

# 136-140 Worcester Street

*Wellesley, MA*

*Application for a Comprehensive  
Permit*



Submitted To:

Wellesley Zoning Board of Appeals

May 24<sup>th</sup> 2019

## **Table of Contents**

Section 1: Zoning Board of Appeal - Official Development Prospectus

Section 2: Project Introduction

Section 3: Project Data Summary

Section 4: Application Status

Section 5: Project Eligibility Letter

Section 6: Development Team

Section 7: P&S Agreements

Section 8: DHCD SHI

Section 9: Sample Regulatory Agreement

Section 10: Waiver / Zoning Requests

Section 11: Traffic Impact Study

Section 12: Engineering Plans

Section 13: Omitted

Section 14: Architectural Plans

Section 15: Landscaping Plan

Section 16: W9

Section 17: Drainage Study/Stormwater Management Report

Section 18: Developer Experience

Section 19: EcoTec Wetlands/Environmental Analysis

**12 full size copies of each plan**

**7 11x17 copies of each plan**

Check for \$2000 and \$25 to Town of Wellesley for filing fee and mailing & publication purposes

## SUBMITTAL PACKET: COMPREHENSIVE PERMIT

The following items shall be included with applications for Comprehensive Permits:

1. Narrative including the following:
  - a. Total number of buildings, total number of unit and unit mix within each building (number of affordable units/market rate units, breakdown by bedroom)
  - b. Description of type of units (apartment, townhouse, single family dwellings) and whether the units are to be rented or owned by the occupant
  - c. The location of the site within all Zoning Districts, including overlay districts.
2. Proof of Status of Petitioner:
  - a. Documentation of organization of applicant either as a public agency, non-profit organization or limited dividend organization.
  - b. Documentation of project fundability by a subsidizing agency under a specific low and moderate income housing subsidy program, which shall include a letter of site approval or project eligibility from said governmental agency
  - c. Documentation of sufficient interest in the proposed site. (760 CMR 31.01 (3))
3. Copy of Local Initiative Application for proposal, which has been approved by EOCD. (If applicable)
4. Completed "Official Development Prospectus" with 12 copies of all plans specified on the form. All plans shall include a Title Block with the name and address of the applicant, the date and scale of the drawing.
5. Certification from the Wetlands Protection Committee stating compliance with the Wetlands Protection Act. As appropriate, the certification shall be an Order of Conditions, a Negative Determination of Applicability, or a letter from the Conservation Administrator stating that the Wetlands Protection Act is not applicable.
6. A list of requested exceptions to local codes, by-laws or regulations, including the Zoning Bylaw.
7. A resume of past development experience including all affordable housing projects completed by the developer.
8. A letter regarding the financial standing of the applicant from a financial institution.
9. A check in the amount of \$2,000.00 payable to the Town of Wellesley.
10. A check in the amount of \$25.00 payable to the Town of Wellesley for mailing & publication fees.

**ALL WETLANDS PROTECTION ISSUES (DETERMINATION OF NEGATIVE APPLICABILITY OR ORDER OF CONDITIONS) MUST BE RESOLVED AND SUBMITTED TO THE BOARD BEFORE THE ZBA PUBLIC HEARING.**

**THE BOARD RECOMMENDS THAT THE PETITIONER REVIEW THE ZONING BOARD OF APPEALS RULES AND REGULATIONS.**



ZONING BOARD OF APPEALS

TOWN HALL • 525 WASHINGTON STREET • WELLESLEY, MA 02482-5992

RICHARD L. SEEGEL, CHAIRMAN  
J. RANDOLPH BECKER, VICE CHAIRMAN  
DAVID G. SHEFFIELD

LENORE R. MAHONEY  
EXECUTIVE SECRETARY  
TELEPHONE  
(781) 431-1019 EXT. 2208  
TOWN OF WELLESLEY

ROBERT W. LEVY  
WALTER B. ADAMS  
DEREK B. REDGATE

OFFICIAL DEVELOPMENT PROSPECTUS

Applicable to Major Construction Projects  
Submitted Under Section XVIA of the Zoning Bylaw  
And Comprehensive Permit Projects Submitted  
Under Chapter 40B



Date: May 2019

Year/Number: 2019 - 61

RECEIVED  
TOWN OF WELLESLEY  
2019 MAY 29 A 11:34  
WELLESLEY MA 02482

I. IDENTIFICATION

Petitioner: SEB Wellesley, LLC

Address: 257 Hillside Avenue, Needham 02494

Telephone: (617) 782 2900

Land Owner of Record: Worcester Road Realty Trust & Dean B. Cartwright

Location of Property: 130,136, 140 Worcester Street, Wellesley

Proposed Use of Property: 40 unit Multi-family residential

Zoning Districts: (Including all overlay districts) \_\_\_\_\_

Single Residence 10 (SR-10)

Are any other special permits or variances, other than Site Plan Approval  
required for this project? Yes x No \_\_\_\_\_

If yes, what is required? A comprehensive permit under Chapter 40B is being requested (see section 10 for waiver request)

II. DESCRIPTION

Describe in detail the plan to be executed under the appropriate categories below

- 1. Land Area 37,511 SF
- 2. Square footage of proposed construction footprint 13,584
- 3. Square footage of existing building footprint 2,640
- 4. Square footage of total structure footprint 13,584
- 5. Total floor area of existing building 3,613
- 6. Total floor area of proposed construction 53,120
- 7. Total floor area after proposed construction completed 53,120
- 8. Floor area ratio: n/a(Commercial)
- 9. Number of Buildings 1
- 10. Number of Stories of each Building 4 +Parking level
- 11. Height of each Building 35+/- (current) 58 6" (proposed)
- 12. Number of Parking Spaces: (Existing/Proposed)
 

Standard	<u>10</u> / <u>38</u>	Compact	<u>na</u> / <u>22</u>	Handicapped	<u>0</u> / <u>3</u>
Covered	<u>5</u> / <u>34</u>	Open	<u>0</u> / <u>29</u>		
Total (Existing and proposed)		<u>15+/-, 63</u>			
Total Number Required		<u>60</u>			
- 13. Number of handicapped sidewalk curb cuts provided 2
- 14. Lot coverage in square feet ( % )
 

	Before	After
1) Buildings	( 7% )	( 37% )
2) Drives & Parking	( 31% )	( 44% )
3) Other uses (identify uses and coverage)	( % )	( 0% )
<u>Sidewalks</u> and Patios		
- 15. Open Space
 

1) Landscaped area	( 62% )	( 19% )
2) Natural (i.e. woods, fields)	( 0 )	( 0 )
3) Recreational	( 0 )	( 0% )

A. Residential Construction

1. Number of Dwelling Units

Efficiency<sup>0</sup> \_\_\_\_\_ One Bedroom<sup>14</sup> \_\_\_\_\_ Two Bedroom<sup>21</sup> \_\_\_\_\_  
Three Bedroom<sup>5</sup> \_\_\_\_\_ Other<sup>N/A</sup> \_\_\_\_\_

2. How many units will be provided with handicapped access to bathrooms, toilets, entrances, egresses, etc.? TBD

3. Density in square feet of land per dwelling unit.  
Existing 9,377.75 Proposed 937.75

4. Density in square feet of land per person:  
Existing 6251 Proposed 528.32  
\*Calculation assumes 1 person per bedroom

III. TRAFFIC IMPACT ANALYSIS AND DATA

(Explain basis for data entered)

Transportation Impact Assessment by Vanasse and Associates

If, as a result of the proposed construction, the following conditions will exist, Questions 1-5 must be answered:

- a. If the floor area of the building exceeds 10,000 sf; or
- b. If 50 or more vehicle trips will be generated by the completed project in any single hour of the day.

1. Projected traffic generation of proposed new development:

a. Peak Day	In	Out	Total
24-Hour	_____	_____	216
Am Peak Hour	_____	_____	14
PM Peak Hour	_____	_____	18

b. Typical or Average Day

24-Hour	_____	_____	216
Am Peak Hour	_____	_____	14
PM Peak Hour	_____	_____	18

2. Current two-way traffic flows on frontage street(s):

	24 Hour	AM Peak Hour	PM Peak Hour
Street <u>Worcester Street (Route 9)</u>	<u>43,580 vehicles/day</u>	<u>4,152 vehicles/hour</u>	<u>4,359 vehicles/hour</u>
Street _____	_____	_____	_____

3. Data compiled by: Vanasse and Associates, Inc.

4. Date of data compilation: April 2019

5. Comment on adequacy of drive entrances & exits with respect to sight distance and other traffic operations considerations on frontage street(s)

Locations through which 30 or more vehicles approach from a single direction in any single hour of the day.

(List intersections and operational problems):

See attached Transportation Impact Assessment dated 6/2018 from Vanesse & Associates, LLC.

List possible hazardous pedestrian and bicycle crossings:

See attached Transportation Impact Assessment dated 2/2018 from Vanesse & Associates, LLC.

6. Has a separate Traffic Study been submitted? Yes X No       

IV. PUBLIC UTILITIES - (Quantitative, state basis for data entered)

A. Estimated water consumption 8,590 gal/day

B. Number of Fire Hydrants - existing within 200 ft 0 Proposed 1

C. Estimated discharge to sewer system 7,810 gal/day

D. Sewer Disposal - will any proposed on-site individual sewage disposal systems be designed to receive more than 110 gallons of sewage per quarter acre per day? Yes        No X

E. Refuse disposal <sup>1,581 lbs./day (this does not see accurate)</sup>        lbs. or tons/day Assumed 3lbs./ day per person

1. Proposed method of handling Private Collection

2. What provisions will be made to facilitate the recycling of solid waste? 3-2 yard yard dumpsters will be provided for private haul away service of refuse and recycle for building occupants

F. Service Voltage TBD Service Amperage TBD

1. Estimated peak electrical consumption TBD kw

a. Heating Season TBD kw b. Cooling Season TBD kw

2. Estimated annual electric energy consumption TBD kw

3. Three Phase Service YES Single Phase Service       

G. Are energy efficient appliances to be used? YES

H. What R-Factors will be used in insulation and glazing for walls and ceilings? Not yet known

I. What energy source will be used for heating water?  
Electric \_\_\_\_\_ Gas<sup>x</sup> \_\_\_\_\_ Fuel Oil \_\_\_\_\_ Other \_\_\_\_\_

J. Will electric resistance heating or heat pumps be used? Yes \_\_\_\_\_ No<sup>x</sup> \_\_\_\_\_

K. Will the facility include an emergency electric generator?  
Yes \_\_\_\_\_ No<sup>x</sup> \_\_\_\_\_

If YES, would you be willing to run it to reduce your peak load?  
Yes \_\_\_\_\_ No<sup>x</sup> \_\_\_\_\_

V. FIRE PROTECTION

A. \*Fire flow presently available at site Connection to Water Main in Worcester Street

B. \*Total floor area of building (Largest single building if more than one building) 53,120

C. Type of Building Construction TBD

D. \*Required fire flow for building (Maximum required for a single building if more than one building) TBD

E. \*If required fire flow (D) exceeds available fire flow (A), describe plans to provide required fire flow (D)  
N/A

F. Describe access for fire apparatus to building (s) \_\_\_\_\_

Site is designed to allow for access to three sides of the building

\*Written statement indicating these figures signed by a registered professional engineer must accompany submittal.

VI. ENVIRONMENTAL IMPACT

A. What percentage of the property is Wetlands 10.1% (riverfront)  
Floodplains NA

Will either be altered as a result of the project? Yes - to repair / stabilize

B. Will the proposed development contribute in any way to pollution of groundwater, surface water, or waterway: Yes \_\_\_\_\_ No<sup>x</sup> \_\_\_\_\_

Oil \_\_\_\_\_ Salt \_\_\_\_\_ Chemicals \_\_\_\_\_ Other \_\_\_\_\_

Explain

\_\_\_\_\_  
\_\_\_\_\_

Describe proposed measures to eliminate or minimize such pollution:

The proposed site will have an Operation and Maintenance Plan for the new stormwater management facilities

---

C. Does the proposed development involve storage of any of the following materials above or below the ground?

- No deicing chemicals or other related materials  
No commercial fertilizers and other related materials  
No hazardous materials  
yes liquid petroleum products

If YES to any of the above, list specific materials to be stored:

Gas storage for fuel contained within passenger vehicles

---

D. Impact on surface drainage

- 1a. Current rate of peak runoff 1.87 cubic ft/second  
b. Current volume of runoff 8,504 100 yr. storm cubic feet or acre-feet  
2a. Post-development rate of peak runoff 0.67 100 yr. storm cfs  
b. Post-development volume of runoff 2,254 100 yr. storm cubic feet or acre-feet  
(Design storm and rainfall intensity should be cited for #1 & #2)

3. Describe measures to eliminate or minimize any increase in rate of runoff See Mitigation Drainage Study for #136/#140 Worcester Street Dated April 29th 2019 by HEI

---

4. Might the project result in significant changes in existing drainage patterns? Will any abutting or other property be adversely affected by the changes? No

---

E. Does the proposed structure include installation of floor drains?  
Yes<sup>x</sup>      No      If YES, how many? TBD

F. Will the project affect the condition, use, or access to any existing public open space or recreation area? If so, how?

No

---

G. Does the proposed development involve outside lighting? Yes<sup>x</sup> No  
if YES, state height of lighting fixtures Dark Sky Compliant / 20ft.

Will the outside lighting shine directly on abutting premises?  
Yes No<sup>x</sup>

If YES, explain

N/A

Describe proposed steps to minimize this impact All exterior lighting to be Dark Sky Compliant and

H. Might any site or structure of historic or archeological significance be affected? Yes No<sup>x</sup>

Describe N/A

I. Will the project require the removal of any street trees protected under M.G.L. Ch. 87? Yes No<sup>x</sup>

If YES, how many? N/A

J. Will the project involve blasting or pile driving? Yes No<sup>x</sup>

1. What is the approximate volume of the material to be removed?

Where will this material be disposed? No material leaving the site. More fill than cut.

K. Is an Environmental Notification Form required to be filed under M.G.L. Ch. 30, Section 61-62H, the Mass. Environmental Policy Act? Yes No<sup>x</sup>

#### VII. IMPACT OF WATER SUPPLY

A. Will the project result in an increase of 10,000 square feet or more of impervious area within a Water Supply Protection District defined by Section XIVE of the Zoning Bylaw? Yes<sup>N/A</sup> No<sup>N/A</sup>

If so, does it satisfy the design and operation standards of Section XIVE? Yes<sup>N/A</sup> No

B. Will the project result in finished exterior grades lower than the existing grade and less than 5 feet of soil overburden above the maximum ground water elevation within a Water Supply Protection District? Yes<sup>N/A</sup> No<sup>N/A</sup>

C. Will catch basins be installed? Yes<sup>x</sup> No  
If so, how many? 4

Do catch basins presently exist? Yes No<sup>x</sup>  
If so, how many? N/A

Are catch basins fitted with oil and grease traps? Yes<sup>x</sup> No<sup>N/A</sup>  
How many? Existing 0 Proposed 4

D. Will water saving appliances be used or water conservation devices be used in all plumbing? Yes<sup>x</sup> No

VIII. FINANCIAL IMPACT

A. Estimated Building Permit Valuation The estimated residential construction cost is approximately \$12 million

B. Estimated assessed value not known

# **136-140 Worcester Street**

Wellesley, Massachusetts

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

*Submitted by:*

SEB Wellesley, LLC

May, 2019

Town of Wellesley Massachusetts  
**ZONING BOARD OF APPEALS**

---

Premises affected: A 37,511 SF parcel of land, at 136-140 Worcester Street

---

**APPLICATION FOR A COMPREHENSIVE PERMIT  
UNDER GENERAL LAW CHAPTER 40B, SECTIONS 20-23**

---

SEB Wellesley, LLC (hereinafter the "Applicant") hereby applies to the Board of Appeals of the Town of Wellesley Massachusetts, pursuant to General Laws, Chapter 40B, Section 20 through 23, as amended, for the issuance of a Comprehensive Permit authorizing the applicant to construct 40 apartment units on land located at 136-140 Worcester Road in Wellesley, Massachusetts. The applicant and the development are more particularly described in the exhibits here to annexed and submitted simultaneously here with, all of which are incorporated herein by reference and constitute the documents required to be submitted under the regulations for filing a 40B application by the Massachusetts Department of Housing and Community Development (760 CMR 56.00).

## REQUEST FOR FINDINGS OF FACT

The applicant requests that the Board of Appeals make the following findings of fact in connection with the action of the Board on this application:

1. SEB Wellesley, LLC a limited dividend organization within the meaning of General Laws, Chapter 40B and 760 CMR 56.02, and is eligible to receive a subsidy under a state or federal affordable housing program after a Comprehensive Permit has been granted.
2. The applicant has shown evidence of its site control to qualify it as a recipient of a Comprehensive Permit for this site.
3. The Massachusetts Housing Finance Agency (“Masshousing”), as the Program Administrator of the New England Fund (NEF) Program, will be the subsidizing agency within the meaning of the regulations of 40B (760 CMR 56.00) and within the meaning of the procedural regulations of the Housing Appeals Committee (760 CMR:30.01(C)).
4. The number of low or moderate income housing units in the Town of Wellesley constitutes less than ten percent (10%) as reported in the latest decennial census of the town and reported by the Department of Housing & Community Development as of September 2017
5. The development as proposed in the application is consistent with local needs within the meaning of General Laws, Chapter 40B, Section 20.

The applicant respectfully requests the Board of Appeals after complying with the procedural requirements as provided by law, to issue to the applicant a Comprehensive Permit for the development.

SEB Wellesley, LLC

By: \_\_\_\_\_  
Geoffrey Engler  
Manager

## PROJECT DATA SUMMARY

### 1. Applicant

SEB Wellesley, LLC (the "Applicant") has been organized under the General Laws of the State of Massachusetts and is qualified to undertake the planning and development of the proposed apartment community in Wellesley, MA. The Applicant proposes to develop 40 apartment units on a limited dividend basis as required under all laws and regulations of the Commonwealth of Massachusetts.

The project manager of SEB Wellesley, LLC Geoffrey Engler, as well as many members of his development team, have experience developing multi-family housing developments in the Greater Boston area. The Applicant respectfully requests that all notices from the Board in connection with this Application be sent to Geoffrey Engler, 257 Hillside Ave, Needham MA 02494.

### 2. Description of the Development

The proposed building is located on the south side of Worcester Street in Wellesley which is the east-bound lane of a divided thoroughfare (Route 9) with direct access to Boston and adjacent communities. The proposed building has an overall horizontal massing with four stories of residential units above one level of parking. In order to achieve a balanced massing, this horizontal form is combined with a series of vertical elements.

The 40 unit building is sited and configured so as to minimize the building massing adjacent to neighboring homes putting open space and landscaping immediately adjacent to the neighbors. In general, the building is not proximate to many residential structures and all vehicular access will be to and from Route 9.

Within the residential areas, the typical floor plan for the first building provides access to units off a central double-loaded corridor that connects several egress stair cores. Typical one, two and three bedroom units are designed with spacious open kitchen/living areas, comfortable bedrooms and bathrooms, as well as large walk-in closets. Large windows provide abundant natural light at each unit. In addition to high-quality finishes and individual environmental control, each unit will contain modern energy-efficient appliances, in-unit laundry, and low-energy lighting fixtures, all of which combine to provide contemporary luxury with a traditional timelessness.

### 3. Qualification as a 40B Development

The development qualifies as assisted "low or moderate income housing" within the meaning of Massachusetts General Laws Chapter 40B, section 20 and will provide 10 units (25%) which will serve households earning at or below 80% of area median income and thus will meet the definition of low and moderate income under the statute. The Applicant will develop this project pursuant to the guidelines of the MassHousing New England Fund Program administered by MassHousing under which a site approval letter has been granted.

### 4. Local Need

According to figures compiled by the Massachusetts Department of Communities and Development (DHCD), in September 2017, Wellesley's subsidized housing inventory represented 6.3% of its total housing stock, which is below the threshold requirements established under Chapter 40B of M.G.L.

### 5. Exceptions and Approvals Requested

136-140 Worcester Road is zoned Single Residential 15 (SR-15) - restricts development to single lots. Certain elements of the proposed development do not comply with the current underlying

zoning. Consequently, an exception of use is required to enable multi-family residential at the proposed density to be constructed. Other exceptions to the Town of Wellesley's Zoning Bylaws and other local land use regulations are specifically detailed in this application. If any specific exceptions have not been listed in this application, the applicant, upon notification of such an oversight, shall promptly amend the list of exceptions included herein.

## CONCLUSION

For all of the foregoing reasons, and for the additional reasons the Applicant will present at the scheduled public hearing on this Application, the Applicant respectfully requests the Board, after complying with the procedural requirements as provided by law, issue to the Applicant a Comprehensive Permit for the Development.

## **APPLICANT STATUS**

The applicant, SEB Wellesley, LLC is a Massachusetts limited liability company which is a Limited Dividend Organization within the meaning of 760 CMR 56.02 and an eligible applicant under 760 CMR 56.04. Pursuant to the New England Fund Program administered by MassHousing as the subsidizing agency, the applicant intends to enter into a Regulatory Agreement providing for (i) affordability of the proposed affordable units and (ii) limitation on the applicant's return on investment substantially in form attached.



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

TEL: 617.854.1000  
FAX: 617.854.1091 | [www.masshousing.com](http://www.masshousing.com)

Videophone: 857.366.4157 or Relay: 711

May 17, 2019

SEB Wellesley, LLC  
257 Hillside Avenue  
Needham, MA 02494  
Attention: Geoffrey Engler

**Re: 136-140 Worcester Street  
Project Eligibility/Site Approval  
MassHousing ID No. 1025**

Dear Mr. Engler:

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 (“FHLBank Boston”).

SEB Wellesley, LLC has submitted an application with MassHousing pursuant to Chapter 40B. You have proposed to build 64 units of rental housing (the “Project”) on approximately 0.96 acres of land located at 136-140 Worcester Street (the “Site”) in Wellesley (the “Municipality”). MassHousing reviewed a previous application for a project at this Site submitted by Riverview Crossing, LLC in May 2018. Riverview Crossing, LLC was denied eligibility due to concerns related to the Applicant’s qualifications and capacity. MassHousing’s review of the Project as proposed by SEB Wellesley, LLC is conditioned upon the previous applicant no longer having any membership, financial interest, or involvement in the Project.

In accordance with the Comprehensive Permit Rules, this letter is intended to be a written determination of Project Eligibility 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 has performed an on-site inspection of the Site, which local boards and officials were invited to attend, 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 Comments**

The Municipality was given a thirty (30) day period in which to review the Site Approval application and submit comments to MassHousing. At the request of Victor Panak, Interim Planning Director for the Town of Wellesley, this period was extended an additional fourteen (14) days. The Board of Selectmen for the Town of Wellesley submitted a letter regarding the Application on April 11, 2019 summarizing comments from municipal officials and staff. Municipal comments identified the following specific areas of concern:

- The Municipality would like clarification on whether the Site's area includes the two paper streets (Echo Road and Alpine Street) shown on the site plan and requests that the Applicant provide additional information regarding its rights to use those areas.
- The Municipality is concerned that the proposed access will challenge already limited vehicular capacity to the Site, which can only be accessed from Route 9 eastbound. In particular, the Municipality noted that the 50 mph speed limit and limited turn radius into the Site creates a challenging ingress. Further concern was raised for vehicular circulation in the neighborhood overall, due to Site's eastbound limitations.
- The Municipality is concerned about pedestrian access and safety on the Site, noting that there are no sidewalks along this section of Route 9 and no connections with surrounding neighborhood streets such as Dearborn Street.
- The Municipality noted that due to MassDOT improvements along Route 9, the Town anticipates there will be a 5-year moratorium on cutting into the pavement, potentially challenging connections to public water and sewer.
- The Municipality is concerned about the proposed Project's impact on wetlands resource areas, noting that it is built out to the edge of a bordering vegetated wetland (BVW), and its location within both the 100' buffer and a riverfront area. Particular concern was raised for construction of the retaining wall and other hardscaping in proximity to the BVW. The Applicant will be required to file a Notice of Intent with the local Conservation Commission.
- The Municipality is concerned that the proposed Project's height and bulk overburdens the Site. Specifically, the Municipality noted concern for inadequate setbacks, majority impervious area, and lack of useable open space.
- The Municipality would like more information regarding proposed landscaping and screening plans for the Site, particularly given that the site plan suggests removal of several existing trees within the property.
- The Municipality expressed concerns with respect to the practicality of constructing the Project, particularly as it relates to the management of construction materials within an environmentally sensitive buffer, and requests further clarification on how construction will be staged and coordinated.

## **Community Comments**

While no comments were received by area residents specifically in connection with this Application, MassHousing did receive two (2) letters from area residents in connection with the previous applicant's submission. Those letters expressed concerns relative to density, environmental impacts and traffic. While the letters received by area residents echoed many of the concerns raised by the Municipality, they raised the following additional concerns:

- Area residents are concerned that the Project's architectural design is incompatible with the surrounding neighborhood.
- Area residents are concerned that the height of the proposed building may cast shadows on neighboring homes and that light pollution from its large windows and cars moving in and out of the Site will negatively impact neighboring properties.

### **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 Applicant 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, the following issues should be addressed in the application to the Wellesley Zoning Board of Appeals, and the Applicant should be prepared to explore them more fully during the public hearing process:

- 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.
- The Applicant should be prepared to provide sufficient data to assess potential traffic impacts on area roadways and intersections, including the safety of proposed site access and egress, and the safety of pedestrians.
- The Applicant should be prepared to address concerns relative to the height and bulk of the proposed Project, its impact on the character of the surrounding neighborhood, and fully describe the proposed measures to address and mitigate these concerns.

- The building layout should be reviewed for egress requirements, including dead end corridors.
- Consideration should be given to accessible design features throughout the development. In particular, unit layouts should demonstrate compliance with applicable regulations including appropriate distribution by size and location
- The Applicant should provide a detailed landscaping plan. Particular consideration should be given to enhancing vegetative buffers at the front of the property and where tree removal will occur. Opportunities to enhance the Site with pervious design features and additional common areas should also be considered.
- The Applicant should provide information relative to spaces for storage of maintenance equipment and snow removal.
- The Applicant is encouraged to incorporate additional energy-saving and sustainability features into the Project. Possible features may include renewable energy sources, building envelope improvements, drought tolerant landscaping, and pervious surfaces.

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

This Site Approval is expressly limited to the development of no more than sixty-four (64) rental units under the terms of the Program, of which not less than seventeen (17) of such units shall be restricted as affordable for low or moderate income persons or families as required under the terms of the Guidelines. It is not a commitment or guarantee of 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 or a reduction in the size of the Site, you may be required to submit a new Site Approval application for review by MassHousing. Should you consider a change in tenure type or a change in building type or height, 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 (2) 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 at the following times throughout this two-year period: (1) when the Applicant applies to the local ZBA for a Comprehensive Permit, (2) when the ZBA issues a decision and (3) if applicable, when 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.

**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 FHLBank Boston, 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 Katherine Miller at (617) 854-1116.

Sincerely,



Chrystal Kornegay  
Executive Director

cc: Janelle Chan, Undersecretary, DHCD  
The Honorable Cynthia Stone Creem  
The Honorable Rebecca L. Rausch  
The Honorable Alice Hanlon Peisch  
Jack Morgan, Chair, Wellesley Board of Selectmen  
Richard L. Seegel, Chair, Wellesley Zoning Board of Appeals  
Meghan Jop, Executive Director  
Victor Panak, Interim Planning Director

**136-140 Worcester Street, Wellesley, MA #1025**

After the close of a 30-day review period and 14-day extension, 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, 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 Wellesley is \$89,200.

Proposed gross rent levels of \$1,466 for a one-bedroom affordable unit, \$1,758 for a two-bedroom affordable unit and \$2,032 for a three-bedroom affordable unit are within the current affordable rent levels for the Boston-Cambridge-Quincy HMFA under the NEF Program, less utility allowances of \$92, \$123 and \$147 for the one two- and three-bedroom units, respectively.

A letter of interest for project financing was provided by Cambridge Savings Bank, a member bank of the FHLBank Boston under the NEF Program.

***(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);***

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 Municipality describing previous municipal actions intended to provide affordable housing. Specific examples cited by the Selectmen include:

- Recent completion of a DHCD approved Housing Production Plan (HPP), effective September 27, 2018.
- November 2018 selection of Trinity Financial for the construction of 90 units, 45 which are SHI-eligible, through an RFP for the development of affordable housing at the Tailby and Railroad parking lot sites in Wellesley Square.

- October 2018 ZBA approval of a Comprehensive Permit for 135 Great Plain Avenue for the creation of 44 condominiums, 11 of which are required to be affordable.
- April 2018 Town Meeting approval for the transfer of funds in the amount \$200,000 to the Wellesley Housing Authority from the Community Preservation Committee to study the redevelopment potential of the Barton Road site.
- The Municipality is planning to redevelop the Wellesley Office Park site through the creation of a 40R district to be approved at a Special Town Meeting on May 13, 2019.
- Development of the Town's Unified Plan, updating and combining the Board of Selectmen's Strategic Plan and the Planning Board's Comprehensive Plan. (2016)
- Amending the Wellesley Square Zoning District to create a special permit to increase density, allowing the previously stalled Wellesley Inn project to proceed. (2013)
- Adopting an inclusionary zoning bylaw requiring residential projects in commercial districts and subdivisions of 5 lots or more to provide 20% affordable housing, and commercial projects over 10,000 square feet to provide 2% affordable housing. (2004)

MassHousing recognizes Wellesley's recent efforts as meaningful; however, municipal actions to date have not been of a character and scale that meets the municipality's need for affordable housing as measured by the Statutory Minima. According to DHCD's Chapter 40B Subsidized Housing Inventory (SHI), updated in April 2019, Wellesley has 615 Subsidized Housing Inventory (SHI) units (6.77% of its housing inventory), which is 294 units short of the statutory minima requirement of 10%.

The need for additional affordable housing is further supported by U.S. Census data from the 2013-2017 American Community Survey (ACS), which indicates that approximately 45.3% earned less than the HUD published 2019AMI (\$113,3000), approximately 16.9% earned less than 50% of 2019 AMI, approximately 20.1% earned less than 60% of the 2019 AMI and approximately 30.1% earned less than 80% of the 2019 AMI.

Based on MassHousing staff's site inspection, internal discussions, and a thorough review of the application, MassHousing finds that the Site is suitable for residential use and development and that such use would be compatible with surrounding uses.

*(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, and architectural details):**

The surrounding neighborhood is comprised of a mix of uses. To the east of the Site there is one single-family residential abutter. The properties abutting the Site to the south and

west are owned by the Town of Wellesley and consist of approximately 10 acres of undeveloped woodland. While relatively modest single-family neighborhoods exist in the immediate vicinity across Worcester Street and to the rear of the Site, commercial development also has a significant presence in the neighborhood. Also on Worcester Street, less than one-quarter mile east of the Site, Harvard Pilgrim Health Care and Sun Life Financial have headquartered campuses with several commercial office buildings, approximately 3-5 stories in height with a mix of brick and cement facades.

The developer intends to build one 5-story apartment building on the Site, including one sub-surface parking garage, one street-level parking garage, and a mix of 64 one-, two-, and three-bedroom apartment units. The exterior of the building has a mixture of materials including brick, precast stone, horizontal siding and metal panels framing large windows. The major design elements are two turrets. The central turret encloses the elevator shaft and is capped with a hip roof. The circular turret anchors the right side of the front façade and softens the corner on Worcester Street. The massing of the building and the choice of materials is appropriate for the design and the surrounding context. Given the mix of uses already existing near the Site, the proposed Project is able to integrate with adjacent building typologies and nearby patterns of development.

- **Relationship to adjacent streets/Integration into existing development patterns**

The proposed Project is located at 136-140 Worcester Street (Route 9). Route 9 is a major east-west State Highway with a high volume of traffic that provides direct access to several commercial centers throughout Wellesley and in neighboring Newton and Natick. Given its location on Route 9, the Site is primarily auto-oriented. However, the Site remains in relative proximity to a number of transit-oriented centers along the MBTA's "D" Branch of the Green Line, including Eliot Station which is approximately 2 miles away.

Access to and from the Site is by curb cut into a right turn only one-way drive, which runs parallel to Worcester Street, aiding vehicle deceleration and circulation into the Site and providing access to the at-grade and below-grade parking levels.

- **Density**

The Developer intends to build 64 homes on 0.96 acres, all of which are buildable. The resulting density is 67 units per buildable acre, which is acceptable given the proposed housing type and similar patterns of development found within the region.

- **Conceptual Site Plan**

The site plan consists of one 5-story building fronted along the eastbound side of Worcester Street. Site access is by curb cut into a right turn only one-way drive that provides access to the at-grade and below-grade parking levels. The Project's proposed total of 98 parking spaces results in a parking ratio of 1.53 parking spaces per unit.

The site plan indicates a sidewalk along Worcester Street, a “Tot Lot”, and a small patio area to the rear of the Site. Other Site features appear to include a retaining wall along the rear boundary of the Site, however, a landscaping plan was not provided for additional detail.

- **Environmental Resources**

No documented on-site resource areas have been identified on the Site. However, there are wetland areas located on the Town-owned property to the rear of the Site. The proposed Project clears the 25’ no disturbance area, however the rear of the building falls within the 100’ buffer. The proposed Project also lies within a 200’ Riverfront Area setback. Accordingly, the Project will be subject to further review by the local Conservation Commission under a Notice of Intent.

- **Topography**

The topography is generally level and is not a significant factor contributing to the proposed development.

***(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 64 rental apartments to be financed under the NEF Program. There will be 47 market-rate units with proposed average rent levels of \$2,378 for the one-bedroom units; \$3,622 for the two-bedroom units; and \$4627 for the three-bedroom units.

MassHousing’s Appraisal and Marketing team (A&M) performed a Competitive Market Analysis and found that proposed market rents for each unit type fall within the range of adjusted comparable market rents, albeit the estimated three-bedroom market rent falls at the upper end of that range. They note further, that the subject proposal appears limited in site amenities typically included at many of the mid- to high-end comparable properties (e.g. pool, fitness/rec. facilities, clubhouse/community room etc.), which may reduce its marketability/rent potential relative to these properties.

***(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 \$1,320,000. The Project pro forma includes a proposed investment of \$9,691,348 in private equity. Based on estimated development costs, the Project appears to be financially feasible and within the limitations on profits and distributions.

***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***

MassHousing finds that 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 Site consists of five parcels of land containing a total site area of about 1 acre. The land and buildings at 130 and 136 Worcester Street are controlled by the applicant under a Purchase and Sale Agreement (P&S) between Dean Behrend, Trustee of the Worcester Road Realty Trust (seller) and SEB Wellesley, LLC (buyer) with an expiration date on or before fifteen days after receipt of all permits and approvals, but no later than December 31, 2020. The land and buildings at 140, 140R, and 142 Worcester Street are controlled by the Applicant under an Assignment Agreement between Behrend Construction, LLC and SEB Wellesley, LLC which expires forty-five days after receipt of all permits and approvals, but no later than September 30, 2020.

## *Development Team*

### **Applicant**

SEB Wellesley, LLC  
Geoffrey Engler  
257 Hillside Avenue  
Needham, MA 02494  
617-782-2300  
[gengler@s-e-b.com](mailto:gengler@s-e-b.com)

### **40B Consultant**

SEB, LLC  
Geoff Engler  
257 Hillside Ave  
Needham, MA 02494  
617-782-2300 x 202  
[gengler@s-e-b.com](mailto:gengler@s-e-b.com)  
[www.s-e-b.com](http://www.s-e-b.com)

### **Architect**

Cube3 Studios  
Nick Griffin  
370 Merrimack Street, Suite 337  
Lawrence, MA. 01843  
978-989-9900  
[ngriffin@cube3.com](mailto:ngriffin@cube3.com)  
[www.cube3.com](http://www.cube3.com)

### **Civil Engineer**

Hayes Engineering, Inc  
Bill Bergeron  
603 Salem Street  
Wakefield, MA 01880  
781-246-2800  
[BBergeron@hayeseng.com](mailto:BBergeron@hayeseng.com)  
[www.hayeseng.com](http://www.hayeseng.com)

### **Traffic Consultant**

VANASSE & ASSOCIATES, INC.  
Jeff Dirk  
35 New England Business Center Drive  
Suite 140  
Andover, MA 01810  
978-474-8800  
[jdirk@rdva.com](mailto:jdirk@rdva.com)  
[www.rdva.com](http://www.rdva.com)

### **Landscape Architect**

Bohler Engineering  
Matt Mrva and Jason Miller  
352 Turnpike Road  
Southboro, MA 01772  
(508) 480-9900  
[jmiller@bohlereng.com](mailto:jmiller@bohlereng.com)

### **Wetlands/Environmental Consultant**

EcoTec, Inc.  
Paul McManus  
102 Grove Street  
Worcester, MA 01605  
508-752-9666  
[pmmcmanus@ecotecinc.com](mailto:pmmcmanus@ecotecinc.com)

## PURCHASE AND SALE AGREEMENT

DEAN F. BEHREND Trustee of the WORCESTER ROAD REALTY TRUST, a Massachusetts realty trust dated November 20, 1989, and recorded with Norfolk County Registry of Deeds, in Book 8492, at Page 729, as the same may have been amended of record, hereinafter called the SELLER, agrees to SELL and SEB WELLESLEY, LLC a Massachusetts limited liability company with an address at 257 Hillside Avenue, Needham, MA 02494 and/or its nominee or assigns hereinafter called the BUYER or PURCHASER, agrees to BUY, upon the terms hereinafter set forth, the following described premises:

1. Buy and Sell Agreement. Subject to and upon the terms and conditions hereinafter set forth, Seller agrees to sell and Buyer agrees to buy, the Premises described below.
2. Description of Premises. The premises to be conveyed by Seller to Buyer hereunder shall include the following (the "Premises"):

The land, with the improvements thereon, located on Worcester Street, Wellesley, Norfolk County, Massachusetts, as further described in a deed recorded at the Norfolk County Registry of Deeds in Book 8492, at Page 736.

3. Title Deed. The Premises are to be conveyed by a good and sufficient quitclaim deed running to the Buyer, or in Buyer's sole discretion without the consent of the Seller to the nominee or assignee designated by the Buyer by written notice to the Seller at least five (5) days prior to the Closing Date (as that term is hereinafter defined), whereby the principals of the Buyer shall have an interest in any such nominee or assignee and said deed shall convey good and clear record and marketable title thereto, free from encumbrances, except
  - (a) Provisions of existing building, environmental and zoning laws and regulations;
  - (b) Any liens for municipal betterments assessed after the date of this agreement; and
  - (c) Such easements, restrictions, covenants and agreements of record as Buyer has accepted or shall be deemed to have accepted under the terms of Section 8 of this Agreement (the "Permitted Exceptions").

Any matter or practice arising under or relating to this Agreement which is the subject of a practice or title standard of The Real Estate Bar Association (formally known as the Massachusetts Conveyancers Association) shall be governed by such standard to the extent applicable. If a plan (a so called Form A plan)

showing the Real Property will be necessary to be recorded with the deed the Buyer shall deliver such plan in form adequate for recording.

4. Purchase Price. The agreed purchase price for the Premises is Two Million Three Hundred Thousand Dollars and NO/100 (\$2,300,000.00). Upon execution of this Agreement, Buyer shall place in escrow in an account for the benefit of the Buyer and Seller, the sum of Ten Thousand (\$10,000) Dollars to be credited towards the Purchase Price (the "Deposit").
5. Development Permits. Buyer intends to develop a residential affordable housing development at the Property ("Proposed Development") under what is known as a comprehensive permit. Buyer shall submit a complete application to the appropriate state agencies within sixty (60) days of the date of this Agreement and upon site approval submit a complete application to the appropriate municipal boards, and, thereafter, diligently and continuously pursue obtaining the comprehensive permit and all other permits and approvals (other than a building permit) necessary for construction of the Proposed Development containing such terms and conditions as are satisfactory to Buyer (the "Permit Period"). Buyer's obligation to perform at the Closing (as defined in Section 6 herein) shall be subject to and contingent upon Buyer obtaining all permits and approvals (other than a building permit) necessary for construction of the Proposed Development with all appeal periods expired and no appeal taken. Buyer acknowledges and agrees that Seller will have no responsibility or obligation to perform any off-site improvements or mitigation measures as a result of Buyer's purchase of the Premises or development of the Proposed Development. If Buyer obtains the Permits and they or any one of them is appealed, provided that Buyer diligently prosecutes or defends, as applicable, such appeal(s) the Permit Period shall extend.
6. Closing/Closing Date: Closing Deliverables.
  - (a) Closing. The deed to the Premises (and other instruments called for herein) are to be delivered and the purchase price paid commencing at 1:00 o'clock p.m. on or before the earlier of (a) fifteen (15) days after Buyer receives all permits and approvals (other than a building permit) necessary for the Proposed Development, with all appeal periods expired and no appeal taken or (b) fifteen (15) days following the expiration of the Permit Period, at the offices of the Buyer's attorney or the attorney for the Buyer's lender. The time of the commencement of the closing shall sometimes be referred to herein as the "Closing," and the date thereof shall sometimes be referred to as the "Closing Date." If any date on which the Closing would occur by operation of this Agreement is not a business day in Boston, Massachusetts, the Closing shall occur on the next following business day. Notwithstanding the foregoing the Closing Date must occur by December 31, 2020 unless otherwise agreed to by the parties or an appeal of one or more Permits has been taken (in which event provided Buyer is diligently prosecuting or

defending such appeal, the Closing Date shall be extended until fifteen days after a final judgment is entered). Time is of the essence for each and every provision of this Agreement. Seller's obligation to close and convey the Premises as required hereunder becomes binding upon Buyer's satisfaction or waiver of any conditions to Buyer's performance.

(b) Seller Deliverables. At the Closing, Seller shall duly execute and deliver the following closing documents (the "Seller Documents"):

(1) a Massachusetts quitclaim deed conveying the Real Property in form reasonably acceptable to Buyer and its title insurer;

(2) such affidavits or letters of indemnity as the Buyer's title insurer shall reasonably require in order to issue, without extra charge, an owner's policy of title insurance free of any exceptions for unfiled mechanics' or materialmen's liens for work performed by Seller prior to Closing, or for rights of parties in possession;

(3) a Non-Foreign Affidavit as required by the Foreign Investors in Real Property Tax Act ("FIRPTA"), as amended;

(4) a certification by Seller that all representations and warranties made by Seller in this Agreement are true and correct in all material respects on the date of Closing;

(5) such authority documents as are reasonably necessary under Section 24 hereof including a Good Standing Certificate from the Massachusetts Secretary of State; and,

(6) such other instruments and documents reasonably requested by Buyer, Buyer's lender, and/or Buyer's title insurance company, and reasonably required to effectuate the transaction contemplated by this Agreement, including without limitation a closing statement describing the sources and uses of funds in connection with the Closing; and

(c) Buyer Deliverables. At the Closing, in addition to payment of the purchase price, Buyer shall execute and deliver the following:

(1) instruments and documents reasonably requested by Seller and reasonably required to effectuate the transaction contemplated by this Agreement.

7. Possession and Condition of Premises. Full possession of the Premises, free of all tenants and occupants is to be delivered at the time of Closing, the Premises to be then (a) in the same physical condition as at present, reasonable wear and tear excepted (b) not in violation of applicable building, environmental, zoning and

other applicable laws, and (c) in compliance with the provisions of any instrument referred to in Section 3 hereof. The Buyer shall be entitled to an inspection of the Premises prior to the Closing in order to determine whether the condition thereof complies with the terms of this clause. Seller shall maintain the Premises in their current condition and shall not remove timber, soil or other resources or material prior to the Closing.

8. Title and Survey Review; Extension to Perfect Title.

(a) Buyer's Title Review. Upon execution of this Agreement, Buyer shall promptly obtain a current title commitment for Owner's and Lender's Title Insurance from Lawyer's Title Insurance Company (the "Title Commitment") and a survey in such form as Buyer shall determine necessary in its sole discretion ("Survey"). On or before thirty (30) days from the date hereof, Buyer may object to, in its sole and absolute discretion, any matters disclosed by the Title Commitment, and give written notice to Seller of any such title matters disclosed. On or before thirty (30) days from the date hereof, Buyer may object to, in its sole and absolute discretion, any matters disclosed by the Survey, and give written notice to Seller of any such survey matters disclosed. Any matters disclosed by the Title Commitment or Survey are hereinafter referred to as "Title Matters". Within five (5) business days of Seller's receipt of Buyer's Title Matters, if any, as provided above, Seller shall determine whether or not Seller shall cure, to reasonable satisfaction of Buyer, such Title Matters within 30 days from the date of Seller's receipt of notice of Buyer's Title Matters ("Title Matters Cure Notice"). If Seller determines that Seller will not cure to the reasonable satisfaction of Buyer any or all such Title Matters, Seller shall so notify Buyer in writing by 6:00 pm on the fifth (5<sup>th</sup>) business day after Seller's receipt of Buyer's Title Matters, in which event this Agreement shall be terminated, without further recourse of the parties unless Buyer, within five (5) business days of receipt of Seller's notice, notifies Seller in writing that Buyer waives Buyer's Title Matters that Seller has determined Seller will not cure. In the event Seller fails to provide a timely Title Matters Cure Notice that Seller will not cure any or all such Title Matters, Seller shall be required to use reasonable efforts to cure such Title Matters within twenty (20) days (the "Title Matter Cure Period"). All matters of record as of the date of the Title Commitment (other than Voluntary Liens), and all survey matters existing as of the date of the Survey, other than Title Matters that have not been waived by Buyer as provided above, shall constitute "Permitted Exceptions." Seller shall use reasonable efforts to cure the Title Matters within the Title Matter Cure Period. If, despite such reasonable efforts, Seller is unable to cure the Title Matters within the Title Matter Cure Period, despite such reasonable efforts, Buyer shall have, in its sole and absolute discretion, the options stated in Section 10 herein, or to terminate this Agreement whereby all obligations of the parties hereto shall cease, the Deposit paid shall be returned to the Buyer, and this Agreement shall be null and void without recourse to the parties. All Voluntary Liens will be satisfied by Seller on or prior to the Closing Date or, if not so satisfied, shall be satisfied at Closing out of the proceeds

otherwise payable to Seller, provided that all instruments so obtained are recorded simultaneously with the delivery of said deed, or with regard to institutional discharges only, within a reasonable time thereafter pursuant to customary conveyancing practices. Voluntary Liens shall mean any mortgage, deed of trust, financing statement, mechanics' or materialmens' lien, or other lien securing the payment of money. In the event Buyer elects to waive the Title Matters and accept title as provided herein, such action shall not be construed or interpreted so as to permit Seller to avoid removing any Voluntary Liens which, pursuant to the terms of this Agreement, are required to be removed by Seller prior to or concurrently with the Closing.

9. Failure to Perfect Title or Make Premises Conform, etc. If at the time of the Closing or at the expiration of the extended time, as the case may be, the Seller shall (i) have failed after having used reasonable efforts so to remove any defects in title, make conveyance, or deliver possession, as the case may be, or (ii) make the Premises conform with the provisions hereof, (each such foregoing event being hereinafter called a "Failure of Condition"), then Seller, for a Failure of Condition arising out of clause (i) or (ii), shall give written notice thereof to the Buyer at least seven (7) days before the time of the Closing, and thereupon, the time of the Closing shall be extended for a period of up to 30 days, during which time Seller shall use reasonable efforts to cure such Failure of Condition. If the time of the Closing is extended and if at the end of such extension period Seller shall have failed so to cure such Failure of Condition, as herein provided, and if Buyer, at its election, does not waive any such Failures of Condition, then Buyer may elect, as its sole and exclusive remedy to exercise any of its rights under Paragraph 17(b) herein.
  
10. Buyer's Election to Accept Title. Including if any casualty, condemnation, or similar event occurs, 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 Premises in their then condition and to pay therefor the purchase price without deduction, in which case the Seller shall convey such title, except that in the event of such conveyance in accordance with the provisions of this clause, if the Premises shall have been damaged by fire or casualty fully-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, at the Closing, all amounts recovered or recoverable on account of such insurance, less any amounts reasonably expended by the Seller for any partial restoration, and give the Buyer a credit for the amount of any deductible under such insurance policy, or
  
  - (b) if a holder of a mortgage on the Premises shall not permit the insurance proceeds or a part thereof to be used to restore the Premises to their former condition or to be so paid over or assigned, give to the Buyer a credit against the purchase price, at the Closing, equal to said amounts so recovered or recoverable

and retained by the holder of the mortgage plus the amount of any deductible under such insurance policy less any amounts reasonably expended by the Seller for any partial restoration.

11. Acceptance of Deed. The acceptance of a deed by the Buyer or Buyer's 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 thereof, to be performed after or are to survive the Closing.
12. Use of Purchase Money to Clear Title. To enable the Seller to make conveyance as herein provided, the Seller may, at the time of Closing, 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 and recording of the deed, or provisions are made at Closing consistent with local conveyancing practice and custom for obtaining the release of institutional mortgage(s) on the Premises.
13. Insurance. Until the Closing, the Seller shall cause to be maintained insurance on the Premises as the same are presently insured and, at Buyer's request in writing, shall deliver proof of such insurance to Buyer.
14. Adjustments. Real estate taxes and other applicable expenses for the then current year shall be apportioned as of the Closing Date 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 Closing.
15. Adjustment of Unassessed and Abated Taxes. If the amount of the real estate taxes assessed against the Premises is not known at the time of the Closing, or if the Premises are assessed together as part of a larger parcel, taxes shall be apportioned on the basis of the taxes assessed for the preceding year (with all land, in the case of the Premises assessed as part of a larger parcel, being valued equally), 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 otherwise agreed. Seller shall not institute any proceeding for a tax abatement without the consent of Buyer. The parties shall sign at Closing a tax apportionment agreement pursuant to which taxes shall, after the Closing and once ascertainable, be further adjusted as need be.
16. No Broker's Fee. Seller represents to Buyer, and Buyer represents to Seller, that that no intermediary or broker is or shall be entitled to any commission or other compensation with respect to any of such transactions. Each party hereby indemnifies and holds harmless the other party from all loss, cost and expense

(including reasonable attorneys' fees) arising out of a breach of its representation or undertaking set forth in this Section. This obligation shall survive the Closing.

17. Remedies.

(a) Buyer's Default; Damages. If the Buyer shall fail to fulfill the Buyer's obligations prior to the Closing, this Agreement shall terminate without recourse and this shall be the Seller's sole and exclusive remedy at law or in equity for Buyer's default.

(b) Seller's Default; Damages. In the event Seller breaches or fails, without legal excuse, to complete the sale of the Premises or to perform its obligations under this Agreement, Buyer may, as its sole remedy therefor, either (i) enforce specific performance of this Agreement against Seller or (ii) terminate this Agreement or (iii) elect to accept title as provided under Section 10 herein. No other remedies shall be available to Buyer. In the event Buyer elects to enforce specific performance of this Agreement against Seller, Seller shall reimburse Buyer for Buyer's reasonable attorney's fees relating thereto.

18. Warranties and Representation. (a) Seller represents and warrants to Buyer as of the date of this Agreement that the following warranties and representations shall be true and accurate as of the Closing Date as follows:

(i) Seller is a valid and existing Massachusetts realty trust, duly formed, and Seller, by and through its trustees, has full power and authority to enter into this Agreement and to perform this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly and validly authorized by all necessary action on the part of Seller and all required consents and approvals have been duly obtained. This Agreement is a legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, subject to the effect of applicable bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws affecting the rights of creditors generally.

(ii) No authorization, consent or approval of any governmental authority (including courts) is required for the execution and delivery by Seller of this Agreement or the performance of its obligations hereunder.

(iii) Except as set forth in Exhibit B attached hereto, Seller is not a party to, and there is not any, presently effective leases, lease amendments, lease guaranties, work letter agreements, improvement agreements, subleases, assignments, licenses, concessions or other agreements (including, without limitation, any oral agreements) with respect to the leasing, use or occupancy of the Premises or any part thereof nor are there any rights of first refusal, options or other agreements or obligations on the part of Seller wherein any third party approval of the sale contemplated herein is required..

(iv) Except as permitted by applicable Environmental Laws and regulations, and except for building materials within the buildings existing on the Premises, to the best of Seller's knowledge, there is no present release or threatened release of any Hazardous Substances in, on or under the Premises. Seller has not received any notice, citation or claim alleging that the Premises or any part thereof, or any operations and activities therein and thereon or the use and occupancy thereof, are in violation of any applicable environmental laws and to the best of Seller's knowledge neither Seller nor any person using or occupying the Premises or any part thereof is violating any environmental laws or regulations. No claim, demand, action or proceeding of any kind relating to any past or present release or threatened release of any Hazardous Substances in, on or under the Premises or any past or present violation of any environmental laws at the Premises is pending, or to the best of Seller's knowledge, is being threatened by any person. As used in this Agreement, the term "Hazardous Substances" shall have the meaning set forth in the Comprehensive Environmental Response, Compensation and Liability Act, as amended, and the regulations thereunder, the Resource Conservation and Recovery Act, as amended, and the regulations thereunder, and the Federal Clean Water Act, as amended, and the regulations thereunder, and such terms shall also include asbestos, petroleum products, radioactive materials and any regulated substances under any Federal, State or local environmental law, regulation or ordinance.

(v) Seller is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code of 1986, as amended, and the income tax regulations thereunder.

(vi) Each person signing this Agreement on behalf of Seller is duly and validly authorized to do so.

(vii) With regard to the Premises, Seller has complied with and neither the Seller nor the Premises are in violation of, any applicable federal, state, or local statute, law, or regulation (including, without limitation, any applicable building, zoning, health, environmental or other law, ordinance, or regulation) affecting the Premises or the use thereof.

(viii) The representations and warranties of Seller in this Paragraph 18 are material inducements for Buyer to enter into this Agreement and shall survive Closing. Buyer would not buy the Premises from Seller without such representations and warranties of Seller.

(b) Buyer represents and warrants to Seller as of the date of this Agreement that the following warranties and representations shall be true and accurate as of the Closing Date as follows:

(i) The Buyer is a Massachusetts limited liability company duly organized and validly existing under the laws of the Commonwealth of Massachusetts. Buyer has full power and authority to enter into this Agreement and to perform

this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly and validly authorized by all necessary action on the part of Buyer and all required consents and approvals have been duly obtained. This Agreement is a legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms, subject to the effect of applicable bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws affecting the rights of creditors generally. Each person signing on behalf of Buyer is duly and validly authorized to do so.

(ii) The Buyer acknowledges that the Buyer has not been influenced to enter into this transaction nor has Buyer relied upon any warranties or representations not expressly set forth in this Agreement or in any document to be delivered by Seller at Closing that was prepared or approved by Seller. The Buyer hereby acknowledges that Buyer is purchasing the Premises "AS IS" without any representations or warranties express or implied other than as set forth in this Agreement or in any document to be delivered by Seller at Closing that was prepared or approved by Seller. Buyer is being given the opportunity to fully inspect the Premises and except as set forth in this Agreement Buyer is not relying upon any statement or representation of the Seller or Brokers, express or implied, with respect to the condition of the Premises. The provisions of this paragraph shall survive delivery of the deed.

(iii) The representations and warranties of Buyer in this Paragraph 18 are material inducements for Seller to enter into this Agreement and shall survive Closing. Seller would not sell the Premises to Buyer without such representations and warranties of Buyer. In addition, Buyer agrees that Seller makes no representation or warranties, express or implied, except as provided herein, regarding the adequacy, accuracy, completeness or content of any items, documents, or materials furnished by Seller pursuant to this Agreement or in connection with this transaction that were not prepared or approved by Seller. In addition, and except as provided herein, Buyer agrees that Seller shall not be liable for the adequacy, accuracy, completeness or content of any items, documents, or materials furnished by Seller pursuant to this Agreement that were not prepared or approved by Seller.

The representations and warranties of Seller and Buyer in this paragraph 18 shall survive the delivery of the deed.

19. Seller's Covenants. In addition to other covenants and agreements of Seller in this Agreement, Seller hereby covenants as follows:

(a) In the event Seller obtains notice (written or oral) at any time prior to the Closing of any pending condemnation action affecting the Premises (or any portion thereof), Seller shall promptly notify Buyer.

(b) If Seller obtains notice (written or oral) thereof prior to the Closing, Seller shall advise Buyer promptly of any claim, litigation, arbitration or administrative hearing concerning or affecting the use and development of the Premises.

20. Access. From and after the date of this Agreement, Buyer and Buyer's representatives shall have the right to enter upon the Premises at any reasonable times and upon one (1) day prior notice (which may be oral) to Seller for the purpose of conducting building and land surveys, inspections, soil tests, environmental tests and such other examinations and investigations as the Buyer may desire. Buyer shall repair any and all damage caused by such entry and restore the Premises, and shall defend, indemnify and save Seller harmless from and against any claim, loss, cost, damage and liability resulting directly from or arising directly out of such entry or activity (but not from any loss, cost, damage, liability or consequences which may arise solely from the test or examination results or as a result of Seller's conduct). All such activities authorized hereunder shall be at the sole and exclusive risk and cost of Buyer. Notwithstanding anything to the contrary herein, the Buyer's indemnification obligations under this paragraph shall survive the delivery of the deed or the termination of this Agreement by either party prior to the Closing.
21. Evidence of Compliance. Seller shall provide in advance of the Closing Date such documents as Buyer may reasonably require (i) to evidence Seller's existence and due authority to perform and convey title to the Premises as required herein, and that the persons acting for and on behalf of the Seller have the authority to so act and have acted within the scope of such authority.
22. Notices. All notices which may or are required to be given by either party to the other shall be in writing and shall be sent by United States certified mail, postage prepaid, return receipt requested, or by a nationally recognized overnight courier service, or by facsimile transmission (provided the facsimile machine automatically generates a transmission report that states the date and time of the transmission, the length of the document transmitted, and the telephone number of the recipient's facsimile machine), addressed to the parties at their respective addresses as follows:

If to Seller:

Dean F. Behrend Trustee  
Worcester Road Realty Trust  
c/o Dean F. Behrend  
869 Worcester Street  
Wellesley, MA 02482

With a copy to: Alan H. Shocket, Esq.  
Shocket Law Office LLC  
175 Highland Avenue, Suite 303  
Needham, MA 02494

If to Buyer: SEB Wellesley, LLC  
C/O Geoff Engler  
257 Hillside Avenue  
Needham, MA 02494

With a copy to: Jason A. Pithie, Esq.  
Pithie & Associates, P.C.  
158 Pleasant Street  
South Weymouth, MA 02190  
Fax No.: 781-682-9011

or at such other address within the Continental United States as either party by written notice to the other may from time to time designate. Unless otherwise specifically provided to the contrary, notice shall be deemed given as of the date of receipt unless previously sent by facsimile, in which event notice shall be deemed given as of the date of such facsimile. Any notice to be given by any party hereto may be given by the counsel for such party.

23. Foreign Person and Reporting Forms. Seller represents and warrants that it is not a foreign person within the meaning of Section 1445 of the Internal Revenue Code 1954, as amended, and will furnish to Buyer an appropriate Nonforeign Affidavit on the Closing Date. In addition, Seller shall furnish to whomever is designated by the Buyer (other than the Seller) such information as may be required to report the transaction to the Internal Revenue Service as provided by law.
24. Assignment of Buyer and Seller's Interest. Seller and Buyer understand and agree that this Agreement is personal to Buyer and that Buyer may not, without Seller's prior written consent (which consent Seller may withhold or deny in Seller's sole discretion) assign Buyer's right, title and interest in and to this Agreement at any time to any party. Notwithstanding the foregoing Buyer may assign this Agreement simultaneously with the Closing or to another entity controlled by Buyer.
25. Construction of Agreement. This instrument, which may be executed in multiple counterparts, executed in quadruplicate is to be construed as a Massachusetts agreement, 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.

26. Closing Costs and Expenses. Buyer shall pay the costs and expenses of all reviews, texts or other undertakings of Buyer pursuant to Diligence Review. Buyer shall pay the costs of a survey and title insurance premiums for title insurance it desires. Seller shall pay all real property transfer taxes and sales tax incurred in connection with the transfer of any personal property. Each party shall pay its own attorney's fees. All other costs and expenses shall be paid by the party who normally and customarily pays such expenses for a commercial transaction in the Greater Boston Area.
27. Confidentiality. Each party agrees with the other to keep the terms and conditions of this agreement confidential and will not disclose such information to any other party without written consent. "Confidential Information" includes the business terms of this Agreement, and any and all information whether oral, written or other form, which is communicated by either party to the other relating to this contemplated transaction, including, but not limited to architectural plans, specifications, site plans and drawings (regardless of whether such information is labeled as confidential). Confidential Information may be released to either parties' relatives, employees, attorneys, accountants, officers, partners, consultants or lenders, or governmental officials who have a reasonable need for such Confidential Information, provided that such individuals agree to maintain the confidential nature of the information. It is contemplated this Agreement may have to be provided to third parties in connection with obtaining the Permits.
28. No Financing Contingency. Buyer acknowledges and agrees that its obligation to purchase the Property is not subject to its ability to obtain financing or to raise equity capital.
29. Buyer's Permits. Buyer shall be solely responsible, at its sole cost and expense, for applying for and obtaining all final local, state and federal permits, licenses, orders, approvals, consents and utilities from all governmental authorities and agencies which may be required for the construction, operation and use of the Proposed Development with all appeal periods having expired with no appeal having been taken therefrom (collectively, the "Permits"). Seller agrees to execute, as owner of the Property, such applications and authorizations as may be reasonably required by the applicable governmental authority, consistent with the Proposed Development, and to support such applications and otherwise reasonably cooperate with Buyer in obtaining such Permits. If Buyer terminates this Agreement or fails to perform at the Closing, all rights, title and interest in and to all Permits then issued and all pending applications for Permits, shall belong solely to Seller at no cost to Seller, provided that Seller shall not have any obligation to pursue or to maintain any such permit or application nor to comply

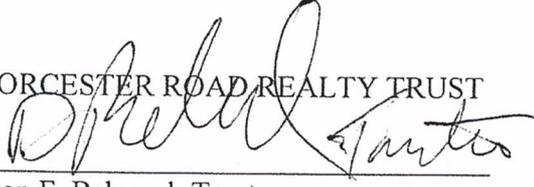
with any condition thereof. In addition, Buyer shall provide to Seller, without cost or expense, all studies, plans, reports, information or other materials regarding the Real Property or the Proposed Development prepared by Buyer or prepared by anyone engaged by or acting on Buyer's behalf (collectively, the "Materials").

30. Limits on Seller's Knowledge. Whenever a representation is qualified by the phrase "to the best of Seller's knowledge", or by words of similar import, whenever a representation is made to the effect that Seller has received no written notice, and whenever this Agreement otherwise makes reference to Seller's actual knowledge (including as to whether any information is in Seller's possession or control), the accuracy of such representation and the determination as to whether Seller has such actual knowledge shall be based solely on the actual (as opposed to constructive or imputed) knowledge of the Trustees, without independent investigation or inquiry other than review of Seller's files and reasonable inquiry of Seller's agents (including property managers) who are familiar with the ownership and operation of the Premises.
31. Limits on Buyer's Knowledge. Whenever a representation is qualified by the phrase "to the best of Buyer's knowledge", or by words of similar import, whenever a representation is made to the effect that Buyer has received no written notice, and whenever this Agreement otherwise makes reference to Buyer's actual knowledge, the accuracy of such representation and the determination as to whether Buyer has such actual knowledge shall be based solely on the actual (as opposed to constructive or imputed) knowledge of Geoff Engler without independent investigation or inquiry other than review of any third party reports or other written information concerning the Property prepared on behalf of and delivered to Buyer.
32. If, at any time before the Closing Date, a taking or condemnation (or proceeding in lieu thereof) is commenced against the Premises that adversely affects the Proposed Development, seller may terminate this Agreement. If Seller does not terminate this Agreement, Buyer may, at Buyer's sole option, elect either to:
  - (a) terminate this Agreement ; or
  - (b) purchase the Premises subject to and in accordance with this Agreement. In the event of condemnation or taking that does not affect the Proposed Development, or if there is a condemnation or taking but Buyer elects to proceed hereunder, (1) Buyer shall purchase the Premises in accordance with the terms hereof (without reduction in the Purchase Price), (2) Seller shall assign to Buyer at Closing all condemnation proceeds paid or payable as a result of such condemnation, (3) Buyer shall have the right to be present with Seller at any hearings or negotiations with respect thereto, and (4) Seller shall not settle or compromise any such matter without Buyer's prior written consent which consent shall not be unreasonably withheld.

EXECUTED as of the date first above written.

SELLER:

WORCESTER ROAD REALTY TRUST

  
\_\_\_\_\_  
Dean F. Behrend, Trustee

BUYER:

SEB WELLESLEY, LLC

  
\_\_\_\_\_  
Geoff Engler, Manager

Purchase and Sale Agreement - Trust (Final 2)

## ASSIGNMENT

This Assignment Agreement (“Assignment”) is made as of the dates set forth below by and between SEB Wellesley, LLC (“SEB Wellesley”), a Massachusetts limited liability company, with a place of business at 257 Hillside Avenue, Needham, Commonwealth of Massachusetts and Behrend Construction, LLC (“Behrend”), a Massachusetts limited liability company with a principal address at 136 Worcester Street, Wellesley, Massachusetts. SEB Wellesley and Behrend are collectively referred to herein as the “Parties.”

## RECITALS

**WHEREAS**, Behrend is the buyer under the terms of a certain purchase and sale agreement (the “P & S”) dated February 28, 2018, for the purchase of property known as and numbered 140, 140R and 142 Worcester Street, Wellesley, Massachusetts (the “Property”), as further described in the P & S, a true copy of which is annexed hereto and incorporated herein as Exhibit A, and

**WHEREAS**, the seller under the terms of the P & S is Dean Cartwright a/k/a Dean B. Cartwright (“Cartwright”), of 140 Worcester Street, Wellesley, Massachusetts, and

**WHEREAS**, Behrend was planning to purchase the Property in order to develop it under the auspices of Massachusetts General Laws, Chapter 40B (“Chapter 40B”), the development of which requires the issuance of a comprehensive permit (the “Permit”) pursuant to Chapter 40B from the Town of Wellesley Zoning Board of Appeals (the “ZBA”), and

**WHEREAS**, Behrend now desires to transfer its rights under the P&S to SEB Wellesley in order that SEB Wellesley can pursue developing the Property under the auspices of Chapter 40B, and

**WHEREAS**, in order for SEB Wellesley to undertake control of the permitting process, it must maintain so-called “site control” over the Property, and

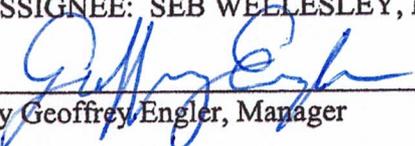
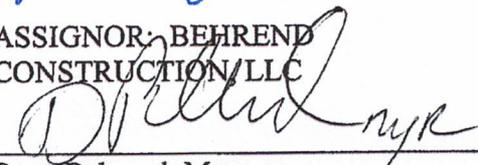
**WHEREAS**, SEB can obtain site control by taking an assignment of the P & S from Behrend, and

**WHEREAS**, the Parties, in order to accomplish this purpose, are desirous of effecting an assignment of the P & S from Behrend to SEB Wellesley,

**NOW THEREFORE**, in consideration of the terms and conditions hereof and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, SEB Wellesley and Behrend do hereby agree as follows:

1. In consideration of \$ 700,000, to be paid upon SEB Wellesley's receipt of the Permit, Behrend hereby assigns, transfers and sets over to SEB Wellesley, its successors and assigns, all of its right, title and interest in and to the P & S.
2. Behrend warrants, represents, and agrees that (i) it has not released, assigned or conveyed any rights or remedies set forth in the P & S, nor is it in breach of any condition thereof, (ii) that it has the full right to assign the P & S to SEB Wellesley and has obtained Cartwright's agreement thereto, (iii) it will fully cooperate with SEB Wellesley in carrying out the obligations of the purchaser under the P & S, and (iv) will fully cooperate with SEB Wellesley, if and when called upon to perform any function or act necessary for obtaining the Permit.
3. This Assignment contains and embodies the entire agreement between the Parties with regard to the assignment of the right, title and interest in the P & S, and may only be amended, altered or revised by a written instrument signed by SEB Wellesley and Behrend, and, to the extent it affects rights or obligations under the P & S, with written approval from Cartwright.
4. This Assignment shall be governed by the laws of the Commonwealth of Massachusetts. The Parties agree that any action to enforce any provision hereof shall be initiated in the Superior Court of Norfolk County, Massachusetts.
5. This Assignment is binding upon the Parties, their successor and assigns and may be executed in counterpart, each of which shall function as an original instrument.

In witness whereof, SEB Wellesley, LLC, and Behrend Construction, LLC, have caused this Assignment Agreement to be signed by their duly authorized managers on the dates set forth below.

Date: <u>2-11-2019</u>	ASSIGNEE: SEB WELLESLEY, LLC  By Geoffrey Engler, Manager
Date: <u>2-11-2019</u>	ASSIGNOR: BEHREND CONSTRUCTION/LLC  Dean Behrend, Manager

I hereby Consent to this Assignment Agreement.

Date: ✓ 2-6-19

✓ Dean B Cartwright  
Dean Cartwright a/k/a Dean B. Cartwright

Assignment Agreement (Ver. 1)

**FIRST MODIFICATION AGREEMENT**

SELLER: DEAN CARTWRIGHT A/K/A DEAN B. CARTWRIGHT  
BUYER: BEHREND CONSTRUCTION LLC OR NOMINEE  
PREMISES: 140, 140R AND 142 WORCESTER STREET, WELLESLEY MA.  
DATE: FEBRUARY , 2019

In mutual consideration of the covenants contained herein, the above referenced parties hereby agree to amend the terms of their Purchase and Sale Agreement dated February 23, 2018 (the "Agreement"), regarding the conveyance of the above entitled premises as follows:

WHEREAS, the parties desire to proceed under the following terms and conditions.

NOW, THEREFORE, the parties agree as follows:

1. THE TIME FOR PERFORMANCE; DELIVERY OF DEED noted in provision 6 of the Agreement shall be modified as follows:

Such deed is to be delivered at 10:00 o'clock A.M. on or before forty-five (45) days after Buyer obtains all permits and approvals with all appeal periods having expired for construction of "The Crossings" at Wellesley, MA but no later than September 30, 2020. Closing shall take place at the office of Buyer's attorney, unless otherwise agreed upon in writing. It is agreed that time is of the essence of this agreement.

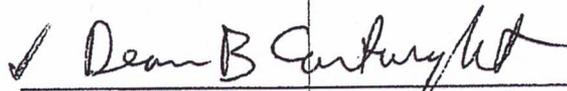
2. All terms, provisions, conditions and contingencies contained within the parties' Agreement, as amended to date, shall remain in full force and effect.

In witness whereof, the parties hereto have affixed their hands and seals as of the date first set forth above.

Agreed and Consented To:

**SELLER:**

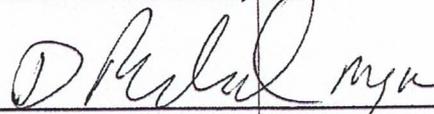
By:  
Name:

✓   
\_\_\_\_\_  
Dean Cartwright a/k/a Dean B. Cartwright

**BUYER:**

By:  
Name:

Behrend Construction, LLC

  
\_\_\_\_\_  
Dean Behrend, Manager

Department of Housing and Community Development  
Chapter 40B Subsidized Housing Inventory (SHI)  
as of September 14, 2017

<b>Community</b>	<b>2010 Census Year Round Housing Units</b>	<b>Total Development Units</b>	<b>SHI Units</b>	<b>%</b>
Abington	6,364	518	485	7.6%
Acton	8,475	1,144	568	6.7%
Acushnet	4,097	127	97	2.4%
Adams	4,337	321	321	7.4%
Agawam	12,090	556	505	4.2%
Alford	231	0	0	0.0%
Amesbury	7,041	898	738	10.5%
Amherst	9,621	1,130	1,083	11.3%
Andover	12,324	2,000	1,637	13.3%
Aquinnah	158	41	41	25.9%
Arlington	19,881	1,429	1,121	5.6%
Ashburnham	2,272	144	29	1.3%
Ashby	1,150	0	0	0.0%
Ashfield	793	2	2	0.3%
Ashland	6,581	514	410	6.2%
Athol	5,148	310	310	6.0%
Attleboro	17,978	1,155	1,155	6.4%
Auburn	6,808	251	251	3.7%
Avon	1,763	70	70	4.0%
Ayer	3,440	454	299	8.7%
Barnstable	20,550	1,763	1,462	7.1%
Barre	2,164	83	83	3.8%
Becket	838	0	0	0.0%
Bedford	5,322	1,174	972	18.3%
Belchertown	5,771	418	392	6.8%
Bellingham	6,341	733	551	8.7%
Belmont	10,117	675	365	3.6%
Berkley	2,169	103	24	1.1%
Berlin	1,183	254	109	9.2%
Bernardston	930	24	24	2.6%
Beverly	16,522	2,153	1,919	11.6%
Billerica	14,442	1,766	1,118	7.7%
Blackstone	3,606	165	123	3.4%
Blandford	516	1	1	0.2%
Bolton	1,729	192	62	3.6%
Boston	269,482	54,409	51,283	19.0%
Bourne	8,584	1,198	660	7.7%
Boxborough	2,062	325	268	13.0%
Boxford	2,730	72	31	1.1%

Boylston	1,765	26	26	1.5%
Braintree	14,260	1,679	1,382	9.7%
Brewster	4,803	306	255	5.3%
Bridgewater	8,288	645	546	6.6%
Brimfield	1,491	71	71	4.8%
Brockton	35,514	4,619	4,619	13.0%
Brookfield	1,452	19	19	1.3%
Brookline	26,201	3,151	2,454	9.4%
Buckland	866	3	3	0.3%
Burlington	9,627	1,707	1,283	13.3%
Cambridge	46,690	7,102	6,911	14.8%
Canton	8,710	1,195	1,090	12.5%
Carlisle	1,740	57	51	2.9%
Carver	4,514	146	146	3.2%
Charlemont	615	3	3	0.5%
Charlton	4,774	83	83	1.7%
Chatham	3,460	180	174	5.0%
Chelmsford	13,741	1,591	1,072	7.8%
Chelsea	12,592	2,439	2,434	19.3%
Cheshire	1,481	0	0	0.0%
Chester	585	13	13	2.2%
Chesterfield	524	17	17	3.2%
Chicopee	25,074	2,637	2,601	10.4%
Chilmark	418	3	3	0.7%
Clarksburg	706	9	9	1.3%
Clinton	6,375	549	549	8.6%
Cohasset	2,898	325	311	10.7%
Colrain	731	0	0	0.0%
Concord	6,852	926	804	11.7%
Conway	803	0	0	0.0%
Cumington	426	16	16	3.8%
Dalton	2,860	159	159	5.6%
Danvers	11,071	1,565	1,149	10.4%
Dartmouth	11,775	1,001	971	8.2%
Dedham	10,115	1,149	1,104	10.9%
Deerfield	2,154	33	33	1.5%
Dennis	7,653	338	324	4.2%
Dighton	2,568	420	144	5.6%
Douglas	3,147	140	140	4.4%
Dover	1,950	69	18	0.9%
Dracut	11,318	861	585	5.2%
Dudley	4,360	104	104	2.4%
Dunstable	1,085	0	0	0.0%
Duxbury	5,532	441	410	7.4%
East Bridgewater	4,897	230	176	3.6%
East Brookfield	888	0	0	0.0%
East Longmeadow	6,072	513	445	7.3%

Eastham	2,632	63	54	2.1%
Easthampton	7,567	1,021	522	6.9%
Easton	8,105	979	787	9.7%
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	1,061	1,061	6.4%
Fairhaven	7,003	486	486	6.9%
Fall River	42,650	4,847	4,751	11.1%
Falmouth	14,870	1,230	959	6.4%
Fitchburg	17,058	1,680	1,486	8.7%
Florida	335	0	0	0.0%
Foxborough	6,853	869	859	12.5%
Framingham	27,443	2,871	2,871	10.5%
Franklin	11,350	1,814	1,352	11.9%
Freetown	3,263	104	86	2.6%
Gardner	9,064	1,356	1,356	15.0%
Georgetown	3,031	352	352	11.6%
Gill	591	24	24	4.1%
Gloucester	13,270	1,009	972	7.3%
Goshen	440	5	5	1.1%
Gosnold	41	0	0	0.0%
Grafton	7,160	732	365	5.1%
Granby	2,451	67	67	2.7%
Granville	630	0	0	0.0%
Great Barrington	3,072	378	306	10.0%
Greenfield	8,325	1,173	1,155	13.9%
Groton	3,930	343	217	5.5%
Groveland	2,423	137	80	3.3%
Hadley	2,200	264	264	12.0%
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	575	575	11.9%
Hanson	3,572	270	157	4.4%
Hardwick	1,185	9	8	0.7%
Harvard	1,982	247	113	5.7%
Harwich	6,121	335	335	5.5%
Hatfield	1,549	52	52	3.4%
Haverhill	25,557	2,770	2,555	10.0%
Hawley	137	0	0	0.0%
Heath	334	0	0	0.0%
Hingham	8,841	2,798	1,005	11.4%
Hinsdale	918	0	0	0.0%
Holbrook	4,262	440	440	10.3%

Holden	6,624	514	407	6.1%
Holland	1,051	13	13	1.2%
Holliston	5,077	447	236	4.6%
Holyoke	16,320	3,278	3,253	19.9%
Hopedale	2,278	119	119	5.2%
Hopkinton	5,087	842	724	14.2%
Hubbardston	1,627	49	49	3.0%
Hudson	7,962	1,051	892	11.2%
Hull	4,964	84	84	1.7%
Huntington	919	44	44	4.8%
Ipswich	5,735	564	511	8.9%
Kingston	4,881	359	204	4.2%
Lakeville	3,852	590	274	7.1%
Lancaster	2,544	223	140	5.5%
Lanesborough	1,365	28	28	2.1%
Lawrence	27,092	4,076	4,057	15.0%
Lee	2,702	173	176	6.5%
Leicester	4,231	176	176	4.2%
Lenox	2,473	178	178	7.2%
Leominster	17,805	1,493	1,456	8.2%
Leverett	792	2	2	0.3%
Lexington	11,946	1,500	1,321	11.1%
Leyden	300	0	0	0.0%
Lincoln	2,153	310	238	11.2%
Littleton	3,443	649	444	12.9%
Longmeadow	5,874	272	272	4.6%
Lowell	41,308	5,253	5,180	12.5%
Ludlow	8,337	293	293	3.5%
Lunenburg	4,037	195	195	4.8%
Lynn	35,701	4,435	4,435	12.4%
Lynnfield	4,319	744	495	11.5%
Malden	25,122	2,607	2,542	10.1%
Manchester	2,275	137	115	5.1%
Mansfield	8,725	1,035	939	10.8%
Marblehead	8,528	399	333	3.9%
Marion	2,014	204	156	7.7%
Marlborough	16,347	1,962	1,866	11.4%
Marshfield	9,852	775	572	5.8%
Mashpee	6,473	363	337	5.2%
Mattapoissett	2,626	70	70	2.7%
Maynard	4,430	398	380	8.6%
Medfield	4,220	358	304	7.2%
Medford	23,968	2,243	1,694	7.1%
Medway	4,603	468	284	6.2%
Melrose	11,714	1,425	932	8.0%
Mendon	2,072	77	40	1.9%
Merrimac	2,527	397	141	5.6%

Methuen	18,268	1,931	1,641	9.0%
Middleborough	8,921	979	589	6.6%
Middlefield	230	2	2	0.9%
Middleton	3,011	173	151	5.0%
Milford	11,379	976	708	6.2%
Millbury	5,592	244	221	4.0%
Millis	3,148	181	118	3.7%
Millville	1,157	26	26	2.2%
Milton	9,641	737	481	5.0%
Monroe	64	0	0	0.0%
Monson	3,406	138	138	4.1%
Montague	3,926	408	376	9.6%
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	1,798	1,458	10.4%
Needham	11,047	1,503	1,397	12.6%
New Ashford	104	0	0	0.0%
New Bedford	42,816	5,144	5,110	11.9%
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	713	599	7.5%
Newton	32,346	2,543	2,425	7.5%
Norfolk	3,112	218	128	4.1%
North Adams	6,681	866	866	13.0%
North Andover	10,902	1,389	931	8.5%
North Attleborough	11,553	306	294	2.5%
North Brookfield	2,014	142	142	7.1%
North Reading	5,597	652	540	9.6%
Northampton	12,604	1,586	1,356	10.8%
Northborough	5,297	719	610	11.5%
Northbridge	6,144	468	453	7.4%
Northfield	1,290	27	27	2.1%
Norton	6,707	897	533	7.9%
Norwell	3,652	452	297	8.1%
Norwood	12,441	1,047	1,035	8.3%
Oak Bluffs	2,138	158	146	6.8%
Oakham	702	0	0	0.0%
Orange	3,461	405	405	11.7%
Orleans	3,290	334	304	9.2%
Otis	763	0	0	0.0%
Oxford	5,520	404	404	7.3%
Palmer	5,495	310	269	4.9%

Paxton	1,590	62	62	3.9%
Peabody	22,135	2,174	2,051	9.3%
Pelham	564	0	0	0.0%
Pembroke	6,477	771	616	9.5%
Pepperell	4,335	197	130	3.0%
Peru	354	0	0	0.0%
Petersham	525	0	0	0.0%
Phillipston	658	8	8	1.2%
Pittsfield	21,031	2,057	1,936	9.2%
Plainfield	283	0	0	0.0%
Plainville	3,459	619	572	16.5%
Plymouth	22,285	976	721	3.2%
Plympton	1,039	63	51	4.9%
Princeton	1,324	26	26	2.0%
Provincetown	2,122	256	208	9.8%
Quincy	42,547	4,096	4,096	9.6%
Randolph	11,980	1,280	1,280	10.7%
Raynham	5,052	604	489	9.7%
Reading	9,584	1,341	831	8.7%
Rehoboth	4,252	99	27	0.6%
Revere	21,956	1,790	1,780	8.1%
Richmond	706	4	4	0.6%
Rochester	1,865	8	8	0.4%
Rockland	7,030	645	450	6.4%
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	8	8	1.2%
Rutland	2,913	86	86	3.0%
Salem	18,998	2,467	2,425	12.8%
Salisbury	3,842	797	592	15.4%
Sandisfield	401	0	0	0.0%
Sandwich	8,183	605	307	3.8%
Saugus	10,754	808	732	6.8%
Savoy	318	0	0	0.0%
Scituate	7,163	360	315	4.4%
Seekonk	5,272	96	87	1.7%
Sharon	6,413	741	683	10.7%
Sheffield	1,507	30	30	2.0%
Shelburne	893	51	51	5.7%
Sherborn	1,479	41	34	2.3%
Shirley	2,417	57	57	2.4%
Shrewsbury	13,919	957	860	6.2%
Shutesbury	758	2	2	0.3%
Somerset	7,335	273	273	3.7%
Somerville	33,632	3,278	3,250	9.7%

South Hadley	7,091	424	424	6.0%
Southampton	2,310	44	44	1.9%
Southborough	3,433	808	472	13.7%
Southbridge	7,517	499	499	6.6%
Southwick	3,852	164	164	4.3%
Spencer	5,137	268	267	5.2%
Springfield	61,556	10,458	10,192	16.6%
Sterling	2,918	269	68	2.3%
Stockbridge	1,051	113	113	10.8%
Stoneham	9,399	501	495	5.3%
Stoughton	10,742	1,495	1,240	11.5%
Stow	2,500	337	185	7.4%
Sturbridge	3,759	357	209	5.6%
Sudbury	5,921	887	669	11.3%
Sunderland	1,718	0	0	0.0%
Sutton	3,324	176	50	1.5%
Swampscott	5,795	218	212	3.7%
Swansea	6,290	247	236	3.8%
Taunton	23,844	1,720	1,529	6.4%
Templeton	3,014	516	238	7.9%
Tewksbury	10,803	1,312	1,044	9.7%
Tisbury	1,965	123	109	5.5%
Tolland	222	0	0	0.0%
Topsfield	2,157	173	155	7.2%
Townsend	3,356	199	160	4.8%
Truro	1,090	28	25	2.3%
Tyngsborough	4,166	853	447	10.7%
Tyringham	149	0	0	0.0%
Upton	2,820	223	178	6.3%
Uxbridge	5,284	434	264	5.0%
Wakefield	10,459	1,276	758	7.2%
Wales	772	43	43	5.6%
Walpole	8,984	497	485	5.4%
Waltham	24,805	2,724	1,834	7.4%
Ware	4,539	387	387	8.5%
Wareham	9,880	894	764	7.7%
Warren	2,202	101	101	4.6%
Warwick	363	0	0	0.0%
Washington	235	0	0	0.0%
Watertown	15,521	1,745	1,072	6.9%
Wayland	4,957	370	254	5.1%
Webster	7,788	722	722	9.3%
Wellesley	9,090	663	573	6.3%
Wellfleet	1,550	36	30	1.9%
Wendell	419	5	5	1.2%
Wenham	1,404	186	118	8.4%
West Boylston	2,729	413	223	8.2%

West Bridgewater	2,658	175	121	4.6%
West Brookfield	1,578	68	68	4.3%
West Newbury	1,558	116	39	2.5%
West Springfield	12,629	429	429	3.4%
West Stockbridge	645	0	0	0.0%
West Tisbury	1,253	38	23	1.8%
Westborough	7,304	1,265	974	13.3%
Westfield	16,001	1,166	1,158	7.2%
Westford	7,671	1,028	635	8.3%
Westhampton	635	17	17	2.7%
Westminster	2,826	274	87	3.1%
Weston	3,952	285	167	4.2%
Westport	6,417	498	232	3.6%
Westwood	5,389	810	576	10.7%
Weymouth	23,337	1,908	1,771	7.6%
Whately	654	2	2	0.3%
Whitman	5,513	200	200	3.6%
Wilbraham	5,442	306	305	5.6%
Williamsburg	1,165	51	51	4.4%
Williamstown	2,805	249	201	7.2%
Wilmington	7,788	1,067	799	10.3%
Winchendon	4,088	331	331	8.1%
Winchester	7,920	292	244	3.1%
Windsor	387	0	0	0.0%
Winthrop	8,253	638	638	7.7%
Woburn	16,237	1,587	1,419	8.7%
Worcester	74,383	10,076	9,977	13.4%
Worthington	553	22	22	4.0%
Wrentham	3,821	485	485	12.7%
Yarmouth	12,037	634	527	4.4%
<b>Totals</b>	<b>2,692,186</b>	<b>297,863</b>	<b>262,223</b>	<b>9.7%</b>

\*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.

**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 [redacted] 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 Subsiding 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 [REDACTED].

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:

**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 <sup>1</sup>  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>[Identify<sup>2</sup>]</u> MSA or HMFA									
Utility Allowance**	\$---	\$---	\$---	\$---	\$---	\$---	N/A	N/A	N/A
<b>Tenant Rent*</b>	<b>30% of adjusted gross income</b>			<b>\$-,---</b>	<b>\$-,---</b>	<b>\$-,---</b>	<b>\$-,---</b>	<b>\$-,---</b>	<b>\$-,---</b>

\* **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.]*

<sup>1</sup> 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.

<sup>2</sup> 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:

**Re136/140 WORCESTER ROAD  
PROPOSED WAIVER LIST**

**ZONING BYLAW**

**SECTION II A. SINGLE FAMILY DISTRICTS (SR10)**

**REQUIRED:** One-Family Dwelling in SR10 – Single Residence Zoning District

**PROPOSED:** Multi-family rental project consisting of 40 units (30 market rate and 10 affordable) under M.G.L. c. 40B with parking and appurtenances as shown in accompanying plans (the “Multi-family Project”)

**SECTION XVI RESTRICTIONS AFFECTING ALL DISTRICTS**

**REQUIRED:** Construction of other than single- or two-family buildings per Section XVIA (Project Approval) and Section XXV (Special Permit)

**PROPOSED:** Multi-family Project per M.G.L. c. 40B Comprehensive Permit process

**SECTION XVIA PROJECT APPROVAL FOR PROJECTS OF SIGNIFICANT IMPACT**

**REQUIRED:** Design Review, Site Plan Review and Special Permit

**PROPOSED:** ZBA review through M.G.L. c. 40B Comprehensive Permit process in accordance with state law and regulations

**SECTION XVIB INCLUSIONARY ZONING**

**REQUIRED:** Provide affordable housing or cash contribution for Projects of Significant Impact under Section XVIA (Project Approval)

**PROPOSED:** Provide affordable units per Multi-family Project and Comprehensive Permit

**SECTION XVIC DRAINAGE REVIEW**

**REQUIRED:** Review by DPW and Planning Director of grading and drainage plans and other materials as may be required in accordance with local specifications

**PROPOSED:** ZBA review through M.G.L. c. 40B Comprehensive Permit process in accordance with state law and regulations

**SECTION XVIE TREE PROTECTION & PRESERVATION**

**REQUIRED:** Submission of Tree Protection & Mitigation Plan for review and approval by Building Commissioner and/or Planning Board in accordance with local specifications

**PROPOSED:** ZBA review and approval of Landscaping Plan through M.G.L. c. 40B Comprehensive Permit process in accordance with state law and regulations

SECTION XVIII.B AREA REGULATIONS/RATIO OF BUILDING TO LOT AREA

REQUIRED: 6,000sf

PROPOSED: 13,854sf (excluding garage outside the building foundation and entrance canopy)

SECTION XIX YARD REGULATIONS

REQUIRED: Front Yard 30'; Side Yard 20'; Rear Yard 20'

PROPOSED: Front Yard 30'; Side Yard 10.4'; Rear Yard 14.9'

SECTION XX HEIGHTS OF BUILDINGS

REQUIRED: 45' or 3 stories

PROPOSED: 58.6' or five stories (based on existing average ground grade of 73.12') Excludes elevator penthouse height as a necessary projection

SECTION XXI OFF-STREET PARKING

REQUIRED: Parking Plan approved by the Building Commissioner and/or Planning Board with local specifications for setbacks, quantity of spaces, design, construction, landscaping, screening and administration including no tandem spaces;

PROPOSED: ZBA review and approval of Site Plan through M.G.L. c. 40B Comprehensive Permit process in accordance with state law and regulations including 63 parking spaces, including a waiver to allow 33% of total as compact spaces;

SECTION XXII DESIGN REVIEW

REQUIRED: Signage and Project Approvals (Section XXIIA) reviewed by Design Review Board

PROPOSED: ZBA review and approval of Site Plan and Signage Plans through M.G.L. c. 40B Comprehensive Permit process in accordance with state law and regulations

SECTION XXIIIA SIGNS

REQUIRED: Design Review Board, Building Commissioner and/or ZBA review of quantity, location and design of signs per local specifications

PROPOSED: ZBA review and approval of Site Plan and Signage Plans through M.G.L. c. 40B Comprehensive Permit process in accordance with state law and regulations

**DPW MUNICIPAL STORMWATER DRAINAGE SYSTEM RULES AND REGULATIONS**

REQUIRED: Storm water management approved by DPW in accordance with local regulation

PROPOSED: Storm water management reviewed and approved by ZBA through M.G.L. c. 40B Comprehensive Permit process in accordance with state law and regulations

**DPW SEWER RULES AND REGULATIONS**

REQUIRED: Sewer connection, construction and fees pursuant to DPW Sewer Rules And Regulations

PROPOSED: Sewer connection, construction and fees reviewed and approved by ZBA through M.G.L. c. 40B Comprehensive Permit process in accordance with state law and regulations.

**DPW WATER RULES AND REGULATIONS**

REQUIRED: Water connection, construction and fees pursuant to DPW Water Rules And Regulations.

PROPOSED: Water connection, construction and fees reviewed and approved by ZBA through M.G.L. c. 40B Comprehensive Permit process in accordance with state law and regulations.

**TOWN OF WELLESLEY WETLAND PROTECTION REGULATIONS**

REQUIRED: Regulation(s) section 2.4(4)(a): no-touch requirement

PROPOSED: Replication provided at a 1:1 ratio for proposed 557 square feet of local only isolated Vegetated Wetland Impacts

REQUIRED: Regulation(s)s section 2.5(4)(a)1: 25-foot no-touch zone

PROPOSED: Work proposed within the local 25-foot No-Touch Zone associated with a local Isolated Vegetated Wetland in the eastern portion of the site. Wetland Resource Area mitigation work proposed within the 25-foot No-Touch Zone associated with a Bordering Vegetated Wetland in the southern portion of the site.

REQUIRED: Regulation(s)s section 2.5(4)(a)2: limit of 10% or 5,000 sf (whichever is less) of BZ important to wildlife habitat

PROPOSED: The proposed work area is previously developed and greater than 5,000SF. The waiver is sought for Bylaw wildlife habitat procedure and mitigation of altered habitat requirements contained in Section 2.10 for work in the 100 foot buffer zone.

REQUIRED: Regulation(s) section 2.5(4)(a)3: Proposed work is previously developed and greater than 5,000SF of Riverfront Area

PROPOSED: The waiver is sought for Bylaw wildlife habitat procedure and mitigation of altered habitat requirements contained in Section 2.10 for work in the Riverfront Area.

REQUIRED: Notification of Abutters within 300 feet of the property.

PROPOSED: Consistent with Wetlands Protection Act Regulations, the Applicant will notify all abutters within 100 feet of the property.

REQUIRED: Regulation(s) section 2.5(4)(a)3: replacement of 5" dbh trees with 1.5" dbh trees, where 2.5(4)(a)2 (above) is triggered

PROPOSED: ZBA acceptance of the planting and landscaping plan as shown on the final submitted plan set.

The Applicant will be filing a Notice of Intent with the Wellesley Conservation Commission under the Massachusetts Department of Environmental Protection Wetlands Protection Act.

#### **TOWN OF WELLESLEY RULES AND REGULATIONS GOVERNING UPGRADING OF INADEQUATE WAYS**

REQUIRED: Requires Planning Board oversight of this local provision

PROPOSED: Asks that the Zoning Board serve in place of the Planning Board and approve the upgrading as part of the review and approval of the Comprehensive Permit Plan set.

# Request for Taxpayer Identification Number and Certification

**Give Form to the requester. Do not send to the IRS.**

▶ Go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9) for instructions and the latest information.

Print or type. See Specific Instructions on page 3.

**1** Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.  
**SEB Wellesley, LLC**

**2** Business name/disregarded entity name, if different from above

**3** Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only **one** of the following seven boxes.

Individual/sole proprietor or single-member LLC     C Corporation     S Corporation     Partnership     Trust/estate

Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶ \_\_\_\_\_

**Note:** Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is **not** disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.

Other (see instructions) ▶ \_\_\_\_\_

**4** Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):

Exempt payee code (if any) \_\_\_\_\_

Exemption from FATCA reporting code (if any) \_\_\_\_\_

(Applies to accounts maintained outside the U.S.)

**5** Address (number, street, and apt. or suite no.) See instructions.  
**257 Hillside Avenue**

**6** City, state, and ZIP code  
**Needham, MA 02494**

**7** List account number(s) here (optional)

Requester's name and address (optional)

## Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

**Note:** If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

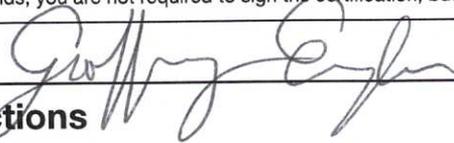
Social security number									
or									
Employer identification number									
8	3	-	3	4	9	1	8	4	8

## Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

<b>Sign Here</b>	<b>Signature of U.S. person ▶</b> 	<b>Date ▶</b> 5-15-2019
------------------	---	-------------------------

## General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9).

## Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
  - Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
  - Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
  - Form 1099-S (proceeds from real estate transactions)
  - Form 1099-K (merchant card and third party network transactions)
  - Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
  - Form 1099-C (canceled debt)
  - Form 1099-A (acquisition or abandonment of secured property)
- Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.
- If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.*



SEB LLC



# Unparalleled Experience and Client Service

## Who We Are and What We Do

For over 40 years, SEB and its principals have been leaders in the planning and development community, specializing in mixed-income multi-family residential housing. SEB has provided housing development consulting services that have resulted in the approval and development of more than 13,000 units of housing. Our work has involved a broad range of housing types in a variety of different communities, from small home ownership communities to large rental developments.

Working in cooperation with our clients and development partners, we have completed over one thousand diverse consulting assignments – ranging from development of mixed-use multi-family developments, to permitting assistance with specific affordable housing development projects on urban and suburban sites, to larger scale neighborhood plans in cities and towns.

SEB also provides affordable housing administrative and lottery services. We have leased/sold more units of affordable housing than any other entity or lottery administrator in the state across a wide variety of developments and programs. We have excellent relationships with Masshousing, Masshousing Partnership, the Department of Housing and Community Development and MassDevelopment – all of the State Subsidizing Agencies involved in the oversight of the affordable housing sell-out & lease-up process. SEB's involvement ensures a coordinated and efficient process while strictly adhering to all state, local regulatory and compliance related requirements.

### **SEB has been involved in public or private sector projects in more than 180 cities and towns in Massachusetts, including the partial list below.**

Abington	Acton	Amesbury	Amherst	Andover	Arlington	Ashburnham
Ashland	Athol	Attleboro	Avon	Barnstable	Bedford	Bellingham
Belmont	Berkley	Berlin	Beverly	Billerica	Bolton	Boston
Bourne	Boxborough	Boxford	Braintree	Brewster	Brockton	Brookline
	Burlington	Cambridge				
Canton	Carlisle	Chatham	Chelmsford	Chelsea	Clinton	Concord
Danvers	Dartmouth	Dedham	Dennis	Dighton	Dover	Duxbury
East	Bridgewater	Easton	Edgartown	Everett	Fall River	Falmouth
Fitchburg	Framingham	Franklin	Freetown	Gardner	Georgetown	Gloucester
Grafton		Groton	Groveland	Hanover	Hanson	Harvard
Harwich	Haverhill	Hingham	Holyoke	Hopkinton	Ipswich	Kingston
Lancaster	Lawrence	Leominster	Lexington	Lincoln	Littleton	Lowell
Ludlow	Lynn	Lynnfield	Malden	Mansfield	Marblehead	Marion
Marlboro	Edgartown	Mashpee	Maynard	Medfield	Medford	
Medway	Melrose	Mendon	Merrimack	Methuen	Middleboro	Milford
Millville	Milton	Nantucket	Natick	Needham	New Bedford	Newburyport
Newton	Norfolk	North Andover	North Reading	Northampton	Northborough	
Northbridge	Norton	Norwell	Norwood	Oxford	Palmer	Peabody
Pelham	Pembroke	Pittsfield	Plainville	Plymouth	Randolph	Raynham
Reading	Rehoboth	Revere	Richmond	Rockport	Rockland	Rowley
Salem	Salisbury	Sandwich	Saugus	Scituate	Seekonk	Sharon
Sherborn	Shrewsbury	Somerset	Somerville	Southborough	Southbridge	Springfield
Stoneham	Stoughton	Stow	Sturbridge	Sudbury	Sutton	Swansea
Taunton	Tewksbury	Townsend	Tyngsboro	Upton	Wakefield	Walpole
Waltham	Wareham	Watertown	Wayland	Wellesley	Wellfleet	
West Tisbury	Westborough	Westminster	Weston	Westport	Westwood	Weymouth
Whitman	Wilmington	Winchester	Woburn	Worcester	Wrentham	Yarmouth

# Background

## Our History

SEB is a continuation, through various iterations, of a consulting practice which began in 1970 in Cambridge, MA. Bob Engler remains as one of the partners in the first firm – Justin Gray Associates –and has been joined by his two sons, Geoff and Brian, who have now been working together over 10 years.

Brian Engler is the firm's Lottery Director and is primarily responsible for managing all of the lottery contracts including all elements of affirmative marketing, buyer/tenant selection and ongoing program compliance. Geoff Engler is responsible for SEB's permitting and development portfolio including serving as project manager for all of SEB's own development projects.

Throughout our history, SEB has remained committed to focusing our business in the area of affordable housing, for ourselves, our partners, and our clients. SEB have managed over 1,000 contracts, yet the firm has retained its small size so we could be directly involved in working with our clients and continuing in many cases the long term relationships that we have developed over the past many years.

## SEB & The 40B Process

Chapter 40B of M.G.L. was passed in 1969 and remains today as the single most productive vehicle in Massachusetts for developing affordable housing units, whether rental or homeownership. Each 40B project involves a complex administrative and permitting process, from initial conception through the public hearing process, construction and occupancy. There are a myriad of rules, regulations, guidelines, policies, preferred practices, strategies, negotiations and monitoring reviews which must be unequivocally understood in order to be successful.

SEB's role over the past many years has been to guide clients through the entirety of this process, often from beginning to end, or in some cases, for specific and discreet tasks. We have assisted over 100 developers and 20 communities engage in this process; we also undertake our own 40B developments as well. Our knowledge and experience has brought us to half the communities in Massachusetts (180+) through permitting responsibilities, leading workshops, providing technical assistance or carrying out developments for our own portfolio. We have served on State-initiated task forces which have created affordable housing programs under 40B or modified existing 40B regulations/guidelines over time.

The various roles SEB has been asked to play in the development process include:

- Property specific analysis and evaluation
- Site control negotiations
- Preliminary site planning and concept origination
- Financial/pro forma analysis
- Assembling the development team
- Securing construction/permanent loans
- Application (site approval, comprehensive permit, etc.) preparations/submittals
- Leading public presentations/ZBA hearings
- Negotiations on final permits and review of regulatory agreements
- Expert witness at the Housing Appeals Committee
- Lottery agent / Affordable housing administrator
- Acquisition and due diligence assistance of existing 40B developments

# Representative Sample of Projects



**The Terraces**  
Newton  
Developer  
48 for-sale units

**Charles River  
Landing**  
Needham  
Permitting  
350 rental units



**Chrysler Apartments**  
*(Currently Avalon Natick)*  
Natick  
Permitting  
543 rental units



**Ink Block**  
Boston  
Lottery Agent  
392 Rental & for-sale units

**Greendale Village**  
Needham  
Developer  
20 for-sale units



## SEB Contact Information

**SEB, LLC**  
165 Chestnut Hill Avenue, Unit #2  
Brighton, MA 02135  
(617) 782-2300  
[www.s-e-b.com](http://www.s-e-b.com)

**Bob Engler**  
President  
(617) 782-2300 x201  
[Bob@s-e-b.com](mailto:Bob@s-e-b.com)

**Brian Engler**  
Lottery Director / VP  
(617) 782-2300 x203  
[brian@s-e-b.com](mailto:brian@s-e-b.com)

**Geoff Engler**  
Vice President  
(617) 782-2300 x202  
[gengler@s-e-b.com](mailto:gengler@s-e-b.com)

# EcoTec, Inc.

## ENVIRONMENTAL CONSULTING SERVICES

102 Grove Street

Worcester, MA 01605-2629

508-752-9666 – Fax: 508-752-9494

September 15, 2017  
Revised: May 2, 2019

Geoff Engler  
SEB Wellesley, LLC  
257 Hillside Avenue  
Needham, MA 02494

RE: Wetland Resource Evaluation, 136-140 Worcester Street, Wellesley, Massachusetts

Dear Mr. Engler:

On September 14, 2017, December 14, 2017, February 13, 2018, and March 27, 2019 EcoTec, Inc. inspected the above-referenced property for the presence of wetland resources as defined by: (1) the Massachusetts Wetlands Protection Act (M.G.L. Ch. 131, § 40; the “Act”) and its implementing regulations (310 CMR 10.00 *et seq.*; the “Regulations”); (2) the Town of Wellesley Wetlands Protection Bylaw and its implementing regulations; and (3) the U.S. Clean Water Act (i.e., Section 404 and 401 wetlands). Scott Jordan, CPESC and Arthur Allen, CPSS conducted the inspections. Please note that the site contained frost in the ground and in two inches of snowcover during the December 14, 2017 inspection.

The subject site consists of two parcels located at 136 and 140 Worcester Street in Wellesley, Massachusetts. The upland portions of the site consist of existing structures, paved driveways, lawn area, gravel drive and parking area, and stone, soil, stone and yard waste stockpiles in the eastern portion. Plant species observed include Norway maple (*Acer platanoides*), red maple (*Acer rubrum*), white ash (*Fraxinus Americana*), and crab apple (*Malus spp.*) trees and/or saplings; Virginia creeper (*Parthenocissus quinquefolia*), and oriental bittersweet (*Celastrus orbiculata*) climbing woody vines; crab apple (*Malus spp.*) shrubs; and Japanese knotweed (*Polygonum cuspidatum*) ground cover. The wetland resources observed on the site are described below.

### Methodology

The site was inspected, and areas suspected to qualify as wetland resources were identified. The boundary of Bordering Vegetated Wetlands or, in the absence of Bordering Vegetated Wetlands, Bank was delineated in the field in accordance with the definitions set forth in the regulations at 310 CMR 10.55(2)(c) and 310 CMR 10.54(2). Section 10.55(2)(c) states that “The boundary of Bordering Vegetated Wetlands is the line within which 50% or more of the vegetational community consists of wetland indicator plants and saturated or inundated conditions exist.” Section 10.54(2)(c) states that “The upper boundary of Bank is the first observable break in the slope or the mean annual flood level, whichever is lower.” The methodology used to delineate Bordering Vegetated Wetlands is further described in: (1) the BVW Policy “*BVW: Bordering Vegetated Wetlands Delineation Criteria and Methodology*,” issued March 1, 1995; and (2) “*Delineating Bordering Vegetated Wetlands Under the Massachusetts Wetlands*

*Protection Act: A Handbook*,” produced by the Massachusetts Department of Environmental Protection, dated March 1995. The plant taxonomy used in this report is based on the *National List of Plant Species that Occur in Wetlands: Massachusetts* (Fish and Wildlife Service, U.S. Department of the Interior, 1988). Federal wetlands were presumed to have boundaries conterminous with the delineated Bordering Vegetated Wetlands and Bank. One set of DEP Bordering Vegetated Wetland Delineation Field Data Forms completed for observation plots located in the wetlands and uplands near flag A12 is attached. The table below provides the Flag Numbers, Flag Type, and Wetland Types and Locations for the delineated wetland resources.

Flag Numbers	Flag Type	Wetland Types and Locations
Start AO to A33 Stop	Blue Flags	Boundary of Bordering Vegetated Wetlands located in or near the southern portion of the site that is associated with a mapped perennial stream.
Start R1 to R11 Stop	Red Flags	Mean Annual High-water Line (MAHWL) of mapped perennial stream located offsite to the south.
Start I1 to I14 Stop (I14 connect to I1)	Blue Flags	Boundary of Isolated Vegetated Wetland located in or near the eastern portion of the site. Jurisdictional under the Bylaw and possible Federal Wetland.

**Findings**

Wetland A (i.e., flags A0 to A31) consists of a wooded swamp located in or near the southern portion of the site that is associated with a perennial stream. Plant species observed include red maple (*Acer rubrum*) and American elm (*Ulmus americana*) trees and/or saplings; poison ivy (*Toxicodendron radicans*) climbing woody vines; glossy buckthorn (*Rhamnus frangula*) shrubs; and royal fern (*Osmunda regalis*), sensitive fern (*Onoclea sensibilis*), and swamp Jack-in-the-pulpit (*Arisaema triphyllum*) ground cover. Evidence of wetland hydrology, including hydric soils, saturated soils, evidence of flooding, and drainage patterns, was observed within the delineated wetland. This vegetated wetland borders a perennial stream; accordingly, the vegetated wetlands would be regulated as Bordering Vegetated Wetlands and the perennial stream would be regulated as Bank and Land Under Water Bodies and Waterways under the Act and Bylaw. A 100-foot Buffer Zone extends horizontally outward from the edge of Bordering Vegetated Wetlands under the Act and Bylaw. A 25-foot No Touch Zone also extends horizontally outward from Bordering Vegetated Wetlands under the Bylaw.

Wetland I (i.e., flags I1 to I14) consists of an isolated vegetated wetland located in or near the eastern portion of the site. Plant species observed in this shallow, isolated depression include grasses (Gramineae sp.) and soft rush (*Juncus effusus*) ground cover. Hydric soils and other evidence of wetland hydrology, including saturated soils, pore linings, and evidence of flooding, were observed within the delineated wetland. This wetland does not border a creek, stream, river, pond, or lake; accordingly, it would not be regulated as Bordering Vegetated Wetlands under the Act. Section 10.57(2)(b)1. states that “Isolated Land Subject to Flooding is an isolated depression or closed basin without an inlet or an outlet. It is an area that at least once per year confines standing water to a volume of at least ¼ acre-feet and to an average depth of at least six inches.” Based upon field observations, the potential ponding area appears to be too small to hold the requisite volume and depth of water to be regulated as Isolated Land Subject to Flooding under the Act and does not hold the requisite average 6-inch depth to be regulated as Isolated Land Subject to Flooding under the Bylaw definition. Accordingly, this area would not be subject to jurisdiction under the

Act, but does qualify as an Isolated Vegetated Wetland under the Bylaw. A 100-foot Buffer Zone extends horizontally outward from the edge of Isolated Vegetated Wetlands under the Bylaw. A 25-foot No Touch Zone also extends horizontally outward from Isolated Vegetated Wetlands under the Bylaw. Additionally, depending upon the proximity of this area to a Bordering Vegetated Wetlands, this area may be subject to jurisdiction as a federal wetland. Federal wetlands do not have a Buffer Zone.

Bordering Land Subject to Flooding is an area that floods due to a rise in floodwaters from a bordering waterway or water body. Where flood studies have been completed, the boundary of Bordering Land Subject to Flooding is based upon flood profile data prepared by the National Flood Insurance Program. Section 10.57(2)(a)3. states that “The boundary of Bordering Land Subject to Flooding is the estimated maximum lateral extent of flood water which will theoretically result from the statistical 100-year frequency storm.” The project engineer should evaluate the most recent National Flood Insurance Program flood profile data to determine if Bordering Land Subject to Flooding occurs on the site. Bordering Land Subject to Flooding would occur in areas where the 100-year flood elevation is located outside of or upgradient of the delineated Bordering Vegetated Wetlands or Bank boundary. Bordering Land Subject to Flooding does not have a Buffer Zone under the Act, but has a 200-foot Buffer Zone under the Bylaw and Bylaw Regulations. A copy of the most recent Flood Insurance Rate Map for the site is attached.

The Massachusetts Rivers Protection Act amended the Act to establish an additional wetland resource area: Riverfront Area. Based upon a review of the current USGS Map (i.e., Boston South Quadrangle, dated 1987, attached), a stream that is shown as perennial is located off-site to the south. Streams that are shown as perennial on the current USGS map are designated perennial under the Massachusetts Wetlands Protection Act regulations. Unless this perennial designation is overcome, Riverfront Area is presumed to extend 200 feet horizontally upgradient from the mean annual high-water line of the stream. Section 10.58(2)(a)2. states that the “Mean annual high-water line of a river is the line that is apparent from visible markings or changes in the character of soils or vegetation due to prolonged presence of water and that distinguishes between predominantly aquatic and predominantly terrestrial land. Field indicators of bankfull conditions shall be used to determine the mean annual high-water line. Bankfull field indicators include but are not limited to: changes in slope, changes in vegetation, stain lines, top of pointbars, changes in bank materials, or bank undercuts.” Section 10.58(2)(a)2.a. states that “In most rivers, the first observable break in slope is coincident with bankfull conditions and the mean annual high-water line.” The mean annual high-water line of the stream was delineated in the field with flags R1 to R11 based upon the above-referenced regulation. Furthermore, based upon a review of the current USGS Map and observations made during the site inspection, there are no other mapped or unmapped streams located within 200 feet of the site. Accordingly, except as noted above, Riverfront Area would not occur on the site. Riverfront Area does not have a Buffer Zone under the Act, but may overlap other wetland resources and their Buffer Zones.

The Regulations require that no project may be permitted that will have any adverse effect on specified habitat sites of rare vertebrate or invertebrate species, as identified by procedures set forth at 310 CMR 10.59. Based upon a review of the *Massachusetts Natural Heritage Atlas On-line Data Viewer Output* dated 5/1/2019, there are no Estimated Habitats [for use with the Act and Regulations (310 CMR 10.00 *et seq.*)], Priority Habitats [for use with Massachusetts Endangered Species Act (M.G.L. Ch. 131A;

136-140 Worcester Street, Wellesley

Revised: May 2, 2019

Page 4.

“MESA”) and MESA Regulations (321 CMR 10.00 *et seq.*)], or Certified Vernal Pools on or in the immediate vicinity of the site. A copy of this map is attached.

The reader should be aware that the regulatory authority for determining wetland jurisdiction rests with local, state, and federal authorities. A brief description of my experience and qualifications is attached. If you have any questions, please feel free to contact me at any time.

Cordially,  
ECOTEC, INC.

A handwritten signature in cursive script that reads "Scott Jordan".

Scott Jordan, CPESC  
Senior Environmental Scientist

Attachments (9 pages)

11/W/Wellesley136-140WorcesterStReport050219

# DEP Bordering Vegetated Wetland (310 CMR 10.55) Delineation Field Data Form

Applicant:

Prepared by: EcoTec, Inc.

Project location: 130-136 Worcester St., Wellesley

DEP File # :

Check all that apply:

- Vegetation alone presumed adequate to delineate BVW boundary: fill out Section I only
- Vegetation and other indications of hydrology used to delineate BVW boundary: fill out Sections I and II
- Method other than dominance test used (attach additional information)

Section I. Vegetation		Observation Plot Number: Upland	Transect Number: TPU @ A12	Date of Delineation: 9/14/17		
A. Sample Layer and Plant Species # (by common/scientific name)			B. Percent Cover (or basal area)	C. Percent Dominance	D. Dominant Plant (yes or no)	E. Wetland Indicator Category * #
Tree	Red maple	<i>Acer rubrum</i>	80	100	yes	FAC*
Sapling	Norway maple	<i>Acer platanoides</i>	10	50	yes	FACU
	Crabapple	<i>Malus spp.</i>	10	50	yes	UPL
Shrub	Glossy buckthorn	<i>Frangula alnus</i>	5	6	no	FAC*
	Crabapple	<i>Malus spp.</i>	75	94	yes	UPL
Ground cover	Virginia creeper	<i>Parthenocissus quinquefolia</i>	20	100	yes	FACU

# Plant Taxonomy and Wetland Indicator Category from "National List of Plant Species that Occur in Wetlands: Massachusetts" (Fish & Wildlife Service, U.S. Department of the Interior, 1988) as required by 310 CMR 10.55(2)(c).

\*Use an asterisk to mark wetland indicator plants: plant species listed in the Wetlands Protection Act (MGL c. 131, s. 40); plants in the genus *Sphagnum*; plants listed as FAC, FAC+, FACW-, FACW, FACW+, or OBL; or plants with physiological or morphological adaptations. If any plants are identified as wetland indicator plants due to physiological or morphological adaptations, describe the adaptation next to the asterisk.

**Vegetation conclusions:**

Number of dominant wetland indicator plants: 1                      Number of dominant non-wetland indicator plants: 4  
 Is the number of dominant wetland plants equal to or greater than the number of dominant non-wetland plants? No

*If vegetation alone is presumed adequate to delineate the BVW boundary, submit this form with the Request for Determination of Applicability or Notice of Intent.*

TPU @ A12

Section II. Indicators of Hydrology

1. Soil Survey

Is there a published soil survey for this site? -

title/date: -  
map number: -  
soil type mapped: -  
hydric soil inclusions: -

Are field observations consistent with soil survey? -

Remarks: -

2. Soil Description

Horizon	Depth (inches)	Matrix Color	Mottle Color
A	0-8	10YR 2/1	
Bw	8-12+	10YR 5/4	

Remarks: Fine sandy loam

3. Other: -

Conclusion: Is soil Hydric? No

Other Indications of Hydrology: (check all that apply and describe)

- Site inundated: \_\_\_\_\_
- Depth to free water in observation hole: \_\_\_\_\_
- Depth to soil saturation in observation hole: \_\_\_\_\_
- Water marks: \_\_\_\_\_
- Drift lines: \_\_\_\_\_
- Sediment deposits: \_\_\_\_\_
- Drainage patterns in BVW: \_\_\_\_\_
- Oxidized rhizospheres: \_\_\_\_\_
- Water-stained leaves: \_\_\_\_\_
- Recorded data (stream, lake, or tidal gauge; aerial photo; other): \_\_\_\_\_  
\_\_\_\_\_
- Other: \_\_\_\_\_  
\_\_\_\_\_

Vegetation and Hydrology Conclusion		
	yes	no
Number of wetland indicator plants ≥ number of non-wetland indicator plants	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Wetland hydrology present:		
hydric soil present	<input type="checkbox"/>	<input checked="" type="checkbox"/>
other indicators of hydrology present	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Sample location is in a BVW	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Submit this form with the Request for Determination of Applicability or Notice of Intent.

## DEP Bordering Vegetated Wetland (310 CMR 10.55) Delineation Field Data Form

Applicant:

Prepared by: EcoTec, Inc.

Project location: 130-136 Worcester St., Wellesley

DEP File # :

Check all that apply:

- Vegetation alone presumed adequate to delineate BVW boundary: fill out Section I only
- Vegetation and other indications of hydrology used to delineate BVW boundary: fill out Sections I and II
- Method other than dominance test used (attach additional information)

Section I. Vegetation		Observation Plot Number: Wetland	Transect Number: TPW @ A12	Date of Delineation: 9/14/17		
A. Sample Layer and Plant Species # (by common/scientific name)			B. Percent Cover (or basal area)	C. Percent Dominance	D. Dominant Plant (yes or no)	E. Wetland Indicator Category * #
Tree	Red maple	<i>Acer rubrum</i>	80	100	yes	FAC*
Sapling	American elm Crabapple	<i>Ulmus americana</i> <i>Malus spp.</i>	10 20	33 67	yes yes	FACW-* UPL
Shrub	Glossy buckthorn Crabapple	<i>Frangula alnus</i> <i>Malus spp.</i>	20 60	25 75	yes yes	FAC* UPL
Ground cover	Sensitive fern	<i>Onoclea sensibilis</i>	70	100	yes	FACW*

# Plant Taxonomy and Wetland Indicator Category from "National List of Plant Species that Occur in Wetlands: Massachusetts" (Fish & Wildlife Service, U.S. Department of the Interior, 1988) as required by 310 CMR 10.55(2)(c).

\*Use an asterisk to mark wetland indicator plants: plant species listed in the Wetlands Protection Act (MGL c. 131, s. 40); plants in the genus *Sphagnum*; plants listed as FAC, FAC+, FACW-, FACW, FACW+, or OBL; or plants with physiological or morphological adaptations. If any plants are identified as wetland indicator plants due to physiological or morphological adaptations, describe the adaptation next to the asterisk.

**Vegetation conclusions:**

Number of dominant wetland indicator plants: 4                      Number of dominant non-wetland indicator plants: 2  
 Is the number of dominant wetland plants equal to or greater than the number of dominant non-wetland plants? Yes

*If vegetation alone is presumed adequate to delineate the BVW boundary, submit this form with the Request for Determination of Applicability or Notice of Intent.*

TPW @ A12

## Section II. Indicators of Hydrology

### 1. Soil Survey

Is there a published soil survey for this site? -

title/date: -  
map number: -  
soil type mapped: -  
hydric soil inclusions: -

Are field observations consistent with soil survey? -

Remarks: -

### 2. Soil Description

Horizon	Depth (inches)	Matrix Color	Mottle Color
A	0-8	10YR 2/1	
Bw	8-12+	10YR 5/4	

Remarks: **Fine sandy loam**

3. Other: -

Conclusion: Is soil Hydric? No

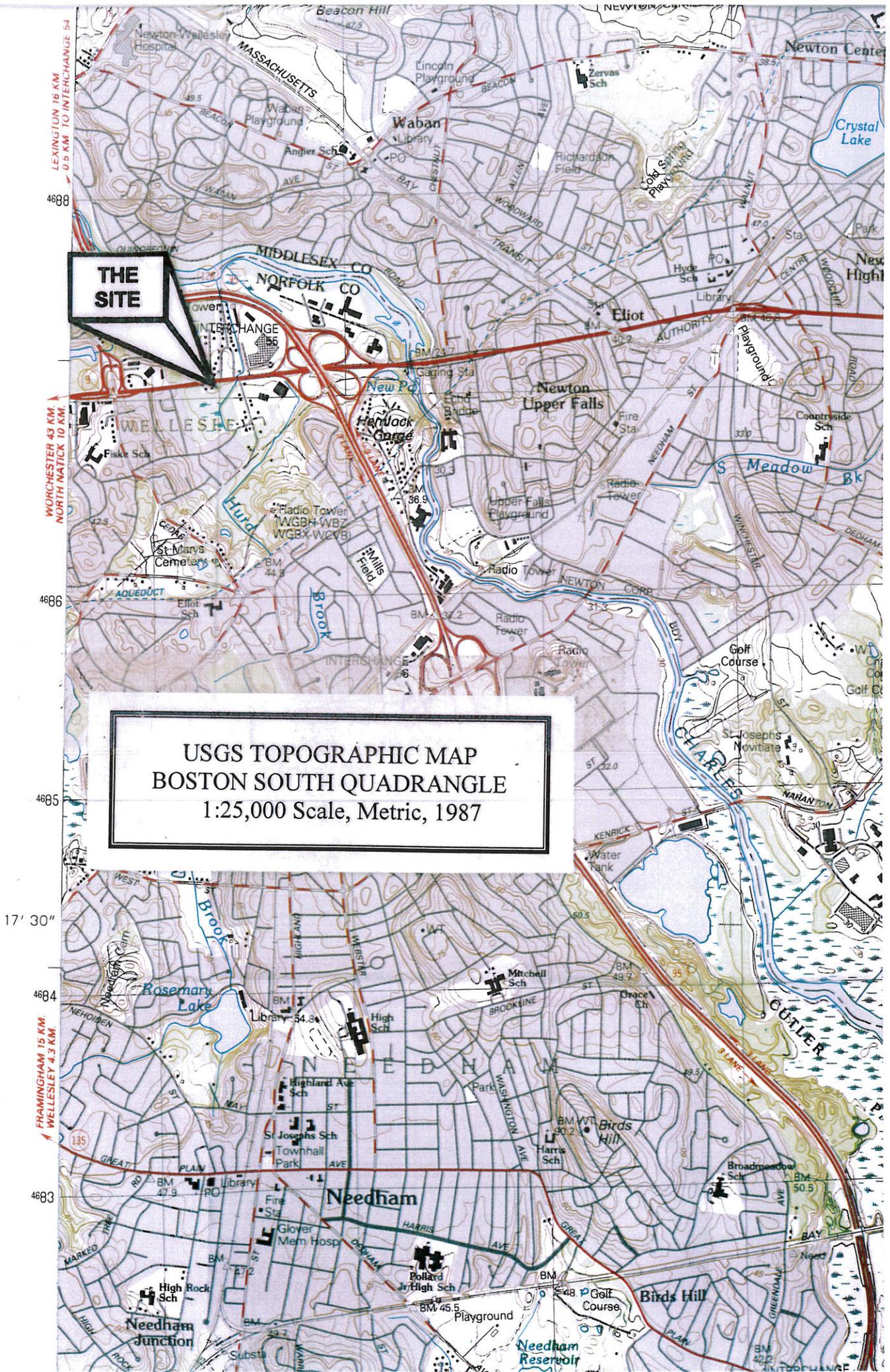
Other Indications of Hydrology: (check all that apply and describe)

- Site inundated: \_\_\_\_\_
- Depth to free water in observation hole: \_\_\_\_\_
- Depth to soil saturation in observation hole: \_\_\_\_\_
- Water marks: \_\_\_\_\_
- Drift lines: \_\_\_\_\_
- Sediment deposits: \_\_\_\_\_
- Drainage patterns in BVW: \_\_\_\_\_
- Oxidized rhizospheres: \_\_\_\_\_
- Water-stained leaves: \_\_\_\_\_
- Recorded data (stream, lake, or tidal gauge; aerial photo; other): \_\_\_\_\_  
\_\_\_\_\_
- Other: \_\_\_\_\_  
\_\_\_\_\_

### Vegetation and Hydrology Conclusion

	yes	no
Number of wetland indicator plants ≥ number of non-wetland indicator plants	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Wetland hydrology present:		
hydric soil present	<input type="checkbox"/>	<input checked="" type="checkbox"/>
other indicators of hydrology present	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sample location is in a BVW	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Submit this form with the Request for Determination of Applicability or Notice of Intent.



**THE SITE**

USGS TOPOGRAPHIC MAP  
BOSTON SOUTH QUADRANGLE  
1:25,000 Scale, Metric, 1987

LEXINGTON 16 KM  
0.9 KM TO INTERCHANGE 54

WORCHESTER 43 KM  
NORTH NATTICK 10 KM

4686

4685

17' 30"

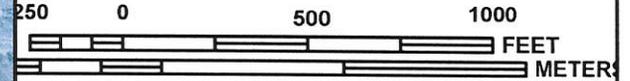
4684

4683

FRAMINGHAM 15 KM  
WELLESLEY 4.3 KM



MAP SCALE 1" = 500'



NATIONAL FLOOD INSURANCE PROGRAM

PANEL 0028E

**FIRM**  
 FLOOD INSURANCE RATE MAP  
 NORFOLK COUNTY,  
 MASSACHUSETTS  
 (ALL JURISDICTIONS)

PANEL 28 OF 430  
 (SEE MAP INDEX FOR FIRM PANEL LAYOUT)

CONTAINS:

COMMUNITY	NUMBER	PANEL	SUFFIX
NEEDHAM, TOWN OF	255215	0028	E
WELLESLEY, TOWN OF	250255	0028	E

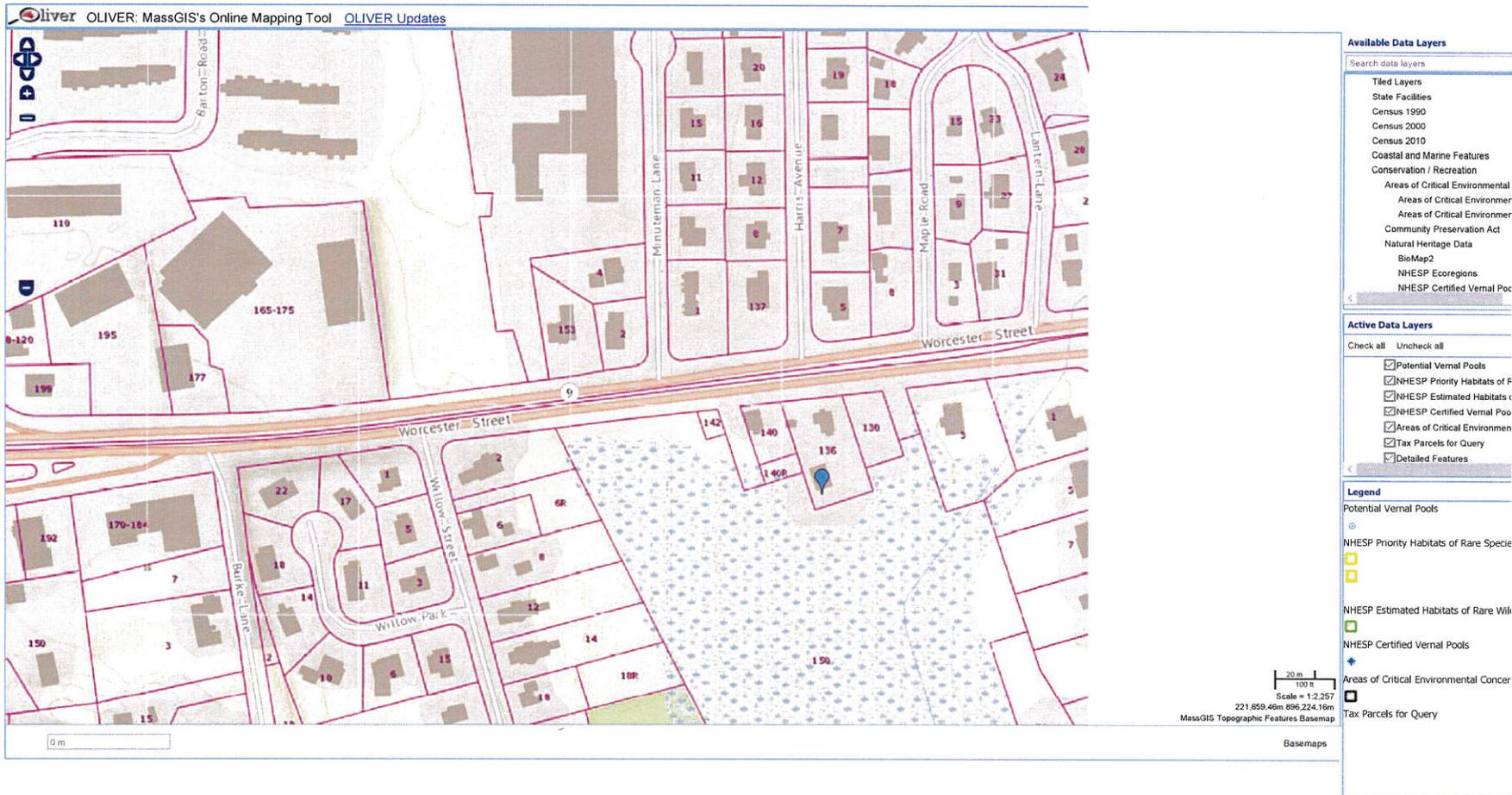
Notice to User: The Map Number shown below should be used when placing map orders; the Community Number shown above should be used on insurance applications for the subject community.



MAP NUMBER  
 25021C0028E  
 EFFECTIVE DATE  
 JULY 17, 2012

Federal Emergency Management Agency

This is an official copy of a portion of the above referenced flood map. It was extracted using F-MIT On-Line. This map does not reflect changes or amendments which may have been made subsequent to the date on the title block. For the latest product information about National Flood Insurance Program flood maps check the FEMA Flood Map Store at [www.msc.fema.gov](http://www.msc.fema.gov)



Natural Heritage Atlas On-line Data Viewer Output May 1, 2019

# EcoTec, Inc.

ENVIRONMENTAL CONSULTING SERVICES

102 Grove Street  
Worcester, MA 01605-2629  
508-752-9666 – Fax: 508-752-9494

**Scott Jordan, CPESC**  
Senior Environmental Scientist

Scott Jordan is an Environmental Scientist with EcoTec, Inc. Since joining EcoTec in 2000, Mr. Jordan's duties have included wetland resource evaluation and delineation; erosion and sediment control planning and monitoring, environmental monitoring, including water quality analysis, sediment analysis and wildlife habitat impact analysis; environmental permitting at local, state, and federal level; pond and stream evaluation; wildlife habitat evaluation, vernal pool evaluation; and wetland restoration and replication design and oversight. He has served as an environmental consultant to the development community, engineering firms, municipalities, and conservation commissions. Prior to joining EcoTec, Mr. Jordan was the Senior Laboratory Technician for GeoComp Corporation where he performed numerous physical properties analysis of soils and geosynthetic materials in accordance with ASTM, and AASHTO specifications. His approximately seven years experience evaluating New England soils includes soil analysis and classification of site-remediated soils with oil and hazardous material contamination. His educational background includes courses in organic and inorganic chemistry, biology, botany and comparative vertebrate physiology, with extensive coursework in ecology and wildlife biology; and he has completed several professional training seminars including erosion and sediment control, soil evaluation, wildlife habitat evaluation, wetland mitigation, vernal pool evaluation, water quality assessment using macro-invertebrates, and river morphology and functions. He has participated in several rare species and wildlife monitoring and inventory projects, including marsh bird surveys, marbled salamander (*Ambystoma opacum*) survey, great laurel (*Rhododendron maximum*) survey, wood turtle (*Glyptemys insculpta*) habitat assessments and sweeps, eastern box turtle (*Terrapene carolina*) habitat assessments, and greater black-backed gull (*Larus marinus*) inventory. His prior research experience includes behavioral and acoustic studies of the common loon (*Gavia immer*) in northwestern Maine.

**Education:** Bachelor of Science: Biology - Wildlife and Environmental, *Cum Laude*  
Framingham State College, 2000  
Biotechnology Certificate  
Middlesex Community College, 1994

**Professional**

**Affiliations:** Certified Professional in Erosion and Sediment Control (Cert. #3644)  
Massachusetts Association of Conservation Commissioners  
Association of Massachusetts Wetland Scientists  
Society of Wetland Scientists  
Society of Soil Scientists of Southern New England



# EcoTec, Inc.

---

## ENVIRONMENTAL CONSULTING SERVICES

368 Burncoat Street  
Worcester, MA 01606-3129  
508-852-0333 • Fax: 508-852-0555

**Arthur Allen, CPSS**  
**Vice President**  
**Soil & Wetland Scientist**

Arthur Allen is a senior environmental scientist with certifications in soil and wetland science and a strong background in geology, forestry, hydrology and ecology. Since 1995, his work with EcoTec has involved wetland delineation, wildlife habitat evaluation, environmental permitting (federal, state and local), environmental monitoring and peer reviews for private landowners, developers, major corporations and regulatory agencies in addition to contaminated site assessment and the description, mapping and interpretation of soils. Prior to joining EcoTec, Mr. Allen mapped and interpreted soils in Franklin County, MA for the U.S.D.A. Natural Resources Conservation Service (formerly Soil Conservation Service) and was a research soil scientist at Harvard University's Harvard Forest. Since 1994, Mr. Allen has been assisting the Massachusetts Department of Environmental Protection and the Massachusetts Association of Conservation Commissions as an instructor in the interpretation of soils for wetland delineation and for the Title V Soil Evaluator program.

Mr. Allen has a civil service rating as a soil scientist, an undergraduate degree in Natural Resource Studies and a graduate certificate in Soil Studies. His work on the Franklin County soil survey involved interpretation of landscape-soil-water relationships, classifying soils and drainage, and determining use and limitation of the soil units that he delineated. As a soil scientist at the Harvard Forest, Mr. Allen was involved in identifying the legacies of historical land-use in modern soil and vegetation at a number of study sites across southern New England. He has a working knowledge of the chemical and physical properties of soil and water and how these properties interact with the plants that grow on a given site. While at Harvard Forest he authored and presented several papers describing his research results which were later published. In addition to his aforementioned experience, Mr. Allen was previously employed by the Trustees of Reservations as a land manager and by the Town of North Andover, MA as a conservation commission intern.

### **Education:**

1993-Graduate Certificate in Soil Studies, University of New Hampshire  
1982-Bachelor of Science in Natural Resource Studies, University of Massachusetts

### **Professional Affiliations:**

Certified Professional Soil Scientist (ARCPACS CPSS #22529)  
New Hampshire Certified Wetland Scientist (#019)  
Registered Professional Soil Scientist & Board Member - SSS of SNE  
Massachusetts Arborists Association-Certified Arborist (1982 – 1998)  
Massachusetts Association of Conservation Commissions - Member  
Society of Wetland Scientists - Member

### **Refereed Publications:**

*Soil Science and Survey at Harvard Forest.* A.Allen. In: Soil Survey Horizons. Vol. 36, No. 4, 1995, pp. 133-142.  
*Controlling Site to Evaluate History: Vegetation Patterns of a New England Sand Plain.* G.Motzkin, D.Foster, A.Allen, J.Harrod, & R.Boone. In: Ecological Monographs 66(3), 1996, pp. 345-365.  
*Vegetation Patterns in Heterogeneous Landscapes: The Importance of History and Environment.* G.Motzkin, P.Wilson, D.R.Foster & A.Allen. In: Journal of Vegetation Science 10, 1999, pp. 903-920.



# EcoTec, Inc.

---

## ENVIRONMENTAL CONSULTING SERVICES

102 Grove Street  
Worcester, MA 01605-2629  
508-752-9666 – Fax: 508-752-9494

### **Compliance Assessment under the Massachusetts Wetlands Protection Act**

**Proposed Multi-family Residential Project  
136 & 140 Worcester Street  
Wellesley, Massachusetts**

Prepared for:  
SEB Wellesley, LLC  
257 Hillside Avenue  
Needham, MA 02494

Prepared by:

Scott Jordan  
Senior Environmental Scientist

Paul J. McManus, PWS  
President

May 9, 2019

#### **PROJECT DESCRIPTION**

The proposed project consists of a multi-family residential project consisting of 40 units with associated work including driveway, parking areas, retaining wall, grading, landscaping, utilities, an isolated wetland restoration area, an isolated wetland replication area, and subsurface stormwater management facilities. The proposed site is comprised of Assessors parcels located at Map 10 / Parcels 2, 3 and 66, and Map 7 / Parcel 39 along the southerly side of Worcester Street (a.k.a., “the site”). The project will require an Order of Conditions under the Massachusetts Wetlands Protection Act and Regulations [310 CMR 10.00] and has been designed in accordance with these Regulations, including the Riverfront Area redevelopment regulations at 310 CMR 10.58(5).

The site is entirely developed and contains existing house/office and barn structures, paved and gravel driveway and parking areas, and maintained/mowed areas. The eastern portion of the site is located within the previously developed 200-foot Riverfront Area (RA) associated with a perennial stream located off-site to the south. Accordingly, given

the site configuration, the proposed project will require work to be conducted within the outer riparian zone of the Riverfront Area. The Mean Annual High-water Line of the stream was delineated in the field with pink flags R1 to R11, as outlined in the Wetland Resource Evaluation 136-140 Worcester Street, Wellesley report prepared by EcoTec, dated-revised: May 2, 2019. The perennial stream would be regulated as Bank and Land Under Water Bodies and Waterways under the Act. The existing development on the site is located approximately 145 feet from the perennial stream, at its closest point.

An area of Bordering Vegetated Wetland (BVW) associated with the stream is located just off-site to the south and was delineated in the field with blue flags A0 to A33. A 100-foot Buffer Zone extends horizontally outward from the edge of Bordering Vegetated Wetlands under the Act.

An approximately 3,427 square foot Isolated Vegetated Wetland (IVW) is located, in part, within the eastern portion of the site. This low-lying area has been historically altered, contains sparse vegetation and was field delineated with blue flags I1 to I14 based upon the presence of indicators of wetland hydrology, including hydric soils. This IVW does not qualify as an Isolated Land Subject to Flooding (ILSF) or BVW under the Act and is therefore not subject to protection under the Act.

#### **PROPOSED MITIGATION WORK**

As part of the proposed project, approximately 557 square feet of the IVW is proposed to be permanently filled in the eastern portion of the site. Although not required under the Act, replication of the filled area will be provided at a 1:1 ratio in the southern portion of the site. Additional wetland mitigation provided as part of the project includes restoration of approximately 145 square feet of the altered IVW located on the subject site, and restoration of the remaining approximately 2,725 square feet of the off-site portion of the IVW. The proposed IVW mitigation will occur within the Riverfront Area and will consist of gravel and debris removal, topsoil enhancement, and seeding and planting with native herbaceous and woody plantings. The restoration and replication areas located within the Riverfront Area shall provide enhanced food, shelter, overwintering, migratory and breeding wildlife habitat functions for the Riverfront Area and Buffer Zone associated with the perennial stream; and therefore improve, over existing conditions, the capacity of the Riverfront Area to protect the interests of the Act.

Proposed work within the previously developed Riverfront Area includes the proposed multi-family rental structure, driveway, grading, IVW restoration area, and IVW replication area. The existing Riverfront Area on the site consists of 3,734 square feet of gravel driveway and existing detached garage which qualify as degraded Riverfront Area under the Riverfront Area redevelopment regulations at 310 CMR 10.58(5). The proposed project includes 3,721 square feet of impervious structures and driveway within the outer riparian zone of the Riverfront Area. In accordance with the regulations: the pre and post project work will not be located closer to the perennial stream (145 feet); the work is located outside of the inner riparian zone of the Riverfront Area; the stormwater management system has been designed in accordance with Mass DEP Stormwater Management Standards; and the proposed work, including the IVW mitigation work,

shall result in an improvement over existing conditions of the capacity of the Riverfront Area to protect the interests of the Act.

### **RIVERFRONT AREA COMPLIANCE**

The proposed project has been designed in accordance with the Riverfront Area redevelopment regulations at 310 CMR 10.58(5). The provisions of these regulations are cited below with an assessment of the project's compliance with each provision:

*(5) Redevelopment Within Previously Developed Riverfront Areas; Restoration and Mitigation. Notwithstanding the provisions of 310 CMR 10.58(4)(c) and (d), the issuing authority may allow work to redevelop a previously developed riverfront area, provided the proposed work improves existing conditions. Redevelopment means replacement, rehabilitation or expansion of existing structures, improvement of existing roads, or reuse of degraded or previously developed areas. A previously developed riverfront area contains areas degraded prior to August 7, 1996 by impervious surfaces from existing structures or pavement, absence of topsoil, junkyards, or abandoned dumping grounds. Work to redevelop previously developed riverfront areas shall conform to the following criteria:*

*(a) At a minimum, proposed work shall result in an improvement over existing conditions of the capacity of the riverfront area to protect the interests identified in M.G.L. c. 131 § 40. When a lot is previously developed but no portion of the riverfront area is degraded, the requirements of 310 CMR 10.58(4) shall be met.*

The site is previously developed, having consisted of Behrend Construction office and work yard since 1987, prior to the Rivers Protection Act of 1996, and includes 3,734± square feet of degraded Riverfront Area associated with the existing gravel driveway and garage. Under existing conditions, the driveway is located approximately 145 feet from the Mean Annual High-Water Line of the perennial stream. No work is proposed within approximately 145 feet from the Mean Annual High-Water Line and Bank of the perennial stream. The proposed mitigation package includes a total of 3,428 square feet of Isolated Vegetated Wetland restoration within the Riverfront Area which will enhance the Riverfront Area's capacity to serve wetland interests, including wildlife habitat functions, including cover, perching and foraging opportunities; and therefore improve, over existing conditions, the capacity of the Riverfront Area to protect the interests of the Act.

*(b) Stormwater management is provided according to standards established by the Department.*

The proposed project has been designed to in accordance with the Mass DEP Stormwater Management Standards. A copy of the Stormwater Management Form and supporting calculations has been included with the Notice of Intent filing.

*(c) Within 200-foot riverfront areas, proposed work shall not be located closer to the river than existing conditions or 100 feet, whichever is less, or not closer than existing conditions within 25-foot riverfront areas, except in accordance with 310 CMR 10.58(5)(f) or (g).*

The proposed project is not closer to the stream than the existing conditions. Under existing conditions, at its closest point, the driveway is located 145 feet from the Mean Annual High-Water Line. Under proposed conditions, the proposed grading in the southern portion will also be located 145 feet from the Mean Annual High-Water Line of the stream.

*(d) Proposed work, including expansion of existing structures, shall be located outside the riverfront area or toward the riverfront area boundary and away from the river, except in accordance with 310 CMR 10.58(5)(f) or (g).*

As the eastern portion of the site is located within the Riverfront Area, it is not possible for the proposed project to be located outside of the Riverfront Area. The proposed project is not closer to the perennial stream than the existing conditions. Under existing conditions, at its closest point, the driveway is located 145 feet from the Mean Annual High-Water Line and Bank of the perennial stream. Under proposed conditions, grading in the southern portion will be located 145 feet from the Mean Annual High-Water Line and Bank of the perennial stream.

*(e) The area of proposed work shall not exceed the amount of degraded area, provided that the proposed work may alter up to 10% if the degraded area is less than 10% of the riverfront area, except in accordance with 310 CMR 10.58(5)(f) or (g).*

The project has been designed so that the proposed impervious surface area does not exceed the existing degraded Riverfront Area on the site. The existing site includes 3,734 square feet of existing degraded/impervious area: including a gravel driveway and garage. The project is proposing 3,721 square feet of impervious structures within the Riverfront Area. The remainder of the Riverfront Area on the site has been previously developed prior to the promulgation of the Rivers Protection Act.

*(4) General Performance Standard. Where the presumption set forth in 310 CMR 10.58(3) is not overcome, the applicant shall prove by a preponderance of the evidence that there are no practicable and substantially equivalent economic alternatives to the proposed project with less adverse effects on the interests identified in M.G.L. c.131 § 40 and that the work, including proposed mitigation, will have no significant adverse impact on the riverfront area to protect the interests identified in M.G.L. c. 131 § 40. In the event that the presumption is partially overcome, the issuing authority shall make a written determination setting forth its grounds in the Order of Conditions and the partial rebuttal shall be taken into account in the application of 310 CMR 10.58 (4)(d)1.a. and c.; the issuing authority shall impose conditions in the Order that contribute to the protection of interests for which the riverfront area is significant.*

*(4)(a) Protection of Other Resource Areas. The work shall meet the performance standards for all other resource areas within the riverfront area, as identified in 310 CMR 10.30 (coastal bank), 10.32 (salt marsh), 10.55 (Bordering Vegetated Wetland), and 10.57 (Land Subject to Flooding). When work in the riverfront area is also within the buffer zone to another resource area, the performance standards for the riverfront area shall contribute to the protection of the interests of M.G.L. c. 131, § 40 in lieu of any additional requirements that might otherwise be imposed on work in the buffer zone within the riverfront area.*

The project will occur within the outer riparian zone of the Riverfront Area. The project will not occur within any additional resource areas but will occur within the 100-foot Buffer Zone to a Bordering Vegetated Wetland located off site to the south. The project has been designed in accordance with the applicable General Performance Standards for the Riverfront Area at Sections 310 CMR 10.58(4)(a) & (b) and the redevelopment regulations at 310 CMR 10.58(5) and shall therefore contribute to the protection of the interests of the Act. Proposed work in the Buffer Zone includes appropriate erosion control measures, wetland restoration and replication, grading, parking/driveway areas, and landscaping. The project will not alter any BVW.

*(b) Protection of Rare Species. No project may be permitted within the riverfront area which will have any adverse effect on specified habitat sites of rare wetland or upland, vertebrate or invertebrate species, as identified by the procedures established under 310 CMR 10.59 or 10.37, or which will have any adverse effect on vernal pool habitat certified prior to the filing of the Notice of Intent.*

Based upon a review of the *Massachusetts Natural Heritage Atlas On-line Data Viewer Output* dated 5/1/2019, there are no Estimated Habitats [for use with the Act and Regulations (310 CMR 10.00 *et seq.*)], Priority Habitats [for use with Massachusetts Endangered Species Act (M.G.L. Ch. 131A; “MESA”) and MESA Regulations (321 CMR 10.00 *et seq.*)], or Certified Vernal Pools on or in the immediate vicinity of the site. A copy of this map is attached.

*(c) Practicable and Substantially Equivalent Economic Alternatives. There must be no practicable and substantially equivalent economic alternative to the proposed project with less adverse effects on the interests identified in M.G.L. c. 131 § 40....”*

This project has been filed under the Riverfront Area redevelopment regulations at 310 CMR 10.58(5)(g); therefore, this standard is not applicable. As such, a formal alternatives analysis has not been provided. Section 10.58(5) states that: *Notwithstanding the provisions of 310 CMR 10.58(4)(c) and (d), the issuing authority may allow work to redevelop a previously developed riverfront area, provided the proposed work improves existing conditions. Redevelopment means replacement, rehabilitation or expansion of existing structures, improvement of existing roads, or reuse of degraded or previously developed areas. A previously developed riverfront area contains areas degraded prior to August 7, 1996 by impervious surfaces from*

*existing structures or pavement, absence of topsoil, junkyards, or abandoned dumping grounds.* Based upon our field evaluation, it is EcoTec's opinion that all of the site Riverfront Area is designated as previously developed, including 3,734 square feet of degraded area.

*(d) No Significant Adverse Impact. The work, including proposed mitigation measures, must have no significant adverse impact on the riverfront area to protect the interests identified in M.G.L. c. 131, § 40...."*

Based upon our analysis, as summarized above, it is the applicant's opinion that the proposed project, including Department of Environmental Protection compliant stormwater management; and 3,428 square feet of Riverfront Area mitigation will have no significant adverse impact on the Riverfront Area to protect the interests identified in the Act and that the mitigation planting area will improve the natural capacity of the Riverfront Area to protect the interests of the Act.

### **SUMMARY AND CONCLUSION**

- Redevelopment project
  - 3,734 sf of existing, degraded impervious areas on site;
  - 3,721 sf of proposed impervious surfaces;
  - 2,870 sf of local Isolated Vegetated Wetland restoration;
  - 557 sf of local Isolated Vegetated Wetland alteration;
  - 558 sf of local Isolated Vegetated Wetland replication;
  - Total 3,428 sf of Riverfront Area restoration and improvement under IVW mitigation package.
- Wildlife habitat functions and native plant cover and diversity enhanced with mitigation areas;
- Proposed work to be located no closer (145 feet) to perennial stream;
- Stormwater managed in accordance with Mass DEP Stormwater Standards;
- No Estimated or Priority Habitats or Certified Vernal Pools on or in the vicinity of site;
- Wetlands Protection Act interests protected.

Attachments (2 pages)

# EcoTec, Inc.

## ENVIRONMENTAL CONSULTING SERVICES

102 Grove Street

Worcester, MA 01605-2629

508-752-9666 – Fax: 508-752-9494

**Paul J. McManus, LSP, PWS**

**President**

Paul McManus is the President and owner of EcoTec, Inc., which he founded in 1990. He has received certification as a Professional Wetlands Scientist (PWS) from the International Society of Wetlands Scientists (SWS), the leading professional organization in the field. He was elected President of the New England Chapter of SWS, and represented the Chapter on the International Board of Directors for several years, and currently serves as Chapter Past President and Treasurer. Mr. McManus is also a Massachusetts-certified Licensed Site Professional with experience that has included a wide range of site assessment and remediation projects, focused on the field of ecological risk assessment at contaminated sites. Prior to the founding of EcoTec, Mr. McManus was employed as the Senior Scientist at Harborline Engineering Inc. of New Bedford, MA and served for several years as a project manager at the Gulf of Maine Research Center Inc. in Salem, MA. His experience also includes employment as an aquatic ecologist at the Massachusetts Division of Water Pollution Control. Mr. McManus brings a wide variety of environmental consulting experience to EcoTec, including wetland evaluation and delineation, lake and stream assessment, wildlife habitat evaluation, oil and hazardous materials assessment and ecological risk assessment, as well as a variety of other types of environmental impact assessment. Included among the major wetland projects he has completed are detailed wetland community surveys and impact restoration specifications for lengthy pipeline crossings of the Fowl Meadow "Area of Critical Environmental Concern" (ACEC). At the MWRA's Norumbega Reservoir property in Weston, he conducted the state and federal wetland delineations, was project manager for the related town-wide off-site vernal pool mitigation evaluation, and authored the project's wetland mitigation program, including vernal pool replication in support of a Wetlands Protection Act Variance and other environmental permits. He has directed hundreds of other wetlands projects at sites including large and small residential and commercial developments. He has completed all phases of environmental permitting work, including wetland delineation, replication and mitigation design, implementation, and monitoring in freshwater wetlands and salt marsh, as well as general wildlife and rare species assessments and trapping, including marbled salamander, 4-toed salamander, spotted turtle, and eastern box turtle, under the MA Wetlands and Endangered Species Act Regulations. Permitting efforts regularly include federal, local and state permitting, including filings under the Massachusetts Environmental Policy Act (MEPA) regulations. Additional projects he has directed include major biological and chemical marine sampling programs; he has been involved in a variety of freshwater system evaluations, and conducted evaluations and sampling for proposed fresh water and marine dredging projects. He has conducted ecological risk assessments for aquatic and terrestrial biota, including state-listed species, at numerous locations of contamination by oil and hazardous materials. Mr. McManus serves as a consultant on behalf of government, business, major utility companies, the development community, conservation commissions, and concerned citizens' groups. He presently serves on a regular basis as technical wetlands consultant for the Town of Dover Conservation Commission, and works regularly for other Commissions providing peer review expertise on a wide variety of projects.

**Education:** Master of Science: Applied Marine Ecology - University of Massachusetts/Boston, 1988  
Bachelor of Arts: Biology (Ecology emphasis) – College of the Holy Cross, Worcester, MA, 1984  
U.S. Fish and Wildlife Service: Habitat Evaluation Procedure (HEP) Certification  
Massachusetts Division of Water Pollution Control: Algal Assay (eutrophication) Short Course

**Professional Affiliations:** Massachusetts Association of Conservation Commissioners  
**(Partial list)** Society of Wetland Scientists (Past President of the New England Chapter)  
Association of Massachusetts Wetlands Scientists  
Society of Environmental Toxicology and Chemistry

**Certifications:** Society of Wetlands Scientists Professional Wetlands Scientist # 962  
Commonwealth of Massachusetts Licensed Site Professional # 5711  
OSHA Health & Safety Hazardous Waste Safety Training, 29 CFR 1910.120 (40 hr & refresher)

# EcoTec, Inc.

---

## ENVIRONMENTAL CONSULTING SERVICES

102 Grove Street  
Worcester, MA 01605-2629  
508-752-9666 – Fax: 508-752-9494

### **Scott Jordan, CPESC** Senior Environmental Scientist

Scott Jordan is an Environmental Scientist with EcoTec, Inc. Since joining EcoTec in 2000, Mr. Jordan's duties have included wetland resource evaluation and delineation; erosion and sediment control planning and monitoring, environmental monitoring, including water quality analysis, sediment analysis and wildlife habitat impact analysis; environmental permitting at local, state, and federal level; pond and stream evaluation; wildlife habitat evaluation, vernal pool evaluation; and wetland restoration and replication design and oversight. He has served as an environmental consultant to the development community, engineering firms, municipalities, and conservation commissions. Prior to joining EcoTec, Mr. Jordan was the Senior Laboratory Technician for GeoComp Corporation where he performed numerous physical properties analysis of soils and geosynthetic materials in accordance with ASTM, and AASHTO specifications. His approximately seven years experience evaluating New England soils includes soil analysis and classification of site-remediated soils with oil and hazardous material contamination. His educational background includes courses in organic and inorganic chemistry, biology, botany and comparative vertebrate physiology, with extensive coursework in ecology and wildlife biology; and he has completed several professional training seminars including erosion and sediment control, soil evaluation, wildlife habitat evaluation, wetland mitigation, vernal pool evaluation, water quality assessment using macro-invertebrates, and river morphology and functions. He has participated in several rare species and wildlife monitoring and inventory projects, including marsh bird surveys, marbled salamander (*Ambystoma opacum*) survey, great laurel (*Rhododendron maximum*) survey, wood turtle (*Glyptemys insculpta*) habitat assessments and sweeps, eastern box turtle (*Terrapene carolina*) habitat assessments, and greater black-backed gull (*Larus marinus*) inventory. His prior research experience includes behavioral and acoustic studies of the common loon (*Gavia immer*) in northwestern Maine.

**Education:** Bachelor of Science: Biology - Wildlife and Environmental, *Cum Laude*  
Framingham State College, 2000  
Biotechnology Certificate  
Middlesex Community College, 1994

#### **Professional**

**Affiliations:** Certified Professional in Erosion and Sediment Control (Cert. #3644)  
Massachusetts Association of Conservation Commissioners  
Association of Massachusetts Wetland Scientists  
Society of Wetland Scientists  
Society of Soil Scientists of Southern New England