

SUDBURY BOARD OF SELECTMEN
TUESDAY MAY 23, 2017
6:45 PM, GRANGE HALL, 326 CONCORD ROAD
7:30 PM, TOWN HALL - LOWER LEVEL

Item #	Time	Action	Item
	6:45 PM		CALL TO ORDER
EXECUTIVE SESSION			
1.	6:45 PM	<i>VOTE</i>	Open in regular session at Grange Hall , and vote to immediately enter into Executive Session to discuss strategy with respect to collective bargaining, and that the chair declare than an open meeting may have a detrimental effect on the bargaining position of the public body (Firefighters and Engineering contracts), pursuant to General Laws chapter 30A, §21(a)(3).
2.		<i>VOTE</i>	Vote to close Executive Session and resume Open Session at Lower Town Hall.
			Opening remarks by Chairman
			Reports from Town Manager
			Reports from Selectmen
			Citizen's comments on items not on agenda
TIMED ITEMS			
3.	7:30 PM	<i>VOTE</i>	Discussion and vote on Board of Selectman chairman, and Board of Selectman vice-chairman.
4.	7:35 PM	<i>VOTE / SIGN</i>	PUBLIC HEARING: As the Local Licensing Authority, vote on whether to approve the application of Da Vinci Bistro, LLC, d/b/a Da Vinci Bistro, 457 Boston Post Rd., Sudbury, for an Alteration of Premises of an All Alcohol Restaurant, under M.G.L. c. 138, s.15A & 16B. Dariusz Zwinga, Manager, to attend.
5.	7:55 PM	<i>VOTE / SIGN</i>	As the Licensing Authority for the Town of Sudbury, vote whether to approve a new Common Victualler License for Whole Foods Market, 536 Boston Post Road, as requested in an application dated April 13, 2017, subject to conditions put forth by the Fire Department and Building Department. In attendance will be: John Forziati, Store Team Leader, Whole Foods Market; R. Jason Boutwell, Associate Coordinator Store Decor and Design, Whole Foods Market; Steve Ouellette, Senior Architectural Designer, Jacobs Engineering.

These agenda items are those reasonably anticipated by the Chair which may be discussed at the meeting. Not all items listed may in fact be discussed and other items not listed may also be brought up for discussion to the extent permitted by law.

Item #	Time	Action	Item
6.	8:05 PM	<i>VOTE</i>	Interview Council on Aging candidate Amy Unckless of 26 Anselm Way. Following interview, vote whether to approve this appointment to the Council on Aging for a term ending May 30, 2020, as recommended by Debra Galloway, COA Chair.
7.	8:20 PM	<i>VOTE</i>	Vote to approve the Regulatory and Use Agreement, and the contract for Monitoring Services, for Avalon at Sudbury. David Gillespie of Avalon Bay to attend.
MISCELLANEOUS			
8.		<i>VOTE</i>	Discussion and vote authorizing the Town Manager to enter into a contract for municipal aggregation.
9.		<i>VOTE</i>	Vote to allow the Town Manager to enter into a contract with BCK law for an amount that will exceed \$25,000.
10.		<i>VOTE</i>	Vote to approve a 120-day extension for Legal Counsel services.
11.		<i>VOTE</i>	Vote whether to approve the annual Selectmen's re-appointments of those listed (all of which are subject to acceptance), to acknowledge the resignations of those who choose not to be re-appointed, and to send a letter of appreciation to the resigning volunteers for their service to the community.
12.		<i>VOTE</i>	Vote whether to approve the Town Manager's annual re-appointments requiring Board of Selectmen's approval of those listed (all of which are subject to acceptance).
13.		<i>VOTE</i>	Vote on whether to approve collective bargaining agreements with the Fire and Engineering unions.
14.		<i>VOTE</i>	Discussion and potential vote of revisions to BOS meeting schedule.
15.		<i>VOTE</i>	Discussion and vote to allow Town Manager to sign contract for Auditing Services
16.			Citizen's Comments (cont)
17.			Discuss future agenda items
CONSENT CALENDAR			
18.		<i>VOTE</i>	Vote to accept, on behalf of the Town, a check in the amount of \$2,500, from the Massachusetts Clean Energy Center, to be deposited into the Solarize Massachusetts Program Account, (as requested by James Kelly, in a memo dated May 8, 2017), to be used at the discretion of the Combined Facilities Director and the Energy and Sustainability Committee in compliance with this marketing campaign.
19.		<i>VOTE</i>	Vote to accept, on behalf of the Town, two rebate checks in the amount of \$1,685 and \$797, from National Grid, on behalf of Boston Gas Company, to be deposited into the Excelon/Select Utility Gift/Donation Account, (as requested by James Kelly, Combined Facilities Director, in a memo dated May 2, 2017), said funds to be accepted toward future energy initiatives in Town buildings under the direction of the Combined Facilities Director.

These agenda items are those reasonably anticipated by the Chair which may be discussed at the meeting. Not all items listed may in fact be discussed and other items not listed may also be brought up for discussion to the extent permitted by law.

Item #	Time	Action	Item
20.		<i>VOTE / SIGN</i>	As the Licensing Authority for the Town of Sudbury, vote to renew a billiards table license for the American Legion Sudbury Post #191, Inc., Phillip M. McKenzie, Manager, 676 Boston Post Road, said license expires on May 1, 2017.
21.		<i>VOTE</i>	Vote to grant a Special Permit to the American Cancer Society, to Hold the “Bicycles Battling Cancer Ride” on Sunday June 11, 2017, from 7:30 A.M. through approximately 4:30 P.M., subject to Police Department safety requirements, Proof of Insurance Coverage and the assurance that any litter will be removed at the race’s conclusion.
22.		<i>VOTE / SIGN</i>	Vote to grant a 1-day All Alcohol license to Sudbury Assabet and Concord Wild and Scenic River Stewardship Council, to accommodate a fundraiser on Friday, June 16, 2017 from 6:00 PM to 8:00 PM at SVT Wolbach Farm, 18 Wolbach Road, Sudbury, subject to the use of a TIPS-trained bartender and a receipt of a Certificate of Liability.
23.		<i>VOTE / SIGN</i>	Vote to grant a 1-day All Alcohol license to Sudbury for Wounded Warriors, to accommodate a fundraiser on Saturday, June 24, 2017 from 7:30 PM to 11:30 PM at 96 Peakham Road, Sudbury, subject to the use of a TIPS-trained bartender and a receipt of a Certificate of Liability.
24.		<i>VOTE</i>	Vote to approve award of a two-year contract to Girard & Associates, LLC by the Town Manager as a sole source procurement for services to be provided for the Fire Department’s Advanced Life Support Program involving quality assurance/quality control, in the amount of \$17,400 per year.
25.		<i>VOTE / SIGN</i>	Vote to approve the FY18 contract between the Town on behalf of the Goodnow Library (Participant) and Minuteman Library Network, Inc. for the purchase, installation and maintenance of telecommunications equipment provided to the Goodnow Library for participation in the Network, effective July 1, 2017, as requested by the Goodnow Library Director, said Agreement to be executed by the Town Manager.
26.		<i>VOTE</i>	Vote to appoint Frank Riepe, 54 Newbridge Road, as an associate member of the Zoning Board of Appeals for a term ending 5/31/18.
27.		<i>VOTE</i>	Vote to approve award of contract by the Town Manager between the Town and Graves Engineering, Inc. for engineering services to be performed relative to the Loring School locus, in the amount of \$29,000, as requested by Dan Nason, DPW Director.
28.		<i>VOTE</i>	Vote to approve the regular session minutes of April 25, 2017.
29.		<i>VOTE / SIGN</i>	Vote to enter into the Town record and congratulate Aiden Judge Cavanaugh, Charles Nason Cavanaugh, and Michael Thomas Cavanaugh, of Boy Scout Troop 61, to be recognized at a Court of Honor Ceremony on June 3, 2017, for having achieved the high honor of Eagle Scout. Also vote to authorize the chair to sign the congratulatory letters on behalf of the Board.

These agenda items are those reasonably anticipated by the Chair which may be discussed at the meeting. Not all items listed may in fact be discussed and other items not listed may also be brought up for discussion to the extent permitted by law.



SUDBURY BOARD OF SELECTMEN

Tuesday, May 23, 2017

1

EXECUTIVE SESSION

1: Exec Session Fire and Eng Contracts

REQUESTOR SECTION

Date of request:

Requested by: Patty Golden

Formal Title: Open in regular session at Grange Hall, and vote to immediately enter into Executive Session to discuss strategy with respect to collective bargaining, and that the chair declare than an open meeting may have a detrimental effect on the bargaining position of the public body (Firefighters and Engineering contracts), pursuant to General Laws chapter 30A, §21(a)(3).

Recommendations/Suggested Motion/Vote: Open in regular session at Grange Hall, and vote to immediately enter into Executive Session to discuss strategy with respect to collective bargaining, and that the chair declare than an open meeting may have a detrimental effect on the bargaining position of the public body (Firefighters and Engineering contracts), pursuant to General Laws chapter 30A, §21(a)(3).

Background Information:

Financial impact expected:

Approximate agenda time requested:

Representative(s) expected to attend meeting:

Review:

Patty Golden	Pending
Melissa Murphy-Rodrigues	Pending
Barbara Saint Andre	Pending
Susan N. Iuliano	Pending
Board of Selectmen	Pending

05/23/2017 6:45 PM



SUDBURY BOARD OF SELECTMEN

Tuesday, May 23, 2017

2

EXECUTIVE SESSION

2: Close Executive Session

REQUESTOR SECTION

Date of request:

Requested by: Patty Golden

Formal Title: Vote to close Executive Session and resume Open Session at Lower Town Hall.

Recommendations/Suggested Motion/Vote: Vote to close Executive Session and resume Open Session at Lower Town Hall.

Background Information:

Financial impact expected:

Approximate agenda time requested:

Representative(s) expected to attend meeting:

Review:

Patty Golden	Pending
Melissa Murphy-Rodrigues	Pending
Barbara Saint Andre	Pending
Susan N. Iuliano	Pending
Board of Selectmen	Pending

05/23/2017 6:45 PM



SUDBURY BOARD OF SELECTMEN
Tuesday, May 23, 2017

3

TIMED ITEM

3: Vote on BOS chair and vice-chair

REQUESTOR SECTION

Date of request:

Requested by: Patty Golden

Formal Title: Discussion and vote on Board of Selectman chairman, and Board of Selectman vice-chairman.

Recommendations/Suggested Motion/Vote: Discussion and vote on Board of Selectman chairman, and Board of Selectman vice-chairman.

Background Information:

Financial impact expected:

Approximate agenda time requested:

Representative(s) expected to attend meeting:

Review:

Patty Golden	Pending
Melissa Murphy-Rodrigues	Pending
Barbara Saint Andre	Pending
Susan N. Iuliano	Pending
Board of Selectmen	Pending

05/23/2017 6:45 PM



SUDBURY BOARD OF SELECTMEN

Tuesday, May 23, 2017

TIMED ITEM**4: Da Vinci Bistro Alteration of Premises**REQUESTOR SECTION

Date of request:

Requestor: Dariusz Zywna, Manager

Formal Title: PUBLIC HEARING: As the Local Licensing Authority, vote on whether to approve the application of Da Vinci Bistro, LLC, d/b/a Da Vinci Bistro, 457 Boston Post Rd., Sudbury, for an Alteration of Premises of an All Alcohol Restaurant, under M.G.L. c. 138, s.15A & 16B. Dariusz Zwinga, Manager, to attend.

Recommendations/Suggested Motion/Vote: **PUBLIC HEARING:** As the Local Licensing Authority, vote on whether to approve the application of Da Vinci Bistro, LLC, d/b/a Da Vinci Bistro, 457 Boston Post Rd., Sudbury, for an Alteration of Premises of an All Alcohol Restaurant, under M.G.L. c. 138, s.15A & 16B. Dariusz Zwinga, Manager, to attend.

Background Information:

See attached application and department feedback. No additional seating will be added. This request is to accommodate seasonal outdoor seating.

Financial impact expected:\$150 application fee

Approximate agenda time requested: 20 minutes

Representative(s) expected to attend meeting:

Review:

Patty Golden	Pending
Melissa Murphy-Rodrigues	Pending
Barbara Saint Andre	Pending
Susan N. Iuliano	Pending
Board of Selectmen	Pending

05/23/2017 6:45 PM



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

AMENDMENT APPLICATION FOR AN ALTERATION OF PREMISES OR CHANGE OF LOCATION

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

☒ Alteration of Premises / Change of Location Amendment Application (this packet)

☒ Vote of the Corporate Board

A corporate vote to apply for an alteration of premises or change of location, signed by an authorized signatory for the proposed licensed entity

☒ Supporting Financial Documents

Documentation supporting any loans or financing, if applicable

☒ Floor Plan

Detailed Floor Plan showing square footage, entrances and exits and rooms

☒ Lease

Signed by licensee and landlord.

☒ Additional Documents Required by the Local Licensing Authority

RECEIVED
 BOARD OF SUPERVISORS
 SUDBURY, MA

2017 APR 24 P 4:12



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

AMENDMENT APPLICATION FOR AN ALTERATION OF PREMISES OR CHANGE OF LOCATION

Below you will find a step-by-step explanation of the alteration of premises / change of location amendment application process. **Please read this entire page before you apply for an amendment to your license as it provides critical information on the approval process.**

The ABCC urges you to reach out to the Local Licensing Authority ("LLA") in the city or town in which you are applying for a change of manager amendment to your license **before applying**. While state law requires you to submit certain documents, your LLA may have other documents and/or fees required of you before it will consider your application, and failure to contact them before you apply for a change of manager amendment to your license may delay the consideration of your application.

The granting of a retail license amendment involves a three-step process under M.G.L. c. 138, §§ 15A & 16B:

1. Step One is the granting of an amendment application by the LLA;
2. Step Two is approval by the ABCC;
3. Step Three is the issuance of the amended retail license by the LLA.

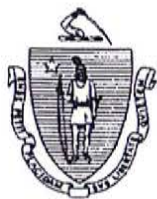
Each step has certain legal requirements:

Step One. In Step One, when you submit your application with the LLA, the LLA is required by law to note the date and hour your application is filed with it. Then, they must publish an advertisement noticing a public hearing on your application, if their regulations require, within 10 days of your application being filed. Then, no sooner than 10 days after advertising the hearing, the hearing will be held. The LLA must act on an application within 30 days of it being filed.

If the LLA grants the license, the application shall be forwarded to the ABCC no later than 3 days following such approval.

Step Two. In Step Two, when the ABCC receives an amendment application that has been approved by the LLA, an investigator will be assigned. The investigator will investigate the proposed licensed premises, if required, as well the source(s) of financing for the transaction. Parties to an application must respond promptly to investigators' inquiries. **Failure to do so will result in a delay of the approval and may result in a denial of the amendment application.**

Step Three. Once the LLA receives the ABCC's approval of an amendment application, it must issue the amended license within 7 days.



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

AMENDMENT APPLICATION FOR AN ALTERATION OF PREMISES OR CHANGE OF LOCATION

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)

Da Vinci Bistro, LLC

ABCC License Number

00048-RS-1250

City/Town of Licensee

Sudbury

2. APPLICATION CONTACT

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

First Name: Mark

Middle: G

Last Name: Zuroff

Title: Attorney

Primary Phone:

781-429-3111

Email:

mark@zurofflaw.com

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: 490

Street Name: Concord Road

City/Town: Sudbury

State:

Massachusetts

Zip Code: 01776

Country:

USA

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:

AMENDMENT APPLICATION FOR AN ALTERATION OF PREMISES OR CHANGE OF LOCATION

6. PREMISES INFORMATION

Please enter the address where the alcoholic beverages are sold.

Premises Address

Street Number: Street Name: Unit:

City/Town: State: Zip Code:

Country:

Description of Premises

Please provide a complete description of the premises, including the number of floors, number of rooms on each floor, any outdoor areas to be included in the licensed area, and total square footage.

Floor Number	Square Footage	Number of Rooms
1	2541	2

Patio/Deck/Outdoor Area Total Square Footage

Indoor Area Total Square Footage

Number of Entrances

Number of Exits

Proposed Seating Capacity

Proposed Occupancy

Occupancy of Premises

Please complete all fields in this section. Documentation showing proof of legal occupancy of the premises is required.

Please indicate by what right the applicant has to occupy the premises

Lease Beginning Term

Lease Ending Term

Rent per Month

Rent per Year

Landlord Name

Landlord Phone

Landlord Address

If leasing or renting the premises, a signed copy of the lease is required.

Please indicate if the terms of the lease include payments based on the sale of alcohol: ☐ Yes ☒ No

AMENDMENT APPLICATION FOR AN ALTERATION OF PREMISES OR CHANGE OF LOCATION

9. FINANCIAL INFORMATION

Please provide information about associated costs of this license.

Associated Costs

A. Purchase Price for Building/Land	
B. Purchase Price for any Business Assets	
C. Costs of Renovations/Construction	8,000.00
D. Purchase Price of Inventory	
E. Initial Start-Up Costs	
F. Other (Please specify)	
G. Total Cost (Add lines A-F)	

Please note, the total amount of Cash Investment (top right table) plus the total amount of Financing (bottom right table) must be equal to or greater than the Total Cost (line G above).

You are required to provide all documents relating to financing and/or loans you receive for this transaction

Please provide information about the sources of cash and/or financing for this transaction

Source of Cash Investment

Name of Contributor	Amount of Contribution
business capital	8,000.00
Total:	8,000.00

Source of Financing

Name of Lender	Amount	Does the lender hold an interest in any MA alcoholic beverages licenses?	If yes, please provide ABCC license number of lender
none			
Total:			

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.

Request is to serve alcoholic beverages on a new outside deck to be attached to the premises on the rented property. No additional seating capacity is being added to that already allowed.

APPLICANT'S STATEMENT

I, Dariusz Zywna the: ☐ sole proprietor; ☐ partner; ☐ corporate principal; ☒ LLC/LLP member
Authorized Signatory

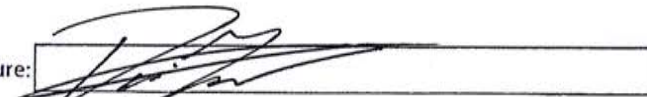
of Da Vinci Bistro, LLC, hereby submit this application for Alteration of premises
Name of the Entity/Corporation Transaction(s) you are applying for

(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:



Date:

4/24/17

Title:

Owner

**WAIVER OF NOTICE OF SPECIAL MEETING OF MEMBERS OF DA VINCI BISTRO, LLC AND
UNANIMOUS WRITTEN CONSENT**

The undersigned, being all of the members of DA VINCI BISTRO, LLC, a LIMITED LIABILITY COMPANY duly formed under the laws of the Commonwealth of Massachusetts (the "LIMITED LIABILITY COMPANY"), hereby waives notice of the time, place and purpose of a special meeting of the members of the LIMITED LIABILITY COMPANY and hereby consent to the adoption, as of April ____, 2017, of each of the following votes:

VOTED: That DA VINCI BISTRO, LLC, a Massachusetts LIMITED LIABILITY COMPANY (hereinafter the "LIMITED LIABILITY COMPANY") is hereby authorized and empowered, and that any MANAGER(S) of this LIMITED LIABILITY COMPANY, and each of them, are hereby authorized and empowered on behalf of this LIMITED LIABILITY COMPANY to apply for an alteration of the existing CV liquor licenses in order to construct an outside deck to expand the seasonal seating at the premises at the land and building at 457 Boston Post Road, Sudbury, Massachusetts;; it is further

VOTED: In connection with and in order to complete the said transaction, the LIMITED LIABILITY COMPANY is hereby authorized and empowered, and that the MANAGER(S) of the LIMITED LIABILITY COMPANY, and each of them, are hereby authorized and empowered on behalf of the LIMITED LIABILITY COMPANY to execute enter into and/or deliver any and all documents, instruments and agreements required by any authorities or parties necessary to accomplish same;

The undersigned members certify that the above votes have not been altered, amended, rescinded, or repealed.

Dated this 24 day of April, 2017

By: 

DARIUSZ ZYWINA, member and manager

By: 

HARKAMALIT SINGH, member
and manager

By: 

JASWANT SINGH, member
and manager

NOTE: CONTRACTOR SHALL PERFORM ALL WORKS IN COMPLIANCE WITH THE COMMONWEALTH OF MASSACHUSETTS LATEST EDITION OF THE BUILDING CODE, THE BUILDING BOARD OF STANDARDS AND REGULATIONS AND THE CITY OF DORCHESTER ORDINANCES.

PROJECT: DAVINCI BISTRO

LOCATION:
SUDBURY, MA BOSTON POST RD

INTER:

AWN ON DATE: 04/07/2016
AWN BY: GILBERTO JIMENEZ
ISSUED BY: AOUN INCORPORATED
APPROVED BY: AOUN INCORPORATED

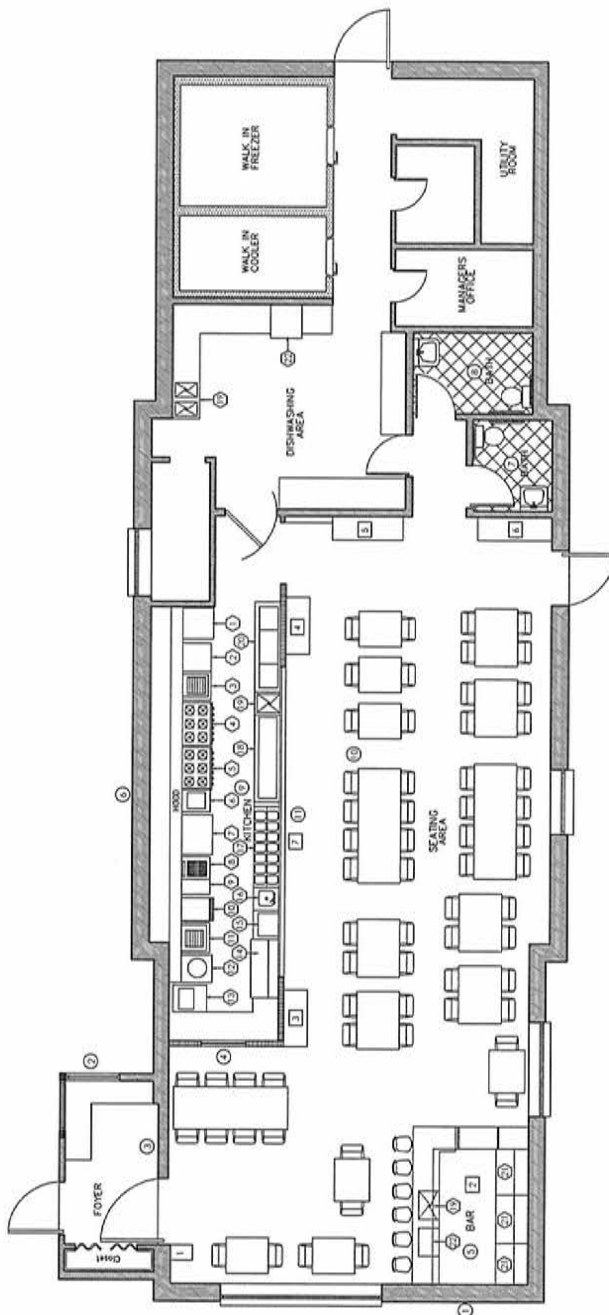
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FLOOR PLAN	A-1	
	SCALE: 1/4" = 1'-0" 1" = 10'-0"	

1	OVEN	7	OVEN	13	PASTA MACHINE	19	SINK
2	PREP. S. STEEL TABLE	8	FRYER	14	DESSERT STATION	20	GRILL STATION FRIDGE
3	GRILL	9	PREP. S. STEEL TABLE	15	FREEZER	21	FRIDGE
4	STOVE	10	OVEN	16	SINK	22	DISHWASHER
5	STOVE	11	GRILL	17	SALAD STATION		
6	PASTA COOKER	12	COOKING POT	18	PASTA FRIDGE		

- 1 REMOVE EXISTING DOOR
- 2 CLOSE THE OPENING AND FINISH TO MATCH EXTERIOR OF THE BUILDING
- 3 ENCLOSE COVER AREA, AND
- 4 INSTALL NEW DOOR AND TWO NEW WINDOWS
- 5 REMOVE EXISTING WINDOW AND
- 6 INSTALL NEW ENTRANCE DOOR
- 7 BUILD NEW WALL WITH THE OPENING FOR FAST THRU WINDOW
- 8 BUILD NEW BAR WITH NEW PLUMBING
- 9 NEW OPENING
- 10 NEW OPENING
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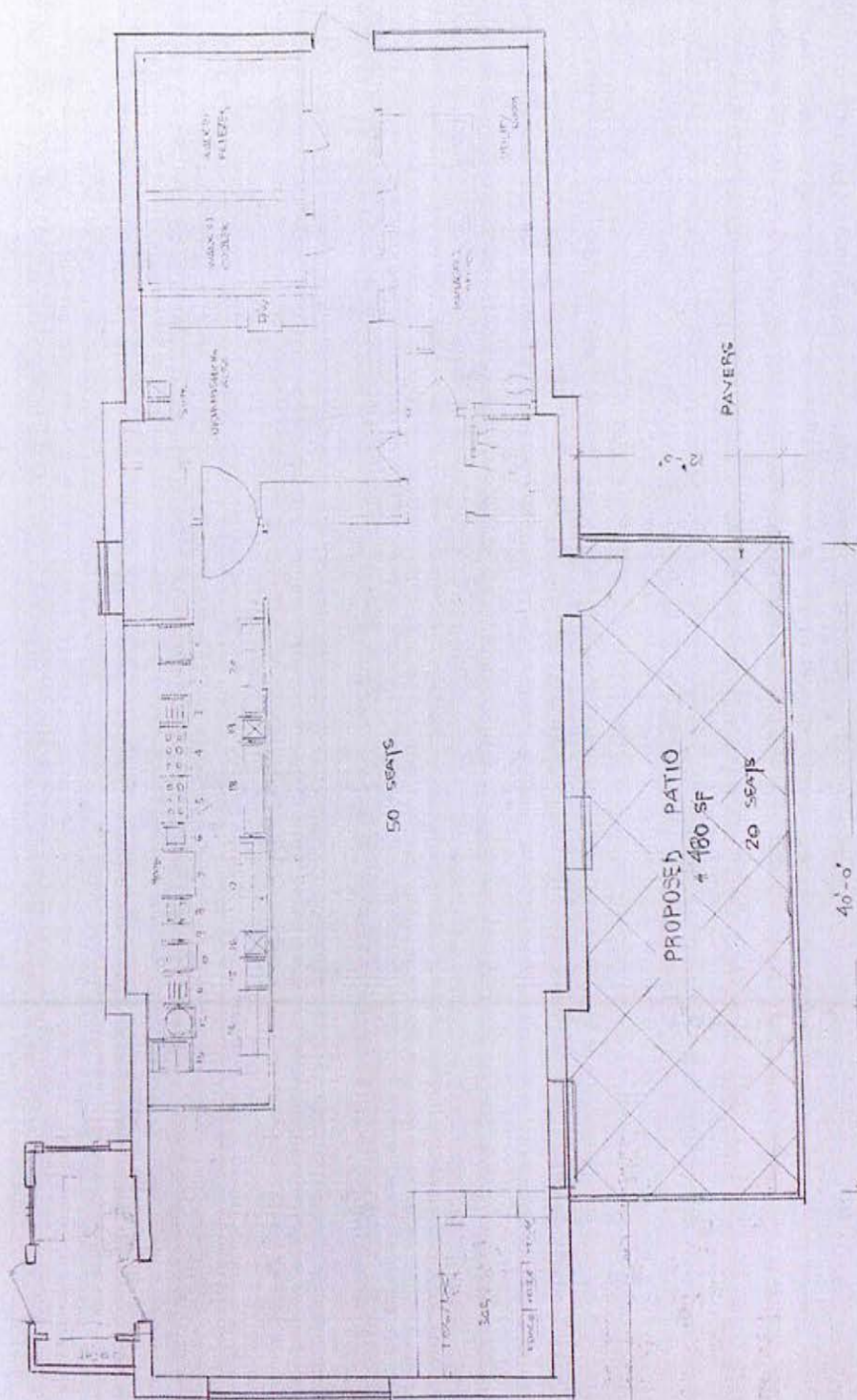
DINING AREA / 70 SEATS	
1	HOSTES STAND
2	BAR
3	COFFE BAR
4	BREAD BAR
5	CUSTOM SHELVES
6	CUSTOM SHELVES
7	OPEN SERVICE COUNTER



EXIST'G WALLS
PROPOSED NEW NON-BEARING WALL

NOTE: CONTRACTOR SHALL PERFORM ALL WORKS IN COMPLIANCE WITH THE CONSTRUCTION ACT OF MASSACHUSETTS LATEST EDITION OF THE BUILDING CODE, THE BUILDING BOARD OF STANDARDS AND REGULATIONS AND THE CITY OF DORCHESTER ORDINANCES.

Existing



PAVERS

PROPOSED PATIO
+ 480 SF

20 SEP-18

40'-0"

1000

ALL HUSBANDS

DATE _____

Scale $\frac{1}{4}$ " = 1'-0"

DAV/INDEX BASTRO

LAND AND BUILDING SUBLEASE AGREEMENT

APRIL 12, 2016

LANDLORD:

O ICE, LLC,
A DELAWARE LIMITED LIABILITY COMPANY

TENANT:

DA VINCI BISTRO, LLC,
A MASSACHUSETTS LIMITED LIABILITY COMPANY

PREMISES LOCATION:

DA VINCI BISTRO
457 BOSTON POST ROAD
SUDBURY, MA 01776

LAND AND BUILDING SUBLEASE AGREEMENT

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Exhibit "A-1" – Legal Description of Real Property

Exhibit "A-2" – Ground Lease

Exhibit "B" – Intentionally omitted

Exhibit "C" – ACH Automatic Payment Authorization

Exhibit "D" – Subordination, Non-disturbance and Attornment Agreement

Exhibit "E" – Tenant Estoppel Certificate

LAND AND BUILDING SUBLEASE AGREEMENT

This Land and Building Sublease Agreement ("**Lease**"), dated for reference purposes only as of April 12, 2016, is made by and between O ICE, LLC, a Delaware limited liability company ("**Landlord**"), and DA VINCI BISTRO, LLC, a Massachusetts limited liability company ("**Tenant**"), with reference to the recitals set forth below.

RECITALS

A. Landlord owns the following described property (collectively referred to herein as the "**Premises**"): (i) the leasehold estate of the tenant under the Ground Lease (as defined in Section 2.3 below) in and to the lot or parcel of land as to which Landlord holds the leasehold interest as tenant ("**Leasehold Estate**"), the legal description of which is attached hereto and incorporated herein as Exhibit "A-1," together with the easements, rights and appurtenances thereunto belonging or appertaining (together with the Leasehold Estate, the "**Land**"); (ii) the buildings, structures and other improvements, if any, on the Land (collectively, "**Improvements**") and (iii) the machinery and equipment, if any, which is attached to the Improvements in such a manner as to become fixtures under applicable law, together with all additions and accessions thereto, substitutions therefor and replacements thereof permitted by this Lease, excepting therefrom Tenant's Personal Property (as defined below), commonly referred to as:

Da Vinci Bistro
457 Boston Post Road
Sudbury, MA 01776

B. Landlord and FRIENDLY'S RESTAURANTS, LLC, a Delaware limited liability company, as tenant ("**Existing Tenant**") are parties to that certain Land and Building Lease Agreement dated August 30, 2007 as amended ("**Prior Lease**") as evidenced by that certain Confirmatory Memorandum of Lease recorded on January 1, 2009 as Instrument No. 2009 00002077 in the official records of the County of Middlesex, State of Massachusetts. The expiration date of the Prior Lease is May 16, 2016. Landlord hereby advises Tenant of the existence of the Prior Lease; provided, however, the parties agree that as a condition to the parties' obligations under this Lease, the Prior Lease and Existing Tenant's right to possession must be terminated. Notwithstanding any provision of this Agreement to the contrary, Tenant's rights under this Lease are subject to the rights of Existing Tenant under the Prior Lease until such time as possession of the Premises under the Prior Lease has been surrendered to Landlord. Until such time, Tenant shall not have the right to take any actions that would disturb Existing Tenant's use, occupancy and quiet possession and enjoyment of the Premises.

C. Landlord desires to lease the Premises to Tenant, and Tenant desires to lease the Premises from Landlord pursuant to the provisions of this Lease.

1. DEFINITIONS

The following terms, when used in this Lease, shall have the meaning set forth in this Article.

1.1 Lease Year

The term "**Lease Year**" shall mean the first twelve (12) full calendar months after the Rent Commencement Date (as defined in Section 4.2) and each subsequent twelve (12) month period thereafter during the term and any extensions. If the Rent Commencement Date is other than the first day of the month, then the first Lease Year also will include the partial month in which the Rent Commencement Date occurs.

1.2 Hazardous Material

The term "**Hazardous Material**" means any substance, material, or waste which is toxic, ignitable, reactive, or corrosive and which is or becomes regulated by the local or state governmental authority or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance which is (i) defined as a "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," "hazardous substance," or "hazardous material," by any United States federal, local or state law, (ii) oil and petroleum products and their by-products, (iii) asbestos, or asbestos-containing materials, (iv) designated as a "hazardous substance" pursuant to the Federal Water Pollution Control Act, (v) defined as a "hazardous waste" pursuant to the Federal Resource Conservation and Recovery Act, or (vi) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act.

1.3 Environmental Laws

The term "**Environmental Laws**" shall mean any law, statute, regulation, order, or rule now or hereafter promulgated by any governmental entity, whether local, state, or federal, relating to air pollution, water pollution, noise control, and/or transporting, storing, handling, release, discharge or disposal of Hazardous Material, including, without limitation, the following: the Clean Air Act; the Resource Conservation and Recovery Act, as amended by the Hazardous Waste and Solid Waste Amendments of 1984; the Comprehensive Environmental Response Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986; the Toxic Substances Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Safe Drinking Water Act; OSHA; the Hazardous Liquid Pipeline Safety Act; the Hazardous Materials Transportation Act; and the National Environmental Policy Act, as each may be amended from time to time.

2. LANDLORD'S WORK; PREMISES; GROUND LEASE

2.1 Landlord's Work

Notwithstanding anything contained herein to the contrary, Landlord shall deliver the heating, ventilation and air conditioning units ("**HVAC**") and roof ("**Roof**") in good working order within sixty (60) days following the Commencement Date (*i.e.*, by July 16, 2016), weather and availability of materials permitting ("**60-day Period**"). Landlord's Work (a) shall include replacement of the HVAC and Roof, if necessary; and (b) with respect to the HVAC shall exclude ducting. If, upon the expiration of the 60-day Period, the HVAC and/or Roof shall not be in good working order as set forth herein, Tenant shall notify Landlord in writing, and Landlord shall thereafter have a reasonable time not to exceed thirty (30) days (weather and availability of materials permitting) to make any necessary repairs or replacements to the reasonable satisfaction of Tenant. Tenant shall be deemed to have accepted the HVAC and Roof in the event Tenant fails to timely notify Landlord in writing as set forth herein.

Notwithstanding anything herein to the contrary, Landlord's obligations under this Section 2.1 shall be limited to the actual and reasonable costs directly incurred to deliver the HVAC and Roof to Tenant in good working order, it being the intention of the parties that Landlord shall not be responsible for consequential damages or any actions, damages, liabilities, claims and expenses (including, without limitation, attorneys' fees and costs), incurred by or asserted against Tenant, arising out of a claim of breach by Landlord of its obligations hereunder.

2.2 As Is, Where Is, With All Faults

Except as set forth in Section 2.1 above, Landlord leases to Tenant and Tenant leases from Landlord the Premises in its "**AS IS, WHERE IS, WITH ALL FAULTS**" condition with no representations or warranties whatsoever and on the terms and conditions set forth in this Lease. By affixing its initials below, Tenant acknowledges and agrees that: (i) no representations have been or are made by Landlord or relied upon by Tenant, or responsibility assumed by Landlord, with respect to the Premises or its operation, or the condition or repair of the Premises, or as to any fact, circumstance, thing or condition which may affect or relate to the Premises, except as specifically set forth in this Lease; (ii) the Premises is leased in its "**AS IS, WHERE IS, WITH ALL FAULTS**" condition as of the Commencement Date; and (iii) other than as specifically set forth in this Lease, Landlord shall have no obligation to alter, restore, improve, repair, or develop the Premises, and further shall have no obligation to remove therefrom any items of personal property, or other trade fixtures or equipment which may be upon the Premises.

DZ

Tenant's Initials

2.3 Ground Lease

This Lease is, in all respects, subject and subordinate to all of the terms and conditions of that certain Sublease dated May 17, 1966 ("**Ground Lease**") between 1776 Plaza Limited Partnership, as successor to Eleanor Thanos, Trustee of Sudbury Associates Realty Trust ("**Ground Lessor**") and Landlord, as successor to Curtis L. Blake and S. Priestly Blake, as Trustees of Blake Brother Company, as the same may have been or may be supplemented or amended ("**Ground Lease**"), a copy of which is attached hereto and incorporated hereby as "Exhibit A-2," and Tenant shall acquire by this Lease no rights or privileges in and to the Premises greater than those Landlord has obtained by virtue of the Ground Lease.

Except as specifically provided in this Lease, all of the terms and conditions of the Ground Lease shall apply to Tenant's use and occupancy of the Premises. Landlord and Tenant each hereby covenant and agree that it will not do, or cause or suffer to be done, any act (whether of commission or omission) which would result in a breach of or default under any term, covenant, provision or condition of the Ground Lease. In the event of any conflict between the provisions of this Lease and the Ground Lease, the provisions of this Lease shall prevail, unless the provisions of the Ground Lease impose a stricter obligation upon the tenant, in which event the Ground Lease shall prevail unaffected by the Lease and be binding on Tenant. In the event Landlord becomes the fee owner of the Premises ("**Fee Acquisition**"), and the Ground Lease is terminated as a result, this Lease shall continue in full force and effect as a direct lease between Landlord and Tenant, and the terms hereof shall be amended and interpreted as reasonably necessary to reflect the same.

Landlord shall not materially amend or modify the Ground Lease without Tenant's consent, which consent shall not be unreasonably withheld, delayed or conditioned; provided, however, the foregoing shall in no way be deemed to restrict Landlord's ability to terminate the Ground Lease in the event of a Fee Acquisition by Landlord of the Premises. Subject to the foregoing, provided there is no uncured Event of Default under this Lease, Landlord shall not voluntarily terminate or consent to any termination of the Ground Lease.

The term "**Ground Lease Rental**" shall mean, collectively, any monthly scheduled "rental" payments required to be paid under the terms of the Ground Lease. The term "**Ground Lease Additional Rent**" shall mean, collectively, any monetary obligation of Landlord, as tenant, under the Ground Lease, other than the Ground Lease Rental. Effective on the Commencement Date, Tenant shall be responsible for all Ground Lease Rental and Ground Lease Additional Rent obligations. Ground Lease Rental shall be paid by Tenant as Additional Rent to Landlord (who shall pay such Ground Lease Rental and Ground Lease Additional Rent to Ground Lessor or other appropriate party pursuant to the Ground Lease) in monthly installments during the term of this Lease commencing upon the Commencement Date and on or before the first day of each calendar month thereafter, concurrently with the Base Monthly Rent due pursuant to Section 4.2.

Landlord shall maintain the Ground Lease in full force and effect and agrees that it shall promptly provide: (a) Ground Lessor with notice of a change in the notice address (if applicable) for "tenant" under the Ground Lease and (b) Tenant with a copy of any notice of default received by Landlord, as tenant under the Ground Lease. If Landlord acts or fails to act in a manner which results in a default under the Ground Lease, then Tenant shall have the right to cure such default (but shall have no obligation to do so) and Landlord shall reimburse Tenant (within ten (10) days upon demand) for any and all actual and reasonable expenses including, without limitation, reasonable experts and attorneys' fees incurred by Tenant in connection therewith.

3. TERM

3.1 Primary Term

Subject to Recital B above, the effective date ("**Commencement Date**") of this Lease shall be May 17, 2016. The primary term ("**Primary Term**") of this Lease shall commence upon the Commencement Date. The expiration ("**Expiration Date**") of the Primary Term shall be May 16, 2026. References to the term of the Lease shall include extensions, if any. Except as otherwise expressly stated, the terms and conditions of this Lease shall remain in effect during any extension, renewal, or holdover of the Primary Term. Notwithstanding anything contained herein to the contrary, in no event shall the term of this Lease, extend beyond the expiration date of the Ground Lease.

3.2 Surrender of Premises; Holding Over

On the last day or sooner termination of the term of this Lease, Tenant shall quit and surrender the Premises, together with all alterations, vacant and free of all tenancies and any leasehold rights therein and in good condition and repair, normal wear and tear excepted, broom clean and free of violations, and shall surrender all keys for the Premises to Landlord at the place

then fixed for the payment of rent and shall inform Landlord of all combinations of locks, safes, and vaults, if any, in the Premises. If Tenant does not do so, then after expiration of this Lease, it will be a tenant at will upon the applicable conditions of this Lease. In such event the rent payable shall be increased by fifty percent (50%) over the rent payable during the last full month of the term of this Lease that just ended. If the Premises is not so surrendered, Tenant shall indemnify Landlord from and against loss or liability resulting from the delay by Tenant in so surrendering the Premises, including without limitation, any claims made by the Ground Lessor, or any succeeding occupant or purchaser founded on such delay. Tenant's obligations under this Section shall survive the expiration or earlier termination of this Lease.

3.3 Early Access to the Premises

Subject to Recital B and in coordination with Prior Tenant, Landlord, and other parties as may be reasonably necessary, Tenant shall have the ability to access the Premises after the execution of this Lease but prior to the Commencement Date ("**Early Access Period**"). Tenant may not make any modifications or improvements to the Premises during the Early Access Period. Tenant shall indemnify, defend and protect Landlord, and hold Landlord harmless from any and all loss, cost, damage, expense and/or liability (including, without limitation, court costs and reasonable attorneys' fees) incurred in connection with or arising from Tenant's entry upon the Premises during the Early Access Period. Additionally, Landlord shall be under no obligation to provide access to the Premises prior to the date upon which Tenant has provided satisfactory evidence to Landlord of the existence and amounts of the insurance required under Section 13 hereof. The provisions of this paragraph shall survive the expiration or sooner termination of this Lease with respect to any claims or liability occurring prior to such expiration or termination.

4. BASE MONTHLY RENT

4.1 Net-Net-Net Lease

This is a net-net-net lease. It is the intention of Landlord and Tenant that the Base Monthly Rent (as defined below) and other sums and charges provided herein shall be absolutely net to Landlord. Except as otherwise specifically set forth in this Lease, Tenant shall pay, as additional rent ("**Additional Rent**"), all costs, charges, obligations, assessments, and expenses of every kind and nature against or relating to the Premises or the use, occupancy, area, possession, leasing, operation, management, maintenance, or repair thereof, which may arise or become due during the term hereof, or which may pertain to this transaction, whether or not now customary or within the contemplation of the parties hereto, and which, except for the execution and delivery of this Lease, would have been payable by Landlord.

4.2 Base Monthly Rent

Tenant shall pay to Landlord as base monthly rent ("**Base Monthly Rent**") the following sums:

Period	Base Monthly Rent
November 13, 2016 – November 30, 2018	\$7,500.00
December 1, 2018 – November 30, 2019	\$7,725.00
December 1, 2019 – November 30, 2020	\$7,956.75
December 1, 2020 – November 30, 2021	\$8,195.45

December 1, 2021 – November 30, 2022	\$8,441.32
December 1, 2022 – November 30, 2023	\$8,694.56
December 1, 2023 – November 30, 2024	\$8,955.39
December 1, 2024 – November 30, 2025	\$9,224.05
December 1, 2025 – May 16, 2026	\$9,500.78

Notwithstanding anything contained in this Lease to the contrary, in no event shall the rental to be paid by Tenant hereunder ever be less than the amount payable by Tenant as Base Monthly Rent. Base Monthly Rent shall be payable by Tenant to Landlord in advance in equal monthly installments commencing ("**Rent Commencement Date**") on the first day following the Abatement Period and on or before the first day of each calendar month thereafter, without prior notice, invoice, demand, deduction, or offset whatsoever. As used herein, "**Abatement Period**" means the period of time from the Commencement Date through November 12, 2016 (such that the Rent Commencement Date is November 13, 2016). If the first day of the calendar month falls on a day which is a Saturday, Sunday, or a day which is, in the city and state in which Tenant is located, either a legal holiday or a day on which banking institutions are authorized by law to remain closed for the entire day, then Base Monthly Rent shall be payable on the last business day of the immediately preceding calendar month.

Tenant acknowledges and agrees the rental abatement afforded Tenant during the Abatement Period expressly is conditioned upon Tenant's full and faithful performance of each and every provision of this Lease, it being the intention of the parties that the Abatement Period is granted by Landlord in consideration of Tenant's covenant to perform its duties and obligations under this Lease. In the event Tenant at any time is in default of this Lease beyond any applicable cure period, then, notwithstanding anything contained herein to the contrary, Landlord shall be entitled to recover the full amount of Base Monthly Rent so abated, and Tenant hereby agrees that such Base Monthly Rent shall be based upon the Base Monthly Rent owing by Tenant for the first full calendar month following the Rent Commencement Date. In such event, such Base Monthly Rent shall not be deemed to have been abated, but immediately shall become due and payable as unpaid rental earned at the time of the uncured default.

Landlord shall have the right to accept all rent and other payments, whether full or partial, and to negotiate checks and payments thereof without any waiver of rights, irrespective of any conditions to the contrary sought to be imposed by Tenant. Base Monthly Rent and Additional Rent payable to Landlord pursuant to the terms hereof shall be paid via electronic transfer of funds (or via ACH transfer by completion of the ACH Automatic Payment Authorization attached hereto as Exhibit "C"), or at Landlord's option (upon thirty (30) days advance written notice to Tenant), by check paid to Landlord at the address to which notices to Landlord are given or to such other address as Landlord may designate in writing. Base Monthly Rent for any partial month shall be prorated based upon the actual number of days in the period subject to proration.

5. INTENTIONALLY OMITTED

6. INTENTIONALLY OMITTED

7. SECURITY DEPOSIT

Tenant shall, on or before the Commencement Date, deposit with Landlord, the sum of TEN THOUSAND AND 00/100 DOLLARS (\$10,000.00) ("Security Deposit"), as a Security Deposit to secure the faithful performance by Tenant of all the terms, covenants, and conditions of this Lease. Landlord may use the Security Deposit or any portion thereof to cure a default by Tenant or to compensate Landlord for all damages sustained by Landlord resulting from the default. Tenant shall, within five (5) days of demand, pay to Landlord a sum equal to the portion of the Security Deposit expended or applied by Landlord so as to maintain the Security Deposit in the sum initially deposited with Landlord. Any interest earned on the Security Deposit shall accrue to the benefit of Landlord. Landlord shall not be required to keep this Security Deposit separate from its general funds. Tenant shall have no right to have the Security Deposit applied to the last month's or any other rent payable by Tenant hereunder. If Tenant has complied with all of the terms and conditions of this Lease, Landlord shall return the Security Deposit to Tenant within thirty (30) days of the expiration or termination of the Lease.

To protect Landlord in the event Tenant defaults hereunder, Tenant hereby grants to Landlord a security interest in the Security Deposit. Said security interest shall secure all amounts to be paid by Tenant to Landlord hereunder, including all costs of collection and any other indebtedness of Tenant to Landlord. Tenant agrees to sign any financing statement or security agreement requested by Landlord in order to perfect such security interest. The lien granted hereunder shall be in addition to any Landlord's lien that may now or at any time hereafter be provided by law.

8. USE OF THE PREMISES

Tenant shall use the Premises only for a restaurant and such other uses as may be incidental thereto ("Use") and no other uses without the prior written consent of Landlord which consent may be withheld in its sole and absolute discretion. Tenant has satisfied itself, and represents to Landlord, that such Use is lawful and conforms to all applicable zoning and other use restrictions and regulations applicable to the Premises. In no event may the Premises be used in violation of the terms of the Ground Lease.

9. PROPERTY TAXES, OTHER CHARGES, ASSESSMENTS AND UTILITIES

9.1 Tenant's Required Payments

Effective on the Rent Commencement Date, Property Taxes (as defined below) that accrue during or are otherwise allocable to the term of this Lease shall be paid by Tenant to Landlord in monthly installments, all as more particularly set forth in Section 9.5 below. In addition, effective on the Rent Commencement Date, Tenant shall (i) pay before delinquency and as Additional Rent, all Other Charges (as defined below) that accrue during or are otherwise allocable to the term of this Lease; and (ii) concurrently provide Landlord with evidence of payment thereof upon request.

- 9.1.1 **“Property Taxes”** shall mean all taxes, assessments, excises, levies, fees, and charges (and any tax, assessment, excise, levy, fee, or charge levied wholly or partly in lieu thereof or as a substitute therefor or as an addition thereto) of every kind and description, general or special, ordinary or extraordinary, foreseen or unforeseen, secured or unsecured, whether or not now customary or within the contemplation of Landlord and Tenant, that are levied, assessed, charged, confirmed, or imposed on or against, or otherwise with respect to, the Premises or any part thereof or any personal property used in connection with the Premises, including, without limitation, real, *ad valorem*, personal property, gross income, franchise, margin, commercial activity, withholding, profits, and gross receipts taxes. It is the intention of Landlord and Tenant that all new and increased taxes, assessments, levies, fees and charges be included within the definition of Property Taxes for the purpose of this Lease.
- 9.1.2 **“Other Charges”** shall mean all other taxes, assessments, excises, levies, fees, and charges (including, without limitation, common area maintenance charges, charges relating to the cost of providing facilities or services, and charges relating to documents or instruments of record affecting or encumbering the Premises), whether or not now customary or within the contemplation of Landlord and Tenant, that are levied, assessed, charged, confirmed, or imposed upon, or measured by, or reasonably attributable to (a) the Premises; (b) the cost or value of Tenant’s furniture, fixtures, equipment, or personal property located in the Premises or the cost or value of any leasehold improvements made in or to the Premises by or for Tenant, regardless of whether title to such improvements is vested in Tenant or Landlord; (c) Base Monthly Rent and all Additional Rent payable under the Lease, including, if applicable, Property Taxes, Other Charges, insurance, maintenance, and other costs incurred by Tenant by which Landlord may benefit, including, without limitation, any gross income tax or excise tax levied by any public or government authority with respect to the receipt of any such rents and costs; (d) the possession, leasing, operation, management, maintenance, alteration, repair, use, or occupancy by Tenant of the Premises; (e) any license fee, occupancy fee, tax based upon the collection of rent, or any other fees or taxes assessed or charged in connection with the rental under this Lease; and (f) this transaction or any document to which Tenant is a party creating or transferring an interest or an estate in the Premises.
- 9.1.3 In addition to the foregoing, during the term of this Lease, Tenant shall timely perform all obligations of the owner of the Premises under, and pay all expenses which the owner of the Premises may be required to pay in accordance with any declarations or reciprocal easement agreements or any other documents or instruments of record now (or of record in the future if created or filed by or with the consent of Tenant) affecting the Premises (referred to collectively herein as the **“Title**

Instruments”). Tenant promptly shall comply with all of the terms and provisions of the Ground Lease and all Title Instruments, including without limitation, all insurance requirements set forth in the Ground Lease or Title Instruments, regardless of whether any such requirements exceed the requirements otherwise set forth in Article 13 below.

9.2 Assessments

If any assessment for a capital improvement made by a public or governmental authority shall be levied or assessed against the Premises, and the assessment is payable either in a lump sum or on an installment basis, then Landlord shall have the right to elect the basis of payment; provided however, throughout the entire term of this Lease, Tenant shall pay, as part of Property Taxes, all assessments that accrue during or are otherwise allocable to the term of this Lease.

9.3 Utility Payments

Tenant shall promptly pay when due all charges for water, gas, electricity, and all other utilities furnished to or used upon the Premises, including all charges for installation, termination, and relocations of such service. Landlord, at its option, may require Tenant to furnish Landlord with evidence of payment of such charges.

9.4 Property Taxes Paid in Monthly Installments

Property Taxes shall be paid by Tenant as Additional Rent to Landlord in monthly installments during the term of this Lease commencing upon the Rent Commencement Date and on the first day of each calendar month thereafter. Such monthly installments shall be an estimated amount equal to one-twelfth (1/12) of the Property Taxes for the immediate preceding year, subject to adjustment when the actual amount of Property Taxes is determined. At such time as the actual amount of Property Taxes is determined, Landlord shall furnish to Tenant a statement indicating the actual amount of Property Taxes. Within thirty (30) days after receipt of such statement by Tenant, Tenant shall pay to Landlord any deficiency due (i) by check from Tenant to Landlord, or (ii) at Landlord's option, and if so indicated in the communication accompanying such statement, concurrently with an ACH transfer of Base Monthly Rent, pursuant to Paragraph 4.2, provided such transfer date is at least thirty (30) days (and no more than ninety (90) days) after receipt of such statement by Tenant. Any surplus paid by Tenant shall, at Landlord's option, be credited against the next installment(s) of Base Monthly Rent or other charges due from Tenant or be refunded to Tenant.

9.5 Landlord's Right to Contest Taxes and/or Seek Reduction of Assessed Valuation of the Premises

Without in any way limiting Tenant's obligation to pay Property Taxes pursuant to Section 9.5 above, Landlord shall have the right, at any time before or during the Lease term, to seek a reduction in the assessed valuation of the Premises or to contest any Property Taxes paid or to be paid in connection with the Premises. In the event of a final determination favorable to Landlord, the tax refund or savings and the expenses associated with the appeal or contest (excluding attorneys' fees and costs associated with any lawsuit brought by Landlord unless Tenant shall first have consented to such lawsuit) shall be prorated and apportioned between Tenant and Landlord such that Tenant shall receive all benefit and bear all expenses for the

period applicable to and accruing during the Lease term, and Landlord shall receive all benefit and bear all expenses for any other period, i.e., applicable to and accruing prior to the Rent Commencement Date and/or following the Expiration Date (regardless of (i) when the appeal or contest was initiated, (ii) when the appeal or contest was finalized, (iii) when the refund actually was paid or (iv) when expenses actually were incurred or billed).

9.6 Partial Lease Years and Adjustment of Property Taxes

Property Taxes (and Other Charges, as may be applicable) payable by Tenant in accordance with the terms of this Lease shall be appropriately adjusted for any partial Lease Year. Property Taxes which cannot be ascertained with certainty as of the Expiration Date shall be prorated on the basis of the parties' reasonable estimates of such amount(s) and shall be the subject of a final proration as soon thereafter as the precise amounts can be ascertained. The provisions of this paragraph shall survive the expiration or termination of this Lease.

10. FURNITURE, FIXTURES AND EQUIPMENT

10.1 Furniture, Fixtures, and Equipment

During the term Tenant may, at Tenant's expense, place or install such furniture, trade fixtures, equipment, machinery, furnishings, face plates of signage and other articles of movable personal property (collectively, "**Tenant's Personal Property**") on the Premises as may be needed for the conduct of Tenant's business. It is expressly understood that the term Tenant's Personal Property as used herein shall in no event extend to leasehold improvements, fixtures or similar "vanilla shell" items such as light fixtures, HVAC equipment, or other fixtures and equipment permanently affixed to the Premises. Landlord further authorizes Tenant to utilize or remove any furniture, fixtures, and equipment present in the Premises on the Commencement Date, provided, however, (i) Landlord makes no representation or warranty with regard to the furniture, fixtures, and equipment, and (ii) Tenant shall not remove HVAC equipment or other fixtures and equipment permanently affixed to the Premises.

10.2 Landlord's Waiver

Tenant may finance Tenant's Personal Property at any time and from time to time during the term of this Lease. Upon request of Tenant, Landlord shall execute and deliver to any lender a Landlord's Waiver in such form as shall be reasonably acceptable to Landlord. Tenant may remove and replace Tenant's Personal Property periodically during the term of this Lease.

10.3 Removal of Tenant's Personal Property at Expiration of Lease

At the expiration or earlier termination of the Lease, providing there is no material uncured Event of Default, Tenant's Personal Property may be removed at the option of Tenant. In the alternative, at the expiration or earlier termination of the Lease, Landlord may require Tenant to remove Tenant's Personal Property within a reasonable time following receipt of written notice from Landlord. Tenant immediately shall make such repairs and restoration of the Premises as may be necessary to repair any damage to the Premises from removal of Tenant's Personal Property. Any of Tenant's Personal Property not so removed shall be deemed abandoned, and Landlord may cause such property to be removed from the Premises and disposed of, but the reasonable cost of any such removal shall be borne by Tenant. The provisions of this paragraph shall survive the expiration or termination of this Lease.

10.4 Right to Affix Signs, Banners and Decals

Tenant shall have the right to decorate the Premises and affix such signs, banners and decals customarily used in its business upon the windows, doors, interior and exterior walls (excluding the roof) of the Premises, and such sign panels or free-standing signs as may seem appropriate to Tenant and are authorized by any governmental authority having jurisdiction over the Premises and permitted by the Ground Lease and any covenants, conditions and restrictions encumbering the Premises ("**Signage**"). Upon the expiration or earlier termination of the Lease, Tenant shall remove such Signage within a reasonable time following receipt of written notice from Landlord; provided, however, in no event may Tenant remove free-standing Signage (such as pole-mounted or monument signs) from the Premises. Any sign panels removed from any pylon sign structures promptly shall be replaced with blank sign panels, so as to preserve the integrity of the pylon sign structure. Tenant promptly shall make such repairs and restoration of the Premises as are necessary to repair any damage to the Premises from removal of the Signage. Notwithstanding the foregoing, in no event shall Tenant exercise any rights under this Section 10.4 that may adversely affect any existing Signage rights benefiting the Premises (including without limitation any existing variance or legal-nonconforming Signage rights) without the prior written consent of Landlord.

11. MAINTENANCE AND REPAIRS OF THE PREMISES; COMPLIANCE

11.1 Obligation to Maintain the Premises

During the term of this Lease, Tenant shall, at its own expense, keep and maintain the entire Premises in good order and repair. Tenant shall make such repairs and replacements as may be necessary, regardless of whether the benefit of such repair or replacement extends beyond the term of this Lease. The Premises shall be returned to Landlord at the termination or expiration of this Lease in good condition, ordinary wear excepted. For as long as Tenant is not in default of any of the terms and conditions of this Lease, Landlord hereby assigns to Tenant all building contractor, subcontractor, and manufacturer's warranties and guarantees, if any, applicable to the Premises; and Landlord shall cooperate with Tenant at Tenant's request and sole cost in any action to enforce such warranties and guarantees. In the event of destruction of the Premises by fire or other casualty, the condition of the Premises upon termination of this Lease shall be governed by Article 14. Except as otherwise set forth herein, Landlord shall have no obligation whatsoever to alter, remodel, improve, repair, renovate, retrofit or maintain the Premises or any portion thereof.

Without limiting the generality of the foregoing, Tenant shall maintain the HVAC and Roof under commercially reasonable maintenance contracts ("**Maintenance Contracts**"), which shall provide for maintenance of the HVAC and Roof, respectively, at intervals that are no less frequent than quarterly and semi-annually, respectively. Tenant shall deliver copies of the applicable Maintenance Contracts to Landlord upon engagement of the contractors and thereafter, within ten (10) days following receipt of a request therefor. Tenant shall deliver to Landlord copies of each quarterly HVAC inspection report and semi-annual Roof inspection report within ten (10) days following receipt by Tenant. Should Tenant fail to obtain and maintain the Maintenance Contracts as required hereby, Landlord (upon five (5) business days notice to Tenant) may procure the Maintenance Contracts on behalf of and at the expense of Tenant. Upon written notice from Landlord of the procurement of the Maintenance Contracts, (i)

Tenant shall immediately pay to Landlord, as Additional Rent, an amount equal to the total cost incurred by Landlord in procuring and maintaining the Maintenance Contracts, and (ii) Tenant shall permit the contractors to enter upon the Premises at all reasonable times for the purpose of carrying out the terms of the Maintenance Contracts. For the avoidance of doubt, Tenant's obligations with respect to the HVAC shall include ducting.

11.2 Obligation to Keep the Premises Clear

Tenant shall keep the Premises, all sidewalks adjacent to the Premises and loading area allocated for the use of Tenant, clean and free from rubbish and debris. Tenant shall store all trash and garbage within the Premises and arrange for regular pickup and cartage of such trash and garbage at Tenant's expense.

11.3 Compliance

Tenant, at Tenant's sole expense, promptly shall comply with all applicable statutes, ordinances, rules, regulations, orders, covenants and restrictions of record, and requirements in effect during the term or any part of the term hereof (including, without limitation, the Ground Lease), regulating the use by Tenant of the Premises, including, without limitation, the obligation at Tenant's cost, to alter, maintain, or restore the Premises in compliance and conformity with all laws relating to the condition, use or occupancy of the Premises during the term (including, without limitation, any and all requirements as set forth in the Americans with Disabilities Act) and regardless of (i) whether such laws require structural or non-structural improvements, (ii) whether the improvements were foreseen or unforeseen, and (iii) the period of time remaining in the term.

12. ALTERATIONS AND IMPROVEMENTS

12.1 Right to Make Alterations

Subject to obtaining any approval required under the Ground Lease, at all times during the term of this Lease, except as provided in Article 17, Tenant shall have the right to make alterations, additions and improvements ("**Alterations**") to the interior or exterior of the Premises and parking areas adjacent to the Premises. Nevertheless, the following shall not be made by Tenant without the prior written consent of Landlord: Alterations that (i) are over TWENTY-FIVE THOUSAND DOLLARS (\$25,000), (ii) are structural in nature, (iii) negatively impact parking, (iv) in any manner involve or impact the roofing system, and/or (v) require a variance, conditional use permit, or similar instrument from a governmental authority. Any Alterations made or installed by Tenant shall remain upon the Premises and, at the expiration or earlier termination of this Lease, shall be surrendered with the Premises to Landlord. Alterations shall be accomplished by Tenant in a good, expeditious, quality workmanlike manner, in conformity with the Ground Lease and applicable laws, zoning, regulations, ordinances, orders and covenants, conditions and restrictions encumbering the Premises, and by a licensed contractor; and with respect to Alterations requiring Landlord's consent, the contractor shall be approved by Landlord. Prior to commencement of any such work, Tenant shall provide to Landlord copies of documents as shall reasonably be requested by Landlord, including, without limitation, permits and governmental approvals, architectural plans and manufacturer specifications. Within Thirty (30) days of completion of any such work, Tenant shall provide to Landlord final "as-built" plans, copies of all construction contracts, inspection reports, proof of payment of all labor and materials (including final unconditional lien waivers from the general

contractor and all subcontractors), and such documentation as reasonably may be requested by Landlord (including, without limitation, digital photographs documenting the progress and completion of the Alterations). Tenant shall pay when due all claims for such labor and materials and shall give Landlord at least ten (10) days' prior written notice of the commencement of any such work. Landlord may enter upon the Premises, in such case, for the purpose of posting appropriate notices, including, but not limited to, notices of non-responsibility.

12.2 Tenant Shall Not Render Premises Liable For Any Lien

Tenant shall have no right, authority, or power to bind Landlord, or any interest of Landlord in the Premises, nor to render the Premises liable for any lien or right of lien for the payment of any claim for labor, material, or for any charge or expense incurred to maintain, to repair, or to make Alterations to the Premises. Tenant shall in no way be considered the agent of Landlord in the construction, modification, repair, or alteration of the Premises. Notwithstanding the above, Tenant shall have the right to contest the legality or validity of any lien or claim filed against the Premises. No contest shall be carried on or maintained by Tenant after the time limits in the sale notice of the Premises for any such lien or claim unless Tenant shall have (i) duly paid the amount involved under protest; (ii) procured and recorded a lien release bond from a bonding company acceptable to Landlord in an amount not less than one and one-half (1-1/2) times the amount involved; or (iii) procured a stay of all proceedings to enforce collection. Upon a final adverse determination of any contest, Tenant shall pay and discharge the amount of the lien or claim determined to be due, together with any penalties, fines, interest, cost, and expense which may have accrued, and shall provide proof of payment to Landlord.

13. INDEMNITY AND INSURANCE

13.1 Indemnification

To the fullest extent permitted by law, Tenant shall indemnify, defend and protect Landlord, and hold Landlord harmless from any and all loss, cost, damage, expense and/or liability (including, without limitation, court costs and reasonable attorneys' fees) incurred in connection with or arising at any time and from any cause whatsoever in or about the Premises, other than damages proximately caused by reason of the gross negligence or willful misconduct of Landlord or its agents and employees, including, without limiting the generality of the foregoing: (i) any default by Tenant in the observance or performance of any of the terms, covenants or conditions of this Lease on Tenant's part to be observed or performed; (ii) the use or occupancy of the Premises by Tenant or any person claiming by, through, or under Tenant; (iii) the condition of the Premises or any occurrence or happening on the Premises from any cause whatsoever; or (iv) any acts, omissions or negligence of Tenant or any person claiming by, through or under Tenant, or of the contractors, agents, servants, employees, visitors or licensees of Tenant or any such person, in, on or about the Premises, either prior to or during the Lease term (including, without limitation, any holdovers in connection therewith), including, without limitation, any acts, omissions, or negligence in the making or performance of any Alterations. Tenant further agrees to indemnify and hold harmless Landlord, Landlord's agents, and the landlord or landlords under all ground or underlying leases, from and against any and all loss, cost, liability, damage, and expense (including, without limitation, reasonable attorneys' fees) incurred in connection with or arising from any claims by any persons by reason of injury to persons or damage to property occasioned by any use, occupancy, condition, occurrence,

happening, act, omission or negligence referred to in the preceding sentence. The provisions of this Section shall survive the expiration or sooner termination of this Lease with respect to any claims or liability occurring prior to such expiration or termination, and shall not be limited by reason of any insurance carried by Landlord and Tenant.

13.2 Insurance Company Requirement

Insurance required by this Lease shall be issued by companies holding a general policyholder's rating of A-VIII or better as set forth in the most current issue of Best's Insurance Guide and authorized to do business in the state in which the Premises are located. If this publication is discontinued, then another insurance rating guide or service generally recognized as authoritative shall be substituted by Landlord.

13.3 Insurance Certificate Requirements

- 13.3.1 Tenant shall deliver to Landlord or Landlord's designee evidence of the existence and amounts of the insurance with additional insured endorsements and loss payable clauses as required herein. Tenant shall deliver to Landlord or Landlord's designee the then most current versions of an ACORD 25 Certificate of Liability Insurance in connection with Tenant's liability policy(ies) and an ACORD 28 Evidence of Commercial Property Insurance in connection with Tenant's property policy(ies) (together, the "**ACORD Forms**"), such ACORD Forms to be delivered to Landlord or Landlord's designee, together with a copy of the additional insured endorsement set forth in Section 13.5 below, on or before the Commencement Date and thereafter, prior to expiration of the policies. In the event Tenant delivers ACORD Forms or procures policies that set forth an entity other than Tenant as the "insured" ("**Insured Party**") under the applicable policy(ies), Tenant hereunder represents and agrees that (i) the Insured Party is an affiliate of Tenant and has an insurable interest in Tenant and the Premises, (ii) Tenant has the right to bind the Insured Party and (iii) the Insured Party automatically shall be joined in this Lease for the purposes of being bound by the provisions of Articles 13 and 14. To the extent Tenant delivers ACORD Forms to Landlord that indicate a variance between the requirements of this Article 13 and the policy provisions and coverages maintained by Tenant, under no circumstances shall Landlord's acceptance of such ACORD Forms ever be deemed to constitute a waiver by Landlord of the express requirements set forth herein. Within ten (10) days following Landlord's request, Tenant shall deliver to Landlord complete, certified copies of Tenant's insurance policies. Neither the issuance of any insurance policy required hereunder, nor the minimum limits specified herein with respect to any insurance coverage, shall be deemed to limit or restrict in any way the liability of Tenant arising under or out of this Lease.

13.4 Minimum Acceptable Insurance Coverage Requirements

- 13.4.1 Tenant shall, at Tenant's expense, obtain and keep in full force during the term of this Lease a policy of combined single limit bodily injury and property damage insurance written on an occurrence basis insuring Tenant against any liability arising out of ownership, use, occupancy or maintenance of the Premises and all of its appurtenant areas including, without limitation, the parking lot and other common areas of the shopping center in which the Premises is located (also known as 1776 Plaza Shopping Center). The policy shall provide blanket contractual liability coverage and an Amendment of Insured Contract CG 2426 07 04 endorsement (without modification) and shall include an endorsement for liquor liability in the event alcoholic beverages are being sold on the Premises. The insurance shall be in an amount not less than TWO MILLION DOLLARS (\$2,000,000) per occurrence, and a general aggregate limit which shall apply separately to the Premises or shall be in an amount no less than three times the required occurrence limit; provided however, following receipt of written notice from Landlord the limits of such insurance shall be increased from time to time during the term of the Lease to such amount as may then be generally procured and maintained by owners or occupants of similar properties in the geographic area of the Premises. Any deductibles or self-insured retentions or sub-limits must be declared and approved by Landlord. The insurance to be maintained by Tenant pursuant to this Section 13.4.1 may be procured in any combination of primary, umbrella and/or excess coverage (as long as the umbrella and/or excess policies are at least as broad as the primary policies), but in all events shall be primary and not contributory to any other insurance maintained by Landlord, it being expressly understood and agreed that any policy(ies) maintained by Landlord are solely for its own benefit (and not for the benefit of Tenant), and under no circumstances shall any such policy(ies) ever be deemed to be other insurance covering loss or damage otherwise the responsibility of Tenant pursuant to the terms hereof. In no event shall the limits of insurance maintained by Tenant limit any liability of Tenant under this Lease.
- 13.4.2 Tenant shall, at Tenant's expense, obtain and keep in force during the term of this Lease a special causes of loss insurance policy covering all of Tenant's Personal Property in an amount not less than eighty percent (80%) of the replacement value thereof, together with such other coverages as Tenant shall deem reasonable or necessary.
- 13.4.3 Tenant shall also obtain and keep in force for the benefit of Landlord and Tenant during the term of this Lease, a policy of business interruption insurance ("**Business Interruption Insurance**") covering Base Monthly Rent and other operating expenses for a period of SIX (6) MONTHS).

- 13.4.4 Tenant shall also obtain and keep in force during the term of this Lease a worker's compensation policy and Employer's Liability policy insuring against and satisfying Tenant's minimum statutory obligations and liabilities under the worker's compensation laws of the state in which the Premises is located.
- 13.4.5 Tenant shall also obtain and keep in force during the term of this Lease such other types and amounts of insurance for the Premises and its operations as Landlord shall from time to time reasonably require, consistent with the types and amounts of insurance commonly maintained by owners or occupants of similar properties in the geographic area of the Premises.

13.5 Additional Insureds; Loss Payee

Tenant shall name as additional insureds (by way of a CG 20 26 11 85 endorsement (without modification) or equivalent endorsement), on all liability policies, the following parties:

O ICE, LLC, TOGETHER WITH REALTY INCOME CORPORATION, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUBSIDIARIES, AFFILIATES, SUCCESSOR(S) AND ASSIGN(S).

Tenant shall cause any and all contractors performing work on the Premises for or on behalf of Tenant to maintain commercial general liability insurance with limits of coverage commensurate with the scope of work being performed, and naming both Tenant and Landlord as additional insureds thereunder by way of a CG 2038 04 13 endorsement (or equivalent endorsement).

Tenant shall name Landlord as loss payee by way of a Lender's Loss Payable Provisions endorsement (ISO Form CP 12 18 06 95) without modification (or equivalent endorsement) on all property policies insuring the Premises.

13.6 Insurance to be Maintained by Landlord

- 13.6.1 Landlord shall obtain and keep in force during the term of this Lease a "Special Form" (as such term is used in the insurance industry) policy of insurance covering loss or damage to the improvements (but excluding Tenant's Personal Property). The policy shall be commercially reasonable in form and substance, and, at Landlord's option, may contain one or more of the following provisions and/or endorsements: (i) be in an amount not less than the full guaranteed replacement cost of the building(s) (less slab, foundation, supports and other customarily excluded improvements); (ii) contain only standard printed exclusions; (iii) contain no coinsurance clause; (iv) include an agreed value endorsement; (v) include business interruption with extra expense or rent loss; and (vi) include an ordinance or law coverage endorsement covering loss to the undamaged portion of the building,

demolition costs and increased cost of construction resulting from changes in laws or codes. The deductible ("Deductible") payable in connection with such policy shall be any amount deemed reasonable by Landlord in its reasonable business judgment. In the event of casualty, Tenant shall be responsible for payment of the Deductible.

- 13.6.2 If the Premises is located in Special Flood Hazard Area as defined by the Federal Emergency Management Agency (FEMA), Landlord may, at Tenant's expense, obtain and keep in force during the term of this Lease a policy of insurance covering loss or damage due to flood with respect to the Premises.
- 13.6.3 Intentionally omitted.
- 13.6.4 Upon request, Landlord shall deliver to Tenant a certificate with respect to the policy maintained by Landlord pursuant to this Section.
- 13.6.5 Effective on the Commencement Date, Tenant shall be responsible as Additional Rent for all costs and fees assessed by Landlord in connection with procurement, maintenance and administration of the aforementioned policies of insurance ("**Insurance Costs and Fees**"). The Insurance Costs and Fees shall be paid by Tenant to Landlord in monthly installments during the term of this Lease commencing upon the Commencement Date and on or before the first of each calendar month thereafter. Such monthly installments shall be an estimated amount equal to one-twelfth (1/12) of the Insurance Costs and Fees for the immediate preceding year, subject to adjustment when the actual Insurance Costs and Fees are determined. At such time as the actual Insurance Costs and Fees are determined, Landlord shall furnish to Tenant a statement indicating the actual amount of Insurance Costs and Fees. Within ten (10) business days after receipt of such statement by Tenant, Tenant shall pay to Landlord any deficiency due (i) by check from Tenant to Landlord, or (ii) at Landlord's option, and if so indicated in the communication accompanying such statement, concurrently with an ACH transfer of Base Monthly Rent, pursuant to Paragraph 4.2, provided such transfer date is at least ten (10) days (and no more than ninety (90) days) after receipt of such statement by Tenant.
- 13.6.6 Tenant shall not do or permit to be done anything which shall invalidate the insurance policies. Landlord's delay, or the failure of Landlord beyond commencement of any renewal period, in computing or billing for the Insurance Costs and Fees shall in no way impair the continuing obligation of Tenant to pay the Insurance Costs and Fees otherwise due pursuant to this Section.

13.7 Mortgage Endorsement

At Landlord's option, the policies of insurance required to be maintained hereunder shall bear a standard first mortgage endorsement in favor of any holder or holders of a first

mortgage lien or security interest in the property with loss payable to such holder or holders as their interests may appear.

14. PARTIAL AND TOTAL DESTRUCTION OF THE PREMISES

In the event any portion or all of the Premises shall at any time during the term of this Lease be damaged or destroyed, regardless of cause, Tenant shall give prompt notice to Landlord. If the Premises is "substantially damaged or destroyed" (as defined below), Landlord shall have the right to terminate this Lease upon thirty (30) days' written notice to Tenant, which notice shall be delivered within thirty (30) days following the date upon which Landlord learns of the casualty. In the event of such termination by Landlord, this Lease shall terminate effective as of the date of casualty, and Base Monthly Rent and Additional Rent shall be adjusted as between Landlord and Tenant as of such date. As used herein, the phrase "substantially damaged or destroyed" shall mean that the restoration or repair cost, as estimated by one (1) general contractor selected by Landlord and properly licensed in the State in which the Premises is located, exceeds twenty-five percent (25%) of the replacement value of the improvements immediately prior to such damage or destruction. In the event Landlord does not elect to terminate the Lease as set forth above and (i) the Premises is substantially damaged or destroyed, (ii) any such damage or destruction renders the Premises inaccessible or unusable by Tenant, and (iii) the remaining Lease term, including exercised extension options, if any, is less than TWO (2) years, Tenant shall have the right to terminate this Lease upon thirty (30) days' written notice to Landlord, which notice shall be delivered within thirty (30) days following the date of the casualty. In the event of such termination by Tenant, this Lease shall terminate effective as of the date Tenant's termination notice is received by Landlord, and Base Monthly Rent and Additional Rent shall be adjusted as between Landlord and Tenant as of such date.

If the Lease is not terminated as provided above, and providing there are no uncured Events of Default then existing under the Lease, then to the extent permitted by applicable law and subject to the Ground Lease, the availability of insurance proceeds and Tenant's payment of the Deductible, Landlord shall, as soon as circumstances reasonably permit, commence repair and restoration of the Premises and shall thereafter work diligently to substantially complete such repair and restoration of the Premises to a complete architectural unit of the substantially same value, condition and character that existed immediately prior to such casualty, and with any and all modifications as may be necessary to meet code compliance (excluding Tenant's Personal Property). If necessary with respect to repair and restoration of the Premises, Landlord may require Tenant to temporarily remove certain or all of Tenant's Personal Property from the Premises, and Tenant covenants and agrees to so remove Tenant's Personal Property promptly following notice from Landlord. Tenant is not entitled to any rent abatement during or resulting from any disturbance from partial or total destruction of the Premises for the first SIX (6) MONTHS ("**First Six Months**") following the event of casualty, and in no event shall Tenant be entitled to terminate the Lease; provided, however, Tenant's obligation for payment of Base Monthly Rent and Additional Rent shall be reduced dollar for dollar by the amount of Business Interruption Insurance received by Landlord. Base Monthly Rent otherwise due hereunder following the First Six Months shall abate to the extent the Premises are unusable by Tenant until such time as repairs and restoration of the Premises are substantially complete.

15. CONDEMNATION

15.1 Condemnation Damages

In the event of the taking or conveyance in fee of, or temporary use of, or perpetual easement upon, the whole or any part of the Premises by reason of condemnation by any public or quasi-public body ("**Condemnation**"), Landlord and Tenant shall represent themselves independently in seeking damages before the condemning body (the "**Condemnor**"). Each party shall be entitled to the amount awarded respectively to each. Landlord shall be entitled to the entirety of the award and any and all damages arising from or associated with the Condemnation, except that Tenant shall have the right to make a claim against the Condemnor for the following:

- 15.1.1 That portion of the award expressly attributable to the value of Tenant's leasehold improvements made to the Premises by Tenant in accordance with this Lease, so long as Tenant has the right to remove such improvements from the Premises upon the expiration or termination of the Lease pursuant to the provisions of this Lease, but elects not to remove;
- 15.1.2 That portion of the award expressly attributable to the value of Tenant's Personal Property installed in the Premises in accordance with this Lease, so long as Tenant has the right to remove such Tenant's Personal Property from the Premises upon the expiration or termination of the Lease pursuant to the provisions of this Lease;
- 15.1.3 All relocation benefits separately awarded for: (i) removing Tenant's Personal Property; (ii) damage or loss to Tenant's business and good will and (iii) moving and relocation expenses; and
- 15.1.4 Providing (i) Tenant is then occupying the Premises (i.e., at the time the Condemnor is physically occupying the portion of the Premises subject to a temporary Condemnation) and (ii) there is no then uncured Event of Default, that portion of the award attributable to a temporary Condemnation to the extent the temporary Condemnation solely affects Tenant's leasehold interest in the Premises during the Lease term and not Landlord's fee interest in the Premises, such as (by way of example only) the taking of a temporary construction easement which easement shall expire prior to expiration of the Lease.

15.2 Termination of Lease Due to Condemnation

In the event the entirety of the Premises or a material and significant portion of the land and/or building comprising the Premises is permanently acquired in Condemnation, which Condemnation will materially adversely affect the Use of the Premises, Tenant may terminate the Lease by giving Landlord written notice of its intention to terminate the Lease within thirty (30) days following the date upon which Tenant receives written notice of the nature, extent and scope of the Condemnation or otherwise becomes aware, or reasonably should be aware, of such facts sufficient to put Tenant on notice of the full effects of the Condemnation. This Section 15.2 shall not alter the method of distribution of any Condemnation award set forth above in Section 15.1. In the event this Lease is terminated as provided herein, the effective date of the termination shall be the date upon which fee simple interest in the Premises is deemed to

have passed to the Condemnor, and Tenant shall be released from further obligations or liabilities arising under the Lease with the exception of those obligations which accrued or arose prior to the effective date of the Condemnation and those liabilities which, pursuant to the terms of the Lease, survive expiration or termination of the Lease. In the event of termination, Base Monthly Rent, Property Taxes, Other Charges and any other items of Additional Rent (collectively, "**Rent and Charges**") shall be prorated based upon the actual number of days in the period to be prorated. Within thirty (30) days following the termination, Landlord shall refund to Tenant any Rent and Charges paid to Landlord in advance of the termination.

16. ASSIGNMENT AND SUBLETTING

16.1 Tenant's Right of Assignment and Subletting

Tenant shall not voluntarily or by operation of law assign or encumber its interest in this Lease or in the Premises, or sublease all or any part of the Premises, or allow any other person or entity to occupy or use any part of the Premises, without first obtaining the written consent of Landlord. If Tenant is a corporation (other than a public corporation whose stock is traded on a nationally recognized stock exchange), an unincorporated association, limited liability company, trust, or partnership, then (i) any direct or indirect transfer or assignment of a forty-nine percent (49%) or more beneficial ownership interest in such entity (including without limitation by merger, consolidation, or reorganization), (ii) any change of an ownership or management interest in Tenant, either directly or indirectly, through one or more tiers of ownership, which transfers control or management of Tenant, or (iii) any other transfer or assignment the effect of which is to circumvent the Landlord's approval rights under this Section, will be deemed an assignment requiring Landlord's prior written consent, which consent will not be unreasonably withheld. Any assignment, encumbrance, or sublease without Landlord's consent shall be voidable and, at Landlord's election, shall constitute a default. It shall not be unreasonable for Landlord to withhold its consent to any proposed assignment or subletting if the proposed transferee does not meet certain criteria, including, but not limited to, the transferee's financial condition and business experience; the identity, nature, quality, and business character of the transferee; and the nature of the use and occupancy. In addition, Landlord reserves the right, in exercise of its reasonable business judgment, to condition its consent on obtaining additional security under the Lease, such as, by way of example only, an additional or increased security deposit.

16.2 Landlord's Option to Preserve Subtenancies

In the event of Tenant's surrender of this Lease or the termination of this Lease in any other manner, Landlord may, at its option, either terminate any or all subtenancies or succeed to the interest of Tenant as sublandlord thereunder. No merger shall result from Tenant's sublease of the Premises under this Article, Tenant's surrender of this Lease, or the termination of this Lease in any other manner.

16.3 Tenant's Assignment of All Rent from Subletting as Security for Tenant's Obligations

Tenant immediately and irrevocably assigns to Landlord, as security for Tenant's obligations under this Lease, all rent from any subletting of all or a part of the Premises as permitted by this Lease. In the event of a default by Tenant, Landlord, as assignee and as attorney-in-fact for Tenant, or a receiver for Tenant appointed on Landlord's application, may collect the rent and apply it toward Tenant's obligations under this Lease.

16.4 Continuing Obligation of Tenant

No transfer permitted by this Article 16 shall release Tenant or change Tenant's primary liability to pay the rent and to perform all other obligations of Tenant under this Lease. Landlord's acceptance of rent from any other person is not a waiver of any provision of this Article. Landlord's consent to one transfer is not a consent to any subsequent transfer. If Tenant's transferee defaults under this Lease, Landlord may proceed directly against Tenant without pursuing remedies against the transferee. Landlord may consent to subsequent assignments or modifications of this Lease by Tenant's transferee, without notifying Tenant or obtaining its consent. Such action shall not relieve Tenant's liability under this Lease.

16.5 Landlord's Right of Assignment

Landlord shall be free at all times, without need of consent or approval by Tenant, to assign its interest in this Lease and/or to convey fee title to the Premises, provided, however, notice to Tenant shall be provided within thirty (30) days of any such assignment. Each conveyance by Landlord of Landlord's interest in the Lease or the Premises prior to expiration or termination hereof shall be subject to this Lease and shall relieve the grantor of any further obligations or liability as Landlord, and Tenant shall look solely to Landlord's successor in interest for all future obligations of Landlord. Tenant hereby agrees to attorn to Landlord's successors in interest, whether such interest is acquired by sale, transfer, foreclosure, deed in lieu of foreclosure, or otherwise. The term "Landlord" as used in this Lease, so far as covenants and obligations on the part of Landlord are concerned, shall be limited to mean and include only the owner at the time in question of the fee title of the Premises. Without further agreement, the transferee of such title shall be deemed to have assumed and agreed to observe and perform any and all obligations of Landlord hereunder during its ownership of the Premises.

17. DEFAULT AND TERMINATION

17.1 Event of Default

The occurrence of any of the following events (each an "**Event of Default**") shall constitute a default by Tenant:

- 17.1.1 Failure by Tenant to pay Base Monthly Rent or Additional Rent when due.
- 17.1.2 Failure by Tenant to deliver to Landlord evidence of the existence and amounts of the insurance with endorsements and loss payable clauses as required pursuant to Article 13, if the failure is not cured within ten (10) days after notice has been given to Tenant.
- 17.1.3 Failure by Tenant to perform or comply with any provision of this Lease (other than as set forth in Subsections 17.1.1 or 17.1.2) if the failure is not cured within thirty (30) days after notice has been given to Tenant, or in the event of an emergency ("**Emergency**"), within twenty-four (24) hours after notice has been given to Tenant. As used herein, the term "**Emergency**" shall mean a condition that gives rise to a reasonable basis for Landlord to believe the integrity of the improvements situated on the Premises may be or may imminently be in peril or jeopardy if immediate action is not taken. If, however, the

failure cannot reasonably be cured within the above cure period, Tenant shall not be in default of this Lease if Tenant commences to cure the failure within the cure period and diligently and in good faith continues to cure the failure.

- 17.1.4 The abandonment or vacation of the Premises by Tenant for a period of five (5) days.
- 17.1.5 A default by Tenant under any other lease in which Landlord (or an affiliate of Landlord) is the landlord and Tenant (or an affiliate of Tenant) is the tenant. As used herein, "**affiliate**" means any person or entity which, directly or indirectly, (a) controls, or is controlled by Landlord or Tenant (as the case may be) or (b) is also controlled by the same entity having a controlling interest in Landlord or Tenant (as the case may be).
- 17.1.6 To the extent permitted by law, a general assignment by Tenant or any guarantor of the Lease for the benefit of creditors, or the filing by or against Tenant or any guarantor of any proceeding under any insolvency or bankruptcy law, unless in the case of a proceeding filed against Tenant or any guarantor the same is dismissed within sixty (60) days, or the appointment of a trustee or receiver to take possession of all or substantially all of the assets of Tenant or any guarantor, unless possession is restored to Tenant or such guarantor within (30) days, or any execution or other judicially authorized seizure of all or substantially all of Tenant's assets located upon the Premises or of Tenant's interest in this Lease, unless such seizure is discharged within thirty (30) days.
- 17.1.7 Any notice delivered pursuant to this Section 17.1 shall be in lieu of, and not in addition to, any notice required by law.

17.2 Landlord's Remedies

Landlord shall have any one or more of the following remedies after the occurrence of a default by Tenant. These remedies are not exclusive; they are cumulative in addition to any remedies now or later allowed by law, in equity, or otherwise:

- 17.2.1 Terminate this Lease by giving written notice of termination to Tenant, in which event Tenant immediately shall surrender the Premises to Landlord. Subject to applicable law, if Tenant fails to so surrender the Premises, then Landlord, without prejudice to any other remedy it has for possession of the Premises or arrearages in rent or other damages, may seek to re-enter and take possession of the Premises and expel or remove Tenant and any other person or entity occupying the Premises or any part thereof, without being liable for any damages.
- 17.2.2 No act by Landlord other than giving notice of termination to Tenant shall terminate this Lease. Acts of maintenance, efforts to relet the Premises, or the appointment of a receiver on Landlord's initiative to protect Landlord's interest under this Lease shall not constitute a

termination of this Lease. Notwithstanding anything contained herein to the contrary, if Landlord elects to terminate this Lease or to terminate Tenant's right to possession without terminating the Lease, or if Tenant's right to possession is otherwise terminated by operation of law, then Landlord may, to the extent not prohibited under applicable law, recover as damages from Tenant the following: (i) all Base Monthly Rent and Additional Rent then due under the Lease through the date of termination; (ii) the Base Monthly Rent due for the remainder of the Lease term in excess of the fair market rental value of the Premises for the remainder of the Lease term plus any and all Additional Rent (each discounted by the discount rate of the Federal Reserve Bank of San Francisco plus One Percent (1%)); (iii) the cost of reletting the Premises, including without limitation the anticipated period of vacancy until the Premises can be re-let at its fair market rental value; and (iv) any other costs and expenses that Landlord may reasonably incur in connection with the Event of Default.

17.2.3

Landlord may re-enter and take possession of the Premises without terminating this Lease and without being liable for any damages. Landlord may relet the Premises, or any part of them, to third parties, but has no obligation to do so. Landlord may relet the Premises on whatever terms and conditions Landlord, in its sole discretion, deems advisable. Reletting can be for a period shorter or longer than the remaining term of this Lease. Landlord's action under this Subsection is not considered an acceptance of Tenant's surrender of the Premises unless Landlord so notifies Tenant in writing. Tenant shall be immediately liable to Landlord for all costs Landlord incurs in reletting the Premises, including brokers' commissions, expenses of remodeling the Premises required by the reletting, and like costs. Tenant shall pay to Landlord the rent due under this Lease on the dates the rent is due, less the rent Landlord receives from any reletting.

If Landlord elects to relet the Premises without terminating this Lease, any rent received will be applied to the account of Tenant, not to exceed Tenant's total indebtedness to Landlord; no reletting by Landlord is considered to be for its own account unless Landlord has notified Tenant in writing that the Lease has been terminated. If Landlord elects to relet the Premises, rent that Landlord receives from reletting will be applied to the payment of: (i) first, any indebtedness from Tenant to Landlord other than rent due from Tenant; (ii) second, all costs, including maintenance, incurred by Landlord in reletting; and (iii) third, rent due and unpaid under the Lease. After deducting the payments referred to in this Subsection, any sum remaining from the rent Landlord receives from reletting will be held by Landlord and applied in payment of future rent as rent becomes due under this Lease. If, on the date rent is due under this Lease, the rent received from the reletting is less than the rent due on that date, Tenant will pay to Landlord, in addition to the remaining rent due, all costs, including

maintenance, Landlord incurred in reletting which remain after applying the rent received from the reletting. Tenant shall have no right to or interest in the rent or other consideration received by Landlord from reletting to the extent it exceeds Tenant's total indebtedness to Landlord.

17.2.4 Re-enter the Premises, without terminating this Lease and without being liable for any damages, and do whatever Tenant is obligated to do under the terms of this Lease. The expenses incurred by Landlord in effecting compliance with Tenant's obligations under this Lease immediately shall become due and payable to Landlord as Additional Rent.

17.2.5 In all events, Tenant is liable for all direct damages suffered by Landlord as a result of the occurrence of an Event of Default. If Tenant fails to pay Landlord in a prompt manner for the damages suffered, Landlord may pursue a monetary recovery from Tenant. Included among these damages are all expenses incurred by Landlord in repossessing the Premises (including, but not limited to, increased insurance premiums resulting from Tenant's vacancy), all expenses incurred by Landlord in reletting the Premises (including, but not limited to, those incurred for advertisements, brokerage fees, repairs, remodeling, and replacements), all losses incurred by Landlord as a result of Tenant's Event of Default (including, but not limited to, any unamortized commissions paid in connection with this Lease). In addition, Tenant shall pay all expenses incurred by Landlord (including, without limitation, reasonable attorneys fees) in connection with: (i) the enforcement of Landlord's rights under the Lease in any proceeding whether formal or informal relating to or arising under the Lease, including without limitation, any proceedings in connection with a petition for relief under the Bankruptcy Code filed by or against Tenant and whether or not the matter is settled before a judgment or order is entered; or (ii) any assumption by Tenant or assignment of the Lease to and by any assignee of Tenant whether pursuant to the Bankruptcy Code or otherwise. Notwithstanding anything to the contrary in this Lease, in no event shall Tenant be liable for special, indirect or consequential damages.

17.2.6 Pursuit of any of the foregoing remedies does not constitute an irrevocable election of remedies nor preclude pursuit of any other remedy provided elsewhere in this Lease or by applicable law. Likewise, forbearance by Landlord to enforce one or more of the remedies available to it on an Event of Default does not constitute a waiver of that default or of the right to exercise that remedy later or of any rent, damages, or other amounts due to Landlord hereunder. Nothing herein shall be deemed to preclude Landlord from pursuing non-judgment collection and related activities (including, without limitation, skip-tracing and payment negotiations) to the extent

permitted by applicable law, nor from placing derogatory information in a debtor's credit profile to the extent such information is based upon an Event of Default under the Lease and is otherwise materially accurate.

- 17.2.7 Whether or not Landlord elects to terminate this Lease or Tenant's right to possession of the Premises on account of any default by Tenant, Landlord shall have all rights and remedies at law or in equity, including, but not limited to, the right to re-enter the Premises and, to the maximum extent provided by law, Landlord shall have the right to terminate any and all subleases, licenses, concessions, or other consensual arrangements for possession entered into by Tenant and affecting the Premises or, in Landlord's sole discretion, may succeed to Tenant's interest in such subleases, licenses, concessions, or arrangements. In the event of Landlord's election to succeed to Tenant's interest in any such subleases, licenses, concessions, or arrangements, Tenant shall have no further right to or interest in the rent or other consideration receivable thereunder as of the date of notice by Landlord of such election.

17.3 Late Charge; Default Interest

If Tenant fails to pay when due any payment of rent or other charges which Tenant is obligated to pay to Landlord under this Lease, there shall be a late charge, immediately payable by Tenant as Additional Rent, in the amount of six percent (6%) of each such obligation. Landlord and Tenant agree that this sum is reasonable to compensate Landlord for accounting and administrative expenses incurred by Landlord. In addition to the foregoing, if any payment tendered by Tenant to Landlord is dishonored by the financial institution upon which the payment is drawn (e.g., insufficient funds, uncollected funds, account closed, payment stopped, etc.), Tenant shall pay to Landlord the greater of Twenty Dollars (\$20.00) or the actual service fee charged by Landlord's financial institution in connection with such dishonored payment.

In addition to the late charge, any and all rent or other charges which Tenant is obligated to pay to Landlord under this Lease which are unpaid, shall bear interest from the date said payment was due until paid at the lesser of (i) the prime commercial rate being charged by the Bank of America N.A. in effect on the date due plus two percent (2%) per annum; or (ii) the maximum rate permitted by law, said interest to be payable by Tenant as Additional Rent. If Bank of America N.A. is no longer in existence, then another comparable bank or financial institution shall be substituted by Landlord. Landlord and Tenant agree that this sum is reasonable to compensate Landlord for the loss of the use of funds.

17.4 Right of Landlord to Re-Enter

In the event of any termination of this Lease or of Tenant's possession of the Premises (without termination of the Lease), Landlord shall have the immediate right to enter upon and repossess the Premises, and any personal property of Tenant may be removed from the Premises and discarded and/or stored in any public warehouse at the risk and expense of Tenant.

17.5 Surrender of Premises

No act or thing done by Landlord or any agent or employee of Landlord during the Lease term shall be deemed to constitute an acceptance by Landlord or a surrender of Premises unless such intent is specifically acknowledged in a writing signed by Landlord. The delivery of keys to the Premises to Landlord or any agent or employee of Landlord shall not constitute a surrender of the Premises or effect a termination of this Lease, whether or not the keys are thereafter retained by Landlord and, notwithstanding such delivery, Tenant shall be entitled to the return of such keys at any reasonable time upon request until this Lease shall have been terminated properly. The voluntary or other surrender of this Lease by Tenant, whether accepted by Landlord or not, or a mutual termination hereof, shall not work a merger, and at the option of Landlord shall operate as an assignment to Landlord of all subleases or subtenancies affecting the Premises.

17.6 Default by Landlord

Landlord shall be in default if Landlord fails to perform any provision of this Lease required of it and the failure is not cured within thirty (30) days after notice has been given to Landlord. If, however, the failure cannot reasonably be cured within the cure period, Landlord shall not be in default of this Lease if Landlord commences to cure the failure within the cure period and diligently and in good faith continues to cure the failure. Notices given under this Section 17.6 shall specify the alleged breach and the applicable Lease provisions. If Landlord shall at any time default beyond the applicable notice and cure period, Tenant shall have the right to cure such default on Landlord's behalf. Any sums expended by Tenant in doing so, and all reasonably necessary incidental costs and expenses incurred in connection therewith, shall be payable by Landlord to Tenant within thirty (30) days following demand therefor by Tenant, provided, however, that Tenant shall not be entitled to any deduction or offset against any rent otherwise payable to Landlord under this Lease, and in no event may Tenant terminate this Lease in the event of a default by Landlord.

18. RIGHT OF ENTRY

Landlord and Landlord's authorized representatives shall have the right (but not the obligation) after written notice to Tenant (except in the event of an Emergency, when written notice is not required and notice may be given telephonically to Tenant by Landlord), to enter upon the Premises at all reasonable hours for the purpose of inspecting the Premises, making repairs, additions, or Alterations in or upon the Premises, addressing Events of Default concerning Emergencies, and for the purpose of exhibiting the Premises to prospective tenants, purchasers, or others. Provided Tenant is not in default beyond any applicable cure period, Landlord shall not exhibit any "for sale" or "for lease" signs during the term of the Lease.

19. WAIVER OF BREACH

No waiver by Landlord of any breach of any one or more of the terms, covenants, conditions, or agreements of this Lease shall be deemed to imply or constitute a waiver of any succeeding or other breach. Failure of Landlord to insist upon the strict performance of any of the terms, conditions, covenants, and agreements of this Lease shall not constitute or be considered as a waiver or relinquishment of Landlord's rights to subsequently enforce any default, term, condition, covenant, or agreement, which shall all continue in full force and effect.

20. NOTICES

All notices, requests, or demands herein provided to be given or made, or which may be given or made by either party to the other (excluding Emergencies), shall be given or made only in writing in the English language and shall be deemed to have been duly given:

- (i) upon delivery, or if delivery is rejected when delivery was attempted, of U.S. Certified Mail, properly addressed, postage prepaid with return receipt requested; or
- (ii) upon delivery, or if delivery is rejected when delivery was attempted, when sent via overnight or express mail courier, properly addressed and postage prepaid; or
- (iii) when delivered personally at the address set forth below, or to any agent of the party to whom notice is being given, or if delivery is rejected when delivery was attempted; or
- (iv) via facsimile transmission on a machine that prints the date and time of transmission on the notice or
- (v) by e-mail, and if so sent, (a) the subject line of the e-mail shall state "URGENT: NOTICE TO [LANDLORD] [TENANT]" (or substantially similar thereto) and (b) followed within one (1) business day by a copy sent by a method prescribed in (i), (ii) or (iv) above.

Notwithstanding the above-prescribed methods of delivery, actual receipt of written notice by a party designated below shall constitute notice given in accordance with this Lease on the date received, unless deemed earlier given pursuant to the foregoing methods of delivery. The proper address, facsimile number and e-mail to which notices, requests or demands may be given or made by either party shall be as set forth below, or to such other address or to such other person as any party shall designate in writing. Such address, facsimile number or e-mail may be changed by written notice given to the other party in accordance with this Article.

If to Landlord:

O ICE, LLC
 c/o Realty Income Corporation
 Attn: Legal Department
 11995 El Camino Real
 San Diego, CA 92130
 Phone Number: (858) 284-5000
 Fax Number: (858) 481-4862
 E-mail Address: notices@realtyincome.com

If to Tenant:

DA VINCI BISTRO, LLC
 Attn: Wioletta Zywna

130 Warren Street
Brookline, MA 02445
Phone number: (207) 329-4781 (cell)
Phone number: (617) 350-0007 (work)
Fax number: [REDACTED]
E-mail Address: wioletta@davinciboston.com

21. RELATIONSHIP OF THE PARTIES

This Lease shall not be deemed or construed by the parties, nor by any third party, as creating the relationship of (i) principal and agent, (ii) partnership, or (iii) joint venture between the parties. Neither the method of computation of rent nor any acts of the parties are other than in the relationship of Landlord and Tenant.

22. SUBORDINATION, ATTORNMEN T AND ESTOPPEL

22.1 Subordination and Non-Disturbance

Subject to the provisions of this Section, this Lease and the leasehold estate created hereby shall be, at the option and upon written declaration of Landlord, subject, subordinate, and inferior to the lien and estate of any liens, trust deeds, and encumbrances ("**Mortgages**"), and all renewals, extensions, or replacements thereof, now or hereafter imposed by Landlord upon the Premises; provided, however, that this Lease shall not be subordinate to any Mortgage arising after the date of this Lease, or any renewal, extension, or replacement thereof, unless and until Landlord provides Tenant with a subordination, non-disturbance and attornment agreement ("**Non-Disturbance Agreement**"), substantially in the form of Exhibit "D," attached hereto and incorporated hereby, in recordable form, which Non-Disturbance Agreement also shall include such commercially reasonable modifications and additional provisions as are customarily requested by secured lenders with liens encumbering real property similar to the Premises, including, without limitation, Tenant's agreement to attorn as set forth in Section 22.2 below. Tenant shall, promptly following a request by Landlord and after receipt of the Non-Disturbance Agreement, execute and acknowledge any subordination agreement or other documents required to establish of record the priority of any such encumbrance over this Lease, so long as such agreement does not otherwise increase Tenant's obligations or diminish Tenant's rights hereunder.

22.2 Attornment

In the event of foreclosure of any Mortgage, whether superior or subordinate to this Lease, then (i) this Lease shall continue in force; (ii) Tenant's quiet possession shall not be disturbed if Tenant is not in default hereunder; (iii) Tenant shall attorn to and recognize the mortgagee or purchaser at foreclosure sale ("**Successor Landlord**") as Tenant's landlord for the remaining term of this Lease; and (iv) the Successor Landlord shall not be bound by (a) any payment of rent for more than one month in advance; (b) any amendment, modification, or ending of this Lease without the Successor Landlord's consent after the Successor Landlord's name is given to Tenant, unless the amendment, modification, or ending is specifically authorized by the original Lease and does not require Landlord's prior agreement or consent; and (c) any liability for any act or omission of a prior Landlord. At the request of the Successor

Landlord, Tenant shall execute a new lease for the Premises, setting forth all of the provisions of this Lease except that the term of the new lease shall be for the balance of the term of this Lease.

22.3 Estoppel Certificate

Tenant shall execute and deliver to Landlord, within twenty (20) days after receipt of Landlord's request, an estoppel certificate or other statement to be furnished to any prospective purchaser of or any lender against the Premises ("**Estoppel Certificate**"), substantially in the form of Exhibit "E," attached hereto and incorporated hereby, which Estoppel Certificate also shall include such commercially reasonable modifications and additional provisions as are customarily requested by purchasers or lenders, including, without limitation, any or all of the following matters, to the extent each may be true: that the Lease is in effect and not subject to any rental offsets, claims, or defenses to its enforcement; the commencement and expiration dates of the term; that Tenant is paying rent on a current basis; that any improvements required to be furnished under the Lease have been completed in all respects; that the Lease constitutes the entire agreement between Tenant and Landlord relating to the Premises; that Tenant has accepted the Premises and is in possession thereof; that the Lease has not been modified, altered, or amended except in specified respects by specified instruments; that Tenant has no notice of any prior assignment, hypothecation, or pledge of rents or the Lease. Tenant shall also, upon request of Landlord, certify and agree for the benefit of any lender against the Premises or the building ("**Lender**") that Tenant will not look to such Lender: as being liable for any act or omission of Landlord; as being obligated to cure any defaults of Landlord under the Lease which occurred prior to the time Lender, its successors or assigns, acquired Landlord's interest in the Premises by foreclosure or otherwise; as being bound by any payment of rent or Additional Rent by Tenant to Landlord for more than one (1) month in advance; or as being bound by Landlord to any amendment or modification of the Lease without Lender's written consent. Failure to deliver the documents required under this Article 22 in the time period required shall constitute an Event of Default without the need for any notice or cure period.

22.4 Leasehold Mortgage

Tenant is hereby given the right by Landlord to mortgage its interest in this Lease under one or more leasehold mortgages without obtaining the consent of Landlord upon the condition that all rights acquired under such mortgages shall be subject to each and all of the terms, covenants, conditions, and restrictions set forth in this Lease, and to all rights and interests of Landlord herein, none of which terms, covenants, conditions, or restrictions is or shall be waived by Landlord by reason of the right given so to mortgage such interest in this Lease, except as expressly provided herein. If Tenant shall mortgage this leasehold, and if Tenant or the holder of such mortgage shall, within thirty (30) days of execution send to Landlord a true copy thereof together with written notice specifying the name and address of the mortgagee and the pertinent recording date with respect to such mortgage, Landlord agrees that so long as any such leasehold mortgage shall remain unsatisfied of record or until written notice of satisfaction is given by the holder to Landlord, the following provisions shall apply:

- 22.4.1 There shall be no cancellation, surrender or material modification of this Lease by joint action of Landlord and Tenant without the prior consent in writing of the leasehold mortgagee (which consent shall not be unreasonably withheld, conditioned or delayed); provided however, under no circumstances shall failure to obtain such prior written

consent constitute a breach of, or default under, the Lease or related or supplemental agreement thereto by Landlord; and further provided that this subsection shall not impair Landlord's rights under subsection 22.4.3 below.

- 22.4.2 Landlord shall, upon serving Tenant with any notice of default, simultaneously mail a copy of such notice to the holder of such mortgage; provided however, under no circumstances shall Landlord's failure to mail such notice constitute a breach of, or default under, the Lease, nor shall Tenant or the leasehold mortgagee have any recourse whatsoever against Landlord for such failure to give notice. The leasehold mortgagee shall thereupon have the same period to remedy or cause to be remedied the defaults complained of, and Landlord shall accept such performance by or at the instigation of such leasehold mortgagee as if the same had been done by Tenant.
- 22.4.3 Anything herein contained notwithstanding, while such leasehold mortgage remains unsatisfied of record, or until written notice of satisfaction is given by the holder of such mortgage to Landlord, if any default shall occur which, pursuant to any provision of this Lease, entitles Landlord to terminate this Lease, and if before the expiration of ten (10) days from the date of service of notice of termination upon such leasehold mortgagee, such leasehold mortgagee shall have notified Landlord of its desire to nullify such notice and shall have paid to Landlord all rent and other payments herein provided for, and then in default, and shall have complied with all of the other requirements of this Lease or, if immediate compliance is impossible, shall have commenced the work of complying with all of the other requirements of this Lease, if any are then in default, and shall prosecute the same to completion with reasonable diligence, then in such event Landlord shall not be entitled to terminate this Lease and any notice of termination theretofore given shall be void and of no effect.
- 22.4.4 Landlord agrees that the name of the leasehold mortgagee may be added to the "Loss Payable Endorsement" of any and all insurance policies required to be carried by Tenant hereunder on condition that the insurance proceeds are to be applied in the manner specified in this Lease, and that the leasehold mortgage document shall so provide.
- 22.4.5 The proceeds from any insurance policies or awards arising from a condemnation shall be distributed pursuant to the provisions of this Lease, but the leasehold mortgagee may reserve rights to apply to the leasehold mortgage debt all, or any part, of Tenant's share of such proceeds pursuant to such mortgage to the extent same shall be excess over and above what is required to carry out the covenants and requirements of Tenant pursuant to Articles 13, 14 and 15 hereof.
- 22.4.6 The leasehold mortgagee shall be given notice of any adjudicative proceedings by the parties hereto, and shall have the right to intervene

therein and be made party to such proceedings, and the parties hereto do hereby consent to such intervention, provided however, that under no circumstances shall failure to give such notice constitute a breach of, or default under, the Lease, nor shall Tenant or the leasehold mortgagee have any recourse whatsoever against Landlord for such failure to give such notice. In the event that the leasehold mortgagee shall not elect to intervene or become a party to such proceedings, the leasehold mortgagee shall be entitled to receive notice of, and a copy of, any award or decision made in said adjudicative proceedings.

- 22.4.7 Any and all assignments of the Lease shall be consistent with the provisions of Article 16.
- 22.4.8 Landlord shall, upon request, execute, acknowledge and deliver to each leasehold mortgagee, an agreement prepared at the sole cost and expense of Tenant, in form satisfactory to Landlord and such leasehold mortgagee, between Landlord, Tenant and leasehold mortgagee, agreeing to all of the provisions of this Section. To the extent any conflicts exist between the terms of the leasehold mortgage, the terms of the loan agreement, or the terms of this Lease, the terms of this Lease shall govern. Landlord's consent to the execution and recordation of a leasehold mortgage by Tenant in no way constitutes approval of Landlord of any of the provisions of the leasehold mortgage. The term "**mortgage**," whenever used herein, shall include whatever security instruments are used in the locale of the Premises, such as, without limitation, deeds to secure debt, deeds of trust and conditional deeds, as well as financing statements, security agreements and other documentation required pursuant to the Uniform Commercial Code.
- 22.4.9 Any and all leasehold mortgage(s) shall at all times be subject, subordinate, and inferior to the lien and estate of any liens, trust deeds, mortgages or encumbrances, and all renewals, extensions or replacements thereof, now or hereafter imposed by Landlord upon the Premises.

23. TENANT'S FINANCIAL STATEMENTS

During the term of the Lease, Tenant shall provide Landlord with current financial statements as follows:

- (i) Within sixty (60) days of the end of each fiscal year, Tenant's detailed profit and loss statement for the retail sales operations located upon the Premises; and
- (ii) Within thirty (30) days of filing same with the Internal Revenue Service, a copy of the annual federal tax returns filed with respect to Tenant, any business entity operating upon the Premises (if other than Tenant) and any and all guarantors of the Lease.

In the event the Premises is subleased during the term, the obligations of Tenant under this Article 23 shall become the obligation of the subtenant, and Tenant covenants and agrees to require its subtenant (under the Sublease) to comply with the provisions hereof.

Landlord acknowledges that the financial information ("**Information**") provided by Tenant pursuant to this Article 23 is for Landlord's informational purposes only. Subject to the terms and conditions contained herein, Landlord shall hold as confidential all Information and shall not release any Information to third parties without Tenant's prior written consent, except (1) for Landlord's directors, officers, employees, affiliates, attorneys, accountants, auditors, lenders, financial or legal consultants or advisors, others providing professional services, investors or prospective purchasers of Landlord or the Premises and (2) as may be required to comply with regulatory requirements (e.g., filings with the Securities and Exchange Commission), or pursuant to a court order requiring such release or as otherwise may be required by law or legal process.

24. ATTORNEYS' FEES

24.1 Recovery of Attorneys' Fees and Costs of Suit

Tenant shall reimburse Landlord, upon demand, for any costs or expenses incurred by Landlord in connection with any breach or default under this Lease, whether or not suit is commenced or judgment entered. Such costs shall include legal fees and costs incurred for the negotiation of a settlement, enforcement of rights, or otherwise. Furthermore, if any action for breach of or to enforce the provisions of this Lease is commenced, the court in such action shall award to the party in whose favor a judgment is entered, a reasonable sum as attorneys' fees and costs. Such attorneys' fees and costs shall be paid by the losing party in such action.

24.2 Party to Litigation

Tenant shall indemnify Landlord against and hold Landlord harmless from all costs, expenses, demands, and liability incurred by Landlord if Landlord becomes or is made a party to any claim or action (i) instituted by Tenant, or by any third party against Tenant, or by or against any person holding any interest under or using the Premises by license of or agreement with Tenant; (ii) for foreclosure of any lien for labor or material furnished to or for Tenant or such other person; (iii) otherwise arising out of or resulting from any action or transaction of Tenant or such other person; or (iv) necessary to protect Landlord's interest under this Lease in a bankruptcy proceeding, or other proceeding under Title 11 of the United States Code, as amended. Tenant shall defend Landlord against any such claim or action at Tenant's expense with counsel reasonably acceptable to Landlord or, at Landlord's election, Tenant shall reimburse Landlord for any legal fees or costs incurred by Landlord in any such claim or action.

25. CONSENT

Tenant shall pay Landlord's reasonable attorneys' fees and other costs incurred in connection with Tenant's request for Landlord's consent under Article 16, "Assignment and Subletting," or in connection with any other act which Tenant proposes to do and which requires Landlord's consent (whether or not consent is ultimately given), which fees and costs shall not exceed One Thousand Five Hundred Dollars (\$1,500) for each such request. Landlord shall have no liability for damages resulting from, nor may Tenant terminate this Lease as a result of,

Landlord's failure to give any consent, approval or instruction reserved to Landlord. Tenant's sole remedy in any such event shall be an action for injunctive relief.

26. AUTHORITY TO MAKE LEASE; COVENANT OF QUIET ENJOYMENT

26.1 Full Power and Authority to Enter Lease

The parties covenant and warrant that each has full power and authority to enter into this Lease. If Tenant is a corporation, trust or general or limited partnership, all individuals executing this Lease on behalf of that entity represent that they are authorized to execute and deliver this Lease on behalf of that entity.

26.2 Quiet Enjoyment

Landlord covenants and warrants that Tenant shall have and enjoy full, quiet, and peaceful possession of the Premises and all rights and privileges incidental thereto during the term, as against all persons claiming by, through, or under Landlord, subject to the provisions of this Lease and any title exceptions or defects in existence on the Commencement Date.

26.3 Encumbrances, Covenants and Restrictions

Tenant leases the Premises subject to (i) all encumbrances, covenants, conditions, restrictions, easements, rights of way, and all other matters of record now or in the future affecting the Premises; (ii) all matters known to Tenant as of the Commencement Date and (iii) any state of facts which a current survey or physical inspection of the Premises might disclose. Tenant shall not violate, permit a violation, or cause Landlord to violate any zoning ordinance or regulation, recorded covenants or restrictions affecting the Premises. Tenant shall defend, indemnify, and hold harmless Landlord from any costs or expenses incurred from such a violation.

Tenant hereby acknowledges and agrees that Landlord reserves the right, in its reasonable business judgment, at any time during the term of this Lease, to enter into new (or amend or supplement existing) agreements encumbering the Premises that have the effect of benefiting and/or burdening the Premises; provided, however, no such agreements shall have the effect of unreasonably interfering with Tenant's use and enjoyment of the Premises.

27. HAZARDOUS MATERIAL

27.1 Environmental Compliance

Tenant shall not cause or permit any Hazardous Material to be brought upon, or used in or about the Premises by Tenant, its agents, employees, contractors, or invitees, without the prior written consent of Landlord (which Landlord shall not unreasonably withhold as long as Tenant demonstrates to Landlord's reasonable satisfaction that such Hazardous Material is necessary or useful to Tenant's business and will be used, kept, and stored in a manner that complies with all Environmental Laws relating to such Hazardous Material). If Tenant breaches the obligations stated in the preceding sentence, if the presence of Hazardous Material on the Premises caused or permitted by Tenant results in contamination of the Premises, or if contamination of the Premises by Hazardous Material otherwise occurs and Landlord is not responsible for the contamination, then Tenant shall indemnify, defend, and hold Landlord harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or

losses (including, without limitation, diminution in value of the Premises, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises, damages arising from any adverse impact on marketing of space of the Premises, and sums paid in settlement of claims, attorneys' fees, consultation fees, and expert fees) which arise during or after the term of the Lease as a result of such contamination. This indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with any investigation or site conditions or any cleanup, remedial, removal, or restoration work required by any federal, state, or local governmental agency or political subdivision because of Hazardous Material present in or emanating from the soil or ground water on or under the Premises. Without limiting the foregoing, if the presence of any Hazardous Material on the Premises caused or permitted by Tenant results in any contamination of the Premises, Tenant shall promptly take all actions at its sole expense as are recommended by environmental engineers hired by Tenant and are necessary to return the Premises to the condition existing prior to the introduction of any such Hazardous Material to the Premises; provided that Landlord's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Premises.

27.2 Survival

Provisions of this Article 27 shall survive expiration or termination of tenancy.

28. GENERAL PROVISIONS

28.1 Recitals

The Recitals set forth on Page 1 above are incorporated herein by this reference.

28.2 Gender; Number

The use of (i) the neuter gender includes the masculine and feminine and (ii) the singular number includes the plural, whenever the context requires.

28.3 Captions

Captions in this Lease are inserted for the convenience of reference only and do not define, describe, or limit the scope or the intent of this Lease or any of its terms.

28.4 Exhibits

All attached exhibits are a part of this Lease and are incorporated in full by this reference. Except as specifically provided herein, if any provision contained in any exhibit hereto is inconsistent or in conflict with any provisions of this Lease, the provisions of this Lease shall supersede the provisions of such exhibit and shall be paramount and controlling.

28.5 Entire Agreement

Other than that certain Retail Use Waiver and Restrictive Covenant dated as of May 13, 2016, by and between Landlord, Tenant, Ground Lessor and Roche Bros. Supermarkets Co., this Lease contains the entire agreement between the parties relating to the transactions contemplated hereby and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Lease.

28.6 Drafting

This Lease shall not be construed more strictly against one party than the other because it may have been drafted by one of the parties or its counsel, each having contributed substantially and materially to the negotiation and drafting hereof.

28.7 Modification

No modification, waiver, amendment, discharge, or change of this Lease shall be valid unless it is in writing and signed by the party against which the enforcement of the modification, waiver, amendment, discharge, or change is or may be sought.

28.8 Joint and Several Liability

If any party consists of more than one person or entity, the liability of each such person or entity signing this Lease shall be joint and several.

28.9 Governing Law

This Lease shall be construed and enforced in accordance with the laws of the state in which the Premises are located. Notwithstanding the foregoing, Tenant warrants and represents that the terms of this Lease are fully enforceable in the locality in which the Premises is located. In the event any provision contained in this Lease is inconsistent or in conflict with local law, custom, or practice, the provisions of this Lease shall supersede and shall be paramount and controlling.

28.10 Attorneys' Fees

With respect to Article 24 and any other provision in this Lease providing for payment or indemnification of attorneys' fees, such fees shall be deemed to include reasonable fees incurred through any applicable appeal process, and shall include fees attributable to legal services provided by any in-house counsel and staff to the prevailing or indemnified party. For purposes hereof, the services of in-house counsel and their staff shall be valued at rates for independent counsel prevailing in the metropolitan area in which such counsel and staff practice.

28.11 Time of Essence

Time is of the essence of every provision of this Lease.

28.12 Severability

In the event any term, covenant, condition, or provision of this Lease is held to be invalid, void, or otherwise unenforceable by any court of competent jurisdiction, the fact that such term, covenant, condition, or provision is invalid, void, or otherwise unenforceable shall in no way affect the validity or enforceability of any other term, covenant, condition, or provision of this Lease.

28.13 Successors and Assigns

Except as otherwise provided herein, all terms of this Lease shall be binding upon, inure to the benefit of, and be enforceable by the parties and their respective legal representatives, successors, and assigns.

28.14 Independent Covenants

This Lease shall be construed as though the covenants herein between Landlord and Tenant are independent and not dependent, and Tenant hereby expressly waives the benefit of any statute to the contrary and agrees that if Landlord fails to perform its obligations set forth herein, Tenant shall not be entitled to make any repairs or perform any acts hereunder at Landlord's expense or to any offset of the rent or other amounts owing hereunder against Landlord; provided, however, the foregoing shall in no way impair the right of Tenant to commence a separate action against Landlord for any violation by Landlord of the provisions hereof so long as notice is first given to Landlord and any holder of a mortgage or deed of trust covering the Premises (of whose address Tenant has theretofore been notified) and an opportunity is granted to Landlord and such holder to correct such violation as provided above.

28.15 Information Provided

Tenant warrants and represents that all information Tenant has provided to Landlord is accurate and correct and Tenant acknowledges that Landlord has relied upon such information in entering into this Lease.

28.16 Limitation of Landlord's Liability

Notwithstanding anything contained in this Lease to be contrary, Landlord shall not incur any liability beyond Landlord's interest in the Premises upon a breach of this Lease, except to the extent any such breach stemmed from a breach by Landlord under the Ground Lease (as tenant thereunder) and resulted in termination of the Ground Lease, and Tenant shall look exclusively to such interest in the Premises for the payment and discharge of any obligations imposed upon Landlord under this Lease.

28.17 Waiver of Trial by Jury

Landlord and Tenant do hereby waive trial by jury in any action, proceeding or counterclaim brought by either party against the other, upon any matters whatsoever arising out of or in any way connected with this Lease, Tenant's use or occupancy of the Premises and/or any claim of injury or damage. It further is agreed that in the event Landlord commences any summary proceeding for non-payment of rent or Additional Rent, Tenant will not interpose any counterclaim of whatever nature or description in any such proceeding.

28.18 OFAC Compliance

- 28.18.1 Tenant represents and warrants that (a) Tenant and each person or entity owning an interest in Tenant is (i) not currently identified on the Specially Designated Nationals and Blocked Persons Listed 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"), and (ii) not 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, (b) none of the funds or other assets of Tenant constitute property of, or are beneficially owned, directly or indirectly, by any Embargoed Person (as hereinafter defined), (c) no Embargoed Person

has any interest of any nature whatsoever in Tenant (whether directly or indirectly), (d) none of the funds of Tenant have been derived from any unlawful activity with the result that the investment in Tenant is prohibited by law or that the Lease is in violation of law, and (e) Tenant has implemented procedures, and will consistently apply those procedures, to ensure the foregoing representations and warranties remain true and correct at all times. 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.A. § 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 Tenant is prohibited by law or Tenant is in violation of law.

28.18.2 Tenant covenants and agrees (a) to comply with all requirements of law relating to money laundering, anti-terrorism, trade embargos economic sanctions, now or hereafter in effect, (b) to immediately notify Landlord in writing if any of the representations, warranties or covenants set forth in this Article are no longer true or have been breached or if Tenant has a reasonable basis to believe that they may no longer be true or have been breached, (c) not to 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 Landlord under the Lease and (d) at the request of Landlord, to provide such information as may be requested by Landlord to determine Tenant's compliance with the terms hereof.

28.18.3 Tenant hereby acknowledges and agrees that Tenant's inclusion on the List at any time prior to the expiration or earlier termination of the Lease shall constitute a material Event of Default under the Lease, and the Lease shall automatically terminate. Notwithstanding anything to the contrary, Tenant shall not permit the Premises or any portion thereof to be used or occupied by any person or entity on the List or by any Embargoed Person (on a permanent, temporary or transient basis), and any such use or occupancy of the Premises by any such person or entity shall constitute a material Event of Default under the Lease.

28.19 No Lease Until Accepted

Landlord's delivery of unexecuted copies or drafts of this Lease is solely for the purpose of review by the party to whom delivered and is in no way to be construed as an offer by Landlord nor in any way implies that Landlord is under any obligation to lease the Premises. When this Lease has been executed by both Landlord and Tenant, it shall constitute a binding agreement to lease the Premises upon the terms and conditions provided herein and Landlord and Tenant agree to execute all instruments and documents and take all actions as may be reasonably necessary or required in order to consummate the lease of the Premises as contemplated herein.

28.20 Four Party Agreement.

This Lease is contingent on the execution of that certain Retail Use Waiver and Restrictive Covenant dated as of ~~May 13~~, 2016, by and between Landlord, Tenant, Ground Lessor and Roche Bros. Supermarkets Co. ("Four Party Agreement"). In the event the Four Party Agreement is not fully executed by the Commencement Date, Landlord hereby acknowledges and agrees to diligently pursue obtaining the full execution of the Four Party Agreement.

THE REMAINDER OF THIS PAGE WAS LEFT BLANK INTENTIONALLY.

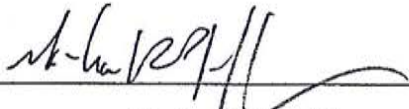
28.20 Counterparts

This Lease may be executed in any number of counterparts, each of which shall be deemed an original. The counterparts shall together constitute but one agreement. Any signature on a copy of this Lease or any document necessary or convenient thereto sent by electronic transmission or facsimile shall be binding upon transmission and the electronic or facsimile copy may be utilized for the purposes of this Lease.

LANDLORD:

O ICE, LLC,
a Delaware limited liability company

By: REALTY INCOME CORPORATION,
a Maryland corporation,
its sole and managing member

By: 

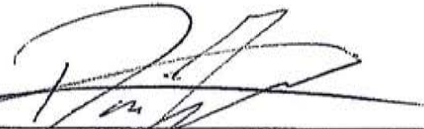
Name: Michael R. Pfeiffer
Executive Vice President

Title: General Counsel

Date: 5/13/2016

TENANT:

DA VINCI BISTRO, LLC,
a Massachusetts limited liability company

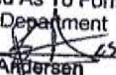
By: 

Name: Dariusz Zywnia

Title: Manager

Date: 05/09/16

**NULL AND VOID AT LANDLORD'S OPTION
IF NOT FULLY EXECUTED BY TENANT
AND DELIVERED TO LANDLORD ON OR
BEFORE MAY 9, 2016.**

Approved As To Form
Legal Department

W. Andersen

**Sudbury Building
Department**

Memo

To: Patty Golden
From: Mark Herweck, Inspector of Buildings
Date: 5/8/2017
Re: Da Vinci Bistro, 457 Boston Post Road

Hi Patty,

Please forward my concerns and comments regarding Da Vinci Bistro

- Side door is a required means of egress. (Need unobstructed clear exit. – Not shown on plans.)
- Patio must be handicap accessible. (Need handicap sill, maneuvering space and accessible table.)
- Fence with outswing gate. – View unobstructed metal picket style 4' in height.
- Lighting and noise.

Thank you,

Mark H.

Attachment4.b: Da Vinci_dept_feedback (2310 : Da Vinci Bistro Alteration of Premises)

Golden, Patricia

From: Whalen, John
Sent: Thursday, May 04, 2017 8:50 AM
To: Golden, Patricia
Cc: Miles, William
Subject: RE: Da Vinci Bistro - Alteration of Premises - for 5/23 BOS agenda

Hello Patty,

The Fire Department has no issue with this application for the use of the additional patio space.

Thank you

John M. Whalen
 Assistant Fire Chief
 Sudbury Fire Dept.
 978-440-5312

From: Golden, Patricia
Sent: Wednesday, May 03, 2017 12:11 PM
To: Miles, William <MilesW@sudbury.ma.us>; Whalen, John <WhalenJ@sudbury.ma.us>; Murphy, Bill <MurphyB@sudbury.ma.us>; Herweck, Mark <HerweckM@sudbury.ma.us>; Nix, Scott <NixS@sudbury.ma.us>
Cc: Hobin, Carol <HobinC@sudbury.ma.us>
Subject: Da Vinci Bistro - Alteration of Premises - for 5/23 BOS agenda

Good morning!

Please see the attached application for an alteration of premises at Da Vinci Bistro (former Friendly's location) on Route 20.

This is not for additional seating. The owner is requesting to serve alcoholic beverages on an outside deck to be attached to the premises (rented property).

This will be on the Selectmen's May 23rd agenda. If you would please respond no later than Thursday, May 11 with your feedback, it would be appreciated.

Thank you!

Patty Golden
 Senior Administrative Assistant to the Town Manager
 Town of Sudbury
 278 Old Sudbury Road
 Sudbury, MA 01776
 Ph: 978-639-3382
 Fax: 978-443-0756
www.sudbury.ma.us

When writing or responding, please be aware the Secretary of State has determined that e-mail is a public record and thus not confidential

Attachment4.b: Da Vinci_bistro_feedback (2310 : Da Vinci Bistro Alteration of Premises)

Golden, Patricia

From: Nix, Scott
Sent: Thursday, May 04, 2017 2:36 PM
To: Golden, Patricia
Subject: RE: Da Vinci Bistro - Alteration of Premises - for 5/23 BOS agenda

Patty,

We do not have an issue with the request as long as the Selectmen approve.

Respectfully,

Scott Nix
Chief of Police
 Sudbury Police Department
 75 Hudson Road
 Sudbury, MA 01776
 (978) 443-1042
nixs@sudbury.ma.us

From: Golden, Patricia
Sent: Wednesday, May 3, 2017 12:11 PM
To: Miles, William <MilesW@sudbury.ma.us>; Whalen, John <WhalenJ@sudbury.ma.us>; Murphy, Bill <MurphyB@sudbury.ma.us>; Herweck, Mark <HerweckM@sudbury.ma.us>; Nix, Scott <NixS@sudbury.ma.us>
Cc: Hobin, Carol <HobinC@sudbury.ma.us>
Subject: Da Vinci Bistro - Alteration of Premises - for 5/23 BOS agenda

Good morning!

Please see the attached application for an alteration of premises at Da Vinci Bistro (former Friendly's location) on Route 20.

This is not for additional seating. The owner is requesting to serve alcoholic beverages on an outside deck to be attached to the premises (rented property).

This will be on the Selectmen's May 23rd agenda. If you would please respond no later than Thursday, May 11 with your feedback, it would be appreciated.

Thank you!

Patty Golden
 Senior Administrative Assistant to the Town Manager
 Town of Sudbury
 278 Old Sudbury Road
 Sudbury, MA 01776
 Ph: 978-639-3382
 Fax: 978-443-0756
www.sudbury.ma.us

When writing or responding, please be aware the Secretary of State has determined that e-mail is a public record and thus not confidential

Attachment4.b: Da Vinci_dept_feedback (2310 : Da Vinci Bistro Alteration of Premises)

Golden, Patricia

From: Murphy, Bill
Sent: Friday, May 19, 2017 9:52 AM
To: Golden, Patricia
Subject: RE: Your feedback on several items for BOS agenda (deadline this am!)

With regard to the pending applications:

1. Da Vinci Bistro- The Board of Health requested a floor plan from the applicant showing a seating plan for not more than 70 seats, including the patio. If the seating plan indicates 70 seats, the Board of Health would not have any issues with application.
2. River Stewardship Council- No issues.
3. Wounded Warriors- No issues.

William C. Murphy, MS,RS,CHO

Director of Public Health
Sudbury Health Department
978-440-5479
murphyb@sudbury.ma.us



When writing or responding, please be aware the Secretary of State has determined that e-mail is a public record and thus not confidential.

Attachment4.b: Da Vinci_dept_feedback (2310 : Da Vinci Bistro Alteration of Premises)



SUDBURY BOARD OF SELECTMEN

Tuesday, May 23, 2017

TIMED ITEM**5: Common Vic license - Whole Foods**REQUESTOR SECTION

Date of request:

Requestor: Whole Foods

Formal Title: As the Licensing Authority for the Town of Sudbury, vote whether to approve a new Common Victualler License for Whole Foods Market, 536 Boston Post Road, as requested in an application dated April 13, 2017, subject to conditions put forth by the Fire Department and Building Department. In attendance will be: John Forziati, Store Team Leader, Whole Foods Market; R. Jason Boutwell, Associate Coordinator Store Decor and Design, Whole Foods Market; Steve Ouellette, Senior Architectural Designer, Jacobs Engineering.

Recommendations/Suggested Motion/Vote: As the Licensing Authority for the Town of Sudbury, vote whether to approve a new Common Victualler License for Whole Foods Market, 536 Boston Post Road, as requested in an application dated April 13, 2017, subject to conditions put forth by the Fire Department and Building Department. In attendance will be: [John Forziati, Store Team Leader, Whole Foods Market](#);

[R. Jason Boutwell, Associate Coordinator Store Decor and Design, Whole Foods Market](#);
[Steve Ouellette, Senior Architectural Designer, Jacobs Engineering](#).

Background Information:
attached application and department feedback

Financial impact expected:

Approximate agenda time requested: 10 minutes

Representative(s) expected to attend meeting:

Review:

Patty Golden	Pending
Melissa Murphy-Rodrigues	Pending
Barbara Saint Andre	Pending
Susan N. Iuliano	Pending
Board of Selectmen	Pending

05/23/2017 6:45 PM



550 BOWIE STREET, AUSTIN, TEXAS 78703
WWW.WHOLEFOODSMARKET.COM
WHOLE FOODS. WHOLE PEOPLE. WHOLE PLANET.

April 13, 2017

Town of Sudbury
Office of the Selectmen
278 Old Sudbury Rd.
Sudbury, MA 01776

RE: Common Victualler Application for Whole Foods Market Group, Inc.

To whom it may concern:

Please find enclosed a Common Victualler application for the Whole Foods Market located at 536 Boston Post Rd., Sudbury, MA 01776. Whole Foods Market, the world's leader in natural and organic foods, operates 462 grocery stores with prepared food venues and full service restaurants across North America and the United Kingdom and maintains the strictest quality standards in the industry.

We look forward to working with your office to complete the application process for this license. Please feel free to contact me with any questions or concerns at jacob.creswell@wholefoods.com or 512-542-3743.

Sincerely,

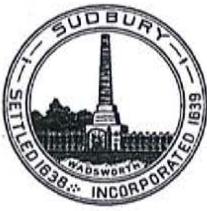
A handwritten signature in black ink, appearing to read "Jacob Creswell".

Jacob Creswell
Licensing Administrator

2017 APR 14 A 10:23

RECEIVED
TOWN OF SUDBURY
MA

Enclosure



Town of Sudbury

Office of Selectmen
www.sudbury.ma.us

Flynn Building
278 Old Sudbury Rd
Sudbury, MA 01776-1843
978-639-3381
Fax: 978-443-0756
Email: selectmen@sudbury.ma.us

APPLICATION FOR COMMON VICTUALLER & ENTERTAINMENT LICENSE

Please complete this application form and return to the Selectmen's Office, along with all required materials listed below. Please review your plans with the Building Inspector, Health Director and Fire Chief **before** submitting your application.

TO THE LICENSING AUTHORITY
SUDBURY, MASSACHUSETTS

Name of applicant: Whole Foods Market Group, Inc.

Address of applicant: Corporate: 550 Bowie St. Austin, TX 78703 Mailing: PO Box 684786, Austin, TX 78768-4786

Phone: 512-542-3743

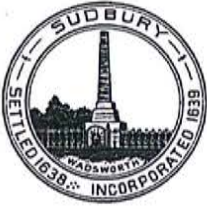
Email: jacob.creswell@wholefoods.com

Business Name: Whole Foods Market

Business Address: 536 Boston Post Rd., Sudbury, MA 01776

Please enclose the following documents with your application:

- ☒ Completed Tax Attestation (form attached)
- ☒ Evidence of compliance with the Worker's Compensation Act requirement to provide workers' compensation insurance for employees. (A copy of the policy or a certificate of insurance is satisfactory.)
- ☒ Background information relative to the corporation. If applicable, articles of incorporation, including, names of principals of corporation, number of restaurants owned, etc.
- ☒ Floor plan: detailing plan of rooms, their use, restroom locations, exits, seating arrangements, as well as showing cooking and service area (seating capacity must be obtained from the Building Inspector).
- ☐ Whether any changes in the premises, structural or expansion, are planned.
- ☐ A dated letter from the present business owner stating the effective date of new ownership.



Town of Sudbury

Office of Selectmen
www.sudbury.ma.us

Flynn Building
278 Old Sudbury Rd
Sudbury, MA 01776-1843
978-639-3381
Fax: 978-443-0756
Email: selectmen@sudbury.ma.us

- ☒ A copy of the lease agreement between the property owner and the business owner.
- ☒ Application Fee: Common Victualler License = \$50
Entertainment License = \$50 (if applicable)
Provide one check payable to *Town of Sudbury*.

APPLICATION FOR ENTERTAINMENT LICENSE

Entertainment licenses are required for live entertainment (not tv and radio) that occurs Monday – Saturday. A separate license is required for entertainment on Sunday.

TYPE OF ENTERTAINMENT: Live Music

DAYS & HOURS OF ENTERTAINMENT: TBD

In accordance with M.G.L. c.140, I hereby request a Common Victualler license, to be presented within the premises herein described.

4/10/17
Date

[Signature]
Applicant Signature

Please submit completed application and materials to:
Board of Selectmen, 278 Old Sudbury Rd, Sudbury, MA 01776

CERTIFICATE OF TAXES/TAX ATTESTATION

Pursuant to M.G.L. Chapter 62C, Section 49A, I certify under penalties of perjury that
Whole Foods Market Group, Inc. has/have complied with all laws
of the Commonwealth of Massachusetts relating to taxes, reporting of employees and
contractors, and withholding and remitting child support.

52-1711175
Social Security Number, or
Federal Identification Number

Whole Foods Market Group, Inc.
Signature of Individual, or
Corporation Name

4/10/17
Date

By: 
Corporate Officer & Title (if applicable)

AFFIX CORPORATE SEAL

MEMORANDUM OF INSURANCE

 Date
9/30/2016

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Producer John L. Wortham & Son L.P.
 P O Box 1388
 Houston, TX 77251-1388

COMPANIES AFFORDING COVERAGE

Insured: Whole Foods Market, Inc.
 Attn: Monique Vale
 550 Bowie Street
 Austin, TX 78703

- A. ACE American Insurance Company
- B. XL Specialty Insurance Company
- C. ACE Fire Underwriters Insurance Company
- D. Agri General Insurance Company

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS MEMORANDUM MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS, AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS

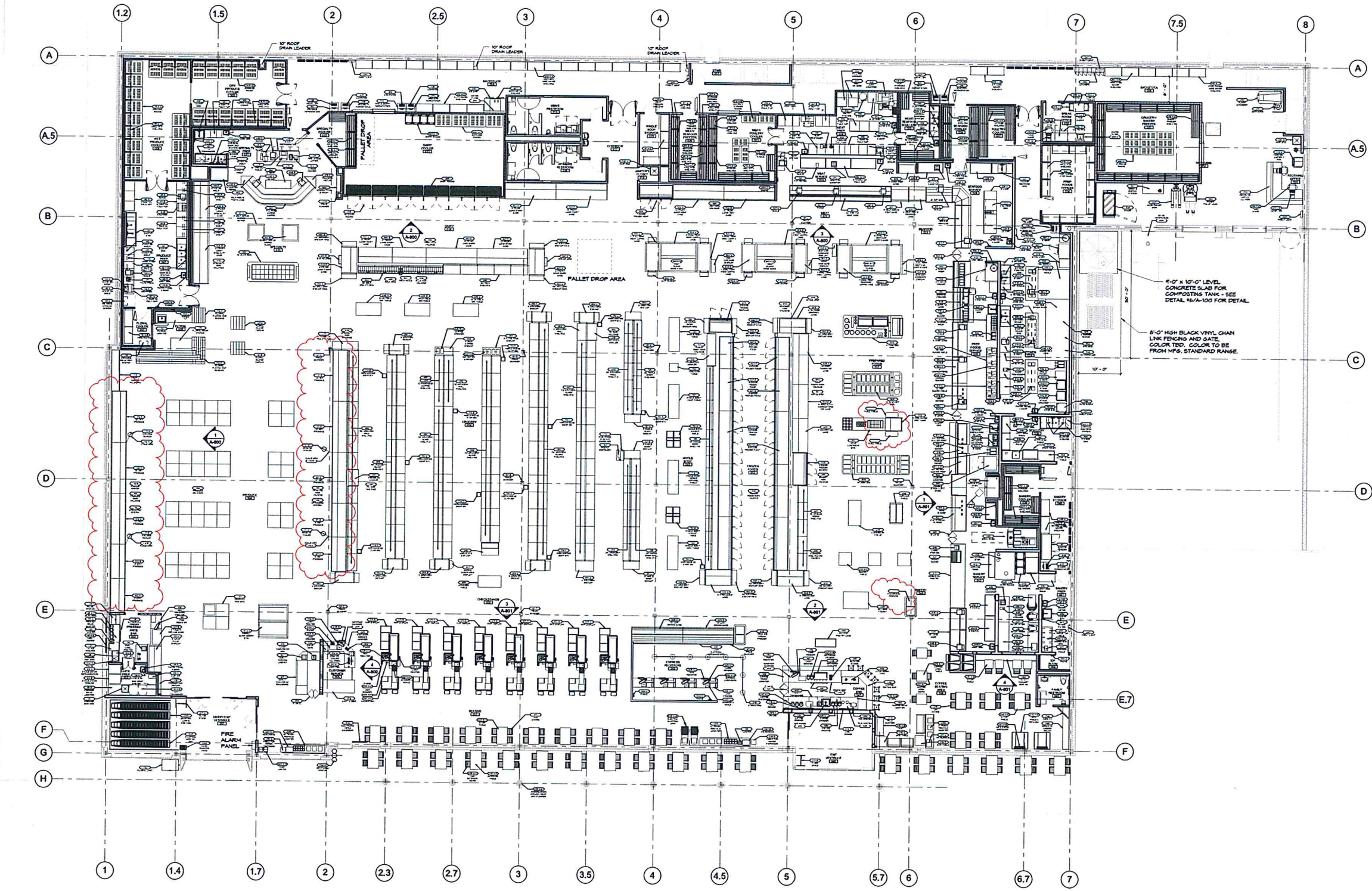
Ltr	Type of Insurance	Policy Number	Policy Effective Date (MM/DD/YYYY)	Policy Expiration Date (MM/DD/YYYY)	Limits
A	GENERAL LIABILITY	XSLG27855994	9/30/2016	9/30/2017	EACH OCCURRENCE \$500,000
	COMMERCIAL GENERAL LIABILITY				FIRE DAMAGE (Any one fire)
	OCCURRENCE				MED EXP (Any one person)
					PERSONAL & ADV INJURY \$500,000
	SIR \$2,000,000 PER OCCURRENCE				GENERAL AGGREGATE \$1,500,000
A	AUTOMOBILE LIABILITY	ISAH0904470A	9/30/2016	9/30/2017	PRODUCTS-COMP/OP AGG \$1,500,000
	ANY AUTO				COMBINED SINGLE LIMIT (Ea accident) \$2,000,000
	HIRED AUTOS				BODILY INJURY (Per person)
	NON-OWNED AUTOS				BODILY INJURY (Per accident)
					PROPERTY DAMAGE (Per accident)
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT
					OTHER THAN AUTO ONLY: EA ACC AGG
B	EXCESS / UMBRELLA LIABILITY	US00072655LI16A	9/30/2016	9/30/2017	EACH OCCURRENCE \$5,000,000
	OCCURRENCE				AGGREGATE \$5,000,000
	Retention:				
C A D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	SCFC48610547 (WI Retro)	9/30/2016	9/30/2017	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER
		WLRC48610535 (Other States except TN, TX, WI, WA, WY, ND & OH)	9/30/2016	9/30/2017	E.L. EACH ACCIDENT \$2,000,000
		WLRC48610559 (TN)	9/30/2016	9/30/2017	E.L. DISEASE - EA EMPLOYEE \$2,000,000
					E.L. DISEASE - POLICY LIMIT \$2,000,000

The Memorandum of Insurance serves solely to list insurance policies, limits, and dates of coverage. Any modifications hereto are not authorized

Whole Foods Market Group, Inc.
Ownership, Officer and Director Information

<u>Name</u>	<u>Title</u>	<u>Business Address</u>
Whole Foods Market, Inc. (publicly traded)	Shareholder/Owner (100%)	550 Bowie St. Austin, TX 78703
Albert Percival	Director, President, Vice President, Secretary, and Treasurer	550 Bowie St. Austin, TX 78703
Anthony C. Gallo	Director	550 Bowie St. Austin, TX 78703

JACOBS
JACOBS CONSULTANTS, INC.
One Broadway
Cambridge, Massachusetts
02142
P 617.481.6450
F 617.481.7104
W www.jacobs.com
Consultants:

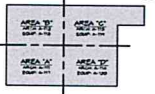
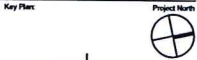


- Scales:
- General Notes:
- EQUIPMENT TAG NUMBERS SHOWN THIS REFER TO EQUIPMENT TAGS IN EQUIPMENT BOOK ENLARGED FLOOR PLANS.
 - SEE DWGS. A-117 THROUGH A-121 FOR PARTIAL ENLARGED FLOOR PLANS.
 - SEE DWGS. A-111 THROUGH A-119 FOR PARTIAL ENLARGED FLOOR PLANS.
 - DIMENSIONS ON THIS DRAWING ARE CLEAR DIMENSIONS UNLESS OTHERWISE NOTED.
 - S.G. TO PROVIDE F.R. FOOD BLOCKS IN ALL WALLS WHERE FENS ARE TO BE WALL MOUNTED. THIS TO INCLUDE CEILING, LINING, SHELVING AND FOLE NOT FAN RACKS AND STORAGE CABINETS. SEE EQUIPMENT BOOK NOTES FOR FURTHER INFORMATION.
 - FIRE EXTINGUISHERS SHOWN THIS FOR REFERENCE ONLY. LOCATIONS, TAG PLACEMENT, HEIGHTS AND QUANTITIES WITH FIRE EXTINGUISHERS, TAG.

Project Client:
WHOLE FOODS
North Atlantic Region
125 Cambridge Park Drive
Cambridge, MA 02142
P 617.482.5200
F 617.482.5510
W www.wholefoodsmarket.com

WHOLE FOODS SUDBURY
536 BOSTON POST RD.
SUDBURY, MA

Number	Description	Date
1	536B27 FOR PLANT	12/10/09
2	536B27 FOR CONSTRUCTION	12/10/09
3	536B27 FOR WALL TIE-BACK	12/10/09
4	536B27 FOR WALL TIE-BACK	12/10/09
5	536B27 FOR WALL TIE-BACK	12/10/09
6	536B27 FOR WALL TIE-BACK	12/10/09
7	536B27 FOR WALL TIE-BACK	12/10/09



CAD File:
Project No.: L1004029
Copyright: 2016 Jacobs Consultants, Inc.

Drawing Sheet Title:
FIRST FLOOR EQUIPMENT PLAN

Drawing Sheet Number:
A-116
Owner's Drawing Sheet No.:

Golden, Patricia

From: Whalen, John
Sent: Thursday, May 04, 2017 9:26 AM
To: Golden, Patricia
Cc: Miles, William
Subject: RE: Whole Foods Market - Common Victualler application

Hello Patty,

The Fire Department has no issues with this application at this time.

Thank you

John M. Whalen
 Assistant Fire Chief
 Sudbury Fire Dept.
 978-440-5312

From: Golden, Patricia
Sent: Wednesday, May 03, 2017 12:37 PM
To: Whalen, John <WhalenJ@sudbury.ma.us>; Miles, William <MilesW@sudbury.ma.us>; Murphy, Bill <MurphyB@sudbury.ma.us>; Herweck, Mark <HerweckM@sudbury.ma.us>
Cc: Hobin, Carol <HobinC@sudbury.ma.us>
Subject: Whole Foods Market - Common Victualler application

Good morning!

Attached is a zip file containing the Common Victualler application packet for Whole Foods Market, 536 Boston Post Road.

Would you please review the attached materials and provide your feedback no later than Thursday, May 11th. This will be on the May 25th Selectmen's agenda. Please let me know if you have difficulty opening the files.

Thank you very much.

Patty Golden
 Senior Administrative Assistant to the Town Manager
 Town of Sudbury
 278 Old Sudbury Road
 Sudbury, MA 01776
 Ph: 978-639-3382
 Fax: 978-443-0756
www.sudbury.ma.us

When writing or responding, please be aware the Secretary of State has determined that e-mail is a public record and thus not confidential

Attachment5.b: WholeFoodsDeptFeedback (2309 : Common Vic license - Whole Foods)

Golden, Patricia

From: Herweck, Mark
Sent: Friday, May 12, 2017 7:37 AM
To: Golden, Patricia
Subject: RE: Whole Foods Market - Common Victualler application

Sorry I'm late Patty. I have no issues with Whole Foods

From: Golden, Patricia
Sent: Wednesday, May 03, 2017 12:37 PM
To: Whalen, John <WhalenJ@sudbury.ma.us>; Miles, William <MilesW@sudbury.ma.us>; Murphy, Bill <MurphyB@sudbury.ma.us>; Herweck, Mark <HerweckM@sudbury.ma.us>
Cc: Hobin, Carol <HobinC@sudbury.ma.us>
Subject: Whole Foods Market - Common Victualler application

Good morning!

Attached is a zip file containing the Common Victualler application packet for Whole Foods Market, 536 Boston Post Road.

Would you please review the attached materials and provide your feedback no later than Thursday, May 11th. This will be on the May 25th Selectmen's agenda. Please let me know if you have difficulty opening the files.

Thank you very much.

Patty Golden
 Senior Administrative Assistant to the Town Manager
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 278 Old Sudbury Road
 Sudbury, MA 01776
 Ph: 978-639-3382
 Fax: 978-443-0756
www.sudbury.ma.us

When writing or responding, please be aware the Secretary of State has determined that e-mail is a public record and thus not confidential

Attachment5.b: WholeFoodsDeptFeedback (2309 : Common Vic license - Whole Foods)

Golden, Patricia

From: Murphy, Bill
Sent: Friday, May 19, 2017 10:19 AM
To: Golden, Patricia
Subject: RE: Whole Foods Market - Common Victualler application

The Board of Health does not have any issues. There will separate food establishments operating within Whole Foods that will be obtaining separate food permits. Will they require separate CV licenses?

William C. Murphy, MS,RS,CHO
Director of Public Health
Sudbury Health Department
978-440-5479
murphyb@sudbury.ma.us



When writing or responding, please be aware the Secretary of State has determined that e-mail is a public record and thus not confidential.

Attachment5.b: WholeFoodsDeptFeedback (2309 : Common Vic license - Whole Foods)



SUDBURY BOARD OF SELECTMEN

Tuesday, May 23, 2017

TIMED ITEM**6: Council on Aging - Interview Candidate for Appointment**REQUESTOR SECTION

Date of request:

Requestor: Debra Galloway

Formal Title: Interview Council on Aging candidate Amy Unckless of 26 Anselm Way. Following interview, vote whether to approve this appointment to the Council on Aging for a term ending May 30, 2020, as recommended by Debra Galloway, COA Chair.

Recommendations/Suggested Motion/Vote: Interview Council on Aging candidate Amy Unckless of 26 Anselm Way. Following interview, vote whether to approve this appointment to the Council on Aging for a term ending May 30, 2020, as recommended by Debra Galloway, COA Chair.

Background Information:

See attached application and memo from Debra Galloway, COA Director.

Financial impact expected:

Approximate agenda time requested: 10 minutes

Representative(s) expected to attend meeting:

Review:

Patty Golden	Pending
Melissa Murphy-Rodrigues	Pending
Town Counsel	Pending
Barbara Saint Andre	Pending
Susan N. Iuliano	Pending
Board of Selectmen	Pending

05/23/2017 6:45 PM



SUDBURY SENIOR CENTER

COUNCIL ON AGING

Town of Sudbury, Massachusetts

40 Fairbank Road • Sudbury, Massachusetts • 01776-1681
 Phone: (978) 443-3055 • Fax: (978) 443-6009 • E-mail: senior@sudbury.ma.us

April 28, 2017

Sudbury Board of Selectmen
 Town of Sudbury
 278 Old Sudbury Road
 Sudbury, MA 01776

Dear Madam/Gentlemen,

The Board of the Sudbury Council on Aging has interviewed candidates for appointment to the Council on Aging to replace retiring COA Board member Robert Diefenbacher. At their regular meeting Thursday, April 13, 2017, the Council on Aging unanimously voted to recommend Amy Unckless, to begin a new term on June 1, 2017. Please find her application enclosed with this letter. We are very happy to welcome Amy to the Sudbury Council on Aging.

We are sad to see Bob Diefenbacher retire from the COA. Bob acted as the COA Intergenerational Coordinator, advocating for intergenerational programming and attending many meetings to discuss plans for the future. Bob also started an intergenerational program with Lincoln-Sudbury Regional High School. Working with Economics/Business teacher Jim Raffel, Bob, a retired entrepreneur himself, along with two other Sudbury entrepreneurs, visited Mr. Raffel's Economics class, shared their stories and then listened to students' business plans, providing constructive feedback over a 6 week period every spring for the past 4 years.

Bob also utilized his strategic planning expertise to plan and facilitate 3 strategic planning sessions for the Sudbury COA. We thank Bob for all of his contributions! It has been great working with him.

Sincerely,

Debra Galloway, Director

for the Sudbury Council on Aging

Attachments: COA Application for Amy Unckless

F:\coa board\membership\selectmen letter re board appointees 2017.doc

Attachment6.a: selectmen letter re board appointees 2017 (2319 : Council on Aging - Interview Candidate for Appointment)

Amy Unckless

26 Anselm Way • Sudbury, MA 01776 • Phone: 339-203-1194

Date: June 15, 2016

Debra Galloway
Senior Center Director
Sudbury Senior Center
40 Fairbank Road
Sudbury, MA 01776

Dear Debra:

Thank you for your time on the phone today. It was very helpful to learn a little more about the Council on Aging and the position you are looking to fill. Based on what I learned, I am even more enthusiastic about this opportunity. I think it would be a great way to pursue my passion for working with seniors while also giving back to the community.

Enclosed please find the application form, along with my resume and a brief bio. Thank you in advance for your consideration.

Sincerely,



Amy L Unckless

TOWN OF SUDBURY
APPLICATION FOR APPOINTMENT TO
COUNCIL ON AGING

BOARD OF SELECTMEN
 278 OLD SUDBURY ROAD
 SUDBURY, MA 01776

FAX: (978) 443-0756
 E-MAIL: selectmen@sudbury.ma.us

Name:

Amy Unckless

Brief resume of background and experience:

See attached

Address:

26 Anselm Way

Home phone:

~~978-443-2642~~

Work phone:

~~978-203-1199~~

Years lived in Sudbury:

10

E-Mail Address:

~~amunckless~~

Municipal experience (If applicable):

n/a

Educational background:

PhD in Industrial/Organizational Psychology
 MS in
 BS in Communication

Employment and/or other pertinent experience:

Currently taking time off from work, will resume
 part time later in the year

Reason for your interest in serving:

I believe strongly in this cause and would
 like to give back to the community

Times when you would be available (days, evenings, weekends):

Varies - but I do have a fair amount of flexibility

Do you or any member of your family have any business dealings with the Town? If yes, please explain:

no

(Initial here that you have read, understand and agree to the following statement)

I agree that if appointed, I will work toward furtherance of the committee's mission statement as adopted by the Board of Selectmen and further, I agree that I will conduct my committee activities in a manner which is compliant with all relevant State and Local laws and regulations, including but not limited to the Open Meeting Law, Public Records Law, Conflict of Interest Law, Email Policy and the Code of Conduct for Town Committees.

I hereby submit my application for consideration for appointment to the Board or Committee listed above.

Signature

Amy L Unckless

Date

10/13/16

AMY UNCKLESS, PH.D

EXECUTIVE PROFILE

Amy Unckless is a strategic business leader recognized for helping businesses improve their market, revenue and operational performance results. As a dynamic business catalyst, Amy brings more than 20 years of experience driving change and making organizations and leaders more effective.

She brings a unique blend of line management experience as Head of Private Wealth Management and Chief Administrative Officer, along with organizational development / talent management roles as Head of HR and Executive / Leadership Development and Change Management Consulting.

Amy holds a Ph.D and MS in Industrial-Organizational Psychology from Penn State University and a BS in Communication from Cornell University, as well as Series 7, 24, and 63 licenses.

AREAS OF EXPERTISE & RESULTS DELIVERED

Organizational Diagnostics and Turnaround. As a sales channel leader for a large asset manager, Amy improved sales and relationships for the organization's two largest accounts (each had over \$50 billion in assets under management). In each case, Amy conducted a thorough assessment of business results, processes and people, and implemented a multi-faceted plan to drive improvement. One relationship moved into net positive sales for the first time in 15 years and the other saw a \$4B year-over-year improvement in year-one net sales.

Organizational Transformation and Change. Amy was responsible for all business aspects of the \$1 billion acquisition of Columbia Management by Ameriprise Financial. This involved overseeing organizational design, staffing, process redesign, governance, sales territory alignment, and coordination with the technology teams. She has also led a globalization effort and played integral part in mergers and acquisitions in her HR and Consulting roles. She is well versed in mapping out a comprehensive road map for change, including communication planning and organizational readiness.

Leadership and Team Effectiveness. Working with executives and their teams, Amy has successfully helped senior leaders operate more effectively individually and collectively. She has guided leaders in identifying and agreeing on strategic priorities and also has worked extensively with Boards of Directors. Amy is a student of effective meeting management, team dynamics and decision-making and is passionate about bringing these disciplines to bear to drive business results.

Amy L. Unckless, Ph.D.26 Anselm Way Sudbury, MA 01776 ~~unckless@comcast.net~~ ~~202-222-1212~~**Summary**

Executive-level expertise in transforming organizations from three perspectives: sales management, business management and people management. Key strengths include overseeing complex relationships, diagnosing and fixing broken businesses and executing key business priorities to increase growth and profitability.

Professional History

COLUMBIA MANAGEMENT, owned by Ameriprise Financial, Boston MA **January 2010-April 2016**

Led four profitable US Intermediary businesses: Private Wealth Management (\$50B AUM/\$10B annual gross sales); Ameriprise relationship (\$50B AUM/\$8B gross sales); Defined Contribution Investment Only (\$24B AUM/\$8B gross sales); 529 Savings Plan (\$2B AUM/\$.3B gross sales). Also responsible for business relationship with Acorn Mutual Fund Board.

Managing Director, Head of Private Wealth Management

March 2012-April 2016

As leader of Private Wealth Management and 529 Business units:

- Stabilized and rebuilt relationship with large Private Bank, under stress after severing of affiliate relationship; resolved legal agreements and improved net flows by \$4B year-over-year in year 1.
- Directed sales expansion into other Private Banks; quadrupled gross sales to \$750M in two years; developed strategy to identify target private banks; hired platform sales analyst and enhanced overall field sales effort.
- Launched a new multi-manager 529 plan after winning contract rebid with S. Carolina; led marketing of 529 in road shows and multimedia campaigns; increased sales by 25% in each year since relaunch; Oversaw marketing and sales initiatives to continue to grow the business.

Managing Director, Head of Ameriprise Relationship and DCIO

April 2014-April 2016

As director of the relationship with our parent company and DCIO leader:

- Conducted end-to-end assessment of sales at Ameriprise to identify causes for market share losses; currently direct multifaceted initiative to improve strategic positioning, encompassing product development, value-add programs, advisor segmentation, marketing, sales strategy and training. Succeeded in increasing share across all major product platforms, resulting in net positive sales for first time in 15 years.
- Appointed a new sales leader for DCIO and led initiative to realign existing products and develop new ones; conducted territory analysis and changed incentive and compensation structure to better align with business goals.

Managing Director, Chief Administrative Officer

January 2010-April 2014

Led all cross-functional aspects in conducting daily business: developed strategic priorities; oversaw financial and risk management; executed complex initiatives; guided profitability initiatives.

- As Business Lead for Globalization of Asset Management unit, managed large-scale initiative to design and implement global business model; increased collaboration across US, UK and Asia units, including joint product development, financial reporting, research sharing, institutional sales coverage, business management routines and legal and regulatory coordination.
- As Business Lead for Columbia Management's integration into Ameriprise Financial, oversaw organizational redesign, staffing, mutual fund mergers, sales territory and governance structure alignment and coordination with technology integration team.
- Key Risk Management roles included President of Broker Dealer, Chair of Management Risk Forum and Chair of Code of Ethics Committee; ran business continuity and operational risk planning; served as Liaison to Corporate Crisis Response Team and legal, compliance and audit groups.

Amy L. Unckless, Ph.D.~~CONFIDENTIAL~~**Chief Administrative Officer, Managing Director (Continued)** January 2010-April 2014

- As right hand to Columbia Management's CEO/President, helped lead the business on a daily basis; directed internal and external messaging and financial reporting to key constituents from Ameriprise CEO to Mutual Fund Boards to internal staff.
- Directly responsible for \$22M investment budget.

BANK OF AMERICA, Boston MA and New York, NY July 2002-January 2010
In over seven years, directed business management, human resources and leadership development.**Business Support Executive, Columbia Management** September 2008-January 2010

- Led business management for Columbia Management's President; conducted strategic planning and financial, data and change management; coordinated Columbia's divestiture from Bank of America; ran due diligence process; assisted legal team with deal documents; led transition planning.

Human Resource Executive September 2003-September 2008

- Headed HR for Wealth Management divisions: Columbia Management (2004-08); Retirement (2008); Alternative Investments (2007) and Private Bank (2003-04); oversaw support functions, including strategy, marketing, operations, call centers and regulatory implementation.
- Guided Asset Management business through significant changes, including US Trust acquisition (2006), market timing inquiry and Fleet Bank acquisition (2004) and numerous restructurings.

Leadership Development Client Manager July 2002-September 2003

- Provided executive coaching and leadership support to the Private Bank's President; implemented comprehensive talent management process, including succession planning, 360 assessments, organization development, performance management and employee surveys.

TOWERS PERRIN, New York, NY September 1998-July 2002

- As a Senior Consultant, Change Management, led merger and acquisition projects for clients in financial services, pharmaceutical, entertainment and telecommunications; specialized in executing large-scale organizational change, organizational capability building and comprehensive training.

PERSONNEL DECISIONS RESEARCH INSTITUTE, Washington, DC September 1997-September 1998

- As Research Associate, conducted project work in the areas of selection, job design, training, performance management and leadership develop for government agencies including the CIA, FBI, FAA, and Virginia State Police.

Licenses

Series 7, 24 and 63

Education**Doctorate in Industrial/Organizational Psychology**

Penn State University, State College PA

Masters of Science in Industrial/Organizational Psychology

Penn State University, State College PA

Bachelors of Science in Communication

Cornell University, Ithaca NY

**SUDBURY BOARD OF SELECTMEN**

Tuesday, May 23, 2017

TIMED ITEM**7: Avalon LIP****REQUESTOR SECTION**

Date of request:

Requested by: Patty Golden

Formal Title: Vote to approve the Regulatory and Use Agreement, and the contract for Monitoring Services, for Avalon at Sudbury. David Gillespie of Avalon Bay to attend.

Recommendations/Suggested Motion/Vote: Vote to approve the Regulatory and Use Agreement, and the contract for Monitoring Services, for Avalon at Sudbury. David Gillespie of Avalon Bay to attend.

Background Information:

See attached

Financial impact expected:

Approximate agenda time requested: 10 minutes

Representative(s) expected to attend meeting: David O. Gillespie, Vice President- Development, Avalon Bay Communities

Review:

Patty Golden	Pending
Melissa Murphy-Rodrigues	Pending
Barbara Saint Andre	Pending
Susan N. Iuliano	Pending
Board of Selectmen	Pending

05/23/2017 6:45 PM

REGULATORY AND USE AGREEMENT

[Comprehensive Permit Rental]

LOCAL INITIATIVE PROGRAM

This Regulatory and Use Agreement (this “Agreement”) is made this ____ day of _____, 2017 by and among the Commonwealth of Massachusetts, acting by and through the Department of Housing and Community Development (“DHCD”) pursuant to G.L. c.23B §1 as amended by Chapter 19 of the Acts of 2007, the Town of Sudbury (the “Municipality”), and Sudbury Avalon, Inc., a Maryland corporation, having a mailing address at 600 Atlantic Avenue, 20th Floor, Boston, Massachusetts 02210, and its successors and assigns (“Developer”).

RECITALS

WHEREAS, the Developer is proposing a housing development known as Avalon Sudbury at an approximately 24.7 acre site within a larger subdivision located at 526 & 528 Boston Post Road in the Municipality, as more particularly described in Exhibit A attached hereto and made a part hereof (the “Development”); and

WHEREAS, DHCD has promulgated Regulations at 760 CMR 56.00 (as may be amended from time to time, the “Regulations”) relating to the issuance of comprehensive permits under Chapter 40B, Sections 20-23, of the Massachusetts General Laws (as may be amended from time to time, the “Act”) and pursuant thereto has issued its Comprehensive Permit Guidelines (the “Guidelines” and, collectively with the Regulations and the Act, the “Comprehensive Permit Rules”); and

WHEREAS, pursuant to the Act and the final report of the Special Legislative Commission Relative to Low and Moderate Income Housing Provisions issued in April 1989, regulations have been promulgated at the Regulations which establish the Local Initiative Program (“LIP”); and

WHEREAS, DHCD acts as Subsidizing Agency for the Development pursuant to the Comprehensive Permit Rules; and

WHEREAS, a comprehensive permit pursuant to the Act was issued by virtue of a Decision dated July 18, 2016 issued by The Town of Sudbury Zoning Board of Appeals (“ZBA”), which was recorded in the Middlesex South Registry of Deeds (the “Registry”) in Book 67882, Page 210 (“the Comprehensive Permit”); and

WHEREAS, pursuant to the Comprehensive Permit and the requirements of the Comprehensive Permit Rules, the Development is to consist of a total of 250 rental units, of which twenty five percent (25%) (i.e. 63 units) (the “Affordable Units”) will be rented to Low or Moderate Income Persons and Families (as defined herein) at rentals specified in this Agreement and will be subject to this Agreement; and

WHEREAS, DHCD has adopted the *Preparation of Cost Certification for 40B Rental Developments: Inter-Agency 40B Rental Cost Certification Guidance for Owners, Certified*

Public Accountants and Municipalities (the “Cost Certification Guidance”), which shall govern the cost certification and limited dividend requirements for the Development pursuant to the Comprehensive Permit Rules; and

WHEREAS, the parties intend that this Agreement shall serve as a “Use Restriction” as defined in and required by Section 56.05(13) of the Regulations; and

WHEREAS, the parties recognize that Affirmative Fair Marketing (as defined herein) is an important precondition for rental of Affordable Units and that local preference cannot be granted in a manner which results in a violation of applicable fair housing laws, regulations and subsidy programs; and

WHEREAS, the parties recognize that the Municipality has an interest in preserving affordability of the Affordable Units and may offer valuable services in administration, monitoring and enforcement.

NOW, THEREFORE, in consideration of the agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, DHCD, the Municipality and the Developer hereby agree as follows:

DEFINITIONS

1. In addition to terms defined elsewhere in this Agreement, the following terms as used in this Agreement shall have the meanings set forth below:

Accountant’s Annual Determination shall have the meaning given such term in Section 7(f) hereof.

Accumulated Distribution Amounts shall have the meaning given such term in Section 7(c) hereof.

Accumulated and Unpaid Distribution Amounts shall have the meaning given such term in Section 7(c) hereof.

Act shall have the meaning given such term in the Recitals hereof.

Affirmative Fair Housing Marketing Plan shall mean the Affirmative Fair Housing Marketing Plan prepared by the Developer in accordance with the Guidelines and approved by DHCD, as further set forth in Section 3.

Affordable Units shall have the meaning set forth in the Recitals above.

Allowable Development Costs shall have the meaning given such term in Section 21 hereof.

Annual Excess Revenues shall have the meaning given such term in Section 7(e) hereof.

Annual Income shall be determined in the manner set forth in 24 C.F.R. 5609 (or any successor regulations).

Area shall mean the Boston, Cambridge, Quincy MA-NH Metropolitan Statistical Area (MSA)/County/HMFA as designated by the Department of Housing and Urban Development (“HUD”).

Area Median Income (“AMI”) shall mean the median gross income for the Area, as determined from time to time by HUD. For purposes of determining whether Adjusted Family Income qualifies a tenant for treatment as a Low or Moderate Income Tenant, the Area Median Income shall be adjusted for family size.

Comprehensive Permit shall have the meaning given such term in the Recitals hereof.

Comprehensive Permit Rules shall have the meaning given such term in the Recitals hereof.

Construction Lender shall mean the lender(s) making the Construction Loan, and its successors and assigns.

Construction Loan shall mean the loan to the Developer for the construction of the Development, if any.

Construction Mortgage shall mean the mortgage from the Developer securing the Construction Loan, if any.

Cost Certification shall have the meaning given such term in Section 21 hereof.

Current Distribution Amounts shall have the meaning given such term in Section 7(c) hereof.

Developer’s Equity shall be calculated according to the formulas outlined in Attachment C of the Cost Certification Guidance, using the Cost Method until the Cost Certification process is complete, and either the Cost Method or the Value Method, whichever results in the greater amount, thereafter. Developer’s Equity shall be retroactively applied to the period from the start date (commencement of construction of the Development as evidenced by issuance of the first building permit) until Substantial Completion (the “Construction Period”). For the Construction Period, Developer’s Equity shall mean the average of costs expended by the Developer on the Development during the period in question, based on a review of Developer’s financial reports by an independent accounting firm. By way of example only, if on the first day of construction the Developer’s costs are \$10,000,000 (all attributable to land acquisition costs), and one year later the Developer’s costs are \$20,000,000 (half attributable to land acquisition costs, half attributable to construction costs), then the Developer’s Equity for that year of construction would be the average of those two amounts of \$15,000,000. The Developer’s Equity for the construction period shall be appropriately prorated for any partial year during such period.

Developer Parties shall have the meaning given such term in Section 7(b) hereof.

Development shall have the meaning given such term in the Recitals hereof.

Development Revenues shall have the meaning given such term in Section 7(b) hereof.

Distribution Payments shall have the meaning given such term in Section 7(b) hereof.

Event of Default shall mean a default in the observance of any covenant under this Agreement existing after the expiration of any applicable notice and cure periods.

Excess Revenues Account shall mean the account established under Section 7(e) hereof.

Family shall have the same meaning as set forth in 24 C.F.R. §5.403 (or any successor regulations).

Guidelines shall have the meaning given such term in the Recitals hereof.

Housing Subsidy Program shall mean any other state or federal housing subsidy program providing rental or other subsidy to the Development or to Low or Moderate Income Tenants.

HUD shall mean the United States Department of Housing and Urban Development.

Lender shall mean the Construction Lender and/or the Permanent Lender.

Low or Moderate Income Persons or Families shall mean persons or Families whose Annual Incomes do not exceed eighty percent (80%) of the Median Income for the Area, and shall also mean persons or Families meeting such lower income requirements as may be required under the Comprehensive Permit.

Low or Moderate Income Tenants shall mean Low or Moderate Income Persons or Families who occupy the Affordable Units.

Maximum Annual Distributable Amounts shall have the meaning given such term in Section 7(c) hereof.

Mortgage shall mean the Construction Mortgage and/or the Permanent Mortgage, if any.

Permanent Lender shall mean the lender(s) making the Permanent Loan to the Developer, and its successors and assigns, if any.

Permanent Loan shall mean the Permanent Loan which may be made or committed to be made by the Permanent Lender to the Developer after completion of construction of the Development, which will replace the Construction Loan, or any subsequent refinancing thereof, if any.

Permanent Mortgage shall mean the mortgage from the Developer to the Permanent Lender securing the Permanent Loan, if any.

Regulations shall have the meaning given such term in the Recitals hereof.

Related Person: shall mean a person whose relationship to such other person is such that (i) the relationship between such persons would result in a disallowance of losses under Section 267 or 707(b) of the Code, or (ii) such persons are members of the same controlled group of corporations (as defined in Section 1563(a) of the Code, except that “more than 50 percent” shall be substituted for “at least 80 percent” each place it appears therein).

Substantial Completion shall have the meaning given such term in Section 21 hereof.

Surety shall have the meaning given such term in Section 22 hereof.

Tenant Selection Plan shall mean the Tenant Selection Plan, prepared by the Developer in accordance with the Guidelines and approved by DHCD, with such changes thereto provided that any substantive changes have been approved by the DHCD.

Term shall have the meaning set forth in Section 24 hereof.

CONSTRUCTION OBLIGATIONS

2. (a) The Developer agrees to construct the Development in accordance with plans and specifications approved by the Municipality (the “Plans and Specifications”) and in accordance with all on-site and off-site construction, design and land use conditions of the Comprehensive Permit. All Affordable Units to be constructed as part of the Development must be similar in exterior appearance to other units in the Development and shall be evenly dispersed throughout the Development. In addition, all Affordable Units must contain complete living facilities including but not limited to a stove, kitchen cabinets, plumbing fixtures, and sanitary facilities, all as more fully shown in the Plans and Specifications. Materials used for the interiors of the Affordable Units must be of good quality. The Development must fully comply with the State Building Code and with all applicable state and federal building, environmental, health, safety and other laws, rules, and regulations, including without limitation all applicable federal and state laws, rules and regulations relating to the operation of adaptable and accessible housing for the handicapped. Except to the extent that the Development is exempted from such compliance by the Comprehensive Permit, the Development must also comply with all applicable local codes, ordinances and by-laws.

(b) The Developer shall provide to the Municipality evidence that the final plans and specifications for the Development comply with the requirements of the Comprehensive Permit and that the Development was built substantially in accordance with such plans and specifications.

(c) Unless the same shall be modified by a change to the Comprehensive Permit approved by the Board of Appeals for the Municipality, the bedroom mix for the Development shall be as follows:

31 of the Affordable Units shall be one bedroom units;

25 of the Affordable Units shall be two bedroom units; and
7 of the Affordable Units shall be three bedroom units.

All Affordable Units to be occupied by families must contain two or more bedrooms. Affordable Units must have the following minimum areas:

one bedroom units – 700 square feet
two bedroom units – 900 square feet
three bedroom units – 1,200 square feet

USE RESTRICTION/RENTALS AND RENTS

3. (a) The Developer shall rent the Affordable Units during the Term hereof to Low or Moderate Income Persons or Families upon the terms and conditions set forth in the Comprehensive Permit and this Agreement. In fulfilling the foregoing requirement, Developer will accept referrals of tenants from the Public Housing Authority in the Municipality, and will not unreasonably refuse occupancy to any prospective tenants so referred who otherwise meet the requirements of the Tenant Selection Plan. The foregoing provisions shall not relieve Developer of any obligations it may have under the provisions of other documents and instruments it has entered with respect to any applicable Housing Subsidy Program; provided, however, DHCD shall have no obligation hereunder, expressed or implied, to monitor or enforce the applicable requirements of any such Housing Subsidy Programs.

(b) The annual rental expense for each Affordable Unit (equal to the gross rent plus allowances for all tenant-paid utilities, including tenant-paid heat, hot water and electricity) shall not exceed thirty percent (30%) of eighty percent (80%) of AMI, adjusted for household size, assuming that household size shall be equal to the number of bedrooms in the Affordable Unit plus one. If rentals of the Affordable Units are subsidized under any Housing Subsidy Program, then the rent applicable to the Affordable Units may be limited to that permitted by such Housing Subsidy Program, provided that the tenant's share of rent does not exceed the maximum annual rental expense as provided in this Agreement.

(c) If, after initial occupancy, the income of a tenant of an Affordable Unit increases and, as a result of such increase, exceeds the maximum income permitted hereunder for such a tenant, the Developer shall not be in default hereunder so long as either (i) the tenant income does not exceed one hundred forty percent (140%) of the maximum income permitted (in which case the unit in question shall continue to be counted as an Affordable Unit) or (ii) the Developer rents the next available unit at the Development as an Affordable Unit in conformance with Section 3(a) of this Agreement, or otherwise demonstrates compliance with Section 3(a) of this Agreement.

(d) If, after initial occupancy, the income of a tenant in an Affordable Unit increases, and as a result of such increase, exceeds one hundred forty percent (140%) of the maximum income permitted hereunder for such a tenant, at the expiration of the applicable lease

term, the rent restrictions shall no longer apply to such tenant.

(e) Rentals for the Affordable Units shall be initially established as shown on the Rental Schedule attached as Appendix A hereto, subject to change from time to time (if necessary to reflect any changes in AMI) in accordance with the terms and provisions of this Agreement and any applicable Housing Subsidy Program. Thereafter, the Developer shall annually submit to the Municipality and DHCD a proposed schedule of monthly rents and utility allowances for all Affordable Units in the Development. It is understood that such review rights shall be with respect to the maximum rents for all the Affordable Units, and not with respect to the rents that may be paid by individual tenants in any given unit. Rents for the Affordable Units shall not be increased above such maximum monthly rents without DHCD's prior approval of either (i) a specific request by the Developer for a rent increase; or (ii) the next annual schedule of rents and allowances as set forth in the preceding sentence. Notwithstanding the foregoing, rent increases shall be subject to the provisions of outstanding leases and shall not be implemented without at least 30 days' prior written notice by the Developer to all affected tenants. If an annual request for a new schedule of rents for the Affordable Units as set forth above is based on a change in the AMI figures published by HUD, and the Municipality and DHCD fail to respond to such a submission within thirty (30) days of the Municipality's and DHCD's receipt thereof, the Municipality and DHCD shall be deemed to have approved the submission. If an annual request for a new schedule of rents for the Affordable Units is made for any other reason, and the Municipality and DHCD fail to respond within thirty (30) days of the Municipality's and DHCD's receipt thereof, the Developer may send DHCD and the Municipality a notice of reminder, and if the Municipality and DHCD fail to respond within thirty (30) days from receipt of such notice of reminder, the Municipality and DHCD shall be deemed to have approved the submission.

Without limiting the foregoing, the Developer may request a rent increase for the Affordable Units to reflect an increase in the AMI published by HUD between the date of this Agreement and the date that the Units begin to be marketed or otherwise made available for rental pursuant to subsections 3 (h) and (i) below; if DHCD approves such a rent increase in accordance with this subsection (e), the Rental Schedule attached as Appendix A hereto shall be deemed to be modified accordingly.

(f) Developer shall obtain income certifications satisfactory in form and manner to DHCD at least annually for all Low or Moderate-Income Tenants. Said income certifications shall be kept by the management agent for the Development and made available to DHCD and the Municipality upon request.

(g) Throughout the term of this Agreement, the Municipality shall annually certify in writing to DHCD that each of the Affordable Units continues to be an Affordable Unit as provided in Section 2(c), above; and that the Development and the Affordable Units have been maintained in a manner consistent with the Comprehensive Permit and this Agreement.

(h) Prior to marketing or otherwise making available for rental any of the units in the Development, the Developer shall submit an Affirmative Fair Housing Marketing Plan (also known as an "AFHM Plan") for DHCD's approval. At a minimum, the AFHM Plan shall meet the requirements of the Guidelines, as the same may be amended from time to time to comply with the requirements of fair housing laws. The AFHM Plan, upon approval by DHCD, shall become

a part of this Agreement and shall have the same force and effect as if set out in full in this Agreement. At the option of the Municipality, and provided that the AFHM Plan demonstrates (i) the need for the local preference (e.g., a disproportionately low rental or ownership affordable housing stock relative to need in comparison to the regional area), and (ii) that the proposed local preference will not have a disparate impact on protected classes, the AFHM Plan may also include a preference for local residents for up to seventy percent (70%) of the Affordable Units, subject to all provisions of the Regulations and Guidelines and applicable to the initial rent-up only. When submitted to DHCD for approval, the AFHM Plan should be accompanied by a letter from the Chief Executive Officer of the Municipality (as that term is defined in the Regulations) which states that the tenant selection and local preference (if any) aspects of the AFHM Plan have been approved by the Municipality and which states that the Municipality will perform any aspects of the AFHM Plan which are set forth as responsibilities of the Municipality in the AFHM Plan. If the Chief Executive Office of the Municipality fails to approve the tenant selection and local preference (if any) aspects of the AFHM Plan for the Affordable Units above within thirty (30) days of the Municipality's receipt thereof, the Municipality shall be deemed to have approved those aspects of the AFHM Plan. In addition, if the Development is located in the Boston, Cambridge, Quincy MA-NH MSA/HMFA/County, Developer must list all Affordable Units with the Boston Fair Housing Commission's MetroList (Metropolitan Housing Opportunity Clearing Center). The Developer agrees to maintain for at least five years following the initial lease-up of the Development a record of all newspaper ads, outreach letters, translations, leaflets, and any other outreach efforts as described in the AFHM Plan as approved by DHCD which may be inspected at any time by DHCD.

(i) The AFHM Plan shall designate entities to implement the plan who are qualified to perform their duties. DHCD may require that another entity be found if DHCD finds that the entity designated by the Developer is not qualified. Moreover, DHCD may require the removal of an entity responsible for a duty under the AFHM Plan if that entity does not meet its obligations under the AFHM Plan.

(j) The restrictions contained herein are intended to be construed as an affordable housing restriction as defined in Section 31 of Chapter 184 of Massachusetts General Laws which has the benefit of Section 32 of said Chapter 184, such that the restrictions contained herein shall not be limited in duration by any rule or operation of law but rather shall run for the Term hereof. In addition, this Agreement is intended to be superior to the lien of any mortgage on the Development and survive any foreclosure or exercise of any remedies thereunder and the Developer agrees to obtain any prior lienholder consent with respect thereto as DHCD shall require.

TENANT SELECTION AND OCCUPANCY

4. Developer shall use its good faith efforts during the Term of this Agreement to maintain all the Affordable Units within the Development at full occupancy as set forth in Section 2 hereof. In marketing and renting the Affordable Units, the Developer shall comply with the Tenant Selection Plan and Affirmative Fair Housing Marketing Plan which are incorporated herein by reference with the same force and effect as if set out in this Agreement.

5. Occupancy agreements for Affordable Units shall meet the requirements of the Comprehensive Permit Rules, this Agreement, and the Local Initiative Program. The Developer shall enter into a lease with each tenant for a minimum term of one year. The lease shall contain clauses, among others, wherein each resident of such Affordable Unit:

(a) certifies the accuracy of the statements made in the application and income survey;

(b) agrees that the family income, family composition and other eligibility requirements, shall be deemed substantial and material obligations of his or her occupancy; that he or she will comply promptly with all requests for information with respect thereto from Developer, the Municipality, or DHCD; and that his or her failure or refusal to comply with a request for information with respect thereto shall be deemed a violation of a substantial obligation of his or her occupancy; and

(c) agrees that at such time as Developer, the Municipality, or DHCD may direct, but at least annually, he or she will furnish to Developer certification of then current family income, with such documentation as the Municipality or DHCD shall reasonably require; and agrees to such charges as the Municipality or DHCD has previously approved for any facilities and/or services which may be furnished by Developer or others to such resident upon his or her request, in addition to the facilities included in the rentals, as amended from time to time pursuant to Section 3 above.

6. Omitted

LIMITED DIVIDENDS

7. (a) The Developer covenants and agrees that Distribution Payments made in any fiscal year of the Development shall not exceed the Maximum Annual Distributable Amounts for such fiscal year. No Distribution Payments may be made during any period in which an Event of Default has occurred and is continuing, which shall include but not be limited to failure to maintain the Development in good physical condition in accordance with Section 8 hereof.

(b) For the purposes hereof, the term “Distribution Payments” shall mean all amounts paid from revenues, income and other receipts of the Development, not including any amounts payable in respect of capital contributions paid by any members or partners of the Developer or any loan proceeds payable to the Developer (herein called “Development Revenues”) which are paid to any partner, manager, member or any other Related Person of the Developer (collectively, the “Developer Parties”) as profit, income, or fees or other expenses which are unrelated to the operation of the Development or which are in excess of fees and expenses which would be incurred from persons providing similar services who are not Developer Parties and provide such services on an arms-length basis.

(c) For the purposes hereof, the “Maximum Annual Distributable Amounts” for any particular fiscal year shall be defined and determined as follows: the sum of (i) an amount equal to ten percent (10%) of the “Developer’s Equity” for such fiscal year, subject to adjustment

as provided in (d) below (the “Current Distribution Amounts”); plus (ii) the amount of all Accumulated and Unpaid Distributions calculated as of the first day of such fiscal year.

In no event shall the total Maximum Annual Distributable Amounts actually distributed for any given year exceed total funds available for distribution after all current and owed-to-date expenses have been paid and reserves, then due and owing, have been funded.

“Accumulated and Unpaid Distribution Amounts” shall be the aggregate of the Current Distribution Amounts calculated for all prior fiscal years less the Distribution Payments (“Accumulated Distribution Amounts”) calculated for each such fiscal year together with simple interest (“Accrued Interest”) resulting from such calculation in all prior years computed at five percent (5%) per annum. For the purposes of this calculation, it is assumed any amounts available for distribution in any year shall be fully disbursed.

(d) When using the Value-Based Approach, the Developer’s Equity may be adjusted not more than once in any five year period with the first five - year period commencing with the first fiscal year of the Development. Any adjustments shall be made only upon the written request of the Developer and, unless the Developer is otherwise directed by DHCD, shall be based upon an appraisal commissioned by (and naming as a client) DHCD and prepared by an independent and qualified appraiser prequalified by, and randomly assigned to the Development by, DHCD. The appraiser shall submit a Self-Contained Appraisal Report to DHCD in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). The costs of such appraisal shall be borne by the Developer. Such appraisal shall be based on the so-called ‘investment value’ methodology, using assumptions subject to the reasonable approval of DHCD.

Upon completion of an appraisal as provided above, the Developer’s Equity shall be adjusted to equal the appraised value of the Development as determined by the appraisal less the unpaid principal amount of the sum of secured debt on the Development plus public equity, whether structured as a grant or loan determined as of the date of the appraisal. Such new Developer’s Equity shall be the Developer’s Equity commencing with the first day of the month following the date of such appraisal and stay in effect until a subsequent adjustment.

(e) If at the end of any fiscal year, any Development Revenues for such fiscal year shall remain and are in excess of the Maximum Annual Distributable Amounts for such fiscal year, such amount (the “Annual Excess Revenues”) , other than those which may be required by any Lender to remain at the Development as a reserve to pay the expenses of the Development, shall be deposited in an escrow account with the Lender (or if the Loan is paid off, in an escrow account to be established to the satisfaction of DHCD) designated as the “Excess Revenues Account.” No distributions may be made to the Developer from the Excess Revenues Account except those permitted pursuant to this Section (e) with the prior written consent of DHCD.

Upon Developer’s request, amounts may also be withdrawn from the Excess Revenues Account during the Term hereof and applied for the following purposes: (i) payment of or adequate reserve for all sums due or currently required to be paid under the terms of the Mortgage; (ii) payment of or adequate reserve for all reasonable and necessary operating expenses of the Development as reasonably determined by the Developer; (iii) deposit of all amounts as may be deposited in a reserve fund for capital replacements reasonably determined by the Developer to be

sufficient to meet anticipated capital needs of the Development (the “Replacement Reserve”) which may be held by a lending institution reasonably acceptable to DHCD and which reserves may be used for capital expenditures for the Development reasonably determined to be necessary by the Developer; (iv) payments of operating expense loans made by the partners, managers or members of Developer for Development expenses, provided that Developer shall have obtained prior written approval for such loans from the applicable Lender (or, if there is no mortgage, or after discharge of the Mortgage, from the DHCD) and shall have supplied the applicable Lender (or DHCD) with such evidence as the applicable Lender (or DHCD, as applicable) may reasonably request as to the application of the proceeds of such operating expense loans to Development; or (v) for any other purposes, subject to a determination by the Lender (or, if there is no Mortgage, or the Mortgage is discharged during the Term of this Agreement, the reasonable determination by DHCD) that the expenditure is necessary to address the Development’s physical or financial needs and that no other Development reserve funds are available to address such needs. Notwithstanding the foregoing, payment of the items set forth in clauses (i), (ii), (iii) and (v) above by the Developer shall be subject to the prior written approval of DHCD, which approval shall not be unreasonably withheld or delayed; it being agreed by DHCD that if the Developer can demonstrate that its proposed operating expenditures, capital expenditures and reserves are substantially consistent with those made for comparable developments in the Commonwealth of Massachusetts, DHCD shall approve such request. Further, in no event shall such review or approval be required by DHCD to the extent any such capital expenditures or reserves are mandated by Lender.

Further, DHCD agrees that it shall not unreasonably withhold or delay its consent to release of any amounts held in the Excess Revenues Account, upon the written request of the Developer that:

- (i) provide a direct and material benefit to Low or Moderate Tenants; or
- (ii) reduce rentals to Low or Moderate Tenants.

In the event that DHCD’s approval is requested pursuant to this Section 7(e) for expenditures out of the Excess Revenues Account, and DHCD fails to respond within thirty (30) days of DHCD receipt thereof, then DHCD shall be deemed to have approved the request, and DHCD shall have no further rights to object to, or place conditions upon, the same.

In any event, cash available for distribution in any year in excess of 20% of Developer’s Equity, subject to payment of Accumulated and Unpaid Distributions, shall be distributed to the Municipality within fifteen (15) business days of notice and demand given by DHCD as provided herein, or as otherwise directed by DHCD. Upon the expiration of the “Limited Dividend Term” as that term is defined in Section 24(b) hereof, any balance remaining in the Excess Revenues Account shall be contributed by the Developer to the Replacement Reserve held for the Development if reasonably deemed necessary by DHCD, and otherwise shall be paid to the Developer.

(f) The Developer shall provide DHCD for each fiscal year with a copy of its audited financial statements, and provide the DHCD with a certificate from the independent certified public accountant (the “CPA”) who prepared such reports which certifies as to their

determination (the “Accountant’s Annual Determination”) of the following for such fiscal year, based on the terms and conditions hereof:

- (i) Accumulated Distribution Amounts;
- (ii) Current Distribution Amounts;
- (iii) Maximum Annual Distributable Amounts;
- (iv) Annual Excess Revenues;
- (v) Accumulated and Unpaid Distribution Amounts (including a calculation of Accumulated Distribution Amounts and Accrued Interest); and
- (vi) Development Revenues.

Such Accountant’s Annual Determination shall be accompanied by a form completed by the CPA and by a Certificate of Developer in forms as reasonably required by DHCD certifying under penalties of perjury as to the matters such as, without limitation, the fact that (i) the Developer has made available all necessary financial records and related data to the CPA who made such Accountant’s Annual Determination, (ii) there are no material transactions related to the Development that have not been properly recorded in the accounting records underlying the Accountant’s Annual Determination, (iii) the Developer has no knowledge of any fraud or suspected fraud affecting the entity involving management, subcontractors, employees who have significant roles in internal control, or others where the fraud could have a material effect on the Accountant’s Annual Determination and has no knowledge of any allegations of fraud or suspected fraud affecting the Developer or the Development received in communications from employees, former employees, subcontractors, regulators, or others, and (iv) the Developer has reviewed the information presented in the Accountant’s Annual Determination and believes that such determination is an appropriate representation of the Development.

(g) DHCD shall have sixty (60) days after the delivery of the Accountant’s Annual Determination to accept it, to make its objections in writing to the Developer and the Developer’s CPA, or to request from the Developer and/or CPA additional information regarding it. If DHCD does not object to it or request additional information with respect to it, it shall have been deemed accepted by the DHCD. If DHCD shall request additional information, then the Developer shall provide DHCD with such additional information as promptly as possible and DHCD shall have an additional thirty (30) days thereafter to review such information and either accept or raise objections to such Accountant’s Annual Determination. If no such objections are made within such thirty day (30) period, the Accountant’s Annual Determination shall be deemed accepted by DHCD. Prior to acceptance of the Accountant’s Annual Determination, DHCD shall deliver a copy of the Accountant’s Annual Determination to the Municipality with DHCD’s determination of the Developer’s compliance with the Comprehensive Permit Rules. The Municipality shall have the option of evaluating the report for accuracy (e.g., absence of material errors), applying the same standards as set forth herein, for a period of 30 days after receipt. Such thirty (30) day period may be extended upon the written request of the Municipality to DHCD, which request shall not be unreasonably withheld. DHCD will reasonably review any inaccuracies identified by the Municipality during this period and shall thereafter either accept or raise

objections to the Accountant's Annual Determination as provided above.

To the extent that DHCD shall raise any objections to such Accountant's Annual Determination as provided above, then the Developer and DHCD shall consult in good faith and seek to resolve such objections within an additional thirty (30) day period. If any objections are not resolved during such period, then DHCD may enforce the provisions under this Section by the exercise of any remedies it may have under this Agreement.

(h) If upon the approval of an Accountant's Annual Determination as provided above, such Accountant's Annual Determination shall show that the Distribution Payments for such fiscal year shall be in excess of the Maximum Annual Distributable Amounts for such fiscal year, then upon thirty (30) days written notice from DHCD, the Developer shall cause such excess to be deposited in the Excess Revenue Account from sources other than Development Revenues to the extent not otherwise required by Lender to remain with the Development as provided in subsection (e) above.

If such Accountant's Annual Determination as approved shall show that there are Annual Excess Revenues for such fiscal year which have not been distributed, such amounts shall be applied as provided in subsection (e) above within thirty (30) days after the approval of the Accountant's Annual Determination as set forth in subsection (g) above.

(i) Notwithstanding anything to the contrary contained in this Agreement, a distribution resulting from the proceeds of a sale or refinancing of the Development shall not be regulated by this Agreement. A sale or refinancing shall not result in a new evaluation of Developer's Equity.

(j) Payment of fees and profits from capital sources for the initial development of the Development to the Developer and/or the Developer's related party consultants, partners and legal or beneficial owners of the Development shall (unless otherwise limited by DHCD) be limited to no more than that amount resulting from the calculation in Attachment B, Step 3 ("Calculation of Maximum Allowable 40B Developer Fee and Overhead") of the Cost Certification Guidance (the "Maximum Allowable Developer Fee"). The Maximum Allowable Developer Fee shall not include fees or profits paid to any other party, whether or not related to the Developer, to the extent the same are arm's length and commercially reasonable in light of the size and complexity of the Development. The Developer shall comply with the requirements of Section 21 below regarding Cost Certification in accordance with the requirements of 760 CMR 56.04(8) (e), in the event that DHCD determines, following examination of the Cost Certification submitted by the Developer pursuant to Section 21 below, that amounts were paid or distributed by the Developer in excess of the above limitations (the "Excess Distributions"), the Developer shall pay over in full such Excess Distributions to the Municipality within fifteen (15) business days of notice and demand given by DHCD as provided herein.

(k) The Municipality agrees that upon the receipt by the Municipality of any cash available for distribution pursuant to subsection (e) above or upon the receipt of any Excess Distributions pursuant to subsection (j) above, the Municipality shall deposit any and all such

monies into an affordable housing fund, if one exists in the Municipality, or into an affordable housing trust fund, if one exists in the Municipality, or otherwise into a fund established pursuant to G.L. c. 44, §53A (collectively, an “Affordable Housing Fund”) to be used by the Municipality for the purpose of creating or subsidizing the construction, purchase, rehabilitation, or preservation of housing in the Municipality for persons and families of low and moderate income housing. The expenditure of funds from the Affordable Housing Fund shall be reported on an annual basis to DHCD.

MANAGEMENT OF THE DEVELOPMENT

8. Developer shall maintain the Development in good physical condition in accordance with DHCD’s requirements and standards and the requirements and standards of the Lender ordinary wear and tear and casualty excepted. Developer shall provide for the management of the Development in a manner that is consistent with accepted practices and industry standards for the management of multi-family market rate rental housing. Notwithstanding the foregoing, DHCD shall have no obligation hereunder, expressed or implied, to monitor or enforce any such standards or requirements and, further, DHCD has not reviewed nor approved the Plans and Specifications for compliance with federal, state or local codes or other laws.

CHANGE IN COMPOSITION OF DEVELOPER ENTITY; RESTRICTIONS ON TRANSFERS

9. (a) Except for rental of Units to Low or Moderate Income Persons or Families as permitted by the terms of this Agreement, the Developer will not sell, transfer, lease or exchange (collectively, a “Sale”) the Development or any portion thereof or any interest therein without the prior written consent of DHCD, which consent shall be granted by DHCD provided that: (1) the Developer secures from the transferee a written agreement, which in the case of any transfer other than a transfer of Beneficial Interests, shall be recorded in the Registry of Deeds with the deed and/or other recorded documents effecting the sale, stating that the transferee will assume in full the Developer’s obligations and duties under this Agreement, (2) the proposed transferee (or any entity controlled by or controlling or under common control with the proposed transferee) has no documented history of failures to abide by agreements with funding or regulatory agencies of the Commonwealth or the federal government and is not currently in violation of any agreements with such agencies beyond the time permitted to cure the violation, and (3) the Development is in compliance with this Agreement at the time of the proposed Sale.

(b) The Developer shall provide DHCD and the Municipality with thirty (30) days’ prior written notice of the following:

(i) any change, substitution or withdrawal of any general partner, manager, or agent of Developer; or

(ii) the conveyance, assignment, transfer, or relinquishment of a majority of the Beneficial Interests (herein defined) in Developer (except for such

a conveyance, assignment, transfer or relinquishment among holders of Beneficial Interests as of the date of this Agreement); or

(iii) the sale, mortgage, conveyance, transfer, ground lease, or exchange of Developer's interest in the Development or any party of the Development.

For purposes hereof, the term "Beneficial Interest" shall mean: (i) with respect to a partnership, any limited partnership interests or other rights to receive income, losses, or a return on equity contributions made to such partnership; (ii) with respect to a limited liability company, any interests as a member of such company or other rights to receive income, losses, or a return on equity contributions made to such company; or (iii) with respect to a company or corporation, any interests as an officer, board member or stockholder of such company or corporation to receive income, losses, or a return on equity contributions made to such company or corporation.

Notwithstanding the above, DHCD's consent under this Section 9 shall not be required with respect to the grant by the Developer of any mortgage or other security interest in or with respect to the Development to a state or national bank, state or federal savings and loan association, cooperative bank, mortgage company, trust company, insurance company or other institutional lender or any exercise by any such mortgagee of any of its rights and remedies (including without limitation, by foreclosure or by taking title to the Development by deed in lieu of foreclosure), subject, however to the provisions of Section 25 hereof.

Developer hereby agrees that it shall provide copies of any and all written notices received by Developer from a mortgagee exercising or threatening to exercise its foreclosure rights under the mortgage.

10. Omitted.

BOOKS AND RECORDS

11. All records, accounts, books, tenant lists, applications, waiting lists, documents, and contracts relating to the Developer's compliance with the requirements of this Agreement shall at all times be kept separate and identifiable from any other business of Developer which is unrelated to the Development, and shall be maintained, as required by applicable regulations and/or guidelines issued by DHCD from time to time, in a reasonable condition for proper audit and subject to examination during business hours by representatives of DHCD or the Municipality. Failure to keep such books and accounts and/or make them available to the DHCD or the Municipality will be an Event of Default hereunder if such failure is not cured to the satisfaction of the DHCD within thirty (30) days after the giving of notice to the Developer. The Developer agrees to comply and to cause the Development to comply with all requirements of the Regulations and Guidelines (except that in the extent of a conflict between the express terms of this Agreement and any modifications to the Regulations and Guidelines after the date hereof, the terms of this Agreement shall control), and all other applicable laws, rules, regulations, and executive orders.

12. Within ninety (90) days following the end of each fiscal year of the Development, Developer shall furnish DHCD with a complete annual financial report for the Development based upon an examination of the books and records of Developer containing a detailed, itemized statement of all income and expenditures, prepared and certified by a certified public accountant in accordance with the reasonable requirements of DHCD which include: (i) financial statements submitted in a format acceptable to DHCD; (ii) the financial report on an accrual basis and in conformity with generally accepted accounting principles applied on a consistent basis; and (iii) amounts available for distribution under Section 7 above. A duly authorized agent of Developer must approve such submission in writing. The provisions of this paragraph may be waived or modified by DHCD.

FINANCIAL STATEMENTS AND OCCUPANCY REPORTS

13. At the request of DHCD or the Municipality, Developer shall furnish financial statements and occupancy reports and shall give specific answers to questions upon which information is reasonably desired from time to time relative to the ownership and operation of the Development as it pertains to the Developer's compliance with the requirements of this Agreement.

NO CHANGE OF DEVELOPMENT'S USE

14. Except to the extent permitted in connection with a change to the Comprehensive Permit approved in accordance with the Regulations or as set forth in Section 28 below, Developer shall not, without prior written approval of DHCD and the Municipality and an amendment to the Agreement, change the type or number of Affordable Units. Developer shall not permit the use of the dwelling accommodations of the Development for any purpose except residences and any other use permitted by the Comprehensive Permit; provided however, that the foregoing shall not be deemed to prohibit the conversion of the use of the property on which the Development is built for other uses permitted by the applicable zoning then in effect. Notwithstanding any other provision of this Agreement, in no event shall the Developer change the use of the Development to a use other than a multi-family residential use or change the number or type of Affordable Units on or before the date that is thirty (30) years from the date of the execution of this Agreement (except as provided in Section 29 hereof).

NO DISCRIMINATION

15. (a) There shall be no discrimination upon the basis of race, color, creed, religious creed, national origin, sex, sexual orientation, age, ancestry, handicap, or marital status or any other basis prohibited by law in the lease, use, or occupancy of the Development (provided that if the Development qualifies as elderly housing under applicable state and federal law, occupancy may be restricted to the elderly in accordance with said laws) or in connection with the employment or application for employment of persons for the operation and management of the

Development.

(b) There shall be full compliance with the provisions of all state or local laws prohibiting discrimination in housing on the basis of race, creed, color, religion, disability, sex, sexual orientation, national origin, age, familial status, or any other basis prohibited by law and providing for nondiscrimination and equal opportunity in housing, including without limitation in the implementation of any local preference established under the Comprehensive Permit. Failure or refusal to comply with any such provisions shall be a proper basis for the Municipality or DHCD to take any corrective action it may deem necessary.

DEFAULTS; REMEDIES

16. (a) If any default, violation, or breach of any provision of this Agreement by the Developer is not cured to the satisfaction of the DHCD within thirty (30) days after the giving of notice to the Developer as provided herein, then at DHCD's option, and without further notice, the DHCD may either terminate this Agreement, or DHCD may apply to any state or federal court for specific performance of this Agreement, or DHCD may exercise any other remedy at law or in equity or take any other action as may be necessary or desirable to correct noncompliance with this Agreement. If any default, violation, or breach of any provision of this Agreement by the Municipality is not cured to the satisfaction of DHCD within thirty (30) days after the giving of notice to the Municipality as provided herein, then DHCD may either terminate this Agreement or may apply to any state or federal court for specific performance of this Agreement, or may exercise any other remedy at law or in equity or take any other action as may be necessary to correct noncompliance with this Agreement. The thirty (30) day cure periods set forth in this paragraph shall be extended for such period of time as may be necessary to cure such a default so long as the Developer or the Municipality, as the case may be, is diligently prosecuting such a cure.

(b) If DHCD elects to terminate this Agreement as the result of an uncured breach, violation, or default hereof, then whether the Affordable Units continue to be included in the Subsidized Housing Inventory maintained by DHCD for purposes of the Act shall from the date of such termination be determined solely by DHCD according to the rules and regulations then in effect.

(c) In the event DHCD brings an action to enforce this Restriction and prevails in any such action, DHCD shall be entitled to recover from the Developer all of DHCD's reasonable costs of an action for such enforcement of this Restriction, including reasonable attorneys' fees.

(d) The Developer hereby grants to DHCD or its designee the right to enter upon the Development for the purpose of enforcing the terms of this Agreement or to prevent, remedy or abate any violation of this Agreement.

MONITORING AGENT; FEES; SUCCESSOR SUBSIDIZING AGENCY

17. DHCD intends to monitor the Developer's compliance with the requirements of this Agreement. The Developer hereby agrees to pay DHCD fees for its services hereunder, as set forth on Appendix B hereto, initially in the amounts and on the dates therein provided, and hereby grants to DHCD a security interest in Development Revenues as security for the payment of such fees subject to the lien of the Mortgage and this Agreement shall constitute a security interest with respect thereto.

18. DHCD shall have the right to engage a third party (the "Monitoring Agent") to monitor compliance with all or a portion of the ongoing requirements of this Agreement. In carrying out its obligations as a Monitoring Agent, the third party shall apply and adhere to the standards and policies of DHCD related to the administrative responsibilities of Subsidizing Agencies. DHCD shall notify the Developer and the Municipality in the event DHCD engages a Monitoring Agent, and in such event (i) as partial compensation for providing these services, the Developer hereby agrees to pay to the Monitoring Agent an annual monitoring fee in an amount reasonably determined by DHCD, payable within thirty (30) days of the end of each fiscal year of the Developer during the Limited Dividend Term as defined in Section 24(b) below, but not in excess of the amounts as shown on Appendix B hereto and any fees payable under Section 17 hereof shall be net of such fees payable to a Monitoring Agent; and (ii) the Developer hereby agrees that the Monitoring Agent shall have the same rights, and be owed the same duties, as DHCD under this Agreement, and shall act on behalf of DHCD hereunder, to the extent that DHCD delegates its rights and duties by written agreement with the Monitoring Agent.

19. The Municipality shall have the right to engage a third party (the "Affordability Monitoring Agent"), pursuant to the terms of a separate monitoring agreement between the Municipality and the Developer in accordance with the terms of the Comprehensive Permit, to monitor compliance with all or a portion of the ongoing affordability requirements of this Agreement which Municipality is responsible for overseeing hereunder, but for no other purpose. In carrying out its obligations as an Affordability Monitoring Agent, the third party shall apply and adhere to the standards and policies of DHCD related to the administrative responsibilities of Subsidizing Agencies. The Municipality shall notify the Developer and DHCD in the event the Municipality engages an Affordability Monitoring Agent, and in such event the Developer hereby agrees that the Affordability Monitoring Agent shall have the same rights, and be owed the same duties, as the Municipality under this Agreement, and shall act on behalf of the Municipality hereunder, to the extent that the Municipality delegates its rights and duties by written agreement with the Affordability Monitoring Agent.

CONSTRUCTION AND FINAL COST CERTIFICATION

20. The Developer shall provide to the Municipality evidence that the final plans and specifications for the Development comply with the requirements of the Comprehensive Permit and that the Development was built substantially in accordance with such plans and specifications.

21. Upon Substantial Completion, the Developer shall provide the Municipality with a certificate of the architect for the Development in the form of a "Certificate of Substantial Completion" (AIA Form G704) or such other form of completion certificate acceptable to the

Municipality.

In addition, within ninety (90) days after Substantial Completion, the Developer shall provide DHCD with its Cost Certification for the Development.

As used herein, the term “Substantial Completion” shall mean the time when the construction of the Development is sufficiently complete so that all of the units may be occupied and amenities may be used for their intended purpose, except for designated punch list items and seasonal work which does not interfere with the residential use of the Development.

For the purposes hereof the term “Cost Certification” shall mean the determination by the DHCD of the aggregate amount of all Development Costs as a result of its review and approval of: (i) an itemized statement of Total Development Costs together with a statement of gross income from the Development received by the Developer to date in the format provided in the Cost Certification Guidance (the “Cost Examination”). The Cost Certification must be examined in accordance with the attestation standards of the American Institute of Certified Public Accountants (AICPA) by an independent certified public accountant (CPA) and (ii) an owner’s and/or general contractor’s certificate, as provided in the Cost Certification Guidance, executed by the Developer and/or general contractor under penalties of perjury, which identifies the amount of the Construction Contract, the amount of any approved Change Orders, including a listing of such Change Orders, and any amounts due to subcontractors and/or suppliers. “Allowable Development Costs” shall mean any hard costs or soft costs paid or incurred with respect to Development as determined by and in accordance with the Guidelines.

Prior to acceptance of the Cost Certification, DHCD shall deliver a copy of the Cost Certification to the Municipality with DHCD’s determination of the Developer’s compliance with the Comprehensive Permit Rules. The Municipality shall have the option of evaluating the report for accuracy (e.g., absence of material errors), applying the same standards as set forth herein, for a period of 30 days after receipt. Such thirty (30) day period may be extended upon the written request of the Municipality to DHCD, which request shall not be unreasonably withheld. DHCD will reasonably review any inaccuracies identified by the Municipality during this period and shall thereafter either accept or raise objections to the Cost Certification as provided in Section (g) above.

22. In order to ensure that the Developer shall complete the Cost Certification as required by Section 21 hereof, the Developer has provided DHCD herewith adequate financial surety (the “Surety”) provided through a letter of credit, bond or cash payment in the amounts and in accordance with the Comprehensive Permit Rules and in a form approved by DHCD. If DHCD shall determine that the Developer has failed in its obligation to provide Cost Certification as described above, DHCD may draw on such Surety in order to pay the costs of completing Cost Certification.

23. Omitted.

TERM

24. (a) This Agreement shall bind, and the benefits shall inure to, respectively, Developer and its successors and assigns, and DHCD and its successors and assigns and the Municipality and its successors and assigns, in perpetuity, except as provided in Section 24(b) below, (the “Term”). Upon expiration of the Term, this Agreement and the rights and obligations of the parties hereunder shall automatically terminate without the need of any party executing any additional document. For the purposes hereof, the term “perpetuity” shall mean for so long as the Development does not comply with applicable zoning or other local requirements without the benefit of the Comprehensive Permit. Notwithstanding any other provision of this Agreement, in no event shall the Term expire prior to the date that is thirty (30) years from the date of the execution of this Agreement.

(b) Notwithstanding subsection (a) above, the provisions of Section 7(a)–(i) herein (“Limited Dividends”) shall bind, and the benefits shall inure to, respectively, Developer and its successors and assigns, and DHCD and its successors and assigns, and the Municipality and its successors and assigns until the date which is fifteen (15) years from the date of this Agreement (the “Limited Dividend Term”).

LENDER FORECLOSURE

25. The rights and restrictions contained in this Agreement shall not lapse if the Development is acquired through foreclosure or deed in lieu of foreclosure or similar action, and the provisions hereof shall continue to run with and bind the Development.

INDEMNIFICATION/LIMITATION ON LIABILITY

26. The Developer, for itself and its successors and assigns, agrees to indemnify and hold harmless DHCD and the Municipality against all damages, costs and liabilities, including reasonable attorney’s fees, asserted against DHCD or the Municipality by reason of its relationship to the Development under this Agreement to the extent the same is attributable to the acts or omissions of the Developer and does not involve the negligent acts or omissions of DHCD or the Municipality.

27. DHCD and the Municipality shall not be held liable for any action taken or omitted under this Agreement so long as they shall have acted in good faith and without gross negligence. Further, no officer, partner, manager, member, agent or employee of DHCD or the Municipality shall have any personal liability hereunder.

28. Notwithstanding anything in this Agreement to the contrary, upon the occurrence of any breach or default by the Developer hereunder, DHCD will look solely to the Developer’s interest in the Development for the satisfaction of any judgment against the Developer or for the performance of any obligation of the Developer hereunder. Further, no officer, partner, manager, member, agent or employee of the Developer shall have any personal liability hereunder.

CASUALTY

29. Subject to the rights of the Lender, Developer agrees that if the Development, or any part thereof, shall be damaged or destroyed or shall be condemned or acquired for public use, the Developer shall have the right, but not the obligation, to repair and restore the Development to substantially the same condition as existed prior to the event causing such damage or destruction, or to relieve the condemnation, and thereafter to operate the Development in accordance with the terms of this Agreement. Notwithstanding the foregoing, in the event of a casualty in which some but not all of the buildings in the Development are destroyed, if such destroyed buildings are not restored by Developer, Developer shall be required to maintain the same percentage of Affordable Units of the total number of units in the Development.

DEVELOPER'S REPRESENTATIONS AND WARRANTIES

30. The Developer hereby represents and warrants as follows:

(a) The Developer (i) is a Maryland corporation, qualified to transact business under the laws of the Commonwealth of Massachusetts, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted, and (iii) has the full legal right, power and authority to execute and deliver this Agreement.

(b) The execution and performance of this Agreement by the Developer (i) will not violate or, as applicable, has not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body, and (ii) will not violate or, as applicable, has not violated any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which the Developer is a party or by which it or the Development is bound, and (iii) will not result in the creation or imposition of any prohibited encumbrance of any nature.

(c) The Developer will, at the time of execution and delivery of this Agreement, have good and marketable title to the premises constituting the Development free and clear of any lien or encumbrance (subject to encumbrances created pursuant to this Agreement, and any other documents executed in connection with the Construction Loan, or other encumbrances permitted by DHCD).

(d) There is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Developer, threatened against or affecting it, or any of its properties or rights, which, if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by this Agreement) or would materially adversely affect its financial condition.

MISCELLANEOUS CONTRACT PROVISIONS

31. This Agreement may not be modified or amended except with the written consent of DHCD or its successors and assigns, the Municipality or its successor and assigns, and

Developer or its successors and assigns.

32. Developer warrants that it has not, and will not, execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that, in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations set forth and supersede any other requirements in conflict therewith. Without limiting the foregoing, any local preference criteria to be used in the selection of tenants for the Affordable Units shall conform to the requirements of the Guidelines.

33. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.

34. Any titles or captions contained in this Agreement are for reference only and shall not be deemed a part of this Agreement or play any role in the construction or interpretation hereof.

35. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include corporations and associations, including public bodies, as well as natural persons.

36. The terms and conditions of this Agreement have been freely accepted by the parties. The provisions and restrictions contained herein exist to further the mutual purposes and goals of DHCD, the Municipality and the Developer set forth herein to create and preserve access to land and to decent and affordable rental housing opportunities for eligible families who are often denied such opportunities for lack of financial resources.

NOTICES

37. Any notice or other communication in connection with this Agreement shall be in writing and (i) deposited in the United States mail, postage prepaid, by registered or certified mail, or (ii) hand delivered by any commercially recognized courier service or overnight delivery service, such as Federal Express, or (iii) sent by facsimile transmission if a fax number is designated below, addressed as follows:

If to the Developer:

c/o AvalonBay Communities, Inc.
600 Atlantic Avenue, 20th Floor
Boston, MA 02210
Attention: Vice President – Development
Fax: 617-426-1610

with copies by regular mail or such hand delivery

[or facsimile transmission] to:

Sudbury Avalon, Inc.
c/o AvalonBay Communities, Inc.
Ballston Tower
671 N. Glebe Road Suite 800
Arlington, VA 22203
Attention: Senior Vice President and General Counsel
Fax: 703-329-9130

And to:
Goulston & Storrs PC
400 Atlantic Avenue
Boston, MA 02110
Attention: Steven Schwartz, Esq.
Fax: 617-574-7636

If to DHCD:

Department of Housing and Community Development
100 Cambridge St., Suite 300
Boston, MA 02114
Attention: Director of Local Initiative Program
Fax: 617-573-1330

If to the Municipality:

Town Manager
Town of Sudbury
278 Old Sudbury Road
Sudbury, MA 01776
Fax: (978) 443 - 0756

Any such addressee may change its address for such notices to any other address in the United States as such addressee shall have specified by written notice given as set forth above.

A notice shall be deemed to have been given, delivered and received upon the earliest of: (i) if sent by certified or registered mail, on the date of actual receipt (or tender of delivery and refusal thereof) as evidenced by the return receipt; or (ii) if hand delivered by such courier or overnight delivery service, when so delivered or tendered for delivery during customary business hours on a business day at the specified address; or (iii) if facsimile transmission is a permitted means of giving notice, upon receipt as evidenced by confirmation. Notice shall not be deemed to be defective with respect to the recipient thereof for failure of receipt by any other party.

RECORDING

38. Upon execution, the Developer shall immediately cause this Agreement and any amendments hereto to be recorded or filed with the Registry, and the Developer shall pay all fees and charges incurred in connection therewith. Upon recording or filing, as applicable, the Developer shall immediately transmit to DHCD and the Municipality evidence of such recording or filing including the date and instrument, book and page or registration number of the Agreement.

GOVERNING LAW

39. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts. Any amendments to this Agreement must be in writing and executed by all of the parties hereto. The invalidity of any clause, part, or provision of this Agreement shall not affect the validity of the remaining portions hereof.

DELEGATION BY DHCD

40. DHCD may delegate its compliance and enforcement obligations under this Agreement to a third party, if the third party meets standards established by DHCD, by providing written notice of such delegation to the Developer and the Municipality. In carrying out the compliance and enforcement obligations of DHCD under this Agreement, such third party shall apply and adhere to the pertinent standards of DHCD.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties have caused these presents to be signed and sealed by their respective, duly authorized representatives, as of the day and year first written above.

DEVELOPER:

SUDBURY AVALON, INC.

By: _____
 Name: _____
 Its: _____
 Hereunto duly authorized

DHCD:

DEPARTMENT OF HOUSING AND
 COMMUNITY DEVELOPMENT, AS
 SUBSIDIZING AGENCY AS AFORESAID

By: _____
 Name: _____
 Its: _____
 Hereunto duly authorized

MUNICIPALITY:

TOWN OF SUDBURY

By: _____
 Name: _____
 Its: _____
 Hereunto duly authorized

Attachments:

Exhibit A – Legal Description
 Appendix A – Rent Schedule
 Appendix B – Fees Payable to DHCD

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF _____, ss.

On this _____ day of _____, 2017, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding document, as _____ of Sudbury Avalon, Inc., a Maryland corporation, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

 Notary Public
 Print Name:
 My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY, ss.

On this _____ day of _____, 2017, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding document, as _____ for the Commonwealth of Massachusetts acting by and through the Department of Housing and Community Development, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

 Notary Public
 Print Name:
 My Commission Expires:

Attachment 7.a: AVB - Sudbury - LIP Regulatory Agreement (2317 : Avalon LIP)

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF _____, ss.

On this _____ day of _____, 2017, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding document, as the _____ for the Town of Sudbury, and acknowledged to me that he/she signed it voluntarily for its stated purpose on behalf of the Town of Sudbury.

Notary Public

Print Name:

My Commission Expires:

Attachment 7.a: AVB - Sudbury - LIP Regulatory Agreement (2317 : Avalon LIP)

EXHIBIT A**LEGAL DESCRIPTION**

That certain parcel of land with the improvements thereon located in the Town of Sudbury, Middlesex County, Massachusetts, being shown as “Lot 3, Area = 1,078,022 sq. ft. (24.748 Acres)” on a plan entitled “Subdivision Plan of Land in Sudbury, Massachusetts,” prepared by VHB Inc., dated May 6, 2016, and recorded with the Middlesex South District Registry of Deeds as Plan No. 1005 of 2016.

Attachment 7.a: AVB - Sudbury - LIP Regulatory Agreement (2317 : Avalon LIP)

APPENDIX A**RENT SCHEDULE (INITIAL)**

Re: Avalon Sudbury
Sudbury, MA
Sudbury Avalon, Inc.

Initial Maximum Rents and Utility Allowances for Low and Moderate Income Units

	<u>Rents</u>	<u>Utility Allowances</u>
Studio Units	\$1216	\$61
One-bedroom Units	\$1419	\$78
Two-bedroom Units	\$1622	\$103
Three-bedroom Units	\$1825	\$128
Four-bedroom Units	N/A	\$N/A

APPENDIX B**FEES PAYABLE TO DHCD**

During the term of this Agreement, the Development shall pay to DHCD a monitoring fee of \$30.00 per month for each Affordable Unit with a maximum annual fee of \$4,000. The Developer shall make each payment to DHCD within ten (10) days of the end of every month until such time as it shall have paid DHCD the maximum annual fee.

REGULATORY AND USE AGREEMENT

[Comprehensive Permit Rental]

LOCAL INITIATIVE PROGRAM

This Regulatory and Use Agreement (this “Agreement”) is made this ____ day of _____, 2017 by and among the Commonwealth of Massachusetts, acting by and through the Department of Housing and Community Development (“DHCD”) pursuant to G.L. c.23B §1 as amended by Chapter 19 of the Acts of 2007, the Town of Sudbury (the “Municipality”), and Sudbury Avalon, Inc., a Maryland corporation, having a mailing address at ~~51-Sleeper-Street, Suite 750~~, 600 Atlantic Avenue, 20th Floor, Boston, Massachusetts 02210, and its successors and assigns (“Developer”).

RECITALS

WHEREAS, the Developer is proposing a housing development known as ~~Avalon Sudbury~~ at an approximately ~~23.7~~24.7 acre site within a larger subdivision located at 526 & 528 Boston Post Road in the Municipality, as more particularly described in Exhibit A attached hereto and made a part hereof (the “Development”); and

WHEREAS, DHCD has promulgated Regulations at 760 CMR 56.00 (as may be amended from time to time, the “Regulations”) relating to the issuance of comprehensive permits under Chapter 40B, Sections 20-23, of the Massachusetts General Laws (as may be amended from time to time, the “Act”) and pursuant thereto has issued its Comprehensive Permit Guidelines (the “Guidelines” and, collectively with the Regulations and the Act, the “Comprehensive Permit Rules”); and

WHEREAS, pursuant to the Act and the final report of the Special Legislative Commission Relative to Low and Moderate Income Housing Provisions issued in April 1989, regulations have been promulgated at the Regulations which establish the Local Initiative Program (“LIP”); and

WHEREAS, DHCD acts as Subsidizing Agency for the Development pursuant to the Comprehensive Permit Rules; and

WHEREAS, a comprehensive permit pursuant to the Act was issued by virtue of a Decision dated July 18, 2016 issued by The Town of Sudbury Zoning Board of Appeals (“ZBA”), which was recorded in the Middlesex South Registry of Deeds (the “Registry”) in Book 67882, Page 210 (“the Comprehensive Permit”); and

WHEREAS, pursuant to the Comprehensive Permit and the requirements of the Comprehensive Permit Rules, the Development is to consist of a total of 250 rental units, of which twenty five percent (25%) (i.e. 63 units) (the “Affordable Units”) will be rented to Low or Moderate Income Persons and Families (as defined herein) at rentals specified in this Agreement and will be subject to this Agreement; and

WHEREAS, DHCD has adopted the *Preparation of Cost Certification for 40B Rental Developments: Inter-Agency 40B Rental Cost Certification Guidance for Owners, Certified Public Accountants and Municipalities* (the “Cost Certification Guidance”), which shall govern the cost certification and limited dividend requirements for the Development pursuant to the Comprehensive Permit Rules; and

WHEREAS, the parties intend that this Agreement shall serve as a “Use Restriction” as defined in and required by Section 56.05(13) of the Regulations; and

WHEREAS, the parties recognize that Affirmative Fair Marketing (as defined herein) is an important precondition for rental of Affordable Units and that local preference cannot be granted in a manner which results in a violation of applicable fair housing laws, regulations and subsidy programs; and

WHEREAS, the parties recognize that the Municipality has an interest in preserving affordability of the Affordable Units and may offer valuable services in administration, monitoring and enforcement.

NOW, THEREFORE, in consideration of the agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, DHCD, the Municipality and the Developer hereby agree as follows:

DEFINITIONS

1. In addition to terms defined elsewhere in this Agreement, the following terms as used in this Agreement shall have the meanings set forth below:

Accountant’s Annual Determination shall have the meaning given such term in Section 7(f) hereof.

Accumulated Distribution Amounts shall have the meaning given such term in Section 7(c) hereof.

Accumulated and Unpaid Distribution Amounts shall have the meaning given such term in Section 7(c) hereof.

Act shall have the meaning given such term in the Recitals hereof.

Affirmative Fair Housing Marketing Plan shall mean the Affirmative Fair Housing Marketing Plan prepared by the Developer in accordance with the Guidelines and approved by DHCD, as further set forth in Section 3.

Affordable Units shall have the meaning set forth in the Recitals above.

Allowable Development Costs shall have the meaning given such term in Section 21 hereof.

Annual Excess Revenues shall have the meaning given such term in Section 7(e) hereof.

Annual Income shall be determined in the manner set forth in 24 C.F.R. 5609 (or any successor regulations).

Area shall mean the Boston, Cambridge, Quincy MA-NH Metropolitan Statistical Area (MSA)/County/HMFA as designated by the Department of Housing and Urban Development (“HUD”).

Area Median Income (“AMI”) shall mean the median gross income for the Area, as determined from time to time by HUD. For purposes of determining whether Adjusted Family Income qualifies a tenant for treatment as a Low or Moderate Income Tenant, the Area Median Income shall be adjusted for family size.

Comprehensive Permit shall have the meaning given such term in the Recitals hereof.

Comprehensive Permit Rules shall have the meaning given such term in the Recitals hereof.

Construction Lender shall mean the lender(s) making the Construction Loan, and its successors and assigns.

Construction Loan shall mean the loan to the Developer for the construction of the Development, if any.

Construction Mortgage shall mean the mortgage from the Developer securing the Construction Loan, if any.

Cost Certification shall have the meaning given such term in Section 21 hereof.

Current Distribution Amounts shall have the meaning given such term in Section 7(c) hereof.

Developer’s Equity shall be calculated according to the formulas outlined in Attachment C of the Cost Certification Guidance, using the Cost Method until the Cost Certification process is complete, and either the Cost Method or the Value Method, whichever results in the greater amount, thereafter. Developer’s Equity shall be retroactively applied to the period from the start date (commencement of construction of the Development as evidenced by issuance of the first building permit) until Substantial Completion (the “Construction Period”). For the Construction Period, Developer’s Equity shall mean the average of costs expended by the Developer on the Development during the period in question, based on a review of Developer’s financial reports by an independent accounting firm. By way of example only, if on the first day of construction the Developer’s costs are \$10,000,000 (all attributable to land acquisition costs), and one year later the Developer’s costs are \$20,000,000 (half attributable to land acquisition costs, half attributable to construction costs), then the Developer’s Equity for that year of construction would be the average of those two amounts of \$15,000,000. The Developer’s Equity for the construction period shall be appropriately prorated for any partial year during such period.

Developer Parties shall have the meaning given such term in Section 7(b) hereof.

Development shall have the meaning given such term in the Recitals hereof.

Development Revenues shall have the meaning given such term in Section 7(b) hereof.

Distribution Payments shall have the meaning given such term in Section 7(b) hereof.

Event of Default shall mean a default in the observance of any covenant under this Agreement existing after the expiration of any applicable notice and cure periods.

Excess Revenues Account shall mean the account established under Section 7(e) hereof.

Family shall have the same meaning as set forth in 24 C.F.R. §5.403 (or any successor regulations).

Guidelines shall have the meaning given such term in the Recitals hereof.

Housing Subsidy Program shall mean any other state or federal housing subsidy program providing rental or other subsidy to the Development or to Low or Moderate Income Tenants.

HUD shall mean the United States Department of Housing and Urban Development.

Lender shall mean the Construction Lender and/or the Permanent Lender.

Low or Moderate Income Persons or Families shall mean persons or Families whose Annual Incomes do not exceed eighty percent (80%) of the Median Income for the Area, and shall also mean persons or Families meeting such lower income requirements as may be required under the Comprehensive Permit.

Low or Moderate Income Tenants shall mean Low or Moderate Income Persons or Families who occupy the Affordable Units.

Maximum Annual Distributable Amounts shall have the meaning given such term in Section 7(c) hereof.

Mortgage shall mean the Construction Mortgage and/or the Permanent Mortgage, if any.

Permanent Lender shall mean the lender(s) making the Permanent Loan to the Developer, and its successors and assigns, if any.

Permanent Loan shall mean the Permanent Loan which may be made or committed to be made by the Permanent Lender to the Developer after completion of construction of the Development, which will replace the Construction Loan, or any subsequent refinancing thereof, if any.

Permanent Mortgage shall mean the mortgage from the Developer to the Permanent Lender securing the Permanent Loan, if any.

Regulations shall have the meaning given such term in the Recitals hereof.

Related Person: shall mean a person whose relationship to such other person is such that (i) the relationship between such persons would result in a disallowance of losses under Section 267 or 707(b) of the Code, or (ii) such persons are members of the same controlled group of corporations (as defined in Section 1563(a) of the Code, except that “more than 50 percent” shall be substituted for “at least 80 percent” each place it appears therein).

Substantial Completion shall have the meaning given such term in Section 21 hereof.

Surety shall have the meaning given such term in Section 22 hereof.

Tenant Selection Plan shall mean the Tenant Selection Plan, prepared by the Developer in accordance with the Guidelines and approved by DHCD, with such changes thereto provided that any substantive changes have been approved by the DHCD.

Term shall have the meaning set forth in Section 24 hereof.

CONSTRUCTION OBLIGATIONS

2. (a) The Developer agrees to construct the Development in accordance with plans and specifications approved by the Municipality (the “Plans and Specifications”) and in accordance with all on-site and off-site construction, design and land use conditions of the Comprehensive Permit. All Affordable Units to be constructed as part of the Development must be similar in exterior appearance to other units in the Development and shall be evenly dispersed throughout the Development. In addition, all Affordable Units must contain complete living facilities including but not limited to a stove, kitchen cabinets, plumbing fixtures, and sanitary facilities, all as more fully shown in the Plans and Specifications. Materials used for the interiors of the Affordable Units must be of good quality. The Development must fully comply with the State Building Code and with all applicable state and federal building, environmental, health, safety and other laws, rules, and regulations, including without limitation all applicable federal and state laws, rules and regulations relating to the operation of adaptable and accessible housing for the handicapped. Except to the extent that the Development is exempted from such compliance by the Comprehensive Permit, the Development must also comply with all applicable local codes, ordinances and by-laws.

(b) The Developer shall provide to the Municipality evidence that the final plans and specifications for the Development comply with the requirements of the Comprehensive Permit and that the Development was built substantially in accordance with such plans and specifications.

(c) Unless the same shall be modified by a change to the Comprehensive Permit approved by the Board of Appeals for the Municipality, the bedroom mix for the Development shall be as follows:

31 of the Affordable Units shall be one bedroom units;
 25 of the Affordable Units shall be two bedroom units; and
 7 of the Affordable Units shall be three bedroom units.

All Affordable Units to be occupied by families must contain two or more bedrooms. Affordable Units must have the following minimum areas:

one bedroom units – 700 square feet
 two bedroom units – 900 square feet
 three bedroom units – 1,200 square feet

USE RESTRICTION/RENTALS AND RENTS

3. (a) The Developer shall rent the Affordable Units during the Term hereof to Low or Moderate Income Persons or Families upon the terms and conditions set forth in the Comprehensive Permit and this Agreement. In fulfilling the foregoing requirement, Developer will accept referrals of tenants from the Public Housing Authority in the Municipality, and will not unreasonably refuse occupancy to any prospective tenants so referred who otherwise meet the requirements of the Tenant Selection Plan. The foregoing provisions shall not relieve Developer of any obligations it may have under the provisions of other documents and instruments it has entered with respect to any applicable Housing Subsidy Program; provided, however, DHCD shall have no obligation hereunder, expressed or implied, to monitor or enforce the applicable requirements of any such Housing Subsidy Programs.

(b) The annual rental expense for each Affordable Unit (equal to the gross rent plus allowances for all tenant-paid utilities, including tenant-paid heat, hot water and electricity) shall not exceed thirty percent (30%) of eighty percent (80%) of AMI, adjusted for household size, assuming that household size shall be equal to the number of bedrooms in the Affordable Unit plus one. If rentals of the Affordable Units are subsidized under any Housing Subsidy Program, then the rent applicable to the Affordable Units may be limited to that permitted by such Housing Subsidy Program, provided that the tenant's share of rent does not exceed the maximum annual rental expense as provided in this Agreement.

(c) If, after initial occupancy, the income of a tenant of an Affordable Unit increases and, as a result of such increase, exceeds the maximum income permitted hereunder for such a tenant, the Developer shall not be in default hereunder so long as either (i) the tenant income does not exceed one hundred forty percent (140%) of the maximum income permitted (in which case the unit in question shall continue to be counted as an Affordable Unit) or (ii) the Developer rents the next available unit at the Development as an Affordable Unit in conformance with Section 3(a) of this Agreement, or otherwise demonstrates compliance with Section 3(a) of this Agreement.

(d) If, after initial occupancy, the income of a tenant in an Affordable Unit increases, and as a result of such increase, exceeds one hundred forty percent (140%) of the

maximum income permitted hereunder for such a tenant, at the expiration of the applicable lease term, the rent restrictions shall no longer apply to such tenant.

(e) Rentals for the Affordable Units shall be initially established as shown on the Rental Schedule attached as Appendix A hereto, subject to change from time to time (if necessary to reflect any changes in AMI) in accordance with the terms and provisions of this Agreement and any applicable Housing Subsidy Program. Thereafter, the Developer shall annually submit to the Municipality and DHCD a proposed schedule of monthly rents and utility allowances for all Affordable Units in the Development. It is understood that such review rights shall be with respect to the maximum rents for all the Affordable Units, and not with respect to the rents that may be paid by individual tenants in any given unit. Rents for the Affordable Units shall not be increased above such maximum monthly rents without DHCD's prior approval of either (i) a specific request by the Developer for a rent increase; or (ii) the next annual schedule of rents and allowances as set forth in the preceding sentence. Notwithstanding the foregoing, rent increases shall be subject to the provisions of outstanding leases and shall not be implemented without at least 30 days' prior written notice by the Developer to all affected tenants. If an annual request for a new schedule of rents for the Affordable Units as set forth above is based on a change in the AMI figures published by HUD, and the Municipality and DHCD fail to respond to such a submission within thirty (30) days of the Municipality's and DHCD's receipt thereof, the Municipality and DHCD shall be deemed to have approved the submission. If an annual request for a new schedule of rents for the Affordable Units is made for any other reason, and the Municipality and DHCD fail to respond within thirty (30) days of the Municipality's and DHCD's receipt thereof, the Developer may send DHCD and the Municipality a notice of reminder, and if the Municipality and DHCD fail to respond within thirty (30) days from receipt of such notice of reminder, the Municipality and DHCD shall be deemed to have approved the submission.

Without limiting the foregoing, the Developer may request a rent increase for the Affordable Units to reflect an increase in the AMI published by HUD between the date of this Agreement and the date that the Units begin to be marketed or otherwise made available for rental pursuant to subsections 3 (h) and (i) below; if DHCD approves such a rent increase in accordance with this subsection (e), the Rental Schedule attached as Appendix A hereto shall be deemed to be modified accordingly.

(f) Developer shall obtain income certifications satisfactory in form and manner to DHCD at least annually for all Low or Moderate-Income Tenants. Said income certifications shall be kept by the management agent for the Development and made available to DHCD and the Municipality upon request.

(g) Throughout the term of this Agreement, the Municipality shall annually certify in writing to DHCD that each of the Affordable Units continues to be an Affordable Unit as provided in Section 2(c), above; and that the Development and the Affordable Units have been maintained in a manner consistent with the Comprehensive Permit and this Agreement.

(h) Prior to marketing or otherwise making available for rental any of the units in the Development, the Developer shall submit an Affirmative Fair Housing Marketing Plan (also known as an "AFHM Plan") for DHCD's approval. At a minimum, the AFHM Plan shall

meet the requirements of the Guidelines, as the same may be amended from time to time to comply with the requirements of fair housing laws. The AFHM Plan, upon approval by DHCD, shall become a part of this Agreement and shall have the same force and effect as if set out in full in this Agreement. At the option of the Municipality, and provided that the AFHM Plan demonstrates (i) the need for the local preference (e.g., a disproportionately low rental or ownership affordable housing stock relative to need in comparison to the regional area), and (ii) that the proposed local preference will not have a disparate impact on protected classes, the AFHM Plan may also include a preference for local residents for up to seventy percent (70%) of the Affordable Units, subject to all provisions of the Regulations and Guidelines and applicable to the initial rent-up only. When submitted to DHCD for approval, the AFHM Plan should be accompanied by a letter from the Chief Executive Officer of the Municipality (as that term is defined in the Regulations) which states that the tenant selection and local preference (if any) aspects of the AFHM Plan have been approved by the Municipality and which states that the Municipality will perform any aspects of the AFHM Plan which are set forth as responsibilities of the Municipality in the AFHM Plan. If the Chief Executive Office of the Municipality fails to approve the tenant selection and local preference (if any) aspects of the AFHM Plan for the Affordable Units above within thirty (30) days of the Municipality's receipt thereof, the Municipality shall be deemed to have approved those aspects of the AFHM Plan. In addition, if the Development is located in the Boston, Cambridge, Quincy MA-NH MSA/HMFA/County, Developer must list all Affordable Units with the Boston Fair Housing Commission's MetroList (Metropolitan Housing Opportunity Clearing Center). The Developer agrees to maintain for at least five years following the initial lease-up of the Development a record of all newspaper ads, outreach letters, translations, leaflets, and any other outreach efforts as described in the AFHM Plan as approved by DHCD which may be inspected at any time by DHCD.

(i) The AFHM Plan shall designate entities to implement the plan who are qualified to perform their duties. DHCD may require that another entity be found if DHCD finds that the entity designated by the Developer is not qualified. Moreover, DHCD may require the removal of an entity responsible for a duty under the AFHM Plan if that entity does not meet its obligations under the AFHM Plan.

(j) The restrictions contained herein are intended to be construed as an affordable housing restriction as defined in Section 31 of Chapter 184 of Massachusetts General Laws which has the benefit of Section 32 of said Chapter 184, such that the restrictions contained herein shall not be limited in duration by any rule or operation of law but rather shall run for the Term hereof. In addition, this Agreement is intended to be superior to the lien of any mortgage on the Development and survive any foreclosure or exercise of any remedies thereunder and the Developer agrees to obtain any prior lienholder consent with respect thereto as DHCD shall require.

TENANT SELECTION AND OCCUPANCY

4. Developer shall use its good faith efforts during the Term of this Agreement to maintain all the Affordable Units within the Development at full occupancy as set forth in Section 2 hereof. In marketing and renting the Affordable Units, the Developer shall comply

with the Tenant Selection Plan and Affirmative Fair Housing Marketing Plan which are incorporated herein by reference with the same force and effect as if set out in this Agreement.

5. Occupancy agreements for Affordable Units shall meet the requirements of the Comprehensive Permit Rules, this Agreement, and the Local Initiative Program. The Developer shall enter into a lease with each tenant for a minimum term of one year. The lease shall contain clauses, among others, wherein each resident of such Affordable Unit:

(a) certifies the accuracy of the statements made in the application and income survey;

(b) agrees that the family income, family composition and other eligibility requirements, shall be deemed substantial and material obligations of his or her occupancy; that he or she will comply promptly with all requests for information with respect thereto from Developer, the Municipality, or DHCD; and that his or her failure or refusal to comply with a request for information with respect thereto shall be deemed a violation of a substantial obligation of his or her occupancy; and

(c) agrees that at such time as Developer, the Municipality, or DHCD may direct, but at least annually, he or she will furnish to Developer certification of then current family income, with such documentation as the Municipality or DHCD shall reasonably require; and agrees to such charges as the Municipality or DHCD has previously approved for any facilities and/or services which may be furnished by Developer or others to such resident upon his or her request, in addition to the facilities included in the rentals, as amended from time to time pursuant to Section 3 above.

6. Omitted

LIMITED DIVIDENDS

7. (a) The Developer covenants and agrees that Distribution Payments made in any fiscal year of the Development shall not exceed the Maximum Annual Distributable Amounts for such fiscal year. No Distribution Payments may be made during any period in which an Event of Default has occurred and is continuing, which shall include but not be limited to failure to maintain the Development in good physical condition in accordance with Section 8 hereof.

(b) For the purposes hereof, the term “Distribution Payments” shall mean all amounts paid from revenues, income and other receipts of the Development, not including any amounts payable in respect of capital contributions paid by any members or partners of the Developer or any loan proceeds payable to the Developer (herein called “Development Revenues”) which are paid to any partner, manager, member or any other Related Person of the Developer (collectively, the “Developer Parties”) as profit, income, or fees or other expenses which are unrelated to the operation of the Development or which are in excess of fees and expenses which would be incurred from persons providing similar services who are not Developer Parties and provide such services on an arms-length basis.

(c) For the purposes hereof, the “Maximum Annual Distributable Amounts” for any particular fiscal year shall be defined and determined as follows: the sum of (i) an amount equal to ten percent (10%) of the “Developer’s Equity” for such fiscal year, subject to adjustment as provided in (d) below (the “Current Distribution Amounts”); plus (ii) the amount of all Accumulated and Unpaid Distributions calculated as of the first day of such fiscal year.

In no event shall the total Maximum Annual Distributable Amounts actually distributed for any given year exceed total funds available for distribution after all current and owed-to-date expenses have been paid and reserves, then due and owing, have been funded.

“Accumulated and Unpaid Distribution Amounts” shall be the aggregate of the Current Distribution Amounts calculated for all prior fiscal years less the Distribution Payments (“Accumulated Distribution Amounts”) calculated for each such fiscal year together with simple interest (“Accrued Interest”) resulting from such calculation in all prior years computed at five percent (5%) per annum. For the purposes of this calculation, it is assumed any amounts available for distribution in any year shall be fully disbursed.

(d) When using the Value-Based Approach, the Developer’s Equity may be adjusted not more than once in any five year period with the first five - year period commencing with the first fiscal year of the Development. Any adjustments shall be made only upon the written request of the Developer and, unless the Developer is otherwise directed by DHCD, shall be based upon an appraisal commissioned by (and naming as a client) DHCD and prepared by an independent and qualified appraiser prequalified by, and randomly assigned to the Development by, DHCD. The appraiser shall submit a Self-Contained Appraisal Report to DHCD in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). The costs of such appraisal shall be borne by the Developer. Such appraisal shall be based on the so-called ‘investment value’ methodology, using assumptions subject to the reasonable approval of DHCD.

Upon completion of an appraisal as provided above, the Developer’s Equity shall be adjusted to equal the appraised value of the Development as determined by the appraisal less the unpaid principal amount of the sum of secured debt on the Development plus public equity, whether structured as a grant or loan determined as of the date of the appraisal. Such new Developer’s Equity shall be the Developer’s Equity commencing with the first day of the month following the date of such appraisal and stay in effect until a subsequent adjustment.

(e) If at the end of any fiscal year, any Development Revenues for such fiscal year shall remain and are in excess of the Maximum Annual Distributable Amounts for such fiscal year, such amount (the “Annual Excess Revenues”) , other than those which may be required by any Lender to remain at the Development as a reserve to pay the expenses of the Development, shall be deposited in an escrow account with the Lender (or if the Loan is paid off, in an escrow account to be established to the satisfaction of DHCD) designated as the “Excess Revenues Account.” No distributions may be made to the Developer from the Excess Revenues Account except those permitted pursuant to this Section (e) with the prior written consent of DHCD.

Upon Developer’s request, amounts may also be withdrawn from the Excess Revenues

Account during the Term hereof and applied for the following purposes: (i) payment of or adequate reserve for all sums due or currently required to be paid under the terms of the Mortgage; (ii) payment of or adequate reserve for all reasonable and necessary operating expenses of the Development as reasonably determined by the Developer; (iii) deposit of all amounts as may be deposited in a reserve fund for capital replacements reasonably determined by the Developer to be sufficient to meet anticipated capital needs of the Development (the “Replacement Reserve”) which may be held by a lending institution reasonably acceptable to DHCD and which reserves may be used for capital expenditures for the Development reasonably determined to be necessary by the Developer; (iv) payments of operating expense loans made by the partners, managers or members of Developer for Development expenses, provided that Developer shall have obtained prior written approval for such loans from the applicable Lender (or, if there is no mortgage, or after discharge of the Mortgage, from the DHCD) and shall have supplied the applicable Lender (or DHCD) with such evidence as the applicable Lender (or DHCD, as applicable) may reasonably request as to the application of the proceeds of such operating expense loans to Development; or (v) for any other purposes, subject to a determination by the Lender (or, if there is no Mortgage, or the Mortgage is discharged during the Term of this Agreement, the reasonable determination by DHCD) that the expenditure is necessary to address the Development’s physical or financial needs and that no other Development reserve funds are available to address such needs. Notwithstanding the foregoing, payment of the items set forth in clauses (i), (ii), (iii) and (v) above by the Developer shall be subject to the prior written approval of DHCD, which approval shall not be unreasonably withheld or delayed; it being agreed by DHCD that if the Developer can demonstrate that its proposed operating expenditures, capital expenditures and reserves are substantially consistent with those made for comparable developments in the Commonwealth of Massachusetts, DHCD shall approve such request. Further, in no event shall such review or approval be required by DHCD to the extent any such capital expenditures or reserves are mandated by Lender.

Further, DHCD agrees that it shall not unreasonably withhold or delay its consent to release of any amounts held in the Excess Revenues Account, upon the written request of the Developer that:

- (i) provide a direct and material benefit to Low or Moderate Tenants; or
- (ii) reduce rentals to Low or Moderate Tenants.

In the event that DHCD’s approval is requested pursuant to this Section 7(e) for expenditures out of the Excess Revenues Account, and DHCD fails to respond within thirty (30) days of DHCD receipt thereof, then DHCD shall be deemed to have approved the request, and DHCD shall have no further rights to object to, or place conditions upon, the same.

In any event, cash available for distribution in any year in excess of 20% of Developer’s Equity, subject to payment of Accumulated and Unpaid Distributions, shall be distributed to the Municipality within fifteen (15) business days of notice and demand given by DHCD as provided herein, or as otherwise directed by DHCD. Upon the expiration of the “Limited Dividend Term” as that term is defined in Section 24(b) hereof, any balance remaining in the Excess Revenues Account shall be contributed by the Developer to the Replacement Reserve held for the Development if reasonably deemed necessary by DHCD, and otherwise shall be paid to the

Developer.

(f) The Developer shall provide DHCD for each fiscal year with a copy of its audited financial statements, and provide the DHCD with a certificate from the independent certified public accountant (the “CPA”) who prepared such reports which certifies as to their determination (the “Accountant’s Annual Determination”) of the following for such fiscal year, based on the terms and conditions hereof:

- (i) Accumulated Distribution Amounts;
- (ii) Current Distribution Amounts;
- (iii) Maximum Annual Distributable Amounts;
- (iv) Annual Excess Revenues;
- (v) Accumulated and Unpaid Distribution Amounts (including a calculation of Accumulated Distribution Amounts and Accrued Interest); and
- (vi) Development Revenues.

Such Accountant’s Annual Determination shall be accompanied by a form completed by the CPA and by a Certificate of Developer in forms as reasonably required by DHCD certifying under penalties of perjury as to the matters such as, without limitation, the fact that (i) the Developer has made available all necessary financial records and related data to the CPA who made such Accountant’s Annual Determination, (ii) there are no material transactions related to the Development that have not been properly recorded in the accounting records underlying the Accountant’s Annual Determination, (iii) the Developer has no knowledge of any fraud or suspected fraud affecting the entity involving management, subcontractors, employees who have significant roles in internal control, or others where the fraud could have a material effect on the Accountant’s Annual Determination and has no knowledge of any allegations of fraud or suspected fraud affecting the Developer or the Development received in communications from employees, former employees, subcontractors, regulators, or others, and (iv) the Developer has reviewed the information presented in the Accountant’s Annual Determination and believes that such determination is an appropriate representation of the Development.

(g) DHCD shall have sixty (60) days after the delivery of the Accountant’s Annual Determination to accept it, to make its objections in writing to the Developer and the Developer’s CPA, or to request from the Developer and/or CPA additional information regarding it. If DHCD does not object to it or request additional information with respect to it, it shall have been deemed accepted by the DHCD. If DHCD shall request additional information, then the Developer shall provide DHCD with such additional information as promptly as possible and DHCD shall have an additional thirty (30) days thereafter to review such information and either accept or raise objections to such Accountant’s Annual Determination. If no such objections are made within such thirty day (30) period, the Accountant’s Annual Determination shall be deemed accepted by DHCD. Prior to acceptance of the Accountant’s Annual Determination, DHCD shall deliver a copy of the Accountant’s Annual Determination to the Municipality with DHCD’s determination of the Developer’s compliance with the Comprehensive Permit Rules. The

Municipality shall have the option of evaluating the report for accuracy (e.g., absence of material errors), applying the same standards as set forth herein, for a period of 30 days after receipt. Such thirty (30) day period may be extended upon the written request of the Municipality to DHCD, which request shall not be unreasonably withheld. DHCD will reasonably review any inaccuracies identified by the Municipality during this period and shall thereafter either accept or raise objections to the Accountant's Annual Determination as provided above.

To the extent that DHCD shall raise any objections to such Accountant's Annual Determination as provided above, then the Developer and DHCD shall consult in good faith and seek to resolve such objections within an additional thirty (30) day period. If any objections are not resolved during such period, then DHCD may enforce the provisions under this Section by the exercise of any remedies it may have under this Agreement.

(h) If upon the approval of an Accountant's Annual Determination as provided above, such Accountant's Annual Determination shall show that the Distribution Payments for such fiscal year shall be in excess of the Maximum Annual Distributable Amounts for such fiscal year, then upon thirty (30) days written notice from DHCD, the Developer shall cause such excess to be deposited in the Excess Revenue Account from sources other than Development Revenues to the extent not otherwise required by Lender to remain with the Development as provided in subsection (e) above.

If such Accountant's Annual Determination as approved shall show that there are Annual Excess Revenues for such fiscal year which have not been distributed, such amounts shall be applied as provided in subsection (e) above within thirty (30) days after the approval of the Accountant's Annual Determination as set forth in subsection (g) above.

(i) Notwithstanding anything to the contrary contained in this Agreement, a distribution resulting from the proceeds of a sale or refinancing of the Development shall not be regulated by this Agreement. A sale or refinancing shall not result in a new evaluation of Developer's Equity.

(j) Payment of fees and profits from capital sources for the initial development of the Development to the Developer and/or the Developer's related party consultants, partners and legal or beneficial owners of the Development shall (unless otherwise limited by DHCD) be limited to no more than that amount resulting from the calculation in Attachment B, Step 3 ("Calculation of Maximum Allowable 40B Developer Fee and Overhead") of the Cost Certification Guidance (the "Maximum Allowable Developer Fee"). The Maximum Allowable Developer Fee shall not include fees or profits paid to any other party, whether or not related to the Developer, to the extent the same are arm's length and commercially reasonable in light of the size and complexity of the Development. The Developer shall comply with the requirements of Section 21 below regarding Cost Certification in accordance with the requirements of 760 CMR 56.04(8) (e), in the event that DHCD determines, following examination of the Cost Certification submitted by the Developer pursuant to Section 21 below, that amounts were paid or distributed by the Developer in excess of the above limitations (the "Excess Distributions"), the Developer shall pay over in full such Excess Distributions to the

Municipality within fifteen (15) business days of notice and demand given by DHCD as provided herein.

(k) The Municipality agrees that upon the receipt by the Municipality of any cash available for distribution pursuant to subsection (e) above or upon the receipt of any Excess Distributions pursuant to subsection (j) above, the Municipality shall deposit any and all such monies into an affordable housing fund, if one exists in the Municipality, or into an affordable housing trust fund, if one exists in the Municipality, or otherwise into a fund established pursuant to G.L. c. 44, §53A (collectively, an “Affordable Housing Fund”) to be used by the Municipality for the purpose of creating or subsidizing the construction, purchase, rehabilitation, or preservation of housing in the Municipality for persons and families of low and moderate income housing. The expenditure of funds from the Affordable Housing Fund shall be reported on an annual basis to DHCD.

MANAGEMENT OF THE DEVELOPMENT

8. Developer shall maintain the Development in good physical condition in accordance with DHCD’s requirements and standards and the requirements and standards of the Lender ordinary wear and tear and casualty excepted. Developer shall provide for the management of the Development in a manner that is consistent with accepted practices and industry standards for the management of multi-family market rate rental housing. Notwithstanding the foregoing, DHCD shall have no obligation hereunder, expressed or implied, to monitor or enforce any such standards or requirements and, further, DHCD has not reviewed nor approved the Plans and Specifications for compliance with federal, state or local codes or other laws.

CHANGE IN COMPOSITION OF DEVELOPER ENTITY; RESTRICTIONS ON TRANSFERS

9. (a) Except for rental of Units to Low or Moderate Income Persons or Families as permitted by the terms of this Agreement, the Developer will not sell, transfer, lease or exchange (collectively, a “Sale”) the Development or any portion thereof or any interest therein without the prior written consent of DHCD, which consent shall be granted by DHCD provided that: (1) the Developer secures from the transferee a written agreement, which in the case of any transfer other than a transfer of Beneficial Interests, shall be recorded in the Registry of Deeds with the deed and/or other recorded documents effecting the sale, stating that the transferee will assume in full the Developer’s obligations and duties under this Agreement, (2) the proposed transferee (or any entity controlled by or controlling or under common control with the proposed transferee) has no documented history of failures to abide by agreements with funding or regulatory agencies of the Commonwealth or the federal government and is not currently in violation of any agreements with such agencies beyond the time permitted to cure the violation, and (3) the Development is in compliance with this Agreement at the time of the proposed Sale.

(b) The Developer shall provide DHCD and the Municipality with thirty (30)

days' prior written notice of the following:

- (i) any change, substitution or withdrawal of any general partner, manager, or agent of Developer; or
- (ii) the conveyance, assignment, transfer, or relinquishment of a majority of the Beneficial Interests (herein defined) in Developer (except for such a conveyance, assignment, transfer or relinquishment among holders of Beneficial Interests as of the date of this Agreement); or
- (iii) the sale, mortgage, conveyance, transfer, ground lease, or exchange of Developer's interest in the Development or any part of the Development.

For purposes hereof, the term "Beneficial Interest" shall mean: (i) with respect to a partnership, any limited partnership interests or other rights to receive income, losses, or a return on equity contributions made to such partnership; (ii) with respect to a limited liability company, any interests as a member of such company or other rights to receive income, losses, or a return on equity contributions made to such company; or (iii) with respect to a company or corporation, any interests as an officer, board member or stockholder of such company or corporation to receive income, losses, or a return on equity contributions made to such company or corporation.

Notwithstanding the above, DHCD's consent under this Section 9 shall not be required with respect to the grant by the Developer of any mortgage or other security interest in or with respect to the Development to a state or national bank, state or federal savings and loan association, cooperative bank, mortgage company, trust company, insurance company or other institutional lender or any exercise by any such mortgagee of any of its rights and remedies (including without limitation, by foreclosure or by taking title to the Development by deed in lieu of foreclosure), subject, however to the provisions of Section 25 hereof.

Developer hereby agrees that it shall provide copies of any and all written notices received by Developer from a mortgagee exercising or threatening to exercise its foreclosure rights under the mortgage.

10. Omitted.

BOOKS AND RECORDS

11. All records, accounts, books, tenant lists, applications, waiting lists, documents, and contracts relating to the Developer's compliance with the requirements of this Agreement shall at all times be kept separate and identifiable from any other business of Developer which is unrelated to the Development, and shall be maintained, as required by applicable regulations and/or guidelines issued by DHCD from time to time, in a reasonable condition for proper audit and subject to examination during business hours by representatives of DHCD or the Municipality. Failure to keep such books and accounts and/or make them available to the DHCD

or the Municipality will be an Event of Default hereunder if such failure is not cured to the satisfaction of the DHCD within thirty (30) days after the giving of notice to the Developer. The Developer agrees to comply and to cause the Development to comply with all requirements of the Regulations and Guidelines (except that in the extent of a conflict between the express terms of this Agreement and any modifications to the Regulations and Guidelines after the date hereof, the terms of this Agreement shall control), and all other applicable laws, rules, regulations, and executive orders.

12. Within ninety (90) days following the end of each fiscal year of the Development, Developer shall furnish DHCD with a complete annual financial report for the Development based upon an examination of the books and records of Developer containing a detailed, itemized statement of all income and expenditures, prepared and certified by a certified public accountant in accordance with the reasonable requirements of DHCD which include: (i) financial statements submitted in a format acceptable to DHCD; (ii) the financial report on an accrual basis and in conformity with generally accepted accounting principles applied on a consistent basis; and (iii) amounts available for distribution under Section 7 above. A duly authorized agent of Developer must approve such submission in writing. The provisions of this paragraph may be waived or modified by DHCD.

FINANCIAL STATEMENTS AND OCCUPANCY REPORTS

13. At the request of DHCD or the Municipality, Developer shall furnish financial statements and occupancy reports and shall give specific answers to questions upon which information is reasonably desired from time to time relative to the ownership and operation of the Development as it pertains to the Developer's compliance with the requirements of this Agreement.

NO CHANGE OF DEVELOPMENT'S USE

14. Except to the extent permitted in connection with a change to the Comprehensive Permit approved in accordance with the Regulations or as set forth in Section 28 below, Developer shall not, without prior written approval of DHCD and the Municipality and an amendment to the Agreement, change the type or number of Affordable Units. Developer shall not permit the use of the dwelling accommodations of the Development for any purpose except residences and any other use permitted by the Comprehensive Permit; provided however, that the foregoing shall not be deemed to prohibit the conversion of the use of the property on which the Development is built for other uses permitted by the applicable zoning then in effect. Notwithstanding any other provision of this Agreement, in no event shall the Developer change the use of the Development to a use other than a multi-family residential use or change the number or type of Affordable Units on or before the date that is thirty (30) years from the date of the execution of this Agreement (except as provided in Section 29 hereof).

NO DISCRIMINATION

15. (a) There shall be no discrimination upon the basis of race, color, creed, religious creed, national origin, sex, sexual orientation, age, ancestry, handicap, or marital status or any other basis prohibited by law in the lease, use, or occupancy of the Development (provided that if the Development qualifies as elderly housing under applicable state and federal law, occupancy may be restricted to the elderly in accordance with said laws) or in connection with the employment or application for employment of persons for the operation and management of the Development.

(b) There shall be full compliance with the provisions of all state or local laws prohibiting discrimination in housing on the basis of race, creed, color, religion, disability, sex, sexual orientation, national origin, age, familial status, or any other basis prohibited by law and providing for nondiscrimination and equal opportunity in housing, including without limitation in the implementation of any local preference established under the Comprehensive Permit. Failure or refusal to comply with any such provisions shall be a proper basis for the Municipality or DHCD to take any corrective action it may deem necessary.

DEFAULTS; REMEDIES

16. (a) If any default, violation, or breach of any provision of this Agreement by the Developer is not cured to the satisfaction of the DHCD within thirty (30) days after the giving of notice to the Developer as provided herein, then at DHCD's option, and without further notice, the DHCD may either terminate this Agreement, or DHCD may apply to any state or federal court for specific performance of this Agreement, or DHCD may exercise any other remedy at law or in equity or take any other action as may be necessary or desirable to correct noncompliance with this Agreement. If any default, violation, or breach of any provision of this Agreement by the Municipality is not cured to the satisfaction of DHCD within thirty (30) days after the giving of notice to the Municipality as provided herein, then DHCD may either terminate this Agreement or may apply to any state or federal court for specific performance of this Agreement, or may exercise any other remedy at law or in equity or take any other action as may be necessary to correct noncompliance with this Agreement. The thirty (30) day cure periods set forth in this paragraph shall be extended for such period of time as may be necessary to cure such a default so long as the Developer or the Municipality, as the case may be, is diligently prosecuting such a cure.

(b) If DHCD elects to terminate this Agreement as the result of an uncured breach, violation, or default hereof, then whether the Affordable Units continue to be included in the Subsidized Housing Inventory maintained by DHCD for purposes of the Act shall from the date of such termination be determined solely by DHCD according to the rules and regulations then in effect.

(c) In the event DHCD brings an action to enforce this Restriction and prevails in any such action, DHCD shall be entitled to recover from the Developer all of DHCD's reasonable costs of an action for such enforcement of this Restriction, including reasonable

attorneys' fees.

(d) The Developer hereby grants to DHCD or its designee the right to enter upon the Development for the purpose of enforcing the terms of this Agreement or to prevent, remedy or abate any violation of this Agreement.

MONITORING AGENT; FEES; SUCCESSOR SUBSIDIZING AGENCY

17. DHCD intends to monitor the Developer's compliance with the requirements of this Agreement. The Developer hereby agrees to pay DHCD fees for its services hereunder, as set forth on Appendix B hereto, initially in the amounts and on the dates therein provided, and hereby grants to DHCD a security interest in Development Revenues as security for the payment of such fees subject to the lien of the Mortgage and this Agreement shall constitute a security interest with respect thereto.

18. DHCD shall have the right to engage a third party (the "Monitoring Agent") to monitor compliance with all or a portion of the ongoing requirements of this Agreement. In carrying out its obligations as a Monitoring Agent, the third party shall apply and adhere to the standards and policies of DHCD related to the administrative responsibilities of Subsidizing Agencies. DHCD shall notify the Developer and the Municipality in the event DHCD engages a Monitoring Agent, and in such event (i) as partial compensation for providing these services, the Developer hereby agrees to pay to the Monitoring Agent an annual monitoring fee in an amount reasonably determined by DHCD, payable within thirty (30) days of the end of each fiscal year of the Developer during the Limited Dividend Term as defined in Section 24(b) below, but not in excess of the amounts as shown on Appendix B hereto and any fees payable under Section 17 hereof shall be net of such fees payable to a Monitoring Agent; and (ii) the Developer hereby agrees that the Monitoring Agent shall have the same rights, and be owed the same duties, as DHCD under this Agreement, and shall act on behalf of DHCD hereunder, to the extent that DHCD delegates its rights and duties by written agreement with the Monitoring Agent.

19. The Municipality shall have the right to engage a third party (the "Affordability Monitoring Agent"), pursuant to the terms of a separate monitoring agreement between the Municipality and the Developer in accordance with the terms of the Comprehensive Permit, to monitor compliance with all or a portion of the ongoing affordability requirements of this Agreement which Municipality is responsible for overseeing hereunder, but for no other purpose. In carrying out its obligations as an Affordability Monitoring Agent, the third party shall apply and adhere to the standards and policies of DHCD related to the administrative responsibilities of Subsidizing Agencies. The Municipality shall notify the Developer and DHCD in the event the Municipality engages an Affordability Monitoring Agent, and in such event the Developer hereby agrees that the Affordability Monitoring Agent shall have the same rights, and be owed the same duties, as the Municipality under this Agreement, and shall act on behalf of the Municipality hereunder, to the extent that the Municipality delegates its rights and duties by written agreement with the Affordability Monitoring Agent.

CONSTRUCTION AND FINAL COST CERTIFICATION

20. The Developer shall provide to the Municipality evidence that the final plans and specifications for the Development comply with the requirements of the Comprehensive Permit and that the Development was built substantially in accordance with such plans and specifications.

21. Upon Substantial Completion, the Developer shall provide the Municipality with a certificate of the architect for the Development in the form of a “Certificate of Substantial Completion” (AIA Form G704) or such other form of completion certificate acceptable to the Municipality.

In addition, within ninety (90) days after Substantial Completion, the Developer shall provide DHCD with its Cost Certification for the Development.

As used herein, the term “Substantial Completion” shall mean the time when the construction of the Development is sufficiently complete so that all of the units may be occupied and amenities may be used for their intended purpose, except for designated punch list items and seasonal work which does not interfere with the residential use of the Development.

For the purposes hereof the term “Cost Certification” shall mean the determination by the DHCD of the aggregate amount of all Development Costs as a result of its review and approval of: (i) an itemized statement of Total Development Costs together with a statement of gross income from the Development received by the Developer to date in the format provided in the Cost Certification Guidance (the “Cost Examination”). The Cost Certification must be examined in accordance with the attestation standards of the American Institute of Certified Public Accountants (AICPA) by an independent certified public accountant (CPA) and (ii) an owner’s and/or general contractor’s certificate, as provided in the Cost Certification Guidance, executed by the Developer and/or general contractor under penalties of perjury, which identifies the amount of the Construction Contract, the amount of any approved Change Orders, including a listing of such Change Orders, and any amounts due to subcontractors and/or suppliers. “Allowable Development Costs” shall mean any hard costs or soft costs paid or incurred with respect to Development as determined by and in accordance with the Guidelines.

Prior to acceptance of the Cost Certification, DHCD shall deliver a copy of the Cost Certification to the Municipality with DHCD’s determination of the Developer’s compliance with the Comprehensive Permit Rules. The Municipality shall have the option of evaluating the report for accuracy (e.g., absence of material errors), applying the same standards as set forth herein, for a period of 30 days after receipt. Such thirty (30) day period may be extended upon the written request of the Municipality to DHCD, which request shall not be unreasonably withheld. DHCD will reasonably review any inaccuracies identified by the Municipality during this period and shall thereafter either accept or raise objections to the Cost Certification as provided in Section (g) above.

22. In order to ensure that the Developer shall complete the Cost Certification as required by Section 21 hereof, the Developer has provided DHCD herewith adequate financial surety (the “Surety”) provided through a letter of credit, bond or cash payment in the amounts

and in accordance with the Comprehensive Permit Rules and in a form approved by DHCD. If DHCD shall determine that the Developer has failed in its obligation to provide Cost Certification as described above, DHCD may draw on such Surety in order to pay the costs of completing Cost Certification.

23. Omitted.

TERM

24. (a) This Agreement shall bind, and the benefits shall inure to, respectively, Developer and its successors and assigns, and DHCD and its successors and assigns and the Municipality and its successors and assigns, in perpetuity, except as provided in Section 24(b) below, (the “Term”). Upon expiration of the Term, this Agreement and the rights and obligations of the parties hereunder shall automatically terminate without the need of any party executing any additional document. For the purposes hereof, the term “perpetuity” shall mean for so long as the Development does not comply with applicable zoning or other local requirements without the benefit of the Comprehensive Permit. Notwithstanding any other provision of this Agreement, in no event shall the Term expire prior to the date that is thirty (30) years from the date of the execution of this Agreement.

(b) Notwithstanding subsection (a) above, the provisions of Section 7(a)–(i) herein (“Limited Dividends”) shall bind, and the benefits shall inure to, respectively, Developer and its successors and assigns, and DHCD and its successors and assigns, and the Municipality and its successors and assigns until the date which is fifteen (15) years from the date of this Agreement (the “Limited Dividend Term”).

LENDER FORECLOSURE

25. The rights and restrictions contained in this Agreement shall not lapse if the Development is acquired through foreclosure or deed in lieu of foreclosure or similar action, and the provisions hereof shall continue to run with and bind the Development.

INDEMNIFICATION/LIMITATION ON LIABILITY

26. The Developer, for itself and its successors and assigns, agrees to indemnify and hold harmless DHCD and the Municipality against all damages, costs and liabilities, including reasonable attorney’s fees, asserted against DHCD or the Municipality by reason of its relationship to the Development under this Agreement to the extent the same is attributable to the acts or omissions of the Developer and does not involve the negligent acts or omissions of DHCD or the Municipality.

27. DHCD and the Municipality shall not be held liable for any action taken or

omitted under this Agreement so long as they shall have acted in good faith and without gross negligence. Further, no officer, partner, manager, member, agent or employee of DHCD or the Municipality shall have any personal liability hereunder.

28. Notwithstanding anything in this Agreement to the contrary, upon the occurrence of any breach or default by the Developer hereunder, DHCD will look solely to the Developer's interest in the Development for the satisfaction of any judgment against the Developer or for the performance of any obligation of the Developer hereunder. Further, no officer, partner, manager, member, agent or employee of the Developer shall have any personal liability hereunder.

CASUALTY

29. Subject to the rights of the Lender, Developer agrees that if the Development, or any part thereof, shall be damaged or destroyed or shall be condemned or acquired for public use, the Developer shall have the right, but not the obligation, to repair and restore the Development to substantially the same condition as existed prior to the event causing such damage or destruction, or to relieve the condemnation, and thereafter to operate the Development in accordance with the terms of this Agreement. Notwithstanding the foregoing, in the event of a casualty in which some but not all of the buildings in the Development are destroyed, if such destroyed buildings are not restored by Developer, Developer shall be required to maintain the same percentage of Affordable Units of the total number of units in the Development.

DEVELOPER'S REPRESENTATIONS AND WARRANTIES

30. The Developer hereby represents and warrants as follows:

(a) The Developer (i) is a Maryland corporation, qualified to transact business under the laws of the Commonwealth of Massachusetts, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted, and (iii) has the full legal right, power and authority to execute and deliver this Agreement.

(b) The execution and performance of this Agreement by the Developer (i) will not violate or, as applicable, has not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body, and (ii) will not violate or, as applicable, has not violated any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which the Developer is a party or by which it or the Development is bound, and (iii) will not result in the creation or imposition of any prohibited encumbrance of any nature.

(c) The Developer will, at the time of execution and delivery of this Agreement, have good and marketable title to the premises constituting the Development free and clear of any lien or encumbrance (subject to encumbrances created pursuant to this Agreement, and any other documents executed in connection with the Construction Loan, or other encumbrances permitted by DHCD).

(d) There is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Developer, threatened against or affecting it, or any of its properties or rights, which, if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by this Agreement) or would materially adversely affect its financial condition.

MISCELLANEOUS CONTRACT PROVISIONS

31. This Agreement may not be modified or amended except with the written consent of DHCD or its successors and assigns, the Municipality or its successor and assigns, and Developer or its successors and assigns.

32. Developer warrants that it has not, and will not, execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that, in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations set forth and supersede any other requirements in conflict therewith. Without limiting the foregoing, any local preference criteria to be used in the selection of tenants for the Affordable Units shall conform to the requirements of the Guidelines.

33. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.

34. Any titles or captions contained in this Agreement are for reference only and shall not be deemed a part of this Agreement or play any role in the construction or interpretation hereof.

35. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include corporations and associations, including public bodies, as well as natural persons.

36. The terms and conditions of this Agreement have been freely accepted by the parties. The provisions and restrictions contained herein exist to further the mutual purposes and goals of DHCD, the Municipality and the Developer set forth herein to create and preserve access to land and to decent and affordable rental housing opportunities for eligible families who are often denied such opportunities for lack of financial resources.

NOTICES

37. Any notice or other communication in connection with this Agreement shall be in

writing and (i) deposited in the United States mail, postage prepaid, by registered or certified mail, or (ii) hand delivered by any commercially recognized courier service or overnight delivery service, such as Federal Express, or (iii) sent by facsimile transmission if a fax number is designated below, addressed as follows:

If to the Developer:

c/o AvalonBay Communities, Inc.
~~51 Sleeper Street, Suite 750~~
600 Atlantic Avenue, 20th Floor
 Boston, MA 02210
 Attention: Vice President – Development
 Fax: 617-426-1610

with copies by regular mail or such hand delivery
 [or facsimile transmission] to:

Sudbury Avalon, Inc.
 c/o AvalonBay Communities, Inc.
 Ballston Tower
 671 N. Glebe Road Suite 800
 Arlington, VA 22203
 Attention: Senior Vice President and General Counsel
 Fax: 703-329-9130

And to:
 Goulston & Storrs PC
 400 Atlantic Avenue
 Boston, MA 02110
 Attention: Steven Schwartz, Esq.
 Fax: 617-574-7636

If to DHCD:

Department of Housing and Community Development
 100 Cambridge St., Suite 300
 Boston, MA 02114
 Attention: Director of Local Initiative Program
 Fax: 617-573-1330

If to the Municipality:

Town Manager
 Town of Sudbury
 278 Old Sudbury Road
 Sudbury, MA 01776
 Fax: (978) 443 - 0756

Any such addressee may change its address for such notices to any other address in the United States as such addressee shall have specified by written notice given as set forth above.

A notice shall be deemed to have been given, delivered and received upon the earliest of: (i) if sent by certified or registered mail, on the date of actual receipt (or tender of delivery and refusal thereof) as evidenced by the return receipt; or (ii) if hand delivered by such courier or overnight delivery service, when so delivered or tendered for delivery during customary business hours on a business day at the specified address; or (iii) if facsimile transmission is a permitted means of giving notice, upon receipt as evidenced by confirmation. Notice shall not be deemed to be defective with respect to the recipient thereof for failure of receipt by any other party.

RECORDING

38. Upon execution, the Developer shall immediately cause this Agreement and any amendments hereto to be recorded or filed with the Registry, and the Developer shall pay all fees and charges incurred in connection therewith. Upon recording or filing, as applicable, the Developer shall immediately transmit to DHCD and the Municipality evidence of such recording or filing including the date and instrument, book and page or registration number of the Agreement.

GOVERNING LAW

39. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts. Any amendments to this Agreement must be in writing and executed by all of the parties hereto. The invalidity of any clause, part, or provision of this Agreement shall not affect the validity of the remaining portions hereof.

DELEGATION BY DHCD

40. DHCD may delegate its compliance and enforcement obligations under this Agreement to a third party, if the third party meets standards established by DHCD, by providing written notice of such delegation to the Developer and the Municipality. In carrying out the compliance and enforcement obligations of DHCD under this Agreement, such third party shall apply and adhere to the pertinent standards of DHCD.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties have caused these presents to be signed and sealed by their respective, duly authorized representatives, as of the day and year first written above.

DEVELOPER:

SUDBURY AVALON, INC.

By: _____
 Name: _____
 Its: _____
 Hereunto duly authorized

DHCD:

DEPARTMENT OF HOUSING AND
 COMMUNITY DEVELOPMENT, AS
 SUBSIDIZING AGENCY AS AFORESAID

By: _____
 Name: _____
 Its: _____
 Hereunto duly authorized

MUNICIPALITY:

TOWN OF SUDBURY

By: _____
 Name: _____
 Its: _____
 Hereunto duly authorized

Attachments:

Exhibit A – Legal Description
 Appendix A – Rent Schedule
 Appendix B – Fees Payable to DHCD

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF _____, ss.

On this _____ day of _____, 2017, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding document, as _____ of Sudbury Avalon, Inc., a Maryland corporation, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

 Notary Public
 Print Name:
 My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY, ss.

On this _____ day of _____, 2017, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding document, as _____ for the Commonwealth of Massachusetts acting by and through the Department of Housing and Community Development, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

 Notary Public
 Print Name:
 My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF _____, ss.

On this _____ day of _____, 2017, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding document, as the _____ for the Town of Sudbury, and acknowledged to me that he/she signed it voluntarily for its stated purpose on behalf of the Town of Sudbury.

Notary Public

Print Name:

My Commission Expires:

Attachment 7.b: Redline - Regulatory Agreement (2317 : Avalon LIP)

EXHIBIT A**LEGAL DESCRIPTION**

That certain parcel of land with the improvements thereon located in the Town of Sudbury, Middlesex County, Massachusetts, being shown as "Lot 3, Area = 1,078,022 sq. ft. (24.748 Acres)" on a plan entitled "Subdivision Plan of Land in Sudbury, Massachusetts," prepared by VHB Inc., dated May 6, 2016, and recorded with the Middlesex South District Registry of Deeds as Plan No. 1005 of 2016.

Attachment 7.b: Redline - Regulatory Agreement (2317 : Avalon LIP)

APPENDIX A**RENT SCHEDULE (INITIAL)**

Re: Avalon Sudbury
Sudbury, MA
Sudbury Avalon, Inc.

Initial Maximum Rents and Utility Allowances for Low and Moderate Income Units

	<u>Rents</u>	<u>Utility Allowances</u>
Studio Units	\$1216	\$61
One-bedroom Units	\$1419	\$78
Two-bedroom Units	\$1622	\$103
Three-bedroom Units	\$1825	\$128
Four-bedroom Units	N/A	\$N/A

Attachment 7.b: Redline - Regulatory Agreement (2317 : Avalon LIP)

APPENDIX B**FEES PAYABLE TO DHCD**

During the term of this Agreement, the Development shall pay to DHCD a monitoring fee of \$30.00 per month for each Affordable Unit with a maximum annual fee of \$4,000. The Developer shall make each payment to DHCD within ten (10) days of the end of every month until such time as it shall have paid DHCD the maximum annual fee.

Document comparison by Workshare Professional on Thursday, May 18, 2017
2:19:56 PM

Input:	
Document 1 ID	interwovenSite://BOS-DMS1/gsdocs/8849031/11
Description	#8849031v11<gsdocs> - AVB - Sudbury - LIP Regulatory Agreement
Document 2 ID	C:\NRPortbl\gsdocs\RENN2056\8849031_12.docx
Description	C:\NRPortbl\gsdocs\RENN2056\8849031_12.docx
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	4
Deletions	5
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	9

CONTRACT

Monitoring Services for Avalon at Sudbury

The Town of Sudbury, a municipal corporation located in the Commonwealth of Massachusetts, by its Town Manager, duly authorized who, however, incurs no personal liability by reason of the execution hereof or anything herein contained, and Sudbury Avalon, Inc., having a mailing address of 600 Atlantic Avenue, 20th Floor, Boston, MA 02210 (designated as the "Project Sponsor"), agree this _____ day of May, 2017 as follows with respect to comprehensive permit granted to Project Sponsor by the Sudbury Zoning Board of Appeals dated July 18, 2016 (the "Comprehensive Permit") with respect to the multifamily residential development described in the Comprehensive Permit (the "Project"):

Article 1. Town

Whenever the word "Town" is used in this agreement, it shall be understood to mean the Town of Sudbury, Massachusetts, acting through its Town Manager. The word "Manager" shall mean the Town Manager of the Town of Sudbury, Massachusetts.

Article 2. Project Sponsor

Whenever the word "Project Sponsor" is used in this agreement, it shall be understood to include its successors in title to the Project.

Article 3. Work

The Project Sponsor agrees to support, at the Project Sponsor's own expense, all the work required hereunder to be performed by the Project Sponsor and furnish all the material, equipment and labor, except as herein otherwise specified, necessary or proper for the performing and completing such work herein specified during the term of this Contract, all in accordance with the terms and provisions of this Contract, the Comprehensive Permit, and applicable federal, state, and local law and regulations and in a proper, thorough and workmanlike manner and to the satisfaction of the Town.

The scope of work required to be performed by the Project Sponsor under this Contract shall include only the scope of services as follows:

Scope of Services

The Project Sponsor will be expected to provide annual certification reports and information to confirm that the Affordable Units have been maintained in a manner consistent with the Comprehensive Permit and applicable regulations.

The Project Sponsor will provide and the Town or its agent will confirm the following on an annual basis:

1. **Rents Charged:** Project Sponsor will provide an annual schedule of rents, to include gross and net rents by unit type, and applicable utility allowances, as well as an annual rent listing, to include rents charged by individual unit.

2. Tenant Eligibility: Project Sponsor will provide the opportunity for the Town to review income certifications for the Affordable Units, sampling 10% of the units each year as follows:
 - a. The Town shall review tenant documentation held in Project Sponsor's files using appropriate standards for certification.
 - b. If income is in excess of 140% of 80% of median income; the Town shall review the Project Sponsor's records to ensure that the next available unit rule has been complied with.
 - c. The Town shall obtain and review leases for sample units.
3. Physical Inspection: Project Sponsor will provide the opportunity for the Town to review the physical condition of the property each year, sampling 10% of the units each year, including units of each bedroom size.

Article 4. Payment

A. Compensation to be Paid By Project Sponsor: The Project Sponsor will pay and the Town will accept, in full consideration for the performance of the Town's monitoring of the Project Sponsor's obligations, the amount not to exceed **\$4,150 annually** (\$1,000 plus \$50/affordable unit for 63 affordable units). Payments by the Project Sponsor to the Town under the Contract shall be made annually no later than ten business days after the January 1 of each calendar year. The Project Sponsor will make payment of any other amounts due to the Town under the terms of this Contract within thirty days of receiving an invoice from the Town.

B. Price Escalators: There are no allowable price escalators during the term of this Contract unless agreed and signed by the Town and the Project Sponsor.

Article 5. Liability

A. Town's Liability: The Town's liability under this Contract shall be limited to the work due from the Town hereunder. In no event shall the Town be liable for any additional work, including without limitation, any indirect, special or consequential damages.

B. Protection Against Liability: The Project Sponsor acknowledges and agrees that it is not acting hereunder as an agent of the Town, and agrees that it will indemnify, exonerate and hold harmless the Town and its officers, boards, employees, agents and officials, from and against any and all loss, damage, cost, charge, expense and claim, which may be made against it or them or to which it or they may be subject by reason of any alleged act, action, neglect, or omission in connection with any obligation, or default, hereunder on the part of the Project Sponsor or any of its agents or employees and will pay promptly on demand all costs and expenses of the investigation and defense thereof, including reasonable attorneys' fees and expenses.

Article 6. Miscellaneous Provisions

A. Laws and Regulations: The Project Sponsor shall keep fully informed of all Federal, State and local laws, bylaws, rules, and regulations in any manner affecting those engaged or employed in the work or the materials used in the work, or in any way affecting the conduct of the work and of all such orders and decrees or bodies or tribunals having any jurisdiction or authority over the same.

- B. Term: The term of this Contract shall be ten years.
- C. Amendment: This Contract may be amended only by mutual written agreement of the Town and Project Sponsor.

IN WITNESS WHEREOF, the parties have caused this Contract to be signed and sealed by their respective, duly authorized representatives, as of the day and year first written above.

THE TOWN OF SUDBURY

THE PROJECT SPONSOR

By: _____

Town Manager

Its: _____

579323

CONTRACT

Monitoring Services for Avalon at Sudbury

The Town of Sudbury, a municipal corporation located in the Commonwealth of Massachusetts, by its Town Manager, duly authorized who, however, incurs no personal liability by reason of the execution hereof or anything herein contained, and Sudbury Avalon, Inc., having a mailing address of 600 Atlantic Avenue, 20th Floor, Boston, MA ~~02210~~, 02210 (designated as the "Project Sponsor"), agree this _____ day of May, 2017 as follows with respect to comprehensive permit granted to Project Sponsor by the Sudbury Zoning Board of Appeals dated July 18, 2016 (the "Comprehensive Permit") with respect ~~to~~ the multifamily residential development described in the Comprehensive Permit (the "Project"):

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Article 2. Project Sponsor

Whenever the word "Project Sponsor" is used in this agreement, it shall be understood to include its successors in title to the Project.

Article 3. Work

The Project Sponsor agrees to support, at the Project Sponsor's own expense, all the work required hereunder to be performed by the Project Sponsor and furnish all the material, equipment and labor, except as herein otherwise specified, necessary or proper for the performing and completing such work herein specified during the term of this Contract, all in accordance with the terms and provisions of this Contract, the Comprehensive Permit, and applicable federal, state, and local law and regulations and in a proper, thorough and workmanlike manner and to the satisfaction of the Town.

The scope of work required to be performed by the Project ~~Sponsor~~ Sponsor under this Contract shall include only the scope of services as follows:

Scope of Services

The Project Sponsor will be expected to provide annual certification reports and information to confirm that the Affordable Units have been maintained in a manner consistent with the Comprehensive Permit and applicable regulations.

The Project Sponsor will provide and the Town or its agent will confirm the following on an annual basis:

1. Rents Charged: Project Sponsor will provide an annual schedule of rents, to include gross and net rents by unit type, and applicable utility allowances, as well as an annual rent listing, to include rents charged by individual unit.

2. Tenant Eligibility: Project Sponsor will provide the opportunity for the Town to review income certifications for the Affordable Units, sampling 10% of the units each year as follows:
 - a. The Town shall review tenant documentation held in Project Sponsor's files using appropriate standards for certification.
 - b. If income is in excess of 140% of 80% of median income; the Town shall review the Project Sponsor's records to ensure that the next available unit rule has been complied with.
 - c. The Town shall obtain and review leases for sample units.
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A. Compensation to be Paid By Project Sponsor: The Project Sponsor will pay and the Town will accept, in full consideration for the performance of the Town's monitoring of the Project Sponsor's obligations, the amount not to exceed **\$4,150 annually** (\$1,000 plus \$50/affordable unit for 63 affordable units). Payments by the Project Sponsor to the Town under the Contract shall be made annually no later than ten business days after the January 1 of each calendar year. The Project Sponsor will make payment of any other amounts due to the Town under the terms of this Contract within thirty days of receiving an invoice from the Town.

B. Price Escalators: There are no allowable price escalators during the term of this Contract unless agreed and signed by the Town and the Project Sponsor.

Article 5. Liability

A. Town's Liability: The Town's liability under this Contract shall be limited to the work due from the Town hereunder. In no event shall the Town be liable for any additional work, including without limitation, any indirect, special or consequential damages.

B. Protection Against Liability: The Project Sponsor acknowledges and agrees that it is ~~responsible as an independent Project Sponsor for all operations under this Contract and for all acts of employees and agents thereunder~~ not acting hereunder as an agent of the Town, and agrees that it will indemnify, exonerate and hold harmless the Town and its officers, boards, employees, agents and officials, from and against any and all loss, damage, cost, charge, expense and claim, which may be made against it or them or to which it or they may be subject by reason of any alleged act, action, neglect, or omission in connection with any obligation, or default, hereunder on the part of the Project Sponsor or any of ~~their~~ its agents or employees and will pay promptly on demand all costs and expenses of the investigation and defense thereof, including reasonable attorneys' fees and expenses.

Article 6. Miscellaneous Provisions

A. Laws and Regulations: The Project Sponsor shall keep fully informed of all Federal, State and local laws, bylaws, rules, and regulations in any manner affecting those engaged or employed in the work or the materials used in the work, or in any way affecting the conduct of

the work and of all such orders and decrees or bodies or tribunals having any jurisdiction or authority over the same.

B. Term: The term of this Contract shall be ten years.

C. Amendment: This Contract may be amended only by mutual written agreement of the Town and Project Sponsor.

IN WITNESS WHEREOF, the parties have caused this Contract to be signed and sealed by their respective, duly authorized representatives, as of the day and year first written above.

THE TOWN OF SUDBURY

THE PROJECT SPONSOR

By: _____

Town Manager

Its: _____

579323

Attachment7.d: Redline - Monitoring Agreement (2317 : Avalon LIP)

Document comparison by Workshare Professional on Thursday, May 18, 2017
2:07:44 PM

Input:	
Document 1 ID	file:///C:/Users/RENN2056/AppData/Local/Microsoft/Windows/INetCache/Content/8928558v4.docx
Description	KP-#579323-v1-Avalon - Monitoring Agreement KP Law 4-3-17
Document 2 ID	interwovenSite://BOS-DMS1/gsdocs/8928558/4
Description	#8928558v4<gsdocs> - Sudbury LIP Monitoring Agreement - Town Form
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	10
Deletions	5
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	15

Attachment7.d: Redline - Monitoring Agreement (2317 : Avalon LIP)



MISCELLANEOUS (UNTIMED)

8: Municipal Aggrigation

REQUESTOR SECTION

Date of request:

Requested by: Patty Golden

Formal Title: Discussion and vote authorizing the Town Manager to enter into a contract for municipal aggregation.

Recommendations/Suggested Motion/Vote: [Discussion and vote authorizing the Town Manager to enter into a contract for municipal aggregation.](#)

Background Information:

Financial impact expected:

Approximate agenda time requested:

Representative(s) expected to attend meeting:

Review:

Patty Golden	Pending
Melissa Murphy-Rodrigues	Pending
Barbara Saint Andre	Pending
Susan N. Iuliano	Pending
Board of Selectmen	Pending

05/23/2017 6:45 PM



SUDBURY BOARD OF SELECTMEN
Tuesday, May 23, 2017

9

MISCELLANEOUS (UNTIMED)

9: Contract with BCK law

REQUESTOR SECTION

Date of request:

Requested by: Patty Golden

Formal Title: Vote to allow the Town Manager to enter into a contract with BCK law for an amount that will exceed \$25,000.

Recommendations/Suggested Motion/Vote: Vote to allow the Town Manager to enter into a contract with BCK law for an amount that will exceed \$25,000.

Background Information:

Financial impact expected:

Approximate agenda time requested:

Representative(s) expected to attend meeting:

Review:

Patty Golden	Pending
Melissa Murphy-Rodrigues	Pending
Barbara Saint Andre	Pending
Susan N. Iuliano	Pending
Board of Selectmen	Pending

05/23/2017 6:45 PM



SUDBURY BOARD OF SELECTMEN

Tuesday, May 23, 2017

MISCELLANEOUS (UNTIMED)**10: Legal Counsel 120 day extension**REQUESTOR SECTION

Date of request:

Requested by: Patty Golden

Formal Title: Vote to approve a 120-day extension for Legal Counsel services.

Recommendations/Suggested Motion/Vote: Vote to approve a 120-day extension for Legal Counsel services.

Background Information:

Financial impact expected:

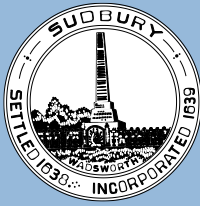
Approximate agenda time requested:

Representative(s) expected to attend meeting:

Review:

Patty Golden	Pending
Melissa Murphy-Rodrigues	Pending
Barbara Saint Andre	Pending
Susan N. Iuliano	Pending
Board of Selectmen	Pending

05/23/2017 6:45 PM



SUDBURY BOARD OF SELECTMEN

Tuesday, May 23, 2017

MISCELLANEOUS (UNTIMED)**11: Annual Board & Committee Re-appointments**REQUESTOR SECTION

Date of request:

Requested by: Patty Golden

Formal Title: Vote whether to approve the annual Selectmen's re-appointments of those listed (all of which are subject to acceptance), to acknowledge the resignations of those who choose not to be re-appointed, and to send a letter of appreciation to the resigning volunteers for their service to the community.

Recommendations/Suggested Motion/Vote: Vote whether to approve the annual Selectmen's re-appointments of those listed (all of which are subject to acceptance), to accept the resignations of those who choose not to be re-appointed, and to send a letter of appreciation to the resigning volunteers for their service to the community.

Background Information:

Attached list of re-appointments and resignations.

Financial impact expected:N/A

Approximate agenda time requested:

Representative(s) expected to attend meeting:

Review:

Patty Golden	Pending
Melissa Murphy-Rodrigues	Pending
Barbara Saint Andre	Pending
Susan N. Iuliano	Pending
Board of Selectmen	Pending

05/23/2017 6:45 PM

BOARD OF SELECTMENT RE-APPOINTMENTS

Board Name	Member Name	Position	Type	Status	Term	Notes	
Council on Aging	Alice Sapienza	Member	Selectmen	Re-Appoint	3		
	Melissa Immonen	Member		Re-Appoint	3		
	1 VACANCY	Robert H. Diefenbacher		Member	No	3	
	Jack Ryan	Chair					
Agricultural Commission	Laura Abrams	Chair	Selectmen	Re-Appoint	3		
1 Vacancy	Edward Houser	Member		No	3		
Board of Appeals	Jonathan W. Patch	Associate	Selectmen	Re-Appoint	1		
	William Ray	Member		Re-Appoint	1		
	Benjamin Stevenson	Associate		Re-Appoint	1		
	Jonathan F.K. O'Brien	Associate					
Bruce Freeman Trail							
Design Task Force	Robert Schless	Chair	Selectmen		1		
	Leroy Seivers	Member			1		
	Lana B. Szarc	Member		Re-Appoint/Y	1		
	John C. Drobinski	Member		Re-Appoint/Y	1		
	Charles Russo	Chair			1		
	Daniel Carty	Chair		NO	1		
	Robert Beagan	Represtv			1		
Constables	Lawrence Hartnett		Selectmen		3		
	Nelson Goldin			Re-Appoint	3		
Board Name	Member Name	Position	Type	Status	Term	Notes	
Capital Improvement							
Advisory Committee	Susan Asbedian-Ciaffi	Member	Selectmen	Re-Appoint	3		
2 Vacancies	Michael Lane	Member		No	3		
	Eric Greece	Member		50% attendance	3		
	Mark Howrey	Chair					

BOARD OF SELECTMENT RE-APPOINTMENTS

11.a

Community Preservation Committee					
	Christopher Morely	Chair	Selectmen	Re-Appoint	
	Fred Floru	Member		No	
	Patricia Brown	Member			
Design Review Brd	Deborah Kruskal	Member	Selectmen	Re-Appoint/Y	2
Earth Removal Board	Jonathan W. Patch	Member	Selectmen	Re-Appoint/Y	1
	William Ray	Member		Re-Appoint	1
	John Riordan	Member		Re-Appoint	1
	Benjamin Stevenson	Member		Re-Appoint	1
Energy and Sustainability Committee	William G. Braun	Chair	Selectmen	Re-Appoint	3
	Edward Lewis	Member		Re-Appoint	3
	Kurt Reiss	Member		Re-Appoint	3
Land Acquisition Review	Matthew P. Barach		Selectmen	RE-Appoint	2
	Jan Hardenbergh			RE-Appoint	2
Board Name	Member Name	Position	Type	Status	Term
Permanent Bldg Comm	Michael Melnick	Co-Chair	Selectmen	Re-Appoint	3
Ponds and Waterways	Anne M. Slugg	Chair	Selectmen	No	3
1 Vacancy	Francis T. Lyons			Re-Appoint	3
Sudbury Centre Improvemt Adv Committee	Frank Reipe	Member	Selectmen		1
	June Allen	Member			1

Attachment 11.a: Copy of Board Re-Appoint List Selectmen BOS Edition (2332 : Annual Board &

BOARD OF SELECTMENT RE-APPOINTMENTS

	Eva MacNeill	Member			1
	Deborah Kruskal	Member		Re-Appoint/Y	1
	Joseph Sziabowski	Member			1
	Richard Davidson	Member			1
					1
Sudbury Housing Trust	Lydia Pastuszek	Chair	Selectmen	Re-Appoint/Y	2
	Susan Iuliano	Member		Re-Appoint	2
	Andrew Kaye	Member		Re-Appoint	2
1 Vacancy	Jay Zachariah	Member		Resigned 4/18	
Vocational Education	Aida Ramos	Member	Selectmen	Re-Appoint	1
Guidance Committee	Ivar henningson	Member		Re-Appoint	1
	Christine A. Hogan	Member		Re-Appoint	1
	Dennis Keohane	Member		Re-Appoint	1
	David R. Manjarrez	Member		Re-Appoint	1
	Douglas Michaud	Member		Re-Appoint	1
	Melissa Murhphy-Rod	Member		Re-Appoint	1
	Leonard Simon	Chair		Re-Appoint	1

Board Name	Member Name	Position	Type	Status	Term	Notes
------------	-------------	----------	------	--------	------	-------

NO RESPONSES BELOW

Fairbank Task Force	John Beeler	Member	Selectmen		1
Letter requesting	Pat Brown	Chair			1
That task force be	Deborah Galloway	Member			1
Dissolved and be	Jose Garcia-Meitin	Member			1
rolled into the	James Kelly	Member			1
Permanent Bldg Comm	Kayla McNamara	Member			1
	Sam Merra	Member			1
	Christopher Morely	Member			1
	John Ryan Jr.	Member			1
	Bryan Semple	Member			1
	Richard Tinsley	Member			1

BOARD OF SELECTMENT RE-APPOINTMENTS

Michael Ensley	Member	1
Lisa V. Kouchakdjian	Member	1
James Marotta	Member	1

**Strategic Financial
Planning for Capital
Funding**

Mark Howrey	Member	Selectmen	1
Susan Berry	Chair		1
Joan Carlton	Member		1
James Kelly	Member		1
Elaina M. Kleifges	Member		1
Lisa kouchakdjian	Member		1
Kevin Matthews	Member		1
Melissa Murhpy-Rod	Member		1
Thomas Travers	Member		1
Pat Brown	Member		1
Lucie S. St. George	Member		1

Board Name	Member Name	Position	Type	Status	Term	Notes
Sud WaterDist Protect Commission	Robert Sheldon	Chair				
	James Occhialini	Member				

Special Circumstances Fairbank task Force - recommending to to disband and be moved to the Permanent Bldg Committee



SUDBURY BOARD OF SELECTMEN

Tuesday, May 23, 2017

MISCELLANEOUS (UNTIMED)**12: Town Manager Annual Re-appointments**REQUESTOR SECTION

Date of request:

Requested by: Patty Golden

Formal Title: Vote whether to approve the Town Manager's annual re-appointments requiring Board of Selectmen's approval of those listed (all of which are subject to acceptance).

Recommendations/Suggested Motion/Vote: Vote whether to approve the Town Manager's annual re-appointments requiring Board of Selectmen's approval of those listed (all of which are subject to acceptance).

Background Information:

Attached list of re-appointments and resignations

Financial impact expected:N/A

Approximate agenda time requested:

Representative(s) expected to attend meeting:

Review:

Patty Golden	Pending
Melissa Murphy-Rodrigues	Pending
Barbara Saint Andre	Pending
Susan N. Iuliano	Pending
Board of Selectmen	Pending

05/23/2017 6:45 PM

TOWN MANAGER RE-APPOINTMENT LIST

12.a

Board Name	Member Name	Position	Type	Status	Term	BOS
Conservation Comm	David Henkles	Member	Town Mgr	Re-Appoint/Y	3	
	Thomas Friedlaner	Chair		Re-Appoint/Y	3	
	1 Vacancy	Elizabeth Armstrong	Member	No	3	
Commission on Disabil	Lotte Diomedes	Chair	Town Mgr	No	3	
6 Vacancies						
Historical Commission	Jan Costa	Member	Town Mgr	Re-Appoint/Y	3	
	Lyn MacLean	Chair				
Labor Rel Counsel	Kevin P. Feeley		Town Mgr	Re-Appoint/Y	1	
Town Historian	Lee Swanson	Chair	Town Mgr	Re-Appoint/Y	1	

Attachment 12.a: Board Re-Appoint List Town Manager BOS Edition (2333 : Town Manager Annual Re-



SUDBURY BOARD OF SELECTMEN

Tuesday, May 23, 2017

MISCELLANEOUS (UNTIMED)**13: Vote to approve collective bargaining agreements**REQUESTOR SECTION

Date of request:

Requested by: Patty Golden

Formal Title: Vote on whether to approve collective bargaining agreements with the Fire and Engineering unions.

Recommendations/Suggested Motion/Vote: Vote on whether to approve collective bargaining agreements with the Fire and Engineering unions.

Background Information:

Financial impact expected:

Approximate agenda time requested:

Representative(s) expected to attend meeting:

Review:

Patty Golden	Pending
Melissa Murphy-Rodrigues	Pending
Barbara Saint Andre	Pending
Susan N. Iuliano	Pending
Board of Selectmen	Pending

05/23/2017 6:45 PM



MISCELLANEOUS (UNTIMED)

14: BOS meeting schedule

REQUESTOR SECTION

Date of request:

Requested by: Patty Golden

Formal Title: Discussion and potential vote of revisions to BOS meeting schedule.

Recommendations/Suggested Motion/Vote: Discussion and potential vote of revisions to BOS meeting schedule.

Background Information:
attached is current 2017 meeting schedule

Financial impact expected:

Approximate agenda time requested:

Representative(s) expected to attend meeting:

Review:

Patty Golden	Pending
Melissa Murphy-Rodrigues	Pending
Barbara Saint Andre	Pending
Susan N. Iuliano	Pending
Board of Selectmen	Pending

05/23/2017 6:45 PM

TOWN OF SUDBURY Board of Selectmen Meeting Schedule

Meetings Commence at 7:30 PM at Town Hall, 322 Concord Rd. (see Town website for updates)

2017

JANUARY						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

FEBRUARY						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28				

MARCH						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

APRIL						
S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

MAY						
S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

JUNE						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

JULY						
S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

AUGUST						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

SEPTEMBER						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

OCTOBER						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

NOVEMBER						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

DECEMBER						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

Red=LSRHS School Comm Meetings

Yellow=BOS Mtg

Blue=Holiday/other event

Jan. 1 New Year's Day
Jan. 2 New Year's Day Observed
Jan. 16 MLK Day
Feb. 20 President's Day
Feb. 21-24 School Vacation
March 27 Annual Town Election

April 10 (evening) Passover
April 14 Good Friday
April 16 Easter
April 17 Patriot's Day
April 18-21 School Vacation
May 1-3 Annual Town Meeting @LSRHS
May 29 Memorial Day

July 4 Independence Day
Sept. 4 Labor Day
Sept. 20 (evening) Rosh Hashanah
Sept. 29 (evening) Yom Kippur

Oct. 9 Columbus Day
Nov. 10 Veterans Day Observed
Nov. 11 Veterans Day
Nov. 23 Thanksgiving Day
Dec. 12 (evening) Hannukah
Dec. 23-Jan. 1 School Vacation
Dec. 25 Christmas Day



SUDBURY BOARD OF SELECTMEN

Tuesday, May 23, 2017

MISCELLANEOUS (UNTIMED)**15: Discussion of Auditing Services**REQUESTOR SECTION

Date of request:

Requestor: Town Manager Rodrigues

Formal Title: Discussion and vote to allow Town Manager to sign contract for Auditing Services

Recommendations/Suggested Motion/Vote: Discussion and vote to allow Town Manager to sign contract for Auditing Services

Background Information:

Documents to be provided separately

Financial impact expected:

Approximate agenda time requested:

Representative(s) expected to attend meeting:

Review:

Patty Golden	Pending
Melissa Murphy-Rodrigues	Pending
Barbara Saint Andre	Pending
Susan N. Iuliano	Pending
Board of Selectmen	Pending

05/23/2017 6:45 PM



SUDBURY BOARD OF SELECTMEN

Tuesday, May 23, 2017

MISCELLANEOUS (UNTIMED)**16: Citizen's Comments (cont)**REQUESTOR SECTION

Date of request:

Requested by: Patty Golden

Formal Title: Citizen's Comments (cont)

Recommendations/Suggested Motion/Vote:

Background Information:

Financial impact expected:

Approximate agenda time requested:

Representative(s) expected to attend meeting:

Review:

Patty Golden	Pending
Melissa Murphy-Rodrigues	Pending
Barbara Saint Andre	Pending
Susan N. Iuliano	Pending
Board of Selectmen	Pending

05/23/2017 6:45 PM



SUDBURY BOARD OF SELECTMEN
Tuesday, May 23, 2017

17

MISCELLANEOUS (UNTIMED)

17: Discuss future agenda items

REQUESTOR SECTION

Date of request:

Requested by: Patty Golden

Formal Title: Discuss future agenda items

Recommendations/Suggested Motion/Vote:

Background Information:

Financial impact expected:

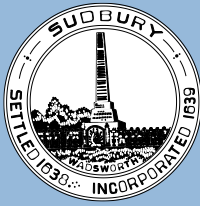
Approximate agenda time requested:

Representative(s) expected to attend meeting:

Review:

Patty Golden	Pending
Melissa Murphy-Rodrigues	Pending
Barbara Saint Andre	Pending
Susan N. Iuliano	Pending
Board of Selectmen	Pending

05/23/2017 6:45 PM



SUDBURY BOARD OF SELECTMEN

Tuesday, May 23, 2017

CONSENT CALENDAR ITEM**18: Accept Solarize Mass Program grant**REQUESTOR SECTION

Date of request:

Requestor: James Kelly, Combined Facilities Director

Formal Title: Vote to accept, on behalf of the Town, a check in the amount of \$2,500, from the Massachusetts Clean Energy Center, to be deposited into the Solarize Massachusetts Program Account, (as requested by James Kelly, in a memo dated May 8, 2017), to be used at the discretion of the Combined Facilities Director and the Energy and Sustainability Committee in compliance with this marketing campaign.

Recommendations/Suggested Motion/Vote: Vote to accept, on behalf of the Town, a check in the amount of \$2,500, from the Massachusetts Clean Energy Center, to be deposited into the Solarize Massachusetts Program Account, (as requested by James Kelly, in a memo dated May 8, 2017), to be used at the discretion of the Combined Facilities Director and the Energy and Sustainability Committee in compliance with this marketing campaign.

Background Information:
attached memo

Financial impact expected:

Approximate agenda time requested:

Representative(s) expected to attend meeting:

Review:

Patty Golden	Pending
Melissa Murphy-Rodrigues	Pending
Barbara Saint Andre	Pending
Susan N. Iuliano	Pending
Board of Selectmen	Pending

05/23/2017 6:45 PM



Town of Sudbury

Facilities Department

275 Old Lancaster Road
Sudbury, MA 01776
978-440-5466; Fax 978-440-5404
facilities@sudbury.ma.us

James F. Kelly, Facilities Director

TO: Melissa Murphy-Rodrigues, Town Manager
FROM: James Kelly, Facilities Director
RE: Solarize Mass Program
DATE: May 8, 2017

The Town of Sudbury was selected to participate in the Solarize Massachusetts Program for the purpose of reaching out to the community through education and marketing efforts to promote the benefits of adopting solar photovoltaic systems in our community. The Town was awarded a marketing grant in the amount of \$2,500 from the Massachusetts Clean Energy Center.

I would like to request the Selectmen accept this check to be deposited in the Solarize Mass Program Account to be used at the discretion of the Facilities Director and the Energy and Sustainability Committee in compliance with this marketing campaign.

cc: Dennis Keohane, Finance Director
Christine Nihan, Town Accountant

RECEIVED
BOARD OF SELECTMEN
SUDBURY, MA
2017 MAY -9 P 2:33



SUDBURY BOARD OF SELECTMEN

Tuesday, May 23, 2017

CONSENT CALENDAR ITEM**19: National Grid Energy Rebate**REQUESTOR SECTION

Date of request:

Requestor: James Kelly, Facilities Director

Formal Title: Vote to accept, on behalf of the Town, two rebate checks in the amount of \$1,685 and \$797, from National Grid, on behalf of Boston Gas Company, to be deposited into the Excelon/Select Utility Gift/Donation Account, (as requested by James Kelly, Combined Facilities Director, in a memo dated May 2, 2017), said funds to be accepted toward future energy initiatives in Town buildings under the direction of the Combined Facilities Director.

Recommendations/Suggested Motion/Vote: Vote to accept, on behalf of the Town, two rebate checks in the amount of \$1,685 and \$797, from National Grid, on behalf of Boston Gas Company, to be deposited into the Excelon/Select Utility Gift/Donation Account, (as requested by James Kelly, Combined Facilities Director, in a memo dated May 2, 2017), said funds to be accepted toward future energy initiatives in Town buildings under the direction of the Combined Facilities Director.

Background Information:

Attached memo

Financial impact expected:

Approximate agenda time requested:

Representative(s) expected to attend meeting:

Review:

Patty Golden	Pending
Melissa Murphy-Rodrigues	Pending
Town Counsel	Pending
Barbara Saint Andre	Pending
Susan N. Iuliano	Pending
Board of Selectmen	Pending

05/23/2017 6:45 PM



Town of Sudbury

Facilities Department

275 Old Lancaster Road
Sudbury, MA 01776
978-440-5466; Fax 978-440-5404
facilities@sudbury.ma.us

James F. Kelly, Facilities Director

TO: Melissa Murphy-Rodrigues, Town Manager
FROM: James Kelly, Facilities Director
RE: National Grid Energy Incentive Rebates
DATE: May 2, 2017

I would like to request the Selectmen accept two energy efficiency incentive checks from National Grid, on behalf of Boston Gas Company, in the amount of \$1,685 and \$797. These checks have been issued to the Town of Sudbury to recognize the energy efficient measures that were recently made to the town buildings.

I am requesting that the checks be accepted for future energy initiatives in town buildings selected by the Combined Facilities Director and be deposited in the Exelon/Select Utility Gift/Donation Account.

cc: Dennis Keohane, Finance Director
Christine Nihan, Town Accountant

RECEIVED
TOWN OF SUDBURY
2017 MAY -3 P 2:04



SUDBURY BOARD OF SELECTMEN

Tuesday, May 23, 2017

CONSENT CALENDAR ITEM**20: Billiard Table License Renewal 2017**REQUESTOR SECTION

Date of request:

Requestor: James Wiegel, Finance Officer, American Legion Post 191

Formal Title: As the Licensing Authority for the Town of Sudbury, vote to renew a billiards table license for the American Legion Sudbury Post #191, Inc., Phillip M. McKenzie, Manager, 676 Boston Post Road, said license to expires on May 1, 2017.

Recommendations/Suggested Motion/Vote: As the Licensing Authority for the Town of Sudbury, vote to renew a billiards table license for the American Legion Sudbury Post #191, Inc., Phillip M. McKenzie, Manager, 676 Boston Post Road, said license expires on May 1, 2017.

Background Information:

Application and police feedback attached

Financial impact expected:\$25 license fee

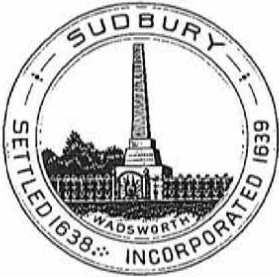
Approximate agenda time requested:

Representative(s) expected to attend meeting:

Review:

Patty Golden	Pending
Melissa Murphy-Rodrigues	Pending
Barbara Saint Andre	Pending
Susan N. Iuliano	Pending
Board of Selectmen	Pending

05/23/2017 6:45 PM



TOWN OF SUDBURY
Office of Selectmen
 278 Old Sudbury Road
 Sudbury, MA 01776
 (978) 639-3381, Fax (978) 443-0756
BOAdmin@sudbury.ma.us

APPLICATION FOR POOL TABLE LICENSE

Please complete the form below and return to the Board of Selectmen's Office.

Applicant name: Sudbury American Legion Post 191
 Address: 676 Boston Post Road Phone: 978.443.9059
 Business name: Sudbury American Legion Post 191
 Address: 676 Boston Post Road
 Number of pool tables: 1
 Location (if different than above) not applicable
 Expiration Date: May 1, 2017

All Pool Table licenses expire May 1st and MUST be renewed annually.

☒ \$25 Application Fee made payable to Town of Sudbury

I hereby apply for a pool table license within the Town of Sudbury.

Applicant Signature: [Signature]

Date: 4 May 17

Golden, Patricia

From: Nix, Scott
Sent: Wednesday, May 17, 2017 3:22 PM
To: Golden, Patricia
Subject: RE: American Legion Pool Table

Patty,

The Police Department does not have an issue with the application. Thank you!

Respectfully,

Scott Nix
Chief of Police
Sudbury Police Department
75 Hudson Road
Sudbury, MA 01776
(978) 443-1042
nixs@sudbury.ma.us

Attachment20.b: American Legion_pooltable_Police_feedback (2311 : Billiard Table License Renewal 2017)



SUDBURY BOARD OF SELECTMEN

Tuesday, May 23, 2017

CONSENT CALENDAR ITEM**21: 2017 Bicycles Battling Cancer Ride**REQUESTOR SECTION

Date of request:

Requestor: Mark Walter, American Cancer Society

Formal Title: Vote to grant a Special Permit to the American Cancer Society, to Hold the "Bicycles Battling Cancer Ride" on Sunday June 11, 2017, from 7:30 A.M. through approximately 4:30 P.M., subject to Police Department safety requirements, Proof of Insurance Coverage and the assurance that any litter will be removed at the race's conclusion.

Recommendations/Suggested Motion/Vote: Vote to grant a Special Permit to the American Cancer Society, to Hold the "Bicycles Battling Cancer Ride" on Sunday June 11, 2017, from 7:30 A.M. through approximately 4:30 P.M., subject to Police Department safety requirements, Proof of Insurance Coverage and the assurance that any litter will be removed at the race's conclusion.

Background Information:
see attached application and department feedback

Financial impact expected:

Approximate agenda time requested:

Representative(s) expected to attend meeting:

Review:

Patty Golden	Pending
Melissa Murphy-Rodrigues	Pending
Barbara Saint Andre	Pending
Susan N. Iuliano	Pending
Board of Selectmen	Pending

05/23/2017 6:45 PM

Golden, Patricia

From: Mark Walter <mwaltersme@gmail.com>
Sent: Friday, April 14, 2017 12:25 PM
To: Selectmen's Office
Subject: 2017 Bicycles Battling Cancer and Sudbury
Attachments: Sudbury_app for charitable walk_2017.pdf

Dear Selectmen:

I'm working with the American Cancer Society to help coordinate the 2017 Bicycles Battling Cancer ride which will take place on Sunday, June 11, 2017 and I'm writing to ask for your approval for this charity ride to come through Sudbury. This is the 8th year of the event and the route is unchanged from last year.

Bicycles Battling Cancer is an outdoor cycling fundraiser that offers 30, 70, and 100 mile route options to participants. The ride starts and ends in Marlborough, MA. Cyclists in the 70 and 100 mile rides will begin at 7:30am while cyclists in the 30 mile ride will begin at 11:30am. The 70 mile and 30 mile rides are separate routes while the 100 mile ride is a combination of the 30 and 70 mile rides put together.

Cyclists will enter Sudbury on Hudson Road, then go right onto Dutton Road and then right on Wayside Inn Road. I expect cyclists will ride this stretch of roads between 12pm and 1:30pm. I estimate 175-225 cyclists will ride these roads. Note this is not a race and cyclists will be instructed to obey the rules of the road.

The 100 mile route can be viewed with a click here:

<https://ridewithgps.com/routes/19442471>

Attached a completed copy of the town's "**Application for a Charitable Walk/Relay Permit**" (note that a Certificate of Insurance has been requested and will be sent as soon as I receive it).

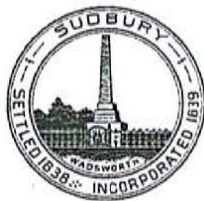
Our plan is to mark the course a few days before the event with paper arrow stickers on the road. These arrows are biodegradable and will wash away in about a week. Course markings are essential to effectively and safely guide riders along the course.

Please let me know if you approve of the ride and any additional information is required.

I look forward to hearing from you.

Mark Walter
 Cell: 781-414-0437

Attachment21.a: Bicycles Battling Cancer Ride Application (2315 : 2017 Bicycles Battling Cancer Ride)



TOWN OF SUDBURY

Office of Selectmen
www.sudbury.ma.us

Flynn Building
278 Old Sudbury Rd
Sudbury, MA 01776-1843
978-639-3381
Fax: 978-443-0756

Email: BOSSadmin@sudbury.ma.us

APPLICATION FOR A CHARITABLE WALK/RELAY PERMIT ON A PUBLIC WAY

Written permission to conduct a fundraising walk or relay race in any public street, public sidewalk or public way within the Town must be obtained from the Board of Selectmen prior to the event. The Chief of Police will determine the appropriate public safety requirements for this event and the cost of such special duty officers, if any required, will be borne by the applicant. The Town of Sudbury requires a Certificate of Insurance of no less than \$1,000,000, naming the Town as an additional insured. All cleanup from the event will be completed by the applicant within 8 hours after the stated ending time or applicant will be billed for the Town's cost to clean up. Application processing can take up to four weeks as approval from the Police, Building and Park & Recreation departments may be required prior to Board of Selectmen approval. Processing begins after all required materials are received, so please plan accordingly.

Organization Name American Cancer Society

Event Name Bicycles Battling Cancer

Organization Address 30 Speen Street, Framingham MA 01701

Name of contact person in charge Mark Walter

Telephone Number(s) of contact [REDACTED] (cell) [REDACTED]

Email address [REDACTED]

Date of event 6-11-17 Rain Date —

Starting time 7:30 AM Ending time 4:30 PM

Route of the race/relay and portion of the road requested to be used (please indicate on map and attach to this application) Hudson Rd → Dutton Rd → Wayside Inn Rd

Anticipated number of participants 175-225

Assembly area (enclose written permission of owner if private property to be used for assembly) —

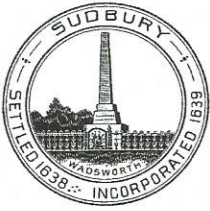
Start + finish is at the Hillside School in Marlborough

Organization that proceeds will go to American Cancer Society

Any other important information This is the 9th year of the event and the 2017 route is the same as 2016

The undersigned applicant agrees that the applicant and event participants will conform to applicable laws, by-laws and regulations as well as any special requirement that may be made as a condition of the granting of permission pursuant to this application. I/we agree to hold the Town of Sudbury harmless from any and all liability and will defend the Town of Sudbury in connection therewith.

Signature of Applicant Mark Walter Date 4-6-17



TOWN OF SUDBURY

Office of Selectmen
www.sudbury.ma.us

Flynn Building
 278 Old Sudbury Rd
 Sudbury, MA 01776-1843
 978-639-3381
 Fax: 978-443-0756

Email: BOSadmin@sudbury.ma.us

CONTINUED: APPLICATION FOR A CHARITABLE WALK/RELAY PERMIT...

Application Checklist:

- ☒ Application Form
- ☒ Map of Route
- ☒ Evidence of Certificate of Insurance (please see details above)

Please submit completed application and materials to:

Board of Selectmen
 278 Old Sudbury Rd.
 Sudbury, MA 01776
 Fax: 978-443-0756
 Email: BOSadmin@sudbury.ma.us



CERTIFICATE OF LIABILITY INSURANCE

21.a
DATE (MM/DD/YYYY)
5/3/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Commercial Lines – (404) 923-3700 Wells Fargo Insurance Services USA, Inc. 3475 Piedmont Road NE, Suite 800 Atlanta, GA 30305-2886	CONTACT NAME: Jennifer Lefler PHONE (A/C, No, Ext): 404-923-3663 E-MAIL ADDRESS: jennifer.l.lefler@wellsfargo.com FAX (A/C, No): 877-362-9069
INSURED American Cancer Society, Inc. 250 Williams Street Atlanta, GA 30303	INSURER(S) AFFORDING COVERAGE INSURER A: Federal Insurance Company INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:

COVERAGES

CERTIFICATE NUMBER: 11746664

REVISION NUMBER: See below

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	X		35943463	09/01/2016	09/01/2017	EACH OCCURRENCE \$ 1,000,00 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,00 MED EXP (Any one person) \$ 5,00 PERSONAL & ADV INJURY \$ 1,000,00 GENERAL AGGREGATE \$ 25,000,00 PRODUCTS - COMP/OP AGG \$ 2,000,00
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED \$ RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y / N <input type="checkbox"/>	N / A				PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Re: Contract #45426 Bicycles Battling Cancer Starts in Marlboro Goes thru Sudbury June 11, 2017 (mm)

Certificate holder is included as an additional insured in accordance with the terms and conditions of the general liability policy and only if required by written contract or agreement.

CERTIFICATE HOLDER

CANCELLATION

Town of Sudbury
278 Old Sudbury Rd.
Sudbury, MA 01776

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

The ACORD name and logo are registered marks of ACORD © 1988-2015 ACORD CORPORATION. All rights reserved.

Golden, Patricia

From: Nason, Dan
Sent: Friday, May 05, 2017 10:16 AM
To: Golden, Patricia
Cc: Tarves, Patrick; Anderson, Kenneth; ORourke, William
Subject: RE: Charity Bike Ride - Bicycles Battling Cancer - June 11, 2017
Attachments: Bicycles Battling Cancer Ride Application.pdf

Patty,

Public Works has no issue with the race as presented in the attached application with the assumption that no personnel or barricades (barrels, cones, road closures, etc.) are needed from our department.

Regards,
Dan Nason

Attachment21.b: Bicycles Battling Cancer_dept_feedback (2315 : 2017 Bicycles Battling Cancer Ride)

Golden, Patricia

From: McNamara, Kayla
Sent: Monday, May 08, 2017 12:35 PM
To: Golden, Patricia; Miles, William; Whalen, John; Nason, Dan; Nix, Scott
Cc: Hobin, Carol
Subject: RE: Charity Bike Ride - Bicycles Battling Cancer - June 11, 2017

Okay with Park and Recreation



Kayla McNamara, CPO

Director of Parks, Recreation, & Aquatics
 Sudbury Park and Recreation/Atkinson Pool – **A CAPRA Accredited Agency!**
 40 Fairbank Road
 Sudbury, MA 01776
 (978) 443-1092 x3259

www.SudburyRec.com

Check out our new website! SudburyRec.com for all program information and registration!

Inclement Weather Hotline: (978) 639-3233

Attachment21.b: Bicycles Battling Cancer_dept_feedback (2315 : 2017 Bicycles Battling Cancer Ride)

Golden, Patricia

From: Nix, Scott
Sent: Monday, May 08, 2017 3:46 PM
To: Golden, Patricia
Subject: RE: Charity Bike Ride - Bicycles Battling Cancer - June 11, 2017

Patty,

Dutton Road narrows in some portions. I am assuming participants will be spread out enough so they can traverse the area safely. As long as that is the case, we do not have an issue with the event.

Respectfully,

Scott Nix

Chief of Police

Sudbury Police Department
75 Hudson Road
Sudbury, MA 01776
(978) 443-1042
nixs@sudbury.ma.us

Attachment21.b: Bicycles Battling Cancer_dept_feedback (2315 : 2017 Bicycles Battling Cancer Ride)



SUDBURY BOARD OF SELECTMEN

Tuesday, May 23, 2017

CONSENT CALENDAR ITEM**22: Riverfest one-day alcohol license**REQUESTOR SECTION

Date of request:

Requestor: Anne Slugg, Riverfest Stewardship Chair

Formal Title: Vote to grant a 1-day All Alcohol license to Sudbury Assabet and Concord Wild and Scenic River Stewardship Council, to accommodate a fundraiser on Friday, June 16, 2017 from 6:00 PM to 8:00 PM at SVT Wolbach Farm, 18 Wolbach Road, Sudbury, subject to the use of a TIPS-trained bartender and a receipt of a Certificate of Liability.

Recommendations/Suggested Motion/Vote: *Vote to grant a 1-day All Alcohol license to Sudbury Assabet and Concord Wild and Scenic River Stewardship Council, to accommodate a fundraiser on Friday, June 16, 2017 from 6:00 PM to 8:00 PM at SVT Wolbach Farm, 18 Wolbach Road, Sudbury, subject to the use of a TIPS-trained bartender and a receipt of a Certificate of Liability.*

Background Information:
attached application and department approvals.

Financial impact expected:\$25 application fee

Approximate agenda time requested:

Representative(s) expected to attend meeting:

Review:

Patty Golden	Pending
Melissa Murphy-Rodrigues	Pending
Barbara Saint Andre	Pending
Susan N. Iuliano	Pending
Board of Selectmen	Pending

05/23/2017 6:45 PM



Town of Sudbury

Office of Selectmen
www.sudbury.ma.us

Flynn Building
278 Old Sudbury Rd
Sudbury, MA 01776-1843
978-639-3381
Fax: 978-443-0756
Email: BOSadmin@sudbury.ma.us

APPLICATION FOR ONE-DAY LIQUOR LICENSE (NON-PROFIT)

Non-profit organizations hosting an event in Sudbury are eligible to apply for a one-day liquor license. All licensees must purchase their alcoholic beverages from a licensed Massachusetts wholesaler, manufacturer, winery shipment licensee, farmer brewery, farmer distillery or holder of a Special Permit issued by the ABCC.

Application processing can take up to four weeks as approval from the Fire, Police, Building and Board of Health departments are required prior to Board of Selectmen approval. Processing begins after all required materials are received, so please plan accordingly.

Name of Responsible Manager: Anne Slugg, RSC chair

Address of Responsible Manager: 66 Fox Run Road Sudbury MA

Phone: 508 245 7500 Email: anne.slugg@gmail.com

Non-Profit Organization Name: Sudbury Assabet and Concord Wild and Scenic River Stewardship Council

Name & Purpose of Event: Riverfest Weekend's Kickoff Event

Name(s) of Brewery/ Distillery/Winery/Wholesaler/Manufacturer to provide alcohol:

The event is to launch the annual Riverfest Weekend of free river focused family events throughout the watershed to present

License Type Requested: ☒ \$25 Wine & Malt - OR - ☐ \$35 All Alcohol awards and thank volunteers.

Event Date: Friday, June 16 2017

Event Time: 6-8 P

Event Venue & Address: SVT Wolbach Farm, 18 Wolbach Rd, Sudbury

Documents Enclosed:

- ☒ Certificate of Liability naming the Town of Sudbury
- ☒ Proof of bartender(s) training/certification
- ☒ Application fee: \$25 Wine & Malt or \$35 All Alcohol. Check payable to Town of Sudbury.

Please submit completed application and materials to:

Board of Selectmen, Attn: Application Processing, 278 Old Sudbury Rd., Sudbury, MA 01776

04/26/17
Date

[Signature]
Applicant Signature

ACORD

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

4/25/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. If **SUBROGATION** IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER License # 0C36861

Chantilly-Alliant Ins Svc Inc.
4530 Walney Rd Ste 200
Chantilly, VA 20151-2285

CONTACT NAME: Anna Hill

PHONE

FAX

(A/C, No, Ext):

(A/C, No):

E-MAIL ADDRESS: ahill@alliant.com

INSURER(S) AFFORDING COVERAGE

NAIC #

INSURER A : Federal Insurance Company

20281

INSURED

Sudbury Valley Trustees, Inc.
18 Wolbach Rd
Sudbury, MA 01776

INSURER B :

INSURER C :

INSURER D :

INSURER E :

INSURER F :

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR			35360701	10/05/2016	10/05/2017	EACH OCCURRENCE \$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000
							MED EXP (Any one person) \$ 10,000
							PERSONAL & ADV INJURY \$ 1,000,000
							GENERAL AGGREGATE \$ 2,000,000
							PRODUCTS - COMP/OP AGG \$ Included
							Host Liquor \$ Included
	AUTOMOBILE LIABILITY						
	<input type="checkbox"/> ANY AUTO						COMBINED SINGLE LIMIT (Ea accident) \$
	<input type="checkbox"/> ALL OWNED AUTOS	<input type="checkbox"/> SCHEDULED AUTOS					BODILY INJURY (Per person) \$
	<input type="checkbox"/> HIRED AUTOS	<input type="checkbox"/> NON-OWNED AUTOS					BODILY INJURY (Per accident) \$
							PROPERTY DAMAGE (Per accident) \$
							\$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR						EACH OCCURRENCE \$ 3,000,000
	<input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE			79761859	10/05/2016	10/05/2017	AGGREGATE \$ 3,000,000
	<input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$						\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						PER STATUTE OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	<input type="checkbox"/> Y <input checked="" type="checkbox"/> N					E.L. EACH ACCIDENT \$
	If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				E.L. DISEASE - EA EMPLOYEE \$
							E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Event Name: Riverfest Kickoff

Event Date: 06/16/17

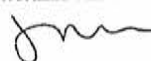
CERTIFICATE HOLDER

Town of Sudbury
278 Old Sudbury Road
Sudbury, MA 01776

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



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2014/01)

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Main

Main Menu

Do not click Back-Space to leave this window

Certificate of Completion

This Certificate of Completion of
eTIPS On Premise 2.0
For coursework completed on April 11, 2016
provided by Health Communications, Inc.
is hereby granted to:

Kate Tyrrell

Certification to be sent to:

**River Stewardship Council
18 Wolbach Rd
Sudbury MA, 01776-2429 USA**



HEALTH COMMUNICATIONS, INC.



This document is not proof of TIPS certification. It signifies only that you have completed the course. Valid certification documents will be forwarded to you.

Golden, Patricia

From: Whalen, John
Sent: Thursday, May 04, 2017 8:45 AM
To: Golden, Patricia
Cc: Miles, William; Polcari, Kimberly
Subject: RE: Application for 1-day liquor license - 6/16/17

Hello Patty,

The Fire Department has no issue with this application, a fire detail will be required for this event.

Thank you

John M. Whalen
 Assistant Fire Chief
 Sudbury Fire Dept.
 978-440-5312

From: Golden, Patricia
Sent: Wednesday, May 03, 2017 3:39 PM
To: Miles, William <MilesW@sudbury.ma.us>; Whalen, John <WhalenJ@sudbury.ma.us>; Nix, Scott <NixS@sudbury.ma.us>; Grady, Robert <GradyR@sudbury.ma.us>; Murphy, Bill <MurphyB@sudbury.ma.us>; Herweck, Mark <HerweckM@sudbury.ma.us>
Subject: Application for 1-day liquor license - 6/16/17

Hello again!

Attached is an application for a 1-day liquor license for an event hosted by the River Stewardship Council scheduled for June 16, 2017 at Wolbach Farm.

This is on the May 23 Selectmen's agenda, so if you can please respond with your feedback no later than May 11, it would be appreciated.

Thank you!

Patty Golden
 Senior Administrative Assistant to the Town Manager
 Town of Sudbury
 278 Old Sudbury Road
 Sudbury, MA 01776
 Ph: 978-639-3382
 Fax: 978-443-0756
www.sudbury.ma.us

When writing or responding, please be aware the Secretary of State has determined that e-mail is a public record and thus not confidential

Attachment22.b: Dept_Feedback_SUASCO (2320 : Riverfest one-day alcohol license)

Golden, Patricia

From: Nix, Scott
Sent: Thursday, May 04, 2017 2:32 PM
To: Golden, Patricia
Subject: RE: Application for 1-day liquor license - 6/16/17

The police department does not have an issue with the event.

Respectfully,

Scott Nix
Chief of Police
 Sudbury Police Department
 75 Hudson Road
 Sudbury, MA 01776
 (978) 443-1042
nixs@sudbury.ma.us

From: Golden, Patricia
Sent: Wednesday, May 3, 2017 3:39 PM
To: Miles, William <MilesW@sudbury.ma.us>; Whalen, John <WhalenJ@sudbury.ma.us>; Nix, Scott <NixS@sudbury.ma.us>; Grady, Robert <GradyR@sudbury.ma.us>; Murphy, Bill <MurphyB@sudbury.ma.us>; Herweck, Mark <HerweckM@sudbury.ma.us>
Subject: Application for 1-day liquor license - 6/16/17

Hello again!

Attached is an application for a 1-day liquor license for an event hosted by the River Stewardship Council scheduled for June 16, 2017 at Wolbach Farm.

This is on the May 23 Selectmen's agenda, so if you can please respond with your feedback no later than May 11, it would be appreciated.

Thank you!

Patty Golden
 Senior Administrative Assistant to the Town Manager
 Town of Sudbury
 278 Old Sudbury Road
 Sudbury, MA 01776
 Ph: 978-639-3382
 Fax: 978-443-0756
www.sudbury.ma.us

When writing or responding, please be aware the Secretary of State has determined that e-mail is a public record and thus not confidential

Attachment22.b: Dept_Feedback_SUASCO (2320 : Riverfest one-day alcohol license)

Golden, Patricia

From: Herweck, Mark
Sent: Monday, May 08, 2017 2:20 PM
To: Golden, Patricia; Miles, William; Whalen, John; Nix, Scott; Grady, Robert; Murphy, Bill
Subject: RE: Application for 1-day liquor license - 6/16/17

The Building Department has no issues.

Thank you.

From: Golden, Patricia
Sent: Wednesday, May 03, 2017 3:39 PM
To: Miles, William <MilesW@sudbury.ma.us>; Whalen, John <WhalenJ@sudbury.ma.us>; Nix, Scott <NixS@sudbury.ma.us>; Grady, Robert <GradyR@sudbury.ma.us>; Murphy, Bill <MurphyB@sudbury.ma.us>; Herweck, Mark <HerweckM@sudbury.ma.us>
Subject: Application for 1-day liquor license - 6/16/17

Hello again!

Attached is an application for a 1-day liquor license for an event hosted by the River Stewardship Council scheduled for June 16, 2017 at Wolbach Farm.

This is on the May 23 Selectmen's agenda, so if you can please respond with your feedback no later than May 11, it would be appreciated.

Thank you!

Patty Golden
 Senior Administrative Assistant to the Town Manager
 Town of Sudbury
 278 Old Sudbury Road
 Sudbury, MA 01776
 Ph: 978-639-3382
 Fax: 978-443-0756
www.sudbury.ma.us

When writing or responding, please be aware the Secretary of State has determined that e-mail is a public record and thus not confidential

Attachment22.b: Dept_Feedback_SUASCO (2320 : Riverfest one-day alcohol license)

Golden, Patricia

From: Murphy, Bill
Sent: Friday, May 19, 2017 9:52 AM
To: Golden, Patricia
Subject: RE: Your feedback on several items for BOS agenda (deadline this am!)

With regard to the pending applications:

1. Da Vinci Bistro- The Board of Health requested a floor plan from the applicant showing a seating plan for not more than 70 seats, including the patio. If the seating plan indicates 70 seats, the Board of Health would not have any issues with application.
2. River Stewardship Council- No issues.
3. Wounded Warriors- No issues.

William C. Murphy, MS,RS,CHO

Director of Public Health
 Sudbury Health Department
 978-440-5479
 murphyb@sudbury.ma.us



When writing or responding, please be aware the Secretary of State has determined that e-mail is a public record and thus not confidential.

Attachment22.b: Dept_Feedback_SUASCO (2320 : Riverfest one-day alcohol license)



SUDBURY BOARD OF SELECTMEN

Tuesday, May 23, 2017

CONSENT CALENDAR ITEM**23: Sudbury for Wounded Warriors one-day alcohol license**REQUESTOR SECTION

Date of request:

Requestor: Mark Dence, Sudbury for Wounded Warriors

Formal Title: Vote to grant a 1-day All Alcohol license to Sudbury for Wounded Warriors, to accommodate a fundraiser on Saturday, June 24, 2017 from 7:30 PM to 11:30 PM at 96 Peakham Road, Sudbury, subject to the use of a TIPS-trained bartender and a receipt of a Certificate of Liability.

Recommendations/Suggested Motion/Vote: *Vote to grant a 1-day All Alcohol license to Sudbury for Wounded Warriors, to accommodate a fundraiser on Saturday, June 24, 2017 from 7:30 PM to 11:30 PM at 96 Peakham Road, Sudbury, subject to the use of a TIPS-trained bartender and a receipt of a Certificate of Liability.*

Background Information:
attached application and department feedback.

Financial impact expected:\$35 application fee

Approximate agenda time requested:

Representative(s) expected to attend meeting:

Review:

Patty Golden	Pending
Melissa Murphy-Rodrigues	Pending
Barbara Saint Andre	Pending
Susan N. Iuliano	Pending
Board of Selectmen	Pending

05/23/2017 6:45 PM



Town of Sudbury

Office of Selectmen
www.sudbury.ma.us

Flynn Building
278 Old Sudbury Rd
Sudbury, MA 01776-1843
978-639-3381
Fax: 978-443-0756
Email: BOSadmin@sudbury.ma.us

APPLICATION FOR ONE-DAY LIQUOR LICENSE

The responsible manager of an indoor or outdoor activity or enterprise in Sudbury is eligible to apply for a one-day liquor license. All licensees must purchase their alcoholic beverages from a licensed Massachusetts wholesaler, manufacturer, winery shipment licensee, farmer brewery, farmer distillery or holder of a Special Permit issued by the ABCC.

Application processing can take up to four weeks as approval from the Fire, Police, Building and Board of Health departments are required prior to Board of Selectmen approval. Processing begins after all required materials are received, so please plan accordingly.

Name of Responsible Manager: MARK DENCE
Address of Responsible Manager: 88 PLEASANT ST APT 3 BROOKLINE MA
Phone: 617-691-4774 Email: MDENCE69@GMAIL.COM
Organization Name: SUDBURY WOUNDED WARRIOR
Name & Purpose of Event: BARN BASH RAISE FUNDS FOR CHARITY 501(C)3
Name(s) of Brewery/ Distillery/Winery/Wholesaler/Manufacturer to provide alcohol:
SHIRAZ BRAWERY

License Type Requested: ☐ \$25 Wine & Malt – OR – ☒ \$35 All Alcohol

Event Date: 6/24/2017

Event Time: 7:30 - 11:30 PM

Event Venue & Address: ARTHUR CARA MAXWELL 96 PEAKHAM RD
SUDBURY MA
01776

Documents Enclosed:

- ☒ Certificate of Liability naming the Town of Sudbury
- ☒ Proof of bartender(s) training/certification
- ☒ Application fee: \$25 Wine & Malt. Check payable to Town of Sudbury.

Please submit completed application and materials to:

Board of Selectmen, Attn: Application Processing, 278 Old Sudbury Rd., Sudbury, MA 01776

5/10/17
Date

[Signature]
Applicant Signature



SIMPL-2 OP ID: KM

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

05/09/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Estabrook & Chamberlain Ins P. O. Box 277 Bridgewater, MA 02324-9986 Charlie Rourke, CIC		CONTACT NAME: Charlie Rourke, CIC PHONE (A/C, No, Ext): 508-697-6963 FAX (A/C, No): FAX-697-5809 E-MAIL ADDRESS:	
		INSURER(S) AFFORDING COVERAGE	NAIC #
		INSURER A: Central Insurance Companies	20230
		INSURER B: Citation Insurance	40274
		INSURER C: Travelers Indemnity Co. of CT	25682
		INSURER D: Hospitality Insurance Group	
		INSURER E:	
		INSURER F:	

INSURED
 Simply Serving II LLC
 Ann Marie McCann
 9 Second Street
 Norwood, MA 02062

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Blkt addl ins GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:		CLP8621177	08/03/2016	08/03/2017	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COM/OP AGG \$ 2,000,000 Emp Ben. \$ INCL GLPli
B	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS		BGHSQG	08/03/2016	08/03/2017	COMBINED SINGLE LIMIT (Ea accident) \$ 500,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$ <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE					EACH OCCURRENCE \$ AGGREGATE \$ \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/> N/A	UB1260N670	04/04/2017	04/04/2018	PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ 100,000 E.L. DISEASE - EA EMPLOYEE \$ 100,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
D	Liquor Liability		50000730LL	09/06/2016	09/06/2017	Occurrence 1,000,000 Aggregate 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Shipyards Brewery and Sudbury for Wounded Warriors are named as an additional insured as respects general liability per policy form 8-1889 and liquor liability.

Event Date: 6/24/2017

CERTIFICATE HOLDER

CANCELLATION

SUDBU96

Sudbury for Wounded Warriors
 @ Miller Family Barn
 96 Peakham Road
 Sudbury, MA 01776

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Charles Rourke

© 1988-2014 ACORD CORPORATION. All rights reserved.

This is your Official TIPS® Certification Card.

Carry it with you as evidence of your skills and knowledge in the responsible sale and consumption of alcohol.

Congratulations!

By successfully completing the TIPS (Training for Intervention ProcedureS) program, you have taken your place in the forefront of a nationwide movement to reduce the tragedies resulting from the misuse of alcohol. We value your participation in the TIPS program.

You will help to provide a safer environment for your patrons, peers and/or colleagues by using the techniques you have learned and taking a positive approach towards alcohol use.

If you have any information you think would enhance the TIPS program, or if we can assist you in any way, please contact us at 703-524-1200. Thank you for your dedication to the responsible sale and consumption of alcohol.

Sincerely,



Adam F. Chafetz
President, HCI

IMPORTANT: Keep a copy of this card for your records. Write down your certification number because you will need it when contacting TIPS. For assistance or additional information, contact Health Communications, Inc. by using the information provided on the reverse side of your certification card. There is a minimal charge for a replacement card if your original card becomes lost, damaged or stolen.

TIPS	eTIPS On Premise 2.0 SSN:	XXX-XX-XXXX
Issued:	3/12/2016	Expires: 3/12/2019
ID#:	4204509	D.O.B.: XX/XX/XXXX

Eileen F Stanowicz
Simply Serving II
9 2nd St
Norwood, MA 02062-4848

For service visit us online at www.gettips.com



HEALTH COMMUNICATIONS INC.
1400 Key Blvd., Suite 700
Arlington, VA 22209
703-524-1200
www.gettips.com

This card was issued for successful completion of the TIPS program.

Signature: _____

CERTIFICATION NUMBER:	84192
ALCOHOL INTERVENTION METHODS	
CERTIFIES:	
DJ Mullen	
CAMPBELL TRENT 508 756-8542	EXPIRES: FEB 28 2019

your official TIPS certification card. Carry it with you as proof of your TIPS certification.

tions!

certifies that you have successfully completed the training for Intervention Procedure(S) program. We appreciate your participation and dedication to the responsible use of alcohol, and consumption of alcohol.

The techniques you have learned, you will help to create a safer environment for your patrons, peers, and family, and reduce the tragedies resulting from underage drinking, and drunk driving.

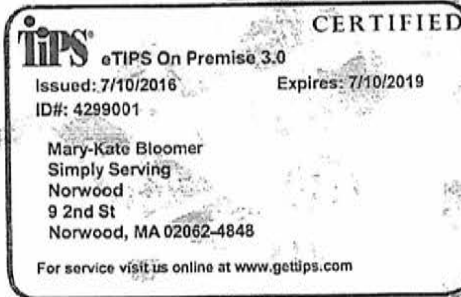
If you have any information you think would enhance the TIPS program, or if we can assist you in any way, please contact us at 781-347-7777.



Sincerely,

Adam F. Chafetz
HCI President

ID#: 4299001 Name: Mary-Kate Bloomer
Exam Date: 7/10/2016 Expiration Date: 7/10/2019



Carry it with you as evidence of your skills and knowledge in the responsible sale and consumption of alcohol.

Congratulations!

By successfully completing the TIPS (Training for Intervention Procedures) program, you have taken your place in the forefront of a nationwide movement to reduce the tragedies resulting from the misuse of alcohol. We value your participation in the TIPS program.

You will help to provide a safer environment for your patrons, peers and/or colleagues by using the techniques you have learned and taking a positive approach towards alcohol use.

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Sincerely,



Adam F. Chaffetz
President, HCT

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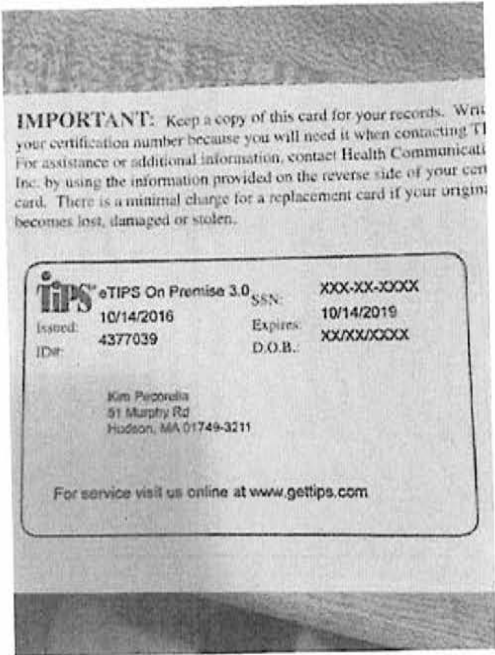
TIPS	eTIPS On Premise 2.065N	XXX-XX-XXXX
Issued:	2/15/2015	Expires: 2/15/2017
TIP#:	4158227	D.O.B.: XXXXX/XXXX
Linda A. Howard 35 1st St Norwood, MA 02062-4925		
For service visit us online at www.gotips.com		

Signature:

This card was issued for successful completion of the TIPS program.

www.gotips.com
 703-524-1200
 1400 Elm St., 8th Fl., Suite 200
 Arlington, VA 22204

HEALTH COMMUNICATIONS INC.
HCT



This is your official TIPS certification card. Carry it with you as proof of your TIPS certification.
Congratulations!

This card certifies that you have successfully completed the TIPS (Training for Intervention Procedures) program. We value your participation and dedication to the responsible sale, service, and consumption of alcohol.

By using the techniques you have learned, you will help to provide a safer environment for your patrons, peers, and colleagues and reduce the tragedies resulting from intoxication, underage drinking, and drunk driving.

If you have any information you think would enhance the TIPS program, or if we can assist you in any way, please contact us at 800-438-8477.



Sincerely,



Adam F. Chafetz
HCI President

ID#: 4450909 Name: Dan Logan
Exam Date: 2/7/2017 Expiration Date: 2/7/2020

TIPS eTIPS On Premise 3.0
Issued: 2/7/2017 Expires: 2/7/2020
ID#: 4450909

Dan Logan
Simply Serving II
9 2nd St
Norwood, MA 02062-4848

For service visit us online at www.gettips.com

Congratulations!

You have successfully completed the ServSafe Alcohol® Responsible Alcohol Service Training and Certification Program. This is your official ServSafe Alcohol Certification Card and provides confirmation that you have studied and are knowledgeable about how to serve alcohol responsibly.

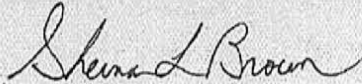
Thank you for participating in the ServSafe Alcohol program. Responsible alcohol service begins with the choices you make, and ServSafe Alcohol training will help you make the right decision when the moment arises.

By completing the ServSafe Alcohol program, you show your dedication to safe and responsible alcohol service. The ServSafe Alcohol program and the National Restaurant Association are dedicated to helping you continue to raise the bar on alcohol safety.

To learn more about our full suite of responsible alcohol service training products, contact your State Restaurant Association, your distributor or visit us at ServSafe.com.

We value your dedication to responsible alcohol service and applaud you for making the commitment to keep your operation, your customers and your community safe.

Sincerely,



Sherman Brown

Senior Vice President, National Restaurant Association Solutions

ServSafe
NATIONAL RESTAURANT ASSOCIATION

ServSafe Alcohol® CERTIFICATE

ID # 13502468
CARD # 14377120

CHRIS GEIGER

NAME

11/16/2016

DATE OF EXAMINATION

Card expires three years from the date of examination. Local laws apply.



NOTE: You can access your score and certification information anytime at www.servsafe.com with the class number provided on this form.

If you have any questions regarding your certification please contact the National Restaurant Association Service Center at

ServiceCenter@nra.org or 800.745.2724 ext. 6761

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Sherman Brown
Senior Vice President, National Restaurant Association Solutions

This certificate confirms completion of the ServSafe Alcohol® responsible alcohol service program.

In Alaska you must laminate your card for it to be valid.

NATIONAL
RESTAURANT
ASSOCIATION

2500 North Lincoln Road
Suite 1000
Chicago, IL 60614-3114
www.servsafe.com
800.745.2724

© 2015 National Restaurant Association Educational Foundation (NRAEF). All rights reserved. ServSafe and the ServSafe logo are trademarks of the NRAEF National Restaurant Association and the cert design are trademarks of the National Restaurant Association.

Congratulations!

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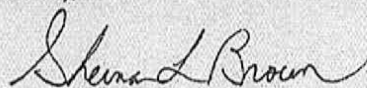
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To learn more about our full suite of responsible alcohol service training products, contact your State Restaurant Association, your distributor or visit us at ServSafe.com.

We value your dedication to responsible alcohol service and applaud you for making the commitment to keep your operation, your customers and your community safe.

Sincerely,



Sherman Brown

Senior Vice President, National Restaurant Association Solutions



ID # 13502668

CARD # 14377120

ServSafe Alcohol® CERTIFICATE

CHRIS GEIGER

NAME

11/16/2016

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ServSafe Customer Service Department or
800/765-7122 ext. 6900

© 2015 National Restaurant Association Educational Foundation (NRAEF). All rights reserved. ServSafe and the ServSafe logo are trademarks of the NRAEF. National Restaurant Association. 141027901 v.14102

Senior Vice President, National Restaurant Association Solutions

Sherman Brown

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In Alaska you must laminate your card for it to be valid.



25 Year Tradition
Since 1929
Creating a Better World
Every Day
11/16/2016
14377120

CONFIDENTIAL - For Internal Use Only
This card is for internal use only and should not be distributed to the public. If you have any questions regarding this card, please contact the National Restaurant Association Service Center at 800/765-7122 ext. 6900.

This is your official TIPS certification card. Carry it with you as proof of your TIPS certification.

Congratulations!

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If you have any information you think would enhance the TIPS program, or if we can assist you in any way, please contact us at 800-438-8477.



Sincerely,
Adam F. Chafetz
Adam F. Chafetz
HCI President

ID#: 4450909 Name: Dan Logan
Exam Date: 2/7/2017 Expiration Date: 2/7/2020

CERTIFIED
TIPS® eTIPS On Premise 3.0
Issued: 2/7/2017 Expires: 2/7/2020
ID#: 4450909

Dan Logan
Simply Serving II
9 2nd St
Norwood, MA 02062-4848

For service visit us online at www.gettips.com



Golden, Patricia

From: Whalen, John
Sent: Monday, May 15, 2017 12:29 PM
To: Golden, Patricia
Cc: Miles, William
Subject: RE: Application for 1-day liquor license - Sudbury Wounded Warriors - June 24

Hello Patty,

The Fire Department conducted a site visit of this location and has no issues with this license application.

John M. Whalen
 Assistant Fire Chief
 Sudbury Fire Dept.
 978-440-5312

-----Original Message-----

From: Golden, Patricia
 Sent: Thursday, May 11, 2017 5:20 PM
 To: Nix, Scott <NixS@sudbury.ma.us>; Grady, Robert <GradyR@sudbury.ma.us>; Whalen, John <WhalenJ@sudbury.ma.us>; Miles, William <MilesW@sudbury.ma.us>; Herweck, Mark <HerweckM@sudbury.ma.us>; Murphy, Bill <MurphyB@sudbury.ma.us>
 Cc: Hobin, Carol <HobinC@sudbury.ma.us>
 Subject: Application for 1-day liquor license - Sudbury Wounded Warriors - June 24
 Importance: High

Hello again!

Attached is an application for a 1-day liquor license for an event hosted by Sudbury for Wounded Warriors scheduled for June 24, 2017 at 96 Peakham Road.

This is on the May 23 Selectmen's agenda. Kindly review the application and if you could respond with your feedback no later than Tues, May 16, it would be appreciated.

Thank you!

Patty Golden
 Senior Administrative Assistant to the Town Manager Town of Sudbury
 278 Old Sudbury Road
 Sudbury, MA 01776
 Ph: 978-639-3382
 Fax: 978-443-0756
 www.sudbury.ma.us

When writing or responding, please be aware the Secretary of State has determined that e-mail is a public record and thus not confidential

Attachment23.b: Wounded_Warriors_dept_feedback (2331 : Sudbury for Wounded Warriors one-day alcohol license)

Golden, Patricia

From: Nix, Scott
Sent: Friday, May 12, 2017 7:59 AM
To: Golden, Patricia
Subject: RE: Application for 1-day liquor license - Sudbury Wounded Warriors - June 24

The police department does not have an issue with the event.

Respectfully,

Scott Nix

Chief of Police
 Sudbury Police Department
 75 Hudson Road
 Sudbury, MA 01776
 (978) 443-1042
 nixs@sudbury.ma.us

-----Original Message-----

From: Golden, Patricia
 Sent: Thursday, May 11, 2017 5:20 PM
 To: Nix, Scott <NixS@sudbury.ma.us>; Grady, Robert <GradyR@sudbury.ma.us>; Whalen, John <WhalenJ@sudbury.ma.us>; Miles, William <MilesW@sudbury.ma.us>; Herweck, Mark <HerweckM@sudbury.ma.us>; Murphy, Bill <MurphyB@sudbury.ma.us>
 Cc: Hobin, Carol <HobinC@sudbury.ma.us>
 Subject: Application for 1-day liquor license - Sudbury Wounded Warriors - June 24
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Thank you!

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 278 Old Sudbury Road
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When writing or responding, please be aware the Secretary of State has determined that e-mail is a public record and thus not confidential

Attachment23.b: Wounded_Warriors_dept_feedback (2331 : Sudbury for Wounded Warriors one-day alcohol license)

Golden, Patricia

From: Murphy, Bill
Sent: Friday, May 19, 2017 9:52 AM
To: Golden, Patricia
Subject: RE: Your feedback on several items for BOS agenda (deadline this am!)

With regard to the pending applications:

1. Da Vinci Bistro- The Board of Health requested a floor plan from the applicant showing a seating plan for not more than 70 seats, including the patio. If the seating plan indicates 70 seats, the Board of Health would not have any issues with application.
2. River Stewardship Council- No issues.
3. Wounded Warriors- No issues.

William C. Murphy, MS,RS,CHO

Director of Public Health
 Sudbury Health Department
 978-440-5479
 murphyb@sudbury.ma.us



When writing or responding, please be aware the Secretary of State has determined that e-mail is a public record and thus not confidential.

Attachment23.b: Wounded_Warriors_dept_feedback (2331 : Sudbury for Wounded Warriors one-day alcohol license)

Golden, Patricia

From: Herweck, Mark
Sent: Friday, May 19, 2017 10:12 AM
To: Golden, Patricia
Subject: RE: Application for 1-day liquor license - Sudbury Wounded Warriors - June 24

Hi Patty; I have inspected the area and talked with the owner. I have no issues. Sorry for the delay.

-----Original Message-----

From: Golden, Patricia
 Sent: Thursday, May 11, 2017 5:20 PM
 To: Nix, Scott <NixS@sudbury.ma.us>; Grady, Robert <GradyR@sudbury.ma.us>; Whalen, John <WhalenJ@sudbury.ma.us>; Miles, William <MilesW@sudbury.ma.us>; Herweck, Mark <HerweckM@sudbury.ma.us>; Murphy, Bill <MurphyB@sudbury.ma.us>
 Cc: Hobin, Carol <HobinC@sudbury.ma.us>
 Subject: Application for 1-day liquor license - Sudbury Wounded Warriors - June 24
 Importance: High

Hello again!

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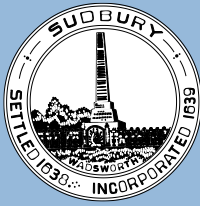
This is on the May 23 Selectmen's agenda. Kindly review the application and if you could respond with your feedback no later than Tues, May 16, it would be appreciated.

Thank you!

Patty Golden
 Senior Administrative Assistant to the Town Manager Town of Sudbury
 278 Old Sudbury Road
 Sudbury, MA 01776
 Ph: 978-639-3382
 Fax: 978-443-0756
 www.sudbury.ma.us

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Attachment23.b: Wounded_Warriors_dept_feedback (2331 : Sudbury for Wounded Warriors one-day alcohol license)



SUDBURY BOARD OF SELECTMEN

Tuesday, May 23, 2017

CONSENT CALENDAR ITEM**24: Award of Contract Girard Assoc.**REQUESTOR SECTION

Date of request:

Requestor: Bill Miles Fire Chief

Formal Title: Vote to approve award of a two-year contract to Girard & Associates, LLC by the Town Manager as a sole source procurement for services to be provided for the Fire Department's Advanced Life Support Program involving quality assurance/quality control, in the amount of \$17,400 per year.

Recommendations/Suggested Motion/Vote: Vote to approve award of a two-year contract to Girard & Associates, LLC by the Town Manager as a sole source procurement for services to be provided for the Fire Department's Advanced Life Support Program involving quality assurance/quality control, in the amount of \$17,400 per year.

Background Information:
attached letter from Chief Miles and contract

Financial impact expected:

Approximate agenda time requested:

Representative(s) expected to attend meeting:

Review:

Patty Golden	Pending
Melissa Murphy-Rodrigues	Pending
Barbara Saint Andre	Pending
Susan N. Iuliano	Pending
Board of Selectmen	Pending

05/23/2017 6:45 PM



William L. Miles
Chief of Department

TOWN OF SUDBURY Fire Department

77 Hudson Road
Sudbury, MA 01776
Tel. (978) 443-2239
Fax (978) 440-5305

May 11, 2017

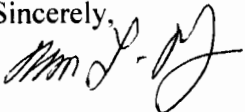
Board of Selectmen
Sudbury, Mass 01776

I am requesting approval of a two year sole source contract with Girard & Associates, LLC, of Westport, Mass. The amount of the contract is \$ 17,400 per year for a total of \$ 34,800 over two years.

According to my research, they are the only company that can provide complete Quality Assurance/Quality Improvement services for our Advanced Life Support Program that are required by the State Office of Emergency Medical Services.

Among their services are auditing patient care reports, development and implementation of our Department QA/QI plan, constructive feedback to all our staff members, utilization of a performance rating and feedback system, individualized remediation programs, an incentive program for excellence, and interactions with our Medical Director at Metrowest Medical Center.

Thank you for your attention to this matter.

Sincerely,

William L. Miles
Fire Chief

**AGREEMENT FOR AN EDUCATION-BASED EMERGENCY MEDICAL SERVICES
(EMS) QUALITY IMPROVEMENT PROGRAM BETWEEN**

**THE
TOWN OF SUDBURY
AND
GIRARD & ASSOCIATES LLC**

This Education-Based EMS Quality Improvement Program Agreement ("Agreement") effective April 1, 2017 by and between the Town of Sudbury, a municipal corporation with an office at 278 Old Sudbury Road, Sudbury, Massachusetts 01776 ("TOWN"), and Girard & Associates LLC, a Massachusetts Limited Liability Company with an office at P.O. Box 1144 Westport, MA 02790 ("GA"). TOWN desires to retain the services of GA and GA desires to render services to the TOWN upon the following terms and conditions. Therefore, in consideration of the promises, undertakings, and covenants set forth in this Agreement, the Parties agree as follows.

1. GA OBLIGATIONS

a. Administer an Education-based EMS Quality Improvement Program

- i. Audit 100% of TOWN's Ambulance Run Report and enter data into GA database;
- ii. Educate TOWN and TOWN's medical director on developing EMS clinical and quality improvement performance benchmarks and best practices;
- iii. Prepare and submit QI reports to TOWN and its physician medical director for the purpose of educating TOWN and its physician medical director regarding TOWN's performance;
- iv. Develop and implement TOWN's annual QI plan;
- v. Educate applicable TOWN personnel on TOWN's annual QI plan and its elements;
- vi. Educate, coach, and mentor TOWN's applicable personnel in coordination with TOWN and TOWN's medical director to facilitate adherence to TOWN's QI policies, procedures, and the applicable EMS treatment protocols;
- vii. Draft EMS QI policies and procedures for the approval and implementation by TOWN;
- viii. Educate TOWN and TOWN's medical director on developing performance benchmarks and best practices;
- ix. Propose recommendations for improvement processes to TOWN and TOWN's medical director regarding EMT and EMS system performance;
- x. Review circumstances surrounding EMS QI variances and develop individual or system-wide educational opportunities focused on QI benchmark achievement jointly with TOWN and TOWN's medical director;
- xi. Develop and recommend for TOWN's implementation, methods to facilitate QI related communication between TOWN, TOWN's medical director, and EMTs.

2. COMPENSATION AND PAYMENT SCHEDULE

- a. Subject to appropriation or availability of other funds, TOWN shall compensate GA according to the following payment schedule:
 - i. Total Compensation for: April 1st, 2017 to March 31, 2018 is \$17,400; payments of \$4,350.00 are due on or before April 1, 2017, July 1, 2017, October 1, 2017, and January 1, 2018, respectively.
 - ii. Total Compensation for: April 1st, 2018 to March 31, 2019 is \$17,400; payments of \$4,350.00 are due on or before April 1, 2018, July 1, 2018, October 1, 2018, and January 1, 2019, respectively.
 - ii. Expenses, including travel, are included in this Agreement.
- b. Withholding; Other Benefits
 - i. Compensation paid pursuant to this Agreement shall not be subject to the customary withholding of income taxes and other employment taxes. GA shall be solely responsible for reporting and paying any such taxes. The TOWN shall not provide GA with any coverage or participation in the TOWN's accident and health insurance, life insurance, disability income insurance, medical expense reimbursement, wage continuation plans, or other fringe benefits provided.

3. DURATION OF THE AGREEMENT

- a. The term of this Agreement shall be from April 1, 2017 to March 31, 2019 unless terminated in accordance with Section 9.

4. CONFIDENTIALITY

- a. GA acknowledges and agrees that any information provided by TOWN or obtained by GA as a result of run report auditing, review of variances, and interviews with TOWN's employees is "Confidential Information."
- b. Except for disclosures required by law or allowed by this section, GA shall not, during the term of this Agreement or after the termination of this Agreement, disclose any Confidential Information to any person or use any Confidential Information for the benefit of GA or any other person, except with the prior written consent of the TOWN.
- c. TOWN understands that certain Confidential Information may be required to be disclosed to certain individuals: employees, agents, advisors, physician medical directors, or attorneys of GA.
- d. GA shall maintain records of the persons to whom Confidential Information is distributed, will inform all such persons of the confidential nature of the information, will direct them to treat such information in accordance with this Agreement, will exercise such precautions or measures as may be reasonable in the circumstances to prevent improper use of Confidential Information by them, and will be responsible for any breaches by them of the provisions of this Agreement.
- e. The term "Confidential Information" does not include information that is or becomes publicly available (other than through breach of this Agreement) or information that is or

becomes available to GA on a non-confidential basis, provided that the source of such information was not known by GA (after such inquiry as would be reasonable in the circumstances) to be bound by a confidentiality agreement or other legal or contractual obligation of confidentiality with respect to such information.

- f. In addition, Confidential Information may be disclosed to the extent required in the course of inspections or inquiries by federal or state regulatory agencies to whose jurisdiction GA is subject to and that have the legal right to inspect the files that contain the Confidential Information and GA will advise TOWN promptly upon such disclosure.
- g. HIPAA. Acceptable uses of Protected Health Information (PHI) by GA are limited to Run Report audits, including communication about the run report audit between GA, its employees, subcontractors, agents, and TOWN's Business Associate(s), and any other purpose(s) permitted or mandated by federal pursuant to 45 C.F.R. § 164.502(j)(1) (2005) or applicable state law.
 - i. Parties agree to adhere to the conditions set forth in the Business Associate Agreement, which is attached as Exhibit B hereto and incorporated by this reference.
 - ii. For the purpose of the Run Report Audit, TOWN agrees to remove from each Run Report, all individually identifiable information defined at 45 CFR § 164.514(b) except a run report number which TOWN and GA determined to be a minimally necessary individual identifier prior to providing each Run Report to GA.
 - iii. For the purpose of any QI follow-up, TOWN agrees to provide additional minimally necessary individual identifiers only at the request of GA.
- h. Return of Documents. GA does not store paper copies of run reports. All paper copies of run reports will be destroyed after use. GA acknowledges and agrees that all originals and copies of records, reports, data, documents, lists, plans, memoranda, notes and other documentation related to the business of the TOWN or containing any Confidential Information that GA has in its possession, shall be the sole and exclusive property of the TOWN, and shall be returned by commercially reasonable means to the TOWN upon the termination of this Agreement or upon the written request of the TOWN.
 - i. No Release of Confidentiality Obligations. GA agrees that the termination of this Agreement shall not release GA from any Confidentiality obligations.

5. INTELLECTUAL PROPERTY

- a. "Intellectual Property" means any and all designs, devices, techniques, know-how, inventions, discoveries, improvements, code, written materials, methods and practices, procedures, engineering information, technology or intellectual property rights (including, without limitation, patents, patent applications, copyrights, trademarks, trade names, trade secrets, service marks, blueprints, designs, plans, specifications, manufacturing information and processes and documentation thereof, formulae, procedures and all other proprietary rights).
- b. Solely with respect to its own Intellectual Property, GA shall have and retain all right, title and interest, including ownership of copyrights, patents, trade secrets and other intellectual property rights in and to methods, processes, techniques, strategies, materials, images,

prototypes, software, source and object code and related materials that are used or developed solely by GA, or its agents, during the term of this Agreement, including any modifications to, or derivative works or enhancements of, materials owned or licensed by either TOWN or GA and any tools, utilities, prototypes, models, processes, methodologies and other such materials that are developed, enhanced or improved during the term of this Agreement by GA or any of its agents or employees, which relate to the performance of the Services, or any modification of the services to be provided under this Agreement. TOWN acknowledges that all of this work is GA's Intellectual Property, none of this work is "work for hire" and that it has no rights to the Intellectual Property developed by GA and its agents, principals, employees, subcontractors and delivery partners.

- c. GA acknowledges that it has no right, title, and interest in any Intellectual Property licensed or owned now or in the future by TOWN, or developed solely by TOWN, or in use by TOWN at the commencement of this Agreement.
- d. Each Party will protect the other Party's Intellectual Property and confidential information with the same care and diligence as it would use to protect its own Intellectual Property and confidential information. Each Party will take all necessary and appropriate steps to safeguard the other's Intellectual Property and confidential information by employees, former employees, vendors, affiliates and others to whom they have directly, or indirectly, made confidential information available.
- e. Post Termination License. If at the time of termination of this Agreement, TOWN desires to utilize GA QI Software in connection with the operation of its QI functions, GA will grant TOWN a non-transferable, non-assignable license to use the GA QI Tools and Technology software, subject to negotiation of an annual licensing fee. GA QI Tools and Technology software means the GA internet based QI database and report generating technology utilized by GA during the duration of this Agreement. Licensing fees do not include fees associated with storing, maintaining or processing data and information on behalf of TOWN. In the event TOWN elects to have GA continue to store, maintain or process its data and information through GA's data centers, GA will be entitled to commercially reasonable fees for these additional services.
- f. TOWN will not knowingly (and will not knowingly allow any third party to): (i) knowingly permit any third party to access and use the Software; (ii) decompile, disassemble, or reverse engineer the Software, (iii) use the Software or any GA Confidential Information to develop a competing product or service; (iv) provide, lease, lend, use for timesharing or service bureau purposes or otherwise use or allow others to use any Software for the benefit of any third party; (v) knowingly use any Product, or knowingly allow the transfer, transmission, export, or re-export of the Software or portion thereof, in violation of any export control laws or regulations administered by the U.S. Commerce Department or any other government agency; or (vi) remove any copyright, trademark, proprietary rights, disclaimer or warning notice included on or embedded in any part of a Software (including any screen displays, etc.) or any other products or materials provided by GA hereunder. Under no circumstances, shall GA be liable or responsible for any use, or any results obtained by the use, of the Software in conjunction with any other software or third party products. All such use shall be at TOWN's sole risk.

- g. All de-identifiable data entered into the QI database is the sole property of GA. Upon completion of the Agreement and project, GA shall de-identify all data in accordance with federal and state law and provide TOWN with a written attestation of de-identification upon TOWN's request.

6. GA REPRESENTATIONS, WARRANTIES, AND LIABILITY

- a. GA does not guarantee specific results or positive outcomes.
- b. GA, its employees, agents, and independent contractors are not responsible for any action taken by the TOWN, its Medical Director, or state, federal, or applicable regional EMS authority as a result of GA's performance of its obligations as described in Paragraph 1 of this Agreement.
- c. GA represents to the TOWN that there is no employment contract or other contractual obligation to which GA is subject, which prevents GA from entering into this Agreement or from performing fully GA's duties under this Agreement.
- d. GA is not responsible for TOWN's applicable sentinel event reporting obligations reporting obligations under applicable state, federal law or regional EMS authority jurisdiction.
- e. GA is not responsible for the implementation of any disciplinary action of TOWN's employees that may occur as a result of GA's performance of its obligations as described in Paragraph 1 of this Agreement.
- f. GA warrants that the work contained in Paragraph 1 will be performed with reasonable care in a diligent and competent manner. GA's sole obligation will be to correct any non-conformance with this warranty provided that you give us written notice within ten business days during or after the completion of this Agreement. The notice will specify and detail the non-conformance and we will have a reasonable time based on its severity and complexity to correct the non-conformance.
- g. GA does not warrant and is not responsible for any third party products or services. TOWN's sole and exclusive rights and remedies with respect to any third party products or services are against the third party vendor and not against GA.
- h. This warranty is GA's only warranty concerning the services and any deliverable except those provided under a separate license agreement and is made expressly in lieu of all other warranties and representations, express, implied, including any implied warranties of merchantability, or fitness for a particular purpose or otherwise, all of which are hereby disclaimed.
- i. GA will not be liable for any lost profits, savings, or business opportunity.

7. COVENANTS

- a. TOWN agrees that services, information, and materials provided under this agreement will not be duplicated, shared, or otherwise distributed in any way to persons or organizations

outside of TOWN, and any state, local, regional, or national regulatory agency, except as required by law. This information is being provided exclusively for internal use by TOWN.

- b. The Parties agree to comply with all federal, state, and local laws, regulations and administrative requirements that pertain to the provision of emergency medical services by TOWN.
- c. In the event that GA, its subcontractors, employees, or agents become aware of any violation of any applicable law or regulation by TOWN, GA will notify TOWN as soon as reasonably practicable.
- d. TOWN shall cooperate with GA in the performance by GA of its services under this Agreement including, without limitation, providing GA with reasonable facilities and timely access to data, information, and personnel of TOWN.
- e. TOWN agrees to provide Run Report data to GA in a mutually agreed upon secured manner in compliance with applicable state and federal data security laws.
- f. TOWN shall be responsible for the performance of its personnel and agents including its medical director for the accuracy and completeness of all data and information provided to GA for the purposes of the performance by GA of its services under this Agreement. The decision to implement any or all of GA's recommendations shall be the sole responsibility of TOWN.
- g. TOWN agrees that TOWN's physician medical director, not GA, is responsible for determining whether TOWN breached any applicable treatment protocol and what action, if any, should be taken on under the authority of the physician medical director.
- h. TOWN agrees that TOWN, not GA is responsible for the implementation of any disciplinary action of TOWN's employees that may occur as a result of GA's performance of its obligations as described in Paragraph 1 of this Agreement.

8. SEVERABILITY

- a. If any provision of this Agreement or the application of it to any person or circumstance is held invalid, such invalidity shall not affect other provisions of this Agreement which can be given effect without the invalid provision.
- b. The Parties shall add a provision as similar in terms to the illegal, invalid and unenforceable provision as may be possible and be legal, valid and enforceable.

9. TERMINATION

- a. Either party may terminate this Agreement without cause upon sixty days written notice. Termination without cause may require notification to the TOWN.
- b. In the event that either Party has failed to perform its obligations under this Service Agreement in a material manner, and that failure has not been satisfactorily addressed through the cure process established in this Agreement, the injured Party shall have the right to terminate this Service Agreement for Cause ten days following the issuance of a written notice of termination. No

written notice of Termination for Cause will be valid unless the Party issuing the notice has complied with the cure procedure set forth below. If the performance deficiency is not addressed through the cure process, TOWN shall have the right to terminate this Agreement for Cause, as outlined herein. Either Party shall also have the right to terminate this Agreement for Cause in the event that either Party is added to the Excluded Providers list maintained by the Office of Inspector General ("OIG") maintained by the Health and Human Services Administration of the Federal Government.

- c. Procedure Regarding Cure. In the event that a Party has failed to perform its obligations under this Service Agreement, the Parties agree that the non-performing Party shall have the opportunity to cure the failure to perform prior to a Termination for Cause. Therefore, prior to issuing a written notice of termination, each Party agrees to proceed in the following manner, working, in good faith, to address the circumstances that led to the failure to perform:
 - i. The Party seeking to address an area of concern shall give written notice to the non-performing Party.
 - ii. The non-performing Party shall be given fifteen days within which to satisfactorily address the concern and begin implementation of the agreed upon course of action. If necessary under the circumstances, the complete implementation of the agreed upon course of action may take more than fifteen days but may not exceed thirty days.
 - iii. If the non-performing Party fails to comply with the agreed upon course of action on the appropriate timetable, the other Party issue a notice of Termination for Cause.
 - iv. Upon the issuance of a notice of Termination for Cause, the Parties may meet to discuss the steps required to facilitate an orderly transition in connection with the termination and shall agree upon a transition plan ("Termination Transition Plan") that shall address timing of the termination of Services, employee communication, reconciliation of fees, and licenses for continued use of GA intellectual property if applicable. Any disputes that arise during these procedures and cannot be resolved by good faith dialogue among the Parties may be resolved through a mutually agreed upon alternative dispute resolution plan adopted by the Parties.

10. APPROPRIATION

- a. Agreement obligations beyond one year are subject to annual appropriation.

11. INDEPENDENT CONTRACTOR STATUS

- a. GA acknowledges that it is an independent contractor and is not an agent, partner, joint venture, or employee of TOWN. GA shall have no authority to bind or otherwise obligate TOWN in any manner nor shall GA represent to anyone that it has a right to do so.
- b. GA shall not assign any of its rights under this Agreement.
- c. GA may subcontract and/or delegate the performance of its duties under this Agreement without the prior written consent of TOWN.

12. INSURANCE

- a. GA shall, at its own expense, obtain and maintain general liability and auto/motor vehicle liability insurance policies protecting the TOWN in connection with any operations included in this Agreement. As proof of insurance, GA shall provide Certificate(s) of Insurance

specifically stating in the Description portion of the certificate: "**The Town of Sudbury is named as additional insured in regards to General Liability on the policies noted above by contractual Agreement.**"

- b. Coverage amounts shall be in at least the amounts noted below: General Liability: At least **\$1,000,000** per occurrence, and, at least **\$2,000,000** aggregate. Auto Liability: At least **\$1,000,000** bodily injury and property damage per occurrence, and, at least **\$2,000,000** aggregate.
- c. GA shall, before commencing performance of this Contract, provide insurance for the payment of compensation and the furnishing of other benefits in accordance with Mass. Gen. L. Ch. 152, as amended, to all employed under the Contract and shall continue such insurance in full force and effect during the term of the Contract.
- d. All insurance coverage shall be in force from the time of the Agreement to the date when all work under the Contract is completed and accepted by the TOWN. Certificates and any and all renewals substantiating that required insurance coverage is in effect shall be filed with the TOWN. Since this insurance is normally written on a year-to-year basis, GA shall notify the TOWN should coverage become unavailable or if its policy should change. Any cancellation of insurance, whether by the insurers or the insured, shall not be valid unless written notice thereof is given by the party proposing cancellation to the other party and to the TOWN at least fifteen days prior to the intended effective date thereof, which date should be expressed in said notice.

13. MISCELLANEOUS

- a. This Agreement shall be governed by and shall be construed in accordance with the laws of the Commonwealth of Massachusetts.
- b. This Agreement constitutes the entire Agreement between TOWN and GA pertaining to its subject matter and supersedes all prior contemporaneous agreements, representations, proposals, and understandings of TOWN and GA. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by their authorized representatives.
- c. TOWN certifies that to the best of its knowledge after reasonable due diligence that the services provided by GA under this Agreement do not conflict with the applicable union collective bargaining agreement.

14. PRIVILEGE ISSUES

- a. GA acknowledges that TOWN believes that in connection with the delivery of the Agreement, information may be prepared under the direction of TOWN's legal counsel in anticipation of litigation, or otherwise, that TOWN seeks to keep privileged under the applicable attorney/TOWN or attorney work product or peer review privileges conferred by applicable law ("Privileged Work Product"). GA acknowledges that under such circumstances, GA is performing the services as to Privileged Work Product as an agent of TOWN, and that all matter related thereto is protected from disclosure, at TOWN's option.

- b. TOWN shall notify GA when it is to be provided access to Privileged Work Product or when its work is determined to be Privileged Work Product.
- c. After GA is notified or otherwise becomes aware that such documents, data, database, or communications are Privileged Work Product, only GA personnel for whom such access is necessary for the purpose of providing services to TOWN as provided in this Agreement may have access to Privileged Work Product.
- d. Should GA ever be notified of any judicial or other proceeding seeking to obtain access to Privileged Work Product, GA shall unless prohibited by law (a) immediately notify TOWN and (b) take such reasonable actions at TOWN's expense as may be specified by TOWN to resist providing such access.
- e. If GA is ultimately required under an order of a court of competent jurisdiction, to produce documents, disclose data or otherwise act in contravention of the confidentiality obligations imposed in this Agreement or otherwise with respect to maintaining the confidentiality, proprietary nature, and secrecy of Privileged Work Product, GA shall not be liable for breach of its obligation.
- f. In such event, GA agrees to disclose only that information minimally required to be disclosed by the legal action.

15. BREACH REIMBURSEMENT

In the event of a Breach caused by Subcontractor and the HIPAA Regulations require notice to Individuals pursuant to 45 CFR §§ 164.404 and 164.406, or an applicable state law for such Breach, Subcontractor will reimburse Business Associate for its reasonable and substantiated costs related to such Breach, including but not limited to, providing notification to affected Individuals, establishing and operating a call center for affected Individuals, providing credit monitoring services to affected Individuals, if appropriate, fines and penalties arising from such Breach, and all reasonable attorneys' fees associated with such Breach. This section shall survive termination of this Subcontractor Business Associate Agreement.

16. COMPLIANCE

- a. Compliance. The parties will comply in all material respects with all applicable federal and state laws and regulations including the federal Anti-kickback statute.
- b. Non-Exclusion. Each party represents and certifies that neither it nor any practitioner who orders or provide Services on its behalf hereunder has been convicted of any conduct that constitutes grounds for mandatory exclusion as identified in 42 U.S.C. § 1320a-7(a). Each party further represents and certifies that it is not ineligible to participate in Federal health care programs or in any other state or federal government payment program. Each party agrees that if DHHS/OIG excludes it, or any of its practitioners or employees who order or provide Services, from participation in Federal health care programs, the party must notify the other party within five days of knowledge of such fact, and the other party may

immediately terminate this Agreement, unless the excluded party is a practitioner or employee who immediately discontinues ordering or providing Services hereunder.

- c. Referrals. It is not the intent of either party that any remuneration, benefit or privilege provided for under the Agreement shall influence or in any way be based on the referral or recommended referral by either party of patients to the other party or its affiliated providers, if any, or the purchasing, leasing or ordering of any services other than the specific services described in this Agreement. Any payments specified herein are consistent with what the parties reasonably believe to be a fair market value for the services provided.

17. FORCE MAJEURE

- a. If either party is prevented from performing any of its obligations under this Agreement due to any cause beyond the party's reasonable control, including, without limitation, an act of God, fire, flood, explosion, war, strike, embargo, government regulation, civil or military authority, acts or omissions of carriers, transmitters, providers of telecommunications or Internet services, vandals, or hackers (a "**force majeure event**"), time for that party's performance will be extended for the period of the delay or inability to perform due to such occurrence without liability to the other party; provided, however, that TOWN will not be excused from the payment of any sums of money owed by TOWN to GA. In addition, neither party will have the right to claim damages or to terminate this Agreement as a result of a force majeure event.

18. PROCUREMENT PROCESS

- a. TOWN certifies that to the best of its knowledge after reasonable due diligence, this procurement process and Agreement:
 - 1. Followed all applicable rules under the Town of Sudbury's Charter, By-Laws, and policies/procedures;
 - 11. This Agreement has been entered into in accordance with the Town of Sudbury's Charter, By-Laws, policies/procedures.

19. CERTIFICATE OF NON-COLLUSION

- a. The undersigned certifies on behalf of GA under penalties of perjury that this Agreement has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

16. COUNTERPARTS

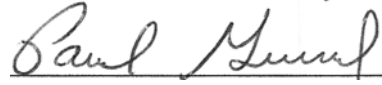
- a. This Agreement may be signed in counterparts, all of which upon execution and delivery shall be considered an original and together shall constitute one agreement. Signed facsimile copies of this Agreement will legally bind the parties to the same extent as original documents.

I have read this Agreement, had the opportunity to consult with an attorney, and represent that this Agreement shall be executed in accordance with its terms and conditions. I further represent that I have been duly authorized to sign and enter into this Agreement.

Town of Sudbury (TOWN)

Girard & Associates LLC, (GA)

By: _ _ _ _ _

By: 

Duly Authorized Representative

Paul Girard

Dated:

Dated: May 5, 2017

Attachment 24.b: Girard Associates Sudbury QA Contract April 2017 (2322 : Award of Contract Girard Assoc.)

Exhibit A

Business Associate Agreement

Under the Agreement, as may be amended from time-to-time in accordance with its terms, wherein the GA (Business Associate) creates, receives, maintains or transmits Protected Health Information (PHI) on behalf of the Town of Sudbury (Covered Entity) and to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH), and implementing regulations which are codified at 45 C.F.R. Parts 160 and 164, as amended from time to time (collectively the "HIPAA Standards"), the parties agree to the terms herein.

1. Permitted Uses and Disclosures by Business Associate

- a) The Business Associate's use and disclosure of PHI shall comply in all respects with the HIPAA Standards.
- b) Except as otherwise limited in this Business Associate Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Agreement, provided that such use or disclosure would not violate the HIPAA Standards if done by Covered Entity. Business Associate shall not use or disclose PHI other than permitted or required by this Business Associate Agreement or as required by law. The Business Associate shall limit the use and disclosure of PHI to the minimum necessary to accomplish the intended purpose of the use or disclosure of the PHI or as required pursuant to the Agreement. All such uses and disclosures shall be consistent with the Covered Entity's minimum necessary policies and procedures.
- c) Except as otherwise limited in this Business Associate Agreement, Business Associate may use and disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that (i) the disclosure is required by law and timely notice is provided to Covered Entity prior to the disclosure, or (ii) Business Associate obtains reasonable assurances from the recipient that the PHI will remain confidential and used or further disclosed only as required by law for the purposes for which it was disclosed to the recipient, and the recipient promptly notifies Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached.

2. Obligations of Covered Entity

- a) Covered Entity shall provide Business Associate with the Notice of Privacy Practices that Covered Entity produces in accordance with 45 C.F.R. § 164.520, as well as any changes to such Notice of Privacy Practices and the Business Associate shall comply with such Notice of Privacy Practices.
- b) Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.

- c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522.
- d) Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Standards if done by Covered Entity.
- e) Covered Entity shall make all reasonable efforts to assist Business Associate with responding to an investigation or compliance audit by the Secretary, or an action by an attorney general having jurisdiction.

3. Obligations and Activities of Business Associate

- a) Business Associate shall ensure, through a written agreement, that any subcontractors of Business Associate that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such PHI, including without limitation, the restrictions, conditions, and requirements of this Business Associate Agreement and the HIPAA Standards.
- b) Business Associate shall immediately report to Covered Entity any use or disclosure of PHI not provided for by this Business Associate Agreement, any Breach, or any Security Incident involving the PHI of which the Business Associate, or a subcontractor of the Business Associate, becomes aware (each, an "Incident"). The Business Associate shall identify each individual whose PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed during an Incident. Notice shall be made to the Covered Entity no later than five business days after discovery of the Incident by Business Associate or a subcontractor of the Business Associate, whichever is earlier, except that in the event urgent notice may be required due to the possible imminent misuse of PHI, Business Associate shall notify Covered Entity in writing without unreasonable delay and in no case later than two business days. Business Associate accepts the burden of demonstrating that such notice was timely, proper and in accordance with HIPAA Standards. Business Associate shall, at its expense, take any action necessary or requested by the Covered Entity to mitigate, to the extent practicable, any harmful effect of an Incident. Business Associate shall, at its expense, provide all information and take all action requested by Covered Entity and consistent with the HIPAA Standards to assist Covered Entity in providing notice of an Incident.
- c) Business Associate shall restrict disclosures or communicate confidentially with Individuals as required by the HIPAA Standards and as requested by the Covered Entity.
- d) If the Business Associate maintains PHI in a Designated Record Set, the Business Associate shall:
 - (1) provide access (including inspection, obtaining a copy or both), in the time and manner designated by Covered Entity, and Business Associate shall not charge any fee greater than the lesser of the amount permitted by State Law or the Business Associate's actual cost of postage, labor and supplies for complying with the request;

- (2) make available PHI for amendment and incorporate any amendment(s) in the time and manner designated by Covered Entity; and
- (3) provide access to PHI that is in electronic format in the form and format requested by the Individual or Covered Entity, if not readily producible in such form or format, in a readable electronic form and format agreed to by the Covered Entity and the Individual, and transmit such copy directly to an entity or person designated by the Individual or Covered Entity. Business Associate shall not charge any fee greater than the lesser of the amount permitted by State law or the Business Associate's actual cost of postage, labor, and supplies for complying with the request.
- e) Business Associate shall make internal practices, books, and records relating to the use and disclosure of PHI available to the Covered Entity or the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary investigating or determining Covered Entity's or Business Associate's compliance with the HIPAA Standards.
- f) Business Associate shall document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity or Business Associate under the HIPAA Standards to respond to a request by an Individual for an accounting of disclosures of PHI. Business Associate shall provide, in the time and manner designated by Covered Entity, an accounting of disclosures required by the HIPAA Standards made by the Business Associate.
- g) Business Associate shall prevent use or disclosure of the PHI other than as provided for in this Business Associate Agreement and shall comply, where applicable, with the HIPAA Standards with respect to electronic PHI, including Subpart C of 45 C.F.R. Part 164 ("Security Rule"). The Business Associate shall implement and maintain safeguards as necessary to ensure that all PHI is used or disclosed only as authorized under the HIPAA Standards and this Business Associate Agreement. Without limiting Business Associate's obligations under the HIPAA Standards, the Business Associate agrees to assess potential risks and vulnerabilities to PHI in its possession and develop, implement and maintain appropriate administrative, physical and technical safeguards set forth in the HIPAA Standards to protect the confidentiality, availability and integrity of the PHI that Business Associate creates, receives, maintains or transmits on behalf of the Covered Entity. These measures must be documented and kept current, and must include, at a minimum, those measures that fulfill the requirements outlined in the HIPAA Standards and all guidance issued by the Secretary.
- h) Business Associate recognizes that violation of any HIPAA Standard by Business Associate may subject Business Associate to civil and criminal penalties, including those set forth in 42 U.S.C. § 1320d-5 and 1320d-6 and Subparts C-E of 45 C.F.R. Part 160 ("Enforcement Rule").
- i) Business Associate shall not, and shall ensure that its subcontractors do not, directly or indirectly receive any remuneration in exchange for any PHI unless approved in advance in writing by the Covered Entity in accordance with the HIPAA Standards.

- j) Business Associate shall not, and shall ensure that its subcontractors do not, engage in any marketing or fundraising that uses or discloses PHI.
- k) Business Associate shall respond to and shall assist the Covered Entity with responding to an investigation or compliance audit by the Secretary, or an action by an attorney general having jurisdiction involving PHI subject to this Agreement.
- l) To the extent that Business Associate is to carry out one or more of Covered Entity's obligations under Subpart E of 45 C.F.R Part 164 ("Privacy Rule"), Business Associate shall comply with such requirements that apply to Covered Entity in the performance of such obligations.
- m) Business Associate shall not create, receive, maintain, or transmit PHI outside of the United States or its Territories.

4. Term and Termination

- a) Term. The Term of this Business Associate Agreement shall be effective as of GA's receipt of PHI and shall terminate when all of the PHI maintained by Business Associate on behalf of Covered Entity is properly and completely destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy the PHI, protections are extended to such PHI in accordance with the termination provisions in this section.
- b) Termination for Cause. Upon Covered Entity's knowledge of a material breach of this Business Associate Agreement by Business Associate, Covered Entity shall provide an opportunity for Business Associate to cure the breach or end the violation, and Covered Entity shall terminate the Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, or immediately terminate the Agreement if Business Associate has breached a material term of this Business Associate Agreement and cure is not possible, as determined by the Covered Entity in its reasonable discretion.
- c) Effect of Termination.
 - (1) Except as provided in subparagraph (2) of this subsection (c), upon termination of the Agreement or this Business Associate Agreement, for any reason, Business Associate shall return or if authorized by Covered Entity, destroy all PHI maintained by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors of Business Associate. Business Associate shall retain no copies of the PHI.
 - (2) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. The Business Associate shall extend the protections of this Business Associate Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible. Business Associate shall not use or disclose such PHI and shall maintain its security pursuant to this Business Associate Agreement for so long as Business Associate maintains such PHI.

- (3) The parties hereto understand and agree that the terms of this Business Associate Agreement are reasonable and necessary to protect the interests of the Covered Entity and the Business Associate. The parties further agree that the Covered Entity would suffer irreparable harm if the Business Associate breached this Business Associate Agreement. Thus, in addition to any other rights or remedies, all of which shall be deemed cumulative, the Covered Entity shall be entitled to obtain injunctive relief to enforce the terms of this Business Associate Agreement.

5. Miscellaneous

- a) Survival. The respective rights and obligations of Business Associate under Section 4(c) of this Business Associate Agreement shall survive the termination of this Business Associate Agreement.
- b) Interpretation. Any ambiguity in this Business Associate Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the HIPAA Standards.
- c) No Private Cause of Action. This Business Associate Agreement is not intended to and does not create a private cause of action by any individual, other than the parties to this Business Associate Agreement, as a result of any claim arising out of the breach of this Business Associate Agreement, the HIPAA Standards or other state or federal law or regulation relating to privacy or security.
- d) Amendment. In the event that any law or regulation is enacted or promulgated regarding the protection of health information that is in any way inconsistent with the terms of this Business Associate Agreement or that interferes with Covered Entity's obligations with respect to the protection of health information so as to warrant a modification to this Business Associate Agreement or in the event any HIPAA Standard is amended or modified, the Covered Entity shall have the right to amend this Business Associate Agreement to effectuate such change by providing notice thereof to Business Associate but without having to obtain Business Associate's consent thereto. Except as set forth above in this Section 5(d), this Business Associate Agreement shall only be amended or modified upon written consent of the parties.
- e) Application of State Law. Where any applicable provision of State law relates to the privacy or security of health information and is not preempted by HIPAA, as determined by application of the HIPAA Standards, the parties shall comply with the applicable provisions of Statelaw.
- f) Severability. If any provision of this Business Associate Agreement shall be declared invalid or illegal for any reason whatsoever, then notwithstanding such invalidity or illegality, the remaining terms and provisions of this Business Associate Agreement shall remain in full force and effect.
- g) Governing Law. This Business Associate Agreement shall be interpreted, construed, and governed according to the laws of the Commonwealth of Massachusetts. The parties agree that venue shall lie in Federal and State courts in the Commonwealth of Massachusetts, without regard to its conflicts of law principles, regarding any and all disputes arising from this Business Associate Agreement.

- h) Notices. Any notice or other communication given pursuant to this Business Associate Agreement must be in writing and (a) delivered personally, (b) delivered by overnight express, or (c) sent by registered or certified mail, postage prepaid, to the address set forth above and shall be considered given upon delivery.

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SUDBURY BOARD OF SELECTMEN

Tuesday, May 23, 2017

CONSENT CALENDAR ITEM**25: Minuteman Library Network**REQUESTOR SECTION

Date of request:

Requestor: Anna Roughsedge, Goodnow Library Office Coordinator

Formal Title: Vote to approve the FY18 contract between the Town on behalf of the Goodnow Library (Participant) and Minuteman Library Network, Inc. for the purchase, installation and maintenance of telecommunications equipment provided to the Goodnow Library for participation in the Network, effective July 1, 2017, as requested by the Goodnow Library Director, said Agreement to be executed by the Town Manager.

Recommendations/Suggested Motion/Vote: Vote to approve the FY18 contract between the Town on behalf of the Goodnow Library (Participant) and Minuteman Library Network, Inc. for the purchase, installation and maintenance of telecommunications equipment provided to the Goodnow Library for participation in the Network, effective July 1, 2017, as requested by the Goodnow Library Director, said Agreement to be executed by the Town Manager.

Background Information:

This contract continues services provided under previous agreements for purchase and maintenance of telecommunications equipment for participating libraries in the Minuteman Library Network.

Financial impact expected: Budgeted share of Network costs: \$39,701.69

Approximate agenda time requested:

Representative(s) expected to attend meeting:

Review:

Patty Golden	Pending
Melissa Murphy-Rodrigues	Pending
Barbara Saint Andre	Pending
Susan N. Iuliano	Pending
Board of Selectmen	Pending

05/23/2017 6:45 PM

AGREEMENT

Agreement made as of this 1st day of July, 2017, by and between the Board/Town/City/Chief Financial Officer/President/Designee of **Sudbury, MA** ("PARTICIPANT"), and Minuteman Library Network, Incorporated ("MINUTEMAN"), a Massachusetts non-profit corporation which is a multi-type library cooperative. In consideration of the undertakings of the PARTICIPANT **Goodnow Library** (sometimes hereinafter called a "Participating Library") and MINUTEMAN, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the undersigned, it is herein agreed by PARTICIPANT and MINUTEMAN as follows:

1. MINUTEMAN shall provide for the purchase, installation, and maintenance of hardware and software, to be located at the MLN Central Site, 10 Strathmore Road, Natick, Massachusetts 01760 (hereinafter called "CENTRAL SITE")
2. Minuteman shall purchase, install, and maintain at each library and branches telecommunications equipment, as may be necessary for a library's participation in the automated network system. Participating Libraries shall be responsible for insuring all telecommunication equipment provided by Minuteman in their buildings. Participating libraries shall purchase their own PCs to be connected to the Minuteman Wide Area Network (WAN). Libraries will support and maintain hardware and operating systems at adequate levels required for connection to the MINUTEMAN system. Participating libraries shall purchase their own labels, library cards, and such other supplies as may be necessary for participation in the MINUTEMAN system. Supplies purchased under this paragraph for use with the MINUTEMAN system shall meet all specifications as shall be established under the operating rules of MINUTEMAN.
3. MINUTEMAN shall provide computer and office facilities, personnel and operating services necessary to run the Network. MINUTEMAN shall use its best efforts to make the system available to the Participating Libraries whenever any participant is scheduled to use the system.

MINUTEMAN shall not be held responsible or liable for time lost during periods of routine system maintenance, equipment or system failure, except that it shall do everything reasonably within its power to ensure that problems are corrected as soon as possible. MINUTEMAN shall use its best efforts to cause copies to be made of all software and files daily and to make appropriate arrangements to store said software and files safely at least once per week.

4. MINUTEMAN shall annually make a determination of Network costs to be shared by Participating Libraries during the next fiscal year, which shall run from July 1 until June 30 of the following calendar year.

5. All Participating Libraries shall share in the annual Network operating costs, based on the following formula:

- Acquisitions - 28.5% - using the average number of items added in the last three fiscal years
- FTE - 2% - using the numbers reported to the MBLC and NCES
- Population - 2% - using data from the MA Department of Revenue (2012)
- Simultaneous users - 17.5% - submitted by member libraries; number of simultaneous Sierra user sessions
- Circulation - 18.3% - using the average number of circulations in the last three fiscal years
- Shared equally - 31.7% - dividing the percentage by 43
- Each library charged the actual cost of its Comcast/FIOS Internet connection
- 5% resource sharing credit

PARTICIPANT reserves 14 simultaneous users which reflect number of staff connections to the Integrated Library System-Sierra for the period ending June 30, 2018.

6. Participating Libraries may withdraw from the MINUTEMAN system by terminating membership in MINUTEMAN in accordance with the MINUTEMAN bylaws. All costs and other charges due to MINUTEMAN shall be computed and paid up to the official date of termination.

Participating Libraries retain ownership of their database records and may receive copies in machine-readable form. MINUTEMAN shall make available, upon written request, a suitable copy of the patron and bibliographic entries of the requesting member in the common shared database. The requesting member shall pay all costs incurred by MINUTEMAN in the recovery, copying and transmittal of those records.

Libraries which withdraw from MINUTEMAN forego all monetary interest in Minuteman assets, including Central Site hardware or software, at the time of termination, notwithstanding any provision for general dissolution of the Corporation as provided by the Minuteman bylaws.

7. MINUTEMAN agrees to protect the confidentiality of circulation and patron records, and further agrees not to make such records available outside of the MINUTEMAN system except if such records are subpoenaed by a governmental authority or with the consent of the Participating Library or Libraries contributing the records. Nothing in this paragraph shall be construed to prohibit MINUTEMAN from contracting with other parties to perform record-processing or data conversion, nor

shall this paragraph prohibit MINUTEMAN from merging or interfacing its database with any other for the purpose of providing better library service.

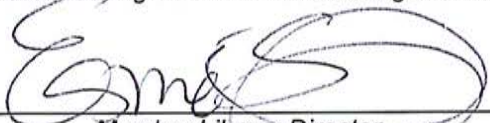
Participating Libraries agree to maintain the confidentiality of system software, together with all materials and knowledge related thereto, and agrees not to disclose the system software in any form to any person or entity other than to employees of the Participating Library having a need to obtain such disclosure in the ordinary course of their employment. Participating Libraries agree to maintain confidentiality of all patron records and transactions, including names, addresses, contact information, and borrowing history, except if such records are subpoenaed by a governmental authority.

8. The obligations of Participating Libraries hereunder with regard to the expenditure of money in each fiscal year shall be subject to and contingent upon the availability of appropriated funds through either Town Meeting or City Council action, Reserve Fund Transfer, or other funding procedure. The MINUTEMAN budget shall be presented and approved not later than the January Membership meeting preceding the July 1st fiscal year commencement. Payment and signed Network Agreement of any Participating Library hereunder shall be due August 1st of the fiscal year for which services are provided. Failure of a Participating Library to return the signed Network Agreement and to make full payment by September 29, 2017 without adequate explanation to the Board of Directors will result in the loss of training and consulting privileges until both are received. Payment and Network Agreement more than 90 days (October 31) late without prior approval of the Board of Directors will be cause for termination of services and potentially, termination of membership to the Participating Library.
9. PARTICIPANT'S share of Network costs for the period ending June 30, 2018, as determined under paragraph 5 is **\$39,701.69**
10. Nothing in this Agreement shall be construed as creating any liability on the part of any party hereto for any defect or failure in services or equipment owned, operated or provided by MINUTEMAN or the Participating Library.
11. The Participant agrees to the bylaws of MINUTEMAN and the obligations and responsibilities stated therein, including but not limited to; regular attendance at all Membership meetings and full participation in resource sharing. The Board of Directors will review situations in which a Participating Library fails to meet these obligations and requirements, and will recommend appropriate action to Membership.

12. This Agreement embodies the entire understanding and agreement between parties, and no inducement, promise, term, condition or obligation is made or entered into by either party if not set forth herein or incorporated herein by reference. The Agreement may be amended by an instrument signed by both parties and no other mode of amendment shall be effective.
13. This Agreement must be signed and returned to the Minuteman Library Network, 10 Strathmore Road, Natick, MA 01760, by August 1, 2017.

WITNESS our respective hands and seals as of this _____ day of _____, 2017.

Authorized Signature for Network Agreement



Member Library Director

Barbara F. Pugh
Library Trustee/Dean



President, Minuteman Library Network, Inc.



SUDBURY BOARD OF SELECTMEN

Tuesday, May 23, 2017

CONSENT CALENDAR ITEM**26: Appt of Frank Riepe as ZBA Assoc**REQUESTOR SECTION

Date of request:

Requested by: Patty Golden

Formal Title: Vote to appoint Frank Riepe, 54 Newbridge Road, as an associate member of the Zoning Board of Appeals for a term ending 5/31/18.

Recommendations/Suggested Motion/Vote: Vote to appoint Frank Riepe, 54 Newbridge Road, as an associate member of the Zoning Board of Appeals for a term ending 5/31/18.

Background Information:
application and memo from ZBA

Financial impact expected:n/a

Approximate agenda time requested:

Representative(s) expected to attend meeting:

Review:

Patty Golden	Pending
Melissa Murphy-Rodrigues	Pending
Barbara Saint Andre	Pending
Susan N. Iuliano	Pending
Board of Selectmen	Pending

05/23/2017 6:45 PM



Town of Sudbury

Board of Appeals

appeals@sudbury.ma.us

Flynn Building
278 Old Sudbury Rd
Sudbury, MA 01776
978-639-3389
Fax: 978-443-0756

<http://www.sudbury.ma.us/services/planning>

To: Board of Selectman

FROM: Board of Appeals

DATE: May 9, 2017

RE: Recommendation to Appoint Frank Riepe as Associate Member

At the May 8, 2017 Board of Appeals meeting, the Board voted unanimously to recommend the appointment of Frank Riepe for Associate Member. His breadth of knowledge as an architect and time served on several Town Boards and Committees will greatly add to various perspectives of the Board.

The Zoning Board of Appeals recommends the appointment of Frank Riepe to serve as an Associate Member for a one-year term.

TOWN OF SUDBURY **APPLICATION FOR APPOINTMENT**

BOARD OF SELECTMEN
278 OLD SUDBURY ROAD
SUDBURY, MA 01776

FAX: (978) 443-0756
E-MAIL: selectmen@sudbury.ma.us

Board or Committee Name: BOARD OF APPEALS

Name: FRANK W. RIEPE
Address: 54 NEWBRIDGE RD. Email Address: FRANK@FWRBA.COM
Home phone: 978-443-6494 Work or Cell phone: 978-443-4775

Years lived in Sudbury: 34
Brief resume of background and pertinent experience: REGISTERED ARCHITECT
MEMBER OF HISTORIC DISTRICTS COMMISSION, TOWN HALL BLUE
RIBBON COMMITTEE, SUDBURY CENTER IMPROVEMENT ADVISORY COMM.
FORMERLY CHAIRMAN OF DESIGN REVIEW BOARD
GOODNOW LIBRARY BUILDING COMMITTEE
Municipal experience (if applicable):

VERY INTERESTED IN THE FORM AND DYNAMICS OF TOWN GROWTH

Educational background: B. AND. M. OF ARCHITECTURE, TULANE UNIV.

Reason for your interest in serving: LIKE TO PARTICIPATE IN GOVERNMENT IN
A VARIETY OF WAYS, AND WAS INVITED TO DO SO.

Times when you would be available (days, evenings, weekends): FLEXIBLE

Do you or any member of your family have any business dealings with the Town? If yes, please explain:
No

FR (Initial here that you have read, understand and agree to the following statement)

I agree that if appointed, I will work toward furtherance of the committee's mission statement; and further, I agree that I will conduct my committee activities in a manner which is compliant with all relevant State and Local laws and regulations, including but not limited to the Open Meeting Law, Public Records Law, Conflict of Interest Law, Email Policy and the Code of Conduct for Town Committees.

I hereby submit my application for consideration for appointment to the Board or Committee listed above.

Signature FRANK W. RIEPE Date 4-6-2017



SUDBURY BOARD OF SELECTMEN

Tuesday, May 23, 2017

CONSENT CALENDAR ITEM**27: Engineering Services for Loring School pavement**REQUESTOR SECTION

Date of request:

Requestor: Dan Nason, DPW Director

Formal Title: Vote to approve award of contract by the Town Manager between the Town and Graves Engineering, Inc. for engineering services to be performed relative to the Loring School locus, in the amount of \$29,000, as requested by Dan Nason, DPW Director.

Recommendations/Suggested Motion/Vote: Vote to approve award of contract by the Town Manager between the Town and Graves Engineering, Inc. for engineering services to be performed relative to the Loring School locus, in the amount of \$29,000, as requested by Dan Nason, DPW Director.

Background Information:

Under Article 24 of the 2017 Annual Town Meeting funding was approved for various DPW projects including the design phase for Loring School parking lot, sidewalks, drainage and curb reconstruction.

Financial impact expected:

Approximate agenda time requested:

Representative(s) expected to attend meeting:

Review:

Patty Golden	Pending
Melissa Murphy-Rodrigues	Pending
Barbara Saint Andre	Pending
Susan N. Iuliano	Pending
Board of Selectmen	Pending

05/23/2017 6:45 PM

AGREEMENT BETWEEN TOWN OF SUDBURY AND GRAVES ENGINEERING, INC.

THIS AGREEMENT for engineering services for Engineering Services for Roadways, Parking and Sidewalk Reconstruction for the Town of Sudbury (hereinafter referred to as the "Project"), is made the _____ day of May, 2017, by and between Graves Engineering, Inc. (GEI), with a usual place of business at 100 Grove Street, Worcester, MA 01605, hereinafter referred to as the "CONTRACTOR", and the Town of Sudbury, (hereinafter referred to as the "TOWN").

WITNESSETH that the CONTRACTOR and the TOWN, for the consideration hereinafter named, agree as follows:

ARTICLE 1: CONTRACT DOCUMENTS

The Contract Documents consist of the following, and in the event of conflicts or discrepancies among them, they shall be interpreted on the basis of the following priorities:

- 1) Amendment issued, if applicable
- 2) This agreement for procurement between TOWN and CONTRACTOR
- 3) Attachment A – Scope of Services, Fees, and Special Conditions
- 4) Drawings required for the project, if applicable
- 5) Copies of all required certificates of insurance and licenses required under the contract,

EACH OF WHICH IS ATTACHED HERETO. These documents form the entire Agreement between the parties and there are no other agreements between the parties. Any amendment or modification to this Agreement must be in writing and signed by an official with the authority to bind the Town.

ARTICLE 2: SCOPE OF WORK

The CONTRACTOR shall furnish all materials, labor and equipment, and perform all work outlined in Schedule A – Scope of Services, Fees, and Special Conditions attached and on the Contract Documents, and the CONTRACTOR agrees to do everything required by this Agreement and the Contract Documents.

ARTICLE 3: TERMS OF AGREEMENT

- (a) The work to be performed under this Agreement shall be commenced on the date of this contract and shall be entirely completed by December 29, 2017, unless otherwise extended by mutual agreement.
- (b) The CONTRACTOR shall commence work promptly upon execution of this Agreement and shall prosecute and complete the work regularly, diligently and uninterruptedly at such a rate of progress as will insure completion in a timely manner.
- (c) The CONTRACTOR hereby agrees that if it fails to carry on the work with reasonable speed or stops work altogether without due cause, as determined in each case by the TOWN, the TOWN may terminate this Agreement in accordance with the provisions hereof.

ARTICLE 4: THE CONTRACT SUM

The TOWN shall pay the CONTRACTOR for the performance of this Agreement the sum not to exceed \$29,000, **plus applicable reimbursables** according to CONTRACTOR'S cost schedule and Special Conditions set forth in Attachment A – Scope of Services, Fees, and Special Conditions.

ARTICLE 5: PAYMENT

- (a) The TOWN shall make payment as follows:
Payment within thirty days after receipt of an invoice, for work then fully completed and performed.
- (b) With any invoice, the CONTRACTOR shall submit evidence satisfactory to the TOWN that the goods or supplies have been delivered and/or that the work has been completed in accordance with this Agreement, and that all payrolls, material bills and other indebtedness connected with the work have been paid. The billings shall include, if applicable, all charges for consultants, subcontractors, plans, equipment, models, renderings, travel, reproductions, postage and delivery, and all other expenses. There shall not be any markup for overhead, administration or profit for any of the above listed services.
- (c) The acceptance of final payment by the CONTRACTOR shall constitute a waiver of all claims by the CONTRACTOR arising under the Agreement.

ARTICLE 6: TERMINATION

- (a) The TOWN may suspend or terminate this Agreement by providing the CONTRACTOR with ten (10) days written notice for the reasons outlined as follows:
 - 1. Failure of the CONTRACTOR to fulfill in a timely and proper manner its obligations under this Agreement.
 - 2. Violation of any of the provisions of this Agreement by the CONTRACTOR.
 - 3. A determination by the TOWN that the CONTRACTOR has engaged in fraud, waste, mismanagement, misuse of funds, or criminal activity with any funds provided by this Agreement.
- (b) In addition, the TOWN shall have the right to terminate this Agreement if funds are not appropriated or otherwise made available to support the continuation of this Agreement after the first year, if applicable.
- (c) The TOWN shall also have the right to terminate this Agreement without cause, upon ten (10) days written notice to the CONTRACTOR. In the event that the Agreement is terminated pursuant to this subparagraph, the CONTRACTOR shall be reimburse in accordance with the Agreement for all work performed up to the termination date.
- (d) The CONTRACTOR shall have the right to terminate this Agreement if the TOWN fails to make payment within 30 days after it is due.

ARTICLE 7: NOTICE

All notices required to be given under this Agreement shall be in writing and shall be effective upon receipt by hand delivery or certified mail to:

Town of Sudbury:

Town Manager
278 Old Sudbury Road
Sudbury, MA 01776

Contractor:

Graves Engineering, Inc.
Attn. Donald J. Graves, P.E., President
100 grove Street
Worcester, MA 01605

ARTICLE 8. INSURANCE

- (a) The CONTRACTOR shall, at its own expense, obtain and maintain general liability and motor vehicle liability insurance policies protecting the TOWN in connection with any operations included in this Contract, and shall have the TOWN as an additional insured on the policies. General liability coverage shall be in the amount of at least \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury liability and property damage liability.
- (b) CONTRACTOR shall carry a professional errors and omissions policy with limits of at least \$1,000,000 per claim and \$2,000,000 aggregate, with a deductible of no more than \$50,000 per claim.
- (c) The CONTRACTOR shall, before commencing performance of this Contract, provide by insurance for the payment of compensation and the furnishing of other benefits in accordance with Mass. Gen. L. Ch. 152, as amended, to all employed under the Contract and shall continue such insurance in full force and effect during the term of the Contract.
- (d) All insurance coverage shall be in force from the time of the Agreement to the date when all work under the Contract is completed and accepted by the TOWN. **Certificates and any and all renewals substantiating that required insurance coverage is in effect shall be filed with the TOWN and, except for professional liability and worker's compensation, insurance shall list the TOWN as additional insured for each policy.** Since this insurance is normally written on a year-to-year basis, the CONTRACTOR shall notify the TOWN should coverage become unavailable or if its policy should change. Any cancellation of insurance, whether by the insurers or the insured, shall not be valid unless written notice thereof is given by the party proposing cancellation to the other party and to the TOWN at least fifteen days prior to the intended effective date thereof, which date should be expressed in said notice.
- (e) The CONTRACTOR shall indemnify and save harmless the TOWN and all of the TOWN'S officers, agents and employees from and against all suits and claims of liability, asserted against the Town by a third party, including costs of defending any action, for or on account of any injuries to persons or damage to property of the TOWN or any person, firm, corporation or association but only to the extent caused by any negligent act or omission, of the CONTRACTOR, its subcontractors and its and their agents or employees in the performance of

the work covered by this Agreement and/or failure to comply with terms and conditions of this Agreement, but only in respect of such injuries or damages sustained during the performance and prior to the completion and acceptance of the work covered by this Agreement. The foregoing provisions are in addition to any other remedies available to the Town, and shall not be deemed to be released, waived or modified in any respect by reason of any surety or insurance provided by the CONTRACTOR under the Contract.

ARTICLE 9: SUBCONTRACTING OF WORK

The CONTRACTOR shall not subcontract any of the work that it is required to perform under this Contract to any corporation, entity or person without the prior written approval of the TOWN.

ARTICLE 10: OWNERSHIP OF DOCUMENTS

Upon completion of the final payment to the CONTRACTOR, the TOWN shall be the owner of all plans, specifications, electronic data and computations created by the CONTRACTOR that relate to this Agreement. The TOWN agrees that the information contained therein was produced specifically for this Agreement and agrees to waive all claims against the CONTRACTOR and hold the CONTRACTOR harmless from any liability of the TOWN'S use of these documents in any future project not directly related to the subject matter of this Agreement.

ARTICLE 11: STANDARD OF CARE

The CONTRACTOR agrees to perform its work under this Contract, which the parties acknowledge consists solely of professional consulting services, in accordance with the degree of skill and care exercised by similarly practicing professionals performing similar services under similar conditions.

ARTICLE 12: GOVERNING LAW

The CONTRACTOR shall perform the work required under this Contract in conformity with requirements and standards of the TOWN and all applicable laws of the Commonwealth of Massachusetts, its political subdivisions, and the Federal Government.

This Agreement and performance thereunder are governed by, and shall be interpreted and enforced in accordance with the laws of the Commonwealth of Massachusetts and shall be subject to all such laws and all other applicable by-laws and administrative rules, regulations and orders.

ARTICLE 13: BINDING AGREEMENT AND ASSIGNMENT OF INTEREST

This Agreement shall be binding upon the TOWN and the CONTRACTOR and the partners, successors, heirs, executors, administrators, assigns and legal representatives of the TOWN and the CONTRACTOR. Neither the TOWN nor the CONTRACTOR shall assign, sublet or transfer any interest in this Agreement without the written consent of each other, and such consent shall not be unreasonably withheld.

ARTICLE 14: CERTIFICATE OF COMPLIANCE WITH MASSACHUSETTS TAX LAWS; NON-COLLUSION CERTIFICATION

The undersigned CONTRACTOR certifies under the pains and penalties of perjury that the **CONTRACTOR** has complied with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting of child support, and that the services set forth in Attachment A have been proposed and submitted in good faith and without collusion or fraud.

IN WITNESS WHEREOF the parties hereto have executed copies of this Agreement the day and year first above written. *

*If a Corporation, attach to each signed copy of this Contract an attested copy of the vote of the Corporation on authorizing the said signing and sealing.

GRAVES ENGINEERING, INC.

Donald J. Graves, President

Dated: _____

TOWN OF SUDBURY

Melissa Rodrigues, Town Manager

Dated: _____

ATTACHMENT A. SCOPE OF SERVICES, FEES, AND SPECIAL CONDITIONS

Phase 1 - Site Detail /Topographic Survey

1. The CONTRACTOR will conduct a site reconnaissance to become familiar with the site and identify specific ancillary work tasks that the TOWN should probably reconstruct as part of the roadways and parking lots. Additionally, CONTRACTOR will mark the estimated disturbance limits for DigSafe. These items could include manhole frames, grates or covers, catch basins, valve boxes, curbing, sidewalks and handicap ramps.
2. The CONTRACTOR will retain EcoTec, Inc. to assess the presence of jurisdictional wetland resource areas abutting the Project. EcoTec will present their findings in a letter report.
3. Secure a DigSafe number to have existing underground utilities marked.
4. Conduct a detail/topographic survey of the building corners, roadways, parking lots, and sidewalks. The survey will also locate visible utility components (valve boxes, manholes, catch basins, area drains, light- poles) as well as any marked underground utility locations. Compile any as-built utility drawings information into the base existing conditions site plan and adjust to match visible utility components and marked underground utilities. Should any wetland resource areas have been identified by EcoTec, the CONTRACTOR will locate their wetland flags. The survey will be based upon the Massachusetts State Plane Coordinate System and NAVD88 vertical datum. The field survey data will be reduced and used to prepare a base existing conditions site plan.

Phase 2 - Site Design

1. Prepare a Project cover sheet with locus plans.
2. Prepare a site sediment/erosion control & demolition plan to identify required sediment/erosion control systems as well as existing site features to be removed, abandoned , and or salvaged . The plan will also identify the Project limits-of-work.
3. Prepare a site layout plan for the Project including the parking lots, the loop roadways, and selected sidewalks.
4. Prepare a site grading plan for the roadways, parking lots, and selected sidewalks.
5. Identify any utility structures within the roadways and parking lots that need to be repaired or adjusted.
6. Prepare and assemble additional construction details and drawing notes to assist in defining the site construction work.
7. Write technical specifications for the work and prepare front-end bid documents suitable for soliciting construction bids.
8. Request state prevailing wage rates for the Project.
9. Prepare of a Stormwater Pollution Prevention Plan (SWPPP) for the Project which is used for implementing Best Management Practices (BMP's) during the construction phase of the Project.
10. Meet with the TOWN twice during the site design to review the progress.

Phase 3 - Site Permitting

Based on MassGIS wetland maps, the Project work area may or may not be within 100 feet of a wetland resource area or it's jurisdictional buffer zone. Therefore, the CONTRACTOR will prepare and subm it a Request for Determination of Applicability (RDA) from the Sudbury Conservation Commission, if necessary.

Due to the amount of construction site disturbance (greater than 1 acre), a Notice of Intent filing (different from a wetlands NOI filing) will need to be made with the USEPA. The

CONTRACTOR will assist the selected site contractor by completing most of the application through the USEPA's online system.

Specific services that may be necessary are as follows:

1. Prepare RDA application form for submittal to the Sudbury Conservation Commission, if necessary.
2. Attend one meeting with the Sudbury Conservation Commission, if necessary.
3. Make minor design revisions, if necessary, to secure a Negative Determination.
4. Complete most a USEPA Notice of Intent application filing using the USEPA's online system. A portion must be completed by the selected contractor for the Project.

Phase 4 - Bid Phase Assistance

The CONTRACTOR will assist the TOWN with soliciting bids from prospective contractors. It is our understanding the TOWN would like to utilize electronic e-hosting and e-bidding. These services may include:

1. Coordinate the Project pre-bid conference date and public bid opening date with the TOWN.
2. Forward the bid advertisement to TOWN selected newspapers or bidding service organizations.
3. Assemble all drawings, specifications, and front-end documents in pdf format and forward to the e-hosting service company.
4. Attend pre-bid conference if requested.
5. Screen questions from prospective bidders.
6. Review and assess prospective bidder questions.
7. Prepare and distribute addenda, if necessary.
8. Review bids received by e-bidding serviGe company.
9. Review the bids received and check references on the apparent low bidder.
10. Prepare letter of recommendation on construction contract award.
11. Assist TOWN with construction contract execution.

FEES (Cost Schedule)

1. Detailed Topo Survey	\$13,200.00	Fixed fee
2. Site Design	\$11,500.00	Fixed fee
3. Site Permitting		
• RDA	\$1,000.00	Fixed fee (if required)
• NOI (USEPA)	\$900.00	Fixed fee
4. Bid Phase Assistance	\$2,400.00	Fixed fee
	\$29,000.00	Total

SPECIAL CONDITIONS

The following costs and/or services are excluded from this contract:

1. Review, filing, permit fees.
2. e-hosting and e-bidding service fees.
3. Legal advertisements.
4. Printing and mailing costs.
5. Property boundary survey.
6. Geotechnical assessments including borings.
7. Soils laboratory testing.
8. Electrical design.

9. Structural design.
10. Building design.
11. Any services or requirements associated with hazardous materials including 21E.
12. Stormwater management design.
13. Any permitting beyond those specifically identified herein.
14. Any meetings beyond those specifically identified herein.
15. Any service not specifically described herein.



SUDBURY BOARD OF SELECTMEN

Tuesday, May 23, 2017

CONSENT CALENDAR ITEM**28: Minutes approval**REQUESTOR SECTION

Date of request:

Requested by: Patty Golden

Formal Title: Vote to approve the regular session minutes of April 25, 2017.

Recommendations/Suggested Motion/Vote: Vote to approve the regular session minutes of April 25, 2017.

Background Information:
attached draft

Financial impact expected:N/A

Approximate agenda time requested:

Representative(s) expected to attend meeting:

Review:

Patty Golden	Pending
Melissa Murphy-Rodrigues	Pending
Barbara Saint Andre	Pending
Susan N. Iuliano	Pending
Board of Selectmen	Pending

05/23/2017 6:45 PM



SUDBURY BOARD OF SELECTMEN

Tuesday, May 23, 2017

CONSENT CALENDAR ITEM**29: Eagle Scout Recognitions**REQUESTOR SECTION

Date of request:

Requestor: Troop 61

Formal Title: Vote to enter into the Town record and congratulate Aiden Judge Cavanaugh, Charles Nason Cavanaugh, and Michael Thomas Cavanaugh, of Boy Scout Troop 61, to be recognized at a Court of Honor Ceremony on June 3, 2017, for having achieved the high honor of Eagle Scout. Also vote to authorize the chair to sign the congratulatory letters on behalf of the Board.

Recommendations/Suggested Motion/Vote: Vote to enter into the Town record and congratulate Aiden Judge Cavanaugh, Charles Nason Cavanaugh, and Michael Thomas Cavanaugh, of Boy Scout Troop 61, to be recognized at a Court of Honor Ceremony on June 3, 2017, for having achieved the high honor of Eagle Scout. Also vote to authorize the chair to sign the congratulatory letters on behalf of the Board.

Background Information:

attached letter of 4/29/17 from Boy Scout Troop 61

Financial impact expected:n/a

Approximate agenda time requested:

Representative(s) expected to attend meeting:

Review:

Patty Golden	Pending
Melissa Murphy-Rodrigues	Pending
Barbara Saint Andre	Pending
Susan N. Iuliano	Pending
Board of Selectmen	Pending

05/23/2017 6:45 PM

Boy Scout Troop 61

Boy Scouts of America
Sudbury, MA 01776
<http://troop61.info/>



April 29, 2017

Robert Haarde
37 Belcher Drive
Sudbury, MA 01776

Dear Mr. Haarde,

Sudbury Troop 61, within the Knox Trail Council of the Boy Scouts of America, is pleased to announce **Aiden Judge Cavanaugh, Charles Nason Cavanaugh and Michael Thomas Cavanaugh, IV** have achieved the rank of Eagle Scout. A key element required to earn the rank is the leadership and completion of an Eagle Scout Service Project. All three boys have chosen projects to enrich their town:

Aiden, a sophomore, built a shed for the Sudbury Little League Baseball Complex. He is a First Aid Instructor for his troop and has participated in the BSA National Youth Leadership Training program

Charles, a sophomore, built a shed for the Sudbury Little League Baseball Complex. He has participated in the BSA National Youth Leadership Training program

Michael, a freshman, constructed a 70 foot bridge for the Town of Sudbury Conservation Commission. He has been a patrol leader for his Troop and participated in the BSA National Youth Leadership Training program.

Earning the Eagle Scout rank is a notable achievement reflecting their attainment of the highest rank in Boy Scouting. These boys will be recognized at a Court of Honor on June 3th, 2017, at Memorial Congregational Church, Sudbury.

We ask for your assistance in recognizing the achievements and service of each Eagle recipient. Will you please send Aiden, Charles and Michael each a letter of greeting, along with any other items you wish to be presented to them during a *recognition ceremony*? Please address your letters and recognitions in care of the following address:

Cindy Fenichel
365 Boston Post Road, # 234
Sudbury, MA 01776

Thank you very much for taking time from your extremely busy work schedule to help this community and this troop recognize Aiden, Charles and Michael's personal achievements and service.

Yours respectfully,

Cindy Fenichel
Publicity Committee, Boy Scout Troop 61