



Town of Wayland Massachusetts

River's Edge Advisory Committee (REAC) Meeting Minutes for Meeting on Tuesday, December 16th, 2014

Members

Present: Anthony Boschetto (7:05) Rebecca Stanizzi
Jerome Heller (Chair) William Steinberg
Daniel Hill (7:08) William Sterling
Robert Morrison Michael Wegerbauer

Not Present: Christine DiBona

Guests: Anderson & Kreiger
Stephen D. Anderson
Stephanie Dubanowitz

Meeting was called to order at 7:02 PM.

Public Comment: None

Minutes of 11/22/14

Bill Steinberg motion, Becky 2nd – motion to approve, unanimous in favor, Bill, Bill, Jerry, Becky, Mike, Rob

Minutes of 11/25/14

Jerry motion, Becky 2nd – motion to approve, unanimous in favor – Bill, Bill, Jerry, Becky, Mike, Rob, Tony

Discussion of ways to handle potential environmental issues known (already disclosed) and possible unknown

Phase 1 study is \$3k-\$10k, Phase II could be up to \$50k – town has already completed phase 1 and a partial phase 2 by Tighe & Bond

Specify that any "problem" identified must be outside of what has been already disclosed

Could have buyer do phase II after selection, takes probably longer than 30 days

Assume methane mitigation should be included in the building design

Build T&B results into the RFP and make rest of the documents available in eRoom, then allow 45-60 days to allow buyer to complete their own study – they can walk only if they discover a problem that is materially different from what has been disclosed and materially significant

Don't allow exclusions or exceptions from the bid documents except for LDA and reuse restrictions – A&K suggests we allow exclusions/exceptions but that is a criteria on which the bidder will be judged

Bidder must include full list of testing that they will be performing once awarded

Discussion of inter-agency agreement regarding 10% 3-bedroom requirement – seeking a letter to exclude us from this new 1/14 requirement as this project should be grandfathered in

Discussion of evaluation of piles – reuse on site (yes, per T&B), reuse as landfill cover elsewhere or must be treated as hazardous waste? – expect lateral testing of piles by bidders

Arsenic from Sudbury landfill present and disclosed

Need right of entry agreement for testing – their LSP will suggest what tests should be performed

Site will need public water provided

Need to terminate with one bidder before speaking with another and cannot re-engage with 1st bidder

Tony suggested, Bill Sterling agreed, disclosure & due diligence up front with testing after award for up to 60 day – general consensus on this by the committee

Post-closure use plan may be required for DEP which may include methane plan, so may need to defer this to the developer – possibly satisfy this earlier with design plan with methane mitigation required

DPW Surplus Declaration -Mark Lanza to draft proposal to declare land surplus – Steve would like to see a copy of this once Mark has completed

ANR Plan of the Property to be conveyed - Town Surveyor – Alf working on this

Landfill assignment – need to schedule meeting with BoH (Julia), Nan, Mark L. & DEP to discuss how to rescind landfill designation

Appraisal report – use group that created initial report – ok to select without sending out to bid as this under the \$10k bid cap

Design guidelines – latest version is online – may need to be updated by Bill Sterling – will pass around for comments and make updates prior to RFP distribution

Disclose the cost the Town spent for preparation of bid - Tighe & Bond to A&K costs

Collect all disclosure documents – have Nina (A&K) review and then town will find a location to post publicly

ProjectDog per Bill Sterling is a group that handled this task for him well on another project

A&K needs IMA for septage facility agreement with Sudbury – Pat should have this

There exists an easement over road and right to improve it

Find out what utilities might cross the Rivers Edge proposed site (natural gas line?)

Can decide later whether or not we'd like to interview bidders, but need more clarification on this as this may require BoS to interview

Deed restriction on property will preclude sale, must be rental property in perpetuity, record repurchase right (1st right of refusal) agreement – disclose in RFP

At LDA will not have financing yet

Can structure RFP as sale, lease or either – request A&K summarize pros/cons and protections – 1 page summary for BoS to make decision on this

Recommend a \$10k good faith deposit – keep if bidder selected and opts out

Discussion regarding setting timelines for permitting – lots of considerations for different types of permits possibly required depending on type of proposal, may trigger MEPA process for # of vehicles if >180+? units – may need to be 51% age restricted to conform, etc.

Separate out the cost of demolition of the septage facility – verify final cost and specify that any difference be refunded to Wayland in the RFP and contract

Rough estimate of about \$650k to get Wayland water to property down Route 20

Discussion regarding better defining what plans should be required as part of the bid – REAC to provide further information on this (Bill, Bill & Becky) – schematic set with list of drawings – keep on schematic end rather than highly defined so as to not trigger prevailing wage laws

Dan to look at 40b language and provide input

Assignment provision in LDA and others will be covered in deed restrictions

Spell out obligations in agreement that might trigger the repurchase agreement – capital reserve, maintenance minimum spend, must not be in default, etc.

Specify set format for the bids so that they're easier to compare including form for pro forma

Provide estimated expenses and cap rate so that bidders can reasonably plug tax costs into pro forma – make sure this is not binding, simply to keep bids reasonably consistent for comparison purposes

Break out the design guidelines expectations – quality of design, finishes, quality of construction, etc.

Must demonstrate compliance with SHI – may need to define how the affordability factor will be weighed

Can we include photos, images, etc. to promote this RFP to secure as many bidders as possible – yes, it's fine to put together a promotional package as an attachment – maybe folded binder with RFP in binder as an option

Can we keep using the site during the bidding process after the site inspection? May have to stop when LDA is signed (shooting for July/August 2015)

Next meeting – Thursday, January 8th

Tony, motion to adjourn, Bill Sterling 2nd, unanimous in favor, Bill, Bill, Jerry, Tony, Dan, Becky, Rob, Mike

Respectfully submitted by M. Wegerbauer

Attachments:

A&K e-mail message distributed to the REAC by Chair

Sent: Friday, December 12, 2014 10:50 PM

Subject: Wayland - Draft RFP and Land Disposition Agreement

2 documents attached to above e-mail message

Wayland - Rivers Edge RFP for Property Disposition - Draft 12-12-14 (A0284852-9xB0BA5)

Wayland - Rivers Edge Land Disposition Agreement - Draft 12-12-14 (A0286504xB0BA5)

DRAFT 12/12/14

TOWN OF WAYLAND

REQUEST FOR PROPOSALS (RFP)

RFP # [REDACTED] - RIVER'S EDGE PROPERTY

Comment [SDA1]: Town to provide.

Disposition of Town-Owned Real Property For Rental, Affordable and Senior Housing Purposes

RFP Issued: _____, 2015

Responses Due: _____, 2015

**By: Wayland Board of Selectmen
In Consultation with Wayland
River's Edge Advisory Committee**

RFP # [REDACTED] - RIVER'S EDGE PROPERTY, WAYLAND, MA

TOWN OF WAYLAND
REQUEST FOR PROPOSALS (RFP)
RFP # [REDACTED] - RIVER'S EDGE PROPERTY

Disposition of Town-Owned Real Property
For Rental, Affordable and Senior Housing Purposes

A. Introduction

1. Request for Proposals

The Town of Wayland (“Town”) is seeking proposals for the disposition of approximately [REDACTED] acres of Town-owned real property located at 484-490 Boston Post Road, Wayland, MA for the construction of between 150 and 190 new rental housing units, including 25% affordable housing units and a minimum of 25% age-restricted (senior) housing units, and associated improvements on the property. The Town is a Massachusetts municipal corporation acting by and through its Board of Selectmen. By two-thirds vote under Article 15 (Exhibit A)¹ and Article 16 (Exhibit B)² at the 2014 Annual Town Meeting, the Town voted to adopt new zoning to streamline permitting of the new use and to authorize the transfer to and disposition of the property by the Board of Selectmen to the Successful RFP Respondent.

Comment [SDA2]: From ANR Plan when available.

The goals of this RFP are to implement the votes of Town Meeting; realize significant financial benefits to the Town from the disposition and redevelopment of the Property; address pre-existing environmental issues associated with the Property; and facilitate rental, affordable housing and senior housing opportunities in the Town through the construction of a top quality rental housing development the design of which is well integrated into and compatible with the Town’s historic New England character.

The RFP specifies the process for disposition and the restrictions imposed on the subsequent reuse of the Property for rental, affordable and senior housing purposes. The purpose of this RFP is to enable the Town to select a qualified, experienced developer that will acquire, demolish, remediate, redevelop, restrict, market and manage the Property in accordance with this RFP and its Exhibits.

1 Article 15 adopted at the 2014 Wayland Annual Town Meeting is entitled “Amend Zoning Bylaw Chapter 198: Rivers Edge Housing Overlay Zoning District.”

2 Article 16 adopted at the 2014 Wayland Annual Town Meeting is entitled “Transfer and Dispose of Septage Facility Land and Adjacent Town-Owned Land on Boston Post Road.”

RFP # [REDACTED] - RIVER'S EDGE PROPERTY, WAYLAND, MA

Copies of the RFP may be obtained from the Wayland Planning Department, Monday through Thursday, during the hours of 8:30 AM and 3:30 PM, either in person or by calling the Planning Department at (508) 358-3778.

Comment [SDA3]: Consider charging for the cost of copying and posting the RFP.

2. RFP Schedule

As described in more detail below, the anticipated RFP Schedule is as follows; however, the Town may in its discretion alter any of the dates in this anticipated RFP Schedule to promote the goals and purposes of this RFP:

Comment [SDA4]: Place Holder for discussion with Committee

Date	Time	Milestone
February __, 2015		Central Register Notice of RFP Availability
February __, 2015	4:00 PM	Register for Site Tour and Briefing
March __, 2015	10:00AM	Site Tour and Briefing Held
March __, 2015	4:00 PM	Deadline for Written Questions
April __, 2015		Town's Issuance of Addenda (if any) and Town Responses to Questions
April __, 2015	4:00 PM	Deadline to Submit RFP Responses
April __, 2015	4:00 PM	Opening of Non-Price Proposals
Thru May __, 2015		Committee Evaluation of Non-Price Proposals
May __, 2015	4:00 PM	Opening of Price Proposals
Thru May __, 2015		Committee Evaluation of Price Proposals
June __, 2015	7:00 PM	Selectmen's Review of RFP Responses and Committee's Evaluation and Recommendations
June __, 2015		Notice of Award
July __, 2015		Disposition Agreement Executed

3. Site Tour and Briefing

Interested RFP Respondents are strongly encouraged to have a representative attend an information session at Wayland Town Building, 41 Cochituate Road, Wayland, MA 01778, followed by an on-site tour at the Property. The information session will be on [REDACTED], 2015 beginning at 10:00AM in Room [REDACTED], of Wayland Town Building. Advance registration to attend the briefing is encouraged by no later than 4:00 PM on [REDACTED], 2015. To register, please email the Town Administrator Nan Balmer at nbalmer@wayland.ma.us. Participants in the on-site visit will be required to sign a release in the form attached as Exhibit BB.

Comment [SDA5]: Consider pros and cons of making this a mandatory site visit.

Comment [SDA6]: For items 3, 4 and 5, consider whether to name a different point of contact for the Town.

4. Written Questions Concerning RFP

All inquiries and requests for interpretation concerning this RFP must be submitted in writing or by email (phone calls will not be permitted) to be received by the Town no

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later than 4:00 PM on [REDACTED], 2015, to the following person and address/email address:

Nan Balmer
Wayland Town Administrator
Town Building
41 Cochituate Road
Wayland, MA 01778
nbalmer@wayland.ma.us

5. Addenda to RFP

If the Town determines to respond to any questions submitted pursuant to Section A(3) or to amend the RFP in response thereto, the Town will do so in the form of an Addendum to the RFP issued no later than [REDACTED], 2015. Addenda will be sent by e-mail to all persons on record as having received the RFP and provided an email address. A prospective RFP Respondent may request to be included on the email distribution list for any Addenda by emailing the Town Administrator Nan Balmer at nbalmer@wayland.ma.us. Notwithstanding any such request to be included on the email distribution list, it is the RFP Respondent's responsibility to ensure that it has obtained all RFP Addenda issued prior to the submission deadline.

6. Due Diligence by RFP Respondents

The RFP anticipates that prospective RFP Respondents will perform all due diligence (except for title review) prior to submitting an RFP Response. In addition to the information referenced in and appended to this RFP, the Town has assembled a set of materials for inspection and copying by interested prospective RFP Respondents at the Town Building during normal business hours. For an appointment please email Town Administrator Nan Balmer at nbalmer@wayland.ma.us. In addition, the Town will promptly respond to any public records requests by prospective RFP Respondents for additional public documents, subject to the requestor's commitment to pay the search and copying costs therefor in accordance with applicable public records regulations. The Town will also allow on-site investigations during the pre-submission due diligence period, subject to the prospective RFP Respondent's execution of a Right of Entry Agreement in the form attached as Exhibit CC.

Comment [SDA7]: Pros and Cons of Pre-Response v Post-Response Due Diligence to be discussed with Committee

Comment [SDA8]: For discussion with Committee.

7. Submission Process and Submission Deadline

Sealed proposals will be received at the following address until 4:00 PM on [REDACTED], 2015:

RFP # [REDACTED] - RIVER'S EDGE PROPERTY, WAYLAND, MA

Town of Wayland
c/o Nan Balmer, Town Administrator
Town Building
41 Cochituate Road
Wayland, MA 01778

Regardless of the cause of delay, RFP Responses submitted after the deadline for submission will not be accepted. It is the responsibility of each RFP Respondent to ensure the receipt of its RFP Response before the specified deadline.

The Town may in its discretion extend the deadline for submission by a written Addendum to the RFP issued before the deadline for submission.

RFP Respondents must submit one original and fifteen (15) hard copies of the Response and one electronic copy of the RFP Response in PDF Format in a sealed package, plainly marked on the outside "River's Edge RFP - Proposal for Disposition of Town Property." Within the sealed package, the original, fifteen (15) copies of, and the electronic copy of, the Price Summary Form must be contained in a separate sealed envelope plainly marked on the outside of the second envelope "River's Edge RFP - Price Summary Form."

RFP Respondents may correct, modify or withdraw proposals, in writing only, prior to the proposal opening. Corrections, modifications and withdrawals must be in a sealed envelope when submitted. The envelope must be plainly marked on the outside as appropriate: "[Correction/Modification/Withdrawal] to River's Edge RFP - Proposal for Disposition of Town Property." One original, fifteen (15) hard copies and one electronic copy of the correction must be provided. A correction, modification or withdrawal to the Price Summary Form must be further enclosed in a separate sealed envelope plainly marked on the outside of the second envelope as appropriate: "[Correction/Modification/Withdrawal] River's Edge RFP - Price Summary Form."

All proposals must remain in effect for a period of one hundred eighty (180) calendar days from the deadline for submission, or until the disposition has been effectuated, or this Request for Proposals is cancelled, whichever occurs first. RFP Respondents must meet all minimum evaluation criteria, must complete all required forms and must include all required documents.

Comment [SDA9]: Consider whether this is an appropriate time frame.

8. Disclaimers and Caveats

The Town makes no representations or warranties, express or implied, as to the accuracy and/or completeness of the information provided in this RFP.

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The Town has attempted in this RFP to be accurate, but Town is not responsible for any errors herein.

All proposals shall be deemed to be public records with the meaning of M.G.L. c. 4, § 7(26).

The award of this contract is subject to M.G.L. c. 30B, § 16, and to Articles 15 and 16 adopted at the 2014 Wayland Annual Town Meeting (Exhibits A and B).

The Town's Disposition of the Property is subject to approval of the Town Board of Selectmen.

B. The Property Subject to the RFP

1. Property Information

The Town has assembled the background information below concerning the Property from a variety of sources. The Town makes no representation or warranty, express or implied, as to the accuracy or completeness of the information provided or referenced in this RFP, in its Exhibits, in any Addenda hereto, on the Town's website,³ or in public records available from the Town (collectively the "Property Information"). The Town assumes no liability for any inaccuracy or incompleteness of the Property Information. Each RFP Respondent assumes all risk in connection with the use of the Property Information. By responding to the RFP, the RFP Respondent on behalf of itself and its parents, subsidiaries, affiliates, officers, directors, members, managers, predecessors, successors, contractors, subcontractors, assigns, agents, and representatives agrees to release the Town of Wayland and its boards, commissions, officials, employees, agents, and representatives from any liability whatsoever arising out of or in connection with the use of the Property Information by the RFP Respondent.

Comment [SDA10]: Consider whether or not to include the footnote.

2. Property Description

The Property that is the subject of this RFP consists of [REDACTED] ± acres of land with the buildings and improvements thereon situated in Wayland, MA and shown as Lot

³ The following information is on the web: (a) the 2014 Annual Town Meeting Warrant is available at http://www.wayland.ma.us/Pages/WaylandMA_Selectmen/ATMWarrant2014.pdf; background information concerning Article 15 (Exhibit A) and 16 (Exhibit B) for the 2014 Annual Town Meeting is available at http://www.wayland.ma.us/Pages/WaylandMA_BComm/Econ/ATM2014; and other information concerning the Property, background information, and a prior (unsuccessful) 2013 Annual Town Meeting is available at http://www.wayland.ma.us/Pages/WaylandMA_BComm/Econ/RiversEdge.

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[REDACTED] on an Approval Not Required Plan (“ANR Plan,” Exhibit C) dated [REDACTED], endorsed by the Wayland Planning Board on [REDACTED], and recorded in Middlesex South Registry of Deeds (the “Registry”) as Plan No. [REDACTED] of [REDACTED] (the “Property”). The Property is located at 484-490 Boston Post Road, Wayland, MA; it comprises a portion of the land shown on Wayland Assessors Map/Parcels 22-3, 22-6 and 22-7 (Exhibit D); and it consists together of the following:

- a. A [REDACTED] ± acre portion of the 7.63 ± acre parcel known as and numbered 490 Boston Post Road, Wayland, MA, which parcel was acquired by the Town by an Order of Taking dated January 11, 1971 and recorded with the Registry in Book 11943, Page 420 and is shown on the plan recorded in the Registry as Plan Number 27 of 1971 (collectively Exhibit E);
- b. The 4.5 ± acre parcel shown as Lot A on the plan recorded in the Registry as Plan Number 482 of 1978, which parcel was acquired by the Town by Order of Taking dated May 15, 1978 and recorded with the Registry in Book 13443, Page 177 (collectively Exhibit F); and
- c. A [REDACTED] ± acre portion of the 1.0 ± acre parcel described in an Order of Taking dated November 15, 1965 and recorded with the Registry in Book 11003, Page 389 and shown on the plan recorded in the Registry as Plan Number 1582 of 1965 (collectively Exhibit G), not including those portions of said parcel (i) comprising the private access way running from Boston Post Road (Route 20) to other property of the Town of Wayland shown as Assessors’ Map/Parcels 22-5, 22-3, 17-8 and 22-4 (the “Access Road”) or (ii) situated easterly of the Access Road.

The Property is the subject of a Surplus Declaration pursuant to M.G.L. c. 40, § 15, by the Wayland Department of Public Works dated [REDACTED] (Exhibit H). The Property will be conveyed in its “as is” condition, with all faults, and subject to and with the benefit of any easements and restrictions of record.

3. Access

The Property has approximately [REDACTED] ± feet of frontage on Boston Post Road (Massachusetts Route 20). The Property will be conveyed with the benefit of a non-exclusive access easement from Boston Post Road over a portion of the Access Road (shown as the Access Easement Area on the ANR Plan) for all purposes for which public ways are used in the Town. The Access Easement Area shall be the sole and exclusive means of access and egress between Boston Post Road and the Property. No other curb cuts will be allowed. The Successful RFP Responded shall be responsible for designing, constructing and maintaining all necessary improvements to the Access Road and the

Comment [SDA11]: The blanks in this Section will be filled in after the Town prepares and the Planning Board endorses the ANR Plan.

Comment [SDA12]: In the REHOD Zoning, Section 198-2502.1, and in Article 16 the parcels are identified on “Plate 22 of the Atlas of the Town of Wayland, Massachusetts, 2002, numbered as Parcels 22-3, 22-6 and 22-7.” The Assessors’ current map is dated 2015. Query: Are there differences in the 2002 and 2015 maps?

Comment [SDA13]: Verify that the entire parcel will be conveyed.

Comment [SDA14]: To be provided by the Town.

Comment [SDA15]: From ANR Plan when final.

Comment [SDA16]: Conform to description in ANR Plan.

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Access Easement Area to accommodate the rental housing development that is the subject of this RFP.

4. Buildings and Improvements:

A portion of the Property was previously used as the Wayland/Sudbury Septage Facility which was decommissioned in or about [REDACTED]. There continue to exist various buildings, structures, improvements, foundations, pipes, tanks, fixtures and equipment on and under the Property associated with that use. In preparation for construction of the rental housing project under this RFP, the Successful RFP Respondent shall be responsible for the demolition and removal of all buildings, structures, improvements, foundations, pipes, tanks, fixtures and equipment currently situated on and under the Property.

Comment [SDA17]: Are there any other buildings etc. that were not associated with that use which are to be demolished?

5. Zoning:

Portions of the Property are located in two underlying Zoning Districts (Residence District and Refuse Disposal Districts) and three Zoning Overlay Districts (the Municipal Service District, the Wireless Communications District, and the River’s Edge Housing Overlay District (“REHOD”)) under the Town’s Zoning Bylaw. The REHOD was adopted under Article 15 of the 2014 Annual Town Meeting (Exhibit A).

Comment [SDA18]: Verify.

The purpose of the REHOD is to “increase the supply of housing in the Town of Wayland that is available to and affordable by low-income and moderate-income households which might otherwise have difficulty in finding housing in Wayland, and to ensure that such housing is affordable over the long term and provided in accordance with the Wayland Master Plan and the Town’s Affordable Housing Production Plan.” See Exhibit A, § 198-2501.1. Multi-Family Affordable and Market-Rate Housing Dwelling Units are permitted, as of right, in the REHOD, subject to site plan approval issued by the Planning Board pursuant to the Zoning Bylaw. See Exhibit A, § 2504.1.1.

6. Utilities and Infrastructure:

Public water, natural gas and electricity are available in the public way abutting the Property. The Successful RFP Respondent shall be responsible for obtaining all utility connections and paying the cost involved.

Comment [SDA19]: Verify.

There is no public sewer serving the Property. The Successful RFP Respondent shall be responsible for obtaining all necessary governmental permits and approvals for and designing, constructing, operating and maintaining the sewage disposal system(s) for the Project. Without limitation, soil testing for suitability of on-site sewage disposal system(s) will need to be witnessed by the Wayland Board of Health.

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7. Environmental Issues:

Tighe & Bond has completed a Phase I Environmental Site Assessment and a Limited Phase II Investigation dated October 2012 (Exhibit I). The Tighe & Bond Report identified a number of recognized environmental conditions associated with the Property (such as an area of former underground storage tanks, a hazardous waste storage shed, methane releases from the abutting Sudbury Landfill, arsenic concentrations in excess of a GW-1 standard, the presence of soil stockpiles, and leachable lead in soils from the Wayland firing range) and various data gaps associated with the Property and the recognized environmental conditions.

Comment [SDA20]: Verify whether there have been any updates.

As part of its response, the Successful RFP Respondent must agree to (a) assess, contain, remove and remediate all pre-existing releases of oil and hazardous materials at of from the Property 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's Board of Selectmen, and (b) design and construct the 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 consistent with a Permanent Solution involving No Significant Risk under General Laws Chapter 21E and the Massachusetts Contingency Plan.

8. Wetlands

Wetlands exist on and proximate to the Property. The Wayland Conservation Commission has issued an Abbreviated Notice of Resource Area Delineation ("ANRAD") dated [REDACTED] concerning the Property (Exhibit J).

Comment [SDA21]: Town to provide.

9. Site Assignment

Pursuant to M.G.L. c. 111, § 150A, the Wayland Board of Health issued a Site Assignment dated February 9, 1979 (Exhibit K) and a Permit to Operate Sanitary Landfill dated June 16, 1980 (Exhibit L). A portion of the Property was the subject of that Site Assignment and that Permit. By decision dated [REDACTED], the Wayland Board of Health amended the Site Assignment to remove from the assigned site that portion of the Property that is subject to disposition pursuant to this RFP (Exhibit M).

Comment [SDA22]: Town to provide.

10. Appraisal:

The firm of [REDACTED] has appraised the Property for the Town as of [REDACTED] for multi-family rental housing purposes consistent with the Town's Rivers

RFP # [REDACTED] - RIVER'S EDGE PROPERTY, WAYLAND, MA

Edge Housing Overlay Zoning as set forth in the Appraisal Report dated [REDACTED] (Exhibit N).

Comment [SDA23]: Town to provide.

11. Respondent's Responsibility for Due Diligence:

The RFP Respondent should undertake an independent review and analysis concerning the Property, its history and use, its physical conditions, environmental conditions, applicable zoning, required permits and approvals, and all other development and legal considerations pertaining to the Property, the Work, and the proposed use.

The Town makes no representation or warranty with respect to the Property, including without limitation, the Town's title to the Property, the value, quality or character of the Property or its fitness or suitability for any particular use and/or the physical and environmental condition of the Property.

The Successful RFP Respondent shall accept the Property on a strictly "as is" basis, with all faults, and without any warranty or obligation whatsoever on the part of Town.

The Successful RFP Respondent shall release, defend, indemnify and hold the Town harmless from and against any and all claims, damages, losses, penalties, costs, expenses and fees (including without limitation reasonable legal fees) arising out of or relating to the condition of the Property including without limitation any release of oil or hazardous materials to, at or from the Property.

C. Evaluation of Proposals

The Town will review all proposals received by the filing deadline in accordance with the Comparative Evaluation Criteria in Appendix I and the following procedure:

- Proposals will initially be evaluated and rated by the Town's River's Edge Advisory Committee (the "Committee") according to the Comparative Evaluation Criteria set forth in this Appendix I to the RFP.
- The Committee will make its recommendations to the Town's Board of Selectmen.
- The Town's Board of Selectmen will select the most advantageous proposal from the responsible and responsive RFP Respondents, taking into consideration the Comparative Evaluation Criteria, the Committee's recommendations, and the Board's own judgment as to which RFP Respondent best meets the Comparative Evaluation Criteria.

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- The Town will notify all RFP Respondents in writing of the Board of Selectmen's decision.

The Town through its Board of Selectmen reserves the right to accept or reject any or all proposals if the Town determines that it is in its best interests to do so. The Town reserves the right to waive any informalities in a proposal and to accept the proposal for processing when deemed to be in the best interest of Town. The Town reserves the right to make an award as deemed to be in the best interests of the Town.

The Town reserves the right to interview or to seek additional information from any RFP Respondent after the opening of Proposals but before entering into a Disposition Agreement, to reject any proposal if Town deems it to be in the best interests of Town, and to award the Disposition Agreement to the next qualified respondent.

D. Disposition Agreement

The Successful RFP Respondent will have thirty (30) days from the receipt of a Notice of Award from Town to execute the Purchase and Sale Agreement for the Disposition of the Property (the "Disposition Agreement") substantially in the form set forth in Exhibit O, with such mutually acceptable amendments (if any) as are approved by the Town's Board of Selectmen after consideration of the RFP Respondent's exceptions (if any) submitted with its RFP Response. Any such amendments to the Disposition Agreement may be negotiated by the Town after the successful bidder has been selected. If the Successful RFP Respondent fails to execute the Disposition Agreement within thirty (30) days of Notice of Award (or within any extension to which Town may agree in writing), the Town may cancel the Notice of Award and select the next most advantageous offer. If the Successful RFP Respondent fails to close on the acquisition of the Property pursuant to the Disposition Agreement, the Town may terminate the Disposition Agreement pursuant to its terms, cancel the Notice of Award and select the next most advantageous offer.

E. Specific Terms, Conditions and Restrictions on Reuse

Pursuant to M.G.L. c. 30B, § 16, Town sets the following terms, conditions and restrictions on the Successful RFP Respondent's use of the Property pursuant to the RFP:

1. The Project and the Work

After acquiring the Property, the Successful RFP Respondent shall, at its sole cost and expense, perform and complete all work necessary for the design and construction of the multi-family rental housing development project on the Property, together with related improvements, as approved by the Board of Selectmen in the Notice of Award (the

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“Project”). All work relative to the Project shall be completed in compliance with the following requirements, plans, permits and approvals, and in general conformance with the spirit and intent of the following River’s Edge Design Guidelines (collectively the “Work”):

Comment [SDA24]: See Article 16 of the 2014 Annual Town Meeting.

- a. The requirements of the Wayland Zoning Bylaw relative to the River’s Edge Housing Overlay District as adopted under Article 15 at the 2014 Wayland Annual Town Meeting (Exhibit A);
- b. The requirements of all required governmental permits and approvals for the Project;
- c. The requirements of the final, executed Disposition Agreement;
- d. The requirements of this RFP and any Addenda hereto;
- e. The conceptual Site Plan, Architectural Drawings, and Building Elevations submitted by the Successful RFP Respondent and approved by the Board of Selectmen in the Notice of Award together with such amendments to the conceptual Site Plan, Architectural Drawings, and Building Elevations as the Board of Selectmen may in its discretion approve during the course of the disposition of the Property and the RFP Respondent’s permitting, financing, and construction of the Project; and
- f. The River’s Edge Design Guidelines (Exhibit P).

Comment [SDA25]: Pros and cons: Preparing these conceptual plans will involve a fair amount of work by the RFP Respondents (and may discourage some respondents) but will enable the Town to review and compare specific design proposals.

Without limitation, after acquiring the Property, the Successful RFP Respondent shall, at its sole cost and expense, perform and complete the following Work related to the Project:

- a) Demolish, remove and properly dispose of all buildings, improvements, foundations, pipes, tanks, fixtures, equipment and demolition debris on or under the Property (“Demolition”).
- b) Assess, contain, remove and remediate all pre-existing releases of oil and hazardous materials at of from the Property 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’s Board of Selectmen (“Environmental Remediation”).
- c) Design and construct the Project in such a way to evaluate and eliminate the risk of methane gas or other vapor intrusion from the Sudbury landfill

Comment [SDA26]: Consider whether bid laws and prevailing wages apply to demolition in light of inter-town IMA discussed below.

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or otherwise into the residential buildings and units consistent with a Permanent Solution involving No Significant Risk under General Laws Chapter 21E and the Massachusetts Contingency Plan. (“Environmental Mitigation”).

- d) Obtain all governmental licenses, permits, approvals and other relief required for the Project, the Work, the Demolition, the Environmental Remediation, the Environmental Mitigation, and all other Work necessary for the development and use of the rental housing project pursuant to this RFP.

- *[NOTE: Without the express written permission of the Board of Selectmen, the Successful RFP Respondent (and its successors and assigns) shall not file an application for a comprehensive permit for the Project pursuant to M.G.L. c. 40B, §§ 2—23. If and to the extent required to ensure that 100% of the units in the 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 Successful RFP (and its successors and assigns) seek to waive the requirement for Site Plan Approval from the Planning Board under the REHOD Zoning Bylaw (Exhibit A) or to obtain that Site Plan Approval from the Board of Appeals under a comprehensive permit for the Project. In addition, the Successful RFP Respondent (and its successors and assigns) shall not seek a waiver from any other provision of the REHOD Zoning Bylaw (Exhibit A) without the express written permission of the Board of Selectmen. This provision shall run with the land.]*

Comment [SDA27]: Stephanie: Please include in the LDA.

Comment [SDA28]: This provision is for discussion with the Committee.

- e) Comply with all applicable laws, bylaws, rules and regulations with respect to the Project, the Work, the Demolition, the Environmental Remediation, the Environmental Mitigation, and all other activities necessary for the development and use of the rental housing project pursuant to this RFP.

The RFP Respondent will, if awarded the Project, engage a contractor licensed by the State of Massachusetts as a Construction Supervisor to supervise all construction on the Project and will engage a Massachusetts Licensed Site Professional to supervise all Environmental Remediation and Environmental Mitigation on the Project.

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2. Costs and Expenses

The Successful RFP Respondent shall be solely responsible for all costs and expenses arising out of or related to the RFP Response, Due Diligence, the Disposition Agreement, the Project, the Work, the Demolition, the Environmental Remediation, the Environmental Mitigation, and all other activities necessary, proper, or incidental to the redevelopment and reuse of the Property for the rental housing project pursuant to this RFP. Without limitation, the Successful RFP Respondent shall be solely responsible for all costs and expenses of (a) the design 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 Project in compliance with the RFP, the Disposition 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, (c) all contractors, subcontractors, architects, engineers, project managers, construction managers, attorneys, consultants relating thereto.

3. Costs of Demolition of the Former Wayland/Sudbury Septage Facility

The Town of Wayland has an Inter-Municipal Agreement (“IMA”) with the Town of Sudbury whereby the Town of Sudbury must reimburse the Town of Wayland for a portion of the actual costs of the Demolition of the former the Wayland/Sudbury Septage Facility on a portion of the Property. The Successful RFP Respondent shall separately track and account for all costs and expenses actually incurred for the Demolition of the former the Wayland/Sudbury Septage Facility. Within forty-five (45) days of completing that Demolition, the Successful RFP Respondent shall provide to the Wayland Town Administrator a detailed accounting of all costs and expenses of the Demolition, including all supporting documents reasonably necessary to substantiate those costs and expenses. The Successful RFP Respondent shall fully cooperate with the Town of Wayland’s efforts to recover the applicable portion of those Demolition costs and expenses from the Town of Sudbury to ensure that the purpose of the IMA is met. The Successful RFP Respondent waives any claim it allegedly may have now or in the future with respect to any reimbursement paid by the Town of Sudbury to the Town of Wayland with respect to the Demolition costs and expenses. The RFP Respondent acknowledges that its proposed purchase price for the Property takes into account the anticipated costs and expenses of Demolition.

Comment [SDA29]: We need to review the IMA between Wayland and Sudbury to determine form of bidding and reimbursement protection for Wayland on this issue.

4. Release and Indemnity

The Successful RFP Respondent on behalf of itself and its parents, subsidiaries, affiliates, officers, directors, members, managers, predecessors, successors, contractors,

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subcontractors, assigns, agents, and representatives shall release, defend, indemnify and hold harmless the Town of Wayland 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 Property, any release of oil or hazardous materials to, at or from the Property, the Property Information, the Project, the Work, the Demolition, the Environmental Remediation, the Environmental Mitigation, and all other activities necessary, proper, or incidental to the redevelopment and reuse of the Property for the rental housing project pursuant to this RFP.

5. Performance Standards

The Successful RFP Respondent shall perform and complete the Work in a good, workmanlike and commercially reasonable manner, in compliance with good engineering and construction practices, using all new 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 Successful RFP Respondent shall take all reasonably necessary measures to (i) minimize dust, noise and construction traffic, (ii) minimize any damage, disruption or inconvenience caused by the Work, 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.

6. Senior and Affordable Housing Requirements

The Town has established the following senior and affordable housing goals and guidelines for the reuse of the Property, which shall be incorporated as perpetual terms, conditions and restrictions on the Successful RFP Respondent's use of the Property:

- a. The Project shall consist of between 150 and 190 residential units.
- b. One hundred percent (100%) of the units shall be rental units.
- c. Per the REHOD, at least 25% of the units shall be 55+ age-restricted units.
- d. Per the REHOD, at 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 ("AMI"), as

Comment [SDA30]: Committee to review for accuracy and completeness.

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established by the United States Department of Housing and Urban Development.

- e. The affordable units shall be distributed proportionally between the age-restricted and non-age-restricted units.
- f. The affordable units shall be eligible for and counted toward the Town's Subsidized Housing Inventory established and administered by the Commonwealth of Massachusetts Executive Office of Housing and Economic Development, Department of Housing and Community Development ("DHCD"), or its successor (the "Subsidized Housing Inventory").
- g. Local preference for affordable units shall be provided to the maximum extent allowed by legal requirements.
- h. These senior and affordable housing unit requirements shall be incorporated into a perpetual Affordable Housing Restriction that shall run with the land and have priority over other encumbrances created by or under the Successful RFP Respondent, including without limitation any mortgage securing the acquisition of the Property or the construction of the Project, to ensure that the Project remains a rental housing development with 25% affordable housing units and a minimum of 25% age-restricted (senior) housing units and that 100% of the units count toward the Town's Subsidized Housing Inventory.

7. Property Management

The Successful RFP Respondent and its permitted successors and assigns shall

- a. Market and rent all residential units in the Project promptly upon completion of and throughout the existence of the Project.
- b. Manage and implement all legal requirements applicable to the restricted affordable and senior rental housing units.
- c. Maintain, repair and replace deteriorated components of the Project's buildings, improvements and infrastructure over time so that the Project remains a top quality rental housing development within the Town.

8. Schedule

Each RFP Respondent shall submit with its proposal its anticipated critical path time schedule for major Project milestones (including such matters as execution of the

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Disposition Agreement, completion of due diligence, financing, closing, design, permitting, construction, marketing and rental) so that the Work shall be commenced and completed, and the units marketed, rented and occupied as soon as reasonably possible. The schedule shall, at a minimum, conform to and include the information set forth in Exhibit T.

9. Right of Repurchase Failure to Meet Critical Milestones

Title to the Property will be conveyed subject specific covenants on behalf of the Successful RFP Respondent to (a) commence and use commercially reasonable efforts to diligently continue with and complete the construction of the Work in accordance with a critical path time schedule and construction completion deadline by no later than [REDACTED] months] from the date of closing on the Property and (b) use the Property solely for residential rental housing as provided in this RFP. In the event that the Successful RFP Respondent fails to so commence, continue and complete the Work, subject only to delays caused solely by Force Majeure, or does not use the Property solely for residential rental housing as provided herein, the Town shall have the option, exercisable at the Town's sole and absolute discretion, to repurchase all or any portion of the Property pursuant to the terms of a Repurchase Agreement to be entered into between the parties and recorded at the time of closing. The form of Repurchase Agreement is attached hereto as Exhibit DD.

Comment [SDA31]: Outside date TBD

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F. Submission Requirements

Each RFP Respondent must submit the following information and documents (completed and executed as applicable). Failure to provide any of the required documents may result in the determination that the Proposal is non-responsive. Numbered tabs should match numbered items in the following table, and should appear in the order given.

Tab	Contents	Exhibit
	Cover Letter confirming enclosure of all required information and documents	
1.	Completed and signed Proposal Form	R
2.	Completed and signed Price Summary Form including a Pro Forma for the Project setting forth a detailed breakdown of the projected revenues and costs (<i>attached in a separate sealed envelope labeled as set forth above</i>)	S
3.	Completed and signed Certificate of Non-Collusion	U
4.	Completed and signed Disclosure of Beneficial Interest Form as required by M.G.L. c.7C, § 38	V
5.	Completed and signed Non-Delinquency Statement required by M.G.L. c. 60, § 77B	W
6.	Completed and signed Commitment for payment in lieu of taxes calculated in accordance with M.G.L. c. 44, § 63A	X
7.	Certification as to Payment of Taxes	Y
8.	Completed and signed Evidence of Authorization for the RFP Respondent's signatory to the RFP (e.g. Corporate Resolution)	Z
9.	RFP Respondent's Statement of Qualifications including a statement/evidence of the RFP Respondent's: <ul style="list-style-type: none"> • Business and years of relevant experience • Project Team • Comparable Projects (by size, type, complexity, location, development costs, affordable/senior components, or other relevant metrics) <ul style="list-style-type: none"> ○ Provide photographs or other visual representations of completed comparable projects where possible • Financial stability and financial capacity to complete the Project • Disclosure of any material facts undermining the RFP Respondent's ability to finance and complete the Project in a timely manner (e.g. relevant litigation, liens, foreclosures, bankruptcies, or other significant impediments) • Other information to document the RFP Respondent's 	

RFP # [REDACTED] - RIVER'S EDGE PROPERTY, WAYLAND, MA

Tab	Contents	Exhibit
	capabilities and qualifications for the Project	
10	Resume of each of the RFP Respondent's key employees and team member for this Project	
11.	Letters of Reference: Three letters of reference for the RFP Respondent based on projects of similar size, type and scope.	
12.	Conceptual Site Plan, Architectural Drawings, and Building Elevations: <ul style="list-style-type: none"> • Narrative description of the RFP Respondent's Proposal • Preliminary conceptual site development plan showing the site boundaries; the locations and outlines of proposed buildings, streets, drives, parking areas, walks, and paved areas; preliminary location and sizes of on-site sewage and storm-water control facilities; general landscaping; other planned improvements to the Property; and open areas within the site • Preliminary, scaled, architectural drawings showing, for each building, typical floor plans, typical elevations, construction type, exterior finishes, and other main architectural features 	
13.	A tabulation of proposed units in each building by type (market, affordable; age-restricted, non-age-restricted), number of bedrooms, floor area, and a brief description of unit amenities	
14.	Critical path time schedule for the Project conforming to Section E(8) above	T
15.	Demonstration that the proposal meets the Comparative Evaluation Criteria in the form of a completed Exhibit AA in which the RFP Respondent demonstrates (with reference to supporting documentation as applicable) how the RFP Respondent's Proposal meets or exceeds the comparative evaluation criteria of the RFP	AA
16	List of Exceptions (If Any) to Disposition Agreement: If a prospective RFP Respondent takes exception to any provision(s) of the proposed Disposition Agreement (Exhibit O), the RFP Respondent must identify with specificity the provision to which exception is taken, the basis for the exception, and the RFP Respondent's proposed alternative language or provision with respect to that exception. The RFP Respondent should include with its RFP Response a redlined copy of the proposed Disposition Agreement (Exhibit O) indicating the changes (if any) requested by the RFP Respondent. Any exception not so identified in the RFP Response will be deemed waived.	O
17	List of Exceptions (If Any) to Specific Terms, Conditions and Restrictions on Reuse: If a prospective RFP Respondent takes exception to any of the Specific Terms, Conditions and Restrictions on Reuse set forth in RFP Section	

RFP # [REDACTED] - RIVER'S EDGE PROPERTY, WAYLAND, MA

Tab	Contents	Exhibit
	E, the RFP Respondent must identify with specificity the provision to which exception is taken, the basis for the exception, and the RFP Respondent's proposed alternative language or provision with respect to that exception. Any exception not so identified in the RFP Response will be deemed waived.	
18	Demonstration of the RFP Respondent's Strategy for ensuring that 100% of the units in the Project count toward the Town's Subsidized Housing Inventory	
19.	A Certified Check payable to the Town of Wayland in the amount of \$10,000 to be (a) forfeited to the Town in the event the RFP Respondent is awarded the Project but fails or refuses to execute the required Disposition Agreement within the time set forth in the Notice of Award, or (b) applied to the required deposit under the Disposition Agreement in the event the RFP Respondent is awarded the Project and timely executes the required Disposition Agreement, or (c) returned to the RFP Respondent in the event the Town rejects all proposals or rejects the RFP Respondent's Proposal.	

Comment [SDA32]: Consider whether this amount is too high or too low.

Updated originals of forms 3-7 shall be executed and delivered by the Successful RFP Respondent at Closing and as a pre-condition thereto.

Appendix I: Evaluation Criteria

1. Minimum Threshold Criteria

Submissions must meet the following minimum threshold criteria:

- a. The Proposal must be complete and conform to all submission requirements set forth in this RFP and any Addendum to this RFP issued before the submission deadline.
- b. The Proposal must be timely submitted.
- c. The RFP Respondent must have prior experience in completing similar projects.
- d. The RFP Respondent must not require any funds for the Project from the Town of Wayland or the Wayland Community Preservation Committee.

2. Comparative Evaluation Criteria

Each proposal meeting the minimum threshold criteria will then be evaluated and rated on the basis of the following comparative evaluation criteria:

a. **Comparable Experience**

- A Highly Advantageous rating will be given to a proposal that in the judgment of the evaluators identifies a highly qualified RFP Respondent and highly experienced Project Team with (a) extensive experience with comparable residential and rental projects, (b) an exceptional record of successfully completing residential and rental projects on schedule and within budget, and (c) top caliber principals and senior staff assigned to the Project based on the resumes and references provided.
- An Advantageous rating will be given to a proposal that in the judgment of the evaluators identifies a qualified RFP Respondent and experienced Project Team with (a) relevant experience with comparable residential and rental projects, (b) a record of successfully completing residential and rental projects, and (c) experienced personnel staff assigned to the Project based on the resumes and references provided.

Comment [SDA33]: The Committee should pay particular attention to these criteria – amending, adding or deleting as appropriate.

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- An Unacceptable rating will be given to a proposal that in the judgment of the evaluators fails to identify a qualified RFP Respondent and experienced Project Team.

b. **Quality of Design and Construction.**

- A Highly Advantageous rating will be given to a proposal that in the judgment of the evaluators meets and exceeds the qualitative design requirements of the RFP; presents superior merit in terms of architectural features, unit designs and amenities, and the quality of proposed construction; and carefully integrates the development of the Property as a gateway feature to the Town.
- An Advantageous rating will be given to a proposal that in the judgment of the evaluators complies with the design requirements of the RFP and presents an acceptable quality of building and unit design and construction.
- An Unacceptable rating will be given to a proposal that in the judgment of the evaluators fails to meet the design requirements of the RFP and presents an unacceptable design or quality of buildings, units, amenities, layout or construction.

c. **Financial Strength.**

- A Highly Advantageous rating will be given to a proposal that in the judgment of the evaluators identifies an RFP Respondent with exceptional financial strength and capacity to undertake and complete the Project.
- An Advantageous rating will be given to a proposal that in the judgment of the evaluators identifies an RFP Respondent with reasonable and demonstrated financial strength and capacity to undertake the Project.
- An Unacceptable rating will be given to a proposal that in the judgment of the evaluators fails to identify an RFP Respondent with reasonable and demonstrated financial strength and capacity to undertake the Project.

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d. **Feasibility of Proposed Project.**

- A Highly Advantageous rating will be given to a proposal that in the judgment of the evaluators is highly feasible based on an analysis of the pro forma, the demonstrated ability of the Project Team to resolve financial, environmental and permitting issues as they may arise, the likely acceptability of the proposed Project to regulators, lenders and funders, and the likelihood of providing or obtaining proposed financing for Project costs and expenses, and the reasonableness of the pro forma.
- An Advantageous rating will be given to a proposal that in the judgment of the evaluators is feasible based on an analysis of these factors.
- An Unacceptable rating will be given to a proposal that in the judgment of the evaluators is not feasible based on an analysis of these factors.

e. **Affordability.**

- A Highly Advantageous rating will be given to a proposal that in the judgment of the evaluators will meet the affordability requirements established by the RFP, the REHOD (Exhibit A) and the River's Edge Design Guidelines (Exhibit P) (collectively the "Affordability Requirements") and will result in 170-190 new rental housing units which are counted toward the Town's Subsidized Housing Inventory.
- An Advantageous rating will be given to a proposal that in the judgment of the evaluators will meet the Affordability Requirements and will result in 150-169 new rental housing units which are counted toward the Town's Subsidized Housing Inventory.
- An Unacceptable rating will be given to a proposal that in the judgment of the evaluators fails to meet the Affordability Requirements and/or would result in fewer than 150 new rental housing units which are counted toward the Town's Subsidized Housing Inventory.

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f. **Senior Housing.**

- A Highly Advantageous rating will be given to a proposal that in the judgment of the evaluators will, in compliance with all applicable federal, state and local laws, provide a higher percentage of age-restricted units than the minimum requirement set forth in the RFP.
- An Advantageous rating will be given to a proposal that will, in compliance with all applicable federal, state and local laws, in the judgment of the evaluators meet the required minimum percentage of age-restricted units set forth in the RFP.
- An Unacceptable rating will be given to a proposal that in the judgment of the evaluators fails to meet the required minimum percentage of age-restricted units set forth in the RFP.

g. **Proposed Development Schedule.**

A Project with a shorter but achievable development schedule will receive a more advantageous rating on this criterion than a Project with a longer development schedule or an impractical development schedule.

h. **Exceptions to Disposition Agreement and/or to the Specific Terms, Conditions and Restrictions on Reuse.**

There will be an evaluation of each RFP Respondent's proposed exceptions (if any) to the Disposition Agreement and/or to the Specific Terms, Conditions and Restrictions on Reuse established by the RFP.

- A Highly Advantageous rating will be given to a proposal that in the judgment of the evaluators accepts the Town's Disposition Agreement and the Specific Terms, Conditions and Restrictions on Reuse with no material exceptions. (Exceptions required to comply with applicable federal, state or local law will not be counted against an RFP Respondent.)
- An Advantageous rating will be given to a proposal that in the judgment of the evaluators accepts the Town's Disposition Agreement and the Specific Terms, Conditions and Restrictions on Reuse with exceptions that raise reasonable subjects for negotiation between the Town as Seller and the RFP Respondent as Buyer, that do not materially derogate from the fundamental

Comment [SDA34]: For discussion with the Committee

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purposes of the RFP or the benefits to the Town, and that do not undermine the policy of competitive fairness in procurement. (Exceptions required to comply with applicable federal, state or local law will not be counted against an RFP Respondent.)

- An Unacceptable rating will be given to a proposal that in the judgment of the evaluators contains significant and material substantive exceptions that raise unreasonable subjects for negotiation between the Town as Seller and the RFP Respondent as Buyer, that materially derogate from the fundamental purposes of the RFP or the benefits to the Town, or that undermine the policy of competitive fairness in procurement. (Exceptions required to comply with applicable federal, state or local law will not be counted against an RFP Respondent.)

Note: The evaluators' ranking on this criterion shall not be deemed to be an acceptance by the Town of any exceptions taken by the RFP Respondent. Rather, The Board of Selectmen retains the discretion whether or not to accept, modify, or reject any such proposed exception in the final Disposition Agreement for the Property. See RFP Section D above.

i. **Preliminary Ranking**

After evaluating all proposals on the foregoing factors, the evaluators will arrive at a preliminary recommended ranking of the proposals relative to the other proposals. A proposal which achieves "Highly Advantageous" and/or "Advantageous" rankings in several categories will not necessarily be disqualified simply because it received an "Unacceptable" ranking in one or more other categories if, in the judgment of the evaluators, the proposal on the whole is "Advantageous" or "Highly Advantageous" to the Town. Any Notice of Award, however, will be contingent upon the project proponent curing any "Unacceptable" criterion ranking prior to the execution of the Disposition Agreement.

j. **Price Ranking**

After completing the preliminary recommended ranking of the proposals relative to each other as above, the evaluators will open all price proposals, calculate the total financial benefits to the Town from each proposal, and separately rank the proposals in order based on price. Price alone will not be the determining factor for the award of the RFP to an RFP Respondent. Rather, the evaluators will group the Responses into three categories

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based on price:

- A Highly Advantageous rating will be given to a proposal that in the judgment of the evaluators provides total financial benefits to the Town well above the average of all proposals.
- An Advantageous rating will be given to a proposal that in the judgment of the evaluators provides total financial benefits to the Town that are average to above the average of all proposals.
- An Unacceptable rating will be given to a proposal that in the judgment of the evaluators provides total financial benefits to the Town that are below the average of all proposals.

k. **Final Ranking**

After arriving at the three categories of price rankings, the evaluators will arrive at a final recommended ranking of the proposals relative to the other proposals taking price into account. All other things being equal, the evaluators may increase the ranking of a proposal that is Highly Advantageous on price and decrease the ranking of a proposal that is Unacceptable on price.

The Selectmen will then make a final determination as to which proposal is most advantageous to the Town taking all factors including price into account. The Selectmen's determination may differ from the recommendations provided by the Committee, and the Selectmen's discretion in this regard shall be final.

The Notice of Award, if any, will be made by the Town based upon the Wayland Board of Selectmen's determination of the most advantageous proposal from a responsible, qualified and responsive RFP Respondent, taking into consideration all evaluation criteria set forth in the RFP.

RFP # [REDACTED] - RIVER'S EDGE PROPERTY, WAYLAND, MA

Appendix II: List of Exhibits

Ex.	Description
A	Certified Copy of Article 15 adopted at the 2014 Wayland Annual Town Meeting to "Amend Zoning Bylaw Chapter 198: Rivers Edge Housing Overlay Zoning District," with attached map of Rivers Edge Housing Overlay Zoning District
B	Certified Copy of Article 16 adopted at the 2014 Wayland Annual Town Meeting to "Transfer and Dispose of Septage Facility Land and Adjacent Town-Owned Land on Boston Post Road" with attached Map
C	Approval Not Required Plan dated [REDACTED], endorsed by the Wayland Planning Board on [REDACTED], recorded in the Registry as Plan No. [REDACTED] of [REDACTED]
D	Wayland Assessors Map 22 showing Parcels 22-3, 22-6 and 22-7
E	Order of Taking dated January 11, 1971 and recorded with the Middlesex South Registry of Deeds in Book 11943, Page 420, together with the plan recorded in the Registry as Plan Number 27 of 1971
F	Order of Taking dated May 15, 1978 and recorded with the Middlesex South Registry of Deeds in Book 13443, Page 177, together with the plan recorded in the Registry as Plan Number 482 of 1978
G	Order of Taking dated November 15, 1965 and recorded with the Middlesex South Registry of Deeds in Book 11003, Page 389, together with the plan recorded in the Registry as Plan Number 1582 of 1965
H	Surplus Declaration pursuant to M.G.L. c. 40, § 15, by the Wayland Department of Public Works dated [REDACTED]
I	Tighe & Bond Phase I Environmental Site Assessment and a Limited Phase II Investigation dated October 2012
J	Wayland Conservation Commission's Abbreviated Notice of Resource Area Delineation ("ANRAD") dated [REDACTED]
K	Wayland Board of Health Site Assignment dated February 9, 1979
L	Wayland Board of Health Permit to Operate Sanitary Landfill dated June 16, 1980
M	Wayland Board of Health Decision amending Site Assignment to remove that portion of the Property that is subject to disposition pursuant to this RFP
N	Appraisal Report dated [REDACTED]
O	Form of Disposition Agreement for the Property
P	River's Edge Design Guidelines
Q	List of Costs incurred by the Town of Wayland for the RFP and disposition of the Property, to be reimbursed by the Successful RFP Respondent at Closing
R	Proposal Form
S	Price Summary Form
T	Project Schedule
U	Certificate of Non-Collusion
V	Disclosure of Beneficial Interest Form

Comment [SDA35]: A&K has copies of the Exhibits shaded in green. All Exhibits will be renumbered and re-ordered as appropriate in the final draft.

Comment [SDA36]: To be created by Town and endorsed by Planning Board.

Comment [SDA37]: To be drafted by Mark Lanza and approved by DPW.

Comment [SDA38]: To be provided by Town.

Comment [SDA39]: To be provided by Town.

Comment [SDA40]: To be provided by Town.

Comment [SDA41]: A&K is drafting.

Comment [SDA42]: The Town should provide A&K a Word version of the latest draft of the Design Guidelines. The latest PDF version of the Design Guidelines on the web can be found at http://www.wayland.ma.us/Pages/WaylandMA_BCo mm/Econ/DraftDesign2014.pdf. This is version v10 dated 2/25/14.

Comment [SDA43]: To be provided by Town (if the Committee seeks to recover these costs separate from the proposed purchase price.

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W	Non-Delinquency Statement
X	Commitment for payment in lieu of taxes
Y	Certification as to Payment of Taxes
Z	Evidence of Authorization/Corporate Resolution
AA	Form in which the RFP Respondent explains (with supporting documentation as necessary) how the RFP Respondent's Proposal meets or exceeds the comparative evaluation criteria of the RFP
BB	Form of Release for Site Visit
CC	Form of Right of Entry Agreement (for RFP Respondent Due Diligence prior to RFP Submission)
DD	Form of Repurchase Agreement

Comment [SDA44]: A&K will draft

Comment [SDA45]: For discussion with Committee. A&K will draft.

Comment [SDA46]: Same

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EXHIBIT A

Certified Copy of Article 15 adopted at the 2014 Wayland Annual Town Meeting

RFP # [REDACTED] - RIVER'S EDGE PROPERTY, WAYLAND, MA

EXHIBIT B

Certified Copy of Article 16 adopted at the 2014 Wayland Annual Town Meeting

RFP # [REDACTED] - RIVER'S EDGE PROPERTY, WAYLAND, MA

EXHIBIT C

Approval Not Required Plan dated _____, endorsed by the Wayland Planning Board on _____, recorded in the Registry as Plan No. _____ of _____

RFP # [REDACTED] - RIVER'S EDGE PROPERTY, WAYLAND, MA

EXHIBIT D

Assessors' Map 22 showing numbered Parcels 22-3, 22-6 and 22-7

RFP # [REDACTED] - RIVER'S EDGE PROPERTY, WAYLAND, MA

EXHIBIT E

Order of Taking dated January 11, 1971 and recorded with the Middlesex South Registry of Deeds in Book 11943, Page 420, together with the plan recorded in the Registry as Plan Number 27 of 1971

RFP # [REDACTED] - RIVER'S EDGE PROPERTY, WAYLAND, MA

EXHIBIT F

Order of Taking dated May 15, 1978 and recorded with the Middlesex South Registry of Deeds in Book 13443, Page 177, together with the plan recorded in the Registry as Plan Number 482 of 1978

RFP # [REDACTED] - RIVER'S EDGE PROPERTY, WAYLAND, MA

EXHIBIT G

Order of Taking dated November 15, 1965 and recorded with the Middlesex South Registry of Deeds in Book 11003, Page 389, together with the plan recorded in the Registry as Plan Number 1582 of 1965

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EXHIBIT H

Surplus Declaration pursuant to M.G.L. c. 40, § 15

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EXHIBIT I

**Tighe & Bond Phase I Environmental Site Assessment and a Limited Phase II
Investigation dated October 2012**

RFP # [REDACTED] - RIVER'S EDGE PROPERTY, WAYLAND, MA

EXHIBIT J

**Wayland Conservation Commission's Abbreviated Notice of Resource Area
Delineation ("ANRAD") dated [REDACTED]**

RFP # [REDACTED] - RIVER'S EDGE PROPERTY, WAYLAND, MA

EXHIBIT K

Wayland Board of Health Site Assignment dated February 9, 1979

RFP # [REDACTED] - RIVER'S EDGE PROPERTY, WAYLAND, MA

EXHIBIT L

Wayland Board of Health Permit to Operate Sanitary Landfill dated June 16, 1980

RFP # [REDACTED] - RIVER'S EDGE PROPERTY, WAYLAND, MA

EXHIBIT M

Wayland Board of Health Decision amending Site Assignment to remove that portion of the Property that is subject to disposition pursuant to this RFP

RFP # [REDACTED] - RIVER'S EDGE PROPERTY, WAYLAND, MA

EXHIBIT N

Appraisal Report dated _____

RFP # [REDACTED] - RIVER'S EDGE PROPERTY, WAYLAND, MA

EXHIBIT O

Form of Disposition Agreement for the Property

RFP # [REDACTED] - RIVER'S EDGE PROPERTY, WAYLAND, MA

EXHIBIT P

River's Edge Design Guidelines

RFP # [REDACTED] - RIVER'S EDGE PROPERTY, WAYLAND, MA

EXHIBIT Q

List of Costs incurred by the Town of Wayland for the RFP and disposition of the Property, to be reimbursed by the Successful RFP Respondent at Closing

RFP # [REDACTED] - RIVER'S EDGE PROPERTY, WAYLAND, MA

EXHIBIT R

PROPOSAL FORM

Disposition of Municipal Real Estate – River's Edge Property

TOWN OF WAYLAND
c/o Town Manager
Town Building
41 Cochituate Road
Wayland, Massachusetts 01778

On behalf of the Person or Business Submitting the Proposal (“the “RFP Respondent”), having been duly authorized, I represent that:

The name and address of the RFP Respondent are:

The name, address, email address, and business phone of the RFP Respondent's principal contact person for all matters concerning this RFP are:

The RFP Respondent acknowledges receipt of the following Addenda to the RFP:

Addendum _____ dated _____

Addendum _____ dated _____

RFP # [REDACTED] - RIVER'S EDGE PROPERTY, WAYLAND, MA

The RFP Respondent constitutes the following type of entity with the following principals (use separate sheet if necessary):

If a corporation, the State of Incorporation and the officers and directors are:

If a limited liability company, the manager and members are:

If a partnership or a limited partnership, the general partners are:

If a trust, name of trust, the trustees and the Registry book and page for the recorded trust instrument are:

If an other form of person or entity, specify the type of entity and its principals:

The following Town of Wayland officials and employees have a financial interest in the RFP Respondent or are related (by blood or marriage) to any of the partners, officers, directors, trustees, managers or employees of the RFP Respondent:

RFP # [REDACTED] - RIVER'S EDGE PROPERTY, WAYLAND, MA

On behalf of the RFP Respondent, having been duly authorized, I represent and agree that:

1. The RFP Respondent is one of the following (specify yes or no to each):
 - A public agency (____)
 - A non-profit organization (____)
 - A limited dividend organization (____) or
 - A private party that shall form a limited dividend organization for purposes of the acquisition and development of the Property (____).
2. Within 30 days from receipt of the Notice of Award, or such further time as Town may agree in writing, the RFP Respondent will execute the Disposition Agreement in the form attached to the RFP (Exhibit O) with such amendments thereto as are reflected in the above Addenda (if any) to the RFP or as may otherwise be approved by the Town's Board of Selectmen in accordance with the procedures set forth in the RFP.
3. Without limitation, effective on the Closing under the Disposition Agreement, the RFP Respondent will:
 - Acquire the Property, develop the Project, and perform the Work in accordance with its RFP Response and subject to the provisions, terms conditions and restrictions of the RFP and its Exhibits.
 - Execute and deliver a perpetual affordable housing restriction in a form reasonably acceptable to the Wayland Board of Selectmen securing compliance with the affordable and senior housing restrictions of the RFP.
 - Be responsible for all costs and expenses arising out of or related to the RFP Response, Due Diligence, the Disposition Agreement, the Project, the Work, the Demolition, the Environmental Remediation, the Environmental Mitigation, and all other activities necessary, proper, or incidental to the redevelopment and reuse of the Property for the rental housing project pursuant to this RFP.
 - Assess, contain, remove and remediate all pre-existing releases of oil and hazardous materials at of from the Property 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's Board of Selectmen.

Comment [SDA47]: For simplicity, these terms can be built into the Disposition Agreement and deleted from the Proposal Form.

RFP # [REDACTED] - RIVER'S EDGE PROPERTY, WAYLAND, MA

- Design and construct the 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 consistent with a Permanent Solution involving No Significant Risk under General Laws Chapter 21E and the Massachusetts Contingency Plan.
 - On behalf of itself and its parents, subsidiaries, affiliates, officers, directors, members, managers, predecessors, successors, contractors, subcontractors, assigns, agents, and representatives, release, defend, indemnify and hold harmless the Town of Wayland 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 Property, any release of oil or hazardous materials to, at or from the Property, the Property Information, the Project, the Work, the Demolition, the Environmental Remediation, the Environmental Mitigation, and all other activities necessary, proper, or incidental to the redevelopment and reuse of the Property for the rental housing project pursuant to this RFP.
4. This Proposal will remain subject to acceptance by the Town of Wayland (“Town”) for 180 days after the date of submission of proposals.
5. The RFP Respondent has enclosed with its proposal a Certified Check payable to the Town of Wayland in the amount of \$10,000. The RFP Respondent understands and agrees that this Certified Check shall be (a) deposited by the Town to general revenues and the amount of the check forfeited to the Town by the RFP Respondent in the event the RFP Respondent receives the Notice of Award for the Project from the Town but fails or refuses to execute the required Disposition Agreement within 30 days from receipt of the Notice of Award, or (b) deposited by the Town to general revenues and the amount of the check applied toward the required deposit under the Disposition Agreement in the event the RFP Respondent receives the Notice of Award for the Project from the Town and timely executes the required Disposition Agreement, or (c) returned to the RFP Respondent in the event the Town rejects all proposals or rejects the RFP Respondent’s Proposal.

Signature

RFP # [REDACTED] - RIVER'S EDGE PROPERTY, WAYLAND, MA

Name of Person Signing

Title

Name of Business

Address

RFP # [REDACTED] - RIVER'S EDGE PROPERTY, WAYLAND, MA

EXHIBIT S
PRICE SUMMARY FORM

Disposition of Municipal Real Estate – River's Edge Property
TOWN OF WAYLAND
Town Building
41 Cochituate Road
Wayland, Massachusetts 01778

Name of RFP Respondent: _____

1. **The Purchase Price Offered** to the Town of Wayland (as Seller) by the RFP Respondent (as Buyer) for the purchase of the Property identified in the RFP is:

Words: _____

Numbers: _____

The proposed Purchase Price takes into account the requirement that the RFP Respondent shall be solely responsible for all costs and expenses identified in RFP Sections E(1), E(2) and E(3). **The Successful RFP Respondent agrees** to abide by RFP Section E(3) relative to proving the costs and expenses actually incurred for the Demolition of the former the Wayland/Sudbury Septage Facility

Comment [SDA48]: Update after reviewing the IMA between Wayland and Sudbury.

2. **In addition to the Purchase Price**, the RFP Respondent shall pay to the Town of Wayland at closing all costs incurred by the Town in connection with the RFP and the disposition of the Property, including (a) all costs listed on RFP Exhibit Q plus (b) any additional such costs through Closing, up to the total of these costs (items 2(a) plus 2(b)) not to exceed:

Words: _____

Numbers: _____

3. **Attached hereto is the RFP Respondent's Pro Forma for the Project.**

Signature

Name of Person Signing

RFP # [REDACTED] - RIVER'S EDGE PROPERTY, WAYLAND, MA

Title

RFP # [REDACTED] - RIVER'S EDGE PROPERTY, WAYLAND, MA

EXHIBIT T
PROJECT SCHEDULE

River's Edge, Wayland MA

Name of RFP Respondent: _____

The RFP Respondent proposes to commence and complete the Project in accordance with the following critical path time schedule:

Note: Town's required dates are included in the list below. RFP Respondent's proposed dates must be inserted for all items with a blank below.

- The RFP Respondent will execute the Disposition Agreement within 30 days from the Notice of Award from the Town.
- The RFP Respondent will complete all Due Diligence Activities and waive any conditions relating thereto within 45 days after the execution of the Disposition Agreement.
- The RFP Respondent will close on the acquisition of the Property within 60 days after the execution of the Disposition Agreement.
- The RFP Respondent will file for all necessary governmental permits and approvals within ___ days after the closing.
- The RFP Respondent will use its best efforts to obtain all necessary governmental permits and approvals within ___ days after the closing (not including any time necessary to resolve any third party appeals).
- The RFP Respondent will secure any necessary construction financing within ___ days after it obtains all necessary final governmental permits and approvals.
- The RFP Respondent will file for the initial building permit for the Project within ___ days after it obtains all necessary final governmental permits and approvals.
- The RFP Respondent will commence construction within ___ days after it obtains a building permit for the Work.
- The Successful RFP Respondent shall complete the construction of the Project not later than ___ months after commencing construction.

Comment [SDA49]: Once the Due Diligence, Permitting and Financing provisions of the LDA are final, revise this schedule to match.

RFP # [REDACTED] - RIVER'S EDGE PROPERTY, WAYLAND, MA

Absent delays caused by third party appeals or other matters beyond the reasonable control of the RFP Respondent, the RFP Respondent anticipates that the critical path time schedule from execution of the Disposition Agreement until completion of construction will be _____ months.

The RFP Respondent proposes to track the critical path time schedule for the Project using _____ software.

Optional: The RFP Respondent has attached hereto the initial proposed critical path time schedule for the Project prepared in the format of that software program.

Signature

Name of Person Signing

Title

RFP # [REDACTED] - RIVER'S EDGE PROPERTY, WAYLAND, MA

EXHIBIT U

CERTIFICATE OF NON-COLLUSION

The undersigned certifies under penalties of perjury that the bid or proposal submitted relative to this project is in all respects bona fide, fair and made without collusion or fraud with any other person, joint venture, partnership, corporation or other business or legal entity.

Signature

Name (Person signing Proposal)

(Company)

(Date)

RFP # [REDACTED] - RIVER'S EDGE PROPERTY, WAYLAND, MA

EXHIBIT V

Comment [SDA50]: Update the DBI Form for any changes to the standard form.

DISCLOSURE OF BENEFICIAL INTERESTS IN REAL PROPERTY TRANSACTION

This form contains a disclosure of the names and addresses of all persons with a direct or indirect beneficial interest in the real estate transaction described below. This form must be filed with the Massachusetts Division of Capital Planning and Operations, as required by M.G.L. c.7C, § 38, prior to the conveyance of or execution of a Disposition for the real property described below. Attach additional sheets if necessary.

1. Public agency (as defined in G.L. c.7, § 39A) involved in this transaction:

Town of Wayland, Wayland Town Building, 41 Cochituate Road, Wayland, Massachusetts 01778

2. Complete legal description of the property:

[To Follow]

3. Type of Transaction: X Sale Disposition or rental for [term]

4. Seller(s) or Lessor(s): Town of Wayland
Purchaser(s) or Lessee(s):

5. Names and addresses of all persons who have or will have a direct or indirect beneficial interest in the real property described above. Note: If a corporation has, or will have a direct or indirect beneficial interest in the real property, the names of all stockholders must also be listed except that, if the stock of the corporation is listed for sale to the general public, the name of any person holding less than ten percent of the outstanding voting shares need **not** be disclosed.

Name	Address
_____	_____
_____	_____

RFP # [REDACTED] - RIVER'S EDGE PROPERTY, WAYLAND, MA

5. Continued

None of the persons listed in this section is an official elected to public office in the Commonwealth of Massachusetts except as noted below:

Name	Title or position
------	-------------------

6. This section must be signed by the individual(s) or organizations(s) entering into this real property transaction with the public agency named in item 1. If this form is signed on behalf of a corporation, it must be signed by a duly authorized officer of that corporation.

The undersigned acknowledges that any changes or additions to item 4 of this form during the term of any Disposition or rental will require filing a new disclosure with the Division of Capital Planning and Operations within 30 days following the change or addition.

The undersigned swears under the pains and penalties of perjury that this form is complete and accurate in all respects.

Signature: _____

Date: _____

RFP # [REDACTED] - RIVER'S EDGE PROPERTY, WAYLAND, MA

EXHIBIT W

Non-Delinquency Statement Required by M.G.L. c. 60, § 77B

I/We, the undersigned, under the pains and penalties of perjury, state that neither I/we nor any person who would gain equity in the Property that is the subject of this RFP Response has ever been convicted of a crime involving the willful and malicious setting of a fire or of a crime involving the aiding, counseling or procuring of a willful and malicious setting of a fire, or of a crime involving the fraudulent filing of a claim for fire insurance; or is delinquent in the payment of real estate taxes to the Town of Wayland, or if delinquent, that a pending application for abatement of such tax, or a pending petition before the appellate tax board or the county commissioners has been filed in good faith.

Signature

Name of Person Signing

Title

Name of Business

Address

Federal Identification Number or Social Security Number

Note: If there is to be more than one grantee of the deed for the Property, each grantee must file such statement, and no such deed shall be valid unless it contains a recitation that the board or officer granting the deed has received such statement. See M.G.L. c. 60, § 77B.

RFP # [REDACTED] - RIVER'S EDGE PROPERTY, WAYLAND, MA

EXHIBIT X

**Commitment for Payment in Lieu of Taxes Calculated
In Accordance with M.G.L. C. 44, § 63A**

Comment [SDA51]: Verify if Applicable to this Transaction

I/We, the undersigned, acknowledge that General Laws Chapter 44, Section 63A, provides as follows:

Whenever in any fiscal year a town, which term, as used in this section, shall include a city, shall sell any real estate, the board or officer executing the deed therefor in the name and behalf of the town shall, as a condition precedent to the power to deliver such deed, receive from the grantee as a payment in lieu of taxes allocable to the days ensuing in said fiscal year after the date of such deed, a sum which shall be equal to such portion of a pro forma tax computed as hereinafter provided as would be allocable to the days aforesaid if such pro forma tax were apportioned pro rata according to the number of days in such fiscal year; provided, however, that whenever the said real estate shall be sold between January second and June thirtieth of the fiscal year, the town shall also receive an additional amount equal to the entire pro forma tax computed as hereinafter provided and allocable as a payment in lieu of taxes for the next succeeding fiscal year. Such pro forma tax shall be computed by applying the town's tax rate for the fiscal year of the sale, or, if such rate is not known, the town's tax rate for the fiscal year next preceding that of the sale, to the sale price after crediting any exemption to which, if the deed had been executed and delivered on January first of such next preceding fiscal year, the grantee would have been entitled under section five of chapter fifty-nine. A recitation in the deed that there has been full compliance with the provisions of this section shall be conclusive evidence of such fact. Sums received under this section shall not be subject to section sixty-three of this chapter or to section forty-three of chapter sixty, but shall be credited as general funds of the town.

If awarded the contract for the disposition of the Property, I/we commit to make at the closing the required Payment in Lieu of Taxes calculated in accordance with General Laws Chapter 44, Section 63A.

Signature

Name of Person Signing

Title

RFP # [REDACTED] - RIVER'S EDGE PROPERTY, WAYLAND, MA

EXHIBIT Y

CERTIFICATION AS TO PAYMENT OF TAXES

Pursuant to G.L. c.62C, § 49A, I, _____, hereby certify under the pains and penalties of perjury that _____ (RFP Respondent) has complied with all laws of the Commonwealth of Massachusetts relating to the payment of taxes and has filed all state tax returns and paid all State taxes required under law.

Date

Signature of Authorized
Representative of RFP Respondent

Federal ID Number of Contractor

Title

RFP # [REDACTED] - RIVER'S EDGE PROPERTY, WAYLAND, MA

EXHIBIT Z

CORPORATE RESOLUTION

(to be filed if Contractor is a Corporation)

I, _____, hereby certify that I am the duly qualified
and
(Secretary of the Corporation)

acting Secretary of _____ and I further certify
(Name of Corporation)

that a meeting of the Directors of said Company, duly called and held on

_____,
(Date of Meeting)

at which all Directors were present and voting, the following individuals:

were duly authorized and empowered to execute Forms of General Bid, Contracts, Agreements or Bonds on behalf of the Corporation.

I further certify that the above authority is still in effect and has not changed or modified in any respect.

By: _____
(Secretary of Corporation)

A True Copy:

Attest: _____
(Notary Public)

My Commission Expires: _____

RFP # [REDACTED] - RIVER'S EDGE PROPERTY, WAYLAND, MA

EXHIBIT AA

Form in which the RFP Respondent explains (with supporting documentation as necessary) how the RFP Respondent's Proposal meets or exceeds the comparative evaluation criteria of the RFP

RFP # [REDACTED] - RIVER'S EDGE PROPERTY, WAYLAND, MA

EXHIBIT AA

Form of Release for Site Visit

RFP # [REDACTED] - RIVER'S EDGE PROPERTY, WAYLAND, MA

EXHIBIT BB

Form of Release for Site Visit

RFP # [REDACTED] - RIVER'S EDGE PROPERTY, WAYLAND, MA

EXHIBIT CC

**Form of Right of Entry Agreement
(for RFP Respondent Due Diligence prior to RFP Submission)**

RFP # [REDACTED] - RIVER'S EDGE PROPERTY, WAYLAND, MA

EXHIBIT DD

Form of Repurchase Agreement

DRAFT 12/12/14

LAND DISPOSITION **AGREEMENT**

Comment [A1]: To be discussed regarding whether to structure deal as ground lease.

**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 [_____] acres, commonly known as 484-490 Boston Post Road in the Town of Wayland, Middlesex County, Commonwealth of Massachusetts, shown as [_____] (the "Premises") on that certain Approval Not Required Plan entitled "_____" prepared by [_____] , dated [_____] , endorsed by the Wayland Planning Board on [_____] , 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.

Comment [A2]: To be discussed whether Town will need to reserve any easements.

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 (“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, including 25% of such new rental housing units being Affordable Housing Units (as such term is defined herein) and a minimum of 25% of such new rental housing units being Age-Restricted (senior) Housing Units, and associated improvements on the property [substantially as shown and described on Exhibit B attached hereto.]

Comment [A3]: The scope and content of Exhibit B to be discussed with Town.

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 or administer 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”) 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 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 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).

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.

Comment [A4]: To be discussed whether to include a governmental subsidy contingency.

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 without the prior written consent of the Seller.

Comment [A5]: Discuss whether the Town wants this to survive closing.

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 Purchase Price

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

The 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, or to such other payee as the Seller may designate, 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 deposit with the Seller in the amount of _____ (\$ _____) (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”).
[Total amount of Deposit shall be equal to five (5) percent of the Purchase Price.]

The Deposit shall be held [by Anderson & Kreiger LLP] in a non-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 shall be retained by the Seller and credited against the Purchase Price at the time of the Closing.

Comment [A6]: For discussion with Town.

ARTICLE III
BUYERS PRE-CONVEYANCE ACTIVIES

3.1 Due Diligence

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). Buyer shall be responsible, at Buyer’s sole cost and expense for the demolition, removal and disposal of all buildings, improvements, foundations, pipes, tanks, fixtures, equipment and demolition debris on or under the Premises (the “Demolition”). [It is acknowledged between the parties that Buyer has factored the cost of the Demolition into the Purchase Price.]

Comment [A7]: The following two options to be discussed with the Town: (1) require developer to perform all diligence (except title) prior to entering into LDA (an Entry Agreement will be necessary to allow for access onto the property) or (2) Allow a certain period post-execution of LDA for developer to conduct due diligence and terminate if not satisfied.

3.3 Environmental Matters.

Buyer shall be responsible for the assessment, containment, removal and 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 the design and construction of Buyer’s Project in such a way to evaluate and eliminate the risk of methane gas or other vapor intrusion from the Sudbury landfill adjacent to the Premises 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”).

Comment [A8]: Revisit after reviewing inter-town IMA

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, 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.

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, subject to such matters, at the Closing (as hereinafter defined).

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 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.

Comment [A9]: Discuss whether an appropriation is necessary for this obligation.

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 Deposit shall be returned to Buyer without further recourse to either Party, subject to Buyer's obligations under that certain Right of Entry and License Agreement between the Parties dated as of _____ (the "Entry Agreement"), a copy of which Entry Agreement is attached hereto as Exhibit D.

3.5 The Seller's Review.

(a) General.

(i) The Buyer shall not submit a site plan approval application to the Planning Board for the construction and/or alteration of any building or structure on the Premises unless and until the Seller has approved (which may be a conditional approval) Buyer's Site Plan schematic design drawings, which include conceptual site plans, architectural drawings and building elevations (collectively, "Schematic Design Plans"), which approval shall not be unreasonably withheld.

(ii) Buyer shall not make any material changes to the Schematic Design Plans affecting the buildings' exteriors, including but not limited to changes in color, fenestration or architectural details after such documents have been approved by Seller or after a building permit has been applied for or issued based upon such Seller approved Schematic Design Plans, whether by change order or otherwise unless Buyer has submitted such material changes to Seller for its review and approval as provided in this section. When submitting the Schematic Design Plans to the Seller for review, Buyer shall type in conspicuous capitalized bold type at the top of the first page of Buyer's submission the following: "NOTICE: YOU HAVE **FIFTEEN BUSINESS DAYS TO RESPOND. FAILURE TO RESPOND WITHIN FIFTEEN BUSINESS DAYS WILL BE DEEMED APPROVAL OF THE ATTACHED DOCUMENTS.**" The Seller shall review and comment on the Schematic Design Plans within fifteen (15) business days after its receipt thereof (the "Notice of Approval"). Buyer shall provide to the Seller any information that it may reasonably request in writing respecting Buyer's submissions to the Planning Board.

Comment [A10]: To be discussed with Committee

(b) The Seller shall review the Schematic Design Plans for conformance with 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 E (the "REHOD Requirements"), with the River's Edge Design Guidelines, a copy of which is attached hereto as Exhibit F (the "Design Guidelines"), with the Legal Requirements (as such term is hereinafter defined) and any local requirements. The Seller shall review and approve the Schematic Design Plans within fifteen (15) business days after receipt thereof.

(c) The Buyer warrants and represents that any building or other structure, including all utilities, shall be constructed substantially in accordance with the Schematic Design Plans as such Schematic Design Plans shall have been modified by change orders approved by the Buyer and, if required by this Agreement, by the Seller, and/or applicable federal, state, and local laws, and, further, that any significant future expansion or any material alteration of the exterior portion or design of buildings or structures shall be subject to the Seller's prior review and approval in the manner provided herein, which approval shall not be unreasonably withheld.

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

(e) The Seller shall have the right to inspect the construction of the Buyer's Project to ensure that the exterior portion of the construction is in substantial accordance with the approved Schematic Design Plans, as such plans shall have been modified by change orders approved by the Buyer and, when required by this Agreement, by the Seller such inspections shall be scheduled by written notice to the Buyer. The Seller agrees to conduct its inspection for final completion within ten (10) business days of receipt of notice from Buyer that construction is substantially complete. Any exterior portion of the construction of the Buyer's Project not in substantial accordance with the Schematic Design Plans, as such Schematic Design Plans shall have been modified by change orders

approved by the Buyer and, if required by this Agreement, by the Seller, and/or applicable federal, state, and local laws, shall be immediately remedied and repaired at the sole cost of the Buyer and/or its contractor. In the event the Buyer fails for any reason to cure such defects within thirty (30) days after written notice thereof from Seller, the Seller shall be entitled to injunctive relief as no remedy at law shall be adequate to compensate the Seller. When the Seller determines that the exterior portion of the construction has been completed in substantial accordance with the Schematic Design Plans, as such Schematic Design Plans shall have been modified by change orders approved by the Buyer and, if required by this Agreement, by the Seller, the Seller shall issue a Certificate of Compliance (the "Certificate of Compliance") in recordable form to the Buyer, which certificate the Seller agrees to issue within five (5) business days of completing its final inspection, whereupon the Buyer may then apply for a Certificate of Occupancy for the Premises. A Certificate of Compliance from the Seller shall be a prerequisite to Buyer's application for a Certificate of Occupancy for all or any portion of the Premises.

The provisions of this Section 3.5 shall survive the Closing and the delivery of the Deed.

3.6 Project Permitting.

The Buyer shall be solely responsible for applying for and obtaining any governmental permits and approvals required by law, prior to the commencement of any construction activities on the Premises.

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

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 ____ on _____, 2015, 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 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 which meets the requirements of M.G.L. c. 184 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 a minimum of 25% age-restricted (senior) housing units and that 100% of the units count toward the Town of Wayland's Subsidized Housing Inventory;
- (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) Buyer has obtained all permits and approvals required for the commencement of construction of Buyer's Project.

Comment [A11]: To be discussed regarding further conditions precedent, including septic approval.

(b) 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, §§ 2-23. 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.

Comment [A12]: For discussion with Committee

(c) Buyer has furnished the Seller with evidence satisfactory to the Seller of a binding commitment from a lender for financing of the construction of Buyer's Project and evidence that Buyer's contractor has obtained a payment and performance bond in an amount equal to the full construction cost and that Buyer has satisfied or is capable of satisfying any other conditions contained in such commitment; and

(d) 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 G.

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 and approved perpetual affordable housing restriction satisfying the requirements of Section 4.2(e) and Article V of this Agreement executed by the Department of Housing and Community Development;
 - (vii) a duly executed Repurchase Agreement;
 - (viii) such other documents, certificates, or agreements as may be necessary to consummate the transaction contemplated by this Agreement; and
 - (ix) 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 provided, however, that if as of the date of termination Buyer has commenced construction of the buildings which are a part of the Buyer's Project, Buyer shall not be required to remove such construction but shall be required to take all such steps as are necessary to safely secure the Buyer's Project 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 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.

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 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; 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.

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").
- (d) At 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 between the age-restricted and non-age-restricted units.
- (f) One hundred (100) percent 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 the Commonwealth of Massachusetts Executive Office of Housing and Economic Development, Department of Housing and Community Development, or its successor.
- (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 H is a utility location plan showing the record location of all utilities located within the Premises ("Utility Location Plan"). The information provided on the Utility Location Plan was compiled by the Seller from available record documents 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 Utility Location 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.

Comment [A13]: Discuss with Town whether it can and/or will generate this plan.

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, and 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 governmental permits and approvals for the designing, constructing, operating and maintaining the sewage disposal system(s) for 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 I (the "Reserved Easement Agreement").

Comment [A14]: To be discussed and confirmed with Town whether easements are necessary.

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 Public Works Department. The Buyer shall not be permitted to proceed with any Relocation Work without the prior written approval of the Seller's Public Works Department, 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 Engineering Department and compatible with the Seller's existing Geographical Information System ("GIS").

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**

7.1 Time for Completion of Buyer's Project.

(a) Subject only to delays caused solely by Force Majeure, the Buyer's failure to complete (as defined herein) the Buyer's Project by a date which is [] months from Closing ("Buyer's Project Completion Date"), shall permit the Seller, in its sole discretion, to repurchase all or any portion of the Premises pursuant to Section 7.2 and to terminate this Agreement.

Comment [A15]: To be discussed how long of a timeframe to permit. Also to be discussed whether to allow the Town to elect to repurchase the property or have it automatically revert to the Town. We have structured this initially as a repurchase right, but we should discuss both options.

(b) 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 Schematic 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; (iv) all landscaping is completed and planted, except for such work that cannot be completed due to seasonal conditions; and (v) a copy of the inspection certification from the Buyer's lender, if any, certifying that the construction is at least ninety-five percent (95%) complete.

Comment [A16]: Discuss whether to issue a Certificate of Completion for recording with the registry.

7.2 Repurchase Right.

Notwithstanding anything contained in this Agreement to the contrary, title to the Premises shall be conveyed subject to specific covenants whereby the Buyer covenants and affirms that the Buyer shall (i) commence and use commercially reasonable efforts to diligently continue with the construction of the Buyer's Project so as to cause it to be completed in accordance with the Schematic Design Plans by the Buyer's Project Completion Date and (ii) use the Premises solely for residential rental housing as provided herein. In the event that the Buyer fails to so commence, continue and complete Buyer's Project, subject only to delays caused solely by Force Majeure, or does not use the Premises solely for residential rental housing as

provided herein, 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. Buyer and the Seller have agreed upon the Repurchase Agreement attached hereto as Exhibit J which shall be executed and recorded at the Time of Closing.

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, 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.

7.3 Assignment.

Comment [A17]: To be discussed whether to limit assignment.

After the Closing and prior to the Certificate of Compliance, Buyer shall not 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, unless 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. In the event of any such transfer without such assumption of obligations, Buyer shall pay to Seller the expenses and costs of any actions or proceedings instituted to enforce all such obligations, conditions and restrictions, and

all of Seller's said rights, remedies and controls as against such transferee. Therefore, in the absence of a specific written agreement by Seller to the contrary, no such transfer or approval thereof by Seller shall be deemed to relieve Buyer or any party bound in any way by this Agreement or otherwise with respect to the construction of Buyer's Project from any of its obligations with respect thereto.

(c) There has been submitted to Seller for review and the Seller has approved, 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 Completion, 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.

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, not less than the following coverage and limits of insurance: (a) Workers' Compensation and Employer's Liability - Workers' Compensation coverage equal to at least the greater of (i) such limits as are required by law or (ii) \$500,000 per injury, \$500,000 per accident and \$500,000 per disease, (b) Comprehensive General Liability - limits of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate; (c) Automotive Liability - Combined Single Limit - \$1,000,000; and (d) Builder's Risk in an amount equal to the amount of the amount of the general construction contract for the construction of Buyer's Project. The automobile and general liability policies shall be accompanied by an umbrella policy with a combined limit of \$5,000,000.

All policies of insurance, except for Workers' Compensation and Employer's Liability Insurance, shall include the Seller as an additional insured, shall 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 shall be issued and delivered in accordance with Massachusetts law and regulations.

Comment [A18]: Insurance amounts to be discussed and confirmed with Town, including builder's risk.

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

All of the insurance policies 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 and its members. 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.

Comment [A19]: To be discussed whether any other municipal actions or approvals are necessary. If so, a contingency for those actions should be inserted.

(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.

Comment [A20]: To be discussed regarding wetlands issues concerning access road.

(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) the charter of the Seller, (2) any law or any order, writ, injunction or decree of any court or governmental authority; or (3) 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, committees, representatives and boards (collectively, the “Indemnitees”) and hold the Indemnitees harmless from and against actual losses sustained by an Indemnitee on account of (i) 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; and (4) any default in the Buyer's obligations under this Agreement. 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. This indemnification shall survive the termination of this Agreement and any Closing.

(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.

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: 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 Successors Bound.

This Agreement shall be binding upon and shall inure to the benefit of the Seller and the Buyer and their successors and permitted assigns.

11.9 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.

11.10 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.

11.11 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 – REHOD Requirements**
- EXHIBIT F – Design Guidelines**
- EXHIBIT G – Disclosure of Beneficial Interest**
- EXHIBIT H – Utility Location Plan**
- EXHIBIT I – Reserve Easement Agreement**
- EXHIBIT J – 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
REHOD Requirements

EXHIBIT F
Design Guidelines

EXHIBIT G
Disclosure of Beneficial Interest

Exhibit H
Utility Location Plan

Exhibit I
Reserved Easement Agreement

EXHIBIT J

Repurchase Agreement

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