

DRAFT

LAND DISPOSITION AGREEMENT

FOR THE

SALE AND REDEVELOPMENT OF LAND

BETWEEN

TOWN OF WAYLAND

AND

[_____]

LAND DISPOSITION AGREEMENT

This Land Disposition Agreement (“Agreement”) is entered into this _____ day _____ of 201__ (“Effective Date”) by and between the Town of Wayland, acting by and through its Board of Selectmen, (the “Seller”), a Massachusetts municipal corporation, having an address of 41 Cochituate Road, Wayland, MA 01778, AND [_____] (the “Buyer”), a [_____] having its business address [_____]. The Seller and the Buyer may hereinafter be collectively referred to as the “Parties” or individually as a “Party.”

RECITALS

A. WHEREAS, Seller acquired the land consisting of approximately 8.24 acres, commonly known as 484-490 Boston Post Road in the Town of Wayland, Middlesex County, Commonwealth of Massachusetts, shown as “Lot A”, “Lot C”, and “Lot E” (the “Premises”) on that certain plan entitled “ANR Subdivision Plan Assessors Map 22, Lot 3, Lot 6 & Lot 7 Boston Post Road Wayland, Massachusetts” prepared by WSP Transportation & Infrastructure, dated June 1, 2015, endorsed by the Wayland Planning Board on June 2, 2015, and recorded with the Middlesex South Registry of Deeds (the “Registry”) as Plan No.[____] of [____] (the “ANR Plan”), a copy of which plan is attached hereto as Exhibit A and incorporated herein by reference, by Order of Taking dated January 11, 1971 and recorded with the Registry in Book 11943, Page 420, Order of Taking dated May 15, 1978 and recorded with the Registry in Book 13443, Page 177, and Order of Taking dated November 15, 1965 and recorded with the Registry in Book 11003, Page 389;

B. WHEREAS, Seller issued a Request for Proposals for the disposition and development of the Premises for affordable housing purposes (the “RFP”), pursuant to M.G.L. c. 30B, which specified certain uses, restrictions and other requirements in connection with the sale and development of the Premises;

C. WHEREAS, Buyer’s proposal for the acquisition of the Premises for Buyer’s Project (as such term is hereinafter defined) was accepted by Seller;

D. WHEREAS, Buyer and Seller wish to enter into this Agreement to set forth the terms and conditions under which Seller will sell and convey and Buyer will acquire and develop the Premises, and the covenants of Buyer, for itself, its successors and assigns, to develop and maintain the Premises for the rental, senior and affordable housing purposes set forth herein.

NOW, THEREFORE, for the consideration hereinafter set forth, the parties hereto do mutually agree as follows:

AGREEMENT

ARTICLE I PURCHASE AND DEVELOPMENT OF THE PROPERTY

1.1 Premises.

(a) The property to be conveyed by the Seller to the Buyer hereunder consists of the Premises.

(b) In addition to the Premises, Seller shall convey at the Closing (as such term is defined herein) a non-exclusive Access Easement for access to the Premises over that certain land shown as “Access Easement Area” on the ANR Plan (the “Access Road”).

(c) The Premises shall be conveyed subject to, and together with: (i) all buildings, structures and improvements located thereon, if any; (ii) all easements, restrictions, agreements, and other documents of record, insofar as the same may be in force and applicable to the Premises; (iii) Seller’s Reserved Easements as set forth in Section 6.3 herein; and (iv) those matters identified in Section 4.2 below.

1.2 Agreement to Sell and Purchase.

Subject to the terms and provisions of this Agreement, the Seller agrees to sell the Premises to the Buyer, and the Buyer agrees to purchase and accept the Premises from the Seller. The Seller shall convey the Premises to the Buyer as set forth in Section 4.1.

1.3 Buyer’s Project.

The Buyer’s development and construction of the Premises (the “Buyer’s Project”) shall consist of the permitting, design, and construction of _____ [number of units to be inserted based on response to RFP, but in all circumstances between 150-190 units] new rental housing units developed under the Commonwealth of Massachusetts Executive Office of Housing and Economic Development, Department of Housing and Community Development’s (“DHCD”) Local Initiative Program as Local Action Units, including 25% of all such new rental housing units being Affordable Housing Units (as such term is defined herein) and a minimum of 25% of all such new rental housing units being Age-Restricted (senior) Housing Units (or such other minimum amount as may be permitted by applicable zoning bylaws), and associated improvements on the Premises substantially as shown and described on Buyer’s conceptual design drawings submitted with Buyer’s response to the RFP (the “RFP Response”), which include conceptual site plans, architectural drawings and building elevations attached hereto as Exhibit B (collectively, the “Conceptual Design Plans”).

Except as otherwise expressly set forth herein, the Buyer shall be solely responsible for awarding and administering all construction contracts for the construction of the Buyer’s Project, and the Seller shall have no obligation to award, administer nor make any payments under any such construction contract or any liability thereunder. The Seller shall not be responsible for making any payments to any contractors, subcontractors, agents, consultants, employees or suppliers of the Buyer.

The Buyer shall observe the requirements of all governmental approvals with respect to the construction of the Buyer's Project, and nothing in this Agreement shall be construed to alter, in any respect, any of the requirements contained in any governmental approvals with respect to the construction of the Buyer's Project, including without limitation, any and all approvals required by the Town of Wayland Planning Board (the "Planning Board"), Town of Wayland Conservation Commission (the "Conservation Commission"), the Town of Wayland Department of Public Works (the "Department of Public Works") and the Town of Wayland Board of Health (the "Board of Health").

The Buyer shall perform and complete, or cause the performance and completion of, all of its obligations hereunder and shall conduct all operations with respect to the construction of Buyer's Project in a good, workmanlike and commercially reasonable manner, in compliance with good engineering and construction practices, using all new or suitable recycled materials, and in conformance with the standard of diligence and care normally employed by a duly qualified persons in the performance of comparable work, in accordance with generally accepted practices appropriate to the activities undertaken in the greater Boston area, and in accordance with the requirements of all applicable laws, ordinances, codes, orders, rules and regulations of all governmental authorities, agencies or departments with jurisdiction.

The Buyer shall take all reasonably necessary measures to (i) minimize dust, noise and construction traffic, (ii) minimize any damage, disruption or inconvenience caused by the Buyer's Project, and (iii) make adequate provision for the safety and convenience of all persons affected thereby and to properly police same. Dust, noise and other effects of such work shall be controlled using commercially accepted methods customarily utilized in order to control deleterious effects associated with construction projects in a populated or developed area.

The Buyer shall employ at all times adequate staff or consultants with the requisite experience necessary to administer and coordinate all work related to the design, engineering, acquisition, construction, installation and development of the Buyer's Project, including without limitation a licensed Massachusetts Construction Supervisor to supervise all construction on Buyer's Project and a Massachusetts Licensed Site Professional to supervise all Environmental Remediation and Environmental Mitigation on Buyer's Project (as such terms are hereinafter defined).

The Buyer shall be solely responsible for all costs and expenses of (a) the design, permitting and construction of the new buildings and improvements, the installation of all utilities and site work required for the proposed housing use, and any other measures necessary to construct and occupy the Buyer's Project in compliance with this Agreement and all applicable federal, state and local laws, ordinances, rules, regulations and codes for the proposed use, (b) all products, materials, tools, equipment, fixtures, relating thereto and (c) all contractors, subcontractors, architects, engineers, project managers, construction managers, attorneys, consultants relating thereto.

1.4 Further Consideration for Sale and Purchase of Premises.

The Buyer acknowledges that the Seller would not agree to sell the Premises to the Buyer except for: (a) the commitment of the Buyer to undertake and complete the construction of the

Buyer's Project in accordance with the requirements set forth herein, (b) the commitment of the Buyer to restrict the land in perpetuity for the uses set forth herein, and (c) the Buyer's existing commitment for the financing of the Buyer's purchase.

1.5 Marketing.

Prior to Closing (as such term is defined herein,) Buyer shall not disseminate any marketing or similar materials, regardless of form or media, regarding the Seller or the Buyer's Project without the prior written consent of the Seller.

1.6 No Seller's Development Obligations.

The Seller shall have no obligation for the preparation or development of the Premises for construction of the Buyer's Project.

ARTICLE II
PURCHASE PRICE AND DEPOSIT

2.1 Net Purchase Price to Town

The "Gross Purchase Price" for the Premises is _____ (\$_____).

Buyer estimates that the costs to undertake the following work (the "Site Conditions Work") are as follows (collectively, the "Site Conditions Estimates"):

Demolition of Wayland/Sudbury Septage Facility:	\$_____
Design and Construction of On-Site Package Treatment Plant:	\$_____
Design and Construction of Water Line Extension:	\$_____
Removal/Remediation of On-Site Soil Conditions (the "On-Site Soil Removal Work"):	\$_____

The "Net Purchase Price" for the Premises, is the Gross Purchase Price less the Site Conditions Estimates, which equals _____ (\$_____).

The Site Conditions Estimates are good faith and third-party researched estimates, to be substantiated by further on-site due diligence at Buyer's expense per Section 3.1. The Net Purchase Price shall be adjusted in accordance with Section 3.1.

The Net Purchase Price, less the Deposit (as defined below), shall be paid by the Buyer to the Seller at the Time of Closing (as hereinafter defined) by certified or bank check or checks drawn upon a Boston clearinghouse bank, made payable to the Seller, without endorsement, or by federal wire transfer of immediately available federal funds in accordance with the Seller's instructions.

2.2 Deposit

The Buyer has made an initial non-refundable deposit with the Seller in the amount of Ten Thousand and 00/100 Dollars (\$10,000.00) (the “Initial Deposit”) and, upon Buyer’s execution of this Agreement, Buyer will deposit with the Seller an additional _____ (\$ _____) (the “Additional Deposit,” together with the Initial Deposit, the “Deposit”). [Additional Deposit shall equal 5% of Purchase Price less \$10,000 from Initial Deposit. Total amount of Deposit shall be equal to five (5) percent of the Purchase Price.]

The Deposit shall be held by [Anderson & Kreiger LLP][Buyer’s title company] (the “Escrow Agent”) in an interest bearing account subject to the terms of this Agreement and the terms of the Escrow Agreement attached hereto as Exhibit C and shall be duly accounted for at the time for performance of this Agreement as hereinafter defined. If this Agreement is consummated as contemplated hereunder, the Deposit (including any interest earned thereon) shall be retained by the Seller and credited against the Purchase Price at the time of the Closing. If the Closing does not occur, then interest earned on the Deposit shall be paid to the Party entitled to retain the Deposit pursuant to the terms of this Agreement.

ARTICLE III **BUYERS PRE-CONVEYANCE ACTIVITIES**

3.1 Due Diligence; Adjustments to Net Purchase Price.

(a) Buyer shall have a period of ninety (90) days from the Effective Date to perform its due diligence of the Premises (the “Due Diligence Period”). During the Due Diligence Period, Buyer, at its sole cost and expense and subject to the terms and conditions of the Right of Entry and License Agreement between the Parties dated as of the date hereof (the “Entry Agreement”), a copy of which Entry Agreement is attached hereto as Exhibit D may conduct environmental, engineering, architectural, surveying and similar on-site investigation and testing desired by Buyer with respect to the Premises. Seller will reasonably cooperate, at no additional cost to Seller, with Buyer’s efforts to coordinate with the Massachusetts DEP during the Due Diligence Period to evaluate and receive any guidance on required protocol for environmental conditions on site.

The terms of the Entry Agreement are incorporated herein by reference and Buyer’s obligations thereunder shall survive the Closing, delivery of the Deed or the termination of this Agreement. A default under the Entry Agreement beyond any applicable cure period shall be deemed to be a default under this Agreement, and a default under this Agreement beyond any applicable cure period shall be deemed to be a default under the Entry Agreement.

Buyer has received, reviewed and is familiar with those certain reports commissioned by the Seller set forth on Exhibit E attached hereto and made a part hereof (collectively, the “Property Information”). Seller makes no representation or warranty of any kind, nature or description whatsoever with respect to the completeness or accuracy of the information contained in the Property Information.

(b) No later than the expiration of the Due Diligence Period, Buyer may provide written evidence to Seller of competitive pricing established by not less than three (3) third party

sources that the cost to undertake any element of the Site Conditions Work is more than five percent (5%) in excess of the Site Conditions Estimates (the “Third Party Submittals”). Seller shall review the Third Party Submittals and may, in Seller’s discretion, engage one or more consultants with the relevant expertise that are reasonably acceptable to Buyer (each, a “Town Consultant”), at Buyer’s expense, to assist Seller in its evaluation of the Third Party Submittals. Seller, after consultation with the Town Consultant, may determine the cost of any element of the Site Conditions Work (the “Town’s Cost Determination”). Subject to Seller’s right to terminate this Agreement and Buyer’s right to engage in the Neutral Decision Process (as both are described below), the Net Purchase Price shall be adjusted by the Town’s Cost Determination (or if the Town has elected not to engage the Town Consultant, by an amount agreed to by the Town and Buyer consistent with the Third Party Submittals).

If the Town’s Cost Determination with respect to any element of the cost of the Site Conditions Work specified in a Third Party Submittal is less than the lowest amount so specified in any Third Party Submittal, Buyer, within five (5) business days after its receipt of the Town’s Cost Determination, may notify Seller that it elects to proceed with the Neutral Decision Process (as described below) to finally determine any further reduction to the Net Purchase Price on account of any element of the Site Conditions Work. If Buyer fails to timely undertake the Neutral Decision Process, then the Town’s Cost Determination shall be the established and final amount by which the Net Purchase Price may be reduced on account of such element of the Site Conditions Work.

(c) Notwithstanding anything in this Agreement to the contrary, Seller reserves the right to terminate this Agreement if any Third Party Submittal with respect to the (i) demolition of the existing Wayland/Sudbury Septage Facility, (ii) installation of a new On-Site Package Treatment Plant or (iii) extension of a water line to serve the Property exceeds by more than thirty percent (30%) the Site Conditions Estimate applicable thereto and set forth in Section 2.1 above. Additionally, Seller reserves the right to terminate this Agreement if any Third Party Submittal with respect to the On-Site Soil Removal Work exceeds by more than fifty percent (50%) the amount established above. In the event Seller exercises such termination right, it shall retain the Initial Deposit, however, any other deposits paid under this Agreement shall be refunded to Buyer.

(d) If any adjustment(s) are made to Site Conditions Work estimate(s), and therefore the Net Purchase Price, as set forth in this Section 3.1, Buyer shall track the actual costs of such Site Conditions Work, and if actual costs are less than the adjusted estimate(s), then any such difference shall be paid to Seller within sixty (60) days following substantial completion of such Site Conditions Work, and Seller shall not issue a certificate of occupancy to Buyer for Buyer’s Project unless and until such difference has been paid. The terms and provisions of this subparagraph (d) shall survive the Closing (as hereinafter defined).

(e) If Buyer timely notifies Seller that it desires to dispute the Town’s Cost Determination (the “Neutral Decision Request”), as set forth in this Section 3.1 above, then such dispute shall be submitted to the dispute resolution process set forth in this subparagraph (e) (the “Neutral Decision Process”). Promptly following Seller’s receipt of a Neutral Decision Request, Buyer and Seller shall agree on a “Neutral” within ten (10) business days after Seller’s receipt of the Neutral Decision Request, and, if not so agreed, the President of the Greater Boston Real

Estate Board shall appoint the Neutral (such person so appointed shall have at least fifteen (15) years' experience in the field under review). r.

Buyer and Seller agree that (i) they shall use all reasonable good faith efforts to cause the Neutral (x) to promptly agree to consider the Neutral Decision Request and (y) to contractually agree to issue a written decision within fifteen (15) business days thereafter, (ii) any inspection of the Premises by the Neutral shall take place in the presence of both Seller and Buyer, (iii) copies of any materials submitted to the Neutral by Buyer or Seller shall be submitted contemporaneously to the other party, (iv) the decision of the Neutral shall be in writing and shall be signed by the Neutral, (v) the decision of the Neutral shall be limited to the issue of whether (A) the Town's Cost Determination or (B) the average of the estimated cost of the Site Conditions Work specified in three (3) Third Party Submittals applicable to such Site Conditions Work represents the most accurate estimate of the costs to complete the applicable element of the Site Conditions Work (vi) the Neutral shall have no authority to award damages or direct remedies for the benefit of either party, (vii) each party shall bear its own costs and expenses and an equal share of the Neutral's fees, and (viii) the decision rendered by the Neutral shall be final.

3.2 Condition of Land to be Conveyed.

The Seller and Buyer covenant and agree that the Premises shall be conveyed in "as is" condition, free and clear of all tenants and occupants, but subject to the Permitted Encumbrances (as such term is defined herein in Section 4.2). Buyer shall be responsible, at Buyer's sole cost and expense for the demolition, removal, recycling and/or proper disposal of all buildings, structures, improvements, foundations, pipes, tanks, fixtures, equipment and demolition debris on or under the Premises (the "Demolition Work").

It is acknowledged between the parties that Buyer has factored the cost of the Demolition Work into the Net Purchase Price to the Town and has estimated said cost in Section 2.1 (the "Demolition Cost Estimate"). Buyer agrees to provide to Seller a detailed accounting of the actual costs of the Demolition Work within forty-five (45) days after completion of the Demolition Work. If any adjustment was made to the Demolition Work estimate pursuant to Section 3.1, and the actual costs of the Demolition Work are less than this adjusted estimate, then Buyer shall pay such amount to Seller in accordance with Section 3.1(d).

It is acknowledged between the parties that the Buyer is responsible for completing the design, permitting and construction for extension of the Town of Wayland water main to the Site (the "Water Main Extension") and has estimated said cost in Section 2.1. Seller, in its sole and absolute discretion, may elect to design and construct the Water Main Extension. If Seller so elects, then it may require that Seller and Buyer enter into a written agreement in connection therewith setting forth additional information that Seller determines may be necessary or appropriate in order to design and construct the Water Main Extension. Upon completion of the design and construction of the Water Main Extension, Buyer shall pay to Seller the Water Main Extension Estimate. The terms and provisions of this paragraph shall survive the Closing.

The provisions of this Section 3.2 shall survive the Closing and the delivery of the Deed.

3.3 Environmental Matters.

Buyer shall be responsible for the assessment, containment, removal and/or remediation of all pre-existing releases of oil and hazardous materials at or from the Premises in accordance with General Laws Chapter 21E and the Massachusetts Contingency Plan to either a Permanent Solution with No Conditions or a Permanent Solution with such Conditions as are acceptable to the Town of Wayland Board of Selectmen (the “Environmental Remediation”). Without limiting the foregoing, Buyer shall be responsible for (i) designing, constructing and operating Buyer’s Project in such a way to evaluate and eliminate the risk of methane gas or other vapor intrusion from the Sudbury landfill or otherwise into the residential buildings and units to be constructed by Buyer on the Premises as part of Buyer’s Project consistent with a Permanent Solution involving No Significant Risk under General Laws Chapter 21E and the Massachusetts Contingency Plan (the “Environmental Mitigation”) and (ii) designing, constructing and operating Buyer’s Project in such a way to achieve a condition of No Significant Risk to the Buyer’s Project’s residents as to other recognized environmental conditions such as arsenic in groundwater (*e.g.*, by prohibiting on-site drinking water wells and irrigation wells, following the Massachusetts Department of Environmental Protection Best Management Practices for any gardening on the Premises, and the like).

With respect to the On-Site Soil Removal Work, if the estimate is to be adjusted in accordance with Section 3.1 above, Buyer may elect to provide an adjusted estimate which shall be quantified by estimated soil quantities and fixed unit pricing by type for the projected soils required to be removed from the Property under applicable law. Such unit pricing shall be fixed as of the end of the Due Diligence Period. Buyer shall complete all On-Site Soil Removal Work within the first ninety (90) days after the commencement of construction. Buyer shall document the actual quantities of the On-Site Soil Removal Work, and if such actual costs based on fixed unit pricing, are above or below such adjusted estimate, then the difference shall be paid to/from Buyer or Seller within sixty (60) days following the completion of the On-Site Soil Removal Work. Notwithstanding the foregoing, there shall be no adjustment to the Net Purchase Price under this paragraph for any On-Site Soil Removal Work that occurs after ninety (90) days after the start of construction.

Buyer, on behalf of itself and its parents, subsidiaries, affiliates, officers, directors, members, managers, predecessors, successors, contractors, subcontractors, assigns, agents, and representatives shall and hereby does release, defend, indemnify and hold harmless Seller and its boards, commissions, officials, employees, agents and representatives from and against any and all claims, damages, liabilities, losses, penalties, costs, expenses and fees (including without limitation reasonable legal fees and expert fees) arising out of or relating to the condition of the Premises, any release of oil or hazardous materials to, at or from the Premises, the Demolition Work, Buyer’s Project, the Environmental Remediation, the Environmental Mitigation, and all other activities necessary, proper or incidental to the development and use of the Premises for Buyer’s Project.

The provisions of this Section 3.3 shall survive the Closing and the delivery of the Deed.

3.4 Title Review.

Buyer shall have a period of thirty (30) days from the Effective Date to perform its title review (the "Title Review Period") of the Premises at Buyer's sole cost and expense and to notify the Seller of its objections to any encumbrances or liens, other than the Permitted Encumbrances as defined in Section 4.2 ("Buyer's Title Objections"), by a written notice (the "Title Objections Notice"). If Buyer has not delivered the Title Objections Notice by 5:00 p.m. on the last day of the Title Review Period, Buyer shall be deemed to have waived its objections to all matters of title, other than those first arising after the date of Buyer's title commitment for the Premises (or if the Buyer does not obtain a title commitment, then the date of this Agreement), and shall accept title to the Premises (the "Post-Review Title Objections"), subject to such matters, at the Closing (as hereinafter defined). With respect to any Post-Review Title Objections, each of Seller and Buyer shall have the same rights and obligations under this Section 3.4 as if such Post-Review Title Objections constituted Title Objections hereunder.

Within ten (10) business days after the Seller's receipt of the Title Objection Notice ("Cure Election Period"), the Seller shall notify Buyer in writing as to whether the Seller elects to use reasonable efforts to cure any or all of Buyer's Title Objections ("Title Cure Notice"). Reasonable efforts shall not require the expenditure of more than [one and one-half percent (1.5%) of the Purchase Price] (\$ _____) by Seller (exclusive of the payment of voluntary monetary liens but inclusive of reasonable attorney's fees) (the "Cure Amount"). If the Seller elects not to cure Buyer's Title Objections, Buyer shall have ten (10) days from Buyer's receipt of the Seller's Title Cure Notice to notify the Seller in writing that Buyer elects to proceed or to terminate this Agreement ("Election Notice"). If Buyer timely elects to terminate this Agreement as aforesaid, then the Additional Deposit shall be returned to the Buyer. If Buyer elects to proceed or fails to give the Election Notice, Buyer shall be deemed to have waived its objections to all matters of title and shall accept title to the Premises, subject to such matters set forth on the Title Objection Notice, at the time of the Closing.

If the Seller fails to give the Title Cure Notice, the Seller shall be deemed to have elected not to cure Buyer's Title Objections. If Seller elects or is deemed to have elected not to attempt to cure any one or more of Buyer's Title Objections and Buyer has elected to terminate the Agreement in the Election Notice, this Agreement shall be terminated and the Additional Deposit shall be returned to Buyer without further recourse to either Party, subject to Buyer's obligations under the Entry Agreement.

3.5 Buyer's Objections - Due Diligence. If Buyer, acting in good faith, discovers during its due diligence any new, different, significant and material conditions not disclosed in the Property Information or in the RFP, it may, on or before 5:00 p.m. on the last day of the Due Diligence Period, serve written notice upon the Seller, which notice shall provide a detailed description of the basis for Buyer's objections ("Buyer's Objections").

Upon receipt of notice of Buyer's Objections, the Seller may, in its sole discretion, extend the Due Diligence Period for so long as Seller deems necessary in order to understand and analyze Buyer's Objections. Upon the expiration of such extended Due Diligence Period, or if Seller has not elected to extend the Due Diligence Period as aforesaid, Seller shall have the option, but not the obligation, by providing written notice to Buyer, to either: (i) take any and all

action necessary in the Seller's discretion to cure Buyer's Objections within a reasonable period of time after Seller's receipt of notice of Buyer's Objections, which period of time shall be agreed upon by the Parties in writing but shall under no circumstances be shorter than forty-five (45) days or longer than one hundred eighty (180) days (the "Remedial Period"); or (ii) to terminate this Agreement, in which event the Additional Deposit shall be returned to Buyer, and this Agreement shall terminate without further recourse to either Party, subject to Buyer's obligations under the Entry Agreement. In the event of such termination, Buyer shall provide Seller with all reports and data generated as a result of Buyer's due diligence.

If Seller elects to cure Buyer's Objections in accordance with this Section 3.5, the Closing shall automatically be extended to forty-five (45) days from the expiration of the Remedial Period, or such other time period as the Parties may agree to. If at the expiration of the Remedial Period, as the same may be extended, the Seller has not remediated Buyer's Objections to a solution which would not prevent or substantially interfere with Buyer's development, construction, marketing and/or rental of residential housing on the Premises, Buyer, as its sole and exclusive remedy, may terminate this Agreement by sending written notice to the Seller, within five (5) business days of the expiration of the Remedial Period, in which event this Agreement shall terminate and the Additional Deposit shall be returned to Buyer without further recourse to either Party, subject to Buyer's obligations under the Entry Agreement. In the event of such termination, Buyer shall provide Seller with all reports and data generated as a result of Buyer's due diligence. If Seller does not receive written notice from Buyer of Buyer's intent to terminate this Agreement within five (5) business days of the expiration of the Remedial Period, Buyer shall be deemed to have waived its right to terminate this Agreement under this section and shall be obligated to purchase the Premises subject to all uncured Buyer's Objections in accordance with this Agreement.

3.6 Site Plan Approval.- General.

(a) The Buyer's application for site plan approval to the Planning Board shall contain conceptual design drawings, which include site plans, architectural drawings and building elevations that are substantially similar to the Conceptual Design Plans. The Buyer covenants and agrees that it shall not materially alter the Conceptual Design Plans during the site plan approval process or otherwise unless required by the Planning Board.

(b) In the event that the Conceptual Design Plans are materially altered because of a requirement by the Planning Board or by law, the Buyer shall promptly submit such material changes to the Seller for its review, but not for its approval.

(c) The Buyer acknowledges and agrees that the Conceptual Design Plans must be in conformity with (i) the requirements of the Wayland Zoning Bylaw relative to the River's Edge Housing Overlay District, a copy of which is attached hereto as Exhibit F (the "REHOD Requirements"), (ii) the River's Edge Design Guidelines, a copy of which is attached hereto as Exhibit G (the "Design Guidelines") and (iii) Legal Requirements (as such term is hereinafter defined). The Buyer also acknowledges and agrees that the Planning Board may impose conditions on its site plan approval, including without limitation, conditioning its approval on the Buyer's Project conforming to the Design

Guidelines irrespective of whether the REHOD Requirements permit or otherwise allow for the imposition of any conditions by the Planning Board.

(d) The Buyer shall provide the Seller with three (3) hard copies and an electronic copy of the Conceptual Design Plans (in a form acceptable to the Seller's Building Department) approved by the Seller and the Planning Board.

The provisions of this Section 3.6 shall survive the Closing and the delivery of the Deed.

3.7 Project Permitting.

(a) The Buyer shall be solely responsible for applying for and obtaining any and all governmental permits and approvals required by law for the construction of Buyer's Project (the "Approvals"), prior to the Time of Closing (as such term is defined herein). Upon the expiration of the Due Diligence Period, Seller shall reasonably cooperate with Buyer in connection with Buyer's application for Approvals, including executing any documents necessary therefor, but in no event shall Seller incur any liability in connection therewith.

If Buyer's Project requires any Approvals that are a change to the REHOD Requirements because Buyer's Project is not compliant with the federal Fair Housing Act, Seller, at no additional cost to Seller, may elect to cooperate with Buyer in connection with obtaining such Approvals, however, Seller makes no representations or warranties with respect to the likelihood of Buyer obtaining any such Approvals that are a change to the REHOD Requirements, and any such Approvals that are a change to the REHOD Requirement shall be completed within the same time required for any other Approvals necessary for Buyer's Project.

(b) Buyer shall use diligent and good faith efforts to obtain the Approvals for the construction of Buyer's Project by the Time of Closing (as hereinafter defined in Section 4.1). In no event will Buyer be deemed to have used diligent efforts to obtain the Approvals unless the Buyer submits completed applications for the Approvals in the timeframes provided in the schedule attached hereto as Exhibit H.

(c) First Extension Period. If, despite such diligent efforts, the Buyer is unable to obtain final (beyond all appeals and appeal periods) Approvals prior to the Time of Closing, Buyer may elect, in its sole discretion, to

- (i) proceed to Closing the transaction contemplated herein on the Closing Date or
- (ii) extend the Time of Closing by three (3) months (the "First Extension Period"). If Buyer elects to extend the Time of Closing, Buyer shall pay to Escrow Agent a nonrefundable additional deposit payment in the amount of [____] [one and one half percent (1 ½%) of the Purchase Price] (the "First Extension Deposit").

(d) Second Extension Period. If, as of the last day of the First Extension Period, Buyer has still not obtained final Approvals, Buyer shall again have the option to

(i) proceed to Closing or

(ii) extend the Time of Closing by three (3) additional months (the “Second Extension Period”). If Buyer elects to extend the Time of Closing through the last day of the Second Extension Period, Buyer shall pay to Escrow Agent a nonrefundable additional deposit payment in the amount of [____] [three and one half percent (3 ½%) of the Purchase Price] (the “Second Extension Deposit”, together with the First Extension Deposit, the “Extension Deposits”).

If after the Second Extension Period the Buyer still has not received its Approvals Buyer can elect to proceed to the Closing. If Buyer does not elect to proceed to the Closing, then (i) it shall be a default of the Buyer under this Agreement and the Seller, in its sole and absolute discretion, shall have the right to terminate without further recourse to either party and (ii) the Deposit, including the Extension Deposits, shall be paid to Seller by Escrow Agent. If this Agreement is consummated as contemplated hereunder, the Extension Deposits shall be credited against the Purchase Price at the time of the Closing.

(e) Regulatory Delay. Notwithstanding the foregoing, to the extent that the Buyer is delayed in obtaining all of the Approvals necessary to construct Buyer’s Project due solely to the actions or inactions of a permit granting authority, then the Buyer may request, and the Board of Selectmen, in its sole discretion, may extend the Time of Closing, without requiring Buyer to pay any additional deposit, for the period of time that Seller determines, in its sole and absolute discretion, that Buyer has been delayed by such permit granting authority.

(f) Appeal Extension Period. If prior to the Closing Date, Buyer has been granted the Approvals, but any of the Approvals have been appealed by a third party pursuant to an administrative appeal process or to a court of competent jurisdiction, Buyer shall have the right to elect to extend the Time of Closing until the Appeal Extension Deadline (as such term is defined herein) without an obligation to pay the Extension Deposits. During any such extension of the Closing Date, Buyer shall

(i) diligently prosecute any such appeal until the issuance of a final un-appealed decision by a court of competent jurisdiction,

(ii) provide a monthly status update to Seller of the appeal, and, upon Seller’s request, provide copies of all court or other filings made by the Buyer or any other party to the appeal, and

(iii) deposit with Escrow Agent a nonrefundable additional deposit payment in the amount of \$5,000 for each three month period from the Closing Date until the Appeal Extension Deadline (as such term is hereinafter defined) (each payment, an “Appeal Deposit”). The Appeal Deposit shall be retained by the Seller and credited against the Purchase Price at the time of the Closing.

If the Closing has not occurred by the date that is thirty-six (36) months (or such extended period as the Seller may extend in its sole discretion) after the Effective Date

(the “Appeal Extension Deadline”), irrespective of whether any Approvals are outstanding or still subject to appeal, then it shall be a default of the Buyer under this Agreement and the Seller may terminate this Agreement and retain the Deposit and any Appeal Deposit. Any extension of the Closing Date under this Section 3.7(f) shall run simultaneously with the First Extension Period and Second Extension Period, if applicable, such that the Buyer shall not be permitted any extension periods after the Appeal Extension Deadline.

ARTICLE IV
CONVEYANCE OF THE PREMISES.

4.1 Closing.

The Seller shall convey the Premises to the Buyer at the offices of the Seller, at 10:00 a.m. on the date that is twelve (12) months after the Effective Date, unless another date and time is otherwise agreed upon in writing between the parties (such time, as the same may be extended pursuant to this Agreement, being referred to as the “Time of Closing”, “Closing” or the “Closing Date”).

4.2 Title.

The Premises is to be conveyed by a good and sufficient quitclaim deed (the “Deed”) running to the Buyer. The Deed shall convey title to the Premises, subject to the following (the “Permitted Encumbrances”):

- (a) Applicable laws, orders and regulations of any federal, state, or local governmental authority, including, without limitation, building, zoning, and environmental laws (the “Legal Requirements”);
- (b) All easements, restrictions, agreements, rights of first refusal, repurchase agreements, and other documents of record, insofar as the same may be in force and applicable to the Premises;
- (c) All matters which would be disclosed by a personal inspection or an instrument survey of the Premises;
- (d) All matters created or caused by Buyer;
- (e) A perpetual affordable housing restriction substantially in the form of DHCD’s “Local Initiative Program Regulatory Agreement and Declaration of Restrictive Covenants for Rental Project Local Action Units”, with such revisions thereto as the Seller, in consultation with DHCD, may approve, which meets the requirements of M.G.L. c. 184 and which shall run with the land and have priority over other encumbrances created by Buyer, including without limitation any mortgage securing the acquisition of the Premises or the construction of Buyer’s Project, to ensure that Buyer’s Project remains a rental housing development with 25% affordable housing units and that 100% of the units count toward the Town of Wayland’s Subsidized Housing Inventory (the “Affordable Housing Restriction”);

- (f) The provisions of this Agreement;
- (g) The Seller's Reserved Easement (as defined below);
- (h) The Repurchase Agreement (as defined below) that will be recorded at the time of the conveyance referenced in Section 7.2 below.

4.3 Closing Costs.

- (a) The Seller will pay the following costs at the Time of Closing:
 - (i) the fees and disbursements of the Seller's counsel; and
 - (ii) all real estate transfer, stamp or documentary taxes, if any.
- (b) The Buyer will pay the following costs of closing this transaction:
 - (i) the fees and disbursements of the Buyer's counsel;
 - (ii) the cost of title, including a title commitment, owner's title insurance policies and all endorsements the Buyer may request; and
 - (iii) a payment in lieu of taxes, at Closing, in an amount determined by Seller in accordance with M.G.L. c. 44, sec. 63A.
- (c) Recording fees and adjustments, if any, shall be paid in accordance with Massachusetts custom.
- (d) All costs incurred by the Seller in connection with the RFP and the disposition of the Property, including (a) all costs listed on Exhibit Q to the RFP plus (b) any additional such costs through Closing, in accordance with the Buyer's Price Summary Form in its RFP Response.

4.4 Conditions Precedent to Closing.

- (a) Without the express written permission from the Seller, Buyer (and its successors and assigns) shall not file an application for a comprehensive permit for Buyer's Project pursuant to M.G.L. c. 40B, §§ 20-23. If and to the extent required to ensure that 100% of the units in Buyer's Project are eligible for inclusion in DHCD's Subsidized Housing Inventory for the Town as Local Initiative Program Units or under another affordable housing subsidy program, the Board of Selectmen may so consent. However, under no circumstances shall the Buyer (or its successors and assigns) seek to waive the requirement for Site Plan Approval from the Planning Board under the requirements of the Wayland Zoning Bylaw relative to the River's Edge Housing Overlay District or to obtain that Site Plan Approval from the Board of Appeals under a comprehensive permit for Buyer's Project. In addition, the Buyer (and its successors and assigns) shall not seek a waiver from any other provision of the Wayland Zoning Bylaw relative to the River's

Edge Housing Overlay District without the express written permission of the Seller. This provision shall survive the Closing and run with the land.

(b) Buyer has furnished the Seller with (i) evidence satisfactory to the Seller of a binding commitment from a lender for financing of the construction of Buyer's Project, (ii) evidence of equity or commitment of equity and any other financings or fundings required to complete Buyer's Project, (iii) evidence that Buyer's contractor has obtained a payment and performance bond in an amount equal to the full construction cost (or provides evidence they are capable of providing such bond, or otherwise meets the bonding requirements of Buyer's lender for the project) and (iv) evidence that Buyer has satisfied or is capable of satisfying any other conditions contained in such commitment(s); and

(c) Buyer has furnished to the Seller a duly executed disclosure of beneficial interests in real property pursuant to M.G.L. c. 7C, Section 38 in the form attached hereto as Exhibit I.

4.5 Closing Deliveries.

(a) At the Time of Closing, the Seller shall deliver the following documents, fully executed, in a form reasonably acceptable to the Buyer's counsel and title insurance company:

(i) the Deed duly executed and acknowledged by the Seller containing the following statement: "In connection with the conveyance hereby made, there has been full compliance with the provisions of Section 63A of Chapter 44 of the Massachusetts General Laws.";

(ii) a duly executed certificate to the effect that the representations and warranties made by the Seller in this Agreement are true and correct at the Time of Closing;

(iii) any easements reserved by Seller referred to in this Agreement, duly executed and acknowledged by the Seller or otherwise incorporated into the Deed;

(iv) reasonable and customary affidavits executed by the Seller regarding mechanics' and materialmen's liens and parties in possession as required by the title company;

(v) a so-called FIRPTA affidavit executed by the Seller as to its non-foreign status within the meaning of Sections 1445 or 7701 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder;

(vi) a duly executed settlement statement;

(vii) a duly executed Repurchase Agreement; and

- (viii) a duly executed Access Easement for the Access Road.
- (b) At the Time of Closing, the Buyer shall deliver the following documents, fully executed, in a form reasonably acceptable to the Seller:
 - (i) a current certificate of legal existence and good standing from the Commonwealth of Massachusetts and evidence of Buyer's qualification to conduct business in Massachusetts;
 - (ii) a duly executed certificate to the effect that the representations and warranties made by the Buyer in this Agreement are true and correct at the Time of Closing;
 - (iii) a certificate of the Secretary or Assistant Secretary of the Buyer evidencing the corporate, or other appropriate, authority of the officer or manager executing any documents delivered by the Buyer in connection with the purchase of the Premises;
 - (iv) such documents to evidence proof of Buyer's source of equity as set forth in Section 1.4 of this Agreement;
 - (v) a duly executed settlement statement;
 - (vi) a duly executed Affordable Housing Restriction executed by the Department of Housing and Community Development;
 - (vii) a duly executed Repurchase Agreement;
 - (viii) a certification of payment in lieu of real estate taxes as set forth in Section 4.9;
 - (ix) such other documents, certificates, or agreements as may be necessary to consummate the transaction contemplated by this Agreement; and
 - (x) the Purchase Price and the Buyer's share of all closing expenses.

4.6 Default; Damages.

If prior to the Closing the Buyer shall fail to fulfill the Buyer's agreements and/or obligations hereunder in any material respect within applicable cure periods, the Seller may terminate this Agreement upon notice to Buyer. In the event of such termination, the Seller shall retain the Deposit and the Buyer shall: (a) restore the Premises to substantially the same condition as the Premises was prior to entering into this Agreement, as required under this Agreement and the Entry Agreement, unless otherwise agreed to in writing by the Seller and (b) fulfill all obligations of Buyer under Section 10.1 of this Agreement. In the event that Buyer fails to fulfill Buyer's agreements and/or obligations hereunder after the Closing, Seller shall be entitled to (i) all rights and remedies available under the law and (ii) elect to exercise its right to repurchase the Premises in accordance with the Repurchase Agreement, in which event, the

Seller shall be entitled to specific performance to compel the delivery of a deed thereunder. In the event that this Agreement is terminated, the Entry Agreement shall be deemed to be automatically terminated at the same time.

If the Seller shall fail to fulfill the Seller's agreements and/or obligations hereunder, and the sale contemplated hereby is not consummated because of default by the Seller in its obligation to sell the Premises in accordance with the terms of this Agreement, then the Buyer may, as its sole and exclusive remedy at law or in equity: (a) terminate this Agreement by giving written notice thereof to Seller, in which event the Additional Deposit will promptly be returned to the Buyer and the Parties shall have no further obligations to each other except for the Buyer's obligations under the Entry Agreement (except for the provisions that expressly survive termination thereof); (b) waive such default and consummate the transactions contemplated hereby in accordance with the terms of this Agreement; or (c) seek specific performance.

In no event shall Seller be responsible to Buyer for the cost of any improvements Buyer may have made to the Premises or for the costs of any studies, reports, or tests performed by the Buyer except as otherwise provided in the Repurchase Agreement.

In no event shall Seller be liable to Buyer for any indirect, special, punitive, multiple, incidental or consequential damages, however caused, including, but not limited to, lost profits, lost revenue, work interruption, or any other form of such damages. In no event shall any of the elected or appointed officials of Seller or any of Seller's employees or volunteers be personally liable whatsoever with respect to this Agreement.

A default under the Entry Agreement beyond any applicable cure period shall be deemed to be a default under this Agreement, and a default under this Agreement beyond any applicable cure period shall be deemed to be a default under the Entry Agreement.

The provisions of this Section 4.6 shall survive the Closing and the delivery of the Deed.

4.7 Condemnation.

If prior to the Time of Closing any proceeding shall be commenced or consummated for the taking of all or any part of the Premises pursuant to the power of eminent domain or otherwise which would: (a) in the Buyer's reasonable judgment substantially and materially affect or interfere with the Buyer's access to or use and development of the Premises for Buyer's Project; or (b) make the Premises non-conforming under applicable laws, the Buyer shall have the right, exercisable by giving written notice to the Seller within ten (10) days after receiving written notice of such taking, to either: (a) terminate this Agreement; or (b) accept the Premises in its then condition, without any abatement or reduction in the Purchase Price, and receive an assignment of all of the Seller's rights to any claims and condemnation awards payable by reason of such taking. If the Buyer elects to proceed under clause (b) above, the Seller shall not compromise, settle or adjust any claims to such award without the Buyer's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed.

4.8 Extension.

If at the Time of Closing the Seller shall be unable to convey title or to make conveyance, or to deliver possession of the Premises in accordance with the terms hereof, then the Seller shall use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or to make the Premises conform to the provisions hereof, or to satisfy such conditions precedent, and thereupon the Time of Closing shall be automatically extended for a period of ninety (90) days; provided, however, that the Seller shall not be obligated to spend more than the Cure Amount in the exercise of reasonable efforts to cure such defects or to otherwise deliver the Premises. The Seller may satisfy any voluntary liens or encumbrances at Closing out of the proceeds otherwise payable to Seller.

If at the extended Time of Closing the Seller shall have failed to cure any defects in title, deliver possession, or make the Premises conform, then (a) at the election of the Buyer this Agreement may be terminated without recourse to either party hereto and the Additional Deposit shall be returned to the Buyer subject to the Buyer's obligations to restore the Premises to substantially the same condition it was at the time of entering into this Agreement and the Entry Agreement as well as Buyer's obligations under the Entry Agreement, unless otherwise agreed to in writing by the Seller; or (b) the Buyer may accept such title as the Seller can deliver to the Premises in its then condition and to pay therefor the Purchase Price without deduction, in which case the Seller shall convey such title to the Buyer.

4.9 Real Estate Taxes.

Seller represents and warrants that the Premises are exempt from local real estate taxes as of the date of this Agreement. Seller's performance hereunder is conditioned upon Buyer making a payment in lieu of taxes, at Closing, in an amount determined by Seller in accordance with M.G.L. c. 44, sec. 63A.

In accordance with G.L. c. 62C, § 49A, Buyer certifies, under the pains and penalties of perjury, that Buyer has complied with all laws of the Commonwealth of Massachusetts relating to the payment of taxes. Such certification shall be made again and executed as of the Time of Closing.

The obligation to pay the real estate taxes shall run with and bind the Premises as a matter of record. If Buyer is nonprofit corporation or other tax exempt entity, then notwithstanding such tax exempt status, Buyer shall be required to pay real estate taxes on the Premises, which shall be assessed by Seller as if Buyer were a for-profit, non-tax exempt entity. In order to effect such taxation (as deemed necessary or appropriate by the Seller), or as otherwise required by Seller, Seller and Buyer shall enter into a so-called PILOT (Payment In Lieu of Taxes) Agreement or other similar agreement. The terms and provisions of this paragraph shall survive the Closing and the delivery of the Deed.

ARTICLE V
RESTRICTIONS ON DEVELOPMENT AND USE

5.1 Restrictions on Use.

Buyer agrees that the Deed for the Premises shall contain agreements on behalf of the Buyer that it will devote Buyer's Project only to and in accordance with the uses specified below (unless otherwise agreed by Seller and Buyer) and approved by the Planning Board:

- (a) Buyer's Project shall consist of between 150 and 190 residential units;
- (b) One hundred percent (100%) of the units shall be rental units;
- (c) At least 25% of the units shall be 55+ age-restricted units ("Age-Restricted Housing Units"), subject to any changes to the REHOD Requirements in accordance with Section 3.7;
- (d) A least 25% of the units shall be affordable units for occupancy by persons or households whose aggregate family income does not exceed 80% of the median gross income for the area, as established by the United States Department of Housing and Urban Development ("Affordable Housing Units");
- (e) The affordable units shall be distributed proportionally (by type, size, and location) between and among the age-restricted and non-age-restricted units;
- (f) One hundred percent (100%) of all of the units constructed as Buyer's Project shall be eligible for and counted toward the Town of Wayland's Subsidized Housing Inventory established and administered by DHCD, or its successor; and
- (g) Local preference for the leasing of affordable units shall be provided to the maximum extent allowed by legal requirements.

ARTICLE VI
UTILITIES

6.1 Utilities - General.

Attached hereto as Exhibit J is a utility location plan showing the record location of all utilities located within the Premises ("Existing Conditions Plan"). The information provided on the Existing Conditions Plan was compiled by the Seller from record documents available to the Seller. The Seller does not warrant the location or descriptive information provided or that all active and/or abandoned utilities are shown on the Existing Conditions Plan.

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

6.2 Utility Services.

The Buyer shall be solely responsible for any utility relocation, upgrades and/or modifications for all utilities to the Premises, including, without limitation, natural gas, electric, communications, storm water, or water as may be necessary. Buyer acknowledges that there is no public sewer serving the Premises and Buyer is solely responsible for obtaining all necessary Approvals for the designing, constructing, operating and maintaining an on-site package treatment plant and associated piping, leaching fields and infrastructure for Buyer's Project. Buyer also acknowledges that there is no public water supply service the Premises. Buyer shall be responsible for (a) obtaining all necessary governmental permits and approvals to connect the Premises to the Wayland water supply, and (b) designing and constructing all necessary water mains, extensions, connections and infrastructure to connect the Premises to the public water supply and to serve Buyer's Project.

6.3 Relocation, Connection and Upgrading of Active Utilities.

Seller, at its election, may reserve for no consideration an easement or easements over, across, on, under, or otherwise, the Premises for the continued maintenance and operation of any utilities and storm water drainage and other water pipes to either the Premises or other parts of Wayland, provided that the location of such utilities and pipes does not materially interfere with the Buyer's operation and use of the Premises for Buyer's Project (the "Reserved Easements"). Any such easement shall be substantially in the form attached hereto as Exhibit K (the "Reserved Easement Agreement") The Buyer shall, at its sole cost and expense, be responsible for any costs associated with connecting to the existing utilities and/or the cost of upgrading such utilities, if necessary, and the construction of all on-Premises storm water collection systems, subject to the following conditions:

- (i) the specifications (the "Specifications") for the removal, relocation, connection and construction of any active utilities (the "Relocation Work") shall be prepared by the Buyer and shall be subject to the final review and approval of the Seller's Department of Public Works. The Buyer shall not be permitted to proceed with any Relocation Work without the prior written approval of the Seller's Department of Public Works, which approval shall not be unreasonably withheld. The proposed relocation points and/or areas shall in no way impact and/or interfere with the future development, enjoyment and/or use of any adjacent parcel.
- (ii) the Buyer agrees that removal and relocation of the active utilities conducted by or on behalf of the Buyer shall be conducted in strict accordance with the Specifications;
- (iii) the Relocation Work shall be subject to the inspection by representatives of the Seller, at any time without prior notice to the Buyer;
- (iv) proposed grading cannot create a situation where any active utilities are either too deep, so as to create an obstacle to the Seller's ability to repair and/or maintain, or too shallow, so as to provide inadequate cover; and

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

Any work performed under subsections (i) through (v) above that is not in strict accordance with the Specifications and/or all applicable federal, state, and local laws, rules, codes, or regulations shall be immediately remedied and repaired at the sole cost of the Buyer and/or its contractor, or in the alternative by the Seller, in the event the Buyer fails for any reason to cure such defects after written notice thereof, in which case the Buyer shall be solely responsible for all of the Seller’s costs incurred in connection with curing such defect.

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

ARTICLE VII

POST CONVEYANCE ACTIVITIES AND COVENANTS

7.1 Covenants Relating to the Timing, Use and Maintenance of Buyer’s Project.

(a) Subject only to delays caused solely by Force Majeure, the Buyer shall Commence (as defined herein) construction of the Buyer’s Project in accordance with the Conceptual Design Plans by a date that is ninety (90) days after the Closing (“Buyer’s Project Commencement Date”). Construction of the Buyer’s Project shall be deemed to “Commence” upon the date that (i) a building permit for Buyer’s Project is issued by the Town of Wayland Building Inspector and (ii) the Buyer commences and diligently undertakes physical construction of the Buyer’s Project.

(b) Subject only to delays caused solely by Force Majeure, the Buyer hereby covenants and agrees to Complete (as defined herein) construction of the Buyer’s Project by a date which is eighteen (18) months after the Closing (“Buyer’s Project Completion Date”). The Buyer’s Project shall be deemed completed upon the date that: (i) the Town of Wayland Building Inspector has issued a temporary or permanent certificate of occupancy for the Buyer’s Project, including without limitation, all of the rental housing units the Buyer is obligated to construct pursuant to the terms hereof; (ii) the Buyer’s Project can be used for its intended purpose as evidenced by a certification of substantial completion, in accordance with the approved Conceptual Design Plans issued by the Buyer’s architect or designer, as applicable, and contractor on AIA Document G-702 subject only to a punch list of items remaining to be completed of minor nature of construction, decoration, painting, and millwork; (iii) the Buyer’s Project is free of debris and construction materials, is in usable condition; and (iv) all landscaping is completed and planted, except for such work that cannot be completed due to seasonal conditions. Upon satisfaction of this Section 7.1 and written request by the Buyer, the Seller shall

issue a Certificate of Compliance to the Buyer in a form suitable for recording with the Registry.

(c) The Buyer hereby covenants and agrees to use the Premises solely for residential rental housing in accordance with the Affordable Housing Restriction and for accessory uses allowed by Section 2504.1.2 of the REHOD Requirements.

(d) The Buyer hereby covenants and agrees that there shall be no drinking water wells installed on the Premises.

(e) The Buyer hereby covenants and agrees to maintain the Buyer's Project in first class condition, including maintaining, repairing and replacing deteriorated components of the buildings, improvements and infrastructure constructed as part of the Buyer's Project. At the Time of Closing, the Buyer shall establish and fund a capital reserve account for the sole purpose of funding capital improvements and capital repairs and maintenance to the Premises as required herein. The Buyer shall provide to Seller on an annual basis (or more frequently if requested by Seller) statements of accounting for said reserve account.

For purposes of this Agreement, "Force Majeure" shall mean a delay or stoppage due to strikes, civil riots, war, invasion, fire or other casualty, acts of God, adverse weather conditions not reasonably anticipated and resulting in a declared state of emergency, act or failure to act of quasi-governmental or governmental authorities or other causes beyond the reasonable control of the party required to make performance, but specifically excluding financial constraints of such party.

7.2 Repurchase Right.

In the event that the Buyer fails to commence the Buyer's Project by the Buyer's Project Commencement Date, subject only to delays caused solely by Force Majeure, the Seller shall have the option, exercisable at the Seller's sole discretion, to repurchase all or any portion of the Premises pursuant to the terms of the Repurchase Agreement to be entered into between the Parties (the "Repurchase Agreement") and recorded at the time of the initial conveyance with the Middlesex South District Registry of Deeds. The Buyer and the Seller have agreed upon the Repurchase Agreement attached hereto as Exhibit L, which shall be executed and recorded at the Time of Closing.

7.3 Assignment.

After the Closing and prior to the Buyer's Project Commencement Date, Buyer covenants not to make or suffer to be made any assignment, lease or any other manner of transfer of its interest in the Premises or portion thereof or in this Agreement, except for (i) leasing of rental units in the Premises to future occupants thereof or (ii) to any person or entity which directly or indirectly controls, is controlled by or is under common ownership with Buyer as of the date of this Agreement provided such assignee expressly assumes Buyer's obligations under this Agreement in writing and Seller receives a copy of such assumption, or (iii) if it shall have complied with the following conditions:

- (a) The transferee shall have been approved as such in writing by the Seller;
- (b) The transferee or transferees, by valid instrument in writing satisfactory to Seller, shall have expressly assumed for themselves and their successors and assigns, and directly to and for the benefit of the Seller, all obligations of any person or persons, including Buyer, to being, complete and or maintain and operate, as applicable, Buyer's Project and all obligations of the Buyer provided for in this Agreement. Notwithstanding the foregoing, the fact that any transferee of, or any other successor interest whatsoever to the Premises, or any part thereof, shall for whatever reason, not have assumed such obligations or so agreed, shall not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by Seller) relieve or except such transferee or successor of or from obligations, conditions, or restrictions, or deprive or limit the Seller of or with respect to any rights or limitations or controls with respect to the Premises or the construction of Buyer's Project; it being the intent of this, together with other provisions of this Agreement that, to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement, no transfer of or change, with respect to ownership, possession or control, shall operate legally or practically to deprive or limit Seller of or with respect to any rights or remedies or controls provided in or resulting from this Agreement with respect to the Premises and the construction of Buyer's Project that Seller would have, had there been no such transfer or change.
- (c) There has been submitted to Seller for review and the Seller has approved, in its sole discretion, or has not objected to in writing stating the reason for its objections within ten (10) business days of delivery to Seller, all instruments and other legal documents involved in effecting transfer.
- (d) Buyer and its transferee or transferees shall comply with such other reasonable conditions as Seller may find desirable in order to achieve and safeguard the purposes of this Agreement.

In the event of any violation by such a transferee of any obligation assumed or required to be assumed under this Section, which violation shall occur prior to receipt of the Certificate of Compliance, Buyer shall be responsible, jointly and severally with the transferee, for curing or effecting the cure of such violation. If Buyer shall fail or refuse to effect such cure, Seller may institute such actions or proceedings against the transferee and/or Buyer as Seller deems appropriate, including actions and proceedings to compel specific performance. Payment of all costs and expenses which may be incurred by Seller in instituting and prosecuting such action or proceedings shall be paid by Buyer.

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

ARTICLE VIII
INSURANCE REQUIREMENTS DURING CONSTRUCTION

8.1 Insurance Requirements During Construction Period.

The Buyer shall, at all times prior to the final completion of the Buyer's Project, maintain and deliver to the Seller evidence of and keep in full force and effect, or cause the general contractor(s) for the Buyer's Project to maintain, either directly or through subcontractors, and to deliver to the Seller evidence of and keep in full force and effect a policy of Builder's Risk insurance in an amount equal to the amount of the general construction contract for the construction of Buyer's Project. The policy shall (i) list Seller as an additional insured, (ii) be issued by companies licensed or approved by the Commonwealth's Insurance Commissioner and rated A-VII or better in the most recent edition of Best's Insurance Guide with respect to primary levels of coverage and (iii) be issued and delivered in accordance with Massachusetts law and regulations.

Promptly upon execution of this Agreement by the Buyer, the Buyer shall deliver to the Seller a copy of the required policy and endorsements thereto on forms which are acceptable to the Seller.

The insurance policy required by this Section 8.1 shall contain an endorsement providing that written notice shall be given to the Seller at least thirty (30) calendar days prior to termination, cancellation or reduction of coverage in the policy.

The insurance coverage required herein may be effected under blanket insurance policies; provided, however, that (a) such policies are written on a per-occurrence basis, (b) such policies comply in all other respects with the provisions of this Article VIII, and (c) the protection afforded under any such policy shall be no less than that which would be available under a separate policy relating only to this Agreement. If any coverage required by this Agreement is provided under blanket insurance policies, promptly upon execution of this Agreement and annually thereafter, the Seller shall be provided with a list of the projects covered by such blanket insurance policies, the dollar amount of each project covered and such other information as the Seller may reasonably request to enable it to evaluate whether the requirements of this article have been met, or, in the alternative, any such policy shall include a dedicated limit applicable solely to Buyer's Project.

The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Buyer are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Buyer under this Agreement or constitute a representation or warranty by the Seller that the coverage provided by such insurance is adequate for purposes of the Buyer or for any other purpose other than the protection of the interests of the Seller. The Seller shall have the right to waive the levels of coverage and types of insurance required hereunder.

ARTICLE IX
REPRESENTATIONS, WARRANTIES AND COVENANTS

9.1 Representations, Warranties and Covenants of the Buyer.

(a) Organization. The Buyer is duly organized and validly existing under the laws of the Commonwealth of Massachusetts, is authorized to do business in the Commonwealth, is in compliance with the laws of the Commonwealth, and has the power and authority to own its properties and assets and to carry on its business in the Commonwealth as now being conducted and as hereby contemplated.

(b) Authority. The Buyer has the power and authority to enter into this Agreement, and has taken all action necessary to cause this Agreement to be executed and delivered, and this Agreement has been duly and validly executed and delivered by the Buyer.

(c) Binding Obligation. This Agreement is a legal, valid and binding obligation of the Buyer, enforceable against the Buyer in accordance with its terms, except as enforceability may be subject to the exercise of judicial discretion in accordance with general equitable principles and to applicable bankruptcy, insolvency, reorganization, moratorium and other laws for the relief of debtors heretofore or hereafter enacted to the extent that the same may be constitutionally applied.

(d) Compliance with Laws. In the permitting, design, acquisition and construction of the Buyer's Project, the Buyer has complied and will comply with the provisions of this Agreement and all applicable building, zoning, land use, environmental protection, sanitary and safety laws, rules and regulations, and all applicable grant, reimbursement and insurance requirements, and will not permit a nuisance thereon; but it shall not be a breach of this subsection if the Buyer fails to comply with such laws, rules, regulations and requirements (other than Chapter 21E of the Massachusetts General Laws, as amended) during any period in which the Buyer is diligently and in good faith contesting the validity thereof. The Buyer shall not with knowledge commit, suffer or permit any act to be done in, upon or to the Premises in violation of any law, ordinance, rule, regulation or order of any governmental authority.

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

(f) No Conflicts. Neither the execution, delivery or performance of this Agreement nor compliance herewith (i) conflicts or will conflict with or results or will result in a breach of or constitutes or will constitute a default under (1) the [Operating Agreement] of the Buyer, (2) to the best of the Buyer's knowledge, any law or any order, writ, injunction or decree of any court or governmental authority; or (3) any agreement or instrument to which the Buyer is a party or by which it is bound or (ii) results in the

creation or imposition of any lien, charge or encumbrance upon its property pursuant to any such agreement or instrument.

(g) No Approvals Required. No authorization, consent, or approval of any governmental authority (including courts) is required for the execution and delivery by the Buyer of this Agreement or the performance of its obligations hereunder.

(h) Completion of Buyer's Project. The Buyer will complete the Buyer's Project in accordance with the terms this Agreement and within the timeframes set forth in this Agreement.

(i) Buyer's Source of Equity. Buyer currently has, or has satisfactory access to, equity funds sufficient in the reasonable judgment of the Buyer, to acquire and develop the Premises. At the date of execution of this Agreement and again prior to the Closing, the Buyer shall provide a detailed written statement to Seller enumerating the sources and planned uses of such funds to complete Buyer's Project.

9.2 Representations of the Seller.

(a) Authority. The Seller has the power and authority to enter into this Agreement, and has taken all action necessary to cause this Agreement to be executed and delivered, and this Agreement has been duly and validly executed and delivered by the Seller.

(b) Binding Obligation. This Agreement is a legal, valid and binding obligation of the Seller, enforceable against the Seller in accordance with its terms, except as enforceability may be subject to the exercise of judicial discretion in accordance with general equitable principles and to applicable bankruptcy, insolvency, reorganization, moratorium and other laws for the relief of debtors heretofore or hereafter enacted to the extent that the same may be constitutionally applied.

(c) No Material Litigation. To the knowledge of the Seller, there are no actions, suits or proceedings pending or threatened, against or affecting the Seller or the Premises which, if determined adversely to the Seller, would materially adversely affect its ability to perform its obligations hereunder.

(d) No Conflicts. To the knowledge of the Seller, neither the execution, delivery or performance of this Agreement nor compliance herewith (i) conflicts or will conflict with, or results or will result in a breach of, or constitutes or will constitute a default under, (1) any law or any order, writ, injunction or decree of any court or governmental authority; or (2) any agreement or instrument to which the Seller is a party or by which it is bound or (ii) results in the creation or imposition of any lien, charge or encumbrance upon its property pursuant to any such agreement or instrument.

(e) FIRPTA. The Seller is not a "foreign person" as defined in Section 1445 of the Code.

9.3 Brokers.

The Seller and the Buyer represent and warrant to each other that no brokerage fee or real estate commission is or shall be due or owing in connection with this transaction, and the Seller and the Buyer's hereby agree to indemnify and hold the other harmless from any and all claims of any broker or agent based on action or alleged action of the other.

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

ARTICLE X **INDEMNIFICATION**

10.1 Indemnification; Remedies of Buyer.

(a) The Buyer, regardless of any agreement to maintain insurance, will indemnify and defend the Seller, and its officers, directors, employees, agents, elected and appointed officials, committees, representatives and boards (collectively, the "Indemnitees") and hold the Indemnitees harmless from and against actual losses sustained by an Indemnitee on account of any and all claims arising out of (1) the design, engineering and construction of the Buyer's Project by the Buyer or any of its consultants, engineers, advisors, contractors, subcontractors or suppliers; (2) the Buyer's nonpayment under any contract between the Buyer and its consultants, engineers, advisors, contractors, subcontractors and suppliers, or any claims of persons employed by the Buyer or its agents to construct the Buyer's Project; (3) any accident, injury or damage to any person occurring on the Premises or as a result of the Buyer's Project during the construction thereof but only to the extent that such accident, injury or damage was not caused by the negligent or intentionally tortuous act or omission of the Seller; (4) any default in the Buyer's obligations under this Agreement; (5) the Property Information as set forth in Exhibit E; and (6) all matters set forth in Section 3.3 hereof. In case any action or proceeding is brought against the Indemnitees, by reason of any such claim, the Buyer will defend the same at its expense upon notice from any Indemnitee with counsel chosen by Buyer subject to the reasonable approval of the Seller. The Seller and the Indemnitees will cooperate with the Buyer, at the expense of the Buyer, in connection therewith and will do nothing to compromise any defense. The Seller has the option, but not the obligation, of retaining separate counsel at its sole cost and expense for any purpose. Retention of such separate counsel by the Seller shall not relieve Buyer of the obligation to defend hereunder.

(b) Notwithstanding any contrary provision in this Agreement, the Seller shall have the right to take any action not prohibited by law or make any decision not prohibited by law with respect to proceedings for indemnity against the liability of the Indemnitees. The Seller may enforce its rights, including any and all rights available to Seller under law or equity, under this Agreement by legal proceedings.

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

ARTICLE XI
MISCELLANEOUS

11.1 Notices.

All notices required or permitted to be given hereunder shall be in writing and delivered by hand, by recognized national overnight courier service, or mailed postage prepaid, by registered or certified mail, addressed as follows:

If to Buyer:

with a copy to:

If to Seller: Nan Balmer
 Town Administrator
 Town of Wayland
 Wayland Town Building
 41 Cochituate Road
 Wayland, MA 01778

with a copy to: Stephen D. Anderson
 Anderson & Kregier LLP
 One Canal Park, Suite 200
 Cambridge, MA 02141

and Mark. J. Lanza
 Town Counsel
 41 Cochituate Road
 Wayland, MA 01778

or in the case of either party to such other address as shall be designated by written notice given to the other party. Any such notice shall be deemed given when so delivered by hand or one (1) day after when deposited with a nationally recognized overnight courier service or three days after deposit with the U.S. Postal Service, except that where under this Agreement any time period is specified to commence from notice, such time period shall not be deemed to commence until, according to applicable records of the courier service or U.S. Postal Service, delivery of such notice was first attempted. Notices which are given by either party may be given by the attorney for such party without the signature of such party.

11.2 Non-Offer.

The submission of a draft of this Agreement or a summary of some or all of its provisions does not constitute an offer to buy or to sell the Premises, it being understood and agreed that neither the Buyer nor the Seller shall be legally obligated with respect to the purchase or sale of the Premises on account of such submission unless and until this Agreement has been fully executed by both the Buyer and the Seller and a fully executed copy has been delivered.

11.3 Survivability of Covenants.

The acceptance of the Deed by the Buyer or the nominee designated by the Buyer, as the case may be, shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed, except for the provisions which are not capable of having been performed on or before the Time of Closing or which by their terms survive delivery of the Deed. Any covenants or provisions in this Agreement which by their terms should survive delivery of the Deed shall be deemed to survive said delivery.

11.4 Complete Agreement.

This Agreement and all Exhibits attached hereto constitute the entire Agreement between the parties hereto and no oral statements made by anyone with regard to the transaction which is the subject of this Agreement shall be construed as a part hereof unless the same is incorporated herein by writing.

11.5 Severability.

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

11.6 Time of Essence.

Time is of the essence under this Agreement.

11.7 Counterparts.

This Agreement may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument.

11.8 Recording.

Seller, at its sole option and expense, may elect to record this Agreement with the Registry.

11.9 Successors Bound.

This Agreement shall be binding upon and shall inure to the benefit of the Seller and the Buyer and their successors, including any successors in title, and permitted assigns.

11.10 General.

This instrument is to be construed as a Massachusetts contract, sets forth the entire contract between the parties and may be canceled, modified or amended only by a written instrument executed by both the Seller and the Buyer. Both Parties have actively participated in the drafting and negotiation of this Agreement, and any ambiguity herein shall not be construed against either Party as drafter.

11.11 Captions.

The captions in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Agreement or the scope or content of any of its provisions.

11.12 List of Exhibits.

- EXHIBIT A – Plan of Land/Premises**
- EXHIBIT B – Buyer’s Project**
- EXHIBIT C – Escrow Agreement**
- EXHIBIT D – Right of Entry Agreement**
- EXHIBIT E – Property Information**
- EXHIBIT F – REHOD Requirements**
- EXHIBIT G – Design Guidelines**
- EXHIBIT H – Approvals**
- EXHIBIT I – Disclosure of Beneficial Interest**
- EXHIBIT J – Utility Location Plan**
- EXHIBIT K – Reserve Easement Agreement**
- EXHIBIT L – Repurchase Agreement**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal as of the day and year first above written.

SELLER:

TOWN OF WAYLAND

By: _____

Name:

Title:

BUYER:

[_____]

By: _____

Name:

Title:

EXHIBIT A

Plan of Land/Premises

EXHIBIT B
Buyer's Project

EXHIBIT C
Escrow Agreement

EXHIBIT D
Entry Agreement

EXHIBIT E
Property Information

EXHIBIT F
REHOD Requirements

EXHIBIT G
Design Guidelines

EXHIBIT H

Approvals

EXHIBIT I

Disclosure of Beneficial Interest

Exhibit J
Utility Location Plan

Exhibit K
Reserved Easement Agreement

EXHIBIT L

Repurchase Agreement

