

Summary of Kirby Commons Agreement to Lease

This is a summary of the Agreement to Lease (the “Agreement”) between the Village/Town of Mount Kisco (the “Village”) and Kirby Commons, LLC (“Kirby”) that is a partnership between the Gotham Organization, Inc. and Charter Realty and Development.

This agreement is not a lease between the Village and Kirby Commons, but simply an agreement to lease and provides a framework for both parties to work towards a potential lease of real property owned by the Village.

The Village initiated a Comprehensive Plan update process that began in 2017, which included a focus on revitalizing the Village’s downtown. The process included countless hours of meetings of the Comprehensive Plan Steering Committee, hours of open public forums and workshops with two such public sessions specifically focused on downtown, a public survey, countless comments received in person and submitted electronically, a website dedicated to the comprehensive plan update that shared information throughout the process and received feedback from the public, meetings with various stakeholder groups, a complete Generic Environmental Impact Study, and public hearings at Village Board of Trustees meetings. The process culminated with the adoption of the current Comprehensive Plan for the Village/Town of Mount Kisco on February 4, 2019, and a desire to redevelop the Village’s two municipal parking lots adjacent to the Metro-North train station in the heart of Downtown Mount Kisco, which resulted in the issuance of a Request for Proposals by the Village to accomplish this goal.

After considerable review by the Village Board of Trustees, consultants, and Village staff that lasted nearly a year, the Village Board of Trustees approved a Letter of Intent to work with the Gotham Organization Inc. and Charter Realty and Development on the Kirby Commons project. Since the Letter of Intent was approved by the Village Board at its meeting of November 18, 2019, the parties have worked to negotiate this Agreement, the Village Parking Agreement, and a potential lease. In addition, the parties worked to negotiate a Payment in Lieu of Taxes (PILOT) agreement that has a greater benefit to the public than to Kirby, and that covers the cost to educate any school children generated by the development. The parties have also worked on completing due diligence and have obtained preliminary approvals from the Westchester County Industrial Development Agency (IDA) for this project.

The Village seeks to have Kirby Commons construct mixed-use residential, retail, and parking facilities on the current Village owned South Moger Parking Lot and North Moger Parking Lot (referred to as the South Lot and North Lot).

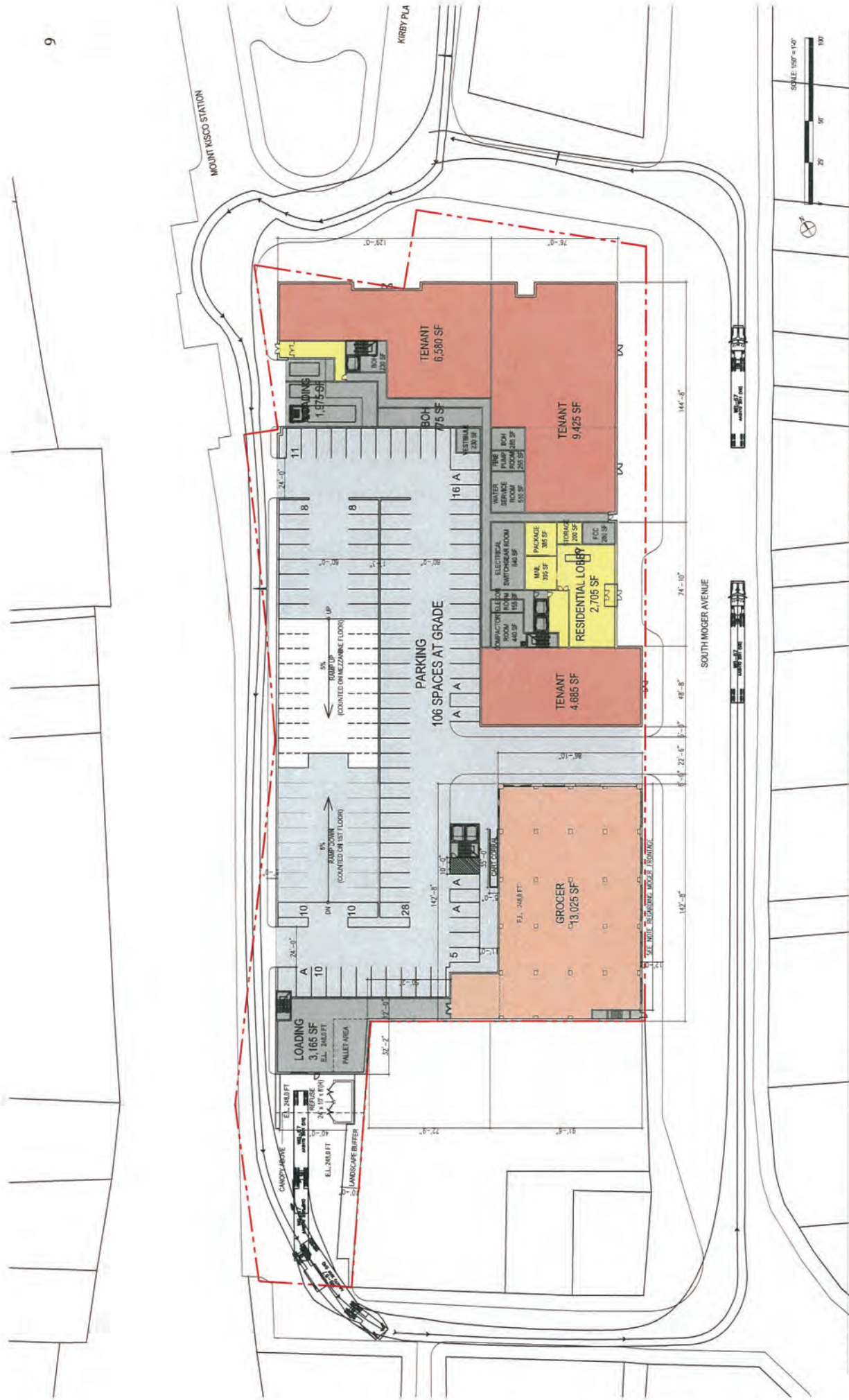


**BEYER
BLINDER
BELLE**

MOUNT KISCO
MOUNT KISCO, NY

SCHEMATIC DESIGN
JUNE 1ST, 2020

**SITE PLAN: SOUTH SITE
FROM RFP SUBMISSION**



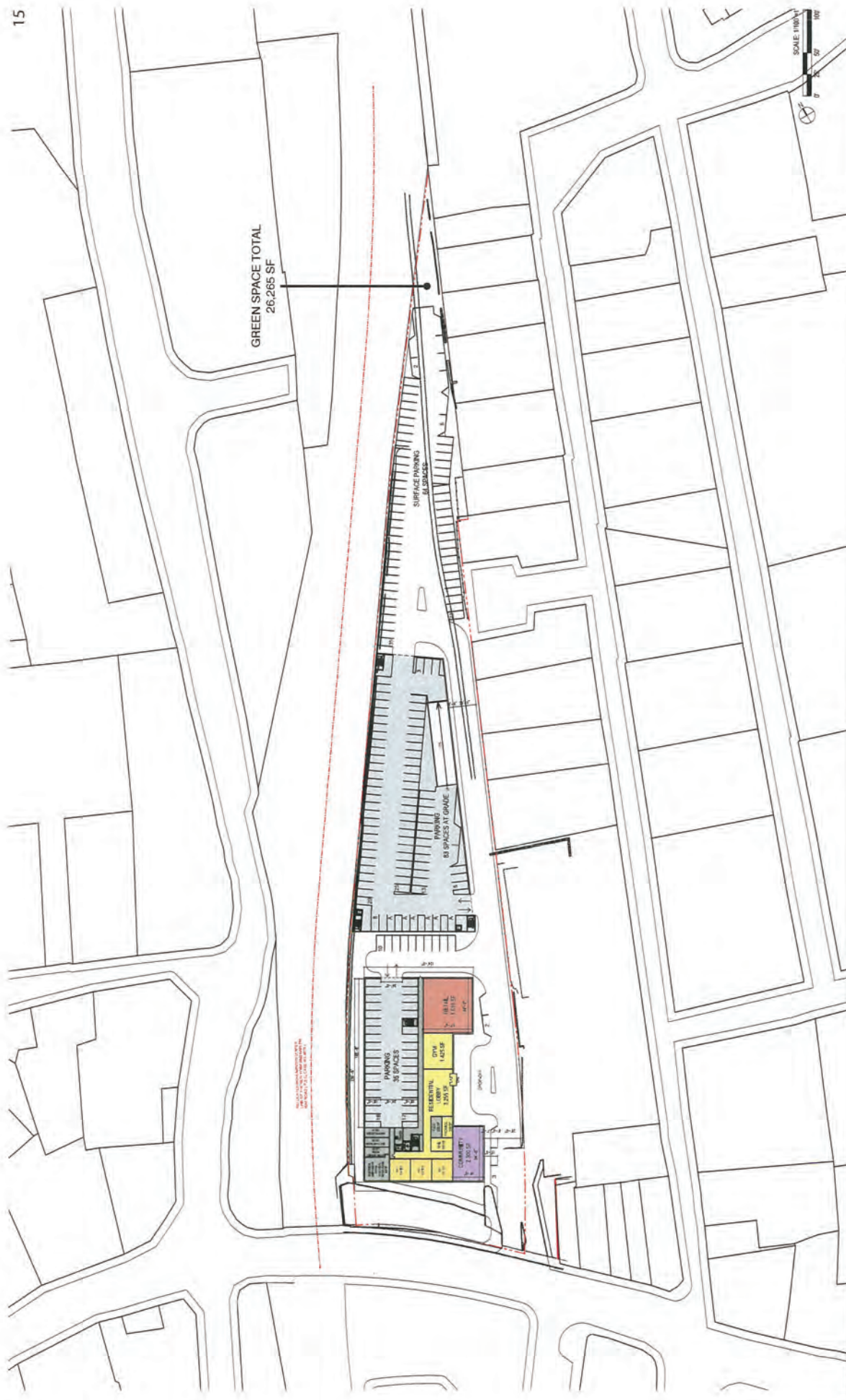


**BEYER
BLINDER
BELLE**

MOUNT KISCO
MOUNT KISCO, NY

SCHEMATIC DESIGN
JUNE 1ST, 2020

**SITE PLAN: NORTH SITE
FROM RFP SUBMISSION**



**NORTH SITE
CONTEXT**

MOUNT KISCO
MOUNT KISCO, NY

**BEYER
BLINDER
BELLE**

SCHEMATIC DESIGN
JUNE 1ST, 2020

The development would include:

South Lot:

- 119 residential units
- 38,000 square feet of commercial space
- 363 parking spaces
 - 179 – residential/visitor
 - 120 – public permit commercial tenants
 - 64 – open public (meter/permit)

North Lot:

- 95 residential units
- 15 residential units at 90% AMI* (units same size as market rate units)
- 3,600 square feet of commercial
- 2,300 square feet of indoor community space operated by the Village
- 564 parking spaces
 - 152 – residential/visitor
 - 7 – public permit commercial tenant
 - 405 – open public (meter/permit)

*Eligible residents must not have income, based on number of people in the unit, that exceeds 90% of Area Median Income (AMI) as established by the U.S. Department of Housing and Urban Development (HUD) for Westchester County.

The Village will retain the revenue of 596 of the total 927 parking spaces proposed for the development to match the 596 Village parking spaces that currently exist across the South Lot and North Lot, ensuring parking for commuters and shoppers. The Village will handle regular and routine maintenance of the parking facilities and receive an annual parking maintenance fee of \$100,000, paid in two installments each year, that increases annually at the same rate as the Consumer Price Index (CPI) as established by the U.S. Bureau of Labor Statistics. Kirby Commons agrees to maintain security cameras and monitors for both parking facilities.

The Village and Kirby Commons also desire to enter into a 99-year lease of the property that is to be executed upon receipt of all necessary local, state, and federal permits and approvals for this project. The ground rent to be paid to the Village by Kirby would be a single advance payment of \$8,000,000, which will be used to capitalize a portion of the cost of construction of the Village's parking spaces (estimated cost of construction of Village Parking Spaces is \$20,000,000). Upon execution of this Agreement to Lease (not the lease), Kirby shall deposit an initial refundable deposit of \$800,000, less soft costs incurred to date, but in no event less than \$400,000 (initial deposit) to be held in escrow by the Village Attorney. Kirby shall be able to draw upon this deposit to cover soft costs associated with the project after submitting detailed descriptions of such costs to the Village Attorney, and shall replenish this escrow monthly and as needed to maintain a balance of no less than \$400,000.

Kirby agrees to accept the property in “as is” condition. If some casualty were to occur to the property between the time that this Agreement is executed and when a lease is signed, the Village will have to correct the casualty provided that it would cost less than \$500,000 and take less than 12 months to correct. If the cost to address the casualty is greater than \$500,000 or will take longer than 12 months to correct, the Village can cancel this agreement and return the deposit to Kirby. If the Village were to cancel this agreement under this provision, Kirby would have the option to waive this entire provision and accept the property in its then “as-is” condition.

The Village has also agreed to spend up to \$500,000 to resolve any title issues that exist, and which the Village would seek to remedy regardless of whether this agreement is executed or not.

Under this agreement and prior to the execution of a 99-year lease, the Village agrees to provide Kirby with:

- continued access to the property;
- maintain in full force and effect the casualty and liability insurance policies that currently cover the property;
- maintain the property in its current condition;
- cooperate with, exercise good faith, and not take any unreasonable action to impede Kirby’s efforts to obtain all necessary approvals for the project;
- use good-faith efforts to defend any challenge to this agreement;
- cooperate with Kirby in making any applications necessary for this project to various county, state, and federal agencies; cooperate with Kirby regarding the Westchester County Industrial Development Agency (IDA) regarding the negotiated Payment In Lieu of Taxes (PILOT) (see PILOT on next page);
- obtain \$4,000,000 in public capital through grants, Village funds, or some combination to aid in the construction of the cost of public parking spaces; and
- share all Village information regarding the property; negotiate with property owner of 3 Main Street to amend existing easement with the Village.

Under this agreement and prior to the execution of a 99-year lease, Kirby agrees to:

- obtain all local, county, state, and federal governmental approvals necessary for the project;
- meet with Village officials, officers, and residents as requested and on reasonable notice to explain and promote the project; and
- make all payments as required under this agreement; and exercise good-faith and due diligence.

Prior to closing and execution of a 99-year lease:

Kirby shall:

- have received all required approvals for the project;

30 Year Pilot						
A.V. Taxes		\$1,725,795	% of EGI Today		19.1%	
Escalator		2.0%	Discount Rate		5.5%	
Resi & Retail SF		312,400				
Full Taxes/SF		\$5.52				
Year	AV Taxes	Abatemen	PILOT Benefit	Pilot Payment	Pilot/SF	
2021	Construction	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0
2022	Construction	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0
2023	Year 1	\$1,725,795	88.4%	\$1,525,795	\$200,000	\$0.64
2024	Year 2	\$1,760,311	88.1%	\$1,550,311	\$210,000	\$0.67
2025	Year 3	\$1,795,517	87.7%	\$1,575,017	\$220,500	\$0.71
2026	Year 4	\$1,831,427	87.4%	\$1,599,902	\$231,525	\$0.74
2027	Year 5	\$1,868,056	87.0%	\$1,624,955	\$243,101	\$0.78
2028	Year 6	\$1,905,417	86.6%	\$1,650,161	\$255,256	\$0.82
2029	Year 7	\$1,943,525	86.2%	\$1,675,506	\$268,019	\$0.86
2030	Year 8	\$1,982,396	85.8%	\$1,700,976	\$281,420	\$0.90
2031	Year 9	\$2,022,044	85.4%	\$1,726,553	\$295,491	\$0.95
2032	Year 10	\$2,062,485	85.0%	\$1,752,219	\$310,266	\$0.99
2033	Year 11	\$2,103,734	80.8%	\$1,699,817	\$403,917	\$1.29
2034	Year 12	\$2,145,809	75.0%	\$1,609,357	\$536,452	\$1.72
2035	Year 13	\$2,188,725	72.0%	\$1,575,882	\$612,843	\$1.96
2036	Year 14	\$2,232,500	69.0%	\$1,540,425	\$692,075	\$2.22
2037	Year 15	\$2,277,150	66.0%	\$1,502,919	\$774,231	\$2.48
2038	Year 16	\$2,322,693	62.0%	\$1,440,070	\$882,623	\$2.83
2039	Year 17	\$2,369,147	57.0%	\$1,350,414	\$1,018,733	\$3.26
2040	Year 18	\$2,416,530	52.0%	\$1,256,595	\$1,159,934	\$3.71
2041	Year 19	\$2,464,860	47.0%	\$1,158,484	\$1,306,376	\$4.18
2042	Year 20	\$2,514,157	42.0%	\$1,055,946	\$1,458,211	\$4.67
2043	Year 21	\$2,564,441	37.0%	\$948,843	\$1,615,598	\$5.17
2044	Year 22	\$2,615,729	32.0%	\$837,033	\$1,778,696	\$5.69
2045	Year 23	\$2,668,044	27.0%	\$720,372	\$1,947,672	\$6.23
2046	Year 24	\$2,721,405	22.0%	\$598,709	\$2,122,696	\$6.79
2047	Year 25	\$2,775,833	17.0%	\$471,892	\$2,303,941	\$7.37
2048	Year 26	\$2,831,350	10.0%	\$283,135	\$2,548,215	\$8.16
2049	Year 27	\$2,887,977	8.0%	\$231,038	\$2,656,938	\$8.50
2050	Year 28	\$2,945,736	6.0%	\$176,744	\$2,768,992	\$8.86
2051	Year 29	\$3,004,651	3.5%	\$105,163	\$2,899,488	\$9.28
2052	Year 30	\$3,064,744	1.5%	\$45,971	\$3,018,773	\$9.66

Gotham / Charter Village	
\$34,990,204.84	\$35,021,983.42
49.98%	50.02%

- have obtained a commitment for construction financing at a rate not to exceed market rates;
- have obtained all final approvals from the Westchester County IDA; and
- have performed all of its covenants, agreements, and obligations under this agreement.

The Village shall:

- have obtained \$4,000,000 in public capital to aid in the cost of construction of the public parking.

Both the Village and Kirby:

- shall have executed and delivered to each other all of the documents required by this agreement;
- ensure that all and each of their representations and warranties as set for in this agreement shall be true, correct, and complete in all material respects;
- represent that there is no action, suit, or legal proceeding that would prohibit the lease of the property or the construction of the project; and
- represent that there are no restrictions from any governmental entity with authority that would prevent the Property from being used for residential purposes.

Kirby represents through closing and completion of construction that:

- they are a limited liability company validly existing and in good standing under the laws of New York with full power and authority to conduct business in New York;
- that the execution, delivery, and performance of this agreement does not violate their operating agreement or any other legal document to which they are a party or are bound; and
- that they are authorized to enter into this agreement; and have the authority to perform their obligations under this agreement.

The Village represents that:

- it is authorized to execute this agreement;
- there are no pending or threatened condemnation or eminent domain proceedings against the Property;
- there are no agreements that would bind the property after closing except for public parking permits;
- it is the sole owner of the Property except for the Permitted Exceptions;
- there is not action, suit, claim, investigation, or proceeding that would threaten this agreement;
- it is currently exempt from paying real property taxes on the property;
- there are no charges or taxes paid for the property currently;

- there are no environmental matters affecting the property in violation of applicable laws; and
- the zoning permits the project.

If the property is taken from the Village by eminent domain or condemnation, then Kirby shall either choose to complete the project or cancel the project and recoup their deposit and soft costs, provided that such costs do not exceed any award received by the Village under the eminent domain proceeding.

Both parties represent that they have not dealt with or negotiated with any broker in connection with the transactions contemplated in this agreement.

Kirby shall reimburse the Village for its reasonable and actual transactional expenses related to this transaction up to \$150,000.

At closing:

The Village shall:

- deliver a duly executed Lease;
- Memorandum of Lease;
- an affidavit sufficient for a title company to remove all exceptions to title other than the Permitted Exceptions;
- assignment of all of the Village rights in and to all plans, specifications, approvals, permits, licenses, and authorizations related to the property;
- all documents necessary for the transaction;
- evidence of \$4,000,000 of public capital for the public parking, and
- any documents required by Kirby's lender.

Kirby shall:

- deliver a duly executed Lease;
- Memorandum of Lease;
- a portion of the balance of the \$8,000,000 due to the Village at closing, which shall be the greater of \$1,000,000 or such amount as required as an initial draw for construction of the public parking spaces;
- the Completion Guaranty; and
- all documents necessary for the transaction.

Both the Village and Kirby shall:

- execute the Parking Maintenance Agreement;
- all documents related to the IDA; and
- any other documents required by tax laws for the transaction.

The Closing shall occur on or about 30 days after all Pre-Closing Approvals have been obtained and all Pre-Closing conditions have been satisfied, but no sooner than the issuance of a Building Permit, and shall also take place concurrently with the closing of Kirby's construction loan and the IDA transaction.

Kirby has the right to cancel, provided they are not in material default of this agreement, and have the remaining balance of their deposit returned to them if, for a variety of stated reasons the project becomes no longer financially viable or does not receive necessary approvals to proceed with construction. If Kirby cancels this agreement, where the Village is not the cause of the cancellation, the Village shall be entitled to reimbursement for all expenses incurred in connection with the transaction up to the date of cancellation.

The Village has the right to cancel, provided the Village is not in material default of this agreement, and have the remaining balance of the deposit returned to Kirby if a decision is not rendered on a Pre-Closing Approval application within two years of such an application; closing does not occur within 36 months of the date of this agreement; or after SEQRA review the project cannot be completed.

Both parties agree that a full and complete SEQRA review will be conducted for this project.

Both parties also agree that construction shall commence three months after Closing, that both shall comply with all provisions of the lease, that the assessed value of the property shall be fixed to reflect an initial tax payment of \$1,725,795 without the benefit of the PILOT and shall increase at 2% per year and shall be adjusted to reflect fair market values in accordance with applicable law at the end of the PILOT, and that Kirby shall provide the Village with a Completion Guaranty for the Project.

Both parties agree to indemnify each other in the instance of bad faith, willful misconduct, or any breach of the agreement by the other party. No one involved in this transaction shall have any personal liability or obligations under this agreement. The Village shall provide possession to the property upon closing. The agreement and all of its exhibits shall constitute the complete agreement. The agreement shall be governed in accordance with the laws of the State of New York. None of the parties of this agreement can assign their rights or otherwise transfer this agreement without first obtaining the other party's written consent. No waiver by either party of any failure or refusal by the other party to comply with its obligations shall be deemed a waiver of any other subsequent failure or refusal to comply. A Memorandum of the Agreement may be recorded in the Office of the Westchester County Clerk. In the event of any sale or refinancing of any permanent loan, the Village shall receive a payment equal to 0.5% of the net sale proceeds provided peak invested equity capital has been returned. Nothing in this agreement shall provide any benefit to any third party or entitle any third party to any claim.

Under this agreement, Kirby also agrees to allocate 15 units of affordable housing at 90% AMI in the same proportion as units are to be constructed.

Any improvements that may be required for the intersection of Main Street and North Moger Avenue shall be the responsibility of the Village.

The Village shall have 120 days to obtain releases or other documentation satisfactory to Kirby's title company and work to obtain an amended easement or new easement with the property owner of 3 Main Street to allow for improved access and circulation for the North Moger Lot. Kirby shall have 120 days to complete its due diligence on the property relating to environmental and engineering matters.

The parties also agree to work to implement a connection to the Metro-North train platform from the North Moger Lot, and which Kirby has agreed to provide the Village with \$250,000.00 towards the cost of making such a connection.