



## Board of Selectmen

ANDOVER TOWN OFFICES  
36 BARTLET STREET  
ANDOVER, MA 01810  
[WWW.ANDOVERMA.GOV](http://WWW.ANDOVERMA.GOV)

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### MEETING AGENDA

MONDAY, MARCH 13, 2017

Regular Session 7:00 P.M.

Executive Session 9:00 P.M.

SELECTMEN'S CONFERENCE ROOM, ANDOVER TOWN OFFICES

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- I. Call to Order– 7:00 P.M.
- II. Opening Ceremonies/ Moment of Silence/Pledge of Allegiance – 7:00 P.M.
- III. Communications/Announcements/Liaison Reports – 7:05 P.M.
- IV. Citizens Petitions and Presentations – 7:10 P.M.
- V. Public Hearing – 7:15 P.M.
  - A. Oak and Iron Brewing Company, Inc. – (10 minutes)

Public Hearing Notice is hereby given under Chapter 138 of the General Laws, as amended, that Oak & Iron Brewing Company, Inc., 18 Red Spring Road, Andover, MA has applied for a Farmer Series Pouring Permit Malt Beverage License at 18 Red Spring Road, Andover, MA. John D. Helferich, 1 Wallace Road, Rockport, MA is the proposed designated manager.

**The premises to be described as follows: Total interior existing space of approx. 2,500 sq. ft., with: 3 rooms, 2 entrances and 2 exits, and proposed seating capacity of 90. A total exterior space 850 sq. ft. of outdoor patio.**
- VI. Regular Business of the Board – 7:25 P.M.
  - A. Board Registrar of Voters Appointment – (5 minutes)

The Board to discuss and consider to vote for re-appointment of Gerald Gustus to the Board of Registrar of Voters for term to expire on March 31, 2020.
  - B. Board of Registrar of Voters – (5 minutes)

Board to consider nominees for vacancy on the Board of Registrar of Voters; Republican Town Committee Nominee Gary Coon, Democratic Town Committee Nominees Champa Bilwakesh and Nural Aman; term to expire on March 31, 2019.
  - C. Special Municipal Employee Designation – (5 minutes)

The Board to consider designating the members of the Andover High School Facility Study Committee as Special Employees.

D. Riverside Woods, Pulte’s Senior Residential Community – (15 minutes)

Board to approve and to consider to vote to sign the following 5 documents relating to Riverside Woods, Pulte’s Senior Residential Community (Special Permit SP15-01 Special Permit for Senior Residential Community Overlay District): 1. Open Space to be deeded to Town (Subsection 8.8.5.70), (including proposed Escrow Agreement), 2. Age Restriction (Subsection 8.8.5.8.15 and Special Permit Condition 34, 3. Affordability Restriction (Subsection 8.8.5.8.h), 4. Monitoring Agreement (Subsection 8.8.5.8.j) and 5. LIP Application to DHCD.

E. Deyermond Field Lights – (5 minutes)

Acceptance of gift from Andover Little League, Inc. for the purpose of the purchase and installation of lights at Deyermond Field. (5 minutes)

F. Health Insurance Plan Design – (10 minutes)

Board to discuss and consider voting to implement plan design changes pursuant to G.L. c. 32B, sec. 22 by following the requirements of G.L. c. 32B, sec. 21(b) (-h) with the previously-established PEC.

VII. 2017 Annual Town Meeting – 8:10 P.M.

A. Board to discuss and consider voting on the following Warrant Articles:

P-21	Support for Civic Events
P-24	Insurance Recovery Transfer
P-25	Stabilization Bond Premium
P-55	Sale of Town Yard Property and Portion of Lewis Street
P-56	Amend General Bylaws Article XII Section 11 Dogs
P-58	LED Street Light Purchase
P-59	Water Treatment Plant Maintenance
P-67	Marijuana Moratorium Bylaw - Amend Zoning
P-76	Abandonment of Sewer Easement

VIII. Consent Agenda – 8:55 P.M.

A. APPOINTMENTS – (Town Manager)

**That the following appointments by the Town Manager be approved:**

DEPARTMENT/ COMMITTEE	NAME	POSITION	RATE/ TERM	DOH
Finance/Town Manager	Anthony Collins	Finance/Admin. Temp.	\$15.00/hr.	3/13/17
Youth Services	Christopher Casey	Counselor 3-PT	\$11.00/hr.	2/21/17
Youth Services	Neal Callahan (v. K. Lightner)	Program Assistant 2-FT	\$51,186.	3/20/17
Ballardvale Historic District Commission	Remi Mchet (v. M. Mitton)	Alternate to Regular Member		Term until 2018

- IX. Executive Session – 9:00 P.M.  
Board to go into executive session to consider the purchase, exchange, lease or value of real property.
- X. Open Session – Continue Regular Business of the Board – 9:30 P.M.  
A. 0 Blanchard Street, Parcel #199-0050-0000 and 30 Blanchard Street, Parcel #199-002A-0000 – (10 minutes)  
Board to consider to vote to respond to the letter from Thomas H. Dargoonian and Dena L. Dargoonian of Dargoonian Bros Farm, Inc. in regards to M.G.L. Chapter 61A and authorize the chair to sign a letter in response.
- XI. Adjournment – 9:40 P.M.

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View documents associated with this agenda: [www.andoverma.gov/selectmen](http://www.andoverma.gov/selectmen)

Meetings are televised on Comcast Channel 22 and Verizon Channel 45 or may be viewed online at [www.andovertv.org](http://www.andovertv.org)

If any member of the public wishing to attend this meeting seeks special accommodations in accordance with the Americans with Disabilities Act, please contact Wendy Adams at 978-623-8210 or [wadams@andoverma.gov](mailto:wadams@andoverma.gov) in the Town Manager's Office.

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March 13, 2017

**TOWN OF ANDOVER GENERAL LICENSE APPLICATION**

TIME STAMP

APPLICANT'S D/B/A: OAK & IRON BREWING Co., INC

APPLICANT NAME: JAMES R. CASS OR John Helferich

APPLICANT'S ADDRESS: 18 Red Spring Rd.

ANDOVER MA 01810

APPLICANT'S TEL. NUMBER: 973.936.3510

CONTACT PERSON: JAMES CASS

TELEPHONE: 973.936.3510 E-MAIL Jim @ OAK AND IRON BREWING, Com

MAILING ADDRESS: 18 Red Spring Rd Andover MA 01810

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TYPE OF LICENSE: LIQUOR LICENSE - New Application - Farmer Series Buring Permit for Malt Beverages

LOCATION OF LICENSE ACTIVITY: 18 Red Spring Rd Andover MA 01810

APPLICATION/LICENSE FEE: \$125 FID/SS # 46-5492915

DATE OF ACTIVITY N/A TIME from N/A to N/A

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*I certify under 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: James R. Cass

\*\*\*\*\*

OFFICE USE ONLY      OFFICE USE ONLY      OFFICE USE ONLY      OFFICE USE ONLY

Date of log entry 1.24.17 By: CDW License Board Hearing Date: TBD

Prior Approval Required:	DATE SENT:	DATE APPROVED
Police Dept:	<u>1.24.17</u>	<u>1.24.17</u>
Fire Dept:	<u> </u>	<u>1.25.17</u>
CD&P Mgr:	<u> </u>	<u>2.8.17</u>
Town House:	<u> </u>	<u> </u>
Treasurer:	<u>✓</u>	<u>1.25.17</u>

Add'l conditions for license: \_\_\_\_\_

This license requires: (circle all that apply)

Selectmen Approval

Business Certificate

Letter of Clearance



# TOWN OF ANDOVER

**Town Clerk's Office**  
36 Bartlet Street  
Andover, MA 01810  
978-623-8255  
townclerk@andoverma.gov

TOWN OF ANDOVER



## PUBLIC HEARING

Notice is hereby given under Chapter 138 of the General Laws, as amended, that Oak & Iron Brewing Company, Inc., 18 Red Spring Road, Andover, MA has applied for a Farmer Series Pouring Permit Malt Beverage License at 18 Red Spring Road, Andover, MA. John D. Helferich, 1 Wallace Road, Rockport, MA is the proposed designated manager.

**The premises to be described as follows: Total interior existing space of approx. 2,500 sq. ft., with: 3 rooms, 2 entrances and 2 exits, and proposed seating capacity of 90. A total exterior space 850 sq. ft. of outdoor patio.**

The public hearing will be held on Monday, March 13, 2017, in Conference Room A on the third floor of the Andover Town Offices, 36 Bartlet Street, Andover, Massachusetts at 7:00 p.m. in accordance with the General Laws relating thereto.

By Order of the  
Board of Selectmen

Lawrence J. Murphy  
Town Clerk

Date of Issue: Thursday, March 2, 2017

Oak & Iron Brewing Co., Inc. MOTIONS

MOTION #1

I move to approve the application of Oak & Iron Brewing Company, Inc. for a Farmers Series Pouring Permit Malt Beverage License at 18 Red Spring Road, Andover and for the appointment of John D. Helferech, 1 Wallace Road, Rockport, MA as designated Manager, subject to the condition that all other requirements of the Town are met prior to issuance of the license.

Moved by \_\_\_\_\_

Seconded by \_\_\_\_\_

Voted \_\_\_\_\_ to \_\_\_\_\_

MEMO FROM THE OFFICE OF THE TOWN CLERK

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TO: Board of Selectmen  
FROM: Lawrence J. Murphy, Town Clerk  
SUBJECT: Appointments to the Board of Registrars of Voters  
DATE: 3/1/2017  
CC: Town Manager

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Dear members of the Board,

We currently have a vacancy on the Board of Registrars of Voters as the result of the resignation of William T. Downs, Republican. Mr. Down's term of office would have expired on March 31, 2019.

The term of office of Gerald F. Gustus a Democratic member of the Board of Registrars expires at the end of this month. Mr. Gustus has expressed his desire to be re-appointed to the Board for another three year term.

Per the provisions of MGL Ch. 51, Sec 15 I have notified the Chairs of the Democratic and Republican Town Committees of their right to nominate candidates to serve in Mr. Downs' stead as well as to nominate candidates to fill the seat currently held by Mr. Gustus at the expiration of his term of office.<sup>1</sup>

The Democratic Town Committee supports the re-appointment of Mr. Gustus. The Democratic Town Committee has submitted the names of two candidates to fill the seat formerly held by Mr. Downs: Nural Aman and Champa Bilwakesh.

The Republican Town Committee has nominated Gary Coon to fill the seat formerly held by Mr. Downs.

Please see the attached correspondence from the Chairs of the respective Town Committees. I request these appointments be put on the agenda for the Selectmen's meeting of March 13<sup>th</sup>.

U:17-1:BOSRegMemo

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<sup>1</sup> The Board of Registrars consists of four member; three appointed by the Board of Selectmen and the Town Clerk, ex officio. No more than two members can belong to the same political party. The remaining appointed member of the Board of Registrars is William E. Melahn, Republican. I am Unenrolled (Independent) and thus not a member of a political party.

RECEIVED  
TOWN CLERK'S OFFICE

2017 FEB 27 A 10: 27

TOWN OF ANDOVER, MASS

February 27, 2016

Mr. Lawrence Murphy  
Town Clerk  
36 Bartlet Street  
Andover, MA 01810

Dear Mr. Murphy,

The Andover Democratic Town Committee is nominating the following candidates for the Board of Registrars of Voters for the seat recently vacated by Mr. William Downs. These candidates are registered democrats and listed in alphabetical order. Please inform me of the date when the Board of Selectman will hold their meeting on this topic.

Candidates for the Board of Registrar of Voters:

Nural Aman  
Champa Bilwakesh

Kind Regards,

Joe Thibodeau  
Chair, Andover Democratic Town Committee  
(978) 886-8089

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TOWN CLERK'S OFFICE

2017 FEB 27 A 10:27

TOWN OF ANDOVER, MASS

**February 27, 2016**

**Mr. Lawrence Murphy**

**Town Clerk**

**36 Bartlet Street**

**Andover, MA 01810**

**Dear Mr. Murphy,**

**The Andover Democratic Town Committee is nominating Mr. Gerald Gustus for re-appointment to the seat he currently holds on the Board of Registrars of Voters. Mr. Gustus is the only registered democrat currently serving on the Board. Please inform me of the date when the Board of Selectman will hold their meeting on this topic.**

**Kind Regards,**

**Joe Thibodeau**

**Chair, Andover Democratic Town Committee**

**(978) 886-8089**

January 30, 2017

Lawrence J. Murphy

36 Bartlet St.

Andover, MA 01810

Town Clerk

Dear Larry,

Reference is made to your letter of January 3, 2017 informing me that William Downs, a member of the Board of Registrars has resigned.

You also note that under Massachusetts General Law, Chapter 51, Section 15, the Andover Republican Town Committee may submit to the board of Selectmen up to three names of enrolled members of their party who are residents of the town to fill this vacancy.

The Andover Republican Town Committee is formally recommending that former State Representative Gary Coon be chosen for this vacancy.

Therefore, I am submitting Mr. Coon's name for appointment to the Board of Registrars by the Andover Board of Selectmen.

Sincerely,

John F. Moffitt

Chair, Republican Town Committee

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TOWN CLERK'S OFFICE

2017 JAN 30 P 1:54

TOWN OF ANDOVER, MASS

## **Selectmen Meeting on March 13, 2017**

### **Motion that the Board of Selectmen**

- (a) Accept the donation by Pulte of the Open Space, approve the format of the proposed Quitclaim Deed, and authorize the signing of the same as well as authorize the Town Manager to sign the proposed Escrow Agreement;
- (b) Approve the format of the proposed Declaration of Age Restriction, and authorize the signing of the same;
- (c) Approve the format of the proposed Local Affordability Restriction and authorize the signing of the same;
- (d) Approve the format of the proposed Monitoring Agreement and authorize the signing of the same by the Town Manager; and
- (e) Approve the format of the proposed LIP, and authorize the signing of the same by the Board Chair and the Town Manager as applicable.

(2-14-17)

## DECLARATION OF AFFORDABLE HOUSING RESTRICTION

Pulte Homes of New England, LLC, a Michigan Corporation of 115 Flanders Road, Westborough, MA 01581 (“**Pulte**” or the “**Declarant**”), hereby declares and does hereby grant with quitclaim covenants to the Town of Andover, a Massachusetts municipal corporation acting by and through its Planning Board (the “**Planning Board**”) with a usual place of business at the Andover Town Office building at 36 Bartlet Street, Andover MA 01810 (“**Andover**” or the “**Municipality**”), the following described Affordable Housing Restriction (“**Restriction**”) which shall burden a portion of the improvements to be constructed on that certain parcel of land located in Andover, Massachusetts, known as 459 River Road, as more particularly described in the Deed recorded at Essex North District Registry of Deeds in Book 14713, Page 190 and being more particularly shown as Proposed Lot 1 (the “**Property**”) on a Plan entitled “Plan of Land -- Pulte Homes -- dated 03/08/16 prepared by Control Point Associates, Inc. (the “**2016 ANR Plan**”) recorded with Essex North District Registry of Deeds as Plan #17443;

WHEREAS, Pulte intends to construct a senior housing residential development for residents who have attained the age of 62 on the Property to be known as “**Riverside Woods**” (the “**Project or Project Site**”);

WHEREAS, the Project is to consist of a Condominium Project including a total number of two hundred (200) condominium units (the “**Units**”); and

WHEREAS, the Andover Planning Board, following notice and public hearing, approved a Special Permit pursuant to Section 8.8 of the Andover Zoning Bylaw under the Senior Residential Community Overlay District, namely Decision: SP 15-01 which was issued on October 30, 2015 and filed that date with the Andover Town Clerk’s Office and is recorded with Essex North District Registry of Deeds in Book 14713 Page 278 (the “**Special Permit**”).

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, and in order to comply with the provisions of Special Permit, Pulte does, for itself and its successors and assigns hereby forever covenant and agree for the benefit of the Town, acting through its Planning Board, and for the benefit of all future owners of the Property and Units within Riverside Woods as follows:

1. The Special Permit authorizes the construction of 200 age restricted dwelling units and other improvements on the Property. According to Condition Number 26 of the Special Permit,

in perpetuity, thirty (30) of the units within the Project shall be “affordable units”, as defined in Section 8.8.5.8 of the Andover Zoning By-Law, (the “Affordable Units”). Declarant shall comply in all respects with the conditions of the Special Permit pertaining to the Affordable Units to the extent permitted by law and by the Department of Housing and Community Development (DHCD). The Affordable Units are described in more detail in the Special Permit and the plans referenced therein. Of the affordable units, the Declarant shall set aside units representing all three income levels as follows: 30% shall serve low income persons, 40% shall serve moderate income persons and 30% shall serve upper-moderate income persons, as those income levels are defined in Section 8.8.5.8 of the Andover Zoning By-Law. If the Project is approved by DHCD under the Local Initiative Program, the asset limitations of the LIP Program shall also apply. Affordable units shall be dispersed throughout the buildings and shall be compatible with and generally comparable to the market-rate units in terms of location, quality and character. In addition, Declarant shall comply with the following condition excerpted from the Special Permit and this condition shall be included in the Regulatory Agreement described in Paragraph 3 of this Restriction.

32. Recognizing the importance of preserving affordable units for future generations, the Andover Housing Partnership has recommended that a fund be established to assist with rehabbing the thirty (30) units upon resale. As agreed upon by the Declarant one percent (1%) of the sale of each affordable unit shall be deposited into the Andover Affordable Housing Trust Fund Account, specifically identified for the future renovation or rehab of affordable units at Andover Woods;

Prior to marketing or otherwise making available for sale any of the Affordable Units, the Declarant must enter into a Monitoring Agreement with a Monitoring Agent subject to the approval of the Andover Planning Board and shall obtain the Monitoring Agent’s approval of a marketing plan for the Affordable Units. Such marketing plan must set forth a plan for affirmative fair housing marketing of the Affordable Units and effective outreach to protected groups underrepresented in the Municipality. At the option of the Municipality, and provided that the affirmative fair housing marketing plan for the Affordable Units demonstrates (i) the need for the local preference (e.g., a disproportionately low rental or ownership affordable housing stock relative to need in comparison to the regional area), and (ii) that the proposed local preference will not have a disparate impact on protected classes, the marketing plan may also include a preference for local residents for up to seventy percent (70%) of the Affordable Units, subject to all the provisions of 760 CMR 67.00 and DHCD’s Comprehensive Permit Guidelines (“Guidelines”), provided that any local preference shall apply only to the initial sales of the Affordable Units by the Declarant. The marketing plan must comply with all applicable statutes and regulations.

It being the intent that this Declaration be approved by DHCD under the provisions of Massachusetts Gen. Laws Chapter 184, Section 32, the following provisions shall also apply:

(A) Each Low, Moderate, and Upper Moderate Income Unit will be initially sold for no more than the price set forth in Exhibit A attached hereto and made a part hereof to an Eligible Purchaser. An Eligible Purchaser is a Family (i) , in the case of a Low Income Family, whose annual income does not exceed sixty percent (60%); in the case of a Moderate Income Family,

whose annual income does not exceed eighty percent (80%); and, in the case of an Upper Moderate Income Family, whose annual income does not exceed one hundred twenty (120%), of the Area median income adjusted for family size as determined by the U. S. Department of Housing and Urban Development and (ii) whose assets do not exceed the limits specified in the Guidelines. A “Family” shall mean two or more persons who will live regularly in the Low or Moderate Income Unit as their primary residence and who are related by blood, marriage, or operation of law or who have otherwise evidenced a stable inter-dependent relationship; or an individual. The “Area” is defined as the Lawrence MSA.

(B) (i) At the time of initial sale of each Low, Moderate and Upper Moderate Income Unit by the Declarant, the Declarant shall execute and shall as a condition of the sale cause the purchaser of the Low, Moderate and Upper Moderate Income Unit to execute an Affordable Housing Deed Rider, in form and substance approved by the Municipality and DHCD. Such Deed Rider shall be attached to and made a part of the deed from the Declarant to the Unit Purchaser. Each such Deed Rider shall require the Unit Purchaser at the time he desires to sell the Low, Moderate and Upper Moderate Income Unit (hereinafter in this paragraph referred to as the “Affordable Unit”) to offer the Affordable Unit to the Municipality at a discounted purchase price which is affordable to Low, Moderate, and Upper Moderate Families within the applicable income levels and which is more particularly described therein. The Municipality shall have the option upon terms more particularly described in the Deed Rider to either purchase the Affordable Unit or to find an Eligible Purchaser. The Deed Rider shall require the Unit Purchaser and the Eligible Purchaser to execute at the time of resale a Deed Rider identical in form and substance to the Deed Rider then in effect with respect to the Affordable Units which will be attached and made a part of the deed from the Unit Purchaser to the Eligible Purchaser, so that the affordability of the Affordable Unit will be preserved each time that subsequent resales of the Affordable Unit occur. The various requirements and restrictions regarding resale of an Affordable Unit contained in the Deed Rider are hereinafter referred to as the (“Resale Restrictions”). If upon the initial resale or any subsequent resale of an Affordable Unit, the Municipality is unable to find an Eligible Purchaser for the Low and Moderate Income Unit, and the Municipality elects not to exercise its right to purchase the Affordable Unit, then the then current owner of the Affordable Unit shall have the right to sell the Affordable Unit to any person, regardless of his income (an “Ineligible Purchaser”) at a discounted purchase price which is affordable to Low, Moderate, and Upper Moderate Families within their respective income levels and subject to all rights and restrictions contained in the Deed Rider, and provided that the Unit is conveyed subject to a Deed Rider identical in form and substance to the Deed Rider then in effect with respect to the Affordable Unit which will be attached and made part of the deed from the Unit Purchaser to the Ineligible Purchaser.

(ii) For each sale of an Affordable Income Unit, the Municipality must approve the terms of the Eligible Purchaser’s mortgage financing as evidenced by the Municipality’s issuance of the Resale Price Certificate described in the Deed Rider.

(iii) The Municipality agrees that in the event that it purchases an Affordable Unit pursuant to its right to do so contained in the Deed Rider then in effect with respect to such Affordable Unit, that the Municipality shall within six (6) months of its acceptance of a deed of

such Affordable Unit, either (i) sell the Affordable Unit to an Eligible Purchaser at the same price for which it purchased the Affordable Unit plus any expenses incurred by the Municipality during its period of ownership, or (ii) rent the Affordable Unit to a person who meets the income guidelines set forth above.

2. Section 8.8.5.8.h of the Andover Zoning By-Law requires the recording of an “affordable housing restriction,” in a form approved by the Planning Board and town counsel, senior to any liens on the Project Site to protect the continued availability of the requirement for the Affordable Units in the event of any foreclosure, bankruptcy, refinancing or sale.

3. This Restriction shall prohibit the use of the Affordable Units, when constructed on the Project Site, for any use except residential use by persons who qualify as low or moderate or upper-moderate income persons as defined in Section 8.8.5.8 of the Andover Zoning By-Law, and the Special Permit. This Restriction shall burden only the Affordable Units, which shall be those units for which an Affordable Housing Deed Rider has been recorded and shall not burden the remainder of the units in which no such deed rider has been recorded or the Project Site. Declarant shall also make application to DHCD for approval of the Project under the local Initiative Program (“LIP”) and shall record a Local Initiative Program Regulatory Agreement and Declaration of Restrictive Covenants for Ownership Project (“Regulatory Agreement”), if the Project is approved by DHCD under the Local Initiative Program.

It is expressly intended that this Declaration will be replaced, amended, restated and suspended in effect by a conventional Regulatory Agreement which will explicitly provide that it is a MGL c. 184 Affordable Housing Restriction; at such time and in such case, the effect of this Declaration will be suspended and of no force and effect but only so long as, and only during the period of time that, the Regulatory Agreement continues to operate as a MGL c. 184 Affordable Housing Restriction.

Declarant shall comply in all respects with Section 8.8.5.8 of the Andover Zoning Bylaw entitled “Affordability,” to the extent permitted by law and by DHCD. Pursuant to Section 8.8.5.8.k, Declarant shall engage a Monitoring Agent to ensure that the Declarant is abiding by its obligations relative to the affordable units pursuant to the Special Permit.

The Monitoring Agent shall monitor resales of Affordable Units (including review of income and asset certifications, deeds, Regulatory Agreement, Deed Riders, and Affordable Housing Restrictions) for compliance with the terms of this Affordable Housing Restriction, the Regulatory Agreement and Deed Rider and issuance of certifications, as appropriate, in connection with approval of resales. The Monitoring Agent shall also locate and select, or provide assistance to the Municipality in locating and selecting, Eligible Purchasers, including without limitation, ensuring compliance with the approved Marketing Plan and lottery process. On resale of an Affordable Unit, at the request of the purchaser, the Monitoring Agent shall, if necessary under the terms of the Affordable Housing Restriction, Regulatory Agreement and Deed Rider, issue a new Resale Price Certificate recalculating the Resale Price Multiplier in accordance with the terms of the Affordable Housing Restriction and Deed Riders, and the purchaser may record the new Resale Price Certificate immediately after the recording of the

deed to such Affordable Unit. The Resale Price Multiplier set forth in the most recently recorded Resale Price Certificate shall apply to each subsequent resale of the Affordable Unit.

In the event of a violation of the provisions of this Restriction, the Regulatory Agreement or a Deed Rider, the Monitoring Agent shall have the right to take appropriate enforcement action against the affordable unit owner or the affordable unit owner's successors in title, including, without limitation, legal action to compel the affordable unit owner to comply with the requirements of this Restriction, the Regulatory Agreement or the Deed Rider. This Restriction hereby provides for payment by the affordable unit owner of fees and expenses (including legal fees) of the Monitoring Agent in the event enforcement action is taken against the affordable unit owner hereunder. The Monitoring Agent is hereby granted a lien on the unit, junior to the lien of any institutional holder of a first mortgage on the affordable unit to secure payment of such fees and expenses. The Monitoring Agent shall be entitled to seek recovery of its fees and expenses incurred in enforcing this Restriction against the affordable unit owner and to assert a lien on the relevant affordable unit to secure payment by the affordable unit owner of such fees and expenses.

The Municipality shall have the right to enforce this Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, in addition to, and not in limitation of, any other rights and remedies available to the Municipality. Any election by the Municipality as to the manner and timing of its right to enforce this Restriction, or otherwise exercise its rights hereunder, shall not be deemed or construed to be a waiver of such rights.

The burdens of this Restriction shall run with the land, and shall be enforceable against the Declarant and the successors and assigns of the Declarant holding any interest in the Project Site. The Municipality is authorized to record or file this Restriction, and any other notices or instruments appropriate to assuring the enforceability of this Restriction.

Upon request by the Declarant, the Municipality shall within twenty (20) days execute and deliver to the Declarant any document, including an estoppel certificate, which certifies the Declarant's compliance with any obligation of the Declarant contained herein. Failure by the Municipality to respond such request within said twenty (20) day period shall be deemed a certification of compliance and a waiver by the Municipality of any claims hereunder.

Declarant shall record this Declaration of Affordable Housing Restriction executed by Declarant and the Board of Selectmen with the Essex North District Registry of Deeds, together with a Certificate of Approval executed by DHCD under G.L. c. 184, and provide a certified copy thereof to the Municipality prior to obtaining Declarant's first Building Permit, in accordance with Section 8.8.5.8 of the Andover Zoning Bylaw.

4. Pulte does hereby declare, represent, covenant and warrant as follows:

(a) Pulte (i) is a limited liability company duly organized under the laws of the State of Michigan and is qualified to transact business under the laws of the Commonwealth of Massachusetts, (ii) has the power and authority to own its properties and assets and to carry on its

business as now being conducted, and (iii) has the full legal right, power and authority to execute and deliver this Declaration of Affordable Housing Restriction (hereinafter the “Restriction”).

(b) The execution and performance of this Restriction by Pulte (i) will not violate or, as applicable, has not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body, and (ii) will not violate or, as applicable, has not violated any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which the is a party or by which it or the Project is bound, and (iii) will not result in the creation or imposition of any prohibited encumbrance of any nature.

(c) Pulte will, at the time of the delivery and recording of this Restriction, have good and marketable title to the premises constituting the Project free and clear of any lien or encumbrance which would prevent use of the Property for the Project or which would prevent the execution and recording of this Restriction.

(d) There is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of Pulte, threatened against or affecting it, or any of its properties or rights, which, if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by this Restriction).

5. This Restriction shall be governed by the laws of the Commonwealth of Massachusetts. Any amendments to this Restriction must be in writing and consented to in writing by Pulte and the Municipality acting by its Planning Board. The invalidity of any clause, part, or provision of this Restriction shall not affect the validity of the remaining portions hereof.

6. The Declarant agrees to file this Restriction with the Essex North Registry of Deeds, and to forward recorded copies of this Restriction to the Planning Board within thirty (30) days of recording.

7. This Restriction shall be binding upon and inure to the benefit of the owner of the Property, the owners of Units in the proposed condominium, and any successors in interest to the Property, it being the express intention and understanding and agreement that this Restriction shall constitute a Restriction running with the land. Each and all of the Restrictions and provisions of the Restriction shall be incorporated by reference into and shall be referenced in all future affordable unit deeds for in the Condominium.

8. This Restriction shall also be and is for the benefit of the Municipality, its successors and assigns.

9. This Restriction shall run with the Property in perpetuity from the date of recordation in the Essex North District Registry of Deeds and shall be binding upon Declarant, Declarant's successors and assigns, and any other party having an ownership interest in said Property or claiming to have an interest with respect to said Property as tenants, invitees, licenses or otherwise, and all of the respective heirs, successors, grantees, mortgagees, assigns, agents, contractors, subcontractors and employees of the foregoing. This Restriction is hereby intended and declared to be a Restriction in perpetuity held by a governmental body as defined in and with the benefit of

M.G.L. c. 184, § 32 and no re-recording of this Restriction under G.L. c. 184, §§23-30 or any other law shall ever be necessary in order to maintain the full legal effect and authority thereof and Declarant and its successors and assigns, hereby waive all their legal right to and shall forego any action in law or equity of any kind whatsoever attempting to contest the validity of any provision of this Restriction and shall not, in any enforcement action, raise the invalidity of any provision of this Restriction.

10. This Restriction shall not be modified, amended, changed, or terminated or waived without the consent of the Declarant (or Declarant's successor) and the consent of the Municipality and DHCD. The Declarant as well as the Municipality and DHCD, may enforce and, if necessary, extend this Restriction in accordance with applicable law. Declarant agrees for itself, and its heirs, successors and assigns to execute and record such notices of restriction as are required to extend this Restriction in perpetuity in accordance with applicable law. The Municipality is hereby declared to be a benefited party to and a holder of this Restriction and the Declarant hereby appoints the Municipality as its attorney-in-fact to execute, acknowledge, deliver and record any such notice or instrument on its and/or their behalf, including, but not limited to any notice or instrument which may at any time be necessary to maintain this Restriction in effect in perpetuity. Without limiting the forgoing, the Declarant and its successors and assigns agree to execute any such notices and instruments upon request of the Municipality.

11. The Municipality shall have the authority and right to enforce this Restriction as a benefited party. The Municipality shall have the right to enter the Property in a reasonable manner and at reasonable times, for the purposes of (i) inspecting the Property to determine compliance with this Restriction; (ii) enforcing this Restriction; and (iii) taking any other action which may be necessary or appropriate. The Municipality shall have the right to bring proceedings at law or equity against any party or parties violating or attempting to violate the terms of this Restriction to enjoin them from so doing and to cause any such violation to be remedied, after providing written notice to such party or parties and the Municipality shall recover its attorney's fees and costs in any action of enforcement.

12. If any court or other tribunal of competent jurisdiction determines that any provision of this Restriction is invalid or unenforceable, such provision shall be deemed to have been modified automatically to conform to the requirements for validity and enforceability as determined by such court or tribunal. In the event the provision invalidated is of such a nature that it cannot be so modified, the provision shall be deemed deleted from this instrument as though it had never been included herein. In either case, the remaining provisions of this instrument shall remain in full force and effect.

13. Any election by the Municipality as to the manner and timing of its right to enforce this Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.

14. Declarant and Declarant's successors and assigns, including all subsequent owners of the Property or portions thereof, shall inform a potential purchaser in writing of this Declaration of Restriction and shall incorporate this Declaration of Restriction, in full or by reference, into all deeds, easements, mortgages, leases, licenses, occupancy agreements or any other instrument of

transfer by which an interest in and/or a right to use the Property or any portion thereof is conveyed.. Any such deed purporting to convey any portion of the Property or interest therein without including this Restriction in full or by reference shall be deemed and taken to include said Restriction in full even though said Restriction is not expressly described or referenced therein.

15. No amendment or release of this Restriction shall be effective unless it has been approved in writing by the Municipality acting by its Planning Board (hereinafter the “Town Approval”) and by the DHCD and said amendment or release and the requisite Town Approval and DHCD Approval have been recorded with the appropriate Registry of Deeds and/or Land Registration Office.

16. Pulte intends, declares and covenants on behalf of itself and its successors and assigns (i) that this Restriction and the Restrictions, agreements and restrictions contained herein shall be and are Restrictions running with the land, encumbering the Project for the duration of this Restriction, and are binding upon Pulte’s successors in title, (ii) are not merely personal Restrictions of Pulte, and (iii) shall bind Pulte, its successors and assigns and inure to the benefit of Andover and its successors and assigns for the duration of this Restriction. Pulte hereby agrees that any and all requirements of the laws of the Commonwealth of Massachusetts required to be satisfied in order for the provisions of this Restriction to constitute restrictions and Restrictions running with the land shall be deemed to be satisfied in full and that any requirements of privity of estate are also deemed to be satisfied in full.

17. Pulte represents and warrants that it has not mortgaged the Property and does not require the consent of any mortgagees of the Project to the execution and recording of this Restriction.

For Declarant’s title to the Project Site, see the deed recorded at the Essex North Registry of Deeds in Book 14713, Page 190.

[Signature page follows]

EXECUTED as an instrument under seal as of the \_\_\_\_ day of \_\_\_\_\_ 2017.

**DECLARANT:**

**Pulte Homes of New England, LLC,**  
a Michigan limited liability company

By: \_\_\_\_\_  
Name:  
Title: Duly Authorized Signatory

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss. \_\_\_\_\_, 2017

On this \_\_\_\_ day of \_\_\_\_\_, 2017, before me, the undersigned notary public, personally appeared \_\_\_\_\_, Authorized Signatory for **Pulte Homes of New England, LLC**, proved to me through satisfactory evidence of identification, which was that he is personally known to me to be the person whose name is signed on this document and acknowledged to me that he signed it voluntarily for its stated purpose, and that he has the authority to sign in that capacity.

\_\_\_\_\_  
Notary Public

My Commission Expires:

APPROVAL OF BOARD OF SELECTMEN

We, the undersigned Board of Selectmen of the Town of Andover, Massachusetts, approve the foregoing conveyance to said Town.

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COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2017 before me, the undersigned notary public, personally appeared \_\_\_\_\_, member of the Andover Board of Selectmen, who proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily, in the capacity indicated, and that he has the authority to sign in that capacity.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

## EXHIBIT A

Re: Riverside Woods  
(Project name)  
Andover  
(City/Town)  
Pulte  
(Developer)

### Maximum Selling Prices and Initial Condominium Fees Assigned to Low, Moderate, and Upper Moderate Income Units

#### Low Income Units (60% AMI)

	<u>Sales Price</u>	<u>Condo Fee</u>
One bedroom units	\$101,200	\$130/month
Two bedroom units	\$113,200	\$150/month

#### Moderate Income Units

	<u>Sales Price</u>	<u>Condo Fee</u>
One bedroom units	\$145,200	\$130/month
Two bedroom units	\$162,800	\$150/month

#### Upper Moderate Income Units

	<u>Sales Price</u>	<u>Condo Fee</u>
One bedroom units	\$255,000	\$130/month
Two bedroom units	\$280,000	\$150/month

**RIVERSIDE WOODS  
ANDOVER, MA  
DEVELOPED BY PULTE HOMES OF NEW ENGLAND  
AFFORDABLE HOUSING LOTTERY PROGRAM  
JWO CONSULTANT SERVICES  
P.O. BOX 323  
WESTWOOD, MA 02090  
781.329.8201**

November 30, 2016

Andrew P. Flanagan  
Andover Town Manager  
36 Bartlet Street  
Andover, MA 01810


Dear Mr. Flanagan:

I am submitting to you the Local Action Units (LAU) application for the Riverside Woods development. I have completed the application and marketing materials in my role as the Lottery Agent for the project. I am also attaching copies of the Special Permit for the project, and the preliminary price worksheet that was completed by Monitoring Agent (Andover Community Trust) and approved by DHCD. The other documents that are listed on page 5 of the LAU application will be provided to DHCD and the Town with the Regulatory Agreement (RA). The RA is being prepared by the developer's legal counsel and should be forwarded to the Town shortly.

The LAU application must be submitted to DHCD as soon as possible so that their review can be completed in a timely manner. We hope to begin marketing by late spring or summer so that affordable buyers will be qualified for the first phase of units that will be completed in 2017.

Thanks you for your assistance with this application. Please contact me at 781-329-8201 or by email at [jillonderdonk@gmail.com](mailto:jillonderdonk@gmail.com) if you have any questions.

Sincerely yours,

  
Jill Onderdonk  
Lottery Agent

**RIVERSIDE WOODS  
ANDOVER, MA  
DEVELOPED BY PULTE HOMES OF NEW ENGLAND  
AFFORDABLE HOUSING LOTTERY PROGRAM  
JWO CONSULTANT SERVICES  
P.O. BOX 323  
WESTWOOD, MA 02090  
781.329.8201**

November 30, 2016

Rieko Hayashi  
Dept. of Housing & Community Development  
100 Cambridge Street, Suite 300  
Boston, MA 02114


Dear Rieko:

I am submitting to you the Local Action Units (LAU) application for the Riverside Woods development. I have completed the application and marketing materials in my role as the Lottery Agent for the project. I am also attaching copies of the Special Permit for the project, and the preliminary price worksheet that was completed by Monitoring Agent (Andover Community Trust) and approved by DHCD. The other documents that are listed on page 5 of the LAU application will be provided to DHCD and the Town with the Regulatory Agreement (RA). The RA is being prepared by the developer's legal counsel and should be forwarded to the Town shortly.

The LAU application must be submitted to DHCD as soon as possible so that their review can be completed in a timely manner. We hope to begin marketing by late spring or summer so that affordable buyers will be qualified for the first phase of units that will be completed in 2017.

Thanks you for your assistance with this application. Please contact me at 781-329-8201 or by email at [jillonderdonk@gmail.com](mailto:jillonderdonk@gmail.com) if you have any questions.

Sincerely yours,

  
Jill Onderdonk  
Lottery Agent

## Community Support Narrative, Project Description and Documentation

Please provide a description of the project, including a summary of the project's history and the ways in which the community fulfilled the local action requirement.

Riverside Woods is a new Senior Housing development located at 459 River Road in Andover, MA. This seventy acre parcel of land was formerly the site of St. Francis Seminary and has been sold and divided into this senior housing development and housing units for the Melmark School. Riverside Woods will include over seven acres of protected open space when all of the housing units are completed. A total of two hundred units of Senior Housing will be constructed.

This project was approved by Special Permit under the Andover Senior Residential Overlay District zoning for senior residents 62 years old or older. This development will include four buildings with garden style condominium units and fourteen detached town homes along the frontage area of River Road. The garden style units will be a mixture of one and two bedroom units with fifteen percent of each building providing a combination of one and two bedroom affordable units. Parking will be provided underneath each building with four levels of housing units above the parking. The affordable units will be marketed to three income categories in order to serve a wide variety of senior applicants. Each building will have affordable units for applicants at sixty percent of the Area Median Income, eighty percent of the Area Median Income, and one hundred and twenty percent of the Area Median Income. None of the town houses will be sold as affordable units.

## Signatures of Support for the Local Action Units Application

### Chief Executive Officer:

*defined as the mayor in a city and the board of selectmen in a town, unless some other municipal officer is designated to be the chief executive officer under the provisions of a local charter*

Signature: \_\_\_\_\_

Print Name: Paul J. Salfia

Date: \_\_\_\_\_

**Chair, Local Housing Partnership:**  
*(as applicable)*

Signature: \_\_\_\_\_

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

Date: \_\_\_\_\_

**Municipal Contact Information**

**Chief Executive Officer**

Name Paul J. Salfia  
Address Andover Town Hall, 36 Bartlet Street, Andover, MA 01810  
Phone 978-623-8227  
Email selectmen@andoverma.gov

**Town Administrator/Manager**

Name Andrew P. Flanagan  
Address Andover Town Hall, 36 Bartlet Street, Andover, MA 01810  
Phone 978-623-8227  
Email aflanagan@andoverma.gov

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

Name Lisa LaGrasse Schwarz  
Address Andover Town Hall, 36 Bartlet Street, Andover, MA 01810  
Phone 978-623-8310  
Email planning@andoverma.gov

**City/Town Counsel**

Name \_\_\_\_\_  
Address \_\_\_\_\_  
Phone \_\_\_\_\_  
Email \_\_\_\_\_

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

Name \_\_\_\_\_  
Address \_\_\_\_\_  
Phone \_\_\_\_\_  
Email \_\_\_\_\_

**Community Contact Person for this project**

Name Lisa LaGrasse Schwarz  
Address Andover Town Hall, 36 Bartlet Street, Andover, MA 01810  
Phone 978-623-8310  
Email planning@andoverma.gov

**The Project**

**Developer**

Name Pulte Homes of New England, LLC  
 Address 115 Flanders Road, Suite 200, Westborough, MA 01581  
 Phone 508-621-0408  
 Email mark.mastrolanni@pultegroup.com

Is your municipality utilizing any HOME or CDBG funding for this project?  Yes  No

Local tax rate per thousand \$ 14.82 for Fiscal Year 2016

Site Characteristics

<u>Project Style</u>	<u>Total # of Units</u>	<u># of Units Proposed for LAU Certification</u>
Detached single-family house	<u>14</u>	<u>0</u>
Rowhouse/townhouse	<u>          </u>	<u>          </u>
Duplex	<u>          </u>	<u>          </u>
Multifamily house (3+ family)	<u>186</u>	<u>21</u>
Multifamily rental building	<u>          </u>	<u>          </u>
Other (specify)	<u>9</u>	<u>9 at 120%</u>

**Unit Composition**

Type of Unit:	# of Units	# of BRs	# of Baths	Gross Square Feet	Livable Square Feet	Proposed Sales Prices/Rents	Proposed Condo Fee
Condo Ownership							
Fee Simple Ownership							
Rental							
<b>Affordable:</b>	8	1	1			\$110,000 \$155,000	\$130
	13	2	2			\$125,000 \$170,000	\$150
<b>Market:</b>	170	2+	2 1/2				

Income level	1 Person household income		2 person household income		3 person household income	
	1 BR 60%	2 BR 60%	1 BR 80%	2 BR 80%	1 BR 120%	2 BR 120%
50%	29,450	736	33,650	841	37,850	946
60%	35,340	884	40,380	1,010	45,420	1,136
70%	41,230	1,031	47,110	1,178	52,990	1,325
80%	46,000	1,150	52,600	1,315	59,150	1,479
100%	58,900	1,472	67,300	1,682	75,700	1,892
110%	64,790	1,620	74,030	1,851	83,270	2,082
120%	70,680	1,767	80,760	2,019	90,840	2,271
House Price	110,000	125,000	155,000	170,000	\$255,000	\$280,000
Real Estate Taxes \$14.97						
HOA Fee						
1 BR \$130						
2 BR \$150						

(for recording)

## QUITCLAIM DEED

**PULTE HOMES OF NEW ENGLAND, LLC**, a Michigan limited liability company, with an address of 115 Flanders Road, Suite 200, Westborough, Massachusetts 01581 (together with its successors and assigns with respect to the rights, obligations and easements granted and reserved herein, "**Grantor**"),

for consideration paid and in consideration of less than one hundred dollars,

grants to the Inhabitants of the Town of Andover under the care, custody and control of the Andover Conservation Commission pursuant to Massachusetts General Laws Chapter 40, Section 8C solely for passive recreation and conservation purposes, having an address of 36 Bartlet Street, Andover, MA 01810 (together with its successors and assigns with respect to the real property, easements and rights granted herein, "**Grantee**"),

with *QUITCLAIM* covenants,

The land and improvements thereon (if any) located on River Road, Andover, Essex County, Massachusetts and being:

**Proposed Lot 2** (containing 7.207 Acres/313,978 square feet) (the "Premises") on Plan of Land Entitled "Plan of Land Pulte Homes, 0 & 459 River Road, Lot 4, Map 228, and Lot 5, Map 229, Town of Andover, Essex County, Commonwealth of Massachusetts, dated 03/08/16 by Control Point Associates, Inc., which Plan is recorded with the Essex County North Registry of Deeds (the "Registry") as Plan #17443 on June 16, 2016 (the "**ANR Plan**").

Together with access rights for the benefit of said **Proposed Lot 2** as more fully set forth in **Exhibit A** attached hereto and incorporated herein by reference, save and except such rights, easements and obligations as more fully set forth in **Exhibit A** attached hereto and incorporated herein by reference.

This conveyance is made pursuant to Subsection 8.8.5.7 of the Andover Zoning Bylaw, and the Planning Board Special Permit Decision: SP 15-01 dated October 30, 2015 with the Registry at Book 14713 Page 278.

This conveyance is subject to the following permanent Restrictions, which Grantor hereby imposes for the benefit of Grantor's remaining property (being Proposed Lot 1 on the ANR Plan):

The Premises will be maintained in perpetuity as Open Space pursuant to Subsection 8.8.5.7 of the Andover Zoning Bylaw, and the Planning Board Special Permit Decision: SP 15-01 dated October 30, 2015 with the Registry at Book 14713 Page 278 and used solely for passive recreation and conservation purposes, in a natural, scenic and undeveloped condition, which shall not be altered to any use that would materially impair or interfere with its passive recreation and conservation ("conservation values"), and the Grantee will not perform or allow others to perform the following acts and uses which are prohibited on, above, and below the Premises:

- (1) The use of the Premises for commercial recreation, business, residential or industrial use;
- (2) Hunting, except that Grantee may permit deer hunting on the Premises by archery from tree stands so long as conducted at least 500 feet from any adjacent residential structure and in accordance with Conservation Commission Policies.

Subject to the matters of record set forth on Exhibit C attached hereto, to the extent now in force and applicable.

Except as otherwise expressly herein provided, the rights and easements granted herein to Grantee, and the restrictions reserved herein by Grantor, shall run with title to the land described herein and be binding upon and inure to the benefit of the successors and assigns of Grantor and Grantee with respect thereto.

For Grantor's title to Proposed Lot 2 on the ANR Plan, see Quitclaim Deed from Melmark, Inc. dated June 30, 2016, and recorded with the Registry in Book 14713, Page 190; also see Notice of Voluntary Withdrawal of Land from the Registration System, M.G.L. c. 185, Sec 52, which Notice is filed with the Essex North Registry District of the Land Court as Document No. 113,049.

This is a conveyance in the ordinary course of business and is not in contravention of the filed Certificate of Organization for the Limited Liability Company, as it may be amended. Neither this instrument nor any other record at the Registry of Deeds discloses anything in contravention of the laws of the Commonwealth of Massachusetts and the Grantor limited liability company appears from the records of the Commonwealth of Massachusetts Office of the Secretary of State to exist.

By execution hereof, the undersigned further certifies that he is named in the Operating Agreement and Certificate of Organization as one of the persons authorized to execute, acknowledge, deliver and record any recordable instrument purporting to affect an interest in real property on behalf of the limited liability company and such authority has not been amended, modified or revoked; that the Operating Agreement authorizes him to take all

steps necessary to convey the premises described above on the terms and conditions contained in the deed recorded herewith; and that no member of Pulte Homes of New England LLC has filed for bankruptcy protection.

This conveyance does not constitute all or substantially all of the Massachusetts assets of the Grantor.

THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK

Grantor signature page to Proposed Lot 2 Deed

IN WITNESS WHEREOF, the said Pulte Homes of New England LLC, has caused its seal to be hereto affixed and in these presents signed by REID A. BLUTE, its Authorized Signatory, as of the 17<sup>th</sup> day of FEBRUARY, 2017.

Pulte Homes of New England LLC



By: REID A. BLUTE  
Its: Authorized Signatory

COMMONWEALTH OF MASSACHUSETTS

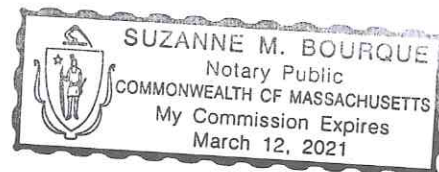
Worcester, ss.

February 17, 2017

On this 17<sup>th</sup> day of February, 2017, before me, the undersigned notary public, personally appeared Reid A. Blute, Authorized Signatory for Pulte Homes of New England LLC, proved to me through satisfactory evidence of identification, which was  photographic identification with signature issued by a federal or state governmental agency,  oath or affirmation of a credible witness,  personal knowledge of the undersigned, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose in his capacity as Authorized Signatory for Pulte Homes of New England LLC, and that he has the authority to act in that capacity.



Notary Public SUZANNE M. BOURQUE  
My Commission Expires: 3-12-21



**JOINDER TO QUITCLAIM DEED  
of Proposed Lot 2 Open Space**

**MELMARK, INC.**, a Delaware non-profit corporation authorized to conduct business in the Commonwealth of Massachusetts, with a principal address of 2600 Wayland Road, Berwyn, Pennsylvania, 19312, **Grantor** under that certain **Quitclaim Deed** from Melmark to **PULTE HOMES OF NEW ENGLAND, LLC** (herein with its successors and assigns in title, **“Pulte”**), a Michigan limited liability company, with an address of 115 Flanders Road, Suite 200, Westborough, Massachusetts 01581 dated June 30, 2016, and recorded with the Registry in Book 14713, Page 190 (herein, the **“Original Deed”**)

for consideration paid and in full consideration of **less than \$100**,

does hereby join in execution of the Quitclaim Deed (the **“Deed”**) of Proposed Lot 2 from Pulte to the Inhabitants of the Town of Andover (herein with its successors and assigns in title, **“Andover”**) to which this Joinder is attached, for the sole and exclusive purpose of agreeing, and does hereby agree for the benefit of Andover, that notwithstanding the terms of the Original Deed, none of the indemnification obligations of Pulte contained in the Original Deed shall in any manner whatsoever be assumed by, apply to, or be enforceable against Andover, and Melmark does hereby forever release and remise Andover from any such indemnification obligations. For avoidance of doubt, the provisions of this Joinder and the foregoing release shall not in any way affect or release the continuing liability of Pulte Homes of New England, LLC for the indemnification obligations set forth in the Original Deed.

Notwithstanding anything contained herein to the contrary, it is the explicit intent of the deed and Joinder that none of the indemnifications and obligations by Melmark and Pulte contained in the Original Deed shall run with the land that is Proposed Lot 2 as described in said Original Deed, other than requiring that the use of the area identified as **“Proposed Trail Access Easement”** shall be for passive recreational purposes without charge or fee being imposed, which provision survives and is binding upon successors and assigns, including the Town of Andover. Accordingly, Melmark and Pulte are hereby effectively amending that Original Deed by deleting and waiving all such indemnities, notices and obligations contained in that Original Deed as those indemnities, notices and obligations apply to Proposed Lot 2 or to the Town of Andover, other than the provision hereinabove in this paragraph governing the passive recreational use of the **“Proposed Trail Access Easement”**.

For Melmark’s title, see Quitclaim Deed dated July 5, 2016 from Society of The Friars Minor Of The Order Of Saint Francis to Grantor recorded together with, but prior to the Original Deed at Book 14713 Page 161. Also see Notice of Voluntary Withdrawal of Land from the Registration System, M.G.L. c. 185, Sec 52, which Notice is filed with the Essex North Registry District of the Land Court as Document No. 113,049.

[Signature Appear on Following Pages]

Melmark signature page to Melmark Joinder

Executed as a sealed instrument as of this 30<sup>th</sup> day of January, 2017.

MELMARK, INC., a Delaware non-profit corporation

By: Rita M. Gardner  
Rita Gardner, President and CEO

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

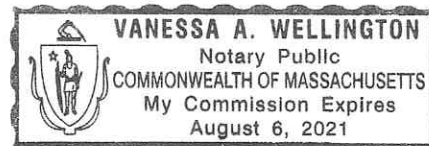
January 30, 2017

On this 30<sup>th</sup> day of January, 2017, before me, the undersigned notary public, personally appeared Rita Gardner, President and CEO of Melmark, Inc., proved to me through satisfactory evidence of identification, which was  photographic identification with signature issued by a federal or state governmental agency,  oath or affirmation of a credible witness,  personal knowledge of the undersigned, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she has the authority to act in that capacity, and that she signed it voluntarily in such capacity, for its stated purpose as the voluntary act of Melmark, Inc.

Vanessa A. Wellington

Notary Public

My Commission Expires: August 6, 2021



Acknowledging and accepting the foregoing:

Pulte Homes of New England LLC



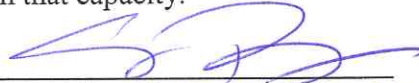
By: REID A. BLUTE  
Its: Authorized Signatory

COMMONWEALTH OF MASSACHUSETTS

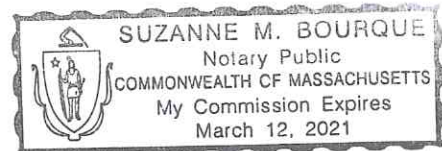
Worcester, ss.

FEBRUARY 17, 2017

On this 17<sup>th</sup> day of February, 2017, before me, the undersigned notary public, personally appeared Reid A. Blute, Authorized Signatory for Pulte Homes of New England LLC, proved to me through satisfactory evidence of identification, which was  personal knowledge of the undersigned, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose in his capacity as Authorized Signatory for Pulte Homes of New England LLC, and that he has the authority to act in that capacity.



Notary Public SUZANNE M. BOURQUE  
My Commission Expires: 3-12-21



ACCEPTANCE OF GRANT BY CONSERVATION COMMISSION

By their signatures below, the undersigned members of the Conservation Commission for the Town of Andover acknowledge acceptance of the foregoing grant on the terms and conditions outlined therein.

IN WITNESS WHEREOF the undersigned hereunto sets its hand and seal this 21<sup>st</sup> day of February, 2017.

**Grantee**  
**Conservation Commission**  
**Town of Andover**

Donald Cooper

Kevin J. Porter

Ellen Townson

Alexandria Driscoll

Thomas Brady

\_\_\_\_\_

[Signature]

\_\_\_\_\_

Commonwealth of Massachusetts

County of Essex, ss.

On this 21<sup>st</sup> day of February, 2017, before me, the undersigned notary public, personally appeared Donald Cooper, Ellen Townson, Thomas Brady, Kevin J. Porter and Jon Hanea and Alexandria Driscoll all being members of the Conservation Commission for the Town of Andover, Massachusetts, each of whom proved to me through satisfactory evidence of identification, which were that they are personally know to me to be the persons whose names are signed on the preceding or attached document, and who swore or affirmed to me that each executed the foregoing document as his or her free act and deed as aforesaid.

Kevin M. Voells  
Notary Public

My commission expires 8/31/18

ACCEPTANCE OF GRANT BY BOARD OF SELECTMEN

By their signatures below, the undersigned members of the Board of Selectmen for the Town of Andover acknowledge acceptance of the foregoing grant on the terms and conditions outlined therein.

IN WITNESS WHEREOF the undersigned hereunto sets its hand and seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**Grantee  
Board of Selectmen  
Town of Andover**

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

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

Commonwealth of Massachusetts

County of Essex, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2017, before me, the undersigned notary public, personally appeared

all being members of the Board of Selectmen for the Town of Andover, Massachusetts, each of whom proved to me through satisfactory evidence of identification, which were that they are personally know to me to be the persons whose names are signed on the preceding or attached document, and who swore or affirmed to me that each executed the foregoing document as his or her free act and deed as aforesaid.

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_

## Exhibit A

### Access Rights to Proposed Lot 2

#### **Pedestrian Trail Easement over Proposed Lot 3 on Plan #17443**

There is hereby granted as appurtenant to Proposed Lot 2 a perpetual, non-exclusive easement for pedestrian access (the “**Lot 3 Pedestrian Trail Easement**”) over the area on Proposed Lot 3 on the ANR Plan identified as “Proposed Trail Access Easement” on the Trail Access Easement Exhibit attached hereto as **Exhibit B** (the “**2017 Trail Plan**”) (a similar version of which was attached as Exhibit B to Grantor’s Deed from Melmark, Inc. dated June 30, 2016 (the “**Original Deed**”), and recorded with the Registry in Book 14713, Page 190 (the “**2016 Trail Plan**); the 2017 Trail Plan differs only with respect to the addition of the “Additional Access Trail Easement” (as described below as a Deferred Operation Easement) which continues on through Proposed Lot 1 to reach Proposed Lot 2), which Lot 3 Pedestrian Access Easement shall be appurtenant to Proposed Lot 2 for the benefit of Grantee and of the public at large and shall be used for passive recreational and conservation purposes, without a charge or fee therefore being imposed, and the Grantee by acceptance and recordation of this Deed covenants and agrees that Grantee and or its successors and or assigns shall at all times permit the public to use the same for such uses at no charge. The foregoing Lot 3 Pedestrian Access Easement is being conveyed and assigned by Grantor to the Grantee pursuant to Grantor’s right to so convey or assign to the Town of Andover or any political subdivision thereof this access right pursuant to said Deed to Grantor from Melmark, Inc. dated June 30, 2016, and recorded with the Registry in Book 14713, Page 190 (the “Original Deed”). It is the intention of Grantor and Grantee that the portion of the Lot 3 Pedestrian Trail Easement over the area on Proposed Lot 3 on the ANR Plan which had been an easement in gross pursuant to the Original Deed be and become, and Grantor and Grantee hereby agree that the same now is, an easement appurtenant to Proposed Lot 2, which cannot be conveyed apart from Proposed Lot 2.

No other easements, except the Lot 3 Pedestrian Trail Easement and those Deferred Operation Easements expressly set forth herein, are hereby implied or created; and in that regard, and without limiting the foregoing, no easements for access, utilities, or of any type whatsoever, or for parking or for cross access between or through any other portion of other property now or in the future owned by Grantor, including without limitation, the parcel shown as Proposed Lot 1 on the ANR Plan, is hereby granted or implied except for the additional Deferred Operation Easements described in the paragraphs appearing below. In particular, Grantor and Grantee expressly acknowledge and agree that except for the perpetual, non-exclusive easement for pedestrian access as granted in the foregoing paragraph (identified therein as the Lot 3 Pedestrian Trail Easement), and the Deferred Operation Easements described in the paragraphs below Grantee is not being granted, nor shall Grantee have the benefit or use of, and Grantor hereby expressly reserves, all of the other easement rights (“Non-Applicable Easements”) together with any rights to indemnification from Melmark benefitting Grantor, which Grantor obtained from Melmark Inc. in the Original Deed. As evidenced by the Joinder executed and notarized

by Melmark, Inc. and attached to this Deed, Melmark, Inc. and Grantor have confirmed that none of the indemnification obligations of Grantor or Melmark and their successors and assigns otherwise appearing in the Original Deed shall whatsoever apply to Grantee. Consequently, none of the indemnification requirements associated with such other Non-Applicable Easements shall apply to Grantee, and Grantor hereby covenants and agrees with Grantee to hold Grantee harmless from any indemnification claims asserted by Melmark, Inc. in connection with Grantor's exercise of said Non-Applicable Easements. In consideration of execution by Melmark, Inc. of the Joinder attached, Grantor hereby covenants and agrees with Melmark, Inc. and its successors and assigns in title that, notwithstanding any contrary provisions of the Original Deed, Grantor shall remain liable and responsible for the indemnification obligations from which Andover was released in the Joinder.

#### **Deferred Operation Easements pursuant to Planning Board Conditions #47 and #49**

Notwithstanding anything contained in this Deed to the contrary, Grantor acknowledges that pursuant to Conditions #47 and #49 as set forth in the Planning Board Special Permit Decision: SP 15-01 dated October 30, 2015 recorded with the Registry at Book 14713 Page 278, prior to the receipt of Grantor's final building permit for its Riverside Woods senior housing condominium project, Grantor shall have granted to Grantee mutually agreeable easements recorded by Grantor in order to provide Grantee with the additional access and parking rights for the general public noted in Conditions #47 and #49 as set forth in the Planning Board Special Permit Decision: SP 15-01 dated October 30, 2015 with the Registry at Book 14713 Page 278. In addition, as agreed between the parties, Grantor offered to grant an additional pedestrian easement for the general public over Grantor's Proposed Lot 1 shown on the attached Exhibit B as "**Additional Access Trail Easement**". Collectively, these additional pedestrian access and parking easements are referred to hereinafter as the "**Deferred Operation Easements**". The effective date of the Deferred Operation Easements is intended to occur in the future, prior to certain events as described below.

Consequently, Grantor does hereby grant and convey to Grantee (effective immediately as a current grant between Grantor and Grantee but for which Grantee's ability to utilize the same shall be deferred until the **Effective Date**, as that term is defined below) as appurtenant to **Proposed Lot 2** (containing 7.207 Acres/313,978 square feet) (hereinafter "Lot 2") on Plan of Land Entitled "Plan of Land Pulte Homes, 0 & 459 River Road, Lot 4, Map 228, and Lot 5, Map 229, Town of Andover, Essex County, Commonwealth of Massachusetts, dated 03/08/16 by Control Point Associates, Inc., which Plan is recorded with the Essex County North Registry of Deeds (the "Registry") as Plan #17443 on June 16, 2016 (the "Plan") the following Deferred Operation Easements:

(A) a perpetual non-exclusive pedestrian-only access easement in common with Grantor and Grantor's successors in title to Lot 1 (including without limitation future owners of condominium units located on Lot 1), which is for the benefit of, appurtenant to, and shall run with the title to Lot 2, over and across that portion of the remaining land of the Grantor (being Proposed Lot 1 on the Plan) designated as "Proposed 10' Wide

Pedestrian Easement” on the 2017 Trail Plan a copy of which is attached hereto as Exhibit B and incorporated herein by reference (the “**Lot 1 Pedestrian Easement**”). The purpose of this easement is to provide pedestrian access to and egress from Lot 2 over and across limited portions of Proposed Lot 1. Grantee shall be responsible for any maintenance of the easement area to make the easement area suitable for this purpose. Grantor shall have no maintenance obligations relative to the Pedestrian Easement area. Grantee shall post and maintain permanent signs at both ends of the easement area stating that use of the easement area is pursuant to written easement granted to the Grantee. This easement is granted for passive recreational and conservation purposes associated with Proposed Lot 2.

(B) a perpetual non-exclusive pedestrian-only access easement in common with Grantor and Grantor’s successors in title to Proposed Lot 1 (including without limitation future owners of condominium units located on Proposed Lot 1), which is for the benefit of, appurtenant to, and shall run with the title to Proposed Lot 2, over and across limited portions of Proposed Lot 1 shown on the attached Exhibit B as “**Additional Access Trail Easement**”. The purpose of this easement is to provide additional pedestrian access to and egress from Lot 2 over Proposed Lot 1. Grantee shall be responsible for any maintenance of the easement area to make the easement area suitable for this purpose. Grantor shall have no maintenance obligations relative to the Pedestrian Easement area. Grantee shall post and maintain permanent signs at both ends of the easement area stating that use of the easement area is pursuant to written easement granted to the Grantee. This easement is granted for passive recreational and conservation purposes associated with Proposed Lot 2.

(C) an easement for pedestrian and vehicular access, solely for the purpose of parking 5 vehicles in the area designated as “Parking Area” on the 2017 Trail Plan (the “**Parking Lot Easement**”) for the benefit of Proposed Lot 2 as shown on the Plan (but for no other of Grantee’s land). This easement is granted for passive recreational and conservation purposes associated with Proposed Lot 2. Grantor shall, prior to the Effective Date, install (and Grantor and its successors in title shall thereafter maintain) a sign denoting the parking spaces as “Public Trail Parking Only” and “Not for Residents or Guests.”

The following provisions apply to all of the Deferred Operation Easements:

(1) Grantor shall have no responsibility for maintenance, repair or replacement, including paving or snow removal, within any of the foregoing easement areas except as otherwise provided herein. If any improvements need to be made to the easement areas to permit access to Grantee’s Property, Grantee may do so at its sole cost and expense. The use by the public of any of the foregoing easement areas shall be at the public's own risk.

(2) The “Effective Date” shall be December 31, 2020 or such earlier date on which Grantor records with the Essex North District Registry of Deeds the “Effective Date Certificate” attached hereto as **Exhibit D**, at the earliest of, and prior to, (i) the conveyance of Proposed Lot 1 by Grantor (which term, however, shall not include the recording of a condominium master deed or the conveyance of individual condominium units within any

such condominium) or (ii) the issuance of a Certificate Of Occupancy for any unit within the third of Grantor's Garden Style Condominium Buildings; or (iii) the issuance of a building permit for Grantor's fourth Garden Style Condominium Building. The December 31, 2020 Effective Date shall be extended if determined necessary in writing by Grantor and the Andover Director of Planning and Community Development after a vote of such authorization by the Andover Planning Board and the recording of a Certificate of such vote with the Essex North Registry of Deeds. If Grantor does not record the Effective Date Certificate upon the occurrence of any such event, then the Grantee may record the Effective Date Certificate and, in any event, the Effective Date shall be December 31, 2020 unless the Effective Date Certificate has been recorded prior thereto or the December 31, 2020 date has been extended by a Certificate recorded as provided herein. It shall be a condition for the issuance of any such certificate of occupancy under clause (ii) or any such building permit under clause (iii) that the Effective Date Certificate be recorded at the Registry of Deeds.

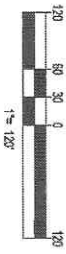
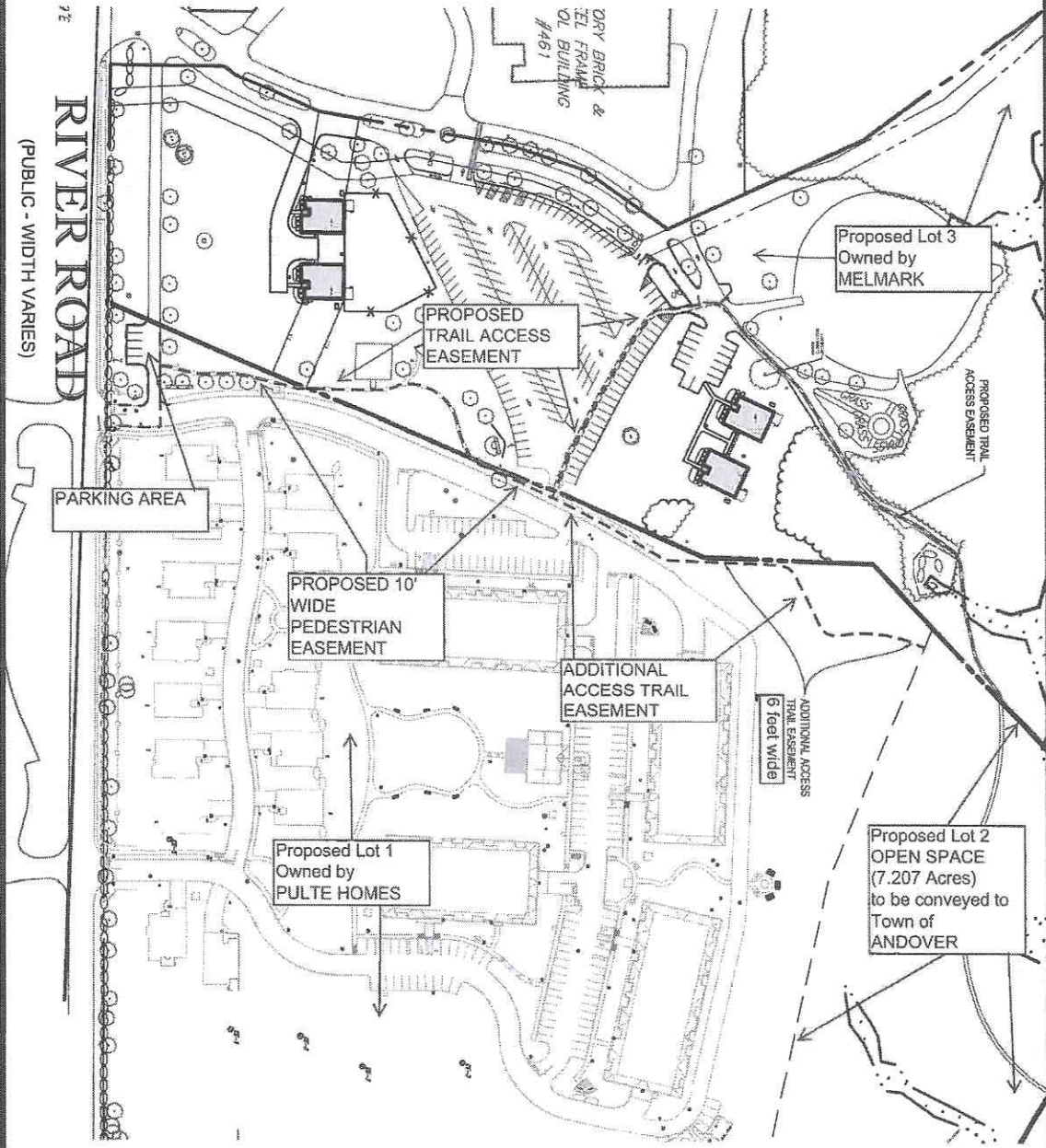
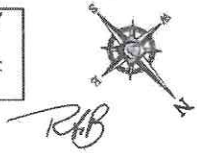
(3) Grantor reserves the following rights (i) to cross and use the areas of Proposed Lot 1 containing the Deferred Operation Easements, (ii) to prune trees, make plantings, mow, and landscape within the easement areas, and (iii) to construct, install, maintain, operate, repair, replace and/or remove sidewalks, overhead or underground utilities and the detention basin in the rear of Proposed Lot 1 (and the grading associated therewith) in, through, on, over, under or across the easement areas, provided that the exercise of such rights by Grantor does not unreasonably interfere with Grantee's right to use the easement areas for the purposes set forth herein. Grantor shall have responsibility for maintenance, repair or replacement of any of such features or utilities, and Grantor shall repair any damage to the easement area as a result of Grantor's exercise of such rights, or caused by any of its agents or invitees, to substantially the same condition as existed prior thereto.

**Exhibit B**

**2017 Trail Plan**

EXHIBIT "B"  
2017 TRAIL PLAN

1/26/17  
Revised:  
2/22/17



PREPARED BY  
**BOHLER**  
ENGINEERING  
302 TURNING ROAD  
SOUTH BORDEN, MA 01772  
(508) 450-9500  
www.bohlerengineering.com

AND  
**Pulte**  
HOMES

**Melmark**

REVISED  
TRAIL ACCESS  
EASEMENT EXHIBIT

455 RIVER ROAD  
TOWN OF ANDOVER  
ESSEX COUNTY  
MASSACHUSETTS  
DATED: 06/17/2016  
REVISED: 01/6/2017  
PREPARED FOR:

## **Exhibit C**

### Existing matters of Record

1. Flowage rights reserved in Deed from Essex Company to George A. McCormack dated June 24, 1929 and recorded with Essex North District Registry of Deeds in Book 547, Page 265.
2. Subject to all public rights in the Merrimack River as set forth in Decree of the Land Court dated April 22, 1931 and filed as Document No. 4990 on Certificate of Title No. 1847.

**EXHIBIT D**

FORM of EFFECTIVE DATE CERTIFICATE

---

(Space Above this Line Reserved for Registry of Deeds)

EFFECTIVE DATE CERTIFICATE

**PULTE HOMES OF NEW ENGLAND, LLC**, ("**Grantor**"), a Michigan limited liability company, with an address of 115 Flanders Road, Suite 200, Westborough, Massachusetts 01581

being the Grantor named in that certain Quitclaim Deed from Pulte Homes of New England LLC to the Inhabitants of the Town of Andover dated \_\_\_\_\_, 20\_\_\_\_, recorded with the Essex North District Registry of Deeds at Book \_\_\_\_\_, Page \_\_\_\_\_, (the "Open Space Deed") hereby certifies, for the purpose of establishing the Effective Date of the Deferred Operation Easements as described in the Open Space Deed that, with respect to construction of Grantor's senior housing condominium project located on Proposed Lot 1 on Registry of Deeds Plan #17443 known as "Riverside Woods", this Certificate is executed and recorded to certify that at least one of the following events has occurred:

- (i) the conveyance of Proposed Lot 1 by Grantor
- (ii) the issuance of a Certificate of Occupancy for any unit within the third of Grantor's Garden Style Condominium Buildings
- (iii) the issuance of a building permit for Grantor's fourth Garden Style Condominium Building
- (iv) the deadline of December 31, 2020 for the Effective Date

Therefore, with the recording of this Certificate, the Deferred Operation Easements as recited in the Open Space Deed are now in effect. Grantor hereby confirms that said Deferred Operation Easements are now in full force and effect, and that Grantee has the right to full utilization of the same. For title to Grantor's Proposed Lot 1 see Quitclaim Deed recorded at Book 14713, Page 190. For Grantee's title to Proposed Lot 2 on Registry of Deeds Plan #17443 see Quitclaim Deed recorded at Book \_\_\_\_\_, Page \_\_\_\_\_.

This certificate is given to evidence the Effective Date as that term is defined in the Quitclaim Deed dated \_\_\_\_\_, 2017 and recorded at Book \_\_\_\_\_, Page \_\_\_\_\_.

END OF TEXT  
SIGNATURE PAGE FOLLOWS

*(Grantor signature page to Effective Date Certificate)*

IN WITNESS WHEREOF, the said Pulte Homes of New England LLC, has caused its seal to be hereto affixed and in these presents signed by \_\_\_\_\_, its Authorized Signatory, as of the day of \_\_\_\_\_, 20\_\_.

Pulte Homes of New England LLC

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

Its: Authorized Signatory

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

\_\_\_\_\_, 20\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, Authorized Signatory for Pulte Homes of New England LLC, proved to me through satisfactory evidence of identification, which was  photographic identification with signature issued by a federal or state governmental agency,  oath or affirmation of a credible witness,  personal knowledge of the undersigned, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose in his capacity as Authorized Signatory for Pulte Homes of New England LLC, and that he has the authority to act in that capacity.

\_\_\_\_\_  
Notary Public

My Commission Expires:

(final)

**ESCROW AGREEMENT  
REGARDING RELEASE AND RECORDING OF  
Effective Date Certificate**

THIS ESCROW AGREEMENT is entered into as of the 21<sup>st</sup> day of February, 2017, by and between **PULTE HOMES OF NEW ENGLAND, LLC**, a Michigan limited liability company, with an address of 115 Flanders Road, Suite 200, Westborough, Massachusetts 01581 ("Pulte") and **the Inhabitants of the Town of Andover** having an address of 36 Bartlet Street, Andover, MA 01810 ("Andover"), and **Mark Johnson Esq. of Johnson & Borenstein LLC** located at 12 Chestnut Street Andover MA 01810 ("Escrow Agent").

1. This Escrow Agreement relates to the execution and delivery of that certain Effective Date Certificate of even date herewith (the "Certificate"), as more fully set forth below

2. Attached hereto as Exhibit A is the final form of the "Open Space Deed", which is being executed and delivered by Pulte to Andover as of February 21, 2017, to be recorded in due course by the Escrow Agent once the same has been duly accepted and signed by Andover's Conservation Commission and Board of Selectmen. The "Premises" described in the Open Space Deed will be maintained by Andover in perpetuity as Open Space pursuant to Subsection 8.8.5.7 of the Andover Zoning Bylaw, and the Planning Board Special Permit Decision: SP 15-01 dated October 30, 2015 with the Registry at Book 14713 Page 278 (the "Special Permit").

3. The parties wish to have assurance that the Certificate will be executed and deposited into escrow at the present time, so as to be available for release and recording at the appropriate time in the future, as described herein; consequently the parties have asked Attorney Mark Johnson of Johnson & Borenstein LLC to act as Escrow Agent in connection with the Certificate; Attorney Johnson is willing to act as Escrow Agent, but only upon the terms and conditions contained herein.

4. Following the signing of the Certificate and its delivery to the Escrow Agent, the parties agree that the following process and procedures shall absolutely and irrevocably control the conduct of the parties:

a. Pulte will conduct itself in accordance with the terms and provisions of the Special Permit in connection with the construction of Pulte's senior housing condominium project known as "Riverside Woods";

b. Attorney Johnson as Escrow Agent shall hold the Certificate in escrow until achievement of the "Effective Date". As detailed in the Open Space Deed:

The "Effective Date" shall be December 31, 2020 or such earlier date on which Grantor records with the Essex North District Registry of Deeds the "Effective Date Certificate" attached hereto as **Exhibit D**, at the earliest of, and prior to, (i)

the conveyance of Proposed Lot 1 by Grantor (which term, however, shall not include the recording of a condominium master deed or the conveyance of individual condominium units within any such condominium) or (ii) the issuance of a Certificate Of Occupancy for any unit within the third of Grantor's Garden Style Condominium Buildings; or (iii) the issuance of a building permit for Grantor's fourth Garden Style Condominium Building. The December 31, 2020 Effective Date shall be extended if determined necessary in writing by Grantor and the Andover Director of Planning and Community Development after a vote of such authorization by the Andover Planning Board and the recording of a Certificate of such vote with the Essex North Registry of Deeds. If Grantor does not record the Effective Date Certificate upon the occurrence of any such event, then the Grantee may record the Effective Date Certificate and, in any event, the Effective Date shall be December 31, 2020 unless the Effective Date Certificate has been recorded prior thereto or the December 31, 2020 date has been extended by a Certificate recorded as provided herein.

c. Upon achievement of the Effective Date, either party shall have the right to notify the Escrow Agent of said fact, taking care to notify the other party or the Escrow Agent in writing sent by certified mail, return receipt requested (the "Release Notice").

d. On or before the 7<sup>th</sup> business day following receipt of the Release Notice, the Escrow Agent shall cause and pay for the Certificate to be recorded at the Essex North Registry of Deeds.

e. The Escrow Agent will receive no compensation or reimbursements from the Town of Andover.

#### 5. Escrow Provisions.

a. Escrow Terms. The Escrow Agent hereby acknowledges receipt of the Certificate pursuant to the terms of this Agreement. The Escrow Agent shall hold the Certificate in escrow pursuant to the terms of this Agreement. The Escrow Agent will not have any responsibility with respect to the Certificate other than to hold and release the Certificate in accordance with this Agreement.

b. Escrow Agent Not Disqualified. The parties hereto acknowledge that the Escrow Agent has and continues to act as counsel to Pulte in connection with Riverside Woods and other matters. The parties agree that the Escrow Agent will not be disqualified, by reason of having acted as Escrow Agent, from representing Pulte in this matter or in any dispute which may arise between the parties in connection with this Agreement or Riverside Woods, or any other matter.

c. Duties of the Escrow Agent. The Escrow Agent:

1. shall be obligated only for the performance of such duties as are specifically set forth in this Agreement;

2. shall not be obligated to take any legal or other action hereunder which might in its judgment involve any expense or liability unless it shall have been furnished with indemnification (backed by adequate financial assurances) acceptable to the Escrow Agent;

3. may rely on and shall be protected in acting or refraining from acting upon any written notice, instruction, instrument, statement, request or document furnished to it hereunder and believed by it to be genuine and to have been signed or presented by the proper person, and shall have no responsibility for determining the accuracy thereof; and

4. may consult counsel satisfactory to it, including counsel within its own firm at the Escrow Agent's expense, and the opinion of such counsel given in good faith shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in accordance with the opinion of such counsel.

d. Limitation of Liability. Neither the Escrow Agent nor any of its respective partners, employees or agents shall be liable to anyone for any action taken or omitted to be taken by it or any of its partners, employees or agents hereunder except in the case of gross negligence or willful misconduct. In no event shall the Escrow Agent be liable for indirect or special or consequential damages.

e. Matters Relied on by Escrow Agent. The Escrow Agent shall not be liable for any action taken by it in good faith and believed by it to be authorized or within the rights or powers conferred upon it by any provision hereof, and the Escrow Agent may consult with counsel and shall be fully protected for any action taken or suffered by it hereunder in good faith and in reliance upon the opinion of such counsel. Whenever any Escrow Agent shall be required to take any action with respect to the Certificate, said Escrow Agent may require such certificates, documents and instruments from the parties in interest and/or others as said Escrow Agent may deem necessary or advisable to enable it to discharge its duties hereunder. The Escrow Agent is entitled to rely, in good faith, upon such certificates, documents and instruments which it believes to be genuine as to their validity and effectiveness as well as to the truth and accuracy of any information contained therein.

f. Resignation. The Escrow Agent may at any time resign as Escrow Agent hereunder by giving twenty (20) days prior written notice of resignation to the parties. Prior to the effective date of the resignation as specified in such notice, the parties shall issue to such Escrow Agent a written instruction authorizing redelivery of the Certificate to such Escrow Agent's successor. If such notice is not given, such Escrow Agent may apply to a court of competent jurisdiction for appointment of a successor Escrow Agent.

[Signatures appear on next page]

Signed as a sealed instrument as of the 21<sup>st</sup> day of February, 2017.

PULTE

Pulte Homes of New England LLC



By: \_\_\_\_\_  
Its: Authorized Signatory

ANDOVER:


Inhabitants of the Town of Andover

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

Its Town Manager

ESCROW AGENT:

JOHNSON & BORENSTEIN, LLC.

By:  \_\_\_\_\_  
Mark B. Johnson

# MEMO

**To:** Andover Board of Selectmen  
**From:** Robert Lavoie, Esq, Johnson & Borenstein  
On behalf of Pulte Homes of New England LLC  
**Date:** March 8, 2017

**Subject: Pulte's Request for approval and signature of documents relating to Riverside Woods,** (A 62+ community approved by the Planning Board under Special Permit SP15-01 Special Permit for land at 459 River Road within the Senior Residential Community Overlay District):

- (A) **Open Space to be deeded to Town:** Subsection 8.8.5.7 (and related Escrow Agreement)
- (B) **Age Restriction:** Subsection 8.8.5.8.15 and Special Permit Condition 34
- (C) **Affordability Restriction:** Subsection 8.8.5.8.h
- (D) **Monitoring Agreement:** Subsection 8.8.5.8.j
- (E) **LIP Application to DHCD**

1. In July 2016, Pulte Homes of New England, LLC (Pulte) closed on its purchase of 459 River Road consisting of Proposed Lot 1 and Proposed Lot 2, comprising over 22 acres of land. The Closing marked the culmination of several years of hard work by the Andover Planning Board, and Pulte. An important step was the issuance of the 10/30/15 Planning Board Special Permit SP15-01, under the Town's relatively new amendment to the Zoning Bylaw, creating the Senior Residential Community Overlay District (SRCOD) at the Franciscan Center on River Road.

2. As noted above, there are 4 key documents which under the Zoning Bylaw currently require the review, approval and signature of the Selectmen:

- (A) **Open Space to be deeded to Town:** Subsection 8.8.5.7
- (B) **Age Restriction:** Subsection 8.8.5.8.15 and Special Permit Condition 34
- (C) **Affordability Restriction:** Subsection 8.8.5.8.h
- (D) **Monitoring Agreement:** Subsection 8.8.5.8.j.

In addition, as required by the Department of Housing and Community Development (DHCD), Pulte has proposed that the Selectmen review and approve the following:

- (E) **Local Initiative Program (LIP) Application to DHCD.**

3. **Open Space to be deeded to Town:** Earlier this year, Pulte agreed to convey the 7.207 acre Open Space Parcel (Proposed Lot 2) to the Town, in the care, custody and control of the Conservation Commission. The exact wording of the proposed Quitclaim Deed has been worked out to the satisfaction of Town Counsel Thomas Urbelis. On Tuesday 2/21/17, Pulte appeared before the Conservation Commission who approved the form and substance of the proposed Open Space Deed, and proceeded to sign the same.

This is been a pre-condition of the Board of Selectmen. The Conservation Commission also voted to approve and recommend the use of an Escrow Agreement under which the “Certificate of Effective Date” would be held and available for recording at the required time, independent of Pulte. The exact wording of the proposed Escrow Agreement has been worked out to the satisfaction of Town Counsel Thomas Urbelis.

**4. Age Restriction, Affordability Restriction, and Monitoring Agreement:** Again, in compliance with the Senior Residential Community Overlay District zoning requirements and the 10/30/15 Planning Board Special Permit SP15-01, our office and Town Counsel Thomas Urbelis have worked to achieve mutually satisfactory Agreements which are now ready for the Board of Selectmen’s review and approval. The Planning Board voted to approve the Monitoring Agreement and the Age Restriction at their 1/24/17 meeting, and on 2/28/17 the Planning Board approved the Affordability Restriction.

**5. The Local Initiative Program (LIP) Application:** The LIP Application to DHCD is in the standard format required by the Department of Housing and Community Development (DHCD), and the Board of Selectmen have indicated that they are comfortable with the proposal, having reviewed, approved and signed various similar LIP applications for other projects having affordability components. Pulte’s Riverside Woods has been approved by the Planning Board so as to ensure that the maximum 21 of Riverside Woods’ 30 Affordable Senior Housing units will be counted in Andover’s favor on the State’s Affordable Housing Inventory.

**6. Requested Action:** Consequently, the following Board of Selectmen action is respectfully requested by Pulte:

#### **Motion that the Board of Selectmen**

- (a) Accept the donation by Pulte of the Open Space, approve the format of the proposed Quitclaim Deed, and authorize the signing of the same as well as authorize the Town Manager to sign the proposed Escrow Agreement;
- (b) Approve the format of the proposed Declaration of Age Restriction, and authorize the signing of the same;
- (c) Approve the format of the proposed Local Affordability Restriction and authorize the signing of the same;
- (d) Approve the format of the proposed Monitoring Agreement and authorize the signing of the same by the Town Manager; and
- (e) Approve the format of the proposed LIP, and authorize the signing of the same by the Board Chair and the Town Manager as applicable.

(1-10-17)

**DECLARATION OF  
AGE RESTRICTION COVENANT**

This Age Restriction Covenant (the "**Covenant**") is made as of the \_\_\_\_ day of January, 2017 by Pulte Homes of New England, LLC, a Michigan Corporation of 115 Flanders Road, Westborough, MA 01581 ("**Pulte**" or the "**Declarant**"), for the benefit of the Town of Andover, a Massachusetts municipal corporation acting by and through its Planning Board (the "**Planning Board**") with a usual place of business at Andover Town Office building at 36 Bartlet Street, Andover MA 01810 ("**Andover or Town**"), with respect to the following:

**RECITALS**

WHEREAS, Pulte is the owner of that certain parcel of land located in Andover, Massachusetts, known as 459 River Road, which constitutes a portion of Andover Assessor's Map 228, Lot 4-5 as more particularly described in a Deed recorded herewith at Essex North District Registry of Deeds and being more particularly shown as Lot 1 (the "**Property**") on a Plan entitled "Plan of Land -- Pulte Homes -- dated 03/08/16 prepared by Control Point Associates, Inc. (the "**2016 ANR Plan**") recorded with Essex North District Registry of Deeds as Plan #17443;

WHEREAS, Pulte intends to construct a senior housing residential development on the Property to be known as "**Riverside Woods**" (the "**Project**");

WHEREAS, the Project is to consist of a Condominium Project including a total number of two hundred (200) condominium units (the "**Units**");

WHEREAS, the Andover Planning Board, following notice and public hearing, approved a Special Permit pursuant to Section 8.8 of the Andover Zoning Bylaw under the Senior Residential Community Overlay District, namely Decision: SP 15-01 which was issued on October 30, 2015 and filed that date with the Andover Town Clerk's Office and is recorded with Essex North District Registry of Deeds in Book 14713, Page 278 (the "**Special Permit**");

WHEREAS, the Special Permit In Condition #34 requires that the units in Riverside Woods be designated as "Age Restricted Dwelling Units" with the restriction that each unit be occupied by at least one resident who is sixty-two (62) years of age or older and that no resident of a dwelling unit shall be under the age of 18;

WHEREAS, the Town and the Declarant desire for the Declarant to make and record a Restrictive Covenant on the Property to comply with the age restrictions on the Project required by the Special Permit; and

WHEREAS, Pulte intends to submit the Property to the condominium form of ownership and intends to record a Condominium Master Deed (the "Master Deed") under the provisions of Massachusetts Gen. Laws Chapter 183A.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, and in order to comply with the provisions of Special Permit Condition 34, Pulte does, for itself and its successors and assigns hereby forever covenant and agree for the benefit of the Town, acting through its Planning Board, and for the benefit of all future owners of the Property and Units within Riverside Woods as follows:

1. In accordance with Condition 34 of the Special Permit, Pulte hereby forever declares, covenants and agrees for the benefit of the Town, acting through its Planning Board, and for the benefit of all future owners of the Property and all Units within Riverside Woods, that all Units within Riverside Woods regardless of form of ownership or whether or not the Units are condominium units or held in any other form of ownership, shall require at least one resident to have attained the age of 62 and that no resident shall be under the age of 18.

2. The Master Deed for any Condominium to be established at Riverside Woods shall provide that each of the Units shall be age restricted and must be occupied by one or more persons age 62 and over and that no resident shall be under the age of 18. The Trustee of the Condominium Trust will establish and adhere to policies to carry out the above-referenced age restriction. The age restriction language set forth in the Master Deed and Declaration of Trust, which shall govern the Condominium, shall comply with requirements of Massachusetts Gen. Law Chapter 151B and with the Housing For Older Persons Act of 1995 (HOPA) of the Federal Fair Housing Act. The Master Deed shall be submitted to the Town, acting by its Planning Board, for approval of the age restriction language before recording of the Master Deed and no amendments to the Master Deed relating to the age restriction language shall be effective until approved by the Town, acting by its Planning Board.

3. Subject to the foregoing, the Declarant hereby reserves the right under this Covenant to record a Master Deed (and to amend said Master Deed) so that same is consistent with 42 USCS Section 3607 (b)(2)(c) and the rules issued by the Secretary of HUD, is consistent with applicable Massachusetts law and regulations regarding the age-restriction of residential real estate, and/or is consistent the terms of the Special Permit.

4. Pulte does hereby declare, represent, covenant and warrant as follows:

(a) Pulte (i) is a limited liability company duly organized under the laws of the State of Michigan and is qualified to transact business under the laws of the

Commonwealth of Massachusetts, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted, and (iii) has the full legal right, power and authority to execute and deliver this Declaration of Restrictive Covenant.

(b) The execution and performance of this Covenant by Pulte (i) will not violate or, as applicable, has not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body, and (ii) will not violate or, as applicable, has not violated any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which the is a party or by which it or the Project is bound, and (iii) will not result in the creation or imposition of any prohibited encumbrance of any nature.

(c) Pulte will, at the time of the delivery and recording of this Covenant, have good and marketable title to the premises constituting the Project free and clear of any lien or encumbrance which would prevent use of the Property for the Project or which would prevent the execution and recording of this Covenant.

(d) There is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of Pulte, threatened against or affecting it, or any of its properties or rights, which, if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by this Covenant).

5. This Covenant shall be governed by the laws of the Commonwealth of Massachusetts. Any amendments to this Covenant must be in writing and consented to in writing by Pulte and the Town acting by its Planning Board. The invalidity of any clause, part, or provision of this Covenant shall not affect the validity of the remaining portions hereof.

6. The Declarant agrees to file this Covenant with the Essex North Registry of Deeds, and to forward recorded copies of this Covenant to the Planning Board within thirty (30) days of recording.

7. This Covenant shall be binding upon and inure to the benefit of the owner of the Property, the owners of Units in the proposed condominium, and any successors in interest to the Property, it being the express intention and understanding and agreement that this Declaration of Age Restriction Covenant shall constitute a covenant running with the land. Each and all of the covenants and provisions of the Covenant shall be incorporated by reference into and shall be referenced in all future deeds for the Property and all Units in the Condominium.

8. This Covenant shall also be and is for the benefit of the Town, its successors and assigns.

9. This Covenant shall run with the Property in perpetuity from the date of recordation in the Essex North District Registry of Deeds and shall be binding upon Declarant, Declarant's successors and assigns, and any other party having an ownership interest in

said Property or claiming to have an interest with respect to said Property as tenants, invitees, licenses or otherwise, and all of the respective heirs, successors, grantees, mortgagees, assigns, agents, contractors, subcontractors and employees of the foregoing. This Covenant is hereby intended and declared to be a covenant in perpetuity held by a governmental body as defined in and with the benefit of M.G.L. c. 184, § 32 and no re-recordation of this Declaration of Covenant under G.L. c. 184, §§23-30 or any other law shall ever be necessary in order to maintain the full legal effect and authority thereof and Declarant and its successors and assigns, hereby waive all their legal right to and shall forego any action in law or equity of any kind whatsoever attempting to contest the validity of any provision of this Covenant and shall not, in any enforcement action, raise the invalidity of any provision of this Covenant.

10. This Covenant shall not be modified, amended, changed, or terminated or waived without the consent of the Declarant (or Declarant's successor) and the consent of the Town. The Declarant as well as the Town, may enforce and, if necessary, extend this Covenant in accordance with applicable law. Declarant agrees for itself, and its heirs, successors and assigns to execute and record such notices of restriction as are required to extend this Covenant in perpetuity in accordance with applicable law. The Town is hereby declared to be a benefited party to and a holder of this Covenant and the Declarant hereby appoints the Town as its attorney-in-fact to execute, acknowledge, deliver and record any such notice or instrument on its and/or their behalf, including, but not limited to any notice or instrument which may at any time be necessary to maintain this Covenant in effect in perpetuity. Without limiting the foregoing, the Declarant and its successors and assigns agree to execute any such notices and instruments upon request of the Town.

11. The Town shall have the authority and right to enforce this Covenant as a benefited party. The Town shall have the right to enter the Property in a reasonable manner and at reasonable times, for the purposes of (i) inspecting the Property to determine compliance with this Declaration of Covenant; (ii) enforcing this Declaration of Covenant; and (iii) taking any other action which may be necessary or appropriate. The Town shall have the right to bring proceedings at law or equity against any party or parties violating or attempting to violate the terms of this Covenant to enjoin them from so doing and to cause any such violation to be remedied, after providing written notice to such party or parties and the Town shall recover its attorney's fees and costs in any action of enforcement.

12. If any court or other tribunal of competent jurisdiction determines that any provision of this Covenant is invalid or unenforceable, such provision shall be deemed to have been modified automatically to conform to the requirements for validity and enforceability as determined by such court or tribunal. In the event the provision invalidated is of such a nature that it cannot be so modified, the provision shall be deemed deleted from this instrument as though it had never been included herein. In either case, the remaining provisions of this instrument shall remain in full force and effect.

13. Any election by the Town as to the manner and timing of its right to enforce this Covenant or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.

14. Declarant and Declarant's successors and assigns, including all subsequent owners of the Property or portions thereof, shall inform a potential purchaser in writing of this Declaration of Covenant and shall incorporate this Declaration of Covenant, in full or by reference, into all deeds, easements, mortgages, leases, licenses, occupancy agreements or any other instrument of transfer by which an interest in and/or a right to use the Property or any portion thereof is conveyed.. Any such deed purporting to convey any portion of the Property or interest therein without including this Restriction in full or by reference shall be deemed and taken to include said Restriction in full even though said Restriction is not expressly described or referenced therein.

15. No amendment or release of this Covenant shall be effective unless it has been approved in writing by the Town acting by its Planning Board (hereinafter the "Town Approval") and said amendment or release and the requisite Town Approval has been recorded with the appropriate Registry of Deeds and/or Land Registration Office.

16. Pulte intends, declares and covenants on behalf of itself and its successors and assigns (i) that this Covenant and the covenants, agreements and restrictions contained herein shall be and are covenants running with the land, encumbering the Project for the duration of this Covenant, and are binding upon Pulte's successors in title, (ii) are not merely personal covenants of Pulte, and (iii) shall bind Pulte, its successors and assigns and inure to the benefit of Andover and its successors and assigns for the for the duration of this Covenant. Pulte hereby agrees that any and all requirements of the laws of the Commonwealth of Massachusetts required to be satisfied in order for the provisions of this Covenant to constitute restrictions and covenants running with the land shall be deemed to be satisfied in full and that any requirements of privity of estate are also deemed to be satisfied in full.

17. Pulte represents and warrants that it has not mortgaged the Property and does not require the consent of any mortgagees of the Project to the execution and recording of this covenant.

[Signature page follows]

Executed as a sealed instrument as of the date first above written.

Pulte Homes of New England, LLC

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

Its Authorized Signatory

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_, Authorized Signatory for Pulte Homes of New England, LLC, proved to me through satisfactory evidence of identification, which was that he is \_\_\_\_\_ personally known to me \_\_\_\_\_ to be the person whose name is signed on the preceding or attached document and acknowledged to me that he signed it voluntarily for its stated purpose, and that he has the authority to sign in that capacity.

\_\_\_\_\_  
(Official Signature and Seal of Notary)

My Commission Expires:

APPROVAL OF BOARD OF SELECTMEN

We, the undersigned Board of Selectmen of the Town of Andover, Massachusetts accept the foregoing Age Restriction Covenant for the benefit of the Town of Andover.

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

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_ before me, the undersigned notary public, personally appeared \_\_\_\_\_, member of the ~~Norfolk-Andover~~ Board of Selectmen, who proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily, in the capacity indicated, and that he has the authority to sign in that capacity.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

**AFFORDABLE HOUSING MONITORING AGREEMENT  
FOR  
RIVERSIDE WOODS IN ANDOVER, MA**

This Affordable Housing Monitoring Agreement (the "Agreement") is made this \_\_\_\_\_ day of January, 2016 by and among Pulte Homes of New England, LLC a Michigan limited liability company, having an address at 115 Flanders Road, Suite 200, Westborough, MA 01581, and its successors and assigns (the "Developer"), Andover Community Trust, Inc., having an address at Two Dundee Park, Suite B02A, P.O. Box 5038, Andover MA 01810 (the "Monitoring Agent") and the Town of Andover (the "Municipality").

WITNESSETH:

WHEREAS, the Municipality has adopted a Senior Residential Community Overlay District (the "Approved District") in Section 8.8 of the Municipality's Zoning Bylaw (the "Bylaw");

WHEREAS, the Developer intends to construct a senior housing development known as Riverside Woods at a 23.92 acre site on River Road in the Municipality known as 459 River Road as more particularly described in the Deed recorded at Essex North District Registry of Deeds (the "Registry") Book 14713, Page 190 and being more particularly shown as Lot 1 on Plan entitled "Plan of Land – Pulte Homes – dated 03/08/16 prepared by Control Point Associates and recorded at the Registry as Plan #17443" (the "Project");

WHEREAS, the Project is subject to a Regulatory Agreement between the Department of Housing and Community Development ("DHCD") and the Developer (the "Regulatory Agreement");

WHEREAS, the Approved District covers the entire 23.92 acre site. The Project is located within the Approved District. The Project shall consist of a total number of 200 for-sale condominium units (the "Units") and pursuant to the requirements of the Bylaw, fifteen percent (15%) of the Units (30 units) will be set aside as affordable housing units for seniors who qualify as low, moderate, or upper-moderate income persons as specified in the Bylaw (the "Affordable Units") and shall be subject to resale restrictions as defined in the Declaration of Affordable Housing Restriction and Deed Rider attached to the Regulatory Agreement (the "Affordability Requirement");

WHEREAS, the Developer has received a Special Permit Approval Decision for the Project from the Municipality's Planning Board, which decision is recorded at the Registry in Book 14713, Page 278 (the "Special Permit Decision");

WHEREAS, pursuant to the requirements of the Bylaw, for the purposes of ensuring that the Developer is abiding by its obligations relative to the Affordable Units pursuant to the

Special Permit Decision, a Monitoring Agent shall be assigned by the Planning Board and a Monitoring Agreement shall be provided;

WHEREAS, pursuant to the Special Permit Decision, the Andover Community Trust has been assigned by the Planning Board as the Monitoring Agent to perform certain administration, monitoring and enforcement services regarding compliance of the Project's Affordable Units.

NOW, THEREFORE, in consideration of the agreements and covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

**1. Monitoring Services.** Monitoring Agent shall monitor the compliance of the Project with the Affordability Requirement, as more fully described herein.

(a) Affordability Requirement.

(i) Initial Sales. The Developer agrees to deliver to the Monitoring Agent the income, asset and age certifications, deeds and Affordable Housing Restrictions with respect to initial sales of Affordable Units as required under the Regulatory Agreement (the "Initial Sales Data"). The Monitoring Agent agrees to review the Initial Sales Data and determine the substantive compliance of the Project with the Affordability Requirement in accordance with the rules of DHCD. The Monitoring Agent shall also ensure substantive compliance with the approved Marketing Plan and lottery process. Upon completion of its review of Initial Sales Data, the Monitoring Agent shall deliver to DHCD and the Municipality a copy of such data together with the Monitoring Agent's determination of whether the Affordability Requirement has been met. The DHCD shall make the final determination of whether the Affordability Requirement has been met and shall notify the Municipality of its determination.

(ii) Resales. The Monitoring Agent also agrees to monitor resales of Affordable Units (including review of income and asset certifications, deeds, Deed Riders, and Declaration of Affordable Housing Restriction and Regulatory Agreement) for compliance with the terms of the Declaration of Affordable Housing Restriction, Deed Rider and Regulatory Agreement, and issuance of certifications, as appropriate, in connection with approval of resales. The Monitoring Agent shall also locate and select, or provide assistance to the Municipality in locating and selecting, Eligible Purchasers, including without limitation, ensuring compliance with the approved Marketing Plan and lottery process.

On resale of an Affordable Unit, at the request of the purchaser, the Monitoring Agent shall, if necessary under the terms of the Declaration of Affordable Housing Restriction, Deed Rider and Regulatory Agreement, issue a new Resale Price Certificate recalculating the Resale Price Multiplier in accordance with the terms of the Declaration of Affordable Housing Restriction and Regulatory Agreement and Deed Riders, and the purchaser may record the new Resale Price Certificate immediately after the recording of the deed to such Affordable Unit. The Resale Price Multiplier set forth in the most recently recorded Resale Price Certificate shall apply to each subsequent resale of the Affordable Unit.

(b) Annual Reports. The Monitoring Agent agrees to prepare and deliver annually a report (the "Annual Compliance Report") to the Municipality on compliance of the Project with the Affordability Requirement. The Annual Compliance Report shall indicate the extent of noncompliance with the relevant reporting and/or substantive requirements, describe efforts being made by the Developer to remedy such noncompliance and, if appropriate, recommend possible enforcement action by the Monitoring Agent and/or Municipality against the Developer. The Monitoring Agent shall deliver the Annual Compliance Report within one hundred twenty (120) days of the end of each calendar year during the term of this Agreement.

(c) Supplemental Monitoring Services. The Monitoring Agent shall provide reasonable supplemental monitoring on its own initiative in order to ensure to the extent practicable (i) the compliance by the Developer with the Affordability Requirement, and (ii) the compliance by the owners of the Affordable Units with the requirements of the Declaration of Affordable Housing Restriction, Deed Rider and the Regulatory Agreement, including without limitation the owner-occupancy requirement and the Resale Restrictions (including recalculating the Resale Price Multiplier, if necessary). The services hereunder shall also include considerations of requests for refinancing, approval of capital improvements, further encumbrances and leasing an Affordable Unit. The services hereunder shall not include any construction monitoring. The services hereunder shall include follow-up discussions with the Developer and/or owners of the Affordable Units, if appropriate, after an event of noncompliance. The Monitoring Agent shall be entitled to a reasonable fee for supplemental monitoring services as set forth in the Homebuyer Disclosure Statement executed by the buyer of the Affordable Unit.

2. **Developer Obligations.** The Developer agrees to deliver to the Monitoring Agent the income, asset and age certifications, deeds and

Affordable Housing Restrictions with respect to initial sales of Affordable Units as required under the Declaration of Affordable Housing Restriction, Deed Rider and the Regulatory Agreement on a timely basis.

3. **Monitoring Services Fee.** The Monitoring Agent shall receive a fee of \$22,500 from the Developer. Such fee shall constitute payment for the services of the Monitoring Agent with respect to compliance by the Developer with the Affordability Requirement in connection with initial sales of the Affordable Units. Such fee shall be due and payable upon invoice from the Monitoring Agent according to the following schedule:
  - \$6000 at the time of execution of the Agreement;
  - \$4500 at the time of commencement of Building 2 construction
  - \$6000 at the time of commencement of Building 3 construction
  - \$6000 at the time of commencement of Building 4 construction.

As provided in the Regulatory Agreement and Deed Rider for each Affordable Unit, the Monitoring Agent shall receive a Resale Fee of up to two and one-half percent (2.5%) of the product of the Base Income Number (at the time of resale) multiplied by the Resale Price Multiplier, to be paid by the seller of the Affordable Unit at each closing as a condition precedent to closing, for the services with respect to monitoring each subsequent sales transaction for compliance with the Resale Restrictions and the other terms of the Declaration of Affordable Housing Restriction, Deed Rider and Regulatory Agreement. Such fee shall be payable for all transfers of Affordable Units, including those to an Eligible Purchaser or any other purchaser. If the Monitoring Agent's fee is not paid at the time of closing, the Monitoring Agent shall be entitled to payment from the purchaser of the Affordable Unit and to bring an action and seek an attachment of the interest of the purchaser in the Affordable Unit. Neither the Project Administrator nor the Municipality shall have any responsibility for payment of any fee to Monitoring Agent hereunder.

4. **Enforcement Services.** In the event of serious or repeated violations of the substantive or reporting requirements of the Declaration of Affordable Housing Restriction, Deed Rider and Regulatory Agreement (with respect to the Affordability Requirement) or a failure by the Developer to take appropriate actions to cure a default under the Declaration of Affordable Housing Restriction, Deed Rider and Regulatory Agreement (with respect to the Affordability Requirement), the Monitoring Agent shall have the right, with the prior consent of the Municipality, to take appropriate enforcement action against the Developer, including, without limitation, legal action to compel the Developer to comply with the Affordability Requirement. The Regulatory Agreement provides for payment by the Developer of fees and expenses (including legal fees) of the Monitoring Agent in the event enforcement action is taken against the Developer thereunder and grants to the Monitoring Agent a lien on the Project, junior

to the lien of any institutional holder of a first mortgage on the Affordable Unit, to secure payment of such fees and expenses. The Monitoring Agent shall be entitled to seek recovery of its fees and expenses incurred in enforcing the Regulatory Agreement, the Deed Rider and the Declaration of Affordable Housing Restriction against the Developer and to assert a lien on the Project to secure payment by the Developer of such fees and expenses.

In the event of a violation of the provisions of the Declaration of Affordable Housing Restriction, Deed Rider or Regulatory Agreement, the Monitoring Agent shall have the right, with the prior consent of the Project Administrator, to take appropriate enforcement action against the unit owner or the unit owner's successors in title, including, without limitation, legal action to compel the unit owner to comply with the requirements of the relevant Affordable Housing Restriction. The Declaration of Affordable Housing Restriction shall provide for payment by the unit owner of fees and expenses (including legal fees) of the Monitoring Agent in the event enforcement action is taken against the unit owner thereunder and shall grant to the Monitoring Agent a lien on the unit, junior to the lien of any institutional holder of a first mortgage on the unit to secure payment of such fees and expenses. The Monitoring Agent shall be entitled to seek recovery of its fees and expenses incurred in enforcing the Declaration of Affordable Housing Restriction, Deed Rider or Regulatory Agreement against the unit owner and to assert a lien on the relevant unit to secure payment by the unit owner of such fees and expenses.

The Monitoring Agent shall not be entitled to seek any compensation or reimbursement from DHCD or the Municipality in connection with the enforcement services under this Section, it being understood that the Monitoring Agent shall look solely to the reimbursement rights described above for payment of the Monitoring Agent's costs and expenses.

5. **Term.** The term and the monitoring services provided under this Agreement, continue for so long as there is any Affordable Unit subject to the Declaration of Affordable Housing Restriction, Deed Rider or Regulatory Agreement.
6. **Responsibility of Monitoring Agent.** The Monitoring Agent shall not be held liable for any action taken or omitted under this Agreement so long as it shall have acted in good faith and without gross negligence.
7. **Successor Monitoring Agent/Further Delegation/Conflict of Interest.**
  - (a) This Agreement is terminable at will by the Monitoring Agent or the Municipality with sixty (60) days notice to the other parties. In addition, this Agreement is terminable immediately by the Municipality should the Monitoring Agent be dissolved or become incapable of fulfilling its

obligations during the term of this Agreement. In the event of termination of this Agreement, the Municipality shall promptly appoint a successor monitoring agent to serve as Monitoring Agent for the remaining term of this Agreement.

(b) The Monitoring Agent shall not delegate all or any portion of its obligations hereunder without the prior approval of the Municipality. If the Monitoring Agent performs any functions for the Developer, such as running the lottery, which would be subject to oversight by the Monitoring Agent, the Monitoring Agent must delegate oversight of such functions to a Municipality-approved entity.

8. **Indemnity.** The Developer agrees to indemnify and hold harmless the Monitoring Agent, DHCD and the Municipality against all damages, costs and liabilities, including reasonable attorney's fees, asserted against the Monitoring Agent, DHCD or the Municipality by reason of its relationship with the Project under this Agreement and not involving the Monitoring Agent, DHCD or the Municipality acting in bad faith and with gross negligence.
9. **Applicable Law.** This Agreement, and the application or interpretation hereof, shall be governed by the laws of The Commonwealth of Massachusetts.
10. **Binding Agreement.** This Agreement shall be binding on the parties hereto, their heirs, executors, personal representatives, successors and assigns.
11. **Headings.** All paragraph headings in this Agreement are for the convenience of reference only and are not intended to qualify the meaning of the paragraph.
12. **Third-Party Beneficiaries.** The DHCD and the Municipality shall be entitled to enforce this Agreement and may rely on the benefits of this Agreement.
13. **Entire Agreement.** This Agreement supersedes all prior agreements between the parties with respect to the Project, whether oral or written, including without limitation, all correspondence between the parties and between counsel for their respective parties. This Agreement constitutes the sole and entire agreement between the parties hereto with respect to the subject transaction, and the rights, duties, and obligations of the parties with respect thereto. In executing this Agreement, the Monitoring Agent acknowledges that the Monitoring Agent is not relying on any statement, representation, warranty, covenant or agreement of any kind made by the

Developer, DHCD or the Municipality or any employee or agent of any of the foregoing, except for the agreements set forth herein.

- 14. Definitions.** Any capitalized term used and not defined herein shall have the same meaning as set forth in the Regulatory Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first written above.

Developer,  
Pulte Homes of New England, LLC

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

Municipality,  
Town of Andover

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

Monitoring Agent,  
Andover Community Trust, Inc.

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

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF \_\_\_\_\_, Ss. \_\_\_\_\_, 201\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_ of \_\_\_\_\_, proved to me through satisfactory evidence of identification, which were Mass. Drivers License to be the person whose name is signed on the preceding document, as \_\_\_\_\_ [Developer], and acknowledged to me that he/she signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
Print Name:  
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF \_\_\_\_\_, Ss. \_\_\_\_\_, 201\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_ of \_\_\_\_\_, proved to me through satisfactory evidence of identification, which were Mass. Drivers License to be the person whose name is signed on the preceding document, as \_\_\_\_\_ [Municipality], and acknowledged to me that he/she signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
Print Name:  
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF \_\_\_\_\_, Ss. \_\_\_\_\_, 201\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_ of \_\_\_\_\_, proved to me through satisfactory evidence of identification, which were Mass. Drivers License to be the person whose name is signed on the preceding document, as \_\_\_\_\_ [Monitoring Agent], and acknowledged to me that he/she signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
Print Name:  
My Commission Expires:

Board of Selectmen Meeting on March 13, 2017

MOTION

I move to accept a gift of funds in the amount of \$71,677.00 from the Andover Little League, Inc. for the purpose of the purchase and installation of lights at Deyermond Field.

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**DARGOONIAN BROS. FARM INC.**

978-475-1918  
ddaroon11@gmail.com

42 Blanchard St  
Andover, MA  
01810

February 22, 2017

Board of Selectman  
Town of Andover  
36 Bartlett Street  
Andover, MA 01810

FEU24735 am10:16

Dear Selectman,

Thomas H Dargoonian and Dena L Dargoonian of Dargoonian Bros Farm Inc, of Andover would like to list their business property for sale. The property in question is under the laws of Chapter 61A. This allows the town for first right of refusal.

We are requesting either the purchase or the release of the property at 0 Blanchard St, Parcel # 199-0050-0000, and 30 Blanchard St, Parcel # 199-002A-0000.

We would like to have it put on the calendar for a decision as soon as possible. We are heading into our spring growing season, which could cause some financial confusion with listing it.

Thank you

Sincerely yours,



Thomas H Dargoonian

Owner/President

Cell 978-807-3784

Sincerely yours,



Dena L Dargoonian

Owner/Clerk

Cell 978-807-6829

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**Part I** ADMINISTRATION OF THE  
GOVERNMENT

**Title IX** TAXATION

**Chapter** ASSESSMENT AND TAXATION OF

**61A** AGRICULTURAL AND  
HORTICULTURAL LAND

**Section** SALE FOR OR CONVERSION TO  
**14** RESIDENTIAL OR COMMERCIAL  
USE; NOTICE OF INTENT TO CITY  
OR TOWN; OPTION TO PURCHASE;  
ASSIGNMENT OF OPTION

Section 14. Land taxed under this chapter shall not be sold for, or converted to, residential, industrial or commercial use while so taxed or within 1 year after that time unless the city or town in which the land is located has been notified of the intent to sell for, or to convert to, that other use.

The discontinuance of agricultural or horticultural use shall not, in itself, for the purposes of this section, be considered a conversion. Specific use of land for a residence for the owner, the owner's spouse or a parent, grandparent, child, grandchild, or brother or sister of the owner, or surviving husband or wife of any deceased such relative, or for living quarters for any persons actively employed full-time in the agricultural or horticultural use of such land, shall not be a conversion for the purposes of this section, and a certificate of the board of assessors, recorded with the

registry of deeds, shall conclusively establish that particular use.

Any notice of intent to sell for other use shall be accompanied by a statement of intent to sell, a statement of proposed use of the land, the location and acreage of land as shown on a map drawn at the scale of the assessors map in the city or town in which the land is situated, and the name, address and telephone number of the landowner.

Any notice of intent to sell for other use shall be accompanied by a certified copy of an executed purchase and sale agreement specifying the purchase price and all terms and conditions of the proposed sale, which is limited to only the property classified under this chapter, and which shall be a bona fide offer as described below.

Any notice of intent to sell for other use shall also be accompanied by any additional agreements or a statement of any additional consideration for any contiguous land under the same ownership, and not classified under this chapter, but sold or to be sold contemporaneously with the proposed sale.

For the purposes of this chapter, a bona fide offer to purchase shall mean a good faith offer, not dependent upon potential changes to current zoning or conditions or contingencies relating to the potential for, or the potential extent of, subdivision of the property for residential use or the potential for, or the potential extent of development of the property for industrial or commercial use, made by a party unaffiliated with the landowner for a fixed consideration payable upon delivery of the deed.

Any notice of intent to convert to other use shall be accompanied by a statement of intent to convert, a statement of proposed use of the land, the location and acreage of land as shown on a map drawn at the scale of the assessors map in the city or town in which the land is situated, the name, address and telephone number of the landowner and the landowner's

attorney, if any.

The notice of intent to sell or convert shall be sent by the landowner by certified mail or hand delivered to the mayor and city council of a city, or board of selectmen of a town, and in the case of either a city or a town, to its board of assessors, to its planning board and conservation commission, if any, and to the state forester.

A notarized affidavit that the landowner has mailed or delivered a notice of intent to sell or convert shall be conclusive evidence that the landowner has mailed the notice in the manner and at the time specified. Each affidavit shall have attached to it a copy of the notice of intent to which it relates.

The notice of intent to sell or convert shall be considered to have been duly mailed if addressed to the mayor and city council or board of selectmen in care of the city or town clerk; to the planning board and conservation commission if addressed to them directly; to the state forester if addressed to the commissioner of the department of conservation and recreation; and to the assessors if addressed to them directly.

If the notice of intent to sell or convert does not contain all of the material described above, then the town or city, within 30 days after receipt, shall notify the landowner in writing that notice is insufficient and does not comply.

For a period of 120 days after the day following the latest date of deposit in the United States mail of any notice which complies with this section, the city or town shall have, in the case of intended sale, a first refusal option to meet a bona fide offer to purchase the land.

In the case of intended or determined conversion not involving sale, the municipality shall have an option to purchase the land at full and fair market value to be determined by an impartial appraisal performed by a

certified appraiser hired at the expense of the municipality or its assignee, the original appraisal to be completed and delivered to the landowner within 30 days after the notice of conversion to the municipality. In the event that the landowner is dissatisfied with the original appraisal, the landowner may, at the landowner's expense, contract for a second appraisal, to be completed within 60 days after the delivery of the notice to convert. If, after completion of the second appraisal, the parties cannot agree on a consideration, the parties will contract with a mutually acceptable appraiser for a third appraisal whose cost will be borne equally by both parties. The third appraisal shall be delivered to both parties within 90 days after the notice of conversion to the municipality and shall be the final determination of consideration. Upon agreement of a consideration, the city or town shall then have 120 days to exercise its option. During the appraisal process, the landowner may revoke the intent to convert at any time and with no recourse to either party.

The option may be exercised only after a public hearing followed by written notice signed by the mayor or board of selectmen, mailed to the landowner by certified mail at the address that is specified in the notice of intent. Notice of public hearing shall be given in accordance with section 23B of chapter 39.

The notice of exercise shall also be recorded at the registry of deeds and shall contain the name of the record owner of the land and description of the premises adequate for identification of them.

The notice to the landowner of the city or town's election to exercise its option shall be accompanied by a proposed purchase and sale contract or other agreement between the city or town and the landowner which, if executed, shall be fulfilled within a period of not more than 90 days after the date the contract or agreement, endorsed by the landowner, is returned

by certified mail to the mayor or board of selectmen, or upon expiration of any extended period that the landowner has agreed to in writing, whichever is later.

At the public hearing or a further public hearing, the city or town may assign its option to a nonprofit conservation organization or to the commonwealth or any of its political subdivisions under the terms and conditions that the mayor or board of selectmen may consider appropriate. Notice of public hearing shall be given in accordance with section 23B of chapter 39.

The assignment shall be for the purpose of maintaining no less than 70 per cent of the land in use as forest land as defined in section 1, as agricultural and horticultural land as defined in sections 1 and 2 of chapter 61A or as recreation land as defined in section 1 of chapter 61B, and in no case shall the assignee develop a greater proportion of the land than was proposed by the developer whose offer gave rise to the assignment. All land other than land that is to be developed shall then be bound by a permanent deed restriction that meets the requirements of chapter 184.

If the first refusal option has been assigned to a nonprofit conservation organization or to the commonwealth or any of its political subdivisions as provided in this section, the mayor or board of selectmen shall provide written notice of assignment to the landowner.

The notice of assignment shall state the name and address of the organization or agency of the commonwealth which will exercise the option in addition to the terms and conditions of the assignment. The notice of assignment shall be recorded with the registry of deeds.

Failure to record either the notice of exercise or the notice of assignment within the 120 day period shall be conclusive evidence that the city or town has not exercised its option.

If the option has been assigned to a nonprofit conservation organization or to the commonwealth or any of its political subdivisions, the option may be exercised by the assignee only by written notice to the landowner signed by the assignee, mailed to the landowner by certified mail at the address that is specified in the notice of intent. The notice of exercise shall also be recorded with the registry of deeds and shall contain the name of the record owner of the land and description of the premises adequate for identification of them.

The notice of exercise to the landowner shall be accompanied by a proposed purchase and sale contract or other agreement between the assignee and landowner which, if executed, shall be fulfilled within a period of not more than 90 days, or upon expiration of any extended period the landowner has agreed to in writing, from the date the contract or agreement, endorsed by the landowner, is returned by certified mail to the assignee.

During the 120 day period, the city or town or its assignees, shall have the right, at reasonable times and upon reasonable notice, to enter upon the land for the purpose of surveying and inspecting the land, including, but not limited to, soil testing for purposes of Title V and the taking of water samples.

The city or town or its assignee shall have all rights assigned to the buyer in the purchase and sale agreement contained in the notice of intent.

If the city or town elects not to exercise the option, and not to assign its right to exercise the option, the city or town shall send written notice of nonexercise, signed by the mayor or board of selectmen, to the landowner by certified mail at the address that is specified in the notice of intent. The notice of nonexercise shall contain the name of the owner of record of the land and description of the premises adequate for identification of them

and shall be recorded with the registry of deeds.

No sale or conversion of the land shall be consummated until the option period has expired or the notice of nonexercise has been recorded with the registry of deeds, and no sale of the land shall be consummated if the terms of the sale differ in any material way from the terms of the purchase and sale agreement which accompanied the bona fide offer to purchase as described in the notice of intent to sell except as provided in this section.

This section shall not apply to a mortgage foreclosure sale, but the holder of a mortgage shall, at least 90 days before a foreclosure sale, send written notice of the time and place of the sale to the parties in the manner described in this section for notice of intent to sell or convert, and the giving of notice may be established by an affidavit as described in this section.