



TOWN OF BRAintree

REQUEST FOR PROPOSALS (RFP)

**DISPOSITION OF TOWN PROPERTY –
44 ALLEN STREET**

Release Date: August 6, 2020

DUE: October 8, 2020 at 12pm (noon)

Contact:

Lorraine See
Contract Administrator
Braintree Town Hall
One John F. Kennedy Memorial Drive
Braintree, MA 02184
lsee@braintreema.gov



Legal Advertisement

TOWN OF BRAINTREE DISPOSITION OF TOWN PROPERTY – 44 ALLEN STREET REQUEST FOR PROPOSALS (RFP)

The Town of Braintree, pursuant to M.G.L. 30B, is seeking proposals from qualified proposers for the sale and redevelopment of the Property located at 44 Allen Street for a multi-unit residential use. The Request for Proposals (“RFP”) may be obtained from the Town website at <http://www.braintreema.gov/Bids.aspx> on August 6, 2020. Proposals are due on October 8, 2020 until 12:00 PM (noon) to Lorraine See, Braintree Town Hall, One John F. Kennedy Memorial Drive, Braintree, MA 02184. Price and technical proposals must be submitted separately, sealed, and clearly marked. Proposals that are not prepared as required will be considered non-responsive. E-Mail submissions will not be accepted. It is the sole responsibility of a Respondent to ensure that the proposal arrives on time at the designated place. It is strongly recommended that proposals are mailed or delivered in advance of the due date and time. Late proposals will not be accepted.

The Town reserves the right to cancel all or part of this solicitation and to reject in whole or part any and all proposals. Notice is also available at www.masspublicnotices.org.

DISPOSITION OF PROPERTY BY TOWN OF BRAINTREE

Property at 44 Allen Street
Assessors' Map 3004 Plots 7, 8 and 9

SECTION I: INTRODUCTION & PROPERTY DESCRIPTION

A. Introduction

In accordance with G.L. c. 30B, the Town of Braintree (Town) is offering for sale, through this Request for Proposal (RFP), a parcel of land owned by the Town and located at 44 Allen Street (Property), adjacent to the Monatiquot River. The Property consists of Plots 7, 8, and 9 as shown on Assessors Map 3004, with an area, according to the Assessors' records, of 1.6 acres. See Aerial of Assessors Plan with Property Cards, in the project-related documents that are available at <http://www.braintreema.gov/Bids.aspx>.

The purpose of the RFP is to solicit proposals for the sale and redevelopment of the Property for a multi-unit residential use. The objective of the Town is that the Property is to be redeveloped for residential occupancy at a scale that is appropriate to the site, in harmony with the neighborhood, and in compliance with existing zoning, and that the principal structure on the Property (formerly used for an industrial purpose) be preserved through rehabilitation and reuse for residential purposes. Based on prior feasibility studies and the success of recent developments in the vicinity, as well as the nearby location of a commuter rail station with convenient service to Boston, the Town believes that the Property offers a unique opportunity for a high-quality transit-oriented residential development.

The Town of Braintree seeks responses from qualified individuals, firms, and/or development teams with demonstrated experience in multi-family residential development, particularly with the reuse and repurposing of municipally-owned structures and properties. Specific requirements for proposal contents are listed below in Section VI.

B. Property Description

The Property was formerly the site of the Braintree Electric Light Department (BELD) power plant. The Property has approximately 500 linear feet of frontage on Allen Street, a public way, near its intersection with Quincy Avenue. The Property has an elevation of 21 feet at Allen Street and slopes downward to an 8-foot elevation at the Property shoreline on the Monatiquot River. See "*Compiled Plan of Town of Braintree Property on Allen Street*" (dated 6/23/15) and "*Property at 44 Allen Street*" (undated), available at <http://www.braintreema.gov/Bids.aspx>. The Property has approximately 600 linear feet of frontage on the Monatiquot River, which is a tributary to the Weymouth Fore River that flows into Hingham Bay. The southerly portion of the Property lies within the 100-year floodplain. Portions of the Property are filled tidelands. (Licenses granted under M.G.L. c. 91 are discussed below.)

Two points of access presently exist via the paved driveways located at both the northeast and northwest frontage of the Property with curb cuts off Allen Street. A Town sanitary sewer main runs across the Property, parallel with the River and Allen Street. See “*Taking for Sewers*” (Plan Nos. 10 and 11) and accompanying deed, available at <http://www.braintree.ma.gov/Bids.aspx>.

There are currently four buildings located on the Property. The largest structure, known as the “Switch House,” was constructed in 1948 (incorporating, on the western side of the structure, two smaller sections that were constructed in the 1920’s and 1930’s). With distinctive architecture and high ceilings, the Switch House offers an opportunity for preservation and adaptation for reuse. The Switch House faces Allen Street, as does the “Administration Building,” a less significant structure that may, nonetheless, be reusable, in whole or part. The area between the Switch House and the Administration Building was formerly occupied by a power plant, which was razed in the 1990’s; portions of the building’s foundation remain. There are two smaller structures closer to the River, the “Screen House” and the “Pipe Shop,” which are in poor condition and are not expected to be preserved as part of the redevelopment of the Property.

For several years, the Braintree Yacht Club has been allowed, under a license agreement with the Town, to place seasonal docks along the Property waterfront, for use by the Yacht Club’s members. The Yacht Club is located on the east side of Quincy Avenue, and its members access the seasonal docks by a floating walkway under the Quincy Avenue bridge. It is understood that this license agreement would terminate upon the conveyance of the Town’s ownership interest in the Property.

C. Historical Background

The Town acquired the middle parcel of the Property (Lot 8) in 1892, and BELD, a municipally-owned utility, thereafter constructed an electricity generation facility on the site to provide electrical power for homes and businesses in Braintree. The Town acquired Lot 7 in 1930, and Lot 9 in 1947, both by takings. See ‘*Deeds and Plans for Lots 7, 8, and 9*’, available at <http://www.braintree.ma.gov/Bids.aspx>.

In 1993, BELD ceased to use the Property for power generation and moved its operations to a new site. The buildings on the Property were vacated, and subsequent use of the Property has been limited to temporary storage of equipment and materials, and as a staging area for Town-related projects. In 2011, BELD transferred control of the Property to the Town. The Office of the Mayor initiated a study to explore the potential redevelopment of the property.

SECTION II: PURPOSE / ZONING / ENVIRONMENTAL INVESTIGATIONS

A. Town Purposes and Objectives

The Town desires to return the Property to a productive use as a residential development. This objective was determined on the basis of planning studies conducted over a several-year period

that reviewed alternative uses of the Property, and that considered financial feasibility, community goals, and other factors. The Community Design Research Center (CDRC) was engaged to facilitate a public outreach program and participation by residents, Town officials, members of the East Braintree Civic Association and local business owners in the immediate neighborhood, to determine the community's vision for the redevelopment of the Property. The conclusion was that the Property was best suited for residential development, focused on the reuse of the Switch House. See "*Braintree Electric Light Department: Brownfield Revitalization + Community Engagement*" (CDRC-Boston, November 2010), available at <https://braintreema.gov/Bids.aspx>.

A subsequent feasibility study analyzed the potential for reuse of the structures on the Property, and estimated that approximately 30-35 dwelling units could be constructed, with some units to be located within the Switch House and others in new, architecturally compatible construction. The feasibility study also concluded that the topography of the site would allow parking to be placed, in part, beneath the structures. See "*Braintree Electric Light Department: Pre-Development Feasibility Study*" (Gamble Associates, April 2014), available at <https://braintreema.gov/Bids.aspx>. (Environmental studies and remediation activities are discussed separately, below.)

The Property is within walking distance of the Weymouth Landing/East Braintree Station on the "Greenbush Line" of the MBTA commuter-rail system. The Station is less than a thirty-minute train ride from South Station in downtown Boston. This proximity to commuter-rail service makes the Property an attractive location for a transit-oriented development. Further, the Property is, likewise, within a short walk of the Braintree-Weymouth Landing residential/commercial district, which has been redeveloped and revitalized over the past decade through the joint efforts of the Towns of Braintree and Weymouth to make public infrastructure improvements and to create favorable zoning regulations.

The Property is also within walking distance of Watson Park, a major public recreational site in East Braintree, and (as noted above) the Braintree Yacht Club. As an additional recreational resource, the Town has been engaged in developing a public walkway along the Monaquot River that would extend across multiple properties. In conjunction with the redevelopment of the Property, the Town would retain an easement to extend this "Riverwalk" across the Property, providing public access to the waterfront while also offering an amenity to the new residents of the Property.

In May 2020, Shepherd Associates submitted an Appraisal Report to the Town for the Property. The appraised market value for the fee simple estate, based on the highest and best use as multi-family residential (assuming the construction of up to 35 units), was estimated as \$1,300,000. See "*Real Property Appraisal Report*" (Shepherd Associates, May 2020), available at <http://www.braintreema.gov/Bids.aspx>.

B. Zoning and Other Land-Use Regulations

In 2015, the Braintree Town Council rezoned the Property so as to include it in the Braintree-Weymouth Landing District, a new zoning district that was created in 2011 to encourage

redevelopment and a mix of residential and commercial uses within the Landing. Multifamily use is allowed in the Landing District by special permit, issued by the Planning Board. The zoning provisions for the Landing District are included in the Town Zoning Ordinance at Sections 135-615-01 through 135-615-14. See “*Zoning Ordinance §135-615 and Table of Uses*”, available at <http://www.braintree.ma.gov/Bids.aspx>. (The entire Town Zoning Ordinance is available at <https://www.ecode360.com/14707492>.) Of note, the Landing District zoning regulations authorize the Planning Board, by special permit, to allow modifications to density and dimensional requirements for a project that provides a publicly accessible waterfront walkway or the preservation and reuse of historic buildings.

A portion of the Property is within the 100-year floodplain, as designated on FEMA Flood Insurance Rate Maps. See “*National Flood Hazard Layer FIRMette*,” FIRM Panel No. 25021C0226F, effective 6/9/2014, available at <http://www.braintree.ma.gov/Bids.aspx>. As such, that portion of the Property is within the Wetlands and Floodplain Protection District, an overlay district, and is subject to the permitting requirements of Section 135-609 of the Zoning Ordinance, available at <https://www.ecode360.com/14707492>.

The Town has considered the addition of an “inclusionary zoning” provision to the Town Zoning Ordinance, so as to require multifamily developments to designate a minimum of fifteen percent of the units as affordable housing. The Town will include this requirement as a condition for the sale of this Property, regardless of whether the Zoning Ordinance is revised to include such a provision.

The Property is also subject to the jurisdiction of the Braintree Conservation Commission, which administers the provisions of the Wetlands Protection Act and the Braintree Wetlands Ordinance (Chapter 12.20 of the Town General Ordinances, available at <https://www.ecode360.com/14706833>).

Given the Property’s proximity to the Monaquot River, redevelopment proposals may also be subject to the jurisdiction of the Department of Environmental Protection (DEP) under the Waterways Act, M.G.L. c. 91. Portions of the Property are historic tidelands that were filled pursuant to licenses granted by state boards and agencies to the Town and/or BELD. In particular, licenses were granted in 1940, 1943, 1944, 1948, and 1952 for filling and the construction of seawalls, bulkheads, and other structures. For the licenses and plans recorded in the Norfolk County Registry of Deeds that have been located by the Town, see “Chapter 91 Licenses & Plans 1940-52”, available at <https://braintree.ma.gov/Bids.aspx>. (The Town makes no representation that the referenced documents include all waterways licenses that pertain to the Property.)

C. Environmental Conditions and Investigations

In anticipation of making the Property available for reuse and redevelopment, the Town has commissioned assessments and evaluations of environmental conditions on the Property, as well as assessments of the structures (particularly the Switch House) for the presence of hazardous materials and a review of structural integrity. Summaries of these investigations are presented below, solely as an overview of the previous studies. The summaries are not intended to be

relied upon by interested Proposers, who are responsible for undertaking their own independent review of the cited reports and documents (available at <https://braintreema.gov/Bids.aspx>) as well as any additional documents submitted to DEP pursuant to M.G.L. c. 21E (available at <https://eeaonline.eea.state.ma.us/portal#!/wastesite/4-0026207>).

1. Environmental Investigations and Remediation Pursuant to M.G.L. c. 21E

Given the prior uses of the Property, the Town and BELD (as the prior operator of the Property) engaged environmental consultants to conduct thorough investigations of environmental conditions on the Property and to undertake necessary remedial actions pursuant to M.G.L. c. 21E. These activities culminated with the filing of the “*Release Abatement Measure Completion Report and Permanent Solution Statement*” (Weston & Sampson, June 2017), available at <https://braintreema.gov/Bids.aspx>.

In 2013, Weston & Sampson Engineers performed an initial Phase I Environmental Site Assessment (ESA) of the Property. See “*ASTM Phase I Environmental Site Assessment*” (Weston & Sampson, May 2013), included in “*Braintree Electric Light Department: Pre-Development Feasibility Study—Appendix*” (Gamble Associates, April 2014), available at <https://braintreema.gov/Bids.aspx>. Based on the findings of the Phase I ESA, Weston & Sampson was retained to undertake a Phase II ESA on the Property, which was conducted in early 2016. The Phase II ESA identified lead and hydrocarbons in fill material soil samples that were at levels reportable under the Massachusetts Contingency Plan, as well as petroleum-impacted soil in the vicinity of petroleum underground storage tanks that had been removed in 2011. See “*Phase II Environmental Site Assessment*” (Weston & Sampson, Feb. 2016) and “*Focused Method 3 Risk Characterization*” (Weston & Sampson, April 2016), available at <https://braintreema.gov/Bids.aspx>. In June 2016, a Release Notification Form was submitted to DEP, which assigned Release Tracking Number (RTN) 4-26207 to the Property. See “*Release Notification Form*” (June 2016), and “*Notice of Responsibility*” (January 2017), available at <https://braintreema.gov/Bids.aspx>.

In July-August 2016, Weston & Sampson performed an additional Phase II assessment of the Property to determine the nature and extent of impacted soils. See “*Additional Phase II Environmental Site Assessment*” and “*Updated Method 3 Risk Characterization*” (Weston & Sampson, Aug. 2016), available at <https://braintreema.gov/Bids.aspx>. This assessment concluded that removal of an area of fill with elevated lead levels at one location on the Property would allow the Property to be characterized as having a condition of No Significant Risk. A plan was subsequently prepared for the excavation and removal of an area of lead-impacted soil. See “*Release Abatement Measure Plan*” (Weston & Sampson, March 2017), available at <https://braintreema.gov/Bids.aspx>.

In November 2016 to January 2017, Weston & Sampson undertook additional investigations of the area of petroleum-impacted soil (approximately 900 square feet). Groundwater sampling did not identify concentrations of hydrocarbons or volatile organic compounds above applicable standards. A risk characterization concluded that the petroleum-impacted soil was not a significant source of impact to groundwater, and that remedial actions were not required for that

soil. See “*Release Abatement Measure Completion Report and Permanent Solution Statement*” (Weston & Sampson, June 2017), available at <https://braintree.ma.gov/Bids.aspx>.

Soil gas samples were also collected from the location of one of the previously-removed underground storage tanks near the former Administration Building, the area on the site that had the highest detected concentrations of gasoline in the soil. Hydrocarbon concentrations in these samples were detected at concentrations below DEP Soil Gas Screening Levels for residential buildings. *Id.*

Following the submission of the “*Release Abatement Measure Plan*” approximately 55 tons of lead-impacted fill soil was excavated and removed. Subsequent revised risk characterization established that the RAM activities had been successful in reducing lead concentrations in the affected area, and that residual impacted soil did not represent a significant risk to human health and the environment for potential use of the Property. See “*Release Abatement Measure Completion Report and Permanent Solution Statement*”.

Weston & Sampson concluded that, as a result of the remediation activities, a condition of No Significant Risk now existed on the Property, and that the Property now met the requirements for a Permanent Solution, with the sole condition being that Best Management Practices be followed for any non-commercial gardening on the Property. See *id.*, and “*Permanent and Temporary Solution Statement*” (filed June 5, 2017), available at <https://braintree.ma.gov/Bids.aspx>.

2. Assessment of Asbestos, Lead, and other Hazardous Materials Within the Structures

In addition to the assessment and remediation of site conditions, the presence of hazardous materials within the structures that are to be reused or demolished has also been evaluated. In December 2013, Weston & Sampson submitted a “Hazardous Materials Assessment” to the Town. In summary, the Assessment identified the presence of asbestos-containing materials (ACM) in the Switch House and Administration Building, particularly in floor tiles, pipe fitting insulation, and caulking. The Assessment also surveyed and identified the presence of lead-based paint (LBP), which would require OSHA regulatory requirements be followed for the protection of construction workers. Window and door caulking samples were analyzed for the presence of PCBs; low concentrations were detected in a few samples, but were below regulatory standards. A survey was also made of “Regulated Materials,” such as fluorescent light bulbs and tubes. The cost for asbestos removal was estimated at \$48,000, and for the removal of Regulated Materials as \$7,000. See “*Hazardous Materials Assessment*” (Weston & Sampson, Dec. 2013) and “*Pre-Renovation Asbestos Containing Materials, Lead Based Paint, Regulated Materials and Suspect PCBs in Caulking Inspection Report*” (Vertex Air Quality Services, Nov. 2013), included in “*Braintree Electric Light Department: Pre-Development Feasibility Study—Appendix*” (Gamble Associates, April 2014), available at <https://braintree.ma.gov/Bids.aspx>. (As the presence of these hazardous materials would be addressed during construction, the Town has not undertaken any subsequent measures to remove these materials.)

The structural condition of the Switch House has also been examined. In January 2011, AECOM submitted a report entitled “*Structural Condition Assessment: ‘Switch House’*”. In

summary, AECOM determined that the Switch House is “in relatively good and sound condition, and conditionally acceptable for reuse,” subject to further more detailed investigations. AECOM noted that while the main section of the Switch House was constructed in 1948, two small sections of the building attached to the west end of the main section had likely been constructed in the 1920’s and 1930’s, and were more deteriorated. It was AECOM’s judgment that these two older sections would likely need to be removed in conjunction with the rehabilitation of the main portion of the building. (This removal would require the construction of a new exterior west wall for the main section.) *Id.*, available at <https://braintree.ma.gov/Bids.aspx>.

SECTION III: MINIMUM CONDITIONS AND REQUIREMENTS FOR PROPOSALS

Based on prior feasibility studies and community engagement, as well as existing site conditions, the Town offers the Property for sale subject to the following:

- (1) Proposals shall be for multifamily residential development (either as rental units, or as condominium units for purchase). A minimum of thirty units shall be proposed. (As noted above, a greater number of units may be feasible.)
- (2) Adaptive re-use of the main portion of the Switch House (i.e., the section constructed in 1948) is preferred. Any new construction on the site shall be designed to use building materials comparable to and compatible with the appearance of the Switch House.
- (3) A maximum of four stories above grade may be proposed for the residential structures, subject to approval of a special permit by the Planning Board, with the option of providing subsurface parking in a basement level in order to reduce the amount of surface parking that is needed.
- (4) A minimum of fifteen percent of the units shall be designated as affordable housing units that are eligible for inclusion in the DHCD inventory as Local Action Units, in order to advance the Town’s affordable-housing objectives.
- (5) Given the existing location of the Town sewer main that bisects the Property, and a manhole on the sewer main that is accessed during storm events to convey surcharge overflows to the River (pursuant to DEP authorization), the conveyance of the Property will be subject to the grant to the Town of a twenty-foot-wide sewer easement in the location of the sewer main, with the right to convey overflows to the River.
- (6) The conveyance will also be subject to the grant of an easement to the Town for the development and use of the “Riverwalk,” a public walkway and passive recreational area along the Property’s shoreline on the Monaquot River, with public access to be provided from Allen Street across the Property to the walkway.
- (7) **The Conveyance of Property Is to Be on an “As Is” Basis.** Given the extent of the prior environmental investigations and remediation measures described in Section II, the Town will expect the selected Proposer to purchase the Property in an “as is” condition,

subject to a reasonable period for due diligence. The form of Purchase and Sales Agreement attached to this RFP (see Appendix C) reflects this expectation.

SECTION IV: KEY DATES FOR THE REQUEST FOR PROPOSALS

August 5, 2020	Advertised in the Central Register
August 6, 2020	First Advertisement in the Braintree Forum
August 13, 2020	Second Advertisement in the Braintree Forum
September 17, 2020 @4 PM	Deadline for questions to Lorraine See, Purchasing Department
September 24, 2020 @2 PM	Last Day Addenda will be issued
October 8, 2020 @12 PM	Deadline to submit Proposals to Purchasing Department
Within 60 Days of Submission Deadline:	Award of Project to Selected Proposer

SECTION V: PROPOSAL SUBMITTAL PROCESS

Parties interested in responding to this RFP are invited to submit a proposal in accordance with the following terms and conditions. With submission of a response to this RFP, the interested party acknowledges that he or she has read and understands the requirements and conditions herein.

A. Availability of Request for Proposals

The Request for Proposals (“RFP”) may be obtained from the Town website at <http://www.braintreema.gov/Bids.aspx>, beginning August 6, 2020. Proposers are responsible for checking the website periodically for any addenda issued by the Town.

B. Submission Deadline

Proposals must be received before 12:00 PM (Noon) on October 8, 2020, by Lorraine See, Braintree Town Hall, One John F. Kennedy Memorial Drive, Braintree, MA 02184.

E-Mail submissions will not be accepted. Late proposals will not be accepted. Any proposal received after the date and time stated in the Legal Advertisement will be deemed “non-eligible” and shall not be opened. It is the sole responsibility of a Respondent to ensure that the proposal arrives on time at the designated place. It is strongly encouraged recommended that proposals are mailed or delivered in advance of the due date and time.

C. Contents of Proposal Response Package

The proposal response package must include a price proposal and a development proposal in separate, sealed envelopes. The development proposal must not include reference to a purchase price.

The proposal response package shall include one (1) unbound original and six (6) bound copies of the development proposal, complete with all back-up materials, and one electronic copy of the proposal on a CD/DVD or USB memory stick.

D. Proposal Security

Proposal security in the form of a certified check, cashier's check or bid bond payable to the Town of Braintree in the amount of five percent (5%) of the Proposer's proposed purchase price must accompany the proposal package, in a sealed envelope. The proposal security of parties not selected will be returned promptly after the award of the Project to a selected Proposer. Proposal packages which fail to include such security will be summarily rejected as non-responsive.

E. Pre-Submittal Site Visit

The Town will conduct a site visit of the Property for interested parties on August 27, 2020, at 10 a.m. Depending on the number of interested parties, additional site visits may be scheduled. To arrange for access to the Property on another date, please contact Lorraine See at the Purchasing Department well in advance to make arrangements. Proposers shall not visit the site unaccompanied.

F. Questions / Requests for Clarification

Questions and requests for clarification of the provisions of this RFP, including the documents attached hereto, shall be submitted no later than September 17, 2020, at 4 p.m., in order to afford the Town adequate time to respond prior to the deadline for submission of proposals. Such questions shall be submitted, in writing, to the Purchasing Department, Braintree Town Hall, One JFK Memorial Drive, Braintree, MA 02184 with "44 Allen Street" marked on the outside of the envelope, or may be submitted by email to lsee@braintreema.gov, with "44 Allen Street" in the subject line.

G. Modification / Cancellation of the RFP

If deemed necessary by the Town, the RFP may be amended or revised, or an addendum issued, as a result of the questions submitted or for any other reason. Such amendments, revisions, and/or addenda will be provided, in writing, prior to the proposal submission deadline to all parties that have obtained copies of the RFP. The Town reserves the right, at its sole discretion, to extend the submission deadline for all applicants if, in the Town's judgment, such an extension is warranted by the nature of the changes to the RFP.

The Town also reserves the right to cancel the RFP, without liability, if deemed to be in the best interests of the Town.

H. Amendment and/or Withdrawal of Proposals

Proposers may correct or modify their submitted proposals prior to the proposal submission deadline by submitting such corrections and/or modifications to the Purchasing Department in sealed envelopes, clearly marked to indicate the contents and bearing the name and address of the Proposer.

Submitted proposals may be withdrawn prior to the proposal submission deadline by written request to the Purchasing Department.

I. Obligations and Responsibilities of Proposers

All costs incurred by a Proposer in the preparation and submission of responses to this RFP are solely the responsibility of the Proposer. The Town shall not be liable for such costs under any circumstances.

Proposals may not be withdrawn, amended or modified for a period of one hundred and eighty (180) days from the deadline for submission of proposals. Proposers are responsible for errors and omissions in their responses, and any such errors and omissions will not alter a Proposer's legal obligations to the Town. All warranties, commitments and representations made in the selected proposal shall be binding and shall become contractual obligations of the selected Proposer to the Town, unless the Town in its sole discretion waives any such warranty, commitment, or representation.

J. Governed by Law

The proposer's attention is directed to the fact that all applicable federal and state laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over municipal finance shall apply to the contract throughout, and they shall be deemed to be included in the contract the same as though herein written out in full.

K. Non-Collusion

It is understood that the proposer has submitted the Proposal in good faith and has not colluded with any other individuals, firms, or corporations in creating the proposal to subvert the market process.

L. Bid Opening

Bids will be opened publicly at Braintree Town Hall, One John F. Kennedy Memorial Drive, Braintree, MA 02184 on the date and time that bids are due. A written register of all bids received, which shall include the name of the bidder and the proposal price, will be available at 12:00 p.m. on the business day following the bid opening. If, at the time of the scheduled bid

opening, the bid opening location is closed due to uncontrolled events, bids will be opened at 12:00 p.m. on the next full day that the bid opening location is open.

SECTION VI: PROPOSAL FORM AND CONTENTS

(NOTE: All submissions will be public records. Do not submit confidential materials.)

A. Format

Proposals must be submitted in an 8 1/2" x 11" format for text, and to the extent practical, for graphics. Oversized pages or graphics should be folded to 8 1/2" x 11".

B. Cover Letter

A cover letter shall include a statement of interest, identify the primary Proposer and contact person, the proposed Property purchaser, and the name, address and contact information of all interested parties.

C. Price Proposal and Proposal Security

As noted in Section V, a price proposal and the proposal security shall be included with the submission, in separate, sealed envelopes, labeled with the name and address of the Proposer.

D. Development Proposal Contents

1. Development Team Qualifications and Experience

The proposal must identify the principal and support members of the development team (i.e., the persons who will carry out the development plan). A resume for each person must be attached which demonstrates the qualifications, experience, and role of each member in the proposed development of the Property, and their collective and individual ability to carry out those roles. The proposal shall describe the development team members' general experience with property development and construction, and their particular experience with similar development projects. References for each development team member must also be included. Contact information for project references should be provided for each project, including reference name, title, daytime telephone and email address.

If a joint venture is proposed, the above information shall be provided for all parties to the joint venture, including the role of each party in the joint venture.

2. Financial Capacity

The proposal shall describe the sources of financing available to the development team for the Property acquisition and the Project development, in order to demonstrate that the Proposer has sufficient financial resources to purchase, develop, and complete the Project. The proposal

should explain how the development team has financed similar projects that the team has undertaken.

3. Project Narrative

The proposal shall include a Project Narrative that describes the overall concept and vision for the Project, and how the Project will meet the Town's development objectives. The narrative shall also describe the structures to be contained in the Project (including reuse of existing buildings and new construction), the number and sizes of residential units to be included, and the type of unit (i.e., apartment or condominium) and operation / management of the completed Project, including how the Project will conform to the 15% affordable-housing requirement. The narrative shall review how the Project will conform to zoning and other permitting requirements.

4. Development Plans

The proposal shall include conceptual site plans, structural and architectural plans, landscaping plans, and parking plans, so as to illustrate the intended layout and physical appearance of the Project in relation to the site and abutting properties.

5. Permitting and Construction Schedule

The proposal shall provide an estimated permitting and construction schedule, with a development time line from the Town's selection of the Proposer, through design, permitting, construction, and marketing to occupancy.

6. Impact Analysis

The proposal shall provide a brief assessment of the anticipated economic impacts of the Project, including anticipated Town permit and tax revenues, impacts on municipal services, impacts on local businesses, and increases in employment. The impact analysis should also describe potential negative impacts and proposed mitigation measures to reduce or eliminate such impacts, including measures to encourage the use of public transit.

7. Preliminary Pro-Forma Budget

The proposal shall include a preliminary pro-forma budget for the Project to demonstrate its financial feasibility, including the expected range of residential unit sale prices or rental rates.

8. Other Required Documents

In addition to the proposal contents described above, each proposal must include the following executed documents (see forms in Appendix A):

- Proposal Cover Sheet
- Certificate of Authorization

- Certification of Non-Collusion
- Certification of Tax Compliance
- Disclosure Statement for Transaction With A Public Agency Concerning Real Property

SECTION VII: SELECTION PROCESS AND CRITERIA

Proposals will be reviewed by a committee of Town officials and staff to be designated by the Mayor. Each proposal will be evaluated based on its responsiveness to the proposal content requirements and the information contained in each proposal as to (among other factors) the Project team’s qualifications, experience, and financial capacity, as well as the quality of Project design and the degree to which the design proposal advances the Town’s development objectives for the site. For each criterion, proposals will be ranked “Highly Advantageous,” “Advantageous,” “Less Advantageous,” or “Non-Responsive.” The committee may determine that certain criteria are more significant than others in evaluating the relative merits of the Project proposals. See Appendix B.

The committee may check the previous-project references for one or more proposals and provide the Mayor with information received in that process.

After receiving the ranking of the proposals from the designated committee, the Mayor shall award the Project to the proposal that, in his judgment, is most advantageous to the Town, taking into consideration the selection criteria and the financial terms offered by the proposals. During its review process, the Town reserves the right to waive minor irregularities or defects contained in any proposal and to allow exceptions to the specifications and requirements herein, provided that such waiver or exception does not materially alter the conditions under which all proposals were submitted.

The Town anticipates that an award will be made within sixty (60) days of the Project submission deadline. All Proposers will be notified when the award is made. The Town reserves the right to extend the review period, and will so notify all Proposers if such an extension is made.

The Town reserves the right to reject any and all proposals submitted, without liability or penalty, if the Town, in its sole discretion, concludes that none of the proposals are acceptable, whether due to price considerations, the quality and adequacy of the development proposals, or both. All Proposers will be notified of such an outcome.

The proposal security of parties not selected will be returned promptly after the award of the Project to a selected Proposer.

SECTION VIII: EXECUTION OF AGREEMENT WITH SELECTED PROPOSER

A. Negotiations with Selected Proposer

The Proposer that is selected by the Town will be given exclusive rights for a period of forty-five (45) days to negotiate with the Town the terms of the Purchase and Sales Agreement (“P&S Agreement”) and to execute said P&S Agreement. The P&S Agreement shall be in substantially the same form as attached hereto as Appendix C. The P&S Agreement shall incorporate the terms and conditions of this RFP, shall contain provisions customary to purchase and sales agreements under similar circumstances, and shall incorporate, as an exhibit, a Land Development Agreement, which shall be in substantially the same form as attached hereto as Appendix D (subject to modifications based on the terms of the selected Proposer’s development proposal) and shall specify the development requirements that will continue to apply to the Project after the conveyance of the Property from the Town to the selected Proposer. The P&S Agreement shall provide that the Land Development Agreement is to be executed and recorded upon the delivery of the deed to the Property.

The exclusive negotiation period may be extended by mutual agreement of the parties, but the Town may decline to agree to such an extension and may terminate the negotiations, if the Town, in its sole discretion, determines that the negotiations are not proceeding to the satisfaction of the Town.

If the selected Proposer fails to execute a P&S Agreement, on terms agreeable to the Town, within the exclusive negotiation period (or a mutually-agreed-to extension of said period), the selected Proposer shall forfeit its proposal security as liquidated damages for the costs and delay incurred by the Town.

B. Selection of Alternate Proposer

In the event that the negotiations between the Town and the selected Proposer are terminated without the execution of a P&S Agreement, the Town may, at its sole discretion, decide to award the Project to another Proposer, based on the previously-submitted proposals, without issuing a new RFP. Said newly-selected Proposer shall resubmit its proposal security to the Town and enter into negotiations with the Town for the execution of a P&S Agreement, in accordance with the procedures described herein.

C. Issuance of Development Permits as Separate Process

The Mayor’s award of the Project to a selected Proposer does not presume that the Proposer’s development plans will receive final approval of any necessary permits from Town boards/commissions and state agencies. Such development plans will be subject to any and all appropriate permitting review processes by those entities, which operate independently in exercising their legal responsibilities under municipal ordinances and state statutes. Costs incurred by the selected proposer during the permitting process are solely the responsibility of the Proposer. The Town anticipates that the P&S Agreement will include contingencies for its termination if the permitting process does not result in approval of a feasible development proposal.

APPENDIX A:

Required Documents

TOWN OF BRAINTREE
REQUEST FOR PROPOSALS (RFP)
DISPOSITION OF TOWN PROPERTY – 44 ALLEN STREET
COVER SHEET

This must be the first page of the Proposal, no exceptions.

Name and Address of Proposer:

Contact Person for this Proposal:

Name: _____
Title: _____
Phone: _____
E-Mail: _____

Purchase Price Offered for Property:

Numerical: _____ \$ _____

In Words: _____

In the event of a discrepancy, the price in words prevails.

Signature*:

By signing this proposal for the Sale of Property at 44 Allen Street, I (we) hereby bind _____ (name of proposer) to all comments made in the proposal, and accept all of the provisions made in the Request for Proposals.

Name Title Date

Name Title Date

Signature must be authorized by a Certificate of Authorization (see next page)

Certificate of Authorization

(NOTE: A certified vote of the corporation may be substituted for this form.)

The Vendor, _____ is: (CHECK ONE)
(Name of Company/Consultant/Corporation)

_____ A. a corporation formed and existing under the laws of the state of _____, and pursuant to the corporate by-laws,

(Insert Name and Title of Authorized Representative)

is authorized to execute contracts in the name of said corporation. Such execution of any contract or obligation in this corporation's name on its behalf by such duly authorized individual shall be valid and binding upon the corporation.

_____ B. a limited liability company or a partnership formed and existing under the laws of the state of _____, and pursuant to the limited liability company agreement or partnership agreement,

(Insert Name and Title of Authorized Representative)

is authorized to execute contracts in the name of said company or partnership. Such execution of any contract or obligation in this company or partnership's name on its behalf by such duly authorized individual shall be valid and binding upon the company or partnership.

_____ C. is a sole proprietorship owned an operated exclusively by the undersigned.

(Insert Name and Title of Authorized Representative)

Execution of any contract or obligation in this sole proprietorship's name by such duly authorized individual shall be valid and binding.

Signature:
(Must be signed by Corporate Officer, Partner, or Sole Proprietor)

Print Name of Above

Title

Date

TOWN OF BRAINTREE
REQUEST FOR PROPOSALS (RFP)
DISPOSITION OF TOWN PROPERTY – 44 ALLEN STREET

CERTIFICATION OF NON-COLLUSION

The undersigned certifies under penalties of perjury that this bid or proposal has been submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union committee, club or other organization, entity or group of individuals.

For (Vendor/Company/Proposer) *

Signature

Printed Name: _____

Title: _____

Date: _____

*Must be signed by the person signing the bid, proposal, or contract.

TOWN OF BRAINTREE
REQUEST FOR PROPOSALS (RFP)
DISPOSITION OF TOWN PROPERTY – 44 ALLEN STREET

CERTIFICATION OF TAX COMPLIANCE

I, _____, for _____,
(Name of representative, position/title) (Company / Consultant/Proposer)

a Company, Consultant or Corporation existing or formed under the laws of

_____, having a principal place of business at
(state)

_____, hereby certify that the
(Company/Consultant/Corporation Business Address)

Company/Consultant/Corporation is in full compliance with all laws of the

Commonwealth of Massachusetts relating to taxes, as required by

Massachusetts General Laws, Chapter 62C, Section 49A.

Signed under pains and penalties of perjury this _____ day of
_____, 20__.

(signature of representative/position/title)

(print name of person signing above)

Date: _____

**DISCLOSURE STATEMENT FOR
TRANSACTION WITH A PUBLIC AGENCY CONCERNING REAL PROPERTY
M.G.L. c. 7C, s. 38 (formerly M.G.L. c. 7, s. 40J)**

INSTRUCTION SHEET

NOTE: The Division of Capital Asset Management and Maintenance (DCAMM) shall have no responsibility for insuring that the Disclosure Statement has been properly completed as required by law. Acceptance by DCAMM of a Disclosure Statement for filing does not constitute DCAMM's approval of this Disclosure Statement or the information contained therein. Please carefully read M.G.L. c. 7C, s. 38 which is reprinted in Section 8 of this Disclosure Statement.

Section (1): Identify the real property, including its street address, and city or town. If there is no street address then identify the property in some other manner such as the nearest cross street and its tax assessors' parcel number.

Section (2): Identify the type of transaction to which this Disclosure Statement pertains --such as a sale, purchase, lease, etc.

Section (3): Insert the exact legal name of the Public Agency participating in this Transaction with the Disclosing Party. The Public Agency may be a Department of the Commonwealth of Massachusetts, or some other public entity. Please do not abbreviate.

Section (4): Insert the exact legal name of the Disclosing Party. Indicate whether the Disclosing Party is an individual, tenants in common, tenants by the entirety, corporation, general partnership, limited partnership, LLC, or other entity. If the Disclosing Party is the trustees of a trust then identify the trustees by name, indicate that they are trustees, and add the name of the trust.

Section (5): Indicate the role of the Disclosing Party in the transaction by checking one of the blanks. If the Disclosing Party's role in the transaction is not covered by one of the listed roles then describe the role in words.

Section (6): List the names and addresses of every legal entity and every natural person that has or will have a direct or indirect beneficial interest in the real property. The only exceptions are those stated in the first paragraph of the statute that is reprinted in Section 8 of this Disclosure Statement. If the Disclosing Party is another public entity such as a city or town, insert "inhabitants of the (name of public entity)." If the Disclosing Party is a non-profit with no individual persons having any beneficial interest then indicate the purpose or type of the non-profit entity. If additional space is needed, please attach a separate sheet and incorporate it by reference into Section 6.

Section (7): Check "NONE" in the box if none of the persons mentioned in Section 6 is employed by DCAMM or an official elected to public office in the Commonwealth of Massachusetts. Otherwise list any parties disclosed in Section 6 that are employees of DCAMM or an official elected to public office.

Section (8): The individual signing this statement on behalf of the Disclosing Party acknowledges that he/she has read the included provisions of Chapter 7C, Section 38 (formerly Chapter 7, Section 40J) of the General Laws of Massachusetts.

Section (9): Make sure that this Disclosure Statement is signed by all required parties. If the Disclosing Party is a corporation, please make sure that this Disclosure Statement is signed by a duly authorized officer of the corporation as required by the statute reprinted in Section 8 of this Disclosure Statement.

DCAMM's acceptance of a statement for filing does not signify any opinion by DCAMM that the statement complies with applicable law.

This completed and signed Disclosure Statement should be mailed or otherwise delivered to:

Deputy Commissioner for Real Estate
Division of Capital Asset Management and Maintenance
One Ashburton Place, 15th Floor, Boston, MA 02108

The undersigned party to a real property transaction with a public agency hereby discloses and certifies, under pains and penalties of perjury, the following information as required by law:

(1) REAL PROPERTY:

(2) TYPE OF TRANSACTION, AGREEMENT, or DOCUMENT:

(3) PUBLIC AGENCY PARTICIPATING in TRANSACTION:

(4) DISCLOSING PARTY'S NAME AND TYPE OF ENTITY:

(5) ROLE OF DISCLOSING PARTY (Check appropriate role):

_____ Lessor/Landlord

_____ Lessee/Tenant

_____ Seller/Grantor

_____ Buyer/Grantee

_____ Other (Please describe): _____

(6) The names and addresses of all persons and individuals who have or will have a direct or indirect beneficial interest in the real property excluding only 1) a stockholder of a corporation the stock of which is listed for sale to the general public with the securities and exchange commission, if such stockholder holds less than ten per cent of the outstanding stock entitled to vote at the annual meeting of such corporation or 2) an owner of a time share that has an interest in a leasehold condominium meeting all of the conditions specified in M.G.L. c. 7C, s. 38, are hereby disclosed as follows (attach additional pages if necessary):

NAME

RESIDENCE

(7) None of the above-named persons is an employee of the Division of Capital Asset Management and Maintenance or an official elected to public office in the Commonwealth of Massachusetts, except as listed below (Check "NONE" if NONE):

NONE

NAME:

POSITION:

- (8) The individual signing this statement on behalf of the above-named party acknowledges that he/she has read the following provisions of Chapter 7C, Section 38 (formerly Chapter 7, Section 40J) of the General Laws of Massachusetts:

No agreement to rent or to sell real property to or to rent or purchase real property from a public agency, and no renewal or extension of such agreement, shall be valid and no payment shall be made to the lessor or seller of such property unless a statement, signed, under the penalties of perjury, has been filed by the lessor, lessee, seller or purchaser, and in the case of a corporation by a duly authorized officer thereof giving the true names and addresses of all persons who have or will have a direct or indirect beneficial interest in said property with the commissioner of capital asset management and maintenance. The provisions of this section shall not apply to any stockholder of a corporation the stock of which is listed for sale to the general public with the securities and exchange commission, if such stockholder holds less than ten per cent of the outstanding stock entitled to vote at the annual meeting of such corporation. In the case of an agreement to rent property from a public agency where the lessee's interest is held by the organization of unit owners of a leasehold condominium created under chapter one hundred and eighty-three A, and time-shares are created in the leasehold condominium under chapter one hundred and eighty-three B, the provisions of this section shall not apply to an owner of a time-share in the leasehold condominium who (i) acquires the time-share on or after a bona fide arms length transfer of such time-share made after the rental agreement with the public agency is executed and (ii) who holds less than three percent of the votes entitled to vote at the annual meeting of such organization of unit owners. A disclosure statement shall also be made in writing, under penalty of perjury, during the term of a rental agreement in case of any change of interest in such property, as provided for above, within thirty days of such change.

Any official elected to public office in the commonwealth, or any employee of the division of capital asset management and maintenance disclosing beneficial interest in real property pursuant to this section, shall identify his position as part of the disclosure statement. The commissioner shall notify the state ethics commission of such names, and shall make copies of any and all disclosure statements received available to the state ethics commission upon request.

The commissioner shall keep a copy of each disclosure statement received available for public inspection during regular business hours.

- (9) This Disclosure Statement is hereby signed under penalties of perjury.

PRINT NAME OF DISCLOSING PARTY (from Section 4, above)

AUTHORIZED SIGNATURE of DISCLOSING PARTY DATE (MM / DD / YYYY)

PRINT NAME & TITLE of AUTHORIZED SIGNER

APPENDIX B:

Selection Criteria

Criteria	Highly Advantageous	Advantageous	Less Advantageous	Non-Responsive
Qualifications of Key Personnel	All Project Principals have <u>ten or more</u> years of experience with multiunit residential projects of similar size and scope.	All Project Principals have <u>five or more</u> years of experience with multiunit residential projects of similar size and scope.	All Project Principals have <u>one or more</u> years of experience with multiunit residential projects of similar size and scope.	One or more of the Project Principals lacks experience with multiunit residential projects of similar size and scope.
Development Team Experience	Team has worked on three or more projects of similar size and scope in Massachusetts.	Team has worked on two or more projects of similar size and scope in Massachusetts.	Team has worked on one project of similar size and scope in Massachusetts.	Team has not worked on projects of similar size and scope in Massachusetts.
Financial Capacity of Development Entity	Financial Statements demonstrate <u>superior</u> financial strength and stability, with no pending conditions affecting the entity's ability to perform.	Financial Statements demonstrate <u>good</u> financial strength and stability, with no pending conditions affecting the entity's ability to perform.	Financial Statements demonstrate <u>marginal</u> financial strength and stability, and/or the presence of a pending condition affecting the entity's ability to perform.	Financial Statements demonstrate <u>poor</u> financial strength and stability, with more than one pending condition affecting the entity's ability to perform.
Ability to Obtain Financing	Proposal <u>clearly demonstrates</u> the proposer's ability to obtain financing.	Proposal <u>somewhat demonstrates</u> the proposer's ability to obtain financing.	It is <u>unclear</u> whether the proposer will be able to obtain financing.	Proposal has <u>no elements</u> that address the proposer's ability to obtain financing.
Municipal Redevelopment Experience	Team has worked on three or more projects involving redevelopment of municipally-owned sites	Team has worked on two or more projects involving redevelopment of municipally-owned sites	Team has worked on one or more projects involving redevelopment of municipally-owned sites	Team has not previously worked on project involving redevelopment of municipally-owned sites
Project Feasibility	Proposal <u>clearly demonstrates</u> that project is feasible, based on its analysis of financing and permitting issues	Proposal <u>somewhat demonstrates</u> that project is feasible, based on its analysis of financing and permitting issues	Proposal is <u>unclear or uncertain</u> as to whether project is feasible, based on its analysis of financing and permitting issues	Proposal <u>fails to demonstrate</u> that project is feasible, based on its analysis of financing and permitting issues
Project Schedule	Proposal schedule <u>clearly demonstrates</u> that permitting and construction will be completed within 36 months from date of award.	Proposal schedule <u>somewhat demonstrates</u> that permitting and construction will be completed within 36 months from date of award.	Proposal schedule is <u>unclear or uncertain</u> as to whether permitting and construction will be completed within 36 months from date of award.	Proposal schedule <u>fails to demonstrate</u> that permitting and construction will be completed within 36 months from date of award.

Architectural Design and Scale	Project design is <u>highly consistent</u> with the visual character and architectural scale of development within the immediate vicinity and the Landing District as a whole.	Project design is <u>somewhat consistent</u> with the visual character and architectural scale of development within the immediate vicinity and the Landing District as a whole.	Project design is <u>not consistent</u> with the visual character and architectural scale of development within the immediate vicinity and the Landing District as a whole.	Project design <u>conflicts</u> with the visual character and architectural scale of development within the immediate vicinity and the Landing District as a whole.
Reuse of Existing Structures	Proposal <u>clearly incorporates</u> the reuse and upgrade of existing structures.	Proposal <u>somewhat incorporates</u> the reuse and upgrade of existing structures.	Proposal <u>makes little use</u> of existing structures.	Proposal <u>makes no use</u> of existing structures.
Parking and Use of Public Transit	Proposal <u>clearly promotes</u> the Town's objectives of providing adequate parking while encouraging the use of nearby public transit.	Proposal <u>somewhat promotes</u> the Town's objectives of providing adequate parking while encouraging the use of nearby public transit.	Proposal is <u>uncertain or unclear</u> as to whether it promotes the Town's objectives of providing adequate parking while encouraging the use of nearby public transit.	Proposal <u>fails to promote</u> the Town's objectives of providing adequate parking while encouraging the use of nearby public transit.
Economic Benefits	Proposal <u>clearly demonstrates and describes</u> the project's positive impacts on municipal revenue and local business establishments.	Proposal <u>somewhat demonstrates and describes</u> the project's positive impacts on municipal revenue and local business establishments.	Proposal is <u>uncertain or unclear</u> as to the project's positive impacts on municipal revenue and local business establishments.	Proposal <u>fails to demonstrate and describe</u> the project's positive impacts on municipal revenue and local business establishments.
Impact Mitigation	Proposal <u>clearly demonstrates and describes</u> mitigation measures for any short-term or long-term negative impacts of project.	Proposal <u>somewhat demonstrates and describes</u> mitigation measures for any short-term or long-term negative impacts of project.	Proposal is <u>uncertain or unclear</u> as to mitigation measures for any short-term or long-term negative impacts of project.	Proposal <u>fails to demonstrate and describe</u> mitigation measures for any short-term or long-term negative impacts of project.
Senior Housing Option	The entire project will be restricted to housing for persons 55 years old and over.	A portion of the project will be restricted to housing for persons 55 years old and over.	None of the project will be age-restricted, but units will be designed to be attractive to persons 55 years old and over.	The project will not be age-restricted and will not be designed to be attractive to persons 55 years old and over.
Riverwalk Compatibility	Project design is <u>clearly compatible</u> with the Town's development of a river walkway.	Project design is <u>somewhat compatible</u> with the Town's development of a river walkway.	It is <u>unclear or uncertain</u> whether the Project design is compatible with the Town's development of a river walkway.	The Project design is <u>not compatible</u> with the Town's development of a river walkway.

APPENDIX C:

Purchase and Sales Agreement

PURCHASE AND SALE AGREEMENT

1. INFORMATION AND DEFINITIONS

(a) DATE OF AGREEMENT: _____, 2020

(b) PREMISES: Three (3) parcels of land located on Allen Street, Braintree, shown on Assessors Map 3004 as Parcels 7, 8 and 9, having a street address of 44 Allen Street, and described in deeds recorded with the Norfolk Registry of Deeds in Book 1904, Page 318 and 1932, Page 545 (Parcel 7); Book 672, Page 365 (Parcel 8); and Book 2663, Page 530 (Parcel 9), and further shown on a plan entitled _____, a copy of which is attached hereto as Exhibit A, excluding therefrom (i) the Riverwalk Easement Premises, (ii) the Sewer Easement Premises, and (iii) the Parking Easement Premises, as defined in Section 17 (collectively, the "Premises").

(c) SELLER: **Town of Braintree**

Address: One JFK Memorial Drive, Braintree, MA 02184

Seller's Attorney:

Address:

Phone:

Fax:

(d) BUYER:

Address:

Buyer's Attorney:

Address:

Phone:

(e) CLOSING DATE: Thirty (30) days from satisfaction of the contingencies in Section 19 of this Agreement, but in no event later than _____. Time is of the essence.

(f) PLACE: Norfolk Registry of Deeds (the "Registry") at noon, or a closing by mail, at Seller's election.

(g) TITLE: Quitclaim Deed

2. COVENANT. Seller agrees to sell and Buyer agrees to buy the Premises upon the terms hereinafter set forth. The parties acknowledge that the covenant of good faith and fair dealing is applicable to this Agreement.

3. BUILDINGS, STRUCTURES, IMPROVEMENTS, FIXTURES. Included in the sale as a part of the Premises are the buildings, structures, fixtures and improvements now thereon.

4. TITLE DEED. Said Premises are to be conveyed by a quitclaim deed running to Buyer, and said deed shall convey a good and clear record and marketable title thereto, free from encumbrances, except:

- (a) Provisions of existing building and zoning laws;
- (b) Such taxes for the then current year as are not due and payable on the date of the delivery of such deed;
- (c) Any liens for municipal betterments assessed after the date of this Agreement;
- (d) Easements, restrictions and reservations of record, if any, so long as the same do not prohibit or materially interfere with the use of the Premises for residential purposes.
- (e) Easements and rights reserved by Seller, as set forth more particularly in Section 17; and
- (f) A Land Development Agreement, as defined in Section 20, and in a form substantially similar to the document attached hereto as Exhibit B.

5. PURCHASE PRICE. The agreed purchase price for the conveyance of the Premises is _____ Dollars (\$ _____), of which:

\$ _____ being the amount of the Proposal Security that was previously paid by Buyer to Seller;

\$ _____ being the difference between ten percent (10%) of the purchase price and the Proposal Security, to be paid this day by certified or bank check. This payment added to the Proposal Security shall constitute the deposit (the "Deposit") under this Agreement; and

\$ _____ (being the balance of the purchase price) is to be paid at the time of delivery of the deed by certified or bank check or by wire transfer, at Seller's discretion.

\$ _____ TOTAL

6. PLANS. Seller shall prepare the deed. Buyer shall, at its sole cost and expense, prepare a survey plan in form adequate for recording or registration, showing the Premises, and the Easement Plan, as described hereinafter in Section 17, in form adequate for recording or registration.

7. POSSESSION AND DELIVERY OF PREMISES. Full possession of said Premises free of all tenants and occupants, except as herein provided, is to be delivered at the time of the delivery of the deed, said Premises to be then (a) in the same condition as they now are, reasonable use and wear thereof and damage by casualty excepted, and (b) in compliance with provisions of any instrument referred to in Section 4 hereof. Buyer shall be entitled personally to inspect said Premises prior to the delivery of the deed in order to determine whether the condition thereof complies with the terms of this Section.

8. EXTENSION TO PERFECT TITLE OR MAKE PREMISES CONFORM. If Seller shall be unable to give title or to make conveyance, or to deliver possession of the Premises, all as herein stipulated, or if at the time of the delivery of the deed the Premises do not conform with the provisions hereof, then any payments made under this Agreement shall be forthwith refunded and all other obligations of the parties hereto shall cease and this Agreement shall be void without recourse to the parties hereto, unless Seller elects, in its sole discretion, to use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or to make the said Premises conform to the provisions hereof, as the case may be, in which event Seller shall give written notice thereof to Buyer at or before the time for performance hereunder. In no event, however, shall reasonable efforts require Seller to expend more than \$2,500.00, including attorneys' fees, subject to the availability and/or appropriation of funds.

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

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

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

12. ADJUSTMENTS. A payment in lieu of taxes shall be paid in accordance with G.L. c. 44, §63A as of the day of performance of this Agreement and the net amount thereof shall be added to the purchase price payable by Buyer at the time of delivery of the deed. Charges for water and sewer, if any, shall be adjusted as of the day of closing.

13. DEPOSIT. The Deposit made hereunder shall be held in escrow by the Town Treasurer, as escrow agent, in a non-interest bearing account and shall be duly accounted for at the time for performance of this Agreement. In the event of any disagreement between the parties, the escrow agent may retain the Deposit made under this Agreement pending instructions mutually given by Seller and Buyer or by a court of competent jurisdiction.

14. BUYER'S DEFAULT; DAMAGES. If Buyer shall fail to fulfill Buyer's agreements herein, the Deposit made hereunder by Buyer shall be retained by Seller as Seller's sole and exclusive remedy at law and equity for Buyer's breach of this Agreement. The parties acknowledge and agree that Seller has no adequate remedy in the event of Buyer's default under this Agreement because it is impossible to exactly calculate the damages which would accrue to Seller in such event. Therefore, acknowledging this fact, the parties agree that: (i) the Deposit hereunder is the best estimate of such damages which would accrue to Seller in the event of Buyer's default, (ii) said Deposit represents damages and not a penalty against Buyer, and (iii) the parties have been afforded the opportunity to consult an attorney with regard to the provisions of this Section.

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

16. BROKERS. Buyer and Seller each represent and warrant to the other that each has not contacted any real estate broker in connection with this transaction and was not directed to the other as a result of any services or facilities of any real estate broker. Buyer and Seller agree to defend, indemnify and hold the other harmless, to the extent permitted by law, from any claim, loss, damage, costs or liabilities for any brokerage commission or fee which may be asserted against the other by any broker in connection with this transaction. The provisions of this Section shall survive the delivery of the deed.

17. RESERVED EASEMENTS. Seller shall convey the Premises subject to the following reserved permanent easements in, on, and under the Premises, as shown on the Proposed Easement Plan, attached hereto as Exhibit C:

- (a) A permanent easement across a portion of the Premises adjoining the Monatiquot River, to be used by the Seller for public recreational purposes, within which the Seller may install, maintain, repair, and replace a pedestrian walkway (the "Riverwalk"), and permanent easements at the west and east portions of the Premises, each approximately twenty (20) feet wide, running from Allen Street to said portion of the Premises and to be used to provide public access to said portion, all as shown the Proposed Easement Plan (collectively, the "Riverwalk Easement Premises");
- (b) A permanent easement for utilities and access from Allen Street, said access to coincide with the westerly portion of the Riverwalk Easement Premises, defined above, to the existing sewer overflow manhole on the Premises and from the existing sewer overflow manhole to the Monatiquot River, along the western edge of the Premises, to address storm event overflows to the Monatiquot River by the Town of Braintree under the administrative review of the Massachusetts Department of Environmental Protection, and for maintaining, repairing and replacing the sewer main that is currently located within and across the Premises, the easement area for this purpose to be a minimum of twenty feet wide (the "Sewer Easement Premises"),

in the location shown on the Proposed Easement Plan, and including the right to construct a structure within the Sewer Easement Premises to conduct the sewer overflow operations in a more controlled environment; and

- (c) A permanent easement for public parking purposes, for two (2) vehicles, the location and area of which shall be determined upon submittal of a concept plan by the Buyer of the Project (the "Parking Easement Premises").

Buyer agrees not to place or cause to be placed any temporary or permanent buildings or structures on or upon the Riverwalk Easement Premises, the Sewer Easement Premises, and/or the Parking Easement Premises (collectively, the "Easement Premises") without the consent of the Seller as holder of the Easement Premises (which consent shall be at the Seller's sole discretion) or any other improvements that may interfere unreasonably with the rights granted hereunder. The parties agree that the attached Exhibit C shows the approximate location of the Easement Premises (with the exception of the Parking Easement Premises) and that metes and bounds of the Easement Premises shall be shown on an easement plan prepared by Buyer, at Buyer's cost, and acceptable to both parties (the "Easement Plan"). Buyer shall present a preliminary Easement Plan to Seller for review and approval at least ninety (90) days prior to the closing. The provisions of this Section shall survive the delivery of the deed.

18. FINANCING. At least thirty (30) days prior to the closing, Buyer shall provide Seller with evidence of having funds in an amount reasonably satisfactory to Seller as being sufficient to design, construct and complete the Project (the "Financing"), such as firm project financing commitments, including, but not limited to, construction loan commitments, and/or permanent loan commitments from institutional lenders, and/or public or quasi-public entities, and, further, Buyer shall, prior to or simultaneously with the execution and delivery of the deed to the Premises, close on the Financing. Seller's obligation to convey the Premises to Buyer is contingent on the Buyer having and closing on the Financing required hereunder, as provided in Section 19.

19. CONTINGENCIES. The obligation of each party to close is subject to the satisfaction at or before the closing of all of the following conditions:

- (a) *Financing*: Buyer has provided proof of the Financing and Seller shall have approved the same, as provided in Section 18;
- (b) *Permits*: Buyer shall have obtained from all state and local authorities any and all permits, approvals, and licenses necessary to construct the Project, including (but not limited to) (i) a special permit under the zoning provisions of the "Braintree-Weymouth Landing District" for the development at the Premises, (ii) an Order of Conditions under the Wetlands Protection Act and the Town Wetlands Ordinance, and (iii) if necessary, a Waterways License under M.G.L. c. 91 (collectively, the "Permits"). Buyer shall use good faith and diligent efforts to submit applications to the appropriate entities for all necessary Permits within forty-five (45) days from the date of this Agreement;

- (c) *Number of Residential Units.* Buyer intends to seek approval for at least _____ residential units at the Premises. If fewer than _____ residential units are permitted by the Planning Board, Buyer may, in its sole discretion, terminate this Agreement, provided that Buyer shall not be entitled to a return of the Deposit. In the alternative, Buyer may seek to negotiate with Seller in good faith for modifications to the terms of this Agreement;
- (d) *Compliance:* Compliance by Buyer and Seller with any other requirements of Massachusetts General or Special Laws, including, without limitation, G.L. c. 7C, §38, relative to the disposition of real property by Seller, and Buyer and Seller agree to diligently pursue full compliance with said laws; and
- (e) *Execution of Documents/Approval of Easement Plan:* The parties shall approve the survey plan and the Easement Plan and shall execute and deliver at the closing the deed, the Land Development Agreement (defined below in Section 20), and any and all other documents that are required to effectuate this conveyance.

20. LAND DEVELOPMENT AGREEMENT. Seller shall convey the Premises to Buyer subject to the Land Development Agreement in the form attached hereto as Exhibit B and incorporated herein (the "LDA"), which the parties shall execute at the closing and record immediately after the recording of the deed and prior to any mortgages. Said LDA shall govern the development of the Premises.

21. TERMINATION FOR NON-ISSUANCE OF PERMITS. If Buyer is unable to obtain the Permits within eighteen (18) months from the date of this Agreement (which period shall be extended until the final adjudication of an appeal or judicial challenge to a Permit brought by a third party, pursuant to a final court order without further appeal), either Seller or Buyer may terminate this Agreement, provided that Buyer shall not be entitled to a return of the Deposit.

22. AFFIDAVITS. At the time of delivery of the deed, Seller shall execute and deliver all the usual and customary affidavits required by Buyer's lender, including but not limited to affidavits with respect to due authority, parties in possession and mechanic's liens, to induce Buyer's title insurance company to issue lender's and owner's policies of title insurance without exception for those matters, and such additional and further customary instruments and documents as may be reasonably required by Buyer's title insurance company to complete the transactions described in this Agreement.

23. HAZARDOUS MATERIALS. Buyer acknowledges that Buyer has not been influenced to enter into this transaction and that it has not relied upon any warranties or representations not set forth in this Agreement. Buyer represents and warrants that it or its agents have had an opportunity to conduct a full inspection of the Premises, pursuant to a License Agreement between Seller and Buyer, and based upon Buyer's investigation, Buyer is aware of the condition of the Premises and will accept the Premises "AS IS". Buyer agrees, for itself and its successors and assigns, including any person having any interest in the Premises (the "Buyer Parties"), that the Buyer Parties shall release and hold harmless Seller and the Braintree Electric Light Department (the "Seller Parties") of any and all liability, loss, damage,

costs, expenses, causes of action, suits, claims, demands or judgments of any kind or nature (including, without limitation attorneys' and experts' fees and expenses, clean-up costs, waste disposal costs and those costs, expenses, penalties and fines within the meaning of any environmental law, regulation, code and/or order) (individually, a "Claim"), in any way related to hazardous waste, oil, hazardous material or hazardous substances, as those terms are defined by any applicable law, rule or regulation, including, without limitation, the Massachusetts Oil and Hazardous Materials Release Prevention and Response Act, M.G. L. c. 21E, the Massachusetts Hazardous Waste Management Act, M.G.L. c. 21C, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9601 et seq. and the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq. (herein collectively referred to as "Hazardous Materials") on, in, under or emitting from the Premises or for any other condition or defect on the Premises. Without limiting the foregoing, Buyer agrees that, effective as of the closing date, no Buyer Party will institute any action, suit or proceeding, and will not implead, join, seek contribution or indemnification from, or otherwise involve the Seller Parties or any of them in any action, suit or proceeding which has been or could be brought by or against any of the Buyer Parties to the extent the same relates to or arises out of any Claim. The Buyer Parties further agree to indemnify the Seller Parties for and against any and all liability, loss, damage, costs, expenses, causes of action, suits, claims, regulatory or enforcement actions, demands or judgments of any kind or nature (including, without limitation attorneys' and experts' fees and expenses, clean-up costs, waste disposal costs and those costs, expenses, penalties and fines related to Hazardous Materials) arising from the negligent or willful act or omission of the Buyer. The provisions of this Section shall survive delivery of the deed.

24. PROPERTY INSPECTION. Buyer and Buyer's agents shall have the right to enter the Premises, upon no less than forty-eight (48) hours written notice to Seller, at Buyer's own risk, for the purposes of inspecting the Premises, provided that Buyer shall not conduct any subsurface tests without Seller's prior written consent, not to be unreasonably withheld, and shall promptly restore the Premises to their condition prior to any such disturbance. Buyer shall defend, indemnify and hold Seller harmless against any claim by Buyer or Buyer's agents, employees or invitees for any harm to them arising from said entry and shall restore the Premises to substantially the same condition as prior to such entry if the closing does not occur. Buyer shall obtain comprehensive liability insurance, including coverage for bodily injury, wrongful death and property damage, in the minimum amount set forth herein to support the obligations of Buyer under the terms and conditions of this Agreement to indemnify, defend and hold harmless Seller: General Liability: \$1,000,000.00/occurrence, \$2,000,000.00/aggregate; Bodily Injury Liability: \$1,000,000.00/occurrence, \$2,000,000.00/aggregate. The insurance coverage required hereunder shall be issued by insurance companies licensed in Massachusetts and having a Best's rating of A- or better. Prior to entering the Premises, Buyer shall provide Seller with a copy of such insurance policy in each case indicating Seller is an additional insured on the policy and showing compliance with the foregoing provisions. In the event Buyer finds Hazardous Materials on the Premises in quantities that must be reported to the Department of Environmental Protection under the provisions of G.L. c. 21E or the regulations thereunder, and informs Seller at least sixty (60) days prior to the closing, this Agreement shall be null and void and without recourse to the parties, unless Seller, at Seller's sole option, gives written notice to Buyer within thirty (30) days of receiving Buyer's notice of its intention to remediate such contamination and thereafter remediates such Hazardous Materials in compliance with applicable law, with Seller

paying all of the costs of remediation. Nothing herein shall require Seller to remediate any contamination on the Premises. The provisions of this Section shall survive the delivery of the deed.

25. SELLER'S OFF-SITE IMPROVEMENTS. Subject to authorization and appropriation of funds, Seller intends to reconstruct Allen Street, which shall become a one-way street incoming from Quincy Avenue, through to the intersection of Allen Street with Thayer Road and Shaw Street. In connection with the reconstruction of Allen Street, Seller contemplates that new sidewalks and curbing shall be constructed/installed, but cannot guarantee that any of these improvements will be built. Any construction is projected to commence in 2020. Seller will, if Allen Street is reconstructed, permit the Buyer to have all utilities stubbed out prior to the start of the road work. Buyer may, at its own cost and expense, connect the improvements on the Premises to said utilities, if and when installed, subject to any and all costs associated with said connection imposed by the Seller, its boards and commissions.

26. CONDITION OF PREMISES. Seller agrees to deliver the Premises at the time of delivery of Seller's deed in a condition substantially similar to its condition at the time of the signing of this Agreement, removing all of Seller's personal property therefrom which is not being sold to Buyer, or left for its benefit, as consented to by it. Seller shall at closing deliver to Buyer all keys to the Premises that are in Seller's possession or control. Until the delivery of the deed, Seller shall maintain insurance on the Premises as presently insured.

27. CONDEMNATION. Notwithstanding anything herein to the contrary, in the event of a taking of all or substantially all of the Premises by eminent domain by an entity other than Seller, Seller or Buyer, may, at its option, terminate this Agreement, whereupon all deposits made by Buyer under this Agreement shall be returned. "Substantially all" shall be defined as a taking that would materially and adversely affect the use of the Premises for the purposes set forth herein.

28. ASSIGNMENT. Given that Buyer has been selected by Seller after a competitive process, based on Buyer's qualifications and an evaluation of its proposal, Buyer may not assign its rights or interests under this Agreement without the prior written consent of Seller. Seller may withhold such consent, at Seller's sole and absolute discretion, if in Seller's opinion, the development of the Premises in accordance with the terms of the LDA may be put at risk by such assignment, due to the financial condition, experience, qualifications or any other attribute of the proposed assignee as compared with those of Buyer. Buyer shall provide Seller with financial and any other requested information regarding the assignee, sufficient for Seller to determine the suitability of the assignee. For purposes hereof, the term "assignment" shall include a reorganization, dissolution or merger of Buyer or a transfer of fifty percent (50%) or more of the ownership interests in Buyer, or (if a partnership) a change in the identity or identities of the general partner.

29. TITLE OR PRACTICE STANDARDS. Any matter or practice arising under or relating to this Agreement which is the subject of a title standard or a practice standard of the Massachusetts Real Estate Bar Association at the time for delivery of the deed shall be covered by said title standard or practice standard to the extent applicable.

30. INSURABLE TITLE. It is understood and agreed by the parties that the Premises shall not be in conformity with this Agreement unless title to the Premises is insurable at ordinary rates for the benefit of Buyer in a fee owner's ALTA-form policy, and for the benefit of Buyer's lender, if any, in an ALTA-form loan policy, subject to the standard printed exceptions provided that such exceptions do not render title to the Premises unmarketable.

31. CLOSING. The deed and other documents required by this Agreement are to be delivered and the Purchase Price paid at the Date and Time of Closing and at the Place of Closing. Unless the Closing takes place at the appropriate Registry of Deeds, all documents and funds are to be delivered in escrow subject to prompt rundown of title and recording, which term shall include registration in the case of registered land. Unless otherwise agreed, Seller's attorney may disburse the funds if no report has been received by 5:00 p.m. of the next business day following the date of the delivery of the deed that the documents have not been recorded, due to some problem beyond the recording attorney's control.

32. BUYER'S WARRANTIES. Buyer hereby represents and warrants:

- (a) This Agreement and all documents to be executed by Buyer and delivered to Seller at the closing are, or at the time of the closing will be, duly authorized, executed and delivered by Buyer.
- (b) Buyer hereby acknowledges and agrees that, except for the representations and warranties of Seller expressly set forth in this Agreement, Buyer has not relied upon nor been induced by any representations, warranties, guarantees, promises or statements, whether written or oral, express or implied, or whether made by Seller or any employee or representative of Seller.

33. NOTICE. Any notice required or permitted to be given under this Agreement shall be in writing and signed by the party or the party's attorney or agent and shall be deemed to have been given: (a) when delivered by hand, or (b) when sent by Federal Express or other similar courier service, or (c) when mailed by certified mail, return receipt requested, or (d) confirmed facsimile transmission or e-mail (provided such facsimile or e-mail notice is promptly followed by other acceptable means of sending notice), addressed to the party and the party's attorney at the addresses set forth in Section 1. By such notice, either party may notify the other of a new address, in which case such new address shall be employed for all subsequent deliveries and mailings.

34. SELLER DEFAULT. In the event that Seller defaults under this Agreement, Buyer shall be entitled to terminate this Agreement and receive a refund of the Deposit. The foregoing shall be Buyer's sole and exclusive remedy at law and in equity for any breach of this Agreement by Seller.

35. COOPERATION. Seller agrees to use reasonable efforts to assist Buyer in obtaining any and all Permits required by any governmental authorities with respect to the Project, all at Buyer's cost, but Buyer acknowledges that Seller has no control over and cannot guarantee that Permits required from municipal boards or officers within their statutory or regulatory authority will be granted or fees waived.

36. POST-CLOSING COMPLIANCE AND ADJUSTMENTS. If any errors or omissions are found to have occurred in any calculations or figures used in the settlement statement signed by the parties (or would have been included if not for any such error or omission) and notice hereof is given within six (6) months of the date of the delivery of the deed to the party to be charged, then such party agrees to make a payment to correct the error or omission. This provision shall survive delivery of the deed.

37. EXTENSIONS. Buyer and Seller hereby authorize their respective attorneys (as the case may be) to execute on their behalf any extensions to the time for performance and any change of location and/or time for delivery of the deed. Buyer and Seller shall be able to rely upon the signature of said attorneys as binding unless they have actual knowledge before the execution or other consent to such extensions, that either party has disclaimed the authority granted herein to bind them. For purposes of this Agreement, facsimile signatures shall be construed as original.

38. CONSTRUCTION. This instrument is to take effect as a sealed instrument, sets forth the entire contract between the parties, is binding upon and inures to the benefit of the parties hereto and their respective heirs, devisees, executors, administrators, successors and assigns, and may be canceled, modified or amended only by a written instrument executed by both Seller and Buyer. If two or more persons are named herein as Buyer their obligations hereunder shall be joint and several. The captions and marginal notes are used only as a 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.

39. GOVERNING LAW. This Agreement shall be governed exclusively by the provisions of the laws of the Commonwealth of Massachusetts, and any actions, suits or other claims pertaining or relating to this Agreement shall be brought within the courts of the Commonwealth of Massachusetts.

[Signature Page Follows]

In Witness Thereof, the parties sign this Agreement under seal as of date above written.

SELLER:

BUYER:

TOWN OF BRAINTREE,
By its Mayor

Charles C. Kokoros

By: _____

Name:

Title:

Exhibit A

Plan

Exhibit B

Land Development Agreement

Exhibit C

Proposed Easement Plan

APPENDIX D:

Land Development Agreement

Premises:
44 Allen Street
Braintree, MA 02184

LAND DEVELOPMENT AGREEMENT

This Land Development Agreement (this "Agreement") is entered into on this _____ day of _____, 2020, by and between the **Town of Braintree** (the "Town"), a Massachusetts municipal corporation, having an address of One JFK Memorial Drive, Braintree, MA 02184, and _____, (the "Developer"), having an address of _____.

WHEREAS, the Town issued a Request For Proposals (the "RFP"), the original of which is on file with the Braintree Purchasing Department, seeking to convey three (3) parcels of land located on Allen Street, Braintree, shown on Assessors Map 3004 as Parcels 7, 8, and 9, and having a street address of 44 Allen Street (collectively, the "Property");

WHEREAS, Developer submitted a proposal (the "Proposal") in response to the RFP, the original of which is on file with the Braintree Purchasing Department, agreeing to purchase the Property and to develop the Property for residential purposes, and has been chosen as the successful proposer;

WHEREAS, Developer has obtained permits and approvals to construct _____ (_____) residential units (the "Units") on the Property (the "Project");

WHEREAS, in consideration for the sum of _____ (\$ _____) Dollars, the Town has conveyed the Property to Developer by a deed recorded with the Norfolk Registry of Deeds (the "Registry") of even date herewith (the "Date of Recording") in Book _____, Page _____;

WHEREAS, in consideration for the Property, Developer hereby agrees to develop the Property and to undertake, at its sole cost and expense, all the work that is required to be done under this Agreement to construct, develop and complete the Project (the "Work") in accordance with the RFP, the Proposal and the Approved Plans, as hereinafter defined; and

WHEREAS, the Town and Developer intend to set forth herein the terms and conditions that will govern the use and development of the Property.

NOW THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

I. PROVISIONS FOR DEVELOPMENT OF PROPERTY

Developer agrees, for itself and its successors and assigns, and in consideration of the conveyance of the Property, that it shall develop the Project on the Property and undertake, at its sole cost and expense, all the work that is required to be done under this Agreement to construct, develop and complete the Project as follows:

A. Construction Obligations.

1. Construction of Units: Developer shall construct the Project in accordance with the permits, plans and specifications that have been approved by the Town through its boards and officials (the “Approved Plans”), which are attached hereto as Exhibit A. In the event of a conflict, the Approved Plans shall supersede the terms of the RFP and/or the Proposal. Developer agrees not to make any material changes or revisions to the Work or the improvements as described in the Approved Plans during the course of construction without having obtained the prior approval of the Town’s boards and officials.

2. Construction Schedule: Developer shall commence construction of the Project within sixty (60) days from the Date of Recording, pursuant to the building permits issued for the Project, and shall use good faith and diligent efforts to complete said construction expeditiously within two (2) years from said Date of Recording, all in accordance with the terms of this Agreement, and the Construction Schedule attached hereto as Exhibit B. For purposes of this Section, Developer shall be deemed to have completed construction of the Project upon obtaining a final Certificate of Occupancy for the Project and issuance of a Certificate of Substantial Completion, as provided for in Section I-A-5 of this Agreement. The Town may extend these deadlines if the Town reasonably determines that Developer has proceeded diligently in constructing the Project.

3. Quality of Work: Developer shall have obtained all the permits and approvals necessary to construct and operate the Project on the Property before undertaking any Work, and shall cause all the Work to be performed in a good and workmanlike manner and employing materials of good quality and in accordance with the Approved Plans and all applicable laws, bylaws, codes and regulations. The Developer shall take all reasonably necessary measures to (i) minimize dust, noise and construction traffic, (ii) minimize any damage, disruption or inconvenience caused by the Project, and (iii) make adequate provision for the safety and convenience of all persons affected thereby and to police the same. Dust, noise, lighting and other effects of the Project shall be controlled using commercially reasonable methods with the understanding that such matters while they will be reasonably mitigated cannot be eliminated completely in any construction project. As a precondition for the issuance of any Certificate of Occupancy for the Project, the Developer shall provide a certification to the Town by the architect identified in Section B.3, at the Developer’s expense, that the Work has been done substantially in accordance with the Approved Plans.

4. Liens: Developer shall not permit any mechanic's liens or similar liens to remain upon the Property for labor and materials furnished to Developer in connection with work of any character performed by or at the direction of Developer and shall cause any such lien to be released of record within thirty (30) days after receiving notice of any such claim by satisfaction and discharge of such lien or release of such lien by bond.

5. Certificate of Substantial Completion:

(a) Promptly after "Substantial Completion" of the Project, which shall occur when the Project has been constructed such that Developer has obtained a certificate of occupancy for the Project, with only minor "punch list" items remaining, in the Town's reasonable discretion, that will not materially interfere with the use and occupancy of the Project, the Town (through the Office of the Mayor) will furnish the Developer with an appropriate instrument so certifying (the "Certificate of Substantial Completion"). The Certificate of Substantial Completion shall be in such form as will enable it to be recorded in the Norfolk Registry of Deeds.

(b) If the Town shall refuse or fail to provide the Certificate of Substantial Completion in accordance with the provisions of this Section, the Town or a representative of the Town shall, within thirty (30) days after written request by the Developer, provide the Developer with a written statement indicating in adequate detail in what respects the Developer has failed to complete the improvements in accordance with the provisions of this Agreement, or is otherwise in default, and what measures or acts will be necessary, in the opinion of the Town, for the Developer to take or perform in order to obtain such certification, and all such deadlines recited herein shall be extended by agreement in order to allow Developer to comply with such written request, provided no such extension shall exceed ninety (90) days without the agreement of the parties.

(c) Notwithstanding anything to the contrary in this Agreement, the Certificate of Substantial Completion issued by the Town shall be a conclusive determination of satisfaction and termination of this Agreement and covenants in this Agreement, except those that expressly survive the issuance of the Certificate of Substantial Completion. Any such certification shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any Lender, including any mortgage holder or any insurer of a mortgage securing money loaned to finance the improvements, or any part thereof. The issuance of the Certificate of Substantial Completion shall bar the exercise of any remedies by the Town set forth in this Agreement, except those that expressly survive the issuance of the Certificate of Substantial Completion.

B. Financial Obligations

1. Construction Loan: Developer has obtained funds in the amount of \$ _____ (the "Construction Loan") to construct and complete the Project from

_____ (the “Lender”), secured by a mortgage on the Property to be recorded hereafter (the “Construction Mortgage”), which Construction Mortgage shall be expressly subject to this Agreement. Developer shall perform all of Developer’s obligations under the Construction Loan, including Developer’s covenants to make payments when due. Developer shall cause the Lender to give at least sixty (60) days prior written notice to the Town, by registered mail, of the Lender’s intention to foreclose upon the Construction Mortgage or to accept a conveyance of the Property in lieu of foreclosure, in which event the Town shall have the right, but not the obligation, to cure whatever default(s) have entitled the Lender to issue the foreclosure notice, subject to appropriation. Developer shall pay or cause to be paid all taxes, assessments and other charges, fines and impositions attributable to the Property that may attain a priority over the Construction Mortgage. The Construction Mortgage shall be subject to and subordinate to this Agreement. The Town shall provide to the Lender advance notice and an opportunity to cure any default under this Agreement, and shall consent to the Lender exercising any rights under the Construction Mortgage, including but not limited to rights to take title and/or control of the Property and the Project, pursuant to the Construction Mortgage, so long as the Lender shall recognize and agree to comply with the terms and provisions of this Agreement.

2. Refinancing/Additional Financing. The Developer shall provide the Town with thirty (30) days prior written notice of any intended refinancing of the Property that is to occur prior to Substantial Completion, which shall be approved by the Town provided that the total indebtedness shall not exceed \$ _____ and that any refinancing is on terms equal to or more favorable than the Construction Mortgage.

3. Architect. The Developer has retained _____, of _____, Massachusetts, to prepare, complete, and submit architectural submissions as contemplated under this Agreement and to provide construction supervision services for the Project. The Developer may not substitute another architect without the Town’s prior written consent, which shall not be unreasonably withheld.

4. Representative. The Developer has designated _____ as its representative authorized to act on its behalf. Unless and until the Town has received written notice that such authority has been revoked, the Town shall be entitled to rely upon the directives of such representative. The Town shall act by and through its Mayor, or his designee.

C. Use of Property; Restrictions

1. Use and Maintenance: Developer shall use the Property solely for residential purposes and maintain the Project and other improvements on the Property in good order, condition and repair. Notwithstanding the foregoing, Developer shall have the right to maintain a construction management and marketing office on the Property until the residential units are completed, and thereafter to maintain a management office for residential sales or (if the Project is to consist of rental units) for tenant service and property management..

2. Restrictions During Construction. From the Date of Recording until the Town has issued the Certificate of Substantial Completion, the following restrictions shall bind the Developer, the Property and the Project:

(a) Prohibition Against Change in Identity and Ownership. This Agreement is being entered into as a means of permitting and encouraging the development of the Property in accordance with the objectives of the Town for the redevelopment of the Property as put forward in the Recitals, and not for speculation in landholding. The Developer acknowledges that, in view of the importance of the undertakings set forth herein to the general welfare of the community, and the importance of the identity of the parties in control of the Developer and the Project, it is hereby agreed that, commencing on the date hereof and continuing until the issuance of the Certificate of Substantial Completion by the Town, and except by reason of death, there shall be no (i) change in the identity of the parties holding a legal or beneficial interest in the Developer, (ii) transfer or pledge in the aggregate of a majority of the beneficial ownership or control of Developer or (iii) transfer, by assignment or otherwise, of the Developer's rights under this Agreement or of the Developer's legal or beneficial interest in the Property to any person (including but not limited to, any partnership, joint venture or corporation) (all such changes being referred to herein as a "Change in Identity"), unless in each instance, (i) the Developer gives the Town prior written notice of a proposed Change in Identity, which notice shall provide information as to financial condition and operational experience, sufficient to enable the Town to evaluate the acceptability of the proposed Change in Identity, and (ii) the Town, within thirty (30) days from the date on which the Town receives said written notice or such longer period as may be approved by the Developer and the Town, approves of such change in writing, or fails to object, in which case the proposed Change in Identity shall be deemed to be approved, so long as the notice advises the Town of said deemed approval. If the Town notifies the Developer in writing within said thirty (30) day period (or longer period agreed to by the parties) of its objection to the proposed Change in Identity, specifying reasonable grounds for such objection, the Developer shall make no Change in Identity without the subsequent written consent of the Town. Any attempted Change in Identity made contrary to this Section shall be void.

The foregoing restrictions on the Change in Identity shall not be binding on a mortgagee of the Property which has foreclosed its mortgage and taken possession of the Property.

(b) Prohibition Against Transfer of Property. For all of the same reasons stated above, the Developer represents and agrees for itself, and its successors and assigns, that, except for the granting of the Construction Mortgage and any approved refinancing, and the granting of easements necessary for the construction of the Project, including utilities, the Developer shall not sell, assign or otherwise transfer the Property or any portion thereof without the prior written consent of the Town, which consent shall not be unreasonably withheld. The term "transfer" shall include, without limitation, any total or partial sale, mortgage, assignment, lease (not

including the transfer or lease of residential units in the ordinary course of business), or contract or agreement for any of the same. It is the intent of this Section that the prohibition on transfer of the Property shall not apply to transfers resulting from the foreclosure of the Construction Mortgage, provided that the transferee assumes and agrees to comply with all conditions and agreements contained in this Agreement, including, but not limited to the obligation to construct the Project in accordance with the Approved Plans. No transfer shall relieve the Developer of its obligations hereunder, who shall be jointly and severally liable with the transferee. Any attempted assignment or other transfer made contrary to this Section shall be void.

3. Affordability Requirement

(a) At least fifteen percent (15%) of the dwelling units in the Project shall be priced so as to be affordable to a low- or moderate-income household, as such terms are defined by regulations of the Massachusetts Department of Housing and Community Development (DHCD), and to qualify for inclusion in the DHCD Subsidized Housing Inventory (SHI). Fractions shall be rounded up to the next whole number. This affordability requirement shall be imposed by an affordable housing restriction on the Project (or, in the case of purchased units, by deed riders imposed upon the initial conveyance) that shall run in perpetuity or for the maximum period allowed by law, and that is enforceable under the provisions of M.G.L. c. 184, §§ 31-33 or other equivalent state law.

(b) The selection of qualified purchasers or qualified renters shall be carried out under an affirmative fair housing marketing plan submitted by the Developer and approved by the Town's Department of Planning and Community Development. The affirmative fair housing marketing plan shall comply with the DHCD Local Initiative Program (LIP) guidelines then in effect.

(c) All affordable housing units shall be dispersed throughout the Project and shall be indistinguishable from market-rate units except as to interior finish, fixtures, and appliances. The number of bedrooms in affordable housing units shall be comparable to the bedroom mix in market-rate units in the Project.

(d) No certificate of occupancy shall be issued for any market-rate units in the Project until all documents necessary to ensure compliance with the LIP guidelines, including any required affordable-housing restriction, have been executed. The Developer shall be responsible for preparing and complying with any documentation that may be required by DHCD in order for the units to be eligible for the Subsidized Housing Inventory

4. Restrictions Following Construction Completion. After issuance of the Certificate of Substantial Completion, the Developer, the Property and the Project shall be subject to the following restrictions:

(a) Restriction on Alterations. During the Term of the Agreement, as described below in Section III-K, the Developer shall not alter, demolish, subtract therefrom, reconstruct, make any additions to the Project, or change the materials, design, dimensions or color thereof, if such reconstruction, demolition, subtraction, alteration, addition, extension or change will materially affect in any way the external appearance of the Project, or make other changes to the design of the Project so as to deviate substantially from the Approved Plans, unless the Developer first submits to the Town a revised concept plan showing the proposed alterations at least forty-five (45) days prior to seeking to obtain the approval of the Planning Board and other permitting boards, commissions, and agencies under the applicable provisions of state and federal law and the Town Ordinances. If the Town notifies the Developer in writing within said forty-five (45) day period (or longer period agreed to by the parties) of its objection to the proposed change, specifying reasonable grounds for such objection, the Developer shall revise said concept plan accordingly. Nothing herein shall be construed to prevent the ordinary maintenance, repair or replacement of any exterior feature of the buildings and other improvements at the Project which do not involve a change in design, material or color of such exterior feature of the building/improvement nor to prevent landscaping the Property with plants, trees or shrubs, nor be construed to prevent the meeting of requirements certified by a duly authorized public officer to be necessary for public safety because of an unsafe or dangerous condition or to comply with any federal, state or local law, rule or regulation. This restriction shall survive the issuance of the Certificate of Substantial Completion.

(b) Restriction on Permitted Uses. During the Term of the Agreement, the Developer shall not change the use of the Project from residential use, without the Town's prior written consent. In the event the Developer wishes to change the use of the Development, Developer shall present to the Office of the Mayor appropriate documentation supporting the proposed change, as well as a concept plan showing the proposed use, and the Office of the Mayor shall, within forty-five (45) days, approve said concept plan, in writing, or notify the Developer in writing of its objection to the proposed change, specifying reasonable grounds for such objection, whereupon the Developer shall submit revised/supplemental evidence relative to the proposed change, and the Office of the Mayor shall have an additional thirty (30) days to approve or disapprove. Failure of the Office of the Mayor to object within the time frames set forth herein shall be deemed approval, so long as the notice contains notice of such deemed approval. Approval by the Office of the Mayor (or failure of the Office of the Mayor to object within the specified time period) shall not relieve the Developer of the necessity to comply with any requirements of federal, state, or local law, including (but not limited to) building codes and zoning requirements, and to obtain any necessary permits, prior to changing the use of the Project.

D. Maintenance and Insurance

1. Maintenance; Hazardous Substances. The Developer shall maintain the Property and improvements thereon in good order, condition and repair during the Term of the

Agreement. The Developer represents and warrants to the Town that the Developer shall not release or permit any release or threat of release of oil, asbestos, urea formaldehyde foam insulation, nor any other hazardous material, hazardous waste or hazardous substance (hereinafter collectively called "hazardous substances"), as those terms are defined by any applicable law, rule or regulation including without limitation, the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, G.L. c. 21E, the Massachusetts Hazardous Waste Management Act, G.L. c. 21C, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. Sections 9601 et seq., and the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Sections 6901 et seq., nor generate or permit any hazardous substances to be generated on the Property, nor store or permit any hazardous substances to be stored on the Property.

2. Insurance. The Developer agrees to maintain the following insurance:

(a) *Property Insurance*: Developer shall continuously maintain in full force, for the Term of the Agreement, a policy of comprehensive casualty and property damage insurance, insuring the Property and all improvements thereto, in an amount equal to at least one hundred percent (100%) of the replacement costs thereof. Until the issuance of the Certificate of Substantial Completion, the Town shall be named as an additional insured under said policy, which shall provide that the insurer agrees to defend, indemnify and hold the Town harmless from and against all cost, expense and/or liability arising out of or based upon any and all claims, accidents, injuries and damages related to the Work, the condition of the Property, or any act or omission of Developer, its contractors, licensees, agents, servants, employees, customers, invitees, guests or visitors, or anyone claiming by, through or under Developer, or failure to comply with the provisions of this Agreement or with applicable laws in connection with the exercise of the rights and obligations of Developer hereunder, in the broadest form of such coverage from time to time available in Massachusetts. Developer shall submit to the Town, on or before conveyance of the Property from the Town to Developer and at any such other time upon the request of the Town, evidence of such continuous insurance coverage satisfactory to the Town.

(b) *Liability Insurance*: Until the issuance of the Certificate of Substantial Completion, Developer shall carry comprehensive personal liability insurance in the minimum amount of \$2,000,000.00/occurrence, \$3,000,000.00/aggregate with property damage liability insurance in limits of \$2,000,000.00/occurrence, \$3,000,000.00/aggregate.

(c) *Builder's Risk*: During the period of any construction or structural alteration of the Property or the construction of the residential units, Developer shall also keep in full force and effect, at its sole cost and expense, "Builder's All Risk" insurance against loss or damage on a completed value non-reporting basis from such hazards and in such amounts as the Town may reasonably require.

(d) *Insurance Carried by Contractors:* During the period of any construction or structural alteration of the Property or the construction of the residential units, Developer shall also require the general contractor for the work to maintain (i) for the benefit of Developer and the Town, as additional insureds, commercial general liability insurance, including products and completed operations coverage, against any claims for personal injury, death and property damage occurring upon, in or about the Property and on, in and about the adjoining sidewalks and passageways during the construction of the work for at least \$2,000,000.00 per occurrence and \$3,000,000.00 in General Aggregate; (ii) worker's compensation in amounts required by state statute; (iii) employer's liability insurance with limits of not less than \$1,000,000.00; and (iv) automobile liability insurance, including the ownership, maintenance and operation of any automotive equipment, owned, hired or non-owned, in an amount not less than \$1,000,000.00 combined single limit.

(e) *Evidence of Insurance:* All policies shall name the Town as an additional insured and shall be so written that the Town shall be notified of cancellation or restrictive amendment at least thirty (30) days prior to the effective date of such cancellation or amendment. Developer shall submit to the Town certificates of insurance for all the policies required to be maintained by Developer hereunder, which certificates shall show at least the coverage and limits of liability specified herein the and the expiration date.

(f) *Acceptable Insurers:* All insurance required hereunder shall be underwritten with an insurance company or companies with an AM Best Rating of A-1 or better, licensed to write such insurance in the Commonwealth of Massachusetts and reasonably acceptable to the Town.

(g) *Termination:* The Developer's responsibility of naming the Town as additional insured under this Section 2 shall terminate upon the issuance of the Certificate of Substantial Completion for the Project.

3. Obligation to Restore. In the event that any damage or destruction of the Property or any part thereof occurs as a result of fire or other casualty during the construction of the Project and thereafter for the Term of the Agreement, Developer or its successor in interest shall use good faith efforts to restore the Property to the extent of its insurance proceeds.

II. DEFAULT

If, prior to the issuance of the Certificate of Substantial Completion:

A. Developer shall have failed to observe or perform any of Developer's covenants, agreements, or obligations set forth in this Agreement within thirty (30) days following receipt of written notice from the Town specifying such failure (or if such failure or violation cannot be cured within said thirty (30)-day period, to commence to cure the same within said period and

diligently to proceed thereafter to complete such curing, but in no event later than sixty days (60) from the date of the Town's notice);

B. Developer shall have failed, after all applicable cure periods, to observe or perform any of its covenants, agreements, or obligations under the Construction Mortgage;

C. Developer shall have sold, assigned, exchanged, mortgaged or otherwise transferred the Property or any portion thereof (other than the Construction Mortgage and the sale/rental of the Units) or transferred its interests under this Agreement without the Town's prior written consent prior to the completion of the Project;

D. There shall have issued any execution or attachment against Developer or any of Developer's property pursuant to which the Property shall be taken or occupied or attempted to be taken or occupied, provided Developer is first provided an opportunity to cure or bond the same to the Town's reasonable satisfaction within sixty (60) days unless extended by agreement of the parties; or

E. Developer shall have filed a voluntary petition, or there shall have been filed against Developer an involuntary petition, in bankruptcy or insolvency or adjudication of bankruptcy or insolvency of Developer, or the filing by Developer of any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the present or any future federal bankruptcy act, or any other present or future applicable federal, state, or other statute or law, or the assignment by Developer for the benefit of creditors, or appointment of a trustee, receiver, or liquidator of all or any part of the assets of Developer, and within one hundred twenty (120) days after the commencement of any such proceeding against Developer, such proceeding shall not have been dismissed, or if, within one hundred twenty (120) days after the appointment of any trustee, receiver, or liquidator of Developer or of all or any part of Developer's property, without the consent or acquiescence of Developer, such appointment shall not have been vacated or otherwise discharged;

Then, upon such default, the Town shall have the right to exercise any and all rights and remedies available to it including actions and proceedings to compel specific performance and money damages, and Developer shall reimburse the Town for all its costs and expenses (including, without limitation, reasonable attorneys' fees) from and after the giving of the default notice.

III. GENERAL PROVISIONS

A. Access. Until the issuance of the Certificate of Substantial Completion, Developer shall permit the Town or its agents to enter the Property, including, without limitation, the residential units, at any reasonable time, from time to time, to inspect the construction of the Project, the condition of the Property and to ensure compliance with the provisions of this

Agreement, provided, however, that the Town provides Developer at least forty-eight (48) hours' prior notice thereof, which may be oral notice, except in the event of emergency, in which case notice shall be given as soon as practicable.

B. Compliance with Laws: Developer shall carry out the Project in compliance with all applicable federal, state and local laws, codes, ordinances, rules and regulations and with all necessary permits.

C. Development Costs: Developer shall be solely liable for all costs incurred in construction and development of the Project on the Property in compliance with all laws, ordinances, rules, regulations and codes applicable to the permitted use. The Town assumes no responsibility or obligation whatsoever for the condition of the Property and/or the development of the Property by Developer.

D. Cooperation: The Town agrees to use reasonable efforts to assist Developer in obtaining any and all permits, licenses, easements and other authorizations required by any governmental authorities with respect to any construction or other work to be performed on the Property, but Developer acknowledges that the Town has no control over and cannot guarantee that permits required from municipal boards or officers within their statutory or regulatory authority will be granted or fees will be waived.

E. Indemnification: Developer shall defend, indemnify, and hold the Town harmless from and against any and all liabilities, losses, costs, expenses (including reasonable attorneys' fees), causes of action, suits, claims, damages, demands, judgments or expenses from any and all claims, actions, or suits of any nature whatsoever that may be imposed upon, incurred by, or asserted against the Town by reason of this Agreement, except to the extent that the same is caused by the negligence or willful misconduct of the Town or its employees or agents. This indemnity and hold harmless agreement shall include indemnity against all costs, expenses, and liabilities incurred in or in connection with any such claim or proceeding brought thereon, and the defense thereof. In no event shall the Town be liable to the other for consequential, incidental, or punitive damages. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

F. Notices: Any and all notices required herein shall be in writing and shall be deemed properly given upon the earlier of: (a) two business days after deposit with the United States Postal Service, if sent by registered or certified mail, return receipt requested, postage prepaid; (b) one business day after deposit with an express courier service such as Federal Express; (c) electronic mail or (d) actual receipt. All such notices will be delivered to the address specified below or such other address as the respective parties may designate in writing:

If to the Town: Hon. Charles C. Kokoros
 Mayor of Braintree

Town of Braintree
One JFK Memorial Drive
Braintree, MA 02184

with a copy to: Nicole I. Taub, Town Solicitor
Town of Braintree
One JFK Memorial Drive
Braintree, MA 02184

If to Developer: _____

with a copy to: _____, Esq.

G. Waiver: The failure on the part of Developer or Town, as the case may be, to complain in any one or more cases of any action or non-action on the part of the other party, or to insist in any one or more cases upon the performance of any of the provisions, covenants, agreements or conditions of this Agreement or to exercise any option contained herewith, no matter how long the same may continue, shall never be deemed or construed to be a waiver by such party of any of its rights hereunder, or a relinquishment for the future of any such provision, covenant, agreement, condition or option. Further it is covenanted and agreed that no waiver at any time of any of the provisions hereof by Developer or the Town shall be construed as a waiver of any of the other provisions hereof, and that a waiver at any time of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions.

H. No Partnership: Nothing contained under this Agreement shall be construed to create a partnership or joint venture between the Town and Developer or to make the Town an associate in any way of Developer in the conduct of Developer's business, nor shall the Town be liable for any debts incurred by Developer in the conduct of Developer's business.

I. No Brokers: Each warrants and represents to the other that it has had no dealings or negotiations with any broker or agent in connection with this Agreement. Each agrees to pay, and shall hold the other harmless and indemnified from and against any and all costs, expenses (including without limitation counsel fees) or liability for any compensation, commissions and

charges claimed by any broker or agent resulting from any such dealings by the indemnifying party with respect to this Agreement or the negotiation therefor.

J. Headings and Captions for Convenience Only: The captions and headings throughout this Agreement are for convenience of reference only and the words contained therein shall in no way be held or deemed to define, limit, explain, modify, amplify or add to the interpretation, construction or meaning of any provisions of, or the scope or intent of this Agreement, nor in any way affect this Agreement, and shall have no legal effect.

K. Term of Agreement: This Agreement and the restrictions and covenants contained herein shall be enforceable by the Town from the date of the execution of this Agreement until thirty (30) years from the issuance of the Certificate of Substantial Completion.

L. Binding: The terms of this Agreement shall be binding on the parties, and their respective successors and assigns. All covenants, agreements, terms and conditions of this Agreement shall be construed as covenants running with the land.

M. Entire Agreement of Parties; No Oral Agreement: There are no oral agreements between the parties hereto affecting this Agreement, and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements, and undertakings, if any, between the parties hereto with respect to the subject matter hereof, and none thereof shall be used to interpret or construe this Agreement.

N. Governing Law: This Agreement shall be governed exclusively by the provisions of the laws of the Commonwealth of Massachusetts, and any actions, suits or other claims pertaining or relating to this Agreement shall be brought within the courts of the Commonwealth of Massachusetts.

O. Recording: Developer shall record this Agreement forthwith with the Registry. The Agreement shall be recorded prior to the recording of any mortgages or subordinations shall have been obtained.

[Signature Page Follows]

WITNESS the above execution hereof under seal as of the day and year first above written.

TOWN:

DEVELOPER:

TOWN OF BRAINTREE,
By its Mayor

Charles C. Kokoros

Name:
Title:

COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss.

On this ____ day of _____, 2020, before me, the undersigned notary public, personally appeared _____, Mayor of the Town of Braintree, as aforesaid, 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 to me that he signed the foregoing instrument voluntarily for its stated purposes on behalf of the Town of Braintree.

Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

_____, ss.

On this _____ day of _____, 2020, before me, the undersigned Notary Public, personally appeared _____, who proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose on behalf of _____.

Notary Public
My Commission Expires:

Exhibit A

Approved Plans

Exhibit B

Construction Schedule