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**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MOUNT VERNON  
MAKING A DETERMINATION UNDER SEQRA, AND ADOPTING A  
ZONING TEXT AMENDMENT TO PERMIT TOWNHOMES IN THE RMF-  
6.75 DISTRICT**

**WHEREAS**, Prestige Realtors (“Petitioner”) submitted a Zoning Petition dated December 10, 2019, requesting that 65 W. Second Street (Tax Lot 165.77-3067-23) (“Property”) be rezoned from the RMF-6.75 Multifamily Residence Zoning District (“RMF-6.75 District”) to the RMF-15 Multifamily Residence Zoning District (“RMF-15 District”) to allow for the development of ten townhomes on the Property; and

**WHEREAS**, upon review of the Zoning Petition by the City’s Planning Staff and Planning and Legal Consultants, it was recommended to regulate the townhome use throughout the RMF-6.75 District to ensure it is compatible with its surroundings; and

**WHEREAS**, on April 23, 2021, the Planning Board recommended approval of a proposed Zoning Text Amendment to permit townhomes in the RMF-6.75 Zoning District, with specific regulations incorporated to address impacts on surrounding uses in conformance with the RMF-6.75 Zoning District, as well as to limit density to six units on the Property; and

**WHEREAS**, the City Council, after taking a hard look at the impacts of this Zoning Text Amendment, finds that increasing the permitted density to allow for eight units on the Property based upon certain maximum floor areas is consistent with the uses found in the RMF-6.75 District, and the character of said District; and

**WHEREAS**, based upon the Record, the City Council, as Lead Agency under the State Environmental Quality Review Act (“SEQRA”) has reviewed the proposed Zoning Text Amendment and entire associated Record, and has taken a hard look at any potential environmental impacts, and determined that the proposed Zoning Text Amendment, including a limitation of 1,600 square feet per unit, will not have any significant adverse environmental impacts, including no significant adverse impacts on traffic or sewage flow, and issues a Negative Declaration hereunder; and

**WHEREAS**, on May 12, 2021, the City Council held a duly noticed Public Hearing regarding the proposed Zoning Text Amendment,

**NOW, THEREFORE, the City of Mount Vernon, in City Council convened, does hereby ordain and enact:**

Section 1. Chapter 267 of the City Code of the City of Mount Vernon, entitled “Zoning,” is hereby amended, as follows, with underlined material added and material in brackets [] deleted:

**§267-17 E(1) (also known as Article V, Section 5(E)(1), “District RMF-6.75 Multifamily Residence, Permitted Principal Uses”):**

(g) Townhomes, as regulated under Section 267-18B (Article V, Section 3(B))

**Section 267-18B (Article V, Section 3(B)). Townhouse Developments in the R-6.75 Zoning District**

(1) A Townhouse shall comply with the definition for an Attached Dwelling Unit as set forth in Section 267-4

(2) A Townhouse development may consist of one or more principal buildings

(3) Principal buildings shall be separated by a minimum of 18 feet

(4) Lot Area = 10,000 square feet

(5) Lot Area Per Dwelling Unit = 1,600 square feet

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(6) Building Coverage = 50%

(7) Impervious Surface Coverage = 80%

(8) Lot Width and Frontage = 75 feet

(9) Front Yard = 4 feet

(10) Side Yard (Each) = 2 feet (5 feet if abutting a single-family district)

(11) Side Yard (Combined) = 5 feet (12 feet if abutting a single-family district)

(12) Rear Yard = 12 feet (20 feet if abutting a single-family district)

(13) Usable Open Space, as defined in Section 267-4, Per Unit = 500 square feet

a. Said useable open space shall have a minimum dimension of 15 feet

(14) Building Height = 3 stories/35 feet

(15) A streetscape improvement plan is required addressing improvements to sidewalks, public utilities, street trees, street furniture, and similar improvements.

Section 2. This ordinance shall take effect immediately.

APPROVED AS TO FORM

Janice Beauford  
Assistant Corporation Counsel

Derrick Thompson  
Councilperson

THIS ORDINANCE  
ADOPTED BY CITY COUNCIL

Charles A. Ruffolo  
President

ATTEST:  
William A. Holmes  
City Clerk

APPROVED

MAY 13 2021

Date

Derrick Thompson  
Mayor

APPROVED

Dept. \_\_\_\_\_

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Vote Taken As Follows: 5/12/2021  
Duarte: Yea Thompson: Yea  
Farquharson: Nay Copeland: Yea  
Griffith: Yea Ordinance Adopted

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**AN ORDINANCE AUTHORIZING THE CITY COUNCIL TO APPROVE AN AMENDED AND RESTATED LAND DISPOSITION AGREEMENT RELATED TO 7-11, 25, AND 29 NORTH MACQUESTEN PARKWAY**

**WHEREAS**, the City of Mount Vernon is the owner of certain real property located at 7-11 North MacQuesten Parkway (tax lot 164.88-1073-21), 25 North MacQuesten Parkway (164.68-1073-24), and 29 North MacQuesten Parkway (164.68-1073-25) (collectively, the "Property"); and

**WHEREAS**, Qwest LLC ("Buyer") intends to purchase the Property, and construct a mixed-use structure containing 229 residential units and commercial space ("Project") thereon; and

**WHEREAS**, the Finance and Planning Committee of the City Council of Mount Vernon has requested that the City Council approve the Amended and Restated Land Disposition Agreement related to the sale of the Property to the Buyer; and

**WHEREAS**, the City Council originally approved a Land Disposition Agreement ("Original LDA") with said Buyer regarding the Property on March 13, 2019, by a vote of three to two; and

**WHEREAS**, pursuant to Section 47 of the City of Mount Vernon Charter, a four/fifths vote is required to approve the disposition of City-owned real estate, and thus the City Council is undertaking the instant re-vote; and

**WHEREAS**, said Original LDA has been revised, and amended and restated as enclosed ("Land Disposition Agreement"); and

**WHEREAS**, the Property was appraised at the value of \$929,469.00, pursuant to an appraisal conducted by Lane Appraisals, Inc., dated effective March 14, 2018, and Buyer offers \$930,000.00 for said Property; and

**WHEREAS**, on February 26, 2021, Valuation Plus, Inc., reviewed the March 14, 2018 Appraisal by Lane Appraisals, Inc., and found the value of \$929,569.00 to be reasonable; and

**WHEREAS**; approval of the LDA does not represent approval of the Project, and a condition of Closing is that the Buyer obtain all the requisite approvals for the Project, including, but not limited to Site Plan Approval by the Mount Vernon Planning Board; and

**WHEREAS**, the Real Estate Committee approved the proposed sale, pursuant to Section 205-5 of the City Charter, and, on or about September 25, 2020, recommended the approval of said sale; and

**WHEREAS**, pursuant to Article V, Section IV of the Zoning Code (the "Mount Vernon-West TOD"), the Planning Board shall determine the appropriate process to review the Site Plan, and review said Site Plan Application; and

**WHEREAS**, the approval of the LDA does not represent approval of the Project, and the requisite review under the State Environmental Quality Review Act ("SEQRA") must be undertaken,

**NOW, THEREFORE, the City of Mount Vernon, in City Council convened, does hereby ordain and enact:**

MAY 12 2021  
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Section 1. The City Council of the City of Mount Vernon, as convened, does hereby approve the enclosed Land Disposition Agreement, and authorizes the City's Representatives to execute said Land Disposition Agreement.

Section 2. The City Council hereby requests that the Planning Board, as part of its Site Plan review, consider adding certain elements related to the Project, including, integrating work designs, utilities, and mechanical equipment, which will recognize and maximize the prevention of the spread of Covid-19; replacing and enhancing the landscaping; ensuring a vibrant streetscape design; providing usable and accessible open space; providing for the use of alternative, renewable energy sources; and installing electric vehicle charging stations and allowing for the use of shared vehicles.

Section 3. This Ordinance shall take effect upon its approval by the Board of Estimate and Contract.

APPROVED AS TO FORM

*Janice Beigel*  
Assistant Corporation Counsel

*Derrick Hoover*  
Councilperson

THIS ORDINANCE  
ADOPTED BY CITY COUNCIL

*Walter A. Duffell*  
President

ATTEST:  
*William F. Holman*  
City Clerk

APPROVED  
MAY 13 2021

*Shaun Peters Howard*  
Date  
By  
Mayor

APPROVED  
Dept. \_\_\_\_\_

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Vote Taken As Follows: 5/12/2021  
Duarte: Yea Thompson: Yea  
Farquharson: Nay Copeland: Yea  
Griffith: Yea Ordinance Adopted

**AMENDED AND RESTATED AGREEMENT**

**THIS AGREEMENT** (this "Agreement") is made this \_\_\_ day of May, 2021 by and between the **City of Mount Vernon ("Seller")**, 1 Roosevelt Square, Mount Vernon, NY 10550, and the **QWest LLC**, 1250 Waters Place, PH1, Bronx, NY 10461 ("**Buyer**").

WHEREAS, Seller and Buyer entered officially into the Agreement for the acquisition of the Property, defined below, dated March 19, 2019 ("Agreement"); and

WHEREAS, there is an Appraisal dated March 24, 2018, which values the Property at \$930,000.00; and

WHEREAS through no fault of the Parties, Seller and Buyer did not close on the Property under the Agreement; and

WHEREAS, the Buyer and the Seller wish to update, amend and restate the Agreement as set forth in this Agreement; and

WHEREAS, the Property is in an area that was rezoned by the Seller to allow for increased density, supporting transit oriented development; and

WHEREAS, the Buyer has engaged in acquisition of adjacent properties to facilitate the increased density and transit oriented as intended by the rezoning; and

WHEREAS, the Real Estate Committee of the Seller approved the transfer of the Property materially in conformance with the terms of this Agreement on or about September 25, 2020, attached hereto as Exhibit "A"; and

**NOW THEREFORE**, in consideration of ten (\$10.00) dollars and other good and valuable consideration, receipt of which is hereby acknowledged and in consideration of the covenants and provisions contained herein, and subject to the terms and conditions hereinafter set forth, the Parties, intending to be legally bound,

**AGREE**, as follows:

1. **Sale:**

Subject to the terms and conditions contained herein, the Seller hereby agrees to sell and convey to Buyer, who hereby agrees to purchase from the Seller, all those certain interests in tracts of land situated in the City of Mount Vernon, Westchester County, State of New York, more fully and particularly described in Schedule "A" attached hereto and made a part hereof, together with, to the extent the Seller owns same, all strips, gaps, and gores of land, sewer and utility rights, water rights and powers, buildings, structures, fixtures, systems, improvements, topsoil, trees, shrubbery and landscaping currently situated on, in or under or used in connection with the land (the "Property").

2. **Definitions:**

As used in this Agreement, the following terms shall have the following meaning:

- a) **“Approvals”** means all final and non-appealable approvals for the development of the Project, including, but not limited to, site plan and subdivision approvals. An approval shall be deemed “non-appealable” thirty (30) days after the filing of such approval when no challenge has been filed, or if challenged, when the challenge has been denied and the denial is non-appealable or the time to appeal the denial has expired without appeal.
- b) **“Approved”** means having received the Approvals.
- c) **“Closing”** means the transfer of title to the Property to Buyer, the payment of the Purchase Price to the Seller and the exchange of all other documents required for completion of the transfer of title and the completion of all other conditions for Closing as provided for in this Agreement as evidenced by delivery of a deed to the Property.
- d) **“Parties”** means the Seller and Buyer, and their permitted successors and assignees.
- e) **“Processing Approvals”** means activities of Buyer, its consultants, engineers, architects, planners and consultants, after the date of the Seller’s execution of this Agreement, in furtherance of obtaining the Approvals and designing the Project to the extent required to obtain the Approvals, including: (i) preparing and filing plans, studies and applications, and (ii) attending meetings and hearings necessary to obtain the Approvals.
- f) **“Project”** means the improvements and facilities proposed by Buyer to develop the following:

1- a state of the art multi-phased mixed-use green project at 7-29 North MacQuesten Parkway which is expected to consist of, and which the Buyer will make commercially reasonable efforts to materially adhere to, including a combined gross floor area of approximately 260,000 square feet at the Property including approximately 229 residential rental units, 2,500 square feet of commercial space and required parking . A copy of the Concept Plan is attached as Exhibit “B.”

3. **Purchase Price:**

- a) The Purchase Price for the Property is Nine Hundred Thirty Thousand Dollars (\$930,000.00) which shall be allocated equally among the three tax parcels as described in Schedule “A” that make up the Property, as follows:
  - 1. **7-11 MacQuesten Parkway, N** (Section 164.68, Block 1073, Lots 21);
  - 2. **25 MacQuesten Parkway, N** (Section 164.68, Block 1073, Lots 24); and
  - 3. **29 MacQuesten Parkway** (Section 164.68, Block 1073, Lots 25).

4. **Title:**

- a) Seller shall convey fee simple title to the Property, which is being sold to the Buyer "as is," subject only to the Permitted Exceptions (as defined below).
- b) Permitted exceptions shall be (i) any state of facts an accurate survey would disclose, provided that such facts do not render title uninsurable or prevent or materially interfere with construction or intended use of the Project, (ii) zoning regulations except as may be provided for in paragraph 17, (iii) stoops, trim, cornices, lintels, awnings, canopies, ledges, fences, retaining walls projecting from adjoining properties, (iv) easements, covenants and restrictions of record, provided they do not render title uninsurable or prevent or materially interfere with construction or intended use of the Project, and (v) such other matters as a reputable title insurance company which is a member of the New York Board of Title Underwriters ("the Title Company") is willing to insure will not materially interfere with construction or the intended use of the Project without special premium, provided the Title Company underwriter confirms such coverage in writing and insures Buyer's lenders to the same extent (subparagraphs (i) through (v) shall be "Permitted Exceptions"). For avoidance of doubt the Property will be delivered vacant, free of all tenants and/or occupants, unless agreed in writing otherwise by the Buyer and Seller in their reasonable discretion.
- c) Buyer shall promptly order examination of title and a survey and shall cause a copy of the title report and survey to be forwarded to Seller within ninety (90) days of the execution of this Agreement.
- d) Within ten (10) days of delivery of the title report and the survey, Buyer shall advise Seller, in writing, of any defects or objections in title, which Buyer considers to violate the provisions of this Agreement as to the condition of title ("Title Defect").
- e) Seller is conveying the subject Property "as is." However, in the event Seller is unable to convey good and insurable fee simple title such as will be insured by the Title Company as set forth above, Buyer shall have the option of: (i) taking such title as Seller can convey, without abatement of the Purchase Price, and (ii) canceling this Agreement after (60) days from the report of Title Defects being delivered to Seller, if after sixty (60) days Seller is still unable to give good and insurable title as required hereunder, in which event, upon return of the Good Faith Deposit, there shall be no further liability or obligation by either of the Parties hereunder and this Agreement shall become null and void, it being specifically understood that should Buyer fail to exercise its option to cancel this Agreement within thirty (30) days of Seller's notice of inability to cure Title Defects then Buyer waives any such objection to title and is obligated to complete this Agreement according to its other terms.
- f) Seller shall execute and deliver to the Title Company such releases, documents, indemnities and affidavits, unrecorded agreements, authority to convey the Property, filed and unfiled judgments, mechanics' liens and the satisfaction of any New York State and Internal Revenue Service disclosure and reporting requirements.
- g) The foregoing notwithstanding, if after delivery of the title report and survey as provided for in paragraph (c) above and at or before Closing, as defined herein, the Title Company provides notice of a condition of title not previously reported which condition renders title uninsurable or would prevent or materially interfere with construction or use of the Project intended by Buyer ("Additional Title Defect") then in that event the Parties shall have the same

rights to cure the Additional Title Defect and to modify or cancel this Agreement as are contained in paragraph (e) for a Title Defect in the first instance.

5. **Closing:**

- a) Closing shall be made at the offices of Seller's attorneys or Buyer's lending institution or via escrow through the Title Company on the date which is on or about thirty (30) days following the later of conclusion of the satisfaction of the conditions set forth in paragraph 17, but subject to the time frames set forth in paragraph 17, upon at least fifteen (15) days' notice from Buyer to Seller. For avoidance of doubt, the Parties will schedule the Closing, subject to the preceding sentence of this Section 5(a), on the date reasonably requested by the Buyer's lenders. During the continuance of the COVID Pandemic, Closing may occur by mail using an escrow agreement reasonably acceptable to the Parties.
- b) To the extent applicable, the following shall be apportioned as of midnight the day before Closing: taxes (if any paid by the Seller), real estate taxes, sewer rents and water charges.

6. **Possession:**

Possession is to be given at the time of Closing, without any leases, licenses and other occupancies or tenancies of any kind, by Quit Claim Deed, provided, in the event that Seller, after a good faith effort, identifies any leases, licenses and other occupancies or tenancies relating to or on the Property and is unable to avoid or terminate such conditions, then Buyer may either: i) require an escrow of funds from the Purchase Price of sufficient amount to be mutually agreed to by the parties, to be used for the reasonable costs of terminating any such leases, licenses and other occupancies or tenancies of any kind; if the parties are unable to agree upon said escrow amount, then only subparagraph (ii) herein will be available, or ii) terminate this Agreement and have returned to the Buyer the Good Faith Deposit and all unspent funds in the Approval Escrow .

7. **Transfer Taxes:**

Payment of New York State and Westchester County real estate transfer taxes, if any, shall be the responsibility of Buyer. The Parties shall sign any required transfer tax returns and Seller is to prepare and sign an equalization and assessment return.

8. **Formal Tender Waived:**

Formal tender of an executed deed and purchase money is hereby waived in order to declare default.

9. **Buyer's Default:**

Should Buyer violate or fail to fulfill or perform any of the terms or conditions of this Agreement, the Seller will give Buyer written notice of its right to cure such default (the "Notice to Cure"). Thirty (30) days after the Notice to Cure is given, if Buyer has not cured or has not commenced curing such default (in the event cure cannot be completed within such thirty (30) day time period, Buyer shall have commenced to cure the default and be diligently pursuing such cure), at Seller's sole option, Seller may declare this Agreement to be null and void without further obligation by the Parties to each other. The Seller may exercise such option to declare this Agreement null and void after the expiration of the aforesaid thirty (30) day period from the giving of the Notice



to Cure, by giving Buyer written notice (without further opportunity by Buyer to cure any such default or violation, unless Buyer has commenced curing such default or violation prior to the expiration of the thirty (30) day period). In that event, Seller, as its sole and exclusive remedy, shall retain Buyer's Good Faith Deposit and monies paid to the Approval Escrow as liquidated damages and thereupon this Agreement shall be deemed terminated and the Parties shall have no further rights against the other.

10. **Seller's Default:**

Should Seller violate or fail to fulfill or perform any of the terms or conditions of this Agreement, Buyer will give Seller Notice to Cure. Thirty (30) days after the Notice to Cure is given, if Seller has not cured or has not commenced curing such default (in the event cure cannot be completed within such time thirty (30) day time period, Seller shall have commenced to cure the default and be diligently pursuing such cure), Buyer's remedy shall be (i) specific performance or, to the extent that specific performance cannot be used as a remedy against the Seller, such other nonmonetary equitable remedy as may be appropriate to enforce Buyer's rights under this Agreement, provided such remedy does not require Seller to expend any funds to cure such default, except to comply with Seller's obligations under this Agreement, or (ii) to terminate this Agreement and receive a full refund of the Good Faith Deposit, and monies paid to the Approval Escrow, but not spent.

11. **Intentionally Omitted**

12. **Intentionally Omitted**

13. **Brokers:**

The Parties represent they have not dealt with any brokers. Buyer and Seller each agree to indemnify and hold the other harmless from and against any liability arising from a breach of the above representation. This paragraph shall survive delivery of the deed.

14. **Intentionally Omitted**

15. **Seller's Representations, Warranties and Covenants:**

Seller covenants, represents and warrants to the Buyer, which representations shall be true at the time of Closing and, except for items "b", "c" and "d" (which shall explicitly survive closing for 4 years), shall not survive delivery of the deed as follows:

- a) While the property is being conveyed to the Buyer "as is," to the best of its knowledge, the Seller has good and insurable title to the Property.
- b) Seller and the parties executing this Agreement on behalf of Seller have performed all necessary acts to permit execution of this Agreement and to grant authority to the person executing this Agreement to do so.
- c) To Seller's actual knowledge there is no action, suit or proceeding pending or to the best of Seller's knowledge threatened, which would impair Seller's obligations to perform under this Agreement or affect the Property.
- d) Neither the entering into of this Agreement, the consummation of the sale, nor the conveyance of the Property to Buyer, has or will constitute a violation or breach of any of the terms of any contract or other instrument to which Seller is a party or to which Seller or the Property is subject.

- e) To the best of Seller's knowledge there are no commitments or agreements, which would require Buyer to pay any money or perform any obligation or which would otherwise affect the ownership or development of the Property by Buyer.
- f) The Property is being sold "as is," and the Seller is making no representations relating to existing or pending violations of any applicable housing, building, safety, fire or other ordinances, environmental conditions on, under or related to the Property, or any other applicable laws, rules or regulations.
- g) No condemnation proceedings, eminent domain proceedings or similar actions or proceedings are now pending or, to the best knowledge of Seller, threatened against the Property.
- h) To the best knowledge of Seller, without inquiry, there is no fact or condition that would result in the modification, termination, limitation or reduction of existing access and egress rights to and from the Property through the existing publicly dedicated streets, or sewer or other utility services presently available to service the Property.
- i) The Property is not subject to any unrecorded leases, occupancies, agreements of sale, or any options, or other rights of third parties to acquire any interest therein.

16. **Seller's Covenants Pending Closing:**

Between the date of execution of this Agreement and the date of Closing, provided the Agreement has not been otherwise terminated, the Seller shall do the following:

- a) Seller shall maintain the Property in its present state of repair and in substantially the same condition as on the date hereof subject to reasonable wear and tear and natural deterioration.
- b) Seller shall not enter into any lease, agreement of sale, option, or any other agreement or contract affecting the Property, nor shall Seller grant any easements or further encumber the Property, without the prior written consent of Buyer, which may be withheld if in Buyer's reasonable opinion same may interfere with the Project.
- c) Seller shall not use, manufacture, store, generate, handle, or dispose of any hazardous and/or toxic substances or materials, or use or permit the Property to be used for such purposes except Seller may continue to maintain existing facilities on the site in accordance with applicable laws, rules and regulations.
- d) Buyer shall diligently and in good faith pursue, and Seller shall not take any action to impede Buyer's efforts to obtain, the Approvals and any other approvals, consents, permits or other items reasonably necessary for the Closing in connection with the Property, including the zoning changes, and the construction of the Approved Project as contemplated in this Agreement. However, taking reasonable steps to review the Project pursuant to SEQRA, if applicable, (within the time frames established by SEQRA or otherwise

consented to by the Parties) and other applicable rules, laws and regulations, including requiring Buyer to supply other and/or additional information relevant to the review of the Project and/or requiring the payment of application fees and/or review costs as provided for herein or by City Code shall not be considered actions impeding Buyer's efforts to obtain the Approvals. This paragraph shall not be construed, however, as requiring that Seller or any of its agencies, boards, commissions or departments to grant any of the Approvals.

17. **Conditions to Closing:**

The obligation of the Parties to complete Closing under this Agreement is expressly conditioned upon the following:

- a) Approvals shall have been granted for the Project without material change to the Project description described herein, unless consented to by Seller and Buyer ("Material Change"), for purposes of this provision a Material Change shall be, among other potential items, not more than a ten percent reduction or increase in the size of the proposed structure and/or number of housing units contemplated in the Project description herein, or material change in the other elements of the Project or offered amenities.
- b) The Approvals shall be unmodified and in full force and effect on date of the Closing.
- c) A final site plan and a final subdivision plat for the Property (which may include more than one site plan approval) in accordance with the Approvals shall have been approved by the City of Mount Vernon and its applicable agencies, and where applicable, recorded with the Westchester County Clerk.
- d) Seller shall have performed all obligations that it is required to perform pursuant to the provisions of this Agreement and all of its representations and warranties set forth in this Agreement shall be true, correct and complete as of the date of Closing.
- e) No moratorium prohibiting the construction or development of the Property shall be in effect.
- f) Buyer has provided commercially reasonable evidence of financing necessary to commence and complete construction of the Project by the Project Completion Date (e.g. commitment letter(s), correspondence from funding agencies, etc.)
- g) The Property is in vacant condition, free of all tenants and/or occupants, subject to Section 6 above.
- h) If any of conditions specified in this paragraph 17 are not met, the party benefiting from or protected by such condition shall have the option of: (i) waiving such requirement and completing the Closing hereunder within the time periods provided and at the Purchase Price; or (ii) canceling this Agreement in which case this Agreement shall become null and void and the Escrow Agent shall promptly return to Buyer the Good Faith Deposit, provided, for clarification purposes, subparagraphs (b) and (c) herein are solely for the benefit and protection of the Seller, and can only be waived

by the Seller; while subparagraph (a) is for the benefit and protection of both Parties.

- i) Buyer shall have a period of two (2) years from the date of execution of this Agreement to complete all of the requirements of this Paragraph 17, or the Seller at its sole option, may terminate this Agreement with the only requirement being the return of Buyer's Good Faith Deposit. Notwithstanding anything to the contrary the Buyer will receive a day-for-day extension of the time to complete the requirements for any delay caused by the Seller's Breach or by force majeure, including but not limited to the pandemic.

18. **Buyer's Representations, Warranties and Covenants:**

- a) Buyer shall promptly initiate the application for, and thereafter supply all information reasonably required to process all applications, pay all required application and processing fees and use its best commercially reasonable efforts in the context of the size, scope and complexity of the proposed Project ("Commercially Reasonable") to obtain, together with Seller's cooperation but at Buyer's sole cost and expense, all Approvals.
- b) Buyer represents that it has inspected the Property, and agrees, subject to obtaining the Approvals, Seller's Covenants and Representation set forth in this Agreement, to purchase the same in its present "as is" condition, subject to reasonable use, wear, tear and natural deterioration of the Property as otherwise provided for herein. Except as set forth in this Agreement, Seller has not made any representations as to the physical condition or any other matter or thing affecting or related to the Property. In connection with the construction of the proposed Project, Buyer shall demolish the existing structures on the Property, as well as shall conduct environmental remediation, as needed, and prepare the Property for construction of the Project contemplated herein.
- c) Buyer represents, warrants and agrees that, except as and solely to the extent specifically set forth herein, neither Seller, nor any of the agents or attorneys of Seller, have made any verbal or written representations, warranties, promises or guaranties whatsoever to Buyer, whether express or implied.
- d) The provisions of this paragraph 18 shall survive delivery of the deed.

19. **Notices:**

Any notice required to be given hereunder shall be given in writing and shall be served in person, by nationally recognized overnight express delivery service, by United States certified mail, with postage prepaid, or by facsimile transmission with a hard copy sent on the same day by a nationally recognized overnight express delivery service, properly addressed and directed to the party to receive the same at the following address or at such other address as may hereafter be substituted by notice in writing thereof. Notice shall be deemed received on the same day as delivery in person or by facsimile, the next day if by overnight express delivery service and three (3) days after posting by certified mail. The provisions of this paragraph shall survive delivery of the deed.

To Seller:

MAY 12 2021

City of Mount Vernon  
Department of Law  
One Roosevelt Square North  
Mount Vernon, NY 10550

Attn: Corporation Counsel

Zarin and Steinmetz  
81 Main Street, Suite 415  
White Plains, New York 10601  
Fax: (914) 683-5490  
Attention: Michael Zarin

With a copy to:

City of Mount Vernon  
One Roosevelt Square North  
Mount Vernon, NY 10550  
Attention: Mayor

To Buyer:  
QWest LLC  
1250 Waters Place, PH 1  
Bronx, NY 10461

Attention: Joseph Simone and L'Judie Matt Simons

With a copy to:

Goldstein Hall PLLC  
80 Broad St., Suite 303  
New York, New York 10004

Attention: David Goldstein

Copy to Escrow Agent:

Benchmark Title Agency LLC  
222 Bloomingdale Road, Suite 102  
White Plains, New York 10605  
Attention: Jean Partridge

20. **Entire Agreement:**

This Agreement contains the entire agreement between Seller and Buyer and there are no other terms, obligations, covenants, representations, statements or conditions, oral or otherwise, of any kind whatsoever. This Agreement supersedes all prior agreements between the Parties whether written or oral. This Agreement may be amended only by a writing signed by both Parties.

21. **Assignment:**

This Agreement may not be assigned without the express written consent of the Seller, which may be withheld. **Notwithstanding anything to the contrary, the Buyer may assign this agreement without any approval of the Seller to an affiliated or subsidiary entity controlled by the Buyer, or legal interest to a Housing Fund Development Corporation or nominal interest to the County of Westchester, or any other governmental, quasi governmental or public authority entity solely in order to construct the Project and access funding.**

22. **Escrow:**

- a) Buyer has, prior the signing of this Agreement, placed with the Benchmark Title Agency LLC ("Escrow Agent") the Good Faith Deposit of twenty-five thousand dollars (\$25,000.00) dollars to be held in escrow in a non-interest bearing account, with interest paid to the party receiving the Good Faith Deposit (the "Deposit") based upon the terms set forth in this Agreement.
- b) In the event this Agreement is terminated due to the inability of Buyer to obtain the Approvals, the failure of a condition pursuant to paragraph 17, or the inability of the Seller to deliver title pursuant to paragraph 4, then the Deposit shall be paid to Buyer within fifteen (15) days of receipt of written notice of same by Escrow Agent.
- c) To the extent provided under this Agreement, the Parties hereby agree that in the event that Buyer defaults, after the applicable Notice to Cure period, under the terms of this Agreement, that within fifteen (15) days of the Escrow Agent's receipt of the Seller's written demand, the Escrow Agent shall pay the full amount of the Deposit the Seller as liquidated damages, and without further liability on the part of Buyer, to compensate the Seller for the time spent in negotiating the Agreement, the time in which the Property was off the market and for such other losses incurred by the Seller in connection with this transaction. The provision herein contained for liquidated and agreed upon damages are bona fide provisions for such and are not a penalty. The Parties understand that by reason of the Seller binding itself to sell the Property, by reason of setting aside the Property for purposes of consummating a sale at the time when the Parties have agreed to close and by reason of the Seller having devoted substantial time and resources in showing the Property and negotiating the Agreement, the Seller will have sustained damages, if Buyer defaults or fails to pursue Processing Approvals, which damages will be substantial, but will not be capable of determination with a mathematical precision, and therefore as aforesaid, this provision for liquidated and agreed upon damages has been incorporated in this Agreement as an inducement to the Seller to enter into this Agreement and take its Property off of the market, which is nevertheless beneficial to both Parties.
- d) The Parties agree that the Escrow Agent shall not be liable for any error in judgment, or for any act done or omission made in good faith, or for any mistake of fact or law, and is hereby released and exculpated from any liability hereunder except for willful misconduct or gross negligence. The sole responsibility of the Escrow Agent hereunder shall be to hold and disburse the foregoing Deposit, in accordance with the provisions of this Agreement or in the case of a dispute between the Parties to continue to hold the Deposit until such dispute is resolved or to pay the Deposit into court to be held pending a resolution of such dispute.

e) Any demand for the Deposit by a party hereunder shall be made in writing and delivered in accordance with the notice provisions hereunder. If for any reason either party makes a written demand upon Escrow Agent for payment of the Deposit, then Escrow Agent shall give written notice, in accordance with the provisions of Paragraph 19 to the other party of such demand. If Escrow Agent does not receive a written objection from the other party to the proposed payment of the Deposit pursuant to the aforesaid demand within ten (30) days after the delivery of such notice by Escrow Agent, Escrow Agent is hereby authorized to make such payment in accordance with the aforesaid demand. If Escrow Agent receives written objection from the other party to the proposed payment of the Deposit pursuant to the aforesaid demand within such ten (30) day period or if for any other reason Escrow Agent in good faith shall elect not to make such payment, Escrow Agent shall continue to hold the Deposit until otherwise directed by written instructions from Seller and Buyer or a final judgment of a court of competent jurisdiction. Escrow Agent, however, shall have the right at any time to deposit the Deposit with the clerk of any court of competent jurisdiction in the State of New York, and Escrow Agent shall give written notice of such deposit to the Seller and the Buyer, and upon such deposit being made, Escrow Agent shall be discharged from all obligations and responsibilities hereunder.

f)

23. **Financial Security:**

As and when required in connection with the Approvals, Buyer shall post a surety bond or irrevocable letter of credit with the Seller securing performance of all of the public infrastructure work, in accordance with the Approvals as required by the City Code, as well as any other security and/or fees required by the City Code, in the amounts required by the City Code. Such bond(s) or letter(s) of credit shall, in a manner consistent with the City Code, be released on a quarterly basis based upon the work completed and the work remaining to be completed. The provisions of this paragraph shall survive delivery of the deed.

24. **Buyer's Additional Payment and/or Reimbursement:**

a) In addition to all other payments provided for herein and fees required by City Code for processing and inspecting construction of the Project, Buyer shall reimburse the Seller for commercially reasonable (based upon the size and scope of the Project) actual, out of pocket, third party payments related directly to costs incurred after the date of this Agreement and through the issuance of Approvals including the recording of the final site plan and final subdivision plat and all other documents required by the Approvals for the review and processing of the Approvals, including but not limited to planning engineering and legal review and processing in an amount not to exceed the amount permitted pursuant to 6 NYCRR 617.13(c). In furtherance of this provision, Buyer has deposited funds with the Seller's Attorney, Zarin Steinmetz as Escrow Agent, (upon execution of this Agreement, which shall be held in escrow (the "Approval Escrow") by the Seller and used to pay such third party expenses after Buyer has reviewed such invoices to substantiate such charges. Buyer shall advise Seller within fifteen (15) days of receipt of any invoice as to any objection it has to any invoice and the reason for such objection or any objection to the invoice shall be waived. If Buyer objects to any invoice the Seller shall seek a further explanation from the vendor before determining whether to pay the

invoice. At any time the Approval Escrow balance falls below \$10,000 Buyer shall issue additional payments to the Seller's Attorney in a sum necessary to return the Approval Escrow to a balance of twenty-five thousand (\$25,000) dollars. Within thirty (30) days after Closing any remaining balance in the Approval Escrow shall be returned to Buyer. Failure of Buyer to comply with the provisions of this paragraph shall relieve the Seller of any responsibility to process any applications by Buyer for Approvals and/or for building permits and/or certificates of occupancy. This provision shall survive delivery of the deed.

25. **Reverter:**

Buyer shall pursue construction financing and construction diligently and in good faith. In the event the Buyer fails to substantially commence construction of the Project within eighteen (18) months of Closing ("Project Completion Date"), with a day-for-day extension for force majeure, including but not limited to, pandemic, or should Buyer seek to make use of the Property materially different from or materially inconsistent with the Project, provided that Seller Breach is not the cause either directly or indirectly of such failure, Seller shall have the right, but not the obligation, and Buyer shall cooperate with Seller, and take all reasonable actions necessary, to allow Seller to recover title to and take back the Property without any obligation to reimburse the Buyer for any of its costs related to obtaining the Approvals, purchasing the Property of undertaking development of the Project. Notwithstanding anything to the contrary, if the Buyer has taken all commercially reasonable efforts and construction is commencing diligently in good faith, the Seller will not retake the Property. The Deed delivered at Closing shall set forth the terms of this provision, which shall survive delivery of the Deed.

26. **Miscellaneous Provisions:**

- a) This Agreement shall be of no force and effect until executed by both Seller and Buyer.
- b) As used herein, the phrases "the date hereof" and "the date of execution of this Agreement" shall mean the date of execution by the last party to sign this Agreement.
- c) This Agreement may be signed in one or more counterparts (or with counterpart signature pages) which, taken together, shall constitute a fully executed Agreement and shall be considered a single document.
- d) Buyer and Seller agree to cooperate with each other and to take such further actions as may be reasonably requested by the other in order to facilitate the timely purchase and sale of the Property.
- e) If any date on which a time period scheduled to expire herein is a Saturday, Sunday or holiday, the subject date shall be extended to the next business day.
- f) This Agreement has been drafted by counsel for both the Seller and Buyer, and accordingly, any ambiguities contained herein shall not be interpreted in favor of or against either party.
- g) If any term or provision of this Agreement or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable,



of, any such entry or entries upon or use of the Property by Buyer, its employees, agents, and/or independent contractors in connection with Buyer's activities or as a result of any liens for labor or services performed and/or materials furnished by or for the account of Buyer in respect of Buyer's entries upon the Property. In the event this Agreement terminates for any reason, Buyer shall also be obligated to restore the Property, to a Commercially Reasonable degree, to the condition in which it existed prior to the commencement of Buyer's activities thereon.. The provisions of this Section shall survive any termination of this Agreement.

28. **Closing Documents:**

a) At Closing, Seller shall deliver to Buyer:

- i) The Deeds conveying title to Buyer as required by this Agreement, in proper form for recording, and
- ii) Seller's Resolution of Authority properly certified, and
- iii) FIRPTA, and
- iv) All Forms Required by the County Clerk, and
- v) Affidavit of Title in customary form, and
- vi) Such other documents as are reasonably required by Buyer to effectuate the transactions contemplated by this Agreement.

b) At Closing, Buyer shall deliver to Seller:

- i) Payment of the balance of the Purchase Price as provided for in this Agreement, and
- ii) Payment of \$350,000 to the Seller to be used for "community benefit" as determined by the Seller.
- iii) Such other documents as are reasonably required by Seller to effectuate the transactions contemplated by this Agreement, and
- iv) Buyer's Resolution of Authority properly certified.

. [Remainder of Page Intentionally Blank Signature Page Follows]

the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby, provided this Agreement may be otherwise carried out in a manner consistent with the intent of this Agreement.

- h) Wherever used in this Agreement the words "include" or "including" shall be construed as incorporating, also, "but not limited to" or "without limitation".
- i) This Agreement and the terms and provisions hereof shall inure to the benefit and be binding upon the Parties hereto and their respective successors and permitted assigns.
- j) All monies paid or other consideration given on account of the Purchase Price are made liens on the Property (the "Vendee's Lien").
- k) Whenever Buyer is required to pay costs incurred by or on behalf of the Seller, such costs shall be at the same rate or fee customarily paid by the Seller for the same or similar services.

27. **Access Prior to Closing:**

- a) Buyer shall have the right to enter upon, test, measure and inspect the Property for any reason, from the date hereof through the Closing. Buyer, at its sole cost and expense, may at reasonable times upon three (3) days' prior written notice to Seller, cause the Property to be inspected by such parties reasonably deemed necessary by Buyer, including lenders, engineers, environmental inspectors, architects and others acting on behalf of Buyer, as Buyer may designate (which testing may include taking measurements and performing soil boring and environmental tests). Prior to any entry upon the Property, Buyer shall furnish or cause to be furnished to Seller evidence of insurance insuring Seller from and against actions for injury to or death of any person or persons and damage to or destruction of property, in an amount not less than one million (\$1,000,000.00) dollars, combined single limits.
- b) Buyer, its agents, employees and/or independent contractors shall observe all rules, laws, codes and regulations as to any activity and/or testing performed on the Property and shall render the Property safe from any hazard created by such parties at the end of each work day and/or prior to leaving the Property unattended. In the event of any boring or other excavation Buyer, its agents, employees and/or independent contractors shall secure the location at all times there is any opening or excavation that may be a hazard or attractive nuisance.
- c) Buyer hereby agrees to indemnify, defend and hold harmless Seller, its officers, employees, attorneys and consultants from and against all liabilities, obligations, claims, damages, judgments, awards, penalties, costs, and expenses including, without limitation, reasonable attorney's fees and court costs, which Seller, its officers, employees, attorneys and consultants may incur, suffer or sustain, or for which Seller may become obligated or liable by reason of any act or omission on the part of Buyer, its employees, agents, and/or independent contractors in the performance of conduct of Buyer's activities on the Property or by reason of any injury to or death of persons or loss of or damage to property in connection with, or as a result

MAY 12 2021

IN WITNESS WHEREOF the Parties hereto have executed this contract on the date written next to their signatures below.

Seller:

**City of Mount Vernon**

By \_\_\_\_\_

Date:

Buyer

**QWest LLC**

By \_\_\_\_\_

Date:

Name: Joseph Simone

Title: Member

\_\_\_\_\_  
Name: L'Judie Matt Simmons

Title: Member

Date:

MAY 12 2021

EXHIBITS

MAY 12 2021

Schedule A

MAY 12 2021

# Exhibit B

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Q - WEST TOWERS  
7 & 11 NORTH MACQUESTEN PARKWAY

MAY 12 2021

# Exhibit A



**A RESOLUTION OF THE REAL ESTATE COMMITTEE OF THE CITY OF MOUNT VERNON RECOMMENDING THE CITY COUNCIL APPROVE THE SALE OF CITY-OWNED LAND TO QWEST TOWERS, LLC**

**WHEREAS**, the City of Mount Vernon is the owner of certain real property located at 7-11 North MacQuesten Parkway, 25 North MacQuesten Parkway, and 29 North MacQuesten Parkway, Mount Vernon, New York, Tax Parcel Nos. 164.68-1073-21, 164.68-1073-24, and 164.68-1073-25, respectively (“Subject Properties”); and

**WHEREAS**, pursuant to a Land Acquisition Development Agreement, originally executed in June 17, 2017, and re-executed and dated February 18, 2019, Qwest Towers, LLC (“Qwest”) entered into an Agreement with the City of Mount Vernon to purchase the Subject Properties from the City of Mount Vernon; and

**WHEREAS**, Qwest met with the Real Estate Committee regarding such sale on numerous instances during the period 2013-2014; provided, there is no record of the Real Estate Committee issuing any formal recommendations to the City Council regarding such transaction pursuant to Section 205-5 of the City Code; and

**WHEREAS**, on July 1, 2020, the City Council and City Clerk, on behalf of the Real Estate Committee, referred the proposed sale to the City of Mount Vernon Planning Board, Real Estate Committee, Comptroller, Department of Public Workers, City Council President, Department of Planning, Department of Law, Department of Buildings, Youth Bureau, Urban Renewal Agency, Water Department, and Department of Recreation to request any recommendations as to the proposed sale of the Subject Properties, including, specifically, if the Subject Properties were needed for municipal use; and

**WHEREAS**, the Real Estate Committee and other relevant City Agencies required to be notified of this proposed sale under Section 205-5 of the City Code have been duly notified of said proposed sale; and

**WHEREAS**, as of September 25, 2020, the Real Estate Committee has received no written objections from any of the relevant City Agencies notified that the Subject Properties are necessary for municipal use; and

**WHEREAS**, the Real Estate Committee has determined that the Subject Properties are not needed for municipal use pursuant to Section 205-5 of the City Code; and

**WHEREAS**, the Real Estate Committee has determined that the demolition of any existing structures on the Subject Property is in the interest of the public health, safety, and welfare pursuant to Section 205-5 of the City Code, subject to any subsequent applicable law,


MAY 12 2021

**NOW THEREFORE BE IT RESOLVED THAT,**

The Real Estate Committee of the City of Mount Vernon, as convened, does hereby recommend to the City Council the approval of the sale of the Subject Properties to Qwest Towers, LLC, or its affiliate, and the demolition of any structures thereon, pursuant to Section 205-5 of the City Code.

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The Real Estate Committee voted unanimous.



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Stephanie Vanderpool  
Chair, of the Real Estate Committee