

FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT

THIS FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT (the “Amendment”) is made this 28th day of March, 2018 (the “Contract Date”), by and among the CITY OF BEACON, a municipal corporation with its principal offices at One Municipal Plaza, Beacon, New York 12508 (“Seller”), THE KEARNEY REALTY & DEVELOPMENT GROUP INC., a New York corporation, having an address at 34 Clayton Boulevard, Suite A, Baldwin Place, New York 10505 (“Purchaser”), and WEST END LOFTS HOUSING DEVELOPMENT FUND COMPANY, a New York not-for-profit corporation, as nominee for WEST END LOFTS LIMITED PARTNERSHIP, a New York limited partnership (collectively “West End Lofts”).

WHEREAS, Seller and Purchaser entered into that certain Purchase and Sale Agreement dated October 6, 2016 (the “Purchase Contract”), pursuant to which Purchaser agreed to purchase, and Seller agreed to sell, a certain parcel of vacant land, generally referred to on the Tax Map of the City of Beacon as Parcel Number 130200-5954-26-688931 and a portion of Parcel Number 130200-5954-26-708967, as further described in the Purchase Contract; and

WHEREAS, Purchaser desires to amend certain provisions set forth in the Purchase Contract; and

WHEREAS, Purchaser desires to assign Purchaser’s right to acquire title to Parcel “B” to West End Lofts; and

WHEREAS, all undefined capitalized terms used herein shall have the meanings assigned such terms in the Purchase Contract;

NOW, THEREFORE, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged by the parties hereto, the Purchase Contract is hereby amended as follows:

1) Property Description. Schedule A to the Purchase Contract is hereby replaced with Schedule A attached hereto to reflect the omission of a certain +/- 2,400 sq. ft. triangle shaped parcel of property, more particularly described in Schedule B hereto (the “Triangle Parcel”), which parcel is subject to a reverter right held by the New York State Department of Transportation (the “Reverter Right”).

2) Property Conveyance. Except as provided below, in accordance with paragraph 14 of the Purchase Contract, Purchaser assigns its rights and obligations under the Purchase Contract solely with respect to Parcel “B” to West End Lofts, and West End Lofts hereby assumes all rights and obligations under the Purchase Contract with respect to Parcel “B.” Notwithstanding the foregoing, West End Lofts does not assume any obligations under the Purchase Contract which survive the Closing, with the exception of the provisions of Section 5 of this Amendment. Purchaser shall remain obligated to Seller for all post-Closing obligations with respect to the Property (including, for the avoidance of doubt, Parcel “B”), and Seller agrees that it will pursue any and all rights and remedies it may have under the Purchase Contract or this Amendment following Closing solely against the Purchaser, with the exception of the provisions of Section 5 of this Amendment.

3) Purchase Price Allocation. In accordance with Section 4 of Schedule B to the Purchase Contract, Seller and Purchaser agree that \$325,000 of the Purchase Price shall be allocated to Parcel "A" and \$875,000 of the Purchase Price shall be allocated to Parcel "B".

4) Parcel "B" Deed Restrictions. (a) Section 12 of Schedule B to the Purchase Contract is hereby amended to more particularly reflect the affordability restrictions imposed by the New York State Division of Housing and Community Renewal ("DHCR") on Parcel "B" as follows:

"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. Use of Parcel "B" shall be restricted, for the period of time described below, to two residential buildings (and associated improvements) containing an aggregate of seventy-two (72) affordable housing units, fifty (50) of which shall be occupied by individuals and households with a combined annual income equal to 60% or less of the Dutchess County Area Median Income ("AMI"), and the remainder of which shall be occupied by individuals and households with a combined annual income between 60% and 117% of AMI, together with one (1) unit for a resident superintendent. The owner of Parcel "B" shall also provide a preference for occupancy of the fifty (50) units set aside at or below 60% of AMI by persons involved with artistic activities. The use restrictions set forth in this Section 12 shall encumber Parcel "B" until the earlier to occur of (a) the fiftieth (50th) anniversary of the date the property is placed in service for purposes of Section 42 of the of the United States Internal Revenue Code, or (b) the date Parcel "B" is acquired by foreclosure or an instrument in lieu of foreclosure."

(b) Section 14 of Schedule B to the Purchase Contract is hereby amended to comply with the requirements of DHCR and the financing sources for the Parcel "B" improvements as follows:

"The Purchaser must obtain a building permit for the improvements to Parcel "A" (the issuance of such permit not to be unreasonably withheld, conditioned or delayed by Seller) prior to the issuance of a final Certificate of Occupancy for the first building completed on Parcel "B"."

5) Acquisition of Triangle Parcel by West End Lofts. West End Lofts agrees that, in the event a waiver of the Reverter Right is obtained within six (6) months of the date hereof, West End Lofts shall file an amended subdivision map with the Dutchess County Clerk and acquire title to the Triangle Parcel from Seller, for no consideration, and shall construct the improvements to the Triangle Parcel in accordance with the alternative site plan for Parcel "B" approved by the City of Beacon Planning Board prior to the date of this Amendment. The provisions of this Section 5 shall survive the conveyance of title to Parcel "B" to West End Lofts; provided however, that, (a) in the event a waiver of the Reverter Right is not obtained within six (6) months of the date hereof, or (b) West End Lofts is not able to take title to the Triangle Parcel within seven (7) months of the date hereof for any reason outside of the reasonable control of West End Lofts, the provisions of this Section 5 shall become null and void and West End Lofts, shall not have any obligations to the Seller under this Section 5.

6) Effect on Purchase Contract. All terms and conditions of the Purchase Contract shall remain in full force and effect as written except as expressly modified by this Amendment.

7) Counterparts. This Amendment may be executed in counterparts, each of which shall be deemed to be an original copy and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

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

By: 

Anthony Ruggiero, City Administrator

THE KEARNEY REALTY &
DEVELOPMENT GROUP INC.

By: _____

Kenneth Kearney, President

WEST END LOFTS HOUSING
DEVELOPMENT FUND COMPANY, INC.

WEST END LOFTS LIMITED
PARTNERSHIP

By: West End Lofts Associates, LLC, its
Managing General Partner

By: _____

Christa Hines, Treasurer

By: _____

Kenneth Kearney, Manager

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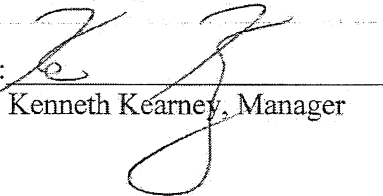
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Kenneth Kearney, President

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Schedule A

ALL that certain plot, piece or parcel of land situate, lying and being in the City of Beacon, County of Dutchess and State of New York, being known and designated as Proposed Lots Number 1 and 2 on a certain subdivision map entitled "Final Plat prepared for The West End Lofts, etc.," dated March 21, 2018, filed in the office of the Dutchess county Clerk on March 27, 2018 as Map Number 9899A, said Lot being more particularly bounded and described as follows:

BEGINNING at a point in the southeasterly line of Beekman Street as presently laid out at the intersection of the division line between lands of the Grantor herein formerly lands of the City of Beacon known formerly as Main Street on the south and lands now or formerly of Central Hudson Electric and Gas on the north.

THENCE along said lands now or formerly of Central Hudson Electric and Gas North 88°24'30" East a distance of 99.97'; to lands of the City of Beacon;

THENCE said lands the following bearings and distances:

South 27°05'43" West a distance of 128.53';
South 06°28'35" West a distance of 56.01';
South 35°00'00" East a distance of 34.67'
South 82°17'55" East a distance of 164.54' and
South 51°15'26" East a distance of 64.50' to a point in the northwesterly line of Wolcott Avenue (aka Route 9D) as presently laid out;

THENCE along said line of Wolcott Avenue the following bearings and distances:

South 42°01'30" West a distance of 143.00';
South 44°14'19" West a distance of 133.01' and
South 42°17'27" West a distance of 221.65' to lands now or formerly of the Reformed Church of Beacon;

THENCE along same N 50°07'23" W a distance of 198.84' to a point in the line of Lot 1 as shown on said filed map no. 9899;

THENCE along the line of said Lot 1 of filed map no. 9899 North 41°16'37" East a distance of 235.87' and North 35°00'00" West a distance of 135.07' to lands now or formerly of DMS Consolidators, Ltd. formerly being a portion of Beekman Street;

THENCE along same North 47°03'30" West a distance of 38.75' to a point on a curve in said southeasterly line of Beekman Street through which point a radial bears South 35°56'48" East;

THENCE along a curve to the left having a radius of 493.37', a central angle of 12°15'54", an arc length of 105.61' to a point of tangency;

THENCE continuing along said southeasterly line of Beekman Street as currently laid out North 41°47'18" East a distance of 81.95' and North 38°09'31" East a distance of 63.67' to the point and place of BEGINNING.

Schedule B

Beginning at a point in the northwesterly line of Wolcott Avenue (aka Route 9D) as presently laid out, at the intersection of the division line between Lot 1 as shown on a map entitled "Final Plat prepared for the West End Lots, etc.," filed in the Office of the Dutchess County Clerk on March 27, 2018 as Map No. 9899A on the south and the herein described parcel being lands of the City of Beacon on the north;

Thence from said point of beginning along said division line N 51°15'26" W a distance of 64.50' to a point;

thence through lands of the grantor herein S 82°17'55" E a distance of 71.64' and S 51°15'26" E a distance of 5.24' to a point in said northwesterly line of Wolcott Avenue;

thence along same S 42°01'30" W a distance of 37.00' to the point and place of beginning.

Containing 1,288 square feet or 0.0300 acres