

## OPTION AGREEMENT AND CONTRACT OF SALE

**OPTION AGREEMENT AND CONTRACT OF SALE (this "Contract")**, made this 27th day of July, 2005 by and between NEW ROCHELLE REVITALIZATION, LLC, a New York limited liability company having an address c/o Cappelli Enterprises, Inc., 115 Stevens Avenue, Valhalla, New York 10595 (hereinafter referred to as "NRR"), and ANDERSON DEVELOPMENT GROUP LLC, a New York limited liability company having an address c/o Mark Fonte, 1955 Central Park Avenue, Yonkers, New York 10710 (hereinafter referred to as "ADG").

### WITNESSETH:

**WHEREAS**, ADG owns certain real property located in the City of New Rochelle, County of Westchester and State of New York located at the northeast corner of Anderson Street and North Avenue, New Rochelle, New York as more particularly described herein;

**WHEREAS**, NRR is the developer of property in the City of New Rochelle, County of Westchester, State of New York, and has been designated as developer of the revitalization plan for the redevelopment of certain properties in New Rochelle, New York, such properties bounded by Lecount Place, Anderson Street, Huguenot Street, and North Avenue (the "New Rochelle Revitalization Project") of which the ADG Parcel (hereinafter defined) is a part,

**WHEREAS**, the acquisition of the ADG Parcel is required in furtherance of the New Rochelle Revitalization Project and, in the event ADG does not sell the ADG Parcel to NRR, the City of New Rochelle and/or the New Rochelle Urban Renewal Agency will use its authority to condemn the ADG Parcel;

**WHEREAS**, the sale of the ADG Parcel to NRR as provided herein is made under the threat or imminence of condemnation and is therefore a compulsory or involuntary conversion under §1033 of the Internal Revenue Code;

**WHEREAS**, NRR desires to acquire the exclusive right and option to purchase the ADG Parcel and ADG is willing to grant the option for the price and on the terms hereinafter set forth.

**WHEREAS**, NRR intends to establish a condominium as part of the New Rochelle Revitalization Project to be known as Lecount Anderson Development (the "Condominium");

**WHEREAS**, NRR intends to create several units in the Condominium, one of which will contain 22,000 square feet of retail space;

**WHEREAS**, ADG desires to convey the ADG Parcel to NRR for the consideration set forth in Section 4 herein, including but not limited to a condominium unit containing no less than 22, 000 Gross Square Feet of retail space in the Condominium, and as part of the consideration

for the purchase of the ADG Parcel, NRR desires to convey to ADG a condominium unit containing no less than 22,000 square feet in the Condominium.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, NRR and ADG agree as follows:

**Section 1. Definitions**

<b>Account</b>	As defined in Section 3.04(b).
<b>ADG Closing</b>	As defined in Section 6.01.
<b>ADG Closing Date</b>	As defined in Section 6.01.
<b>ADG Parcel</b>	All that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the City of New Rochelle, County of Westchester and State of New York as more fully described in Exhibit A annexed hereto and made a part hereof, together with all right, title and interest of ADG, if any, in and to the land lying in the bed of any street or highway in front of or adjoining such land to the center line thereof and to any unpaid award for any taking by condemnation or any damage to such land by reason of a change of grade of any street or highway.
<b>Assumed Mortgage</b>	As defined in Section 7.01.
<b>Condominium</b>	As defined in the preamble of this Agreement.
<b>Development Period</b>	The period of time commencing upon the exercise of the Option pursuant to Section 2.04 and ending eighteen (18) months later, except NRR shall have the right in the event the New Rochelle Revitalization Project is not completed but is progressing to extend the Development Period until the earlier of (i) twelve (12) additional months or (ii) substantial completion of the New Rochelle Revitalization Project, the issuance of a temporary Certificate of Occupancy for that portion of the New Rochelle Revitalization Project making up the NRR Parcel, and the establishment of the Condominium.
<b>DHCR Approval</b>	As defined in Section 3.03(a).

<b>Excess Real Estate Taxes</b>	As defined in Section 5.01(d).
<b>Existing Tenancies</b>	As set forth in Schedule I annexed hereto and made a part hereof.
<b>Final Approval</b>	Collectively, the required approvals, permits, licenses, easements and utility agreements from the applicable governmental authorities and utility companies to secure the development of the New Rochelle Revitalization Project, consisting of no less than 895,000 square feet of new construction, or such lesser square footage as NRR determines, in its sole discretion, enables it to proceed with the New Rochelle Revitalization Project, including without limitation approvals for zoning changes, subdivision, plat or map approvals, utility connection permits, environmental permits and approvals, ground disturbance permits, building permits, board of health approvals and other regulatory permits and approvals, all of which must be final, unappealable, and not subject to reconsideration by any applicable governmental authorities or utility companies, with no injunction, moratorium or other legal impediment in place that would reasonably be expected to legally preclude NRR from developing the New Rochelle Revitalization Project and/or constructing the Condominium.
<b>Fund</b>	As defined in Section 3.03(d).
<b>Gross Square Feet</b>	The square footage of the area measured from the outside of the exterior walls to the midpoint of the interior partition walls.
<b>Guaranteed Rent Payment</b>	As defined in Section 4.01(c).
<b>Guarantor</b>	As defined in Section 11.02
<b>Guaranty</b>	As defined in Section 11.02 and annexed as Exhibit B
<b>Lease Term</b>	The period of time commencing on the date which is the earlier of (a) the NRR Closing or (b) the expiration of the Development Period and ending sixty (60) months later.
<b>Monthly Payments</b>	As defined in Section 3.06.

<b>NRR Closing</b>	As defined in Section 6.01.
<b>NRR Closing Date</b>	As defined in Section 6.01.
<b>NRR Parcel</b>	A condominium unit in the Condominium consisting of no less than 22,000 Gross Square Feet of contiguous retail space, with its own demising walls. A minimum of 16,000 Gross Square Feet shall be located on the ground floor with the balance on the second floor. The exact location of the condominium unit shall be determined by NRR.
<b>Option</b>	As defined in Section 2.01.
<b>Option Payment</b>	As defined in Section 2.02.
<b>Option Period</b>	As defined in Section 2.03.
<b>Permitted Exceptions</b>	As defined in Section 6.02(a) and Schedule II.
<b>Post Termination Period</b>	The period of time commencing upon the issuance of a Termination Notice and ending eighteen (18) months later.
<b>Purchase Price</b>	As defined in Section 7.01.
<b>Relocation Expenses</b>	As defined in Section 3.03(c).
<b>Termination Notice</b>	As defined in Section 2.03.
<b>Title Insurer</b>	Stewart Title Insurance Company or, if NRR refuses to close on the ADG Parcel because of objections to title, First American Title Insurance Company of New York.

## **Section 2. Option**

§2.01. ADG hereby gives and irrevocably grants to NRR the exclusive right and option to purchase the ADG Parcel, on the terms and conditions hereinafter set forth (the "Option").

§2.02. Upon the execution and delivery of this Contract, NRR has paid to ADG the sum of One Hundred Thousand and 00/100 (\$100,000.00) Dollars (the "Option Payment"). The Option Payment shall be non-refundable.

§2.03. The term of the Option shall commence upon the execution and delivery of this Contract and shall expire at 11:59 p.m. on June 30, 2007 unless sooner terminated by NRR as hereinafter provided (the "Option Period"). NRR shall have the right to terminate the Option and the Option Period by written notice at any time (a "Termination Notice").

§2.04. Exercise of the Option shall be by written notice given by NRR in the manner specified in Section 13.01 below, not later than the last day of the Option Period. If the Option is exercised in accordance with its terms, then, upon such exercise, the terms and conditions set forth in this Contract shall automatically become applicable in all respects; and it is agreed, without limiting the foregoing, that at the ADG Closing, ADG shall sell and convey the ADG Parcel to NRR and NRR shall purchase and accept the ADG Parcel from ADG, on and subject to the terms set forth in this Contract.

### **Section 3. Parties' Rights and Obligations During the Option Period**

During the Option Period:

§3.01. (a) NRR, its agents, representatives, and any designee of NRR and its employees and agents shall have the right and permission to enter upon the ADG Parcel or any part thereof at all reasonable times and from time to time on reasonable notice for the purpose, at NRR's cost and expense, of inspecting the same and making all surveys, tests or studies required in connection with the matters requiring NRR's approval hereunder and for other purposes relative to the acquisition of the ADG Parcel and NRR's planned development thereof.

(b) NRR shall obtain appropriate insurance in connection with NRR's rights under Section 3.01 and name ADG as an additional insured.

(c) NRR shall restore any damage to the ADG Parcel caused by such inspections, tests, or surveys, if NRR does not proceed with the purchase of the ADG Parcel.

(d) NRR shall defend, indemnify and hold harmless ADG from and against any mechanic's or other liens or claims that may be filed or asserted against the ADG Parcel by anyone performing any such work on NRR's behalf and from and against any and all claims, demands, losses, liabilities, damages, expenses (including reasonable attorneys fees) arising out of or in connection with NRR's entry on to the ADG Parcel.

§3.02. ADG shall not enter into any agreements or letters or memoranda of intent for or relating to the sale, lease or other disposition of all or any part of the ADG Parcel to, or occupancy of all or any part of the ADG Parcel by, any person, firm or other entity (other than NRR or its designee), nor shall ADG directly or indirectly solicit offers or proposals from any such third party for, or conduct negotiations with any such third party with respect to, any such sale, lease, disposition or occupancy.

§3.03. (a) (i) Within ten (10) days of the execution of this Contract, NRR shall prepare and ADG shall execute an application to the New York Division of Housing and Community Renewal and other agencies having jurisdiction over the matter for an order (a) granting demolition of the existing building on the ADG Parcel, (b) allowing ADG to refuse to renew tenant leases and (c) authorizing ADG and/or NRR to relocate tenants to suitable housing accommodations in accordance with the ETPA and all applicable City, State and/or Federal statutes, codes, guidelines and regulations related to a "friendly" condemnation (the "DHCR Approval").

(b) NRR shall diligently proceed to obtain the DHCR Approval at its sole cost and expense, and ADG shall cooperate with NRR's efforts to obtain the DHCR Approval and any and all other federal, state, county or municipal governmental approvals and permits sought by NRR in connection with the proposed redevelopment of the ADG Parcel as part of the New Rochelle Revitalization Project. Such cooperation shall include without limitation providing written consents or authorizations for NRR's applications or the submission or processing thereof, and, where required by governmental authorities in connection with any application or amended application, co-signing such application or amendment.

(c) ADG shall, pursuant to direction from NRR, attempt to relocate the existing tenants and cause tenants to vacate the ADG Parcel prior to the ADG Closing. NRR shall be responsible for any and all costs of vacating the ADG Parcel whether or not NRR exercises the Option, including costs incurred to purchase residential and commercial tenant rights, to relocate tenants, and to pay all obligations under the ETPA with regard to the vacating of residential apartments and all expenses otherwise related to the vacating of the building for demolition (collectively, the "Relocation Expenses").

(d) As security for the performance by NRR of its obligations to pay the Relocation Expenses, NRR shall deposit within thirty (30) days of execution hereof the sum of Two Hundred Fifty Thousand Dollars (\$250,000.00) in an escrow account with DelBello Donnellan Weingarten Tartaglia Wise & Wiederkehr, LLP, to create a fund (the "Fund") to be utilized to pay the Relocation Expenses. ADG shall be entitled to apply for and receive such Fund proceeds for the Relocation Expenses only after giving NRR five (5) business days' notice. NRR shall have the right to participate in all decisions regarding disbursements from the Fund, and shall be entitled to retain the entire unused portion of the Fund remaining at the ADG Closing. If and when the fund is reduced to \$50,000, NRR shall replenish the Fund to the amount of \$250,000. In no event shall NRR be obligated to deposit more than Seven Hundred Fifty Thousand Dollars (\$750,000) in the Fund. Notwithstanding the foregoing, NRR shall be responsible for the Relocation Expenses in accordance with Section 3.03(c).

(e) NRR shall have the right, at any time prior to delivery of the NRR Parcel to ADG, to seek the condemnation by appropriate governmental authorities of all land within the New Rochelle Revitalization Project area, including the ADG Parcel. ADG acknowledges and agrees that NRR shall control such condemnation proceedings and ADG shall fully cooperate with NRR's efforts in effectuating any such condemnation of the ADG Parcel. In any

condemnation, NRR shall not seek to eliminate or modify any of the terms and conditions of this Contract or the Guaranty, and NRR expressly agrees to continue to be bound by this Contract, and every provision herein, and to fully perform hereunder. In the event NRR elects to proceed with condemnation, NRR may terminate efforts to obtain the DHCR approval and proceed with the removal of tenants through condemnation proceedings.

(f) NRR shall indemnify and hold ADG harmless from NRR's actions taken to vacate the ADG Parcel.

(g) ADG shall be responsible for the return of any tenant security deposits held by ADG.

§3.04 (a) ADG shall manage the ADG Parcel, maintaining the ADG Parcel in the normal course of business, while NRR and ADG are attempting to vacate tenants pursuant to direction from NRR and in accordance with the DHCR Approval. ADG shall not be entitled to any management fee in connection with these services, but NRR shall make the Monthly Payments to ADG as provided in §3.06 below.

(b) From and after the date of execution of this Contract, ADG shall open and maintain a separate bank account to receive the rents from the ADG Parcel and to pay the expenses of the ADG Parcel (the "Account"). All rent for the month of August 2005 shall be deposited in the Account. ADG will remit to NRR within ten (10) days of the close of each month the "net cash flow" of the ADG Parcel as of the close of the preceding month, accompanied by the monthly statement for the Account and a Monthly Cash Flow Statement prepared by ADG's accountants. For purposes of this Contract, the term "net cash flow" shall mean all income of any nature derived from the ADG Parcel, less all normal operating expenses, first mortgage payments, and monies expended to remove Violations pursuant to this Contract. ADG represents that the current gross income for the ADG Parcel is in excess of \$41,000 per month.

In the event that the net cash flow for any month is negative, NRR shall pay to ADG a sum equal to (i) the amount of the loss for such month, plus (ii) another amount equal to the loss for such month, less non-recurring items in the preceding month, within ten (10) days of receiving the Monthly Cash Flow Statement. Such payments shall represent (i) the reimbursement to ADG of the operating loss in the preceding month; and (ii) a payment on account of the estimated operating loss for the current month. All such payments shall be deposited into the Account and reflected on the next Monthly Cash Flow Statement. It is the parties' intent that NRR shall receive the net cash flow of the ADG Parcel, and that NRR will be responsible for all tax consequences with respect thereto.

(c) As long as the Assumed Mortgage is outstanding, NRR shall pay into the Account on the first day of each month commencing on the execution hereof, the monthly mortgage payment amount for the Assumed Mortgage, provided, however, such amount shall not exceed \$18,000 per month. At the ADG Closing, if the Assumed Mortgage has not been

satisfied, NRR shall, at its option, either discharge the Assumed Mortgage or assume same. ADG makes no representation as to the assumability of the Assumed Mortgage. If the Assumed Mortgage has been satisfied by ADG from its own funds prior to the ADG Closing, NRR shall pay ADG an amount equal to the principal amount of the mortgage paid by ADG, together with accrued interest thereon, at the time it was satisfied, and provide NRR with a copy of the payoff letter and proof of the amount paid upon satisfaction of the mortgage.

(d) ADG shall promptly furnish NRR with copies of all notes or notices of violations of law or governmental ordinances, orders or requirements which are noted or issued prior to the ADG Closing Date by any governmental department, agency or bureau having jurisdiction as to conditions affecting the ADG Parcel (collectively, the "Violations"). Any Violations relating to safety shall be removed or complied with by ADG as promptly as practicable and the costs of removal shall be paid from the Account and reported and otherwise dealt with as provided in Section 3.04(b). If required, ADG shall promptly furnish to NRR, upon request, written authorization to make any necessary searches for the purposes of determining whether notes or notices of violations have been noted or issued with respect to the ADG Parcel or whether liens have attached thereto.

§3.05 NRR shall have the right, at any time prior to delivery of the NRR Parcel to ADG, to make an application at NRR's sole cost to reduce real estate taxes assessed on all or any part of the land within the New Rochelle Revitalization Project area, including the ADG Parcel. ADG acknowledges and agrees that NRR shall control such tax certiorari proceedings and ADG shall fully cooperate with NRR's efforts in effectuating any such reduction in real estate taxes with respect to the ADG Parcel.

§3.06 NRR shall pay into the Account \$25,000 per month (the "Monthly Payments") commencing on August 1, 2005 and continuing on the first day of each month until the earliest to occur of (i) the NRR Closing; (ii) expiration of the Development Period, or (iii) expiration of the Post Termination Period. ADG shall have the immediate right to withdraw the Monthly Payments from the Account for its own purposes..

#### **Section 4. Parties' Rights and Obligations upon Exercise of the Option**

§4.01 If NRR exercises the Option:

(a) All of the parties' rights and obligations set forth in Sections 3.01, 3.02, 3.03, 3.04, 3.05 and 3.06 shall, except as hereinafter provided, continue through the Development Period.

(b) NRR shall be obligated to pay the Purchase Price.

(c) If the NRR Closing has not occurred on or before the expiration of the Development Period, then NRR shall pay ADG the additional sum of \$550,000 per year in equal

monthly installments (the "Guaranteed Rent Payment") commencing on the expiration of the Development Period and upon ending the expiration of the Lease Term.

(d) If the NRR Closing has not occurred on or before the expiration of the Lease Term, NRR shall pay ADG the sum of \$5,000,000 (the "Liquidated Amount"), in addition to all other payments provided for in this Contract but in lieu of conveying the NRR Parcel to ADG.

## **Section 5. Parties' Rights and Obligations upon NRR's Non-Exercise of the Option**

§5.01 If NRR does not exercise the Option:

(a) NRR shall have no further rights or obligations under Section 3.01(a) or (b), but shall continue to be obligated and responsible under Section 3.01(c) and (d).

(b) ADG shall have no further obligations under Section 3.02.

(c) NRR's obligations under Section 3.03 shall continue through the expiration of the Post Termination Period.

(d) Neither of ADG nor NRR shall have any further obligations under Section 3.04, except that, if the aggregate real estate taxes on the ADG Parcel shall then or at any time thereafter up until the expiration of the Post Termination Period exceed \$50,000 per annum (the "Excess Real Estate Taxes"), then NRR shall pay the Excess Real Estate Taxes through the expiration of the Post Termination Period. Payment of the Excess Real Estate Taxes shall be made pro rata when the real estate taxes are due. For example, if the real estate taxes for a calendar year are \$100,000 payable in equal installments on April 1 and October 1, then the Excess Real Estate Taxes are \$50,000, and NRR is obligated to pay \$25,000 on each of April 1 and October of that tax year.

(e) NRR shall have no further rights under Section 3.03(e).

(f) NRR's obligations under Section 3.06 shall continue.

(g) NRR shall not be obligated to pay the Purchase Price or the additional payments provided in Section 4.01(d).

## **Section 6. Closings; Closing Obligations**

6.01. The closing of title to the ADG Parcel pursuant to this Contract (the "ADG Closing") shall take place within thirty (30) days of NRR's exercise of the Option (the "ADG Closing Date") and the closing of title to the NRR Parcel pursuant to this Contract (the "NRR Closing") shall take place within thirty (30) days of completion of the New Rochelle Revitalization Project and the establishment of the Condominium (the "NRR Closing Date"), at

the offices of DelBello Donnellan Weingarten Tartaglia Wise & Wiederkehr, LLP, One North Lexington Avenue, White Plains, New York 10601.

§6.02 At the ADG Closing:

(a) ADG shall convey and NRR shall accept fee simple title to the ADG Parcel in accordance with the terms of this Contract, subject only to the items set forth on Schedule II (collectively, the "Permitted Exceptions") and the Existing Tenancies. ADG shall have removed or satisfied of record, at or prior to the ADG Closing, all judgment liens, mechanics' liens, materialmens' liens and any other financing instruments such as assignments of rent, security agreements and financing statements wherever filed, liens for unpaid corporate franchise taxes, and any other liens or encumbrances affecting the ADG Parcel except for any liens or encumbrances that have arisen as a result of NRR's actions (including but not limited to mechanics liens filed by contractors who proposed work on the ADG Parcel with NRR's approval and any judgments or other encumbrances obtained by Tenants and related to efforts by ADG and NRR to vacate the ADG Parcel). In addition, ADG shall deliver the Parcel free and clear of any and all leases, ground leases and occupancies, except the Existing Tenancies.

(b) ADG shall deliver the following to NRR:

(i) A statutory form of bargain and sale deed with covenants against grantor's acts for the ADG Parcel, which deed shall contain the covenant required by Section 13 of the Lien Law, and shall be properly executed in proper form for recording so as to convey the title required by this Contract.

(ii) A duly executed certification stating that ADG is not a foreign person, which certification shall be in form then required by FIRPTA.

(iii) Such affidavits as the Title Insurer shall reasonably require in order to omit from its title insurance policy all exceptions for judgments, bankruptcies or other returns against persons or entities whose names are the same as or similar to the ADG's name.

(iv) Checks to the order of the appropriate officers in payment of all applicable real property transfer taxes and copies of any required tax returns therefor executed by ADG, which checks shall be certified or official bank checks if required by the taxing authority.

(v) Possession of the ADG Parcel subject to the Existing Tenancies to the extent NRR has been unable to relocate tenants.

(vi) All lease files for any tenants in possession together with any security deposits.

§6.03 At the NRR Closing:

(a) NRR shall convey and ADG shall accept fee simple title to the NRR Parcel in accordance with the terms of this Contract lien free, subject only to the Condominium declaration, utility easements and other agreements of record necessary for the New Rochelle Revitalization Project and such matters as the Title Insurer shall be willing, without special premium, to omit as exceptions to coverage or to except with insurance against collection out of or enforcement against the NRR Parcel.

(b) NRR shall deliver the following to ADG:

(i) Copies of the declaration and bylaws for the Condominium, which shall allow ADG to divide and lease the NRR Parcel without the consent, or waiver of right of first refusal, of the Condominium Board of Managers.

(ii) A duly executed certification stating that NRR is not a foreign person, which certification shall be in form then required by FIRPTA.

(iii) A statutory form of bargain and sale deed with covenants against grantor's acts for the NRR Parcel, which deed shall contain the covenant required by Section 13 of the Lien Law, and shall be properly executed in proper form for recording so as to convey the title required by this Contract.

(iv) Such affidavits as the Title Insurer shall reasonably require in order to omit from its title insurance policy all exceptions for judgments, bankruptcies or other returns against persons or entities whose names are the same as or similar to NRR's name.

(v) Checks to the order of the appropriate officers in payment of all applicable real property transfer taxes and copies of any required tax returns therefor executed by NRR, which checks shall be certified or official bank checks if required by the taxing authority.

(vi) Possession of the NRR Parcel in the condition required by this Contract except that the tenant fit up shall not be performed until a lease of the NRR Parcel is executed with a tenant.

§6.04 NRR and ADG shall each be responsible for their respective attorneys fees in connection with the transaction contemplated by this Contract. All other purchase and sale closing costs in connection with the ADG Closing and the NRR Closing shall be paid by NRR or ADG in accordance with the custom in Westchester County.

§6.05 NRR and ADG hereby acknowledge and agree that neither party is entitled to monetary adjustments as a result of the transfer of the ADG Parcel and the NRR Parcel.

§6.06 Notwithstanding anything to the contrary contained in Section 6.05:

(a) The following items shall be prorated between ADG and NRR as of midnight on July 1, 2005:

(i) sewer rent, and any other applicable public utility charges, on the basis of the fiscal year for which assessed;

(ii) real estate taxes for the ADG Parcel on the basis of the fiscal year for which assessed;

(iii) rent, additional rent and any other revenues derived from the ADG Parcel;

(iv) The difference between \$2,700,000 principal amount of the Assumed Mortgage and the principal amount as of July 1, 2005, \$2,633,066, or \$66,934; and

(v) such other items as are customarily prorated in transactions of this nature.

The aggregate of the above prorated amounts shall be paid to the party entitled to the credit within thirty (30) days of the date hereof. If ADG is entitled to a credit, the amount of the credit may be withdrawn from the Fund as soon as monies are available to pay such amount, except that the credit due ADG under Section 6.06(a)(iv) shall be paid at the time of the ADG Closing.

(b) NRR shall receive a credit at the ADG Closing in the amount of any security deposits made in connection with the Existing Tenancies.

(c) The following items shall be prorated between ADG and NRR as of midnight on the day immediately preceding the NRR Closing Date:

(i) real estate taxes for the NRR Parcel on the basis of the fiscal year for which assessed; and

(ii) such other items that are customarily prorated in transactions of this nature.

## **Section 7. Purchase Price**

§7.01 If NRR exercises the Option, NRR agrees to pay and ADG agrees to accept as consideration for the transfer of the ADG Parcel to NRR a purchase price equal to the following (the "Purchase Price"): (a) payment or assumption by NRR of the existing first mortgage encumbering the ADG Parcel dated September 3, 2004 in favor of Mitsuko Kawanishi and Yoshiaki Kawanishi (the "Assumed Mortgage"),(b) title to the NRR Parcel, and (c) the payments provided in §4.01(c) above.

§7.02 In the event that NRR decides to sell the New Rochelle Revitalization Project and/or the Condominium, NRR shall give notice to ADG of such proposed sale and the terms thereof (the "Proposed Sale Notice"), and ADG, in lieu of accepting title to the NRR Parcel, shall have the right, within thirty (30) days of the date the Proposed Sale Notice is given to elect by notice in writing to receive a portion of the net proceeds of sale equal to the price per square foot NRR is obtaining upon any such sale. Any purchaser of the New Rochelle Revitalization Project and/or the Condominium shall be given notice of, and take subject to, this Contract.

§7.03 NRR and ADG hereby agree that the NRR Parcel and the ADG Parcel are each intended to be "like kind" within the meaning of the Internal Revenue Code and that the transaction is made under threat or imminence of condemnation of the ADG Parcel by the City of New Rochelle and is therefore a compulsory or involuntary conversion under Section 1033 of the Internal Revenue Code. Except as provided in §3.04(b), NRR shall not be liable for any income tax imposed on ADG.

## **Section 8. Representations and Warranties**

§8.01. ADG represents and warrants to NRR as follows:

- (a) ADG is the sole owner of the ADG Parcel.
- (b) ADG has full power, authority and right to execute, deliver and perform its obligations under this Contract.
- (c) There are no pending or to the best of ADG's knowledge, threatened lawsuits, administrative actions or proceedings relating to the ADG Parcel or other matters affecting materially and adversely the current use or occupancy thereof.
- (d) To the best of ADG's knowledge, after due investigation with respect to the Existing Tenancies, except as expressly set forth on Schedule I attached hereto:
  - (i) ADG has delivered true, correct and complete copies of all leases at the ADG Parcel to NRR (the "Leases");

(ii) Schedule I lists all of the current tenants of the ADG Parcel, as well as the current rental amounts of each tenant and any security deposit held by ADG in connection with their respective Leases;

(iii) All of the Leases are in full force and effect and none of them have been modified or amended;

(iv) The rents are being collected on a current basis and there are no arrearage;

(v) No tenant is entitled to rental concessions or abatements for any period subsequent to the date hereof;

(vi) ADG has not sent any tenant a notice of default under its respective Lease; and

(vii) There are no actions or proceedings pending against ADG by any tenant at the ADG Parcel, except with respect to claims involving personal injury or property damage which are fully covered by insurance and there are no such threatened actions or proceedings.

§8.02. NRR represents and warrants to ADG as follows:

(a) Upon completion of the New Rochelle Revitalization Project and the establishment of the Condominium, NRR or an affiliated company will be the sole owner of the NRR Parcel.

(b) Upon the establishment of the Condominium, the taxes and common charges for the NRR Parcel shall be proportionate to all other space in the Condominium.

(c) NRR has full power, authority and right to execute, deliver and perform its obligations under this Contract.

§8.03 NRR acknowledges that NRR has inspected the ADG Parcel; is fully familiar with the physical condition and state of repair thereof, and shall accept the ADG Parcel "as is" as of the ADG Closing Date.

## **Section 9. Intentionally Deleted.**

## **Section 10. Parties' Rights and Obligations from and after the NRR Closing**

§10.01 NRR shall, at its sole cost and expense, complete the tenant fit-out work pursuant to specifications for each tenant of the NRR parcel. The NRR parcel shall be divided

as follows: Approximately 12,000 square feet shall be divided for a single tenant which will be a two-tier space with a maximum of 6,000 square feet on the ground floor and 6,000 square feet on the second floor ("Tenant Space 1"). The balance of the space consisting of approximately 10,000 square feet on the ground floor may be divided into any number of spaces to suit available tenants ("Tenant Space 2"). Each tenant space shall have a ground floor entrance that opens onto a street.

§10.02 NRR shall, at no charge to ADG for broker's commission or otherwise, attempt to procure tenants for the NRR Parcel on standard lease terms for at least the Lease Term for a fixed minimum rent of no less than Twenty-Five Dollars (\$25.00) per square foot, triple net (the "Minimum Guaranteed Rent") (without any diminution in such net rent by reason of rent concessions, moving allowances or otherwise). The tenants shall be ones that are consistent with the characteristics or quality of other tenants of the property of which the NRR Parcel is a part. The tenant in Tenant Space 1 shall be an investment grade tenant. If NRR is unable to procure tenants for the entire NRR Parcel, then NRR shall pay to ADG commencing on the first month after the NRR closing the Guaranteed Rent Payment for any portion of the NRR Parcel that has not been leased until the expiration of the Lease Term or such time as tenants are procured by NRR or ADG, whichever is sooner. NRR's obligation under this Section shall terminate on the earlier of (i) the expiration of the Lease Term, (ii) upon execution of leases for the NRR Parcel providing for the Minimum Guaranteed Rent, or (iii) December 31, 2013. If a lease for Tenant Space 1 is executed for less than the Minimum Guaranteed Rent, NRR shall pay the greater of (1) one-half of the difference between the rent provided for in such lease and the Minimum Guaranteed Rent, or (2) an amount necessary to make the base rent equal to \$22.50 per foot until the end of the Lease Term. If the lease or leases for Tenant Space 2 aggregate less than the Minimum Guaranteed Rent, NRR shall pay the difference between the rent provided for in such lease or leases and the Minimum Guaranteed Rent until the end of the Lease Term. If a lease for the NRR parcel is executed for more than the Minimum Guaranteed Rent, NRR shall be entitled to receive an amount equal to the cost of the tenant fit-out work for the space which is the subject of such lease, such amount to be amortized over the Lease Term. Any base rent paid over and above the Minimum Guaranteed Rent and the tenant fit-out cost in connection with the initial leases for the NRR Parcel and any renewals thereof shall be divided equally between NRR and ADG through the end of all lease terms for such tenants (including all renewal leases for such tenants).

§10.03 In furtherance of the agreements of NRR hereunder, NRR shall have the exclusive right to negotiate with prospective tenants on behalf of ADG for occupancy of the NRR Parcel and shall have the right to approve or disapprove any tenant until NRR's obligations under this Section shall have expired or terminated. Notwithstanding the foregoing, any proposed tenant and lease shall be subject to ADG's approval and consent, not to be unreasonable withheld, conditioned and/or delayed. In the event ADG unreasonably disapproves or fails to consent to a bona fide offer to rent the NRR Parcel on behalf of ADG, NRR shall have no further obligation to obtain a new tenant and lease under this Section. If the lease provides that the tenant thereunder shall contribute to the tenant fit up costs, whether such contribution is in cash or in the form of lease payments amortized over the life of the lease, such amounts shall

be paid to NRR by ADG up to the amount expended by NRR for the tenant fit up; provided, however, that ADG shall receive the lease payments in an amount of at least the Minimum Guaranteed Rent.

### **Section 11. Defaults; Guaranty; Specific Performance**

§11.01 Except in the case of an Intentional Breach (hereinafter defined), if NRR fails to convey the NRR Parcel to ADG pursuant to the terms of the Agreement or otherwise materially breaches this Contract, ADG agrees that its sole remedy is to receive the aggregate of the payments and income due to ADG hereunder, including the Liquidated Amount. The aggregate of such payments and the Liquidated Amount shall constitute liquidated damages (the "Liquidated Damages") and be immediately payable to ADG by NRR and/or the Guarantor (as hereafter defined). The parties agree that ADG's actual damages would be difficult to ascertain, and that the Liquidated Damages are a reasonable estimate of ADG's damages, and not a penalty. Upon payment of the Liquidated Damages, all obligations to convey the NRR Parcel shall be terminated. Except in the case of an Intentional Breach, ADG shall not be entitled to seek specific performance of NRR's obligation to convey the NRR Parcel and shall not be entitled to any cause of action for any right, title or interest in any portion of the Condominium or the New Rochelle Revitalization Project. Notwithstanding the foregoing, in the event NRR or its successor in interest completes the New Rochelle Revitalization Project, obtains a temporary Certificate of Occupancy and is otherwise capable of conveying the NRR Parcel to ADG but does not do so (an "Intentional Breach"), then ADG shall have the remedy of specific performance to compel NRR or its successor in interest to deliver the NRR Parcel to ADG. In the event of a default in the payment of the Monthly Payments, which is not cured within sixty (60) days of a notice thereof, then ADG may, by notice in writing, accelerate the balance of the Monthly Payments. In the event of a default in the Guaranteed Rent Payments prior to the NRR Closing which is not cured within one hundred eighty (180) days notice thereof, then ADG may, by notice in writing, accelerate the balance of the Guaranteed Rent Payments and the Liquidated Damages. In the event the Guaranteed Rent Payments and Liquidated Damages are accelerated and in the event such accelerated payments are voluntarily paid to ADG within sixty (60) days of ADG's notice of acceleration, then the amount due shall be reduced to a present value of such payouts as of the date of payment utilizing a discount rate equal to 250 basis points over the rate of ten year treasuries in effect as of that date.

§11.02 In the event NRR exercises the Option, as additional security for the performance by NRR of its obligations hereunder, Louis R. Cappelli (the "Guarantor") shall, on behalf of NRR, provide a guaranty for the benefit of ADG in the form annexed hereto as Exhibit B (the "Guaranty"). The Guaranty shall survive the ADG and the NRR Closings, and any transfer of the ADG Parcel by NRR or its successor in interest.

### **Section 12. Broker**

§12.01 The parties acknowledge that this Contract was brought about by direct negotiation between NRR and ADG and that neither NRR nor ADG knows of any broker entitled to a commission in connection with this transaction. NRR and ADG shall indemnify and defend each other against any costs, claims or expenses, including attorneys' fees, arising out of the breach on their respective parts of any representations, warranties or agreements contained in this paragraph. The representations and obligations under this paragraph shall survive the ADG Closing and the NRR Closing or, if such Closings do not occur, the termination of this Contract.

### **Section 13. Miscellaneous Provisions**

§13.01 All notices under this Contract shall be in writing and shall be delivered personally or shall be sent by overnight courier for next day delivery, addressed as set forth below, or as NRR or ADG shall otherwise have given notice as herein provided.

If to NRR:

New Rochelle Revitalization, LLC  
c/o Cappelli Enterprises, Inc.  
115 Stevens Avenue  
Valhalla, New York 10595  
Attention: Louis R. Cappelli

And with a copy to:

Cappelli Enterprises, Inc.  
115 Stevens Avenue  
Valhalla, New York 10595  
Attention: Joe Apicella

And with a copy to:

DelBello Donnellan Weingarten Tartaglia  
Wise & Wiederkehr, LLP  
One North Lexington Avenue  
White Plains, New York 10601  
Attention: Alfred E. Donnellan, Esq.

If to ADG:

Anderson Development Group LLC  
c/o Mark Fonte  
1955 Central Park Avenue  
Yonkers, New York 10710

And with a copy to:

Townsend & Valente, LLP  
489 Fifth Avenue  
New York, New York 10017-6105

Attention: R. Edward Townsend, Jr., Esq.

§13.02. This Contract embodies and constitutes the entire understanding between the parties with respect to the transaction contemplated herein, and all prior agreements, understandings, representations and statements, oral or written, are merged into this Contract. Neither this Contract nor any provision hereof may be waived, modified, amended, discharged or terminated except by an instrument signed by the party against whom the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument.

§13.03. This Contract shall be governed by, and construed in accordance with, the laws of the State of New York.

§13.04. The captions in this Contract are inserted for convenience of reference only and in no way define, describe or limit the scope or intent of this Contract or any of the provisions hereof.

§13.05. This Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

§13.06. At either party's request and expense, a memorandum of this Contract may be recorded in the land records at the office of the Westchester County Clerk.

§13.07. This Contract shall not be binding or effective until properly executed and delivered by both NRR and ADG.

§13.08. As used in this Contract, the masculine shall include the feminine and neuter, the singular shall include the plural and the plural shall include the singular, as the context may require.

§13.09. The schedules and exhibits attached hereto are incorporated herein and made a part hereof. If the provisions of any schedule or exhibit to this Contract are inconsistent with the provisions of this Contract, the provisions of such schedule or exhibit shall prevail.

§13.10. This Contract may be executed in one or more counterparts, which, taken together, shall constitute a binding Contract.

#### **Section 14. Additional Development Rights.**

§14.01 The parties acknowledge that NRR may apply to either the Westchester County Industrial Development Agency or the New Rochelle Industrial Development Agency (referred to herein as the "IDA") in order to take advantage of a sales tax exemption on construction materials, mortgage tax exemption and possible job training and other benefits (the


“IDA Benefits”). In the event of any such application by NRR, ADG shall cooperate in connection therewith to the extent necessary so as to enable NRR to realize the IDA Benefits. If title to the NRR Parcel is held by the IDA, NRR will cause the IDA to transfer the NRR Parcel to NRR prior to the transfer for NRR to ADG.

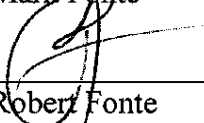
IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the date first above written.

NEW ROCHELLE REVITALIZATION, LLC

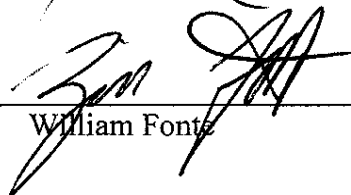
By:   
Louis R. Cappelli, Managing Member

ANDERSON DEVELOPMENT GROUP LLC

By:   
Mark Fonte

By:   
Robert Fonte

By:   
Michael Longo

By:   
William Fonte