DRAFT FOR POLICY DEVELOPMENT PURPOSES ONLY

Rev. 2/26/20

LAND DISPOSITION AGREEMENT

By and Between

THE TOWN OF ANDOVER

and

_____

Dated: _____

Town Yard Property
Buxton Court and Lewis Street
Andover, Massachusetts

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TABLE OF CONTENTS

Page

ARTICLE 1 RECITALS....2

ARTICLE 2 AGREEMENT TO PURCHASE AND SELL....2

Section 2.01 Purchase Price; Deposits....2
Section 2.02 Deed....2
Section 2.03 Pre-Closing and Development Schedule....3
Section 2.04 Due Diligence Period....4
Section 2.05 Title Examination; Title Objections....6
Section 2.06 "As Is" Sale; No Representations or Warranties by Seller....8
Section 2.07 Approvals....10
Section 2.08 Conditions Precedent to the Seller's Obligation to Close....13
Section 2.09 Conditions Precedent to the Developer's Obligation to Close....16
Section 2.10 Closing; Closing Date; Closing Procedure....16
Section 2.11 Adjustments....19
Section 2.12 Possession and Condition of Property....19
Section 2.13 Acceptance of Deed....19
Section 2.14 Default; Damages....19
Section 2.15 Construction of the Project; Use of the Property....20
Section 2.16 Closing Costs....20
Section 2.17 Use of Sale Proceeds to Clear Record Title....21

ARTICLE 3 CONSTRUCTION OBLIGATIONS....21

Section 3.01 Construction of Project....21
Section 3.02 Approved Plans....22
Section 3.03 Construction Schedule....22
Section 3.04 Performance of the Work....23
Section 3.05 Prompt Payment by the Developer; Liens....24
Section 3.06 Performance Bond....24
Section 3.07 Utility Services....25
Section 3.08 Certificate of Completion....25
Section 3.09 *[if applicable – LEED Performance Deposit. Upon receipt by the Town of the LEED Performance Deposit from the Closing Escrow Agent at the Closing as provided in Section 2.10(d) above, the Town shall hold the LEED Performance Deposit to secure the Developer's obligation to obtain LEED ND Built Project Silver or higher certification for the entire Project as constructed. The Town may commingle the LEED Performance Deposit with other funds of the Town, and shall not be required to pay any interest on the LEED Performance Deposit to the Developer. The Town shall continue to hold the LEED Performance Deposit from the Closing until the earlier*

DRAFT

of (i) receipt by the Town of evidence that the USGBC has issued a LEED ND Built Project Silver or higher certification for the entire Project as constructed, in which case the Town shall promptly thereafter disburse the LEED Performance deposit to the Developer (without interest), or (ii) one (1) year (which one year period may be extended by the Town in its sole and absolute discretion) after the issuance by the Town of Andover Building Inspector of a permanent certificate of occupancy for the last building to be constructed as part of the Project as shown on the CPP (including such modifications thereto as were approved by the Select Board pursuant to the selection process set forth in the RFP), in which case, if the requirements of the preceding clause (i) have not been satisfied by such one-year anniversary (as such one year period may be extended by the Town in its sole and absolute discretion), the LEED Performance Deposit shall become the sole property of the Town as part of its General Fund, the Developer shall have no rights in or claim to the LEED Performance Deposit and the Town may expend such funds as it deems appropriate, in its sole and absolute discretion. The provisions of this Section 3.09 shall survive the issuance of a Certificate of Completion pursuant to Section 3.08 hereof.] 26

Section 3.10 Representatives. 26

ARTICLE 4 FINANCING; RIGHTS OF MORTGAGEES 27

Section 4.01 Financing. 27
Section 4.02 Refinancing/Additional Financing. 27
Section 4.03 Notice of Foreclosure. 28
Section 4.04 Rights and Duties of Mortgage Holder upon Acquisition Prior to Completion. 28
Section 4.05 Rights and Duties of Mortgage Holder upon Acquisition after Completion. 29
Section 4.06 Default of Mortgage Holder. 29
Section 4.07 Town's Option to Purchase Land and the Improvements Thereon Following Foreclosure. 29
Section 4.08 Obligation to Pay Taxes and Assessments. 29

ARTICLE 5 RESTRICTIONS 30

Section 5.01 Restriction on Use. 30
Section 5.01.1 Restrictions on Use during Restriction Period. 30
Section 5.01.2 Permanent Restrictions on Use. 30
Section 5.02 Restrictions During Construction. 30
Section 5.02.1 Prohibition Against Change in Identity and Ownership, or Key Personnel. 31
Section 5.02.2 Prohibition Against Transfer of Land and the Project. 32

DRAFT

Section 5.02.3 Prohibition Against Change in Key Personnel. 32
Section 5.03 Restrictions Continuing after Completion of Construction. 33
Section 5.03.1 Material Alteration. 33
Section 5.03.2 Change in Use. 34
Section 5.04 Transfers after Completion of Construction. 34
Section 5.05 Survival. 34

ARTICLE 6 MAINTENANCE; INSURANCE; RESTORATION 35

Section 6.01 Maintenance. 35
Section 6.02 Insurance. 35
Section 6.03 Obligation to Restore. 36

ARTICLE 7 USE OF THE PROPERTY 36

Section 7.01 Use of the Land and the Project. 36

ARTICLE 8 NOTICE AND DEFAULT PROVISIONS 37

Section 8.01 Developer Default. 37
Section 8.02 Rights of the Town upon a Developer Default. 38
Section 8.03 Rights of Mortgage Holders upon Developer Default. 41
Section 8.03.1 Notice of Developer Default to Mortgage Holder. 41
Section 8.03.2 Mortgage Holder may Cure Developer Default. 41
Section 8.04 Default of the Town. 41
Section 8.04.1 Town Default. 41
Section 8.04.2 Rights of Developer Upon Town Default. 42

ARTICLE 9 REPRESENTATIONS AND WARRANTIES 42

Section 9.01 Representations and Warranties of the Developer. 42
Section 9.02 Representations and Warranties of the Seller. 43
Section 9.03 Brokers. 44

ARTICLE 10 GENERAL PROVISIONS 44

Section 10.01 Request for Proposals Incorporated. 44
Section 10.02 Access. 44
Section 10.03 Duration. 44
Section 10.04 Enforcement. 45
Section 10.05 Indemnification. 45
Section 10.06 Notices. 45
Section 10.07 Waiver. 46
Section 10.08 Rights and Remedies Cumulative. 46
Section 10.09 Headings and Captions for Convenience Only. 47
Section 10.10 Parties Bound; Covenants Running with the Land. 47
Section 10.11 Entire Agreement of Parties; Amendments. 47
Section 10.12 Governing Law. 47

DRAFT

Section 10.13 Conditions to Effectiveness of Agreement. 47
Section 10.14 Severability. 47
Section 10.15 Number and Gender. 48
Section 10.16 Construction. 48
Section 10.17 Business Day. 48
Section 10.18 No Third Party Beneficiaries. 48
Section 10.19 Time of the Essence; Extension of Time. 48
Section 10.20 Determinations and Approvals under this Agreement. 48
Section 10.21 Action by the Town. 49
Section 10.22 Town's Members and Officers Barred from Interest. 49
Section 10.23 Estoppel Certificate. 49
Section 10.24 Counterparts. 49

DRAFT

LAND DISPOSITION AGREEMENT

PARTIES

THIS LAND DISPOSITION AGREEMENT (as the same may hereafter be amended in accordance with the provisions hereof, this "**Agreement**"), dated as of this ___ day of _____, 20___, is made by and between the Town of Andover, a Massachusetts municipal corporation, acting by and through its Select Board, with an address of 36 Bartlet Street, Andover, MA 01810 (hereinafter referred to as the "**Town**" or "**Seller**"), and _____ _____, (hereinafter referred to as the "**Developer**").

RECITALS

WHEREAS. the Town, as owner of a certain parcel of land situated, off of Lewis Street and Buxton Court in Andover, Massachusetts, upon which is located the former Town Yard, as shown as "Lot 1" on the plan entitled "Plan of Land in Andover, Mass. Prepared for the Town of Andover", dated February 13, 2020, prepared by Andover Consultants, Inc., recorded with Essex County Northern District Registry of Deeds as Plan No. ____ of 2020, and more particularly described in Exhibit A attached hereto and made a part hereof (the "**Land**") (and, together with all buildings and other improvements situated thereon and to be conveyed to the Developer along with the Land, collectively, the "**Property**"), issued a Request for Proposals dated _____, 2020 (together with all Addenda thereto issued by the Town, collectively, the "**RFP**"), for the disposition of Property.

WHEREAS, the Developer submitted a proposal dated _____, 2020 in response to the RFP (the "**Proposal**"), a copy of which Proposal is on file with the Town Purchasing Agent and portions of which Proposal are attached hereto as Exhibit B and made a part hereof, which includes a Conceptual Program and Plan (as the same may be amended with the approval of the Select Board prior to the execution of this Agreement, the "**CPP**") for the Property *[and the Private Property – if applicable]*, and calls for the Developer to demolish the building(s) located upon the Property *[and the Private Property – if applicable]*, and construct on the Property *[and the Private Property – if applicable]* a project consisting of _____, as more particularly described in the Proposal, the CPP and this Agreement (and as will be more fully described in the "Approved Plans" and the "Approved Construction Documents" (as such terms are hereinafter defined) prepared by the Developer and approved by the Seller pursuant to this Agreement, the "**Project**");

*[If applicable - WHEREAS, the Proposal provides for the acquisition of title by the Developer to, and the inclusion in the Project of, the following parcels of privately-owned land: _____ (collectively, the "**Private Property**");]*

WHEREAS, the Town, for consideration of _____ Dollars, and other consideration as set forth in this Agreement, agrees to sell, and the Developer agrees to buy, the Property, on the terms and conditions set forth in this Agreement;

DRAFT

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

WHEREAS, the Developer, in consideration for the Property, agrees to develop the Property *[and the Private Property – if applicable]*, and undertake all the work that is required to be done under this Agreement to construct, develop and complete the Project (the "**Work**").

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

ARTICLE 1

RECITALS

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

ARTICLE 2

AGREEMENT TO PURCHASE AND SELL

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

Section 2.01 Purchase Price; Deposits.

(a) The Developer shall pay to the Town the sum of _____ Dollars ($_____) (the "**Purchase Price**") for the Property, of which (i) Thirty Thousand ($30,000.00) Dollars has previously been paid to the Town as a "Proposal Deposit" pursuant to the RFP, (ii) Fifty Thousand ($50,000.00) Dollars has previously been paid to the Town as a "Selection Deposit" pursuant to the RFP, and (iii) Two Hundred Thousand ($200,000.00) Dollars has this day been paid to the Town as an "Execution Deposit" pursuant to the RFP (collectively, the "**Deposits**"), which will be held and disbursed in accordance with the terms of this Agreement. The balance of the Purchase Price shall be paid in full at the time of the "Closing" (as hereinafter defined) by wire transfer of immediately available funds to an account designated by the Town in writing.

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

Section 2.02 Deed.

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

DRAFT

a. Provisions of existing building, zoning, subdivision, environmental and all other Laws enacted by any governmental authority prior to the "Closing Date" (as hereinafter defined);

b. Such real estate taxes for the fiscal year ending June 30, 20__ as are not due and payable on the date of the delivery of the Deed (if any);

c. Any liens for municipal betterments assessed after the date of this Agreement;

d. All easements, restrictions and other matters of record, including, without limitation, those matters listed in Schedule B, Section 2 of Commonwealth Land Title Insurance Company Commitment Number [19-54668], a copy of which is attached hereto as Exhibit D and made a part hereof;

e. Matters that would be disclosed by an accurate ALTA/NSPS survey of the Property (regardless of whether the Developer obtains such a survey);

f. The standard printed exceptions contained in the most recent edition of the ALTA title insurance policy;

g. All matters of title or affecting title which constitute "Permitted Exceptions" in accordance with the provisions of Section 2.05 below;

h. The provisions of the Deed and any document recorded with the Deed as part of the closing of the sale transaction contemplated by this Agreement; and

i. The provisions of this Agreement.

Section 2.03 Pre-Closing and Development Schedule.

The Developer shall be solely responsible, at its sole cost and expense, for the permitting, design, financing and construction of the Project, all as provided in this Agreement. The date on which the Developer has received all "Approvals" (as hereinafter defined) required to construct the Project, with all appeal periods relating to such Approvals having expired without any appeal having been filed (or, if any such appeal has been filed, the final disposition of such appeal by settlement or final non-appealable judgment) is referred to in this Agreement as the "**Approvals Issuance Date**".

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

Events Prior to Closing	Date
Execution of this Agreement	_____
Complete Due Diligence and Title Search	_____

DRAFT

Submit Plans for Select Board Approval _____

Begin Filing for Other Approvals _____

Submit Application for Special Permit to Planning Board _____

Target Approvals Issuance Date _____

Obtain Financing Commitment _____

Closing Date *[90 days after Target Approvals Issuance Date]* _____

Outside Closing Date _____

Events After Closing

Commence Construction _____

Complete Construction _____

If the Developer fails to meet any of the milestone dates set forth above with respect to obtaining Approvals, the provisions of Section 2.07(b) hereof shall apply. If the Developer fails to meet any of the milestone dates set forth above with respect to any other actions required to be taken prior to the Closing, the Seller, in its sole and absolute discretion, may either agree to extend such dates, which extension shall be in writing, or may terminate this Agreement by written notice to the Developer, in which event the Seller shall be entitled to retain the Deposits (including all interest accrued thereon, if any) and, except as expressly provided otherwise in this Agreement, this Agreement shall be of no further force and effect and the parties shall have no further rights, obligations or liabilities hereunder. The Seller's remedies for the Developer's failure to meet the schedule of events to be performed after the Closing are set forth in Section 8.02 hereof.

Section 2.04 Due Diligence Period.

(a) Developer's Inspection Rights. Subject to the provisions of this Agreement, for a period of sixty (60) days after the date of this Agreement (the "**Due Diligence Period**"), the Developer, and the Developer's employees, contractors, consultants, agents and representatives (collectively "**Developer's Representatives**"), may enter the Property, at the Developer's sole risk and the Developer's sole cost and expense, to inspect the Property and to conduct such due diligence with regard to the condition of the Property (including conducting a non-invasive Phase I environmental assessment of the Property, if desired by the Developer), as the Developer deems necessary or desirable to investigate and evaluate the Property (collectively, "**Developer's Investigations**"). Notwithstanding anything to the contrary contained above, with respect to the performance of any excavation or any environmental tests or studies of the Property involving sampling, testing or analyzing samples of water, soil, or building materials, the Developer shall first obtain the prior written approval of the Seller as to the identity of the company or persons who shall perform such excavation, tests or studies and a written proposal outlining the proposed scope of such excavation, tests and studies, which approval may be withheld by the Seller in its

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sole and absolute discretion. The Developer shall not perform any excavation, environmental tests or studies of the Property other than as so approved by the Seller.

All Developer's Investigations which are permitted under this Agreement shall be done at reasonable times, and after twenty-four hours' prior notice (which may be verbal) to _____ ("**Seller's Representative**"), telephone no. _____; e-mail: _____. The Developer and the Developer's Representatives shall take all reasonable precautions to minimize the impact of all Developer's Investigations on the Property. All Developer's Investigations shall be conducted in accordance with all applicable laws, codes, ordinances, orders, rules, regulations, by-laws, and ordinances (collectively, "**Laws**"). If the Developer or any of the Developer's Representatives desires to take any sample from the Property in connection with any of Developer's Investigations, the Developer must give the Seller three (3) Business Days' notice prior to performing such sampling so that the Seller may have the opportunity to be present and to split or take its own test samples. If any damage to the Property is caused by the activities or operations of the Developer or Developer's Representatives during the Due Diligence Period, the Developer shall, at its sole cost and expense, prior to the expiration of the Due Diligence Period and without regard to whether or not the Developer terminates this Agreement during the Due Diligence Period in accordance with the provisions of Section 2.04(d) hereof, repair all damage to the Property caused by any of Developer's Investigations and restore the Property (including, without limitation, all exterior building surfaces, paving and landscaping) to its former condition to the extent reasonably practical. Notwithstanding anything to the contrary herein, in the event that the Developer is otherwise entitled to the refund of any of the Deposits pursuant to the provisions of Section 2.04(d) hereof, no Deposit shall be released to the Developer until the Property has been repaired and restored to the required condition and the Seller has verified the condition of the Property as so repaired and restored.

The Developer shall deliver to the Seller, promptly after the receipt thereof, copies of all studies, analyses, reports and assessments (both final and interim versions) relating to any of Developer's Investigations involving environmental testing or studies. The Developer shall not submit a copy of any such data or report to any governmental authority unless specifically required to do so by applicable Law; and, if so required, the Developer agrees that the Seller, not the Developer or any Developer's Representative, shall make such disclosure as the Seller deems appropriate.

The provisions of this Section 2.04(a) shall survive, as applicable, the Closing and delivery of the Deed, or the rescission, cancellation, or termination of this Agreement.

(b) Developer's Risk and Indemnification. The Developer assumes all risks associated with the performance of Developer's Investigations, including, without limitation, all damage to property (including, without limitation, the Property) and all injuries and loss to the Developer and the Developer's Representatives, and agrees to defend, indemnify and hold harmless the Seller and its employees, agents, consultants, contractors and subcontractors of, from and against any and all costs, losses, claims, defenses, demands, damages, liabilities, expenses and other obligations (including, without limitation, reasonable attorneys' fees and court costs) arising from, out of or in connection with or otherwise relating to, the entry onto the Property by, or the performance of Developer's Investigations by, the Developer or any of the

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Developer's Representatives. The provisions of this Section 2.04(b) shall survive, as applicable, the Closing and delivery of the Deed, or the rescission, cancellation, or termination of this Agreement.

(c) Insurance. The Developer shall carry (i) commercial general liability coverage with a combined single limit of not less than $1,000,000 per occurrence and $2,000,000 general aggregate, covering liabilities arising out of the Developer's activities on the Property prior to the "Closing" (as hereinafter defined), (ii) worker's compensation insurance with coverage at least equal to statutory limits, (iii) employer's liability insurance with a limit not less than $1,000,000 each accident, and (iv) automobile liability insurance covering owned, non-owned, leased and hired vehicles, in a combined single limit of not less than $1,000,000 for Bodily Injury and Property Damage. The Developer's insurance policies shall (i) name the Seller as an additional insured with respect to the Property, and (ii) be primary as to all other policies. It is further agreed that the Developer and its insurer(s) providing coverage must waive all rights of subrogation and/or contribution against the Seller. Prior to entry upon or commencement of any activities on the Property, the Developer shall deliver a true and correct copy of a certificate of insurance to the Seller in a form and substance satisfactory to the Seller evidencing the required coverages and providing that should any of the policies above be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. The Developer shall ensure that the Developer's Representatives are adequately insured without necessity of duplicating the Developer's required insurance.

(d) Developer's Right to Terminate. The Developer may terminate this Agreement at its sole option and discretion by giving written notice to the Seller by 5:00 p.m. on the last day of the Due Diligence Period if for any reason the Property is not acceptable to the Developer. Following such notice by the Developer and the delivery by the Developer to the Seller (at no cost to Seller) of copies of the final version (unless a final version has not been prepared by or submitted to the Developer, in which case the last draft version thereof shall be delivered) of all studies, analyses, and reports relating to any of the Developer's Investigations, and absent default by the Developer hereunder, the Seller will return to the Developer the Selection Deposit and the Execution Deposit (without interest), but the Seller shall retain the Bid Deposit. Upon such termination, except as expressly provided otherwise in this Agreement, this Agreement shall be of no further force and effect and the parties shall have no further rights, obligations or liabilities hereunder. If the Developer fails to give such written notice of termination to the Seller on or before 5:00 p.m. on the last day of the Due Diligence Period, the Developer will be conclusively presumed to have waived such right of termination and thereupon the Deposits will be nonrefundable except as otherwise provided in this Agreement.

Section 2.05 Title Examination; Title Objections.

(a) During the Due Diligence Period, the Developer may, at its sole cost and expense, (i) have the title to the Property examined, and (ii) have a survey made of the Property, subject to the provisions of Section 2.04(a), (b) and (c) hereof. The Developer shall give written notice to Seller (a "**Title Defect Notice**") not later than 5:00 p.m. on the last day of the Due Diligence Period if such title examination or survey discloses any title defect or encroachment upon the Property which is reasonably anticipated to have a material adverse effect on the Developer's intended development of the Property for the Project as set forth in its Proposal, and over which

the Developer cannot obtain title insurance on an owner's title insurance policy issued by a nationally-recognized title insurance company without the payment of additional premium therefor (collectively called the "**Unpermitted Exceptions**"), which notice shall contain a description of each Unpermitted Exception together with copies of all documents evidencing such Unpermitted Exceptions. Any matter of record title as of the effective date of such title examination, or matter in existence which appeared on or could have appeared on such a survey, which is not the subject of a Title Defect Notice shall be conclusively deemed waived by the Developer and shall constitute a Permitted Exception.

(b) If the Developer gives a Title Defect Notice to the Seller in accordance with the provisions of the preceding Section 2.05(a), then the Seller shall have the option, in its sole discretion, either:

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

(ii) to use reasonable efforts to remove or cure the same, provided that (1) the Seller shall not be required to incur more than $3,000.00 in costs and expenses (including, without limitation, attorneys' fees and expenses) in the aggregate to cure all Unpermitted Exceptions, (2) the Seller shall not be required to commence any effort to remove or cure the same if the Seller reasonably determines that the cost of such removal or cure is likely to cost more than $3,000.00 in costs and expenses (including, without limitation, attorneys' fees and expenses) in the aggregate, and (3) the Seller shall not be obligated to commence any litigation or other proceeding in any court to effectuate such cure. If the Seller elects to proceed pursuant to this clause (ii), then the Seller may extend the Closing Date by written notice to the Developer for up to sixty (60) days to enable it to make such reasonable efforts to remove or cure the Unpermitted Exceptions.

Seller shall give written notice to the Developer not later than ten (10) Business Days after the Seller's receipt of the Title Defect Notice as to which of the foregoing options under this subsection (b) the Seller elects. Unless the Seller states in such notice that it has elected to proceed pursuant to the preceding clause (b)(ii) to attempt to remove or cure the Unpermitted Exceptions, the Developer shall have the right to terminate this Agreement by giving written notice of termination to the Seller within three (3) Business Days after the earlier of either its receipt of such notice from the Seller or the expiration of such 10-Business Day period without the Seller having given such a notice, in which event the Developer shall be entitled to the return of the Selection Deposit and the Execution Deposit (without interest), but the Seller shall retain the Bid Deposit and, except as expressly provided otherwise in this Agreement, this Agreement shall be of no further force and effect and the parties shall have no further rights, obligations or liabilities hereunder.

(c) If the Seller elects pursuant to clause (ii) of the preceding Section 2.05(b) to make reasonable efforts to remove or cure the Unpermitted Exceptions but the Seller is unable to

DRAFT

complete such removal or cure by such extended Closing Date, the Seller shall so notify the Developer and the Developer shall, as its sole and exclusive remedy, on or before the tenth (10th) Business Day after the Developer's receipt of the Seller's notice, give notice to the Seller, that the Developer either:

(i) elects to proceed with the Closing, in which event all Unpermitted Exceptions identified in the Title Defect Notice which the Seller has not cured or removed shall be conclusively presumed thereafter to constitute Permitted Exceptions and the Closing shall occur without any credit against or abatement of the Purchase Price on account thereof; or

(ii) elects to terminate this Agreement, in which event the Developer shall be entitled to the return of the Selection Deposit and the Execution Deposit (without interest), but the Seller shall retain the Bid Deposit and, except as expressly provided otherwise in this Agreement, this Agreement shall be of no further force and effect and the parties shall have no further rights, obligations or liabilities hereunder.

Unless the Developer gives notice to Seller within such 10-Business Day period that the Developer has elected to terminate this Agreement pursuant to the foregoing clause (ii), the Developer shall be conclusively presumed to have elected to proceed to the Closing pursuant to the foregoing clause (i) and the uncured Unpermitted Exceptions shall be deemed waived by the Developer and shall thereupon be deemed to be Permitted Exceptions.

(d) If, between the expiration of the Due Diligence Period and the "Closing Date" (as hereinafter defined), an updated title report shows any new Unpermitted Exceptions which did not appear on the record title to the Property as of the date of the initial title examination performed during the Due Diligence Period, or an updated survey shows any new encroachments or other survey matters not in existence as of the date of the survey prepared for the Developer during the Due Diligence Period, in either case which is reasonably anticipated to have a material adverse effect on the Developer's intended development of the Property for the Project as set forth in its Proposal, then the Developer shall have the right to give the Seller written notice of any such new Unpermitted Exception and in such instance the parties shall have the same rights and obligations as to such new Unpermitted Exceptions as stated in Sections 2.05 (a) – (c) above except that the Seller shall have a period of one (1) week to respond to the Developer's notice under Section 2.05(a). If the Developer does not give notice of any such new Unpermitted Exceptions to the Seller on or before the Closing Date, the Developer shall be conclusively presumed to have waived such Unpermitted Exceptions and to have agreed to accept title subject to such new Unpermitted Exceptions (which shall thereupon be deemed to be Permitted Exceptions), and the Closing shall occur without any credit or abatement of the Purchase Price.

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

Section 2.06 <u>"As Is" Sale; No Representations or Warranties by Seller.</u>

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

(b) The Developer acknowledges and agrees that the Seller, its employees, agents, consultants and attorneys have not made, do not hereby make and will not hereafter be deemed to have made, and Seller hereby specifically disclaims, any representations or warranties or guarantees of any kind whatsoever, whether express or implied, oral or written, with respect to the Property or the physical condition or profitability thereof, including without limitation: (i) the nature, quality, adequacy or condition of the Property, including, without limitation, the water, soil, geology, groundwater and environmental condition of the Property and the condition of any buildings or other improvements situated on the Land, (ii) the expenses and potential income associated with the ownership, operation, maintenance, or development of the Property, (iii) the suitability of the Property for any and all development, construction, activities and uses which the Developer may conduct thereon, (iv) the compliance of or by the Property or its operation (whether existing or contemplated) with any applicable Laws, (v) the habitability, merchantability, fitness, value or adequacy of the Property for any particular purpose, (vi) the Seller's title to the Property and the existence of any liens, encumbrances, charges, assessments, restrictions or claims relating thereto, (vii) the availability, condition or adequacy of any utilities serving or which could serve the Property, or the amount of any costs or fees required to extend, tie into, or tap into any utilities serving the Property or to otherwise develop the Property, or (viii) any other matter with respect to the Property.

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

(d) Upon the Closing, the Developer shall assume the risk that adverse matters, including, but not limited to, adverse physical and environmental conditions or violations of any Laws, may not have been revealed by Developer's investigations, and the Developer, as of the Closing, shall be deemed to have permanently and irrevocably waived, relinquished and released the Seller (and the Seller's employees, agents, consultants and attorneys) of and from any and all claims, demands, causes of action (including causes of action in tort), obligations, losses,

damages, liabilities, penalties, fines, judgments, costs and expenses (including reasonable attorneys' fees and expenses) of any and every kind of character, known or unknown, now existing or hereafter created, foreseen or unforeseen, which the Developer might have asserted or alleged against the Seller (and/or the Seller's employees, agents, consultants and attorneys) at any time relating to or arising out of the Property, including, without limitation, any physical or environmental conditions. The Developer covenants and agrees never (directly or indirectly) to commence, aid in any way, or prosecute against the Seller or any of the Seller's employees, agents, consultants and attorneys, any action or other proceeding based upon any claims, demands, causes of action, obligations, damages or liabilities released in this Section. In addition to, and not in limitation of, the provisions of Section 10.05 hereof, from and after the Closing, the Developer shall indemnify, defend and save harmless the Town and the Town's officers, employees, agents, consultants, contractors and attorneys, from and against any and all damages, liabilities, actions, suits, proceedings, claims, demands, losses, costs, expenses, recoveries and judgments of every nature and description (including reasonable attorneys' fees and expenses) arising in whole or in part out of or in connection with any physical or environmental conditions now existing or hereafter arising at the Land *[and the Private Property – if applicable]*, regardless of the cause thereof. The duty to defend shall immediately accrue and be owing upon the assertion of such a claim by any person or entity regardless of merit and shall not be dependent upon a finding of negligence or any other finding of fact at trial. The existence of insurance shall in no way limit the scope of the Developer's indemnification under this subsection.

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

Section 2.07 Approvals.

(a) The Developer shall be solely responsible for applying for and obtaining any and all governmental permits, approvals, consents, orders and determinations required for the construction, use, occupancy or operation of the Project as depicted in its Proposal and the CPP (including such modifications thereto as were approved by the Select Board pursuant to the selection process set forth in the RFP), including, without limitation, a special permit pursuant to Section 8.7 of the Andover Zoning By-law (collectively, the "**Approvals**"). *[if applicable – If the Project as described in the Proposal and the CPP (as the same may have been modified as provided above) includes Private Property to be acquired by the Developer, such Private Property shall be included in all such applications for Approvals.]* The Developer shall deliver to the Seller prior to the execution of this Agreement a list of all Approvals required by applicable Law for the construction, use, occupancy or operation of the Project, together with a schedule of projected submission and issuance dates for each Approval so listed, and shall provide updates of such schedule to the Seller not less frequently than monthly. All Approvals required for the construction of the Project shall be obtained prior to the Closing. After the expiration of the Due Diligence Period, the Seller shall reasonably cooperate with the Developer in connection with the Developer's applications for Approvals, including executing any documents necessary therefor, but in no event shall the Seller incur any obligation or liability in connection therewith. The Developer shall provide to the Town copies of all applications for Approvals filed with any governmental authority other than a board, commission, department or agency of the Town, promptly after the filing thereof. The Developer shall be solely responsible, at its sole cost and expense, for all costs and expenses

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(including, without limitation, attorneys', engineers' and consultants' fees and expenses) associated with (i) the preparation of all applications for Approvals and all accompanying materials, (ii) applying for and obtaining Approvals, and (iii) performance of all conditions, mitigation or obligations imposed as conditions to any of the Approvals. The Developer shall reimburse the Seller, promptly upon request therefor, for all costs and expenses incurred by the Seller to its consultants (other than Town Counsel) in connection with the review of any application for an Approval or otherwise reasonably incurred by the Seller in connection with the obtaining of an Approval by the Developer. *[If applicable – If the Developer has included in its Proposal a statement that the Developer will seek and attain LEED BD+C Silver or higher pre-certification for the design of each building included in the Project, then this requirement shall be set forth in the special permit to be issued by the Planning Board pursuant to Section 8.7 of the Andover Zoning By-law, and the Developer shall be required to (i) inform the Planning Board in its application for a special permit for the Project pursuant to Section 8.7 of the Andover Zoning By-Law that the Developer has committed in its Proposal to attain LEED BD+C Silver or higher pre-certification for the design of each building included in the Project, and request in such application that the Planning Board include in any special permit issued in response to such application the requirement that each building included in the Project must attain that certification prior to the issuance by the Town of Andover Building Inspector of a building permit for each such building, and (ii) deliver to the Town evidence of the issuance by the United States Green Building Council ("USGBC") of a pre-certification of each building pursuant to the LEED BD+C program at a level of Silver or higher prior to, and as a condition precedent to, the issuance by the Town of Andover Building Inspector of a building permit for each such building, and;]*

(b) The Developer shall use diligent and good faith efforts to obtain all Approvals required for the construction of the Project by the "Target Approvals Issuance Date" set forth in Section 2.03 hereof. In no event will the Developer be deemed to have used diligent efforts to obtain the Approvals unless the Developer submits completed applications for the Approvals in accordance with the dates set forth therefor in Section 2.03 hereof. If the Developer determines that, despite using such diligent and good faith efforts, the Developer will not be able to meet any of the deadlines with respect to obtaining Approvals as set forth in Section 2.03, it shall notify the Seller in writing prior to the relevant deadline. So long as the Developer has been using such diligent and good faith efforts, the Seller shall extend the applicable deadline by five (5) Business Days (or such longer period as the Seller may elect in its sole and absolute discretion) for the Developer to satisfy the condition required by such applicable deadline. In the event that the Developer fails to submit to the appropriate governmental authority a completed application or submission, including all required (as of the application date) studies, plans and other materials, within five (5) Business Days after the date set forth in Section 2.03 for such submission (as such date may be adjusted in accordance with the provisions of this subsection (b)), it shall immediately constitute a "Developer Default" (as hereinafter defined) under this Agreement, without the requirement of any notice or any passage of time, for which Seller shall have the right to terminate this Agreement by giving written notice to the Developer, in which event the Seller shall be entitled to retain the Deposits (including all interest accrued thereon, if any) and, except as expressly provided otherwise in this Agreement, this Agreement shall be of no further force and effect and the parties shall have no further rights, obligations or liabilities hereunder.

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(c) The Developer shall give the Seller reasonable advance notice of all public hearings and all meetings with any representatives of governmental authorities other than the Town in connection with any application for an Approval, so that representatives of the Town may attend the same if they so desire.

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

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

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

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

(h) The Developer shall deliver to the Seller, promptly after receipt by the Developer, copies of all notice of appeals or other written materials relating to any threatened appeals or to

any appeals that are commenced by third parties with respect to the issuance of any of the Approvals. The Developer shall diligently defend such appeals at its sole cost and expense, using qualified counsel. The Developer shall keep the Seller reasonably informed of the status of each appeal of any of the Approvals, including providing copies of all pleadings filed by any party relating to each such appeal. If, despite the Developer's diligent defense of an appeal, the appellant obtains a final and nonappealable judgment in its favor in an appeal from the issuance of an Approval, the Developer shall promptly notify the Seller thereof and the Developer shall have the right to terminate this Agreement by written notice given to the Seller within forty-five (45) days after the entry of such final and nonappealable judgment, in which case, absent default by the Developer hereunder, the Seller will return to the Developer the Selection Deposit and the Execution Deposit (without interest), but the Seller shall retain the Bid Deposit. In the event that this Agreement is terminated pursuant to this subsection (h), then, except as expressly provided otherwise in this Agreement, this Agreement shall be of no further force and effect and the parties shall have no further rights, obligations or liabilities hereunder. The Developer shall not settle or compromise any appeal relating to an Approval without the prior written approval of the Town, which approval may be withheld in its sole and absolute discretion.

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

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

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

a. Status of Agreement. This Agreement shall not have been terminated by the Seller or the Developer in accordance with its terms;

b. No Default. The Developer is not then in default in the payment or performance of any of its obligations hereunder;

c. Performance by the Developer. The Developer shall have performed, observed and complied in all material respects with all of the covenants, agreements and conditions required by this Agreement to be performed, observed and complied with on its part on or before the Closing Date;

d. No Change in Identity or Key Personnel. No Change in Identity of the Developer or change in Key Personnel shall have occurred other than such as has been approved in writing by the Town pursuant to Section 5.02.1 or Section 5.02.3 hereof;

e. Financing. The Developer shall have (i) received and accepted in writing a commitment for financing for the construction of the Project in accordance with the terms of the Approvals (and delivered to the Seller a copy thereof), (ii) provided to the Seller evidence reasonably acceptable to the Seller that all equity funding required for the closing of the transaction as described in such financing commitment will be available to the Developer in accordance with the terms of the commitment, and (iii) not later than the Closing Date, closed such construction financing and equity funding in accordance with the terms thereof previously provided to the Seller;

f. Approvals. The Developer shall have obtained all Approvals necessary for the construction of the Project (but with respect to a building permit, the Developer shall be required to have obtained a building permit for at least the first new building to be constructed as part of the Project, but not necessarily for all of the buildings included in the Project (as used in this Agreement, the term "**Approved Construction Documents**" shall mean any and all plans and specifications which have been submitted to, and approved by, the Andover Building Inspector with respect to the application for a building permit for all or any portion of the Project), and all appeal periods with respect thereto have expired with no appeal having been timely filed (or, if any such appeal has been timely filed, such appeal has been finally resolved by settlement or final non-appealable judgment);

g. Construction Management Plan. The Town Manager shall have approved the Developer's construction management plan for the Project, which shall address matters such as the delivery of materials, the location of staging and laydown areas, the proposed flow of vehicular traffic to and from the Property *[and the Private Property – if applicable]* during construction, and measures to be taken to mitigate the effects of construction on land, buildings, businesses and roadways in the vicinity of the Property;

h. Insurance. The Developer has provided to the Seller certificates of insurance with respect to all insurance coverage required by the terms of this Agreement to be in existence during the construction of the Project, such policies to comply with the requirements of this Agreement;

i. Disclosure of Beneficial Interest. The grantee named in the Deed shall have filed with the Commissioner of Capital Asset Management and Maintenance, and furnished the Seller with a copy of, a signed statement in the form attached hereto as Exhibit E;

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j. No Insolvency Event. The Developer shall not be the subject of an "Insolvency Event" (as hereinafter defined);

k. Representations and Warranties of the Developer. All of the representations and warranties of the Developer contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date, as though republished and remade on and as of the Closing Date;

l. [if applicable – Acquisition of Private Property. The Developer shall have satisfied all conditions to closing set forth in any agreement to which the Developer is a party relating to its acquisition of title to all or any portion of the Private Property, and the deed(s) thereof to the Developer, together with any plans required to be recorded in connection with such deed, are available for recording simultaneously with the Deed pursuant to escrow arrangements satisfactory to the Seller;]

m. [if applicable – LEED BD+C Pre-Certification. If the Developer has included in its Proposal a statement that the Developer will seek and attain LEED BD+C Silver or higher pre-certification for the design of each building included in the Project, then the Developer has provided to the Town of Andover Building Inspector a pre-certification issued by the USGBC pursuant to the LEED BD+C program at a level of Silver or higher with respect to each building included in the Project for which a building permit has been issued prior to the Closing;]

*n. [if applicable – LEED ND Built Project Certification. If the Developer has included in its Proposal a statement that the Developer will seek and attain LEED ND Built Project Silver or higher certification for the entire Project as constructed, then the Developer has delivered to the Closing Escrow Agent the sum of $_____ [i.e., an amount equal to one (1%) percent of the Purchase Price] (the "**LEED Performance Deposit**") to be further delivered to the Town at the Closing to secure the Developer's obligation to obtain LEED ND Built Project Silver or higher certification for the entire Project as constructed, which LEED Performance Deposit will be held and disbursed by the Town as provided in Section 3.09 of this Agreement;]*

o. Other Documents. All other documents, agreements, affidavits and certifications reasonably required to be executed or delivered by the Seller or the Developer in connection with the transaction contemplated by this Agreement (including, without limitation, the "Restriction Documents" and the "Notice of Option" (as such terms are hereinafter defined)) shall have been fully executed in form and content reasonably satisfactory to the Seller and delivered; and

p. Lapse of Time. The Outside Closing Date, as the same may be extended pursuant to this Agreement, shall not have occurred.

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The Developer shall submit to the Seller no later than twenty-one (21) days prior to the "Closing Date" (as hereinafter defined) all materials reasonably required by the Seller to satisfy such conditions. If all of the conditions set forth in the preceding clauses b. through m. have not been satisfied by the Closing Date, then the Seller shall have the right to terminate this Agreement effective immediately upon giving written notice to the Developer of such termination, and the Deposits shall be retained by the Seller as liquidated damages as the Seller's sole and exclusive remedy hereunder, or at law or in equity for such failure of condition. In the event that the Seller terminates this Agreement, then except as expressly provided otherwise herein, this Agreement shall be of no further force and effect and neither the Developer nor the Seller shall have any further rights, obligations or liabilities hereunder.

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

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

a. Status of Agreement. This Agreement shall not have been terminated by the Seller or the Developer in accordance with its terms.

b. No Default. Seller is not then in default in the payment or performance of any of its obligations hereunder;

c. Performance by the Seller. The Seller shall have performed, observed and complied in all material respects with all of the covenants, agreements and conditions required by this Agreement to be performed, observed and complied with on its part on or before the Closing Date; and

d. Representations and Warranties of the Seller. All of the representations and warranties of the Seller contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date, as though republished and remade on and as of the Closing Date.

If all of such conditions set forth in the preceding clauses b. through d. have not been satisfied by the Closing Date, then the Developer shall have the right to terminate this Agreement effective immediately upon giving written notice to the Seller of such termination, and the Deposits (without interest) shall be returned to the Developer, which shall be the Developer's sole and exclusive remedy hereunder, or at law or in equity for such failure of condition. In the event that the Developer terminates this Agreement, then except as expressly provided otherwise herein, this Agreement shall be of no further force and effect and neither the Developer nor the Seller shall have any further rights, obligations or liabilities hereunder.

Section 2.10 Closing; Closing Date; Closing Procedure.

(a) Closing. The closing of the transaction contemplated by this Agreement (the "**Closing**") shall occur at 10:00 a.m. on the date (the "**Closing Date**") which is ninety (90) days after the Approvals Issuance Date, but in no event later than _____ (the "**Outside**

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Closing Date"), provided that if the Closing Date falls on a day that is not a Business Day then the Closing shall occur on the next Business Day. The Closing will take place pursuant to an escrow-style closing with _____ [insert name of Town's title insurer] serving as the escrow agent for purposes of the Closing (the "**Closing Escrow Agent**"). Upon satisfaction or completion of all closing conditions and deliveries, the Closing Escrow Agent shall immediately record and deliver the closing documents to the appropriate parties and make disbursements according to the closing statement executed by the Seller and the Developer.

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

a. the Deed conveying to the Developer title to the Property, subject to the conditions and restrictions referred to in this Agreement;

b. the "Restriction Documents" (as hereinafter defined);

*c. [if applicable – a "Notice of Option" in form mutually acceptable to the Seller and the Developer and suitable for recording with the Northern Essex Registry of Deeds, identifying the "Option" (as hereinafter defined) and the parcels of Private Property which are subject to the Option (the "**Notice of Option**")];*

d. a fully-executed and acknowledged original of this Agreement, to be recorded prior to the Deed;

e. a counterpart of the closing and settlement statement;

f. an affidavit relating to mechanics' liens and parties in possession in the form customarily provided by sellers of commercial properties in the Boston metropolitan area;

g. a certification by the Seller that all representations and warranties made by the Seller in Section 9.02 of this Agreement are true and correct in all material respects on the Closing Date, except as may be set forth in such certificate; and

h. any additional documents which are customarily required in commercial transactions similar to this that the Developer or the Closing Escrow Agent may reasonably require for the proper consummation of the transaction contemplated by this Agreement.

(c) Developer's Deliveries in Escrow. On or before the last Business Day immediately prior to the Closing Date, the Developer shall deliver in escrow to the Closing Escrow Agent (i) the Purchase Price, less the Deposits, plus or minus applicable prorations and adjustments which are customary for transfers of real estate in Massachusetts, including the Pro

DRAFT

Forma Tax as required by M.G.L. c.59, sec. 2C *[if applicable - , and (ii) the LEED Performance Deposit]*. On or before three (3) Business Days immediately prior to the Closing Date, the Developer shall deliver in escrow to the Closing Escrow Agent the following documents and instruments, duly executed and acknowledged (if applicable) by the Developer:

a. such tax forms or returns, if any, as are required to be delivered or signed by the Developer by applicable Laws in connection with the conveyance of the Property by the Seller to the Developer;

b. originals of all Approvals (or notice of issuance of an Approval) required to be recorded as a condition to their effectiveness (including, without limitation, the decision by the Andover Planning Board issuing a special permit for the Project pursuant to Section 8.7 of the Andover Zoning By-law);

c. the "Restriction Documents" (as hereinafter defined);

d. [if applicable, the Notice of Option];

e. a counterpart of the closing and settlement statement;

f. a certification by the Developer that all representations and warranties made by the Developer in Section 9.01 of this Agreement are true and correct in all material respects on the Closing Date, except as may be set forth in such certificate;

g. the certificate required by M.G.L. c. 7C, sec. 38 in the form attached hereto as Exhibit E;

h. the Tax Compliance Certificate required by M.G.L. c. 62C, sec. 49A in the form attached hereto as Exhibit F;

i. the Non-Collusion Certificate in the form attached hereto as Exhibit G;

j. any plans as may be required in connection with the recordation of the Deed, which shall be the Developer's obligation and expense to prepare and record;

k. [if applicable – unless otherwise then held in escrow pursuant to escrow arrangements satisfactory to the Seller, the deed(s) conveying title of all of the Private Property to the Developer, together with any plans required to be recorded in connection with such deed(s); and]

l. any additional documents which are customarily required in commercial transactions similar to this that the Seller or the Closing Escrow Agent may reasonably require for the proper consummation of the transaction contemplated by this Agreement.

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

Section 2.11 Adjustments.

Water and sewer charges (if any) shall be apportioned and adjusted, as of the day of performance of this Agreement and the net amount thereof shall be added to or deducted from, as the case may be, the purchase price payable by the Developer at the time of delivery of the Deed. The Seller is exempt from payment of Massachusetts Deed Excise stamps on the Deed under M.G.L. c. 64D, §1.

The Developer shall pay at the Closing a Pro Forma Real Estate Tax in accordance with the provisions of M.G.L. Chapter 59, Section 2C.

Section 2.12 Possession and Condition of Property.

Full possession of the Property, free of all tenants and occupants, is to be delivered at the time of delivery of the Deed, the Property to be then in the same condition as it now is, reasonable use and wear thereof excepted.

Section 2.13 Acceptance of Deed.

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

Section 2.14 Default; Damages.

(a) Developer Default. If the Developer shall fail to perform any of its covenants and agreements contained in Article 2 of this Agreement when required to be performed hereunder prior to the recording of the Deed, and such failure shall continue for three (3) Business Days after the Seller gives the Developer written notice of such failure, then the Seller shall have the right to terminate this Agreement effective immediately upon giving written notice to the Developer of such termination, and the Deposits (together with all interest accrued thereon) shall be retained by the Seller as liquidated damages. Notwithstanding the preceding sentence, (i) in no event shall such cure period extend beyond the Closing, and (ii) if such failure relates to any covenant or agreement to be performed at the Closing, there shall be no notice required or grace or cure period allowed. The remedy set forth in the preceding provisions of this Section 2.14(a) shall be the Seller's sole and exclusive remedy hereunder, or at law or in equity, for the Developer's default in the performance of any of its covenants and agreements contained in Article 2 of this Agreement. In the event that the Seller terminates this Agreement, then except as expressly provided otherwise herein, this Agreement shall be of no further force and effect and neither the Developer nor the Seller shall have any further rights, obligations or liabilities hereunder. Notwithstanding anything to the contrary contained herein, under no circumstances

shall the Seller be entitled to recover any damages, direct, punitive, consequential or otherwise, for the Developer's default in the performance of any of its covenants and agreements contained in Article 2 of this Agreement.

(b) Seller Default. If the Seller shall fail to perform any of its covenants and agreements contained in Article 2 of this Agreement when required to be performed hereunder prior to the recording of the Deed, and such failure shall continue for three (3) Business Days after the Developer gives the Seller written notice of such failure, then the Developer shall have the right to terminate this Agreement effective immediately upon giving written notice to the Seller of such termination, and the Deposits shall be returned to the Developer (without interest). Notwithstanding the preceding sentence, (i) in no event shall such cure period extend beyond the Closing, and (ii) if such failure relates to any covenant or agreement to be performed at the Closing, there shall be no notice required or grace or cure period allowed. The remedy set forth in the preceding provisions of this Section 2.14(b) shall be the Developer's sole and exclusive remedy hereunder, or at law or in equity, for a Seller's default in the performance of any of its covenants and agreements contained in Article 2 of this Agreement. In the event that the Developer terminates this Agreement, then except as expressly provided otherwise herein, this Agreement shall be of no further force and effect and neither the Seller nor the Developer shall have any further rights, obligations or liabilities hereunder. Notwithstanding anything to the contrary contained herein, under no circumstances shall the Developer be entitled to recover any damages, direct, punitive, consequential or otherwise, for a Seller default in the performance of any of its covenants and agreements contained in Article 2 of this Agreement.

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

The Property will be conveyed subject to a right of reverter reserved by the Town, or shall be subject to such other provision that ensures that the construction of the Project proposed by the Developer will be completed by the Developer, that the Property will not be transferred prior to completion of construction, and that for the duration of the "Restriction Period" (as defined in Section 5.01 hereof), the use and occupancy of the Property shall be in accordance with this Agreement, the RFP, the Proposal, and the Approved Plans. Reference is hereby made to Sections 5.01, 5.02, 5.03 and 8.02 of this Agreement for more detailed provisions relating to these matters.

Section 2.16 Closing Costs.

(a) The Seller shall pay the recording fee for the recordation of all documents and instruments necessary to remove Unpermitted Exceptions from title to the Property, if any are removed by Seller pursuant to the provisions of Section 2.05 of this Agreement.

(b) The Developer shall pay for the recordation of the Deed and such of the other documents delivered to, by or on behalf of the Developer at the Closing as shall be recorded in connection with this transaction. The Developer shall also be solely responsible for all title insurance premiums and charges, title search charges, survey charges, Closing Escrow Agent fees, and all fees, charges and expenses of any kind whatsoever arising out of or relating to the performance of the Developer's Investigations.

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

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

Section 2.17 Use of Sale Proceeds to Clear Record Title.

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

ARTICLE 3

CONSTRUCTION OBLIGATIONS

Section 3.01 Construction of Project.

The Developer shall design and construct on the Land *[and the Private Property – if applicable]* the following improvements as part of the Project, in accordance with the plans that have been approved by the Select Board and which shall be subject to approval by the Planning Board in connection with its issuance of a special permit for the Project pursuant to Section 8.7 of the Andover Zoning By-law (the "**Approved Plans**"):

(a) *Buildings*: (the "Buildings"), to be constructed in accordance with the Approved Plans, as hereinafter defined; and

(b) *Parking*:

(c) *Other Improvements:* To the extent that the Developer proposes to construct as part of the Project streets which it anticipates later requesting the Town to accept as public ways, such streets shall be built in accordance with the standards set forth in Section 7 of the Andover Subdivision Rules and Regulations, as the same may be modified for the Project by the Planning Board in the course of its issuance of a special permit for the Project pursuant to Section 8.7 of the Andover Zoning By-law. Acceptance by the Town of such streets as public ways shall be subject to the provisions of Section 8 of the Andover Subdivision Rules and Regulations.

As used in this Agreement, the term "Project" shall include the demolition of all structures and improvements existing on the Land *[and the Private Property – if applicable]* in accordance with one or more demolition permits to be issued by the Town of Andover Building

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

Section 3.02 Approved Plans.

The Developer agrees to construct the Project in accordance with the Approved Plans, and not to make any substantial change or revision to the Project as shown on the Approved Plans, including, without limitation, any changes to the Buildings, parking and landscaping, during the course of construction unless such changes are first approved by the Planning Board. Nothing herein shall be deemed to waive the Developer's obligations to apply for and comply with all Approvals governing the Property *[and the Private Property – if applicable]* or the Project; *provided, however*, that the Developer may make insignificant changes as may otherwise be consistent with applicable Planning Board or other regulatory body requirements.

Section 3.03 Construction Schedule.

(a) Subject only to delays caused solely by "Force Majeure" (as hereinafter defined), the Developer shall "Commence" (as defined herein) construction of the Project in accordance with the Approved Plans and the Approved Construction Documents by a date that is thirty (30) days after the Closing (the "**Project Commencement Date**"). Construction of the Project shall be deemed to "**Commence**" upon the date that (i) a building permit for the first new building included within the Project is issued by the Town of Andover Building Inspector and (ii) the Developer commences and diligently undertakes physical construction of the Project pursuant to that building permit, which shall be evidenced by the commencement of site preparation work in furtherance of the Project.

(b) Subject only to delays caused solely by Force Majeure, the Developer hereby covenants and agrees, after construction of the Project has Commenced, to diligently prosecute such construction in accordance with the construction schedule as most recently approved by the Town pursuant to Section 3.03(d) below so as to "Complete" (as hereinafter defined) construction of the entire Project by a date which is _____ (__) months after the Closing (the "**Project Completion Date**"). The Project shall be deemed "**Complete**" on the date that: (i) the Town of Andover Building Inspector has issued a permanent certificate of occupancy for the last building to be constructed as part of the Project as shown on the CPP (including such modifications thereto as were approved by the Select Board pursuant to the selection process set forth in the RFP); (ii) all buildings and improvements included within the Project can be used for their respective intended purposes as evidenced by a certificate of substantial completion issued by the Developer's architect, subject only to a punch list of items remaining to be completed of minor nature of construction, decoration, painting, and millwork; (iii) the Project is free of debris and construction materials, and is in usable condition; (iv) all landscaping is completed and planted, except for such work that cannot be completed due to seasonal conditions; and (v) the Developer has executed, acknowledged and delivered to the Town instruments in form and content acceptable to the Town and suitable for recording, granting to the public rights of access to and passage over such streets and ways included within the Project as were designated by the Planning Board in the special permit issued for the Project pursuant to Section 8.7 of the Andover Zoning By-law (including those, if any, which the Developer later intends to request the Town to accept as public ways).

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(c) For purposes of this Agreement, "**Force Majeure**" shall mean a delay or stoppage due to strikes, civil riots, war, acts of terrorism, invasion, fire or other casualty, acts of God, adverse weather conditions not reasonably anticipated, act or failure to act of quasi-governmental or governmental authorities, unanticipated and unforeseen governmental acts or orders affecting the development of the Project, or other causes beyond the reasonable control of the party required to make performance, but specifically excluding financial constraints of such party; provided, in all cases, that (i) such act or event is beyond the reasonable control of the party claiming Force Majeure after pursuing diligently commercially reasonable efforts to remedy the delaying condition in an expedient and efficient manner and was not separately or concurrently caused by any act or omission of such party or could not have been prevented by commercially reasonable actions on the part of such party, and (ii) the party claiming Force Majeure shall have notified the other party within a reasonable time after discovering the occurrence of the event of Force Majeure. The time or times for performance under this Agreement shall be extended for the period of delay caused solely by such event of Force Majeure, as agreed upon by the Town and the Developer.

(d) The Developer shall submit to the Town Manager for his review and approval prior to Commencing construction of the Project a detailed construction schedule for the Project, in a format acceptable to the Town Manager. This schedule shall be updated and resubmitted each month, with actual progress shown, until the Town Manager has issued a Certificate of Completion. This monthly submission shall be accompanied by a written report by the Developer citing any adjustments to the progress forecast, analyzing the causes thereof, and where applicable, noting proposed corrective efforts. Any such corrective efforts, as well as any modifications to the construction schedule as initially reviewed and approved by the Town Manager, shall be subject to the written approval of the Town Manager.

(e) During the construction of the Project, such construction shall be subject to inspection by representatives of the Town charged with inspection, and the Developer shall permit the Town access to the Land *[and the Private Property – if applicable]* and all portions of the Project under construction from time to time for such inspections at all reasonable times.

(f) It is intended and agreed that the agreements and covenants contained in this Section 3.03 with respect to the beginning and Completion of construction of the Project shall be covenants running with the land. This subsection shall not, however, apply against a "Mortgage Holder" (as hereinafter defined) permitted by this Agreement unless such Mortgage Holder shall elect to complete as permitted in Section 4.04 hereof, in which case the extension provisions of that Section shall apply.

Section 3.04 Performance of the Work.

The Developer shall procure all necessary Approvals before undertaking any Work, and shall cause all of the Work to be performed in a good and workerlike manner, in compliance with good engineering and construction practices, and in accordance with the Approved Plans, the Approved Construction Documents, and all applicable Laws and the provisions of all Approvals. The Developer shall take all commercially and reasonably necessary measures to (i) minimize dust, noise, light trespass, and construction traffic, (ii) minimize any damage, disruption or inconvenience caused by the Project, and (iii) make adequate provision for the safety and

convenience of all persons affected thereby and to police the same. As a precondition for the issuance of any Certificate of Occupancy for a Building, the Developer shall provide a certification to the Town by the Developer's architect, at the Developer's expense, that the Work has been performed substantially in accordance with the Approved Plans and the Approved Construction Documents.

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

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

Section 3.05 Prompt Payment by the Developer; Liens.

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

Section 3.06 Performance Bond.

Prior to the commencement of any work on the Property *[or the Private Property – if applicable]*, the Developer shall provide the Town with a performance bond in a form satisfactory to the Town and in the amount reasonably determined by the Planning Board to be an amount sufficient to Complete the Project, with a surety subject to approval by the Town. In the event the Project as required by this Agreement is not Completed within the time set forth in Section 3.03 hereof, or if the Project is not Completed substantially in accordance with the Approved Plans and the Approved Construction Documents, the Town, in co-ordination with the "First Mortgage Holder" (as hereinafter defined) may require that the surety Complete the Project in accordance with the Approved Plans and the Approved Construction Documents. If the Project includes any streets or ways which are either intended by the Developer or required by the Planning Board to become public ways upon completion of their construction, the Developer shall provide an additional performance bond to the Town, in a form satisfactory to the Town and in an amount reasonably determined by the Planning Board, to secure the

Developer's obligation to construct such ways in accordance with the standards set forth in Section 7 of the Andover Subdivision Rules and Regulations, as the same may be modified for the Project by the Planning Board in the course of its issuance of a special permit for the Project pursuant to Section 8.7 of the Andover Zoning By-law, and to obtain the Town's acceptance of the same as public ways.

Section 3.07 Utility Services.

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

(b) The Developer shall be solely responsible, at its sole cost and expense, for any utility relocation, upgrades and/or modifications for all utilities to the Project, including, without limitation, natural gas, electric, communications, storm water, or water as may be necessary to service the Project.

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

(d) Any work performed under subsections (a) or (b) above that is not in strict accordance with the Approved Construction Documents and/or all applicable Laws shall be immediately remedied and repaired at the sole cost of the Developer and/or its contractor, or in the alternative by the Seller, in the event the Developer fails for any reason to cure such defects after written notice thereof and a cure period of thirty (30) days, in which case the Seller shall be entitled to all costs and expenses related thereto and to exercise whatever rights it may have as a governmental entity with respect to the proper functioning and installation of utilities in the Town of Andover.

(e) The provisions of this Section 3.07 shall survive the Closing and the delivery of the Deed.

Section 3.08 Certificate of Completion.

(a) Upon written request made by the Developer following Completion of construction of the entire Project (as defined in Section 3.03 hereof), the Town shall inspect the Project and, if it determines from such inspection that Completion of construction of the entire Project has occurred, then the Town Manager shall issue the "**Certificate of Completion**" to the Developer within thirty (30) days of its receipt of such request. The Town Manager shall be under no obligation to issue a Certificate of Completion until such time as the Developer has requested in writing that the Town issue a Certificate of Completion and the Town has made

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such inspection of the Project for such purpose. There will be only one (1) Certificate of Completion issued with respect to the Project.

(b) If the Town shall refuse or fail to provide the Certificate of Completion in accordance with the provisions of this Section, the Town or a representative of the Town shall, within thirty (30) days after written request by the Developer, provide the Developer with a written statement indicating in reasonable detail in what respects the Developer has failed to Complete the Project in accordance with the provisions of this Agreement, the Approved Plans, and the Approved Construction Documents, and what measures or acts will be necessary, in the opinion of the Town, for the Developer to take or perform in order to obtain such certification.

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

Section 3.09 *[if applicable – LEED Performance Deposit. Upon receipt by the Town of the LEED Performance Deposit from the Closing Escrow Agent at the Closing as provided in Section 2.10(d) above, the Town shall hold the LEED Performance Deposit to secure the Developer's obligation to obtain LEED ND Built Project Silver or higher certification for the entire Project as constructed. The Town may commingle the LEED Performance Deposit with other funds of the Town, and shall not be required to pay any interest on the LEED Performance Deposit to the Developer. The Town shall continue to hold the LEED Performance Deposit from the Closing until the earlier of (i) receipt by the Town of evidence that the USGBC has issued a LEED ND Built Project Silver or higher certification for the entire Project as constructed, in which case the Town shall promptly thereafter disburse the LEED Performance deposit to the Developer (without interest), or (ii) one (1) year (which one year period may be extended by the Town in its sole and absolute discretion) after the issuance by the Town of Andover Building Inspector of a permanent certificate of occupancy for the last building to be constructed as part of the Project as shown on the CPP (including such modifications thereto as were approved by the Select Board pursuant to the selection process set forth in the RFP), in which case, if the requirements of the preceding clause (i) have not been satisfied by such one-year anniversary (as such one year period may be extended by the Town in its sole and absolute discretion), the LEED Performance Deposit shall become the sole property of the Town as part of its General Fund, the Developer shall have no rights in or claim to the LEED Performance Deposit and the Town may expend such funds as it deems appropriate, in its sole and absolute discretion. The provisions of this Section 3.09 shall survive the issuance of a Certificate of Completion pursuant to Section 3.08 hereof.]*

Section 3.10 Representatives.

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

ARTICLE 4

FINANCING; RIGHTS OF MORTGAGEES

Section 4.01 Financing.

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

The Town shall provide to each Mortgage Holder whose name and address has theretofore been provided to the Town notice and an opportunity to cure any default on the part of the Developer, and will accept the cure thereof by a Mortgage Holder, all as provided in Section 8.03 hereof. The Town hereby consents to the Funding Sources exercising any rights under their Mortgages and security agreements, including but not limited to rights to foreclose or take title and or control of the Land *[and the Private Property – if applicable]* and the Project, pursuant to their Mortgage(s) and any other collateral security, financing or loan documents entered into between the Developer and any of the Funding Sources, so long as the Funding Sources shall include a condition in all Mortgages and other collateral security, financing or loan documents that any party acquiring title to the Land *[and the Private Property – if applicable]* and the improvements thereon from a Funding Source, and all successors in title thereto, shall be bound by the terms and provisions of this Agreement.

Section 4.02 Refinancing/Additional Financing.

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

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such refinancing by the Town shall be required. The term "Mortgage(s)" or "Funding Sources" shall include said later approved refinancing or additional financing.

Section 4.03 Notice of Foreclosure.

The Developer shall cause the Mortgage Holders to give not less than sixty (60) days' prior written notice to the Town, by certified mail, of each Mortgage Holder's intention to accelerate the indebtedness secured by its Mortgage, or to foreclose upon its Mortgage, or to accept a conveyance of the Land *[and the Private Property – if applicable]* and the improvements thereon in lieu of foreclosure, in which event the Town shall have the right, but not the obligation to cure whatever default(s) have entitled the Mortgage Holder to take such action (subject to appropriation), which amount, together with the Town's costs and expenses (including reasonable attorneys' fees and expenses) shall be added to the amounts due to the Town pursuant to Section 8.02(e)(i) hereof.

Section 4.04 Rights and Duties of Mortgage Holder upon Acquisition Prior to Completion.

(a) Any Mortgage Holder who obtains title to the Land *[and the Private Property – if applicable]* and the improvements thereon or any portion thereof prior to Completion of construction of the Project by foreclosure or action in lieu thereof (but not including a party who obtains title through any such Mortgage Holder) shall not be obligated to construct or complete the Project, but shall have the following options:

1. complete construction of the Project in accordance with the Approved Plans, the Approved Construction Documents, the Proposal and this Agreement, and in all respects comply with the provisions of this Agreement, or

2. sell, assign, or transfer with the prior written consent of the Town (not to be unreasonably withheld, delayed or conditioned), title to the Land *[and the Private Property – if applicable]* and the improvements thereon or any part thereof to a buyer, assignee or transferee who shall expressly assume all of the covenants, agreements and obligations of the Developer under this Agreement in respect of the Project, by written instrument reasonably satisfactory to the Town and recorded forthwith in the appropriate Registry of Deeds, or

3. reconvey title to the Land *[and convey title to the Private Property – if applicable]* and the improvements thereon to the Town, in which event the provisions of Section 8.02(e) relative to resale shall apply.

(b) In the event that a Mortgage Holder elects to complete construction pursuant to subsection (a)(1) above, or sells, assigns or transfers pursuant to subsection (a)(2) above, the Town shall extend the time limits set forth in Section 3.03 hereof as shall be reasonably necessary to enable the Completion of construction of the Project, and upon Completion of such construction, the Mortgage Holder or the buyer, as the case may be, shall be entitled to the Certificate of Completion pursuant to Section 3.08 hereof.

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

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

Section 4.06 Default of Mortgage Holder.

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

Section 4.07 Town's Option to Purchase Land and the Improvements Thereon Following Foreclosure.

In the event that ownership of all or portions of the Land *[and the Private Property – if applicable]* and the improvements thereon have vested in a Mortgage Holder by way of foreclosure or action in lieu thereof, the Town shall be entitled to (and every mortgage instrument made prior to Completion of construction with respect to the Land *[and the Private Property – if applicable]* and the Project by the Developer shall so provide), at the Town's option, a conveyance to the Town of the Land*[and the Private Property – if applicable]* and the improvements thereon upon payment to such Mortgage Holder of an amount equal to the sum of: (i) the mortgage debt at the time of foreclosure or action in lieu thereof (less all appropriate credits, including those resulting from collection and application of rentals and other income received from the Land *[and the Private Property – if applicable]* and the improvements thereon, if any); (ii) all expenses with respect to the foreclosure; (iii) the net expense, if any (exclusive of general overhead), incurred by such Mortgage Holder in and as a direct result of the subsequent ownership or management of the Land *[and the Private Property – if applicable]* and the improvements thereon; (iv) the costs of any improvements made by such Mortgage Holder; and (v) an amount equivalent to the interest that would have accrued to the date of payment on the aggregate of such amounts had all such amounts become part of the mortgage debt and such debt had continued in existence.

Section 4.08 Obligation to Pay Taxes and Assessments.

The Developer shall pay or cause to be paid when due all taxes, assessments and other charges, fines and impositions attributable to the Land *[and the Private Property – if applicable]* and the improvements thereon, which may give rise to a lien upon the Land *[or the Private Property – if applicable]* and the improvements thereon or any part thereof, but this clause shall

not be deemed to preclude the Developer from contesting the validity or amount of such taxes, assessments, charges, fines or impositions, which may be paid under protest.

ARTICLE 5

RESTRICTIONS

Section 5.01 Restriction on Use.

Section 5.01.1 Restrictions on Use during Restriction Period.

The Developer agrees for itself, and its successors and assigns, and every successor in interest to the Land *[and the Private Property – if applicable]* and the improvements thereon or any part thereof, and the Deed shall contain restrictions and covenants binding upon the Developer, its successors and assigns, that commencing on the date of this Agreement and ending on the thirtieth (30th) anniversary of the date on which the Certificate of Completion is issued for the Project in accordance with the provisions of Section 3.09 hereof (the "**Restriction Period**"), the Land*[and the Private Property – if applicable]* and the Project shall be used only for the uses specified in the Proposal and this Agreement. The foregoing covenant shall run with the land and shall be binding to the fullest extent permitted by law and equity for the benefit and in favor of, and enforceable by, the Town, to protect the interest of the community and other parties, public and private, in whose favor or for whose benefit the covenants have been provided, against the Developer, its successors and assigns, and every successor in interest to the Land *[and the Private Property – if applicable]* and the improvements thereon or any part thereof or any interest therein, and any party in possession or occupancy of the Land *[and the Private Property – if applicable]* and the improvements thereon or any part thereof. *[if applicable – The restrictions and covenants described in this Section 5.01.1 shall be included in the "Restriction Documents" (as hereinafter defined) with respect to the Private Property.]*

Section 5.01.2 Permanent Restrictions on Use.

The Developer agrees for itself, and its successors and assigns, and every successor in interest to the Land *[and the Private Property – if applicable]* and the improvements thereon or any part thereof, that (i) any green space included within the Project shall be restricted in perpetuity to use only as open space for the use and enjoyment by the public, which use restriction shall, at the election of the Town, either be set forth in the Deed or in a separate instrument conveying either title to such green space or the benefit of such a restriction with respect to such green space to either the Town or a nonprofit organization designated by the Town, and (ii) all affordable housing units constructed or to be constructed as part of the Project shall be subject to a permanent restriction preserving such units as affordable housing. The documents described in the preceding sentence (collectively, the "**Restriction Documents**") shall be in form and content mutually acceptable to the Town and the Developer, and shall be recorded simultaneously with the Deed (to the extent such restrictions are not set forth in the Deed itself).

Section 5.02 Restrictions During Construction.

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

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

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

a. The importance of the undertakings set forth herein to the general welfare of the community;

b. The importance of the identity of the parties in control of the Developer and the Project;

c. The importance of the Key Personnel identified by the Developer in its Proposal remaining in place with respect to the Project until the Completion of Construction; and

d. The fact that a transfer of any or all of the legal or beneficial ownership in the Developer, or any other act or transaction involving or resulting in a change in the ownership or change in the identity of the parties in control of the Developer or the Project, is for practical purposes a transfer or disposition of the Developer's interest in the Project;

it is hereby understood and agreed that, except as otherwise expressly provided herein, during the period commencing on the date hereof and continuing until the issuance of the Certificate of Completion by the Town, and except by reason of death, disability or retirement of any individual holding a direct or indirect ownership interest in the Developer, there shall be no (i) change in the identity of the parties holding a legal or beneficial interest in the Developer, or (ii) transfer, by assignment or otherwise, of the Developer's rights under this Agreement or of the Developer's legal or beneficial interest in the Land *[or the Private Property – if applicable]* and the Project, to any person or entity (all such changes being referred to herein as a "**Change in Identity**"), unless in each instance, (a) the Developer gives the Town prior written notice of a proposed Change in Identity, which notice shall provide sufficient information to enable the Town to evaluate the acceptability of the proposed Change in Identity and shall request the Town's consent thereto, and (b) the Town, in its sole and absolute discretion, within forty-five (45) days from the date on which the Town receives said written notice or such longer period as may be agreed upon by the Developer and the Town, approves of such change in writing. If the Town notifies the Developer in writing within said forty-five day (45) day period (or longer period agreed to by the parties) of additional information reasonably required in order to review and evaluate the proposed Change in Identity, or of an objection to the proposed Change in Identity, specifying the grounds for such objection, the Developer shall make no Change in Identity without the subsequent written approval of the Town, which approval shall be granted or

withheld by the Town in its sole and absolute discretion. Any attempted Change in Identity made contrary to this Section shall be void.

In order to fulfill the purposes of this Section, the Developer agrees that during the period between execution of this Agreement and the issuance of a Certificate of Completion by the Town, the Developer shall annually, within ten (10) days of each anniversary of the date of this Agreement, provide to the Town the names of all of the direct or indirect holders of an ownership interest in the Developer, in the form of an affidavit made by an officer of the Developer.

The foregoing restrictions on the Change in Identity shall not be binding on a Mortgage Holder which has foreclosed its Mortgage or has otherwise acquired title to the Land *[and the Private Property – if applicable]* and the improvements thereon in lieu of foreclosure, but shall apply to said Mortgage Holder's successors in title.

Section 5.02.2 Prohibition Against Transfer of Land and the Project.

For all of the same reasons stated in Section 5.02.1 above, the Developer hereby agrees for itself, and its successors and assigns, that, except for the granting of the Mortgages and the approved refinancing of the Mortgages, and entering into other customary security agreements with the Funding Sources, and except for [sales or] leases of units in the ordinary course of business and the granting of easements necessary for the construction of the Project, including utilities, the Developer shall not, prior to the issuance of a Certificate of Completion by the Town, sell, assign or otherwise transfer the Land *[or the Private Property – if applicable]* and the improvements thereon or any portion thereof without the prior written consent of the Town, acting by its Select Board, which consent may be withheld by the Town, in its sole and absolute discretion. As a condition of any approval by the Select Board of a transfer, the transferee shall assume and agree in writing to comply with all conditions, obligations and agreements contained in this Agreement, the Deed and the Restriction Documents, including but not limited to the obligation to construct the Project. The term "transfer" shall include, without limitation, any total or partial sale, or lease (not including the lease of the residential units or any of the commercial space in the ordinary course of business). It is the intent of this Section that the prohibition of transfer of the Land *[and the Private Property – if applicable]* and the improvements thereon shall not apply to transfers resulting from the foreclosure of a Mortgage, provided that, except as otherwise provided in Section 4.04 above, the transferee assumes and agrees to comply with all conditions, obligations and agreements contained in this Agreement, the Deed and the Restriction Documents, including, but not limited to the obligation to construct the Project. No transfer shall relieve the Developer of its obligations hereunder, who shall be jointly and severally liable with the transferee. Any attempted assignment or other transfer made contrary to this Section shall be void.

Section 5.02.3 Prohibition Against Change in Key Personnel.

For all of the same reasons stated in Section 5.02.1 above, the Developer hereby agrees that, except as otherwise expressly provided herein, during the period commencing on the date hereof and continuing until the issuance of the Certificate of Completion by the Town, it shall assign to the Project the individuals identified as "Project Principal", "Project Manager", or

otherwise identified in the "Qualifications Statement" submitted as part of the Proposal as key individuals from the Developer to be assigned substantive roles with the Project, and that such persons will devote such time to the Project as is necessary and appropriate to the full and timely performance of this Agreement by the Developer. The Developer agrees that none of such persons will be removed from his or her responsibilities on the Project without the written consent of the Town (which consent shall not be unreasonably withheld), except in the event of his or her death, disability or departure from the employment of the Developer, or upon the written request of the Town. In the event, however, that any of such persons are so removed or leave the Developer's employ, any subsequent personnel proposed by the Developer must be approved in advance by the Town, which approval shall not be unreasonably withheld.

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

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

Section 5.03 Restrictions Continuing after Completion of Construction.

Section 5.03.1 Material Alteration.

The Developer shall not, for the duration of the Restriction Period, materially alter the Buildings, which shall include the modification, demolition, subtraction therefrom, reconstruction, and additions to the Buildings or extensions thereof, or change to the materials, design, dimensions or color thereof, if such reconstruction, demolition, subtraction, alteration, addition, extension or change will materially affect in any way the external appearance of the Buildings, or make other changes to the design of the Buildings so as to deviate substantially from the Approved Plans, unless the Developer first submits to the Planning Board a revised concept plan showing the proposed alterations at least forty-five (45) days prior to making such change and the Planning Board approves of such change. If the Planning Board does not approve the proposed material alteration to the Buildings, the Developer shall not make such proposed material alteration. In the event the Developer shall fail to comply with the foregoing requirement, the Town may within thirty (30) days of its discovery thereof, direct in writing that the Developer so modify, reconstruct or remove such portion or portions of the Buildings as were altered, modified, reconstructed, demolished or subtracted from or added to or extended or changed without the prior written approval of the Town, and the Developer shall promptly

comply with such a directive at its sole cost and expense. Nothing herein contained shall be construed to prevent the ordinary maintenance, repair or replacement of any exterior feature of the Buildings which does not involve a change in design or material of such exterior feature of the Buildings or otherwise substantially change the outward appearance of the facade of the Buildings, nor to prevent landscaping the Land *[and the Private Property – if applicable]* with plants, trees or shrubs, nor construed to prevent the meeting of requirements certified by a duly authorized public officer to be necessary for public safety because of an unsafe or dangerous condition or to comply with any Law. This restriction shall be set forth in the Deed.

Section 5.03.2 Change in Use.

The Developer shall not, for the duration of the Restriction Period, change the use of the Buildings or any material portion thereof from that set forth in the Proposal, the Approvals, and Section 7.01 of this Agreement, except in accordance with the provisions of this Section. In the event that at any time during the Restriction Period the Developer is unable to economically maintain one or more of the elements of the Project in the use required by the Proposal, the Approvals and this Agreement, for good and substantial cause(s), the Developer may request approval by the Select Board of a change in use by presenting to the Select Board evidence of such good and substantial cause(s) for the proposed change together with a concept plan showing the proposed change. No such change shall be made without the approval by the Select Board of such cause, such proposed change in use, and such concept plan. If the Select Board so approves, the Developer shall proceed to obtain approvals for such change under the applicable provisions of the Zoning By-law, if necessary. If the Select Board notifies the Developer in writing, within sixty (60) days after its receipt of such information from the Developer, of its objection to the reasons proffered for the proposed change or the concept plan or the proposed change in use, specifying the grounds for such objection, the Developer shall submit additional evidence relative to the cause and/or a revised concept plan accordingly, and the Select Board shall have an additional thirty (30) days to approve or disapprove the cause for the proposed change in use and/or the revised concept plan. In the event the Developer shall fail to comply with the foregoing requirement, the Town may within thirty (30) days of its discovery thereof, direct in writing that the Developer cease such use which has not been approved by the Select Board pursuant to this Section, and the Developer shall promptly comply with such a directive at its sole cost and expense. Approvals hereunder shall be at the discretion of the Select Board and there shall be no deemed approvals for purposes of this Section. This restriction shall be set forth in the Deed.

Section 5.04 Transfers after Completion of Construction.

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

Section 5.05 Survival.

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

ARTICLE 6

MAINTENANCE; INSURANCE; RESTORATION

Section 6.01 Maintenance.

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

Section 6.02 Insurance.

From the date of this Agreement until the issuance by the Town of a Certificate of Completion for the Project, the Developer agrees to maintain in full force and effect the following insurance coverages:

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

(b) a policy of Commercial General Liability Insurance against claims for bodily injury, death and property damage occurring upon, in or about the Land *[and the Private Property – if applicable]* and the Project and the adjoining sidewalks, with limits not less than $1,000,000 per occurrence, $3,000,000 aggregate, naming the Town as an additional insured and providing a waiver of subrogation in favor of the Town;

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

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

(e) Worker's Compensation Insurance in the amount required by applicable law.

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

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by other reasonably satisfactory evidence of such payment shall be delivered by the Developer to the Town. Each policy or certificate issued by an insurer shall, to the extent obtainable, contain an agreement by the insurer that such policy shall not be canceled, non-renewed or substantially modified without at least thirty (30) days' prior written notice to the Town.

Section 6.03 Obligation to Restore.

Until the issuance of a Certificate of Completion, in the event that any damage or destruction of the Project or any part thereof occurs as a result of fire or other casualty, the Developer shall be responsible for the restoration of the Project to a condition at least comparable to that existing at the time of such damage or destruction, to the extent that such insurance proceeds may permit; *provided, however,* that if such damage or destruction is caused as a result of the negligence or willful act or omission of the Developer, or of any of its employees or agents, members, contractors, subcontractors, lessees, licensees or invitees, the Developer shall be responsible for the full restoration of the damaged or destroyed Project regardless of the cost thereof or the amount of the available insurance proceeds. Any reconstruction or repair undertaken pursuant to the provisions of this Section shall in all respects be in accordance with and conform to the provisions of the Approved Plans, the Approved Construction Documents, and the provisions of this Agreement.

The Developer shall commence to reconstruct or repair the Project, or any portion thereof, which have been destroyed or damaged within a period not to exceed three (3) months after the insurance or other proceeds with respect to such destroyed or damaged property have been received by the Developer or any mortgagee and all permits have been received (or, if the conditions then prevailing require a longer period, such longer period as the Town may specify in writing), and shall well and diligently and with dispatch prosecute such reconstruction or repair to completion, such reconstruction or repair in any event to be completed within twenty-four (24) months after the start thereof, subject to Force Majeure.

ARTICLE 7

USE OF THE PROPERTY

Section 7.01 Use of the Land and the Project.

The Land *[and the Private Property – if applicable]* and the Project shall be used for _____. Throughout the duration of the Restriction Period, the use of the Land *[and the Private Property – if applicable]* and the Project or any material portion hereof shall not be changed except in accordance with the provisions of Section 5.03.2 hereof. The Developer shall construct and use the Project in compliance with all applicable Laws and all Approvals issued by any federal, state or local governmental authority having jurisdiction thereof.

ARTICLE 8

NOTICE AND DEFAULT PROVISIONS

Section 8.01 Developer Default.

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

a. Breach by the Developer of any of the restrictions set forth in Article 5 of this Agreement, the Deed or the Restriction Documents;

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

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

d. Failure by the Developer, after the expiration of all applicable notice and cure periods provided in its financing arrangements (if any), to observe or perform any of the Developer's covenants, agreements, or obligations pursuant to any agreement between the Developer and any of the Funding Sources;

e. The issuance of any execution or attachment against the Developer or any of the Developer's property pursuant to which the Land *[or the Private Property – if applicable]* and the improvements thereon shall be taken or occupied or attempted to be taken or occupied, provided that the Developer is first provided an opportunity to cure the same within ninety (90) days after such execution or attachment is first issued, unless extended by agreement of the parties; or

f. The filing by the Developer of a voluntary petition, or the filing against the Developer of an involuntary petition, in bankruptcy or insolvency or adjudication of bankruptcy or insolvency of the Developer, or the filing by the Developer of any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the present or any future federal bankruptcy act, or any other present or future applicable federal, state, or other statute or law, or the assignment by the Developer for the benefit of creditors, or appointment of a trustee, receiver, or liquidator of all or any part of the assets of the Developer, and within one hundred twenty (120) days after the commencement of any such proceeding against the Developer, such proceeding shall not have been dismissed, or if, within one hundred twenty (120) days after the appointment of any trustee, receiver, or liquidator of the Developer or of all or any part of the Developer's property, without

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the consent or acquiescence of the Developer, such appointment shall not have been vacated or otherwise discharged.

Section 8.02 Rights of the Town upon a Developer Default.

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

i. the Town has delivered written notice of the Developer Default to the Mortgage Holder(s), whose name(s) and address (es) the Developer or the Mortgage Holder(s) has previously delivered to the Town;

ii. sixty (60) days have passed following delivery of said notice to the Mortgage Holder(s);

iii. the Mortgage Holder(s) has failed to cause the Developer Default to be cured within said sixty (60) days, or in the event of a non-monetary default that is curable but is not reasonably susceptible to cure within said sixty (60) day period, the Mortgage Holder has not commenced and continually prosecuted cure of said default to completion (said cure period, the "**Mortgage Holder Cure Period**"); and

iv. the Town has not received written notice from the Mortgage Holder(s) that it has commenced foreclosure proceedings against the Developer.

(b) Subject to the provisions of subsection (a) above, the Town may, at its option, cure any Developer Default, whether prior to or subsequent to the issuance by the Town of a Certificate of Completion, in which case the Town shall be entitled, in addition to and without limitation upon any other rights or remedies to which it shall be entitled by this Agreement, operation of law, or otherwise, to reimbursement from the Developer, upon demand therefor, of all costs and expenses incurred by the Town in curing such Developer Default.

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

(d) In addition, subject to the provisions of subsection (a) above, if the Developer Default occurs prior to the issuance by the Town of a Certificate of Completion, the Town, after expiration of the applicable cure period (if any) provided in Section 8.01 hereof, shall also have the right:

i. to require the Developer, by written notice, to promptly surrender possession of the Land and the improvements thereon and cause title to the Land (including all improvements therein) to be reconveyed to the Town without cost to the Town, by

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Quitclaim Deed, provided that (i) such reconveyance shall be subject to the lien of any existing mortgages thereon permitted under this Agreement, (ii) this right of the Town shall not apply after the issuance of a Certificate of Completion for the Project pursuant to Section 3.08 hereof, and (iii) following such reconveyance, the Developer shall have the right to receive payment, if any, as provided in subsection (e) below. If the Developer shall fail so to reconvey, the Town may institute such actions or proceedings as it may deem advisable as well as proceedings to compel specific performance and the payment of damages, expenses and costs by the Developer; and

ii. to re-enter and take possession of the Land *[and to take possession of the Private Property – if applicable]* (including all improvements thereon) and to terminate (and revest in the Town) the estate conveyed by the Deed to the Developer, it being the intent of this Section, together with other provisions of this Agreement, that the conveyance of the Property to the Developer shall be made upon, and that the Deed shall contain, a condition subsequent to the effect that in the event of such failure to cure, the Town at its option may declare a termination in favor of the Town of the title, and of all the rights and interests in the Property and that such title, and all rights and interest of the Developer, and any assigns or successors in interest, in the Land and the improvements thereon, shall revert to the Town; provided, that such condition subsequent and any revesting of title as a result thereof in the Town: (1) shall be subject to the lien of any existing mortgages permitted under this Agreement, (2) shall not apply after the issuance of a Certificate of Completion for the Project pursuant to Section 3.08 hereof, and (3) shall require the Town to make payments, if any, as provided in subsection (e) below. If the Town exercises its right to take title to the Land and the improvements thereon, (x) the Town shall record a notice of such action with the Registry of Deeds, and (y) upon written request by the Town, the Developer shall execute, acknowledge and deliver to the Town a confirmatory deed of the Land and the improvements thereon.

*[If applicable, add: If the Town elects to exercise its rights under either clause i. or clause ii. of this subsection (d) so as to reacquire title to the Property, the Town shall have the option (the "**Option**") also to acquire title to such parcels of the Private Property as the Town identifies in a written notice given to the Developer, in accordance with the provisions of Exhibit H attached hereto and made a part hereof.]*

(e) Upon the conveyance by the Developer to the Town of title to, or the reversion in the Town of title to, the Land *[and the acquisition by the Town from the Developer of title to the Private Property by means of the exercise of the Option – if applicable]* and the improvements thereon or any part thereof as provided herein, the Town shall use its best efforts to resell the Land *[and the Private Property so acquired by the Town– if applicable]* and the improvements thereon or part thereof (subject to such mortgage liens as are provided for herein) as soon and in such manner as the Town shall find feasible (subject to the requirements of applicable Laws including, without limitation, M.G.L. c. 30B), to a qualified and responsible party or parties (as determined by the Town), who will assume the obligation of making or completing the improvements or such other improvements in their stead as shall be satisfactory to the Town and

in accordance with the uses specified for such property or part thereof in this Agreement. Upon such resale of the Land *[and the Private Property so acquired by the Town – if applicable]* and the improvements thereon, the proceeds thereof shall be applied as follows:

i. First, to reimburse the Town for all costs and expenses incurred by the Town in connection with the recapture, management and resale of the Land *[and the Private Property (including, without limitation, all amounts paid by the Town in connection with the exercise of the Option) – if applicable]* and the improvements thereon or any part thereof (but less any income received by the Town from the Land *[and the Private Property – if applicable]* and the improvements thereon or any part thereof in connection with such management); all taxes, assessments, and water and sewer charges with respect to the Land *[and the Private Property – if applicable]* and the improvements thereon or any part thereof or, in the event the Land *[and the Private Property – if applicable]* and the improvements thereon are exempt from taxation or assessment or water and sewer charges during the period of ownership thereof by the Town, an amount equal to such taxes, assessment, or charges (as reasonably determined by the appropriate Town officials) as would have been payable if the Land *[and the Private Property – if applicable]* and the improvements thereon were not so exempt); any payments made or necessary to be made to discharge any monetary encumbrances or liens due to obligations, defaults or acts of the Developer; any reasonable expenditures made or obligations incurred with respect to the completion of the improvements on the Land *[and the Private Property – if applicable]* or any part thereof, and any amounts otherwise owing to the Town by the Developer under this Agreement;

ii. Second, in their respective order of priority, to pay any and all existing mortgage indebtedness permitted under this Agreement and to make all and whatever payments may be necessary to discharge any other encumbrances or liens existing or threatened on the Land *[or the Private Property – if applicable]* and the improvements thereon, in favor of mechanics, materialmen or subcontractors;

iii. Third, if there is any balance of proceeds remaining, to use the balance of the proceeds to reimburse the Developer for and up to the amount of cash actually invested by it in the purchase and improvement of the Land *[and the Private Property – if applicable]* less any profit theretofore realized by the Developer from the disposition of any interest in the Land *[and the Private Property – if applicable]* and the improvements thereon or in any individual part or parcel thereof; and

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

(f) Any delay by the Town in instituting or prosecuting any actions or proceedings or otherwise asserting its rights under this Section 8.02 shall not operate as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this Section that the Town should not, because of concepts of waiver or laches or otherwise, feel constrained to exercise

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such remedy at a time when it may still hope to resolve by other methods the problems created by the default; nor shall the Town's waiver of any specific default be treated as a waiver of the Town's rights with respect to any other default or, for that matter, as a waiver with respect to the particular default, except and only to the extent specifically waived in writing).

Section 8.03 Rights of Mortgage Holders upon Developer Default.

In the event of a Developer Default, any Mortgage Holder shall have the right to cure any such Developer Default within the cure period (if any) provided therefor in Section 8.01 hereof and within the Mortgage Holder Cure Period, as well as the other rights provided in this Section 8.03.

Section 8.03.1 Notice of Developer Default to Mortgage Holder.

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

Section 8.03.2 Mortgage Holder may Cure Developer Default.

In the event that the Developer receives notice from the Town of a default under this Agreement, and such default is not cured by the Developer before the expiration of the cure period therefor provided in Section 8.01 hereof, then the Mortgage Holder(s) may cure any such default within the time provided in Section 8.02(a) hereof; *provided, however,* that if the breach or default is with respect to the Developer's failure to construct the Project in accordance with the Approved Plans, the Approved Construction Documents, and the Approvals, nothing contained in this Agreement shall be deemed to authorize or permit such Mortgage Holder either before or after foreclosure or action in lieu thereof, to undertake or continue the construction or completion of the Work (beyond the extent necessary to conserve or protect improvements or construction already made) without first having expressly assumed the obligation to the Town, by written agreement satisfactory to the Town, to complete the Work in the manner provided in this Agreement. Any such Mortgage Holder which shall properly complete the Work or applicable part thereof shall be entitled, upon written request made to the Town, to a Certificate of Completion in the manner provided in Section 3.08 hereof.

Section 8.04 Default of the Town.

Section 8.04.1 Town Default.

The failure of the Town to observe or perform any of the Town's covenants, agreements, or obligations hereunder to be performed after the Closing pursuant to Article 2 hereof, within sixty (60) days following receipt of written notice from the Developer, specifying such failure, or

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such longer period reasonably required to cure the breach, provided the cure is commenced reasonably promptly after receipt of said notice and continuously and diligently prosecuted to completion (said cure period, the "**Town Cure Period**"), shall constitute a "**Town Default**" for purposes of this Agreement.

Section 8.04.2 Rights of Developer Upon Town Default.

In the event that a Town Default has occurred, the Developer's sole remedy shall be to institute such action and proceedings for injunctive relief as may be appropriate against the Town, including actions and proceedings to compel specific performance, but no default by the Town shall entitle the Developer to recover any damages of any kind or nature whatsoever from the Town, or relieve the Developer from its obligations under this Agreement.

ARTICLE 9

REPRESENTATIONS AND WARRANTIES

Section 9.01 Representations and Warranties of the Developer.

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

(a) the Developer is a _____, duly organized, validly existing and in good standing under the laws of_____ and duly qualified to do business in the Commonwealth of Massachusetts. The Developer has the power and authority to execute and deliver this Agreement and to perform its covenants and obligations under this Agreement, and the person executing this Agreement has been duly authorized by all necessary action and has full, right, power and authority to execute and deliver this Agreement on behalf of the Developer;

(b) this Agreement has been duly and validly authorized, executed and delivered on behalf of the Developer;

(c) this Agreement and each and every document and instrument to be executed and delivered by the Developer pursuant to this Agreement, when fully executed and delivered by all intended signatories thereto, shall constitute the valid and binding obligations of the Developer, enforceable against the Developer in accordance with their respective terms, subject to general equitable principles and applicable provisions of law related to bankruptcy, insolvency and creditors' rights generally;

(d) the Developer is not the subject of any Insolvency Event and the Developer has no knowledge of any threatened or contemplated Insolvency Event. The Developer possesses the financial resources to perform all of its covenants and obligations contained in this Agreement and to be contained in the documents and instruments to be executed and delivered pursuant to this Agreement, and the performance of said covenants and obligations will not render the Developer the

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subject of an Insolvency Event. As used in this Agreement, the term "**Insolvency Event**" shall mean, as it pertains to a party, any proceeding by or against said party under any federal or state law or statute regarding bankruptcy, insolvency, fraudulent transfers, receivership, conservatorship, custodianship, trusteeship, moratorium or creditors' rights or debtors' obligations generally; any assignment for the benefit of creditors by said party; any failure of said party to pay its obligations as they come due; the insolvency of said party; or entry by said party into a composition agreement;

(e) there are no pending or, to the best of the Developer's knowledge, threatened actions, suits, or proceedings before any court, arbitrator or governmental or administrative body which may materially adversely affect the properties, business or condition, financial or otherwise, of the Developer or its ability to perform its obligations under this Agreement; and

(f) neither the execution, delivery or performance of this Agreement nor compliance herewith (i) conflicts or will conflict with or results or will result in a breach of or constitutes or will constitute a default under (1) the organizational documents of the Developer, (2) to the best of the Developer's knowledge, any law or any order, writ, injunction or decree of any court or governmental authority; or (3) any agreement or instrument to which the Developer is a party or by which it is bound, or (ii) results in the creation or imposition of any lien, charge or encumbrance upon its property pursuant to any such agreement or instrument.

Section 9.02 Representations and Warranties of the Seller.

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

(a) the Seller has the power and authority to execute and deliver this Agreement and to perform its covenants and obligations under this Agreement, and the person executing this Agreement has been duly authorized by all necessary action and has full, right, power and authority to execute and deliver this Agreement on behalf of the Seller;

(b) this Agreement has been duly and validly authorized, executed and delivered by the Seller;

(c) this Agreement and each and every document and instrument to be executed and delivered by the Seller pursuant to this Agreement, when fully executed and delivered by all intended signatories thereto, shall constitute the valid and binding obligations of the Seller, enforceable against the Seller in accordance with their respective terms, subject to general equitable principles and applicable provisions of law related to bankruptcy, insolvency and creditors' rights generally; and

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(d) there are no written leases, subleases, licenses or other agreements entered into by the Seller which grant any possessory interest in and to the Property or any portion thereof that will survive the Closing.

Section 9.03 Brokers.

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

Section 9.04. Survival.

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

ARTICLE 10

GENERAL PROVISIONS

Section 10.01 Request for Proposals Incorporated.

The Terms and Conditions of the RFP issued by the Town of Andover dated _____, 2020 (including all Addenda thereto issued by the Town), are incorporated herein by reference. A copy of the RFP and all such Addenda is on file in the office of the Town Purchasing Agent.

Section 10.02 Access.

The Developer shall permit the Town or its agents to enter the Land *[and the Private Property – if applicable]* and the Project at any reasonable time, from time to time, to inspect the Land *[and the Private Property – if applicable]* and the Project and to ensure compliance with the provisions of this Agreement; *provided, however,* that the Town provides the Developer at least twenty-four (24) hours' prior notice thereof (which may be verbal), except in the event of an emergency.

Section 10.03 Duration.

The restrictions and covenants contained in (i) Sections 5.01.1, 5.03, 6.01 and 7.01 of this Agreement shall have a term equal to the Restriction Period, (ii) Sections 5.02, 6.02 and 6.03 of this Agreement shall have a term commencing on the date of this Agreement and expiring on the date on which a Certificate of Completion is issued for the Project in accordance with the provisions of Section 3.09 hereof, and (iii) Section 5.01.2 of this Agreement shall remain in force and effect in perpetuity. The Developer agrees that each of this Agreement, the restrictions set forth in the Deed, and the Restriction Documents is an "other restriction held by a governmental body" as that term is used in M.G.L. c.184, §26 and thus not subject to the limitations on the enforceability of restrictions in M.G.L. c.184, §§26 – 30 and is enforceable for the full period provided in this Agreement, the Deed or the Restriction Documents, respectively. Nevertheless, if recording of a notice is ever needed to extend the time period for enforceability of any of the restrictions and covenants referenced in the first sentence of this Section 10.03, or set forth in the Deed or the Restriction Documents, the Developer hereby appoints the Select Board of the Town

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as the Developer's agent to execute and record such notice and agrees that the Developer shall execute and record such notice upon request.

Section 10.04 Enforcement.

The parties hereto, and thereafter the permitted successors and assigns of the parties hereto, covenant and agree that the Developer will reimburse the Town for all reasonable costs and expenses (including without limitation attorney's fees and expenses) incurred by the Town in enforcing this Agreement or in remedying or abating any violation thereof.

Section 10.05 Indemnification.

The Developer shall indemnify, defend and save harmless the Town and the Town's officers, employees, agents, consultants, contractors and attorneys, from and against any and all damages, liabilities, actions, suits, proceedings, claims, demands, losses, costs, expenses, recoveries and judgments of every nature and description (including reasonable attorneys' fees and expenses) that may arise in whole or in part out of or in connection with any use, occupancy, conduct or management of or from any work or thing whatsoever done in or about the Land *[and the Private Property – if applicable]* and the improvements thereon by the Developer, its employees, agents, contractors, subcontractors, material men, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, or any condition of the Land *[and the Private Property – if applicable]*, including, without limitation, any environmental condition now existing or hereafter arising at the Land *[and the Private Property – if applicable]* and the improvements thereon regardless of the cause thereof. The duty to defend shall immediately accrue and be owing upon the assertion of such a claim by any person or entity regardless of merit and shall not be dependent upon a finding of negligence or any other finding of fact and trial. The existence of insurance shall in no way limit the scope of the Developer's indemnification under this Agreement. The provisions of this Section shall survive, as applicable, the Closing and delivery of the Deed, or the rescission, cancellation, or termination of this Agreement; *provided, however,* that if this Agreement is terminated in accordance with its terms prior to the Closing, the Developer's obligations under this Section with respect to physical conditions and environmental conditions at the Property shall be limited to damages, liabilities, actions, suits, proceedings, claims, demands, losses, costs, expenses, recoveries and judgments arising out of, relating to or caused by any act or omission on the part of the Developer, the Developer's Representatives, or any of their respective employees, agents, contractors, subcontractors, material men, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

Section 10.06 Notices.

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

DRAFT

if to the Developer: _____

_____

_____

With a copy sent in the same manner to:

_____

_____

_____

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

With a copy sent in the same manner to:

Town Counsel
_____
_____
_____

Section 10.07 Waiver.

The failure on the part of the Developer or the Town, as the case may be to complain in any one or more cases of any action or non-action on the part of the other party or to insist in any one or more cases upon the performance of any of the provisions, covenants, agreements or conditions of this Agreement or to exercise any option contained herein no matter how long the same may continue, shall never be deemed or construed to be a waiver by such party of any of its rights hereunder, or a relinquishment for the future of any such provision, covenant, agreement, condition or option. Further it is covenanted and agreed that no waiver at any time of any of the provisions hereof by the Developer or the Town shall be construed as a waiver of any of the other provisions hereof, and that a waiver at any time of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions. No waiver shall be effective unless in writing and signed by the party to be charged therewith.

Section 10.08 Rights and Remedies Cumulative.

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

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Section 10.09 Headings and Captions for Convenience Only.

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

Section 10.10 Parties Bound; Covenants Running with the Land.

As used in this Agreement, (i) the terms "the Town" or "Seller" shall include such party and its successors and assigns, and (ii) the term "Developer" shall include such party, its permitted successors and assigns, and also its permitted successors in title to the Property or any portion thereof. The provisions contained herein shall be covenants running with the land; *provided, however,* that notwithstanding the foregoing, no party shall be liable for any breach of any covenant or agreement on the part of the Developer herein contained except such as occur during the time it holds the Developer's interest under this Agreement *[and the Private Property – if applicable]* and the improvements thereon or any portion thereof. No Mortgage Holder shall be deemed to be the owner of the Land *[and the Private Property – if applicable]* and the improvements thereon until it shall have foreclosed the mortgage thereon or shall have acquired title by deed in lieu of foreclosure.

Section 10.11 Entire Agreement of Parties; Amendments.

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

Section 10.12 Governing Law.

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

Section 10.13 Conditions to Effectiveness of Agreement.

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

Section 10.14 Severability.

DRAFT

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

Section 10.15 Number and Gender.

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

Section 10.16 Construction.

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

Section 10.17 Business Day.

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

Section 10.18 No Third Party Beneficiaries.

This Agreement and the representations, warranties, covenants and agreements contained herein are made and entered into for the sole protection and benefit of the parties hereto and their permitted successors in interest and assigns, if any, and no other person, persons, entity or entities shall have any right of action hereon or right to claim any right or benefit from the terms contained herein or be deemed a third party beneficiary hereunder.

Section 10.19 Time of the Essence; Extension of Time.

Time is of the essence in the performance of each of the parties' respective obligations contained herein. Upon written request by the Developer including a statement of good cause therefor, the Town Manager may, in his or her sole and absolute discretion, on behalf of the Town extend any deadline or period for performance by the Developer hereunder, provided that any such extension must be in writing and signed by the Town Manager and the Developer.

Section 10.20 Determinations and Approvals under this Agreement.

DRAFT

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

Section 10.21 Action by the Town.

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

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

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

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

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

Section 10.23 Estoppel Certificate.

The Town agrees from time to time, within thirty (30) days of a written request by the Developer, to execute, acknowledge and deliver to the Developer a statement in writing certifying that this Agreement is unmodified and in full force and effect and that there are no uncured defaults by the Developer under this Agreement (or, if there have been any modifications, that the same are in full force and effect as modified and stating the modifications and if there are uncured defaults, the nature of such defaults).

Section 10.24 Counterparts.

DRAFT

This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same Agreement. For purposes of the execution of any amendment or modification to this Agreement (but not for purposes of the execution of this Agreement itself), and any communications delivered pursuant to this Agreement (as it may be so amended or modified), the signature of a party on any counterpart thereof transmitted by facsimile or electronic mail shall be binding with the same force and effect as if it was manually affixed to a hard copy original thereof.

(Signature Page Follows)

DRAFT

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

TOWN OF ANDOVER

By its Select Board

_____

_____

_____

_____

_____

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

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

_____

Notary Public
My Commission Expires:

DRAFT

DEVELOPER:

_____

By: _____
Name:
Title:

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

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

_____

Notary Public
My Commission Expires:

DRAFT

LIST OF EXHIBITS

Exhibit A: Legal Description and Plan of the Land

Exhibit B: Excerpts from Proposal

Exhibit C: Form of Deed

Exhibit D: Title Insurance Commitment

Exhibit E: Disclosure Statement re: Beneficial Interests in Developer

Exhibit F: Certificate of Compliance with Tax Laws

Exhibit G: Non-Collusion Certificate

Exhibit H: Option Provisions

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SCHEDULE OF DEFINED TERMS

Agreement	Preamble
Approval Conditions	Section 2.07
Approvals	Section 2.07
Approvals Issuance Date	Section 2.03
Approved Construction Documents	Section 2.08
Approved Plans	Section 3.01
Business Day	Section 10.17
Certificate of Completion	Section 3.08
Change in Identity	Section 5.02.1
Closing	Section 2.10
Closing Date	Section 2.12
Closing Escrow Agent	Section 2.12
Commence	Section 3.03
Complete	Section 3.03
CPP	Recitals
Deed	Section 2.02
Deposits	Section 2.01
Developer	Preamble
Developer Default	Section 8.01
Developer's Investigations	Section 2.04
Developer's Representatives	Section 2.04
Due Diligence Period	Section 2.04
First Mortgage Holder	Section 4.01
Force Majeure	Section 3.03
Funding Sources	Section 4.01
Insolvency Event	Section 9.01
Land	Recitals
Laws	Section 2.04
[LEED Performance Deposit	*Section 2.08]*
Mortgage	Section 4.01
Mortgage Holder	Section 4.01
Mortgage Holder Cure Period	Section 8.02
[Notice of Option	*Section 2.10]*
[Option	*Section 8.02]*
Outside Closing Date	Section 2.10
Permitted Exceptions	Section 2.02
[Private Property	*Recitals]*
Project	Recitals
Project Commencement Date	Section 3.03
Project Completion Date	Section 3.03
Property	Recitals
Proposal	Recital
Purchase Price	Section 2.01
Restriction Documents	Section 5.01.2

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Restriction Period	Section 5.01.1
RFP	Recitals
Seller	Preamble
Seller's Representative	Section 2.04
Title Defect Notice	Section 2.05
Town	Preamble
Town Cure Period	Section 8.04.1
Town Default	Section 8.04.1
Unpermitted Exceptions	Section 2.05
[USGBC	*Section 2.07]*
Work	Recitals

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Exhibit A

<u>Legal Description and Plan of Land</u>

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Exhibit B

<u>Excerpts from Proposal</u>

[NOTE: THIS EXHIBIT WILL NOT BE ATTACHED TO THE COPY OF THIS AGREEMENT WHICH IS RECORDED WITH THE NORTHERN ESSEX REGISTRY OF DEEDS]

DRAFT

Exhibit C

<u>Form of Deed</u>

DRAFT

Exhibit D

<u>Title Insurance Commitment</u>

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Exhibit E

DISCLOSURE STATEMENT FOR

TRANSACTION WITH A PUBLIC AGENCY CONCERNING REAL PROPERTY

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

INSTRUCTION SHEET

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

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

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

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

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

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

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

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

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

DRAFT

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

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

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

DRAFT

DISCLOSURE STATEMENT FOR

TRANSACTION WITH A PUBLIC AGENCY CONCERNING REAL PROPERTY

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

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

(1) REAL PROPERTY:

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

(3) PUBLIC AGENCY PARTICIPATING in TRANSACTION:

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

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

_____Lessor/Landlord _____Lessee/Tenant

_____Seller/Grantor _____Developer/Grantee

_____Other (Please describe):_____

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

NAME RESIDENCE

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

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

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

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

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

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

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

_____
_____
AUTHORIZED SIGNATURE of DISCLOSING PARTY DATE (MM / DD / YYYY)

_____
_____
PRINT NAME & TITLE of AUTHORIZED SIGNER

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Exhibit F

Certificate of Compliance with Tax Laws

Pursuant to Massachusetts General Laws, Chapter 62C, Section 49A, I certify under the penalties of perjury that I have filed all Massachusetts state tax returns; have complied with all Massachusetts laws relating to taxes; and have paid all Massachusetts state taxes required under law; and that the Federal Social Security number for the undersigned is _____.

Dated: _____, 20__

_____

DEVELOPER

DRAFT

Exhibit G

Certificate of Non-Collusion

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

Dated: _____, 20__ _____

DEVELOPER

DRAFT

Exhibit G

Option Provisions

[NOTE: THIS EXHIBIT WILL NOT BE ATTACHED TO THE COPY OF THIS AGREEMENT WHICH IS RECORDED WITH THE NORTHERN ESSEX REGISTRY OF DEEDS]

1. Properties and Purchase Price[1]

Property	Purchase Price

2. In further consideration for the conveyance by the Town to the Developer of the Property, the Developer hereby grants to the Town an option to purchase all or such portions of the Private Property as the Town may specify (collectively, the "**Option Property**") in the written notice of exercise given by the Town to the Developer (the "**Exercise Notice**"), in the manner provided in Section 10.06 hereof within ___ days of the re-acquisition by the Town of title to the Property pursuant to Section 8.02(d) hereof. The Exercise Notice shall state a closing date, which date shall not be less than thirty (30) days nor more than ninety (90) days after the day the Exercise Notice is given.

3. The deed to the Option Property is to be delivered and the Purchase Price therefor paid, unless otherwise agreed upon in writing, at 10:00 a.m. on the date fixed for conveyance in the Town's Exercise Notice, at _____, Massachusetts (such date and time, as the same may be extended in accordance with the provisions of this Option Agreement, are hereinafter referred to as the "**Time of Closing**").

4. If as of the Time of Closing there are any encumbrances or other matters of record which secure the payment of money, the Town may, at its election, pay to the holder thereof out of the Purchase Price otherwise payable to the Developer the amount required to satisfy or to release the same (provided that the instruments necessary for this purpose are either recorded or registered simultaneously with the deed to the Option Property or the Town has established customary arrangements for the payment of such amounts and the subsequent receipt of such instruments), and all amounts so paid shall be credited against the Purchase Price otherwise due and payable by the Town to the Developer. All payments of the Purchase Price to the Developer (as adjusted in accordance with the terms of these Option Provisions) shall be made by a certified or bank check or by federal wire transfer.

[1] Purchase Price for each Property is to be the consideration stated in the deed therefor from the private party owning the same to the Developer which is recorded as part of the Closing

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5. The Developer shall convey title to the Option Property by a good and sufficient quitclaim deed running to the Town, which title shall be subject to all encumbrances and other matters of record as of the recording of such deed. If the deed refers to a plan necessary to be recorded therewith the Developer shall deliver such plan with the deed in form adequate for recording or registration. If title to the Property is registered, the deed shall be in form sufficient to entitle the Town to a Certificate of Title to the Property, and the Developer shall deliver with the deed all instruments, if any, necessary to enable the Town to obtain such Certificate of Title.

6. The Developer shall vacate the Option Property by the Time of Closing and shall deliver to the Town at that time full possession of the Option Property, free of all tenants and occupants, and otherwise in its then "as is" condition.

7. Upon any default by the Developer under these Option Provisions, the Town shall have all rights and remedies as are available to it under Section 8.02 of this Agreement.

8. The Developer shall deliver to the Town at the Time of Closing the following documents: the deed to the Option Property; an assignment of all Approvals; and such certifications as may be reasonably necessary for compliance with Internal Revenue Service regulations.

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