

**TOWN OF CONCORD
SELECT BOARD
AGENDA
April 12, 2017**

Open Session Following Public Hearing – Select Board Room – Town House				
1.	Call to Order in Select Board Room			
2.	Consent Agenda: <ul style="list-style-type: none"> • Town Accountant's Warrants • One Day Special Licenses <ul style="list-style-type: none"> · Development Strategy Consultants 4/21/17 6PM-11PM 40 Stow St (Wine & Malt) · Development Strategy Consultants 4/22/17 6PM-11PM 40 Stow St (Wine & Malt) · Development Strategy Consultants 4/23/17 3PM-7PM 40 Stow St (Wine & Malt) · Development Strategy Consultants 4/28/17 6PM-11PM 40 Stow St (Wine & Malt) · Development Strategy Consultants 4/29/17 6PM-11PM 40 Stow St (Wine & Malt) · Development Strategy Consultants 4/30/17 3PM-7PM 40 Stow St (Wine & Malt) · Development Strategy Consultants 5/5/17 6PM-11PM 40 Stow St (Wine & Malt) · Development Strategy Consultants 5/6/17 6PM-11PM 40 Stow St (Wine & Malt) · Development Strategy Consultants 5/7/17 6PM-11PM 40 Stow St (Wine & Malt) 			
3.	Executive Session Minutes			
4.	Town Manager's Report			
5.	Consider Request from owner of Black Birch land on Forest Ridge Road to waive the town's first right of refusal to purchase the property under MGL c.61 – Attorney Tom Falwell			
6.	Take Positions on Warrant Articles – Special Town Meeting			
7.	Take Positions on Warrant Articles – Annual Town Meeting			
8.	Public Comments			
9.	Committee Liaison Reports			
10.	Miscellaneous/Correspondence			
11.	Adjournment			

PENDING

Wednesday	April 12	7PM	Joint Public Hearing Select Board/Finance Committee	Town House
Monday	April 17	All Day	Patriots Day	Town Offices Closed
Monday	April 24	6:30PM	Select Board Meeting	CCHS
April 24, 25, 26, 27		7PM	Annual Town Meeting	CCHS
Monday	May 8	7PM	Select Board Meeting	Town House
Monday	May 22	7PM	Select Board Meeting	Town House
Monday	May 29	All Day	Memorial Day	Town Offices Closed

Weekly One Day License Log – April 12, 2017

Applicant Name & Number	Phone Number	Event Date	Location	Type of Alcohol	
17-72 Development Strategy Consultants	617-733-6633	April 21	40 Stow Street Umbrella Gallery	Wine & Malt	Event Coordinator: Wendy Jacobs Bartenders: Brian Boruta, Lara Finn, Michael Lacey Under 21: Yes First License in Concord: No
17-73 Development Strategy Consultants	617-733-6633	April 22	40 Stow Street Umbrella Gallery	Wine & Malt	Event Coordinator: Wendy Jacobs Bartenders: Brian Boruta, Lara Finn, Michael Lacey Under 21: Yes First License in Concord: No
17-74 Development Strategy Consultants	617-733-6633	April 23	40 Stow Street Umbrella Gallery	Wine & Malt	Event Coordinator: Wendy Jacobs Bartenders: Brian Boruta, Lara Finn, Michael Lacey Under 21: Yes First License in Concord: No
17-75 Development Strategy Consultants	617-733-6633	April 28	40 Stow Street Umbrella Gallery	Wine & Malt	Event Coordinator: Wendy Jacobs Bartenders: Brian Boruta, Lara Finn, Michael Lacey Under 21: Yes First License in Concord: No
17-76 Development Strategy Consultants	617-733-6633	April 29	40 Stow Street Umbrella Gallery	Wine & Malt	Event Coordinator: Wendy Jacobs Bartenders: Brian Boruta, Lara Finn, Michael Lacey Under 21: Yes First License in Concord: No
17-77 Development Strategy Consultants	617-733-6633	April 30	40 Stow Street Umbrella Gallery	Wine & Malt	Event Coordinator: Wendy Jacobs Bartenders: Brian Boruta, Lara Finn, Michael Lacey Under 21: Yes First License in Concord: No
17-78 Development Strategy Consultants	617-733-6633	May 5	40 Stow Street Umbrella Gallery	Wine & Malt	Event Coordinator: Wendy Jacobs Bartenders: Brian Boruta, Lara Finn, Michael Lacey Under 21: Yes First License in Concord: No
17-79 Development Strategy Consultants	617-733-6633	May 6	40 Stow Street Umbrella Gallery	Wine & Malt	Event Coordinator: Wendy Jacobs Bartenders: Brian Boruta, Lara Finn, Michael Lacey Under 21: Yes First License in Concord: No
17-80 Development Strategy Consultants	617-733-6633	May 7	40 Stow Street Umbrella Gallery	Wine & Malt	Event Coordinator: Wendy Jacobs Bartenders: Brian Boruta, Lara Finn, Michael Lacey Under 21: Yes First License in Concord: No

COMINS & NEWBURY LLP

COUNSELLORS AT LAW

9 DAMONMILL SQUARE - SUITE 4D
CONCORD, MASSACHUSETTS 01742

(978) 341-0222
FAX (978) 341-0655

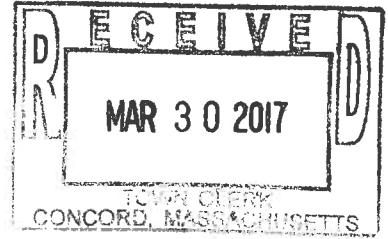
THOMAS WRAY FALWELL
CAROLYN M. RYAN
PAUL H. CLOUGH
RICHARD J. LANE II

DANFORTH W. COMINS
1880-1971

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1910-1985

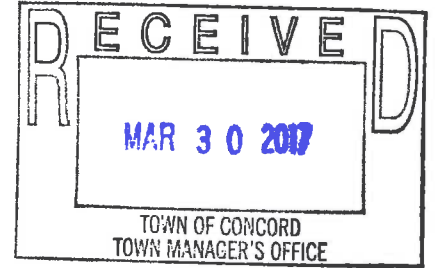
March 30, 2017

HAND DELIVER



Mr. Michael Lawson, Chair
Select Board
c/o Ms. Anita S. Tekle, Town Clerk
22 Monument Square
P.O. Box 535
Concord, MA 01742

HAND DELIVER



Board of Assessors
c/o Mr. R. Lane Partridge, M.A.A., Town Assessor
P.O. Box 535
Concord, MA 01742

HAND DELIVER

Planning Board
c/o Ms. Marcia Rasmussen, Director
Department of Planning and Land Management
141 Keyes Road, 1st Floor
Concord, MA 01742

HAND DELIVER

Natural Resources Commission
c/o Ms. Delia Kaye, Director
Division of Natural Resources
141 Keyes Road
Concord, MA 01742

Certified No. 7011 2000 0001 2269 2748

Mr. Leo Roy, Commissioner
Department of Conservation and Recreation
251 Causeway Street
Suite 900
Boston, MA 02114

Re: Lot 4A and Parcel A, Forest Ridge Road (Ch. 61B Notice of Intent)

Dear Sir/Madam:

This Notice is hereby given under the provisions of MGL Chapter 61B by Todd Pulis, Trustee of the Thoreau Realty Trust u/d/t dated May 21, 1997 ("Thoreau") and recorded with the Middlesex South District Registry of Deeds in Book 27336, Page 549 and shall serve to supplement the Notice of Intent given by letter dated September 1, 2016. Thoreau has executed an Amendment to the Purchase and Sale Agreement dated August 12, 2016 ("the 2016 Agreement") to sell the property located at Lot 4A and Parcel A, Forest Ridge Road, Concord, MA to ABODE Builders of New England, Inc. ("ABODE") I include herewith a fully executed copy of the Amendment which I have certified thereon as being a true and complete copy thereof.

The Amendment, inter alia, slightly reduces the total area of Lot A (from 5.8 acres to 5.79 acres) and increases the size of Parcel A (from 3.3 acres to 5.40 acres), all as shown on the plan entitled: "Locus Plan Lot 4A & Parcel A," dated June 24, 2016, revised March 8, 2017 a copy of which is attached hereto as Exhibit "A". The Amendment makes other, essentially administrative modifications to the 2016 Agreement resulting from supplementary agreements between Thoreau and ABODE but does not alter the purchase price as set forth in the 2016 Agreement. This supplementary Notice is given solely as the result of the modifications to Lot 4A and Parcel A.

The transaction is contingent upon the Town waiving (actual or constructive) its right of first refusal option for the land classified as Recreational Land under the terms stated in the 2016 Agreement and the said Amendment.

The proposed use of the land continues to be (i) a sixteen (16) unit Alternative Planned Residential Development for Lot 4A and (ii) common Open Space for Parcel A which is proposed to be deeded to the Town as part of the PRD.

The mailing address of the owner is 275 Forest Ridge Road, Concord, MA 01742. The owner can be reached, by telephone, through this office.

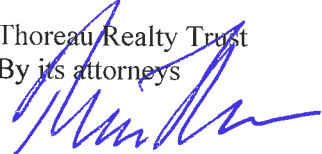
I am hand delivering this notice with enclosures to the Select Board, Board of Assessors, the Planning Board, the Natural Resources Commission and, by certified mail, to the state forester through the Commissioner of the Department of Conservation and Recreation, as required by statute.

As the Town has previously voted, by action of the Select Board, to waive the option to purchase the former Lot 4A and Parcel A and matters associated with the proposed development will be considered by the April 2017 Town Meeting, we request that this matter be expedited to the extent possible.

Please advise if you require additional information or have any questions concerning this matter.

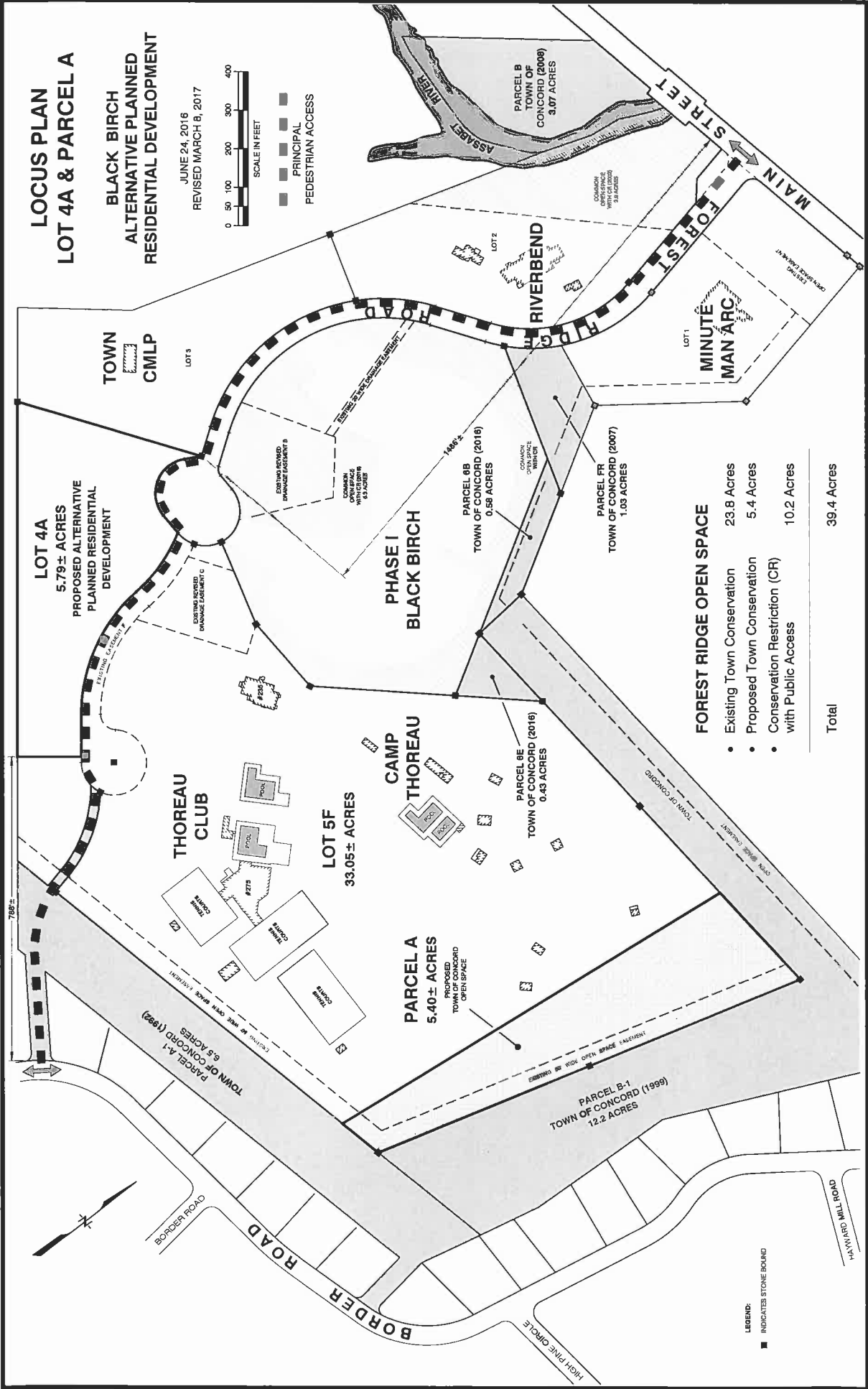
Very truly yours,

Thoreau Realty Trust
By its attorneys


Thomas Wray Falwell

TWF/s
Enclosures

- cc. John C. McBride, ABODE Builders of New England, Inc. (w/out enclosures)
- Mark A. Kablack, Esquire (w/out enclosures)
- Todd A. Pulis, Trustee (w/out enclosures)



**LOCUS PLAN
LOT 4A & PARCEL A**

**BLACK BIRCH
ALTERNATIVE PLANNED
RESIDENTIAL DEVELOPMENT**

JUNE 24, 2016
REVISED MARCH 8, 2017



- PRINCIPAL
- PEDESTRIAN ACCESS

**LOT 4A
5.79± ACRES
PROPOSED ALTERNATIVE
PLANNED RESIDENTIAL
DEVELOPMENT**

**TOWN
CMLP**

**PHASE I
BLACK BIRCH**

**THOREAU
CLUB**

**LOT 5F
33.05± ACRES**

**CAMP
THOREAU**

**PARCEL A
5.40± ACRES
PROPOSED
TOWN OF CONCORD
OPEN SPACE**

**PARCEL BE
TOWN OF CONCORD (2016)
0.43 ACRES**

**PARCEL 8B
TOWN OF CONCORD (2018)
0.56 ACRES**

**PARCEL 8R
TOWN OF CONCORD (2007)
1.03 ACRES**

**PARCEL B-1
TOWN OF CONCORD (1999)
12.2 ACRES**

**PARCEL 8E
TOWN OF CONCORD (2016)
0.43 ACRES**

FOREST RIDGE OPEN SPACE

- Existing Town Conservation 23.8 Acres
- Proposed Town Conservation 5.4 Acres
- Conservation Restriction (CR) with Public Access 10.2 Acres

Total 39.4 Acres

LEGEND:
■ INDICATES STONE BOUND

A TRUE COPY

ATTEST:

Todd A. Pulis, Attorney for Thoreau Realty Trust

AMENDMENT TO PURCHASE AND SALE AGREEMENT

This Amendment to Purchase and Sale Agreement is executed as of March 29, 2017, by and between **Todd A. Pulis, Trustee of the Thoreau Realty Trust**, under Declaration of Trust dated May 21, 1997, and recorded with the Middlesex Registry of Deeds at Book 27336, Page 549 ("Seller"), and **ABODE Builders of New England, Inc.**, ("Buyer").

The Buyer and Seller entered into a Purchase and Sale Agreement dated August 12, 2016 (the "Agreement") for the purchase and sale of certain real property located on Forest Ridge Road, Concord, MA being shown as Lot 4A (5.8 acres) and Parcel A (3.3 acres) on the plan entitled: "Locus Plan Lot 4A & Parcel A," dated June 24, 2016, a copy of which plan is attached to the Agreement as Exhibit "A". In consideration of the mutual covenants herein contained and other good and valuable consideration, the Agreement is hereby amended as follows:

- 1. The first sentence of Paragraph 2 of the Agreement is hereby deleted in its entirety and replaced with the following provision:

The land in Concord, MA, located on Forest Ridge Road, being shown as Lot 4A (5.79 acres) and Parcel A (5.40 acres) on the plan entitled: "Locus Plan Lot 4A & Parcel A," dated June 24, 2016, revised March 8, 2017 a copy of which is attached hereto as Exhibit "A" ("the Premises").

- 2. An additional sentence is hereby added to Paragraph 5 of the Agreement which states as follows:

The Buyer will incur the necessary cost for preparation and endorsement of an updated ANR Plan, for purposes of revising the size and location of Parcel A on the ANR Plan consistent with Exhibit "A".

- 3. A new Paragraph 52 is added to the Agreement as follows:

52. The conveyance of Premises to Buyer shall be subject to the reserved right of the Seller to use Parcel A for camp purposes until it is conveyed by the Buyer to the Town of Concord. The Seller's reserved right to so use Parcel A shall terminate upon the conveyance of Parcel A from the Buyer to the Town of Concord. On or before 30 days prior to the conveyance date of Parcel A from Buyer to Town of Concord, Buyer shall provide the Seller with notice of the conveyance date. Upon receipt of said notice, Seller shall, at the Seller's sole expense, commence the removal of all camp structures and equipment from Parcel A and commence cessation of any and all camp activities and other uses of Parcel A such that such removal and cessation is completed by the conveyance date.

- 5. A new Paragraph 53 is added to the Agreement as follows:

53. The Seller agrees to provide the Buyer with a credit at the Closing in the amount of \$100,000.00 in order to reduce Buyer's cost of providing two (2) 80 percent AMI affordable housing units.

- 6. Paragraph 31 (a) is amended by striking therefrom clause (iii) thereof that reads "and (ii) amendments to the FAR requirement, increasing the FAR square footage per acre from 3,000 sq. ft. to 6,000 sq. ft. for Residential Uses in the LIP #2 District, provided such

Residential uses are located within an Alternative PRD.

- 7. Paragraph 31 (d) is deleted in its entirety.
- 8. Exhibit "A" to the Agreement is hereby deleted in its entirety and replaced with the attached Exhibit "A".

In all other respects the Agreement is ratified and confirmed.

Buyer and Seller acknowledge that upon execution of this Amendment, Seller will be required to provide a copy of this Amendment to the required recipients under M.G.L. c. 61B §9 and the Amendment may revive the Town of Concord's right of first refusal and associated 120 day option period.

IN WITNESS WHEREOF, the undersigned have executed this Amendment under seal as of the date first written above.

SELLER:

Thoreau Realty Trust



 Todd A. Pulis, Trustee

BUYER:

ABODE Builders of New England, Inc.

 John C. McBride, President

Residential uses are located within an Alternative PRD.

7. Paragraph 31 (d) is deleted in its entirety.
8. Exhibit "A" to the Agreement is hereby deleted in its entirety and replaced with the attached Exhibit "A".

In all other respects the Agreement is ratified and confirmed.

Buyer and Seller acknowledge that upon execution of this Amendment, Seller will be required to provide a copy of this Amendment to the required recipients under M.G.L. c. 61B §9 and the Amendment may revive the Town of Concord's right of first refusal and associated 120 day option period.

IN WITNESS WHEREOF, the undersigned have executed this Amendment under seal as of the date first written above.

SELLER:

Thoreau Realty Trust

Todd A. Pulis, Trustee

BUYER:

ABODE Builders of New England, Inc.



John C. McBride, President

COMINS & NEWBURY LLP

COUNSELLORS AT LAW

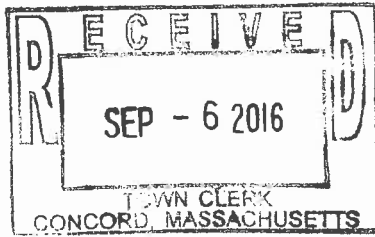
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DANFORTH W. COMINS
1880-1971

EGBERT S. NEWBURY, JR.
1910-1985

THOMAS WRAY FALWELL
CAROLYN M. RYAN
PAUL H. CLOUGH
RICHARD J. LANE II



September 1, 2016

Certified Mail, Return Receipt Requested

(Certified No. 7011 2000 0001 2269 2687)

Mr. Michael Lawson, Chair
Select Board
c/o Ms. Anita S. Tekle, Town Clerk
22 Monument Square
P.O. Box 535
Concord, MA 01742

(Certified No. 7011 2000 0001 2269 2694)

Board of Assessors
c/o Mr. R. Lane Partridge, M.A.A., Town Assessor
P.O. Box 535
Concord, MA 01742

(Certified No. 7011 2000 0001 2269 2717)

Planning Board
c/o Ms. Marcia Rasmussen, Director
Department of Planning and Land Management
141 Keyes Road, 1st Floor
Concord, MA 01742

(Certified No. 7011 2000 0001 2269 3196)

Natural Resources Commission
c/o Ms. Delia Kaye, Director
Division of Natural Resources
141 Keyes Road
Concord, MA 01742

(Certified No. 7011 2000 0001 2269 2700)

Mr. Leo Roy, Commissioner
Department of Conservation and Recreation
251 Causeway Street
Suite 900
Boston, MA 02114

Re: Lot 4A and Parcel A, Forest Ridge Road (Ch. 61B Notice of Intent)

Dear Sir/Madam:

Notice is hereby given under the provisions of MGL Chapter 61B that Todd Pulis, Trustee of the Thoreau Realty Trust u/d/t dated May 21, 1997 and recorded with the Middlesex South District Registry of Deeds in Book 27336, Page 549, has executed a Purchase and Sale Agreement to sell the property located at Lot 4A and Parcel A, Forest Ridge Road, Concord, MA to ABODE Builders of New England, Inc. This transaction is contingent upon the Town waiving (actual or constructive) its right of first refusal option for the land classified as Recreational Land under the terms stated in the Agreement, a certified copy of which is enclosed herewith.

Lot 4A and Parcel A are a 9.1 acre portion of the 44.24 acre property known and numbered as 275 Forest Ridge Road ("275 FRR"). Lot 4A and Parcel A are shown on the plan entitled: "Locus Plan Lot 4A & Parcel A," dated June 24, 2016, a copy of which is attached to the Purchase and Sale Agreement as Exhibit "A". 275 FRR is assessed by the Town of Concord as Parcel 2970-1-5 (a copy of a portion of the GIS mapping is enclosed herewith). Of the 44.24 acres for Parcel 2970-1-5, 41.16 acres are currently classified and taxed under Chapter 61B as Recreational Land pursuant to Notices of Lien recorded with said Deeds in Book 29214, Page 354 and Book 31141, Page 232. The proposed use of the land shall be (i) an alternative planned residential development for Lot 4A containing sixteen (16) units and (ii) open space land for Parcel A.

The mailing address of the owner is 275 Forest Ridge Road, Concord, MA 01742. The owner can be reached, by telephone, through this office.

I am mailing, by certified mail, this notice with enclosures to the Select Board, Board of Assessors, the Planning Board, the Natural Resources Commission and the state forester through the Commissioner of the Department of Conservation and Recreation, as required by statute.

We request that the decision to purchase or waive the option be expedited to the extent possible.

Please advise if you require additional information or have any questions concerning this matter.

Very truly yours,

Thoreau Realty Trust
By its attorneys


Thomas Wray Falwell

TWF/s
Enclosures

cc. John C. McBride, ABODE Builders of New England, Inc. (w/out enclosures)
Mark A. Kablack, Esquire (w/out enclosures)
Todd A. Pulis, Trustee (w/out enclosures)

COMINS & NEWBURY LLP

COUNSELLORS AT LAW

THOMAS WRAY FALWELL
CAROLYN M. RYAN
PAUL H. CLOUGH
RICHARD J. LANE II

9 DAMONMILL SQUARE - SUITE 4D
CONCORD, MASSACHUSETTS 01742

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DANFORTH W. COMINS
1880-1971

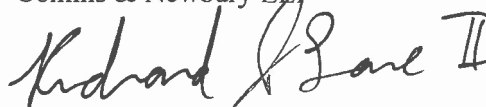
EGBERT S. NEWBURY, JR.
1910-1985

Dear Sir/Madam:

I, Richard J. Lane II, certify that attached is a true and accurate copy of the Purchase and Sale Agreement for the proposed sale of the property located at Lot 4A and Parcel A, Forest Ridge Road, Concord, MA.

Executed under the pains and penalties of perjury on this 1st day of September, 2016.

Comins & Newbury LLP

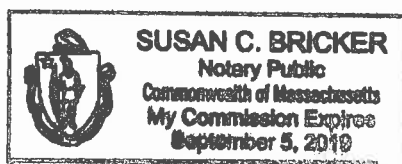


Richard J. Lane II

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this 1st day of September, 2016, before me, the undersigned notary public, personally appeared, Richard J. Lane II, proved to me through satisfactory evidence of identification, which was my personal knowledge, to be the person whose name is signed on the preceding document, and acknowledged to me that he executed it voluntarily for its stated purpose as his free act and deed and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his knowledge and belief.



Susan C. Bricker

Notary Public

My commission expires:

PURCHASE AND SALE AGREEMENT

This 12th day of August, 2016.

1. PARTIES AND MAILING ADDRESSES

Todd A. Pulis, Trustee of the Thoreau Realty Trust, under Declaration of Trust dated May 21, 1997, and recorded with the Middlesex Registry of Deeds at Book 27336, Page 549, hereinafter called the SELLER whose mailing address is: 275 Forest Ridge, Concord, MA 01742 agrees to SELL and ABODE Builders of New England, Inc., hereinafter called the BUYER whose mailing address is: 83 Great Road, Suite 1B, Acton, Massachusetts 01720 hereinafter called the BUYER(s) or Purchaser(s) agrees to Buy, upon the terms hereinafter set forth, the following described premises:

2. DESCRIPTION

The land in Concord, MA, located on Forest Ridge Road, being shown as Lot 4A (5.8 acres) and Parcel A (3.3 acres) on the plan entitled: "Locus Plan Lot 4A & Parcel A," dated June 24, 2016, a copy of which is attached hereto as Exhibit "A" ("the Premises"). For Seller's title see Deeds to Seller dated September 26, 2000 and recorded with said Deeds in Book 31877, Page 96 and dated December 30, 1997 and recorded with said Deeds in Book 28057, Page 135.

3. BUILDINGS, STRUCTURES, IMPROVEMENTS, FIXTURES

The Premises consist of land only.

4. TITLE DEED

The 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 (7) 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) Such taxes for the then current year as are not due and payable on the date of the delivery of such deed;
- (c) Any liens for municipal betterments assessed after the date of this Agreement;
- (d) Easements, restrictions and reservations of record, if any, so long as the same do not prohibit or materially interfere with residential development of the Premises in accordance with the Project (as defined below), ("collectively, the Permitted Exceptions").

5. PLANS

The Buyer will incur the necessary cost for preparation and endorsement of an ANR Plan, for purposes of delineating the Premises consistent with Exhibit A.

6. EASEMENT RIGHTS

In addition to the foregoing, the Seller shall deliver at the time of Closing a mutually acceptable access and utility easement to Buyer over the area shown on Exhibit A as "Easement F." The access and utility easement shall provide for use of Easement F for



all purposes for which roads are used in the Town of Concord. Said easement shall include the right for Buyer, at Buyer's expense, to make improvements within said Easement F consistent with and as required by its Project and shall provide for the ongoing care, maintenance and future improvement of Easement F by both the Buyer and the Seller, and/or their successors and assigns. Seller and Buyer agree that the cost of ongoing care, maintenance and future improvements shall be shared with the Seller paying 75% of such expenses and Buyer paying 25% of such expenses. The easement shall provide a reasonable basis for review and approval of such expenses, including any capital improvements.

The Seller shall also deliver at the time of Closing a mutually acceptable drainage easement to Buyer over the area shown on Exhibit A as "Easement C." The drainage easement shall be in common with Seller, in connection with Seller's adjoining property. The drainage easement shall be for all purposes for which drainage easements are used in the Town of Concord. Said easement shall include the right for Buyer, at Buyer's expense, to make improvements within Easement C consistent with an as required by its Project.

7. PURCHASE PRICE

The agreed purchase price for the Premises is: **Two Million Six Hundred Fifty Thousand (\$2,650,000.00) Dollars**

\$ 25,000.00 have been paid as a deposit this day and

\$2,625,000.00 are to be paid at the time of delivery of the deed by certified, cashier's, treasurer's or bank check(s), or by closing attorney's IOLTA account check reasonably acceptable to Seller's counsel or, if requested, by wire transfer.

\$2,650,000.00 TOTAL

8. TIME FOR PERFORMANCE; DELIVERY OF DEED

Such deed is to be delivered at the Buyer's attorney's office, unless otherwise agreed upon in writing, in accordance with the provisions set forth in Paragraph 35 and incorporated herein by reference. It is agreed that time is the essence of this agreement.

9. POSSESSION AND CONDITION OF PREMISES

Full possession of said Premises, free of all tenants and occupants, is to be delivered at the time of the delivery of the deed, said Premises to be then (a) in the same condition as they now are, reasonable use and wear thereof excepted, and (b) not in violation of said building and zoning laws, and (c) in compliance with 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 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 time for performance hereof shall be extended for a reasonable period of time necessary for Seller to remove such defects or delivery possession as required herein, but in no event beyond a date one (1) year from the date of the close of the Town Meeting's approval of the Project. The term "reasonable efforts" as used herein shall not require SELLER to expend more than \$25,000.00 in the exercise of such efforts, exclusive of the payment of voluntary liens, mortgages and rollback taxes.

11. FAILURE TO PERFECT TITLE OR MAKE PREMISES CONFORM, etc.

If at the expiration of the extended time 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 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.

13. ACCEPTANCE OF DEED

The acceptance and recording of a deed by the BUYER or his nominee as the case may be, shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed, except such as are, by the terms hereof, to be performed after the delivery of said deed.

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 in accordance with customary conveyancing practices.

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) Liability 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. All rollback taxes, fees and other assessments due in accordance with the release of lien under M.G.L.

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 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. BROKER'S FEE

A Broker's fee for professional services is due from the SELLER to Kevin P. Hurley, the Broker herein, as per the agreement between SELLER and Kevin P. Hurley, said Broker's fee to be paid if, as and when the deed is delivered and recorded and the net sales proceeds are released to the SELLER and not otherwise.

19. BROKER(S) WARRANTY

The Broker named herein, Kevin P. Hurley, warrants that the Broker is duly licensed as such by the Commonwealth of Massachusetts.

20. DEPOSIT

All deposits, if any, made hereunder shall be held in escrow by the Seller's attorneys, Comins & Newbury LLP, as escrow agent, 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 shall retain all deposits made under this agreement pending instructions mutually given in writing by the SELLER and the BUYER, or pursuant to a final order of a court of competent jurisdiction or mutually agreed upon binding arbitration. All deposits shall be held in a federally insured escrow account. No interest shall be paid on said deposits.

It is understood and agreed by the parties hereto that the firm of Comins & Newbury LLP, in holding the deposit is acting as escrow agent for the parties and that in the event that there is any dispute with respect to the proceeds of the escrow account, said firm shall be indemnified by Buyer and Seller for any costs and expenses incurred by it, or any of its members or associates, including reasonable attorney's fees, with respect to any civil action brought relative to said escrow account by or against any party to the Agreement. It is understood and agreed by the parties hereto that in acting as such escrow agent, the firm of Comins & Newbury LLP shall not be prevented from representation of the Seller in all matters under the Agreement, such duties as escrow agent being merely ministerial in nature.

Comins & Newbury LLP shall not be responsible for any penalties, or loss of principal or interest or any delays in the withdrawal of the funds which may be imposed by the Depository as a result of the making or redeeming of the investment pursuant to our instructions, nor shall Comins & Newbury LLP be liable for any loss or impairment of funds while those funds are in the course of collection or while those funds are on deposit in a financial institution if such loss or impairment results from the failure, insolvency or suspension of the financial institution.

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21.

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 in equity and at law. In view of the uncertainty and impossibility of ascertaining such damages to Seller, both Seller and Buyer agree that the amount of the deposit, and all accrued interest thereon, constitutes a reasonable forecast of damage which would be sustained by Seller in the event of a default by Buyer.

If the SELLER shall fail to fulfill the SELLER's agreements herein, the BUYER shall be entitled to pursue all remedies at law and equity, including but not limited to specific performance of the terms of this Agreement but excluding any claim for speculative or consequential damages claimed as a result of such failure.

22. **RELEASE BY HUSBAND OR WIFE**

Intentionally Deleted.

23. **BROKER AS PARTY**

The Broker(s) named herein join(s) in this agreement and become(s) a party hereto, insofar as any provisions of this agreement expressly apply to the Broker(s), and to any amendments or modifications of such provisions to which the Broker(s) agree(s) 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 nor has he relied upon any warranties or representations not set forth or incorporated in this agreement, except for the following additional warranties and representations, if any, made by either the SELLER or the Broker(s): None, except as expressly set forth in this Agreement.

26. **MORTGAGE CONTINGENCY CLAUSE**

Intentionally Deleted.

27. **CONSTRUCTION**

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. If two or more persons are named herein as BUYER their obligations hereunder shall be joint and several. The captions and marginal notes are used only as a

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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**
Intentionally Deleted.
- 29. **SMOKE DETECTORS**
Intentionally Deleted.
- 30. **CARBON MONOXIDE DETECTORS**
Intentionally Deleted.
- 31. **PERMITS AND APPROVALS**

Buyer's obligations under this Agreement are subject to the Buyer, at the Buyer's expense, obtaining all permits and approvals (with the exception of building permits) necessary to construct an Alternative PRD with (a) 16 units, each with 3 bedrooms, and each occupied by at least one individual who is fifty-five (55) years of age or older, with a maximum of 2 of the 16 units set aside as "affordable units" or (b) in the alternative 16 market rate units with no "affordable units," based upon a contribution from the Buyer to the Town in an amount not to exceed \$1,000,000, and upon such other terms and conditions acceptable to Buyer (collectively "the Project"). Said permits and approvals (the "Permits and Approvals") to include, but are not limited to:

- a. Town Meeting Approval – Town Meeting action to include (i) approval of a Preliminary Site Development and Use Proposal for the Project; (ii) approval of a release of the Premises from the residential restriction applicable thereto, allowing development, construction and operation of the Project; and (iii) amendments to the FAR requirement, increasing the FAR square footage per acre from 3,000 sq. ft. to 6,000 sq. ft. for Residential Uses in the LIP #2 District, provided such Residential uses are located within an Alternative PRD. All shall be in accordance with one or more a warrant articles reasonably acceptable to Buyer, or with amendments thereto reasonably acceptable to Buyer (the "Warrant Articles")
- b. Other Project Approvals – Upon obtaining Town Meeting Approval the Buyer will proceed diligently with all necessary applications for approvals for the Project (with the exception of building permits) including, to the extent applicable, approvals from the Board of Appeals, Planning Board, Natural Resources Commission, Board of Health, or any board, committee and/or agency having any jurisdiction over the Project. Other Project Approvals shall expressly include an acceptable design and allocation of sewage flow in an on-site waste water disposal system, capable of handling flow generated from not more than 48 bedrooms .
- c. Release of the Town's Right of First Refusal under M.G.L. c.61B – Town action to include a release of the Premises in form acceptable for recording of the Town's right of first refusal under M.G.L. c.61B.
- d. Transfer of Development Rights – Seller and Buyer, hereby mutually agrees that Buyer's Project will be based in part and dependent upon Town action to include a Special Permit, or modification thereof, allowing for the 1.0 +/- acres of development rights being transferred from Parcel A to Lot 4A and 2.3 +/- acres of development rights being transfer from Parcel A to Lot 5F.

- e. Other Approvals – Other approvals to include modification of the Site Plan/Special Permit for Seller’s permitted recreational facility on Seller’s remaining land to accommodate the modification of parking area currently located on Lot 4A. The Buyer, at Buyer’s expense, shall permit and construct the modification of the staff and overflow parking located on Lot 5F. Said modifications shall include: a new entrance, a walk, 50 parking spaces and related improvements all substantially as shown on the sketch plan entitled: “Parking Lot D, 50 Parking Spaces,” attached hereto as Exhibit B (“Seller’s Relocated Parking Spaces”).

The Buyer, at the Buyer’s expense, will retain Hurley Associates to assist in preparing necessary Town Meeting Articles and, to the extent deemed necessary by the Buyer, other applications for approval. In addition the Buyer, at the Buyer’s expense, will attempt to retain a local architect and engineer to work with Hurley Associates and the Buyer on the Project.

In the event that i) Buyer is unable to obtain any of the Permits and Approvals, ii) Buyer is not reasonably satisfied with any conditions and/or terms imposed on the Project in the Permits and Approvals, or iii) Buyer determines in its reasonable discretion that the Permits and Approvals are not capable of being obtained in a reasonable time and manner, Buyer may elect in its sole discretion, upon written notice to Seller, to terminate this Agreement, whereupon all deposit funds shall be promptly returned to Buyer and this Agreement shall be rendered null and void and without further effect.

In the event that Buyer obtains all Permits and Approvals and proceeds to a Closing in accordance with the terms hereof, then Buyer shall perform certain improvements on Seller’s remaining land in order to accommodate Seller’s Relocated Parking Spaces. Said improvements shall be performed at Buyer’s expense, subject to mutually agreed upon construction and site plans and construction schedule. Buyer’s obligations to perform said improvements shall expressly survive Closing.

32. APPLICATION MATERIALS

Upon execution of this Agreement, Seller and Buyer agree that the Buyer will proceed diligently with preparation of conceptual plans, documents, and project materials that the Buyer believes are reasonably necessary to apply for and attempt to gain the support for the Project and proposed Warrant Articles from Town departments, boards, committees, officers, and agencies in connection with the 2016 Special Town Meeting to be held in the fall. Materials to include conceptual site plans, conceptual architectural plans, renderings and presentation media, soil and waste disposal studies, utility availability reports, environmental studies, affordability analyses and details of the economic impact, traffic studies and other studies as reasonably required or recommended by Town staff and Boards. Buyer further agrees to meet with all departments, Boards, committees, town officers, as necessary to attempt to obtain support for the Project and the Warrant Articles. Seller agrees to cooperate and provide the requisite consent to Buyer to submit all application materials. Buyer agrees to provide Seller with copies of all documents prepared in connection with the Project and with full copies of all applications for Permits and Approvals within thirty (30) days of filing of same. Notwithstanding the foregoing, if the Buyer, despite Buyer’s diligent efforts, determines that i) sufficient support from Town staff and Boards cannot be secured to ensure reasonable consideration at the 2016 Special Town Meeting of the requisite Warrant Articles, ii) the Warrant Articles are moved and voted down, or otherwise amended or conditioned in a manner unacceptable to Buyer, iii) the Warrant Articles are indefinitely postponed or otherwise passed over at the 2016 Special Town

Meeting, or iv) the Town will not hold a 2016 Special Town Meeting, then Buyer may elect to continue Buyer's efforts to obtain the necessary approvals at the 2017 Annual Town Meeting.

33. BUYER'S DUE DILIGENCE

The Buyer shall have a period of forty five (45) days from the execution and delivery of this Agreement to review and satisfy itself as to any matters relating to the Premises including: title matters, environmental conditions, zoning, restrictions and property agreements ("Buyer's Due Diligence"). In the event that Buyer is dissatisfied in any way with the condition of the Premises, or for no other reason, Buyer decides in its sole discretion not to proceed with the Permits and Approvals or otherwise to purchase the Premises, Buyer may elect in its sole discretion, upon written notice to Seller, to terminate this Agreement, whereupon all deposit funds shall be promptly returned to Buyer and this Agreement shall be rendered null and void and without further effect. In the event of such termination during Buyer's Due Diligence Period, Escrow Agent shall be obligated to return the Deposit to Buyer upon the unilateral instructions of Buyer following notice of Buyer's termination of this Agreement in accordance with the terms hereof. In the event that Buyer shall fail to notify the Seller, in writing, of Buyer's dissatisfaction with Buyer's Due Diligence prior to the expiration of such forty five (45) days, Buyer shall be deemed to be satisfied with Buyer's Due Diligence.

The Buyer shall give written notice to the Seller by the forty-fifth (45th) day from the execution and delivery of this Agreement (the "Title Notification Date") of any title matters that materially interfere with the Project or which are not acceptable to the Buyer in the Buyer's reasonable discretion (the "Title Notice"), it being agreed that, in the event of the failure of the Buyer to timely advise the Seller to the contrary, the matters set forth in subsections 4(a) through 4(d) above shall be deemed acceptable to the Buyer and will be deemed to be Permitted Exceptions. Except for those matters arising after the Title Notification Date, any matter not set forth in the Title Notice shall be deemed to be a Permitted Exception. In the event that the Title Notice sets forth title matters not acceptable to the Buyer, then the Seller shall use reasonable efforts under Paragraphs 10 and 11 hereof to remedy the title matters raised by the Buyer in the Title Notice. The Buyer's failure to provide the Title Notice on or before the Title Notification Date shall be deemed a waiver by the Buyer of the Buyer's rights to object to matters of title existing as of the Title Notification Date, and the Buyer shall be deemed to have waived the Buyer's right to a return of the Deposit solely on the basis of unsatisfactory title matters existing as of the Title Notification Date.

34. BUYER'S ACCESS TO PREMISES

Seller agrees that Buyer and Buyer's representatives may, with reasonable prior notice to Seller, enter upon the Premises period for the purpose of taking measurements, taking soil samples, making surveys and borings, assessing any potential existence for wetlands, assessing topography, performing percolation tests thereon and making such other tests or observations as Buyer may desire and to perform any other acts deemed by Buyer as necessary or desirable to determine the feasibility and to plan for the potential development of the Project provided that Buyer shall promptly restore any portion of the Premises disturbed by such work and there shall be no cutting of trees and/or other vegetation without Seller's prior express written consent. Buyer's entry upon the Premises shall be at Buyer's sole cost, expenses, risk and hazard. In consideration of the foregoing, Buyer agrees (a) to indemnify and save Seller harmless from and against all loss, demands, causes of action, costs and expenses, claim, liability, or damage, including reasonable attorney's fees, caused by or related to any and all entries and activities as

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aforesaid by Buyer or Buyer's agents, employees, licensees and contractors; and (b) to carry the appropriate liability insurance, naming Seller as co-insured, and to provide Seller with a copy of said insurance prior to accessing said Premises.

Notwithstanding the foregoing, it is understood and agreed by and between the Buyer and Seller that during the months of June through September, inclusive, a summer camp may be conducted on portions of the Premises. The Buyer agrees to provide a minimum of 24 hours advance notice to Seller of its need to enter the Premises during the summer camp months, in order that Seller may make the appropriate arrangements to accompany Buyer as set forth herein. In the event, Seller, or its agents, is not able to attend due to scheduling conflicts or otherwise, the Seller shall provide Buyer with an alternate date (which date shall be within 48 hours of the Buyer requested date) for Buyer to gain entry to the Premises as provided in the paragraph above.

35. CLOSING DATE

The Closing shall occur with ninety (90) days of the Buyer obtaining all necessary Permits and Approvals (other than building permits) to construct the Project. Should any permits or approvals be appealed upon issuance or approval, the time for performance shall be extended to allow the Buyer adequate time to defend or prosecute such appeal(s), but in no event beyond a date three (3) years from the date of the close of the Town Meeting's approval of the Project (the "Closing Deadline"). The Buyer agrees to proceed with due diligence to obtain all necessary Permits and Approvals and to defend any such appeals as they may arise, subject in all instances to Buyer's rights of termination as set forth in paragraph 31. In the event that the Closing has not occurred on or before the Closing Deadline and the parties are unable to mutually agree on a further extension of the Closing Deadline, this Agreement, unless previously terminated or otherwise in default, shall be deemed null and void and without recourse to the parties hereto, and all Deposits shall be returned to Buyer.

36. RIGHT OF FIRST REFUSAL

Buyer acknowledges that the Premises are subject to the provisions of Massachusetts General Laws Chapter 61B and as set forth in Classified Forest – Agricultural or Horticultural – Recreational Land Tax Liens, recorded with said Deeds in Book 37791, Page 528, Book 54062, Page 219, and 54062, Page 220. Buyer and Seller agree, promptly following the full execution and delivery of this Agreement, to provide notice of this Agreement to the Town of Concord in accordance with the Town's right of first refusal, or otherwise apply for and obtain the release of the Premises from M.G.L. c.61B in a form acceptable for recording, at such time mutually agreed upon by Buyer and Seller. In the event that the Town of Concord elects not to waive its right of first refusal under M.G.L. c.61B, and proceeds to purchase the Property under the terms of this Agreement, either party shall have the right to terminate this Agreement, upon written notice to the other, whereupon all deposit funds shall be promptly returned to Buyer and this Agreement shall otherwise be rendered null and void, provided, however, that in the event of such election by the Town of Concord to purchase the Premises, the Seller shall pay to Buyer a permitting and development fee in the amount of \$200,000.00 (the "Permitting and Development Fee"), which amount shall be due and payable simultaneously with the Town's, or an assignee under c.61B, recording of a deed to the Premises. This obligation of Seller to pay Buyer the Permitting and Development Fee shall survive a termination of the Agreement in connection with the Town's election of purchase under M.G.L. c.61B.

37. **SELLER'S REPRESENTATIONS**

Seller covenants and represents to Buyer as follows (each such representation and warranty being true and correct as of the date of this Agreement to the best of Seller's actual knowledge and belief and, as to sub-paragraph (d), without independent investigation as to same and shall be true and correct on the date of Closing):

- (a) Seller is the sole legal owner of that portion of the Premises in fee simple and has the necessary and requisite authority to execute, deliver and perform this Agreement and all agreements and documents referred to in this Agreement, and the Premises is not subject to any lease, option, right of first refusal, agreement of sale or other agreement, except as provided in Chapter 61B. The person who executed this Agreement on behalf of Seller has the authority to do so and no additional parties are required to bind Seller.
- (b) There is no action, suit or proceeding pending or threatened against or affecting any of Seller or the Premises or relating to or arising out of the ownership of the Premises, including general or special assessment proceedings of any kind, or condemnation or eminent domain actions or proceedings of any kind.
- (c) Neither the entering into of this Agreement, the consummation of the sale, nor the conveyance of the Premises to Buyer, has or will constitute a violation or breach of any of the terms of any contract or other instrument to which any of Seller is a party.
- (d) No portion of the Premises contains any substance which may be classified as a hazardous, toxic, chemical or radioactive substance, or a contaminant or pollutant (together, "Hazardous Substances") under applicable federal, state or local law, statute, ordinance, rule or regulation ("Applicable Laws") or which may require any cleanup, remediation or other corrective action pursuant to such Applicable Laws. Seller has not used any portion of the Premises, nor permitted any other person or entity to use the Premises for the purpose of storage, generation, manufacture, disposal, transportation or treatment of any such Hazardous Substances in violation of Applicable Laws, and no underground storage tanks are, or have been previously, located on or at the Premises, other than usual and customary substances used in operating the summer camp and other recreational activities on the Premises and/or maintaining the land.
- (e) Other than the contractual arrangement with the Forest Ridge Association, there are no leases, commitments or other agreements which would require Buyer to pay any money or perform any obligation or which would otherwise affect the ownership or development of the Premises by Buyer.
- (f) No notice by any governmental or other public authority has been served upon any of Seller, or anyone on Seller's behalf, relating to violations of any applicable housing, building, safety, fire or other ordinances or any of the Applicable Laws. Seller has not received written notice of any pending or threatened condemnation or other proceeding affecting any of Seller or the Premises (or any portion thereof).



38. Operations Pending Closing

Between the date of execution of this Agreement and the date of the Closing:

- (a) Seller shall maintain the Premises in its present state of repair and in substantially the same condition as on the date hereof. Seller shall keep in force property insurance covering all improvements and comprehensive general liability insurance (in amounts no less than \$1,000,000 per occurrence) covering the Premises.
- (b) Other than in the ordinary course of business, Seller shall not enter into any lease, agreement of sale, option, or any other agreement or contract affecting the Premises or the Forest Ridge Association, nor shall Seller grant any easements or further encumber the Premises or the Forest Ridge Association, without the prior written consent of Buyer.
- (c) Seller shall comply with all covenants, conditions, restrictions and any Applicable Laws affecting the Premises.
- (d) Other than in the ordinary course of business, Seller shall not use, manufacture, store, generate, handle, or dispose of any Hazardous Substances, or use or permit the Premises to be used for such purposes, or emit, release or discharge any such Hazardous Substances into the air, soil, surface water or groundwater comprising the Premises.
- (e) Seller shall not remove or damage any structures, fixtures, systems, improvements, standing trees, shrubbery, plants, landscaping or soil now in or on the Premises during the term of this Agreement. Seller shall not dispose of any trash, debris, building materials or organic material (including trees and stumps) on the Premises. If such disposal occurs after the date hereof, Seller shall remove all such materials at Seller's expense prior to the Closing.

39. Conditions to Buyer's Obligations

Buyer's obligation to complete the Closing under this Agreement is expressly conditioned upon the following, and Buyer shall have the further right, exercisable at any time and from time to time, to waive any one or more of such conditions (in whole or in part) without affecting any of Buyer's other rights, conditions or obligations:

- (a) All representations of Seller herein being true and correct at the time of the Closing; and
- (b) Seller having performed all of its covenants and obligations hereunder; and
- (c) The receipt by Buyer, at its sole cost and expense, of final Permits and Approvals for development of the Project, with the applicable appeal periods having expired without appeal and/or any appeal having been dismissed with prejudice in favor of Buyer, and the satisfaction of all conditions to the final approval;
- (d) The receipt by Buyer of acceptable forms of easements for access over Easement F and drainage over Easement C.
- (e) The receipt by Buyer of properly authorized documents if required from the Forest Ridge Association, evidencing approval and acceptance of the Project, and confirming the



Project's percentage interest rights and responsibilities at 15.42%.

If on or before the date of the Closing there is a failure of the condition set forth in paragraph 39(a) or 39(b) Buyer shall be entitled to treat such failure as Seller's Default entitling Buyer to exercise the remedies set forth above.

40. BROKER

The BUYER warrants and represents to the SELLER and the SELLER represents and warrants to the BUYER that, with the exception of Kevin P. Hurley, neither has dealt with any broker or other person entitled to a broker's commission in connection with the negotiation or execution of this Agreement or the consummation of the transaction contemplated hereby and each agrees to hold the other harmless and indemnify the other against all damages, claims, losses and liabilities, including legal fees, incurred by the other, arising out of or resulting from the failure of its representation and warranty. This provision shall survive Closing.

41. DOCUMENTS REQUIRED AT CLOSING

Seller hereby agrees to sign and deliver, at the time of performance, a Quitclaim Deed, Trustee Certificate, and such affidavits, documents and certificates as may be reasonably required by the Buyer's attorney, Buyer's lender's attorney, or Buyer's title company for this transaction, provided that the same are reasonably requested by such Buyer's attorney. In addition to the foregoing, Seller shall deliver, in a form acceptable to Buyer and Buyer's title company, executed easements for access over Easement F and drainage over Easement C.

42. TITLE STANDARDS

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

- a) no building, structure or improvement of any kind belonging to any other person or entity shall encroach upon or under said Premises; and
- b) the Premises shall abut a public way or a private way to which Buyer shall have legal access to Forest Ridge Road for both pedestrian and vehicular access, and that such private way in turn has satisfactory access to a public way; which public way is duly laid out or accepted as such by the city or town in which said Premises are located.

43. REBA STANDARDS

Any matter or practice arising under or relating to this Agreement which is the subject of a Title Standard or Practice Standard of the Real Estate Bar Association of Massachusetts, Inc. (REBA) at the time for delivery of the Deed hereunder shall be covered by said Title Standard or Practice Standard to the extent possible, so long as not contrary to Massachusetts law or case law.

44. INSURABLE TITLE

Buyer's performance hereunder is conditioned upon title to the Premises being insurable on a standard ALTA Form B insurance policy by companies licensed to do business in the Commonwealth of Massachusetts, without exception for any matters not expressly permitted

hereunder, other than the conditions and stipulations of that form, the exclusions from coverage which are part of that form.

45. NOTICE

Any notice to be given hereunder shall be in writing and signed by the party or the party's attorney and shall be deemed to have been given (a) when delivered by hand, or (b) when mailed by registered or certified mail, all charges prepaid, or (c) when sent by overnight carrier providing a receipt, when delivered to such carrier, or (d) when sent by telefax during normal business hours, addressed:

In the Case of Seller to:

Thomas Wray Falwell, Esquire
Comins & Newbury, LLP
9 Damonmill Square, Suite 4D
Concord, MA 01742
Facsimile 978-341-0655
Email: tfalwell@cominsnewbury.com

In the case of Buyer to:

Mark A. Kablack, Esquire
M.A. Kablack & Associates, P.C.
176 East Main Street, Suite 3
Westborough, MA 01581
Telephone: (508) 366-2900
Facsimile: (508) 366-1089
E-Mail: mkablacklaw@kablacklaw.com

Each of the undersigned hereby authorizes his or her respective attorney to assent to and execute on that party's behalf any agreements extending the time for the performance of any event or of any notice that may be given under this Agreement or any amendment thereto.

By such notice, either party or such party's attorney may notify the other of a new address, in which case such new address shall be employed for all subsequent deliveries and mailings.

46. BUYER'S RIGHT TO WAIVE CONDITIONS

Buyer shall have the right at any time to waive any conditions upon which Buyer's obligations under this Agreement are conditioned.

47. FOREST RIDGE ASSOCIATION INTEREST

Buyer and Seller hereby agree that the Premises will be conveyed with a 15.42 percent interest in the Forest Ridge Association.

TWD

48. SELLER'S TRUSTEE AUTHORITY

Seller hereby represents that he is the sole Trustees of the Thoreau Realty Trust and that he has the requisite power and authority to execute this Agreement, perform all of Seller's obligations hereunder, and convey the Premises to Buyer in accordance with the terms hereof.

49. FORM OF SIGNATURES

This Agreement may be signed in multiple counterparts, through electronic signature technology which is in compliance with Massachusetts law governing electronic signatures, by facsimile or scanned and emailed documents, which counterparts and signatures shall all be treated as original signatures. It is agreed that SELLER shall sign the deed and that a deed executed under a power of attorney shall not constitute a satisfactory deed under this agreement.

50. SOLE AGREEMENT

This agreement supersedes all prior agreements, memoranda and other understandings between the parties with respect to the Premises, and represents the complete and full agreement of the parties hereto with respect to the Premises, except as this Agreement is modified or altered by written agreement signed by the parties hereto. All prior offers, agreements and memoranda, regarding the Premises, shall be considered null and void.

51. GENERAL PROVISIONS

- a) The terms and conditions of this Agreement shall be binding upon, and inure to the benefit of the parties hereto and their respective successors and assigns.
- b) Subsequent to the issuance of the Permits and Approvals, this Agreement may be assignable to an entity or entities wholly owned by or independent of BUYER without the prior written consent of the SELLER, upon written notice to SELLER, and upon the acceptance of all rights and obligations under this Agreement by any such assignee, whereupon the BUYER shall be released of any further rights or obligations of this Agreement. No assignment prior to the issuance of the Permits and Approvals shall be allowed. All Permits and Approvals obtained shall run with the land comprising the Premises. Notwithstanding the foregoing, BUYER may elect to assign this Agreement to a nominee entity, by written notice to SELLER without SELLER'S approval, provided, however, that as to any assignment prior to the issuance of the Permits and Approvals, the nominee entity is owned or controlled by BUYER and BUYER provides SELLER with reasonable documentation evidencing same.
- c) Whenever used herein, unless expressly provided otherwise, the term "days" shall mean consecutive calendar days, except that if the expiration of any time period measured in days occurs on a Saturday, Sunday, legal holiday or other day when banks are closed in Boston, Massachusetts, such expiration shall automatically be extended to the next business day.
- d) If any errors or omissions are found to have occurred in any calculations or figures used in the settlement statement signed by the parties (or would have been included if not for any such error or omission) and notice hereof is given within two (2) months of the date

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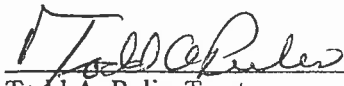
of delivery of the deed to the party to be charged, then such party agrees to make such payment as may be necessary to correct the error or omission.

- e) In the event any one or more of the provisions contained in this Agreement are held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provisions hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein.
- f) Any section headings or captions contained in this Agreement shall be for convenience of reference only and shall not affect the construction or interpretation of any provisions of this Agreement.
- g) This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts. The parties agree that all time is of the essence.
- h) It is acknowledged and agreed by all parties hereto that each party to this Agreement has had the benefit of competent, independent legal counsel and other advisors, that each party has had an equal right to negotiate the terms hereof and participate in the drafting of this Agreement. No rule of law or construction that would require that this Agreement be construed more strongly for or against any party hereto shall be applicable to the enforcement, interpretation or construction of this Agreement.
- i) Whenever and so often as requested by a party, the other party will promptly execute and deliver or cause to be executed and delivered all such other and further instruments, documents or assurances, and promptly do or cause to be done all such other and further things as may be necessary and reasonably required in order to further and more fully vest in such requesting party all rights, interests, powers, benefits, privileges and advantages conferred or intended to be conferred upon it by this Agreement, or to effectuate the termination of this Agreement. The terms of this section shall survive Closing and/or termination of this Agreement.

Executed under seal on the day and year first above written.

SELLER:

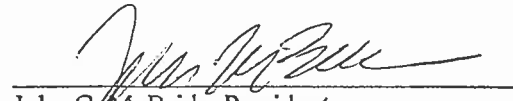
Thoreau Realty Trust



Todd A. Pulis, Trustee

BUYER:

ABODE Builders of New England, Inc.



John C. McBride, President

Exhibit A: Locus Plan
Exhibit B: Parking Plan

**LOCUS PLAN
LOT 4A & PARCEL A**

**BLACK BIRCH
ALTERNATIVE PLANNED
RESIDENTIAL DEVELOPMENT**

JUNE 24, 2016

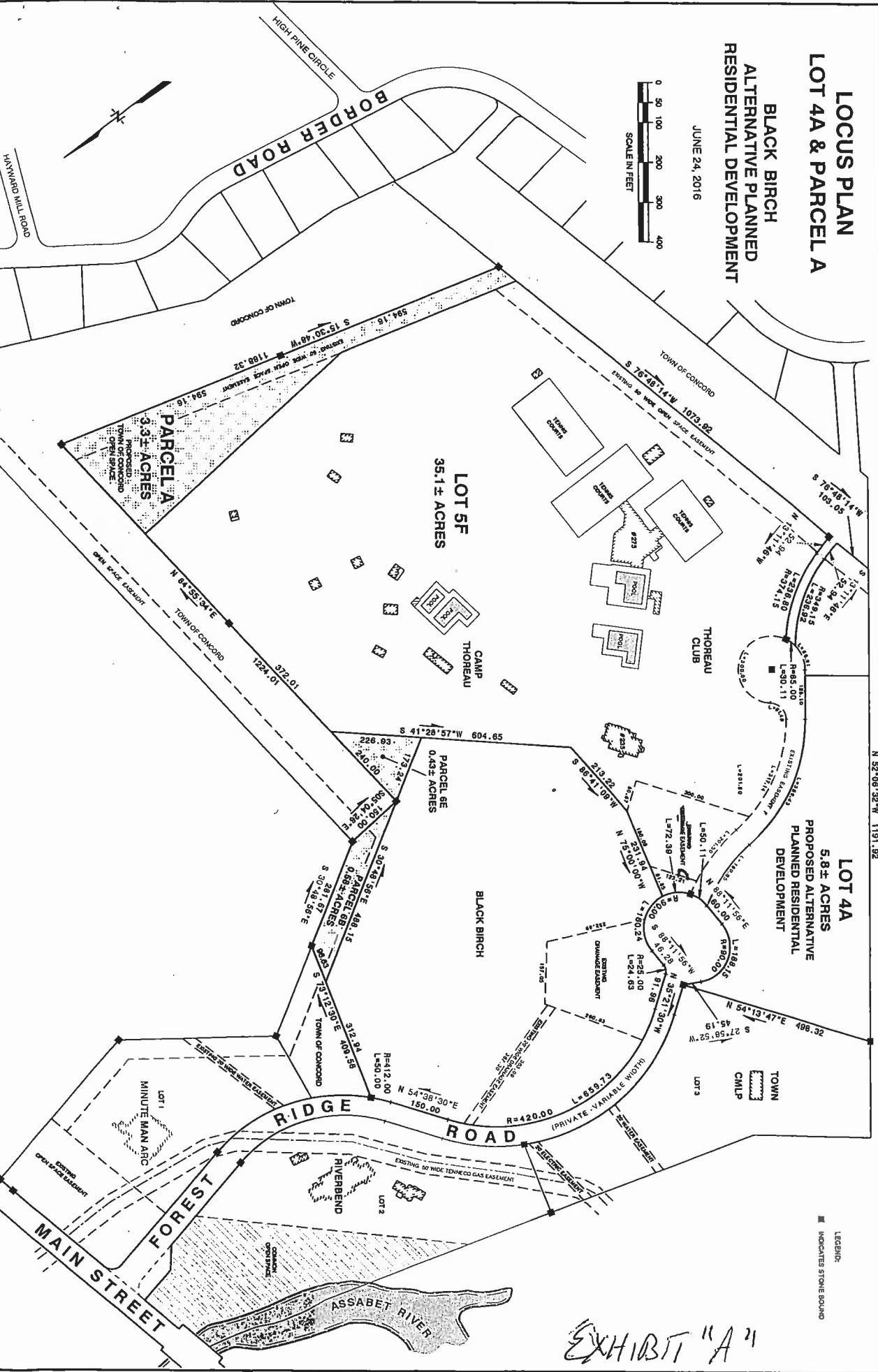
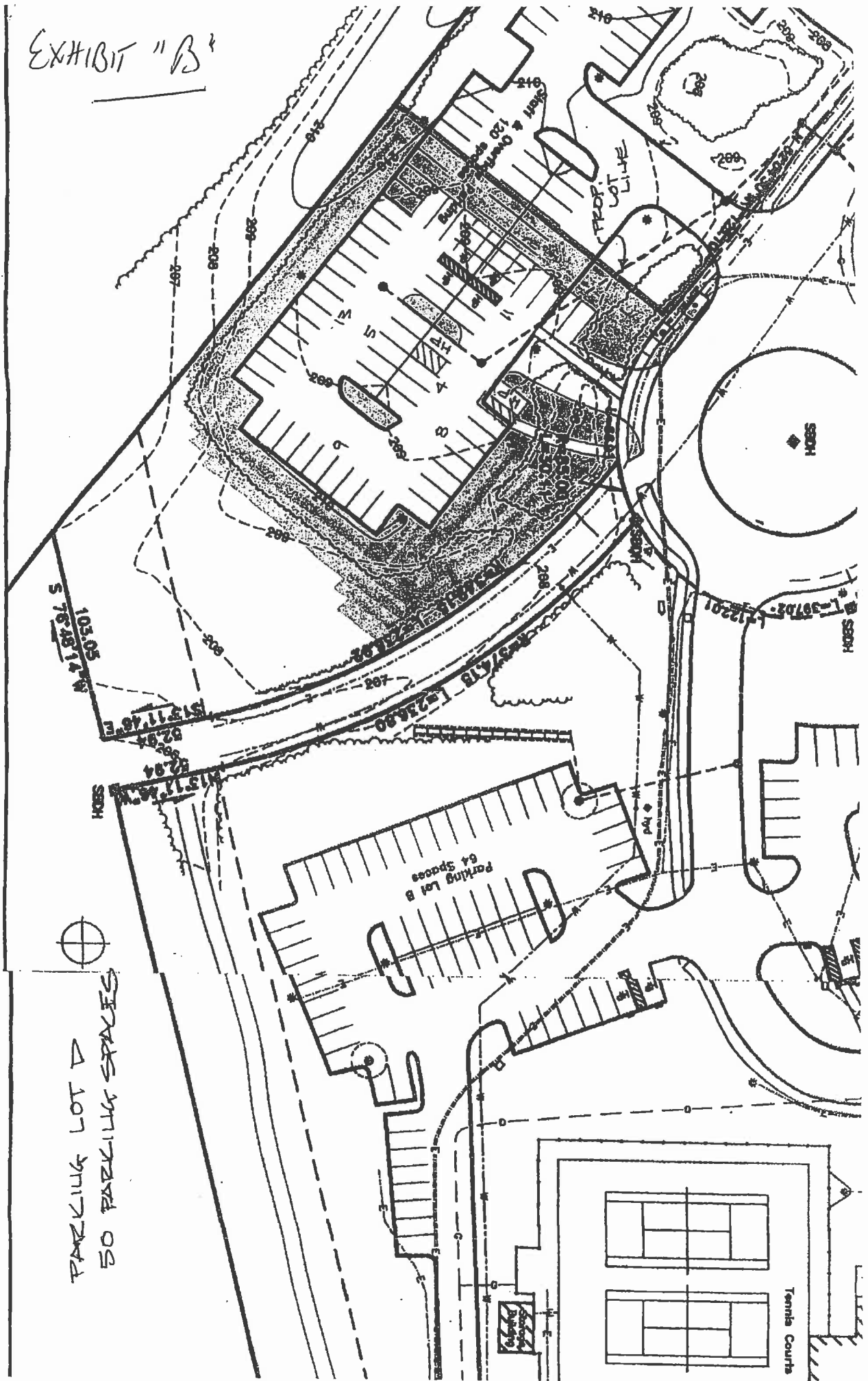


EXHIBIT "A"

© 2016 BY [unreadable] ENGINEERS, INC. ALL RIGHTS RESERVED. THIS PLAN IS THE PROPERTY OF [unreadable] ENGINEERS, INC. AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, WITHOUT THE WRITTEN PERMISSION OF [unreadable] ENGINEERS, INC.

EXHIBIT "B"



PARKING LOT A
50 PARKING SPACES

**TOWN OF CONCORD
TOWN HOUSE
CONCORD, MA 01742**

**BULK RATE
U.S. POSTAGE PAID
PERMIT No. 51**

**RESIDENTIAL CUSTOMER
LOCAL 01742**

WARRANT FOR SPECIAL TOWN MEETING

TUESDAY, APRIL 25, 2017

7:30 PM

**CONCORD-CARLISLE REGIONAL HIGH SCHOOL
500 WALDEN STREET**

**ADJOURNED SESSION/SNOW DATE IF NECESSARY
WEDNESDAY, APRIL 26, 2017**

**JOINT PUBLIC HEARING
FINANCE COMMITTEE & SELECT BOARD**

**WEDNESDAY, APRIL 12, 2017 AT 7:00 PM
TOWN HOUSE – HEARING ROOM**

CANCELLATION INFORMATION

IN CASE OF SNOW VISIT THE TOWN'S WEBSITE AT www.concordma.gov OR
CALL 978 318-3006.

**THE COMMONWEALTH OF MASSACHUSETTS
WARRANT FOR SPECIAL TOWN MEETING
Tuesday, April 25, 2017**

Middlesex, ss.

To any of the Constables of the Town of Concord, in said County,

In the name of the Commonwealth of Massachusetts, you are hereby required to notify the legal voters of said Town of Concord, qualified to vote at Town Meeting for the transaction of Town affairs, to meet at the Concord-Carlisle Regional High School at 500 Walden Street, in said town, on Tuesday, the twenty-fifth day of April, 2017, at 7:30 o'clock in the evening, by posting a printed copy of this Warrant by you attested, at the Town House and in at least one public location in each precinct in Concord, and by mailing a copy thereof to every household fourteen days, at least, before said 25th of April, 2017, then and there to act upon the following Articles:

BY PETITION CONCORD A WELCOMING COMMUNITY

ARTICLE 1. To determine whether the Town will vote to urge the Select Board to adopt the following formal policies and procedures relative to immigrants who work or live in Concord as well as those who come here to visit, or take any other action relative thereto. These policies are generally consistent with those adopted by the Concord Police Department.

Proposed Policies

1. No employee of Concord shall inquire about the immigration status of an individual, including a crime victim, a witness, or a person who calls or approaches the police, or any other member of the public with whom the employee has contact, unless necessary to investigate criminal activity by that individual.
2. No police officer of Concord shall arrest, detain, or continue to detain a person based solely on the belief that the person is not present legally in the United States or that the person has committed a civil immigration violation.
3. No police officer of Concord shall arrest, detain, or continue to detain a person based on an immigration detainer, federal administrative warrant, or any other such order or request in any form whatsoever, unless such detainer or warrant is accompanied by a judicial warrant, and where: a) there is probable cause to believe that the individual has illegally re-entered the country after a previous removal; and b) the individual has been convicted at any time of a violent felony, terrorism-related offense, trafficking in individuals or drugs, or participation in a criminal organization using violence.
4. No police officer or employee of Concord shall respond to any ICE notification request by providing any federal agent or agency information about an individual's incarceration status, hearing information, length of detention, home address, or personal information, but may provide information regarding citizenship or immigration status.
5. No police officer or employee of Concord shall perform the functions of an immigration officer, nor shall any department of the Town of Concord use Town funds, resources, facilities, property, equipment or personnel to assist in the enforcement of federal civil immigration laws. Nothing in this section shall prevent an officer, employee or department from lawfully discharging duties in compliance with and in response to a lawfully issued judicial warrant, judicial subpoena, or judicial detainer.

Petitioner's Explanation: Concord has long held diversity as a community value. The Town, including its schools and police department, has long been committed to upholding and protecting the civil and human rights and the life, safety, and security, of all individuals, regardless of race, sex, sexual preference, religion, ethnicity or national origin. Consistent with this commitment, this proposed resolution, if adopted, will formalize, and extend, existing policies, thereby ensuring that all immigrants are able to fully participate in the civic and economic life of our Town. We believe this will lead to a safer community, a better educated citizenry, and improved quality life for all those who live, work, and visit our Town.

ADOPT MGL CHAPTER 40, SECTION 8J CREATING A COMMISSION ON DISABILITY

ARTICLE 2. To determine whether the Town will vote to accept the provisions of Massachusetts General Law chapter 40, section 8J creating a Commission on Disability, or take any other action relative thereto.

Adoption of Section 8J of Chapter 40 will allow the Select Board to establish a Commission on Disability consisting of five members that will (1) research local problems of people with disabilities; (2) advise and assist municipal officials and employees in ensuring compliance with state and federal laws and regulations that affect people with disabilities; (3) coordinate or carry out programs designed to meet the problems of people with disabilities in coordination with programs of the Massachusetts Office on Disability; (4) review and make recommendations about policies, procedures, services, activities and facilities of departments, boards and agencies of the town as they affect people with disabilities; (5) provide information, referrals, guidance and technical assistance to individuals, public agencies, businesses and organizations in all matters pertaining to disability; and (6) coordinate activities of other local groups organized for similar purposes.

FUNDING FOR TECHNOLOGY IMPROVEMENTS

ARTICLE 3. To determine whether the Town will vote to transfer from funds available in the treasury the sum of \$1,500,000, or any other sum, to be expended under the direction of the Town Manager for the purpose of modernizing the town’s computer services including software, hardware, training and related services for program enhancements in financial services, billing, general ledger, license and permit tracking, email, document management and other computerized municipal services, or take any other action relative thereto.

This article will provide funding for the Town to undertake several major technology improvement projects which will be implemented over several years. These projects require significant investment in software and implementation that exceed the resources available within the operating budget’s Technology Fund. The first project will enable electronic permits, licensing and automation related to applications and renewal processing. Projects selected for this program support multiple departments and focus on integration and improving services.

Hereof fail not and make due return of this Warrant with your doings thereon, to the Town Clerk, at or before the time of said meeting aforesaid.

Given under our hands this 27th day of March in the year two thousand-seventeen.

Michael Lawson

Jane Hotchkiss

Alice Kaufman

Thomas Mckean

Steven Ng

SELECT BOARD

Commonwealth of Massachusetts Middlesex, ss.

Concord _____
Date

By virtue of this warrant I have notified the legal voters of the Town of Concord to meet at the times and places and for the purposes within named as directed.

Constable of Concord

SPECIAL TOWN MEETING VOTER REGISTRATION INFORMATION

THE DEADLINE FOR UNREGISTERED RESIDENTS TO REGISTER TO VOTE AT THE SPECIAL TOWN MEETING IS:

FRIDAY, APRIL 14, 2017

IN ADDITION TO REGULAR OFFICE HOURS, A SPECIAL EVENING REGISTRATION SESSION WILL BE HELD ON FRIDAY, APRIL 14, 2017 UNTIL 8:00 PM AT THE TOWN CLERK'S OFFICE, 22 MONUMENT SQUARE FOR RESIDENTS WHO ARE CURRENTLY NOT REGISTERED VOTERS IN CONCORD.

Voter registration may be done online, by mail or in person.

For online registration or to download a mail-in registration form, visit the Town's Web Site (www.concordma.gov – click "Elections & Voting") or call the Town Clerk's office and ask that a form be mailed.

For in-person registration, visit the Town Clerk's office at the Town House
22 Monument Square – 978-318-3080
Mondays-Fridays, 8:30 am-4:30 pm

Select Board's Recommendations/Positions/Comments

Positions need to be completed by April 12, 2017 BOS Meeting

	TITLE	RECOMMENDATION
1	BY PETITION Concord A Welcoming Community	
2	Adopt MGL Chapter 40, Section 8J Creating a Commission On Disability	
3	Funding for Technology Improvements	

**SELECTMEN'S KEY
VOTING ON POSITIONS ON WARRANT ARTICLES**

AFFIRMATIVE ACTION RECOMMENDED

AGREE WITH ARTICLE

AFFIRMATIVE ACTION RECOMMENDED IN
THE AMOUNT OF \$_____

AGREE WITH THE ARTICLE IN AN AMOUNT TO
BE SPECIFIED

AFFIRMATIVE ACTION RECOMMENDED ON
AN AMENDED MOTION

AGREE WITH THE SUBSTANCE OF THE ARTICLE
BUT AN AMENDED MOTION WILL BE VOTED ON

NO ACTION

DISAGREE WITH THE ARTICLE

NO MOTION IS EXPECTED

THE ARTICLE IS NOT EXPECTED TO BE
MOVED

RECOMMENDATION WILL BE MADE AT
TOWN MEETING

AT THE TIME OF TAKING POSITIONS THERE
ISN'T ENOUGH INFORMATION TO REACH A
DECISION

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (the "Agreement") is entered into by and between the Town of Concord, Massachusetts (the "Town"), acting by and through its Town Manager, as authorized by its Select Board (the "Select Board"), the Concord Housing Development Corporation ("CHDC"), and the Grantham Group, LLC (the "Developer"). The Agreement represents the understanding between the Town, the Developer, and CHDC (collectively the "Parties") with respect to Developer's proposal to construct an 83-unit affordable assisted living development (the "Project") on approximately six acres of land comprising a portion of Parcel 2013-1 on the Town of Concord's Assessors' Map, which parcel is located at 6X Winthrop Street in West Concord, Massachusetts (the "Site"). The Site is owned by CHDC and leased to the Developer for 99 years pursuant to a Ground Lease to be entered into substantially on the terms and conditions of the Development Agreement of CHDC and the Grantham Group dated February 22, 2016. A plan of the Site is attached hereto as **Exhibit A**.

RECITALS

WHEREAS: CHDC received title the Site and remainder of Parcel 2013-1 from the Commonwealth of Massachusetts in 2013 subject to a restriction that the Site be used for a development project comprised of 100% affordable housing units or open space, and pursuant to which deed the land will revert to the Commonwealth if said conditions are not met;

WHEREAS: The Developer intends to request that the Town grant all necessary permits to build the Project;

WHEREAS: The Developer has applied, or will apply, for federal low income housing tax credits and other public funding in support of the Project;

WHEREAS: The Select Board has requested, and the Concord Community Preservation Committee ("CPC") has recommended, that the 2017 Concord Annual Town Meeting appropriate Community Preservation Act ("CPA") funding in the amount of three hundred and fifty (\$350,000) dollars and in the following two years will request additional CPA funding to bring the total to one million (\$1,000,000.00) dollars for the Project (the "CPA Amount"); and

WHEREAS: The Select Board has requested that the Concord Town Meeting appropriate an additional one million (\$1,000,000.00) dollars from the Town's General Fund to support the Project (the "General Fund Amount", together with the CPA Funding, the "Town Funds");

NOW, THEREFORE, in consideration of the mutual promises of the Parties contained herein and other good and valuable consideration, the receipt of which is acknowledged, the Parties hereby agree as follows:

1. CHDC and the Developer hereby acknowledge that the Town's payment of all or a portion of the Town Funds is subject to appropriation by Concord Town Meeting. Nothing herein shall constitute a commitment to provide funding not yet appropriated by Concord Town Meeting for the Project.
2. The Project must be constructed in conformance with all Federal, State, and local laws, rules, regulations permits and approvals including, without limitation, any and all Special Permits granted by the Concord Zoning Board of Appeals. Notwithstanding the foregoing, nothing in this Agreement shall require the Town or any board, committee, department or official thereof to grant any permit or approval required for the construction of the Project.

3. The Developer shall bear, or seek funding from sources other than the Town for, any and all costs of the Project, including but not limited to, construction expenses, site development costs or soil remediation costs. The Developer anticipates that these costs shall total \$17,351,533.
4. As required by the deed from the Commonwealth conveying the Site to CHDC, 100% of the units created by the Project will be affordable and will count towards the Town of Concord's subsidized housing inventory ("SHI"); 17 of the units shall be affordable at or below 30% of median household income; 26 of the units shall be affordable at or below 60% of median household income; and 40 of the units shall be affordable at or below 150% of median household income.
5. The CHDC and the Developer agrees that the Project will conform to all of the requirements of the CPC in the use of the CPA Amount, and shall be subject to the Town's standard CPA funding agreement.
6. Roadway and other improvements on the Site will be built by the Developer, at the Developer's expense, and will conform to the Town's specifications, including the Town's specifications for subdivision roads pursuant to the Concord Planning Board's Subdivision Rules and Regulations, and in compliance with all other applicable laws, rules, regulations, and the terms of any Federal, State, or local permits and approvals.
7. CHDC commits to working with the Concord Natural Resources Commission, the Sudbury Valley Trustees and the Concord Land Trust toward the goal of creating a permanent Conservation Restriction, providing for public access, on the portions of the Site not used for the development of the Project.
8. To the greatest extent permitted by law and program requirements for the development of affordable housing of the Commonwealth of Massachusetts, the Developer shall maximize the number of units in the Project offered on a preferential basis to Concord residents.
9. The Developer agrees to minimize disruption to neighborhood during Project construction by conforming to time of work requirements set by the Town, meeting with neighbors to resolve conflicts, and limiting off-Site noise, dust, and litter from the Project.
10. The CHDC agrees that no additional buildings will be constructed on the Site other than those permitted as part of the Project.
11. The Developer agrees not to request any financial support from the Town other than the Town Funds for the construction and development of the Project and acknowledges that the Town is under no obligation to provide any additional financial support; provided however, that this provision shall not apply to bar the Developer from seeking additional Town approvals to allow for the disbursement of the Town Funds.
12. The Developer and CHDC agree to view the Town Funds as a deferred subordinated loan that will be structured according to the terms and conditions imposed by the Commonwealth's Affordable Housing Trust Fund as administered by MassHousing. The Town shall not disburse any Town Funds to the Developer until the Developer has closed on all debt and equity financing necessary for the Project. The Developer agrees that, thereafter, not more than 50% of the Town Funds shall be disbursed to the Developer prior to the issuance of a Certificate of Occupancy for the Project from the Town's building commissioner. The Town shall disburse the balance of the appropriated Town Funds to the Developer upon the

Developer's procurement of a certificate of occupancy from the Town's building commissioner for the Project.

13. The Town agrees to work with the Massachusetts Department of Transportation ("MassDOT") and the Massachusetts Department of Corrections ("DOC") to secure permission for Developer's construction vehicles to use MassDOT and DOC property for access to the Site during the period of construction. Developer and CHDC agree and acknowledge that such permission is not within the Town's control to grant, and that the Town's failure to obtain such permission shall in no way alter the Parties' rights and obligations under this Agreement.
14. No party shall assign its rights or obligations under this Agreement without the prior written consent of all other Parties which may be withheld in any party's sole discretion, provided, however, that the Developer may assign its rights and obligations under this agreement to an entity entirely owned and controlled by the Developer formed to act as the ground tenant of the Site with the Town's prior written consent, which consent, in that case may not be unreasonably withheld.

The Parties enter this Agreement into this 11th day of April 2017.

For the Town of Concord:



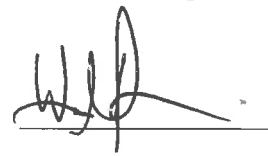
Christopher Whelan
Town Manager

For the CHDC:



Philip Posner
Chair, CHDC

For the Developer:



Walter Ohanian,
Managing Director
Grantham Group, LLC