



## FRANKLIN TOWN COUNCIL

June 28, 2017

6:45 PM

**A. EXECUTIVE SESSION** – *Real Property Acquisition/Value*

**B. APPROVAL OF MINUTES** – *May 24, 2017, May 25, 2017, June 7, 2017*

**C. ANNOUNCEMENTS** –

1. *This meeting is being recorded by Franklin TV and shown on Comcast channel 11 and Verizon channel 29. This meeting may also be recorded by others.*

**D. PROCLAMATIONS/RECOGNITIONS** *Swearing in of Firefighters  
Dean College*

**E. CITIZEN COMMENTS** – *Citizens are welcome to express their views for up to five minutes on a matter that is not on the Agenda. The Council will not engage in a dialogue or comment on a matter raised during Citizen Comments. The Town Council will give remarks appropriate consideration and may ask the Town Administrator to review the matter.*

**F. APPOINTMENTS** - *Cultural Council  
Election Workers  
Citizens Committee*

**G. HEARINGS** - *Franklin Cultural District – 7:10 pm*

**H. LICENSE TRANSACTIONS** - *Table & Vine – Change of Manager*

**I. PRESENTATIONS/DISCUSSIONS**

**J. SUBCOMMITTEE REPORTS**

**K. LEGISLATION FOR ACTION**

1. *Resolution 17-43: MBTA – Dean Station Solar Canopy(Motion to Move Resolution 17-43 – majority vote (5))*
2. *Resolution 17-39: Grant of Reserved Easement on former Town-Owned Land on Pond Street to Charles River Pollution Control District (Motion to Move Resolution 17-39 – 2/3 majority vote (6 ))*
3. *Resolution 17-40: Chapter 61B – Non-exercise of 1<sup>st</sup> Refusal Option – 17.12 Acres of land off Maple Street (Motion to Move Resolution 17-40 – majority vote (5))*
4. *Resolution 17-41: Chapter 61A – Non-exercise of 1<sup>st</sup> Refusal Option – 114.473 Acres located at 215 Prospect Street(Motion to Move Resolution 17-41 – majority vote (5))*
5. *Resolution 17-42: Acceptance of Gift – Franklin Fire Department (Motion to Move Resolution 17-42 – majority vote (5))*
6. *Resolution 17-44: Creation of Cultural District Committee (Motion to Move Resolution 17-44 – majority vote (5))*
7. *Resolution 17-45: Proposed Franklin Cultural District (Motion to Move Resolution 17-45 – majority vote (5))*
8. *Resolution 17-46: Appropriation – Town Common Stage Improvements (Motion to Move Resolution 17-46 – majority vote (5))*
9. *Resolution 17-47: Appropriation – FY 17 Operating Budget Transfer – Fire Salaries (Motion to Move Resolution 17-47 – majority vote (5))*

10. *Zoning Bylaw Amendment 17-788: Definitions. Brewer, Distillery, or Winery with Tasting Room – 2<sup>nd</sup> Reading (Motion to Move Bylaw Amendment 17-788 – 2/3 majority Roll Call vote (6))*
11. *Zoning Bylaw Amendment 17-792: Use Regulations for Brewery, Distillery, or Winery with a Tasting Room – 2<sup>nd</sup> Reading (Motion to Move Bylaw Amendment 17-792 – 2/3 majority Roll Call vote (6))*
12. *Bylaw Amendment 17-793: Amendment to Water System Map – 2<sup>nd</sup> Reading (Motion to Move Bylaw Amendment 17-793 – majority Roll Call vote (5))*
13. *Bylaw Amendment 17-794: A bylaw to Amend the Code of the Town of Franklin by Adding a New Chapter: Chapter 108 Library Board of Directors – 2<sup>nd</sup> Reading (Motion to Move Bylaw Amendment 17-794 – majority Roll Call vote (5))*

**L. TOWN ADMINISTRATOR'S REPORT**

**M. FUTURE AGENDA ITEMS**

**N. COUNCIL COMMENTS**

**O. ADJOURN**

**EXECUTIVE SESSION –  
REAL PROPERTY  
ACQUISITION/VALUE – 6:45 PM**

**FRANKLIN TOWN COUNCIL  
MINUTES OF MEETING  
May 24, 2017**

A meeting of the Town Council was held on Wednesday, May 24, 2017 at the Franklin Municipal Building, 355 East Central Street, Franklin, Massachusetts. Councilors present: Andrew Bissanti, Robert Dellorco, Glenn Jones, Matthew Kelly, Thomas Mercer, Peter Padula, Deborah Pellegrini, Judith Pond Pfeffer, Robert Vallee. Councilors absent: None. Administrative personnel in attendance: Jeffrey Nutting, Town Administrator; Jamie Hellen, Deputy Town Administrator; Mark Cerel, Town Attorney.

**CALL TO ORDER:** ► Chairman Kelly called the meeting to order at 7:00 PM. ► Chairman Kelly, on behalf of the Town Council, thanked the first responders, Franklin Fire Department, Franklin Police Department, and Federal and State First Responding Agencies for their hard work and dedication this past week. In addition, he thanked the townspeople and community members who offered prayers and aided in the search. He stated that this moment of silence will be for the Doherty family; our thoughts and prayers go to the Doherty family for the passing of their son, Michael. There was a moment of silence and the Pledge of Allegiance.

**APPROVAL OF MINUTES:** *None.*

**ANNOUNCEMENTS:** Chairman Kelly announced the meeting is being recorded by *Franklin TV* and available for viewing on Comcast Channel 11 and Verizon Channel 29. This meeting may also be recorded by others.

**PROCLAMATIONS/RECOGNITIONS:** ► *Swearing In - Police Department – Nick Palmieri.* Police Chief Lynch introduced the newest member of the Police Department, Patrol Officer Nicholas Palmieri, and gave a summary of his background, career, and education. He stated that Officer Palmieri is a resident of Franklin. Ms. Teresa Burr, Town Clerk, officiated the swearing in.

**CITIZEN COMMENTS:** *None.*

**APPOINTMENTS:** *None.*

**PRESENTATIONS/DISCUSSIONS:** ► *Veteran's Agent – Dale Kurtz.* Mr. Dale Kurtz, Veteran's Agent, addressed the Town Council about the Municipal Veterans' Fund established last November. To date, \$3,025 has been collected; \$250 has been expended on a veteran in need of car repair. This program has been very successful and much appreciated. In addition, many veterans in town are served with Chapter 115 benefits and VA benefits. He stated he is thankful for the opportunity to serve the town. The Veteran's Memorial Day breakfast honoring Korean War veterans will be held on Friday at 9:00 AM at the Senior Center where he will present six Ambassador of Peace medals to six Korean War veterans. The Memorial Day Parade will be on Monday, with kickoff at 10:30 AM.

**LICENSE TRANSACTIONS:** ► *Sreefarminghamma Inc.: New All Alcoholic Beverages Restaurant License.* Ms. Pfeffer read the license transaction. ► **MOTION to Approve** the request by Sreefarminghamma d/b/a Dharani Grill for a new all alcoholic beverages restaurant license and approve the Manager, Bhaskar Rednam; license to be held until all Departments have signed off on the application by **Pfeffer. SECOND by Mercer. Discussion.** ► Mr. Craig Ciechanowski, attorney representing the applicant, along with Mr. Bhaskar Rednam, manager under the license, addressed the Town Council. Mr. Ciechanowski stated the Dharani Grill is now open on East Central Street, the former location of Artistry Kitchen. The restaurant will be open to the public in the upstairs portion. He provided a summary of the previous work and experience of the applicant. ► Mr. Padula noted that it was indicated on the application that the Manager will be on the premises approximately 30 hours per week; he asked what

happens during the times he is not on the premises. ► Mr. Rednam stated he hired a chief executive chef who would be representing him in his absence. He stated they would be using the downstairs/basement level as a testing kitchen; it would not be open to the public. ► Mr. Bissanti and Mr. Jones applauded the applicant for bringing a new face to Main Street and welcomed him to Franklin. ► Mr. Nutting stated that missing from the application is that they plan to use the outside patio; so, they do need a floor plan, by law, before the license is issued. ► Mr. Ciechanowski stated that would be given to the Town Administrator. ► Mr. Cerel stated it is a requirement of the ABCC and license cannot be processed until it is received. ► **Chairman Kelly stated the approval is conditioned on the outside patio and seating diagram being received.** ► **VOTE: Yes-9, No-0, Absent-0.**

**HEARINGS:** ► ***FY 2018 Budget Hearing.*** ► **MOTION to Open** the FY 2018 Budget Hearing by **Mercer. SECOND** by **Dellorco. No Discussion.** ► **VOTE: Yes-9, No-0, Absent-0.** ► Mr. Nutting provided a brief overview of the budget. He thanked all the people involved in getting the document together with special thanks to Susan, Jim, and Stephanie as it is their last budget. The FY 2018 proposed budget is balanced, but the schools will use about \$2.8 million of funds that will not be available next year which will put stress on the FY 2019 budget. Discussions will have to start early next year to figure out a game plan to address the issue. As Franklin continues to grow, will have to increase staff to maintain services, including funds for public safety people, schools, and DPW. He noted that even with the added two positions, the DPW is still down from the turn of the century. They could use some snow and roads money, and funds will be needed to fund stormwater.

► Ms. Pfeffer read each ***Operating Budget Town of Franklin FY 2018*** Line Item and Dollar Amount as listed under ***FY 2018 Town Council to Vote*** column.

► Mr. Mercer requested a Hold on Line Item 152: Human Resources – Salaries. ■ He asked if the reduction in salary was due to reducing staff. ■ Mr. Nutting stated Stephanie Lutz is retiring. Her replacement has been chosen and is working for less funds and adding a part-time clerk to fill in.

► Mr. Mercer requested a Hold on Line Item 155: Information Technology - Expenses. ■ He asked why there was a 25 percent increase. ■ Mr. Nutting stated the \$40,000 increase is for all hardware and licensing fees. Part of that is the new software, e-permitting, and the Town Clerk's software. ■ Mr. Hellen stated the Town Council had voted for Gmail for the staff. ■ Mr. Jones asked if there were any salaries for this. ■ Mr. Nutting stated the schools pay for all technology salaries and we pay for all facilities.

► Mr. Dellorco requested a Hold on Line Item 192: Public Property & Buildings - Expenses. ■ Mr. Mercer stated it has stayed the same for the last three years. ■ Mr. Nutting stated it went up \$150,000. ■ Mr. Michael D'Angelo, Director of Public Facilities, stated the increases were in a few categories; water and sewer brought it up about \$52,000. Had overspent water budget in the fall, mainly watering town fields. The other item is electricity for about \$60,000. There are also some smaller increases.

► Chairman Kelly requested a Hold on Line Item 210: Police – Expenses. ■ He asked if Police Chief Lynch had everything he needed. ■ Police Chief Lynch stated, that as Mr. Nutting had stated, as the Town continues to grow he is still four officers short of where the department was in 2000, and with anticipated 850 new dwelling units, he needs more police officers. Regarding equipment, he stated they are making due; if they put several people on at the same time, he may need to up the requests for equipment. He is looking for four or five more officers. ■ Mr. Nutting stated that FY 2019 needs a game plan due to increased demands and housing coming up; more revenue is needed. ■ Mr. Padula stated the Town Council is aware that more bodies are needed. He stated the Town is lucky they have such a talented force. We need to get back to where we were; now have 34,000 people. ■ Ms. Pellegrini asked why Chief Lynch did not put in for any new officers this year. ■ Chief Lynch stated he did; he is looking for four

over the next five years. He would put the officers on patrol. He realizes the cost financially for the Town. He did get the overtime necessary to fill the shifts.

► Chairman Kelly requested a Hold on Line Item 220: Fire – Expenses. ■ He asked about ambulances. ■ Fire Chief McCarraher stated the ambulance rate is up about 15 percent this year. Next week he will beat the busiest call volume for the history of the department. Multiple simultaneous calls continue to grow; they are busy. Two to three times per day he is out of resources for two to three hours at a time. In addition to another ambulance, he needs another layer of supervision. He stated his people are outstanding. It is the complexity of the world; who would ever think there would be a meth lab in Franklin. Stretching people thin. ■ Mr. Mercer asked if headway was being made in privatizing any assisted living communities. ■ Chief McCarraher stated some are down, some are the same, and some need to be dealt with. ■ Mr. Vallee asked where they were with central dispatching. ■ Mr. Nutting stated he signed the contract today for the building. The building will be constructed in Norfolk; it will take about 14 months. ■ Chief McCarraher stated there is an agreement with the four communities; they have gone out to bid for a contractor. It is moving along. They have an executive director, Gary Primo. He noted that when 911 is called on a cell phone, the State Police is received. Once regional dispatch is open, it should go to the regional dispatch. ■ Mr. Dellorco asked if any engines need to be replaced. ■ Chief McCarraher stated he had an engine funded this capital cycle. The next engine is scheduled for five years for replacement. ■ Mr. Nutting stated it is EMS appreciation week; he thanked Chief McCarraher and his entire staff.

► Mr. Padula requested a Hold on Line Item 225: Regional Dispatch - Expenses. ■ Mr. Padula asked what is the extra \$50,000 for. ■ Mr. Nutting stated it was for startup costs for training; have to pre-train people prior to opening the regional dispatch. Franklin is about 47 percent of the volume; the cost is a proration based on the agreement. ■ Mr. Jones asked about the staffing plan when regional dispatch is operational. ■ Mr. Nutting stated the staffing plan would be for the next budget cycle as regional dispatch is not yet operational. ■ Chief McCarraher stated they are working on it.

► Mr. Mercer requested a Hold on Line Item 300: Town Schools. ■ Ms. Maureen Sabolinski, Superintendent of Schools, introduced Ms. Sara Ahern who would be taking her place. ■ Mr. Mercer stated that the Town Council does not have control of the School Committee or school budget line items. The Town Council votes the bottom line and it is up to the School Committee to work within the budget. He asked for an overview of some of the issues the schools are dealing with and will continue to deal with. He asked about the money being used from the Reserve Funds to provide services. ■ Ms. Sabolinski stated they are using about \$2.8 million in funds set aside in revolving funds. She stated there is an extensive budget presentation on the website. This budget represents just keeping the same level staff. There is no fat in the budget; no additional positions. Keeping same staff as in classrooms and schools today. ■ Ms. Miriam Goodman, Finance Director, stated they are using \$6.3 million from revolving accounts where they collect fees to offset this budget. Of that, \$2.8 million is non-recurring. ■ Mr. Mercer asked for a summary of special education concerns they deal with. ■ Ms. Sabolinski stated it is a large driver of the budget. Currently, special education enrollment is about 15 percent which is lower than the state and national average. It is not about the numbers; it is about the intensity of the needs students are coming to school with as young as three and four years old. More extensive disabilities require more expensive services. Currently, have 79 students that cannot be educated in Franklin Public Schools. They want to keep students with disabilities in Franklin schools, but there are some students for whom they are not able to provide educational services. They are spending about \$5 million this year on those 79 students; next year it will be \$6.8 million. She stated they get some reimbursement from the state; that is funded year-to-year. They also get about \$1 million from a grant funding. She discussed reductions in some funding based on the state budget. Regarding enrollment, she stated for the high school it continues to grow. Right now, the high school is at about 1,800; the high school was built for 1,675. They had declining enrollment in the elementary school; middle school is beginning to grow. Watching on the

horizon the building developments near Garelick Farms; will have to assess the impact. They have done data collection on some of the other apartment complexes. She stated that in many of the apartments 34 to 48 percent of the students living there get free or reduced lunch. ■Ms. Pfeffer asked how they got \$6.3 million in a revolving account in the first place. ■Ms. Goodman stated they collect revenue from fees, such as transportation fees, on an annual basis and if there is not a need to use that revenue in that year, then they will not use it. ■Ms. Sabolinski stated that with the School Choice Revolving Fund the money and funds were kept as a rainy-day fund. ■Mr. Padula asked about the \$6.8 million to educate 79 students. ■Ms. Sabolinski stated her teams make the best decisions for students; the tuition rates are set by the state. Special education transportation is also very costly. ■Mr. Jones asked about possible needs for redistricting due to new housing in town. ■Ms. Sabolinski stated that it is best to wait to see where the enrollment trends are and where students are living; redistricting is complex and politically challenging. ■Mr. Bissanti asked for clarification on the declining enrollment in the elementary school. ■Ms. Sabolinski stated there has been a declining birth rate. Elementary enrollment is down about 750. ■Mr. Nutting stated they are receiving less state aid than in 2010.

► Chairman Kelly requested a Hold on Line Item 390: Regional School. ■Mr. Jones stated he would be recusing himself from voting/abstaining from voting on Line Item 390 for the purposes that he is currently employed at Regional School and will be refraining from any discussion on that line item.

► Chairman Kelly requested a Hold on Line Item 610: Library – Salaries. ■He said with the opening of the new library, he noticed salaries went up. Will she be able to staff the library and stay accredited? ■Mr. Nutting stated they are still not accredited. He stated there are over 300 libraries in the Commonwealth and 31 needed a waiver this year; Franklin was one of them. There is a goal to staff it up. He noted the library will not reopen until October, so staff is not needed for the full year. He thinks this is a positive budget for the library. ■Ms. Felicia Oti, Library Director, stated she had 11 staff members and planning to add three part-time staff.

► Chairman Kelly, Mr. Mercer, and Mr. Dellorco requested a Hold on Line Item 610: Library – Expenses. ■Mr. Mercer stated that with 10 percent increase in expenses, are there any expenses that could have been incorporated into the library project. ■Mr. Nutting stated the biggest increase is in materials, such as books, DVDs, CDs, and all things that go in and out of the library. The other increase is in contractual services with the Minuteman; it goes up every year. They are all operational costs. ■Ms. Pfeffer stated the capital requests for the library this year were not part of the Town's capital budget; they are part of the budget for the library new construction.

► Mr. Mercer requested a Hold on Line Item 630: Recreation – Expenses. ■He asked that with a 10 percent increase in expenses, are not most of the Recreation programs funded through fees? ■Mr. Nutting stated 100 percent are self-funded. More programs, more expenses, more revenue. So, going up 10 percent, but will collect all that through more participation.

► Mr. Nutting asked if any Town Council members were going to have any questions tomorrow as many of the people present at tonight's meeting would not be around tomorrow. ■Town Council members indicated they were all set. ► **MOTION to Close the FY 2018 Budget Hearing by Jones. SECOND by Dellorco. No Discussion. ► VOTE: Yes-9, No-0, Absent-0.**

*Chairman Kelly declared a three-minute recess.*

**SUBCOMMITTEE REPORTS: None.**

## LEGISLATION FOR ACTION:

1. **Resolution 17-32: Salary Schedule, Full-Time Elected Official (Motion to Move Resolution 17-32 – Majority Vote (5)).** Ms. Pfeffer read the resolution. ► **MOTION to Move** Resolution 17-32: Salary Schedule, Full-Time Elected Official, Town Clerk to \$81,000 by **Mercer. SECOND** by **Dellorco. Discussion:** ► Mr. Nutting stated that when the new Town Clerk was elected this was the plan to bring her back to the prior clerk’s salary once she was certified over three years. This is the second year. ► Ms. Pellegrini asked if this should wait for the second budget hearing to be voted on. ► Mr. Nutting stated this will vote the money into the budget. ► **VOTE: Yes-9, No-0, Absent-0.**
2. **Resolution 17-34: Request for Special Legislation Re: Authorization for Town to Establish a Local Agricultural Commission with Limited Authority (Motion to Move Resolution 17-34 – Majority Vote (5)).** Ms. Pfeffer read the resolution. ► **MOTION to Move** Resolution 17-34: Request for Special Legislation Re: Authorization for Town to Establish a Local Agricultural Commission with Limited Authority by **Mercer. SECOND** by **Dellorco. Discussion:** ► Mr. Hellen stated the proposed commission comes from citizen request. Hopefully, the charge in exhibit one speaks for itself; it is to help educate the community as well as provide support for farmers and farm interests. ► Mr. Jones stated he fully supports this. ► Mr. Bissanti thanked Mr. Nutting and Mr. Hellen for this. ► **VOTE: Yes-9, No-0, Absent-0.**
3. **Resolution 17-36: Upgrading Street Lighting System (Motion to Move Resolution 17-36).** Ms. Pfeffer read the resolution. ► **MOTION to Move** Resolution 17-36: Upgrading Street Lighting System to LED Lighting by **Mercer. SECOND** by **Dellorco. Discussion:** ► Mr. Nutting stated as they move to have every building in Franklin have LED lights in the next year, the next step is the street lights. He stated that Mr. Hellen has done much research to develop a plan to do this with very short payback both in savings on electric costs of about \$70,000 per year and a couple of grants that we will be eligible for. Game plan is to get this done over the next year. It is a great opportunity to have long-term savings. ► Mr. Hellen stated the governor put a grant program out which gives a 30 percent reduction in all labor and material costs. In addition, with all LED street lighting, National Grid gives about \$100,000 payback as well. The life of a LED street light is 15 years. ► Mr. Jones stated he is in favor of this project. In the long run, it will save money. ► Mr. Bissanti questioned the savings that Mr. Hellen mentioned. ► Mr. Hellen reviewed the payback plan. ► Mr. Padula asked what is the replacement cost to change the street lights the town has currently compared to having to change a new one. ► Mr. Hellen described the current maintenance contract to change the lights. He thinks the costs would be comparable. ► Mr. Nutting stated that about 20 percent of the lights are replaced every year. ► Chairman Kelly confirmed that the Planning Board is aware that all new subdivisions will need to be done with LED lighting. ► **ROLL CALL VOTE:** Bissanti-YES; Dellorco-YES; Jones-YES; Kelly-YES; Mercer-YES; Padula-YES; Pellegrini-YES; Pfeffer-YES; Vallee-YES. ► **VOTE: Yes-9, No-0, Absent-0.**
4. **Resolution 17-37: Appropriation: Town Administration – Water BAN Interest (Motion to Move Resolution 17-37 – Majority Vote (5)).** Ms. Pfeffer read the resolution. ► **MOTION to Move** Resolution 17-37: Appropriation: Town Administration – Water BAN Interest for \$40,000 by **Mercer. SECOND** by **Padula. Discussion:** ► Mr. Nutting stated the money was borrowed after last year’s budget. So, the first interest payment is due and need to transfer the funds. It is in next year’s budget already. ► **VOTE: Yes-9, No-0, Absent-0.**
5. **Bylaw Amendment 17-793: Amendment to Water System Map – 1<sup>st</sup> Reading (Motion to Move Bylaw Amendment 17-793 to a 2<sup>nd</sup> Reading – Majority Vote – (5)).** Ms. Pfeffer read the bylaw amendment. ► **MOTION to Move** Bylaw Amendment 17-793: Amendment to Water System Map to a 2<sup>nd</sup> Reading by **Mercer. SECOND** by **Dellorco. Discussion:** ► Mr. Nutting stated this is an



approved subdivision for four lots. The water line already goes down the street; this just pops into the subdivision. ► Mr. Vallee confirmed this was Mr. Nutting's recommendation. ► **VOTE: Yes-9, No-0, Absent-0.**

► Mr. Nutting stated, in response to a Town Council member's question, there are a few resolutions out of sequence as additional information was being obtained; they will be on the next agenda.

**TOWN ADMINISTRATOR'S REPORT:** *None.*

**FUTURE AGENDA ITEMS:** ► Ms. Pfeffer stated she thought a person from the SAFE initiative was supposed to come before the Town Council. ► Mr. Nutting stated the person had a family issue and will be back before the end of the fiscal year.

**COUNCIL COMMENTS:** ► Town Council members expressed condolences to the Doherty family. They also gave thanks to all those that provided help and support.

**EXECUTIVE SESSION:** *None.*

**ADJOURN: MOTION to Adjourn by Mercer. SECOND by Dellorco. No Discussion. ► VOTE: Yes-9, No-0, Absent-0. Meeting adjourned at 8:43 PM.**

Respectfully submitted,

Judith Lizardi  
Recording Secretary

**FRANKLIN TOWN COUNCIL  
MINUTES OF MEETING  
May 25, 2017**

A meeting of the Town Council was held on Thursday, May 25, 2017 at the Franklin Municipal Building, 355 East Central Street, Franklin, Massachusetts. Councilors present: Andrew Bissanti, Robert Dellorco, Glenn Jones, Matthew Kelly, Thomas Mercer, Peter Padula, Deborah Pellegrini, Judith Pond Pfeffer. Councilors absent: Robert Vallee. Administrative personnel in attendance: Jeffrey Nutting, Town Administrator; Jamie Hellen, Deputy Town Administrator.

**CALL TO ORDER:** ► Chairman Kelly called the meeting to order at 7:00 PM with a moment of silence and the Pledge of Allegiance.

**APPROVAL OF MINUTES:** *None.*

**ANNOUNCEMENTS:** Chairman Kelly announced the meeting is being recorded by *Franklin TV* and available for viewing on Comcast Channel 11 and Verizon Channel 29. This meeting may also be recorded by others.

**PROCLAMATIONS/RECOGNITIONS:** *None.*

**CITIZEN COMMENTS:** *None.*

**APPOINTMENTS:** *None.*

**LICENSE TRANSACTIONS:** *None.*

**PRESENTATIONS/DISCUSSIONS:** *None.*

**SUBCOMMITTEE REPORTS:** ► Mr. Mercer stated the Senior Center is finishing up with just a lot of paperwork left and a few minor issues. Everything is done except for the movable partition on the second floor. He stated that we will probably do it ourselves after the project. ► Mr. Mercer stated the final piece of paperwork for the High School has gone through and has been accepted. The audit should begin sometime in the next two to three weeks. That process will take two to three months. That will bring it to complete closure. ► Mr. Padula asked about the upkeep for the turf fields. ► Mr. Nutting stated they must be raked, cleaned up, and pellets redistributed once per year; it is usually contracted out. ► Ms. Pfeffer stated the Library is coming along. A company inspected the roof as water was coming in on the side of the original structure. The gutter had bent and the mortar had been knocked out. It is in the process of being fixed. A new front walk will be installed. A company has been contacted to make an unbreakable display cabinet for the Benjamin Franklin books. Lights are being installed. The refurbishing of the bronze doors is starting. ► Mr. Bissanti, EDC, asked if the Planning Board is endorsing back to the Town Council the brewery, distillery with tasting room. ► Mr. Hellen stated Yes; the Planning Board made one alteration regarding the percentage of the square footage that could be used for the tasting room. It will be on the next Town Council agenda. ► Mr. Dellorco asked about buying the bricks for the library. ► Ms. Pfeffer stated information can be found on the website and at the Town Hall, the Library, the Senior Center and other places. ► Mr. Jones, Communications, stated things are going well; they are on track with Google. Franklin TV is putting in a backup generator this week. Franklin Radio is at 102.9. ► Mr. Hellen stated the town is transitioning from the old email to Gmail. It is going well. Councilors will be notified when to come in and get their public email.

**TOWN ADMINISTRATOR'S REPORT:** *None.*

**FUTURE AGENDA ITEMS:** ► Ms. Pfeffer asked about the Regional School projections for 2021 and 2022 as listed on the proposed forecast. ► Mr. Nutting stated it must be an error/typo.

**COUNCIL COMMENTS:** ► *None.*

**HEARINGS:** ► *FY 2018 Budget Hearing: 2<sup>nd</sup> Hearing.* ► **MOTION to Open** the FY 2018 Budget Hearing: 2<sup>nd</sup> Hearing by **Jones. SECOND** by **Mercer. No Discussion.** ► **VOTE: Yes-8, No-0, Absent-1.** ► Chairman Kelly asked if there were any Holds on any items on the FY 2018 Operating Budget for the Town of Franklin. ► Town Council members all said No. ► **MOTION to Close** the FY 2018 Budget Hearing by **Mercer. SECOND** by **Dellorco. No Discussion.** ► **VOTE: Yes-8, No-0, Absent-1.**

**LEGISLATION FOR ACTION:**

- 1. Resolution 17-33: Adoption of FY 2018 Budget (Motion to Move Resolution 17-33 – Majority Vote (5)).** Ms. Pfeffer read the resolution. ► **MOTION to Move** Resolution 17-33: Adoption of FY 2018 Budget by **Mercer. SECOND** by **Dellorco. Discussion:** ► Mr. Nutting stated he had no comments. ► Chairman Kelly stated that Mr. Jones is unable to vote on Item 390: Regional School. He asked the Town Council how they would like to handle that. ► Mr. Mercer proposed to amend the motion. ► **MOTION to Amend** the Motion to **Move** FY 2018 Budget Item 390: Regional School for \$2,373,202 by **Mercer. SECOND** by **Dellorco. No Discussion.** ► **VOTE: Yes-7, No-0, Absent-1, Abstain-1** (Mr. Jones abstained). ► **Vote on the amended motion:** FY 2018 Town of Franklin Budget Item 390: Regional School for \$2,373,202 as amended. ► **VOTE: Yes-7, No-0, Absent-1, Abstain-1** (Mr. Jones abstained). ► **MOTION to Move** the balance of the FY 2018 Town of Franklin Budget which is \$118,092,608 by **Mercer. SECOND** by **Dellorco. No Discussion.** ► **VOTE: Yes-8, No-0, Absent-1.** ► Chairman Kelly confirmed the Town Council just took two votes on two separate budget pieces and when added together it equals the total budget.

**EXECUTIVE SESSION:** *None.*

**ADJOURN:** **MOTION to Adjourn** by **Mercer. SECOND** by **Dellorco. No Discussion.** ► **VOTE: Yes-8, No-0, Absent-1. Meeting adjourned at 7:21 PM.**

Respectfully submitted,

Judith Lizardi  
Recording Secretary

**FRANKLIN TOWN COUNCIL  
MINUTES OF MEETING  
June 7, 2017**

A meeting of the Town Council was held on Wednesday, June 7, 2017 at the Franklin Municipal Building, 355 East Central Street, Franklin, Massachusetts. Councilors present: Andrew Bissanti, Robert Dellorco, Glenn Jones, Matthew Kelly, Thomas Mercer, Peter Padula, Deborah Pellegri, Judith Pond Pfeffer, Robert Vallee. Councilors absent: None. Administrative personnel in attendance: Jeffrey Nutting, Town Administrator; Jamie Hellen, Deputy Town Administrator; Mark Cerel, Town Attorney.

**CALL TO ORDER:** ► Chairman Kelly called the meeting to order at 7:00 PM with a moment of silence and the Pledge of Allegiance.

**APPROVAL OF MINUTES: May 10, 2017.** ► **MOTION** to **Approve** the May 10, 2017 meeting minutes by **Mercer. SECOND** by **Dellorco. No Discussion.** ► **VOTE: Yes-9, No-0, Absent-0.**

**ANNOUNCEMENTS:** Chairman Kelly announced the meeting is being recorded by *Franklin TV* and available for viewing on Comcast Channel 11 and Verizon Channel 29. This meeting may also be recorded by others.

**PROCLAMATIONS/RECOGNITIONS:** ► *Electric Youth.* ► Ms. Raye Lynn Mercer, Director of the Franklin School for the Performing Arts, introduced Electric Youth and stated they are preparing for their annual concert tour in Europe performing 10 concerts over 2 ½ weeks. She provided a review of the tour schedule. Electric Youth sang for the Town Council. ► *Swearing in of Firefighters.* None.

**CITIZEN COMMENTS:** ► Ms. Bridget Stahl, 414 Gatehouse Lane, introduced Ms. Judy Dirosario and Ms. Susan Burns and stated she enjoys volunteering and making a positive impact in the community. They are here to propose the Franklin Community Pride committee. ► Ms. Dirosario, 8 Essex Road, stated she has done much volunteering in the past. Their vision for this committee is to form a group with the purpose to show support to the first responders for making Franklin a safe community. She provided their contact information to Chairman Kelly. ► Ms. Burns, 55 Skyline Drive, described her past work experience as it related to the proposed committee. They would like meet with the Town Council to further discuss their committee proposal.

**APPOINTMENTS:** ► *FY 18 Annual Appointments – Boards and Committees.* ► Ms. Pfeffer read the Appointed Committee Members June 2017 list. ► **MOTION** to **Ratify** the Annual appointments to the boards and commissions as presented by **Pfeffer. SECOND** by **Mercer. Discussion:** ► Mr. Nutting stated there are vacancies listed on the website if people are interested. He would like to get more volunteers involved especially for the Charles River Pollution Control. He gave appreciation to all volunteers currently on committees and boards giving their time to serve the community. ► **VOTE: Yes-9, No-0, Absent-0.**

**HEARINGS:** ► *Zoning Bylaw Amendment 17-788: Definitions, Brewery, Distillery, or Winery with a Tasting Room.* ► *Zoning Bylaw Amendment 17-792: Use Regulations for Brewery, Distillery, or Winery with a Tasting Room.* ► **MOTION** to **Open** the Zoning Bylaw Amendment 17-788: Definitions, Brewery, Distillery, or Winery with a Tasting Room public hearing, and the Zoning Bylaw Amendment 17-792: Use Regulations for Brewery, Distillery, or Winery with a Tasting Room public hearing by **Mercer. SECOND** by **Dellorco. No Discussion.** ► **VOTE: Yes-9, No-0, Absent-0.** ► Mr. Hellen stated this is an Economic Development Committee initiative to create a zoning district that would allow craft breweries, craft wineries and craft spirits with tasting rooms. These facilities will be allowed in all Commercial districts and will be prohibited in all Residential districts. He stated the original proposal indicated 33 percent of a facility's square footage could be used for a tasting room. During the Planning

Board process, it was suggested to reduce that to 25 percent of the square footage. He stated the administration supports this. He discussed the craft brewery boom throughout the country. He stated the EDC voted and recommended this to move forward. He hopes the Town Council will support this initiative. ► Mr. Bissanti stated he sees this as an excellent stepping stone for the very nature of the business. He sees this as a boon for getting some empty spaces in town occupied, rented and leased. ► **MOTION to Close the public hearings by Mercer. SECOND by Jones. No Discussion. ► VOTE: Yes-9, No-0, Absent-0.**

**LICENSE TRANSACTIONS:** ► *Franklin Lodge of Elks – Change of Manager.* Ms. Pfeffer read the license transaction. ► **MOTION to Approve the request by the Franklin Lodge #2136 B.P.O.E., Inc. for the Change of Manager to Joan Kimberly Casey by Pfeffer. SECOND by Mercer. Discussion:** ► Mr. Nutting stated Ms. Casey was present if there were any questions. ► Mr. Padula complimented the quantity of information on the application. ► **VOTE: Yes-9, No-0, Absent-0.**

**PRESENTATIONS/DISCUSSIONS:** ► *SAFE Coalition.* ► Chairman Kelly stated they could not make it; therefore, there will be no presentation tonight.

**SUBCOMMITTEE REPORTS:** *None.*

#### **LEGISLATION FOR ACTION:**

- 1. Resolution 17-31: Transfer of Tax Title Possession Parcels to Different Municipal Purposes (Motion to Move Resolution 17-31 – 2/3 majority (6) vote).** Ms. Pfeffer read the resolution. ► **MOTION to Move Resolution 17-31: Transfer of Tax Title Possession Parcels to Different Municipal Purposes by Mercer. SECOND by Padula. Discussion:** ► Mr. Nutting stated this process is undertaken when there is an accumulation of parcels of land through tax title. They have reviewed all the current parcels and have suggested, with one exception, they all be turned over for municipal purposes. The exception is the one next to Tanglewood which is an open space subdivision; so, that land needs to be reserved for open space as the two abutting properties next to it. This is a simple transfer of land. ► Mr. Padula asked what is “general municipal purposes.” ► Mr. Nutting stated whatever the Town Council would like to do with it; it is not constrained. ► Ms. Pellegrini asked if the abutters have been notified and were they interested in purchasing it. ► Mr. Nutting stated No because it is already the town’s land. If the town was going to sell it, first it would have to be owned. This is the first step in the process. ► Ms. Pfeffer stated the Housing Trust has been approached in the past by a local contractor who is in the process of developing condominiums on West Central Street. He has offered to the Housing Trust a ranch property. However, there is no piece of land that the town owns that the house could be moved to. She asked if any of these properties would be appropriate. ► Mr. Nutting stated No and he reviewed each. ► Mr. Bissanti followed up and further asked about the properties and if they could be viable for an affordable housing. ► Mr. Nutting stated it is something that could be looked into. ► **VOTE: Yes-9, No-0, Absent-0.**
- 2. Resolution 17-38: Acceptance of Gift – Council on Aging (Motion to Move Resolution 17-38 – majority (5) vote).** Ms. Pfeffer read the resolution. ► **MOTION to Move Resolution 17-38: Acceptance of Gift – Council on Aging for \$700 from Norwood Hospital/Steward Health Care System, LLC by Mercer. SECOND by Dellorco. Discussion:** ► Mr. Nutting stated a thank you will be sent. ► **VOTE: Yes-9, No-0, Absent-0.**
- 3. Zoning Bylaw Amendment 17-788: Definitions, Brewery, Distillery or Winery with a Tasting Room – 1<sup>st</sup> Reading (Motion to Move Zoning Bylaw Amendment 17-788 to a 2<sup>nd</sup> Reading – majority (5) vote).** Ms. Pfeffer read the zoning bylaw amendment. ► **MOTION to Move Zoning Bylaw Amendment 17-788: Definitions, Brewery, Distillery or Winery with a Tasting Room to a 2<sup>nd</sup>**

Reading by **Mercer**. **SECOND** by **Padula**. **Discussion:** ► Mr. Nutting stated no comment. ► Mr. Padula asked who drafted the language as it was a good job. ► Mr. Nutting stated Mr. Hellen and Mr. Cerel did. ► **VOTE: Yes-9, No-0, Absent-0.**

4. **Zoning Bylaw Amendment 17-792: Use Regulations for Brewery, Distillery or Winery with a Tasting Room – 1<sup>st</sup> Reading (Motion to Move Zoning Bylaw Amendment 17-792 to a 2<sup>nd</sup> Reading – majority (5) vote).** Ms. Pfeffer read the zoning bylaw amendment. ► **MOTION to Move** Zoning Bylaw Amendment 17-792: Use Regulations for Brewery, Distillery or Winery with a Tasting Room to a 2<sup>nd</sup> Reading by **Mercer**. **SECOND** by **Dellorco**. **Discussion:** ► Mr. Nutting stated no comment. ► **VOTE: Yes-9, No-0, Absent-0.**
5. **Bylaw Amendment 17-791: New Chapter 73, Departmental Revolving Funds - 2<sup>nd</sup> Reading (Motion to Move Bylaw Amendment 17-791 – Roll Call - majority (5) vote).** ► **MOTION to Waive** the reading by **Mercer**. **SECOND** by **Dellorco**. **No Discussion.** ► **VOTE: Yes-9, No-0, Absent-0.** ► **MOTION to Move** Bylaw Amendment 17-791: New Chapter 73, Departmental Revolving Funds by **Mercer**. **SECOND** by **Jones**. **Discussion:** ► Mr. Padula asked for explanation regarding Chapter 73-2. A. “Fringe benefits...” ► Mr. Nutting explained that most of these are part-time employees or program people such as working at the park for the summer or some of the programs at the Senior Center. If there was a full-time employee that was paid out of a revolving account, their fringe benefits would have to be paid out of that revolving account as well. ► Mr. Cerel explained that this was required by law. ► Mr. Jones asked if the financial limits are already set. ► Mr. Nutting stated the next resolution covers that and it must be done every year. ► **VOTE: Yes-9, No-0, Absent-0.**
6. **Resolution 17-35: Expenditure Limits for FY 2018 on Departmental Revolving Funds Established by Franklin Town Code Chapter 73, As Provided in G.L. Chapter 44, Section 53E½, As Amended (Motion to Move Resolution 17-35 – majority (5) vote).** Ms. Pfeffer read the resolution. ► **MOTION to Move** Resolution 17-35: Expenditure Limits for FY 2018 on Departmental Revolving Funds Established by Franklin Town Code Chapter 73, As Provided in G.L. Chapter 44, Section 53E½, As Amended by **Mercer**. **SECOND** by **Padula**. **Discussion:** ► Mr. Nutting stated this is an annual vote of the Town Council to set the limits on the expenditures of the revolving accounts. ► Mr. Padula asked how the scope of each was set. ► Mr. Nutting stated it was in the bylaw. ► Ms. Pfeffer asked about the amount of money going into some of the accounts, for instance, the Facilities account is getting \$200,000. ► Mr. Nutting explained that they are not putting money in there; that amount is the most that can be spent from the account. He stated money could be used from the account only for the purpose of which it is authorized. Money cannot be taken out of one account and spent on a different department. ► **VOTE: Yes-9, No-0, Absent-0.**
7. **Bylaw Amendment 17-794: A Bylaw to Amend the Code of the Town of Franklin by Adding a New Chapter: Chapter 108 Library Board of Directors – 1<sup>st</sup> Reading (Motion to Move Bylaw Amendment 17-794 to a 2<sup>nd</sup> Reading – majority (5) vote).** Ms. Pfeffer read the bylaw amendment. ► **MOTION to Move** Bylaw Amendment 17-794: A Bylaw to amend the Code of the Town of Franklin by Adding a New Chapter: Chapter 108 Library Board of Directors to a 2<sup>nd</sup> Reading by **Mercer**. **SECOND** by **Jones**. **Discussion:** ► Mr. Nutting stated that in 1990 the Town Council passed a resolution related to library trustees. In reviewing it, the resolution was out of date such as incorrect number of people, and duties and responsibilities that had been superseded. So, they went updated it and thought to make it a bylaw such as was done with the Council on Aging and a few other boards. He stated that this brings up to date what goes on currently. ► Chairman Kelly asked why elected officials cannot serve on this board. ► Mr. Nutting stated it was thought that a person should be solely focused on the library. ► Chairman Kelly stated he felt by not having a Town Council member on the board, it is not in keeping with the direction of the Master Plan. He would like a change for the second reading so that an elected official could be on the board. ► Mr. Jones

asked if a liaison or a Town Council ex-officio would be plausible for this purpose. ► Mr. Nutting stated the library has been running along without the Town Council or anyone else. ► Chairman Kelly stated the library has also been in turmoil. ► Mr. Nutting stated that there are not a lot of elected officials on any of the other appointed boards. ► Chairman Kelly, Mr. Nutting and Town Council members discussed elected officials being on some boards and committees. ► Chairman Kelly suggested Town Council members email Mr. Nutting to let him know their thoughts. It is not going to pass in its current form; it is going to a second reading. ► **VOTE: Yes-9, No-0, Absent-0.**

**TOWN ADMINISTRATOR'S REPORT:** ► Mr. Nutting reminded everyone about the Strawberry Stroll tomorrow. He mentioned that it was sad that there was not much said about D-Day yesterday. He said the Memorial Day service was great, but he would like to remember veterans more often. He suggested the Town Council chair, himself and public safety folks meet with the people that came in earlier to see how they would like to proceed with their proposed committee.

**FUTURE AGENDA ITEMS:** ► Mr. Bissanti stated he would like to know more from the group about the committee they are proposing. They do have a great concept and it should be given consideration.

**COUNCIL COMMENTS:** ► Mr. Jones congratulated graduates of Franklin High School Class of 2017 and the Tri-County High School Class of 2017. He wished them all the best. ► Mr. Dellorco congratulated the graduation classes. ► Mr. Bissanti stated congratulations to the Class of 2017. He was honored to drive some of the veterans through the Memorial Day Parade. ► Ms. Pfeffer stated it was an honor to drive the two Grand Marshalls of the Memorial Day Parade. She noted there was a show on Channel 2 about the D-Day invasion; the narrator was Mr. Bill Belichick. It was a very good presentation. ► Ms. Pellegrini thanked Joey Carmignani and a second volunteer who have stepped up to take over the Fourth of July celebration. She was on the original committee and served for 25 years; it is a great thing to have this in town. She stated the Pleasant Street playground was wonderful; there were many children and the parking lot was full. On Thursday night, she and Mr. Mercer went to the Rod & Gun Club; the firefighters had put on a dinner for the Jarvis family. It was wonderful. She stated that Mr. Dale Kurtz at the Senior Center put together a great program. She asked why the town did not spray as there are caterpillars everywhere. ► Mr. Nutting stated it was not on anyone's radar to spray. He has not received any complaints on it. ► Mr. Padula stated Ryan Jette picked a wonderful playground for Pleasant Street. He congratulated the graduating class. ► Mr. Mercer stated there is work on the high school gymnasium floor being done. This has been an ongoing issue. The repairs did not work, so the contractor is refinishing the floors. He thanked Ms. Mercer for bringing in Electric Youth. He congratulated the Class of 2017. He thanked Franklin High School for honoring the 50-year graduates at the graduation. He stated it was a great time at the 50-year class reunion. ► Mr. Vallee stated it was embarrassing that a town of 35,000 people cannot provide fireworks for its citizens. ► Chairman Kelly stated they need to have a conversation about a second parking lot at DelCarte. ► Mr. Nutting stated if there is room; the Conservation Commission owns the majority of the land. ► Chairman Kelly thanked the Town Councils present and past for building the new high school that the Class of 2017 graduated in. He stated that we worked very hard to get that building up. It is a beautiful building to have the students graduate from.

**EXECUTIVE SESSION:** *None.*

**ADJOURN: MOTION to Adjourn by Mercer. SECOND by Jones. No Discussion. ► VOTE: Yes-9, No-0, Absent-0. Meeting adjourned at 8:06 PM.**

Respectfully submitted,

Judith Lizardi  
Recording Secretary

Swearing in  
of  
Firefighters:  
James Polito  
Michael Falter





PROCLAMATION –  
DEAN COLLEGE



## APPOINTMENTS

### Franklin Cultural Council

Lillian Gould  
69 Brook Street

The Franklin Cultural Council has recommended the appointment of Lillian Gould to serve as a member of the Franklin Cultural Council with an expiration of June 30, 2018.

**MOTION** to ratify the appointment by the Town Administrator of Lillian Gould to serve as a member of the Franklin Cultural Council.

**DATED:** \_\_\_\_\_, 2017

**VOTED:**

**UNANIMOUS** \_\_\_\_\_

**A True Record Attest:**

**YES** \_\_\_\_\_ **NO** \_\_\_\_\_

**Teresa M. Burr**  
**Town Clerk**

**ABSTAIN** \_\_\_\_\_

**ABSENT** \_\_\_\_\_

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**Judith Pond Pfeffer, Clerk**  
**Franklin Town Council**



## Town of Franklin MA

355 East Central Street

Franklin, MA 02038

Phone: 508-520-4949

### Volunteer Form

*Good Government Starts with You*

Date Submitted: May 26, 2017

Name: Lillian Gould

Home Address:

FRANKLIN, MA 02038

Mailing Address: (

FRANKLIN, MA 02038

Phone Number(s): (

Email Address:

Current Occupation/Employer: Museum of Fine Arts, Boston

Narrative: I am available most evenings Monday through Friday and most weekends.

I am a longtime supporter of the arts and have made a career working in the arts and culture field. I have an MA in Art History from Boston University and have worked at the Museum of Fine Arts, Boston, in a number of capacities since 2007. For the past year I have worked in Development at the Museum as a grant writer, raising funds for a variety of programs and initiatives. In recent months I have become involved in arts advocacy. I coordinated the MFA's participation in the Arts Matter Advocacy Day at the State House earlier this year, and I volunteered to co-present a workshop on grant writing during Franklin's Community Arts Advocacy Day on May 20. I would be honored to share my experience and knowledge with the Franklin Cultural Council.

Board(s) / Committee(s):  Franklin Cultural Council

# LILLIAN GOULD

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60 Brook Street Boston, MA 02108 878 888 1500

## EXPERIENCE

**Development Officer, Foundation and Government Relations** March 2016-Present  
Museum of Fine Arts, Boston

- Cultivates and solicits private foundations and government agencies for support of a variety of Museum activities; contributed to the raising of over \$1.3 million to date in fiscal year 2017.
- Stewards relationships with private foundations and government agencies, including drafting endowment, interim and final reports, and ensuring proper recognition and crediting on the web and all collateral and marketing materials
- Researches new prospects; particular emphasis in seeking funding sources beyond traditional arts and culture supporters
- Serves as Development Liaison for Publications; part of Access Team
- Sensitive handling of confidential material

**Department Coordinator, Contemporary Art & MFA Programs** June 2012-March 2016  
Museum of Fine Arts, Boston

- Oversaw all administrative aspects of the Contemporary Art Department
- Supported department chair in annual budgeting process; tracked expenses and revenue against department budget; ran financial reports as needed; completed quarterly budget forecast
- Collaborated with department chair on planning and execution of five events each calendar year for the department's membership group, The Contemporaries, and the department's twice annual Visiting Committee meetings
- Wrote and distributed the monthly Visiting Committee Newsletter
- Coordinated the acquisition process for the department; corresponded with donors and dealers; generated acquisition paperwork. Oversaw the acquisition of more than 500 objects
- Coordinated the loan process for the department for both special exhibitions and regular and temporary loans;
- Hired, trained, and managed Contemporary Art's interns

**Department Coordinator, Education** September 2010-June 2012  
Museum of Fine Arts, Boston

- Oversaw all administrative aspects of Education
- Served as the department's Human Resources liaison, completing all necessary paperwork for hiring new staff and making changes for existing staff; worked with managers in implementing the staff assimilation guide for new staff
- Managed the department's internship program, one of the largest in the Museum with over 30 interns working in the department over the summer term
- Provided administrative support for the Alford Curator of Education as needed

**Research Associate, Education** September 2007-September 2010  
Museum of Fine Arts, Boston

- Provided support to Curator of Education and Head of Interpretation in the development, evaluation, and design of interactive, visitor-based activities and spaces for the Art of the Americas Wing

## EDUCATION

**MA Art History, Boston University, Boston, MA** 2007  
MA Thesis: *Construction of Identity: The Diamond Right Hand Ring*

**BA Art History, May 2003 Summa Cum Laude, Hollins University, Roanoke, VA** 2003  
Hollins University, Roanoke, VA  
Honors: Hollins Scholar; Dean's List; Omicron Delta Kappa Leadership Society; Margaret Markley Smith Award in Art History  
Hollins Abroad London, Academic Year 2001-02

## SKILLS & ACTIVITIES

Trainer for the Fine Art of Service Program, MFA, Boston; Adult Lecturer for Group Sales, MFA, Boston; Art handling

**Languages:** Reading knowledge of French, familiar with German

**Computers:** Microsoft Office Suite, Mac and PC platforms, Tessitura, The Museum System



## **APPOINTMENTS:**

### **Election Workers**

The Town Clerk has submitted the attached names to be appointed as Election Workers for the upcoming 2017 election.

**MOTION** to ratify the appointment by the Town Administrator of the attached Election Workers as requested by the Town Clerk.

---

**DATED:** \_\_\_\_\_, 2017

**A True Record Attest:**

**Teresa M. Burr**  
Town Clerk

**VOTED:**

**UNANIMOUS** \_\_\_\_\_

**YES** \_\_\_\_\_ **NO** \_\_\_\_\_

**ABSTAIN** \_\_\_\_\_

**ABSENT** \_\_\_\_\_

---

**Judith Pond Pfeffer, Clerk**  
**Franklin Town Council**

**Election Workers to be reappointed  
2017**

Adams, Joyce	Lowd, Diane
Bissanti, Anne M.	Malonson, Jayne
Brown, Robert	Martin, Liz
Brunelli, Peter	McCafferey, Leslie
Burnard, Eileen	McDermott, Lesley
Caribardi, Faye	Minkle, Cornie
Carrachino, Paul	Moore, Susan
Carrachino, Valarie	Morgan, Lynne
Clary, Paul	Oliver, Robert
Clary, Roberta	Olsen, Tom
Cussen, Joan	Pasquantonio, Joanne
D'Alessando, Janice	Pedersen, Joyce
Damico, Lois	Picard, Betty
D'Errico, Mary	Pisani, Joyce
Fiorillo, Francis A	Renkas, Paula
Gelineau, Gloria	Repeta, Charles M Jr.
Gentili, Jean	Rondeau, Barbara
Ghiringhelli, Mona	Santoro, Patricia
Gleichauf, Cynthia	Semerjian, Lucy
Halterman, Janet	Shumway, Amy
Hooper, Sheila	Smith, Joanne
Howe, Steve	Staniscia, Sheila
Hutchinson, Joyce	Tolman, Elaine
Hynes, Judy	Tomaino, Richard
Ipacs, Carol	Tomaino, Theresa
Jewell, Linda	Vozzella, Louise
Kautz, Carol	Woodring, Ann
Kelly, Barbara	Wright, Joanne
Kenney, Sandra	Zatkowski, Deborah
Lane, Margie	



## APPOINTMENTS

### Franklin Advisory Committee

Lawrence Benedetto 213 Chestnut Street  
Paul Cheli 6 Pearly Lane  
Robert Ficco 43 Highland Street  
Bruce Hunchard 496 Summer Street  
Judith Pond Pfeffer 37 Arlington Street  
Robert Valle 480 Maple Street

### Associate Members:

Richard Ciconne 185 Chestnut Street  
Paul Compton 221 Pond Street  
Joseph Halligan 1 Newall Drive  
Diane Jardine 142 Lincoln Street

**MOTION** to ratify the re-appointment by the Town Administrator of the members listed above to serve on the Franklin Advisory Committee from July 1, 2017 to December 31, 2017.

**DATED:** \_\_\_\_\_, 2017

**VOTED:**

**UNANIMOUS** \_\_\_\_\_

**A True Record Attest:**

**YES** \_\_\_\_\_ **NO** \_\_\_\_\_

**Teresa M. Burr**  
**Town Clerk**

**ABSTAIN** \_\_\_\_\_

**ABSENT** \_\_\_\_\_

---

**Judith Pond Pfeffer, Clerk**  
**Franklin Town Council**

# HEARINGS – 7:10 PM

1. FRANKLIN CULTURAL DISTRICT



# Town of Franklin

Town Administrator  
Tel: (508) 520-4949



Fax: (508) 520-4903

355 East Central Street  
Franklin, Massachusetts 02038-1352

## MEMORANDUM

To: Town Council

From: Jamie Hellen

**Re: Cultural District Committee & State Designation**

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We are requesting the Town Council approve two resolutions that will:

1. Establish a town committee of no more than seven members to coordinate the big picture marketing and public relations strategy of the Franklin Downtown Cultural District; and
2. Approve of the town staff forwarding our application to the state for approval.

These resolutions are required by the state.

Now that the downtown infrastructure is complete, the next phase of the downtown revitalization is to help foster a creative economic development atmosphere. Already we have seen new private investment with the Horace Mann plaza and other new small businesses, including Teddy Gallagher's Pub, the Little Shop of Olive Oils, Dharani Grill and more. Additionally, the many cultural events have been seeing increased participation and this district will help to promote and market these events to a wider audience. Finally, with the library renovation and expansion project opening in the Fall, we believe there are additional opportunities to offer new attractions, such as the Benjamin Franklin exhibits, to a wider audience where people can also eat and shop in Franklin. This is the right time to have some additional public relations for the downtown.

Setting up this Cultural District will:

- Help promote and market the Downtown attractions to a wider audience;
- Receive free marketing and promotion from the state;
- Give the town a \$5,000 seed grant for local marketing and public relations activities for downtown Franklin (we spend the money at our discretion);
- Coordinate big picture marketing policy for the district and downtown;
- Help foster additional investment in the arts and culture communities in town.

# **FRANKLIN PLANNING & COMMUNITY DEVELOPMENT**

355 EAST CENTRAL STREET, ROOM 120  
FRANKLIN, MA 02038-1352  
TELEPHONE: 508-520-4907  
FAX: 508-520-4906

## **MEMORANDUM**

**TO: JEFFERY D. NUTTING, TOWN ADMINISTRATOR**  
**FROM: BRYAN W. TABERNER, AICP, DIRECTOR**  
**RE: PROPOSED FRANKLIN CULTURAL DISTRICT AND CULTURAL DISTRICT COMMITTEE**  
**CC: JAMIE HELLEN, DEPUTY TOWN ADMINISTRATOR**  
**DATE: JUNE 21, 2017**

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Over the last three years a variety of organizations and individuals have worked towards creation of a Cultural District in Downtown Franklin. Headed by a small Steering Committee much has been accomplished; this group of hard working arts and culture advocates has: assisted the Department of Planning & Community Development (DPCD) with the Cultural District application process including development of a strong cultural district Partnership; worked hard to support art and culture programming; and even organized the annual Franklin Cultural Festival. Lovers of the arts in Franklin owe them a great deal for their passion and hard work.

The Massachusetts Cultural Council (MCC) has developed guidelines and requirements for communities looking to establish a state-designated cultural district. Most importantly, the Town needed to define and map the proposed District. DPCD worked with the Steering Committee and many other organizations and individuals to identify the boundaries of the proposed Franklin Cultural District. On May 8, 2017 DPCD formally submitted the proposed District map to MCC for review. Attached is a copy of the map submitted.







The next step in establishing a cultural district is to form a strong partnership of art and culture related organizations and stakeholders. This partnership will work with the Town to manage the proposed District. Fortunately over the last few years a strong Partnership has formed in support of creating a state-designated cultural district in the Downtown area. This informal Partnership includes many of Franklin's organizations and businesses, including: Franklin's School Department, Historic Commission, Public Library, Cultural Council, and Senior Center/COA; Franklin TV; Franklin Downtown Partnership; Dean College; Franklin Art Association; Franklin Performing Arts Company; the Circle of Friends Coffeehouse; and Franklin School for the Performing Arts. Now that a Partnership has been formed, the Town is required to develop a formal organizational structure to manage the District and to assure the District will remain a priority in the future. DPCD recommends a "Town" committee is established for these purposes.





Once the Town addresses the remaining requirements an application can be submitted for MCC review; the two Town Council resolutions (see attached) described below address all other requirements needed in order to submit the application:

Resolution 17-44 Creation of Cultural District Committee, if approved by Town Council the resolution will create a formal Town committee responsible for oversight and management of the Franklin Cultural District.

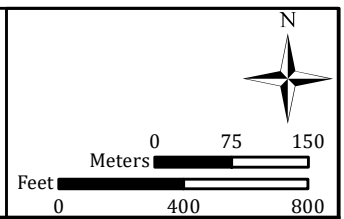
Resolution 17-45: Proposed Franklin Cultural District, formally expresses Franklin's interest in establishing a state-designated cultural district; endorses state-sponsored cultural district goals; endorses submission of a Cultural District application; agrees to foster the development of a cultural district; and appoints the Town Administrator to represent the Town regarding cultural district issues.

# FRANKLIN Cultural District

-  Cultural District
-  Town Common & Dean College Historic Districts
-  Fire Station
-  Police Station
-  Town Hall
-  Public Parking

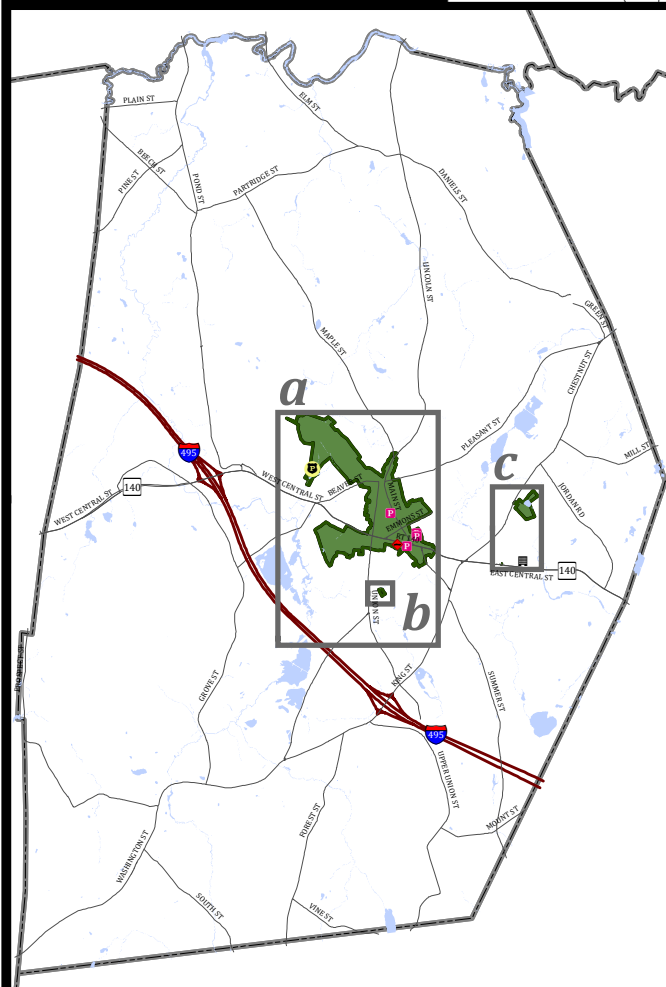
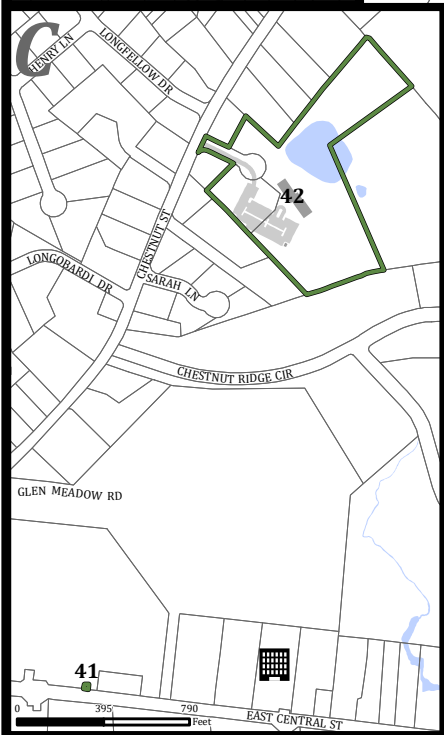
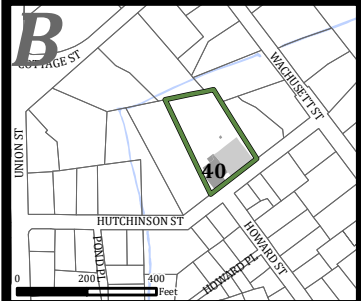
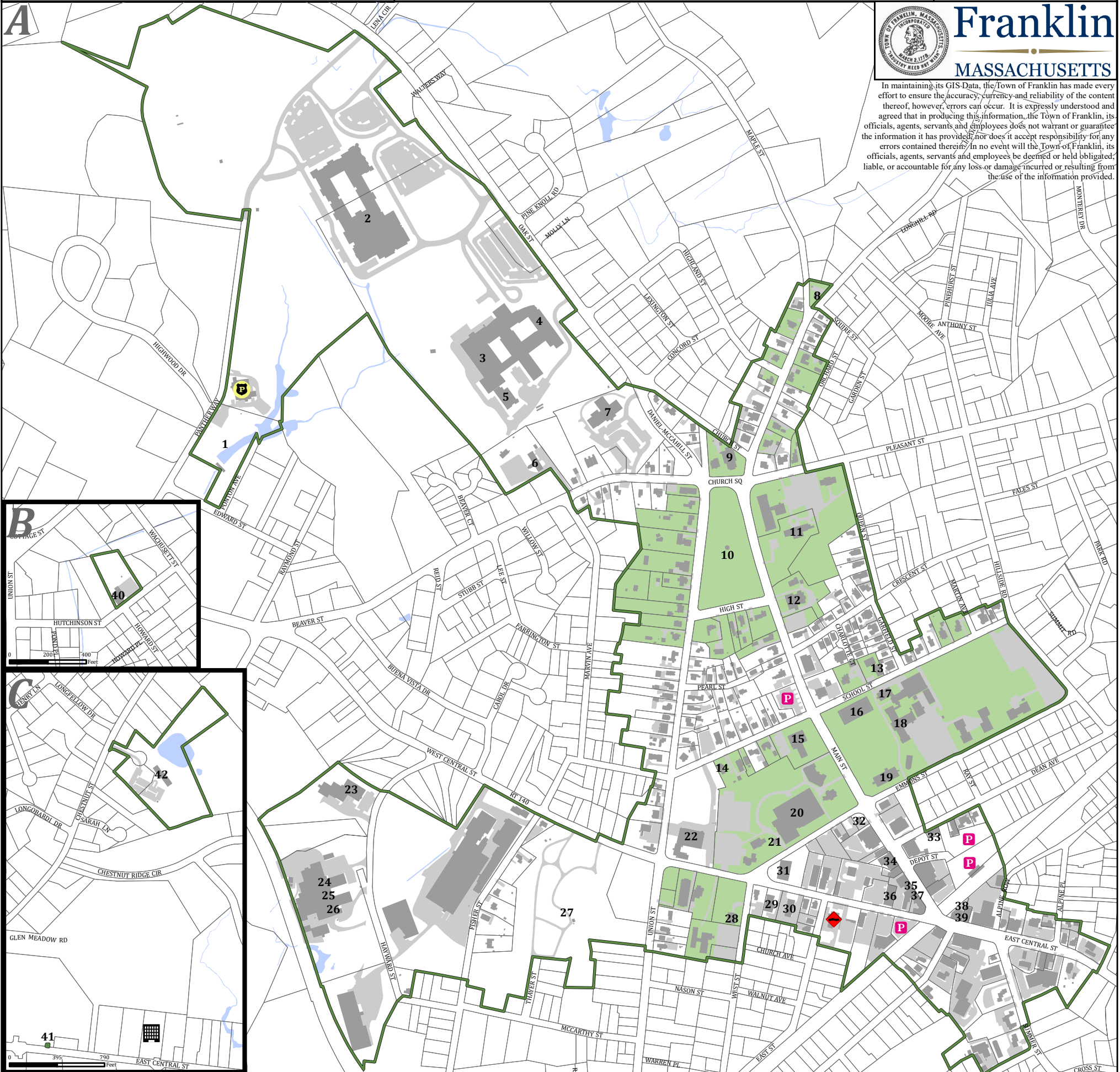
-  Structure
-  Parking Lot or Driveway
-  Parcel Line
-  Water

May 2017



**Franklin**  
MASSACHUSETTS

In maintaining its GIS Data, the Town of Franklin has made every effort to ensure the accuracy, currency and reliability of the content thereof, however, errors can occur. It is expressly understood and agreed that in producing this information, the Town of Franklin, its officials, agents, servants and employees does not warrant or guarantee the information it has provided, nor does it accept responsibility for any errors contained therein. In no event will the Town of Franklin, its officials, agents, servants and employees be deemed or held obligated, liable, or accountable for any loss or damage incurred or resulting from the use of the information provided.



- 38. Franklin Downtown Partnership**
- 35. Emma's Quilt Cupboard
- 39. Janes Frames
- 37. Norfolk/Franklin Music Together
- 23. Patti Eisenhower Dance Theater
- 33. Sara Montani Photography
- 32. Vallee's Jewelers
- 24. Vicario Studio
- 40. Franklin Community Cable Access:** Franklin All Access TV; Franklin Pride TV; Franklin Town Hall TV; Franklin Public Radio 102.9 FM; Recording Studios
- 30. Franklin Historic Museum: **Franklin Historic Commission**; Sculpture
- Franklin Interfaith Council**
- 25. Anglican Church - The Redeemer
- 42. First Universalist Society: **Circle of Friends Coffeehouse**; LiveArts; Universal Singers
- 12. Franklin Federated Church
- 29. Franklin United Methodist Church
- 6. Grace Baptist Church
- 9. Saint Mary's Church
- Franklin School Department**
- 2. Franklin High School: Franklin Arts Academy; Lifelong Learning Institute; Main Auditorium; Black Box Studio; Media Center; Radio Station
- 3. Horace Mann Middle School
- 4. Oak Street Elementary School
- 5. O'Regan Early Childhood
- 22. Davis Thayer School
- 8. Red Brick School House
- 11. Ben Franklin Charter School
- 26. Sunrise Montessori School
- 36. The Black Box: **Franklin Performing Arts Company**
- 15. Franklin Public Library: Ben Franklin Statue**
- 34. Franklin School for the Performing Arts:** Electric Youth; Little Music School
- 7. Franklin Senior Center: **Council on Aging; Franklin Art Association**; Silvertone Senior Chorus; Art and Dance Programs
- 31. Horace Mann Park; Horace Mann Statue
- 1. Sculpture Park
- 10. Town Common: Gazebo; War Memorial
- 27. Union Street Cemetery
- 41. Horace Mann Memorial
- Dean College**
- 17. Alumni Memorial Hall
- 20. Campus Center: The Main Stage; Rehearsal Room; Set & Costume Shops; Campanella Board Room; Guidrey Center; Golder Room
- 14. Children's Center
- 18. Dean Hall: Marvin Chapel; Telecommunications Center; WGAO FM 88.3 "Power 88" Radio; Digital Media Arts Center
- 16. Green Family Library Learning Commons
- 21. Thayer House: Dean School of Arts; Palladino School of Dance
- 19. Peirce Center for Technology & Science: Alden Center
- 13. Performing Arts Studio
- 28. Thayer Barn: Dance Studio

*Note: Cultural assets in bold are partners.*

# LICENSE TRANSACTIONS

- Table & Vine – Change of Manager



## License Transactions:

Table & Vine  
348 East Central Street

The applicant is seeking a change of Manager on their alcoholic beverages license from James A. Wilson to Kevin Daniel Petrillo.

All Departments have signed off on this application.

**MOTION** to approve the request by Table & Vine for a change of Manager from James A. Wilson to Kevin Daniel Petrillo.

**DATED:** \_\_\_\_\_, 2017

**VOTED:**

UNANIMOUS \_\_\_\_\_

YES \_\_\_\_\_ NO \_\_\_\_\_

ABSTAIN \_\_\_\_\_

ABSENT \_\_\_\_\_

**A True Record Attest:**

**Teresa M. Burr**  
Town Clerk

---

**Judith Pond Pfeffer, Clerk**  
**Franklin Town Council**



The Commonwealth of Massachusetts  
Alcoholic Beverages Control Commission

For Reconsideration

LOCAL LICENSING AUTHORITY REVIEW RECORD

00079-PK-0430

Franklin

06/30/2017

ABCC License Number

City/Town

Date Filed with LLA

TRANSACTION TYPE (Please check all relevant transactions):

- New License       Change Corporate Name       Pledge of Collateral (i.e. License/Stock)       Change Corporate Structure (i.e. Corp / LLC)
- Transfer of License       Change of DBA       Change of Class (i.e. Annual / Seasonal)       Change of Hours
- Change of Manager       Alteration of Licensed Premises       Change of License Type (i.e. club / restaurant)       Issuance/Transfer of Stock/New Stockholder
- Change of Beneficial Interest       Change of Location       Change of Category (i.e. All Alcohol/Wine, Malt)       Management/Operating Agreement

APPLICANT INFORMATION

Name of Licensee  D/B/A

ADDRESS:  CITY/TOWN:  STATE:  ZIP CODE:

Manager

Granted under Special Legislation? Yes  No

If Yes, Chapter  of the Acts of (year)

Type (i.e. restaurant, package store)      Class (Annual or Seasonal)      Category (i.e. Wines and Malts / All Alcohol)

LOCAL LICENSING AUTHORITY DECISION

Please indicate the decision of the Local Licensing Authority:

Please indicate what days and hours the licensee will sell alcohol:

If **Approving With Modifications**, please indicate below what changes the LLA is making:

Please indicate if the LLA is downgrading the License Category (approving only Wines and Malts if applicant applied for All Alcohol):

Changes to the Premises Description	Indoor Area Total Square Footage	<input type="text"/>	Floor Number	Square Footage	Number of Rooms
	Patio/Deck/Outdoor Area Total Square Footage	<input type="text"/>			
	Seating Capacity	<input type="text"/>			

Abutters Notified: Yes  No  Date of Abutter Notification  Date of Advertisement

Please add any additional remarks or conditions here:

Check here if you are attaching additional documentation

The Local Licensing Authorities By:

Alcoholic Beverages Control Commission  
Ralph Sacramone  
Executive Director

\_\_\_\_\_  
 Judith Pond Pfeffer  
 Clerk  
 Franklin Town Council

Date APPROVED by LLA

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



*The Commonwealth of Massachusetts*  
*Alcoholic Beverages Control Commission*  
239 Causeway Street  
Boston, MA 02114  
[www.mass.gov/abcc](http://www.mass.gov/abcc)

RECEIVED

MAY 30 2017

TOWN ADMINISTRATOR  
TOWN OF FRANKLIN

**AMENDMENT APPLICATION FOR A CHANGE OF MANAGER**

The following documentation is required as a part of your retail license application.

*ABCC investigators reserve the right to request additional documents as a part of their investigation.*

- Monetary Transmittal Form with \$200 fee  
You can PAY ONLINE or include a \$200 check made out to the ABCC
- Change of Manager Amendment Application (this packet)
- CORI Authorization Form  
For the manager of record AND any individual with direct or indirect interest in the proposed licensee. This form must be notarized with a stamp\*
- Proof of Citizenship for proposed manager of record  
Passport, US Birth Certificate, Naturalization Papers, Voter Registration
- Vote of the Corporate Board  
A corporate vote appointing the manager of record, signed by an authorized signatory for the proposed licensed entity
- Additional Documents Required by the Local Licensing Authority



The Commonwealth of Massachusetts  
 Alcoholic Beverages Control Commission  
 239 Causeway Street  
 Boston, MA 02114  
[www.mass.gov/abcc](http://www.mass.gov/abcc)

Print Form

**RETAIL ALCOHOLIC BEVERAGES LICENSE APPLICATION  
 MONETARY TRANSMITTAL FORM**

APPLICATION SHOULD BE COMPLETED ON-LINE, PRINTED, SIGNED, AND SUBMITTED TO THE LOCAL LICENSING AUTHORITY.

ECRT CODE: RETA

CHECK PAYABLE TO ABCC OR COMMONWEALTH OF MA: \$200.00

(CHECK MUST DENOTE THE NAME OF THE LICENSEE CORPORATION, LLC, PARTNERSHIP, OR INDIVIDUAL)

CHECK NUMBER

IF USED EPAY, CONFIRMATION NUMBER

A.B.C.C. LICENSE NUMBER (IF AN EXISTING LICENSEE, CAN BE OBTAINED FROM THE CITY)

LICENSEE NAME

ADDRESS

CITY/TOWN  STATE  ZIP CODE

**TRANSACTION TYPE (Please check all relevant transactions):**

- Alteration of Licensed Premises
- Change Corporate Name
- Change of License Type
- Change of Location
- Change of Manager
- Other
- Cordials/Liqueurs Permit
- Issuance of Stock
- Management/Operating Agreement
- More than (3) \$15
- New License
- New Officer/Director
- New Stockholder
- Pledge of Stock
- Pledge of License
- Seasonal to Annual
- Transfer of License
- Transfer of Stock
- Wine & Malt to All Alcohol
- 6-Day to 7-Day License

THE LOCAL LICENSING AUTHORITY MUST MAIL THIS TRANSMITTAL FORM ALONG WITH THE CHECK, COMPLETED APPLICATION, AND SUPPORTING DOCUMENTS TO:

**ALCOHOLIC BEVERAGES CONTROL COMMISSION  
 P. O. BOX 3396  
 BOSTON, MA 02241-3396**





The Commonwealth of Massachusetts  
 Alcoholic Beverages Control Commission  
 239 Causeway Street  
 Boston, MA 02114  
 www.mass.gov/abcc

**AMENDEMENT APPLICATION FOR A CHANGE OF MANAGER**

Please complete this entire application, leaving no fields blank. If field does not apply to your situation, please write N/A.

**1. NAME OF LICENSEE** (Business Contact)

ABCC License Number  City/Town of Licensee

**2. APPLICATION CONTACT**

The application contact is required and is the person who will be contacted with any questions regarding this application.

First Name:  Middle:  Last Name:

Title:  Primary Phone:

Email:

**3. BUSINESS CONTACT**

Please complete this section ONLY if there are changes to the Licensee phone number, business address (corporate headquarters), or mailing address.

Entity Name:

Primary Phone:  Fax Number:

Alternative Phone:  Email:

**Business Address (Corporate Headquarters)**

Street Number:  Street Name:

City/Town:  State:

Zip Code:  Country:

**Mailing Address**  Check here if your Mailing Address is the same as your Business Address

Street Number:  Street Name:

City/Town:  State:

Zip Code:  Country:

**APPLICATION FOR A NEW RETAIL ALCOHOLIC BEVERAGES LICENSE**

**4. MANAGER CONTACT**

The Manager Contact is required and is the individual who will have day-to-day, operational control over the liquor license.

Salutation  First Name  Middle Name  Last Name  Suffix

Social Security Number  Date of Birth

Primary Phone:  Email:

Mobile Phone:  Place of Employment

Alternative Phone:  Fax Number

**Citizenship / Residency / Background Information of Proposed Manager**

Are you a U.S. Citizen?  Yes  No

Do you have direct, indirect, or financial interest in this license?  Yes  No

Have you ever been convicted of a state, federal, or military crime?  Yes  No  
 If yes, attach an affidavit that lists your convictions with an explanation for each

If yes, percentage of interest

If yes, please indicate type of Interest (check all that apply):

Officer  Sole Proprietor  
 Stockholder  LLC Manager  
 LLC Member  Director  
 Partner  Landlord  
 Contractual  Revenue Sharing  
 Management Agreement  Other

Have you ever been Manager of Record of a license to sell alcoholic beverages?  Yes  No

If yes, please list the licenses for which you are the current or proposed manager:

Please indicate how many hours per week you intend to be on the licensed premises

**Employment Information of Proposed Manager**

Please provide your employment history for the *past 10 years*

Date(s)	Position	Employer	Address	Phone
4/2016 -Present	Store Director	Big Y Foods, Inc.	2145 Roosevelt Avenue Springfield MA	413-784-0600
1/1999 - 4/2016	Store Director	Stop & Shop	Hancock St. Quincy, MA	(800) 767-7772

**Prior Disciplinary Action of Proposed Manager**

Have you ever been involved directly or indirectly in an alcoholic beverages license that was subject to disciplinary action? If yes, please complete the following:

Date of Action	Name of License	State	City	Reason for suspension, revocation or cancellation

# KEVIN PETRILLO

## Objective

To maintain a challenging and rewarding career through customer service and driving profit margin. Continue to function as a Human Resources Manager providing coaching, training and talent acquisition to support company growth.

## Education

Bachelor of Science, 1993  
University of Massachusetts Boston  
Political Science  
100 Morrissey Boulevard, Boston Ma.

## Qualifications

Strong background in business.  
Excellent computer skills.  
Experienced manager.  
Work well independently or on a team.  
Good decision making skills.  
Hard working and highly motivated to succeed.  
Can build and motivate teams.

## Employment

Store Manager 2004-2015  
**Stop and Shop Supermarkets**  
Driving sales through merchandising and giving great customer service.  
Driving profit margin through mitigating shrink.  
Analyzing Profit and Loss statements.  
Building productive team environments.  
Providing Human Resource Management skills to store associates ranging from 100 to 150 staff members.  
These skills include hiring, new hire paperwork, talent acquisition, coaching and mentoring as well as Union meetings and terminations.

Assistant Store Manager 1999-2004  
**Stop and Shop Supermarkets**  
Supervising up to 150 employees.  
Interviewing and Hiring  
Assisting Store Manager in running the daily operations of the business.

Grocery/Night Crew Chief 1990-1999  
**Star Market Supermarkets**  
Ordering to maximize sales through great in stock position.  
Ran night operations including supervising up to 30 employees.  
Merchandising to drive sales and profit

## Interests

Enjoy watching my children succeed at their activities as well as listening to music.  
Provide coaching and training to my direct reports in order for them to succeed.

June 19, 2017

Written statement of Kevin Petrillo, proposed manager of record

for

Table & Vine, Inc. Franklin, MA location

As an employee, and the manager in charge, in a location where Big Y Foods, Inc. ("Big Y") sells alcohol through their Table & Vine, Inc. subsidiary I am required to take training on preventing alcohol sales to minors. In addition to computer based training I attended a class on April 27, 2017 and passed the TIPS Certification Program. Additionally, many of our employees in the Franklin location have already been TIPS certified.

Big Y recognizes that selling alcohol is more regulated than groceries, and takes their obligation to comply with the alcohol laws very seriously. As such they have implemented in-house Computer Based Training: Alcohol Sales to Minors. This is a required training for all wine/ beer/spirit employees, all front-end employees as well as employees in any department that has a satellite register, such as Bakery, Floral, Seafood and Food Service. Additional TIPS Certification training is also required of our key employees. Big Y also offers On the Job Training specific to Table & Vine, Inc. licensed locations; this includes various business related policies/procedures such as case purchases/ log book (8 cases and up), etc.

Additionally Big Y has created a Point of Sale System which requires that a cashier enters a valid date of birth prior to any alcohol sale being processed.

As the manager in charge I also am required to take and maintain my certification in all the policies and certifications that are required related to sales of alcohol.

While my previous work experience did not deal directly with alcohol sales, I have been involved with the training and supervision of employees selling other age sensitive items such as tobacco products. In addition, I trained at Big Y for 12 months prior to being appointed Store Director for the Franklin location.

Big Y/Table & Vine has a great track record in the Massachusetts supermarkets where they sell alcohol, and it is my intent to continue this record with diligence, education and the continuous training for myself and my employees.



---

Kevin Petrillo

**ADDITIONAL SPACE**

The following space is for any additional information you wish to supply or to clarify an answer you supplied in the application.

If referencing the application, please be sure to include the number of the question to which you are referring.

Big Y Foods, Inc. is a Massachusetts S Corporation, and Table & Vine, Inc. is a subsidiary of Big Y Foods, Inc., and as such is wholly owned by Big Y Foods, Inc.

**APPLICANT'S STATEMENT**

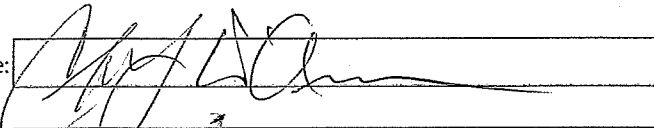
I, Charles L. D'Amour the:  sole proprietor;  partner;  corporate principal;  LLC/LLP member  
Authorized Signatory

of Table & Vine, Inc., hereby submit this application for Change of Manager  
Name of the Entity/Corporation Transaction(s) you are applying for

(hereinafter the "Application"), to the local licensing authority (the "LLA") and the Alcoholic Beverages Control Commission (the "ABCC" and together with the LLA collectively the "Licensing Authorities") for approval.

I do hereby declare under the pains and penalties of perjury that I have personal knowledge of the information submitted in the Application, and as such affirm that all statement and representations therein are true to the best of my knowledge and belief. I further submit the following to be true and accurate:

- (1) I understand that each representation in this Application is material to the Licensing Authorities' decision on the Application and that the Licensing Authorities will rely on each and every answer in the Application and accompanying documents in reaching its decision;
- (2) I state that the location and description of the proposed licensed premises does not violate any requirement of the ABCC or other state law or local ordinances;
- (3) I understand that while the Application is pending, I must notify the Licensing Authorities of any change in the information submitted therein. I understand that failure to give such notice to the Licensing Authorities may result in disapproval of the Application;
- (4) I understand that upon approval of the Application, I must notify the Licensing Authorities of any change in the Application information as approved by the Licensing Authorities. I understand that failure to give such notice to the Licensing Authorities may result in sanctions including revocation of any license for which this Application is submitted;
- (5) I understand that the licensee will be bound by the statements and representations made in the Application, including, but not limited to the identity of persons with an ownership or financial interest in the license;
- (6) I understand that all statements and representations made become conditions of the license;
- (7) I understand that any physical alterations to or changes to the size of, the area used for the sale, delivery, storage, or consumption of alcoholic beverages, must be reported to the Licensing Authorities and may require the prior approval of the Licensing Authorities;
- (8) I understand that the licensee's failure to operate the licensed premises in accordance with the statements and representations made in the Application may result in sanctions, including the revocation of any license for which the Application was submitted; and
- (9) I understand that any false statement or misrepresentation will constitute cause for disapproval of the Application or sanctions including revocation of any license for which this Application is submitted.

Signature:   
Title: COO


Date: 5/17/17

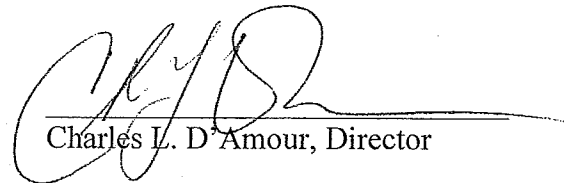
Written Consent Vote of the Board of Directors  
of  
Table & Vine, Inc.

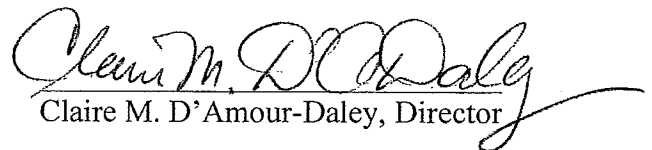
The undersigned, being all of the Directors of Table & Vine, Inc. acting without a meeting pursuant to Section 8.21 of Chapter 156D of the Mass. General Laws, hereby take the following action and adopt the following votes as of the date first set forth above:

RESOLVED: To appoint Kevin Petrillo of Mansfield, Massachusetts as its manager or principal representative in the Franklin, MA location, with as full authority and control of the premises described in the license of the Corporation and of the conduct of all business therein relative to alcoholic beverages as the licensee itself could in any way have and exercise if it were a natural person resident in the Commonwealth of Massachusetts and that a copy of this vote duly certified by the Secretary of the Corporation and delivered to said manager or principal representative shall constitute the written authority required by Sec. 26, Chap. 138, G.L.

DATED: 5-17-17

  
Donald H. D'Amour, Director

  
Charles L. D'Amour, Director

  
Claire M. D'Amour-Daley, Director

ALCOHOLIC BEVERAGES CONTROL COMMISSION

**BENEFICIAL INTEREST CONTACT - Individual** (Formerly known as a Personal Information Form)

Please complete a Beneficial Interest - Individual sheet for all individual(s) who have a direct or indirect beneficial interest, with or without ownership, in this license. This includes people with a financial interest and people without financial interest (i.e. board of directors for not-for-profit clubs). All individuals with direct or indirect financial interest must also submit a CORI Authorization Form.

An individual with direct beneficial interest is defined as someone who has interest directly in the proposed licensee. For example, if ABC Inc is the proposed licensee, all individuals with interest in ABC Inc are considered to have direct beneficial interest in ABC Inc (the proposed licensee).

An individual with indirect beneficial interest is defined as someone who has ownership in a parent level company of the proposed licensee. For example, if ABC Inc is the proposed licensee and is 100% owned by XYZ Inc, all individuals with interest in XYZ Inc are considered to have an indirect beneficial interest in ABC Inc (the proposed licensee).

Salutation  First Name  Middle Name  Last Name  Suffix

Title:  Social Security Number  Date of Birth

Primary Phone:  Email:

Mobile Phone:  Fax Number

Alternative Phone:

**Business Address**

Street Number:  Street Name:

City/Town:  State:

Zip Code:  Country:

**Mailing Address**

Check here if your Mailing Address is the same as your Business Address

Street Number:  Street Name:

City/Town:  State:

Zip Code:  Country:

**Types of Interest (select all that apply)**

Contractual     Director     Landlord     LLC Manager    **NONE**  
 LLC Member     Management Agreement     Officer  
 Partner     Revenue Sharing     Sole Proprietor     Stockholder     Other

**Citizenship / Residency Information**

Are you a U.S. Citizen?     Yes     No    Are you a Massachusetts Resident?     Yes     No

**Criminal History**

Have you ever been convicted of a state, federal, or military crime?     Yes     No    If yes, please provide an affidavit explaining the charges.



**ALCOHOLIC BEVERAGES CONTROL COMMISSION**

**BENEFICIAL INTEREST CONTACT - Individual** (continued)

**Ownership / Interest**

Using the definition above, do you hold a direct  Direct  Indirect or indirect interest in the proposed licensee?

**NONE**

If you hold a direct beneficial interest in the proposed licensee, please list the % of interest you hold.

0

If you hold an indirect beneficial interest in this license, please complete the Ownership / Interest Table below.

**Ownership / Interest**

If you hold an indirect interest in the proposed licensee, please list the organization(s) you hold a direct interest in which, in turn, hold a direct or indirect interest in the proposed licensee. These generally include parent companies, holding companies, trusts, etc. A Beneficial Interest - Organization Form will need to be completed for each entity listed below.

Name of Beneficial Interest - Organization	FEIN

**Other Beneficial Interest**

List any indirect or indirect beneficial or financial interest you have in any other Massachusetts Alcoholic Beverages License(s).

Name of License	Type of License	License Number	Premises Address

**Familial Beneficial Interest**

Does any member of your immediate family have ownership interest in any other Massachusetts Alcoholic Beverages Licenses? Immediate family includes parents, siblings, spouse and spouse's parents. Please list below.

Relationship to You	ABCC License Number	Type of Interest (choose primary function)	Percentage of Interest

**Prior Disciplinary Action**

Have you ever been involved directly or indirectly in an alcoholic beverages license that was subject to disciplinary action? If yes, please complete the following:

Date of Action	Name of License	State	City	Reason for suspension, revocation or cancellation



The Commonwealth of Massachusetts  
 Department of Industrial Accidents  
 1 Congress Street, Suite 100  
 Boston, MA 02114-2017  
 www.mass.gov/dia

Workers' Compensation Insurance Affidavit: General Businesses.  
 TO BE FILED WITH THE PERMITTING AUTHORITY.

**Applicant Information**

**Please Print Legibly**

Business/Organization Name: BIG Y FOODS, INC.

Address: 2145 ROOSEVELT AVENUE

City/State/Zip: SPRINGFIELD, MA 01104

Phone #: 413-784-0600

**Are you an employer? Check the appropriate box:**

1.  I am a employer with 11,000 employees (full and/ or part-time).\*
2.  I am a sole proprietor or partnership and have no employees working for me in any capacity. [No workers' comp. insurance required]
3.  We are a corporation and its officers have exercised their right of exemption per c. 152, §1(4), and we have no employees. [No workers' comp. insurance required]\*\*
4.  We are a non-profit organization, staffed by volunteers, with no employees. [No workers' comp. insurance req.]

**Business Type (required):**

5.  Retail
6.  Restaurant/Bar/Eating Establishment
7.  Office and/or Sales (incl. real estate, auto, etc.)
8.  Non-profit
9.  Entertainment
10.  Manufacturing
11.  Health Care
12.  Other \_\_\_\_\_

\*Any applicant that checks box #1 must also fill out the section below showing their workers' compensation policy information.

\*\*If the corporate officers have exempted themselves, but the corporation has other employees, a workers' compensation policy is required and such an organization should check box #1.

*I am an employer that is providing workers' compensation insurance for my employees. Below is the policy information.*

Insurance Company Name: SAFETY NATIONAL CASUALTY CORPORATION (EXCESS INSURANCE)

Insurer's Address: 1831 SHUETZ ROAD

City/State/Zip: ST LOUIS, MO 63146-3540

Policy # or Self-ins. Lic. # SP 4053229

Expiration Date: 6/30/2017

**Attach a copy of the workers' compensation policy declaration page (showing the policy number and expiration date).**

Failure to secure coverage as required under Section 25A of MGL c. 152 can lead to the imposition of criminal penalties of a fine up to \$1,500.00 and/or one-year imprisonment, as well as civil penalties in the form of a STOP WORK ORDER and a fine of up to \$250.00 a day against the violator. Be advised that a copy of this statement may be forwarded to the Office of Investigations of the DIA for insurance coverage verification.

*I do hereby certify, under the pains and penalties of perjury that the information provided above is true and correct.*

Signature: \_\_\_\_\_

Date: 11-14-16

Phone #: 413-784-0600

**Official use only. Do not write in this area, to be completed by city or town official.**

City or Town: \_\_\_\_\_ Permit/License # \_\_\_\_\_

Issuing Authority (circle one):

1. Board of Health 2. Building Department 3. City/Town Clerk 4. Licensing Board 5. Selectmen's Office  
 6. Other \_\_\_\_\_

Contact Person: \_\_\_\_\_ Phone #: \_\_\_\_\_



**CERTIFICATE OF COMPLIANCE WITH STATE LAWS**

Pursuant to M.G.L Chapter 62C, Sec 49A, and M.G.L. Ch. 151A, Section 19A, the undersigned acting on behalf on the License Holder, certifies under the penalty of perjury that, to the best of the undersign's knowledge and belief, the License Holder is in compliance with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support\*.

TABLET VINE, INC

\*\* Signature of Individual or Corporate License Holder (Mandatory)

04-19-29-305

\*\*\* License Holder's Social Security Number/or Federal Identification Number

By: [Signature]  
Corporate Officer  
(Mandatory, if applicable)

Date: 6-12-17

\*The provision in the Attestation of relating to child support applies only when the License Holder is an individual.

\*\*Approval of or a renewal of a license will not be granted unless this certification clause is signed by the applicant. For all corporations, a certified copy of the vote of the Board of Directors must be provided.

\*\*\* Your social security number will be furnished to the Massachusetts Department of Revenue to determine whether you have met tax filing or tax payment obligations. Providers who fail to correct their non-filing or delinquency will not have a license or other agreement issued, renewed or extended. This request is made under the authority of Massachusetts General Laws, Chapter 62C, section 49A.

# Town of Franklin

Town Administrator  
Tel: (508) 520-4949



Fax: (508) 520-4903

355 East Central Street  
Franklin, Massachusetts 02038-1352

## MEMORANDUM

To: Town Council

From: Jamie Hellen

**Re: Proposed MBTA Solar Canopy at Dean Station**

---

We are requesting the Town Council approve a resolution to oppose the MBTA's plan to install a solar canopy at the Dean Station Commuter Parking Lot.

After the Town just finished a decade-long, \$7 million dollar project to redo its entire streetscape to help spur more economic development and create a quaint, vibrant and pedestrian-friendly downtown, we believe this project will:

1. Jeopardize any possible redevelopment projects or private investment on neighboring or adjacent parcels;
2. Be an eyesore to pedestrians walking along the new sidewalks, notably any solar glare that retreats up for people walking on the bridge;
3. Limit the Town's ability to develop that area of downtown in any creative manner;
4. Continually push off the infrastructure improvements to the parking lot, staircase, platform and Train Station that have been promised for years.

It is important to note:

- Town officials were never alerted to this project;
- The MBTA has already selected a vendor, signed a contract with a vendor for a twenty year lease and is developing plans for each station;
- At a recent meeting last week with the MBTA that was requested by the Town Administrator through our legislative delegation, it was noted the Dean Station was one of their dozen most prioritized projects. Yet the lot only serves 180 cars and will net the MBTA an estimated \$15,000 a year in new revenue for a twenty-year lease;
- The Town fully supports, encourages and prioritizes any development of a solar canopy at the Forge Park MBTA Lot. It has nearly 750 spaces, has maximum sun light potential and is a win-win for the commuter who will have less snow on their car when they return home from work.

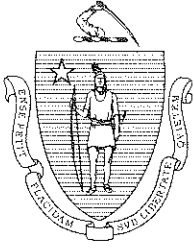
Town staff were recently alerted to a project the MBTA has been quietly developing to install solar canopies over many of their MBTA Commuter Parking lots. Attached is a sample picture of a solar

canopy below (not of the Dean Station lot, of course). The Town does not have any rendering of the Dean Station proposal.



The Town of Franklin is a proven leader in supporting solar projects. The Town manages a solar farm off Union Street that produces enough energy equivalent to 90-plus percent of all of the energy used by both the Town and the Schools. Solar is an as of right use in this community and has had many successful programs to encourage the use. The Town of Franklin is one of “greenest” communities in the Commonwealth of Massachusetts.

However, this proposed project at the Dean Station is a lost opportunity to the Town, the MBTA and other landowners who see the next phase of economic development in downtown coming. This project will significantly jeopardize the ability of private investment in that area of downtown.



COMMONWEALTH OF MASSACHUSETTS  
**THE GENERAL COURT**  
STATE HOUSE, BOSTON 02133-1053

June 19, 2017

Stephanie Pollock, Secretary  
Massachusetts Department of Transportation  
10 Park Plaza  
Boston, MA 02116

Steve Poftak  
MBTA Interim General Manager  
10 Park Plaza  
Boston, MA 02116

RE: Solar canopy at Franklin/Dean T station

Dear Secretary Pollock & Interim GM Poftak:

We are writing with significant concerns over the MBTA's proposed solar array canopy at the Dean/Downtown Franklin T Station. As we communicated with Ms. Janelle Chan and MassDOT staff at a site meeting last week, this proposal will net very little financial gain for the MBTA, but will effectively shut off millions of private and public investment to revitalize the station and downtown Franklin. We request a meeting with you *immediately* to address this issue and to discuss alternatives to this proposal.

The Town of Franklin just finished a \$7 million streetscape project which included new sidewalks, roads, brick paving and a variety of other amenities to enhance the look and feel of downtown. In addition, the Town prepared a detailed Master Plan and implementation report in October 2013 and has been moving forward on a number of initiatives since that time to improve the downtown area. With the opening of the new streetscape a year ago and the implantation of several Master Plan initiatives, the Town has seen several new small businesses open up and has received a lot of positive feedback. Our local arts and cultural events have seen increased interest and participation in the downtown area, and we fully expect this trend to continue. But we are certain that these efforts will be stifled if the MBTA constructs its solar canopy at the Dean station lot, because it would be an eyesore and would restrict or discourage development on adjacent parcels.

This train station occupies critical real estate in our downtown and we are looking for a more thoughtful approach to the area than what has been proposed. In that regard, many

## THE GENERAL COURT

Stephanie Pollack & Steve Poflak

June 19, 2017

Page 2

downtown landowners have been actively engaged with prospective buyers over new private investment in buildings and property in that location. This includes an adjacent parcel to the MBTA parking lot where there is an old building and underutilized land with frontage on Main Street. Several prospective developers have looked at purchasing the lot, re-developing it, and helping to spur more economic development. Additionally, the Town of Franklin owns a small commuter lot adjacent to the MBTA lot, and we would like to work with all stakeholders to invest in developing a more comprehensive solution to some problems and make a better investment for all parties involved, including the MBTA. In other words, if we all work collaboratively, we may be able to produce a more productive project.

The MassDOT staff informed us that the agency would only gain \$15,000 a year in new revenue over twenty years (a total of \$300,000). Thus, we are flummoxed by a decision to support a project that will hinder millions in private investment for such a small amount of revenue. This projected revenue pales in comparison to the millions in new investment this project would effectively kill. We assure you that if a more extensive conversation takes place relative to alternatives, we could assist the MBTA in constructing a better deal and a better project for everyone. As a small example, please consider that over 300 apartments are currently proposed to be developed in the area. If only four residents from these units buy a monthly pass and commute into Boston, they will generate \$15,264 in revenue annually (based on current \$318/month cost of a pass). That's a very conservative estimate, as we expect more than four commuters will result from the development proposals. But it is already more than what a solar canopy would produce.

Furthermore, by putting up this solar canopy, the MBTA would be killing the transit oriented development vision the Town has been working on for over twenty years. Right as the Town is on the cusp of reaching some of their transit oriented goals, the MBTA is proposing to kill any improvements for the next twenty years. The cost-benefit is wholly unfair to the Town, the MBTA and the citizens of this community. Overall, it's a bad deal for the Commonwealth!

On the other hand, the Town of Franklin fully supports a proposed solar canopy at the Forge Park MBTA Station. We cannot think of a better location. And we request you prioritize development of the solar canopy at the Forge Park site over the downtown site. If the Town can be of assistance in making the Forge Park site materialize faster, please let us know. Indeed, the Town of Franklin is a fan of solar installations in appropriate locations and has recently aided efforts to install them at the Mount Saint Mary's Abbey and Tri-County School in Franklin. In fact, Franklin uses power generated from the Abbey array solar panels to provide an estimated 80 percent of the electricity used in town buildings and schools. In addition, the Town receives payments in lieu of taxes for the land where the solar panels were installed, and uses credits for electricity produced by the farm to offset some of its other energy costs.

Another area of angst involves the fact that the MBTA never reached out to the legislative delegation and never contacted the Town to give a heads up on any of the solar canopy plans. The Town heard about this project through the grapevine and did its own research.

## THE GENERAL COURT

Stephanie Pollack & Steve Poftak

June 19, 2017

Page 3

Also, the Town has been in discussions with GATRA and the MBTA about taking over the station building and parking lot, and surprisingly, nothing about the solar canopies ever came up. While the MBTA still struggles to gain positive public relations within its communities, this project came as a complete shock given that nothing was disseminated to the community impacted by the decision.

The Town of Franklin has been requesting improvements to the entire Dean Station for years. We have called to the MBTA's attention crumbling staircases, lack of accessibility, parking lot potholes, building issues, and the poor platform at the station. We have had several meetings over the years and received many promises that the issues would be addressed. Unfortunately, every promise has gone completely unfilled with the exception of some minor improvements (a new roof) to the building on the property. Other than a new roof, the MBTA has put \$0 into the Dean/Downtown Franklin Station Parking lot in the last decade. We have attached the MBTA's Master Plan for the parcel given to us in 2014 that has gone completely unfilled. Your staff was not even aware of its existence when we gave it to them at the meeting last week.

In summary, the MBTA's desire to put up a solar canopy, without any notice or consultation, and to reap just \$15,000 in revenue, is a slap in the face to the delegation, the citizens of our community, and the local officials you are supposed to serve. Meanwhile, the MBTA's plan will no doubt kill millions in private economic development investment. It is for all of these reasons that we urge reconsideration and another approach.

And again, we request a meeting with you as soon at your earliest convenience.

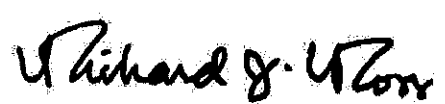
Sincerely,



Rep. Jeffrey N. Roy  
10<sup>th</sup> Norfolk District



Sen. Karen B. Spilka  
2<sup>nd</sup> Middlesex & Norfolk



Sen. Richard Ross  
Norfolk, Bristol &  
Middlesex

cc: Hon. Karyn Polito, Lt. Gov.  
Jay Ash, Secretary of Economic Development  
Matt Kelly, Chair, Franklin Town Council  
Jeffrey Nutting, Town Administrator  
Jamie Hellen, Deputy Town Administrator  
Dr. Paul Rooney, Dean College President  
Lisa Piana, Franklin Downtown Partnership





June 21, 2017

Matt Kelly, Chairman  
Town Council  
355 East Central Street  
Franklin

Dear Mr. Chairman:

I am writing on behalf of the Franklin Downtown Partnership Board of Directors to express our opposition to the proposed solar canopy at Franklin MBTA Station, located in the heart of downtown Franklin. We hope through our elected representatives, a meeting will occur before any final proposal moves forward.

Our main concern is how this proposal could impact the next phase of economic development in downtown Franklin. As you know, the Town just finished its new streetscape project which resulted a great deal of interest and investment from local business owners in downtown Franklin. We have new restaurants and several small new businesses and most importantly we have interest from developers looking to possibly purchase and redevelop property right next to the MBTA station.

Our arts and culture related events have seen record interest and attendance due to the new streetscape and pedestrian friendliness of the new sidewalks. We are very concerned that this solar canopy will effectively hurt any future investment in this area of downtown, in addition to compounding the parking problem we will encounter soon in downtown Franklin due to the increased business presence.

The Partnership would appreciate any effort our elected leaders could do to work with the MBTA to slow down this proposal and work to develop a more comprehensive plan in this section of downtown Franklin. We appreciate your consideration of this request.

Sincerely,

  
*Lisa Piana-Executive Director*  
Franklin Downtown Partnership Board of Directors

cc: Town Council  
Jeff Nutting, Town Administrator  
Jeff Roy, State Representative



# TOWN OF FRANKLIN

## RESOLUTION 17-43

### PROPOSED DEAN STATION SOLAR CANOPY

**WHEREAS**, the Franklin Town Council opposes the proposed solar canopy over the MBTA’s commuter parking lot at Dean Station due to concerns of complicating prospective economic development in that area of Downtown Franklin and because the MBTA has not delivered on many previous promises to fix the many infrastructure deficiencies at the Dean Station.

**WHEREAS**, the Franklin Town Council supports and prioritizes the development of a solar canopy at the Forge Park MBTA lot.

**NOW THEREFORE, BE IT RESOLVED THAT:** The Franklin Town Council respectfully requests the MBTA postpone development of a solar canopy at the Dean Station Parking lot and prioritize development of a solar canopy at the Forge Park MBTA Station.

The Franklin Town Council respectfully requests the MBTA to meet with the Town’s Administration and local legislative delegation to develop a long-range land and management plan for the area surrounding the MBTA Dean Station parking lot.

This resolution shall become effective according to the provisions of the Town of Franklin Home Rule Charter.

**DATED:** \_\_\_\_\_, 2017

**VOTED:**  
**UNANIMOUS:** \_\_\_\_\_

**YES:** \_\_\_\_\_ **NO:** \_\_\_\_\_

**ABSTAIN:** \_\_\_\_\_

**ABSENT:** \_\_\_\_\_

**A True Record Attest:**

**Teresa M. Burr**  
**Town Clerk**

\_\_\_\_\_  
**Judith Pond Pfeffer, Clerk**  
**Franklin Town Council**

# Town of Franklin

Town Administrator  
Tel: (508) 520-4949

Fax: (508) 520-4903



355 East Central Street  
Franklin, Massachusetts 02038-1352

## MEMORANDUM

TO: Franklin Town Council

FROM: Jeffrey D. Nutting, Town Administrator

RE: Resolution 17-39 Grant of Reserved Sewer Easement by  
Town to Charles River Pollution Control District

DATE: June 12, 2017

The Town recently closed on the sale of Town-owned property at 0 Pond Street to Baystone Franklin, LLC. In reviewing the title documents to prepare the deed, the Town Attorney determined that there was no easement on record for a section of Charles River Pollution Control District's interceptor which traverses the property. Accordingly, he reserved a sewer easement in Town's deed to Baystone Franklin, LLC for this section of interceptor, with the intent that Town would subsequently grant this reserved easement to CRPCD. Resolution 17-39 grants the reserved sewer easement to CRPCD and authorizes me to execute the attached Grant of Reserved Sewer Easement.

JDN:ce





**TOWN OF FRANKLIN**

**RESOLUTION 17-39**

**GRANT OF RESERVED EASEMENT ON FORMER  
TOWN-OWNED LAND ON POND STREET TO  
CHARLES RIVER POLLUTION CONTROL DISTRICT**

WHEREAS, Town, until recently, owned two parcels of unimproved land on the westerly side of Pond Street, title reference: Norfolk County Registry of Deeds Book 1281, Page 108, and

WHEREAS, Town permitted Charles River Pollution Control District to install and maintain sewer pipes and related structures on said property, and

WHEREAS, the location of said sewer installation is delineated on a plan of land prepared in connection with Town's sale of said property, said plan being captioned "Conveyance Plan of Land off Pond Street Lots 3 & 4 Map 258 Town of Franklin, Norfolk County, Commonwealth of Massachusetts" dated April 3, 2017, revised through May 5, 2017, and recorded at Norfolk County Registry of Deeds in Plan Book 658 at Page 62, and

WHEREAS, it has been determined that a portion of said sewer installation enjoys the benefit of an easement recorded at said Registry of Deeds in Book 8366 at Page 90, but that another portion does not, and

WHEREAS, Town conveyed said property on May 22, 2017 to Baystone Franklin, LLC by deed with reserved easements, covenants and restrictions executed on May 22, 2017 and recorded that date at said Registry of Deeds in Book 35129 at Page 16, and

WHEREAS, one of the easements which Town reserved in said instrument was a twenty-foot wide sewer easement for the portion of the District sewer installation which does not presently enjoy the benefit of an easement, said easement having been reserved therein for subsequent grant to District,

NOW THEREFORE, BE IT RESOLVED THAT the Town Council of the Town of Franklin hereby grants to Charles River Pollution Control District the twenty-foot wide sewer easement reserved by Town in its deed to Baystone Franklin LLC dated May 22, 2017 and recorded at Norfolk County Registry of Deeds in Book 35129 at Page 16, shown on the above-described plan of land recorded at said Registry of Deeds in Plan Book 658 at Page 62, further shown on said plan, beginning at a point in the south-central portion of said parcel and thence running northerly to the northerly boundary of said parcel, designated in two places on said plan as "Charles River Pollution Control District 20' wide sewer easement 17,292 sq. ft. +/- (0.397 acre =/-)", together with all of Town's reserved rights, as set out in said deed, as more fully set

out and upon the terms and conditions in the easement instrument attached hereto as "Exhibit 1" and the Town Council hereby authorizes the Town Administrator to execute said easement instrument on its behalf.

This Resolution shall become effective according to the rules and regulations of the Town of Franklin Home Rule Charter.

**DATED:** \_\_\_\_\_, 2017

**VOTED:**

**UNANIMOUS** \_\_\_\_\_

**A True Record Attest:**

**YES** \_\_\_\_\_ **NO** \_\_\_\_\_

**Teresa M. Burr**  
**Town Clerk**

**ABSTAIN** \_\_\_\_\_

**ABSENT** \_\_\_\_\_

---

**Judith Pond Pfeffer, Clerk**  
**Franklin Town Council**

Exhibit 1

**GRANT OF RESERVED SEWER EASEMENT**

**The Town of Franklin**, a duly-organized municipal corporation with administrative offices located in the Franklin Municipal Building, 355 East Central Street, Franklin, Norfolk County, MA acting by and through its Town Administrator, duly-authorized, (hereinafter: "Town") for consideration paid and in full consideration of

One Dollar (\$1.00)

hereby grants to the **Charles River Pollution Control District**, a water pollution abatement district established pursuant to the provision of G.L.c. 21 §§ 28, 29, and 30, acting by and through its Commissioners, with administrative offices at 66 Village Street, Medway, Norfolk County, MA, all of the Town of Franklin's right, title and interest in and to the twenty-foot wide perpetual easement to install, construct, repair, operate, use or maintain a system of waste water interceptors and related purposes which include two sewer interceptors, one of which is a 24-inch gravity fed reinforced concrete pipe and the other of which is an 18-inch ductile iron force main located on land now or formerly known and numbered as **0 Pond Street, Franklin, Massachusetts**, which easement is shown on the plan titled "Conveyance Plan of Land Off Pond Street 0 Pond Street Lots 3 & 4, Map 258 Town of Franklin, Norfolk County Commonwealth of Massachusetts" prepared by Control Point Associates, Inc. dated 4-3-17 revised through 5-5-17, Scale 1"=80' Job No. 03-160043 recorded with said Deeds in Plan Book 658, Plan 62.

The easement granted herein was expressly reserved by the Town in its deed to Baystone Franklin LLC dated May 22, 2017 and recorded at Norfolk County Registry of Deeds in Book 35129 at Page 16, and begins at a point in the south-central portion of the parcel of land delineated therein and thence runs northerly to the northerly boundary of said parcel, designated in two places on said plan as "CHARLES RIVER POLLUTION CONTROL DISTRICT 20' WIDE SEWER EASEMENT 17,292 sq. ft. +/- (0.397 acre +/-)",

The Town further grants to the Charles River Pollution Control District all of Town's reserved rights as set out in said deed in Book 35129 at Page 16, namely: all ownership rights in any headwalls, pipes, manholes, conduits, fixtures or other structures or appurtenances that are now or may hereafter be constructed or installed in, through, or under the above-described land; also, the perpetual right to enter the above-described land on foot or with vehicles and/or equipment to inspect, improve,

maintain, repair, and/or replace the entire system and/or any portion or component thereof.

For the Town's title to the two parcels of unimproved land on the westerly side of Pond Street granted to Baystone Franklin LLC, see Book 1281, Page 108.

*In witness whereof*, the Town of Franklin has caused this instrument to be executed on its behalf this \_\_\_\_ day of \_\_\_\_\_ 2017 by its Town Administrator, duly-authorized.

Town of Franklin, by:

\_\_\_\_\_  
Jeffrey D. Nutting, Town Administrator

COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2017 before me, the undersigned notary public, personally appeared Jeffrey D. Nutting, as Franklin Town Administrator, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding document and acknowledged to me that he signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_



**TOWN OF FRANKLIN**

**RESOLUTION 17 - 40**

**Chapter 61B – Non-exercise of 1<sup>st</sup> Refusal Option – 17.12 Acres of land off Maple Street**

**WHEREAS,** The Town has been notified by Attorney for the owner of Chapter 61B land off of Maple Street, Title reference: Parcel 2 in deed recorded at Norfolk Registry of Deeds in Book 25317 Page 578, of the owner’s intent to convert the property to other use.

**WHEREAS,** the Town has 120 days to exercise its first refusal option; and

**WHEREAS,** the Town Council, after consideration, does not wish to exercise said option to acquire this parcel of land.

**BE IT RESOLVED THAT THE TOWN OF FRANKLIN,** acting by and through the Town Council and pursuant to Section 14, MGL Chapter 61B, hereby declares that it will not exercise the first refusal option on the parcel of land off of Maple Street containing 17.12 acres of land, Title reference: Norfolk Registry of Deeds Book 25317 Page 578.

This resolution shall become effective according to the provisions of the Town of Franklin Home Rule Charter.

**DATED:** \_\_\_\_\_ **2017**

**VOTED:** \_\_\_\_\_

**UNANIMOUSLY:** \_\_\_\_\_

**A TRUE RECORD ATTEST:**

**YES:** \_\_\_\_ **NO:** \_\_\_\_

**ABSTAIN:** \_\_\_\_ **ABSENT:** \_\_\_\_

**Teresa M. Burr**  
**Town Clerk**

\_\_\_\_\_  
**Judith Pond Pfeffer, Clerk**  
**Franklin Town Council**





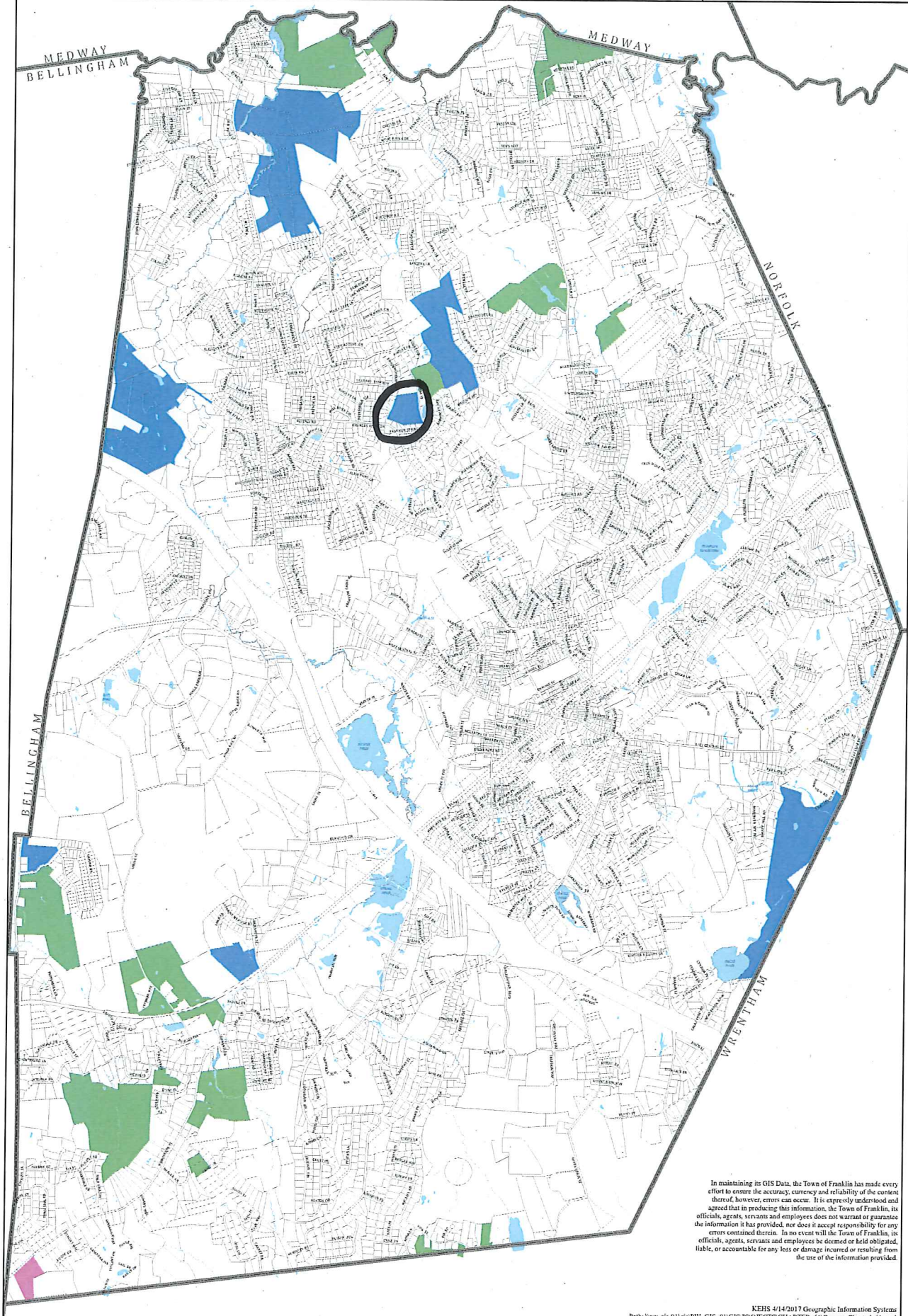
# Franklin

MASSACHUSETTS

- Chapter 61
- Chapter 61A
- Chapter 61B
- Parcel Line

- Water
- Municipal Boundary

Kilometers 0 0.25 0.5  
Miles 0 0.25 0.5



In maintaining its GIS Data, the Town of Franklin has made every effort to ensure the accuracy, currency and reliability of the content thereof, however, errors can occur. It is expressly understood and agreed that in producing this information, the Town of Franklin, its officials, agents, servants and employees does not warrant or guarantee the information it has provided, nor does it accept responsibility for any errors contained therein. In no event will the Town of Franklin, its officials, agents, servants and employees be deemed or held obligated, liable, or accountable for any loss or damage incurred or resulting from the use of the information provided.

# LAW OFFICE OF DANIEL W. NYE

50 North Street, Suite 215  
Medfield, Massachusetts 02052  
Telephone: (508) 359-5410  
Email: [dannyelaw@email.com](mailto:dannyelaw@email.com)

June 8, 2017

<b>CERTIFIED MAIL RETURN RECEIPT REQUESTED</b>  Receipt No. 7016 0340 0000 1128 1011  Board of Councilors c/o Judith Pond Pfeffer, Clerk of Board Town of Franklin 355 East Central Street, Franklin, MA 02038	<b>CERTIFIED MAIL, RETURN RECEIPT REQUESTED</b>  Receipt No. 7016 0340 0000 1128 1028  Town of Franklin Board of Assessors 355 East Central Street Franklin, MA 02038
<b>CERTIFIED MAIL RETURN RECEIPT REQUESTED</b>  Receipt No. 7016 0340 0000 1128 1035 Town of Franklin Planning Board 355 East Central Street, Franklin, MA 02038	<b>CERTIFIED MAIL RETURN RECEIPT REQUESTED</b>  Receipt No. 7016 0340 0000 1128 1042 Town of Franklin Conservation Commission 355 East Central Street, Franklin, MA 02038
<b>CERTIFIED MAIL RETURN RECEIPT REQUESTED</b>  Receipt No. 7016 0340 0000 1128 1059  Massachusetts Executive Office of Energy and Environmental Affairs 100 Cambridge Street, Suite 900 Boston, MA 02114 Attn: State Forester	

**Re: Notice of Intent to Sell 17.12 Acres Located Off of Maple Street in Franklin,  
Massachusetts**

Dear Sir/Madam:

On behalf of our client, **FRANKLIN LABASTE FAMILY L.L.C.**, a Delaware limited liability company, with a principal place of business at 469 Maple Street, Franklin, Massachusetts 02038 (the "**Seller**"), this letter will constitute notice pursuant to M.G.L. Chapter 61B, Section 9 ("**Chapter 61B**") that Seller intends to sell the above-referenced

**RECEIVED**

JUN 12 2017

TOWN ADMINISTRATOR  
TOWN OF FRANKLIN

Town of Franklin  
June 8, 2017  
Page 2

property that is taxed under Chapter 61B. The Seller has entered into a purchase and sale agreement with Franklin Holdings LLC for the property consisting of 17.12 acres, more or less, located off of Maple Street, Franklin, Norfolk County, Massachusetts which land is taxed under Chapter 61B and is more particularly described at Exhibit "A" hereto (the "Property").

A true and correct copy of the purchase and sale agreement with Franklin Holdings LLC dated as of November 26, 2014 (the "Purchase Agreement") is attached hereto as Exhibit "B" and an Amendment to the Purchase Agreement fixing the total purchase price for the Property is attached hereto as Exhibit "C"

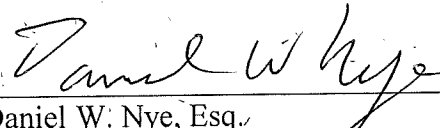
The proposed use of the property is residential. Under the terms of the Agreement, the Buyer has completed the permitting provided under the Agreement and the Seller shall be selling ten (10) permitted house lots for a net purchase price of \$85,000 per lot for a total purchase price of **\$850,000.00**. The Seller's address is as follows:

**FRANKLIN LABASTE FAMILY L.L.C.**  
**Attn: Stephen Labaste, Manager**  
**469 Maple Street,**  
**Franklin, Massachusetts 02038**

Under the terms of Chapter 61B, Section 9, the Town of Franklin shall have 120 days after mailing this Notice of Intent, specifically on or before the close of business on **September** \_\_\_\_\_ **2017**, to exercise a first refusal option to purchase the land on the terms set forth in the referenced purchase and sale agreement. Failure to record a notice of exercise of the right of first refusal option within the 120-day period shall be conclusive evidence that the Town has not exercised its option.

FRANKLIN LABASTE FAMILY L.L.C.

By its counsel,

  
\_\_\_\_\_  
Daniel W. Nye, Esq.

Enclosure

EXHIBIT A

Description of the Premises

**EXHIBIT "A"**

**Description of the Property**

That parcel of property, consisting of 17.12 acres, more or less, located off of Maple Street, Franklin, Norfolk County, Massachusetts described as follows:

Beginning on the Southeasterly corner of the granted premises at land formerly of McFarland on said Maple Street; thence Westerly on said McFarland land, as the wall now stands, to land now or formerly of Pond; thence Northerly on said Pond land in part, and in part on land formerly of Wight, as the wall now stands to land formerly of Hills; thence Easterly on said Hills land, as the wall now stands, to said Street; thence Southerly on said street to the point of beginning, being the same premises identified as "**Parcel 2**" in that Quitclaim Deed of Henry D. Labastie dated November 21, 2007 and recorded at the Norfolk County Registry of Deeds at Book 25317, Page 578 including all buildings and other improvements located at the Premises, together with all of the right, title and interest of the Owner of the Premises in any permits, rights, options and other intangible rights associated with the Premises.

Town of Franklin  
June 8, 2017  
Page 4

**EXHIBIT "B"**

**Copy of that Purchase and Sale Agreement with Franklin Holdings LLC  
dated as of November 26, 2014**

Town of Franklin  
June 8, 2017  
Page 5

**EXHIBIT "C"**

**Copy of Amendment to Purchase and Sale Agreement dated June 1, 2017**

**AMENDMENT TO PURCHASE AND SALE AGREEMENT  
BETWEEN FRANKLIN LABASTE FAMILY L.L.C.  
AND FRANKLIN HOLDINGS LLC**

FRANKLIN LABASTE FAMILY L.L.C., a Delaware limited liability company, with a principal place of business at 469 Maple Street, Franklin, Massachusetts 02038 (the "Seller"), and FRANKLIN HOLDINGS LLC, a Massachusetts limited liability company with a principal place of business at 14 Camp Road, Foxborough, Massachusetts 02035 (the "Buyer") hereby agree to amend that certain Purchase and Sale Agreement dated November 24, 2014 (hereinafter, the "Agreement") as follows:

A. **Amendments to Agreement.** Sections 2.2 and 2.3 of the Agreement are each hereby deleted in their entirety and are hereby replaced by the following provision.

**2.2 Purchase Price.** The purchase price for the Premises be \$850,000.00, which amount has been established based on a per lot purchase price of \$100,000 for each of the ten Form A lots within the subdivision to be developed at the Premises as approved and permitted on a final basis (the "Project") less the \$150,000 agreed projected cost for the common onsite septic system for the 10 lots as agreed by the Buyer and the Seller.

**2.3 INTENTIONALLY DELETED**

B. **Ratification.** The Seller and the Buyer hereby acknowledge that the Agreement is in full force at this time and that neither Party is currently in default thereunder. The Parties hereby ratify and reaffirm all other provisions thereof which have not be amended.

C. **Incorporation.** Except as set forth above, the Agreement remains in full force and effect and the terms hereof are incorporated into the Agreement by reference.

IN WITNESS WHEREOF, the parties hereof have duly executed this Amendment as a sealed instrument all as of the 8<sup>th</sup> day of June, 2017 in any number of counterpart copies, each of which shall be deemed an original for all purposes.

FRANKLIN LABASTIE FAMILY L.L.C.  
Seller

By: Steven H. Labastie  
Name: Steven H. Labastie  
Title: Sole Manager  
Duly authorized

FRANKLIN HOLDINGS LLC  
Buyer

By: Mark F. Carroll  
Name: Mark F. Carroll,  
Title: Sole Manager  
Duly-authorized

## PURCHASE AND SALE AGREEMENT

**THIS PURCHASE AND SALE AGREEMENT** (this "Agreement") is entered into as of this 26th day of November, 2014 (the "Effective Date"), by and between **FRANKLIN LABASTIE FAMILY L.L.C.**, a Delaware limited liability company, with a principal place of business at 469 Maple Street, Franklin, Massachusetts 02038, (the "Seller"), and **FRANKLIN HOLDINGS LLC**, a Massachusetts limited liability company with a principal place of business at 11 Allen Drive, Norton, Massachusetts 02766, or such nominee to be designated by **Franklin Holdings LLC** on or before the conclusion of the Due Diligence Investigation (as defined below) (the "Buyer").

### RECITALS

- A. The Seller is a Delaware limited liability engaged in the business of property management and ownership, including that property consisting of approximately 17.12 acres located off of Maple Street in Franklin, Massachusetts described at EXHIBIT "A" hereto (the "Premises").
- B. The Seller desires to convey the Premises.
- C. The Buyer desires to acquire the Premises for the purpose of developing residential single family homes thereon.
- D. The Seller desires to sell the Premises (as defined at Section 1.1 hereof) to the Buyer and provide other accommodations to the Buyer and the Buyer desires to purchase and benefit from such accommodations all in accordance with the terms and provisions of this Agreement.

### PROVISIONS

NOW, THEREFORE, for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Buyer and the Seller hereby agree as follows:

#### **ARTICLE 1. Purchase and Sale.**

1.1 The Seller agrees to sell and the Buyer agrees to purchase, pursuant to the terms and conditions hereof, the Premises shown on EXHIBIT A attached hereto and made a part hereof, consisting of 17.12 contiguous acres. For the purposes of this Agreement, the term "Lot" shall mean each buildable single-family lot permitted for development by the Town of Franklin, Massachusetts (the "Town") as evidenced by Final Approvals (defined below) and "Units" shall mean single family, attached or detached, market rate homes of the type permitted under applicable laws to be constructed upon the Premises.

1.2 The parties hereby acknowledge and agree that the sale of the Premises pursuant to this Agreement will be exempt from the provisions of the Interstate Property Sales Full Disclosure Act (15 U.S.C. §§1701-1720) ("IPSFDA") and the regulations promulgated thereunder, under the exemption applicable to the sale or lease of property to any person who acquires such property for the purpose of engaging in the business of constructing residential, commercial or industrial buildings (15 U.S.C. §1710.5(g)). The Seller shall not be responsible for the registration or disclosure requirements of the Buyer, if any, under IPSFDA with respect to marketing and sales of the lots within the Premises.

#### **ARTICLE 2. Deposit and Purchase Price.**

2.1 Deposit. Prior to the Effective Date, the Buyer has delivered to the Seller a deposit in the

DS  
meg

DS  
SHL



amount of \$100,000.00 (inclusive of the interest to accrue thereon, the "**Deposit**"), which the Seller has received and has used to fund the estate tax liability estimated to be assessed against the Seller in connection with the disposition of the estate of Henry D. Labastie. The Deposit is evidenced by that Promissory Note (the "**Deposit Note**") and that Mortgage (the "**Deposit Mortgage**") from the Seller in favor of the Buyer, each dated as of November 3, 2014, copies of which have been attached hereto as **EXHIBIT "B."** Provided that the Buyer and the Seller proceed to the closing and consummation of the purchase and sale of the Premises as provided hereunder, the Deposit shall be applied to the Purchase Price (as defined herein) at the Closing (also as defined herein). In the event that the closing of the purchase and sale of the Premises does not occur and this Agreement and the transactions contemplated herein are terminated, the Seller shall refund the Buyer the Deposit as provided in, and subject to the terms and conditions of, the Deposit Note and the Deposit Mortgage. The Deposit shall be applied against the Purchase Price payable (as defined at Section 2.2 hereof).

2.2 Purchase Price. The purchase price for the Premises shall equal

- (a) The product of the following (the "**Purchase Price**").
  - (i) the number of Lots approved by Final Approvals (as defined below) by the Town and the Commonwealth of Massachusetts multiplied by
  - (ii) **\$100,000.00** for each Lot, payable as provided herein;
- (b) less the Deposit balance above; and
- (c) subject to price reduction on the terms set forth below

provided, however, that if the only Lots approvable by Final Approvals are Form A Lots for which septic systems shall be installed, the Purchase Price shall be the number of such Lots, multiplied by \$150,000.00 (without reduction in the Purchase Price pursuant to Section 2.2 hereof), and less the balance of the Deposit, to be paid in the form of a Promissory Note from the Buyer to the Seller at the time of the Closing, subject to the permitting and approval by the zoning, planning and other boards and authorities in the Town and other state and county authorities of the Lots:

- (d) Having at least the minimum square foot size required under applicable zoning laws and regulations within the Premises (not including any property other than the Premises); and
- (e) Developable as single family homes of at least at least 2,500 square feet of living space, with a two car garage.

(the "**Project**") for which the Buyer is able to obtain final (with all appeal periods have run) subdivision and other approvals, orders and permits (the "**Final Approvals**") from all municipal, county and state agencies having jurisdiction and/or authority thereover (the "**Authorities**")

2.3 The total Purchase Price as provided above shall be adjusted at the Closing as

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follows:

- (a) If Final Approvals are obtained for less than 15 Lots in total, then the total Purchase Price shall be reduced by \$5,000 per Lot.
- (b) The total Purchase Price shall be reduced by \$25,000.00 if a sewer pump station for the Premises is required under Final Approvals (a "**Sewer Pump Station**"), such reduction based on the average \$375,000.00 cost of a sewer pump station sufficient to serve the Premises, as determined by the Buyer; provided, however, that to the extent that the actual cost of the Sewer Pump Station for the Premises is less than or more than the estimated average cost by more than five percent (5%), the Buyer and the Seller shall adjust the Purchase Price reduction for the Sewer Pump Station accordingly;
- (c) In the event that the sewer requirements of the Project can be served under Final Approvals by a forced main sewer system (a "**Forced Main System**"), the Buyer and the Seller shall in good faith negotiate a mutually acceptable reduction in the total Purchase Price for the Premises prior to the Closing which properly and fairly accounts for net cost savings realized in establishing, constructing and installing the a Forced Main System for the Project in comparison to the reasonably estimated cost of a Sewer Pump Station;
- (d) In the event that the Buyer can obtain from one or more abutters to the Premises an easement to permit public sewer access from the nearby Franklin Springs Road, Franklin, Massachusetts (a "**Sewer Easement**"), with a connection to such sewer system being made available by the Town under Final Approvals, the Buyer and the Seller shall in good faith negotiate a mutually acceptable reduction in the total Purchase Price for the Premises prior to the Closing which properly and fairly accounts for net cost savings (after accounting for the cost of such easement(s) paid by the Buyer) realized in establishing, constructing and installing the sewer system for the Project required by Final Approvals as a result of obtaining such Sewer Easement;
- (e) In the event that the waste disposal requirements of the Project can be served under Final Approvals by one or more septic systems, the Seller and the Buyer shall in good faith negotiate a mutually acceptable adjustment in the total Purchase Price for the Premises prior to the Closing which properly and fairly accounts for the differential (greater or lesser) in the comparative cost of a septic system serving the Premises and of a Sewer Pump Station

2.4 As more particularly described at Sections 8.5 and 8.6 hereof, the Purchase Price shall be offset, without limitation, by the following closing costs attributable to the Seller:

- (a) Payoff of all mortgages and voluntary liens, along with any Unpermitted Exceptions (as

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defined at Section 3.1(a) hereof);

- (b) Payment of deed transfer tax stamps as provided under Massachusetts General Laws Chapter 61D, Sec. 1, *et seq.*; and
- (c) Payment of all other closing costs, as more particularly described at Sections 8.5 and 8.6 hereof, as may be customarily paid by a Seller of real property pursuant to statute, regulation, or local custom and practice.

**ARTICLE 3. Title and Survey Review and Due Diligence.**

**3.1 Title Review.**

- (a) **Examination of the Title Commitment by the Buyer.** The Buyer shall obtain, at its cost, on or before the sixtieth (60<sup>th</sup>) day following the Effective Date (the "Title Review Deadline") a Commitment for Owner's Policy of Title Insurance (the "**Title Commitment**"), prepared and issued by a title insurance company of the Buyer's sole choice licensed to issue owner's and lender's title insurance policies in the Commonwealth of Massachusetts (the "**Title Company**") describing and covering the Premises, which Title Commitment shall constitute the commitment of the Title Company to insure the Buyer as the fee simple owner of the Premises, pursuant to the issuance of the standard form of an Owner's Policy of Title Insurance in use in the state in which the Premises is located, subject only to the Permitted Exceptions. The Buyer may also obtain, at its cost, a current ALTA survey (the "**Survey**") of the Premises. The Buyer shall give written notice to the Seller not later than 5:00 p.m. (Eastern time) on the Title Review Deadline, if such Title Commitment or the Survey discloses any title defect upon the Premises existing as of the date of such Title Commitment (collectively, the "**Unpermitted Exceptions**"), which notice shall contain a description of each Unpermitted Exception together with copies of all documents evidencing such Unpermitted Exception. Such notice of an Unpermitted Exception is hereinafter referred to as a "**Title Defect Notice.**" Notwithstanding any other provision of this Agreement, the Buyer disapproves all monetary and financing liens and encumbrances (other than liens for non-delinquent real property taxes) as Unpermitted Exceptions. The Seller, at its sole cost and expense, shall be obligated at Closing to discharge:
  - (i) By payment in full all mortgages executed or assumed by the Seller; and the Seller shall be obligated to discharge
  - (ii) By payment or other manner acceptable to the Title Company and the Buyer any mechanics liens, tax liens, any lien securing an obligation of the Seller or any prior owner of the Premises in fixed or determinable monetary amount; and
  - (iii) By payment in full or other manner acceptable to the Title Company and the Buyer any broker's liens arising from any written agreement entered into or assumed by the Seller.

The liens and encumbrances that the Seller is obligated to discharge in accordance with this Section 3.1(a) are herein called "**Voluntary Liens.**"

- (b) **Curing and Removal of Title Objections.** If the Buyer provides a Title Defect Notice to the Seller in accordance with the provisions of Section 3.1(a) hereof, then the Seller may elect, in writing, in its sole discretion, one of the following options:

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- (i) To use commercially reasonable efforts to remove or cure the Unpermitted Exceptions at or before the Closing, provided that the Seller shall not be required or obligated to:
    - (a) Subject to Section 3.1(f) hereof, incur more than \$25,000.00 in costs and expenses (including, without limitation, attorney's fees) in the aggregate to cure all Unpermitted Exceptions (the "Seller's Cure Cost Limit");
    - (b) Subject Section 3.1(f) hereof, commence any effort to remove or cure any Unpermitted Exception, if the Seller reasonably determines that the cost of such removal or cure is likely to cost more than the Seller's Cure Cost Limit (including, without limitation, attorney's fees) in the aggregate; or
    - (c) Commence any litigation or other proceeding in any court to effectuate such cure;
  - (ii) On or prior to the Closing Date, to obtain recordable instruments or other documentation sufficient to cause Title Company, without the payment of additional premiums by the Buyer therefor, either to delete such matters from an owner's title insurance policy to be issued to the Buyer or, if the Buyer agrees in the Buyer's sole discretion, to affirmatively insure the Buyer in such owner's title insurance policy against loss arising out of the enforcement or attempted enforcement of such Unpermitted Exceptions, which affirmative insurance must be in form satisfactory to the Buyer in the Buyer's sole discretion; or
  - (iii) To take no action in connection with the existence of such Unpermitted Exception, in which event all of the Unpermitted Exceptions would be deemed waived by the Buyer and shall thereupon be deemed to be Permitted Exceptions, unless the Buyer terminates this Agreement pursuant to this Section 3.1 as provided in Section 3.1(c) hereof.
- (c) Notice of Title Defects. The Seller shall give written notice to the Buyer not later than thirty (30) calendar days following receipt of the Buyer's Title Defect Notice as to which of the foregoing options 3.1(b)(i), 3.1(b)(ii) or 3.1(b)(iii) that the Seller elects, provided that if the Seller elects option 3.1(b)(iii), the Buyer shall have the right to terminate this Agreement by giving written notice of its election to terminate this Agreement to the Seller within ten (10) business days after its receipt of such notice from the Seller.
- (d) Issues with Regard to Cure of Title Defects. If the Seller elects to make commercially reasonable efforts to cure the Unpermitted Exceptions pursuant to Section 3.1(b)(i) hereof, but is unable to complete such cure within ninety (90) days following its written election to so cure, and provided that the Seller has used commercially reasonable best efforts to effect such cure(s), the Seller shall notify the Buyer and the Buyer shall, as its sole and exclusive remedy, on or before the tenth (10th) business day after the Buyer's receipt of the Seller's notice (such date, the "Notice to Proceed Date"), give notice to the Seller that the Buyer either elects to:
- (i) proceed with the Closing, in which event all Unpermitted Exceptions identified in the Title Defect Notice which the Seller has not cured or removed after expending reasonably commercial best efforts shall thereafter constitute Permitted Exceptions and the Closing (as same may be extended pursuant hereto) shall occur as provided in this Agreement, without any credit against or abatement of the Purchase Price on account thereof; or

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- (ii) extend the period for the cure by a period of up to 60 days from the Notice to Proceed Date, whereupon the Seller shall continue to undertake commercially reasonable best efforts to effect such cure, subject to the Seller's Cure Cost Limit; or
  - (iii) Terminate this Agreement, in which event the Buyer shall be entitled to the prompt return of the Deposit and, except as expressly provided otherwise in this Agreement, this Agreement shall be of no further force and effect and the parties shall have no further rights, obligations or liabilities hereunder.
- (e) Termination Due to Title Defects. In the event of a termination of this Agreement pursuant to this Section 3.1, the Seller shall promptly return the Deposit to the Buyer, together with all interest accrued thereon, as provided in the Deposit Note. In the event of a termination of this Agreement pursuant to this Section 3.1 and following the return of the Deposit to the Buyer, except as expressly provided otherwise herein, this Agreement shall be of no further force and effect and the parties shall have no further rights, obligations or liabilities hereunder.
- (f) Discharge of Voluntary Liens. Notwithstanding the foregoing, the Seller agrees to remove any Voluntary Liens without application of the Seller Cure Cost Limit and irrespective of whether the same is noted in any Title Defect Notice sent by the Buyer.

2. Change of Title Conditions. If between the date of the Title Commitment and the Closing Date, an updated title report or update of the Survey shows any new Unpermitted Exceptions which were placed of record following the effective date of the Title Commitment, then the Buyer shall have the right to give the Seller written notice of any such new Unpermitted Exception, the Seller's Cure Cost Limit shall not apply any such new Unpermitted Exception and the Seller shall cure each such new Unpermitted Exception no later than ten (10) business days prior to the Closing Date. If the Buyer does not give notice of any such new Unpermitted Exceptions to the Seller on or before the Closing Date, the Buyer shall be conclusively presumed to have waived such Unpermitted Exceptions and to have agreed to accept title subject to such new Unpermitted Exceptions (which shall thereupon be deemed to be Permitted Exceptions), and the Closing shall occur without any credit or abatement of the Purchase Price.

3. Access and Buyer's Indemnification. From and after the date hereof, the Seller shall make the Premises available to the Buyer and its agents, subcontractors, suppliers, employees, contractors, consultants, engineers and representatives (collectively, the "Buyer Representatives") for such environmental, topographical and other inspections and tests as the Buyer deems appropriate in connection with the Buyer's due diligence, upon a minimum of twenty-four (24) hours prior notice to the Seller. Neither the Buyer, nor any the Buyer Representative shall enter the Premises to exercise its rights hereunder until an insurance certificate for the Buyer and the Buyer Representatives has been provided to the Seller evidencing commercial general liability insurance (including property damage, bodily injury and death and personal injury) with limits of at least \$500,000 per occurrence and \$1,000,000 annual aggregate liability coverage, which coverage shall remain in place for a period of one (1) year following the completion of construction of the last Lot at the Premises, for damage done to the Seller's property or assets in connection with such site access. The Buyer shall indemnify and hold the Seller harmless from and against any and all loss, costs or damage to the Premises arising out of the actions taken by the Buyer or any the Buyer Representative(s) in connection with the Buyer's performance of due diligence, to the extent the same are evidenced by direct damages, actually incurred by the Seller or its affiliate entities.

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4. Delivery of Documents. In order to facilitate the Buyer's engineering and other work at the Premises, within three (3) business days after the full execution and mutual delivery of this Agreement, the Seller shall deliver to the Buyer copies of any existing files relating to permitting, hazardous materials reports, current operating cost information, appraisals, engineering reports, traffic studies, drainage calculations, real estate tax bills, soils reports, owner's title reports and exception documents referred to therein, surveys, and notices from local governmental authorities applicable to the Premises.

**ARTICLE 4. Sewer Easement Agreement: Statutory Right of First Refusal: Real Estate Taxes Following Conversion.**

4.1 The Easement Agreement. Following the Effective Date, the Buyer shall use commercially reasonable best efforts to obtain from abutters to the Premises a Sewer Easement (as defined in Section 2.2(d) hereof), which Easement Agreement shall be prepared by and for the Buyer at its sole cost and expense, the cost of preparation, permitting and consideration to the abutters for which shall be funded by the Buyer alone, to be obtained for the purpose of allowing a sewer connection between the Lots on the Premises and the municipal sewer connection that may be available along Franklin Springs Road in the Town. The Easement Agreement and each covenant contained therein shall run with the land within the Premises and for the benefit of the Lots.

4.2 Statutory Right of First Refusal. The Buyer and the Seller acknowledge and agree the Seller is obligated under Part I, Title IX, Chapter 61B, Section 8 of the Massachusetts General Laws, as the same may be amended (the "Code") to provide the Town with a right of first refusal with respect to the transaction contemplated by this Agreement (the "ROFR"). Within thirty (30) days following the entry of the last of the Final Approvals required for development of the Project, the entry of which the Buyer shall notify the Seller in writing following the entry of the last of the Final Approvals (together with passage of any appeal periods), as of which time the Buyer and the Seller shall have fixed the value of the Purchase Price as provided in Section 2.2 and 2.3 (the Seller's obligation to satisfy the requirements for determination by the Town on the ROFR to be stayed until such time as the Buyer and Seller agree in writing on the fixed value of the Purchase Price as provided in Section 2 hereof, the Seller covenants it will satisfy the requirements of the Seller under the Code with respect to the ROFR, with the understanding that time is of the essence. Pursuant to the Code, the Town shall have one hundred twenty (120) days from delivery of the formal request from the Seller within which to accept or reject the ROFR. In the event the Town timely accepts the transaction offered to the Town hereunder, the Seller shall notify the Buyer within three (3) days after such acceptance (the "ROFR Acceptance Notification Date") and this Agreement shall terminate as of such date (the "ROFR Termination"). Upon exercise of the ROFR Termination, the Deposit and other funds shall be disbursed to the Buyer as provided in Section 4.3 hereof, whereupon this Agreement shall terminate and neither party shall have any further obligation to the other under this Agreement except for reimbursement of the Buyer Costs (as defined at Section 4.3 hereof). In the event the Town declines to exercise the ROFR, either by express written waiver or by not timely exercising the ROFR Under the time permitted under the Code, the Seller shall notify in writing the Buyer within three (3) days after such waiver by the Town (the "ROFR Waiver Notification Date").

4.3 Reimbursement of Buyer in Event of Exercise of ROFR. In the event that the Town exercises the ROFR, the Seller shall reimburse the Buyer in full the following amounts, effective as of the date of closing of the purchase of the Premises by the Town, provided that the Town agrees to purchase the Premises on the same timeline agreed in this Agreement for the Closing following the Town's waiver of the ROFR, but in any event no later than 90 days following the Town's exercise of the ROFR:

- (i) The Deposit and any other deposits paid by the Buyer in connection with the

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purchase of the Premises;

- (ii) All costs that the Buyer incurred in the permitting and due diligence process with regard to the Premises and the negotiation and consummation of the prior Offer agreed to by the Buyer and the Seller, including reasonable attorney's fees; and
- (iii) A fee to the Buyer in compensation for its time and effort in the sale process of five percent (5%) of the Purchase Price.

(the "**Buyer Costs**"). The Buyer Costs to be reimbursed shall not include any labor costs incurred by officers or employees of the Buyer or of any entity more than forty-nine percent (49%) controlled by the Buyer. This provision shall survive the closing of a sale of the Premises to the Town pursuant to its statutory ROFR and/or the termination of this Agreement.

4.4 Taxation of Premises for Residential Purposes following Conversion from Recreational Land. The Buyer and the Seller agree and acknowledge that under Part I, Title IX, Chapter 61B, of the Massachusetts General Laws, as the same may be amended (the "**Land Conversion Statute**"), the Town may:

- (a) Assess a conversion tax against the Premises under Section 7 of the Land Conversion Statute upon the conversion of its classification from recreational use to the extent that the Premises was designated as recreational land for the purposes of said statute within ten (10) years from the date of conversion, in an amount and in accordance with the formula set forth in Section 7 of the Land Conversion Statute ("**Conversion Taxes**"); and
- (b) Per Section 8 of the Land Conversion Statute, effective as of the date that the Premises no longer qualifies for recreational use under the Land Conversion Statute, additional real estate taxes for the current tax year in which its use is converted from recreational use and for each of the four (4) immediately preceding tax years ("**Roll-Back Taxes**"). Per Section 8 of the Land Conversion Statute, the Roll-Back Taxes are to equal the difference between the real estate tax liability for the current year in which the use of the Premises is converted from recreation land and for the four (4) preceding tax years based on the Premises' designation for recreational use and the tax liability that would have been assessed against the Premises in the absence of a recreational use designation under the Land Conversion Statute.

The Seller shall be responsible for any Conversion Taxes or Roll Back Taxes that are assessed by and whose collection is sought by the Town prior to the date when the same are due and payable to the Town. The Seller's failure to timely pay such Conversion Taxes or Roll Back Taxes to the Town prior to the due date imposed therefor by the Town shall be a default by the Seller hereunder and the Buyer shall have the option to exercise all remedies provided in this Agreement against the Seller. The Seller shall have the right, at the Seller's sole cost to challenge the assessment or the amount of any Conversion Taxes and/or Roll Back Taxes assessed by the Town, provided that the Seller undertakes such challenge in full compliance with all dispute and abatement procedures imposed under applicable law.

**ARTICLE 5. The Seller Representations, Warranties and Covenants.** As of the Effective Date and the Closing Date, the Seller represents and warrants to the Buyer as follows:

5.1 This Agreement constitutes the legal, valid and binding obligations of the Seller and (together with all documents contemplated hereby when executed and delivered) is enforceable against

the Seller in accordance with its terms, as such enforceability may be modified by applicable bankruptcy laws, the laws applicable to creditors' rights generally and general equitable principles. All of the Seller's members/holders of beneficial interests have approved and authorized the Seller to enter into this Agreement as a binding obligation of the Seller.

5.2 The Seller is a Delaware limited liability company, duly incorporated, validly existing, and in good standing under the laws of the State of Delaware and duly qualified and in good standing as a foreign limited liability company with the Commonwealth of Massachusetts and the individuals executing this Agreement and the documents contemplated by this Agreement on its behalf are duly elected or appointed and validly authorized to execute and deliver the same.

5.3 To the Seller's knowledge and to the knowledge of the Seller's undersigned manager, Steven H. Labastie (the "Seller Manager"), neither the Seller nor any party acting for, by or under the Seller has used any oil or hazardous materials (as those terms are defined in M.G.L. c. 21E) on, from or affecting the Premises in any manner which is not in compliance with applicable federal, state or local environmental laws, rules or regulations. Except as disclosed in the environmental reports forwarded to the Buyer, if any, the Seller and the Seller's Manager have no knowledge and have not received any written notice from any governmental agency, body or subdivision, of the presence of any hazardous materials on or emanating from the Premises or from any abutting parcel.

5.4 Except as disclosed in Schedule 5.4 attached hereto, neither the Seller and the Seller Manager has any knowledge of any pending, threatened or contemplated action or litigation, by or against the Seller or any party related to the Seller, or in connection with all or any part of the Site which would materially affect the transactions contemplated by this Agreement.

5.5 Except as disclosed in Schedule 5.5 attached hereto, neither the Seller and the Seller Manager has any knowledge and neither has received any written notice from any governmental agency, body or subdivision to the effect that the Seller or the Premises is in violation of applicable laws or ordinances of any such governmental agency, body or subdivision which would prevent the Buyer's development of the Premises.

5.6 Following the Closing, the Buyer shall maintain insurance upon the Premises in keeping with its current insurance coverage types and amounts until the conveyance of each Lot hereunder to third party purchases, whereupon the Buyer shall not be required to provide insurance with respect to such Lots.

5.7 The Seller has not and shall not grant to any other party (except the Buyer) any option, contract or other agreement with respect to a purchase or sale of the Premises, nor shall the Seller further encumber the Premises, except as more particularly described at Section 5.8 and Section 7.1(a) hereof, unless the subject encumbrancer acknowledges and agrees to the terms and provisions of the transaction contemplated hereby, specifically, the release of the Premises as of the Closing Date at a release price equal to or less than the Purchase Price.

5.8 To the Seller's and the Seller Manager's knowledge, the Premises are not encumbered by the lien of any mortgage, except as follows:

- (a) Potential federal and state statutory liens for estate tax liabilities potentially owed in connection with the death of Henry D. Labastie; and
- (b) No other lien or mortgage.

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5.9 To the actual knowledge of the Seller Manager, the only required approvals or consents to this Agreement and/or the transaction to be effected hereby are more particularly described on Schedule 5.9 attached hereto.

5.10 The Seller has not received written notice from any governmental authority regarding and to the best knowledge of the Seller there are no assessments or special assessments (including, without limitation, assessments for municipal improvements) filed, pending or proposed against the Premises or any portion thereof, including, without limitation, any street improvement or special district assessments.

5.11 To the Seller Manager's actual knowledge, water, telephone, gas and electric utilities are available to the residences located at Franklin Springs Road and Maple Street, Franklin, Massachusetts.

5.12 The Seller Manager shall provide all reasonable assistance and cooperation to the Buyer in connection with the permitting required to close the purchase and sale of the Premises as provided herein, including the signature of all applications for permitting relief prepared by the Buyer (at the Buyer's expense), the participation, cooperation and support of the Seller Manager at all meetings, proceedings, hearings and other matters scheduled in connection with the permitting of the Premises sought by the Buyer as well as the Seller's participation, cooperation and support (including but not limited to cooperation in any lender's environmental review and analysis of the Premises) in connection with the construction financing application and approval process to be undertaken by the Buyer. In connection therewith, the Seller and the Seller Manager shall allow for any reasonable environmental investigation of the Premises sought by a prospective lender to the Buyer and shall provide such lender(s) with all documents, materials and information sought by the Buyer's construction lender to the extent the same are in the possession or knowledge of the Seller or the Seller Manager. The Buyer shall not be required to pay or reimburse the Seller for such participation or any costs associated with assisting the Buyer in the permitting and construction financing approval process undertaken pursuant to this Agreement.

**ARTICLE 6. Buyer's Representations, Warranties and Covenants.** As of the Effective Date and the Closing Date, the Buyer represents and warrants to the Seller as follows:

6.1 This Agreement constitutes the legal, valid, and binding obligation of the Buyer and (together with all documents contemplated hereby when executed and delivered) is enforceable against the Buyer in accordance with its terms, as such enforceability may be modified by applicable bankruptcy laws, laws applicable to creditors' rights generally and general equitable principles.

6.2 The Buyer is a duly organized limited liability company existing and in good standing under the laws of the Commonwealth of Massachusetts and the individuals executing this Agreement and the documents contemplated by this Agreement on behalf of the Buyer are duly elected or appointed and validly authorized to execute and deliver the same.

6.3 The Buyer is acquiring the Premises for the purpose of engaging in the business of constructing residential buildings thereon in conformance with the provisions of 15 U.S.C. §1710.5(g).

**ARTICLE 7 Conditions Precedent to Closing.**

7.1 Conditions Precedent to the Seller's Obligation to Close. The Seller's obligation to consummate the Closing shall be conditioned upon the occurrence or waiver, in writing, of the following conditions (the "**Seller's Conditions Precedent**") no later than ten (10) days prior to the Closing Date:

- (a) In the event the Seller further encumbers the Premises prior to the Closing Date, in breach of the warranties herein and in the Deposit Mortgage, then contemporaneously with the Closing, the Seller shall provide evidence that the holder of such mortgage has approved the sale of the Premises and irrevocably agreed to release the Premises upon the

conveyance thereof to the Buyer in accordance with this Agreement. The Seller shall secure the release of the applicable portion of the Premises prior to or simultaneously with the conveyance of the Premises, or any Lot therein, pursuant to the terms hereof from the lien, operation, effect and provisions of that certain mortgage from the Seller to the holder of the Seller's Monetary Encumbrances, if any, it being agreed that an instrument or instruments so releasing the Premises shall be duly recorded prior to or concurrently with the Deed (as defined at Section 8.4(a)(i) hereof. For the purposes of this Agreement, the term "**Seller's Monetary Encumbrance(s)**" shall mean the holder of any monetary encumbrance upon the Premises as of the Closing Date.

- (b) All of the representations and warranties of the Buyer contained in Article 6 hereof shall be true and correct in all material respects on and as of the Closing Date, as though republished and remade as of the Closing Date.
- (c) The Buyer shall have performed, observed and complied in all material respects with all of the covenants, agreements and conditions required by this Agreement to be performed, observed and complied with on its part on or before the Closing Date.
- (d) This Agreement shall not have been terminated previously in accordance with its terms.
- (e) The Buyer shall not be the subject of any proceeding by or against said party under any federal or state law or statute regarding bankruptcy, insolvency, fraudulent transfers, receivership, conservatorship, custodianship, trusteeship, moratorium or creditors' rights or debtors' obligations generally; any assignment for the benefit of creditors by said party; any failure of said party to pay its obligations as they come due; the insolvency of said party; or entry by said party into a composition agreement.

7.2 Conditions Precedent to the Buyer's Obligation to Close. The Buyer's obligation to consummate the Closing shall be conditioned upon the occurrence or waiver, in writing, of the following conditions (the "**Conditions Precedent**") no later than ten (10) days prior to the Closing Date:

- (a) On or before the Closing Date, each holder of a Seller's Monetary Encumbrance shall have approved the sale of the Premises and irrevocably agreed to release the Premises upon the conveyance thereof to the Buyer in accordance with this Agreement.
- (b) The Buyer's obligation to purchase the Premises and to perform under this Agreement is subject to the Buyer's securing financing for the Closing in the amount of 80% of the Purchase Price on or before ten (10) days prior to the Closing Date. In the event that the Buyer cannot obtain such financing but has obtained all or most of the Final Approvals required for Project, and the Premises are subsequently sold to the Town or a third party other than the Town under the ROFR, then the Owner shall, at the closing of such purchase and sale of the Premises, reimburse the Buyer for the Buyer Costs, on the terms and conditions provided in Section 12(e) of this Agreement.
- (c) Title to the Premises shall be in conformance with Section 8.4(a)(i) hereof.
- (d) No environmental condition shall exist on the Premises that would require the filing of any notice or the conduct of any remedial action, any local, state or federal environmental law or regulation, except for any environmental condition caused by or resulting from the actions or omissions of the Buyer or any of its employees, agents, contractors, engineers, subcontractors or any third party invitee of the Buyer, the remediation of which shall be an obligation of the Buyer pursuant to Section 3.4 of this Agreement.

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- (e) All of the representations of the Seller contained in Article 5 hereof shall be true and correct in all material respects on and as of the Closing Date, as though republished and remade as of the Closing Date.
- (f) The Seller shall have performed, observed and complied in all material respects with all of the covenants, agreements and conditions required by this Agreement to be performed, observed and complied with on its part on or before the Closing Date.
- (g) This Agreement shall not have been terminated previously in accordance with its terms.
- (h) The Premises shall then be in substantially the same condition as they were as of the Effective Date.
- (i) The Seller shall not be the subject of any proceeding by or against said party under any federal or state law or statute regarding bankruptcy, insolvency, fraudulent transfers, receivership, conservatorship, custodianship, trusteeship, moratorium or creditors' rights or debtors' obligations generally; any assignment for the benefit of creditors by said party; any failure of said party to pay its obligations as they come due; the insolvency of said party; or entry by said party into a composition agreement.
- (j) No change shall have occurred subsequent to the Effective Date to any zoning regulation, municipal building restriction or any other law, ordinance, regulation, resolution or restriction of any duly constituted public authority, which change shall have a material adverse effect upon the Premises or the development contemplated hereby.

#### ARTICLE 8 Closing.

8.1 The Closing. The closing of the conveyance of the Premises contemplated hereby (the "**Closing**") shall occur on the ninetieth (90th) calendar day following the ROFR Waiver Notification Date, subject to this Section 8.1 (the date upon which such conveyance is consummated, the "**Closing Date**").

- (a) Notwithstanding any provision of this Agreement to the contrary, the Buyer is hereby granted the option to extend the Closing Date under one or more written requests up to a total of one hundred twenty (120) calendar days beyond the original Closing Date (the "**Closing Date Extension**"). The Buyer shall exercise each Closing Date Extension by providing a written notice of extension to the Seller no less than five (5) days prior to then-scheduled Closing Date (the "**Closing Date Extension Notice**"). Following exercise of any Closing Date Extension, each reference within this Agreement to the Closing Date shall be construed as the Closing Date, as so-extended.
- (b) Notwithstanding anything to the contrary contained herein, the Seller or the Buyer may elect to extend the Closing Date for a period not to exceed thirty (30) days, upon notice to the Buyer or the Seller, as applicable, to permit either party to complete any Condition Precedent to Closing provided such party has, and is, continuing in good faith to achieve such completion.
- (c) Notwithstanding anything to the contrary contained herein, in the event the Seller is unable to deliver the Premises in accordance with Section 8.4(a)(i) hereof and such failure is attributable to:
  - (i) a claim or proceeding before a court or other regulatory agency possessing the power to convene affecting the Premises and the Seller's inability to deliver the same in compliance with Section 8.4(a)(i); or

- (ii) a matter that requires the Seller to pursue equitable relief from a court possessing jurisdiction over the matter then-under dispute in order to facilitate delivery of the Premises in compliance with Section 8.4(a)(i).

8.2 Closing Date: Generally. The Closing Date shall be a regular business day on which the national banks of the City of Boston shall be open for business. The Buyer may, upon not less than five (5) business days' prior notice to the Seller given at any time during the term of this Agreement, elect to waive any of the conditions to Closing as set forth herein and to proceed with the Closing. For the purposes of this Agreement, the term "**Closing**" means the actual closing and consummation of the transaction contemplated by the subject conveyance.

8.3 Place of Closing. The Closing shall occur at the offices of the Buyer's counsel Madoff & Khoury LLP, 124 Washington Street, Suite 202, Foxborough, Massachusetts 02035 (or such other location as the parties hereto shall agree upon in writing).

8.4 Closing Deliverables.

- (a) Seller's Closing Deliverables. On or prior to the Closing Date, the Seller shall deliver the following documents and instruments to the Title Company:

- (i) A Quitclaim Deed(s) (the "**Deed**"), substantially in the form attached as **EXHIBIT C**, conveying good and marketable title to the Premises, free and clear of all tenants and occupants, and free from encumbrances, except for the following matters ( the "**Permitted Encumbrances**"):
  - (a) The Site Approvals, which are those permits, approvals and other matters, including, without limitation, any restrictive covenants that may be placed upon the Premises in connection therewith, as they may have been modified or supplemented from time to time (collectively, the "**Site Approvals**"); and
  - (b) the grantee thereunder takes title to the subject Lot subject to the Easement Agreement.
  - (c) Taxes on the Premises for then current tax year as are not due and payable on the subject Closing Date.
  - (d) Any matters that would be described by an accurate survey of the Premises and any other restrictions, covenants, easements, agreements described in this Agreement or other matters accepted by the Buyer pursuant to Article 3 of this Agreement.
- (ii) A waiver in writing by the Town of the ROFR that the Town has with respect to the Premises in connection with the purchase and sale as provided in this Agreement;
- (iii) The Mechanic's Lien/Parties-in-Possession Title Affidavit of the Seller (substantially in the form attached hereto as **EXHIBIT D** or in the standard form required by the Title Company).
- (iv) An affidavit of the Seller, substantially in the form attached hereto as **EXHIBIT E** stating the Seller's U.S. taxpayer identification number and that the Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal

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Revenue Code of 1986, as amended (the "FIRPTA Certificate")

- (v) **A Unanimous Consent of the Manager** and all other Managers of the Seller certifying that the all of the Managers and all of the Members of (all holders of beneficial interests in) the Seller have approved and authorized the sale of the Premises to the Buyer for the consideration and on the terms presented in this Agreement, as the same may be amended by mutual written agreement of the Seller and the Buyer, and that the Managers are authorized to execute and deliver to the Buyer or its closing counsel at the Closing all Deeds, settlement statements, waivers, agreements, affidavits and certifications of title and of the tax status and information of the Seller as are reasonably required in connection with the purchase and sale of the Premises under applicable Massachusetts law, standards and customs, which Managers Consent shall be fully executed and notarized for filing with the Deed to the Premises;
  - (vi) **A Unanimous Consent of the Members** of (holders of beneficial interests in) the Seller have approved and authorized the sale of the Premises to the Buyer for the consideration and on the terms presented in this Agreement, as the same may be amended by mutual written agreement of the Seller and the Buyer, and that the Managers are authorized to execute and deliver to the Buyer or its closing counsel at the Closing all Deeds, settlement statements, waivers, agreements, affidavits and certifications of title and of the tax status and information of the Seller as are reasonably required in connection with the purchase and sale of the Premises under applicable Massachusetts law, standards and customs. Further, such certificate shall certify the identity of the Members of the Seller and of the Managers of the Seller and attach a true and accurate current Operating Agreement for the Seller which the Members shall certify under oath to be true accurate and complete. This Certificate of the Members of the Seller shall not be recorded at the Registry, but shall be retained in the records of the Buyer or its closing counsel;
  - (vii) The Easement Agreement, if obtained by the Buyer, duly executed by the Seller and the abutters who have granted the Sewer Easement;
  - (viii) A Seller's certificate certifying in writing that all of the representations and warranties made by the Seller in this Agreement continue to be true and correct in all material respects as of such Closing Date as if the same were made on such Closing Date ("**Seller's Bring Down Certificate**")
  - (ix) Such other and further documents and evidence as may be requested reasonably by the Buyer's closing counsel or the Title Company evidencing that all necessary consents and approvals by the members of the Seller have been obtained and that the person executing the Deed and other closing documents on behalf of the Seller has been duly authorized.
  - (x) A settlement statement, setting forth the purchase price being paid and the closing adjustments and prorations being applied thereto, duly executed by the Seller.
  - (xi) Payoff letters from each holder of a Seller's Monetary Encumbrance as to the Premises, confirming the payoff amount due to the holder(s) of the Seller's Monetary Encumbrances in order to obtain a release and discharge of each mortgage affecting the Premises.
- (b) Buyer's Closing Deliverables. On or prior to the Closing Date, the Buyer

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shall deliver the following documents and instruments to the Seller:

- (i) A Promissory Note, in form substantially similar to the Promissory Note attached hereto as **EXHIBIT E**, in the original principal amount of the Purchase Price, as adjusted pursuant to Sections 2.2, 2.3, 8.5 and 8.6 hereof, less the total of the Deposit paid by the Buyer, issued by the Buyer in favor of the Seller (the "**Seller Note**") under which the Buyer shall pay the Seller the Purchase Price, as adjusted, in installments equal to the net adjusted Purchase Price divided by the total number of Lots approved by Final Approvals as and when the Lots are improved by single family homes of the size and type provided above (the "**Payment Installments**"), payable as and when each such improved Lot is sold to a third party buyer, such Payment Installments to be made by the Buyer contemporaneously with the closing of the sale of a Lot to a third party buyer. The Deposit shall be credited ratably to each Lot, with an equal portion applied to the Payment Installments of each approved Lot as released by the Seller from the Seller Mortgage (defined below).
- (ii) a Mortgage, Security Agreement and Financing Statement, in a form substantially similar to that attached hereto as **EXHIBIT E**, encumbering the Premises as security for the Seller Note (the "**Seller Mortgage**"), which shall provide that, absent default by the Buyer, the Seller shall release each Lot requested by the Buyer in writing with each sale of a Lot to a third party buyer in consideration for delivery in good and immediately available funds of the Payment Installment for each such Lot requested. Upon request of the Buyer, the Seller shall be required to and shall subordinate the Seller Mortgage at the closing of any construction financing obtained by the Buyer for one or more Lots such that the Seller Mortgage shall be junior in priority and in right to proceeds to such construction financing, such subordination to be effected by a standard form Subordination Agreement to be executed and delivered for recording at the Registry at the closing of a construction financing facility covering one or more of the Lots;
- (iii) A certificate as to the authority and incumbency of the Buyer's representatives executing the documents and instruments delivered at the Closing;
- (iv) Buyer's certificate certifying in writing that all of the representations and warranties made by the Buyer in this Agreement continue to be true and correct in all material respects as of such Closing Date as if the same were made on such Closing Date (the "**Buyer's Bring Down Certificate**");
- (v) The Easement Agreement, if obtained by the Buyer, duly executed by the Buyer and the abutters who have granted the Sewer Easement;
- (vi) A settlement statement, setting forth the Purchase Price being paid, as adjusted pursuant to the terms of this Agreement and the closing adjustments and prorations being applied thereto, duly executed by the Buyer.

8.5 Prorations and Adjustments. The following items shall be prorated and adjusted between the parties as of the day immediately preceding the Closing (the "**Proration Date**") in the following manner:

- (a) Subject to and except as provided in Section 4.3 hereof, real estate taxes and assessments on the subject Lots shall be prorated between the Buyer and the Seller (based on a 365-day year) as of the Closing Date based on the actual number of days within the applicable

proration period and the most current statement available to the parties hereto; provided, however, the Buyer shall pay any incremental increase in real estate taxes assessed against the Lots attributable to the taxation of the Lots for non-recreational use commencing as of the date immediately following completion of conversion under the Land Conversion Statute through the Closing Date (specifically excluding any liability for Conversion Taxes and/or Rollback Taxes);

- (b) Water and sewer use charges and other utility charges, payments under municipal or other service agreements and all other expenses relating to the Premises shall be apportioned as of the Closing Date based on the most recently ascertainable information in respect of each such expense and the amount thereof shall be added to or deducted from, as the case may be, the Purchase Price; and
- (c) It is the intent of the parties that any other costs or expenses will be equitably allocated between the parties as of the Closing Date in accordance with the terms and conditions of this Agreement or, if the Agreement is silent, customary practice in the state in which the Premises is located.

To the extent that the amount of any such proration proves to be more or less than the actual charges for the period in question, a further adjustment shall be made after the Closing Date as soon as the actual charges for such proration are available. The provisions of this Section 8.5 shall survive the Closing.

8.6 Fees and Closing Costs.

(a) Seller's Allocations. The Seller shall pay:

- (i) All transfer taxes, deed stamp assessments, and similar conveyance taxes or charges in connection with the Closing; and
- (ii) All costs, including without limitation, recording costs, to remove any encumbrances against the Premises, to the extent the Seller is required or elects to remove the same pursuant to the provisions of this Agreement.

(b) Buyer's Allocations. The Buyer shall pay:

- (i) The cost of recording the Deed and any other documents that the Buyer may choose to record;
- (ii) Any costs associated with the issuance of an owner's policy of title insurance;
- (iii) The cost of any survey prepared by or on behalf of the Buyer in connection herewith and of any endorsements to the owner's title policy requested by the Buyer; and
- (iv) All fees, charges and expenses of any kind whatsoever arising out of or relating to the performance of the Buyer's due diligence investigations;

- (c) Allocation of Costs, Generally. All other expenses incurred by the Seller or the Buyer with respect to the Closing, including, but not limited to, attorneys' fees of the Buyer and the Seller, shall be borne and paid exclusively by the party incurring the same, without reimbursement, except to the extent otherwise specifically provided herein.

**Article 9 Casualty; Condemnation.** If prior to the Closing Date, all or a "substantial part" of the Premises or all or substantially all of the necessary access roads or utilities serving the Premises, is or are taken by condemnation, eminent domain or by agreement in lieu thereof, or any proceeding to acquire,

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take or condemn all or any "substantial part" of such access roads or utilities is commenced (a "Taking") with respect to the Premises or the same has suffered casualty damage, the Buyer may terminate this Agreement upon written notice to the Seller delivered within thirty (30) days after receipt of the Buyer becoming aware of such Taking or the Buyer may take title to the Premises in accordance with the terms hereof, without reduction in the Purchase Price therefor, together with an assignment of the Seller's rights to any award paid or payable by or on behalf of the condemning authority or the Seller's insurance provider, as applicable. If the Seller has received payments from the condemning authority or its insurance provider for the Premises, and if the Buyer elects to close title to the Premises, the Seller shall credit the amount of said payment against the Purchase Price at the Closing. For purposes of this Article 9, "substantial part" as to the Premises shall mean such portion of the Premises which would prevent at least 4 Lots from being developed and constructed on the remainder of the Premises.

**Article 10 Indemnification.**

10.1 Seller's Indemnification. The Seller shall indemnify, defend with counsel reasonably acceptable to the Buyer and hold the Buyer and the Buyer's members, managers, officers, directors, shareholders, employees, agents, lenders, successors and assigns and their affiliates and constituent entities and individuals (collectively, the "the Buyer Indemnified Parties") harmless from and against, and shall reimburse the Buyer's Indemnified Parties for, any and all obligations, claims, demands, causes of action, liabilities, losses, damages, judgments, penalties, costs and expenses which may be imposed upon, asserted against or incurred or paid by the Buyer's Indemnified Parties or for which the Buyer's Indemnified Parties become obligated or liable, by reason of, on account of, or in connection with:

- (a) Any claim against the Buyer or for which the Buyer becomes obligated or liable as permittee under and holder of any permit or approval for the Premises obtained by or on behalf of the Buyer, by reason of, on account of or in connection with, any action or omission of the Seller in material violation of any permit or approval, to the extent the Buyer has provided the Seller with prior written notice of any such permit or approvals;
- (b) Any claim against the Buyer or for which the Buyer becomes obligated or liable by reason of, on account of or in connection with, any action or omission of the Seller in material violation of any permit or approval relating to the use, operation or maintenance of the Premises;
- (c) Any material breach of a the Seller representation or warranty under this Agreement giving rise to a claim for which the Buyer seeks indemnification;
- (d) Any breach by the Seller of its obligations under this Agreement to deliver any portion of the Premises to the Buyer in compliance with the terms of this Agreement; or
- (e) To the extent attributable to any action or omission of the Seller in violation of this Agreement or in connection with any injury suffered by persons or property due to actions or omissions of the Seller or the Seller's representatives, agents, contractors, invitees, consultants or employees, any claim against the Buyer or for which the Buyer becomes obligated or by reason of, on account of, or in connection therewith.

10.2 Buyer's Indemnification. The Buyer shall indemnify, defend with counsel reasonably acceptable to the Seller and save the Seller and the Seller's members, managers, officers, directors, shareholders, employees, agents, successors and assigns and their affiliates and constituent entities and individuals (collectively, the "Indemnified Parties") forever harmless from and against, and shall reimburse the Indemnified Parties for, any and all obligations, claims, demands, causes of action, liabilities, losses, damages, judgments, penalties, costs and expenses which may be imposed upon, asserted against or incurred or paid by the Indemnified Parties or for which the Indemnified Parties may become obligated or liable, by reason of, on account of or in connection with:

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- (a) The Buyer's failure to comply or the failure of the Premises to comply with the Site Approvals;
- (b) To the extent attributable to any action or omission of the Buyer in violation of any Site Approval, a claim against the Seller or for which the Seller may become obligated or liable as permittee under and holder of any Permit;
- (c) To the extent attributable to the Buyer's failure to fulfill any of its obligations to the Town relating to subdivision approval or otherwise requiring a bond or other security relating solely to development of the Premises, a claim by the Town that the Seller is obligated to fulfill such obligations in whole or in part; or
- (d) to the extent attributable to any action or omission of the Buyer in violation of this Agreement or in connection with any injury suffered by persons or property due to actions or omissions of the Buyer or the Buyer's representatives, agents, contractors, invitees, consultants or employees, any claim against the Seller or for which the Seller becomes obligated or by reason of, on account of, or in connection therewith.

10.3 Survival. The terms and provisions of this Article 10 shall survive the Closing Date for a period equal to one (1) year following the completion of all development of the Premises by the Buyer.

**ARTICLE 11 Buyer's Right of Exclusive Negotiation**. The Buyer shall have the following right:

11.1 For a period of eighteen (18) months following the date of execution of this Agreement, which period may be extended by the Buyer and the Owner upon mutual written agreement of the Buyer and the Seller, the Buyer shall have the exclusive right and opportunity to negotiate the terms of a potential purchase and sale or other development proposal with the Seller with respect to the approximate sixty-eight (68) acre parcel, located near the Premises and identified as "**Parcel 2**" in that Quitclaim Deed of Henry D. Labastie dated November 21, 2007 and recorded at the Norfolk County Registry of Deeds at Book 25317, Page 578 including all buildings and other improvements located at the Premises, together with all of the right, title and interest of the Seller in any permits, rights, options and other intangible rights associated therewith (the "**Additional Property**") on mutually agreeable price using the then current market value of such Additional Property, discounted to its mutually agreed wholesale value, and incorporating the Buyer's cost of development of the same.

11.2 The exclusive right to purchase the Additional Property shall be memorialized and noticed to third parties by a Notice of Exclusive Rights, signed by the Seller and the Buyer with this Agreement, in substantially the form attached hereto as **EXHIBIT G** (the "**Exclusive Rights Notice**"), the rights in which the Buyer may enforce against the Seller and third parties if violations of the Buyer's rights thereunder are violated. The Buyer shall following the execution of this Agreement and the Exclusive Rights Notice; record the Exclusive Rights Notice at the Registry.

11.3 The Buyer's exclusive rights with respect to the purchase and development of the Additional Parcel shall be revoked at the option of the Seller if the Buyer breaches its obligations under this Agreement or if the rights and obligations of the Parties under this Agreement are

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terminated by the parties by mutual agreement. The Exclusive Rights Notice shall recite the terminability of the Buyer's exclusive rights thereon as provided in this Agreement which Exclusive Rights Notice shall be rescinded upon recording of an affidavit of the Seller or the Buyer attesting under oath that this Agreement and the rights and obligations of the Parties thereunder have been terminated by mutual agreement or unilaterally without opposition of the other Party.

**ARTICLE 12. Default and Remedies.**

12.1 Buyer's Defaults and the Seller Remedies.

- (a) Buyer's Default. It shall be a default by the Buyer under this Agreement (a "Buyer Default") if any one or more of the following shall occur:
- (i) The Closing shall fail to timely occur and such failure shall be continuing for a period of ten (10) business days after the Closing Date once designated as provided in Article 8 hereof; or
  - (ii) The Buyer shall fail to perform any of its other covenants and agreements contained in this Agreement when required to be performed hereunder and such failure shall continue for five (5) business days after the Seller gives the Buyer written notice of such failure.

- (b) Seller Remedies for the Buyer's Default. If a Buyer Default occurs pursuant to Section 12(a), in consideration of the efforts and costs of the Buyer in permitting the Premises, the Closing may, at the Buyer's option, be delayed until the Buyer delivers its Closing Notice therefor, not to exceed one hundred twenty (120) days in total following the original Closing Date as defined herein (the "**Extended Closing Date**"). In the event such Closing does not occur on or before the Extended Closing Dates, the Seller shall have the right to terminate this Agreement upon ten (10) business days prior notice to the Buyer, in the event such rescheduled Closing does not occur within such ten (10) business day notice period;

(c) In the event that the Seller terminates this Agreement as a result of a Buyer Default, then in any and all events, the Seller shall be entitled to all engineering plans and work obtained by the Buyer to date, to be used by another in connection with the continued development of the Premises but the Buyer shall be entitled to repayment in full of the Deposit in full at any closing of a sale of any one or more Lots by the Seller to a third party (including the Town), for which the Buyer shall be paid out of first available funds. At the time of repayment in full of the Buyer's Deposit, Buyer shall cancel the Deposit Note and release the Deposit Mortgage given by Seller to secure the Deposit.

- (d) In the event of a Buyer Default following the Buyer's completion of all engineering and sewer and septic plans and permits, which efforts on the part of the Buyer shall provide substantial value to the Seller and a subsequent buyer of some or all of the Premises, but before obtaining substantially all permitting approvals, which efforts on the part of the Buyer shall provide substantial value to the Seller and a subsequent buyer of some or all of the Premises, the Buyer shall be entitled to payment, prorated over the sale of approved lots on the Premises, of all documented, out-of-pocket third party expenses that the Buyer incurred in connection with the engineering of the Premises and the plans and permits with respect to the septic and sewer systems to serve the Premises. The Buyer agrees

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to subordinate the Deposit Mortgage to secure the Buyer's Deposit in the event that, following a Buyer Default and termination of this Agreement, the Seller enters into a transaction with respect to the Premises for construction financings with a lender under a valid and reasonable construction financing arrangement whose terms are commercially reasonable given then current market conditions. The Buyer shall execute partial releases of the Deposit Mortgage for each lot sold until Buyer's Costs are recovered in full. At the time that Buyer's Costs are recovered in full, Buyer shall cancel the Deposit Note and release the Deposit Mortgage given by Seller to secure the Deposit.

(e) In the event of a Buyer Default following substantial completion of all permitting of the Lots, the Buyer shall be entitled to and shall be paid from the proceeds of the sale of Lots the Buyer Costs, of which

(i) The Deposit shall be paid in full from the first proceeds of the sale of the Lots (after payment of real estate taxes, county deed transfer taxes and recording fees (the "Net Proceeds") to be sold by the Seller to one or more third party purchasers following a Buyer Default. At the time of repayment of the Buyer's Deposit, Buyer shall cancel the Deposit Note and release the Deposit Mortgage given by Seller to secure the Deposit;

(ii) The balance of the Buyer Costs shall be paid on a pro-rated basis from the sale of each Lot as sold to one or more third party purchasers from the Net Proceeds of such sale. The Buyer agrees to subordinate the Deposit Mortgage given by Seller to secure the Buyer's Deposit in the event that Seller enters into a transaction with respect to the Premises for construction financings with a lender under a valid and reasonable construction financing arrangement whose terms are commercially reasonable given then current market conditions. The Buyer shall execute partial releases of the Deposit Mortgage each lot sold until Buyer's Costs are recovered. At the time that Buyer's Costs are recovered in full, Buyer shall cancel the Deposit Note and release the Deposit Mortgage given by Seller to secure the Deposit.

This provision shall survive the termination of this Agreement;

(f) In the event that Seller terminates this Agreement pursuant to Section 12.1 (b) hereof, then after the Seller has satisfied in full its obligation to return the Buyer's Deposit as provided in Section 12.1 (e) (i), or, if applicable, after the Seller has satisfied in full its obligation to return the Buyer's Deposit and Buyer's Costs as provided in either Section 12.1 (e) (ii) as applicable, this Agreement shall be of no further force and effect and neither the Buyer nor the Seller shall have any further rights, obligations or liabilities hereunder or any other agreements, documents or instruments executed by the Buyer and/or the Seller pursuant to this Agreement;

(g) The Parties acknowledge and agree that, in consideration of the efforts and expenses undertaken by the Buyer in subdividing and permitting the Lots and in developing the Premises for sale as a residential development, the Seller's damages from such Buyer Default shall be limited to retaining the Deposit, to be paid back to the Buyer as provided as forth above herein in subsection (e) (i) or (e) (ii), and, given the benefit to the Seller from the Buyer's development and permitting efforts with respect to the Premises and the turnover of all engineering plans, permits and related permitting materials, such limitation on damages is fair and equitable. Notwithstanding anything to the contrary contained herein, under no circumstances shall the Seller be entitled to recover any special, indirect,

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consequential, punitive, or similar damages for a the Buyer Default.

12.2 Seller Default and the Buyer's Remedies.

- (a) Seller Default. Subject to Section 8.1 hereof, it shall be a default by the Seller under this Agreement (a "**Seller Default**") if the Seller shall fail to perform any of its covenants and agreements under this Agreement when required to be performed hereunder and such failure shall continue for ten (10) business days after the Buyer gives the Seller notice of such failure (but in no event later than the Closing Date).
- (b) Buyer's Remedies for the Seller Default. If a Seller Default occurs, then the Buyer shall have the right to either:
- (i) Terminate this Agreement immediately pursuant to this Section 12.2(b) by giving written notice to the Seller, in which event the Buyer shall be entitled to payment in full of the Deposit as provided in the Deposit Note and shall be entitled to an immediately return to the Buyer or all documented Buyer Costs, which shall be immediately payable by the Seller upon written demand therefor from the Buyer; or
  - (ii) In a court of competent jurisdiction, seek specific performance of the Seller's obligation to tender the Premises.

The foregoing election of remedies shall be the Buyer's sole and exclusive remedy hereunder, or at law or in equity, for a Seller Default. In the event that the Buyer terminates this Agreement pursuant to this Section 12.2(b)(i), then except as expressly provided otherwise herein, upon payment by the Seller to the Buyer of the Buyer Costs, this Agreement shall be of no further force and effect and neither the Buyer nor the Seller shall have any further rights, obligations or liabilities hereunder.

**ARTICLE 13. Notices.** Any and all notices or other communications required or permitted by this Agreement to be served on or given to any party hereto by any other party hereto and to whom it is directed, shall be deemed given when and if delivered in hand, by facsimile (fax), by email transmission or by overnight mail via a courier of national reputation, to the BUYER and the BUYER's counsel or to the SELLER and the SELLER's counsel at the contact information below:

If to the Seller, to: **FRANKLIN LABASTIE FAMILY L.C.C.**  
Attn.: Steven H. Labastie, Manager  
469 Maple Street,  
Franklin, Massachusetts 02038  
Email: [stevenhomestead@verizon.net](mailto:stevenhomestead@verizon.net)

With copy to: Daniel H. Nye, Esq.  
**LAW OFFICE OF DANIEL H. NYE**  
50 North Street, Suite 215  
Medfield, Massachusetts 02052  
Fax: (508) 359-4169  
Email: [dannyelaw@email.com](mailto:dannyelaw@email.com)

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**If to the Buyer:** Franklin Holdings LLC  
11 Allen Drive  
Norton, MA 02766  
Fax: (508) 622-0521  
Attn: Mark F. Carroll, Sole Manager  
Email: [carrolcorp@hotmail.com](mailto:carrolcorp@hotmail.com)

With a copy to: Michael A. Khoury, Esq.  
**MADOFF & KHOURY LLP**  
Pine Brook Office Park  
124 Washington Street, Suite 202  
Foxborough, MA 02035  
Fax: (508) 543-0020  
Email: [khoury@mandkllp.com](mailto:khoury@mandkllp.com)

provided that any party may change its address for notice by giving to the other party written notice of such change. Any notice request, demand or other communication given under this Article 13 shall be effective upon the earlier of (i) hand delivery, fax delivery or email transmittal to the party to receive such notice, request, demand or communication, or (ii) receipt at the address for notice as provided for herein for the party to receive such notice, request, demand or communication by nationally recognized overnight carrier for first priority morning delivery. If notification is by facsimile or email transmission, such transmission must be made between the hours of 9:00 AM and 5:00 PM prevailing Eastern Time, Monday through Friday, excluding holidays. The attorneys for the parties hereto may give notice on behalf of their client.

**ARTICLE 14 Miscellaneous.**

14.1 Each party shall pay the costs of its own attorneys, consultants and accountants' fees and expenses.

14.2 For the purposes hereof, "Unavoidable Delay" shall mean and refer to any prevention, delay or stoppage in the work of subdivision or other work which is caused by or through acts of God, war, inclement weather, settlement or consolidation of soils, strikes, acts of public utilities or governmental authorities in failing to approve necessary permits and plans despite diligent efforts to obtain the same, moratoria (whether imposed by governmental authority or by initiative), inability to obtain labor or materials or reasonable substitutes therefore, or governmental regulations or controls. If the performance of any act is rendered difficult primarily because of the financial condition of a party, the same shall not constitute an Unavoidable Delay. To the extent the Buyer or the Seller is impeded or impaired by an Unavoidable Delay in timely performing hereunder, such performance shall be deferred on a day-for-day basis during the continuance of such impediment or impairment.

14.3 Nothing contained in this Agreement shall be construed to make the Seller and the Buyer partners or joint venturers or to render either party liable for the debts or obligations of the other, except as in this Agreement expressly provided.

14.4 No delay or omission by either party hereto to exercise any right or power accruing upon any noncompliance or failure of performance by the other party under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. The failure herein to specify a right, power or remedy accruing upon any noncompliance or failure of performance by either party hereto shall not be construed to be a waiver thereof or as impairing the right of the party thereby aggrieved to all remedies then available to such party at law or in equity by reason of such noncompliance or failure of performance subject. A waiver by either party hereto of any of the covenants, conditions, or agreements hereof to be performed by the other party shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition or agreement herein contained.

14.5 This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts. If any provision, or portion thereof, of this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provision, or portion thereof, to any other person or circumstance, shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

14.6 EACH OF PURCHASER AND THE SELLER HEREBY AGREES NOT TO/ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS AGREEMENT, THE TRANSACTION CONTEMPLATED HEREBY, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY EACH OF PURCHASER AND THE SELLER AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. EACH OF PURCHASER AND THE SELLER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY PURCHASER AND THE SELLER.

14.7 Where used herein, the neuter gender shall include the masculine or feminine whenever applicable.

14.8 No agreement shall be effective to add to, change, modify, waive, or discharge this Agreement in whole or in part unless such agreement is in writing and signed by the parties hereto.

14.9 This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts shall together constitute one and the same instrument.

14.10 All negotiations regarding the acquisition and development of the Premises will be confidential and shall not be disclosed to any party, other than the employees, agents, consultants, prospective or actual lenders, prospective or actual investors, attorneys and financial advisors or either party possessing a need to know about the transaction contemplated hereby. No press or other publicity release shall be issued to the general public concerning the transaction contemplated hereby without the mutual consent of the Buyer and the Seller, unless the same is compelled by law, in which event the party so-compelled shall notify the other party of such requirement.

14.11 This Agreement, by its terms, contemplates continuing cooperation and specifies continuing obligations between the parties during the pendency of this Agreement and also after Closing. It is expressly understood and agreed that any term or provision hereof which by its nature is intended to be performed, or any amount, which is intended to be paid after Closing shall also survive Closing, or earlier termination of this Agreement, whether or not so expressly stated in the applicable section of this Agreement.

14.12 Except as in this Agreement otherwise expressly provided, the terms hereof shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted successors and assigns.

14.13 No agreement shall be effective to add to, change, modify, waive, or discharge this Agreement in whole or in part unless such agreement is in writing and signed by the parties hereto.

DS  
MCC

DS  
SKL

14.14 In the event of any litigation regarding the rights and obligations of the parties under this Agreement, the prevailing party shall be entitled to recover reasonable counsel fees, court costs and other direct litigation expenses.

14.15 This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts shall together constitute one and the same instrument.

14.16 the Buyer and the Seller each represent and warrant to each other that they have dealt with no broker, finder or like agents who might claim a commission or fee in connection with the transaction contemplated by this Agreement. the Buyer and the Seller each agree to indemnify and hold harmless the other and their respective successors and assigns from and against any and all claims, losses, liabilities and expenses, including, without limitation, reasonable attorneys' fees and expenses, arising out of any claim or demand for commission or other compensation for bringing about this transaction by any broker, finder, or like agents who claim to have dealt with the indemnifying party or any affiliate thereof in connection with this transaction. The provisions of this Section 14.16 shall survive the Closing or the termination of this Agreement.

14.17 Notwithstanding any other provision of this Agreement to the contrary, and notwithstanding the Closing of the sale of the Premises, the Buyer and the Seller agree in good faith before and after the Closing hereunder to execute such further or additional documents, and to take such other actions, as may be reasonably necessary or appropriate to fully carry out the intent and purposes of the parties as set forth in this Agreement.

14.18 In computing any period of time under this Agreement, the date of the act or event from which the designated period of time begins to run shall not be included, the last day of the period so computed shall be included unless it is a Saturday, Sunday, or federal legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday, or federal legal holiday.

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

*[The remainder of this page intentionally left blank.]*

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Signature Page to Agreement of Purchase and Sale

IN WITNESS WHEREOF, the parties hereof have duly executed this agreement as a sealed instrument all as of the day and year first above written in any number of counterpart copies, each of which shall be deemed an original for all purposes.

**FRANKLIN LABASTIE FAMILY L.L.C.**

Seller

DocuSigned by:  
By: Steven H. LaBastie  
Name: Steven H. LaBastie  
Title: Sole Manager  
*Duly authorized*

**FRANKLIN HOLDINGS LLC**

Buyer

DocuSigned by:  
By: Mark F. Carroll  
Mark F. Carroll, its Sole Manager



**EXHIBIT A**

**Description of the Premises**

17.12 acres, more or less (located off of Maple Street, Franklin, Norfolk County, Massachusetts described as follows:

Beginning on the Southeasterly corner of the granted premises at land formerly of McFarland on said Maple Street; thence Westerly on said McFarland land, as the wall now stands, to land now or formerly of Pond; thence Northerly on said Pond land in part, and in part on land formerly of Wight, as the wall now stands to land formerly of Hills; thence Easterly on said Hills land, as the wall now stands, to said Street; thence Southerly on said street to the point of beginning, being the same premises identified as "Parcel 2" in that Quitclaim Deed of Henry D. Labastie dated November 21, 2007 and recorded at the Norfolk County Registry of Deeds at Book 25317, Page 578 including all buildings and other improvements located at the Premises, together with all of the right, title and interest of the Owner of the Premises in any permits, rights, options and other intangible rights associated with the Premises.

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**EXHIBIT "B"**

**Copies of Deposit Note and Deposit Mortgage**

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DS  
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**EXHIBIT C**

**The Deed**

*[To be attached.]*

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TMEC

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SHL

**EXHIBIT D**

**Mechanic's Lien/Parties in Possession Title Affidavit**

COMMONWEALTH OF MASSACHUSETTS )  
 )  
COUNTY OF NORFOLK )

With respect to \_\_\_\_\_ [the "Premises"], as shown on a plan entitled \_\_\_\_\_, dated \_\_\_\_\_ and recorded \_\_\_\_\_, the undersigned being duly sworn deposes and says:

1. Within the last ninety (90) days, including the date hereof, no person has furnished any labor, services or materials in connection with the construction or repair of any structures or improvements on the above-described premises, for which a lien could be filed, except:
2. As of the date hereof, there are no tenants or other parties who are in possession or have the right to be in possession of said premises, except as follows:

This affidavit is made for the purpose of inducing Commonwealth Land Title Insurance Company to issue an owner's title insurance policy on said Premises free and clear of any possible claims of a party in possession or against any unrecorded or inchoate mechanics' liens or rights to such liens against such premises well knowing that it will do so only in complete reliance upon the truth and accuracy of the statements contained herein.

WITNESS my hand and seal this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**FRANKLIN LABASTIE FAMILY, L.L.C.**

By: \_\_\_\_\_  
Name: Steven H. Labastie  
Title: Sole Manager  
*Duly Authorized*

DS  
mcc

DS  
SHL

COMMONWEALTH OF MASSACHUSETTS )  
 )  
COUNTY OF NORFOLK )

On this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me, the undersigned notary public, personally appeared Steven H. Labastie, the Sole Manager of Franklin Labastie Family L.L.C., a Delaware limited liability company, provided to me through satisfactory evidence of identification which was \_\_\_\_\_ to be the person whose name is signed on the preceding or attached document and acknowledged to me that he signed it voluntarily for its stated purpose in the above-noted capacity:

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

DS  
mcc

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**EXHIBIT E**

**FIRPTA Certificate**

Section 1445 of the Internal Revenue Code provides that a transferee (or the Buyer) of a U.S. real property interest must withhold tax if the transferor (or the Seller) is a foreign person. To inform the transferee that withholding of tax is not required in connection with the transfer of a U.S. real property interest by Franklin Labastie Family L.L.C., a Delaware limited liability company (the "Company"), the undersigned being the duly authorized sole Manager of the Company hereby certifies the following:

1. The Company is not a foreign corporation, foreign partnership, foreign trust, foreign estate or non-resident alien individual (as those terms are defined in the Internal Revenue Code and regulations promulgated thereunder).
2. The Company is not a foreign corporation, foreign partnership, foreign trust, foreign estate or non-resident alien individual (as those terms are defined in the Internal Revenue Code and regulations promulgated thereunder).
3. The U.S. Employer Identification Number of the Company is as follows:  
\_\_\_\_\_
4. The address of the Company is 469 Maple Street, Franklin, Massachusetts 02038.

The undersigned understands that this Certification may be disclosed to the Internal Revenue Service and that any false statement contained herein could be punished by fine, imprisonment or both.

Under penalties of perjury the undersigned declare that they have examined this certification and to the best of the undersigned's knowledge and belief it is true, correct and complete.

**FRANKLIN LABASTIE FAMILY, L.L.C.**

DocuSigned by:  
By: Steven H. LaBastie  
Name: Steven H. LaBastie  
Title: Sole Manager  
*Duly authorized*

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DS  
SHL

**EXHIBIT F**  
**Form of Seller Note**

*[To be attached.]*

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**EXHIBIT G**

**Form of Seller Mortgage**

*[To be attached.]*

DS  
MEC

DS  
SHL



**EXHIBIT G**

**Form of Exclusive Rights Notice**

[to be attached]

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**SCHEDULE 5.4**

**Seller Pending or Threatened Litigation**

None to the Actual Knowledge of the Seller

DS  
mcc

DS  
SHL

Schedule 5.4

**SCHEDULE 5.5**

**Seller Written Notices Regarding Violations of Laws**

None, to the Actual Knowledge of the Seller,

Schedule 5.5

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mek

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SHL

**SCHEDULE 5.9**

**Seller Required Approvals and Consents with Respect to  
this Agreement or the Transaction Contemplated Thereby**

1. Waiver of Statutory Right of First Refusal in favor of Town of Franklin regarding Premises

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MFC

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Exhibit 8.4.2.3



**TOWN OF FRANKLIN**

**RESOLUTION 17 - 41**

**Chapter 61A – Non-exercise of 1<sup>st</sup> Refusal Option – 114.473 Acres  
located at 215 Prospect Street**

**WHEREAS,** The Town has been notified by Attorney for the owner of Chapter 61A land at 215 Prospect Street, Parcel No. 325-003-000-000, Title reference: Norfolk Registry of Deeds Book 11712 Page 405, of the owner’s intent to convert the property to other use.

**WHEREAS,** the Town has 120 days to exercise its first refusal option; and

**WHEREAS,** the Town Council, after consideration, does not wish to exercise said option to acquire this parcel of land.

**BE IT RESOLVED THAT THE TOWN OF FRANKLIN,** acting by and through the Town Council and pursuant to Section 14, MGL Chapter 61A, hereby declares that it will not exercise the first refusal option on the parcel of land at 215 Prospect Street containing 114.473 acres of land known as Assessors’ Parcel ID No.: 325-003-000-000, Title reference: Norfolk Registry of Deeds Book 11712 Page 405.

This resolution shall become effective according to the provisions of the Town of Franklin Home Rule Charter.

**DATED:** \_\_\_\_\_ **2017**

**VOTED:** \_\_\_\_\_

**UNANIMOUSLY:** \_\_\_\_\_

**A TRUE RECORD ATTEST:**

**YES:** \_\_\_\_ **NO:** \_\_\_\_

**ABSTAIN:**\_\_\_\_ **ABSENT:**\_\_\_\_

**Teresa M. Burr**  
**Town Clerk**

\_\_\_\_\_  
**Judith Pond Pfeffer, Clerk**  
**Franklin Town Council**

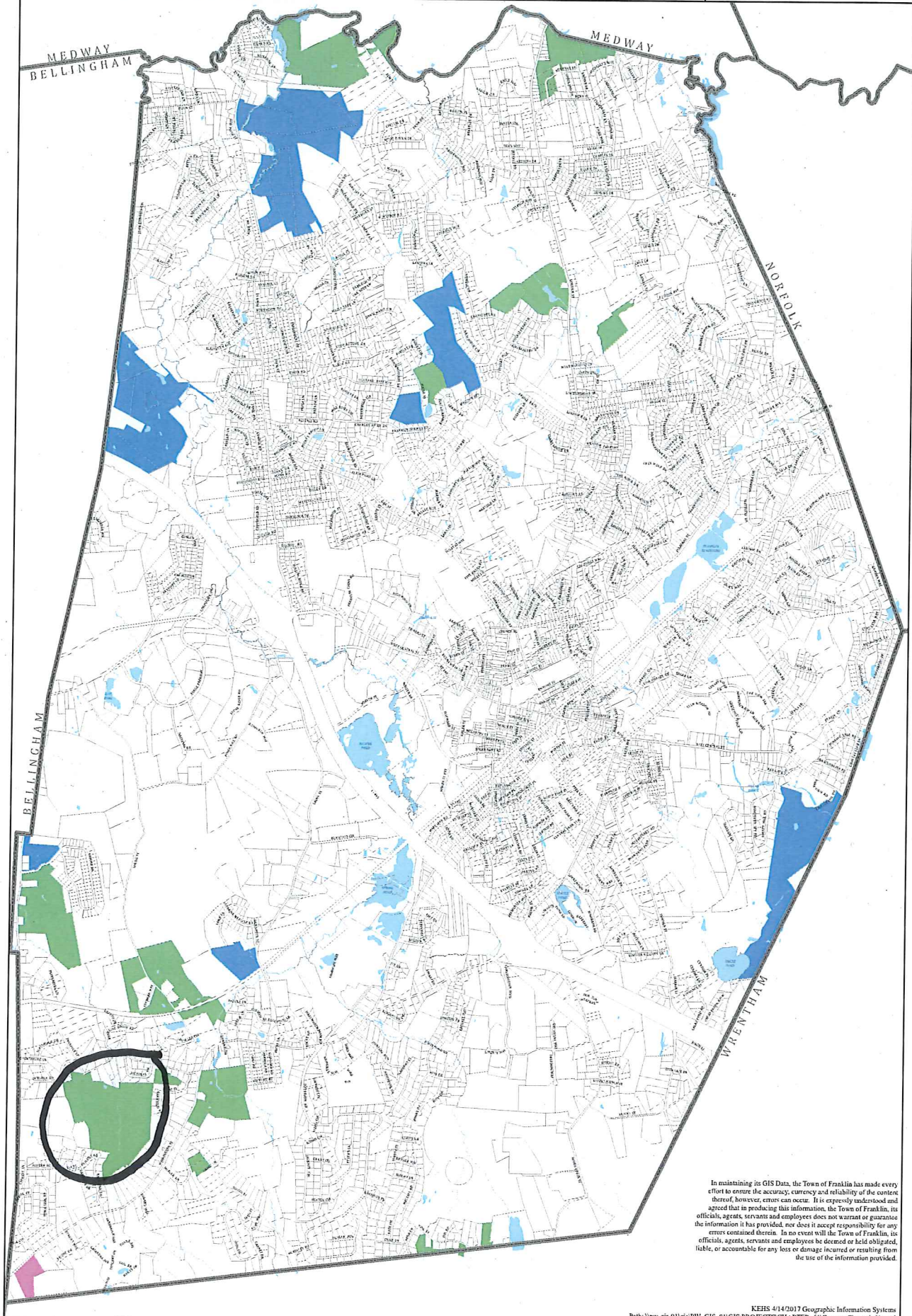
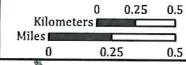


# Franklin

MASSACHUSETTS

- Chapter 61
- Chapter 61A
- Chapter 61B
- Parcel Line

- Water
- Municipal Boundary



In maintaining its GIS Data, the Town of Franklin has made every effort to ensure the accuracy, currency and reliability of the content thereof, however, errors can occur. It is expressly understood and agreed that in producing this information, the Town of Franklin, its officials, agents, servants and employees does not warrant or guarantee the information it has provided, nor does it accept responsibility for any errors contained therein. In no event will the Town of Franklin, its officials, agents, servants and employees be deemed or held obligated, liable, or accountable for any loss or damage incurred or resulting from the use of the information provided.



Rubenstein & Associates

10 Speen Street, First Floor  
Framingham, MA 01701  
Telephone 508-969-9988  
Facsimile 508-969-5138

Andrew Rubenstein  
Andrew@raalaw.com

June 16, 2017

Jeff Nutting  
Town Administrator  
c/o Town Clerk  
Town of Franklin  
355 East Central Street  
Franklin, MA 02038

RECEIVED  
JUN 20 2017  
TOWN ADMINISTRATOR  
TOWN OF FRANKLIN

Re: 215 Prospect Street Franklin, MA  
Parcel No. 325-003-000-000  
Request for Waiver of Right of  
First Refusal and Release of  
Agricultural Tax Lien

NOTICE OF INTENT TO SELL FOR OTHER USE

Dear Mr. Nutting:

I represent the Schmidt's Farm Inc. which owns the property located at 215 Prospect Street, Franklin, MA. The Corporation is now in the process of selling the property to a third party and is requesting a Waiver of the Right of First Refusal and a Release of Agricultural Tax Lien from the Town of Franklin in order to clear the title in connection with the sale. The property being conveyed is known as 215 Prospect Street, Franklin, MA and identified as Parcel No. 325-003-000-000. The parcel contains approximately 114.473 acres according to the Assessor's records. A copy of the Assessor's plan is attached for your file. The purchaser intends to use the property for building lots for the construction of single family homes. An original copy of the Purchase and Sale Agreement for the property is attached for your file.

The address and telephone number of the landowner is:

Schmidt Farm, Inc.  
215 Prospect Street  
Franklin, MA 02038  
Tel: 508 369 1642

The address and telephone number of the landowner's attorney is:

Andrew M. Rubenstein, Esq.  
Rubenstein and Associates  
10 Speen Street, First Floor  
Framingham, MA 01701  
508-969-9988  
508-969-5138 fax  
andrew@raalaw.com

Please feel free to contact me with any additional questions.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Andrew M. Rubenstein', with a long horizontal flourish extending to the right.

Andrew M. Rubenstein, Esq.

CC: Franklin Town Council c/o Franklin Town Clerk  
CC: Franklin Board of Assessors  
CC: Franklin Planning Board  
CC: Franklin Conservation Commission  
CC: State Forester c/o Commission of the Department of Conservation and Recreation



**PURCHASE AND SALE AGREEMENT  
215 PROSPECT STREET  
FRANKLIN, MA**

This 15<sup>th</sup> day of June, 2017 ("Effective Date").

**1. PARTIES AND MAILING ADDRESSES**

**SCHMIDT'S FARM INC.** of 215 Prospect Street, hereinafter called the SELLER, agrees to SELL and **MADDI NORTH STREET DEVELOPMENT, LLC OR ITS ASSIGNEE**, of PO Box 411 Franklin, MA 02038 hereinafter called the BUYER, agrees to BUY, upon the terms hereinafter set forth;

**2. DESCRIPTION/PROPERTY**

The property includes one (1) parcel owned by the SELLER, consisting of 114.47 acres located at 215 Prospect Street, Franklin, MA per the deed recorded at the Norfolk County Registry of Deeds at Book 11712 Page 405 (the "PROPERTY").

The BUYER is purchasing the Property for a new residential subdivision to be approved and fully permitted for the development and construction of sixty (60) for-sale, four-bedroom single family homes in a residential community with all applicable site infrastructure, public water, private septic, gas and electric utilities, and rights of way pursuant to the existing Town of Franklin Zoning By-Laws (the "APPROVED HOMES").

Buyer agrees that Seller will retain one (1) lot in the new subdivision to be at least 1.5 acres in size, (the "Retained Lot"), in the general area of Lot 1 on the Conceptual Subdivision Plan, attached hereto. The exact location and size of the Retained Lot to be determined by BUYER based on infrastructure, area needed for other lots, drainage, costs, aesthetics and changes suggested by the Town of Franklin, including the Planning Board, to the proposed subdivision plan, provided however that the Retained Lot shall be at least 1.5 acres in size.

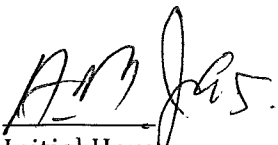
**3. PURCHASE AND SALE OF PROPERTY**

Subject to the terms and conditions herein contained SELLER agrees to sell and BUYER agrees to purchase the Property and all rights, appurtenant thereto for utilities, ingress and egress or other appurtenant rights.

The Property shall include all privileges, rights, easements and appurtenances belonging to such land and right, title and interest (if any) of SELLER in and to any property, easements, streets, alleys, passages or other rights-of-way or appurtenances included in, adjacent to or used in connection with such land, the right to access abutting public roads for all purposes for which public ways may be used in Massachusetts including without limitation the right to pass and repass and install utilities, and all right, title and interest (if any) of SELLER in all mineral rights appurtenant to such land.

**4. TITLE AND SURVEY**

- (a) Subject to the rights of the Buyer regarding title and survey issues set forth below, said Property are to be conveyed by good and sufficient quitclaim deed running to the BUYER, or to the

  
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nominee designated by the BUYER by written notice to the SELLER at least seven (7) days before the deed is to be delivered as herein provided, and said deed shall convey a good and clear record and marketable and insurable title thereto, free from encumbrances, except:

- (1) Provisions of existing building and zoning laws;
  - (2) Such taxes for the then current year as are not due and payable on the date of the delivery of such deed;
  - (3) Any liens for municipal betterments assessed after the date of the closing and recording of the deed;
  - (4) Easements, restrictions and reservations of record, if any, but subject to the provisions below, so long as the same do not interfere with the Buyer's intended use of the Property;
- (b) Title Commitment. BUYER shall at BUYER's sole expense, obtain an ALTA Title Insurance Commitment showing all matters affecting title to the Property (the "Title Commitment"). BUYER shall furnish to SELLER a copy of the Title Commitment and any amendments to the Title Commitment promptly upon BUYER's receipt of the same. Buyer shall not be required to expend any funds for Survey, title or due diligence until after the Town of Franklin's right of first refusal has been extinguished to Buyer's reasonable satisfaction.
- (c) Survey. BUYER shall, at BUYER's sole expense, employ an Engineer, to prepare a survey of the Property (the "Survey"). BUYER shall furnish to SELLER a copy of the Survey and any amendments to the Survey promptly upon BUYER's receipt of the same.
- (d) BUYER's Title Objections. BUYER may furnish to SELLER a written statement specifically identifying any liens, encumbrances, encroachments or other objections to the title to the Property, the ("BUYER's Title Notice"). A copy of the Title Commitment and the Survey shall accompany BUYER's Title Notice if the same have not been previously provided to SELLER. If SELLER does not receive BUYER's Title Notice on or before 5:00 p.m. on the date that is the greater of one hundred eighty (180) days from the Effective Date or ninety (90) days from the date of Buyer's receipt of the 61A Termination Notice, as defined herein, then BUYER shall be deemed to have waived BUYER's right to object to matters of title or matters of survey that were of record or in existence on the Effective Date.
- (e) SELLER's Obligation to Cure. Prior to the Closing, SELLER shall remove those objections listed on BUYER's Title Notice that (i) are mortgages or other liens created by, through or under SELLER which secure solely the payment of a stated indebtedness, (ii) were voluntarily placed on the record title by SELLER after the Effective Date.
- (f) SELLER's Election to Cure. If objections appear on BUYER's Title Notice that SELLER is not obligated to remove pursuant to Section 4(e), then SELLER, within fourteen (14) days of SELLER's receipt of BUYER's Title Notice, shall send written notice to BUYER indicating which, if any, of the remaining objections SELLER has elected to eliminate prior to the Closing ("SELLER's Title Notice"). BUYER, within fourteen (14) days of BUYER's receipt of SELLER's Title Notice, shall either (i) elect to terminate this Agreement, in which case the

  
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Deposit shall be refunded to BUYER, or (ii) elect to proceed subject to the title and survey matters SELLER has elected not to remove without any abatement of the Purchase Price. ("Buyer's title election reply"). If SELLER fails to send SELLER's Title Notice within Seller's said fourteen (14) day period, then SELLER shall be deemed to have elected to terminate the Agreement and return the BUYER's Deposit with no further recourse to either party. If BUYER fails to make BUYER's title election reply within said fourteen (14) day period, then BUYER shall be deemed to have elected clause (i) above.

(g) New Title and Survey Matters. BUYER shall have the right to object to any title matters or survey matters that first arise after the effective date of the Title Commitment or the Survey, as the case may be, in which case said matters shall be resolved in the manner set forth in this Section and, if required, the Closing Date shall be extended to provide the parties with the time periods set forth above.

## 5. PURCHASE PRICE

The agreed purchase price for said Property is **Five Million Dollars (\$5,000,000.00)**, of which

<b>\$ 5,000.00</b>	Initial Deposit has been to Rubenstein & Associates, escrow agent in a non-interest bearing IOLTA.
<b>\$20,000.00</b>	Deposit has been paid this day to Rubenstein & Associates, escrow agent in a non-interest bearing IOLTA.
<b>\$3,475,000.00</b>	are to be paid at the time of delivery of the deed in cash, or by certified, cashier's, treasurer's or bank check(s), via wire transfer or Attorney IOLTA check drawn from a Boston clearing house bank, to SELLER or SELLER's designee by written notice to conveyance attorney, subject to the provisions of Section 8.
<b>\$1,500,000.00</b>	in the form of a Note Payable attached as <b>Addendum A</b> , herein after referred to as "SELLER FINANCING" as further defined in Section 11
<b>\$5,000,000.00</b>	TOTAL

## 6. DOCUMENTS

Within five (5) days after the Effective Date of this Agreement or as soon as practically possible, SELLER shall deliver to BUYER the "Due Diligence Information" which shall consist of all instruments, contracts, licenses, permits, reports, documents and agreements which affect the ownership, operation, or use of the Property, including, but not limited to, (i) any title information, policies, reports, a copy of the deed(s), any and all leases, security deposit agreements, service contracts, utility agreements, construction contracts, licenses, permits (including water, waste water and storage tanks, if any), (ii) all development permits applicable to the Property, (iii) all development plans, plats, architectural drawings, plans, specifications, renderings, floor plans, engineering plans, (iv) any environmental and toxic waste reports, studies, and information (including wetlands and endangered species habitat located on the Property and any Phase I environmental report with respect to the Property that has been completed by a reputable

  
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environmental consultant within the last thirty-six (36) months), (v) surveys, site plans, soil and substrata studies, construction plans or contracts, utility schemes, and landscape plans available to SELLER covering, affecting, or relating to any of the Property, and (vi) any other documents that pertain to the Property and the BUYER's plans for the Property, reasonably requested by the BUYER.

**7. INVESTIGATIONS; ENVIRONMENTAL MATTERS**

- A. Subject to the terms of this Agreement, BUYER may perform a due diligence investigation of the Property, and in this regard BUYER shall have the full opportunity to (i) inspect, take measurements, conduct surveys and perform tests, (ii) show the Property, to contractors, architects, surveyors, engineers, insurers, banks and other lenders and investors, and (iii) make legal, financial, zoning, engineering, accounting and other reviews or investigations of the Property. Provided that BUYER first provides written notice to SELLER, BUYER may perform soil and groundwater testing for the presence of Hazardous Materials. As used in this Agreement, "Hazardous Materials" means all chemicals, materials, substances, pollutants, contaminants and wastes, including, without limitation, oil, petroleum, petroleum containing substances, PCBs, asbestos containing materials, mold, mildew, fungus, microbial contaminants or pathogenic organisms or any other chemicals, materials, substances, pollutants, contaminants or wastes regulated under the Comprehensive Environmental Response Compensation and Liability Act of 1980, the Superfund Amendments and Reauthorization Act, the Resource Conservation and Recovery Act, Chapter 21E and Chapter 21C of the Massachusetts General Laws, all regulations promulgated under the foregoing and any other federal, state or local law, ordinance, bylaw or regulation applicable to the Property. BUYER shall, immediately at the conclusion of BUYER's investigation of the Property, at BUYER's sole cost and expense, restore the same to as near the condition which existed immediately prior to BUYER's investigations as is reasonably possible, including replacing paving and landscaping. BUYER, its employees, agents, contractors, subcontractors, consultants and other representatives ("BUYER's Representatives") shall take all necessary precautions to minimize the impact of BUYER's investigations on the Property.
  
- B. If BUYER's investigations of the Property are not satisfactory to BUYER, in BUYER's sole and absolute discretion, then BUYER may terminate this Agreement by written notice delivered to SELLER not later than the day that is the greater of one hundred eighty (180) days from the Effective Date or ninety (90) days from the BUYER's receipt of the 61A Termination Notice from the Seller (the "Due Diligence End Date"). If BUYER shall not have terminated this Agreement by written notice delivered to SELLER on or before 5:00 p.m. on the Due Diligence End Date, then BUYER shall have no right to terminate this Agreement pursuant to this Section. If BUYER terminates this Agreement as set forth in this Section, then the Deposit shall be refunded to BUYER.

**8. TOWN OF FRANKLIN 61A RIGHT OF FIRST REFUSAL**

Within 5 days of the Effective Date, SELLER shall take all steps necessary under the State of Massachusetts General Law to notify the Town of Franklin of this Agreement and SELLER's intent to sell the Property; request the Property's withdrawal from the 61A program and revert to residential zoning; and begin the Town's 120-day right of first refusal period (the "61A PERIOD"). SELLER shall have one hundred twenty-five (125) days from the Effective Date to obtain the Town of Franklin's refusal to purchase the Property under its right of first refusal according to Massachusetts General Law. SELLER

  
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shall take all reasonable steps to cause the termination of the Town of Franklin's right of first refusal as contained in Ch. 61A, shall copy BUYER on all correspondence with the Town of Franklin and shall deliver written notice of the termination of the Town of Franklin's right of first refusal (the "61A Termination Notice" to the Buyer as provided in the notice section of this Agreement.). If SELLER fails to obtain the Town of Franklin's refusal, then BUYER shall have the right to terminate this Agreement with no recourse to either Party pursuant to this Section, and the Deposit shall be refunded to BUYER.

BUYER shall pay up to a maximum of \$40,000 for the 61A tax payment to the Town of Franklin in order to transfer the property from agricultural to residential zoning. Said payment shall be made at the Closing on the Property. The Seller shall be responsible for any sum owed to the town of Franklin for the 61A tax payment in excess of said \$40,000 payment to be made by the Buyer.

## 9. APPROVAL PERIOD

Following the 61A PERIOD, BUYER shall pursue, at BUYER's cost, all legal, engineering, percolation tests, permits and approvals, and any other processes that are required for the development and construction of at least sixty (60) APPROVED HOMES with all applicable site infrastructure and public utilities pursuant to the Town of Franklin Zoning By-Laws. BUYER shall seek to receive all permits and approvals necessary beyond any/all applicable appeal periods, utilizing every diligent and reasonable effort to secure said permits and approvals within an eighteen (18) month period following the 61A PERIOD ("Approval Period") as described in Section 8. If after using reasonable efforts and diligently pursuing the permits and approvals, the BUYER has made significant progress, but has not secured the permits and approvals from all governing bodies in accordance with the terms of this Agreement, the BUYER and SELLER shall agree to extend the Approval Period for up to three (3) additional ninety (90) day extensions. All deposits and all Approval Period Extension Payments, if any, shall be applied to the Purchase Price should BUYER receive all permits and approvals to construct the APPROVED HOMES as contemplated in this Agreement. To the extent a third party has appealed any approval received by the BUYER for the Property or if there is any litigation commenced on the Property, the Parties mutually agree to extend the Approval Period, Closing and deadlines related thereto until the final resolution of all litigation or appeals having been resolved to Buyer's satisfaction to a final approval or judgment, with all appeal periods having expired.

The BUYER shall provide to SELLER copies of all correspondence and other materials submitted to the Town of Franklin and SELLER shall agree to sign any necessary permits or documents, as that may be required from the SELLER of the property. All permits, plans, engineering, and materials associated with the permitting of the property as contemplated herein shall be assigned to SELLER should the BUYER be unable to obtain the sixty (60) Approved Home permits and BUYER opts to terminate this Agreement.

## 10. CLOSING, CLOSING DOCUMENTS, CONDITIONS AND DELIVERABLES

- (a) Following the expiration of the Approval Period, with any extensions thereon, the consummation of the transaction contemplated by this Agreement (the "Closing") shall occur at 10:00 a.m. at the office of the BUYER's attorney, or, at BUYER's option, at the office of counsel to the party providing the BUYER with financing, or, such other location as the parties may agree, on a date no more than sixty (60) days after the expiration of the Financing Approval Period, as may be extended by the parties. The Closing date shall be established by a written notice from BUYER to SELLER which shall establish a Closing date not sooner than ten (10) days after the date of the notice and no later than sixty (60) days after the expiration of the Financing Approval Period, as

  
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may be extended by the parties.

- (b) SELLER's Closing Deliverables. At the Closing, SELLER shall deliver, or cause to be delivered at SELLER's expense, each of the following items to BUYER:
- (1) A duly executed and acknowledged Deed conveying the Property to BUYER or BUYER's nominee, and the Deed shall provide that SELLER is not taxed as a corporation for federal income tax purposes, or if SELLER is taxed as a corporation for federal income tax purposes, then the Deed shall provide that the sale of the Property does not constitute the sale of all or substantially all of the SELLER's Massachusetts assets, or if SELLER is unable to make such statement then SELLER shall deliver a corporate excise tax lien waiver;
  - (2) A duly executed certificate of non-foreign status from SELLER in the form mutually agreed upon;
  - (3) Customary affidavits sufficient for BUYER's title insurer to delete any exceptions for parties in possession and mechanic's or material men's liens from BUYER's title insurance policy;
  - (4) Evidence reasonably satisfactory to BUYER and BUYER's title insurer of SELLER's authority to convey the Property pursuant to this Agreement in form and substance reasonably satisfactory to BUYER and BUYER's title insurer;
  - (5) Certificates of legal existence and good standing for SELLER;
  - (6) A counterpart original of the Closing Statement setting forth the Purchase Price and the adjustments;
  - (7) Key to the House Property; and
  - (8) A certificate that all representations and warranties of the SELLER remain true and correct as of the Closing.
- (c) BUYER's Closing Deliverables. On the Closing Date, BUYER shall deliver, or cause to be delivered at BUYER's expense, each of the following to SELLER:
- (1) The Purchase Price as reflected on the Closing Statement;
  - (2) The note and mortgage as set forth in Section 11;
  - (3) A counterpart original of the Closing Statement setting forth the Purchase Price and the adjustments;
  - (4) Such other instruments and certificates as SELLER may reasonably request to effectuate the transaction contemplated by this Agreement without additional liability to BUYER, including, without limitation, evidence reasonably satisfactory to SELLER of BUYER's authority to purchase the Property.

  
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- (d) Conditions to BUYER's Obligation to Close. The obligation of BUYER to consummate the transaction contemplated by this Agreement is conditioned upon (i) SELLER having performed SELLER's obligations under this Agreement and having tendered all deliverables listed above to be made on or before the Closing, including, without limitation, the Deed to the Property and (ii) no material adverse change having occurred to the Property.
- (e) Conditions to SELLER's Obligation to Close. The obligation of SELLER to consummate the transaction contemplated by this Agreement is conditioned upon BUYER having performed BUYER's obligations under this Agreement and having tendered all deliverables listed above to be made on or before Closing, including, without limitation, payment of the Purchase Price.

**11. SELLER FINANCING**

At the Closing, BUYER agrees to execute a Note and Mortgage for the benefit of the SELLER or SELLER's nominee for \$1,500,000 per **Addendum A** ("SELLER FINANCING"). SELLER agrees that SELLER FINANCING shall at all times be subordinate to BUYER's financing for the Property and construction of the APPROVED HOMES and loans for the construction of improvements upon the Property and any mortgage to secure such financing. Seller further agrees to sign any agreement required by a lender providing such financing to effect such subordination. The provisions of this paragraph shall survive the Closing.

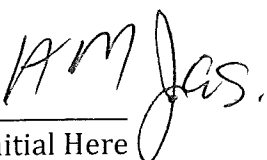
**12. INTENTIONALLY DELETED**

**13. EXTENSION TO PERFECT TITLE**

Except as otherwise provided herein, if the SELLER shall be unable to give title to make conveyance, or to deliver possession of the Property, all as herein stipulated, or if at the time of the delivery of the deed the Property do not conform with the provisions hereof, the SELLER shall use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or to make the said Property conform to the provisions hereof, as the case may be, and thereupon the time for performance hereof, as specified in Paragraph 10, as may have been extended there under, shall be extended for a period of up to sixty (60) days as specified in a written notice of SELLER to BUYER. Other than for construction and improvement related items, reasonable efforts shall not require the SELLER to expend more than \$100,000.00, exclusive of tax liens, voluntary liens, sums payable by insurance company, or mortgage loans and or attachments of record.

**14. FAILURE TO PERFECT TITLE**

If the SELLER elects to not expend more than the amount in Paragraph 13 above to perfect or cure any issues contemplated by Paragraph 4, or if at the expiration of the extended time, as aforementioned, the SELLER shall have failed so to remove any defects in title, or deliver possession, or as the case may be, all as herein agreed, or if at any time during the period of this Agreement or any extension thereof, the holder of a mortgage on said Property shall refuse to permit the insurance proceeds, if any, to be used for such purposes, then all obligations of the parties hereto shall cease and this Agreement shall be void without recourse to the parties hereto and all deposits shall be refunded to BUYER, unless BUYER elects to proceed with the purchase of the Property as set forth in Section 4(f) or 4(g).

  
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**15. ACCEPTANCE**

The acceptance and recording of a deed by the BUYER or its nominee 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 such as are, by the terms hereof, to be performed after the delivery of said deed, including without limitations the provisions of Paragraph 31, or which expressly survive the Closing.

**16. USE OF MONEY TO CLEAR TITLE**

To enable the SELLER to make conveyance as herein provided, the SELLER may, at the time of delivery of the deed, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, provided that all instruments so procured are recorded simultaneously with the delivery of said deed, except that for institutional mortgages that are satisfied in full pursuant to a written payoff statements, an instrument may be recorded as soon as practical after recording of the deed and as is in accordance with customary conveyance practice.

**17. INSURANCE**

Until the delivery of the deed, the SELLER shall maintain insurance on said Property as presently insured. Risk of loss shall remain with the SELLER until the Deed is recorded with the Norfolk County Registry of Deeds.

**18. ADJUSTMENTS**

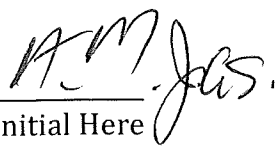
Real Estate Taxes for the then current fiscal year, shall be apportioned, as of the day of performance of this Agreement and the net amount thereof shall be added to or deducted from, as the case may be, the purchase price payable by the BUYER at the time of delivery of the deed.

**19. ADJUSTMENT OF UNASSESSED AND ABATED TAXES**

If the amount of said taxes is not known at the time of the delivery of the deed, they shall be apportioned on the basis of the taxes assessed for the preceding fiscal year, with a reapportionment as soon as the new tax rate and valuation can be ascertained; and, if the taxes which are to be apportioned shall thereafter be reduced by abatement, the amount of such abatement, less the reasonable cost of obtaining the same, shall be apportioned between the parties, provided that neither party shall be obligated to institute or prosecute proceedings for an abatement unless herein otherwise agreed.

**20. BROKER'S FEE**

The BUYER and SELLER represent and warrant to the other that each has not contacted any real estate broker(s) in connection with this transaction and were not directed to the other as a result of any services or facilities of any real estate broker. BUYER agrees to indemnify against and to hold the SELLER harmless from any claim, loss, damage, cost or liability for any brokerage commission or fee which may be asserted against SELLER in connection with an allegation that BUYER engaged a real estate broker. SELLER agrees to indemnify against and to hold the BUYER harmless from any claim, loss, damage, cost or liability for any brokerage commission or fee which may be asserted against BUYER in connection with an allegation that SELLER engaged a real estate broker. The provisions of this Paragraph shall survive delivery of the deed.

  
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## 21. DEPOSIT

The Deposit will be held in an insured, non- interest-bearing account by SELLER's attorney Rubenstein and Associates P.C., 10 Speen Street, First Floor, Framingham, MA (the "Escrow Agent").

The Escrow Agent shall not be liable for any action or non-action taken in good faith in connection with the performance of the Escrow Agent's duties under this Agreement, but the Escrow Agent shall be liable for the Escrow Agent's own gross negligence or willful misconduct. Notwithstanding anything contained in this Agreement to the contrary, should any dispute arise with respect to the delivery of the Deposit or the Final Payment, or ownership or right to possession of the Deposit or the Final Payment, then the Escrow Agent shall have no liability to any party to this Agreement for retaining dominion and control over such amount until such dispute shall have been settled:

- (a) by written mutual agreement between the parties, or
- (b) by final order, decree or judgment by a court of competent jurisdiction in Norfolk County, Massachusetts (and no such order, decree or judgment shall be deemed to be "final" unless and until the time of the appeal has expired and no appeal has been perfected);

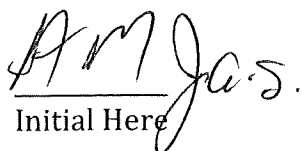
in which case the Escrow Agent shall make payment of such amount as the parties may have mutually agreed in writing or in accordance with such final order, decree or judgment. In no event shall the Escrow Agent be under any duty whatsoever to institute or defend any such proceeding. The Escrow Agent has acknowledged agreement to these provisions by signing in the place indicated on the signature page of this Agreement.

## 24. LIABILITY OF TRUSTEE, SHAREHOLDER, BENEFICIARY, ETC.

If the SELLER or BUYER executes this Agreement in a representative or fiduciary capacity, only the principal or the estate represented shall be bound, and neither the SELLER or BUYER so executing, nor any shareholder or beneficiary of any trust, shall be personally liable for any obligation, express or implied, hereunder.

## 25. WARRANTIES AND REPRESENTATIONS

- (a) The BUYER acknowledges that the BUYER has not been influenced to enter into this transaction nor has BUYER or its affiliates relied upon any warranties and representations not set forth and incorporated in this Agreement.
- (b) SELLER's Representations and Warranties. SELLER represents and warrants to BUYER as of the execution of this Agreement as follows:
  - 1. Ability to Perform. SELLER has legal authority to execute, deliver and carry out the terms and provisions of this Agreement. The person signing this Agreement on behalf of SELLER is authorized to do so;
  - 2. SELLER is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Massachusetts, registered to do business in and are in good standing under the laws of the Commonwealth of Massachusetts and have all necessary

  
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power and authority to execute and deliver this Agreement and to perform all of its obligations hereunder. This Agreement has been duly authorized by all requisite action on the part of SELLER and represents the valid and binding obligation of SELLER enforceable against SELLER in accordance with its terms. SELLER has full right, power and authority to sell the Property as herein contemplated without the consent or approval of any third party.

3. No Conflict. Neither the execution and delivery of this Agreement by SELLER, nor the performance of SELLER's obligations hereunder, will result in a breach, violation or default by SELLER of any provision of its organizational documents or any other document to which it is bound or to which its assets are subject;
4. Not a Foreign Person. SELLER is not a foreign person within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended;
5. Litigation. SELLER has received no written notice of litigation affecting the Property or SELLER's ability to fulfill its obligations under this Agreement, nor has any such action been threatened in writing;
6. Insolvency/Bankruptcy. SELLER has not (i) commenced a voluntary case, or had entered against it a petition, for relief under the federal Bankruptcy Act or any similar petition, order or decree under the federal or state law or statute relative to bankruptcy, insolvency or other relief for debtors, or (ii) caused, suffered or consented to the appointment of a receiver, trustee, administrator, conservator, liquidator or similar functionary in any federal, state or foreign judicial or nonjudicial proceeding, to hold, administer and/or liquidate any of its assets;
7. No Condemnation. There are no pending or, to SELLER's knowledge, contemplated condemnation, eminent domain or similar proceedings with respect to all or any portion of the Real Property;
8. Mechanic's Liens. All bills and claims for labor performed and materials furnished to or for the benefit of SELLER with respect to the Property shall be paid in full by SELLER at or before the Closing Date;
9. Leases. There are no leases, licenses, licenses, occupancy agreements or other rental agreements (written or verbal) that grant any possessory interest in and to any portion of the Property, with the exception of the right of first refusal held by the Town of Franklin, as detailed in Paragraph 8 herein;
10. No Mortgage. With respect to the Property, there is no lender or other party having an interest in the Property that must consent to this Agreement or SELLER's performance under this Agreement;
11. Hazardous Materials. SELLER has no knowledge of any Hazardous Materials, as described in Section 7, during SELLER's ownership, which have been generated, stored, treated or disposed on or about the Property and SELLER has no knowledge of any substances or conditions in or on the Property which would support a claim or cause of

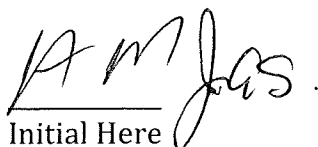
  
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action under a federal, state or local environmental statutes, regulations, ordinances or other environmental regulatory requirements;

12. Notices. SELLER has not received any written notices that remain outstanding or unresolved relating to (i) any violation of any laws, ordinances, bylaws or other governmental regulations applicable to the Property (ii) any pending or threatened condemnation proceedings regarding any portion of the Property or (iii) any proposed changes to the zoning bylaw affecting the Property; and
13. Sale Proceeds. The sale proceeds to be paid to SELLER at Closing are sufficient to obtain releases of any and all mortgages on the Property.
14. Financial Ability. SELLER has the financial ability to perform the SELLER's obligations under this Agreement.

(c) BUYER's Representations and Warranties. BUYER represents and warrants to SELLER as of the Effective Date as follows:

1. Ability To Perform. BUYER has the full power to execute, deliver and carry out the terms and provisions of this Agreement, BUYER has taken all necessary action to authorize the execution, delivery and performance of this Agreement and the person signing this Agreement on behalf of BUYER is authorized to do so; and
2. BUYER is a Massachusetts limited liability company duly organized, validly existing and in good standing under the laws of the Commonwealth of Massachusetts, is registered to do business in and is in good standing under the laws of the Commonwealth of Massachusetts and has all necessary power and authority to execute and deliver this Agreement and to perform all of its obligations hereunder. This Agreement has been duly authorized by all requisite action on the part of BUYER and represents the valid and binding obligation of BUYER enforceable against BUYER in accordance with its terms. BUYER has full right, power and authority to purchase the Property as herein contemplated without the consent or approval of any third party.
3. No Conflict. Neither the execution and delivery of this Agreement by BUYER, nor the performance of BUYER's obligations hereunder, will result in a breach, violation or default by BUYER of any provision of its organizational documents or any other document to which it is bound or to which its assets are subject.
4. No Impediments. There is no action, suit, arbitration, unsatisfied order or judgment, government investigation or proceeding pending against BUYER which, if adversely determined, could individually or in the aggregate materially interfere with the consummation of the transactions contemplated by this Agreement.
5. Insolvency/Bankruptcy. BUYER has not (i) commenced a voluntary case, or had entered against it a petition, for relief under the federal Bankruptcy Act or any similar petition, order or decree under the federal or state law or statute relative to bankruptcy, insolvency or other relief for debtors, or (ii) caused, suffered or consented to the appointment of a receiver, trustee, administrator, conservator, liquidator or similar functionary in any

  
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federal, state or foreign judicial or non-judicial proceeding, to hold, administer and/or liquidate any of its assets;

6. Financial Ability. BUYER has the financial ability to perform BUYER's obligations under this Agreement.

## 26. CONSTRUCTION OF AGREEMENT

This instrument, executed in multiple counterparts, is to be construed as a Massachusetts contract, is to take effect as a sealed instrument, sets forth the entire contract between the parties, is binding upon and endures to the benefit of the parties hereto and their respective heirs, devisees, executors, administrators, successors and assigns, and may be cancelled, modified or amended only by a written instrument executed by both the SELLER and the BUYER. If two or more persons are named herein as BUYER their obligations hereunder shall be joint and several. The captions and marginal notes are used only as a matter of convenience and are not to be considered a part of this Agreement or to be used in determining the intent of the parties to it.

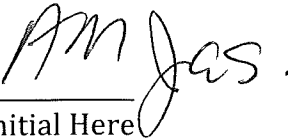
## 27. FINANCING CONTINGENCY

In order to help finance the acquisition of the Property, the BUYER shall apply for a conventional bank or other institutional mortgage loan of up to **\$3,500,000** at prevailing rates, terms and conditions. If, despite the BUYER'S diligent efforts, a commitment for such loan cannot be obtained on or before Sixty (60) days after the end of the Approval Period (the "Financing Approval Period"), the BUYER may terminate this agreement by written notice to the SELLER and/or the Broker(s), as agent(s) for the SELLER, prior to the expiration of such time, whereupon any payments made under this agreement shall be forthwith refunded and all other obligations of the parties hereto shall cease and this agreement shall be void without recourse to the parties hereto. BUYER need only apply to one lender to satisfy its obligation to seek financing.

## 28. NOTICES

Except as otherwise provided herein All notices or other communications required or provided to be sent by either party shall be in writing and shall be sent by: (i) by United States Postal Service, certified mail, return receipt requested, (ii) by any nationally known overnight delivery service for next day delivery, (iii) delivered in person or (iv) sent by telecopier or facsimile machine which automatically generates a transmission report that states the date and time of the transmission, the length of the document transmitted and the telephone number of the recipient's telecopier or facsimile machine (v) by e-mail (with a copy thereof sent in accordance with clause (i), (ii) or (iii) above). All notices shall be deemed to have been given upon receipt. All notices shall be addressed to the parties at the addresses below:

To SELLER(s): Andrew M. Rubenstein, Esq.  
Rubenstein and Associates  
10 Speen Street, First Floor  
Framingham, MA 01701  
508-969-9988  
508-969-5138 fax  
andrew@raalaw.com

  
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To BUYER:

Anthony Marinella, Manager  
Maddi North Street Development LLC  
P.O. Box 411  
Franklin, MA 02038  
Office Tel. 508-520-0613  
FAX 508-541-7443  
Email: [anth2424@gmail.com](mailto:anth2424@gmail.com)

With a Copy to:

Michael P. Doherty, Esq.  
Doherty, Ciechanowski, Dugan & Cannon, P.C.  
124 Grove Street, Suite 220  
Franklin, MA 02038  
Tel (508) 541-3000  
Fax (508) 541-3008  
Email: [MPD@dcdclaw.com](mailto:MPD@dcdclaw.com)

To Escrow Agent:

Andrew M. Rubenstein, Esq.  
Rubenstein and Associates  
10 Speen Street, First Floor  
Framingham, MA 01701  
508-969-9988  
508-969-5138 fax  
[andrew@raalaw.com](mailto:andrew@raalaw.com)

Any address or name specified above may be changed by notice given to the addressee by the other party in accordance with this Paragraph. The inability to deliver notice because of a changed address of which no notice was given as provided above, or because of rejection or other refusal to accept any notice, shall be deemed to be the receipt of the notice as of the date of such inability to deliver or rejection or refusal to accept. Any notice to be given by any party hereto may be given by the counsel for such party.

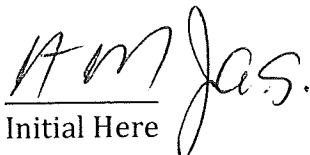
## 29. CONFIDENTIAL NATURE OF TRANSACTION

BUYER and SELLER acknowledge the confidential nature of this transaction and agree not to disclose the terms of the Agreement or share any of the Documents described herein to any other parties other than employees, agents, consultants, advisors, lenders, and lawyers, etc. working on behalf of the parties to this transaction.

## 30. DEFAULT

**SELLER's Default.** If SELLER shall default in the performance of SELLER's obligations under this Agreement, then BUYER may elect to either: (i) obtain specific performance against SELLER, and its reasonable costs and attorney's fees to obtain such specific performance; or (ii) terminate this Agreement by delivering written notice to SELLER, in which case the Deposit with all accrued interest shall be refunded to BUYER.

**BUYER's Default.** The parties acknowledge that in the event of BUYER's failure to pay the Purchase Price for the Property at the Closing it is impossible to compute exactly the damage that SELLER would suffer due to such failure. The parties have taken these facts into account in setting the amount of the Deposit and agree that (i) the Deposit is the best estimate of the damage SELLER would suffer, (ii) the Deposit represents damage and not a penalty against BUYER, and (iii) if this Agreement shall be terminated by SELLER by reason of BUYER's failure to pay the Purchase Price for the Property at the Closing, then the Escrow Agent shall pay the Deposit to SELLER as SELLER's full and liquidated damages in lieu of any additional recovery on account of BUYER's failure to pay the Purchase Price for the Property at the Closing.

  
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**31. ADDITIONAL PROVISIONS**

Eminent Domain. If, prior to the Closing, all or any portion of the Property, is taken by eminent domain (or is the subject of a pending taking which has not yet been consummated), then SELLER shall notify BUYER of such fact and BUYER shall have the right to terminate this Agreement by giving written notice to the other not later than thirty (30) days after the giving of SELLER's notice, in which case the Deposit, but no other payments, shall be refunded to BUYER. If BUYER does not elect to terminate this Agreement, then there shall be no abatement of the Purchase Price and SELLER shall assign to BUYER (without recourse) at the Closing the right of SELLER to the awards, if any, for the taking, and BUYER shall be entitled to receive and keep all awards for the taking of the Property.

Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and to their respective heirs, legal representatives, successors and permitted assigns.

Entire Agreement; Modifications. This Agreement embodies the entire contract between the parties hereto with respect to the Property being purchased hereunder and the subject matter hereof and supersedes any and all prior negotiations, agreements and understandings, written or oral, formal or informal, all of which are deemed to be merged herein. No representations, statements, warranties, covenants, undertakings or promises of SELLER or any representative or agent of SELLER, whether oral, implied or otherwise and whether made before or after the date hereof, shall be considered a part hereof or binding upon SELLER unless set forth herein or agreed to by the parties in writing, nor shall any term or provision of this Agreement be supplemented, terminated, modified or waived except by a writing signed by both parties. No modification or amendment to this Agreement of any kind whatsoever, shall be made or claimed by SELLER or BUYER, and no notice of any extension, change, modification or amendment made or claimed by SELLER or BUYER shall have any force or effect whatsoever unless the same shall have been reduced to writing and fully signed by SELLER and BUYER.

Pronouns; Joint and Several Liability. All pronouns and nouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the parties or the context may require.

Invalidity; Ambiguity. If any term or provision of this Agreement shall to any extent or for any reason be held invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement, but the remainder of this Agreement and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law, subject to such modification hereof as may be necessitated by such invalidity. This Agreement is a fully negotiated document by and between SELLER and BUYER and their respective counsel, and no term or provision hereof that is ambiguous shall be interpreted against either party despite its counsel having initially drafted this Agreement and/or such specific term or provision.

Applicable Law. This Agreement shall be deemed made in Massachusetts and shall be governed by, and construed and enforced in accordance with, the internal laws of said state, without regard to principles of conflicts of law. Each of the parties submits to the exclusive jurisdiction of any state or federal court sitting in the county in which the Property is located in any action or proceeding arising out of or relating to this Assignment. Each of the parties waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought and waives any bond, surety or other security that might be required of any party with respect thereto.

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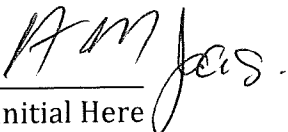
Waivers; Extensions. No waiver of any breach of any agreement or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof or of any other agreement or provision herein contained. No extension of time for the performance of any obligation or act shall be deemed an extension of time for the performance of any other obligation or act.

Schedules and Exhibits. All schedules and exhibits attached to this Agreement are hereby incorporated by this reference into this Agreement.

Counterparts; Execution. This Agreement may be signed on separate signature pages and shall be effective once this Agreement has been signed by both of the parties and all signature pages have been attached to one another, it not being necessary for the parties to have physically signed the same signature pages of this Agreement. Such signatures may also be by facsimile or other electronic means, which the undersigned all specifically agree shall be deemed to be binding upon each of them and each other as if an original signature.

One or more of Seller's shareholders, officer and directors ("Schmidts") reside at the exiting home located at 215 Prospect Street, Franklin Massachusetts the ("House Property"). The Schmidts will enter into a Use and Occupancy Agreement with Buyer to be executed at the Closing to allow the Schmidts to reside at the House Property without payment for use and occupancy. In the event that the Sellers or the Schmidts enter into a contract with the Buyer for construction of a new home on the Retained Lot, the Seller and the Schmidts shall vacate the House Property on or before 4 days after the certificate of occupancy is issued by the Town of Franklin for the new home on the Retained Lot. In the event that the Schmidts do not enter into a contract with the Buyer for construction of a new home on the Retained Lot, the Schmidts will have the right to occupy the House Property for up to 150 days after closing. Thereafter, the Schmidts shall vacate the House Property, whereupon any remaining property or items left behind shall be deemed to have been abandoned and the Buyer may demolish the House Property and discard any personal property or other items left behind by the Schmidts. Notwithstanding anything herein to the contrary, the Seller agrees to remove all vehicles, farm equipment, personal property and other debris from the Property, including the House Property, prior to Closing. Following the Closing, but prior to the Schmidts' vacating the House Property, the Buyer shall be entitled, in Buyer's sole discretion, to demolish and remove from the House Property, every barn, outbuilding or other structure, excluding, however, the existing home, located on the House Property. In the event that the Schmidts fail to so vacate within the then applicable above stated period, the Schmidts shall pay all of the Buyer's costs, damages and legal fees incurred to remove the Schmidt's from the House Property and shall indemnify and hold the Buyer harmless for such damages and costs and shall pay a penalty of \$300 per day for each day the Schmidt's delay the Buyer's ability to take possession of and demolish the House Property.

The parties shall, within sixty (60) days following the expiration of the 61A Period, agree to the terms of a contract that either (a) Buyer will construct a home for the Schmidts on the Retained Lot or (b) that the Schmidts will construct the home on the Retained Lot. In the event that the Schmidts elect to construct the home on the Retained Lot, the contract will include detailed plans showing the location, elevation, materials and other details of the new home satisfactory to the Town of Franklin and the contract will also include that the Schmidts shall obtain Buyer's written approval of all modifications to the plans for the new home on the Retained Lot, its location on the Retained Lot and that the Schmidts will provide to Buyer written evidence that they and any of their subcontractors have and will maintain Workers compensation insurance and general liability insurance. In all events, the location, size, building materials and building style of the new home on the Retained Lot will be subject to the Buyer's prior written

  
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approval. In addition, the Schmidts and Seller shall self-insure their liability for any injury, loss, casualty or claim on the House Property. Further, in the event that the Schmidts and Seller do not enter into a contract with the Buyer to build a home on the Retained Lot, the Schmidts shall maintain insurance for the Retained Lot, until they obtain a Certificate of Occupancy, naming Buyer or Buyer's nominee as an additional insured, said insurance to be a minimum of \$1,000,000 per occurrence and \$2,000,000 in the aggregate of general liability insurance and fire, and casualty property coverage. In addition, for as long as the Schmidts reside at the House Property subsequent to Closing, the Seller shall indemnify and hold the Buyer harmless from and against all actions, suits, claims, liabilities, losses, damages, and costs, including reasonable attorney's fees, arising from the Schmidts' occupancy of the House Property, the Schmidts' negligence or the conditions of the House Property. In the event that Buyer should expend any money as a result of a claim arising due to the Schmidts' occupancy at the House Property, the Schmidt's construction of a new home on the Retained Lot or claims covered by the foregoing indemnity, such amount or amounts, as the case may be, may be, at the Buyer's sole discretion, either paid by Seller, paid by the Schmidts or offset against the Buyer's obligations under the Note attached here as **Addendum A**. Seller and the Schmidts waive any claim arising from the condition of the House Property

Buyers Retention of Rights on retained lot: The Seller shall grant in conjunction with the closing all necessary access and easements that do not materially infer with the Seller construction and use of a single- family home on the retained lot. Buyer agrees to properly restore, repair or complete any area which is disturbed by their use for said access the property to its finished state. Seller shall provide Buyer with all plans for Seller's construction of his new home on the retained lot at the closing and before any construction. Buyer and Seller must mutually agree regarding the lot Seller is to retain, the location, size, building material and appearance of the Seller's new home. Seller agrees that his construction of his new home will not interfere with or delay Buyer's construction of roads, infrastructure and homes in the new subdivision.

If the town shall require the installation of a water pump station, this cost shall be borne exclusively Buyer and have no effect on the purchase price.

*[signature page to follow]*

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates written below.

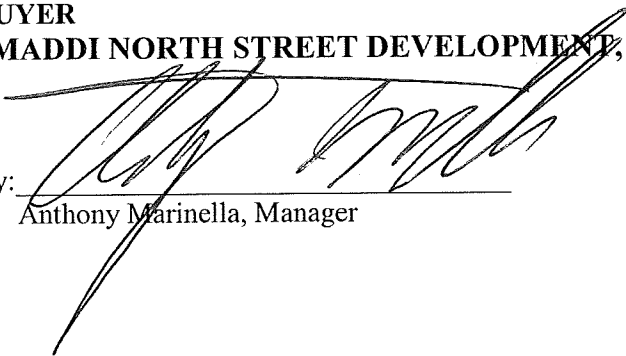
**SELLER**  
SCHMIDT'S FARM INC.

Date: 6-15-17

By: John A. Schmidt President  
(Print Name) \_\_\_\_\_  
Its Duly Authorized Representative

**BUYER**  
MADDI NORTH STREET DEVELOPMENT, LLC

Date: 6/15/17

By:   
Anthony Marinella, Manager

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**ADDENDUM A**

**MORTGAGE DEED OF TRUST**  
**(215 Prospect Street, Franklin, MA 02038)**

THIS MORTGAGE DEED OF TRUST AND SECURITY AGREEMENT (this "Mortgage") is granted as of this \_\_\_ day of , 201\_ and between **MADDI NORTH STREET DEVELOPMENT, LLC.**, a Massachusetts **Limited Liability Company** with a principal place of business at **PO BOX 411 FRANKLIN, MA 02038**(the "Mortgagor") and **SCHMIDT FARM, INC.** a Massachusetts Corporation with a principal place of business at 215 Prospect Street, Franklin, Massachusetts 02038 (the "Mortgagee").

**RECITALS**

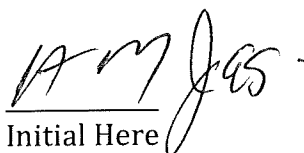
WHEREAS, the Mortgagor has requested that the Mortgagee make a term loan to the Mortgagor in the principal amount of **\$1,500,000.00** (the "Loan");

WHEREAS, it is a condition of the Mortgagee to making the Loan to the Mortgagor that, among other conditions, the Mortgagor enter into and grant the Mortgagee this Mortgage as security for the Mortgagor's payment and performance of its obligations under the Loan;

NOW, THEREFORE, in order to induce the Mortgagee to make the Loan to the Mortgagor, and in consideration thereof and in consideration of the mutual covenants contained herein and of the benefits to the Mortgagor derived from the Loan and this Mortgage, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Mortgagor agrees to the following terms and conditions.

**ARTICLE 1- GRANT OF MORTGAGE INTEREST AND LIABILITIES**

To secure the Mortgagor's prompt, punctual and faithful payment and performance of all and each of the Mortgagor's present and future Liabilities (as defined herein) to the Mortgagee, including, without limitation, those arising under that certain Commercial Promissory Note of even date herewith in the original principal amount of **\$1,500,000.00**, payable to the order of the Mortgagee in interest accruing over a sixty month period with a maturity date of \_\_\_\_\_ 1, 2022, at which time all principal, interest and other charges accrued and unpaid must be repaid by the Mortgagor, together with any and all extensions, renewals, substitutions, modifications or replacements thereof (hereinafter, the "Note"), the Mortgagor hereby grants, mortgages, assigns and transfers to the Mortgagee WITH MORTGAGE COVENANTS, subject to the terms and conditions of this Mortgage, the Collateral (as defined herein). The Mortgagor intends to convey and hereby does convey to the Mortgagee WITH MORTGAGE COVENANTS the Collateral as described in Section 3-3 herein.

  
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**ARTICLE 2- GRANT OF SECURITY INTEREST AND ASSIGNMENT**

2-1. Security Interest. To secure Mortgagor's prompt, punctual and faithful payment and performance of all and each of the present and future Liabilities to Mortgagee, including, without limitation, those arising under the Note, the Mortgagor hereby grants to the Mortgagee a continuing security interest in and to, and assigns to Mortgagee, the Collateral.

**ARTICLE 3 - CERTAIN DEFINITIONS**

As used herein, the following terms shall have the following meanings:

3-1. Liabilities. "Liabilities" include, without limitation, the Note, this Mortgage, and all other agreements, instruments and documents now executed by the Mortgagor (collectively, with the Note, this Mortgage, the "Loan Documents"); all obligations, responsibilities and duties are required to be performed under the Loan Documents; and any and all other liabilities, debts and obligation now or hereafter at any time owing by the Mortgagor to the Mortgagee, each of every kind, nature and description. "Liabilities" includes, without limitation:

- (a) all principal, interest and other amounts which accrue or become due or chargeable to the Mortgagor under the Loan Documents and/or which may be due from the Mortgagor to the Mortgagee from time to time under the Loan Documents;
- (b) all costs and expenses now or hereafter incurred or paid by the Mortgagee in respect of the Loan Documents or any agreement between the Mortgagor and the Mortgagee; and
- (c) all costs and expenses now or hereafter incurred or paid by the Mortgagee in respect of any agreement or instrument furnished to the Mortgagee by.

(Including, without limitation, Costs of Collection (as defined below), attorneys' reasonable fees and all court and litigation costs and expenses).

3-2. Costs of Collection. "Costs of Collection" include, without limitation, all reasonable fees and out-of-pocket expenses incurred by the Mortgagee's attorneys and all costs incurred by the Mortgagee, which costs and expenses are directly or indirectly related to or in respect of the Mortgagee's efforts to collect or enforce any of the Liabilities and/or to exercise or enforce any of the Mortgagee's rights, remedies or powers against or in respect of the Mortgagor (whether or not suit is instituted in connection with such efforts).

3-3. Collateral. "Collateral" shall include all and each of the following, whether singly or collectively, whether real property, personal property or a combination thereof, whether now owned or now due or now existing, or in which the Mortgagor has an interest, or hereafter, at any time in the future, acquired, arising or to become due, or in which the Mortgagor obtains an

  
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interest, and all proceeds, products, substitutions and accessions of or to any of the following:

- (a) the land, together with the buildings and improvements whether now existing or hereafter constructed or located thereon, situated at **215 Prospect Street, Franklin, MA 02038**, such land as more particularly described on Exhibit "A" annexed hereto (hereinafter, the "Mortgaged Premises"), together with
  - (i) all passages, water, water courses, water rights, riparian rights, other rights, liberties and privileges, including homestead rights and claims and any other claims in law or in equity as well as any after-acquired title, franchise or license, and the reversion and remainder thereof;
- (b) INTENTIONALLY OMITTED
- (c) All easements, rights of way, covenants and agreements, which are appurtenant to or benefit the Mortgaged Premises;
- (d) The right in the case of foreclosure hereunder of the encumbered property for Mortgagee to take and use the name by which the buildings and all other improvements situated on the Mortgaged Premises are commonly known and the right to manage and operate the said buildings under any such name and variants thereof;
- (e) All right, title and interest of Mortgagor in any and all buildings and improvements of every kind and description now or hereafter erected or placed on the said Mortgaged Premises hereafter owned by Mortgagor and attached to the Mortgaged Premises.
- (f) Together with all right, title and interest of Mortgagor, now or hereafter acquired, in and to any and all strips and gores of land adjacent to and used in connection with the Mortgaged Premises and all right, title and interest of Mortgagor, now owned or hereafter acquired, in, to, over and under the ways, streets, sidewalks and alleys adjoining the Mortgaged Premises.
- (g) all right, title and interest, of the Mortgagor, now owned or hereafter acquired, in and to any land lying with the right of way of any street, open or proposed, adjoining the Mortgaged Premises and in any and all sidewalks and alleys and strips of land adjacent to or used in connection with the Mortgaged Premises;
- (h) INTENTIONALLY OMITTED
- (i) all rights, remedies, representations, warranties and privileges pertaining to any of the foregoing Subparagraphs (a) through (h).

TO HAVE AND TO HOLD the same unto the Mortgagee, its successors and assigns forever, for

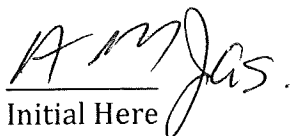
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the purposes and uses herein expressed.

**ARTICLE 4- REPRESENTATIONS, WARRANTIES AND COVENANTS**

4-1. Insurance Coverage. The Mortgagor hereby covenants and agrees to maintain public liability insurance, flood hazard insurance, all risk insurance, builder's risk insurance, boiler insurance and such other insurance against such casualties or contingencies as may be required by the Mortgagee, in coverage amounts satisfactory to the Mortgagee with a so-called "replacement cost" endorsement, in an amount not less than 100 percent of the full replacement cost of the improvements to the Mortgaged Premises, a so-called "agreed amount" endorsement.. If, however, a policy does contain a co-insurance provision, the Mortgagor shall insure the Mortgaged Premises and the improvements thereto in an amount that at all times shall prevent the application of the coinsurance provisions. If the Mortgaged Premises undergo construction, such insurance shall be in builders' risk completed value non-reporting form (including without limitation all risk, extended coverage and collapse). All policies shall name the Mortgagee as an additional insured with respect to liability policies, and with respect to hazard coverages, shall contain a noncontributory Standard Mortgagee Clause and a loss payee clause in favor of, and acceptable to, the Mortgagee, as well as a provision requiring at least thirty (30) days prior written notice to the Mortgagee before any cancellation or modification. All insurance on the Collateral shall be for the benefit of the Mortgagee. All companies issuing such insurance with respect to the Collateral must, be authorized and qualified to issue insurance in the State of Massachusetts and shall have ratings of "A VIII" or better in "Best's Insurance Reports" and shall be otherwise satisfactory to the Mortgagee. The Mortgagor shall furnish the Mortgagee with an original or a certified copy of each policy of insurance required hereunder. Thirty (30) days prior to the expiration of each insurance policy, the Mortgagor shall furnish the Mortgagee with satisfactory evidence of the re-issuance of a policy of continuing insurance in force as required by the Mortgagee. In all cases, the Mortgagor shall immediately give notice to the Mortgagee of any notice received by the Mortgagor of any expiration, cancellation, or modification of, or material reduction of coverage, under any insurance policy covering the Collateral.

4-2. Insurance Claims and Adjustments. After the occurrence of any casualty to the Collateral or any part thereof, the Mortgagor shall promptly advise the Mortgagee thereof and shall promptly submit a claim to the insurer for payment of insurance proceeds and shall promptly provide the Mortgagee with a copy of such claim and all documentation submitted therewith. At the Mortgagee's option in each instance, if the Mortgagor is in default under the Liabilities, the Mortgagor shall permit, authorize and appoint the Mortgagee, to the exclusion of the Mortgagor, to conduct the adjustment of each such claim. Subsequent to an Event of Default which remains uncured, the Mortgagor hereby appoints the Mortgagee as the Mortgagor's attorney-in-fact to obtain, adjust or settle any insurance claim or cancel any insurance described in this section and to endorse in favor of the Mortgagee any and all drafts and other instruments with respect to such insurance. The within appointment, being coupled with an interest, is irrevocable until this Agreement is terminated by a written instrument executed by a duly authorized officer of Mortgagee. The Mortgagee shall not be liable for any loss sustained on account of any exercise

  
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pursuant to said power unless such loss is caused by the willful misconduct, actual bad faith or gross negligence of the Mortgagee. During the continuance of an event of default under the Loan Documents, if the Mortgagee has exercised its Power of Attorney, the Mortgagee may, at its option, make any proceeds available to the Mortgagor to repair or reconstruct the Collateral (subject to such disbursement procedures as the Mortgagee may establish) or apply any proceeds of such insurance against the Liabilities, whether or not such have matured, in accordance with the terms hereof.

Any proceeds of insurance covering the Collateral (the "Insurance Proceeds") released to the Mortgagor (or paid or applied to the cost of restoration, repair or alteration of the Collateral) shall in no event be deemed a payment on the Liabilities. The Mortgagee shall not be responsible for any failure to collect the Insurance Proceeds under the terms of any policy, except as such failure is a direct result of the Mortgagee's willful misconduct. Notwithstanding the application of any Insurance Proceeds to the payment of a portion of the Liabilities, the unpaid portion of the Liabilities shall remain fully collectible from the Mortgagor and shall remain in full force and effect, and the Mortgagor shall not be excused from the payment thereof. The application or release by the Mortgagee of any Insurance Proceeds shall not cure or waive any event of default or notice of default under the Loan Documents or nor shall such invalidate any act done pursuant to such notice.

4-3. Eminent Domain. Should the Collateral, or any part thereof or interest therein, be taken or damaged by reason of any public improvement or condemnation proceeding, or in any other manner (a "Condemnation"), or should the Mortgagor receive any notice or other information regarding any such proceeding, the Mortgagor shall give prompt written notice thereof to the Mortgagee. The Mortgagee may participate in any such Condemnation proceedings, and the Mortgagor shall promptly deliver to the Mortgagee all instruments requested by the Mortgagee to permit such participation. The Mortgagor shall, at its expense, diligently prosecute any such proceedings and shall consult with the Mortgagee and its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings. All proceeds of Condemnation awards or proceeds of sale in lieu of Condemnation with respect to the Collateral and all judgments, decrees and awards for injury or damage to the Collateral or any part thereof or interest therein shall be paid to the Mortgagee and shall be applied first to all costs and expenses incurred by the Mortgagee in obtaining the proceeds. The balance of the proceeds, if any, shall be applied at the option of the Mortgagee: (i) toward altering, restoring or rebuilding the Collateral or such portion thereof that may have been altered, damaged or destroyed; or (ii) against the Liabilities, in accordance with the provisions of the Loan Documents. If the Mortgagee elects not to apply all of the Condemnation proceeds for the restoration or repair of the Collateral, the Mortgagor shall not be required to repair or restore that portion of the Collateral affected by the election of the Mortgagee, and the failure to do so shall not constitute a breach by the Mortgagor of its obligation to maintain the Collateral set forth in Section 4.6 hereof.

4-4. Statutory Compliance. The Mortgagor shall comply with, shall not use any of the Collateral in violation of, and shall cause the Collateral to be in compliance with, every statute,

  
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regulation, ordinance, decision, directive, order, by-law or rule of any federal, state, municipal and other governmental authority that has or claims jurisdiction over the Mortgagor or any of the Collateral.

4-5. Title to Collateral. The Mortgagor is, and shall hereafter remain, the owner of the Collateral free and clear of all voluntary or involuntary liens, encumbrances, attachments, security interests, purchase money security interests, assignments, mortgages, charges or other liens or encumbrances of any nature whatsoever, with the exceptions of (a) the mortgage and security interest created herein, (b) liens for real estate taxes not yet due and payable, (c) those encumbrances, if any, as described on EXHIBIT A attached hereto; and sales of lots to third party buyers to allow partial payment of the debt secured by this Mortgage.

4-6. No Damages; No Litigation. The Mortgagor represents that

- (a) The Mortgaged Premises are not subject to any casualty damage;
- (b) The Mortgagor has not received any written notice of any eminent domain or condemnation proceeding affecting the Mortgaged Premises; and
- (c) To the best of Mortgagor's actual knowledge, , there are no actions, suits or proceedings pending, completed or threatened against or affecting Mortgagor or any person or entity owning an interest (directly or indirectly) in or managing or controlling the Mortgagor (collectively, "Interest Owner(s)") or any property of the Mortgagor or any Interest Owner in any court or before any arbitrator of any kind or before or by any governmental authority (whether local, state, federal or foreign) that, individually or in the aggregate, could reasonably be expected by Mortgagee to be material to the transaction contemplated hereby.

4.7 OFAC. The Mortgagor further represents and warrants that as of the date hereof and until the Indebtedness is paid in full:

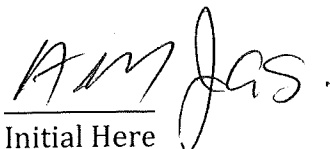
- (i) The Mortgagor and each person or entity owning an interest in Mortgagor is not (i) identified on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control, Department of the Treasury ("OFAC") and/or on any other similar list maintained by OFAC pursuant to any authorizing statute, executive order or regulation (collectively, the "List"), (ii) a person or entity with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States;
- (ii) None of the funds or other assets of the Mortgagor constitute property of, or are beneficially owned, directly or indirectly, by any Embargoed Person (as hereinafter defined);

  
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- (iii) No Embargoed Person has any interest of any nature whatsoever in the Mortgagor (whether directly or indirectly);
- (iv) None of the funds of the Mortgagor have been derived from any unlawful activity with the result that the investment in the Mortgagor is prohibited by law or that the agreement is in violation of law;
- (v) The Mortgagor has and will continue to implement procedures, and has consistently and will continue to consistently apply those procedures, to ensure the foregoing representations and warranties remain true and correct at all times.
- (vi) The term “Embargoed Person” means any person, entity or government subject to trade restrictions under U.S. law, including but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated thereunder with the result that the investment in Mortgagor is prohibited by law or Mortgagor is in violation of law;
- (vii) The Mortgagor has complied and will continue to comply with all requirements of law relating to money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect; and
- (viii) The Mortgagor has not and will not use funds from any “Prohibited Person” (as such term is defined in the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism) to make any payment due to Mortgagee under the Loan Documents

The Mortgagor will immediately notify the Mortgagee in writing if any of the representations, warranties or covenants are no longer true or have been breached or if the Mortgagor has a reasonable basis to believe that they may no longer be true or have been breached. In addition, the Mortgagor will, at the request of Mortgagee, provide such information as may be requested by the Mortgagee to determine the Mortgagor’s compliance with the terms hereof.

4-8. Maintenance and Condition of Collateral. The Collateral is, and shall hereafter remain, in good repair, well maintained and in good working order. The Mortgagor shall not cause or permit to be suffered any waste, destruction or loss (whether or not such loss is insured against) to Collateral or any part thereof, provided however that the now existing home at 215 Prospect Street may be demolished as provided in the Purchase and Sales Agreement between the parties. The Mortgagor shall: (i) keep the Collateral in good condition and repair, subject to reasonable and ordinary wear and tear; (ii) complete promptly and in a good and workmanlike manner any improvement, construction or restoration on the Mortgaged Premises and pay when due all claims for labor performed and materials furnished therefor; (iv) comply with all laws, ordinances, regulations, covenants, conditions and restrictions now or hereafter affecting the

  
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Collateral or any part thereof, including, without limitation, the Americans with Disabilities Act and the Fair Housing Act, if applicable to the Collateral, and all regulations promulgated pursuant thereto; (v) keep and maintain grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair; and (vi) not commit, suffer or permit any act to be done in or upon the Collateral in violation of any law, ordinance or regulation. The Mortgagor shall have the right to contest by appropriate legal proceedings, at the Mortgagor's expense (and without any cost or expense to the Mortgagee), the validity of any laws, ordinances, orders, rules, regulations, covenants, conditions or restrictions affecting the Collateral or the business conducted on the Mortgaged Premises if compliance therewith is legally held in abeyance without the incurring of any charge or lien against the Collateral, and further provided such noncompliance or contest shall not otherwise adversely affect the validity or priority of this Mortgage; and in such event that the Mortgagor may postpone compliance therewith until the final determination of any such proceedings, provided that the Mortgagor shall at all times prosecute such proceedings diligently and in good faith to completion and shall maintain monetary reserves, sufficient in the sole judgment of the Mortgagee, to pay any amounts which may be payable if such final determination is unfavorable to the Mortgagor.

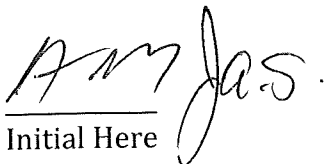
4-9. Taxes, Insurance Premiums and Other Costs. To the extent payment is not provided for in Section 4-11 herein, the Mortgagor shall pay when due all real and personal property taxes, assessments, charges and other taxes assessed against it, and all insurance premiums relative to the Collateral. The Mortgagor agrees that the Mortgagee may, at its option, and from time to time, pay any taxes or insurance premiums for which the payment thereof is then due, discharge any liens or encumbrances on any of the Collateral or take any other action that the Mortgagee may deem proper to repair, insure, maintain or preserve any of the Collateral or the Mortgagee's rights therein. The Mortgagor shall pay to the Mortgagee upon demand all amounts so paid or incurred by the Mortgagee.

4-10. Property of Third Parties. Except for the encumbrances listed in Paragraph 4-5 or Exhibit A as referred to herein, if any, the Mortgagor shall not suffer or permit any item of property owned by a third party to be affixed, attached or installed on, upon or within, or be located at, the Mortgaged Premises, or any portion or unit thereof, or any improvement or fixture thereto, which may be subject to any security interest, lien, encumbrance or charge which is prior or superior to the interest granted herein.

4-11. INTENTIONALLY OMITTED

4-12. INTENTIONALLY OMITTED

4-13. Hazardous Waste. The Mortgagor shall not store (except in compliance with all laws, ordinances and regulation pertaining thereto), or dispose of any hazardous material or oil. The Mortgagor further warrants and represents that there is no hazardous material or oil-related products located on the Mortgaged Premises.

  
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4-14. Mortgage Conditions. This Mortgage and Security Agreement is upon the STATUTORY CONDITION, upon breach of which, the Mortgagee shall have the STATUTORY POWER OF SALE.

4-15-17. INTENTIONALLY OMITTED

4-18. The Mortgagor shall:

- (a) If other than a natural person, do all things necessary to preserve and keep in full force and effect its existence, franchises, rights and privileges under the laws of the state of its formation and, if other than its state of formation, the State where the Mortgaged Premises is located. The Mortgagor shall provide written notice the Mortgagee at least thirty (30) days prior to (i) any relocation of the Mortgagor's principal place of business to a different state or any change in the Mortgagor's state of formation, and/or (ii) if the Mortgagor is an individual, any relocation of the Mortgagor's principal residence to a different state;
- (b) do all things necessary to preserve and keep in full force and effect the Mortgagee's title insurance coverage insuring this Mortgage as a second mortgage,;
- (c) execute any and all documents which may be required to perfect the mortgage liens granted by this Mortgage;
- (d) without the Mortgagee's consent, which shall not be unreasonably withheld, delayed or conditioned,
  - (i) make or permit any use of the Mortgaged Premises that could with the passage of time result in the creation of any right of use, or any claim of adverse possession or easement on, to or against any part of the Mortgaged Premises in favor of any person or entity or the public;
  - (ii) allow any of the following to occur (unless a Permitted Transfer) except as expressly permitted herein:
    - (a) a Transfer of all or any portion of the Mortgaged Premises or any interest in the Mortgaged Premises;
    - (b) a Transfer of any ownership interest in Mortgagor or any entity which owns, directly or indirectly, an interest in Mortgagor at any level of the ownership structure; or
- (e) If any of such events occur, it shall be null and void and shall constitute an Event of Default under the Loan Documents.

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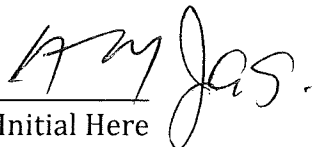
- (f) It is understood and agreed that the Liabilities evidenced by the Note is personal to the Mortgagor and in reliance upon the ownership structure of the Mortgagor and in accepting the same the Mortgagee has relied upon what it perceived as the willingness and ability of the Mortgagor and the Interest Owners to pay and perform its obligations under the Loan Documents. Furthermore, the Mortgagee may consent to a Transfer and expressly waive the Mortgagor's covenants contained in this foregoing subparagraph, in writing to the Mortgagor; however any such consent and waiver shall not constitute any consent or waiver of such covenant as to any Transfer other than that for which the consent and waiver was expressly granted. Furthermore, the Mortgagee's willingness to consent to any Transfer and waive the Mortgagor's covenants contained herein, implies no standard of reasonableness in determining whether or not such consent shall be granted and the same may be based upon what the Mortgagee deems to be in its best interest in its sole and subjective discretion.
- (g) For purposes of the Loan Documents, the following terms shall have the respective meanings set forth below:
- (i.) "Transfer" or "Transferred" shall mean with respect to the Collateral, an interest in the Collateral, or an ownership interest or interest therein:
- (a) a sale, assignment, transfer, conveyance or other disposition (whether voluntary, involuntary or by operation of law);
  - (b) the creation, sufferance or granting of any lien, encumbrance, security interest or collateral assignment (whether voluntarily, involuntarily or by operation of law), other than this Mortgage, the leases of the Collateral assigned to Mortgagee, the Permitted Encumbrances, the granting of a lien on a tenant's interest under any Lease in accordance with the terms specifically set forth therein, and those liens which Mortgagor is contesting in accordance with the provisions of this Mortgage;
  - (c) the issuance or other creation of ownership interests in an entity;
  - (d) the reconstitution or conversion from one entity to another type of entity;
  - (e) a merger, consolidation, reorganization or any other business combination;  
or
  - (f) a conversion to or operation of all or any portion of the Mortgaged Premises as a cooperative or condominium form of ownership.

(ii) "Permitted Transfer" shall mean:

  
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- (a) a minor (as determined by the Mortgagee in its sole discretion) conveyance of an interest in a portion of the Collateral by the Mortgagor, such as a utility easement, and for which the Mortgagee has given its prior written consent and imposed such conditions as the Mortgagee deems advisable and appropriate; provided, however, with regard to those easements for which the Mortgagee's consent is required, if:
- (i) the Mortgagor provides the Mortgagee with a written request for consent to such easement and the request is accompanied by a copy of the proposed easement together with a certificate executed by the Mortgagor confirming that such easement will not adversely affect the Collateral or any portion thereof now or in the future;
  - (ii) the request is given in the manner provided for the giving of notices in this Mortgage;
  - (iii) the request is boldly noted as a request for consent to an easement for which the Mortgagee's consent is required and specifically states that the easement will be deemed approved if the Mortgagee fails to respond within 15 business days (the Mortgagee and the Mortgagor hereby agree that such 15 business day period shall commence on the date of the Mortgagee's actual receipt of all information reasonably required by the Mortgagee in connection with the Mortgagee's review of said easement); and
  - (iv) in the event the Mortgagee fails to respond to the Mortgagor's request for consent within the time period set forth in subparagraph (iii) above, then said consent shall be deemed to have been given.

4-20. Any Superior Mortgage. The Mortgagor does hereby covenant and agree to faithfully and fully comply with and abide by each and every term, covenant and condition of any superior mortgage or mortgages, if applicable, on the Mortgaged Premises. The Mortgagee is hereby expressly authorized, permitted and directed, in its sole discretion, and at its option, to advance all sums necessary to cure any default under any such mortgage. The Mortgagor further covenants and agrees not to modify, change, alter or extend any of the terms or conditions of any such prior mortgage, and not to request, accept or allow the disbursement hereafter of any advances which are to be secured by any such mortgage. The Mortgagee agrees that this Mortgage and the debt secured thereby, shall at all times be subordinate to any financing received by the Mortgagor for the acquisition of and construction of improvements upon the Mortgaged Premises and any mortgage to secure such financing. The Mortgagee further agrees to sign any agreement required by a lender providing such financing to the Mortgagor to effect such subordination.

A handwritten signature in black ink, appearing to read 'Amy Jas.', is written over the 'Initial Here' text.

4-22. Inspections. The Mortgagee or its representatives are authorized to enter at any reasonable time upon prior reasonable notice in any part of the Collateral for the purpose of inspecting the same and all books, records and documents relating thereto, and for the purpose of performing any of the acts it is authorized to perform under the terms of any of the Loan Documents.

4-23. Notice of Events of Default. The Mortgagor agrees to notify the Mortgagee immediately in writing upon its knowledge of any default or Event of Default.

4-24. Transfer of Interests in the Mortgagor or the Collateral. The Mortgagor shall not convey, sell, alienate, transfer, mortgage, encumber, assign, pledge or otherwise dispose of (voluntarily, involuntarily, by operation of law or otherwise) its ownership or control of all or any part of the Collateral or any legal or beneficial interest therein, including without limitation, rents, issues or profits arising from the Collateral.

4-25. Further Assurances. So long as any of the Liabilities shall remain unpaid, the Mortgagor shall execute, acknowledge, where appropriate, and deliver from time to time promptly at the request of the Mortgagee all such instruments and documents as in the opinion of the Mortgagee are necessary or desirable to preserve the mortgage lien created by this Mortgage, having the priority contemplated hereunder.

4-26. Successors and Assigns. This Mortgage and all warranties and covenants of the Mortgagor contained herein and in the Loan Documents shall apply to, inure to the benefit of and bind all parties hereto, their heirs, successors and assigns.

#### **ARTICLE 5- MORTGAGOR'S USE OF COLLATERAL**

Unless and until the occurrence of any one or more events which are, or solely with the passage of time would be, one or more Events of Default hereunder, the Mortgagor shall be authorized to occupy, operate, manage, hold or otherwise use the Collateral in the ordinary and reasonable course of the Mortgagor's business and collect, when due, the Rental Payments, subject, however, to the terms and provisions hereof and to sell lots to third parties.

#### **ARTICLE 6- EVENTS OF DEFAULT**

Upon the occurrence of any one (1) or more of the following (hereinafter, the "Events of Default"), any and all Liabilities of the Mortgagor to the Mortgagee shall become immediately due and payable, without notice or demand, at the option of the Mortgagee. The occurrence of any such Event of Default shall also constitute, without notice or demand, a default under all other agreements between the Mortgagee and the Mortgagor or instruments and papers given the Mortgagee by the Mortgagor, whether now existing or hereafter arising:

6-1. The failure by the Mortgagor to pay when due, the payments due under the Note or upon

  
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demand, if payable upon demand, any of the Liabilities then owing by the Mortgagor to the Mortgagee.

6-2. The failure by the Mortgagor to promptly, punctually and faithfully perform, discharge or comply with any of the obligations, duties or responsibilities under the Loan Documents or under any of the Liabilities.

6-4. The occurrence of any event such that any indebtedness of the Mortgagor for borrowed money from any lender other than the Mortgagee has been accelerated such that the indebtedness of the Mortgagor to another lender other than the Mortgagee could be accelerated, notwithstanding that such acceleration has not taken place.

6-5. The occurrence of any event of default under any agreement between the Mortgagee and the Mortgagor, or under any instrument or paper given the Mortgagee by the Mortgagor, (notwithstanding that the Mortgagee may not have exercised its rights upon default under any such other agreement, instrument or paper).

6-6. Any act by, against or relating to the Mortgagor, or any property or assets of the Mortgagor, which act constitutes:

- (i) the application for, consent to or sufferance of the appointment of a receiver, trustee or other person, pursuant to court action or otherwise, over all or any part of the property of the Mortgagor;
- (ii) the granting of any trust mortgage or execution of an assignment for the benefit of creditors of the Mortgagor, or the occurrence of any other voluntary or involuntary liquidation or extension of debt agreement or arrangement for the Mortgagor;
- (iii) the failure of the Mortgagor generally to pay debts of the Mortgagor as those debts mature;
- (iv) adjudication of bankruptcy or insolvency relative to the Mortgagor;
- (v) the calling or sufferance of a meeting of creditors of the Mortgagor; (vi) the meeting of the Mortgagor with a formal or informal committee of creditors for the Mortgagor;
- (vi) the offering of or actual entry into any composition, extension or other arrangement by the Mortgagor seeking relief or extension for the debts of the Mortgagor, or the initiation of any other judicial or non-judicial proceeding or agreement by, against or including the Mortgagor, which seeks or intends to accomplish a reorganization, restructuring, forbearance or other arrangement with creditors of the Mortgagor;

  
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- (vii) the entry of an order for relief or similar order with respect to the Mortgagor, or with respect to any one of them, in any proceeding pursuant to the Bankruptcy Reform Act of 1978, as amended (as amended, the "Bankruptcy Code") or any other federal or state bankruptcy, insolvency, reorganization, receivership, liquidation or restructuring law; or
- (viii) the filing of any complaint, application or petition by or against the Mortgagor initiating any matter in which the Mortgagor is or may be granted any relief from the debts of the Mortgagor pursuant to the Bankruptcy Code or any other insolvency statute or procedure (*provided, however*, that it shall not be an Event of Default hereunder if such complaint, application or petition is filed against the Mortgagor, which complaint, application or petition is being diligently contested until the earlier of:
  - (a) the entry of an Order for Relief against the Mortgagor, or any one of them; or
  - (b) the expiration of sixty (60) days since the filing of the complaint, application or petition with dismissal thereof);

6-7. The entry of any judgment against the Mortgagor, which judgment is not satisfied or appealed from (with execution or similar process stayed) within twenty-one (21) day of entry of such judgment;

6-8. One or more foreclosure or other proceedings shall be commenced to enforce, execute or realize upon any lien, encumbrance, attachment, trustee process, mortgage or security interest against the Mortgagor or any assets held by the Mortgagor;


6-9. The death or the commencement of the termination of existence, of the dissolution, of the winding up or of the liquidation of the Mortgagor;

6-10. The sale, transfer, assignment or other disposition of any of the capital stock of any partnership, membership or beneficial interest of the Mortgagor, by the legal entity or individuals who have an ownership interest in the legal entity, or the sale, transfer, assignment, pledge, mortgage or other disposition or grant of any interest in all or any portion of the Collateral;

6-11. The occurrence of any of the events described in this Article with respect to any partner or beneficiary of the Mortgagor

6-12. INTENTIONALLY OMITTED

6-13. The occurrence of any one or more of the foregoing Events of Default with respect to: (i) (if any one or more of the undersigned Mortgagor is a general or limited partnership, limited

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liability company, limited liability partnership or trust) any partner, limited liability entity member or the beneficiary of the Mortgagor; or (iii) (if any one or more of the undersigned Mortgagor is a Limited Liability Company) any parent, subsidiary, affiliate or holder of ten (10) percent of voting equity in the Mortgagor

6-14. In the absence the Mortgagee's express, prior written consent, the sale or transfer of all or any interest of the Mortgagor in any portion of the Collateral;

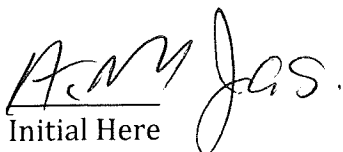
6-15. The reasonable determination by the Mortgagee that the Mortgagor has, jointly and/or severally, become unable to pay its financial obligations as they become due;

6-16. The breach of the STATUTORY CONDITION contained herein, upon which breach, the Mortgagee shall have the STATUTORY POWER OF SALE AS PROVIDED IN MASSACHUSETTS GENERAL LAWS SECTIONS 34-27-1 THROUGH 34-27-6, OTHER APPLICABLE STATUTORY AND OTHER LAW IN EFFECT WITH REGARD TO THE PREMISES.

#### **ARTICLE 7- RIGHTS AND REMEDIES UPON DEFAULT**

7-1. Rights and Remedies Upon Default. Upon the occurrence of any Event of Default, or at any time thereafter while such default is not cured to the reasonable satisfaction of the Mortgagee, the Mortgagee shall have all the rights of a mortgagee and a secured party under Massachusetts Laws, in addition to which the Mortgagee shall have all of the following rights and remedies:

- (a) to declare some or all Liabilities to be due and payable, and the same shall thereupon become due and payable without any presentment, demand, notice of protest or notice of any kind except as otherwise provided herein, and the Mortgagor hereby waives notice of intent to accelerate the Liabilities;
- (b) either in person or by agent, with bringing an action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, to enter upon and take possession of the Collateral or any part thereof and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Collateral, or part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Collateral, take any action described in this Mortgage,. The entering upon and taking possession of the Collateral, the taking of any action described in this Mortgage, , shall not cure or waive any default or notice of default or invalidate any act done in response to such default or pursuant to such notice of default and, notwithstanding the continuance in possession of the Collateral, the Mortgagee shall be entitled to exercise every right provided for in any of the Loan Documents or by law upon occurrence of any Event of Default, including the right to exercise the power of sale herein conferred;

  
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- (c) to commence an action to foreclose this Mortgage, appoint a receiver, specifically enforce any of the covenants hereof, or sell the Collateral pursuant to the power of sale herein conferred;
- (d) to exercise any or all of the remedies available to a secured party under the UCC;
- (e) to apply any sums or amounts received pursuant to Sections 4-2 or 4-3, upon any of the Liabilities in such manner and order as the Mortgagee may elect. The receipt, use or application of any such sums by the Mortgagee hereunder shall not be construed to affect the maturity of any of the Liabilities or any of the rights or powers of the Mortgagee under the terms of the Loan Documents or any of the obligations of the Mortgagor;
- (f) with or without taking possession, to collect any proceeds of the Collateral;
- (g) with or without taking possession of the Collateral, to sell, lease or otherwise dispose of any or all of the Collateral in its then condition or following such preparation or processing as the Mortgagee deems advisable;
- (h) with or without taking possession of the Collateral, and without assuming the obligations of the Mortgagor thereunder, to exercise the rights of the Mortgagor under, to use, or to benefit from any of the easements, covenants, agreements, rights and interests referred to in Section 3-3 (a) and (c) hereof;
- (i) with or without taking possession of the Collateral and with bringing an action or proceeding, either directly, by agent or by the appointment of a receiver, manage, lease, sublease or operate the Collateral on such terms as the Mortgagee, in its sole discretion, deems proper or appropriate;
- (j) to apply all or any portion of the Collateral, or the proceeds thereof, towards (but not necessarily in complete satisfaction of) the Liabilities; and
- (k) to exercise the STATUTORY POWER OF SALE.

7-2. Grant and Exercise of Power of Sale. This Mortgage is upon the STATUTORY CONDITION and upon the further condition that all agreements and covenants of the Mortgagor contained in the Liabilities or in any of the Loan Documents or in any agreement or instrument executed or delivered in connection therewith shall be fully kept and performed and all of the other conditions thereof shall be fully met, all as therein provided, for any breach of which the Mortgagee shall have the STATUTORY POWER OF SALE.

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- (a) The Mortgagee or its representative shall cause to be recorded, published and delivered such notices of sale as may then be required by applicable law and by this Mortgage. The Mortgagee shall, without demand on the Mortgagor, after such time as may then be required by law and after notice of sale having been given as required by law, sell the Collateral, either as a whole, or in separate lots or parcels or items as the Mortgagee shall deem expedient, and in such order as it may determine, or as otherwise may then be required by law. The Mortgagee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. The Mortgagee may purchase the Collateral or any portion thereof at such sale;
- (b) The Mortgagee may postpone the sale of all or any portion of the Collateral, and in case the Mortgagee in the exercise of the power of sale herein given elects to postpone sale or to sell in parts or parcels, said sale or sales may be held from time to time, and the power of sale shall not be fully executed until all the Collateral not previously sold shall have been sold;
- (c) In the event all or part of the Collateral is included at any foreclosure sale conducted pursuant hereto, a single total price for the Collateral, or such part thereof as is sold, may be accepted by the Mortgagee with no obligation to distinguish between the application of such proceeds amongst the property comprising the Collateral.

7-3. Appointment of Receiver. If an Event of Default shall have occurred, the Mortgagee, as a matter of right and without notice to the Mortgagor or anyone claiming under the Mortgagor or any other party, and without regard to the then value of the Collateral or the interest of the Mortgagor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Collateral, and the Mortgagor hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of the Mortgagee in case of entry as provided in Section 7-1(b) and shall continue as such and exercise all such powers until the date of confirmation of sale of the Collateral unless such receivership is sooner terminated.

7-4. Collection of Proceeds of Collateral. In connection with the exercise by the Mortgagee of the rights and remedies provided herein:

- (a) The Mortgagor shall hold any proceeds and collections of any of the Collateral that it has in its possession in trust for the Mortgagee and shall not commingle such proceeds or collections with any other funds of the Mortgagor; and

  
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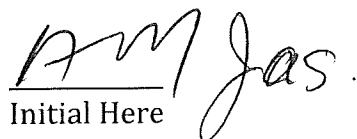
- (b) The Mortgagor shall deliver all such proceeds to the Mortgagee immediately upon the receipt thereof by the Mortgagor in the identical form received, but duly endorsed or assigned on behalf of the Mortgagor to the Mortgagee.

7-5. Use and Occupation of Collateral. In connection with the Mortgagee's exercise of the Mortgagee's rights after an Event of Default which is continuing under this Article, the Mortgagee may enter upon, occupy and use all or any part of the Collateral and may exclude the Mortgagor from the Mortgaged Premises or portion thereof as may have been so entered upon, occupied or used. The Mortgagee shall not be required to remove any of the Collateral from the Mortgaged Premises upon the Mortgagee's taking possession thereof, and may render any Collateral unusable to the Mortgagor. Further, the Mortgagee may make such alterations, renovations, repairs and replacements to the Collateral, as the Mortgagee, in its sole discretion, deems proper or appropriate.

7-6. Partial Sales. The Mortgagor agrees that, in case the Mortgagee in the exercise of the Power of Sale contained herein or in the exercise of any other rights hereunder given, elects to sell the Collateral in parcels, said sales may be held from time to time and that the power shall not be exhausted until all of the Collateral not previously released shall have been sold, notwithstanding that the proceeds of such sales exceed, or may exceed, the Liabilities then secured thereby.

7-7. Marshalling. Notwithstanding the existence of any other security interest in the Collateral held by the Mortgagee or by any other party, the Mortgagee shall have the right to determine the order in which any of the Collateral or any part thereof shall be subjected to the remedies provided herein. The Mortgagee shall have the right to determine the order in which any or all portions of the Liabilities are satisfied from the proceeds realized upon the exercise of the remedies provided herein. The Mortgagor and any party who now or hereafter acquires a security interest in any of the Collateral and who has actual or constructive notice hereof hereby waives, to the extent permitted by law, any and all right to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein.

7-8. Rights and Remedies. The rights, remedies, powers, privileges and discretions of Mortgagee hereunder (hereinafter "Mortgagee's Rights and Remedies"), shall be cumulative and not exclusive of any rights or remedies which it would otherwise have. No delays or omissions by Mortgagee in exercising or enforcing any of Mortgagee's Rights and Remedies shall operate as or constitute a waiver thereof. No waiver by the Mortgagee of any default hereunder or under any other agreement shall operate as a waiver of any other default hereunder or under any other agreement. No single or partial exercise of Mortgagee's Rights or Remedies, and no other agreement or transaction, of whatever nature entered into between Mortgagee and Mortgagor at any time, whether before, during or after the date hereof, preclude any other or further exercise of Mortgagee's Rights and Remedies. No waiver or modification on Mortgagee's part on any one occasion shall be deemed a waiver on any subsequent occasion, nor shall it be deemed a continuing waiver. All of the Mortgagee's Rights and Remedies under this or any other

  
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agreement or transaction shall be cumulative, and not alternative or exclusive, and may be exercised by the Mortgagee at such time or times and in such order of preference as the Mortgagee, in its sole discretion, may determine.

## **ARTICLE 8- MISCELLANEOUS**

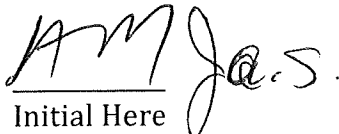
8-1. Successors and Assigns. In the event the ownership of the Collateral, or any part thereof, becomes vested in a person other than the Mortgagor, the Mortgagee may, without notice to the Mortgagor, deal with such successor or successors in interest with reference to this Agreement and the Liabilities in the same manner as with the Mortgagor, without in any way waiving the default occasioned by such transfer of ownership or in any way vitiating or discharging the Mortgagor's liability hereunder or upon the Liabilities, and no compromise, settlement, release or sale of the Collateral, no forbearance on the part of the Mortgagee, and no alteration, amendment, cancellation, waiver or modification of any term or condition or extension of the time for payment of the Liabilities given by Mortgagee shall operate to release, discharge, modify, change or affect the original liability of the Mortgagor herein, either in whole or in part, notice of any action being waived.

8-2. Set Off. Except for tax escrow funds which are provided for in Section 4-9 herein, all deposits or other sums at any time credited by or due from the Mortgagee to the Mortgagor, and all cash, securities, instruments or other property of the Mortgagor in the possession of the Mortgagee (whether for safekeeping, or otherwise) shall at all times constitute security for the Liabilities, and may be applied or set off by the Mortgagee against the Liabilities at any time whether or not the Liabilities are then due or other collateral is then available to the Mortgagee.

8-3. Application of Proceeds. The proceeds of any collection, sale or disposition of the Collateral, or of any other payments received hereunder, shall be applied toward the Liabilities in such order and manner as the Mortgagee reasonably determines, in its sole discretion, any statute, custom or usage to the contrary notwithstanding. The Mortgagor shall remain liable to the Mortgagee for any deficiency remaining following such application.

8-4. Waiver. (a) The Mortgagor WAIVES notice of demand, presentment, notice of dishonor or protest and all forms of demand and notice, both with respect to the Liabilities and to the Collateral; and (b) the Mortgagor, if entitled to it, WAIVES the right to notice and/or hearing prior to the exercise of any of the Mortgagee's Rights and Remedies.

8-5. Responsibility of Mortgagee. The Mortgagee shall not be liable for any loss sustained by the Mortgagor resulting from any action, omission or failure to act by the Mortgagee with respect to the exercise or enforcement of its rights under this Agreement or its relationship with the Mortgagor unless such loss is caused by the willful misconduct, actual bad faith or gross negligence of the Mortgagee. This Agreement and the Mortgagee's exercise of its rights hereunder shall not operate to place any responsibility upon the Mortgagee for the control, care, management or repair of the Collateral, nor shall it operate to place any responsibility upon the Mortgagee to perform the obligations of the Mortgagor under any Lease, or to make the

  
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Mortgagee responsible or liable for any waste committed on the Mortgaged Premises, and the Mortgagor agrees to save, defend and indemnify the Mortgagee from same, and any damages or defective condition of the Mortgaged Premises, or any negligence in the management, upkeep, repair or control of the Mortgaged Premises.

8-6. Indemnification. The Mortgagor shall indemnify, defend and hold the Mortgagee harmless of and from any claim brought or threatened against the Mortgagee by the Mortgagor, , or any other person (as well as from attorneys' reasonable fees and expenses in connection therewith) on account of the Collateral, or on account of the Mortgagee's relationship with the Mortgagor o (each of which may be defended, compromised, settled or pursued by the Mortgagee with counsel of the Mortgagee's selection, but at the expense of the Mortgagor). The within indemnification shall survive payment of the Liabilities and/or any termination, release or discharge executed by the Mortgagee in favor of the Mortgagor.

8-7. Binding on Successors. This Agreement shall be binding upon the Mortgagor and the Mortgagor's heirs, executors, administrators, representatives, successors and assigns and shall inure to the benefit of the Mortgagee and the Mortgagee's successors and assigns. This provision shall not in any way be deemed a waiver by the Mortgagee of any Event of Default provided for herein.

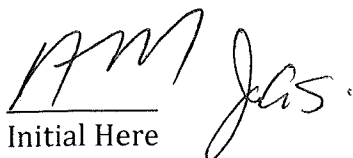
8-8. Severability. Any determination that any provision of this Agreement or any application thereof is invalid, illegal or unenforceable in any respect in any instance shall not affect the validity, legality and enforceability of such provision in any other instance, nor the validity, legality or enforceability of any other provision of this Agreement.

8-9. Consent. The Mortgagor may take any action herein prohibited, or omit to perform any act required to be performed by it, if the Mortgagor shall obtain the prior written consent by a duly authorized officer of the Mortgagee for each such action, or omission to action.

8-10. Payment of Costs. The Mortgagor shall pay on demand all Costs of Collection and all expenses of the Mortgagee in connection with the preparation, execution and delivery of this Agreement and of any other documents and agreements between the Mortgagor and the Mortgagee, including, without limitation, attorneys' reasonable fees and disbursements, and all expenses which the Mortgagee may hereafter incur in connection with the collection of the Liabilities or the protection or enforcement of any of the Mortgagee's rights against the Mortgagor, any Collateral. The Mortgagor authorizes the Mortgagee to pay all such expenses and to charge the same to any account of the Mortgagor with the Mortgagee.

8-11. Additional Advances. All amounts which the Mortgagee may advance under any Sections of this Agreement shall be repayable to the Mortgagee with interest at the highest rate charged relative to any of the Liabilities, on demand, shall be a Liability, and may be charged by the Mortgagee to any deposit account which the Mortgagor maintains with the Mortgagee.

8-12. Notice. All notices, demands and other communications made in respect to this Agreement

  
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shall be made to the following addresses (each of which may be changed upon seven (7) days written notice to all others) given by hand, by facsimile, by service of process or by certified mail, return receipt requested, as follows:

If to the Mortgagee:

Schmidt Farm, Inc.  
c/o Rubenstein and Associates, P.C.  
10 Spreen Street, First Floor  
Framingham, MA 01701

If to the Mortgagor:

**MADDI NORTH STREET DEVELOPMENT, LLC OR ITS ASSIGNEE,**  
PO Box 411  
Franklin, MA 02038

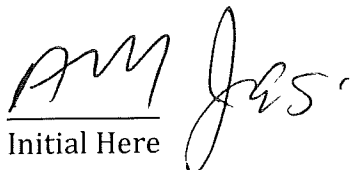
With a copy to:

Michael P. Doherty, Esq.  
Doherty, Ciechanowski, Dugan & Cannon, PC  
124 Grove Street, Suite 220  
Franklin Ma 02038

8-13. Governing Law. This Agreement and all rights and obligations hereunder, including matters of construction, validity and performance, shall be governed by the substantive laws of the Commonwealth of Massachusetts, excluding the laws of the State of Massachusetts which shall govern the sale of the Collateral in the event of a foreclosure sale, and without regard to choice of law rules and principles in effect in the Commonwealth of Massachusetts. The Mortgagor submits itself to the jurisdiction of courts of the Commonwealth of Massachusetts, including the United States District Court located therein, for all purposes with respect to this Agreement and the Mortgagor's relationship with the Mortgagee.

8-14. WAIVER OF TRIAL BY JURY. THE MORTGAGOR AS WELL AS MORTGAGEE HEREBY EXPRESSLY WAIVE ALL RIGHTS TO TRIAL BY JURY, AS TO ALL ISSUES, INCLUDING ANY COUNTERCLAIMS, WITHOUT EXCEPTION, IN ANY ACTION OR PROCEEDING DIRECTLY OR INDIRECTLY RELATING HERETO, OR RELATING TO ANY AND ALL OTHER LOAN DOCUMENTS EXECUTED IN CONNECTION THEREWITH.

IN WITNESS WHEREOF, the Mortgagor has caused this Mortgage to be executed under seal on the day and year set forth in the acknowledgment set forth below, all as of the day and year first above written.

  
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**MADDI NORTH STREET DEVELOPMENT, LLC**

BY: ANTHONY MARINELLA, ITS DULY AUTHORIZED MANAGER

COMMONWEALTH OF MASSACHUSETTS

, ss.

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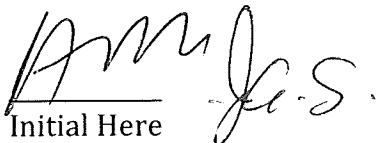
Before me personally appeared the above-named Anthony Marinella, Manager of **MADDI NORTH STREET DEVELOPMENT, LLC.** , proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person who signed the preceding document in my presence, and who acknowledged to me that he signed it voluntarily for its stated purpose as the duly-authorized Manager of **MADDI NORTH STREET DEVELOPMENT, LLC.** and individually.

\_\_\_\_\_  
Notary Public: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

SCHMIDT FARM, INC

By:

\_\_\_\_\_  
Its duly authorized President

  
Initial Here

**EXHIBIT A - LEGAL DESCRIPTION**

**PARCEL I**

AM Jas.  
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**SCHMIDT FARM, INC.**

**Commercial Real Estate Promissory Note**

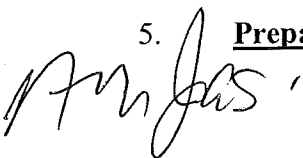
**Franklin, Massachusetts**

**\$1,500,000.00**

**DATE:**

FOR VALUE RECEIVED, the undersigned **MADDI NORTH STREET DEVELOPMENT, LLC**, a Massachusetts **Limited Liability Company** with a principal place of business at **PO BOX 411 FRANKLIN, MA 02038** (hereinafter referred as the "Maker"), promises to pay to the order of **SCHMIDT FARM, INC.**, a Massachusetts limited liability company with a principal place of business at 215 Prospect Street, Franklin, Massachusetts 02038 (hereinafter, with any subsequent holder, the "Lender" or the "Holder") at the offices of the Lender, the principal amount of **One Million, Five Hundred Thousand Dollars and 00/100 (\$1,500,000.00)** (the "Principal Amount").

1. **Payments to be Made.** The Maker shall repay the Principal Amount and the interest accruing thereon under this Note as follows:
  - (a) Upon the sale of each lot until the Maturity Date as defined in subsection (b) below, the Maker shall make to the Lender a payment of **Thirty Thousand 00/100 (\$30,000.00)**, representing principal payments on the amount advanced and/or outstanding pursuant to this Note;
  - (b) Commencing on year four (4) of the loan term, the Maker shall pay to the Lender interest on the outstanding principal balance at the rate of three (3%) percent per annum, until the Maturity Date, as defined herein:
  - (c) On the next business day following the sale of the fiftieth (50<sup>th</sup>) home in the proposed subdivision \_\_\_\_\_ (the "Maturity Date"), the entire outstanding Principal Amount hereof, together with all accrued and unpaid interest thereon, and other costs, if any, shall be due and payable and the Maker shall pay the full amount thereof on such date:
  - (d) If not paid previously in full, all amounts due shall be paid in full on the first day of the sixtieth month following the date hereof.
2. **Place of Payments.** Payments shall be payable to the Lender at the Lender's offices, 215 Prospect Street, Franklin, MA 02038 or at such other place as the Holder may from time to time in writing designate at least ten (10) days before such payment is due.
3. **Default Rate.** Upon the occurrence of an Event of Default (as defined below), or the maturity of this Note, the interest rate under this Note shall immediately increase to TWELVE PERCENT (12%) per annum.
4. INTENTIONALLY OMITTED
5. **Prepayment of Principal.** In the event that the Maker wishes to make a



prepayment of this Note in whole or in part before it becomes due and payable in full, the Maker hereby agrees with the Lender that no penalty shall be charged. .

6. **Cross-Collateralization**. This Note is secured by any and all collateral at any time granted to the Lender to secure the obligation of the undersigned hereunder.

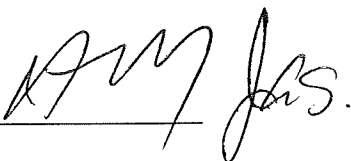
7. **Real Estate Taxes; Insurance**. In the event of a default, any amount adjusted by the Lender for payment of any tax assessments or of any insurance premium or similar charges or to extinguish any lien and/or mortgage on the premises securing payment of this Note and the Liabilities, including the Lender's legal expenses incurred in the exercise of any collection or collateral enforcement activities, including but not limited to mortgage foreclosure paid by the holder hereof, may be added to the principal of this Note and be deemed to be secured by said mortgage and/or security agreement.

8. **Application of Payments**. Any payments received by the Lender on account of this Note, prior to demand or acceleration, shall be applied to the unpaid principal balance hereof. Any payments so received after demand or acceleration shall be applied as follows: (i) first, to any reasonable costs, expenses or charges then owed to the Lender by the undersigned; (ii) second, to accrued and unpaid interest as provided hereunder; and (iii) third, to the unpaid principal balance hereof.

9. **Loan is for Commercial Purposes**. The undersigned represents to the Lender that the proceeds of this Note shall be used for business purposes and shall not be used for personal, family or household purposes and that the property serving as collateral for this Note is commercial property, not residential property to be used by the Maker or any other party for residential purposes

10. **Events of Default**. The Lender at its option may accelerate this Note and declare the entire unpaid principal balance hereof, and any and all accrued and unpaid interest thereon, to be immediately due and payable without demand, presentment, notice, notice of dishonor or protest (which are each and all hereby waived by the each and every of the undersigned) upon the occurrence of any one or more of the following events (the term "Maker" in the following subparagraphs (a) through (m) below refers to the occurrence of any one or more of such events involving, or with respect to, each of the undersigned collectively as well as to each of the undersigned on a single, individual basis):

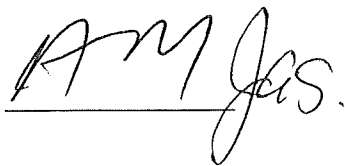
- (a) The failure of the Maker to pay when due any of the Maker's liabilities, obligations or indebtedness to the Lender;

  
\_\_\_\_\_

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- (b) The failure of the Maker to promptly, punctually and faithfully perform, discharge or comply with any of the Maker's liabilities, obligations, indebtedness, warranties or covenants to the Lender hereunder and under any other obligation to the Lender (the amounts due under this Note and the other liabilities, obligations, indebtedness, warranties and covenants described in subparagraphs (a) and (b) above and this subparagraph (c) are referred to herein as the "Liabilities");
- (c) INTENTIONALLY OMITTED;
- (d) The occurrence of any event of default under any agreement between the Lender and the Maker or any instrument, paper or writing given to the Lender by the Maker, whether such agreement, instrument, paper or writing now exists or hereafter arises (notwithstanding that the Lender may not have exercised its rights upon default under any such other agreement, instrument, paper or writing);
- (e) Any act by, against, or relating to the Maker, or any property or assets of the Maker, which act constitutes the application for, consent to or sufferance of the appointment of a receiver, trustee or other person, pursuant to court action or otherwise, over all or any part of the property of the Maker; the granting of any trust mortgage or execution of an assignment for the benefit of creditors of the Maker, or the occurrence of any other voluntary or involuntary liquidation or extension of debt agreement or arrangement for the Maker; the failure of the Maker generally to pay debts of the Maker as those debts mature; the adjudication of bankruptcy or insolvency relative to the Maker; the calling or sufferance of a meeting of creditors of the Maker; the meeting of the Maker with a formal or informal committee of creditors for the Maker; the offering of or actual entry into any composition, extension or other arrangement by the Maker, seeking relief or extension for the debts of the Maker, or the initiation of any other judicial or non-judicial proceeding or agreement by, against or including the Maker, which seeks or intends to accomplish a reorganization, restructuring, forbearance or other arrangement with creditors of the Maker; the entry of an order for relief or similar order with respect to the Maker, or with respect to any one of them, in any proceeding pursuant to the Bankruptcy Reform Act of 1978, as amended (as amended, the "Bankruptcy Code") or any other federal or state bankruptcy, insolvency, reorganization, receivership, liquidation or restructuring law; the filing of any complaint, application or petition by or against the undersigned initiating any matter in which the Maker is or may be granted any relief from the debts of the Maker pursuant to the Bankruptcy Code or any other insolvency statute or procedure (*provided, however*, that it shall not be an Event



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of Default hereunder if such complaint, application or petition is filed against the Maker, which complaint, application or petition is being diligently contested until the earlier of (i) the entry of an Order for Relief against the Maker; or (ii) the expiration of sixty (60) days since the filing of the complaint, application or petition with dismissal thereof);

- (f) The entry of any judgment against the Maker, which judgment is not satisfied or appealed from (with execution or similar process stayed) within twenty-one (21) day of entry of such judgment;
- (g) One or more foreclosure or other proceedings shall be commenced to enforce, execute or realize upon any lien, encumbrance, attachment, trustee process, mortgage or security interest against the Maker;
- (h) The death or the commencement of the termination of existence, of the dissolution, of the winding up or of the liquidation of the Maker;
- (i) The occurrence of any one or more of the foregoing Events of Default with respect to: (i) (if the Maker is a general or limited partnership, limited liability company, limited liability partnership or trust) any partner, limited liability entity member or the beneficiary of the Maker; or (ii); or (iii) (if the Maker is a Limited Liability Company) any parent, subsidiary, affiliate or holder of ten (10) percent of voting equity in the Maker;
- (j) In the absence of the Lender's express, prior written consent, the sale or transfer of all or any interest of the Maker in any portion of the real or personal property or any other collateral securing this Note, except for the sake of lots as contemplated in paragraph 1, above.

11. **No Waiver of Rights of Lender.** No delay or omission on the part of the Lender in exercising or enforcing any of the Lender's powers, rights, privileges, remedies or discretions hereunder and under any documents executed in connection with this Note against any one or more of the undersigned, whether contemporaneously or subsequently executed, shall operate as a waiver thereof on that occasion or on any other prior or future occasion against any one or more of the undersigned. No single or partial exercise by the Lender of any power, right, privilege, remedy or discretion against any one or more of the undersigned shall preclude another, further or future exercise thereof against any of the undersigned. A waiver of any power, right, privilege, remedy or discretion on any occasion against any one or more of

  
\_\_\_\_\_

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undersigned shall not be construed as a bar to or waiver of any such right or remedy on any future occasion.

12. **Consent to Renewals, Extensions, Etc.** Without notice to, or further consent of the Maker ( the “**Obligors**”), the Maker consents to:

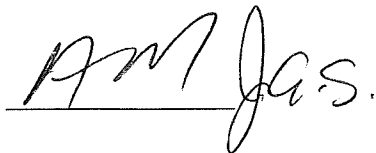
- (a) every renewal, forbearance, extension of time, and other change in the terms or conditions of any indebtedness; and
- (b) every waiver of Bank's rights against any Obligor(s) or any security, without such waiver prohibiting the later exercise of the same or similar rights..

14. **Bankruptcy; Subordination.** Neither bankruptcy, insolvency, merger, consolidation, dissolution, nor the death of any Obligor(s) shall affect the Maker’s obligations to the Lender hereunder. The Maker subordinates to the indebtedness of the Obligor(s) to Lender any claim or security it now or hereafter may have against any other Obligor(s) or its assets. Without limiting any of the Bank's rights or the Maker’s obligations, the Maker waives all suretyship defenses.

15. **Authority; Waivers by Maker.** The Maker hereby waives:

- (a) presentment, demand, notice, notice of dishonor and protest, and any and all other demands and notices in connection with the delivery, acceptance, performance, default or enforcement of this Note, the Loan Documents and the Liabilities and also waives any delay on the part of the holder hereof.
- (b) any delay or failure of Lender in the exercise of any right or remedy;
- (c) the release, compromise, subordination, substitution, impairment, or failure to perfect any security or any rights or remedies against any Obligor(s);
- (d) any right to marshaling, subrogation, reimbursement or indemnity, until all indebtedness has been fully and indefeasibly paid and Maker’s ability to obtain credit under the Loan Agreement has been irrevocably terminated; and
- (e) any right to request or obtain from Lender information on any Obligor(s).

The Maker assumes all responsibility for being and keeping themselves informed of the financial condition and assets of each and all of the other Obligor(s), and of all other

A handwritten signature in black ink, appearing to read "AM JAS.", is written over a horizontal line.

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circumstances bearing upon the risk of nonpayment of the indebtedness and the nature, scope, and extent of the risks that the Maker assumes and incur hereunder, and agree that the Lender shall have no duty to advise any Obligor(s) of information known to it regarding such circumstances or risks.


16. **Indemnification.** Each of the Maker, , shall indemnify, defend and hold the Lender harmless against any claim brought or threatened against the Lender by any one or more of the undersigned, (as well as from attorneys' reasonable fees and expenses in connection therewith) on account of the Lender's relationship with the undersigned (each of which may be defended, compromised, settled or pursued by the Lender with counsel of the Lender's selection, but at the expense of the undersigned).

Each of the undersigned shall pay on demand all attorneys' reasonable fees and out-of-pocket expenses incurred by the Lender in the administration of this Note and the Liabilities, including, without limitation, costs and expenses associated with travel on behalf of the Lender. Each of the undersigned shall also pay on demand all attorneys' reasonable fees and out-of-pocket expenses incurred by the Lender's attorneys and all costs incurred by the Lender, including, without limitation, costs and expenses associated with travel on behalf of the Lender, which costs and expenses are directly or indirectly related to the preservation, protection, collection or enforcement of any of the Lender's rights against the each of the undersigned and the Liabilities and against any collateral given the Lender to secure this Note or any other Liabilities of the each of the undersigned (whether or not suit is instituted by or against the Lender).

17. **Joint and Several Obligations.** The Liabilities of the undersigned are joint and several; *provided, however*, the release by the Lender of any one or more of the undersigned shall not release any other person obligated on account of this Note. Each reference in this Note to the undersigned, any endorser, is to such person individually and also to all such persons jointly and severally. No person obligated on account of this Note may seek contribution from any other person also obligated unless and until all liabilities, obligations and indebtedness to the Lender of the person from whom contribution is sought have been satisfied in full.

18. **Binding Obligations; Successors to the Maker.** This Note shall be binding upon the each of the undersigned upon their respective heirs, successors, assigns and representatives, and shall inure to the benefit of the Lender and its successors, endorsees and assigns. Each of the undersigned authorizes the Lender to complete this Note if delivered incomplete in any respect.

19. **Severability.** Any determination that any provision of this Agreement or any



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application thereof in any particular instance is invalid, illegal or unenforceable in any respect in any instance shall not affect the validity, legality and enforceability of such provision in any other instance, nor the validity, legality or enforceability of any other provision of this Agreement.

20. **No Marshaling.** The Lender shall not be required to marshal any present security for, , the obligations or to resort to any such security or guarantee in any particular order and the Maker waives, to the fullest extent that it lawfully can:

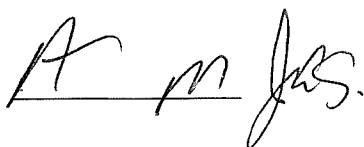
- (a) any right the Maker or other obligors may have to require the Lender to pursue any particular remedy before proceeding against it; and
- (b) any right to the benefit of, or to direct the application of the proceeds of any collateral until the obligations are paid in full.

21. **Maker's Representations and Warranties.** The Bank's agreement to advance funds pursuant to the terms hereof and pursuant to the Loan Agreement is made in reliance upon the information that the Maker have given to the Lender in connection with this Note, the Loan Agreement, the other Loan Documents and the other obligations that the Maker has with Bank, which the Maker represents, warrants and covenants to be true and correct as of the date hereof. The Maker represents, warrants and covenants that any information that the Maker provides to Lender in the future shall also be true and correct.

22. **Negotiability of this Note.** The Maker hereby waives presentment, dishonor, protest and demand, diligence, notice of protest, demand and of dishonor, and any other notice otherwise required to be given under the law in connection with the delivery, acceptance, performance, default, enforcement or collection of this Note, and expressly agree that this Note or any payment hereunder may be extended or subordinated, by forbearance or otherwise, from time to time, without in any way affecting the liability of the Maker. No consent or waiver by the Holder hereof with respect to any action or failure to act which, without such consent or waiver, would constitute a breach of any provision of this Note, shall be valid and binding unless in writing and signed by both the Maker and the Bank.

23. **Completion of Instrument; Reproduction Admissible.** The Maker authorizes the Lender to complete this Note if delivered incomplete in any respect. A photographic or other reproduction of this Note shall be admissible in evidence with the same effect as the original Note in any judicial or other proceeding, whether or not the original is in existence.

25. **Headings; References to Parties.** The headings herein are for convenience only

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and shall not be deemed to be part of this Note. Any references to any party shall be construed in the masculine, feminine or neuter, singular or plural, as the context may require.

26. **Governing Law.** This Note is delivered to the Lender at one of its offices in Massachusetts, shall be governed by the substantive laws of the Commonwealth of Massachusetts, irrespective of the law of any other jurisdiction in which some or all collateral herefor may be located, and without regard to choice of law rules and principles, and shall take effect as a sealed instrument.

27. **Jurisdiction.** Each of the undersigned submits to the jurisdiction of the courts of the Commonwealth of Massachusetts, including the United States District Court located therein, for all purposes with respect to: (i) this Note; (ii) the Liabilities; (iii) all documents and obligations undertaken in connection therewith; (iv) any collateral given to secure such parties' respective liabilities, obligations and indebtedness to the Lender; and (v) such parties' respective relationships with the Lender.

28. **Additional Waivers** Each of the undersigned makes the following waivers knowingly, voluntarily, and intentionally, and understands that the Lender, in the establishment and maintenance of the Lender's relationship with the undersigned contemplated by the within Note, is relying thereon.

**TO INDUCE SCHMIDT FARM, INC. TO MAKE THE LOAN TO THE UNDERSIGNED, EACH OF THE UNDERSIGNED DOES HEREBY ATTEST, CERTIFY, REPRESENT, WARRANT AND COVENANT THAT NEITHER THE PREMISES NOR ANY PORTION THEREOF DESCRIBED IN ANY MORTGAGE SECURING THIS NOTE ARE USED OR ARE INTENDED TO BE USED BY THE UNDERSIGNED OR BY ANY PERSON LIABLE HEREUNDER AS A DWELLING, OR AS A HOME, AND THAT THE PROCEEDS OF THIS TRANSACTION ARE SOLELY TO BE USED FOR COMMERCIAL AND BUSINESS PURPOSES AND NOT FOR AGRICULTURAL OR CONSUMER PURPOSES, AND THE UNDERSIGNED ACKNOWLEDGES THAT THIS ATTESTATION, CERTIFICATION, REPRESENTATION, WARRANTY AND COVENANT HAS BEEN RELIED UPON BY THE HOLDER HEREOF.**

**THE MAKER, TO THE EXTENT ENTITLED THERETO, UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY AND ALL OF ITS PRESENT OR FUTURE RIGHTS, OR OF ANY PERSON OR OF ANY PERSON LIABLE TO THE LENDER ON ACCOUNT OR IN RESPECT TO THE LIABILITIES, TO A TRIAL BY JURY IN ANY LEGAL ACTION, CASE,**

48



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**COUNTERCLAIM OR CONTROVERSY IN WHICH THE LENDER IS OR BECOMES A PARTY (WHETHER SUCH CASE OR CONTROVERSY IS INITIATED BY OR AGAINST THE LENDER IN WHICH THE LENDER IS JOINED AS A PARTY LITIGANT), WHICH CASE OR CONTROVERSY ARISES OUT OF, OR IS IN RESPECT TO, ANY RELATIONSHIP AMONGST OR BETWEEN THE UNDERSIGNED, ANY SUCH PERSON, AND THE LENDER.**

The undersigned, by signing this document, acknowledges that he/she/they/it has read, understands, and received a copy of this Note.

EXECUTED as a sealed instrument the day and year first above written.

**MADDI NORTH STREET DEVELOPMENT, LLC.**

\_\_\_\_\_  
BY: ANTHONY MARINELLA, ITS DULY AUTHORIZED MANAGER

A handwritten signature in black ink, appearing to read 'AMJAS', written over a horizontal line.

COMMONWEALTH OF MASSACHUSETTS

, ss.

201

Before me personally appeared the above-named Anthony Marinella, Manager of **MADDI NORTH STREET DEVELOPMENT, LLC**, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person who signed the preceding document in my presence, and who acknowledged to me that he signed it voluntarily for its stated purpose as the duly-authorized Manager of **MADDI NORTH STREET DEVELOPMENT, LLC**. and individually.

\_\_\_\_\_  
Notary Public: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

This Note is secured by the following:

(i) Mortgage and Security Agreement covering the premises known as **215 Prospect Street, Franklin, MA 02038** (the "Premises")





# TOWN OF FRANKLIN

## RESOLUTION 17-42

### Acceptance of Gift – Franklin Fire Department

**WHEREAS,** The Franklin Fire Department has received a generous donation of one hundred and fifty dollars (\$150.00) from the Moms Club of Franklin.

**NOW THEREFORE, BE IT RESOLVED THAT:** The Town Council of the Town of Franklin on behalf of the Fire Department gratefully accepts this gift and thanks the Moms Club of Franklin for their continued support of the Franklin Fire Department and their programs.

This resolution shall become effective according to the provisions of the Town of Franklin Home Rule Charter.

---

**DATED:**                   , 2017

**VOTED:** \_\_\_\_\_

**UNANIMOUSLY:** \_\_\_\_\_

**A TRUE RECORD ATTEST:**

**YES:** \_\_\_\_ **NO:** \_\_\_\_

**ABSTAIN:** \_\_\_\_ **ABSENT:** \_\_\_\_

**Teresa M. Burr**  
Town Clerk

---

**Judith Pond Pfeffer, Clerk**  
**Franklin Town Council**

MOMS CLUB OF FRANKLIN, MA  
NORTH CHAPTER

017

DATE 6/14/17

PAY TO THE ORDER OF Franklin Fire Dept  
One hundred fifty and 00/100 — \$ 150.00

DEAN BANK  
Franklin, MA 02038

DOLLARS Security Features  
Printed on Bank

MEMO Donation

Allyson

MP

DELUXE WALLET OR DUPLICATE

SPECIALTY GRAV

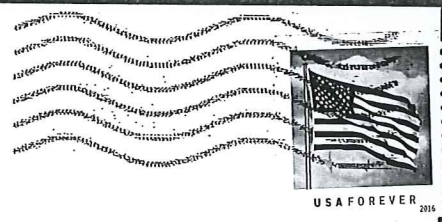
Franklin Fire Dept.

Please accept this donation on behalf of the Franklin Moms Club as a thank you for your support of our community.

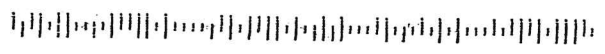
Warmest Regards,  
Abby Quinn  
Treasurer Moms Clubs

FNT

65 Brandywine Rd  
Franklin, MA 02038  
15 JUN 2017 PM 1 T



Franklin Fire Dept.  
40 W Central St  
Franklin, MA 02038





SPONSOR: Administration

**TOWN OF FRANKLIN  
RESOLUTION 17-44  
CREATION OF CULTURAL DISTRICT COMMITTEE**

**WHEREAS**, MGL Chapter 10 Section 58A allows cities and towns to create state-sponsored cultural districts to stimulate new arts and cultural activity and attract creative businesses; and

**WHEREAS**, the Town has identified a walkable and widely accessible area with a concentration of cultural facilities and assets within the Downtown Franklin area; and

**WHEREAS**, a strong Partnership of organizations and businesses has formed in support of creating a state-designated cultural district in the Downtown area; and

**WHEREAS**, the Town Council wishes to establish a state-designated cultural district in the Downtown Franklin area; and

**WHEREAS**, the Town Council wishes to create a committee responsible for oversight and management of the Franklin Cultural District.

**NOW THEREFORE, BE IT ENACTED** by Franklin Town Council that a Cultural District Committee be established. Said committee shall consist of 7 members to be appointed by the Town Administrator and ratified by the Town Council in accordance with the Franklin Town Charter. Said committee shall hold regular meetings, provide oversight and management of the district, work to implement the Franklin Cultural District goals, and assure the Town meets requirements for continued cultural district status.

This Resolution shall become effective according to the rules and regulations of the Town of Franklin Home Rule Charter.

**DATED:** \_\_\_\_\_, 2017

**VOTED:**  
**UNANIMOUS** \_\_\_\_\_

**A True Record Attest:**

**YES** \_\_\_\_\_ **NO** \_\_\_\_\_

**ABSTAIN** \_\_\_\_\_

**Teresa M. Burr**  
**Town Clerk**

**ABSENT** \_\_\_\_\_

\_\_\_\_\_  
**Judith Pond Pfeffer, Clerk**  
**Franklin Town Council**



SPONSOR: *Administration*

**TOWN OF FRANKLIN**  
**RESOLUTION 17-45**  
**PROPOSED FRANKLIN CULTURAL DISTRICT**

**WHEREAS**, MGL Chapter 10 Section 58A allows cities and towns to create state-sponsored cultural districts to stimulate new arts and cultural activity and attract creative businesses; and

**WHEREAS**, the Town of Franklin wishes to pursue a state-authorized cultural district in the Downtown area; and

**WHEREAS**, the Franklin Town Council has held a public hearing so residents, businesses and interested parties can learn about and comment on the proposed Franklin Cultural District and related goals; and

**WHEREAS**, by Resolution 17-44 Franklin Town Council established the Cultural District Committee to provide oversight and management of said cultural district; and

**WHEREAS**, the Massachusetts Cultural Council will be petitioned in accordance with its guidelines and criteria to designate said cultural district.

**NOW THEREFORE, BE IT ENACTED** by the Franklin Town Council that:

1. The Town of Franklin formally expresses its interest in establishing a state-designated cultural district;
2. Endorses the state-sponsored cultural district goals to attract artists and cultural enterprises; encourage business and job development; establish the district as a tourist destination; preserve and reuse historic buildings; enhance property values; and foster local cultural development;
3. Endorses the submission of a state-authorized Cultural District application and agrees to foster the development of a cultural district;
4. Hereby appoints the Town Administrator to represent the Town within said cultural district.

This Resolution shall become effective according to the rules and regulations of the Town of Franklin Home Rule Charter.

---

**DATED:** \_\_\_\_\_, 2017

**VOTED:**  
**UNANIMOUS** \_\_\_\_\_

**A True Record Attest:**

**YES** \_\_\_\_\_ **NO** \_\_\_\_\_

**Teresa M. Burr**  
**Town Clerk**

**ABSTAIN** \_\_\_\_\_

**ABSENT** \_\_\_\_\_

---

**Judith Pond Pfeffer, Clerk**  
**Franklin Town Council**

# Town of Franklin

Town Administrator  
Tel: (508) 520-4949

Fax: (508) 520-4903



355 East Central Street  
Franklin, Massachusetts 02038-1352

## MEMORANDUM

To: Town Council

From: Jamie Hellen

**Re: Town Common Stage Improvements**

---

We are requesting the Town Council approve a transfer of \$35,000 from Free Cash for the purposes of making improvements to the Town Common stage for summer concerts and other activities. The stage needs much needed guardrails, ADA accessibility ramp, new platforms, weatherproofing protection and more work to make it safer for all of the participants.

Jeff and I are available for any questions.





**TOWN OF FRANKLIN**

**RESOLUTION NO.:** 17-46

**APPROPRIATION:** DPW – Town Common Stage Improvements

**AMOUNT REQUESTED:** \$ 35,000

**PURPOSE:** To transfer funds from Free Cash for improvements to the Town Common Stage

**MOTION**

Be It Moved and Voted by the Town Council to transfer Thirty-five Thousand dollars (\$35,000.00) from Free Cash for improvements to the Town Common Stage.

**DATED:** \_\_\_\_\_, 2017

**VOTED:**

**UNANIMOUS** \_\_\_\_\_

**YES** \_\_\_\_\_ **NO** \_\_\_\_\_

**ABSTAIN** \_\_\_\_\_

**ABSENT** \_\_\_\_\_

**A True Record Attest:**

**Teresa M. Burr**  
Town Clerk

---

**Judith Pond Pfeffer, Clerk**  
**Franklin Town Council**

# Town of Franklin

Town Administrator  
Tel: (508) 520-4949

Fax: (508) 520-4903



355 East Central Street  
Franklin, Massachusetts 02038-1352

## MEMORANDUM

To: Town Council

From: Jamie Hellen

**Re: Fire Department salaries**

---

We are requesting the Town Council approve the transfer of \$20,000 from health care accounts to fill a small gap in salaries for the Fire Department for FY17. See the Fire Chief's attached memo.

Jeff and I are available for any questions you may have.



# *FRANKLIN FIRE DEPARTMENT*

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TO : JEFFREY D. NUTTING, TOWN ADMINISTRATOR  
JAMIE HELLEN, DEPUTY TOWN ADMINISTRATOR

FROM : G. B. MCCARRAHER, FIRE CHIEF

DATE : 20 JUNE 2017

RE : REQUEST FOR TRANSFER FUNDS TO FY'17 SALARY LINE

The purpose of this memorandum is to request the transfer of \$20,000 into the Fire Department Salary line item to cover an anticipated shortfall in salary funds.

As we have discussed, this anticipated shortfall is due to a myriad of incidents experienced over the course of the fiscal year. In brief, we experienced the long term illness of a firefighter due to last stage cancer and were required to cover his open shifts. Another firefighter was absent due to a duty related injury and eventually retired in January. The department also suffered the tragic loss of a full time dispatcher which caused several weeks of coverage to allow personnel to manage the stress resulting from this incident. The opening created by retirement of personnel on injury leave, sickness and routine retirement lead to the intake of several new personnel causing the department to run three personnel orientation programs; the excessive number of new personnel orientations were not foreseen during the development of the FY'17 budget.

Thank you for your attention regarding this matter. Please contact me should you have any questions or require any additional information.

cc: S. Gagner, Comptroller  
file



**TOWN OF FRANKLIN**

**RESOLUTION NO.:** 17-47

**APPROPRIATION:** FY 2017 Operating Budget Transfers

**AMOUNT REQUESTED:** \$ 20,000

**PURPOSE:** To transfer from the FY 2017 Employee Benefits- Health Insurance Accounts to the following FY 2017 Operating Budgets:

Fire Salaries	01220100-511260	\$20,000
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**MOTION**

Be It Moved and Voted by the Town Council that the sum of Twenty Thousand dollars (\$20,000.00) be transferred from Employee Benefits – Health Insurance Accounts to the above mentioned FY 2017 Operating Budget.

**DATED:** \_\_\_\_\_, 2017

**VOTED:**

**UNANIMOUS** \_\_\_\_\_

**YES** \_\_\_\_\_ **NO** \_\_\_\_\_

**ABSTAIN** \_\_\_\_\_

**ABSENT** \_\_\_\_\_

**A True Record Attest:**

**Teresa M. Burr**  
Town Clerk

\_\_\_\_\_  
**Judith Pond Pfeffer, Clerk**  
**Franklin Town Council**



SPONSOR: Administration

**TOWN OF FRANKLIN  
ZONING BY-LAW AMENDMENT 17-788**

**DEFINITIONS. BREWERY, DISTILLERY, OR WINERY WITH TASTING ROOM**

**A ZONING BY-LAW TO AMEND THE FRANKLIN TOWN CODE AT  
CHAPTER 185, SECTION 3.**

**BE IT ENACTED BY THE FRANKLIN TOWN COUNCIL THAT:**

Chapter 185 of the Code of the Town of Franklin is hereby amended by adding the following text at §185-3 Definitions:

BREWERY, DISTILLERY, OR WINERY PRODUCTION WITH TASTING ROOM: A business located in a building where the primary use is for the production and distribution of malt, spirituous, or vinous beverages with a tasting room and which holds a Commonwealth of Massachusetts issued Farmer Series Production License. Any such facility that sells alcoholic beverages to be consumed on the premises shall have a Commonwealth of Massachusetts issued Farmer Series Pouring License approved by the Local Licensing Authority. The facility may host marketing events, special events, and factory tours. The facility may only sell beverages produced by, and commercial goods branded by, the brewery, distillery or winery. The facility may sell permitted beverages by the bottle to consumers for consumption off the brewery premises.

TASTING ROOM: A room attached to a brewery, distillery, or winery that allows patrons to sample or consume wine, beer, or other alcoholic beverages that are produced on-site in accordance with M.G.L. c. 138.

A tasting room may not be greater than twenty-five (25) percent of the main building's gross square footage.

The foregoing Zoning By-law amendment shall take effect in accordance with the Franklin Home Rule Charter and Massachusetts General Law Chapter 40A, Section 5.

\_\_\_\_\_  
**DATED:** \_\_\_\_\_, 2017

**VOTED:**  
**UNANIMOUS** \_\_\_\_\_

**A True Record Attest:**

**YES** \_\_\_\_\_ **NO** \_\_\_\_\_

**ABSTAIN** \_\_\_\_\_

**Teresa M. Burr**  
**Town Clerk**

**ABSENT** \_\_\_\_\_

\_\_\_\_\_  
**Judith Pond Pfeffer, Clerk**  
**Franklin Town Council**

# Town of Franklin

Town Administrator  
Tel: (508) 520-4949



Fax: (508) 520-4903

355 East Central Street  
Franklin, Massachusetts 02038-1352

## MEMORANDUM

June 2, 2017

To: Economic Development Subcommittee

From: Jamie Hellen

**RE: Zoning bylaws – Brewery, Distillery, Winery with a tasting room**

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The proposal before the Economic Development subcommittee is to create a new use in the Town's zoning code by allowing for the production of beer, wine and spirits with an option of establishing a retail on premises (tasting room bar) or off-premises (take home, bottle, can, growler) business.

The following are some bullet points to consider:

1. The proposed zoning will allow for the production of beer, wine or spirits and/or an optional tasting room in the following zoning districts: Business, Commercial I, Commercial II, Industrial, and Downtown Commercial District.
2. Production and retail will be prohibited in all residential districts.
3. The proposed zoning will allow for any producer to have a tasting room at no more than 25% of the total square footage of the structure.
4. A manufacturer may also have a restaurant or serve food prepared on site, but will need to go through the normal Board of Health related procedures for kitchens and receive a Common Victualler's license from the Administrator's Office. Keep in mind one note:
  - a. If a producer desires to serve on premises and obtain a Common Victualler's License to prepare food on site, they will be limited to selling *only* their manufactured beer, wine, or spirit products. They may not import and sell any other alcoholic products because the law would require them to seek a traditional "Section 12" alcohol on-premises license like every other restaurant in town.

5. There is nothing in the bylaw that would prohibit a “BYOF” (“Bring Your Own Food”) policy at an establishment. But this feature is a policy that would be put in place by each establishment.
6. Entertainment licenses may also be granted through normal procedures through the Town Administrator’s office (TV’s, juke box, live entertainment, etc.).
7. The following is the process for someone who ONLY desires to produce beer, wine or spirits:
  - a. Receive a Farmer’s Farmer Series Production License from the state Alcohol Beverages Control Commission (ABCC).
  - b. Proceed through traditional Special Permit process in Town.
8. The following is the process for someone who wants BOTH to produce and serve the manufactured products on the premises with a tasting room bar:
  - a. Receive a Farmer’s Farmer Series Production License from the state Alcohol Beverages Control Commission (ABCC).
  - b. Proceed through the traditional special permit process in Town.
  - c. Apply for a “Farmer Series Pouring License” to the Local Licensing Authority (Town Council)
    - i. The process to receive this license is the same as every other Section 12 license restaurant in town, including legal notification, abutters’ notification, liquor liability insurance, and other requirements outlined in the application and town policy.

# Town of Franklin

Tel: (508) 520-4907

Fax: (508) 520-4906



## Planning Board

355 East Central Street  
Franklin, Massachusetts 02038-1352

May 23, 2017

Teresa M. Burr, Town Clerk  
Town of Franklin  
355 East Central Street  
Franklin, MA 02038

2017 MAY 23 PM 1:04  
TOWN OF FRANKLIN  
TOWN CLERK

### CERTIFICATE OF VOTE

Zoning By-Law Amendments:

**17-788: §185-3, Definitions**

**17-792: §185-5, Compliance Required: Use Regulations Schedule**

**Petitioner:** Town Administration

Dear Mrs. Burr:

Please be advised that at its meeting on Monday, May 22, 2017 the Planning Board, upon motion duly made and seconded, voted (5-0) to recommend, *with change*, the Zoning By-law Amendments #17-788 and 17-792, changes to Chapters 185-3 and 5 of the zoning bylaws.

The Planning Board recommends changing the tasting room from thirty-three (33) percent of the main building's gross square footage to **twenty-five (25) percent of the main building's gross square footage**.

If you have any questions concerning this decision, please contact me or the planning staff.

Sincerely,

Anthony Padula  
Chairman

cc: Town Council  
Town Administrator  
DPW  
File



**Sponsor:** *Administration*

**TOWN OF FRANKLIN  
ZONING BY-LAW AMENDMENT 17-792  
USE REGULATIONS FOR BREWERY, DISTILLERY, OR  
WINERY WITH A TASTING ROOM  
A ZONING BY-LAW TO AMEND THE FRANKLIN TOWN CODE AT  
CHAPTER 185, USE REGULATION SCHEDULE PART III**

**BE IT ENACTED BY THE FRANKLIN TOWN COUNCIL THAT:**

Chapter 185 of the Code of the Town of Franklin is hereby amended by the following **additions** to §185, Attachment 4 Use Regulations Schedule Part III:

185 Attachment 4  
USE REGULATION SCHEDULE  
PART III

Symbols in the Use Regulations Schedule shall mean the following:

- Y = A permitted use.
- N = An excluded or prohibited use.
- BA = A use authorized under special permit from the Board of Appeals.
- PB = A use authorized under special permit from the Planning Board.
- P/SP = Permitted as of right. A special permit from the Board of Appeals is required if the proposed project results in an increase in estimated water consumption of more than 15,000 gallons per day.

Principal Uses	District													
	RRI RVI	RRII RVII	SFRIII	SFRIV	GRV	NC	RB	CI	CH	DC	B	I	LI	O
3. Industrial, utility														
3.1 Bus, railroad station	N	N	N	N	N	N	N	P/SP	P/SP	P/SP	P/SP	P/SP	P/SP	P/SP
3.2 Contractor's yard														
a. Landscape materials storage and distribution	N	N	N	N	N	N	N <sup>7</sup>	N	N	N	N <sup>7</sup>	P/SP	N	N
b. Other	N	N	N	N	N	N	N	N	N	N	N <sup>7</sup>	P/SP	N	N
3.3 Earth removal														
a. Earth removal, commercial <sup>3,5,6</sup>	N	N	N	N	N	N	N	BA	BA	N	BA	BA	BA	BA
b. Earth removal, other <sup>3,4</sup>	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA
c. Rock quarrying	N	N	N	N	N	N	N	N	N	N	N	N	N	N
d. Washing, sorting and/or crushing or processing of materials	N	N	N	N	N	N	N	N	N	N	N	N	N	N
e. Production of concrete	N	N	N	N	N	N	N	N	N	N	N	N	N	N
f. Production of bituminous concrete	N	N	N	N	N	N	N	N	N	N	N	N	N	N
3.4 Lumberyard	N	N	N	N	N	N	N	N	N	N	N	PB	N	N
3.5 Manufacturing and Processing:														
a. Biotechnology <sup>1</sup>	N	N	N	N	N	N	N	N	N	N	N	Y	N	Y
b. Light	N	N	N	N	N	N	N	PB	PB	PB	PB	P/SP/	N	PB
c. Medium	N	N	N	N	N	N	N	N	N	N	N	P/SP/	N	N
d. Heavy	N	N	N	N	N	N	N	N	N	N	N	N	N	N
3.6 Printing, publishing:														
a. Under 5,000 square feet	N	N	N	N	N	N	N	P/SP	P/SP	P/SP	P/SP	P/SP	N <sup>4</sup>	P/SP
b. Over 5,000 square feet	N	N	N	N	N	N	N	N	N	N	P/SP	P/SP	N	PB
3.7 Public utility	P/SP	P/SP	P/SP	P/SP	P/SP	N	N	P/SP	P/SP	P/SP	P/SP	P/SP	P/SP	P/SP
a. Electric power plant	N	N	N	N	N	N	N	N	N	N	N	BA	N	N
3.8 Research and development:														
a. Biotechnology <sup>1</sup>	N	N	N	N	N	N	N	N	N	N	N	PB <sup>2</sup>	N	PB <sup>2</sup>
b. Others	N	N	N	N	N	N	N	N	N	N	P/SP	P/SP	N	P/SP
3.9 Solid waste facility	N	N	N	N	N	N	N	N	N	N	N	BA	N	N
3.10 Warehouse, distribution facility	N	N	N	N	N	N	N	N	N	N	PB	Y	N	N <sup>7</sup>
3.11 Wholesale office, salesroom:														
a. With storage	N	N	N	N	N	N	N	N	P/SP	N	P/SP	P/SP	N	N <sup>7</sup>
b. Without storage	N	N	N	N	N	N	N	P/SP	P/SP	P/SP	P/SP	Y	N <sup>7</sup>	N <sup>7</sup>
3.12 Conference center	N	N	N	N	N	N	N	N	PB	N	PB	PB	P/SP	PB
3.13 Brewery, distillery, or winery production with tasting room	N	N	N	N	N	N	N	PB	PB	PB	PB	PB	PB	N

NOTES:

1. Subject to § 185-42.
2. Biotechnology uses are permitted in the portions of the Industrial District and Office District which are in the Biotechnology Uses Overlay District.
3. See § 185-23, specifically, § 185-23A, Exemptions.
4. See § 185-44, "Administration and enforcement," for general special permit filing information, and § 185-23, Earth removal regulations, for specific filing information.
5. Any commercial earth removal is not permitted within a Water Resource District.
6. See § 185-3 for "commercial earth removal" definition.
7. Only allowed as an accessory use to an otherwise permitted use as detailed in Use Regulations Schedule, Part VII, Accessory Uses.

The foregoing Zoning By-law amendment shall take effect in accordance with the Franklin Home Rule Charter and Massachusetts General Law Chapter 40A, Section 5.

---

**DATED:** \_\_\_\_\_, 2017

**VOTED:**

**UNANIMOUS** \_\_\_\_\_

**A True Record Attest:**

**YES** \_\_\_\_\_ **NO** \_\_\_\_\_

**Teresa M. Burr**  
**Town Clerk**

**ABSTAIN** \_\_\_\_\_

**ABSENT** \_\_\_\_\_

---

**Judith Pond Pfeffer, Clerk**  
Franklin Town Council



**TOWN OF FRANKLIN**

**BY-LAW AMENDMENT 17-793**

**AMENDMENT TO WATER SYSTEM MAP**

**A BY-LAW TO AMEND THE CODE OF THE TOWN OF FRANKLIN, CHAPTER 179 § 179-9.1 WATER MAP.**

**BE IT ENACTED BY THE TOWN COUNCIL OF THE TOWN OF FRANKLIN** that Chapter 179 § 179-9.1. Water System Map Exhibit A (Map) be amended by adding as an eligible location the following:

§179-9.1 Water System Map.

Exhibit A:

Extending the water system to allow construction of an 8” water main from Acorn Place, approximately 350 feet into the Acorn Hill Estates subdivision to serve the proposed homes.

Bylaw shall not become effective until all conditions agreed to between the developer and the DPW are satisfied.

This By-Law amendment shall become effective in accordance with the provisions of the Franklin Home Rule Charter.

**DATED:** \_\_\_\_\_, 2017

**VOTED:**

**UNANIMOUS** \_\_\_\_\_

**A True Record Attest:**

**YES** \_\_\_\_\_ **NO** \_\_\_\_\_

**Teresa M. Burr**  
**Town Clerk**

**ABSTAIN** \_\_\_\_\_

**ABSENT** \_\_\_\_\_

---

**Judith Pond Pfeffer, Clerk**  
**Franklin Town Council**



# TOWN OF FRANKLIN

## DEPARTMENT OF PUBLIC WORKS

Franklin Municipal Building  
257 Fisher Street  
Franklin, MA 02038-3026

May 16, 2017

Mr. Jeffrey Nutting  
Town Administrator  
355 East Central Street  
Franklin, MA 02038

**RE: Acorn Hill Estates – Water System Extension**

Dear Jeff,

Acorn Hill Estates is an approved 4 lot subdivision off of Acorn Place located between Tyson Road and Cardinal Drive, approved by the Planning Board on May 8, 2017. The proponent of the subdivision submitted an application for a Water System Extension Permit to allow construction of an 8" water main from Acorn Place, approximately 350 feet into the subdivision to serve the proposed homes.

The Applicant has indicated he will donate \$10,000 to Franklin's Water conservation efforts.

We believe that the proposal provides a significant public benefit and is consistent with the Department's policy on water conservation. If the Council decides to approve the extension, we recommend the following conditions be attached to the approval:




1. The applicant will need to file all required permits, pay the required fees, and provide the financial contribution to the DPW prior to construction/installation of the water main.
2. The applicant shall construct the proposed water main and install services to the property line prior to constructing the proposed roadway and the installation shall be in accordance with DPW standards.
3. Acorn Place, within the limits of the intersection of the proposed roadway, shall be overlaid from edge to edge to avoid having a trench patch, and the asphalt joints sealed using infrared treatment.


Sincerely,

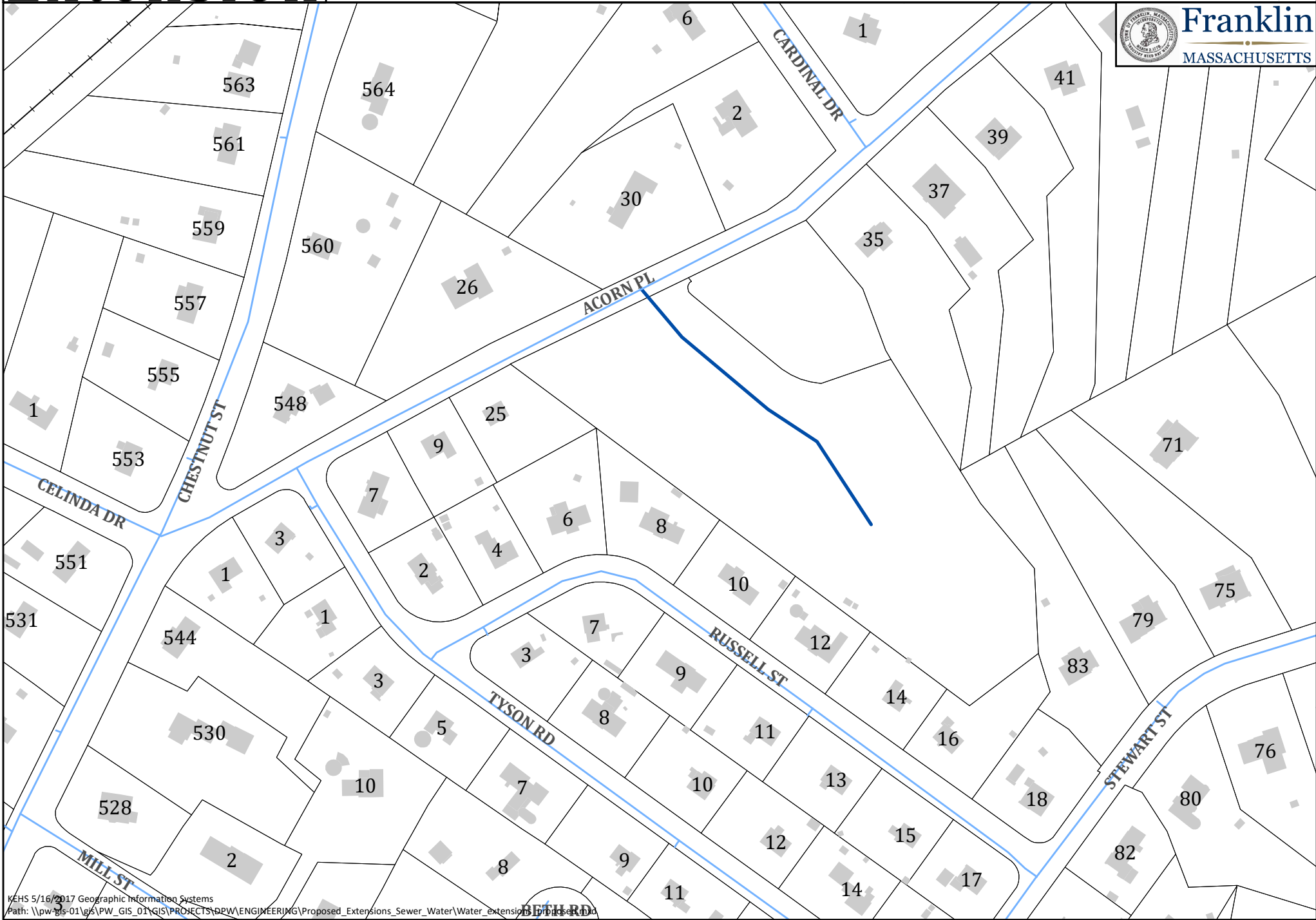
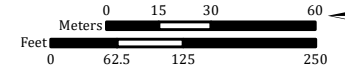
Michael Maglio, PE  
Town Engineer

Robert A. Cantoreggi  
Director of Public Works

# Proposed Water Extension

-  Existing Waterline
-  Proposed Waterline
-  Building

 Parcel Line





**TOWN OF FRANKLIN**  
**BYLAW AMENDMENT 17-794**

**A BYLAW TO AMEND THE CODE OF THE  
TOWN OF FRANKLIN BY ADDING A NEW CHAPTER:  
CHAPTER 108 LIBRARY BOARD OF DIRECTORS**

BE IT ENACTED by the Franklin Town Council that the Code of the Town of Franklin is amended by adding Chapter 108 Library Board of Directors, as follows:

Chapter 108 Library Board of Directors

§108-1 Purpose. There is hereby created a Library Board of Directors for the purpose of providing input and ideas to the Town Administrator related to Library Services provided by the Town of Franklin.

§108-2 Appointment. The Library Board of Directors shall consist of five (5) persons appointed by the Town Administrator, subject to ratification by the Town Council and serving without pay. Members must be residents of the Town of Franklin and interested in the promotion of the Town of Franklin Library. Elected officials or library employees of the Town of Franklin will not be appointed as members of the Board. The Franklin Library Director will be an ex-officio member of the Board.

§108-3 Term of Office. Term of office shall be for three years or until the appointment of a qualified successor. When first constituted, one member shall be appointed for a one year term, two members for a two year term and two members for a three year term. Thereafter the term of office shall expire after a three year term. Vacancies occurring otherwise than by expiration of a term shall be filled by the Town Administrator for the unexpired term.

§108-4 Functions - The Board, through the Town Administrator will:

1. Provide recommendations for the operation of the library services and programs.
2. Promote a coordination of efforts between agencies providing library services within and outside the Town.
3. Sponsor surveys of facilities, programs, and services within the Town for the purpose of assessing library needs, including the need for capital improvements to, or in the library.
4. Respond to the Town Administrator request to review and recommend the annual Capital and Operating budget to the Town Administrator.
5. Assist in recruiting, interviewing and the reviewing of credentials of candidates for the position of library director, and thereafter, make appropriate recommendations to Town Administrator.

6. With approval of the Town Council, solicit and receive grants, gifts and donations to be applied for library purposes.
7. Recommend appropriate space use in existing facilities.
8. Make policy and program recommendations to the Town Administrator.

This bylaw supercedes Town Council Resolution 90-44, which is hereby rescinded.

This bylaw amendment shall become effective in accordance with the provisions of the Franklin Home Rule Charter.

**DATED:** \_\_\_\_\_, 2017

**VOTED:**

**UNANIMOUS** \_\_\_\_\_

**A True Record Attest:**

**YES** \_\_\_\_\_ **NO** \_\_\_\_\_

**ABSTAIN** \_\_\_\_\_

**Teresa M. Burr**  
Town Clerk

**ABSENT** \_\_\_\_\_

---

**Judith Pond Pfeffer, Clerk**  
**Franklin Town Council**