

DRAFT

Post 4/30 mtg comments

DEVELOPMENT AGREEMENT

This Development Agreement dated as of ~~April~~ May __, 2013, is entered into by and between the Town of Maynard, acting by and through its Board of Selectmen and Planning Board (collectively "Maynard" or "the Town") and Capital Group Properties, LLC, a Delaware limited liability company with a principal place of business at 259 Turnpike Road, Site 100, Southborough MA 01772 (the "Developer"), for the property located at 129 Parker Street, Maynard MA including 58.30 +/- acres (the "Property" see Description in Exhibit "A") which is owned by LSREF2 Clover REO 2, LLC a Delaware limited liability company with an address of 2711 N. Haskell Avenue, Suite 1800, Dallas, TX 75204 (the "Owner") pursuant to section 9.3.3(11) Neighborhood Business Overlay District ("NBOD") of the Town of Maynard Protective Zoning Bylaw (the "Bylaw") as amended through May 19, 2013.

RECITALS

WHEREAS; The Owner has authorized the Developer in accordance with Exhibit "B" to enter into this Development Agreement and file a Concept Plan with and propose zoning amendment to Town Meeting concerning the Property.

WHEREAS; the Property is subject to an existing proposal and approval for the redevelopment of the Property pursuant to section 9.3 of the Bylaw as amended through October, 2011, more fully described in Memorandum of Agreement dated 12/20/06 ("MOA") between Maynard and 129 Parker Avenue, LLC ("Former Developer"). The Former Developer, was granted an agreement by the Town to defer payment of real estate taxes ("TIF"). The Town has determined that No portion ~~aspect~~ of the development was undertaken and none of the provisions of the MOA were completed.

WHEREAS; Given the passage of time and the inability of the Former Developer to undertake the project, -the Developer wishes to change the prior proposal to a proposal which is mutually acceptable to Maynard and the Developer; and

WHEREAS; the Developer is proposing a development substantially in the form attached hereto as Exhibit "C" (the "Proposal" or "Concept Plan") which includes;

- 250 units of residential development (containing not more than 400 bedrooms) none of which are proposed to include three bedrooms in the following distribution: 45.6—% will be one bedroom or one bedroom with a den (the den shall not be convertible to an additional bedroom); 54.4—% will be two bedroom or two bedroom with a den (the den shall not be convertible to a bedroom); ——%;

- 118,000 sq ft retail structure, in which no single tenant or related entity under common control will occupy more than 85,000 sq ft
- Not more than five retail structures totaling 29,000 sq ft combined
- Not more than two retail structures totaling 50,000 sq. ft. combined
- Not more than two retail structures totaling 14,000 sq. ft. combined
- 117,000 sq ft retail structure, in which no single tenant or related entity under common control will occupy more than 85,000 sq ft
- A 50,300 sq ft existing structure for community use: and

WHEREAS;- the Owner currently pays approximately \$88,000 in taxes to the Town of Maynard for the ~~p~~Property for real estate taxes; and

WHEREAS; according to the Town's financial consultant, Stantec, as more fully set forth in the report of the Edward J. Collins, Jr. Center for Public Management prepared for the Town (the "Collins Center Report") and which is in a report dated March 25, 2013, under the Proposal it is estimated that the following gross revenues will be received by the Town annually if the Proposal were to be developed. Similar to the Developer presented information which estimated annual Gross Revenues:

<u>Category</u>	<u>Collins Center (Stantec)</u>
<u>Excise Tax</u>	<u>\$8,425</u>
<u>Real Estate Tax</u>	<u>\$2,369,038</u>
<u>Food and Beverage Tax</u>	<u>\$35,625</u>
<u>CPA Surcharge</u>	<u>\$34,214</u>
<u>Personal Property</u>	<u>(not included in estimate)</u>
<u>Total Gross Revenue</u>	<u>\$2,439,190</u>

and

<u>One Time Bldg</u>	<u>\$871,750</u>
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Permit Fee(s)	
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WHEREAS; Stantec estimated that the Project will have the following impact on the Town Services and finances:

- \$1,579,779.00; and

WHEREAS; Stantec estimated that the Project will have a net positive annual revenue impact on the Town in the amount of \$868,300.00; and

WHEREAS; Stantec ~~estimated~~ the following new jobs will be created by the Proposal:

- o Approximately 499 jobs during construction; and
- o Approximately 426 Full Time Equivalent retail jobs; and

WHEREAS; during the Planning Board public hearing for the proposed zoning amendment the Developer agreed to make certain traffic improvements as part of the development as more fully set forth ~~herein Exhibit~~ and in addition the Developer agreed to undertake additional studies as more fully set forth on ~~Exhibit H~~

WHEREAS; the Developer and Maynard jointly acknowledge that the Proposal is merely a concept plan and as such this Agreement, the zoning amendment and the Proposal may need to be refined and the parties will ~~negotiate~~ additional terms and details of this Agreement related to the Traffic Studies and resulting conclusions, and

WHEREAS; the Developer is additionally proposing to amend section 9.3 of the Bylaw substantially as set forth below (~~Exhibit "D"~~) and the Developer acknowledges that the Town Meeting will need to approve same along with a Concept Plan of the Proposal, and

WHEREAS; the Developer acknowledges that even after Town Meeting approval the Bylaw requires the Developer to apply to the Maynard Planning Board ("Planning Board") for site plan approval and/or special permit(s); and

WHEREAS; the Developer and the Town have entered into a Memorandum of Agreement, Peer Review and Legal Fees dated December 10, 2012, concerning the review of the project up to and including through the Special Town Meeting; and

WHEREAS; the Developer and Maynard believe it will be in the best interest of the Town and the Developer to allow the Town to conduct a peer review of the Developer's Proposal and related studies ~~after~~ the Town Meeting approves the zoning amendments and the Concept Plan and further that the Developer acknowledges that Maynard does not have the funds sufficient to pay for the Town reviews and it is in the best interest of the Town and the Developer to pay the Town for same; and

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and for the mutual promises set forth below, the parties agree as follows:

A. ENGAGEMENT OF CONSULTANTS; REIMBURSEMENT FOR COSTS

1. **Payment for Review of Plans and Documents Accompanying the Application for a Site Plan Review.** At the time of the submittal of the application for the Site Plan Review or Special Permit required by the NBOD, Developer shall deposit with the Maynard Treasurer the amount of ~~\$ 10,000.00~~, (the "Site Plan Review Account") which shall be used pursuant to G.L. c. 44, §53G by the Planning Board to continue to engage or engage anew, a traffic engineer, civil engineer (which will be required to review the civil aspects of the site including, lighting, noise, emission, water, sewer, stormwater, landscaping and wetlands, all as appropriate and in accordance with the Site Plan Review criteria in section 10.3 of the Zoning Bylaw), and legal counsel which will continue to assist the Town in the legal review and peer review of the project during the Planning Board Site Plan Review or Special Permit process, and other reasonably necessary consultants to provide technical assistance during the review of said application. Once the peer review consultants are selected in accordance with the process set forth in section 2(b) below, the Developer shall deposit additional funds equal to the contract amounts for the selected peer review consultants prior to the Town executing any contracts with said consultants. Notwithstanding the foregoing, the Town/Planning Board shall continue to use Town Counsel as legal counsel which said counsel shall be paid on an hourly basis and not be subject to the process set forth in section 2(b). The Planning Board shall not be required to proceed with the Site Plan Review process until said amounts for peer review consultants and legal counsel are deposited. The Site Plan Review or Special Permit Account shall be replenished by Developer at the request of the Planning Board when the balance falls to \$5,000.00.

2. **Management and Allocation of Escrow Accounts.**

a. With respect to the escrow accounts anticipated in Sections A(1) above, in the event that actual costs for a specific budgeted item are not expended, at the time such escrow account is terminated, any funds allocated for such costs which remain in an escrow account must be used to replenish other required escrows before requesting additional funding from Developer. In the event the Developer shall fail to replenish any escrow fund, the Developer agrees that the Town may stop work on the plans, permits and/or applications of whatever kind or nature, and the Town shall not commence work again, until such time as the escrow fund is replenished. In the event there is a statutory time limit applicable to any permit, the Developer agrees to forthwith waive said time limit in writing until such time the escrow is replenished.

b. Maynard agrees that prior to engaging any consultant or incurring any costs which will be paid for by Developer, Maynard will: (i) seek at least three (3) quotes from each specialty required, as part of said quote the Town will require a lump sum contract based upon the submitted scope of work and then select the lowest most qualified bidder. Further as part of this process, the Town agrees to: (i) consult with Developer; (ii) provide a budget for the anticipated

consultant contract; (iii) not incur any such cost, or enter into any such contract, without prior notice to Developer; and (iv) upon request from Developer, provide a periodic accounting for each of the specific escrow accounts referenced in this section.

c. Upon final payment of invoices for the various costs and consultant fees required of Developer pursuant to this Section, Maynard will provide a final accounting of all such expenses and payments, pursuant to statute. Unless Developer objects to such reconciliation within 30 days following receipt of same, the reconciliation will be deemed acceptable to both Maynard and Developer. Maynard will provide Developer a release from any further obligations with respect to the payments required from Developer under this Section. Any funds remaining in any escrow account at that time will be disposed of in accordance with the provisions of Section 4G (2) below.

3. Maynard and Developer agree that, if, and only if, the Concept Plan and the NBOD Amendments are adopted at the Special Town Meeting in the form attached hereto as **Exhibits "C" & "D"**, without modification which materially affects Developer's rights as set forth herein, then Maynard and Developer shall each perform the actions as set forth herein; ~~provided, however, that with respect to the actions described in Sections A(1), Developer shall perform its obligations regardless the status of any site plan review application or building permit application. Notwithstanding the foregoing, in the event there are modifications at the Town Meeting to the NBOD Amendments or Concept Plan which materially affect the Developer's rights as set forth herein, the Developer may choose to proceed with the Project and in which case this Agreement will be in full force and effect or the Developer may choose not to proceed with the Project and thereafter, this Agreement shall be of no further force and effect.~~

~~4. The Developer agrees that prior to the issuance of any building permit to deposit an additional \$5,000.00 in an escrow account for the purpose of paying for fire protection inspections during the construction process as the Fire Chief deems appropriate. In the event the Fire Inspection escrow account reaches \$1,000.00, the Developer agrees to replenish it to \$5,000.00 forthwith. In the event the Developer fails to do so, the Developer may, at the option of the Building Commissioner, to order to cease and desist any activity on the Property.~~

B. TRAFFIC IMPROVEMENTS

1. Developer shall pay for planning, permitting, and design, and shall install and construct at its sole expense, such reasonable off-site traffic improvements and mitigation as may be required by Massachusetts ~~Highway~~ Department of Transportation ("M~~DOT~~H") or Maynard Department of Public Works, whichever entity has jurisdiction over the planned work activity to be approved by the Planning Board.

2. a. With respect to the main entrance to 129 Parker Street and the intersection of Parker Street & Great Road and other traffic improvements reasonably identified by Maynard's and Developer's Traffic Consultants, (the "Traffic Improvements"), Developer agrees to pursue the approval by the M~~DOT~~H for the Traffic Improvements, as required and Maynard agrees that it will reasonably cooperate with Developer in its efforts to obtain MHD approval, including the execution of any documents required therewith. At least 14 days prior to

the submittal of any design for such traffic improvements to MHD, Developer shall provide copies of the proposed design to the Town of Maynard for its review.

b. In addition to those improvements noted above, the Developer shall undertake the following improvements which are identified in the Collins Center Report within the study by Faye Spofford and Thorndike, which may be refined as part of the Site Plan Review and Special Permit process:

Site Access/Internal Circulation Actions

- Signalization of and lane additions at the primary site drive. A concept plan was provided of this improvement;
- Use of the secondary site drive to right-in only. A concept plan was provided of this improvement;
- New ADA compliant sidewalk on the west side of Parker Street from the primary site drive to Great Road;
- Placing bike racks on-site; and
- Create a bicycle/pedestrian connection to the high school/ball fields.

Off-Site Actions

- Increase the length of left turn lanes at Parker Street/Great Road;
- Install guide signage;
- Ensure optimum signal timing at Parker/Powder Mill/Waltham;
- Install an ADA compliant sidewalk on the east side of Parker Street from Old Marlboro Road to North Street or contribute to the sidewalk fund for this project;
- A pedestrian crossing beacon is recommended for Parker Street at Field Street;
- Join the local Transportation Management Association (TMA); and
- Monitor traffic in the neighborhoods east around of the project site, including North Street, South Street, B. Street, Marlborough Street, Old Marlborough Road, Woodbridge Road and Tobin Drive and the intersection of Maynard and Hudson Roads and provide appropriate mitigation as determined by the Planning Board in the Site Plan Review or Special Permit Process.

Construction of the Traffic Improvements shall be completed as required in schedules agreed to by the Planning Board Maynard and the Developer and which shall become a part of the Site Plan Review or Special Permit approval process. The Developer shall not be required to complete all Traffic Improvements prior to the issuance of the first certificate of occupancy, but will complete all Traffic Improvements in a phased plan as set forth by the Planning Board in the Site Plan Review or Special Permit Process.

3. ~~Prior to~~**During** the Planning Board's review of the Site Plan Review, Developer shall be required to perform supplementary new traffic analyses as set forth on Exhibit H, and undertake and implement additional mitigation and improvements to assure that the Developer is addressing the traffic impacts from the proposed development on the surrounding sidewalks, intersections and streets to the extent that public health, welfare and safety are addressed in the opinion of the Planning Board. The Parties agree to amend this Development Agreement to reflect the additional required mitigation and improvements, including security for same, following the earlier to occur of the Site Plan Review or Special Permit Planning Board process but prior to the expiration of the appeal period for same.

4. Developer shall construct streets and parking areas within the Concept Plan, it being the intention that all such streets and parking areas shall remain privately owned. Developer will maintain streets and parking areas at the Developer's sole cost and expense, including for the parking associated with the building known as PK2 and which will may be put to municipal use as more fully set forth below, ~~at the Developer's sole cost and expense.~~

5. Developer shall be allowed to construct any improvements or utility connections as may be required within public ways, provided road opening or curb cut permits, and waivers from any road or street opening moratorium are obtained from all appropriate agencies, commissions, or boards, which will not be unreasonably withheld.

6. ~~6.~~ Prior to the application for Site Plan Review or Special Permit, the Developer shall have completed all traffic studies listed in Exhibit H and the Developer agrees not to submit any Application for Site Plan Review or Special Permit prior to said submittals. Nothing herein shall prevent the Planning Board from requiring an appropriate form of security to assure the phased construction and implementation of the traffic improvements which are a part of the Site Plan Review and/or Special Permit decision(s).

7. During the Site Plan Review process, the requests for signage from residents of neighboring streets (South St., B St., Old Marlborough, Field St, Vose Hill) are determined to be appropriate and in line with the recommendations of the Planning Board Peer Review consultants, and they pose no public safety issues then all reasonable signage requested by the Planning Board shall be included and shall be at the expense of the applicant.

C. DESIGN AND DEVELOPMENT

1. **Aggregate Limits.** Developer's application for a Site Plan Approval pursuant to the NBOD as amended shall include the following aggregate limits or otherwise be consistent with Concept Plan approval at the Special Town Meeting:

a. 250 dwelling units (containing not more than 400 bedrooms) none of which shall include three bedrooms and which shall be constructed as follow:

a. 45.6% will be one bedroom or one bedroom with a den (the den shall not be convertible to an additional bedroom); 54.4% will be two bedroom or two bedroom with a den (the den shall not be convertible to a bedroom);

b. Ten (10) percent of the dwelling units shall be deed restricted for the purpose of low to moderate income housing and in accordance with the appropriate requirements to qualify for the Town of Maynard Subsidized Housing Inventory.

b.b. not more than three hundred twenty-eight thousand (328,000) square feet of Gross Floor Area of nonresidential space,

(i) One, -118,000 sq ft retail structure, in which no single tenant or related entity under common control will occupy more than 85,000 sq ft.

(ii) Not more than ~~one~~ five retail structures totaling 29,000 sq ft combined,

(iii) Not more than two retail structures totaling 50,000 sq ft combined,

(iv) Not more than two retail structures totaling 14,000 sq ft combined,

(v) One 117,000 sq ft retail structure, in which no single tenant or related entity under common control will occupy more than 85,000 sq ft.

e.d. One 50,300 sq ft existing structure ~~(may be increased to 55,000 sq ft for that amount necessary to accommodate the needs of the Town)~~ for municipal purposes, not to be computed as part of the nonresidential space, or commercial use.

e. In the event the proposed zoning is changed at Town Meeting on May 19, 2013 to be more restrictive than as set forth above, and the Developer chooses to move forward with the development, then notwithstanding the foregoing, the more restrictive zoning shall control and this Agreement shall be in full force and effect. However, if the Developer shall choose not to move forward, then this Agreement shall be of no further force or effect.

2. **Utilities:** Developer shall install all utilities on site serving the proposed development underground, including, but not limited to, stormwater, water, sewer, gas, electric, telephone/teldata, and cable. Notwithstanding the foregoing, in the event there are water and sewer improvements which are directly attributable to the Development, the Developer shall undertake those improvements as well, regardless of whether they are located on or off of the site.

3. **Building and Site Design:** a. In designing its Site Plan, and any plans submitted with an application for a Site Plan Approval, Developer will use reasonable efforts to cooperate with Maynard to develop building designs for its development in a manner which is consistent

with the Concept Plan approved at the Special Town Meeting. Additionally, the Developer agrees to reasonably incorporate Low Impact Development (“LID”) design techniques throughout the site including but not limited to retention and re-use of storm-water for primary on-site irrigation purposes, underground storage of stormwater, rain gardens and the like. Further, the Developer shall design the site to encourage walkability and non-motorized vehicular use of the site by the placement of sidewalks, locations of structures, inclusion of green “rest and congregating areas” and placement of bike racks.

In addition, in the design of the site the Developer shall include the following requirements:

- All residential buildings shall be built outside the buffer and wetlands areas but may be built within the wetlands buffer zones to the extent permitted by the Conservation Commission and further the placement of said buildings shall comply with all local, state and federal regulations and laws regarding same.
- The site shall be designed to provide for well defined and friendly and inviting residential connection with the remainder of the development encouraging the use of sidewalks.
- Connections to the hiking trails should be included.
- The residential space should be inviting and open rather than closed off from the remainder of the development.
- Parking spaces in the overall site plan should be reduced by 120 spaces or more if appropriate to allow for increased setbacks and more green space within the design of the commercial areas.
- Bike lanes should be designed within the Parker Street area.
- The Developer shall in its best All efforts should be made to pull away the commercial development from the Downing Road residential neighborhood.

b. The Developer shall amend the Concept Plan at or before the Special Town Meeting of May 19, 2013 to properly reflect the location of the proposed gymnasium adjacent to the PK2 structure and which shall also more accurately reflect the major design criteria noted above including but not limited to: Reduced parking, increased green space, reconfigured residential and pedestrian access and bike access.

4. **Phased Development.** Developer agrees that it will develop the Property consistent with the following phased approach:

a. It is anticipated that the first phase shall consist of the construction of the residences and the larger commercial/retail building along with the rehabilitation and addition of the municipal building while the second phase shall consist of the construction of the remaining buildings.

(i) the Developer shall submit an application for Site Plan Approval or Special Permit on or before November 15, 2013.

(ii) the Developer shall commence construction of the first phase as soon as all federal, state and local permits are obtained and market conditions allow.

(iii) all traffic mitigation shall be undertaken in accordance with the phased approach as noted above and in accordance with the determination of the Planning Board as part of the Site Plan Review or Special Permit process.

~~(iv)~~ substantially all landscape improvements must be completed concurrently with the issuance of a certificate of occupancy for the building they are meant to complement. Notwithstanding this, the main entry site improvements and landscaping along with all perimeter landscaping shall be completed prior to the issuance of the first occupancy certificate for any structure.

b. The existing PK2 structure will be used for municipal purposes and the Developer shall construct the improvements of PK2 as a senior center, school administration offices and a gymnasium all in accordance with the plans attached hereto as Exhibit E and as further defined in section F(2) hereafter. The Parties agree that the gymnasium will either be constructed as part of, reconstructed, as an addition to or a stand-alone structure adjacent to the existing PK2 structure. Once the plans are finalized for PK2, Developer will apply for a building permit for such improvements (at no charge by Maynard) within 90 days of the issuance of the first building permit for the development and commence construction within 60 days thereafter. Maynard shall provide the plans to construct such improvements and the parties shall work in good faith and a commercially reasonable manner to assure the plans properly reflect the plans attached as Exhibit E. Construction on PK2 including and the gymnasium shall be complete and a certificate of occupancy applied for at the earlier to occur of the issuance of any certificate of occupancy for the first retail structure or the issuance of the first certificate of occupancy for any residential unit or structure after issuance of the certificate of occupancy for the first unit after 90% the 12th.

c. The timing of assessments by Maynard of new improvements shall be in accordance with MA law.

d. To the extent permitted by law, the Town agrees to convey to the Developer an easement or license and the Developer may apply for the appropriate special permit to have a reasonable pylon sign constructed on Town property at the southeast corner of the intersection of Routes 117 & 27 identifying the shopping center and its major anchors once the first retail store in the development is opened. The Board of Selectmen agrees to reasonably review any application and apply the Special Permit criteria as set forth in the bylaws.

e. The Developer agrees to have a sign within the development with a map showing the location and names of the businesses in the Maynard Downtown Business District. Once the sign/map is installed by the Developer the Maynard Business Alliance will be responsible for updating the names to reflect the current businesses in the Down Town.

f. During the Site development, any portion of the site which is not being developed as part of the then active development phase shall be appropriately landscaped and stabilized.

D. PROPERTY SITE SERVICES

Developer shall be solely responsible for the exterior maintenance and operation, including but not limited to refuse and trash removal, snow removal, road and sidewalk maintenance, non-building lighting, landscape maintenance and similar activities of the development to be built on the Property, and including- PK2 and the gymnasium if separate and which shall be maintained to the same standards as the remainder of the Property.

Notwithstanding the foregoing, the Town shall be responsible for trash and refuse removal from PK2 and the gym once the Town occupies same.

E. PUBLIC SAFETY

1. Developer shall be responsible for site security during and following construction. The Developer shall pay for public safety details when required during the construction period when site equipment and material deliveries affect public roadways adjacent to the Property, as well as during particularly busy periods when the development has been completed and is in operation, such as holiday shopping seasons.

F. FINANCIAL CONSIDERATION / MITIGATION

1. Maynard and Developer agree that a reasonable budget for the consultant reviews funded by Developer pursuant to Section A, paragraphs (1) shall be provided as noted therein.
\$ _____.

~~2. In addition to the Financial Gift referenced in paragraph (1) above, the Developer shall pay to Maynard as an additional gift pursuant to be deposited with the Town Treasurer to be expended by the Board of Selectmen or committee appointed by them, to establish a loan or grant program to assist new or existing businesses in the Town of Maynard G.L.c. 44, §53A, the sum of \$25,000 per year for ten (10) years. for the purpose of making improvements and promoting student learning and economic development and revitalization in the Maynard downtown area.~~

2. In accordance with the timeline noted in D(4)(b) above, the Developer will renovate (simultaneously with while it is doing other construction on the development) and construct an addition to the structure known as PK2 for the proposed municipal use including the gymnasium, senior center and related amenities up to a cost of \$ _____ in accordance with the plans and specifications attached hereto as Exhibit E in a completely finished, move in ready turn-key (commercially reasonable : proposed by developer) condition (equal to or better than similar renovated office and gymnasium space in the greater Maynard area). Notwithstanding the foregoing, the Developer shall be required to spend no more than \$62,500.00 for the completion of the School Administrative Space as noted on said plans. In the event the Developer determines the cost to complete the School Administrative space will exceed \$62,500.00 then the Developer shall provide to the Town proof of its estimated costs to complete the space, and prior to undertaking same, the parties shall work in good faith and use commercially reasonable efforts to determine how best to complete the space in order that the Town will have an office space suitable for School Administration and which meets all appropriate regulations and general laws. The Developer shall fit out and renovate PK2 in accordance with Exhibit. The Developer shall

provide a one (1) year guarantee for replacement and/or repair on all work and/or systems which the Developer undertakes and/or installs as part of its improvements. The Town shall have a right to inspect the premises prior to taking occupancy to determine that the condition of the premises, for all areas which the Developer has not made improvements to or constructed upon is in the same condition as they are at the execution of this Agreement, reasonable wear and tear excluded. ~~fifteen (15) year guarantees on the HVAC, roofing, window, electrical and plumbing systems for the PK2 building and gymnasium.~~ The Developer has offered and the Town will accept, subject to Town Meeting approval, ~~will then~~ gift by deed of said building(s) and real estate directly thereunder or lease ~~it~~ to the Town of Maynard for 99 years for \$1.00 a year. The Developer will provide a parking area sufficient to serve the proposed uses of same including and access and egress areas, all as mutually agreed upon and for no less than 99 years. The Developer shall provide an easement to the Town to allow parking and provide access over the Property to the parking and building for no less than 99 years. Once the Town takes occupancy of the building, whether by fee or lease, thereafter neither the Developer nor the Owner will be liable or responsible for any activity by Maynard or the public thereon.

4.3. On or before the issuance of the first certificate of occupancy for any structure on the site, the Developer shall gift Maynard an easement on the rear area of the property as identified on Exhibit IF along with a non-exclusive access easement leading from the commercial and/or residential development area closest to the PK2 structure to the Recreation Easement Area which will remain undeveloped and with no structures on it and be used by the Town for passive recreation use only, at which time neither the Developer nor the Owner will be liable or responsible for any activity by Maynard or the public on the land described in Exhibit F.

6.4. The Developer agrees that if there are any improvements or enhancements to the water system and related infrastructure and which are identified as part of the site plan review or special permit process and which are made necessary as a result of this project, which but for this project, the Town would not otherwise have had to undertake, that the Developer shall be solely responsible for same. The Developer agrees that given the time frame requested by the Developer in the approval process of the Concept Plan, that the study of the impact on the water system was not completed and the Developer anticipates that study and peer review thereof to be a part of the site plan review process.

5. Notwithstanding the foregoing, the Developer and the Town agree that there may be additional mitigation and improvements required as part of the Site Plan Review and Special Permit process as it relates to traffic, stormwater, water and sewer review and final design. The Town and the Developer agree that this Development Agreement will be amended to reflect said mitigation. The Board of Selectmen and Planning Board agree that ~~they~~ will seek no further mitigation or improvements related to the project other than the foregoing.

G. MISCELLANEOUS PROVISIONS

1. Prohibitions

a. Cell Tower Prohibition. Developer agrees that it will not allow siting of a cell tower or any wireless antennas, receivers, transmitters, or the like, with the exception such equipment owned or leased by tenants for the operation of their businesses, within the Property.

b. Adult Entertainment Prohibition. The Developer agrees not to allow Adult Entertainment uses, as defined in the Zoning Bylaw of Maynard, within the Property.

~~c. e.— Given the proximity of the Property to schools, the Selectmen may propose an article to the Town Meeting that the sale of guns or other similar weapons from any property near any school at any time shall be prohibited. Notwithstanding the foregoing,~~ the Developer agrees that no tenant at the Property will sell guns or other similar weapons.

~~d. Other than residential, there shall be no use, store, or any other commercial operation which operates twenty-four (24) hours a day. The Planning Board may, through the Site Plan Review process limit hours of delivery to commercial establishments on the Property so as to mitigate any potential impacts on nearby residential neighborhoods.~~

2. **Invalidity.** Maynard and Developer agree that if the Town's adoption of the proposed zoning amendment is determined to be invalid, illegal, or unconstitutional by the Attorney General of the Commonwealth of Massachusetts or by a court of competent jurisdiction prior to the performing of the actions described herein ~~or in the event of Termination by the parties herein~~, then the provisions of this Memorandum and each of the agreements and documents referenced herein shall be null and void; provided, however, that the Developer shall pay the consultants in Section A(1) for work done up until such determination and any surplus remaining in the escrow accounts shall be returned to the Developer.

3. **Compliance; Site Plan Review and/or Special Permit.** Developer agrees that the site plan approval process shall include the submission of evidence, to the satisfaction of the Planning Board, of compliance with the terms of this Agreement.

4. **Intent to Bind Successors, Heirs and Assigns.** The foregoing obligations shall run with the land in Maynard, Massachusetts and shall be binding upon the Owner and the Developer and inure to the benefit and burden of Developer, its heirs, successors, and assigns. A notice thereof in the form attached hereto as Exhibit G shall be executed by the Owner and the Developer and recorded with the Registry of Deeds upon approval of the NBOD Amendment by the Attorney General, without modification which would inhibit the Developers proposal to develop the Concept Plan hereunder. Notwithstanding the foregoing, in the event there are modifications at the Town Meeting or which are required by the Attorney General to the NBOD Amendments which materially affect the Developer's rights as set forth herein, the Developer may choose to proceed with the Project and in which case this Agreement will be in full force and effect— ~~or the Developer may choose not to proceed with the Project and thereafter, this Agreement shall be of no further force and effect.~~ In the event of a sale of the property, all Developer's and Owner's responsibilities, commitments, and benefits hereunder shall be transferred to the purchaser.

5. **Effect;** This Agreement shall not take effect until voted and executed by the Board of Selectmen and the Planning Board of the Town of Maynard. This agreement may be amended by a written document executed by all parties hereto.

6. **Required Notice.** Unless otherwise specified in this Agreement, any notice to be given under this Agreement shall be in writing and signed by the party (or the party's attorney) and shall be deemed to have been given (a) when delivered, if delivered by hand, or (b) two business days after the date mailed, if mailed by registered or certified mail, all charges prepaid, or (c) faxed in either event addressed as follows:

in the case of the Town, to:

Maynard Board of Selectmen
Maynard Town Building
195 Main Street
Maynard, MA 01754
Attn: Town Administrator
(978) 897 8457 (fax)

with copy to Town Counsel:

Lisa L. Mead
Blatman, Bobrowski & Mead, LLC
30 Green Street
Newburyport MA 01950
(978)463 7747 (fax)

and in the case of the Developer to:

Capital Group Properties, LLC
259 Turnpike Road, Suite 100
Southborough, MA 01772
Attn: William A. Depietri, Manager
(508) 357-6859 (fax)

with a copy to Developer's attorney:

Myron J. Fox, Esquire
Rollins, Rollins & Fox
36 Glen Avenue
Newton Center, MA 02459
(617)969-5281 (fax)

By such notice, either party (or such party's attorney) may specify a new address, which thereafter shall be used for subsequent notices.

7. **Default and Notice.**

~~_____a. By Developer.~~ If Developer shall default in the performance of any term, covenant or condition of this Development Agreement, which default shall continue for more than thirty (30) days after written notice to Developer (or if such default shall be reasonably expected to take more than thirty (30) days to cure, said longer period of time), Maynard shall have the right to (i) terminate this Development Agreement; (ii) withhold any Approvals issued by Maynard; or (iii) exercise any other remedy available at law or in equity, including commencing an action for specific performance. Maynard agrees that if, within twenty (20) days after Developer's receipt of a notice of a claim of default, Developer shall give notice to Maynard that Developer contests the same, then Maynard shall not have the right to exercise any of the foregoing rights in respect thereto until such claim shall have been finally adjudicated or the parties mutually agree otherwise. If such matter is determined adversely to Developer, Developer shall have thirty (30) days (or such longer period of time as shall be reasonable under the circumstances) to effect such cure and in addition thereto, ~~Developer shall reimburse Maynard its reasonable legal fees and other expenses in defending any such contest.~~

~~a.b. By Maynard.~~ If Maynard shall default in the performance of any term, covenant or condition of this Development Agreement, which default shall continue for more than thirty (30) days after written notice to Maynard (or if such default shall be reasonably expected to take more than thirty (30) days to cure, said longer period of time), Developer shall have the right to (i) terminate this Development Agreement; or (ii) exercise any other remedy available at law or in equity, including commencing an action for specific performance. If such matter is determined adversely to Maynard, Maynard shall have thirty (30) days (or such longer period of time as shall be reasonable under the circumstances) to effect such cure and in addition thereto. ~~The failure of the Town Meeting to adopt the proposed zoning shall not be considered a default hereunder, but shall render this agreement void and of no further effect of force.~~

8. **Effective Date of Agreement.** This Development Agreement shall be effective as of the date it shall be executed by both Developer and Maynard.

9. **Dispute Resolution.** Prior to the initiation of any court proceeding regarding the terms of this Agreement or performance thereunder, Maynard and the Developer agree that such disputes shall be first subject to ~~nonbinding arbitration, or~~ mediation, for a period not longer than one hundred twenty (120) days.

10. **Applicable Law; Construction.**

a. This Development Agreement shall be deemed to have been executed within the Commonwealth of Massachusetts and the rights and obligations of the parties hereto shall be construed and enforced in accordance with, and governed by, the laws of the Commonwealth of

Massachusetts. Any actions brought hereunder shall be filed and tried in the courts of appropriate jurisdiction in Middlesex County Massachusetts.

b. This Development Agreement is the entire agreement among the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions.

11. **Authority.** This Agreement has been duly authorized, executed and delivered by Maynard and the Developer; it constitutes the legal, valid and binding obligation of each party and is enforceable against the other party in accordance with its terms.

12. **Continuing Obligation:** Neither the extension of this Development Agreement nor the approval of the said Concept Plan and NBOD zoning amendments nor the approval of the Planning Board of a site plan and special permits for the Property shall create any obligation of the Owner or the Developer to construct any portion or all of the development contemplated hereunder.

13. **Reservation of Authority:**

~~a.A.~~ It is expressly understood and agreed by and between the Board of Selectmen and the Planning Board and the Developer that the aforesaid consultants, peer review experts and attorney(s) represent solely the interests of the Town and that the Town retains full authority to pay any and all invoices upon completion of assigned tasks to the sole satisfaction of the Town.

~~Bb.~~ It is expressly understood and agreed by and between the Board of Selectmen and the Planning Board and the Developer that by accepting such funds for the review of the Application, neither the Town nor the Board of Selectmen nor the Planning Board make a representation or promise that it will act on the site plan review or any special permit applications in any particular way other than by the Board of Selectmen's and Planning Board's normal and regular course of conduct and in accordance with their rules and regulations and any statutory guidelines governing them.

Executed under seal as of the date first above written.

Town of Maynard

By: _____
Selectman

Planning Board

By: _____

By: _____

By: _____

By: _____

By: _____

Developer – Capital Group Properties, LLC

By: _____

William A. Depietri - Manager

Owner:

By: _____
Approved as to form:

By: _____
Town Counsel

DRAFT