

FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT

THIS FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT (this “**Amendment**”), is made effective as of the ___ day of May, 2020, by and between the **CITY OF BEACON**, a municipal corporation with its principal offices at One Municipal Plaza, Beacon, New York 12508 (the “**Seller**” or “**City**”), and **23-28 CREEK DRIVE, LLC**, a New York limited liability company having an office at 25 East Main Street, Beacon, New York 12508 (“**Purchaser**”).

RECITALS

WHEREAS, Seller and Purchaser entered into that certain Purchase and Sale Agreement, dated as of May 11, 2018 (the “**Contract**”), which is restated in its entirety and incorporated herein by reference as if set forth at length herein pursuant to which Seller agreed to sell, and Purchaser agreed to buy, certain real property owned by Seller consisting of land, together with all buildings and improvements located thereon, commonly known as 23-28 Creek Drive, located in the City of Beacon, Dutchess County New York and referred to as Tax Parcel Grid Identification #130200-6054-37-037625, and more particularly described in the Contract (the “**Property**”); and

WHEREAS, the parties ratify and affirm the validity and enforceability of the Contract, as neither party has terminated said Contract and each hereby confirms Purchaser and Seller’s intention to amend, extend and continue same, as set forth herein.

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

1. Any capitalized term used and not defined in this Amendment shall have the same meaning as set forth in the Contract, except as otherwise specifically herein provided.

2. Schedule B, Paragraph 17, currently reads:

This Agreement is contingent upon, and the Property shall not be conveyed to Purchaser, until such time as the Purchaser has, and by no later than fifteen (15) months after the expiration of the Environmental Due Diligence Period, (a) obtained any Zoning Approvals necessary, (b) obtained Site Plan Approval and (c) obtained Building Permit for the Project. The Closing shall occur on a date mutually agreeable to the parties which date shall be on or before thirty (30) days after the Building Permit for the Project for the Project is issued by the City. If the Zoning Approvals, Site Plan Approval and Building Permit are not obtained within sixteen (16) months of the Contract Date despite a diligent effort by Purchaser, then either Purchaser or Seller may cancel this Agreement and Escrowee shall return the Downpayment to Purchaser together with any interest earned thereon,

if any, whereupon this Agreement shall be deemed null and void, without further force or effect.

Schedule B, Paragraph 17, shall be amended to read:

Purchaser has completed its Environmental Due Diligence and obtained its Zoning Approvals and Site Plan Approval and submitted a Building Permit Application for the Project. Therefore, the Parties agree that the Closing shall occur on a date mutually agreeable to the parties, which date shall be on or before thirty (30) days after the full execution of this Contract Amendment.

3. Schedule B, Paragraph 18 shall be intentionally omitted.
4. Schedule B, Paragraph 20, currently reads:

Purchaser shall commence construction within sixty (60) days of Closing.

Schedule B, Paragraph 20, shall be amended to read:

Purchaser shall, in accordance with all applicable laws, rules and regulations, (a) within thirty (30) days of Closing, commence demolition work and remediation work, pursuant to the remediation work plan dated February 20, 2020, as prepared by Gallagher Basset Technical Services (the "Remediation Work"), and diligently complete same, and (b) within sixty (60) days of closing, obtain (i) a Building Permit and (ii) construction financing in an amount sufficient to construct the Project. Purchaser shall commence construction on the Project within thirty (30) days of the later of the issuance of a Building Permit or completion of the Remediation Work. Purchasers' obligations to (i) commence Remediation Work, (ii) secure construction financing, (iii) obtain a Building Permit and (iv) commence construction on the Project, in accordance with the herein terms and conditions, shall be incorporated into the language of the deed and binding upon all subsequent owners of the Property. The terms and conditions of this herein paragraph shall survive the closing of title for the Property.

5. Except as expressly set forth herein, the terms and provisions of the Contract shall remain in full force and effect.
6. This Amendment may be executed in counterparts and any such counterpart signed by both Seller and Purchaser may be delivered by email or facsimile, which counterpart shall have the same force and effect as an originally signed document.
7. The Recitals set forth hereinabove are incorporated into and made a part of this Amendment.

8. This Amendment contains the final, complete and exclusive statement of the agreement between the parties with respect to the transactions contemplated herein and all prior or contemporaneous written or oral agreements with respect to the subject matter hereof are merged herein.

IN WITNESS WHEREOF, the Seller and Purchaser have executed this Amendment as of the date first written above.

PURCHASER:
23-28 Creek Drive, LLC

Name: Rodney Weber, Member/Manager

SELLER:
City of Beacon

Name: Anthony Ruggiero
Title: City Administrator