

**MEETING AGENDA
TOWN OF PHILIPSTOWN PLANNING BOARD
Old VFW Hall, 34 Kemble Ave., Cold Spring, New York 10516
November 16, 2017
7:30 PM**

Pledge of Allegiance
Roll Call
Approval of Minutes – October 19, 2017

Correspondence:

- Letter from Celia Imrey regarding Hudson Highlands Reserve proposal – dated 10/30/2017
- Letter from Jane Hall regarding Peck-Eyler proposal – dated 10/30/2017
- Letter from Barbara Weisberg regarding Peck-Eyler proposal – dated 11/1/2017
- Letter from Robert Berlin regarding Peck-Eyler proposal dated 11/1/2017

Public Hearing:

1657 Route 9D(Christopher Buck), 1657 Route 9D, Cold Spring **TM# 49.-1-24.1**
(Proposed renovation and addition to the existing residence. Construction of a new accessory structure for use as a home office, new pool and pool house. New driveways to access the home office and redefine the main entrance to the residence.)

Old Business (All Old Business Pending):

Barbara Peck-Eyler, Lake Celeste Drive/Old Albany Post Rd. **TM# 72.18-1-5**
(Proposed construction of a new single family residence and driveway with detached garage. Access approval needed)

Hudson Highland Reserve, Rte 9 & Horton Road.
(continued review which includes a Full Environmental Assessment and revised preliminary drawings)

New Business:

Robert Miller/Alltec Service Center, 1380 Route 9, Garrison **TM# 82.-2-7**
(The applicant is seeking site plan approval for a motor vehicle service center with apartment above, for an existing 3-bay garage which has previously been utilized for motor vehicle repair but for which the commercial use is currently not operating. The applicant wishes to also use the site for limited automotive sales.)

*****NOTE: All items may not be called. Items may not always be called in order *****

**PHILIPSTOWN PLANNING BOARD
MEETING MINUTES
OCTOBER 19, 2017**

The Philipstown Planning Board held its regular monthly meeting on Thursday, October 19, 2017 at the Old VFW Hall, 34 Kemble Ave., Cold Spring, New York.

Present: Anthony Merante, Chairman
Kim Conner
Peter Lewis
Neal Tomann
Davin Hardy
Dennis Gagnon
Ronald Gainer, Town Engineer
Stephen Gaba, Counsel

Absent: Neal Zuckerman

Chairman Merante opened the meeting at 7:30 p.m. with the Pledge of Allegiance. Roll call was taken by Ms. Percacciolo.

A. Minutes:

The minutes of September 21, 2017 were reviewed. Mrs. Conner made a motion to adopt the minutes and Mr. Gagnon seconded the motion. The vote was as follows:

Anthony Merante	-	Aye
Kim Conner	-	Aye
Dennis Gagnon	-	Aye
Peter Lewis	-	Aye
Neal Tomann	-	Aye
Neal Zuckerman	-	Absent
David Hardy	-	Aye

B. Return of Escrow:

Lausca, LLC, Lady Blue Devils Lane, Cold Spring

TM# 27.12-1-10

Mr. Gainer stated the project has not been active for a while and there are no outstanding monies. Mrs. Conner questioned if the landscaping in the back had been finished. Mr. Gainer stated he is unsure. Mr. Gaba suggested approving it on the condition that the landscaping be complete; if not complete, hold the escrow, if complete, release it. Mrs. Conner made a motion to return the escrow of Lausca, LLC and Mr. Tomann seconded the motion. The vote was as follows:

Anthony Merante	-	Aye
Kim Conner	-	Aye
Dennis Gagnon	-	Aye
Peter Lewis	-	Aye
Neal Tomann	-	Aye
Neal Zuckerman	-	Absent
David Hardy	-	Aye

C. New Business

Barbara Peck-Eyler, Lake Celeste Drive/Old Albany Post Rd.

TM# 72.18-1-5

Mr. James Clearwater of MJS Engineering & Land Surveying and Mr. Ben Fiering were in attendance representing the applicant. Mr. Clearwater stated Ms. Eyler purchased this 19 acre site at the end of Lake Celeste Drive about a year ago. Mr. Clearwater stated the site is vacant at present and the applicant is proposing a single family residence and added it has no frontage on a public street, never has, and it has always had its access at the end of Lake Celeste. He stated the first thing necessary is to take a look at the Open Development Area requirements in the Town Code in regards to building another house on this private road. Mr. Clearwater stated there are already 14 houses on that road, which is already more than what the code permits. Chairman Merante questioned if the lot is buildable to which Mr. Clearwater responded it is. Mr. Gainer stated there is a technical review from his office, which the applicant has received, indicating it is on a private road. He adds it is a landlocked parcel and has applied for a building permit which the Building Inspector referred to the Planning Board. He stated it is a matter for the board to consider approval of the access that he requires off of that private road. Mr. Gainer reminded the Board it is a process they have been through before with other applicants. He stated there are some technical issues to deal with but the primary issue the Board should consider tonight is scheduling a site inspection so they can evaluate the issues of the existing private road as well as the access intended into the parcel. Mrs. Conner stated that in the pre-app meeting notes from August 8th it says "The authority of the Building Inspector to issue permits for parcels deriving access from any such right-of-way or easement shall be limited to such number, which, when added to the number of principal structures...shall not exceed eight on a right-of-way or easement existing before August 5, 1960." She stated there are already 14 houses on the road and it would seem that the ODA forecloses adding anymore houses on that road. Mr. Gaba stated that is not correct. The applicant can, as of right (assuming that the road meets construction standards), build as long as there are 8 or less. If it exceeds 8, you can take a look at the road and say you can't build on it unless A, B and C are done. He stated that this gives you a right to say no, you can't build, whereas if there were less than 8 you would not have that right and all you could look at is construction. Mrs. Conner clarified then that the process of the Planning Board would be to go and have a look and decide

whether or not the road needs improvements in order to add another house. Mr. Gaba responded that is correct. He added there is presumption that the access of the ODA road to public road, if traffic is backing up too much, it could be dangerous. There is also the presumption that these roads are not as wide or well built as Town roads therefore if there are too many houses on them with too much traffic it will cause problems. Mr. Gaba stated that is not necessarily the case but something the Board would look into; it could be that the ODA road can support 14, 20 houses on it, but you have to go out and take a look before making a decision. Mrs. Conner questioned that the limiting factor here for the Planning Board going forward then would be after August 5th, 1960. Mr. Gaba stated there are 2 time-frames, one of them, he believes it is the older roads, can have 8 or more whereas if it's a newer road you can have 4 or more. Mr. Fiering stated that the existing road is narrow but passable and bounded by stone walls, presumably erected by owners of the existing dwellings. He added that many of the existing dwellings are in need of, or going to be in need of, significant attention in the next period and that is an overall concern. Mr. Fiering stated that most of them are bungalows built in late 1950s. He stated there is an easement crossing 2 lots and the road isn't too bad until you hit those easements and so the assumption that he has put on his client, the applicant, is to expect to have to make some improvements through the easement to her property, where things get kind of bumpy and unkept. The assumption would be that the existing road will be tight but adequate. He stated there is a culvert/small bridge that Mr. Clearwater's colleague took a look at and deemed it to be strong enough. He added the road is no worse than other roads, such as Indian Brook Road. Mr. Gaba questioned what the grade on the road is. Mr. Clearwater stated the grade is fine until you reach this parcel where there is an increase. He added that Lake Celeste Road comes in off of Old Albany Post Road which is a dirt road as well as a Town Road and stated that in some places, Lake Celeste is in better condition than OAPR. Mr. Fiering added that it is flatter and less subject to erosion than OAPR or Indian Brook, because it is flatter. Mr. Fiering stated that the baseline position is that the lot was created at the same time as all the existing lots. Mr. Merante questioned how many other buildable lots are left, to the applicants knowledge. Mr. Fiering responded that this would be the last one. Mr. Tomann questioned how many acres the property is. Mr. Fiering responded that it is 19+ acres and the intent is to build a 2500 square foot house with a garage for a single family. He added, for those familiar with the road, it is beyond the turnaround at the end of the road. Mr. Merante asked Mr. Gaba about the approval of access. Mr. Gaba said that is the ODA. Mr. Merante asked if there were anymore comments from the Board. Mrs. Conner stated she saw in the EAF that one of the questions was "Is the project site or any portion of it located in or adjacent to an area designated as sensitive for archaeological sites on the New York Historic Preservation Office archaeological site inventory" and indicated that the applicant marked it "yes". Mr. Clearwater stated that had been marked yes by the DEC; when you fill out the form online the DEC automatically checks off certain things. Mrs. Conner suggested it would be helpful to know what that is. Mr. Clearwater stated he would have to address the DEC to get that answer. He added that most of the county is in an archaeological sensitive area because the Indians were here. Mr. Fiering stated he has discussed with the applicant possibly inviting one of the local colleges to come to the site and see if

there was anything of interest and added it has not been inhabited for hundreds of years, so anything is possible. Mrs. Conner stated that in the same document it says "Will the proposed action disturb more than one acre and create stormwater runoff, etc." and that is marked no. She stated the application states somewhere that there will be .83 acres of disturbance and .5 acres in terms of roads, stating that adds up to more than 1 acre. Mr. Clearwater stated that the .5 was included in the total of .83. Mr. Fiering stated that the road is an old timber road and there is pretty minimal work needed. Mr. Merante questioned what the length of the road is from Old Albany Post Road to the terminus, approximately. Mr. Clearwater stated he was unsure but estimated it was about a thousand feet. Mr. Fiering stated it was maybe half a mile.

Mr. Merante stated he would entertain a motion to declare this a major project. Mrs. Conner made a motion and Mr. Lewis seconded the motion. The vote was as follows:

Anthony Merante	-	Aye
Kim Conner	-	Aye
Dennis Gagnon	-	Aye
Peter Lewis	-	Aye
Neal Tomann	-	Aye
Neal Zuckerman	-	Absent
David Hardy	-	Aye

Mr. Merante suggested a courtesy referral to the Conservation Board as well as the Fire Department but was unsure of the responsible department. Mr. Merante stated once the correct department is identified they will be notified.

Mr. Hardy made a motion to refer the project to the Conservation Board as well as the pertinent Fire Department and Mr. Lewis seconded the motion. The vote was as follows:

Anthony Merante	-	Aye
Kim Conner	-	Aye
Dennis Gagnon	-	Aye
Peter Lewis	-	Aye
Neal Tomann	-	Aye
Neal Zuckerman	-	Absent
David Hardy	-	Aye

Mr. Merante asked what dates were available to schedule site visits. Ms. Percacciolo suggested either November 5th or November 12th. Mrs. Conner stated she was unavailable for the 5th. Mr. Fiering questioned what day and time. Mr. Merante stated Sunday morning at 9:30 am. Mrs. Conner suggested November 12th. Mr. Gagnon said he would not be available to make it.

Mr. Lewis made a motion to schedule a site for November 12th and Mr. Hardy seconded the motion. The vote was as follows:

Anthony Merante	-	Aye
Kim Conner	-	Aye
Dennis Gagnon	-	Aye
Peter Lewis	-	Aye
Neal Tomann	-	Aye
Neal Zuckerman	-	Absent
David Hardy	-	Aye

Mr. Merante stated they were not ready to schedule a public hearing on the matter. Mr. Gaba suggested the Board declare it an unlisted action under SEQRA and do an uncoordinated review. Mr. Lewis made a motion and Mrs. Conner seconded the motion. The vote was as follows:

Anthony Merante	-	Aye
Kim Conner	-	Aye
Dennis Gagnon	-	Aye
Peter Lewis	-	Aye
Neal Tomann	-	Aye
Neal Zuckerman	-	Absent
David Hardy	-	Aye

Mr. Tomann questioned if it was necessary for them to declare the Planning Board as lead agency. Mr. Gaba stated if you do an uncoordinated review there is only one responsible agency. He added he does not believe it is a Type 1 action but depending on what they find out from SHIPPO, it might change. He stated if it is, they have to do a coordinated review.

Mr. William Florence in the audience questioned if the Board would entertain any discussion concerning this application, Mr. Merante stated he would not at this time and added that would take place at the public hearing. Mr. Florence stated there would be some discussion. Mrs. Conner added that the site visits are also public for people who are interested. Mr. Gaba added that the public could also submit written comments before the public hearing. Mr. Florence stated he wished to speak about the ownership of the road.

D. Old Business

1657 Route 9D(Christopher Buck), 1657 Route 9D, Cold Spring

TM# 49.-1-24.1

Mr. Watson stated that this application was before the Planning Board and referred to the Zoning Board for a variance for a garage that exceeded what is allowable by the Code and they have obtained that variance. He stated the Board has conducted its site inspection and believes the project is ready for a public hearing to be scheduled and he was ready to answer any questions. Mrs. Conner asked Mr. Gainer for a quick memory refresher on what the Planning Boards obligations are regarding the Scenic Protection Overlay District and the Open Space Conservation Overlay District; what are they supposed to be looking for. Mr. Gainer stated the Scenic Protection Overlay Ordinance just mandates the protection of vegetation along the frontage; there's certain criteria that you do not remove vegetation within the first 100 feet and you also do not want major structures to be visible from publicly viewable spaces along the frontage. Mr. Gainer stated the Board has been to the site and is unaware of any views noted by the Board in areas that he is proposing to develop or provide additions to. He added, in terms of the Open Space, it really relates to subdivision of the property and requirements as to minimum lot sizes. Mr. Hardy questioned if there were restrictions on what could be viewed from the river. Mr. Gainer stated that could be deemed publicly visible space or a viewable space and asked Mr. Watson if he could identify the improvements that are planned to the structure. He added that the major addition of the garage is going to be on the route 9D side of the existing structure. Using his visual, Mr. Watson reviewed the proposed additions to the existing structure and the garage. He stated the work is being done well within the property. Mr. Merante questioned if the electricity was to be run underground and Mr. Watson responded it is. He stated he does not believe, at any time of the year, that there is a possibility there would be any visual impact. He added they would not be clear-cutting below the home office and most of the trees on the slope will remain, with the exception of a few places. Mr. Gainer noted there was also talk of a long overhang to minimize any kind of glass glare from the walkway, as well as darkened glass or some sort of shaded glass. Mrs. Conner stated she did not remember the original plan having 2 driveways; she was under the impression that one was being rerouted and one was being removed. Mr. Watson responded there were always 2 on the plans. Mr. Gainer stated he is separating the one driveway that services the property to the south. Mrs. Conner asked if there was any further discussion about preserving some of those larger trees. Mr. Watson responded yes and that they had been on the property flagging trees that are to be specifically preserved. He added there are a number of trees that will come out, specifically where the pool and pool house are to be located. Mrs. Conner questioned if the new addition is lower than the existing tower. Mr. Watson stated he believes it to be adding he thinks it is not as high as what's already there. Mr. Gainer suggested that prior to the public hearing the applicant should file architectural drawings so the board understands all the improvements planned, between the garage, the additions, the home office, so some illustration is available for the board to look at. Mr. Lewis questioned if all of Mr. Gainer's technical comments would be addressed in a packet for the Board before the public hearing. Mr. Watson stated they probably would not adding that normally there are things that are settled afterward. He added the major ones will be addressed, the minor ones will not which is typical procedure. Councilman Flaherty questioned what the variance

granted was for. Mr. Watson stated the proposed garage is about 1200 feet bigger than is allowed. He added that except for the doors, that garage is going to be underground and under a green roof.

Mr. Gagnon made a motion to schedule a public hearing for November 16th and Mr. Tomann seconded the motion. The vote was as follows:

Anthony Merante	-	Aye
Kim Conner	-	Aye
Dennis Gagnon	-	Aye
Peter Lewis	-	Aye
Neal Tomann	-	Aye
Neal Zuckerman	-	Absent
David Hardy	-	Aye

Hudson Highland Reserve, Rte 9 & Horton Road.

Mr. Glenn Watson was in attendance representing the applicant. Mr. Merante reported that Mr. Gainer and AKRF had only recently received a copy of the EAF and neither have had ample time to review it. Mr. Gainer reiterated Mr. Merante's statement and stated that they would issue their technical reports in advance of the next meeting. Mr. Gaba agreed. Ms. Michele Smith of the Hudson Highlands Land Trust spoke briefly just to ensure the Board had received a letter submitted on behalf of the Trust dated October 5th, 2017. She requested the letter be posted online with the application. Mr. Watson stated he had a couple of comments to make. He stated he was disappointed that nothing was being discussed this month. He added there was a considerable amount of work that went into the preparation of this on a very tight deadline. He added he did not receive a copy of the letter from Michele Smith. Mr. Watson's comment was that the Board has taken a considerable amount of time and a very detailed look. He stated the Board has deviated from their normal practice by holding a public hearing before SEQRA has been closed; if you're going to follow the rules, follow the rules. Mr. Gaba stated the Board always holds the public hearing before they make a SEQRA determination; it's been the Board's practice as long as he has been here. Mr. Watson stated that you are not supposed to have the public hearing until after a determination has been made. Mr. Gaba argued the SEQRA regulations don't say that at all, there's one second department case that says that and whether that's binding or not is open to interpretation. Mr. Watson stated they have done everything asked of them and are getting frustrated by it. Mr. Tomann requested that the code provisions for SEQRA be circulated for everyone to read so everyone is on the same page. Mr. Gaba stated the SEQRA regulations can be found online. Mr. Merante stated this is the first, and may be the only kind of this development in Philipstown. He added that the project next door, which was another one and only of its kind, took roughly 6 years to complete. He suggested they are being absolutely thorough because it is a large, sensitive area. Mr.

Philipstown Planning Board
Regular Monthly Meeting
October 19, 2017

Watson stated there was not a hint of fault in taking the time and doing it correctly but wishes to move the project along.

Mr. Tomann moved to adjourn the meeting and Mr. Lewis seconded the motion. The vote was as follows:

Anthony Merante	-	Aye
Kim Conner	-	Aye
Dennis Gagnon	-	Aye
Peter Lewis	-	Aye
Neal Tomann	-	Aye
Neal Zuckerman	-	Absent
David Hardy	-	Aye

The motion passed unanimously and the meeting adjourned at 8:15 P.M.

Date approved _____

Respectfully submitted by

Tara K. Percacciolo

Celia Imrey
62 Horton Road
Cold Spring, NY 10516

October 30, 2017

Anthony Merante, Chairman
Philipstown Planning board
238 Main Street
Cold Spring, NY 10516

Dear Chairman Merante,

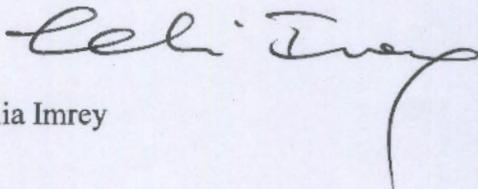
I wish to start by acknowledging the time, effort and resources that have been committed by your Board in the process of evaluating and approving the Hudson Highlands Reserve development to date. Decisions on the fate of such a large and important parcel of open land in our community are critical in that they will affect this area on many levels and for many years. Thank you for your efforts thus far.

I am writing to express my concern that decisions continue to be made without a Full Environmental Impact Statement. Additionally, the leaders of our community have not yet reached out to hear our views --with a Public Hearing. The public and long-term benefit of the Full EIS cannot be underestimated. The value of public input cannot be underestimated.

A proper review of a full EIS and engaged public hearings on the HHR will provide our leaders and the individual members of our community with peace of mind and confidence in public decisions. Without it, we suspect hidden private interests may be affecting this process, since it is obviously in the interests of the developer to move forward with minimal investment and as quickly as possible.

Thus, I am still concerned about the process of evaluating and approving the HHR that I have seen thus far, notwithstanding the time and effort devoted. I look forward to careful and engaged Phillipstown leadership where due diligence and public views are included in addition to the private interests of a single developer.

Sincerely,



Celia Imrey

Jane S. Hall
49 West 12th Street
New York, New York 10011

212-675-7364
janeshall@earthlink.net

October 30, 2017

Re. Lake Celeste Drive: Building permit request

Dear Planning Board Members,

I am writing regarding a building permit request from Barbara Peck-Eyler. I have lived at 51 Lake Celeste Drive for over 30 years. I bought my home after being assured that there would be no more building because there were already too many homes on the road. The road is a narrow, one lane dirt road. It is curvy and I live towards the top of the hill. The community takes care of the road but every time it rains hard, there are pot holes requiring careful navigating.

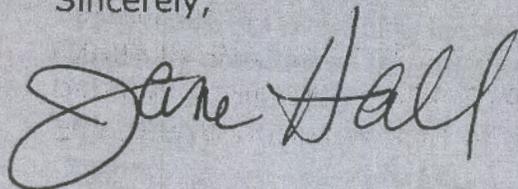
So, I am most distressed to learn that a new permit is being considered. I met personally with Ms. Peck-Eyler who told me of her plans to build a recording studio on her property along with a cement foundation to her house and garage/studio.

First of all, a cement truck would break the bridge on the road. MS. EVIER-PECK knows this and said we should fix our road to accommodate her needs!

Secondly, her plan to build a 'top of the line' recording studio would cause more traffic than the road could bear. State of the art recording studios are very expensive hobbies so I worry about it being used for commercial purposes.

I implore you to reject the permit request as you have in the past. Her contractor knew of these issues and it may be that he was not entirely truthful with her.

Sincerely,



Subject: Fwd: Euyler Peck request for variance.
From: Linda Valentino <lvalentino@philipstown.com>
Date: 11/6/2017 10:30 AM
To: tpercacciolo@philipstown.com

----- Forwarded Message -----

Subject: Euyler Peck request for variance.

Date: Sun, 5 Nov 2017 12:14:03 -0500

From: Debbie <dwolesh@gmail.com>

To: dgagnon@philipstown.com <dgagnon@philipstown.com>, amerante@philipstown.com <amerante@philipstown.com>, dhardy@philipstown.com <dhardy@philipstown.com>, kconner@philipstown.com <kconner@philipstown.com>, lvalentino@philipstown.com <lvalentino@philipstown.com>, ntomann@philipstown.com <ntomann@philipstown.com>, nzuckerman@philipstown.com <nzuckerman@philipstown.com>, plewis@philipstown.com <plewis@philipstown.com>

To the members of the Philipstown Planning Board I am writing to express my dismay and concern that this issue is even before you. Before Ms. Peck Eyler even closed on the property in question, when she visited our community with several of her people to do, as she said to me "due diligence" before the closing, I spoke with her on the road and I told her that no more homes could be built with access on Lake Celeste Drive because of the characteristics of the road. She said that she would "run those facts"

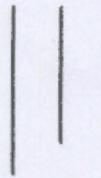
past her attorneys.

She obviously proceeded even in the face of these restrictions.

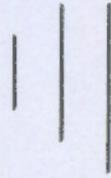
Ours is a small community with a history in Philipstown going back to before WWII, and I emphasize the word community. Some of our members occupy houses that have been in their families for several generations. The road that connects our community, Lake Celeste Drive, is not only a means of passage for cars, but also the pedestrian way for our members, our children and grandchildren as they make their way around the community. Any increase in traffic on this road, especially commercial traffic, or other traffic not concerned with the welfare of our members is a concern for all of us.

In addition, the unique character of the road, single laned and bordered by rock walls, and much impacted by weather, is quite vulnerable to misuse.

The management and upkeep of the road is one of our community's major chores. It is also the thread that connects us. Having someone think of it only as an impediment to their plans is distressing.



Deborah Olesh



38 Lake Celeste Drive

PHILIPSTOWN PLANNING BOARD
Public Hearing – November 16, 2017

The Philipstown Planning Board for the Town of Philipstown, New York will hold a public hearing on Thursday, November 16, 2017 starting at 7:30 p.m. at the Old VFW Hall, 34 Kemble Ave., Cold Spring, New York. to consider the following application:

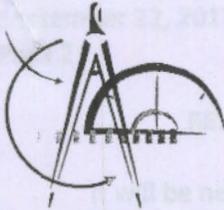
1657, LLC (Christopher Buck), 1657 Route 9d, Cold Spring, New York - for a proposed renovation and addition to the existing residence and construction of a new accessory structure for use as a home office, new pool and pool house. Additionally, new driveways will be added to the property to access the home office and redefine the main entrance to the residence. The proposal also includes construction of a buried garage adjacent to the residence in excess of 1000 sf allowable by the Town Code, which the applicant has obtained a variance for. The property is 33.044 acres.

The property is located along the west side of NYS Route 9D slightly north of Boscobel and is situated in a "RC" (Rural Conservation) Zoning District in the Town of Philipstown. TM# 49.-1-24.1.

At said hearing all persons will have the right to be heard. Copies of the application, plat map, and other related materials may be seen in the Office of the Planning Board at the Philipstown Town Hall.

Dated at Philipstown, New York, this 2nd day of November, 2017.

Anthony Merante, Chairman



RONALD J. GAINER, P.E., PLLC
31 Baldwin Road, Patterson, NY 12563
Mailing Address: PO BOX 417, Pawling, NY 12564

office 845-878-6507 cell 845-527-1432

TO: Town of Philipstown Planning Board DATE: September 22, 2017
FROM: Ronald J. Gainer, PE SUBJ: "AllTec Service Center" Site Plan; NYS Route 9

As provided in Section 175-66B of the Town Code a pre-application meeting was held on September 15, 2017 at Philipstown Town Hall. In attendance were the following:

Joe Mariotta	-	Hudson Valley Realty
Bob Miller	-	Prospective purchaser of property
Dennis Gagnon	-	Planning Board member
Peter Lewis	-	Planning Board member
Greg Wunner	-	Code Enforcement Officer
Ron Gainer	-	Town Engineer

The following matters were discussed:

Purpose of Application:

Mr. Miller is proposing to purchase 1380 Route 9, on which an existing commercial structure exists. The property is currently owned by Paul Nolte. The property lies on the east side of Route 9, just south of the Route 403 intersection. It has previously been utilized for motor vehicle service, but the commercial use currently is not operating. Per the County tax records, the property comprises 1.74 acres; tax map no. 82.-2-7. Mr. Margiotta is his realtor. Further, these records indicate the structure on site is <3,000 sf.

The premises includes a 3-bay garage. Mr. Miller would continue to utilize the first floor of the premises for motor vehicle repair. A residential apartment is on the second floor, which he would continue to use as "residential". He would expect to store 4-5 vehicles on the site external to the premises, for cars waiting for either repair or pick up. He did not plan to fence the property, or provide a gate at the entrance. Associated with this "use" would be some limited "automotive sales", although this would involve few cars.

Mr. Miller currently operates Alltec Service Center on E. Main Street (NYS Route 6) in Cortland Manor. The use he is proposing on this site will be similar to that which he currently operates. Little, if any site improvements are expected in order to utilize the premises for motor vehicle repairs.

Zoning District Information:

The property is located in the Highway Commercial ("HC") Zoning District. "Service Business" is a use permitted within the district. The Zoning Code defines "Service Business" as including "automobile service station". A review of the definition of this latter term includes "auto body shops". Therefore, it appears that this use is permitted on the property.

Site Plan Review Required:

Per the Town of Philipstown "Use Table" contained in the Zoning Ordinance, since the former business activity is no longer operating, Site Plan approval from the Planning Board will be required.

C:\Users\Gainer\Documents\Phillipstown\Planning Board\Pre-Applications - MISC\1380 Route 9\09-22-17 AllTec Service Center pre-appl memo.doc

RE: Hudson Design Site Plan; NYS Route 9

It will be necessary to review Town files in order to confirm whether "Site Plan" approval" was ever previously granted for the existing premises on the site. If a site plan exists in the Town's files, only an "Amended Site Plan" application and associated fees would be required. However, if not, typical "Site Plan" application and fees would apply.

"Major/Minor" Classification:

Per the provisions of Section 175-60C(1) of the Town Code, the following threshold criteria would be the only items that could apply to the proposal:

- Conversion of existing structures totaling 5,000 square feet to another use
- Alteration and active use of 10,000 square feet of land, with or without structures.

Since the new "use" of the building will appear to involve <5,000 sf, the project would therefore be classified as a "Minor" project. It was noted that a public hearing for "Minor" projects is discretionary.

Waivers:

No waivers were identified by the applicant during the pre-application meeting.

Sensitive Environmental Areas/Overlay Districts:

A review of the town's environmental mapping indicates that the property does not appear to encompass any overlay districts. It is noted that the "Scenic Protection Overlay" district lies along NYS Route 9 in this area; however, encompasses properties only along the west side of the roadway and so does not affect the parcel.

Further, the property lies in the vicinity of Graymoor, which is included in the "Open Space Overlay" District. However, as this property's boundaries do not abut Graymoor lands, these regulations would not appear to apply.

Site Development issues:

In order for the applicant move forward with a site plan application, he would have to obtain at least a survey of the site, illustrating the site's boundaries and existing site improvements. This could be obtained from a local surveyor. Any improvements planned should be noted, including vehicle storage, etc.

Mr. Miller had no knowledge of the site's existing water supply and sanitary disposal facilities. It was noted that these systems should be investigated to assure that they would be adequate for the activities and "uses" proposed for the site.

The Site Plan drawings should also specify the amount of "existing" and "proposed" impervious coverage, as well as overall site disturbance planned, to confirm what SWPPP requirements will apply.

Site Plan Fees: Since the County Tax Records indicate that some site improvements appear to have been constructed in the late 1980's or early 1990's, it is possible that "Site Plan" approval was previously granted for the property. If so, and considering that only "Amended Site Plan" fees would then apply, based upon review of the Town's fee schedule the following fees may potentially apply:



RE: Hudson Design Site Plan; NYS Route 9

"Amended Site Plan, minor"	-	\$250
Escrow	-	\$5,000 (un-used monies returned to applicant)

Obviously, once town records are reviewed, and a Site Plan application is filed, the applicable fees to be charged can accurately be confirmed. It should be noted that the application fees and escrow deposit should be posted with separate checks.

Expected Referrals:

- a courtesy referral to the local Fire Department was felt appropriate.

As the conclusion of these discussions, the pre-application meeting concluded.

c: Greg Wunner, Code Enforcement Officer
Stephen Gaba, Esq.
Applicant



Town of Philipstown

238 Main Street

Cold Spring New York 10516

PLANNING BOARD

SITE PLAN APPLICATION PACKAGE

MINOR PROJECT

Project Name: LEGALIZATION OF AUTO REPAIR GARAGE

Date: 11/02/17



Town of Philipstown

Planning Board
238 Main Street, PO Box 155
Cold Spring, NY 10516

Office (845) 265- Fax (845) 265-2687

Application for Planning Board Special Use & Site Plan Approval

Date: 11/02/17

TM# 82.-2-7

Project Name: LEGALIZATION OF AUTO REPAIR GARAGE

Street Address: 1380 RTE 9, GARRISON

Fee Amount: \$250.00

Received: _____

Bond Amount: _____

Received: _____

Applicant:

Name ROBERT MILLER

Address 100 LOCUST AVE

C/MNR, NY 10567

Telephone 914-737-6492

Tenant:

Name Jason Miller

Address 194 Dogwood Rd

Cortlandt Manor NY 10567

Telephone 914 804 4512

Design Professional:

MICHAEL J. REAPE, A.I.A.

Address 64 PLEASANT ROAD

LAKE PEEKSKILL, NY 10537

Telephone 845-528-0557

Property Owner

Name ROBERT MILLER

Address 100 LOCUST AVE

C/MNR, NY 10567

Telephone 914-737-6492

TM# 92.-2-7

Project Name: LEGALIZATION OF AUTO REPAIR GARAGE

Project Description: LEGALIZATION OF AUTO REPAIR GARAGE
W/ APARTMENT ABOVE

ZONING INFORMATION

175-7 Zoning District: HC

175-10 Proposed Use: AUTO REPAIR GARAGE

Proposed Accessory Use(s): APARTMENT ABOVE

Minimum side yard setback (2) _____

Minimum side yard setback (1) _____

175-7 Overlay Districts on the property:

	Yes or No
175-13 Floodplain Overlay District - NFIP Map ----- (FPO)	<u>NO</u>
175-18.1 Mobile Home Overlay District ----- (MHO)	<u>NO</u>
175-14 Cold Spring Reservoir Water Shed Overlay ----- (WSO)	<u>NO</u>
175-15 Scenic Protection Overlay ----- (SPO)	<u>YES</u>
175-16 Aquifer Overlay District ----- (AQO)	<u>NO</u>
175-18 Open Space Conservation Overlay District ----- (OSO)	<u>NO</u>
175-35 Within 100 foot buffer of Wetlands or Watercourse -----	<u>YES</u>
175-36 Steep Terrain -----	<u>NO</u>
175-36 Ridge Line Protection -----	<u>NO</u>
175-37 Protection Agricultural -----	<u>NO</u>

- 1. Site Plan
- 2. A long-form Environmental Assessment Form or Draft Environmental Impact Statement.
- 3. An agricultural data statement as defined in §175-74, if required by §175-37C.
- 4. The Site Plan application fee, as established by the Town Board and any required escrow deposit for review costs, as required by the Planning Board.
- 5. FEE: _____ Received: _____
- 6. Escrow: _____ Received: _____

TM# 82-2-7

Project Name: LEGALIZATION OF AUTO REPAIR GARAGE

175-11 Density and Dimensional Regulations

LOTSIZE 83,198 SF.

Zoning District <u>HC</u>	Required	Existing	Proposed	Complies	Variance
Minimum front yard setback					
Measured from the travel way Town Road					
✓ Measured from the travel way County/State	35'	37.1'	37.1'	✓	
Minimum side yard setback	15'	64.0'	64.0'	✓	
Minimum side yard setback (2)	15'	81.2'	81.2'	✓	
Minimum side yard setback (3)					
Minimum rear yard setback	35'	207.5'	207.5'	✓	
Maximum impervious surface coverage <u>60%</u>	49,919	10,092	10,413	✓	
Maximum height	40'	22'-0" $\frac{1}{2}$	22'-0" $\frac{1}{2}$	✓	
Maximum footprint non-residential structures	40,000	3881	3881	✓	

SUBMISSION:

13 copies with one electronic file in .pdf format of the following:

1. Pre-Application meeting decision and comments
2. Application
3. Proof of Ownership
4. Site Plan
5. A long-form Environmental Assessment Form or Draft Environmental Impact Statement.
6. An agricultural data statement as defined in §175-74, if required by §175-37C.
7. The Site Plan application fee, as established by the Town Board and any required escrow deposit for review costs, as required by the Planning Board.
8. FEE: _____ Received: _____
9. Escrow: _____ Received: _____

617.20
Appendix B
Short Environmental Assessment Form

Instructions for Completing

Part 1 - Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part 1 - Project and Sponsor Information			
Robert Miller			
Name of Action or Project: Legalization of Auto Repair Garage			
Project Location (describe, and attach a location map): 1380 Route 9, Garrison, NY			
Brief Description of Proposed Action: Legalization of Existing Auto Repair Garage			
Name of Applicant or Sponsor: Michael J. Reape, A.I.A.		Telephone: 845-528-0557	
		E-Mail: mreape@aol.com	
Address: 64 Pleasant Road			
City/PO: Lake Peekskill		State: NY	Zip Code: 10537
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.			NO <input checked="" type="checkbox"/>
			YES <input type="checkbox"/>
2. Does the proposed action require a permit, approval or funding from any other governmental Agency? If Yes, list agency(s) name and permit or approval:			NO <input checked="" type="checkbox"/>
			YES <input type="checkbox"/>
3.a. Total acreage of the site of the proposed action?		1.910 acres	
b. Total acreage to be physically disturbed?		0.005 acres	
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?		1.910 acres	
4. Check all land uses that occur on, adjoining and near the proposed action.			
<input type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input checked="" type="checkbox"/> Commercial <input checked="" type="checkbox"/> Residential (suburban)			
<input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input type="checkbox"/> Other (specify): _____			
<input type="checkbox"/> Parkland			

5. Is the proposed action, a. A permitted use under the zoning regulations?	NO	YES	N/A
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Consistent with the adopted comprehensive plan?	NO	YES	N/A
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
8. a. Will the proposed action result in a substantial increase in traffic above present levels?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
b. Are public transportation service(s) available at or near the site of the proposed action?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
c. Are any pedestrian accommodations or bicycle routes available on or near site of the proposed action?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: _____	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
10. Will the proposed action connect to an existing public/private water supply? If No, describe method for providing potable water: _____	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
11. Will the proposed action connect to existing wastewater utilities? If No, describe method for providing wastewater treatment: _____	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
12. a. Does the site contain a structure that is listed on either the State or National Register of Historic Places?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
b. Is the proposed action located in an archeological sensitive area?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency?	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply: <input type="checkbox"/> Shoreline <input type="checkbox"/> Forest <input type="checkbox"/> Agricultural/grasslands <input type="checkbox"/> Early mid-successional <input type="checkbox"/> Wetland <input type="checkbox"/> Urban <input checked="" type="checkbox"/> Suburban			
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
16. Is the project site located in the 100 year flood plain?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes, a. Will storm water discharges flow to adjacent properties? <input type="checkbox"/> NO <input type="checkbox"/> YES	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe: _____	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	

18. Does the proposed action include construction or other activities that result in the impoundment of water or other liquids (e.g. retention pond, waste lagoon, dam)? If Yes, explain purpose and size: _____	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe: _____	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe: _____	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
I AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE		
Applicant/sponsor name: <u>Michael J. Rease AIA</u> Date: <u>11/02/17</u>		
Signature: <u>Michael J. Rease, AIA</u>		

Part 2 - Impact Assessment. The Lead Agency is responsible for the completion of Part 2. Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept "Have my responses been reasonable considering the scale and context of the proposed action?"

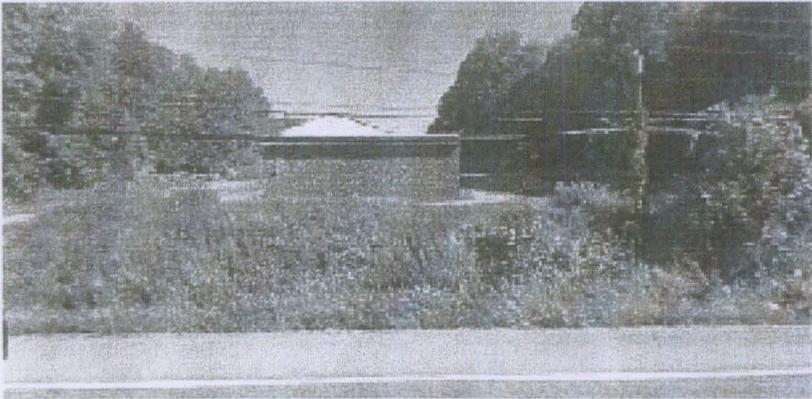
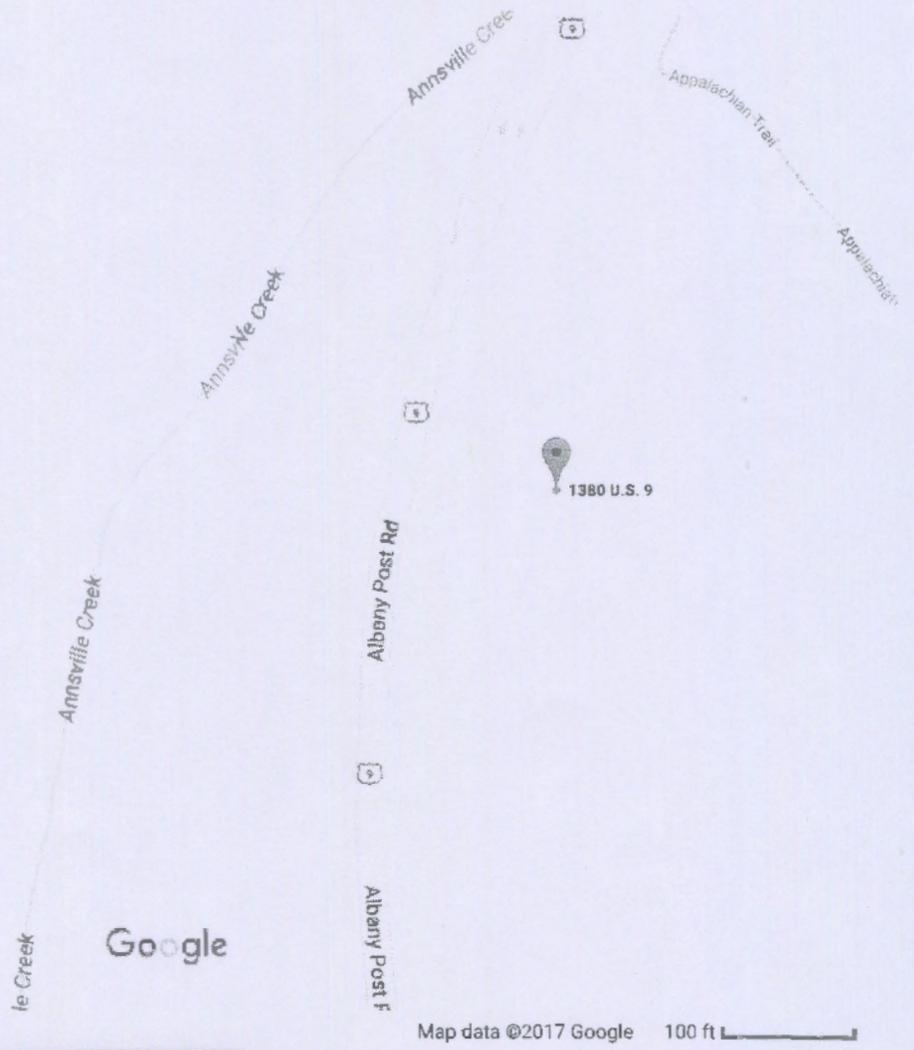
	No, or small impact may occur	Moderate to large impact may occur
1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?	<input type="checkbox"/>	<input type="checkbox"/>
2. Will the proposed action result in a change in the use or intensity of use of land?	<input type="checkbox"/>	<input type="checkbox"/>
3. Will the proposed action impair the character or quality of the existing community?	<input type="checkbox"/>	<input type="checkbox"/>
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?	<input type="checkbox"/>	<input type="checkbox"/>
5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?	<input type="checkbox"/>	<input type="checkbox"/>
6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?	<input type="checkbox"/>	<input type="checkbox"/>
7. Will the proposed action impact existing:		
a. public / private water supplies?	<input type="checkbox"/>	<input type="checkbox"/>
b. public / private wastewater treatment utilities?	<input type="checkbox"/>	<input type="checkbox"/>
8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?	<input type="checkbox"/>	<input type="checkbox"/>
9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?	<input type="checkbox"/>	<input type="checkbox"/>

	No, or small impact may occur	Moderate to large impact may occur
10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?	<input type="checkbox"/>	<input type="checkbox"/>
11. Will the proposed action create a hazard to environmental resources or human health?	<input type="checkbox"/>	<input type="checkbox"/>

Part 3 - Determination of significance. The Lead Agency is responsible for the completion of Part 3. For every question in Part 2 that was answered "moderate to large impact may occur", or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

<input type="checkbox"/>	Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action may result in one or more potentially large or significant adverse impacts and an environmental impact statement is required.
<input type="checkbox"/>	Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action will not result in any significant adverse environmental impacts.
_____	_____
Name of Lead Agency	Date
_____	_____
Print or Type Name of Responsible Officer in Lead Agency	Title of Responsible Officer
_____	_____
Signature of Responsible Officer in Lead Agency	Signature of Preparer (if different from Responsible Officer)

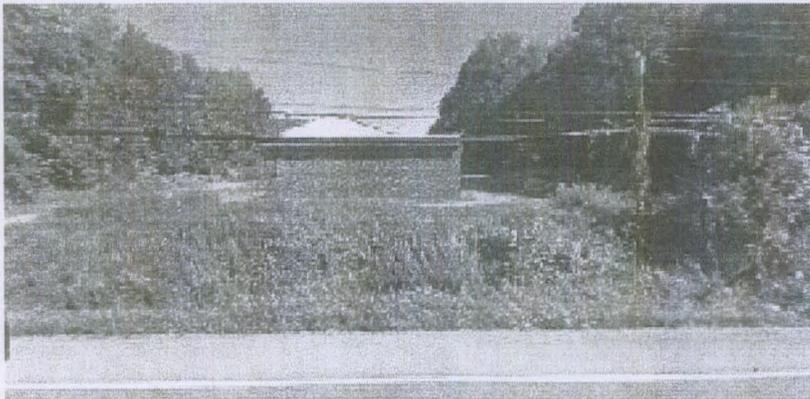
PRINT



1380 U.S. 9
Garrison, NY 10524



Imagery ©2017 Google, Map data ©2017 Google 100 ft



1380 U.S. 9
Garrison, NY 10524

In Witness Whereof, this contract has been duly executed by the parties hereto.

CATHERINE A. NOLTE, Seller

~~ROBERT MILRENT, Purchaser~~
MILLER

Attorney for Seller: Erin Coxen, Esq.

Address: 36 Horton Drive, Mahopac, NY 10541

Tel: (914) 393-2777 Fax: (877) 349-0246

Email: coxenlaw@gmail.com

Receipt of the Downpayment is acknowledged and the undersigned agrees to act in accordance with the provisions of paragraph 6 above.

Attorney for Purchaser: Donald Singer, Esq.

Address: 74 Corwood Rd., Cortlandt Manor, NY 10567

Phone: 914 739-1164

Email: singersr@optonline.net

Erin Coxen, Escrowee

PREMISES

Contract of Sale

TITLE NO. _____

NOLTE

TO

~~MILRENT~~ ROBERT MILLER

Sheet
Section
Block
Lot
Plate
County or Town PUTNAM

NOTES ON MORTGAGE COMMITMENT CONTINGENCY CLAUSE

for

RESIDENTIAL CONTRACT OF SALE

- WARNING:** The mortgage Commitment contingency clause for the Residential Contract of Sale is a bar association form that attempts to provide a mechanism that makes the rights and obligations of the parties clear in sale of residences in ordinary circumstances. It should be reviewed carefully by Seller and Purchaser and their attorneys in each and every transaction to make sure that all the provisions are appropriate for that transaction. Negotiated modifications should be made whenever necessary.
- Under the clause, the obligation of Purchaser to purchase under the contract of sale is contingent on Purchaser's obtaining a mortgage Commitment letter from an Institutional Lender within the number of days specified for the amount specified. This refers to calendar days. Seller's attorney should state his/her calculation of the Commitment Date in the letter delivering the executed contract to Purchaser's attorney, to prevent confusion later. Purchaser should promptly confirm or correct that date. In applying for a loan, Purchaser should inform its lender of the scheduled date of Closing in the contract and request that the expiration date of the Commitment occur after the scheduled date of Closing. Purchaser must comply with deadlines and pursue the application in good faith. The Commitment contingency is satisfied by issuance of a Commitment in the amount specified on or before the Commitment Date, unless the Commitment is conditioned on approval of an appraisal. If the Commitment is conditioned on approval of an appraisal and such approval does not occur prior to the Commitment Date, Purchaser should either cancel the contract or obtain an extension of the Commitment Date. If the Commitment is later withdrawn or not honored, Purchaser runs the risk of being in default under the
- If, as has been common, the Commitment letter itself is conditioned on sale of Purchaser's home or payment of any outstanding debt or no material adverse change in Purchaser's financial condition, such a Commitment will satisfy the contract contingency nonetheless, and Purchaser will take the risk of fulfilling those Commitment conditions, including forfeiture of the Downpayment if Purchaser defaults on its obligation to close. Under New York case law, a defaulting Purchaser may not recover any part of the Downpayment, and Seller does not have to prove any damages. If Purchaser is not willing to take that risk, the clause must be modified accordingly.
- Purchaser may submit an application to registered Mortgage Broker instead of applying directly to an Institutional Lender.
- This clause allows Seller to cancel if a Commitment is not accepted by Purchaser by the Commitment Date, unless Purchaser timely supplies a copy of the Commitment, to allow Seller the option to avoid having to wait until the scheduled date of Closing to see if Purchaser will be able to close. Seller may prefer to cancel rather than to wait and settle for forfeiture of the Downpayment if Purchaser defaults. Because of Seller's right to cancel, Purchaser may not waive this contingency clause. This clause means that Purchaser is subject to cancellation by Seller even if Purchaser is willing to risk that he/she will obtain the Commitment after the Commitment Date. Some Purchasers may not want to be subject to such cancellation by Seller.
- Purchaser may want to add to paragraph 21(c) that Purchaser's reimbursement should include non-refundable financing and inspection expenses of Purchaser, which should be refunded by Seller if Seller willfully defaults under the contract of sale (alternative: If Seller is unable to

Jointly prepared by the Real Property Section of the New York State Bar Association, the New York State Land Title Association, the Committee on Real Property Law of the Association of the Bar of the City of New York and the Committee on Real Property Law of the New York County Lawyers' Association

WARNING: NO REPRESENTATION IS MADE THAT THIS FORM OF CONTRACT FOR THE SALE AND PURCHASE OF REAL ESTATE COMPLIES WITH SECTION 5-702 OF THE GENERAL OBLIGATIONS LAW ("PLAIN LANGUAGE").

CONSULT YOUR LAWYER BEFORE SIGNING THIS AGREEMENT

NOTE: FIRE AND CASUALTY LOSSES AND CONDEMNATION

This contract form does not provide for what happens in the event of fire, or other casualty loss or condemnation before the title closing. Unless different provision is made in this contract, Section 5-1311 of the General Obligations Law will apply. One part of that law makes a Purchaser responsible for fire and casualty loss upon taking possession of the Premises before the title closing.

Residential Contract of Sale

Contract of Sale made as of October , 2017 BETWEEN

Catherine A. Nolte, as Executor of the Estate of Paul C. Nolte

1380 Route 9, Garrison, New York 10524

Social Security Number/Fed. I.D. No.(s):

hereinafter called "Seller" and

MULLER

Robert Milrent

Address:

Social Security Number/Fed. I.D. No.(s):

hereinafter called "Purchaser"

The parties hereby agree as follows:

1. Premises. Seller shall sell and convey and Purchaser shall purchase the property, together with all buildings and improvements thereon (collectively the "Premises"), more fully described on a separate page marked "Schedule A", annexed hereto and made a part hereof and also known as:

Address: 1380 Route 9, Town of Philipstown

Section: 82

Block: 2

Lot: 7

Tax Map Designation:

Together with Seller's ownership and rights, if any, to land lying in the bed of any street or highway, opened or proposed, adjoining the Premises to the center line thereof, including any right of Seller to any unpaid award by reason of any taking by condemnation and/or for any damage to the Premises by reason of change of grade of any street or highway. Seller shall deliver at no additional cost to Purchaser, at Closing (as hereinafter defined), or thereafter, on demand, any documents that Purchaser may reasonably require for the conveyance of such title and the assignment and collection of such award or damages.

2. Personal Property. This sale also includes all fixtures and articles of personal property now attached or appurtenant to the Premises, unless specifically excluded below. Seller represents and warrants that at Closing they will be paid for and owned by Seller, free and clear of all liens and encumbrances, except any existing mortgage to which this sale may be subject. They include, but are not limited to, plumbing, heating, lighting and cooking fixtures, chandeliers, bathroom and kitchen cabinets and counters, mantels, door mirrors, switch plates and door hardware, venetian blinds, window treatments, shades, screens, awnings, storm windows, storm doors, window boxes, mail box, TV aerials, weather vane, flagpole, pumps, shrubbery, fencing, outdoor statuary, tool shed, dishwasher, washing machine, clothes dryer, garbage disposal unit, range, oven, built-in-microwave oven, refrigerator, freezer, air conditioning equipment and installations, wall to wall carpeting and built-ins not excluded below, As and if they presently exist and in as in condition.

Excluded from this sale are furniture and household furnishings and

3. Purchase Price. The purchase price is \$430,000.00, payable as follows:

(a) On the signing of this contract, by Purchaser's good check payable to the Escrowee (as hereinafter defined), subject to collection, the receipt of which is hereby acknowledged, to be held in escrow pursuant to paragraph 6 of this contract (the "Downpayment"):

\$43,000.00

(b) By allowance for the principal amount unpaid on the existing mortgage on the date hereof, payment of which Purchaser shall assume by joinder in the deed: \$

(c) Seller's Concession: \$

(d) Balance at Closing in accordance with paragraph 7:

\$387,000.00

4. Existing Mortgage. (Delete if inapplicable) If this sale is subject to an existing mortgage as indicated in paragraph 3(b) above:

(a) The Premises shall be conveyed subject to the continuing lien of the existing mortgage, which is presently payable, with interest at the rate of percent per annum, in monthly installments of \$ which include principal, interest and escrow amounts, if any, and with any balance of principal being due and payable on

(b) To the extent that any required payments are made on the existing mortgage between the date hereof and Closing which reduce the unpaid principal amount thereof below the amount shown in paragraph 3(b), then the balance of the price payable at Closing under paragraph 3(d) shall be increased by the amount of the

payments of principal. Seller represents and warrants that the amount shown in paragraph 3(b) is substantially correct and agrees that only payments required by the existing mortgage will be made between the date hereof and Closing.

- (e) If there is a mortgagee escrow account, Seller shall assign it to Purchaser, if it can be assigned, and in that case Purchaser shall pay the amount in the escrow account to Seller at Closing.
- (d) Seller shall deliver to Purchaser at Closing a certificate dated not more than 30 days before Closing signed by the holder of the existing mortgage, in form for recording, certifying the amount of the unpaid principal, the date to which interest has been paid and the amounts, if any, claimed to be unpaid for principal and interest, itemizing the same. Seller shall pay the fees for recording such certificate. If the holder of the existing mortgage is a bank or other institution as defined in Section 274-a of the Real Property Law it may, instead of the certificate, furnish a letter signed by a duly authorized officer, employee or agent, dated not more than 30 days before Closing, containing the same information.
- (e) Seller represents and warrants that (i) Seller has delivered to Purchaser true and complete copies of the existing mortgage, the note secured thereby and any extensions and modifications thereof, (ii) the existing mortgage is not now, and at the time of Closing will not be, in default, and (iii) the existing mortgage does not contain any provision that permits the holder of the mortgage to require its immediate payment in full or to change any other term thereof by reason of the sale or conveyance of the Premises.

5. Purchase Money Mortgage. (*Delete if inapplicable*) If there is to be a purchase money mortgage as indicated in paragraph 3(e) above:

- (a) The purchase money note and mortgage shall be drawn by the attorney for Seller in the form attached or, if not, in the standard form adopted by the New York State Land Title Association. Purchaser shall pay at Closing the mortgage recording tax, recording fees and the attorney's fees in the amount of \$ _____ for its preparation.
- (b) The purchase money note and mortgage shall also provide that it is subject and subordinate to the lien of the existing mortgage and any extensions, modifications, replacements or consolidations of the existing mortgage, provided that (i) the interest rate thereof shall not be greater than _____ percent per annum and the total debt service thereunder shall not be greater than \$ _____ per annum, and (ii) if the principal amount thereof shall exceed the amount of principal owing and unpaid on the existing mortgage at the time of placing such new mortgage or consolidated mortgage, the excess is to be paid to the holder of such purchase money mortgage in reduction of the principal thereof. The purchase money mortgage shall also provide that such payment to the holder thereof shall not alter or affect the regular installments, if any, of principal payable thereunder and that the holder thereof will, on demand and without charge therefore, execute, acknowledge and deliver any agreement or agreements further to effectuate such subordination.

6. Downpayment in Escrow.

- (a) Seller's attorney ("Escrowee") shall hold the Downpayment in escrow in a segregated bank account at: **Chase Bank**

until Closing or sooner termination of this contract shall pay over or apply the Downpayment in accordance with the terms of this paragraph. Escrowee shall hold the Downpayment in a(n) **non** interest-bearing account for the benefit of the parties. If interest is held for the benefit of the parties, it shall be paid to the party entitled to the Downpayment and the party receiving the interest shall pay any income taxes thereon. If interest is not held for the benefit of the parties, the Downpayment shall be placed in an IOLA account or as otherwise permitted or required by law. The Social Security or Federal Identification numbers of the parties shall be furnished to Escrowee upon request. At Closing, the Downpayment shall be paid by Escrowee to Seller. If for any reason Closing does not occur and either party gives Notice (as defined in paragraph 25) to Escrowee demanding payment of the Downpayment, Escrowee shall give prompt Notice to the other party of such demand. If Escrowee does not receive Notice of objection from such other party to the proposed payment within 10 business days after the giving of such Notice, Escrowee is hereby authorized and directed to make such payment. If Escrowee does receive such Notice of objection within such 10 day period or if for any other reason Escrowee in good faith shall elect not to make such payment, Escrowee shall continue to hold such amount until otherwise directed by Notice from the parties to this contract or a final, non-appealable judgment, order or decree of a court. However, Escrowee shall have the right at any time to deposit the Downpayment and the interest thereon with the clerk of a court in the county in which the Premises are located and shall give Notice of such deposit to Seller and Purchaser. Upon such deposit or other disbursement in accordance with the terms of this paragraph, Escrowee shall be relieved and discharged of all further obligations and responsibilities hereunder.

- (b) The parties acknowledge that Escrowee is acting solely as a stakeholder at their request and for their convenience and that Escrowee shall not be liable to either party for any act or omission on its part unless taken or suffered in bad faith or in willful disregard of this contract or involving gross negligence on the part of Escrowee. Seller and Purchaser jointly and severally (with right of contribution) agree to defend (by attorneys selected by Escrowee), indemnify and hold Escrowee harmless from and against all costs, claims and expenses (including reasonable attorneys' fees) incurred in connection with the performance of Escrowee's duties hereunder, except with respect to actions or omissions taken or suffered by Escrowee in bad faith or in willful disregard of this contract or involving gross negligence on the part of Escrowee.
- (c) Escrowee may act or refrain from acting in respect of any matter referred to herein in full reliance upon and with the advice of counsel which may be selected by it (including any member of its firm) and shall be fully protected in so acting or refraining from action upon the advice of such counsel.
- (d) Escrowee acknowledges receipt of the Downpayment by check subject to collection and Escrowee's agreement to the provisions of this paragraph by signing in the place indicated on the signature page of this contract.
- (e) Escrowee or any member of its firm shall be permitted to act as counsel for Seller in any dispute as to the disbursement of the Downpayment or any other dispute between the parties whether or not Escrowee is in possession of the Downpayment and continues to act as Escrowee.
- (f) The party whose attorney is Escrowee shall be liable for loss of the Downpayment.

- (b) Good certified check of Purchaser drawn on or official check issued by any bank, savings bank, trust company or savings and loan association having a banking office in the State of New York unendorsed and payable to the order of Seller, or as Seller may otherwise direct upon reasonable prior notice (by telephone or otherwise) to Purchaser.
- (c) As to money other than the purchase price payable to Seller at Closing, uncertified check of Purchaser up to the amount of **\$ 1,000.00**; and
- (d) As otherwise agreed to in writing by Seller or Seller's attorney.

8. Mortgage Commitment Contingency. *(Delete paragraph if inapplicable. For explanation, see: NOTES ON MORTGAGE COMMITMENT CONTINGENCY CLAUSE.)*

- (a) The obligation of Purchaser to purchase under this contract is conditioned upon issuance, on or before **30 calendar** days after a fully executed copy of this contract is given to Purchaser or Purchaser's attorney in the manner set forth in paragraph 25 or subparagraph 8(j) (the "Commitment Date"), of a written commitment from an Institutional Lender pursuant to which such Institutional Lender agrees to make a first mortgage loan, other than a VA, FHA or other governmentally insured loan, to Purchaser, at Purchaser's sole cost and expense, of ~~\$344,000.00~~ for a term of at least **30** years (or such lesser sum or shorter term as Purchaser shall be willing to accept) at the prevailing fixed or adjustable rate of interest and on other customary commitment terms (the "Commitment"). To the extent a Commitment is conditioned on the sale of Purchaser's current home, payment of any outstanding debt, no material adverse change in Purchaser's financial condition or any other customary conditions, Purchaser accepts the risk that such conditions may not be met; however, a commitment conditioned on the Institutional Lender's approval of an appraisal shall not be deemed a "Commitment" hereunder until an appraisal is approved (and if that does not occur before the Commitment Date Purchaser may cancel under subparagraph 8(e) unless the Commitment Date is extended).—Purchaser's obligations hereunder are conditioned only on issuance of a Commitment. Once a Commitment is issued, Purchaser is bound under this contract even if the lender fails or refuses to fund the loan for any reason.
- (b) Purchaser shall (i) make prompt application to one or, at Purchaser's election, more than one Institutional Lender for such mortgage loan, (ii) furnish accurate and complete information regarding Purchaser and members of Purchaser's family, as required, (iii) pay all fees, points and charges required in connection with such application and loan, (iv) pursue such application with diligence, and (v) cooperate in good faith with such Institutional Lender(s) to obtain a Commitment. Purchaser shall accept a Commitment meeting the terms set forth in subparagraph 8(a) and shall comply with all requirements of such Commitment (or any other commitment accepted by Purchaser). Purchaser shall furnish Seller with a copy of the Commitment promptly after receipt thereof.
- (c) *(Delete this subparagraph if inapplicable)* Prompt submission by Purchaser of an application to a mortgage broker registered pursuant to Article 12-D of the New York Banking Law ("Mortgage Broker") shall constitute full compliance with the terms and conditions set forth in subparagraph 8(b)(i), provided that such Mortgage Broker promptly submits such

- (d) If all Institutional Lenders to whom applications were made deny such applications in writing prior to the Commitment Date, Purchaser may cancel this contract by giving Notice thereof to Seller, with a copy of such denials, provided that Purchaser has complied with all its obligations under this paragraph 8.
- (e) If no Commitment is issued by an Institutional Lender on or before the Commitment Date, then, unless Purchaser has accepted a written commitment from an Institutional Lender that does not conform to the terms set forth in subparagraph 8(a), Purchaser may cancel this contract by giving Notice to Seller within 5 business days after the Commitment Date, provided that such Notice includes the name and address of the Institutional Lender(s) to whom application was made and that Purchaser has complied with all its obligations under this paragraph 8.
- (f) If this contract is canceled by Purchaser pursuant to subparagraphs 8(d) or (e), neither party shall thereafter have any further rights against, or obligations or liabilities to, the other by reason of this contract, except that the Downpayment shall be promptly refunded to Purchaser and except as set forth in paragraph 27.
- (g) If Purchaser ~~fails to give timely Notice of cancellation or if Purchaser~~ accepts a written commitment from an Institutional Lender that does not conform to the terms set forth in subparagraph 8(a), then Purchaser shall be deemed to have waived Purchaser's right to cancel this contract and to receive a refund of the Downpayment by reason of the contingency contained in this paragraph 8.
- (h) If Seller has not received a copy of a commitment from an Institutional Lender accepted by Purchaser by the Commitment Date, Seller may cancel this contract by giving Notice to Purchaser within 5 business days after the Commitment Date, which cancellation shall become effective unless Purchaser delivers a copy of such commitment to Seller within 10 business days after the Commitment Date. After such cancellation neither party shall have any further rights against, or obligations or liabilities to, the other by reason of this contract, except that the Downpayment shall be promptly refunded to Purchaser (provided Purchaser has complied with all its obligations under this paragraph 8) and except as set forth in paragraph 27.
- (i) For purposes of this contract, the term "Institutional Lender" shall mean any bank, savings bank, private banker, trust company, savings and loan association, credit union or similar banking institution whether organized under the laws of this state, the United States or any other state, foreign banking corporation licensed by the Superintendent of Banks of New York or regulated by the Comptroller of the Currency to transact business in New York State; insurance company duly organized or licensed to do business in New York State; mortgage banker licensed pursuant to Article 12-D of the Banking Law; and any instrumentality created by the United States or any state with the power to make mortgage loans.
- (j) For purposes of subparagraph 8(a), Purchaser shall be deemed to have been given a fully executed copy of this contract on the third business day following the date of ordinary or regular mailing, postage prepaid.

9. Permitted Exceptions. The Premises are sold and shall be conveyed subject to:

- (a) Zoning and subdivision laws and regulations, and landmark, historic or wetlands designation, provided that they are not violated by the existing buildings and improvements erected on the property or their use;
- (b) Consents for the erection of any structures on, under or above any streets on which the Premises abut;

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10. Governmental Violations and Orders.

- (a) Seller shall comply with all notes or notices of violations of law or municipal ordinances, orders or requirements noted or issued as of the date hereof of closing by any governmental department having authority as to lands, housing, buildings, fire, health, environmental and labor conditions affecting the Premises. The Premises shall be conveyed free of them at Closing. Seller shall furnish Purchaser with any authorizations necessary to make the searches that could disclose these matters.
- (b) ~~(Delete if inapplicable) All obligations affecting the Premises pursuant to the Administrative Code of the City of New York incurred prior to Closing and payable in money shall be discharged by Seller at or prior to Closing.~~

11. Seller's Representations.

- (a) Seller represents and warrants to Purchaser that:
- I. The Premises abut or have a right of access to a public road;
 - II. Seller is the sole owner of the Premises and has the full right, power and authority to sell, convey and transfer the same in accordance with the terms of this contract;
 - III. Seller is not a "foreign person", as that term is defined for purposes of the Foreign Investment in Real Property Tax Act. Internal Revenue Code ("IRC") Section 1445, as amended, and the regulations promulgated thereunder (collectively "FIRPTA");
 - IV. The Premises are not affected by any exemptions or abatements of taxes; and
 - V. Seller has been known by no other name for the past ten years, except: **None**
- (b) Seller covenants and warrants that all of the representations and warranties set forth in this contract shall be true and correct at Closing.
- (c) Except as otherwise expressly set forth in this contract, none of Seller's covenants, representations, warranties or other obligations contained in this contract OR RIDERS shall survive Closing.

12. Condition of Property. Purchaser acknowledges and represents that Purchaser is fully aware of the physical condition and state of repair of the Premises and of all other property included in this sale, based on Purchaser's own inspection and investigation thereof, and that Purchaser is entering into this contract based solely upon such inspection and investigation and not upon any information, data, statements or representations, written or oral, as to the physical conditions, state of repair, use, cost of operation or any other matter related to the Premises or the other property included in the sale, given or made by Seller or its representatives, and shall accept the same "as is" in their present condition and state of repair, subject to reasonable use, wear, tear and natural deterioration between the date hereof and the date of Closing (except as otherwise set forth in paragraph 16(e)), without any reduction in the purchase price or claim of any kind for any change in such condition by reason thereof subsequent to the date of this contract. Purchaser and its authorized representatives shall have the right, at reasonable times and upon reasonable notice (by telephone or otherwise) to Seller, to inspect the Premises before Closing.

13. Insurable Title. Seller shall give and Purchaser shall accept such title as **any reputable title company licensed in the State**

14. Closing, Deed and Title.

- (a) "Closing" means the settlement of the obligations of Seller and Purchaser to each other under this contract, including the payment of the purchase price to Seller, and the delivery to Purchaser of a **bargain and sale with covenant deed** in proper statutory short form for record, duly executed and acknowledged, so as to convey to Purchaser fee simple title to the Premises, free of all encumbrances, except as otherwise herein stated. The deed shall contain a covenant by Seller as required by subd. 5 of Section 13 of the Lien Law.
- (b) ~~If Seller is a corporation, it shall deliver to Purchaser at the time of Closing (i) a resolution of its Board of Directors authorizing the sale and delivery of the deed, and (ii) a certificate by the Secretary or Assistant Secretary of the corporation certifying such resolution and setting forth facts showing that the transfer is in conformity with the requirements of Section 909 of the Business Corporation Law. The deed in such case shall contain a recital sufficient to establish compliance with that Section.~~

15. Closing Date and Place. Closing shall take place at 10:00 a.m. o'clock on or about **December 20, 2017** or upon reasonable notice (by telephone or otherwise) by Purchaser, at the office of Lender's attorney.

16. Conditions to Closing. This contract and Purchaser's obligation to purchase the Premises are also subject to and conditioned upon the fulfillment of the following conditions precedent:

- (a) The accuracy, as of the date of Closing, of the representations and warranties of Seller made in this contract.
- (b) The delivery by Seller to Purchaser of a valid and subsisting Certificate of Occupancy or other required certificate of compliance, or evidence that none was required, covering the building(s) and all of the other improvements located on the property authorizing their use as a **Commercial** property at the date of Closing.
- (c) The delivery by Seller to Purchaser of a certificate stating that Seller is not a foreign person, which certificate shall be in the form then required by FIRPTA or a withholding certificate from I.R.S. If Seller fails to deliver the aforesaid certificate or if Purchaser is not entitled under FIRPTA to rely on such certificate, Purchaser shall deduct and withhold from the purchase price a sum equal to 10% thereof (or any lesser amount permitted by law) and shall at Closing remit the withheld amount with the required forms to the Internal Revenue Service.
- (d) The delivery of the Premises and all building(s) and improvements comprising a part thereof in broom clean condition, vacant and free of leases or tenancies, together with keys to the Premises.
- (e) All plumbing (including water supply and septic systems, if any), heating and air conditioning, if any, electrical and mechanical systems, equipment, and machinery in the building(s) located on the property and all appliances which are included in this sale being in working order as of the date of Closing. **And Roof free of leaks**
- (f) If the Premises are a one or two family house, delivery by the parties at Closing of affidavits in compliance with state and local law requirements to the effect that there is installed in the Premises a smoke detecting alarm device or devices.
- (g) The delivery by the parties of any other affidavits required as a condition of recording the deed.

17. Deed Transfer and Recording Taxes. At Closing, payment in any reasonable form to the order of the appropriate State, City or County officer in the amount of any applicable transfer and/or recording tax payable by reason of the delivery or recording of the deed or mortgage, if any, shall be delivered by the party required by this contract to pay such transfer and/or recording tax together with any required tax returns duly executed and sworn to, and such party shall cause any such checks and returns to be delivered to the appropriate officer promptly after Closing. The obligation to pay any additional tax or deficiency and any interest or penalties thereon shall survive Closing.

18. Apportionments and Other Adjustments; Water Meter and Installment Assessments.

- (a) To the extent applicable, the following shall be apportioned as of midnight of the day before the day of Closing:
- (i) taxes, water charges and sewer rents, on the basis of the fiscal period for which assessed; (ii) fuel; (iii) ~~interest on the existing mortgage;~~ (iv) ~~premiums on existing transferable insurance policies and renewals of those expiring prior to Closing;~~ (v) ~~vault charges;~~ (vi) ~~rents as and when collected.~~
- (b) If Closing shall occur before a new tax rate is fixed, the apportionment of taxes shall be upon the basis of the tax rate for the immediately preceding fiscal period applied to the latest assessed valuation.
- (c) If there is a water meter on the Premises, Seller shall furnish a reading to a date not more than 30 days before Closing and the unfixed meter charge and sewer rent, if any, shall be apportioned on the basis of such last reading.
- (d) If at the date of Closing the Premises are affected by an assessment which is or may become payable in annual installments, and the first installment is then a lien, or has been paid, then for the purposes of this contract all the unpaid installments shall be considered due and shall be paid by Seller at or prior to Closing.
- (e) Any errors or omissions in computing apportionments or other adjustments at Closing shall be corrected within a reasonable time following Closing. This subparagraph shall survive Closing.

19. Allowance for Unpaid Taxes, etc. Seller has the option to credit Purchaser as an adjustment to the purchase price with the amount of any unpaid taxes, assessments, water charges and sewer rents, together with any interest and penalties thereon to a date not less than five business dates after Closing, provided the official bills therefor computed to said date are produced at Closing.

20. Use of Purchase Price to Remove Encumbrances. If at Closing there are other liens or encumbrances that Seller is obligated to pay or discharge, Seller may use any portion of the cash balance of the purchase price to pay or discharge them, provided Seller shall simultaneously deliver to Purchaser at Closing instruments in recordable form and sufficient to satisfy such liens or encumbrances of record, together with the cost of recording or filing said instruments. As an alternative Seller may deposit sufficient monies with the title insurance company employed by Purchaser acceptable to and required by it to assure their discharge, but only if the title insurance company will insure Purchaser's title clear of the matters or insure against their enforcement out of the Premises and will insure Purchaser's Institutional Lender clear of such matters. Upon reasonable prior notice (by telephone or otherwise), Purchaser shall provide separate certified or official bank checks as requested to assist in clearing up these matters.

21. Title Examination; Seller's Inability to Convey; Limitations of Liability.

- (a) Purchaser shall order an examination of title in respect of the Premises from a title company licensed or authorized to issue title insurance by the New York State Insurance Department or any agent for such title company promptly after the execution of this contract or, if this contract is subject to the mortgage contingency set forth in paragraph 8, after a mortgage commitment has been accepted by Purchaser. Purchaser shall cause a copy of the title report and of any additions thereto to be delivered to the attorney(s) for Seller promptly after receipt thereof.
- (b) (i) If at the date of Closing, Seller is unable to transfer title to Purchaser in accordance with this contract, or Purchaser has other valid grounds for refusing to close, whether by reason of liens, encumbrances or other objections to title or otherwise (herein collectively called "Defects"), other than those subject to which Purchaser is obligated to accept title hereunder or which Purchaser may have waived and other than those which Seller has herein expressly agreed to remove, remedy or discharge and if Purchaser shall be unwilling to waive the same and to close title without abatement of the purchase price, then, except as hereinafter set forth, Seller shall have the right, at Seller's sole election, either to take such action as Seller may deem advisable to remove, remedy, discharge or comply with such Defects or to cancel this contract; (ii) if Seller elects to take action to remove, remedy or comply with such Defects, Seller shall be entitled from time to time, upon Notice to Purchaser, to adjourn the date for Closing hereunder for a period or periods not exceeding 60 days in the aggregate (but not extending beyond the date upon which Purchaser's mortgage commitment, if any, shall expire), and the date for Closing shall be adjourned to a date specified by Seller not beyond such period. If for any reason whatsoever, Seller shall not have succeeded in removing, remedying or complying with such Defects at the expiration of such adjournment(s), and if Purchaser shall still be unwilling to waive the same and to close title without abatement of the purchase price, then either party may cancel this contract by Notice to the other given within 10 days after such adjourned date; (iii) notwithstanding the foregoing, the existing mortgage (unless this sale is subject to the same) and any matter created by Seller after the date hereof shall be released, discharged or otherwise cured by Seller at or prior to Closing.
- (c) If this contract is cancelled pursuant to its terms, other than as a result of Purchaser's default, this contract shall terminate and come to an end, and neither party shall have any further rights, obligations or liabilities against or to the other hereunder or otherwise, except that: (i) Seller shall promptly refund or cause the Escrowee to refund the Downpayment to Purchaser and, unless cancelled as a result of Purchaser's default or pursuant to paragraph 8, to reimburse Purchaser for the net cost of examination of title, including any appropriate additional charges related thereto, and the net cost, if actually paid or incurred by Purchaser for updating the existing survey of the Premises or of a new survey, and (ii) the obligations under paragraph 27 shall survive the termination of this contract.

22. Affidavit as to Judgments, Bankruptcies, etc. If a title examination discloses judgments, bankruptcies or other returns against persons having names the same as or similar to that of Seller, Seller shall deliver an affidavit at Closing showing that they are not against Seller.

23. Defaults and Remedies.

- (a) If Purchaser defaults hereunder, Seller's sole remedy shall be to receive and retain the Downpayment as liquidated damages, it being

impossible to ascertain and the Downpayment constitutes a fair and reasonable amount of damages under the circumstances and is not a penalty.

- (b) If Seller defaults hereunder, Purchaser shall have such remedies as Purchaser shall be entitled to at law or in equity, including but not limited to, specific performance.

24. Purchaser's Lien. All money paid on account of this contract, and the reasonable expenses of examination of title to the Premises and of any survey and survey inspection charges are hereby made liens on the Premises, but such liens shall not continue after default by Purchaser under this contract.

25. Notices. Any notice or other communication ("Notice") shall be in writing and either:

- (a) sent by either of the parties hereto or by their respective attorneys who are hereby authorized to do so on their behalf or by the Escrowee, by registered or certified mail, postage prepaid, or
- (b) delivered in person or by overnight courier, with receipt acknowledged, to the respective addresses given in this contract for the party and the Escrowee, to whom the Notice is to be given, or to such other address as such party or Escrowee shall hereafter designate by Notice given to the other party or parties and the Escrowee pursuant in this paragraph. Each Notice mailed shall be deemed given on the third business day following the date of mailing the same, except that any Notice to Escrowee shall be deemed given only upon receipt by Escrowee and each Notice delivered in person or by overnight courier shall be deemed given when delivered, or
- (c) with respect to paragraph 7(b) or paragraph 20, sent by fax to the party's attorney. Each Notice by fax shall be deemed given when transmission is confirmed by the sender's fax machine. A copy of each Notice sent to a party shall also be sent to the party's attorney. The attorneys for the parties are hereby authorized to give and receive on behalf of their clients all Notices and deliveries. This contract may be delivered as provided above or by ordinary mail.

26. No Assignment. This contract may not be assigned by Purchaser without the prior written consent of Seller in each instance and any purported assignment(s) made without such consent shall be void.

27. Broker. Purchaser represents and warrants that it has not dealt with any broker in connection with this sale other than **Houlihan Lawrence and Hudson Valley Realty (Broker)**. Seller and Purchaser shall indemnify and defend each other against any costs, claims and expenses, including reasonable attorney's fees arising out of the breach on their respective parts of any representation or agreement contained in this paragraph. The provisions of this paragraph shall survive Closing or, if Closing does not occur the termination of this contract.

28. Miscellaneous.

- (a) All prior understanding, agreements, representations and warranties, oral or written, between Seller and Purchaser are merged in this contract; it completely expresses their full agreement and has been entered into after full investigation, neither party relying upon any statement made by anyone else that is not set forth in this contract.
- (b) Neither this contract nor any provision thereof may be waived, changed or cancelled except in writing. This contract shall also apply to and bind the heirs, distributees, legal representatives, successors and permitted assigns of the respective parties. The parties hereby authorize their respective attorneys to agree in writing to any changes in dates and time periods provided for in this contract.
- (c) Any singular word or term herein shall also be read as in the plural and the neuter shall include the masculine and feminine gender, whenever the sense of this contract may require it.
- (d) The captions in this contract are for convenience of reference only and in no way define, limit or describe the scope of this contract and shall not be considered in the interpretation of this or any provisions hereof.
- (e) This contract shall not be binding or effective until duly executed and delivered by Seller and Purchaser.
- (f) Seller and Purchaser shall comply with IRC reporting requirements, if applicable. This subparagraph shall survive Closing.
- (g) Each party shall, at any time and from time to time, execute, acknowledge where appropriate and deliver such further instruments and documents and take such other action as may be reasonably requested by the other in order to carry out the intent and purpose of this contract. This subparagraph shall survive Closing.
- (h) This contract is intended for the exclusive benefit of the parties hereto and except as otherwise expressly provided herein, shall not be for the benefit of, and shall not create any rights in, or be enforceable by any other person or entity.
- (i) If applicable, the complete and fully executed disclosure of information on lead-based paint and/or lead-based paint hazards is attached hereto and made a part hereof.

Continued on Rider attached hereto. *(Delete if inapplicable)*