

**LAND DISPOSITION AGREEMENT**

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BY AND BETWEEN

PETRUZZIELLO PROPERTIES, LLC

AND

THE TOWN OF WESTWOOD

DRAFT

## PREAMBLE

This Land Disposition Agreement (the “**Agreement**”) is entered into as of this \_\_\_\_ day of April, 2018 (the “**Execution Date**”), by and between the TOWN OF WESTWOOD, a Massachusetts municipal corporation with its principal offices at Town Hall, 580 High Street, Westwood, MA 02090 (the “**Town**”), acting by and through its Board of Selectmen, and PETRUZZIELLO PROPERTIES, LLC, a Massachusetts limited liability company with a principal address of 21 Eastbrook Road, Dedham, MA 02026 (the “**Redeveloper**”).

## RECITALS

WHEREAS, on May 4, 2016, the Town issued a Request for Proposals for the Redevelopment of Islington Center, RFP # ECON-16-R-003 (the “**RFP**”), which sought proposals for the purchase and redevelopment of the following four Town-owned properties (collectively, the “**Town Properties**”):

- (a) the existing municipal parking lot at 277-283 Washington Street (the “**Parking Lot Parcel**”);
- (b) Wentworth Hall, 280 Washington Street (the “**Wentworth Parcel**”);
- (c) Islington Community Center, 288 Washington Street (the “**Community Center Parcel**”); and
- (d) a portion of Lot 190 on Town of Westwood Assessor’s Plan No. 23 (the “**East Street Parcel**”);

WHEREAS, the Redeveloper owns three parcels of land, together with improvements thereon, adjacent to the Town Properties, and has a fourth parcel of land under agreement (collectively, the “**Redeveloper Parcels**”), consisting of the following:

- (a) an approximately 6,331-square foot parcel of property located at the corner of School Street and Washington Street with a street address of 291-295 Washington Street abutting the Parking Lot Parcel on the south (“**Redeveloper Parcel A**”);
- (b) an approximately 26,370-square foot parcel of property with a street address of 9 School Street and abutting Redeveloper Parcel A on the west (“**Redeveloper Parcel B**”);
- (c) an approximately 22,525-square foot parcel of property with a street address of 277A Washington Street and abutting the Parking Lot Parcel on the west (“**Redeveloper Parcel C**”); and

- (d) an approximately 31,363-square foot parcel of property with a street address of 266-278 Washington Street abutting the Wentworth Parcel on the north (“**Redeveloper Parcel D**”):

WHEREAS, on June 20, 2016, the Redeveloper responded to the RFP with a proposal entitled “Proposed Redevelopment Islington Village, Westwood, MA” (the “**Proposal**”);

WHEREAS, the Board of Selectmen subsequently found that the Proposal satisfied the criteria set forth in the RFP, designated the Redeveloper as the Designated Developer, and entered into a Memorandum of Understanding dated September \_\_, 2017 (the “**MOU**”) to memorialize this designation;

WHEREAS, through an extensive public process, including public meetings held by the Planning Board, the Proposal has evolved into its current form, shown on a set of plans entitled, “Islington Village Site Plans, Washington, East and School Streets, Westwood, Massachusetts,” prepared by GCG Associates, Inc., for Supreme Development, c/o Giorgio Petruzzello, 21 Eastbrook Road, Dedham, MA 02026, dated December 12, 2017, revised through April 6, 2018, comprising 25 sheets (the “**Site Plans**”);

WHEREAS, in keeping with the Site Plans, the Redeveloper proposes to redevelop the Town Properties and the Redeveloper Parcels (the “**Project**”) by, among other things:

- (a) constructing on the combined area of Redeveloper Parcels A, B, and C and a portion of the Parking Lot Parcel (collectively, the “**School Street Site**”) (i) a building with a gross floor area (“**gfa**”) of approximately 9,990 square feet (“**Building A**”), for use as a pharmacy and associated retail store; (ii) a 40-space parking lot for use by Building A customers, as well as for public parking; and (iii) a 32-space municipal parking lot;
- (b) renovating the existing building on Redeveloper Parcel D (“**Building B**”) to create approximately 8,750 square feet of commercial/retail use and no less than 5,000 square feet of lower-level space, to be offered for lease to Mother’s Morning Out (“**MMO**”);
- (c) constructing on the Community Center Parcel, the Wentworth Parcel, and the East Street Parcel (collectively, with Redeveloper Parcel D, the “**East Street Site**”), a mixed-use, commercial and residential building (“**Building C**”) with approximately 13,000 square feet of ground level commercial/retail space, 18 two-bedroom condominium units on upper levels, and a 36-space, belowground parking garage;
- (d) providing approximately 55 surface-level, open-air parking spaces on the East Street Site;

- (e) providing 5 on-street parking spaces and one bus stop adjacent to the School Street Site, and 12 on-street parking spaces adjacent to the East Street Site;
- (f) conveying to the Town a newly-created parcel (the “**New Town Parcel**”) on the School Street Site for use as open space, a 32-space municipal parking lot, and up to 8,070 square feet of new community space, town office space, and a town library via relocation and expansion of the existing building on the Wentworth Lot (“**Wentworth Hall**”), which, unless the Redeveloper exercises its option to relocate and renovate the Blue Hart Tavern presently located on its own property, will include an approximately 1,908-square foot lot adjacent to the relocated town library;

WHEREAS, the Project will create significant amenities, fiscal benefits, and community assets for the Town;

NOW, THEREFORE, in consideration of the promises and the mutual obligations of the parties hereto, the sufficiency of which is hereby acknowledged, each of the Town, acting by and through the Board of Selectmen, and the Redeveloper (each a “**Party**”, and collectively, the “**Parties**”) does hereby covenant and agree with the other as follows:

**SECTION 1                    DEFINITIONS**

As used in this Agreement, the following terms shall have the following meanings.

<b>TERM</b>	<b>DEFINITION</b>
<u>Affiliate</u> :	(a) any entity that directly or indirectly controls, is controlled by or is under common control with the Redeveloper, where the term “control” means the power to direct the management of such entity through voting rights, ownership or contractual obligations, or (b) any entity at least a majority of whose economic interest is owned by the Redeveloper.
<u>Agreement</u> :	this Land Disposition Agreement.
<u>Appraisal Parcels</u> :	The land (excluding any buildings) comprising the Community Center Parcel, the Wentworth Parcel and the East Street Parcel.

**TERM****DEFINITION**

<u>Approvals:</u>	all final permits, licenses, and approvals required from a governmental authority of competent jurisdiction or pursuant to any instruments of record in order to construct or demolish any improvements, perform any work, use or occupy property or conduct any other activity, including, without limitation, (i) permits and approvals relating or pertaining to the demolition of any existing improvements, (ii) site plan approvals, engineering permits, traffic and department of transportation permits, sewer and storm water management permits, (iii) building permits, (iv) environmental permits and approvals, and (v) approvals, consents, or notices required pursuant to any instruments binding on the relevant land.
<u>Blue Hart Tavern:</u>	the existing, approximately 1,804-gsf building located as of the Execution Date on Redeveloper Parcel B.
<u>Blue Hart Tavern Parcel:</u>	an approximately 1,908-square foot lot designated Blue Hart Tavern on the Site Plans.
<u>Building A:</u>	the building proposed for the School Street Site on the corner of School Street and Washington Street, with a gfa not to exceed 9,990 square feet.
<u>Building B:</u>	the renovated, existing building on the East Street Site in the approximate location of Redeveloper Parcel D, with approximately 8,750 square feet of first floor commercial/retail use and no less than 5,000 square feet of lower level space.
<u>Building C:</u>	the mixed-use, commercial and residential building proposed for the East Street Site on the corner of Washington Street and East Street, with approximately 13,000 square feet of commercial/retail space; 18 second-floor, two-bedroom condominium units; and a 36-space, belowground parking garage.
<u>Certificate of Completion:</u>	a certificate issued by the Town certifying that the improvements that are the subject of a Notice of Completion meet the Completion Standard, or, in the event that the Town does not timely issue a Certificate of Completion, an affidavit pursuant to Section 7.4.E of this Agreement.
<u>Certificate of Compliance:</u>	a certificate issued by the Town following the Closing certifying that the Redeveloper has met all of the requirements of this Agreement, except those requirements that by their nature are ongoing.

**TERM**

**DEFINITION**

<u>Certificate of Occupancy:</u>	any preliminary, partial, temporary or permanent certificate of occupancy issued by the Town.
<u>Claims:</u>	all demands, actions, causes of action, suits, proceedings, damages, claims, counterclaims, third-party claims, cross-claims, contributions claims, indemnity claims, executions, judgments, losses, penalties, obligations, and liabilities whatsoever, of every name, kind, type, nature or description, in law or in equity, arising under Laws, whether known, unknown, direct, indirect, absolute, contingent, disclosed, undisclosed or capable or incapable of detection, including, without limitation, any and all fees, costs, disbursements and expenses (including but not limited to reasonable attorneys' and reasonable experts' fees, disbursements, and expenses) that may be imposed upon, incurred by, or asserted or awarded against the Party.
<u>Closing(s):</u>	the consummation of any of the three phases of the transactions contemplated by this Agreement, as set forth in Section 6.1 of this Agreement (each, a " <b>Closing</b> " and collectively, the " <b>Closings</b> ").
<u>Closing Date</u>	as defined in Section 6.1 of this Agreement.
<u>Commencement of Construction:</u>	commencement of grading, land contouring, installation of drainage facilities, or similar activities following issuance of a building permit.
<u>Community Center Parcel:</u>	an approximately 15,136-square foot parcel of land with a street address of 288 Washington Street, shown as Lot 189 on Town of Westwood Assessor's Plat No. 23, together with all improvements thereon.
<u>Completion Standard:</u>	constructed in substantial conformance with the approved plans for the improvements shown thereon in a safe, workmanlike manner and in accordance with all applicable Laws.
<u>Cure Period:</u>	a fourteen (14) day period commencing on the day after a Party's receipt of a Default Notice.
<u>Default:</u>	a Party's (or successor's) failure timely to perform any acts required of the Party under this Agreement, or any of its terms or conditions, as set forth in a Default Notice.
<u>Default Notice:</u>	a written notice from the Non-Defaulting Party to the Defaulting Party identifying with particularity an alleged Default under this Agreement by the Defaulting Party.

**TERM**

**DEFINITION**

<u>Defaulting Party:</u>	the Party identified as being in Default of this Agreement in a Default Notice from the Non-Defaulting Party.
<u>Deposit:</u>	as defined in Section 3.3 of this Agreement.
<u>DHCD:</u>	Massachusetts Department of Housing and Community Development.
<u>East Street Parcel:</u>	an approximately 3,469-square foot parcel of land located off of East Street and shown as a portion of Lot 190 on Town of Westwood Assessor’s Plat No. 23, and also shown as _____ on a plan entitled, “_____”, dated _____, prepared by _____, together with all improvements thereon.
<u>East Street Site:</u>	an approximately 66,169-square foot tract of land comprising the Community Center Parcel, the Wentworth Parcel, the East Street Parcel, and Redeveloper Parcel D.
<u>Effective Date:</u>	as defined in Section 14.1.
<u>Encumbrance:</u>	any security agreement, mortgage, pledge, license, conditional sales agreement, charge, claim, lien, liability, easement, encumbrance, or other restriction or limitation on the right or benefit of ownership of any nature whatsoever.
<u>Environmental Due Diligence:</u>	as defined in Section 2.7.A of this Agreement
<u>Environmental Due Diligence Period:</u>	any of the Phase 1 Environmental Due Diligence Period, the Phase 2 Environmental Due Diligence Period, or the Phase 3 Environmental Due Diligence Period
<u>Execution Date:</u>	the date set forth in the Preamble
<u>Existing Community Building:</u>	the community building existing on the Community Center Parcel as of the Execution Date.
<u>Extended Cure Period:</u>	an additional fourteen (14) day period commencing on the day after the end of the Cure Period.
<u>First Outside Date:</u>	January 1, 2019.
<u>Force Majeure:</u>	unforeseeable or catastrophic causes beyond the reasonable control of a Party and without the Party’s fault or negligence, including, but not limited to, acts of God, acts of terrorism directly affecting the Boston Metropolitan area, war, fires, floods, earthquakes, epidemics, labor disputes, strikes, unusual and severe weather conditions, materially affecting the Redeveloper’s ability to carry out the Project in compliance with all Laws and Approvals.

**TERM**

**DEFINITION**

Infrastructure Improvements:

Signalization improvements to the existing traffic signals at the intersection of Washington Street and East Street.

Intersection Improvement Parcel:

A portion of the Community Center Parcel and the East Street Parcel fronting on East Street, to be retained by the Town for potential intersection improvements, as shown on a plan entitled \_\_\_\_\_, dated \_\_\_\_\_, 2018, a copy of which is attached to the draft deed for the Community Center Parcel at Exhibit B and to the draft deed for the East Street Parcel at Exhibit D.

LAU:

a Local Action Unit under the Guidelines for G.L. c.40B Comprehensive Permit Projects and the Subsidized Housing Inventory

Laws:

all present and future laws, rules, orders, ordinances, regulations, statutes, requirements, decisions, codes and executive orders (extraordinary as well as ordinary, foreseen or unforeseen) of any and all federal, state, municipal, governmental, public or quasi-public authorities (including, without limitation, any court), and any and all of their respective departments and bureaus, whether now existing or hereafter enacted or promulgated, as they may be amended from time to time, that relate, directly or indirectly, to any matter addressed by this Agreement, including, without limitation, zoning ordinances, wetlands regulations, land use regulations, and environmental regulations.

Liens:

as defined in Section 2.6.A of this Agreement.

LIP:

Local Initiative Program maintained by DHCD under the Guidelines for G.L. c.40B Comprehensive Permit Projects and the Subsidized Housing Inventory

MOU:

the Memorandum of Understanding dated September \_\_, 2017 by and between the Town, acting by and through its Board of Selectmen, and the Redeveloper.

New Town Parcel:

an approximately 38,692-square foot parcel of land shown on Sheet C-8 of the Site Plans, entitled “Proposed Layout Site Plan / School Street Side” as “Prop. Town Property”, together with the Blue Hart Tavern Parcel in the event that the Redeveloper does not exercise its option to relocate and renovate the Blue Hart Tavern under Section 5.6 of this Agreement.

Non-Defaulting Party:

the Party providing a Default Notice to the Defaulting Party.



**TERM**

**DEFINITION**

<u>Notice of Completion:</u>	a written notice by the Redeveloper certifying that the improvements that are the subject of the Notice of Completion satisfy the Completion Standard.
<u>Notice of Incompletion:</u>	a written notice given by the Town in accordance with Section 7.4.B of this Agreement stating that, in the Town’s opinion, the improvements that are the subject of a Notice of Completion do not meet the Completion Standard.
<u>Parking Cross Easements</u>	an easement granted by the Redeveloper to the Town for use by the public of the Redeveloper’s 40-space parking lot on the School Street Site, and an easement granted by the Town to the Redeveloper for use of the Town’s 32-space municipal parking lot on the School Street Site in connection with Building A, as required by the Special Permit.
<u>Parking Lot Parcel:</u>	an approximately 29,527-square foot parcel of land with a street address of 277-283 Washington Street, shown as Lot 163 on Town of Westwood Assessor’s Plat No. 23, together with all improvements thereon.
<u>Phase 1 Closing:</u>	as defined in Section 6.1 of this Agreement.
<u>Phase 2 Closing:</u>	as defined in Section 6.1 of this Agreement.
<u>Phase 3 Closing:</u>	as defined in Section 6.1 of this Agreement.
<u>Phase 1 Environmental Due Diligence Period:</u>	90 days beginning on the Effective Date.
<u>Phase 2 Environmental Due Diligence Period:</u>	the earlier of (a) 90 days after the date on which a Certificate of Occupancy is issued for Building A, and (b) one (1) year after the Phase 1 Closing.
<u>Phase 3 Environmental Due Diligence Period:</u>	the earlier of (a) 90 days after the date on which a Certificate of Occupancy is issued for Building B, and (b) one (1) year after the Phase 2 Closing.
<u>Phase 1 Financing Contingency:</u>	the period beginning on the Effective Date and ending 90 days later.
<u>Phase 2 Financing Contingency:</u>	the earlier of (a) 90 days after the date on which a Certificate of Occupancy is issued for Building A, and (b) one (1) year after the Phase 1 Closing.
<u>Phase 3 Financing Contingency:</u>	the earlier of (a) 90 days after the date on which a Certificate of Occupancy is issued for Building B, and (b) one (1) year after the Phase 2 Closing.
<u>Phase 1 Title Due Diligence Period:</u>	as defined in Section 2.6.B.1 of this Agreement.

**TERM**

**DEFINITION**

Phase 2 Title Due Diligence Period:

as defined in Section 2.6.B.2 of this Agreement.

Phase 3 Title Due Diligence Period:

as defined in Section 2.6.B.3 of this Agreement.

Planning Board:

the Town of Westwood Planning Board, which has its principal offices at 50 Carby Street, Westwood, Massachusetts.

Project:

as defined generally in the Recitals in this Agreement, and more specifically as approved by the Special Permit, including the Site Plans.

Proposal:

the proposal dated June 20, 2016, entitled “Proposed Redevelopment Islington Village, Westwood, MA”.

Redeveloper:

Petruzziello Properties, LLC, or an Affiliate approved by the Town in accordance with Section 14.8 of this Agreement.

Redeveloper Authorized Representatives:

any of the Redeveloper’s employees, agents, contractors, or subcontractors.

Redeveloper Improvements:

as defined in Section 7.2 of this Agreement.

Redeveloper Parcel A:

an approximately 6,331-square foot parcel of land with a street address of 291-295 Washington Street, shown as Lot 162 on Town of Westwood Assessor’s Plat No. 23, together with all improvements thereon.

Redeveloper Parcel B:

an approximately 26,370-square foot parcel of property with a street address of 9 School Street, shown as Lot 161 on Town of Westwood Assessor’s Plat No. 23, together with all improvements thereon.

Redeveloper Parcel C:

an approximately 22,525-square foot parcel of property with a street address of 277A Washington Street, shown as Lot 165 on Town of Westwood Assessor’s Plat No. 23, together with all improvements thereon.

Redeveloper Parcel D:

an approximately 31,363-square foot parcel of land with a street address of 266-278 Washington Street, shown as Lot 187 on Town of Westwood Assessor’s Plat No. 23, together with all improvements thereon.

Redeveloper Releasees:

as defined in Section 13.7.B

Registry:

the Norfolk County Registry of Deeds.

<b>TERM</b>	<b>DEFINITION</b>
<u>RFP:</u>	the Request for Proposals for the Redevelopment of Islington Center, RFP # ECON-16-R-003.
<u>Requisite Financial Capacity:</u>	as defined in Section 8.2 of this Agreement.
<u>School Street Site:</u>	an approximately 84,753-square foot tract of land comprising Redeveloper Parcels A, B, and C and the Parking Lot Parcel.
<u>Second Outside Date:</u>	the earlier of (a) 180 days after the date on which a Certificate of Occupancy is issued for Building A, and (b) two (2) years after the Phase 1 Closing.
<u>SHI:</u>	Subsidized Housing Inventory maintained by DHCD.
<u>Site:</u>	the East Street Site and the School Street Site, collectively.
<u>Site Plans:</u>	a set of plans entitled, "Islington Village Site Plans, Washington, East and School Streets, Westwood, Massachusetts," prepared by GCG Associates, Inc., for Supreme Development, c/o Giorgio Petruzzello, 21 Eastbrook Road, Dedham, MA 02026, dated December 12, 2017, revised through April 6, 2018, comprising 25 sheets, as may be amended pursuant to the Special Permit.
<u>Special Permit:</u>	The Decision of the Planning Board dated April 10, 2018, granting Redeveloper and the Town a Special Permit pursuant to Section 9.5 of the Zoning Bylaw (Flexible Multiple Use Overlay District), Environmental Impact and Design Review Approval ("EIDR") pursuant to Section 7.3 of the Zoning Bylaw, and an Earth Material Movement EIDR pursuant to Section 7.1 of the Zoning Bylaw, filed with the Office of the Town Clerk on April 18, 2018.
<u>Third Outside Date:</u>	the earlier of (a) 180 days after the date on which a Certificate of Occupancy is issued for Building B, and (b) two (2) years after the Phase 2 Closing.
<u>Title Due Diligence Period(s):</u>	as defined in Section 2.6.B of this Agreement.
<u>Title Exception:</u>	as defined in Section 2.6.C of this Agreement.
<u>Title Cure Period:</u>	as defined in Section 2.6.C of this Agreement.
<u>Town:</u>	the Town of Westwood, a municipal corporation duly organized under the laws of the Commonwealth of Massachusetts.

<b>TERM</b>	<b>DEFINITION</b>
<u>Town Improvements:</u>	the relocation of Wentworth Hall onto the New Town Parcel and the renovation and expansion of Wentworth Hall.
<u>Town Meeting</u>	the May 30, 2018 Town Meeting, as may be continued from time to time.
<u>Town Properties:</u>	the Community Center Parcel, the East Street Parcel, the Parking Lot Parcel, and the Wentworth Parcel.
<u>Town Releasees:</u>	as defined in Section 13.7.A.
<u>Wentworth Monetary Contribution:</u>	Greater of (a) Two Million, Two Hundred Thousand Dollars (\$2,200,000.00), and (b) the appraised value of the Appraisal Parcels as determined pursuant to Section 5.2.A of this Agreement
<u>Wentworth Parcel:</u>	an approximately 19,040-square foot parcel of land with a street address of 280 Washington Street, shown as Lot 188 on Town of Westwood Assessor's Plat No. 23, together with all improvements thereon.
<u>Wentworth Parcel Parking Easement:</u>	An easement granted by the Redeveloper to the Town for shared parking of 29 parking spaces on the Wentworth Parcel after the Town transfers that parcel to the Redeveloper; said easement to exist until the Phase 3 Closing occurs.
<u>Wentworth Hall:</u>	the existing building located on the Wentworth Parcel as of the Effective Date.
<u>Zoning Bylaw:</u>	The Zoning Bylaw of the Town of Westwood, Massachusetts, as adopted on March 13, 1961, with all amendments up to and including the May 2017 Town Meeting.
<u>Zoning Map Amendment</u>	as defined in Section 4.2.C.
<u>321 Washington Street Apartments:</u>	as defined in Section 5.5.A.

**SECTION 2.0           TRANSFER OF THE TOWN PROPERTIES AND EASEMENTS**

- 2.1. Deed Forms; Terms Material. The forms of deeds and other instruments attached as exhibits to this Agreement are incorporated by reference herein. Terms and conditions appearing in such forms of deeds and other instruments are material terms of this Agreement.
- 2.2. Transfer of the Town Properties. Subject to the terms and conditions of this Agreement, including but not limited to satisfaction by the Redeveloper of all pre-

transfer requirements and conditions to Closing, the Town shall convey to the Redeveloper the Town Properties, more particularly as follows:

- A. The Parking Lot Parcel shall be conveyed by a deed substantially in the form attached as **Exhibit A** hereto, which is incorporated by reference herein.
- B. The Community Center Parcel shall be conveyed by a deed substantially in the form attached as **Exhibit B** hereto, which is incorporated by reference herein, and which shall include a reservation of the fee interest in that portion of the Intersection Improvement Parcel located within the Community Center Parcel;
- C. The Wentworth Parcel shall be conveyed by a deed substantially in the form attached as **Exhibit C** hereto, which is incorporated by reference herein; and
- D. The East Street Parcel shall be conveyed by a deed substantially in the form attached as **Exhibit D** hereto, which is incorporated by reference herein, and which shall include a reservation of the fee interest in that portion of the Intersection Improvement Parcel located within the East Street Parcel.

2.3. Transfer of the New Town Parcel. Subject to the terms and conditions of this Agreement, the Redeveloper shall convey to the Town the New Town Parcel, more particularly as follows:

- A. The New Town Parcel shall be conveyed as follows:
  - (1) in the event that the Redeveloper exercises its option to relocate and renovate the Blue Hart Tavern under Section 5.6 of this Agreement, the form of deed shall be substantially as attached as **Exhibit E-1** hereto, which is incorporated by reference herein; or
  - (2) in the event that the Redeveloper does not exercise its option to relocate and renovate the Blue Hart Tavern under Section 5.6 of this Agreement, the form of deed shall be substantially as attached as **Exhibit E-2** hereto, which is incorporated by reference herein.

2.4. As-Is Condition. Except for any express representations and warranties set forth in this Agreement, the Town Properties and the New Town Parcel are to be transferred “AS IS”, reasonable wear and tear excepted, with all faults and without any warranty, express, implied or statutory. Except as expressly set forth in this Agreement, no representations or warranties have been made or are made and no responsibility has been or is assumed by the Redeveloper or the Town or by any official, agent or representative acting or purporting to act on behalf of the Town as to the condition or repair of the Town Properties and the New Town Parcel or the value, expense of operation, or income potential thereof. The

Redeveloper and the Town fully assume the risk of any adverse latent or patent physical, structural, environmental, economic or legal conditions, including, but not limited to, any environmental, geotechnical, or other conditions that may exist on, in, over, under, or around the Town Properties, with respect to the Redeveloper, and the New Town Parcel, with respect to the Town, as of the Closing Date(s) and thereafter.

2.5. Parking Easements. All surface parking spaces shall be shared throughout the School Street site and shall not be restricted to any specific business or use with the exception of CVS customer pick-up. Subject to the terms and conditions of this Agreement, the Redeveloper and the Town shall grant to one another the Parking Cross Easements which shall be for the shared use of the CVS and municipal uses substantially in the form attached hereto as **Exhibit F**. The Parking Cross Easements shall, in accordance with the Special Permit, provide that reasonable efforts shall be used to provide forty (40) parking spaces for CVS use. In addition, as part of the Phase 2 Closing, the Redeveloper shall convey to the Town the Wentworth Parcel Parking Easement substantially in the form attached hereto as **Exhibit G**. The Wentworth Parcel Parking Easement shall provide that the Redeveloper shall not prohibit the public from parking for baseball games at Morrison Field on the Wentworth Parcel, the East Street Parcel or the Community Center Parcel in accordance with current customary practice.

2.6. Title Due Diligence Permitted Encumbrances; Marketable Title.

A. Redeveloper's Title to the Town Properties. Except as set forth in Section 2.6.C below, the Redeveloper shall take title to the Town Properties subject to all Encumbrances, whether or not of record, provided that subsequent to the Effective Date, the Town shall not permit any liens of mortgages or deeds of trust, mechanics' liens, attachments, judgments, or assessment liens against the Town Properties that can be removed by the payment of a sum (collectively, "**Liens**"), and the Town agrees, at its cost, to cause all such Liens to be released or removed on or prior to the Closing Date for the property being conveyed, so as to be able to deliver good, clear and marketable title to the Town Properties at the Closings.

B. Title Due Diligence Periods. In order to satisfy the requirements for three separate Closings, there shall be three Title Due Diligence Periods (each a "Title Due Diligence Period"), as follows:

1. The Phase 1 Title Due Diligence Period shall expire 60 days after the Effective Date.
2. The Phase 2 Title Due Diligence Period shall be coterminous with the Phase 2 Environmental Due Diligence Period.
3. The Phase 3 Title Due Diligence Period shall be coterminous with the Phase 3 Environmental Due Diligence Period.

- C. Redeveloper's Title Due Diligence. Before expiration of a Title Due Diligence Period, the Redeveloper shall provide the Town with written notice of any Encumbrance or other defects in title that would make the Town unable to convey good, clear and marketable title (each such Encumbrance or other defect in title individually referred to herein as a "**Title Exception**"), and the Town shall have one hundred and twenty (120) days after receipt of such written notice (the "**Title Cure Period**") within which to correct or remedy such Title Exception, and the Town covenants and agrees to use reasonable efforts to correct or remedy such Title Exception within the Cure Period, provided that the Town shall not be required to spend more than \$10,000 total in connection with such reasonable efforts for any and all efforts to correct Title Exceptions during any of the three Title Due Diligence Periods. If, despite such reasonable efforts, the Town is unable to take such actions as may be required to remedy such Title Exception, the Town shall give the Redeveloper notice thereof, and the Redeveloper may elect either to (i) accept title to the Town Properties subject to the uncorrected or unremedied Title Exception, or (ii) terminate this Agreement, in which case the Deposit shall be returned to the Redeveloper, all obligations of the Parties hereunder shall cease except for those provisions expressly stated to survive termination of this Agreement, and neither Party shall have any claim against the other by reason of this termination.
- D. Town's Title to the New Town Parcel. Except as set forth in Section 2.6.E below, the Town shall take title to the Town Parcels subject to all Encumbrances, whether or not of record, provided that subsequent to the Effective Date, the Redeveloper shall not permit any Liens against the New Town Parcel and the Redeveloper agrees, at its cost, to cause all such Liens to be released or removed on or prior to the Phase 2 Closing, so as to be able to deliver good, clear and marketable title to the Town Parcels at the Phase 2 Closing.
- E. Town's Title Due Diligence. Before expiration of the Phase 1 Title Due Diligence Period, the Town shall provide the Redeveloper with written notice of any Title Exceptions, and the Redeveloper shall have the Title Cure Period within which to correct or remedy such Title Exception, and the Redeveloper covenants and agrees to use reasonable efforts to correct or remedy such Title Exception within the Cure Period, provided that the Redeveloper shall not be required to spend more than \$10,000 total in connection with such reasonable efforts for any and all efforts to correct Title Exceptions. If, despite such reasonable efforts, the Redeveloper is unable to take such actions as may be required to remedy such Title Exception, the Redeveloper shall give the Town notice thereof, and the Town may elect either to (i) accept title to the Town Parcels subject to the uncorrected or unremedied Title Exception, or (ii) terminate this Agreement, in which case the Deposit shall be returned to the Redeveloper, all obligations of the Parties hereunder shall cease except for

those provisions expressly stated to survive termination of this Agreement, and neither Party shall have any claim against the other by reason of this termination.

2.7. Environmental Conditions; Environmental Due Diligence.

- A. Environmental Due Diligence Periods: Subject to the terms of this Section 2.7, within the Phase 1 Environmental Due Diligence Period, each Party shall have the right to conduct such inspections, investigations, tests, studies, and similar inquiries as it deems necessary to assess environmental conditions (collectively, “**Environmental Due Diligence**”) on the property that the Party would own after the Phase 1, Phase 2, and Phase 3 Closings, namely: (1) for the Redeveloper, all of the Town Properties except for the portion of the New Town Parcel presently owned by the Town; (2) for the Town, the portion of the New Town Parcel presently owned by the Redeveloper; (2) for both the Redeveloper and the Town, the Blue Hart Tavern Parcel. In addition, during the Phase 2 Environmental Due Diligence Period and the Phase 3 Environmental Due Diligence Period, the Redeveloper shall have the right to conduct Environmental Due Diligence.
- B. Indemnification. The Party seeking access shall indemnify, defend, protect, and hold the other Party harmless from and against any and all liability, loss, cost, expense, claim, damage, or expense (including, without limitation, mechanic’s and materialmen’s liens and reasonable attorney’s fees and costs) of any kind or nature whatsoever which the other Party actually sustains or incurs as a result of any personal injury or physical damage to property caused by the Party seeking access or its agents during the performance of any Environmental Due Diligence. With respect to the Town, such indemnification shall only be provided to the extent allowed by law.
- C. Invasive Testing. No Party shall have the right to undertake any environmental studies or testing beyond the scope of a standard “Phase I” evaluation, or any invasive testing, without the prior written consent of the Party on whose property the testing is to be performed, which approval shall not be unreasonably withheld, delayed, or conditioned. In the event a Party seeks access to physically alter or disturb the property of the other Party, the Party seeking access (i) shall give the other Party no less than twenty-four (24) hours’ written notice (which may be via email as provided in this Agreement) prior to such access; (ii) shall not interfere or disturb the operations of the property, or the use and enjoyment of the Property; (iii) promptly shall restore any altered or disturbed areas to substantially the same condition as existed prior to the physical alteration or disturbance; and (iv) shall furnish the other Party with a certificate of general liability and property damage insurance for the Party seeking access and each of its agents entering upon the Property with single



occurrence coverage of at least \$2,000,000, and naming the other Party as an additional insured.

- D. Reports and Other Information. Except as may be required by law or by an order of a court, governmental authority upon prior written notice to the other Party, upon completion of any environmental investigation, the Party conducting such investigation shall not provide any written or verbal updates, draft or final reports, copies of any soil or groundwater data, photographs, figures, or any other information or materials whatsoever related to the environmental assessment to any third-party, other than the Party's lenders, attorneys, agents, consultants and affiliated-entities, unless agreed to in writing by the other Party. The Party seeking access shall provide a copy of any such information or materials to the other Party only upon the written request of the other Party.
- E. Costs. Each Party shall assume its own costs and expenses in connection with such Environmental Due Diligence.
- F. Termination.
1. Phase 1. Each Party shall have the right to terminate this Agreement due to unacceptable environmental conditions upon giving the other Party written notice thereof on or before the expiration of the Phase 1 Environmental Due Diligence Period, in which event the Deposit shall be returned to the Redeveloper.
  2. Phase 2. The Redeveloper shall have the right to terminate this Agreement due to unacceptable environmental conditions upon giving the Town written notice thereof on or before the expiration of the Phase 2 Environmental Due Diligence Period, in which event the Redeveloper shall have no obligation to proceed to the Phase 2 Closing and the Deposit shall be returned to the Redeveloper.
  3. Phase 3. The Redeveloper shall have the right to terminate this Agreement due to unacceptable environmental conditions upon giving the Town written notice thereof on or before the expiration of the Phase 2 Environmental Due Diligence Period, Period, in which event the Redeveloper shall have no obligation to proceed to the Phase 3 Closing and the Deposit shall be returned to the Redeveloper.
  4. Termination in General. In the event of termination, the Parties shall be relieved of any and all obligations under this Agreement not required to be carried out prior to the date of termination, except for those provisions expressly stated to survive termination of this Agreement. If either Party fails to give the other Party a notice of termination before the expiration of an Environmental Due Diligence Period, then the Party failing to give such notice shall be deemed to

have waived its right to terminate this Agreement under this Section 2.7. In the event that a Party does not exercise its right of termination hereunder, then the Town Properties shall be transferred to the Redeveloper, and the New Town Parcel shall be transferred to the Town, “AS IS” and without any warranty, express, implied or statutory, as set forth in Section 2.4 above, provided that nothing in this Section 2.7 shall constitute a release of claims or compel a Party to accept a deed for property where, subsequent to the expiration of an Environmental Due Diligence Period, the other Party or its agents have caused a new release of oil and/or hazardous material on any property that such Party owns prior to any of the Closings.

- 2.8. Financing Contingencies. The Redeveloper shall have until the Phase 1 Finance Contingency Period within which to secure financing for the Phase 1 Closing, shall have until the Phase 2 Finance Contingency Period within which to secure financing for the Phase 2 Closing, and shall have until the Phase 3 Finance Contingency Period within which to secure financing for the Phase 3 Closing. In the event that the Redeveloper is not able to secure financing for the applicable closing within such periods, it shall provide written notice thereof on or before the expiration of the such period, in which event the Deposit shall be returned to the Redeveloper, this Agreement shall terminate, and the Parties shall have no further obligations under this Agreement except for those obligations for which there exists an uncured Default (which the Defaulting Party must cure unless waived by the Non-Defaulting Party) and those obligations expressly stated to survive termination. If the Redeveloper fails to give the Town a notice of termination before the expiration of the applicable finance contingency period, then it shall be deemed to have waived its right to terminate the Agreement under this section.

**SECTION 3 VALUES AND CONSIDERATION**

- 3.1. Minimum Purchase Price. As set forth in the RFP, the minimum purchase price for conveyance of each of the Town Properties is as follows:

	<b>Town Properties</b>	<b>Consideration</b>
<b>1</b>	<b>Parking Lot Parcel</b>	\$600,000.00
<b>2</b>	<b>Community Center Parcel</b>	\$1,200,000.00
<b>3</b>	<b>Wentworth Parcel</b>	\$750,000.00
<b>4</b>	<b>East Street Parcel</b>	\$25,000.00
	<b>TOTAL</b>	<b>\$2,575,000.00</b>

- 3.2. Consideration for Conveyance of the Town Properties. The consideration for the conveyances by the Town to the Redeveloper consists of (a) the real estate transfers, the design and construction of improvements, and the completion of in-kind items (collectively, the “In-Kind Consideration”) required by this Agreement, and (b) the Wentworth Monetary Contribution.
- 3.3. Deposit. The Town acknowledges that the Redeveloper paid a deposit in the

amount of Fifty Thousand and 00/100 Dollars (\$50,000.00) contemporaneously with the submittal of its Proposal (the “**Deposit**”). The Town is holding the Deposit in escrow. In the event the Phase 3 Closing occurs, the Deposit shall be credited against all amounts due from the Redeveloper at the Phase 3 Closing. In the event of termination of this Agreement prior to the Phase 3 Closing, the Town shall return the Deposit to the Redeveloper no later than five (5) business days following such termination.

- 3.4. Costs. The Redeveloper shall be responsible for all of its own costs associated with engineering, surveys, appraisals, site assessments, legal services, and other services it deems necessary to complete the transactions contemplated by this Agreement.
- 3.5. No Waiver of In-Kind Consideration. No waiver by the Town of any item of In-Kind Consideration as mitigation or as a condition for the granting of an Approval for the Project shall constitute a waiver of any portion of the In-Kind Consideration required hereunder for the conveyances provided for in this Agreement.

#### **SECTION 4. OBLIGATIONS OF THE TOWN**

- 4.1. Cooperation with Applications for Approvals. The Town, acting by and through the Selectmen, shall execute such applications for Approvals and other documents as are required to be signed by a property owner, where applicable, or any person with an interest in the property on which the work will be conducted, provided that the Town shall incur no liability whatsoever in connection with such applications for Approvals and other documents.
- 4.2. The Town Meeting. The Board of Selectmen agrees to place two articles as described in subsections A and B below (the “Articles”) on the official warrant for the Town Meeting, and agrees to support the zoning article sponsored by the Planning Board described in subsection C below:
  - A. An article authorizing the Board of Selectmen to convey the Town Properties to the Redeveloper and accept the Town Parcels from the Redeveloper, and to take any and all actions reasonably necessary to deliver good, clean and marketable title to the Redeveloper, in accordance with standard commercial real estate practice, as the same may be modified by the requirements of this Agreement;
  - B. An article authorizing the Town to appropriate and/or transfer from available funds and/or borrow an amount sufficient to cover the costs of all design and construction work associated with the relocation, renovation and expansion of Wentworth Hall in a manner generally consistent with the Site Plans and conceptual architectural plans entitled “Islington Library Study” prepared by Gienapp Design, dated February 8, 2018; and

- C. An article amending the zoning map as necessary for the issuance of a Special Permit for the Project by rezoning Redeveloper Parcels B and C from the Single Residence A (SRA) district to the Local Business B (LBB) district, and overlaying these two parcels with the Flexible Multiple Use Overlay District 6 (FMUOD6/Washington Street Business District), or take any other action in relation thereto (the “Zoning Map Amendment”).
- 4.3. Failure To Adopt the Warrant Articles. In the event that the warrant articles described in Section 4.2.A through 4.2.C above are not adopted at the Town Meeting, this Agreement shall terminate, the Deposit shall be returned to the Redeveloper, and the Parties shall have no further obligations under this Agreement except for those obligations expressly stated to survive termination.
- 4.4. Wentworth Hall Relocation. Provided that the Redeveloper shall have paid the first and second installments of the Wentworth Monetary Contribution, the Town shall make reasonable efforts to remove Wentworth Hall from the Wentworth Parcel in a manner that meets the Redeveloper’s schedule for the Phase 2 Closing and the commencement of construction on the Wentworth Parcel.
- 4.5. Town Improvements. The Town shall be responsible for the Town Improvements, provided that the Town shall be entitled to use the Redeveloper’s Wentworth Monetary Contribution for purposes of the Town Improvements.
- 4.6. Building Permit Fees Account: The Town and the Redeveloper agree that all of the building permit fees for Buildings A, B, and C (the “**Building Permit Fees**”) shall be tracked separately from the general funds and used to fund and support costs and payments in connection with the project, as permitted by law. Building Permit Fees shall be paid on a building by building basis as applications for each individual building are submitted.
- 4.7. Material Changes to the Site Plans. If, as a result of Planning Board review, the Site Plans change materially from the Site Plans that exist as of the Effective Date, then the Town and the Redeveloper shall revisit this Agreement and, if necessary to accommodate the changed Site Plans, shall make reasonable efforts to renegotiate affected provisions of this Agreement. If an agreement is reached with respect thereto, the Parties shall amend this Agreement accordingly. If the Parties fail to reach an agreement on necessary revisions to this Agreement within 30 days of Town Meeting, then either Party may terminate this Agreement, the Deposit shall be returned to the Redeveloper, and the Parties shall have no further obligations under this Agreement except for those obligations expressly stated to survive termination.

## **SECTION 5. REDEVELOPER’S PRE-TRANSFER OBLIGATIONS**

- 5.1. Approvals. The Redeveloper shall diligently apply for and prosecute and obtain all Approvals for the construction and implementation of the Project, substantially as shown on the Site Plans, with appeals not having been taken or, if taken,

having been finally resolved in the Redeveloper's favor, with the exception of (i) those Approvals which the Redeveloper and the Town agree in writing are not ordinarily obtained or obtainable until construction is imminent; and (ii) those Approvals that are necessary solely for the Town Improvements.

5.2. Wentworth Monetary Contribution.

A. Wentworth Monetary Contribution Amount. The Wentworth Monetary Contribution shall be the greater of (1) Two Million, Two Hundred Thousand Dollars (\$2,200,000.00) and (2) the appraised value of the Appraisal Parcels as determined in this Section 5.2.A. The value of the Appraisal Parcels shall be established through an appraisal prepared by an appraiser jointly agreed upon by the Parties, performed in accordance with the Uniform Standards of Professional Appraisal Practice, and in accordance with customary practice by commercial real estate lenders in Massachusetts for determining land value of a proposed real estate development, with an effective valuation date as of 60 days prior to the Third Closing. If the Parties are unable to agree on a single appraiser to perform this appraisal, then the Parties shall proceed as follows:

1. the Town chooses its own appraiser to prepare an appraisal (the "Town Appraisal");
2. the Redeveloper chooses its own appraiser to prepare an appraisal (the "Redeveloper Appraisal");
3. following completion of the Town Appraisal and the Redeveloper Appraisal, the respective appraisers shall meet and shall attempt to reach agreement regarding a mutually acceptable appraisal;
4. if the appraisers chosen by the Town and the Redeveloper cannot reach agreement then they shall decide upon a third appraiser to prepare an appraisal (the "Third Appraisal"); and
5. the value of the Appraisal Parcels for purposes of the Wentworth Monetary Contribution shall be the average of the three appraisals, except that this value shall be equal to the value determined by the Third Appraisal if the Third Appraisal's value is between the values determined by the Town Appraisal and the Redeveloper Appraisal and is not no more than 10% higher or more than 10% lower than the average of the three appraisals.
6. If the appraisers are unable to agree upon a third appraiser pursuant to subsection (4), above, then the President of the Greater Boston Real Estate Board shall be requested to decide upon the third appraiser.

B. Installments. Following the receipt of all necessary final Approvals in accordance with Section 5.1 above, the Redeveloper shall pay, in immediately available funds, the Wentworth Monetary Contribution, in three installments as follows:

1. The Redeveloper shall pay a first installment of Wentworth Monetary Contribution in the amount of Four Hundred Thousand and 00/100 Dollars (“\$400,000.00) as part of, and as a condition of, the Phase 1 Closing (as that term is defined in Section 6.1.A below).
2. The Redeveloper shall pay a second installment of Wentworth Monetary Contribution in the amount of Four Hundred Thousand and 00/100 Dollars (\$400,000.00) as part of, and as a condition of, the Phase 2 Closing (as that term is defined in Section 6.1.B below).
3. The Redeveloper shall pay the remaining balance of Wentworth Monetary Contribution as part of, and as a condition of, the Phase 3 Closing (as that term is defined in Section 6.1.C below).

5.3. Disclosure of Beneficial Interests. In compliance with the provisions of M.G.L. c. 7C, § 38 relative to the filing of disclosure statements, signed under the penalties of perjury, of persons who have or will have a direct or beneficial interest in the Town Properties, the Redeveloper shall furnish to the Town, either prior to or simultaneously with the execution and delivery of this Agreement, evidence of the filing of a signed statement in the form attached hereto as **Exhibit H**. The Redeveloper shall not assign this Agreement without causing the assignee to file a signed statement substantially in the form of **Exhibit H** prior to or simultaneously with the assignment.

5.4. Tax Compliance Statement Pursuant to M.G.L. c. 62C, § 49A. The Redeveloper also shall furnish to the Town, either prior to or simultaneously with the execution and delivery of this Agreement, a signed statement in the form attached hereto as **Exhibit I** as required by applicable law and shall update the same promptly following any transfers or changes in the Redeveloper. The Redeveloper shall not assign this Agreement without causing the assignee to file a signed statement substantially in the form of **Exhibit I** prior to or simultaneously with the assignment.

5.5. Affordable Housing. To meet the Town’s need for affordable housing, the Redeveloper shall do the following:

- A. Provide one rental apartment unit in the existing apartment complex located at 321 Washington Street (the “**321 Washington Street Apartments**”) and ensure that this unit is restricted in perpetuity for use as

low- or moderate-income housing in accordance with all requirements that must be met for inclusion of the unit on the SHI as an LAU under the LIP;

- B. Prepare and submit to the Town a revised, draft LAU application for the 321 Washington Street Apartments to include three (3) affordable units (inclusive of the two (2) existing units) and take all other steps necessary or required by DHCD for inclusion of all 12 of the 321 Washington Street Apartments on the SHI, including executing a new regulatory agreement, cooperate in good faith with the Town's application for inclusion of all 12 such units on the SHI, and execute all documents necessary for such application; and
  - C. Restrict two additional rental apartments in perpetuity for use as low- or moderate-income housing in accordance with the requirements for inclusion on the SHI as LAUs under the LIP, prepare and submit to the Town a revised, draft LAU application and take all other steps necessary or required by DHCD for inclusion of these units on the SHI, including executing a new regulatory agreement, and cooperate in good faith with the Town's application for inclusion of these units on the SHI. The location of these apartments shall be as set forth in the Special Permit, provided that, in the event that the Special Permit does not establish the location of these apartments, the Board of Selectmen and the Redeveloper shall agree to the location of these apartments.
- 5.6. Blue Hart Tavern. The Redeveloper shall continue to store the Blue Hart Tavern on the Applicant's property until ten (10) days after the Town receives notice that the Attorney General has approved the Zoning Map Amendment (the "Final Moving Date"). The Redeveloper may (but is not required to) relocate the Blue Hart Tavern to the lot designed for the same on the Site Plans and restore the Tavern for permitted uses. In the event that the Redeveloper elects to relocate and restore the Blue Hart Tavern on or before the Final Moving Date, the ownership of the lot designated on the Site Plans for the Blue Hart Tavern shall remain with the Redeveloper. In the event that the Redeveloper elects not to relocate and restore the Blue Hart Tavern, the Redeveloper shall give interested persons a reasonable opportunity to take possession and ownership of the Blue Hart Tavern for purposes of relocating and restoring the same on the designated lot. However, the designated lot shall not be transferred to any interested party unless and until the Westwood Planning Board grants approval for the proposed relocation, restoration and reuse of the Blue Hart Tavern on the designated lot by the interested party, which approval shall include appropriate provisions to ensure the timely completion of all restoration work. In the event the Redeveloper elects not to relocate and restore the Blue Hart Tavern, and no interested person requests and receives the Planning Board's approval for the relocation, restoration and reuse of the Blue Hart Tavern on the designated lot by the Final Moving Date, said lot shall be transferred by the Redeveloper to the Town, and the Town shall have an opportunity to relocate and restore the Blue Hart Tavern on the designated lot at the Town's expense. Notwithstanding any provision herein to

the contrary, in the event that neither the Redeveloper nor the Town, nor any interested party has relocated the Blue Hart Tavern by the sooner of the Final Moving Date or November 30, 2018, the Redeveloper shall be permitted to demolish the Blue Hart Tavern.

## **SECTION 6. CLOSING AND CLOSING DELIVERIES; TIME OF PERFORMANCE**

6.1. Closing Date; Place. The transaction contemplated by this Agreement shall take place in three separate Closings, each on a date that the Parties agree in writing (the “**Closing Date**”), at the Town’s offices or at such other place as the Parties agree or through mutually acceptable escrow arrangements. The Closings shall take place in the following order:

- A. Phase 1: The Town transfers the Parking Lot Parcel to the Redeveloper, and the Redeveloper places the first installment of Wentworth Monetary Contribution in escrow (the “**Phase 1 Closing**”).
- B. Phase 2: The Town transfers the Wentworth Parcel to the Redeveloper; the Redeveloper transfers the New Town Parcel to the Town and pays the second installment of the Wentworth Monetary Contribution; the Parties grant to each other the Parking Cross Easements; and the Redeveloper grants the Town the Wentworth Parcel Parking Easement (the “**Phase 2 Closing**”).
- C. Phase 3: The Town transfers the Community Center Parcel and the East Street Parcel to the Redeveloper, and the Redeveloper pays the final installment of the Wentworth Monetary Contribution (the “**Phase 3 Closing**”).

6.2. Conditions Precedent to Closing To Be Satisfied by the Redeveloper. The following conditions shall be required to be satisfied (unless the Town elects to waive them) as a precondition to a Closing:

- A. Conditions Precedent to Each Closing:
  - 1. Satisfaction of Pre-Transfer Obligations. The Redeveloper has fully satisfied all of its obligations set for in Sections 5.1, 5.3 and 5.4 above.
  - 2. Legal Opinion. The Redeveloper shall deliver to the Town a legal opinion, dated as of the applicable Closing Date, (i) identifying the party having the legal authority to execute documents that bind the Redeveloper, and (ii) stating that any deed or other document required to be delivered at the Closing has been duly authorized and validly executed and delivered; and (iii) stating the



Redeveloper is not in arrears or in default upon any debt, lease, contract or obligation to the Town, including, but not limited to, real estate taxes and any other municipal liens or charges.

3. Authority Documentation. The Redeveloper shall deliver to the Town such other customary documents as required by law and evidence of authority as the Town may reasonably request;
  4. Plan Recording. Any survey plan – including an approval not required (“ANR”) plan – referenced in any deed or other recordable instrument to be delivered at the Closing shall either have been recorded by the Redeveloper with the Registry or shall be delivered by Redeveloper for recording with the applicable deed;
  5. Deeds. Any deed or other instrument to be delivered or recorded at the closing shall be validly executed and acknowledged;
  6. Representations and Warranties. All of the Redeveloper’s representations and warranties set forth in Section 9 of this Agreement shall be materially true and correct as of the Closing Date;
  7. Evidence of Insurance. The Redeveloper shall have presented the Town with evidence of the insurance required by Section 12; and
  8. No Default; Satisfaction of Conditions. No material Default shall exist in the performance by the Redeveloper of all other obligations on its part to be performed hereunder prior to or as part of the Closing. For the purposes of this condition, a material Default shall be one which, if uncured, gives the Town a reasonable basis for determining that the Redeveloper will be unable to close on the terms set forth in this Agreement. The Redeveloper shall deliver to the Town such written evidence of the fulfillment, to the Redeveloper’s knowledge, of all closing conditions required for the applicable Closing as the Town may reasonably request.
- B. Additional Conditions Precedent to the Phase 1 Closing:
1. The Redeveloper shall have placed the Building Permit Fees for Building A in the Building Permit Fee Account, in accordance with Section 4.6 above.
  2. The Redeveloper shall have satisfied its obligation to provide affordable housing in accordance with Sections 5.5.A and 5.5.B of this Agreement.

3. The Redeveloper shall have placed the first installment of Wentworth Monetary Contribution in escrow in accordance with Section 5.2.B above, to be released to the Town at the Closing.
4. The Redeveloper shall ensure that no mortgage encumbers the New Town Parcel such that the New Town Parcel can be transferred to the Town free and clear of any mortgages, financing statements, or other encumbrances securing the Redeveloper's debt.
5. Existing easements that are inconsistent with the use and operation of Building A or the New Town Parcel shall be terminated or amended.

C. Additional Conditions Precedent to the Phase 2 Closing:

1. The Phase 1 Closing shall have been completed.
2. The Redeveloper shall have completed Building A and the associated parking lot, and shall have received a Certificate of Completion for all of these improvements from the Town in accordance with Section 7.4.C below.
3. The Redeveloper shall have placed the Building Permit Fees for Building B in in the Building Permit Fee Account, in accordance with Section 4.6 above.
4. The Redeveloper shall have placed the second installment of the Wentworth Monetary Contribution in escrow in accordance with Section 5.2.B above, to be released to the Town at the Closing.
5. The Town shall have removed Wentworth Hall from the Wentworth Parcel in accordance with Section 4.4 above, provided that if the Town has made reasonable efforts as required by Section 4.4 but is not able to meet the Redeveloper's schedule for the Phase 2 Closing and commencement of construction on the Wentworth Parcel, then the Redeveloper may, in a good and workmanlike manner, move Wentworth Hall to the New Town Parcel upon fifteen (15) days' prior notice to the Town. If Wentworth Hall has been moved by the Redeveloper as provided in this section to the reasonable satisfaction of the Town, the Redeveloper shall be entitled to a credit against the second installment of the Wentworth Monetary Contribution in the amount of its actual costs, provided that the Redeveloper provides proof of those costs, but in no event to exceed the costs that the Town would have incurred had it moved Wentworth Hall itself.

6. The Redeveloper shall have completed construction of the municipal parking lot and shall have leveled, graded, and loamed the portion of the New Town Parcel intended for the relocation of Wentworth Hall, and shall have received a Certificate of Completion for all of these improvements from the Town in accordance with Section 7.4.C below; provided that the Redeveloper's obligations under this subsection 6 shall not include the removal of ledge.

D. Additional Conditions Precedent to the Phase 3 Closing:

1. The Phase 2 Closing shall have been completed.
2. The appraisal of the Appraisal Parcels shall be complete.
3. The Redeveloper shall provide the Town with at least ninety (90) days' notice prior to the Phase 3 Closing, in order to give the Town sufficient time to relocate employees, if any, at the Community Center.
4. The Redeveloper shall have placed the final installment of the Wentworth Monetary Contribution in escrow in accordance with Section 5.2.C above, to be released to the Town at the Closing.
5. The Redeveloper shall have placed the Building Permit Fees for Building C in in the Building Permit Fee Account, in accordance with Section 4.6 above.
6. The Redeveloper shall have complied with the requirements of Section 5.5.C of this Agreement, and the Town shall have received written confirmation from DHCD that the two apartments required by Section 5.5.C are listed on the SHI.

6.3. Conditions Precedent To Closing To Be Satisfied By the Town.

- A. Authority Documentation. The Town shall deliver to the Redeveloper evidence of the Town's authority to transfer the Town Properties as is customary for the Town, and such evidence as may be reasonably requested by the Redeveloper or by the Redeveloper's title insurance company, if any;
- B. Plan Recording. Any survey plan referenced in any deed or other recordable instrument to be delivered at the Closing shall either have been recorded by the Redeveloper with the Registry or shall be delivered by Redeveloper for recording with the applicable deed;
- C. Deeds. Any deed or other instrument to be delivered or recorded at the closing shall be validly executed and acknowledged;

- D. Representations. All of the Town's representations set forth in Section 9.2 of this Agreement shall be materially true and correct as of the Closing; and
- E. No Default. No material Default shall exist in the performance by the Town of all other obligations on its part to be performed hereunder prior to or as part of the Closing. For the purposes of this condition, a material Default shall be one which, if uncured, gives the Redeveloper a reasonable basis for determining that the Town will be unable to close on the terms set forth in this Agreement.
- 6.4. Outside Dates. This Agreement shall terminate if the Phase 1 Closing does not take place by the First Outside Date, the Phase 2 Closing does not take place by the Second Outside Date, or the Phase 3 Closing does not take place by the Third Outside Date. In each case, the Deposit shall be returned to the Redeveloper, and the Parties shall have no further obligations under this Agreement except for those obligations for which there exists an uncured Default (which the Defaulting Party must cure unless waived by the Non-Defaulting Party) and those obligations expressly stated to survive termination. Notwithstanding anything to the contrary in this section, (a) any of the Outside Dates may be extended by written agreement of both Parties, and (b) if a failure to close by any of the Outside Dates is due entirely to the failure of one Party to satisfy its conditions to Closing, then the Party who is able to satisfy its conditions to Closing shall have the option of terminating this Agreement or exercising its remedies under Section 13, including specific performance.
- 6.5. Failure of Conditions. In the event of the failure of fulfillment or observance of any condition under this section to the Town's or the Redeveloper's respective performance (unless the same shall be waived as above provided), the Party for whose benefit such condition is provided shall have the election at the Closing not to proceed with the Closing and to terminate this Agreement, in which case the Deposit shall be returned to the Redeveloper, and the Parties shall have no further obligations under this Agreement except for those obligations expressly stated to survive termination.
- 6.6. Acceptance of Deed. The acceptance and recording of a deed shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed, except (a) those that are, by the terms hereof or thereof, stated to survive the Closing, as set forth in Section 14.1 below, and (b) those that, in the event of the Phase 1 Closing, are required to be performed and discharged prior to the Phase 2 Closing.
- 6.7. Failure to Proceed to the Phase 2 Closing. In the event that the Redeveloper is, for any reason, not able to proceed to the Phase 2 Closing by the Second Outside Date, the Redeveloper shall, no later than seven (7) days after the Second Outside Date, transfer the New Town Parcel to the Town at no cost to the Town.

## SECTION 7. REDEVELOPER'S POST-CLOSING REQUIREMENTS

- 7.1. Use of the Parking Lot Parcel. Commencing with the Phase 1 Closing and ending with the Phase 2 Closing, the Redeveloper and the Town shall agree upon reasonable accommodations for the use of some or all of the Parking Lot Parcel for public parking, at no cost to the Town, consistent with the Redeveloper's construction schedule and activities for completion of the Redeveloper Improvements on the School Street Site.
- 7.2. Demolition. The Redeveloper shall demolish the existing structure on the Community Center Parcel and all structures on the School Street Site, with the exception of the Blue Hart Tavern located on Redeveloper Parcel B, which may be demolished solely after compliance with the terms of Section 5.6 above. The Redeveloper shall not demolish the existing building on Redeveloper Parcel D, which shall be renovated as Building B. The Redeveloper shall not demolish the Existing Community Building until the Town has relocated to Wentworth Hall (as renovated and expanded). All demolition shall be completed in a good, workmanlike manner in compliance with all applicable Laws and with the standard of care required for professionals in the business. All demolition debris shall be properly disposed of off-site and shall not be reused or recycled on-site without the written consent of the Board of Selectmen, which consent may be withheld in the Board's sole discretion for any reason whatsoever.
- 7.3. Construction. The Redeveloper shall construct all improvements required by the Approvals for the Project, including, but not limited to, Buildings A, B, and C (collectively, the "**Redeveloper Improvements**"), in a good and workmanlike manner and in compliance with all applicable Laws, except for the Town Improvements, for which the Town is responsible under Section 4.5 of this Agreement.
- 7.4. Notice of Completion; Certificate of Completion. The Redeveloper's satisfaction of its obligation to construct the Redeveloper Improvements shall be documented in the following manner.
- A. Notice of Completion. Upon completion of the Redeveloper Improvements or applicable portion thereof, the Redeveloper shall provide the Town with a Notice of Completion substantially in the form attached as **Exhibit J** hereto.
  - B. Inspection. Upon receipt of the Notice of Completion, the Town shall have thirty (30) days within which to inspect the Redeveloper Improvements to determine whether these improvements satisfy the Completion Standard and any other requirements of this Agreement. If, upon such inspection, the Town forms the opinion that the improvements do not satisfy the Completion Standard and/or any other requirements of this Agreement, then the Town shall provide a Notice of Incompletion indicating, in reasonable detail and with particularity, (a) all respects in

which the Redeveloper has failed to complete the applicable obligation(s), and (b) what measures or acts are, in the opinion of the Town, necessary (including, without limitation, the provision of additional information) for the Redeveloper to obtain a Certificate of Completion.

- C. Certificate of Completion. Within seven (7) days after the Town determines that the improvements that are the subject of the Notice of Completion meet the Completion Standard, the Town shall execute a Certificate of Completion in the form attached as **Exhibit K** hereto.
- D. Reasonable Reliance. The Redeveloper acknowledges and agrees that the Town, without any independent investigation or examination, may reasonably rely on statements made in the Notice of Completion when issuing a Certificate of Completion. The Redeveloper hereby indemnifies and saves harmless the Town against any and all Claims arising from or relating to the Town's reliance on such statements in issuing a Certificate of Completion.
- E. Failure To Provide Certificate of Completion. If the Town fails to provide the Redeveloper with a Certificate of Completion or Notice of Incompletion in accordance with the provisions of this Section 7, then the Redeveloper shall be authorized to record an affidavit (with a copy of the applicable Notice of Completion) certifying that the Town failed to respond to the Notice of Completion within the period required hereunder, and such affidavit shall constitute a Certificate of Completion as to the applicable obligation for which the Notice of Completion was made, provided that the Town shall not be estopped from asserting any of its rights to the extent that any statement in such affidavit or the applicable Notice of Completion is materially inaccurate, incomplete or untrue, or to the extent the Redeveloper has not actually completed any work described in such Notice of Completion.

## **SECTION 8. FINDINGS AND ACKNOWLEDGEMENTS**

- 8.1. This Agreement supersedes the MOU.
- 8.2. The Proposal satisfies the requirements of the RFP and, if carried out in accordance with the terms and conditions of this Agreement and all required Approvals, will meet the objectives expressed in the RFP.
- 8.3. The Redeveloper has demonstrated the financial capacity to carry out the Project in accordance with the requirements of the Town without any ongoing subsidy or expense to the Town, including but not be limited to the financial capacity to make purchase payments and pay for initial capital improvements, taxes, insurance, utilities, maintenance and capital replacement reserves, site maintenance any other cost that could be otherwise be the Town's responsibility (the "**Requisite Financial Capacity**").

- 8.4. The Redeveloper acknowledges that (a) the Town made and makes no representations or warranties, express or implied, as to the accuracy and/or completeness of the information provided in the RFP, including all attachments and supplements thereto, and all reports from independent professionals on the building structure, environmental assessment and other matters described therein; (b) the RFP may have had and may have errors or omissions; (c) there may be changes to, additional, and different interpretations of Laws referred to in the RFP. The Redeveloper acknowledges that it shall have no recourse whatsoever against the Town with respect to these or other matters set forth in the RFP.

## **SECTION 9. REPRESENTATIONS**

- 9.1. Representations of the Redeveloper. As of the Effective Date, The Redeveloper makes the following representations and warranties to the Town:
- A. The Redeveloper is a Massachusetts limited liability company.
  - B. The Redeveloper has all requisite and necessary power and authority to execute and deliver this Agreement and perform its obligations hereunder, and is qualified to do business in the Town and the Commonwealth.
  - C. The Redeveloper has the Requisite Financial Capacity to complete the Project.
  - D. The execution and delivery of this Agreement by the Redeveloper and the performance of its obligations hereunder will not violate any provision of law, or orders of any court, or any indenture, agreement or other instrument to which the Redeveloper is a party or by which the Redeveloper or any of its assets is bound, or be in conflict with, result in a breach of, or constitute a default thereunder or lien on any property of Redeveloper.
  - E. The Redeveloper is not in arrears or in default upon any debt, lease, contract or obligation to the Town, including without limitation, real estate taxes and any other municipal liens or charges.
  - F. This Agreement constitutes the legal, valid and binding obligation of the Redeveloper and is enforceable against the Redeveloper in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency and other similar laws affecting the rights of creditors and by general principles of equity.
  - G. There are no judicial, administrative, mediation or arbitration actions, suits or proceedings (including, without limitation, bankruptcy or insolvency proceedings) pending, or to the best of the Redeveloper's knowledge, threatened, against Redeveloper which if adversely decided, whether individually or in any combination thereof, would materially impair the

Redeveloper's ability to timely and fully perform its obligations under this Agreement.

- H. The Redeveloper has dealt with no broker in connection with the consummation of this Agreement, and, in the event of any brokerage Claims against the Town predicated upon prior dealings with the Redeveloper, the Redeveloper agrees to defend the same and hold harmless and indemnify the Town against any such claim.

9.2. Representations of the Town. As of the Effective Date, the Town makes the following representations to the Redeveloper:

- A. The individuals specified in the signature pages of this Agreement hold the offices identified thereby.
- B. The Board of Selectmen has all requisite power and authority to execute and deliver this Agreement, and this Agreement constitutes the legal, valid and binding obligation of the Town, subject to Laws.
- C. The individuals executing this agreement on behalf of the Town are not aware of the institution of, or the threat of, any litigation challenging the Town's authority, through the Town in consultation with the Town, to enter into this Agreement.
- D. The Town has dealt with no broker in connection with the consummation of this Agreement.

9.3. Liability for Representations. If any of the representations contained in this Agreement shall be inaccurate, false or misleading prior to the closing, then the same shall constitute a Default by the Party making such representation hereunder and thus entitle the Non-Defaulting Party to exercise its rights and remedies set forth in this Agreement, provided that in no event shall either Party be liable for monetary damages for a Default under this Section 9.3.

## **SECTION 10. COVENANTS**

10.1. Financial Capacity. The Redeveloper has and shall maintain throughout completion of the Project the Requisite Financial Capacity.

10.2. Non-Discrimination. No covenant, agreement, lease, conveyance or other instrument by the Redeveloper shall be effected or executed by the Redeveloper whereby so as to imposed a restriction because of the race, color, religious creed, national origin, sex, gender identity, sexual orientation, which shall not include persons whose sexual orientation involves minor children as the sex object, age, genetic information, ancestry or status as a veteran of any individual, or any other basis prohibited by law, in the sale, rental, lease, use, or occupancy thereof, and the Redeveloper shall not discriminate in violation of any law because of the race, color, religious creed, national origin, sex, gender identity, sexual orientation,



which shall not include persons whose sexual orientation involves minor children as the sex object, age, genetic information, ancestry or status as a veteran of any individual, in the sale, lease or rental or in the use or occupancy thereof.

## **SECTION 11. RIGHTS AND DUTIES OF MORTGAGEES AND OTHER HOLDERS OF INTERESTS**

- 11.1. Whenever the Town shall deliver any notice or demand to the Redeveloper with respect to a Default by the Redeveloper under this Agreement, the Town shall at the same time deliver a copy of such notice or demand to each holder of any mortgage on the Site or portion of the Site to which such default relates who files a request for such notification with the Town in the manner specified in this Agreement at the address of such holder shown in such request. Each holder of any such mortgage shall have the right, at its option, during the period of time specified in said default notice to cure or remedy such default.
- 11.2. Notwithstanding the foregoing or any other restriction in this Agreement, such mortgagee may, at its option, sell, assign, or transfer fee simple title to the property on which it holds a mortgage to one or more purchasers, assignees or transferees who shall expressly assume directly to the Town in writing the Redeveloper's obligations hereunder (whereupon the mortgage holder shall be released from any further obligations with respect thereto), provided that mortgagee and any such purchaser, assignee or transferee shall comply with M.G.L. c. 7C, § 38 and M.G.L. c. 62C, § 49A,
- 11.3. Mortgagee Not Obligated to Construct; Recognition of Mortgages. Notwithstanding any of the provisions of this Agreement, the holder of any mortgage authorized by this Agreement (including any such holder which obtains title to all or a portion of the Site as a result of foreclosure proceedings, or action in lieu thereof, but not including: (a) any other party who thereafter obtains title to any portion of the Site from or through such holder; or (b) any other purchaser at foreclosure sale other than the holder of the mortgage itself) shall not be liable for money damages for not constructing or to completing the Redeveloper Improvements; nor shall any covenant or any other provision in the deed(s) be construed to subject such mortgagee to such liability; provided, however, that (a) nothing in this Agreement shall be deemed or construed to permit or authorize any such holder to devote all or any portion of the mortgaged premises to any uses, or to construct any improvements thereon, other than those uses or improvements provided or permitted in this Agreement, except upon written consent of the Board of Selectmen, with consent the Board of Selectmen may withhold in its sole discretion for any reason whatsoever.
- 11.4. Mortgagee's Option to Cure Defaults. If the Redeveloper has received a Notice of Default from the Town for an alleged Default by the Redeveloper of its obligations or covenants under this Agreement and such Default is not cured by the Redeveloper before the expiration of the period provided therefor, each holder of any mortgage permitted by this Agreement shall (insofar as the rights of the

Town are concerned) have the right, at its option, to cure or remedy such Default (or such Default to the extent that it relates to the portion of the property covered by its mortgage) upon giving written notice of its intention to do so to the Town within forty-five (45) days after such holder receives notice from the Town that the Redeveloper has so failed to cure such Default and to add the cost thereof to the mortgage debt and the lien of its mortgage; provided, however, that if the Default is with respect to construction of the Project, nothing contained in this Agreement shall be deemed to permit or authorize such a holder, either before or after foreclosure or action in lieu thereof, to undertake or continue the construction or completion of the Project (beyond the extent necessary to conserve or protect the Project or construction already made) without first having expressly assumed the obligation to the Town, by written agreement satisfactory to the Town and any other party having a right to enforce this Agreement in the event of Default, to complete the Redeveloper Improvements. In the event that such holder elects to undertake or continue the construction or completion as above provided on the mortgaged premises, the rights and remedies set forth in Section 13 of the Agreement shall not be exercisable until such holder is afforded a reasonable period of time in which to complete such construction.

- 11.5. Estoppel Certificates. The Town shall, with reasonable promptness, but in no event more than fourteen (14) days after receipt or a written request therefor by the Redeveloper, any mortgagee, lessee or purchaser of the Site or the Project, which request has been made in connection with the closing, sale, lease or financing of the Site or the Project, provide an Estoppel Certificate, without any duty of inquiry, stating that this Agreement is in full force and effect and unmodified, or stating in what respects the Agreement is no longer in force and effect or has been modified, and whether or not it has actual knowledge of any Default of the Redeveloper under this Agreement and, if so, in what respects.

## **SECTION 12. INSURANCE AND INDEMNITY**

- 12.1. Required Insurance. With respect to all activities related to the Project, the Redeveloper shall purchase and maintain throughout the term of this Agreement commercial general public liability insurance, including blanket contractual liability coverage sufficient to cover the Redeveloper's indemnity obligations hereunder. On demand, the Redeveloper shall provide the Town with a certificate of commercial general liability insurance in the minimum amount of Two Million Dollars and 00/100 (\$2,000,000.00) per occurrence. Such insurance shall be written using an occurrence form and shall be endorsed to name the Town as an additional insured and to state that the insurance provided thereunder shall be primary and that any insurance maintained by the Town shall be non-contributory. All such insurance policies shall be endorsed to waive the insurer's rights of subrogation against the Town. Such certificate of insurance shall state unequivocally that should any such policy or policies lapse, be materially changed, or be cancelled before the expiration date thereof, the issuing insurer shall provide thirty (30) days written notice to the Town.

- 12.2. All policies of insurance referred to herein shall be written in a form that is reasonably acceptable to the Town and by companies that are authorized to do business in the Town and have a Best's rating of not less than A-/IX. The Town may waive or modify one or more of the foregoing insurance requirements. All policies of insurance shall provide that any act or negligence of the Redeveloper shall not prejudice the rights of the Town as a Party insured under said policies. If requested by the Town in writing, the Redeveloper shall furnish the Town with certified copies of the insurance policies required hereunder.
- 12.3. Policies Non-Cancelable. The Redeveloper agrees that all policies of insurance referred to herein shall not be canceled or allowed to lapse nor shall any material changes be made in any such policy which changes, restricts or reduces the insurance provided, nor shall there be a change in the name of the insured, without first giving thirty (30) days' notice in writing to the Town.
- 12.4. Waiver of Subrogation. The Redeveloper hereby waives all rights of recovery against the Town, its elected officials and employees, on account of loss or damage to the Redeveloper's property, and to the extent that the Redeveloper obtains an insurance policy for such loss or damage, the Redeveloper shall cause such policy to be endorsed to waive the insurer's rights of subrogation against the Town, its elected officials and employees.
- 12.5. Indemnity Provision. The Redeveloper, at its sole cost and expense, shall defend and shall indemnify and hold harmless the Town from and against all loss, cost, damage, and expense, including Claims for bodily injury and property damage, which are incurred or suffered by any one or more of them (a) based upon or arising out of the action or inaction or negligence of the Redeveloper, or any of the Redeveloper Authorized Representatives in the performance of any activity, undertaking or obligation arising out of this Agreement, or (b) based upon or arising out of any breach of or default under this Agreement by the Redeveloper; provided, however, that the Redeveloper shall not be liable for any losses to the extent caused by the gross negligence or willful misconduct of any one or more of the Town or its representatives, agents or contractors.
- 12.6. No Indemnification Agreement Intended by the Town. No agreement to indemnify any Party is intended to be made by the Town by virtue of, or in connection with, this Agreement, it being acknowledged by the Redeveloper that any such indemnification may not be permitted by Laws. In no event shall the Town be liable to the Redeveloper for any monetary damages, direct or indirect, on account of this Agreement.

### **SECTION 13. REMEDIES FOR DEFAULT; FORCE MAJEURE; RELEASE AND INDEMNITY**

- 13.1. Force Majeure. Each Party's ability to perform, and the time for the performance of, any obligation required to be performed hereunder is expressly made subject to Force Majeure. Where such performance is required by this Agreement to be

completed within a specified time period, such time period shall be extended by a period equal to any delay caused by Force Majeure.

- 13.2. In General; Opportunity to Cure. Except as otherwise provided in this Agreement, in the event of a Default by the Defaulting Party, the Defaulting Party shall, upon actual receipt of a Default Notice from the Non-Defaulting Party, proceed immediately to commence to cure or to remedy such Default, and complete such cure within the Cure Period or, if the Default is not capable of being cured within the Cure Period, shall commence to cure the same within the Cure Period and diligently prosecute the same to completion, but in no event beyond the Extended Cure Period without the express written consent of the Non-Defaulting Party. Where such cure is timely made, the Defaulting Party shall no longer be treated as in Default of this Agreement. If such action is not taken or not diligently pursued as provided herein, or if the Default is not cured or remedied within the Cure Period or Extended Cure Period, as applicable, the Non-Defaulting Party may institute such proceedings as may be necessary or desirable in its opinion to cure and to remedy such Default on the part of the Defaulting Party. In no event shall the Cure Period or Extended Cure Period serve as a basis for extending a Closing Date without the express written consent of the Non-Defaulting Party.
- 13.3. Termination Prior to Closing. In the event that, prior to Closing, an event happens that will (a) cause the Redeveloper incurably to be unable to convey the Town Parcels or (b) cause the Town incurably to be unable to convey the Town Properties then, after providing a Default Notice and opportunity to cure pursuant to 13.2 above, the Town in the case of (a) above, or the Redeveloper in the case of (b) above, may, in its sole discretion, terminate the Agreement without further recourse by either Party, except for enforcement of those provisions expressly stated to survive termination of the Agreement, in which case the Deposit shall be returned to the Redeveloper, and the Parties shall have no further obligations under this Agreement except for those obligations expressly stated to survive termination. The foregoing shall be the sole and exclusive remedy for a Default for such events.
- 13.4. Town Remedies after Closing. In the event that, subsequent to a Closing, the Redeveloper shall Default under this Agreement, and such Default is not cured pursuant to Section 13.2 above, then the Town shall have the right to pursue any remedies available at law or in equity, including specific performance.
- 13.5. No Personal or After-the-Fact Liability. No individual partner, trustee, manager, member, stockholder, officer, director, employee or beneficiary of the Redeveloper or successor or assign of the Redeveloper shall be personally liable under this Agreement. The Redeveloper acknowledges and agrees that no public official of the Town shall have any personal liability for any act or omission in connection with this Agreement.

13.6. Rights and Remedies Cumulative. The rights and remedies of the Parties whether provided by law or by this Agreement shall be cumulative, and, except as expressly provided in this Agreement, the exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach or of any of its remedies for any other default or breach by the other Party. No waiver made by either such Party with respect to the performance, or manner or time thereof, or any obligation of the other Party or any condition to its own obligation under this Agreement shall be considered a waiver of any rights of the Party making the waiver with respect to the particular obligation of the other Party or condition to its own obligation beyond those expressly waived in writing and to the extent thereof, or a waiver in any respect in regard to any other rights of the Party making the waiver or any other obligations of the other Party.

13.7. Mutual Releases and Indemnity:

A. Upon recording of any deed to any of the Town Properties, the Redeveloper (on its behalf and on behalf of any parent or related corporation, liquidator, shareholder, affiliate, subsidiary, successors and assigns, predecessors and predecessors in interest, as well as its and their past, present, and future directors, officers, employees, agents, representatives, insurers, attorneys, and any other person or entity claiming by, through, or under the Redeveloper) irrevocably, unconditionally, and generally releases, remits, relinquishes, and forever discharges and indemnifies the Town (and any current and former officers, officials, managers, affiliates, employees, volunteers, agents, representatives, insurers, attorneys, insurers, advisors, administrators, , executors, successors, assigns, and any other person or entity claiming by, through, or under the Town (collectively referred to as the “Town Releasees”)) from Claims which the Redeveloper now has, could have had, or ever had against the Town Releasees whether existing or contingent, asserted or unasserted, known or unknown, foreseen or unforeseen from the beginning of the world to the date of this Agreement, that relate to, or are in any way connected with the Town Properties for which such deed was executed.

B. Release by the Town. Upon recording of the deed to the New Town Parcel, the Town (on its behalf and on behalf of affiliate, subsidiary, successors and assigns, predecessors and predecessors in interest, as well as its and their past, present and future officers, officials, employees, agents, representatives, insurers, attorneys, and any other person or entity claiming by, through, or under the Town) irrevocably, unconditionally, and generally releases, remits, relinquishes, and forever discharges and indemnifies the Redeveloper (and any current and former officers, directors, managers, parent companies, subsidiaries, affiliates, employees, volunteers, agents, representatives, attorneys, insurers, advisors, administrators, fiduciaries, executors, trustees, successors, predecessors,

heirs, assigns, and any other person or entity claiming by, through, or under the Redeveloper (collectively referred to as the “Redeveloper Releasees”) from all Claims which the Town now has, could have had, or ever had against the Redeveloper Releasees whether existing or contingent, asserted or unasserted, known or unknown, foreseen or unforeseen from the beginning of the world to the date of this Agreement, that relate to, or are in any way connected with, the New Town Parcel.

13.8. Retained Rights

**SECTION 14. MISCELLANEOUS**

14.1. Survival after Termination and/or Closing. The following provisions of this Agreement shall survive termination of this Agreement and/or the Closing(s) and remain in full force and effect thereafter, as follows:

- A. Section 2.7 (Environmental Due Diligence);
- B. Section 7 (Redeveloper’s Post-Transfer Obligations);
- C. Section 8 (Findings and Acknowledgments);
- D. Section 10 (Covenants);
- E. Section 11 (Rights and Duties of Mortgagees and other Holders of Interests in the Site or Redevelopment Project);
- F. Section 12 (Insurance and Indemnity);
- G. Section 13 (Remedies for Default; Force Majeure; Release and Indemnity); and
- H. Section 14 (Miscellaneous)

14.2. Notice of Agreement. Within 30 days of the Effective Date, the Redeveloper shall cause to be recorded with the Registry a notice of this Agreement on Redeveloper’s Parcels A, B, C, and D, in a form acceptable to the Town, and shall cause such a notice to be recorded with respect to each of the Town Properties contemporaneously with the recorded of a deed conveying one a Town Property to the Redeveloper.

14.3. Certificate of Compliance. Following the completion of all Closings, the Town shall, within thirty (30) days after receipt of a written request therefor by the Redeveloper, provide a Certificate of Compliance as to the requirements of this Agreement.

- 14.4. Jurisdiction of Agencies Not Restricted. Nothing contained in this Agreement shall negate, limit, or restrict the Town’s jurisdiction and authority over the Project and any permits or financial agreements necessary in connection with the Project except as to the actions of the Town in consultation with the Town regarding the real property dispositions and acquisitions provided for in the Act and in the terms and conditions of this Agreement. This Agreement shall not bind the independent powers of any authority, board, commission, agency, or official of the Town with respect to approvals within their jurisdiction.
- 14.5. Attorney-in-Fact. The Town Administrator is the Town’s agent and attorney-in-fact for (a) service of process in all legal proceedings related to this Agreement, (b) giving and receipt of notices hereunder, (c) executing and acknowledging this Agreement or any amendments hereof, and (d) the giving, withholding, and receipt of consents and approvals pursuant to the terms of this Agreement.
- 14.6. Notices. Any notice, request, or other communication under this Agreement shall be in writing and shall be given by either Party (i) by delivery in hand or by courier service, or (ii) by registered or certified mail. All such notices, requests or communications shall be sent to the addressees set forth below. Notices shall be deemed given when received or when delivery is refused.

A. If to the Redeveloper:

Giorgio Petruzziello, Manager  
Petruzziello Properties, LLC  
21 Eastbrook Road  
Dedham, MA 02026

With a copy to:

[\_\_\_\_\_]

And to any mortgagee(s) of the Redeveloper of which the Town has received written notice pursuant to the terms of this Agreement;

B. If to the Town:

Michael Jaillet, Town Administrator  
580 High Street  
Westwood, MA 02090

With a copy to:

Daniel J Bailey III, Esq.  
Pierce Atwood LLP  
100 Summer Street, 22<sup>nd</sup> Floor  
Boston, MA 02108

- C. Or at such other address as the party to be notified may have designated hereafter by notice in writing to the other party.
- 14.7. Time. All references to time shall mean Eastern Standard Time.
- 14.8. No Waiver. No delay or omission by a Party hereto in exercising its rights occurring upon any default or noncompliance by any other Party under this Agreement shall impair any such rights or be construed to be a waiver thereof. Any waiver of any of the terms, covenants, conditions or agreements hereof to be performed shall be in writing, shall be express and contain the word “waiver,” and shall not be construed to be a waiver of any succeeding breach thereof or of any other term, covenant, condition or agreement herein contained. No consent given by any person hereunder in any one instance shall be deemed to be consent in any other instance or circumstance.
- 14.9. Assignment. Prior to the issuance of a Certificate of Occupancy for Building C, the Redeveloper may not assign its rights and obligations under this Agreement and may not transfer all or any portion of the Site to another entity other than an Affiliate without the Town’s consent. Notwithstanding the foregoing, prior to the issuance of such Certificate of Occupancy, the Redeveloper may, without first obtaining the Town’s consent, lease portions of the Site on terms that do not purport to transfer its obligations under this Agreement to the tenant, and may enter into agreements for the purchase and sale of, and may convey, condominium units in Building C.
- 14.10. Successors and Assigns. Except as otherwise provided in this Agreement, this Agreement and every provision herein contained shall run with the land and shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, successors, assigns, legal representatives and agents, including, without limitation any successor with respect to the interest of any entity comprising the Redeveloper in any of the Site.
- 14.11. No Partnership. It is not intended by this Agreement to, and nothing contained in this Agreement will, create any partnership, joint venture, limited liability company or other arrangement between the Town and the Redeveloper.
- 14.12. No Third Party Beneficiaries. No third party shall be deemed to be a third party beneficiary of this Agreement.
- 14.13. Actions by the Parties; Deemed Approvals. Except as specifically provided otherwise in this Agreement, when the assent, consent or approval of either Party is required to be obtained pursuant to this Agreement, such consent shall be in writing, such Party shall be obligated to act reasonably, and any such approval may not be unreasonably withheld, delayed, or conditioned



14.14. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

14.15. Jurisdiction; Venue.

- a. For the purposes of any suit, action or proceeding involving this Agreement, the Parties hereby expressly submit to the jurisdiction of all Federal and State courts sitting in the Commonwealth of Massachusetts and consent that any order, process, notice of motion or other application to or by any such court or a judge thereof may be served within or without such court's jurisdiction by registered mail or by personal service, provided that a reasonable time for appearance is allowed, and the parties agree that such courts shall have exclusive jurisdiction over any such suit, action or proceeding commenced by either or both of said parties. In furtherance of such agreement, the Parties agree upon the request of the other to discontinue (or agree to the discontinuance of) any such suit, action or proceeding pending in any other jurisdiction.
- b. Each Party hereby irrevocably waives any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement brought in any federal or state court sitting in the Commonwealth of Massachusetts and hereby further irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.
- c. In recognition of the benefits of having any disputes with respect to this Agreement resolved by an experienced and expert person, the Town and the Redeveloper hereby agree that any suit, action or proceeding, whether claim or counterclaim, brought or instituted by any Party in connection with this Agreement or any event, transaction or occurrence arising out of or in any way connected with this Agreement or the Property, or the dealings of the parties with respect thereto, shall be tried only by a court and not by a jury. EACH PARTY HEREBY EXPRESSLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION OR PROCEEDING.

14.16. Amendments. This Agreement may be amended or modified only by a writing signed by the Town and the Redeveloper.

14.17. Severability. If any term or provision of this Agreement, or the application thereof to any person or circumstance shall, to any extent, be invalid, inoperative 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, inoperative or unenforceable shall not be affected thereby; it shall not be deemed that any such invalid, inoperative or unenforceable provision affects the consideration for this Agreement; and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

- 14.18. Entire Agreement. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate representatives of the Town or the Redeveloper, whichever is the Party waiving a provision of this Agreement.
- 14.19. Exhibits; Counting of Days; Rules of Construction. The obligations of the Parties as set forth in this Agreement are subject to compliance with the terms and conditions of the exhibits attached hereto which are incorporated herein and shall be considered to be a part of this Agreement. The titles, captions, or headings to the various sections of this Agreement are for convenience of reference only, do not define or limit the contents thereof, and should be ignored in any construction thereof. Capitalized terms used in the main body of this Agreement and not otherwise defined shall have the meaning ascribed to them in any exhibit hereto and incorporated herein. When used herein, the words “he” or “she” shall have the same meaning. Unless specifically noted to the contrary, the term “day” as used in this Agreement shall mean calendar day. If any date or period for performance by the Redeveloper or the Town under this Agreement falls or expires on a Saturday, Sunday or legal holiday, said date or period shall be deemed to fall or expire on the first succeeding business day after said Saturday, Sunday or holiday. All time periods shall be calculated by counting, as the first day, the day after the event that commences the time period: for instance, if a time period is 30 days after the Effective Date, then the day after the Effective Date shall be the first day for purposes of calculating that time period.
- 14.20. Participation in Drafting. Each Party has cooperated in the drafting and preparation of this Agreement. Accordingly, in any action to construe this Agreement, a Party’s participation in such drafting shall not cause any language to be construed against it.
- 14.21. Counterparts. This Agreement may be executed in multiple counterpart originals, each of which shall constitute one and the same instrument.
- 14.22. Cooperation; Appeals. To the extent required by law, the Town shall join as co-applicant with respect to applications for governmental approvals and permits and, at the Redeveloper’s request, cooperate in the Redeveloper’s prosecution and/or defense of any appeals with respect thereto; provided, however, that the Redeveloper shall pay for the cost of and indemnify and hold the Town harmless from (a) any liability arising from joining the Redeveloper as a co-applicant in any such application, and (b) from the Town’s litigation expenses for outside counsel.
- 14.23. Effective Date. This Agreement shall be effective when (i) the Articles have been approved by Westwood Town Meeting, (ii) the Agreement has been executed by the Board of Selectmen and Petruzzello Properties, LLC, and (iii) the Zoning Map Amendment has been approved by the Attorney General.

**[SIGNATURES APPEAR ON FOLLOWING PAGE]**

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TOWN OF WESTWOOD,

By and through its BOARD OF  
SELECTMEN

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

PETRUZIELLO PROPERTIES, LLC

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

Title: \_\_\_\_\_

DRAFT

## LIST OF EXHIBITS

- Exhibit A. Form of Deed for the Parking Lot Parcel
- Exhibit B. Form of Deed for the Community Center Parcel
- Exhibit C. Form of Deed for the Wentworth Parcel
- Exhibit D. Form of Deed for the East Street Parcel
- Exhibit E. Exhibit E-1: Form of New Town Parcel without Blue Hart Tavern Parcel  
Exhibit E-2: Form of Deed to New Town Parcel with Blue Hart Tavern Parcel
- Exhibit F. Form of Cross-Easement Agreement
- Exhibit G. Form of Wentworth Parcel Parking Easement
- Exhibit H. Form of Statement of Beneficial Interest
- Exhibit I. Form of Tax Compliance Statement
- Exhibit J. Form of Notice of Completion
- Exhibit K. Form of Certificate of Completion

**EXHIBIT A**

**Form of Deed for the Parking Lot Parcel**

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**EXHIBIT B**

**Form of Deed for the Community Center Parcel**

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**EXHIBIT C**

**Form of Deed for the Wentworth Parcel**

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**EXHIBIT D**

**Form of Deed for the East Street Parcel**

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**EXHIBIT E-1**

**Form of Deed for the New Town Parcel**

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**EXHIBIT E-2**

**Alternative Form of Deed for the New Town Parcel**

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**EXHIBIT F**

**Form of Cross-Easement Agreement**

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**EXHIBIT G**

**Form of Wentworth Parcel Parking Easement**

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**EXHIBIT H**

**Statement of Beneficial Interest**

**DISCLOSURE STATEMENT FOR  
TRANSACTION WITH A PUBLIC AGENCY CONCERNING REAL PROPERTY  
REAL PROPERTY PUSTUANT TO M.G.L. c. 7C, § 38**

**[TO BE PROVIDED]**

DRAFT

**EXHIBIT I**

**Form of Revenue Enforcement Certification  
Pursuant to M.G.L. C. 62C, §49A**

**Revenue Enforcement Certification Pursuant to M.G.L. C. 62C, §49A**

Pursuant to M.G.L. c. 62C, §49A, I hereby certify under the penalties of perjury that I, and the entity on behalf of which I am signing, have complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

By: \_\_\_\_\_  
Name: Giorgio Petruzziello  
Title: Manager

By: \_\_\_\_\_  
Name: Antonio Petruzziello  
Title: Manager

**COMMONWEALTH OF MASSACHUSETTS**

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

On this \_\_\_\_ day of \_\_\_\_\_, 2018, before me, the undersigned notary public, personally appeared Giorgio Petruzziello, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as Manager of Petruzziello Properties, LLC.

\_\_\_\_\_  
Notary Public  
My commission expires:  
(Affix Seal)

COMMONWEALTH OF MASSACHUSETTS

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

On this \_\_\_\_ day of \_\_\_\_\_, 2018, before me, the undersigned notary public, personally appeared Antonio Petruzzello, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as Manager of Petruzzello Properties, LLC.

\_\_\_\_\_  
Notary Public  
My commission expires:  
(Affix Seal)

DRAFT



**EXHIBIT J**

**Form of Notice of Completion**

DRAFT

**EXHIBIT K**

**Form of Certificate of Completion**

DRAFT