

PURCHASE AND SALE AGREEMENT – FEE SITE PACKAGE

THIS PURCHASE AND SALE AGREEMENT (the "Agreement") is made and entered into as of the Effective Date (as defined in Section 27 below), by and between COUNTRYSIDE ALF, LLC, a New York limited liability company with offices at 762 Brooks Avenue, Rochester, New York ("Seller") and _____, a _____, at the address set forth on the signature page of this Agreement ("Purchaser").

WITNESSETH:

WHEREAS, Seller is the owner of the parcel of real property described on Exhibit "A-1" hereto and all buildings and improvements thereon (Seller's fee simple interest in and to such real property being referred to herein as the "Real Property"), together with the equipment, trade fixtures, and other tangible personal property, **if any**, at the Real Property, (collectively, the "Personal Property"), located at the Real Property; and

WHEREAS, Purchaser has agreed to purchase the Real Property and the Personal Property from Seller all on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **TERMS OF PURCHASE.** Seller agrees to sell and convey the Real Property to Purchaser and Seller shall cause WF to sell and convey the Personal Property to Purchaser, and Purchaser agrees to acquire and accept the Real Property and Personal Property from Seller at the Closing (as defined in Section 5 hereof) on the following terms:

(a) Property to be purchased. A description of the Real Property to be purchased is contained on Exhibit "A-1" attached hereto.

(b) Purchase Price. The purchase price for the Real Property and the Personal Property (the "Purchase Price") is listed on Exhibit "A-2" attached hereto and is payable in immediately available funds as follows:

(i) Purchaser is delivering simultaneously with the execution of this Agreement the greater of (i) 2.5% of the Purchase Price or (ii) \$5,000.00. Such amount is referred to herein as the "Bid Deposit" and shall be payable by certified or cashier's check made payable to William Kent, Inc. ("WKI").

(ii) If Purchaser is notified by WKI of the Seller's acceptance of Purchaser's bid offer with respect to the Real Property and Personal Property, then

Purchaser must deliver to WKI, by certified or cashier's check made payable to WKI or by wire transfer of immediately available funds, within two (2) days after such notification, an amount equivalent to 10% of the Purchase Price, less the Bid Deposit (the "Additional Escrow Deposit"). WKI shall deposit the Bid Deposit and the Additional Escrow Deposit (collectively referred to hereinafter as the "Earnest Money Deposit") into a separate, non-interest bearing trust account for the benefit of the parties to the transaction. The Earnest Money Deposit shall be applied to the Purchase Price at the Closing, and the balance of the Purchase Price shall be paid by Purchaser by wire transfer or certified check at Closing.

(c) Buyers Premium. Purchaser shall also pay to WKI at the Closing a "buyer's premium" equal to 10% of the Purchase Price.

(e) Terms and Conditions. Purchaser acknowledges that Purchaser has received and reviewed the Terms and Conditions of Sale contained in the executive summary prepared by WKI (the "ES"), which are incorporated in this Agreement by reference.

2. **LIKE KIND EXCHANGE.** Purchaser hereby acknowledges that Seller shall have the option to qualify this transaction as part of a tax deferred exchange under section 1031 of the Internal Revenue Code provided that such exchange will neither delay the Closing nor result in additional expense or liability to the Purchaser. Purchaser agrees that Seller may assign its rights and obligations under this agreement to a Qualified Intermediary, as that term is defined in the Code, as necessary to facilitate the exchange and Purchaser agrees to cooperate with the Seller and Qualified Intermediary in order to complete the exchange.

3. **TITLE TO REAL PROPERTY.**

At the Closing of a Real Property, Seller shall convey the Real Property to Purchaser free and clear of all liens, covenants, restrictions, easements, encumbrances, and other title exceptions or objections, except Permitted Exceptions (as defined hereinafter). Otherwise, title to the Real Property shall be good and marketable such that a Title Company is willing to issue a title policy in the amount of the Purchase Price. As used in this Agreement, the term "Permitted Exceptions" means (1) the standard printed exceptions and exclusions contained in a title policy; (2) the lien of taxes and other public charges not yet due and payable; (3) governmental requirements, including, without limitation, zoning, subdivision, environmental and land use statutes and ordinances and all rules and regulations promulgated by governmental bodies having jurisdiction; (4) easements, privileges, licenses or rights of public utilities, municipal utilities, public service companies and municipal service companies; (5) easements or servitudes apparent from an inspection of the Real Property and any variation in location or dimensions, conflict with lines of an adjoining property, encroachments, projections or other matters which might be disclosed by an accurate survey of the Real Property; (6) rights of tenants or other parties in possession, under any leases identified by Seller in writing and agreed to by Purchaser; and (7) other covenants, conditions, restrictions, rights of way and easements, provided the same do not prohibit the Real Property from

being used in the manner in which it is currently being used. In no event shall any of the following be considered Permitted Exceptions: deeds of trust or mortgages; judgments; mechanics' and materialmen's liens; and tax liens.

4. **PRORATIONS; CLOSING EXPENSES.**

(a) Prorations. Real property taxes and assessments, third party rents (if applicable), and other similar items shall be prorated as of the Closing Date.

(b) Closing Expenses. All expenses incurred in connection with the Closing shall be paid as follows:

(i) Purchaser shall pay any sales tax, if any, due in connection with the transfer and conveyance to be made to Purchaser hereunder;

(ii) Purchaser shall pay all recording and filing fees and escrow fees incurred with respect to the transactions contemplated by this Agreement; and

(iii) Purchaser shall pay the costs of obtaining any title commitment, title policy and all endorsements thereto, search fees, surveys, appraisals and engineering and environmental reports obtained by Purchaser;

(iv) Purchaser shall pay all applicable transfer taxes due in connection with the transfer and conveyance to made to Purchaser hereunder.

(c) Attorney's Fees. Each party shall bear its respective attorney's fees in any matter connected herewith.

5. **CLOSING; REQUIRED APPROVALS.**

(a) Closing Date. The closing of the transaction contemplated by this Agreement (the "Closing") shall take place on a business day selected by Seller which shall be forty (45) days after the Effective Date, unless extended at the sole discretion of Seller for up to an additional thirty (30) days provided Purchaser is given prior written notice by WKI. The date on which the Closing occurs is referred to in this Agreement as the "Closing Date", and Seller shall provide Purchaser with notice of the Closing Date at least five (5) days prior thereto.

(b) Seller's Deliveries. At the Closing, Seller shall execute and deliver to the Escrow Agent the following items:

(i) A special warranty deed for the Real Property (the "Deed"), duly executed and acknowledged by Seller, in proper form for recording, conveying good and marketable title to Purchaser, subject to the Permitted Exceptions;

(ii) Evidence of the termination of any leases for the Real Property;
and

(iii) Such other documents as may be reasonably required to complete the transaction contemplated by this Agreement.

(c) Purchaser's Deliveries. At the Closing, Purchaser shall execute and deliver to Escrow Agent, the following items:

(i) Evidence of Purchaser's authority to execute, deliver and perform this Agreement and consummate the acquisition of the Real Property and the Personal Property;

(ii) Cash or immediately available funds to pay for the balance of the Purchase Price, the Personal Property, and all Escrow Fees and Purchasers closing costs and prorations as stated in the settlement statement;

(iii) If applicable, any executed documents required by the state, county, or municipality where the Real Property is located that are necessary to effectuate the transfer of the ownership of the underground storage tanks, on such forms as may be required by the state, county or municipality in which the Real Property is located;

(iv) To the extent applicable, Purchaser's certificate of good standing from the Secretary of State's Office of the state of its organization or incorporation; and

(v) Such other documents as may be reasonably required to complete the transaction contemplated by this Agreement.

(d) All documents executed and delivered by Seller and/or Purchaser pursuant to this Section 5 are collectively referred to herein as the "Transaction Documents."

6. DISCLAIMER OF WARRANTIES; "AS-IS, WHERE IS" CONVEYANCE.

(a) Purchaser acknowledges and affirms that Seller has not made any warranty, guaranty or representation, express or implied, oral or written, past, present, or future, of, as to, or concerning (a) the condition or state of repair of the Real Property and/or the Personal Property, including, but not by way of limitation, any condition arising in connection with the generation, use, transportation, storage, release, or disposal of petroleum products, toxic or hazardous substances, on and under, above, upon, or in the vicinity of the Real Property such as water, soil and geology, and the suitability thereof and of the Real Property for any and all activities and use which Purchaser may elect to conduct thereon; (b) the extent of any right-of-way, lease, possession, lien, encumbrance, easements, license, reservation, or condition in connection with the Real

Property; (c) the compliance of the Real Property or its operation with any applicable laws, ordinances, or regulations of any government or other body, including without limitation, compliance with any land use, Americans with Disabilities Act, wetland, or zoning law or regulation, or applicable environmental or coastal laws, rules, ordinances and regulations; (d) title to or the boundaries of the Real Property or any underlying fee simple estate; and (e) the physical condition of the Real Property and/ or the Personal Property, including, without limitation, the structural, mechanical and engineering characteristics of the improvements to the Real Property and/or the Personal Property.

(b) Except as stated above, the Real Property and Personal Property are being conveyed on an "AS IS, WHERE IS, WITH ALL FAULTS" basis, and Purchaser expressly agrees that Seller makes no warranty or representation, express or implied, or arising by operation of law, including, but not limited to, any warranty of condition, habitability, merchantability or fitness for this particular purpose, with respect to the Real Property and/or the Personal Property. Purchaser is acquiring the Real Property and the Personal Property based on its own investigations, and, by accepting title to the Real Property and the Personal Property, acknowledges that it has conducted such investigations as it has deemed necessary or advisable and that Purchaser is not relying upon any representations of Seller, its officers, employees, successors, predecessors and assigns, (collectively referred to herein as "Released Parties).

(c) Without in any way limiting the generality of the preceding subsections (a) and (b) of this Section 8, Purchaser specifically acknowledges and agrees that Purchaser hereby waives, releases and discharges any claim it has, might have had or may have against Seller, its predecessors, successors and assigns with respect to the condition of the Real Property and the Personal Property, either patent or latent.

7. PROPERTY INSPECTION.

(a) Purchaser acknowledges and confirms that, throughout the period prior to submitting its offer, Purchaser has been afforded the opportunity to inspect, examine and survey the Real Property. Between the date hereof and the Closing Date, Purchaser and its representatives may further inspect, examine or survey the Real Property with Seller's prior approval and at dates and times scheduled in advance with Seller. Notwithstanding the foregoing, it is specifically understood that (i) Purchaser will not have access at any time to the Real Property except with Seller's prior approval and in the company of a representative of Seller; and (ii) Purchaser's obligation to purchase the Real Property is not contingent upon any further inspections or diligence performed on the Real Property and/or with Purchaser being satisfied with the conditions of the Real Property. Purchaser agrees to indemnify and hold Seller harmless for, from and against any loss, cost, claim, damage or expense incurred, directly or indirectly, by Seller as a result of Purchaser's inspection, examination or survey of the Real Property, either prior to, on, or after the date hereof.

(b) It is specifically understood by all parties hereto that (i) Purchaser shall not be permitted to test any equipment or take samples of soil, groundwater or other

water, air or building materials or conduct any Phase II or other invasive environmental testing (including any subsurface drillings or inspections on the Real Property), and (ii) any environmental firm selected to perform Phase I studies shall be independent of and not affiliated with Seller, Purchaser or either of their lenders for this transaction. Prior to the Closing, Purchaser shall make no written or oral inquiries, requests, demands, or other solicitations of any governmental agencies for information concerning the environmental condition of the Real Property, except (i) under any applicable freedom of information laws and (ii) disclosure of information or events (including any release) required to be disclosed by applicable law. Purchaser agrees to indemnify and hold Seller harmless for, from and against any loss, cost, claim, damage or expense incurred, directly or indirectly, by Seller as a result of Purchaser's inspection, examination or survey of the Real Property regardless of when such inspection, examination or survey occurred.

8. **SURVEY.** Seller shall have no obligation to deliver any survey of the Real Property to Seller. Purchaser may, prior to the Closing, and at its sole cost and expense, cause a new as-built survey of the Real Property to be made.

9. **BREACH OF AGREEMENT BY SELLER.** In the event the purchase and sale hereunder is not consummated by reason of Seller's default in any material obligation under this Agreement, or as a result of the repudiation of this Agreement by Seller, the parties hereto agree that, upon receipt of written notice from Purchaser, WKI shall deliver the Earnest Money Deposit to Purchaser, and Purchaser's exclusive remedy shall be limited to a return of the Earnest Money Deposit as full liquidated damages for Seller's default. In no event shall Purchaser have the right, and Purchaser hereby waives the right, to sue for specific performance, and in no event shall Seller be liable for any special, incidental, exemplary or consequential damages, including, without limitation, the loss of profits or revenue, interference with business operations, or loss of tenants, lenders, investors, or purchasers, or the inability to use the Real Property. The parties hereto expressly acknowledge that it is impossible to estimate more precisely the damages to be suffered by Purchaser upon Seller's default, and that the return of the Earnest Money Deposit shall be Purchaser's sole remedy.

10. **BREACH OF AGREEMENT BY PURCHASER.** In the event the purchase and sale hereunder is not consummated by reason of Purchaser's default under this Agreement, or as a result of the repudiation of this Agreement by Purchaser, the parties hereto agree that, upon receipt of written notice from Seller, WKI shall deliver the Earnest Money Deposit to Seller as full liquidated damages for Purchaser's default. In no event shall Seller have the right, and Seller hereby waives the right, to sue for specific performance, and in no event shall Purchaser be liable for any special, incidental, exemplary or consequential damages, including, without limitation, the loss of profits or revenue, interference with business operations, or loss of tenants, lenders, investors, or purchasers, or the inability to use the Real Property. The parties hereto expressly acknowledge that it is impossible to estimate more precisely the damages to be suffered by Seller upon Purchaser's default, and that the Earnest Money is intended not as a penalty, but as full liquidated damages. The parties further acknowledge that the amount of the Earnest Money Deposit represents a reasonable estimate by the parties of the

amount of the probable loss that Seller would be expected to suffer in the event the purchase and sale of the Real Property is not consummated because of Purchaser's default. In the event the purchase and sale contemplated in this Agreement is not consummated because of the Purchaser's default, Purchaser hereby waives and releases any right to (and hereby covenants that it shall not) sue Seller to recover the Earnest Money Deposit or any part thereof on the grounds that it is unreasonable in amount or that its retention by Seller is a penalty and not a reasonable determination by the parties of liquidated damages.

11. **CASUALTY.** All risk of loss with respect to damage to the Real Property shall be borne by Seller until the Closing Date.

12. **ENVIRONMENTAL MATTERS.** (a) Except as set forth below, Purchaser hereby assumes liability for, and hereby agrees to defend and save Released Parties harmless from and against, and hereby indemnify Released Parties from and against any and all liens, damages (including, without limitation, punitive or exemplary damages), losses, liabilities (including, without limitation, strict liability), obligations, settlement payments, penalties, fines, assessments, citations, directives, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements and expenses of any kind or of any nature whatsoever (including, without limitation, reasonable attorneys', consultants' and experts' fees and disbursements actually incurred in investigating, defending, settling or prosecuting any claim, litigation or proceeding) (collectively "Costs") which may at any time be imposed upon, incurred by or asserted or awarded against Released Parties, Purchaser or relating to the Property, and arising directly or indirectly from or out of, whether now, hereafter or heretofore occurring: (i) any violation or alleged violation of, or liability or alleged liability under, any local, state or federal law, rule or regulation or common law duty pertaining to human health, natural resources or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601 et seq.) ("CERCLA"), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.), the Clean Air Act (42 U.S.C. §7401 et seq.), the Emergency Planning and Community-Right-to-Know Act (42 U.S.C. §11001 et seq.), the Endangered Species Act (16 U.S.C. §1531 et seq.), the Toxic Substances Control Act (15 U.S.C. §2601 et seq.), the Occupational Safety and Health Act (29 U.S.C. §651 et seq.) and the Hazardous Materials Transportation Act (49 U.S.C. §1801 et seq.), and those relating to Lead Based Paint (as hereinafter defined) and the regulations promulgated pursuant to said laws, all as amended from time to time (collectively, "Environmental Laws"), relating to or affecting the Property, whether or not caused by or within the control of the Released Parties; (ii) the presence, release or threat of release of or exposure to any hazardous, toxic or harmful substances, wastes, materials, pollutants or contaminants (including, without limitation, asbestos or asbestos-containing materials, polychlorinated biphenyls, petroleum or petroleum products or byproducts, flammable explosives, radioactive materials, paint containing more than .05% lead by dry weight ("Lead Based Paint"), infectious substances or raw materials which include hazardous constituents) or any other substances or materials which are included under or regulated by Environmental Laws

(collectively, "Hazardous Substances") or any toxic mold or fungus of a type that may pose a risk to human health or the environment or would negatively impact the value of the Property ("Toxic Mold"), on, in, under or affecting all or any portion of the Property or any surrounding areas, regardless of whether or not caused by or within the control of Purchaser; (iii) any transport, treatment, recycling, storage, disposal or arrangement therefor of Hazardous Substances whether on the Property, originating from the Property, or otherwise associated with the Purchaser or any operations conducted on the Property at any time; (iv) the breach of any representation or warranty contained in this Agreement; (v) the enforcement of this Agreement, or (vi) any environmental investigation, assessment, audit or review conducted in connection with the Property or the operations conducted at any time thereon, including, without limitation, the cost of assessment, investigation, containment, removal and/or remediation of any and all Hazardous Substances or Toxic Mold from all or any portion of the Property or any surrounding areas, the cost of any actions taken in response to the presence, release or threat of release of any Hazardous Substances or Toxic Mold on, in, under or affecting any portion of the Property or any surrounding areas to prevent or minimize such release or threat of release so that it does not migrate or otherwise cause or threaten danger to present or future public health, safety, welfare or the environment, and costs incurred to comply with Environmental Laws in connection with all or any portion of the Property or any surrounding areas.

(b) -Purchaser hereby waives, relinquishes and releases the Released Parties from all Costs by reason of or arising out of any environmental conditions at the Real Property; and should any clean-up, remediation or removal of Hazardous Materials or other environmental conditions on the Real Property be required after the Closing Date, it is hereby understood and agreed that such clean-up, removal or remediation shall be the responsibility of and shall be performed at the sole cost and expense of Purchaser. It is understood and agreed that the Purchase Price reflects the allocation of risk set forth in this paragraph. It is acknowledged and agreed that the purchase price of the property reflects the condition of the Property.

(d) The covenants of this paragraph 12 shall survive closing and shall be binding upon and shall inure to the successors and assigns of each of the parties.

13. **TIME IS OF THE ESSENCE.** Time is of the essence in the performance of each and every obligation of this Agreement.

14. **WAIVER.** No failure or delay on the part of Seller in exercising any right of Seller, nor any action on the part of Seller or any course of dealing or partial performance, shall be deemed a waiver of any right of Seller set forth herein or a modification of any terms hereof.

15. **ENTIRE AGREEMENT; AMENDMENT.** This Agreement, together with the other Transaction Documents, constitutes the entire and complete agreement between the parties hereto with respect to the purchase and sale of the Real Property and the Personal Property, and there are no oral or parol agreements existing between the parties relating

to this transaction. This transaction supersedes any prior oral or written agreements between the parties with respect thereto. This Agreement may not be amended, altered, modified or discharged except by an instrument in writing executed by the parties hereto.

16. **NOTICES.** All notices under this Agreement shall be in writing and shall be deemed delivered when (a) personally delivered or mailed postage prepaid, certified or registered mail, return receipt requested, (b) sent by facsimile to the telephone number indicated in the signature block of each party as set forth herein, as confirmed by a written facsimile confirmation, or (c) delivered by a courier service to the address set forth next to the signature block of each party as set forth herein.

17. **HEADINGS.** The paragraph headings herein are for convenience of reference only and shall not be deemed to vary the content of this Agreement or the covenants, agreements, representations and warranties set forth herein, or limit the provisions or scope thereof.

18. **SEVERABILITY.** The invalidity of any provision of this Agreement shall not affect the validity or enforceability of any other provision set forth herein.

19. **GOVERNING LAW.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State in which the Real Property is located, excluding conflict of law rules and principles. All parties hereby waive personal service of the summons, complaint and other process issued in any such action or suit and agree that service of such summons, complaint and other process may be made by registered or certified mail addressed to such party at the address stated on the first page or the signature block of this Agreement or to such other address as designated in accordance with this Agreement.

20. **WAIVER OF JURY TRIAL.** EACH PARTY TO THIS AGREEMENT WAIVES THE RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING OR COUNTERCLAIM OF ANY KIND ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR THE TRANSACTION DOCUMENTS. Each party agrees to submit to the personal jurisdiction and venue of a court of subject matter jurisdiction located in the County in the state in which the Real Property is located. Each party warrants and represents to the other that it has reviewed the foregoing waivers with its legal counsel and has knowingly and voluntarily waived its jury trial rights following consultation with legal counsel.

21. **EFFECTIVE DATE; BINDING EFFECT.** The obligations of the parties hereto under this Agreement shall commence and become effective upon the date which is the later to occur of the date that the Seller and Purchaser each execute this Agreement, as reflected adjacent to their signatures on the signature page of this Agreement (the "Effective Date"). This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective successors, personal representatives, legal representatives, heirs and permitted assigns.

22. **NON-RECORDATION.** Purchaser shall not record or cause this Agreement or any memorandum thereof to be recorded.

23. **COMMISSIONS.** In no event shall Seller be liable for commissions due to any real estate agent or broker retained by or claiming a commission through Purchaser. Purchaser shall indemnify, defend and save Seller harmless against the claims, damages, losses, liabilities, judgments, costs and expenses (including reasonable attorneys' fees), from the real estate agent or broker representing the Purchaser, including any reasonable attorneys' fees incurred by Seller as a result of such claim. This provision shall survive any termination of this Agreement.

24. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall collectively constitute one and the same instrument. Execution and delivery of this Agreement by delivery of a facsimile copy bearing the facsimile signature of a party shall constitute a valid and binding execution and delivery of this Agreement by such party. Such facsimile copies shall constitute enforceable original documents.

25. **ATTORNEY FEES.** In the event of litigation between the parties pertaining to this Agreement, the prevailing party shall be entitled to recover expenses and costs, including, but not limited to, reasonable attorney's fees incurred as a result thereof from the non-prevailing party.

[Signature pages follow.]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement of the dates set forth below.

PURCHASER'S ADDRESS:

Date of Purchaser's Execution:

Date of Seller's Execution:

SELLER'S ADDRESS:

PURCHASER:

[PRINT THE NAME OF THE
INDIVIDUAL OR ENTITY INSERTED
ON PAGE 1 OF THIS CONTRACT]

Work#:_____

Fax:_____

Home:_____

Cell:_____

Email:_____

SELLER:

[Saunders Entity]

By_____

Name_____

Title_____

EXHIBIT “A-1”

REAL PROPERTY DESCRIPTION

(see attached)

EXHIBIT "A-2"

PURCHASE PRICE FOR REAL PROPERTY AND PERSONAL PROPERTY

\$_____ - Purchase Price