

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("Agreement") is made as of the _____ day of March, 2018, by and between the CITY OF BEACON, a municipal corporation with its principal offices at One Municipal Plaza, Beacon, New York 12508 ("Seller" or "City"), and 23-28 CREEK DRIVE, LLC, a New York limited liability company with offices at 11 Creek Drive, Suite 102A, Beacon, New York 12508 ("Purchaser").

Purchaser agrees to purchase and Seller agrees to sell the property described below upon the following terms and conditions:

1) **PROPERTY DESCRIPTION.** The property which is the subject of this Agreement is the land, together with all buildings and improvements located thereon, commonly known as 23-28 Creek Drive, Beacon, New York and referred to as Parcel Grid Identification #130200-6054-37-037625, and as more particularly described in "Schedule A" annexed hereto and made a part hereof (the "Premises"), together with: (i) all of Seller's interest, if any, in and to any and all rights of ingress and egress to and from the Premises; (ii) all of Seller's interest, if any, in and to any and all easements or rights of way now or hereafter affecting or appurtenant to the Premises and any rights Seller has to use the same; (iii) intentionally omitted (iv) all right, title and interest of Seller, if any, in and to all strips and gores and alleys adjoining the Premises; and (v) all right, title and interest of Seller, if any, in and to any land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Premises, to the center line thereof, including any right of Seller to any unpaid award by reason of any taking by condemnation and/or for any damage to the Premises by reason of change of grade of any street or highway. The Premises, together with items (i) to (v) above are herein collectively called the "Property".

2) **PRICE: AMOUNT AND HOW IT WILL BE PAID.** The purchase price for the Property shall be One Hundred Fifty Thousand and 00/100 Dollars (\$150,000.00) (the "Purchase Price"). Consideration for the purchase shall also include the items of work listed in Paragraphs 4, 7, 8, 9, 11, 12 and 17 of Schedule B. Upon Purchaser's execution of this Agreement, Purchaser shall submit a check for Fifteen Thousand and 00/100 Dollars (\$15,000.00) (the "Downpayment") made payable to "Keane & Beane, P.C., as escrow agent". At the time of Closing (as hereafter defined), Purchaser shall pay to Seller One Hundred Thirty Five Thousand and 00/100 Dollars (\$135,000.00) by cash, certified or official bank check or wire transfer(s) of immediately available funds.

3) **CLOSING DATE:** The settlement of the obligations of Seller and

Purchaser to each other under this Agreement, including transfer of title and payment of the Purchase Price (the "Closing"), shall be completed at the offices of Keane & Beane, P.C., 200 Westage Business Ctr., Ste. 120, Fishkill, New York, or at such other place as mutually agreed to between Seller and Purchaser, at 10:00 A.M. on the date set forth in Schedule B – Terms and Conditions of Sale in Section I, Paragraph 16 (the "Closing Date").

4) **PERMITTED EXCEPTIONS.** The Property is sold and shall be conveyed subject to the following (collectively, the "Permitted Exceptions"):

(a) Zoning and subdivision laws and regulations, and landmark, historic, or wetlands designation, provided that they are not violated by the existing buildings and improvements erected on the Property or their use;

(b) Real estate taxes that are a lien, but are not yet due and payable provided Purchaser shall have no liability for any real estate taxes assessed against the Property for any period prior to Purchaser's acquisition of the Property;

(c) Any and all state of facts, easements and legends shown on any filed map or which an accurate survey of the Property would disclose, provided the same do not render title to the Property unmarketable and/or uninsurable at standard title rates or premiums.

(d) Any and all recorded covenants, restrictions, easements, reservations, limitations, burdens, conditions and rights-of-way encumbering the Property, provided the same (i) do not render title to the Property unmarketable and/or uninsurable at standard title rates or premiums, (ii) are not violated by existing improvements and/or current uses of the Property, (iii) do not contain any outstanding options, rights of first refusal, or purchase rights, or require any affirmative acts or monetary payments (including any mortgages filed against the Property), and (iv) do not contain any provision whereby a future violation will result in a forfeiture or reversion of title.

(e) De minimis (one foot or less) encroachments of retaining walls, hedges and fences, and de minimis variations (one foot or less) between record lines and retaining walls, hedges and fences; and

(f) Terms and Conditions of Sale annexed hereto as Schedule "B" and made a part hereof.

5) **PURCHASER'S POSSESSION OF PROPERTY.** (a) Purchaser shall have sole and exclusive possession of the Property from and after the Closing Date.

(b) Prior to Closing, Seller grants to Purchaser and the adjacent property owner, Weber Projects III, LLC ("Adjacent Owner") a revocable license agreement for the Property solely for the purpose of (i) the Adjacent Owner to store manufactured building materials being used in connection with construction by Adjacent Owner of the building located at 9 Creek Drive, (ii) Adjacent Owner to exclusively store soil excavated from 9 Creek Drive to be used for construction of the park required by paragraph 3 of Schedule B, and (iii) use of the office space within the building on the Property for office type use. Neither the Adjacent Owner nor the Purchaser shall access or use the garage on the Property and shall not store anywhere on the Property, any gravel or the like or any liquids or hazardous materials. Should either party terminate this Agreement, within seventy-two (72) hours, Purchaser and Adjacent Owner shall vacate the Property, remove all of its personal property and restore the Property to its prior condition. Purchaser and Adjacent Owner agree to indemnify, defend and hold Seller harmless from any claims arising out of the grant of the revocable license agreement.

6) **DOWNPAYMENT IN ESCROW.** (a) Seller's attorney ("Escrowee") shall hold the Downpayment in escrow in a segregated bank account at Sterling National Bank, located at 40 Church Street, White Plains, New York 10601, until Closing or the termination of this Agreement, whichever occurs sooner, and shall pay over or apply the Downpayment in accordance with the terms of this paragraph. Escrowee shall hold the Downpayment in an interest-bearing account for the benefit of the parties. If interest is held for the benefit of the parties, it shall be paid to the party entitled to the Downpayment and the party receiving the interest shall pay any income taxes thereon. If interest is not held for the benefit of the parties, the Downpayment shall be placed in an IOLA account or as otherwise permitted or required by law. The Taxpayer Identification Numbers of the parties shall be furnished to Escrowee within five business days upon request. At Closing, the Downpayment shall be paid by Escrowee to Seller. If for any reason Closing does not occur and either party gives Notice (as defined in paragraph 28) to Escrowee demanding payment of the Downpayment, Escrowee shall give prompt Notice to the other party of such demand. If Escrowee does not receive Notice of objection from such other party to the proposed payment within 10 business days after the giving of such Notice, Escrowee is hereby authorized and directed to make such payment. If Escrowee does receive such Notice of objection within such 10 day period or if for any other reason Escrowee in good faith shall elect not to make such payment, Escrowee shall continue to hold such amount until otherwise directed by Notice from the parties to this Agreement or a final, non-appealable judgment, order or decree of a court. However, Escrowee shall have the right at any time to deposit the Downpayment and the Interest thereon with the clerk of a court in the county in which the Property is located and shall give Notice of such deposit to Seller and Purchaser. Upon such deposit or other disbursement in accordance with the terms of this paragraph, Escrowee shall be relieved and discharged of all further obligations and responsibilities hereunder.

(b) The parties acknowledge that Escrowee is acting solely as a stakeholder at their request and for their convenience and that Escrowee shall not be liable to either party for any act or omission on its part unless taken or suffered in bad faith or in willful disregard of this Agreement or involving gross negligence on the part of Escrowee. Seller and Purchaser jointly and severally (with right of contribution) agree to defend (by attorneys selected by Escrowee), indemnify and hold Escrowee harmless from and against all costs, claims and expenses (including reasonable attorneys' fees) incurred in connection with the performance of Escrowee's duties hereunder, except with respect to actions or omissions taken or suffered by Escrowee in bad faith or in willful disregard of this Agreement or involving gross negligence on the part of Escrowee.

(c) Escrowee may act or refrain from acting in respect of any matter referred to herein in full reliance upon and with the advice of counsel which may be selected by it (including any member of its firm) and shall be fully protected in so acting or refraining from acting upon the advice of such counsel.

(d) Escrowee acknowledges receipt of the Downpayment by check subject to collection and Escrowee's agreement to the provisions of this paragraph by signing in the place indicated on the signature page of this Agreement.

(e) Escrowee or any member of its firm shall be permitted to act as counsel for Seller in any dispute as to the disbursement of provisions of this paragraph by signing in the place indicated on the signature page of this Agreement.

(f) The party whose attorney is Escrowee shall be liable for loss of the Downpayment.

7) CONDITIONS TO CLOSING. This Agreement and Purchaser's obligation to purchase the Property are expressly subject to and conditioned upon the fulfillment of the following conditions precedent:

(a) The delivery by Seller to Purchaser of a Quit Claim Deed, in a form reasonably acceptable to the Title Company (as herein defined), duly executed and acknowledged in proper form for recording so as to convey fee simple title to the Property.

(b) The delivery by Seller to Purchaser of evidence reasonably satisfactory to Purchaser and Purchaser's title insurance company that Seller has the legal power, right and authority to consummate the sale and conveyance of the Property to the Purchaser.

(c) The delivery by Seller to Purchaser of the Property and all buildings and improvements comprising a part thereof in the condition stated in Section IV of Schedule B, together with all keys in the possession of the Seller to locks located

on the Property.

(d) The delivery by Seller to Purchaser of a certificate stating that all of Seller's representations and warranties made in this Agreement remain true and correct as of the date of Closing.

(e) The delivery by Seller of Seller's executed counterparts of: (i) the New York State Department of Taxation and Finance Combined Real Estate Transfer Tax Return, Credit Line Mortgage Certificate, and Certification of Exemption from the Payment of Estimated Personal Income Tax (Form TP-584), (ii) the State of New York State Board of Real Property Services Real Property Transfer Report (Form RP-5217), and (iii) any other real estate transfer tax documents required in connection with the transfer contemplated herein.

(f) The delivery by Seller of a signed and acknowledged title affidavit in a form reasonably acceptable to Purchaser's Title Company (as hereinafter defined).

(g) The delivery by Purchaser to Seller of the cash, certified or official bank check(s) or wire transfer(s) required hereunder in the payment of the Purchase Price payable at the Closing.

8) **INSURABLE TITLE/OBJECTIONS TO TITLE.** (a) Seller shall give and Purchaser shall accept any such fee simple title as any reputable title company selected by Purchaser and reasonably acceptable to Seller ("Title Company") will be willing to approve and insure at standard title rates or premiums, in the amount of the Purchase Price, in accordance with the standard form of ALTA policy approved by the New York State Insurance Department ("Title Commitment"), subject only to the aforementioned Permitted Exceptions.

(b) Provided that this Agreement is not terminated in accordance with the provisions of paragraph 12A (g) below, Purchaser agrees that no later than ten (10) days following the expiration of the Environmental Due Diligence Period (as hereinafter defined), Purchaser shall request from the Title Company a title report and commitment for an owner's title insurance policy (the "Title Report") and a survey of the Property (the "Survey"). Seller's counsel shall be given copies of the Title Report, Survey, searches and amendments thereto within three (3) business days from the date on which Purchaser receives copies of the same. Purchaser agrees that, prior to the date which is twenty (20) days following Purchaser's receipt of the Title Report and/or the Survey (the "Title Objection Date"), it will notify Seller's counsel in writing in what respects, if any, Purchaser deems Seller's title not to be that required by this Agreement as of the date of

such notice (i.e. title defects other than Permitted Exceptions) or state of facts shown on the Survey which are objectionable. In the event Purchaser fails to deliver such notice prior to the Title Objection Date, Purchaser shall be deemed to have waived its right to object any matters disclosed in the Title Report. Purchaser further agrees that, prior to the date which is fourteen (14) days after the date of receiving any updates or revisions to the Title Report or Survey (the "Amended Title Objection Date"), it will notify Seller's counsel in writing in what respects, if any, Purchaser deems Seller's title not to be that required by this Agreement as of the date of such notice or state of facts shown on the Survey which are objectionable. In the event Purchaser fails to deliver such notice prior to the Amended Title Objection Date, Purchaser shall be deemed to have waived its right to object to the same.

(c) Seller shall be obligated to discharge the following Title Objections provided such objections were notified to Seller's counsel in the manner set forth in Paragraph 8(b): (i) any Title Objection that constitutes a mortgage encumbering the Property; (ii) any Title Objection that constitutes a mechanic's lien of record; and (c) any Title Objection that can be cured solely by the payment of a liquidated sum of money not to exceed \$3,000.00 in the aggregate. If Seller is unable by the date set forth herein for Closing to arrange for the Title Company to agree to omit from the Title Report any Title Objections, then Seller may adjourn the Closing for a reasonable period of time not in excess of sixty (60) days in order to attempt to do so. Except as set forth above, in no event, however, shall Seller be required to bring any action or institute any proceeding, or otherwise to incur any costs or expenses, in order to arrange for the Title Company to agree to omit any Title Objections or otherwise to cause title to the Property to be in accordance with the terms of this Agreement on the date set forth herein for Closing, except as set forth in Paragraph 8 (d) below. If the Title Company shall not have agreed to omit any Title Objections by the date set forth herein for Closing and shall not have agreed to provide a Title Commitment, then Purchaser may elect to the following: (i) if the Title Objection can be satisfied solely with the payment of a liquidated sum of money not to exceed \$3,000.00 in the aggregate, Purchaser shall have the right, but not the obligation, to pay such sums to remove the Title Objection and offset such amounts against the Purchase Price; (ii) consummate the transaction contemplated hereby without regard to such Title Objections (in which event, the Purchase Price shall not be adjusted because of such Title Objections and such Title Objections shall become Permitted Exceptions); or (iii) terminate this Agreement by written notice delivered to Seller, such termination shall be effective as of the giving of such notice and Purchaser shall be entitled to the return of the Downpayment with any accrued interest thereon, if any, and, thereafter, neither party shall have any further obligations to the other hereunder, except as expressly provided to the contrary herein.

(d) If the Title Report discloses judgments, bankruptcies or other returns against persons or entities having names the same as, or similar to, that of Seller, Seller shall deliver to Purchaser an affidavit showing that such judgments, bankruptcies or other returns are not against Seller.

(e) Unpaid taxes, assessments, water charges and sewer rents, together with the interest and penalties thereon to a date not less than two (2) days following the date scheduled for Closing, and any other liens and encumbrances which Seller is obligated to pay and discharge, together with the cost of recording or filing any instruments necessary to discharge such liens and encumbrances of record, may be paid out of the proceeds of the monies payable at the Closing if Seller delivers to Purchaser at least two (2) business days prior to the date scheduled for Closing official bills for such taxes, assessments, water charges, sewer rents, interest and penalties and instruments in recordable form sufficient to discharge any other liens and encumbrances of record.

9) **PLANS/SURVEYS/APPRAISALS/REPORTS.** Within ten (10) days of the date of this Agreement, to the extent in Seller's actual possession, Seller agrees to provide Purchaser with copies of any and all plans, surveys, appraisals and reports regarding the Property.

10) **RECORDING COSTS, MORTGAGE TAX, TRANSFER TAX AND CLOSING ADJUSTMENTS.** Purchaser will pay for continuation of all tax and title searches to and including the date of Closing, and, pursuant to New York State Tax Law §1405 for any real property transfer taxes. Purchaser will pay for recording the deed and mortgage recording tax, if any. Rent payments, if any, fuel oil on the Property, if any, water charges, if any, sewer charges, if any, or assessments, if any, and current taxes, if any, computed on a fiscal year basis, excluding any delinquent items, interest and penalties, will be prorated and adjusted between Seller and Purchaser as of the Closing Date.

11) **RISK OF LOSS.** Risk of loss or damage to the Property by fire or other casualty until Closing shall be assumed by Seller. If material damage to the Property by fire or such other casualty occurs prior to Closing, Purchaser may terminate this Agreement without any further liability to Seller and Seller shall refund the Downpayment to Purchaser within five (5) business days of such termination.

12) **CONDITION OF PROPERTY.** If Purchaser does not terminate this Agreement pursuant to Paragraph 12A (g) below, Purchaser acknowledges and represents that Purchaser is fully aware of the physical condition and state of repair of the Property and of all other property included in this sale, including the environmental conditions of the Property, based on Purchaser's own inspection and investigation thereof, and that Purchaser is entering into this Agreement based solely upon such inspection and investigation and not upon any information, data, statements or representations, written or oral, as to the physical condition, state of repair, use, cost of operation or any other matter related to the Property or the other property included in the sale, given or made by Seller or its representatives unless expressly stated in this Agreement, and shall accept the same "as is" in their present condition and state of repair and environmental condition, subject to reasonable use, wear, tear and natural deterioration between the date hereof and the date of Closing, without any reduction in the purchase price or claim of any kind for any

change in such condition by reason thereof subsequent to the date of this Agreement. Purchaser and its authorized representatives shall have the right, at reasonable times and upon reasonable written notice to Seller, to inspect the Property prior to Closing.

12A) ENVIRONMENTAL DUE DILIGENCE. Subject to the terms and conditions of this Paragraph 12A, Purchaser, and its agents, contractors, and representatives, shall have the privilege, opportunity and right during a period commencing on the date that a fully executed copy of this Agreement is delivered to the Purchaser's attorney and expiring at 5:00 p.m. on the date which is six (6) weeks thereafter (the "Environmental Due Diligence Period"), of entering upon the Property, subject to Paragraph 12A (c) below, in order to inspect, examine, study, test, and perform all environmental due diligence investigation, studies, tests, and analysis that Purchaser deems prudent and advisable (collectively, the "Environmental Studies"). Purchaser shall be responsible for all costs incurred during the Environmental Due Diligence Period and prior to Closing. The Environmental Studies under this Paragraph 12A may include a Phase I environmental audit of the Property and a Phase II study of the Property. Seller agrees to cooperate with Purchaser in all reasonable ways in connection with Purchaser's environmental investigation of the Property including, without limitation, furnishing to Purchaser any and all documents and reports relating to the environmental condition of the Property, as Purchaser may reasonably request to the extent in Seller's custody or control.

(a) Purchaser shall inform Seller's designated representative at least two (2) business days prior to any planned access of the Property for the purpose of conducting Environmental Studies. Such notice ("Access Notice"), which shall be in writing, shall identify the specific persons and entities planning to access the Property and the specific activities that each such person or entity plans to perform thereon.

(b) If the Closing does not occur for any reason, Purchaser agrees to promptly return to Seller any reports or other materials furnished by Seller and any copies thereof made by Purchaser or its agents or representatives.

(c) Purchaser and its agents or representatives hereby agree to keep confidential any information regarding the Property obtained in the course of conducting the Environmental Studies and agrees further not to disclose any such information to any other person or entity, without Seller's written consent, which consent shall not be unreasonably withheld, conditioned, or delayed.

(d) Purchaser and/or its agents and representatives or contractors performing any of the Environmental Studies, shall maintain during the Environmental Due Diligence Period comprehensive general liability insurance and contractor's pollution liability insurance in the amount of no less than \$1,000,000 per occurrence and Seller shall be named an additional insured thereon. Purchaser shall provide to Seller prior to entry on the Property a certificate of insurance evidencing such insurance coverage.

(e) Purchaser does and shall hereby indemnify and hold harmless Seller, its agents, successors and assigns, against all losses, liabilities, obligations, claims, damages, penalties, fines, actual costs and expenses (including, without limitation, attorneys' and consultants' fees) and costs of litigation, suits, judgments, liens, and encumbrances, including third party claims, arising from the acts or omissions of Purchaser, its agents, employees, contractors/subcontractors, licensees, invitees and/or representatives, or any or all of them, under this Paragraph 12A, whenever made or incurred, and this indemnity shall survive Closing, or any other termination of this Agreement.

(f) Purchaser shall, at its sole cost and expense, promptly, after all Environmental Studies are conducted, repair any damage caused to the Property and/or Seller's personal property by reason of the Environmental Studies and restore the Property to its condition immediately prior to such damage.

(g) Purchaser agrees to provide to Seller upon Seller's written request therefor, copies of all environmental reports, audits, sampling data, analytical data and other documents, reports or correspondence resulting from the Environmental Studies, specifically including any Phase II environmental report.

(h) Purchaser shall be responsible at its sole cost for any recognized environmental condition related to the Property (and not the Buildings) set forth in the Environmental Studies that costs Fifty Thousand (\$50,000.00) Dollars or less. In the event that the results of the Environmental Studies establish there are recognized environmental conditions related to the Property (and not the Buildings) which require remediation costs that two (2) qualified environmental consultants provide written estimates will exceed Fifty Thousand (\$50,000) Dollars, Purchaser in Purchaser's sole and absolute discretion, shall have the right to terminate this Agreement, on or before the last day of the Environmental Due Diligence Period, by giving written notice ("Purchaser's Notice") to Seller, which Purchaser's Notice Seller must receive on or before 5:00 P.M. on the last day of the Environmental Due Diligence Period, whereupon this Agreement shall be deemed terminated and thereafter neither party shall have any further rights, obligations or liabilities hereunder, except that the Downpayment and any interest earned thereon shall be promptly refunded to Purchaser. Purchaser's failure to give to Seller on or before 5:00 P.M. on the last day of the Environmental Due Diligence Period (time being of the essence) written notice of its election to terminate this Agreement under the terms of this Paragraph 12A, shall be deemed a waiver by Purchaser of its right to terminate under this Paragraph 12A. Notwithstanding anything in this Agreement to the contrary, Purchaser's Notice pursuant to this Paragraph 12A may be given by Purchaser or Purchaser's counsel by email to Seller's counsel at: nward-willis@kblaw.com at or prior to 5:00 P.M. on the last day of the Environmental Due Diligence Period. Seller acknowledges that Purchaser has offered two separate conceptual development plans and uses for the Property, designated as Option A ("Option A") and Option B ("Option B"), as both set forth on Page 12 in Purchaser's RFP Response (as defined in Schedule B). Seller acknowledges that in the event that the selection of Option B either reduces or eliminates the need for any required remediation at the Property, Purchaser will select and move forward with Option B.

13) **SELLER'S REPRESENTATIONS, WARRANTIES AND COVENANTS.** Seller represents, warrants and covenants to Purchaser, based on the actual knowledge of Seller as of the date hereof and as of the date of Closing, as follows:

(a) Requisite Action. Seller is the sole owner of the Property and has the full right, power and authority to sell, convey and transfer the same in accordance with the terms of this Agreement. Without limiting the generality of the foregoing, Seller has obtained all requisite municipal authorization necessary to enter into this Agreement and to consummate the transactions contemplated hereunder.

(b) Validity. This Agreement and all documents required hereby to be executed by Seller are and shall be valid, legally binding obligations of and enforceable against Seller in accordance with their terms, except to the extent that enforceability thereof may be subject to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of contracts and creditor's rights generally and to general principles of equity.

(c) Conflicts. Neither the execution and delivery of this Agreement and documents referenced herein, nor the incurrence of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor referenced herein, conflict with or result in the material breach of any terms, conditions or provisions of or constitute a default under, any bond, note or other evidence of indebtedness or any contract or lease to which Seller is a party.

(d) Leases. There are no leases with respect to the Property.

(e) Service Contracts. To Seller's actual knowledge, there are no service contracts in respect of the Property.

(f) The Seller is not liable, or bound in any matter, by express or implied warranties, guarantees, promises, statements or representations pertaining to the Property, the condition thereof or any other matter whatsoever, made or furnished by any real estate broker, agent, employee, servant or other person representing or purporting to represent Seller, unless such warranties, guaranties, promises, statements or representations are expressly or specifically set forth herein.

Seller shall fully disclose to Purchaser, promptly upon Seller's becoming aware of its occurrence and at least two (2) business days prior to Closing, any change in facts or

circumstances of which Seller becomes aware prior to the Closing that may affect the representations and warranties set forth above.

14) **DEFAULTS AND REMEDIES.** If Purchaser defaults hereunder, Seller's sole remedy shall be to receive and retain the Downpayment as liquidated damages, it being agreed that Seller's damages in case of Purchaser's default might be impossible to ascertain and that the Downpayment constitutes a fair and reasonable amount of damages under the circumstances and is not a penalty. If Seller defaults hereunder, Purchaser may either (i) terminate this Agreement by written notice to Seller, in which event the Downpayment and accrued interest thereon, if any, shall be promptly returned to Purchaser, or (ii) commence an action for specific performance of Seller's obligations under this Agreement.

15) **RESPONSIBILITY OF PERSONS UNDER THIS CONTRACT; ASSIGNABILITY.** If more than one person signs this Agreement as Purchaser, each person shall be responsible for keeping the promises made by Purchaser in this Agreement. This Agreement may not be assigned by Purchaser and any purported assignment of this Agreement by Purchaser shall be void ab initio. Notwithstanding the foregoing, this Purchase and Sale Agreement may be assigned by Purchaser with the prior written consent of Seller in each instance to an entity in which Rodney Weber shall own no less than 51% of the stock or membership interests in such entity. Any permitted assignment hereunder shall be by written instrument, signed by the assignee, which provides for the assumption by the assignee of all of Purchaser's obligations hereunder, provided that Purchaser shall nonetheless remain fully responsible to Seller for the due performance of all of Purchaser's obligations hereunder.

16) **ENTIRE AGREEMENT.** This Agreement when signed by both Purchaser and Seller will be the record of the complete Agreement between the Purchaser and Seller concerning the purchase and sale of the Property. No verbal agreements or promises will be binding.

17) **FURTHER DOCUMENTS.** Each party to this Agreement agrees to execute, acknowledge and deliver or cause to be delivered, such other deeds, assignments, affidavits, certificates and other instruments and documents as may be reasonably necessary and required by the other party from time to time to confirm and carry out the intent and purpose of this Agreement and the performance of each party's obligations under the terms of this Agreement, in such form as shall be reasonably satisfactory to counsel for both parties.

18) **HEADINGS.** Headings in this Agreement are for convenience of reference only and in no way define, limit or describe the scope of this Agreement and shall not be used to interpret or construe this Agreement or any of its provisions.

19) **NO THIRD PARTY BENEFICIARIES.** This Agreement is intended for the exclusive benefit of the parties hereto and shall not be for the benefit of, and shall not create any rights in, or be enforceable by, any other person or entity.

20) **INTEGRATION.** All prior understandings, agreements, representations and warranties, oral or written, between Purchaser and Seller are merged in this Agreement which Agreement completely expresses their full agreement and has been entered into after full investigation, neither party relying upon any statement made by anyone else that is not set forth in this Agreement.

21) **INTERPRETATION.** This Agreement shall be interpreted and construed according to its fair meaning and neither for nor against any party hereto irrespective of which party caused the same to be drafted. Each of the parties acknowledges that it has been or has had the opportunity to be represented by an attorney in connection with the preparation and execution of this Agreement.

22) **GOVERNING LAW; VENUE.** This Agreement shall be interpreted, construed and enforced in accordance with and governed by the internal laws of the State of New York without reference to the principles of conflicts of laws. Each party hereby irrevocably consents to the exclusive jurisdiction of the courts of the County of Dutchess and State of New York for all purposes in connection with any action, suit or proceeding which arises out of or relates to this Agreement. To the fullest extent it may effectively do so under applicable law, each party hereby irrevocably waives and agrees not to assert, by way of motion, as a defense or otherwise, any claim that it is not subject to the jurisdiction of any such court, any objection which it may now or hereafter have to the laying of the venue of any such action, suit or proceeding brought in any such court and any claim that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

23) **AMENDMENTS.** This Agreement may not be modified or amended, nor may any of its provisions be waived except by an agreement in writing signed by the party against whom enforcement of any such modification, amendment, or waiver is sought, and then such modification, amendment, or waiver shall be effective only in the specific instance and for the specific purpose for which given.

24) **FURTHER ASSURANCES.** Each party hereto shall, at any time and from time to time, execute, acknowledge where appropriate and deliver such further instruments and documents and take such other action as may be reasonably requested by the other party in order to carry out the intent and purpose of this Agreement. This paragraph shall survive the Closing under this Agreement.

25) **SUCCESSORS AND ASSIGNS.** Subject to the terms and conditions hereof, the covenants, agreements, terms, provisions and conditions contained in this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective distributees, legal representatives, successors and assigns.

26) **COUNTERPARTS.** This Agreement may be executed by the parties individually in several separate counterparts, each of which shall be deemed an original, and all of the said counterparts taken together shall be deemed to constitute one and the same instrument. This Agreement is intended to be enforceable when executed and delivered by facsimile or by e-mail.

27) **SEVERABILITY.** If any term, covenant or condition of this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each term, covenant or condition of this Agreement shall be valid and be enforced to the extent permitted by the law.

28) **NOTICES.** Any notice given hereunder shall be in writing and shall be served in person, via facsimile (subject to printout of confirmation of receipt), via email, by nationally recognized overnight express delivery service, or by United States certified mail, with postage prepaid, properly addressed and directed to a party's attorney at the following address:

If to Seller:

Nicholas M. Ward-Willis, Esq.
Keane & Beane, P.C.
445 Hamilton Avenue, Suite 1500
White Plains, New York 10601
Telephone: (914) 946-4777
Facsimile: (914) 946-6868
Email: nward-willis@kblaw.com

If to Purchaser:

Taylor M. Palmer, Esq.
Cuddy & Feder LLP
445 Hamilton Avenue, 14th Floor
White Plains, New York 10601
Telephone: (914) 761-1300
Facsimile: (914) 761-5372
Email: tpalmer@cuddyfeder.com

29) **BROKER.** Seller and Purchaser each represent and warrant to the other that it has not dealt with any real estate broker in connection with this sale. Seller and

Purchaser shall indemnify and defend each other against any costs, claims and expenses, including reasonable attorneys' fees, arising out of the breach of their respective parts of any representation or agreement contained in this paragraph. The provisions of this paragraph shall survive Closing or, if Closing does not occur, the termination of this Agreement.

30) Purchaser and Seller expressly authorize their respective attorneys to act on their behalf and bind the respective parties to any stipulations as to extensions, adjournments or changes in any time periods in this Agreement, including, but not limited to, the Closing Date.

31) Neither this Agreement nor a memorandum thereof may be recorded by Purchaser. Breach of this provision by Purchaser shall constitute a default hereunder.

32) See Terms and Conditions of Sale, attached hereto as Schedule "B" and made a part hereof.

[NO FURTHER TEXT ON THIS PAGE; SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, each of the parties hereto has caused its duly authorized representative to execute this Agreement as of the date first above set forth.

CITY OF BEACON

23-28 CREEK DRIVE, LLC

By: _____
Name: Anthony Ruggiero
Title: City Administrator

By: _____
Name: Rodney Weber
Title: Member/Manager

ADJACENT OWNER (paragraph 5)

Weber Projects III, LLC

By: _____
Name:
Title:

ESCROWEE:

Keane & Beane, P.C.

By: _____
Nicholas M. Ward-Willis, Esq., a partner

Schedule A – Property Description

Schedule B – Terms and Conditions of Sale

I. Redevelopment and Transfer Conditions

1. Purchaser acknowledges that Seller makes no representations that the Property meets local, County or Federal ordinances, regulations or laws governing development of property commercially, industrially or otherwise. All permits, empowerments, permissions and grants necessary for the sale and/or development of the Property are at the Purchaser's sole risk, cost and responsibility.
2. Provided that this Agreement is not terminated in accordance with the provisions of paragraph 12A(g) above, so as to facilitate compliance with this Agreement and the City's intent for redevelopment of the Property, Purchaser and its design team shall meet within thirty (30) days following the expiration of the Environmental Due Diligence Period, with a representative of the City Planner, Building Inspector and the City Attorney (the "Initial Project Meeting") to review the proposed redevelopment project based on Purchaser's RFP response proposal ("Purchaser's RFP Response") (a copy of which is attached hereto as Schedule C) and prior to its submission of any land use application to the City. . Purchaser agrees to make reasonable modifications to the Project in response to comments received from City officials at the Initial Project Meeting. The proposed redevelopment project based on Purchaser's RFP response proposal as modified by further discussions between the City and Purchaser shall hereinafter be referred to as the "Project". If (i) the Purchaser and the City officials are unable to come to agreement on the Project during the Initial Project Meeting and/or during any subsequent meeting prior to Purchaser's submission of any land use application , or (ii) Purchaser's submission to the Zoning Board of Appeals, and/or the Planning Board is denied or fails to receive approval within the time periods required by this Agreement, then Purchaser shall have the right, upon written notice to Seller, to terminate this Agreement whereupon the Downpayment and any interest earned thereon, if any, shall be immediately returned to Purchaser. Purchaser acknowledges that approval of the Project shall require Purchaser to modify the land use approvals obtained for the adjacent property located at 9 Creek Drive, Beacon, New York (the "Adjacent Property"), specifically regarding the building shown as "4 Story Building 16 Apartments" and the Greenway Trail located south of bend in the trail located south of the building identified as "3 Story Building 6 Apartments" as shown on the Site Plan generally entitled "Special Use Permit Application – Lot 1, 3 Churchill Street (A/K/A 9-11 Creek Drive)" prepared by Aryeh Siegel, Architect, dated January 25, 2015, last revised August 25, 2015 (the "2015 Site Plan"), which 2015 Site Plan was approved by the City of Beacon Planning Board by Resolution dated September 9, 2015, signed by the Planning Board Chairman dated September 23, 2015. Purchaser agrees to make a joint submission to the Zoning Board of

Appeals, if required, and the Planning Board, together with the owner(s) of the Adjacent Property, which owner(s) include Rodney Weber and Weber Projects III, LLC, as may be necessary in order to modify or amend the 2015 Site Plan and the subdivision plat consisting of two (2) sheets entitled “3 Churchill Street (AKA 9-11 Creek Drive)” prepared by TEC Land Surveying, P.C., dated February 25, 2014, last revised July 28, 2014, filed in the Dutchess County Clerk’s Office as Filed Map Number 12519, (the “Subdivision Plat”) to be consistent with the Project.

3. The Project shall include a park open to the public (which park shall be open at such times and subject to such rules as applies to City parks) and to be maintained in perpetuity by Purchaser, its successors and assigns, consisting of a trail, benches, lighting, construction of retaining walls and landscaping (the “Park”) costing no less than One Hundred Thousand (\$100,000) Dollars to construct (which \$100,000 shall be inclusive of the cost to construct the Greenway Trail as required in paragraph 4, below), and the design of the Park must be reasonably satisfactory to the Planning Board.
4. The City acknowledges that the existence of the Park on the Property as part of the Project will be factored in when determining the tax assessment for the Project upon completion of the Project.
5. The City will assume liability for injuries/death occurring on the Park not due to the fault of Purchaser or any subsequent owner of the Property, as it would if the Park were located on property owned solely by the City.
6. The Project shall include construction of a Greenway Trail open to the public and connecting to the Southwest to the trail in the Park described in paragraph 3, above, and connecting to the Northeast to the Greenway Trail on the adjacent Northeastern parcel (the “Greenway Trail”).
7. Purchaser acknowledges that (i) construction and maintenance of the Greenway Trail and Park, and (ii) maintenance of the Park are considered partial consideration for the purchase of the Property. The Greenway Trail and Park shall be maintained in accordance with the Greenway Trail and Park easement agreement in a form annexed hereto as Schedule D, subject to further modifications by the Planning Board, which will be signed at Closing. Purchaser’s obligation to maintain the Park in perpetuity and to a condition to the reasonable satisfaction of the City and consistent with the maintenance of the Greenway Trail, shall be incorporated into the language of the deed and binding upon all subsequent owners of the Property.
8. Purchaser shall construct two (2) parking spaces within 200 feet of the entrance to the Park designated for handicap use and both of which shall be reserved for patrons of the Park during normal Park operating hours.

9. The construction of the trail in the Park and a Greenway Trail on the Property shall be in accordance with the recommendations of the Fishkill Creek Greenway & Heritage Trail Master Plan.
10. The Project shall include plans for removal and installation of one main sanitary sewer pipeline on the Property in a location and form to be determined by the City Engineer in his reasonable discretion. Any storm water facilities located on this Property will be terminated.
11. The Project shall include Purchaser's demolition and removal, at its sole cost and expense, of all buildings, structures (above and below ground) from the Property.
12. Intentionally omitted.
13. Within forty-five (45) days of the expiration of the Environmental Due Diligence Period, if this Agreement is not terminated pursuant to paragraph 12A(h) above, a complete application, including all applicable fees, for any zoning variance for the maximum building height; total number of stories; as well as maximum dwelling unit size (3,000 sq. ft.) necessary for the Project (the "Variance") shall be made to the Zoning Board of Appeals. Purchaser shall diligently pursue the Variance and take all reasonable actions necessary to obtain the Variance. The zoning change and the Variance shall be referred to herein as the "Zoning Approvals".
14. Within forty-five (45) days of the issuance of the Variance(s) a complete application for the site plan approval and subdivision approval, including all applicable fees (the "Site Plan Approval"), for redevelopment of the Property substantially in accordance with the Project shall be made to the Planning Board. Purchaser shall diligently pursue the Site Plan Approval and take all reasonable actions necessary to obtain the Site Plan Approval.
15. Purchaser shall submit a complete Building Permit application, including all applicable fees, for the Project within one-hundred (120) days of issuance of the Site Plan Approval. Purchaser shall diligently pursue such application and take all reasonable actions necessary to obtain such Building Permit.
16. Purchaser acknowledges that construction and maintenance of the Greenway Trail and Park are considered partial consideration for the purchase of the Property and the recreation fee due to the City shall not be reduced due to the construction and maintenance of the Greenway Trail and Park.
17. 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 the Site Plan Approval

and (c) obtained a 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 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.

18. On the Closing Date and simultaneously with the Seller's delivery of the Deed, Purchaser shall provide Seller with (a) a copy of a signed contract with a construction manager for construction of the Project; and (b) a copy of a signed contract with a contractor for construction of the Project; and (c) evidence that Purchaser has an unconditional construction loan commitment letter in an amount sufficient to construct the Project and proof that the construction loan closing has been scheduled. The closing of Purchaser's construction financing shall occur simultaneously with and on the Closing Date for this Agreement, at the office of Purchaser's lender or Seller, in its sole discretion, may elect to close in escrow.
19. Within fourteen (14) days of conveyance of title to the Property, the Property shall be secured and the Property shall comply with Sections 107.2, 302, 303 and 307 of the Property Maintenance Code of the State of New York and Chapter 92 of the City of Beacon Code.
20. Purchaser shall commence construction within sixty (60) days of Closing.
21. Purchaser must diligently pursue construction and obtain any and all Certificates of Occupancy for the complete Project within eighteen (18) months after issuance of a Building Permit of the Project.
22. Prior to the issuance of any Certificate of Occupancy for the Project, the following conditions shall be fulfilled: (i) Purchaser shall construct the Greenway Trail on the Property; and (ii) Purchaser shall enter into an agreement with the City and any other necessary parties whereby the maintenance of the Greenway Trail on the Property shall be performed by the person(s), entity(ies), or organization(s) responsible under the rules and regulations for the complete greenway trail of which the Greenway Trail to be constructed hereunder shall be a part.
23. Any requests for an extension of time frames set forth in Paragraphs 1 through 20 above shall be subject to the approval of the City Council, in its sole discretion, which consent shall not be unreasonably withheld, conditioned or delayed provided that Purchaser has been diligently and in good faith proceeding toward completion of the Project.

24. The Parties agree that the dates set forth in paragraphs 18, 19 and 20 of these Terms and Conditions of Sale are subject to Unavoidable Delays (as hereinafter defined) and the dates set forth in such paragraphs shall be extended for the period of Unavoidable Delay provided Purchaser promptly advises the City in writing of the Unavoidable Delay and sets forth a date by which it anticipates such Unavoidable Delay will be resolved and provides a written update every thirty (30) days and proceeds with those portions of the Project not affected by the Unavoidable Delay. Any Unavoidable Delay is subject to the City's reasonable approval, which approval shall not be unreasonably withheld, conditioned, or delayed. "Unavoidable Delays" shall mean delays due to fire, casualty, labor trouble, inclement weather conditions, natural disaster, civil unrest; unforeseen site conditions or other unforeseen conditions, governmental preemption of priorities or other controls in connection with a national or other public emergency or shortages of fuel, supplies or labor resulting therefrom, or any other cause, whether similar or dissimilar, beyond Purchaser's reasonable control.
25. The Seller selected Purchaser on the basis of the Purchaser's assurance that the Property would be developed in the manner, and within the timeframes, described herein so that the Property will be utilized for the benefit of the City of Beacon and its residents and visitors. Therefore, except as permitted below, the Purchaser shall neither be permitted to sell nor transfer the Property until five (5) years following the issuance of the last Certificate of Occupancy for the Project and nor shall Rodney Weber sell, transfer or dilute more than 49% of his membership interests in the Purchaser until after expiration of this five (5) year period. At the time of signing of this Agreement, Purchaser is owned 100% by Rodney Weber. Notwithstanding the foregoing, (i) sales and/or transfers of individual condominium units in a building constructed on the Property shall not be subject to the restrictions on sales or transfers of the Property as contained in this paragraph 23, and (ii) Seller recognizes the rights of mortgage lenders under applicable mortgages to foreclose on the Property, subject to the deed restrictions set forth herein. The deed shall contain language to this effect.

II. Restrictions on Use of the Property

26. The Property is being sold upon the condition that all or any part thereof shall not be used as a used car lot, junkyard or for any other dangerous, noxious or offensive purpose or establishment whatsoever. The deed shall contain language to this effect.
27. All improvements must be made in compliance with the Building Code and Zoning Ordinances of the City of Beacon and all other applicable codes, rules, and standards.
28. Except as otherwise permitted in paragraph 5(b) of this Agreement, the Property must be kept free from all accumulation of construction debris and materials at all

times, except for the staging of construction materials pursuant to a duly issued building permit.

III. Possibility of Reverter

29. Seller selected Purchaser on the basis of Purchaser's assurance that the Property would be developed in the manner, and within the timeframes, described herein so that the Property will be utilized for the benefit of the City of Beacon and its residents and visitors. Seller hereby retains a possibility of reverter in the Property for the purpose of assuring compliance with the Conditions of Sale set forth herein. The Terms and Conditions of Sale are covenants that shall run with the land and be binding to the fullest extent permitted by law and in equity. These Terms and Conditions of Sale shall inure to the benefit of the City of Beacon and shall be enforceable against Purchaser and its successors and assigns. This possibility of reverter shall be set forth in the deed and shall be binding upon any successor owner of the Property until such time as all post-Closing conditions have been satisfied. If the post-Closing Terms and Conditions of Sale are not satisfied within the specified times outlined herein (as such specified times may be extended), the Property shall revert to Seller, free and clear of any and all claims, encumbrances or other liens as set forth below. Notwithstanding the foregoing, however, Seller agrees to fully subordinate its possibility of reverter rights to any first or second mortgage secured against the Property if such subordination is required by Purchaser's lender to allow Purchaser to obtain financing for the construction of the Project.
- i. If Purchaser fails to comply with any of the post-Closing conditions set forth in these Terms and Conditions of Sale, Seller shall provide Purchaser a written Notice of Failure to Comply (the "Notice") with Terms and Conditions of Sale. Purchaser shall have forty-five (45) days after receipt of such Notice to comply; provided, however, that if any such failure to comply cannot be cured within such forty-five (45) day period, Mortgagor shall be afforded up to an additional forty-five (45) days to cure such failure to comply provided Purchaser shall have commenced such cure within such initial forty-five (45) day period and shall thereafter diligently continue to cure such failure to comply;
 - ii. If Purchaser has failed to correct the condition that is set forth in the Notice by the end of thirty (30) days or as such time as may be extended as set forth in (i) above or in writing by Seller, the City Council and Seller shall at its regularly scheduled meeting, adopt a Resolution declaring Purchaser to be in default.
 - iii. Seller shall send a certified copy of such Resolution to Purchaser. Purchaser agrees that upon receipt of a certified copy of the Resolution adopted by the City Council declaring Purchaser to be in default of these

post-Closing Terms and Conditions of Sale, Purchaser shall, within ten (10) days, execute a deed conveying the Property to the Seller at no cost.

- iv. In the event Purchaser fails to execute such deed, Seller shall have the right to commence an action in Supreme Court, Dutchess County compelling Purchaser to execute the deed and convey the Property to the Seller. Purchaser shall be responsible for all reasonable legal fees and expenses incurred by the Seller in preparing the Notice, Resolution and costs associated with any litigation.
- v. Upon issuance of all permanent Certificates of Occupancy for the Property conforming to the complete Project, the conditions set forth in these Terms and Conditions of Sale shall have been deemed fulfilled (aside from the restriction on using all or any part of the Property as a used car lot, junkyard or for any other dangerous, noxious or offensive purpose or establishment whatsoever, which restriction shall continue to remain in effect) and the possibility of reverter set forth herein and on the deed shall automatically terminate and be of no further force and effect.

IV. Condition of Property

- 30. **All lands and premises are sold in an “AS IS” condition.** The City has performed NO inspections to verify any of the land or premises that are being sold in an “AS IS” condition. At Closing, the Premises shall be delivered free of all tenancies and other possessory rights.
- 31. The Property will be delivered at Closing free of all personal property.

V. Miscellaneous Matters

- 32. Except as specifically provided for in the Conditions of Sale, the City of Beacon makes no representation and gives no warranties as to the environmental conditions of the aforesaid structure(s), lands and premises (the Property).
 - a. For the purposes of these conditions, “Environmental Laws” mean Federal, State and local laws and regulations, common law, orders, and permits governing the protection of the environment, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601, et seq. as amended (CERCLA); the Resource Conservation and Recovery Act, as amended 42 U.S.C. 6901, et seq.; the Clean Water Act, 33 U.S.C. 1251, et seq.; the Clean Air Act, 42, U.S.C. 7401, et seq.; The Toxic Substance Control Act, 15 U.S.C. 300f through 300j; Et seq. and any amendments thereto together with any other similar laws regulating the environment existing at the time of coming into existence in the future.

- b. Purchaser acknowledges that it is taking the Property subject to all environmental conditions existing at the Property, whether known or unknown.
 - c. Unless this Agreement is terminated pursuant to paragraph 12A(h), paragraph 2 or paragraph 17 of this Schedule B, Purchaser agrees to indemnify, defend, and hold harmless the City of Beacon from all liability for any claims relating to any contamination, or violations of any Environmental Laws, as defined above relating to conditions known or unknown regardless of whether existing prior to or following Closing, including reasonable attorneys' fees.
 - d. The representations and warranties contained in this paragraph shall survive Closing.
33. All sales shall be final and without recourse, and in no event shall the Seller be liable for any defects in title for any cause whatsoever. Except as set forth in paragraph 14 of the Agreement, no claim, demand or suit of any nature shall exist in favor of the Purchaser, his/her heirs, successors or assigns, against the Seller arising from this sale. This paragraph shall survive the Closing.
34. At the time of Closing, Purchaser shall coordinate with the Tax Assessor, at Purchaser's sole cost and expense, to restore the Property to the tax roll. In the event that the Property is not presently on the Assessment Roll and assessed real property taxes, Purchaser agrees to pay at Closing its proportionate share of city, county and school taxes from the date of Closing in an amount equal to that which it would have been apportioned if the Property were on the Assessment Roll. If the Property is not listed on the Assessment Roll (or will not be listed when the Assessment Roll is next published), Purchaser shall make no objection to the Property being restored to the Assessment Roll and the Property being assessed omitted taxes from the date of Closing and forward, which shall be Purchaser's obligation to pay. In no event shall the Seller be responsible for the payment of any property taxes.
35. In accordance with NYS Tax Law §1405, Purchaser shall be responsible for paying the New York State real estate transfer tax.
36. All of the terms, obligations and conditions set forth in paragraphs 1 to 35 shall survive the Closing.

Schedule C - Purchaser's RFP Response

Schedule D – EASEMENT AGREEMENT