

# CITY OF NEWBURGH

OFFICE OF THE CITY MANAGER  
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Richard F. Herbek  
Acting City Manager

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July 13, 2010

Dr. Jerome H. Blue  
President  
Bluestone Developers, Inc.  
1461 Franklin Avenue  
Garden City, New York 11530

Re: City of Newburgh to Bluestone Developers, Inc.  
1 Liberty Street, City of Newburgh, County of Orange  
Section 45, Block 5, Lot 18

Dear Dr. Blue:

This is to confirm that the City Council of the City of Newburgh, pursuant to Resolution No.: 144 - 2010 attached hereto, is willing to immediately close title and deliver quitclaim deed to you for the above-referenced property, pursuant to the terms and conditions of that Land Purchase Agreement by and between the City of Newburgh ("City") and Bluestone Developers, Inc. ("Bluestone") dated June 19, 2008 ("LPA"), copies of the LPA and Resolution No.: 30-2008 as referenced therein also being attached hereto, together with pursuant to the following additional terms and conditions which shall be deemed an amendment to the LPA:

1. Section 2 of the LPA entitled "PREMISES" and Schedule A to the LPA shall be amended to delete those properties known as 5 and 9 Johnes Street also known as Section 46, Block 1, Lots 14 and 15 ("Johnes Street Properties") from the Premises, the Johnes Street Properties being subject to that Option to Purchase Agreement by and between the City and Bluestone dated November 6, 2009.
2. Section 3 of the LPA entitled "PURCHASE PRICE" shall remain as is, without any change of purchase price for the Premises as a result of deletion of the Johnes Street Properties.
3. Section 7 of the LPA entitled "CLOSING" shall be amended to delete the last two (2) sentences therefrom and to replace them with the following wording: "The closing of title to the Premises shall occur at the Law Department of the City, 83 Broadway, Newburgh, New York on or before August 9, 2010."

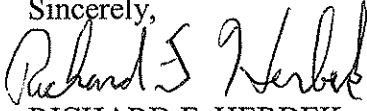
Dr. Jerome H. Blue  
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Page Two

4. Subsection c of Section 9 of the LPA entitled "ACCESS AND INSPECTIONS" shall be amended to read as follows: "In connection with the exercise of the license granted to Purchaser in paragraph Subsections 9(a) and 9(b) herein, and in connection with the conduct of any other pre-closing activities by the Purchaser, including but not limited to those activities which have resulted in issuance of New York State Department of Labor "Notice of Violation and Order to Comply" dated May 13, 2010 and the filing with the City of "Notice Under Mechanic's Lien Law for Account of Public Improvement" by Coppola Architectural, P.C. on January 15, 2010, Purchaser and Jerome H. Blue, individually, agree to defend, indemnify, and hold Seller harmless from any loss, cost, damages, lawsuit, damage to person or property, and the cost of litigation (including attorneys fees) caused solely by Purchaser or its agents, servants or employees in the use of said licensing and the conduct of such activities. The provisions of paragraphs Subsections 9(a) and, 9(b), and 9(c) herein shall survive the closing of title."

5. Section 12 of the LPA entitled "REPRESENTATIONS OF SELLER" shall be amended to delete Subsection 12(d) therefrom.

6. All other terms and conditions of the LPA shall remain in full force and effect.

If the foregoing-listed additional terms and conditions to the LPA are acceptable to you as an amendment thereto, please signify your acceptance and agreement to them by signing the enclosed copy of this letter below and returning it to my office, together with a corporate resolution authorizing such acceptance and agreement.

Sincerely,  
  
RICHARD F. HERBEK  
Acting City Manager

THE FOREGOING-LISTED ADDITIONAL  
TERMS AND CONDITIONS ARE HEREBY  
ACCEPTED AND AGREED TO:

BLUESTONE DEVELOPERS, INC.

By \_\_\_\_\_  
Jerome H. Blue, President

\_\_\_\_\_  
Date

\_\_\_\_\_  
Jerome H. Blue, Individually

\_\_\_\_\_  
Date

LAND PURCHASE AGREEMENT

The City of Newburgh, New York  
as Seller

WITH

Bluestone Developers, Inc.  
as Purchaser

Date of Contract:  
Premises:

June 19, 2008  
1 Liberty Street, 5 Johnes Street, 9 Johnes Street  
City Of Newburgh, New York  
Section 44, Block 5, Lot 18  
Section 46, Block 1, Lot 15  
Section 46, Block 1, Lot 14

## LAND PURCHASE AGREEMENT

AGREEMENT made this 19<sup>th</sup> day of June, 2008 (the "Effective Date"), between THE CITY OF NEWBURGH, a municipality organized and existing under the laws of the State of New York, with offices at 83 Broadway, City Hall, Newburgh, New York 12550, (hereinafter "City" or "Seller"), and Bluestone Developers, Inc., having an address of 6 Reckson Plaza, Uniondale, New York 11566 ("Purchaser").

### WITNESSETH

WHEREAS, the Seller is the owner of certain improved real property located at 1 Liberty Street, 5 Johnes Street and 9 Johnes Street, City of Newburgh, New York, and identified on the City's Tax map as Section 45, Block 5, Lot 18, Section 46, Block 1, Lot 15 and Section 46, Block 1, Lot 14, respectively, County of Orange, and State of New York (hereinafter collectively referred to as the "Premises"), and

WHEREAS, the Purchaser is desirous of acquiring and the Seller is desirous of selling the Premises, upon and subject to the terms and conditions set forth below,

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Purchaser hereby agree as follows:

1. SALE. Seller hereby agrees to sell and convey to Purchaser and Purchaser hereby agrees to purchase and acquire from Seller, on and subject to the terms, covenants and conditions hereinafter set forth, the Premises, described at Paragraph "2" below.

2. PREMISES. The Premises are bounded and described as set forth in Schedule "A" annexed. This sale includes all of Seller's right, title and interest in and to:

- a. all easements, rights of way or use, privileges, licenses, permits and right to the same belonging to or appertaining to the Premises, subject to zoning and other ordinances, codes and regulations of the City; and
- b. all rights, title, and interest of the Seller in and to any unpaid award for damage to the Premises by reason of change in grade of any street. Seller will execute to the Purchaser on the closing date all proper instruments for the conveyance of such title and assignment and collection of any such award.

3. PURCHASE PRICE. The purchase price for the Premises (the "Purchase Price") is the sum of Fifty Thousand One and 00/100 (\$50,001.00) Dollars, which shall be paid as follows:

- a. Five Thousand and 00/100 (\$5,000.00) Dollars (the "Deposit") shall be paid by Purchaser upon the execution of this Agreement, to the City of Newburgh. The Deposit shall be applied against the Purchase Price at closing.

- b. Forty Five Thousand One and 00/100 (\$45,001.00) Dollars shall be paid to the Seller by Purchaser at closing by good certified check of Purchaser, or official check of a bank, trust company, or savings and loan association having a banking office in the State of New York, payable to the order of Seller.

#### 4. FINANCING AND QUALIFICATIONS

- a. Within thirty (30) days of the execution of this Agreement, Purchaser shall submit to the Community Development Coordinator of the City of Newburgh, at 83 Broadway, City Hall, Newburgh New York 12550, a plan and narrative description showing how Purchaser will provide long-term financing for securing and developing the property according to the Terms and Conditions contained in Schedule C and the other provisions hereof.
- b. Within thirty (30) days of the execution of this Agreement, Purchaser shall submit to the Community Development Coordinator of the City of Newburgh, New York 12550, a narrative description setting forth the time table for securing and developing the Premises as described in this Agreement. Purchaser shall include in this narrative, a schedule showing the following, as a minimum:
  - i. That no longer than nine (9) months from the execution of this Agreement, Purchaser shall have applied for and received from the City of Newburgh Planning Board, Zoning Board of Appeals, and any and all other City boards and agencies with jurisdiction and power of approval over the premises, such approvals and permits as may be legally required to undertake the improvements to the premises as described in this Agreement. Purchaser shall not be deemed to be in violation of this condition if Purchaser can demonstrate that it has diligently pursued all such approvals and permits, and that any delays in securing same has occurred in the normal and regular course of events and is the result of natural and unforeseeable causes, and is not due to the neglect or failure of Purchaser to properly pursue same.
  - ii. That no longer than twelve (12) months from the execution of this Agreement, Purchaser shall have commenced the rehabilitation of the premises and shall have commenced construction of the project as described in Schedule C and elsewhere herein.
  - iii. That no longer than thirty (30) months from the execution of this Agreement, Purchaser shall have completed construction of the project as described in Schedule C and elsewhere herein; and that Purchaser shall have applied to the Building Inspector and Code Compliance Office of the City of Newburgh for a Certificate of Occupancy.

Purchaser shall be deemed to be in compliance with the requirements set forth in this Section 4 if any delay in meeting the time limits and requirements as set forth herein is caused by a force majeure or other reasonably unforeseeable event, and not by the negligence or failure of Purchaser to conduct the development of the premises as described herein with due diligence.

#### 5. SELLERS RIGHT TO RECAPTURE

- a. In the event Purchaser fails to provide Seller with any of the plans, descriptions, qualifications, materials or other information as called for in Paragraph 4; and/or in the event Purchaser fails to diligently undertake the securing or clean-up of the premises and the improvement thereof as called for in this Agreement, Seller shall have the right to serve upon Purchaser by regular mail a Notice to Cure. Said Notice to Cure shall specify such terms, conditions and requirements as Seller contends that Purchaser has failed to satisfy. Purchaser shall have fourteen (14) days from the date said Notice to Cure was received to satisfy Seller's demands to comply with the requirements of this Agreement, unless further extended by Seller in writing.
- b. In the event that Purchaser remains out of compliance with the terms and conditions of this Agreement following the serving of such Notice to Cure and the time frame for compliance therewith and any extensions thereof, then Seller shall have the right to notify Purchaser of Seller's cancellation of this contract, and all further rights and obligations of the parties hereunder shall cease and terminate, in keeping with Section 17 of this Agreement.

#### 6. SUBDIVISION APPROVAL AND CONDITIONS.

- a. The Purchaser has reviewed each and all of the conditions imposed by the City upon the City's approval of the Project by City Council Resolution No.: 30-2008 of February 25, 2008, and the Purchaser agrees to purchase the property subject to the terms and conditions set forth in said resolution, including but not limited to obtaining the approval of all necessary regulatory agencies. The Seller shall have no obligation to take any further steps to satisfy the requirements of the project, nor shall Seller be obligated to incur any expense in connection therewith. A certified copy of Resolution No.: 30-2008 is annexed hereto and made a part hereof.
- b. Purchaser will make its own evaluation and will not rely upon Seller concerning applicable regulations or requirements of any governmental authority or otherwise pertaining to the Premises including without limitations, zoning, buildings, traffic and environmental regulations or other requirements, and the availability of sewer, water and utilities, and Seller makes no representations or warranties with respect to any of the foregoing.
- c. The Seller reserves the right to approve the design of the building located at 1 Liberty Street prior to submission to other regulatory agencies, as required by law, rule or regulation. Said approval shall not be unreasonably withheld by Seller.

- d. Provided there is no cost or expense to the Seller, Seller shall cooperate fully with the Purchaser, as may be reasonably required, in any and all applications, proceedings and appeals made or prosecuted by or on behalf of Purchaser in connection with and consistent with the terms of this Agreement, and Seller agrees to execute and deliver all documents, consents or authorizations reasonably required by any governmental authority with respect thereto.
- e. Purchaser warrants and Seller relies upon the promise of the Purchaser that the Premises shall be used in connection with the construction of the Project of the Purchaser, to wit: The redevelopment of 1 Liberty Street to a residential co-operative or condominium of approximately twenty-five (25) units with 80 percent of the units to be sold at market rate and 20 percent of the units to be allocated as affordable units for low or moderate income measured at 80 percent of the Orange County area median income and the redevelopment of 5 and 9 Johnes Street to a parking area supporting the residential development.
- f. Purchaser shall comply with the Seller's "One Percent for Public Art" as provided in Chapter 14 of the Seller's Code of Ordinances, adopted as Ordinance No. 14-2007 of November 26, 2007.

7. CLOSING. The "Closing" means the settlement of the obligations of the Seller and Purchaser to each other under this Agreement, including the payment by Purchaser to Seller of the purchase price and other sums due, in the manner set forth in this Agreement, and the delivery to Purchaser of the deed referred to in Paragraph "11 (b)" herein in proper statutory form for recording so as to transfer and convey to Purchaser, fee simple ownership to the property, free of all encumbrances except as provided herein (see Paragraph "11"). The deed will contain the covenant of Seller as required by Section 13 of the Lien Law of the State of New York. The closing of title to the property will occur at the office of Seller's attorney, thirty (30) days after the issuance of all necessary government approvals, including a Building Permit issued by the City of Newburgh to Purchaser or their designee, if required, or at any other location agreed upon and convenient to both parties. However, no closing shall take place until such time as Purchaser has established to the satisfaction of the City's Community Development Coordinator that Purchaser has secured seventy (70%) percent of the total estimated cost of the rehabilitation of the Premises and construction of the project.

8. INSPECTION PERIOD. The Purchaser shall have a period of sixty (60) days (the "Inspection Period") commencing on the Effective Date, and ending at 4:00 p.m. on the sixtieth (60<sup>th</sup>) day thereafter, to conduct any and all tests, reviews, investigations, inquiries, research and analysis of the subject Premises, including environmental audits, engineering studies, planning and zoning reviews, which in the discretion of the Purchaser are necessary and desirable. Purchaser shall notify seller, in advance, of its desire to inspect the premises, and perform any tests and will arrange the same with Seller. In the event Purchaser is not satisfied with any aspect of the subject Premises, the Purchaser may elect to cancel this Agreement upon written notice to both Seller and the Escrow Agent given not later than the date and time the Inspection Period expires with time of the essence as to that date and time. In the event Purchaser elects to cancel this Agreement pursuant to this Paragraph, the Purchaser agrees to provide Seller with copies of any and all studies, reports, tests, applications, approvals, and documents prepared for the purpose of evaluation of the Premises, whereupon this Agreement shall be deemed null and void, without further force or effect. Time shall be of the essence as to the time periods provided in this paragraph.

9. ACCESS AND INSPECTIONS.

- a. Seller hereby grants to Purchaser, its agents, servants, employees and consultants, a license to enter in and upon the Premises throughout the term of this Agreement for the purpose of securing the structural integrity of the building located on the property known as 1 Liberty Street within thirty (30) days of the execution of this Agreement. The Purchaser agrees to secure the building in such a manner so as to protect the building from further deterioration during the predevelopment phase of the proposed redevelopment. Purchaser shall be responsible for the costs of securing the structural integrity of the building. Seller agrees to reimburse Purchaser for the cost of said stabilization if the project, as described herein, is not completed and the failure to complete the project is caused by a force majeure or other reasonably unforeseeable event, and not by the negligence or failure of Purchaser to conduct the development of the premises as described herein with due diligence.
- b. Seller hereby further grants to Purchaser, its agents, servants, employees and consultants, a license to enter in and upon the Premises throughout the term of this Agreement for the purpose of inspecting the Premises which inspections may include, but are not limited to, conducting surveys, physical inspections, tests, engineering and construction evaluation and reports, architectural study and planning, and environmental study, testing, and such other tests and evaluations as are reasonably required for the full and complete evaluation of the Premises and the full and complete prosecution of any applications for governmental approvals. Purchaser shall notify Seller of the date and time of such inspections and tests. The Purchaser agrees to conduct such inspections in such manner so as to cause a minimum of disturbance to the Premises. After such access, Purchaser agrees to return the Premises to substantially the same condition as existed prior to said access to the extent consistent with the measures taken to secure the structural integrity of the building as required by paragraph 9(a) herein.

- c. In connection with the exercise of the license granted to Purchaser in paragraph 9(a) and 9(b) herein, Purchaser agrees to hold Seller harmless from any loss, cost, damages, lawsuit, damage to person or property, and the cost of litigation (including attorneys fees) caused solely by Purchaser or its agents, servants or employees in the use of said licensing. The provisions of paragraphs 9(a) and 9(b) herein shall survive the closing of title
- d. Purchaser shall, at its sole expense, keep and maintain a policy of commercial public liability insurance which shall include coverage for their actions upon the Property during the term of this Agreement. This insurance policy shall name Seller as an additional insured and afford protection in limits of not less than \$1,000,000.00 for bodily injury or death in any one accident, and not less than \$500,000.00 for property damage. All insurance shall be effected under standard form policies, issued by insurers of recognized responsibility authorized to do business in the State of New York and having a national rating of A-9 or better, provided that, at the option of the Purchaser, such coverage may be effectuated through a blanket policy of insurance so long as the risks in respect of the Property are separately scheduled or identified. Purchasers will deliver to Seller within seven (7) days after the Effective Date, and prior to entry onto the Property, certificates of this insurance coverage and, not less than thirty (30) days prior to the expiration of the coverage, a certificate of the new policy accompanied by evidence reasonably satisfactory to Seller of payment of premiums therefor. Purchaser covenants, and this insurance coverage shall include, an agreement by the insurer that the policy shall not be canceled prior to the Closing or earlier termination of this Contract.

#### 10. APPORTIONMENTS.

- a. At Closing, real property taxes, and water and sewer charges and rents, if applicable, will be apportioned and adjusted as of midnight preceding the Closing date.
- b. In the event that any time subsequent to the closing of title hereunder the Premises shall be charged with an assessment, penalty, interest as the result of the loss of a tax exemption whether for agriculture, veteran, senior citizen, or other exemption (which said assessment, penalty and/or interest is collectively referred to as "Roll-Back Taxes"), any such Roll-Back Taxes shall be the sole obligation of the Purchasers. This provision shall survive delivery of the deed.

#### 11. TITLE.

- a. If, at the date of a closing there may be any taxes or other liens or encumbrances on the Premises which may be satisfied or discharged by the payment of money ("Monetary Liens") the Seller shall be obligated to pay and discharge the same. Seller may use the portion of the Purchase Price payable at or prior to the closing, to satisfy the Monetary Liens, provided the Seller shall simultaneously either (a) deliver to the Purchaser at the closing of title,

instruments in recordable form and sufficient to satisfy such Monetary Liens of record together with the cost of recording or filing said instruments; or (b) provided that the Seller has made arrangements with the title company of the Purchaser in advance of closing, Seller will deposit with said title company sufficient monies, acceptable to and required by it to insure obtaining and recording such satisfactions, and the issuance of title insurance to the Purchaser free of any exception for such Monetary Liens. The Purchaser, if request is made within a reasonable time prior to the closing of title, agree to provide at the closing separate bank or certified checks, aggregating the amount of any such Monetary Liens. The existence of any such Monetary Liens shall not be deemed objections to title if the Seller shall comply with the foregoing requirements.

- b. At the closing of title, the Seller will convey title to the Premises by standard City Quitclaim Deed, free and clear of all exceptions, liens and encumbrances, other than those shown on Schedule "B" attached hereto (collectively, "Permitted Exceptions"), said title to be insurable (subject to the Permitted Exceptions) by a Title Insurance Company licensed to do business within the State of New York at ordinary rates payable by Purchaser unless Purchaser shall have waived such objections as hereinafter provided. The payment of the New York State Transfer Tax shall be the obligation of the Purchaser.
- c. Within thirty (30) days of the Effective Date, the Purchaser shall deliver to the Seller a copy of the preliminary title insurance report, including the exception sheets, tax search, survey and survey reading, if any, and property description together with a written notice setting forth any and all objections to the Seller's title and if the written notice of objections is not given within such period, such title objections shall be deemed waived by Purchaser except for any objections which shall arise of record subsequent to the date of the preliminary title report of the Purchaser ("Subsequent Objections") and Purchaser shall, if possible, give Seller written notice of Subsequent Objections at least ten (10) days prior to the date set for closing. With respect to any objections, other than a Permitted Exception, Seller, shall have a period of forty-five (45) days, commencing with the receipt by Seller of Purchaser's notice of objections, within which to cause such objections to be cured or discharged to the satisfaction of Purchaser and its title company. If Seller attempts to cure or discharge the said objections but is unable or fails to do so by the end of the Cure Period, then upon the expiration of the Cure Period this Agreement shall be deemed canceled, unless Purchaser, no later than ten (10) days following the end of the Cure Period, shall notify Seller of their waiver of the said objections. If this Agreement is canceled pursuant to the provisions of this Paragraph the Deposit paid by the Purchaser pursuant to Paragraph "3(a)" above, shall be returned to Purchaser, whereupon this Agreement shall terminate and neither party shall have any liability to or claim against the other, whether at law or in equity.

12. REPRESENTATIONS OF SELLER. The Seller makes the following representations with respect to this transaction to the best of Seller's knowledge, same not to survive closing unless specifically noted to the contrary.

- a. There are no tenancies, written or oral, affecting the Premises, and no other persons have any right to occupy the same. No new tenancies are to be created or existing tenancies modified after execution of this Agreement without Purchasers' consent. The Premises will be conveyed vacant.
- b. Seller is not aware of any claims or conditions which would affect Seller's title to the Premises, or prevent Seller from conveying the quality of title described above.
- c. Seller has the authority to enter into this Agreement and to deliver the Deed to the Premises.
- d. Seller has no actual knowledge of any environmental constraints which would create a reporting or cleanup obligation under any local, regional, state or federal environmental regulation or statute, or the presence of any hazardous substances or spills on the Premises as defined by any local, regional state, or federal environmental regulation or statute.
- e. Seller has no actual knowledge of any threatened, anticipated, or pending eminent domain or condemnation action.

In the event Seller receives any information which would cause the above noted statements to be untrue or incomplete, Seller agrees to immediately notify Purchaser of such state of facts.

13. FIRPTA. Seller represents and warrants to Purchaser that Seller is not a "foreign person" as defined in IRC §1445, as amended, and the regulations issued thereunder ("Code Withholding Section"). At the Closing, Seller shall deliver to Purchaser a certification stating that Seller is not a foreign person, which certification shall be in the form then required by the Code Withholding Section.

14. PREMISES SOLD "AS IS". Purchaser has inspected the Premises and is thoroughly familiar with the physical condition thereof. Seller has not made and does not make any representations as to the physical condition thereof other than as heretofore set forth herein. Seller has not made and does not make any representations as to the physical condition, topography, drainage, or soil conditions, subdivisions, zoning, acreage, expense of operations or any other matter or thing affecting or related to the Premises except as herein specifically set forth, and Purchaser hereby expressly acknowledge that no such representations have been made, and Purchaser further acknowledges that they have inspected the Premises and agrees to take the property in its present condition "AS IS."

15. BROKER. Each party hereby represents and warrants to the other that there was no broker, finder or person acting as such in any way instrumental or having any part in bringing about this transaction. Each party covenants and agrees to indemnify and hold the other party harmless from and against any loss, cost, damage, expense (including reasonable attorneys fees and expenses) or liability resulting from any claims that may be made against the other by any other broker, finder or other person claiming a fee or other compensation in connection with this transaction arising from the acts of the indemnifying party. The provisions of this Paragraph shall survive delivery of the deed hereunder or the earlier termination of this Agreement.

16. CONDEMNATION.

- a. If after the date this Agreement becomes effective and prior to the Closing date there is a taking of less than ten percent (10%) of the Premises in eminent domain proceedings or under threat of condemnation, and such taking will not, in the reasonable opinion of Purchaser, prevent or interfere in a material way with the development of the Premises as described in "Schedule C" below, Purchaser shall perform their obligations under this Agreement and purchase the Premises.

If during such period of time there is a taking of ten percent (10%) or more of the Premises as aforesaid, or if such taking will prevent or interfere with the development of the Premises as described in "Schedule C" below, Purchaser shall have the option of complying with the terms of or terminating this Agreement. If Purchaser is obligated hereunder to purchase the Premises or, if granted an option to terminate, elects not to terminate this Agreement, Purchaser shall remain obligated to perform their obligations under this Agreement, and Seller shall at the Closing deliver to Purchaser any part of the condemnation award collected by Seller and assign to Purchaser rights to any part of the award not yet collected, in each case attributable to Seller's interest in the Premises. For the purposes of this Agreement, a taking in condemnation shall mean the vesting of fee title to any part of the Premises in governmental entity pursuant to the exercise of the power of eminent domain or pursuant to a deed delivered in lieu or in contemplation thereof.

- b. Purchaser agrees that the election granted to Purchaser under this Paragraph to terminate this Agreement shall be conclusively waived by Purchaser and of no force or effect unless Purchaser elect to terminate this Agreement by notice to Seller within sixty (60) days after Purchaser is notified by Seller of a taking that authorizes such election, such notification to include a specific description of the parcels to be taken and whether the taking is in fee, easement or otherwise.

17. REMEDIES UPON DEFAULT.

- a. In the event of Purchaser's default, it is agreed by the parties that it will be impossible to determine the exact amount of Seller's damages and therefore it is agreed that Seller's sole remedy in the event of Purchaser's default shall be for the Seller to receive any and all sums delivered by the Purchaser to the City through the date of the default, as and for liquidated damages.

- b. In the event of Seller's default, than Purchaser may elect to either:
- i. waive such default, whereupon Purchaser shall perform all of their obligations under this Agreement, and the Closing shall occur in accordance with the terms of this Agreement with no abatement of the Purchase Price, and no liability on the part of the Seller; or
  - ii. terminate this Agreement, without any other further claim, liability or obligation of either party to the other.

18. MISCELLANEOUS.

- a. Benefits. All of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties, the Seller and the Purchaser, and their respective successors and assigns.
- b. Entire Agreement. This Agreement and the Schedules and Exhibits hereto contain the entire Agreement between the Purchaser and the Seller with respect to the transactions contemplated herein; and no party shall be bound by nor shall be deemed to have made any representations, warranties or covenants except those contained herein. This Agreement cannot be modified, changed, discharged or terminated except by an instrument in writing, signed by the party against whom the enforcement or any modification, change, discharge or termination is sought.
- c. Captions. The captions of the Paragraphs and subparagraphs of this Agreement are for convenience and reference only, and are not to be considered in construing this Agreement.
- d. Notices. Any notices, request, instrument or other document to be given hereunder shall be in writing and, shall be delivered personally or sent by certified, registered or express mail, return receipt requested, as follows:

If to the Purchasers: Jerome H. Blue, PhD  
President  
Bluestone Developers, Inc.  
(The Green September tbf llc)  
626 Reckson Plaza  
Uniondale, NY 11556

If to the Seller: The City of Newburgh  
Office of the Corporation Counsel  
83 Broadway, City Hall  
Newburgh, New York 12550

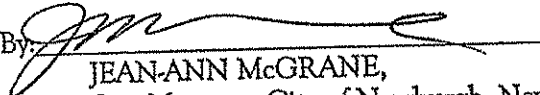
Each party may change its address for the purposes of this Paragraph by giving written notice of such change to the other party in the manner herein provided. If this Agreement provides for a designated period after a Notice within which to perform an act, such period shall commence on the date of receipt or tender of the Notice. If this Agreement requires the exercise of a right by Notice on or before a certain date or within a designated period, such right shall be deemed exercised on the date of mailing or tender of the Notice pursuant to which such right is exercised.

- e. Severability. In case any one or more of the provisions or parts of a provision contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or part of a provision of this Agreement.
- f. Governing Law. This Agreement has been negotiated and executed in the State of New York and shall be governed by and construed in accordance with the laws of the State of New York.
- g. No Waiver. The failure of Seller or Purchasers to seek redress for violation of, or to insist on the strict performance of, any term, covenant or condition of this Agreement, shall not be deemed a waiver of any such party's rights hereunder nor prevent a similar subsequent act from constituting a default under this Agreement.
- h. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.
- i. Expenses. The Purchaser and the Seller shall pay its respective legal, accounting and other fees in connection with this Agreement, including expenses incurred in connection with the purchase of the real property.
- j. Assignment. This Agreement may not be assigned by the Purchaser without the prior written consent of the Seller, which consent shall not be unreasonably withheld. The Seller may assign this agreement to a third party, provided such third party assumes each and all obligations of the Seller, and further provided that such assignment shall not release Seller from this Agreement.

- k. Merger. Seller is not liable or bound in any manner by express or implied warranties, guaranties, promises, statements, representations or information pertaining to the Premises, made or furnished by any agent, employee, servant, or other person representing or purporting to represent the Seller, unless such warranties, guaranties, promises, statements, representations or information are expressly and specifically set forth herein. It is understood and agreed that all understandings and Agreements heretofore had between the parties hereto are merged in this Agreement, which alone fully and completely expresses their Agreement, and that the same is entered into after full investigation, neither party relying upon any statement or representation, not embodied in this Agreement, made by the other party or any other person.

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

Seller: THE CITY OF NEWBURGH

By:   
JEAN-ANN McGRANE,  
City Manager, City of Newburgh, New York

Purchaser: Bluestone Developers, Inc.

By:   
JEROME H. BLUE, PhD  
President, Bluestone Developers, Inc.

Approved as to form:

  
GEOFFREY E. CHANIN  
Corporation Counsel

  
CHARLES EMBERGER  
Comptroller

## SCHEDULE "A"

All that certain lot, piece or parcel of land, with buildings and improvements thereon erected, situate, lying and being in the City of Newburgh, County of Orange and State of New York, known as 1 Liberty Street, 5 Johns Street and 9 Johns Street, being more accurately described as Section 45, Block 4, Lot 18, Section 46, Block 1, Lot 15, Section 46, Block 1, Lot 14, respectively, on the Official Tax Map of The City of Newburgh.

## SCHEDULE "B"

### PERMITTED EXCEPTIONS

1. Current taxes not yet due and payable.
2. Any state of facts which an accurate survey would show.
3. Any laws, regulations or ordinances (including, but not limited to zoning, building and environmental protection) as to use, occupancy, subdivision or improvement of the Premises adopted or imposed by any governmental body, or the effect of any noncompliance or violation thereof.
4. Any special assessment affecting the property.

## SCHEDULE "C"

### TERMS AND CONDITIONS

As a term and condition of the sale of the Premises by the City of Newburgh as Seller, to the Bluestone Developers, Inc, as Purchaser, the parties hereby further agree to the terms and conditions set forth in this Schedule "C", which is made a part of the Agreement between the parties. The following terms and conditions shall survive the closing of title:

1. Purchaser warrants and Seller relies upon Purchaser's promise that the Premises shall be used in connection with the Purchaser's project proposal, to wit: The redevelopment of 1 Liberty Street to a residential co-operative or condominium of approximately twenty-five (25) units with 80 percent of the units to be sold at market rate and 20 percent of the units to be allocated as affordable units for low or moderate income measured at 80 percent of the Orange County area median income and the redevelopment of 5 and 9 Johnes Street to a parking area supporting the residential development.
2. The Seller reserves the right to approve the design of the building located at 1 Liberty Street prior to submission to other regulatory agencies, as required by law, rule or regulation. Said approval shall not be unreasonably withheld by Seller.
3. The Premises shall be developed in conformity with the laws, ordinances, codes, rules and regulations of the City of Newburgh and State of New York. The deed will contain provisions stating that the Purchaser is required to rehabilitate any building on the 1 Liberty Street property and bring it into compliance with all State, County and Local standards for occupancy within eighteen (18) months of the date of the deed. Within such eighteen (18) month time period the Purchaser must either: obtain a Certificate of Occupancy for all buildings on the property or make all buildings granted a Certificate of Occupancy before the date of purchase fit for the use stated in such Certificate of Occupancy. The deed shall require the Purchaser to schedule an inspection by City officials at or before the end of the eighteen (18) month period. If the Purchaser has not complied with the deed provisions regarding rehabilitation of the property and obtained a Certificate of Occupancy or Certificate of Compliance by that time, then the title to the property shall revert to the City of Newburgh. The deed shall also provide that the property shall not be conveyed to any other person before a Certificate of Occupancy or Certificate of Compliance is issued.
4. In the event that the residential development is approved as a co-operative, the by-laws of the co-operative's board of directors shall provide that no less than seventy (70%) percent of the residential units must be occupied by the shareholder/owner of the unit and that the co-operative board be responsible for maintaining such ratio. This provision shall survive the closing of title.
5. Purchasers agree to fully repair, renovate and improve all other areas and portions of the Premises. The Premises must conform to all City ordinances, codes and other requirements.
6. Purchaser shall comply with the Seller's "One Percent for Public Art" as provided in Chapter 14 of the Seller's Code of Ordinances, adopted as Ordinance No. 14-2007 of November 26, 2007.

7. The parties hereto agree that all the terms and conditions of Resolution No. 30 - 2008 of February 25, 2008, and all subsequent resolutions duly adopted by the City Council pertaining to the premises shall remain in full force and effect and shall be considered a part of the Agreement between the parties.

RESOLUTION NO.: 30 - 2008

OF

FEBRUARY 25, 2008

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A LAND DISPOSITION AGREEMENT WITH BLUESTONE DEVELOPERS, INC. REGARDING THE SALE AND PROPOSED DEVELOPMENT OF REAL PROPERTY KNOWN AS 1 LIBERTY STREET (SECTION 45, BLOCK 5, LOT 18) 5 JOHNES STREET (SECTION 46, BLOCK 1, LOT 15) AND 9 JOHNES STREET (SECTION 46, BLOCK 1, LOT 14) WITH A PURCHASE PRICE OF \$50,001.00

WHEREAS, the City of Newburgh is the owner of properties commonly known as 1 Liberty Street, 5 Johnes Street and 9 Johnes Street, and being more accurately described as Section 45, Block 5, Lot 18, Section 46, Block 1, Lot 15 and Section 46, Block 1, Lot 14, respectively, on the official tax map of the City of Newburgh; and

WHEREAS, Bluestone Developers, Inc. has presented a proposal for the purchase and development of the aforementioned parcels; and

WHEREAS, such proposal would require the execution of a land disposition agreement, a copy of which is annexed hereto; and

WHEREAS, this Council feels it would be in the best interests of the City of Newburgh and its continuing development to enter into such land disposition agreement;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager be and she is hereby authorized to execute a land disposition agreement, in substantially the same form as annexed hereto with such other terms and conditions as may be required by Counsel, with Bluestone Developers, Inc., and other related documents as may be required by the Corporation Counsel; and

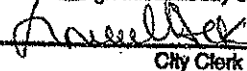
BE IT FURTHER RESOLVED, by the Council of the City of Newburgh that such land disposition agreement shall be inclusive of the following terms:

- Sale price of \$50,001.00
- Qualifications of Bluestone Developers, Inc. as developers;
- Proof of financing;

- Time schedule for each step and a time-table for the preliminary steps, including, but not limited to securing adequate financing, the taking of title, commencement of rehabilitation and completion, together with adequate security for performance, including a right of re-entry should the time table not be adhered to;
- Time to acquire necessary regulatory approvals;
- Recapture provision.

I, Lorene Vitek, City Clerk of the City of Newburgh, hereby certify that I have compared the foregoing with the original resolution adopted by the Council of the City of Newburgh at a regular meeting held 2/25/08 and that it is a true and correct copy of such original.

Witness my hand and seal of the City of Newburgh this 26 day of Feb. 2008

  
City Clerk