129 Parker Street Development, Maynard, Massachusetts

MEMORANDUM OF AGREEMENT
September 6, 2016

I. Preliminary Statement

This contract, executed by the Parties on September 6, 2016, shall become effective immediately upon passage by Maynard Town Meeting's approval of the Concept and Signage plans or revisions thereto, identified in Section III of this Agreement, is a "Memorandum of Agreement" ("MOA") between Maynard Crossing, JV, LLC, the property owner, its successors and assigns and the Town of Maynard ("Town of Maynard" or "Town") in accordance with Section 9.3.3 of the Neighborhood Business Overlay District ("NBOD") as codified in the Zoning By Laws of the Town of Maynard, as amended through January 2016. The Property Owner's commitments and terms listed in this MOA are offered freely and in response to the calculation of development impacts from the proposed 129 Parker Street development. This MOA shall hereafter be in full force and effect with the offers and conditions set forth below and shall supersede and replace any prior Agreements by and between the parties as it relates to the property that is subject to this Agreement.

The Parties to this MOA are:

A. The Town of Maynard, Massachusetts, by and through its Board of Selectmen. As used in this MOA, -Maynard" shall also mean the Town of Maynard as a municipal entity or its Boards, Commissions, Departments and staff, as applicable in context.

B. Maynard Crossing, JV, LLC, with a business address of 259 Turnpike Road, Southborough MA, 01772, which is the fee simple owner of the property located at 129 Parker Street, Maynard, Massachusetts and its successors, assigns, mortgagees and all others taking title in fee or less than fee or otherwise acquiring an interest to a part or all of the Property described herein (all the above hereinafter identified as "the Owner').

The property that is the subject of this MOA located at 129 Parker Street, Maynard, Massachusetts, and identified a Assessor's map number 25 and parcel numbers 152 and 152-1 ("the Property"). The legal description of the Property is attached hereto as Exhibit A.
In addition to the legal binding effect of this MOA, it is understood and agreed that the Owner will apply for various approvals from, among others, the Maynard Planning Board, that may include but not be limited to, Site Plan and Special Permit approval pursuant to the Maynard Zoning Bylaw. The Owner agrees to be bound by such terms and conditions imposed by the Planning Board; terms and conditions that are to be considered in addition to, those contained herein. Accordingly, nothing in this MOA shall be construed as authorizing development of the locus independent of the approvals required from the Planning Board pursuant to the Zoning Bylaw.

Notwithstanding the foregoing nothing in this agreement shall constitute a waiver of Owner's rights of appeal under G.L.c. 40A or otherwise as to Site Plan Review or any Special Permit.

II. RECITALS

Whereas the Owner asserts that it owns the Property in fee simple; and

Whereas Owner is proposing a mixed use development containing, without limitation as to specific final use, residential apartments, independent senior living, retail/commercial/office buildings and a supermarket (the "Project"); and

Whereas the Maynard Special Town Meeting held on June 12, 2006 approved an amendment to the Maynard Zoning Bylaw that rezoned the Property to the NBOD; and

Whereas, the June 12, 2006 approval of the NBOD authorized the then Owner and its successors to submit a "Concept Plan" regarding the proposed development of the Property to Town Meeting; and

Whereas, the NBOD significantly expands the uses allowed on the Property; and
Whereas Owner is the successor in interest of the previous owner of the Property, 129 Parker Street, LLC; and

Whereas 129 Parker Street, LLC executed a Memorandum of Agreement dated December 20, 2006 for the Property which Memorandum of Agreement remains in full force and effect; (the "2006 MOA") and

Whereas Town Meeting approved a Concept Plan dated December 12, 2006, revised December 20, 2006; and

Whereas the Planning Board of the Town of Maynard issued a Site Plan Approval and Parking Special Permit on September 8, 2009 incorporating the essential terms of the 2007 Concept Plan and the 2006 MOA which Site Plan Approval and Special Permit remain in full force and effect; and

Whereas Town Meeting further amended the NBOD Zoning Bylaw at a Special Town Meeting on January 11, 2016 through which additional uses by right and special permit were added to the NBOD; and;

Whereas Owner, pursuant to the approval by Town Meeting of the NBOD Amendment, intends to submit a revised Concept Plan and a Signage Concept Plan to Special Town Meeting in September 2016, which Revised Concept Plan and Signage Concept Plan require approval by a majority vote of the Town Meeting so as to enable the Owner to proceed to Site Plan Review and Special Permit applications as provided in the Zoning By-Law; and

Whereas, the Owner and the Town have agreed to amend the existing 2006 MOA on the terms and conditions hereinafter set forth so as to facilitate development of the Property consistently with the NBOD as amended by Special Town Meeting (January 2016) and

Whereas the Owner has agreed to mitigate the impact of the proposed project on the immediate neighborhood and the Town for its and the Town's benefit;

NOW, THEREFORE, in consideration of the Town, acting through its Board of Selectmen, supporting the NBOD Zoning Amendment at Special Town Meeting and supporting the Revised Concept Plan and Signage Concept Plan for the Project and of Owner offering to and agreeing to take and implement specific actions and to forbear from certain uses so as to offset the specific development impacts of the proposed Project, the parties hereto agree as follows, including, without limitation those voluntary offers of mitigation and use made by Owner and accepted by the Town, all as hereinafter set forth.

III. TERMS OF AGREEMENT

A. Description of Project and Revised Concept Plan.

The Project may not exceed or expand the following components, each constructed in compliance with the dimensional requirements of the Maynard Zoning Bylaw, generally, and as may be approved by the Planning Board:

1. Residential Apartments. Not more than 180 residential apartments with not more than 256 bedrooms (plus two bedrooms for each additional unit greater than 175) situated in not more than three multi unit buildings and two "carriage houses", all as shown on the plans identified below. The maximum number of units applies regardless of the permitting mechanism used to construct said dwelling units. For up to and including 175 dwelling units no fewer than seventeen (17) of the dwelling units constructed within the Project shall be made available for rent, for the longest period permitted by law, to individuals or families earning less than eighty percent (80%) of the median income of Maynard, as that figure is determined from time to time by the Commonwealth of Massachusetts ("affordable unit"). All additional dwelling units greater than 175 shall be affordable units.

2. Independent Living or Continuing Care Retirement Community. Any independent living or continuing care retirement community shall consist of not more than 143 units.

3. Retail/office/commercial space including supermarket, with a total gross floor area not to exceed 310,000 square feet.

The Project as described above is shown on the plan consisting of multiple sheets and pages dated June 28, 2016 entitled, "129 Parker Street, Maynard, MA, Concept Plan Submittal" prepared by CI Design, Inc., and includes any and all supporting materials, including, but not limited to, the Traffic Assessment dated March 9, 2016 prepared by Green International Affiliates Inc. ("the Project" or "Concept Plan", as applicable). The signage for the Project is shown on the plan consisting of multiple sheets and pages dated July 11, 2016 entitled "Maynard Commons, Retail and

Residential Graphics: Branding & Wayfinding, Revised Concept Design 4", prepared by Gamble Design, LLC.

B. Payment of Consultants and Legal Costs.

1. The Owner offers to pay the reasonable fees of review consultants (including Town Counsel and/or other attorneys) hired by the Town in connection with the Town's review and consideration of the NBOD, this Amended and Restated MOA, the Revised Concept Plan and supporting materials and applications for site plan or special permit approvals. The Town's selection of consultants and attorneys shall be subject to Owner's reasonable approval and compliant with all applicable laws, rules and regulations pertaining to the engagement of such consultants and attorneys by municipalities in connection with the development of private projects.

   As it relates to this section of the Agreement only, if the Town's costs associated with the Project exceed the sum of $20,000.00, paid on November 5, 2015 the Owner offers to pay the additional reasonable cost associated with the Project provided the Town complies with the terms of G.L. c.44, s.53G, and, provided that there is no conflict with G.L. c.44, s.53G, the Town agrees that prior to engaging a consultant, or an attorney or incurring any further costs that will be paid for by the Owner, the Town will: (i) consult with the Owner; (ii) provide the Owner with a scope of work and an estimated budget for the anticipated consultant's work; (iii) not incur any such cost, or enter into any such contract, without prior notice to and reasonable approval by the Owner; and (iv) upon request by the Owner, provide a written accounting of all costs incurred and other expenditures made by or on behalf of Owner under this Agreement.

2. In the event that there is a remaining balance in this fund after the Site Plan Approval and Special Permit processes, the Town of Maynard shall return any balance to the Owner.

3. To the extent permitted by law and public policy, the Owner shall have the right, at the Owners election, to contribute funds pursuant to G.L. c.44, s.53G to assist in the Maynard Building Department's review of plans and applications for the Project as well as to assist in determining compliance with the State Building Code and other applicable codes relating to the Project.

C. Financial Contribution.

1. The Owner offers to pay the Town of Maynard the amount of One Million Dollars ($1,000,000.00) for deposit in an appropriate fund established by the Town Treasurer to offset the anticipated direct and indirect impacts of the Project. The Town acknowledges that a payment of $100,000.00 of this total amount was paid by the prior owner, 129 Parker Street, LLC.

2. This additional financial sum of $900,000.00 ("Owner's Financial Gift") shall be conditioned upon Owner first having obtained, with all appeal periods having expired and no appeal having been filed, any and all Federal, state and local permits, licenses, orders or approvals required for the construction and use of the Project as set forth in the Revised Concept Plan and Signage Concept Plan as approved by Town Meeting (the "Necessary Approvals") and shall thereafter be paid as follows:

   a. $300,000.00 upon issuance of first Site Plan Approval or first Special Permit by the Planning Board with all appeal periods for the first Site Plan Review approval or Special Permit approval having expired and no appeal having been filed; and

   b. $200,000.00 upon issuance of first building permit for any retail building or supermarket within the Project; and

   c. $200,000.00 upon issuance of first building permit for any building within the residential apartment component of the Project; and

   d. $200,000.00 upon issuance of first building permit for any building within the Independent Living or Continuing Care Retirement Community component of the Project.

   The Owner shall make the payments as set forth in Section 2 (a-d) above should the Owner proceed with construction of the Project, in whole or in any part, notwithstanding an appeal of any permit or approval issued for the Project.

D. Infrastructure Improvements.

1. Traffic: The Owner offers to undertake the planning, design, permitting and construction of traffic mitigation improvements associated with the Project as provided below, including the updated traffic assessment ("traffic assessment") compliant with the requirements of the NBOD Bylaw as well as compliance with requirements established by MassDOT pertaining to "complete streets". The reasonable costs of said updated traffic assessment and any peer review or further revision requested following peer review shall be the responsibility of the Owner. The requirement of a "traffic assessment", above, is in addition to the requirement of completion of a comprehensive Traffic Impact and Access Study for the Project ("traffic impact and access study").

   Timing of Required Action: The "traffic impact and access study" shall be conducted prior to the Owner's submission to the Planning Board for site plan or special permit approval and said study shall accompany the first application for site plan or special permit approval. Additional off-site traffic mitigation which is identified during the Planning Board's review of site plan and special permit approvals as reasonably necessary in the sole discretion of the Planning Board, in

conjunction with the "traffic impact and access study" shall be implemented by the Owner as specified by the Planning Board.

a. "Front Door" Improvements.

These improvements shall include Parker Street/Primary Site Driveway (collectively, the "Front Door Improvements") and shall be completed by the Owner at the Owner's sole expense. These improvements shall consist of:

1) Dedicated northbound left turn lane into the Property;

2) Dedicated southbound right turn lane into the Property at the driveway approach along Parker Street;

3) "Through" traffic lanes in both north and southbound directions;

4) Constructed sidewalk in the area along Owner's property;

5) A fully permitted and operational traffic signal at primary entrance.

The Front Door Improvements shall be generally consistent with the Revised Concept Plan entitled 'Conceptual Improvement Plan-Parker Street at Site Driveways'', dated 12/12/06 and prepared by Vanasse & Associates, Inc. but updated to reflect current conditions and development plans and subject to Planning Board approval as noted below, including applicability of the Town's adoption of the Commonwealth's and MassDOT's "complete streets" program.

The final scope and location of the Front Door Improvements shall be determined by the Planning Board during either the Site Plan Review or special permit process, whichever is applicable. If during the Site Plan Review or the special permit process, the Planning Board determines that the above listed traffic and pedestrian improvement are not recommended, payment for those specific improvements shall not be required. However, nothing in this paragraph removes the obligation of the Owner to pay for the completion of specific traffic improvements that the Planning Board may reasonably require for the development of a portion or all of the Property.

Owner agrees that regardless of the specific requirements of the Planning Board, the proposed traffic signal shall be installed and made operational. If during Site Plan Review or the special permit process, the Planning Board reasonably requires additional traffic, public safety and/or pedestrian improvements along the frontage of the Property, the Owner shall pay for the reasonable costs of planning, permitting, design, construction and operation of those additional improvements.

To the extent permitted by law, the Town agrees to cooperate with the Owner in seeking and expediting any and all approvals required for the Front Door Improvements and any other improvements to State owned or controlled highways as may be required under this MOA or the Project. It shall be the responsibility of Owner to pay for and obtain all necessary permits, licenses and approvals from the State.

The Owner offers to convey for no (zero) consideration in fee simple to the Town all land along the Property's frontage required for the Front Door Improvements, the same to be identified on both a plan and deed prepared by the Owner no later than the issuance of the first building permit for the Project. Nothing herein shall be construed as obligating the Town to accept said offer.

The Owner shall retain a traffic engineer(s) licensed in the Commonwealth to monitor the Front Door Improvements and its intersection every six months for a period of 24 months following the issuance of the first occupancy for any building located within the Project. Reports of this data collection and analysis shall be submitted to the Town of Maynard Planning Department.

This monitoring shall include turning movement counts conducted during the peak hours analyzed in the Project traffic study. Capacity analysis should be conducted using these volumes to evaluate the adequacy of the current signal operation in terms of delays, queues, and other relevant measures of effectiveness. The results of this monitoring shall be provided to the town with accompanying technical appendices for review. The first report is due six months from the date of the issuance of the first certificate of occupancy and every six months thereafter. If upon review of the Town, following consultation with Owner's engineer and/or consultants, it is determined that signal phasing and/or timing adjustments are required, the Owner agrees to make such changes and adjustments within three months and at Owner's expense.

Timing of Required Action: The Front Door Improvements shall be substantially completed prior to the issuance of the first final or temporary occupancy permit for any new retail building or use, for any purpose, constructed within the Property. For the purposes of this paragraph, "substantially completed" shall mean a fully-operational traffic signal with all travel lanes and pedestrian accommodations available for use.

b. Route 117/Parker Street Intersection.

The Owner shall construct additional traffic mitigation requested by the Town (as well as contained in the Judith Nitsch Report dated December 8, 2006) between 129 Parker Street and the Route 117/Parker Street intersection and additional improvements recommended by Vanasse and Associates, provided

all such improvements and mitigation measures are located within the existing right of way. The final scope and location of the 117/Parker Street Intersection shall be determined by the Planning Board during either the Site Plan Review or special permit process, whichever is applicable. The costs of the planning, permitting, design and construction of these improvements shall be paid for by the Owner. All such improvements shall be substantially completed prior to the issuance of the first building permit for any new retail building or use or residential or independent living or continuing care retirement community constructed within the Property. The Owner, at the Owner's expense shall, at the request of the Board of Selectmen or Planning Board, update the reports referenced herein. The reasonable costs of said updating shall be the responsibility of the Owner pursuant to Section III. 2 of this Agreement.

Timing of Required Action: The Route 117/Parker Street improvements shall commence within sixty (60) days following the issuance of the first final or temporary occupancy permit for any use or purpose and thereafter completed expeditiously and shall include but not be limited to:

1) the modification of the traffic signal equipment, phasing, and timing to allow for a Great Road (Route 117) westbound protected left-turn phase;

2) the replacement of existing pedestrian signal heads with countdown pedestrian signal heads, with adjustments to signal equipment, phasing, and timing as determined necessary by the Town;

3) implementation of the geometric modifications proposed by the Owner in the Preliminary Traffic impact and Access Study (PTIAS) dated August 2006;

4) reconfiguration of all pedestrian curb cuts so as to be made complaint, to the maximum extent possible and consistent with the Americans with Disabilities Act and

5) upgrading of the sidewalk to include granite curbing along the west side frontage of Owner's Property for a distance of approximately 925 linear feet.
6) If not located adjacent to Owner's land all work shall be contained within the Town right-of-way and Owner shall obtain, at Owner's expense, all permits and approval required to complete the above described improvements.

c. Other Traffic Improvements to be constructed by the Owner.

Timing of Required Action: With the exception of the improvements included in subparagraph (a), below, the Owner shall complete the following

traffic and pedestrian access improvements prior to the issuance of the first final or temporary occupancy permit for any retail building constructed within the Property. With respect to the improvements included in subparagraph (1), below, the Owner shall complete or pay for the completion of the traffic improvements within thirty (30) days following Maynard Town Meeting's approval of the Concept Plan identified in Section III.A, above. The costs of the planning, design and construction of these improvements shall be paid for by the Owner:

1) Great Road/Parker Street - Install the necessary signal equipment, including but not limited to right-turn arrow signal heads on the westbound Great Road (Route 117) approach to the intersection, with accompanying modifications of the traffic signal equipment, phasing, and timing to allow for the modified phasing proposed. The Town Administrator, acting on behalf of the Board of Selectmen, shall determine the final scope and location of the Great Road/Parker Street improvements.

2) Parker Street/Old Marlboro Road - Remove the Stop sign on the south side of Old Marlboro Road at Parker Street. Install a 'Stop Ahead' sign (MUTCD designation W3-1) facing southbound Old Marlboro Road traffic. A centerline shall be placed on Old Marlboro Road and a Stop line painted adjacent to the existing Stop sign on the north side of Old Marlboro Road. In addition, a chevron sign (MUTCD designation W1-8) shall be placed on the south side of Old Marlboro Road facing southbound traffic on Old Marlboro Road. The Owner shall submit a plan during the Site Plan Review and/or special permit process illustrating the proposed improvements. The final scope and location of the Parker Street/Old Marlboro Road improvements shall be determined by the Planning Board during either the Site Plan Review or special permit process, whichever is applicable.

3) Great Road (Route 117)/Old Marlboro Road. Signing, pavement markings and minor geometric modifications shall be undertaken to clarify lane use and any restrictions on the approaches to the intersection. The Owner shall submit a plan during Site Plan Review and/or special permit process illustrating the project limits and the proposed improvements. The final scope and location of the Great Road (Route 117)/Old Marlboro Road improvements shall be determined by the Planning Board during either the Site Plan Review or special permit process, whichever is applicable.

4) Parker/Field Street Intersection. Installation of a "pedestrian warning beacon system" as recommended by the Owner in its "Preliminary Traffic Evaluation, March 9, 2016. The final scope and location of the Great Road (Route 117)/Old Marlboro Road improvements shall be determined

by the Planning Board during either the Site Plan Review or special permit process, whichever is applicable.

E. Mitigation Funds.

In addition to all other promises made herein and any requirements imposed by the Town of Maynard or its regulatory boards, departments or commissions, the Owner covenants to contribute $260,000.00 to a Traffic Improvement Fund, which shall be established by the Town Treasurer for the purposes of mitigating the impact of the proposed development.

Timing of Required Action: The above noted payments shall be made upon the issuance of the first building permit for a building or use constructed within the Property, more fully described below:

1. $90,000.00 upon the issuance of the building permit for the proposed supermarket; and

2. $90,000.00 upon the issuance of the first building permit for any use within Building A, Building B, Building C or Building D as shown on the Revised Concept Plan; and

3. $80,000.00 upon the issuance of the first building permit for any use within Building E, Building F, Building G or Building H as shown on the Revised Concept Plan.

The above noted funds may be applied by the Town at any time deemed appropriate by the Town toward any traffic improvement determined by the Town as the Town, in its sole and exclusive judgment believes appropriate to require mitigation as a result of the Project or otherwise, including, without limitation the following improvements:

a. Parker Street/Powder Mill Road/Waltham Street - upgrade the traffic signal from pre-timed to fully actuated through the installation of vehicle detection and other required signal equipment, and coordinate the signal with the Main Street/Acton Street/Summer Street signal; upgrade the roadway surface, curbing and geometry (where possible within existing pavement limits);

b. Main Street/Acton Street/Summer Street -upgrade traffic signal from pre-timed to fully actuated (involves replacing signal controller, installation of vehicle detection, and other signal equipment as necessary);

c. Installation of vehicle detection;

d. Coordination of the Parker Street/Powder Mill Road/Waltham Street signal traffic signal with other existing traffic signals in the vicinity of that location; and

e. Nason Street/Summer Street - Replace the existing pedestrian signal heads with countdown pedestrian signals and implement a Summer Street westbound protected left-turn phase, with accompanying modifications of the traffic signal equipment, phasing, and timing to allow for the modified phasing proposed.

F. Other Infrastructure Improvements and Payments.

1. Water.

Timing of Required Action: In addition to all other promises made herein and requirements imposed by the Town of Maynard or its regulatory boards, departments or commissions, the Owner will pay, commensurate with the application for the first building permit for construction within the Property, $10,000.00 to a fund established by the Town Treasurer for, among others, the following purposes:

a. Looping the existing water main at the end of Field Street with the Property;

b. Looping the dead end water pipe on the Maynard High School locus with the Property; and

c. The completion of a Town-wide water system distribution model.

The parties agree that the Water Connection Fees presented in III.G., below, shall be applicable to the Project and paid in full commensurate with applications for building permits for each land use or portions thereof, identified in Section III.G., below. In addition, and with the exception of the Water Connection Fees presented in Section III.G., below, the parties agree that the Maynard Water Rules and Regulations and Water Meter Installation Policy shall apply to the Project, including the application fees and schedules contained therein, as revised from time to time, and that the Town reserves the right to increase the fees and schedules regarding the delivery of water as it deems in the best interests of the Town.

2. Sewer.

Timing of Required Action: In addition to all other promises made herein and requirements imposed by the Town of Maynard or its regulatory boards, departments or commissions, the Owner will pay, commensurate with the application for the first building permit for construction within the Property,

$40,000.00 to a fund established by the Town Treasurer for, among others, the following purposes:

a. Upgrade of the Marlborough Road Sewer Pumping Station; and

b. Inspection of the Town's existing sewer infrastructure, including carrying capacity to serve the Project.

The parties agree that the Sewer Connection Fees presented in Section III.G., below, shall be applicable to the Project and paid in full commensurate with applications for building permits for each land use or portions thereof, identified in Section III.G., below. In addition, and with the exception of the Sewer Connection Fees presented in Section III.G., below, the parties agree that the Town of Maynard Sewer Rules and Regulations, including the fees and schedules contained therein, as revised from time to time, shall be applicable to the Project and that the Town reserves the right to increase the fees and schedules regarding wastewater disposal as it deems in the best interests of the Town.

G. Water and Sewer Connection Fees.

Land Use	**Water Connection Fee**	**Sewer Connection Fee**
Supermarket	$5,000.00	$5,250.00
Retail, not restaurant[1]	$5,000.00	$5,250.00
Restaurant, not fast food	$5,000.00	$6,125.00
Restaurant, fast food[2]	$5,000.00	$3,500.00
Commercial	$5,000.00	$3,500.00
Multi Family Residential[3]	$450,000.00	$630,000.00
Independent Living Facility	$5,000.00	$345,000.00

With the exception of the Multi Family Residential land use, the fees identified above are based upon the fees required for a single (1) connection to and for, the proposed land use. The fees for the Independent Living facility are based upon a single connection for water and a single connection for sewer to serve no greater than 143 living units. Should additional connections be required or requested, the Town

[1] Per structure, excluding restaurant.
[2] Based upon a freestanding or attached structure.
[3] Based upon approval of 180 dwelling units. Should the Planning Board approve fewer than 180 dwelling units, the total water and sewer fees shall be $6,000.00 per dwelling unit ($2,500.00 for water and $3,500.00 for sewer).

reserves the right to require additional water and/or sewer connection fees consistent with published rate schedules in effect at that time.

H. Town Meeting Costs.

Should the Town be required to hold a Special Town Meeting for the purposes of acting upon the Owner's concept plan as discussed above and required by the NBOD Bylaw, the Owner shall pay all costs incurred by the Town for the holding of the same.

Timing of Required Action: Payment shall be made within thirty (30) days of receipt of the true costs incurred by the Town for the holding of said Special Town Meeting.

I. Conservation/Wetlands.

It is anticipated that on and off site wetland resources and adjacent buffer zones to these resources will be impacted from the development of the Property.

Timing of Required Action: To off set the impacts anticipated by development of the Property, in addition to all other promises made herein and requirements imposed by the Town of Maynard or its regulatory boards, departments or commissions, prior to the issuance of the first occupancy permit of a structure within the Property, the Owner covenants to pay for the costs of all on and off site stormwater management improvements necessitated by the development of the Property, said improvements to be determined by the Town of Maynard and to be consistent with requirements and standards of federal, state and Maynard laws and regulations.

To the extent that such use does not interfere with proposed creation of new habitat for endangered or other threatened species as may be required by the Massachusetts Division of Fisheries and Wildlife ("DFW") and otherwise subject to DFW approval, the Owner shall, grant a perpetual easement in gross, the same to run with the land, allowing the public to use the existing hiking trails which are partially located on the southwest corner of the Property as shown on the Revised Concept Plan and as may be revised from time to time by the Owner and Town Meeting. The Owner reserves the right to include all such land contained within said easement in the calculation or the land area of the Property in establishing zoning compliance (open space, lot size, density, etc.) and meeting other relevant regulatory requirements.

Timing of Required Action: Within sixty (60) days following Owner's receipt of the first site plan or special permit approval received for the Project, Owner agrees to grant a perpetual easement in gross to the Town, as described above.

J. Land Donation.

Owner offers to donate, in fee simple absolute and without cost, a portion of land as shown on a plan of land dated March 1, 2016 prepared by CAI Technologies and

identified as "400 Foot Radius Proposed New Well", sufficient to provide the Town of Maynard the land necessary to develop a new public supply well as illustrated on said plan.

Timing of Required Action: Owner agrees to provide the Town with a good and sufficient deed for said parcel within sixty (60) days following Owner's receipt of the first site plan or special permit approval received for the Project.

K. Cooperation Efforts by the Town.

1. Cooperation: The Town, acting within the respective jurisdiction of Board of Selectmen, Planning Board Conservation Commission, Building Department, Water and Sewer Department, Fire Department and Police Department shall, to the extent permitted by law and with due regard to all relevant statutes, regulations and public policy, cooperate with the Owner in all aspects of the implementation of the Project and associated offsite traffic improvements so long as the same is in compliance with permits and approvals issued by federal, state and Maynard authorities and otherwise consistent with the rules, regulations and bylaws of the Town of Maynard.

2. Prompt Review: To the extent permitted by law and with due regard to all relevant statutes, regulations and public policy, the Board of Selectmen shall facilitate prompt review of the Project and the cooperation of all Town Boards Commissions, Departments and staff in the review and implementation of the Project This provision does not require any Town Board, Commission, Department or staff to take any particular action.

L. Affordability.

In lieu of providing no fewer than 17 dwelling units (or such fewer number as the Town may ultimately approve) as affordable to qualifying renters within the Property, the Owner covenants that neither it nor its successors or assigns shall apply to develop the Property pursuant to G.L. c.40B, ss. 20-23 and, accordingly, waives any right to claim that the Town of Maynard is not "consistent with local needs" as that phrase is defined in G.L. c.40B, s.20. This covenant shall be deemed to run with the land, is intended to be a restriction on the use of the Property and, pursuant to G.L. c.184, s.26 is intended as a restriction to be held by a governmental body and intended to benefit the Town of Maynard, pursuant to G.L. c.184, s.26 for the longest period permitted by law.

Timing of Required Action: Owner shall record the above noted covenant with the Registry of Deeds within sixty (60) days following Owner's receipt of the first site plan or special permit approval received for the Project.

M. No Obligation to Build.

Neither the execution of this MOA, nor the approval of the Revised Concept Plan shall create any obligation of the Owner to construct all or any portion of the Project, provided however, that the promises, covenants and restrictions contained herein shall remain binding upon the Town and the Owner and its successors, assigns, mortgagees and all others taking title in fee or less than fee or otherwise acquiring an interest to a part or all of the Property, for the longest period permitted by law.

N. Condition Precedent to Owner's Obligations and Covenants.

Unless otherwise provided herein, the Owner's obligation to complete the agreements and promises contained in this MOA, including, without limitation the promise to make any payments of any kind whatsoever, is specifically conditioned upon and subject to Owner obtaining, with all appeal periods having expired any and all Federal, state and local, approvals, permits or orders necessary and required for the construction of the Project in substantial compliance with the Revised Concept Plan, including, without limitation, the following: NBOD Zoning Bylaw amendment; Town Meeting Concept Plan Approval of the Revised Concept Plan, Conservation Commission Order of Conditions, Planning Board Site Plan Approval, Planning Board Special Permits for Uses that require same within the NBOD, municipal and/or state road access or curb cut permits and municipal and or state sewer and water hook up and/or connection permits. In the event the Owner shall be unable, despite Owner's best efforts, including defending or prosecuting any and all appeals or taking any and all good faith appeals that are needed to be filed, to obtain any such approval or permit required for the construction of the Project as proposed, the Town and the Owner specifically agree and acknowledge that the 2006 MOA, 2007 Concept Plan and the 2009 Planning Board Site Plan Approval and Parking Special Permit remain in full force and effect and that this Memorandum of Agreement shall terminate without recourse to either party excepting only the terms of this paragraph which shall survive termination.

Notwithstanding the foregoing, this Memorandum of Agreement shall not be deemed terminated if the Owner elects to pursue development of a Project with fewer dwelling units, lesser commercial square footage or otherwise smaller in scale than that Project illustrated in the Concept Plan identified in Section III.A., above.

O. Successors and Assigns.

The Parties agree that this Agreement shall run with the Property and shall be binding upon and insure to the benefit of the Town, and the burden of the Owner and its successors in interest and assigns and all persons claiming any rights under the Owner including its successors, assigns, mortgagees and all others taking title in fee or less than fee or otherwise acquiring an interest to a part or all of the Property. The parties further agree that this MOA, once executed, may be recorded by either party in the Middlesex County Registry of Deeds against the title of the Property.

P. Adult Entertainment Uses.

The Owner covenants not to allow so-called "adult entertainment uses" on the Property or within the Project as the same is more specifically defined by G.L. c.40A, s.9A. This covenant shall be deemed to run with the land and is intended to be a restriction on the use of the Property and, pursuant to G.L. c.184, s.26 is intended as a restriction to be held by a governmental body and intended to benefit the Town of Maynard, for the longest period permitted by law.

Timing of Required Action: Owner shall record the above noted covenant with the Registry of Deeds within sixty (60) days following Owner's receipt of the first site plan or special permit approval received for the Project.

Q. Use Restrictions.

1. Notwithstanding specific provisions contained within the NBOD Zoning Bylaw which may otherwise allow for such uses by right or by special permit, in recognition of the Town's support for a coordinated and planned development within the Property consistent with the Zoning Bylaw and long range plans and planning objectives, the Owner covenants that the following uses and/or named establishments will not be permitted within the Property or constitute a portion of the Project, and to fulfill this promise, the Owner covenants that it will neither lease nor sell any portion of the Property to the following restaurants or establishments identified as follows: McDonald's, Burger King, KFC, Wendy's, Taco Bell, Chick-fil-a, Arby's and Sonic or, as the names of these establishments may be changed, from time to time. This covenant shall be deemed to run with the land and is intended to be a restriction on the use of the Property and, pursuant to G.L. c.184, s.26 is intended as a restriction to be held by a governmental body and intended to benefit the Town of Maynard, for the longest period permitted by law.

2. In addition to the covenants contained elsewhere in this Agreement, the Owner covenants that the number of drive through businesses in the Project shall be limited to four (4) and that no more than two restaurants shall provide drive through services. This covenant shall be deemed to run with the land and is intended to be a restriction on the use of the Property and, pursuant to G.L. c.184, s.26 is intended as a restriction to be held by a governmental body and intended to benefit the Town of Maynard, for the longest period permitted by law.

3. In addition to the covenants contained elsewhere in this Agreement, the Owner covenants that only one of the two individual use pads closest to Parker Street shall be used as a fast food restaurant and that there shall be no more than a total of five full service restaurants on the Property (exclusive of establishments whose primary menu items are coffee and similar beverages and related baked goods (such as Dunkin Donuts and Starbucks) or ice cream and frozen desserts (such as Ben and Jerry's and Orange Leaf). This covenant shall be deemed to run with the

land and is intended to be a restriction on the use of the Property and, pursuant to G.L. c.184, s.26 is intended as a restriction to be held by a governmental body and intended to benefit the Town of Maynard, for the longest period permitted by law.

4. In addition to the covenants contained elsewhere in this Agreement, the Owner covenants that there shall be no more than a total of 266 bedrooms in the residential component of the Project and no residential unit shall have more than two bedrooms. This covenant shall be deemed to run with the land and is intended to be a restriction on the use of the Property and, pursuant to G.L. c.184, s.26 is intended as a restriction to be held by a governmental body and intended to benefit the Town of Maynard, for the longest period permitted by law.

5. In addition to the covenants contained elsewhere in this Agreement, the Owner covenants that there shall be no more than one building in the residential component of the Project with more than three (3) stories which building shall be less than 50 feet in height. This covenant shall be deemed to run with the land and is intended to be a restriction on the use of the Property and, pursuant to G.L. c.184, s.26 is intended as a restriction to be held by a governmental body and intended to benefit the Town of Maynard, for the longest period permitted by law.

Timing of Required Action: Owner shall record the above noted covenants as set forth in Section III. Q. (1-5), above, with the Registry of Deeds within sixty (60) days following Owner's receipt of the first site plan or special permit approval received for the Project.

R. Interpretation and Amendment.

1. No modification or termination of this Agreement will be effective unless it is in writing and is signed by all Parties. To the extent authorized by General Laws, this Agreement binds and benefits all parties and any their heirs, executors, administrators, estates, officers, partners, members, officers, trustees, partners, employees, agents, principals, servants, attorneys, successors, predecessors and assigns and any representatives and any subsidiary, affiliated entities.

2. The Parties agree that this Agreement is a fully integrated document and constitute the entire agreement between them. The Parties expressly disclaim reliance on any representations, written or oral, other than those expressly contained in this Agreement.

3. The Parties and their counsel agree that each party and counsel for each party to this Agreement has reviewed and had the opportunity to revise this Agreement and accordingly, the normal rule of construction (to the effect that any ambiguities are to be resolved against the drafting party) will not be employed in any interpretation of this Agreement.

4. This Agreement shall be governed by and interpreted under the laws of the Commonwealth of Massachusetts. All covenants, agreements and protections herein contained shall be binding upon and inure to the benefit of the Parties hereto.

5. The Parties acknowledge that this Agreement shall be considered a public document pursuant to the Massachusetts Public Records Law and may be offered in evidence by either Party in any judicial or other legal proceeding to enforce any of its provisions against the other Party.

6. The Parties agree that if any term of this Agreement is to any extent invalid, illegal, or incapable of being enforced, such term shall be excluded to the extent of such invalidity, illegality or unenforceability; all other terms hereof shall remain in full force and effect.

END OF INSTRUMENT: SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed in their respective name, by their proper officers and their seals to be affixed this 6th day of September, 2016.

Town of Maynard:

Chris DiSilva, Chairman

Timothy Egan, Selectman

Terrence Donovan, Selectman

David Gavin, Selectman

Jason Kreil, Selectman

Maynard Crossing, JV, LLC
By:

William A. Depietri

Attested:

Michelle Sokolowski, Town Clerk

Exhibit A to Memorandum of Agreement dated September 6, 2016

129 Parker Street, Maynard, MA

Legal Description of Locus Subject to the attached Memorandum of Agreement dated September 6, 2016:

Those two (2) parcels of land, with the buildings thereon shown as:

Lot 68 on Land Court Plan No. 8795-N, a copy of which is filed in the Registry of Deeds for the South Registry District of the Middlesex County with Certificate of Title No. 218672 in Registration Book 1223, Page 122; and

Lot 62 on Land Court Plan No. 8795-K, , a copy of which is filed in the Registry of Deeds for the South Registry District of the Middlesex County with Certificate of Title No. 125681 in Registration Book 758, Page 131.