

LAND DEVELOPMENT AND ACCESS AGREEMENT

for

GROUND LEASE OF APPROXIMATELY 43,389 SF PARCEL OF LAND

located at

PARCELS 9-148, 9-175, AND 9-150, OFF WATERFIELD ROAD,  
WINCHESTER, MASSACHUSETTS

between

THE TOWN OF WINCHESTER

and

WATERFIELD WINCHESTER MM LLC

## LAND DEVELOPMENT AND ACCESS AGREEMENT

This LAND DEVELOPMENT AND ACCESS AGREEMENT (this “Agreement”) is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2021 (the “Effective Date”), by and between the **TOWN OF WINCHESTER**, a Massachusetts municipal corporation with a mailing address of Town Hall, 71 Mount Vernon Street, Winchester, Massachusetts 01890, acting by and through its Select Board (the “Town”), and **WINCHESTER WATERFIELD MM LLC**, a Massachusetts limited liability company with a mailing address of 50 Summer Street, Boston, Massachusetts 02110 (the “Developer”). The Town and the Developer shall hereinafter be referred to individually as a “Party” or collectively as the “Parties.”

WHEREAS, the Town owns the fee interest in those certain parcels of land located off Waterfield Road in Winchester, Massachusetts identified as Assessor’s Parcels 9-148, 9-175, and 9-150, collectively containing approximately 43,389 square feet of land, together with the improvements thereon, and is the holder of an easement over Assessor’s Parcel 9-147 (collectively, the “Property”). The Property is further identified on Exhibit A, attached hereto and incorporated herein;

WHEREAS, the Town issued that certain Request for Qualifications for Selection of Developers dated October 30, 2019 pursuant to M.G.L. c. 30B, for the pre-selection of developers qualified to submit proposals for the development of the Property (as amended, the “RFQ”). The Developer submitted a response to the RFQ, and was subsequently selected by the Town as one such pre-qualified developer;

WHEREAS, the Town issued that certain Request for Proposals for Selection of Developer dated July 1, 2020 pursuant to M.G.L. c. 30B, for the development of the Property (the “RFP”);

WHEREAS, in response to the RFP, the Developer’s predecessor-in-interest submitted a proposal dated August 31, 2020 (the “Proposal”), which contemplates the permitting, design, construction, and redevelopment of mixed-use buildings on the Property containing mixed-income residential rental units and commercial rental units, together with below-grade private and public parking (unless such parking is bought out pursuant to an agreed-upon arrangement with the Town) and public open space (as further described in the Proposal, the “Project”);

WHEREAS, the Proposal further contemplates the Town and the Developer entering into a ground lease for the Property for the construction and operation of the Project, for a term of ninety-nine (99) years, and upon such other terms and conditions as are mutually acceptable to the Parties (the “Ground Lease”);

WHEREAS, the Proposal was selected by the Town, the Town issued a Notice of Award dated October 29, 2020 concerning the selection of the Proposal, the Developer’s predecessor-in-interest accepted such Notice of Award, and the Town and the Developer’s predecessor-in-interest entered into that certain Memorandum of Understanding dated as of December 17, 2020 concerning the Project (the “MOU”); and

WHEREAS, in accordance with and as contemplated by the MOU, Developer's predecessor-in-interest has assigned its rights under the MOU to Developer, and the Town and the Developer now desire to enter into this Agreement to set forth the terms and conditions under which (a) the Developer shall have the right to access the Property for the purpose of conducting its due diligence and inspections of the Property, and further developing the design, permitting, and financing of the Project; and (b) the Parties shall negotiate and enter into the Ground Lease, as set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town and the Developer hereby agree as follows.

1. Deposit.

a. Within one (1) Business Day after Town Meeting Approval, as defined below, the Developer shall deposit with Fidelity National Title Insurance Company (the "Escrow Agent") an initial deposit in the amount of \$50,000.00 (the "Initial Deposit"), and within one (1) Business Day after the expiration of the Due Diligence Period (as defined below), the Developer shall deposit with the Escrow Agent a second deposit in the amount of \$50,000.00 (the "Second Deposit") and together with the Initial Deposit, the "Deposit"). The Deposit shall be credited against the initial payment of base rent under the Ground Lease (the "Initial Base Rent Payment"), and shall be returned to Developer in the event this Agreement is terminated as provided herein, or in the event either Party defaults under the terms of this Agreement, then delivered to the non-defaulting Party.

b. The Escrow Agent shall hold the Deposit in accordance with the terms and provisions of this Agreement, and the Escrow Agreement attached hereto and incorporated herein as Exhibit B (the "Escrow Agreement"). The Town and the Developer shall be mutually responsible on a 50/50 basis for all costs and expenses of the Escrow Agent in connection with the escrow of the Deposit.

2. Ground Lease of the Property.

a. The Town and the Developer shall work in good faith to substantially negotiate a mutually acceptable Ground Lease incorporating the material terms identified in Exhibit C attached hereto and incorporated herein (the "Material Terms") and other customary and standard ground lease terms typical of mixed-use/affordable housing developments in the greater Boston real estate market, on or before the date (the "Ground Lease Negotiation Deadline") that is three (3) months after the approval of this Agreement at the 2021 Winchester Annual Town Meeting commencing on April 26, 2021 (the "Town Meeting Approval"). The Ground Lease Negotiation Deadline may be extended for a period of three (3) months by mutual agreement of the Parties.

b. Notwithstanding anything in this Section 2 to the contrary, the Ground Lease shall be subject to the review and comments of Developer's lender(s) and investor(s), which are commercially reasonable, mutually acceptable in the Parties' reasonable discretion, and do not alter the material terms of the Ground Lease as negotiated by the Parties, on or before the date

that is forty-eight (48) months after the effective date of the Town Meeting Approval (the “Ground Lease Execution Deadline”), but in no event less than thirty (30) days prior to the date on which the Ground Lease is to be entered into. The Parties shall use diligent and good faith efforts to negotiate any such comments and execute and deliver the Ground Lease on or before the Ground Lease Execution Date, to be held in escrow by the Parties’ respective attorneys until the Commencement Date (as defined below). In the event this Agreement is terminated prior to the Commencement Date as provided herein, the Ground Lease shall be deemed null and void.

c. If, despite the Town’s and the Developer’s diligent and good faith efforts, the Parties fail (i) to substantially negotiate a mutually satisfactory Ground Lease incorporating the Material Terms on or before the Ground Lease Negotiation Deadline, or (ii) execute and deliver the Ground Lease on or before the Ground Lease Execution Deadline, the Deposit shall be returned to the Developer and this Agreement shall automatically terminate without further recourse to either Party (subject to the Developer’s obligations provided in Section 4.c., below).

d. The term of the Ground Lease shall commence upon the date that: (i) the Developer has received the Approvals and closes on the Financing (as such terms are defined below); and (ii) the Town delivers the Property in its required condition and free of any tenants, licensees, or occupants, including, without limitation, the Massachusetts Bay Transportation Authority (the “MBTA”), under the License Agreement, as defined below, and the Temporary Easement, as defined below (the “Commencement Date”), unless and to the extent otherwise expressly agreed by the Developer in writing. Upon the Commencement Date, this Agreement shall expire and be of no further force and effect, except and to the extent expressly intended to survive the Commencement Date.

### 3. Developer’s Due Diligence.

a. The Developer shall have the right, for a six (6) month period commencing upon the effective date of Town Meeting Approval (the “Due Diligence Period”), which Due Diligence Period shall be extended on a day-for-day basis for each day that Developer is unable to access the entire Property, if and to the extent reasonably necessary for such inspections, due to the MBTA’s occupancy of any portion thereof after May 31, 2021, to conduct and perform diligence inspections on the Property at its sole cost and expense, including visual inspections, building condition assessments, land surveys, environmental, engineering, and architectural assessments, and similar on-site investigation and testing of the surface and subsurface of the Property desired by the Developer related to the Project (collectively, the “Inspections”).

b. The Town has delivered to the Developer certain reports, agreements, and other information relating to the Property, copies of which are attached hereto as Exhibit D (the “Property Information”). The Town makes no representation or warranty of any kind, nature or description whatsoever with respect to the completeness or accuracy of the information contained in the Property Information.

c. If the Developer, acting in good faith, discovers during the Inspections any new or different conditions that are significant and material that were not disclosed in the Property Information or in the RFP, the Developer may, prior to the expiration of the Due Diligence

Period, serve written notice upon the Town, which notice shall provide a detailed description of the basis for the Developer's objections (the "Objections").

d. Within thirty (30) days after receipt of notice of the Developer's Objections, the Town shall notify the Developer in writing of its election to either: (i) resolve all items identified in the Developer's Objections; or (ii) seek to enter into a mutually agreeable resolution of the Developer's Objections with the Developer. If the Town, by written notice to the Developer, refuses to resolve all of the items identified in the Developer's Objections or if the Parties are unable to enter into a mutually agreeable resolution within thirty (30) days after the Town's notice to the Developer, then the Developer shall have the election either to waive the unresolved items set forth in the Developer's Objections and proceed with the transaction hereunder, or terminate this Agreement, in which event the Deposit shall be returned to the Developer and this Agreement shall automatically terminate without further recourse to either Party (subject to the Developer's obligations provided in Section 4.c., below). The Town's failure to timely notify the Developer of its election shall be deemed its election not to resolve any of the items set forth in the Developer's Objections.

e. In the event this Agreement is terminated in accordance with Section 3.d. above, the Developer shall, at the Town's request, provide the Town with copies of all reports and data generated as a result of the Developer's due diligence, exclusive of any design materials and any confidential information, without representation or warranty of any kind, provided that the Town reimburses Developer for the reasonably documented cost thereof.

f. From and after the end of the Due Diligence Period until the Commencement Date, the Town shall not, without the prior written consent of Developer, which consent shall not be unreasonably withheld, conditioned, or delayed, enter into any contract, agreement, license, easement, lease, or any amendment or modification thereto which could bind Developer or the Property after the Commencement Date.

#### 4. Developer's Access.

a. During the Due Diligence Period, the Developer shall have the right, upon reasonable prior notice to the Town of at least two (2) Business Days, to enter upon and access the Property, for the Developer and its members, managers, employees, contractors, consultants, lenders, prospective lenders, agents, and representatives (collectively, "Agents") to conduct and perform the Inspections. The Developer's access to the Chamber of Commerce building on the Property shall be subject to the consent of the Chamber of Commerce for so long as it continues to be an occupant therein, which consent the Town shall use commercially reasonable efforts to obtain and which occupancy will end on or before the Commencement Date. The Town shall have the right to have a board member, employee, agent, or other representative present during Inspections conducted by or on behalf of the Developer and to inspect any activities of Developer and its Agents on the Property.

b. The Developer shall continue to have the right to access the Property in the manner provided in this Section 4 following the expiration of the Due Diligence Period for so

long as this Agreement remains in effect, as may be reasonably necessary in connection with the design, permitting, and financing of the Project.

c. At all times during the term of this Agreement in connection with its access to the Property as provided in this Section 4, the Developer and its Agents shall: (i) not unreasonably interfere with the operation of the Property; (ii) not damage or disturb any part of the Property, or shall otherwise promptly repair any such damage to the Property and restore any areas disturbed resulting from any such Inspections substantially to the condition that existed immediately prior to the performance of such Inspections, or such damage or disturbance; (iii) comply with all federal, state, municipal and local laws, codes, ordinances, rules and regulations of federal, state, regional, local or municipal governmental authorities, agencies, or subdivisions, committees, associations, or other regulatory committees, agencies or governing bodies having jurisdiction over the Property, the Project, the Town or Developer, including both statutory and common law and hazardous waste rules and regulations (“Applicable Laws”); and (iv) not permit any liens to attach to the Property by reason of the exercise of Developer’s rights hereunder, and if any such liens attach to the Property, the Developer shall promptly arrange for the same to be discharged of record. The Developer’s obligations under this Section 4.c. shall survive the expiration or earlier termination of this Agreement. For the avoidance of doubt, the Developer shall obtain, at its sole cost and expense, any and all permits that may be necessary in connection with its access and inspections including, if required and without limitation, a street opening permit and a 8M permit from the MWRA, and shall coordinate as may be necessary directly with the MWRA.

d. The Developer expressly acknowledges that: (i) the Town is in negotiations with the MBTA relating to certain improvements to the Winchester Center MBTA Commuter Rail (the “MBTA Project”); (ii) it is the current intent of the Town and the MBTA that the MBTA Project shall commence prior to the Commencement Date (and if the MBTA Project commences prior to the Commencement Date, the Commencement Date shall not occur before the MBTA Project is substantially complete, the portions of the Temporary Easement encumbering the Property have expired, and the MBTA has completely vacated the area of the Temporary Easement within the Property, except as expressly agreed by the Developer); and (iii) the MBTA and the Town have entered into a License Agreement for the demolition portion of the MBTA Project (the “License Agreement”), and the MBTA further requires certain temporary easement rights over the Property in connection with the MBTA Project (the “Temporary Easement”). Notwithstanding anything in this Section 4 to the contrary, the Developer’s right to access the Property shall be subject to the terms and provisions of the License Agreement and the Temporary Easement if and to the extent applicable; *provided, however*, that the Town shall use (A) commercially reasonable efforts to negotiate provisions in the Temporary Easement that would permit the Developer’s access to the Property in accordance with this Section 4 (potentially in phases as the MBTA completes phases of the station improvement project); (B) commercially reasonable efforts to negotiate for an outside termination date for the Temporary Easement of January 1, 2024; and (C) commercially reasonable efforts to diligently enforce its rights against the MBTA in the event the MBTA fails to timely vacate the Premises upon the expiration of the Temporary Easement. The Town shall forward to the Developer copies of any written notices it receives from the MBTA pursuant to the License Agreement or the Temporary Easement relating to any delays in the MBTA Project, or the MBTA’s inability to timely complete the work contemplated thereunder or to timely vacate the Property. The Town shall

reasonably cooperate, at no out-of-pocket, third party cost to the Town, with the Developer's efforts to coordinate the development, permitting, financing, and construction of the Project with the Town's own communications with the MBTA and the MBTA Project throughout the development process including, without limitation, during the term of the Temporary Easement.

5. Title Review.

a. The Developer shall have a six (6) month period commencing upon the effective date of Town Meeting Approval to examine the title to the Property (the "Title Inspection Period"). The Developer shall have the right to object to any title matters disclosed in the title examination, other than the following, which are deemed "Permitted Exceptions": (i) provisions of building and zoning laws existing as of the date of this Agreement; (ii) easements, restrictions and reservations of record that do not materially interfere with the Project; and (iii) the instruments identified in Exhibit E, attached hereto and incorporated herein.

b. If the Developer objects to any matter disclosed in the title examination, other than a Permitted Exception, the Developer shall notify the Town in writing, specifying the objection (the "Title Notice"). If the Developer fails to deliver the Title Notice prior to the expiration of the Title Inspection Period, the Developer shall be deemed to have waived its objections to all matters of title, all of which shall be deemed Permitted Exceptions, excepting only those matters of title first arising after the date of the Developer's title commitment for the Property (or if the Developer does not obtain a title commitment, then the final day of the Title Inspection Period) (the "Post-Inspection Title Matters"). If Developer timely gives such Title Notice, all title matters not objected to therein shall be deemed Permitted Exceptions, except for any Post-Inspection Title Matters.

c. Within ten (10) days after receipt of the Title Notice, the Town shall notify the Developer in writing of its election whether to use diligent, good faith efforts to remove of record any of the matters raised in the Title Notice. The Town's failure to timely notify the Developer of its election shall be deemed its election not to cure any of the matters raised in the Title Notice.

d. If the Town elects to remove of record any or all of the matters raised in the Title Notice pursuant to Section 5.c.(ii) above, then the Town shall use diligent and good faith efforts to so remove those items prior to the Ground Lease Execution Deadline. If, (I) despite such diligent and good faith efforts, the Town is unable to timely remove such title matters, or (II) the Town's response under Section 5.c.(ii), above, does not elect to remove all of the matters identified in the Title Notice, the Developer shall elect as its sole and exclusive remedy to either: (i) terminate this Agreement, in which event the Deposit shall be returned to the Developer and this Agreement shall automatically terminate without further recourse to either Party (subject to the Developer's obligations provided in Section 4.c., above); or (ii) accept such exceptions to title, which shall be deemed Permitted Exceptions, provided that the Developer shall make such election under subsection (II) not later than the last day of the Title Inspection Period. The Developer's execution and delivery of the Ground Lease shall be deemed its acceptance of such title matters as Permitted Exceptions. As used in this Section 5, diligent and good faith efforts shall not require the Town to expend more than \$5,000, exclusive of Mandatory Cure Items.

e. Notwithstanding anything to the contrary in this Agreement, the Town shall in any case be required to cure prior to the Ground Lease Execution Deadline (whether or not it receives a Title Notice and whether not specifically identified as objections therein), and in no event shall the Developer be obligated to enter into the Ground Lease for the Property subject to, the following matters (collectively, “Mandatory Cure Items”): mortgages, security instruments, collateral assignments, liens, assessments, delinquent taxes and/or other monetary encumbrances applicable to the Property.

6. Design, Permitting, and Approvals.

a. The Developer shall be responsible for designing the Project at its sole cost and expense, which design shall be consistent with and the logical evolution of the Proposal (the concept plans for which are attached hereto in Exhibit F (the “Concept Plans”)), as well as the final Approvals (as defined below). On or before the date that is thirty (30) days after the close of the Due Diligence Period, Developer shall submit to the Town, acting by and through its Select Board, a further developed set of plans for the Project sufficient for the Developer to commence the process for obtaining the Approvals (the “Permitting Set”), together with a schedule of major projected capital needs for the Project. The Town shall have thirty (30) days after Developer’s submittal of the Permitting Set to review the same and approve or disapprove, in the Town’s reasonable discretion, the Permitting Set. This process shall be repeated until the Permitting Set is finally approved, provided that the Town shall have twenty (20) days to review re-submittals after the initial submittal. If the Town fails to respond within said thirty (30)-day or twenty (20)-day period, as applicable, the Developer may send a further notice to the Town, which notice shall include a statement in bold, all-caps type reminding the Town of its obligation to respond, and if the Town fails to respond in writing with approval or disapproval, in the Town’s reasonable discretion, of the Permitting Set within ten (10) days after the Developer’s submittal of the further notice, the Permitting Set shall be deemed approved. Any disapproval of the Permitting Set shall be accompanied by an explanation therefor. The Permitting Set, so approved or deemed approved, shall be defined as the “Approved Permitting Set.” Once the Approved Permitting Set has been established, (I) no material modification (as defined below) thereto shall be permitted without submitting the modification to the Town, acting and through the Select Board, and securing the Town’s approval, not to be unreasonably withheld, conditioned, or delayed, in accordance with the submittal and review process set forth immediately above, and (II) all draft applications for the Approvals shall be submitted by the Developer to the Town, acting by and through the Select Board, not less than fifteen (15) business days prior to submittal to the applicable Approval authority. Other than as may be required by any permit-granting authority during the process to obtain the Approvals, the Approvals shall not be modified or amended in a material manner without the Town’s prior written approval in its reasonable discretion, to be granted or denied in the manner provided in this paragraph. It shall be reasonable for the Town to withhold approval if, without limitation, any such application alters the total number, type, or affordability breakdown of residential units from those identified in Exhibit G, attached hereto and incorporated herein (a “material modification”). Any such approval by the Town shall be solely in its capacity as owner of the Property and landlord under the Ground Lease, and shall not be deemed to: (i) bind any Town board, commission, official, or employee with respect to the Approvals, (ii) waive any

Applicable Laws, or (iii) waive the Select Board's right to provide recommendations and comments to the permit-granting authority in the regular course of the permitting process provided that the Select Board shall not oppose the Developer's pursuit of the Approvals as long as the same are based on and materially consistent with the Approved Permitting Set. As a general matter, the Parties shall reasonably cooperate with each other in connection with the development of the Approved Permitting Set and the permitting of the Project. Developer hereby agrees to use good faith, diligent efforts to develop the Permitting Set and pursue the Approvals and the Town agrees to respond as promptly as possible and within the timeframes set forth in this Section 6.a.

b. The Developer shall be solely responsible for applying for and obtaining the Approvals, at its sole cost and expense, including, without limitation, any and all costs and fees relating to outside consultants pursuant to MGL c. 44 sec. 53G, and any Infiltration & Inflow contributions that may be required by the Town. The Town shall reasonably cooperate with the Developer in connection with the Developer's application for Approvals, including executing any documents necessary therefor, but in no event shall the Town incur any liability in connection therewith.

c. The Developer shall have the right to terminate this Agreement by written notice to the Town delivered within eighteen (18) months after the effective date of Town Meeting Approval, extendable by the length of time during which the Developer's ability to seek or obtain the Approvals is delayed due to an act or omission of the Town (a "Town Delay") or a strike, lock-out, act of God, epidemics, pandemics, appeal(s) of project approval(s), delays caused by the MBTA in connection with the MBTA Project, or any other matter not reasonably within the control of such party ("Force Majeure") if, despite its diligent and good faith efforts, it reasonably believes that it will not or has not received all permits and approvals required by Applicable Laws for the construction of Project (the "Approvals"). For the avoidance of doubt, in no event shall the applicability or requirements of any Applicable Laws or the Town's enforcement thereof constitute a Town Delay. In the event of such termination, the Deposit shall be returned to the Developer and this Agreement shall terminate without further recourse to either Party (subject to the Developer's obligations to restore the Property in the manner provided in Section 4 c.).

7. Financing. The Developer shall have the right to terminate this Agreement by written notice to the Town delivered within thirty-six (36) months after the effective date of Town Meeting Approval, extendable by the length of time during which the Developer's ability to seek or obtain the Approvals is delayed due to a Town Delay or Force Majeure, if, despite its diligent and good faith efforts, the Developer believes it will not be able to or has not received a commitment for financing the construction of the Project from such public financing sources (including, without limitation, the Massachusetts Department of Housing and Community Development), one or more institutional lenders and equity investors (collectively, the "Financing"). In the event of such termination, the Deposit shall be returned to the Developer and this Agreement shall terminate without further recourse to either Party (subject to the Developer's obligations to restore the Property in the manner provided in Section 4 c.).

8. Insurance.

a. Prior to and at all times during any entry on the Property, the Developer and its Agents shall obtain and maintain in full force and effect the following insurance coverages, at its sole cost and expense: (i) commercial general liability insurance against claims for incidents occurring in, on, or about the Property, with coverages totaling not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate; (ii) automobile liability insurance (including non-owned automobiles) in a combined single limit of not less than \$1,000,000; (iii) worker's compensation in the amount required by Applicable Laws; and (iv) such other insurance in such amounts as may be required by Applicable Laws.

b. All such policies of insurance shall: (i) contain a provision stating that the policy shall not be canceled, nor material changes made in the coverages provided thereunder, until not less than thirty (30) days' prior written notice has been given to the Town; (ii) be endorsed to include the Town as an additional insured; and (iii) provide that claims arising from occurrences on the Property shall be covered except to the extent arising directly from the negligence or willful misconduct of the Town.

c. Prior to any entry on the Property, the Developer or its Agents, as the case may be, shall provide the Town with Certificates of Insurance evidencing their compliance with the requirements of this Section 8.

9. Indemnity. The Developer shall indemnify, hold harmless, and defend (with legal counsel reasonably acceptable to the Town) the Town and its boards, commissions, committees, departments, employees, contractors, consultants, agents, and representatives (collectively, the "Town Indemnitees") from and against all costs, expenses, liabilities, obligations, losses, damages, penalties, actions, suits, demands, judgments, or claims (including court costs and reasonable attorney's fees) of whatever nature (collectively, the "Indemnity Damages"): (i) arising out of the exercise of any right or performance or any obligation of the Developer under this Agreement; (ii) arising out of any act or omission of the Developer or its Agents in, on, or about the Property; (iii) any breach of, or default under, this Agreement by the Developer or its Agents, including, without limitation, any failure to comply with any Applicable Laws; and (iv) loss of life, bodily injury or damage to property (including real property, personal property, and environmental or natural resource damage) resulting within the Property from or in connection with and/or attributable to the Developer's or its Agents' access to the Property in connection with this Agreement. The provisions of this Section 9 shall survive the expiration or earlier termination of this Agreement and the Developer's indemnity obligations under this Section 9 shall not extend to any act or omission of Town Indemnitees giving rise to Indemnity Damages nor shall the Developer be liable for the mere discovery of existing conditions that are not exacerbated by Developer or its Agents.

10. Default.

a. Any one of the following shall be deemed an "Event of Default":

i. The Developer's failure to timely deliver either installment of the Deposit when due;

- ii. The default or failure by the Developer to observe and perform any other provision of this Agreement to be observed or performed by it, which failure continues for thirty (30) days after written notice from the Town to the Developer (or such longer period as may be reasonably necessary if the nature of the default or failure is such that the same cannot reasonably be cured within such thirty (30) day period, provided the Developer shall within such thirty (30) day period commence said cure and thereafter diligently prosecute the same to completion within a reasonable period of time); or
- iii. The Developer shall become insolvent as evidenced by an admission in writing of an inability to meet the obligations as they mature; or shall make an assignment for the benefit of creditors, or shall at any time be adjudicated bankrupt; or shall at any time apply for the appointment of a trustee or receiver, and if in any such action the Developer shall indicate its approval of, consent to or acquiescence in such appointment, or any such trustee or receiver shall not be discharged within sixty (60) days; or any proceedings shall at any time be commenced by or against the Developer under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law or statute of the United States or any state thereof, and if such proceedings shall remain undischarged for sixty (60) days.

b. Upon an Event of Default, the Town may, at its option, but without any obligation so to do, as its sole and exclusive remedy at law or in equity (except with respect to indemnification obligations of Developer pursuant to Section 9(iv) that expressly survive the termination or other expiration of this Agreement): (i) commence to cure the same on behalf of the Developer, and the Developer shall reimburse the Town for any amount paid and any expense or contractual liability so incurred, with interest at the annual rate equal to the lesser of (a) ten percent (10%) per annum, and (b) the highest rate then permitted by law; or (ii) terminate this Agreement by giving written notice of such termination to the Developer and the Escrow Agent, upon which notice the Escrow Agent shall deliver the Deposit to the Town without further recourse to either of the Parties; provided, however, that upon such termination the Developer shall promptly deliver to the Town, as liquidated damages in addition to the Deposit, an amount equal to \$40,000.00. The Town and the Developer agree that the Deposit and such additional \$40,000.00 liquidated damages payment together represent a reasonable forecast of the minimum damages expected to occur upon an Event of Default, taking into account the uncertainty, time, and cost of determining elements relevant to actual damages, and that such total amount is not a penalty.

c. In the event the Town defaults in its performance under this Agreement and such default has not been cured within fifteen (15) days after written notice from the Developer (or such longer period as may be reasonably necessary, provided the Town commences to cure such default within such fifteen (15) day period and diligently prosecutes the same to completion), then Developer, as its sole and exclusive remedy at law or in equity, may either: (i) terminate this

Agreement by notice given to the Town, whereupon the Deposit shall be promptly refunded to Developer, or (ii) bring an action against the Town to seek specific performance of the Town's obligations hereunder, or (iii) waive the breach or default and proceed with the transaction contemplated hereunder in accordance with the provisions of this Agreement. Notwithstanding the foregoing, if the remedy of specific performance is not available as a result of the Town's willful and intentional default in violation of this Agreement, then, in addition to the return and delivery of the Deposit, the Developer shall be entitled to commence an action against the Town for all damages in law or in equity other than special, punitive, or consequential damages.

11. Notices. All notices provided for in this Agreement shall be in writing and shall be sent to the addresses set forth below (or such other address as a Party may hereinafter designate in writing by written notice to the other), and shall be sufficient if sent by registered or certified mail, return receipt requested, postage prepaid; by hand delivery; by overnight courier service, or by electronic transmission with proof of receipt with an original by regular mail. Any such notice shall be effective when delivered or when delivery is refused.

If to the Town: Town of Winchester, Town Hall  
71 Mount Vernon Street  
Winchester, MA 01890  
Attn: Town Manager

with a copy to: Anderson & Kreiger LLP  
50 Milk Street, 21<sup>st</sup> Floor  
Boston, MA 02109  
Attn: Mina Makarious, Esq.  
Email: [mina@andersonkreiger.com](mailto:mina@andersonkreiger.com)

If to the Developer: Winchester Waterfield MM LLC  
50 Summer Street  
Boston, MA 02110  
Attn: Dave Traggorth  
Email: [dave@traggorthcompanies.com](mailto:dave@traggorthcompanies.com)

with a copy to: Civico Development, LLC  
2 Tammie Road  
Hopedale, MA 01747  
Attn: Andrew Consigli  
Email: [aconsigli@civicodevelopment.com](mailto:aconsigli@civicodevelopment.com)

And to: Robinson & Cole LLP  
One Boston Place, 25<sup>th</sup> Floor  
Boston, MA 02108  
Attn: Matthew J. Lawlor, Esq.  
Email: [mlawlor@rc.com](mailto:mlawlor@rc.com)

12. Representations and Warranties. (i) Developer. The Developer hereby makes the following representations and warranties to the Town, which shall remain true and shall be restated in the Ground Lease:

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

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

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

d. To the best of the Developer's knowledge, there are no pending or, to the best of the Developer's knowledge, threatened actions, suits, or proceedings before any court, arbitrator or governmental or administrative body which may materially adversely affect the properties, business or condition, financial or otherwise, of the Developer or its ability to perform its obligations under this Agreement or the Ground Lease.

e. Neither the execution, delivery or performance of this Agreement nor compliance herewith (i) conflicts or will conflict with or results or will result in a breach of or constitutes or will constitute a default under (1) the formation and operational documents of the Developer, (2) to the best of the Developer's knowledge, any law or any order, writ, injunction or decree of any court or governmental authority; or (3) any agreement or instrument to which the Developer is a party or by which it is bound or (ii) results in the creation or imposition of any lien, charge or encumbrance upon its property pursuant to any such agreement or instrument.

(ii) The Town. The Town hereby makes the following representations and warranties to the Developer, to the best of the Town's actual knowledge without any independent duty to investigate the same, which shall remain true and shall be restated in the Ground Lease:

(a) Other than the Temporary Easement (if and to the extent the Developer expressly agrees in writing to a phased schedule for the MBTA's vacating and partial terminations thereof), there are no agreements with any third parties affecting the Property that will survive the Commencement Date, and there is no default or condition that with the passage of time or the giving of notice or both would constitute a default under said lease.

- (b) Except for Town Meeting Approval, the execution, delivery and performance by the Town of this Agreement are not precluded by, and will not violate, any provisions of any existing law, statute, rule or regulation in the Commonwealth of Massachusetts or any judgment, order, decree, writ or injunction of any court, governmental department, commission, board, bureau, or agency, and is not restricted by, and will not result in a breach of or default under, any option, right of first refusal, right of first offer, agreement, mortgage, contract, undertaking or other instrument or document to which the Town is a party or by which the Town is bound or to which Town or any portion of the Property is subject.
- (c) There are no legal actions, suits or similar proceedings pending and served, or, to the Town's knowledge, threatened against Seller with respect to the Property.
- (d) The Town has not received any written condemnation notice with respect to all or part of the Property, and to the Town's knowledge, no action in condemnation of the Property is currently pending.
- (e) The Town has not (i) commenced a voluntary case, or, to the Town's knowledge, had entered against it a petition, for relief under any federal bankruptcy act or any similar petition, order or decree under any federal or state law or statute relative to bankruptcy, insolvency or other relief for debtors, (ii) caused, suffered or consented to the appointment of a receiver, trustee, administrator, conservator, liquidator or similar official in any federal, state or foreign judicial or non-judicial proceedings, to hold, administer and/or liquidate all or substantially all of its property, or (iii) made an assignment for the benefit of creditors.
- (f) The Town has not granted any option agreements or rights of first refusal with respect to the purchase of Property or any other unexpired rights in favor of third persons to purchase or otherwise acquire the Property or any interest in the Property, other than the anticipated conveyance of Parcel W-1 to the MBTA, as further defined and described in Exhibit E.
- (g) There are no betterment assessments or other special assessments presently pending or, to the Town's knowledge, proposed by any governmental authority with respect to any portion of the Property.
- (h) The Town has not received any written notice from a governmental authority that: (A) the Property is in violation of any applicable law, or (B) the Property is subject to any claim, investigation, suit, arbitration or proceeding, whether judicial or administrative in nature with respect to any applicable law.
- (i) The items listed on Exhibit D attached hereto are the only written communications, reports, studies, and/or documents with respect to the Property of which the Town is aware and has in its possession or within its reasonable control.

- (j) The Town covenants and agrees to (i) pursue acquisition of Parcel 9-147 from the MBTA and/or Pan Am Railways or the actual owner(s) thereof on or before the Commencement Date; (ii) coordinate such acquisition with Developer's own efforts with respect to Parcel 9-147; and (iii) add Parcel 9-147 to the Property and to the premises leased to Developer under the Ground Lease upon the Town's acquisition thereof.

13. Municipal Requirements.

a. The Town's obligations under this Agreement shall be expressly subject to and contingent upon the receipt of all municipal approvals, including, without limitation, the Town Meeting Approval, and satisfaction of all legal requirements necessary for the consummation of such transaction, including without limitation MGL c. 30B, to the Town's satisfaction.

b. Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement shall be deemed or construed to waive or limit any of the Town's rights, authority, powers, privileges, or immunities as a municipality in the Commonwealth of Massachusetts including, without limitation, the applicable permit-granting authority's review and consideration of applications for the Approvals, the right to charge any and all fees, contributions, costs, expenses, or other amounts applicable to the Project, the power of eminent domain, the assessment of real estate taxes, the enforcement of its bylaws and regulations, or any other such right, authority, power, privilege, or immunity.

14. Miscellaneous.

a. Each of the Parties represent and warrant to the other that no brokerage fee or real estate commission is or shall be due or owing in connection with this transaction, and each of the Parties hereby agree to indemnify and hold the other harmless from any and all claims of any broker or agent based on action or alleged action of the other. The provisions of this Section 14.a. shall survive the expiration or earlier termination of this Agreement.

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

c. If any provision of this Agreement or application to any Party or circumstances shall be determined by a final, unappealed ruling of any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law.

d. Time is of the essence under this Agreement.

e. No action or failure to act by any party hereto shall constitute a waiver of any right, duty, or obligation afforded them under this Agreement nor shall such action or failure to

act constitute approval of or acquiescence in a breach hereunder, except as may be specifically agreed by both parties in writing. Neither party will intentionally take any action that would deprive the other of any benefits of this Agreement.

f. As used herein, a “Business Day” shall be any day other than a Saturday, Sunday, or legal state holiday in the Commonwealth of Massachusetts.

g. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts, may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument. Emailed, facsimile, or electronic signatures on this Agreement shall have the same force and effect as an original signature. This Agreement shall not be amended or modified except in a writing executed by both the Town and the Developer.

h. This Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of the parties and their successors and permitted assigns. Neither the Developer nor the Town shall have no right to assign its interest in this Agreement without the prior written consent of the other, in its sole and absolute discretion, except for Developer’s assignment to its financing sources as collateral for financing of the development and construction of the Project and to an affiliate of Developer at or prior to closing on the Ground Lease.

i. The obligations, responsibilities, and liabilities of the Developer under this Agreement are joint and several.

j. Both Parties have actively participated in the drafting and negotiation of this Agreement, and any ambiguity herein shall not be construed against either Party as drafter.

[Signature Pages Follow]

Executed under seal as of the date first written above.

**DEVELOPER:**

**WINCHESTER WATERFIELD MM  
LLC**

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

Name: David Traggorth

Title: Manager

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

Name: Andrew P. Consigli

Title: Manager

**TOWN OF WINCHESTER**

By its Select Board

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

Name: Lisa Wong

Title: Town Manager, duly authorized

EXHIBIT A

Description of Property

[See Attached]

EXHIBIT B

Escrow Agreement

[See Attached]

## EXHIBIT C

### Material Terms of Ground Lease

1. Term. 99 years, commencing upon the Commencement Date. A notice of lease under G.L. c. 183, s. 4 shall be recorded to memorialize the Commencement Date, the Term, and other required elements of the Ground Lease.
2. Property; Condition.
  - a. The Property shall be leased to the Developer in its present “as-is” condition as of the Effective Date, with all faults, without any representation or warranty, subject to: (a) any facts that an accurate survey or personal inspection of the Property would show (b) the Permitted Encumbrances; (c) any Post-Inspection Title Matters that do not materially interfere with the construction, development, or operation of the Project; and (d) all Applicable Laws.
  - b. Notwithstanding the foregoing, if the MBTA Project commences prior to the Commencement Date, in no event shall the Commencement Date occur before the MBTA Project is substantially complete, the portion of the Temporary Easement encumbering the Property has expired, and the MBTA has completely vacated the area of the Temporary Easement that encumbers the Property, unless expressly agreed by the Developer.
  - c. The Property shall be leased free and clear of all tenants and occupants.
  - d. The Town shall have no obligation to incur any expense or liability of any kind whatsoever in connection with the ownership, construction, operation, maintenance, or repair of the Property, including, without limitation, the preparation or development of the Property for construction of the Project.
3. Base Rent.
  - a. The Initial Base Rent Payment shall be in the amount of One Million Dollars (\$1,000,000.00), due and payable upon the Commencement Date.
  - b. Upon the Commencement Date, the Deposit shall be delivered to the Town and credited against the Initial Base Rent Payment.
  - c. After the Initial Base Rent Payment, commencing upon the first fiscal year of the Developer that closes after the substantial completion of the Project (it being agreed that the Fiscal Year shall be the calendar year or such other tax year as Tenant may establish for the conduct of its business) (“Fiscal Year”), and with respect to each Fiscal Year thereafter, Annual Base Rent for the Property shall be paid in an amount equal to ten percent (10%) of Net Operating Revenue (defined below), if any, for each such Fiscal Year, which Annual Base Rent shall be due

and payable, in arrears, within one hundred twenty (120) days after the end of the Fiscal Year with respect to which such payment is due. For purposes of this provision, “Net Operating Revenue” shall mean with respect to any period, the sum of the Project’s gross revenues less the sum of (i) Project Expenses (defined below), (ii) debt service, (iii) payments for security and resident services, (iv) required deposits to the lender reserves, (v) payments of any portion of a development fee and overhead which is not paid from sources other than Net Operating Revenue (determined prior to the application of this clause (v)), and (vi) a priority return of 8% of Developer's equity. Net Operating Revenue shall be determined separately for each Fiscal Year. For purposes of this provision, “Project Expenses” shall mean all the costs and expenses of any type incurred incident to the ownership and operation of the Project after the payment of debt service, including, without limitation, taxes, capital expenditures (to the extent not paid for with proceeds of insurance or permitted withdrawals from any required replacement reserve), the cost of operations, maintenance and repairs, insurance premiums, fees due and payable, contributions to required reserves, and management fee, but excluding cost recovery deductions, other noncash charges, fees required to be paid only to the extent of Net Operating Revenues, and cash distributions to members. The Annual Base Rent amounts, if any, shall be evidenced by current audited financial statements, reasonably acceptable to the Town.

4. Additional Rent; Other Fees and Costs. In addition to the Base Rent, the Developer shall pay to the Town as additional rent, or shall pay or cause to be paid to any applicable third parties, all taxes, utilities, and other operating expenses on or related to the operation of the Property, as well as all other costs, expenses, late charges, and fees of every kind and nature payable under the Ground Lease. For the avoidance of doubt, it is the intent of the Parties that the Ground Lease be absolutely net to the Town, and that the Developer shall be responsible for all costs, charges and expenses of every kind and nature whatsoever against or in connection with the construction, development, use and operation of the Property which may arise or become due during the Term, including all of those which, except for the execution and delivery hereof, would or could have been payable by the Town.

5. Permitted Uses. The construction of the Project, and thereafter uses that are consistent with the uses described in the Proposal and uses commonly accessory and/or ancillary thereto, and for no other use without the prior written consent of the Town, provided that changes of commercial use within the commercial unit (from example, from restaurant to retail or office or other commercial uses permitted under the Approvals) shall not require the Town’s written consent. Notwithstanding anything in the Agreement or the Ground Lease to the contrary, the Developer and the Project shall at all times comply with any and all Applicable Laws, including, without limitation, requirements of the Massachusetts Department of Housing and Community Development or any other governmental authority with jurisdiction over the Developer, Property, or Project.

6. Project Construction.

- a. The Developer shall be solely responsible for all costs and expenses of the construction of the Project, including, without limitation: (a) the installation of all utilities (including any on or off-site improvements necessary for utilities serving the Project, as well as any improvements to the MWRA easement necessitated by the construction of the Project) and site work required for the proposed uses, and any other measures necessary to construct and occupy the Project in compliance with this Agreement, the Proposal, the Ground Lease, and Applicable Laws; (b) all products, materials, tools, equipment, fixtures, relating thereto; and (c) all contractors, subcontractors, architects, engineers, project managers, construction managers, attorneys, consultants relating thereto. The Town shall reasonably cooperate, at no additional out-of-pocket cost to the Town, as may be necessary for the Developer to accomplish such construction.
- b. The Developer's construction and development of the Project shall be performed: (i) in accordance with the approved construction plans for the Project established as of the Commencement Date, representing full construction drawings based on the Approved Permitting Set; (ii) in compliance with all Applicable Laws and the Approvals; and (iii) in a good, workmanlike, and commercially reasonable manner, in compliance with good engineering and construction practices, using all new or suitable recycled materials, and in conformance with the standard of diligence and care normally employed by duly qualified persons in the performance of comparable work, in accordance with generally accepted practices appropriate to the activities undertaken in the greater Boston area.
- c. Subject to Force Majeure and Town Delays, within ninety (90) days after the Commencement Date, the Developer shall promptly commence, and thereafter shall diligently proceed, to construct the Project. Subject to Force Majeure and Town Delays, the Developer shall use diligent efforts to substantially complete the construction of the Project within twenty-four (24) months after the Commencement Date, but in any event such construction shall be substantially complete within thirty-six (36) months after the Commencement Date, provided that as long as the Developer is diligently pursuing such completion, the Developer shall have the right to extend the period for completion of construction of the Project two (2) times for periods of up to three (3) months each by giving notice to the Town prior to the end of the period (as the same may have been previously extended). The Developer and the Town shall hold regular construction status review meetings at least every three (3) months until the construction of the Project is substantially complete.
- d. Upon final completion of the Project, the Developer shall deliver as-built plans to the Town and the Town shall, upon Developer's written request, deliver to the Developer a recordable certificate evidencing such completion (the "Certificate of Completion")

- e. The Developer shall use commercially reasonable efforts to mitigate dust, noise, and vibrations caused by the construction of the Project, and the Town and Developer shall cooperate in good faith to develop standards for the same.
  - f. On or promptly after the Commencement Date, the Developer shall deliver a bond covering the faithful performance of its obligations with respect to the timely construction of the Project, in a form and substance reasonably acceptable to the Town, which construction security may be satisfied with commercial reasonable payment and performance bonds obtained by the Project's general contractor with an additional obligee rider naming the Town, an appropriately sized letter of credit, sub-guard insurance.
7. Environmental. The Ground Lease shall contain customary terms and provisions relating to the environmental liability of the Parties. The Town shall be liable for all costs and claims related to conditions existing on the Property prior to the Commencement Date, provided the Developer shall be responsible for costs and claims associated with removing or remediating hazardous wastes at the Property as reasonably necessary to construct the Project. The Developer shall be liable for hazardous materials costs first occurring during the Term, or caused by the Developer and its Agents including during the construction of the Project.
8. Leasehold Mortgages & Equity Investment. The Ground Lease shall contain commercially reasonable, customary terms and provisions mutually agreeable to the Developer (together with Developer's financing parties in accordance with Section 2.b of the LDA) and the Town to permit the leasehold financing of the Ground Lease with an institutional lender and equity investor, and otherwise consistent with the Proposal.
9. Maintenance, Repair, Capital Replacement, Utilities, and Services.
- a. The Developer shall be solely responsible for using diligently maintaining, repairing, and replacing the Property and each and every part thereof comprising the Project including, without limitation, all buildings, facilities, structures, landscaping, and other improvements thereon, and all systems and utilities serving or located on the Property, in good repair and condition and in compliance with Applicable Laws, whether ordinary or extraordinary, structural, relating to the systems or utilities serving the Property or the Project, or capital in nature including without limitation any necessary capital repairs, replacements, and improvements. All such work shall be performed in a good and workmanlike manner, consistent with the quality of the original construction of the Project, and in compliance with Applicable Laws. The Developer's maintenance obligations shall be subject to such commercially reasonable maintenance standards as may be promulgated in writing to the Developer by the Town from time to time, provided that the Developer shall be accommodated a reasonable period of time to comply with such standards after receiving the same. The Ground Lease shall contain customary terms and provisions relating to the surrender condition of the Property, requiring that the Developer vacate and surrender the Property in a

condition consistent with its maintenance, repair, and replacement obligations pursuant to this Section 9.a.

- b. The Developer shall, at its sole costs and expense, engage the services of a reputable third-party management company with respect to the residential units of the Project.
- c. The Developer shall be solely responsible for furnishing utility services to the Property. The Developer shall promptly pay, or ensure the payment of, all for all utilities furnished to the Property from and after the Commencement Date, including, but not limited to, gas, steam, water, sewer charges, electricity, telephone, communication services, transmission of intelligence and the like, including all utilities necessary for heating and air-conditioning.
- d. The Developer shall be solely responsible for the proper storage of trash, refuse, and recycling at the Property, and for all trash, refuse, and recycling removal services.
- e. The Developer shall not commit or permit any waste on the Property, and shall keep the Property, or cause the Property to be kept, in a clean and sanitary condition.
- f. For the avoidance of doubt, the Town shall not be responsible for furnishing any utilities or services to the Property, or for the performance of any maintenance, repairs, replacements, improvements, or any other work or services of any type or nature or the cost thereof to, for, on, or about the Property, provided that the Town shall cooperate in good faith, at no out of pocket cost to the Town, with the Developer's efforts with respect to arranging, permitting, maintaining and improving water and sewer utility access and services to the Property. For the avoidance of doubt, the Developer shall be responsible for all utility charges incurred in connection with the Project.

10. Alterations.

- a. Developer shall have the right to make alterations, decorations, installations, removals, additions and/or improvements to the Project (collectively, "Alterations"), which individually or collectively do not constitute a Material Alteration (as defined below), to (i) the interior of the Project, without the prior written consent of the Town, and (ii) upon thirty (30) days' notice to the Town to the exterior of the Project with the Town's prior written consent, which shall not be unreasonably withheld, conditioned or delayed. Each Alteration that constitutes a Material Alteration shall require the Town's prior written consent. The Town agrees to respond to any request for approval of Alterations within thirty (30) days after receipt thereof. The Town's failure to respond in writing within such thirty (30) day period for approval of such Alterations shall be deemed an approval of such Alterations for all purposes provided that the

Developer has delivered to the Town a further request for approval with a statement in large, all-caps type reminding the Town of such obligation to respond and if the Town fails to respond within fifteen (15) days after the transmittal of such notice. Developer shall (A) perform all Alterations at Developer's sole cost and expense, (B) procure or cause others to procure on its behalf all necessary Approvals before undertaking any work, (C) perform all Alterations in compliance with Applicable Laws, and in a good and workmanlike manner, employing materials of good quality, and (D) cause contractors employed by the Developer to (1) carry Worker's Compensation Insurance in accordance with statutory requirements, (2) carry Automobile Liability Insurance and Commercial General Liability Insurance naming the Town as an additional insured, and covering such contractors on or about the Premises in the amounts stated in the Lease, and (3) submit insurance certificates evidencing such coverage to the Town upon the Town's request. For purposes hereof, "Material Alteration" shall mean any proposed change that (u) requires new Approvals or amendments to the existing Approvals; (v) alters the total number, type, or affordability breakdown of residential units from those identified in Exhibit G, attached hereto; (w) results in a violation of Applicable Laws; (x) allows for a use other than a Permitted Use; (y) materially and adversely affects the structural integrity of the Project; or (z) involves any material change to exterior features of the Project. For the avoidance of doubt, painting and interior redecorating, ordinary repair, maintenance, and replacement of Project systems and landscaping shall not be a Material Alteration.

- b. Any and all improvements and additions made or installed by or on behalf of the Developer on the Property, including, without limitation, the initial construction of the Project, shall remain the property of the Developer for the Term of the Ground Lease, but shall remain upon the Property at the expiration or earlier termination of the Ground Lease and shall thereupon become the property of the Town.

11. Assignment and Subletting.

- a. Prior to the completion of the initial construction of the Project, the Developer shall not assign the Ground Lease or sublet the Property without the prior written consent of the Town, in its sole and absolute discretion.
- b. From and after the completion of the initial construction of the Project, the Developer may assign the Ground Lease or sublease the entirety of the Property upon the prior written approval of the Town, not to be unreasonably withheld, conditioned, or delayed, taking into account such proposed successor's financial capacity (which, without limitation, shall be deemed sufficient if such proposed successor's financial ability is approved by the Department of Housing and Community Development pursuant to M.G.L. c. 40T) and experience owning and managing similar developments. Thereafter, the Developer may assign the Ground Lease or sublease the entirety of the Property without the Town's consent.

- c. Notwithstanding the foregoing, the Town's consent shall not be required for:
- i. Permitted leasehold mortgages and/or tax credit equity investments (including the exercise of any rights by such mortgagees or tax credit investors and the initial assignment or sublease made thereby); and
  - ii. Residential leases of the residential units on a mutually acceptable, commercially reasonable form and otherwise in compliance with the Approvals and Applicable Laws and reasonably acceptable to the Developer's financing sources, including, without limitation, the Massachusetts Department of Housing and Community Development (each, a "Residential Lease").
- d. In the event of an assignment of the Ground Lease, sublet of the Property (other than a Residential Lease or a sublease of a commercial unit described in Section 11(e) below (a "Commercial Sublease")), refinancing of the Project, or other sale or transfer of the Project, or change of ownership or control of Developer that results in Excess Profit, as defined below, to the Developer (each, a "Capital Event"), fifteen percent (15%) of such profit shall be due and payable to the Town as "Capital Event Rent," as such provision shall be further negotiated and described in the Ground Lease. For purposes of this provision, "Excess Profit" shall mean with respect to any Capital Event the sum of the Project's gross proceeds less the sum of (i) transaction closing costs, (ii) debt repayment, (iii) required deposits to lender reserves, (iv) payments of any remaining portion of development fee and overhead, (v) a full return of Developer's equity including any advances during the operating period, and (vi) payments required by any subordinate lenders. The amount of Capital Event Rent due in each instance shall be evidenced by the Developer's current audited financial statements and transaction settlement statements, reasonably acceptable to the Town. Notwithstanding the foregoing, the initial construction and permanent financing for the Project shall not be considered a Capital Event.
- e. Commercial leases of the commercial units shall be on a commercially reasonable form, in compliance with the Approvals and Applicable Laws, and shall be subject to the prior written approval of the Town, not to be unreasonably withheld, conditioned, or delayed, which approval shall be limited to confirmation that the Permitted Use under the commercial sublease falls within the then-current definition of the Permitted Use under the Ground Lease and that the term of the sublease does not extend beyond the term of the Ground Lease. The Town shall have twenty (20) days after the Developer's submittal of a commercial sublease for approval within which to approve or deny approval in writing, provided that if the Town fails to respond in writing within such period, the Town shall be deemed to have approved the sublease as submitted, so long as the Developer has sent a further notice to the Town, which notice shall include a statement in bold, all-caps type reminding the Town of its obligation to respond, and the Town again

fails to respond in writing within ten (10) days after the Developer's submittal of the further notice. Without limitation, it shall be reasonable for the Town to withhold its consent to any commercial leases for adult uses. The Town and Developer shall negotiate a commercially reasonable form of non-disturbance and attornment agreement to be attached to the Ground Lease, and the Town shall provide an executed version of such instrument to all commercial tenants upon the Town's approval of such lease.

- f. For any assignment or sublease requiring the consent of the Town, other than a Residential Lease or a Commercial Sublease, the Developer shall make such request in writing, together with such information as the Town may reasonably require. The Town shall either approve or deny such request within forty-five (45) days of its receipt of all required information and materials, provided that its failure to timely respond shall be deemed its denial of such request. The Developer shall be responsible for the Town's reasonable out-of-pocket costs and expenses in connection with reviewing any such request, not to exceed \$3,500, such amount to increase by the applicable Boston-area consumer price index on every five (5) year anniversary of the Commencement Date.

12. Insurance; Indemnification. The Ground Lease shall include commercially reasonable customary insurance and indemnification terms and provisions customary of a Ground Lease of this nature and reasonably acceptable to the Parties and the Developer's financing sources.

13. Municipal Requirements.

- a. Simultaneously with the execution of the Ground Lease, the Developer shall complete a disclosure of beneficial interest as required under M.G.L. c. 7C, sec. 38, and the Town shall file the same with the Division of Capital Asset Management of Massachusetts.
- b. The Town's obligations under the Ground Lease shall be expressly subject to and contingent upon the receipt of all municipal approvals and satisfaction of all legal requirements necessary for the consummation of such transaction, including without limitation MGL c. 30B, to the Town's satisfaction.

## EXHIBIT D

### Property Information

- Information disclosed by RFP
- Title report dated December 9, 2019 for Parcels W-1 and TE-W-1 as shown on plan attached as Exhibit E-1
- Title report dated April 9, 2019 for Assessor's Parcel 9-147
- MBTA Precondition Survey for the Chamber of Commerce Building

## EXHIBIT E

### Permitted Exceptions

- Temporary Easement between the Town and the MBTA for the MBTA Project over Parcel TE-W-1, as shown on the plan attached hereto as Exhibit E-1 (the “MBTA Plan”)
- ANR plan to be created, establishing Parcel W-1 as shown on the MBTA Plan as a separate lot, to be conveyed to the MBTA
- Sewer Easement, see Middlesex South District Registry of Deeds, Book 2210, Page 162
- Deed to the Town of Winchester, see Middlesex South District Registry of Deeds, Book 9302, Page 432
- Driveway easement over Assessor’s Parcel 9-147 from Boston and Maine Railroad, see Middlesex South District Registry of Deeds, Book 9327, Page 499
- Reservations and conditions in deed from Boston and Maine Railroad, see Middlesex South District Registry of Deeds, Book 9740, Page 226
- Deed to the Town of Winchester, see Middlesex South District Registry of Deeds, Book 14676, Page 415

EXHIBIT E-1

MBTA Plan

[See Attached]

EXHIBIT F

Concept Plans

[Please see attached.]

## EXHIBIT G

### Residential Units

<b>Total Units</b>	
Studio	12
One	18
Two	24
Three	6
<b>Total Units</b>	<b>60</b>

  

<b>Affordability Breakdown</b>	
<b>Market</b>	
Studio	4
One	12
Two	2
Three	2
	<b>20</b>

  

<b>80% AMI Units</b>	
Studio	2
One	3
Two	3
Three	0
	<b>8</b>

  

<b>60% AMI</b>	
Studio	5
One	2
Two	15
Three	2
	<b>24</b>

  

<b>50% AMI - PBV's</b>	
Studio	
One	
Two	1
Three	1
	<b>2</b>

  

<b>30% units - PBV's</b>	
Studio	1
One	1
Two	3
Three	1
	<b>6</b>