

Town of Harwich

Request for Proposals

for the

Disposition of 62 Route 28 First Baptist Church

Release Date: June 28, 2023 at 9:00 a.m.

Pre-Proposal Meeting Date: July 10, 2023 at 10:00 a.m.

Deadline for Questions: July 14, 2023 at 4:00 p.m.

Proposal Response Deadline: July 28, 2023 at 2:00 pm

I. OVERVIEW:

The Town of Harwich (the “Town”), acting by and through its Select Board (the “Board”), is offering for sale, through the Request for Proposals (“RFP”) process in accordance with Massachusetts General Laws Chapter 30B, a parcel of land, comprising 1.6 acres, more or less, located at 62 Route 28, West Harwich, Massachusetts, containing the historical First Baptist Church and a historic cemetery, which is currently maintained by the Town. The Premises is **Assessor Parcel 10-G2-0** (the “Premises”) and described in a deed recorded in the Middlesex North Registry of Deeds in Book 2, Page 90. The Premises is illustrated in photographs in **Exhibit A** and incorporated herein, and shown on the parcel layout attached as **Exhibit B** and incorporated herein. Further information on the Premises is set forth in Section 2 of this RFP.

Town Meeting voted to authorize the Select Board to acquire the Premises by gift, purchase, eminent domain or otherwise for housing, cemetery and sewer purposes and including the purpose of conveyance of the Premises by the vote taken under Article 2 of the October 18, 2022 Special Town meeting, a copy of which is attached as **Exhibit C**, and is incorporated herein.

The Town is seeking proposals for the purchase and redevelopment of the First Baptist Church for a minimum of 12 units of affordable “workforce” housing for persons earning up to 80% of area median income. The Town anticipates that proposers and members of the development team will have experience with the development of affordable rental housing and property management, as well as the programs providing subsidies and services for such a development.

The Town will continue to operate and maintain the historic cemetery on the property, and will retain an easement in the location of the cemetery. The Town may also reserve an easement in a portion of the cemetery for the installation of a sewer pump station.

The Town does not currently own the Premises, but intends to acquire the property through a taking. This RFP is subject the Town acquiring title to the Premises. The Town has had a title search performed, and it appears that the current owner of the Premises is the First Baptist Church & Society. The Town will share the results of that title search with the successful proposer, however it is expected that the proposer will conduct its own due diligence as to title. The successful proposer will be required to indemnify and hold the Town harmless in the event third parties make a claim to ownership of the Premises. The proposer will also be required to pay the expenses associated with issuance of this RFP, including, but not limited to, the costs of an appraisal, title research and legal fees.

The proposal must meet the following, minimum criteria:

- **Monetary compensation for the disposition of 62 Route 28** (required)
 - The Town is offering a 1.6-acre parcel, as illustrated in **Exhibit B**, to assist with the desired redevelopment of this historically significant property. Based on the most up-to-date property assessment data available, the property is currently assessed at \$805,100.00.

- **Creation of affordable workforce housing** (required)
 - The Town is seeking proposals that will create a minimum of twelve (12) affordable rental workforce housing units for persons earning 80% or less of the area median income (AMI), as determined by the Department of Housing and Urban Development. The Town's priority is that all units will meet the requirements for inclusion in the Executive Office of Housing and Livable Communities' (EOHLC) (formerly the Department of Housing and Community Development) Subsidized Housing Inventory (SHI). The Town shall convey the property subject to: (a) a Regulatory Agreement among the developer, the Town and EOHLC; and (b) an affordable housing restriction, enforceable by the Town, requiring the affordable units to be used for affordable rental workforce housing purposes in perpetuity, and which shall run with and bind the property and the developer and its successors and assigns notwithstanding the foreclosure of any mortgage or deed in lieu thereof.
- **Historic Preservation of the First Baptist Church** (required)
 - Proposers must be willing to preserve the historic exterior features of the First Baptist Church, in accordance with the Historic Preservation Agreement attached hereto as **Exhibit F**.

The purpose of this RFP is to facilitate the selection of a proposer who will demonstrate the qualifications and capacity necessary to (a) best effectuate the terms and conditions of the purchase, as set forth in Section 7 of this RFP, and (b) best meet the Evaluation Criteria described in Section 6.

While the Board believes that the information provided in this RFP, including all exhibits and addenda, if any, is accurate, the Town makes no representation or warranty, express or implied, as to the accuracy and completeness of the information in this RFP. The proposer assumes all risk in connection with the use of the information, and releases the Town, the Board, any other Town boards and commissions, and Town officials, employees, representatives and agents from any liability in connection with the use of the information provided by the Town. Further, the Board makes no representation or warranty with respect to the Premises, including without limitation, the value, quality, or character of the Premises or its fitness or suitability for any particular purpose and/or the physical and environmental condition of the Premises. The Premises will be sold in "AS IS" condition.

Each proposer shall undertake its own review and analysis (due diligence) concerning the physical and environmental condition of the Premises, applicable zoning permits and approvals, and other development, ownership, and legal considerations pertaining to the Premises, and the use of the Premises.

Proposals are due to the Town Administrator's Office at Harwich Town Hall, 732 Main Street, Harwich Center, MA 02645 by 2:00 pm. on July 28, 2023. The Submission Requirements are set forth in Section 5, the Selection Process in Section 3. All costs and

expenses of purchasing and developing the Premises, including without limitation, all costs of permitting and improvements, shall be the sole responsibility of the successful proposer.

No proposer may withdraw its proposal for a period of one hundred and fifty (150) days from the due date for submission of the proposals to the Town.

The Town reserves the right to reject any and all proposals, to negotiate any and all non-mandatory contract terms with the successful proposer, or to cancel this procurement at any time if it is in the Town's best interest to do so.

The successful proposer must be prepared to enter into a purchase and sale agreement, substantially similar to the Purchase and Sale Agreement attached hereto as **Exhibit D** and incorporated herein (the "P&S") within thirty (30) days from the date of award to the successful proposer. The terms and conditions applicable to the sale of the Premises are more fully set forth in Sections 7 and 8 and in **Exhibit D**. The successful bidder must be willing to impose a historic preservation restriction on the exterior of the First Baptist Church, as further described below. The successful proposer must also be willing to enter into a Regulatory Agreement with EOHLIC, and impose a perpetual Affordable Housing Restriction on the affordable workforce rental housing, which sets forth the terms of affordability associated with the project.

II. PROPERTY DESCRIPTION

The Premises consist of the Town-owned property located at 62 Route 28, West Harwich, containing approximately **1.6 acres**, more or less, as illustrated in **Exhibit B**. The parcel is zoned Commercial within a Historic District of Critical Planning Concern. Any variations from permissible uses will require special permitting and zoning variances. Please consult with the Town of Harwich's Planning Department and Harwich's Zoning Bylaws for more information.

The First Baptist Church was built in 1880 and is comprised of approximately 4136 sq. ft. of space, and is listed on the State Historical Register with ID # HRW.226

It is believed that the subsurface sewage disposal system currently serving the Premises does not comply with the requirements of Title 5 of the State Environmental Code. The successful proposer agrees to purchase the Premises "AS IS" with respect to the subsurface sewage disposal system (the "System"). The Premises is conveyed subject to the condition that the successful proposer shall upgrade the System, to be compliant with Title 5 of the State Environmental Code, and further, the successful applicant shall comply with any and all rules and regulations of the Massachusetts Department of Environmental Protection and the Harwich Board of Health applicable to the Premises. The Town assumes no liability and makes no warranties in relation to the System.

The Premises is serviced by the Town of Harwich's municipal water supply.

III. RULE FOR AWARD

The most advantageous proposal from a responsive and responsible proposer, taking into consideration price and all other comparative evaluation criteria set forth in this RFP, will be selected.

IV. PROPOSAL PROCESS AND SCHEDULE OF EVENTS

- A. Availability of RFP Packages. The RFP will be available at 9:00 a.m. on June 28, 2023 on the Town website <https://www.harwich-ma.gov/home/pages/procurement> or in person at the Town Administrator's Office at the Harwich Town Hall, 732 Main Street, Harwich, Massachusetts, between the hours of 8:00 a.m. and 4:00 p.m. on Monday through Fridays (excluding holidays).
- B. Pre-Submittal Meeting and Site Visit. Interested parties will have the opportunity to attend a pre-submittal meeting on July 10, 2023 at 10:00 a.m. at the Premises. Town representatives will conduct a walkthrough of the Premises for interested parties. Interested parties may, on a separate date, arrange to conduct an inspection of the Premises under conditions acceptable to the Town. Proposers are advised to do their own due diligence, and neither the Town nor any of its agents or representatives are responsible for representations made regarding the Premises at the pre-submittal meeting site visit.
- C. Deadline for Submission of Questions. Written responses will be provided to requests for clarification or interpretation of the meaning of the provisions of this RFP that are submitted in writing to and received by the Town no later than 4:00 p.m. on July 14, 2023. Responses will be distributed to all parties who have received an RFP and have provided contact information. In the sole discretion of the Town, written responses to questions raised during the view of the Premises or at the pre-submittal meeting will be similarly distributed. The Town is not obligated, in any way, to waive RFP requirements, or create exceptions, for proposers who choose not to attend the pre-submittal meeting/site view. Questions must be submitted to the Town's procurement email address meldredge@harwich-ma.gov, or in writing to the Town Administrator's Office, Harwich Town Hall, 732 Main Street, Harwich, MA 02645, with "Questions - Town of Harwich Disposition of 62 Route 28 (First Baptist Church)" clearly marked on the outside.
- D. Submission Deadline. Sealed proposals must be received at the Office of the Town Administrator at Harwich Town Hall, 732 Main Street, Harwich, MA 02645 by 10:00 a.m. on July 28, 2023. Late, faxed or emailed proposals will not be accepted. The front page of the proposal package must be clearly marked with the words "Town of Harwich Disposition of 62 Route 28 (First Baptist Church)."
- E. Opening of Proposals. Submitted proposals will be opened in public and reviewed by a group of individuals designated by the Chief Procurement Officer.
- F. Withdrawal; Effectiveness. Proposals may be withdrawn upon written request to the Town prior to the submission deadline. Otherwise, proposals shall not be modified, amended or withdrawn for a period of one hundred and fifty (150) days from the submission deadline.

V. PROPOSAL SUBMISSION REQUIREMENTS

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

Each proposer shall submit five (5) copies of the proposal (one of which shall be the original and one shall be presented on a flash drive, to facilitate ease in distribution), complete with all supporting materials.

Responses to the RFP must include all required documents, completed, and signed per the instructions and attached forms included in this RFP package. Electronically mailed (emailed) and faxed proposals will not be accepted and will be deemed non-responsive and will not be evaluated. No proposals submitted after the above-referenced deadline will be accepted.

Additional Instructions:

- If any changes are made to this RFP, an addendum will be issued. Each addendum will be mailed (electronically or physically) or faxed to all persons on record as having requested the RFP. Failure of any proposer to receive any such addendum or interpretation shall not relieve such proposer from the obligation to comply with the terms of such addenda. All addenda so issued shall become part of this RFP.
- At the time of the opening of bids, each proposer will be presumed to have inspected the Premises and to have read and be thoroughly familiar with the RFP (including all addenda). The failure or omission of any proposer to examine any form, instrument, or document shall in no way relieve any proposer from any obligation to comply with the RFP.
- Proposers are cautioned that it is the responsibility of each individual proposer to assure that his/her proposal is in the possession of the responsible official or a designated alternate prior to the stated time and at the place of proposal by the due date. The Town is not responsible for proposals delayed by mail and/or delivery service of any nature. Late responses will not be accepted, nor will additional time be granted to individual respondents unless the Town extends the required submittal date for all proposers.
- Proposals cannot be withdrawn, modified or amended for a period of one hundred fifty (150) days from the due date for submission of proposals.
- All signatures must be handwritten and in ink by the person(s) seeking to purchase the Premises. All other words and figures submitted on the proposal shall be neatly written in ink or typed. Proposals that are conditional, obscure, or which contain additions not called for in the specifications, erasures, alterations, or irregularities may be rejected.
- All proposals become the property of the Town. All proposals are deemed to be public records, excluding financial supporting documentation, within the meaning of Massachusetts General Laws Chapter 4, Section 7(26).
- The Town will not be liable for any costs incurred by any respondents in the preparation and presentation of responses to this RFP or in the participation in views, interviews, negotiations or any other aspect of this RFP process.
- Failure to meet the submittal requirements may be sufficient cause to reject a proposal. Proposers are solely responsible for reviewing all the provisions of this RFP and any

attachments prior to submitting the proposal. Proposals that are incomplete, not properly endorsed, or are otherwise in conflict with the requirements of this RFP, may be rejected.

- The Town shall not be required to convey the Premises to the proposal offering the highest price.
- After evaluating a proposal on the foregoing factors, the evaluators will provide an overall ranking for the proposal as compared to other proposals.

All proposals must include the following materials:

- **Cover Letter:** A letter signed by the proposer, or, if the proposer is an entity, a principal(s) of the proposer who is authorized to submit its RFP response, including a statement of interest, the identity of the proposer, and name of the purchaser of the Premises, and the name, address and contact information of all interested parties.
- **Price Proposal:** Proposers must insert the price offered for the Premises by filling in the blank spaces in the Price Proposal Form attached hereto in both words and figures (Form 1 attached).
- **Development Plan; Closing Date:** Each proposer must submit a narrative on the proposer's proposed use of the Premises. Proposers must also identify a proposed closing date.
- **Site Plan:** Proposers must include a site plan which identifies any material changes to the layout of the First Baptist Church, and if any changes are to be made to the site.
- **Building Design and Construction:** Proposers are encouraged to use their creativity and experience in the choice of materials and methods of construction that will minimize regular maintenance costs and are energy efficient. The development shall incorporate green building technology to the greatest extent possible.
- **Management and Maintenance Plan:** Proposers are required to provide a management plan for the operation of affordable rental housing of the property, including identifying the entity who will manage the property. If a manager has not been selected, the proposer should explain how the developer plans on procuring a management agent. Proposers should include a maintenance overview.
- **Affordable Housing Plan:** Proposers must include a plan which demonstrates how the property will be developed to create the affordable rental workforce housing units (at 80% AMI or less), and demonstrate a willingness to enter into a Regulatory Agreement with EOHLC and a perpetual Affordable Housing Restriction with the Town, both to be recorded with the Registry of Deeds, as a condition of sale.

- **Historic Preservation Plan.** Proposers must include a plan which outlines how the applicant will preserve the historic character of the First Baptist Church, and comply with the Historic Preservation Agreement attached as **Exhibit F**.
- **Experience:** The proposal should demonstrate experience with projects of a similar scale and complexity, permitting an affordable housing development, design and financing. Each proposal should evidence the ability to perform as proposed and to complete the project in a competent and timely manner, including the ability to pursue and carry out permitting, financing, marketing, lottery, design and construction. This narrative shall identify the following regarding other, similar projects: project name, location, type and description, scope, projected completion date and actual date of completion, total development costs, sources of financing and total number of units and bedroom sizes.
- **Lottery and Marketing:** Please provide a description of the marketing and lottery process that will be consistent with EOHLC's Affirmative Fair Housing Marketing and Resident Selection Plan Guidelines.
- **Implementation Plan and Timetable:** The proposal must include a description of how the development concept will be implemented, including, but not limited to, a detailed development schedule, including key milestones, financing benchmarks, and projected completion/occupancy time frames, including EOHLC approval process; a schedule for securing approvals and permits for the proposal.
- **Other Information:** Please provide the following: (a) information regarding any legal or administrative actions, past, pending or threatened, that could relate to the conduct of the proposer, its principals or any affiliates; (b) confirmation that no local, state or federal taxes are due and outstanding for the proposer or any member of the development team; and (c) three (3) references with contact names, title and current telephone numbers and email addresses who can provide information concerning the proposer's experience in similar projects.
- **Proposal Security.** Proposal security in the form of a certified check or cashier's check payable to the "Town of Harwich" in the amount of \$10,000.00 must accompany the proposal submittal. The proposal security of parties not selected will be returned within a reasonable time after the date of an award. Proposal packages which fail to include security, or those of responding parties who fail to provide the aforementioned security by the submission deadline, will be rejected as non-responsive. The proposal security shall be credited towards the purchase price.
- **Forms 1 through 5.** Proposers are required to complete and sign Forms 1 through 5 attached hereto:
 - Form 1, *Price Proposal Form*: Proposal offer of the purchase price for the property.
 - Form 2, *Certificate of Non-Collusion*: required under G.L. c. 30B, §10, in which the proposer states that the proposal is made in good faith without fraud or collusion or in connection with any other person submitting a proposal, signed and dated by the proposer.

- o Form 3, *Certificate of Tax Compliance*: required under G.L. c. 62C, §49A, in which the proposer certifies that he or she has complied with all laws of the Commonwealth of Massachusetts relating to taxes.
- o Form 4, *Certificate of Authority*: in which the proposer, if an entity, identifies the names and addresses of the managers, directors, officers, and/or other parties authorized to act on behalf of the entity.
- o Form 5, *Real Property Disclosure Statement*: required under G.L. c. 7C, §38, in which the proposer identifies the parties having an interest in the Premises and whether any such party is a state or local employee or volunteer.
- **Financing Information and, if applicable, Loan Commitment.** Each proposer must provide evidence of the proposer's ability to meet the financial obligations of the property acquisition and renovation of the Premises, not contingent upon the sale of another property. Financial statements and background information must be attached to the proposal. If a proposer intends to purchase and renovate the Premises with third party financing, the proposer must specify how much is to be borrowed and submit, in its proposal package, a pre-approval letter from a financial institution lender acknowledging that the proposer has sufficient financial resources to obtain a loan commitment, subject to prevailing terms and conditions. The proposer must deliver a firm letter of commitment to the Town within thirty (30) days from the date the parties enter into a Purchase and Sale Agreement.
- **Other.** The proposer should include in this section any other information which the proposer believes the Town should know in order to fully evaluate the proposal, or any special conditions to the proposal. If a proposal is missing any of the required materials in Section 5, or if the required materials are combined, the Town reserves the right to evaluate the proposal, if, in the sole discretion of the Town, the overall proposal is responsive to the evaluation criteria and required materials. (For example, a proposal will not necessarily be rejected if the Site Plan and Development Plan are submitted as one document, if all the required information is still included)

VI. EVALUATION CRITERIA

A. QUALITY REQUIREMENTS (Minimum Evaluation Criteria)

All proposals must meet the following quality requirements in order to be deemed "responsive" and to proceed forward to the Comparative Evaluation Criteria section.

- Conformance with all requirements set forth in Section V, titled "Proposal Submission Requirements."
- Written confirmation that the proposer will provide the following items as part of their overall redevelopment proposal to the Town:
 - o A commitment to create affordable workforce rental units for living at or below 80% of the area median income and to accept the placement of a perpetual Regulatory Agreement with EOHLC and an Affordable Housing Restriction on

the property, which shall ensure all units will count on the Town's subsidized housing inventory.

- A commitment to impose a Historic Preservation Restriction upon the Premises.

B. COMPARATIVE EVALUATION CRITERIA

Proposals which meet all quality requirements listed in Section VI(A) shall be evaluated based on the comparative evaluation criteria listed below.

(1) Number of Proposed Affordable Housing Units

A **Highly Advantageous** rating will be given to a proposal that intends to provide 12 or more affordable workforce housing units (at 80% AMI or less).

An **Advantageous** rating will be given to a proposal that intends to provide 12 affordable workforce housing units (at 80% AMI or less).

An **Unacceptable** rating will be given to a proposal that intends to provide fewer than 12 affordable workforce housing units (at 80% AMI or less).

(2) DEVELOPER EXPERIENCE AND CAPABILITY

A **Highly Advantageous** rating will be given to a development team that has experience in designing, permitting and developing affordable housing projects in excess of 10 units, and has completed more than 5 such projects.

An **Advantageous** rating will be given to a development team that has experience in designing, permitting and developing affordable housing projects less than 10 units, and has completed 3-5 such projects.

An **Unacceptable** rating will be given to a development team that has no experience in designing, permitting and development multiple unit affordable housing projects.

(3) Price

The Town is interested in selling the Premises at the highest price. However, the Town reserves the right to make an award to a proposal that offers other than the highest price, particularly if the level of affordability exceeds the minimum required herein. The Town will consider the overall value of the offer based on the selection criteria set forth herein.

(4) Financial Feasibility

A **Highly Advantageous** rating will be given when the developer submits a pro forma that clearly addresses the adequacy of a proposed development budget and appropriateness of proposed market prices in relation to the market, and the developer has included a letter from a lending institution insuring financing for the project.

An **Advantageous** rating will be given when the developer submits a pro forma that that clearly addresses the adequacy of a proposed development budget and appropriateness of proposed market prices in relation to the market.

An **Unacceptable** rating will be given when the developer fails to submit a pro forma.

(5) Time Required to Close on the Property

A **Highly Advantageous** rating will be given to a proposal where the developer is able to close on the property within 90 days from the date of the P&S agreement

An **Advantageous** rating will be given to a proposal where the developer is able to close on the property within 180 days from the date of the P&S agreement

A **Not Advantageous** rating will be given to a proposal where the developer is able to close on the property within 240 days from the date of the P&S agreement

VII. AWARD, TERMS AND CONDITIONS OF SALE

- The Premises shall be awarded to the proposer selected in accordance with **Section 3 above**. The Town shall send a letter to the successful proposer, informing the proposer of such award.
- The Town and the selected proposer (referred to as “Buyer”) shall, within thirty (30) days of date of the award, enter into a purchase and sale agreement substantially similar to the Purchase and Sale Agreement attached hereto as **Exhibit D** and incorporated herein (the “P&S”).
- The Buyer shall provide a site plan suitable for recording at the Barnstable County Registry of Deeds.
- The P&S shall contain, in addition to the usual provisions, the following terms:
 - At the time of execution of the P&S, Buyer shall pay a deposit, which including the \$10,000 proposal security paid with the submission of the proposal, will equal ten percent (10%) of the purchase price. The deposit submitted by Buyer shall be held in escrow by the Treasurer of the Town of Harwich in a non-interest-bearing account and shall be duly accounted for at the time for performance of this Agreement. In the event Buyer fails to fulfill its obligation to purchase the Premises, the Town shall retain the deposit as liquidated damages. In the event of any disagreement between the parties, the Treasurer may retain all deposits made under the P&S pending written instructions mutually given by the Town and Buyer.
 - No broker’s commission shall be paid by the Town, and Buyer shall indemnify and hold harmless the Town from any claims for such commission.

- A payment in lieu of taxes shall be paid in accordance with G.L. c.44, §63A as of the day of closing and the net amount thereof shall be added to the purchase price payable by Buyer at the time of delivery of the deed.
 - Buyer shall pay the monetary consideration for the Premises by certified, treasurer's or bank check or by wire transfer, in the Town's discretion.
- The Town shall convey the property subject to (a) a Regulatory Agreement between the developer, the Town and the Massachusetts Executive Office of Housing and Livable Communities, (b) a Land Development Agreement, setting forth the development of the property for affordable workforce rental housing purposes, and (c) an affordable housing restriction, enforceable by the Town, requiring the housing units to be used for affordable workforce rental housing purposes in perpetuity, as set forth more particularly in the Land Development Agreement.
- The Town shall reserve an easement or a fee interest in the location of the cemetery, as well as an easement for sewer pump station.
- The Buyer shall indemnify and hold the Town harmless from any and all claims brought by third parties asserting an ownership interest in the Premises.
- The Buyer shall pay, at the closing, any and all expenses of the Town in issuing the RFP, surveys of the property, conducting title research and legal fees related to the RFP and the conveyance of the Premises.
- The Town will convey the property to the developer upon the satisfaction of the following conditions, among others:
 - (a) *Permits*: The developer shall have obtained all permits, approvals and licenses, with appeal periods having expired without any appeal being filed, or if filed, the final adjudication of such appeal pursuant to a final court order without further appeal from all federal, state and local authorities necessary to construct and operate the project
 - (b) *Financing*: The developer shall have obtained financing sufficient in the reasonable judgment of the Town and the developer to design, construct, operate and maintain the project and other improvements required under the Land Development Agreement. The developer shall provide the Town with firm project financing commitments, including, but not limited to public funding commitments, construction loan commitments, and/or a permanent loan commitment from an institutional lender and/or public or quasi-public entities, on terms and amounts reasonably satisfactory to the Town and the developer, and, prior to or simultaneously with the execution and delivery of the deed to the property, the developer shall close on project financing, whereby the developer shall receive funds from institutional lenders and/or public or quasi-public entities in amounts reasonably satisfactory to the developer and the Town to complete the project

(c) *Approved Plans and Specifications.* The developer shall prepare plans and specifications for the construction of the project and for any work done or improvements made on or to the property, showing in detail the location, layout and size of the units, the design of the building, the landscaping, and all other improvements to be constructed on the property. At least one hundred twenty (120) days prior to the date of closing, the developer shall submit the plans and specifications to the Select Board for its approval, not to be unreasonably withheld. In the event of disapproval, the Town shall give the developer an itemized statement of reasons for disapproval within sixty (60) days after the plans and specifications are submitted. The developer shall use reasonable efforts to cause such item(s) to be appropriately revised as soon as possible after receipt of such notice of disapproval and resubmit the same to the Town for approval pursuant to this section. The Town and the developer agree to cooperate reasonably and in good faith with each other to resolve any objections of the other to such items and/or requested modifications by the other. If no response is received from the Town within said sixty (60) day period, the plans and specifications shall be deemed approved by the Town. The developer acknowledges and agrees that the review of the plans by the Select Board shall be independent of, and not substitute for, any review of the project required under the Town of Harwich's General and Zoning Bylaws

- Buyer acknowledges that Buyer has not been influenced to enter into this transaction and that Buyer has not relied upon any warranties or representations not set forth in the P&S. Buyer represents and warrants that it will accept the Premises "AS IS," provided however Buyer shall have the right to terminate this P&S if Buyer finds Hazardous Materials on the Premises in amounts required to be reported to the Department of Environmental Protection. Buyer acknowledges that the Town has no responsibility for hazardous waste, oil, hazardous material or hazardous substances, as those terms are defined by any applicable law, rule or regulation, including, without limitation, the Massachusetts Oil and Hazardous Materials Release Prevention and Response Act, MGL c.21E, the Massachusetts Hazardous Waste Management Act, MGL c.21C, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9601 et seq. and the Resource Conservation and Recovery Act, as amended, 42 U.S.C §§ 6901 et seq. (herein collectively referred to as "Hazardous Materials") on, in, under or emitting from the Premises or for any other condition or defect on the Premises. The provisions of this Section shall survive delivery of the deed.
- In the event that the Town defaults under the P&S, Buyer shall be entitled to terminate the P&S and receive a refund of the deposit. The foregoing shall be Buyer's sole and exclusive remedy at law and equity for any breach of the P&S by the Town.
- The purchase of the Premises shall not be contingent on the sale of any other property.

- The closing shall occur within the time frame set forth in the P&S, but in no event, longer than 240 days from the date on which the P&S is signed by the Town and Buyer, or within such further time as the Town and Buyer shall agree.
- The Town reserves the right, in its sole discretion, to require a performance bond or similar means of ensuring that the renovations or construction described in a Proposer's RFP is completed within a reasonable time period.

The Town shall convey the property subject to a Land Development Agreement attached as **Exhibit E** that will incorporate the provisions of the developer's accepted proposal and specify how the developer will develop, construct and operate the project. The parties shall sign the Land Development Agreement at the closing and record the same prior to the recording of any mortgages or other liens. The Land Development Agreement shall include, but is not limited to, the following terms:

- *Construction Obligation:* The developer shall, at its sole cost and expense, rehabilitate the existing building on the property (the "Project"). The developer shall commence the Project within sixty (60) days from the date on which the deed from the Town to the developer is recorded with the Registry and complete said construction within two (2) years from said date of recording or within such extended period as is set forth more particularly in the Land Development Agreement
- *Affordable Workforce Rental Housing:* All the dwellings on the property shall be rented to persons earning no more than eighty percent (80%) of the area median income for the metropolitan statistical area in which Harwich is located, as defined by the United States Department of Housing and Urban Development ("HUD"), adjusted for household size. The developer shall rent all units at a price acceptable to the Massachusetts Executive Office of Housing and Livable Communities
- *Affordable Housing Restriction:* The developer shall, with the deed to the property, grant the Town an affordable housing restriction, enforceable by the Town in perpetuity, meeting the requirements of G.L. c. 184, §§ 31 and 32, and in form and substance acceptance under EOHLIC's Local Initiative Program (LIP), and substantially similar to the Restriction attached hereto as **Exhibit G**. The developer shall also enter into a Regulatory Agreement and Declaration of Restrictions (a "Regulatory Agreement") with EOHLIC and the Town at the closing. The rental and other restrictions contained in the Regulatory Agreement and/or affordable housing restriction shall also be deemed to be an "other restriction" held by a governmental body, as that term is used in G.L. c. 184, § 26 such that the restrictions contained therein shall be enforceable for its full term and not be limited in duration by any contrary rule or operation of law, and in any event shall be enforceable for at least two hundred (200) years
- *Sale or Transfer of Premises:* Until the Project has been substantially completed, the developer shall not convey or transfer the property or any portion thereof to any person or entity, other than the rental of the individual units

- *Monitoring Services:* The developer shall engage the services of a monitoring agent acceptable to the Town to market the affordable units and conduct a lottery to find eligible tenants
- *Approved Plans and Specifications:* The developer shall obtain the Town's approval of project plans and specifications, including, without limitation, review of plans for substantial compliance with the RFP, and any material changes thereto
- *Subordination:* Any and all mortgages and other liens on the property shall be subordinate to the Land Development Agreement, the Regulatory Agreement, the affordable housing restriction and the Historic Preservation Restriction

VIII. RESERVATIONS BY THE TOWN

- This RFP does not represent any obligation or agreement whatsoever on the part of the Town to sell the Premises described in this RFP.
- The Town reserves the right, in its sole discretion, to reject at any time, any or all proposals, to withdraw the RFP, to select finalists to submit and negotiate a more fully-developed response, to negotiate with one or more applicants, and/or negotiate and dispose of the Premises on terms that are not materially different from those set forth herein. The Town also reserves the right, at any time, to waive strict compliance with the terms and conditions of this RFP or to entertain reasonable modifications or additions to selected proposals provided the same are not materially different from the terms set forth herein.
- The Town makes no representations or warranties, express or implied, as to the accuracy and/or completeness of the information provided in this RFP. This RFP (including all attachments and supplements) is made subject to errors, omissions, withdrawal without prior notice, and changes to, additions to, and different interpretations of laws and regulations.
- Selection of a proposal will not create any rights on the proposer's part, including, without limitation, rights of enforcement, other equitable remedies or reimbursement for any costs or expenses incurred.

EXHIBIT A

PHOTOGRAPHS

The series of photographs below illustrates the exterior faces of the First Baptist Church







EXHIBIT B

PROPOSED PARCEL LAYOUT CONTAINING 1.6 ACRES OF LAND



EXHIBIT C
TOWN MEETING VOTE
SEE ATTACHED

EXHIBIT D
PURCHASE AND SALE AGREEMENT
SEE ATTACHED

EXHIBIT E
LAND DEVELOPMENT AGREEMENT
SEE ATTACHED

EXHIBIT F
HISTORIC PRESERVATION AGREEMENT
SEE ATTACHED

EXHIBIT G
AFFORDABLE HOUSING RESTRICTIVE COVENANT
~~SEE ATTACHED~~

TO BE DRAFTED AND EXECUTED PRIOR TO PURCHASE AND SALE

TOWN OF HARWICH

REQUEST FOR PROPOSALS (RFP)

Town of Harwich Disposition of 62 Route 28

FORM 1

PRICE PROPOSAL FORM

PRICE

Please write your proposal offer:

Print/Type your proposal amount above in written form

Print/Type your proposal amount above in number form

Note: *Both the written form and the number form should indicate the same total amount. If there is a conflict between the written form and the number form amounts, the written form will control.*

Name of proposer

Name of person signing proposal

Signature of person signing proposal

Date

Title

Address

(Note: This form must be included in the proposal submission)

TOWN OF HARWICH
REQUEST FOR PROPOSALS (RFP)

Town of Harwich Disposition of 62 Route 28

FORM 2

Certificate of Tax Compliance

Pursuant to Chapter 62C, §49A(b) of the Massachusetts General Laws, I,

_____, authorized signatory for
(Name)

_____, do hereby certify under the pains and
(Name of Proposer)

penalties of perjury that said proposer has complied with all laws of the Commonwealth
of Massachusetts relating to taxes.

Signature: _____

Printed name: _____

Title: _____

Name of Business: _____

Date: _____

(Note: This form must be included in the proposal submission)

TOWN OF HARWICH
REQUEST FOR PROPOSALS (RFP)

Town of Harwich Disposition of 62 Route 28

FORM 3

Certificate of Non-Collusion

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

Signature: _____

Printed name: _____

Title: _____

Name of Business: _____

Date: _____

(Note: This form must be included in the proposal submission)

TOWN OF HARWICH
REQUEST FOR PROPOSALS (RFP)

Town of Harwich Disposition of 62 Route 28

FORM 4

CERTIFICATE OF AUTHORITY

Give full names and residences of all persons and parties interested in the foregoing proposal:

(Notice: Give first and last name in full; in case of a corporation, give names of President and Treasurer; in case of a limited liability company, give names of the individual members, and, if applicable, the names of all managers; in case of a partnership or a limited partnership, all partners, general and limited and; in case of a trust, all the trustees)

NAME	ADDRESS	ZIP CODE
_____	_____	_____
_____	_____	_____
_____	_____	_____

Kindly furnish the following information regarding the Respondent:

☐ **IF A PROPRIETORSHIP**

Name of Owner: _____

Address: _____

Name of Business: _____

Home: _____

☐ **IF A PARTNERSHIP**

Business Name: _____

Business Address: _____

Names and Addresses of Partners

PARTNER NAME	ADDRESS	ZIP CODE
_____	_____	_____
_____	_____	_____
_____	_____	_____

☐ **IF A CORPORATION OR A LIMITED LIABILITY COMPANY**

Full Legal Name: _____

State of Incorporation: _____

Principal Place of Business: _____

Qualified in Massachusetts: Yes _____ No _____

Place of Business in Massachusetts: _____

☐ **IF A TRUST**

Full Legal Name: _____

Recording Information: _____

State of Formation: _____

Full names and address of all trustees:

NAME	ADDRESS	ZIP CODE
_____	_____	_____
_____	_____	_____

Signature: _____

Printed name: _____

Title: _____

Name of Business: _____

Date: _____

(Note: This form must be included in the proposal submission)

TOWN OF HARWICH

REQUEST FOR PROPOSALS (RFP)

Town of Harwich Disposition of 62 Route 28

FORM 5

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

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

(1) Real Property:

The land and buildings located at 62 Route 28, being the property described in a deed recorded with the Barnstable County Registry of Deeds in Book ____, Page ____

(2) Type of Transaction, Agreement, or Document:

Conveyance by Town of Harwich (Deed)

(3) Public Agency Participating in Transaction:

Town of Harwich, acting by and through its Select Board

(4) Disclosing Party's Name and Type of Entity (if not an individual):

(5) Role of Disclosing Party (Check appropriate role):

____ Lessor/Landlord ____ Lessee/Tenant

____ Seller/Grantor X Buyer/Grantee

____ Other (Please describe): _____

(6) The names and addresses of all persons and individuals who have or will have a direct or indirect beneficial interest in the real property excluding only 1) a stockholder of a corporation the stock of which is listed for sale to the general public with the securities and exchange commission, if such stockholder holds less than ten per cent of the outstanding stock entitled to vote at the annual meeting of such corporation or 2) an owner of a time share that has an interest in a leasehold

condominium meeting all of the conditions specified in M.G.L. c. 7C, s. 38, are hereby disclosed as follows (attach additional pages if necessary):

NAME

RESIDENCE

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

None

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

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

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

copies of any and all disclosure statements received available to the state ethics commission upon request.

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

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

Print Name of Disclosing Party (from Section 4, above)

Authorized Signature of Disclosing Party

Date (mm /dd/yyyy)

Print Name & Title of Authorized Signer

(Note: This form must be included in the proposal submission)

TOWN OF HARWICH

REQUEST FOR PROPOSALS (RFP)

Town of Harwich Disposition of 62 Route 28

Checklist for Proposers

(for reference purposes only, does not need to be included with proposal documents)

- ☐ Security Deposit
- ☐ Cover Letter
- ☐ Price Proposal Form
- ☐ Development Plan/Closing Date
- ☐ Proposed Site Plan
- ☐ Affordable Housing Plan
- ☐ Historic Preservation Plan
- ☐ Form 1: Price Proposal Sheet
- ☐ Form 2: Certificate of Tax Compliance
- ☐ Form 3: Certificate of Non-Collusion
- ☐ Form 4: Certificate of Authority
- ☐ Form 5: Real Property Disclosure



Town of Harwich

TOWN CLERK'S OFFICE

Emily Mitchell, Town Clerk

Harwich Town Hall • 732 Main Street • Harwich, MA 02645

Tel: 508-430-7516 • Fax: 508-430-7517

The following is a True Copy of Article 2 of the Special Town Meeting held on October 18, 2022, and the vote passed thereunder.

ARTICLE 2: Acquire parcel of land located at 62 Route 28

To see if the Town will vote to authorize the Board of Selectmen to acquire by gift, purchase, eminent domain, or otherwise, a parcel of land consisting of 1.560 acres, more or less, located at 62 Route 28, identified as Assessor's Map 10, Parcel G2, for housing, cemetery and sewer purposes, and including the purpose of conveyance; and to authorize the Board of Selectmen, subject to compliance with G.L. c. 30B, §16, to convey a portion of said parcel for the development of workforce or other housing; and to raise and appropriate; transfer from available funds, or borrow a sum of money for said acquisition, including all costs incidental and related thereto; and to authorize the Board of Selectmen to enter into all agreements and take any and all actions as may be necessary or convenient to accomplish the foregoing purposes; and further to authorize the Board of Selectmen to retain an historic preservation restriction on the façade of the Church Building located on the parcel, and a housing restriction; and to act fully thereon.

By request of the Board of Selectmen.

Estimated cost: \$1.00.

Explanation: This article seeks authorization for the Board of Selectmen to acquire a parcel of land presently owned by the First Baptist Church located at 62 Route 28, and then to dispose of the property to a developer who has expressed an interest in constructing approximately 14 units of work force housing within the existing Church building. The Church is an historic building in West Harwich, but it is in a deteriorated condition. Because there may be title issues with this property, the Board of Selectmen would like the authorization to engage in a friendly taking of the property, so that the town can issue an RFP for the conveyance of the property to an eligible developer. The Town intends to retain an historic preservation restriction and a housing restriction to ensure that the historic character of the Church building is preserved and also to ensure that the use of the property is restricted to workforce housing. In order to protect the interests of the Town, the Board of Selectmen will not acquire this property until a Request for Proposals is issued and a qualified developer is selected for the development of the housing. The Town may decide to use a small portion of the property for a sewer pump station. Since a portion of this property includes a cemetery, the Town may also retain ownership of the cemetery land as one of the Town cemeteries. The Town is not seeking an appropriation of funds for this acquisition because the Town will obtain a waiver of any monetary damages before proceeding with a taking of the property.

Finance Committee Explanation: The Finance Committee recommends this article as this property is needed to install a pumping station along Route 28.

FINANCE COMMITTEE RECOMMENDS NO RECOMMENDATION PENDING FURTHER INFORMATION. FINANCE COMMITTEE VOTES NRPI WHEN, AT THE TIME THE WARRANT IS PRINTED, IT HAS INSUFFICIENT OR INCOMPLETE INFORMATION TO MAKE AN INFORMED RECOMMENDATION. IT DOES NOT IMPLY A NEGATIVE FINANCE COMMITTEE VIEW, ONLY AN INCOMPLETE UNDERSTANDING OF THE ARTICLE SO VOTED. FINANCE COMMITTEE WILL MAKE ITS FINAL RECOMMENDATION AT SPECIAL TOWN MEETING AFTER HAVING RECEIVED FURTHER INFORMATION. YES-7, NO-0

ROLL CALL VOTES:

Finance Committee:

No Recommendation Pending Further Information:

Yeas: 7 (Seven): Peter Hughes, Dana DeCosta, Karen Doucette, Mark Kelleher, Angelo LaMantia, Mark Ameres, Daniel Tworek

Nays: 0 (Zero): None

Board of Selectmen:

To accept and adopt:

Yeas: 5 (Five): Michael MacAskill, Julie Kavanagh, Mary Anderson, Larry Ballantine, Donald Howell

Nays: 0 (Zero): none

Proposed Motion

I move that Article 2 be accepted and adopted and that the sum of \$1.00 be raised and appropriated for purposes of the Article.

Two-thirds vote required

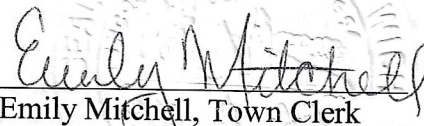
Motion: (Peter Hughes, Chair – Finance Committee) I move that Article 2 be accepted and adopted and that the sum of \$1.00 be raised and appropriated for purposes of the Article. Duly seconded

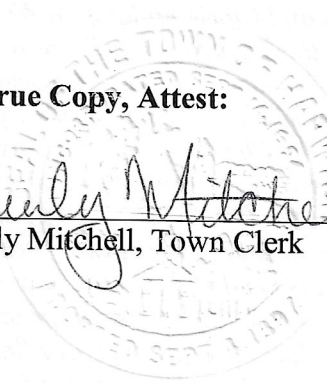
Motion to Amend: Sally Urbano made a motion to amend the main motion to add that a perpetual historic preservation restriction be placed on the exterior of the West Harwich Baptist Church that meets the criteria under G.L. c. 184 §31-33. Duly seconded

Action on the Motion to Amend: The motion carried

Action on the Main Motion as Amended: The motion was ruled to have gotten the necessary two-thirds majority and passed.

A True Copy, Attest:


Emily Mitchell, Town Clerk



No votes were taken.

ADJOURNMENT

Mr. Howell moved to adjourn Executive Session and reconvene open session at 6:30 p.m.
Second by Ms. Anderson

Vote: 5:0 by roll call in favor, unanimous.

Respectfully Submitted,

Ellen Powell
Executive Assistant

EXHIBIT D

PURCHASE AND SALE AGREEMENT

PURCHASE AND SALE AGREEMENT (this “Agreement”) is entered into as of this _____ day of _____, 2023, by and between the **Town of Harwich**, acting by and through its Select Board, having an address of Harwich Town Hall, 732 Main Street, Harwich Center, MA 02645 (“Seller”), and _____, a Massachusetts _____, having an address of _____, MA _____ (“Buyer”).

Recitals

WHEREAS, Seller intends to acquire a parcel of land, including a building being a former First Baptist Church, and other improvements, as well as a cemetery, located at 62 Route 28, Harwich, Massachusetts, consisting of 1.56 acres, more or less, and described in an deed recorded with the Barnstable County Registry of Deeds (the “Registry”) in Book 2, Page 90 (the “Property”);

WHEREAS, by the vote under Article 2 of the October 18th, 2022 Special Town Meeting, Seller is authorized to convey the Property for affordable housing purposes on such terms and conditions as the Select Board deems appropriate;

WHEREAS, on _____, 2023, the Town issued a Request for Proposals (the “RFP”), which is incorporated herein, soliciting proposals for the development, construction and operation of at least twelve (12) affordable rental housing units on the Property;

WHEREAS, the Developer submitted a proposal on _____, 2023 in response to the RFP (the “Proposal”), which is incorporated herein, proposing to construct _____ (____) dwelling units on the Property (as defined below, the “Improvements”), as more particularly described in the RFP and the Proposal, and operate an affordable housing rental development thereon (as more particularly described below, the “Project”);

WHEREAS, Seller has awarded the Project to Buyer;

WHEREAS, the obligations of Buyer and Seller to enter into the conveyance are contingent, among other things, on Buyer obtaining the permits and approvals necessary for the construction and operation of the Project and on financing in amounts sufficient in Buyer’s and Seller’s reasonable judgment to construct the Improvements; and

WHEREAS, the parties wish to enter into this Agreement to memorialize the terms and conditions under which Seller will convey the Property to Buyer.

NOW, THEREFORE, in consideration of the mutual promises of the parties contained herein and other good and valuable consideration each to the other paid, receipt of which is hereby acknowledged, the parties hereby agree as follows:

1. **Description of Property.** Subject to the terms and conditions of this Agreement, Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase from Seller, the Property described herein on the terms and conditions set forth below.

2. **Purchase Price.** The agreed purchase price for the Property is _____ 00/100 Dollars (\$_____.00), which will be paid, subject to adjustments, by certified or bank check, or wire at the Closing, in the Seller's discretion.

3. **Title.**

(a) **Title Report.** Buyer shall obtain a title commitment (the "**Title Commitment**") issued by a nationally recognized title insurance company, together with a copy of all instruments creating title exceptions described in the Title Commitment (the "**Exception Documents**"), all at its sole cost and expense;

(b) **Title Objection Notice.** Buyer shall have until 5:00 p.m. on _____, 2023 [**no more than 60 days from the date of the Agreement**] (the "**Inspection Termination Date**") and the period from the Effective Date to the Inspection Termination Date, the "**Inspection Period**") to send Seller a letter (the "**Title Objection Letter**") setting forth all of Buyer's objections to the Title Report and Exception Documents, with copies thereof (collectively, the "**Title Objections**"), and (b) Seller shall have until 5:00 p.m. _____, 2023 (the "**Seller Response Period**") [**which date is fifteen (15) days after Seller receives the Title Objection Letter**] to notify Buyer in writing ("**Seller's Title Response Notice**") of Seller's election, in its sole and absolute discretion, to either: (i) cure, on or prior to Closing, any of the Title Objections, or (ii) not cure any or all of the Title Objections (and Seller's failure to respond by the expiration of the Seller Response Period shall be deemed an election by Seller not to cure any of the Title Objections). If Seller elects to cure any Title Objections, Seller shall use good faith efforts to cure such Title Objections at or prior to Closing, provided, however, that good faith efforts shall not require Seller to expend more than \$1,000.00 to effectuate said cure, including attorneys' fees, but excluding monetary liens voluntarily granted by Seller.

(c) **Title Termination Date.** If Seller is unwilling to cure (or is deemed to have elected not to cure) any of the Title Objections, Buyer will have the option to either: (a) waive any Title Objections that Seller is unwilling to cure or is deemed to have elected not to cure; or (b) terminate this Agreement by written notice to Seller sent by 5:00 p.m. on _____, 2023 (the "**Termination Date**") [**which date is fifteen (15) days after the Seller Response Period expires**]. Upon a timely termination by Buyer, this Agreement shall automatically terminate, the parties shall be released from all further obligations under the Agreement (except for those provisions that, by their terms, survive a termination of this Agreement).

(d) **Waiver.** Buyer's failure to take either one of the actions described in (b) and (c) above shall be deemed to be Buyer's election to acquire the Property notwithstanding the Title Objections under this subsection (d), if any, and Buyer shall have waived its right to terminate this Agreement under this Section. Buyer shall have been deemed to have approved any title

matter that exists as of the date of the Title Commitment and that Seller is not obligated to remove or as to which either Buyer did not object to as provided above or to which Buyer did object, but with respect to which Buyer did not terminate this Agreement. Nothing herein shall affect Buyer's right to object to title matters occurring after the Inspection Period.

(e) **Permitted Exceptions.** Notwithstanding anything herein to the contrary, Buyer acknowledges and agrees that the Property shall be conveyed subject to the following matters: (i) any lien to secure payment of special assessments, not delinquent, (ii) any and all applicable laws, by-laws, rules and governmental regulations (including, without limitation, those relating to building, zoning and land use) affecting the development, use, occupancy and/or enjoyment of the Property, (iii) matters set forth in the Title Report and not included in the Title Objections, (iv) Title Objections subsequently waived or deemed waived by Buyer in accordance with this Section 4, (v) such other Title Objections as Buyer's title company shall commit to insure over or omit as an exception, without any additional cost to Buyer, (vi) the LDA, the Regulatory Agreement and the Affordable Housing Restriction (which terms are defined below), which shall be recorded immediately after the deed to the Property is recorded and prior to the recording of any mortgages, liens, or other encumbrances, (vii) the Reserved Easements, as defined below (viii) the Historic Preservation Restriction on the exterior of the former First Baptist Church, in the form attached hereto as Exhibit ____, and (ix) any lien, encumbrance, title exception or defect that are approved or deemed approved by Buyer after the date hereof. The foregoing matters are referred to herein, collectively, as the "**Permitted Exceptions.**" Notwithstanding anything stated to the contrary herein, Seller covenants and agrees to remove from the Property any lien or encumbrance which is a mortgage, deed of trust and/or other debt instruments to the extent voluntarily executed by Seller or expressly assumed by Seller in writing.

(f) **Title and Practice Standards.** Any matter or practice arising under or relating to this Agreement which is the subject of a title standard or a practice standard of the Real Estate Bar Association for Massachusetts at the time for delivery of the deed shall be covered by said title standard or practice standard to the extent applicable.

4. **Reserved Easements.** Seller shall reserve the following easements (the "**Reserved Easements**") in the deed to the Buyer for the Property:

- (a) An easement to operate and maintain a cemetery at the current location of the cemetery at the Property (the "**Cemetery Easement**"), to be included in the deed from the Seller to the Buyer; and

5. **Plans.** If said deed refers to a plan necessary to be recorded therewith, Buyer shall prepare and deliver such plan in form adequate for recording or registration to Seller for Seller's approval, not to be unreasonably withheld, at least thirty (30) days prior to the closing date.

6. **Date of Closing.** Such deed is to be delivered at 11:00 o'clock a.m. at the Registry on _____, 202__, provided that the contingencies set forth in Section 15 have been satisfied. It is agreed that time is of the essence of this Agreement.

7. **Possession and Condition of Property.** Buyer shall be entitled personally to inspect said Property prior to the delivery of the deed in order to determine whether the condition thereof complies with the terms of this Section.

8. **Property Inspection.** (a) During the Inspection Period, Buyer shall have a limited license to enter upon the Property for the purpose of conducting such inspections, surveys, tests and investigations as Buyer deems reasonably necessary to ascertain the suitability of the Property for the Permitted Uses (including use thereof for residential purposes and ability to construct the Project improvements), including, without limitation, inspection of the buildings and other structures at the Property, ALTA boundary/topographical and/or “as-built” surveys, utility inspections, zoning verifications, examination of flood plain status, to determine the acceptability of soil compaction, examination of water and drainage delineations, and other non-invasive inspections (the “Inspections”), all at Buyer’s sole risk and expense. Buyer shall not conduct any subsurface or invasive inspections unless: Buyer’s Phase 1 Site Assessment report recommends a Phase 2 Site Assessment and Buyer has notified Seller of the same in writing at least thirty (30) days prior thereto and obtained Seller’s prior written approval, including, without limitation, Seller’s prior written approval of the location of such invasive inspections and compliance with Seller’s testing protocols, which may not be unreasonably withheld. Buyer shall use commercially diligent efforts to complete the Inspections as soon as practicable and to minimize any interference with the use of the Property by Seller and others entitled thereto. All of such other entries upon the Property shall be at reasonable times during normal business hours and after at least forty-eight (48) hours prior written notice to Seller or Seller’s agent (which notice may be sent by e-mail to _____ at _____), and Seller or Seller’s agent shall have the right to accompany Buyer during any activities performed by or on behalf of Buyer on the Property.

(b) **Repair, Restoration.** Except as provided below, if Buyer and/or its agents, employees, representatives, contractors, consultants and/or invitees (with Buyer, the “Buyer Parties”) disturb or damage the Property or any other improvements or property of Seller or of others during the Inspection Period or at any other time that Buyer and/or the other Buyer Parties enter the Property, Buyer shall promptly restore or repair the Property and/or the improvements thereon to the same condition as existed prior to such disturbance or damage, it being acknowledged that the failure to repair/restore the Property and/or the other property promptly shall be a material default under this Agreement. The foregoing obligation shall survive the termination of this Agreement.

(c) **Property Objection Notice.** If Buyer determines that the condition of the Property is not acceptable under this Section 8, Buyer shall have the right to terminate this Agreement by notifying Seller of such termination no later than the Inspection Termination Date, setting forth therein the reasons for said termination (the “Property Objection Letter”). Upon such timely termination, neither party shall have any further rights or obligations under this Agreement except for such obligations expressly intended to survive termination. If Buyer fails to so notify Seller of Buyer’s termination of this Agreement by the Inspection Termination Date, then Buyer shall have waived its right to terminate this Agreement pursuant to this Section 8, and be deemed to have approved the condition of the Property as of said Inspection Termination Date. Nothing

herein shall affect Buyer's right to object to hazardous materials released on the Property after the Inspection Termination Date.

9. **Insurance.**

(a) **Insurance.** Buyer shall procure and maintain, effective as of the date of this Agreement through and until the Closing: (a) Workers' Compensation Insurance in statutory limits, and Employer's Liability Insurance in a minimum amount of One Million (\$1,000,000.00) Dollars, and (b) the following insurance coverages with insurance companies reasonably acceptable to Seller: (i) Commercial General Liability Insurance including Personal Injury, Death, Contractual, Products/Completed Operations, Independent Contractors, and Property Damage and Commercial Automobile Liability Insurance covering all automobiles, trucks, and other vehicles utilized at the Property, all in a minimum amount of One Million (\$1,000,000.00) Dollars combined single limit coverage arising out of any one occurrence, and Two Million (\$2,000,000.00) Dollars in the aggregate; and (iii) umbrella insurance in the amount of Five Million (\$5,000,000.00) Dollars.

(b) **General Requirements.** Each of the foregoing policies (except workers' compensation insurance) must include "Town of Harwich, Massachusetts" as an additional insured. Upon or prior to execution of this Agreement, Buyer shall deliver to Seller one or more certificates of insurance evidencing that Buyer has in fact procured the insurance required hereunder. Buyer will not be permitted to access the Property until Seller receives such certificates of insurance. Such policies shall contain a provision whereby the insurer shall give Seller not less than thirty (30) days' written notice prior to the cancellation or material modification of such policies. If such insurance is available only on a claims-made basis, then the dates of coverage, including the retroactive date and the time period within which any claim can be filed, shall be stated in the certificates of insurance, and Buyer shall be obligated to ensure that no gaps in coverage occur. Such insurance shall not relieve or release Buyer from, or limit its liability as to, any and all obligations arising under this Agreement. Buyer shall immediately notify Seller, initially by telephone, and thereafter in writing, of any and all incidents arising out of Buyer's activities on the Property.

10. **Indemnification; Release.** Buyer shall release, discharge, indemnify, defend and hold harmless Seller and/or its agents, employees, representatives, board or commission members, and others acting by and through Seller (collectively, with Seller, the "**Seller Parties**") from and against any and all damages, claims, losses, liabilities, costs and expenses (including reasonable attorneys' fees), which may be brought against, imposed upon and/or incurred by any of the Seller Parties arising out of or related to the Inspections of the Property and/or the entry upon and/or activities undertaken by Buyer and/or any of the other Buyer Parties, except to the extent that the same is directly caused by the gross negligence of any of the Seller Parties. The obligations of Buyer pursuant to this Section shall survive the Closing and/or the termination of this Agreement.

11. **As-Is.** If Buyer does not terminate this Agreement under Section 8, Buyer acknowledges and agrees that it accepts the Property in its "AS IS" condition, WITH ALL FAULTS, IF ANY, AND WITHOUT ANY REPRESENTATION OR WARRANTY, EXPRESS

OR IMPLIED, other than as expressly set forth in this Agreement. Buyer acknowledges and agrees that, except as stated in this Agreement, neither Seller nor any of the other Seller Parties have made any representation or warranty, direct or indirect, oral or written, express or implied, to Buyer or any of the other Buyer Parties with respect to the condition of the Property, its fitness for any particular purpose, or its compliance with any laws, and Buyer is not aware of, and does not rely upon any such representation to any other party. Buyer acknowledges that, as of the date of the Property Objection Letter, Buyer will have had the opportunity to make such inspections of the Property as it deems necessary or appropriate. Any information, documents or materials now or hereinafter provided to the Buyer, if any, are made available solely as an accommodation to Buyer in the conduct of its due diligence, and that, by providing such information to Buyer, Seller makes no representation or warranty whatsoever, express or implied, as to the accuracy or completeness thereof. The provisions of this Section shall survive the Closing.

12. **Affordable Housing.**

(a) **Permitted Use.** The Property is being conveyed to Buyer for an affordable housing development. Buyer shall construct 11 residential dwelling units on the Property (the “Affordable Units”), all of which shall be used for affordable rental housing purposes in perpetuity (the “Permitted Use”), to be sold to and occupied by households having a incomes no more than 80% Area Median Income (“AMI”) for the Metropolitan Statistical Area in which the Town is located, as defined by the United States Department of Housing and Urban Development (“HUD”), adjusted for household size, having assets and meeting such other qualifications under the Local Initiative Program (“LIP”) by the Massachusetts Executive Office of Housing and Living Communities (“EOHLC”) (the “Eligible Purchasers”), and at a price acceptable to EOHLC, (the “Project”). The Project shall comply with LIP Guidelines issued by EOHLC, as amended from time to time.

(b) **Affordable Housing Restrictions.** Buyer shall, with the deed to the Property, record a Regulatory Agreement and Declaration of Restrictions entered into with Buyer, Seller, and EOHLC (the “Regulatory Agreement”), in form and substance acceptable to Seller and to EOHLC under LIP for inclusion of the Affordable Units in the Town of Harwich’s subsidized housing inventory, and, in addition, Buyer shall, at Seller’s request, grant a separate affordable housing restriction to Seller, enforceable in perpetuity, meeting the requirements of G.L. c. 184, §§ 31 and 32, and in form and substance acceptable to Seller, wherein the affordability requirements shall not terminate or lapse after foreclosure or deed in lieu thereof and shall run with the Property for the full term of said restriction (the “Affordable Housing Restriction” and, with the Regulatory Agreement, “Restrictions”). The restrictions contained in said Restrictions shall also be deemed to be an “other restriction” held by a governmental body, as that term is used in G.L. c. 184, § 26 such that the restrictions contained therein shall be enforceable for its full term and not be limited in duration by any contrary rule or operation of law, and in any event shall be enforceable for at least ninety-nine (99) years. The Restrictions shall be recorded prior to any mortgages or other liens on the Property, and shall have priority over the same. In no event shall the affordability requirements terminate upon foreclosure or deed given in lieu thereof or other similar action.

(c) Monitoring Services. Buyer shall engage the services of a monitoring agent acceptable to Seller to market the Affordable Units and conduct a lottery to find Eligible Purchaser in compliance with the 40B Guidelines and EOHLC requirements.

(d) Survival. The provisions of this Section shall survive the closing.

13. **Land Development Agreement.** Seller shall convey the Property to Buyer subject to the Land Development Agreement attached hereto as Exhibit and incorporated herein (the “LDA”), which the parties shall execute at the closing and record immediately after the recording of the deed and prior to any mortgages. Said LDA shall govern the development of the Property and require, among other things, the following mandatory terms:

(a) Construction Obligation. Buyer shall, at its sole cost and expense, commence the Project within sixty (60) days from the date on which the deed from Seller to Buyer is recorded with the Registry and complete said construction within two (2) years from said date of recording or within such extended period as is set forth more particularly in the LDA.

(b) Affordable Housing Purposes. All the Affordable Units shall be restricted in perpetuity for the Permitted Use.

(c) Affordable Housing Restrictions. Buyer shall comply with the Restrictions.

(d) Sale or Transfer of Property. Until the Project has been substantially completed, Buyer shall not convey or transfer the Property or any portion thereof to any person or entity, except as permitted under the LDA.

(e) Survival. The provisions of this Section shall survive the closing.

14. **Permits and Financing.**

(a) Permits. Buyer shall obtain any and all necessary permits, approvals, and licenses from federal, state and local authorities that are necessary or convenient to enable Buyer to undertake, construct and operate the Project for the Permitted Use (collectively, the “Permits”), with appeal periods having expired without any appeal being filed, or if filed, the final adjudication of such appeal pursuant to a final court order without further appeal. All such Permits shall be obtained at the sole risk and expense of the Buyer, and no work shall be done upon the Property in connection therewith unless and until Buyer has provided Seller with written notice and copies of all applicable Permits. Seller agrees to cooperate in any reasonable manner in connection with the making of applications for any such Permits, all at Buyer’s cost, but Buyer acknowledges that Seller has no control over and cannot guarantee that Permits required from municipal boards or officers within their statutory or regulatory authority will be granted or fees waived.

(b) Financing. Buyer shall obtain financing, in an amount sufficient in the reasonable judgment of Buyer and Seller for Buyer to pay the purchase price for the Property and design,

construct, operate and maintain the Project as required under the LDA (the “Financing”), and Buyer shall provide Seller with firm project financing commitments, including, but not limited to public funding commitments, construction loan commitments, and/or permanent loan commitments from institutional lenders and/or public or quasi-public entities, on terms and amounts reasonably satisfactory to Buyer and Seller (the “Financing Commitments”), and Buyer shall, prior to or simultaneously with the execution and delivery of the deed, close on the Financing, including closing on all financing transactions, whereby Buyer shall have the contractual right to receive funds from institutional lenders, tax credit equity investors and/or public or quasi-public entities (the “Financial Closing”).

(c) Due Diligence. Buyer shall use commercially diligent and good faith efforts to obtain the Permits and Financing Commitments no later than _____, 202____ (as Seller may extend in writing, in its sole and absolute discretion, the “Initial Diligence Period”). If, at the expiration of the Initial Diligence Period, the Financing Commitments have not been obtained despite Buyer’s good faith and diligent efforts, Buyer may, with Seller’s consent, which shall not be unreasonably withheld, extend the Due Diligence Period by no more than six (6) months (the “Extended Diligence Period” and, with the Initial Diligence Period, the “Diligence Period”), provided that Buyer gives written notice to Seller requesting the extension at least thirty (30) days prior to the expiration of the Initial Diligence Period. In the event that the Financing Commitments cannot be satisfied within the Diligence Period, Buyer or Seller shall have the right to terminate this Agreement, whereupon this Agreement shall be null and void, without recourse to the parties, except those provisions that are expressly stated herein to survive said termination. Buyer shall not be liable to Seller for failing to obtain the Permits and/or the Financing unless Buyer failed to use good faith and diligent efforts to satisfy said contingencies.

(d) Buyer shall provide Seller with written status once every _____ weeks/months from the Effective Date until the Closing, and shall meet with Buyer at such times as Seller may reasonably request, to update Seller of the specific steps taken by Buyer to obtain the Permits and Financing and shall provide such other information as Seller may reasonably request.

15. **Conditions to Closing**. The parties acknowledge and agree that Buyer’s and Seller’s obligations hereunder are contingent on the satisfaction of the following conditions (the “Contingencies”) on or before the Closing Date or such earlier or later date set forth in this Agreement:

(a) Permits. Buyer obtaining the necessary Permits to construct and operate the Project by the expiration of the Diligence Period;

(b) Financing. Buyer shall obtain the Financing Commitments by the expiration of the Diligence Period, and shall conduct the Financial Closing prior to or simultaneously with the execution and delivery of the deed to the Property, whereby Buyer shall receive access to funds to undertake and complete the Project;

(c) Approved Plans and Specifications. Buyer shall have provided Seller, and Seller shall have approved in writing, detailed plans and specifications for the construction of the Project and for any work done or improvements made on or to the Property, showing in detail the

location, layout and size of the affordable units, the landscaping, and the other improvements to be constructed thereon (the “Approved Plans”). The Approved Plans shall be submitted to Seller for Seller’s approval at least sixty (60) days prior to the Closing, said approval not to be unreasonably delayed, conditioned or withheld. In the event of disapproval, Seller shall give Buyer an itemized statement of reasons for disapproval within sixty (60) days after the Approved Plans are submitted to Seller. Buyer shall use reasonable efforts to cause such item to be appropriately revised as soon as possible after receipt of such notice of disapproval and resubmit the same to Seller for approval pursuant to this Section. Buyer and Seller agree to cooperate reasonably and in good faith with each other to resolve any objections of the other to such items and/or requested modifications by the other. If no response is received from Seller within said sixty (60) day period, the Approved Plans shall be deemed approved by Seller. Buyer acknowledges and agrees that the review of the Approved Plans by the Select Board shall be independent of, and not substitute for, any review of the Project required under the Town of Harwich’s General and Zoning Bylaws or any Permits;

(d) Compliance. Compliance by Buyer and Seller with any other requirements of Massachusetts General or Special laws relative to the disposition of real property by Seller including G.L. c. 30B, and Buyer and Seller agree to diligently pursue full compliance with said laws;

(e) Execution of Documents. The parties shall execute and deliver at closing the LDA, the Historical Preservation Restriction, the Cemetery Easement, the Pump Station Easement, the Regulatory Agreement, the Affordable Housing Restriction (if requested by Seller), and any and all other documents required to effectuate this conveyance; and

(f) Termination. In the event that the Closing does not occur within the time set forth in Section 6 because of Buyer’s failure to satisfy the Contingencies, despite its good faith and diligent efforts, Buyer or Seller shall have the right to terminate this Agreement, whereupon neither party shall have any further rights or obligations under this Agreement except for such obligations expressly intended to survive termination.

16. **Deliverables at Closing**.

(a) Items to be Delivered by Seller. Seller shall execute, acknowledge and deliver, as applicable, to Buyer’s attorney on or prior to the date of Closing, the following: (a) an original, recordable quitclaim deed conveying fee title to the Property, subject only to Permitted Exceptions and the other restrictions set forth herein, (b) a signed counterpart of the Regulatory Agreement, (c) a signed counterpart of the Affordable Housing Restriction, if applicable, (d) a settlement statement showing all of the payments, adjustments and prorations provided for in this Agreement and otherwise agreed upon by Seller and Buyer (“Closing Statement”), and (e) such customary and usual certificates and affidavits as Buyer’s title insurance company may reasonably require in order to issue the Title Policy without exception for mechanic’s and materialmen’s liens, broker’s liens, rights of parties in possession, without cost or expense to Seller.

(b) Items to be Delivered by Buyer. Buyer shall execute and deliver, as applicable, to the Seller's attorney the following: (a) the Purchase Price, adjusted as provided in this Agreement, which funds shall remain in escrow until the deed has been recorded; (b) an original Historical Preservation Restriction; (c) an original Regulatory Agreement, signed by Buyer and DHCD; (d) an original Affordable Housing Restriction, signed by Buyer and DHCD under G.L. c.184, §§31-33, if applicable; (e) a signed counterpart of the Closing Statement; (f) evidence, reasonably satisfactory to Seller's attorney, of authority of any person or persons executing instruments for or on behalf of Buyer; (g) a signed Disclosure of Beneficial Interest form, as required under G.L. c.7C, §38, and (h) such other documents, instruments and items as may be reasonably required by the Seller's title insurance company and/or Seller to consummate the transaction contemplated by this Agreement.

17. Adjustments. Buyer shall pay at closing a payment in lieu of taxes as required by law and the amount thereof shall be added the purchase price payable by Buyer at the time of delivery of the deed. If the amount of said taxes is not known at the time of the delivery of the deed, they shall be apportioned on the basis of the taxes assessed for the preceding fiscal year. Buyer shall be responsible for any liens for municipal betterments assessed after the date of this Agreement.

18. Closing. The consummation of the purchase and sale of the Property which is the subject of this Agreement (the "Closing") shall be at 11:00 a.m. EST on _____, 202__ (or such later date agreed to by Seller, in its sole and absolute discretion, the "Closing Date"), and shall take place at the Barnstable Registry of Deeds or a closing by mail, at Seller's option. All documents and funds are to be delivered in escrow subject to prompt rundown of title and recording. All funds shall be held in escrow by Seller's attorney who shall release the funds to Seller only upon the recording of the deed.

19. Eminent Domain. Notwithstanding anything herein to the contrary, in the event that all or a substantial part of the Property is taken by eminent domain by an entity other than Seller, Seller or Buyer may each, at its option, terminate this Agreement. "Substantial Part" is defined herein as that portion of the Property that would materially and adversely prevent Buyer from undertaking the Project and/or using the Property for the Permitted Use.

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

21. Miscellaneous.

(a) Assignment. Buyer, for tax credit funding purposes, may assign this Agreement and its rights hereunder to a limited liability company or limited partnership controlled by the Buyer. Except as stated in the previous sentence, Buyer shall not assign this Agreement or any of

its rights hereunder without prior written consent of Seller, which may be withheld in Seller's sole and absolute discretion.

(b) Brokers' Commissions. Seller and Buyer each hereby represent and warrant to each other that they have not dealt with or engaged any broker or finder in respect to the transaction contemplated hereby. Seller and Buyer each hereby indemnify, protect and defend and hold the other harmless from and against all losses, claims, damages, awards, costs and expenses resulting from the claims of any broker, finder, or other such party claiming by, through or under the acts or agreements of the indemnifying party. The provisions of this paragraph shall survive the Closing.

(c) Waiver; Consent. Either party may specifically and expressly waive in writing any portion of this Agreement or any breach thereof, but no such waiver shall constitute a further or continuing waiver of any preceding or succeeding breach of the same or any other provision. The consent by one party to any act by the other party for which consent was required shall not be deemed to imply consent or waiver of the necessity of obtaining such consent for the same or any similar acts in the future. No waiver or consent shall be implied from silence or any failure of a party to act, except as otherwise specified in this Agreement.

(d) Notices. Any notice required or permitted to be given under this Agreement shall be in writing and signed by the party or the party's attorney or agent and shall be deemed properly given upon the earlier of: (1) two (2) business days after deposit with the United States Postal Service, if sent by registered or certified mail, return receipt requested, postage prepaid; (ii) one (1) business day after deposit with an express courier service such as Federal Express; (iii) actual receipt, or (iv) electronic transmission, addressed as follows.

If to Buyer:

with a copy to:

If to Seller:

Select Board
Town of Harwich
732 Main Street
Harwich Center, MA 02645

with a copy to:

Katharine Lord Klein, Esq.
KP Law, P.C.
101 Arch Street, 12th Floor
Boston, MA 02110
Phone: (617) 654-1834
E-Mail: kklein@k-plaw.com

A party may change its address for receipt of notices by service of a notice of such change in accordance herewith.

(e) Entire Agreement. This Agreement and its exhibits constitute the entire agreement between the parties hereto pertaining to the subject matter hereof, and the final, complete and exclusive expression of the terms and conditions thereof. All prior agreements, representations, negotiations and understandings of the parties hereto, oral or written express or implied, are hereby superseded and merged herein.

(f) Captions. The captions used herein are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions hereof.

(g) Governing Law. This Agreement shall be governed by and construed under the laws of the Commonwealth of Massachusetts, and any and all disputes, issues and claims of any kind or nature relating to this Agreement and/or the Property shall be brought in the courts of the Commonwealth of Massachusetts.

(h) Invalidity of Provision. If any provision of this Agreement as applied to either party or to any circumstances shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way affect (to the maximum extent permissible by law) any other provision of this Agreement, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of the Agreement as a whole.

(i) Amendments. No addition to or modification of any provision contained in this Agreement shall be effective unless fully set forth in writing executed by both Buyer and Seller.

(j) Date of Performance. All references to "days" in this Agreement shall be construed to mean calendar days unless otherwise expressly provided. If the date on which any performance required hereunder is other than a Business Day, then such performance shall be required as of the next following Business Day. The term "Business Day" shall mean a day that is other than a Saturday, Sunday or holiday in which the banks in Massachusetts are authorized to close. Unless otherwise expressly provided herein, the last day of any period of time described herein shall be deemed to end at 5:00 p.m., Eastern Standard Time.

(k) Time of Essence. Time is of the essence of every provision of this Agreement of which time is an element.

(l) Effective Date of this Agreement. The Effective Date of this Agreement shall be the last date on which the fully-executed Agreement or counterpart signature pages have been delivered.

(m) Counterparts; PDF Execution; Drafts not an Offer to Enter into a Legally Binding Agreement. This Agreement may be executed in multiple counterparts (which counterparts may be executed by facsimile) which shall together constitute a single document. However, this Agreement shall not be effective unless and until all counterpart signatures have been obtained. Delivery of an executed counterpart of this Agreement via electronic mail shall be equally as effective as delivery of an original executed counterpart. Any party delivering an executed counterpart of this Agreement by electronic mail also shall deliver an original executed

counterpart of this Agreement, but the failure to deliver an original executed counterpart shall not affect the validity, enforceability and binding effect of this Agreement. Signature and acknowledgement pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one document.

(n) No Third Party Beneficiaries. This Agreement is for the sole and exclusive benefit of the parties hereto and their respective permitted successors and assigns, and no third party is intended to, or shall have, any rights hereunder.

[Signatures on the Following Page]

Executed as a document under seal on this _____ day of _____, 2023.

SELLER:

BUYER:

TOWN OF HARWICH,
By Its Select Board

By: _____
Name:
Title:

Exhibit A

Sketch Plan of Property

Exhibit B

Land Development Agreement

LAND DEVELOPMENT AGREEMENT

This Land Development Agreement (this “LDA”) is entered into on this _____ day of _____, 202__, by and between the **Town of Harwich** (the “Town”), a Massachusetts municipal corporation, having an address of Harwich Town Hall, 732 Main Street, Harwich Center, MA 02645, and _____ (“Developer”), a Massachusetts _____, having an address of _____.

Whereas, the Town owned a parcel of land, with a building known as the First Baptist Church, other improvements, and a cemetery, at 62 Route 28 in Harwich, Barnstable County, Massachusetts, consisting of approximately 1.56 acres and described in a deed recorded with the Barnstable County Registry of Deeds (the “Registry”) in Book 2, Page 90 (the “Property”);

Whereas, the Town published a Request for Proposals dated _____, 2023, seeking proposers who would purchase and develop the Property for affordable rental housing purposes (the “RFP”);

Whereas, Developer submitted a response to the RFP dated _____, 2023 (the “Response to RFP”), including a proposal to purchase the Property from the Town, that was accepted by the Town as the successful proposal;

Whereas, Developer will construct _____ (____) residential dwelling units on the Property (the “Affordable Units”), to be used for affordable rental housing purposes in perpetuity, as set forth more particularly herein (the “Project”);

WHEREAS, the Town has conveyed the Property to Developer by a deed recorded with the Registry of even date herewith;

WHEREAS, in consideration for the Property, Developer hereby agrees to develop the Property and to undertake, at its sole cost and expense, all the work that is required to be done under this LDA to construct, develop and complete the Project; and

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

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

The Developer agrees (for itself and any successors to, or assigns of, any interest in the Property or any portion thereof) to develop the Property and undertake the Project as follows:

I. Construction Obligations; Transfer Restrictions.

1. Financing: The Developer has obtained funds in the amount of \$_____ (the "Construction Loan") to construct and complete the Affordable Units from _____ (the "Lender"), secured by a mortgage on the Property to be recorded hereafter (the "Construction Mortgage"), which Construction Mortgage shall be expressly subject to this LDA, a Historic Preservation Restriction on the exterior of the former First Baptist Church, and the Regulatory Agreement and Affordable Housing Restriction granted to the Town of even date herewith (as such terms are defined in Section 12).

2. Construction of the Project: The Developer shall construct the Affordable Units on the Property (the "Work") in accordance with this LDA and the plans and specifications previously approved by the Town (the "Approved Plans"). The Developer agrees not to make any substantial changes or revisions to the Work or any other improvements as described in this LDA and the Approved Plans without having obtained the Town's prior written consent. At least thirty (30) days prior to making such changes or revisions, the Developer shall submit to the Town detailed plans and specifications showing in detail the changes to be made and obtain the Town's consent. The Town shall not withhold approval unreasonably, and in the event of disapproval, the Town shall give to the Developer an itemized statement of reasons for disapproval within thirty (30) days after the plans and specifications are submitted to the Town. The Developer shall use reasonable efforts to cause such item to be appropriately revised. The Town and the Developer agree to cooperate reasonably and in good faith with each other to resolve any objections of the other to such item and/or requested modifications by the other. If no response is received from the Town within said thirty (30) day period, such changes to the Approved Plans shall be deemed approved by the Town.

3. Construction Schedule: The Developer shall (a) begin construction of the Affordable Units within sixty (60) days from the date this LDA is recorded with the Registry (the "Date of Recording"), and (b) Substantially Complete the Affordable Units in accordance with the terms of this LDA within two (2) years from the Date of Recording. The Affordable Units shall be "Substantially Complete," or "Substantial Completion" shall occur, when all the Affordable Units and the other improvements required of the Developer (with the exceptions hereinafter set forth) by the provisions of this LDA have been built substantially in accordance with the Approved Plans and permanent Certificates of Occupancy have been issued for all of the Affordable Units. The exceptions herein above referenced shall be (i) items of work and adjustment of equipment and fixtures that can be completed after occupancy has been taken, i.e., so-called punch list items, (ii) landscaping and other similar work which cannot then be completed because of climatic conditions and (iii) "customer preference" items normally left for completion subsequent to the execution of rental agreements, if any, provided that none of the foregoing interferes unreasonably with the rental and occupancy of the Affordable Units. The Town, at its sole option, may extend these deadlines if the Town determines that the Developer

has proceeded diligently in its performance, and the Town shall reasonably extend the deadlines for force majeure and other events beyond the reasonable control of the Developer. Before a final Certificate of Occupancy can be issued for the Affordable Units, the Developer shall hire, at its expense, an architect or engineer who shall be responsible for certifying to the Town that the Work has been done substantially in accordance with this LDA and the Approved Plans (the “Independent Architect”). The Developer shall use good faith efforts to commence and complete the Affordable Units with due diligence.

4. Performance and Payment Bonds: Prior to the commencement of any Work, the Developer or its contractor shall provide the Town with a performance and labor and materials payment bond of a surety acceptable to the Town, in the amount of 100% of the value of the construction cost. In the event the Affordable Units are not Substantially Completed within the time set forth in Section 3 (including any extensions thereof agreed upon by the parties), or if the Work is not completed substantially in accordance with the Approved Plans, the Town shall have the right to call upon the surety to complete the Work in accordance with this LDA. Upon the Town’s consent, which shall not be unreasonably withheld, a payment and performance bond in favor of the Lender in form and amount acceptable to the Town, whereby funds are retained by the Lender to ensure the completion of the construction of the Affordable Units, may be substituted, in which case the Town shall have no right to bond proceeds payable to the Lender.

5. Quality of Work: The Developer shall procure all necessary permits before undertaking any Work, and shall cause all the Work to be performed in a good and workmanlike manner and employing new materials of good quality and substantially in accordance with the Approved Plans.

6. Indemnification: The Developer shall comply with the requirements of all applicable laws, rules and regulations. The Developer shall defend, indemnify and hold the Town harmless from and against all cost, expense and/or liability arising out of or based upon any and all claims, accidents, injuries and damages related to the Work, the condition of the Property or any act or omission of the Developer, its contractors, licensees, agents, servants, employees, customers, invitees, guests or visitors, or anyone claiming by, through or under the Developer, except to the extent any such cost, expense and/or liability is caused directly by the gross negligence of the Town, its contractors, licensees, agents, servants, or employees. This shall not be construed as a limitation of the Developer’s liability under this Agreement or as otherwise provided by law.

7. Liens: The Developer shall not permit any mechanic's liens or similar liens to remain upon the Property for labor and materials furnished to the Developer in connection with work of any character performed at the direction of the Developer and shall, within sixty (60) days after receiving notice of such claim, cause any such lien to be released of record without cost to the Town, by satisfaction and discharge of such lien or release of such lien by bond. Written evidence of the satisfaction or release of any such lien shall be provided to the Town immediately upon such satisfaction or release.

8. Compliance: The Developer shall construct the Affordable Units in compliance with all applicable approvals, licenses, permits and variances issued by any federal, state or local governmental authority having jurisdiction thereof.

II. Financial Obligations.

9. Construction Loan: (a) The Construction Mortgage and any other monetary liens on the Property shall be subject to this LDA, the Historical Preservation Restriction, the Regulatory Agreement, and the Affordable Housing Restriction. The Developer shall perform all of the Developer's obligations under the Construction Mortgage, including Developer's covenants to make payments when due. The Developer shall cause the Lender to give not less than thirty (30) days prior written notice to the Town, by registered mail, of the Lender's intention to foreclose upon the Construction Mortgage or to accept a conveyance of the Property in lieu of foreclosure, in which event the Town shall have the right, but not the obligation, to cure whatever default(s) have entitled the Lender to issue the foreclosure notice, subject to appropriation, which amount, together with the Town's costs and expenses (including counsel fees) shall be paid by the Developer to the Town within thirty (30) days of presentment of invoices therefor. The Developer shall pay or cause to be paid all taxes, assessments and other charges, fines and impositions attributable to the Property, which may attain a priority over the Construction Mortgage, but this clause shall not be deemed to preclude the Developer from contesting the validity or amount of such taxes, assessments, charges, fines or impositions, which may be paid under protest.

(b) The Developer shall provide the Town with thirty (30) days prior written notice of any intended refinancing of any Permitted Mortgage (defined in Section 23(a)) that is to occur prior to Substantial Completion, which refinancing is subject to the consent of the Town, which consent shall not unreasonably be withheld or denied.

(c) The Developer shall pay or cause to be paid all taxes, assessments and other charges, fines and impositions attributable to the Property, which may attain a priority over the Permitted Mortgage(s), but this clause shall not be deemed to preclude Developer from contesting the validity or amount of such taxes, assessments, charges, fines or impositions, which may be paid under protest.

10. Affordable Housing and Initial Rents: The Developer agrees that the Affordable Units shall be subject to the Regulatory Agreement and the Affordable Housing Restriction as further described in Section 12.

11. Marketing: The Developer agrees to market the Affordable Units as provided in Article III.

III. Affordability Requirements.

12. Affordable Housing: The Affordable Units shall be affordable in perpetuity or for the longest time allowed by law (and in no event fewer than ninety-nine (99) years). The Property shall be subject to the Regulatory Agreement entered into by the Town, the Developer, and EOHLC (the “Regulatory Agreement”), limiting the rental and occupancy of the Affordable Units to households having an income of no more than _____% Area Median Income (“AMI”) and, at the Town’s request, a separate affordable housing restriction granted by the Developer to and enforceable by the Town and surviving foreclosure and/or deed in lieu of foreclosure (the “Affordable Housing Restriction”), limiting the rental and occupancy of an Affordable Unit as set forth herein, for the Metropolitan Statistical Area in which Harwich is located, as defined by the United States Department of Housing and Urban Development (“HUD”), adjusted for household size, having assets and meeting such other qualifications under the Local Initiative Program (“LIP”) by the Massachusetts Executive office of Housing and Livable Communities (“EOHLC”) (the “Eligible Tenants”), and at rents acceptable to EOHLC.

13. Initial Rents: The Developer shall rent the Affordable Units at a price that is affordable to Eligible Tenants, or such lower amount as required under any subsidy program, adjusted for household size, which initial rents are set forth in the Regulatory Agreement and/or the Affordable Housing Restriction.

14. Affordability Restrictions. The affordability restrictions stated in the Regulatory Agreement, Affordable Housing Restriction and this LDA shall be affordable housing restrictions as that term is defined in G.L. c. 184, §§31, 32 and as that term is used in G.L. c. 184, §§26, 31, 32, and 33, and shall also be an “other restriction” held by a governmental body, as that term is used in G.L. c. 184, §26, such that such restrictions shall be enforceable for their full term and not be limited in duration by any contrary rule or operation of law, and in any event shall be enforceable for at least ninety-nine (99) years. Such restrictions shall be for the benefit of and enforceable by the Town, and the Town shall be deemed to be holder of such affordable housing restrictions. The Regulatory Agreement, the Affordable Housing Restriction, and this LDA shall be recorded prior to any mortgages or other liens encumbering the Property (or subordinations thereof shall be recorded), and shall have priority over the same.

15. Monitoring Agent: The Developer shall enter into a Monitoring Services Agreement with _____ (the “Monitoring Agent”), of even date herewith, to develop, conduct, monitor and administer the lottery and the marketing plan for the sale of the Affordable Units. The Developer shall submit to the Town, through the Monitoring Agent, documentation that the selection of applicants of the Affordable Units has met all eligibility requirements, including those for local preference where applicable. The Monitoring Agent shall be responsible for ensuring that the Affordable Units are rented in accordance with this LDA.

16. Subsidized Housing Inventory: The Developer shall be responsible for ensuring that all of the Affordable Units count in the Town’s Subsidized Housing Inventory.

IV. Use of the Property.

17. Compliance with Affordability Requirements: The Developer shall comply with the requirements of Article III (the “Affordability Commitments”).

18. Use and Maintenance: The Developer shall maintain the Property, the buildings and other improvements thereon in good order, condition and repair.

19. Indemnification: The Developer shall defend, indemnify and hold harmless the Town from and against any and all liabilities, losses, costs, expenses (including attorneys’ fees), causes of action, suits, claims, damages, demands, judgments or expenses from any and all claims, actions, or suits of any nature whatsoever (collectively, the “Claims”) that may be imposed upon, incurred by, or asserted against the Town by reason of this LDA or the Developer’s acts and omissions, including, without limitation, any Claims related to the Work, the condition of the Property, any act or omission of the Developer, its agents, employees, contractors, licensees or invitees, or anyone claiming by, through or under the Developer, or the failure of the Developer to comply with the provisions of this LDA or with applicable laws in connection with the exercise of the rights and obligations of the Developer hereunder, except to the extent that such Claims are caused directly by the gross negligence of the Town or its agents, employees or contractors. This indemnity and hold harmless agreement shall include indemnity against all costs, expenses, and liabilities incurred in or in connection with any such claim or proceeding brought thereon, and the defense thereof.

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

(a) *Property Insurance*: The Developer shall continuously maintain in full force, for the Term hereof, a policy of comprehensive casualty and property damage insurance, insuring the Property and all improvements thereto, in an amount equal to at least one hundred percent (100%) of the replacement costs thereof.

(b) *Liability Insurance*: The Developer shall continuously maintain in full force, for the Term hereof, a policy of comprehensive public liability insurance covering the Property in the amount of \$1,000,000.00 for injury to or death of any one person, and \$3,000,000.00 for injury to or death of any number of persons in one occurrence, and property damage liability insurance in the amount of \$1,000,000.00 and insurance on all boilers and other pressure vessels, fired or unfired and replacement cost of the buildings, in the sum of \$1,000,000.00 in any one occurrence or \$3,000,000.00 in general aggregate, under which, until the completion of the Affordable Units, the Town shall be named as additional insured, and under which the insurer agrees to defend, indemnify and hold the Town harmless from and against any and all Claims set forth in this LDA, including this Section.

(c) *Builder’s Risk*: During the construction of the Project, the Developer shall also keep in full force and effect, at its sole cost and expense, “Builder’s All Risk” insurance against loss or damage on a completed value non-reporting basis from such hazards and in such amounts as the Town may reasonably require.

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

(e) *General Requirements:* All such policies shall be in the broadest form of such coverage from time to time available in Massachusetts. The Developer shall submit to the Town, at the Date of Recording and no less often than annually thereafter, and at any other times as the Town may reasonably request, a copy of the policies meeting the requirements hereunder. All policies shall be so written that the Town shall be notified of cancellation or restrictive amendment at least thirty (30) days prior to the effective date of such cancellation or amendment. All insurance required hereunder shall be underwritten with an insurance company or companies with an AM Best Rating of A-1 or better, licensed to write such insurance in the Commonwealth of Massachusetts and reasonably acceptable to the Town.

21. Obligation to Restore: Subject to the rights of mortgagees and equity investors of the Developer ("Equity Investor"), in the event that any damage or destruction of the Property occurs as a result of the negligent or willful act or omission of the Developer, or of any of its employees or agents, members, lessees, assignees, licensees or invitees, the Developer shall be responsible for the full restoration of the damaged or destroyed Property regardless of the cost thereof, the available insurance proceeds, or the time remaining on the Term of this LDA.

V. Transfer and Mortgage of Developer's Interest.

22. General Terms Relating to Transfer of Interest in Parcels by Developer:

(a) Except as provided in Section 23 and subsection (b) below, until all of the Affordable Units have been Substantially Completed in accordance with this LDA, the Developer shall not sell, dispose, encumber, pledge, convey, assign or otherwise transfer any interest in the Property or any portion thereof or in this LDA (referred to herein as a "Transfer") without the prior written approval of the Town, which may be withheld in the Town's sole discretion. The Developer shall advise the Town of any and all such proposed changes in ownership. After Substantial Completion of the Affordable Units, the Developer may transfer the Property or any portion thereof, or its interest in this LDA, provided the Developer obtains the Town's prior written consent, not to be unreasonably withheld.

(b) Notwithstanding the terms and conditions of the aforesaid subsection (a) to the contrary, the Town hereby expressly acknowledges and consents to the following:

- (i) A Transfer at any time by the Developer, upon prior written notice to the Town, of all or part of its right, title and interest in this LDA and in the Property to any entity that the Developer merges with, is acquired or controlled by, or is otherwise consolidated with the Developer, provided that the permitted transferee shall execute, acknowledge and deliver to the Town an agreement, in form reasonably satisfactory to the Town, assuming the observance and performance of all of the terms, covenants and conditions of this LDA on the Developer's part to be observed and/or performed;
- (ii) Granting any utility, access or similar easements or agreements relating to the construction of the Affordable Units and/or the use of or access to the Property;
- (iii) The Permitted Mortgages; and
- (iv) A Transfer in accordance with Section 23 below.

(b) All Transfers shall be subject and subordinate to the terms of this LDA, the Historic Preservation Restriction, the Regulatory Agreement, and the Affordable Housing Restriction. Any permitted transferee shall be obligated by this LDA to construct or complete the Project in accordance with its terms.

(c) Any Transfer permitted by the Town shall not be deemed assent to any subsequent Transfer.

23. Mortgage of the Property by the Developer:

(a) Notwithstanding the provisions of Section 22(a), and in addition to or replacement of the Construction Mortgage, the Developer shall have the right to encumber, pledge, or convey its rights, title and interest in and to the Property, or any portion thereof, by way of a bona fide mortgage to the Lender or to another institutional lender to secure the payment of any commercially reasonable loan or loans obtained by the Developer to finance the design, construction, repair or maintenance of the Project and other improvements required to be constructed by the Developer on the Property as contemplated by this LDA, together with any restrictive covenants or other documents required in connection therewith (each such mortgage, together with the Construction Mortgage, and including accompanying restrictions or other documents, being referred to a "Permitted Mortgage," and each holder thereof, together with the Mortgagee, a "Permitted Mortgagee"), provided that the Developer shall give thirty (30) days prior written notice to the Town of its intent to exercise such rights hereunder, including in such notice the name(s) and address(es) of such Permitted Mortgagees, the amount of the loan secured by such mortgage, and any other information regarding the Permitted Mortgagees and/or the Permitted Mortgages and accompanying restrictions or other documents. Any such Permitted

Mortgage shall be expressly subject and subordinate to this LDA, the Regulatory Agreement, and the Affordable Housing Restriction.

(b) For the purpose of this LDA, the making of a Permitted Mortgage shall not be deemed to constitute a Transfer of this LDA or of the Property, nor shall any Permitted Mortgagee, as such, be deemed an assignee or transferee of this LDA so as to require such Permitted Mortgagee to assume the performance of any of the terms, covenants or conditions on the part of the Developer to be performed hereunder; but the purchaser at any sale of the interest created by this LDA or the Property in any proceedings for the foreclosure of any Permitted Mortgage, or the assignee or transferee of such interest under any instrument of assignment or transfer in lieu of the foreclosure of any Permitted Mortgage, shall be deemed to be a transferee (without requiring the consent of the Town pursuant to Section 22(a) for such sale or deed in lieu of foreclosure), and shall be deemed to have assumed the performance of all of the terms, covenants and conditions on the part of the Developer to be performed hereunder from and after the date of such purchase and conveyance/assignment, and shall execute a written instrument assuming the Developer's obligations hereunder to construct and/or operate the Project in accordance with the terms of this LDA.

VI. Default.

24. Default: If:

(a) The Developer fails to observe or perform any of the Developer's covenants, agreements, or obligations stated in this LDA;

(b) The Developer fails, after all applicable cure periods, to observe or perform any of the Developer's covenants, agreements, or obligations under the Construction Loan;

(c) The Developer Transfers the Property or any portion thereof or this LDA, other than the Permitted Mortgages, without the prior written consent of the Town; or

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

then, the Town shall notify the Developer and the Permitted Mortgagee in writing of such failure or violation. The Developer shall thereupon have thirty (30) days from the receipt by it of such written notice (the "First Notice") to cure such failure or violation (or if such failure or violation is a non-monetary violation and cannot be cured within thirty (30) days, to commence to cure the same within said period and diligently to proceed thereafter to complete such curing, but in no event later than sixty days (60) from the date of the First Notice). If the Developer does not cure such failure or violation within the aforesaid periods (or within such extended period of time as set forth above), the Town shall give a second notice (the "Second Notice") of such failure or violation and the expiration of the grace period to Developer and the Permitted Mortgagees.

25. Developer Cure Period: If the Developer does not cure such failure or violation within the aforesaid periods and if the Permitted Mortgagees do not exercise their rights to cure such violations or failure (as provided in Section 27), or, having elected to cure, fail to complete such cure within a reasonable period of time (which in no event shall exceed one-hundred twenty (120) days from the date of the Second Notice), an Event of Default shall be deemed to exist.

26. Notice of Breaches to Mortgagees: If the Town gives written notice to the Developer of a default under this LDA as provided in Section 24, the Town shall forthwith furnish a copy of the notice to each Permitted Mortgagee. To facilitate the operation of this Section, the Developer shall at all times keep the Town provided with an up-to-date list of names and addresses of all Permitted Mortgagees. Any such Permitted Mortgagee may notify the Town of its address and request that the provisions of this Section 26 as they relate to notices apply to it. The Town agrees to comply with any such request. Notwithstanding anything to the contrary, the parties acknowledge and agree that the rights granted to the Permitted Mortgagees hereunder, and the Town's obligation to inform such Permitted Mortgagees of any default under this LDA, shall be contingent upon the Town having received written notice of the name and address of the Permitted Mortgagee.

27. Mortgagee May Cure Breach of Developer: In the event that the Developer fails to cure a breach of this LDA within the periods set forth in Section 24, the Permitted Mortgagee shall have the right, but not the obligation, to cure said breach provided that it gives the Town written notice of its intention to cure said breach within thirty (30) days from the date of the Second Notice, and thereafter cures the same within sixty (60) days of the date of the Second Notice, or, if such default is a non-monetary default and cannot reasonably be cured within such sixty (60) days, within such longer period as is required to cure such default, including such period of time as may reasonably be required for Permitted Mortgagee to obtain possession of the Property, provided, that the Permitted Mortgagee shall have commenced cure or appropriate measures to obtain possession of the Property within such sixty (60) day period and thereafter continues diligently to effect such cure, or obtain such possession or title. Notwithstanding anything to the contrary, any cure undertaken by the Permitted Mortgagees must be completed within one-hundred twenty (120) days from the date of the Second Notice. Any cure of a breach hereunder by a Permitted Mortgagee shall be deemed a cure of said breach by the Developer.

28. Rights Upon Default: Upon the occurrence of an Event of Default, the Town shall have the right to terminate this LDA and all other remedies available to it under law and in equity, including, without limitation, the following: (a) the right to call upon the surety to complete the Project, if the Town still holds a bond; and/or (b) specific performance of the Developer's obligations hereunder.

29. Town's Option To Cure Developer Default. Notwithstanding the foregoing, the Town may, at its option, cure any default of the Developer, in which case the Town shall be entitled, in addition to and without limitation upon any other rights or remedies to which it shall be entitled by this LDA, operation of law, or otherwise, to reimbursement from the Developer or successor in interest of all costs and expenses incurred by the Town in curing the Developer's default and to a lien upon the Property for such reimbursement; provided, however, that any such lien shall be subject and junior always to the lien of (including any lien contemplated by) any then-existing Permitted Mortgages.

30. Notice of Foreclosure. The Developer shall cause the Permitted Mortgagees to give not less than sixty (60) days prior written notice to the Town, by registered mail, of each Permitted Mortgagee's intention to foreclose upon its Permitted Mortgage or to accept a conveyance of the Property in lieu of foreclosure, in which event the Town shall have the right, but not the obligation, subject to the rights of any Permitted Mortgagee and Equity Investor, to cure whatever default(s) have entitled the Permitted Mortgagee to issue the foreclosure notice, subject to appropriation, which amount, together with the Town's costs and expenses (including counsel fees) shall be added to the amounts due to the Town pursuant to Section 29 above.

VII. General Provisions.

31. Access: The Developer shall permit the Town or its agents to enter the Property at any reasonable time, from time to time, to inspect the Property and to ensure compliance with the provisions of this LDA, provided, however, that the Town provides the Developer at least twenty-four (24) hours' prior notice thereof, which may be oral notice, provided that no such notice shall be required during the construction of the Affordable Units. Nothing herein shall impair the rights of municipal employees and agents from entering the Property in the exercise of their regulatory duties in compliance with applicable laws, rules, regulations, bylaws and codes.

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

33. Development Costs: The Developer shall be solely liable for all costs incurred in construction of all the Work required under this LDA and in compliance with all laws, by-laws, rules, regulations and codes applicable to the permitted use.

34. Cooperation: The Town agrees to use reasonable efforts to assist the Developer in obtaining any and all permits, licenses, easements and other authorizations required by any

governmental authorities with respect to any construction or other work to be performed on the Property, but the Developer acknowledges that the Town has no control over and cannot guarantee that permits required from municipal boards or officers within their statutory or regulatory authority will be granted or fees waived.

35. Costs of Enforcement: In the event that the Town initiates enforcement or other legal proceedings to enforce this LDA or to otherwise redress a breach of this LDA by the Developer, in addition to any other remedies to which the Town may be entitled, the Developer shall pay to the Town forthwith any and all costs and expenses, including attorneys' fees and court costs, that are incurred in enforcing this LDA or prosecuting any such proceedings.

36. Environmental: The Developer shall comply with all state and federal environmental laws and shall defend, indemnify, and hold the Town harmless from and against any and all liabilities, losses, costs, expenses (including attorneys' fees), causes of action, suits, claims, damages, demands, judgments or expenses from any and all claims, actions, or suits of any nature whatsoever that may be imposed upon, incurred by, or asserted against the Town arising from any release or threat of release of any oil, hazardous materials or hazardous substances (as such terms are used in any federal, state or local law or regulations, including without limitation, General Laws Chapter 21E, "Hazardous Materials") that are placed, released or disposed on or near the Property.

37. Obligations and Rights and Remedies Cumulative and Separable: The respective rights and remedies of the Town and the Developer, whether provided by this LDA, or by law or equity, shall be cumulative, and the exercise of any one or more of such rights or remedies shall not preclude the exercise, at the same or different times of any other such rights or remedies.

38. Notices: Any and all notices required herein shall be in writing and shall be deemed properly given upon the earlier of: (i) two (2) business days after deposit with the United States Postal Service, if sent by registered or certified mail, return receipt requested, postage prepaid; (ii) one (1) business day after deposit with an express courier service such as Federal Express; (iii) actual receipt, or (iii) confirmed facsimile transmission (provided a copy is sent by any or the other permitted forms of notice). All such notices will be delivered to the address specified below or such other address as the respective parties may designate in writing:

If to the Town: Select Board
 Town of Harwich
 732 Main Street
 Harwich Center, MA 02645

With a copy to: Katharine Lord Klein, Esq.
 KP Law, P.C.
 101 Arch Street, 12th Floor
 Boston, MA 02110
 Phone: (617) 654-1834

If to Developer:

with a copy to:

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

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

41. Term of Agreement. This LDA and the restrictions and covenants contained herein shall be enforceable by the Town in perpetuity or for the longest period permitted by law, which in any event shall be for at least ninety-nine (99) years (the "Term").

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

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

44. Limitation on Liability: Notwithstanding anything in this LDA to the contrary, neither party shall be liable to the other for consequential, incidental, special or punitive damages.

45. No Partnership: Nothing contained under this LDA shall be construed to create a partnership or joint venture between the Town and the Developer or to make the Town an

associate in any way of the Developer in the conduct of the Developer's business, nor shall the Town be liable for any debts incurred by the Developer in the conduct of the Developer's business.

46. No Brokers: The Developer warrants and represents to the Town that it has not had any dealings or negotiations with any broker or agent in connection with this LDA. The Developer agrees to defend, indemnify and hold harmless the Town from and against any and all costs, expenses (including without limitation counsel fees) or liability for any compensation, commissions and charges claimed by any broker or agent resulting from any such dealings by the Developer with respect to this LDA or the negotiation therefor.

47. Recording: Upon execution, the Developer shall immediately cause this LDA and any amendments hereto to be recorded with the Registry, and the Developer shall pay all fees and charges incurred in connection therewith. Upon recording, the Developer shall immediately transmit to the Town evidence of such recording including the date and document number, book and page of this LDA. The LDA shall be recorded prior to the recording of any mortgages, including the Construction Mortgage.

48. Recitals: The recitals stated in the preface of this LDA are true and accurate and are incorporated herein by reference.

49. Governing Law. This LDA shall be governed exclusively by the laws of the Commonwealth of Massachusetts.

[Signature Page Follows]

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

TOWN:

DEVELOPER:

TOWN OF HARWICH,
By Its Select Board

By: _____
Name:
Title:

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

On this _____ day of _____, 202____, before me, the undersigned notary public, personally appeared _____, member of the Harwich Select Board, as aforesaid, proved to me through satisfactory evidence of identification which was _____, to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose on behalf of the Town of Harwich.

Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

_____, ss.

On this ____ day of _____, 202____, before me, the undersigned notary public, personally appeared _____, _____ of _____, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding instrument and acknowledged to me that he/she signed the foregoing instrument on behalf of _____.

Notary Public

My Commission Expires:

Exhibit F
PRESERVATION RESTRICTION AGREEMENT

between

TOWN of HARWICH
acting by and through the Harwich Historical Commission

and

THIS PRESERVATION AGREEMENT (this “Agreement”) is made on this ____ day of _____, 202__, by and between _____ (“Grantor”), having an address of _____, and the **Town of Harwich**, a municipality of the Commonwealth of Massachusetts, acting by and through the Harwich Historical Commission pursuant to G.L. c. 40, § 8D (“Grantee” or the “Town”), having an address of 732 Main Street, Harwich Center, MA 02645.

WITNESSETH:

WHEREAS, Grantor is owner in fee simple of certain real property, located at 62 Route 28, West Harwich, Barnstable County, Massachusetts, described in a deed recorded with the Barnstable County Registry of Deeds in Book _____, Page _____ or filed as Document No. _____ and noted on Certificate of Title No. _____ (hereinafter referred to as the “Property”), said Property including the building known as the “First Baptist Church” (the “Building”), which Property and which Building are described more particularly in Exhibits A, B, and C, attached hereto and incorporated herein;

[briefly describe other buildings on the Property, if any]

WHEREAS, Grantee is a municipality and is interested in the preservation and conservation of sites, buildings, and objects of local, state and national significance in the Town of Harwich and is authorized to accept and hold preservation restrictions under the Massachusetts General Laws, Chapter 184, Sections 31, 32 and 33 (the “Act”);

WHEREAS, the Harwich Historical Commission is a governmental body whose purposes include the preservation and protection of buildings, structures, vessels, real property, documents or artifacts that are listed or eligible for listing on the state register of historic places or have been determined by the Harwich Historical Commission to be significant in the history, archeology, architecture or culture of the Town;

WHEREAS, the Town of Harwich has designated the Harwich Historical Commission to administer, manage, and enforce preservation agreements;

[Describe the building and/or protected features, such as the type of building, uses, when built etc.]

[Revise as needed] WHEREAS, the Building is a _____-story wood frame structure, designed by _____ and constructed in _____ for use as a _____ *[describe unique features]*;

[Revise as needed] WHEREAS, the original _____ century house and its subsequent additions have been determined to represent an architectural resource of considerable importance to the Town, being an important example of _____ century domestic construction exceptionally well preserved on the exterior;

[Revise as needed] WHEREAS, the Building stands as a significant example of _____ architecture, important in design and setting and possessing integrity of materials and workmanship;

[If applicable] WHEREAS, the Property is located within the _____ Historic District, and is a contributing building within the historic district;

[Revise as needed] WHEREAS, because of its architectural, historic and cultural significance, including its important local associations with the development of the Town of _____, the Building was listed in the State and National Registers of Historic Places on _____ as _____ *[is Building listed in the State and/or National Registers? If so, when was it registered, and what category is it listed under/what unique style/features does the Building represent?]*;

WHEREAS, Grantor and Grantee recognize the architectural, historic, and cultural values (hereinafter “preservation values”) and significance of the Building, and have the common purpose of preserving the aforesaid preservation values and significance of the Building;

WHEREAS, the Building’s preservation values are documented in Exhibits A, B and C (hereinafter, collectively “Baseline Documentation”) attached hereto and incorporated herein by reference, which Baseline Documentation the parties agree provides an accurate representation of the Building as of the date of this Preservation Restriction Agreement;

WHEREAS, the Baseline Documentation includes the following:

1. Property Description and Description of the Building (Exhibit A),
2. Photographs as prepared in _____ by _____ (Exhibit B), and
3. Drawings of Building (Exhibit C) (*optional*)

WHEREAS, Grantor is going to undertake work to rehabilitate the Building (the “Work”);

WHEREAS, Grantor and Grantee recognize the architectural, historic, and cultural values (hereinafter “preservation values”) and significance of the Property, and have the common purpose of preserving the aforesaid preservation values and significance of the Property and the Building;

WHEREAS, the grant of a preservation restriction on the Property by Grantor to Grantee will assist in the preservation and maintenance of the Building and its architectural, historic and cultural features for the benefit of the people of the Town of Harwich, County of Barnstable, Commonwealth of Massachusetts, and United States of America;

WHEREAS, to that end, Grantor desires to grant to Grantee, and Grantee desires to accept a preservation restriction in gross and in perpetuity on the Property and the Building pursuant to the Act; and

NOW, THEREFORE, in consideration of the sum of \$1.00 paid, and the conveyance of the Property from the Town of Harwich to the Grantor, Grantor does hereby irrevocably grant and convey unto the Grantee an agreement in gross and in perpetuity over the Property and the Building described in Exhibits A, B, and C, all as set forth more particularly herein.

PURPOSE

1.1 Purpose. It is the purpose of this Agreement to ensure that the features and characteristics that embody the architectural, historic and cultural significance of the exterior of the Building will be forever retained and maintained substantially in their current condition and to prevent any use or change in the Property that will significantly impair or interfere with the Building's preservation values (the "Purpose").

1.2 Improvements. Grantor agrees to make the improvements to the Building as set forth in the Scope of Work, attached hereto as Exhibit D.

GRANTOR'S COVENANTS

[this Restriction protects exterior features only – if interior and/or other features are involved, this Restriction needs to be revised]

2.1 Covenant to Maintain. Grantor agrees at all times to maintain the exterior of the Building in as good structural condition and sound state of repair as that existing on the date of this Agreement and/or the completion of the Work and otherwise in the condition required by this Preservation Restriction Agreement, and shall comply with all federal, state and local laws, codes and by-laws applicable to the Property and/or the Building. Grantor's obligation to maintain shall require replacement, repair, reconstruction and where necessary replacement in kind by Grantor whenever necessary to preserve the Building in a good, sound and attractive condition and state of repair. Subject to the casualty provisions of Sections 6 and 7, this obligation to maintain shall require replacement, rebuilding, repair and reconstruction of the Building whenever necessary in accordance with The Secretary of Interior's Standards for the Treatment of Historical Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings (36 CFR 67), as these may be amended from time to time (hereinafter the "Secretary's Standards").

2.2. Prohibited Activities.

[Use if applicable and revise as needed] The following acts or uses are expressly forbidden on, over, or under the Property, except as otherwise conditioned in this Section:

- (a) The Building shall not be moved, demolished, removed or razed except as described in Sections 6 and 7;
- (b) No barrier shall be constructed, erected or allowed to grow on the Property which would impair the visibility from the street of the Property or the Building without the prior approval of Grantee;
- (c) The dumping of ashes, trash, rubbish, or any other unsightly or offensive materials is prohibited on the Property; and
- (d) No above ground utility transmission lines, except those reasonably necessary for the existing Building, may be created on the Property, subject to utility easements already recorded.
- (e) The Property shall not be divided or subdivided in law or in fact and the Property shall not be devised or conveyed except as a unit; [and]
- (f) No other buildings or structures, including camping accommodations, mobile homes or cell towers, shall be erected or placed on the Property hereafter except for temporary structures required for maintenance or rehabilitation of the Property, such as construction trailers.
- (g) *is there anything else you wish to prohibit?*

GRANTOR'S CONDITIONAL RIGHTS

3.1 Conditional Rights Requiring Approval by Grantee. Without prior express written approval of the Grantee, which approval shall not be unreasonably withheld but which may be subject to such reasonable conditions as Grantee in its discretion may determine, Grantor shall not make any changes to the exterior of the Building, including additions to and the alteration, partial removal, construction, remodeling, or other physical or structural change to the façades of the Building, and any change in design, material or color thereof. Activities by Grantor to maintain the exterior of the Building, which are intended to be performed in accordance with Section 2.1, and which are minor in nature, shall not require Grantee's prior approval. For the purposes of this Section, the interpretation of what constitutes ordinary maintenance of a minor nature is governed by the Restriction Guidelines which are attached to this Agreement as Exhibit E, and incorporated by reference. For purposes of this Agreement, the exterior of the Building shall be defined as all surfaces (including but not limited to walls, roofs, foundations, windows including sash and enframements, doors, gutters, downspouts, and associated hardware and visible details) which are in contact with the exterior of the Building. Subject to this restriction are any activities, including construction or alteration or any internal structural features that act as support for external surfaces, construction or alteration of which may alter the exterior appearance of the Building or threaten the structural stability or integrity of the exterior of the Building.

3.2 Review of the Grantor's Request for Approval. Should Grantor wish to exercise the conditional rights set out or referred to in Section 3.1, Grantor shall submit to Grantee, for Grantee's approval, two copies of information (including plans, specifications and designs, where appropriate) identifying the proposed activity with reasonable specificity. In connection therewith, Grantor shall also submit to Grantee a timetable for the proposed activity sufficient to

permit Grantee to monitor such activity. Within sixty (60) days of Grantee's receipt of any plan or written request for approval hereunder, Grantee shall certify in writing that (a) it approves the plan or request, or (b) it disapproves the plan or request as submitted in which case Grantee shall provide Grantor with written suggestions for modification or a written explanation for Grantee's disapproval. Any failure by Grantee to act within sixty (60) days of receipt of Grantor's submission or resubmission of plans or requests shall be deemed to constitute approval by Grantee of the plan or request as submitted and to permit Grantor to undertake the proposed activity in accordance with the plan or request submitted.

3.3 Conditional Rights Requiring the Approval of the Massachusetts Historical Commission. The conduct of archeological activities on the Property, including without limitation, survey, excavation and artifact retrieval, may occur only following the submission of an archeological field investigation prepared by Grantor and approved in writing by the State Archeologist of the Massachusetts Historical Commission (G.L. Ch.9, Section 27C, 950 CMR 70.00).

STANDARDS FOR REVIEW

4. Secretary's Standards. Grantee shall apply Secretary's Standards whenever (a) exercising any authority created by this Agreement to inspect the Building; (b) reviewing any construction, alteration, repair or maintenance; (c) reviewing casualty damage or (d) reconstructing or approving reconstruction of the Building following casualty damage.

GRANTOR'S RESERVED RIGHTS

5. Grantor's Rights Not Requiring Further Approval by Grantee. Subject to the provisions of Sections 2.1, 2.2, and 3.1, the following rights, uses, and activities of or by Grantor on, over, or under the Property are permitted by this Agreement and by Grantee without further approval by Grantee:

- (a) The right to engage in all those acts and uses that: (i) are permitted by governmental statute or regulation; (ii) do not substantially impair the conservation and preservation values of the Building; and (iii) are not inconsistent with the Purpose of this Preservation Restriction Agreement;
- (b) Pursuant to the provisions of Section 2.1, the right to maintain and repair the Building strictly according to the Secretary's Standards. As used in this subsection the right to maintain and repair shall mean the use by Grantor of in-kind materials and colors, applied with workmanship comparable to that which was used in the construction or application of those materials being repaired or maintained, for the purpose of retaining in good condition the appearance and construction of the Building. The right to maintain and repair as used in this subsection shall not include the right to make changes in appearance, materials, and workmanship from that existing prior to the maintenance and repair without the prior approval of Grantee in accordance with the provisions of Sections 3.1 and 3.2; and

- (c) The right to make changes of any kind to the interior of the Building, provided such changes do not alter materially the appearance of the exterior of the Building in contravention of this Preservation Restriction Agreement.

CASUALTY DAMAGE OR DESTRUCTION; INSURANCE

6. Casualty Damage or Destruction. In the event that the Building or any part thereof shall be damaged or destroyed by fire, flood, windstorm, hurricane, earth movement or other casualty, Grantor shall notify Grantee in writing within fourteen (14) days of the damage or destruction, such notification including what, if any, emergency work has been completed. No repairs or reconstruction of any type other than temporary emergency work to prevent further damage to the Building and to protect public safety shall be undertaken by Grantor without Grantee's prior written approval of the work. Within thirty (30) days of the date of damage or destruction, Grantor at Grantor's expense shall submit to Grantee a written report prepared by a qualified restoration architect and an engineer who are acceptable to Grantee, which report shall include the following: (a) an assessment of the nature and extent of the damage; (b) a determination of the feasibility of the restoration of the Building and/or reconstruction of damaged or destroyed portions of the Building; and (c) a report of such restoration and/or reconstruction work necessary to return the Building to the condition existing at the date thereof.

7. Review After Casualty Damage or Destruction. If, after reviewing the report provided in Section 6 and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under Section 8, Grantor and Grantee agree that the Purpose of this Agreement will be served by such restoration/reconstruction, Grantor and Grantee shall establish a schedule under which Grantor shall complete the restoration/reconstruction of the Building in accordance with plans and specifications consented to by the parties to at least the total of the casualty insurance proceeds available to the Grantor.

If, after reviewing the report and assessing the availability of the insurance proceeds after satisfaction of any mortgagee's/lender's claims under Section 8, Grantor and Grantee agree that restoration/reconstruction of the Building is impractical or impossible, or agree that the Purpose of this Agreement would not be served by such restoration/ reconstruction, Grantor may with prior written consent of Grantee, alter, demolish, remove or raze the Building and/or construct new improvements on the Property. In such event, Grantor and Grantee may agree to extinguish this Agreement in accordance with the laws of the Commonwealth of Massachusetts and Section 21 hereof.

If, after reviewing the report and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under Section 8, Grantor and Grantee are unable to agree that the Purpose of this Agreement will or will not be served by such restoration/reconstruction, the matter may be referred by either party to binding arbitration and settled in accordance with the Commonwealth of Massachusetts arbitration statute then in effect, and all other applicable laws, rules, and regulations.

8. Insurance. Grantor shall keep the Building insured by an insurance company rated "A1" or better by Best's for the full replacement value against loss from the perils commonly insured under standard fire and extended coverage policies and comprehensive general liability insurance

against claims for personal injury, death and property damage. Property damage insurance shall include change in condition and building ordinance coverage, in form and amount sufficient to replace fully the damaged Building without cost or expense to Grantor or contribution or coinsurance from Grantor. Grantor shall deliver to Grantee, within ten (10) business days of Grantee's written request therefore, certificates of such insurance coverage. Provided, however, that whenever the Property is encumbered with a mortgage or deed of trust nothing contained in this Section shall jeopardize the prior claim, if any, of the mortgagee/lender to the insurance proceeds.

INDEMNIFICATION; TAXES

9. Indemnification. Grantor hereby agrees to indemnify, hold harmless and defend at its own cost and expense, Grantee, its agents, directors, employees and independent contractors from and against any and all claims, liabilities, expenses, costs, damages, losses and expenditures (including reasonable attorneys' fees and disbursements hereafter incurred) arising out of or in connection with injury to or death of any person on or about the Property; physical damage to the Property or the Building; the presence or release in, on, or about the Property, at any time, of any substance now or hereafter defined, listed or otherwise classified pursuant to any law, ordinance or regulation as a hazardous, toxic, polluting or contaminating substance; or other injury or damage occurring on or about the Property, unless such injury or damage is caused by Grantee or agent, employee or contractor of Grantee. In the event that Grantor is required to indemnify Grantee pursuant to the terms of this Section, the amount of such indemnity until discharged shall constitute a lien on the Property with the same effect and priority as a mechanic's lien, provided, however, that nothing contained herein shall jeopardize the priority of any recorded first priority mortgage given in connection with a promissory note secured by the Property.

10. Taxes; Insurance. Grantor shall pay all general taxes, special taxes, special assessments, water charges, sewer service charges, and other charges which may become a lien on the Property. Grantor shall keep the Building insured by an insurance company rated "A" or better by Best's for the full replacement value against loss from perils commonly insured under standard fire and extended coverage policies. Said insurance shall be in form and amount sufficient to fully restore or repair the protected features of damaged Building without cost or expense to Grantor or contribution or coinsurance from Grantor. Grantor shall deliver to the Town, within ten (10) business days of the Town's written request therefor, certificates of such insurance coverage, provided, however, that whenever the Premises are encumbered with a mortgage or deed of trust, nothing contained in this Section shall jeopardize the prior claim, if any, of the mortgagee/lender to the insurance proceeds.

ADMINISTRATION AND ENFORCEMENT

11. Written Notice. Any notice Grantor or Grantee may desire or be required to give to the other party shall be in writing and shall be mailed postage prepaid by overnight courier, facsimile transmission, registered or certified mail with return receipt requested or hand delivered; if to Grantor, at _____, _____, MA _____, and if to Grantee, at Town of Harwich, 732 Main Street, Harwich Center, MA 02645 Attention: Harwich Historical Commission. Each party may change its address set forth herein by a notice to such effect to the other party given pursuant hereto.

12. Evidence of Compliance. Upon request by Grantor, Grantee shall promptly furnish Grantor with certification that, to the best of Grantee's knowledge, Grantor is in compliance with the obligations of Grantor contained herein, or that otherwise evidences the status of this Agreement to the extent of Grantee's knowledge thereof.

13. Inspection. With the consent of Grantor, representatives of Grantee shall be permitted at all reasonable times to inspect the Property, including the interior of the Building. Grantor covenants not to unreasonably withhold consent in determining dates and times for such inspections.

14. Grantee's Remedies. The rights hereby granted shall include the right to enforce this Agreement by appropriate legal proceedings and to institute suit(s) to enjoin any violation of the terms of this Agreement by ex parte, temporary, preliminary and/or permanent injunction, including without limitation prohibitory and/or mandatory injunctive relief and to require the restoration of the Property and/or the Building to the condition and appearance required under this Agreement (it being agreed that Grantee may have no adequate remedy at law), which rights shall be in addition to, and not in substitution of, all other legal and other equitable remedies available to Grantee to enforce Grantor's obligation hereunder. Except in the case of an emergency, Grantee agrees that no such enforcement actions will be taken unless (a) Grantee has sent written notice to Grantor, specifying Grantor's failure to comply with the terms of this Preservation Restriction Agreement, and (b) Grantor fails to cure the same within thirty (30) days from the date of the Grantee's notice, or, if such cure cannot reasonably be completed within said thirty (30) days, Grantor has commenced to cure said default within said thirty (30) day period and is pursuing said cure diligently to completion.

In the event Grantor is found to have violated any of Grantor's obligations, Grantor shall reimburse Grantee for any costs or expenses incurred in connection with Grantee's enforcement of the terms of this Preservation Restriction Agreement, including all reasonable court costs, and attorneys', architectural, engineering and expert witness fees, together with interest thereon at the prime lending rate.

Exercise by Grantee of one remedy hereunder shall not have the effect of waiving or limiting the use of any other remedy, and the failure to exercise any remedy shall not have the effect of waiving or limiting the use of any other remedy or the use of such remedy at any other time.

By its acceptance, Grantee does not undertake any liability or obligation relating to the condition of the Property or the Building, including with respect to compliance with hazardous materials or other environmental laws and regulations. Nothing herein shall impose upon the Grantee any affirmative obligation or liability relating to the condition of the Property or the Building.

15. Notice from Government Authorities. Grantor shall deliver to Grantee copies of any notice of violation or lien relating to the Property or the Building received by Grantor from any government authority within five (5) days of receipt by Grantor. Upon request by Grantee, Grantor shall promptly furnish Grantee with evidence of Grantor's compliance with such notice or lien where compliance is required by law.

16. Notice of Proposed Sale. Grantor shall promptly notify Grantee in writing of any proposed sale of the Property and provide the opportunity for the Grantee to explain the terms of this Agreement to potential new owners prior to sale closing.

17. Liens. Any lien on the Property created pursuant to any Section of this Agreement may be confirmed by judgment and foreclosed by Grantee in the same manner as a mechanic's lien, provided, however, that no lien created pursuant to this Agreement shall jeopardize the priority of any recorded lien of mortgage or deed of trust given in connection with a promissory note secured by the Property.

BINDING EFFECT; ASSIGNMENT

18. Runs with the Land. Except as provided in Sections 7 and 21, the rights and obligations created or imposed by this Agreement shall be in effect in perpetuity and shall be deemed as a binding servitude upon the Property. Grantor agrees that this Agreement shall also be considered an "other restriction held by a governmental body," as that term is used in G.L. c. 184, §26, and thus not subject to the limitations on the enforceability of restrictions in G.L. c. 184, §§26-30, and, in any event, shall bind and run with the Property for a period of ninety-nine (99) years. To the extent this Agreement is deemed subject to said statutes, this Agreement may, during said term of years, be renewed for successive twenty (20) year periods by filing a notice of the continued enforceability of said Agreement prior to thirty (30) years from the date of imposition of the Agreement, and thereafter by filing a notice of continuation prior to the end of each such twenty (20) year renewal period, as allowed by law pursuant to G.L. c. 184, §§ 26-30. The Grantor hereby appoints the Town as Grantor's agent to execute and record such notices and agrees that Grantor shall execute and record such a notice upon request.

This Agreement shall extend to and be binding upon Grantor and Grantee, their respective successors in interest and all persons hereafter claiming under or through Grantor or Grantee, and the words "Grantor" and "Grantee" when used herein shall include all such persons. Any right, title or interest herein granted to Grantee shall be deemed granted to each successor and assign of Grantee and each such following successor and assign thereof, and the word "Grantee" shall include all successors and assigns.

Anything contained herein to the contrary notwithstanding, an owner of the Property shall have no obligation pursuant to this instrument where such owner shall cease to have any ownership interest in the Property by reason of bona fide transfer. The restrictions, stipulations and covenants contained in this Agreement shall be inserted by Grantor, verbatim or by express reference, in any subsequent deed or other legal instrument by which Grantor divests itself of either the fee simple title to or any lesser estate in the Property or any part hereof, including by way of example but not limitation, a lease of all or a portion of the Property.

19. Assignment. Grantee may, at its discretion without prior notice to Grantor, convey, assign or transfer this Agreement to a unit of federal, state or local government or to a similar local, state or national organization that qualifies under the Act, as amended, whose purposes, inter alia, are to promote preservation of historical, cultural or architectural resources, provided that any such conveyance, assignment or transfer requires that the Purpose for which this Agreement was granted will continue to be carried out.

20. Recording and Effective Date. Grantee shall do and perform at its own cost all acts necessary to the prompt recording of this Agreement in the land records of the Barnstable Registry of Deeds. Grantor and Grantee intend that the restrictions arising under this Agreement take effect on the day and year this instrument is executed by Grantor and Grantee.

EXTINGUISHMENT

21.1. Extinguishment. Grantor and Grantee hereby recognize that an unexpected change in conditions affecting the Property may make impossible the continued ownership or use of the Property for the Purpose of this Agreement and necessitate extinguishment of this Preservation Restriction Agreement. Such a change in conditions may include, but is not limited to, partial or total destruction of the Building resulting from casualty. An extinguishment must meet all the requirements of the Act for extinguishment, including a public hearing to determine that such extinguishment is in the public interest, and approval by Grantee (or the then holder of this Agreement, if it has been assigned pursuant to Section 19), and the Massachusetts Historical Commission, if this Agreement has been approved by the Massachusetts Historical Commission.

21.2 Proceeds. Grantor and Grantee agree that this Agreement gives rise to a real property right, immediately vested in the Grantee, with a fair market value that is at least equal to the proportionate value that this Agreement, determined at the time of the gift, bears to the value of the unrestricted Property at that time. Such proportionate value of the Grantee's property right shall remain constant. Grantor shall pay Grantee its share of any proceeds from the sale or conveyance of the Property.

21.3 Condemnation. If all or any part of the Property is taken under the power of eminent domain by public, corporate or other authority, or otherwise acquired by such authority through a purchase in lieu of a taking, Grantor and the Grantee shall join in appropriate proceedings at the time of such taking to recover the full value of the Property that is subject to the taking and all incidental and direct damages from the taking. All expenses reasonably incurred by Grantor and the Grantee in connection with such taking shall be paid out of the recovered proceeds. Such recovered proceeds shall be paid to the parties in accordance with the provisions of 21.3.

INTERPRETATION

22. Interpretation. The following provisions shall govern the effectiveness, interpretation and duration of this Preservation Restriction Agreement:

- (a) Any rule of strict construction designed to limit the breadth of restrictions on alienation or use of property shall not apply in the construction or interpretation of this Agreement and this instrument shall be interpreted broadly to affect its Purpose and the transfer of rights and the restrictions on use herein contained.
- (b) This instrument is executed in two counterparts, one of which is to be retained by the Grantor and the other, after recording, to be retained by Grantee. In the event of any disparity between the counterparts produced, the recorded counterpart retained by the

Grantee shall in all cases govern. Except as provided in the preceding sentence, each counterpart shall constitute the agreement of the parties.

- (c) This instrument is made pursuant to the Act, but the invalidity of such Act or any part thereof shall not affect the validity and enforceability of this Agreement according to its terms, it being the intent of the parties to agree and to bind themselves, their successors and their assigns in perpetuity to each term of this instrument whether this instrument is enforceable by reason of statute, common law or private agreement either in existence now or at any time subsequent hereto.
- (d) Nothing contained herein shall be interpreted to authorize or permit Grantor to violate any ordinance or regulation relating to building materials, construction methods or use. In the event of any conflict between any such ordinance or regulation and the terms hereof Grantor promptly shall notify Grantee of such conflict and shall cooperate with Grantee and the applicable government entity to accommodate the purpose of both this Agreement and such ordinance or regulation.

AMENDMENT

23. Amendment. If circumstances arise under which an amendment to or modification of this Agreement would be appropriate, Grantor and Grantee may by mutual written agreement jointly amend this Preservation Restriction Agreement, provided that no amendment shall be made that will adversely affect the qualifications of this Agreement or the status of Grantee under the Act, or any applicable laws, including any other laws of the Commonwealth of Massachusetts. Any such amendment shall be consistent with the protection of the preservation values of the Property and the Purposes of this Agreement; shall not affect its perpetual duration; shall not permit any private inurement to any person or entity; and shall not adversely impact the overall architectural, historic, natural habitat, and open space values protected by this Agreement. Any such amendment shall comply with the provisions of the Act and shall be recorded in the land records of the Barnstable Registry of Deeds. Nothing in this Section shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

24. Additional Changes. Grantor agrees to make such changes to this Agreement as are reasonably necessary to obtain the approval of the Massachusetts Historical Commission under Section 32 of Chapter 184 of the General Laws of the Commonwealth of Massachusetts.

25. Mortgage Subordination. At the time of the conveyance of this Agreement, the Property is subject to a Mortgage _____, recorded with _____ County Registry of Deeds in Book _____, Page _____ (hereinafter "the Mortgage") held by _____ (hereinafter, "Mortgagee"). The Mortgagee joins in the execution of this Agreement to evidence its agreement to subordinate the Mortgage to this Agreement under the following conditions and stipulations:

- a. The Mortgagee and its assignees shall have a prior claim to all insurance proceeds as a result of any casualty, hazard or accident occurring to or about the Property and all proceeds of condemnation proceedings, and shall be entitled to same in preference to the

proceeds until the Mortgage is satisfied in full and discharged, notwithstanding that the Mortgage is subordinate in priority to this Agreement.

- b. If the Mortgagee receives an assignment of the leases, rents, and profits of the Property as security or additional security for the loan secured by the Mortgage, then the Mortgagee shall have a prior claim to the leases, rents, and profits of the Property and shall be entitled to receive same in preference to the Town until the Mortgagee's debt is paid off or otherwise satisfied, notwithstanding that the Mortgage is subordinate in priority to the Agreement.
 - c. The Mortgagee or purchaser in foreclosure shall have no obligation, debt, or liability under this Agreement until the Mortgagee or a purchaser in foreclosure under it obtains ownership of the Property. In the event of foreclosure or deed in lieu of foreclosure, this Agreement shall not be extinguished.
 - d. Nothing contained in this Section or in this Agreement shall be construed to give any Mortgagee the right to violate the terms of this Agreement or to extinguish this Agreement by taking title to the Property by foreclosure or otherwise.
25. Recitals. The recitals to this Agreement are incorporated herein and made a part hereof.

IN WITNESS WHEREOF, Grantor has set its hand under seal on the day and year first set forth below.

GRANTOR:

By: _____
Name:
Title:

By: _____
Name:
Title:

MORTGAGEE:

By: _____
Name:
Title:

COMMONWEALTH OF MASSACHUSETTS

_____, ss.

On this _____ day of _____, 202__, before me, the undersigned Notary Public, personally appeared _____, who proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose as _____ of _____.

(Official Signature and Seal of Notary)
My term expires:

COMMONWEALTH OF MASSACHUSETTS

_____, SS.

On this _____ day of _____, 202____, before me, the undersigned Notary Public, personally appeared _____, _____ of _____, as aforesaid, who proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose on behalf of _____ [mortgagee].

(Official Signature and Seal of Notary)

My term expires:

ACCEPTANCE OF PRESERVATION RESTRICTION

Acceptance of this Agreement by the Town of Harwich , acting by and through its Historical Commission pursuant to the authority granted to said Commission under G.L. c.40, § 8D, is acknowledged this _____ day of _____, 202__.

TOWN OF HARWICH,
Historical Commission

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

On this _____ day of _____, 202__, before me, the undersigned Notary Public, personally appeared _____, member of the Harwich Historical Commission, as aforesaid, who proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose on behalf of the Town of Harwich.

(Official Signature and Seal of Notary)
My term expires:

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

On this _____ day of _____, 202____, before me, the undersigned Notary Public, personally appeared _____, member of the Harwich Historical Commission, as aforesaid, who proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose on behalf of the Town of Harwich.

(Official Signature and Seal of Notary)
My term expires:

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

On this _____ day of _____, 202____, before me, the undersigned Notary Public, personally appeared _____, member of the Harwich Historical Commission, as aforesaid, who proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose on behalf of the Town of Harwich.

(Official Signature and Seal of Notary)
My term expires:

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

On this _____ day of _____, 202____, before me, the undersigned Notary Public, personally appeared _____, member of the Harwich Historical Commission, as aforesaid, who proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose on behalf of the Town of Harwich.

(Official Signature and Seal of Notary)
My term expires:

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

On this _____ day of _____, 202____, before me, the undersigned Notary Public, personally appeared _____, member of the Harwich Historical Commission, as aforesaid, who proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose on behalf of the Town of Harwich.

(Official Signature and Seal of Notary)
My term expires:

APPROVAL BY THE MASSACHUSETTS HISTORICAL COMMISSION
COMMONWEALTH OF MASSACHUSETTS

The undersigned Executive Director and Clerk of the Massachusetts Historical Commission hereby certifies that the foregoing Agreement to the Town of Harwich, acting by and through the Harwich Historical Commission (Grantee), has been approved by the Massachusetts Historical Commission in the public interest pursuant to G.L. Chapter 184, Section 32.

MASSACHUSETTS HISTORICAL COMMISSION

By: _____
Brona Simon, Executive Director and Clerk

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On this _____ day of _____, 202____, before me, the undersigned Notary Public, personally appeared Brona Simon, Executive Director and Clerk of the Massachusetts Historical Commission, as aforesaid, who proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose on behalf of the Massachusetts Historical Commission.

(Official Signature and Seal of Notary)
My commission expires:

EXHIBIT A

Description of the Property

Insert legal description of property

Description of the Building

EXHIBIT B

Photographs of the Building

Please see the attached.

List of photographs:

For examples of details to be included:

1. South wing – north elevation
2. South wing – north elevation
3. South wing – north elevation
4. West wing – east elevation
5. North wing – south elevation
6. North wing – east elevation
7. North wing – north elevation
8. North wing – north elevation
9. North wing – north elevation
10. West wing – west elevation
11. South wing – south elevation
12. South wing – south elevation
13. South wing – south elevation
14. South wing – east elevation
15. Barn – south elevation
16. Barn – east elevation
17. Barn – north elevation
18. Barn – west elevation

EXHIBIT C

Architect's Drawings of the Building

Please see the attached.

EXHIBIT D

Scope of Work

Please see the attached.

EXHIBIT E

Restriction Guidelines

The purpose of the Restriction Guidelines is to clarify Section 3.1 of the terms of the Preservation Restriction Agreement which deals with alteration to the exterior of the Building on the Property. Under this section, permission from the Grantee is required for any major alteration. Alterations of a minor nature, which are part of ordinary maintenance and repair, do not require review.

In an effort to explain what constitutes a minor alteration and what constitutes a major change, which must be approved by the Grantee, the following list has been developed. By no means is this list comprehensive; it is only a sampling of some of the more common alterations, which may be contemplated by building owners.

PAINT

Minor – Exterior hand scraping and repainting of non-decorative and insignificant surfaces as part of periodic maintenance.

Major – Painting or fully stripping decorative surfaces or distinctive stylistic features including murals, stenciling, wallpaper, ornamental woodwork, stone, decorative or significant original plaster.

WINDOWS AND DOORS

Minor – Regular maintenance including caulking, painting and necessary re-glazing. Repair or in-kind replacement of existing individual decayed window parts.

Major – Wholesale replacements of units; change in fenestration or materials; alteration of profile or setback of windows. The addition of storm windows is also considered a major change; however, with notification it is commonly acceptable.

EXTERIOR

Minor – Spot repair of existing cladding and roofing including in-kind replacement of clapboards, shingles, slates, etc.

Major – Large-scale repair or replacement of cladding or roofing. Change involving inappropriate removal or addition of materials or building elements (i.e., removal of chimneys or cornice detailing; installation of architectural detail which does not have a historical basis); altering or demolishing building additions; spot repointing of masonry. Structural stabilization of the property is also considered a major alteration.

LANDSCAPE/OUTBUILDINGS

Minor – Routine maintenance of outbuildings and landscape including lawn mowing, pruning, planting, painting and repair.

Major – Moving or subdividing buildings or property; altering of property; altering or removing significant landscape features such as gardens, vistas, walks, plantings; ground disturbance affecting archaeological resources.

WALLS/PARTITIONS

Minor – Making fully reversible changes (i.e., sealing off doors in situ, leaving doors and door openings fully exposed) to the spatial arrangement of non-significant portion of the building.

Major – Creating new openings in walls or permanently sealing off existing openings; adding permanent partitions which obscure significant original room arrangement; demolishing existing (exterior) walls; removing or altering stylistic features; altering primary staircases.

HEATING/AIR CONDITIONING/ELECTRICAL/PLUMBING SYSTEMS

Minor – Repair of existing systems.

Major – Installing or upgrading systems which will result in major appearance changes (i.e., dropped ceilings, disfigured walls or floors, exposed wiring, ducts and piping); the removal of substantial quantities of original plaster or other materials in the course of construction.

Changes classified as major alterations are not necessarily unacceptable. Under the Preservation Restriction Agreement such changes must be reviewed by the Grantee and their impact on the historic integrity of the Property assessed.

It is the responsibility of the Grantor to notify the Grantee in writing when any alterations are contemplated. Substantial alterations may necessitate review of plans and specifications.