

## MEMO

To: Select Board  
From: Lisa Wong  
Date: June 15, 2021  
Re: Correction in LDA

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The Land Disposition Agreement (LDA) for the Waterfield Lot has a sentence that was meant to be deleted at the end of Appendix C, Section 11.b. To correct this, Town Counsel prepared a “Slip Page” that deleted the erroneous provision. The deleted sentence contradicts other provisions in the LDA and the intention is that the Developer needs the Town’s consent to assign the Ground Lease or sublease the entire Property. See the deleted provision below and the signed slip on the following page.

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.**

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. **[Erroneous Provision Intentionally Omitted]**

Deletion of erroneous provision acknowledged:

*[Handwritten initials]*

**[Erroneous Provision Intentionally Omitted]**

DS  
*[Handwritten initials]*

- 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