

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (this "**Agreement**"), dated as of January 17, 2018, which is the last date of execution and delivery of this Agreement by the parties hereto (the "**Effective Date**"), is entered into between **Dolomite Products Company, Inc.**, a New York corporation ("**Seller**") having an address of 1150 Penfield Road, Rochester, NY 14624 and the **Town of Penfield**, an incorporated New York town ("**Buyer**") having an address of 3100 Atlantic Avenue, Penfield, NY 14526 ("Seller and Buyer are sometimes referred to collectively as the "**Parties**").

RECITALS

WHEREAS, Seller is the owner of the land located in the Town of Penfield, Monroe County, New York being Tax Identification Numbers: 124.13-1-2.1 (1950 Clark Road), 124.13-1-3 (1960 Clark Road), 124.13-1-4 (745 Whalen Road), and 124.09-1-1 (2701 Atlantic Avenue) consisting of approximately 211.70 acres in the aggregate, which is more particularly described in Exhibit A attached to this Agreement and made a part hereof (the "**Land**"); the buildings and improvements, if any, located thereon (the "**Improvements**"); the fixtures, building equipment and personal property owned by Seller and used in connection with the Improvements or the Land, excluding that portion of Seller's irrigation system consisting of the main pumps and appurtenances serving property owned by Seller other than the Land (the "**Personal Property**"); and all of the rights and interests of Seller appurtenant to the Land and described in Article II of this Agreement (the "**Property Rights**") (the Land, Improvements, Personal Property and Property Rights are hereinafter sometimes collectively referred to as the "**Property**"); and

WHEREAS, the Parties acknowledge and agree that the exact location, dimensions and acreage of the Land shall be as shown on the instrument survey map of the Land to be obtained by Buyer as provided in this Agreement; and

WHEREAS, subject to the terms and conditions hereof, Seller desires to sell to Buyer the Property and Buyer desires to purchase the Property from Seller.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I
ACCESS AND INSPECTION; EXAMINATION BY BUYER

Section 1.01 **Buyer Access to Property.** From and after the Effective Date and continuing for period of sixty (60) days ("Buyer's Due Diligence Period"), Buyer and Buyer's agents, employees, contractors, representatives and other designees (hereinafter collectively called "***Buyer's Designees***") shall have the right to enter the Property for the purposes of inspecting the Property, conducting soil tests, conducting surveys, mechanical and structural engineering studies, and conducting any other investigations, examinations, tests and inspections as Buyer may reasonably require to assess the condition of the Property; *provided however*; that

(a) Buyer, at Buyer's sole cost and expense, shall repair any damage to the Property caused by the conduct of any activities by or on behalf of Buyer, including, without limitation, the entry by Buyer or Buyer's Designees onto the Property, or the other activities of Buyer or Buyer's Designees with respect to the Property (hereinafter called "***Buyer's Activities***"), and shall return the Property to substantially as close to the condition as existed prior to Buyer's Activities. Buyer's obligation to repair any damage to the Property caused by Buyer's Activities and return the Property to substantially as close to the condition as existed prior to Buyer's Activities shall survive the termination of this Agreement;

(b) Buyer or Buyer's Designees shall conduct Buyer's Activities at reasonable times agreed upon by Seller and Buyer after reasonable prior oral or written notice from Buyer to Seller (to the attention of Jack Odenbach, jack.odenbach@dolomitegroup.com, (585) 350-9508, or designee) (which shall, in all cases, be at least 24 hours in advance) and Buyer's Activities shall be conducted so as not to interfere with any rights of Seller. Seller shall have the right, but not the obligation, to accompany Buyer or Buyer's Designees during any Buyer's Activities;

(c) Seller shall have the right, but not the obligation, to accompany Buyer or Buyer's Designees during any Buyer's Activities;

(d) Buyer shall indemnify, defend and hold Seller, its affiliates and each of its respective officers, directors, shareholders, employees, agents, successors, and assigns (collectively the "***Indemnified Parties***") harmless from and against any and all claims, liabilities, damages, losses, costs and expenses of any kind or nature whatsoever (including, without limitation, reasonable attorneys' fees and expenses and court costs) suffered, incurred or sustained by the Indemnified Parties as a result of, by reason of, or in connection with any Buyer's Activities and any breach or violation of the provisions of this Article on the part of Buyer. The foregoing defense and indemnity obligations shall survive the termination of this Agreement and the Closing;

(e) Notwithstanding any provision of this Agreement to the contrary, and except for the site assessment activities described in a certain limited environmental site investigation prepared by C&S Engineers, Inc. ("C&S") dated November 22, 2017, and a certain limited environmental site investigation prepared by C&S dated November 29, 2017, Buyer shall not have the right to undertake any environmental studies or testing beyond the scope of a standard "Phase I" evaluation without the prior written consent of Seller, which consent shall not be unreasonably withheld, conditioned or delayed. If the Buyer desires to do any invasive testing at or on the Property, then Buyer or Buyer's Designees shall do so only after reasonable written notice to Seller (which shall, notwithstanding anything to the contrary contained above, be at least three (3) business days in advance) and obtaining the Seller's prior written consent thereto, which may be withheld in Seller's sole and absolute discretion, and which consent, if given, may be subject to any reasonable terms and conditions imposed by Seller in its sole and absolute discretion, including, without limitation, the prompt restoration of the Property to substantially the same condition as existed prior to any such inspections or tests, at Buyer's sole cost and expense. Buyer's obligation to promptly restore the Property as set forth herein shall survive the termination of this Agreement; and

(f) At Seller's request, Buyer shall promptly furnish to Seller copies of any reports received by Buyer relating to Buyer's Activities.

Section 1.02 **Due Diligence Contingency.** In the event that during Buyer's Due Diligence Contingency Period Buyer, in its sole and absolute discretion, elects not to proceed with the purchase of the Property, for any reason or for no reason, Buyer shall have the right to terminate this Agreement by giving written notice to Seller within two (2) business days following the expiration of Buyer's Due Diligence Period ("**Due Diligence Termination Notice**"). In the event Buyer delivers the Due Diligence Termination Notice to Seller, all rights and obligations of the parties under this Agreement shall terminate (except those obligations which are expressly stated to survive the termination of this Agreement), and the Deposit (as hereinafter defined) shall be forthwith returned to Buyer. If Buyer does not deliver, or fails to timely deliver the Due Diligence Termination Notice in accordance with this Section 1.02, Buyer shall have no further right to terminate this Agreement pursuant to this Section 1.02.

Section 1.03 **Liability Insurance.** Prior to any entry by Buyer or any of Buyer's Designees onto the Property, Buyer shall:

(a) if Buyer does not then have such a policy in force, procure a policy of general liability insurance, issued by an insurer reasonably satisfactory to Seller, covering all Buyer's Activities, with a single limit of liability (per occurrence and aggregate) of not less than \$2,000,000.00; and

(b) deliver to Seller a Certificate of Insurance, evidencing that such insurance is in force and effect, and evidencing that Seller has been named as an additional insured

and loss payee thereunder with respect to any Buyer's Activities (such Certificate of Insurance shall be delivered to Seller, at the address for notices set forth in Article VIII of this Agreement). Such insurance shall be written on an "occurrence" basis, and shall be maintained in force until the earlier of:

- (i) the termination of this Agreement and the conclusion of all Buyer's Activities, or;
- (ii) Closing.
- (c) Such insurance shall be primary and waive all rights of subrogation against the Seller, or Seller's officers, directors, employees, representatives and affiliates.

Section 1.04 Seller's Insurance. Seller represents that it maintains and shall maintain general liability and property damage insurance covering the Property, and with respect to the Improvements, for the full replacement cost thereof, through the Closing Date (as hereinafter defined).

ARTICLE II CONVEYANCE OF THE PROPERTY

Section 2.01 Subject of Conveyance. Subject to the terms and conditions of this Agreement, Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller the Property, including without limitation, all of Seller's right, title and interest in:

- (a) all rights appurtenant to the Land, if any, including without limitation, any strips and gores abutting the Land, and any land lying in the bed of any street, road or avenue in front of, or adjoining the Land, to the center line thereof; and
- (b) all other rights, privileges, easements, licenses, appurtenances, and hereditaments relating to the Property.

Section 2.02 "As-Is", "Where Is" Conveyance.

(a) Subject to this Agreement, Buyer acknowledges that Buyer has made (or will make as part of Buyer's Activities during the Buyer's Due Diligence Period) reasonably thorough inspections and investigations of the Property and Buyer agrees to take title to the Property "AS-IS" and in the condition existing as of the Effective Date of this Agreement, subject to reasonable use, ordinary wear and tear and without any reduction in or abatement of the Purchase Price.

(b) Neither party to this Agreement is relying on any statement or representation not expressly stated in this Agreement. Buyer specifically confirms and acknowledges that in entering into this Agreement, Buyer has not been induced by, and

has not relied upon, whether express or implied, warranties, guaranties, promises, statements, inducements, representations or information pertaining to the Property or its uses, the physical condition, environmental condition, state of title, income, expenses or operation of the Property, or any other matter or thing with respect thereto, written or unwritten, whether made by Seller or any agent, employee or other representative of Seller, or any broker or any other person representing (or purporting to represent) Seller, which are not expressly set forth in this Agreement. Seller shall not be liable for or bound by any written or unwritten statements, representations, warranties, brokers' statements or other information pertaining to the Property furnished by Seller, any broker, any agent, employee or other actual (or purported) representative of Seller, or any person, unless and only to the extent the same are expressly set forth in this Agreement.

ARTICLE III PURCHASE PRICE

Section 3.01 **Purchase Price and Deposit.** The purchase price to be paid by Buyer to Seller for the Property is Three Million Three Hundred Fifty Thousand and NO/100 (\$3,350,000.00) Dollars (the "***Purchase Price***"). The Purchase Price shall be payable as follows:

- (a) the amount of Twenty Five Thousand and NO/100 (\$25,000.00) Dollars (the "***Deposit***") is due and payable within three (3) business days following the Effective Date; and
- (b) the balance of the Purchase Price is due and payable on the Closing Date, subject to any credits or apportionments as provided for under this Agreement.

Section 3.02 **Payments.** The Deposit may be paid by Buyer's certified check, wire, or official bank check, subject to collection, and it shall be made payable to Crossroads Abstract Corporation, as escrow agent ("***Escrow Agent***"). The Escrow Agent agrees to hold the Deposit in escrow pursuant to the terms of this Agreement. All interest, if any, earned on the Deposit shall constitute part of the Deposit and shall be payable to the party entitled to receive it under this Agreement. If the closing shall occur, the Deposit shall be credited against the Purchase Price. If Buyer terminates this Agreement pursuant to a right to do so as provided under this Agreement, the Deposit shall be refundable to Buyer except in the event of Buyer's default or breach, in which event the Deposit, plus all interest earned thereon, shall be paid to Seller as liquidated damages. The Parties agree that the Deposit shall be nonrefundable to Buyer except in the event of: (a) a default by Seller under this Agreement; (b) a failure of any of the conditions to closing to Buyer's obligation to close under this Agreement; and / or (c) as provided in this Agreement. Upon the "Closing" (as hereinafter defined), the balance of the Purchase Price shall be paid, at Seller's election, either by certified or official bank checks or by one or more wire transfers of immediately available federal funds to an

account, or accounts, designated in writing by Seller no later than one (1) day prior to the Closing Date.

Section 3.03 **Financing Contingency**. This Agreement, and Buyer's obligations hereunder, are contingent upon Buyer's ability to obtain financing for the purchase of the Property, whether by debt offering, mortgage or otherwise, upon terms and conditions satisfactory to Buyer, in Buyer's sole discretion ("***Buyer's Financing Contingency***"). Buyer shall have until April 20, 2018 ("***Buyer's Financing Contingency Period***") to satisfy Buyer's Financing Contingency". In the event Buyer fails to satisfy Buyer's Financing Contingency prior to the expiration of Buyer's Financing Contingency Period, Buyer shall have the right to terminate this Agreement by giving written notice to Seller within two (2) business days following the expiration of Buyer's Financing Contingency Period ("***Financing Contingency Termination Notice***"). In the event Buyer delivers the Financing Contingency Termination Notice to Seller, all rights and obligations of the parties under this Agreement shall terminate (except those obligations which are expressly stated to survive the termination of this Agreement), and the Deposit shall be forthwith returned to Buyer. If Buyer does not deliver, or fails to timely deliver, the Financing Contingency Termination Notice in accordance with this **Section 3.03**, Buyer shall have no further right to terminate this Agreement pursuant to this **Section 3.03**.

ARTICLE IV CLOSING

Section 4.01 **Closing Date**. Unless previously terminated pursuant to an express written ability of a party to do so as provided herein, closing of the transaction contemplated by this Agreement (the "***Closing***") shall take place within ten (10) days following the last to occur of the satisfaction or waiver of Buyer's Due Diligence Contingency and Buyer's Financing Contingency, but in no event later than April 30, 2018 (the "***Closing Date***") or as may be mutually agreed to by the Parties in writing, and shall be effected through a customary escrow closing. *Provided, however*, that in connection with the preparation of the documentation for Closing, Seller shall be responsible for such preparation, and will work with Buyer and Buyer's counsel and the Escrow Agent to prepare such documents sufficiently in advance so that all closing documents may be executed by the authorized representatives of Seller at Seller's offices in advance of Closing, and attendance by the authorized representatives of Seller at Closing will not be necessary.

Section 4.02 **Seller's Closing Deliverables.** At the Closing, Seller shall deliver or cause to be delivered to Buyer, the items listed in this Section 4.02, executed, certified and acknowledged by Seller, as appropriate.

(a) Seller shall deliver to Buyer a Bargain and Sale Deed with covenant against grantor's acts (the "Deed"), executed with the appropriate acknowledgement form and otherwise in proper form for recording so as to convey title to the Property as required by this Agreement. The delivery of the Deed by Seller, and the acceptance by Buyer, shall be deemed the full performance and discharge of every obligation on the part of Seller to be performed pursuant to this Agreement, except those obligations of Seller which are expressly stated in this Agreement to survive the Closing. The Deed shall contain covenants (a) prohibiting in perpetuity the use of the Property for the (i) mining, excavation, and extraction of sand, gravel, clay, overburden, dolomite, limestone, sandstone, boulders, stones or rocks suitable for use in building, construction, and road making (including concrete, clay brick, asphalt, roadbeds, railroad ballast or other use), (ii) operation of an asphalt plant or asphalt-related business, including but not limited to a hot mix asphalt plant, (iii) operation of a concrete, concrete block, glass, or other building products plant, (iv) operation of concrete batch plant (including both ready-mix plants and central-mix plants), (v) operation of a concrete paver, edger, or pre-built modular hardscapes plant, (vi) sales of aggregates and recycled material, and (vii) operation of a crushing facility, and (b) restricting the development and use of a 200 foot width area along Whalen Road and Clark Road, and in the location shown on **Exhibit B** attached to this Agreement and made a part hereof, as a buffer for Seller's quarry property located on Whalen Road and Clark Road ("**Seller's Quarry Property**"), but providing for the use of the buffer area for driveways and / or trails. Further, the buffer area shall not apply to any existing structures. Such covenants shall run with the land and shall be binding upon Buyer's successors and assigns and all subsequent owners of the Property until the earlier of (a) the termination of such restrictive covenants by Seller; or (b) the natural expiration of the restrictive covenants. Such covenants are only for the benefit of the Seller and its successors or assigns.

(b) Seller shall execute and deliver to Buyer counterparts of any required transfer tax returns, or in each instance and if available, an electronic filing of such returns, together with the required payment of applicable transfer taxes, pursuant to the requirements of the applicable state and local taxing authorities.

(c) Seller shall execute and deliver to Buyer a bill of sale whereby Seller conveys to Buyer all of Seller's right, title and interest in the Personal Property together with all state and local sales tax returns and payment of all sales taxes payable in connection with such conveyance of the Personal Property. The bill of sale will be delivered without any Seller representations or warranties.

(d) A certification that Seller is not a "foreign person" as such term is defined in Section 1445 of the Internal Revenue Code of 1984, as amended and the regulations thereunder, which certification shall be signed under penalty of perjury.

(e) With respect to the Title Insurance Company (as hereafter defined), Seller shall deliver: (i) an original affidavit of title to the Title Insurance Company in customary form and reasonably acceptable to the Title Insurance Company, stating, among other things, that there are no unpaid bills or claims (except for bills or expenses to be prorated pursuant to this Agreement as of the date immediately preceding the Closing Date) for labor performed or materials furnished in connection with the Property; and (ii) such evidence as the Title Insurance Company may reasonably require as to the authority of the person, or persons, executing document on behalf of Seller and a certificate of good standing for Seller.

(f) A settlement statement setting forth the distribution of the Purchase Price at the Closing, and the payments of the expenses and prorations of the real property taxes as provided in this Agreement.

Section 4.03 Buyer's Closing Deliverables. At the Closing, Buyer shall deliver or cause to be delivered to Seller, the items listed in this **Section 4.03**, executed, certified and acknowledged by Buyer, as appropriate.

(a) Buyer shall pay the balance of the Purchase Price to Seller on the Closing Date.

(b) Buyer shall pay all costs and expenses agreed to be paid by Buyer in **Section 4.04** of this Agreement.

(c) Buyer shall, where applicable, join with Seller in the execution and delivery of the closing documents and instruments required under **Section 4.02** of this Agreement to which Buyer is a party.

(d) Such other documents or instruments as may be reasonably requested by the Seller (provided that such other documents do not conflict with the terms expressly set forth in this Agreement) to consummate the transaction contemplated by this Agreement.

Section 4.04 Costs.

(a) Seller and Buyer shall each pay the fees and expenses of its own counsel in connection with the preparation and negotiation of this Agreement. The Deed and other agreements and instruments related to the transaction contemplated by this Agreement and such legal costs shall not be part of the closing costs.

(b) Seller shall pay the commission owed to the Broker pursuant to **Article XIII** of this Agreement and shall pay any required real estate transfer tax, the filing fee for Real Estate Transfer Tax Return Form TP-584, as well as the recording charges necessary to render title good and marketable as provided herein; provided, however, notwithstanding the foregoing, Seller, at Seller's option, Seller may elect to allow Buyer a credit against the Purchase Price for the amount of real estate transfer taxes due and

payable by Seller and to have Buyer make the timely payment directly to the taxing authorities or provide payment for such amounts through the Escrow Agent or the Title Insurance Company and Buyer shall provide Seller with proof of payment at the Closing.

(c) Buyer shall pay:

(i) the costs charged by Buyer's Title Insurance Company, including, without limitation, costs related to the Title Commitment, any premiums, title endorsements and affirmative insurance;

(ii) the costs related to the Survey (as hereinafter defined);

(iii) any other fees or costs related to Buyer's Activities; and

(iv) all costs related to Buyer's financing, if any;

(v) all costs of recording the Deed and filing Real Property Transfer Report Form RP-5217-PDF; and

(vi) any other fees and costs as is customary in transactions of this size and type in Monroe County, New York.

Section 4.05 **Apportionments**. All matters listed in this Section 4.05 shall be apportioned as of 11:59 p.m. of the date immediately preceding the Closing Date, unless expressly provided for otherwise.

(a) All real estate taxes based on the current fiscal year for which they are assessed and assessments. If the Property shall be, or have been, affected by any assessments or special assessments payable in a lump sum or which are, or may become, payable in installments, of which the first installment is then a charge or lien, or has already been paid, then at the Closing such amounts will be paid or apportioned, as the case may be in the following manner:

(i) any such assessments or installments, or portion thereof, payable on or after the Closing Date shall be the responsibility of Buyer; and

(ii) any such assessments or installments, or portion thereof, payable prior to the Closing Date shall be the responsibility of Seller.

(b) Any other items which are customarily prorated in connection with the purchase and sale of properties similar to the Property shall be prorated as of the Closing.

ARTICLE V

TITLE MATTERS AND VIOLATIONS

Section 5.01 **Acceptable Title**. At Closing, Seller shall convey and Buyer shall accept good and marketable fee simple title to the Property in accordance with the terms and conditions of this Agreement, free and clear of liens and encumbrances, but subject to:

- (a) the Permitted Exceptions (as hereafter defined); and
- (b) such other matters as the Title Insurance Company shall be willing to omit as exceptions to coverage or to except with insurance against collection out of or enforcement against the Property.

Section 5.02 **Permitted Exceptions**. For the purposes of this Agreement, “good and marketable fee simple title” shall mean such title as is insurable by a title insurance company licensed to conduct business in the state of New York, designated by Buyer and ordered through the office of Escrow Agent (the “*Title Insurance Company*”), under the Title Insurance Company’s current standard form of ALTA owner’s policy of title insurance (the “*Owner’s Policy*”), at the Title Insurance Company’s standard rates. The Property is to be conveyed subject to the following matters (collectively, the “*Permitted Exceptions*”):

- (a) any and all laws, statutes, ordinances, codes, rules, regulations, requirements or executive mandates, as the same may be amended subsequent to the Effective Date, affecting the Property, which are not violated by the existing Improvements or the past or present use of the Property;
- (b) the standard printed exclusions in the form of Owner’s Policy;
- (c) encroachments, if any, on any street or highway;
- (d) such matters as are disclosed by the Survey or inspection of the Property, whether or not Buyer actually conducts any inspection of the Property;
- (e) real estate taxes, assessments and water and sewer charges, that are not due and payable prior to the Closing Date, subject to any apportionments as provided for in this Agreement;
- (f) such other matters as the Title Insurance Company is willing, without special premium, to omit as exceptions to the Owner’s Policy.

Section 5.03 **Objections to Title**.

(a) Buyer shall order, at its sole cost and expense, within ten (10) days following the Effective Date (i) fully guaranteed tax, title and United States District Court searches for the Land (the “*Searches*”) ; and (ii) an instrument survey map of the Land (the “*Survey*”). Within ten (10) days following the receipt by Buyer’s attorneys of the Searches and the Survey, Buyer, at Buyer’s sole cost and expense, shall order and obtain a commitment for title insurance from the Title Insurance Company, together with true, legible (to the extent available) and complete copies of all instruments giving rise to any defects or exceptions to title to the Property (collectively, the “*Title Commitment*”), which Title Commitment shall be delivered to counsel for both Buyer and Seller concurrently.

(b) Buyer shall deliver to Seller any objections to the exceptions to title set forth in the Title Commitment or the Survey, other than the Permitted Exceptions (collectively, "***Buyer's Objections***"), by no later than ten (10) days after the receipt of the Title Commitment.

(c) Seller shall thereafter have a period of ten (10) days following the receipt of Buyer's Objections to notify Buyer either (i) that Seller will not cure one or more of Buyer's Objections; or (ii) that Seller will undertake the cure of Buyer's Objections. In the event Seller's notice indicates that Seller will undertake the cure of Buyer's Objections, Seller shall have the obligation to remove Buyer's Objections, including a mortgage lien or mechanics liens, for which purpose Seller shall have a reasonable time, but in no event later than the Closing Date. Seller shall not be required to take any action, to institute any proceeding or to incur any expense in order to remedy Buyer's Objections. If Seller shall elect not to take any action, institute any proceeding or incur any expense to remedy Buyer's Objections, Seller shall be deemed unable to convey the Property in accordance with the terms of this Agreement. In the event Seller notifies Buyer that Seller will not cure Buyer's Objections, Buyer shall thereafter, by no later than ten (10) days after Buyer's receipt of Seller's response notice elect to either: (A) accept such title to the Property, in accordance with **Section 5.04** of this Agreement; or (B) terminate this Agreement in accordance with **Section 9.01(b)**.

Section 5.04 Seller's Inability to Convey. In the event Seller is unable to convey title to the Property in accordance with this Agreement, then notwithstanding Buyer's remedies in **Section 9.01(b)** of this Agreement, Buyer shall also have the right to accept such title to the Property as Seller can convey, in which event Seller shall make the deliveries provided for in this Agreement to Buyer at the Closing, to the extent Seller is able to do so, and there shall be no reduction or credit against the Purchase Price, except as otherwise provided for in this Agreement.

Section 5.05 Seller's Contingency. [Intentionally Omitted]

ARTICLE VI

REPRESENTATIONS AND WARRANTIES; CERTAIN DISCLAIMERS

Section 6.01 Seller's Representations and Warranties. Seller represents, covenants and warrants to Buyer on and as of the Effective Date and on and as of the Closing Date the following:

- (a) Seller has received no written notice of any violations of laws, rules, or regulations adversely affecting the Property;
- (b) Seller to continue to maintain and keep the Property in good condition and observe all laws, rules, regulations relating to the Property;

(c) There are no leases, tenancies or occupancy agreements affecting the Property;

(d) There are no contracts, written or oral, such as labor contracts, management contracts or service contracts affecting the Property that will be binding upon Buyer;

(e) The Seller owns the Property in fee simple absolute and has the requisite power and authority to execute, deliver, and perform its obligations under this Agreement and related instruments to which it is a party. Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of New York, and has all necessary power and authority to enter into and carry out this Agreement according to its terms. This Agreement and all other agreements to be executed in connection herewith or therewith (a) have been duly authorized, executed, and delivered by the Seller and (b) are valid, binding, and enforceable against the Seller;

(f) Seller has received no written notice of any hazardous substances, which substances are defined as pollutants, contaminants, toxic or hazardous wastes, materials or substances, or any other substances that might pose a hazard to health or safety, the removal of which may be required or the presence of which may be penalized or governed under any law, ordinance, rule, regulation, order, judgment, injunction or decree now or hereafter relating to pollution or substances or materials which are considered to be hazardous or toxic ("*Hazardous Substances*"), and to the actual knowledge of the Seller, there are no Hazardous Substances or conditions (including asbestos, or asbestos containing materials) affecting the Property or that would give rise to any claim or course of action under applicable Environmental Law(as hereinafter defined). For purposes of this Agreement "Environmental Law" means the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act (codified in various sections of 26 U.S.C., 33 U.S.C., 42 U.S.C. and 42 U.S.C. § 9601 et seq.)(*"CERCLA"*), the Hazardous Materials Transportation Act (49 U.S.C. § 1801 et seq.), the Clean Water Act (33 U.S.C. § 1251 et seq.), the Safe Drinking Water Act (21 U.S.C. § 349, 42 U.S.C. § 201 et seq. and § 300 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2061 et seq.), the Emergency Planning and Community Right to Know Act (42 U.S.C. § 1100 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Occupational Safety & Health Act (29 U.S.C. § 655 et seq.), any state and local environmental laws, all amendments and supplements to any of the foregoing and all regulations and publications promulgated or issued pursuant thereto ("*Environmental Laws*"). Further, that there are no underground storage tanks on the Property;

(g) No other person or entity has a right of first refusal or other right to purchase or finance all or any part of the Property, and Seller has not entered into, there is not existing, nor will Seller will not enter into between the Effective Date and the Closing Date, any other agreement, written or oral, under which Seller is or could become

obligated to sell, lease or grant any other rights in the Property to any party other than Buyer, unless this Agreement is terminated or the Closing does not occur; and

(h) To Seller's knowledge, the Property has full and free access to and from public highways, streets or roads and has no knowledge of any pending or threatened governmental proceeding or any other fact or condition that would limit or result in the termination of the Property's existing access to and from such public highways, streets and roads;

(i) Seller is not a "foreign person" as such term is defined in Section 1445 of the Internal Revenue Code or any related regulations, as amended.

(j) To Seller's knowledge, there is no pending or threatened litigation or condemnation action against the Property or against Seller with respect to the Property as of the date of this Agreement; and

(k) There are no agreements, order, decrees, or governmental directions which relate to the future use of the Property which require any change in the present condition of the Property.

(l) For a period commencing on the Effective Date and continuing through and including the Closing Date, or the date of termination of this Agreement, neither Seller nor Seller's agents, affiliates, representatives or employees shall sell, offer for sale, negotiate with respect to, or otherwise deal in, the sale, lease or other transfer of all or any portion of the Property.

The representations and warranties of Seller contained in this Section 6.01 shall survive for a period of one (1) year following the Closing.

Section 6.02 Disclaimer of All of Representations and Warranties of Seller.
EXCEPT AS EXPRESSLY STATED IN SECTION 6.01 ABOVE, SELLER DOES NOT, BY THE EXECUTION AND DELIVERY OF THIS AGREEMENT, AND SELLER SHALL NOT, BY THE EXECUTION AND DELIVERY OF ANY DOCUMENT OR INSTRUMENT EXECUTED AND DELIVERED IN CONNECTION WITH CLOSING, MAKE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND OR NATURE WHATSOEVER, WITH RESPECT TO THE PROPERTY, AND ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SELLER MAKES, AND SHALL MAKE, NO EXPRESS OR IMPLIED WARRANTY AS TO MATTERS OF TITLE (OTHER THAN SELLER'S WARRANTY OF TITLE SET FORTH IN THE BARGAIN AND SALE DEED TO BE DELIVERED AT CLOSING), ZONING, TAX CONSEQUENCES, PHYSICAL OR ENVIRONMENTAL CONDITION (INCLUDING, WITHOUT LIMITATION, LAWS, RULES, REGULATIONS, ORDERS AND REQUIREMENTS PERTAINING TO THE USE, HANDLING, GENERATION, TREATMENT, STORAGE OR DISPOSAL OF ANY TOXIC OR HAZARDOUS WASTE OR TOXIC, HAZARDOUS OR REGULATED

SUBSTANCE), VALUATION, GOVERNMENTAL APPROVALS, GOVERNMENTAL REGULATIONS OR ANY OTHER MATTER OR THING RELATING TO OR AFFECTING THE PROPERTY, (HEREINAFTER COLLECTIVELY CALLED THE **"DISCLAIMED MATTERS"**). BUYER AGREES THAT, WITH RESPECT TO THE PROPERTY, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN SECTION 6.01 ABOVE, BUYER HAS NOT RELIED UPON AND WILL NOT RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY REPRESENTATION OR WARRANTY OF SELLER, BUYER WILL CONDUCT SUCH INSPECTIONS AND INVESTIGATIONS OF THE PROPERTY (INCLUDING, BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITION THEREOF) AND RELY UPON SAME AND, UPON CLOSING, SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING, BUT NOT LIMITED TO, THE DISCLAIMED MATTERS, MAY NOT HAVE BEEN REVEALED BY BUYER'S INSPECTIONS AND INVESTIGATIONS. SUCH INSPECTIONS AND INVESTIGATIONS OF BUYER SHALL BE DEEMED TO INCLUDE AN ENVIRONMENTAL AUDIT OF THE PROPERTY, AN INSPECTION OF THE PHYSICAL COMPONENTS AND GENERAL CONDITION OF ALL PORTIONS OF THE PROPERTY, SUCH STATE OF FACTS AS AN ACCURATE SURVEY AND INSPECTION OF THE PROPERTY WOULD SHOW, PRESENT AND FUTURE ZONING AND LAND USE ORDINANCES, RESOLUTIONS AND REGULATIONS OF THE CITY, COUNTY AND STATE WHERE THE PROPERTY IS LOCATED AND THE VALUE AND MARKETABILITY OF THE PROPERTY. SELLER SHALL SELL AND CONVEY TO BUYER, AND BUYER SHALL ACCEPT, THE PROPERTY "AS IS", "WHERE IS", AND WITH ALL FAULTS, AND THERE ARE NO ORAL AGREEMENTS, WARRANTIES OR REPRESENTATIONS, COLLATERAL TO OR AFFECTING THE PROPERTY BY SELLER OR ANY THIRD PARTY. WITHOUT IN ANY WAY LIMITING ANY PROVISION OF THIS SECTION 6.02 BUYER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT BUYER HEREBY WAIVES, RELEASES AND DISCHARGES ANY CLAIM BUYER HAS, MIGHT HAVE HAD OR MAY HAVE AGAINST SELLER WITH RESPECT TO (i) THE DISCLAIMED MATTERS, (ii) THE CONDITION OF THE PROPERTY, EITHER PATENT OR LATENT, (iii) THE PAST, PRESENT OR FUTURE CONDITION OR COMPLIANCE OF THE PROPERTY WITH REGARD TO ANY ENVIRONMENTAL PROTECTION, POLLUTION CONTROL OR LAND USE LAWS, RULES, REGULATIONS, ORDERS OR REQUIREMENTS, INCLUDING, WITHOUT LIMITATION, CERCLA, AND (iv) ANY OTHER STATE OF FACTS THAT EXISTS WITH RESPECT TO THE PROPERTY. THE TERMS AND CONDITIONS OF THIS SECTION 6.02 SHALL EXPRESSLY SURVIVE THE CONSUMMATION OF THE PURCHASE AND SALE OF THE PROPERTY ON THE CLOSING, THE DELIVERY OF THE DEED AND THE PAYMENT OF THE PURCHASE PRICE, WITHOUT REGARD TO ANY LIMITATIONS UPON SURVIVAL SET FORTH IN THIS AGREEMENT.

Section 6.03 Buyer's Representations and Warranties. Buyer represents, covenants and warrants to Seller on and as of the Effective Date and on and as of the Closing Date as follows:

(a) The Buyer has the requisite power and authority to execute, deliver, and perform its obligations under this Agreement and related instruments to which it is a party. This Agreement and all other agreements to be executed in connection herewith or therewith (i) have been or will be duly authorized, executed, and delivered by the Buyer and (ii) are valid, binding, and enforceable against the Buyer.

(b) The Buyer is an incorporated town duly formed, validly existing, and in good standing under the laws of the State of New York.

(c) The execution, delivery, and performance of this Agreement and the related instruments and the consummation of the transaction contemplated hereby do not (a) violate any provision of the Buyer's charter or other document governing the Buyer's existence or (b) conflict with any order, arbitration award, judgment, or decree to which such Buyer is a party.

(d) No broker, finder or investment banker is entitled to any brokerage, finders or other fee or commission in connection with the transaction contemplated hereby based upon arrangements made by or on behalf of Buyer.

(e) Buyer has, or will have as of the Closing Date, sufficient cash on hand or other sources of immediately available funds to enable it to make payment of the Purchase Price and consummate the Closing on the Closing Date.

(f) No transfer of property is being or will be made and no obligation is being incurred in connection with the contemplated transaction with the intent to hinder, delay or defraud the Seller.

(g) There are no actions, suits, claims, investigations or other legal proceedings pending or threatened against or by Buyer or any affiliate of Buyer that challenge or seek to prevent, enjoin or otherwise delay the consummation of the contemplated transaction.

(h) Buyer has conducted, or will conduct pursuant to the terms of this Agreement, Buyer's own independent investigation, review and analysis of the Property. Buyer acknowledges and agrees that: (a) in making its decision to enter into this Agreement and to consummate the transaction contemplated hereby, Buyer has relied solely upon its own investigation and the express representations and warranties of Seller set in **Section 5 and Section 6.01** of this Agreement; and (b) neither Seller nor any other person has made any representation or warranty as to Seller or the Property, except as expressly set forth in **Section 5 and Section 6.01** of this Agreement.

ARTICLE VII
RISK OF LOSS

Section 7.01 **Risk of Loss.** If any portion of the Improvements are damaged or destroyed by casualty prior to Closing Date, and the cost of repair of such damage or destruction is reasonably estimated to exceed \$100,000.00, Buyer shall have the right, at Buyer's option, to (a) terminate this Agreement by giving written notice to Seller on or before the date ten (10) days after the date upon which Seller gives Buyer written notice of such casualty, in which event the Deposit shall be refunded to Buyer promptly upon request, all rights and obligations of the parties under this Agreement shall terminate, and this Agreement shall become null and void; or (b) proceed to Closing, in which event Seller shall assign as of the Closing Date, and Buyer shall receive, any insurance proceeds attributable to the Improvements and payable for such loss. In the event of lesser damage or destruction prior to the Closing Date, Buyer shall have no right to terminate this Agreement by reason of such damage or destruction, nor shall Buyer be entitled to any reduction in the Purchase Price and Buyer shall proceed to Closing, in which event Seller shall assign, and Buyer shall receive, any insurance proceeds attributable to the Improvements and payable for such loss.

ARTICLE VIII
NOTICES

Section 8.01 **Notices.**

(a) Any notice or other communication provided for hereunder will be in writing and may be (i) served by personal delivery, (ii) made by electronic mail or facsimile transmission, or (iii) sent by overnight courier service (with all fees prepaid) to the receiving parties as follows, or to any other address which either party may hereafter designate for itself in writing:

If to Seller:

Dolomite Products Company, Inc.
Attn: John Siel, President
1150 Penfield Road, Rochester, NY 14624
Email: jsiel@dolomitegroup.com
Fax: (585) 389-1570

With a Copy to:

Oldcastle Materials, Inc.
Attn: Oldcastle Law Group
900 Ashwood Parkway, Suite 700
Atlanta, GA 30338-4780
Fax: (770) 392-5305

If to Buyer:

Town of Penfield
Attn: R. Anthony LaFountain, Town Supervisor
Penfield Town Hall
3100 Atlantic Avenue
Penfield, NY 14526
Supervisor@penfield.org
Fax: (585) 340-8762

With a Copy to:

Richard J. Horwitz, Esq.
Town Attorney – Town of Penfield
Penfield Town Hall
3100 Atlantic Avenue
Penfield, NY 14526
rjhorwitzlawfirm@rochester.ny.com
Fax: (585) 264-0277

With a Copy to:

Barclay Damon, LLP
2000 Five Star Bank Plaza
100 Chestnut Street
Rochester, New York 14604
Attention: Steven J. Tranelli, Esq.
Fax: (585) 295-8463

(b) Any party may, by notice given in accordance with this Article, designate a different address or person for receipt of all communications or notices.

ARTICLE IX REMEDIES

Section 9.01 Remedies

(a) If Buyer shall default in the observance or performance of any of the terms of this Agreement, then Seller may, at Seller's option (i) terminate this Agreement, in which event the Deposit plus any accrued interest thereon, if any, shall be paid to and retained by Seller as liquidated damages as its sole and exclusive remedy and not as a penalty; or (ii) may pursue Seller's remedies available at law or in equity, including without limitation an action for actual damages.

(b) If Seller shall default in the observance or performance of any of the terms of this Agreement, then Buyer may, at Buyer's option (i) terminate this Agreement, in which event the Deposit plus any accrued interest thereon, if any, shall be promptly paid to Buyer as liquidated damages as Buyer's sole and exclusive remedy and not as a penalty; or (ii) may pursue Buyer's remedies available at law or in equity, including without limitation and action for actual damages.

(c) Except as otherwise expressly stated in this Agreement, it is specifically agreed and understood that neither party shall be responsible to the other for any indirect, special, incidental or consequential loss or damage whatsoever (including lost profits and opportunity costs) arising out of this Agreement.

ARTICLE X

ESCROW

Section 10.01 Buyer's Delivery of the Deposit in Escrow

(a) Within three (3) business days following the Effective Date, Buyer shall deliver the Deposit to Escrow Agent. The Deposit shall be held in escrow and disposed of by Escrow Agent only in accordance with the provisions of this Article.

(b) The Deposit shall be held and released by Escrow Agent in accordance with the terms of this Agreement. The Deposit shall be applied to the Purchase Price at Closing (as hereinafter defined), and shall otherwise be held, refunded or disbursed in accordance with the terms of this Agreement. The Deposit shall be deposited into an account with the Escrow Agent during the pendency of this Agreement. All interest and other income from time to time earned on the Deposit shall be deemed a part of the Deposit for all purposes of this Agreement.

Section 10.02 Escrow Agent's Delivery of the Deposit

(a) Escrow Agent shall deliver the Deposit to Seller on the Closing Date, if the Closing occurs. In no event shall any interest earned on the Deposit be applied as a credit against the Purchase Price.

(b) If, prior to the Closing, either Seller or Buyer delivers a notice to Escrow Agent with a demand for Escrow Agent's delivery of the Deposit, Escrow Agent shall promptly give notice to the other party of such demand. If a notice of objection to the proposed payment is not received from the other party within twenty-one (21) days after the receipt of notice from Escrow Agent, Escrow Agent is hereby authorized to deliver the Deposit to the party who made the demand for the Deposit. If Escrow Agent receives a notice of objection within said time period, then Escrow Agent shall continue to hold the Deposit and thereafter pay it to the party entitled to the Deposit when Escrow Agent receives: (i) a notice from the objecting party withdrawing the objection; (ii) a notice signed by both parties directing disposition of the Deposit; or (iii) a final non-appealable

notice of a court of competent jurisdiction, entered in connection with a proceeding in which Seller, Buyer and the Escrow Agent are named as parties, directing the disbursement of the Deposit.

Section 10.03 Escrow Agent's Duties and Responsibilities

(a) Escrow Agent has signed this Agreement for the sole purpose of agreeing to act as Escrow Agent in accordance with this Article. Escrow Agent shall have no duties or responsibilities except those set forth in this Agreement and Seller and Buyer agree and acknowledge that Escrow Agent shall act hereunder as a depository only.

(b) Escrow Agent shall be protected in relying upon the accuracy, acting in reliance upon the contents, and assuming the genuineness of any notice, demand, certificate, signature, instrument or other document which is given to Escrow Agent without verifying the truth or accuracy of any such notice, demand, certificate, signature, instrument or other document.

(c) Escrow Agent shall not be liable for any action taken or omitted by Escrow Agent in good faith and believed by Escrow Agent to be authorized or within its rights or powers conferred upon it by this Agreement, except for any damage caused by Escrow Agent's own gross negligence or willful default. Escrow Agent shall not have any liability or obligation for loss of all or any portion of the Deposit by reason of the insolvency or failure of the institution of depository with whom the escrow account is maintained. Upon the disbursement of the Deposit in accordance with this Agreement, Escrow Agent shall be relieved and released from any liability under this Agreement, except in connection with Escrow Agent's gross negligence or willful default.

(d) In the event that a dispute shall arise in connection with this Agreement, or as to the rights of the parties in and to, or the disposition of, the Deposit, Escrow Agent shall have the right to: (i) hold and retain all or any part of the Deposit until such dispute is settled or finally determined by litigation, arbitration or otherwise; (ii) deposit the Deposit in an appropriate court of law, following which Escrow Agent shall thereby and thereafter be relieved and released from any liability or obligation under this Agreement; (iii) institute an action in interpleader or other similar action permitted by stakeholders in New York; or (iv) interplead any of the parties in any action or proceeding which may be brought to determine the rights of the parties to all or any part of the Deposit.

(e) Escrow Agent is permitted to charge a fee customary for Escrow Agents in Monroe County, NY for services provided in connection herewith, which will be split evenly between Buyer and Seller at Closing.

(f) All costs and expenses incurred by Escrow Agent in performing its duties as the Escrow Agent including, without limitation, reasonable attorneys' fees (whether paid to retained attorneys or amounts representing the fair value of legal services rendered to or for itself) shall be borne 50% by Seller and 50% by Buyer, except however, if any litigation arises under this Agreement with respect to the Deposit, all

costs and expenses of the litigation shall be borne by whichever of Seller or Buyer is the losing party.

Section 10.04 **Indemnification of Escrow Agent**. Seller and Buyer hereby agree to, jointly and severally, indemnify, defend and hold harmless Escrow Agent from and against any liabilities, damages, losses, costs or expenses incurred by, or claims or charges made against Escrow Agent (including reasonable attorneys' fees and disbursements) by reason of Escrow Agent acting or failing to act in connection with any of the matters contemplated by this Agreement or in carrying out the terms of this Agreement, except for those matters arising as a result of Escrow Agent's gross negligence or willful misconduct.

Section 10.05 **Survival**. This Article shall survive the Closing or the termination of this Agreement.

ARTICLE XI CONFIDENTIALITY

Section 11.01 **Confidential Information**. Commencing on the Effective Date and until the Closing Date or earlier termination of this Agreement, Buyer shall not knowingly or intentionally disclose in a formal public manner the Confidential Information (as hereinafter defined) and no publicity or press release to the general public with respect to the Confidential Information shall be made by Buyer without the prior written consent of Seller, which consent shall not be unreasonably withheld, conditioned or delayed. Buyer agrees that, except as otherwise provided by applicable laws and regulations, including but not limited to the New York Freedom of Information Law ("FOIL"), or in connection with the evaluation or financing of the Property, Buyer (including Buyer's officers, directors, employees, representatives, brokers, attorneys and advisers) shall treat as confidential, and maintain the confidentiality of, any Phase I or Phase II environmental site assessment and any other information related to the Property obtained by Buyer in connection with Buyer's Activities, whether or not marked as "confidential" (collectively, the "***Confidential Information***"). The Confidential Information shall not include any information publicly known, which becomes publicly known, or which may be disclosed to the public pursuant to a FOIL request or otherwise pursuant to law, or other than through the acts of Buyer, or any of Buyer's officers, directors, employees, representatives, brokers, attorneys or advisers. In the event the Closing occurs, Buyer may retain possession of all or any part of the Confidential Information if such Confidential Information relates solely to the Property and the operations thereon.

Section 11.02 **[Intentionally Omitted]**

Section 11.03 **Survival**. The provisions of this Article shall survive the termination of this Agreement.

ARTICLE XII BROKERS

Section 12.01 **Brokers**. Buyer represents and warrants that it has not dealt with a broker in connection with, nor has any broker other than "Broker" (as hereinafter defined) had any part in bringing about, this transaction. Seller represents that it has retained the brokerage firm of Marcus & Millichap with regard to the transaction (the "Broker"). Seller shall pay the brokerage commission due Broker in accordance with the terms and conditions of a separate written agreement. Seller and Buyer shall each indemnify, defend and hold harmless the other from and against any claim of any broker or other person for any brokerage commissions, finder's fees or other compensation in connection with this transaction if such claim is based in whole or in part by, though or on account of, any acts of the indemnifying party or its agents, employees or representatives and from all losses, liabilities, costs and expenses in connection with such claim, including without limitation, reasonable attorneys' fees, court costs and interest.

Section 12.02 **Survival**. The provisions of this Article shall survive the Closing, or the termination of this Agreement prior to the Closing.

ARTICLE XIII SELLER'S TAX DEFERRED EXCHANGE

Section 13.01 **Exchange**. Seller may convey the Property or any portion thereof or interest therein as part of one or more Internal Revenue Code Section 1031 Tax Deferred Exchanges for its benefit. In such event, Seller may be assigning all or some contract rights and obligations hereunder to a qualified intermediary, as a part of, and in furtherance of, such tax deferred exchange. Buyer agrees to assist and cooperate in any such exchange, and Buyer further agrees to execute any and all documents as are reasonably necessary in connection with any such exchange. Buyer shall not be obligated to incur any cost or expense in connection with any such exchange, other than that which Buyer elects to incur to have its counsel review the documents and instruments incident thereto. As part of any such exchange, Seller shall convey the Property described herein directly to Buyer and Buyer shall not be obligated to acquire or convey any other property as part of any such exchange. This Agreement is not subject to or contingent upon Seller's ability to acquire suitable exchange property; and the requirements of this Section 13.01 shall not alter or extend the dates and times for the duties, obligations and performance of the Parties hereunder.

ARTICLE XIV
MISCELLANEOUS

Section 14.01 **Applicable Law**. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of New York.

Section 14.02 **Entire Agreement**. This Agreement sets for the complete understanding and agreement of the parties with respect to the transaction that is the subject of this Agreement. No oral statements, representations or agreements other than this Agreement shall have any force or effect and Buyer and Seller agree that they will not rely on any representations or agreements other than those contained in this Agreement.

Section 14.03 **Limitation of Liability**.

(a) **Disclaimer of Consequential Damages**. IN NO EVENT SHALL SELLER OR BUYER BE LIABLE UNDER THIS AGREEMENT TO THE OTHER OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, INCLUDING ANY DAMAGES FOR BUSINESS INTERRUPTION, LOSS OF USE, REVENUE OR PROFIT, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT EITHER PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(b) **Cap on all other Damages**. IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL PURCHASE PRICE TO BE PAID TO THE SELLER PURSUANT TO THIS AGREEMENT.

Section 14.04 **Modifications and Amendments** This Agreement cannot under any circumstance be modified or amended orally and no agreement shall be effective to waive, change, modify, terminate or discharge this Agreement, in whole or in part, unless such agreement is in writing and is signed by both Seller and Buyer.

Section 14.05 **No Recording**. Neither this Agreement, nor any memorandum of this Agreement, shall be recorded. The recording of this Agreement, or any

memorandum of this Agreement, by Buyer shall constitute a material default and shall entitle Seller to retain the Deposit and any interest earned thereon.

Section 14.06 **Binding Effect; Assignment**. This Agreement shall be binding upon the parties hereto and their respective successors and permitted assigns. No other person or entity shall acquire or have any right under, or by virtue of, this Agreement. Seller is offering the Property to the Buyer at a discount because Buyer intends to develop the Property to benefit the residents of the Town of Penfield. As a result, Buyer shall not have the right to assign this Agreement to any other person or entity without the prior consent of Seller; provided, however, that Buyer shall have the right to assign this Agreement without the prior consent of Seller to an entity formed by Buyer for municipal purposes. Seller may assign or transfer its rights hereunder to any affiliate. Any purported assignment or transfer in violation of this section shall be null and void.

Section 14.07 **Severability**. Any provision of this Agreement that is found by an arbitrator or other adjudicator of competent jurisdiction to be invalid, void, or otherwise unenforceable shall in no way affect, impair, or invalidate any other provision hereof, and the remaining provisions hereof shall nevertheless remain in full force and effect. To the extent that any such provision is so found to be invalid, void, or otherwise unenforceable as written, the parties authorize the adjudicator to revise it retroactive to the effective date so that it is enforceable to the greatest extent allowed by applicable law. In the event that the adjudicator declines to exercise such authority, the parties agree to make such revision.

Section 14.08 **Further Assurances** Each of the parties hereto shall execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions of this Agreement and give effect to the transactions contemplated hereby, provided such documents are customarily delivered in real estate transactions in New York and do not impose any material obligations upon any party hereunder except as set forth in this Agreement.

Section 14.09 **Counterparts**. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

Section 14.10 **Headings**. The headings in this Agreement are for the purposes of reference only and shall not affect or define the meanings hereof.

Section 14.11 **Waiver**. The failure of either party to insist, in any one or more instances, upon a strict performance of any of the terms and conditions of this Agreement, or to exercise or fail to exercise any option or right contained herein, shall not be construed as a waiver or a relinquishment for the future of such right or option, but the same shall continue and remain in full force and effect. The continued performance by either party of this Agreement with knowledge of the breach of any term or condition hereof shall not be deemed a waiver of such breach, and no waiver by either party of any provision hereof, shall be deemed to have been made, or operate as estoppel, unless expressed in writing and signed by such party.

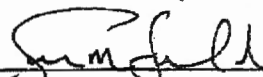
Section 14.12 **Time of Essence; Calculation of Dates**. Time is of the essence of this Agreement. Anywhere a day certain is stated for payment or for performance of any obligation, the day certain so stated enters into and becomes a part of the consideration for this Agreement. If any date set forth in this Agreement shall fall on, or any time period set forth in this Agreement shall expire on, a day which is a Saturday, Sunday, federal or state holiday, or other non-business day, such date shall automatically be extended to, and the expiration of such time period shall automatically be extended to, the next day which is not a Saturday, Sunday, federal or state holiday or other non-business day. The final day of any time period under this Agreement or any deadline under this Agreement shall be the specified day or date, and shall include the period of time through and including such specified day or date.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute, seal and deliver this Agreement, all as of the day and year first written above.

SELLER:

Dolomite Products Company, Inc.,
A New York corporation

By: 
Name: John M. Sie / Sr
Title: President
Date: 1/16/13

BUYER:

Town of Penfield, an incorporated Town in
New York

By: _____
Name: _____
Title: _____
Date: _____

Escrow Agent Consent. The undersigned agrees to hold and deliver the Deposit and any other deposits made hereunder in accordance with the terms of this Agreement, and further agrees to act as the Escrow Agent for the transaction described herein pursuant to the terms of Article X.

Crossroads Land Office, Inc.

By: _____
Name: _____
Title: _____
Date: _____

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute, seal and deliver this Agreement, all as of the day and year first written above.

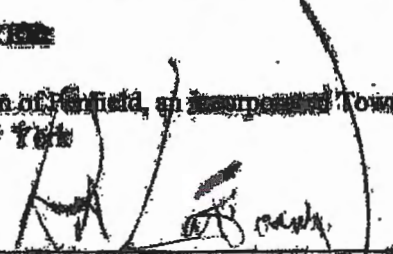
SELLER:

Doherty Business Company, Inc.,
A New York corporation

By: _____
Name: _____
Title: _____
Date: _____

BUYER:

Town of Fairfield, an Incorporated Town in
New York

By: 
Name: DA LAFOUNTAIN
Title: TOWN SUPERVISOR
Date: JANUARY 17, 2018

Escrow Agent Consent. The undersigned agrees to hold and deliver the Deposit and any other deposits made hereunder in accordance with the terms of this Agreement, and further agrees to act as the Escrow Agent for the transaction described herein pursuant to the terms of Article X.

Crossroads Land Office, Inc.

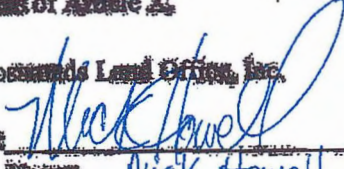
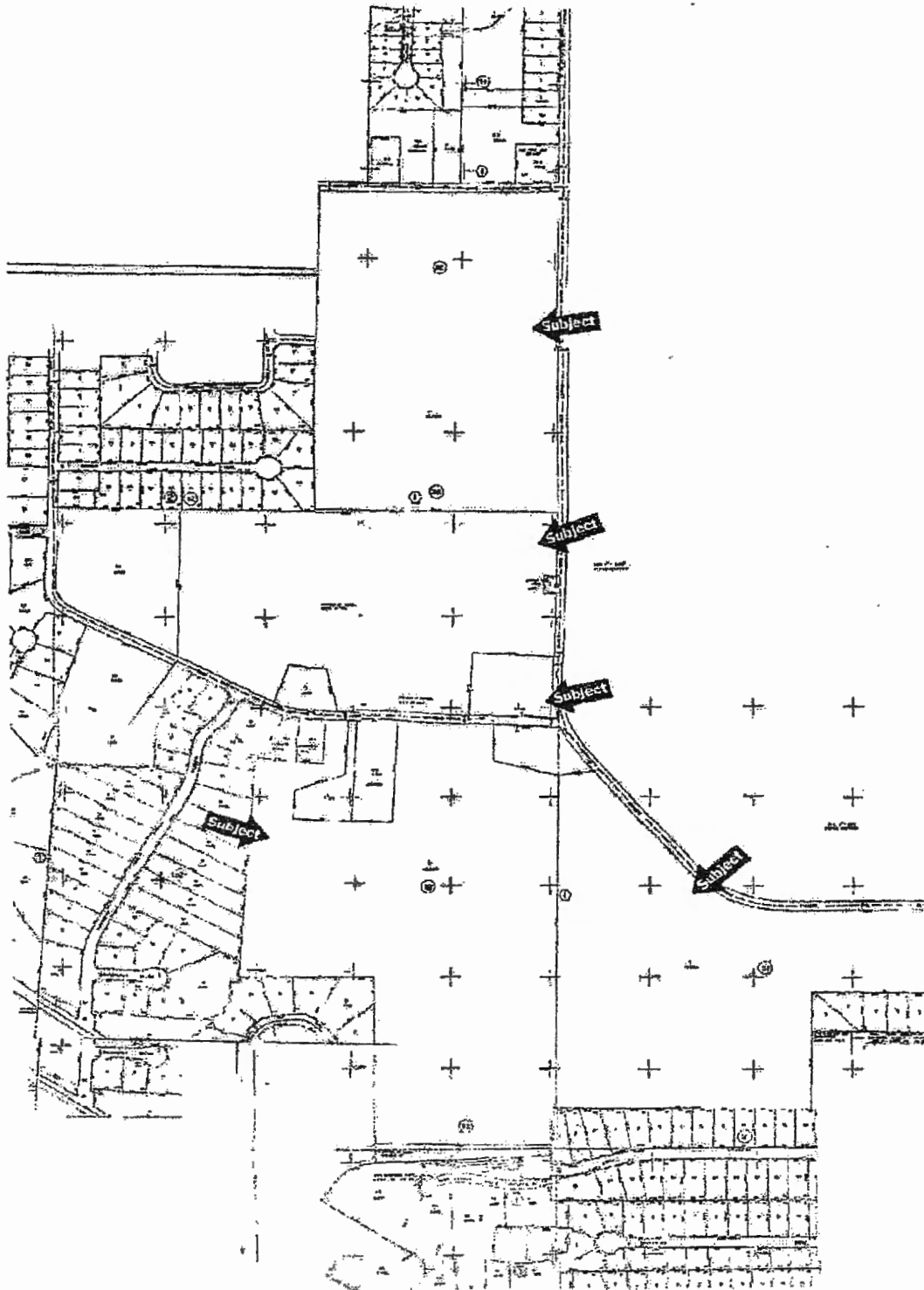
By: 
Name: Nick Howell
Title: President
Date: JANUARY 22, 2018

Exhibit "A"

The legal description of the Property will be provided prior to closing by a survey to be performed by a surveyor at Buyer's expense. In the event that a survey is not performed, the title abstracts will be updated.

Please see the attached map containing the tax parcels.

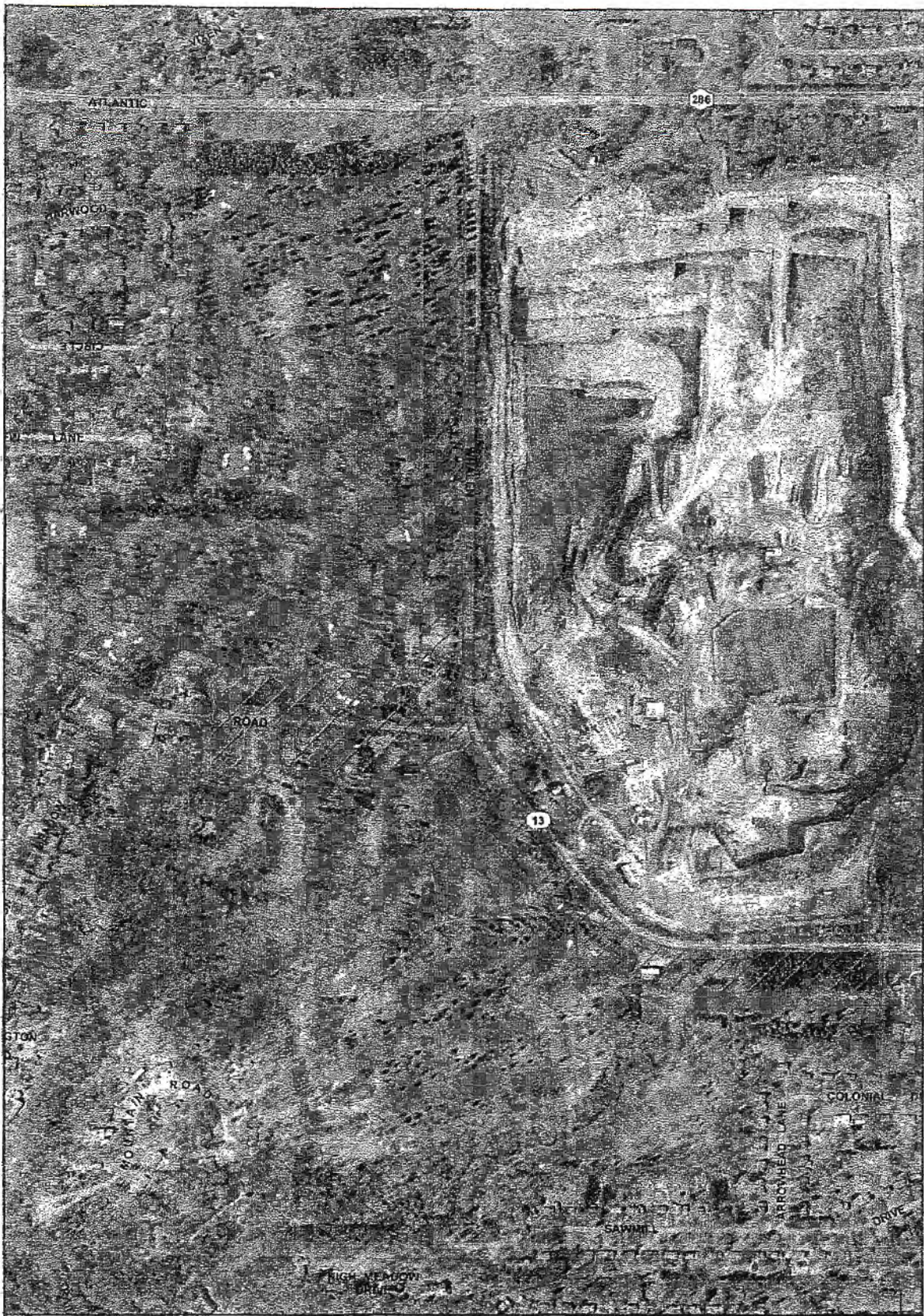
TAX MAP



Executed Version

Exhibit "B"

(See Attached)



200ft Buffer [37.45ac]



200ft Buffer Shadow Pines Property

0 250 500 1,000 Feet

The Town of Peasfield certifies that this GIS document is a digital reproduction of a map or data collected in-house by the Town of Peasfield for the convenience of and use by the Public and Town Staff. The Town of Peasfield does not make any representations, expressed or implied, as to the accuracy of such material. The Town of Peasfield, its Agents and Employees, shall not be responsible or liable for any damage of any nature whatsoever for errors and/or omissions, if any, relating to or contained within such map.

