

Property address: 484-490 Boston Post Road, Wayland, Middlesex County, Massachusetts

RECORD AND RETURN TO:
[_____]

~ Recording Information Area ~

REPURCHASE AGREEMENT

This Repurchase Agreement (the "Agreement") is entered into as of the ____ day of _____, 2016 between the **Town of Wayland, acting by and through its Board of Selectmen**, a Massachusetts municipal corporation, having an address of 41 Cochituate Road, Wayland, MA 01778 (the "Town"), and _____, a _____ having a principal place of business located at _____ ("Buyer").

RECITALS:

WHEREAS, the Town sold to Buyer and Buyer purchased from the Town, pursuant to the terms of a Land Disposition Agreement entered into between the Town and the Buyer dated _____, 2016 (the "Disposition Agreement") and a deed recorded simultaneously herewith, land containing approximately 8.24 acres, commonly known as 484-490 Boston Post Road, Wayland, Middlesex County, Massachusetts, shown as "Lot A", "Lot C", and "Lot E" 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"); and

WHEREAS, Buyer intends to develop and construct _____ [number of units to be inserted] new rental housing units (the "Project"), including (i) at least twenty-five percent (25%) of such new rental housing units being affordable units for occupancy by persons or households whose aggregate family income does not exceed eighty percent (80%) of the median gross income for the area, as established by the United States Department of Housing and Urban Development and (ii) at least twenty-five percent (25%) of such new rental housing units being age-restricted (senior) units, and associated improvements on the Premises in accordance with those certain plans approved by the Town of Wayland Planning Board (the "Schematic Design Plans"); and

WHEREAS, the parties desire to set forth their understanding regarding Buyer's construction of the Project on the Premises and the Town's rights in connection therewith in the event Buyer fails to use commercially reasonable efforts to diligently commence construction of

the Project by [_____], a date which is ninety (90) days after the closing under the Disposition Agreement (the "Commencement Deadline"), subject to the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the Recitals set forth above, which are incorporated in and made a part of this Agreement, and in consideration of the mutual covenants and agreements herein contained, the Town and the Buyer agree as follows:

1. Obligation to Commence Construction of the Premises. Subject only to delays caused solely by Force Majeure (as such term is defined herein), Buyer shall promptly Commence (as such term is defined herein) construction of the Project in accordance with the Schematic Design Plans by the Commencement Deadline. Construction of the 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 construction of the Buyer's Project.

2. The Town's Repurchase Right.

(a) The failure of the Buyer to comply with the obligations set forth in Section 1 of this Agreement shall constitute an event of default ("Default") hereunder.

(b) The Buyer shall have sixty (60) days after receipt of a written notice of default submitted to Buyer by the Town with respect to a Default under Section 1 of this Agreement (the "Cure Period") to cure such Default to the reasonable satisfaction of the Town, provided, however, that such Cure Period shall be reasonably extended for up to an additional sixty (60) days (the "Cure Period Extension Deadline") if the cure of such Default cannot be completed within the Cure Period and Buyer has timely commenced to cure such Default and thereafter diligently completes the cure.

(c) If, after the expiration of the Cure Period, or if applicable, the Cure Period Extension Deadline, the Default remains uncured, the Town shall have the option, but not the obligation, to repurchase the Premises and all improvements thereon, including the Project (the "Repurchase Right"), by notifying Buyer in writing within fifteen (15) days after the expiration of the Cure Period or, if applicable, the Cure Period Extension Deadline of the Town's election to repurchase the Premises for the Repurchase Price, as hereinafter computed.

(d) In the event that the Town exercises its Repurchase Right, the closing shall occur on such a date that is no earlier than sixty (60) days and no later than one hundred eighty (180) days after the Town exercises its option to repurchase (the "Closing Date").

(e) At or prior to the Closing Date:

(i) Buyer shall convey to the Town (or its designee) by good, clear, record and marketable title to the Premises by Quitclaim Deed all of its right, title, and interest in the Premises and all improvements thereon, free and clear of all liens and encumbrances, except those approved in writing by the Town thirty (30) days

prior to the Closing Date and those in existence as of the date of Buyer's purchase of the Premises;

(ii) the Town shall pay to Buyer the Repurchase Price, in cash or by certified check or bank check or by wire transfer of funds; and

(iii) recording fees and adjustments, if any, shall be paid in accordance with Massachusetts custom.

(f) On or prior to the Closing Date, the Buyer shall assign to the Town (or its designee) all of its rights, title and interest in all plans, improvements, warranties, permits, approvals and the like (to the extent the same are assignable), with all fees and expenses related to such work due and payable for the work completed and permits issued as of the Closing Date, to be paid by Buyer in full.

(g) For purposes of this Agreement, the term "Repurchase Price" shall mean the Purchase Price paid by Buyer for the Premises, as defined in Section 2.1 of the Disposition Agreement.

3. Force Majeure. The duties of the Buyer to observe or perform any of the provisions of this Agreement (except the payment of money and the cure of a Default by the Cure Period Extension Deadline) shall be excused and extended for a period equal to the period of prevention, 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 Buyer ("Force Majeure"). Buyer shall provide the Town with written notice at the time it becomes aware of any Force Majeure event, and Buyer shall take all steps that are reasonably necessary under the circumstances to mitigate the effects of such Force Majeure. Financial inability shall not be deemed a ground of Force Majeure.

4. Miscellaneous.

(a) 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 first class postage prepaid, by registered or certified mail, to the following addresses:

If to Buyer: [_____]

with a copy to: [_____]

If to the Town: Town of Wayland
Wayland Town Building
41 Cochituate Road
Wayland, MA 01778
Attention:

with a copy to: Stephen D. Anderson
Anderson & Kreiger LLP

One Canal Park, Suite 200
Cambridge, MA 02141

and

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

Each party shall be responsible for notifying the other party of any change of address.

(b) The provisions of this Agreement are not intended to create, nor shall they in any way be interpreted to create, a joint venture, a partnership, or any other similar relationship between the parties.

(c) The captions heading the various sections of this Agreement are for convenience and identification purposes only, and they shall not be deemed to limit or define the contents of their respective sections.

(d) The recitals set forth in this Agreement and all exhibits attached to this Agreement are incorporated in and made part of this Agreement.

(e) Except as otherwise expressly provided in this Agreement, no delay or omission by either of the parties in exercising any right or power accruing upon the other party's non-compliance with or failure to perform any of the provisions of this Agreement shall impair or be construed to be a waiver of any such right or power.

(f) The parties hereto acknowledge and agree that this Agreement has been negotiated at arm's length and between parties equally sophisticated and knowledgeable in the matters dealt with in this Agreement. Accordingly, any rule of law or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it, or in favor of the non-drafting party, is not applicable and is waived. The provisions of this Agreement shall not be construed strictly or in favor of or against any party hereto but rather shall be interpreted in a reasonable manner to effect the intent of the parties as set forth in this Agreement.

(g) This Agreement shall be binding upon and inure to the benefit of the Town and the Buyer and their respective successors and permitted assigns subject to the provisions of this Agreement. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party hereto, which may be granted or withheld in such other party's sole discretion.

(h) This Agreement may be executed in several counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.

(i) Amendments, modifications, supplements or changes to this Agreement shall be in writing, signed by both parties.

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

(k) This Agreement shall be recorded in the Middlesex South District Registry of Deeds with the parties dividing the cost of such recordation equally between the parties.

(l) Each party shall, without charge, at any time and from time to time hereafter, within fifteen (15) days after receipt of written request of the other, certify by written instrument, duly executed and acknowledged, to any mortgagee or purchaser, or proposed mortgagee or proposed purchaser, or any other person, firm or corporation specified in such request:

(i) whether this Agreement has been supplemented or amended, and, if so, the substance and manner of the supplement or amendment;

(ii) whether any default exists under this Agreement, and, if so, a description of each default;

(iii) whether any offsets, counterclaims or defenses exist on the part of the responding party with respect to the obligations under this Agreement, and, if so, the nature and amount of such offsets, counterclaims or defenses; and

(iv) such other matters as may be reasonably requested.

Any such certificate may be relied upon by the addressee, and said addressee may rely on same to the extent of estopping the party providing the certificate from asserting a claim or defense inconsistent with the facts therein to the extent relied upon by the addressee without knowledge of the facts to the contrary, and the contents of such certificate shall be binding on the party executing the same to such extent.

(m) This Agreement shall be governed by the laws of the Commonwealth of Massachusetts.

[Signatures to appear on next page.]

IN WITNESS WHEREOF, the Town and Buyer have executed this Agreement as of the date first above written.

TOWN OF WAYLAND

By: _____

Name:

Title:

[_____]

By: _____

Name:

Title:

COMMONWEALTH OF MASSACHUSETTS

_____, ss

On this ____ day of _____, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which was _____ (identify the type of evidence), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she/he signed it voluntarily for its stated purpose as _____ of the Town of Wayland.

Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

_____, ss

On this ____ day of _____, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which was _____ (identify the type of evidence), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she/he signed it voluntarily for its stated purpose as _____ of _____.

Notary Public
My Commission Expires: