

**VILLAGE OF TARRYTOWN
BOARD OF TRUSTEES
WORK SESSION 6:00 P.M.
WEDNESDAY, DECEMBER 10, 2014
Amended
Tarrytown Village Hall
One Depot Plaza, Tarrytown, New York**

Board of Trustees Concerns

Open Session

- A. Consultancy Support – Station Area Project
 - 1. Date for Next Work Session
 - 2. Fire Whistle
 - 3. Green Street – Electric Vehicles
 - 4. IMA with Westchester County – RiverWalk Extension Losee Park
 - 5. The River Trolley
 - 6. Letter Town of Greenburgh re Plastic Bags
 - 7. Office Building and Mixed Use District Review
 - 8. Fire Department Membership Changes
 - 9. Property Swap – DeRocker
 - 10. Route 9A Bypass
 - 11. Agreement for Legal Services
 - 12. Purchase Agreement re Sale of Property for Westchester County Sanitary Sewer Force Main Project

PURCHASE AGREEMENT

THIS AGREEMENT dated the ___th day of _____ 2014, by and among

THE VILLAGE OF TARRYTOWN, a municipal corporation of the State of New York, having an office and place of business at One Depot Plaza, Tarrytown, New York 10591 (the "Village" or "Seller");

and

THE COUNTY OF WESTCHESTER, a municipal corporation of the State of New York, on behalf of the Saw Mill Valley Sewer District, having an office and place of business at the Michaelian Office Building, 148 Martine Avenue, White Plains, New York, 10601 (the "County").

WITNESSETH:

WHEREAS, the Seller is the fee title owner of the Property (defined below); and

WHEREAS, the Seller wishes to sell the Property as more particularly set forth herein;
and

WHEREAS, the Westchester County Board of Legislators authorized the County to acquire fee title to the Property described more particularly herein by purchase, pursuant to the provisions of Act No.: 19-2014; and

NOW, THEREFORE, the parties hereto in consideration of the terms and conditions herein contained do agree as follows:

1. **Sale.** (a) The Seller agrees to sell and convey to the County fee title to approximately .7407 acres of vacant real property located on Church Street, in the Village of Tarrytown, New York, as more particularly described in the Greenburgh Tax Assessment Map as Section: 1.100, Block: 65, Lot 79, which real property is more particularly described in Schedule "A" annexed hereto and made a part hereof the ("Property"). This sale includes all of Seller's ownership and rights, if any, in any land lying in the bed of any street or highway, opened or proposed, in front

of or adjoining the Property to the center line thereof, and all right, title and interest of the Seller in and to any award made or to be made in lieu thereof and in and to any unpaid award for damage, to said Property by reason of change of grade of any street; and the Seller will execute and deliver to the Purchaser, on closing of title, or thereafter on demand, all proper instruments for the conveyance of such title and the assignment and collection of any such award.

2. **Purchase Terms.** (a) Upon delivery of the Bargain and Sale Deed with covenants against the grantor's acts to the County, which conveys fee simple title of the Property to the County pursuant to this Agreement, the Seller shall be paid ONE HUNDRED FORTY-FIVE THOUSAND (\$145,000.00) DOLLARS (the "Purchase Price") at the closing of title (the "Closing") pursuant to the Seller's instructions set forth in Schedule "C" hereto. The Closing shall mean the settlement of all obligations of the Seller and the County to each other under this Agreement including the payment of the purchase price and the delivery of the above-referenced deed, in proper statutory form for recording, duly executed and acknowledged, so as to convey to the County fee simple title to the Property, free of all encumbrances, except as otherwise stated herein. The deed shall contain a covenant by the Seller as required by Section 13(5) of the Lien Law.

3. **The Closing.** The Closing shall take place at such time as shall be mutually acceptable to the parties herein. The following charges, if any, are to be apportioned as of midnight of the day before the day of Closing: taxes, water charges and sewer rents on the basis of the fiscal period for which assessed, fuel and vault charges.

4. **Conditions.** The Property is transferred subject to (a) the laws and governmental regulations that affect the use and maintenance of the Property, provided that they are not violated by the buildings and/or improvements, if any, on the Property; (b) consents for the erection of any structures on, under, or above any streets on which the Property abuts; (c) encroachments of stoops, areas, cellar steps, trim and cornices, if any, upon any street or highway provided same does not prohibit the use of the Property for sanitary sewer discharge purposes; (d) any state of facts shown pursuant to an ALTA survey of the Property provided same does not render title unmarketable; (e) any covenants or restrictions of record, provided

that they do not render title unmarketable and do not limit the County's use of the Property for its intended sanitary sewer discharge purpose as ; (f) zoning regulations, ordinances, building restrictions and regulations of the city, town or village in which the Property is located, affecting the Property on the date of the Closing set forth herein provided the same does not prohibit the County's use of the Property for sanitary sewer discharge purposes.

5. **Title.** Title to the Property shall be such title as a title company authorized to do business in the State of New York shall be willing to approve and insure in accordance with their standard form of title policy, subject only to the matters provided for in this Agreement.

6. **Broker.** The Seller and the County mutually represent and warrant to each other that no broker is associated with the transfer of the Property and that each party will defend, indemnify and hold harmless the other from and against any and all claims for brokerage fees or other commissions which may, at any time, be asserted against that party by any identified or unidentified person, firm, entity, and/or organization, together with any and all losses, damages, costs, expenses (including, without limitation, reasonable attorney's fees and disbursements) relating to such claims or arising therefrom or incurred by the other party.

The provisions of this Section "6" shall survive the Closing.

7. **Taxes & Fees.** All outstanding real property taxes and assessments, if any, on the Property shall be paid by the Seller at Closing, subject to the provisions of Section "3" hereof. All documentary taxes, real property transfer taxes, or gains taxes, if any, arising out of the conveyance of the Property shall be paid by the Seller on or before the date of the Closing. If the Seller fails to file the necessary documentation pursuant thereto, or fails to timely pay any transfer gains tax assessed, of which the Seller has received notice prior to the Closing, the County shall have the option to delay the Closing until the resolution of such tax issues to the satisfaction of the County

At Closing, certified or official bank checks payable to the order of the appropriate State, City or County officer in the amount of any applicable transfer and/or recording tax, if any,

payable by reason of the delivery or recording of the deed or mortgage, if any, shall be delivered by the party required by law or by this Agreement to pay such transfer and/or recording tax, together with any required tax returns duly executed and sworn to, and such party shall cause any such checks and returns to be delivered to the appropriate officer promptly after Closing. The obligation to pay any additional tax or deficiency and any interest or penalties thereon shall survive Closing.

8. **Mortgages, etc.** The Seller shall ensure that the Property is conveyed to the County free of any and all mortgages, liens, encumbrances, etc.

9. **Violations.** The Seller shall comply with notes or notices of violations of law or municipal ordinances, orders or requirements noted in or issued by any governmental department having authority as to lands, buildings, fire and health conditions affecting the Property at the date hereof. The Property shall be transferred free of all violations at Closing. The County shall not be obligated to make any independent inquiry and is relying on the Seller's representations, however, in the event the County elects to make such searches, the Seller shall furnish the County with any authorizations necessary to make the searches that could disclose these matters and shall promptly advise the County of any violations that are received between the signing of this Agreement and the Closing.

The provisions of this Section "9" shall survive the Closing.

10. **Condition of the Property.** The County has inspected the Property and agrees to take the Property "AS IS," with no warranties, express or implied, and in their present condition, except as otherwise set forth in this Agreement, subject to reasonable use, wear, tear and natural deterioration between the date of this Agreement and the Closing.

11. **Title Report.** (a) An examination of title in respect of the Property from a title company licensed or authorized to issue title insurance by the New York State Insurance Department or any agent for such title company shall be provided to the County. Good and marketable title shall be conveyed to the County at Closing.

(b)(i) If, at the date of Closing, the Seller is unable to transfer title to the County in accordance with this Agreement, or the County has other valid grounds for refusing to close, whether by reason of liens, encumbrances or other objections to title or otherwise (collectively, "Defects"), other than those for which the County is obligated to accept title hereunder or which the County may have waived, in writing, and other than those for which the Seller provides such funds and/or instruments required by the County to effect removal or discharge of such Defects at the Closing, provided the County agrees to omit exception for such Defects, and if the County shall be unwilling to waive the same and to close title then, except as hereinafter set forth, the Seller shall have the right, to take such action as the Seller may deem advisable to remove, remedy, discharge or comply with such Defects, or either party shall be entitled to cancel this Agreement subject to the provisions of Section "15" hereof;

(b)(ii) If the Seller elects to take action to remove, remedy or comply with such Defects, the Seller shall be entitled, upon reasonable notice to the County, to adjourn the date for Closing hereunder for a reasonable period of time. If for any reason whatsoever, the Seller shall not have succeeded in removing, remedying or complying with such Defects at the expiration of such adjournment, and if the County shall still be unwilling to waive the same and to close title, then either party may cancel this Agreement by notice to the other given within ten (10) days after such adjourned date;

(b)(iii) Notwithstanding the foregoing, any existing mortgage, and any matter or obligation with respect to the Property created by the Seller after the date hereof, shall be released, discharged or otherwise cured by the Seller on or before the date of Closing.

12. **Representations and Warranties of the Seller.** The Seller represents and warrants to the County as follows:

(a) The Seller is the sole owner of the Property, and no consent by any person or entity other than the Seller is required to be obtained by the Seller in connection with the transfer of the Property by the Seller to the County; and

(b) The Seller has the power, authority and legal right to execute and perform this transaction and execute this Agreement; and the deed and any other documents required to be delivered by the Seller when so delivered and when executed by the Seller, will constitute the legal, valid and binding obligations of the Seller enforceable against the Seller in accordance with their respective terms; and

(c) The Seller has no knowledge of:

(i) any suit, action, arbitration, or legal, administrative or other proceeding pending or threatened against the Property or any portion thereof or pending or threatened against the Seller which could affect the Seller's title to the Property or any portion thereof; or

(ii) any notice of an intended public improvement or private right which will result in the creation of any lien upon the Property, or any portion thereof; or

(iii) any violations of law, ordinance, rule or regulation which would affect the Property or any portion thereof; or

(iv) any permits, approvals, decrees, judgments, orders or other mandatory instruments which relate to the future use of the Property, other than those which have been obtained by Seller or require any change in the present condition of the Property; or

(v) any mechanics' liens filed against the Property or any portion thereof; or

(vi) any acts or omissions of the Seller or third parties which would prevent the Property from being in substantial compliance with all federal, state and municipal laws, orders, rules, regulations and requirements relating to the control and abatement of environmental pollution and environmental hazards; and

(e) There are no leases, licenses, options, rights of first refusal or other rights of occupancy or agreements of any kind or nature whatsoever, which have been executed or verbally made by the Seller, whereby the Property has been so encumbered in effect with respect to the Property. In the event that any such rights are now in existence, at Closing, the Seller shall deliver the Property to the County free of any rights of use or tenancies, occupancies or other possessory interests of any kind; and

(f) The Seller has not granted any right or other option to purchase the Property or any part thereof; and

(g) The Seller has not entered into any agreements for the service, maintenance, management, or protection of the Property; and

(h) To the best of the Seller's knowledge, the Property is in compliance with, and the Seller has received no notice of a violation by the Property or any part thereof, of applicable

laws, ordinances, codes and regulations including those governing building, zoning, fire prevention, health and safety; and

(i) The Seller is not a "foreign person" as that term is defined for purposes of the Foreign Investment in Real Property Act ("FIRPTA") (see Reg. Sec. 1.897 of the Internal Revenue Code of 1954, as amended); and

(j) The Property consists of a legal parcel or legal parcels; and

(k) The Seller has not employed or retained any person, other than a bona fide full time salaried employee working fully for the Seller to solicit or secure this Agreement, and that it has not paid or agreed to pay any person (other than counsel) any fee, commission, percentage, gift or other consideration, contingent upon or resulting from the award or making of this Agreement. Upon a breach or violation of this representation, without limiting any other rights or remedies to which the County may be entitled or any civil or criminal penalty to which any violator may be liable, the County shall have the right, in its discretion, to terminate this Agreement without liability, and to deduct from the contract price, or otherwise to recover, the full amount of such fee, commission, percentage, gift or consideration.

The Seller acknowledges and agrees that each of the foregoing representations and warranties shall be deemed to be material and shall be relied upon by the County. The Seller shall immediately notify the County if any of the foregoing representations and warranties ceases to be true prior to Closing. If any of the foregoing representations and warranties ceases to be true at any time prior to Closing, or if the Seller should enter into any agreements affecting the Property and which will survive Closing, the County may, at the County's election, cancel this Agreement by written notice to the Seller and Seller shall refund all money paid on account of this Agreement. The Seller's representations regarding all notices required to be given under this Section "12" shall survive the Closing for a period of sixty (60) days.

The Seller covenants that, from and after the date hereof until Closing, the Seller will not:

i) make any leases, contracts, options or agreements whatsoever affecting the Property and which will survive the Closing;

ii) cause or knowingly consent to any lien, encumbrance, mortgage, deed or trust, right, restriction or easement to be placed upon or created with respect to the Property and which will survive the Closing; and/or

iii) cause or permit any default beyond the applicable cure period under any mortgage or deed of trust covering the Property.

Further, the Seller agrees to defend, indemnify and hold harmless the County from and against all liabilities, obligations, damages, penalties, claims, costs and expenses, including, without limitation, reasonable attorney's fees and disbursements, which may be imposed upon or incurred by the County by reason of the breach by the Seller of any warranty, representation or covenant under this Agreement. This Agreement to indemnify in accordance with this Section "12" shall survive the Closing.

13. **Environmental Representations.** The Seller represents to the County as follows:

(a) Except as described in that certain Phase I Report prepared by Maser Consulting P.A., dated November, 2014 (the "Environmental Report"), the Seller has no knowledge of nor has it received any notice of any condition at, on under or related to the Property (or ground or surface waters associated therewith) or migrating or threatening to migrate to or from the Property which may have a material effect on the value of the Property or subject the owner thereof to potential liabilities in accordance with the Environmental Requirements as defined in subsection (c) of this Section "13"; and

(b) The Seller has no knowledge nor has received any notice of any condition at, on, under or related to the Property (or ground or surface waters associated therewith) or migrating or threatening to migrate to or from the Property presently or potentially posing a significant hazard to human health or the environment; such conditions being defined as "Hazardous Materials" in subsection (c) of this Section "13"; and

(c) Definitions. For the purposes of this Agreement and this Section "13", the following definitions shall apply:

(1.) "Hazardous Materials" or "Hazardous Waste" shall mean any substance:

(i) the presence of which requires investigation or remediation under any federal, state, or local statute, regulation, ordinance, order, action, policy or common law; or

(ii) which is or becomes defined as a hazardous waste, hazardous substance, pollutant or contaminant under any federal, state or local statute, regulation, rule, or ordinance or amendments thereto including, without limitation, the United States Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 USC §9601 (14) 42 USC §9602 and any “hazardous waste” as defined in or listed under the United States Solid Waste Disposal Act, as amended, 42 USC §6901(5), 42 USC §6921; or

(iii) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority, agency, department, commission, board or instrumentality of the United States, the State of New York or any political subdivision thereof; or

(iv) the presence of which, on the Property, causes or threatens to cause a nuisance on the Property or to nearby properties or poses or threatens to pose a hazard to the health and safety of persons on, about or nearby the Property; or

(v) the presence of which on nearby properties would constitute a trespass by the owner of the Property; or

(vi) without limitation which contains gasoline, diesel fuel, or other petroleum hydrocarbons; or

(vii) without limitation which contains polychlorinated bipheynols (PCBs), asbestos, or urea formaldehyde foam insulation.

(2.) “Environmental Requirements” shall mean all applicable present and future statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations, concessions, franchises, and similar items, of all government agencies, departments, commissions, boards, bureaus, or instrumentalities of the United States, the State of New York and the political subdivisions thereof; and all applicable judicial, administrative, and regulatory decrees, judgments, and orders relating to the protection of human health or the environment.

In addition to the foregoing, by not less than seven (7) days prior to Closing, the Seller shall provide to the County proof of compliance with applicable regulations and requirements of

the United States Environmental Protection Agency and the New York State Department of Environmental Conservation relating to underground oil storage tanks, if applicable to the Property, including but not limited to the requirements of 6 NYCRR Part 613. In the event the Seller is unable to provide such proof, the Seller shall assume all costs of removing and replacing the tank with a new tank meeting all federal, state and local laws, rules and regulations.

All of the provisions of this Section "13" shall survive Closing.

14. **Inability to Convey.** If the Seller is unable to transfer title to the County in accordance with this Agreement, and the Seller has not willfully breached this Agreement, then the Seller's sole liability shall be to refund all money paid on account of this Agreement, plus all charges made for title examination. Upon such refund and payment, this Agreement shall be considered canceled and neither the Seller nor the County shall have any further rights against the other in connection with this transaction.

15. **Amendments.** This Agreement may not be released, canceled, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the parties.

16. **Right To Inspect.** The County, its officers, its employees and its agents shall have the right to enter upon the Property for the purpose of making such inspections, investigations and surveys as the County deems appropriate prior to the Closing (including, without limitation, performing environmental assessments of the soils, water and improvements on the Property), at reasonable times upon reasonable notice, with a minimum of interference to the Seller. To the extent such inspection requires a review of relevant records of the Seller, the Seller shall provide the County and its consultants access to all records concerning the condition of the Property during normal business hours. Notwithstanding the foregoing, the County is not obligated to conduct such an inspection, but rather may rely upon Seller's Environmental Representations in Section "13" hereto.

Should the County determine, in its sole discretion based on such inspection or investigation of the Property, that the environmental conditions on the Property are unacceptable to the County, the County shall so notify the Seller, and the Seller may elect to remove any such unacceptable conditions prior to the Closing. In the event that the Seller is unwilling or unable to remove any such unacceptable conditions prior to Closing to the satisfaction of the County, the County shall have the right at its option to terminate this Agreement by written notice to the Seller, and thereafter the parties shall have no further liability to each other.

The County shall indemnify the Seller for any damages caused by the negligence of the County, its agents, employees or third-parties under their direction and control while on the Property pursuant to the rights granted under this Section.

17. **Risk of Loss.** All risk of loss shall remain with the Seller until Closing. In the event the Property is destroyed or damaged and cannot be repaired prior to Closing, the County shall have the right at its option to terminate this Agreement by written notice to the Seller, subject to the provisions of Section "15" hereto.

18. **Conditions Precedent.** The obligations of the Seller and the County under this Agreement are subject to the condition that at or before the Closing all terms, covenants and conditions of this Agreement to be complied with and performed by the County or the Seller, respectively, on or before the date of Closing, have been duly complied with and performed or waived in writing by the Seller or the County, as appropriate.

19. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original and which shall, together, constitute one and the same Agreement.

20. **Severability.** Each provision of this Agreement is severable from any and all other provisions of this Agreement. If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid or void or unenforceable, the remainder of the terms and provisions of this Agreement will in no way be affected, impaired, or invalidated, and to the

extent permitted by applicable law, any such term, or provision will be restricted in applicability or reformed to the minimum extent required for such to be enforceable. This provision will be interpreted and enforced to give effect to the original written intent of the parties prior to determination of such invalidity or unenforceability.

21. **No Agency.** Nothing herein contained shall be construed as creating a co-partnership between the County and the Seller or to constitute the Seller as agent of the County and the County as agent of the Seller. The County and the Seller each expressly disclaim the existence of such a relationship between them.

22. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of New York. In addition, the parties hereby agree that any cause of action arising out of this Agreement shall be brought in the County of Westchester. This Section shall survive the Closing or other cancellation or termination of this Agreement and in such event shall be solely applicable to the other surviving Sections.

23. **Assignability.** This Agreement or any rights hereunder may not be assigned by either party without the prior written consent of the other party. Any such purported assignment is void.

24. **Captions.** The captions are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Agreement nor the intent of any provision thereof.

25. **Remedies upon Default.** In the event the Seller defaults in the performance of any of the Seller's obligations under this Agreement, the County shall, in addition to any and all other remedies provided in this Agreement or at law or in equity, have the right of specific performance against the Seller.

26. **Condemnation.** In the event of the taking of all or any part of the Property by eminent domain proceedings, or the commencement of such proceedings prior to Closing, either party shall have the right, at its option, to terminate this Agreement by written notice to the other.

27. **Notices.** All notices of any nature referred to in this Agreement shall be in writing and either sent by registered or certified mail postage pre-paid, or sent by hand or overnight courier, or sent by facsimile (with acknowledgment received and a copy of the notice sent by overnight courier), to the respective addresses set forth below or to such other addresses as the respective parties hereto may designate in writing. Notice shall be effective on the date of receipt.

To the County:

Commissioner of Environmental Facilities
270 North Avenue 6th Floor
New Rochelle, New York 10801

with a copy to:

County Attorney
Michaelian Office Building, Room 600
148 Martine Avenue
White Plains, New York 10601

To the Seller:

Village of Tarrytown
One Depot Plaza
Tarrytown, New York 10591

With a copy to:

Jeffrey S. Shumejda, Esq.
47 Beekman Avenue
Sleepy Hollow, New York 10591

The attorneys for the parties hereto are hereby authorized, on behalf of their respective clients, to serve any written notice, whenever such notice is provided to be given under the terms of this Agreement. Any such notice shall be in writing and duly signed by such attorneys.

29. **Additional Documents.** The Seller and the County agree to execute such additional documents as may be reasonable and necessary to carry out the provisions of this Agreement.

30. **Entire Agreement; Modification.** This Agreement constitutes the entire agreement between the County and the Seller pertaining to the subject matter contained herein and supersedes all prior and contemporaneous agreements, representations, and understandings. No supplement, modification, waiver or amendment of this Agreement shall be binding unless specific and in writing executed by the parties hereto. In the event of any conflict between the terms of this Agreement and the terms of any schedule or attachment hereto, it is understood that the terms of this Agreement shall be controlling with respect to any interpretation of the meaning and intent of the parties.

31. **No Waiver.** Failure of either party to insist, in any one or more instances, upon strict performance of any term or condition herein contained shall not be deemed a waiver or relinquishment for the future of such term or condition, but the same shall remain in full force and effect.

32. **Compliance with Law.** The Seller shall comply, at its sole cost and expense, with all applicable federal, state and local laws, and all rules and regulations promulgated thereunder, including, but not limited to, the federal and state labor laws, federal, state and local environmental protection, and land use laws, the State Worker's Compensation Law, and State Unemployment Insurance Law, and Federal Social Security Law.

33. **Required Disclosure.** Attached hereto and forming a part hereof as Schedule "B" is a questionnaire entitled "Required Disclosure of Relationships to County." The Seller agrees to complete said questionnaire as part of this Agreement. In the event that any information provided in the completed questionnaire changes prior to Closing, Seller agrees to notify County in writing within ten (10) business days of such event.

34. **Execution.** This Agreement shall not be binding or effective until duly executed by both parties, and approved by the Office of the Westchester County Attorney.

IN WITNESS of the foregoing provisions, the parties have executed and delivered this Agreement as of the date first set forth above.

THE COUNTY OF WESTCHESTER

By: _____
Name: Robert P. Astorino
Title: County Executive

THE VILLAGE OF TARRYTOWN

By: _____
Name: Michael Blau
Title: Village Administrator

Authorized by the Village of Tarrytown Board of Trustees on the ___ th day of ___, 2014.

Authorized by the Westchester County Board of Legislators by Act No. 19-2014

Authorized by the Westchester County Board of Acquisition & Contract on the ___th day of ___, 2014.

Approved as to form and manner of execution:

Assistant County Attorney
County of Westchester

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