

Select Board Meeting

Monday, June 5, 2023 6:30 PM

6:30 PM Executive Session

7:00 PM Regular Session

School Committee Room, School Administration Building
30 Whittier Court, Andover, MA 01810

ANDOVER TOWN CLERK
RCUD 2023 JUN 1 PM4:10

I. Call to Order – 6:30 P.M.

II. Executive Session

Board to vote to go into Executive Session pursuant to purpose 3 to discuss strategy with respect to litigation filed by Fusion Learning, and for the Board to vote to approve and not release Executive Session Minutes of April 12, 2023, April 24, 2023 and May 15, 2023; and that the Chair declare that an open session may have a detrimental effect on the litigation position of the Town and to return to open session.

III. Opening Ceremonies

A. Moment of Silence/Pledge of Allegiance

IV. Communications/Announcements/Liaison Reports

V. Citizens Petitions and Presentations

VI. Public Hearings

A. National Grid Request to Construct a Line of Underground Electric Conduits – Main Street and Locke Street

Board to review and consider voting to approve a petition from Massachusetts Electric Company d/b/a National Grid to construct a line of underground electric conduits, including the necessary sustaining and protecting fixtures, under and across the public ways of Main Street and Locke Street.

B. National Grid Request to Construct a Line of Underground Electric Conduits – Reservation Road

Board to review and consider voting to approve a petition from Massachusetts Electric Company d/b/a National Grid to construct a line of underground electric conduits, including the necessary sustaining and protecting fixtures, under and across the public way of Reservation Road.

VII. Regular Business

A. Land Disposition Agreement – 11 Lewis Street – 1st Reading

Board to receive an update on the Land Disposition Agreement between the Town of Andover and Minco Development and the revised Conceptual Program and Plan for the property located at 11 Lewis Street.

B. Review of Financial Considerations Discussion from the May 31, 2023 Joint Meeting of the Select Board, Finance Committee and Andover High School Building Committee

Board to review and discuss the financial considerations relating to a potential Andover High School Building Project.

C. Zoning Board of Appeals Appointments

Zoning Board of Appeals Subcommittee to recommend the appointment of one regular member and two associate members to Zoning Board of Appeals to terms that will expire on June 30, 2026. Board to consider voting to approve Subcommittee's recommended appointments.

D. Bond Anticipation Note

Board to vote to approve the issuance and details of a bond anticipation note.

VIII. Consent Agenda

A. Appointments by the Town Manager

Board to vote that the following appointments by the Town Manager be approved.

Department	Name	Position	Rate/Term	Date of Hire
Memorial Hall Library	Molly McIntyre <i>(Katherine Dugan)</i>	Children's Librarian	\$65,350.19/yr	6/6/2023
Andover Police Department	Ulises Perez <i>(Daniel Vining)</i>	Patrol Officer	\$67,037.44/yr	6/20/2023
Emergency Management	Patrick Keefe	Director	Term Expires 6/30/2024	7/1/2023
Forest Warden	Michael Mansfield	Fire Chief	Term Expires 6/30/2024	7/1/2023
Keeper of the Lockup	Patrick Keefe	Police Chief	Term Expires 6/30/2024	7/1/2023
Merrimack Valley Planning Commission	Jacki Byerley	Member	Term Expires 6/30/2024	7/1/2023
Merrimack Valley Regional Transit Authority	Jacki Byerley	Member	Term Expires 6/30/2024	7/1/2023
Merrimack Valley Regional Transit Authority	Paul Materazzo	Alternate	Term Expires 6/30/2024	7/1/2023
Merrimack Valley Regional Transit Authority	Lisa Schwarz	Alternate	Term Expires 6/30/2024	7/1/2023
Patriotic Holiday Committee	Mark Comeiro	Member	Term Expires 6/30/2024	7/1/2023
Patriotic Holiday Committee	Michael Mansfield	Member	Term Expires 6/30/2024	7/1/2023

Patriotic Holiday Committee	Calvin Perry	Member	Term Expires 6/30/2024	7/1/2023
Patriotic Holiday Committee	Brian Masterson	Member	Term Expires 6/30/2024	7/1/2023
Patriotic Holiday Committee	R. Scott Parrish	Member	Term Expires 6/30/2024	7/1/2023
Patriotic Holiday Committee	H. Francis Rittershaus	Member	Term Expires 6/30/2024	7/1/2023
Patriotic Holiday Committee	Andrew Sievert	Member	Term Expires 6/30/2024	7/1/2023
Patriotic Holiday Committee	James Bedford	Member	Term Expires 6/30/2024	7/1/2023
Patriotic Holiday Committee	Stephen Wallingford	Member	Term Expires 6/30/2024	7/1/2023
Town Seal Review Committee	Andrew Flanagan	Member	Term Expires 6/30/2024	7/1/2023
Town Seal Review Committee	Karen Van Welden-Herman	Member	Term Expires 6/30/2024	7/1/2023
Town Seal Review Committee	John Hess	Member	Term Expires 6/30/2024	7/1/2023
Town Seal Review Committee	Elaine Clements	Member	Term Expires 6/30/2024	7/1/2023
Town Seal Review Committee	Melissa Litton	Member	Term Expires 6/30/2024	7/1/2023
Town Seal Review Committee	Thomas Adams	Member	Term Expires 6/30/2024	7/1/2023
Veteran Service Agent	Mark Comeiro	Agent	Term Expires 6/30/2024	7/1/2023

IX. Adjourn

If any member of the public wishing to attend this meeting seeks special accommodations in accordance with the Americans with Disabilities Act, please contact Kathryn Forina in the Town Manager's Office at 978-623-8215 or by email at kathryn.forina@andoverma.us

**MEETINGS ARE TELEVISED ON
COMCAST CHANNEL 22 AND VERIZON CHANNEL 45**

Questions contact Dave Boucher 978-725-1461

PETITION FOR JOINT OR IDENTICAL POLE LOCATIONS

To the Board of Selectmen
Of Andover, Massachusetts

Massachusetts Electric Company d/b/a NATIONAL GRID and Verizon New England, Inc requests permission to locate poles, wires, and fixtures, including the necessary sustaining and protecting fixtures, along and across the following public way:

Locke St. - National Grid to relocate (1) JO pole 1294 on Locke St. beginning at a point approximately 183' SW of the centerline of the intersection of Main St. and continuing approximately 20' in a SE direction for new customers driveway. New JO pole 1294 will be located approximately 12' SW of existing old pole 1294 and installed is by the electric company. Once all utilities have been transferred to new pole, old pole will be removed.

Location approximately as shown on plan attached.

Wherefore it prays that after due notice and hearing as provided by law, it be granted a location for and permission to erect and maintain poles and wires, together with such sustaining and protecting fixtures as it may find necessary, said poles to be erected substantially in accordance with the plan filed herewith marked - Locke St. - Andover, Massachusetts.

30385028

Also, for permission to lay and maintain underground laterals, cables, and wires in the above or intersecting public ways for the purpose of making connections with such poles and buildings as each of said petitioners may desire for distributing purposes.

Your petitioner agrees to reserve space for one cross-arm at a suitable point on each of said poles for the fire, police, telephone, and telegraph signal wires belonging to the municipality and used by it exclusively for municipal purposes.

Massachusetts Electric Company d/b/a
NATIONAL GRID *Dave Johnson/lla*

BY _____
Engineering Department

VERIZON NEW ENGLAND, INC.

BY _____
Manager / Right of Way

November 28, 2022

TOWN OF ANDOVER, MASSACHUSETTS



RECEIVED
TOWN CLERK'S OFFICE
AND JAN 26 AM 9:39
TOWN OF ANDOVER, MASS

PRIVATE UTILITY PETITION CHECKLIST

TO BE FILLED OUT BY PETITIONER

COMPANY: nationalGRID 30385028

PROJECT MANAGER NAME: David Boucher

PROJECT MANAGER CONTACT NUMBER: 978-314-5069

LIST OF ADDRESSES IMPACTED BY PROPOSED WORK:

PETITIONER IS REQUIRED TO ATTACH PICTURES SHOWING AREA OF PROPOSAL

PICTURES HAVE BEEN ATTACHED YES

TO BE FILLED OUT BY TOWN OF ANDOVER STAFF

DPW

SUPPORT PROJECT (YES / NO) SIGNATURE: _____

TITLE: _____

COMMENTS:

POLICE DEPARTMENT

SUPPORT PROJECT (YES / NO) SIGNATURE: _____

TITLE: _____

COMMENTS:

FIRE DEPARTMENT

SUPPORT PROJECT (YES / NO) SIGNATURE: _____

TITLE: _____

COMMENTS:

TOWN OF ANDOVER, MASSACHUSETTS



RECEIVED
TOWN CLERK'S OFFICE
2022 JUN 26 AM 8:39
TOWN OF ANDOVER, MASS

PRIVATE UTILITY PETITION CHECKLIST

TO BE FILLED OUT BY PETITIONER

COMPANY: nationalGRID **30385028**

PROJECT MANAGER NAME: David Boucher

PROJECT MANAGER CONTACT NUMBER: 978-314-5069

LIST OF ADDRESSES IMPACTED BY PROPOSED WORK:

PETITIONER IS REQUIRED TO ATTACH PICTURES SHOWING AREA OF PROPOSAL

PICTURES HAVE BEEN ATTACHED YES

TO BE FILLED OUT BY TOWN OF ANDOVER STAFF

DPW

SUPPORT PROJECT (YES / NO) **YES** SIGNATURE: *[Signature]*

TITLE: Town Engineer

COMMENTS:

POLICE DEPARTMENT

SUPPORT PROJECT (YES / NO) SIGNATURE: _____

TITLE: _____

COMMENTS:

FIRE DEPARTMENT

SUPPORT PROJECT (YES / NO) SIGNATURE: _____

TITLE: _____

COMMENTS:

TOWN OF ANDOVER, MASSACHUSETTS



TOWN OF ANDOVER, MASS

1999 JUN 26 AM 9:39

RECEIVED
TOWN ENGINEERING

PRIVATE UTILITY PETITION CHECKLIST

TO BE FILLED OUT BY PETITIONER

COMPANY: nationalGRID

PROJECT MANAGER NAME: David Boucher

PROJECT MANAGER CONTACT NUMBER: 978-314-5089

LIST OF ADDRESSES IMPACTED BY PROPOSED WORK:

PETITIONER IS REQUIRED TO ATTACH PICTURES SHOWING AREA OF PROPOSAL

PICTURES HAVE BEEN ATTACHED YES

TO BE FILLED OUT BY TOWN OF ANDOVER STAFF

DPW

SUPPORT PROJECT (YES / NO) SIGNATURE: _____

TITLE: _____

COMMENTS:

POLICE DEPARTMENT

SUPPORT PROJECT (YES / NO) SIGNATURE: *[Signature]*

TITLE: *Chief of Police*

COMMENTS:

FIRE DEPARTMENT

SUPPORT PROJECT (YES / NO) SIGNATURE: _____

TITLE: _____

COMMENTS:

TOWN OF ANDOVER, MASSACHUSETTS



RECEIVED
TOWN ENGINEERING
2008 JUN 26 AM 9:39
TOWN OF ANDOVER, MASS

PRIVATE UTILITY PETITION CHECKLIST

TO BE FILLED OUT BY PETITIONER

COMPANY: nationalGRID

PROJECT MANAGER NAME: David Boucher

PROJECT MANAGER CONTACT NUMBER: 978-314-5069

LIST OF ADDRESSES IMPACTED BY PROPOSED WORK:

PETITIONER IS REQUIRED TO ATTACH PICTURES SHOWING AREA OF PROPOSAL

PICTURES HAVE BEEN ATTACHED YES

TO BE FILLED OUT BY TOWN OF ANDOVER STAFF

DPW

SUPPORT PROJECT (YES / NO)

SIGNATURE: _____

COMMENTS:

TITLE: _____

POLICE DEPARTMENT

SUPPORT PROJECT (YES / NO)

SIGNATURE: _____

COMMENTS:

TITLE: _____

FIRE DEPARTMENT

SUPPORT PROJECT (YES / NO)

SIGNATURE: *MD Mansfield*

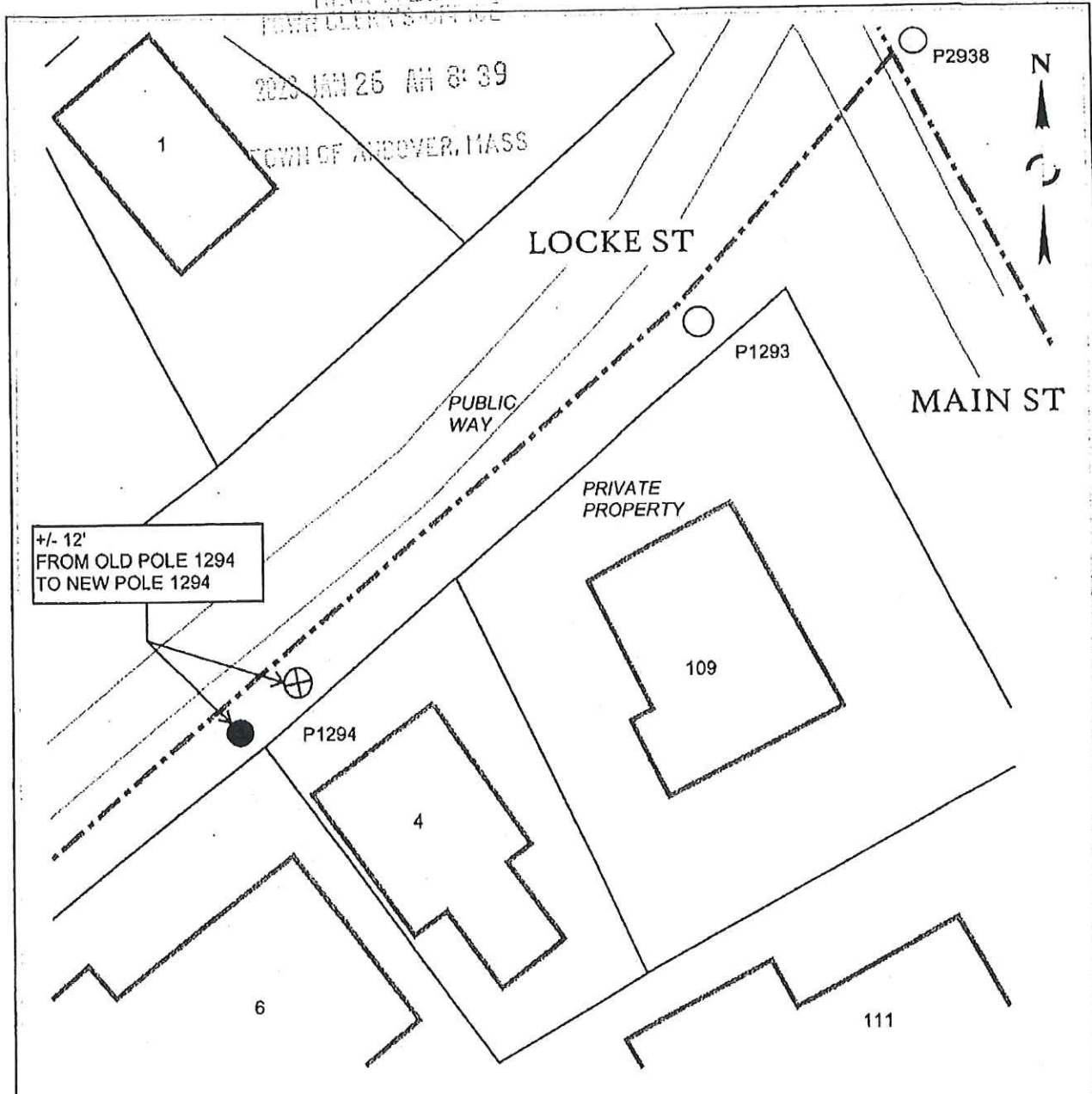
COMMENTS:

TITLE: *Fire Chief*

BLUE-VEL
PLUMBING & ELECTRICAL

2023 JAN 25 AM 8:39

TOWN OF ANDOVER, MASS



+/- 12'
FROM OLD POLE 1294
TO NEW POLE 1294

JOINT OWNED POLE PETITION

LEGEND

- J.O. POLE TO BE INSTALLED BY ELECTRIC CO
- ⊕ J.O. POLE TO BE REMOVE BY TELCO
- EXISTING J.O. POLE
- OVERHEAD UTILITY LINES

Date: 11/22/22

Drawn by: DJB

DRAWING NOT TO SCALE. DISTANCES ARE APPROXIMATE.

WR # 30385028

nationalgrid

and Verizon New England, Inc.

To The: TOWN OF ANDOVER MA

For Proposed:
RELOCATION OF POLE 1294

Location:
LOCKE ST

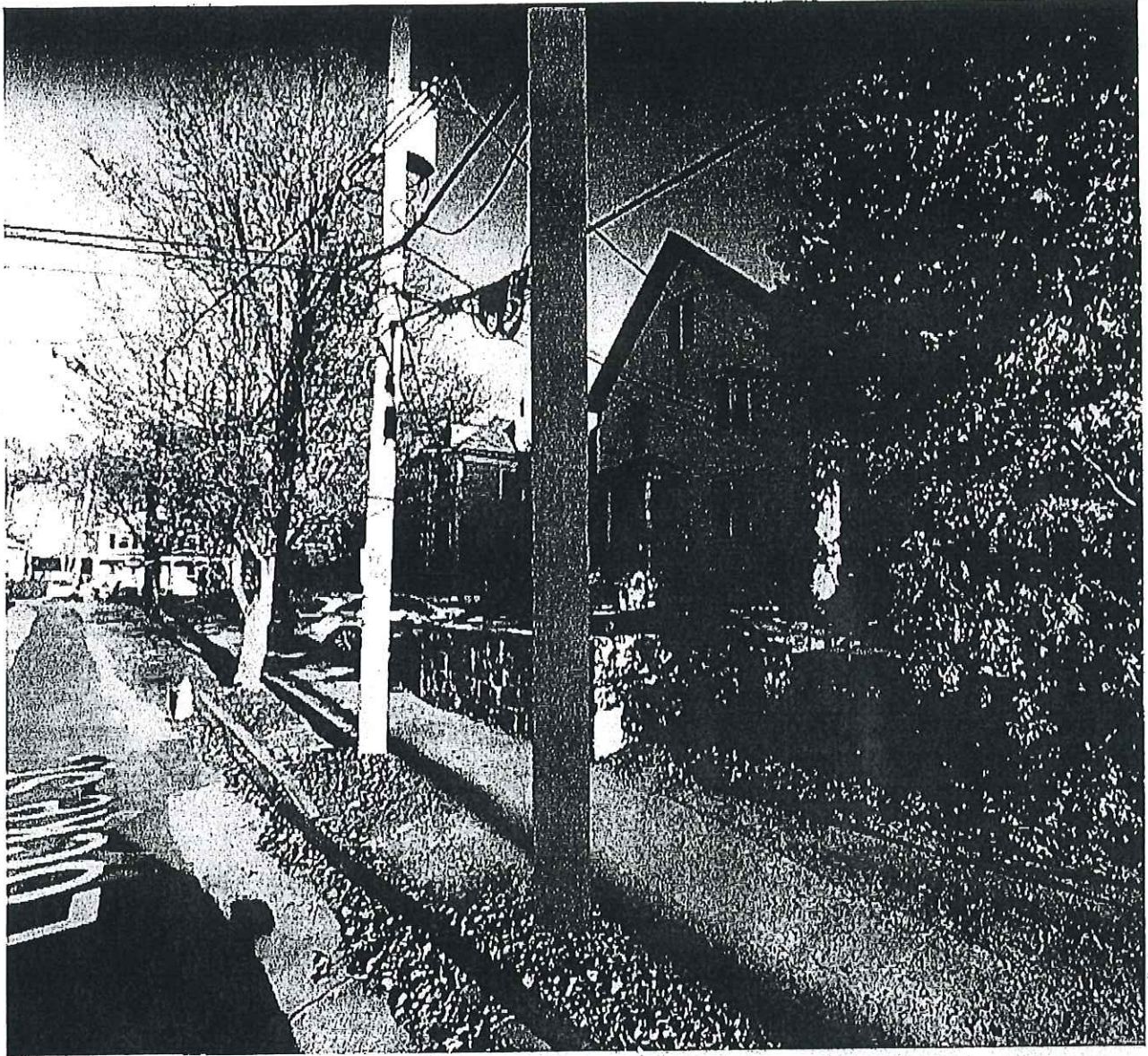
Sketch to accompany petition for:

RELOCATING EXISTING J.O. POLE# 1294 APPROX. 12' SW TO
PROVIDE ACCESS FOR PARKING ON PRIVATE PROPERTY

PRESENT TO
TOWN CLERK'S OFFICE

2000 JUN 26 AM 8:39

TOWN OF ANDOVER, MASS



Questions contact – Dave Boucher 978-314-5069

Petition of the Massachusetts Electric Company d/b/a National Grid of NORTH ANDOVER,
MASSACHUSETTS

For Electric conduit Location:

To the Board of Selectmen of Andover, Massachusetts

Respectfully represents the Massachusetts Electric Company d/b/a National Grid of North Andover, Massachusetts, that it desires to construct a line of underground electric conduits, including the necessary sustaining and protecting fixtures, under and across the public way or ways hereinafter named.

Wherefore it prays that after due notice and hearing as provided by law, it be granted permission to excavate the public highways and to run and maintain underground electric conduits, together with such sustaining and protecting fixtures as it may find necessary for the transmission of electricity, said underground conduits to be located substantially in accordance with the plan filed herewith marked – Reservation Rd - Andover – Massachusetts.

The following are the streets and highways referred to: Plan number # 30737175.

Reservation Rd - National Grid to install beginning at a point approximately 807' feet north of the centerline of the intersection of Cutler Rd and continuing approximately 20 feet in an east direction. Install in Public Way: +/- 40' (2), 3" concrete encased conduits & (1) Heavy Duty Handhole from existing Pole # 10 to entrance of new Private Property home # 107 Reservation Rd to provide electric service.

Location approximately as shown on plan attached

Massachusetts Electric Company d/b/a
NATIONAL GRID *Dave Johnson*

BY _____
Engineering Department

Dated: February 27, 2023

TOWN OF ANDOVER, MASSACHUSETTS



PRIVATE UTILITY PETITION CHECKLIST

TO BE FILLED OUT BY PETITIONER

COMPANY: nationalGRID 30737175
PROJECT MANAGER NAME: David Boucher
PROJECT MANAGER CONTACT NUMBER: 978-314-5069
LIST OF ADDRESSES IMPACTED BY PROPOSED WORK: Abutters can be attained through Town office
PETITIONER IS REQUIRED TO ATTACH PICTURES SHOWING AREA OF PROPOSAL
PICTURES HAVE BEEN ATTACHED YES

TO BE FILLED OUT BY TOWN OF ANDOVER STAFF

<u>DPW</u>	
SUPPORT PROJECT (YES / NO)	SIGNATURE: _____
COMMENTS:	TITLE: _____

<u>POLICE DEPARTMENT</u>	
SUPPORT PROJECT (YES / NO)	SIGNATURE: _____
COMMENTS:	TITLE: _____

<u>FIRE DEPARTMENT</u>	
SUPPORT PROJECT (YES / NO)	SIGNATURE: _____
COMMENTS:	TITLE: _____

TOWN OF ANDOVER, MASSACHUSETTS



PRIVATE UTILITY PETITION CHECKLIST

TO BE FILLED OUT BY PETITIONER

COMPANY: nationalGRID 30737175
PROJECT MANAGER NAME: David Boucher
PROJECT MANAGER CONTACT NUMBER: 978-314-5069
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PETITIONER IS REQUIRED TO ATTACH PICTURES SHOWING AREA OF PROPOSAL
PICTURES HAVE BEEN ATTACHED YES

TO BE FILLED OUT BY TOWN OF ANDOVER STAFF

DPW
SUPPORT PROJECT (YES / NO) YES NO
SIGNATURE: [Signature]
TITLE: Town Engineer
COMMENTS:

POLICE DEPARTMENT
SUPPORT PROJECT (YES / NO) _____
SIGNATURE: _____
TITLE: _____
COMMENTS:

FIRE DEPARTMENT
SUPPORT PROJECT (YES / NO) _____
SIGNATURE: _____
TITLE: _____
COMMENTS:

TOWN OF ANDOVER, MASSACHUSETTS



PRIVATE UTILITY PETITION CHECKLIST

TO BE FILLED OUT BY PETITIONER

COMPANY: nationalGRID 30737175

PROJECT MANAGER NAME: David Boucher

PROJECT MANAGER CONTACT NUMBER: 978-314-5069

LIST OF ADDRESSES IMPACTED BY PROPOSED WORK:
Abutters can be attained through Town office

PETITIONER IS REQUIRED TO ATTACH PICTURES SHOWING AREA OF PROPOSAL

PICTURES HAVE BEEN ATTACHED YES

TO BE FILLED OUT BY TOWN OF ANDOVER STAFF

DPW

SUPPORT PROJECT (YES / NO) SIGNATURE: _____

TITLE: _____

COMMENTS:

POLICE DEPARTMENT

SUPPORT PROJECT (YES / NO) SIGNATURE: [Signature]

TITLE: Chief

COMMENTS:

FIRE DEPARTMENT

SUPPORT PROJECT (YES / NO) SIGNATURE: _____

TITLE: _____

COMMENTS:

TOWN OF ANDOVER, MASSACHUSETTS



PRIVATE UTILITY PETITION CHECKLIST

TO BE FILLED OUT BY PETITIONER

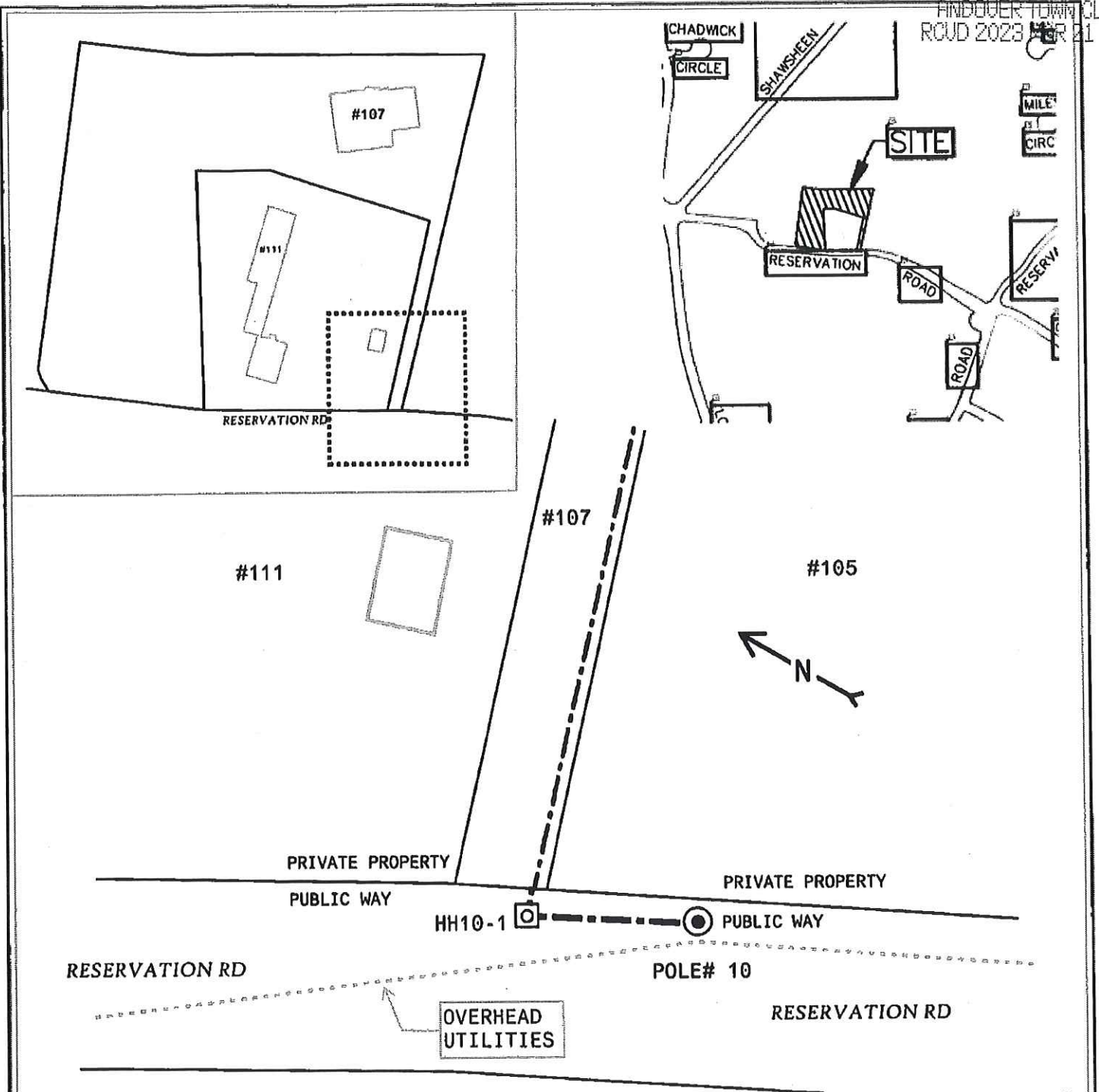
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PICTURES HAVE BEEN ATTACHED YES

TO BE FILLED OUT BY TOWN OF ANDOVER STAFF

<u>DPW</u>	
SUPPORT PROJECT (YES / NO)	SIGNATURE: _____
COMMENTS:	TITLE: _____

<u>POLICE DEPARTMENT</u>	
SUPPORT PROJECT (YES / NO)	SIGNATURE: _____
COMMENTS:	TITLE: _____

<u>FIRE DEPARTMENT</u>	
SUPPORT PROJECT (YES / NO)	SIGNATURE: <i>MO Mansfield</i>
COMMENTS:	TITLE: <i>Fire Chief</i>



DISTRIBUTION ELECTRIC UNDERGROUND PETITION Plan Number 30737175

LEGEND

- EXISTING J.O. POLE
- ⊙ PROPOSED NEW HANDHOLE
- PROPOSED (2)3" CONCRETE ENCASED CONDUITS

nationalgrid

To The: TOWN OF ANDOVER, MA

For Proposed: UNDERGROUND ELECTRIC SERVICE	Location: RESERVATION RD
--	------------------------------------

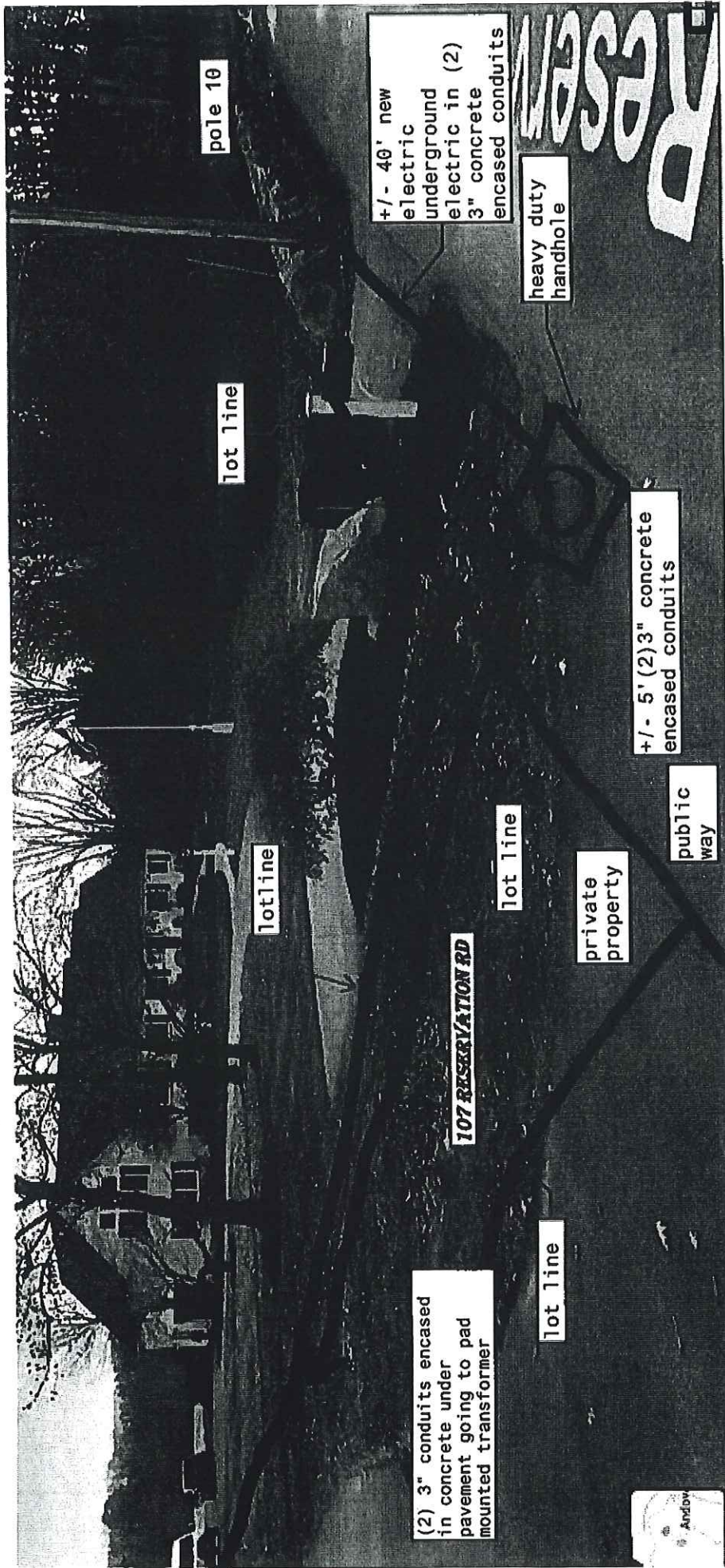
Sketch to accompany petition for:

+/- 40' (2)3" CONCRETE ENCASED CONDUITS
 FROM EXISTING POLE# 10 TO NEW HANDHOLE# 10-1
 THEN +/- 5' (2)3" CONCRETE ENCASED CONDUITS
 INTO PRIVATE PROPERTY OF NEW HOME# 107 RESERVATION RD
 FOR ELECTRIC SERVICE

Date: 2/27/23

Drawn by: DJB

DRAWING NOT TO SCALE. DISTANCES ARE APPROXIMATE



pole 10

lot line

+/- 40' new electric underground electric in (2) 3" concrete encased conduits

heavy duty handhole

+/- 5'(2)3" concrete encased conduits

lot line

lot line

private property

public way

107 RESERVATION RD

(2) 3" conduits encased in concrete under pavement going to pad mounted transformer

lot line



30737175

LAND DISPOSITION AGREEMENT

By and Between

THE TOWN OF ANDOVER

and

ANDOVER TOWN YARD, LLC
a Delaware limited liability company

Dated: _____, 2023

Town Yard Property
Buxton Court and Lewis Street
Andover, Massachusetts

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LAND DISPOSITION AGREEMENT

PARTIES

THIS LAND DISPOSITION AGREEMENT (as the same may hereafter be amended in accordance with the provisions hereof, this “**Agreement**”), dated as of this ___ day of _____, 20___, is made by and between the Town of Andover, a Massachusetts municipal corporation, acting by and through its Select Board, with an address of 36 Bartlet Street, Andover, MA 01810 (hereinafter referred to as the “**Town**” or “**Seller**”), and Andover Town Yard, LLC, a Delaware limited liability company, successor to Minco Development Corp., with an address of 231 Sutton Street, Suite 1B, North Andover, MA 01845 (hereinafter referred to as the “**Developer**”).

RECITALS

WHEREAS, the Town, as owner of certain parcels of land situated off of Lewis Street and Buxton Court in Andover, Massachusetts, upon a portion of which is located the former Town Yard, which parcels are shown as (i) “Lot 1” on the plan entitled “Plan of Land in Andover, Mass. Prepared for the Town of Andover”, dated February 13, 2020, prepared by Andover Consultants, Inc., recorded with the Essex County Northern District Registry of Deeds (the “**Registry**”) as Plan No. 18127 of 2020 and (ii) “Portion of Lewis Street to be Discontinued 4,000 S.F. ±” on a plan entitled “Discontinuance Plan Portion of Lewis Street, Andover, Mass” dated January 18, 2022, prepared by Andover Consultants, Inc., recorded with the Registry as Plan No. 18312 of 2022, and which parcels are more particularly described in Exhibit A-1 attached hereto and made a part hereof (collectively, the “**Land**”, as the definition of the Land may be further revised by the parties pursuant to Section 2.05(a)) (and, together with all buildings and other improvements situated thereon and to be conveyed to the Developer along with the Land, collectively, the “**Property**”), issued a Request for Proposals dated March 8, 2021 (together with all Addenda thereto issued by the Town, collectively, the “**RFP**”), for the disposition of Property;

WHEREAS, the Developer submitted an initial proposal dated July 22, 2021 in response to the RFP and a final proposal dated September 1, 2021 (together, the “**Proposal**”), a copy of which Proposal is on file with the Town Purchasing Agent, which includes Developer’s initial Conceptual Program and Plan for the Property (the “**Initial CPP**”);

WHEREAS, Developer, though its affiliate, Buxton Redevelopment, LLC, has acquired the following parcels adjacent to the Land: (i) 122 North Main Street, as further described in that certain deed dated as of July 28, 2022 and recorded with the Registry in Book 17530, Page 247; (ii) 2-4 Buxton Court, as further described in that certain deed dated as of December 20, 2021 and recorded with the Registry in Book 17282, Page 176; (iii) 7-9 Lewis Street, as further described in that certain deed dated as of December 2, 2021 and recorded with the Registry in Book 17258, Page 343; and (iv) 35 Pearson Street, as further described in that certain deed dated as of October 26, 2021 and recorded with the Registry in Book 17210, Page 97 (collectively, the “**Private Property**”). The Private Property is more particularly described in Exhibit A-2 attached hereto and made a part hereof;

WHEREAS, Developer has modified the Initial CPP to include the inclusion in the Project of the Private Property (such modified Initial CPP being referred to as the “**CPP**”), a copy of which is attached hereto as Exhibit B;

WHEREAS, the Proposal and the CPP calls for the Developer to demolish the building(s) located upon the Property and a portion of the Private Property (other than the building located at 122 North Main Street) and construct on the Property and the Private Property a project consisting of a mixed use residential and commercial development together with amenities and accessory uses, as more particularly described in the Proposal, the CPP and this Agreement (and as will be more fully described in the “Approved Plans” and the “Approved Construction Documents” (as such terms are hereinafter defined) prepared by the Developer and approved by the Seller pursuant to this Agreement, the “**Project**”);

WHEREAS, the Town, for consideration of Four Million Five Hundred Sixty-Six Thousand Dollars (\$4,566,000.00), and other consideration as set forth in this Agreement, agrees to sell, and the Developer agrees to buy, the Property, on the terms and conditions set forth in this Agreement;

WHEREAS, an integral portion of the consideration for the Property is that the Developer be legally obligated to complete the Project; and

WHEREAS, in accordance with this Agreement, the Developer, in consideration for the Property, agrees to use diligent and good faith efforts to obtain all Entitlement Approvals (as defined below) required for the construction of the Project, to develop the Property and the Private Property, and undertake all the work that is required to be done under this Agreement to construct, develop and complete the Project (the “**Work**”).

NOW, THEREFORE, each of the parties hereto for and in consideration of the promises and mutual obligations herein contained, does hereby covenant and agree with the other as follows:

ARTICLE 1

RECITALS

The Recitals stated above are true and accurate and are incorporated herein by reference.

ARTICLE 2

AGREEMENT TO PURCHASE AND SELL

The Town agrees to sell the Property, and the Developer agrees to purchase and develop the Property and undertake the Project, subject to the terms and conditions set forth in this Agreement.

Section 2.01 Purchase Price; Deposits.

(a) The Developer shall pay to the Town the sum of (a) Four Million Five Hundred Fifty Thousand Dollars (\$4,550,000.00) (the “**Land Purchase Price**”), plus (b) Sixteen Thousand

Dollars (\$16,000.00) representing payment for the discontinued portion of Lewis Street, as specified above (the “**Lewis Street Parcel Purchase Price**” and together with the Land Purchase Price, the “**Purchase Price**”) for the Property, of which (i) Thirty Thousand Dollars (\$30,000.00) has previously been paid to the Town as a “Proposal Deposit” pursuant to the RFP, (ii) Fifty Thousand Dollars (\$50,000.00) has previously been paid to the Town as a “Selection Deposit” pursuant to the RFP, and (iii) Two Hundred Thousand Dollars (\$200,000.00) has this day been paid to the Town as an “Execution Deposit” pursuant to the RFP (collectively, the “**Deposits**”), which will be held and disbursed in accordance with the terms of this Agreement. The balance of the Purchase Price shall be paid in full at the time of the Closing (as hereinafter defined) and recording of the Deed (as hereinafter defined) (unless the parties agree to a gap-style closing) by wire transfer of immediately available funds to an account designated by the Town in writing.

(b) The Deposits shall be held by the Town, may be commingled with other funds of the Town, and shall not accrue interest.

Section 2.02 Deed.

The Property is to be conveyed by a good and sufficient quitclaim deed in the form attached hereto as Exhibit C and made a part hereof (the “**Deed**”), running to the Developer, which shall convey a good and clear record and marketable title thereto, free from encumbrances, except the following (collectively, the “**Permitted Exceptions**”);

- a. Provisions of existing building, zoning, subdivision, environmental and all other applicable laws, codes, ordinances, orders, rules, regulations, by-laws, and ordinances (collectively, “**Laws**”) enacted by any governmental authority prior to the Closing Date (as hereinafter defined);
- b. Such real estate taxes for the fiscal year in which the Closing occurs as are not due and payable on the date of the delivery of the Deed (if any);
- c. Any liens for municipal betterments assessed after the Closing Date;
- d. All easements, restrictions and other matters of record at the Registry as of the date of this Agreement, except for only the Title Exceptions and the Unpermitted Exceptions (as such terms are hereinafter defined);
- e. Rights of others entitled in and to Buxton Court, if any;
- f. Matters that would be disclosed by an accurate ALTA/NSPS survey of the Property (regardless of whether the Developer obtains such a survey), including the location of the existing water and sewer lines and related equipment located within the Land in the approximate location described on Exhibit D attached hereto;
- g. The standard printed jacket exceptions contained in the most recent edition of the ALTA title insurance policy;
- h. All matters of title or affecting title which constitute Permitted Exceptions in accordance with the provisions of Section 2.05 below, including, without limitation,

all matters created by the Developer, this Agreement, the Repurchase Agreement, the Notice of Repurchase Agreement, the Restriction Documents, and the Reserved Rights (as such terms are hereinafter defined);

- i. The provisions of the Deed attached hereto as Exhibit C; and
- j. The provisions of this Agreement.

Section 2.03 Pre-Closing and Development Schedule.

The Developer shall be solely responsible, at its sole cost and expense, for the permitting, design, financing and construction of the Project, all as provided in this Agreement.

The Developer agrees to apply for and pursue the Entitlement Approvals (as hereinafter defined), obtain financing for the Project, and take such other actions with respect to the construction of the Project as are set forth below according to the following schedule, unless otherwise agreed in writing by the Seller and the Developer:

<u>Events Prior to Closing</u>	<u>Date</u>
Submit Application for Special Permit to Planning Board	See Section 2.07(b)
Obtain Financing Commitment	Not later than the Closing
Closing Date	See Section 2.10(a)
Outside Closing Date	See Section 2.10(a)
<u>Events After Closing</u>	<u>Date</u>
Complete Commencement Work	See Section 3.03
Complete Construction	Thirty (30) months after completion of the Commencement Work (see Section 3.03)

With respect to any approval or consent for Entitlement Approvals (as hereinafter defined) required by this Agreement from the Town Manager or the Select Board of the Town, the number of days between the day the request is made by the Developer in writing in accordance with Section 10.06 hereof and the date the Town issues its consent or denial of approval to the Developer in writing shall be added to the milestone dates. If the Developer fails to meet any of the milestone dates as may be extended as set forth in this Agreement (which such dates shall be extended on account of any Force Majeure), the Seller may either agree to extend such dates, which extension shall be in writing, or following any initial ninety (90) day extension granted by Seller, may terminate this Agreement effective upon thirty (30) days written notice to the Developer (provided, however, that such termination shall be of no force or effect if, prior to the effectiveness thereof, the Developer cures such failure), in which event the Seller shall be entitled to retain the Deposits (including all interest accrued thereon, if any) and, except as expressly provided otherwise in this

Agreement, this Agreement shall be of no further force and effect and the parties shall have no further rights, obligations or liabilities hereunder. Seller's determination in accordance with the immediately foregoing sentence shall be made in its reasonable discretion with respect to any extension up to the date that is ninety (90) days after the applicable milestone date as originally scheduled (subject to extensions of such milestone date due to Force Majeure), and in its sole and absolute discretion with respect to any further extensions. The Seller's remedies for the Developer's failure to meet the schedule of events to be performed after the Closing are set forth in Section 8.02 hereof.

Section 2.04 Intentionally Omitted.

Section 2.05 Title Examination; Title Objections.

(a) Developer hereby acknowledges and agrees that it has had sufficient time to examine the title to the Property, and that it has conducted an examination of the title to the Property, has conducted a title examination for the Property and a survey of the Property, and that it accepts the condition of the title of the Property as of the date of this Agreement, including, without limitation, all easements, restrictions, and other matters of record in the Registry as of the date of this Agreement and those matters that would be disclosed by an accurate ALTA/NSPS survey of the Property, with the exception of the following matters set forth in this Section 2.05(a) (collectively, the "**Title Exceptions**"). The Seller agrees to perform the following curative actions with respect to the Title Exceptions (collectively, the "**Title Exception Cure Actions**"):

- (A) Within forty-five (45) days after Seller's receipt of an Order of Taking prepared by the Developer, that is reasonably acceptable to the Seller, with respect to the taking voted upon per Warrant Article #41 of the Spring 2023 Town Meeting approved May 2, 2023, taking in fee the westerly end of Lewis Street, the Select Board of the Town of Andover shall execute such Order of Taking and record the same in the Registry at the cost and expense of the Town.
- (B) The Seller shall place on the warrant for the Town of Andover 2024 Annual Town Meeting ("**2024 Town Meeting**") or, in the Seller's discretion, at a Special Town Meeting occurring prior to the 2024 Town Meeting the following items (collectively, the "**Town Meeting Cure Actions**"), which warrant article(s) shall be submitted by the Select Board and the Town Manager:
 - I. Taking in fee simple absolute of former Assessor Lots 38-17 and 38-18 (depicted as Parcel B on the Developer Plan of Land (as hereinafter defined)) against officers, directors, heirs and devisees of the shareholders of Merrimack Card Clothing Company. If the Developer, at its sole cost and expense, identifies the officers, directors, heirs and devisees of the shareholders Merrimack Card Clothing Company, the Town, at the sole cost and expense of the Developer, shall notify such persons and entities identified by the Developer.

- II. Taking in fee simple absolute of a 2,275 square foot parcel (depicted as Parcel A on the Developer Plan of Land) against the heirs of Lewis T. Hardy and Joseph F. Cole. If the Developer, at its sole cost and expense, identifies the heirs and devisees of said Hardy and Cole, the Town shall notify such persons and entities identified by the Developer, at the sole cost of the Town if such notice is to be delivered via the United States Postal Service or an express courier service such as Federal Express, or at the sole cost of the Developer for any other method of notice including personal service.
- III. Taking in fee simple absolute of a 3,872 square foot parcel (depicted as Parcel C on the Developer Plan of Land), consisting of the most northerly 107.57 feet of Buxton Court.
- IV. To accept as a public way the portions of Lewis St. (from North Main Street to the discontinued portion of Lewis Street pursuant to subsection (A) above) and Buxton Court (from Lewis St. 300 feet north to the southerly bound of Parcel A on the Developer Plan of Land).

(collectively, “**Town Meeting Cure Actions**”), which warrant article(s) shall be submitted by the Select Board and the Town Manager.

The warrant articles, orders of taking, and plans for the Town Meeting Cure Actions shall be prepared by the Developer at the Developer’s sole cost and expense, and shall be subject to the Town’s reasonable approval. All public notices to be published in the local Town of Andover newspaper required in connection with the Town Meeting Cure Actions shall be prepared by the Developer, at its sole cost and expense, and shall be subject to the Town’s reasonable approval. The cost of any such public notices shall be paid by the Town. The Town shall pay any recording fees and charges for any instruments, orders of taking, and plans with respect to the Town Meeting Cure Actions that are to be recorded in the Registry.

- (C) The Developer maintains that the boundaries of the Land, as identified on Exhibit A-1, are not correct, and that the land as depicted on the plan entitled “Plan of Land located in Andover, Mass., prepared for the Inhabitants of the Town of Andover”, dated May 5, 2023, prepared by Morin-Cameron Group, Inc. (the “**Developer Plan of Land**”), attached hereto as Exhibit A-3, accurately depicts the Land which plan is to be modified and amended as stated in subsection (B), above if Town Meeting adopts all of the Town Meeting Cure Actions. The parties, acting in good faith, shall reconcile the differences between Exhibit A-1 and the Developer Plan of Land within thirty (30) days of the date of this Agreement. If the parties are unable to agree on a reconciled plan of the Land within such 30-day period, as it may be further extended by mutual agreement of the parties, the Developer shall have the right to terminate this Agreement within ten (10) Business Days

after the expiration of such 30-day period (as such 30-day period may be further extended by mutual agreement of the parties). Upon such termination, the Developer shall be entitled to the return of the Selection Deposit and the Execution Deposit (without interest), but the Seller shall retain the Proposal Deposit and, except as expressly provided otherwise in this Agreement, this Agreement shall terminate and be of no further force and effect and the parties shall have no further rights, obligations or liabilities hereunder. If the parties agree on a reconciled plan of the Land, the parties shall amend this Agreement to replace Exhibit A-1 and Exhibit A-2 with such agreed-upon reconciled plan of the Land.

Upon the Town achieving the Title Exception Cure Actions identified in clause (A) above, Developer acknowledges and agrees that the Town shall have fully and completely cured the Title Exception identified in clause (A) above, and the Developer shall proceed with the Closing in accordance with the terms of this Agreement and the Closing shall occur without any credit or abatement of the Purchase Price.

Any Title Exceptions identified in clause (B) above shall be deemed “**Town Meeting Title Exceptions**” and shall be governed pursuant to the terms and provisions of this Section 2.05(a).

If 2024 Town Meeting (or earlier Special Town Meeting) does not approve by the requisite number of votes all of the above Town Meeting Cure Actions, the Developer, not later than fifteen (15) days after the conclusion of the 2024 Town Meeting or earlier Special Town Meeting, as the case may be, may terminate this Agreement in writing (“**Title Exception Termination Notice**”), in which event the Developer shall be entitled to the return of the Selection Deposit and the Execution Deposit (without interest), but the Seller shall retain the Proposal Deposit and, except as expressly provided otherwise in this Agreement, this Agreement shall be of no further force and effect and the parties shall have no further rights, obligations or liabilities hereunder. If the Developer fails to timely provide the Title Exception Termination Notice to the Seller, then it shall be deemed that the Developer has elected not to terminate this Agreement. If the Developer has elected (or is deemed to have elected) not to terminate this Agreement as aforesaid, then the Developer shall proceed with the Closing, in which event the uncured Town Meeting Title Exceptions shall be conclusively presumed thereafter to constitute Permitted Exceptions and the Closing shall occur without any credit against or abatement of the Purchase Price on account thereof. Alternatively, the Developer, not later than fifteen (15) days after the conclusion of the 2024 Town Meeting or earlier Special Town Meeting, as the case may be, may notify the Seller (the “**2025 Town Meeting Extension Notice**”) that it requests that the Seller submit to the Town of Andover 2025 Annual Town Meeting (“**2025 Town Meeting**”) (or an earlier Special Town Meeting, if agreeable to the Seller in its discretion) the Town Meeting Cure Actions that did not pass the 2024 Town Meeting, in which case the Seller shall place on the warrant for the 2025 Town Meeting or earlier Special Town Meeting, as the case may be, such Town Meeting Cure Actions that did not pass the 2024 Town Meeting, which warrant article(s) shall be submitted by the Select Board and the Town Manager. If 2025 Town Meeting does not approve by the requisite number of votes such Town Meeting Cure Actions, then the Seller shall so notify the Developer and the Developer, as its sole and exclusive remedy, on or before the tenth (10th) Business Day after the Developer’s receipt of the Seller’s notice, shall notify the Seller in writing that the Developer:

- (y) elects to proceed with the Closing, in which event all uncured Town Meeting Title Exceptions shall be conclusively presumed thereafter to constitute Permitted Exceptions and the Closing shall occur without any credit against or abatement of the Purchase Price on account thereof; or
- (z) elects to terminate this Agreement, in which event the Developer shall be entitled to the return of the Selection Deposit and the Execution Deposit (without interest), but the Seller shall retain the Proposal Deposit and, except as expressly provided otherwise in this Agreement, this Agreement shall terminate and be of no further force and effect and the parties shall have no further rights, obligations or liabilities hereunder.

Unless the Developer gives notice to Seller, within such 10-Business Day period that the Developer has elected to terminate this Agreement pursuant to the foregoing clause (z), the Developer shall be conclusively presumed to have elected to proceed to the Closing pursuant to the foregoing clause (y), and the Developer shall be conclusively presumed to have waived such uncured Town Meeting Title Exceptions and to have agreed to accept title subject to such uncured Town Meeting Title Exceptions (which shall thereupon be deemed to be Permitted Exceptions), and the Closing shall occur without any credit or abatement of the Purchase Price.

If the Developer timely sends to the Seller the 2025 Town Meeting Extension Notice, then the number of days from the date that the Seller receives the 2025 Town Meeting Extension Notice to the conclusion of the 2025 Town Meeting or earlier Special Town Meeting, as the case may be (the “**2025 Town Meeting Closing Extension Period**”) shall be added to the Outside Closing Date. Notwithstanding anything in this Agreement to the contrary, the failure of the Seller to cure, or for 2024 Town Meeting (or 2025 Town Meeting, as the case may be) to approve, the Town Meeting Cure Actions shall not be a default of the Seller, and the Developer’s remedies are those remedies expressly set forth in this paragraph.

(b) As used in this Agreement, an “**Unpermitted Exception**” shall mean any title defect or encroachment upon the Property first arising after the date of this Agreement and not created, voluntarily or involuntarily, by Developer or its contractors, agents, employees or representatives. Any matter of record title as of the date of this Agreement, or any matter in existence which appeared on or could have appeared on a survey of the Property as of the date of this Agreement, shall be conclusively deemed waived by the Developer and shall constitute a Permitted Exception.

(c) If, between the date of this Agreement and the Closing Date, an updated title report shows any new Unpermitted Exceptions, then the Developer shall have the right to give the Seller written notice of any such new Unpermitted Exception (a “**Title Defect Notice**”). Within ten (10) Business Days of the Seller’s receipt of a Title Defect Notice, the Seller shall give written notice to the Developer of its election, in Seller’s sole discretion, either:

- (i) to take no action in connection with the existence of such Unpermitted Exception, in which event all of the Unpermitted Exceptions will be deemed waived by the Developer unless the Developer terminates this Agreement as provided below in this Section 2.05(c), or

- (ii) to use reasonable efforts to remove or cure the same, provided that (1) the Seller shall not be required to incur more than \$25,000.00 in costs and expenses (including, without limitation, attorneys' fees and expenses) in the aggregate to cure all Unpermitted Exceptions, except that such \$25,000 cap shall not apply to mortgages or other voluntary monetary liens entered into by the Seller after the date of this Agreement that encumber the Property, (2) the Seller shall not be required to commence any effort to remove or cure the same if the Seller reasonably determines that the cost of such removal or cure is likely to cost more than \$25,000.00 in costs and expenses (including, without limitation, attorneys' fees and expenses) in the aggregate (except with respect to any such mortgages or other voluntary monetary lines), and (3) the Seller shall not be obligated to commence any litigation or other proceeding in any court to effectuate such cure. If the Seller elects to proceed pursuant to this clause (c)(ii), then the Seller may extend the Closing Date by written notice to the Developer for up to sixty (60) days to enable it to make such reasonable efforts to remove or cure the Unpermitted Exceptions.

Unless the Seller states in such notice that it has elected to proceed pursuant to the preceding clause (c)(ii) to attempt to remove or cure the Unpermitted Exceptions, the Developer shall have the right to terminate this Agreement by giving written notice of termination to the Seller within ten (10) Business Days after the earlier of either its receipt of such notice from the Seller, or the expiration of such 10-Business Day period without the Seller having given such a notice, in which event the Developer shall be entitled to the return of the Selection Deposit and the Execution Deposit (without interest), but the Seller shall retain the Proposal Deposit and, except as expressly provided otherwise in this Agreement, this Agreement shall be of no further force and effect and the parties shall have no further rights, obligations or liabilities hereunder.

(d) If the Seller elects pursuant to clause (ii) of the preceding Section 2.05(c) to make reasonable efforts to remove or cure the Unpermitted Exceptions but the Seller is unable to complete such removal or cure by such extended Closing Date, the Seller shall so notify the Developer and the Developer shall, as its sole and exclusive remedy, on or before the tenth (10th) Business Day after the Developer's receipt of the Seller's notice, give notice to the Seller, that the Developer either:

- (i) elects to proceed with the Closing, in which event all Unpermitted Exceptions identified in the Title Defect Notice which the Seller has not cured or removed shall be conclusively presumed thereafter to constitute Permitted Exceptions and the Closing shall occur without any credit against or abatement of the Purchase Price on account thereof; or
- (ii) elects to terminate this Agreement, in which event the Developer shall be entitled to the return of the Selection Deposit and the Execution Deposit (without interest), but the Seller shall retain the Proposal Deposit and, except as expressly provided otherwise in this Agreement, this Agreement shall be of no further force and effect and the parties shall have no further rights, obligations or liabilities hereunder.

Unless the Developer gives notice to Seller, within such 10-Business Day period that the Developer has elected to terminate this Agreement pursuant to the foregoing clause (ii), the Developer shall be conclusively presumed to have elected to proceed to the Closing pursuant to the foregoing clause (i), and the Developer shall be conclusively presumed to have waived such Unpermitted Exceptions and to have agreed to accept title subject to such new Unpermitted Exceptions (which shall thereupon be deemed to be Permitted Exceptions), and the Closing shall occur without any credit or abatement of the Purchase Price.

(e) The Closing Date shall be extended for such period of time as necessary to give the Seller and the Developer the benefit of the time periods stated in this Section.

(f) Notwithstanding any provision of this Agreement to the contrary, and unless otherwise required by applicable Laws, the Seller agrees that the Seller shall not voluntarily create, agree to, or consent to any Unpermitted Exception, including, without limitation, any easement, lien, right or encumbrance affecting the Property or create any encroachment thereon that will not be discharged of record as of the Closing without the written consent of the Developer, which consent may be withheld at its absolute discretion. In the event of a breach of the foregoing covenant, Seller shall remove the encumbrance or encroachment forthwith, without regard to cost or other limitations contained in this Section. Notwithstanding the foregoing, nothing in this paragraph shall limit or restrict the Town from maintaining, repairing or relocating (to a location mutually acceptable to the Town and Developer) the existing water and sewer lines located at the Property.

(g) The Select Board of the Town agrees not to file a Town Meeting warrant article to amend or modify any existing zoning by-law applicable to the Property prior to the Developer's application for a Special Permit (as defined below) from the Andover Planning Board for the Project that would materially and adversely modify the current Historic Mill District zoning applicable to the Property (which is Section 8.5 of the Andover Zoning By-Law), including any amendments or modifications that would materially reduce the number of units in the Project, materially increase the number of on-site parking spaces or materially increase the amount of required open space for the Project.

Section 2.06 "As Is" Sale; No Representations or Warranties by Seller.

(a) The Developer acknowledges and agrees that the Seller shall sell and convey to the Developer, and the Developer shall accept, the Property "as is, where is, with all faults". The Developer has not relied on, and will not rely on, and the Seller is not liable for or bound by, any express or implied warranties, guaranties, statements, or representations, whether oral or written, from the Seller or its employees, agents, consultants, or attorneys, pertaining to the Property or relating thereto except as expressly set forth in this Agreement.

(b) The Developer acknowledges and agrees that, except as expressly stated otherwise in this Agreement, the Seller, its employees, agents, consultants and attorneys have not made, do not hereby make and will not hereafter be deemed to have made, and Seller hereby specifically disclaims, any representations or warranties or guarantees of any kind whatsoever, whether express or implied, oral or written, with respect to the Property or the physical condition or profitability thereof, including without limitation: (i) the nature, quality, adequacy or condition of the Property,

including, without limitation, the water, soil, geology, groundwater and environmental condition of the Property and the condition of any buildings or other improvements situated on the Land, (ii) the expenses and potential income associated with the ownership, operation, maintenance, or development of the Property, (iii) the suitability of the Property for any and all development, construction, activities and uses which the Developer may conduct thereon, (iv) the compliance of or by the Property or its operation (whether existing or contemplated) with any applicable Laws, (v) the habitability, merchantability, fitness, value or adequacy of the Property for any particular purpose, (vi) the Seller's title to the Property and the existence of any liens, encumbrances, charges, assessments, restrictions or claims relating thereto, (vii) the availability, condition or adequacy of any utilities serving or which could serve the Property, or the amount of any costs or fees required to extend, tie into, or tap into any utilities serving the Property or to otherwise develop the Property, or (viii) any other matter with respect to the Property.

(c) The Developer acknowledges that it is a sophisticated real estate developer who has had (or who will have pursuant to the provisions of this Agreement) access to and sufficient time to review all information, documents, agreements, studies and tests relating to the Property which it deems necessary or desirable, and that it has conducted to its satisfaction a complete and thorough inspection, testing, analysis and evaluation of the Property, including but not limited to environmental conditions. The Developer is relying and will rely solely on its own investigation of the Property and not on any information provided or to be provided by the Seller or any agent or employee of the Seller in making its decision to purchase the Property. The Developer further acknowledges and agrees that any and all information provided or to be provided by or on behalf of the Seller with respect to the Property, including without limitation any reports, plans, specifications, studies, analyses, documents or other materials, was obtained from a variety of sources, is being provided to the Developer as a convenience only, and that the Seller has not made any independent investigation or verification of such information and makes no representations or warranties as to the accuracy or completeness of such information.

(d) Upon the Closing, the Developer shall assume the risk that adverse matters, including, but not limited to, adverse physical and environmental conditions or violations of any Laws, may not have been revealed by Developer's investigations, and the Developer, as of the Closing, shall be deemed to have permanently and irrevocably waived, relinquished and released the Seller (and the Seller's employees, agents, consultants and attorneys) of and from any and all claims, demands, causes of action (including causes of action in tort), obligations, losses, damages, liabilities, penalties, fines, judgments, costs and expenses (including reasonable attorneys' fees and expenses) of any and every kind of character, known or unknown, now existing and foreseen or unforeseen, which the Developer might have asserted or alleged against the Seller (and/or the Seller's employees, agents, consultants and attorneys) as of the Closing relating to or arising out of the Property and Private Property, including without limitation the physical or environmental conditions of the Property and Private Property, except for the release of oil or other hazardous materials in, on, or under the Property after the date of this Agreement in excess of reportable concentrations, as specified in the Massachusetts Contingency Plan, 30 CMR 40.0000 et. seq. ("MCP") that require remediation under the MCP (a "**Post-Execution Environmental Release**"), for which the Town shall be responsible; provided, however that a Post-Execution Environmental Release shall exclude any release of oil or hazardous materials in, on or under the Property by the Developer or its employees, contractors, or agents. The Developer covenants and agrees never (directly or indirectly) to commence, aid in any way, or prosecute against the Seller any action or

other proceeding based upon any claims, demands, causes of action, obligations, damages or liabilities released in this Section. In addition to, and not in limitation of, the provisions of Section 10.05 hereof, from and after the Closing, the Developer shall indemnify, defend and save harmless the Town and the Town's officers, employees and agents (collectively, the "**Town Indemnified Parties**") from and against any and all damages, liabilities, actions, suits, proceedings, claims, demands, losses, costs, expenses, recoveries and judgments of every nature and description (including reasonable attorneys' fees and expenses) asserted or alleged by third parties (including any non-Town governmental authorities) arising in whole or in part out of or in connection with any of the following occurrences after the Closing: (i) the post-Closing release of oil or hazardous materials to, at or from the Land arising from or in connection with the construction of the Project or substantial construction activities after the Completion of the Project, including any exacerbation of preexisting oil or hazardous materials, but excluding any claims based solely on the post-Closing discovery of such oil or hazardous materials that existed prior to the Closing; (ii) the negligence of the Developer, its contractors, agents or Licensed Site Professional in the remediation of oil or hazardous materials and/or the proper disposal thereof; and (iii) the designing and construction of the Project in such a way to mitigate the risk of hazardous vapor intrusion migrating into any of the residential buildings and units constructed by Developer on the Land or Private Property. The Developer may at its sole option employ counsel reasonably acceptable to the Town to direct the defense of any such claim. Notwithstanding the immediately foregoing sentence, the duty to defend shall immediately accrue and be owing upon the assertion of such a claim by any person or entity regardless of merit and shall not be dependent upon a finding of negligence or any other finding of fact at trial. The existence of insurance shall in no way limit the scope of the Developer's indemnification under this subsection. Notwithstanding the foregoing, in the event of a third-party claim, Developer reserves the right to assert as affirmative defenses including the presence of preexisting conditions on the Property as of the date of Closing provided that such defenses do not limit, restrict, prohibit or otherwise affect the Developer's indemnification, release, and other obligations under this Section. Notwithstanding anything in this Section 2.06(d) to the contrary, the Developer shall not be required to indemnify the Town under this Section 2.06(d) for any and all damages, liabilities, actions, suits, proceedings, claims, demands, losses, costs, expenses, recoveries and judgments of every nature and description (including reasonable attorneys' fees and expenses) asserted or alleged by third parties (including any non-Town governmental authorities) arising in whole or in part out of or in connection the actions or omissions of the Town or any other Town Indemnified Parties on or about the Land after the Closing.

(e) The provisions of this Section 2.06 shall survive, as applicable, the Closing and delivery of the Deed, or the rescission, cancellation, or termination of this Agreement.

Section 2.06.A Post-Execution Environmental Release.

(a) In the event of a Post-Execution Environmental Release, the Town, at its option, may, by written notice to the Developer, either (i) elect to remediate the Post-Execution Environmental Release, subject to appropriation, to achieve a Permanent Solution with No Conditions or (ii) require the Developer, subject to its termination rights as set forth below, to remediate the Post-Execution Environmental Release (the "**Developer Remediation Requirement**"). In the event the Town elects the Developer Remediation Requirement, the Developer shall obtain an estimate of the cost of such remediation and provide a copy of the same

to the Town. If the Developer and the Town do not agree on such estimate, either party may invoke the neutral decision process set forth in Exhibit K. At the Closing, the Developer shall hold back from the Purchase Price and place into escrow, with an escrow agent mutually agreed to by the Town and the Developer, an amount equal to one hundred twenty-five percent (125%) of the agreed-upon estimate of the cost of such remediation or the estimate established through such neutral decision process, as the case may be. The Developer may apply such escrow funds toward costs incurred in connection with such remediation, pursuant to a mutually agreeable escrow agreement to be entered into by the parties at the Closing. If any funds remain in the escrow account after achieving a Permanent Solution with No Conditions for the Post-Execution Environmental Release, such funds shall be paid to the Town. The Developer, at its option, may elect not to undertake the Developer Remediation Requirement and terminate this Agreement by written notice to the Town not later than thirty (30) days after the Town notifies the Developer that it has elected for the Developer to undertake the Developer Remediation Requirement. Upon such termination, the Developer shall be entitled to the return of the Selection Deposit and the Execution Deposit (without interest), but the Seller shall retain the Proposal Deposit and, except as expressly provided otherwise in this Agreement, this Agreement shall terminate and be of no further force and effect and the parties shall have no further rights, obligations or liabilities hereunder. If the Town elects to undertake the Post-Execution Environmental Release, the Closing Date shall be extended for the period of time necessary for the Town to achieve a Permanent Solution with No Conditions for the Post-Execution Environmental Release.

(b) The Town agrees from and after the execution of this Agreement to install a perimeter fence and locked gate(s) at the Property and to limit the Town's access and use of the Property to the storage of non-hazardous equipment and materials.

Section 2.07 Approvals.

(a) The Developer shall be solely responsible for applying for and obtaining any and all governmental permits, approvals, consents, orders and determinations required for the construction, use, occupancy or operation of the Project as depicted in its Proposal and the CPP (including such modifications thereto as were approved by the Select Board pursuant to the selection process set forth in the RFP, including, without limitation, a special permit pursuant to Section 8.7 of the Andover Zoning By-law (the "**Special Permit**", and collectively, the "**Approvals**"), and shall cause Buxton Redevelopment, LLC, as owner of the Private Property, to execute all applications for the Approvals concerning the Private Property. The Developer shall deliver to the Seller prior to the execution of this Agreement a list of all entitlement Approvals (i.e. Approvals necessary and that are discretionary and/or require public hearings by the Approval granting authority) (together with a demolition permit and foundation permit from the Andover Building Inspector collectively, the "**Entitlement Approvals**") then known to Developer required by applicable Law for the construction, use, occupancy or operation of the Project based on the Developer's due diligence conducted as of the date of this Agreement, together with a schedule of projected submission dates for each Entitlement Approval so listed, and shall provide updates of such schedule to the Seller upon written request, but not more frequently than once a month. All Entitlement Approvals required for the construction of the Project shall be obtained prior to the Closing. The Seller shall reasonably cooperate with the Developer in connection with the Developer's applications for Approvals, including executing any documents necessary therefor, but in no event shall the Seller incur any obligation or liability in connection therewith. The

Developer shall provide to the Town copies of all applications for Entitlement Approvals filed prior to the Closing with any governmental authority other than a board, commission, department or agency of the Town, promptly after the filing thereof; however, the failure of the Developer to provide such applications promptly after the filing thereof shall not constitute a default of the Developer hereunder unless the Developer, after receipt of a written demand by the Seller for a copy of such application, fails to provide the same to the Seller within ten (10) Business Days after receipt of such written demand. The Developer shall be responsible for the cost of all third party reviews or studies that may be required in the normal course by any board, commission, department or agency of the Town to which the Developer applies for an Entitlement Approval. The Developer shall be solely responsible, at its sole cost and expense, for all costs and expenses (including, without limitation, attorneys', engineers' and consultants' fees and expenses) associated with (i) the preparation of all applications for Approvals and all accompanying materials, (ii) applying for and obtaining Approvals, and (iii) performance of all conditions, mitigation or obligations imposed as conditions to any of the Approvals. The Developer shall seek and attain, if attainable (provided that the cost to design and construct the Project to obtain the LEED pre-certification required in this clause (iii), consistent with the LEED requirements existing as of the date of this Agreement, shall not be a basis for such pre-certification to not be attainable), LEED BD+C Silver or higher pre-certification for the design of each building included in the Project, and this requirement, if required by the Planning Board, shall be set forth in the Special Permit, and the Developer shall be required to (A) inform the Planning Board in its application for the Special Permit that the Developer has committed in its Proposal to attain LEED BD+C Silver or higher pre-certification for the design of each habitable building included in the Project, and request in such application that the Planning Board include in any special permit issued in response to such application the requirement that each habitable building included in the Project must attain pre-certification prior to the issuance by the Town of Andover Building Inspector of a building permit for each such habitable building, and (B) deliver to the Town evidence of the issuance by the United States Green Building Council ("USGBC") of a pre-certification of each habitable building pursuant to the LEED BD+C program at a level of Silver or higher prior to, and as a condition precedent to, the issuance by the Town of Andover Building Inspector of a building permit for each such building.

(b) The Developer shall use diligent and good faith efforts to obtain all Entitlement Approvals required for the construction of the Project and to file applications for all Entitlement Approvals and diligently prosecute obtaining all Entitlement Approvals to achieve the occurrence of the Closing, including preparing construction drawings and specifications required for Entitlement Approvals to be issued by the Andover Building Inspector, not later than the Outside Closing Date. Without limiting anything in the immediately forgoing sentence or any other term or provision of this Agreement that requires to the Developer to diligently obtain the Entitlement Approvals and to achieve all conditions, covenants, and agreements of this Agreement to be performed by the Developer to achieve the occurrence of the Closing by the Outside Closing Date, the Town acknowledges that (i) the Developer will not be applying for all Entitlement Approvals simultaneously and, if the Developer determines that it is necessary or appropriate to apply for the Entitlement Approvals sequentially, the Developer may do so and (ii) the Developer has informed the Town that it may elect to undertake the lengthy process of the preparation and drafting of its construction drawings for the Project for submission to the Andover Building Inspector only after it has obtained its last Entitlement Approval (other than Entitlement Approvals to be issued by the Andover Building Inspector). Notwithstanding the foregoing, the Developer agrees that (i) it shall

submit to the Town Manager for his approval a completed pre-application for the Special Permit contemplated by Section 8.7.11.1 of the Town of Andover Zoning By-Law not later than sixty (60) days after the date of this Agreement, such approval not to be unreasonably withheld, conditioned, or delayed if such application is materially consistent with the CPP, (ii) it shall submit such completed and approved pre-application for the Special Permit to the Planning Board within five (5) Business Days after the Town Manager has approved the same, and (iii) it shall submit to the Planning Board a completed application for the Special Permit (i.e., an application that meets the requirements of the Planning Board and is sufficiently complete for the Planning Board to hold a public hearing on such application), which is consistent with such approved pre-application, within one hundred twenty (120) days after the Developer submits its pre-application for the Special Permit. In its application for the Special Permit, the Developer shall propose that the rights of way and adjacent sidewalks (if any) within the Project and any private portions (if any) of Buxton Court and Lewis Street to be used for vehicular traffic and pedestrian purposes may be used by the Town and members of the public for such purposes only (subject to the Developer's reasonable restrictions thereof as may be approved by the Planning Board) from and after the issuance of the Certificate of Completion. As used in this Section, a "completed application" shall mean that Developer has provided all materials and information requested for the submittal of an Application, and thereafter shall timely provide any supplemental materials or information requested by the permit-granting authority. Notwithstanding any provision contained herein to the contrary, the Town acknowledges that in the course of seeking the Entitlement Approvals the Developer may be required by the permit-granting authority from which an Entitlement Approval is being sought to make amended and supplemental filings. In no event may the Developer Voluntarily Supplement, modify, or amend an application for any Entitlement Approval that would materially prolong the Entitlement Approval hearings or constitute a Material Change to the Project without the Town's prior written consent, in its reasonable discretion. "**Voluntarily Supplement**," as used herein, shall not include the Developer's consent to supplement, modify, or amend an application in response to a request or recommendation to do so by Town or by any Town official or entity or board involved with the Project and/or the Approval process. As used in this Agreement, a "**Material Change**" shall mean any decrease in the total number of residential units, or alteration to the number or type of affordable residential units from that contained in in the Proposal and the CPP, the elimination of the programmable community space, the reduction of the public open spaces by more than a *de minimis* amount, any material changes to the private or public roadways to be constructed as part of, or used by, the Project, or any other change that would be materially inconsistent with the Project as depicted in the Proposal and the CPP (including such modifications thereto as were approved by the Select Board pursuant to the selection process set forth in the RFP), unless required by the permit granting authority. In the event of a conflict between the Project as depicted in the Proposal and the CPP and the Approval issued by any permit granting authority, and provided the Developer has otherwise complied with the terms and provisions of this Section, the Approval shall control.

(c) The Developer shall endeavor to give the Seller reasonable advance notice of all public hearings and all meetings with any representatives of governmental authorities other than the Town in connection with any application for an Approval, so that representatives of the Town may attend the same if they so desire. Notice may be given by electronic mail to Andrew Flanagan (via andrew.flanagan@andoverma.us) or the then incumbent town manager of the Town, or his designee from time to time. The unintentional failure to give such notice shall not be a default

under this Agreement unless the Developer, after prior written notice from the Seller, continues, on a frequent and repeated basis, to fail to provide such advance notice to the Seller.

(d) So long as the Developer has been using such diligent and good faith efforts to obtain the Approvals as required herein, if, Developer fails to obtain the Approvals or during obtaining any Approvals, a governmental authority imposes any final condition on any Approvals that the Developer reasonably determines would have a material adverse effect on the feasibility of the Project, then the Developer may, by written notice given to the Seller, terminate this Agreement, in which event the Developer shall be entitled to the return of the Selection Deposit and the Execution Deposit (without interest), but the Seller shall retain the Proposal Deposit and, except as expressly provided otherwise in this Agreement, this Agreement shall be of no further force and effect and the parties shall have no further rights, obligations or liabilities hereunder.

(e) The Developer and the Seller hereby agree that the Seller shall have no obligation in connection with (i) the application for, or obtaining of, any of the Approvals, except as expressly provided in Section 2.07(a) hereof, (ii) the performance or satisfaction of any condition, mitigation, or obligation imposed by or in connection with the issuance of any of the Approvals, or (iii) the design or construction of any building, parking area, road, driveway or other improvement constituting part of the Project or serving the Project or otherwise described in any of the materials submitted in connection with an application for any of the Approvals, and all of the matters described in the preceding clauses (i) – (iii) shall be the sole responsibility of the Developer.

(f) Prior to Closing, the Developer shall not, without the prior written consent of the Seller, (i) enter into any covenant or agreement with any governmental authority relating to the Property that will be binding upon the Property in the event that the Closing does not occur, (ii) record any Approval (or any plan relating thereto) or notice thereof, (iii) agree to: (x) any restriction or obligation proposed to be imposed upon the Property, or (y) any exaction, mitigation measure, off-site improvement obligation, linkage payment, or other condition to the issuance of any Approval which would require either (A) the conveyance of title to or any interest in any portion of the Land, or (B) an out-of-pocket expenditure by the Seller (the matters described in the foregoing clauses (i) – (iii) are hereinafter referred to, collectively, as “**Approval Conditions**”) without the prior written approval of the Seller in each instance, which approval shall not be unreasonably withheld or delayed by the Seller; *provided, however*, that the Seller’s approval shall not be required with respect to any Approval Condition that is part of an Approval as to which either the Approval unequivocally provides on its face (if the permit-granting authority is willing to issue the Approval in such form), or applicable Law provides, that the Approval shall not become effective or otherwise binding upon the owner of the Property or any portion thereof unless and until title to the entire Property is conveyed by recorded deed by the Seller to the Developer.

(g) Seller shall not, without the prior written consent of the Developer, (i) enter into any covenant or agreement with any governmental authority relating to the Property or the Private Property that will be binding upon the Property or Private Property after the Closing or (ii) record any Approval (or any plan relating thereto) or notice thereof.

(h) Promptly after receipt of any of the Approvals issued by a governmental authority other than an agency, board, commission or department of the Town prior to the Closing, the Developer shall furnish to the Seller a complete copy of the same.

(i) The Developer shall deliver to the Seller, promptly after receipt by the Developer, copies of all notice of appeals or other written materials relating to any threatened appeals or to any appeals that are commenced by the Developer or third parties with respect to the issuance of any of the Approvals. If an Appeal to an Approval is timely filed, the Developer may either terminate this Agreement within forty-five (45) days of the filing of such appeal, in which case the Seller will return to the Developer the Selection Deposit and the Execution Deposit (without interest), or diligently defend or prosecute such appeals at its sole cost and expense, using qualified counsel of its choice. The Developer shall keep the Seller reasonably informed of the status of each appeal of any of the Approvals which the Town or any of its boards, commissions or departments is not a party, including upon request from the Seller providing copies of all pleadings filed by any party relating to each such appeal. If, despite the Developer's diligent defense of an appeal, the appellant obtains a final judgment in its favor in an appeal from the issuance of an Approval, the Developer shall promptly notify the Seller thereof and the Developer shall have the right to terminate this Agreement by written notice given to the Seller within forty-five (45) days after the entry of such final judgment, in which case, absent default by the Developer hereunder, the Seller will return to the Developer the Selection Deposit and the Execution Deposit (without interest), but the Seller shall retain the Proposal Deposit. In the event that this Agreement is terminated pursuant to this subsection (i), then, except as expressly provided otherwise in this Agreement, this Agreement shall be of no further force and effect and the parties shall have no further rights, obligations or liabilities hereunder. Prior to Closing, the Developer may not settle or compromise an appeal relating to an Entitlement Approval which the Town or any of its boards, commissions or departments is not a party or would result in a Material Change, without the Town's prior written consent. The Town agrees not to withhold, its consent to any such settlement or compromise that involves solely the payment of money by the Developer (and expressly not by the Town) to the party(ies) appealing the issuance of the Approval and without any other terms or conditions concerning the Property or the Project. With respect to the settlement of any appeals of Entitlement Approvals issued by the Planning Board or any other boards, commissions or departments of the Town, the Developer shall not settle such appeal without the written consent of the Town permit granting authority that issued the Entitlement Approval, and without the written consent of the Select Board, which agrees not to unreasonably withhold or delay its consent with respect to any settlement that is approved by the Planning Board or the applicable Town permit granting authority.

(j) In addition, if the court hearing an appeal relating to an Approval imposes a condition to the issuance of such Approval in a final judgment, which condition either (A) the Developer reasonably determines would have a material adverse effect on the feasibility of the Project, or (B) is a Material Change, then the Developer or the Town (as the case may be) may, by written notice given to the other party, terminate this Agreement, in which event the Developer shall be entitled to the return of the Execution Deposit and the Selection Deposit (without interest), but the Seller shall retain the Proposal Deposit. In the event that this Agreement is terminated pursuant to this subsection (i), then, except as expressly provided otherwise in this Agreement, this Agreement shall be of no further force and effect and the parties shall have no further rights, obligations or liabilities hereunder.

Section 2.08 Conditions Precedent to the Seller's Obligation to Close.

Notwithstanding anything contained herein to the contrary, the Seller shall have no obligation to deliver the Deed and to execute and deliver the other documents required for the Closing as set forth herein, unless each of the following conditions has been satisfied (or the Seller, acting in its sole and absolute discretion, has waived such condition in writing) on or before the Closing Date:

- a. Status of Agreement. This Agreement shall not have been terminated by the Seller or the Developer in accordance with its terms;
- b. No Default. The Developer is not then in default beyond any applicable notice and cure period of one more of the following:
 - (i) The Developer does not comply with the requirements of Section 5.01.2;
 - (ii) A default of the Developer under Section 2.06(d);
 - (iii) A default of the Developer under Section 10.05; or
 - (iv) A default of the Developer exists under any material term or provision of this Agreement for which the Developer has received prior written notice from the Seller that remains uncured following the expiration of any applicable notice and cure period.
- c. Intentionally Omitted.
- d. No Change in Identity or Key Personnel. No Change in Identity (as hereinafter defined) of the Developer or change in Key Personnel (as hereinafter defined) shall have occurred other than such as has been approved in writing by the Town pursuant to Section 5.02.1 or Section 5.02.3 hereof;
- e. Financing. The Developer (i) shall provide a letter from its lender to the Town indicating that the Developer has obtained debt financing to construct the Project in accordance with the construction budget approved by such lender, (ii) shall provide written confirmation to the Town that it has obtained equity funding that, together with its debt financing, is in the amount of the budget for the Project which has been approved by the Developer's lender, and (iii) shall not later than the Closing Date, close on its construction financing and equity funding; provided, however, that the Closing Date may be extended for up to ten (10) Business Days if reasonably requested by Developer's lender;
- f. Approvals. The Developer shall have obtained all Entitlement Approvals necessary for the construction of the Project, except with respect to Entitlement Approvals to be issued by the Andover Building Inspector, the

Andover Building Inspector (i) shall have issued a demolition permit for the Project, which permit may be conditioned on the Developer, to the extent required by applicable Laws or the Andover Building Inspector, abating any asbestos within the existing structures at the Property and Private Property to be demolished or other prerequisites such as a pest report, and (ii) shall have issued, or shall be prepared to issue subject only to payment of the fee therefor (which fee the Developer shall pay to the Andover Building Inspector at the time of Closing), a foundation permit for the Project. As used in this Agreement, the term “**Approved Construction Documents**” shall mean any and all plans and specifications which have been submitted to, and approved by, the Andover Building Inspector with respect to the application for a demolition permit, foundation permit, or building permit, as the case may be, for all or any portion of the Project, and all appeal periods with respect thereto have expired with no appeal having been timely filed (or, if any such appeal has been timely filed, such appeal has been finally resolved by settlement or final non-appealable judgment);

- g. Construction Management Plan. The Town Manager shall have approved the Developer’s construction management plan for the Project (the “**CMP**”) (which approval shall not be unreasonably withheld, delayed or conditioned), which shall address matters such as the delivery of materials, the location of staging and laydown areas, the proposed flow of vehicular traffic to and from the Property and the Private Property during construction, and measures to be taken to mitigate the effects of construction on land, buildings, businesses and roadways in the vicinity of the Property. Notwithstanding the foregoing, a CMP for the Project approved by the Andover Planning Board shall satisfy this requirement;
- h. Insurance. The Developer has provided to the Seller certificates of insurance with respect to all insurance coverage required by the terms of this Agreement to be in existence during the construction of the Project, such policies to comply with the requirements of this Agreement;
- i. Disclosure of Beneficial Interest. The grantee named in the Deed shall have filed with the Commissioner of Capital Asset Management and Maintenance, and furnished the Seller with a copy of, a signed statement in the form attached hereto as Exhibit E;
- j. No Insolvency Event. The Developer shall not be the subject of an Insolvency Event (as hereinafter defined);
- k. Representations and Warranties of the Developer. All of the representations and warranties of the Developer contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date, as though republished and remade on and as of the Closing Date;

- l. Acquisition of Private Property. The deed(s) for the Private Property conveyed from Buxton Redevelopment, LLC to the Developer, together with any plans required to be recorded in connection with such deed(s), if any, are available for recording simultaneously with the Deed;
- m. LEED BD+C Pre-Certification. The Developer has provided to the Town of Andover Building Inspector a pre-certification issued by the USGBC pursuant to the LEED BD+C program at a level of Silver or higher with respect to each building included in the Project for which a building permit has been issued prior to the Closing;
- n. LEED ND Built Project Certification. The Developer has delivered to the Closing Escrow Agent (as hereinafter defined) the sum of \$45,500.00 (i.e., an amount equal to one (1%) percent of the Purchase Price) (the “**LEED Performance Deposit**”) to be further delivered to the Town at the Closing to secure the Developer’s obligation to obtain LEED ND Built Project Silver or higher certification for the habitable portion of the Project as constructed, which LEED Performance Deposit will be held and disbursed by the Town as provided in Section 3.09 of this Agreement;
- o. Other Documents. All other documents, agreements, affidavits and certifications reasonably required to be executed or delivered by the Developer in connection with the transaction contemplated by this Agreement (including, without limitation, the Restriction Documents (provided that the time for the delivery of the Affordable Housing Restriction (as hereinafter defined) is subject to Section 5.01.2), the Repurchase Agreement, and the Notice of Repurchase Agreement) shall have been fully executed by the parties thereto in form and content reasonably satisfactory to the Seller and Developer, and, with respect to the Restriction Documents, where required, executed by the Seller (if the Seller is not the grantee); and
- p. Lapse of Time. Subject to a Force Majeure, the Outside Closing Date (as hereinafter defined), as the same may be extended pursuant to this Agreement, shall not have occurred.

The Developer shall endeavor to submit to the Seller not later than ten (10) Business Days prior to the Closing Date all materials reasonably required by the Seller to satisfy such conditions. If all of the conditions set forth in the preceding clauses b. through p. have not been satisfied by the Closing Date (or otherwise waived by the Seller in writing), then the Seller shall provide written notice to the Developer detailing the deficiencies in such submittal, and if not cured within thirty (30) days the Seller have the right to terminate this Agreement effective immediately upon giving written notice to the Developer of such termination, and the Deposits shall be retained by the Seller as liquidated damages as the Seller’s sole and exclusive remedy hereunder, or at law or in equity for such failure of condition. In the event that the Seller terminates this Agreement, then except as expressly provided otherwise herein, this Agreement shall be of no further force and effect and neither the Developer nor the Seller shall have any further rights, obligations or liabilities hereunder.

Section 2.09 Conditions Precedent to the Developer's Obligation to Close.

Notwithstanding anything contained herein to the contrary, the Developer shall have no obligation to pay the Purchase Price and to execute and deliver the other documents required for the Closing as set forth herein, unless each of the following conditions has been satisfied (or the Developer, acting in its sole and absolute discretion, has waived such condition in writing):

- a. Status of Agreement. This Agreement shall not have been terminated by the Seller or the Developer in accordance with its terms.
- b. Condition of Property. The Property shall be in the condition required by this Agreement, including, without limitation, that, if the Town has elected to undertake any Post-Execution Environmental Release pursuant to Section 2.06.A, any Post-Execution Environmental Release shall have been remediated to a condition of Permanent Solution with No Conditions;
- c. Building Department Permits. If the Andover Building Inspector elects to do so in his discretion (after request by the Town), the Andover Building Inspector shall have issued a written letter confirming that so long as the Project's foundation is constructed in accordance with the foundation permit issued for the Project and otherwise in accordance with all applicable Laws, and provided any required fees are paid to the Town therefor, the Andover Building Department shall issue a building permit for the Project in the normal course;
- d. Representations and Warranties of the Seller. All of the representations and warranties of the Seller contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date, as though republished and remade on and as of the Closing Date;
- e. No Default. A default of the Seller exists under any material term or provision of this Agreement for which the Seller has received prior written notice from the Developer that remains uncured following the expiration of any applicable notice and cure period; and
- f. Other Documents. All other documents, agreements, affidavits and certifications reasonably required to be executed or delivered by the Seller in connection with the transaction contemplated by this Agreement shall have been fully executed by the parties thereto in form and content reasonably satisfactory to the Developer and the Seller.

If all of such conditions set forth in the preceding clauses b. through e. have not been satisfied by the Closing Date (or otherwise waived by the Developer in writing), then the Developer shall provide written notice to the Seller detailing the deficiencies in such submittal, and if not cured within thirty (30) days the Developer shall have the right to terminate this Agreement effective immediately upon giving written notice to the Seller of such termination, and the Deposits (without interest) shall be returned to the Developer, which if the Developer elects to terminate this Agreement shall be the Developer's sole and exclusive remedy hereunder, or at law

or in equity for such failure of condition. If the conditions set forth in clauses b. through e. have not been satisfied by the expiration of such 30-day cure period and if the failure to satisfy such conditions constitutes a default of the Seller under this Agreement, then the Developer, in lieu of termination, may also seek the remedies specified in Section 2.14(b). In the event that the Developer terminates this Agreement, then except as expressly provided otherwise herein, this Agreement shall be of no further force and effect and neither the Developer nor the Seller shall have any further rights, obligations or liabilities hereunder.

Section 2.10 Closing; Closing Date; Closing Procedure.

(a) Closing. The closing of the transaction contemplated by this Agreement (the “**Closing**”) shall occur at 10:00 a.m. on the date (the “**Closing Date**”) which is such date designated by Developer upon twenty (20) days prior written notice to the Town, which is the date that is the earlier to occur of (i) the date that is not more than sixty (60) days after the date that the Developer has obtained all of the Entitlement Approvals for the Project with all appeal periods having expired and without any appeal having been filed (including the Andover Building Department’s issuance of a foundation permit for the Project, or confirmation that such permit shall be issued upon the payment at the Closing of the fee therefor, and written confirmation pursuant to Section 2.09(c) that so long as the Project’s foundation is constructed in accordance with the foundation permit for the Project, the Andover Building Department shall issue a building permit for the Project in the normal course) and (ii) three (3) years from the date of this Agreement, which such 3-year period may be extended on account of (A) a Force Majeure or (B) in the event of an appeal of an Entitlement Approval, ninety (90) days from the latter of (x) the final disposition of such appeal by settlement or final non-appealable judgment; and (y) if the resolution of the appeal results in a remand to the permit granting authority, the issuance of a modified Approval following such remand which is not subject to appeal or contest and all other Approvals remain in full force and effect or (C) the 2025 Town Meeting Closing Extension Period or (D) in the event of a Post-Execution Environmental Release for which the Town elects the Developer Remediation Requirement, the additional time, in excess of the time necessary for the required remediation of any environmental conditions of the Property and Private Property existing as of the date of this Agreement, necessary for the Developer to achieve a Permanent Solution with No Conditions for such Post-Execution Environmental Release (such 3-year period, as it may be extended by the foregoing, the “**Outside Closing Date**”), provided that if the Closing Date falls on a day that is not a Business Day then the Closing shall occur on the next Business Day. The Closing will take place pursuant to an escrow-style closing with Developer’s nationally recognized title insurance company reasonably approved by the Seller serving as the escrow agent for purposes of the Closing (the “**Closing Escrow Agent**”). Upon satisfaction or completion of all closing conditions and deliveries, the Closing Escrow Agent shall immediately record and deliver the closing documents to the appropriate parties and make disbursements according to the closing statement executed by the Seller and the Developer.

(b) Seller’s Deliveries in Escrow. On or before three (3) Business Days immediately prior to the Closing Date, the Seller shall deliver or cause to be delivered in escrow to the Closing Escrow Agent, with copies to Developer, the following documents and instruments, duly executed and acknowledged (if applicable) by the Seller:

- (1) the Deed conveying to the Developer title to the Property;

- (2) each of the Restriction Documents (provided that the time for the delivery of the Affordable Housing Restriction is subject to Section 5.01.2), executed by the Developer and the grantee thereunder (and if the Seller is not the grantee of a restriction pursuant to a Restriction Document, then also executed by the Seller where required);
- (3) an Estoppel Certificate in accordance with Section 10.23;
- (4) an original counterpart to this Agreement, signed by the Seller and notarized;
- (5) the “Repurchase Agreement” to be entered into between the Town and the Developer, substantially in the form attached hereto as Exhibit H and made a part hereof (the “**Repurchase Agreement**”), executed by the Developer and the Seller;
- (6) a “Notice of Repurchase Agreement” substantially in the form attached hereto as Exhibit I and made a part hereof, identifying the Repurchase Agreement and the parcels of Private Property which are subject to the Repurchase Agreement (the “**Notice of Repurchase Agreement**”), executed and acknowledged by the Seller;
- (7) a counterpart of the license agreement in substantially the form attached hereto as Exhibit J, concerning the Town’s use of the Community Facility to be constructed at the Project (the “**License Agreement**”);
- (8) a counterpart of the closing and settlement statement;
- (9) an affidavit relating to mechanics’ liens and parties in possession in the form customarily provided by sellers of commercial properties in the Boston metropolitan area;
- (10) a certification that Seller is not a “foreign person” as defined in Section 1445 of the IRC.
- (11) a certification by the Seller that all representations and warranties made by the Seller in Section 9.02 of this Agreement are true and correct in all material respects on the Closing Date, except as may be set forth in such certificate; and
- (12) any additional documents which are customarily required in commercial transactions similar to this that the Developer or the Closing Escrow Agent may reasonably require for the proper consummation of the transaction contemplated by this Agreement.

(c) Developer’s Deliveries in Escrow. On or before the last Business Day immediately prior to the Closing Date, the Developer shall deliver in escrow to the Closing Escrow Agent (i) the Purchase Price, less the Deposits, plus or minus applicable proration and adjustments which

are customary for transfers of real estate in Massachusetts, including the Pro Forma Tax as required by M.G.L. c.59, sec. 2C, and (ii) the LEED Performance Deposit. On or before three (3) Business Days immediately prior to the Closing Date, the Developer shall deliver in escrow to the Closing Escrow Agent the following documents and instruments, duly executed and acknowledged (if applicable) by the Developer:

- (1) such tax forms or returns, if any, as are required to be delivered or signed by the Developer by applicable Laws in connection with the conveyance of the Property by the Seller to the Developer;
- (2) originals of all Approvals (or notice of issuance of an Approval) required to be recorded at the Registry as a condition to their effectiveness (including, without limitation, the decision by the Andover Planning Board issuing the Special Permit);
- (3) each of the Restriction Documents (provided that the time for the delivery of the Affordable Housing Restriction is subject to Section 5.01.2), executed by the Developer and the grantee thereunder (and if the Seller is not the grantee of a restriction pursuant to a Restriction Document, then also executed by the Seller where required);
- (4) the Repurchase Agreement, executed by the Developer;
- (5) the Notice of Repurchase Agreement, executed and acknowledged by the Developer;
- (6) an original counterpart to this Agreement, signed by the Developer and notarized;
- (7) a counterpart of the License Agreement;
- (8) a counterpart of the closing and settlement statement;
- (9) a certification by the Developer that all representations and warranties made by the Developer in Section 9.01 of this Agreement are true and correct in all material respects on the Closing Date, except as may be set forth in such certificate;
- (10) the certificate required by M.G.L. c. 7C, sec. 38 in the form attached hereto as Exhibit E;
- (11) the Tax Compliance Certificate required by M.G.L. c. 62C, sec. 49A in the form attached hereto as Exhibit F;
- (12) the Non-Collusion Certificate in the form attached hereto as Exhibit G;

- (13) any plans as may be required in connection with the recordation of the Deed, which shall be the Developer's obligation and expense to prepare and record;
- (14) the deed(s) conveying title of all of the Private Property to the Developer, together with any plans required to be recorded in connection with such deed(s), if any; and
- (15) any additional documents which are customarily required in commercial transactions similar to this that the Seller or the Closing Escrow Agent may reasonably require for the proper consummation of the transaction contemplated by this Agreement.

(d) LEED Performance Deposit. At the Closing, the Closing Escrow Agent shall pay over to the Town the LEED Performance Deposit, which shall be held and disbursed by the Town as provided in Section 3.09 of this Agreement.

Section 2.11 Adjustments.

Water and sewer charges (if any) shall be apportioned and adjusted, as of the day of performance of this Agreement and the net amount thereof shall be added to or deducted from, as the case may be, the purchase price payable by the Developer at the time of delivery of the Deed. The Seller is exempt from payment of Massachusetts Deed Excise stamps on the Deed under M.G.L. c. 64D, §1. Seller shall obtain the water and sewer final reading not more than two (2) Business Days prior to the Closing Date.

Provided that the Town's Assessor has provided the calculation, the Developer shall pay at the Closing a Pro Forma Real Estate Tax in accordance with the provisions of M.G.L. Chapter 59, Section 2C.

Section 2.12 Possession and Condition of Property.

Full possession of the Property, free of all tenants and occupants, is to be delivered at the time of delivery of the Deed, the Property to be then in the same condition as it now is, subject to Section 2.06 above, reasonable use and wear thereof excepted and free and clear of debris, stockpiled materials, including soil and sand, vehicles and with all personal property removed from the Property. The Developer shall be entitled personally to inspect said premises prior to the delivery of the Deed in order to determine whether the condition thereof complies with the terms of this clause.

Section 2.13 Delivery and Acceptance of Deed.

Except as otherwise expressly provided herein, the delivery by the Seller and acceptance of the Deed by the Developer and the recording thereof by the Closing Escrow Agent shall be deemed to be a full performance and discharge of every agreement and obligation of the Seller and Developer contained in this Article 2 of this Agreement, except such agreements or obligations which, by the terms hereof, are to be performed after the delivery of the Deed. This Section shall survive the Closing and the delivery of the Deed.

Section 2.14 Default; Damages.

(a) Developer Default. If the Developer shall fail to perform any of its covenants and agreements contained in Article 2 of this Agreement in any material respect when required to be performed hereunder prior to the recording of the Deed, and such failure shall continue after the Seller gives the Developer written notice of such failure for thirty (30) days in the case of the Developer's failure to pay any amount to the Town when due and owing hereunder, or for sixty (60) days in the case of any non-monetary breach (or if such non-monetary breach is curable through the use of diligent efforts but is not so curable within such 60-day period, then within such longer period as is reasonably necessary to cure the same, provided the cure is commenced reasonably promptly after receipt of said notice and continuously and diligently prosecuted to completion, subject to Force Majeure), then if not cured the Seller shall have the right to terminate this Agreement effective immediately upon giving written notice to the Developer of such termination (provided, however, that such termination shall be of no force or effect if, prior to the date of termination specified in Seller's notice to the Developer, the Developer cures such failure), and the Deposits (together with all interest accrued thereon) shall be retained by the Seller as liquidated damages. The remedy set forth in the preceding provisions of this Section 2.14(a) shall be the Seller's sole and exclusive remedy hereunder, or at law or in equity, for the Developer's default prior to the Closing in the performance of any of its covenants and agreements contained in Article 2 of this Agreement. In the event that the Seller terminates this Agreement, then except as expressly provided otherwise herein, this Agreement shall be of no further force and effect and neither the Developer nor the Seller shall have any further rights, obligations or liabilities hereunder. Notwithstanding anything to the contrary contained herein, under no circumstances shall the Town be entitled to recover any indirect, special, multiple, incidental, punitive, or consequential damages for a Developer default in the performance of any of its covenants and agreements contained in Article 2 of this Agreement.

(b) Seller Default. If the Seller shall fail to perform any of its material covenants and agreements contained in Article 2 of this Agreement when required to be performed hereunder prior to the recording of the Deed, and such failure is susceptible to cure and shall continue after the Developer gives the Seller written notice of such failure for thirty (30) days in the case of the Seller's failure to pay any amount to the Developer when due and owing hereunder, or for sixty (60) days in the case of any non-monetary breach (or if such non-monetary breach is curable through the use of diligent efforts but is not so curable within such 60-day period, then within such longer period as is reasonably necessary to cure the same, provided the cure is commenced reasonably promptly after receipt of said notice and continuously and diligently prosecuted to completion, subject to Force Majeure), then the Developer shall have the right to either terminate this Agreement effective immediately upon giving written notice to the Seller of such termination, and the Deposits shall be returned to the Developer (without interest), or, to the extent permitted by applicable Law, bring an action for specific performance of this Agreement within one hundred twenty (120) days after the expiration of such 10-Business Day cure period. Notwithstanding the foregoing, if, in breach of this Agreement, the Town sells the Property (or any portion thereof) to someone other than the Developer or otherwise takes, or fails to take, action that renders the remedy of specific performance impossible to obtain, the Town shall be liable for any damages suffered by the Developer as a result of such breach (subject to the last sentence of this paragraph). The remedies set forth in the preceding provisions of this Section 2.14(b) shall be the Developer's sole and exclusive remedy hereunder, or at law and in equity, for a Seller's default in the

performance of any of its covenants and agreements contained in Article 2 of this Agreement. In the event that the Developer terminates this Agreement, then except as expressly provided otherwise herein, this Agreement shall be of no further force and effect and neither the Seller nor the Developer shall have any further rights, obligations or liabilities hereunder, except as otherwise provided otherwise herein. Notwithstanding anything to the contrary contained herein, under no circumstances shall the Developer be entitled to recover any indirect, special, multiple, incidental, punitive, or consequential damages for a Seller default in the performance of any of its covenants and agreements contained in Article 2 of this Agreement.

Section 2.15 Construction of the Project; Use of the Property.

The Property will be conveyed subject to provisions of this Agreement that ensures that the construction of the Project proposed by the Developer will be completed by the Developer, that the Property will not be transferred prior to Completion of the Project (other than in connection with a foreclosure of the Developer's Mortgage (as hereinafter defined) by the Mortgage Holder (as hereinafter defined) or deed in lieu of foreclosure to the Mortgage Holder), and that for the duration of the Restriction Period (as defined in Section 5.01 hereof), the use and occupancy of the Property shall be substantially in accordance with this Agreement. Reference is hereby made to Sections 5.01, 5.02, 5.03 and 8.02 of this Agreement for more detailed provisions relating to these matters.

Section 2.16 Closing Costs.

(a) The Seller shall pay the recording fee for the recordation of all documents and instruments necessary to remove Unpermitted Exceptions and Title Exceptions from title to the Property, if any are removed by Seller pursuant to the provisions of Section 2.05 of this Agreement, as well as all necessary documents evidencing the Town's legal authority to consummate the transaction contemplated hereby, including certified copies of any votes of Andover the Town Meeting and any instruments relating to the discontinuance of Lewis Street, takings and other matters listed as Title Exceptions. The Seller shall also be solely responsible for one half (1/2) of the reasonable fees of the Closing Escrow Agent for closing escrow services.

(b) The Developer shall pay for the recordation of the Deed and such of the other documents delivered to, by or on behalf of the Developer at the Closing as shall be recorded in connection with this transaction. The Developer shall also be solely responsible for all of its title insurance premiums and charges, title search charges, survey charges, and one half (1/2) of the reasonable fees of the Closing Escrow Agent for closing escrow services.

(c) Each of the Seller and the Developer shall pay the fees and expenses of its counsel and other agents, contractors and consultants retained by it in connection with the purchase or sale of the Property.

(d) The Seller and the Developer shall each pay such other Closing costs as are customarily paid by each such party in the Boston metropolitan area.

Section 2.17 Use of Sale Proceeds to Clear Record Title.

Any unpaid water charges and sewer charges, together with the interest and penalties thereon to the Closing Date, and any other liens and encumbrances which the Seller is obligated to pay and discharge pursuant to the terms of this Agreement, together with the cost of recording or filing any instruments necessary to discharge such liens and encumbrances of record, may be paid out of the proceeds payable to the Seller at the Closing, provided that the documents required to clear record title of any such liens or encumbrances are available for recording at the Closing or arrangements for the delivery thereof have been made to the mutual satisfaction of the parties.

ARTICLE 3

CONSTRUCTION OBLIGATIONS

Section 3.01 Construction of Project.

The Developer shall design and construct on the Land and the Private Property the following improvements as part of the Project, substantially in accordance with the plans attached hereto as Exhibit B, as may be amended from time to time in accordance with Section 2.07(b) of this Agreement if required by permit granting authorities issuing Entitlement Approvals, including any modifications required by the Planning Board in connection with its issuance of the Special Permit, except that no Material Changes shall be made unless those changes are approved by the Seller (the “**Approved Plans**”). In the event of a conflict between the plans approved by the Select Board and the plans approved by the Planning Board, the Planning Board plans shall control, except that no Material Changes shall be made unless those changes are approved by the Seller:

(a) *Buildings*: The buildings (the “**Buildings**”), to be constructed in substantially accordance with the Approved Plans but subject to minor variations related to usual and customary construction tolerances attendant to projects of this size, scope and complexity if such variations are permitted by the Special Permit, the other Entitlement Approvals, and the Andover Building Inspector;

(b) *Parking*: The parking facilities serving the Project, to be constructed in substantially accordance with the Approved Plans but subject to minor variations related to usual and customary construction tolerances attendant to projects of this size, scope and complexity if such variations are permitted by the Special Permit, the other Entitlement Approvals, and the Andover Building Inspector; and

(c) *Other Improvements*: To the extent that the Developer proposes to construct as part of the Project streets which the Developer anticipates later requesting, in the Developer’s sole discretion, the Town to accept as public ways, such streets shall be built in accordance with the standards set forth in Section 7 of the Andover Subdivision Rules and Regulations, as the same may be modified for the Project by the Planning Board in the course of its issuance of the Special Permit. Acceptance by the Town of such streets as public ways shall be subject to the provisions of Section 8 of the Andover Subdivision Rules and Regulations.

As used in this Agreement, the term “Project” shall include the demolition of all structures and improvements existing on the Land and the Private Property (other than the building located at 122 North Main Street) in accordance with one or more demolition permits to be issued by the

Town of Andover Building Inspector, and the removal and disposal of the debris resulting therefrom in accordance with all applicable Laws, all of which work shall be performed at the Developer's sole cost and expense.

Section 3.02 Approved Plans.

The Developer agrees to construct the Project substantially in accordance with the Approved Plans (but subject to minor variations related to usual and customary construction tolerances attendant to projects of this size, scope and complexity if such variations are permitted by the Special Permit, the other Entitlement Approvals, and the Andover Building Inspector), and not to make any substantial change or revision to the Project as shown on the Approved Plans, including, without limitation, any changes to the Buildings, parking and landscaping, during the course of construction unless such changes are first approved by the Planning Board or make any Material Changes unless those changes are approved by the Seller. Nothing herein shall be deemed to waive the Developer's obligations to apply for and comply with all Approvals governing the Property and the Private Property or the Project; *provided, however*, that the Developer may make insignificant changes as may otherwise be consistent with applicable Planning Board or other regulatory body requirements.

Section 3.03 Construction Schedule.

(a) Subject only to delays caused solely by Force Majeure, the Developer shall begin the Commencement Work (as hereinafter defined) for the Project in accordance with the Approved Plans and the Approved Construction Documents by a date that is sixty (60) days after the Closing (the "**Project Commencement Date**"), and shall achieve the completion of the Commencement Work by the date that is six (6) months after the start of the Commencement Work. As used herein, the "**Commencement Work**" means: (i) the Developer's completion of a pre-demolition survey, (ii) the completion of any asbestos abatement of the existing structures and other improvements at the Property and Private Property if required by Laws, (iii) the completion of the demolition of the existing structures and other improvements at the Property and Private Property (other than the building located at 122 North Main Street), and (iv) commencing the actual excavation of soils for the construction of the foundation for the residential Building of the Project.

(b) Subject only to delays caused solely by Force Majeure, the Developer hereby covenants and agrees, after the Project Commencement Date, to diligently prosecute the construction of the Project and the construction schedule as most recently approved by the Town pursuant to Section 3.03(d) below, and to achieve completion of the Commencement Work within the time period specified in Section 3.03(a) above (such date being evidenced by the date of the Repurchase Release, as defined in the Repurchase Agreement), and to Complete (as hereinafter defined) construction of the entire Project by a date which is thirty (30) months after the date the Developer has achieved the completion of the Commencement Work (the "**Project Completion Date**"). The Project shall be deemed "**Complete**" or shall have achieved "**Completion**" on the date that: (i) the Town of Andover Building Inspector has issued a certificate of occupancy (that is not a temporary certificate of occupancy) for the last building to be constructed as part of the Project as shown on the Approved Plans (provided, however, that if the Developer has obtained a temporary certificate of occupancy and not a permanent certificate of occupancy as of the Project Completion Date, then the Developer shall have the right to extend the Project Completion Date by a period of six (6) months by written notice to the Town

for the sole purpose of obtaining a permanent certificate of occupancy for the Project); (ii) all buildings and improvements included within the Project can be used for their respective intended purposes as evidenced by a certificate of substantial completion issued by the Developer's architect, subject only to a punch list of items remaining to be completed of minor nature of construction, decoration, painting, and millwork; (iii) the Project is free of debris and construction materials, and is in usable condition; (iv) all landscaping is completed and planted and all paving work is completed, except for such work that cannot be completed due to seasonal conditions; (v) in addition to the certificate of occupancy from the Andover Building Inspector as aforesaid, the Developer has received from any board, commission or department of the Town that has issued an Approval for the Project any certificates, sign-offs, or other approvals from such permit granting authority required pursuant to the Approval issued by such permit granting authority; and (vi) the Developer has executed, acknowledged and delivered to the Town instruments in form and content acceptable to the Town and suitable for recording, granting to the public rights of access to and passage over such streets and ways included within the Project required by the Planning Board, if any, in the Special Permit (including those, if any, which the Developer later intends to request the Town to accept as public ways).

(c) For purposes of this Agreement, "**Force Majeure**" shall mean a delay or stoppage due to strikes, civil riots, war, acts of terrorism, invasion, earthquake, flood, explosion, fire or other casualty, acts of God, adverse weather conditions not reasonably anticipated whether actual or threatened; act, delay or failure to act of quasi-governmental or governmental authorities, including Town boards, commissions, departments, and employees; public health pandemics or other health care emergency; supply-chain delays, including, without limitation shortages of or delay in obtaining material, labor or supplies, shortage of energy; boycotts or similar job actions by employees or labor organizations; unanticipated and unforeseen changes in any statute, law, by-law, or regulation applicable to the Project; unanticipated and unforeseen governmental or orders affecting the development of the Project; inability to procure a site for disposal of urban fill from the Land and the Private Property at budgeted cost (an "**Urban Fill Force Majeure**"); unanticipated and unforeseen site conditions not covered by reasonable geotechnical testing that a prudent developer of a similar project to the Project would normally undertake (a "**Geotechnical Site Condition Force Majeure**"); delay beyond any time period specified herein in the Town providing any approval or consent required by this Agreement; the failure of a tenant or occupant of the Private Property to quit and surrender its premises by the expiration or earlier termination of the term of its tenancy with Buxton Redevelopment, LLC (provided, however, that the Developer agrees to use, or cause Buxton Redevelopment, LLC to use, diligent efforts to timely terminate such tenancy and promptly file and diligently prosecute summary process proceedings to evict any such tenants or occupants); or other causes whether similar or dissimilar to the foregoing beyond the reasonable control of the party required to make performance, but specifically excluding financial constraints of such party; provided, in all cases, that (i) such act or event is beyond the reasonable control of the party claiming Force Majeure after pursuing diligently commercially reasonable efforts to remedy the delaying condition in an expedient and efficient manner and was not separately or concurrently caused by any act or omission of such party or could not have been prevented by commercially reasonable actions on the part of such party, and (ii) the party claiming Force Majeure shall have notified the other party within a reasonable time after discovering the occurrence of the event of Force Majeure. The time or times for performance under this Agreement shall be extended for the period of delay caused solely by such event of Force Majeure. If a party asserts a claim of Force Majeure by notifying the other

party, as aforesaid, the party receiving such notice shall have the right to dispute the claim of Force Majeure or the period of delay caused by such Force Majeure event by written notice to the claiming party. If the receiving party does not notify the claiming party of any such dispute within fifteen (15) Business Days of its receipt of such notice, the claiming party may notify the receiving party and request again that the receiving party provide any written dispute of the claim of Force Majeure or the period of delay caused by such Force Majeure event, which such second notice shall include on the first page thereof **“FAILURE TO RESPOND TO THIS NOTICE WITHIN TEN (10) BUSINESS DAYS SHALL CONSTITUTE A WAIVER OF CERTAIN RIGHTS OF THE PARTY RECEIVING THIS NOTICE”**. If the receiving party fails to provide any such written dispute within ten (10) Business Days after its receipt of such second notice, then the time period of such Force Majeure event identified in the claiming party’s original notice shall be deemed approved. Notwithstanding anything in this Agreement to the contrary, the duration of any Urban Fill Force Majeure and Geotechnical Site Condition Force Majeure shall not exceed, in the aggregate, a period of three (3) months. If the Town and the Developer do not agree on the length of any period or the validity of any claimed Force Majeure, then either party, upon prior written notice to the other, may invoke the neutral decision process described in Exhibit K attached hereto.

(d) The Developer shall submit to the Town Manager for his review and approval, which approval shall not be unreasonably withheld, delayed, or conditioned, prior to beginning the Commencement Work a detailed construction schedule for the Project, in a format required by Developer’s Mortgage Holder (as hereinafter defined). This schedule shall be updated and resubmitted upon request, but not more than once every three (3) months, except if more frequently required by any Town department in the normal course of its operations, with actual progress shown, until the Town Manager has issued a Certificate of Completion (as hereinafter defined). This submission shall be accompanied by a written report by the Developer citing any material adjustments to the progress forecast, analyzing the causes thereof, and where applicable, noting proposed corrective efforts. Any such corrective efforts, as well as any modifications to the construction schedule as initially reviewed and approved by the Town Manager, shall be subject to the written approval of the Town Manager, which approval shall not be unreasonably withheld, delayed, or conditioned with respect to any matters outside the Developer’s reasonable ability to control, and provided that no such modifications may extend the Project Completion Date, except for Force Majeure. If the Town Manager has not approved or disapproved such construction schedule or any updates thereof, as the case may be, within ten (10) Business Days after the submission of the same to the Town Manager in accordance with Section 10.06, the Developer may notify the Town (the **“Second Construction Schedule Notice”**) and request again that the Town Manager provide his written approval of such construction schedule or such updates, which such notice shall include on the first page thereof **“FAILURE TO RESPOND TO THIS NOTICE WITHIN TEN (10) BUSINESS DAYS SHALL CONSTITUTE A WAIVER OF CERTAIN RIGHTS OF THE TOWN”**. If the Town Manager fails to provide such approval or disapproval of such construction schedule or update within ten (10) Business Days after its receipt of the Developer’s Second Construction Schedule Notice, it shall be deemed that the Town Manager has approved such construction schedule or update.

(e) During the construction of the Project, such construction shall be subject to inspection by representatives of the Town charged with inspection and representatives of the Town may with reasonable advance notice, at their own risk, and subjection to limitations imposed by

Developer, its insurer and/or general contractor. All access shall be accompanied by a representative of Developer and shall not interfere with construction activities. The Town and all those claiming by through and under the Town hereby agree to release, and hereby release, Developer and its contractors from any claims for personal injury and property damage resulting from their presence on or about the Land and/or Private Property, except to the extent arising out of the gross negligence or willful misconduct of the Developer or its contractors(s). All visitors must sign the Developer's job visit release form (which, if inconsistent with the terms and provisions of this Agreement, shall not act to amend or modify this Agreement in any respect) and conform to safety requirements of Developer or its contractor, including, without limitation, wearing hard hats, safety glasses and high visibility vests at all times for safety when on the Land or Private Property. Access to certain portions of the Land and Private Property may be excluded for safety reasons or interference with construction activities. Notwithstanding anything in this Section 3.03(e) to the contrary, this Section 3.03(e) shall not apply to any inspection of, or access to, the Land or the Private Property by the Town in connection with the exercise of its municipal powers in the normal course of its business (for example, an inspection of the Project by the Building Inspector), provided that in connection with any such inspection or access, the Town employees inspecting or accessing the Land and the Private Property shall inform the Developer's contractor prior to such access (except in the event of an emergency) and shall comply with safety protocols applicable to such inspection and access and mandated by the U.S. Occupational Safety Health Administration (OSHA).

(f) It is intended and agreed that the agreements and covenants contained in this Section 3.03 with respect to the beginning and Completion of construction of the Project shall be covenants running with the land. This subsection shall not, however, apply against a Mortgage Holder (as hereinafter defined) permitted by this Agreement.

Section 3.04 Performance of the Work.

The Developer shall procure all necessary Approvals for the Work being undertaken before undertaking such Work, and shall cause all of the Work to be performed in a good and workerlike manner, in compliance with good engineering and construction practices, and in accordance with the Approved Plans, the Approved Construction Documents, the CMP, and all applicable Laws and the provisions of all Approvals. The Developer shall take all commercially and reasonably necessary measures to (i) minimize dust, noise, light trespass, and construction traffic, (ii) minimize any damage, disruption or inconvenience caused by the Project, and (iii) make adequate provision for the safety and convenience of all persons affected thereby and to police the same. As a precondition for the issuance of any Certificate of Occupancy for a Building, the Developer shall provide a certification to the Town by the Developer's architect, at the Developer's expense, that the Work has been performed substantially in accordance with the Approved Plans and the Approved Construction Documents.

The Developer shall be solely responsible for awarding and administering all construction contracts for the construction of the Project, and the Seller shall have no obligation to award, administer or make any payments under any such construction contract, nor any liability thereunder. The Seller shall not be responsible for making any payments to any contractors, subcontractors, agents, consultants, employees or suppliers of the Developer.

The Developer shall be solely responsible for all costs and expenses of (a) the design, permitting and construction of the Project, including the installation of all utilities and site work and any other measures necessary to construct and occupy the Project in compliance with this Agreement and all applicable Laws, (b) all products, materials, tools, equipment, and fixtures relating to the Project, and (c) all contractors, subcontractors, architects, engineers, project managers, construction managers, attorneys and consultants relating to the Project.

Section 3.05 Prompt Payment by the Developer; Liens.

The Developer shall make, or cause to be made, prompt payment of all money due and legally owing and not disputed in good faith by the Developer to all persons and entities doing any work, furnishing any materials or supplies or renting any equipment to the Developer or any of its contractors or subcontractors in connection with the development, construction, furnishing, repairs, or reconstruction of any portion of the Project. The Developer shall not permit any mechanic's liens or similar liens (which shall not include one or more Notices of Contract pursuant to MGL c. 254) to remain upon the Land or the Private Property for labor and materials furnished to the Developer in connection with work of any character performed at the direction of the Developer and shall cause any such lien to be released of record without cost to the Town, by satisfaction and discharge of such lien or by providing surety against such lien by bond, unless otherwise provided in this Agreement or agreed by the Town in writing.

Section 3.06 Performance Bond.

(a) Prior to the commencement of any work by each of the sub-trades listed below on the Property or the Private Property, the Developer shall provide for such sub-trade subcontractor a performance bond(s) in a form reasonably satisfactory to the Town from the following sub-trades on the Project: (i) site work, (ii) foundation, (iii) framing, (iv) electrical, (v) plumbing, (vi) HVAC, and (vii) roofing in the amount budgeted for such sub-trade in the Project's construction budget, with a surety subject to the reasonable approval of the Town, running to the benefit of the Mortgage Holder(s) and the Town, as their interests may appear. In the event the Project or the applicable sub-trade's work on the Project, is not Completed within the time set forth in Section 3.03 hereof, or if the Project, or the applicable sub-trade's work on the Project, is not Completed substantially in accordance with the Approved Plans and the Approved Construction Documents, the Town, in coordination with the First Mortgage Holder (as hereinafter defined) may require that the surety complete the applicable sub-trade's work on the Project, in accordance with the Approved Plans and the Approved Construction Documents subject to the terms of the applicable bond. Notwithstanding anything in the immediately foregoing sentences to the contrary, the First Mortgage Holder shall have the first right to exercise any available remedies under such performance bonds and be entitled to proceeds with respect thereto. If the Project includes any streets or ways which are either intended by the Developer or required by the Planning Board to become public ways upon completion of their construction, the Developer shall provide an additional performance bond to the Town, in a form satisfactory to the Town and in an amount reasonably determined by the Planning Board, to secure the Developer's obligation to construct such ways in accordance with the standards set forth in Section 7 of the Andover Subdivision Rules and Regulations, as the same may be modified for the Project by the Planning Board in the course of its issuance of the Special Permit, and to obtain the Town's acceptance of the same as public ways.

Section 3.07 Utility Services.

(a) It is understood and agreed that the Developer shall undertake and complete, at the Developer's sole cost and expense, the capping, filling, removal, and disposal of all existing abandoned utilities located on and/or under the Property and the Private Property, as the Developer may deem necessary. The Seller shall not be responsible for moving or filling with concrete any abandoned, underground utility lines, pipes and/or conduits.

(b) The Developer shall be solely responsible, at its sole cost and expense, for any utility locations, relocation, upgrades and/or modifications for all utilities to the Project that it deems necessary for the use and occupancy of the Project or are required by applicable Laws, including, without limitation, natural gas, electric, communications, storm water, or water as may be necessary to service the Project, as well as the relocation of the existing Town water and sewer lines to the location identified on the plan attached hereto as Exhibit D or in another location mutually agreed to by the parties. Notwithstanding anything in this Section 3.07(b) to the contrary, in no event shall the Developer be responsible for the cost of relocating any municipal utilities existing at, on, or under the Property as of the date of this Agreement, other than those identified on Exhibit D. For the avoidance of doubt, and other than the relocation of the utility lines identified on Exhibit D, nothing in this Section 3.07(b) shall be interpreted so as to require the Developer to be responsible for the cost of any utility improvements benefitting any property other than the Property or the Private Property.

(c) The Developer shall provide "As-Built" plans for each phase of utilities work as completed. The As-Built plans shall be prepared and stamped by a Registered Land Surveyor licensed in Massachusetts and shall show the horizontal and vertical location of all improvements, all new or relocated utilities, and all existing utilities to be retained. The As-Built plans shall be provided in hard copy and digital format, in a form acceptable to the Town's Department of Public Works and compatible with the Town's existing Geographical Information System.

(d) Any work performed under subsections (a) or (b) above that is not substantially in accordance with the Approved Construction Documents and/or all applicable Laws shall be immediately remedied and repaired at the sole cost of the Developer and/or its contractor, or, at the election of the Seller, by the Seller (i) in the case of emergency or when necessitated by reason of public health or safety, without prior notice to the Developer, or (ii) in all other instances, in the event the Developer fails for any reason to cure such defects after written notice thereof and a cure period of thirty (30) days or if the cure of such defects is of such a nature that it may not be reasonably cured within thirty (30) days then such longer period as may be reasonably required provided the Developer commence such cure within such thirty (30) day period and diligently prosecute the same to completion. The Seller shall be entitled to recoup its costs and expenses in exercising such rights if expressly permitted by applicable Laws. Nothing in this Section 3.07 is meant to limit or restrict any rights the Town may have as a governmental entity with respect to the proper functioning and installation of utilities in the Town of Andover.

(e) The provisions of this Section 3.07 shall survive the Closing and the delivery of the Deed, but not the Certificate of Completion.

Section 3.08 Certificate of Completion.

(a) Upon written request made by the Developer following (i) submission to the Town of a copy of the fully executed and recorded Affordable Housing Restriction in accordance with Section 5.01.2 below, and (ii) Completion of construction of the entire Project (as defined in Section 3.03 hereof), the Town shall inspect the Project and, if Completion of construction of the entire Project has occurred, then the Town Manager shall issue the “**Certificate of Completion**” to the Developer within thirty (30) days of its receipt of such request. The Town Manager shall be under no obligation to issue a Certificate of Completion until such time as the Developer has requested in writing that the Town issue a Certificate of Completion and the Town has made such inspection of the Project for such purpose. There will be only one (1) Certificate of Completion issued with respect to the Project.

(b) If the Town shall refuse or fail to provide the Certificate of Completion in accordance with the provisions of this Section, the Town or a representative of the Town shall, within thirty (30) days after written request by the Developer, provide the Developer with a written statement indicating in reasonable detail in what respects the Developer has failed to Complete the Project in accordance with the provisions of this Agreement, the Approved Plans, and the Approved Construction Documents, and what measures or acts will be necessary, in the opinion of the Town, for the Developer to take or perform in order to obtain such certification. If, after the expiration of such 30-day period, the Town fails to provide such written statement to the Developer, the Developer may notify the Town (the “**Second Certificate of Completion Notice**”) and request again that the Town provide such written statement, which such notice shall include on the first page thereof “**FAILURE TO RESPOND TO THIS NOTICE WITHIN TEN (10) BUSINESS DAYS SHALL CONSTITUTE A WAIVER OF CERTAIN RIGHTS OF THE TOWN**”. If the Town fails to provide such written statement within ten (10) Business Days after its receipt of the Developer’s Second Certificate of Completion Notice, it shall be conclusive that completion of the entire Project has occurred and Developer is entitled to the Certificate of Completion, without reservation.

(c) Notwithstanding anything to the contrary in this Agreement, the Certificate of Completion issued by the Town pursuant to Section 3.08(a) above shall be a conclusive determination of satisfaction and termination of this Agreement and the covenants in this Agreement, except those that expressly survive the issuance of the Certificate of Completion. Any such certification shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any Funding Source, including any Mortgage Holder. The issuance of the Certificate of Completion shall bar the exercise thereafter of any remedies by the Town set forth in this Agreement which are expressly limited to be exercised prior to the issuance of a Certificate of Completion.

Section 3.09 LEED Performance Deposit.

Upon receipt by the Town of the LEED Performance Deposit from the Closing Escrow Agent at the Closing as provided in Section 2.10(d) above, the Town shall hold the LEED Performance Deposit to secure the Developer’s obligation to obtain LEED ND Built Project Silver or higher certification for the habitable portion of Project as constructed. The Town may commingle the LEED Performance Deposit with other funds of the Town, and shall not be required

to pay any interest on the LEED Performance Deposit to the Developer. The Town shall continue to hold the LEED Performance Deposit from the Closing until the earlier of (i) receipt by the Town of evidence that the USGBC has issued a LEED ND Built Project Silver or higher certification for the habitable portion Project as constructed, in which case the Town shall promptly thereafter disburse the LEED Performance deposit to the Developer (without interest), or (ii) two (2) years (which two year period may be extended by the Town in its sole and absolute discretion or by Force Majeure) after the issuance by the Town of Andover Building Inspector of a certificate of occupancy (that is not a temporary certificate of occupancy) for the last building to be constructed as part of the Project as shown on the Approved Plans, in which case, if the requirements of the preceding clause (i) have not been satisfied by such two-year anniversary (as such two year period may be extended by the Town in its sole and absolute discretion or by Force Majeure), the LEED Performance Deposit shall become the sole property of the Town as part of its General Fund, the Developer shall have no rights in or claim to the LEED Performance Deposit and the Town may expend such funds as it deems appropriate, in its sole and absolute discretion. The provisions of this Section 3.09 shall survive the issuance of a Certificate of Completion pursuant to Section 3.08 hereof.

Section 3.10 Representatives.

The Developer shall designate in writing a representative or representatives authorized to act on its behalf. Unless and until the Town has received written notice that such authority has been revoked, the Town shall be entitled to rely upon the directives of such representative(s). The Town shall act by and through its Town Manager who is authorized to act on its behalf.

ARTICLE 4

FINANCING; RIGHTS OF MORTGAGEES

Section 4.01 Financing.

This Agreement and the Repurchase Agreement shall be senior in priority to any Mortgage (as defined below) entered into by the Developer or encumbering the Land or the Private Property, and any Mortgage Holder (as defined below) that acquires the Land or the Private Property by foreclosure or deed in lieu of foreclosure (collectively, a “**Foreclosure Sale**”), and any third party purchaser that acquires the Land or the Private Property at a Foreclosure Sale, and any and all successors in title of the Land and the Private Property, shall be subject to the terms and provisions of this Agreement and the Repurchase Agreement, to the extent the Repurchase Agreement is in force and effect.

Prior to Closing, the Developer shall provide evidence to the Town, through the Town Manager, that it has obtained commitments for funds sufficient to purchase the Property and the Private Property and to construct and complete the Project from one or more lenders or other funding, equity and financing sources, (collectively, “**Funding Sources**”) secured by one or more mortgages, deeds of trust or other instruments creating an encumbrance or lien upon the Land and the Private Property and the improvements thereon to be recorded after this Agreement (the “**Mortgage(s)**”). The holder(s) of the Mortgage(s) is (are) referred to herein as the “**Mortgage Holder(s)**” and the holder of a first priority mortgage lien upon the Land and the Private Property and the improvements thereon is referred to herein as the “**First Mortgage Holder**”.

The Town shall provide to each Mortgage Holder whose name and address has theretofore been provided to the Town notice and an opportunity to cure any default on the part of the Developer, and will accept the cure thereof by a Mortgage Holder, all as provided in Section 8.03 hereof. The Town hereby consents to the Funding Sources exercising any rights under their Mortgages and security agreements, including but not limited to rights to foreclose or take title and or control of the Land and the Private Property and the Project, pursuant to their Mortgage(s) and any other collateral security, financing or loan documents entered into between the Developer and any of the Funding Sources.

Section 4.02 Refinancing/Additional Financing.

The Developer shall provide the Town with thirty (30) days' prior written notice of any intended refinancing of a Funding Source that is to occur prior to Completion, including in such notice the name(s) and address(es) of such proposed new Funding Source(s) and any other information regarding the Mortgage(s) and other collateral security, financing or loan documents to be entered into by the Developer in connection with such refinancing, as the Town may reasonably require. Provided that the Developer demonstrates to the Town's satisfaction that the proposed Funding Source is not an affiliate of the Developer, no approval of such refinancing by the Town shall be required. The term "Mortgage(s)" or "Funding Sources" shall include said later approved refinancing or additional financing.

Section 4.03 Notice of Foreclosure.

The Developer shall request the Mortgage Holders to give not less than sixty (60) days' prior written notice to the Town, by certified mail, of each Mortgage Holder's intention to accelerate the indebtedness secured by its Mortgage, or to foreclose upon its Mortgage, or to accept a conveyance of the Property and the Private Property and the improvements thereon in lieu of foreclosure (the "**Mortgage Holder Notice**"), in which event the Town shall have the right, but not the obligation to cure whatever default(s) have entitled the Mortgage Holder to take such action (subject to appropriation), which amount, together with the Town's costs and expenses (including reasonable attorneys' fees and expenses) shall be due and payable by Developer to the Town within ten (10) Business Days of written demand therefor. To exercise such right to cure, the Town shall (a) notify the applicable Mortgage Holder in writing within thirty (30) days of receipt of the Mortgage Holder Notice of its agreement to so cure, and shall take such action or pay such funds necessary to cure the default within sixty (60) days of receipt of the Mortgage Holder Notice.

Section 4.04 Intentionally Omitted.

Section 4.05 Rights and Duties of Mortgage Holder upon Acquisition after Completion.

If a Mortgage Holder acquires, through foreclosure or action in lieu of foreclosure or otherwise, title to the Land and the Private Property and the Project or any part thereof after the Completion of construction of the Project, such Mortgage Holder, for the period during which it holds such title, shall comply with all applicable provisions of this Agreement.

Section 4.06 Default of Mortgage Holder.

Any Mortgage Holder in whom title to the Land and the Private Property and the improvements thereon has vested by way of foreclosure or action in lieu thereof shall be subject to the Developer Default provisions set forth in Section 8.01 hereof from and as to matters first occurring after the date of such vesting, and the Town shall have the enforcement rights set forth in Section 8.02 hereof, as if the Mortgage Holder were the Developer, so that the Mortgage Holder shall receive notice of a Developer Default in its capacity as Developer and shall not be entitled to an additional notice or cure period in its capacity as Mortgage Holder, and shall have the benefit of all the cure periods applicable to the Developer as set forth in Section 8.01 hereof.

Section 4.07 Intentionally Omitted.

Section 4.08 Obligation to Pay Taxes and Assessments.

The Developer shall pay or cause to be paid when due all taxes, assessments and other charges, fines and impositions attributable to the Property and the Private Property after the Closing, which may give rise to a lien upon the Property or the Private Property or any part thereof, but this clause shall not be deemed to preclude the Developer from contesting the validity or amount of such taxes, assessments, charges, fines or impositions, which may be paid under protest.

Section 4.09 Third Party Purchaser at Mortgage Foreclosure.

If an independent third party, not related to the foreclosure Mortgage Holder, is the high bidder at a Mortgage foreclosure and the grantee of the Mortgage Holder's foreclosure deed, such third party shall have the same rights and obligations as the Mortgage Holder hereunder, as if the Mortgage Holder had acquired title pursuant to a foreclosure sale.

ARTICLE 5

RESTRICTIONS

Section 5.01 Restriction on Use.

Section 5.01.1 Restrictions on Use during Restriction Period.

The Developer agrees for itself, and its successors and assigns, and every successor in interest to the Land and the Private Property or any part thereof, and the Deed may, by mutual agreement of the parties, contain restrictions and covenants binding upon the Developer, its successors and assigns, that commencing on the date on which the Deed is recorded in accordance with the provisions of Section 2.10(a) hereof and ending on the thirtieth (30th) anniversary of such date (the "**Restriction Period**"), the Property and the Private Property and the Project shall be used only for the uses specified in the Entitlement Approvals and this Agreement. The foregoing covenant shall run with the land and shall be binding to the fullest extent permitted by law and equity for the benefit and in favor of, and enforceable by, the Town, to protect the interest of the community and other parties, public and private, in whose favor or for whose benefit the covenants have been provided, against the Developer, its successors and assigns, and every successor in interest to the Property and the Private Property or any part thereof or any interest therein, and any party in possession or occupancy of the Property and the Private Property or any part thereof. The

restrictions and covenants described in this Section 5.01.1 shall be deemed to be included in the Restriction Documents with respect to the Private Property.

Section 5.01.2 Restrictions on Use.

The Developer agrees for itself, and its successors and assigns, and every successor in interest to the Land and the Private Property or any part thereof, that (i) the Property and the Private Property, or the applicable portions of the Property and Private Property, shall be subject to the following easements to the Town, in a form mutually acceptable to by the Town and the Developer, to be fully executed, delivered, and recorded at the Closing (together, the “**Reserved Rights**”): (a) an easement for the use, access to, operation, maintenance, repair, and replacement of the existing water and sewer lines and related equipment and facilities located within the Land as of the date of this Agreement, which may be relocated in accordance with Section 3.07(b), at the Developer’s sole cost and expense, and which such easement shall specify that upon the relocation and successful commissioning of such equipment and facilities in their new location, the easement area under such easement shall be deemed to be such new location, and (b) a perpetual easement, effective upon the recordation of the Certificate of Completion, for the use and enjoyment by members of the public of the green space to be identified as such on the site plan approved by the Planning Board and to be constructed as part of the Project, provided however, that upon the expiration of the Restriction Period, the Developer and the Town may mutually agree to relocate such green space on the Land and the Private Property if the Developer elects to redevelop the Project and such relocation is included in any new or amended Special Permit issued by the Planning Board in connection with any such redevelopment, subject to such reasonable rules, regulations and limitations imposed by Developer; and (ii) all affordable housing units constructed or to be constructed as part of the Project shall be subject to a permanent restriction preserving such units as affordable housing, which restriction shall be set forth in an instrument to be executed by the parties thereto and approved by the Director of the Executive Office of Housing and Livable Communities (formerly known as the Department of Housing and Community Development) (“**EOHLC**”) (and executed by the Select Board of the Town, if required by the applicable statute), all in accordance with the provisions of Massachusetts General Laws, Chapter 184, Sections 26 – 32 (the “**Affordable Housing Restriction**”). The documents described in the preceding sentence (collectively, the “**Restriction Documents**”) shall be in form and content mutually acceptable to the Town and the Developer and the Developer’s initial First Mortgage Holder, and with respect to the Affordable Housing Restriction, EOHLC, and shall be recorded simultaneously with the Deed and prior to any mortgage or other financing document encumbering title to any portion of the Property or the Private Property or any part thereof; *provided, however*, that if EOHLC has not executed the Affordable Housing Restriction prior the Closing, the Seller shall waive the requirement that the Affordable Housing Restriction be delivered at the Closing, in which case, it shall be a condition precedent to the Seller’s obligation to deliver a Certificate of Completion and the Building Inspector’s delivery of a certificate of occupancy for any portion of the Project, that the Affordable Housing Restriction, executed by EOHLC, be recorded in the Registry prior to the issuance of such Certificate of Completion and certificate of occupancy for the Project. In the event of a conflict between this Agreement and any of the Restriction Documents, the applicable Restriction Document shall control.

Section 5.02 Restrictions During Construction.

From the date the parties enter into this Agreement until the Town has issued the Certificate of Completion, the following restrictions shall bind the Developer and its successors and assigns, and every successor in interest to the Land and the Private Property or any part thereof:

Section 5.02.1 Prohibition Against Change in Identity and Ownership, or Key Personnel.

This Agreement is being entered into as a means of permitting and encouraging the development of the Property in accordance with the objectives of the Town for the redevelopment of the Property as put forward in the Recitals, and not for speculation in landholding. The Developer acknowledges that, in view of:

- (a) The importance of the undertakings set forth herein to the general welfare of the community;
- (b) The importance of the identity of the parties in control of the Developer and the Project;
- (c) The importance of the Key Personnel identified by the Developer in its Proposal remaining in place with respect to the Project until the Completion of the Project; and
- (d) The fact that a transfer of any controlling ownership in the Developer, or any other act or transaction involving or resulting in a change in the ownership or change in the identity of the parties in control of the Developer or the Project, is for practical purposes a transfer or disposition of the Developer's interest in the Project;

it is hereby understood and agreed that, except as otherwise expressly provided herein, during the period commencing on the date hereof and continuing until the issuance of the Certificate of Completion by the Town, and except by reason of death, disability or retirement of any individual holding a direct or indirect ownership interest in the Developer, there shall be no change in the identity of the parties holding a controlling interest in the Developer, or transfer, by assignment or otherwise, of the Developer's rights under this Agreement or of the Developer's controlling interest, in the Property or the Private Property and the Project, to any person or entity (all such changes being referred to herein as a "**Change in Identity**"), unless in each instance, (a) the Developer gives the Town prior written notice of a proposed Change in Identity, which notice shall provide sufficient information to enable the Town to evaluate the acceptability of the proposed Change in Identity and shall request the Town's consent thereto, and (b) the Town, in its sole and absolute discretion, within thirty (30) days from the date on which the Town receives said written notice or such longer period as may be agreed upon by the Developer and the Town, approves of such change in writing. If the Town notifies the Developer in writing within said thirty day (30) day period (or longer period agreed to by the parties) of additional information reasonably required in order to review and evaluate the proposed Change in Identity, or of an objection to the proposed Change in Identity, specifying the grounds for such objection, the Developer shall make no Change in Identity without the subsequent written approval of the Town, which approval shall be granted or withheld by the Town in its sole and absolute discretion. Any attempted Change in Identity made contrary to this Section shall be void and of no force and effect. If the Town fails to approve or reject the Change in Identity within thirty (30) days from the date on which the Town receives

said written notice, the Developer may notify the Town (the “**Second Change in Identity Notice**”) and request again that the Town reject or approve the Developer’s proposed Change in Identity, which such notice shall include on the first page thereof “**FAILURE TO RESPOND TO THIS NOTICE WITHIN FIFTEEN (15) BUSINESS DAYS SHALL CONSTITUTE A WAIVER OF CERTAIN RIGHTS OF THE TOWN**”. If the Town fails to provide such written statement within fifteen (15) Business Days after its receipt of the Developer’s Second Change in Identity Notice, it shall be conclusive that the Town has approved the Change in Identity set forth in the Developer’s initial notice thereof. Notwithstanding anything in this paragraph to the contrary, if the Developer requests the Town’s consent to a Change in Identity due to the death or incapacity of Louis P. Minicucci, Jr. or Eric B. Loth, Jr., then the Town agrees that it shall not unreasonably withhold, condition, or delay its consent to such requested Change in Identity.

Notwithstanding anything in this Agreement to the contrary, the Developer shall not affect any Change in Identity or the transfer of any legal or other beneficial interest in Developer without providing to the Town, for the Town to file with the Commonwealth’s Division of Capital Asset Management and Maintenance, the Disclosure of Beneficial Interests form, executed by all required persons, required by M.G.L. c. 7C, Section 38.

In order to fulfill the purposes of this Section, the Developer agrees that during the period between execution of this Agreement and the issuance of a Certificate of Completion by the Town, the Developer shall not more than annually upon written request of the Seller, within ten (10) Business Days of receipt of written request of the Seller, provide to the Town the names of all of the direct and indirect holders of an ownership interest in the Developer, in the form of an certification made by an officer of the Developer.

The foregoing restrictions on the Change in Identity shall not be binding on a Mortgage Holder which has foreclosed its Mortgage or has otherwise acquired title to the Property and the Private Property in lieu of foreclosure, nor said Mortgage Holder’s successors in title, including, without limitation, any third-party buyer at a Mortgage foreclosure sale.

Notwithstanding any provision of this Agreement to the contrary, at any time after the issuance of a Certificate of Completion, the Developer may assign its rights under this Agreement to any Person. The term “**control**” and its correlative meanings shall mean, with respect to any Person as such, the power (either individually or together with others) to direct or cause the direction of the management and policies of such Person, directly or indirectly, whether through ownership of voting securities, membership or partnership interests, by contract or otherwise, and the term “**Person**” shall mean any individual or entity.

Section 5.02.2 Prohibition Against Transfer of Land and the Project.

For all of the same reasons stated in Section 5.02.1 above, the Developer hereby agrees for itself, and its successors and assigns, that, except for the granting of the Mortgages and the approved refinancing of the Mortgages, and entering into other customary security agreements with the Funding Sources, and except for leases of dwelling units and leases or licenses of the commercial and community space in the Project in the ordinary course of business and the granting of easements necessary for the construction, use or enjoyment of the Project, including utilities, the Developer shall not, prior to the issuance of a Certificate of Completion by the Town, sell,

assign or otherwise transfer the Property or the Private Property or any portion thereof without the prior written consent of the Town, acting by its Select Board, which consent may be withheld by the Town, in its sole and absolute discretion. As a condition of any approval by the Select Board of a transfer, the transferee shall assume and agree in writing to comply with all conditions, obligations and agreements contained in this Agreement, the Deed (if any) and the Restriction Documents, including but not limited to the obligation to construct the Project. The term “transfer” shall include, without limitation, any total or partial sale, or lease of the Property or Private Property (not including the lease of the residential units or any of the commercial space in the ordinary course of business). It is the intent of this Section that the prohibition of transfer of the Property and the Private Property shall not apply to transfers resulting from the foreclosure or deed in lieu of foreclosure of a Mortgage, provided that the transferee assumes and agrees to comply with all conditions, obligations and agreements contained in this Agreement, the Deed (if any) and the Restriction Documents, including, but not limited to the obligation to construct the Project. No transfer shall relieve the Developer of its obligations hereunder, who shall be jointly and severally liable with the transferee. Any attempted assignment or other transfer made contrary to this Section shall be void.

Section 5.02.3 Prohibition Against Change in Key Personnel.

For all of the same reasons stated in Section 5.02.1 above, the Developer hereby agrees that, except as otherwise expressly provided herein, during the period commencing on the date hereof and continuing until the issuance of the Certificate of Completion by the Town, it shall assign to the Project the individuals identified as “Project Principal”, “Project Manager”, or otherwise identified in the “Qualifications Statement” submitted as part of the Proposal as key individuals from the Developer to be assigned substantive roles with the Project, and that such persons will devote such time to the Project as is necessary and appropriate to the full and timely performance of this Agreement by the Developer. The Developer agrees that none of such persons will be removed from his or her responsibilities on the Project without the written consent of the Town (which consent shall not be unreasonably withheld, delayed, or conditioned), except in the event of his or her death, disability or departure from the employment of the Developer, or upon the written request of the Town. In the event, however, that any of such persons are so removed or leave the Developer’s employ, any subsequent personnel proposed by the Developer must be approved in advance by the Town, which approval shall not be unreasonably withheld, delayed, or conditioned, provided that such subsequent personnel is experienced in real estate development or construction and otherwise qualified.

In addition, the Developer hereby agrees to request the architect(s), engineer(s) and other consultants identified in the Proposal as a member of the Developer’s team for the Project (i) to assign to the Project for the period commencing on the date hereof and continuing until the issuance of the Certificate of Completion by the Town, their respective principals and employees identified in the “Qualifications Statement” submitted as part of the Proposal, (ii) to enable such persons to devote such time to the Project as is necessary and appropriate to the full and timely performance of this Agreement by the Developer, (iii) not to remove any such persons from his or her responsibilities on the Project without the written consent of the Town (which consent shall not be unreasonably withheld), except in the event of his or her death, disability or departure from their current employment, or upon the written request of the Town, and (iv) in the event, however, that any of such persons are so removed or leave their current employer’s employ, to obtain the prior approval

by the Town of any proposed replacement personnel, which approval shall not be unreasonably withheld.

Notwithstanding the foregoing, the provisions of this Section 5.02.3 shall not apply to a successor to the Developer in the event of a transfer of ownership of the Project by virtue of a foreclosure of, or a deed in lieu of foreclosure of, a Mortgage or after the Town's issuance of a Certificate of Completion.

The individuals identified by title in, or otherwise described in, this Section are referred to in this Agreement, collectively, as the Developer's "**Key Personnel**".

Section 5.03 Restrictions Continuing after Completion of Construction.

Section 5.03.1 Material Alteration.

The Developer shall not, for the duration of the Restriction Period, materially alter the Buildings, which shall include the modification, demolition, subtraction therefrom, reconstruction, and additions to the Buildings or extensions thereof, or change to the materials, design, dimensions or color thereof, if such reconstruction, demolition, subtraction, alteration, addition, extension or change will materially affect in any way the external appearance of the Buildings, or make other changes to the design of the Buildings so as to deviate substantially from the Approved Plans, unless required by one or more Laws, unavailability of materials (except if the Special Permit requires the Planning Board's approval of substitute materials, in which case such changes are approved by the Planning Board), or the Developer first submits to the Planning Board a revised concept plan showing the proposed alterations at least forty-five (45) days prior to making such change and the Planning Board approves of such change. If the Planning Board does not approve the proposed material alteration to the Buildings, the Developer shall not make such proposed material alteration. In the event the Developer shall fail to comply with the foregoing requirement, the Town may within thirty (30) days of its discovery thereof, direct in writing that the Developer so modify, reconstruct or remove such portion or portions of the Buildings as were altered, modified, reconstructed, demolished or subtracted from or added to or extended or changed which was not required by Laws, lack of materials (except if the Special Permit requires the Planning Board's approval of substitute materials, in which case such changes are approved by the Planning Board), or without the prior written approval of the Town, and the Developer shall promptly comply with such a directive at its sole cost and expense. Nothing herein contained shall be construed to prevent the compliance with Laws and the ordinary maintenance, repair or replacement of any exterior feature of the Buildings which does not involve a change in design or material of such exterior feature of the Buildings or otherwise substantially change the outward appearance of the facade of the Buildings, nor to prevent landscaping the Land and the Private Property with plants, trees or shrubs, nor construed to prevent the meeting of requirements certified by a duly authorized public officer to be necessary for public safety because of an unsafe or dangerous condition or to comply with any Law.

Section 5.03.2 Change in Use.

The Developer shall not, for the duration of the Restriction Period, change the use of the Buildings or any material portion thereof from that set forth in the Entitlement Approvals and

Section 7.01 of this Agreement, except in accordance with the provisions of this Section. In the event that at any time during the Restriction Period the Developer is unable to economically maintain one or more of the elements of the Project in the use required by the Proposal, the Entitlement Approvals and this Agreement, for good and substantial cause(s), the Developer may request approval by the Select Board of a change in use by presenting to the Select Board evidence of such good and substantial cause(s) for the proposed change together with a concept plan showing the proposed change. No such change shall be made without the approval by the Select Board of such cause, such proposed change in use, and such concept plan. If the Select Board so approves, the Developer shall proceed to obtain approvals for such change under the applicable provisions of the Zoning By-law, if necessary. If the Select Board notifies the Developer in writing, within sixty (60) days after its receipt of such information from the Developer, of its objection to the reasons proffered for the proposed change or the concept plan or the proposed change in use, specifying the grounds for such objection, the Developer shall submit additional evidence relative to the cause and/or a revised concept plan accordingly, and the Select Board shall have an additional thirty (30) days to approve or disapprove the cause for the proposed change in use and/or the revised concept plan. In the event the Developer shall fail to comply with the foregoing requirement, the Town may within thirty (30) days of its discovery thereof, direct in writing that the Developer cease such use which has not been approved by the Select Board pursuant to this Section, and the Developer shall promptly comply with such a directive at its sole cost and expense. Approvals hereunder shall be at the sole discretion of the Select Board; provided, however, that if the Andover Planning Board has approved the Developer's requested change in use, then the Select Board shall not unreasonably withhold its approval, and further provided that that any changes to the Affordable Housing Restriction shall be subject to the requirements of applicable Laws, including without limitation Chapter 184 of the Massachusetts General Laws. If the Select Board fails to provide the notices required in this Section, the changes requested by Developer shall be deemed approved.

Section 5.04 Transfers after Completion of Construction.

After Completion of construction of the Project, as evidenced by the issuance by the Town of a Certificate of Completion, the Developer may assign or otherwise transfer all or any portion of or interest in the Property and the Private Property and the Project, or any interest in the Developer may be assigned or transferred, without approval of the Town, provided that the Property and the Private Property and the Project and such transferred interests shall remain subject to the provisions of this Agreement.

Section 5.05 Survival.

The provisions of this Article 5 shall survive the Closing and the delivery of the Deed.

ARTICLE 6

MAINTENANCE; INSURANCE; RESTORATION

Section 6.01 Maintenance.

The Developer, its successors and assigns shall, for the duration of the Restriction Period, maintain the Project in good condition, reasonable wear and tear and casualty (subject to Section

6.03) excepted, including maintaining, repairing and replacing deteriorated components of the Buildings and other improvements constructed as part of the Project. The Developer, its successors and assigns shall, for the duration of the Restriction Period, maintain the Project in compliance with all Laws from time to time in effect.

Section 6.02 Insurance.

The Developer agrees to maintain in full force and effect the following insurance coverages from and after the date the Developer first accesses the Land until, in the case of subsections (b) through (e) the Developer achieves the completion of the Commencement Work (or until the Completion of the Project if required by the Andover Building Inspector for all other commercial projects in the Town or any Approvals issued for the Project), and in the case of subsection (a), from and after vertical commencement of construction until the Developer achieves the completion of the Commencement Work (or until the Completion of the Project if required by the Andover Building Inspector for all other commercial projects in the Town or any Approvals issued for the Project):

(a) a policy of Builder's Risk Insurance (standard "All Risk" or equivalent coverage) in an amount not less than the cost of reconstruction, written on a completed value basis or a reporting basis, for property damage, naming the Town as an additional insured and providing a waiver of subrogation in favor of the Town, provided the Town waives subrogation in favor of the Developer;

(b) a policy of Commercial General Liability Insurance against claims for bodily injury, death and property damage occurring upon, in or about the Land and the Private Property and the Project and the adjoining sidewalks, and arising from the actions of the Developer, its contractors, subcontractors, materialmen, employees, agents, or representatives, with limits not less than \$1,000,000 per occurrence, \$3,000,000 aggregate, naming the Town as an additional insured and providing a waiver of subrogation in favor of the Town, provided the Town waives subrogation in favor of the Developer;

(c) a policy of Automobile Liability Insurance covering any automobile owned, hired or non-owned and used in connection with work being performed on the Land and the Private Property, in an amount not less than \$1,000,000 per occurrence, naming the Town as an additional insured and providing a waiver of subrogation in favor of the Town, provided the Town waives subrogation in favor of the Developer;

(d) Employer's Liability insurance (Part 2 of Worker's Compensation Insurance) in an amount not less than \$1,000,000, providing a waiver of subrogation in favor of the Town; and

(e) Worker's Compensation Insurance, if applicable to Developer, in the amount required by applicable Law.

All insurance provided for in this Section 6.02 shall be issued by insurers of recognized responsibility, licensed and doing business in Massachusetts and having a so-called Best's Rating of "A: VIII" or better. When required herein and thereafter prior to the expiration dates from time to time of the policies required pursuant to this Section 6.02, certificates of such insurance with pertinent endorsements attached, bearing notations evidencing the payment of premiums or

accompanied by other reasonably satisfactory evidence of such payment shall be delivered by the Developer to the Town. Each policy or certificate issued by an insurer shall, to the extent obtainable, contain an agreement by the insurer that such policy shall not be canceled without at least thirty (30) days' prior written notice to the Town. The Developer's insurance obligations hereunder shall in no event affect the rights of any Mortgage Holder named as a loss payee or additional insured from applying the proceeds of insurance.

Section 6.03 Obligation to Restore.

Until the issuance of a Certificate of Completion, in the event that any damage or destruction of the Project or any part thereof occurs as a result of fire or other casualty, the Developer shall be responsible for the restoration of the Project to a condition at least comparable to that existing at the time of such damage or destruction, to the extent that such insurance proceeds and applicable Law and all Approvals may permit. Any reconstruction or repair undertaken pursuant to the provisions of this Section shall in all respects be in accordance with and conform to applicable Laws and the provisions of the Approved Plans, the Approved Construction Documents, and the provisions of this Agreement.

The Developer shall commence to reconstruct or repair the Project, or any portion thereof, which have been destroyed or damaged within a period not to exceed three (3) months after the insurance or other proceeds with respect to such destroyed or damaged property have been received by the Developer or any mortgagee and all permits have been received (or, if the conditions then prevailing require a longer period, such longer period as the Town may specify in writing), and shall well and diligently and with dispatch prosecute such reconstruction or repair to completion, such reconstruction or repair in any event to be completed within thirty (30) months after the start thereof, subject to Force Majeure. Notwithstanding the preceding in the event a casualty occurs in the last sixty (60) months of the Restriction Period that results in a loss equal to or greater than seventy-five percent (75%) of the replacement cost of the Project, there shall be no obligation to reconstruct or repair the Project. If less than sixty (60) months remains in the Restriction Period at the time of such casualty, then the immediately foregoing sentence shall be modified such that "sixty (60) months" shall be replaced with "the period of time remaining in the Restriction Period after the date of such casualty", and "seventy-five percent (75%)" shall be replaced with "the percentage produced by (i) taking the quotient of the period of time remaining in the Restriction Period after the date of such casualty, divided by sixty (60) months, and (ii) multiplying such quotient by seventy-five percent (75%)".

ARTICLE 7

USE OF THE PROPERTY

Section 7.01 Use of the Land and the Project.

The Land and the Private Property and the Project shall be used during the Restriction Period for a project consisting of a mixed-use residential and commercial development, containing not less than one hundred thirty-six (136) residential dwelling units, together with amenities and accessory uses, as more particularly described in the Approved Plans, the Approved Construction Documents, and this Agreement. Throughout the duration of the Restriction Period, the use of the

Land and the Private Property and the Project or any material portion hereof shall not be changed except in accordance with the provisions of Section 5.03.2 hereof. The Developer shall construct and use the Project in compliance with all applicable Laws and all Approvals issued by any federal, state or local governmental authority having jurisdiction thereof.

ARTICLE 8

NOTICE AND DEFAULT PROVISIONS

Section 8.01 Developer Default.

The following shall each be an event of default by the Developer (referred to herein as a “**Developer Default**”):

(a) Breach by the Developer of any of the restrictions set forth in Article 5 of this Agreement, the Deed (if any) or the Restriction Documents, which breach is not cured within sixty (60) days following receipt of written notice from the Town specifying in detail such breach, provided that if the breach is of such a nature that it may not be reasonably cured within sixty (60) days, then no Developer Default shall occur hereunder if Developer commences curing within sixty (60) days after the Developer’s receipt of such written notice from the Seller, and thereafter diligently and continuously pursues such cure to completion, all subject to Force Majeure.

(b) Failure by the Developer to pay any amount to the Town when due and owing hereunder, which failure continues for thirty (30) days following receipt of written notice from the Town specifying such failure;

(c) Failure by the Developer to observe or perform any of the Developer’s covenants, agreements, or obligations set forth in this Agreement other than those described in the foregoing clauses a. and b. within sixty (60) days following receipt of written notice from the Town specifying such failure, or if such breach is curable through the use of diligent efforts but is not so curable within such 60-day period, then within such longer period as is reasonably necessary to cure the same, provided the cure is commenced reasonably promptly after receipt of said notice and continuously and diligently prosecuted to completion, all subject to Force Majeure;

(d) [Intentionally omitted];

(e) Prior to the issuance of a Certificate of Completion, the issuance of any execution against the Developer or any of the Developer’s property pursuant to which the Property or the Private Property shall be taken or occupied, provided that the Developer is first provided an opportunity to cure the same (including by bonding over an attachment with a surety bond) within one hundred twenty (120) days after Developer’s receipt of written notice that an execution is first issued, unless extended by agreement of the parties; or

(f) The filing by the Developer of a voluntary petition, or the filing against the Developer of an involuntary petition as debtor, in bankruptcy or insolvency or adjudication of bankruptcy or insolvency of the Developer, or the filing by the Developer of any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the present or any future federal bankruptcy act, or any other present or future

applicable federal, state, or other statute or law, or the assignment by the Developer for the benefit of creditors, or appointment of a trustee, receiver, or liquidator of all or any part of the assets of the Developer, and within one hundred twenty (120) days after the commencement of any such proceeding against the Developer, such proceeding shall not have been dismissed, or if, within one hundred twenty (120) days after the appointment of any trustee, receiver, or liquidator of the Developer or of all or any part of the Developer's property, without the consent or acquiescence of the Developer, such appointment shall not have been vacated or otherwise discharged.

Section 8.02 Rights of the Town upon a Developer Default.

(a) In the event of a Developer Default, the Town may exercise its rights set forth in this Section 8.02, provided that:

- i. the Town has delivered written notice of the Developer Default to the Mortgage Holder(s), whose name(s) and address(es) the Developer or the Mortgage Holder(s) has previously delivered to the Town or are disclosed in the Registry as being an outstanding Mortgage Holder(s);
- ii. sixty (60) days have passed following delivery of said notice to the Mortgage Holder(s);
- iii. the Mortgage Holder(s) has failed to cause the Developer Default to be cured within said sixty (60) days, or in the event of a non-monetary default that is curable but is not reasonably susceptible to cure within said sixty (60) day period, the Mortgage Holder has not commenced and continually prosecuted cure of said default to completion (said cure period, the "**Mortgage Holder Cure Period**"); and
- iv. the Town has not received written notice from the Mortgage Holder(s) that it has commenced foreclosure proceedings against the Developer.

(b) Subject to the provisions of subsection (a) above, the Town may, at its option, cure any Developer Default, prior to the issuance by the Town of a Certificate of Completion, in which case the Town shall be entitled, in addition to and without limitation upon any other rights or remedies to which it shall be entitled by this Agreement, operation of law, or otherwise, to reimbursement from the Developer, upon demand therefor, of all reasonable costs and expenses incurred by the Town in curing such Developer Default, together with interest thereon from the date on which such charge was paid by the Town until paid, at the rate of three percent (3%) per annum over the "prime rate" as published by *The Wall Street Journal* for the relevant date or period (but not more than the maximum rate of interest permitted by Law).

(c) Subject to the provisions of subsection (a) above, the Town shall, in the event of a Developer Default, whether prior to or subsequent to the issuance by the Town of a Certificate of Completion, have the right to institute any and all actions and proceedings in law or at equity as may be appropriate against the Developer, including actions and proceedings to compel specific performance and to bring a claim in a court of competent jurisdiction seeking damages from the Developer in an amount representing the Town's costs, liabilities, losses and expenses, including reasonable attorneys' fees and expenses, resulting from the Developer Default as determined by a

final unappealable judgment. In no event shall the Seller be entitled to recover from Developer any indirect, multiple, punitive or consequential damages or be relieved from its obligations under this Agreement.

(d) Developer hereby expressly acknowledges that the Town would not otherwise agree to sell the Property to the Developer were it not for the Developer's good faith commitment to promptly begin the Commencement Work by the Project Commencement Date and diligently prosecute construction of the Project as contemplated by this Agreement, such commitment being a material inducement to the Town to enter into this Agreement. Subject to the provisions of subsection (a) above, if the Developer fails to achieve the completion of the Commencement Work in the time period provided Section 3.03(a), as such date may be extended by Force Majeure, then in any such event the Town, after expiration of the applicable cure period (if any) provided in Section 8.01(c) hereof, shall have the option, exercisable at the Town's sole discretion, to repurchase all or any portion of the Property and the Private Property, subject to the lien of any existing mortgages permitted under this Agreement, pursuant to the terms of the Repurchase Agreement. The Notice of Repurchase Agreement shall be executed and recorded with the Registry at the time of the Closing. In the event the Town elects to exercise its rights and remedies pursuant to this Section 8.02(d), then the same shall be the Town's sole and exclusive remedy with respect to a Developer Default to timely achieve completion of the Commencement Work or any other default by, or obligation of, Developer.

Section 8.03 Rights of Mortgage Holders upon Developer Default.

In the event of a Developer Default, any Mortgage Holder shall have the right to cure any such Developer Default within the cure period (if any) provided therefor in Section 8.01 hereof and within the Mortgage Holder Cure Period, as well as the other rights provided in this Agreement.

Section 8.03.1 Notice of Developer Default to Mortgage Holder.

In the event that the Town gives written notice to the Developer of default under this Agreement, the Town shall forthwith furnish a copy of the notice to each of the Mortgage Holders whose name and address has theretofore been provided to the Town by either the Developer or the Mortgage Holder. To facilitate the operation of this Section, the Developer shall at all times keep the Town provided with an up-to-date list of names and addresses of Mortgage Holders, and the Town may rely upon such list. In addition, any Mortgage Holder may notify the Town of its address and request that the provisions of this Section 8.03 as they relate to notices apply to it. The Town agrees to comply with any such request.

Section 8.03.2 Mortgage Holder may Cure Developer Default.

In the event that the Developer receives notice from the Town of a default under this Agreement, and such default is not cured by the Developer before the expiration of the cure period therefor provided in Section 8.01 hereof, then the Mortgage Holder(s) may cure any such default within the time provided in Section 8.02(a) hereof; *provided, however*, that if the breach or default is with respect to the Developer's failure to construct the Project in accordance with the Approved Plans, the Approved Construction Documents, and the Approvals, nothing

contained in this Agreement shall be deemed to authorize or permit such Mortgage Holder either before or after foreclosure or action in lieu thereof, to undertake or continue the construction or completion of the Work (beyond the extent necessary to conserve or protect improvements or construction already made, or to cure or fix defects in construction already made in order to cure a Developer default) without first having expressly assumed the obligation to the Town, by written agreement satisfactory to the Town, to complete the Work in the manner provided in this Agreement, or, if applicable, to complete only that portion of the Work necessary to cure the Developer default. Any such Mortgage Holder which shall properly complete the Work or applicable part thereof shall be entitled, upon written request made to the Town, to a Certificate of Completion in the manner provided in Section 3.08 hereof.

Section 8.04 Default of the Town.

Section 8.04.1 Town Default.

The failure of the Town to observe or perform any of the Town’s covenants, agreements, or obligations hereunder to be performed after the Closing pursuant to Article 2 hereof, within sixty (60) days following receipt of written notice from the Developer, specifying such failure, or if such default cannot reasonable be cured with such sixty (60) day period, such longer period reasonably required to cure the breach, provided the cure is commenced reasonably promptly (but not later than the 60-day period) after receipt of said notice and continuously and diligently prosecuted to completion (said cure period, the “**Town Cure Period**”), shall constitute a “**Town Default**” for purposes of this Agreement.

Section 8.04.2 Rights of Developer Upon Town Default.

In the event that a Town Default has occurred, the Developer’s sole remedy shall be to institute such action and proceedings for injunctive relief as may be appropriate against the Town, including actions and proceedings to compel specific performance, *provided, however*, if injunctive relief or specific performance is not available to cure the Town Default, Developer shall be entitled to damages and other remedies as permitted by Law, *provided, however*, that in no event shall the Developer be entitled to recover any indirect, special, multiple, incidental, punitive, or consequential damages.

ARTICLE 9

REPRESENTATIONS AND WARRANTIES

Section 9.01 Representations and Warranties of the Developer.

The Developer hereby represents and warrants to the Seller, as of the date of this Agreement, with the understanding that said representations and warranties constitute a material inducement to and are being relied upon by the Seller, as follows:

- (a) the Developer is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Delaware and duly qualified to do business in the Commonwealth of Massachusetts. The Developer has the power and authority to execute and deliver this Agreement and to perform its covenants

and obligations under this Agreement, and the person executing this Agreement has been duly authorized by all necessary action and has full, right, power and authority to execute and deliver this Agreement on behalf of the Developer;

- (b) this Agreement has been duly and validly authorized, executed and delivered on behalf of the Developer;
- (c) this Agreement and each and every document and instrument to be executed and delivered by the Developer pursuant to this Agreement, when fully executed and delivered by all intended signatories thereto, shall constitute the valid and binding obligations of the Developer, enforceable against the Developer in accordance with their respective terms, subject to general equitable principles and applicable provisions of law related to bankruptcy, insolvency and creditors' rights generally;
- (d) the Developer is not the subject of any Insolvency Event, and the Developer has no knowledge of any threatened or contemplated Insolvency Event. The Developer possesses the financial resources to perform all of its covenants and obligations contained in this Agreement and to be contained in the documents and instruments to be executed and delivered pursuant to this Agreement, and the performance of said covenants and obligations will not render the Developer the subject of an Insolvency Event. As used in this Agreement, the term "**Insolvency Event**" shall mean, as it pertains to a party, any proceeding as debtor by or against said party under any federal or state law or statute regarding bankruptcy, insolvency, fraudulent transfers, receivership, conservatorship, custodianship, trusteeship, moratorium or creditors' rights or debtors' obligations generally; any assignment for the benefit of creditors by said party; the insolvency of said party; or entry by said party into a composition agreement;
- (e) there are no pending or, to the best of the Developer's knowledge, threatened actions, suits, or proceedings before any court, arbitrator or governmental or administrative body which may materially adversely affect the properties, business or condition, financial or otherwise, of the Developer or its ability to perform its obligations under this Agreement;
- (f) there are no leases, subleases, licenses or other agreements entered into by the Developer or Buxton Redevelopment LLC which grant any possessory interest in the Private Property that will survive the Closing, and the Developer shall not, and shall not permit Buxton Redevelopment LLC to enter into, or consent to, any leases, subleases, licenses or other agreements, or extensions of any of the foregoing, which grant any possessory interest in the Private Property that will survive the Closing; and
- (g) neither the execution, delivery or performance of this Agreement nor compliance herewith (i) conflicts or will conflict with or results or will result in a breach of or constitutes or will constitute a default under (1) the organizational documents of the Developer, (2) to the best of the Developer's knowledge, any law or any order, writ, injunction or decree of any court or governmental authority; or (3) any

agreement or instrument to which the Developer is a party or by which it is bound, or (ii) results in the creation or imposition of any lien, charge or encumbrance upon its property pursuant to any such agreement or instrument.

Section 9.02 Representations and Warranties of the Seller.

Notwithstanding the provisions of Section 2.06 hereof, the Seller hereby makes, as of the date of this Agreement, the following representations and warranties to the Developer in connection with the sale of the Property and the transactions contemplated by this Agreement, with the understanding that said representations and warranties constitute a material inducement to and are being relied upon by the Developer:

- (a) the Seller has the power and authority to execute and deliver this Agreement and to perform its covenants and obligations under this Agreement, and the person executing this Agreement has been duly authorized by all necessary action, and has full, right, power and authority to execute and deliver this Agreement on behalf of the Seller;
- (b) this Agreement has been duly and validly authorized, executed and delivered by the Seller;
- (c) this Agreement and each and every document and instrument to be executed and delivered by the Seller pursuant to this Agreement, when fully executed and delivered by all intended signatories thereto, shall constitute the valid and binding obligations of the Seller, enforceable against the Seller in accordance with their respective terms, subject to general equitable principles and applicable provisions of law related to bankruptcy, insolvency and creditors' rights generally;
- (d) there are no leases, subleases, licenses or other agreements entered into by the Seller which grant any possessory interest in and to the Property, the Land, or any portion thereof that will survive the Closing;
- (e) There are no service, maintenance or supply agreements or other agreements entered into by Seller affecting the construction, use, ownership, maintenance and or/operation of the Property that will survive the Closing;
- (f) [Intentionally omitted]; and
- (g) Seller is not a "foreign person" as defined in Section 1445 of the IRC.

Section 9.03 Brokers.

The Seller and the Developer represent and warrant to each other that no brokerage fee or real estate commission is or shall be due or owing in connection with this transaction.

Section 9.04 Survival.

The provisions of this Article 9 shall survive the Closing and delivery of the Deed.

ARTICLE 10

GENERAL PROVISIONS

Section 10.01 Intentionally Omitted.

Section 10.02 Access.

The Developer shall permit the Town or its agents, at their sole risk and so as to not unreasonably interfere with any construction activities, to enter the Property and the Private Property, in accordance with Section 3.03. Nothing in this Section 10.02 shall restrict the right of the Building Inspector or any other Town official to access the Property and the Private Property in accordance with Laws.

Section 10.03 Duration.

The restrictions and covenants contained in (i) Sections 5.01.1, 5.03, 6.01 and 7.01 of this Agreement shall have a term equal to the Restriction Period, (ii) Sections 5.02, 6.02, 6.03, and 10.02 of this Agreement shall have a term commencing on the date of this Agreement and expiring on the date on which a Certificate of Completion is issued for the Project in accordance with the provisions of Section 3.09 hereof, and (iii) Section 5.01.2 of this Agreement shall remain in force and effect in accordance with their terms. The Developer agrees that each of this Agreement, the restrictions set forth in the Deed (if any) and the Restriction Documents is an “other restriction held by a governmental body” as that term is used in M.G.L. c.184, §26 and thus, to the maximum extent permitted by law, is not subject to the limitations on the enforceability of restrictions in M.G.L. c.184, §§26 – 30 and is enforceable for the full period provided in this Agreement, the Deed (if any) or the Restriction Documents, respectively. Nevertheless, if recording of a notice is ever needed to extend the time period for enforceability of any of the restrictions and covenants referenced in the first sentence of this Section 10.03, or set forth in the Deed (if any), or the Restriction Documents, then the Developer hereby agrees that the Developer shall execute and record such a reasonably acceptable notice within ten (10) Business Days of receipt of written request.

Section 10.04 Enforcement.

The parties hereto, and thereafter the permitted successors and assigns of the parties hereto, covenant and agree that, except to the extent prohibited by Law, the prevailing party will be entitled to all its reasonable costs and expenses (including without limitation attorney’s fees and expenses) incurred in enforcing this Agreement or in remedying or abating any violation thereof as determined by a final judgment of a court of competent jurisdiction.

Section 10.05 Indemnification.

Up to, but not after, the Closing, the Developer shall indemnify, defend and save harmless the Town and the Town’s officers, employees and agents, from and against any and all damages, liabilities, actions, suits, proceedings, claims, demands, losses, costs, expenses, recoveries and judgments of every nature and description (including reasonable attorneys’ fees and expenses) to the extent that arises in whole or in part out of or in connection with access to, entry upon, or from

any work or thing whatsoever done in or about the Property and the Private Property by the Developer, its employees, agents, contractors, subcontractors, material men, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. The Developer may at its sole option employ counsel reasonably acceptable to the Town to direct the defense of any such claim. Notwithstanding the immediately foregoing sentence, the duty to defend shall immediately accrue and be owing upon the assertion of such a claim by any person or entity regardless of merit and shall not be dependent upon a finding of negligence or any other finding of fact and trial. The existence of insurance shall in no way limit the scope of the Developer's indemnification under this Agreement. The provisions of this Section shall survive, as applicable, the Closing and delivery of the Deed, or the rescission, cancellation, or termination of this Agreement; *provided, however*, that if this Agreement is terminated in accordance with its terms prior to the Closing, the Developer's obligations under this Section with respect to physical conditions and environmental conditions at the Property shall be limited to the extent of damages, liabilities, actions, suits, proceedings, claims, demands, losses, costs, expenses, recoveries and judgments arising out of, relating to or caused by any act or omission (where the Developer or the Developer's Representatives have a duty to act) on the part of the Developer, the Developer's employees, contractors, consultants, agents and representatives (the "**Developer's Representatives**"), or any of their respective employees, agents, contractors, subcontractors, material men, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. The covenants of the Developer contained in this Section shall be binding upon the Developer and the Developer successors only with respect to matters occurring during Developer's and Developer's successors' respective periods of ownership of the Land. Notwithstanding anything in this Section 10.05 to the contrary, the Developer shall not be required to indemnify the Town under this Section 10.05 for any and all damages, liabilities, actions, suits, proceedings, claims, demands, losses, costs, expenses, recoveries and judgments arising in whole or in part out of or in connection the actions or omissions (where the Town or the Town Indemnified Parties have a duty to act) of the Town or any other Town Indemnified Parties on or about the Property or the Private Property after the date of this Agreement and up to Closing.

Section 10.06 Notices.

Any and all notices required herein shall be in writing and shall be deemed properly given upon the earlier of: (i) two Business Days after deposit with the United States Postal Service, if sent by registered or certified mail, return receipt requested, postage prepaid; (ii) one Business Day after deposit with an express courier service such as Federal Express; (iii) actual receipt, which in the case of the Town shall be deemed upon hand delivery to the Town Clerk; or (iv) upon email transmission with proof of receipt, provided that within one Business Day a copy is also sent via one of the other methods described above. All such notices will be delivered to the address specified below or such other address as the respective parties may designate in writing to the other from time to time:

if to the Developer: Andover Town Yard, LLC
231 Sutton Street, Suite 1B
North Andover, MA 08145
Email: lpm@mincocorp.com

With a copy sent in the same manner to:

Eckert Seamans, Cherin & Mellot, LLC
Two International Place, 16th Floor
Boston, MA 02110
Attn.: Robert W. Levy, Esquire
Email: RLevy@eckertseamans.com

if to the Town:

Town Manager
Town Hall
36 Bartlet Street
Andover, MA 01810
Email: andrew.flanagan@andoverma.us and
austin.simko@andoverma.us

With a copy sent in the same manner to:

Town Counsel
Town Hall
36 Bartlet Street
Andover, MA 01810
Email: tom.urbelis@andoverma.us

Section 10.07 Waiver.

The failure on the part of the Developer or the Town, as the case may be in instituting or prosecuting any actions or proceedings or otherwise to assert its rights or complain in any one or more cases of any action or non-action on the part of the other party or to insist in any one or more cases upon the performance of any of the provisions, covenants, agreements or conditions of this Agreement or to exercise any option contained herein no matter how long the same may continue, shall never be deemed or construed to be a waiver by such party of any of its rights hereunder, or a relinquishment for the future of any such provision, covenant, agreement, condition or option, or operate to deprive such party of or limit such rights in any way (it being the intent of this Section that such party should not, because of concepts of waiver or laches or otherwise, feel constrained to exercise its remedies (including without limitation, an exercise by the Town of its remedies under Section 8.02) at a time when it may still hope to resolve by other methods the problems created by the default of the party). Further it is covenanted and agreed that no waiver at any time of any of the provisions hereof by the Developer or the Town shall be construed as a waiver of any of the other provisions hereof, and that a waiver at any time of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions. Except as expressly set forth in this Agreement, no waiver shall be effective unless in writing and signed by the party to be charged therewith.

Section 10.08 Rights and Remedies Cumulative.

Except as otherwise expressly provided in this Agreement, the rights and remedies of the parties to this Agreement, whether provided at law, in equity, or by this Agreement, shall be cumulative, and the exercise by either party of any one or more such remedies shall not preclude the exercise of any or all such remedies for any other default under this Agreement.

Section 10.09 Headings and Captions for Convenience Only.

The captions and headings throughout this Agreement are for convenience of reference only and the words contained therein shall in no way be held or deemed to define, limit, explain, modify, amplify or add to the interpretation, construction or meaning of any provisions of, or the scope or intent of, this Agreement, nor in any way affect this Agreement.

Section 10.10 Parties Bound; Covenants Running with the Land.

As used in this Agreement, (i) the terms “the Town” or “Seller” shall include such party and its successors and assigns, and (ii) the term “Developer” shall include such party, its permitted successors and assigns, and also its permitted successors in title to the Property or any portion thereof. The provisions contained herein shall be covenants running with the land; *provided, however,* that notwithstanding the foregoing, no party shall be liable for any breach of any covenant or agreement on the part of the Developer herein contained except such as occur during the time it holds the Developer’s interest under this Agreement and the Private Property and the improvements thereon or any portion thereof. No Mortgage Holder shall be deemed to be the owner of the Property and the Private Property until it shall have recorded a mortgage foreclosure deed at the Registry, naming the Mortgage Holder as grantee/purchaser, following a foreclosure of its Mortgage or shall have acquired title by deed in lieu of foreclosure. No Mortgage Holder shall be deemed to be the owner of the Property if it forecloses its Mortgage and a third party is the successful bidder at auction and is the grantee of the mortgage foreclosure deed.

Section 10.11 Entire Agreement of Parties; Amendments.

This Agreement, including the exhibits attached to this Agreement and references contained in this Agreement, constitutes the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior agreements, offers, counteroffers, agreements and understandings of the parties regarding said subject matter, whether written or oral, all of which are hereby merged into and superseded by this Agreement. This Agreement may not be amended, modified, extended, revised or otherwise altered, nor may any party hereto be relieved of any of its liabilities or obligations hereunder, except by a written instrument duly executed by the Developer and the Seller, and in the case of an amendment recorded with the Registry.

Section 10.12 Governing Law.

This Agreement shall be governed exclusively by the provisions of the internal laws of the Commonwealth of Massachusetts, without reference to conflicts of laws principles.

Section 10.13 Conditions to Effectiveness of Agreement.

The Developer and the Seller further acknowledge that notwithstanding anything to the contrary contained herein, this Agreement shall not be considered a binding agreement unless and until (i) this Agreement has been fully executed by both the Developer and the Seller, and a fully executed copy has been delivered, and (ii) the Disclosure of Beneficial Interests form required by M.G.L. c. 7C, Section 38 has been executed and filed.

Section 10.14 Severability.

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be found by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each other term or provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

Section 10.15 Number and Gender.

All words used herein in singular number shall extend to and include the plural number, where the context so requires. All words used herein in the plural number shall extend to and include the singular number, where the context so requires. All words used herein in any gender, whether male, female or neuter, shall extend to and include any and all genders as may be applicable in any particular context.

Section 10.16 Construction.

This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that both the Seller and the Developer have contributed with the advice of counsel to the preparation of this Agreement.

Section 10.17 Business Day.

As used in this Agreement, the term “**Business Day**” shall mean, collectively, any day other than a Saturday, Sunday or official Federal or Commonwealth of Massachusetts holiday. If any payment to be made or obligation to be performed hereunder is to be made or performed on a day other than a Business Day, it shall be deemed to be made or performed in a timely manner if done on the next succeeding Business Day.

Section 10.18 No Third-Party Beneficiaries.

This Agreement and the representations, warranties, covenants and agreements contained herein are made and entered into for the sole protection and benefit of the parties hereto and their permitted successors in interest and assigns, if any, and no other person, persons, entity or entities shall have any right of action hereon or right to claim any right or benefit from the terms contained herein or be deemed a third party beneficiary hereunder. The foregoing is not intended to modify the terms and provisions of Section 10.23 with respect to the parties that can rely on an Estoppel Certificate.

Section 10.19 Time of the Essence; Extension of Time.

Time is of the essence in the performance of each of the parties' respective obligations contained herein. In addition to extensions as a result of Force Majeure or as otherwise expressly provided for in this Agreement, upon written request by the Developer including a statement of good cause therefor, the Town Manager may, in his or her sole and absolute discretion, on behalf of the Town extend any deadline or period for performance by the Developer hereunder, provided that any such extension must be in writing and signed by the Town Manager and the Developer.

Section 10.20 Determinations and Approvals under this Agreement.

The Developer acknowledges that all determinations or approvals to be made by the Town under the terms and provisions of this Agreement are separate and distinct from approvals, determinations or approvals required to be obtained from the Town or an agency, board, commission or department of the Town under any applicable Law, e.g. the approval of plans and specifications under the terms and provisions of this Agreement will not and cannot operate as an approval by the Town of Andover Building Department.

Section 10.21 Action by the Town.

Unless otherwise expressly provided in this Agreement, any decision, statement, consent or approval required to be made or issued by the Town shall be made or issued by the Town Manager.

Section 10.22 Town's Members and Officers Barred from Interest.

(a) No official or employee of the Town shall have any personal interest, direct or indirect, in this Agreement or the Developer, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his personal interest or the interests of any corporation, partnership, or association in which he is, directly or indirectly, interested. No official or employee of the Town, acting as such, shall be personally liable to the Developer or any successor in interest in the event of any default or breach by the Town or for any amount which may become due to the Developer or to its successors or on any obligations under the terms of this Agreement. No manager, member, employee, attorney, agent or consultant of the Developer, acting as such, shall be personally liable to the Town or any successor in interest in the event of any default or breach by the Developer or for any amount which may become due to the Town or to its successors or on any obligations under the terms of this Agreement.

(b) After the date hereinabove first written, the Developer shall not, without a prior finding by the Town that such action is consistent with the public interest, employ in connection with its obligations under this Agreement, any person it has actual knowledge has participated in the planning or execution of the RFP or the Project on behalf of the Town and who is named on any list which may be furnished by the Town to the Developer as having so participated, or permit any such person to directly or indirectly acquire an interest (except an interest based upon the ownership of its capital stock if such stock is publicly held or offered) in the Developer or in the Property or the Private Property, prior to the issuance of the Certificate of Completion.

(c) The provisions of this Section shall survive, as applicable, the Closing and delivery of the Deed, or the rescission, cancellation, or termination of this Agreement.

Section 10.23 Estoppel Certificate.

The Town, acting by and through the Town Manager, shall at Closing, and from time to time, within ten (10) Business Days of a written request by the Developer (but no more frequently than once in any six (6) month period unless more frequently required by any of the Developer's Funding Sources), execute, acknowledge and deliver to the Developer or any of the Developer's Funding Sources, investors or potential buyers a statement in writing (the "**Estoppel Certificate**") provided by Developer or the Funding Source, investor or potential buyer certifying that this Agreement is unmodified and in full force and effect and that there are no Developer Defaults, uncured defaults by the Developer for which the Town has provided written notice to the Developer, and, to the best knowledge of the Town Manager after due inquiry, no condition which on the giving of notice or the passage of time or both would constitute a default of the Developer under this Agreement (or, if there have been any modifications, that the same are in full force and effect as modified and stating the modifications and if there are Developer Defaults, uncured defaults or condition which on the giving of notice or the passage of time or both would constitute a default, the details of such defaults), and such other matters as may be commercially reasonably requested. Notwithstanding the provisions of Section 10.07, any default not contained in such statement shall be deemed a waiver of such default for all purposes. In the event the Town fails to execute and return the Estoppel Certificate within the within such ten (10) Business Day period, the Developer may notify the Town (the "**Second Estoppel Certificate Notice**") and request again that the Town execute and return the Estoppel Certificate, which such notice shall include on the first page thereof "**FAILURE TO RESPOND TO THIS NOTICE WITHIN FIVE (5) BUSINESS DAYS SHALL CONSTITUTE A WAIVER OF CERTAIN RIGHTS OF THE TOWN**". If the Town fails to provide such written statement within five (5) Business Days after the receipt of the Developer's Second Estoppel Certificate Notice, the Town shall be deemed to have agreed with the matters set forth therein as true and accurate. The Developer will have the right to provide a copy of the Estoppel Certificate to current or prospective (i) Funding Sources, (ii) investors or (iii) purchasers and, in addition to Developer, such lender, investor or purchaser will have the right to rely on the Town's representations in the statement for all purposes.

Section 10.24 Counterparts.

This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same Agreement.

(Signature Page Follows)

WITNESS the above executed under seal as of the day and year first above written.

TOWN OF ANDOVER

By its Select Board

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this ___ day of _____, 20___, before me, the undersigned Notary Public, personally appeared the following members of the Select Board of the Town of Andover, namely _____, _____, _____, _____ and _____, who proved to me through satisfactory evidence of identification, which was personal knowledge, to be the persons whose names are signed on the proceeding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose, on behalf of the Select Board of the Town of Andover.

Notary Public
My Commission Expires:

DEVELOPER:

ANDOVER TOWN YARD, LLC

By: _____
Name:
Title:

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this ___ day of _____, 20___, before me, the undersigned Notary Public, personally appeared _____, the _____ of _____, as aforesaid, who proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose, on behalf of Andover Town Yard, LLC, a limited liability company.

Notary Public
My Commission Expires:

LIST OF EXHIBITS

- Exhibit A-1: Legal Description and Plan of the Land
- Exhibit A-2: Legal Description of Private Property
- Exhibit A-3 Developer Plan of the Land
- Exhibit B: CPP
- Exhibit C: Form of Deed
- Exhibit D: Plan of Existing Water and Sewer Lines
- Exhibit E: Disclosure Statement re: Beneficial Interests in Developer
- Exhibit F: Certificate of Compliance with Tax Laws
- Exhibit G: Non-Collusion Certificate
- Exhibit H: Form of Repurchase Agreement
- Exhibit I: Form of Notice of Repurchase Agreement
- Exhibit J: Form of License Agreement for Community Space
- Exhibit K: Neutral Decision Process

SCHEDULE OF DEFINED TERMS

2024 Town Meeting	Section 2.05
2025 Town Meeting	Section 2.05
2025 Town Meeting Extension Notice	Section 2.05
2025 Town Meeting Closing Extension Period	Section 2.05
Affordable Housing Restriction	Section 5.01.2
Agreement	Preamble
Approval Conditions	Section 2.07
Approvals	Section 2.07
Approved Construction Documents	Section 2.08
Approved Plans	Section 3.01
Buildings	Section 3.01
Business Day	Section 10.17
Certificate of Completion	Section 3.08
Change in Identity	Section 5.02.1
Closing	Section 2.10
Closing Date	Section 2.10
Closing Escrow Agent	Section 2.10
CMP	Section 2.08
Commencement Work	Section 3.03
Complete; Completion	Section 3.03
CPP	Recitals
Deed	Section 2.02
Deposits	Section 2.01
Developer	Preamble
Developer Default	Section 8.01
Developer Plan of Land	Section 2.05
Developer Remediation Requirement	Section 2.06.A
Developer's Representatives	Section 10.05
Entitlement Approvals	Section 2.07
EOHLC	Section 5.01.2
Estoppel Certificate	Section 10.23
First Mortgage Holder	Section 4.01
Force Majeure	Section 3.03
Foreclosure Sale	Section 4.01

Funding Sources	Section 4.01
Geotechnical Site Condition Force Majeure	Section 3.03
Initial CPP	Recitals
Insolvency Event	Section 9.01
Key Personnel	Section 5.02.3
Land	Recitals
Land Purchase Price	Section 2.01
Laws	Section 2.02
LEED Performance Deposit	Section 2.08
Lewis Street Parcel Purchase Price	Section 2.01
License Agreement	Section 2.10
Material Change	Section 2.07
MCP	Section 2.06
Mortgage	Section 4.01
Mortgage Holder	Section 4.01
Mortgage Holder Cure Period	Section 8.02
Mortgage Holder Notice	Section 4.03
Notice of Repurchase Agreement	Section 2.10
Outside Closing Date	Section 2.10
Permitted Exceptions	Section 2.02
Person	Section 5.02.1
Post-Closing Environmental Release	Section 2.06
Private Property	Recitals
Project	Recitals
Project Commencement Date	Section 3.03
Project Completion Date	Section 3.03
Property	Recitals
Proposal	Recitals
Purchase Price	Section 2.01
Registry	Recitals
Repurchase Agreement	Section 2.10
Restriction Documents	Section 5.01.2
Reserved Rights	Section 5.01.2
Restriction Period	Section 5.01.1
RFP	Recitals

Second Certificate of Completion Notice	Section 3.08
Second Change in Identity Notice	Section 5.02.1
Second Construction Schedule Notice	Section 3.03
Second Estoppel Certificate Notice	Section 10.23
Seller	Preamble
Special Permit	Section 2.07
Title Defect Notice	Section 2.05
Title Exceptions	Section 2.05
Title Exception Cure Actions	Section 2.05
Title Exception Termination Notice	Section 2.05
Town	Preamble
Town Cure Period	Section 8.04.1
Town Default	Section 8.04.1
Town Indemnified Parties	Section 2.06
Town Meeting Cure Actions	Section 2.05
Town Meeting Title Exceptions	Section 2.05
Unpermitted Exceptions	Section 2.05
Urban Fill Force Majeure	Section 3.03
USGBC	Section 2.07
Voluntarily Supplement	Section 2.07
Work	Recitals

Exhibit A-1

Legal Description and Plan of the Land¹

Legal Description of the Land:

That certain parcel of land shown as ["Lot 1"] on the plan (the "Plan") entitled "[REFERENCE RECONCILED PLAN]" and that certain parcel of land consisting of 4,000 square feet, more or less, identified as "Portion of Lewis Street to be Discontinued" on the plan entitled "Discontinuance Plan Portion of Lewis Street Andover, Mass." dated January 18, 2022, prepared by Andover Consultants Inc., and recorded in the Essex County Registry of Deeds as Plan 18312 of 2022 (collectively, the "Property").

The Property contains <> square feet of land, more or less, according to said plans.

The Property is conveyed (i) subject to the use of ["Parcel C"] shown on the Plan for all purposes for which public ways are used in the Town of Andover,² and (ii) subject to and with the benefit of restrictions, easements, covenants and agreements of record, if any, insofar as the same are now in force and applicable.

Plan of the Land: [See Attached]

¹ [Subject to change based on reconciled plan.]

² ["Parcel C" refers to Parcel C on the Developer Plan of Land attached to the LDA as Exhibit A-3. This reference will be updated based on the reconciled plan.]

Exhibit A-2

Legal Description of Private Property

The following parcels of land, located in Andover, Essex County, Massachusetts, more particularly described as follows:

122 North Main Street

A certain parcel of land, together with the buildings thereon, situated on North Main Street in Andover, Essex County, Massachusetts, bounded and described as follows:

Beginning at a point on said Main Street at Land of Frotten; thence running by said Main Street and in a Northerly direction, 75 feet to land now or once of Sweeney; thence by said Sweeney's land and in a Southwesterly direction, 100 feet to land of the Boston and Maine Railroad; thence by said land of the Boston and Maine Railroad, and in a Southerly direction 101 feet to land of aforementioned Frotten; thence by said Frotten's land and in Northeasterly direction, 153 feet to the point of beginning, being those measurements more or less.

For title reference see Quitclaim Deed dated July 28, 2022 and recorded with Essex North District Registry of Deeds at Book 17530, Page 247.

2-4 Buxton Court

The land in Andover, Essex County, Massachusetts with all the buildings thereon situated in said Andover on the Westerly side of Buxton Court, said Court leading Northerly out of Lewis Street, which street extends Westerly from Main Street, next North of the Tyer Rubber Company and bounded and described as follows:

Beginning at a point in the Westerly line of said Buxton Court, 50 feet North of the Northerly line of said Lewis Street and from said point running Northerly 50 feet along the line of Buxton Court; thence

Westerly by land now or formerly of Hardy & Cole 90 feet to a stake; thence

Southerly by land now or formerly of Hardy & Cole 50 feet to land of Perkins; thence

Easterly by said Perkins land 102 feet to the point of beginning.

Together with the right of way in a strip of land 11 feet wide on said Buxton Court on the Northerly side of the premises now or formerly of one Jane Perkins and running Westerly and adjacent to the premises herein described.

For title reference see Quitclaim Deed dated December 20, 2021 and recorded with Essex North District Registry of Deeds at Book 17282, Page 176.

7-9 Lewis Street

A certain parcel of land with the buildings thereon situated in said Andover on the Westerly side of Buxton Court and on the Northerly side of Lewis Street, bounded and described as follows:

EASTERLY by said Buxton Court fifty (50) feet;
NORTHERLY by land now or formerly of Hardy and Cole one hundred (100) feet;
WESTERLY by other land now or formerly of Hardy and Cole fifty (50) feet; and
SOUTHERLY by said Lewis Street fifty (50) feet.

Containing five thousand (5,000) square feet, more or less.

The Southerly corner of said lot is at a point on the Westerly line of Buxton Court two hundred and forty (240) feet from Main Street measuring along the Northerly line of Lewis Street.

For title reference see Quitclaim Deed dated December 2, 2021 and recorded with Essex North District Registry of Deeds at Book 17258, Page 343.

35 Pearson Street

The land with said buildings thereon situated in said Andover on the Northerly side of Pearson Street, bounded and described as follows:

Beginning on said street at the Southwesterly corner of land of one Collins, once of Joseph L. Low; thence by said street Westerly seventy (70) feet to land of one Stack, once Matthew Culley; thence Northerly by land of said Stack about one hundred thirteen (113) feet to other land of said Stack; once of said Low, thence Easterly by the last named land seventy (70) feet to land of said Collins once of said Low; thence Southerly by said Collins land one hundred twenty-two (122) feet to the first bound.

For title reference see Quitclaim Deed dated October 26, 2021 and recorded with Essex North District Registry of Deeds at Book 17210, Page 97.

Exhibit A-3

Developer Plan of Land

[See Attached]

Exhibit B

CPP

[See Attached]³

³ [To be supplied]

Andover, Essex County, Massachusetts
Property Address:

Exhibit C

Form of Deed⁴

RECORD AND RETURN TO:

QUITCLAIM DEED

KNOW ALL MEN BY THESE PRESENTS, that the **TOWN OF ANDOVER**, acting by and through its Select Board (the "Town" or "Grantor"), a municipality and political subdivision of the Commonwealth of Massachusetts, having an address at 36 Bartlet Street, Andover, Massachusetts 01810, pursuant to the votes taken under Article 15 of the 2020 Annual Town Meeting, and Article 30 of the 2022 Annual Town Meeting, certified copies of which are attached hereto and incorporated herein,

For consideration paid and in full consideration of Four Million Five Hundred Sixty-Six Thousand Dollars (\$4,566,000.00), the receipt and sufficiency of which is hereby acknowledged, hereby grants and conveys to

ANDOVER TOWN YARD, LLC ("Grantee"), a Delaware limited liability company, having an address of 231 Sutton Street, Suite 1B, North Andover, Massachusetts, 01845,

with ***QUITCLAIM COVENANTS***,

That certain parcel of land shown as ["Lot 1"]⁵ on the plan (the "Plan") entitled "[REFERENCE RECONCILED PLAN]" and that certain parcel of land consisting of 4,000 square feet, more or less, identified as "Portion of Lewis Street to be Discontinued" on the plan entitled "Discontinuance Plan Portion of Lewis Street Andover, Mass." dated January 18, 2022, prepared by Andover Consultants Inc., and recorded in the Essex County Registry of Deeds as Plan 18312 of 2022 (collectively, the "Property").

⁴ [Subject to change based on reconciled plan.]

⁵ ["Lot 1" refers to Lot 1 on Plan No. 18127 of 2020 (referred to in the Recitals of the LDA). This reference will be updated based on the reconciled plan.]

The Property contains <> square feet of land, more or less, according to said plans.

The Property is conveyed (i) subject to the use of ["Parcel C"]⁶ shown on the Plan for all purposes for which public ways are used in the Town of Andover, and (ii) subject to and with the benefit of restrictions, easements, covenants and agreements of record, if any, insofar as the same are now in force and applicable.

For Grantor's title, see the deeds and other instruments listed on Exhibit A attached hereto and made a part hereof.

In connection with the conveyance hereby made, there has been full compliance with the provisions of Section 63A of Chapter 44 of the Massachusetts General Laws.

No deed stamps are attached hereto as no deed stamps are due and payable in connection with this conveyance pursuant to Section 1 of Chapter 64D Massachusetts General Laws.

[Signature lines follow on next page.]

⁶ ["Parcel C" refers to Parcel C on the Developer Plan of Land attached to the LDA as Exhibit A-3. This reference will be updated based on the reconciled plan.]

Witness our hands and seal this ____ day of _____, 202__.

TOWN OF ANDOVER
SELECT BOARD

COMMONWEALTH OF MASSACHUSETTS

Essex County, ss.

On this _____ day of _____, 202__ before me, the undersigned notary public,
personally appeared _____,
_____, members of the Town of Andover Select
Board and proved to me through satisfactory evidence of identification, which was personal
knowledge, to be the persons whose name are signed on the preceding or attached document(s),
and acknowledged to me that they signed it voluntarily for its stated purpose, as members of the
Select Board of the Town of Andover.

(official seal)

Notary Public
My commission expires:

ACCEPTANCE: ANDOVER TOWN YARD, LLC, by its duly authorized [members] does hereby accept and approve this Quitclaim Deed and agrees to all of the terms and conditions thereof as of this ____ day of _____ 202_.

ANDOVER TOWN YARD, LLC

By: _____

Name:

Title:

COMMONWEALTH OF MASSACHUSETTS

_____ County, ss.

On this _____ day of _____ before me, the undersigned notary public, personally appeared _____, and proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document(s), and acknowledged to me that he/she signed it voluntarily for its stated purpose, as _____ of Andover Town Yard, LLC.

(official seal)

Notary Public

My commission expires:

EXHIBIT A

Title References⁷

1. Deed dated May 23, 1899, and recorded with the Essex North District Registry of Deeds (the “Registry”) in Book 171, Page 102;
2. Deed dated October 24, 1944, recorded with the Registry in Book 668, Page 518;
3. Deed dated July 31, 1945, recorded with the Registry in Book 675, Page 123 (see also Taking recorded with the Registry in Book 5153, Page 255);
4. Deed dated November 24, 1956, recorded with the Registry in Book 846, Page 41;
5. Deed dated November 23, 1956, recorded with the Registry in Book 846, Page 42;
6. Taking dated May 11, 1970, recorded with the Registry in Book 1152, Page 269;
7. Deed and Release dated May 12, 1970, recorded with the Registry in Book 1152, Page 293;
8. Taking dated October 11, 1977, recorded with the Registry in Book 1322, Page 66;
9. Taking dated April 10, 1989, recorded with the Registry in Book 2914, Page 246;
10. Deed dated August 23, 1994, recorded with the Registry in Book 4130, Page 140;
11. Taking dated August 3, 1998, recorded with the Registry in Book 5153, Page 255;
12. Deed dated January 26, 2007, recorded with the Registry in Book 10605, Page 333;
13. Taking dated August 20, 2007, recorded with the Registry in Book 10887, Page 301;
14. Release Deed dated August 17, 2007, recorded with the Registry in Book 10887, Page 305;
15. Release Deed dated August 17, 2007, recorded with the Registry in Book 10887, Page 308;
16. Taking dated February 8, 2021, recorded with the Registry in Book 16798, Page 170; and
17. Taking dated [_____], 2023, recorded with the Registry in Book [_____], Page [_____].⁸

⁷ [To be reviewed and confirmed by the parties.]

⁸ [Insert cross-reference to taking of 4,000 sf +/- portion of Lewis Street pursuant to Article 41 of the 2023 Annual Town Meeting]

Exhibit D

Plan of Existing and Proposed Water and Sewer Lines

[See Attached]

Exhibit E
DISCLOSURE STATEMENT FOR
TRANSACTION WITH A PUBLIC AGENCY CONCERNING REAL PROPERTY

M.G.L. c. 7C, s. 38 (formerly M.G.L. c. 7, s. 40J)

INSTRUCTION SHEET

NOTE: The Division of Capital Asset Management and Maintenance (DCAMM) shall have no responsibility for insuring that the Disclosure Statement has been properly completed as required by law. Acceptance by DCAMM of a Disclosure Statement for filing does not constitute DCAMM's approval of this Disclosure Statement or the information contained therein. Please carefully read M.G.L. c. 7C, s. 38 which is reprinted in Section 8 of this Disclosure Statement.

Section (1): Identify the real property, including its street address, and city or town. If there is no street address then identify the property in some other manner such as the nearest cross street and its tax assessors' parcel number.

Section (2): Identify the type of transaction to which this Disclosure Statement pertains --such as a sale, purchase, lease, etc.

Section (3): Insert the exact legal name of the Public Agency participating in this Transaction with the Disclosing Party. The Public Agency may be a Department of the Commonwealth of Massachusetts, or some other public entity. Please do not abbreviate.

Section (4): Insert the exact legal name of the Disclosing Party. Indicate whether the Disclosing Party is an individual, tenants in common, tenants by the entirety, corporation, general partnership, limited partnership, LLC, or other entity. If the Disclosing Party is the trustees of a trust then identify the trustees by name, indicate that they are trustees, and add the name of the trust.

Section (5): Indicate the role of the Disclosing Party in the transaction by checking one of the blanks. If the Disclosing Party's role in the transaction is not covered by one of the listed roles then describe the role in words.

Section (6): List the names and addresses of **every** legal entity and **every** natural person that has or will have a **direct or indirect** beneficial interest in the real property. The only exceptions are those stated in the first paragraph of the statute that is reprinted in Section 8 of this Disclosure Statement. If the Disclosing Party is another public entity such as a city or town, insert "inhabitants of the (name of public entity)." If the Disclosing Party is a non-profit with no individual persons having any beneficial interest then indicate the purpose or type of the non-profit entity. If additional space is needed, please attach a separate sheet and incorporate it by reference into Section 6.

Section (7): Write "none" in the blank if none of the persons mentioned in Section 6 is employed by DCAMM. Otherwise list any parties disclosed in Section 6 that are employees of DCAMM.

Section (8): The individual signing this statement on behalf of the Disclosing Party acknowledges that he/she has read the included provisions of Chapter 7C, Section 38 (formerly Chapter 7, Section 40J) of the General Laws of Massachusetts.

Section (9): Make sure that this Disclosure Statement is signed by the correct person. If the Disclosing Party is a corporation, please make sure that this Disclosure Statement is signed by a duly authorized officer of the corporation as required by the statute reprinted in Section 8 of this Disclosure Statement.

This completed and signed Disclosure Statement should be mailed or otherwise delivered to:

Deputy Commissioner for Real Estate
Division of Capital Asset Management and Maintenance
One Ashburton Place, 15th Floor, Boston, MA 02108

**DISCLOSURE STATEMENT FOR
TRANSACTION WITH A PUBLIC AGENCY CONCERNING REAL PROPERTY**

M.G.L. c. 7C, s. 38 (formerly M.G.L. c. 7, s. 40J)

The undersigned party to a real property transaction with a public agency hereby discloses and certifies, under pains and penalties of perjury, the following information as required by law:

(1) REAL PROPERTY:

(2) TYPE OF TRANSACTION, AGREEMENT, or DOCUMENT:

(3) PUBLIC AGENCY PARTICIPATING in TRANSACTION:

(4) DISCLOSING PARTY'S NAME AND TYPE OF ENTITY (IF NOT AN INDIVIDUAL):

(5) ROLE OF DISCLOSING PARTY (Check appropriate role):

_____ Lessor/Landlord

_____ Lessee/Tenant

_____ Seller/Grantor

_____ Developer/Grantee

_____ Other (Please describe): _____

(6) The names and addresses of all persons and individuals who have or will have a direct or indirect beneficial interest in the real property excluding only 1) a stockholder of a corporation the stock of which is listed for sale to the general public with the securities and exchange commission, if such stockholder holds less than ten per cent of the outstanding stock entitled to vote at the annual meeting of such corporation or 2) an owner of a time share that has an interest in a leasehold condominium meeting all of the conditions specified in M.G.L. c. 7C, s. 38, are hereby disclosed as follows (attach additional pages if necessary):

NAME

RESIDENCE

(7) None of the above-named persons is an employee of the Division of Capital Asset Management and Maintenance or an official elected to public office in the Commonwealth of Massachusetts, except as listed below (insert "none" if none):

- (8) The individual signing this statement on behalf of the above-named party acknowledges that he/she has read the following provisions of Chapter 7C, Section 38 (formerly Chapter 7, Section 40J) of the General Laws of Massachusetts:

No agreement to rent or to sell real property to or to rent or purchase real property from a public agency, and no renewal or extension of such agreement, shall be valid and no payment shall be made to the lessor or seller of such property unless a statement, signed, under the penalties of perjury, has been filed by lessor, lessee, seller or the purchaser, and in the case of a corporation by a duly authorized officer thereof giving the true names and addresses of all persons who have or will have a direct or indirect beneficial interest in said property with the commissioner of capital asset management and maintenance. The provisions of this section shall not apply to any stockholder of a corporation the stock of which is listed for sale to the general public with the securities and exchange commission, if such stockholder holds less than ten per cent of the outstanding stock entitled to vote at the annual meeting of such corporation. In the case of an agreement to rent property from a public agency where the lessee's interest is held by the organization of unit owners of a leasehold condominium created under chapter one hundred and eighty-three A, and time-shares are created in the leasehold condominium under chapter one hundred and eighty-three B, the provisions of this section shall not apply to an owner of a time-share in the leasehold condominium who (i) acquires the time-share on or after a bona fide arms length transfer of such time-share made after the rental agreement with the public agency is executed and (ii) who holds less than three percent of the votes entitled to vote at the annual meeting of such organization of unit owners. A disclosure statement shall also be made in writing, under penalty of perjury, during the term of a rental agreement in case of any change of interest in such property, as provided for above, within thirty days of such change.

Any official elected to public office in the commonwealth, or any employee of the division of capital asset management and maintenance disclosing beneficial interest in real property pursuant to this section, shall identify his position as part of the disclosure statement. The commissioner shall notify the state ethics commission of such names, and shall make copies of any and all disclosure statements received available to the state ethics commission upon request.

The commissioner shall keep a copy of each disclosure statement received available for public inspection during regular business hours.

- (9) This Disclosure Statement is hereby signed under penalties of perjury.

PRINT NAME OF DISCLOSING PARTY (from Section 4, above)

AUTHORIZED SIGNATURE of DISCLOSING PARTY

DATE (MM / DD / YYYY)

PRINT NAME & TITLE of AUTHORIZED SIGNER

Exhibit F

Certificate of Compliance with Tax Laws

Pursuant to Massachusetts General Laws, Chapter 62C, Section 49A, I certify under the penalties of perjury that I have filed all Massachusetts state tax returns; have complied with all Massachusetts laws relating to taxes; and have paid all Massachusetts state taxes required under law; and that the Federal Employer Identification Number for the undersigned is [On File with the Town].

Dated: _____, 20__

DEVELOPER

Exhibit G

Certificate of Non-Collusion

The undersigned certifies under the penalties of perjury that the foregoing Agreement has been obtained in good faith and without collusion or fraud with any other person (as used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals).

Dated: _____, 20__

DEVELOPER

Exhibit H

Form of Repurchase Agreement

REPURCHASE AGREEMENT

This REPURCHASE AGREEMENT (this “Agreement”) is made and entered into as of the ____ day of _____, 20____, by and between the TOWN OF ANDOVER, a Massachusetts municipal corporation, acting by and through its Select Board, with an address of 36 Bartlet Street, Andover, MA 01810 (the “Town”) and ANDOVER TOWN YARD, LLC, a Delaware limited liability company, with an address of 231 Sutton Street, Suite 1B, North Andover, MA 01845 (the “Developer”).

Recitals

WHEREAS, pursuant to the terms of a deed of even date herewith to be recorded with the Essex County Northern District Registry of Deeds (the “Registry”), and a Land Disposition Agreement between the Town and the Developer dated _____, 2023 (the “LDA”), which LDA is recorded with the Essex County Northern District Registry of Deeds (the “Registry”) in Book _____, Page _____, the Town has sold to the Developer, and the Developer has purchased from the Town and acquired from Developer’s affiliate, Buxton Redevelopment, LLC, the property described on Schedule 1 attached hereto and incorporated herein (the “Property”);

WHEREAS, the Developer intends to develop and construct on the Property a project (the “Project”) consisting of a mixed use residential and commercial development, containing not less than one hundred thirty-six (136) residential dwelling units, together with amenities and accessory uses, in accordance with those certain plans approved by the Town of Andover Select Board and the Town of Andover Planning Board in accordance with the LDA; and

WHEREAS, the parties desire to set forth their understanding regarding the Developer’s commitment to promptly commence and diligently prosecute construction of the Project on the Property as contemplated by the LDA, and the Town’s rights in connection therewith in the event the Developer fails to timely commence the Project, subject to the terms and provisions set forth in this Agreement.

NOW, THEREFORE, in consideration of the Recitals set forth above, which are incorporated in and made a part of this Agreement, and in consideration of the mutual covenants and agreements herein contained, the Town and the Developer hereby agree as follows:

1. Defined Terms. Capitalized terms used but not defined in this Agreement shall have the meanings ascribed to them in the LDA.

2. Developer’s Obligations. The Developer shall achieve the completion of the Commencement Work by the date that is six (6) months after the start of the Commencement Work, as any such date may be extended by Force Majeure, by written agreement of the parties, or by the Seller pursuant to Section 3.03 of the LDA (collectively, the “Developer’s Obligations”).

For the purposes of this Agreement the term “Commencement Work” means: (i) the Developer’s completion of a pre-demolition survey, (ii) the completion of any asbestos abatement of the existing structures and other improvements at the Property and Private Property if required by Laws, (iii) the completion of the demolition of the existing structures and other improvements at the Property and Private Property (other than the building located at 122 North Main Street), and (iv) commencing the actual excavation of soils for the construction of the foundation for the residential Building of the Project.

3. Repurchase Right.

(a) Subject to the rights of any Mortgage Holder following a Developer Default, as such rights are set forth in Section 8.02(a) of the LDA, the failure of the Developer to achieve the completion of the Commencement Work within the time period provided in Section 2 shall constitute a “Default” hereunder. The Developer shall have sixty (60) days following receipt of written notice from the Town to cure such Default, or if such Default is curable through the use of diligent efforts but is not so curable within such 60-day period, then within such longer period as is reasonably necessary to cure the same, provided the cure is commenced promptly after receipt of said notice and continuously and diligently prosecuted to completion, subject to Force Majeure (the “Cure Period”).

(b) If the Default remains uncured after the expiration of the Cure Period, then the Town shall have the option, but not the obligation, to repurchase the Property and the improvements thereon (the “Repurchase Right”) by notifying the Developer in writing within thirty (30) days after the expiration of the Cure Period of the Town’s election to repurchase the Property for the Repurchase Price, as hereinafter computed (the “Repurchase Election”); provided, however, if, during such 30-day period, the completion of the Commencement Work has been achieved, the Repurchase Right shall expire, terminate and be of no further force or effect.

(c) In the event that the Town exercises its Repurchase Right, the closing shall occur on such date that is no earlier than sixty (60) days and no later than one hundred eighty (180) days after the Town exercises its Repurchase Right, which closing date shall not be earlier than thirty (30) days following a written notice of such closing date from the Town to the Developer (the “Closing Date”).

(d) On or prior to the Closing Date:

(i) the Developer shall convey to the Town (or its designee), by a good and sufficient quitclaim deed, the same title to the Property conveyed to Developer by the Town, and all improvements thereon, free and clear of all liens and encumbrances except, and excluded from such quitclaim covenants, (1) those in existence as of the date of the recording of the Deed from the Town to the Developer, (2) any mortgages permitted pursuant to the LDA, or (3) liens or encumbrances that do not prohibit or materially interfere with the use of the Property for the Project;

(ii) the Town shall pay the Repurchase Price to the Developer, by certified check or bank check or by wire transfer of immediately available federal funds pursuant to the Developer's or a mutually agreeable title insurance company's wiring instructions; and

(iii) recording fees and adjustments, if any, shall be paid in accordance with customary Massachusetts conveyancing standards.

(e) On or prior to the Closing Date, the Developer shall assign, to the extent assignable, to the Town (or its designee) all of its rights, title, and interest in all plans, non-privileged reports, improvements, warranties, permits and approvals obtained by the Developer for the Project, without any representation or warranty as to their accuracy or completeness.

(f) For purposes of this Agreement, the term "Repurchase Price" shall mean the sum of: (i) \$4,566,000.00 (representing the Purchase Price paid by the Developer to the Town pursuant to the LDA) plus the cost of the Developer's builder's risk insurance for the Project from the date of the Town's Repurchase Election to the Closing Date that has been paid by the Developer; and (ii) an amount equal to \$[2,624,800]⁹ (representing the purchase price paid by Buxton Redevelopment, LLC for the Private Property (as defined in the LDA)), plus the cost of the property insurance for 122 North Main Street covering the period from the date of the Town's Repurchase Election to the Closing that has been paid by the Developer.

(g) The Town acknowledges and agrees that the Developer shall sell and convey to the Town, and the Town shall accept, the Property "as is, where is, with all faults" including, without limitation, regarding the nature, character, quality, use, title, quantity, suitability or conditions (including environmental) of the Property or the Project. At the closing under this Agreement, the Developer shall pay over or assign to the Town, all amounts recovered or recoverable on account of its builder's risk and property insurance on the Property and Private Property, less any amounts reasonably expended by the Developer for any partial restoration, or if a holder of a mortgage on said premises shall not permit the insurance proceeds or a part thereof to be used to restore the said premises to their former condition or to be so paid over or assigned, give to the Town a credit against the purchase price, on delivery of the deed, equal to said amounts so recovered or recoverable and retained by the holder of the said mortgage less any amounts reasonably expended by the Developer for any partial restoration. Except as otherwise expressly set forth in this Agreement or the LDA, the Town has not relied on, and will not rely on, and the Developer is not liable for or bound by, any express or implied warranties, guaranties, statements, or representations, whether oral or written, from the Developer or its employees, agents, consultants, or attorneys, pertaining to the Property or relating thereto. The provisions of this section 3(g) shall survive the Closing Date. Upon the conveyance of the Property to the Town,

⁹ [This figure assumes that the Developer, at the time of the Town's conveyance of the Property to the Developer, will pay off the existing outstanding mortgage indebtedness securing the Private Property with equity, and not with mortgage financing from the construction loan for the Project or otherwise. If the Developer pays off the existing mortgage indebtedness on the Private Property with new debt, or if the existing mortgage indebtedness is not paid off at time of the closing under this Agreement, then the bracketed amount shall be the difference between \$2,624,800 and then-outstanding principal amount and accrued and unpaid interest on any mortgage then securing the Private Property. If the Developer does not refinance or pay off the mortgage on the Private Property at the time of the Town's conveyance for the Property to the Developer, then the bracketed amount shall be the difference between \$2,624,800 and then-outstanding principal amount and accrued and unpaid interest on any mortgage then securing the Private Property.]

the Developer shall have no further obligations to the Town under the LDA and shall be released therefrom, except for any obligations that survive the termination of the LDA.

4. Resale. After the Closing Date, the Town shall use commercially reasonable efforts to resell the Property and the improvements thereon (subject to such mortgage liens as are provided for herein) as soon and in such manner as the Town shall find feasible (subject to the requirements of applicable Laws including, without limitation, M.G.L. c. 30B), to a qualified and responsible party or parties (as determined by the Town), who will assume the obligation of making or completing the improvements or such other improvements as shall be satisfactory to the Town and in accordance with the uses specified for the Property in the LDA. Upon such resale of the Property and the improvements thereon, the proceeds thereof shall be applied and credited as follows:

(a) First, to pay all unpaid taxes, payments in lieu of taxes, water and sewer charges, other public charges and other sums due and payable to the Town with respect to the Property and the Project up to the time of such sale or resale;

(b) Second, in an amount of up to Five Million Dollars (\$5,000,000), in their respective order of priority, to pay any and all existing mortgage indebtedness permitted under the LDA and to make all and whatever payments may be necessary to discharge any other encumbrances or liens existing or threatened on the Property and the improvements thereon, in favor of mechanics, materialmen or subcontractors, and to the extent that the balance of such proceeds is insufficient to pay such mortgage indebtedness or such liens in full, such sale or resale shall be subject to any such mortgage or security instruments and other liens for the amount thereof remaining unpaid;

(c) Third, to reimburse the Town for all reasonable costs and expenses incurred by the Town in connection with the repurchase, management, and resale of the Property and the improvements thereon, including, without limitation, the Repurchase Price (but less any income received by the Town from the Property and the improvements thereon in connection with such management) (including reasonable attorneys' fees); any payments made or necessary to be made to discharge any monetary encumbrances or liens due to obligations, defaults or acts of the Developer; any reasonable expenditures made or obligations incurred with respect to the completion of the improvements on the Property, and any amounts otherwise owing to the Town by the Developer under the LDA;

(d) Fourth, in their respective order of priority, to pay any and all existing mortgage indebtedness permitted under the LDA not paid under clause b. above, and to make all and whatever payments may be necessary to discharge any other encumbrances or liens existing or threatened on the Property and the improvements thereon, in favor of mechanics, materialmen or subcontractors, and to the extent that the balance of such proceed is insufficient to pay such mortgage indebtedness or such liens in full, such sale or resale shall be subject to any such mortgage or security instruments and other liens for the amount thereof remaining unpaid;

(e) Fifth, if there is any balance of proceeds remaining, to use the balance of the proceeds to reimburse the Developer for all costs and expenses incurred in the acquisition, development and construction of the Property, including, without limitation the amount of cash actually invested or incurred by it in the permitting, design, development, improvement of the

Property and all engineering, environmental, surveying, architectural and legal expenses (which the Developer shall demonstrate to the Town by providing copies of all invoices and other evidence reasonably acceptable to the Town of amounts incurred by the Developer for such costs and expenses), less any profit theretofore realized by the Developer from the disposition of any interest in the Property and the improvements thereon or in any individual part or parcel thereof; and

(f) Finally, any balance remaining after such reimbursements shall be retained by the Town as its property.

The terms and provisions of this Section 4 shall survive until the closing of the first arms-length sale of the Property by the Town to a third party.

5. Termination. Upon the earlier of Developer achieving completion of the Commencement Work or the Town's failure to timely exercise its Repurchase Election pursuant to Section 3(b) of this Agreement, the Developer may record with the Registry sworn affidavit, signed under the pains and penalties of perjury, that the completion of the Commencement Work has occurred or the Town failed to timely exercise its Repurchase Election pursuant to Section 3(b) of this Agreement, this Agreement and the rights granted here under shall automatically terminate without any further action and be of no further force or effect, without requirement of any further actions or agreements by either the Developer or the Town. Notwithstanding any provision contained in this Agreement to the contrary, upon the earlier of completion of the Commencement Work or the Town's failure to timely exercise its Repurchase Election, the Town acting by and through its Town Manager, who is authorized to act on its behalf, shall promptly execute, acknowledge and deliver to the Developer a termination and release, in recordable form reasonably acceptable to the Developer, necessary to terminate this Agreement and terminate the Repurchase Notice (as defined below in Section 6(k)), as a matter of record (the "Repurchase Release").

6. Miscellaneous.

(a) Notices. Any and all notices required herein shall be in writing and shall be deemed properly given upon the earlier of: (i) two (2) Business Days after deposit with the United States Postal Service, if sent by registered or certified mail, return receipt requested, postage prepaid; (ii) one (1) Business Day after deposit with an express courier service such as Federal Express; or (iii) actual receipt. All such notices will be delivered to the address specified below or each other address as the respective parties may designate in writing:

if to the Developer: Andover Town Yard, LLC
231 Sutton Street, Suite 1B
North Andover, MA 08145

with a copy sent in the same manner to:

Eckert Seamans, Cherin & Mellot, LLC
Two International Place, 16th Floor
Boston, MA 02110

Attn.: Robert W. Levy, Esquire

if to the Town: Town Manager
Town Hall
36 Bartlet Street
Andover, MA 01810

with a copy sent in the same manner to:

Town Counsel
Town Hall
36 Bartlet Street
Andover, MA 01810

(b) Notwithstanding anything set forth herein to the contrary, the Town's and the Developer's obligations hereunder are expressly subject to and contingent upon receiving all municipal approvals that are required therefor to the Town's satisfaction, including without limitation approval by Town Meeting of the repurchase and resale of the Property. In the event the Town fails to receive such approvals within the 180-day period specified in Section 3(c) above, this Agreement shall terminate and be of no further force or effect and the Town shall deliver to the Developer the Repurchase Release.

(c) The provisions of this Agreement are not intended to create, nor shall they in any way be interpreted to create, a joint venture, a partnership, or any other similar relationship between the parties.

(d) The captions heading the various sections of this Agreement are for convenience and identification purposes only, and they shall not be deemed to limit or define the contents of their respective sections. In the event of a conflict between this Agreement and the LDA with respect to the termination or expiration of this Agreement, this Agreement shall control.

(e) Except as otherwise expressly provided in this Agreement, no delay or omission by either of the parties in exercising any right or power accruing upon the other party's non-compliance with or failure to perform any of the provisions of this Agreement shall impair or be construed to be a waiver of any such right or power.

(f) The parties hereto acknowledge and agree that this Agreement has been negotiated at arm's length and between parties equally sophisticated and knowledgeable in the matters dealt with in this Agreement. Accordingly, any rule of law or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it, or in favor of the non-drafting party, is not applicable and is waived. The provisions of this Agreement shall not be construed strictly or in favor of or against any party hereto but rather shall be interpreted in a reasonable manner to effect the intent of the parties as set forth in this Agreement.

(g) This Agreement shall be binding upon and inure to the benefit of the Town and the Developer and their respective permitted successors and assigns subject to the provisions of this Agreement and the LDA.

(h) This Agreement may be executed in several counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.

(i) Amendments, modifications, supplements or changes to this Agreement shall be in writing, signed by both parties.

(j) If any provision of this Agreement or application to any party or circumstances shall be determined by a final, unappealed ruling of any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law. In the place of such invalid or unenforceable provision, there shall be substituted a like, but valid and enforceable provision that comports to the findings of the aforesaid court and most nearly accomplishes the original intent of the parties.

(k) A notice of this Agreement shall be recorded in the Registry with the parties dividing the cost of such recordation equally between the parties (the "Repurchase Notice").

(l) Each party shall, without charge, at any time and from time to time hereafter, within fifteen (15) days after receipt of written request of the other, certify by written instrument, duly executed and acknowledged, to any mortgagee or purchaser, or proposed mortgagee or proposed purchaser, or any other person, firm or corporation specified in such request: (i) whether this Agreement has been supplemented or amended, and, if so, the substance and manner of the supplement or amendment; (ii) whether any default exists under this Agreement, and, if so, a description of each default; (iii) whether any offsets, counterclaims, or defenses exist on the part of the responding party with respect to the obligations under this Agreement, and, if so, the nature and amount of such offsets, counterclaims, or defenses; and (iv) such other matters as may be reasonably requested. Any such certificate may be relied upon by the addressee, and said addressee may rely on same to the extent of estopping the party providing the certificate from asserting a claim or defense inconsistent with the facts therein to the extent relied upon by the addressee without knowledge of the facts to the contrary, and the contents of such certificate shall be binding on the party executing the same to such extent.

(m) This Agreement shall be governed by the laws of the Commonwealth of Massachusetts.

[Signature Page Follows]

IN WITNESS WHEREOF, the Town and the Developer have executed this Agreement as of the date first above written.

TOWN OF ANDOVER:

By its Select Board

ANDOVER TOWN YARD, LLC

By: _____

Name:

Title:

Schedule 1 to Repurchase Agreement

Legal Description of Property

Parcel 1 (the “Land”):¹⁰

That certain parcel of land shown as [“Lot 1”] on the plan (the “Plan”) entitled “[REFERENCE RECONCILED PLAN]” and that certain parcel of land consisting of 4,000 square feet, more or less, identified as “Portion of Lewis Street to be Discontinued” on the plan entitled “Discontinuance Plan Portion of Lewis Street Andover, Mass.” dated January 18, 2022, prepared by Andover Consultants Inc., and recorded in the Essex County Registry of Deeds as Plan 18312 of 2022 (collectively, the “Property”).

The Property contains <> square feet of land, more or less, according to said plans.

The Property is conveyed (i) subject to the use of [“Parcel C”] shown on the Plan for all purposes for which public ways are used in the Town of Andover,¹¹ and (ii) subject to and with the benefit of restrictions, easements, covenants and agreements of record, if any, insofar as the same are now in force and applicable.

For title reference see Quitclaim Deed dated [_____] and recorded with Essex North District Registry of Deeds at Book [____], Page [____].¹²

Parcel 2 (the “Private Property”):

The following parcels of land, located in Andover, Essex County, Massachusetts, more particularly described as follows:

122 North Main Street

A certain parcel of land, together with the buildings thereon, situated on North Main Street in Andover, Essex County, Massachusetts, bounded and described as follows:

Beginning at a point on said Main Street at Land of Frotten; thence running by said Main Street and in a Northerly direction, 75 feet to land now or once of Sweeney; thence by said Sweeney's land and in a Southwesterly direction, 100 feet to land of the Boston and Maine Railroad; thence by said land of the Boston and Maine Railroad, and in a Southerly direction 101 feet to land of aforementioned Frotten; thence by said Frotten's land and in Northeasterly direction, 153 feet to the point of beginning, being those measurements more or less.

2-4 Buxton Court

¹⁰ [Subject to change based on reconciled plan.]

¹¹ [“Parcel C” refers to Parcel C on the Developer Plan of Land attached to the LDA as Exhibit A-3. This reference will be updated based on the reconciled plan.]

¹² [Insert cross-reference to Deed from the Town to the Developer for the Land, recorded at Closing.]

The land in Andover, Essex County, Massachusetts with all the buildings thereon situated in said Andover on the Westerly side of Buxton Court, said Court leading Northerly out of Lewis Street, which street extends Westerly from Main Street, next North of the Tyer Rubber Company and bounded and described as follows:

Beginning at a point in the Westerly line of said Buxton Court, 50 feet North of the Northerly line of said Lewis Street and from said point running Northerly 50 feet along the line of Buxton Court; thence

Westerly by land now or formerly of Hardy & Cole 90 feet to a stake; thence

Southerly by land now or formerly of Hardy & Cole 50 feet to land of Perkins; thence

Easterly by said Perkins land 102 feet to the point of beginning.

Together with the right of way in a strip of land 11 feet wide on said Buxton Court on the Northerly side of the premises now or formerly of one Jane Perkins and running Westerly and adjacent to the premises herein described.

7-9 Lewis Street

A certain parcel of land with the buildings thereon situated in said Andover on the Westerly side of Buxton Court and on the Northerly side of Lewis Street, bounded and described as follows:

EASTERLY by said Buxton Court fifty (50) feet;

NORTHERLY by land now or formerly of Hardy and Cole one hundred (100) feet;

WESTERLY by other land now or formerly of Hardy and Cole fifty (50) feet; and

SOUTHERLY by said Lewis Street fifty (50) feet.

Containing five thousand (5,000) square feet, more or less.

The Southerly corner of said lot is at a point on the Westerly line of Buxton Court two hundred and forty (240) feet from Main Street measuring along the Northerly line of Lewis Street.

35 Pearson Street

The land with said buildings thereon situated in said Andover on the Northerly side of Pearson Street, bounded and described as follows:

Beginning on said street at the Southwesterly corner of land of one Collins, once of Joseph L. Low; thence by said street Westerly seventy (70) feet to land of one Stack, once Matthew Culley; thence Northerly by land of said Stack about one hundred thirteen (113) feet to other land of said Stack; once of said Low, thence Easterly by the last named land seventy (70)

feet to land of said Collins once of said Low; thence Southerly by said Collins land one hundred twenty-two (122) feet to the first bound.

For title reference see Quitclaim Deed dated [_____] and recorded with Essex North District Registry of Deeds at Book [____], Page [____].¹³

¹³ [Insert cross-reference to deed(s) from Buxton Redevelopment, LLC to Developer for the Private Property, recorded at/prior to Closing]

Exhibit I

Form of Notice of Repurchase Agreement

RECORD AND RETURN TO:

NOTICE OF REPURCHASE AGREEMENT

This NOTICE OF REPURCHASE AGREEMENT (this “Notice”) is made and entered into as of the ____ day of _____, 20____, by and between the TOWN OF ANDOVER, a Massachusetts municipal corporation, acting by and through its Select Board, with an address of 36 Bartlet Street, Andover, MA 01810 (the “Town”) and ANDOVER TOWN YARD, LLC, a Delaware limited liability company, with an address of 231 Sutton Street, Suite 1B, North Andover, MA 01845 (the “Developer”).

Notice is hereby given that the Town and the Developer are parties to that certain Repurchase Agreement of even date herewith (the “Repurchase Agreement”), pursuant to which the Developer has granted to the Town certain rights as to the property described on Schedule 1 attached hereto (the “Property”), including certain rights to acquire the Property in connection with the Developer’s default under that certain Land Disposition Agreement dated as of _____, 20____ (the “Land Disposition Agreement”), a notice of which Land Disposition Agreement is recorded with the Essex County Northern District Registry of Deeds (the “Registry”) in Book _____, Page _____. The terms and provisions of the Town’s rights under the Repurchase Agreement are more particularly set forth in the Repurchase Agreement.

The Town’s rights under the Repurchase Agreement shall cease and expire, and the Repurchase Agreement shall be void and of no further force or effect, upon the recording with the Registry of a duly issued Certificate of Completion for the Project or a Repurchase Release (which may be executed by the Town Manager), as such terms are defined in the Land Disposition Agreement.

[Signature Pages Follow]

Property Address:

IN WITNESS WHEREOF, the undersigned have executed this notice as of the date first written above.

TOWN OF ANDOVER

By its Select Board

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this ___ day of _____, 20___, before me, the undersigned Notary Public, personally appeared the following members of the Select Board of the Town of Andover, namely _____, _____, _____, _____ and _____, who proved to me through satisfactory evidence of identification, which was personal knowledge, to be the persons whose names are signed on the proceeding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose, on behalf of the Select Board of the Town of Andover.

Notary Public
My Commission Expires:

ANDOVER TOWN YARD, LLC

By: _____

Name:

Title:

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this ___ day of _____, 20___, before me, the undersigned Notary Public, personally appeared _____, the _____ of _____, as aforesaid, who proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose, on behalf of Andover Town Yard, LLC.

Notary Public

My Commission Expires:

Schedule 1 to Notice of Repurchase Agreement

Legal Description of Property

Parcel 1 (the “Land”):¹⁴

That certain parcel of land shown as [“Lot 1”] on the plan (the “Plan”) entitled “[REFERENCE RECONCILED PLAN]” and that certain parcel of land consisting of 4,000 square feet, more or less, identified as “Portion of Lewis Street to be Discontinued” on the plan entitled “Discontinuance Plan Portion of Lewis Street Andover, Mass.” dated January 18, 2022, prepared by Andover Consultants Inc., and recorded in the Essex County Registry of Deeds as Plan 18312 of 2022 (collectively, the “Property”).

The Property contains <> square feet of land, more or less, according to said plans.

The Property is conveyed (i) subject to the use of [“Parcel C”] shown on the Plan for all purposes for which public ways are used in the Town of Andover,¹⁵ and (ii) subject to and with the benefit of restrictions, easements, covenants and agreements of record, if any, insofar as the same are now in force and applicable.

For title reference see Quitclaim Deed dated [_____] and recorded with Essex North District Registry of Deeds at Book [____], Page [____].¹⁶

Parcel 2 (the “Private Property”):

The following parcels of land, located in Andover, Essex County, Massachusetts, more particularly described as follows:

122 North Main Street

A certain parcel of land, together with the buildings thereon, situated on North Main Street in Andover, Essex County, Massachusetts, bounded and described as follows:

Beginning at a point on said Main Street at Land of Frotten; thence running by said Main Street and in a Northerly direction, 75 feet to land now or once of Sweeney; thence by said Sweeney's land and in a Southwesterly direction, 100 feet to land of the Boston and Maine Railroad; thence by said land of the Boston and Maine Railroad, and in a Southerly direction 101 feet to land of aforementioned Frotten; thence by said Frotten's land and in Northeasterly direction, 153 feet to the point of beginning, being those measurements more or less.

2-4 Buxton Court

¹⁴ [Subject to change based on reconciled plan.]

¹⁵ [“Parcel C” refers to Parcel C on the Developer Plan of Land attached to the LDA as Exhibit A-3. This reference will be updated based on the reconciled plan.]

¹⁶ [Insert cross-reference to Deed from the Town to the Developer for the Land, recorded at Closing.]

The land in Andover, Essex County, Massachusetts with all the buildings thereon situated in said Andover on the Westerly side of Buxton Court, said Court leading Northerly out of Lewis Street, which street extends Westerly from Main Street, next North of the Tyer Rubber Company and bounded and described as follows:

Beginning at a point in the Westerly line of said Buxton Court, 50 feet North of the Northerly line of said Lewis Street and from said point running Northerly 50 feet along the line of Buxton Court; thence

Westerly by land now or formerly of Hardy & Cole 90 feet to a stake; thence

Southerly by land now or formerly of Hardy & Cole 50 feet to land of Perkins; thence

Easterly by said Perkins land 102 feet to the point of beginning.

Together with the right of way in a strip of land 11 feet wide on said Buxton Court on the Northerly side of the premises now or formerly of one Jane Perkins and running Westerly and adjacent to the premises herein described.

7-9 Lewis Street

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EASTERLY by said Buxton Court fifty (50) feet;

NORTHERLY by land now or formerly of Hardy and Cole one hundred (100) feet;

WESTERLY by other land now or formerly of Hardy and Cole fifty (50) feet; and

SOUTHERLY by said Lewis Street fifty (50) feet.

Containing five thousand (5,000) square feet, more or less.

The Southerly corner of said lot is at a point on the Westerly line of Buxton Court two hundred and forty (240) feet from Main Street measuring along the Northerly line of Lewis Street.

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The land with said buildings thereon situated in said Andover on the Northerly side of Pearson Street, bounded and described as follows:

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feet to land of said Collins once of said Low; thence Southerly by said Collins land one hundred twenty-two (122) feet to the first bound.

For title reference see Quitclaim Deed dated [_____] and recorded with Essex North District Registry of Deeds at Book [____], Page [____].¹⁷

¹⁷ [Insert cross-reference to deed(s) from Buxton Redevelopment, LLC to Developer for the Private Property, recorded at/prior to Closing]

Exhibit J

Form of License Agreement for Community Space¹⁸

¹⁸ [To be finalized.]

Exhibit K

Neutral Decision Process

1. If the Town and the Developer cannot agree on the length of any period or validity of claimed Force Majeure (the “FM Dispute”) or if they cannot agree upon the estimated cost to remediate a Post-Execution Environmental Release pursuant to Section 2.06.A of the LDA (a “Post-Execution Environmental Release Dispute” and together with an FM Dispute, a “Dispute”), they shall use good faith efforts to negotiate a resolution of their disagreement. If, after negotiating in good faith for fifteen (15) Business Days, the Town and the Developer have not resolved the Dispute, as evidenced by an executed mutually acceptable agreement, either party may provide a written notice to the other that the notifying party is invoking the neutral decision process set forth below (the “Neutral Decision Initiation Notice”).
2. Within twenty (20) days following a Neutral Decision Initiation Notice, if the Town and the Developer are unable to select a mutually acceptable party to act as the Arbitrator (as hereinafter defined), then either party may ask the AAA Boston, Massachusetts office to select an independent, qualified professional to serve as the Arbitrator. The arbitrator selected by the parties or designated to serve to arbitrate the Dispute shall be the “Arbitrator”. The fees and costs of the Arbitrator and the AAA shall be borne equally by the parties.
3. The initiating party shall send the Neutral Decision Initiation Notice to the Arbitrator within one (1) Business Day after their selection or designation.
4. The Arbitrator shall, no later than five (5) Business Days after the later (i) its receipt of the Neutral Decision Initiation Notice and (ii) the execution of an engagement agreement among the Town, the Developer and the Arbitrator, hold a preliminary, informal mediation meeting with the Town and the Developer in an attempt to mediate the Dispute. The Arbitrator shall be instructed to give due regard to the language of the LDA and the Special Permit when determining the merits of the applicable Dispute, if applicable to the Dispute. If the Dispute is not resolved at that mediation meeting, the Arbitrator shall, at such informal mediation meeting, establish a date, not earlier than ten (10) Business Days after such informal mediation meeting nor later than thirty (30) days after such informal mediation meeting, for a hearing (a “Hearing”) to be held in accordance with the terms and provisions of this Exhibit K to resolve such Dispute. Notwithstanding the foregoing, upon the existence of a prior commitment on the part of the Arbitrator, or upon reasonable cause shown by the Town or the Developer (or both), the Arbitrator may make a reasonable extension to one or both time periods set forth in this paragraph.
5. The Town and the Developer shall have the right to make one (1) written submission to the Arbitrator prior to the Hearing. Such submission shall be received by the Arbitrator and the other party not later than two (2) Business Days prior to the Hearing date. No discovery shall be permitted. The Hearing shall be conducted by the Arbitrator. It is the intention of the parties hereto that the Hearing shall be conducted in an informal and expeditious manner. No transcript or recording shall be made. The Town and the Developer shall have the opportunity to make a brief statement and to present documentary and other support for its position, which

may include the testimony of not more than two (2) individuals, one (1) of whom may be outside experts. There shall be no presumption in favor of either party's position.

6. The Arbitrator shall render a decision, in writing, as to any Dispute not later than seven (7) Business Days following the conclusion of the Hearing regarding such Dispute (the "Neutral Decision") and shall endeavor to provide a brief written basis for its decision not later than five (5) Business Days after the issuance of the Neutral Decision. The Arbitrator may not award money damages or different relief. The Neutral Decision shall be final and binding on the Town and the Developer for all purposes and may be entered in any court of competent jurisdiction.

VOTE OF THE SELECT BOARD

I, the Clerk of the Select Board of the Town of Andover, Massachusetts, certify that at a meeting of the board held June 5, 2023, of which meeting all members of the board were duly notified and at which a quorum was present, the following votes were unanimously passed, all of which appear upon the official record of the board in my custody:

Voted: to approve the sale of a \$13,300,000 4.50 percent General Obligation Bond Anticipation Note (the “Note”) of the Town dated June 21, 2023, and payable December 15, 2023, to Jefferies LLC at par and accrued interest plus a premium of \$51,737.00.

Further Voted: that in connection with the marketing and sale of the Notes, the preparation and distribution of a Notice of Sale and Preliminary Official Statement dated May 24, 2023, and a final Official Statement dated May 31, 2023, each in such form as may be approved by the Town Treasurer, be and hereby are ratified, confirmed, approved and adopted.

Further Voted: that the Town Treasurer and the Select Board be, and hereby are, authorized to execute and deliver a significant events disclosure undertaking in compliance with SEC Rule 15c2-12 in such form as may be approved by bond counsel to the Town, which undertaking shall be incorporated by reference in the Notes for the benefit of the holders of the Notes from time to time.

Further Voted: that we authorize and direct the Town Treasurer to establish post issuance federal tax compliance procedures and continuing disclosure procedures in such forms as the Town Treasurer and bond counsel deem sufficient, or if such procedures are currently in place, to review and update said procedures, in order to monitor and maintain the tax-exempt status of the Notes and to comply with relevant securities laws.

Further Voted: that any certificates or documents relating to the Notes (collectively, the “Documents”), may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same document; delivery of an executed counterpart of a signature page to a Document by electronic mail in a “.pdf” file or by other electronic transmission shall be as effective as delivery of a manually executed counterpart signature page to such Document; and electronic signatures on any of the Documents shall be deemed original signatures for the purposes of the Documents and all matters relating thereto, having the same legal effect as original signatures.

Further Voted: that each member of the Select Board, the Town Clerk and the Town Treasurer be and hereby are, authorized to take any and all such actions, and execute and deliver such certificates, receipts or other documents as may be determined by them, or any of them, to be necessary or convenient to carry into effect the provisions of the foregoing votes.

I further certify that the votes were taken at a meeting open to the public, that no vote was taken by secret ballot, that a notice stating the place, date, time and agenda for the meeting (which agenda included the adoption of the above votes) was filed with the Town Clerk and a copy thereof posted in a manner conspicuously visible to the public at all hours in or on the municipal building that the office of the Town Clerk is located or, if applicable, in accordance with an alternative method of notice prescribed or approved by the Attorney General as set forth in 940 CMR 29.03(2)(b), at least 48 hours, not including Saturdays, Sundays and legal holidays, prior to the time of the meeting and remained so posted at the time of the meeting, that no deliberations or decision in connection with the sale of the Notes were taken in executive session, all in accordance with G.L. c.30A, §§18-25 as amended.

Dated: June 5, 2023

Clerk of the Select Board