

Powder Mill Place, Maynard, Massachusetts

## MEMORANDUM OF AGREEMENT

### I. PRELIMINARY STATEMENT

This contract, executed by the parties on \_\_\_\_\_, 2018, shall become effective only if and after issuance of all local, state and federal permits and authorizations of every type and kind, all appeals periods irrevocably terminated without appeal, necessary to construct not less than 254 apartments in Acton and Maynard, Massachusetts, as shown and described on the plan consisting of multiple sheets and pages dated September 11, 2017 entitled, "Proposed Concept Plan, Powder Mill Place, Powder Mill Road, Maynard & Acton, MA" prepared by Goldsmith, Prest, & Ringwall, Inc., and architectural renderings and building statistics prepared by Gate 17 Architecture. ("Project" and the permits and authorizations as aforesaid, individually and collectively "Permits"). Provided, however, that Owner, in its sole and absolute discretion may at any time, for any reason or for no reason, elect not to proceed with obtaining the Permits, whereupon this Memorandum of Agreement ("MOA") shall be of no further force and effect and neither party hereto shall have any recourse on account of same.

The Owner's commitments and terms listed in this MOA are offered freely and in response to the calculation of possible potential development impacts from the Project on the Town of Maynard ("Town").

The Parties to this MOA are:

- A. Town, by and through its Board of Selectmen. As used in this MOA, "Town" shall also mean the Town of Maynard as a municipal entity and its Boards, Commissions, Departments, Officers and staff, as applicable in context.
- B. Apartments at Powder Mill, LLC, with an address of 205 Willow Street, Waltham, MA 02453, which is the fee simple owner of the property located at 112, 114, 116, 118 Powder Mill Road, 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 "Owner").

The property that is the subject of this MOA located at 112, 114, 116, 118 Powder Mill Road, Maynard, Massachusetts, identified as Assessor's map number 11 and parcel numbers 10, 11, 12, 13, 14, and 15 and the property located at 2, 4, 12, 18 Powdermill Road, Acton, Massachusetts, identified as Assessor's map number J3 and parcel numbers 38, 39, 42, 43, 44, 45 and 48 (collectively "Property"). It is understood and agreed that Owner will apply for various Permits for the Project, among others, that will include, but not be limited to a Comprehensive Permit pursuant to M. G. L. c. 40B §§20-23 and the regulations of the Department of Housing and Community Development related thereto. Nothing in this MOA shall be construed as authorizing development of the Property independent of the approvals required from the Maynard Zoning Board of Appeals pursuant to G. L. c. 40B, and nothing in this MOA shall constitute a waiver of Owner's rights of appeal under G.L. c. 40B or otherwise.

## II. RECITALS

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

Whereas Owner is proposing a multifamily development containing at least 74 dwelling units located in the Town of Maynard and an additional 180 dwelling units to be constructed the Town of Acton, including, without limitation as to specific final use, both market rate and affordable residential apartments; and

Whereas Owner, intends to submit an application for a Comprehensive Permit to the Maynard Zoning Board of Appeals, which Comprehensive Permit requires approval by a majority vote of the Maynard Zoning Board of Appeals; and

Whereas, the Owner and the Town have agreed to enter into this MOA on the terms and conditions hereinafter set forth so as to facilitate development of the Property; and

Whereas the Owner has agreed to mitigate the impact of the 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 Comprehensive Permit for the Project and Owner offering to and agreeing to take and implement specific actions, 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.

Residential Apartments. In Maynard there shall be no more than 74 residential apartments with no more than 116 bedrooms situated in two multi-unit buildings; two historic houses to be relocated onsite; and a portion of the project's clubhouse, all as shown on the plans identified above. Nineteen (19) of the dwelling units constructed within the Project in Maynard 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, Department of Housing and Community Development ("Affordable Unit").

### B. Financial Contribution.

1. Owner shall pay the Town \$525,000 to offset the anticipated direct and indirect impacts of the Project to be used by the Town of Maynard as follows:

- |    |  |           |
|----|--|-----------|
| a. | Traffic Impacts  |           |
|    | Sidewalks on Powdermill Road   | \$50,000  |
| b. | Sewer Impacts as further detailed in Section III (D) of this agreement.                                |           |
|    | 1968±' of reline, 84' + 61'  | \$450,000 |
| c. | CrossTown Connect as further detailed in Section C (2) (b) (for the benefit of both Maynard and Acton) |           |
|    | Contribution to CrossTown Connect  | \$25,000  |

2. The Five Hundred Twenty-Five Thousand (\$525,000) Dollars as aforesaid shall be paid by the Owner as follows:

a. Upon issuance of all of the Permits, expiration of all appeal periods without appeal and commencement of construction, Owner will pay the Town the amount of Two Hundred Fifty Thousand (\$250,000) Dollars for deposit in an appropriate fund established by the Maynard Town Treasurer for the mitigation listed above.

b. The remaining Two Hundred Seventy-Five Thousand (\$275,000) Dollars shall be paid by the Owner upon issuance of a Certificate of Occupancy for each unit whether such certificate is issued by the Town of Maynard or the Town of Acton based on the following formula. Two Hundred Seventy-Five (\$275,000) Dollars divided by the total number of units approved by the Town of Maynard.

3. Owner shall make the payments as set forth above only if the Owner in its sole and absolute discretion decides to proceed with construction of the Project. Provided however, Owner shall not be required to pay any of the Five Hundred Twenty-Five Thousand (\$525,000) Dollars as aforesaid, if Owner: (a) appeals the Maynard Zoning Board of Appeals' Comprehensive Permit decision for the Project to the Housing Appeals Committee ("HAC") or the Maynard Conservation Commission's Order of Conditions for the Project to the Department of Environmental Protection ("DEP") and either HAC or DEP alter any of the conditions of the Comprehensive Permit or Order of Conditions as issued by the Maynard Zoning Board of Appeals or Maynard Conservation Commission, as the case may be; or (b) the Town in way opposes issuance of any state or federal Permit for the Project.

C. Traffic Improvements, subject to DOT approval.

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 comprehensive Traffic Impact and Access Study ("Traffic Assessment") compliant with the requirements established by MassDOT. The reasonable costs of said Traffic Assessment and any peer review or further revision requested following peer review shall be the responsibility of the Owner.

Timing of Required Action: The Traffic Assessment shall be conducted prior to the Owner's submission to the Maynard Zoning Board of Appeals for the Comprehensive Permit approval.

- a. Construction Improvements.<sup>3</sup>

- 1) In order to minimize impacts to Powder Mill Road eastbound traffic and avoid existing site traffic from having to cross the turn lane, the Owner shall reduce the existing westbound left-turn lane to construct back-to-back left-turn lanes; one for the Stratus Technologies site and one for the proposed site;
- 2) The Owner shall leave a portion of the westbound left-turn lane for Wendy's site traffic.

The Construction Improvements shall be generally consistent with the Revised Concept Plan entitled 'Conceptual Improvement Plan - Powder Mill Apartments at Site Driveways", dated 9/22/2017 and prepared by Goldsmith, Prest & Ringwall, Inc. but updated to reflect current conditions and development plans and subject to MassDOT's approval.

The final scope and location of the Construction Improvements shall be determined by the MassDOT.

If during the Comprehensive Permit Review, the Maynard Zoning Board of Appeals pursuant to its jurisdiction reasonably and properly requires additional traffic, public safety and/or pedestrian improvements along the frontage of the Property, and if approved by MassDOT, 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 Traffic 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.

Timing of Required Action: The Construction Improvements shall be substantially completed prior to the issuance of the first occupancy permit for any new residential building constructed within the Property.

b. Mass Transit

The Owner shall promote mass transit as a "green" solution. The Owner will make best efforts to participate in the CrossTown Connect, an organization comprising of six public partners (Acton, Boxborough, Concord, Littleton, Maynard and Westford) and eight private partners (Mill and Main of Maynard, Guterrez Company of Westford, IBM of Littleton, Juniper Networks of Westford, Red Hat of Westford, West Acton Villageworks of Acton, Potpourri Group of Littleton and Associate Environmental Systems of Acton) bound

together by Intermunicipal Agreements and Memoranda of Understanding which are focused on increasing mobility and commuting options while also reducing traffic congestion and air pollution.

Timing of Required Action: The Mass Transit requirements shall be in place prior to the issuance of the first occupancy permit for any new residential building constructed within the Property.

D. Sewer Connection Fees.

| <b>Land Use</b>                       | <b>Sewer Connection Fee</b> |
|---------------------------------------|-----------------------------|
| Multi-Family Residential <sup>1</sup> | \$266,000                   |

Should additional connections be required or requested, the Town reserves the right to require additional water and/or sewer connection fees consistent with published rate schedules in effect at that time.

<sup>1</sup> Based upon approval of 74 dwelling units, two (2) historic homes to be relocated on the site, and the clubhouse. Should the Zoning Board of Approvals for the Town of Maynard approve fewer than 74 dwelling units, the total sewer fees shall be Three Thousand Five Hundred (\$3,500.00) Dollars per dwelling unit.

E. Historic Homes

The Owner has identified two existing homes located on the Property that are listed in the State Historic Registry. Subject to the approval by the Town of Maynard's Historical Commission, the Owner shall:

- a) Relocate the two homes to the southeast corner of the Property; and
- b) Remodel the "red" home such that it can be leased as an additional affordable unit (in addition to the 254 units referenced in the overall Project); and
- c) Should the Historical Commission agree that the second home (not the red home) is beyond repair, the Owner shall contribute Twenty-Five Thousand (\$25,000) Dollars towards the Town of Maynard's Affordable Housing Trust.

Timing of Required Action: The Owner shall relocate or demolish (as directed by the Town of Maynard Historical commission) the two homes prior to the issuance of the first occupancy permit for any new residential building constructed within the Property. Should the Town of Maynard Historical Commission agree that one of the two homes can be demolished, the Twenty-Five Thousand (\$25,000) Dollars contribution shall be paid prior to the first occupancy permit for any new residential building constructed within the Property.

#### F. Conservation/Wetlands.

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 proposed hiking trails which are located along the river frontage of the Property both in Maynard and Acton as shown on the Concept Plan and as may be revised from time to time by the Owner and Town. and. 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 after issuance of the final occupancy permit for the Project, Owner agrees to grant a perpetual easement in gross to the Town, as described above.

#### G. Cooperation Efforts by the Town.

1. Cooperation: The Town, acting within the respective jurisdiction of Board of Selectmen, Zoning Board of Appeals, 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 Town authorities and otherwise consistent with the rules, regulations and bylaws of the Town.
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.
3. Local Initiative Project ("LIP"): Town, by and through its Board of Selectmen, agrees to support the Project as a LIP Project and to promptly provide all necessary documentation to the Department of Housing and Community Development necessary and desirable to affirm the Town's support and approval of the Project pursuant to the LIP program.

#### H. No Obligation to Build.

Neither the execution of this MOA, nor the approval of the 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.

#### I. 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.

#### J. Use Restrictions.

1. In addition to the covenants contained elsewhere in this Agreement, the Owner covenants that there shall be no more than a total of 121 bedrooms in the Project which are in the Town of Maynard and no residential unit shall have more than three 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.
2. In addition to the covenants contained elsewhere in this MOA, the Owner covenants that there shall be no more than two multistory buildings, two houses, and a clubhouse in the Project in the Town of Maynard with more than five (5) stories over enclosed parking which building shall be less than 72 feet in height when measured to the height of the parapet and 69' feet when measure to the top of the roof. 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 issuance of first occupancy permit.

K. 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.

**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 \_\_\_\_<sup>th</sup> day of \_\_\_\_\_, 2018.

**Town of Maynard:**

\_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attested:

**Apartments at Powder Mill, LLC:**

\_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attested:

**Exhibit A to Memorandum of Agreement dated  
\_\_\_\_\_, 2018**

Powder Mill Place, Maynard, MA