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Counselors at Public Law

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**MEMORANDUM**

To: Richard S. Novak, ZBA Chair  
Zoning Board of Appeals

From: Michael K. Terry, Esq.

cc: Jeanne Guthrie, ZBA Administrator  
David Williams, Town Administrator  
Eric Johnson, Select Board Chair  
Christopher J. Petrini, Esq., Town Counsel  
Paul J. Haverty, Esq.

Date: November 25, 2020

Re: **Chapter 40B Applications/Site control**  
**Apple Hill Estates, 31 Hunting Lane, Sherborn**  
**Pine Residences, 41 North Main Street, Sherborn**

I write in response to your request for a memorandum regarding the impact of the Select Board's exercise of its right of first refusal under G.L. c.61B ("Chapter 61B") with respect to parcels of land within the development site in the above-referenced applications for a Comprehensive Permit under Massachusetts General Laws Chapter 40B (the "40B Applications"). Specifically, you have asked how the said Select Board's rights may impact the Zoning Board of Appeals' review of the pending 40B Applications and the requirement under applicable regulations that the Applicant (defined below) demonstrate site control.

**I. BACKGROUND**

Two parcels of land that are within the development site of the 40B Applications, namely Assessors Map 11, Parcel 3B and Assessors Map 11, Parcel 3C at 31 Hunting Lane (the "Subject Parcels"),<sup>1</sup> are classified for real estate tax purposes under Chapter 61B which provides, in

<sup>1</sup> Assessors Map 11, Parcel 3C, containing approximately 16.93 acres, improved by one single-family structure, of which 14.93 were classified as Chapter 61B, and upon which the applicant intends to construct the ownership units. Assessors Map 11, Parcel 3B, contains approximately 8 acres which the applicant intends to dedicate for water and sewer uses. While the use of this parcel appears critical to the feasibility of the project, the applicant contends that this parcel is not part of the 40B Applications. The development

pertinent part, that “[l]and taxed under this chapter shall not be sold for, or converted to, residential, industrial or commercial use while so taxed or within 1 year after that time unless the city or town in which the land is located has been notified of the intent to sell for, or to convert to, that other use.”

On November 19, 2019, Igor Lybarsky, Trustee of the Barsky Estate Realty Trust (together with 31 Hunting, LLC and 41 North Main, LLC referred to herein as the “Applicant”) gave the Town a notice of intent to sell or convert the Subject Parcels to other use (the “Notice”). However, previous Town Counsel provided an opinion that the Notice was defective in that: (1) the purported purchase and sale agreement appended thereto did not constitute a “bona fide offer to purchase” as required by Section 9 of Chapter 61B, because the Seller and Buyer were affiliated entities, as Mr. Lybarsky is/was a principal of both; (2) the sale contemplated by said purchase and sale agreement was contingent upon the receipt of municipal board approvals, contrary to requirements of Chapter 61B; and (3) the purchase and sale concerned the conveyance of other property in addition to the Subject Parcels. (Copy of the November 19, 2019 Notice is appended as **Exhibit A**, and a copy of the opinion of previous Town Counsel dated December 20, 2019 is attached as **Exhibit B**).

In a January 31, 2020 letter to the Massachusetts Housing Finance Agency, the Applicant’s consultant, Lynne Sweet of LDS Consulting Group, LLC, stated that “[t]he Town's right of first refusal will only be triggered if the Applicant provides the Town with a notice of intent to convert in accordance with G.L. ch. 61B, s. 9.” Ms. Sweet continued:

“A notice of intent to sell or convert pursuant to G.L. c. 61B Section 9 would also trigger the Town's right of first refusal. The applicant previously submitted a notice to sell and convert pursuant to G.L. c. 61B, Section 9. The Town deemed the notice insufficient. Accordingly, the applicant will not be selling the property to any third party which would require a notice of intent to sell and convert.”  
(Copy appended as **Exhibit C**).

Subsequently, through counsel, the Applicant sent a “Notice of Withdrawal from 61B Tax Classification” to the Sherborn Town Assessor, which provided: “[t]he purpose of this letter is to inform you of the Landowner's intent to withdraw land from its 61B classification but retain it in its natural state condition and for recreational use for one additional year.” As a result of said notice of withdrawal, the Subject Parcels shall cease to be subject to the provisions of Chapter 61B after June 30, 2021.

On October 5, 2020, 31 Hunting, LLC filed an application for a permit under the Chapter 40B to construct 24 ownership units on land located at 31 Hunting Lane. Simultaneously, 41 North Main, LLC filed a second application for a Chapter 40B permit to construct sixty (60)

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site also includes Assessors Map 11, Parcel 2 containing approximately 4.88 acres, consisting mostly of wetlands, which the applicant intends to dedicate for water and sewer uses and which was not classified under Chapter 61B.

mixed-income rental units on adjacent land with frontage on North Main Street (collectively, the "40B Applications"). The principal of both entities is Igor Lybarsky and the filed plans show that the two projects are designed to share the use of Assessors Map 11, Parcel 3B (one of Subject Parcels) and Assessors Map 11, Parcel 2 (not subject to G.L. 61B) for water and sewer infrastructure purposes.

Having been apprised of the 40B Applications, the Sherborn Select Board voted, during its October 22, 2020 public meeting, to take the following action:

1. to seek an impartial appraisal performed by a certified appraiser hired at the expense of the municipality or its assignee to determine the full and fair market value of the Subject Parcels; and
2. to continue its public hearing, for further consideration of whether to (a) exercise the Town's option to purchase the Subject Parcels and to submit an Article to for consideration by Town Meeting, (b) or to assign the Town's option to Unity Farm Sanctuary, Inc., 17 Unity Lane, Sherborn, MA 01770, or another nonprofit conservation organization, under the terms and conditions that the Select Board may consider appropriate.

The Select Board then issued a letter to the Zoning Board of Appeals dated October 27, 2020, advising the Board as follows:

1. Pursuant to Chapter 61B, the Select Board holds a property interest in the Subject Parcels;
2. The Select Board is considering whether it shall exercise its right of first refusal with respect to the Subject Parcels or assign same; and
3. The Select Board's said property rights under Chapter 61B cannot be waived by the Zoning Board under G.L. c.40B.

In light of the foregoing, it is the view of the Select Board that the Zoning Board of Appeals may have a supportable basis to reject the 40B Applications due to the applicant's failure to establish that it has control of the site, as required by 760 C.M.R. 56.04(1)(c). The Select Board therefore urges to the Zoning Board of Appeals to consider rejecting the 40B Applications on that basis."

(Copy of Select Board letter dated October 27, 2020 appended as **Exhibit D.**)

The Select Board is now in the process of retaining Avery Associates of Acton, Massachusetts for the purpose of producing an appraisal of the Subject Parcels to complete the next step in the process to exercise its right of first refusal.

## II. DISCUSSION

### A. The Town's option to purchase.

Notwithstanding the fact that portions of the development site are subject to Chapter 61B, the Applicant failed to provide the Town with a written notice of a change of use of the Subject Parcels pursuant to Chapter 61B prior to filing the 40B Applications. The Town reserves all of its rights in connection with the Applicant's failure to provide written notification of a change in use as required by Chapter 61B. Notwithstanding Applicant's omission, it is the view of the Select Board that by filing the 40B Applications on October 5, 2020 the Applicant has given the equivalent of such notice to the Town, clearly demonstrating his intent to convert the Subject Parcels to other (residential) uses, thereby triggering the Town's right of first refusal under Chapter 61B.<sup>2</sup>

Accordingly, under Section 9 of Chapter 61B, the Town has the option to purchase property subject to the statute at "full and fair market value" upon notice of an intent to convert the use of the property. Section 9 sets forth the following steps for exercise of the town's option:

1. Town provides appraisal to landowner within 30 days of receipt of notice of intent to convert use.
2. Landowner may rebut town's appraisal with own appraisal within 60 days of delivery of notice to convert.
3. If parties can't agree on consideration, a third appraiser may be retained by the parties to produce an appraisal within 90 days of the delivery of the notice to convert. Said third appraisal shall be the final determination of purchase price.

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<sup>2</sup> In Town of Sudbury v. Scott, 439 Mass. 288 (2003), the Supreme Judicial Court determined that a prospective buyer had concealed the true nature of his planned use of property in order to defeat the town's right of first refusal, finding that under such circumstances, specific performance (allowing the town to exercise its right of first refusal) would be warranted. Scott, 439 Mass. at 301-302. In Scott, a buyer of property taxed under G.L c.61A (substantively similar to c.61B) claimed he intended to continue to use the property for agricultural purposes, but engaged in only minimal agricultural activity, while he simultaneously conducted development-related activities, including meetings with town officials regarding permitting, performance of percolation tests and execution of mortgage documents. The court held that the town had submitted sufficient evidence that it could be found that the buyer never intended to use the property for 61A purposes and that the minimal agricultural activity "was undertaken to conceal his intent in order to defeat the town's right of first refusal."

Here, the Applicant's intent is not concealed: he has applied to the Zoning Board of Appeals for Comprehensive Permits under Chapter 40B seeking to construct a 28-unit mixed-income condominium ownership development on the Subject Parcels. This is self-evidently a demonstration of Applicant's intent to convert the use of the Subject Parcels from their current recreational use to a residential use and constitutes much stronger evidence than that relied upon by the court in Scott.

4. Once the consideration has been determined, the town then has 120 days to exercise its option.

The Town's option may be exercised after a public hearing, followed by written notice signed by Select Board and mailed to landowner. Such notice to landowner must be accompanied by a proposed purchase and sale agreement setting forth the consideration that has been determined by appraisal and must provide for a closing within 90 days. A notice of exercise of the Town's option must also be recorded at the Registry of Deeds and must contain: the name of landowner and a description of the property. A failure to record such a notice within the 120-day period noted above shall be conclusive evidence that the Town did not exercise its option.

The timeline set forth above has been impacted by the provisions of Section 9 of Chapter 53 of the Acts of 2020, which provides, in pertinent part, as follows:

**SECTION 9. Notwithstanding section 8 of chapter 61 of the General Laws, section 14 of chapter 61A of the General Laws, section 9 of chapter 61B of the General Laws or any other general or special law, charter provision, ordinance or by-law to the contrary, during and for a period of 90 days after the termination of the governor's March 10, 2020 declaration of a state of emergency, all time periods within which any municipality is required to act, respond, effectuate or exercise an option to purchase shall be suspended.**

In accordance with M.G.L. c.61B, as affected by Chapter 53 of the Acts of 2020, the deadlines by which the Town must: (a) provide an initial appraisal, and (b) exercise its option to purchase, are tolled during the state of emergency, which is still in effect.<sup>3</sup>

**B. The Applicant must demonstrate site control.**

One of the requirements of the applicable regulations<sup>4</sup> is that, in order to receive a determination of Project Eligibility, an applicant seeking a Comprehensive Permit under Chapter 40B must establish is that it has sufficient control of the site ("Site Control"). 760 CMR 56.04(1)(c) plainly states: "[t]he Applicant shall have site control." The applicable state guidelines define site control as follows: "[i]n the absence of other requirements established by a Subsidizing Agency for its housing programs, site control shall mean that the developer or a related entity holds title or holds a ground lease, an option, or a contract for purchase."

<sup>3</sup> Chapter 53 of the Acts of 2020 has been further modified by Chapter 201 of the Acts of 2020, which ends the tolling under Section 17 of Chapter 53 as of December 1, 2020, thereby impacting the timelines applicable to the Chapter 40B Applications, but does not affect the tolling of deadlines with respect to the Town's execution of its rights under Chapter 61B.

<sup>4</sup> 760 CMR 56.00, et seq. Comprehensive Permit; Low or Moderate Housing.

Department of Housing and Community Development Guidelines, updated December 2014, Responsibilities of Housing Agency, Section IV.A.1(c).<sup>5</sup>

Here, the Applicant was issued a Project Eligibility/Site Approval letter (“PEL”) from the Massachusetts Housing Finance Agency (“MassHousing”) dated April 30, 2020, finding that the Applicant had demonstrated site control. A copy of the April 30, 2020 PEL is attached as **Exhibit E**. However, MassHousing’s determination of Site Control is based upon a perfunctory review of evidence provided it showing that the applicant has a property interest in the site. Site Control within the Chapter 40B context is a minimum standard of an applicant’s legal or equitable interest in the subject real estate. Site Control does not speak to the quality of the owner’s title or to the presence or absence of the Town’s interests created under Chapter 61B. Moreover, MassHousing itself recognized the Chapter 61B issue within the PEL, stating: “[t]he Applicant should be prepared to discuss the Site’s encumbrance under M.G.L c.61B and all associated requirements for removal of the land from the tax classification.” PEL at p. 3.

The Department of Housing and Community Development’s regulations at 760 CMR 56.04(6) provide that the “[i]ssuance of a determination of Project Eligibility shall be considered by the Board or the Committee to be conclusive evidence that the Project and the Applicant have satisfied the project eligibility requirements of 760 CMR 56.04(1).” However, the regulation continues, providing that the: “[a]lleged failure of the Applicant to continue to fulfill any... project eligibility requirements may be subsequently raised by the Board at any time, with the burden of proof on the Board... solely upon the grounds that there has been a substantial change affecting the project eligibility requirements set forth at 760 CMR 56.04(1). Such challenge shall be decided by the Subsidizing Agency [in this case, MassHousing] in accordance with the procedure set forth in 760 CMR 56.04(5), and the Board hearing... may be stayed until such challenge is decided” (emphasis added).

**C. The Select Board’s actions constitute a substantial change affecting the project eligibility requirements.**

It is self-evident that the Select Board’s stated intent to purchase two parcels of land within the 40B Applications development site represents a substantial change to the applicable project eligibility requirements because the development cannot go forward as currently proposed if the Town purchases these parcels. Accordingly, under 760 CMR 56.04(5), the Board may refer this issue back to MassHousing for determination and may stay the 40B Application hearing process until resolved. “[S]ite control is an issue to be determined by the subsidizing agency for the purpose of demonstrating eligibility for the funding of a project.” Cserr v. Bruce, LLC, 91 Mass. App. Ct. 1119 (Mass. App. 2017).

The regulations at 760 CMR 56.04(5) set forth the process for determination of the Site Control issue as follows:

<sup>5</sup> <https://www.mass.gov/files/documents/2017/10/10/guidecomprehensivepermit.pdf>.

Substantial Changes. If an Applicant desires to change aspects of its proposal that would affect the project eligibility requirements set forth at 760 CMR 56.04(1), after it has received a determination of Project Eligibility, it shall notify the Subsidizing Agency in writing of such changes, with a copy to the Department, the Chief Executive Officer of the municipality, and the [Zoning] Board. The Subsidizing Agency shall determine within 15 days whether such changes are substantial with reference to the project eligibility requirements. Failure to respond shall be deemed a finding that the change is not substantial.

If the Subsidizing Agency finds that the continued changes are substantial, it shall ordinarily defer any review (except if the Applicant, the Chief Executive Office of the municipality, or the Board request otherwise) until either the Board has issued a Comprehensive Permit or the application has been denied and the Applicant has lodged an appeal with the Committee, at which time the Subsidizing Agency shall reaffirm, amend, or deny its determination of the project eligibility requirements. Only the changes affecting the project eligibility requirements set forth at 760 CMR 56.04(1) shall be at issue in such review.

**D. The Zoning Board does not have the authority to waive or override the Town's Chapter 61B rights.**

Chapter 40B allows a developer to override local zoning bylaws and obtain a Comprehensive Permit from the local zoning board. Under the statute, the zoning board is granted the same power to issue permits or approvals as any local board or official who would otherwise act with respect to such application, including but not limited to the power to attach to said permit or approval conditions and requirements with respect to height, site plan, size or shape, or building materials. However, the Town's right of first refusal under Chapter 61B is a statutorily created interest in real property that only the Select Board may choose to exercise, assign, or waive.

The Town's Chapter 61B property interest in the Subject Parcels cannot be equated with a zoning board's power to grant permits and approvals and cannot therefore be waived or overridden by the zoning board. See 135 Wells Ave., LLC v. Comm, 478 Mass. 346 (2017). In Wells, the City of Newton's zoning board denied a Comprehensive Permit application where the plaintiff's site was subject to a restrictive covenant held by the City, concluding that it lacked authority to amend the deed restriction, an interest in land held by the city. Upon appeal, the Housing Appeals Committee ("HAC"), Land Court and the Supreme Judicial Court ("SJC") all affirmed the zoning board's decision. The SJC held that (1) the negative easement is a property interest in land, and a zoning board does not have authority to modify certain types of property interests in land; and (2) a restrictive covenant is not invalid where the restrictions provide valuable interests to the city. The SJC observed that "the HAC retains the authority to dispense with local requirements or regulations, as is necessary to ensure the completion of a G.L.c.40B project. Nonetheless, that power clearly does not include the ability to alter real property rights" (emphasis added). Wells, 478 Mass. at 358 n.11 (emphasis added). See also Zoning Board of

Appeals of Groton v. Housing Appeals Committee, 451 Mass. 35 (2008) (G.L. c.40B confers no authority to order a municipality to grant an easement).<sup>6</sup>

### III. CONCLUSION

To summarize all the above: (1) the Town's right of first refusal respecting the Subject Parcels constitutes a property interest that cannot be waived or overridden by the Zoning Board of Appeals; (2) the Town's exercise of its said right constitutes a substantial change affecting the project eligibility requirements under Chapter 40B, namely site control; and (3) upon determination that the Applicant can no longer demonstrate site control, the Zoning Board may refer this question back to MassHousing for resolution under 760 CMR 56.04(5) and stay its consideration of the 40B Applications until MassHousing has rendered a decision.

*2020.11.25 P&A Opinion re 61B Memo (1910-35)*

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<sup>6</sup> The Town of Groton was represented by Blatman, Bobrowski & Haverty, LLC in the Groton matter, the firm representing the Applicant here.

**EXHIBIT A**

**BLATMAN, BOBROWSKI & HAVERTY, LLC**

ATTORNEYS AT LAW

9 DAMONMILL SQUARE, SUITE 4A4  
CONCORD, MA 01742  
PHONE 978.371.2226  
FAX 978.371.2296

CHRISTOPHER J. ALPHEN, Esq.  
Chris@bbhllaw.net

November 19, 2019

By Certified Mail – Postage Prepaid

Select Board's Office  
Town Hall  
19 Washington Street  
Sherborn, MA 01770

Assessor's Office  
Town Hall  
19 Washington Street  
Sherborn, MA 01770

Planning Board  
Town Hall  
19 Washington Street  
Sherborn, MA 01770

Agricultural Commission  
Conservation Commission  
Town Hall  
19 Washington Street  
Sherborn, MA 01770

State Forester  
c/o Jim Montgomery, Commissioner  
Department of Conservation and  
Recreation  
251 Causeway Street, Suite 900  
Boston, MA 02114-2104

RE: NOTICE OF INTENT TO SELL AND CONVERT LAND PURSUANT TO M.G.L.  
CHAPTER 61B, SECTION 9/ 31 Hunting Lane, Sherborn, Massachusetts

To Whom It May Concern:

This firm is counsel for Igor Lybarsky, as Trustee of the Barsky Estate Realty Trust u/d/t dated August 26, 2011 recorded with Middlesex South District Registry of Deeds at Book 60509, Page 174 (hereinafter the "Seller" or "Landowner"), in its capacity as Seller of certain land in Sherborn, Massachusetts. The purpose of this letter is to inform you of the Seller's intent to sell the following described parcels of land and that the Buyer's proposed use will convert the land for residential uses. The current use of the land is agricultural and horticultural.

The exact location of the land and acreage of the land to be sold by the Seller is shown on the enclosed Sherborn Assessors' Map attached hereto and said land is described as follows:

Parcel 2 in the deed recorded with the Middlesex South District Registry of Deeds in Book 66954, Page 354 and the land known as Parcel "A" on a plan entitled "Plan of Land Sherborn, Mass., Scale 1"=50', Dec. 6, 1999, Prepared For: Kent A. Fitzpatrick, Prepared By: GLM Engineering Consultants, Inc.", which plan is recorded with said Registry as

Plan No. 141 of 2000 in Plan Book 31133, Page 597 containing 4.88 acres of land more or less according to said plan, excluded from the sale is Parcel 1 described in said deed; and

The premises known and numbered as 31 Hunting Lane, Sherborn, Massachusetts 01770 being Assessor Parcel 11-0-3C and Parcel 11-0-3B more particularly described in the deed recorded with the Middlesex South Registry of Deeds in Book 67090, Page 363, being the parcel shown as Lot 3 on a plan of land entitled, "Plan of Lan, Sherborn, Mass." by MetroWest Engineering, Inc., dated October 1, 1993, Revised November 4, 1993, recorded with said Registry as Plan No. 194 of 1994 containing 737,415 square feet or 16.93 acres of land more or less, according to said plan and the parcel shown as Lot 3 on plan entitled "Definitive Subdivision Plan, Unity Farms, Sherborn, Mass." by MetroWest Engineering, Inc., dated December 4, 1993, recorded with said Registry as Plan No. 401 of 1994 containing 348,324 square feet or 8 acres, more or less, according to said plan.

(collectively sometime hereinafter referred to as "Subject Land"). Copies of said plans are enclosed herewith.

The name, address and phone number of the Landowner is:

Igor Lybarsky, as Trustee of the Barsky Estate Realty Trust, with address of 70 Greenwood Street, Sherborn, Massachusetts 01770 (phone: 617-299-9193). Please address follow up communication in care of the undersigned, including, but not limited to a notice of non-exercise, as follows: Christopher J. Alphen, Esq. and Paul Haverty, Esq., Blatman, Bobrowski & Haverty, LLC, 9 Damonmill Square, Ste. 4A4, Concord, MA 01742 (phone: 978-371-2226).

Enclosed, enclosed you will find true copies of an executed purchase and sale agreement specifying the purchase price and all terms and conditions of the proposed sale of the Subject Land. Please accept this as a certification that the enclosed copies of the purchase and sale agreement are true copies.

Pursuant to M.G.L. Chapter 61B, Section 9, the Town shall have a period of one hundred and twenty (120) days to exercise its first refusal option to meet the bona fide offer for the Subject Land. For your convenience, we have also enclosed a proposed response letter for your use in the event that the Town will not exercise its option.

Thank you for your attention to this matter.

Very truly yours,



Christopher J. Alphen, Esq.

Enclosures (as stated)

Select Board of the Town of Sherborn

Town Hall  
19 Washington Street  
Sherborn, MA 01770

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(date)

By Certified Mail – Postage Prepaid

Igor Lybarsky, as Trustee  
Barsky Estate Realty Trust  
c/o Christopher J. Alphen, Esq.  
Blatman, Bobrowski & Haverty, LLC  
9 Damonmill Square, Ste. 4A4  
Concord, MA 01742

NOTICE OF INTENT TO SELL AND CONVERT PURSUANT TO M.G.L. CHAPTER 61B, SECTION 9/ 31 Hunting Lane, Sherborn, Massachusetts

Dear Mr. Lybarsky and Mr. Alphen:

Reference is made to your notice dated November 19, 2019 provided pursuant to Massachusetts General Laws Chapter 61B, Section 9 pertaining to the following parcels of land in Sherborn, Massachusetts:

Parcel 2 in the deed recorded with the Middlesex South District Registry of Deeds in Book 66954, Page 354 and the land known as Parcel "A" on a plan entitled "Plan of Land Sherborn, Mass., Scale 1"=50', Dec. 6, 1999, Prepared For: Kent A. Fitzpatrick, Prepared By: GLM Engineering Consultants, Inc.", which plan is recorded with said Registry as Plan No. 141 of 2000 in Plan Book 31133, Page 597 containing 4.88 acres of land more or less according to said plan, excluded from the sale is Parcel 1 described in said deed; and

The premises is known and numbered as 31 Hunting Lane, Sherborn, Massachusetts 01770 being Assessor Parcel 11-0-3C and Parcel 11-0-3B more particularly described in the deed recorded with the Middlesex South Registry of Deeds in Book 67090, Page 363, being the parcel shown as Lot 3 on a plan of land entitled, "Plan of Lan, Sherborn, Mass." by MetroWest Engineering , Inc., dated October 1, 1993, Revised November 4,

1993, recorded with said Registry as Plan No. 194 of 1994 containing 737,415 square feet or 16.93 acres of land more or less, according to said plan and the parcel shown as Lot 3 on plan entitled "Definitive Subdivision Plan, Unity Farms, Sherborn, Mass." by MetroWest Engineering, Inc., dated December 4, 1993, recorded with said Registry as Plan No. 401 of 1994 containing 348,324 square feet or 8 acres, more or less, according to said plan.

Please be advised that at a duly posted and convened meeting of the Sherborn Select Board on \_\_\_\_\_, 2020, a majority of the Select Board voted NOT TO EXERCISE THE OPTION to purchase the Subject Land as provided by M.G.L. Chapter 61B, Section 9. This notice was provided for purposes of recording this notice of non-exercise with the Middlesex South District Registry of Deeds.

Thank you for your attention to this matter.

Sherborn Select Board

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COMMONWEALTH OF MASSACHUSETTS  
COUNTY OF MIDDLESEX

On this \_\_\_\_\_ day of \_\_\_\_\_, 2020, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was one of the following (check applicable box):  a driver's license;  a valid passport;  personally known to be the person whose name is signed on the preceding or attached document; or  other \_\_\_\_\_ and acknowledged to me that he/she signed it voluntarily for its stated purpose as a member of the Board of Selectmen for the Town of Littleton, a municipal corporation.

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- Notary Public  
My commission expires:

**From the Office of:**  
*Blatman, Bobrowksi & Haverty, LLC*  
9 Damonmill Square, Suite 4A4  
Concord, MA 01742  
Phone: 978-371-2226  
Fax: 978-371-2296

## **PURCHASE AND SALE AGREEMENT**

(hereinafter referred to as the "Agreement")

This 14th day of November 2019

**1. PARTIES AND MAILING ADDRESSES**

Igor Lybarsky, Trustee of Barsky Estate Realty Trust, under Declaration of Trust dated August 26, 2011 and recorded with the Middlesex South Registry of Deeds in Book 60509, Page 174 of 70 Greenwood Street, Sherborn, Massachusetts 01770 (hereinafter referred to as the "SELLER") agrees to sell and 31 Hunting Lane, LLC a Massachusetts Limited Liability Company with a mailing address of 23 Hunting Lane, Sherborn, Massachusetts 01770 (hereinafter referred to as the "BUYER") (SELLER and BUYER sometimes hereinafter collectively referred to as the "Parties"), agrees to buy, upon the terms hereinafter set forth, the following described premises:

**2. DESCRIPTION**

The premises is known as a parcel of land along Hunting Lane in Sherborn, Middlesex, Massachusetts being Assessor's Parcel 11-0-02 as more particularly described as Parcel 2 in the deed recorded with the Middlesex South District Registry of Deeds in Book 66954, Page 354 and the land known as Parcel "A" on a plan entitled "Plan of Land Sherborn, Mass., Scale 1"=50', Dec. 6, 1999, Prepared For: Kent A. Fitzpatrick, Prepared By: GLM Engineering Consultants, Inc.", which plan is recorded with said Registry as Plan No. 141 of 2000 in Plan Book 31133, Page 597 containing 4.88 acres of land more or less according to said plan, excluded from the sale is Parcel 1 described in said deed; and

The premises is known and numbered as 31 Hunting Lane, Sherborn, Massachusetts 01770 being Assessor Parcel 11-0-3C and Parcel 11-0-3B more particularly described in the deed recorded with the Middlesex South Registry of Deeds in Book 67090, Page 363, being the parcel shown as Lot 3 on a plan of land entitled, "Plan of Lan, Sherborn, Mass." by MetroWest Engineering , Inc., dated October 1, 1993, Revised November 4, 1993, recorded with said Registry as Plan No. 194 of 1994 containing 737,415 square feet or 16.93 acres of land more or less, according to said plan and the parcel shown as Lot 3 on plan entitled "Definitive Subdivision Plan, Unity Farms, Sherborn, Mass." by MetroWest Engincering, Inc., dated December 4, 1993, recorded with said Registry as Plan No. 401 of 1994 containing 348,324 square feet or 8 acres, more or less, according to said plan.

EXCLUDING the rights in the easement to be granted by the Buyer to Seller or its designee pursuant to the Easement Agreement attached hereto as Exhibit A and paragraph 39 of this agreement.

(hereinafter, together, referred to as the "Premises").

**INCLUDED ITEMS:** The following items are included in the sale as part of the Premises in addition to those generally listed above in this Agreement:

All Permits and Approvals (as defined by Section 38, below) including, but not limited to all plans, engineering, soil test results, all plans and data obtained for the Seller and/or submitted to the Sherborn Zoning Board of Appeals and Board of Health or other governmental agencies, together with all covenants, easements and agreements for the benefit of said approvals shall become the property of the Buyer. The Seller is to convey to Buyer with each of the lots, permits from the Zoning Board of Appeals for the construction of a 40B residential project.

**3. BUILDINGS, STRUCTURES, IMPROVEMENTS, FIXTURES**

Included in the sale as a part of said Premises are the buildings, structures, and improvements now thereon, and the fixtures belonging to the SELLER and used in connection therewith.

**4. TITLE DEED**

Said Premises are to be conveyed by a good and sufficient quitclaim deed running to the BUYER, or to the nominee designated by the BUYER by written notice to the SELLER at least seven (7) calendar days before the deed is to be delivered as herein provided, and said deed shall convey a good and clear record and marketable title thereto, free from encumbrances, except

- (a) Provisions of existing building and zoning laws;
- (b) Existing rights and obligations in party walls which are not the subject of written agreement;
- (c) Such taxes for the then current fiscal year as are not due and payable on the date of the delivery of such deed;
- (d) Any liens for municipal betterments assessed after the date of this Agreement;
- (e) Easements, restriction and reservations of record, if any, so long as the same do not prohibit or materially interfere with the current use of said Premises as a 40B Development; and
- (f) The easement to be granted by the Buyer to Seller or its designee pursuant to the Easement Agreement attached hereto as Exhibit A and paragraph 29 of this agreement.

**5. PLANS**

If said deed refers to a plan necessary to be recorded therewith the SELLER shall deliver such plan with the deed in form adequate for recording or registration.

**6. REGISTERED TITLE**

In addition to the foregoing, if the title to said Premises is registered, said deed shall be in form sufficient to entitle the BUYER to a Certificate of Title to said Premises, and the SELLER shall deliver with said deed all instruments, if any, necessary to enable the BUYER to obtain such Certificate of Title.

**7. PURCHASE PRICE**

The agreed to purchase price for said Premises is Three Million and 00/100 Dollars (\$3,000,000.00), of which:

\$ 0	have been paid
\$ 500.00	have been paid as a deposit this day
\$2,999,500.00	is to be paid at the time of the delivery of the deed by wire, or by bank check, or attorney's conveyancing account check

\$3,000,000.00 TOTAL

**8. TIME FOR PERFORMANCE; DELIVERY OF DEED ("CLOSING")**

Such deed is to be delivered at 12:00 o'clock P.M. on the 1st day of May 2020 or at the Buyer's sole option receipt of all approvals and the expiration of all appeals as further described in Paragraph 38, at the **Middlesex South District Registry of Deeds** or at the office of the conveyancing attorney, unless otherwise agreed upon in writing. Nevertheless, the closing will occur within twenty (20) business days of receipt of all approvals and the expiration of all appeals as further described in Paragraph 38. It is agreed that time is of the essence of this agreement.

**9. POSSESSION AND CONDITION OF PREMISES**

Full possession of said Premises free of all tenants and occupants, except as herein provided, is to be delivered at the time of the delivery of the deed, said Premises to be then (a) in the same condition as they were at the time of BUYER's inspection of the Premises, all of BUYER's use and wear thereof excepted, and (b) not in record violation of said building and zoning laws, and (c) in compliance with provisions of any instrument referred to in Clause Four (4) hereof. The BUYER shall be entitled personally to inspect said premises prior to the delivery of the deed in order to determine whether the condition thereof complies with the terms of this clause.

**10. EXTENSION TO PERFECT TITLE OR MAKE PREMISES CONFORM**

If the SELLER shall be unable to give title or to make conveyance, or to deliver possession of the Premises, all as herein stipulated, or if at the time of the delivery of the deed the Premises do not conform with the provisions hereof, then the SELLER shall use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or to make the said premises conform to the provisions hereof, as the case may be, in which event the SELLER shall give written notice thereof to the BUYER at or before the time of performance hereunder, and thereupon the time for performance shall be extended for a period of thirty calendar days. Reasonable efforts shall not require the SELLER to spend in excess of \$5,000.00, exclusive of voluntary liens and encumbrances.

**11. FAILURE TO PERFECT TITLE OR MAKE PREMISES CONFORM, etc.**

If at the expiration of the extended time the SELLER shall have failed so to remove any defects in title, deliver possession, or make the Premises conform, as the case may be, all as herein agreed, or if at any time during the period of this Agreement or any extension thereof, the holder of a mortgage on said Premises shall refuse to permit the insurance proceeds, if any, to be used for such purposes, then any payments made under this Agreement shall be forthwith refunded and all

other obligations of the Parties hereto shall cease and this Agreement shall be void without recourse to the Parties hereto.

**12. BUYER'S ELECTION TO ACCEPT TITLE**

The BUYER shall have the election, at either the original or any extended time for performance, to accept such title as the SELLER can deliver to the said Premises in their then condition and to pay therefore the purchase price without deduction, in which case the SELLER shall convey such title, except that in the event of such conveyance in accord with the provisions of this Paragraph, if the said Premises shall have been damaged by fire or casualty insured against, then the SELLER shall, unless the SELLER has previously restored the Premises to their former condition, either

- (a) pay over or assign to the BUYER, on delivery of deed, all amounts recovered or recoverable on account of such insurance, less any amounts reasonably expended by the SELLER for any partial restoration, or
- (b) if a holder of a mortgage on said Premises shall not permit the insurance proceeds or a part thereof to be used to restore the said Premises to their former condition or to be so paid over or assigned, give to the BUYER a credit against the purchase price, on delivery of the deed, equal to said amounts so recovered or recoverable and retained by the holder of the said mortgage less any amounts reasonably expended by the SELLER for any partial restoration.

**13. ACCEPTANCE OF DEED**

The acceptance of a deed by the BUYER or his nominee as the case may be, shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed, except such as are, by the terms hereof, to be performed after the delivery of said deed.

**14. USE OF MONEY TO CLEAR TITLE**

To enable the SELLER to make conveyance as herein provided, the SELLER may, at the time of delivery of the deed, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, provided that all instruments so procured are recorded in accordance with customary local conveyancing practice.

**15. INSURANCE**

None.

All risk of loss shall remain with the seller until recording of the deed.

**16. ADJUSTMENTS**

Water and sewer use charges and taxes for the then current fiscal year, shall be apportioned and fuel value shall be adjusted, as of the day of performance of this agreement and the net amount thereof shall be added to or deducted from, as the case may be, the purchase price payable by the BUYER at the time of delivery of the deed.

**17. ADJUSTMENT OF UNASSESSED AND ABATED TAXES**

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, with a reapportionment as soon as the new tax rate and valuation can be ascertained; and, if the taxes

which are to be apportioned shall thereafter be reduced by abatement, the amount of such abatement, less the reasonable cost of obtaining the same, shall be apportioned between the Parties, provided that neither party shall be obligated to institute or prosecute proceedings for an abatement unless herein otherwise agreed.

**18. BROKER'S FEE**

NONE.

**19. DEPOSIT**

All deposits made hereunder shall be held in escrow by Blatman, Bobrowksi & Haverty, LLC as escrow agent subject to the terms of this Agreement and shall be duly accounted for at the time for performance of this Agreement. In the event of any disagreement between the Parties, the escrow agent shall retain all deposits made under this Agreement pending instructions mutually given by the SELLER and the BUYER. Said deposit to be held in a non interest bearing money market account.

**20. BUYER'S DEFAULT; DAMAGES**

If the BUYER shall fail to fulfill the BUYER's agreements herein, all deposits made hereunder by the BUYER shall be retained by the SELLER as liquidated damages and this shall be Sellers sole and exclusive remedy at law and in equity.

**21. RELEASE BY HUSBAND OR WIFE**

The SELLER's spouse hereby agrees to join in said deed and to release and convey all statutory and other rights and interests in said Premises.

**22. LIABILITY OF TRUSTEE, SHAREHOLDER, BENEFICIARY, ect.**

If the SELLER or BUYER executes this Agreement in a representative or fiduciary capacity, only the principal or the estate represented shall be bound, and neither the SELLER or BUYER so executing, nor any shareholder or beneficiary of any trust, shall be personally liable for any obligation, express or implied, hereunder.

**23. WARRANTIES AND REPRESENTATIONS**

The BUYER acknowledges that the BUYER has not been influenced to enter into this transaction nor has he relied upon any warranties or representations not set forth or incorporated in this Agreement, or previously made in writing, except for the following additional warranties and representations, if any, made by either the SELLER or the Broker(s): None.

**24. CONSTRUCTION OF AGREEMENT**

This instrument, executed in multiple counterparts, is to be construed as a Massachusetts contract, is to take effect as a sealed instrument, sets forth the entire contract between the Parties, is binding upon and ensures to the benefit of the Parties hereto and their respective heirs, devisees, executors, administrators, successors and assigns, and may be canceled, modified or amended only by a written instrument executed by both the SELLER and the BUYER. If two or more persons are named herein as BUYER their obligations hereunder shall be joint and several. The captions and marginal notes are used only as a matter of convenience and are not to be considered a part of this agreement or to be used in determining the intent of the parties to it.

**25. LEAD PAINT LAW**

The Parties acknowledge that, under Massachusetts law, whenever a child or children under six years of age resides in any residential premises in which any paint, plaster or other accessible material contains dangerous levels of lead, the owner of said premises (i.e. BUYER herein) must remove or cover said paint, plaster or other material so as to make it inaccessible to children under six years of age.

**26. NOTICES.** Any notices required under this Agreement shall be deemed sufficient if delivered in hand, by facsimile, email, by national overnight courier service, to the BUYER or SELLER at the address set forth in Article 1 above and to their respective attorney as set forth below:

To the SELLER:      Mark Bobrowski  
                            Paul Haverty  
                            Blatman, Bobrowski, Mead & Talerman, LLC  
                            9 Damonmill Square, Suite 4A4  
                            Concord, MA 01742  
                            Phone: (978) 371-2226  
                            Fax: (978) 371-2296  
                            mark@bbhllaw.net  
                            paul@bbhllaw.net

To the BUYER:      AMENDED BY NOTICE TO SELLER'S COUNSEL

**27. LIMITED POWER TO SIGN.** Each of the undersigned hereby authorizes his or her respective attorney or agent in the case of the Seller to assent to and execute on that party's behalf any agreements extending the time for the performance of any event or of any notice that may be given under this Agreement. Electronic mail shall be sufficient for such assents.

**28. TITLE STANDARDS.** Any title or practice matter which is the subject of a title or practice standard of the Real Estate Bar Association of Massachusetts at the time for delivery of the Deed shall be governed by said title or practice standard to the extent applicable. Any dispute as to any title issue or conveyancing practice remaining unresolved at the scheduled time for performance under this Agreement shall be resolved in accordance with applicable Standards or Practices of the REBA, to the extent possible.

**29. EXTENSION UNDER ARTICLE 10.** If an extension of the time for performance by SELLER hereunder is invoked it shall specifically be construed to apply to matters affecting title, the physical condition of the Premises and compliance of the Premises with municipal, county, state or federal codes, ordinances, statutes or regulations concerning the Premises and to which the Premises are subject under the terms of this Agreement and shall not, however, be construed to excuse SELLER from vacating the Premises at the time set for performance hereunder for reasons such as unavailability of movers, inability to find new housing, inconvenience or other such delays in performance hereunder.

**30. CHANGE OF CLOSING LOCATION.** Notwithstanding the provisions of Article 8 of this Agreement, the place for the delivery of the SELLER'S deed will be at the office of the BUYER'S Attorney for the BUYER'S acquisition of the premises, if located in the subject county.

**31. SELLERS DOCUMENTS.** SELLER agrees at the closing to execute a statement under oath to any title insurance company issuing a policy to BUYER and/or BUYER'S mortgagee and/or the BUYER individually to the effect that: (1) there are no tenants, lessees or parties in possession of the premises; (2) SELLER has no knowledge of any work having been done to the premises which would entitle anyone now or hereafter to claim a mechanics' or materialmen's lien on the premises; and (3) SELLER is not a foreign person subject to The withholding provisions of the Deficit Reduction Act of 1984 (FIRPTA). SELLER hereby makes such representations to the BUYER as of the closing and this paragraph shall survive the closing.

**32. LEGAL COUNSEL.** BUYER and SELLER hereby acknowledge that they have been offered the opportunity to seek and confer with qualified legal counsel of their choice prior to signing this Agreement.

**33. ADJUSTMENTS.** If any errors or omissions are found to have occurred in any calculations or figures used in the settlement statement signed by the parties (or would have been included if not for any such error or omission) and notice hereof is given to the party to be charged, then such party agrees to make a payment to correct the error or omission. The parties hereto also agree to execute and deliver to the requesting party whatever additional documents or amendments to existing documents are reasonably required to effectuate the sale and purchase under this Agreement provided such additional documents or amendments are prepared by the requesting party, and do not in any way adversely affect, or otherwise enlarge the liability of, any of the parties relative to said sale and purchase. The provisions of this Clause shall survive delivery of the deed.

**34. INTEGRATION.** This agreement supersedes all prior agreements, memoranda and other understandings between the parties and represents the complete and full agreement of the parties hereto except as this Agreement is modified or altered by written agreement signed by the parties hereto. All prior offers, agreements and memoranda, including the Contract (Offer) to Purchase, Listing Sheet and any Statement of Condition, with respect to the transactions contemplated hereby shall be null and void.

**35. DUE DILIGENCE PERIOD.** Buyer shall have sixty (60) days after execution of this Agreement to perform any and all Due Diligence desired by Buyer, including but not limited to engineering studies, environmental assessment, and other such studies or reviews required to determine the suitability of the Property for the Buyer's intended use. To accomplish the studies and reviews, including, without limitation, an environmental assessment, the Buyer shall have access to the Property. Buyer agrees to (1) restore the premises as nearly as possible to the condition it was in prior to the performance of any tests, and (2) not disclose the results of such tests to any party other than its principals, accountants, attorney, and lender(s), otherwise, such tests and results shall remain confidential, except if disclosure is required by law. Should Buyer elect to terminate the P&S Agreement, at Buyer's sole discretion, at any time during the Due Diligence Period, Seller shall be required to return all deposits to Buyer and said Agreement shall become null and void and neither party will have any additional claim against the other.

**36. INSPECTION.** BUYER represents and acknowledges that BUYER has been given the opportunity to conduct any and all inspections of said premises desired by BUYER, including, without limitation, mechanical, structural, utility systems, heating, septic, plumbing and electrical systems, major appliances, pest and termite, lead paint, asbestos, radon, urea formaldehyde foam insulation and any hazardous chemicals, material or substances, and any environmental issues; and the BUYER is fully satisfied with the results of the same, the condition of said premises, and accepts said premises AS IS, except as otherwise provided herein, and is not relying upon any representations or warranties (express, implied, or otherwise) whatsoever of the SELLER or their agents as to the character, quality, use, value, quantity or condition of said premises. The provisions hereof shall survive the delivery of the deed.

The closing of this sale, and acceptance and recording of the deed by the Buyer, shall constitute acknowledgment that the premises and systems contained therein are acceptable, and that the quality of the title delivered is acceptable, and that Seller shall have no further obligations or responsibilities for the condition of the premises or the title, and that Buyer releases Seller from any liability in any way related to the condition of the premises and title. The provisions of this paragraph shall survive the delivery of the Deed.

**37. AGREEMENT NOT TO BE RECORDED.** This Agreement may not be assigned by the BUYER without the prior written consent of the SELLER and any purported assignment in violation of this provision shall be null and void. In addition, BUYER shall not record a copy of this Agreement or any memorandum or notice thereof in any public office. If BUYER either makes an assignment of its rights under this Agreement or records a copy of this Agreement or any memorandum or notice thereof, SELLER, at its option, may deem BUYER to be in default of its obligations hereunder and may declare SELLER'S obligations hereunder to be null and void and retain BUYER'S deposits hereunder and any interest earned thereon. This provision is not in derogation of the BUYER'S rights under Clause 4 to designate a nominee to take title.

**38. APPROVALS CONTINGENCY.** Seller acknowledges that Buyer is purchasing the Premises for the purpose of constructing a residential development under the provisions of the Massachusetts 40B Statute, (the "Project"). Buyer's obligation to perform under this Agreement is conditioned upon the Buyer obtaining, at Buyer's cost and expense, the issuance of all governmental approvals required under applicable law by any governmental authority for the development and use of the Project (collectively, the "Approvals").

Approvals include, but are not limited to: (1) Obtaining written determination of Project Eligibility from MassHousing for the Project; (2) Obtaining a satisfactory Comprehensive Permit from the Sherborn Zoning Board of Appeals for the use and construction of the Project; (3) Obtaining Regulatory Agreement and Monitoring Services Agreement for the Project; (4) Obtaining Final Approval from the Subsidizing Agency (MA Department of Housing and Community Development) ("DHCD"), as required by Chapter 40B regulations.

For purposes of this Agreement, the Approvals shall not be deemed to have been issued unless and until they have been duly granted by the applicable governmental authority without any conditions that are deemed, in Buyer's sole discretion, unreasonable or likely to result in any additional cost, and with all applicable appeal periods having expired without any appeals having been filed, or if appeals have been filed, unless and until all appeals have been dismissed with prejudice (satisfaction of the foregoing criteria being herein sometimes referred to as the "Approvals Issuance").

Buyer agrees to use diligent efforts to cause all required plans to be prepared and all applications for the Approvals to be filed as soon as practicable after the execution of this Agreement, and shall thereafter pursue the Approvals Issuance diligently. The Seller shall reasonably cooperate with the Buyer in the filing and prosecution of all applications for the Approvals, including, without limitation, by the execution of such instruments as the Buyer may reasonably request and by attendance (upon Buyer's request) at any governmental hearings or meetings in connection with such applications.

In the event that (i) Buyer's application for any Approval is denied by the applicable governmental authority; or (ii) Buyer determines at any time whether before or after its filings, in Buyer's discretion, that there is no reasonable likelihood of obtaining the Approvals; then in either such event, the Buyer shall have the right to terminate this Agreement by giving written notice to the Seller, in which event this Agreement shall be deemed terminated and of no further force or effect, without further recourse to either party at law or in equity. The Deposit in the amount shall be refunded to BUYER forthwith.

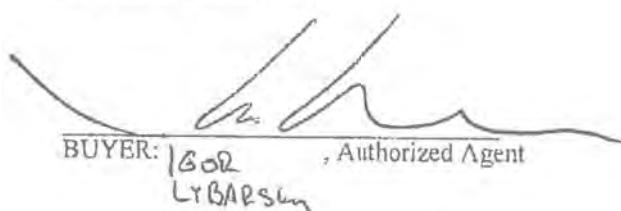
**39. EASEMENT CONTINGENCY.** At the time of closing the Buyer shall grant the Seller or its nominee an exclusive utility easement for the benefit of the land known as 41 North Main Street, Sherborn, Middlesex, Massachusetts being Assessor's Parcel 11-0-41 containing 5.86 acres of land more or less as more particularly described as Parcel 1 in the deed recorded with the Middlesex South District Registry of Deeds, in Book 66954, Page 354 pursuant to the Easement Agreement attached hereto as Exhibit A. The Easement and the accompanying plan may be modified prior to closing in order to clarify the rights and location of said easement. The easement shall be for the purpose of constructing, installing and the use of a private wastewater treatment plant and various water wells as shown on the plan. The Seller shall have the easement to construct, access and maintain water wells and a wastewater treatment plant.

**NOTICE:** THIS IS A LEGAL DOCUMENT THAT CREATES BINDING OBLIGATION. IF NOT UNDERSTOOD, CONSULT AN ATTORNEY.

Barsky Estate Realty Trust

  
SELLER: Igor Lybarsky, Trustee

31 Hunting Lane, LLC

  
BUYER: Igor LYBARSKY, Authorized Agent

## **EXHIBIT B**



*The Leader in Public Sector Law*

101 Arch Street, Boston, MA 02110  
Tel: 617.556.0007 | Fax: 617.654.1735  
[www.kplaw.com](http://www.kplaw.com)

December 20, 2019

Lee S. Smith  
[lsmith@kplaw.com](mailto:lsmith@kplaw.com)

BY E-MAIL AND FACSIMILE

Christopher J. Alphen, Esq.  
Paul Haverty, Esq.  
Blatman, Bobrowski & Haverty, LLC  
9 Damonmill Square, Suite 4A4  
Concord, MA 01742

Re: 31 Hunting Lane, Sherborn, MA – Notice of Intent to Sell and Convert Land  
Pursuant to G.L. Chapter 61B, Section 9

Dear Mr. Alphen and Mr. Haverty:

This firm is Town Counsel to the Town of Sherborn (the “Town”), which received the Notice of Intent to Sell and Convert Land Pursuant to G.L. Chapter 61B, Section 9 dated November 19, 2019 and received on November 21, 2019 (the “Notice”), informing the Town that Igor Lybarsky, as Trustee of the Barsky Estate Realty Trust (the “Owner”) intends to sell to 31 Hunting Lane, LLC (the “Buyer”), for consideration of \$3,000,000, the property located at 31 Hunting Lane, Sherborn along with two additional parcels of land as more particularly described in the Notice (the “Property”). The Notice includes a copy of the Purchase and Sale Agreement (“P&S”) entered into by the Owner and the Buyer. I note that the Notice states that “the current use of the Property is agricultural and horticultural” and that “the Buyer’s proposed use will convert the land for residential uses”. According to the Sherborn Assessor’s records, a portion of the Property is classified under G.L. c. 61B as recreational land.

This letter shall serve to notify the Owner that the Notice is insufficient and the Notice and the P&S do not comply with the requirements of Chapter 61B and that the Town’s 120-day period within which it may exercise its first refusal option to meet a bona fide offer to purchase the land pursuant to G.L. c. 61B, s. 9 will be triggered only when it receives a notice of intent to sell and convert that complies with the statutory requirements.

G.L. c. 61B s. 9 provides in relevant part:

Any notice of intent to sell for other use shall be accompanied by a certified copy of an executed purchase and sale agreement specifying the purchase price and all terms and conditions of the proposed sale, which is limited to only the property classified under this chapter, and which shall be a bona fide offer as described below.

Any notice of intent to sell for other use shall also be accompanied by any additional agreements or a statement of any additional consideration for

Christopher J. Alphen, Esq.

Paul Haverty, Esq.

December 20, 2019

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any contiguous land under the same ownership, and not classified under this chapter, but sold or to be sold contemporaneously with the proposed sale.

For the purposes of this chapter, a bona fide offer to purchase shall mean a good faith offer, not dependent upon potential changes to current zoning or conditions or contingencies relating to the potential for, or the potential extent of, subdivision of the property for residential use or the potential for, or the potential extent of development of the property for industrial or commercial use, made by a party unaffiliated with the landowner for a fixed consideration payable upon delivery of the deed.

The Notice is insufficient and does not comply with G.L. c. 61B s. 9 for the following reasons.

(1) The Notice and P&S include property that is not classified as recreational land pursuant to G.L. c. 61B, specifically, Assessor's Parcel 11-0-2 consisting of 4.8 acres of land and the two acre portion of Assessor's Parcel 11-0-3C consisting of 16.93 acres that includes the residential dwelling and improvements thereon. G.L. c. 61B s. 9 provides, "Any notice of intent to sell for other use shall be accompanied by a certified copy of an executed purchase and sale agreement specifying the purchase price and all terms and conditions of the proposed sale, *which is limited to only the property classified under this chapter....*" (Emphasis added). The P&S, by including land that is not classified under Chapter 61B, does not comply with this requirement.

(2) The P&S is not a bona fide offer. The P&S includes conditions and contingencies relating to the Buyer obtaining "the issuance of all governmental approvals required under applicable law by any governmental authority for the development and use of the Project" being construction of a residential development under the provisions of G.L. c. 40B. Because the P&S is dependent upon potential changes to current zoning or conditions or contingencies relating to the potential for, or the potential extent of, subdivision of the property for residential use, it is not a bona fide offer within the definition set forth in G.L. c. 61B, s. 9.

(3) The P&S is also not a bona fide offer because the Buyer is Igor Lybarsky, as Trustee of the Barsky Estate Realty Trust, and the Seller is 31 Hunting Lane, LLC. According to the records of the Secretary of the Commonwealth, Igor Lybarsky formed 31 Hunting Lane, LLC on November 14, 2019, he is the Manager of the LLC and he is also the person authorized to execute, acknowledge, deliver, and record any recordable instrument purporting to affect an interest in real property for the LLC. Because the Buyer is not unaffiliated with the landowner, the P&S is not a bona fide offer within the definition set forth in G.L. c. 61B, s. 9.

# KP|LAW

Christopher J. Alphen, Esq.

Paul Haverty, Esq.

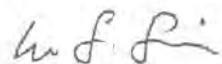
December 20, 2019

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The Owner is hereby cautioned that, should the Owner allow the sale of the property classified under G.L. c. 61B to the Buyer to proceed, the sale will violate Chapter 61B, and the Town will pursue any and all remedies available to enjoin or invalidate the sale and enforce its rights under said statute.

Please contact me if you have any questions.

Very truly yours,



Lee S. Smith

LSS/caa

Enc.

cc: Select Board

707156/SHER/0001

## **EXHIBIT C**



LDS Consulting Group, LLC 233 Needham Street, Newton, MA 02464

LYNNE D. SWEET, MANAGING MEMBER  
617-454-1144

ldsweet@ldsconsultinggroup.com  
www.ldsconsultinggroup.com

January 31, 2020

VIA FIRST-CLASS MAIL & E-MAIL

Ms. Jessica Malcolm  
Ms. Kat Miller  
Mr. Michael Busby  
Comprehensive Permit Program Department  
Massachusetts Housing Finance Agency  
1 Beacon Street  
Boston, MA 02108

**Re: Project Eligibility Letter (PEL) Applications**

Pine Residences, 41 North Main Street, Sherborn, Applicant: 41 North Main LLC

Apple Hill Estates, 31 Hunting Lane, Sherborn, MA, Applicant: 31 Hunting Lane LLC

Dear Ladies and Gentleman:

I am the M.G.L. Chapter 40 B consultant to 41 North Main LLC and 31 Hunting Lane LLC, the applicants in connection with the above-noted PEL applications. It has come to our attention that Board of Selectman of Sherborn has recently filed with your office a letter dated January 17, 2020 commenting on these applications. We appreciate the time and effort they have put into reviewing the applications and now write in response to the Town's letter in order to clarify some pertinent issues.

Development is a process and plans evolve over time. The Development Team is working diligently to not only address the Town's concerns but provide fully engineered and designed plans as well as a Transportation Impact Assessment. **Therefore, we are not going to address every comment at this time as we hope to answer many of the concerns during the comprehensive permitting process at the Zoning Board of Appeals.** At that time, the town will have the benefit of hiring its own peer reviewers to review the application materials. In addition, many of the matters relative to infrastructure will be addressed at the state level through Massachusetts Department of Environmental Protection.

**Site Control:** The applicant has ownership control over all of the land included in the applications for development and additional land around the project sites should it be needed. A railroad crossing may be needed for utilities to serve 41 N. Main Street. See further information below.

- **Railroad Crossing**

The Applicant has hired a contractor who works with the Massachusetts Department of Transportation ("MADOT") on obtaining utility crossings under the railroad tracks. He has contacted MADOT and they have no issues allowing the crossings for utilities, to the extent necessary for the development of 41 North Main Street. They have specified procedures and costs on how to obtain the permits. This is a common practice. See attached letter detailing this procedure.

- **M.G.L. Chapter 61B**

**41 North Main Street** is not subject to M.G.L. 61B. It will get its water from a parcel owned by an affiliate of the developer. As currently designed, it will get its sewer from 31 Hunting Lane, of which all but two acres are subject to M.G.L. 61B tax classification. In the unlikely event that the sewer treatment plant can not be built in 31 Hunting Lane, the 41 North Main Street site can be redesigned to include its own onsite septic treatment system and therefore can be developed separate and apart from 31 Hunting Lane.

A portion of the **31 Hunting Lane** parcel is subject to the M.G.L. 61B tax classification. The record title holder in fee of 31 Hunting Lane is Igor Lybarsky, Trustee of Barsky Estate Realty Trust. The Applicant has control over said Trust. When a property owner, such as the Applicant, enrolls in the Ch. 61B program, a lien is attached to the owner's property to ensure that undeveloped land will continue to provide public benefits. This lien stays with the property when sold or transferred to another landowner. The Chapter 61B lien gives the town a first refusal option that is triggered if the land use is converted to a nonchapter use (e.g., residential, commercial, or industrial) while enrolled in the program or within one year of withdrawal from the program.

The Town's right of first refusal will only be triggered if the Applicant provides the Town with a notice to convert in accordance with G.L. ch. 61B, s. 9.<sup>1</sup> The Town shall have the option to purchase the property at full and fair market value to be determined by an impartial appraisal to be delivered to the property owner with 30 days after the notice to convert is delivered to the Town. Upon agreement of the appraised value, which may be extended beyond 30 days, the Town shall have 120 days to exercise its option to purchase. During the entirety of this process, the Applicant may revoke the intent to convert at any time and with no recourse to either party.

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<sup>1</sup> A notice of intent to sell and convert pursuant to G.L. c.61B, Section 9 would also trigger the Town's right of first refusal. The Applicant previously submitted a notice to intent to sell and convert pursuant to G.L. c.61B, Section 9. The Town deemed the notice insufficient. Accordingly, the Applicant will not be selling the property to any third party which would require a notice of intent to sell and convert.

Based on recent appraisals, the current market value of the land is \$1,200,000 and the house, which is inseparable from the parcel is valued at \$2,000,000. In addition, the not for profit mentioned in the towns correspondence was interested in a low valued parcel of land encumbered by 61b that is no longer part of the application. If the Applicant provides a notice to convert 31 Hunting Lane, there is no indication that the Town or the not for profit has or is willing to allocate the large amount of financial resources necessary to exercise their right of first refusal and purchase the property.

Additionally, the Town will lose its right of first refusal rights in the Property if the Applicant withdraws from the tax program. A landowner who is simply withdrawing from the program at the end of, or within, the one year in Chapter 61B—triggers neither a requirement of notification, nor a right of first refusal. Under these circumstances, the tax classification lien and the Town's rights would be released.

Therefore, the Applicant has site control over all of the parcels in the Application and the ability to obtain easements, if necessary, from MASDOT for infrastructure line easements.

#### **Municipal Actions to Meet Affordable Housing Needs in Sherborn/Safe Harbor**

While this matter is typically addressed at the first Zoning Board of Appeals Public Hearing, we feel it is important to clear up some misrepresentations in the letter. We do agree with the Town that our application was in error and that the town does have a housing production plan that has been approved by the Massachusetts Department of Housing and Community Development. While this effort is commendable and hopefully sets the stage for future affordable housing development, to date, it has not translated into significant production of affordable housing in Sherborn. Therefore, since the town has not produced any housing units under the plan, it is not a certified community under the meaning of the statute. In particular:

- **Subsidized Housing Inventory**

We have attached as Exhibit 2 the towns subsidized housing inventory dated December 19, 2019. It shows 24 units on the SHI and the percent subsidized is 2.3%.

- **Prior Municipal Actions**

The only prior municipal action that we are aware of was in 2017, and this was not for family housing as is proposed by the Applicant. In 2017, a 40B affordable project was not voted on and was not approved. In 2017 a parcel was rezoned for affordable elderly housing project of 67 town homes with only 7 units affordable (only 10%). The Town notes the developer is having issues selling the age restricted units. We note that this location is far away from any shops, services, municipal services, parks and one must have a car to get anywhere. This is the exact opposite of the Applicants location which is

located in the center of Town and does not have any age restriction associated with it. However, the mix of ownership town homes and rental flats makes it attractive to households of all ages.

- **Statutory Safe Harbor - Land Area**

Under the GLAM regulations, our GIS expert has estimated the allowable SHI area per year at 24.348 acres. What the town failed to review is the directly associated area outlined in the GLAM regulations. For the Hunting Lane parcel, the directly associated area is 12.07 acres, well below the 24.348 acres. The revised plans for 41 North Main Street show a 5.8 acre site, of which 3.49 acres is directly associated. Therefore, the two parcels combined are 15.56 acres, less than 24.348 acres under the meaning of the GLAM guidelines.

- **Statutory Safe Harbor - Related Applications 760 CMR 56.01(7)**

The Town refers to a presentation to the Select Board on January 17, 2019 relative to the applicant requesting the town out three articles on its town meeting warrant, which the town did not agree to. This is not considered a prior municipal action because the proposal was not put on the town warrant and voted down, it was merely a discussion. Even if it were deemed to be a related application, the Applicant is applying for a project eligibility application. They will not be applying to the Town of Sherborn Zoning Board of Appeals for a comprehensive permit until more than 12 months have passed since January 17, 2019.

#### **Historic**

- The property is not located in a historic district as defined by the state or the town. The historic house is not a part of this development and will not be affected by this development.

#### **Density/Design**

- The location of the proposed developments is the ideal location for any affordable housing development in Sherborn since they will be in the town center. The 41 North Main Street development provides a sidewalk to North Main street. This means that retail and school located along North Main Street will be in walking distance of the property. Therefore, there will be minimal impacts on surrounding residential neighborhoods.

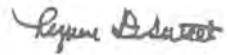
The height of the building at 41 North Main Street at four stories is suitable to any town center. Furthermore, the Applicant has plenty of land on both sites to further refine the building locations, designs and site access to negate many of the concerns raised in the Towns letter as the process continues. This may result in reducing ledge removal and/or

building heights on the North Main Street Parcel. It may also result in moving Hunting Lane units away from the closest neighbors.

In conclusion, the applicant respectfully disagrees with the Town's assessment of the projects, and requests that MassHousing proceed to issue a favorable determination of site eligibility based on the project's compliance with all performance standards under the Chapter 40B regulations for assessing site and project eligibility.

Very Truly Yours,

LDS Consulting Group, LLC



By:

Lynne D. Sweet, Managing Member

cc: Mr. Gary Lybasky  
Mr. Christopher Alphen  
Mr. Paul Haverty  
Mr. George Morrill, Chair, Town of Sherborn ZBA  
Mr. David R. Williams, Town Administrator

## **EXHIBIT D**



**TOWN OF SHERBORN**  
19 Washington Street  
Sherborn, MA 01770  
508-651-7850

**Select Board**

Eric Johnson, *Chair*  
George Morrill, *Vice Chair*  
Jeffrey Waldron, *Clerk*  
Paul DeRensis  
Charles Yon

*David R. Williams, Town Administrator*

October 27, 2020

**By ELECTRONIC TRANSMISSION ONLY**

Richard S. Novak, Chairman  
Zoning Board of Appeals  
Town of Sherborn  
19 Washington Street  
Sherborn, MA 01770

**Re: G.L. c.40B Comprehensive Permit Applications**  
**Villages at Sherborn Apartments // 31 Hunting Lane**  
**Pine Residences // 41 North Main Street**

Dear Mr. Novak,

It has come to the attention of the Select Board that the Zoning Board of Appeals recently received the above-referenced applications seeking Comprehensive Permits under Mass. General Laws Chapter 40B (the "40B Applications").

I write to advise you that two parcels of land within the development site of the 40B Applications, identified as Assessors Map 11, Parcel 3B and portions of Assessors Map 11, Parcel 3C (the "Subject Parcels"), are subject to lien under G.L. c. 61B ("Chapter 61B"). Chapter 61B provides, in pertinent part, that "[l]and taxed under this chapter shall not be sold for, or converted to, residential, industrial or commercial use while so taxed or within one year after that time unless the city or town in which the land is located has been notified of the intent to sell for, or to convert to, that other use."

While the owner of the Subject Parcels has given notice to the Town that he is withdrawing them from Chapter 61B classification, in accordance with the one-year period noted above, the Subject Parcels will remain subject to such classification until June 30, 2021. As you are likely aware, Chapter 61B provides the Town with a right of first refusal upon notice that a landowner intends to sell or convert the use of the property. It is the view of the Select Board that by filing the above-referenced 40B Applications, the owner of the Subject Parcels effectively given notice to the Town of his intent to convert the Subject Parcels to other (residential) use, thereby triggering the Town's right of first refusal under Chapter 61B.

During its public meeting held on October 22, the Select Board voted to take the following action:

1. to seek an impartial appraisal performed by a certified appraiser hired at the expense of the municipality or its assignee to determine the full and fair market value of the Subject Parcels;
2. to continue its public hearing, for further consideration of whether to (a) exercise the Town's option to purchase the Subject Parcels and to submit an Article to for consideration by Town Meeting, (b) or to assign the Town's option to Unity Farm Sanctuary, Inc., 17 Unity Lane, Sherborn, MA 01770, or another nonprofit conservation organization, under the terms and conditions that the Select Board may consider appropriate.

The full text of the vote approved by the Select Board is enclosed herewith as Exhibit A.

In accordance with all the above, the Select Board hereby advises the Zoning Board of Appeals as follows:

1. Pursuant to Chapter 61B, the Select Board holds a property interest in the Subject Parcels;
2. The Select Board is considering whether it shall exercise its right of first refusal with respect to the Subject Parcels or assign same; and
3. The Select Board's said property rights under Chapter 61B cannot be waived by the Zoning Board under G.L. c.40B.

In light of the foregoing, it is the view of the Select Board that the Zoning Board of Appeals may have a supportable basis to reject the 40B Applications due to the applicant's failure to establish that it has control of the site, as required by 760 C.M.R. 56.04 (1)(c). The Select Board therefore urges to the Zoning Board of Appeals to consider rejecting the 40B Applications on that basis.

Very truly yours,



Eric Johnson, Chair  
Sherborn Select Board

cc: By Electronic Transmission  
David Williams, Town Administrator  
Diane Moores, Assistant Town Administrator  
Jeanne Guthrie, ZBA Administrator  
Christopher J. Petrini, Town Counsel

**SELECT BOARD VOTE TO EXERCISE RIGHT OF  
FIRST REFUSAL 31 HUNTING LANE, SHERBORN (VERSION 3)**

MAKER OF MOTION:

The Select Board, having heard comments from Sherborn officials and members of the public in accordance with a public hearing held in accordance with G.L. c. 61B, § 9 and G.L. c. 30A, §§ 18-25, moves as follows:

1. to seek an impartial appraisal performed by a certified appraiser hired at the expense of the municipality or its assignee to determine the full and fair market value of Assessors Map 11, Parcel 3B and Assessors Map 11, Parcel 3C at 31 Hunting Lane (the "Subject Parcels"), the original appraisal to be completed and delivered to the landowner on a date to be determined;
2. to continue said public hearing, or to schedule an additional public hearing, for consideration of whether to (a) exercise the Town's option to purchase the Subject Parcels and to submit an Article to for consideration by Town Meeting, (b) or to assign the Town's option to Unity Farm Sanctuary, Inc., 17 Unity Lane, Sherborn, MA 01770, or another nonprofit conservation organization, under the terms and conditions that the Select Board may consider appropriate, said purchase or assignment shall be for the purpose of maintaining the Subject Parcels in use as forest land as defined in section 1 of chapter 61, as agricultural and horticultural land as defined in sections 1 and 2 of chapter 61A, or as recreation land as defined in section 1 of chapter 61B; and
3. the Board intends to act in accordance with the provisions of M.G.L. c. 61B as affected by Section 9 of Chapter 53 of the Acts of 2020 under which all time periods within which any municipality is required to act, respond, effectuate or exercise an option to purchase having been suspended for a period of 90 days after the termination of the governor's March 10, 2020 declaration of a state of emergency.

*2020.10.21 Select Board Vote to Exercise Right of First Refusal for 31 Hunting Lane (Ver. 3) (1910-35)*

**EXHIBIT E**



Massachusetts Housing Finance Agency  
One Beacon Street, Boston, MA 02108

Tel. 617.854.1000  
Fax 617.854.1091 [www.masshousing.org](http://www.masshousing.org)  
Videophone: 857.366.4152 or Relay: 711

April 30, 2020

31 Hunting Lane LLC  
23 Hunting Lane  
Sherborn, MA 01770  
Attention: Gary Lybarsky

**Re: Apple Hill Estates  
Project Eligibility/Site Approval  
MassHousing ID No. 1058**

Dear Mr. Lybarsky:

This letter is in response to your application as "Applicant" for a determination of Project Eligibility ("Site Approval") pursuant to Massachusetts General Laws Chapter 40B ("Chapter 40B"), 760 CMR 56.00 (the "Regulations") and the Comprehensive Permit Guidelines issued by the Department of Housing and Community Development ("DHCD") (the "Guidelines" and, collectively with Chapter 40B and the Regulations, the "Comprehensive Permit Rules"), under the New England Fund ("NEF") Program ("the Program") of the Federal Home Loan Bank of Boston ("FHLBB").

31 Hunting Lane LLC has submitted an application with MassHousing pursuant to Chapter 40B. Original application materials we filed with MassHousing on November 18, 2019. The original application proposed to build 28 homeownership units (the "Project") on approximately 29.81 acres of land located at 31 Hunting Lane in Sherborn (the "Municipality"). On January 23, 2020 the Applicant decreased the Project's lot size to approximately 21.81 acres (the "Site"<sup>1</sup>), removing an approximately 8-acre parcel that was deemed not necessary for the Project.

In accordance with the Comprehensive Permit Rules, this letter is intended to be a written determination of Project Eligibility by MassHousing acting as Subsidizing Agency under the Guidelines, including Part V thereof, "Housing Programs In Which Funding Is Provided By Other Than A State Agency."

MassHousing has performed an on-site inspection of the Site, which local boards and officials were invited to attend, and has reviewed the pertinent information for the Project submitted by the Applicant, the Municipality and others in accordance with the Comprehensive Permit Rules.

<sup>1</sup> The Site is comprised of two parcels of land, Tax Parcel 11-0-3C and Tax Parcel 11-0-2. A portion of Tax Parcel 11-0-3C is currently encumbered by a lien under M.G.L. c.61B, restricting it for open space and recreational uses. The Applicant has notified the Municipality of its intent to withdraw the land from the tax classification. This Site Approval is conditional upon the compliance with the requirements of the statute.

### **Municipal Comments**

The Municipality was given a thirty (30) day period in which to review the Site Approval application and submit comments to MassHousing. At the request of the Municipality, this period was extended to forty-five (45) days. The Municipality submitted a letter regarding the Application on January 17, 2020, summarizing comments from municipal officials. Additional comments regarding project modifications were submitted to MassHousing on February 14, 2020. In summary, the Municipality opposes the proposed Project, noting concerns relative to water and wastewater safety, inconsistency with existing development patterns, site control, fire safety, and emergency vehicle circulation.

The following specific areas of concern were identified by the Municipality:

- The Municipality is concerned about potential impacts of the proposed Project on water supply and wastewater management. In light of the town's reliance on private wells and private septic, the Municipality noted that undeveloped land, conservation land, and wetlands are critical for the replenishment of the town's aquifers, and that development of the proposed Project may impose drastic point loads on these resources, threatening the supply of safe drinking water for area residents. The Municipality expressed additional concern for the potential for ledge blasting during construction to contaminate private water supply in the area, particularly as it relates to construction of the wastewater management facility.
- The Municipality is concerned that the proposed Project does not integrate with existing development patterns, noting that the Site is in a rural neighborhood, and that the proposed Project will nearly double the number of residences in the area. The Municipality noted further that significant portions of the Site are currently reserved for open space and recreation under M.G.L c.61B. Given potential opportunities for affordable housing on other sites in town, the Municipality expressed an interest in assigning its right of first refusal to an eligible non-profit for preservation of the land for passive recreation, which would align with certain goals outlined in the town's 2019 Master Plan.
- The Municipality noted that the Site is an important wildlife corridor around the town center and expressed concern that development of the proposed Project would prevent the Site from continuing to serve this environmental function.
- The Municipality is concerned that no secondary access on the proposed Project's 1300-foot-long dead-end access road may create safety issues for future residents relative to police and fire vehicle access.
- The Municipality requested that two additional hydrants be located throughout the Site to ensure rapid access to water in the event of a fire and noted that the proposed triplex will be required to have a sprinkler system.
- The Municipality noted that setbacks from abutting residences on Hunting Lane are insufficient and discussed potential opportunities for enhanced buffering and relocation of several proposed homes to other areas of the Site.
- The Municipality requested more information regarding the financial feasibility of the proposed Project.

### **MassHousing Determination**

MassHousing staff has determined that the Project appears generally eligible under the requirements of the Program, subject to Final Approval<sup>2</sup>. As a result of our review, we have made the findings as required pursuant to 760 CMR 56.04(1) and (4). Each such finding, with supporting reasoning, is set forth in further detail on Attachment 1 hereto. It is important to note that Comprehensive Permit Rules limit MassHousing to these specific findings in order to determine Project Eligibility. If, as here, MassHousing issues a determination of Project Eligibility, the Developer may apply to the Zoning Board of Appeals of the Municipality for a comprehensive permit. At that time, local boards, officials and members of the public are provided the opportunity to further review the Project to ensure compliance with applicable state and local standards and regulations.

Based on MassHousing's consideration of comments received from the Municipality, and its site and design review, the following issues should be addressed in your application to the local Zoning Board of Appeals ("ZBA") for a Comprehensive Permit and fully explored in the public hearing process prior to submission of your application for Final Approval under the Program:

- Development of the Site will require compliance with all state and federal environmental laws, regulations and standards applicable to existing conditions and to the proposed use related to wetland protection, stormwater management, wastewater collection and treatment, hazardous waste safety, and public water supply. The Applicant should expect that the Municipality will require evidence of such compliance prior to the issuance of a building permit for the Project.
- The Applicant should be prepared to discuss the proposed blasting of ledge on the Site as it relates to construction of the Project's associated wastewater infrastructure. Public review will be required to address these matters of local concern that may impact public safety.
- The Applicant should be prepared to discuss the impact of the Project on water resources and private wells in the area and respond to reasonable requests for mitigation.
- The Applicant should be prepared to discuss the Site's encumbrance under M.G.L.c.61B and all associated requirements for removal of the land from the tax classification.
- The Applicant should continue to engage with the Municipality to ensure adequate access is provided for emergency vehicles and responders.
- The Applicant should continue to engage with the Municipality to discuss alternatives for increasing buffering along the abutting single-family homes on Hunting Lane, including opportunities to potentially relocate some of the proposed duplexes to other areas of the Site.

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<sup>2</sup> MassHousing has relied on the Applicant to provide truthful and complete information with respect to this approval. If at any point prior to the issuance of a comprehensive permit MassHousing determines that the Applicant has failed to disclose any information pertinent to the findings set forth in 760 CMR 56.04 or information requested in the Certification and Acknowledgment of the Application, MassHousing retains the right to rescind this Site Approval letter.

MassHousing has also reviewed the application for compliance with the requirements of 760 CMR 56.04(2) relative to Application requirements and has determined that the material provided by the Applicant is sufficient to show compliance.

This approval is expressly limited to the development of no more than twenty-eight (28) homeownership units under the terms of the Program, with not less than seven (7) of such units restricted as affordable homeownership units for low and moderate income persons or families as required under the terms of the Guidelines. It is not a commitment or guarantee of financing and does not constitute a site plan or building design approval. Should you consider, prior to obtaining a Comprehensive Permit, the use of any other housing subsidy program, the construction of additional units or a reduction in the size of the Site, you may be required to submit a new Site Approval application for review by MassHousing. Should you consider a change in tenure type or a change in building type or height, you may be required to submit a new Site Approval application for review by MassHousing.

For guidance on the Comprehensive Permit review process, you are advised to consult the Guidelines. Further, we urge you to review carefully with legal counsel the M.G.L. c.40B Comprehensive Permit Regulations and 760 CMR 56.00.

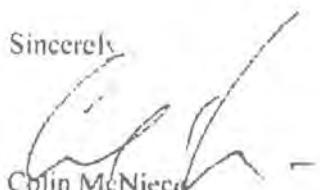
This approval will be effective for a period of two (2) years from the date of this letter. Should the Applicant not apply for a Comprehensive Permit within this period or should MassHousing not extend the effective period of this letter in writing, this letter shall be considered to have expired and no longer be in effect. In addition, the Applicant is required to notify MassHousing at the following times throughout this two-year period: (1) when the Applicant applies to the local ZBA for a Comprehensive Permit, (2) when the ZBA issues a decision and (3) if applicable, when any appeals are filed.

Should a comprehensive permit be issued, please note that prior to (i) commencement of construction of the Project or (ii) issuance of a building permit, the Applicant is required to submit to MassHousing a request for Final Approval of the Project (as it may have been amended) in accordance with the Comprehensive Permit Rules (see especially 760 CMR 56.04(07) and the Guidelines including, without limitation, Part III thereof concerning Affirmative Fair Housing Marketing and Resident Selection). Final Approval will not be issued unless MassHousing is able to make the same findings at the time of issuing Final Approval as required at Site Approval.

**Please note that MassHousing may not issue Final Approval if the Comprehensive Permit contains any conditions that are inconsistent with the regulatory requirements of the New England Fund Program of the FHLBank Boston, for which MassHousing serves as Subsidizing Agency, as reflected in the applicable regulatory documents. In the interest of providing for an efficient review process and in order to avoid the potential lapse of certain appeal rights, the Applicant may wish to submit a "final draft" of the Comprehensive Permit to MassHousing for review. Applicants who avail themselves of this opportunity may avoid significant procedural delays that can result from the need to seek modification of the Comprehensive Permit after its initial issuance.**

If you have any questions concerning this letter, please contact Katherine Miller at (617) 854-1116.

Sincerely,



Colin McNiecc

General Counsel

cc: Jennifer Maddox, Undersecretary, DHCD  
The Honorable Rebecca L. Rausch  
The Honorable David Paul Linsky  
George Morrill, Chair, Sherborn Board of Selectmen  
Richard S. Novak, Chair, Sherborn Zoning Board of Appeals  
David Williams, Sherborn Town Administrator