

**PURCHASE OFFER
WITH CONDITIONAL CLOSING**

(IMPROVED PROPERTY WITH PROPOSAL)

THIS AGREEMENT made this 23 day of February, 2004, by and between the **CITY OF ROCHESTER**, City Hall, 30 Church Street, Rochester, New York 14614, hereinafter called the "City", and 390 South Avenue, LLC residing at 10 County Meadow Dr., Honeoye Falls, NY 14472, hereinafter called "Purchaser".

1. PROPERTY

The Purchaser hereby agrees to purchase the following property known as 420 South Ave (Map Assessment No. 121.48-1-51).

2. A. PURCHASE PRICE

The Purchaser hereby agrees to pay for this property the sum of (\$ 25,000) payable as follows:

DEPOSIT (\$ 6,250) upon signing this offer, to be held until closing at which time it shall become part of the purchase price, or returned if this offer is not accepted by the City or the deposit retained as provided herein.

BALANCE of (\$18,750) payable in cash or certified check at the time of conditional closing.

- B. CERTIFICATE OF OCCUPANCY** - The Purchaser shall apply to the Department of Community Development (Permit Office) for a Certificate of Occupancy for legal use of the property, within two business days from the date of this Agreement written above. Purchaser shall pay the applicable fee.

3. IN LIEU OF TAX PAYMENTS

In addition to the purchase price, the Purchaser hereby pays to the City of Rochester the additional sum of \$ 1,992 in lieu of City taxes for the period ending February 28, 2005 receipt of which is hereby acknowledged.

If the title is transferred (deed recorded) and Certificate of Occupancy is issued prior to February 28, 2005, the City shall credit the pro rata share of the above in lieu of tax payment toward the Purchaser's next full tax bill. The property becomes fully taxable upon transfer of title to Purchaser.

If the transfer of title and recording of deed **does not** take place by February 28, 2005, then the Purchaser, prior to transfer of title, agrees to pay an **additional** in lieu of tax payment equal to a pro rata share of full City and School taxes and embellishments adjusted from March 1, 2005, to date of transfer of title, based on full assessment and then current tax rates and charges. The property becomes fully taxable upon transfer of title to the Purchaser.

If requested in writing by the Purchaser, the City may consider granting the Purchaser an extension of the time limit for structure rehabilitation. Such consideration would be solely at the discretion of the City and the City would be under **no obligation** to grant an extension of time. Extensions, if granted, would be made in one intervals only. If the City consents in writing to grant to the Purchaser an extension of time for structure rehabilitation, then the Purchaser, in consideration for such extension(s), agrees to pay at such time an **additional** in lieu of tax payment equal to a six (6) month pro rata share of full City and School taxes and embellishments, based on full assessment and then current tax rate and charges. If the Purchaser obtains code compliance from the City prior to the expiration of the time the in lieu of tax payment is made pursuant to this paragraph, then the Purchaser shall be refunded the pro rata portion of the in lieu of tax payment made pursuant to this paragraph. The amount of the in lieu of tax payment to be made pursuant to this paragraph shall be equal to a pro rata share of full City and School taxes and embellishments, and shall be based on full assessment and then current tax rate and charges. The property becomes fully taxable upon transfer of title to the Purchaser.

4. CONDITIONAL CLOSING/TITLE TRANSFER WITH REVERTER

A. This contract and the Purchaser's obligations contained herein, including the City's transfer of title to the Purchaser, shall be contingent upon the following:

- (1) This property is sold subject to the condition that the Purchaser complete the conditional closing within a period of 30 days from the date of Council acceptance of the Offer or within such time as may be approved by the City;
- (2) Purchaser obtaining, prior to conditional closing, any zoning variances, Site Plan approval and other zoning/planning approvals required for purchaser's intended use of the property. Purchaser shall apply for any such approvals within 30 days of City Council approval of this contract.

B. The Purchaser may request that the conditional closing requirement stated in Section 4.A. be waived. Approval by the City is subject to the Purchaser meeting the following criteria:

- (1) The Purchaser must have immediate title to the subject property to meet the participating lending institutions requirement for financing. The Purchaser must provide a letter from the participating lending institution to the City containing this requirement;
- (2) The Purchaser shall furnish the City with a financial guarantee for rehabilitation of the property. The amount of the guarantee shall not be less than the estimated cost of rehabilitation as approved by the City.

The guarantee shall be in the form of a Letter of Credit, Performance Bond, or other collateral pledged by the Purchaser to the City, as approved by the City. Upon satisfaction by the Purchaser of the reverter clause requirements stated in Section 4.B.3. below, the City shall release to the Purchaser the financial guarantee pledged to the City for property rehabilitation;

- (3) The deed to the property shall contain a Reverter clause. The Reverter clause shall require the Purchaser to obtain a Certificate of Occupancy for the property within twelve (12) months of title transfer. Failure by the Purchaser to comply shall be grounds for the

City to commence court proceedings to revest title to the property in the name of the City and for the City to use the financial guarantee pledged to the City to complete rehabilitation of the property;

(4) Prior to title transfer, the Purchaser shall obtain any zoning variances, site plan approval and other zoning/planning approvals required for Purchaser's intended use of the property. Purchaser shall apply for any such approvals within 30 days of City Council approval of this contract.

C. In the event that the Purchaser requires immediate title to the property for the reason stated in Section 4.B.1. and the Purchaser is a bona fide participant in City-sponsored grant and/or loan programs, the City shall grant a Reverter Deed to the Purchaser without the Purchaser providing the City with a financial guarantee with regard to property rehabilitation. However, before title transfer, the Purchaser shall furnish the City with a letter of financial commitment from the participating lending institution.

The City shall have the right to revest title to the City under conditions set forth in Section 4.B.3.

5. COUNTY TAX

The Purchaser agrees to pay any existing and future County tax liens, plus interest, pertaining to the subject property, including the following County tax liens, plus interest:

199 ___ \$ ___; 199 ___ \$ ___; 199 ___ \$ ___; Total \$ -0-

6. WATER/PURE WATERS/OTHER UTILITIES

Purchaser agrees to pay for any and all City water and Pure Water charges and for all other utilities for the subject property commencing on the first day of the month after Council approval of this offer.

If the subject property is vacant at the time of the City auction, Purchaser acknowledges that all water meters have been removed from the subject premises and reinstallation of said meters shall be the sole responsibility of the Purchaser. Purchaser agrees to be responsible for any charges for reinstallation of water meters and to have all future billings sent to Purchaser.

If the subject property is occupied, Purchaser agrees to have a final water reading taken immediately by the City Water Bureau and to pay for any and all charges as set forth in the first paragraph in this section.

Purchaser agrees to make the property accessible to the City Water Bureau to insure said final reading shall be made in a timely fashion.

If this property is occupied, Purchaser agrees to have a final reading taken immediately and to pay for any and all City and Pure Water charges and for all other utility charges, commencing on the first day of the month after City Council approval of this offer. Purchaser agrees to make the property accessible to the City Water Bureau to insure that the final reading shall be made in a timely manner.

7. **TITLE REPORTS**

If title to any portion of this property is not insurable, Purchaser or the City shall have the right to cancel this contract. In the event of such cancellation by either party, then any money deposited with the City shall be returned to the Purchaser and there shall be no further liability on the part of either party. The City shall order title insurance at Purchaser's expense. Purchaser shall pay the title insurance premium at closing.

8. **CANCELLATION**

If the Purchaser fails to complete the conditional closing or the rehabilitation of this property as required in this Agreement, or if illegal activity is conducted upon the property during the period of Purchaser's right of possession or during the rehabilitation period, the City, without refund of any deposit payment or in lieu of tax payment, shall cancel this sale. This cancellation shall be effective upon a written notice mailed to the Purchaser. The City shall retain 25 percent of the purchase price or \$1,000, whichever is greater, and the in lieu of tax payments as liquidated damages. Discovery of stolen, illegal, or controlled substances pursuant to execution of a search warrant at the property, or apprehension of a suspect upon the premises pursuant to an arrest warrant, shall constitute prima facie evidence of illegal activity for purposes of this Section.

9. **TERM OF OFFER**

This Offer shall be irrevocable for 60 days from the date of execution of this Purchase Offer Agreement.

10. **TITLE DOCUMENTS**

The City shall order, at Purchaser's expense and payable at closing, a title report (not an abstract of title), City and County tax searches and Federal Bankruptcy search, showing title in the City. Purchaser takes the property subject to any rights of tenants, and any covenants, easements and restrictions of record in the Monroe County Clerk's Office. Purchaser or his attorney is to have title documents for at least three (3) days prior to the date of conditional closing. Purchaser shall pay all recording fees and transfer tax, including, but not limited to, the charges set forth in Section 13 (F), hereinafter set forth.

Purchaser accepts the property in its "as is" condition. No oral warranties or representation, whether expressed or implied, by the City, its agent, employees, representatives, assignees, servants or contractors shall be deemed to be binding on the City. Failure of Purchaser to inspect the subject premises prior to, or after execution of this contract, shall not be grounds for the rescission or revocation of this contract. No claim for damages will exist against the City because of defective title. This paragraph, however, is subject to the attached Lead Compliance Addendum.

11. **RIGHT OF POSSESSION**

A. **LICENSE** - The City hereby grants the Purchaser a revocable license to enter the subject premises from the date of Council Approval for the purpose of debris removal, cleaning, maintenance or any activity primarily related to the care, custody, and control of said

property. Purchaser agrees that he/she shall be responsible for the control and security of premises, and shall be deemed responsible for all persons present upon the property and for all activity conducted thereon. This revocable license does not authorize entry upon the premises for any purpose other than debris removal, cleaning, maintenance, or activities primarily and directly related to the care, custody and control of said property.

Purchaser's right to enter does not include the right of Purchaser or others to reside in the property prior to the conditional closing. This license is subject to the cancellation provisions of Section 8 of this Agreement. For occupancy prior to conditional closing, Purchaser must obtain written approval from the City and a conditional + Certificate of Occupancy from the City. Purchaser's right of entry shall continue until cancellation of this purchase by the City or the conditional closing, whichever occurs first.

B. **INSURANCE** - The Purchaser agrees to hold the City of Rochester harmless from any and all claims for bodily injury or property damage during the license period from Council approval to conditional closing. Purchaser shall insure the property with public liability insurance with limits of not less than \$100,000 with respect to each person, not less than \$300,000 with respect to any one occurrence; or such other limits as may be approved by the City. All such insurance policies shall be issued in the name of the Purchaser and the City as an additional insured, and a copy of a bona fide certificate of insurance evidencing the coverage provided in the policy shall be delivered by the Purchaser to the City on or before the date of conditional closing.

C. **ASSUMPTION OF RISK** - The Purchaser understands and agrees that he takes possession of the property pursuant to Section 11 at his own risk, and accepts, from the day of Council approval, responsibility and liability for the care, custody, and control of the property and assumes from the date of Council approval risk of loss for damage to the property, from whatever cause. Any such damage shall not relieve the Purchaser from completing this purchase.

D. **IMPROVEMENTS/PERSONAL PROPERTY** - The Purchaser understands and agrees that the City shall not be liable to the Purchaser for any reimbursements for any improvements, or expenditures made upon the property by the Purchaser, his agents, contractors, servants, assigns, heirs or successors. If the property contains items of personal property, it shall be the responsibility of the Purchaser to establish ownership to the personal property and the Purchaser shall hold the City harmless from any claims relating to the personal property.

E. **RENTS** - During the license period, the Purchaser shall have the right to collect rents, if any, from the property, commencing on the first day of the month after Council approval of this Offer. There shall be no adjustment of rents for the month of Council approval. The Purchaser's right to collect rents shall include the right to evict. The City shall be entitled to any rents accruing to the end of the month of Council approval and Purchaser shall immediately pay over to the City any such rents collected or received.

12. **DEVELOPMENT PLANS**

A. **SUBMISSION OF PLANS** - The Purchaser shall submit development plans for the property to the Commissioner of Community Development or his/her delegated representative within 30 days from the date of this Agreement. If Purchaser fails to so submit the development

plans, the City may declare this contract null and void by written notice to the Purchaser and shall retain all deposits and payments made by the Purchaser.

- B. CITY'S PLANS APPROVAL - The Commissioner of Community Development or his/her delegated representative shall approve, disapprove or request modifications of the development plans submitted by the Purchaser within 30 days from submission of the plans to the City. If the Commissioner or his/her representative disapproves of the plan, or if the Purchaser does not agree to the modifications requested within 10 days of receipt of the City's request for modification, then the City may declare this contract null and void by written notice to the Purchaser and shall return to the Purchaser all deposits and payments.

13. CONDITIONAL CLOSING

A conditional closing shall take place at City Hall, 30 Church Street, Rochester, New York within 30 days from the date of City Council approval of the sale, or within such time as may be approved by the City.

The time period for completing the conditional closing shall not be extended because of Purchaser's application for any City rehabilitation loan or grant. Any such application should be made within 30 days from the date of City Council approval of the sale. Denial of the loan or grant or other contingencies, such as a sale to a third party shall not relieve Purchaser from completing the purchase according to the terms of this Agreement.

At the conditional closing:

- A. The Purchaser shall pay to the City by cash, certified check or bank draft made payable to the City Treasurer the balance of the purchase price.
- B. The City shall deliver its deed for this property to the City's Department of Finance.
- C. The deed and closing checks shall be held by the Department of Finance.
- D. IN THIS AGREEMENT, IT IS UNDERSTOOD AND AGREED THAT TIME IS OF THE ESSENCE, AND IN THE EVENT PURCHASER FAILS TO COMPLETE THE CONDITIONAL CLOSING WITHIN THE TIME SET FORTH ABOVE, THEN THE CITY MAY CANCEL THIS CONTRACT BY WRITTEN NOTICE MAILED TO THE PURCHASER, AND THE CITY SHALL RETAIN AS LIQUIDATED DAMAGES THE DEPOSIT AND IN LIEU OF TAX PAYMENT MADE HEREIN, AND NEITHER PARTY SHALL HAVE ANY FURTHER RIGHTS AGAINST THE OTHER. THIS PARAGRAPH, HOWEVER IS SUBJECT TO THE ATTACHED LEAD COMPLIANCE ADDENDUM.

E. CONDITIONS OF THE CONDITIONAL CLOSING-REHABILITATION REQUIREMENTS

- (1) Purchaser agrees to demolish the structure on this property and construct the retail buildings as specified in the approved Development Plans, to comply with the applicable codes of the City of Rochester, within twelve (12) months from the date of the conditional closing.
- (2) Demolition and construction shall begin on the date of conditional closing and shall be diligently and continuously prosecuted until completion without any substantial delay.

However, if after 60 days from the date of conditional closing and monthly periods thereafter, the Purchaser has not, in the opinion of the City, shown reasonable and substantial progress in the rehabilitation of the property, then the City, after giving written notice to the Purchaser, may cancel this sales agreement in accordance with the terms and conditions of this Agreement.

In addition, the Purchaser agrees that during the construction period he/she shall be responsible for the control or security of the premises, and shall be deemed responsible for all persons present upon the property and for all activity conducted thereon. Illegal activity as defined in Paragraph 8 of the Agreement by any person upon the premises shall constitute grounds for immediate cancellation pursuant to Paragraph 8 of this Agreement.

(3) The rehabilitation work shall be fully completed within twelve (12) months after the date of conditional closing, unless this Agreement is amended by written document executed by the City. If requested in writing by the Purchaser, the City may consider granting the Purchaser an extension of the time limit for structure rehabilitation. Such consideration would be solely at the discretion of the City and the City would be under **no obligation** to grant an extension of time. Extensions, if granted, would be made in one month intervals only. If the City consents in writing to grant an extension of time for structure rehabilitation, then the Purchaser, in consideration for such extension(s), agrees to pay at such time an **additional** in lieu of tax payment equal to a six month pro rata share of fully City and School taxes and embellishments, based on full assessment and then current tax rate and charges. If the Purchaser obtains code compliance from the City prior to the expiration of the time the in lieu of tax payment is made pursuant to this paragraph, then the Purchaser shall be refunded the pro rata portion of the in lieu of tax payment required to be made pursuant to this paragraph shall be equal to a pro rata share of full City and School taxes and charges. The property becomes fully taxable upon transfer of title to the Purchaser.

(4) Use of the property will comply with the requirements of the existing zoning classification, and the regulations of the Zoning Ordinance of the City of Rochester, and that any changes of land use classification desired will be initiated by the Purchaser and completed prior to the date of transfer of title.

(5) Title to the property will not be conveyed to the Purchaser until the completed rehabilitation receives the approval of the Commissioner of Community Development and a Certificate of Occupancy or Letter of Compliance is issued by the Department of Buildings and Property Conservation.

(6) During the construction period, before title is transferred, the Purchaser shall notify the City Real Estate Office of any change of Purchaser's address and the Purchaser shall contact the City Real Estate Office on a monthly basis for the purpose of arranging regular City monthly inspections.

(7) During the construction period, until the sooner of (a) transfer of title to the Purchaser or (b) cancellation of this Agreement, the provisions of Section 11, subsection B (Insurance), subsection C (Assumption of Risk), subsection D (Improvements/Personal Property) and subsection E (Rents) shall apply, with any reference therein to the "license period" deemed to mean the "rehabilitation period".

(8) If the project is not completed within twelve (12) months from the date of conditional closing, or within such longer time period as granted in writing by the City, then the cancellation provisions of Section 8 shall apply.

F. FINAL CLOSING

If the terms and conditions of this Agreement are satisfied and a Certificate of Occupancy issued within the time limits of this Agreement, a final closing between the City and the Purchaser shall take place at City Hall. At the final closing, the Purchaser shall pay to the City, by cash, certified check or bank draft, the following amounts:

Fee to record Deed	\$ 16.00
Filing fee for Form TP-584	6.00
Filing Fee for SBEA form	25.00
N.Y.S. Transfer Tax	4.00 per \$1,000 of Purchase Price
Title Insurance Premium	Per Schedule
Title Report	Per Title Company charge(s)

(Please Note: These fees, set by State law, are subject to change between the date of this Agreement and final closing.)

The City shall then record the Deed to the Purchaser at the Monroe County Clerk's Office.

14. NON-ASSIGNABLE

This contract shall not be assigned, transferred or pledged by the Purchaser without the written consent of the City.

15. APPROVAL OF PURCHASE OFFER

Approval of this Purchase Offer, if given, shall be by ordinance enacted by the Rochester City Council and approved by the Mayor. Approval is effective on the date of ordinance is adopted. City Council and the Mayor reserve the right to reject any and all Purchase Offers. If City Council and/or the Mayor do not approve this Purchase Offer, this Purchase Offer shall be null and void without further liability on the part of either party. Publication in a newspaper of general circulation of an ordinance accepting this Offer shall constitute due notice to the Purchaser of such acceptance. Purchaser understands that the individual or corporate name, as the case may be, hereinafter set forth, is the name to be submitted for City Council approval. Names cannot be changed after City Council approval. This Purchase Offer may also be subject to cancellation provision of the attached Lead Compliance Addendum.

16. WARRANTY

The Purchaser hereby states that he/she is not an employee of the City of Rochester, that he/she is not the former owner, nor a principal of the former owner or part of the immediate family of the former owner, and that he/she is not making this purchase for such former owner nor for the purpose of transferring the property to such former owner.

17. **SUB-SOIL CONDITIONS**

The Purchaser understands and agrees that the property is being sold "as is". The City of Rochester makes no warranties, expressed or implied, as to the sub-soil conditions of said property. The Purchaser agrees that the City of Rochester shall not be liable for damages because of any sub-soil conditions nor shall said conditions be grounds for non-performance by the Purchaser.

18. **ATTORNEY REPRESENTATION**

If the Purchaser decides not to have an attorney represent him, he or she acknowledges that the City's attorney represents the City's interests, not the Purchaser's. The City's attorneys cannot render legal advice to Purchaser, nor are they under any legal obligation to disclose matters which are a matter of record which the Purchaser may ascertain himself.

19. **NO WAIVER**

In the event that the terms and conditions of this Agreement are not strictly enforced by the City of Rochester, such non-enforcement shall not act as, or be deemed to act as, a waiver or modification of this Agreement, nor shall non-enforcement prevent the City of Rochester from enforcing each and every term of this Agreement thereafter.

20. **SEVERABILITY**

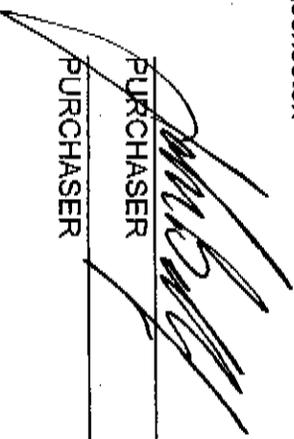
If any provision of this Agreement is held invalid by a court of law, the remainder of the Agreement shall not be affected thereby, if such remainder would then continue to conform to the laws of the State of New York.

21. **PROHIBITION ON RE-SALE**

This contract is made subject to the Purchaser agreeing not to transfer, re-sell or convey the subject premises to a tax-exempt organization for a period of five (5) years from the date of the recording of the deed from the City of Rochester. This covenant shall be contained in the deed from the City of Rochester.

22. See Schedule B

DATED: _____


PURCHASER

WITNESS: _____

PURCHASER

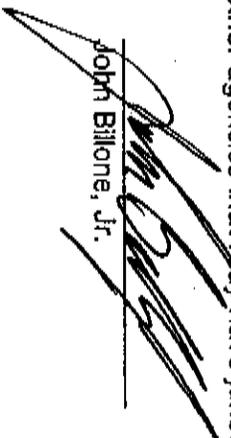
SCHEDULE B

Additional Terms and Conditions of Purchase Offer

Purchaser understands that his/her proposal has been accepted by the City of Rochester subject to the following conditions:

1. Purchaser agrees to demolish the existing structure and construct a retail building to contain uses that are approved by the Director of Real Estate.
2. You will assume responsibility for the care, custody and control of the property on the day following Council approval, and shall hold the City harmless for any and all claims for bodily injury or property damage. From this date, you agree to keep premises insured with public liability insurance with limits of not less than \$100,000 with respect to each person and not less than \$300,000 with respect to any one occurrence. All such insurance shall be issued in the name of the purchaser and the City of Rochester as an additional insured. A copy of the certificate of binder of insurance, evidencing the coverage provided in this policy shall be delivered by the purchaser to the City of Rochester, Division of Real Estate.
3. You agree to close this sale within 30 days from the date of City Council approval.
4. You agree that within 30 days of conditional closing and prior to commencement of the project, you will apply for and obtain site plan approval and all required permits and variances from the Permit Office, located in Room 121B, City Hall.
5. You agree to commence demolition and construction of the retail building within 30 days of said issuance of permits and diligently and continuously prosecute said construction until the completion date, which shall be within twelve (12) months from the date of conditional closing.
6. You agree to comply with all terms and conditions of the purchase offer and the attached proposal, not superseded herein, the City's zoning and building ordinance, the laws and/or ordinances of all other agencies that may have jurisdiction.

Date


John Bilione, Jr.

Date

Witness

ADDENDUM TO AGREEMENT

THIS ADDENDUM is made this 1 day of October, 2004, by and between the **CITY OF ROCHESTER**, City Hall, 30 Church Street, Rochester, New York 14614, hereinafter referred to as "City" and **390 SOUTH AVENUE, LLC**, with offices at ~~10 County Meadow Drive, Heneye Falls, NY 44472~~, hereinafter referred to as the "Purchaser." *Per Bat 10/17/04 Rochester 1/6/10 JS*

WITNESSETH:

WHEREAS, City and Purchaser entered into Purchase and Sale Contract for the purchase of 420 South Avenue ("the property") dated February 23, 2004 ("Agreement"); and

WHEREAS, the City Council by Ordinance 2004-264 authorized the Director of Real Estate to reduce the sale price in an amount not to exceed \$23,000 based on the actual cost of environmental remediation of 420 South Avenue.

NOW THEREFORE, in consideration of the terms and conditions contained herein, the parties do covenant and agree as follows:

1. The Agreement is hereby amended by substituting the following for paragraph 2.A. (*new material in italics*):

2.A. PURCHASE PRICE

The Purchaser hereby agrees to pay for this property the sum of (\$25,000) payable as follows:

DEPOSIT (\$6,250) upon signing this offer, to be held until closing at which time it shall become part of the purchase price, or returned if this offer is not accepted by the City or the deposit retained as provided herein.

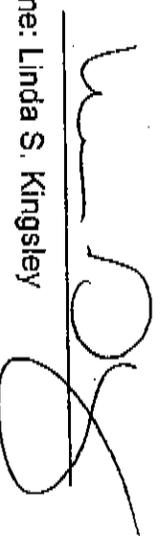
BALANCE of (\$18,750) payable in cash or certified check at time of conditional closing.

REDUCTION. *The purchase price above shall be reduced by a credit, not to exceed (\$23,000) based upon the actual cost of environmental remediation of the property. Purchaser agrees to provide Seller with actual costs and documentation from contractors that are to be reviewed and approved by Director of Real Estate/DES/DEQ, prior to giving the credit. All invoices must be supported by adequate documentation.*

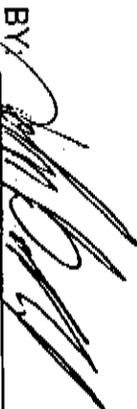
2. The Agreement, as modified by this Addendum, constitutes the entire and integrated agreement between and among the parties hereto and supersedes any and all prior negotiations, agreements and conditions, whether written or oral. Any modification or amendment to the Agreement shall be void unless it is in writing and subscribed by the party to be charged or by the party's authorized agent.
3. Indemnification. To the extent permitted by law, the Purchaser agrees to protect, indemnify, defend, and save City harmless from and against all claims, demands, losses, liabilities, and causes of action of every kind and character in any way resulting from the acts or omissions of the Purchaser, the Purchaser's agents, employees, representatives, or contractors pursuant to this Agreement and Addendum.
4. The parties acknowledge that the execution of this Addendum has been approved by Ordinance 2004-264 duly adopted on August 25, 2004.
5. This addendum shall be incorporated in and be made a part of the Agreement. Any reference herein to the Agreement shall be deemed to be the Agreement and this addendum.

IN WITNESS WHEREOF, the parties have duly executed this Addendum on the date first written above.

CITY OF ROCHESTER

BY: 
Name: Linda S. Kingsley
Corporation Counsel

390 SOUTH AVENUE, LLC

BY: 

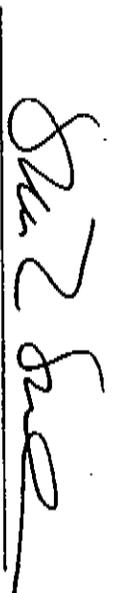
Name: John Billone, Jr.

Title: Managing Member

STATE OF NEW YORK
COUNTY OF MONROE) SS:

On the 29th day of September, 2004 before me, the undersigned, a Notary Public in and for said State, personally appeared **LINDA S. KINGSLEY**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.





Notary Public

STATE OF NEW YORK
COUNTY OF MONROE)

SS:

SCOTT C. SMITH
Notary Public, State of New York
Ontario County # 4651693
Commission Expires January 6, 2006

On the 1st day of October, 2004 before me, the undersigned, a Notary Public in and for said State, personally appeared **JOHN BILLONE, JR.**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



Notary Public

SCOTT C. SMITH
Notary Public, State of New York
Ontario County # 4651693
Commission Expires January 6, 2006

ADDENDUM TO AGREEMENT

THIS ADDENDUM is made this 30 day of November, 2009, by and between the CITY OF ROCHESTER, City Hall, 30 Church Street, Rochester, New York 14614, hereinafter referred to as "City" and 390 SOUTH AVENUE LLC, with offices at P.O. Box 10177, Rochester, New York 14610, hereinafter referred to as the "Purchaser."

WITNESSETH:

WHEREAS, City and Purchaser entered in Purchase and Sale Contract for the purchase of 420 South Avenue ("the property") dated February 23, 2004 ("Agreement"), which was subsequently amended on October 1, 2004:

NOW THEREFORE, in consideration of the terms and conditions contained herein, the parties do covenant and agree as follows:

1. The Agreement is hereby amended by substituting the following for Paragraph 13 in its entirety.

13. CONDITIONAL CLOSING

In consideration of the payment of \$6,250 heretofore received by the City from the Purchaser, this sale shall be considered to be conditionally closed.

- A. Purchaser agrees to apply for all necessary permits to demolish the existing structure on this property, and to carry out said demolition in compliance with all applicable City codes, within six (6) months from the date of execution of this Addendum to Agreement.
- B. The Purchaser shall submit development plans for the property to the Commissioner of Neighborhood and Business Development or his delegated representative within 60 days from the date of execution of this Addendum to Agreement. If Purchaser fails to so submit the development plans, the City may declare this contract null and void by written notice to the Purchaser and shall retain all deposits and payments made by the Purchaser.
- C. The City shall approve, disapprove or request modifications of the development plans submitted by the Purchaser within 30 days from submission of the plans to the City. If the City, or if the Purchaser does not agree to the modifications requested within 10 days of receipt of the City's request for modification, then the City may declare this contract null and void by written notice to the Purchaser and shall return to the Purchaser all deposits and payments.

- D. Demolition and construction shall be diligently and continuously prosecuted until completion without any substantial delay. If after 60 days from the date of execution of this Addendum to Agreement, and monthly periods thereafter, the Purchaser has not, in the opinion of the City, shown reasonable and substantial progress in the demolition of existing structure and/or progress toward the development plans, then the City, after giving written notice to the Purchaser, may cancel this sales agreement in accordance with the terms and conditions of this Agreement.
- E. The construction work shall be fully completed within 12 months after issuance of all required City approvals, but in no event later than May 31, 2011, unless this Agreement is amended by written document executed by the City. If the construction of the improvements on the property as shown on the approved development plan is not completed by the specified deadline, or within such longer time period as granted in writing by the City, the cancellation provisions of Section 8 shall apply. If requested in writing by the Purchaser, the City may consider granting the Purchaser an extension of the time limit for completion. Such consideration would be solely at the discretion of the City and the City would be under no obligation to grant an extension of time. If the City consents in writing to grant an extension, then the Purchaser, in consideration for such extension(s), agrees to pay at such time an additional in lieu of tax payment equal to a pro rata share of full City and School taxes and embellishment charges, based on full assessment and then current tax rate and charges. If the Purchaser obtains code compliance and acquires title to the property prior to the expiration of the time, then the Purchaser shall be refunded the pro rata portion of the in lieu of tax payment. The property becomes fully taxable upon transfer of title to the Purchaser.
- F. Use of the property will comply with all applicable codes of the City of Rochester.
- G. Title to the property will not be conveyed to the Purchaser until issuance of a Certificate of Occupancy or Letter of Compliance by the City, unless conveyance is made by a Deed with Reverter Clause as provided in Section 4B of the Agreement.
- H. During the construction period, before title is transferred, the Purchaser shall notify the City Real Estate Division of any change of the Purchaser's address, and the Purchaser shall arrange for City inspections of a monthly basis to monitor the construction.
- I. Following conditional closing, until the sooner of (a) transfer of title to the Purchaser or (b) cancellation of this Agreement, the provisions of Section 11, subsection B (Insurance), subsection C (Assumption of Risk),

subsection D (Improvements/Personal Property) and subsection E (Rents) shall apply.

J. If the terms and conditions of this Agreement are satisfied and a Certificate of Occupancy issued within the time limits of this Agreement, a final closing between the City and Purchaser shall take place. At the final closing, the Purchaser shall pay to the City, by cash, cashier's check or bank draft, the required fee to record the Deed, filing fees for Form TP-584 and SBEA, NYS Transfer Tax, and the cost for title report and title insurance premium. The City shall then record the Deed to the Purchaser at the Office of the Monroe County Clerk.

2. Section 4A and Section 12 of the Agreement are hereby deleted.
3. This Addendum shall be incorporated in and made a part of the Agreement. Any reference herein to the Agreement shall be deemed to be the Agreement and this Addendum.

IN WITNESS WHEREOF, the parties have duly executed this Addendum on the date first written above.

SCS
CITY OF ROCHESTER

BY: 
Thomas Richards, Corporation Counsel

390 SOUTH AVENUE, LLC

BY: 
John Billone, Jr., Managing Member

STATE OF NEW YORK)
COUNTY OF MONROE) SS:

On the 14th day of December, 2009 before me, the undersigned, a Notary Public in and for said State, personally appeared **THOMAS RICHARDS**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Bonnie K. De Carlo
Notary Public

BONNIE K. DE CARLO
Notary Public, State of New York
Qualified in Monroe County
Commission Expires November 6, 20 10

STATE OF NEW YORK)
COUNTY OF MONROE) SS:

On the 30th day of NOVEMBER, 2009 before me, the undersigned, a Notary Public in and for said State, personally appeared **JOHN BILLONE JR.**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

GINA ZOLLWEG
NOTARY PUBLIC-STATE OF NEW YORK
No. 01206162649
Qualified in Monroe County
Commission Expires March 12, 2011

G. Zollweg
Notary Public