

Town of Sudbury
Zoning Board of Appeals

Flynn Building
278 Old Sudbury Rd
Sudbury, MA 01776

<http://www.sudbury.ma.us>
email: appeals@sudbury.ma.us

APPLICATION FOR COMPREHENSIVE PERMIT (Ch. 40B)

Date Filed: _____

PART I APPLICANT INFORMATION

Applicant's Name: CARIS CLAUSSEN / SUDBURY STATION LLC

Applicant's Address: 2134 SEVILLA WAY, NAPLES FL 34109

Applicant's Phone Number: 239-571-5500 Email Address: cyclausssen@gmail.com

PART II OWNER INFORMATION

Owner's Name: JOE TRUST + JRH TRUST / MATTHEW + MOLLY (PARENTS)

Owner's Address: 578 BOSTON POST RD, SUDBURY, MA 01776 / 30 HUDSON RD, SUDBURY, MA

Owner's Phone Number: _____ Email Address: _____

PART III PROPERTY INFORMATION

Address: PETERS WAY & PETERS WAY EXTENSION

TAX ID PARCELS: Assessors Map No: 609-0100, 609-002, 609-0300, 409-0068 Parcel Size: 39.87 ac

Zoning District: _____

Applicant's Signature: [Handwritten Signature]

Owner's Signature: _____

**Materials to be submitted with the application are described in detail in the
SUPPLEMENTAL RULES FOR COMPREHENSIVE PERMITS**

<http://sudbury.ma.us/documents/dl/4081/Supplemental40BRules070123.doc>

and include:

Preliminary site development plans, Report on existing conditions, Preliminary, scaled, architectural drawings, Tabulation of proposed buildings, Preliminary subdivision and utilities plan, Jurisdictional documentation, Waivers and exceptions requested, Certified List of Abutters, Filing Fee or waiver request

**THE VILLAGE AT SUDBURY STATION
SUDBURY, MA**

**Comprehensive Permit Application
Under M.G.L. Chapter 40B, Sections 20-23**

**Submitted By:
SUDBURY STATION LLC
January 2016**

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SECTION 1

PROJECT AND DEVELOPMENT TEAM SUMMARY

PROJECT SUMMARY

1. Applicant

Sudbury Station LLC (the "Applicant") has been organized under the General Laws of the State of Massachusetts and is qualified for the express purpose of undertaking the planning, development and operating of the proposed developed, titled "The Village at Sudbury Station", a 250 unit mixed income apartment community of which 63 units (25%) will comply with the 40B definition of "low and moderate income" housing and will serve households whose incomes are at or below 80% of the Boston area median income, as published annually by the Federal Department of Housing and Community Development (HUD). The members of the development team are shown on the attached page.

2. Description of the Development

The Village at Sudbury Station will consist of the following mix of units:

	Total	size range/sf
1 Bedroom Units	116	800-1055
2 Bedroom Units	109	1250-1550
3 Bedroom Units	25	1500-1700

There will be 5 apartment buildings totaling 214 units and 36 2-3 bedroom townhomes. The 63 affordable units will be scattered throughout and will be allocated proportionately to the mix of market rate units.

3. Design Summary (attached page)

Sudbury Station Apartments

Sudbury, MA

40B Submission Design Text:

01/25/2016

Design

The proposed building architecture and the site plan have been designed to work together and embrace the topography of the site. The concept is to retain the natural landscape as much as possible and create a village green which would be the center of this new neighborhood. The architecture will take full advantage of the sloping topography and the scale of the proposed buildings to embrace a village setting and the natural features of the site. Thus, most of the buildings are set into the naturally sloping grades of the site, which allow the parking below the buildings to be hidden from view, keeping as much of the site as possible for open, landscaped green space. The buildings are organized on the site in such a fashion so that the lower-scale Townhome buildings are arrayed closest to the eastern edge of the property with the larger buildings located farthest away, mitigating the project's visual impact.

The architecture of the individual buildings picks up on many of the vernacular clues of New England architecture, including steep-sloped shingled roofs, an articulated elevation, large open porches and a stone base, which respectfully echoes the existing stone walls of the site and adjacent Agricultural Preservation Restriction (APR) lands and connects the buildings to the natural landscape. The primary exterior materials are lap siding of different exposures, colors and textures to further break down the mass of the buildings. There are also detailed trim and corner boards around the windows and doors to create visual interest and a pedestrian-friendly scale. The three-season porches for most of the units will become exterior patio spaces at the ground floor units to directly connect the buildings to the landscape and activate the surrounding village green.

The design strategy is to incorporate many of these traditional New England details while still providing all of the amenities and functionality of a modern 21st century apartment building. The buildings' scale, proportion, details and materials reinforce a village feel and a sense of neighborhood and will be respectful of the adjacent historic district and Sudbury's history. The project will be focused on the pedestrian experience with lots of connectivity to the adjacent APR lands and larger Sudbury.

DEVELOPMENT TEAM MEMBERS

Developer	Christopher Claussen Sudbury Station LLC 239.571.5500, cgclaussen@gmail.com Joseph E. Hakim 914.582.8279, jehakim@optonline.net Christopher G. Kennedy 312.952.6333, chris@northbankandwells.com
Development Consultant	Bob Engler SEB, LLC 165 Chestnut Hill Avenue #2, Brighton, MA 02135 617.782.2300x201 bob@s-e-b.com
Environmental/40B Attorney	William Henchy 165 Cranberry Highway Orleans, MA 02653 508.255.1636 whenchy@alumni.tufts.edu
40B Attorney	Peter Freeman 86 Willow Street Yarmouth Port, MA 02675 508.362.4700 peterfreeman@freemanlawgroup.com
Architect	Doug Carr CUBE 3 Studio LLC 360 Merrimack St Lawrence, MA 01843 978.989.9900x18 dcarr@cube3studios.com
Civil Engineer	Mike Sullivan Sullivan, Connors and Associates 121 Boston Post Road, Sudbury, MA 01776 978.443.9566 mjs@csei.net
Land Planner	Steve Cecil & Josh Fiala The Cecil Group 170 Milk St Suite 5, Boston, MA 02109 617.426.5050 scecil@cecilgroup.com
Market Research	Lynne Sweet LDS Consulting Group 233 Needham Street, Newton, MA 02464 617.454.1144 ldsweet@ldsconsultinggroup.com
Traffic Engineer	Bob Michaud MDM Transportation Consultants 28 Lord Road Suite 280, Marlborough, MA 01752 508.303.0370 rmichaud@mdmtrans.com

SECTION 2:
APPLICANT QUALIFICATIONS

Limited Dividend Qualifications

The Applicant qualifies as a Limited Dividend entity as defined under Chapter 40B case law by virtue of its willingness to enter into a Regulatory Agreement with MassHousing, the subsidizing agency, at the time of Final Approval – after the receipt of a comprehensive permit but before a building permit can be issued. A copy of MassHousing’s standard Regulatory Agreement is attached; it covers the requirements to maintain affordable units and to restrict dividend distributions on an annual basis, as per the regulations.

REGULATORY AND USE AGREEMENT

[Rental]

***For Comprehensive Permit Projects in Which Funding is Provided
By Other Than a State Agency***

This Regulatory and Use Agreement (this "Agreement") is made this ___ day of _____, 20__, by and between the Massachusetts Housing Finance Agency acting as Subsidizing Agency (the "Subsidizing Agency"), as defined under the provisions of 760 CMR 56.02, on behalf of the Department of Housing and Community Development ("DHCD"), and _____, a Massachusetts _____ having a mailing address at _____, and its successors and assigns (the "Developer").

RECITALS

WHEREAS, the Developer intends to construct a housing development known as _____ at a ___-acre site located at _____ in the [City/Town] of _____, Massachusetts (the "Municipality"), 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 (as may be amended from time to time, the "Guidelines" and, collectively with the Regulations and the Act, the "Comprehensive Permit Rules");

WHEREAS, the Development is being financed with a loan of approximately \$_____ by _____, a Federal Home Loan Bank of Boston ("FHLBB") member bank (the "NEF Lender"), a non-governmental entity for which the Massachusetts Housing Finance Agency acts as Subsidizing Agency pursuant to the Comprehensive Permit Rules; and

WHEREAS, the Massachusetts Housing Finance Agency will serve as Subsidizing Agency on behalf of DHCD pursuant to the Comprehensive Permit Rules and in accordance with the terms and provisions hereof; and

WHEREAS, the Developer has received a comprehensive permit (the "Comprehensive Permit") from the Zoning Board of Appeals of the Municipality in accordance with the Act, which permit is [recorded/filed] at the _____ County [Registry of Deeds/Registry District of the Land Court] ("Registry") [in Book _____, Page ___/ as Document No. _____], as

amended by [amendments recorded in Book _____, Page ___/ as Document No. _____, and in Book _____, Page ___/ as Document No. _____, and by] the terms of this Agreement; and

WHEREAS, pursuant to the Comprehensive Permit and the requirements of the Comprehensive Permit Rules, the Development is to consist of a total of ____ rental units, of which a minimum of 25 percent (___ 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, 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, the Subsidizing Agency 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:

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 the Subsidizing Agency, with such changes thereto that may be approved by the Subsidizing Agency, 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 Income shall be determined in the manner set forth in 24 C.F.R. 5.609 (or any successor regulations).

Area shall mean the _____ Metropolitan Statistical Area (MSA) [or HUD Metro FMR Area (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.

Audited Annual Limited Dividend Financial Report shall mean an annual report to be submitted by the Developer on a form prescribed by the Subsidizing Agency, pursuant to Section 12(b) hereof.

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.

Construction Mortgage shall mean the mortgage from the Developer securing the Construction Loan.

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

Cost Method shall have the meaning given such term in Section 7(d) hereof.

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

Developer’s Equity shall be determined in the manner set forth in Section 7(d) hereof.

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

Development Revenues: All rental income, receipts and other revenue derived from the operation of the Development other than revenues derived from any sales, financing, or other capital transaction, and 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.

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

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

Excess Development Revenues shall have the meaning given such term in Section 12(e) hereof

Excess Equity: Surplus Cash in excess of the permitted Limited Dividend Distribution, as calculated in accordance with the Audited Annual Limited Dividend Financial Report described in Section 12 hereof.

Excess Equity Account: An interest-bearing account maintained by the Lender (or if the Loan is paid off, with the Subsidizing Agency) for the benefit of the Development during the Term hereof containing Development Revenues which exceed the Limited Dividend Distribution in a given year or years.

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

Fiscal Year: The fiscal year of the Developer ending [_____].

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.

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

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

Limited Dividend Distribution: The aggregate annual distributions permitted to be made to the Developer from Development Revenues as calculated pursuant to the Audited Annual Limited Dividend Financial Report.

Limited Dividend Term shall have the meaning set forth in Section 23(b) hereof.

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

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 or any applicable Housing Subsidy Program.

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

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

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

Permanent Loan shall mean the Permanent Loan 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 in compliance with any specific terms of the Comprehensive Permit or any Housing Subsidy Program applicable to the Development.

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

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 Internal Revenue Code, or (ii) such persons are members of the same controlled group of corporations (as defined in Section 1563(a) of the Internal Revenue 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 20 hereof.

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

Surplus Cash shall have the meaning given such term in Section 7(c) hereof.

Tenant Selection Plan shall mean the Tenant Selection Plan, prepared by the Developer in accordance with the Guidelines and approved by the Subsidizing Agency, with such changes thereto which may be approved by the Subsidizing Agency.

Term shall have the meaning set forth in Section 23 hereof.

Total Development Costs (“TDC”) shall have the meaning set forth in Section 7(h) hereof.

Value Method shall have the meaning given such term in Section 7(d) hereof.

CONSTRUCTION OBLIGATIONS

2. (a) The Developer agrees to construct the Development in accordance with plans and specifications approved by the Subsidizing Agency and the Municipality (the “Plans and Specifications”), in accordance with all on-site and off-site construction, design and land use conditions of the Comprehensive Permit, and in accordance with the information describing the Development presented by the Developer to the Subsidizing Agency in its application for Final Approval. 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 Subsidizing Agency shall monitor compliance with the construction obligations set forth in this section in such manner as the Subsidizing Agency may deem reasonably necessary. In furtherance thereof, the Developer shall provide to the Subsidizing Agency (i) 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; and (ii) prior to commencement of construction, a certification from the Construction Lender concerning construction monitoring in a form acceptable to the Subsidizing Agency. If the information provided to the Subsidizing Agency is not acceptable to the Subsidizing Agency, or if at any time after acceptance the NEF Lender's construction monitor fails to provide adequate construction oversight in accordance with the requirements of the NEF Lender's certification, the Subsidizing Agency may require that the Developer fund the cost of a construction monitor retained by the Subsidizing Agency.

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, the 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 the 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, the Subsidizing Agency 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 but not limited to tenant-paid heat, hot water and electricity) shall not exceed thirty percent (30%) of eighty percent (80%) of AMI (or such other percentage of AMI established by DHCD for Comprehensive Permit Projects In Which Funding Is Provided By Other Than a State Agency), adjusted for household size, assuming that an Affordable Unit which does not have a separate bedroom is occupied by one individual, and that a unit which has one or more separate bedrooms is occupied by 1.5 individuals for each separate bedroom. 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) For purposes of satisfying the requirement that the Affordable Units shall be occupied by Low or Moderate Income Tenants hereunder, no Low or Moderate Income Tenant shall be denied continued occupancy because, after admission, the Low Moderate Income Tenant's Annual Income exceeds eighty percent (80%) of Area Median Income. No Low or Moderate Income Tenant shall continue to be counted as a Low or Moderate Income Tenant as of any date upon which such tenant's Annual Income exceeds one hundred forty percent (140%) of the level at which a tenant may be qualified as a Low or Moderate Income Tenant provided, however, that the Developer shall not be in default regarding the requirements of this Agreement to maintain occupancy of the Affordable Units by Low or Moderate Income Tenants if the Developer rents the next available unit or units of comparable or smaller size to Low or Moderate Income Tenants as needed to achieve compliance with such requirements (thereupon, as rented to a Low or Moderate Income Tenant, such unit or units shall be deemed an Affordable Unit hereunder). Other than as provided above, any unit shall retain its character as an Affordable Unit occupied by a Low or Moderate Income Tenant until it is reoccupied, at which time whether or not such unit is occupied by a Low or Moderate Income Tenant shall be redetermined under the rules set forth in this Section 3, except that no reoccupancy of an Affordable Unit for a temporary period not to exceed thirty-one (31) days shall be taken into account for this purpose.

(d) If, after initial occupancy, the Annual Income of a Low or Moderate Income Tenant increases and, as a result of such increase, exceeds eighty percent (80%) of Area Median Income but is less than one hundred forty percent (140%) of Area Median Income for such a Low or Moderate Income Tenant, at the expiration of the applicable lease term, such tenant's rent may be increased to the higher of the total rental that may be required under any applicable Housing Subsidy Program (including both the tenant share and the subsidized portion) or thirty percent (30%) of such tenant's Annual Income. In the event that a Low or Moderate-Income Tenant's Annual Income increases and, as a result of such increase, exceeds one hundred forty percent (140%) of Area Median Income, the Developer may charge the formerly Low or Moderate-Income Tenant a market rate for the dwelling unit.

(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. The Developer shall annually submit to the Subsidizing Agency a proposed schedule of monthly rents and utility allowances for all Affordable Units in the Development. It is understood that the Subsidizing Agency shall review such schedule with respect to the maximum rents for all the Affordable Units based on the size and required extent of affordability of each affordable Unit, and shall not take into account the actual incomes of individual tenants in any given Affordable Unit. Rents for the Affordable Units shall not be increased above such maximum monthly rents without the Subsidizing Agency'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.

(f) The Developer shall obtain income certifications satisfactory in form and manner to the Subsidizing Agency at least annually for all Low or Moderate-Income Tenants, or more frequently if required by any applicable Housing Subsidy Program. Said income certifications shall be kept by the management agent for the Development and made available to the Subsidizing Agency upon request.

(g) Prior to initial lease-up, the Developer shall submit an Affirmative Fair Housing Marketing Plan (also known as an "AFHM Plan") for the Subsidizing Agency'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. The AFHM Plan, upon approval by the Subsidizing Agency, shall become a part of this Agreement and shall have the same force and effect as if set out in full in this Agreement.

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

(i) 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 the Subsidizing Agency shall require.

TENANT SELECTION AND OCCUPANCY

4. The 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 any applicable Housing Subsidy Program, and 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 the Developer or the Subsidizing Agency; 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 the Developer or the Subsidizing Agency may direct, he or she will furnish to the Developer certification of then current family income, with such documentation as the Subsidizing Agency shall reasonably require; and agrees to such charges as the Subsidizing Agency has previously approved for any facilities and/or services which may be furnished by the 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.

EXPIRATION OF RESTRICTIONS - TENANT PROTECTIONS

6. (a) If, upon the expiration of the Term hereof, the affordability requirements under the Comprehensive Permit shall expire, the Developer shall deliver a written notice to all Low or Moderate or Income Tenants of such expiration (the "Expiration Notice") at the same time that it shall provide such notice to the Subsidizing Agency. The Expiration Notice shall inform all Low or Moderate or Income Tenants of the tenant protections described in this Section 6.

(b) For a period of one year after the date of expiration ("Year 1") (the date of expiration is hereinafter referred to as the "Expiration Date"), the Developer may not increase the rentals payable by any Low or Moderate-Income Tenant on the Expiration Date (a "Protected Low or Moderate-Income Tenant"), except for rental increases which would have been permitted by the terms and provisions of the applicable Housing Subsidy Program if such Expiration Date had not occurred.

(c) For a period of two years after Year 1 ("CPI Index Period"), the rentals for units occupied by Protected Low or Moderate Income Tenants may not be increased more than once annually by the greater of: (i) the consumer price index (applicable to the area in which the Development is located) times the rental rate in effect as of the Expiration Date; or (ii) such higher amount as the Subsidizing Agency shall approve. In no event may the Developer increase rentals for such Affordable Units in excess of any limitations contained in a Housing Subsidy Program which remains in effect after the Expiration Date.

(d) For three (3) years after the CPI Index Period (the "Transition Period"), the Developer shall provide Relocation Assistance, as defined herein, for any Protected Low or Moderate-Income Tenant who voluntarily terminates his or her lease during the Transition Period as a result of rental increases. For the purposes hereof, the term "Relocation Assistance" shall mean reasonable assistance in locating a comparable affordable unit, including the payment

of any broker's fees and the payment of reasonable moving expenses within a thirty (30) mile radius of the Development.

(e) Upon expiration, the Developer agrees to continue to use the form of occupancy agreement for all Protected Low or Moderate-Income Tenants until the expiration of the periods described in (b) and (c), above. Thereafter, the Developer may require that all Protected Low or Moderate-Income Tenants enter into the lease form used for tenants in the market-rental units or a lease substantially in the form published by the National Apartment Association, provided that any new occupancy agreement shall provide the Protected Low or Moderate-Income Tenants with the benefits of subsection (d), above.

(f) The provisions of this Section 6 shall survive the termination of any other provisions of this Agreement as a result of expiration until the expiration of the periods described in subsections (b), (c), and (d), above.

(g) Protected Low or Moderate-Income Tenants shall have a right to enforce the protections provided them in this Section 6.

LIMITED DIVIDENDS; USE OF DEVELOPMENT REVENUES

7. (a) The Developer covenants and agrees that no Distribution Payments may be made to the Developer other than Limited Dividend Distributions. Repayment of developer's fee loaned is treated as a Limited Dividend Distribution and is subject to the limitations set forth herein. Limited Dividend Distributions may be made: (i) on a quarterly basis within the Developer's Fiscal Year; (ii) only once all currently payable amounts as identified in subsection (i) below are paid as evidenced by a certificate provided by an independent accountant certifying that no such obligations are more than thirty (30) days past due and that there are no outstanding material extraordinary obligations incurred outside the ordinary course of business, even if thirty (30) or less days past due; and (iii) only after (x) submission by the Developer of the Audited Annual Limited Dividend Financial Report pursuant to Paragraph 12(b) below and (y) acceptance by the Subsidizing Agency of said report. Except with the prior written authorization of the Subsidizing Agency, Limited Dividend Distributions cannot be derived or made from borrowed funds or from the sale of capital assets.

For the purposes hereof, the term "Distribution Payments" shall mean all amounts paid from Development Revenues (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 who provide such services on an arms-length basis.

(b) No Limited Dividend Distributions may be made when: (i) a default or an Event of Default has occurred and is continuing under this Agreement; (ii) there has been failure to comply with the Subsidizing Agency's notice of any reasonable requirement for adequate (as

determined by the Subsidizing Agency using its reasonable discretion) maintenance of the Development in order to continue to provide decent, good quality and safe affordable housing; or (iii) prior to the expiration of the Term hereof, there is outstanding against all or any part of the Development any lien or security interest other than a lien securing the Loan or a lien expressly permitted by the Subsidizing Agency.

(c) Subject to the provisions set forth above, Limited Dividend Distributions may only be made to the Developer from Surplus Cash, provided that no Limited Dividend Distribution for any Fiscal Year may exceed ten percent (10%) of Developer's Equity.

“Surplus Cash”, which is a balance sheet calculation, represents the long-term accumulation of working capital from the Development’s revenues that is available at the end of any given Fiscal Year to make: (i) Limited Dividend Distributions; (ii) deposits into the Excess Equity Account; and (iii), if necessary, a distribution to the Municipality for the purpose of developing and/or preserving Affordable Housing. The calculation of Surplus Cash is more fully detailed in Part A of the current “M.G.L. Ch. 40B RENTAL DEVELOPMENTS / Instructions for Use of Calculation Tool for Computation of Excess Equity and Limited Dividend Distributions” (as it may be amended, revised or replaced) available from the Subsidizing Agency and which currently is the form to be used in the preparation of the Audited Annual Limited Dividend Financial Report.

(d) For the purposes hereof the initial amount of "Developer’s Equity" shall be \$ _____, subject to adjustment as provided herein. The initial amount of "Developer’s Equity" is established at the time of Final Approval based on the Developer’s projection pursuant to the Cost Method as defined below. This initial amount shall be adjusted and verified at the time of Cost Certification with respect to the construction of the Development in accordance with the “Inter-Agency 40B Rental Cost Certification Guidance for Owners, Certified Public Accountants and Municipalities” (as it may be amended, revised or replaced) as the greater of the amounts determined by (a) the “Cost Method” or (b) the “Value Method.” For purposes hereof the term “Cost Method” is defined as (i) actual cash contributed by the Developer to the Development, including tax credit equity (if applicable) plus (ii) the deferred portion of the maximum allowable developer fee determined in accordance with DHCD policy, provided that any payment of such deferred fee from project cash flow is treated as a Distribution Payment in accordance with Section 7 hereof, plus (iii) the appraised “as-is” market value of the land that exceeds the actual purchase price paid by the Developer for said land, if any. For purposes hereof the term “Value Method” is defined as (i) the as-complete and stabilized appraised market value of the Development, as determined by an independent appraisal commissioned by the Subsidizing Agency in accordance with this Section 7(d), less (ii) the sum of secured debt on the Development plus public equity, whether structured as a grant or loan, as determined by the Subsidizing Agency.

Thereafter, 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. Unless the Developer is otherwise directed by the Subsidizing Agency, the initial appraised

market value and any adjustment thereto shall be based upon an appraisal commissioned by (and naming as a client) the Subsidizing Agency and prepared by an independent and qualified appraiser prequalified by, and randomly assigned to the Development by, the Subsidizing Agency. The appraiser shall submit a Self-Contained Appraisal Report to the Subsidizing Agency 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 use assumptions subject to the reasonable approval of the Subsidizing Agency.

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 Fiscal Year following the date of such appraisal and remain in effect until a subsequent adjustment.

A sale or refinancing of the Development shall not result in a new evaluation of Developer's Equity, except as provided above.

(e) In the event that the amount available for Limited Dividend Distributions in a given Fiscal Year exceeds the Limited Dividend Distribution permitted for such Fiscal Year pursuant to Section 7(c) above, such excess shall be deposited and administered in accordance with Section 7(f) below. Amounts deposited into the Excess Equity Account may, subject to subsections (a) through (c) above, and pursuant to the Subsidizing Agency's Limited Dividend Policy, be distributed by the Lender (or the Subsidizing Agency, as applicable) to the Developer in amounts equal to the difference between the amount by which Limited Dividend Distributions actually made in any prior Fiscal Year were less than the amount permitted to be distributed under Section 7(c) hereof for such Fiscal Year. In the event that Surplus Cash is insufficient to allow the Developer to take its Limited Dividend Distribution as permitted herein and there are funds in the Excess Equity Account, Lender (or the Subsidizing Agency, as applicable) may distribute to the Developer an amount equal to the unpaid portion of the permitted Limited Dividend Distribution for such Fiscal Year, provided that, in no event shall the amount so distributed exceed the amount available in the Excess Equity Account.

Notwithstanding the foregoing, in the event that the amount available for Limited Dividend Distributions in a given Fiscal Year exceeds the Limited Dividend Distribution permitted for such Fiscal Year pursuant to Section 7(c) above, the amount of any such excess may be applied to pay, with simple interest, the amount by which Limited Dividend Distributions made in any of the preceding Fiscal Years were less than the amount permitted to be paid under Section 7(c) hereof for such Fiscal Years, subject to the provisions of subsections (a) through (c) above.

(f) Any amounts available for a Limited Dividend Distribution which may not be distributed in any year pursuant to the provisions of Section 7(c) above ("Excess Equity"), shall be deposited in the Excess Equity Account with the Lender (or if the Loan is paid off, with the Subsidizing Agency). No distributions may be made to the Developer from the Excess Equity Account except those permitted pursuant to Section 7(e) and (f) hereof. Upon the occurrence of

an Event of Default under this Agreement or the Mortgage, the Lender (or the Subsidizing Agency, as applicable) may apply any amounts in the Excess Equity Account to the payment of all or any portion of the debt secured by the Mortgage.

Upon the Developer's written request, amounts may also be withdrawn from the Excess Equity Account by the Lender (or the Subsidizing Agency, as applicable) during the Term hereof and applied for any purpose described in Section 7(i) hereof or for any purpose (i) that provides a direct and material benefit to Low or Moderate Tenants; (ii) that reduces rentals to Low or Moderate Tenants; (iii) that extends the affordability of the Development; or (iv) that provides relocation and transitional assistance to Low or Moderate Tenants as described in Section 6 hereof.

To the extent that the Term of this Agreement extends beyond satisfaction in full of the debt secured by the Mortgage, the Subsidizing Agency may, in its sole discretion, during the remaining Term, make amounts available from the Excess Equity Account to: (a) pay all or a portion of the annual monitoring fee that remains outstanding thirty (30) days after its due date, and/or (b) provide relocation and transitional assistance to tenants of Affordable Units.

Upon the Developer's written request, amounts may also be withdrawn from the Excess Equity 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 which may be held by Lender or a lending institution reasonably acceptable to the Subsidizing Agency and which reserves shall 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 the Developer for Development expenses, provided that the 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 Subsidizing Agency) and shall have supplied the applicable Lender (or the Subsidizing Agency) with such evidence as the applicable Lender (or the Subsidizing Agency, as applicable) may reasonably request as to the application of the proceeds of such operating expense loans to the 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 the Subsidizing Agency) 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) and (iv) above by the Developer shall be subject to the prior written approval of the Subsidizing Agency, which approval shall not be unreasonably withheld or delayed; it being agreed by the Subsidizing Agency that if the Developer can demonstrate that its proposed operating expenditures and reserves are substantially consistent with those made for comparable developments within the Commonwealth of Massachusetts, the Subsidizing Agency shall approve such request. Further, in no event shall such review or approval be required by the

Subsidizing Agency to the extent any such capital expenditures or reserves are mandated by Lender.

In any event, cash available for distribution in any year in excess of 20% of Developer's Equity, subject to payment of a Limited Dividend Distribution pursuant to Section 7(c) hereof, shall be distributed to the Municipality within fifteen (15) business days of notice and demand given by the Subsidizing Agency as provided herein, or as otherwise directed by DHCD. Upon the expiration of the Limited Dividend Term (as defined in Section 23(b) hereof), any balance remaining in the Excess Equity Account shall (i) be contributed by the Developer to the replacement reserve held for the Development, if such contribution is deemed by the Subsidizing Agency (in its reasonable discretion) to be necessary, (ii) be distributed to the Subsidizing Agency for the purpose of developing and/or preserving affordable housing, or (iii) be distributed as otherwise directed by DHCD.

(g) All funds in the Excess Equity Account shall be considered additional security for the performance of obligations of the Developer under the Mortgage and this Agreement and the Developer hereby pledges and grants to the Lender (or the Subsidizing Agency, as applicable) a continuing security interest in said funds. Furthermore, the Developer recognizes and agrees that (i) possession of said funds by the Lender (or the Subsidizing Agency, as applicable) constitutes a bona fide pledge of said funds to the Lender (or the Subsidizing Agency, as applicable) for security purposes, (ii) to the extent required by applicable law, this Agreement, in combination, as necessary, with other documents referred to herein, constitutes a valid and binding security agreement, and (iii) the validity and effectiveness of said pledge will not be compromised if said funds are held in a bank or other financial institution. The Developer further acknowledges and agrees that, notwithstanding any nomenclature or title given to the Excess Equity Account by the bank or other financial institution at which the Excess Equity Account is held, or the fact that the Developer's tax identification number is used with respect to the Excess Equity Account, the Lender (or the Subsidizing Agency, as applicable), and not the Developer, shall be the customer of the bank or other financial institution holding the Excess Equity Account; such bank or other financial institution shall comply with instructions originated by the Lender (or the Subsidizing Agency, as applicable) directing the disposition of funds in the Excess Equity Account, without further consent of the Developer; and the Lender (or the Subsidizing Agency, as applicable), and not the Developer, shall have the exclusive right to withdraw funds from the Excess Equity Account.

(h) 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 ten percent (10%) of Total Development Costs, net of (i) such fees and profits, and (ii) any working capital or reserves intended for operation of the Development and approved by the Subsidizing Agency. Such limited payment of fees and profits 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 the Subsidizing Agency 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 the Subsidizing Agency as provided herein.

For the purposes hereof, the term “Total Development Costs” shall mean the total of all costs associated with acquisition, construction (including construction contingency), and general development (such as architectural, engineering, legal, and financing fees, insurance, real estate taxes and loan interest) for the Development. Total Development Costs include (i) developer overhead and developer fees, and (ii) any capitalized reserves intended for operation of the Development and approved by the Subsidizing Agency as being specifically excluded from the calculation of fees and profits payable from capital sources for the initial development of the Development.

(i) The Developer shall apply Development Revenues in the following order of priority: (x) payment of or adequate reserve for all sums due or currently required to be paid under the terms of the Loan; and (y) payment of or adequate reserve for all reasonable and necessary expenses of the Development as identified below. With respect to the application of Development Revenues as described above, the Developer agrees as follows:

(i) Payment for services, supplies, or materials shall not exceed the amount ordinarily and reasonably paid for such services, supplies, or materials in the area where the services are rendered or the supplies or materials furnished;

(ii) Reasonable and necessary expenses which may be payable pursuant to subsection (i), above, shall be directly related to the operation, maintenance or management of the Development; and

(iii) Without the Subsidizing Agency’s prior written consent, the Developer may not assign, transfer, create a security interest in, dispose of, or encumber any Development Revenues except as expressly permitted herein.

(j) 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.

MANAGEMENT OF THE DEVELOPMENT

8. The Developer shall maintain the Development in good physical condition in accordance with the Subsidizing Agency’s requirements and standards and the requirements and standards of the Mortgage and any applicable Housing Subsidy Program. The 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, the Subsidizing Agency shall have no obligation hereunder, expressed or implied, to monitor or enforce any such standards or requirements and, further, the

Subsidizing Agency 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. Prior to Substantial Completion, the following actions, without limitation, shall be subject to the Subsidizing Agency's prior written approval (which approval shall not be unreasonably withheld, conditioned or delayed):

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

(b) the conveyance, assignment, transfer, or relinquishment of twenty-five percent (25%) or more of the Beneficial Interests (herein defined) in the Developer (except for such a conveyance, assignment, transfer or relinquishment among holders of Beneficial Interests as of the date of this Agreement).

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;

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

Prior to any transfer of ownership of the Development or any portion thereof or interest therein, the Developer agrees to secure from the transferee a written agreement stating that the transferee will assume in full the Developer's obligations and duties under this Agreement.

10. The Developer shall provide the Subsidizing Agency with thirty (30) days' prior written notice of any pledge, assignment or mortgage of the Development, whether direct or indirect, and also, after Substantial Completion, of any sale, conveyance, transfer, ground lease or exchange of the Developer's interest in the Development or any part of the Development. As in Section 9 above, prior to any transfer of ownership of the Development or any portion thereof or interest therein, the Developer agrees to secure from the transferee a written agreement stating that the transferee will assume in full the Developer's obligations and duties under this Agreement.

BOOKS AND RECORDS

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

ANNUAL FINANCIAL REPORT

12. (a) Within ninety (90) days following the end of each Fiscal Year of the Development, the Developer shall furnish the Subsidizing Agency with a complete annual financial report for the Development based upon an examination of the books and records of the 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 the Subsidizing Agency which include: (i) financial statements submitted in a format acceptable to the Subsidizing Agency; (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 the Developer must approve such submission in writing. The provisions of this paragraph may be waived or modified by the Subsidizing Agency.

(b) In addition to the financial information required to be furnished by the Developer to the Subsidizing Agency pursuant to Section 12(a) above, the Developer shall furnish to the Subsidizing Agency, within ninety (90) days of the end of its Fiscal Year, an Audited Annual Limited Dividend Financial Report (including a certificate from the independent certified public accountant (the "CPA") who prepared the Developer's audited financial statements) in the form then required by the Subsidizing Agency. The Subsidizing Agency's agreement to waive or modify the requirement of an Audited Annual Limited Dividend Financial Report for a given Fiscal Year shall not be deemed to constitute a waiver or modification of the requirement of an Audited Annual Limited Dividend Financial Report for any subsequent Fiscal Year. Should the Developer fail in any given year to comply with its obligations under this subparagraph, the Developer acknowledges and agrees that such failure constitutes a knowing waiver and relinquishment of any Limited Dividend Distributions to which it might otherwise be entitled for such Fiscal Year pursuant to Sections 7(c) and/or 7(e) above.

(c) Such Audited Annual Limited Dividend Financial Report shall be accompanied by a Certificate of Developer (in the form as then reasonably required by the Subsidizing Agency) certifying to the Developer's best knowledge and belief, under the pains and penalties of perjury, as to 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 prepared the Audited Annual Limited Dividend Financial Report, (ii) there are no material transactions related to the

Development that have not been properly recorded in the accounting records underlying the Audited Annual Limited Dividend Financial Report, (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 Audited Annual Limited Dividend Financial Report 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 Audited Annual Limited Dividend Financial Report and believes that such determination is an appropriate representation of the Development.

(d) The Subsidizing Agency shall have sixty (60) days after the delivery of the Audited Annual Limited Dividend Financial Report 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 the Subsidizing Agency does not object to the Audited Annual Limited Dividend Financial Report or request additional information with respect to it, the Audited Annual Limited Dividend Financial Report shall have been deemed accepted by the Subsidizing Agency. If the Subsidizing Agency shall request additional information, then the Developer shall provide the Subsidizing Agency with such additional information as promptly as possible and the Subsidizing Agency shall have an additional thirty (30) days thereafter to review such information and either accept or raise objections to such Audited Annual Limited Dividend Financial Report. If no such objections are made within such thirty day (30) period, the Audited Annual Limited Dividend Financial Report shall be deemed accepted by the Subsidizing Agency.

To the extent that the Subsidizing Agency shall raise any objections to such Audited Annual Limited Dividend Financial Report as provided above, then the Developer and the Subsidizing Agency 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 the Subsidizing Agency may enforce the provisions under this Section 12 by the exercise of any remedies it may have under this Agreement.

(e) If upon the acceptance of an Audited Annual Limited Dividend Financial Report as provided above, such Audited Annual Limited Dividend Financial Report shall show that the aggregate Distribution Payments to the Developer during the applicable Fiscal Year exceed the allowable Limited Dividend Distribution for the Developer, then upon thirty (30) days written notice from the Subsidizing Agency, the Developer shall cause such excess to be deposited in the Excess Equity Account from sources other than Development Revenues to the extent not otherwise required by the Lender to remain with the Development.

If such Audited Annual Limited Dividend Financial Report as accepted shall show that there are excess Development Revenues for the Developer which have not been distributed ("Excess Development Revenues"), such amounts shall be applied as provided in Section 7(e) above within thirty (30) days after the acceptance of the Audited Annual Limited Dividend Financial Report as set forth in subsection (d) above.

FINANCIAL STATEMENTS AND OCCUPANCY REPORTS

13. At the request of the Subsidizing Agency, the 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. The Developer covenants and agrees to secure and maintain on file for inspection and copying by the Subsidizing Agency such information, reports and certifications as the Subsidizing Agency may reasonably require in writing in order to insure that the restrictions contained herein are being complied with. The Developer further covenants and agrees to submit to the Subsidizing Agency annually, or more frequently if required in writing by the Subsidizing Agency, reports detailing such facts as the Subsidizing Agency reasonably determines are sufficient to establish compliance with the restrictions contained hereunder, copies of leases for all Affordable Units, and a certification by the Developer that, to the best of its knowledge, the restrictions contained herein are being complied with. The Developer further covenants and agrees promptly to notify the Subsidizing Agency if the Developer discovers noncompliance with any restrictions hereunder.

NO CHANGE OF DEVELOPMENT'S USE

14. Except to the extent permitted by the Comprehensive Permit, as it may be amended pursuant to the Comprehensive Permit Rules, the Developer shall not change the type or number of Affordable Units without prior written approval of the Subsidizing Agency and an amendment to this Agreement. Except to the extent permitted by applicable zoning requirements then in effect, the 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.

NO DISCRIMINATION

15. (a) There shall be no discrimination upon the basis of race, color, disability, religion, sex, familial status, sexual orientation, national origin, genetic information, ancestry, children, marital status, public assistance reciprocity 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 construction, 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, color, disability, religion, sex, familial status, sexual orientation, national origin, genetic information, ancestry, children, marital status, public assistance reciprocity 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 Subsidizing Agency to take any corrective action it may deem necessary including, without limitation, referral to DHCD for enforcement.

DEFAULTS; REMEDIES

16. (a) If any default, violation, or breach of any provision of this Agreement is not cured to the satisfaction of the Subsidizing Agency within thirty (30) days after the giving of notice to the Developer as provided herein, then at the Subsidizing Agency's option, and without further notice, the Subsidizing Agency may either terminate this Agreement, or the Subsidizing Agency may apply to any state or federal court for specific performance of this Agreement, or the Subsidizing Agency 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. No party other than the Subsidizing Agency or its designee shall have the right to enforce the Developer's compliance with the requirements of this Agreement. The thirty (30) day cure period set forth in this paragraph shall be extended for such period of time as may be necessary to cure a non-monetary default so long as the Developer is diligently prosecuting such a cure.

(b) If the Subsidizing Agency 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 rules and regulations then in effect.

(c) In the event the Subsidizing Agency or its designee brings an action to enforce this Agreement, unless the Developer prevails in such action the Developer shall pay all fees and expenses (including legal fees) of the Subsidizing Agency and/or its designee. In such event, the Subsidizing Agency and/or its designee shall be entitled to seek recovery of its respective fees and expenses incurred in enforcing this Agreement against the Developer and to assert a lien on the Development, junior to the lien securing the Loan, to secure payment by the Developer of such fees and expenses. The Subsidizing Agency and its designee may perfect a lien on the Development by recording/filing in the Registry one or more certificates setting forth the amount of the costs and expenses due and owing.

(d) The Developer hereby grants to the Subsidizing Agency or its designee the right to enter upon the Development for the purpose of enforcing the terms of this Agreement, or of taking all actions with respect to the Development which the Subsidizing Agency may determine to be necessary or appropriate to prevent, remedy or abate any violation of this Agreement.

MONITORING AGENT; FEES; SUCCESSOR SUBSIDIZING AGENCY

17. The Subsidizing Agency intends to monitor the Developer's compliance with the requirements of this Agreement. The Developer hereby agrees to pay the Subsidizing Agency fees as partial compensation 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 the Subsidizing Agency 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 agreement with respect thereto.

18. The Subsidizing Agency 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. The Subsidizing Agency shall notify the Developer and the Municipality in the event the Subsidizing Agency 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 the Subsidizing Agency, payable within thirty (30) days of the end of each Fiscal Year of the Developer during the Term of this Agreement, 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 the Subsidizing Agency under this Agreement, and shall act on behalf of the Subsidizing Agency hereunder, to the extent that the Subsidizing Agency delegates its rights and duties by written agreement with the Monitoring Agent. The Monitoring Agent shall apply and adhere to the applicable standards, guidance and policies of DHCD relating to the administrative responsibilities of subsidizing agencies where available, and otherwise shall apply and adhere to the standards and practices of the Subsidizing Agency where applicable.

19. The Subsidizing Agency may resign from its duties hereunder upon ninety (90) days prior written notice to DHCD, the Developer, and the Municipality. In such event, DHCD may appoint a Successor Subsidizing Agency hereunder. If DHCD fails to appoint a Successor Subsidizing Agency, the Subsidizing Agency shall identify a Successor Subsidizing Agency. The Successor Subsidizing Agency shall succeed to all the duties and rights of the Subsidizing Agency hereunder and the Subsidizing Agency shall turn over all amounts and security held by it hereunder to the Successor Subsidizing Agency.

CONSTRUCTION AND FINAL COST CERTIFICATION

20. The Developer shall provide to the Subsidizing Agency 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. Upon Substantial Completion, the Developer shall provide the Subsidizing Agency 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 Subsidizing Agency.

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.

21. Within ninety (90) days after Substantial Completion, the Developer shall provide the Subsidizing Agency with its Cost Certification for the Development. The Subsidizing Agency may allow additional time for submission of the Cost Certification if significant issues are determined to exist which prevent the timely submission of the Cost Certification, and may in certain circumstances (such as a halt in construction for a significant period of time) require submission of an interim Cost Certification within ninety (90) days of written notice to the Developer.

For the purposes hereof the term “Cost Certification” shall mean the Developer’s documentation which will enable determination by the Subsidizing Agency of the aggregate amount of all Allowable 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, all in the format provided in the Subsidizing Agency’s Cost Examination Program, which Cost Certification must be examined (the “Cost Examination”) 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 certificate, executed by the Developer under pains and 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.

22. In order to ensure that the Developer shall complete the Cost Certification as and when required by Section 21 hereof and, if applicable, pay any Excess Distributions to the Municipality, the Developer has provided the Subsidizing Agency with 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 the Subsidizing Agency. If the Subsidizing Agency shall determine that the Developer has failed in its obligation to provide Cost Certification as and when described above or to pay over to the Municipality any Excess Distributions, the Subsidizing Agency may draw on such Surety in order to pay the costs of completing Cost Certification and/or paying such Excess Distribution amounts due plus reasonable attorneys fees and collections costs.

TERM

23. (a) This Agreement shall bind, and the benefits shall inure to, respectively, the Developer and its successors and assigns, and the Subsidizing Agency and its successors and

assigns, until the date which is thirty (30) years from the date hereof (the “Term”). Upon expiration of the Term, this Agreement and the rights and obligations of the Subsidizing Agency hereunder shall automatically terminate without the need of either party executing any additional document. Notwithstanding the foregoing, this Agreement may be released by the Subsidizing Agency if the Development is financed by a state or federal agency and, in connection with such financing, a regulatory agreement acceptable to the Subsidizing Agency is recorded in the Registry. The rights and obligations of the Developer and of the Subsidizing Agency under this Agreement shall continue for the Term, regardless of whether the loan from the NEF Lender is still outstanding. Prior to the expiration of the Term, the Developer shall enter into a use agreement with the Municipality, or as otherwise required by the Comprehensive Permit Rules, ensuring that the Development will comply with the continued affordability requirements applicable to the Development.

(b) Notwithstanding subsection (a) above, the provisions of Section 7 herein shall bind, and the benefits shall inure to, respectively, Developer and its successors and assigns, and the Subsidizing Agency and its successors and assigns, and the Municipality and its successors and assigns, until the date which is the latter of (i) the expiration of the term of the Loan or (ii) fifteen (15) years from the date of Substantial Completion (the “Limited Dividend Term”).

INDEMNIFICATION/LIMITATION ON LIABILITY

24. The Developer, for itself and its successors and assigns, agrees to indemnify and hold harmless the Subsidizing Agency and any Monitoring Agent against all damages, costs and liabilities, including reasonable attorney’s fees, asserted against the Subsidizing Agency or the Monitoring Agent by reason of its relationship to the Development under this Agreement and not involving the Subsidizing Agency or the Monitoring Agent acting in bad faith or with gross negligence.

25. The Subsidizing Agency shall not be held liable for any action taken or omitted under this Agreement so long as it shall have acted in good faith and without gross negligence.

26. Notwithstanding anything in this Agreement to the contrary, no partner, manager, or member of the Developer and no officer, director, shareholder, trustee, member, manager, agent, or employee of the Developer or of any partner, manager, or member thereof shall have any personal liability for the payment of any sum of money that is, or may become, payable by the Developer under or pursuant to this Agreement or for the performance of any obligation by the Developer arising pursuant to this Agreement, and the Subsidizing Agency shall look only to the Developer’s interest in the Development for such payment or performance.

Nothing herein shall preclude the Subsidizing Agency from asserting such claims as it may have at law or in equity against any partner, manager or member of the Developer or any officer, director, shareholder, trustee, member, manager, agent, or employee of the Developer or of such partner, manager or member for any loss or damage the Subsidizing Agency actually suffers as a result of any of the following:

(i) a willful breach by such person of the provisions limiting payments or distributions to partners, members, managers, or affiliates as set forth in this Agreement; or

(ii) intentional fraud committed by such person; or

(iii) a willful breach by such person of a warranty contained in this Agreement or a false representation of a material fact made by such person with respect to itself, the Developer or the Development which was known by such person to be false when made; or

(iv) a false representation knowingly made by such person that it has legal capacity and is authorized to sign this Agreement on behalf of the entity on whose behalf such individual has signed.

Nothing contained in the provisions of this Section 26 or elsewhere shall limit: (i) the right of the Subsidizing Agency to obtain injunctive relief or to pursue equitable remedies under this Agreement, excluding only any injunctive relief ordering payment of obligations by any person or entity for which personal liability does not otherwise exist; or (ii) the liability of any attorney, law firm, architect, accountant or other professional who or which renders or provides any written opinion or certificate to the Subsidizing Agency in connection with the Development even though such person or entity may be an agent or employee of the Developer or of any partner, manager, or member thereof.

MINIMUM SUBSIDY REQUIREMENTS

27. To ensure that the minimum subsidy requirements of the Comprehensive Permit Rules are satisfied, the Developer shall provide to the Subsidizing Agency a certification from the Lender (which certification may, in the case of the Construction Loan, be combined with the certification required pursuant to Section 2(b) hereof) that the Lender is an FHLBB member bank and shall not transfer all or any portion of its interest in the Loan (including participations or sale of servicing rights, but not including foreclosure of its mortgage) or consent to a refinancing of the Loan (which the Developer hereby agrees not to seek) during the first five (5) years of the Loan without the prior written approval of the Subsidizing Agency.

CASUALTY

28. Subject to the rights of the Lender, the 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 the Developer then the Developer shall be required to maintain the same percentage of Affordable Units of the total number of units in the Development.

DEVELOPER'S REPRESENTATIONS, COVENANTS AND WARRANTIES

29. The Developer hereby represents, covenants and warrants as follows:

(a) The Developer (i) is a _____ duly organized under, and is 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 loan from the NEF Lender, or other encumbrances permitted by the Subsidizing Agency).

(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.

(e) **[for use when the Developer is nominee trust/otherwise delete]** [(i) The undersigned Trustee(s) are the sole Trustee(s) of said Trust, duly appointed in accordance with the terms of the Trust; (ii) said Trust has not been altered, amended, revoked, or terminated, and is presently in full force and effect as recorded; (iii) pursuant to the powers granted under said Trust, the Trustee(s) have the power and authority to execute this Agreement, transfer real estate, and to execute and deliver deeds and related closing documents of any or all trust property; (iv) if under said Trust the consent of beneficiaries is required to authorize the Trustee(s) to execute this Agreement, that written consent of all beneficiaries has been obtained; and (v) no beneficiary is a minor, a corporation selling all or substantially all of its assets or a personal representative of an estate subject to estate tax liens or is now deceased or under any legal disability.]

MISCELLANEOUS CONTRACT PROVISIONS

30. This Agreement may not be modified or amended except with the written consent of the Subsidizing Agency or its successors and assigns and Developer or its successors and assigns. The Developer hereby agrees to make such modifications to this Agreement as may be required by DHCD to implement the Comprehensive Permit Rules, as amended from time to time.
31. The 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.
32. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.
33. 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.
34. 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.
35. 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 Subsidizing Agency, 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

36. 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:

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

If to the Subsidizing Agency:

Massachusetts Housing Finance Agency
One Beacon Street
Boston, MA 02108
Attention: Director of Comprehensive Permit Programs
Fax: 617-854-1029

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

37. 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 the Subsidizing Agency and the Monitoring Agent, if any, evidence of such recording or filing including the date and instrument, book and page or registration number of the Agreement.

GOVERNING LAW

38. 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.

CONFLICT; PRIORITY OF AGREEMENT

39. In the event of any conflict or inconsistency (including without limitation more restrictive terms) between the terms of the Comprehensive Permit, any other document relating to the Development and the terms of this Agreement, the terms of this Agreement shall control.

This Agreement is senior to the Mortgage and to any other mortgage encumbering the Development. Furthermore, the Developer understands and agrees that, in the event of foreclosure of the Mortgage and the exercise by the Lender of the power of sale therein, the Development will be sold subject to the restrictions imposed hereby. The Developer acknowledges that any discharge or termination of this Agreement shall not affect the validity or enforceability of the Comprehensive Permit or the obligations of the Developer to comply with the provisions thereof.

[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:

By: _____
Name:
Title:

**MASSACHUSETTS HOUSING
FINANCE AGENCY, as Subsidizing
Agency as aforesaid**

By: _____
Gregory P. Watson, AICP, Manager,
Comprehensive Permit Programs

Attachments:

- Exhibit A – Legal Description
- Appendix A – Rent Schedule
- Appendix B – Subsidizing Agency Fees

Acknowledgment of Zoning Board of Appeals

COMMONWEALTH OF MASSACHUSETTS

County of Suffolk _____, 20__

Then personally appeared before me, the undersigned notary public, the above-named Gregory P. Watson the Manager of Comprehensive Permit Programs of the Massachusetts Housing Finance Agency, as Subsidizing Agency as aforesaid, proved to me through satisfactory identification which was my own personal knowledge of identity of the signatory to be the person whose name is signed on the preceding document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as the Director of Comprehensive Permit Programs of the Massachusetts Housing Finance Agency.

Before me,

Notary Public
My Commission Expires: _____

STATE OF _____

County of

_____, 20__

Then personally appeared before me _____, the _____ of _____, proved to me through satisfactory evidence of identification, which was [] a current driver's license, [] a current U.S. passport, [] my personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as his/her free act and deed, in such capacity, before me

Notary Public

My Commission Expires:

SECTION 3

PROJECT ELIGIBILITY LETTER



RECEIVED
DEC 09 2015

BY:

Massachusetts Housing Finance Agency
One Beacon Street, Boston, MA 02108

TEL: 617.854.1000 | FAX: 617.854.1091
VP: 866.758.1435 | www.masshousing.com

December 7, 2015

Chris Claussen, Manager
Sudbury Station LLC
2134 Sevilla Way
Naples, FL 34109

Re: The Village at Sudbury Station
Project Eligibility/Site Approval
MassHousing ID # 790

Dear Mr. Claussen:

This letter is in response to your application as “Applicant” for a determination of Project Eligibility (Site Approval) pursuant to Massachusetts General Laws Chapter 40B (“Chapter 40B”), 760 CMR 56.00 (the “Regulations”) and the Comprehensive Permit Guidelines issued by the Department of Housing and Community Development (“DHCD”) (the “Guidelines” and, collectively with Chapter 40B and the Regulations, the “Comprehensive Permit Rules”), under the New England Fund (“NEF”) Program (“the Program”) of the Federal Home Loan Bank of Boston (“FHLBB”).

Sudbury Station LLC has submitted an application to MassHousing pursuant to Chapter 40B. The Project will include 250 units of rental housing in 12 multifamily buildings and a clubhouse on 26.42 acres (13.45 buildable acres) located on Peters Way in Sudbury (“the Municipality”).

In accordance with the Comprehensive Permit Rules, this letter is intended to be a written determination of Project Eligibility (“Site Approval”) by MassHousing acting as Subsidizing Agency under the Guidelines, including Part V thereof, “Housing Programs In Which Funding Is Provided By Other Than A State Agency.”

MassHousing performed an on-site inspection of the Site, which local boards and officials attended, and has reviewed the pertinent information for the Project submitted by the Applicant, the Municipality and others in accordance with the Comprehensive Permit Rules.

Municipal Review and Comments

Pursuant to the Regulations, the Municipality was given a thirty (30) day period in which to review the Site Approval application and submit comments to MassHousing. In response to a

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request from the Director of Planning and Community Development this was extended to 45 days. The Chairman of the Sudbury Board of Selectmen, Patricia Brown, submitted a letter (received by MassHousing November 5, 2015) summarizing comments from municipal officials, staff and members of the public. The Selectmen's letter included several attachments including letters from the Conservation Commission, the Chief of Police, Director of Planning and Community Development, and the Sudbury Housing Trust.

In summary, with the exception of the letter from the Sudbury Housing Trust, the Municipal comments expressed opposition to the project, and urged MassHousing to deny the application. Municipal concerns focused on the size and scale of the Project, and its potentially negative traffic, environmental, and visual impacts on the surrounding area. They also questioned the completion and accuracy of the application and feasibility of the Project, noting that the Site's steep slopes and lack of existing utility connections posed significant challenges.

The Selectmen's letter asserted that the Municipality had made steady progress towards increasing its inventory of affordable housing including the issuance of Comprehensive Permits for "nine 40B developments with over 200 units of housing over the past 15 years." The Selectmen's letter explained further that they were currently actively working with another developer on a similarly-sized rental 40B Project proposed for the former Raytheon site. They noted that either one of the two 40B Projects being proposed would individually fulfill the Town's obligation under Chapter 40B to provide 10% affordable housing, and concluded that after careful consideration the Board of Selectmen "had determined that it would welcome the Raytheon project and oppose the Sudbury Station Project."

The following additional concerns were identified:

- That the Site was not appropriate for a large multi-family development due to its many physical constraints including steep and varying topography, lack of utilities, limited vehicular access, and potentially negative impacts on natural, historic and cultural resources.
- That the plans were too schematic, and did not include sufficient information about proposed grading, utilities, stormwater management and wastewater treatment to allow for an adequate review of the Project's environmental impacts and general feasibility.
- The Municipality identified numerous traffic and safety concerns relative to the proposed access in and out of the Site at both Hudson Road and Concord Roads, and speculated that that it would be difficult to mitigate these concerns. They noted that the Hudson Road access would present multiple conflicts with existing driveways and traffic flow on Hudson Road, and expressed concern about limited sight distance from the proposed Project access/egress on Concord Road.
- That the height of the proposed multi-family buildings exceeded height limits established by local zoning. Public safety officials noted that no elevators were proposed for the three and four story buildings, which would make emergency access difficult.

- That should both this Project and this 40B project proposed for the Raytheon property gain approval it “may create an excessive supply of similar housing type.” (Market demand and Project feasibility at the Site Approval phase is addressed in the findings outlined in Attachment 1.)
- That the Project would have negative impacts on significant natural, historic and cultural resources:

-The Town noted that approximately half of the development site is within a priority area under the Natural Heritage Endangered Species Program (NHESP), and may not be developed. They expressed concern that the implications of the NHESP designation and the bounds of the jurisdictional area had not been determined.

-The Sudbury Conservation Commission noted that the Site is included in Sudbury’s Open Space and Recreation Plan (OSRP), and asked that the Developer provide evidence justifying the use of the land for development instead of open space preservation as designated in the OSRP.

-The Town noted that, if built, the Project would be visible from the abutting National Register District, which could potentially compromise its historical integrity. They speculated, further, that the Site may contain potentially significant archeological resources, and recommended that a comprehensive archeological study be performed to ensure a finding of “no impact” before development plans could proceed.

- The Town identified several perceived inconsistencies, omissions and errors in the Application, including the Applicant’s responses to the Sustainable Development Scorecard. The Conservation Commission expressed particular concern that the application did not identify requests from the local wetland bylaw, did not specify proposed provisions to address stormwater run-off into nearby wetlands, and did not discuss the use of Low impact Development (LID techniques) in the site plan.

Community Comments

In addition to the official Town Comments, MassHousing received two letters from individual residents, and a Petition signed by eighty (86) residents, all echoing the concerns identified by the Selectmen, and expressing opposition to the project.

MassHousing also received a letter from the Sudbury Housing Trust dated October 16, 2015, expressing conditional support for the Project, and offering the following suggestions to the Town and the developer:

- Expand the local preference definition to include employees of local businesses;
- Add to the number of three-bedroom affordable units;
- Reserve affordable units for disabled individuals;
- Use renewable energy sources;
- Use Town CPA funds to provide financial assistance for buyers of the affordable units.

Finally, the Trust pointed out that while proposed rents are affordable under the NEF Program, which follows HUD Guidelines, for the one and two-bedroom units they are higher than current Section 8 voucher amounts. They expressed concern that this project would not address the existing scarcity of units available to Section 8 voucher holders in Sudbury and throughout Metrowest area.

Comments Outside of the Findings

While Comprehensive Permit Rules require MassHousing, acting as Subsidizing Agency under the Guidelines, to “accept written comments from Local Boards and other interested parties” and to “consider any such comments prior to issuing a determination of Project Eligibility, “ they also limit MassHousing to specific findings outlined in 760 CMR 56.04(1) and (4). The following comments submitted to MassHousing identified issues that are not within the scope of our review:

- The Town explained that the current access to the property from Peters Way (off Concord Road) was created through a land swap between the Town and current property owner approved by the Sudbury Town Meeting in 2011. The Municipality charged that the property owner misled Town Meeting through representations that they only intended the Site to be developed for one, single-family lot.
- The Director of Planning and Community Development noted that should both this Project and the development proposed for the Raytheon site be built, that it would place undue strain on municipal services.

MassHousing Determination

MassHousing staff has determined that the Project appears generally eligible under the requirements of the Program, subject to final review of eligibility and to Final Approval. As a result of our review, we have made the findings as required pursuant to 760 CMR 56.04(1) and (4). Each such finding, with supporting reasoning, is set forth in further detail on Attachment 1 hereto. It is important to note that Comprehensive Permit Rules limit MassHousing to these specific findings in order to determine Project Eligibility. If, as here, MassHousing issues a determination of Project Eligibility, the Developer may apply to the Zoning Board of Appeals of the Municipality for a comprehensive permit. At that time local boards, officials and members of the public are provided the opportunity to further review the Project to ensure compliance with

applicable state and local standards and regulations.

Based on MassHousing's site and design review, and in light of feedback received from the Municipality and members of the community, the following issues should be addressed in your application to the Sudbury Zoning Board of Appeals, and you should be prepared to explore them more fully in the public hearing process:

1. Development of this Site will require compliance with all state and federal environmental laws, regulations and standards applicable to existing conditions and to the proposed use related to building construction, stormwater management, wastewater collection and treatment, and hazardous waste safety. The Applicant should expect that the Municipality will require evidence of such compliance prior to the issuance of a building permit for the Project.
2. The Applicant should provide a detailed traffic study assessing potential impacts of the Project on area roadways, including traffic volumes, crash rates, and the safety and level of service (LOS) of area intersections, and identifying appropriate traffic mitigation in compliance with all applicable state and local requirements governing site design. In particular, the Applicant should be prepared to verify the adequacy of sight distances at the proposed intersection of the site drive with Concord Road. The Applicant reported that they have hired a qualified traffic consultant and will submit a full Traffic Impact and Analysis Statement (TIAS) with their comprehensive permit application to the Sudbury ZBA.
3. In response to the concerns raised by public safety officials, the Applicant should be prepared to describe emergency access provisions within Project buildings and throughout the Site.
4. The Applicant should be prepared to address Municipal and abutter concerns relative to the size, scale, and appearance of the proposed multi-family buildings and to discuss appropriate measures to address potentially negative visual impacts. The Applicant's efforts to mitigate Project massing and scale are discussed further in the findings discussed in Attachment 1.
5. The Applicant should be prepared to address municipal concerns relative to the Project's potential impacts on the integrity of the Sudbury Center Historic District and area historic and cultural resources. MassHousing is confident that to the extent that there are documented historic resources they will be subject to the appropriate state review and regulation.
6. The Applicant should be prepared to address municipal concerns relative to the implications of the NHESP designation of a portion of the Site as a Priority Species Habitat for the Blue Spotted Salamander. The Applicant has provided MassHousing with a determination from the Division of Fisheries and Wildlife dated October 29, 2015 stating that the proposed Project as currently proposed "will not result in a prohibited 'take' of state-listed rare species."
7. The Applicant should be prepared to address Municipal concerns relative to the feasibility and effectiveness of proposed wastewater and stormwater management measures given

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existing topographic conditions. As noted above, the Project will be subject to all relevant environmental laws, regulations and standards.

8. The Applicant should be prepared to address Municipal concern about the local real estate market's capacity to absorb the large number of multi-family rental housing units currently proposed in Sudbury. The Applicant commissioned a Market Analysis Study dated May 18, 2015 prepared by LDS Consulting Group, LLC indicating "sustained demand for rental housing" based on current data, market conditions and conclusions. (An Executive Summary of this report was included in the Project application) MassHousing's Appraisal and Marketing Division performed a preliminary analysis further supporting Project feasibility, but recommending additional market analysis prior to financing and Final Approval.

MassHousing has also reviewed the application for compliance with the requirements of 760 CMR 56.04 (2) relative to Application requirements, and has determined that the material provided by the Developer in the application is sufficient to show compliance.

This Site Approval is expressly limited to the development of no more than 250 rental units under the terms of the Program, of which not less than 25% shall be restricted as affordable for low income persons or families as required under the terms of the Guidelines. It is not a commitment or guarantee of NEF financing and does not constitute a site plan or building design approval. Should you consider, prior to obtaining a comprehensive permit, the use of any other housing subsidy program, the construction of additional units, a reduction in the size of the Site, a change in tenure type or a substantial change to the overall Site Plan, you may be required to submit a new site approval application for review by MassHousing.

For guidance on the comprehensive permit review process, you are advised to consult the Guidelines. Further, we urge you to review carefully with legal counsel the M.G.L. c.40B Comprehensive Permit Regulations at 760 CMR 56.00.

This approval will be effective for a period of two years from the date of this letter. Should the Applicant not apply for a comprehensive permit within this period this letter shall be considered to be expired and no longer in effect unless MassHousing extends the effective period of this letter in writing. In addition, the Applicant is required to notify MassHousing of the following: (1) the Applicant applies to the local ZBA for a Comprehensive Permit, (2) the ZBA issues a decision and (3) any appeals are filed.

Should a comprehensive permit be issued, please note that prior to (i) commencement of construction of the Project or (ii) issuance of a building permit, the Applicant is required to submit to MassHousing a request for Final Approval of the Project (as it may have been amended) in accordance with the Comprehensive Permit Rules (see especially 760 CMR 56.04(07) and the Guidelines including, without limitation, Part III thereof concerning Affirmative Fair Housing Marketing and Resident Selection). Final Approval will not be issued unless MassHousing is able to make the same findings at the time of issuing Final Approval as required at Site Approval.

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Please note that MassHousing may not issue Final Approval if the Comprehensive Permit contains any conditions that are inconsistent with the regulatory requirements of the New England Fund Program of the FHLBB, for which MassHousing serves as Subsidizing Agency, as reflected in the applicable regulatory documents. In the interest of providing for an efficient review process and in order to avoid the potential lapse of certain appeal rights, the Applicant may wish to submit a "final draft" of the Comprehensive Permit to MassHousing for review. Applicants who avail themselves of this opportunity may avoid significant procedural delays that can result from the need to seek modification of the Comprehensive Permit after its initial issuance.

If you have any questions concerning this letter, please contact Katy Lacy at (617) 854-1098.

Sincerely,



Thomas R. Gleason
Executive Director

cc: Chrystal Kornegay, Undersecretary, DHCD
Patricia Brown, Chairman, Sudbury Board of Selectmen
Jonathan F.X. O'Brien, Chairman, Zoning Board of Appeals
Melissa Murphy Rodrigues, Town Manager
Jody Kablack, Director of Planning and Community Development

Attachment 1

760 CMR 56.04 Project Eligibility: Other Responsibilities of Subsidizing Agency
Section (4) Findings and Determinations

The Village at Sudbury Station

MassHousing hereby makes the following findings, based upon its review of the application, and taking into account information received during the site visit and from written comments:

(a) That the proposed Project appears generally eligible under the requirements of the housing subsidy program, subject to final approval under 760 CMR 56.04(7);

The Project is eligible under the NEF housing subsidy program and at least 25% of the units will be available to households earning at or below 80% of the Area Median Income (AMI), adjusted for household size, as published by the U.S. Department of Housing and Urban Development (“HUD”). The most recent HUD income limits indicate that 80% of the current median income for a four-person household in Sudbury is \$69,700.

Proposed gross rent levels of \$1307 for a one bedroom, \$1468 for a two-bedroom, and \$1812 for a three-bedroom unit reflect gross affordable rent levels for the Boston-Cambridge-Quincy HMFA under the NEF Program.

	Project Rent	Project Utilities	Gross Tenant Costs	HUD Affordable Rent
One Bedroom	\$1190	\$117	\$1307	\$1307
Two Bedroom	\$1419	\$145	\$1468	\$1568
Three Bedroom	\$1629	\$163	\$1812	\$1812

A letter of interest to provide financing under the NEF Program was provided by Citizens Bank, a member bank of the Federal Home Loan Bank of Boston.

(b) that the site of the proposed Project is generally appropriate for residential development, taking into consideration information provided by the Municipality or other parties regarding municipal actions previously taken to meet affordable housing needs, such as inclusionary zoning, multifamily districts adopted under c.40A, and overlay districts adopted under c.40R, (such finding, with supporting reasoning, to be set forth in reasonable detail);

Based on a site inspection by MassHousing staff, internal discussions, and a thorough review of the application, MassHousing finds that the Site is suitable for residential use and development, that such use would be compatible with surrounding uses, and would directly address the local need for affordable housing. With the exception of the 26.42-acre northern portion of the property, which is subject to an Agricultural Preservation Restriction, the Site is zoned for single-family residential development, suggesting that it is appropriate for residential use. While there is no municipal sewer in the area, it appears that connections to municipal water, electricity

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and telecommunication are possible. The location is in close proximity to area commuter routes and services.

Section IV-A (3) (a) of the Guidelines provide guidance to Subsidizing Agencies for evaluating a municipality's actions intended to meet affordable housing needs. MassHousing carefully reviewed the information provided by the Sudbury Board of Selectmen describing previous municipal actions intended to provide affordable housing. The Selectmen's letter identified a variety of municipal actions including the development of a Housing Production Plan, the use of CPA funds for the development of affordable housing, and the issuance of Comprehensive Permits for "nine 40B developments with over 200 units of housing over the past 15 years." The Selectmen's letter explained further that they were currently actively working with another developer on a similarly-sized rental 40B Project proposed for the former Raytheon site, and noted that they felt that this was a more appropriate site for development.

However, Municipal actions to date have not resulted in housing production of a "character and scale to create significant opportunities as-of-right to meet the municipality's need for affordable housing as measured by the Statutory Minima." According to DHCD's Chapter 40B Subsidized Housing Inventory (SHI), updated through December, 2014, Sudbury has 354 Subsidized Housing Inventory (SHI) units (6.0 % of its housing inventory). An additional 218 units in total would be required for the Town to achieve the 10% threshold of 592.

The need for additional affordable housing is further supported by U.S. Census data from the 2009-2013 American Community Survey (ACS), which indicates that of the 5,783 households in the Town of Sudbury, approximately 32.2% earned less than the HUD published AMI (\$98,500), approximately 15.2% earn less than 80% of the 2015 AMI, and approximately 10.2% earned less than 50% of the 2015 AMI.

Sudbury has a DHCD-approved Housing Production Plan (HPP) dated July 14, 2011. The Village at Sudbury Station appears to comply with municipal affordable housing goals as identified in this plan. The HPP notes that "Sudbury has the lowest percentage of rental housing of its neighboring communities"...and lays out a specific strategy for reaching the 10% threshold required under Chapter 40B, including the development of an additional 233 affordable units created through private 40B developments by 2016. Given that more than half of the Town's existing affordable units (.53%) are age restricted, while the 2010 Census shows only 12.2% of the population over age 65, the Project will directly address Goal #1 from the HPP, which is to "Promote a diversity of housing types in Sudbury to meet the needs of a changing and diversified population, particularly with increased production of rental units, development of multi-family buildings, duplexes, and single-family attached dwellings..."

(c) that the conceptual project design is generally appropriate for the site on which it is located, taking into consideration factors that may include proposed use, conceptual site plan and building massing, topography, environmental resources, and integration into existing development patterns (such finding, with supporting reasoning, to be set forth in reasonable detail);

Relationship to Adjacent Building Typology (including building massing, site arrangement,

The Project includes a clubhouse building and 12 residential structures; three, larger four-story apartment buildings; two, mid-sized, three-story apartment buildings; and eight, residentially scaled, two-story buildings containing between 5-13 units each. Buildings are laid out around a central open space which serves much like a town common, and the entire developed portion of the Site is largely surrounded by protected open space, limiting visibility to or from surrounding development. In this way, the Project establishes its own building typology, though with reference to the surrounding traditional New England village context.

The proposed conceptual elevations are schematic, but show architectural detailing intended to provide variety between the 12 residential structures and to reduce the mass of the buildings with varying roof lines and building setbacks for the three garden-style apartment buildings as well as the smaller townhouse style structures. Decorative features include "Shingle-Style" details including porches, steeply sloped roof and window dormers, and six-over-one paired windows on all floors. Building materials include stone and brick bases, and clapboard siding. The smaller, two-story townhouse-style structures located closer to the cemetery (Buildings 6, 7, 8 and 9) feature traditional, single-family residential forms including peaked roofs and front entry porticos. Ground floor elevations give the appearance of single-family homes, with eye-level front windows, and foundation planting.

Relationship to adjacent streets/Integration into existing development patterns

The Project will be accessed by a new roadway linking Hudson Road, to the south, through the Site and out to Concord Road (to the east). Immediately across from the project's entrance on Hudson Road is a low-scale, mixed-use commercial development including two restaurants and a variety of professional services. Existing development on Hudson and Concord Road consists of larger single-family homes set back from the road on spacious, wooded lots. Development within the Site, in contrast, consists of variably-sized buildings clustered around a central common open area, similar to the development pattern in the nearby historic town center

Density

The Project has a gross density of 6.27 units per acre (18.59 units per buildable acre). Perceptions of Project density are ameliorated, however, through the presence of a landscaped central open area, and the surrounding ring of undeveloped land, providing attractive open vistas within and out from the proposed development.

Conceptual Site Plan

Project buildings are linked by the site drive, which leads into the Site from Hudson Road, passes by the existing home at 30 Hudson Road, loops around a central common open space, and continues out on Concord Road. As described below under Topography, the smaller-scale, two and three-story buildings line both sides of the site drive along the Site's higher elevations to the east, with the taller, four-story structures on lower elevations to the west. A central, landscaped open area reminiscent of a traditional town common serves as a central organizing principle. Pathways and sidewalks provide pedestrian access throughout the site, linking Project buildings to shared open spaces and each other. Submitted materials indicate that existing vegetative borders along the property lines will be preserved for screening and separation.

Environmental Resources

Much of the undeveloped northern portion of the Site is included in a Priority Habitat for the Blue Spotted Salamander in accordance with Natural Heritage and Endangered Species Act. The Applicant has provided MassHousing with a determination from the Division of Fisheries and Wildlife dated October 29, 2015 stating that the proposed Project as currently proposed “will not result in a prohibited ‘take’ of state-listed rare species.” Additionally, the existing home at 30 Hudson Road is included in the Old Sudbury Historic District. The developed portion of the Project is laid out so as to avoid disturbance of these protected areas.

The entire northeastern portion of the Site is subject to a local Agricultural Preservation Restriction (APR), a small area of which is currently farmed, and the remainder of which is heavily wooded. Additionally, the Site Plan shows the retention of a significant amount of existing vegetation around the perimeter of the developed area. Together with the cemetery to the east, and the Parkinson Parcel Park to the west, the broad ring of open space surrounding the Project serves to enhance views out from the Site, and retain the semi-rural character of the surrounding area by minimizing views of project buildings from adjacent neighborhoods and roadways.

Topography

The site slopes down from the Old Town Cemetery to the east to the rail trail bounding the property to the west. The proposed plans indicate that slopes on the site exceed 10% in places, with slopes in some areas in excess of 20%. The proposal makes use of the sloping nature of the site by siting the taller buildings at the lower points (to the west along the rail trail) where they will be visible only from the adjacent commercial warehouse property and municipal playing field, and lower buildings on higher ground near the cemetery. Schematic site sections are included indicating that thought has been given to site lines into the Project from neighboring properties and Concord and Hudson roads.

(d) that the proposed Project appears financially feasible within the housing market in which it will be situated (based on comparable rentals or sales figures);

The Applicant proposes the construction of 250 apartments to be financed under the NEF Program. There will be 187 market-rate units with proposed average rent levels of \$1,950 for the one-bedroom units, \$2,300 for the two-bedroom units, and \$2,850 for the three-bedroom units. MassHousing’s Appraisal and Marketing Division (A&M) reviewed comparable rental developments in the area and has noted that proposed market rents fall within (though at the upper end of) the adjusted range of comparable rents for one, two and three-bedroom units. A&M’s review indicate that between 2010 and 2015 the inventory of rental housing in the West/Northwest suburban submarket expanded by 1.3% on year on average. Despite this expansion, rents in this region have continued to rise since 2015 by 17% on average, and vacancy rates have remained relatively steady at 3-4% on average. A&M estimated that the location will attract interest given its proximity to area commuter route and services.

(e) that an initial pro forma has been reviewed, including a land valuation determination consistent with the Department's Guidelines, and the Project appears financially feasible and consistent with the Department's Guidelines for Cost Examination and Limitations on Profits and Distributions (if applicable) on the basis of estimated development costs;

MassHousing has commissioned an as "As-Is" appraisal which indicates a land valuation of \$3,500,000. Based on a proposed investment of \$8,698,326 in private equity the pro forma appears to be financially feasible and within the limitations on profits and distributions. Project costs for site work fall on the higher end of the usual allowance, perhaps due to the need to construct a private wastewater treatment plant.

(f) that the Applicant is a public agency, a non-profit organization, or a Limited Dividend Organization, and it meets the general eligibility standards of the housing program; and

The Applicant must be organized as a Limited Dividend Organization. MassHousing sees no reason this requirement could not be met given information reviewed to date. The Applicant meets the general eligibility standards of the NEF housing subsidy program and has executed an Acknowledgment of Obligations to restrict their profits in accordance with the applicable limited dividend provisions.

(g) That the Applicant controls the site, based on evidence that the Applicant or a related entity owns the site, or holds an option or contract to acquire such interest in the site, or has such other interest in the site as is deemed by the Subsidizing Agency to be sufficient to control the site.

The Applicant controls the Site by virtue of two Purchase and Sale Agreements as follows

- A. Purchase and Sale Agreement dated October 8, 2014 between JOC and JRH Trust (seller) and Christopher G. Claussen
- B. Purchase and Sale #2 dated January 9, 2015 between Mathew S. Gilmartin and Molly F. Gilmartin (seller) and Christopher J. Claussen

EXHIBIT A
LEGAL DESCRIPTION

APPENDIX A
RENT SCHEDULE (INITIAL)
 [Sample/Model]

Low-Income / Rental Assisted At or Below ____ % of AMI Rental Assisted <i>[Delete Columns if N/A]</i>	Low/Moderate-Income ¹ Rent Set at 30% of 80% AMI Qualify with Incomes at or Below 80% of AMI	Market Rate Unrestricted
--	---	---------------------------------

Number of Bedrooms	<u>1 BR</u>	<u>2 BR</u>	<u>3 BR</u>	<u>1 BR</u>	<u>2 BR</u>	<u>3 BR</u>	<u>1 BR</u>	<u>2 BR</u>	<u>3 BR</u>
Number of Units	#	#	#	#	#	#	#	#	#
Net SF/Unit	---	-,---	-,---	---	-,---	-,---	---	-,---	-,---
Elev. (E) / Non-Elev. (N)	E or N	E or N	E or N	E or N	E or N	E or N	E or N	E or N	E or N
Applicable Base/Gross Rent:	\$-,---	\$-,---	\$-,---	\$-,---	\$-,---	\$-,---	\$-,---	\$-,---	\$-,---
Per: <u>[Identify²]</u> MSA or HMFA									
Utility Allowance**	\$---	\$---	\$---	\$---	\$---	\$---	N/A	N/A	N/A
Tenant Rent*	30% of adjusted gross income			\$-,---	\$-,---	\$-,---	\$-,---	\$-,---	\$-,---

* **Tenant Rents** are net of utility allowances. The total of tenant rent and utility allowance may not exceed the Applicable Base/Gross Rent.

****Utility Allowances** are based on the attached schedule or matrix prepared by the [Town Name] Housing Authority and dated _____, as the same may be amended from time to time. The dollar amount listed assumes the following utilities are to be paid by the tenant: *[list all that apply or "All utilities included in rent."]*
 [Oil, Gas or Electric] Heat for the [e.g. "Low-Rise – Garden"] Housing Type;
 [Oil, Gas or Electric] Water Heating; [Gas or Electric] Cooking Fuel; and Electricity

The following utilities are to be paid by the owner/landlord and included in the rent: *[list all that apply or "none"]*
 [Oil, Gas or Electric] Heat for the [e.g. "Low-Rise – Garden"] Housing Type;
 [Oil, Gas or Electric] Water Heating; [Gas or Electric] Cooking Fuel; and Electricity

[If alternative method for calculation of utility allowances is employed, describe here in detail.]

¹ Maximum NEF Ch. 40B affordable unit Rent Limits are calculated based on 30% of the 80% of the Area Median Income (AMI) Limit as derived from income limits published annually by HUD. Changes to the published income limits will result in changes to the rent limits. Unless subsidized under another housing subsidy program, the 80% of AMI Limit also is the standard used to qualify for occupancy at NEF Ch. 40B affordable housing developments.

² Identify subject income limit area, i.e. Metropolitan Statistical Area (MSA) or HUD Metro FMR Areas (HMFA) – See "Area" definition.

APPENDIX B

FEE PAYABLE TO SUBSIDIZING AGENCY

- **Masshousing NEF Rental Regulatory Agreement Affordability and Limited Dividend Monitoring Fees**
 - Initial Fee Due upon Execution of the Regulatory Agreement by MassHousing
 - \$7,500
 - Annual Fee Payable at the time of Initial Occupancy and Annually thereafter
 - \$200 per affordable unit per year

ACKNOWLEDGEMENT OF ZONING BOARD OF APPEALS

The undersigned duly authorized Chairman and members of the _____ Zoning Board of Appeals hereby acknowledges that, after due consideration of the Developer’s request, pursuant to the requirements of 760 CMR 56.05(11), the Board hereby agrees that the foregoing Regulatory Agreement satisfies the requirements of the Comprehensive Permit as defined therein. Without limiting the generality of the foregoing, the units in the Development required to be affordable under the Comprehensive Permit shall be affordable if such units are rented in accordance with Section 3, 4 and 5 of the foregoing Regulatory Agreement; any local preference set forth in the Comprehensive Permit shall be implemented only to the extent in compliance with applicable state and federal fair housing rules; and compliance with the limited dividend requirement shall be determined solely by the Subsidizing Agency under the Regulatory Agreement using the standards of the Subsidizing Agency applicable to comprehensive permit projects in accordance with the Comprehensive Permit Rules. In addition, the conflict provision of the Regulatory Agreement shall control over any conflict provision of the Comprehensive Permit.

Name:
Chairman, _____ Zoning Board of Appeals

Name:

Name:

Name:

Name:

COMMONWEALTH OF MASSACHUSETTS

_____ County, ss.

On this ____ day of _____, 20__, before me, the undersigned notary public, personally appeared _____, the Chairman of the _____ Zoning Board of Appeals, proved to me through satisfactory evidence of identification, which was [a current driver’s license] [a current U.S. passport] [my personal knowledge], to be the person whose name is signed on the preceding instrument and acknowledged the foregoing instrument to be his or her free act and deed.

Notary Public
My commission expires:

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request from the Director of Planning and Community Development this was extended to 45 days. The Chairman of the Sudbury Board of Selectmen, Patricia Brown, submitted a letter (received by MassHousing November 5, 2015) summarizing comments from municipal officials, staff and members of the public. The Selectmen's letter included several attachments including letters from the Conservation Commission, the Chief of Police, Director of Planning and Community Development, and the Sudbury Housing Trust.

In summary, with the exception of the letter from the Sudbury Housing Trust, the Municipal comments expressed opposition to the project, and urged MassHousing to deny the application. Municipal concerns focused on the size and scale of the Project, and its potentially negative traffic, environmental, and visual impacts on the surrounding area. They also questioned the completion and accuracy of the application and feasibility of the Project, noting that the Site's steep slopes and lack of existing utility connections posed significant challenges.

The Selectmen's letter asserted that the Municipality had made steady progress towards increasing its inventory of affordable housing including the issuance of Comprehensive Permits for "nine 40B developments with over 200 units of housing over the past 15 years." The Selectmen's letter explained further that they were currently actively working with another developer on a similarly-sized rental 40B Project proposed for the former Raytheon site. They noted that either one of the two 40B Projects being proposed would individually fulfill the Town's obligation under Chapter 40B to provide 10% affordable housing, and concluded that after careful consideration the Board of Selectmen "had determined that it would welcome the Raytheon project and oppose the Sudbury Station Project."

The following additional concerns were identified:

- That the Site was not appropriate for a large multi-family development due to its many physical constraints including steep and varying topography, lack of utilities, limited vehicular access, and potentially negative impacts on natural, historic and cultural resources.
- That the plans were too schematic, and did not include sufficient information about proposed grading, utilities, stormwater management and wastewater treatment to allow for an adequate review of the Project's environmental impacts and general feasibility.
- The Municipality identified numerous traffic and safety concerns relative to the proposed access in and out of the Site at both Hudson Road and Concord Roads, and speculated that that it would be difficult to mitigate these concerns. They noted that the Hudson Road access would present multiple conflicts with existing driveways and traffic flow on Hudson Road, and expressed concern about limited sight distance from the proposed Project access/egress on Concord Road.
- That the height of the proposed multi-family buildings exceeded height limits established by local zoning. Public safety officials noted that no elevators were proposed for the three and four story buildings, which would make emergency access difficult.

- That should both this Project and this 40B project proposed for the Raytheon property gain approval it “may create an excessive supply of similar housing type.” (Market demand and Project feasibility at the Site Approval phase is addressed in the findings outlined in Attachment 1.)
- That the Project would have negative impacts on significant natural, historic and cultural resources:

-The Town noted that approximately half of the development site is within a priority area under the Natural Heritage Endangered Species Program (NHESP), and may not be developed. They expressed concern that the implications of the NHESP designation and the bounds of the jurisdictional area had not been determined.

-The Sudbury Conservation Commission noted that the Site is included in Sudbury’s Open Space and Recreation Plan (OSRP), and asked that the Developer provide evidence justifying the use of the land for development instead of open space preservation as designated in the OSRP.

-The Town noted that, if built, the Project would be visible from the abutting National Register District, which could potentially compromise its historical integrity. They speculated, further, that the Site may contain potentially significant archeological resources, and recommended that a comprehensive archeological study be performed to ensure a finding of “no impact” before development plans could proceed.

- The Town identified several perceived inconsistencies, omissions and errors in the Application, including the Applicant’s responses to the Sustainable Development Scorecard. The Conservation Commission expressed particular concern that the application did not identify requests from the local wetland bylaw, did not specify proposed provisions to address stormwater run-off into nearby wetlands, and did not discuss the use of Low impact Development (LID techniques) in the site plan.

Community Comments

In addition to the official Town Comments, MassHousing received two letters from individual residents, and a Petition signed by eighty (86) residents, all echoing the concerns identified by the Selectmen, and expressing opposition to the project.

MassHousing also received a letter from the Sudbury Housing Trust dated October 16, 2015, expressing conditional support for the Project, and offering the following suggestions to the Town and the developer:

- Expand the local preference definition to include employees of local businesses;
- Add to the number of three-bedroom affordable units;
- Reserve affordable units for disabled individuals;
- Use renewable energy sources;
- Use Town CPA funds to provide financial assistance for buyers of the affordable units.

Finally, the Trust pointed out that while proposed rents are affordable under the NEF Program, which follows HUD Guidelines, for the one and two-bedroom units they are higher than current Section 8 voucher amounts. They expressed concern that this project would not address the existing scarcity of units available to Section 8 voucher holders in Sudbury and throughout Metrowest area.

Comments Outside of the Findings

While Comprehensive Permit Rules require MassHousing, acting as Subsidizing Agency under the Guidelines, to “accept written comments from Local Boards and other interested parties” and to “consider any such comments prior to issuing a determination of Project Eligibility, “ they also limit MassHousing to specific findings outlined in 760 CMR 56.04(1) and (4). The following comments submitted to MassHousing identified issues that are not within the scope of our review:

- The Town explained that the current access to the property from Peters Way (off Concord Road) was created through a land swap between the Town and current property owner approved by the Sudbury Town Meeting in 2011. The Municipality charged that the property owner misled Town Meeting through representations that they only intended the Site to be developed for one, single-family lot.
- The Director of Planning and Community Development noted that should both this Project and the development proposed for the Raytheon site be built, that it would place undue strain on municipal services.

MassHousing Determination

MassHousing staff has determined that the Project appears generally eligible under the requirements of the Program, subject to final review of eligibility and to Final Approval. As a result of our review, we have made the findings as required pursuant to 760 CMR 56.04(1) and (4). Each such finding, with supporting reasoning, is set forth in further detail on Attachment 1 hereto. It is important to note that Comprehensive Permit Rules limit MassHousing to these specific findings in order to determine Project Eligibility. If, as here, MassHousing issues a determination of Project Eligibility, the Developer may apply to the Zoning Board of Appeals of the Municipality for a comprehensive permit. At that time local boards, officials and members of the public are provided the opportunity to further review the Project to ensure compliance with

applicable state and local standards and regulations.

Based on MassHousing's site and design review, and in light of feedback received from the Municipality and members of the community, the following issues should be addressed in your application to the Sudbury Zoning Board of Appeals, and you should be prepared to explore them more fully in the public hearing process:

1. Development of this Site will require compliance with all state and federal environmental laws, regulations and standards applicable to existing conditions and to the proposed use related to building construction, stormwater management, wastewater collection and treatment, and hazardous waste safety. The Applicant should expect that the Municipality will require evidence of such compliance prior to the issuance of a building permit for the Project.
2. The Applicant should provide a detailed traffic study assessing potential impacts of the Project on area roadways, including traffic volumes, crash rates, and the safety and level of service (LOS) of area intersections, and identifying appropriate traffic mitigation in compliance with all applicable state and local requirements governing site design. In particular, the Applicant should be prepared to verify the adequacy of sight distances at the proposed intersection of the site drive with Concord Road. The Applicant reported that they have hired a qualified traffic consultant and will submit a full Traffic Impact and Analysis Statement (TIAS) with their comprehensive permit application to the Sudbury ZBA.
3. In response to the concerns raised by public safety officials, the Applicant should be prepared to describe emergency access provisions within Project buildings and throughout the Site.
4. The Applicant should be prepared to address Municipal and abutter concerns relative to the size, scale, and appearance of the proposed multi-family buildings and to discuss appropriate measures to address potentially negative visual impacts. The Applicant's efforts to mitigate Project massing and scale are discussed further in the findings discussed in Attachment 1.
5. The Applicant should be prepared to address municipal concerns relative to the Project's potential impacts on the integrity of the Sudbury Center Historic District and area historic and cultural resources. MassHousing is confident that to the extent that there are documented historic resources they will be subject to the appropriate state review and regulation.
6. The Applicant should be prepared to address municipal concerns relative to the implications of the NHESP designation of a portion of the Site as a Priority Species Habitat for the Blue Spotted Salamander. The Applicant has provided MassHousing with a determination from the Division of Fisheries and Wildlife dated October 29, 2015 stating that the proposed Project as currently proposed "will not result in a prohibited 'take' of state-listed rare species."
7. The Applicant should be prepared to address Municipal concerns relative to the feasibility and effectiveness of proposed wastewater and stormwater management measures given

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existing topographic conditions. As noted above, the Project will be subject to all relevant environmental laws, regulations and standards.

8. The Applicant should be prepared to address Municipal concern about the local real estate market's capacity to absorb the large number of multi-family rental housing units currently proposed in Sudbury. The Applicant commissioned a Market Analysis Study dated May 18, 2015 prepared by LDS Consulting Group, LLC indicating "sustained demand for rental housing" based on current data, market conditions and conclusions. (An Executive Summary of this report was included in the Project application) MassHousing's Appraisal and Marketing Division performed a preliminary analysis further supporting Project feasibility, but recommending additional market analysis prior to financing and Final Approval.

MassHousing has also reviewed the application for compliance with the requirements of 760 CMR 56.04 (2) relative to Application requirements, and has determined that the material provided by the Developer in the application is sufficient to show compliance.

This Site Approval is expressly limited to the development of no more than 250 rental units under the terms of the Program, of which not less than 25% shall be restricted as affordable for low income persons or families as required under the terms of the Guidelines. It is not a commitment or guarantee of NEF financing and does not constitute a site plan or building design approval. Should you consider, prior to obtaining a comprehensive permit, the use of any other housing subsidy program, the construction of additional units, a reduction in the size of the Site, a change in tenure type or a substantial change to the overall Site Plan, you may be required to submit a new site approval application for review by MassHousing.

For guidance on the comprehensive permit review process, you are advised to consult the Guidelines. Further, we urge you to review carefully with legal counsel the M.G.L. c.40B Comprehensive Permit Regulations at 760 CMR 56.00.

This approval will be effective for a period of two years from the date of this letter. Should the Applicant not apply for a comprehensive permit within this period this letter shall be considered to be expired and no longer in effect unless MassHousing extends the effective period of this letter in writing. In addition, the Applicant is required to notify MassHousing of the following: (1) the Applicant applies to the local ZBA for a Comprehensive Permit, (2) the ZBA issues a decision and (3) any appeals are filed.

Should a comprehensive permit be issued, please note that prior to (i) commencement of construction of the Project or (ii) issuance of a building permit, the Applicant is required to submit to MassHousing a request for Final Approval of the Project (as it may have been amended) in accordance with the Comprehensive Permit Rules (see especially 760 CMR 56.04(07) and the Guidelines including, without limitation, Part III thereof concerning Affirmative Fair Housing Marketing and Resident Selection). Final Approval will not be issued unless MassHousing is able to make the same findings at the time of issuing Final Approval as required at Site Approval.

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Please note that MassHousing may not issue Final Approval if the Comprehensive Permit contains any conditions that are inconsistent with the regulatory requirements of the New England Fund Program of the FHLBB, for which MassHousing serves as Subsidizing Agency, as reflected in the applicable regulatory documents. In the interest of providing for an efficient review process and in order to avoid the potential lapse of certain appeal rights, the Applicant may wish to submit a "final draft" of the Comprehensive Permit to MassHousing for review. Applicants who avail themselves of this opportunity may avoid significant procedural delays that can result from the need to seek modification of the Comprehensive Permit after its initial issuance.

If you have any questions concerning this letter, please contact Katy Lacy at (617) 854-1098.

Sincerely,



Thomas R. Gleason
Executive Director

cc: Chrystal Kornegay, Undersecretary, DHCD
Patricia Brown, Chairman, Sudbury Board of Selectmen
Jonathan F.X. O'Brien, Chairman, Zoning Board of Appeals
Melissa Murphy Rodrigues, Town Manager
Jody Kablack, Director of Planning and Community Development

Attachment 1

760 CMR 56.04 Project Eligibility: Other Responsibilities of Subsidizing Agency
Section (4) Findings and Determinations

The Village at Sudbury Station

MassHousing hereby makes the following findings, based upon its review of the application, and taking into account information received during the site visit and from written comments:

(a) That the proposed Project appears generally eligible under the requirements of the housing subsidy program, subject to final approval under 760 CMR 56.04(7);

The Project is eligible under the NEF housing subsidy program and at least 25% of the units will be available to households earning at or below 80% of the Area Median Income (AMI), adjusted for household size, as published by the U.S. Department of Housing and Urban Development (“HUD”). The most recent HUD income limits indicate that 80% of the current median income for a four-person household in Sudbury is \$69,700.

Proposed gross rent levels of \$1307 for a one bedroom, \$1468 for a two-bedroom, and \$1812 for a three-bedroom unit reflect gross affordable rent levels for the Boston-Cambridge-Quincy HMFA under the NEF Program.

	Project Rent	Project Utilities	Gross Tenant Costs	HUD Affordable Rent
One Bedroom	\$1190	\$117	\$1307	\$1307
Two Bedroom	\$1419	\$145	\$1468	\$1568
Three Bedroom	\$1629	\$163	\$1812	\$1812

A letter of interest to provide financing under the NEF Program was provided by Citizens Bank, a member bank of the Federal Home Loan Bank of Boston.

(b) that the site of the proposed Project is generally appropriate for residential development, taking into consideration information provided by the Municipality or other parties regarding municipal actions previously taken to meet affordable housing needs, such as inclusionary zoning, multifamily districts adopted under c.40A, and overlay districts adopted under c.40R, (such finding, with supporting reasoning, to be set forth in reasonable detail);

Based on a site inspection by MassHousing staff, internal discussions, and a thorough review of the application, MassHousing finds that the Site is suitable for residential use and development, that such use would be compatible with surrounding uses, and would directly address the local need for affordable housing. With the exception of the 26.42-acre northern portion of the property, which is subject to an Agricultural Preservation Restriction, the Site is zoned for single-family residential development, suggesting that it is appropriate for residential use. While there is no municipal sewer in the area, it appears that connections to municipal water, electricity

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and telecommunication are possible. The location is in close proximity to area commuter routes and services.

Section IV-A (3) (a) of the Guidelines provide guidance to Subsidizing Agencies for evaluating a municipality's actions intended to meet affordable housing needs. MassHousing carefully reviewed the information provided by the Sudbury Board of Selectmen describing previous municipal actions intended to provide affordable housing. The Selectmen's letter identified a variety of municipal actions including the development of a Housing Production Plan, the use of CPA funds for the development of affordable housing, and the issuance of Comprehensive Permits for "nine 40B developments with over 200 units of housing over the past 15 years." The Selectmen's letter explained further that they were currently actively working with another developer on a similarly-sized rental 40B Project proposed for the former Raytheon site, and noted that they felt that this was a more appropriate site for development.

However, Municipal actions to date have not resulted in housing production of a "character and scale to create significant opportunities as-of-right to meet the municipality's need for affordable housing as measured by the Statutory Minima." According to DHCD's Chapter 40B Subsidized Housing Inventory (SHI), updated through December, 2014, Sudbury has 354 Subsidized Housing Inventory (SHI) units (6.0 % of its housing inventory). An additional 218 units in total would be required for the Town to achieve the 10% threshold of 592.

The need for additional affordable housing is further supported by U.S. Census data from the 2009-2013 American Community Survey (ACS), which indicates that of the 5,783 households in the Town of Sudbury, approximately 32.2% earned less than the HUD published AMI (\$98,500), approximately 15.2% earn less than 80% of the 2015 AMI, and approximately 10.2% earned less than 50% of the 2015 AMI.

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(c) that the conceptual project design is generally appropriate for the site on which it is located, taking into consideration factors that may include proposed use, conceptual site plan and building massing, topography, environmental resources, and integration into existing development patterns (such finding, with supporting reasoning, to be set forth in reasonable detail);

Relationship to Adjacent Building Typology (including building massing, site arrangement,

The Project includes a clubhouse building and 12 residential structures; three, larger four-story apartment buildings; two, mid-sized, three-story apartment buildings; and eight, residentially scaled, two-story buildings containing between 5-13 units each. Buildings are laid out around a central open space which serves much like a town common, and the entire developed portion of the Site is largely surrounded by protected open space, limiting visibility to or from surrounding development. In this way, the Project establishes its own building typology, though with reference to the surrounding traditional New England village context.

The proposed conceptual elevations are schematic, but show architectural detailing intended to provide variety between the 12 residential structures and to reduce the mass of the buildings with varying roof lines and building setbacks for the three garden-style apartment buildings as well as the smaller townhouse style structures. Decorative features include "Shingle-Style" details including porches, steeply sloped roof and window dormers, and six-over-one paired windows on all floors. Building materials include stone and brick bases, and clapboard siding. The smaller, two-story townhouse-style structures located closer to the cemetery (Buildings 6, 7, 8 and 9) feature traditional, single-family residential forms including peaked roofs and front entry porticos. Ground floor elevations give the appearance of single-family homes, with eye-level front windows, and foundation planting.

Relationship to adjacent streets/Integration into existing development patterns

The Project will be accessed by a new roadway linking Hudson Road, to the south, through the Site and out to Concord Road (to the east). Immediately across from the project's entrance on Hudson Road is a low-scale, mixed-use commercial development including two restaurants and a variety of professional services. Existing development on Hudson and Concord Road consists of larger single-family homes set back from the road on spacious, wooded lots. Development within the Site, in contrast, consists of variably-sized buildings clustered around a central common open area, similar to the development pattern in the nearby historic town center

Density

The Project has a gross density of 6.27 units per acre (18.59 units per buildable acre). Perceptions of Project density are ameliorated, however, through the presence of a landscaped central open area, and the surrounding ring of undeveloped land, providing attractive open vistas within and out from the proposed development.

Conceptual Site Plan

Project buildings are linked by the site drive, which leads into the Site from Hudson Road, passes by the existing home at 30 Hudson Road, loops around a central common open space, and continues out on Concord Road. As described below under Topography, the smaller-scale, two and three-story buildings line both sides of the site drive along the Site's higher elevations to the east, with the taller, four-story structures on lower elevations to the west. A central, landscaped open area reminiscent of a traditional town common serves as a central organizing principle. Pathways and sidewalks provide pedestrian access throughout the site, linking Project buildings to shared open spaces and each other. Submitted materials indicate that existing vegetative borders along the property lines will be preserved for screening and separation.

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Much of the undeveloped northern portion of the Site is included in a Priority Habitat for the Blue Spotted Salamander in accordance with Natural Heritage and Endangered Species Act. The Applicant has provided MassHousing with a determination from the Division of Fisheries and Wildlife dated October 29, 2015 stating that the proposed Project as currently proposed “will not result in a prohibited ‘take’ of state-listed rare species.” Additionally, the existing home at 30 Hudson Road is included in the Old Sudbury Historic District. The developed portion of the Project is laid out so as to avoid disturbance of these protected areas.

The entire northeastern portion of the Site is subject to a local Agricultural Preservation Restriction (APR), a small area of which is currently farmed, and the remainder of which is heavily wooded. Additionally, the Site Plan shows the retention of a significant amount of existing vegetation around the perimeter of the developed area. Together with the cemetery to the east, and the Parkinson Parcel Park to the west, the broad ring of open space surrounding the Project serves to enhance views out from the Site, and retain the semi-rural character of the surrounding area by minimizing views of project buildings from adjacent neighborhoods and roadways.

Topography

The site slopes down from the Old Town Cemetery to the east to the rail trail bounding the property to the west. The proposed plans indicate that slopes on the site exceed 10% in places, with slopes in some areas in excess of 20%. The proposal makes use of the sloping nature of the site by siting the taller buildings at the lower points (to the west along the rail trail) where they will be visible only from the adjacent commercial warehouse property and municipal playing field, and lower buildings on higher ground near the cemetery. Schematic site sections are included indicating that thought has been given to site lines into the Project from neighboring properties and Concord and Hudson roads.

(d) that the proposed Project appears financially feasible within the housing market in which it will be situated (based on comparable rentals or sales figures);

The Applicant proposes the construction of 250 apartments to be financed under the NEF Program. There will be 187 market-rate units with proposed average rent levels of \$1,950 for the one-bedroom units, \$2,300 for the two-bedroom units, and \$2,850 for the three-bedroom units. MassHousing’s Appraisal and Marketing Division (A&M) reviewed comparable rental developments in the area and has noted that proposed market rents fall within (though at the upper end of) the adjusted range of comparable rents for one, two and three-bedroom units. A&M’s review indicate that between 2010 and 2015 the inventory of rental housing in the West/Northwest suburban submarket expanded by 1.3% on year on average. Despite this expansion, rents in this region have continued to rise since 2015 by 17% on average, and vacancy rates have remained relatively steady at 3-4% on average. A&M estimated that the location will attract interest given its proximity to area commuter route and services.

(e) that an initial pro forma has been reviewed, including a land valuation determination consistent with the Department's Guidelines, and the Project appears financially feasible and consistent with the Department's Guidelines for Cost Examination and Limitations on Profits and Distributions (if applicable) on the basis of estimated development costs;

MassHousing has commissioned an as "As-Is" appraisal which indicates a land valuation of \$3,500,000. Based on a proposed investment of \$8,698,326 in private equity the pro forma appears to be financially feasible and within the limitations on profits and distributions. Project costs for site work fall on the higher end of the usual allowance, perhaps due to the need to construct a private wastewater treatment plant.

(f) that the Applicant is a public agency, a non-profit organization, or a Limited Dividend Organization, and it meets the general eligibility standards of the housing program; and

The Applicant must be organized as a Limited Dividend Organization. MassHousing sees no reason this requirement could not be met given information reviewed to date. The Applicant meets the general eligibility standards of the NEF housing subsidy program and has executed an Acknowledgment of Obligations to restrict their profits in accordance with the applicable limited dividend provisions.

(g) That the Applicant controls the site, based on evidence that the Applicant or a related entity owns the site, or holds an option or contract to acquire such interest in the site, or has such other interest in the site as is deemed by the Subsidizing Agency to be sufficient to control the site.

The Applicant controls the Site by virtue of two Purchase and Sale Agreements as follows

- A. Purchase and Sale Agreement dated October 8, 2014 between JOC and JRH Trust (seller) and Christopher G. Claussen
- B. Purchase and Sale #2 dated January 9, 2015 between Mathew S. Gilmartin and Molly F. Gilmartin (seller) and Christopher J. Claussen



Massachusetts Housing Finance Agency
One Beacon Street, Boston, MA 02108

TEL: 617.854.1000 | FAX: 617.854.1091
VP: 866.758.1435 | www.masshousing.com

December 7, 2015

Chris Claussen, Manager
Sudbury Station LLC
2134 Sevilla Way
Naples, FL 34109

Re: The Village at Sudbury Station
Project Eligibility/Site Approval
MassHousing ID # 790

Dear Mr. Claussen:

This letter is in response to your application as “Applicant” for a determination of Project Eligibility (Site Approval) pursuant to Massachusetts General Laws Chapter 40B (“Chapter 40B”), 760 CMR 56.00 (the “Regulations”) and the Comprehensive Permit Guidelines issued by the Department of Housing and Community Development (“DHCD”) (the “Guidelines” and, collectively with Chapter 40B and the Regulations, the “Comprehensive Permit Rules”), under the New England Fund (“NEF”) Program (“the Program”) of the Federal Home Loan Bank of Boston (“FHLBB”).

Sudbury Station LLC has submitted an application to MassHousing pursuant to Chapter 40B. The Project will include 250 units of rental housing in 12 multifamily buildings and a clubhouse on 26.42 acres (13.45 buildable acres) located on Peters Way in Sudbury (“the Municipality”).

In accordance with the Comprehensive Permit Rules, this letter is intended to be a written determination of Project Eligibility (“Site Approval”) by MassHousing acting as Subsidizing Agency under the Guidelines, including Part V thereof, “Housing Programs In Which Funding Is Provided By Other Than A State Agency.”

MassHousing performed an on-site inspection of the Site, which local boards and officials attended, and has reviewed the pertinent information for the Project submitted by the Applicant, the Municipality and others in accordance with the Comprehensive Permit Rules.

Municipal Review and Comments

Pursuant to the Regulations, the Municipality was given a thirty (30) day period in which to review the Site Approval application and submit comments to MassHousing. In response to a

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request from the Director of Planning and Community Development this was extended to 45 days. The Chairman of the Sudbury Board of Selectmen, Patricia Brown, submitted a letter (received by MassHousing November 5, 2015) summarizing comments from municipal officials, staff and members of the public. The Selectmen's letter included several attachments including letters from the Conservation Commission, the Chief of Police, Director of Planning and Community Development, and the Sudbury Housing Trust.

In summary, with the exception of the letter from the Sudbury Housing Trust, the Municipal comments expressed opposition to the project, and urged MassHousing to deny the application. Municipal concerns focused on the size and scale of the Project, and its potentially negative traffic, environmental, and visual impacts on the surrounding area. They also questioned the completion and accuracy of the application and feasibility of the Project, noting that the Site's steep slopes and lack of existing utility connections posed significant challenges.

The Selectmen's letter asserted that the Municipality had made steady progress towards increasing its inventory of affordable housing including the issuance of Comprehensive Permits for "nine 40B developments with over 200 units of housing over the past 15 years." The Selectmen's letter explained further that they were currently actively working with another developer on a similarly-sized rental 40B Project proposed for the former Raytheon site. They noted that either one of the two 40B Projects being proposed would individually fulfill the Town's obligation under Chapter 40B to provide 10% affordable housing, and concluded that after careful consideration the Board of Selectmen "had determined that it would welcome the Raytheon project and oppose the Sudbury Station Project."

The following additional concerns were identified:

- That the Site was not appropriate for a large multi-family development due to its many physical constraints including steep and varying topography, lack of utilities, limited vehicular access, and potentially negative impacts on natural, historic and cultural resources.
- That the plans were too schematic, and did not include sufficient information about proposed grading, utilities, stormwater management and wastewater treatment to allow for an adequate review of the Project's environmental impacts and general feasibility.
- The Municipality identified numerous traffic and safety concerns relative to the proposed access in and out of the Site at both Hudson Road and Concord Roads, and speculated that that it would be difficult to mitigate these concerns. They noted that the Hudson Road access would present multiple conflicts with existing driveways and traffic flow on Hudson Road, and expressed concern about limited sight distance from the proposed Project access/egress on Concord Road.
- That the height of the proposed multi-family buildings exceeded height limits established by local zoning. Public safety officials noted that no elevators were proposed for the three and four story buildings, which would make emergency access difficult.

- That should both this Project and this 40B project proposed for the Raytheon property gain approval it “may create an excessive supply of similar housing type.” (Market demand and Project feasibility at the Site Approval phase is addressed in the findings outlined in Attachment 1.)
- That the Project would have negative impacts on significant natural, historic and cultural resources:

-The Town noted that approximately half of the development site is within a priority area under the Natural Heritage Endangered Species Program (NHESP), and may not be developed. They expressed concern that the implications of the NHESP designation and the bounds of the jurisdictional area had not been determined.

-The Sudbury Conservation Commission noted that the Site is included in Sudbury’s Open Space and Recreation Plan (OSRP), and asked that the Developer provide evidence justifying the use of the land for development instead of open space preservation as designated in the OSRP.

-The Town noted that, if built, the Project would be visible from the abutting National Register District, which could potentially compromise its historical integrity. They speculated, further, that the Site may contain potentially significant archeological resources, and recommended that a comprehensive archeological study be performed to ensure a finding of “no impact” before development plans could proceed.

- The Town identified several perceived inconsistencies, omissions and errors in the Application, including the Applicant’s responses to the Sustainable Development Scorecard. The Conservation Commission expressed particular concern that the application did not identify requests from the local wetland bylaw, did not specify proposed provisions to address stormwater run-off into nearby wetlands, and did not discuss the use of Low impact Development (LID techniques) in the site plan.

Community Comments

In addition to the official Town Comments, MassHousing received two letters from individual residents, and a Petition signed by eighty (86) residents, all echoing the concerns identified by the Selectmen, and expressing opposition to the project.

MassHousing also received a letter from the Sudbury Housing Trust dated October 16, 2015, expressing conditional support for the Project, and offering the following suggestions to the Town and the developer:

- Expand the local preference definition to include employees of local businesses;
- Add to the number of three-bedroom affordable units;
- Reserve affordable units for disabled individuals;
- Use renewable energy sources;
- Use Town CPA funds to provide financial assistance for buyers of the affordable units.

Finally, the Trust pointed out that while proposed rents are affordable under the NEF Program, which follows HUD Guidelines, for the one and two-bedroom units they are higher than current Section 8 voucher amounts. They expressed concern that this project would not address the existing scarcity of units available to Section 8 voucher holders in Sudbury and throughout Metrowest area.

Comments Outside of the Findings

While Comprehensive Permit Rules require MassHousing, acting as Subsidizing Agency under the Guidelines, to “accept written comments from Local Boards and other interested parties” and to “consider any such comments prior to issuing a determination of Project Eligibility, “ they also limit MassHousing to specific findings outlined in 760 CMR 56.04(1) and (4). The following comments submitted to MassHousing identified issues that are not within the scope of our review:

- The Town explained that the current access to the property from Peters Way (off Concord Road) was created through a land swap between the Town and current property owner approved by the Sudbury Town Meeting in 2011. The Municipality charged that the property owner misled Town Meeting through representations that they only intended the Site to be developed for one, single-family lot.
- The Director of Planning and Community Development noted that should both this Project and the development proposed for the Raytheon site be built, that it would place undue strain on municipal services.

MassHousing Determination

MassHousing staff has determined that the Project appears generally eligible under the requirements of the Program, subject to final review of eligibility and to Final Approval. As a result of our review, we have made the findings as required pursuant to 760 CMR 56.04(1) and (4). Each such finding, with supporting reasoning, is set forth in further detail on Attachment 1 hereto. It is important to note that Comprehensive Permit Rules limit MassHousing to these specific findings in order to determine Project Eligibility. If, as here, MassHousing issues a determination of Project Eligibility, the Developer may apply to the Zoning Board of Appeals of the Municipality for a comprehensive permit. At that time local boards, officials and members of the public are provided the opportunity to further review the Project to ensure compliance with

applicable state and local standards and regulations.

Based on MassHousing's site and design review, and in light of feedback received from the Municipality and members of the community, the following issues should be addressed in your application to the Sudbury Zoning Board of Appeals, and you should be prepared to explore them more fully in the public hearing process:

1. Development of this Site will require compliance with all state and federal environmental laws, regulations and standards applicable to existing conditions and to the proposed use related to building construction, stormwater management, wastewater collection and treatment, and hazardous waste safety. The Applicant should expect that the Municipality will require evidence of such compliance prior to the issuance of a building permit for the Project.
2. The Applicant should provide a detailed traffic study assessing potential impacts of the Project on area roadways, including traffic volumes, crash rates, and the safety and level of service (LOS) of area intersections, and identifying appropriate traffic mitigation in compliance with all applicable state and local requirements governing site design. In particular, the Applicant should be prepared to verify the adequacy of sight distances at the proposed intersection of the site drive with Concord Road. The Applicant reported that they have hired a qualified traffic consultant and will submit a full Traffic Impact and Analysis Statement (TIAS) with their comprehensive permit application to the Sudbury ZBA.
3. In response to the concerns raised by public safety officials, the Applicant should be prepared to describe emergency access provisions within Project buildings and throughout the Site.
4. The Applicant should be prepared to address Municipal and abutter concerns relative to the size, scale, and appearance of the proposed multi-family buildings and to discuss appropriate measures to address potentially negative visual impacts. The Applicant's efforts to mitigate Project massing and scale are discussed further in the findings discussed in Attachment 1.
5. The Applicant should be prepared to address municipal concerns relative to the Project's potential impacts on the integrity of the Sudbury Center Historic District and area historic and cultural resources. MassHousing is confident that to the extent that there are documented historic resources they will be subject to the appropriate state review and regulation.
6. The Applicant should be prepared to address municipal concerns relative to the implications of the NHESP designation of a portion of the Site as a Priority Species Habitat for the Blue Spotted Salamander. The Applicant has provided MassHousing with a determination from the Division of Fisheries and Wildlife dated October 29, 2015 stating that the proposed Project as currently proposed "will not result in a prohibited 'take' of state-listed rare species."
7. The Applicant should be prepared to address Municipal concerns relative to the feasibility and effectiveness of proposed wastewater and stormwater management measures given

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existing topographic conditions. As noted above, the Project will be subject to all relevant environmental laws, regulations and standards.

8. The Applicant should be prepared to address Municipal concern about the local real estate market's capacity to absorb the large number of multi-family rental housing units currently proposed in Sudbury. The Applicant commissioned a Market Analysis Study dated May 18, 2015 prepared by LDS Consulting Group, LLC indicating "sustained demand for rental housing" based on current data, market conditions and conclusions. (An Executive Summary of this report was included in the Project application) MassHousing's Appraisal and Marketing Division performed a preliminary analysis further supporting Project feasibility, but recommending additional market analysis prior to financing and Final Approval.

MassHousing has also reviewed the application for compliance with the requirements of 760 CMR 56.04 (2) relative to Application requirements, and has determined that the material provided by the Developer in the application is sufficient to show compliance.

This Site Approval is expressly limited to the development of no more than 250 rental units under the terms of the Program, of which not less than 25% shall be restricted as affordable for low income persons or families as required under the terms of the Guidelines. It is not a commitment or guarantee of NEF financing and does not constitute a site plan or building design approval. Should you consider, prior to obtaining a comprehensive permit, the use of any other housing subsidy program, the construction of additional units, a reduction in the size of the Site, a change in tenure type or a substantial change to the overall Site Plan, you may be required to submit a new site approval application for review by MassHousing.

For guidance on the comprehensive permit review process, you are advised to consult the Guidelines. Further, we urge you to review carefully with legal counsel the M.G.L. c.40B Comprehensive Permit Regulations at 760 CMR 56.00.

This approval will be effective for a period of two years from the date of this letter. Should the Applicant not apply for a comprehensive permit within this period this letter shall be considered to be expired and no longer in effect unless MassHousing extends the effective period of this letter in writing. In addition, the Applicant is required to notify MassHousing of the following: (1) the Applicant applies to the local ZBA for a Comprehensive Permit, (2) the ZBA issues a decision and (3) any appeals are filed.

Should a comprehensive permit be issued, please note that prior to (i) commencement of construction of the Project or (ii) issuance of a building permit, the Applicant is required to submit to MassHousing a request for Final Approval of the Project (as it may have been amended) in accordance with the Comprehensive Permit Rules (see especially 760 CMR 56.04(07) and the Guidelines including, without limitation, Part III thereof concerning Affirmative Fair Housing Marketing and Resident Selection). Final Approval will not be issued unless MassHousing is able to make the same findings at the time of issuing Final Approval as required at Site Approval.

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Please note that MassHousing may not issue Final Approval if the Comprehensive Permit contains any conditions that are inconsistent with the regulatory requirements of the New England Fund Program of the FHLBB, for which MassHousing serves as Subsidizing Agency, as reflected in the applicable regulatory documents. In the interest of providing for an efficient review process and in order to avoid the potential lapse of certain appeal rights, the Applicant may wish to submit a "final draft" of the Comprehensive Permit to MassHousing for review. Applicants who avail themselves of this opportunity may avoid significant procedural delays that can result from the need to seek modification of the Comprehensive Permit after its initial issuance.

If you have any questions concerning this letter, please contact Katy Lacy at (617) 854-1098.

Sincerely,



Thomas R. Gleason
Executive Director

cc: Chrystal Kornegay, Undersecretary, DHCD
Patricia Brown, Chairman, Sudbury Board of Selectmen
Jonathan F.X. O'Brien, Chairman, Zoning Board of Appeals
Melissa Murphy Rodrigues, Town Manager
Jody Kablack, Director of Planning and Community Development

Attachment 1

760 CMR 56.04 Project Eligibility: Other Responsibilities of Subsidizing Agency
Section (4) Findings and Determinations

The Village at Sudbury Station

MassHousing hereby makes the following findings, based upon its review of the application, and taking into account information received during the site visit and from written comments:

(a) That the proposed Project appears generally eligible under the requirements of the housing subsidy program, subject to final approval under 760 CMR 56.04(7);

The Project is eligible under the NEF housing subsidy program and at least 25% of the units will be available to households earning at or below 80% of the Area Median Income (AMI), adjusted for household size, as published by the U.S. Department of Housing and Urban Development (“HUD”). The most recent HUD income limits indicate that 80% of the current median income for a four-person household in Sudbury is \$69,700.

Proposed gross rent levels of \$1307 for a one bedroom, \$1468 for a two-bedroom, and \$1812 for a three-bedroom unit reflect gross affordable rent levels for the Boston-Cambridge-Quincy HMFA under the NEF Program.

	Project Rent	Project Utilities	Gross Tenant Costs	HUD Affordable Rent
One Bedroom	\$1190	\$117	\$1307	\$1307
Two Bedroom	\$1419	\$145	\$1468	\$1568
Three Bedroom	\$1629	\$163	\$1812	\$1812

A letter of interest to provide financing under the NEF Program was provided by Citizens Bank, a member bank of the Federal Home Loan Bank of Boston.

(b) that the site of the proposed Project is generally appropriate for residential development, taking into consideration information provided by the Municipality or other parties regarding municipal actions previously taken to meet affordable housing needs, such as inclusionary zoning, multifamily districts adopted under c.40A, and overlay districts adopted under c.40R, (such finding, with supporting reasoning, to be set forth in reasonable detail);

Based on a site inspection by MassHousing staff, internal discussions, and a thorough review of the application, MassHousing finds that the Site is suitable for residential use and development, that such use would be compatible with surrounding uses, and would directly address the local need for affordable housing. With the exception of the 26.42-acre northern portion of the property, which is subject to an Agricultural Preservation Restriction, the Site is zoned for single-family residential development, suggesting that it is appropriate for residential use. While there is no municipal sewer in the area, it appears that connections to municipal water, electricity

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and telecommunication are possible. The location is in close proximity to area commuter routes and services.

Section IV-A (3) (a) of the Guidelines provide guidance to Subsidizing Agencies for evaluating a municipality's actions intended to meet affordable housing needs. MassHousing carefully reviewed the information provided by the Sudbury Board of Selectmen describing previous municipal actions intended to provide affordable housing. The Selectmen's letter identified a variety of municipal actions including the development of a Housing Production Plan, the use of CPA funds for the development of affordable housing, and the issuance of Comprehensive Permits for "nine 40B developments with over 200 units of housing over the past 15 years." The Selectmen's letter explained further that they were currently actively working with another developer on a similarly-sized rental 40B Project proposed for the former Raytheon site, and noted that they felt that this was a more appropriate site for development.

However, Municipal actions to date have not resulted in housing production of a "character and scale to create significant opportunities as-of-right to meet the municipality's need for affordable housing as measured by the Statutory Minima." According to DHCD's Chapter 40B Subsidized Housing Inventory (SHI), updated through December, 2014, Sudbury has 354 Subsidized Housing Inventory (SHI) units (6.0 % of its housing inventory). An additional 218 units in total would be required for the Town to achieve the 10% threshold of 592.

The need for additional affordable housing is further supported by U.S. Census data from the 2009-2013 American Community Survey (ACS), which indicates that of the 5,783 households in the Town of Sudbury, approximately 32.2% earned less than the HUD published AMI (\$98,500), approximately 15.2% earn less than 80% of the 2015 AMI, and approximately 10.2% earned less than 50% of the 2015 AMI.

Sudbury has a DHCD-approved Housing Production Plan (HPP) dated July 14, 2011. The Village at Sudbury Station appears to comply with municipal affordable housing goals as identified in this plan. The HPP notes that "Sudbury has the lowest percentage of rental housing of its neighboring communities"...and lays out a specific strategy for reaching the 10% threshold required under Chapter 40B, including the development of an additional 233 affordable units created through private 40B developments by 2016. Given that more than half of the Town's existing affordable units (.53%) are age restricted, while the 2010 Census shows only 12.2% of the population over age 65, the Project will directly address Goal #1 from the HPP, which is to "Promote a diversity of housing types in Sudbury to meet the needs of a changing and diversified population, particularly with increased production of rental units, development of multi-family buildings, duplexes, and single-family attached dwellings..."

(c) that the conceptual project design is generally appropriate for the site on which it is located, taking into consideration factors that may include proposed use, conceptual site plan and building massing, topography, environmental resources, and integration into existing development patterns (such finding, with supporting reasoning, to be set forth in reasonable detail);

Relationship to Adjacent Building Typology (including building massing, site arrangement,

The Project includes a clubhouse building and 12 residential structures; three, larger four-story apartment buildings; two, mid-sized, three-story apartment buildings; and eight, residentially scaled, two-story buildings containing between 5-13 units each. Buildings are laid out around a central open space which serves much like a town common, and the entire developed portion of the Site is largely surrounded by protected open space, limiting visibility to or from surrounding development. In this way, the Project establishes its own building typology, though with reference to the surrounding traditional New England village context.

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Relationship to adjacent streets/Integration into existing development patterns

The Project will be accessed by a new roadway linking Hudson Road, to the south, through the Site and out to Concord Road (to the east). Immediately across from the project's entrance on Hudson Road is a low-scale, mixed-use commercial development including two restaurants and a variety of professional services. Existing development on Hudson and Concord Road consists of larger single-family homes set back from the road on spacious, wooded lots. Development within the Site, in contrast, consists of variably-sized buildings clustered around a central common open area, similar to the development pattern in the nearby historic town center

Density

The Project has a gross density of 6.27 units per acre (18.59 units per buildable acre). Perceptions of Project density are ameliorated, however, through the presence of a landscaped central open area, and the surrounding ring of undeveloped land, providing attractive open vistas within and out from the proposed development.

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Topography

The site slopes down from the Old Town Cemetery to the east to the rail trail bounding the property to the west. The proposed plans indicate that slopes on the site exceed 10% in places, with slopes in some areas in excess of 20%. The proposal makes use of the sloping nature of the site by siting the taller buildings at the lower points (to the west along the rail trail) where they will be visible only from the adjacent commercial warehouse property and municipal playing field, and lower buildings on higher ground near the cemetery. Schematic site sections are included indicating that thought has been given to site lines into the Project from neighboring properties and Concord and Hudson roads.

(d) that the proposed Project appears financially feasible within the housing market in which it will be situated (based on comparable rentals or sales figures);

The Applicant proposes the construction of 250 apartments to be financed under the NEF Program. There will be 187 market-rate units with proposed average rent levels of \$1,950 for the one-bedroom units, \$2,300 for the two-bedroom units, and \$2,850 for the three-bedroom units. MassHousing’s Appraisal and Marketing Division (A&M) reviewed comparable rental developments in the area and has noted that proposed market rents fall within (though at the upper end of) the adjusted range of comparable rents for one, two and three-bedroom units. A&M’s review indicate that between 2010 and 2015 the inventory of rental housing in the West/Northwest suburban submarket expanded by 1.3% on year on average. Despite this expansion, rents in this region have continued to rise since 2015 by 17% on average, and vacancy rates have remained relatively steady at 3-4% on average. A&M estimated that the location will attract interest given its proximity to area commuter route and services.

(e) that an initial pro forma has been reviewed, including a land valuation determination consistent with the Department's Guidelines, and the Project appears financially feasible and consistent with the Department's Guidelines for Cost Examination and Limitations on Profits and Distributions (if applicable) on the basis of estimated development costs;

MassHousing has commissioned an as "As-Is" appraisal which indicates a land valuation of \$3,500,000. Based on a proposed investment of \$8,698,326 in private equity the pro forma appears to be financially feasible and within the limitations on profits and distributions. Project costs for site work fall on the higher end of the usual allowance, perhaps due to the need to construct a private wastewater treatment plant.

(f) that the Applicant is a public agency, a non-profit organization, or a Limited Dividend Organization, and it meets the general eligibility standards of the housing program; and

The Applicant must be organized as a Limited Dividend Organization. MassHousing sees no reason this requirement could not be met given information reviewed to date. The Applicant meets the general eligibility standards of the NEF housing subsidy program and has executed an Acknowledgment of Obligations to restrict their profits in accordance with the applicable limited dividend provisions.

(g) That the Applicant controls the site, based on evidence that the Applicant or a related entity owns the site, or holds an option or contract to acquire such interest in the site, or has such other interest in the site as is deemed by the Subsidizing Agency to be sufficient to control the site.

The Applicant controls the Site by virtue of two Purchase and Sale Agreements as follows

- A. Purchase and Sale Agreement dated October 8, 2014 between JOC and JRH Trust (seller) and Christopher G. Claussen
- B. Purchase and Sale #2 dated January 9, 2015 between Mathew S. Gilmartin and Molly F. Gilmartin (seller) and Christopher J. Claussen

SECTION 4:
EVIDENCE OF SITE CONTROL

PURCHASE AND SALE AGREEMENT

This 8th day of October, 2014

1. PARTIES. Dorothy M. Bartlett, Laura B. Abrams (f/k/a Laura B. McCarthy), and Martha J. Keighley (f/k/a Martha J. Bartlett), as they are the Trustees of JOC Trust which Trust is recorded in Middlesex South District Registry of Deeds in Book 18121, Page 373, and, Laura B. Abrams, Trustee of the 24 Hudson Road Trust, recorded in said Deeds in Book 25548, Page 558, and, Laura B. Abrams, Trustee of JRH Trust, all, of 578 Boston Post Rd., Sudbury, Massachusetts 01776, (hereinafter collectively called the "Seller"), agrees to sell and Christopher G. Claussen of 2134 Sevilla Way, Naples, FL 34109 (hereinafter called the "Buyer" or "Purchaser") agrees to buy, upon the terms hereinafter set forth.

2. DESCRIPTION. The following described premises:

1. The land in Sudbury, Middlesex County, Massachusetts, shown as Parcel 1B, Parcel 2A, Parcel 2B, Parcel 3B, and Peter's Way, on plan entitled "Definitive Plan of Peter's Way Extension - Plan of Land in Sudbury, Massachusetts, Sheet 1 of 1, dated January 24, 2011, revised June 15, 2012, prepared by Sullivan, Connors and Associates of Sudbury, Massachusetts, and located adjacent to Town of Sudbury Cemetery land off Concord Road, Sudbury, Massachusetts; said plan recorded with the Middlesex South Registry of Deeds as Plan 907 of 2012;
2. The land in Sudbury, Middlesex County, Massachusetts, shown as Parcel 3, consisting of 35,687 square feet, on a Plan of Land in Sudbury, Massachusetts, dated March 21, 1972, said plan recorded with the Middlesex South Registry of Deeds in Book 12,185, Page 426; and,

3. The land in Sudbury, Middlesex County, Massachusetts, shown as Parcel B, consisting of 21,320.29 square feet, on plan entitled "Plan of Land in Sudbury, Mass.", dated June 21, 2000, said plan recorded with the Middlesex South Registry of Deeds in Book 31702, Page 525; and,
4. The land in Sudbury, Middlesex County, Massachusetts, shown as Parcel C and Peter's Way, on plan entitled "Definitive Plan of 'Howe Estates' subdivision of land in Sudbury, Mass.", dated August 30, 1993; said plan recorded with the Middlesex South Registry of Deeds as Plan No. 321 of 1994.

3. BUILDINGS, STRUCTURES, IMPROVEMENTS, FIXTURES. DELETED

4. TITLE DEED. Said premises are to be conveyed by a good and sufficient Quitclaim Deed running to the Buyer, or to the assignee designated by the Buyer by written notice to the Seller at least seven days before the deed is to be delivered as herein provided, and subject to the provisions of Paragraph 14 herein, and said deed shall convey a good and clear record and marketable title thereto, free from encumbrances, except:

- (a) Provisions of existing building and zoning laws;
- (b) Deleted;
- (c) Such taxes for the then current fiscal year as are not due and payable on the date of the delivery of such deed;
- (d) Any liens for municipal betterments assessed after date of this Agreement;
- (e) An Agricultural Preservation Restriction on the above described Parcel C recorded in Said Deeds;
- (f) The right of the Town of Sudbury to use Peter's Way for cemetery purposes; and,
- (g) Any other easements, restrictions, covenants, conditions and rights of way of record to the extent same are in force and applicable provided they do not substantially interfere with the use



of the premises for a multi-family residential housing facility containing at least 150 residential units (the "Proposed Use").

5. PLANS. If said deed refers to a plan necessary to be recorded therewith the Seller shall deliver such plan with the deed in form adequate for recording or registration.

6. REGISTERED TITLE. In addition to the foregoing, if the title to said premises is registered, said deed shall be in form sufficient to entitle the Buyer to a Certificate of Title of said premises, and the Seller shall deliver with said deed all instruments, if any, necessary to enable the Buyer to obtain such Certificate of Title.

7. PURCHASE PRICE. The agreed purchase price for said premises is Two Million (\$2,000,000.00) Dollars, of which

\$ 50,000.00	have been paid as a deposit this day and
\$ 50,000.00	are to be paid as an additional deposit within ten (10) days following the expiration of the Due Diligence Period (as defined in Paragraph 38 below)
\$1,900,000.00	are to be paid at the time of delivery of the deed by wire transfer of immediately available funds, or by certified, cashier's, treasurer's or bank check, drawn on a Greater Boston Clearing House Bank, payable directly to Seller without endorsement.

\$2,000,000.00	TOTAL
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8. TIME FOR PERFORMANCE; DELIVERY OF DEED. Subject to the provisions of Paragraph 42, such deed shall be delivered, the purchase price shall be paid and other closing

documents described herein shall be delivered at a closing (the "Closing"), which shall occur at 10 o'clock a.m., on the 15th day of September, 2016, at the Middlesex South District Registry of Deeds, unless extended in accordance with the provisions of this Agreement. Notwithstanding any provision contained herein to the contrary, the Buyer shall have the right to extend the Permitting/Approval Period (as defined in Paragraph 41 below) and the date for the Closing for two (2) successive periods of six (6) months each by delivering written notice of such extension to the Seller at least seven (7) days in advance of the expiration of the then-existing Permitting/Approval Period and delivering an additional deposit of \$50,000 to the escrow agent identified in Paragraph 20 below. Any additional deposit made pursuant to this Paragraph 8 will not be credited against the purchase price due from the Buyer at Closing and will be refunded to the Buyer only if the Seller defaults hereunder or is otherwise unable to comply with its obligations hereunder; in all other events the Seller will be entitled to any additional deposit made pursuant to this Paragraph 8. The Seller agrees to execute at Closing such documents as may be reasonably requested by Buyer or Buyer's title insurance company. It is agreed that time is of the essence of this agreement.

9. POSSESSION AND CONDITION OF PREMISES. Full possession of said premises free of all tenants and occupants, except as herein provided, is to be delivered at the time of the delivery of the deed, said premises to be then (a) not in record violation of said building and zoning laws, (b) in compliance with provisions of any instrument referred to in Clause 4 hereof. The Buyer shall be entitled to an inspection of said premises prior to the delivery of the deed in order to determine whether the condition thereof complies with the terms of this clause.

10. EXTENSION TO PERFECT TITLE OR MAKE PREMISES CONFORM. If the Seller shall be unable to give title or to make conveyance, or to deliver possession of the premises, all as herein stipulated, or if at the time of delivery of the deed the premises do not

conform with the provisions hereof, then the Seller shall use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or to make the said premises conform to the provisions hereof, as the case may be, in which event the Seller shall give written notice thereof to the Buyer at or before the time for performance hereunder, and thereupon the time for performance hereof shall be extended for a period of thirty (30) days.

11. FAILURE TO PERFECT TITLE OR MAKE PREMISES CONFORM, ETC. If at the expiration of the extended time as provided in Paragraph 10 herein, the Seller shall have failed so to remove any defects in title, deliver possession, or make the premises conform, as the case may be, all as herein agreed, then any payment made under this Agreement shall be forthwith refunded and all other obligations of the parties hereto shall cease and this Agreement shall be void without recourse to the parties hereto.

12. BUYER'S ELECTION TO ACCEPT TITLE. The Buyer shall have the election, at either the original or any extended time for performance, to accept such title as the Seller can deliver to the said premises in their then condition and to pay therefor the purchase price without deduction, in which case the Seller shall convey such title.

13. ACCEPTANCE OF DEED. The acceptance of a deed by the Buyer or its assignee as the case may be, shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed, except such as are, by the terms hereof, to be performed after the delivery of said deed.

14. USE OF MONEY TO CLEAR TITLE. To enable the Seller to make conveyance as herein provided, the Seller may, at the time of delivery of the deed, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, provided that all instruments so procured are recorded simultaneously with the delivery of said deed or provided

arrangements are made to obtain and record such instruments within a reasonable time following the closing in accordance with customary conveyancing practice.

15. INSURANCE. Until the delivery of the deed, the Seller shall maintain insurance on said premises as follows:

<u>Type of Insurance</u>	<u>Amount of Coverage</u>
(a) Fire	\$ as presently insured
(b) Extended Coverage	\$ as presently insured

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

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

18. BROKER'S FEE None

19. BROKER(S) WARRANTY. DELETED

20. DEPOSIT. All deposits made hereunder shall be held in escrow by Robert D. Abrams, Esquire, Attorney for the Seller, in his IOLTA account, without interest, subject to the terms of this Agreement and shall be duly accounted for at the time for performance of this Agreement.

21. BUYER'S DEFAULT; DAMAGES. If the Buyer shall fail to fulfill the Buyer's agreements herein, all deposits made hereunder by the Buyer shall be retained by the Seller as liquidated damages and this shall be the Seller's sole and exclusive remedy at law or in equity.

22. RELEASE BY HUSBAND OR WIFE. DELETED

23. BROKER AS PARTY. DELETED

24. LIABILITY OF TRUSTEE, SHAREHOLDER, BENEFICIARY, ETC. If the Seller or Buyer executes this Agreement in a representative or fiduciary capacity, only the principal or the estate represented shall be bound, and neither the Seller or Buyer so executing, nor any shareholder or beneficiary of any trust, shall be personally liable for any obligation, express or implied, hereunder.

25. WARRANTIES AND REPRESENTATIONS. The Buyer acknowledges that the Buyer has not been influenced to enter into this transaction nor has he relied upon any warranties or representations not set forth or incorporated in this Agreement or previously made in writing, except for the following additional warranties and representations, if any, made by either the Seller or the Broker(s): None.

26. MORTGAGE CONTINGENCY CLAUSE. None.

27. CONSTRUCTION OF AGREEMENT. This instrument, executed in multiple counterparts, is to be construed as a Massachusetts contract, is to take effect as a sealed instrument, sets forth the entire contract between the parties, is binding upon and enures to the benefit of the parties hereto and their respective heirs, devisees, executors, administrators, successors and assigns, and may be canceled, modified or amended only by a written instrument executed by both the Seller and the Buyer. The captions and marginal notes are used only as a matter of convenience and are not to be considered a part of this Agreement or to be used in determining the intent of the parties to it.

28. LEAD PAINT LAW. DELETED

29. SMOKE DETECTORS. DELETED

30. AGREEMENT NOT TO BE RECORDED. In the event the Buyer records a copy of this Purchase and Sale Agreement with the Middlesex South District Registry of Deeds, Seller may, at Seller's option, declare this Agreement null and void and Buyer shall be deemed to be in default of Buyer's obligations hereunder.

33. BROKERS. BUYER and SELLER both represent that they have not contacted any real estate broker in connection with this transaction. Each party agrees to indemnify the other and hold the other harmless from any claim, loss or cost for any brokerage commissions or finder's fees arising out of actions or inactions of the indemnitor in connection with this transaction. The provisions of this Paragraph shall survive the closing.

34. NOTICES. All notices required hereunder shall be deemed to have been duly given if in writing and mailed by certified mail, return receipt requested, all charges prepaid, addressed to Buyer or Seller at their respective addresses designated above, and in the case of notices addressed to Seller, a copy thereof to Robert D. Abrams, Esquire, 578 Boston Post Rd., Sudbury, MA 01776; and in the case of notices addressed to Buyer, a copy thereof to Mark B. Elefante, Esquire, Hemenway & Barnes LLP, 60 State Street, Boston, MA 02109. Either party may change its recipient for notices required hereunder or its address by notice delivered in accordance with the provisions of this Paragraph 34. All notices shall be deemed to have been received on the earlier of the date of receipt or the date of first attempted delivery by the U.S. Postal Service.

35. CONSULTANTS. Except as herein set forth, each party shall bear the cost of its respective legal counsel and consultants.

36. TITLE. It is understood and agreed by the parties that the Premises shall not be in conformity with the title provisions of this Agreement unless:

(a) the main access to the Premises, shall be located completely within the boundary lines of said Premises and shall not encroach upon or under the property of any other person or entity;

(b) no building, structure or improvements of any kind belonging to any other person or entity shall encroach upon or under said Premises; and

(c) title to the Premises is insurable for the benefit of BUYER by a title insurance company qualified to do business in Massachusetts and issuing an ALTA Owner's Policy at published standard premium rates with standard exceptions but otherwise without qualifications as to the quality of title.

37. VIOLATIONS/LAWSUITS. SELLER has not been notified by any regulatory or governmental body that the Premises are in violation of any federal, state or local environmental, sanitary, health or safety statute, law, regulation, ordinance or by-law, nor does the SELLER know of any pending or threatened litigation concerning the Premises. The provisions of this Paragraph shall survive delivery of the deed

38. DUE DILIGENCE. BUYER shall have until September 15, 2015 (the "Due Diligence Period"), to perform and conduct such examinations and investigations of the Property as BUYER may desire at its sole expense which shall include, examination of title to the Property and financing for Buyer's Proposed Use and which may include, without limitation, conducting tests to determine the presence or absence of hazardous waste, asbestos, lead paint, radon or other similar materials and substances, reviewing or preparing a current survey of the Property, determining the feasibility of owning the Property and determining the compliance of the Property with all applicable laws, rules, codes and regulations. BUYER may conduct testing on the property at any time, providing such testing does not unreasonably interfere with SELLER and SELLER'S tenants' business operations.

39. REVOCATION. SELLER acknowledges that BUYER shall have the right in its sole and absolute discretion based upon its disapproval of any of the reports or information it receives, including without limitation title examination and financing, to terminate this Agreement by delivering notice thereof to SELLER at any time prior to September 15, 2015. In the event BUYER so elects to terminate this Agreement, the initial deposit made by BUYER shall be refunded to BUYER forthwith and this Agreement shall terminate without further recourse or liability to the parties at law or in equity. It is expressly understood that if BUYER does not so terminate this Agreement, then the conditions of this Due Diligence shall be deemed to be satisfactory to BUYER.

40. TAKING. In the event of any eminent domain taking or condemnation in the nature thereof (a "taking"), or threat of taking, or conveyance or proposed conveyance to any governmental authority in lieu thereof, of the Premises or any part thereof prior to the Closing, which taking prohibits or materially interferes with the Proposed Use of said Premises, BUYER shall have the right to terminate this Agreement and receive back the deposit(s) made by BUYER pursuant to Paragraph 7, or to take conveyance of that which may remain, in which case, BUYER shall be entitled to any and all awards paid or payable with respect to any such taking.

41. PERMITTING. BUYER shall have until June 30, 2016 (the "Permitting/Approval Period") to obtain all requisite and necessary permits and approvals/ agreements to construct and operate the Proposed Use on the Premises; the Permitting/Approval Period may be extended in accordance with the provisions of Paragraph 8 above. SELLER shall sign their consent to BUYER'S obtaining said permits and approvals and shall execute such permit applications and other documents related to said permits and approvals as may be reasonably requested by BUYER, provided that BUYER shall be responsible for all costs associated with obtaining said permits and approvals. For purposes of this Agreement, a permit or approval shall not be deemed to have been secured, obtained or received by BUYER until all appeals periods have elapsed

with no appeals having been filed and/or all appeals have been finally resolved to BUYER'S satisfaction. If after the expiration of the Permitting/Approval Period, BUYER has not secured all such requisite and necessary permits and approvals/agreements, then at BUYER'S option, the deposit(s) made by BUYER pursuant to Paragraph 7 shall be returned to the BUYER forthwith and this Agreement shall be terminated without further recourse to the parties hereto.

42. CLOSING TIME AND PLACE. Within ten days after BUYER receives the last of its permits/approvals and has determined that all appeals periods have elapsed and/or all appeals have been finally resolved to BUYER'S satisfaction, BUYER shall give SELLER written notice of same and the closing date shall be scheduled on the 21st day following such notice but in no event later than September 15, 2016 or such later date to which the date for Closing has been extended pursuant to Paragraph 8.

43. DRAFTS. Drafts of this Agreement and any correspondences related thereto shall not constitute an offer to buy or sell the Premises. This Agreement shall not be binding upon the parties until it is executed by the parties hereto with executed copies delivered to both BUYER and SELLER.

44. AUTHORITY. The parties hereto represent and acknowledge that they each have full legal authority to enter into this transaction.

45. MCA STANDARDS. Any matter or practice arising under or relating to this Agreement which is the subject of a title or practice standard of the Massachusetts Real Estate Bar Association (formerly known as the Massachusetts Conveyancer's Association) shall be governed by such standard to the extent applicable.

46. PRIOR AGREEMENTS. This Agreement supersedes all prior written or any oral agreements between the parties. Except as otherwise herein provided, the representations contained in this Agreement refer to the date of execution hereof. SELLER will promptly notify BUYER of any

material change in facts known to SELLER which arise prior to Closing which would make any such representation untrue if such state of facts had existed on the date of execution of this Agreement.

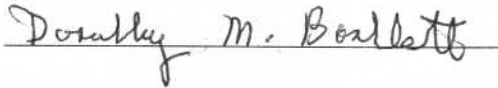
47. REMOVAL OF BUILDINGS. DELETED

48. ADDITIONS TO PURCHASE PRICE. DELETED

49. INSURANCE CERTIFICATES. BUYER shall provide SELLER with certificates of insurance for general liability coverage of not less than \$1,000,000 for any and all liability to SELLER and/or third parties as a result of BUYER'S conduct on the Premises, except for BUYER'S discovery of any violations of law not caused by BUYER. BUYER shall also provide SELLER with certificates of insurance for itself, its agents, and/or consultants for workers' compensation coverage for all such persons on the Premises pursuant to this Agreement.

50. SELLERS' RIGHT TO TERMINATE. Notwithstanding any provision hereof to the contrary, SELLER shall have the absolute right to terminate this Agreement on September 15, 2017, in which event the deposit(s) made pursuant to Paragraph 7 shall be forthwith refunded (and any additional deposits made pursuant to Paragraph 8 shall be paid to SELLER) and all other obligations of the parties shall cease and this Agreement shall terminate without further recourse.

NOTICE: This is a legal document that creates binding obligations. If not understood,
consult an attorney.



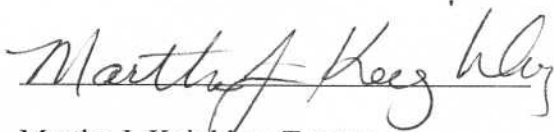
Dorothy M. Bartlett, Trustee

Seller



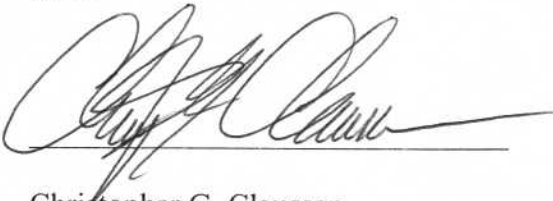
Laura B. Abrams, Trustee

Seller



Martha J. Keighley, Trustee

Seller



Christopher G. Claussen

Buyer



Hemenway & Barnes LLP

60 State Street
Boston, MA 02109-1899
t 617 227 7940
f 617 227 0781
www.hembar.com

Mark B. Elefante
Direct Dial (617) 557-9731
markelefante@hembar.com

January 13, 2015

BY FEDEX

Trustees

Counselors at Law
Timothy F. Fidgeon
Michael J. Puzo
Thomas L. Guidi
Edward Notis-McConarty
Diane C. Tillotson
Stephen W. Kidder
Arthur B. Page
Joan Garrity Flynn
Frederic J. Marx
Nancy B. Gardiner
Kurt F. Somerville
Teresa A. Belmonte
Brian C. Broderick
Charles Fayerweather
Nancy E. Dempze
*Joseph L. Bierwirth, Jr.
*Dennis R. Delaney
*Mark B. Elefante
*John J. Siciliano

Daniel W. Murray, Esquire
Murray Law Offices
One Union Avenue
Sudbury, MA 01776

Re: 30 Hudson Road, Sudbury

Dear Dan:

Enclosed please find a fully-executed version of the Purchase and Sale Agreement, together with a check in the amount of \$35,000 which represents the partial release of the deposit that is contemplated by this Purchase and Sale Agreement.

Please give me a call if there are any questions or concerns regarding the enclosed. Thank you for your continued attention to this matter.

Sincerely,

Mark B. Elefante

Harry F. Lee
Marcia M. Governale
Sarah M. Waelchli
Emma D. Becker
Charles R. Platt
Ryan P. McManus
Nicholas M. McGrath
Kevin M. Ellis
Andrea M. Coloff

MBE/dmp
Enclosures

David H. Morse
Roy A. Hammer
Lawrence T. Perera
George T. Shaw
Deborah J. Hall
Michael B. Elefante
Susan Hughes Banning
R. Robert Woodburn, Jr.
Raymond H. Young
Of Counsel

cc: Christopher Claussen (by e-mail, w/enclosure)

*Also Admitted in NH

PURCHASE AND SALE AGREEMENT

This 9th day of January, 2015:

1. **PARTIES AND MAILING ADDRESSES** Matthew S. Gilmartin and Molly F. Gilmartin, husband and wife (hereinafter called the SELLER), agree to sell, and Christopher G. Claussen of 2134 Sevilla Way, Naples, FL 34109 (hereinafter called the BUYER), agrees to buy, upon the terms set forth herein, the following described premises:
2. **DESCRIPTION** The land and buildings thereon known and numbered as 30 Hudson Road, Sudbury, MA 01776 as described in a deed recorded at the Middlesex South Registry of Deeds, Book 42175, Page 386.
3. **BUILDINGS, STRUCTURES, IMPROVEMENTS, FIXTURES** Included in the sale as a part of said premises are the buildings, structures and improvements now thereon, and the fixtures belonging to the SELLER and used in connection therewith including, if any, all wall-to-wall carpeting, drapery rods, automatic garage door openers, venetian blinds, window shades, screens, screen doors, storm windows and doors, awnings, shutters, furnaces, built-in heaters, heating equipment, stoves, ranges, oil and gas burners and fixtures appurtenant thereto, hot water heaters, plumbing and bathroom fixtures, garbage disposers, electric and other lighting fixtures, mantels, outside television antennas, fences, gates, trees, shrubs, plants, and, ventilators, dishwashers. Excluded from the sale of the premises are washing machines and dryers, refrigerator, air conditioning units, wall-mounted televisions and swing set.
4. **TITLE DEED** Said premises are to be conveyed by a good and sufficient quitclaim deed running to the BUYER, or to the nominee designated by the BUYER by written notice to the SELLER at least seven days before the deed is to be delivered as herein provided, and said deed shall convey a good and clear record and marketable title thereto, free from encumbrances except:
- (a) Provisions of existing building and zoning laws;
 - (b) Existing rights and obligations in party walls which are not the subject of written agreement;
 - (c) Such taxes for the then current fiscal year as are not due and payable on the date of the delivery of such deed;
 - (d) Any liens or municipal betterments assessed after the date of this agreement;
 - (e) Easements, restrictions and reservations of record, if any, so long as the same do not prohibit or materially interfere with the current use of said premises.
5. **PLANS** If said deed refers to a plan necessary to be recorded therewith the SELLER shall deliver such plan with the deed in form adequate for recording or registration.
6. **REGISTERED TITLE** In addition to the foregoing, if the title to said premises is registered, said deed shall be in form sufficient to entitle the BUYER to a Certificate of Title of said premises, and the SELLER shall deliver with said deed all instruments, if any, necessary to enable the BUYER to obtain such Certificate of Title.
7. **PURCHASE PRICE** The agreed purchase price for said premises is Nine Hundred Forty Thousand dollars (\$940,000), of which
- \$75,000 have been paid as a deposit this day, and
- \$865,000 are to be paid at the time of delivery of the deed by conveyancing attorney's IOLTA check or wire transfer.
-
- \$940,000 TOTAL PURCHASE PRICE
8. **TIME FOR PERFORMANCE; DELIVERY OF DEED** Such deed is to be delivered at the Middlesex South Registry of Deeds at 2:00 p.m. on the date described in Paragraph 32, unless otherwise agreed upon in writing. It is agreed that time is of the essence of this agreement.
9. **POSSESSION AND CONDITION OF PREMISE** Full possession of said premises free of all tenants and occupants, except as herein provided, is to be delivered at the time of the delivery of the deed, said premises to be then (a) in the same condition as on the date hereof, reasonable use and wear thereof excepted, (b) not in violation of said building and zoning laws, and (c) in compliance with the provisions of any instrument referred to in clause 4 hereof. The BUYER shall be entitled personally to enter said premises prior to the delivery of the deed in order to



determine whether the condition thereof complies with the terms of this clause.

10. EXTENSION TO PERFECT TITLE OR MAKE PREMISES CONFORM
If the SELLER shall be unable to give title or to make conveyance, or to deliver possession of the premises, all as herein stipulated, or if at the time of the delivery of the deed the premises do not conform with the provisions hereof, then SELLER shall use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or to make the said premises conform to the provisions hereof, as the case may be, in which event SELLER will give written notice thereof to BUYER and the time for performance hereof shall be extended for a period of thirty (30) days, but Seller shall not be required to spend more than \$5,000.00 in the exercise of reasonable efforts herein (excluding amounts paid to payoff mortgages or monetary liens).
11. FAILURE TO PERFECT TITLE OR MAKE PREMISES CONFORM, etc.
If at the expiration of the extended time the SELLER shall have failed to remove any defects in title, deliver possession, or make the premises conform, as the case may be, all as herein agreed, or if at any time during the period of this agreement or any extension thereof, the holder of a mortgage on said premises shall refuse to permit the insurance proceeds, if any, to be used for such purposes, then any payments made under this agreement shall be forthwith refunded and all other obligations of the parties hereto shall cease and this agreement shall be void without recourse to the parties hereto.
12. BUYER'S ELECTION TO ACCEPT TITLE
The BUYER shall have the election, at either the original or any extended time for performance, to accept such title as the SELLER can deliver to the said premises in their then condition and to pay therefore the purchase price without deduction, in which case the SELLER shall convey such title, except that in the event of such conveyance in accord with the provisions of this clause, if the said premises shall have been damaged by fire or casualty insured against, then the SELLER shall, unless the SELLER has previously restored the premises to their former condition, either:
- (a) pay over or assign to the BUYER, on delivery of the deed, all amounts recovered or recoverable on account of such insurance, less any amounts reasonably expended by the SELLER for any partial restoration; or
 - (b) if a holder of a mortgage on said premises shall not permit the insurance proceeds or a part thereof to be used to restore the said premises to their former condition or to be so paid over or assigned, give to the BUYER a credit against the purchase price, on delivery of the deed, equal to said amounts so recovered or recoverable and retained by the holder of the said mortgage less any amounts reasonably expended by the SELLER for any partial restoration.
13. ACCEPTANCE OF DEED
The acceptance of the deed by the BUYER or the BUYER's nominee, as the case may be, shall be deemed to be a full performance and discharge of every agreement and obligation of the SELLER herein contained or expressed, except such as are, by the terms hereof, to be performed after the delivery of said deed.
14. USE OF MONEY TO CLEAR TITLE
To enable the SELLER to make conveyance as herein provided, the SELLER may, at the time of delivery of the deed, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, provided that all instruments so procured are recorded simultaneously with the delivery of said deed or thereafter in accordance with usual and customary practices of conveyancing in the Greater Boston area.
15. INSURANCE
Until the delivery of the deed, the SELLER shall maintain insurance on said premises as follows:
- | <u>Type of Insurance</u> | <u>Amount of Coverage</u> |
|----------------------------|---------------------------|
| Fire and Extended Coverage | as presently insured |
16. ADJUSTMENTS
Water and sewer use charges, and taxes for the fiscal year in which performance takes place hereunder shall be apportioned, and fuel value shall be adjusted, as of the day of performance of this agreement and the net amount thereof shall be added to or deducted from, as the case may be, the purchase price payable by the BUYER at the time of delivery of the deed.
17. ADJUSTMENT OF UNASSESSED AND ABATED TAXES
If the amount of property taxes is not known at the time of the delivery of the deed, they shall be apportioned on the basis of the taxes assessed for the preceding fiscal year, with a reapportionment as soon as the new tax rate and valuation can be ascertained; and, if the taxes which are to be apportioned shall thereafter be reduced by abatement, the amount of such abatement, less the reasonable cost of



obtaining the same, shall be apportioned between the parties, provided that neither party shall be obligated to institute or prosecute proceedings for an abatement unless herein otherwise agreed.

18. **BROKERS' FEES** No party has contracted with any real estate broker in connection with this agreement. Each of the SELLER, on the one hand, and the BUYER, on the other hand, will indemnify and hold harmless the other party or parties (as the case may be) against any claim, loss, damage, cost, or liability for any brokerage commission, fee, or expense which may be asserted against it or them in connection with this agreement, and this provision shall survive the delivery of the deed.
19. ~~BROKERS' WARRANTY~~ ~~Each broker named herein warrants that it is duly licensed as such by the Commonwealth of Massachusetts.~~
20. **DEPOSIT** Subject to the provisions of Paragraph 33 below, all deposits made hereunder shall be held in escrow by Hemenway & Barnes LLP as escrow agent in a non-interest bearing account subject to the terms of this agreement and shall be duly accounted for at the time for performance of this agreement. In the event of any disagreement between the parties, the escrow agent may retain all deposits made under this agreement pending instructions mutually given in writing by the SELLER and the BUYER or of a final court order directing the distribution of the deposit. Buyer and Seller jointly and severally agree to indemnify and hold the escrow agent harmless from any and all costs and expenses, including reasonable attorneys fees, incurred in connection with any such dispute, and Seller agrees that Hemenway & Barnes LLP shall not, by virtue of its serving as escrow agent, be disqualified from representing Buyer in connection with any dispute regarding the disposition of the deposit.
21. **BUYER'S DEFAULT; DAMAGES** If the BUYER shall fail to fulfill the BUYER's agreements herein, all deposits made hereunder by the BUYER shall be retained by the SELLER as liquidated damages and this shall be SELLER'S sole and exclusive remedy at law and equity for any breach of this Agreement by BUYER. The Parties acknowledge and agree that SELLER has no adequate remedy in the event of BUYER'S default under this Agreement because it is impossible to compute exactly the damages which would accrue to SELLER in such event. Therefore, the Parties have taken these facts into account in setting the amount of the deposit hereunder and hereby agree that: (i) the deposit hereunder is the best estimate of such damages which would accrue to SELLER in the event of BUYER'S default hereunder, (ii) said deposit represents damages and not a penalty against BUYER, and (iii) the Parties have had the benefit of counsel with regard to the provisions of this Paragraph 21.
22. **RELEASE BY HUSBAND OR WIFE** The SELLER's spouse hereby agrees to join in said deed and to release and convey all statutory and other rights and interests in said premises.
23. ~~BROKERS AS PARTIES~~ ~~Each broker named herein joins in this agreement and becomes a party hereto, insofar as any provisions of this agreement expressly apply to the broker, and to any amendments or modifications of such provisions to which the broker agrees in writing.~~
24. **LIABILITY OF TRUSTEE, SHAREHOLDER, BENEFICIARY, etc.** If the SELLER or BUYER executes this agreement in a representative or fiduciary capacity, only the principal or the estate represented shall be bound, and neither the SELLER or BUYER so executing, nor any shareholder or beneficiary of any trust, shall be personally liable for any obligation, express or implied, hereunder.
25. **WARRANTIES AND REPRESENTATIONS** The BUYER acknowledges that the BUYER has not been influenced to enter into this transaction by, nor has the BUYER relied upon, any warranties or representations not set forth or incorporated in this agreement.
26. **CONSTRUCTION OF AGREEMENT** This instrument, executed in multiple counterparts, is to be construed as a Massachusetts contract; is to take effect as a sealed instrument; sets forth the entire contract between the parties; is binding upon and inures to the benefit of the parties hereto and their respective heirs, devisees, executors, administrators, successors and assigns; and may be cancelled, modified or amended only by a written instrument executed by both the SELLER and the BUYER or their respective attorneys. The parties may rely upon facsimile, email, or electronically scanned copies of such written instruments. If two or more persons are named herein as the BUYER their obligations hereunder shall be joint and several. The captions and

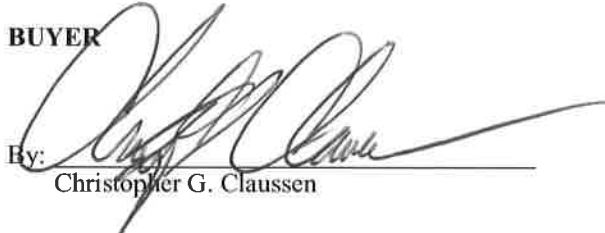


successors and assigns; and may be cancelled, modified or amended only by a written instrument executed by both the SELLER and the BUYER or their respective attorneys. The parties may rely upon facsimile, email, or electronically scanned copies of such written instruments. If two or more persons are named herein as the BUYER their obligations hereunder shall be joint and several. The captions and marginal notes are used only as a matter of convenience and are not to be considered a part of this agreement or to be used in determining the intent of the parties thereto.

- 27. LEAD PAINT LAW The parties acknowledge that, under Massachusetts law, whenever a child or children under six years of age resides in any residential premises in which any paint, plaster or other accessible material contains dangerous levels of lead, the owner of said premises must remove or cover said paint, plaster or other material so as to make it inaccessible to children under six years of age.
- 28. SMOKE DETECTORS The SELLER shall, at the time of the delivery of the deed, deliver a certificate from the fire department of the city or town in which said premises are located stating that said premises have been equipped with approved smoke detectors in conformity with applicable law.
- 29. ADDITIONAL PROVISIONS The executed rider attached hereto is incorporated herein by reference. In the event of a conflict between a provision in such rider and any other provision in clauses 1-28 hereof or any addendum or exhibit hereto, the provision in the rider shall control.

FOR RESIDENTIAL PROPERTY CONSTRUCTED PRIOR TO 1978, BUYER MUST ALSO HAVE SIGNED LEAD PAINT "PROPERTY TRANSFER NOTIFICATION CERTIFICATION"

NOTICE: This is a legal document that creates binding obligations. If not understood, consult an attorney.

BUYER

By: _____
Christopher G. Claussen

SELLER

Matthew S. Gilmartin

Molly F. Gilmartin

marginal notes are used only as a matter of convenience and are not to be considered a part of this agreement or to be used in determining the intent of the parties thereto.

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29. ADDITIONAL PROVISIONS The executed rider attached hereto is incorporated herein by reference. In the event of a conflict between a provision in such rider and any other provision in clauses 1-28 hereof or any addendum or exhibit hereto, the provision in the rider shall control.

FOR RESIDENTIAL PROPERTY CONSTRUCTED PRIOR TO 1978, BUYER MUST ALSO HAVE SIGNED LEAD PAINT "PROPERTY TRANSFER NOTIFICATION CERTIFICATION"

NOTICE: This is a legal document that creates binding obligations. If not understood, consult an attorney.

BUYER

SELLER

By: _____
Christopher G. Claussen


Matthew S. Gilmartin


Molly F. Gilmartin



**RIDER TO PURCHASE AND SALE AGREEMENT FOR 30 HUDSON ROAD,
SUDBURY, MA, BETWEEN**

MATTHEW S. GILMARTIN AND MOLLY F. GILMARTIN ("SELLER")

AND

CHRISTOPHER G. CLAUSSEN ("BUYER")

30. All notices required to be given hereunder shall be in writing and deemed duly given when: hand delivered to the recipient; sent via recognized express/overnight carrier postage prepaid; placed in the U.S. Mail by registered or certified mail, return receipt requested, postage and registration or certification charges prepaid; sent via facsimile during regular business hours between 8:00 a.m. and 6:00 p.m. with proof of delivery and transmission; or sent via e-mail if sent during regular business hours between 8:00 a.m. and 6:00 p.m. with proof of delivery and transmission; in each case addressed as follows:

If to SELLER: Mark B. Elefante, Esq.
Hemenway & Barnes LLP
60 State Street, Suite 800
Boston, MA 02109
Telephone: (617) 557-9731
Fax: (617) 227-0781
E-mail: markelefante@hembar.com

If to BUYER: Daniel W. Murray, Esq.
Murray Law Offices
One Union Avenue
Sudbury, MA 01776
Telephone: (978) 579-9800
Fax: (978) 579-9809
E-mail: Dan@DanielMurrayLaw.com

or to such other address or addresses as may from time to time be designated by either party by written notice to the other.

31. All offers and agreements made prior to this agreement are hereby superseded, rendered null and void, and shall have no further force and effect. The entire agreement of the parties with respect to the transaction set forth in this agreement is fully and completely set forth herein.
32. The closing shall occur on December 29, 2016 provided that (a) Buyer may provide notice at any time after December 29, 2015 that the closing will occur six (6) months after the date of such notice but prior to December 29, 2016, and (b) Buyer may extend the closing to occur after December 29, 2016 but prior to June 29, 2017 by making an additional payment to Seller of \$40,000 on the date of such extension, which will not be refundable to the Buyer and will be credited against the purchase price due at closing.
33. On the date hereof, \$35,000 of the Deposit is being released to the Seller and shall not be refundable to the Buyer. On the first anniversary of the date hereof, the remaining \$40,000 of the Deposit shall be released to the Seller and shall no longer be refundable to the Buyer. Prior to the first anniversary of the date hereof, Buyer, in its sole discretion, may terminate this agreement and receive any portion of the Deposit not paid to the Seller.
34. From and after the date of this agreement, the SELLER agrees to permit the BUYER and its designees reasonable access, at reasonable times to the exterior areas of the Premises for purposes of due diligence investigations, which may include subsurface testing; the SELLER also agrees to permit the BUYER and its designees reasonable access to the interior of the home on the Premises once during January or February of 2015. Said right of access shall be exercised only after reasonable prior notice to the SELLER (which



may be by telephone or by electronic mail) and so as to minimize, to the greatest extent reasonably possible, disturbance to SELLER. In consideration of the foregoing, the BUYER agrees to indemnify, defend and hold harmless the SELLER from any and all costs (including reasonable attorneys' fees), damages, and claims for damage to property or persons caused by or occurring to the BUYER or the BUYER's agent(s) while on the premises or as a result of the BUYER or the BUYER's agent(s) being on the premises. The BUYER's indemnification herein shall be in addition to, and not in any way limited by, the deposit amounts held pursuant to this agreement. This indemnity shall survive the delivery of the deed hereunder and the termination of this agreement.

35. In the event any apportionment or adjustment pursuant to clause 16 is found, within sixty (60) days subsequent to the delivery of the deed, to be erroneous, then either party hereto who is therefore entitled to additional monies shall invoice (along with reasonably detailed back-up data) the other party for such additional amounts as may be owing, and such amounts shall be paid, with good funds, within ten (10) days from the date of the invoice. The provisions of this paragraph shall survive the delivery of the deed hereunder for sixty (60) days.
36. The SELLER shall execute, upon request, simultaneously with the delivery of the deed, and when required shall on oath swear to the truth of the matters therein set forth, such documents customary for a residential closing in the Greater Boston area as may reasonably be required by the BUYER's lender or its attorney, including without limiting the generality of the foregoing, certifications or affidavits with respect to: (a) persons or parties in possession of the premises; (b) facts or conditions which may give rise to mechanic's or materialmen's liens; (c) an affidavit pursuant to Section 1445 of the Internal Revenue Code; (d) the true purchase price of the premises and whether the SELLER has or intends to lend to the BUYER a portion thereof; (e) UFFI Disclosure Affidavit stating that to the best of SELLER's knowledge there is none; and (f) 1099 reporting form.
37. The parties acknowledge and agree that this agreement may be signed in counterparts, and for purposes of this agreement, facsimile or electronically scanned signatures shall be construed as original, provided however that no party shall avoid any obligation hereunder by failing to provide such original signature.
38. Any title or practice matter arising under or relating to this agreement which is the subject of a title or practice standard of the Real Estate Bar Association ("REBA") shall be governed by said title or practice standard to the extent applicable and to the extent such title or practice standard does not contradict any expressed term or condition of this agreement.
39. On the date set for delivery of the deed, Seller shall deliver to Buyer a final water reading dated within five (5) days of the delivery of the deed
40. The SELLER represents the following as of the date hereof:
 - (a) the SELLER has no knowledge that there are any underground oil storage tanks located on the premises;
 - (b) other than reasonable quantities of normal household products, the SELLER has not released any toxic or hazardous substances (as same is contemplated by MGL Ch. 21E) on the premises;
 - (c) the SELLER has complete and unencumbered ownership of all fixtures, fittings and equipment located in the premises;
 - (d) the SELLER has no knowledge of any pending bankruptcy, mortgage foreclosure, or other proceeding which might in any material way impact adversely the SELLER's ability to perform under this agreement;
 - (e) the SELLER has received no written notice from any municipal, county, state or federal agency asserting or alleging that the premises are or may be in violation of the provisions of any

municipal, county, state or federal codes, ordinances, statutes or regulations relating to zoning, building, environmental or health matters or enforcement proceedings;

- (f) the SELLER is not aware of any suits, actions, orders, decrees, claims, writs, injunctions or proceedings against the SELLER or affecting all or any part of the premises or the operation thereof before any court or administrative agency or officer which, if adversely determined, would have material adverse effect upon the premises; and
- (g) as of the date hereof Seller has received no notice from the Town of Sudbury of any violation of the Premises of any zoning or building laws or of the Massachusetts State Sanitary Code.

The provisions of this Paragraph shall survive delivery of the deed for a period of six (6) months.

41. Notwithstanding anything to the contrary herein contained, the Premises shall not be considered to be in compliance with the title provisions of this Agreement unless:
- (a) all buildings, structures, and improvements, including but not limited to, any driveways, garages, septic systems, and wells, if any, shall be located completely within the boundary lines of the Premises and shall not encroach upon, over or under the property of any other person or entity other than by an easement or agreement of record;
 - (b) no building, structure, or improvement, including, but not limited to, any driveways, garages, and septic systems and wells, if any, of any kind belonging to any other person or entity shall encroach upon or under the Premises other than by an easement or agreement of record;
 - (c) the Premises have vehicular and pedestrian access to a public way;
 - (d) title to the Premises is insurable, for the benefit of the Buyer, by a title insurance company reasonably acceptable to Buyer, in a fee owner's policy of title insurance, at normal premium rates in the American Land Title Association form currently in use, subject to those printed exceptions to title normally included in the "jacket" to such form or policy and the standard so-called "Schedule B" exceptions, and exceptions permitted under Paragraph 4 above.
42. In order to facilitate the execution of such documents extending the time for the performance of any event or any notice that may be given under this Agreement, each of the Seller and Buyer hereby authorizes his or her respective attorney to assent and execute on that party's behalf, agreements extending the time for performance of any event or of any notice that may be given under this Agreement.
43. Effective upon the delivery of the deed, Seller hereby assigns to Buyer any and all warranties received from manufacturers of all fixtures, appliances and materials installed in the Premises. Seller shall deliver to Buyer on the closing date copies of all such warranties in Seller's possession, together with all owners' manuals in Seller's possession relating to such fixtures, appliances and materials.
44. Seller represents that Seller is not a foreign person or persons under I.R.C. Section 1445 and agrees to execute at the closing a non-foreign certificate in compliance with I.R.C. Section 1445(b)(2).
45. Seller shall deliver the Premises at the Closing in broom clean condition, free of all personal property.
46. If this agreement or any other provisions incorporated herein by reference shall contain any term or provision which shall be invalid, then the remainder of the agreement or other instrument incorporated herein, as the case may be, shall not be affected thereby and shall remain valid and in full force and effect to the fullest extent permitted by law.



47. In the event that any deadline or date for performance or providing notice contained herein (including, without limitation, any contingencies or extensions of the time for performance under this agreement), falls on a Saturday, Sunday, or legal holiday, such deadline or other date shall be automatically extended to the immediately following business day.
48. SELLER acknowledges that an affiliate of BUYER intends to develop an adjacent property as a multi-family housing facility with related improvements (the "Project"). SELLER agrees that SELLER will not oppose the Project and that SELLER will sign any application or similar document that with respect to the Project as may be reasonably requested by BUYER. SELLER further agrees that, notwithstanding anything to the contrary contained in this Agreement, BUYER may assign this Agreement to an entity formed in connection with the development of the Project.
49. BUYER has had an opportunity to perform an inspection of the Premises and agrees to purchase the Premises in their "as is" conditions as of the date of such inspection, reasonable wear and use excepted.
50. Upon execution of this Agreement, SELLER will execute and deliver to BUYER a mortgage in the form attached hereto as Exhibit A securing SELLER's obligation to convey the Premises to BUYER in accordance with the provisions hereof; BUYER may record such mortgage with the Middlesex South Registry of Deeds. Upon execution of this Agreement, BUYER will execute and deliver to BUYER's counsel, in escrow, a release of such mortgage in the form attached hereto as Exhibit B, which release will be recorded at the direction of SELLER following any termination of this Agreement.
51. Buyer acknowledges that the access allowed in Paragraph 34 is for informational purposes only. Buyer will return the landscaping to its original condition if Buyer performs any subsurface inspections and agrees that Seller is making no representations as to the condition of the septic system.

A handwritten signature in black ink, appearing to read "M. A. M.", is located at the bottom left of the page.

EXHIBIT A

(Form of Mortgage Attached)

Handwritten signature or initials

MORTGAGE

MATTHEW F. GILMARTIN and MOLLY S. GILMARTIN of 30 Hudson Road, Sudbury, Massachusetts 01776 (together with their successors and assigns, the "Mortgagor"), for consideration paid, grants to CHRISTOPHER G. CLAUSSEN of 2134 Sevilla Way, Naples, Florida 34109 (together with his successors and assigns, the "Mortgagee"), with MORTGAGE COVENANTS, the property located at 30 Hudson Road, Sudbury, Massachusetts, which is more particularly described on Exhibit A attached hereto, to secure (i) the obligations of the Mortgagor under a certain Purchase and Sale Agreement dated December __, 2014 between the Mortgagor, as seller, and the Mortgagee, as purchaser, together with all amendments and modifications thereof, and (ii) any and all obligations of the Mortgagor to the Mortgagee arising hereunder.

Being the same premises conveyed to the Mortgagor by deed recorded with the Middlesex County South District Registry of Deeds, Book 42175, Page 386.

This Mortgage is upon the STATUTORY CONDITION, for any breach of which the Mortgagee shall have the STATUTORY POWER OF SALE.

Executed as a sealed instrument as of the ____ day of January, 2015.



Matthew F. Gilmartin

S n R


Molly S. Gilmartin
F.

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF

Before me, the undersigned notary public, on this ____ day of January, 2015, personally appeared Matthew F. Gilmartin who is personally known to me or was proved to me through a current document issued by a federal or state government agency bearing a photographic image of the signatory's face and signature, to be the person whose name is signed to the foregoing instrument and acknowledged to me that he signed it as his free act and deed for its stated purpose.

[notary seal]

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF

Before me, the undersigned notary public, on this ____ day of January, 2015, personally appeared Molly S. Gilmartin who is personally known to me or was proved to me through a current document issued by a federal or state government agency bearing a photographic image of the signatory's face and signature, to be the person whose name is signed to the foregoing instrument and acknowledged to me that she signed it as her free act and deed for its stated purpose.

[notary seal]

A handwritten signature in black ink, appearing to be 'M.A. GSK', is located at the bottom left of the page.

EXHIBIT B

(Form of Release Attached)

DISCHARGE OF MORTGAGE

CHRISTOPHER G. CLAUSSEN, holder of a mortgage from MATTHEW F. GILMARTIN and MOLLY F. GILMARTIN to him dated January __, 2015 and recorded with the Middlesex County South District Registry of Deeds, Book _____, Page __, hereby acknowledges satisfaction of the same.

Executed as a sealed instrument this _____ day of January, 2015.

Christopher G. Claussen

STATE/Commonwealth of
County of

Before me, the undersigned notary public, on this _____ day of January, 2015, personally appeared Christopher G. Claussen who is personally known to me or was proved to me through a current document issued by a federal or state government agency bearing a photographic image of the signatory's face and signature, to be the person whose name is signed to the foregoing instrument and acknowledged to me that he signed it as his free act and deed for its stated purpose.

[notary seal]

Address of Premises: 30 Hudson Road, Sudbury, MA

SECTION 6:

NARRATIVE AND PLANS ON EXISTING CONDITIONS

Section 6:

Existing Conditions – Site Narrative

The project locus consists of seven contiguous parcel of land in Sudbury, Massachusetts. From Hudson Road heading north the parcels are known as: 30 Hudson Road, Parcel A, Parcel 3, Parcel 3A, Parcel 2B, Parcel 3B, Parcel C as shown on the attached existing conditions survey. Total area of the parcel is 1,736,737 sf or 39.87 acres. The parcel affords two access points, one off of Hudson Road and the other off of Concord Road. Concord road access is from Peter's Way.

The site is bordered on the west side by an abandoned rail road line, a commercial office/warehouse building, a Town athletic field and Town land that is undisturbed. The rail road line is the planned Bruce R. Freeman rail trail that is undergoing permitting. To the north the property abuts a single family subdivision. To the east the property abuts single family homes and a cemetery. To the south the property abuts one single family home and Hudson Road. The locus is zoned Single Residence A and Single Residence C.

The Assessor's lot identifications are: Parcel A, and Parcel 3 = Map G09 / Parcel 4, Parcel 2A, and Parcel 1B = Map G09 / Parcel 100, Parcel C = Map G09 / Parcel 300, #30 Hudson Road = Map H09 / Parcel 68, Peters Way = shown as Peters Way / Peters Way Extension (Parcel 2B and 3B) = not shown on town maps.

There is public water, overhead power, natural gas and communications from Hudson and Concord Road. No public sewer is available. No existing site drainage was found servicing the property. The sites drain over land uncontrolled into abutting streets and private properties.

Site soils as listed on the Town's website are:

- 307D – Paxton fine sandy loam, 15 to 25 percent slopes
- 260B – Sudbury fine sandy loam, 3 to 8 percent slopes
- 51A – Swansea muck, 0 to 1 percent slopes
- 255A – Windsor loamy sand, 0 to 3 percent slopes
- 254A – Merrimac fine sandy loam, 0 to 3 percent slopes
- 256A –Deerfield loamy sand, 0 to 3 percent slopes

Site soils as listed on UC Davis USDA-NCSS SSURGO and STATSGO are:

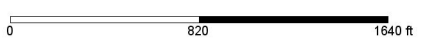
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- Parcels
- Streams Ortho
- Streams CIR
- Lake/Reservoir
- MA FEMA Q3 Flood Zones
 - A
 - AE
 - AH
 - AO
 - V
 - VE
 - ANI
 - X500
 - D
 - UNDES
- Buildings
- MA Highways
 - Interstate
 - US Highway
 - State Highway
- Town Boundary
- Streets

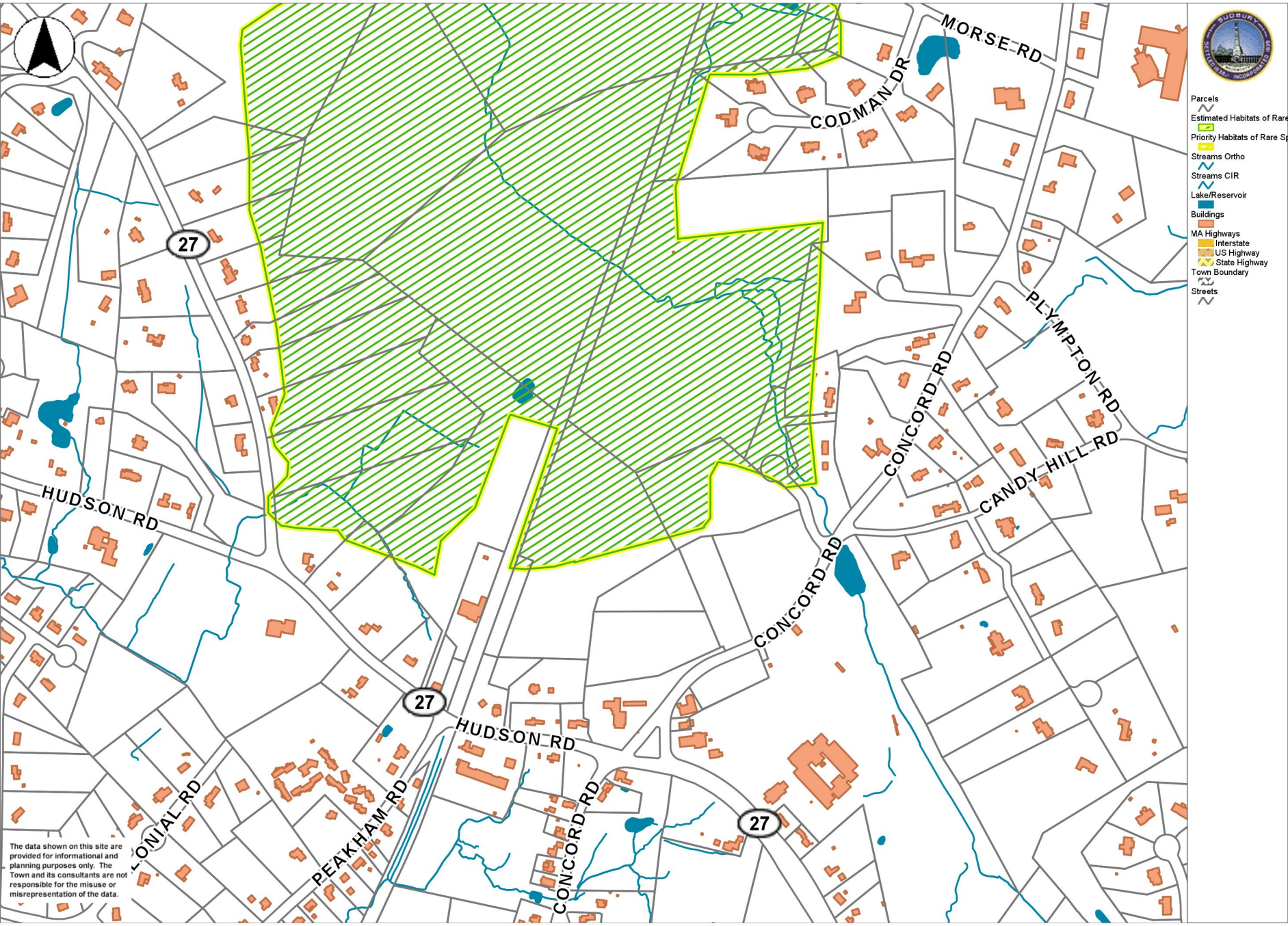


The data shown on this site are provided for informational and planning purposes only. The Town and its consultants are not responsible for the misuse or misrepresentation of the data.





- Parcels
- Estimated Habitats of Rare Wildlife
- Priority Habitats of Rare Species
- Streams Ortho
- Streams CIR
- Lake/Reservoir
- Buildings
- MA Highways
 - Interstate
 - US Highway
 - State Highway
- Town Boundary
- Streets



The data shown on this site are provided for informational and planning purposes only. The Town and its consultants are not responsible for the misuse or misrepresentation of the data.

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SECTION 8

WAIVERS AND EXCEPTIONS REQUESTED

THE VILLAGE AT SUDBURY STATION
COMPREHENSIVE PERMIT APPLICATION
LIST OF WAIVERS REQUESTED

January 22, 2016

Pursuant to 760 CMR 56.05, the Applicant hereby submits this list of waivers requested with its Application for Comprehensive Permit to the Sudbury Zoning Board of Appeals.

In accordance with 760 CMR 56.05(7), the Applicant hereby requests waivers from any and all other local requirements which may hereafter arise during the public hearing, and which are required in order to construct the project as proposed, or as modified by the applicant through the public hearing process or before any vote by the Sudbury Zoning Board of Appeals on the application.

A. ZONING

The Proposed development is located in a Residential “A” Zoning District governed by the Town of Sudbury Zoning By-law (hereinafter the “By-law”). Absent approval under a Comprehensive Permit, the development would be required to conform to all local by-laws including the Sudbury Zoning By-law. Based upon the most recent Subsidized Housing Inventory, it appears that these local requirements are not consistent with the local need for affordable housing in Sudbury.

Therefore, the applicant requests waivers from the following sections of the Town of Sudbury Zoning By-law:¹

1. Section 1210—Requires all uses and structures to conform to the By-law;

Reason for Request: Conformance to the By-law is inconsistent with local needs and would preclude construction of the project as proposed.

2. Section 1220—Requires the By-law to control in the event of a conflict between its provisions and those of any other applicable law, regulation, permit, restriction, easement, covenant, or agreement;

¹ The reasons for each request are not intended, and are not, exclusive reasons for requesting each waiver, but are instead good faith efforts to identify for the Board why the applicant is requesting each specific waiver. All waivers requested are requested because application of the local by-law in question would be inconsistent with local needs and would hinder or preclude construction of the project as proposed.

Reason for Request: Conformance to the By-law is inconsistent with local needs and would preclude construction of the project as proposed. G.L. c. 40B sec. 20-23 and 760 CMR 56.00 et. seq. control with respect to this project.

3. Section 1230—Requires construction or operations to conform to any subsequent amendment of the By-law;

Reason for Request: Reason for Request: Conformance to the By-law is inconsistent with local needs and would preclude construction of the project as proposed. G.L. c. 40B sec. 20-23 and 760 CMR 56.00 et. seq. control with respect to this project.

4. Section 2210—Requires all uses to conform to the By-law;

Reason for Request: Conformance to the By-law is inconsistent with local needs and would preclude construction of the project as proposed. G.L. c. 40B sec. 20-23 and 760 CMR 56.00 et. seq. control with respect to this project.

5. Section 2220—Requires all uses to conform to the most restrictive classification if a use may be susceptible of more than one classification;

Reason for Request: Conformance to the By-law is inconsistent with local needs and would preclude construction of the project as proposed. G.L. c. 40B sec. 20-23 and 760 CMR 56.00 et. seq. control with respect to this project.

6. Section 2230—Table of Principle Use Regulations (Appendix A)—limits uses in Residential A Zoning District to those enumerated;

Reason for Request: Conformance to the By-law is inconsistent with local needs and would preclude construction of the project as proposed. G.L. c. 40B sec. 20-23 and 760 CMR 56.00 et. seq. control with respect to this project.

7. Section 2310—Limits accessory uses to those customarily incidental to the principal use and requires Special Permits for certain accessory uses.

Reason for Request: Conformance to the By-law is inconsistent with local needs and would preclude construction of the project as proposed. G.L. c. 40B sec. 20-23 and 760 CMR 56.00 et. seq. control with respect to this project.

8. Section 2314—Requires a Special Permit from the Board of Appeals for accessory uses to an allowed principal nonresidential use.

Reason for Request: Conformance to the By-law is inconsistent with local needs and would preclude construction of the project as proposed. G.L. c. 40B sec. 20-23 and 760 CMR 56.00 et. seq. control with respect to this project.

9. Section 2325—Requires Site plan approval for swimming pools and requires that all requirements for set-back, side yard, front and rear yard clear distances be the same as for a principal building.

Reason for Request: Conformance to the By-law is inconsistent with local needs and would preclude construction of the project as proposed. G.L. c. 40B sec. 20-23 and 760 CMR 56.00 et. seq. control with respect to this project.

10. Section 2326—Limits accessory structures in residential districts to the rear yard, one story in height, 16 feet in length on any side and maximum floor area of 200 square feet, whichever is less, and requires a five foot setback for such structures.

Reason for Request: Conformance to the By-law is inconsistent with local needs and would preclude construction of the project as proposed. G.L. c. 40B sec. 20-23 and 760 CMR 56.00 et. seq. control with respect to this project.

11. All subsections under Section 2400 (Non-Conforming Uses and Structures) to the extent that approval of the plans will thereby render any existing lot or structure non-conforming under the Zoning By-law.

Reason for Request: Conformance to the By-law is inconsistent with local needs and would preclude construction of the project as proposed. G.L. c. 40B sec. 20-23 and 760 CMR 56.00 et. seq. control with respect to this project.

12. Section 2610—Limits any structure to the Dimensional Requirements contained in the Zoning By-law and in Table B, Dimensional Requirements;

Reason for Request: Conformance to the By-law is inconsistent with local needs and would preclude construction of the project as proposed. G.L. c. 40B sec. 20-23 and 760 CMR 56.00 et. seq. control with respect to this project.

13. Section 2620—Limits any structure in a Residential A Zone to the dimensional requirements contained in Table B;

Reason for Request: Conformance to the By-law is inconsistent with local needs and would preclude construction of the project as proposed. G.L. c. 40B sec. 20-23 and 760 CMR 56.00 et. seq. control with respect to this project.

14. Section 2632—Limitations and exceptions on Height Requirements;

Reason for Request: Conformance to the By-law is inconsistent with local needs and would preclude construction of the project as proposed. G.L. c. 40B sec. 20-23 and 760 CMR 56.00 et. seq. control with respect to this project.

15. Section 2641A—Limits the lot perimeter to no more than one foot of lot perimeter for every 50 square feet of lot area and no less than 50 feet in width at any location within the lot, to the extent that this Section is applicable to the lots upon which the project is proposed;

Reason for Request: Conformance to the By-law is inconsistent with local needs and would preclude construction of the project as proposed. G.L. c. 40B sec. 20-23 and 760 CMR 56.00 et. seq. control with respect to this project.

16. Section 2641B—Limits the minimum front yard to that existing under the By-law at the time of its amendment;

Reason for Request: Conformance to the By-law is inconsistent with local needs and would preclude construction of the project as proposed. G.L. c. 40B sec. 20-23 and 760 CMR 56.00 et. seq. control with respect to this project.

17. Section 2643—Establishing Open Space Requirements required by the Table of Dimensional Requirements, Appendix B;

Reason for Request: Conformance to the By-law is inconsistent with local needs and would preclude construction of the project as proposed.

G.L. c. 40B sec. 20-23 and 760 CMR 56.00 et. seq. control with respect to this project.

18. Section 2647—Requiring a lot having frontage on two or more streets to have the minimum frontage required on one street and half the minimum frontage required on the other street, to the extent applicable to the lots upon which this project is proposed;

Reason for Request: Conformance to the By-law is inconsistent with local needs and would preclude construction of the project as proposed. G.L. c. 40B sec. 20-23 and 760 CMR 56.00 et. seq. control with respect to this project.

19. Section 3100 and all subsections including the Table of Parking Requirements—Parking Standards, to the extent the same are extent inconsistent with the parking shown on the plans;

Reason for Request: Conformance to the By-law is inconsistent with local needs and would preclude construction of the project as proposed. G.L. c. 40B sec. 20-23 and 760 CMR 56.00 et. seq. control with respect to this project.

20. Section 3200 and all subsections, to the extent inconsistent with the signage shown on the plans.

Reason for Request: Application of these sections of the By-law are inconsistent with G.L. c. 40B sec. 20-23 which require one Comprehensive Permit from the Zoning Board of Appeals.

21. Section 3300—Limiting common driveways or access to serving no more than two dwellings or other principal structures except as allowed by Special Permit, to the extent that this section applies to the project as proposed;

Reason for Request: Conformance to the By-law is inconsistent with local needs and would preclude construction of the project as proposed. G.L. c. 40B sec. 20-23 and 760 CMR 56.00 et. seq. control with respect to this project.

22. Section 3400—Limiting any activity within the Zoning District to conformance with the standards for environmental protection and development included in the By-law;

Reason for Request: Conformance to the By-law is inconsistent with local needs and would preclude construction of the project as proposed. G.L. c. 40B sec. 20-23 and 760 CMR 56.00 et. seq. control with respect to this project.

23. Section 3420 and all subsections—The Standards established for compliance with Section 3400 to the extent necessary to construct the development shown on the plans.

Reason for Request: Conformance to the By-law is inconsistent with local needs and would preclude construction of the project as proposed. G.L. c. 40B sec. 20-23 and 760 CMR 56.00 et. seq. control with respect to this project.

Notwithstanding the foregoing request, the project will comply to the maximum extent possible with Section 3420—3426. Waivers are requested from Sections 3427, 3430, 3440, 3500, and all subsections thereof to the extent necessary to construct the project as proposed as follows:

Section 3430 and all subsections—Erosion Control, limiting grades, slopes, and vegetation removal;

Section 3440—Limiting excavation and grades within 50 feet of any road boundary abutting the site;

Section 3500 and all subsections (Screening and Landscaping) to the extent inconsistent with the plans;

Section 5100 and all subsections (Cluster Development) to the extent that these sections would be applicable to the development proposed in the plans;

Section 5300 and all subsections, to the extent that the same are applicable to the proposed development;

Reason for Request: Conformance to the By-law is inconsistent with local needs and would preclude construction of the project as proposed. G.L. c. 40B sec. 20-23 and 760 CMR 56.00 et. seq. control with respect to this project.

24. Section 6130—Limitations on granting of variances;

Reason for Request: Conformance to the By-law is inconsistent with local needs and would preclude construction of the project as proposed. G.L. c. 40B sec. 20-23 and 760 CMR 56.00 et. seq. control with respect to this project.

25. Section 6140—Limitations on Use Variances;

Reason for Request: Conformance to the By-law is inconsistent with local needs and would preclude construction of the project as proposed. G.L. c. 40B sec. 20-23 and 760 CMR 56.00 et. seq. control with respect to this project.

26. Section 6200 and all subsections—Special Permits, to the extent required to approve the project shown on the plans;

Reason for Request: Conformance to the By-law is inconsistent with local needs and would preclude construction of the project as proposed. G.L. c. 40B sec. 20-23 and 760 CMR 56.00 et. seq. control with respect to this project.

27. Section 6300 and all subsections—Site Plan Review, to the extent required to approve the project shown on the plans;

Reason for Request: Conformance to the By-law is inconsistent with local needs and would preclude construction of the project as proposed. G.L. c. 40B sec. 20-23 and 760 CMR 56.00 et. seq. control with respect to this project.

28. Section 6500 and all subsections—Design Review Board, to the extent required to approve the project shown on the plans;

Reason for Request: Conformance to the By-law is inconsistent with local needs and would preclude construction of the project as proposed. G.L. c. 40B sec. 20-23 and 760 CMR 56.00 et. seq. control with respect to this project.

B. OLD SUDBURY HISTORIC DISTRICT

No portion of the construction for the project is within 300 feet of the centerline Hudson Road or Concord Road. Very small portions of the construction (approximately 8 feet of the wastewater treatment plant building and approximately 2 feet of the Townhouses) are located within 300 feet of the sideline of Hudson Road. To the extent that any roadway, utility, or construction falls under the jurisdiction of the Old Sudbury Historic District, waiver is sought from any guideline, specifically including any guideline limiting alterations to stone walls or limits on bituminous surface that would limit or preclude the installation of such roadway, utilities, or other appurtenances as necessary to construct the project as proposed, and from the Historic Commission's "guidelines" relative to architectural features and materials, style, scale and setting of the proposed project, to the extent applicable to the proposed project.

C. SUDBURY WETLANDS BY-LAW AND REGULATIONS

The applicant has received from the Sudbury Conservation Commission an ANRAD and Determination of Applicability under G.L. c. 131 sec. 40 determining the boundaries of all wetland resource areas on-site under the Massachusetts Wetlands Act and the Regulations at 310 CMR 10.00 et. seq.

With the exception of a portion of the access road off Concord Road (Peter's Way) no portion of the construction falls within the jurisdiction of the Sudbury Conservation Commission.

To the extent that any of the construction of Peter's Way falls within the jurisdiction of the Sudbury Conservation Commission under the Sudbury Wetlands By-law and the Sudbury Conservation Commission Regulations, waivers are sought from the following:

1. Any requirement to file a Notice of Intent for work within the buffer zone to any resource area;
2. Any jurisdiction under the local by-law or regulations for isolated vegetated wetlands smaller than the ¼ acre-foot threshold for isolated land subject to flooding under the Wetlands Act and Regulations at 310 CMR 10.57;
3. Any jurisdiction under the Sudbury Wetlands By-law or Regulations for any intermittent stream within a culvert which does not border on

any resource area protected by G.L. c. 131 sec. 40 or the Regulations at 310 CMR 10.00 et. seq.;

4. Without limitation to any of the foregoing, waivers are requested from the following sections of the Sudbury Wetlands By-law and Regulations:

By-law Sections:

Section 2.1 (Jurisdiction)

Section 2.3 (Intermittent Streams)

Section 4.7 (Subdivision Roadway Fees) to the extent applicable to this project;

Section 4.8 (Drainage structure fees);

Section 4.10 (Fees for consultants);

Section 4.11 (Additional Fees);

Section 7.2 (Adjacent Upland Resource Areas);

Section 7.3 (Significant Adverse Effect on Wildlife Habitat)

Section 7.6 (Subdivision Roadways) to the extent applicable to this project;

Section 7.11 (Stormwater Runoff)

Section 7.14 (Tree Removal Standards)

Regulations Sections:

10 –Security;

D. SUDBURY STORMWATER BY-LAW AND REGULATIONS

The proposed stormwater management system has been designed in accordance with applicable State and Federal standards. Waivers have been requested from the Stormwater Management By-law and Regulations where the local By-law and regulation requirements exceed the State or Federal requirements as inconsistent with local needs. The project has been designed to prevent off-site impacts by maintaining the off-site peak rate of runoff to be at or below pre-development levels for the 2-, 10-, and 100-year design storms. The rainfall intensities utilized in the design comply with those listed in 310 CMR 10.57(2)(a)3 and 4.

The proposed project qualifies for coverage under the NPDES Construction General Permit. The permit conditions include preparation of a construction period Stormwater Pollution Prevent Plan (SWPPP), performing regular site inspections, and maintaining supporting documentation and/or reporting throughout construction. These conditions are more than adequate for public safety and disposal and management of stormwater.

Therefore, waivers are requested from the following sections of the Sudbury Stormwater Management By-law and Regulations:

Article V(F) Stormwater Management Bylaw:

1. Section 5.0 Applicability

Stormwater Management Bylaw Regulations:

1. Section 7.0 Permit procedures for Stormwater Management Permits
2. Section 8.0 Stormwater management permit standards and requirements
3. Section 9.0 Inspections
4. Section 10.0 Surety
5. Section 11.0 Certificate of completion

E. SUDBURY PLANNING BOARD DECISION AND COVENANT

Peter's Way and Peter's Way Extension have the benefit of a Decision of the Sudbury Planning Board dated September 19, 2012. That decision, to the extent legally binding on the applicant (and from which a full reservation of rights is taken) requires that any modification to the location or specifications of the driveway serving as access to Lot 2A as shown on the approved subdivision plan shall require approval of the Planning Board. This condition is not set forth in the Covenant recorded at Middlesex South Deeds in Book 60688 Page 161.

The requirements of the Sudbury Planning Board in the Decision dated September 19, 2012 and the Covenant recorded at Middlesex South Deeds in Book 60688 Page 161 are inconsistent with local needs and inconsistent with G.L. c. 40B sec. 20-23 and 760 CMR 56.00 et. Seq. all of which mandate that approval of the project be through one Comprehensive Permit granted by the Zoning Board of Appeals. Therefore, to the extent that any requirement of the Sudbury Planning Board in its Decision and Covenant are legally binding (from which a full reservation of rights is taken) the applicant requests the same be waived to permit the construction of Peter's Way as shown on the plans.

F. SUDBURY WATER DISTRICT REGULATIONS

Article XXVII In Ground Irrigation Systems: Application of these sections of the By-law are inconsistent with G.L. c. 40B sec. 20-23 which require one Comprehensive Permit from the Zoning Board of Appeals. Therefore waiver of these sections is requested and approval of irrigation systems is requested from the Zoning Board of Appeals pursuant to this application for Comprehensive Permit.

F. BOARD OF APPEALS 40B APPLICATION FEES

Section 3.6 of the Board's "Supplemental Rules for Comprehensive Permits" specify a \$2,000.00 base fee plus \$100.00 per unit proposed. To the extent that a filing fee of \$27,000.00 for this project is inconsistent with 760 CMR 56.05(2) or in excess of the Town's actual cost to review this application, the Applicant requests a waiver of any excess fee and that it be remitted to the applicant.

SECTION 9

CERTIFIED LIST OF ABUTTERS

SECTION 10

DHCD'S SUBSIDIZED HOUSING INVESTORY OF SUDBURY

Department of Housing and Community Development
Chapter 40B Subsidized Housing Inventory (SHI)
as of December 5, 2014

Community	2010 Census Year Round Housing Units	Total Development Units	SHI Units	%
Abington	6,364	511	478	7.5%
Acton	8,475	1,107	551	6.5%
Acushnet	4,097	133	103	2.5%
Adams	4,337	321	321	7.4%
Agawam	12,090	499	467	3.9%
Alford	231	0	0	0.0%
Amesbury	7,041	869	505	7.2%
Amherst	9,621	1,081	1,034	10.7%
Andover	12,324	1,428	1,145	9.3%
Aquinnah	158	41	41	25.9%
Arlington	19,881	1,429	1,121	5.6%
Ashburnham	2,272	147	32	1.4%
Ashby	1,150	0	0	0.0%
Ashfield	793	2	2	0.3%
Ashland	6,581	346	241	3.7%
Athol	5,148	247	247	4.8%
Attleboro	17,978	1,177	1,177	6.5%
Auburn	6,808	242	242	3.6%
Avon	1,763	74	74	4.2%
Ayer	3,440	456	290	8.4%
Barnstable	20,550	1,832	1,373	6.7%
Barre	2,164	83	83	3.8%
Becket	838	0	0	0.0%
Bedford	5,322	1,087	902	16.9%
Belchertown	5,771	398	372	6.4%
Bellingham	6,341	702	537	8.5%
Belmont	10,117	392	380	3.8%
Berkley	2,169	139	24	1.1%
Berlin	1,183	222	65	5.5%
Bernardston	930	24	24	2.6%
Beverly	16,522	2,142	1,946	11.8%
Billerica	14,442	1,487	857	5.9%
Blackstone	3,606	165	123	3.4%
Blandford	516	1	1	0.2%
Bolton	1,729	192	64	3.7%
Boston	269,482	52,453	49,324	18.3%
Bourne	8,584	1,227	596	6.9%
Boxborough	2,062	327	24	1.2%
Boxford	2,730	64	23	0.8%

Boylston	1,765	26	24	1.4%
Braintree	14,260	1,636	1,098	7.7%
Brewster	4,803	293	246	5.1%
Bridgewater	8,288	579	524	6.3%
Brimfield	1,491	80	80	5.4%
Brockton	35,514	4,485	4,485	12.6%
Brookfield	1,452	47	41	2.8%
Brookline	26,201	2,634	2,111	8.1%
Buckland	866	3	3	0.3%
Burlington	9,627	1,395	993	10.3%
Cambridge	46,690	7,174	7,084	15.2%
Canton	8,710	1,180	1,075	12.3%
Carlisle	1,740	52	46	2.6%
Carver	4,514	146	146	3.2%
Charlemont	615	3	3	0.5%
Charlton	4,774	83	83	1.7%
Chatham	3,460	176	170	4.9%
Chelmsford	13,741	1,545	1,169	8.5%
Chelsea	12,592	2,130	2,125	16.9%
Cheshire	1,481	0	0	0.0%
Chester	585	22	22	3.8%
Chesterfield	524	17	17	3.2%
Chicopee	25,074	2,588	2,551	10.2%
Chilmark	418	3	3	0.7%
Clarksburg	706	8	8	1.1%
Clinton	6,375	549	549	8.6%
Cohasset	2,898	325	311	10.7%
Colrain	731	0	0	0.0%
Concord	6,852	766	710	10.4%
Conway	803	0	0	0.0%
Cummington	426	16	16	3.8%
Dalton	2,860	158	158	5.5%
Danvers	11,071	1,472	1,109	10.0%
Dartmouth	11,775	959	929	7.9%
Dedham	10,115	1,152	1,107	10.9%
Deerfield	2,154	33	33	1.5%
Dennis	7,653	349	335	4.4%
Dighton	2,568	417	115	4.5%
Douglas	3,147	183	140	4.4%
Dover	1,950	69	17	0.9%
Dracut	11,318	1,004	719	6.4%
Dudley	4,360	104	104	2.4%
Dunstable	1,085	0	0	0.0%
Duxbury	5,532	441	196	3.5%
East Bridgewater	4,897	230	173	3.5%
East Brookfield	888	0	0	0.0%
East Longmeadow	6,072	504	436	7.2%

Eastham	2,632	59	50	1.9%
Easthampton	7,567	505	449	5.9%
Easton	8,105	629	531	6.6%
Edgartown	1,962	94	89	4.5%
Egremont	596	0	0	0.0%
Erving	778	0	0	0.0%
Essex	1,477	40	40	2.7%
Everett	16,691	1,314	1,314	7.9%
Fairhaven	7,003	473	473	6.8%
Fall River	42,650	4,927	4,831	11.3%
Falmouth	14,870	1,231	963	6.5%
Fitchburg	17,058	1,656	1,655	9.7%
Florida	335	0	0	0.0%
Foxborough	6,853	621	611	8.9%
Framingham	27,443	2,870	2,870	10.5%
Franklin	11,350	1,543	1,078	9.5%
Freetown	3,263	98	80	2.5%
Gardner	9,064	1,297	1,297	14.3%
Georgetown	3,031	354	354	11.7%
Gill	591	24	24	4.1%
Gloucester	13,270	986	951	7.2%
Goshen	440	6	6	1.4%
Gosnold	41	0	0	0.0%
Grafton	7,160	642	325	4.5%
Granby	2,451	66	66	2.7%
Granville	630	3	3	0.5%
Great Barrington	3,072	316	244	7.9%
Greenfield	8,325	1,160	1,143	13.7%
Groton	3,930	378	212	5.4%
Groveland	2,423	137	80	3.3%
Hadley	2,200	285	285	13.0%
Halifax	2,971	28	28	0.9%
Hamilton	2,783	124	84	3.0%
Hampden	1,941	60	60	3.1%
Hancock	326	0	0	0.0%
Hanover	4,832	455	455	9.4%
Hanson	3,572	270	148	4.1%
Hardwick	1,185	22	22	1.9%
Harvard	1,982	279	110	5.5%
Harwich	6,121	333	333	5.4%
Hatfield	1,549	47	47	3.0%
Haverhill	25,557	2,694	2,465	9.6%
Hawley	137	0	0	0.0%
Heath	334	0	0	0.0%
Hingham	8,841	2,161	561	6.3%
Hinsdale	918	0	0	0.0%
Holbrook	4,262	439	439	10.3%

Holden	6,624	507	393	5.9%
Holland	1,051	19	19	1.8%
Holliston	5,077	332	225	4.4%
Holyoke	16,320	3,411	3,368	20.6%
Hopedale	2,278	108	108	4.7%
Hopkinton	5,087	558	439	8.6%
Hubbardston	1,627	49	49	3.0%
Hudson	7,962	1,089	918	11.5%
Hull	4,964	93	93	1.9%
Huntington	919	47	47	5.1%
Ipswich	5,735	520	494	8.6%
Kingston	4,881	356	179	3.7%
Lakeville	3,852	572	256	6.6%
Lancaster	2,544	207	124	4.9%
Lanesborough	1,365	28	28	2.1%
Lawrence	27,092	3,926	3,907	14.4%
Lee	2,702	173	176	6.5%
Leicester	4,231	163	163	3.9%
Lenox	2,473	178	178	7.2%
Leominster	17,805	1,479	1,442	8.1%
Leverett	792	2	2	0.3%
Lexington	11,946	1,510	1,329	11.1%
Leyden	300	0	0	0.0%
Lincoln	2,153	310	238	11.2%
Littleton	3,443	643	431	12.5%
Longmeadow	5,874	267	267	4.5%
Lowell	41,308	5,250	5,215	12.6%
Ludlow	8,337	187	187	2.2%
Lunenburg	4,037	164	164	4.1%
Lynn	35,701	4,452	4,451	12.5%
Lynnfield	4,319	704	491	11.4%
Malden	25,122	2,628	2,562	10.2%
Manchester	2,275	122	110	4.8%
Mansfield	8,725	1,042	946	10.8%
Marblehead	8,528	399	333	3.9%
Marion	2,014	204	155	7.7%
Marlborough	16,347	1,728	1,660	10.2%
Marshfield	9,852	753	550	5.6%
Mashpee	6,473	314	298	4.6%
Mattapoissett	2,626	71	71	2.7%
Maynard	4,430	387	369	8.3%
Medfield	4,220	209	191	4.5%
Medford	23,968	1,685	1,647	6.9%
Medway	4,603	285	233	5.1%
Melrose	11,714	1,209	892	7.6%
Mendon	2,072	77	40	1.9%
Merrimac	2,527	397	141	5.6%

Methuen	18,268	1,938	1,649	9.0%
Middleborough	8,921	928	509	5.7%
Middlefield	230	4	4	1.7%
Middleton	3,011	173	151	5.0%
Milford	11,379	980	718	6.3%
Millbury	5,592	244	221	4.0%
Millis	3,148	184	121	3.8%
Millville	1,157	26	26	2.2%
Milton	9,641	733	477	4.9%
Monroe	64	0	0	0.0%
Monson	3,406	152	152	4.5%
Montague	3,926	423	391	10.0%
Monterey	465	0	0	0.0%
Montgomery	337	0	0	0.0%
Mount Washington	80	0	0	0.0%
Nahant	1,612	48	48	3.0%
Nantucket	4,896	179	121	2.5%
Natick	14,052	1,672	1,442	10.3%
Needham	11,047	969	838	7.6%
New Ashford	104	0	0	0.0%
New Bedford	42,816	5,155	5,124	12.0%
New Braintree	386	0	0	0.0%
New Marlborough	692	0	0	0.0%
New Salem	433	0	0	0.0%
Newbury	2,699	94	94	3.5%
Newburyport	8,015	720	606	7.6%
Newton	32,346	2,515	2,438	7.5%
Norfolk	3,112	144	111	3.6%
North Adams	6,681	886	880	13.2%
North Andover	10,902	1,393	932	8.5%
North Attleborough	11,553	308	296	2.6%
North Brookfield	2,014	142	142	7.1%
North Reading	5,597	645	533	9.5%
Northampton	12,604	1,586	1,521	12.1%
Northborough	5,297	718	605	11.4%
Northbridge	6,144	470	455	7.4%
Northfield	1,290	27	27	2.1%
Norton	6,707	898	588	8.8%
Norwell	3,652	426	271	7.4%
Norwood	12,441	992	980	7.9%
Oak Bluffs	2,138	158	146	6.8%
Oakham	702	0	0	0.0%
Orange	3,461	431	431	12.5%
Orleans	3,290	337	307	9.3%
Otis	763	0	0	0.0%
Oxford	5,520	404	404	7.3%
Palmer	5,495	329	284	5.2%

Paxton	1,590	62	62	3.9%
Peabody	22,135	2,146	2,031	9.2%
Pelham	564	4	4	0.7%
Pembroke	6,477	807	625	9.6%
Pepperell	4,335	197	129	3.0%
Peru	354	0	0	0.0%
Petersham	525	0	0	0.0%
Phillipston	658	11	11	1.7%
Pittsfield	21,031	2,078	1,957	9.3%
Plainfield	283	0	0	0.0%
Plainville	3,459	209	175	5.1%
Plymouth	22,285	840	692	3.1%
Plympton	1,039	63	51	4.9%
Princeton	1,324	21	21	1.6%
Provincetown	2,122	210	169	8.0%
Quincy	42,547	4,077	4,077	9.6%
Randolph	11,980	1,279	1,279	10.7%
Raynham	5,052	604	489	9.7%
Reading	9,584	1,137	742	7.7%
Rehoboth	4,252	95	23	0.5%
Revere	21,956	1,769	1,759	8.0%
Richmond	706	3	3	0.4%
Rochester	1,865	8	8	0.4%
Rockland	7,030	453	407	5.8%
Rockport	3,460	135	135	3.9%
Rowe	177	0	0	0.0%
Rowley	2,226	179	94	4.2%
Royalston	523	3	3	0.6%
Russell	687	13	13	1.9%
Rutland	2,913	81	81	2.8%
Salem	18,998	2,350	2,348	12.4%
Salisbury	3,842	555	342	8.9%
Sandisfield	401	0	0	0.0%
Sandwich	8,183	566	287	3.5%
Saugus	10,754	825	749	7.0%
Savoy	318	0	0	0.0%
Scituate	7,163	355	310	4.3%
Seekonk	5,272	88	84	1.6%
Sharon	6,413	472	472	7.4%
Sheffield	1,507	30	30	2.0%
Shelburne	893	51	51	5.7%
Sherborn	1,479	41	34	2.3%
Shirley	2,417	60	60	2.5%
Shrewsbury	13,919	957	860	6.2%
Shutesbury	758	2	2	0.3%
Somerset	7,335	271	271	3.7%
Somerville	33,632	3,270	3,258	9.7%

South Hadley	7,091	396	396	5.6%
Southampton	2,310	44	44	1.9%
Southborough	3,433	610	286	8.3%
Southbridge	7,517	490	490	6.5%
Southwick	3,852	177	173	4.5%
Spencer	5,137	268	267	5.2%
Springfield	61,556	10,247	9,970	16.2%
Sterling	2,918	269	68	2.3%
Stockbridge	1,051	111	111	10.6%
Stoneham	9,399	501	495	5.3%
Stoughton	10,742	1,535	1,207	11.2%
Stow	2,500	331	179	7.2%
Sturbridge	3,759	260	209	5.6%
Sudbury	5,921	575	354	6.0%
Sunderland	1,718	8	8	0.5%
Sutton	3,324	176	42	1.3%
Swampscott	5,795	218	212	3.7%
Swansea	6,290	247	236	3.8%
Taunton	23,844	1,844	1,650	6.9%
Templeton	3,014	476	198	6.6%
Tewksbury	10,803	1,306	1,037	9.6%
Tisbury	1,965	123	109	5.5%
Tolland	222	0	0	0.0%
Topsfield	2,157	164	146	6.8%
Townsend	3,356	214	150	4.5%
Truro	1,090	27	27	2.5%
Tyngsborough	4,166	638	340	8.2%
Tyringham	149	0	0	0.0%
Upton	2,820	223	178	6.3%
Uxbridge	5,284	427	257	4.9%
Wakefield	10,459	1,059	694	6.6%
Wales	772	55	55	7.1%
Walpole	8,984	470	470	5.2%
Waltham	24,805	2,253	1,785	7.2%
Ware	4,539	425	425	9.4%
Wareham	9,880	889	759	7.7%
Warren	2,202	108	108	4.9%
Warwick	363	0	0	0.0%
Washington	235	0	0	0.0%
Watertown	15,521	1,219	1,000	6.4%
Wayland	4,957	362	200	4.0%
Webster	7,788	666	666	8.6%
Wellesley	9,090	597	561	6.2%
Wellfleet	1,550	34	34	2.2%
Wendell	419	5	5	1.2%
Wenham	1,404	190	122	8.7%
West Boylston	2,729	429	136	5.0%

West Bridgewater	2,658	173	119	4.5%
West Brookfield	1,578	57	57	3.6%
West Newbury	1,558	86	34	2.2%
West Springfield	12,629	440	440	3.5%
West Stockbridge	645	0	0	0.0%
West Tisbury	1,253	38	23	1.8%
Westborough	7,304	718	668	9.1%
Westfield	16,001	1,138	1,138	7.1%
Westford	7,671	987	575	7.5%
Westhampton	635	10	10	1.6%
Westminster	2,826	274	87	3.1%
Weston	3,952	252	142	3.6%
Westport	6,417	449	222	3.5%
Westwood	5,389	611	493	9.1%
Weymouth	23,337	1,919	1,895	8.1%
Whately	654	2	2	0.3%
Whitman	5,513	218	218	4.0%
Wilbraham	5,442	254	253	4.6%
Williamsburg	1,165	51	51	4.4%
Williamstown	2,805	148	148	5.3%
Wilmington	7,788	1,048	820	10.5%
Winchendon	4,088	345	345	8.4%
Winchester	7,920	199	152	1.9%
Windsor	387	0	0	0.0%
Winthrop	8,253	637	637	7.7%
Woburn	16,237	1,318	1,150	7.1%
Worcester	74,383	9,983	9,971	13.4%
Worthington	553	22	22	4.0%
Wrentham	3,821	269	165	4.3%
Yarmouth	12,037	625	518	4.3%
Totals	2,692,186	282,268	250,863	9.3%

*This data is derived from Information provided to the Department of Housing and Community Development (DHCD) by individual communities and is subject to change as new information is obtained and use restrictions expire.

SECTION 12

ENDANGERED SPECIES ACT



Commonwealth of Massachusetts

Division of Fisheries & Wildlife

MassWildlife

Jack Buckley, *Director*

October 29, 2015

Christopher Claussen
2134 Sevilla Way
Naples FL 34109

RE: Project Location: Peter's Way, Sudbury
Project Description: 250 Unit Affordable Housing Development
NHESP File No.: 14-33939

Dear Applicant:

Thank you for submitting the MESA Project Review Checklist, site plans (dated July 8, 2015) and other required materials to the Natural Heritage and Endangered Species Program of the MA Division of Fisheries & Wildlife (the "Division") for review pursuant to the Massachusetts Endangered Species Act (MESA) (MGL c.131A) and its implementing regulations (321 CMR 10.00).

Based on a review of the information that was provided and the information that is currently contained in our database, the Division has determined that this project, as currently proposed, **will not result in a prohibited "take"** of state-listed rare species. This determination is a final decision of the Division of Fisheries & Wildlife pursuant to 321 CMR 10.18. Any changes to the proposed project or any additional work beyond that shown on the site plans may require an additional filing with the Division pursuant to the MESA. This project may be subject to further review if no physical work is commenced within five years from the date of issuance of this determination, or if there is a change to the project.

Please note that this determination addresses only the matter of state-listed species and their habitats. If you have any questions regarding this letter please contact Emily Holt, Endangered Species Review Assistant, at (508) 389-6385.

Sincerely,

Thomas W. French, Ph.D.
Assistant Director

cc: Robert & Laura Abrams
William Henchy

www.mass.gov/nhesp

01/13/15

12686

Claussen, Christopher G.

Hemenway & Barnes LLP IOLTA

REMITTANCE ADVICE

CHECK NO.: 2716

DATE	MATTER NUMBER	DESCRIPTION			
01-13-15	12686-001	Partial release of deposit to sellers			TOTAL: \$35,000.00

THIS CHECK IS VOID WITHOUT A BLUE & GREEN BACKGROUND AND AN ARTIFICIAL WATERMARK ON THE BACK - HOLD AT ANGLE TO VIEW

HEMENWAY & BARNES LLP
IOLTA Account
60 State Street
Boston, MA 02109

2716

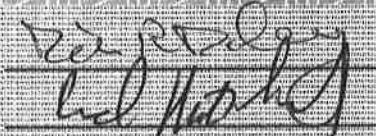
6-7017
2110

RAY Thirty Five Thousand Dollars and no cents

DATE	01/13/15
NET AMOUNT	\$35,000.00

Hemenway & Barnes LLP IOLTA

TO THE ORDER OF
Matthew Gilmartin and Molly Gilmartin



AUTHORIZED SIGNATURE

RBS Citizens, N.A.

SIGNATURE HAS A COLORED BACKGROUND - BORDER CONTAINS MICROPRINTING

⑈ 2716 ⑈

⑆ 211070175⑆ 1107923686⑈