

DEVELOPMENT AGREEMENT FOR MEADOW WALK AT LYNNFIELD

This Development Agreement (the "Agreement") is made as of this _____ day of _____, 2007 by and between PHF-ND COLONIAL LLC, a Delaware limited liability company, with an address c/o of National Development, 2310 Washington Street, Newton Lower Falls, Massachusetts 02462, (the "Owner") and the TOWN OF LYNNFIELD, a municipal corporation, acting by and through its Board of Selectmen, with an address at 55 Summer Street, Lynnfield, Massachusetts 01940 (the "Town").

BACKGROUND

1. The Owner owns approximately 203.5± acres of land in the Towns of Lynnfield and Wakefield, Massachusetts. The Wakefield portion of the property is presently operated as a hotel. The Lynnfield portion of the property presently is operated as an 18-hole golf course, together with a private fitness facility and function facility.
2. The Town has been developing a new Smart Growth Zoning District Bylaw pursuant to General Laws, Chapter 40R and the regulations thereunder to affect approximately 80.25± acres of the land in Lynnfield. The new zoning would govern a proposal made by the Owner to develop a mixed-use project on said portion of the Lynnfield land to be known as Meadow Walk at Lynnfield (said land and improvements being collectively referred to herein as the "Project"). The Project will contain 180 multi-family residential units, 450,000 sq.ft. of retail space, and 50,000 sq.ft. of office space, all as shown on the schematic site plan entitled "Proposed Schematic Site Plan" dated February 15, 2007, by Geller DeVellis Inc., attached hereto as Exhibit A. The proposed Smart Growth Zoning District (hereinafter, the "40R Zoning") is consistent with the goals identified in the 2002 Lynnfield Master Plan (the "Master Plan"), which identified the golf course property for mixed use and commercial development.
3. The proposed 40R Zoning Bylaw has been submitted to, and preliminarily approved by, the Massachusetts Department of Housing and Community Development ("DHCD"). The proposed Bylaw (a copy of which, including the related maps, is attached hereto as Exhibit B) will be considered by the Annual Town Meeting to be held on April 30, 2007. Thereafter, if the Bylaw is approved by Town Meeting, the same also must be finally approved by DHCD and by the Massachusetts Attorney General. In addition, the Design Standards for the Project as previously adopted by the Planning Board (a copy of which is attached hereto as Exhibit C) must also be finally approved by DHCD. Assuming such approvals, the Owner plans to seek all other required permits and approvals for the Project.
4. In connection with the Town's consideration of the Project, the Town and the Owner have agreed on certain mitigation measures, community benefits, and other Project-related matters. These obligations will become effective and binding upon the Owner only if the Town Meeting, DHCD, and the Massachusetts Attorney General, as and to the extent required, each approves Exhibit B and Exhibit C in the form attached, and the Owner secures all other required permits for the Project, including a final building permit.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Owner, for itself and its successors and assigns, as owner of the Project, and the Town, agree that in the event all the approvals described in Section 4 above are obtained by the Owner, the following obligations shall be binding upon the Owner, provided, however, that the Owner's payment obligations under Section 2.4 shall take effect earlier as provided therein and the Owner's payment obligations under Section 3.2 shall continue in effect pursuant to the separate agreement described therein:

ARTICLE 1

PROJECT MITIGATION

1.1 **Traffic.** The Owner shall pay for the actual costs of construction of all off-site traffic mitigation required for the Project by the Town, Wakefield and the Massachusetts Highway Department ("MHD"), including the areas to be improved listed on Exhibit D attached hereto, as more fully described in the separate traffic reports entitled "Traffic Impact and Access Study for Meadow Walk at Lynnfield", dated January, 2007, by VHB, Inc. and "Response and Comments Memorandum", dated March __, 2007, by VHB, Inc. The Owner shall provide a standard contractor's payment and performance bond for all off-site transportation improvement contracts in excess of \$200,000 related to work to be performed in the Town's rights of way. The construction of such traffic improvements shall be completed prior to issuance of a final certificate of occupancy for the Project, except for (a) minor items which the Owner will bond at the request of the Town, and (b) any traffic improvements which the Town requests be deferred or not implemented. The Owner shall not be obligated to pay for any traffic improvements for which public funds from MHD or other state funding sources are available and can be used for such traffic improvements.

In addition to the foregoing, prior to issuance of a final Certificate of Occupancy for the Project, the Owner shall fund into an interest-bearing escrow with the Town the sum of \$50,000. The Town may use said escrow funds for additional transportation improvements that the Town elects not to implement prior to the opening of the Project. If said funds have not been used within three (3) years from the date of the opening of the Project, all funds remaining in the escrow account shall be returned to the Owner.

1.2 **Sewer.** The Owner shall be responsible for all costs related to sewer system improvements required for the Project. If the sewerage needs of the Project are met through arrangements with Wakefield, the Owner shall effectuate such arrangements directly with Wakefield, including payment of any fees, inflow and infiltration removal costs, any charges of the Massachusetts Department of Environmental Protection ("DEP") and the Massachusetts Water Resources Authority ("MWRA"), including those that may be assessed to the Town as a result of the Project, and the actual costs of connection and construction. Alternatively, if the Owner determines to address the sewerage needs of the Project by the construction of an on-site wastewater treatment plant in Lynnfield, the Owner shall be responsible for all costs of permitting and construction thereof.

1.3 **Water.** The Owner shall pay all fees for the provision of water to the Project, together with the actual costs of connection and construction pursuant to applicable regulations.

1.4 City of Lynn. The Owner shall be responsible for securing any necessary permission or approval from the City of Lynn and/or the Lynn Water and Sewer Commission for those aspects of the Project affecting land, utility, or property rights held by the City of Lynn and/or the Lynn Water and Sewer Commission affecting the Project or adjacent areas in Wakefield.

1.5 Town of Wakefield. The Owner shall be responsible for effectuating any additional project-related mitigation which may be required by Wakefield including, without limitation, traffic improvements in Wakefield and sewerage improvements as described in Section 1.2 above. All such traffic improvements and, if applicable, sewerage improvements shall be completed prior to issuance of a final certificate of occupancy for the Project.

1.6 Fees. The Town shall not be responsible for the payment of any fees related to the mitigation measures described in this Article 1.

ARTICLE 2

COMMUNITY BENEFITS

2.1 LIFE Land. Upon issuance of all permits and approvals required for the Project, including the issuance of a building permit, with all appeal periods therefrom expired without appeal or with any appeals dismissed (hereinafter, the "Required Permits"), and completion of certain rough grading, road and utility work by the Owner, the Owner will donate to the Town approximately 6.13± acres of land adjacent to the Project as shown on Exhibit E attached hereto, including sewer stubs with adequate capacity. Thereafter, the Town shall sell such land to Lynnfield Initiative For the Elderly ("LIFE") for the purpose of LIFE constructing thereon no more than forty (40) units of housing for individuals 60 years of age or older. The owner of said parcel shall pay its proportionate share of connection fees due to the Town of Wakefield and/or to the Massachusetts Water Resources Authority based upon anticipated usage or, if the Owner constructs a wastewater treatment system for the Project, an equitable portion of such capital costs based upon usage relative to the Project. Such donation and subsequent development by LIFE will further the Town's goals, as articulated in the Master Plan, of increasing the variety of housing types and the supply of housing for the elderly in the Town. The Town, the Owner and LIFE shall enter into a separate three-party agreement to effectuate the details of the foregoing, including other operational and maintenance matters.

2.2 Donation of Land for Recreational Uses. Upon issuance of the Required Permits, the Owner shall convey to the Town, for no consideration, the fee interest in the remaining portion of the golf course in Lynnfield, consisting of approximately 102.9± acres and shown on Exhibit F attached hereto. Such conveyance shall be "as is". Such conveyance shall provide for a 200 foot "no build" buffer behind any residential property, except for minor and accessory structures for a golf course. Such conveyance also shall contain a restriction, for the benefit of the Project, that the donated land may be used only for open space, a golf course and/or passive recreational uses. There shall be no night lighting for golf. The Town shall not use such land for any purpose which would interfere with the quiet enjoyment of the residential portion of the Project or abutting residential uses.

The Town shall use the proceeds from its sale to LIFE as described in Section 2.1 above to make necessary improvements for the operation of a nine hole golf course on the land donated by the Owner hereunder and any surplus proceeds shall be used for other municipal recreational purposes.

The Owner also agrees to donate to the Town any surplus golf equipment and supplies which may be remaining after closure of the existing 18-hole golf course incident to construction of the Project.

Normal access to such land shall be via the perimeter road which will be part of the Project. The Owner shall extend necessary utility stubs within said perimeter road at the location where it abuts the LIFE Land.

2.3 Conservation Restriction. Subject to mutually agreeable terms, the Owner shall convey the land described in Exhibit F to the Town subject to a conservation restriction on that portion thereof containing approximately 58.01 acres as shown on Exhibit G hereto.

2.4 Assistance with Lynnfield's Short Term Fiscal Needs. To help the Town meet its overall fiscal needs until the Project is constructed and generating full *ad valorem* real estate taxes, the Owner agrees to make additional cash payments to the Town monthly at the rate of (a) \$500,000 per year commencing in fiscal year 2008 (July 1, 2007-June 30, 2008), and (b) \$1,000,000 per year for fiscal year 2009 (July 1, 2008-June 30, 2009). These voluntary payments shall be subject to following conditions:

- a. No payments shall be made until Exhibit B and Exhibit C are approved, as required by applicable law, by the Spring 2007 Town Meeting and also have been approved by any required state authorities, including DHCD and the Massachusetts Attorney General;
- b. Any increase in real estate taxes from fiscal year 2007 taxes shall be credited against these voluntary payments;
- c. Any fees paid by the Owner or Project tenants to the Town for building permit fees or any other or similar permit fees or municipal charges during such two fiscal years shall be credited against these voluntary payments (and, if such permit fees or municipal charges are due and payable after fiscal year 2009, the prior voluntary payments made hereunder shall be credited against such future fees and charges);
- d. Any payments exceeding \$500,000 received by the Town from DHCD (the "Excess 40R Payments") during such two fiscal years as a result of the adoption of the 40R Zoning shall be credited against these voluntary payments (and, if the Excess 40R Payments are received by the Town after fiscal year 2009, such amount shall be credited against future permit fees and municipal charges as described in (c) above); and

- e. If any permit or approval required for construction of the Project is not granted or, in the Owner's sole judgment, is unduly delayed or receives unacceptable conditions, or is appealed, the Owner's obligation to continue such monthly payments shall forthwith cease and terminate.

2.5 Community Space. As part of the Project, the Owner shall provide a community space to Lynnfield of approximately 3,500 sq.ft. Such space shall be in a location determined by the Owner in its sole discretion, which may be on either the first floor or the second floor; provided that the Owner shall try to accommodate the Town's preference for a location in the general vicinity of the Meadow Walk green. The community space shall meet all requirements for accessibility. Such space shall be delivered to Lynnfield in "warm shell" condition (i.e., it shall include finished inside of exterior walls, ceilings, lighting, access to bathrooms (either within the space or in common with other tenants), flooring, and HVAC). To the extent practical, utilities shall be individually metered. The use of the space shall be for cultural groups and similar activities as determined by Lynnfield, provided that such uses shall not interfere or be inconsistent with the use of the building by other tenants. Such community space shall not be counted against any buildout limitations set forth in the 40R Zoning or in the Design Standards, shall be provided rent free and shall not be subject to real estate taxation. The Town shall be required to pay for its separately metered utility costs and for reasonably allocated common area maintenance charges, exclusive of real estate taxes.

ARTICLE 3

OTHER PROJECT-RELATED CONDITIONS

3.1 Hours of Operation. The various anticipated uses within the Project shall be subject to the following limitations on hours of operation:

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|----|-----------------------|--------------------------------|-------------------------|
| a. | Retail stores: | Weekdays and Saturday: | 9:00 a.m. – 10:00 p.m. |
| | | Sunday | 10:00 a.m. – 8:00 p.m. |
| b. | Grocer: | Weekdays and Weekends: | 8:00 a.m. – 10:00 p.m. |
| c. | Pharmacy: | Weekdays and Weekends: | 8:00 a.m. – 11:00 p.m. |
| d. | Typical Restaurant: | | |
| | | Monday – Thursday: | 11:00 a.m. – 11:30 p.m. |
| | | Friday - Saturday | 11:00 a.m. – 12:30 a.m. |
| | | Sunday | 10:00 a.m. – 11:00 p.m. |
| e. | Breakfast Restaurant: | | |
| | | Typical restaurant hours, plus | 6:00 a.m. – 11:00 a.m. |
| | | Monday – Friday, | 7:00 a.m. – 11:00 a.m. |
| | | Saturday, and | 7:00 a.m. -10:00 a.m. |
| | | Sunday | |

f. **Community Space:**

Weekdays 7 a.m. - 11 p.m.

Weekends 8 a.m. - 11 p.m.

The foregoing hours may be extended during the holiday season (the day after Thanksgiving to and including New Year's Day) with the permission of the Lynnfield Board of Selectmen.

3.2 **Hours of Construction.** During construction of the Project, the Owner shall conform with all local, state and federal laws. The Owner shall at all times use all reasonable means to minimize inconvenience to residents in the general area. The Owner shall cause the project general contractor to include language in each subcontract for the construction of the Project that will require construction deliveries to access the Project site via Route 128 and not to use Town streets as delivery routes. Exterior construction of the Project shall not commence on any weekday before 7:00 a.m. and shall not continue beyond 6:00 p.m., except for certain operations such as concrete finishing and emergency repairs. Exterior construction shall not commence on Saturday before 7:00 a.m. and shall not continue beyond 5:00 p.m. with the same exceptions. The Building Inspector may allow longer hours of construction in special circumstances, provided that such activity normally is requested in writing by the Owner except for emergency circumstances, where oral communication shall be followed by written confirmation. There shall be no exterior construction on any Sunday or state or federal legal holiday. Hours of operation shall be enforced by the Lynnfield Police Department. If blasting or rock crushing is to occur, then such activities shall be carried out in accordance with all federal, state and local blasting permit practices as determined by the Town's building and fire departments.

3.3 **Hours for Deliveries and Service.** Deliveries shall not be permitted between the hours of 9:00 p.m. and 6:00 a.m. Trash pick-up shall not be permitted prior to 7:00 a.m. or after 9:00 p.m. There shall be no overnight idling of trucks in the Project's parking areas.

3.4 **Security.** The Owner shall be responsible for providing on site private security one hour before daily store opening until one hour after final store closing. A store shall include the restaurants. A security plan for the property shall annually be reviewed with the Chief of Police.

3.5 **Payment for Lynnfield's Costs.** The Owner shall pay for the cost of all consultants, engineers and attorneys retained by the Town to review the development of the Project, including the development of the 40R Zoning, as further provided for in the Consultant Fee Escrow Agreement dated _____, 2007 previously executed between the Town and the Owner.

3.6 **Phasing.** The residential component of the Project shall have at least one hundred eighty (180) residential rental units. The Owner shall obtain the building permits for all one hundred eighty (180) residential rental units within six (6) months of the Owner obtaining the building permits for the retail/office portion of the Project; further, the Owner shall commence

construction of such residential rental units within six (6) months of obtaining the building permits for the same. The building permit(s) for the retail/office portion of the Project shall be for a first phase of at least 300,000 square feet; provided that nothing herein shall prevent the Owner from obtaining building permits at the same time for a greater portion or all of the Project.

3.7 Three Bedroom Residential Rental Units. No more than five percent (5%) of the total residential rental units in the Project shall be three bedroom units. No more than fifty-five percent (55%) of the total residential units in the Project shall be two bedroom units.

3.8 Restriction on Residential Conversion. For a period of thirty (30) years from the date hereof, the Owner shall maintain the 180 multi-family residential units as rental units and shall not convert the same to a for-sale form of ownership.

3.9 Prohibition on Drive Through Windows. Except for banks and pharmacies, there shall be no drive-through windows within the Project.

3.10. Prohibition of Pad Sites. All retail and office buildings within the Project shall be located adjacent to the interior main streets of the development to form a generally continuous streetscape. No so-called outlying pad sites (other than the existing Boston Sports Club facility) shall be included in the site plan for the Project.

ARTICLE 4

OBLIGATIONS OF THE TOWN

4.1 Permits and Approvals. The Town shall support the 40R Rezoning, the subsequent application for Plan Approval for the Project from the Planning Board, and all other necessary permits and approvals from federal, state and local bodies required for the approval of the Project.

4.2 Financial Assistance. The Town directly shall seek, and shall assist the Owner in seeking, any available public funding to offset the costs of off-site mitigation for the Project, including helping to facilitate the funding of current improvement projects which are on the list for the state's Transportation Improvement Program. The Owner shall reimburse the Town for any reasonable costs incurred by the Town in seeking to obtain public funding for the Project.

4.3 Cooperation with Wakefield. The Town shall enter into any required inter-municipal agreements with Wakefield and other third parties (including, without limitation, the Massachusetts Water Resources Authority), required to effectuate the utility requirements for the Project, including, but not limited to, sewerage and drainage.

4.4 Utility Requirements. The Town shall support applications by the Owner for all necessary utility connections for the Project.

4.5 Liquor Licenses. The Town shall reserve the following liquor licenses for the Project for two (2) years following the issuance of the final Certificate of Occupancy for the

Project: (i) six (6) all alcoholic pouring licenses, plus the transfer of the two (2) existing license for the conference center and clubhouse, (ii) two (2) beer and wine pouring licenses, and (iii) one (1) beer and wine off-premises license.

4.6 City of Lynn. The Town shall support any requests made by the Owner for necessary approvals or permissions from the City of Lynn and/or the Lynn Water and Sewer Commission related to the Project.

4.7 LIFE Land. The Town shall sell the LIFE parcel to LIFE pursuant to Section 2.1 above and shall use the proceeds thereof for the purposes set forth in Section 2.2 hereof.

4.8 Appeals. If a lawsuit is filed by a third party challenging the 40R Zoning, any Plan Approval thereunder, or any other permit or approval issued by the Town for the Project, the Town shall defend any such appeal at its expense and the Town shall oppose any such lawsuit. The Owner shall join the Town in defending and opposing the same and pursuing a prompt judicial determination with respect to any such challenge. The Town's obligation under this Section 4.8 shall terminate upon issuance of a final certificate of occupancy for the Project.

4.9 Overall Cooperation. In addition to the foregoing specific matters, the Town also shall cooperate with any other requests by the Owner which are reasonably related to or necessary for the Owner's effectuation of the Project and related mitigation.

ARTICLE 5

MISCELLANEOUS

5.1 Escrow. This Agreement shall be held in escrow by Town Counsel and shall not become effective or be delivered to the Town unless and until the April 30, 2007 Annual Town Meeting, DHCD, and the Massachusetts Attorney General, as applicable, each has approved Exhibit B and Exhibit C hereto. Upon the last to occur of such events, upon five (5) business days' notice to the Owner, Town Counsel shall deliver one fully-executed copy of this Agreement to the Town and one fully-executed copy to the Owner.

5.2 Cure Periods. With respect to the Owner's obligations hereunder, the Owner shall have (a) fifteen (15) days to cure any monetary default hereunder following receipt of written notice from the Town, and (b) thirty (30) days to cure any non-monetary default following receipt of written notice from the Town, provided that if the non-monetary default is of such a nature that it cannot be cured within thirty (30) days, the Owner shall not be in default if it has commenced to cure such non-monetary default hereunder within said thirty (30) day period and diligently prosecutes such cure to completion.

5.3 Notice to Lenders. If the Town gives written notice to the Owner of a default under this Agreement with respect to any obligation of the Owner, the Town shall simultaneously furnish a copy of such notice to the mortgagee(s) of record of the Project so long as the Town has prior written notice of the identity and address of each such lender. If the Owner has received notice from the Town of a default under this Agreement by the Owner and such breach is not cured by the Owner before the expiration of the period provided therefore, a

lender may, but shall not be obligated to, cure any such breach upon giving written notice of its intention to do so to the Town within sixty (60) days after lender receives such notice of breach, and, if the lender chooses to cure such breach, the lender shall proceed with due diligence to cure the same. To facilitate the operation of this section, the Owner shall at all times provide the Town with an up-to-date list of the names and address of all lenders for the Project. Any lender may notify the Town in writing of its address and request that the provisions of Section 5.5, as they relate to notices with respect to the Project hereunder, apply to it. The Town agrees to comply with any such request.

5.4 Mediation. If a dispute arises concerning the Owner's performance hereunder, prior to resorting to court, the parties first shall provide notice to each other and shall meet and work in good faith either directly or with the assistance of a mutually-agreed third party to attempt to resolve their dispute in a prompt manner. However, if any such dispute is not resolved as aforesaid within sixty (60) days after the notice required above, either party shall be free to seek a judicial remedy.

5.5 Notices. Any notice hereunder shall be in writing and shall be deemed duly given if mailed by certified or registered mail, postage and registration charges prepaid; by overnight delivery service with receipt; or by hand delivery to the parties at the addresses set forth below:

If to the Town: Mr. William Gustus, Town Administrator
Lynnfield Town Hall
55 Summer Street
Lynnfield, Massachusetts 01940

If to the Owner: c/o National Development
2310 Washington Street
Newton Lower Falls, Massachusetts 02462
Attention: Theodore R. Tye

and to: National Development
2310 Washington Street
Newton Lower Falls, Massachusetts 02462
Attention : Richard P. Schwartz, General Counsel

with a copy to: Robert A. Fishman, Esq.
Nutter, McClennen & Fish, LLP
155 Seaport Boulevard
Boston, MA 02210

Any notice that is sent by U.S. Mail shall be deemed given on the third day after deposit in the U.S. Mail; any notice that is sent by overnight delivery service shall be deemed given on the next business day after deposit with such service; and any notice that is sent by hand delivery shall be deemed given on the day of actual receipt.

5.6 Estoppel Certificate. Upon ten (10) days' written request from the Owner, the Town, within an additional ten (10) days, shall execute a certificate in a form acceptable for

recording with the Essex South Registry of Deeds and filing with the Essex Registry District that is addressed to the requesting party or a lender, title insurance company, prospective purchaser, tenant or other interested party, confirming that this Agreement is in full force and effect (or, if not, that this Agreement has terminated) and certifying to the best of its knowledge that the Owner is in compliance with its obligations hereunder or, if not, specifying the respects in which the Owner is not in compliance or specifying the obligations which are unfulfilled.

5.7 Successors and Assigns. The provisions of this Agreement shall run with the land and shall be binding upon the Owner and its successors and assigns as owners of the Project in Lynnfield (containing 80.25± acres as defined in the Background Section) and shall inure to the benefit of the Town and its successors and assigns. An owner of the Project shall be liable hereunder only for any breaches occurring during the period of its ownership of the Project.

5.8 The Town's Independent Powers. Nothing contained in this Agreement shall in any way negate, limit or restrict the Town's jurisdiction and authority over the Project. This Agreement shall not bind nor affect the independent powers of any authority, agency, inspector or board of the Town including, without limitation, the Planning Board, the Board of Appeals, the Conservation Commission and/or the Building Inspector.

5.9 Duration. Except as provided in this section below, this Agreement shall be enforceable for the maximum period permitted by applicable law.

- a. If the Town Meeting vote has not occurred on or before June 30, 2007, and/or if DHCD and the Massachusetts Attorney General have not approved Exhibit B and, as applicable, Exhibit C within the time periods provided by applicable statutes and regulations, then the Owner may terminate this Agreement upon ten (10) days' written notice to the Town, all copies of this Agreement shall be returned to the Owner, and the parties shall be in status quo ante as if this Agreement had never been executed.
- b. If the Owner does not obtain all the Required Permits in a form acceptable to the Owner, or if the Owner determines that, in its judgment, the Required Permits will not be issued in a timely manner or in a satisfactory form, or if any permit or approval is appealed, the Owner may terminate this Agreement upon ten (10) days' written notice to the Town.
- c. Upon the full performance by the Owner of all of its obligations hereunder, the Town shall, at Owner's request, issue a statement in a form appropriate for recording with the Essex South Registry of Deeds and filing with the Essex Registry District stating that all of the terms of this Agreement have been satisfied and this Agreement is of no further force and effect.

5.10 Amendments. This Agreement may be amended only by an instrument in writing signed by each party hereto.

5.11 Governing Law. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts.

5.12 Severability. If any term or provision of this Agreement, or the application thereof to any person or circumstance shall, to any extent, be invalid, inoperative or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid, inoperative or unenforceable, shall not be affected thereby; it shall not be deemed that any such invalid, inoperative or unenforceable provision affects the consideration for this Agreement; and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

5.13 No Recording. If the Town records this Agreement, it shall ipso facto become null and void, provided that the parties shall record a Notice of Development Agreement in the form of Exhibit H hereto when this Agreement is released from escrow pursuant to Section 5.1 hereof.

5.14 Headings. The headings used in this Agreement are for convenience of reference and shall in no way define, increase limit or describe the scope or intent of any provisions hereof.

5.15 Interpretation; Inconsistency With Other Documents. If there are any inconsistencies among this Agreement, the 40R Bylaw (Exhibit B) and the Design Standards (Exhibit C), the provisions of this Agreement shall govern.

5.16 Time of the Essence. All times set forth herein shall be of the essence.

5.17 Counterparts. This Agreement may be executed in any number of counterparts, which, when taken together, shall constitute one and the same instrument.

[Signatures on the Next Page]