

# Village of Mamaroneck



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P.O Box 369*

*123 Mamaroneck Avenue  
Mamaroneck, NY 10543*

*<http://www.villageofmamaroneck.org>*

OFFICE OF  
**ROBERT A. SPOLZINO**  
VILLAGE ATTORNEY

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TO: Mayor Torres and the Board of Trustees  
FROM: Robert A. Spolzino, Village Attorney  
RE: Hunter Tier/Westhab Negotiations  
DATE: November 8, 2024  
CC: Charles Strome, Interim Village Manager

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Per the Board's direction, I have compiled for the agenda all of the memos and correspondence concerning the potential sale of the Hunter Tier Lot since the Board's designation of Westhab as the preferred developer on September 10, 2024. Those documents are attached.

You have asked whether the negotiations with Westhab with respect to the Hunter Tier Lot may continue to be conducted in executive session. As you may recall, I have previously advised you that under Public Officers' Law § 105(1)(h), "the proposed acquisition, sale or lease of real property" may be discussed in executive session if "publicity would substantially affect the value" of the property. The discussions that have been held qualified for executive session because the sale price was a subject of discussion. At the Board's most recent meeting on the subject, however, a majority of the members of the Board of Trustees determined, subject to the full negotiation of a term sheet, that the Village would accept the amount Westhab has offered. Since the value of the property is no longer a subject of discussion, the matter no longer qualifies for discussion in executive session and must, therefore, be discussed in a public meeting.

The threshold issue that remains is the Village's right to terminate the contract if a preference for Village residents and former residents displaced by flooding is not achievable. I advised you in February 2024 that such a preference might be possible if the State and County agreed and no one sued under the Fair Housing Act. I understand that there has now been a meeting arranged by Westhab with a State affordable housing official who said that such a preference would likely be granted. There has been no corresponding conversation with the County.

As the correspondence reflects, Westhab will accept, for the most part, the threshold requirements the majority of the Board defined in its last meeting with respect to this issue.

Westhab will not agree, however, that the Village will have the right to terminate the contract if a legal challenge to the preference program is commenced. In a subsequent email, on November 7, 2024, Mr. Curti advised me that Westhab would agree to defend and indemnify the Village in such a lawsuit.

Defense and indemnification is not, in my opinion, sufficient to protect the Village in these circumstances; that requires the right to terminate if litigation over the preference program is commenced. The term sheet and contract must at least provide that Westhab cannot begin construction until the time within which to commence such litigation has passed and must address what happens if such litigation is commenced after construction has begun.

The risk of litigation over the preference is real. The Town of Bedford was sued in 2017 over such a preference program by the same organization that successfully sued Westchester County. Bedford settled immediately. Copies of the complaint and settlement agreement are attached. The Village may be in different circumstances because of the flooding, and I still believe a preference program is possible, but there is no judicial authority holding that such a program can pass muster under the Fair Housing Act.

Those Board members who defined the threshold conditions said very clearly that their goal was to ensure that the project would require a preference for Village residents and that the Village should not agree that Westhab's project should be able to go forward without it. Without protection in the contract, litigation could result in a project without such a preference.

If Westhab's proposal on this issue is nevertheless acceptable, the next step would be for the Board to discuss the remaining issues outlined in my October 28, 2024 email and give the negotiating team direction with respect to those issues. A final term sheet could be negotiated after that.

It is nevertheless my recommendation that negotiations with Westhab be terminated because Westhab's continued and consistent knowledge of the Village's privileged and confidential communications has made it impossible to negotiate the term sheet in a way that protects the interests of the Village.

During the Board's most recent discussion of this matter, I asked all Board members to refrain from having independent conversations with representatives of Westhab. It is not possible for me to have privileged and confidential attorney-client communications with the members of the Board, and for the negotiating team to do its job effectively if the substance of those communications is being transmitted to Westhab. It has become apparent to me, however, that what I feared is actually happening.

On Wednesday and Thursday of this week, I spoke with two members of the Board of Trustees confidentially about my concern that Westhab would not agree that the Village could cancel the contract if someone sued to set aside the resident preference program that the Board has determined is essential to the deal. Within 12 hours of the initial conversation and a half-hour of the second conversation, I received an email from counsel for Westhab stating that Westhab had thought further about its position on that issue and would agree to defend and indemnify the Village in such a lawsuit. That email established to me that the substance of my privileged and confidential conversation had been shared immediately with Westhab. That may be a violation of the fiduciary duty of the Board member who communicated with Westhab; I have not researched the issue. But the fact that such communications continue to be made makes it impossible for me or any attorney to communicate in a privileged and confidential way with the Board of Trustees. Such communication is essential to negotiate effectively with Westhab. I recommend, therefore, that negotiations with Westhab be terminated.

## Robert Spolzino

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**From:** Robert Spolzino  
**Sent:** Friday, September 13, 2024 11:28 AM  
**To:** Michael Curti  
**Subject:** Hunter Tier

Mike - The Board of Trustees has selected Westhab as the preferred developer for the Hunter Tier project. We should talk next week. When would be a good time? Bob

*Robert Spolzino, Esq. | Executive Partner*



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## Robert Spolzino

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**From:** Michael Curti <michael.curti@westhab.org>  
**Sent:** Wednesday, September 18, 2024 4:19 PM  
**To:** Robert Spolzino  
**Subject:** Hunter Tier

**Caution: This email originated outside of the organization**

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Thank you for connecting with me this morning regarding the Hunter Tier developer negotiations. Because it is typically the purchaser's responsibility, we are in the process of preparing a term sheet based on our best and final for Chuck and the other members of the negotiating team to digest. We should have that to you in a few days. I will also share a copy of a PSA/COS I've used in 2 successful Yonkers affordable deals, one of which included public parking. Of course, we acknowledge that the Village as landowner will need to prepare the PSA/COS, but we thought these samples may be helpful in putting that together.

Best Regards, MVC

# LAND DISPOSITION AGREEMENT

between

VILLAGE OF MAMARONECK,  
as Seller

and

WASHINGTONVILLE HOUSING ALLIANCE, INC.,  
as Purchaser

Dated as of

\_\_\_\_\_, 2024

Village of Mamaroneck  
141 Prospect Avenue  
Village of Mamaroneck, New York 10543

Section 9 Block 289 Lot 7

**PLEASE RECORD AND RETURN TO:**

THIS AGREEMENT, dated as of \_\_\_\_\_, 2024 is between the Village of Mamaroneck, a municipal corporation having an office at 123 Mamaroneck Avenue, Mamaroneck, New York 10543 (the "SELLER"), and Washingtonville Housing Alliance, Inc., a not-for-profit corporation organized under the laws of the State of New York, having an office at 136 Library Lane, Mamaroneck, New York 10543, or any entity formed by them for the purposes contained in this Agreement (the "PURCHASER").

WHEREAS, the Seller is the owner of the Subject Property, which is presently being utilized as a municipal public parking lot known as the "Hunter Tier Lot"; and

WHEREAS, the SELLER has deemed the Subject Property to be surplus property and is desirous of conveying the property to a qualified developer in the interest of economic revitalization; and

WHEREAS, by \_\_\_\_\_ No. 20 adopted by the \_\_\_\_\_ on \_\_\_\_\_ 20, the terms and provisions of this Agreement were approved and disposition of the Subject Property to PURCHASER contemplated herein was authorized and approved; and

WHEREAS, the Subject Property is to be conveyed to the PURCHASER by the SELLER for the purpose of constructing or causing to be constructed a building or buildings all in compliance with the Code of the Village of Mamaroneck, and in accordance with New York State and local law, rule, policy, or regulation relating to the Seller and any other applicable laws, rules and regulations; and

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein contained, and other good and valuable consideration, the mutual receipt and legal sufficiency of which is hereby acknowledged, the SELLER and the PURCHASER hereby covenant and agree as follows:

## ARTICLE I

### ***DEFINITIONS***

As used herein, the following terms shall have the following meanings:

"Additional Title Defects" has the meaning set forth in Section 14.3 hereof.

"Affiliate" or "Affiliates" means (a) in the case of any Person, a Person which, directly or indirectly, controls, is controlled by or is under common control with such Person, or (b) any individual who is a member of the immediate family (whether by birth or marriage) of an individual who is an Affiliate. For purposes of this definition the phrase "member of the immediate family" includes a spouse; a brother or sister of the whole or half-blood of such individual or his spouse; a lineal descendant or ancestor (including an individual related by or through legal adoption) of any of the foregoing or a trust for the benefit of any of the foregoing. For purposes

of the foregoing definition, “control” (including “controlled by” and “under common control with”) shall mean possession, directly or indirectly, of the power to direct or cause the direction of the management policies of the entity in question, whether through the ownership of voting securities, partnership interests, or by agreement or otherwise. For the purposes of this Agreement, a housing development finance corporation, limited liability company, general partnership or limited partnership created by PURCHASER for the purpose of constructing or owning the Project, shall be considered an Affiliate.

“Agreement” means this Land Disposition Agreement and all exhibits hereto and all amendments, modifications and supplements hereof.

“Building Department” means the Department of Housing and Buildings of the Village.

“Closing” means the delivery of the Deed by SELLER upon payment of the Purchase Price by PURCHASER, in accordance with the terms and conditions of this Agreement.

“Closing Date” means the date on which the Closing occurs.

“Conceptual Development Plan” has the meaning set forth in Section 5.1 hereof.

“County” means the County of Westchester, New York.

“DEC” has the meaning set forth in Section 2.3 hereof.

“Escrow Agent” has the meaning set forth in Section 16.24 hereof.

“Event of Default” has the meaning set forth in Section 12.1 hereof with respect to PURCHASER and in Section 12.4 with respect to SELLER.

“Final” with respect to the Governmental Approvals, means all applicable limitations periods for commencement of a proceeding for administrative and/or judicial review of the Governmental Approvals have expired, no such proceeding having been commenced, or if commenced, such proceeding has been finally determined and such determination is no longer appealable to any governmental authority or court.

“Financing Commitments” has the meaning set forth in Section 4.3.6 hereof.

“Governmental Agency(ies)” means the United States, the State of New York (the “State”), the County, the Village or any political subdivision of any thereof, and any agency, department, office, commission, board, court or instrumentality of any thereof.

“Governmental Approvals” means all discretionary land use approvals required from the Village and or other Governmental Agencies for the demolition, renovation, construction, use and occupancy of the Improvements: (i) zoning, land use or building code approvals (including without limitation variances); (ii) building permits and other building-related permits such as

temporary certificates of occupancy, certificates of occupancy, plumbing, electrical and tap-in permits; environmental approvals, including SEQRA, site plan approval, subdivision, building permits and confirmation of the availability of utility services including natural gas availability and capacity, amendment of the master plans, to the extent necessary to develop the Subject Property.

“Improvements” has the meaning set forth in Section 2.1 hereof.

“Manager” if any, means a person designated by PURCHASER to act on its behalf.

“Outside Date” has the meaning set forth in Section 4.2 hereof.

“Permitted Exceptions” means the matters so designated in Article XIV of this Agreement.

“Person” means an individual, corporation, partnership, limited partnership, joint venture, limited liability company, limited liability partnership, estate, trust or unincorporated association, any Federal, State, County or municipal government or any bureau, department, or agency thereof, any political subdivision, any fiduciary acting in such capacity on behalf of any of the foregoing, or any other legal or business entity.

“PILOT Agreement” has the meaning set forth in Section 4.3.8.

“Project” means the demolition, restoration, renovation and/or construction of the Improvements as described in Section 2.1 hereof.

“Public Parking” has the meaning set forth in Section 2.1 hereof.

“Public Parking Funds” has the meaning set forth in Section 3.3 hereof.

“Purchase Price” has the meaning set forth in Section 3.3 hereof.

“Requirements” means any and all laws, rules, regulations, orders, ordinances, variances, statutes, codes, executive orders, permits, approvals (and conditions of permits and approvals) and requirements of all Governmental Agencies applicable to the Subject Property and the Public Parking, as applicable, including, without limitation, all applicable zoning, planning, building and environmental laws, ordinances, rules and regulations.

“SEQRA” means the State Environmental Quality Review Act (Title 8 of the Environmental Conservation Law of the State of New York) and the regulations issued thereunder by the New York State Commissioner of Environmental Conservation.

“Subject Property” means the parcel(s) of property known as 141 Prospect Avenue, Mamaroneck, New York, owned by the SELLER and intended to be conveyed to PURCHASER under this Agreement, comprising approximately 40,030 SF located in the Village of Mamaroneck, designated as Section 9, Block 7, Lot 289 of the Tax Map of the Village of Mamaroneck, as more particularly described by metes and bounds in **Schedule “A”** attached to this Agreement and made

a part hereof, together with all structures and improvements located thereon and other rights and property interests appurtenant thereto as more particularly set forth in Section 3.2 of this Agreement.

“Title Company” has the meaning set forth in Section 14.1 hereof.

“Title Credits” has the meaning set forth in Section 14.3 hereof.

“Title Defects” has the meaning set forth in Section 14.2 hereof.

“Title Exceptions” has the meaning set forth in Section 14.3 hereof.

“Unavoidable Delays” means delays incurred by SELLER or PURCHASER (as the case may be, the “Delayed Party”) due to strikes, lockouts, work stoppages, labor jurisdictional disputes, orders by Governmental Agencies that affect the progress of any work or process hereunder by more than 30 days, pending litigation (including, but not limited to Article 78 proceedings), acts of God, inability to obtain labor or materials, governmental preemptions or restrictions, enemy action, riot or other civil commotion, fire, casualty or other causes beyond the reasonable control of the Delayed Party, or if the Delayed Party is the PURCHASER, or an Affiliate of PURCHASER, the breach, default or delay by SELLER in the payment or performance of its obligations under this Agreement or any agreement referred to in this Agreement; in each case provided the Delayed Party shall have notified the other party to this Agreement not later than thirty (30) days after the Delayed Party knows or should have known of the occurrence of same and if such notice is given after the expiration of such thirty (30) day period, then the period of Unavoidable Delay shall not be deemed to have commenced until the Delayed Party shall have notified the other party of the occurrence of same.

“Village” means the Village of Mamaroneck.

“Zoning Ordinance” means the Zoning Ordinance of the Village of Mamaroneck.

## ARTICLE II

### ***THE PROJECT***

The Project shall consist of the following elements:

Section 2.1 Improvements. The Improvements shall include the following principal elements which are more particularly described in PURCHASER’S Conceptual Development Plan (as defined in Section 5.1 hereof) and is attached hereto as **Schedule B**: the construction and equipping on the Subject Property of an approximately 62 unit residential, multifamily building consisting of long term affordable rental units and three levels of parking with approximately 180 parking spaces, of which 55 parking spaces shall be reserved for the building’s residents and 125 parking spaces (the “Public Parking”) shall be reserved for the (being collectively referred to as the “Improvements”). The Improvements and shall be constructed in

conformity with the Governmental Approvals, as the same may be modified from time to time. Nothing contained in this Section 2.1 shall be deemed to relieve PURCHASER from compliance with any requirements or restrictions of the Zoning Ordinance applicable to the Subject Property, subject to variances that may hereafter be approved by the Zoning Board of Appeals of the Village, or any other applicable Requirements. The provisions of this Section 2.1 shall survive the Closing.

Section 2.2 Conditions for Execution of this Agreement. Upon the execution and delivery of this Agreement, and in contemplation of SELLER conveying the Subject Property to PURCHASER hereunder, PURCHASER shall:

- (a) Make the Deposit described in Section 3.3 hereof;
- (b) Deliver to SELLER any resolutions or other formal determinations or consents of PURCHASER that are reasonably deemed necessary by SELLER in order to authorize PURCHASER to consummate the transactions contemplated herein, such documents to be in form and substance, and certified on behalf of any pertinent entity that is not a natural person, as SELLER shall reasonably require.

Section 2.2.1 Seller's Documents.

Upon the execution and delivery of this Agreement, SELLER shall deliver to PURCHASER: (x) copies of all duly adopted zoning and land use plans that impact the Subject Property and (y) all plans, surveys and information regarding existing Village infrastructure located within and in the vicinity of the Subject Property, as well as all environmental reports, parking studies, and historic resource studies and materials prepared by or on behalf of the SELLER.

Section 2.3 Environmental Costs.

2.3.1 Following Closing, PURCHASER shall be responsible for all costs in connection with any environmental pollution or hazardous substances on the Subject Property. In order to secure the SELLER against any breach by the PURCHASER in the performance of its obligations under this Section 2.3, and to secure the SELLER against any claim, loss or damage arising from environmental pollution or hazardous substances in, on or from the Subject Property, PURCHASER will provide to SELLER at Closing a policy or policies of environmental insurance ("Environmental Insurance"), including, without limitation, Pollution Legal Liability and Cleanup Cost Cap coverage in the amount of \$10,000,000. The Environmental Insurance shall provide protection for preexisting, but undetected, environmental contamination, as well as for liabilities resulting from contamination that occurs during the policy term. This paragraph 2.3.1 shall survive the Closing.

2.3.2 Intentionally omitted.

2.3.3. PURCHASER shall have the option to apply to the N.Y.S. Department of Environmental Conservation ("DEC") for financial assistance for environmental remediation and for certain tax credits available under DEC's Brownfield Clean-up Program, as the same may

extended, modified or replaced, if the Subject Property needs environmental remediation. In the event of such DEC application, SELLER agrees to assist in the application process.

Section 2.4 SELLER's Title to Subject Property. If on the Closing Date, SELLER does not have such title to the Subject Property as it has agreed to convey under Article III of this Agreement, is unable to convey title in accordance with the terms of this Agreement, or is unable to satisfy any conditions precedent to PURCHASER's obligations under this Agreement, this Agreement shall be terminated and the PURCHASER shall not be obligated to purchase the Subject Property. Upon the termination of this Agreement pursuant to this Section 2.4, SELLER's sole obligation and PURCHASER's sole and exclusive remedy shall be a refund to PURCHASER the Deposit paid hereunder with interest earned thereon, if any.

### ARTICLE III

#### ***SALE OF SUBJECT PROPERTY***

Section 3.1 Terms of Sale. SELLER agrees to sell the Subject Property to PURCHASER and PURCHASER agrees to purchase and take the Subject Property from SELLER, on the Closing Date (as defined in Section 4.1 below), subject to the terms and conditions of this Agreement and

(a) Any state of facts, including changes in street lines or grades, which an accurate survey or personal inspection may show, which does not render the title uninsurable unless such facts, changes in street lines or grades were caused or created by the PURCHASER in connection with the Project which results in the Subject Property being uninsurable.

(b) The Zoning Ordinance and all municipal codes and regulations and violations thereof, which do not render the title uninsurable.

(c) Rights-of-way of record, restrictive covenants of record, easements of record, and storm, sanitary sewer, utility and water lines servicing or affecting the Subject Property.

(d) No title to land lying in any street in front of or adjoining said Subject Property is included in this sale.

Section 3.2 Subject Property. The Subject Property shall mean and include:

(a) The Subject Property and all of the buildings, structures, foundations, footings, fixtures and other improvements existing thereon on the date hereof.

(b) Any and all equipment, inventory, supplies, articles of personal property, free and clear of any liens or claims whether tangible or intangible, which are attached, appurtenant to, installed or placed in or upon or used for or adapted in any way to the Subject Property.

(c) All right, title and interest, if any, of SELLER in and to any land lying in the bed of any highways, street, road or avenue, open or proposed, including vaults, if any, any strips and gores in front of or adjoining the Property, and all right, title and interest of SELLER in

and to the award made or to be made in lieu thereof and in and to any unpaid award for damages to the Subject Property by reason of any change of grade of any highway, street, road or avenue adjoining the Subject Property.

(d) All right, title and interest of SELLER in and to all licenses, permits, franchises and approvals, resolutions or consents (to the extent they may be transferred or assigned) issued or made by any federal, state or municipal authority relating to the development, rehabilitation or use of the Subject Property, running to or in favor of SELLER, its successors and assigns.

Section 3.3. Purchase Price. The purchase price (the "Purchase Price") is FIVE MILLION AND 00/100 DOLLARS (\$5,000,000.00), payable as follows:

(a) By PURCHASER's check payable to the Village of Mamaroneck Clerk-Treasurer, as escrow agent, (subject to collection) in the amount of FIVE THOUSAND AND 00/100 DOLLARS (\$5,000.00) (the "Deposit"), delivered on the date of execution and delivery of this Agreement. The Deposit shall be held in escrow by Escrow Agent upon the terms and conditions set forth in Section 16.24 hereof. Any interest or other proceeds of the investment of the Deposit shall be the property of the SELLER except as otherwise set forth herein; and

(b) The balance of FOUR MILLION AND NINE HUNDRED AND NINETY-FIVE THOUSAND AND 00/100 DOLLARS (\$4,995,000.00), to be paid at the Closing, less the actual costs incurred by Purchaser to cure the Title Defects or Additional Title Defects set forth in Section 14.2 to be paid at Closing.

(c) Notwithstanding any provision to the contrary, SELLER shall reinvest FOUR MILLION, FIVE HUNDRED SIXTY-TWO THOUSAND, SEVEN HUNDRED AND SEVENTY-FIVE 00/100 DOLLARS (\$4,562,775.00) towards the construction of the Public Parking (the "Public Parking Funds"). The SELLER shall make available and deliver the Public Parking Funds to the PURCHASER at Closing. At Closing, in exchange for the Public Parking Funds, the PURCHASER shall provide the SELLER with an easement for the Public Parking for a period of not less than ninety nine (99) years. The easement shall describe the responsibilities and obligations of the parties as to the maintenance and operation of the Public Parking. This Section 3.3 (c) shall survive the Closing.

Section 3.4. Acceptable Funds. All monies payable under this Agreement, unless otherwise specified, shall be either:

(a) Good certified check of PURCHASER, or official check of any bank, savings bank or trust company having a banking office in the State of New York, payable to the order of SELLER, or as SELLER may direct;

(b) Money payable to SELLER at the Closing, other than the purchase price, may be by check of PURCHASER up to the amount of \$2,000.00; or

(c) As otherwise agreed to by SELLER or SELLER's attorney.

Section 3.5 Closing Adjustments.

(a) The following shall be adjusted as of the Closing Date:

- (i) real estate taxes and any other state, county or municipal charges, if any;
- (ii) any special assessments;
- (iii) water, gas, electric and sewer charges, it being agreed that PURCHASER shall obtain prior to Closing final readings of all metered accounts.

(b) If the Closing shall occur before a new tax rate is fixed, the apportionment of taxes shall be upon the basis of the old tax rate for the preceding period applied to the latest assessed valuation. Any errors or omissions in computing apportionments at Closing shall be corrected. This provision shall survive the Closing for a period of six months.

Section 3.6 Closing Costs. All real property transfer taxes payable by reason of the conveyance of title as provided for in this Agreement and any costs related to the recordation of the Deed shall be paid by SELLER. PURCHASER shall pay the costs of any title insurance or surveys obtained by PURCHASER. All other closing costs not specifically allocated by this Agreement shall be allocated in accordance with local custom in Westchester County, as determined by the Title Company.

Section 3.7 Credits, Payments from Purchase Price. SELLER shall adjust the amount of any unpaid taxes, assessments, water charges and sewer charges, together with any interest and penalties thereon on the Subject Property and incurred prior to 11:59 p.m. on the day prior to the Closing Date. If there is anything else affecting the sale, which SELLER is obligated to pay and discharge at Closing, SELLER may use any portion of the purchase price to discharge it. Upon request, made within a reasonable time before the Closing, the PURCHASER agrees to provide separate certified checks up to a maximum of six (6) as requested to assist in clearing up any such matters.

#### ARTICLE IV

#### ***CLOSING; CONDITIONS OF CLOSING***

Section 4.1 Time and Place of Closing. The Closing shall take place at the offices of the \_\_\_\_\_, or at the offices of PURCHASER's mortgage lender or of said lender's attorneys in the State of New York, at 10:00 A.M., on a date determined in accordance with Section 4.2 below.

Section 4.2 Date of Closing. Unless otherwise extended by SELLER under Section 14.2 hereof, the Closing shall occur on the first business day after the later of the following: (i) the expiration of one hundred eighty (180) calendar days from receipt of the last of the Final Governmental Approvals required for the Project or (ii) the expiration of sixty (60) calendar days from issuance of a building permit from the Building Department for the construction of the Improvements; and, provided that Purchaser has complied with all of its obligations under Section 13.1 hereof, such date being herein referred to as the "Closing Date"; provided that such date shall be no later than \_\_\_\_\_ (the "Outside Date").

Section 4.3. Conditions of PURCHASER's Obligation to Close. The obligation of the PURCHASER to close hereunder is expressly conditioned upon the fulfillment by and as of the Closing Date of each of the conditions listed below, provided, however, that PURCHASER at its election, evidenced by notice delivered to SELLER prior to or at the Closing, may waive any or all of the following conditions:

4.3.1 All representations, warranties, acknowledgments and covenants made by SELLER in this Agreement shall be true and correct in all material respects at the date of Closing.

4.3.2 No laws, statutes, ordinances, governmental orders, regulations, rules or requirements shall have been enacted, adopted, issued or otherwise promulgated, and/or shall be in force, that would prevent or materially interfere with the rehabilitation, conversion or use of the Subject Property in accordance with this Agreement or the Governmental Approvals; and of which impediment PURCHASER has informed SELLER with reasonable promptness.

4.3.3 SELLER shall own good, marketable title to the Subject Property, and shall be able to convey good and marketable title to the Subject Property to PURCHASER pursuant to this Agreement, subject only to the Permitted Exceptions.

4.3.4 During the term of this Agreement, PURCHASER and its authorized representatives shall have the right and privilege to enter upon the Subject Property, for the purpose of gathering such information and conducting such customary environmental and engineering studies or other tests and reviews as PURCHASER may reasonably deem appropriate and necessary (including, but not limited to, performing engineering and Phase I and Phase II environmental studies) and such other matters as PURCHASER shall deem reasonably necessary or appropriate to determine, in PURCHASER's sole, but reasonable discretion, that the Subject Property can be feasibly developed as contemplated herein. All such inspections, studies, tests and reviews shall be at PURCHASER's sole expense.

4.3.5 PURCHASER shall have obtained all necessary Governmental Approvals needed to complete the Improvements and to operate the completed Project on the Subject Property as contemplated by this Agreement. SELLER agrees to use best efforts to assist PURCHASER in obtaining the Governmental Approvals.

4.3.6 PURCHASER shall have obtained financing and investor equity commitments, including a tax credit allocation, federal, state, and local funding commitments, including but not limited to the County New Homes Land Acquisition funding to pay the Purchase Price, which are sufficient in the reasonable judgment of PURCHASER to acquire the Subject Property and construct the Improvements as contemplated herein (collectively, the "Financing Commitments").

4.3.7 The Zoning Ordinance shall not have been amended in a way that negatively impacts the Project.

4.3.8 PURCHASER shall have obtained a payment in lieu of taxes agreement ("PILOT Agreement") from each affected tax jurisdiction that is substantially similar to the real property tax benefits provided to similar developers of affordable housing in the County of Westchester and that is acceptable to PURCHASER in its sole discretion.

4.3.9 At Closing, the SELLER shall have made available the Public Parking Funds.

If at any time during the term of this Agreement, PURCHASER determines in its sole discretion, that any of the Conditions to Close cannot be feasibly satisfied, PURCHASER shall promptly notify SELLER in which event this Agreement shall be null and void and the Deposit shall be promptly refunded to PURCHASER and neither party shall have any further rights or obligations under this Agreement, except for those that expressly survive termination.

Section 4.4 Conditions of SELLER's Obligation to Close. The obligation of SELLER to close hereunder is expressly conditioned upon the fulfillment by and as of the Closing Date of each of the conditions listed below, provided, however, that SELLER at its election, evidenced by notice delivered to PURCHASER prior to or at the Closing, may waive any or all of the following conditions:

4.4.1 All representations, warranties, acknowledgments and covenants made by PURCHASER in this Agreement shall be true and correct in all material respects at the date of Closing.

4.4.2 No laws, statutes, ordinances, governmental orders, regulations, rules or requirements shall have been enacted, adopted, issued or otherwise promulgated, and/or shall be in force, that would prevent or materially interfere with the rehabilitation, conversion or use of the Subject Property in accordance with this Agreement and the Conceptual Development Plan, as same may be modified or amended during the Governmental Approvals process in accordance with this Agreement, and of which impediment SELLER has informed PURCHASER with reasonable promptness.

Section 4.5 Closing Transactions. The following transactions and deliveries shall occur at the Closing:

4.5.1. SELLER shall deliver:

(a) A statutory form of bargain and sale deed (the "Deed"), with covenant against grantor's acts in statutory form, signed and acknowledged by SELLER in proper form for recording so as to convey the title required by this Agreement. The Deed shall be delivered to the Title Company at the Closing for recordation.

(b) A TP-584 form pertaining to the transfer of the Subject Property, signed by SELLER.

(c) Such customary affidavits pertaining to title as the PURCHASER's or its lender's title insurer may reasonably require.

(d) Certified resolution(s) of SELLER authorizing the conveyance of the Subject Property to the PURCHASER.

(e) Any and all documents, registrations, keys, originals of expired leases or occupancy agreements with current tax bills, etc., used in or applicable to the operation and maintenance of the Subject Property, as is.

(f) A resolution of the Seller's Board of Trustees authorizing the PILOT Agreement.

(g) The Public Parking Funds.

4.5.2 At the Closing PURCHASER shall:

(a) Deliver to SELLER good certified or official bank checks in the amount of FOUR MILLION AND NINE HUNDRED AND NINETY-FIVE THOUSAND AND 00/100 DOLLARS (\$4,995,000.00) as payment of the portion of the Purchase Price payable at the Closing, as adjusted for the Public Parking Funds, Title Credits, apportionments and credits as herein provided.

(b) Cause the Deed to be recorded, duly complete all required real property transfer tax returns and cause all such returns and checks in payment of such taxes, if any, to be delivered to the appropriate officers promptly after the Closing.

(c) Deliver an easement to Seller for the Public Parking.

## ARTICLE V

### *PLANS*

Section 5.1 PURCHASER'S Proposal. PURCHASER's proposed plans for the Improvements are attached hereto as **Schedule B** and have been initialed by the Manager and set

forth the PURCHASER architect's renderings and PURCHASER's description of the program of Improvements to be developed ("Conceptual Development Plan").

Section 5.2 This Article V shall survive the Closing.

ARTICLE VI

***INTENTIONALLY OMITTED.***

ARTICLE VII

***ADDITIONAL AGREEMENTS BETWEEN THE PARTIES***

Section 7.1 Governmental Approvals.

7.1.1 PURCHASER is responsible for obtaining all Governmental Approvals. As soon as practicable after the date hereof, PURCHASER shall apply for, and shall pursue with due diligence, all Governmental Approvals.

7.1.2 SELLER agrees to use best efforts to assist PURCHASER in obtaining the Governmental Approvals.

7.1.3 The cost of obtaining the Governmental Approvals shall be paid by PURCHASER.

7.1.4 Provided that SELLER shall have acted in good faith in the consideration of the applications for Governmental Approvals and used best efforts to assist PURCHASER in obtaining the Governmental Approvals, SELLER shall have the option to terminate this Agreement in the event that the PURCHASER shall fail to obtain the Governmental Approvals required to construct the Improvements on or before [\_\_\_\_\_, 20\_\_]. Upon such termination by SELLER, PURCHASER shall receive a refund of so much of the Deposit as shall not have become non-refundable pursuant to Section 16.24(b) below, in which event neither party shall thereafter have any further rights against, or obligations or liabilities to, the other by reason of this Agreement.

Section 7.2 Utility Lines. The parties agree that the utility lines serving the Improvements will be installed underground.

ARTICLE VIII

***INTENTIONALLY OMITTED***

ARTICLE IX

***PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER***

Section 9.1 Representations as to Redevelopment. PURCHASER represents and agrees that its purchase of the Subject Property and its other undertakings pursuant to this Agreement are (and the Subject Property, when purchased, shall be used for) the purpose of redevelopment and not for speculation. PURCHASER further recognizes that in view of:

9.1.1 The importance of the redevelopment of the Subject Property to the SELLER, and the general welfare of the Village of Mamaroneck; and

9.1.2 The substantial expenditures and other public commitments made and to be made by the Village of Mamaroneck for the purpose of making such redevelopment possible, the qualifications and identity of PURCHASER are of particular concern to the community and the Village. PURCHASER further recognizes that it is because of such qualifications and identity that SELLER is entering into this Agreement with PURCHASER, and in so doing, is further willing to accept and rely upon the obligations of PURCHASER for the faithful performance of all undertakings and covenants by it to be performed hereunder.

Section 9.2 Permitted Assignment. Notwithstanding any provision to the contrary, prior to the Closing, PURCHASER may freely assign its interest in this Agreement or the Subject Property to an Affiliate without the prior written approval or consent of the SELLER.

## ARTICLE X

### ***INTENTIONALLY OMITTED***

## ARTICLE XI

### ***REPRESENTATIONS***

Section 11.1 Representations of PURCHASER. In order to induce SELLER to enter into this Agreement, PURCHASER hereby represents and warrants, with full knowledge that SELLER shall rely on such representations and warranties, that (a) PURCHASER is a duly formed and validly existing not for profit corporation duly qualified to do business in the State of New York and has full power and authority to consummate the transactions contemplated hereby; (b) this Agreement has been duly authorized by all necessary action on the part of PURCHASER and has been duly executed and delivered by PURCHASER and neither the execution and delivery hereof, nor compliance with the terms and provisions hereof (1) requires the approval and consent of any Governmental Agency or any other entity or person, except such as have been duly obtained or shall be obtained prior to Closing; (2) contravenes any existing law, judgment, governmental rule, regulation or other applicable to or binding on PURCHASER (except, and to the extent, that any of the same are to be modified through Governmental Approvals as herein contemplated), or (3) contravenes or results in any breach of or, except as contemplated by this Agreement, results in the creation of any lien or encumbrance upon any property of PURCHASER under any indenture, mortgage, deed of trust, bank loan or credit agreement, applicable ordinances, resolutions or, on the date of this Agreement, any other Agreement or instrument to which

PURCHASER is a party, specifically including any covenants of any bonds, notes, or other forms of indebtedness of PURCHASER outstanding on the date hereof; and (e) this Agreement constitutes a legal, valid and binding obligation of PURCHASER enforceable against PURCHASER in accordance with the terms thereof except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratoriums or similar laws affecting the enforcement of creditors' rights generally and by legal and equitable limitations on the enforceability of specific remedies.

Section 11.2 Representations of SELLER. In order to induce PURCHASER to enter into this Agreement, SELLER hereby represents and warrants, with full knowledge that PURCHASER shall rely on such representations and warranties, that (a) SELLER has full power and authority to consummate the transactions contemplated hereby; (b) this Agreement has been duly authorized by all necessary action on the part of SELLER, and has been duly executed and delivered by SELLER; neither the execution and deliver thereof, nor compliance with the terms and provisions thereof (1) requires the approval and consent of any Governmental Agency or any other entity or person, except such as have been duly obtained or such as are Governmental Approvals to be obtained; (2) contravenes any existing law, judgment, governmental rule, regulation or order applicable to or binding on SELLER (except, and to the extent, that any of the same are to be modified through Governmental Approvals as contemplated herein), or (3) contravenes or results in any breach of or, except as contemplated by this Agreement, results in the creation of any lien or encumbrance upon any property of SELLER under any indenture, mortgage, deed of trust, bank loan or credit agreement, applicable ordinances, resolutions or, on the date of this Agreement, any other Agreement or instrument to which SELLER is a party, specifically including any covenants of any bonds, notes or other forms of indebtedness of SELLER outstanding on the date hereof; (c) this Agreement constitutes a legal, valid and binding obligation of SELLER, enforceable against SELLER in accordance with the terms thereof; (d) SELLER has received no notice of and has no knowledge of any actual or proposed taking in condemnation of all or any part of the Subject Property, or dedication of same to any public or quasi-public use; and (e) there are no current leases affecting the Subject Property, and Seller has no actual knowledge of any rights of possession which would survive the Closing hereunder. SELLER covenants that all of the representations set forth in this Agreement will be true and correct at the time of Closing.

Section 11.3 No Other Representations. Each of the parties to this Agreement acknowledges to the other that, except as otherwise specifically provided herein, (a) no representations, statement or warranties, express or implied, have been made by, or on behalf of, any such party with respect to such party or with respect to the Subject Property, or with respect to the transactions contemplated by this Agreement, and (b) it has not relied on such representations, statements or warranties.

Section 11.4 Subject Property "As Is". PURCHASER has inspected the Subject Property, or caused an inspection thereof to be made on PURCHASER's behalf. PURCHASER is thoroughly acquainted with the condition of the Subject Property and the improvements located therein, if any, including, but not limited to soil, drainage, and the sub-surface conditions beneath the Subject Property, PURCHASER acknowledges that neither SELLER nor any person acting

or purporting to act for SELLER has made or now makes any representations or warranties, and that SELLER is unwilling to make any representations and has held out no inducements to PURCHASER other than those expressed herein. Without limiting the generality of the foregoing, PURCHASER has not relied on any representations or warranties, and SELLER has not made any representations or warranties in either case express or implied, as to (i) the current or future real estate tax liability, assessment or valuation of the Subject Property, (ii) the potential qualification of the Subject Property for any and all benefits conferred by federal, state or municipal laws, whether for subsidies, special real estate tax treatment, insurance, mortgages, or any other benefits, whether similar or dissimilar to those enumerated; (iii) the compliance of the Subject Property in its current or any future state with applicable zoning ordinances and the ability to obtain a variance in respect to the Subject Property's non-compliance, if any, with said zoning ordinances; (iv) the availability of any financing for the purchase, alteration, rehabilitation or operation of the Subject Property from any source, including but not limited to State, local or Federal government or any institutional lender; (v) the current or future use of the Subject Property; (vi) the present and future condition and operating state of any and all machinery or equipment on the Subject Property and the present or future structural and physical condition of the Subject Property or its suitability for rehabilitation or renovation; (vii) the ownership or state of title of any personal property on the Subject Property; (viii) the presence or absence of any rules or notices of violations of law issued by any Governmental Agency; (ix) the layout, leases, rents, income, expenses or operation of the Subject Property; (x) financial statements; or (xi) any other matter or thing affecting or relating to the Subject Property. SELLER is not liable or bound in any manner by any verbal, or written statements, representations, real estate brokers' "set-ups" or information pertaining to the Subject Property or the operation, layout, expenses, condition, income, leases or rents furnished by any real estate broker, salesman, agent, employee, or other person, unless the same are specifically set forth herein. PURCHASER agrees to take the Subject Property "as is", and in its present condition, subject to any deterioration of any kind, nature or extent, between the date hereof and the Closing Date. SELLER shall have no obligation to make any repairs to the Subject Property of any nature or description between the date hereof and the Closing Date.

## ARTICLE XII

### ***DEFAULT AND REMEDIES; TERMINATION***

Section 12.1 Events of Default by PURCHASER. The occurrence of any of the following at or prior to Closing shall be an "Event of Default" by PURCHASER under this Agreement:

12.1.1 Failure of the PURCHASER to proceed to Closing when and in the manner required to do so under the terms and conditions of this Agreement and/or to pay the Purchase Price in the amounts and at the times herein set forth;

12.1.2 The failure of PURCHASER to pay any sum to SELLER required to be paid by PURCHASER under this Agreement (other than the Purchase Price) when the same shall become due and payable and such failure shall continue for thirty (30) days after notice from SELLER to PURCHASER;

12.1.3 If PURCHASER shall admit, in writing, that it is unable to pay its debts as they become due;

12.1.4 If PURCHASER shall make an assignment for the benefit of creditors;

12.1.5 If PURCHASER shall file a voluntary petition under the Bankruptcy Code of the United States, or if such petition shall be filed against PURCHASER and an order for relief shall be entered, or if PURCHASER shall file a petition or an answer seeking, consenting to or acquiescing in, any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code, or any other present or future applicable Federal, State or other bankruptcy or insolvency statute or law, or shall seek, or consent to, or acquiesce in the appointment of, any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of PURCHASER, or of all or any substantial part of its properties;

12.1.6 If within ninety (90) days after the commencement of a proceeding against PURCHASER seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, State or other bankruptcy or insolvency statute or law, such proceeding shall not be dismissed, or if, within ninety (90) days after the appointment, without the consent or acquiescence of PURCHASER, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of PURCHASER, or of all or any substantial part of its properties, such appointment shall not be vacated or stayed on appeal or otherwise, or if, within ninety (90) days after the expiration of any such stay, such appointment shall not be vacated;

12.1.7 If any of the representations made by PURCHASER in Section 11.1 of this Agreement shall be false or incorrect, in any material respect, and PURCHASER shall fail to cause, within thirty (30) days following notice of such misrepresentation to PURCHASER by SELLER, such misrepresentation to become true and correct as of a date within such thirty (30) day period;

12.1.8 Intentionally omitted; or

12.1.9 If PURCHASER shall fail to observe or perform one or more of the other terms, conditions, covenants or agreements contained in this Agreement and such failure shall continue for a period of thirty (30) days after written notice thereof by SELLER to PURCHASER specifying such failure, unless and to the extent that such failure requires work to be performed, acts to be done, or conditions to be removed which cannot by their nature or because of Unavoidable Delays reasonably be performed, done or removed, as the case may be, within such thirty (30) day period, in which case no Event of Default shall be deemed to exist as long as PURCHASER shall have commenced curing the same within such thirty (30) day period and shall, subject to Unavoidable Delays, diligently and continuously prosecute the same to completion.

## Section 12.2 Remedies of SELLER

12.2.1 If an Event of Default by PURCHASER shall have occurred and shall not have been remedied within any applicable grace period provided in Section 12.1 hereof, SELLER shall have the right, at its option, and in addition to all other rights and remedies available to SELLER at law or in equity, to terminate this Agreement by giving thirty (30) days' written notice thereof to PURCHASER, and upon the expiration of such notice period this Agreement shall be deemed terminated.

12.2.2 In the event this Agreement shall be terminated by SELLER in connection with an Event of Default hereunder, then (a) SELLER shall be entitled to retain the Deposit, as liquidated damages for PURCHASER's default; and, in addition thereto, (b) PURCHASER shall pay to SELLER the reasonable costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by SELLER in terminating this Agreement, and upon the occurrence of the payments required under clauses (a) and (b) above, neither party shall have any further obligation under this Agreement.

Section 12.4 Events of Default by SELLER. The occurrence of any of the following shall be an "Event of Default" by SELLER under this Agreement:

12.4.1 The failure of SELLER to pay any sum to PURCHASER required to be paid by SELLER hereunder when the same shall become due and payable and such failure shall continue for thirty (30) days after written notice from PURCHASER to SELLER, including, but not limited to the Public Parking Funds;

12.4.2 Failure to proceed to Closing when and in the manner required to do so under the terms and conditions of this Agreement.

12.4.3 If any of the representations made by SELLER in Section 11.2 of this Agreement shall be false or incorrect in any material respect, and SELLER shall fail to cause, within thirty (30) days following notice of such misrepresentation to SELLER by PURCHASER, such representation to become true and correct as of a date within such thirty (30) day period; or

12.4.4 If SELLER shall fail to observe or perform one or more of the other terms, conditions, covenants or agreements contained in this Agreement, including without limitation, resolving Title Defects and Additional Title Defects in the time periods set forth herein, and such failure shall continue for a period of thirty (30) days after notice thereof by PURCHASER to SELLER specifying such failure, unless such failure requires work to be performed, acts to be done, or conditions to be removed which cannot by their nature or because of Unavoidable Delays reasonably be performed, done or removed, as the case may be, within such thirty (30) day period, in which case no Event of Default shall be deemed to exist as long as SELLER shall have commenced curing the same within such thirty (30) day period, and shall, subject to Unavoidable Delays, diligently and continuously prosecute the same to completion; or

12.4.5 Failure to commit the Public Parking Funds towards the construction of Public Parking.

Section 12.5 Remedies of PURCHASER. If an Event of Default by SELLER, shall have occurred and shall not have been remedied within any applicable grace period as provided in Section 12.4.4, PURCHASER may, at its option, (a) terminate this Agreement by giving thirty (30) days' notice thereof to SELLER, and upon the expiration of such notice period and SELLER's failure to cure such Event of Default, this Agreement shall be deemed terminated, the Deposit refunded to PURCHASER, and SELLER shall reimburse PURCHASER for reasonable out of pocket expenses related to the Subject Property and its performance under this Agreement, including, but not limited to, pursuing the Governmental Approvals, and pay to PURCHASER the reasonable costs and expenses, including, without limitation, reasonable attorneys' fees and disbursement, incurred by PURCHASER, including in-house counsel, in terminating this Agreement and neither party shall have any further obligations hereunder (except such obligations which survive the expiration or termination of this Agreement as expressly provided hereunder) or (b) enforce the obligations of SELLER hereunder by legal or equitable action, including by action for specific performance, and, SELLER shall reimburse PURCHASER for reasonable out of pocket expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by PURCHASER, including in-house counsel, related to enforcing the obligations of SELLER hereunder by legal or equitable action, including by action for specific performance.

Section 12.6 Strict Performance. No failure by SELLER or PURCHASER to insist upon the other party's strict performance of any covenant, agreement, term or condition of this Agreement, or to exercise any right or remedy available to such party, and no payment or acceptance of full or partial performance during the continuance of any Event of Default, shall constitute a waiver of any such Event of Default. No covenant, agreement, term or condition of this Agreement to be performed or complied with by either party, and no default by either party, shall be waived, altered or modified, except by a written instrument executed by the other party. No waiver of any default shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent default.

### ARTICLE XIII

#### ***INTENTIONALLY OMITTED***

### ARTICLE XIV

#### ***PERMITTED EXCEPTIONS, OBJECTIONS TO TITLE***

Section 14.1 Permitted Exceptions. Except as provided herein below, the Subject Property shall be free and clear of all liens and encumbrances and insurable by a national title company of PURCHASER's choosing (the "Title Company") subject at the time of the Closing only to the matters (the "Permitted Exceptions") set forth below:

(a) The provisions of the Zoning Ordinance and any and all other applicable provisions of municipal ordinances, regulations and public laws.

(b) Licenses and easements for public utilities and the rights of any utility company to maintain and operate lines, conduits, cables and distribution boxes in, upon or over the Subject Property.

(c) State of facts set forth in survey attached hereto and made a part hereof.

Section 14.2 Survey. Prior to Closing, PURCHASER shall deliver to SELLER a mete and bounds survey of the Subject Property (the "Survey"). At Closing, such Survey shall be certified to SELLER, PURCHASER, the Title Company and any others as required by PURCHASER'S lender. The parties acknowledge that PURCHASER has delivered to SELLER title commitments from the Title Company requiring that SELLER act to clear title to the Subject Property (the "Title Defects"). SELLER agrees that, at its cost, it shall resolve the Title Defects within 3 months of the Effective Date with the effect that SELLER can deliver title to the Subject Property as described in Section 14.1. PURCHASER agrees to cooperate with SELLER, at no cost to PURCHASER, on the resolution of the Title Defects, which may include obtaining title insurance from a different title insurance company, as long as such company is nationally recognized and is acceptable to PURCHASER'S investors and mortgage lenders.

Section 14.3 Title Report. PURCHASER shall promptly order (i) a search of title to the Subject Property and (ii) the Survey. Such Survey shall be certified to SELLER, PURCHASER, PURCHASER's title insurance company and any others as required by PURCHASER's lender. Promptly upon the receipt of such title report and Survey, PURCHASER shall deliver a copy to SELLER. SELLER shall have the right to cure or remedy any exception or objection to title subject to which PURCHASER is not required to take title hereunder ("Title Exceptions"), and, for such purpose, shall be entitled to reasonable adjournments of closing of title from time to time, not to exceed, in the aggregate, sixty (60) days. However, and notwithstanding any provision to the contrary, in the event PURCHASER agrees to waive, cure or remedy a Title Exception, PURCHASER shall receive a TEN THOUSAND U.S. DOLLARS (\$10,000.00) credit for each Title Exception it waives, cures, or remedies ("Title Credits"). SELLER shall not be obligated to clear any such Title Exceptions or to incur expenditures for such purpose; but PURCHASER may elect to close subject to such Title Exceptions and accept the Title Credits. In the event that any update of such title report or of the Survey is received with respect to the Subject Property indicating any title exceptions impacting the Subject Property, other than the Permitted Title Exceptions ("Additional Title Defects"), PURCHASER agrees that within five (5) business days after it receives such updated title report or updated survey, it will provide a copy or copies thereof to SELLER. SELLER shall have five (5) business days to determine whether it wishes to attempt to remove such Additional Title Defects. If SELLER is unable or unwilling to cure or attempt to cure any such matters, SELLER shall give notice to PURCHASER within such five (5) business day period, but if no such notice is given, SELLER shall be deemed to be unwilling to cure any such Additional Title Defects. If SELLER does not agree to attempt to cure the Additional Title Defects within such five (5) business day period, or if SELLER fails to timely cure the Title

Defects within the reasonable adjournment period, not to exceed sixty (60) days in the aggregate, PURCHASER may (i) cure the Title Defects and the Additional Title Defects and apply its actual cost in doing so or the value of the Title Credits, whichever is greater, against the Purchase Price at Closing or (ii) cancel this Agreement and pursue the remedies set forth in Section 12.5 of this Agreement.

Section 14.4 Possession. The Subject Property shall be delivered by SELLER to PURCHASER at Closing free and clear of all leases, licenses, liens, tenancies, and occupants and all utility services have been shut off and disconnected.

## ARTICLE XV

### ***ACCESS TO SUBJECT PROPERTY***

Section 15.1 Right of Entry. SELLER hereby grants PURCHASER, its Affiliates, contractors, subcontractors, architects, agents and prospective mortgagees, the right to enter the Subject Property together with workers and materials at any time prior to the Closing Date for the following purposes, and with prior written notice to SELLER:

- (a) To make physical inspections of the Subject Property, including subsurface tests, soil test borings, water survey, topographical surveys, sewage disposal survey and draining determination.
- (b) To make any and all inspections, tests, probes, surveys and appraisals.
- (c) To conduct and to carry out any and all engineering studies and operations that are necessary to carry out the intent of this Agreement.

Section 15.2 Indemnification. PURCHASER shall indemnify, defend and save SELLER, and each of their officers, elected officials, appointed officials, directors, employees, agents and representatives (the "Indemnitees"), harmless from any and all loss, costs, damages, expenses and attorneys' fees resulting from personal injury, property damage or loss of value of the Subject Property which Indemnitees may suffer or incur as a result of any entry or activities of PURCHASER, its Affiliates, employees, contractors, subcontractors, architects, agents, invitees and prospective mortgages pursuant to Section 15.1 of this Agreement, except PURCHASER shall not be liable for such indemnification for the negligent acts or omissions attributed to Indemnitees. The Deposit made hereunder shall stand as security for PURCHASER's obligations under this Section 15.2. The indemnification provided under this Section 15.2 shall survive for six months following: (i) Closing or (ii) the termination of this Agreement.

Section 15.3 Insurance. Prior to any such entry upon the Subject Property, PURCHASER shall furnish to SELLER duplicate original policies of workmen's compensation insurance covering all persons to be employed in connection therewith, including those to be employed by all contractors and subcontractors, and of comprehensive public liability insurance (including property damage coverage) in which SELLER shall be named as an additional insured,

which policies shall be issued by companies, and shall be in form and amounts, as are reasonably satisfactory to SELLER.

## ARTICLE XVI

### *MISCELLANEOUS*

#### Section 16.1 Discharge of Liens.

16.1.1 Prior to the Closing, and subject to the provisions of the last sentence of Section 16.1.2, neither PURCHASER nor SELLER shall create or permit to be created or allow to continue any lien, encumbrance or charge upon the Subject Property or any part thereof, nor suffer any other matter or thing whereby the estate, right and interest of PURCHASER or SELLER, as the case may be, in the Subject Property or any part thereof might be impaired.

16.1.2 Prior to the Closing, if any lien at any time shall be filed in violation of the obligation of PURCHASER or SELLER, as the case may be, pursuant to Paragraph 16.1.1 hereof, then within ninety (90) days after notice of the filing thereof, such party shall cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If such party shall fail to cause such lien to be discharged of record within the period aforesaid, and if such lien shall continue for an additional thirty (30) days after notice by PURCHASER or SELLER, as the case may be, to the party so failing, then, in addition to any other right or remedy, the party giving such notice may but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings, and in any such event, PURCHASER or SELLER, as the case may be, shall be entitled, if such party so elects, to compel the prosecution of an action for the foreclosure of such lien by the lienor and to pay the amount of judgment in favor of the lienor with interest, cost and allowances. Any amount so paid by PURCHASER or SELLER, as the case may be, including all reasonable costs and expenses incurred by it in connection therewith, including reasonable attorneys' fees, together with interest thereon at the maximum legal rate permitted by State law, from the respective dates of the making of such payment or incurring of such costs and expenses, shall be paid within ten (10) days after demand by the party which was responsible for causing the lien to be discharged but failed to do so. Notwithstanding the provisions of this Paragraph 16.1.2, neither PURCHASER nor SELLER shall be required to discharge any such lien if it is in good faith contesting the same and has furnished a cash deposit or a surety bond or other security reasonably satisfactory to the other in an amount sufficient to pay such lien with interest and penalties.

Section 16.2 Conflict of Interest. No officer, director, member, official or employee of SELLER shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership or other entity in which he is, directly or indirectly, interested.

Section 16.3 Exclusivity and Right of First Refusal. In the event this

Agreement is terminated because the Village fails to provide Governmental Approvals or SELLER fails to approve and deliver a PILOT Agreement or otherwise due to the default of SELLER, and, within seven (7) years of such termination, the SELLER intends to approve the development of any portion of the Subject Property as housing, PURCHASER shall be given a right of first refusal to develop the Subject Property under the same terms and conditions then offered by the SELLER to redevelop the Subject Property. This Section 16.3 shall survive the termination or expiration of this Agreement.

Section 16.4 Intentionally omitted.

Section 16.5 Consents and Governmental Approvals. All consents and approvals, which may be given under this Agreement, shall, as a condition of their effectiveness, be in writing. The granting of any consent or approval by a party to perform any act requiring consent or approval under the terms of this Agreement or the failure on the part of a party to object to any such action taken without the required consent or approval shall not be deemed a waiver by the party whose consent was required of its right to require such consent or approval for any further similar act.

Section 16.6 SELLER's Project Representative. SELLER hereby appoints the \_\_\_\_\_ and his or her designee as its project representative for this Agreement and for the Project who will be responsible for coordinating the SELLER's activities hereunder with PURCHASER and Governmental Agencies. SELLER will notify PURCHASER prior to appointing any substitute representative.

Section 16.7 Intentionally omitted.

Section 16.8 No Broker. PURCHASER and SELLER each represent and warrant that no broker to whom a commission, fee or other compensation is payable is or has been involved in or brought about the transactions contemplated by this Agreement. Each of said parties shall indemnify and hold the others harmless from any and all claims, obligations, liabilities, costs or expense (including reasonable attorneys' fees) incurred as a result of any claim for brokerage commissions, fees or other compensation by any person or entity which alleges having acted or dealt with the indemnifying party in connection with the Project or the transactions contemplated by this Agreement. The parties' obligations under this Section shall survive the Closing and any termination of this Agreement.

Section 16.9 Recording. Except as provided below, no party shall cause this Agreement or a memorandum hereof to be recorded without the prior written consent of the other.

Section 16.10 Relationship of Parties. This Agreement is not be construed to create a partnership or joint venture between the parties hereto.

Section 16.11 All Notices, Communications, Etc. in Writing. Whenever it is provided herein that notice, demand, request, consent, approval or other communication (a "notice") shall or may be given to, or served upon, any of the parties by any other(s), or whenever

any of the parties desires to give or serve upon the other(s) any notice, each such notice shall be in writing and shall be effective for any purpose only if given or served by personal delivery, with acknowledgment of receipt or by certified mail, postage prepaid, return receipt requested, addressed as follows:

If to SELLER:

If to PURCHASER:

Washingtonville Housing Alliance, Inc.  
136 Library Lane  
Mamaroneck, New York 10543

With copies to:

Westhab, Inc.  
8 Bashford Street  
Yonkers, New York 10701  
Attention: President and CEO

And

Westhab, Inc.  
8 Bashford Street  
Yonkers, New York 10701  
Attention: General Counsel

If to Escrow Agent:

Section 16.12. Intentionally omitted.

Section 16.13 Negotiated Document. The parties acknowledge that the provisions and language of this Agreement have been negotiated, and agree that no provision of this Agreement shall be construed against any party by reason of such party having drafted such provision of this Agreement.

Section 16.14 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

Section 16.15 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and

the same instrument, and any of the parties or signatories hereto may execute this Agreement by signing any such counterpart. This Agreement may be signed in any manner that clearly evidences the parties' intent to be bound, including via faxed, imaged, .PDF, electronic or digital signatures.

Section 16.16 Captions. The captions of this Agreement are for the purpose of convenience of reference only, and in no way define, limit or describe the scope or intent of this Agreement or in any way affect this Agreement.

Section 16.17 Gender, Etc. As used in this Agreement, the masculine shall include the feminine and neuter, the singular shall include the plural, and the plural shall include the singular as the context may require.

Section 16.18 No Third Party Beneficiaries. Except as may be expressly provided to the contrary in this Agreement, nothing contained in this Agreement shall or shall not be construed to confer upon any person other than the parties hereto, any rights, remedies, privileges, benefits or causes of action to any extent whatsoever.

Section 16.19 Successors and Assigns. (a) The agreements, terms, covenants and conditions of this Agreement shall be binding upon and inure to the benefit of the SELLER and PURCHASER and, except as otherwise provided herein, their respective successors and permitted assigns.

(b) Wherever in this Agreement it is stated that a section, term or provision of this Agreement shall survive termination of this Agreement, survival shall apply to the parties hereto and each of their respective successors and assigns.

Section 16.20 Further Assurances. Each party hereto shall do all acts and things and make, execute and deliver such written instruments as shall from time to time be reasonably required to carry out the terms and provisions of this Agreement.

Section 16.21 No Amendment. Neither this Agreement nor any provisions hereof may be changed, modified, amended, supplemented, altered, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against who enforcement of the change, modification, amendment, supplement, alteration, waiver, discharge or termination is sought, and, if required by any mortgage document, the applicable lender has consented thereto.

Section 16.22 Separability. Unenforceability for any reason of any provision of this Agreement shall not limit or impair the operation or validity of any other provision of this Agreement and if any term or provision of this Agreement or the application thereof to any person or circumstance shall for any reason and to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances to which it is valid or enforceable, shall not be limited, impaired or otherwise affected thereby, and each term and provision of this Agreement shall be valid and enforced to the extent permitted by law.

Section 16.23 Risk of Loss. The provisions of Section 5-1311 of the General Obligations Law shall apply to the sale and purchase provided for in this Agreement. For the purpose of interpreting said Section 5-1311, neither a closing of the sale of the Subject Property in escrow, nor a license agreement for PURCHASER to perform work shall be deemed to constitute "legal title or possession of the Subject Property", it being agreed that until the fee title has been transferred to PURCHASER the provisions of Section 5-1311(a) (1) and (2) shall apply.

Section 16.24 Deposit in Escrow; Release. The Deposit made hereunder shall be held in escrow for the account of the SELLER by the Village of Mamaroneck Clerk-Treasurer ("Escrow Agent"), on the following terms and conditions:

(a) The Deposit shall be held in an interest bearing special bank or money market fund account or invested in United States treasury securities. Notwithstanding the foregoing, Escrow Agent shall not be liable to either party for any failure to obtain interest on the escrowed funds. Except in connection with an action, which may be commenced, as provided in subparagraph (d) no charges shall be imposed by the Escrow Agent.

(b) The Deposit shall be applied to the payment of the Purchase Price at Closing, and shall be refunded to PURCHASER prior to Closing only in the event that SELLER is unable to Close under the terms of this Agreement due to the fault of SELLER and PURCHASER is not in default hereunder.

(c) Upon Closing, the remainder of the Deposit and any interest earned thereon shall be paid to SELLER, principal only to be credited to the payment of the Purchase Price due hereunder.

(d) In the event of termination or cancellation of this Agreement in accordance with its terms, and written confirmation executed by SELLER of such termination or cancellation, the Deposit and any interest earned thereon shall be immediately paid to PURCHASER, unless such termination is as a result of PURCHASER's default.

(e) In the event of termination or cancellation of this Agreement for any reason herein not provided, then the Deposit and any interest earned thereon shall be paid only in the manner provided in a written instruction to the Escrow Agent, executed by both SELLER and PURCHASER. In the event of a dispute with respect to the Deposit held in escrow or in the absence of such joint written instruction to the Escrow Agent, then the Escrow Agent shall deposit the Deposit with a court of competent jurisdiction in an appropriate interpleader action naming both SELLER and PURCHASER.

(f) Upon the payment of the Deposit or any portion thereof pursuant to any provision hereof, the Escrow Agent shall be fully discharged and released from any and all further liability or obligation with respect to such portion of the Deposit.

(g) SELLER and PURCHASER each agree that the Escrow Agent shall be entitled to rely on such notices or certifications as may be furnished to it without inquiring into the

sufficiency or correctness thereof and without inquiring as to the application of any funds paid or disbursed pursuant to this Agreement, that the Escrow Agent is discharged and released from any and all responsibility or liability with respect to the Deposit deposited with it except for the willful malfeasance or gross negligence of the Escrow Agent, and that SELLER and PURCHASER shall jointly and severally indemnify the Escrow Agent and hold him harmless from any claims made against it with respect to the funds deposited in escrow hereunder.

Section 16.25 Entire Agreement. All understandings and agreements between the parties prior to the date hereof are merged herein. This Agreement fully and completely expresses the parties' agreement. This Agreement, together with the Exhibits hereto, contains all of the promises, agreements, conditions, inducements and understandings between the SELLER and PURCHASER concerning the Subject Property and the redevelopment thereof, and there are no promises, agreements, conditions, inducements or understandings, oral or written, expressed or implied, between them other than as expressly set forth herein and therein.

Section 16.26 Effectiveness. This Agreement shall not be binding or effective until executed and delivered by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

**VILLAGE OF MAMARONECK**

By: \_\_\_\_\_  
Name:  
Title:

**WASHINGTONVILLE HOUSING ALLIANCE, INC.**

By: \_\_\_\_\_  
Name:  
Title:

Agreed and accepted:

\_\_\_\_\_,  
as Escrow Agent

By: \_\_\_\_\_

**Acknowledgments**

STATE OF NEW YORK            }  
  } sash:  
COUNTY OF WESTCHESTER    }

On \_\_\_\_\_, 20\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK            }  
  } s.s.:  
COUNTY OF \_\_\_\_\_        }

On \_\_\_\_\_, 20\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

**LIST OF EXHIBITS TO BE ATTACHED HERETO AND MADE A PART  
HEREOF:**

**Schedule A: Metes and bounds description of the parcels comprising the Subject Property, and metes and bounds description of the whole.**

**Schedule B: Conceptual Development Plan Describing Improvements set forth in Section 2.1 and defined in Section 5.1.**

**SCHEDULE A**

**Subject Premises Property Description**

**SCHEDULE B**

**Conceptual Development Plan**

## Robert Spolzino

---

**From:** Michael Curti <michael.curti@westhab.org>  
**Sent:** Monday, September 23, 2024 5:19 PM  
**To:** Robert Spolzino  
**Cc:** Andrew Germansky; Richard Nightingale  
**Subject:** Hunter Tier MOU and LDA Sample  
**Attachments:** Hunter Terrace MOU - 9.23.24.docx; Hunter Tier LDA.docx

**Caution: This email originated outside of the organization**

---

I hope this email finds you well.

Attached, please find our proposed Hunter Terrace MOU/term sheet and example LDA. Please review with your client and let me know if you have any questions. We look forward to working with you and the rest of the Village team on this important development project. Best Regards, MVC

September 23, 2024

Memorandum of Understanding (the "MOU") – Confidential

**Overview:** This MOU between New York-based non-profit 501(c)(3) entities Washingtonville Housing Alliance, Inc. and Westhab, Inc. (collectively "WHA" and/or the "Purchaser") and The Village of Mamaroneck (the "Village" and/or the "Seller"), outlines the intended partnership between the two parties to re-develop the Hunter Tier parking lot in the Village of Mamaroneck adding affordable housing above a rebuilt parking structure (the "Development").

**Summary:** Pursuant to the official Request for Proposals: Hunter Tier All-Affordable Mixed-Use Development released by the Village on August 16, 2023 (the "RFP") and the affirmative vote of the Board of Trustees on September 10, 2024 to designate WHA as the preferred developer, the Purchaser is proposing to develop attractive, modern, and high-quality residential housing for lower-income households. The Development will meet a recognized need for affordable housing and make a substantial investment in the Village.

**Subject Property:** The development site is an existing parking lot currently owned and occupied by the Village of Mamaroneck, and located at 141 Prospect Avenue, Village of Mamaroneck, State of New York 10543 (Section 9, Block 7, Lot 289). The Subject Property has a total lot area of approximately 40,030 SF and is located in the Village's C-2 Zoning District.

- Together with the real property, Buyers is purchasing all of the Village's rights, title and interest in all leases, fixtures, improvements, air rights, licenses, parking, maps, reports, plans and other such material and documentation having to do with the Subject Property including all land use entitlements, governmental permits and allocations, and all governmental and agency approvals as may exist concerning the Subject Property.

**Development:** The Buyer will finance and construct an approximately 62-unit residential, multi-family building consisting entirely of long-term rental units. The Development will include 3 levels of parking with approximately 180 parking spaces, with 55 of the parking spaces being reserved for the building's residents and 125 parking spaces being reserved for the general public (Community Parking). The Development was designed to be as-of-right according to the Zoning of the Village's C-2 District.

**WHA Submissions** – In response to the RFP, the Purchaser has submitted three submissions to the Village (attached hereto).

1. Original Submission dated October 23, 2023;
2. 1<sup>st</sup> Amendment dated January 4, 2024;
3. 2<sup>nd</sup> Amendment (and best and final offer) dated August 7, 2024

The terms in this MOU are based on the terms presented to the Village in the three above described submissions, with the terms of the more recently dated submissions having precedence over the terms from the earlier dated submissions.

**Village Board of Trustees (Board Resolutions)**

- The Village of Mamaroneck Board of Trustees accepted the Purchaser's best and final offer on September 10, 2024 by making WHA the 'Preferred Developer'.

**Purchase Agreement:** The Purchaser and Seller agree to negotiate in good faith a Purchase and Sale Agreement based on the following terms.

- Purchase Price: Five million (\$5,000,000).
  - Purchase Price Reinvestment – The Village shall receive the Purchase Price on the Acquisition Date and simultaneously reinvest four million five hundred sixty-two thousand, seven hundred seventy-five dollars (\$4,562,775) back into the financing of the Development to fund the construction of the Community Parking in exchange for an easement for the construction and use of the Public Parking. The easement shall describe the responsibilities and obligations of the parties as to the maintenance and operation of the Public Parking. Thus, the Village will keep four hundred thirty-seven thousand, two hundred twenty-five dollars (\$437,225).
- Acquisition Date (Closing): The Purchaser shall purchase the property from the Village on the same day that it closes on construction loan and tax credit financing with New York State Homes and Community Renewal (HCR) and/or an equivalent government lender.
- The Purchaser may assign its interest to any corporation, partnership or limited liability corporation in which it is the controlling entity without approval from the Village.
- The Purchaser's obligation to close shall be conditioned on:
  - The approval of a payment in lieu of taxes agreement from each affected tax jurisdiction that is substantially similar to the real property tax benefits provided to similar developers of affordable housing in the County of Westchester and that is acceptable to Purchaser in its sole discretion.
  - Purchaser's ability to obtain financing and investor equity commitments, including a tax credit allocation, federal, state, and local funding commitments, including but not limited to County of Westchester New Homes Land Acquisition (NHLA) funding to pay the Purchase Price, which are sufficient in the reasonable judgment of Purchaser to acquire, develop, and construct the Development.
  - Acquisition of all necessary government approvals needed to complete the Development and to operate the completed Development on the Subject Property. Seller agrees to use best efforts to assist Purchaser in obtaining the government approvals.
  - The Zoning Ordinance of the Village shall not have been amended in a way that negatively impacts the Development.
  - The delivery of good, marketable title to the Subject Property.

**Due Diligence:** The Village shall allow the Purchaser to perform all feasibility and due diligence on the Subject Property. Seller shall fully cooperate with Purchaser in providing any and all information available regarding the Subject Property, including, but not limited to disclosure of: any tenant leases and extension options (plus any amendments or modifications thereon) and related tenant materials if applicable, existing mortgage documentation and any guarantees, any certificate(s) of occupancy, any existing environmental and engineering reports (e.g., Phase I, Phase II, geotechnical, soil, etc.), existing title reports, current or pending litigation and disputes, liens, *lis pendens*, easements, tax records, and documents, any third-party service contracts, and parcel map(s), surveys, zoning letter(s), plats and other commercially reasonable requests. Purchaser shall also have the right to perform customary title searches, market studies, surveys, environmental and engineering inspections, appraisal inspections, zoning review, site visits and other due diligence matters during this time period. In addition, Purchaser may seek financial commitments from debt lenders, equity investors and governmental agencies (including but not limited to loans, grants and/or low-income housing tax credit allocations issues by the State of New York acting by and through HCR, the Village and the County of Westchester.

**Financing:** The Developer anticipates securing funding through HCR's Low-Income Housing Tax Credit (LIHTC) program, NHLA, and other available federal, state and local funding sources.

**Exclusivity and Non-Solicitation:** The Seller shall exclusively negotiate and deal with the Purchaser, and shall not solicit other offers.

If the above outline of terms and conditions are acceptable, please indicate by signing below. This MOU may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and may be delivered by hand, or facsimile transmission, or scan and electronic mail. This MOU may be signed in any manner that clearly evidences the parties' intent to be bound, including via faxed, imaged, .PDF, electronic or digital signatures. The Effective Date of this MOU shall be the date indicated below but if no such date is indicated, it means the date on which the MOU is signed and delivered by the last of the two parties to sign and deliver.

**BUYER:**

WASHINGTONVILLE HOUSING ALLIANCE, INC. and WESTHAB, INC.

\_\_\_\_\_ Dated: \_\_\_\_\_, 2024

By: Richard Nightingale  
Title: President and CEO

**SELLER:**

VILLAGE OF MAMARONECK

\_\_\_\_\_ Dated: \_\_\_\_\_, 2024 ("Effective Date")

By: \_\_\_\_\_  
Title: \_\_\_\_\_

## Robert Spolzino

---

**From:** Michael Curti <michael.curti@westhab.org>  
**Sent:** Tuesday, October 1, 2024 3:56 PM  
**To:** Robert Spolzino  
**Cc:** Andrew Germansky; Richard Nightingale  
**Subject:** Re: Hunter Tier MOU and LDA Sample

Caution: This email originated outside of the organization

---

I hope this email finds you well. Just following up on our email from last week. Do you have a sense of when we can expect comments to the MOU and/or LDA?

Best Regards,  
MVC

On Mon, Sep 23, 2024 at 5:19 PM Michael Curti <[michael.curti@westhab.org](mailto:michael.curti@westhab.org)> wrote:  
I hope this email finds you well.

Attached, please find our proposed Hunter Terrace MOU/term sheet and example LDA. Please review with your client and let me know if you have any questions. We look forward to working with you and the rest of the Village team on this important development project. Best Regards, MVC

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**From:** Robert Spolzino  
**Sent:** Wednesday, October 2, 2024 9:01 AM  
**To:** Michael Curti  
**Cc:** Andrew Germansky; Richard Nightingale  
**Subject:** RE: Hunter Tier MOU and LDA Sample

We're reviewing your drafts and putting together the additional terms that the Village requires. Chuck is away this week. He'll be back next week and we expect to get back to you then.

*Robert Spolzino, Esq. | Executive Partner*



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**From:** Michael Curti <[michael.curti@westhab.org](mailto:michael.curti@westhab.org)>  
**Sent:** Tuesday, October 1, 2024 3:56 PM  
**To:** Robert Spolzino <[RSpolzino@Abramslaw.com](mailto:RSpolzino@Abramslaw.com)>  
**Cc:** Andrew Germansky <[andrew.germansky@westhab.org](mailto:andrew.germansky@westhab.org)>; Richard Nightingale <[richard.nightingale@westhab.org](mailto:richard.nightingale@westhab.org)>  
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**From:** Michael Curti <michael.curti@westhab.org>  
**Sent:** Thursday, October 10, 2024 11:01 AM  
**To:** Robert Spolzino  
**Cc:** Andrew Germansky; Richard Nightingale  
**Subject:** Re: Hunter Tier MOU and LDA Sample

**Caution: This email originated outside of the organization**

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Long Island · Brooklyn · White Plains · Rochester · Albany

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**Sent:** Tuesday, October 15, 2024 3:23 PM  
**To:** Michael Curti  
**Cc:** Andrew Germansky; Richard Nightingale  
**Subject:** RE: Hunter Tier MOU and LDA Sample  
**Attachments:** Hunter Terrace MOU - VOM 2024.10.10.docx

Mike – Attached for your review is our revised proposed term sheet. Let me know when you and your team have had a chance to review and I will set up a meeting with Chuck and our team. Bob

*Robert Spolzino, Esq. | Executive Partner*



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*White Plains Office*

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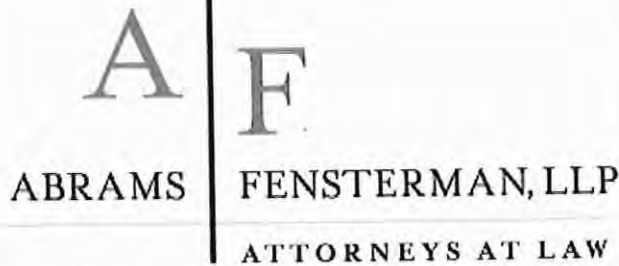
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September 23/October 15, 2024

Memorandum of Understanding (the "MOU") — Confidential Term Sheet

**Overview:** This MOU Term Sheet between New York-based non-profit 501(c)(3) entities Washingtonville Housing Alliance, Inc. and Westhab, Inc. (collectively "WHA" and/or the "Purchaser") and The Village of Mamaroneck (the "Village" and/or the "Seller"), outlines the intended terms of a contract partnership between WHA and the Village the two parties for the re-development of the Hunter Tier parking lot in the Village of Mamaroneck into adding affordable housing residences above a rebuilt parking structure (the "Development").

**Summary:** Pursuant to the official Request for Proposals: the Village issued for the Hunter Tier All-Affordable Mixed-Use Development released by the Village on August 16, 2023 (the "RFP") and the affirmative vote a majority of the Board of Trustees on September 10, 2024 to designate WHA as the preferred developer, the Purchaser WHA is proposing to make a substantial investment in the Village to develop the existing parking structure into attractive, modern, and high-quality residential housing for lower-income households that The Development will meet a recognized need for affordable housing and make a substantial investment in the Village.

**WHA's Submissions:** In response to the RFP, the Purchaser has made three submissions to the Village: (i) an original submission dated October 23, 2023; (ii) a first amended submission dated January 4, 2024; and (ii) a second amended submission (and best and final offer) dated August 7, 2024. Copies of the three submissions are attached to this Term Sheet. The original submission proposed a six-story building with 77 residential units and 170 parking spaces (103 for the public and 67 for Hunter Tier residents) designed to include important community features and amenities, including a 1,000 square foot "grand and spacious lobby with double height ceiling and soaring windows" designed to be used as a community hub/resource center for meetings/events for Village residents and to function as a "place of refuge during emergencies or natural disasters, a 1,160 square foot top floor outdoor terrace with views of Long Island Sound and the Village's downtown, added green space to retain water in place of the existing concrete parking lot, and an extended and reinforced "green" across Prospect Avenue. The second amended submission reduced the building height to five stories, reduced the number of residential units to 62, increased the number of parking spaces to 180 (125 for the public and 55 for Hunter Tier residents) and retained the amenities and features identified in the original submission.

**Village Board of Trustees Resolutions:** The Village Board of Trustees adopted a resolution on September 10, 2024 designating WHA as the "Preferred Developer."

**Nature of this Document:** This is a term sheet; it is not a contract. This term sheet sets forth the terms on which the parties expect to enter into a contract. This document is not, itself, a binding contract. The "contract" is intended to be a separate and formal and binding agreement between the parties to be entitled "Contract" or "Purchase and Sale Agreement." There is no contract binding on either party until there is a Contract or Purchase and Sale Agreement that the Village Board of Trustees has authorized in an open meeting to be executed, and the document has been executed on behalf of both parties.

**Subject Property:** The property that is the subject of the transaction (the "Development Site") is an existing parking lot currently owned and occupied by the Village of Mamaroneck, and located at 141 Prospect Avenue, in the Village of Mamaroneck, County of Westchester and State of New York and is known and designated on the tax map of the Town of Mamaroneck as Section 9, Block 7, Lot 289. The Subject Property Development Site has a total lot area of approximately 40,030 SF and is located in the Village's C-2 Zoning District. The Development Site is presently improved by a two-story parking structure owned and operated by the Village.

**Interest to be conveyed:** The Village will convey to WHA and WHA will purchase from the Village Together with the real property that constitutes the Development Site, together with Buyers is purchasing all of the Village's rights, title and interest in all leases, fixtures, improvements, and air rights, licenses, parking, maps, reports, plans and other such material and documentation having to do with the Subject Property including

all appurtenant to the Development Site. The Contract will not provide for the conveyance of any land use entitlements, governmental permits, and allocations, and all governmental and agency approvals that may exist concerning the Subject Property Development Site.

**Development:** The Buyer WHA will finance and construct:

- an approximately 62-unit residential, multi-family building consisting entirely of long-term, affordable rental units; and
- a parking structure consisting of ~~The Development will include 3~~ three levels of parking containing with approximately 180 parking spaces, with 55 of which will be the parking spaces being reserved for the building's residents ("Resident Parking"); and 125 of which will be parking spaces being reserved for the general public ("Community Parking"), and of which will be shared parking spaces. The Development was designed to be as of right according to the Zoning of the Village's C-2 District.

**WHA Submissions** — In response to the RFP, the Purchaser has submitted three submissions to the Village (attached hereto):

1. Original Submission dated October 23, 2023;
2. 1<sup>st</sup> Amendment dated January 4, 2024;
3. 2<sup>nd</sup> Amendment (and best and final offer) dated August 7, 2024

The terms in this MOU are based on the terms presented to the Village in the three above described submissions, with the terms of the more recently dated submissions having precedence over the terms from the earlier dated submissions.

**Village Board of Trustees (Board Resolutions)** The Village of Mamaroneck Board of Trustees accepted the Purchaser's best and final offer on September 10, 2024 by making WHA the Preferred Developer.

**Purchase Agreement:** The Purchaser and Seller Contract will be agree to negotiate in good faith a Purchase and Sale Agreement based on the following terms as the parties may subsequently negotiate:

- Purchase Price: Five million (\$5,000,000). WHA will pay the Village \$ \_\_\_\_\_.
  - Purchase Price Reinvestment — The Village shall receive the Purchase Price on the Acquisition Date and simultaneously reinvest four million five hundred sixty-two thousand, seven hundred seventy-five dollars (\$4,562,775) back into the financing of the Development to fund the construction of the Community Parking in exchange for an easement for the construction and use of the Public Parking. The easement shall describe the responsibilities and obligations of the parties as to the maintenance and operation of the Public Parking. Thus, the Village will keep four hundred thirty-seven thousand, two hundred twenty-five dollars (\$437,225).
- Acquisition Date (Closing): Closing will take place The Purchaser shall purchase the property from the Village on the same day that it closes at the same time as WHA's closing on any and all financing, including construction loan and tax credit financing with New York State Homes and Community Renewal (HCR) and/or an equivalent government lender, that WHA requires to satisfy its obligations under the agreement, including its obligations to purchase the property, obtain all necessary approvals, construct the improvements, and operate the premises, but not later than one year from the date of the contract on construction loan and tax credit financing with New York State Homes and Community Renewal (HCR) and/or an equivalent government lender.
- The Purchaser may assign its interest to any corporation, partnership or limited liability corporation in which it is the controlling entity without approval from the Village.
- The Purchaser WHA's obligation to close shall be conditioned on:

- The approval of a payment in lieu of taxes agreement acceptable to from each affected tax jurisdiction, including the Village, that is substantially similar to the real property tax benefits provided to similar developers of affordable housing in the County of Westchester and to that is acceptable to Purchaser WHA in the exercise of its sole commercially reasonable discretion;
  - Purchaser WHA's ability to obtain financing and investor equity commitments, including a tax credit allocation, federal, state, and local funding commitments, including but not limited to County of Westchester New Homes Land Acquisition (NHLA) funding to pay the Purchase Price, which are sufficient in the reasonable judgment of Purchaser to acquire, develop, and construct the Development;
  - WHA's Acquisition of all necessary government approvals needed to complete the Development and to operate the completed Development on the Subject Property Development Site;
  - Seller agrees to use best efforts to assist Purchaser in obtaining the government approvals.
  - The Village Zoning Code Ordinance of the Village shall not have been amended in a way that materially negatively impacts the Development; and
  - The Village's delivery of good, marketable title to the Subject Property, such as any reputable licensed NYS title insurance company will be willing to insure, subject only to the exceptions and matters set forth in the Contract.
- The Village's obligation to close shall be contingent upon:
    - An agreement acceptable to the Village for the payment by WHA in lieu of taxes;
    - WHA having obtained all financing and investor equity commitments, including a tax credit allocation, federal, state, and local funding commitments, including but not limited to County of Westchester New Homes Land Acquisition (NHLA) funding WHA needs to pay the Purchase Price and complete the Development;
    - Proof by WHA that WHA's financing and investor equity commitments will not impose any conditions on the Village other than those requirements provided for in the Contract;
    - The approval by the Village Board of Trustees of a site plan for the proposed development of the property consistent with all applicable codes, rules, and regulations, WHA's submissions, and the requirements of the contract, which will include:
      - The structure will contain 62 affordable housing units, no more than \_\_\_ of which shall be two-bedroom units, no more than \_\_\_ of which shall be one-bedroom units, no more than \_\_\_ of which shall be studio units and none of which shall be three or more bedroom units;
      - The structure will be not more than five stories in height;
      - The parking structure under the building will provide no fewer than \_\_\_ parking spaces for residents of the building, no fewer than \_\_\_ parking spaces for the public, and no fewer than \_\_\_ shared parking spaces; and
      - The structure will include a rooftop amenity space consisting of \_\_\_\_\_ and such other amenity spaces as may be acceptable to the Village; and
    - Satisfactory completion, at WHA's expense, of an environmental impact review as required by the New York State Environmental Quality Review Act (SEQRA) (Environmental Conservation Law § 8-0101 et seq., 6 NYCRR Part 617, and \_\_\_\_\_), the scope of which will be not less comprehensive than as set forth in exhibit A;

- The adoption of findings by the lead agency as required by 6 NYCRR § 617.11(d);
- Satisfactory completion at WHA's expense, of a study by a licensed professional engineer, establishing that the structure as contemplated by WHA may be safely constructed on the Development Site;
- An advisory determination by the Village Harbor and Coastal Zone Management Commission (HCZMC), at WHA's expense, that the sale of the property is consistent with the Village's Harbor and Coastal Zone Management Plan, as required by Article VIII of Chapter 240 of the Village Code;
- A determination by the Village Board of Trustees that the sale of the property is consistent with the Village's Harbor and Coastal Zone Management Plan, as required by Article VIII of Chapter 240 of the Village Code;
- A determination by the HCZMC, at WHA's expense, that the development of the property as proposed by WHA is consistent with the Village's Harbor and Coastal Zone Management Plan, as required by Article VIII of Chapter 240 of the Village Code;
- The approval by the Village Planning Board, at WHA's expense, of a site plan for development of the property in accordance with Article XI of Chapter 342 of the Village Code;
- The approval of the proposed development by the Village Board of Architectural Review, at WHA's expense, in accordance with Chapter 6 of the Village Code;
- An affordable housing plan that complies with Village Code §§ 342-105 and 342-106, provides for preferences for local residents displaced or in danger of being displaced by floods, and is otherwise acceptable to the Village, and relief for the Village, to the extent necessary, from any legal or contractual impediments to such a plan;
- An agreement acceptable to the Village, including reciprocal easements, if necessary, for the maintenance and operation of the parking structure, including the public parking spaces and the shared parking spaces in the parking structure, at Westhab's expense; and
- The Purchaser's satisfaction of its obligations under the contract.

**Due Diligence/Termination:** The Village shall allow WHA the Purchaser to perform all feasibility and due diligence studies WHA determines to be reasonably necessary on the Subject Property, provided that WHA provides insurance acceptable to the Village and those studies are performed during regular weekday business hours and in a manner that will not unnecessarily disturb Village residents. SellerThe Village shall fully cooperate with WHA Purchaser in providing any and all information available within the Village's possession regarding the Subject Property, including, but not limited to disclosure of: any tenant leases and extension options (plus any amendments or modifications thereon) and related tenant materials if applicable, existing mortgage documentation and any guarantees, any certificate(s) of occupancy, any existing environmental and engineering reports (e.g., Phase I, Phase II, geotechnical, soil, etc.), existing title reports, current or pending litigation and disputes, liens, *lis pendens*, easements, tax records, and documents, any third-party service contracts, and parcel map(s), surveys, zoning letter(s), plats and other commercially reasonable requests. PurchaserWHA shall also have the right to perform customary title searches, market studies, surveys, non-invasive environmental and engineering inspections, appraisal inspections, zoning review, site visits and other due diligence matters during this time period. In addition, Purchaser may seek financial commitments from debt lenders, equity investors and governmental agencies, (including but not limited to, loans, grants and/or low-income housing tax credit allocations issues by the State of New York acting by and through HCR, the VillageVillage, and the County of Westchester. Either party may terminate the contract for any cause or for no cause at any time within 90 days of the date on which the contract is fully executed. In addition, the Village may terminate the contract if (i) WHA fails to submit a proposed site plan to the Village Board of Trustees within 60 days of the date of the contract, or (ii) fails to apply for approvals from the HCZMC, the Board of Architectural Review and the Planning Board within 120 days of the date of the

contract, (iii) unduly delays the approval process, (iv) fails to apply for a building permit within 60 days of the date on which it receives approvals from the HCZMC, the Board of Architectural Review and the Planning Board, or (v) fails to commence construction within 60 days of the date on which it obtains a building permit.

**Representations:** The Village represents that it will deliver the Subject Property at closing free and clear from any and all occupancies, tenant leases and extension options (plus any amendments or modifications thereon) and related tenant materials if applicable, and agreements for the use of the property, other than the Contract and anything to which the Contract is subject.

**Financing:** The Developer anticipates securing funding through HCR's Low-Income Housing Tax Credit (LIHTC) program, NHLA, and other available federal, ~~state~~state, and local funding sources.

~~**Exclusivity and Non-Solicitation:** The Seller shall exclusively negotiate and deal with the Purchaser, and shall not solicit other offers.~~

If the above outline of terms and conditions are acceptable, please indicate by signing below. This MOU Term Sheet may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and may be delivered by hand, or facsimile transmission, or scan and electronic mail. This MOU Term Sheet may be signed in any manner that clearly evidences the parties' intent to be bound, including via faxed, imaged, .PDF, electronic or digital signatures. The Effective Date of this MOU Term Sheet shall be the date indicated below but if no such date is indicated, it means the date on which the MOU Term Sheet is signed and delivered by the ~~last~~later of the two parties to sign and deliver.

BUYER:

WASHINGTONVILLE HOUSING ALLIANCE, INC. and WESTHAB, INC.

\_\_\_\_\_ Dated: \_\_\_\_\_, 2024  
By: Richard Nightingale  
Title: President and CEO

SELLER:

VILLAGE OF MAMARONECK

\_\_\_\_\_ Dated: \_\_\_\_\_, 2024 ("Effective Date")  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

## Exhibit A – Minimum SEQRA Scope

### 1. Land Use, Zoning, and Public Policy

- a. Assess the compatibility of the proposed project with the scale of adjacent uses and the surrounding neighborhood
- b. Assess the compliance with the criteria in *Article XV, Fair and Affordable Residence Uses* in the Village of Mamaroneck Zoning Code
- c. Analyze the consistency with the 2023 Comprehensive Plan regarding affordable housing, plus other applicable public planning and policy documents.

### 2. Community Character and Historic Resources

- a. Compare the proposed development program with the diverse character and scale of land uses surrounding the Hunter Tier site and the historic resources that are on or eligible for the NYS or National Register of Historic Places;
- b. Describe the proposed architectural character, compatibility with surrounding uses, and potential visible changes that would result from developing the Hunter Tier site as proposed.

### 3. Community Services and Utilities

- a. Analyze the capacity of existing infrastructure and utilities, community services to accommodate proposed use
  - Fire, Police and Ambulance Services
  - Solid waste management and recycling
  - Parks and Recreation
- b. Analyze the capacity of schools to accommodate potential school age children that may reside at the proposed project.

### 4. Socioeconomic Issues

- a. Population – how many residents would likely reside at the project how would this impact the Village's population
- b. Housing impacts, particularly the ability of the proposed project to have a positive impact on increasing the availability of affordable housing in the Village, particularly for vulnerable populations

### 5. Traffic, Circulation and Parking

- a. Analyze the capacity of and potential improvements needed to accommodate the proposed development program for the intersections of:
  - Prospect Avenue and Mamaroneck Avenue
  - Palmer Avenue and Mamaroneck Avenue
  - Palmer Avenue and Mt Pleasant Avenue
  - Mt Pleasant Avenue and Boston Post Road
- b. Analyze the parking demand and supply of the proposed development program on:
  - Existing parking supply and demand broken down by public and private uses
  - Assess future parking demand and supply based on a theoretical build out within the downtown for public and private uses

- Describe a shared parking model for the proposed development program and how this could increase parking supply
  - Identify proposed improvements incorporated into the proposed development program to parking within the immediate area as well as downtown Mamaroneck
- c. Pedestrian Safety
- Analyze existing conditions for pedestrian safety on Prospect Avenue and surrounding streets and ease of access to Village services and cultural facilities
  - Evaluate potential impacts and proposed improvements proposed by the project to improve pedestrian safety and mitigate potential increases in traffic congestion
- d. Public transportation and new mobility
- Evaluate existing conditions of non-vehicular resources within the downtown area, e.g., bikes, pedestrian paths, etc.
6. Construction Impacts of the Proposed Project and a description of the plan to mitigate the temporary closure of the Hunter Tier structure
- a. Describe the Interim parking plan for essential parking needs – assuming loss of 100% of HT parking structure for 2+ years for Emelin, Library, Court & Village Hall?
  - b. Describe interim parking options for public and local businesses
  - c. Describe construction worker parking during construction period
7. Alternatives
- a. If construction of the proposed development program is delayed due to financing, permits, etc., what improvements to the existing parking structure could be implemented to maintain the structural integrity of the parking structure and meet the essential demand for public parking at the Hunter Tier lot?
  - a.b. What adjustments would be needed to the development program, if any, if the Village moves forward with plans to create a single municipal services building at 169 Mount Pleasant Avenue?

## Robert Spolzino

---

**From:** Michael Curti <michael.curti@westhab.org>  
**Sent:** Friday, October 18, 2024 10:40 AM  
**To:** Robert Spolzino  
**Cc:** Andrew Germansky; Richard Nightingale  
**Subject:** Re: Hunter Tier MOU and LDA Sample  
**Attachments:** Hunter Terrace MOU - VOM 2024.10.10 (WHA Comments 10172024).docx

Caution: This email originated outside of the organization

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Dear Bob: Thank you for sharing the term sheet. I've attached our revisions for your review. We believe we're not too far apart and noticed a consistent theme in our comments. Like any developer, we're seeking as much certainty as possible, along with genuine partnership from the Village. If provided with a fair playing field, we're confident we can bring this project to fruition, which would be a significant achievement for all the administrations involved in making it happen. If you would like to have a call to discuss further edits, please let us know. We look forward to hearing from you soon. Thanks again and have a great weekend. Best Regards, MVC

On Tue, Oct 15, 2024 at 3:23 PM Robert Spolzino <[RSpolzino@abramslaw.com](mailto:RSpolzino@abramslaw.com)> wrote:

Mike – Attached for your review is our revised proposed term sheet. Let me know when you and your team have had a chance to review and I will set up a meeting with Chuck and our team. Bob

### *Robert Spolzino, Esq. | Executive Partner*



#### *White Plains Office*

81 Main Street Suite 400  
White Plains, New York 10601  
914-607-7010 | Office  
914-607-7102 | Direct  
516-368-9596 | Fax  
[RSpolzino@Abramslaw.com](mailto:RSpolzino@Abramslaw.com)  
[www.abramslaw.com](http://www.abramslaw.com)



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**From:** Michael Curti <[michael.curti@westhab.org](mailto:michael.curti@westhab.org)>  
**Sent:** Thursday, October 10, 2024 11:01 AM

To: Robert Spolzino <RSpolzino@Abramslaw.com>

Cc: Andrew Germansky <andrew.germansky@westhab.org>; Richard Nightingale <richard.nightingale@westhab.org>

Subject: Re: Hunter Tier MOU and LDA Sample

Caution: This email originated outside of the organization

Hi, just following up on our email exchange from last week. Have you had a chance to caucus internally and come up with the additional terms? Any chance we may receive them before the long weekend?

Best Regards,  
MVC

On Wed, Oct 2, 2024 at 9:00 AM Robert Spolzino <RSpolzino@abramslaw.com> wrote:

We're reviewing your drafts and putting together the additional terms that the Village requires. Chuck is away this week. He'll be back next week and we expect to get back to you then.

***Robert Spolzino, Esq. | Executive Partner***



***White Plains Office***

81 Main Street Suite 400  
White Plains, New York 10601  
914-607-7010 | Office  
914-607-7102 | Direct  
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From: Michael Curti <michael.curti@westhab.org>

Sent: Tuesday, October 1, 2024 3:56 PM

To: Robert Spolzino <RSpolzino@Abramslaw.com>

**Cc:** Andrew Germansky <[andrew.germansky@westhab.org](mailto:andrew.germansky@westhab.org)>; Richard Nightingale <[richard.nightingale@westhab.org](mailto:richard.nightingale@westhab.org)>  
**Subject:** Re: Hunter Tier MOU and LDA Sample

**Caution: This email originated outside of the organization**

---

I hope this email finds you well. Just following up on our email from last week. Do you have a sense of when we can expect comments to the MOU and/or LDA?

Best Regards,

MVC

On Mon, Sep 23, 2024 at 5:19 PM Michael Curti <[michael.curti@westhab.org](mailto:michael.curti@westhab.org)> wrote:

I hope this email finds you well.

Attached, please find our proposed Hunter Terrace MOU/term sheet and example LDA. Please review with your client and let me know if you have any questions. We look forward to working with you and the rest of the Village team on this important development project. Best Regards, MVC

September 23 / October 17, 2024

### Term Sheet

**Overview:** This Term Sheet between New York-based non-profit 501(c)(3) entities Washingtonville Housing Alliance, Inc. and Westhab, Inc. (collectively "WHA") and The Village of Mamaroneck (the "Village"), outlines the intended terms of a contract between WHA and the Village for the re-development of the Hunter Tier parking lot in the Village of Mamaroneck into affordable residences above a rebuilt parking structure (the "Development").

**Summary:** Pursuant to the Request for Proposals the Village issued for the Hunter Tier All-Affordable Mixed-Use Development on August 16, 2023 (the "RFP") and the affirmative vote a majority of the Board of Trustees on September 10, 2024 to designate WHA as the preferred developer, WHA is proposing to make a substantial investment in the Village to develop the existing parking structure into attractive, modern, and high-quality residential housing for lower-income households that will meet a recognized need for affordable housing in the Village.

**WHA's Submissions:** In response to the RFP, the Purchaser has made three submissions to the Village: (i) an original submission dated October 23, 2023; (ii) a first amended submission dated January 4, 2024; and (iii) a second amended submission (and best and final offer) dated August 7, 2024. Copies of the three submissions are attached to this Term Sheet. The original submission proposed a six-story building with 77 residential units and 170 parking spaces (103 for the public and 67 for Hunter Tier residents) designed to include important community features and amenities, including a 1,000 square foot "grand and spacious lobby with double height ceiling and soaring windows" designed to be used as a community hub/resource center for meetings/events for Village residents and to function as a "place of refuge during emergencies or natural disasters, a 1,160 square foot top floor outdoor terrace with views of Long Island Sound and the Village's downtown, added green space to retain water in place of the existing concrete parking lot, and an extended and reinforced "green" across Prospect Avenue. The second amended submission reduced the building height to five stories, reduced the number of residential units to 62, increased the number of parking spaces to 180 (125 for the public and 55 for Hunter Tier residents) and retained the amenities and features identified in the original submission.

**Village Board of Trustees Resolutions:** The Village Board of Trustees adopted a resolution on September 10, 2024 designating WHA as the "Preferred Developer."

**Nature of this Document:** This is a term sheet, it is not a contract. This term sheet sets forth the terms on which the parties expect to enter into a contract. Except for the Good Faith Efforts, this document is not, itself, a binding contract. The "contract" is intended to be a separate and formal and binding agreement between the parties to be entitled "Contract" or "Purchase and Sale Agreement." The parties will use best efforts to negotiate, approve and execute a Contract or Purchase and Sale Agreement that incorporates the concepts described herein within thirty (30) days of the date of this term sheet ("Good Faith Efforts"). There is no contract binding on either party until there is a Contract or Purchase and Sale Agreement that the Village Board of Trustees has authorized in an open meeting to be executed, and the document has been executed on behalf of both parties.

**Subject Property:** The property that is the subject of the transaction (the "Development Site") is located at 141 Prospect Avenue, in the Village of Mamaroneck, County of Westchester and State of New York and is known and designated on the tax map of the Town of Mamaroneck as Section 9, Block 7, Lot 289. The Development Site has a total lot area of approximately 40,030 SF and is located in the Village's C-2 Zoning District. The Development Site is presently improved by a two-story parking structure owned and operated by the Village.

**Interest to be conveyed:** The Village will convey to WHA and WHA will purchase from the Village the real property that constitutes the Development Site, together with all of the Village's right, title and interest in all leases, fixtures, improvements, and air rights appurtenant to the Development Site. The Contract provide for the conveyance of the existing land use entitlements, governmental permits, and allocations, or governmental

and agency approvals that then exist concerning the Development Site.

**Development:** WHA will finance and construct:

- an approximately 62-unit residential, multi-family building consisting entirely of long-term, affordable rental units; and
- a parking structure consisting of three levels of parking containing approximately 180 parking spaces, 55 of which will be reserved for the building's residents ("Resident Parking"); 125 of which will be reserved for the general public ("Community Parking"), and a certain number of which will be shared parking spaces, if any, as determined through the government approval process. The Development was designed to be as-of-right according to the Zoning of the Village's C-2 District.

**Commented [MC1]:** Restored. See comment below as the purchase price and public parking commitments are connected.

**Purchase Agreement:** The Contract will be based on the following primary terms as the parties may subsequently negotiate:

- Purchase Price: Five million (\$5,000,000). ~~WHA will pay the Village \$~~
  - ~~The Village Investment~~Purchase Price Reinvestment – The Village shall receive the Purchase Price on the Acquisition Date and simultaneously reinvest four million five hundred sixty-two thousand, seven hundred seventy-five dollars (\$4,562,775) back into the financing of the Development to fund the construction of the Community Parking in exchange for an easement for the construction and use of the Public Parking (the "Village Investment"). The easement shall describe the responsibilities and obligations of the parties as to the maintenance and operation of the Public Parking. Thus, the Village will keep four hundred thirty-seven thousand, two hundred twenty-five dollars (\$437,225).
- Acquisition Date (Closing): Closing will take place at the same time as WHA's closing on any and all financing, including construction loan and tax credit financing with New York State Homes and Community Renewal (HCR) and/or an equivalent government lender, ~~that WHA requires to satisfy its obligations under the agreement, including its obligations to purchase the property, obtain all necessary approvals, construct the improvements, and operate the premises, but not later than one year from the date that all government approvals necessary to construct the Development are no longer appealable.~~
- The ~~Purchaser~~WHA may assign its interest to any corporation, partnership or limited liability corporation in which it is the controlling entity without approval from the ~~Village~~.
- ~~The Purchaser~~WHA's obligation to close shall be conditioned on:
  - The approval of a commercially reasonable payment in lieu of taxes agreement ~~for an affordable housing development~~ acceptable to each affected tax jurisdiction, including the Village, and to WHA in the exercise of ~~WHA's~~ commercially reasonable discretion;
  - WHA's ability to obtain financing and investor equity commitments, including a tax credit allocation, federal, state, and local funding commitments, including but not limited to County of Westchester New Homes Land Acquisition (NHLA) funding to pay the Purchase Price ~~and receipt by WHA of the Village Investment,~~ which are sufficient in the reasonable judgment of ~~Purchaser~~WHA to acquire, develop, and construct the Development, ~~including the public parking;~~
  - WHA's acquisition of all necessary and unappealable government approvals needed to complete the Development and to operate the completed Development on the Development Site;
  - Seller agrees to use best efforts ~~in supporting to assist~~ in supporting ~~Purchaser~~WHA in obtaining the

**Commented [MC2]:** Our financing is based on certain assumptions. The purchase price and the amount of parking spaces required to be delivered are critical assumptions. There can be no uncertainty regarding those amounts. Our accepted proposal is based on the expectation that that Village will reinvest most of the County funds to pay for the community parking. In short, we cannot commit to anything beyond the \$5 million, with the expectation that most will be repurposed into the project.

**Commented [MC3]:** We need the ability to assign the interest to an HDFC or LP or other special purpose entity for financing purposes.

government approvals.

- The Village Zoning Code shall not have been amended in a way that materially negatively impacts the Development; and
  - The Village's delivery of good, marketable title to the Subject Property, such as any reputable licensed NYS title insurance company will be willing to insure, subject only to the exceptions and matters set forth in the Contract.
  - The satisfaction of the Village of its obligations under the Contract
- The Village's obligation to close shall be contingent upon:
    - ~~An commercially reasonable agreement for an affordable housing development acceptable to the Village for the payment by WHA in lieu of taxes, which approval shall not be unreasonably withheld, conditioned, delayed, or denied;~~
    - WHA having obtained all financing and investor equity commitments, including a tax credit allocation, federal, state, and local funding commitments, including but not limited to County of Westchester New Homes Land Acquisition (NHLA) funding and the Village Investment that WHA needs to pay the Purchase Price and complete the Development, including the public parking;
    - Subject to and excepting any regulatory agreements, instruments, and encumbrances required by federal, state and local government agencies. Proof by WHA that WHA's financing and investor equity commitments will not impose any conditions on the Village other than those requirements provided for in the Contract;
    - The approval by the Village Board of Trustees of a site plan for the proposed development of the property consistent with all applicable codes, rules, and regulations, WHA's submissions, and the requirements of the contract, which will include:
      - The structure will contain 62 affordable housing units, no more than \_\_\_ of which shall be two-bedroom units, no more than \_\_\_ of which shall be one-bedroom units, no more than \_\_\_ of which shall be studio units and none of which shall be three or more bedroom units;
      - The structure will be not more than five stories in height;
      - ~~The parking structure under the building will provide no fewer than 55 parking spaces for residents of the building, no fewer than 125 parking spaces for the public and such shared parking spaces, if any, as determined during the government approval process, and no fewer than shared parking spaces; and~~
      - The structure will include a rooftop amenity space consisting of \_\_\_\_\_ and such other amenity spaces as may be acceptable to the Village; and
    - Satisfactory completion, at WHA's expense, of an environmental impact review as required by the New York State Environmental Quality Review Act (SEQRA) (Environmental Conservation Law § 8-0101 et seq., 6 NYCRR Part 617, and \_\_\_\_\_), the scope of which will be not less comprehensive than as set forth in exhibit A;
    - The adoption of reasonable and good faith findings by the lead agency as required by 6 NYCRR § 617.11(d);
    - Satisfactory completion at WHA's expense, of a study by a licensed professional engineer, establishing that the structure as contemplated by WHA may be safely constructed on the Development Site;
    - An advisory determination by the Village Harbor and Coastal Zone Management

- Commission (HCZMC), at WHA's expense, that the sale of the property is consistent with the Village's Harbor and Coastal Zone Management Plan, as required by Article VIII of Chapter 240 of the Village Code;
- o A determination by the Village Board of Trustees that the sale of the property is consistent with the Village's Harbor and Coastal Zone Management Plan, as required by Article VIII of Chapter 240 of the Village Code;
  - o A determination by the HCZMC, at WHA's expense, that the development of the property as proposed by WHA is consistent with the Village's Harbor and Coastal Zone Management Plan, as required by Article VIII of Chapter 240 of the Village Code;
  - o The approval by the Village Planning Board, at WHA's expense, of a site plan for development of the property in accordance with Article XI of Chapter 342 of the Village Code;
  - o The approval of the proposed development by the Village Board of Architectural Review, at WHA's expense, in accordance with Chapter 6 of the Village Code;
  - o Subject to approval by the State of New York, an affordable housing plan that complies with Village Code §§ 342-105 and 342-106, provides for preferences for local residents displaced or in danger of being displaced by floods, and is otherwise acceptable to the Village, and relief for the Village, to the extent necessary, from any legal or contractual impediments to such a plan;
  - o An agreement acceptable to the Village, including reciprocal easements, if necessary, for the maintenance and operation of the parking structure, including the public parking spaces and the shared parking spaces in the parking structure, at ~~WHA-Westhab's~~ WHA's expense; and
  - o The Purchaser ~~WHA's~~ satisfaction of its obligations under the ~~C~~ contract.
  - o Notwithstanding any provision to the contrary, the obligation of the WHA to satisfy any of the foregoing obligations or contingencies involving a review, determination, opinion, or decision (whether it is binding or non-binding) by the HCZMC, Village Board of Trustees, Village Planning Board, Village Board of Architectural Review, or any other Village agency or board (individually or collectively, as the context may require, the "Local Boards") related to the Project (individually or collectively, as the context may require, the "Project Decisions") shall be contingent on the Local Boards acting in good faith and reasonably in the deliberation, consideration, and/or determination of the Project Decisions.
  - o Notwithstanding any provision to the contrary, if WHA shall fail to materially observe or perform one or more of the terms, conditions, covenants or agreements contained in the Contract and such failure shall continue for a period of sixty (60) days after written notice thereof by Village to WHA specifying such failure, unless and to the extent that such failure requires work to be performed, acts to be done, or conditions to be removed which cannot by their nature or because of unavoidable delays reasonably be performed, done or removed, as the case may be, within such sixty (60) day period, in which case no event of default or right to terminate shall be deemed to exist as long as WHA shall have commenced good faith efforts at curing the same within such sixty (60) day period and shall, subject to unavoidable delays, diligently and continuously prosecute the same to completion.

**Due Diligence/Termination:** The Village shall allow WHA to perform all feasibility and due diligence studies WHA determines to be reasonably necessary on the Subject Property, provided that WHA provides insurance acceptable to the Village and those studies are performed during regular weekday business hours and in a manner that will not unnecessarily disturb Village residents. The Village shall fully cooperate with

WHA in providing any and all information within the Village's possession regarding the Subject Property, including, but not limited to disclosure of, any certificate(s) of occupancy, any existing environmental and engineering reports (e.g., Phase I, Phase II, geotechnical, soil, etc.), existing title reports, current or pending litigation and disputes, liens, *lis pendens*, easements, tax records, and documents, any third-party service contracts, and parcel map(s), surveys, zoning letter(s), plats and other commercially reasonable requests. WHA shall also have the right to perform customary title searches, market studies, surveys, non-invasive environmental and engineering inspections, appraisal inspections, zoning review, site visits and other due diligence matters during this time period. In addition, ~~Purchaser~~WHA may seek financial commitments from debt lenders, equity investors and governmental agencies, including but not limited to, loans, grants and/or low-income housing tax credit allocations issues by the State of New York acting by and through HCR, the Village, and the County of Westchester. ~~Either party may terminate the contract for any cause or for no cause at any time within 90 days of the date on which the contract is fully executed. In addition, the Village may terminate the contract if (i) WHA fails to submit a proposed site plan to the Village Board of Trustees within 60 days of the date of the contract, or (ii) fails to apply for approvals from the HCZMC, the Board of Architectural Review and the Planning Board within 120 days of the date of the contract, (iii) unduly delays the approval process, (iv) fails to apply for a building permit within 60 days of the date on which it receives approvals from the HCZMC, the Board of Architectural Review and the Planning Board, or (v) fails to commence construction within 60 days of the date on which it obtains a building permit.~~

**Commented [MC4]:** We believe that this issue is best addressed by a project schedule in the Contract, which will reflect an anticipated time period for obtaining government approvals, closing, and completing construction of the improvements and other milestones. In other words, the sequencing of the entitlements process will be described in that schedule, but hard deadlines for the entitlements process are almost impossible to define. That said, missed deadlines, subject to reasonable cure periods, will trigger an event of default.

**Representations:** The Village represents that it will deliver the Subject Property at closing free and clear from any and all occupancies, tenant leases and extension options (plus any amendments or modifications thereon) and related tenant materials if applicable, and agreements for the use of the property, other than the Contract and anything to which the Contract is subject.

**Financing:** ~~WHA~~The Developer anticipates securing funding through HCR's Low-Income Housing Tax Credit (LIHTC) program, NHLA, ~~the Village Investment~~ and other available federal, state, and local funding sources.

If the above outline of terms and conditions are acceptable, please indicate by signing below. This Term Sheet may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and may be delivered by hand, or facsimile transmission, or scan and electronic mail. This Term Sheet may be signed via faxed, imaged, .PDF, electronic or digital signature. The Effective Date of this Term Sheet shall be the date indicated below on which the Term Sheet is signed and delivered by the later of the two parties to sign and deliver.

BUYER:

WASHINGTONVILLE HOUSING ALLIANCE, INC. and WESTHAB, INC.

Dated: \_\_\_\_\_, 2024

By: Richard Nightingale  
Title: President and CEO

SELLER:

VILLAGE OF MAMARONECK

\_\_\_\_\_ Dated: \_\_\_\_\_, 2024 ("Effective Date")  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

### Exhibit A – Minimum SEQRA Scope

1. Land Use, Zoning, and Public Policy
  - a. Assess the compatibility of the proposed project with the scale of adjacent uses and the surrounding neighborhood
  - b. Assess the compliance with the criteria in *Article XV. Fair and Affordable Residence Uses* in the Village of Mamaroneck Zoning Code
  - c. Analyze the consistency with the 2023 Comprehensive Plan regarding affordable housing, plus other applicable public planning and policy documents.
2. Community Character and Historic Resources
  - a. Compare the proposed development program with the diverse character and scale of land uses surrounding the Hunter Tier site and the historic resources that are on or eligible for the NYS or National Register of Historic Places;
  - b. Describe the proposed architectural character, compatibility with surrounding uses, and potential visible changes that would result from developing the Hunter Tier site as proposed.
3. Community Services and Utilities
  - a. Analyze the capacity of existing infrastructure and utilities, community services to accommodate proposed use
    - Fire, Police and Ambulance Services
    - Solid waste management and recycling
    - Parks and Recreation
  - b. Analyze the capacity of schools to accommodate potential school age children that may reside at the proposed project.
4. Socioeconomic Issues
  - a. Population – how many residents would likely reside at the project how would this impact the Village's population
  - b. Housing impacts, particularly the ability of the proposed project to have a positive impact on increasing the availability of affordable housing in the Village, particularly for vulnerable populations
5. Traffic, Circulation and Parking
  - a. Analyze the capacity of and potential improvements needed to accommodate the proposed development program for the intersections of:
    - Prospect Avenue and Mamaroneck Avenue
    - Palmer Avenue and Mamaroneck Avenue
    - Palmer Avenue and Mt Pleasant Avenue
    - Mt Pleasant Avenue and Boston Post Road
  - b. Analyze the parking demand and supply of the proposed development program on:
    - Existing parking supply and demand broken down by public and private uses

~~Assess future parking demand and supply based on a theoretical build out within the downtown for public and private uses~~

- Describe a shared parking model for the proposed development program and how this could increase parking supply
  - Identify proposed improvements incorporated into the proposed development program to parking within the immediate area as well as downtown Mamaroneck
- c. Pedestrian Safety
- Analyze existing conditions for pedestrian safety on Prospect Avenue and surrounding streets and ease of access to Village services and cultural facilities
  - Evaluate potential impacts and proposed improvements proposed by the project to improve pedestrian safety and mitigate potential increases in traffic congestion
- d. Public transportation and new mobility
- Evaluate existing conditions of non-vehicular resources within the downtown area, e.g., bikes, pedestrian paths, etc.
6. Construction Impacts of the Proposed Project and a description of the plan to mitigate the temporary closure of the Hunter Tier structure
- a. Describe the Interim parking plan for essential parking needs—assuming loss of 100% of HT parking structure for 2+ years for Emelin, Library, Court & Village Hall?
  - b. Describe interim parking options for public and local businesses
  - c. Describe construction worker parking during construction period

Alternatives

~~If construction of the proposed development program is delayed due to financing, permits, etc., what improvements to the existing parking structure could be implemented to maintain the structural integrity of the parking structure and meet the essential demand for public parking at the Hunter Tier lot?~~

a. ~~What adjustments would be needed to the development program, if any, if the Village moves forward with plans to create a single municipal services building at 169 Mount Pleasant Avenue?~~

**Commented [MC5]:** As to the first "alternative", this only becomes an issue if there is a delay in receiving entitlements which would cause us to miss a favorable financing window. Therefore, we don't believe it should be part of the SEQRA scope. As to the second "alternative", it would require a significant amendment to the Village's existing land use approval processes. Our accepted proposal did not contemplate a larger development program. Moreover, we are not aware of any large scale zoning amendments being undertaken by the Village.

# Village of Mamaroneck



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*Mamaroneck, NY 10543*

*<http://www.villageofmamaroneck.org>*

OFFICE OF  
**ROBERT A. SPOLZINO**  
VILLAGE ATTORNEY

Tel (914) 777-7737  
Fax (914) 777-7769

**PRIVILEGED AND CONFIDENTIAL  
ATTORNEY-CLIENT COMMUNICATION**

TO: Mayor Torres and the Board of Trustees  
FROM: Robert A. Spolzino, Village Attorney  
RE: Hunter Tier Proposed Term Sheet  
DATE: October 28, 2024  
CC: Chuck Strome, Interim Village Manager

---

I have previously provided you with Westhab's response to our proposed revisions to the Hunter Tier Term Sheet. In several respects, the response does not get us to where the Board had directed us to go:

1. The proposed revised term sheet does not provide for a greater purchase price than Westhab has already proposed.
2. The proposed revised term sheet does not provide for any parking beyond what Westhab has already proposed wud defeat any attempt to define the shared parking calculation by agreement, instead leaving the shared parking calculation "to be determined through the government approval process."
3. The proposed revised term sheet would require the affordable housing program to be "commercially reasonable," whatever that means in the context of affordable housing, and would require that agreement to be subject to the approval of the State of New York.
4. The proposed revised term sheet would have the contract provide that the Village is required to accept the terms dictated by Westhab's lenders and funding agencies, instead of allowing the Village to terminate the contract if those terms are not acceptable to the Village.
5. The proposed revised term sheet would require the parties to act in good faith to approve and execute a contract within 30 days. That is not possible.

6. The proposed revised term sheet would make the term sheet binding to the extent that it would require "good faith" efforts to complete the transaction. That is unacceptable. A term sheet is, by definition, an incomplete document. It does not include all of the protections that would be in the contract. There will surely be terms in the proposed contract to which one party or the other will object. That normally leads to a negotiation. Imposing a "good faith" requirement in the term sheet will, instead, inevitably lead to a lawsuit in which one party claims the other is not acting in good faith in negotiating the contract.
7. The proposed revised term sheet would have the contract impose a "good faith" obligation on all of the regulatory approvals from the project would require, including approvals from the Planning Board, HCZMC, BAR and Village Board. This is probably illegal because the Village cannot contract away its governmental authority.
8. The proposed revised term sheet would have the contract delay the closing until all of the financing and all of the government approvals are obtained. That is not unreasonable but would mean the Village would not receive the purchase price for, probably, three years and construction of the project would not begin for at least three years.
9. The proposed revised term sheet would have the contract require that the agreement for the payment in lieu of taxes be "commercially reasonable," and not be "unreasonably withheld, conditioned, delayed or denied."
10. The proposed revised term sheet would have the contract require the Village to "use its best efforts *to support* Westhab in obtaining the other required approvals, rather than *to assist*, as we had proposed. That is probably illegal.
11. The proposed revised term sheet would have the contract require that Village Board's SEQRA determination be "reasonable and in good faith," not just rational, as the law requires. That is not lawful. The Village Board cannot agree to conditions on the exercise of its governmental authority as lead agency under SEQRA.
12. The proposed revised term sheet would eliminate the right of either party to terminate the contract within 90 days.

## Robert Spolzino

---

**From:** Robert Spolzino  
**Sent:** Friday, November 1, 2024 11:40 AM  
**To:** Mayor and Board  
**Cc:** Charles Strome  
**Subject:** Hunter Tier  
**Attachments:** To Westhab 2024.11.01.pdf

Thank you for your prompt responses. The responses confirmed that the Board's position is that only the affordable housing income amount and the preference program cannot be subject to a good faith negotiation requirement. My email to Westhab's counsel is attached.

*Robert Spolzino, Esq. | Executive Partner*



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## Robert Spolzino

---

**From:** Robert Spolzino  
**Sent:** Friday, November 1, 2024 11:36 AM  
**To:** Michael Curti  
**Cc:** Andrew Germansky; Richard Nightingale  
**Subject:** RE: Hunter Tier MOU and LDA Sample

Mike –

I've reviewed WHA's proposed revisions to the term sheet with Board of Trustees. There is much we can discuss, but there are two terms of the affordable housing plan that are dealbreakers for the Village and must be negotiated and agreed upon prior to the execution of the term sheet.

The plan must provide (i) that while a few of the units may be rented to tenants whose income is 80% of AMI, the majority of the units must be rented to tenants whose income is 60% of AMI or less; and (ii) for preferences acceptable to the Village for Village residents who have been displaced by flooding or live in flood prone areas and for former Village residents displaced by flooding, and must be fully and irrevocably approved prior to closing by New York State, Westchester County, and any other governmental entity, lender or funder whose approval is required. The plan can accommodate federal, state, and county requirements, but cannot be subject to federal, state or county law and must ultimately be acceptable to the Village. The affordable housing plan must be approved as part of the contract or, at least, a plan acceptable to the Village must be a condition to closing.

Further, these two items cannot be negotiated in the term sheet subject to a "good faith" or "commercial reasonableness" requirement and the Village must have the right to terminate the contract if anyone commences an action under the Fair Housing Act or otherwise to challenge the preference provisions in the plan.

I think it makes sense to address these issues first and then, if we can reach an agreement, begin discussing the balance of the term sheet. Please let me know WHA's responses by the middle of next week. The Board of Trustees meets next on November 12th.

Bob

Robert Spolzino, Esq. | Executive Partner

A | F  
ABRAMS | FENSTERMAN, LLP  
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**From:** Michael Curti <[michael.curti@westhab.org](mailto:michael.curti@westhab.org)>

**Sent:** Friday, October 18, 2024 10:40 AM

To: Robert Spolzino <RSpolzino@Abramslaw.com>  
Cc: Andrew Germansky <andrew.germansky@westhab.org>; Richard Nightingale <richard.nightingale@westhab.org>  
Subject: Re: Hunter Tier MOU and LDA Sample

Caution: This email originated outside of the organization

Dear Bob: Thank you for sharing the term sheet. I've attached our revisions for your review. We believe we're not too far apart and noticed a consistent theme in our comments. Like any developer, we're seeking as much certainty as possible, along with genuine partnership from the Village. If provided with a fair playing field, we're confident we can bring this project to fruition, which would be a significant achievement for all the administrations involved in making it happen. If you would like to have a call to discuss further edits, please let us know. We look forward to hearing from you soon. Thanks again and have a great weekend. Best Regards, MVC

On Tue, Oct 15, 2024 at 3:23 PM Robert Spolzino <RSpolzino@Abramslaw.com> wrote:

Mike – Attached for your review is our revised proposed term sheet. Let me know when you and your team have had a chance to review and I will set up a meeting with Chuck and our team. Bob

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From: Michael Curti <[michael.curti@westhab.org](mailto:michael.curti@westhab.org)>  
Sent: Thursday, October 10, 2024 11:01 AM  
To: Robert Spolzino <RSpolzino@Abramslaw.com>  
Cc: Andrew Germansky <andrew.germansky@westhab.org>; Richard Nightingale <richard.nightingale@westhab.org>  
Subject: Re: Hunter Tier MOU and LDA Sample

Caution: This email originated outside of the organization

Hi, just following up on our email exchange from last week. Have you had a chance to caucus internally and come up with the additional terms? Any chance we may receive them before the long weekend?

Best Regards,  
MVC

On Wed, Oct 2, 2024 at 9:00 AM Robert Spolzino <[RSpolzino@abramslaw.com](mailto:RSpolzino@abramslaw.com)> wrote:

We're reviewing your drafts and putting together the additional terms that the Village requires. Chuck is away this week. He'll be back next week and we expect to get back to you then.

***Robert Spolzino, Esq. | Executive Partner***



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**From:** Michael Curti <[michael.curti@westhab.org](mailto:michael.curti@westhab.org)>

**Sent:** Tuesday, October 1, 2024 3:56 PM

**To:** Robert Spolzino <[RSpolzino@Abramslaw.com](mailto:RSpolzino@Abramslaw.com)>

**Cc:** Andrew Germansky <[andrew.germansky@westhab.org](mailto:andrew.germansky@westhab.org)>; Richard Nightingale <[richard.nightingale@westhab.org](mailto:richard.nightingale@westhab.org)>

**Subject:** Re: Hunter Tier MOU and LDA Sample

**Caution: This email originated outside of the organization**

I hope this email finds you well. Just following up on our email from last week. Do you have a sense of when we can expect comments to the MOU and/or LDA?

Best Regards,

MVC

On Mon, Sep 23, 2024 at 5:19 PM Michael Curti <[michael.curti@westhab.org](mailto:michael.curti@westhab.org)> wrote:

I hope this email finds you well.

Attached, please find our proposed Hunter Terrace MOU/term sheet and example LDA. Please review with your client and let me know if you have any questions. We look forward to working with you and the rest of the Village team on this important development project. Best Regards, MVC

## Robert Spolzino

---

**From:** Michael Curti <michael.curti@westhab.org>  
**Sent:** Monday, November 4, 2024 11:23 AM  
**To:** Robert Spolzino  
**Cc:** Andrew Germansky; Richard Nightingale  
**Subject:** Re: Hunter Tier MOU and LDA Sample

Caution: This email originated outside of the organization

---

Bob: Thanks for the email and I hope you had a nice weekend.

Please find our responses below:

1. We can agree that the majority of the units must be rented to tenants whose income is 60% or less.
2. We can agree to a preference for 50% of the units for income-eligible Village of Mamaroneck residents and former residents impacted by flooding (Preference). However, if the State of New York approves the Preference and we are able to deliver, the Village must accept the condition.
3. We can agree to remove the good faith/reasonableness requirement on issues 1 and 2 however, however, we expect to see enough comfort in the balance of the term sheet to make sure the playing field is level between the parties.
4. We cannot agree to allow the Village to walk away if someone simply commences litigation. We will be spending a small fortune on entitlements and allowing the Village to walk if a lawsuit is merely filed, when there is no guarantee that it will be successful, is unfair.

If you have any questions regarding our responses, please email or call. Thank you!

Best Regards,  
MVC

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**From:** Michael Curti <[michael.curti@westhab.org](mailto:michael.curti@westhab.org)>

**Sent:** Friday, October 18, 2024 10:40 AM

**To:** Robert Spolzino <[RSpolzino@Abramslaw.com](mailto:RSpolzino@Abramslaw.com)>

**Cc:** Andrew Germansky <[andrew.germansky@westhab.org](mailto:andrew.germansky@westhab.org)>; Richard Nightingale <[richard.nightingale@westhab.org](mailto:richard.nightingale@westhab.org)>

**Subject:** Re: Hunter Tier MOU and LDA Sample

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achievement for all the administrations involved in making it happen. If you would like to have a call to discuss further edits, please let us know. We look forward to hearing from you soon. Thanks again and have a great weekend. Best Regards, MVC

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***Robert Spolzino, Esq. | Executive Partner***



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**From:** Michael Curti <[michael.curti@westhab.org](mailto:michael.curti@westhab.org)>  
**Sent:** Thursday, October 10, 2024 11:01 AM  
**To:** Robert Spolzino <[RSpolzino@Abramslaw.com](mailto:RSpolzino@Abramslaw.com)>  
**Cc:** Andrew Germansky <[andrew.germansky@westhab.org](mailto:andrew.germansky@westhab.org)>; Richard Nightingale <[richard.nightingale@westhab.org](mailto:richard.nightingale@westhab.org)>  
**Subject:** Re: Hunter Tier MOU and LDA Sample

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Hi, just following up on our email exchange from last week. Have you had a chance to caucus internally and come up with the additional terms? Any chance we may receive them before the long weekend?

Best Regards,  
MVC

On Wed, Oct 2, 2024 at 9:00 AM Robert Spolzino <[RSpolzino@abramslaw.com](mailto:RSpolzino@abramslaw.com)> wrote:

We're reviewing your drafts and putting together the additional terms that the Village requires. Chuck is away this week. He'll be back next week and we expect to get back to you then.

*Robert Spolzino, Esq. | Executive Partner*



*White Plains Office*

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**From:** Michael Curti <[michael.curti@westhab.org](mailto:michael.curti@westhab.org)>  
**Sent:** Tuesday, October 1, 2024 3:56 PM  
**To:** Robert Spolzino <[RSpolzino@Abramslaw.com](mailto:RSpolzino@Abramslaw.com)>  
**Cc:** Andrew Germansky <[andrew.germansky@westhab.org](mailto:andrew.germansky@westhab.org)>; Richard Nightingale <[richard.nightingale@westhab.org](mailto:richard.nightingale@westhab.org)>  
**Subject:** Re: Hunter Tier MOU and LDA Sample

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I hope this email finds you well. Just following up on our email from last week. Do you have a sense of when we can expect comments to the MOU and/or LDA?

Best Regards,

MVC

On Mon, Sep 23, 2024 at 5:19 PM Michael Curti <[michael.curti@westhab.org](mailto:michael.curti@westhab.org)> wrote:

I hope this email finds you well.

Attached, please find our proposed Hunter Terrace MOU/term sheet and example LDA. Please review with your client and let me know if you have any questions. We look forward to working with you and the rest of the Village team on this important development project. Best Regards, MVC

## Robert Spolzino

---

**From:** Robert Spolzino  
**Sent:** Wednesday, November 6, 2024 6:10 AM  
**To:** Mayor and Board  
**Cc:** Charles Strome  
**Subject:** FW: Hunter Tier MOU and LDA Sample

The email below is Westhab's response to the Village's comments with regard to the proposed term sheet.

Robert Spolzino, Esq. | Executive Partner



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---

**From:** Michael Curti <[michael.curti@westhab.org](mailto:michael.curti@westhab.org)>  
**Sent:** Monday, November 4, 2024 11:23 AM  
**To:** Robert Spolzino <[RSpolzino@Abramslaw.com](mailto:RSpolzino@Abramslaw.com)>  
**Cc:** Andrew Germansky <[andrew.germansky@westhab.org](mailto:andrew.germansky@westhab.org)>; Richard Nightingale <[richard.nightingale@westhab.org](mailto:richard.nightingale@westhab.org)>  
**Subject:** Re: Hunter Tier MOU and LDA Sample

**Caution: This email originated outside of the organization**

Bob: Thanks for the email and I hope you had a nice weekend.

Please find our responses below:

1. We can agree that the majority of the units must be rented to tenants whose income is 60% or less.
2. We can agree to a preference for 50% of the units for income-eligible Village of Mamaroneck residents and former residents impacted by flooding (Preference). However, if the State of New York approves the Preference and we are able to deliver, the Village must accept the condition.
3. We can agree to remove the good faith/reasonableness requirement on issues 1 and 2 however, however, we expect to see enough comfort in the balance of the term sheet to make sure the playing field is level between the parties.
4. We cannot agree to allow the Village to walk away if someone simply commences litigation. We will be spending a small fortune on entitlements and allowing the Village to walk if a lawsuit is merely filed, when there is no guarantee that it will be successful, is unfair.

If you have any questions regarding our responses, please email or call. Thank you!

Best Regards,  
MVC

On Fri, Nov 1, 2024 at 11:36 AM Robert Spolzino <[RSpolzino@abramslaw.com](mailto:RSpolzino@abramslaw.com)> wrote:

Mike –

I've reviewed WHA's proposed revisions to the term sheet with Board of Trustees. There is much we can discuss, but there are two terms of the affordable housing plan that are dealbreakers for the Village and must be negotiated and agreed upon prior to the execution of the term sheet.

The plan must provide (i) that while a few of the units may be rented to tenants whose income is 80% of AMI, the majority of the units must be rented to tenants whose income is 60% of AMI or less; and (ii) for preferences acceptable to the Village for Village residents who have been displaced by flooding or live in flood prone areas and for former Village residents displaced by flooding, and must be fully and irrevocably approved prior to closing by New York State, Westchester County, and any other governmental entity, lender or funder whose approval is required. The plan can accommodate federal, state, and county requirements, but cannot be subject to federal, state or county law and must ultimately be acceptable to the Village. the affordable housing plan must be approved as part of the contract or, at least, a plan acceptable to the Village must be a condition to closing.

Further, these two items cannot be negotiated in the term sheet subject to a "good faith" or "commercial reasonableness" requirement and the Village must have the right to terminate the contract if anyone commences an action under the Fair Housing Act or otherwise to challenge the preference provisions in the plan.

I think it makes sense to address these issues first and then, if we can reach an agreement, begin discussing the balance of the term sheet. Please let me know WHA's responses by the middle of next week. The Board of Trustees meets next on November 12th.

Bob

*Robert Spolzino, Esq. | Executive Partner*



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**From:** Michael Curti <[michael.curti@westhab.org](mailto:michael.curti@westhab.org)>

**Sent:** Friday, October 18, 2024 10:40 AM

**To:** Robert Spolzino <[RSpolzino@Abramslaw.com](mailto:RSpolzino@Abramslaw.com)>

**Cc:** Andrew Germansky <[andrew.germansky@westhab.org](mailto:andrew.germansky@westhab.org)>; Richard Nightingale <[richard.nightingale@westhab.org](mailto:richard.nightingale@westhab.org)>

**Subject:** Re: Hunter Tier MOU and LDA Sample

**Caution: This email originated outside of the organization**

Dear Bob: Thank you for sharing the term sheet. I've attached our revisions for your review. We believe we're not too far apart and noticed a consistent theme in our comments. Like any developer, we're seeking as much certainty as possible, along with genuine partnership from the Village. If provided with a fair playing field, we're confident we can bring this project to fruition, which would be a significant achievement for all the administrations involved in making it happen. If you would like to have a call to discuss further edits, please let us know. We look forward to hearing from you soon. Thanks again and have a great weekend. Best Regards, MVC

On Tue, Oct 15, 2024 at 3:23 PM Robert Spolzino <[RSpolzino@Abramslaw.com](mailto:RSpolzino@Abramslaw.com)> wrote:

Mike – Attached for your review is our revised proposed term sheet. Let me know when you and your team have had a chance to review and I will set up a meeting with Chuck and our team. Bob

***Robert Spolzino, Esq. | Executive Partner***



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**From:** Michael Curti <[michael.curti@westhab.org](mailto:michael.curti@westhab.org)>  
**Sent:** Thursday, October 10, 2024 11:01 AM  
**To:** Robert Spolzino <[RSpolzino@Abramslaw.com](mailto:RSpolzino@Abramslaw.com)>  
**Cc:** Andrew Germansky <[andrew.germansky@westhab.org](mailto:andrew.germansky@westhab.org)>; Richard Nightingale <[richard.nightingale@westhab.org](mailto:richard.nightingale@westhab.org)>  
**Subject:** Re: Hunter Tier MOU and LDA Sample

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Best Regards,  
MVC

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***Robert Spolzino, Esq. | Executive Partner***



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**Sent:** Tuesday, October 1, 2024 3:56 PM  
**To:** Robert Spolzino <[RSpolzino@Abramslaw.com](mailto:RSpolzino@Abramslaw.com)>  
**Cc:** Andrew Germansky <[andrew.germansky@westhab.org](mailto:andrew.germansky@westhab.org)>; Richard Nightingale <[richard.nightingale@westhab.org](mailto:richard.nightingale@westhab.org)>  
**Subject:** Re: Hunter Tier MOU and LDA Sample

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MVC

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Attached, please find our proposed Hunter Terrace MOU/term sheet and example LDA. Please review with your client and let me know if you have any questions. We look forward to working with you and the rest of the Village team on this important development project. Best Regards, MVC

## Robert Spolzino

---

**From:** Michael Curti <michael.curti@westhab.org>  
**Sent:** Wednesday, November 6, 2024 9:11 AM  
**To:** Robert Spolzino  
**Cc:** Richard Nightingale; Andrew Germansky  
**Subject:** Hunter Tier Term Sheet

**Caution: This email originated outside of the organization**

---

Bob: I hope this email finds you well. I should have mentioned this to you on Monday, but I'm going to be out of the country from Saturday until next Friday. Between flying and the location I'll be travelling to, the wifi may be non-existent or spotty at times. Have you had a chance to connect with the Board and Chuck on our responses? Would it be possible to squeeze in a meeting tomorrow or Friday to socialize issues, if there are any? Please let me know. Thanks! Best, MVC

## Robert Spolzino

---

**From:** Michael Curti <michael.curti@westhab.org>  
**Sent:** Thursday, November 7, 2024 11:40 AM  
**To:** Robert Spolzino  
**Cc:** Richard Nightingale; Andrew Germansky  
**Subject:** [EXTERNAL] Re: Hunter Tier Term Sheet

Hi Bob: Hope this email finds you well. We've given some additional thought to an issue you raised in your email last week regarding the Village's concern of a legal challenge to the preference. Subject to some more particular and finer revision in the contract of sale, we would propose the following limited indemnification to get the Village comfortable in the event of such a scenario:

Washingtonville Housing Alliance, Inc. ("Indemnitor") hereby agrees to indemnify, defend, and hold harmless the Village of Mamaroneck, New York ("Indemnitee") from and against any and all claims, demands, suits, losses, costs, expenses (including reasonable attorneys' fees), damages, judgments, and liabilities of any kind or nature whatsoever ("Claims") arising out of or related to any legal challenge to the 50% set-aside preference for current and former flood victims residing or formerly residing in the Village of Mamaroneck for the new affordable housing development to be constructed on the Indemnitee's Hunter Tier surface parking lot ("Program"). This indemnification shall apply to any Claim alleging that the Program is unlawful, unconstitutional, discriminatory, or otherwise improper, including but not limited to challenges under federal, state, or local law.

We believe that the probability of success of such a lawsuit is low. I've gotten the impression from HCR that they have vetted this issue and feel the same way.

Please let us know if that resolves our outstanding issues and if we can move forward on the term sheet.

Best Regards,  
MVC

On Wed, Nov 6, 2024 at 9:10 AM Michael Curti <michael.curti@westhab.org> wrote:

Bob: I hope this email finds you well. I should have mentioned this to you on Monday, but I'm going to be out of the country from Saturday until next Friday. Between flying and the location I'll be travelling to, the wifi may be non-existent or spotty at times. Have you had a chance to connect with the Board and Chuck on our responses? Would it be possible to squeeze in a meeting tomorrow or Friday to socialize issues, if there are any? Please let me know. Thanks! Best, MVC

## Robert Spolzino

---

**From:** Robert Spolzino  
**Sent:** Friday, November 8, 2024 7:42 AM  
**To:** Michael Curti  
**Cc:** Richard Nightingale; Andrew Germansky  
**Subject:** RE: Hunter Tier Term Sheet

Mike – I will be speaking with the Board of Trustees at its meeting on Tuesday evening. I will be able to get back to you after that. Bob

*Robert Spolzino, Esq. | Executive Partner*



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**From:** Michael Curti <michael.curti@westhab.org>  
**Sent:** Wednesday, November 6, 2024 9:11 AM  
**To:** Robert Spolzino <RSpolzino@Abramslaw.com>  
**Cc:** Richard Nightingale <richard.nightingale@westhab.org>; Andrew Germansky <andrew.germansky@westhab.org>  
**Subject:** Hunter Tier Term Sheet

**Caution: This email originated outside of the organization**

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

FAIR HOUSING JUSTICE CENTER, INC.,  
WESTCHESTER RESIDENTIAL  
OPPORTUNITIES, INC.,

Plaintiffs,

v.

TOWN OF BEDFORD, BLUE MOUNTAIN  
HOUSING DEVELOPMENT CORP.,

Defendants.

No. \_\_\_\_\_

**COMPLAINT**

Plaintiffs Fair Housing Justice Center, Inc. (“FHJC”) and Westchester Residential Opportunities, Inc. (“WRO”), by their attorneys, Emery Celli Brinckerhoff & Abady, LLP, for their Complaint against Defendants Town of Bedford and Blue Mountain Housing Development Corp. allege as follows:

**INTRODUCTION**

1. The Town of Bedford, and its housing agency the Blue Mountain Housing Development Corp., are using residency and employment preferences that favor white applicants over African American applicants in administering the Town’s “middle-income” affordable housing. Bedford’s preference system makes it more likely that white applicants will receive the Town’s “middle-income” housing units and subjects African American applicants to longer waiting periods for such housing.

2. Bedford’s population is overwhelmingly white. According to the 2010 census, the Town’s population was 86% white and only 5% African American.

3. Yet, in 2005, the Town amended its zoning code to include so-called

“preferences” for the distribution of its “middle-income” affordable housing units that prioritize people who already live or work in Bedford—people who are statistically far more likely to be white than the typical Westchester County resident applying for affordable housing. These “preferences” have had a disparate impact on the number of African American applicants who are awarded middle-income housing in Bedford and have subjected African American applicants to longer waiting periods for such housing (if they ever receive it).

4. This is a civil rights lawsuit brought under the Fair Housing Act to enjoin Defendants from continuing to use these residency and employment preferences in the rental and sale of middle-income housing units in Bedford.

#### **JURISDICTION AND VENUE**

5. This Court has subject matter jurisdiction over the federal claims pursuant to 28 U.S.C. §§ 1331 and 1343, 28 U.S.C. §§ 2201 and 2202, and 42 U.S.C. § 3613.

6. The acts complained of occurred in the Southern District of New York, and venue is lodged in this Court pursuant to 28 U.S.C. § 1391(b).

#### **THE PARTIES**

##### **Plaintiff Fair Housing Justice Center, Inc.**

7. Plaintiff Fair Housing Justice Center, Inc. is a private non-profit organization dedicated to ensuring that all people have equal access to housing opportunities in the greater New York City region by eliminating housing discrimination and creating open, accessible, and inclusive communities. It is organized under the laws of New York and operates within the Southern and Eastern Districts of New York, including Westchester County.

8. Among other things, FHJC (a) provides information to the public and other non-profit organizations in the New York City regional area about fair housing laws; (b) provides intake counseling to individuals and organizations with allegations of housing discrimination; (c) conducts testing and other investigations of allegations of housing discrimination; (d) makes legal referrals to cooperating attorneys; (e) assists with the preparation and filing of administrative housing discrimination complaints; and (f) provides post-referral litigation support services. FHJC provides these services free of charge and without regard to income.

9. FHJC also recruits, trains, and utilizes individuals as “testers,” persons who pose as renters or homebuyers for the purpose of obtaining information about the conduct of local governments, landlords, real estate companies, agents, and others to determine whether illegal housing discrimination is taking place.

10. FHJC conducts testing investigations for government law enforcement agencies, provides technical assistance to non-profit organizations engaging in fair housing enforcement activities, and engages in policy initiatives that further FHJC’s mission, including the publication and dissemination of reports and educational materials.

11. Here, FHJC diverted resources by conducting multiple tests (in person and by phone) with the Town of Bedford and various volunteer fire departments within the Town; FHJC also spent time gathering, reviewing, and analyzing publicly-available data concerning the Town’s zoning code, affordable housing program, and racial demographics, and conferring with WRO to discuss the results of their work and coordinate their research and investigation going forward.

**Plaintiff Westchester Residential Opportunities**

12. Plaintiff Westchester Residential Opportunities is a private non-profit organization serving Westchester County and adjacent counties. WRO is organized under the laws of New York, with its principal place of business in White Plains in the Southern District of New York.

13. WRO's mission is to promote equal, affordable, and accessible housing opportunities for all residents in the region in which it operates, including in the Southern District of New York.

14. One of WRO's primary objectives is to promote the expansion of non-discriminatory housing opportunities in Westchester County. It accomplishes this objective through a variety of means, including by providing education about fair housing rights and responsibilities, conducting investigations of allegations of housing discrimination, and undertaking studies and issuing reports about fair housing. WRO also administers a First Time Homebuyers Program that offers home-buying education and helps interested buyers obtain down payment assistance and mortgage advice.

15. WRO operates a Senior Housing Assistance Program which helps locate affordable housing for seniors by, among other things, assisting seniors to find and apply for affordable housing and related programs that help pay for such housing

16. Here, WRO diverted resources by conducting research regarding zoning codes in Westchester, including the Town of Bedford and the Town's preferences, their enforcement, and the properties to which the preferences applied; researching Bedford school districts and other Town services; designing and executing a test and site visits; attending a housing board meeting; and conferring with FHJC to discuss the results of

their work and coordinate their research and investigation going forward.

**Defendant Town of Bedford**

17. Defendant Town of Bedford is a municipal corporation organized under the laws of the State of New York, with its principal offices at 321 Bedford Road, Bedford Hills, New York. The Town is located in northeastern Westchester County within the Southern District of New York. The Town includes the hamlets of Bedford Hills, Bedford, and Katonah.

18. The Town is governed by a Supervisor and a Town Board, which have the authority to enact and enforce the Town's zoning code.

19. The Town has a Housing Agency which, together with Defendant Blue Mountain Development Corporation, is responsible for administering the Town's affordable housing program, including its "middle-income" housing.

20. All references to Defendant Town include any individual acting on behalf of, or under the authority derived from, the Town.

**Defendant Blue Mountain Housing Development Corporation, Inc.**

21. Defendant Blue Mountain Housing Development Corporation, Inc. was created by the Town Board in 1980.

22. On information and belief, Blue Mountain is a non-profit corporation; however it does not appear to maintain an active listing with either the New York State Department of State or the New York Charities Bureau.

23. Blue Mountain's website is a part of the Town's website and lists the same principal place of business as the Town, 321 Bedford Road, Bedford Hills, New York.

24. Blue Mountain is governed by a ten-person Board, which is appointed by the Town Board.

25. Blue Mountain develops and renovates affordable housing in the Town and, together with the Town Housing Agency, administers the Town's affordable housing program, including the Town's "middle-income" housing units.

26. All references to Defendant Blue Mountain include any individual acting on behalf of, or under the authority derived from, Blue Mountain.

### FACTUAL ALLEGATIONS

#### **The Town's Preference System for "Middle-Income" Affordable Housing**

27. The Town's zoning code provides that "middle-income dwelling units" are units available for sale or rental to "middle-income families," which are families "whose aggregate income . . . does not exceed the average of the median annual Town-paid wages of full-time employees of the Town . . ." Town Zoning Code, §§ 125-3 & 125-56.

28. According to the Town's Application for Affordable Housing (available on Defendants' website),<sup>1</sup> the income limits for a "middle income family" are currently: \$84,877 (1 person); \$93,365 (2 person family); \$110,340 (3 person family); \$118,828 (4 person family); \$135,803 (5 person family); \$144,291 (6 person family).

29. The Town's zoning code further provides that "[a]t least 20% of the dwelling units constructed in the DH [Diversified Housing] District shall be middle-income dwelling units." Town Zoning Code, § 125-29.2.

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<sup>1</sup> Available at <http://www.bedfordny.gov/wp-content/uploads/2013/12/Housing-Application-Prt-1.pdf> (last visited July 19, 2017).

30. In 2005, the Town amended its zoning code to provide for a preference system in the allocation of so-called “middle-income dwelling units.” *See* L.L. No. 12-2005.

31. The Town’s zoning code currently provides that:

Middle-income families applying for middle-income dwelling units shall be selected on the basis of the following categories of priority:

- 1) Full-time Town of Bedford municipal employees and active members of the Bedford Fire Department, Katonah Fire Department, the Bedford Hills Fire Department and the Katonah Bedford Hills Volunteer Ambulance Corps.
- 2) Employees of schools within the Town of Bedford that provide any or all of kindergarten through twelfth-grade education.
- 3) Residents of the Town of Bedford.
- 4) Other persons employed in the Town of Bedford.
- 5) Parents and children of residents of the Town of Bedford.
- 6) Other residents of Westchester County.
- 7) Other persons employed in Westchester County.
- 8) All others.

Zoning Code, §125-56(E).

32. According to Blue Mountain’s 2015 Annual Report (the most recent report publicly available), the Town has 16 middle-income units, which are awarded according to the preference system set forth above. *See* 2015 Annual Report at 4-6.

33. In addition, the Town has 7 units “reserve[d]” for “Bedford residents” at the Woodcrest Senior Condos. *See* 2015 Annual Report at 5.

34. More recently, in response to Westchester County's obligations under the consent decree in *United States et al v. Westchester County*, No. 06 Civ. 2860 (DLC) (S.D.N.Y.), the Town has also added "affordable affirmatively furthering fair housing" ("AAFFH") units, which are for households whose aggregate income does not exceed 80% of Westchester County's area median income ("AMI") and which are marketed in accordance with the Westchester County Fair and Affordable Housing Affirmative Marketing Plan. See Zoning Code, § 125-3; 2015 Annual Report at 4-6.

35. Westchester County does not have a county-wide zoning code. Each town within the County has its own zoning code and other towns that are of similar size to Bedford have their own affordable housing programs included within their zoning codes.

**The Town's Preferences Favor White Applicants Over African American Applicants**

36. The Town's preference system for the allocation of middle-income housing favors white households by making it more likely that the recipients of middle-income housing units will be white and by subjecting African American applicants to longer waiting periods for such units.

37. The Town's population is predominantly white. As of the 2010 Census, the Town's population was 17,335. That Census shows that the Town's population was approximately 86% white and only 5% African American, whereas the County's population of 949,113 was 68% white and almost 15% African American.

38. On information and belief, the small percentage of the Town's population that is African American is artificially inflated by the Bedford Hills Correctional Facility, which houses approximately 409 African American inmates (*i.e.* approximately 49% of the facility's total inmate population). Clearly, none of these inmates is eligible for

affordable housing in the Town.

***Bedford Resident Preference Favors White People***

39. The third residency preference is for residents of the Town of Bedford.

40. This third preference favors white people because the overwhelming majority of the Town's residents (86%) are white and only 5% are African American.

41. According to the 2010 Census, 76% to 78% of the Town's households that are income-eligible for "middle-income" housing (per the Zoning Code's income eligibility limits) are white.

42. According to the 2010 Census, only 2 to 3% of the Town households that are income-eligible for "middle-income" housing are African-American.

43. By contrast, according to the 2010 Census, 18% of the Westchester County households that are are income-eligible for Bedford "middle-income" housing are African American.

***The First Preference for Town Employees and Firefighters Also Favors Whites***

44. The first preference (for Town employees and volunteer firefighters) and the second preference (for school employees in the Town) also favor white applicants over African American applicants.

45. On information and belief, the majority of the members of the three listed volunteer fire departments and one listed volunteer ambulance corps are residents of the Town of Bedford which, as set forth above, is majority white.

46. The Bedford Fire Department requires residency within the Bedford Fire District in order to qualify for membership.

47. According to calls conducted by testers employed by FHJC, the Katonah Fire Department, the Bedford Hills Fire Department, and the Katonah Bedford Hills Volunteer Ambulance Corps all have a preference for residents as members and all require that their members live or work close enough to respond quickly in the event of a fire.

48. On information and belief, less than 20% of the people eligible for the first preference are Town employees and a still smaller subset of these employees are full-time employees (as required by the preference) and a still smaller subset of those full-time employees are income-eligible for “middle-income” housing and therefore eligible for the first preference.

49. The first preference also excludes the employees of the Bedford Hills Correctional Facility, a majority of whom are, on information and belief, African American. These employees are relegated to the fourth preference and therefore treated less favorably than the Town employees who, on information and belief, are majority white.

*The Second Preference for Bedford School Employees Also Favors Whites*

50. On information and belief, the majority of the employees of schools within the Town are also white.

51. According to data obtained by FHJC, only 1.4% of the professional staff of the public schools in Bedford was African American as of fall 2016.

52. According to United States Department of Labor data obtained by Plaintiffs, the average salary of the non-professional employees (e.g. cafeteria workers, custodians, grounds keepers) is too low to feasibly allow them to afford the Town’s

“middle-income” units.

53. No racial demographic data is available for the private schools in Bedford, but, on information and belief, the number of private school employees is smaller and there is no reason to believe the private schools’ workforce is any more or less racially diverse than the public schools’ workforce.

**Defendants Discourage Non-Residents from Applying**

54. On information and belief, Defendants apply this preference system by placing applicants for the “middle-income” housing on waitlists and selecting applicants off the waitlists based on their eligibility for one of these preferences.

55. The Town’s housing application (available online and distributed to FHJC testers) misleads nonresidents about the preferences by describing the preferences as “eligibility requirements,” rather than preferences.

56. The application also does not explain that the preferences only apply to middle-income housing, not to the County-wide AAFHH affordable housing which is marketed under the Westchester County guidelines which do not have residency or employment preferences.

57. On information and belief, suggesting in the application that the preferences are requirements for all affordable housing in the Town (including middle-income and affordable housing) discourages people who do not qualify for a preference from applying to either program and further perpetuates the discriminatory effects of the preference system.

58. Town employees and officers have also stated to prospective applicants that the Town actually maintains separate wait lists for residents and non-residents.

59. For example, in a visit to the Town of Bedford office on March 13, 2017, Amy Pectol (the Town Tax Receiver and a Blue Mountain Board Member) told an African American FHJC tester that an applicant got priority if he was already a Town resident, had a parent or child in the Town, was a volunteer with the fire department or ambulance corps, or was employed with the Town. She also said that the Town maintained two lists for affordable housing, one for residents and one for non-residents and that he would be sort of “in the middle” if he worked in Bedford but did not live there—this despite the fact that the tester told her he was about to accept employment as a Bedford school teacher, which should have made him eligible for the second preference. She also told the tester that the wait list could take several years.

60. In another visit to the Town of Bedford office on December 10, 2015, the Town Supervisor’s assistant told a white FHJC tester that the waitlist was long (two to ten years). She stated that Town residents went on the “primary list,” while non-residents were placed on the “secondary list.” She did not explain that the preferences were only for the “middle-income” housing, not for the County-wide AAFHH affordable housing.

61. The same tester also met with Town Tax Receiver and Blue Mountain Board Member Ms. Pectol on April 28, 2016 and she confirmed that the Town was still using the preferences to award its middle-income housing units.

62. On information and belief, Defendants’ “preferences policy” for “middle-income” housing has had a disparate impact on African American people who would otherwise have been income-eligible for such housing but who were not awarded such housing because of the preference system or who were subjected to a longer waiting time to receive such housing than white applicants. As a direct result of Defendants’

preference system, the Town's middle-income housing is disproportionately occupied by white households and African American applicants have either had to wait longer to receive such housing than white applicants or have not received such housing at all.

63. On information and belief, administering the Town's middle-income housing without a preference system would have less disparate impact on African American applicants, including by making it more likely they would have received such housing and by reducing the time they would have had to wait to receive such housing.

#### **Defendants' Disregard of the Impact of Their Policies**

64. On information and belief, prior to adopting the amendment to the Town's zoning code described above, Defendants did not evaluate whether their preference system would have an adverse impact based on race.

65. On information and belief, Defendants have never evaluated whether their preference system for middle income housing units favors white applicants and disfavors African American applicants.

#### **Town's Discriminatory Policies Have Injured Plaintiffs**

66. By reason of Defendants' conduct as described above, FHJC has suffered injury in the form of diversion of its resources. FHJC has expended staff time and funds to investigate and respond to Defendants' discriminatory policies and practices which diverted resources away from FHJC's other activities. As part of its investigative efforts, FHJC expended staff time and resources to conduct and review testing; to obtain and review public documents regarding the Town's zoning code; to analyze Census, employment, school, prison, and other available data; and to confer with WRO to discuss the results of their work and coordinate their investigation going forward.

67. Furthermore, Defendants' discriminatory policies and practices as described above have frustrated FHJC's mission to ensure that all people have equal access to housing opportunities; foster open, accessible and inclusive communities; and eliminate housing discrimination throughout the New York City region, including in Westchester County, by making housing unavailable and imposing discriminatory terms and conditions because of race in the Town of Bedford and Westchester County.

68. By reason of Defendants' conduct as described above, WRO has suffered injury in the form of diversion of its resources. WRO has expended staff time and funds to investigate and respond to Defendants' discriminatory policies and practices which diverted resources away from WRO's other activities. As part of its investigative efforts, WRO expended staff time and resources to: conduct and review testing; conduct research regarding Westchester County zoning codes, including the Town of Bedford and the Town's preferences, their enforcement, and the properties to which the preferences applied; research school districts and other town services; design and execute site visits; attend a housing board meeting; and confer with FHJC to discuss the results of their work and coordinate their investigation going forward.

69. In addition to causing a diversion of WRO's resources, Defendants' conduct as described above has frustrated WRO's stated mission to promote equal, affordable, and accessible housing opportunities for all residents of the region in which it operates, by making housing unavailable and imposing discriminatory terms and conditions because of race in the Town of Bedford and Westchester County, including reducing the availability of affordable housing options for WRO's clients in its Senior Housing Assistance Program.

**FIRST CAUSE OF ACTION**  
(Fair Housing Act, 42 U.S.C. § 3604(a))

70. Plaintiffs repeat and re-allege the foregoing paragraphs of their complaint as though fully set forth herein.

71. Defendants' conduct as described above makes dwellings unavailable because of race in violation of the Fair Housing Act, 42 U.S.C. § 3604(a).

72. Plaintiffs are aggrieved persons as defined by 42 U.S.C. § 3602(i). Plaintiffs have been injured by Defendants' discriminatory conduct, and have suffered damages as a result.

73. Accordingly, under 42 U.S.C. § 3613(c), Plaintiffs are entitled to actual damages, injunctive relief, and reasonable attorneys' fees and costs.

**SECOND CAUSE OF ACTION**  
(Fair Housing Act, 42 U.S.C. § 3604(b))

74. Plaintiffs repeat and re-allege the foregoing paragraphs of their Complaint as though fully set forth herein.

75. Defendants' conduct as described above discriminates in the terms, conditions, or privileges of the rental of a dwelling because of race, in violation of the Fair Housing Act, 42 U.S.C. § 3604(b).

76. Plaintiffs are aggrieved persons as defined by 42 U.S.C. § 3602(i). Plaintiffs have been injured by Defendant's discriminatory conduct, and they have suffered damages as a result.

77. Accordingly, under 42 U.S.C. § 3613(c), Plaintiffs are entitled to actual damages, injunctive relief, and reasonable attorneys' fees and costs.

**PRAYER FOR RELIEF**

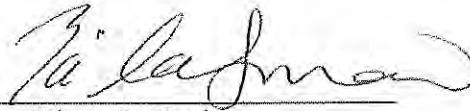
WHEREFORE, Plaintiffs respectfully request that judgment be entered against Defendants as follows:

- a. Declaring that Defendants' actions violate the Fair Housing Act;
- b. Permanently enjoining Defendants from using, requiring, or enforcing preferences in the Town's affordable housing programs and in the Town's Zoning Code;
- c. Enjoining Defendants to:
  - i. Make all necessary modifications to their policies, practices and procedures to comply with fair housing laws, including amending the Town's Zoning Code to remove preferences for middle-income units;
  - ii. Make all necessary modifications to ensure that all middle-income units are allocated based on the original date of application and not based on any other preference;
  - iii. Train all Defendants' officials, personnel, and employees on fair housing laws;
  - iv. Adopt and implement an affirmative marketing plan for the Town's middle-income units that prevents future housing discrimination;
  - v. Modify any restrictive covenants that currently apply to middle-income units to remove any preferences; and
  - vi. Remedy the unlawful discrimination caused by Defendants' actions and omissions.
- d. Awarding damages to Plaintiffs;
- e. Awarding reasonable attorneys' fees and costs under 42 U.S.C. § 3613(c); and

f. Awarding such other and further relief as this Court may deem just and proper.

Dated: New York, New York  
July 26, 2017

EMERY CELLI BRINCKERHOFF  
& ABADY LLP

By:   
Diane L. Houk  
Zoe Salzman

600 Fifth Avenue, 10<sup>th</sup> Floor  
New York, New York 10020  
(212) 763-5000

*Attorneys for Plaintiffs*

*Karas, J. as*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

FAIR HOUSING JUSTICE CENTER, INC.,  
WESTCHESTER RESIDENTIAL  
OPPORTUNITIES, INC.,

Plaintiffs,

v.

TOWN OF BEDFORD, BLUE MOUNTAIN  
HOUSING DEVELOPMENT CORP.,

Defendants.

No. 17 Civ. 05664 (KMK)(PED)

**SO ORDERED STIPULATION OF  
SETTLEMENT**

**WHEREAS**, on July 26, 2017, plaintiffs Fair Housing Justice Center, Inc. (“FHJC”) and Westchester Residential Opportunities, Inc. (“WRO”) (collectively “Plaintiffs”) filed a complaint which alleged claims against defendants Town of Bedford (“Town”) and Blue Mountain Housing Development Corporation, Inc. (“Blue Mountain”) (collectively “Defendants”) (all together, the “Parties”) for discrimination on the basis of race in the administration of the Town’s “middle-income” affordable housing program in violation of the Fair Housing Act, 42 U.S.C. § 3604 (“Complaint”);

**WHEREAS**, Defendants deny the allegations in the Complaint and deny any wrongdoing and take the position that neither this So Ordered Stipulation of Settlement, nor anything contained therein, shall constitute or be construed to constitute an admission of liability by the Defendants with respect to any of the Plaintiffs’ claims or allegations, nor an acknowledgement that there is any merit to such claims or allegations, or an acknowledgement that there is any merit to such claims or allegations, or any admission that the Defendants have not complied with any applicable statute, all of which

the Defendants continue to dispute;

**WHEREAS**, Defendants further assert that they have taken actions to comply with the requirements of the Fair Housing Act and promote fair and affordable housing in the Town of Bedford;

**WHEREAS**, the Parties have a mutual desire to settle the case and avoid protracted litigation and unnecessary expenses;

**NOW, THEREFORE**, the Parties stipulate and agree that all claims shall be settled, released, and dismissed with prejudice subject to the terms and conditions of this So Ordered Stipulation of Settlement Agreement (the "Agreement"), as follows:

**A. TERM AND SCOPE OF AGREEMENT**

1. The effective date of this Agreement shall be the date the Court so-orders this Agreement ("Effective Date").

2. This Agreement shall remain in effect for three (3) years after the Town amends the Town Code, as provided for in Paragraph 5, unless stated otherwise.

3. This Agreement shall be binding on Defendants and all their elected, appointed, and/or volunteer officials, employees, and agents.

4. The United States District Court for the Southern District of New York will retain jurisdiction to enforce the Agreement upon the filing of an appropriate motion. Upon a finding of good cause shown, the Court may grant such relief as it deems just and proper, including but not limited to: extending the length of the terms of the Agreement, modifying the Agreement (*e.g.* to require additional training or monitoring), and/or imposing other legal remedies.

**B. AMENDMENTS TO THE TOWN CODE**

5. Within one hundred and eighty (180) days of the Effective Date, the Town will amend Chapter 125 of the Town Code, in the form substantially similar to that contained in Exhibit "A", to:

- a. Repeal and remove the residency and work preferences currently a part of § 125-56(E). Defendants shall not use work or residency preferences in the middle-income housing program or in any other housing program for fifteen (15) years from the Effective Date.
- b. Establish a neutral, non-discriminatory system to sell and rent all middle-income housing units going forward (*e.g.* a lottery, based on income, or some other procedure acceptable to Plaintiffs).
- c. Revise the definition of "Middle-Income Family" currently a part of § 125-3 to provide that a middle-income family is a household whose aggregate annual income does not exceed 80% of the Westchester County Area Median Income ("AMI") to be eligible to rent a middle-income housing unit or 110% of the Westchester County AMI to be eligible to purchase a middle-income housing unit.
- d. Notwithstanding the foregoing requirement in Section 5(c) above, rental of any middle-income housing units existing in the Town of Bedford as of the Effective Date of this Agreement shall be grandfathered at 100% of Town of Bedford median income based on the average of the last three years.

- e. Add a section that provides the following incentives for the creation of middle-income housing units:
  - i. Planning Board Assistance: When a proposed residential subdivision contains 20% or more middle-income housing units, the Planning Board may:
    - 1. Consider such other forms of financial or other assistance which may be under the control of the Town or Blue Mountain;
    - 2. Actively assist in obtaining financial or other assistance from federal, state or other public agencies in support of affordable housing development;
    - 3. Allow the reduction of dimensional requirements by not more than 25% and an allowance for shared parking so as to reduce infrastructure costs.
  - ii. Expedited Project Review Process:
    - 1. Pre-application meeting. The applicant for a development including middle-income units shall be entitled to attend at least one pre-application meeting at which representatives will be in attendance from each Town agency and staff member expected to play a role in the review and approval of the development application and construction. The purpose of the pre-application meeting will be to expedite the development application review process through:

- a. The early identification of issues, concerns, code compliance, and coordination matters that may arise during the review and approval process.
  - b. The establishment of a comprehensive review process outline, proposed meeting schedule, and conceptual timeline.
2. Meeting schedule and timeline. Town agencies and staff shall endeavor to honor the proposed meeting schedule and conceptual timeline established as an outcome of the pre-application meeting to the greatest extent possible during the review and approval process, subject to the demonstrated cooperation of the applicant to adhere to same. Should the approval process extend beyond one year, an applicant for a development including middle-income housing units shall be entitled to at least one additional meeting per year with the same departments, agencies, authorities, boards, commissions, councils, or committees to review any and all items discussed at previous pre-application meetings.
3. Calendar/agenda priority. Town agencies with review or approval authority over applications for developments including middle-income housing units shall give priority to such applications by placing applications for all developments including middle-income housing units first on all meeting and work session calendars and agendas and, when feasible based on the ability to conduct required reviews and public notice, with the intent of shortening

minimum advance submission deadlines to the extent practicable.

iii. Reductions in Development Fees: The Town will waive, for developers proposing to create middle-income or affordable housing in the Town, thirty (30%) of the following categories of fees incurred or payments received by the Town that would otherwise be charged to such developers:

1. Building Permit application fees;
2. Planning Department application fees;
3. Recreation Fees based on percentage of middle-income housing units to be developed;
4. Advertising expenses;
5. Legal Fees; and
6. Engineering Fees.

#### **C. CHANGES TO THE MIDDLE-INCOME HOUSING PROGRAM**

6. Within thirty (30) days of the Effective Date, Defendants will retain Housing Action Council to act in conjunction with the Town of Bedford Town Housing Agency, to administer the middle-income housing program during the term of this Agreement. Administration shall include development and implementation of the fair housing marketing plan for middle-income housing and reviewing applications for sales of middle-income housing to determine whether applicants meet the requirements for middle-income housing in the Town of Bedford.

7. In the event Housing Action Council is no longer willing or able to participate in the administration of the middle-income housing program in conjunction

with the Town of Bedford Town Housing Agency, Defendants shall promptly retain a new entity with experience in the marketing, sale, and rental of affordable/middle-income housing that is acceptable to Plaintiffs to perform such duties.

8. Within one hundred and twenty (120) days of the Effective Date, Defendants, either directly or through Housing Action Council, will:
  - a. Eliminate the existing waitlists for middle-income housing.
  - b. Mail a letter to all persons on the existing waitlists advising them that the waitlist is being eliminated, describing the neutral, non-discriminatory system that will be used to sell and rent all middle-income housing units going forward, and offering the opportunity to such persons to provide their names and addresses to be notified of future opportunities to apply for middle-income housing. No preference will be given to future applications submitted by persons who are on existing waiting lists.
  - c. Revise the Town's application form(s) for affordable and middle-income housing to remove any reference to residency or work preferences and to include the phrase "Equal Housing Opportunity" and the HUD fair housing logo. The Town may use a short initial application and longer full application form. The Town may make its application forms available online to be completed on-line, as long as the Town also provides an opportunity for applicants to obtain and complete a paper copy.
  - d. Modify all restrictive covenants for existing middle-income housing units and similarly restricted units at Woodcrest Condominiums to eliminate residency and work preferences.

9. Within one hundred and twenty (120) days of the Effective Date, Defendants will develop and implement an affirmative marketing plan for the sale and rental of existing middle-income housing. The plan shall include how the marketing and rental of apartments at Garden Homes and Bedford Lakes Apartments will be conducted in a manner consistent with the requirements and goals of this Agreement. The plan must be designed to reach income-qualified Westchester County and New York City residents in a manner that targets those least likely to apply, including but not limited to the employees of the Bedford Hills Correctional Facility. The plan must include the elements listed in Exhibit "B" attached hereto.

10. Following the effective date of this Agreement, the Town will require developers of future middle-income housing units to develop and implement an affirmative marketing plan, or retain the services of a qualified entity to develop and act as administrator for the affirmative marketing plan, which affirmative marketing plan shall be designed to reach income-qualified Westchester County and New York City residents in a manner that targets those least likely to apply, including but not limited to the employees of the Bedford Hills Correctional Facility. The Town will require such developers to provide the Town with a copy of the affirmative marketing plan and, upon request, records showing how the developer implemented the plan.

11. The affirmative marketing requirements described in Paragraphs 9 and 10 shall remain in effect for at least fifteen (15) years after the Effective Date.

12. Within thirty (30) days of the Effective Date, Defendants will modify the Blue Mountain Housing Lending Programs to include the incentives for the development of middle-income housing that are set forth in Exhibit "C". These modifications will

remain in place for at least fifteen (15) years after the Effective Date, during which time they will be featured on Defendants' websites, in Blue Mountain's annual reports, and in any other materials produced by Defendants that describe these or similar incentives for developers.

13. Within thirty (30) days of the Effective Date, Defendants will make the Bedford Housing Trust Fund available for affordable and middle-income housing developments for at least fifteen (15) years after the Effective Date, during which time this option will be featured on Defendants' websites, in Blue Mountain's annual reports, and in any other materials produced by Defendants that describe this or similar incentives for developers.

14. Defendants support, and will continue to support, qualified applications for third-party subsidies made by developers interested in building affordable or middle-income housing in the Town.

#### **D. OUTREACH AND TRAINING**

15. Within thirty (30) days after amendment of the Town Code, as described in Paragraph 5 above, Defendants will publicize the revisions to the Town Code and incentives for middle-income development required by Sections B and C of this Agreement, including to prospective middle-income housing developers, homebuyers, and renters, including employees at Bedford Hills Correctional Facility. This will include, but not be limited to, sending a letter to prospective non-profit and for-profit housing developers operating in Westchester County. The letter will also be sent to non-profit organizations who assist or work with prospective middle-income homebuyers and renters residing in Westchester County and New York City, including those who provide

first-time homebuyer seminars and programs, including but not limited to the organizations listed in Exhibit "D".

16. Within one hundred and eighty (180) days of the Effective Date, the members of the Blue Mountain Board, members of the Town Board, Town Supervisor, Director of Planning, Town Clerk, Deputy Town Clerk, and all Housing Action Council employees and any other of Defendants' officials and agents who are involved in the implementation of the terms of this Agreement will attend one of two fair housing training sessions provided by WRO. The costs of these training sessions are included in the monetary relief provided for in Section E of this Agreement.

17. Within one hundred and eighty (180) days of the Effective Date, Defendants will also coordinate and schedule a fair housing training session provided by WRO for the employees of the owner of the Bedford Lakes Apartments. The training will be provided for those employees involved in advertising, showing, and renting the middle-income housing units and those who review and/or approve rental applications, at Bedford Lakes Apartments. The cost of this training session is included in the monetary relief provided for in Paragraph 18 of this Agreement.

18. Defendants agree that they will retain WRO to provide fair housing training(s) for the developer(s) and/or owner(s) of any new middle-income housing for whom the Town grants site plan approval during the term of the Agreement. Defendants shall pay WRO for any such additional training session(s) at a rate of \$1,500.00 per session.

**E. MONETARY RELIEF AND RELEASES**

19. Within twenty (20) days after the Effective Date, or on before July 13, 2018, whichever is later, Defendants shall cause to be delivered to the offices of Plaintiffs' counsel, at 600 Fifth Avenue, 10th Floor, New York, New York 10020, by wire transfer or one or more checks, the sum of one hundred and sixty-five thousand (\$165,000.00) dollars. If by check(s), each check shall be made payable to "Emery Celli Brinckerhoff & Abady, LLP, as attorneys for Fair Housing Justice Center, Inc. and Westchester Residential Opportunities, Inc."

20. Contemporaneously with delivery of the check described in the preceding paragraph, Defendants shall cause to be delivered to Plaintiffs' counsel a Stipulation and Order for Dismissal signed by Defendants' counsel in the form attached as Exhibit "E".

21. Plaintiffs shall file the Stipulation and Order of Dismissal with the Court to dismiss the case within ten (10) days after Defendants have made the above payment.

22. The Parties mutually release, acquit, and forever discharge each other from any and all claims, demands, causes of action, or liabilities, at law or in equity, arising out of the allegations in the Complaint and existing as of the Effective Date of this Agreement.

23. Nothing in this section shall preclude Plaintiffs from seeking to enforce the terms of this Agreement.

**F. OTHER TERMS AND CONDITIONS OF THIS AGREEMENT**

24. **Record Retention and Reporting.** During the term of this Agreement, Defendants shall maintain appropriate written records of all activities and efforts they undertake in order to comply with this Agreement. No more than one time per year,

WRO shall be entitled to inspect and copy such records, on reasonable written notice to Defendants and with any copying costs borne by Defendants. In addition, Defendants shall provide prompt notice to WRO, by email to WRO, of:

- a. The amendments of the Town Code required in Paragraph 5 of this Agreement;
- b. The new application form(s) for middle-income and affordable housing required in Paragraph 8(c) of this Agreement;
- c. The new affirmative marketing plan required in Paragraph 9 of this Agreement;
- d. The letter mailed to potential developers and organizations of the changes to the Town Code and incentives for middle-income development as required in Paragraph 15 of this Agreement, along with a list of the names and addresses to whom the Town mailed the letter; and
- e. Any applications received by Defendants for the development of new middle-income housing units.

25. **Jointly Drafted.** This Agreement shall be deemed to have been jointly drafted by the Parties, and no provision herein will be interpreted or construed for or against any party because such party drafted or requested such provision or this Agreement as a whole.

26. **Choice of Law.** This Agreement shall be administered, construed, and enforced according to the laws of the State of New York. Any action to enforce, challenge, or modify the provisions of this Agreement shall be filed exclusively in the Southern District of New York.

27. **Entire Agreement.** This Agreement shall constitute the entire agreement among the Parties and supersedes and replaces all prior negotiations, proposed agreements, and Agreements, whether written or unwritten. This Agreement may only be modified in writing executed by all Parties.

28. **Binding Effect of Agreement.** The provisions, terms and conditions of this Agreement shall, when so-ordered by the Court, be binding by and between Plaintiffs and the Defendants, their successors and assigns.

29. **Enforceability.** If any provision in this Agreement is declared invalid or unenforceable by a court having competent jurisdiction, it is mutually agreed that this Agreement will endure except for the part declared invalid or unenforceable by order of such court, unless the elimination of the invalid provision will materially affect the intent of the Agreement. The Parties will consult and use their best efforts to agree upon a valid and enforceable provision that will be a reasonable substitute for such invalid or unenforceable provision in light of the intent of this Agreement.

30. **Disputes and Modifications of Agreement.** The Parties shall endeavor in good faith to informally resolve any differences regarding compliance and interpretation of this Agreement prior to filing a motion with the Court to enforce or modify the Agreement. The Parties, by written agreement, may modify the deadlines set forth above without further order of the Court.

31. **Notice.** All notices under this Agreement shall be sent to the following:

Plaintiffs

Westchester Residential Opportunities, Inc.  
Attn: Marlene Zarfes  
470 Mamaroneck Avenue, Suite 410  
White Plains, New York 10605  
[mzarfes@wroinc.org](mailto:mzarfes@wroinc.org)

Fair Housing Justice Center, Inc.  
Attn: Fred Freiberg  
30-30 Northern Blvd #302  
Long Island City, NY 11101  
[ffreiberg@fairhousingjustice.org](mailto:ffreiberg@fairhousingjustice.org)

Defendants

Town of Bedford Supervisor  
Bedford Town House  
321 Bedford Road  
Bedford Hills, NY 10507  
[supervisor@bedfordny.gov](mailto:supervisor@bedfordny.gov)

Blue Mountain Housing.  
Attn: Chairperson  
321 Bedford Road  
Bedford Hills, NY 10507

With A Copy To:  
Keane & Beane, P.C.  
Attn.: Eric L. Gordon, Esq.  
445 Hamilton Avenue, 15<sup>th</sup> Floor  
White Plains, NY 10601  
[egordon@kblaw.com](mailto:egordon@kblaw.com)

32. **Signatures.** This Agreement may be executed in any number of counterparts and each such counterpart will be deemed to be an original. A signature transmitted by email or fax will be treated as an original and have the same binding legal effect as an original signature.

[REMAINDER OF PAGE IS BLANK]


**AGREED TO BY THE PARTIES:**

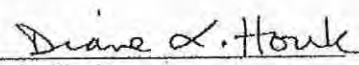
Dated: White Plains, New York  
June 21, 2018

Dated: New York, New York  
June 22, 2018

KEANE & BEANE P.C.

EMERY CELLI BRINCKERHOFF  
& ABADY LLP

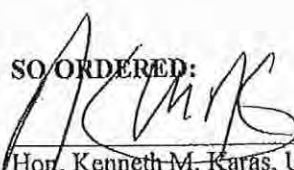
By:   
Eric Gordon  
445 Hamilton Avenue, Suite 1500  
White Plains, NY 10601  
(914) 946-4777

By:   
Diane L. Houk  
Zoe Salzman  
600 Fifth Avenue, 10<sup>th</sup> Floor  
New York, New York 10020  
(212) 763-5000

*Attorneys for Defendants*

*Attorneys for Plaintiffs*

SO ORDERED:

  
\_\_\_\_\_  
Hon. Kenneth M. Karas, U.S.D.J.

June 26, 2018  
Date

EXHIBIT A

LOCAL LAW NO. \_\_\_ OF 2018

TOWN BOARD OF THE TOWN OF BEDFORD  
PROPOSED LOCAL LAW AMENDING CHAPTER 125  
OF THE CODE OF THE TOWN OF BEDFORD

A LOCAL LAW to amend Chapter 125 of the Code of the Town of Bedford concerning Definitions and Middle Income Dwelling Units.

BE IT ENACTED by the Town Board of the Town of Bedford as follows:

Section 1. Chapter 125, Article I, Section 3 of the Code of the Town of Bedford entitled "Definitions" is hereby amended as follows (amended text is underlined and in red and deleted text is in red and marked —):

**MIDDLE-INCOME FAMILY**

A family whose aggregate annual income, including the total of all current annual income of family members residing in the household from any source whatsoever at the time of application, (excluding the earnings of working household members under the age of 21 years who are full-time students), does not exceed the average of the median 80% of the Westchester County Area Median Income ("AMI") to be eligible to rent a middle-income housing unit or 110% of the Westchester County AMI to be eligible to purchase a middle-income housing unit, annual Town paid wages of full-time employees of the Town of Bedford during the three most recently completed calendar years, as shown and determined by the average of the gross wages shown for such full-time employees of the Town of Bedford on the W-2 statements issued to such employees by the Town during and for such period of three calendar years, adjusted for family size by the following factors: one person family, 1.0; two person family, 1.1; three person family, 1.3; four person family, 1.4; five person family, 1.6; six person family, 1.7; seven person family, 1.9; eight or more person family, 2.0. Notwithstanding the foregoing definition set forth above, any middle-income housing units for rent that exist in the Town of Bedford as of the

Effective Date of this Local Law shall be defined as a family whose aggregate annual income, including the total of all current annual income of family members residing in the household from any source whatsoever at the time of application (excluding the earnings of working household members under the age of 21 years who are full-time students), does not exceed 100% of the Town of Bedford median income based on the average of the median annual Town-paid wages of full-time employees of the Town of Bedford during the three most recently completed calendar years as shown and determined by the average of the gross wages shown for such full-time employees of the Town of Bedford on the W-2 statements issued to such employees by the Town during and for such period of three calendar years, as adjusted for family size by the following factors: one-person family, 1.0; two-person family, 1.1; three-person family, 1.3; four-person family, 1.4; five-person family, 1.6; six-person family, 1.7; seven-person family, 1.9; eight-or-more person family, 2.0.

**Section 2.** Chapter 125, Article VI, Section 56 of the Code of the Town of Bedford entitled "Middle Income dwelling units" is hereby amended as follows (amended text is underlined and deleted text is marked):

§ 125-56. Middle-income dwelling units.

- A. Distribution. Such units shall be available for sale or rental to middle-income families, as defined in § 125-3 of this chapter. Such units shall be physically integrated into the design of the development in a manner satisfactory to the Planning Board and shall be distributed among efficiency, one-, two-, three- or four-bedroom units in the same proportion as all other units in the development unless a different proportion is approved by the Planning Board as being better related to the housing needs, current or projected, of the Town of Bedford.
- B. Minimum floor area. Minimum gross floor area per dwelling unit shall not be less than the following:
- (1) Efficiency: 450 square feet.
  - (2) One bedroom: 700 square feet.
  - (3) Two bedrooms: 900 square feet.
  - (4) Three bedrooms: 1,100 square feet, including at least one and one-half (1 1/2) baths.
  - (5) Four bedrooms: 1,300 square feet, including at least one and one-half (1 1/2) baths.

C. Occupancy standards. In determining which dwelling units may qualify as middle-income dwelling units, the following schedule shall apply:

Number of Bedrooms	Number of Persons	Minimum Maximum
Efficiency	1	1
1	1	2
2	2	4
3	4	6
4	6	8

D. Maximum rent and sales price.

- (1) Determination of maximum rent and sales price; capital improvements.
  - (a) In determining which dwelling units qualify as middle-income dwelling units, the monthly rent for such units shall not exceed 1.75%, excluding utilities (gas, oil and electricity), or 2%, if utilities are included, of the aggregate annual family income for a middle-income family as defined in § 125-3 of this chapter for the maximum size of family that may occupy such unit as set forth in Subsection C above. The maximum gross sales price for a middle-income dwelling unit shall not exceed two times the maximum aggregate family income above. There shall be no extra charge for minimum required facilities, such as, but not limited to, parking and recreation facilities.
  - (b) The maximum price at which an owner may resell his/her/their unit will be the original sales price of the unit plus a percentage equal to the increase in the average of the median income for Town of Bedford employees for the three years leading up to and including the year of the owner's purchase and the three years leading up to and including the relevant year of sale.
  - (c) For units purchased by the seller prior to December 1, 2005, additional credit for the cost of reasonable capital improvements made to the unit by the owner and still a part of the premises that would be recognized by the Internal Revenue Service in establishing the homeowner's tax basis in the unit, or its replacement as determined by the Agency-documented closing costs incurred and paid by the owner with his/her/their own funds in connection with the purchase of the unit, including, but not limited to, points, fees and other charges paid to the lender or its counsel, mortgage recording taxes, title insurance charges, title closer's gratuity, recording charges and reasonable attorney's fees. Such capital improvements must be approved by the Town Housing Agency prior to being made to receive additional credit

(d) Subsection D(1)(c) will not apply to units resold after December 1, 2005.

- (2) In a DH Diversified Housing District Zone, the maximum price which may be charged for the 20% of the housing units designated for middle-income families shall be determined at the time such units are offered for sale by the application of a formula based upon the mortgage capacity limit of such average annual income, determined in accordance with the definition of "Middle-Income Family" in § 125-3 herein, assuming and providing for 90% mortgage financing and a 10% equity investment by the purchasing middle-income family, a housing expense ratio of 29% and rates of interest as shall generally prevail at the time for thirty-year, zero-point mortgage loans with a one-year adjustable rate of interest ("one-year ARM") as demonstrated by end loan financing commitments or proposals issued to the developer by a duly licensed institutional lender actually engaged in residential mortgage lending in the marketplace which includes the Town of Bedford. Developers shall have the capacity to ensure such an interest rate level for all required designated middle-income units so as to determine the maximum prices for such units at the time the units are offered for sale. The Town and the developer shall jointly use their best efforts to obtain third-party public and/or privately funded subsidies to reduce further the housing costs of eligible middle-income families purchasing designated units.

E. Middle-income families applying for either rental or for sale middle-income dwelling units shall be selected on the basis of a lottery or another selection formula that is not based on residency or work preferences and is not based on the order in which applications are received. the following categories of priority:

- ~~(1) Full-time Town of Bedford municipal employees and active members of the Bedford Fire Department, Katonah Fire Department, the Bedford Hills Fire Department and the Katonah-Bedford Hills Volunteer Ambulance Corps.~~
- ~~(2) Employees of schools within the Town of Bedford that provide any or all of kindergarten through twelfth grade education.~~
- ~~(3) Residents of the Town of Bedford.~~
- ~~(4) Other persons employed in the Town of Bedford.~~
- ~~(5) Parents and children of residents of the Town of Bedford.~~
- ~~(6) Other residents of Westchester County.~~
- ~~(7) Other persons employed in Westchester County.~~

~~(S) All others.~~

F. Continued eligibility.

- (1) Applicants for middle-income rental units referred to in this Article shall, if eligible and if selected for occupancy by the owner or manager of the development, sign leases for a term of no more than two years.
- (2) As long as a resident remains eligible and has complied with the terms of the lease, said resident shall be offered a two-year renewal of the lease. If a resident's annual gross income should subsequently exceed by more than 20% the maximum then allowable, as defined in this section, and if there is at that time an otherwise eligible applicant ~~within one of the categories in Subsection above~~, said resident may complete his ~~her~~ their current lease term and shall be offered a non-middle-income rental unit available in the development at the termination of such lease term, if available. If no such dwelling unit shall be available at said time, the resident may be allowed to sign one additional one-year lease for the middle-income dwelling unit he occupies but shall not be offered a renewal of the lease beyond the expiration of said term.
- (3) In the case of owner-occupied middle-income dwelling units the title to said property shall be restricted so that:
  - (a) In the event of any resale by the home buyer or any successor the resale price shall not exceed the then maximum sales price for said unit, as determined in accordance with Subsection D of this section; and
  - (b) In the event the titled owner no longer utilizes the dwelling as his/her/their primary residence, he/she/they shall, upon notification from the Town of Bedford or the appropriate agency, either resume such use within 90 days of such notice or immediately cooperate with the resale of that unit pursuant to this Code.

G. Administration.

- (1) The Town Board shall establish a Town Housing Agency, which shall be responsible for the administration of the middle-income housing requirements of this section as well as for the promulgation of such rules and regulations as may be necessary to implement such requirements.
- (2) At the time of the issuance of a certificate of compliance, the Building Inspector shall send a copy of such certificate to the Town Housing Agency, who shall then

inform the applicant of the maximum rental or sales charge which may be established for the middle-income dwelling units in such development and the maximum annual gross family income for eligibility for occupancy of said units.

- (3) The Town Housing Agency shall certify as eligible all applicants for rental or sales of middle-income dwelling units and shall annually reexamine or cause to be reexamined each occupant family's income.
- (4) On or before March 30 of each year thereafter, the Town Housing Agency shall notify the owner or manager of each multifamily development containing middle-income units as to the rent, sales and income eligibility requirements for such units based upon figures derived from the preceding calendar year.
- (5) The owner or manager of such multifamily development shall certify to the Town Housing Agency on or before May 31 of each year that the current rental or sales prices of all middle-income dwelling units comply with the terms of this Article.

H. Incentives for the development of middle income housing units.

(1) Planning Board Assistance: When a proposed residential subdivision contains 20% or more middle income housing units, the Planning Board may:

- (a) Consider such other forms of financial or other assistance which may be under the control of the Town or Blue Mountain;
- (b) Actively assist in obtaining financial or other assistance from federal, state or other public agencies in support of affordable housing development;
- (c) Allow the reduction of dimensional requirements by not more than 25% and an allowance for shared parking so as to reduce infrastructure costs.

(2) Expedited Project Review Process:

- (a) Pre-application meeting. The applicant for a development including middle-income units shall be entitled to attend at least one pre-application meeting at which representatives will be in attendance from each Town agency and staff member expected to play a role in the review and approval of the development application and construction. The purpose of the pre-application meeting will be to expedite the development application review process through:
  - III) The early identification of issues, concerns, code compliance, and coordination matters that may arise during the review and approval process.

(2) The establishment of a comprehensive review process outline, proposed meeting schedule, and conceptual timeline.

(b) Meeting schedule and timeline. Town agencies and staff shall endeavor to honor the proposed meeting schedule and conceptual timeline established as an outcome of the pre-application meeting to the greatest extent possible during the review and approval process, subject to the demonstrated cooperation of the applicant to adhere to same. Should the approval process extend beyond one year, an applicant for a development including middle-income housing units shall be entitled to at least one additional meeting per year with the same departments, agencies, authorities, boards, commissions, councils, or committees to review any and all items discussed at previous pre-application meetings.

(c) Calendar/agenda priority. Town agencies with review or approval authority over applications for developments including middle-income housing units shall give priority to such applications by placing applications for all developments including middle-income housing units first on all meeting and work session calendars and agendas and, when feasible based on the ability to conduct required reviews and public notice, with the intent of shortening minimum advance submission deadlines to the extent practicable.

(3) Reductions in Development Fees: The Town will waive, for developers proposing to create middle-income housing in the Town, thirty (30%) of the following categories of fees incurred or payments received by the Town that would otherwise be charged to such developers:

(a) Building Permit application fees;

(b) Planning Department application fees;

(c) Recreation Fees based on percentage of middle-income housing units to be developed;

(d) Advertising expenses;

(e) Legal Fees; and

(f) Engineering Fees.

### Section 3. Ratification, Readoption and Confirmation

Except as specifically modified by the amendments contained herein, Chapter 125 of the Code of the Town of Bedford is otherwise to remain in full force and effect and is otherwise ratified, readopted and confirmed.

#### **Section 4. Numbering for Codification**

It is the intention of the Town of Bedford and it is hereby enacted that the provisions of this Local Law shall be included in the Code of the Town of Bedford; that the sections and subsections of this Local Law may be re-numbered or re-lettered by the Codifier to accomplish such intention; that the Codifier shall make no substantive changes to this Local Law; that the word "Local Law" shall be changed to "Chapter," "Section" or other appropriate word as required for codification; and that any such rearranging of the numbering and editing shall not affect the validity of this Local Law or the provisions of the Code affected thereby.

#### **Section 5. Severability**

The provisions of this Local Law are separable and if any provision, clause, sentence, subsection, word or part thereof is held illegal, invalid or unconstitutional, or inapplicable to any person or circumstance, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, subsections, words or parts of this Local Law or their petition to other persons or circumstances. It is hereby declared to be the legislative intent that this Local law would have been adopted if such illegal, invalid or unconstitutional provision, clause, sentence, subsection, word or part had not been included therein, and if such person or circumstance to which the Local Law or part hereof is held inapplicable had been specifically exempt there from.

#### **Section 6. Effective Date**

This local law shall take effect immediately upon filing with the Office of the Secretary of State.

**EXHIBIT B**  
**Affirmative Fair Housing Marketing Plan General Components**

1. Identify racial and ethnic demographic groups within the primary (Town) and secondary housing market area (County and New York City) which are least likely to apply for housing without special outreach efforts (LLA populations) using the most recent census data available.
2. Identify media outlets and groups that have direct contact with the LLA populations that you are trying to reach; groups may include social service agencies, faith-based organizations, disability advocacy groups, community centers, civic associations, housing counseling programs, labor unions, etc.
3. Develop outreach plan to groups identified above, including plan to reach employees of Bedford Hills Correctional Facility for Women; plan should include letters, e-mails, information packets, and personal contact; specific outreach activities will vary depending on the tenure (sales v. rental) and number of housing units
4. Develop marketing materials, including brochures, signs, leaflets, websites, advertisements, applications, and press releases, that include the Equal Housing Opportunity and Accessibility logos; for information to be distributed by internet, only free housing services websites should be used; if marketing materials include human figures, then use figures of different races, ages and genders, along with families with children and persons with disabilities
5. Use a lottery to select buyers/renters and not on a first-come first-serve basis. If waiting lists are created for rental units at Garden Homes or Bedford Lakes Apartments, then a lottery will be used to create the waiting list for each site. If an existing middle-income unit becomes available for sale less than one hundred and twenty (120) days after the sale of another existing middle-income unit, then the Town may select applicants from the waiting list created by the lottery for the previous existing unit.
6. Develop a timeline for activities to be undertaken as part of the affirmative marketing plan.
7. Develop a process concerning how requests for reasonable accommodations will be handled.
8. Maintain records of how marketing plan implemented
9. Provide training for management and sales/rental staff on federal state and local fair housing laws.

## EXHIBIT C

### **Modifications to the Blue Mountain Housing Lending Program To Include Incentives for Middle-Income Housing**

#### 1. Down Payment Assistance Program

**Recipients:** Families with incomes at or below **80% median income of Westchester County for affordable housing and 110% median income of Westchester County for middle-income housing**, adjusted by family size depending on the property's restrictions (whichever is lower). The family must be a first-time homebuyer.

**Funds:** Eligible applicants may receive up to \$12,500 towards the purchase of an affordable or middle-income home in the Town of Bedford. The funds may be used to cover the cost of the purchase of a home including down payment and reasonable closing costs.

**Restrictions:** The home must remain an affordable or middle-income home for at least 20 years. If the buyer sells the home earlier, the funds are subject to repayment. The funds may remain in place if the owner sells to another eligible purchaser.

#### 2. Pre-Development Loan Program

**Recipients:** Not-for-profit developers interested in developing affordable or middle-income housing in the Town of Bedford (including Blue Mountain Housing Development Corp.).

**Funds:** Eligible applicants may receive up to \$25,000 loans/grants for pre-development studies. Funds may be used for engineering studies, architectural drawings, soil borings or other uses approved by Bedford Town Housing Agency. Funds are to be repaid no later than the start of construction. Applicant must show reasonable feasibility of potential development.

**Restrictions:** Proposed development will meet Bedford Town Housing Agency's affordability or middle-income requirements.

#### 3. Acquisition Program

**Recipients:** Experienced for-profit and non-profit developers interested in developing affordable or middle-income housing in the Town of Bedford are eligible.

**Funds:** Applicants may receive up to \$50,000 to assist in the purchase of land or a building to be developed as affordable or middle-income housing. Funds may be used toward the purchase price or reasonable closing costs. Applicant must document financial need for the funds and that with the funds the proposed development is feasible.

Restrictions: Rentals – Units must be affordable to tenants with incomes at or below **60% of the Westchester County median income for affordable units and 80% of the Westchester County median income for middle-income units**, adjusted by family size. The apartments must remain affordable for at least 40 years.

Home ownership – Units must be sold to families with incomes at or below **80% median income of Westchester County for affordable units and 110% of the Westchester County median income for middle-income units**, adjusted by family size depending on the property's restrictions. The family must be a first-time homebuyer. In the event the property is sold prior to the restriction term the funds must be repaid.

#### 4. New Construction / Rehabilitation Grants

Recipients: Experienced for-profit and non-profit developers interested in developing affordable housing in the Town of Bedford.

Funds: Applicants may receive up to \$50,000 to assist in the financing of new construction or rehabilitation of affordable housing or middle-income housing. Funds may be used for actual construction costs together with other subsidies and private financing. Applicant must document financial need for the funds and that with the funds the proposed development is feasible.

Restrictions: Rentals – Units must be affordable to tenants with incomes at or below **60% of the Westchester County median income for affordable units and 80% of the Westchester County median income for middle-income units**, adjusted by family size. The apartments must remain affordable for at least 40 years.

Homeownership – Units must be sold to families with incomes at or below **80% median income of Westchester County for affordable units and 110% median income of Westchester County for middle-income housing**, adjusted by family size depending on the property's restrictions. The family must be a first-time homebuyer. In the event the property is sold prior to the restriction term the funds must be repaid.

#### 5. Blue Mountain Acquisition Fund

Recipient: Blue Mountain Housing Development Corp.

Funds: Blue Mountain may consider acquiring houses or condos, moderately renovating them and selling them as affordable or middle-income homes. Blue Mountain would leverage their own dollars with other subsidies and private debt in order to afford the acquisition.

Restrictions: Homes would be sold to families with incomes at or below **80% median income of Westchester County for affordable homes and 110% median income of Westchester County for middle-income homes**, adjusted by family size depending on

the property's restrictions. The family must be a first-time homebuyer and the homes must be affordable in perpetuity.

**EXHIBIT D**

**List of Housing Developers to Notify**

1. Mutual Housing Association of New York
2. Community Housing Innovations
3. Human Development Services Westchester
4. MacQuesten Development
5. Westhab
6. Lazz Development
7. Community Preservation Corporation
8. Marathon Development Group
9. Regan Development Corporation
10. Quintessential Association LLC
11. Wilder Balter
12. Phipps Houses
13. A-Home
14. Trinity Associates LLC
15. Cornell Pace Inc.
16. Croton Housing Network
17. Seavey Organization
18. L&M Development Partners
19. Kearney Realty & Development
20. Enterprise Community Partners
21. Allied Community Enterprises (ACE)
22. Local Initiatives Support Corporation, Inc. (LISC)
23. The Community Builders

**EXHIBIT E**

**FORM OF STIPULATION OF DISMISSAL WITH PREJUDICE**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

FAIR HOUSING JUSTICE CENTER, INC.,  
WESTCHESTER RESIDENTIAL  
OPPORTUNITIES, INC.,

Plaintiffs,

v.

TOWN OF BEDFORD, BLUE MOUNTAIN  
HOUSING DEVELOPMENT CORP.,

Defendants.

No. 17 Civ. 05664 (KMK)(PED)

**STIPULATION OF DISMISSAL  
WITH PREJUDICE**

WHEREAS, Plaintiffs and Defendants, through their undersigned counsel,  
stipulate and agree as follows:

1. This action is hereby dismissed with prejudice, pursuant to the terms of the Stipulation of Settlement signed by the Court on June \_\_, 2018.
2. The Court shall retain jurisdiction over this action for the sole purpose of enforcing compliance with the terms of the Stipulation of Settlement.
3. A facsimile or scanned copy of this stipulation will be considered the same as an original and may be filed with the court electronically or by facsimile transmission.

**AGRED TO BY THE PARTIES:**

Dated: \_\_\_\_\_, 2018

Dated: \_\_\_\_\_, 2018

KEANE & BEANE P.C.

EMERY CELLI BRINCKERHOFF  
& ABADY LLP

By: \_\_\_\_\_  
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New York, New York 10020  
(212) 763-5000

*Attorneys for Defendants*

*Attorneys for Plaintiffs*

**SO ORDERED:**

\_\_\_\_\_  
Hon. Kenneth M. Karas, U.S.D.J.

\_\_\_\_\_  
Date