

# TOWN OF BERLIN

Office of the Town Clerk  
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Berlin MA 01503-1066

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WORCESTER REGISTRY OF DEEDS  
90 FRONT STREET – C201  
WORCESTER MA 01608



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August 20, 2014

## **CERTIFICATE OF NO APPEAL - HIGHLAND COMMONS DEVELOPMENT AGREEMENT, SECOND MODIFICATION (FIRST MODIFICATION SUPERCEDED)**

I, Eloise E. Salls, Town Clerk of Berlin, hereby certify that no legal proceedings have been filed concerning the HIGHLAND COMMONS DEVELOPMENT AGREEMENT voted by the TOWN OF BERLIN, Article 16 of the November 12, 2013 Special Town Meeting. The decision was filed with the Town Clerk on December 20, 2013.

OWNER: Highland Commons Association, LLC

APPLICANT: Highland Commons Association, LLC

Location: On (Route 62) Coolidge Rd, Berlin MA 01503 on the Town of Hudson border.

Berlin Assessors records: Map 22.0 Block 1, Lot 0

Property Recorded: Worcester County Registry of Deeds, Book 39313, Pages 243, 250, 353

The Development Agreement was modified with the following conditions:

1. A first proposed modification of the Development Agreement was approved by the Town at a Special Town Meeting on June 26, 2013, which first proposed modification is superseded by this second modification by vote of the Special Town Meeting on November 12, 2013.

2. This Modification describes the pro rata based on the numerator being the square footage of the buildings for which Certificates of Occupancies that have been issued by the Town with the denominator set at 425,000 and the resulting modification of the payment schedule.

**The twenty day (20) appeal period ended on January 5, 2014. There were no appeals.**

A true copy.

Attest: Eloise E. Salls  
Town Clerk of Berlin



**TOWN CLERK**

23 Linden St., #8  
Berlin MA 01503

Hours: Tuesday and Thursday, 11 am – 2 pm; Wednesday evenings 7 pm – 9 pm  
Phone 978-838-2931; FAX 978-838-0014; email: [townclerk@townofberlin.com](mailto:townclerk@townofberlin.com)

I, Eloise E. Salls, hereby certify that the following is a true extract from the records of the Special Town Meeting of November 12, 2013.

**Warrant Article 16:**

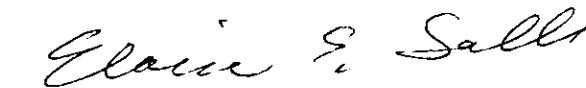
Article 16 – To see if the town will vote to authorize the Selectmen to amend the Development Agreement between the Town and Highland Commons LLC dated as of the 14<sup>th</sup> of May 2008, as amended by vote of Special Town Meeting on the 26<sup>th</sup> of June, 2013, to reduce the denominator of the fraction used to calculate annual public safety payments and other mitigation payments from 480,000 square feet to 425,000 square feet, or take any other action relative thereto. (Board of Selectmen)

**Proceedings of Article 16:**

Article 16. Unanimously voted to authorize the Selectmen to amend the Development Agreement between the Town and Highland Commons LLC dated as of the 14<sup>th</sup> of May 2008, as amended by vote of Special Town Meeting on the 26<sup>th</sup> of June, 2013, to reduce the denominator of the fraction used to calculate annual public safety payments from 480,000 square feet to 425,000 square feet and to make such conforming amendments as may be required to effect this change. The Finance Committee recommended this motion.

A true copy.

Attest:



Town Clerk of Berlin



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**SECOND**  
**MODIFICATION OF**  
**DEVELOPMENT AGREEMENT**

This Second Modification of Development Agreement (the "Agreement") is entered into as of this 12th day of November, 2013, by and between Highland Commons Assoc., LLC, a New York limited liability company, ("the Developer") and the Town of Berlin ("the Town"), acting by and through its Board of Selectmen, for good and valuable consideration the receipt and sufficiency of which are hereby acknowledged.

WITNESSETH:

WHEREAS, the Developer and the Town entered into that certain Development Agreement dated May 14, 2008 for the construction and operation of buildings and other improvements in the Town as an expansion of a shopping center under construction in Hudson on a parcel of land located on Route 62 as more particularly described therein (the "Development Agreement"); as further amended in a proposed Modification of Development Agreement dated June 26, 2013, and

WHEREAS, the Development Agreement requires the Developer to make certain payments to the Town;

WHEREAS, a first proposed modification of the Development Agreement was approved by the Town at a Special Town Meeting on June 26, 2013, which first proposed modification is superseded by this second modification by vote of the Special Town Meeting on 12 November, 2013; and

WHEREAS, due to the changes in the economy, the parties have agreed to modify the payment schedule of some of the payments due under the Development Agreement.

NOW THEREFORE, for One Dollar (\$1.00) and other good and valuable consideration paid by each to the other, the receipt and sufficiency of which are hereby acknowledged the parties agree as follows:

1. Effective as of the May 14, 2008, the Public Safety Services payment described in Section 4.2 of the Development Agreement shall be paid pro rata based on the numerator being the square footage of the buildings for which Certificates of Occupancies that have been issued by the Town with the denominator set at 425,000. In the event that 425,000 sf of Certificates of Occupancy have not been issued by the Town for 425,000 square feet by December 31, 2018 then the full Public Safety Services payment shall be due.

2. Effective as of May 14, 2008, the Community Preservation Mitigation payment and the Municipal Impact Mitigation payment (collectively referred to herein as the "Mitigation Payments") shall be paid pro rata based on the numerator being the square footage of the buildings for which Certificates of Occupancies that have been issued by the Town with the denominator set at 425,000. In the event that Certificates of Occupancy have not been issued by the Town for 425,000 square feet by December 31, 2018 then the full Mitigation Payments shall be due. From and after January 1, 2014, the then remaining portions of the Mitigation Payments shall be adjusted annually according to the percentage change in the Eastern Massachusetts Consumer Price Index published monthly by the Bureau of Labor Statistics, U.S. Department of Labor. In no event at any time shall the adjustment of the Mitigation Payments result in payments that are less than the payments made the immediately prior year.

3. The Developer agrees to pay the amounts described in Section 1 and Section 2 retroactive to the beginning of the fiscal year in which the June 26, 2013 amendment was passed by vote of the Special Town Meeting.

4. In the event that the Developer approaches the Town for any amendment of the payment terms contained in this Amendment, the Developer agrees to pay compensation of \$50,000 for such reconsideration. Such amount shall be payable upon the scheduling of consideration of such amendment at an annual or special town meeting of the Town.

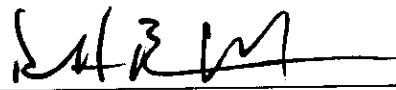

5. Terms used herein that have not been defined herein shall have the meaning defined in the Development Agreement.

6. Except as set forth herein, the Development Agreement shall remain in full force and effect.

7. The first proposed modification of the Development Agreement dated June 26, 2013 is superseded by this second modification and is without further legal effect.

**EXECUTED** under seal as of the date and year first above written, pursuant to the vote under Article 16 of the November 12, 2013 Special Town Meeting of the Town of Berlin, Massachusetts.

HIGHLAND COMMONS ASSOC., LLC

By:   
Name: David H. Baldauf  
Its: Manager  
Hereunto Duly Authorized 

TOWN OF BERLIN BOARD OF SELECTMEN

By: Judith Booman

Name: Judith Booman

Its: Chairman

Hereunto Duly Authorized

STATE OF NEW YORK

County of ERIE, ss.

On this 20<sup>th</sup> day of DECEMBER, 2013, before me, the undersigned notary public, personally appeared David H. Baldauf, proved to me through satisfactory evidence of identification, personally known to me to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose, as Manager of Highland Commons Assoc., LLC.

Sheila M. Hoch

Notary Public

My Commission Expires:

**SHEILA M. HOCH**  
Notary Public, State of New York  
Qualified in Erie County  
Commission Expires May 28, 2014

COMMONWEALTH OF MASSACHUSETTS

County of Worcester, ss.

On this 9<sup>th</sup> day of DECEMBER, 2013, before me, the undersigned notary public, personally appeared Judith Booman, proved to me through satisfactory evidence of identification, which was Voter ID, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose, as Chairman of the Town of Berlin Board of Selectmen.

Eloise E. Salls

Notary Public

My Commission Expires:

**ELOISE E. SALLS**  
Notary Public  
COMMONWEALTH OF MASSACHUSETTS  
My Commission Expires  
October 20, 2017