

## Select Board Meeting

Monday, June 12, 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 8 PM4:14

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### I. Call to Order – 6:30 P.M.

### II. Executive Session

A. Board to vote to go into Executive Session pursuant to option 3 to discuss strategy with respect to litigation filed by Fusion Learning and pursuant to option 6 to discuss the purchase, exchange, lease, or value of real property, and to vote to approve and not release the Executive Session minutes of June 5, 2023; and for the Chair to declare that an open session may have a detrimental effect on the negotiating position and 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. Regular Business

A. Alcoholic Beverages License – Change of DBA

Board to review and consider voting to approve the application of Five Bartlet Street, Inc., doing business as Five Bartlet Street, at 5 Five Bartlet Street, Andover, for a Change of DBA to “Nueva Liquors” on its All-Alcoholic Retail Package Store Liquor License.

B. Alcoholic Beverages License – Temporary Alteration of Premises

Board to review and consider voting to approve the application of Gati Thai, Inc., doing business as Gati Thai, at 12 Post Office Avenue, Andover, for a Temporary Alteration of Premises on its All-Alcoholic Restaurant Alcoholic Beverage License.

C. Local Initiative Project Application

Andover Community Trust to present a Local Initiative Project application for the development of an affordable home at 13 Mary Lou Lane. Board to consider voting to support the application.

D. Land Disposition Agreement – 11 Lewis Street – 2<sup>nd</sup> Reading

Board to consider voting to sign the Land Disposition Agreement between the Town of Andover and Minco Development and to approve the conceptual program and plan for the property located at 11 Lewis Street.

E. Andover High School Building Project

Board to review and consider voting to accept the new building option as recommended by the Andover High School Building Committee.

F. Year-End Transfers and Revolving Fund Spending Limit

Board to consider voting to approve year-end transfers and Revolving Fund Spending Limit Increase(s).

G. Select Board / Town Manager Goals Update

Town Manager to update the Board on the 2022-2023 Select Board / Town Manager Goals.

**VII. 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
Andover Fire Rescue	Timothy Bartlett	Lieutenant	\$107,144.42/yr	7/09/2023
Department of Public Works	Michael Schieding <i>(Michael Ferris)</i>	Tree Climber	\$28.03/hr	6/26/2023
Facilities	Richard Drinkwater <i>(Richard Souza)</i>	Second Shift Custodian	\$25.06/hr	6/13/2023
Facilities	Ryan Raycraft <i>(Blair Heffernan)</i>	Second Shift Custodian	\$25.06/hr	6/26/2023
Memorial Hall Library	Bonney Streeter	Part-Time Library Aide	\$15.00/hr	6/13/2023
Memorial Hall Library	James Chen	Part-Time Library Aide	\$15.00/hr	6/13/2023
MBTA Communities Working Group	Jessica Randolph	Member	Term Expires 6/30/2025	6/12/2023
MBTA Communities Working Group	Emran Baqui	Member	Term Expires 6/30/2025	6/12/2023
MBTA Communities Working Group	Jane Gifun	Member	Term Expires 6/30/2025	6/12/2023
MBTA Communities Working Group	John O'Hara	Member	Term Expires 6/30/2025	6/12/2023
MBTA Communities Working Group	Kevin Coffey	Member	Term Expires 6/30/2025	6/12/2023
MBTA Communities Working Group	Andrew MacKenzie	Member	Term Expires 6/30/2025	6/12/2023
MBTA Communities Working Group	Linda Lecomte	Member	Term Expires 6/30/2025	6/12/2023

MBTA Communities Working Group	Stuart Rubin	Member	Term Expires 6/30/2025	6/12/2023
MBTA Communities Working Group	Denise Johnson	Member	Term Expires 6/30/2025	6/12/2023
MBTA Communities Working Group	Bennet Raphel	Member	Term Expires 6/30/2025	6/12/2023
MBTA Communities Working Group	High Conlon	Member	Term Expires 6/30/2025	6/12/2023
MBTA Communities Working Group	Jennifer Lemmerman	Member	Term Expires 6/30/2025	6/12/2023

**VIII. Approval of Minutes**

A. Board to approve minutes from the following meetings:

1. May 15, 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](mailto:kathryn.forina@andoverma.us)*

MEETINGS ARE TELEVISED ON  
COMCAST CHANNEL 22 AND VERIZON CHANNEL 45

**TOWN OF ANDOVER  
TOWN CLERK'S OFFICE**

36 Bartlet Street  
Andover, MA 01810  
978-623-8230  
www.andoverma.gov

**ALCOHOLIC BEVERAGES LICENSE APPLICATION**

<b>BUSINESS/ENTITY NAME:</b>	FIVE BARTLET ST INC
<b>DBA:</b>	NUEVA LIQUORS
<b>PREMISE ADDRESS:</b>	5 BARTLET ST INC
	ANDOVER MA 01810
<b>MANAGER/CONTACT NAME:</b>	KAUSHAL PATEL
<b>EMAIL:</b>	[REDACTED]
<b>PHONE:</b>	[REDACTED]
<b>BUSINESS MAILING ADDRESS:</b> (if different from premise)	
<b>FID/SS#:</b>	[REDACTED]

**Please select the license transaction for which you are applying below.**

**Each transaction has an application fee of \$125.00 made payable to TOWN OF ANDOVER.**

- |   |   |   |
|---|---|---|
| <input type="checkbox"/> New License                              | <input type="checkbox"/> Change Corporate Name                            | <input type="checkbox"/> Change of Corporate Structure  |
| <input type="checkbox"/> Transfer of License                      | <input type="checkbox"/> Change of Ownership Interest                     | <input type="checkbox"/> Pledge of Collateral           |
| <input type="checkbox"/> Change of Manager                        | <input type="checkbox"/> Change of Class<br>(i.e. Annual/Seasonal)        | <input type="checkbox"/> Management/Operating Agreement |
| <input type="checkbox"/> Change of Officer/Directors/LLC Managers | <input type="checkbox"/> Change of License Type<br>(i.e. club/restaurant) | <input type="checkbox"/> Change of Hours                |
| <input type="checkbox"/> Change of Location                       | <input type="checkbox"/> Change of Category (i.e. All Alcohol/Wine, Malt) | <input checked="" type="checkbox"/> Change of DBA       |
| <input type="checkbox"/> Alteration of Licensed Premises          | <input type="checkbox"/> Issuance/Transfer of Stock/New Stockholder       | <input type="checkbox"/> Other _____                    |

I certify under the penalties of perjury, that the above information is true, and that named applicant has complied with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support. Signature: \_\_\_\_\_ Date: 5/15/2023

This license application requires Select Board approval upon prior approval from the Police Department, Fire Department, Health Department, Building Department and Town Treasurer.  
**(Office Use Only) SELECT BOARD HEARING DATE:** \_\_\_\_\_



**TOWN OF ANDOVER  
TOWN CLERK'S OFFICE**

36 Bartlet Street  
Andover, MA 01810  
978-623-8230  
www.andoverma.gov

**TAX FORM**

**APPLICANT NAME: KAUSHAL PATEL**

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I certify under penalties of perjury that the above named applicant has complied with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

**Signature of Individual or Corporate Name: FIVE BARTLET ST INC**  
(Required for all applicants)DBA NUEVA LIQUORS

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**Name of Corporate Officer: KAUSHAL PATEL**  
(Required if applicant is a corporation)

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**Social Security #:** [REDACTED]  
(Required if applicant is an individual)

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**Federal Identification Number (FID #):** [REDACTED]  
(Required if applicant is a corporation or non-profit):

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*This license will not be issued unless the certification clause is signed by the applicant.*

*Your social security or FID number will be furnished to the Massachusetts Department of Revenue to determine if you have met tax filing or tax payment obligations. Licensees who fail to correct their non-filing delinquency will be subject to license suspension or revocation. This request is made under the authority of Mass General Laws c. 62, s. 49A.*



The Commonwealth of Massachusetts
Department of Industrial Accidents
1 Congress Street, Suite 100

Boston, MA 02114-2017 www.mass.gov/dia

Workers' Compensation Insurance Affidavit: General Businesses. TO BE FILED WITH THE PERMITTING AUTHORITY.

Applicant Information

Please

Print Legibly

Business/Organization Name: FIVE BARTLET ST INC DBA NUEVA LIQUORS

Address: 5 BARTLET ST

City/State/Zip: ANDOVER MA 01810

Phone #:508-202-5247

Are you an employer? Check the appropriate box:
1. I am a employer with \_\_\_\_\_ employees (full and/or part-time).\*
2. I am a sole proprietor or partnership and have no employees working for me in any capacity. [No workers' comp. insurance required]
3. We are a corporation and its officers have exercised their right of exemption per c. 152, §1(4), and we have no employees. [No workers' comp. insurance required]\*\*
4. We are a non-profit organization, staffed by volunteers, with no employees. [No workers' comp. insurance req.]
Business Type (required):
5. Retail
6. Restaurant/Bar/Eating Establishment
7. Office and/or Sales (incl. real estate, auto, etc.)
8. Non-profit
9. Entertainment
10. Manufacturing
11. Health Care
12. Other

\*Any applicant that checks box #1 must also fill out the section below showing their workers' compensation policy information.

\*\*If the corporate officers have exempted themselves, but the corporation has other employees, a workers' compensation policy is required and such an organization should check box #1.

I am an employer that is providing workers' compensation insurance for my employees. Below is the policy information.

Insurance Company Name: THAKKAR INS AGCY LLC

Insurer's Address: 134 CAMBRIDGE ST FL 2

City/State/Zip: BURLINGTON, MA 01803

Policy # or Self-ins. Lic. #UB-9T176625-22-42-G

Expiration Date:12-30-2023

Attach a copy of the workers' compensation policy declaration page (showing the policy number and expiration date).

Failure to secure coverage as required under Section 25A of MGL c. 152 can lead to the imposition of criminal penalties of a fine up to \$1,500.00 and/or one-year imprisonment, as well as civil penalties in the form of a STOP WORK ORDER and a fine of up to \$250.00 a day against the violator. Be advised that a copy of this statement may be forwarded to the Office of Investigations of the DIA for insurance coverage verification.

I do hereby certify, under the pains and penalties of perjury that the information provided above is true and correct.

Signature:

[Handwritten Signature]

Date: MAY 16TH, 2023

Phone #:508-202-5247

Official use only. Do not write in this area, to be completed by city or town official.
City or Town: Permit/License #
Issuing Authority (circle one):
1. Board of Health 2. Building Department 3. City/Town Clerk 4. Licensing Board 5. Selectmen's Office
6. Other
Contact Person: Phone #:



VEERZAL-01

PKORAT

# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
11/15/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Thakkar Insurance Agency 134 Cambridge Street, 2nd floor Burlington, MA 01803	CONTACT NAME: <b>Ajay Thakkar</b>
	PHONE (A/C, No, Ext): <b>(781) 262-0800</b> FAX (A/C, No): <b>(781) 996-7226</b>
	E-MAIL ADDRESS: <b>ajay@thakkarinsurance.com</b>
	INSURER(S) AFFORDING COVERAGE
	INSURER A: <b>Preferred Mutual</b>
	INSURER B: <b>The Travelers Indemnity Of Connecticut</b>
	INSURER C:
	INSURER D:
	INSURER E:
	INSURER F:

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD / WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR		BOP 0100741184	01/13/2023	01/13/2024	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:					
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY					COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB EXCESS LIAB DED RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$
B	WORKERS COMPENSATION AND EMPLOYERS LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in RI) If yes, describe under DESCRIPTION OF OPERATIONS below	<input checked="" type="checkbox"/> Y <input type="checkbox"/> N N/A	UB-9T176625-22-42-G	12/30/2022	12/30/2023	PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	LIQUOR LIABILITY		BOP 0100741184	01/13/2023	01/13/2024	EACH OCCURRENCE 1,000,000
A	LIQUOR LIABILITY		BOP 0100741184	01/13/2023	01/13/2024	GENERAL AGGREGATE 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER	CANCELLATION
Town of Andover, MA 38 Bartlet St, Andover, MA 01810	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE <i>A. J. Thakkar</i>



THE COMMONWEALTH OF MASSACHUSETTS

RECEIVED  
TOWN CLERK'S OFFICE

TOWN OF ANDOVER

2023 MAY 22 PM 12:06

5/22/2023, 2023  
TOWN OF ANDOVER, MASS

In conformity with the provisions of chapter one hundred and ten, section five, of the General Laws, as amended, the undersigned hereby declare(s) that a business is conducted under the title of

Five Bartlet st Inc DBA NUEVA LIQVORS at  
(Name of Business)

5 Bartlet st, Andover, MA - 01810  
(Business Address)

Business Phone: 508-202-5247

By the following named person(s): (Include title, if corporate officer)

Full Name  
Kaushal Patel

Residence  
[Redacted]

Signatures:

[Signature]

[Redacted Signature]

The Commonwealth of Massachusetts

Essex ss

May 22, 2023

Personally appeared before me the above-named Kaushal Patel

and made oath that the foregoing statement is true.

ID Presented: Driver's License [Redacted]

[Signature]  
(Signature)

Other: \_\_\_\_\_

Clerk's office  
(Title)

In accordance with the provision of Chapter 337 of the acts of 1985 and Chapter 110, Section 5 of Mass. General Laws. Business Certificates shall be in effect for four years from the date of issue and shall be renewed each four years thereafter. A statement under oath must be filed with the Town Clerk upon discontinuing, retiring or withdrawing from such business or partnership.

Copies of this certificate shall be available at the address at which business is conducted and shall be furnished on request during regular business hours to any person who has purchased goods or services from this business.

Violations of Chapter one hundred and ten, Section five of the General Laws, as amended are subject to a fine of not more than (\$300) for each month during which violation continues.

Business Certificate Expires: May 22, 2027



The Commonwealth of Massachusetts  
 Alcoholic Beverages Control Commission  
 95 Fourth Street, Suite 3, Chelsea, MA 02150-2358  
 www.mass.gov/abcc

RETAIL ALCOHOLIC BEVERAGES LICENSE APPLICATION  
 MONETARY TRANSMITTAL FORM

**APPLICATION FOR AMENDMENT-Change of Business Entity Information**

**DO NOT MAKE PAYMENT OR COMPLETE THIS FORM FOR CHANGE OF DBA AMENDMENT**

**APPLICATION SHOULD BE COMPLETED ON-LINE, PRINTED, SIGNED, AND SUBMITTED TO THE LOCAL LICENSING AUTHORITY.**

ECRT CODE: RETA

Please make \$200.00 payment here: [ABCC PAYMENT WEBSITE](#)

PAYMENT MUST DENOTE THE NAME OF THE LICENSEE CORPORATION, LLC, PARTNERSHIP, OR INDIVIDUAL AND INCLUDE THE PAYMENT RECEIPT

ABCC LICENSE NUMBER (IF AN EXISTING LICENSEE, CAN BE OBTAINED FROM THE CITY)

ENTITY/ LICENSEE NAME

ADDRESS

CITY/TOWN  STATE  ZIP CODE

For the following transactions (Check all that apply):

- |  |   |   |   |
|--|---|---|---|
| <input type="checkbox"/> New License                                   | <input type="checkbox"/> Change of Location   | <input type="checkbox"/> Change of Class (i.e. Annual / Seasonal)         | <input type="checkbox"/> Change Corporate Structure (i.e. Corp / LLC) |
| <input type="checkbox"/> Transfer of License                           | <input type="checkbox"/> Alteration of Licensed Premises  | <input type="checkbox"/> Change of License Type (i.e. club / restaurant)  | <input type="checkbox"/> Pledge of Collateral (i.e. License/Stock)    |
| <input type="checkbox"/> Change of Manager                             | <input type="checkbox"/> Change Corporate Name  | <input type="checkbox"/> Change of Category (i.e. All Alcohol/Wine, Malt) | <input type="checkbox"/> Management/Operating Agreement               |
| <input type="checkbox"/> Change of Officers/<br>Directors/LLC Managers | <input type="checkbox"/> Change of Ownership Interest<br>(LLC Members/ LLP Partners,<br>Trustees) | <input type="checkbox"/> Issuance/Transfer of Stock/New Stockholder       | <input type="checkbox"/> Change of Hours                              |
|  | <input type="checkbox"/> Other <input type="text"/>   |   | <input checked="" type="checkbox"/> Change of DBA                     |

**THE LOCAL LICENSING AUTHORITY MUST MAIL THIS TRANSMITTAL FORM ALONG WITH COMPLETED APPLICATION, AND SUPPORTING DOCUMENTS TO:**

Alcoholic Beverages Control Commission  
 95 Fourth Street, Suite 3  
 Chelsea, MA 02150-2358



The Commonwealth of Massachusetts  
 Alcoholic Beverages Control Commission  
 95 Fourth Street, Suite 3, Chelsea, MA 02150-2358  
 www.mass.gov/abcc

**APPLICATION FOR AMENDMENT-Change of Business Entity Information**

Change of Corporate Name

Change of DBA

- Payment Receipt (Req. for Chg of Corp Name only)
- Monetary Transmittal Form
- DOR Certificate of Good Standing (Req. for Chg of Corp Name only)
- DUA Certificate of Compliance (Req. for Chg of Corp Name only)
- Change of Corporate Name/DBA Application
- Vote of the Entity
- Business Structure Documents
  - If Sole Proprietor, Business Certificate
  - If partnership, Partnership Agreement
  - If corporation or LLC, Articles of Organization from the Secretary of the Commonwealth

Change of Corporate Structure

- Payment Receipt
- Monetary Transmittal Form
- DOR Certificate of Good Standing
- DUA Certificate of Compliance
- Change of Corporate Structure Application
- Vote of the Entity
- Business Structure Documents
  - If Sole Proprietor, Business Certificate
  - If partnership, Partnership Agreement
  - If corporation or LLC, Articles of Organization from the Secretary of the Commonwealth

**1. BUSINESS ENTITY INFORMATION**

Entity Name	Municipality	ABCC License Number
FIVE BARTLET STREET INC	Andover	90495-PK-0026

Please provide a narrative overview of the transaction(s) being applied for.

Change of DBA from FIVE BARTLET STREET INC to NUEVA LIQUORS

**APPLICATION CONTACT**

The application contact is the person who should be contacted with any questions regarding this application.

Name	Title	Email	Phone
Matthew Porter	Attorney	mporter@clozers.com	508-238-2510

**2. CHANGES TO BUSINESS ENTITY INFORMATION**

<b>2a. Change of Corporate Name</b>	Last-Approved Corporate Name:	
	Requested New Corporate Name:	
<b>2b. Change of DBA</b>	Last-Approved DBA:	FIVE BARTLET STREET INC
	Requested New DBA:	Nueva Liquors
<b>2c. Change of Corporate Structure</b>	Last-Approved Corporate Structure	
LLC, Corporation, Sole Proprietor, etc	Requested New Corporate Structure	

Signature:

Date: 5/24/2023

Title: President

## APPLICANT'S STATEMENT


I, Kaushal J. Patel the:  sole proprietor;  partner;  corporate principal;  LLC/LLP manager  
Authorized Signatory  
of FIVE BARTLET STREET INC  
Name of the Entity/Corporation

hereby submit this application (hereinafter the "Application"), to the local licensing authority (the "LLA") and the Alcoholic Beverages Control Commission (the "ABCC" and together with the LLA collectively the "Licensing Authorities") for approval.

I do hereby declare under the pains and penalties of perjury that I have personal knowledge of the information submitted in the Application, and as such affirm that all statements and representations therein are true to the best of my knowledge and belief. I further submit the following to be true and accurate:

- (1) I understand that each representation in this Application is material to the Licensing Authorities' decision on the Application and that the Licensing Authorities will rely on each and every answer in the Application and accompanying documents in reaching its decision;
- (2) I state that the location and description of the proposed licensed premises are in compliance with state and local laws and regulations;
- (3) I understand that while the Application is pending, I must notify the Licensing Authorities of any change in the information submitted therein. I understand that failure to give such notice to the Licensing Authorities may result in disapproval of the Application;
- (4) I understand that upon approval of the Application, I must notify the Licensing Authorities of any change in the ownership as approved by the Licensing Authorities. I understand that failure to give such notice to the Licensing Authorities may result in sanctions including revocation of any license for which this Application is submitted;
- (5) I understand that the licensee will be bound by the statements and representations made in the Application, including, but not limited to the identity of persons with an ownership or financial interest in the license;
- (6) I understand that all statements and representations made become conditions of the license;
- (7) I understand that any physical alterations to or changes to the size of the area used for the sale, delivery, storage, or consumption of alcoholic beverages, must be reported to the Licensing Authorities and may require the prior approval of the Licensing Authorities;
- (8) I understand that the licensee's failure to operate the licensed premises in accordance with the statements and representations made in the Application may result in sanctions, including the revocation of any license for which the Application was submitted; and
- (9) I understand that any false statement or misrepresentation will constitute cause for disapproval of the Application or sanctions including revocation of any license for which this Application is submitted.
- (10) I confirm that the applicant corporation and each individual listed in the ownership section of the application is in good standing with the Massachusetts Department of Revenue and has complied with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting of child support.

Signature:



Date:

5/18/2023

Title:

President





**The Commonwealth of Massachusetts  
William Francis Galvin**

Minimum Fee: \$250.00

Secretary of the Commonwealth, Corporations Division  
One Ashburton Place, 17th floor  
Boston, MA 02108-1512  
Telephone: (617) 727-9640

**Articles of Organization**

(General Laws, Chapter 156D, Section 2.02; 950 CMR 113.16)

Identification Number: [REDACTED]

**ARTICLE I**

The exact name of the corporation is:

FIVE BARTLET ST. INC.

**ARTICLE II**

Unless the articles of organization otherwise provide, all corporations formed pursuant to G.L. C156D have the purpose of engaging in any lawful business. Please specify if you want a more limited purpose:

**ARTICLE III**

State the total number of shares and par value, if any, of each class of stock that the corporation is authorized to issue. All corporations must authorize stock. If only one class or series is authorized, it is not necessary to specify any particular designation.

Class of Stock	Par Value Per Share Enter 0 if no Par	Total Authorized by Articles of Organization or Amendments		Total Issued and Outstanding Num of Shares
		Num of Shares	Total Par Value	
CNP	\$0.00000	10,000	\$0.00	1,000

G.L. C156D eliminates the concept of par value, however a corporation may specify par value in Article III. See G.L. C156D Section 6.21 and the comments thereto.

**ARTICLE IV**

If more than one class of stock is authorized, state a distinguishing designation for each class. Prior to the issuance of any shares of a class, if shares of another class are outstanding, the Business Entity must provide a description of the preferences, voting powers, qualifications, and special or relative rights or privileges of that class and of each other class of which shares are outstanding and of each series then established within any class.

**ARTICLE V**

The restrictions, if any, imposed by the Articles of Organization upon the transfer of shares of stock of any class are:

**ARTICLE VI**

Other lawful provisions, and if there are no provisions, this article may be left blank.

**Note: The preceding six (6) articles are considered to be permanent and may be changed only by filing appropriate articles of amendment.**

**ARTICLE VII**

The effective date of organization and time the articles were received for filing if the articles are not rejected within the time prescribed by law. If a *later* effective date is desired, specify such date, which may not be later than the *90th day* after the articles are received for filing.

**Later Effective Date: Time:**

**ARTICLE VIII**

The information contained in Article VIII is not a permanent part of the Articles of Organization.


**a,b. The street address of the initial registered office of the corporation in the commonwealth and the name of the initial registered agent at the registered office:**

Name:

No. and Street:

City or Town:

**c. The names and street addresses of the individuals who will serve as the initial directors, president, treasurer and secretary of the corporation (an address need not be specified if the business address of the officer or director is the same as the principal office location):**

<b>Title</b>	<b>Individual Name</b> First, Middle, Last, Suffix	<b>Address (no PO Box)</b> Address, City or Town, State, Zip Code
PRESIDENT	KAUSHAL PATEL	
TREASURER	KAUSHAL PATEL	
SECRETARY	KAUSHAL PATEL	
DIRECTOR	KAUSHAL PATEL	

**d. The fiscal year end (i.e., tax year) of the corporation:**

December

**e. A brief description of the type of business in which the corporation intends to engage:**

COMMERCIAL REAL ESTATE

**f. The street address (*post office boxes are not acceptable*) of the principal office of the corporation:**

No. and Street:

City or Town:

**g. Street address where the records of the corporation required to be kept in the Commonwealth are located (*post office boxes are not acceptable*):**

No. and Street:

City or Town:



which is

its principal office

an office of its transfer agent

an office of its secretary/assistant secretary

its registered office

**Signed this 10 Day of August, 2022 at 5:59:18 PM by the incorporator(s).** *(If an existing corporation is acting as incorporator, type in the exact name of the business entity, the state or other jurisdiction where it was incorporated, the name of the person signing on behalf of said business entity and the title he/she holds or other authority by which such action is taken.)*

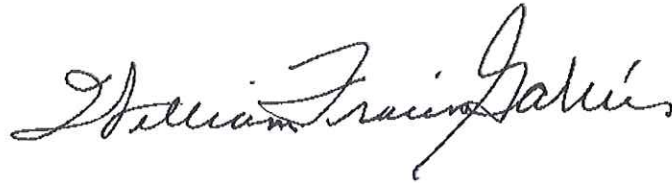
KAUSHAL PATEL

THE COMMONWEALTH OF MASSACHUSETTS

I hereby certify that, upon examination of this document, duly submitted to me, it appears that the provisions of the General Laws relative to corporations have been complied with, and I hereby approve said articles; and the filing fee having been paid, said articles are

deemed to have been filed with me on:

August 10, 2022 05:58 PM

A handwritten signature in cursive script that reads "William Francis Galvin". The signature is written in black ink and is centered on the page.

WILLIAM FRANCIS GALVIN

*Secretary of the Commonwealth*



**TOWN OF ANDOVER  
TOWN CLERK'S OFFICE**

36 Bartlet Street  
Andover, MA 01810  
978-623-8230  
www.andoverma.gov

**ALCOHOLIC BEVERAGES LICENSE APPLICATION**

<b>BUSINESS/ENTITY NAME:</b>	Gati Thai, inc
<b>DBA:</b>	Gati Thai Bistro
<b>PREMISE ADDRESS:</b>	12 Post Office Ave, Andover, MA 01810
<b>MANAGER/CONTACT NAME:</b>	Malinee Kanjanamakanon
<b>EMAIL:</b>	[REDACTED]
<b>PHONE:</b>	[REDACTED]
<b>BUSINESS MAILING ADDRESS:</b> (if different from premise)	
<b>FID/SS#:</b>	[REDACTED]

Please select the license transaction for which you are applying below.

Each transaction has an application fee of \$125.00 made payable to TOWN OF ANDOVER.

- |  |  |   |
|--|--|---|
| <input type="checkbox"/> New License   | <input type="checkbox"/> Change Corporate Name                               | <input type="checkbox"/> Change of Corporate Structure  |
| <input type="checkbox"/> Transfer of License   | <input type="checkbox"/> Change of Ownership Interest                        | <input type="checkbox"/> Pledge of Collateral           |
| <input type="checkbox"/> Change of Manager   | <input type="checkbox"/> Change of Class<br>(i.e. Annual/Seasonal)           | <input type="checkbox"/> Management/Operating Agreement |
| <input type="checkbox"/> Change of Officer/Directors/LLC Managers                    | <input type="checkbox"/> Change of License Type<br>(i.e. club/restaurant)    | <input type="checkbox"/> Change of Hours                |
| <input type="checkbox"/> Change of Location  | <input type="checkbox"/> Change of Category<br>(i.e. All Alcohol/Wine, Malt) | <input type="checkbox"/> Change of DBA                  |
| <input checked="" type="checkbox"/> <u>Temporary</u> Alteration of Licensed Premises | <input type="checkbox"/> Issuance/Transfer of Stock/New Stockholder          | <input type="checkbox"/> Other _____                    |

I certify under the penalties of perjury, that the above information is true, and that named applicant has complied with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

Signature: Malinee Kanjanamakanon Date: 05/17/2023

This license application requires Select Board approval upon prior approval from the Police Department, Fire Department, Health Department, Building Department and Town Treasurer.  
**(Office Use Only) SELECT BOARD HEARING DATE:** \_\_\_\_\_



**TOWN OF ANDOVER  
TOWN CLERK'S OFFICE**

36 Bartlet Street  
Andover, MA 01810  
978-623-8230  
www.andoverma.gov

**TAX FORM**

**APPLICANT NAME:** Gati Thai inc

I certify under penalties of perjury that the above named applicant has complied with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

**Signature of Individual or Corporate Name:**  
(Required for all applicants)

M. Benfano

**Name of Corporate Officer:**  
(Required if applicant is a corporation)

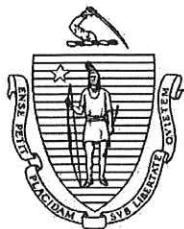
**Social Security #:**  
(Required if applicant is an individual)

**Federal Identification Number (FID #):**  
(Required if applicant is a corporation or non-profit):



*This license will not be issued unless the certification clause is signed by the applicant.*

*Your social security or FID number will be furnished to the Massachusetts Department of Revenue to determine if you have met tax filing or tax payment obligations. Licensees who fail to correct their non-filing delinquency will be subject to license suspension or revocation. This request is made under the authority of Mass General Laws c. 62, s. 49A.*



The Commonwealth of Massachusetts  
 Department of Industrial Accidents  
 1 Congress Street, Suite 100  
 Boston, MA 02114-2017  
 www.mass.gov/dia

Workers' Compensation Insurance Affidavit: General Businesses.  
 TO BE FILED WITH THE PERMITTING AUTHORITY.

**Applicant Information**

Please Print Legibly

Business/Organization Name: Gati Thai, inc. d/b/a Gati Thai Bistro

Address: 12 Post office ave.

City/State/Zip: Andover, MA 01810 Phone #: (978) 409-1352

**Are you an employer? Check the appropriate box:**

- 1.  I am an employer with 7 employees (full and/or part-time).\*
- 2.  I am a sole proprietor or partnership and have no employees working for me in any capacity. [No workers' comp. insurance required]
- 3.  We are a corporation and its officers have exercised their right of exemption per c. 152, §1(4), and we have no employees. [No workers' comp. insurance required]\*\*
- 4.  We are a non-profit organization, staffed by volunteers, with no employees. [No workers' comp. insurance req.]

**Business Type (required):**

- 5.  Retail
- 6.  Restaurant/Bar/Eating Establishment
- 7.  Office and/or Sales (incl. real estate, auto, etc.)
- 8.  Non-profit
- 9.  Entertainment
- 10.  Manufacturing
- 11.  Health Care
- 12.  Other \_\_\_\_\_

\*Any applicant that checks box #1 must also fill out the section below showing their workers' compensation policy information.

\*\*If the corporate officers have exempted themselves, but the corporation has other employees, a workers' compensation policy is required and such an organization should check box #1.

**I am an employer that is providing workers' compensation insurance for my employees. Below is the policy information.**

Insurance Company Name: Am Guard insurance.

Insurer's Address: 39 Public Square

City/State/Zip: Wikes-Barre, PA 01873

Policy # or Self-ins. Lic. # GAWC 336698 Expiration Date: 07/30/23

**Attach a copy of the workers' compensation policy declaration page (showing the policy number and expiration date).**

Failure to secure coverage as required under Section 25A of MGL c. 152 can lead to the imposition of criminal penalties of a fine up to \$1,500.00 and/or one-year imprisonment, as well as civil penalties in the form of a STOP WORK ORDER and a fine of up to \$250.00 a day against the violator. Be advised that a copy of this statement may be forwarded to the Office of Investigations of the DIA for insurance coverage verification.

**I do hereby certify, under the pains and penalties of perjury that the information provided above is true and correct.**

Signature: M. Klump Date: ~~(978) 409-1352~~

Phone #: 978 1409-1352 05/17/2023

**Official use only. Do not write in this area, to be completed by city or town official.**

City or Town: Andover Permit/License # \_\_\_\_\_

Issuing Authority (circle one):

- 1. Board of Health
- 2. Building Department
- 3. City/Town Clerk
- 4. Licensing Board
- 5. Selectmen's Office
- 6. Other \_\_\_\_\_

Contact Person: Austin Simko, Town Clerk Phone #: 978-623-8230

# ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
11/16/2022.

**PRODUCER**  
ATLANTIC INSURANCE PARTNERS LLC  
2 HERITAGE DRIVE, SUITE #301  
N.QUINCY, MA. 02171

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

**INSURERS AFFORDING COVERAGE**

NAIC #

**INSURED**  
GATI THAI, INC. DBA GATI THAI CAFE  
12 POST OFFICE AVENUE  
ANDOVER, MA. 01810

INSURER A: AmGUARD INSURANCE COMPANY  
INSURER B: AmGUARD INSURANCE COMPANY  
INSURER C: AmGUARD INSURANCE COMPANY  
INSURER D:  
INSURER E:

**COVERAGES**

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS								
A	<input checked="" type="checkbox"/>	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> LIQUOR LIABILITY <b>\$1MM COVERAGE</b> GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	GABP301681	07/30/22	07/30/23	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000								
		<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$								
		<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$								
B	<input checked="" type="checkbox"/>	<b>EXCESS/UMBRELLA LIABILITY</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$	GAUM350563	07/30/22	07/30/23	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000 \$ \$								
B	<input checked="" type="checkbox"/>	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER	GAWC336698	07/30/22	07/30/23	<table border="1"> <tr> <td>WC STATU-TORY LIMITS</td> <td>OTH-ER</td> </tr> <tr> <td>E.L. EACH ACCIDENT</td> <td>\$ 1,000,000</td> </tr> <tr> <td>E.L. DISEASE - EA EMPLOYEE</td> <td>\$ 1,000,000</td> </tr> <tr> <td>E.L. DISEASE - POLICY LIMIT</td> <td>\$ 1,000,000</td> </tr> </table>	WC STATU-TORY LIMITS	OTH-ER	E.L. EACH ACCIDENT	\$ 1,000,000	E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000	E.L. DISEASE - POLICY LIMIT	\$ 1,000,000
WC STATU-TORY LIMITS	OTH-ER													
E.L. EACH ACCIDENT	\$ 1,000,000													
E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000													
E.L. DISEASE - POLICY LIMIT	\$ 1,000,000													

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS  
**FAMILY STYLE THAI RESTAURANT SERVING LIQUOR(FULL LIQUOR LICENSE)**  
 LOC: 12 POST OFFICE AVENUE ANDOVER, MA. 01810

**CERTIFICATE HOLDER**

TOWN OF ANDOVER  
TOWN CLERK / LICENSING AGENT  
36 BARLETT STREET  
ANDOVER, MA. 01810-3813

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS' OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE



**TOWN OF ANDOVER  
TOWN CLERK'S OFFICE**

36 Bartlet Street  
Andover, MA 01810  
978-623-8230  
www.andoverma.gov

**SALE OF ALCOHOL ON PATIO & OUTDOOR AREAS  
ADDENDUM**

If you are applying to include a patio and/or outdoor area in your licensed premises, you must provide the following additional information. This application will also be forwarded to the Building Division and Planning Division to determine if any additional permits are necessary.

**SECTION 1: RESTRICTIONS/CONDITIONS**

1. Are the premises (existing and/or proposed) subject to any easements, covenants, or deed restrictions regarding use of the property and/or service of alcohol?

YES                       NO

If yes, please provide copies of the easements, covenants, or deed restrictions.

2. Are the premises (existing and/or proposed) subject to any Zoning Board of Appeals, Site Plan, or Subdivision conditions or restrictions?

YES                       NO

If yes, please provide copies of the conditions and/or restrictions.

**SECTION 2: WRITTEN DESCRIPTION OF PROPOSED PREMISES**

3. Describe the proposed outdoor area including the dimensions, number of tables and chairs, proposed occupancy figures, whether there are any proposed outdoor bars and how the area will be enclosed.

A Outdoor seated size is 50' x 12' along with 9 tables, 36 seats with no bar outside the restaurant. All the beverages will make from inside.

4. Describe in detail the proposed type of fence, rope or other means of proposed enclosure.

Around the area will securit with chain and pole.

5. Describe the proposed use of the outdoor area. (E.g., tented area for special events, area for outdoor food service, etc.)

This outdoor area will service only summer to fall seasons.

6. Are outdoor food preparation areas proposed?

YES

NO

If yes, please consult the Board of Health.

### **SECTION 3: REQUIRED PLAN**

Submit a detailed, scaled plan of the patio and /or outdoor area showing the proposed:

The existing:

- a) Egress/ingress between the inside premises and the proposed outdoor area
- b) Width of the path of egress/ingress from the inside premises through the outdoor area
- c) Location of proposed tables, chairs, bars, outdoor prep areas, etc.
- d) Location of required signage

*All of the above should be clearly labeled.*

### **SECTION 4: ENFORCEMENT**

7. Detail how the applicant will ensure alcohol purchased off-premise will not be brought onto or consumed on the outdoor premises.

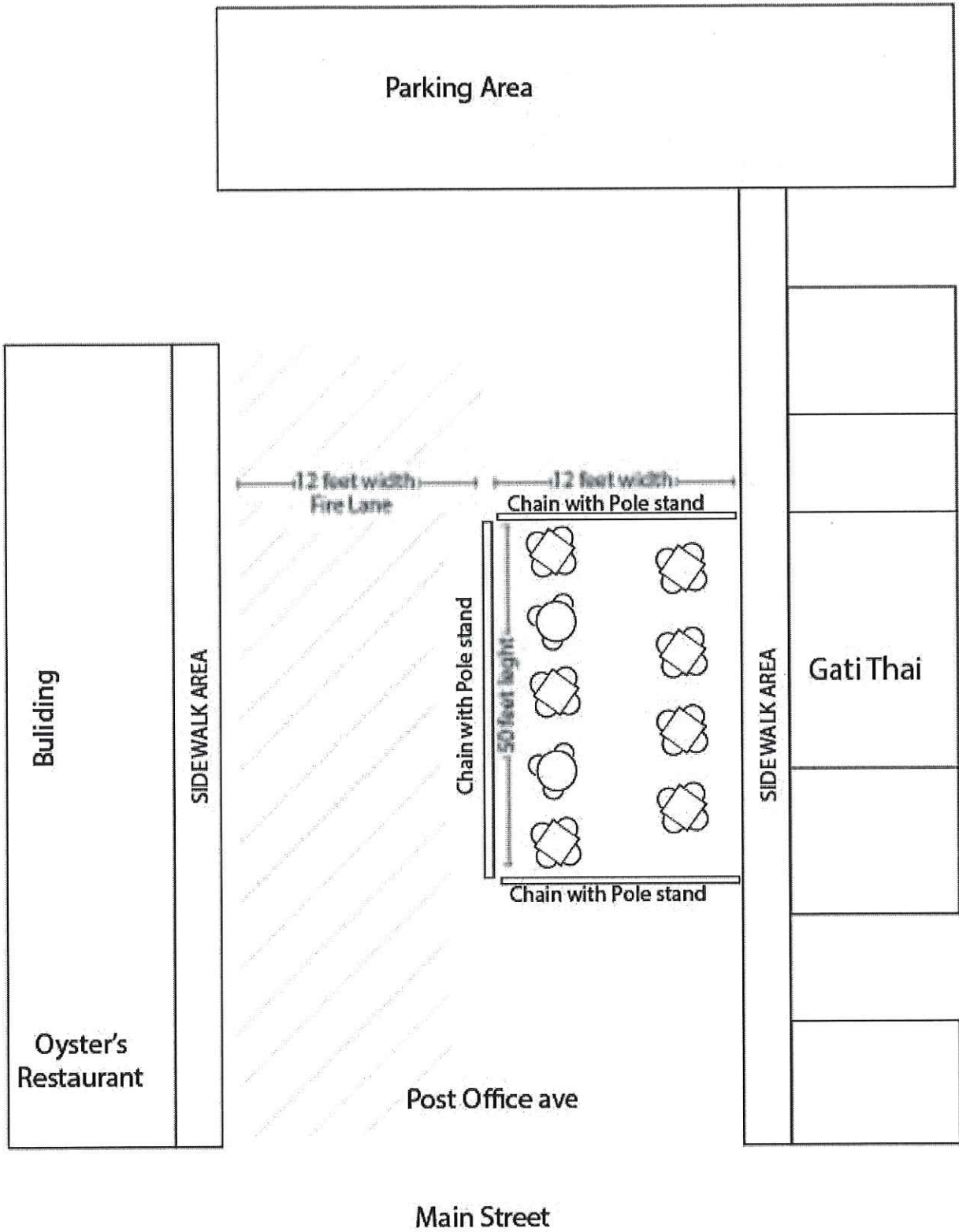
Their will be training staff at the area at all time.

8. Detail how the applicant will ensure patrons do not leave the outdoor premises with alcohol in their possession.

Their will be training staff at the area at all time.

### **PLEASE NOTE:**

The patio and / or outdoor area are an extension of new or already approved premises. It is a part of the same license and will have the exact same type of license as the entire premises. That means that the type of alcohol sold and the hours of sale will be the same for the entire premises





June 9, 2023

Melissa Danisch, Chair  
Andover SelectBoard  
36 Bartlet Street  
Andover, MA 01810

Dear Ms. Danisch and members of the Andover SelectBoard,

Enclosed is an application for a Comprehensive Permit under the Local Initiative Program for Andover Community Trust's (ACT) next permanently affordable home in Andover, on a non-conforming lot at 13 Mary Lou Lane. The Andover Housing Trust Fund Board has voted to support this project and now ACT seeks support from the members of the Board of Selectmen. This home will be very similar to the homes at 94 Cheever Circle and 168 Haverhill Street built in 2008 and 2016. It will be the seventh permanently affordable home the Greater Lawrence Technical School has built for ACT in Andover.

Additionally this home is being Green designed to be netzero and will include low surface to volume ratio, energy efficient appliances, heat pump and air exchanger mechanical systems and solar panels. This new energy efficient, low cost home will be ACT's new model for future affordable homes.

I am enclosing the application information including:

The DHCD Local Initiative Program application information

Town signature page.

Site plan from Andover Consultants.

Elevations for the home to be built at 13 Mary Lou Lane

Floor plans for the home to be built at 13 Mary Lou Lane

Photos of other ACT homes

Copy of the purchase and sale agreement with Cleary Associates LLC

Map showing location of 13 Mary Lou Lane

Thank you for your consideration. We look forward to meeting with you.

Sincerely,

A handwritten signature in cursive script that reads 'Denise Johnson'.

Denise Johnson, Executive Director

**Applicant Organization:**

Andover Community Trust, Inc.  
PO Box 5038  
2 Dundee Park Dr., suite B02A  
Andover, MA 01810

**Primary Contact:**

Denise Johnson  
Executive Director  
978-276-9228  
[Director@AndoverCLT.org](mailto:Director@AndoverCLT.org) (also [djohnson01810@gmail.com](mailto:djohnson01810@gmail.com))


**Name of the project:** 13 Mary Lou Lane  
Location: 13 Mary Lou Lane 71-0-49A  
Andover, MA 01810

Purchase and Sale Letter with lot owner attached.

Andover Community Trust (ACT) proposes to purchase the .174 acre lot to construct a permanently affordable family home. The completed home will be permanently affordable and sold to an income eligible applicant making less than 80% of Area Median Income (AMI). As a community land trust, ACT will retain ownership of the land underneath the home and provide a 99-year ground lease to the homeowner, with a resale formula that will keep the home affordable in perpetuity. Since ACT has been able to permit multiple permanently affordable homes, on vacant, undersized lots in Andover with the Local Initiative Project program, we will confidently present a similar project to the Andover Town boards and committees and the Department of Housing and Community Development to provide another modest, permanently affordable, three bedroom single family home. In addition this home is being Green designed to be netzero and will include low surface to volume ratio, energy efficient appliances, heat pump and air exchanger mechanical systems, and solar panels.

**Project Schedule:** 2023 – 2025

Andover Community Trust is a 501(c)(3) nonprofit Massachusetts corporation.

Signature of Applicant:  \_\_\_\_\_  
Denise Johnson, Executive Director

Date: 6/7/2023

## 2. Project Description:

### Project Location:

Street and number: 13 Mary Lou Lane, Parcel 71 0 49A  
Community: Andover, MA 01810

Andover Community Trust (ACT) proposes to purchase this lot and to construct a permanently affordable family home. The home will be permanently affordable to households with gross income less than 80% of the Area Median Income. As a community land trust, ACT will continue to own the land underneath the home and provide a 99-year ground lease to the homeowner, with a resale formula that will keep the home affordable at 80% AMI in perpetuity.

### Site Characteristics:

The site is in the SRA district. It contains approximately .174 acre of flat land suitable for a residential structure. The residential neighborhood is fully developed. It contains homes of ranch, split level and colonial styles. The extended SRA neighborhood has lots sized from .19 to .55 with .40 being the average, homes are 1200 to 3200 sq ft. with 2089 being the average. The #13 site is between #9, a .344 acre site, and #25 a .353 acre site, both with a modest ranch style home. The lot owner is located at #7 Mary Lou Lane in a raised ranch home.

**Acreage on site:** .174 acres (7560 sq. ft)

**Type of housing:** Affordable homeownership opportunity for households

The home will be built as an all-electric, net zero, passive house. The design includes a super insulated structure with an airtight envelope and energy recovery ventilation (ERV). Passive solar design would be incorporated along with rooftop solar panels. Heating, cooling and water heating would be provided by heat pumps. All-electric high efficiency appliances would be selected along with appropriate windows. It will utilize heat pumps for heating, cooling and hot water.

**Number of units to be assisted:** 1 unit

**Site control:** ACT has a signed Purchase and Sale for the property, attached.

### Site utilities:

**Sanitary sewer:** The lot is serviced by Town sewer.  
**Water:** Town water serves the site.  
**Existing street:** The lot is on an existing town street.

**Surrounding neighborhood:** The surrounding neighborhood is residential.

## 3. Target Population

ACT has developed 13 affordable homes in Andover for households earning between 60 - 80% AMI. This project proposes to serve HUD Low Income or < 80% AMI households as established

by the US Department of Housing and Urban Development Lawrence, MA-NH HUD Metro Fmr Area (currently \$94,650 for a family of 4), households from Greater Lawrence who will fully occupy the modest three bedroom home.

Applicants for ACT homes come primarily from Andover and neighboring communities of Lawrence, Methuen, Haverhill and North Andover. The Merrimack Valley Planning Commission data indicates that all 15 communities in the Merrimack Valley region had population growth from 2000 to 2015 and are estimated to continue to grow, increasing the need for housing of all types. Applicants will come from the approximately 39% of households in the region with income less than 80% of AMI, including the housing cost burdened households in Andover most likely to be composed of small families. The Andover Housing Production Plan indicates the need for more affordable starter homes for first-time homebuyers for low/moderate income and middle-income households including rental and ownership units. It calls for more housing through a combination of conversions of existing housing stock from market rate to affordable, new housing production including affordable units, and direct support. Andover has a healthy commercial and industrial base. Many employees of these businesses live in Lawrence and surrounding towns. The majority population in Lawrence is Hispanic 82.3%, with the median household income in Lawrence \$47,542 and meet the HUD income eligibility criteria. ACT advertises the availability of the affordable homes it builds through the local press, including the Andover Townsman, the Lawrence Eagle Tribune and Rumbo, the Spanish language newspaper serving the Greater Lawrence community. In addition, ACT posts notices on the Town of Andover and Andover school email lists, with state agencies CHAPA (Citizens Housing and Planning Association) and the Dept. of Housing and Community Development (DHCD) websites and at the Andover Housing Authority, the Greater Lawrence Technical School, Andover Town Hall, Lawrence CommunityWorks, Bread and Roses Housing and with many local churches. ACT maintains an interested buyers list and currently has over 300 participants. Housing applications will be made available in English and Spanish.

This project will also serve as technical training for students in the construction trades at Greater Lawrence Technical School (GLTS). ACT has partnered with GLTS for many years and they have built six affordable homes. Approximately 100 students per year work onsite and gain real-life experience, skill development and job training in the construction trades of carpentry, plumbing, electrical, HVAC and landscape. The GLTS serves students from Lawrence, Andover, North Andover and Methuen and is located in Andover, MA. Families of GLTS students (the majority of whom are from Lawrence), are 82% Hispanic and 72% low income and are encouraged to apply.

Andover Community Trust has completed 13 homes—households are 80% Hispanic, 7% Asian, 14% White, 58% are single parent households.

#### **4. Project Need**

Housing costs in Andover are very high—too high to be considered affordable for many families. To purchase a single family home at the median house price of over \$604,000 requires a household income of at least \$200,000. According to the U.S. Census Bureau's American Community Survey, the Median household income in Andover in 2021 was \$155,252; in Lawrence median income was \$47,542. Access to an Andover education is one of the most

important benefits of family homes in Andover, since the Andover Public School district has received an A+ rating by NICHE, which maintains the most comprehensive database on schools and neighborhoods in America. Andover has 13,541 year round housing units. Analysis indicates the need for more affordable starter homes for first-time homebuyers and for low/moderate income households including ownership and rental units. A new affordable home means new opportunity for a household.

The need for opportunity and self-reliance exists in all communities. A decent and affordable place to live helps families by freeing them from physical and mental hardships, while placing them on a path of increased confidence and self-reliance. Another affordable home built in Andover, means another family will have a stable place to live, in a community where they can reap economic, educational, and health-related benefits. And, an affordable mortgage means they have a chance to create savings, invest in their education, and spend discretionary income in their community—Andover.

In recent years there has been an increased awareness of the lack of affordable housing in Massachusetts, including Andover. Ever since the end of the Great Recession, housing has been the subject of numerous studies. Two recent analyses from the Essex County Community Foundation and the Merrimack Valley Planning Commission point to an immediate pressing need for more affordable housing across the region. Andover is one of the communities where housing remains unaffordable.

This project will increase the number of affordable homes in the community. The home will sell for approximately 30% of a market rate home. It will be affordable to a household with gross income less than \$94,650 for a family of 4 (subject to change by HUD). It will be permanently affordable and provide long-term benefits.

## **5. Qualifications: The development team – members and experience**

### **Developer:**

Andover Community Trust  
Tax ID 04-3159877  
2 Dundee Park suite B02A  
Andover, MA 01810  
978-226-9228

ACT has successfully completed thirteen permanently affordable homes in Andover, both single family and duplex homes. Four single family and 1 duplex homes were built in partnership with the GLTS. The homes built with the GLTS were completed in 2001, 2006, 2013, 2017 and 2022. Additionally GLTS installed solar panels on the home on Andover St.

### **Contractor/Builder:** Greater Lawrence Technical School (GLTS)

GLTS has been building homes since 1999. The House Building Program provides the highest quality technical education to all its students, while fostering high expectations of achievement in the real world workplace. Students in carpentry, electrical, plumbing, HVAC including solar installation, and landscaping are involved in the home building projects. ACT has partnered with GLTS on 6 of its previous homes. All GLTS instructors are licensed professionals in their particular trades.

**Architect:** John Pearson, AIA, LEED AP, is a retired architect of John Pearson Architect. John has been involved with ACT for over 20 years serving as president of the board and overseeing homebuilding projects. He designed ACT homes on a pro-bono basis. John has over 40 years experience in residential architecture.

**Engineer:** ACT has worked with Andover Consultants on all of our projects. They are again providing pro-bono civil engineering services to ACT for this project. Andover Consultants Inc. is a multi-discipline company providing civil engineering, surveying, wetland mapping, planning and permitting services and are involved in many projects in Andover.

**Attorney:** Andrew Caffrey Jr. is a partner at Caffrey and Caffrey and has provided pro-bono legal services to ACT for the past ten years. Mr. Caffrey has been practicing real estate law for over 45 years.

**Project Manager:** Peter Magee is a Licensed Construction Supervisor and carpentry instructor at GLTS. He was the project manager for GLTS on our Stott Circle project. He has been in the construction industry for over 30 years building new homes and custom additions and also owns a construction company outside of GLTS.

**ACT Executive Director:** Denise Johnson has been involved with ACT since 2012. Denise served on the ACT board before taking over the Executive Director position in late 2014. She has over 30 years' experience in nonprofit management. She holds a BA from Columbia University and a MBA in nonprofit management from Suffolk University.

**Team Experience:** Andover Community Trust board members have for the past projects served in the developer roles of architect, accountant, project manager, and owner selection committee. Directors involved with the project have experience ranging from (founder) 30 years to 2 years.

## 6. Project Costs

<b>Development Items:</b>	<b>Estimated Costs</b>
Site acquisition	\$ 50,000
<b>Hard Cost Estimates:</b>	
Earth Work	\$ 25,000
Site Utilities	\$ 13,300
Landscape and hardscape	\$ 27,000
Total Site Work	\$ 65,300
Foundation	\$ 35,000
Carpentry,HVAC,finishes	\$200,000
Green upgrades	\$ 39,700
Subtotal Construction costs	\$274,700
Subtotal Hard Costs	\$390,000
contingency	\$ 26,970
Total hard costs	\$416,970

**Soft costs:**

permits/surveys	\$ 4,000
construction mgr fee	\$ 5,000
Green building consultant	\$14,250
construction manager	\$ 5,000
student awards, lunches	\$ 2,000
marketing, lottery	\$ 1,500
insurance	\$15,000
developer overhead	\$20,000
utilities	\$ 500
accounting	\$ 3,800
ACT Personnel costs	\$30,000
Total soft costs:	\$101,050
Total development costs	\$517,950

**7. Alternative Funding Sources**

- \$100,000 HOME or local Affordable Housing Trust Fund (19%)  
HOME designated units = 1
- \$250,000 Sale of home (48%)
- \$167,950 ACT will also seek funding from private foundations such as Charlesbank Homes, Enterprise Bank, Rogers Family Foundation, Granville Foundation, local banks, individuals and other foundations to fully fund the development of this home. We will request that the Town of Andover waive building permit and utility connection fees to help minimize the cost of Andover Community Trust's permanently affordable home. (33%)  
\$25,000 Rogers Family Foundation - received  
\$15,000 Granville Foundation - received  
\$15,000 Chris Webber Memorial Fund - received  
\$25,000 Granville Foundation - anticipated  
\$50,000 Charlesbank Homes - anticipated  
\$37,950 private foundations, individuals and local businesses - anticipated

**8. Timetable**

Andover Community Trust currently has a Purchase and Sale agreement with the owner of the lot.

- Winter 2023 Purchase and sale agreement with land owner
- March 2023 Met with neighbors to present site plan and solicit feedback  
Presentation to Andover Housing Trust Fund Board for feedback and support
- April 2023 Revisions based on comments

Spring 2023	Presentation to Andover Selectboard for support as a “friendly” 40b
Summer 2023	Submission to Massachusetts Department of Housing and Community Development for site approval
	Development of site plan, full architectural plans
Summer 2023	Application to Andover ZBA for comprehensive permit
Fall 2023 –2025	Home Construction - Greater Lawrence Technical School
2025	Owner selection
Fall 2025	Home dedication

### **Site Plan**

Site plan and sketch plans attached. An overview plan shows the parcel within its neighborhood context. The civil engineer has done a plan indicating the setbacks for the proposed house. The Architect’s sketch plan includes a modest 3 bedroom home of approximately 1450 sq. ft. with a single car garage.

<p><b>MASSACHUSETTS</b>          Department of Housing and Community Development  <b>Local Initiative Program</b>  <b>Application for Comprehensive Permit Projects</b></p>
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**INSTRUCTIONS**

Please submit three copies of the application and attachments. Note: only one set of site plan and sample elevations (attachments 11 and 12 noted on page 22) are required. An application fee, payable to the Department of Housing and Community Development, shall be submitted with the application. The schedule of fees is as follows:

	<b>Project Fee</b>	<b>plus</b>	<b>Per Unit Fee</b>
Municipality	\$1,000		\$30
Non-Profit	\$1,750		\$40
All Others	\$4,000		\$50

Mail to:

**Local Initiative Program**  
**Department of Housing & Community Development**  
**100 Cambridge Street, Suite 300**  
**Boston, MA 02114**  
**Attn: Rieko Hayashi, LIP Director**

To complete the application electronically, simply position your cursor on a line and type. Use the tab key to move between questions.

If you have any questions, please refer to the DHCD 40B Guidelines, specifically Section VI. For further assistance, contact Rieko Hayashi at 617-573-1426 or [rieko.hayashi@mass.gov](mailto:rieko.hayashi@mass.gov).

NOTE: For Rental Projects, to complete information on Project Feasibility (Section X), go to the One Stop Application at <http://www.mhlc.com> and complete Section 3 Sources and Uses and Section 4 Operating Pro Forma. Submit the sections with the Application.

Application Contents:

- |                                    |                                     |
|------------------------------------|-------------------------------------|
| I. General Information             | VIII. Surrounding Area              |
| II. Community Support              | IX. Financing                       |
| III. Municipal Contact Information | X. Project Feasibility              |
| IV. Development Team               | XI. Development Schedule            |
| V. Project Information             | XII. Marketing Outreach and Lottery |
| VI. Site Information               | XIII. Checklist of Attachments      |
| VII. Design and Construction       |                                     |

January 2016

**MASSACHUSETTS**  
 Department of Housing & Community Development  
**Local Initiative Program**  
**Application for Comprehensive Permit Projects**

**I. GENERAL INFORMATION**

Community: Andover  
 Name of Development: ACT Mary Lou Lane  
 Site Address: 13 Mary Lou Lane, Andover, MA 01810  
 Developer: Andover Community Trust

1. Type of Housing:  
 Single Family house       Rental  
 Condominium                       Age Restricted

2. Project Characteristics:  
 New Construction     Conversion  
 Rehabilitation                       Other

3. Total Acres .174      Density of Project (units/acre) 5.88

4. Unit Count: 1

Total Number of Units 1  
 Market Rate \$0  
 Affordable \$1

5. Unit Prices/Rents:  
 Market Rate \$n/a  
 Affordable \$approx. \$250,000\_\_\_\_\_

Required Signatures for the  
 Comprehensive Permit Project Application

Chief Executive Official of Municipality:	Chair, Local Housing Partnership (if applicable):
Signature: _____	Signature: _____
Print Name: _____	Print Name: _____
Date: _____	Date: _____

## II. COMMUNITY SUPPORT

1. Letter of Support from Municipality - Attach a letter containing a short narrative on the basics of the project, the history of the project, the ways in which the community is providing support, and how the development team has addressed any concerns the community has. The letter must be signed by the chief elected official of the community.

2. Letter of Support from Local Housing Partnership - If the community has a housing partnership, please attach a letter from them indicating their support for the project. The letter should summarize how the partnership has been working with the developer.

3. Local Contributions - Check off all that apply and provide a brief description at the end.

- Land donation (dollar value \_\_\_\_\_)
- Building donation (dollar value \_\_\_\_\_)
- Marketing assistance
- Other work by local staff
- Density increase
- Waiver of permit fees
- Other regulatory or administrative relief (specify) 40b approval of nonconforming lot
- Local funds (cash)  
Amount \$approx 30,000      Source: Housing Trust Fund
- HOME funds
- Agreement by a lender to provide favorable end-loan financing (ownership projects only)
- Other (specify) \_\_\_\_\_

Briefly explain the contributions: The Town of Andover has waived all permit fees for ACT's permanently affordable homes.

4. Municipal Actions and Local Plans - Briefly describe how the project fits with any planning the community has done (e.g. master plan, community development plan, affordable housing plan) and other local land use and regulatory actions that provide the opportunity for affordable housing (including multi-family and overlay districts, inclusionary zoning by-laws and ordinances). The Andover Housing Production Plan and the Town Master Plan call for more smaller, more affordable home production. The town supports an existing bylaw allowing for the building of a single family affordable home of less than 2500 sq ft on a non-conforming lot. This home will be held affordable in perpetuity.

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### III. MUNICIPAL CONTACT INFORMATION

#### Chief Elected Official

Name Melissa Danisch, Chair, SelectBoard  
Address 36 Bartlet Street, Andover, MA 01810  
Phone 978.623.8200  
Email [melissa.danisch@andoverma.us](mailto:melissa.danisch@andoverma.us)

#### Town Administrator/Manager

Name Andrew Flanagan  
Address 36 Bartlet Street, Andover, MA 01810  
Phone 978.623.8210  
Email [Andrew.flanagan@andoverma.us](mailto:Andrew.flanagan@andoverma.us)

#### City/Town Planner (if any)

Name Paul Materazzo  
Address 36 Bartlet Street, Andover, MA 01810  
Phone 978.623.8650  
Email [planning@andoverma.gov](mailto:planning@andoverma.gov)

#### City/Town Counsel

Name Tom Urbelis  
Address 36 Bartlet Street, Andover, MA 01810  
Phone 978.623.8210  
Email [tju@uf-law.com](mailto:tju@uf-law.com)

#### Chairman, Local Housing Partnership (if any)

Name Linda O'Connell, chair, Housing Trust Fund Board  
Address 36 Bartlet Street, Andover, MA 01810  
Phone 978.623.8650  
Email [planning@andoverma.gov](mailto:planning@andoverma.gov)

#### Community Contact Person for this project

Name Lisa Schwarz, Assistant Planning Director  
Address 36 Bartlet Street, Andover, MA 01810  
Phone 978.623.8650  
Email [planning@andoverma.gov](mailto:planning@andoverma.gov)

**IV. DEVELOPMENT TEAM INFORMATION (include all development members)**

Developer

Name Andover Community Trust  
Address 2 Dundee Park suite B02A, Andover, MA 01810  
Phone 978.276.9228  
Email [info@andoverclt.org](mailto:info@andoverclt.org)  
Tax ID 04-3159877

Contractor

Name Greater Lawrence Technical School  
Address 57 River Road, Andover, MA 01810  
Phone 978.686.0194  
Email [jlavoie@glts.net](mailto:jlavoie@glts.net)  
Tax ID \_\_\_\_\_

Architect

Name John Pearson Architect  
Address \_\_\_\_\_  
Phone \_\_\_\_\_  
Email [john@johnpearsonarchitect.com](mailto:john@johnpearsonarchitect.com)  
Tax ID \_\_\_\_\_

Engineer

Name Andover Consultants  
Address 1 East River Place, Methuen, MA 01844  
Phone 978.687.3828  
Email [dgriecci@andoverconsultants.com](mailto:dgriecci@andoverconsultants.com)  
Tax ID \_\_\_\_\_

Attorney

Name Andrew Caffrey  
Address One Elm Square, Andover, MA 01810  
Phone 978.475.2412  
Email [acaffrey.caffrey@comcast.net](mailto:acaffrey.caffrey@comcast.net)  
Tax ID \_\_\_\_\_

Housing Consultant

Name \_\_\_\_\_  
Address \_\_\_\_\_  
Phone \_\_\_\_\_  
Email \_\_\_\_\_  
Tax ID \_\_\_\_\_

Marketing/Lottery Agent

Name Andover Community Trust  
Address 2 Dundee Park suite B02A, Andover, MA 01810  
Phone 978.276.9228  
Email [info@andoverclt.org](mailto:info@andoverclt.org)  
Tax ID 04-3159877

## TEAM EXPERIENCE – DEVELOPER/CONTRACTOR QUALIFICATIONS

Complete the charts on the following pages for all housing projects undertaken by the developer and the contractor during the past five years. Include projects currently in construction. Provide owner references for each project, including a current phone number. Alternatively, a resume outlining the experience that covers the items listed on the chart below may be submitted.

1. Developer: Andover Community Trust \_\_\_\_\_

Project Summary	Project #1	Project #2	Project #3	Project #4
Project Name:	Stott Circle/Lupine	168 Haverhill	Andover St.	Cheever Circle
Community Address:	8 Lupine Road	168 Haverhill St.	98 Andover St	94 Cheever Circle
Housing Type:	Duplex	Single family	Single family	Single family
Number of Units:	6	1	1	1
Total Development Costs:	1,800,000		240,000	300,000
Subsidy Program (if applicable):	HOME	HOME		HOME
Date Completed:	Dec 2022		June 2013	Aug 2008
Reference: Name and Telephone #:	ACT 978.276.9228	ACT 978.276.9228	ACT 978.276.9228	ACT 978.276.9228

2. Contractor: \_Greater Lawrence Technical School

Project Summary	Project #1	Project #2	Project #3	Project #4
Project Name:	Stott Circle units 3,4	168 Haverhill	Andover St	Heather Dr
Community Address:	8 Lupine Road	168 Haverhill St.	98 Andover St	13 Heather Dr
Housing Type:	Duplex	Single family	Single family	Single family
Number of Units:	2	1	1	1
Total Development Costs:				
Subsidy Program (if applicable):	HOME	HOME		
Date Completed:	Dec 2022		June 2013	Oct 2006
Reference: Name and Telephone #:				

3. Other Chapter 40B Experience

Have you or any members of your team had previous Chapter 40B experience with DHCD and/or other subsidizing agencies?  Yes  No

If yes, please explain. ACT has completed four 40b projects, we have also completed 1 unit through a local bylaw and then added it with a LAU. We were the recipient of a unit developed as an additional unit to the 40b development Northfield Commons.

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

4. Bankruptcy / Foreclosure

Have you or any entities you control ever filed for bankruptcy or have had a property foreclosed?  Yes  No

If yes, please explain. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_.

DEVELOPER CERTIFICATION

The undersigned hereby certifies that he/she is Executive Director (Title) of Andover Community Trust (Legal Name of Applicant) and that the information requested below for the project known as Mary Lou Lane (Project Name) is complete and that all information contained in this application is true and correct to the best of his/her knowledge. The undersigned Developer agrees to execute DHCD model documents, as required. If the Developer is other than a non-profit corporation or public entity, the Developer hereby certifies that it shall comply with all reporting requirements described in 760 CMR 56.00 and as set forth in the LIP Guidelines.

Signature of Developer \_\_\_\_\_

Print Name: \_\_\_\_\_

Date \_\_\_\_\_

## PURCHASE AND SALE AGREEMENT

This Agreement prepared this      day of January, 2023. Time is of the essence.

### 1. PARTIES AND MAILING ADDRESS

Cleary Associates, LLC, 9 Mary Lou Lane, **Andover, MA 01880**

Hereinafter called the SELLER, agrees to SELL and

Andover Community Trust, Dundee Park, **Andover, MA 01810**

### 2. DESCRIPTION

Hereinafter called the BUYER or PURCHASER, agrees to BUY, Upon the terms hereinafter set forth, the following described premises: A parcel of land and the buildings thereon now known as a portion of 9 Mary Lou Lane, **Andover, MA 01880** consisting of approximately 7,560 square feet of land with no buildings thereon, recorded with **Essex North Registry of Deeds, Book 11615, Page 236, as shown on the attached sketch..**

### 3. BUILDINGS, STRUCTURES IMPROVEMENTS, FIXTURES

~~Included in the sale as a part of said premises are the buildings, structures, and improvements now thereon, and the fixtures belonging to the SELLER and used in connection therewith including, if any, all wall-to-wall carpeting, drapery rods, automatic garage door openers, venetian blinds, window shades, screens, screen doors, storm windows and doors, awnings, shutters, furnaces, heaters, heating equipment, stoves, ranges, oil and gas burners and fixtures appurtenant thereto, hot water heaters, plumbing and bathroom fixtures, garbage disposers, electric and other lighting fixtures, mantels, outside television antennas, fences, gates, trees, shrubs, plants, and, microwave, dishwashers.~~

### 4. TITLE DEED

Said premises are to be conveyed by a good and sufficient quitclaim deed running to the BUYER, or to the nominee designated by the BUYER by written notice to the SELLER at least seven days before the deed is to be delivered as herein provided, and said deed shall convey a good and clear record and marketable title therefore, free from encumbrances, except

- (a) provisions of existing building and zoning laws;
- ~~(b) Existing rights and obligations in party walls which are not the subject of written agreement;~~
- (c) Such taxes for the then current year as are not due and payable on the date of the delivery of such deed;
- (d) Any liens for municipal betterments assessed after the date of this agreement;
- (e) Easements, restrictions and reservations of record, if any, so long as the same do not prohibit or materially interfere with the current use of said premises;

### 5. PLANS

If said deed refers to a plan necessary to be recorded therewith the SELLER shall deliver such plan with the deed in form adequate for recording or registration.

### 6. REGISTERED TITLE

In addition to the foregoing, if the title to said premises is registered, said deed shall be in form sufficient to entitle the BUYER to a Certificate of Title of said premises, and the SELLER shall deliver with said deed all instruments, if any, necessary to enable the BUYER to obtain such Certificate of Title.

### 7. PURCHASE PRICE

The agreed purchase price for said premises is **\$50,000.00 (Fifty Thousand and 00/100)**.

\$ 0.00	has been paid with the Offer; and,
\$ 1,000.00	has been paid as deposit this day; and,
\$ 49,000.00	are to be paid at the time of delivery of the deed in cash, or by certified, cashier's, treasurer's or bank check(s) or attorney's Iolta check (provided MA bank).
<hr/> \$ 50,000.00	TOTAL

- 8. TIME FOR PERFORMANCE POSSESSION & CONDITION OF PREMISES** Such deed is to be delivered on or before **10 am** on or before the **31st** day of August, 2023, at the Essex North Registry of Deeds, unless otherwise agreed upon in writing  
Full possession of said premises, ~~FREE OF ALL TENANTS AND OCCUPANTS.~~
- Is to be delivered at the time of the delivery of the deed, said premises to be then ~~(a) in the same condition as they now are, reasonable use and wear thereof excepted, and (b) not in violation of said building and zoning laws, and (c) in compliance with the provisions of any instrument referred to in clause 4 hereof. The BUYER shall be entitled to an inspection of said premises prior to the delivery of the deed in order to determine whether the condition thereof complies with the terms of this clause.~~
- 9. FAILURE TO PERFECT TITLE** If the SELLER shall be unable to give title or to make conveyance, or to deliver possession of the premises, all as herein stipulated, or if at the time of the delivery of the deed, the premises do not conform with the provisions hereof, ~~then any payments made under this agreement shall be refunded and all other obligations of the parties hereto shall cease and this agreement shall be void and without recourse to the parties hereto;~~ unless the SELLER shall use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or to make the said premises conform to the provisions hereof, as the case may be, in which event the SELLER shall give written notice thereof to the BUYER at or before the time of performance thereunder, and thereupon the time for performance hereof shall be extended for a period of thirty (30) days.
- 10. BUYERS ELECTION TO ACCEPT TITLE** The BUYER shall have the election, at either the original or any extended time for performance to accept such title as the SELLER can deliver to the said premises in their then condition and to pay therefore the purchase price without deduction. In case of damage to the premises by fire or other casualty, and unless the Property shall previously have been restored to its former condition by the SELLER, the BUYER may at his option, either cancel this agreement, and recover all sums paid hereunder or require as part of this agreement that the SELLER pay over or assign on delivery of the deed, all sums recovered or recoverable on any and all insurance covering such damage.
- 11. ACCEPTANCE OF DEED** The acceptance of a deed by the BUYER or his nominee as the case may be, shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed, except such as are, by the terms hereof, to be performed after the delivery of said deed.
- 12. USE OF PURCHASE MONEY TO CLEAR TITLE** To enable the SELLER to make conveyance as herein provided, the SELLER may, at the time of delivery of the deed, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, provided that all instruments so procured are recorded promptly. ~~simultaneously with the delivery of said deed or within five days thereafter if additional time is needed to procure the instrument necessary to discharge the encumbrance—~~or within a reasonable time thereafter in accordance with local conveyance practices.
- 14. INSURANCE** Until the delivery of the deed, the SELLER shall maintain insurance on said premises as follows: as presently insured.
- 15. ADJUSTMENTS** ~~Collected rents,, and taxes for the then current year, shall be apportioned and fuel value shall be 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 BUYER at the time of delivery of the deed. Uncollected rents for the current rental period shall be apportioned if and when collected by either party. Security deposits shall be accounted for and transferred as the day of performance of this agreement.~~ If the amount of said taxes is not known at the time of the delivery of the deed, they shall be apportioned on the basis of the taxes assessed for the preceding year with a reapportionment as soon as the new tax rate and valuation can be ascertained, which latter provision shall survive the delivery of the deed.
- 16. BROKER'S FEE** NO broker's fee for professional services is due from the SELLER to any broker herein, as neither party has engaged a broker.
- 17. BROKER(S)** N/A.

- 18. DEPOSIT** All deposits made hereunder shall be held in escrow by the Seller subject to the terms of this agreement and shall be duly accounted for at the time for performance of this agreement. In the event of any disagreement between the parties, the escrow agent shall retain all deposits made pursuant to this Agreement pending written instructions mutually given by the SELLER and the BUYER or an order issued by a Court of competent jurisdiction.
- 19. BUYER'S DEFAULT: DAMAGES** If the Buyer shall fail to fulfill the Buyer's agreements herein, all deposits made hereunder by the BUYER shall be retained by the SELLER as liquidated damages which shall be the SELLER's sole and exclusive remedy in law or equity for any default by Buyer hereunder.
- 20. BROKER AS PARTY** N/A
- 21. WARRANTIES AND REPRESENTATIONS** The BUYER acknowledges that the BUYER has not been influenced to enter into this transaction nor has he relied upon any warranties or representations not set forth or incorporated in this agreement or previously made in writing, except for the following additional warranties and representations, if any, made by either the SELLER or the Broker, if none, state so: None.
- 22. FINANCING** WAIVED  
~~The BUYER agrees to apply promptly for a Conventional Mortgage loan in an amount of xxxxxxxx from an institutional lender at current interest rates, points, and terms. If the BUYER, having used all due diligence fails to obtain a firm commitment for such a loan by February 29, 2012 all payment made hereunder by the BUYER shall be forthwith refunded and all other obligations of the parties hereto shall cease. The BUYER shall be deemed to have waived his rights under this paragraph if the SELLER and Broker have not been notified in writing by February 29, 2012 of the BUYER's inability to obtain said mortgage commitment. In no event shall Buyer be deemed to have used reasonable efforts to obtain such commitment unless the Buyer submits one complete mortgage loan application confirming to the foregoing provisions on or before February 29, 2012, and acted reasonably promptly in providing additional information requested by the mortgage lender.~~
- 23. INSPECTION** WAIVED  
~~This Agreement is subject to the BUYER using reasonable and diligent efforts to obtain, at the BUYER's option and expense, a complete home and real property inspection, including but not to limited termite/pest, lead paint, radon, septic system, well and water inspections, on or before February 6, 2012 from a person normally engaged in the business of conducting such inspections. If the property contains serious structural, mechanical or other major defects, then at the option of the BUYER, with written notification, this offer shall be null and void and all deposits returned to the BUYER. Should the BUYER fail to notify the SELLER or his agent, in writing, on or before February 6, 2012, then it shall be conclusively presumed that the BUYER is satisfied with the inspection and this contingency shall lapse and the BUYER shall be bound to Perform his obligations under this Agreement. In the event the BUYER does not elect to have such Inspection or to so terminate on or before February 6, 2012, the SELLER and the Broker(s) are hereby released from liability relating to defects in the premises which the BUYER or BUYER's Consultant(s) could reasonably discover.~~
- 24. LEAD PAINT** The BUYER agrees that if any child 6 years of age or under resides in said premises after the time of the closing of the sale, that the BUYER will be responsible for compliance with any provisions of the State Statutes or Building Code relating to or regulating levels of lead paint in said premises.
- 25. SMOKE/CARBON MONOXIDE DETECTORS** The SELLER shall, at the time of Closing, deliver a Certificate from the Fire Department of the city or town in which said premises are located stating that the premises have been equipped with approved Smoke Detectors and Carbon Monoxide Detectors in conformity with applicable law.

**26. CONSTRUCTION OF AGREEMENT**


This instrument, executed in five (5) parts, is to be construed under the laws of Massachusetts, is to be construed, sets forth the entire contract between the parties, is binding upon and ensures to the benefit of the parties hereto and their respective heirs devisees, executors, administrators, successors and assigns, and may be "cancelled," modified or amended only by a written instrument executed by the parties hereto or their legal obligations hereunder shall be joint and several.

This Agreement is subject to and conditioned on the following: 1. The Seller having prepared and approved by the Andover Planning Board a Form A plan showing the building lot substantially the same as the sketch attached hereto with a mutually acceptable lot line between the two lots. It is understood that this approval will depict the new lot as "unbuildable" pursuant to current zoning regulations. 2. The Buyer obtaining a c. 40B Comprehensive Permit to build one single family affordable home from the Andover ZBA and other local and state authorities, with no appeals being taken. 3. At the option of the Buyer, the closing date may be moved to an earlier date, or delayed for up to three months if despite good faith efforts the necessary approvals have not been obtained, or appeal periods have not expired.

**NOTICE:** This is a legal document that creates binding obligations. If not understood, consult an attorney.

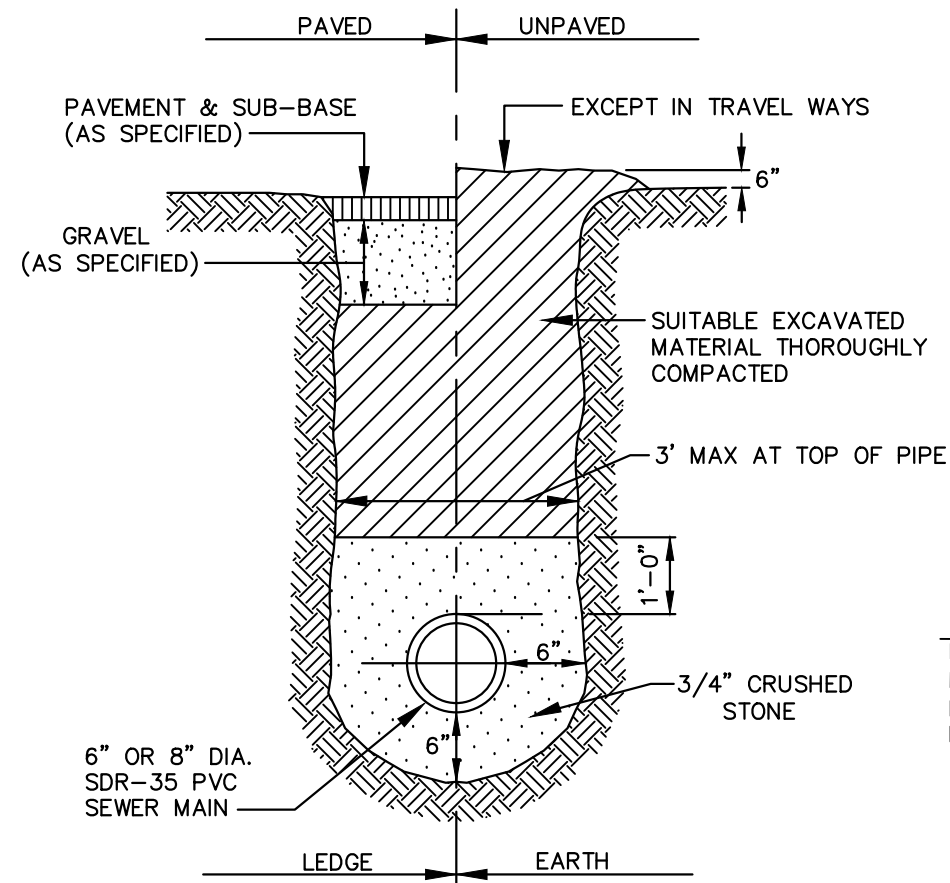
By: \_\_\_\_\_  
SELLER DATE

By:  MANAGER 1/27/2023  
SELLER DATE

  
BUYER DATE

Russella K. Loring 1/10/2023  
BUYER DATE





**SEWER TRENCH  
TYPICAL SECTION**  
NOT TO SCALE

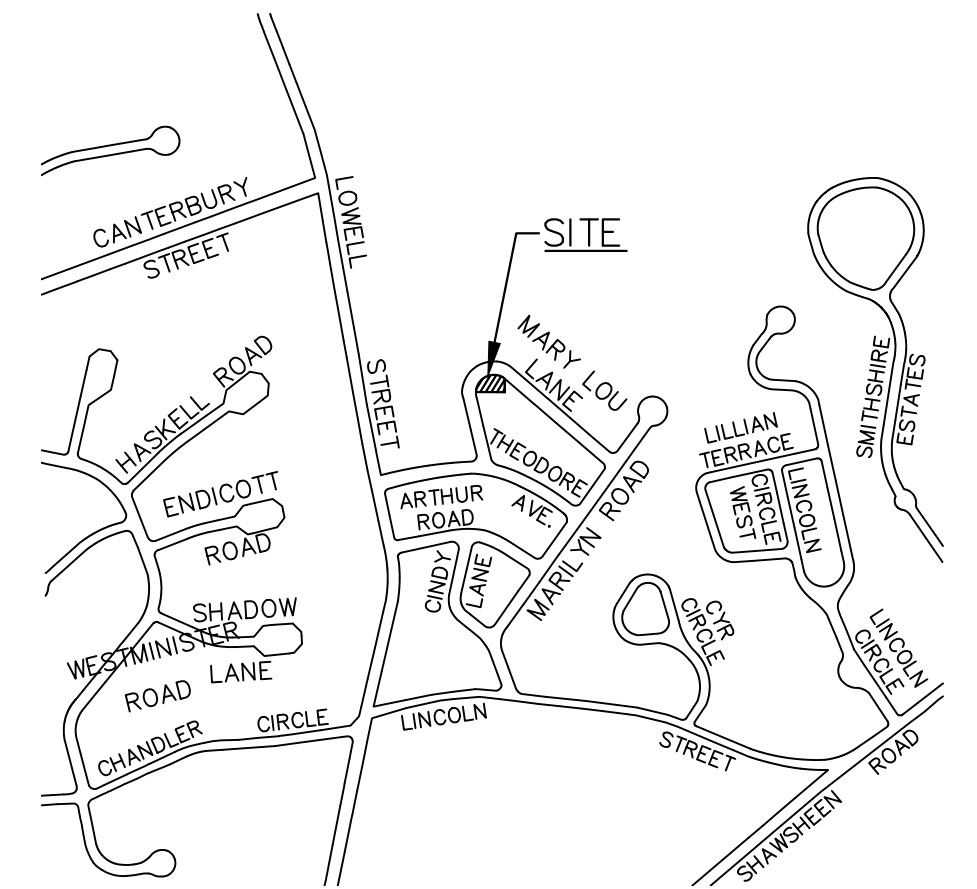
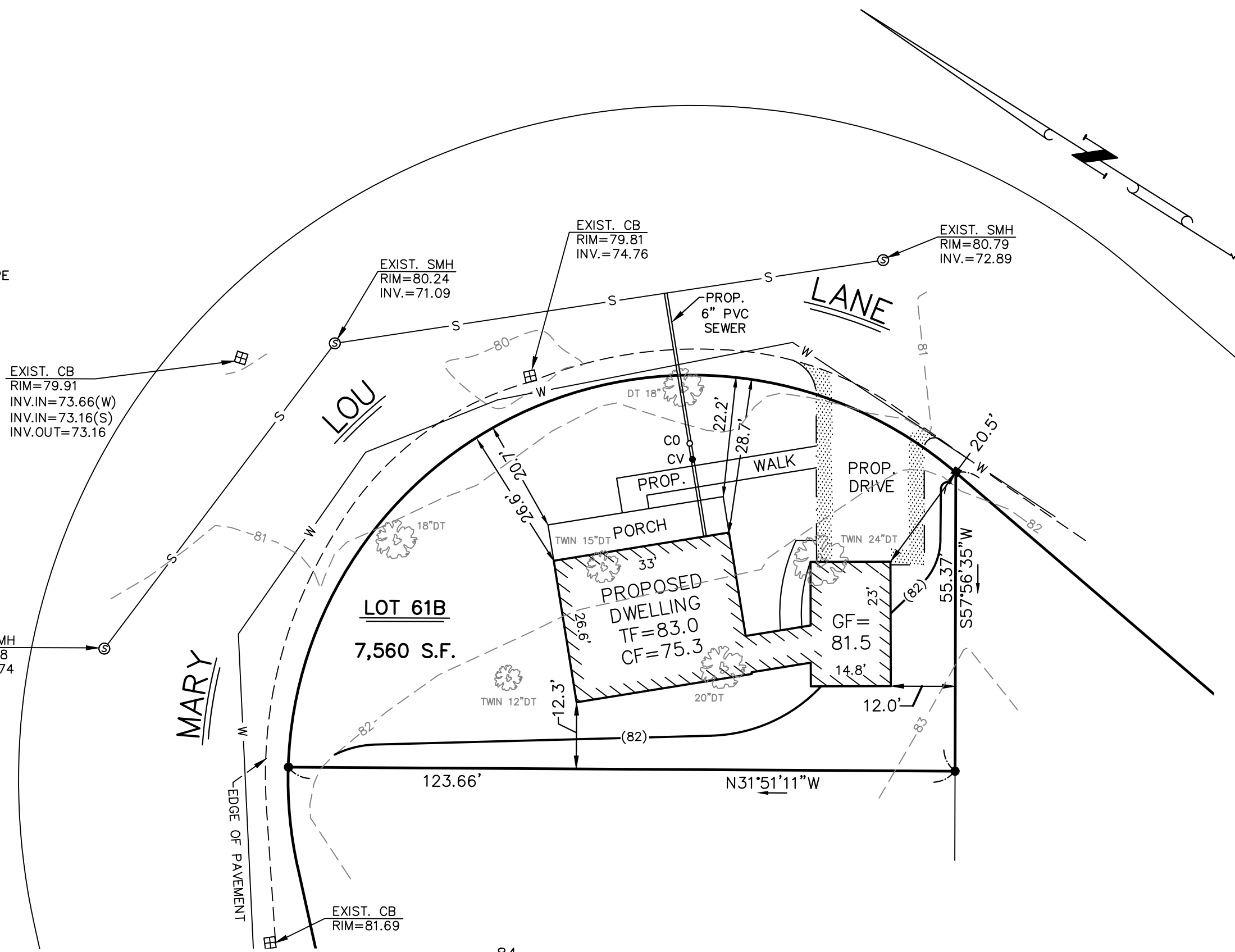
EXIST. CB  
RIM=79.91  
INV.IN=73.66(W)  
INV.IN=73.16(S)  
INV.OUT=73.16

EXIST. SMH  
RIM=81.18  
INV.=72.74

EXIST. CB  
RIM=79.81  
INV.=74.76

EXIST. SMH  
RIM=80.79  
INV.=72.89

EXIST. CB  
RIM=81.69



**LOCUS PLAN** SCALE: 1"=800'

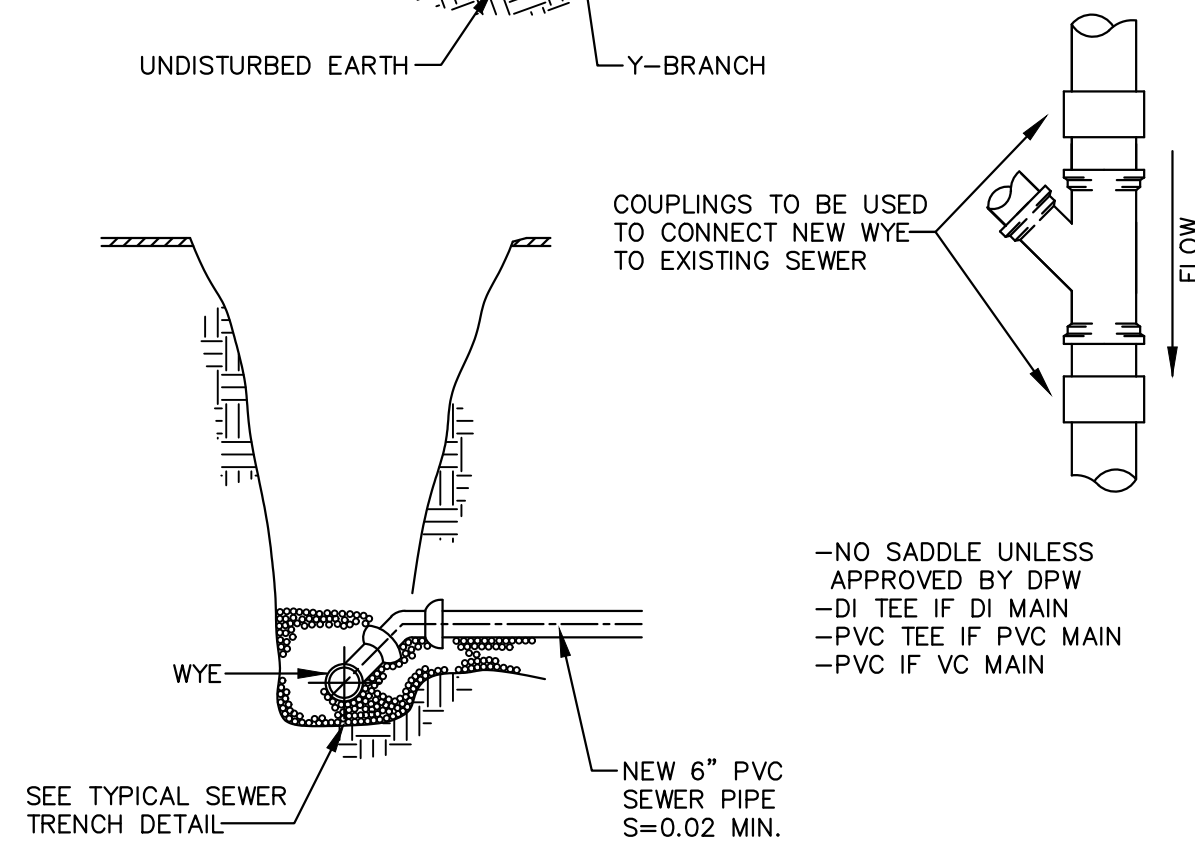
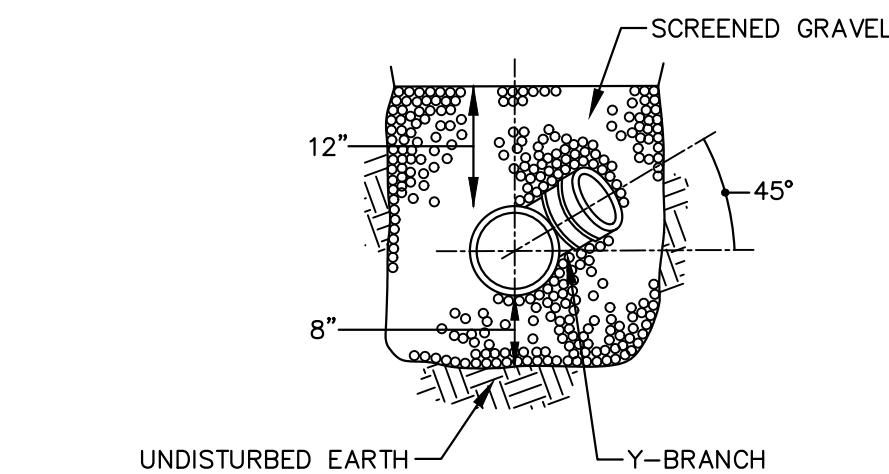
**LEGEND:**  
- - - - - EXISTING CONTOUR  
- - - - - PAVEMENT EDGE

- NOTE:**
- 1.) ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE TOWN OF ANDOVER RULES AND REGULATIONS FOR SANITARY SEWER SYSTEMS.
  - 2.) ELECTRIC AND TELEPHONE LINES TO BE OVERHEAD.
  - 3.) SEWAGE DESIGN FLOW:  
5 BEDROOMS X 110 GPD/BEDROOM = 550 GPD.
  - 4.) THE EXISTING WATER SERVICE SHALL BE DISCONNECTED AT THE MAIN AND A NEW 1 INCH WATER SERVICE SHALL BE INSTALLED FROM THE WATER MAIN.

**OWNER/APPLICANT:**  
CLEARY ASSOCIATES, LLC  
7 MARY LOU LANE  
ANDOVER, MA 01810

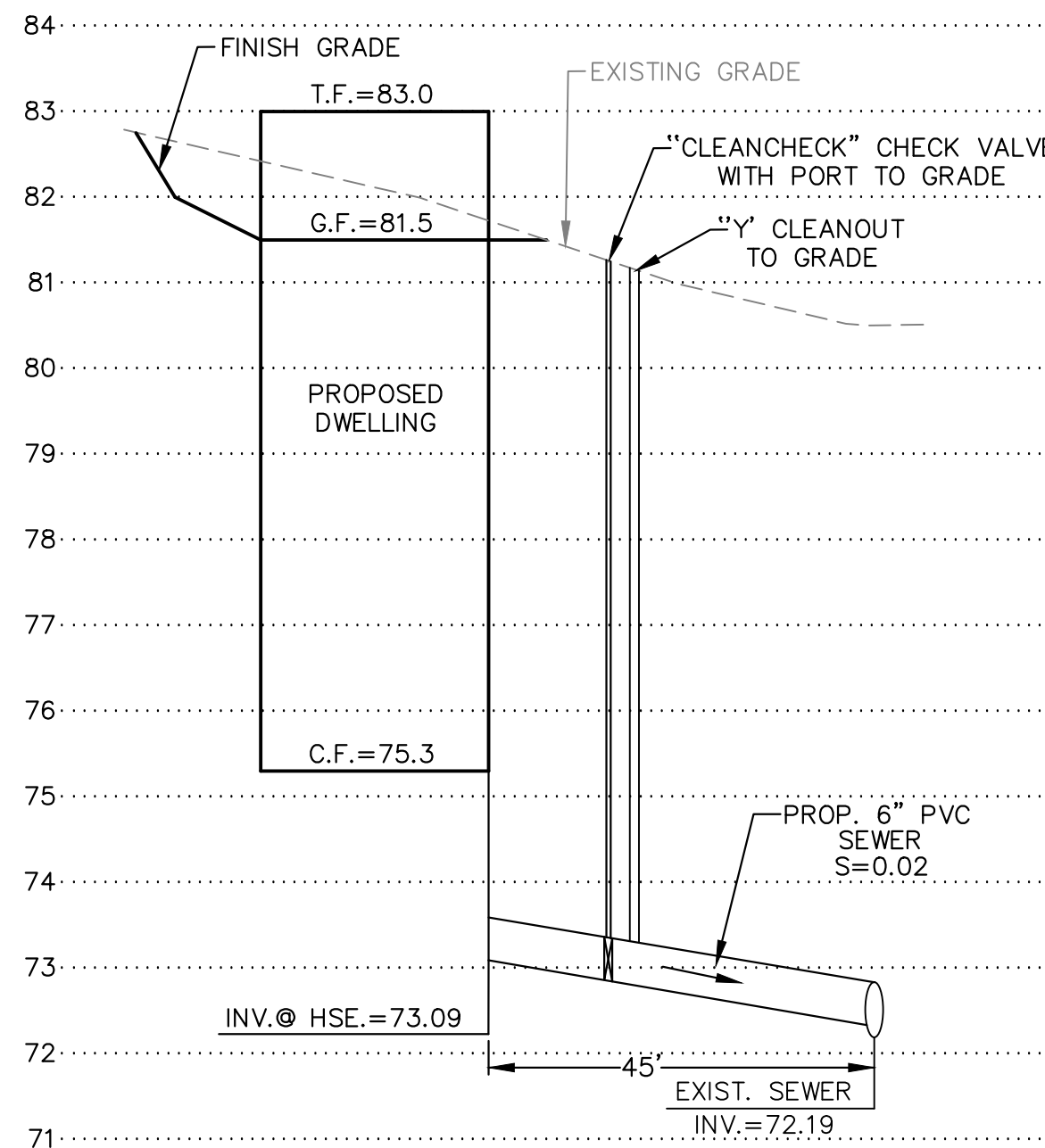
**DEED REFERENCE:**  
BOOK PAGE

**ASSESSORS REFERENCE:**  
TOWN MAP 71 LOT 49A



**TYPICAL NEW WYE TO EXISTING SEWER  
CONNECTION DETAIL**  
NOT TO SCALE

- NO SADDLE UNLESS APPROVED BY DPW
- DI TEE IF DI MAIN
- PVC TEE IF PVC MAIN
- PVC IF VC MAIN



**PROFILE** - SCALE: HOR.: 1"=40', VERT: 1"=4'

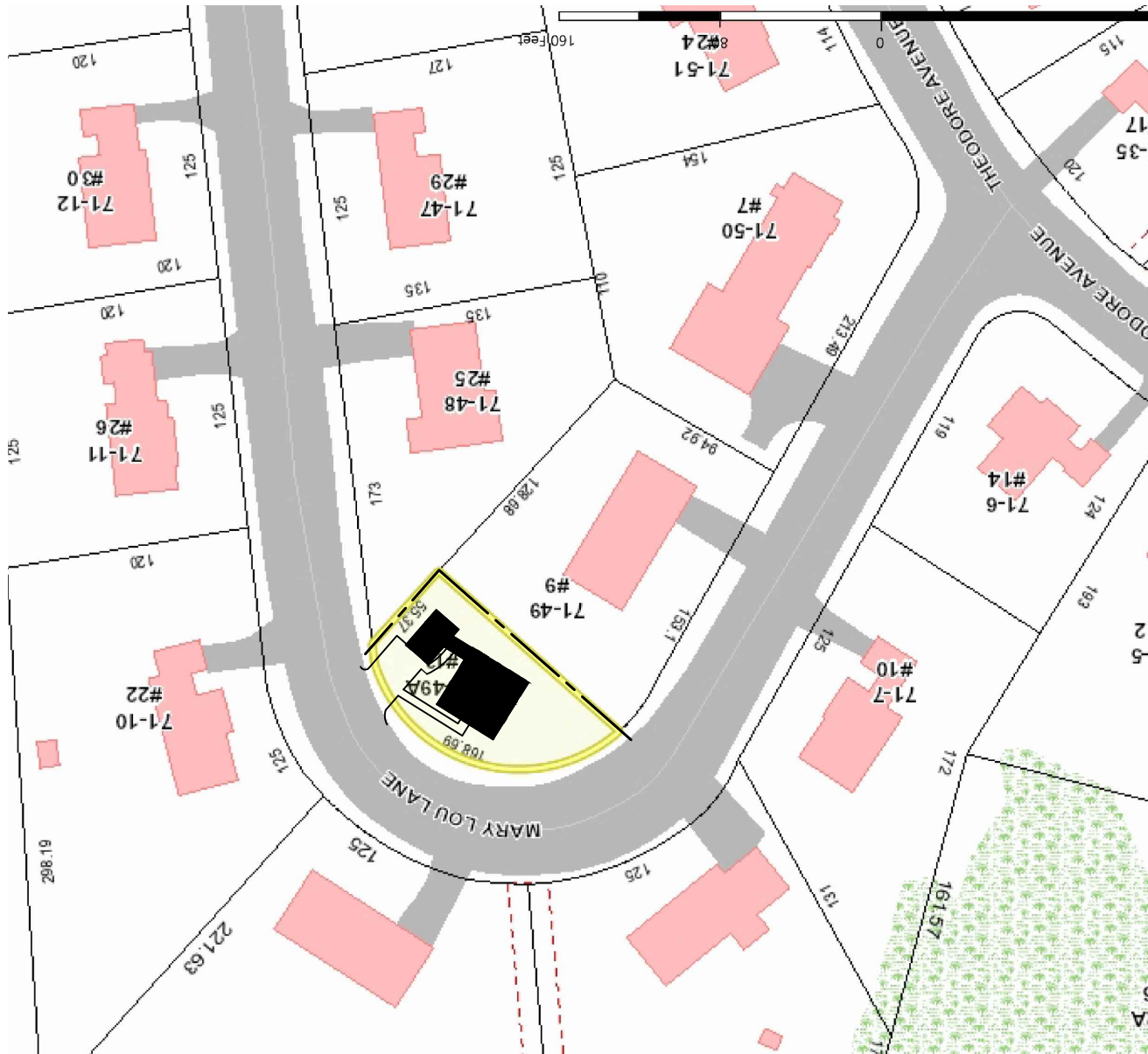
**PROPOSED SITE PLAN  
13 MARY LOU LANE  
ANDOVER, MASS**

PREPARED FOR: ANDOVER COMMUNITY TRUST  
DATE: FEBRUARY 9, 2023  
SCALE: 1"=20'

**FOR REVIEW**

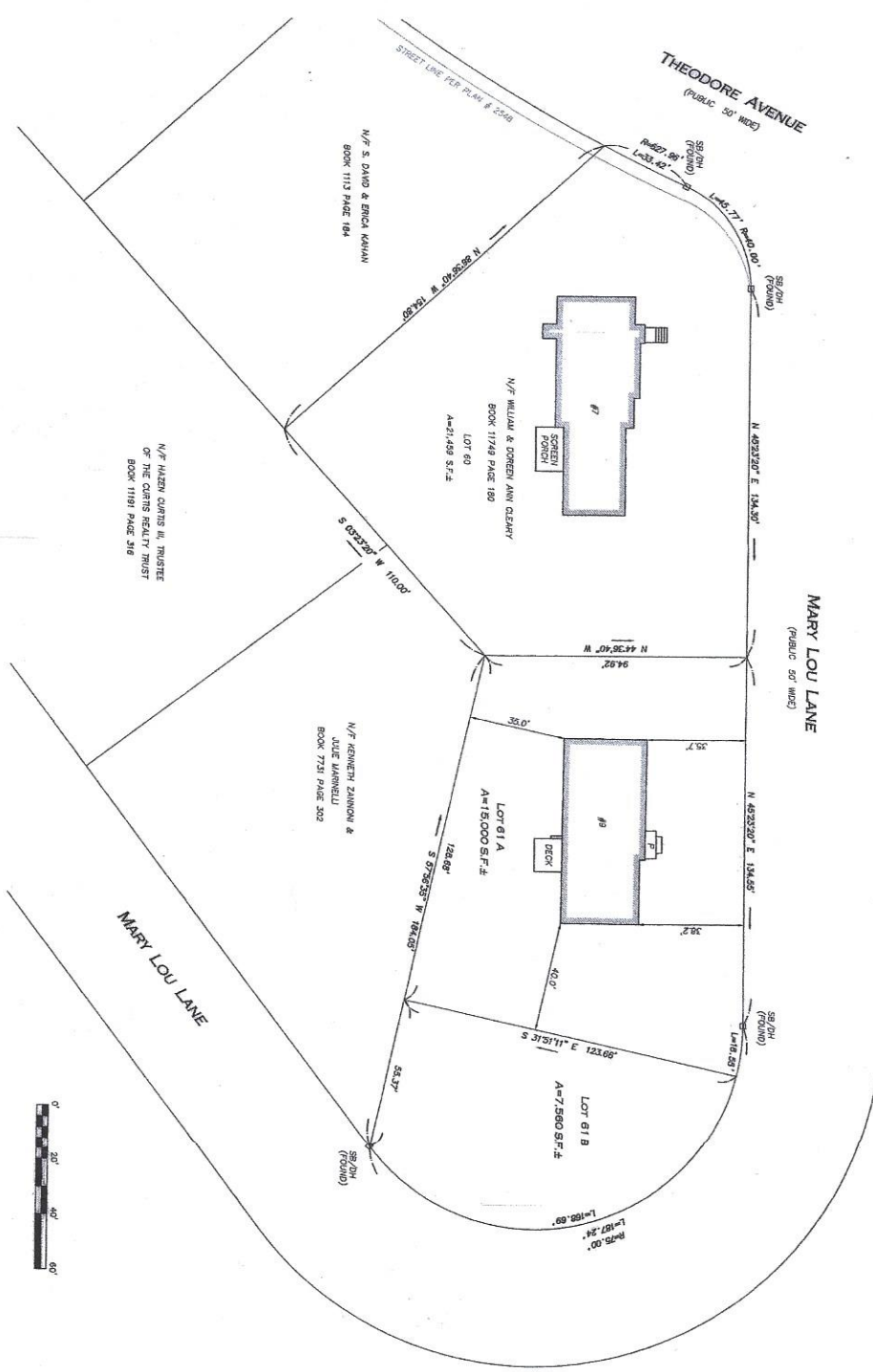
**andover consultants inc.**  
1 East River Place  
Methuen, Mass. 01844  
Reg. Prof. Engineer

0 20 40 60 80 Ft.



Key Plan

16207



- NOTES:
1. LOTS 61A & 61B FORMERLY COMBINED LOT 61 ON PLAN # 2595 CONTAINING 22,560 S.F.
  2. LOT 61B IS NOT A BUILDABLE LOT.

OWNER OF RECORD  
 CLEARLY ASSOCIATES LLC  
 BOOK 11916 PAGE 238 E.N.C.B.  
 ZONING DISTRICT  
 TAX MAP #1 PARCEL 49  
 SAN RESIDENCE ZONING  
 PLAN # 2348  
 PLAN # 2388



**PLAN OF LAND**  
**MARY LOU LANE**  
**ANDOVER, MASS.**  
 SCALE: 1" = 20'  
 NOVEMBER 5, 2009  
 Prepared by  
**EDWARD J. FARRELL**  
 PROFESSIONAL LAND SURVEYOR  
 110 WINN STREET ~ SUITE 203 ~ WOBURN, MA.  
 (781)-933-9012

I HEREBY CERTIFY THAT THIS PLAN IS BASED ON AN ACCURATE FIELD SURVEY AND WAS PREPARED IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE REGISTER OF DEEDS.

EDWARD J. FARRELL P.L.S.  
 DATE 11-8-10

THE ABOVE INSTRUMENT IS NOT A VALID INSTRUMENT FOR RECORDATION UNLESS IT COMPLEMENTS WITH ZONING REGULATIONS.

TOWN OF ANDOVER PLANNING BOARD  
 11-8-10  
 6M

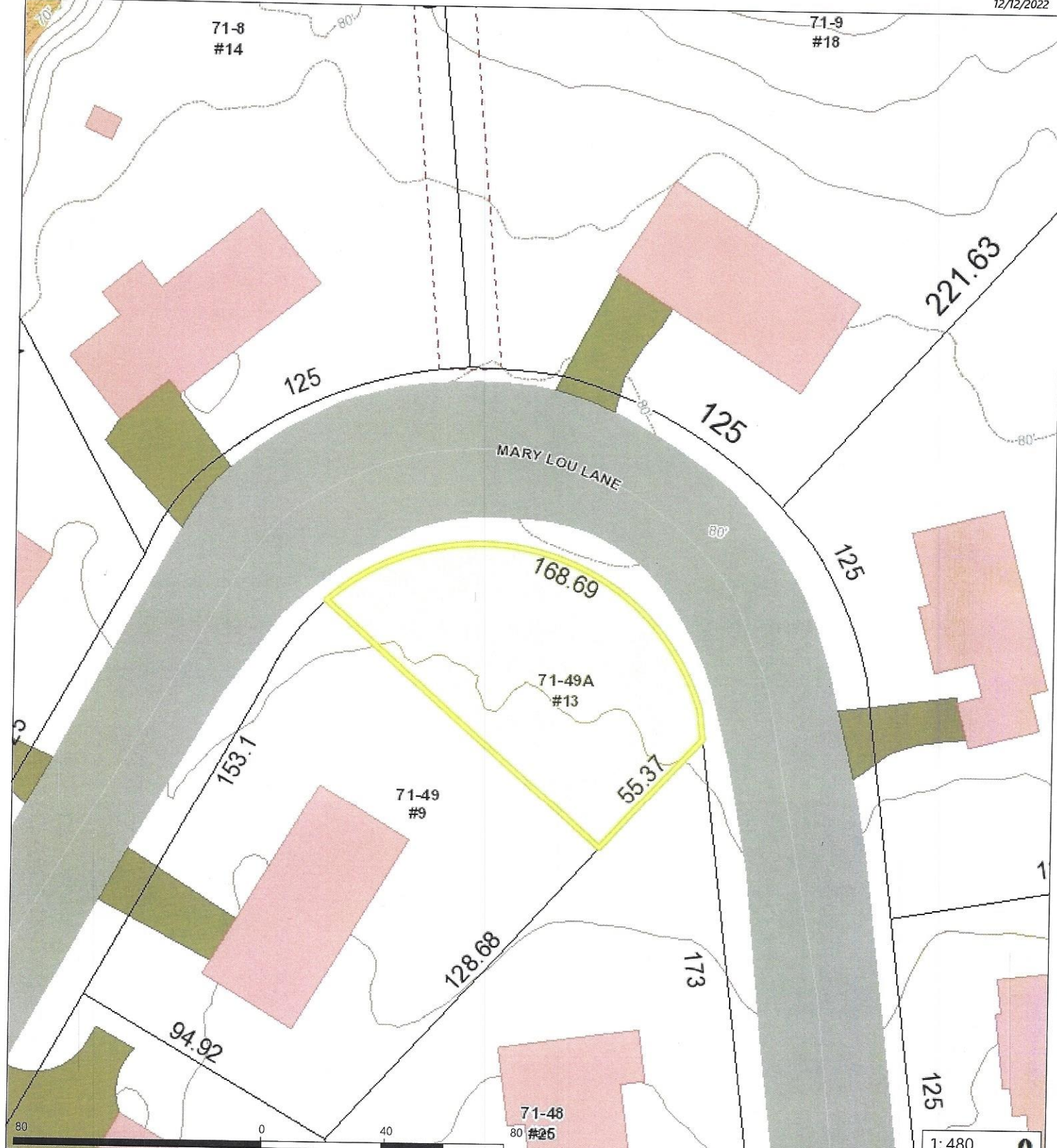
FOR REGISTRY OF DEEDS USE ONLY

REGISTER OF DEEDS  
 Northern District  
 110 State Street  
 Boston, MA 02109  
 16207

16207

# Town of Andover

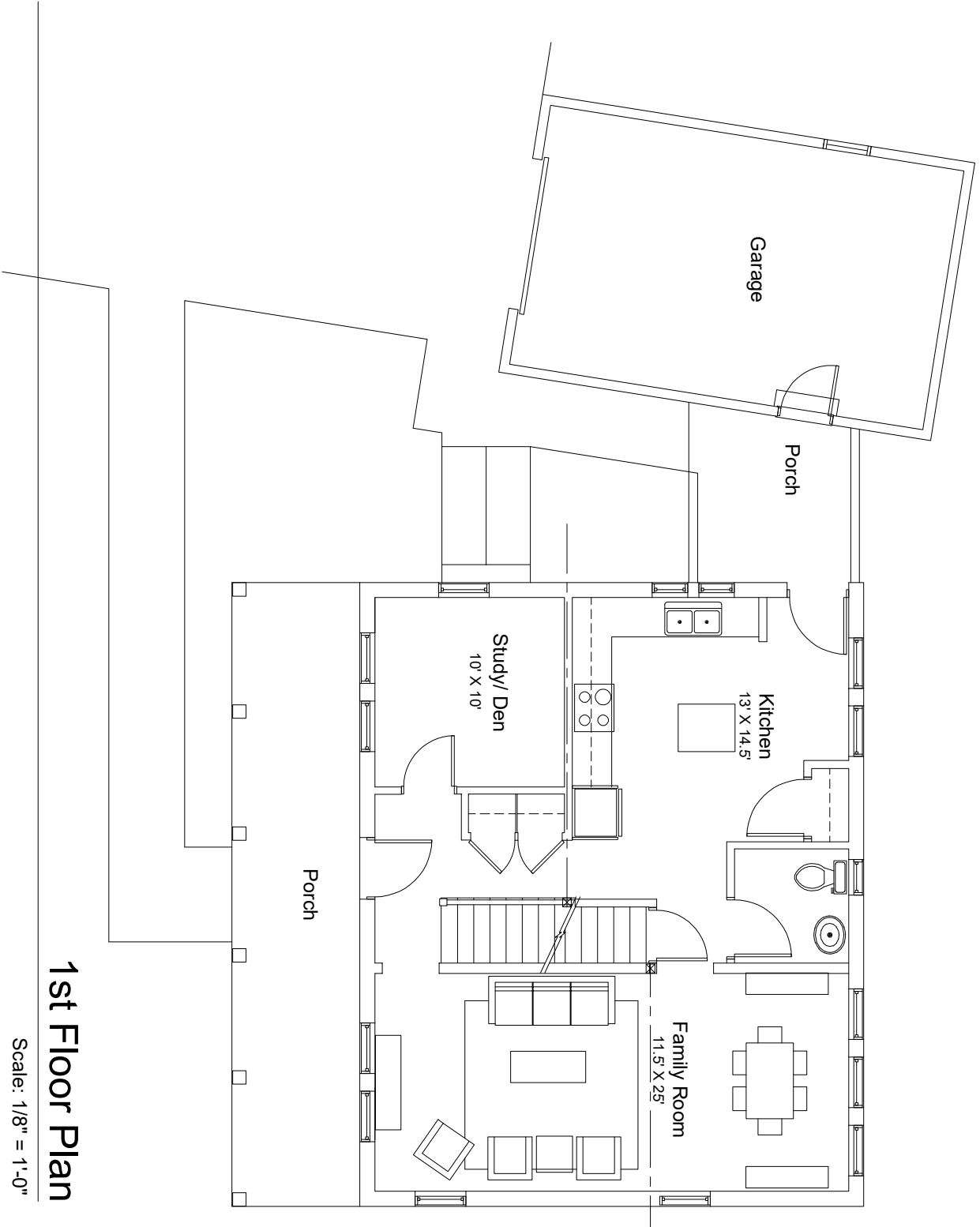
12/12/2022



Data Sources: Produced by Merrimack Valley Planning Commission (MVPC) using data provided by the Town of Andover & MassGIS/MassGIS. MVPC AND THE TOWN OF ANDOVER MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, CONCERNING THE ACCURACY, COMPLETENESS, RELIABILITY, OR SUITABILITY OF THESE DATA. THE TOWN OF ANDOVER AND MVPC DOES NOT ASSUME ANY LIABILITY ASSOCIATED WITH THE USE OR MISUSE OF THIS INFORMATION

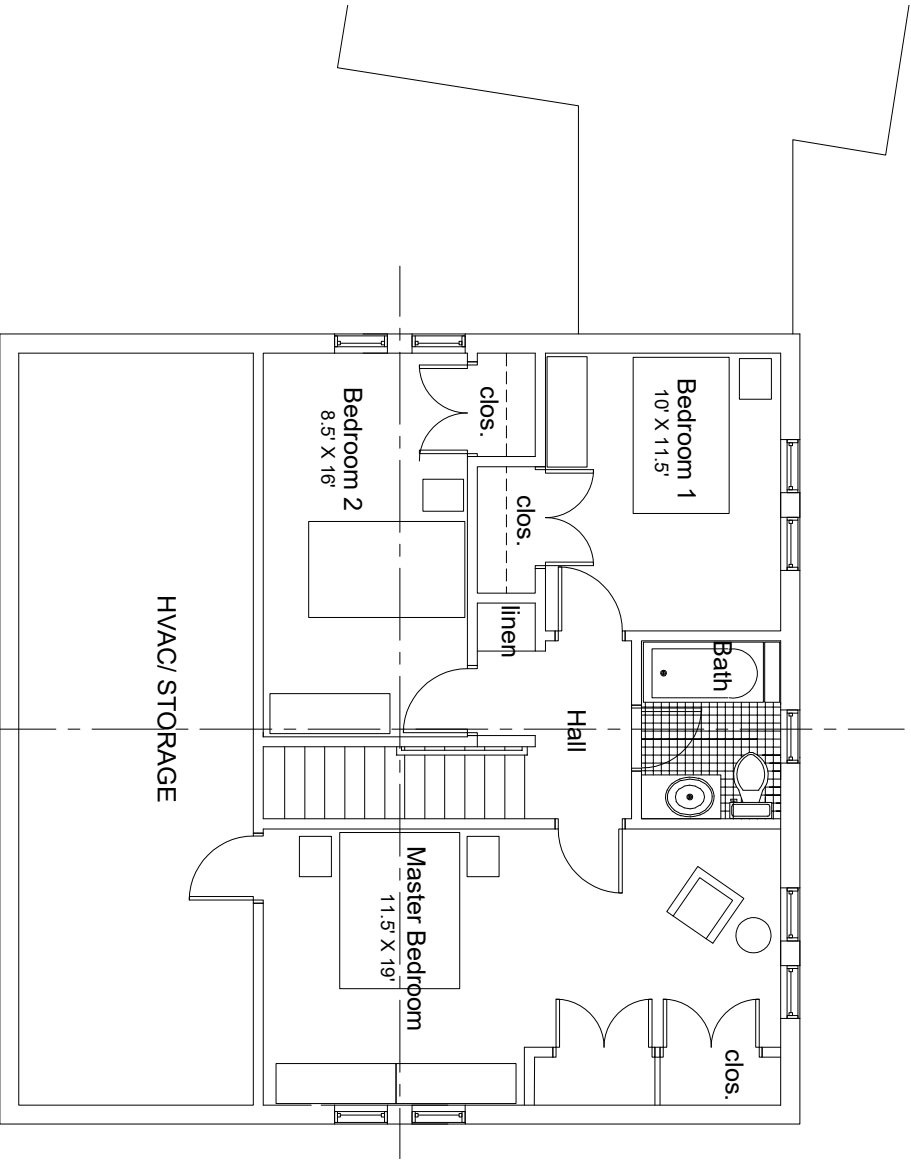


Legend	
Municipal Boundary	Parcels
Fuel Tank	Water Tank
Roads	Rail Line
Paved	Unpaved
Ten Foot Contours	FEMA National Flood H
Easement	Pool
Driveway	Hydrographic Features
Streams	AE: 1% Annual Char
Condo Building	Basketball Court
Tennis Court	Driveway Un-Paver
Wetlands	AE: 1% Annual Chk
Building; <Null>	AE: Regulatory Flow
Bridge	Road Right of Way
Two Foot Contours	X: 0.2% Annual Ch



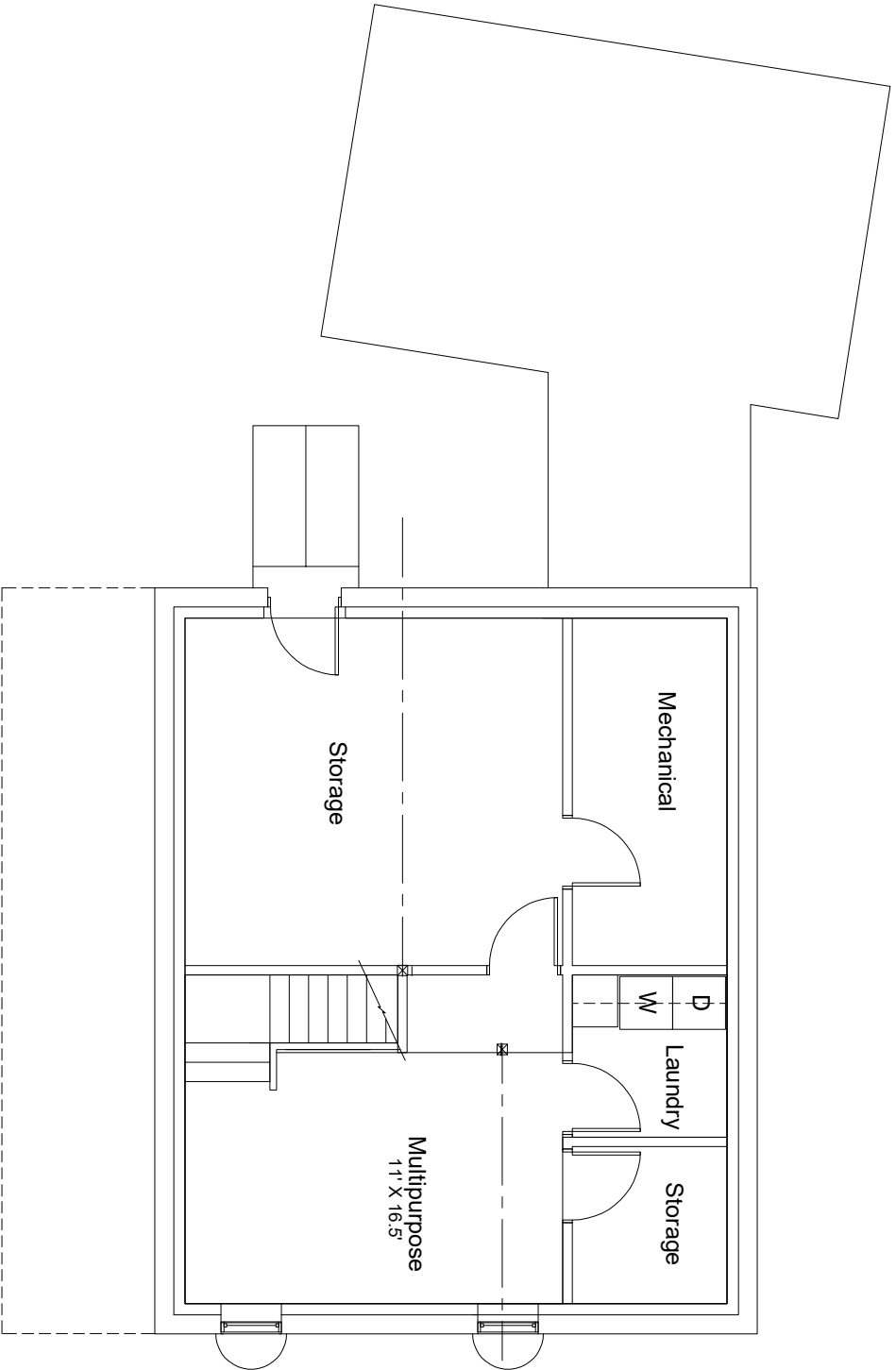
# 1st Floor Plan

Scale: 1/8" = 1'-0"



# 2nd Floor Plan

Scale: 1/8" = 1'-0"



# Basement Plan

Scale: 1/8" = 1'-0"



## Key Facts about Andover Community Trust, Inc.

- **MISSION:** Based on a strong belief that economic diversity is an important contributor to vital and livable communities, Andover Community Trust (ACT) advocates for and develops permanently affordable homes for families.
- **ABOUT US:** ACT increases the number of affordable homes built in Andover, saves existing affordable units through re-sales, and offers high school students the opportunity for real-life work experiences through its partnership with the Greater Lawrence Technical School. ACT incorporated in 1992 and is a **501(c)(3) non-profit**. ACT has **developed 13 permanently affordable homes** in Andover.

ACT is a **community land trust**, which means that after the sale of a permanently affordable home to an income eligible owner, ACT continues to own the land under the home with a 99-year ground lease. The land is held as a community resource.

ACT has an **office at 2 Dundee Park, suite B02A** and a **part-time Executive Director**. The ACT board includes a geologist, architect, accountant, realtor and other professionals plus local affordable home owners. ACT has about 100 dues paying members and has received strong financial support from local foundations, businesses, faith communities and individuals.

- **WHAT'S NEW:** ACT is facilitating the Town of Andover Community Assistance program to provide help to local residents with overdue rent, mortgage and utility bills.
- **FUTURE PROJECTS:** We are actively seeking land and working with the Town of Andover to identify non-conforming town-owned or tax-title lots that ACT might be able to purchase.

### GET INVOLVED:

- **Join a committee:** Social media and marketing; Building site selection; Finance; Legal; Homeowner relations.
- **Volunteer your time:** Office support; Special events; Faith group outreach; Home construction help
- **Help us tell our story**
- **Donate:** Funds; Land



Interested in supporting Andover Community Trust

Contact 978.276.9228 or [info@AndoverCLT.org](mailto:info@AndoverCLT.org)

Visit us at [www.AndoverCLT.org](http://www.AndoverCLT.org) or on Instagram and Facebook

## CREATING OPPORTUNITIES:

- We sell to income eligible households (in 2022, family of 4 with income less than \$89,400)
- Homeowners are typically hourly wage earners including: health care (medical assistants, therapists, dental assistants); educators (teachers, counselors); retail employees; construction trades (carpenters, plumbers, electricians); office management and administrative staff; financial services (bookkeepers, payroll managers, accounting); human services; and other occupations critical to our town's workforce.
- Average ACT home cost \$190,000 - \$250,000. Ideally a household should pay no more than 30 percent of its income on housing costs and those who pay more are considered cost burdened and may have difficulty affording necessities such as food, clothing and medical care.

## TRAINING STUDENTS:

- ACT builds with the Greater Lawrence Technical School—carpentry, plumbing, electrical and HVAC students. ACT's first two homes were built on **donated lots** by the students under the supervision of their faculty instructors. Over 100 students participated in building ACT's seventh home.



Instructors review plans and work with ACT to provide the students with



new learning opportunities such as installing an on-demand hot water home heating system. An ACT project is a positive opportunity for students to work in Andover, demonstrate their skills and encourage other students to consider attending GLTS. GLTS students see an ACT project as a way to give back to the community and help others.

## BUILDING COMMUNITY:

- ACT uses the Mass. Gen.Law Chapter 40B Local Initiative Program (a friendly 40B) to permit building its modest 1500-1800 square foot homes on **undersized lots**—undersized in terms of today's zoning regulations, but consistent with the existing lots of homes in the neighborhoods. Because these lots can not be used for market rate homes, ACT has been able to purchase lots for less than \$50,000.
- ACT has received **support from the Town**. The Andover Housing Partnership Committee has recommended ACT projects and the SelectBoard has also supported the permitting of ACT homes. The Town Manager has waived all building and utility connection fees and the Andover Affordable Housing Trust Fund has funded the purchase of land for ACT homes. The Andover Zoning Board of Appeals has granted comprehensive permits for the new construction of ACT homes. Andover's Dimensional Special Permit for Affordable Housing was used for ACT's sixth home.
- The Massachusetts Department of Housing and Community Development has approved ACT's application to develop its homes and place them on the **state's subsidized housing inventory**. ACT has developed 13 of Andover's 139 affordable ownership units.



**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](mailto: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 (30<sup>th</sup>) 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](mailto: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](mailto:RLevy@eckertseamans.com)

if to the Town:

Town Manager  
Town Hall  
36 Bartlet Street  
Andover, MA 01810  
Email: [andrew.flanagan@andoverma.us](mailto:andrew.flanagan@andoverma.us) and  
[austin.simko@andoverma.us](mailto: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](mailto: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 Land**<sup>1</sup>

#### 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,<sup>2</sup> 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]

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<sup>1</sup> [Subject to change based on reconciled plan.]

<sup>2</sup> ["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]<sup>3</sup>

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<sup>3</sup> [To be supplied]

Andover, Essex County, Massachusetts  
Property Address:

**Exhibit C**

**Form of Deed**<sup>4</sup>

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"]<sup>5</sup> 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").

\_\_\_\_\_  
<sup>4</sup> [Subject to change based on reconciled plan.]

<sup>5</sup> ["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"]<sup>6</sup> 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.]

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<sup>6</sup> ["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 References<sup>7</sup>

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 [\_\_\_\_\_].<sup>8</sup>

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<sup>7</sup> [To be reviewed and confirmed by the parties.]

<sup>8</sup> [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]<sup>9</sup> (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,

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<sup>9</sup> [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

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ANDOVER TOWN YARD, LLC

By: \_\_\_\_\_

Name:

Title:

Schedule 1 to Repurchase Agreement

Legal Description of Property

Parcel 1 (the “Land”):<sup>10</sup>

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,<sup>11</sup> 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 [\_\_\_\_\_].<sup>12</sup>

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

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<sup>10</sup> [Subject to change based on reconciled plan.]

<sup>11</sup> [“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.]

<sup>12</sup> [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 [\_\_\_\_].<sup>13</sup>

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<sup>13</sup> [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”):<sup>14</sup>

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,<sup>15</sup> 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 [\_\_\_\_].<sup>16</sup>

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

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<sup>14</sup> [Subject to change based on reconciled plan.]

<sup>15</sup> [“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.]

<sup>16</sup> [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 [\_\_\_\_].<sup>17</sup>

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<sup>17</sup> [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 Space**<sup>18</sup>

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<sup>18</sup> [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.

### MBTA Working Group Charge

The Town of Andover seeks residents to help create Andover's MBTA Communities district. Participants will conduct outreach to the community to determine district location(s) and form, analyze feedback from the community and identify ways to achieve compliance with MGL Ch. 40A, Section 3. With community recommendations, the Working Group will suggest ways to incorporate recommendations from existing Plans into MBTA Communities zoning; assist in identifying ways to develop zoning regulations that will both be appropriate for Andover, and meet the requirements set forth by the State. Planning Staff will support the Working Group.

## Minutes of the Select Board Meeting

Monday, May 15, 2023

6:30 PM Executive Session

7:00 PM Regular Session

The Robb Center Lifelong Learning Room

30 Whittier Court, Andover, MA 01810

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### I. Call to Order – 6:30 P.M.

Chair, Melissa Danisch called the Select Board to order at 6:30 PM.

Members in Attendance: Laura Gregory, Vice Chair, Chris Huntress, Clerk, Annie Gilbert, and Alex Vispoli.

Others in attendance: Town Manager Andrew Flanagan, Deputy Town Manager Mike Lindstrom, Asst. Town Manger/Town Clerk, Austin Simko, and Town Counsel Tom Urbelis.

### II. Executive Session

On a motion by Laura Gregory seconded by Annie Gilbert, the Select Board voted to go into Executive Session pursuant to option 6 to discuss the purchase, exchange, lease, or value of real property, to vote to approve and not release Executive Session Minutes of April 12, 2023 and April 24, 2023; and for the Chair to declare that an open session may have a detrimental effect on the negotiating position of the Town; and to return to open session. The Chair so declared. Roll call: A. Gilbert-Y, L. Gregory-Y, C. Huntress-Y, A. Vispoli-Y, M. Danisch-Y. Motion passes 5-0.

### III. Opening Ceremonies

#### A. Moment of Silence/Pledge of Allegiance

The meeting began with a Moment of Silence in memory of Sydney Olson, a young child who tragically lost her life in a traffic accident on Main Street. The Chair asked for everyone to think of Sydney and her family during this difficult time. The Moment of Silence was followed by the Pledge of Allegiance.

#### B. Proclamation in Recognition of Pride Month

The Chair read the Proclamation in Recognition of Pride Month. The Andover Select Board recognizes and proclaims the month of June as lesbian, gay, bisexual, transgender, and queer LGBTQ+ Pride Month throughout Andover and recognizes that all human beings are born free and equal in dignity and rights. Individuals of the LGBTQ+ community have had a measurable impact on the cultural, civic, and economic success of the Town of Andover. The Select Board urges all residents to take part in this observance. There will be a celebration held South Church on Sunday, June 4<sup>th</sup> that includes a car parade and picnic in the park. The lineup for the car parade is Dundee Park starting at 11:30 am. The Merrimack Valley Food Truck will be there to accept donations for food insecurity in the Merrimack Valley. Information is available at [www.southchurch.com](http://www.southchurch.com)

#### C. Communications/Announcements/Liaison Reports

On behalf of the Select Board, Melissa Danisch expressed the Board's deepest sympathy to the Olson Family on the loss of their daughter, Sydney from a tragic accident last

week, which is simply heartbreaking. There are support services available in our community for those who may be in distress at [www.andoverma.gov](http://www.andoverma.gov) (wellness and support services). The Chair also thanked the Olsen family and their loved ones for allowing our community to gather in Sydney's memory at last week's prayer vigil at South Church.

As a community, we also give our thanks and appreciation to the members of the Andover Police and Fire Department who rush to help the helpless and bear witness to much suffering in the process. The outpouring of the many acts of kindness, feelings of frustration, sadness, questions and suggestions about what to do next is a reflection of our deeply held desire in Andover to continue to live and thrive as a community as we navigate the next steps to try and comprehend this tragedy.

The Town Manager, on behalf of all who work for the Town, have all been deeply saddened by this tragedy and extend their condolences to the Olson Family. He talked about the safety plans for moving forward with potential changes to the Elm Square intersection and pedestrian oriented improvements throughout the Town. The Town Manager has authorized the funding to begin immediately and coordinated with the State of Massachusetts to ensure that our road safety audit be completed as soon as possible. The State Safety Engineers have already done their work in and around the intersection which is a critical step as some of the changes may require state approval.

Chief Keefe provided an update on the investigation of the incident last week which will be conducted by the Essex County District Attorney's Office, State Police Detectives assigned to that office, the Massachusetts State Police Collision Analysis Office and Construction section, the State Police Commercial Vehicle and Crime Scene. The investigation is on-going. Some results of the preliminary situation showed that the signalization was working correctly, truck speed was not a factor, and the State Truck Team went through the vehicle and found there was no malfunction of the truck. The reconstruction team completed their physical analysis of the area. Information will be brought forward from the District Attorney's Office.

Tom Urbelis commented on the MBTA Zoning By-law change being discussed. There has been a substantial amount of discussion at the public forums as to whether or not the Town should enact the bylaw. The law provides that the Town would lose certain grants if the Town did not pass the bylaw. The Attorney General has issued a statement that a municipality shall enact such a bylaw (not may pass such a bylaw) and made it clear in her directive that the Attorney General's office has the ability to bring lawsuits against municipalities that do not comply with the by-law.

Alex Vispoli thanked the team that put together the community event held on the Shawsheen River on Saturday; it was very well attended.

### **C. Citizens Petitions and Presentations**

Bill Pennington, Washington Park, invited the entire community to the Run for Troops Event to be held at the YMCA on May 21<sup>st</sup> followed by pizza at the Oak & Iron on Sunday, May 2, 2023.

Andover resident, Donald Coleman, asked if the Board was aware of an outbreak of Covid at the Senior Center last month which exposed seniors in the building. The Town Manager said that the Covid occurrences that occurred over the past several years resulted in modifications in the Robb Center.

Kim Hussey of 209 Greenwood Road asked why we need to wait until June to correct the situation with the intersection downtown and if there is a plan to keep the community aware of the process. The Town Manager said that they are not waiting until June to start; both studies (state and town) are underway and there will be ample opportunity for public input and changes need to have State approval. Typically, the State will not take any action unless their data is completed. Jamie Hong, One Island Way, asked that they keep in mind that this intersection is very close to the Memorial Hall Library and the intersection is very scary for children trying to cross.

Chris Huntress asked if the Town Manager could include an update on a regular basis on the throughout the District Attorney's investigation so that the public can be informed. The public can submit questions to the Town Manager and/or Board of Selectmen at [www.andoverma.us](http://www.andoverma.us). [Andrew.flanagan@andoverma.us](mailto:Andrew.flanagan@andoverma.us)

#### **D. Public Hearings**

##### **A. Liquor License Change of Officer/Director**

Board to review and consider voting to approve the application of 99 Restaurant Holdings, LLC dba Ninety-Nine Restaurant & Pub, 464 Lowell Street, Andover, for a Change of Directors/LLC Managers on its All-Alcoholic Restaurant Beverage License; the new LLC Managers to be Clint Lautenschlegar, Marjorie Nemzura, Phillip Purcell, Mark Spurgin, and Kara Jacobs. The request was explained to the Board by Austin Simko who reported there have been no violations to his knowledge. This is a state-wide corporate change, there are no changes to the operations at the restaurant.

Alex Vispoli moved to approve the application of 99 Restaurant Holdings, LLC, d/b/a Ninety-Nine Restaurant & Pub, 464 Lowell Street, Andover, for a Change of Directors/LLC Managers on its All-Alcoholic Restaurant Beverage License, the new LLC Manger to be Clint Lautenschlegar, Marjorie Nemzura, Philip Purcell, Mark Spurgin, and Kara Jacobs, subject to the condition that all other requirements of the Town are met prior to issuance of license. Motion seconded by Annie Gilbert and voted 5-0 to approve.

#### **IV. Regular Business**

##### **A. Alcoholic Beverages License – Change of DBA**

Austin Simko reported that the application has been withdrawn.

##### **B. Jerry Silverman 4<sup>th</sup> of July Fireworks Options**

Board to review options and consider voting to approve the plan for the 2023 Jerry Silverman Fireworks.

The Town Manager reported that Article 23 of this year's Annual Town Meeting was amended to require that fireworks purchased with these funds (\$14,000) be restricted to those having eco-friendly packaging and biodegradable materials. The Town Manager shared the following options under consideration.

Option A. Cancel the show

There is not sufficient lead time to have this year's show include fully biodegradable packing and materials. Every alternative was explored including the possibility of a drone or laser light show. The Town will work with their existing fireworks vendor to ensure the use of biodegradable materials for next year. The fireworks show will utilize smaller shells in order to reduce the size of the impacted area where debris may fall.

Option B Scaled Down Show

The show will utilize smaller shells in order to reduce the size of the impacted area where debris may fall (it is anticipated debris will fall in the area of the baseball field). To the extent possible, the Town will work with our existing fireworks vendor to ensure that next year's show utilizes biodegradable materials.

Option C Proceed as Planned.

Proceed with this year's show as originally planned. The vendor will attempt to change the contents to the more biodegradable materials. There is not sufficient lead time to have this year's show include fully biodegradable packaging and materials.

The show will utilize smaller shells in order to reduce the size of impacted area where debris may fall. The Town will work with our existing fireworks vendor to ensure that next year's show utilizes biodegradable materials.

Funding:

The amount of \$22,726 is available to fund this year's show if Option B is selected. (\$15,839 from prior articles and \$6,887 in Gift Account). Funds are available because last year's show was cancelled due to COVID -19; existing funds are not restricted. Existing balances were intended to supplement future year appropriations and offset the increase in the cost of the annual show. The DPW will clean up the site including materials that may have landed on private properties.

The Town Manager shared a chart of the total cost of the Fireworks Show from 2018-2022 that includes funding for fireworks, fire detail, police detail and Public Works Dept for a total amount of \$22,295 for FY-2022; \$19068 for FY-2019; and \$18,723 for FY-2018.

Matt Shea from Pyrotechnical Fireworks, who is a member of the American Fires Association and on their Environmental Protection Committee of the American Pyrotechnical ensuring fireworks are safe, said there is no certification for a biodegradable show. Every firework site is based on the size of the show. Most fireworks materials are smaller devices made with multiple paper-mâché' balls. Over the past few years, because of the size of the site, they have tried to enhance the show by using plastic items and small pieces of ceramic that at the time were not an issue. Going forward they would use only the paper-mâché' balls which does leave debris on the ground. They do the best they can to make sure that the paper mâché shells are safe will be used and are 88-90% biodegradable. Moving forward, if they were to produce the show this year, it would be a traditional paper-mâché' ball show, no plastic. Every site is based on the size of the show with a safety area where the debris typically falls. They are required to do a 'first-light'

search the next morning looking for unexploded shells that may have come back down, which is rare, but does happen.

The Town Manager reported that they have not received any complaints in the past. The Department of Public Works comes in after the fireworks and removes any trash in the area.

Chris Huntress asked if it was true that the plastic pieces make the shells safer. Mr. Shea responded that, to his knowledge, there is no safety difference between having a show with some plastic components or not. Instead of having some of the ceramic, they will be using plastic.

Comments:

Scott Gabriel of 23 Moraine Street lives in close proximity to the fireworks site and said occasionally they will get some confetti on their property. The 4<sup>th</sup> of July is a wonderful celebration and he would hate to see it impacted by cancelling the event. Joanne Borland, Summer Street, in light of events that have happened in the community, she thinks we need to have this celebration; we need to have an expression of unit.

Chris Huntress read the background information on the funding of Article 23 of this year's Annual Town Meeting which was amended to require that fireworks purchased with these funds would be restricted to those having eco-friendly packaging and biodegradable materials. Annie Gilbert feels that the Board is in compliance with the spirit of the amendment.

The Board members agreed with the use of Option C:

To proceed with this year's show as originally planned. The vendor will attempt to change the contents to the more biodegradable materials as there is not sufficient lead time to have this year's show include fully biodegradable packaging and materials.

Annie Gilbert added that we clearly communicate to the community that we do plan to clean up and that the show will utilize smaller shells in order to reduce the size of the impacted area where debris may fall, the funding, and use of biodegradable material as possible for this year and that the Town will work with our existing fireworks vendor to ensure that next year's show utilizes biodegradable materials.

Several residents came forward to share their comments on the fireworks display and want to continue the tradition of having the 4<sup>th</sup> of July Fireworks as usual.

On a motion by Alex Vispoli and seconded by Chris Huntress, the Select Board voted 5-0 to approve the plan for the 2023 Fireworks for July 4<sup>th</sup>.

Alex Vispoli moved that in the spirit of going in the direction of biodegradable materials, the plan for the 2023 Jerry Silverman Fourth of July Fireworks, using previously appropriated funds for this year's show of \$22,7226 be approved. The motion was seconded by Chris Huntress and voted 5-0 to approve.

C. Andover Home for Aged People Grant

Tom Urbelis reported on the Andover Home for Aged People Grant. Atty. Urbelis has been the President of the Andover Home for the Aged for the past 30-years, who provides funding to Family Services of Lawrence and Andover, who in turn provides a registered nurse for homecare visits for seniors. Last year, home care by a registered nurse was provided to 500 citizens in Andover; they also gave \$150,000 to the Robb Center.

Annie Gilbert moved to accept a \$16,000 grant from the Andover Home for the Aged People for podiatry care for senior residents. Motion seconded by Chris Huntress and voted 5-0 to approve.

D. Town Counsel Appointment Process

The Town Manager provided an update to the Board on the appointment process for Town Counsel. The last time a Town Counsel was appointed was in 1991. Since 2020, the Town has contracted directly with Attorney Urbelis as In-House Counsel. The Town Manager plan is to establish a legal department staffed by two people, one Town Counsel and one legal administrator who would be a high-level administrative support person. This year's legal budget is \$254,000 and he anticipates that once fully established, the legal budget will be about \$370-375,000 and looking at their usage of legal services including labor counsel, they anticipate the cost to be somewhere between \$575,000-\$650,000. It will be a robust multi-layer process. The Town Manager expects to have a seamless transition.

E. Tax Increment Financing Agreement

Board to vote to sign the Tax Increment Financing Agreement between the Town of Andover and Flagship Pioneering Labs TPC, Inc. and ARE-MA Region No. 93 LLC.

Alex Vispoli moved to sign the Tax Increment Financing Agreement between the Town of Andover, Flagship Pioneering Labs TPC, Inc. and ARE-MA Region No. 93 LLC. Motion seconded by Chris Huntress and voted 5-0 to approve.

Representatives from Flagship Pioneering Labs in attendance thanked the Board and the Town for their support.

F. Affordable Unit Right of First Refusal – 1 Powder Mill Square Unit 210

Board to vote to not exercise its right of first refusal to purchase the affordable housing unit at 1 Powder Mill Square, Unit 210. The Town Manager said the Town does not have the funds to purchase the portable units.

Jane Gifun, 9 Castle Heights Road, asked what happens if we don't take the unit? Paul Materazzo replied that they will work with a marketing agent to preserve the unit and increase our marketing.

Chris Huntress moved to not exercise the Board's right of first refusal to purchase the affordable housing unit at One Powder Mill Square, Unit 210. Motion seconded by Laura Gregory and voted 5-0 to approve.

G. [Massworks Grant – Essex Street Corridor](#)

Director of Planning, Paul Materazzo reported on the Land Use to and the submittal of a Mass Works Grant application to provide targeted public infrastructure improvements along the Essex Street corridor (presentation link above). The plans for the Old Town Yard by Minco were shared as were examples of their renderings for the redevelopment of the area. Their focus is to target the corridor of the old Town Yard area

Dave Griangrande reported on the Mass Works Grant and they will move forward upon support of the Board. They initial appropriation of approximately \$5M and they are looking for approximately \$3M for this stage of the plan. This plan is relevant to show the great potential of the area. The conceptual Improvement Plan with the intersection of Red Spring Road/Shawsheen Road/Essex Street and they plan to make it a safer area.

The railroad crossing improvements would reduce the traffic on Pearson Street coming down into the intersection reducing vehicular and pedestrian movement.

Questions: Chris Huntress asked if we have lost any parking: Reply: The upper part of Essex Street currently has parking on both sides of the road; they would reduce the parking on one side to allow for a bike-lane. Question: How important is it to look at School Street and Brook Street if the changes are made, would we be shifting parking to those streets? Reply: Yes, they can take a look and get a parking utilization study. Paul Materazzo said that as this district area builds up, there will be changes that have to be made to the area. Chris Huntress asked if the Board should be reviewing the parking policy.

E. **Consent Agenda**

A. [Appointments by the Town Manager](#)

Alex Vispoli moved to approve the appointments by the Town Manager as listed in the Consent Agenda. Motion seconded by Annie Gilbert and voted 5-0 to approve.

Department	Name	Position	Rate/Term	Date of Hire
Finance – Treasurer / Collector	Genna Jacobs <i>(Ana-Maria DeRosa)</i>	Assistant Treasurer / Collector	\$83,026.17/yr	5/30/2023
Human Resources	Jessica Chaplin	Human Resources Generalist	\$80,000.00/yr	5/30/2023
Department of Public Works	John McQuade	Temporary / Seasonal Parks and Grounds Employee	\$20.00/hr	5/3/2023
Information Technology	Aditya Chunduru	Department Assistant	\$16.50/hr	5/22/2023
Memorial Hall Library	Alistair McBrien	Makerspace Assistant	\$15.00/hr	5/16/2023

Cultural Council	Rachael Longo	Member	Term Expires 6/30/2026	7/1/2023
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**F. 2023 Select Board Meetings**

A. Board to consider voting to accept the following Select Board Meeting Schedule:

June 5, 2023, June 12, 2023, July 11, 2023 (Tuesday), July 17, 2023, and August 15, 2023 (Tuesday).

Alex Vispoli moved to approve the Select Board Meeting dates as listed in the Consent Agenda. Motion seconded by Chris Huntress and voted 5-0 to approve.

**G. Approval of Minutes**

A. Board to approve minutes from the following meetings:

1. May 1, 2023

Annie Gilbert moved to approve the Select Board Meeting Minutes of May 1, 2023 as submitted. Motion seconded by Alex Vispoli and voted 5-0 to approve.

**H. Adjourn**

At 8:33 PM on a motion by Alex Vispoli and seconded by Chris Huntress, the Select Board moved to adjourn the meeting of Monday, May 15, 2023.

Respectfully submitted,

Dee DeLorenzo  
Recording Secretary

Presentations:  
Jerry Silverman 4<sup>th</sup> of July Fireworks Options  
Mass Works: Grant Application