



DEVELOPMENT AGREEMENT

This Agreement is entered into as of this 2nd day of December, 2009, by and between Riverbridge North, LLC, a Massachusetts limited liability company with an address of 5 East Main Street, Suite 4, Westborough, MA 01581 ("Riverbridge"), Valerie C. Longone, Sharon M. Risi and Carl P. Risi, Jr., trustees of the Risi Family Trust under Declaration of Trust dated May 24, 1984, recorded with the Worcester County South Registry of Deeds in Book 8237, Page 72 and ("Property Owners"), (together Riverbridge and the Property Owners are referred to herein as "the Developer"), and the Town of Berlin, acting by and through its Board of Selectmen ("the Town") for good and valuable consideration the receipt and sufficiency of which are hereby acknowledged. It represents the understanding between the parties with respect to the contributions and commitments of the Developer with respect to mitigating traffic, environmental, public safety, and other impacts arising from the development of a Mixed Use Village ("the Project") on River Road in the Town of Berlin as more particularly described in Exhibit A ("the Site").

1. GENERAL

- 1.1 The Developer shall comply with applicable rules, regulations and by-laws of the Town of Berlin, Commonwealth of Massachusetts and Federal Agencies as they apply to the construction, maintenance and operation of the Project, including, without limitation, compliance with Wetlands Protection Act final orders, the Massachusetts Environmental Policy Act (MEPA), General Laws Chapter 30, Section 61, and the State Building Code.
- 1.2 The Developer shall comply with applicable regulations issued by the Commonwealth of Massachusetts relative to the existence of hazardous waste located on the Site, including compliance with the provisions of M.G.L. Chapter 21E and other applicable government codes.
- 1.3 The Developer shall file an Environmental Notification Form (ENF) as required under the Massachusetts Environmental Policy Act (MEPA), Regulations 310 CMR 11.00, covering the entire Project before beginning any construction on the Project Site. If appropriate, Developer may apply for a "Phase One Waiver" pursuant to 310 CMR 11.11 that, if granted, would allow Developer to proceed with an initial phase of the Project prior to preparing any Environmental Impact Report (EIR) that may be found to be required under said MEPA Regulations.
- 1.4 The terms of this Agreement shall be incorporated into the conditions of any Village Overlay ("VO") Site Plan Approval issued by the Planning Board for any portion of the Project, and shall be binding upon the Developer and any successor in interest to the Project, as provided in this Agreement.



- 1.5 The residential components of the Project shall include, in the aggregate, no more than two hundred and five (205) dwellings, of which not more than one hundred fifteen (115) may be located outside of the planned Continuing Care Retirement Community/Assisted Living Facility ("CCRC"). The CCRC may contain a maximum of ninety (90) Independent Living Units, or Assisted Living Units.
- 1.6 The Project's two hundred and five (205) dwellings shall include only one (1) and two (2) bedroom units and shall contain, in the aggregate, no more than four hundred and ten (410) bedrooms. The preceding sentence notwithstanding, the Developer may offer up to two 3-bedroom units outside the CCRC so long as the total number of bedrooms does not exceed the maximum of four hundred and ten (410) (this would require offsetting 1 bedroom units).
- 1.7 Affordable Housing Allocation and Phasing:

(a) As Dwelling units are built in the Village Overlay District, the percentage of such Dwelling units eligible for inclusion in the Massachusetts Department of Housing and Community Development's Subsidized Housing Inventory ("SHI Units") for the town of Berlin required by the provisions of Section 730 or Sec. 458.4 of the Zoning By-law, as applicable, shall be provided by the Developer. The Developer may elect to provide all such affordable Dwelling units outside the CCRC.

(b) With regard to Section 458.4 of the Zoning By-law, the Developer agrees that should the Planning Board, pursuant to review of a relevant VO Site Plan Approval application, and the Berlin Housing Partnership agree that they wish for the Developer to dedicate some portion of the housing units located outside the CCRC to be a rental program with 25% of such units to be affordable to households at incomes at or below the limits set under Section 730 so that, under presently applicable guidelines of the Department of Housing and Community Development ("DHCD") with regard to DHCD's subsidized housing inventory ("SHI") 100% of such rental units are to be included in the Town's calculated SHI, the Developer shall designate a number of units as determined by the Planning Board as such a rental program, up to a maximum of 84 units. If the Planning Board and Housing Partnership are not in agreement as to this designation, it shall be the Developer's choice as to which approach to take, and if a rental program is not elected, the Developer shall comply with all provisions of Section 730 of the Zoning By-laws, by making 15% of all units affordable, notwithstanding any provision of Section 458.4 that would permit a lower percentage of affordable units.

(c) As Dwelling units are built in the Village Overlay District, the affordable housing phasing requirements of Section 730 shall be met. To the extent that construction of the CCRC would otherwise cause the phasing of affordable units

to lag behind such requirements, the Developer shall insure that the pace of the delivery of affordable units within the non-CCRC housing shall be such that at no time are certificates of occupancy requested that would cause, even temporarily, a breach of the Section 730 affordable housing phasing requirement. For example, a certificate of occupancy for a 90-unit CCRC could not be requested or granted unless certificates of occupancy have been issued for at least 14 affordable units available to offset the 90 units of market rate housing (assuming the CCRC was fully market rate).

Further to such phasing concerns, and in a similar fashion, after certificates of occupancy for the first 70,000 square feet of new construction of non-CCRC Dwellings and or Commercial space (any non-CCRC space) have been issued, to insure that the development of additional non-CCRC Dwellings (affordable and/or market rate) does not unduly outpace the development of additional Commercial space within the Village Overlay District, or vice versa:

1. certificates of occupancy for additional non-CCRC Dwellings shall not be requested nor granted if the total number of square feet of Floor Area of such non-CCRC Dwellings, by virtue of those requested certificates, would exceed by a factor of more than 1.5 the total number of square feet of additional Gross Floor Area of Commercial space for which a certificate of occupancy has been issued, and
2. certificates of occupancy for additional Gross Floor Area of commercial space shall not be requested nor granted if the total number of square feet of such additional Gross Floor Area of Commercial space by virtue of those requested certificates, would exceed by a factor of more than 1.5 the total number of square feet of additional Floor Area of such non-CCRC Dwellings for which a certificate of occupancy has been issued.

The above provision applies only up to the point at which either all allowed square footage of Gross Floor Area of Commercial space or all allowed square footage of Floor Area of non-CCRC residential Dwellings has been constructed and for which a certificate of occupancy has been issued.

(d) As to all SHI units within the Riverbridge development, the mix prescribed in Section 730 of the Berlin Zoning By-laws as to levels of affordability shall be met (25% affordable to those making 50% of Area Median Income, and the balance of the units affordable to those making 80% of Area Median Income, as defined in M.G.L. c. Chapter 40B (or regulations issued thereunder).

(e) The Developer shall provide four (4) of such affordable units as ground floor

fully handicapped accessible units.

(f) To the extent permitted by State laws and the policies and regulations of the Department of Housing and Community Development, the Developer shall administer and/or coordinate the administration of all SHI units in the Project, and shall cover the costs of such administration, except that costs typically recoverable at closings or through other channels shall continue to be recoverable by the Developer. Any such administration or coordination shall be done under the supervision of the Berlin Housing Partnership, and the Developer shall provide regular reports to the Partnership at intervals the Partnership designates.

(g) Notwithstanding the provisions of Section 458.4 of the Zoning Bylaw, if, at any time prior to or after the issuance of a building permit for a rental development, either (i) G.L. 40B, §§20-23 ("Chapter 40B") is no longer in effect, or (ii) DHCD rules, regulations or guidelines issued pursuant to or in connection with Chapter 40B do not provide that all of the units in a rental development that contains at least 25% affordable housing units are eligible for inclusion in the SHI, then each rental housing development in the Village Overlay District shall thereafter, in proportion to the number of units in each development, increase the number of affordable rental units until the percentage of affordable rental units in the Village Overlay District shall reach 15%, by renting the next available unit(s) to income-qualified household(s). This requirement shall be reflected in each affordable housing restriction for a rental development that is granted to the Town as required by the Zoning Bylaw or by this Development Agreement. Alternatively, in such event, additional affordable housing units to reach 15% may be provided as for-sale units or as CCRC Independent Living Units.

- 1.8 No property within the Site, other than the open space referred to below in Sec. 8, shall be conveyed to a tax-exempt entity unless: (i) such entity agrees for itself and its successors and assigns in an instrument recorded with the deed or notice of lease that the property will be subject to taxation under M.G.L. c.59, without any claim of exemption on the basis of the entity's tax-exempt status; or (ii) such entity enters into an agreement for Payment in Lieu of Taxes ("PILOT Agreement") that provides for payments in lieu of taxes and /or other benefits to the Town not less than the amount that would otherwise be due to the Town in property taxes and personal property excise taxes under M.G.L. c.59 for as long as the entity continues to be exempt from such property or excise taxation. The restrictions set forth in this paragraph shall apply to any lease by an owner of property within the Site to a tax-exempt entity if the legal effect of such lease would otherwise be to exempt the owner or lessee of the leased property from the payment of real estate taxes.

- 1.9 The Developer has agreed to reimburse the Town, which the Town may treat as a gift under G.L. c.44, §53A, for the reasonable costs of various consultants to the Town providing peer review and other services related to the Project, up to and including VO Site Plan Approval by the Planning Board of any components of the Project. To date, the Developer has provided a total of \$50,000, as per letters of February 3, 2009 (\$20,000), March 26, 2009 (\$10,000), May 20, 2009 (\$10,000) and August 25, 2009 (\$10,000) to the Town for such costs.

Interest >

The payment of such costs shall not be deemed to affect the right of the Planning Board or other Town permitting authorities under applicable law to set review fees in connection with applications filed by the Developer for the Project or any component thereof, nor shall the lack of any right to set review fees affect the Developer's obligation to reimburse the Town hereunder.

X
Setup as Agency
Not Donations

2. CONSTRUCTION PHASE RESPONSIBILITIES

- 2.1 Construction of all structures on the Site is to be in accordance with all applicable Town of Berlin zoning regulations in effect and with the State Building Code.
- 2.2 In addition to the normal fees payable to the Town of Berlin for building permits and other permits, the Developer shall assume reasonable expenses of ongoing inspection and review of the construction process and compliance with all applicable conditions and requirements of the Zoning By-Law, the Village Development Plan and VO Site Plan Approval(s), which the Town may treat as a gift under G.L. c.44, §53A. Upon the issuance of a building permit for the Project or for any phase thereof, the Town shall provide to the Developer an initial estimate of the cost of inspection and review services and the Developer shall deposit said amount in an interest bearing escrow account, such an initial account not to exceed \$100,000. The Town shall draw from the escrow account as necessary to pay for reasonable inspection and review services, and shall provide additional estimates to the Developer when the balance of the escrow account is reduced to a point below the anticipated requirements for the next month. The Developer shall then deposit further amounts equal to such estimates subject to the terms of this Section. At the issuance of a final Occupancy Permit for the Project, any funds remaining in the escrow account shall be returned to the Developer. The Town agrees to use moneys deposited under this Section solely for the purpose of retaining qualified inspectors to review the Project.
- 2.3 Subject to Section 3.5 of this agreement, during construction of the Project, the Developer shall impose on each of its contractors a requirement that all heavy equipment accessing the Site shall use the interstate highway system (Route I-290 to Solomon Pond Road/River Road). This clause shall not apply to any trip

originating or ending at a place of business within the Town of Berlin.

3. TRAFFIC MITIGATION

3.1 As it is envisioned that development of the Project may occur in phases, the Developer shall complete the below traffic mitigation projects over the course of the phasing of the Project as appropriate and required by the Planning Board through the VO Site Plan Approval process described in Section 459 of the Zoning By-law for a specific Village Development Parcel. The Developer and the Town agree to cooperate with one another on the implementation of the following traffic mitigation projects, in accordance with the phasing schedule indicated in Exhibit B.

- (a) River Road West bridge over North Brook: Widen the existing bridge deck by replacing the outer deck beams with wider ones on the existing footings to provide a width of 24.5 feet. Construct a separate pedestrian and bicycle bridge on the eastern side of the roadway, connecting to the existing sidewalk south of the bridge and a future sidewalk from the bridge to the Project. Upgrade sidewalk south of the bridge to the intersection of River Road West with Donald Lynch Blvd. so that it is of consistent design and quality as the sidewalk from the bridge to the Project.
- (b) Construct new "mini-roundabout" at the entrances to the Project at River Road West as shown on the approved Village Development Plan.
- (c) South Berlin Rotary: Upgrade the rotary in conformance with current roundabout design guidelines, including restriping of the rotary and all approach legs, installing YIELD AHEAD and YIELD signs on all approaches, and trimming or clearing vegetation where necessary to improve sight lines.
- (d) Pleasant Street/South Street intersection: Redesign and reconstruct the intersection to form two separate T-type intersections with the South Street westbound and Pleasant Street southbound approaches forming the free-flowing, major-street approaches, and South Street eastbound and Pleasant Street northbound forming the STOP-sign controlled, minor-street approaches.
- (e) Pleasant Street/Sawyer Hill Road intersection: Redesign and reconstruct the intersection to require all traffic from Sawyer Hill

Road to enter Pleasant Street on the north side of the island and install a STOP sign and stop line on Sawyer Hill Road. Allow one-way travel on the southerly leg for Pleasant Street right turns only, and install the necessary signs ("Do Not Enter") and pavement markings to clearly mark the one-way section of road.

- (f) Whitney Road Connector: Construct a connector road along the south side of "Village Center" to provide a connection between River Road West and Whitney Road, allowing vehicles to bypass the Berlin Rotary.
- (g) Any other improvements required by MEPA and not listed specifically in this Section 3.1.

Where any of the above-described traffic mitigation measures will be undertaken on Town-owned land (a considerable portion), the parties agree that the mechanics may, at the option of the Town, involve the Developer contributing agreed upon budget amounts (once the actual costs have been determined) to the Town, and the Town may contract for the work to be completed. The parties will work in good faith with one another to insure the fullest implementation of the above measures, whether contracted for by the Developer or the Town.

- 3.2 Public Transportation: In the event that regular, scheduled bus service to the Project is established by a regional transit authority or similar entity, the Developer shall construct, subject to all required Town approvals, a semi-enclosed shelter at a location deemed appropriate by the Developer and Town.
- 3.3 NEV Friendly: The Developer shall make reasonable efforts to construct roadways, pathways, sidewalks and streets in such a way that buildings within Riverbridge shall be accessible by pedestrians and bicycles and, if feasible, Neighborhood Electric Vehicles (NEVs) and/or similar vehicles.
- 3.4 Ongoing responsibilities:
 - (a) The Developer shall require, and shall require its tenants, tenants' employees, and successors and assigns to require, that delivery vehicles serving the Developer and such tenants, successors and assigns will utilize the interstate highway system (Route I-290 to Solomon Pond Road/River Road) to access the Project. This requirement shall not apply to trips originating or ending at a business located in Berlin, or to deliveries of small cargoes made by common carriers such as UPS or Federal Express as part of a route delivery that in its ordinary course includes residences and businesses located within the Town of Berlin.

(b) The Developer shall cooperate with appropriate officials of the Town in developing traffic contingency plans for peak traffic periods or special events associated with the Project.

3.5 Bridge construction scheduling: The parties acknowledge that the bridge construction work described in Sec. 3.1(a) above will present special traffic challenges during the construction period. Developer will, in addition to the other documents required to be provided with its VO Site Plan Approval application, provide to the Planning Board for its review and approval a bridge construction scheduling plan which will minimize the inconvenience and public safety problems that will arise as a result of said construction.

4. PUBLIC SAFETY

4.1 The Developer shall cooperate with the Town to develop legally enforceable rules and regulations for the operation of motor vehicles (including Neighborhood Electric Vehicles (NEVs) and similar vehicles) at the Project. Appropriate signage and markings shall be installed and maintained by the Developer after such rules and regulations have been developed.

4.2 The Developer shall coordinate with the Town and its Police Department to develop compatible and consistent rules and regulations and by-laws for the administration of public safety in the Project.

4.3 The Developer shall cooperate with the Town and its Fire Department to develop compatible and consistent rules and regulations and by-laws for the administration of public safety in the Project.

4.4 Ambulance Service- The Developer shall ensure that the Continuing Care Retirement Community (CCRC) is adequately served by ambulance service at no cost to the Town. At a minimum the Developer shall provide or procure primary and backup ambulance coverage not involving town service covering both BLS and ALS (i.e. basic and acute) levels of service. Developer shall also provide or procure that this ambulance service shall provide primary service for the residences and commercial uses of the Project at no cost to the Town. In the event that the Town is called on to provide ambulance service to the Project, the Town shall bill the CCRC at a rate of 125% of the rate normally billed by the Town for similar services to the general public or to other land owners. Emergency calls to the Town may be immediately referred to said Developer's ambulance service, if and to the extent such referral is permitted under regulations regarding Emergency Medical Services ("EMS") systems, and the Developer shall indemnify, defend and hold harmless the Town from any and all claims which might arise from any services provided, or any failure or delay in providing services, by Developer's ambulance provider. The Developer shall cooperate with the Town and bear all costs involved in seeking necessary

approvals so that what is referred to in this section as the Developer's ambulance provider has the status of the Primary Ambulance Provider for the Project area and to develop and obtain approval for a Service Zone Plan to create a separate service zone for the Project area.

5. STORMWATER MANAGEMENT

- 5.1 The on-site detention basins shall be inspected by the Developer not less than annually with respect to sedimentation accumulation with copies of annual reports given to the Planning Board. To the extent such reports indicate the need for sediment removal, the same shall be removed.
- 5.2 All catch basins shall be installed with sumps and inverted outlets as more fully shown on the Site Plan. The catch basins shall be monitored by the Developer on a semi-annual basis with reports given to the Planning Board. The catch basins are to be cleaned annually by the Developer, and, as necessary, at more frequent intervals.
- 5.3 Snow storage is to be provided on-site, primarily on impervious surfaces, except (i) during peak periods (November 1—January 1) or (ii) exceptional storms, in which event the Developer may or may not elect to utilize off-site storage. Snow-melt runoff is to be directed towards catch basins. The Developer agrees to use calcium chloride or such other substitute for sodium chloride as may be acceptable to the Town and the Developer for purposes of snow removal treatment. A minimum 50 foot wide vegetated buffer area shall be maintained between a snow storage area and any surface water body or resource area.

6. LIGHTING

- 6.1 The Developer shall comply with the lighting requirements set forth in Sections 1031 and 458.3 of the Zoning By-Law.
- 6.2 All lighting fixtures, with the exception of pedestrian lighting with a height of less than eight feet, shall be designed and maintained so that the bare light bulb, lamp or light source is completely shielded from direct view at any point five feet above the ground on adjoining properties.

7. NOISE

- 7.1 The Developer shall comply with the noise generation standards set forth in Sections 1021 and 458.2 of the Zoning By-Law.
- 7.2 In order to verify compliance with the performance standards regarding noise impacts from the Project, at the Town's reasonable request but no more than once per year the Developer shall engage a competent engineering firm to make measurements and analyze noise levels in reference to such performance

standards.

8. OPEN SPACE MITIGATION

8.1 The Developer shall make an in-kind donation of the development rights to at least 75 acres of the Site in the form of a conservation and access easement benefiting the Town of Berlin. This conservation easement will secure such municipal rights in perpetuity. The conservation easement shall be granted on or before the issuance of the first building permit for the Project. In addition to establishing development restrictions satisfactory to the Conservation Commission of the Town of Berlin, the easement shall provide access for passive recreation. So long as approved by the Conservation Commission, with regard to such passive recreation, the Developer shall construct at its sole cost a 14-car gravel parking lot (roughly as shown on the Village Development Plan) open to the general public, and a trail system providing access by such trails to the Assabet River, including a foot bridge across North Brook. Such amenities shall be provided prior to the issuance of a Certificate of Occupancy for the 200,000th square foot of development of the Project.

8.2 The Developer shall prepare a plan and program for the management of the conservation restriction areas designated on the approved Village Development Plan ("Conservation Restriction Areas Management Plan"). The goals of said plan will be to protect the natural character of such areas and enhance their aesthetic appearance as passive open space (including the creation and maintenance of at-grade and elevated trails and paths).

The Developer shall prepare an annual report on the condition of the conservation restriction areas with recommendations for maintenance work as necessary, and shall submit the report to the Planning Board and Conservation Commission for review. Any reasonable work outlined in the report will be performed at the expense of the Developer.

With regard to a certain parcel of land within the Village Overlay District to be purchased by the Developer known as Assessor's Map 3.0/19/0, which parcel contains about 7.7 acres of land, the Developer hereby agrees to, pursuant to a lease agreement to be negotiated in good faith by the Developer and the Town, grant to the Town at a cost of \$1.00 per year a lease for at least ~~twenty (20)~~ *twenty nine (29)* years, or an easement, whereby the Town may, at its sole cost and expense (including those associated with construction, installation or other related works), use this parcel for active recreation such as ball fields, together with appropriate non-impervious parking, so long as such use is approved by all Town agencies with jurisdiction over such uses, and so long as the same will not impair or negatively impact the Project's on-site utility infrastructure, including the

CP
KB
JCA
JB
SS

w m j.

provision of well water. It is particularly noted that it is likely that the Developer will install a wellhead and related apparatus near the center of this parcel, but it appears as though there would still be room for the Town to take advantage of the lease or easement rights envisioned in this paragraph. The presence of the well may impact what chemicals could be used on the parcel. As to maintenance matters unique to the "active" use of such land, these shall be covered by the Town. As to maintenance matters that are not different from those associated with the passively used conservation lands referred to above, the Developer shall perform such maintenance on this parcel at its cost. No permanent structures (including back stops typically found at baseball fields) may be installed on the property as part of such active recreational use, though removable temporary structures (such as soccer goal posts) may be placed on the parcel. It is specifically noted that the view shed looking north toward Riverbridge from south of this parcel is important to the Developer as well as the Town, and thus the use of this 7.7 acres of land by the Town in a manner that will not impair that view shed is of great importance.

9. PROJECT MAINTENANCE

- 9.1 Vacuum/sweeping and trash removal operations shall be restricted to the hours between 7:00 A.M. and 7:00 P.M.
- 9.2 As part of its common area maintenance, the Developer shall provide a general refuse cleanup of the area within 100 yards outside the Project boundaries, at least twice a month subject to written approval of affected landowners. Developer shall keep a log of such maintenance, and shall deliver a copy to the Planning Board by May 1 of each calendar year.

10. TREE PLAN

- 10.1 The Developer shall provide a tree plan for each Village Development Parcel within the Project that identifies plantings including species, size and location. Such plan as approved by the Planning Board during VO Site Plan Approval shall be maintained unless a request for a change is granted by the Planning Board. The Town and the Developer acknowledge that the purpose of this provision is to maintain the integrity of the landscape, ensure appropriate tree canopy, visual harmony and the environmental benefits that trees provide in the Project area.

11 UTILITIES AND SERVICES

- 11.1 The Developer shall contract for solid waste removal at the Developer's expense. In the event that the Town of Berlin is required to provide solid waste removal for any reason, including but not limited to any applicable law or regulation or failure of the Developer or Developer's contractor to properly deal

with such waste, the Developer agrees to pay the Town for any expenses arising directly from and reasonably attributable to the Project. In such event the Town and the Developer shall work together to establish a plan to coordinate such services.

- 11.2 The Project shall include the development and operation of a private wastewater treatment facility and associated sewerage infrastructure to serve the Site at no cost to the Town. Such facility and infrastructure, including specifically infrastructure located in public rights of way, shall be privately owned and operated.

In the event that the Town of Berlin is required to provide or pay for water or sewer service to the Project for any reason, including but not limited to changes in State laws or regulations, the Developer agrees to hold the Town harmless from any expense, loss, claim or liability arising from the provision of such services to the Project.

- 11.3 The Town of Berlin agrees that it will cooperate with the Developer by providing reasonable easements, licenses and locations within public ways and Town-owned rights of way, specifically including River Road West and Whitney Street, and also at the existing rotary in South Berlin, for the transmission and communication of utility infrastructure, pipes, conduits, lines, junction boxes and other apparatus, including but not limited to the following utilities: water, sewer, electricity, gas, telephone, cable and other typical utilities for such developments. The Board of Selectmen will make known to other permit and approval-granting boards the Town's support for the Project, but the Developer acknowledges that the Board of Selectmen cannot control or predict the conditions that may be imposed by other boards or officers exercising authority under state or local law. Furthermore, any easement grant is conditional on Town Meeting authorization and may require other local or state legislative body actions.

12. SCHEDULE OF LIQUIDATED DAMAGES

For violations of the terms of this Agreement, after one written warning delivered to the Developer's named agent, the parties agree to the following amounts as liquidated damages to cover the Town's costs in enforcement action. These damages are not to preclude any remedy in law (including, if applicable, specific performance) or fines that may be imposed under any applicable bylaw or regulation, and do not include regular litigation expenses to the Town in the event that these are necessary for enforcement.

12.1 Construction Phase:

For each failure of its contractor to have heavy equipment access the site via the interstate highway network:

\$100

12.2 Traffic:

For each failure of a delivery vehicle to access the site via the Interstate highway network:

\$100

12.3 Public Safety:

None

12.4 Stormwater Management:

For failure to provide reports or maintain catch basins:

\$50 per day beginning ten (10) business days after developer has received written notice of the violation.

12.5 Lighting:

For failure to correct lighting violation:

\$50 per day beginning ten (10) business days after developer has received written notice of violation and continuing until said violation has been corrected

12.6 Noise:

For each incident the noise standard is exceeded:

\$100

12.7 Open Space Mitigation:

For each failure to perform maintenance of the conservation restricted area pursuant to Section 8.2:

\$100 per day beginning fourteen (14) days after written notice of failure to perform has been made to the Developer

For each failure to file a report with the Planning Board pursuant to Section 8.2:

\$100 per day beginning sixty (60) days after written notice of failure to file has been made to the Developer

12.8 Operations

For any mechanical sweeping or trash removal not conducted in accordance with Section 9.1 of this Agreement:

\$100

12.9 Tree Plan

For each failure to maintain trees pursuant to Section 10.1:

\$100 per day beginning fourteen (14) days after written notice of failure to perform has been made to the Developer.

13. OTHER OPERATING REQUIREMENTS

- 13.1 The Developer agrees that as major components of the Project are readied for opening, the Developer will make reasonable efforts to coordinate with local or regional governmental employment agencies so that local residents are provided with adequate notice of employment opportunities. In addition, the Developer will encourage its contractors to hire local construction workers for the Project.
- 13.2 The Developer shall provide all parking for employees and patrons of the Project in off-road and on-road parking areas, as approved by the Planning Board. No parking will be permitted on River Road West or Whitney Road.
- 13.3 In the event that the Developer appeals its real estate tax assessment and such appeal is finally denied, the Developer shall reimburse the Town for its costs of reasonable appraisal, legal and other professional expenses incurred by the Town with respect to such appeals for abatement of real estate taxes up to a maximum of \$20,000 per event.

14. AMENITIES/MITIGATION OF IMPACTS

- 14.1 As the village scale, nature and other characteristics of the Development, including the Continuing Care Retirement Community (and its related ambulance service) and the extensive public trails and open space facilities, are considered more desirable by the Town than more conventional and intensive development and use of the Site, the Developer and the Town shall work together to address development-related concerns that may arise during the permitting phase of the development of the Project and identify appropriate and reasonable mitigation for such concerns.
- 14.2 In preparing to negotiate this Development Agreement, and in anticipation of the Town Meeting (May 26, 2009) at which the Village Overlay District for the

Riverbridge project was to come to a vote, the Town of Berlin commissioned a Financial Impact Analysis done by Community Opportunities Group, Inc. of Boston (dated April 30, 2009). The study concludes on page 11 that: ***"The overall revenue ratio of 0.73 is very favorable to Berlin. However, the CCRC plays a critical role in shaping the project's fiscal impact."*** This is followed by a table identified as Table 5, which shows that, considering all municipal costs and expected tax revenues of the Commercial, Residential and CCRC uses, the net impacts to the Town are positive. However, if the CCRC development is never constructed, or is delayed for any reason, especially falling behind the issuance of Certificates of Occupancy for the residential units outside the CCRC, the fiscal impact of the Project will become negative. Therefore, the Developer hereby agrees to the following fiscal mitigation payment program:

If two years after a Certificate of Occupancy is issued for the 100th residential unit outside the CCRC, a Certificate of Occupancy has not been issued for the CCRC, or, regardless of how many residential units outside the CCRC are built, if a period of four years elapses after the date of the Town Meeting at which Village Overlay District was approved (whichever occurs first), and for an indefinite period thereafter so long as no Certificate of Occupancy for a CCRC has been issued, the Developer shall make a payment to the Town of Berlin of \$51,200, payable each November 1st. This amount was arrived at by subtracting from the above referenced Table 5 the CCRC costs and revenues, and is the resulting amount needed to prevent the Project from having a negative fiscal impact on the Town. This amount is hereby fixed and is not to be adjusted based on actual costs and revenues. However, such amount shall be the "Base Payment" which shall be adjusted annually after the year of the first payment, according to the percentage change in the applicable Consumer Price Index published monthly by the Bureau of Labor Statistics, U.S. Department of Labor (the "CPI Adjustment"). In no event at any time shall the adjustment of the Base Payment result in a payment that is less than the payment made in the immediate prior year.

- 14.3 At the time the Developer draws its first building permit it shall make a one-time payment to the Town of \$5,000 to cover the cost of Assessor Map alterations.
- 14.4 While the above-referenced Financial Impact Analysis concluded that the Project is expected to generate sufficient new tax revenue to cover additional costs to the Town resulting from the Project, it is recognized that, as to Public Safety costs, there is likely to be transitional costs as the Town's Public Safety agencies grow to accommodate the increase in the Town's population attributable to the Project. Therefore, as a special mitigation measure addressing such transitional Public Safety costs, the Developer hereby agrees to make five annual payments to the Town of \$100,000 each, payable by November 1st of each year, when the earlier of the following two events has

occurred:

(a) a Certificate of Occupancy for the CCRC has been issued, or

(b) a Certificate of Occupancy for the 150,000th square foot of development has been issued, regardless of the use of those square feet.

These five annual payments are to be expended among public safety departments in accordance with the annual budget process of the Town.

14.5 Omitted.

14.6 The Town and the Developer agree to cooperate with one another to facilitate, if the Board of Selectmen so desires, the submission by the Town of an appropriate "Local Initiative Program Application for Local Action Units" to the Massachusetts Department of Housing and Community Development (DHCD). The purpose of such submission would be to seek the inclusion of any and all qualifying units developed under the provisions of the Village Overlay District as approved by Town Meeting on December 2, 2009, in the "subsidized housing inventory" pursuant to G.L. 40B. Neither party is obligated to undertake costs or agree to conditions it considers to be unfavorable in order to submit such an application, but both parties agree to a good faith investigation and discussion aimed at seeing if they can arrive at an approach that could result in benefits to the Town.

14.7 (a) River Run" Property Future Use The Developer is the contract purchaser of a certain lot owned by First Colony Development Co. Inc., containing approximately 26.49+/- acres (the so-called "River Run" property) located in the vicinity of the Project. As shown on the Town of Berlin's zoning map, part of said property lies within the Residential-Agricultural District, another part lies within the Limited Business District.

A "Comprehensive Permit" for the development of 32 dwelling units on the River Run property has been approved, and was recently extended, by the Berlin Zoning Board of Appeals ("ZBA") under the provisions of M.G.L. Chapter 40B. Under said Comprehensive Permit, 26 of the 32 approved units shall contain three (3) bedrooms; eight (8) units shall be affordable.

As it is desirable to the Town to meet and exceed the thresholds established by M.G.L. ch. 40B, one of the recognized benefits of Riverbridge to the Town is that it is expected, once fully built, to put the Town above M.G.L. ch. 40B's 10% affordable housing threshold, as it will provide for the construction of an 84-unit rental program with 21 affordable rental housing units (referenced above in paragraph 1.7 (b)), which will likely result in the Town being credited with a total of eighty-four (84) additional dwellings included in the Town's recognized

Subsidized Housing Inventory (SHI).

To further complement the benefits of Riverbridge, the Developer hereby agrees that, in the event the proposed Village Overlay District zoning is approved by Town Meeting, it will complete its purchase of the River Run property (it has an absolute right to purchase with no Seller contingencies) and neither the Developer nor any successor or assignee shall build the 32-unit project as permitted for the River Run property under the above-referenced Comprehensive Permit. Rather, the Developer agrees to use the River Run property only as allowed under the Berlin Zoning By-law and in compliance with all state and local regulatory requirements, and possibly for the specific uses detailed below.

The above notwithstanding,

- 1) If the Berlin Housing Partnership and the Developer agree, a portion of the River Run parcel may be used, pursuant to modifications of the above-referenced Comprehensive Permit and/or a new Comprehensive Permit, as the site of a forty (40) unit senior housing complex presently planned to be built elsewhere in town using HUD Section 202 or other grants from Federal and/or State governmental agencies, under terms and conditions agreed to between the non-profit agency responsible for such project and the Developer. Such project (the "HUD Section 202 Development") would contain small residential units restricted to seniors and a building manager.
- 2) If permitted by all State and Local agencies with jurisdiction, a private well water facility to provide water for uses on the River Run parcel and at Riverbridge may be established.

The above are possible uses the Developer and the Board of Selectmen find acceptable for the River Run property; and both agree that in the event the proposed Village Overlay District is approved by Town Meeting, the River Run property shall not be developed as currently allowed under the Comprehensive Permit. Any of the above uses and any uses allowed under the Berlin Zoning By-law, may be implemented only if fully allowed by the Town of Berlin, and only if all required local, state and federal permits are obtained as required.

(b) Proposed Division of River Run Property into Two Parcels: As an additional form of mitigation of the impacts of the Riverbridge Project, the Developer agrees that the Developer shall forthwith make a submission pursuant to the Subdivision Control Law to divide the River Run property (including that portion subject to Conservation Restrictions recorded at the Worcester County Registry of Deeds at Book 41978, Page 384 and Book 40857, Page 273) into two parcels, generally as shown on the attached "River Run Potential Subdivision Plan", attached hereto as Exhibit C, as new Parcels "6A"

and "6B".

Once such subdivision is approved by the Berlin Planning Board and any applicable subdivision approval appeal period has expired or any appeal has been resolved, the Town shall have the option, exercisable within two years of the date of this Agreement or within such later time as the parties shall reasonably agree (the "Option Exercise Period"), to purchase the proposed Parcel 6B for \$1.00 (subject to any mutually acceptable covenant and easement agreements aimed at fulfilling the terms of this paragraph 14.7, which may not be unreasonably refused by the parties). Alternatively, whether or not the Planning Board has approved a subdivision, the Town shall have the right within the Option Exercise Period, whether or not the subdivision plan has been approved, to acquire the area generally shown as Parcel 6B by eminent domain for the purposes and subject to such covenants and easements, and the Developer hereby waives damages and appraisal for such a taking. Upon acquiring said Parcel 6B, the Town may hold the property as part of its inventory of buildable land with a view toward using the parcel for allowed municipal purposes or conveying the parcel at some point to a third party.

The parties agree that no part of either Parcel 6A or Parcel 6B shall be used for any housing except the above-referenced Proposed HUD Section 202 Development. In furtherance of the preceding, the Town may, with the Developer's agreement (which shall not be unreasonably withheld) convey, or assign its option to purchase, Parcel 6B to a not-for-profit entity, for the purpose of constructing the said Proposed HUD Section 202 Development. The Town's option to convey, or assign its option to purchase, Parcel 6B for the purpose of developing the Proposed HUD Section 202 Development shall expire if not exercised within the Option Exercise Period.

As the Developer is paying \$675,000 for the River Run parcel, this offer to sell parcel 6B (which includes about half of the buildable area of the River Run property) to the Town for \$1.00 is considered the equivalent of \$337,500 in potential additional Riverbridge mitigation.

(c) Infrastructure: Two wells that have already been approved by the State and Town for 10,000 gallons per day (an amount that is considered a sufficient water supply for the potential uses of these two parcels) are located on the proposed Parcel 6B. The State and Town have also approved a septic system on said Parcel 6B of sufficient capacity to accommodate the development of both parcels (the parties believe that all possible uses of this land as envisioned in this paragraph 14.7 would require lower water and sewer capacities than the 32 proposed 40B dwelling units (with 90 bedrooms) currently allowed under the River Run Comprehensive Permit). However, It is expected that the cost to build the additional infrastructure required for the development of buildable portions

of Parcels 6A and 6B (including but not limited to an approx. 700' roadway and the piping, pumps and other facilities and apparatus to make such water and septic systems operational, but excluding parcel-specific tie-ins) (the "Required Infrastructure") will be significant.

Before such time that the Town takes title to Parcel 6B (if it does), the Developer shall be responsible for all costs of maintaining, managing and insuring the River Run property. However, if the Town does become title owner of Parcel 6B, or any party takes title through or by way of the Town's option to elect to take title for \$1.00, the cost of installing and maintaining the Required Infrastructure shall, as a general proposition, be borne equally, in as much as the buildable portions of the two parcels (6A and 6B) are about equal.

Although neither the Town nor Riverbridge is required to commence construction of any of the Required Infrastructure until the parcel it or its successors or assignees controls is ready and permitted for construction; either party may elect to install the Required Infrastructure, or a portion thereof, at any time at its sole cost.

The following further terms related to the development of Parcels 6A and 6B are hereby agreed to by the Town and the Developer.

A. If the Town elects to convey or to assign its rights in Parcel 6B to a non-profit entity for the purpose of building the Proposed HUD Section 202 Development ("HUD Section 202 Developer") it shall do so subject to that entity covering all of the costs of installing all of the Required Infrastructure serving both Parcels 6A and 6B as a condition of its acquisition of parcel 6B for \$1.00. In such a case, the HUD Section 202 Developer would not be reimbursed any of such costs, it being acknowledged that the budget for such project – if the land can be procured for \$1.00 – can cover the costs of installing the Required Infrastructure.

B. If the HUD Section 202 Developer does not desire or for any reason does not accept an assignment of Parcel 6B the Required Infrastructure shall be made when the first of the title owners of these parcels elects to commence construction. That party shall cover all costs of the installation of all of the Required Infrastructure, and shall provide the other with a full accounting of all such costs, separated from any other construction costs.

C. The party not installing the Required Infrastructure shall be obliged to pay 50% of such costs to that party which installed the Required Infrastructure when it decides to commence construction on its parcel. Such payment shall be due 60 days after the date of drawing a building permit. Such payment of 50% of the Required Infrastructure installation costs shall increase at the rate of 3% per annum running from the date on which the installing party draws a

Certificate of Occupancy of the building it constructed on its parcel.

D. There are two possibilities with regard to Parcel 6B if HUD Section 202 Developer does not take an assignment for the purpose of constructing the Proposed HUD Section 202 Development project:

- (1) The Town might continue to own Parcel 6B for the purpose of building thereon a municipal structure or for a municipal use that does not require a structure, or
- (2) The Town might convey Parcel 6B to a third party.

If the Town elects to construct a municipal building on Parcel 6B, then:

- (a) If the Required Infrastructure has already been installed, the obligation of the Town to pay such 50% of the cost to install the Required Infrastructure shall become null and void, and the Town shall not be required to make any such payment.
- (b) If the Required Infrastructure has not been installed, the Town may elect to cover all such costs, and shall then be entitled to repayment of 100% of those costs by the title holder of Parcel 6A, which payment may be made by such party in four (4) equal annual payments commencing one year after the issuance of the Certificate of Occupancy of the municipal building constructed by the Town.

If the Town elects to convey Parcel 6B to a third party, that third party shall take title subject to this obligation to pay 50% of the cost of installing the Required Infrastructure (with annual percentage increase if applicable). That payment shall be paid at the closing of that conveyance to the third party.

The intention of the parties expressed in this sub-paragraph is that the Town shall be obligated to pay 50% of the costs to install the Required Infrastructure only if parcel 6B is conveyed to a third party for development.

E. The parties understand and agree that the title holders of Parcels 6A and 6B are sharing the approved well water system and approved septic system, and the road leading to the buildable parts of the parcels. They further agree that regardless of which party pays the costs of the installation of the Required Infrastructure, both parties shall have an equal right to use the road, and to draw water and discharge effluent as allowed by the completed systems, on an equal basis. The party that installs the Required Infrastructure shall complete such installation to the point of having a tie in at the property line separating the two parcels that the other party can use to connect when it develops its parcel.

F. All operation and maintenance costs of the water and septic systems to the extent not covered by use charges, shall be borne proportionately once installed and once both parties have made improvements to their parcel (in the form of a building). For the period of time that the Required Infrastructure has been installed but is being used only by one party, the party using the systems shall cover all such operation and maintenance costs.

G. Once both parcels are improved, the title owners of parcels 6A and 6B shall pay their own metered use charges for water and sewer, and to the extent separate metering is, for any reason, or for any period of time, not done, such utility consumption costs shall be borne proportionately on the basis of flows assigned to different types of uses under Title 5 of the State Environmental Code.

H. If the Town elects to take title to Parcel 6B, the deed into the Town or a taking by the Town shall provide the Developer with an option to purchase said Parcel 6B on the same terms and conditions as a bona-fide third party purchaser in compliance with G.L. c.30B, §16 as it may be amended.

I. All use of Parcels 6A and 6B must comport with all applicable Berlin Zoning By-laws, except that the Town and/or the HUD Section 202 Developer may elect to construct the above-referenced HUD Section 202 Development pursuant to a modification of the existing Comprehensive Permit or the granting of a new Comprehensive Permit, either as approved by the ZBA.

J. The Town may not use Parcel 6B for the storage of sand, gravel or other construction or infrastructure materials, the construction of a Public Works facility, or any other kind of outdoor storage of materials or equipment.

K. It is contemplated that the road leading up to the buildable portions of Parcels 6A and 6B shall be constructed pursuant to subdivision review and approval by the Planning Board and to the standards identified in any such subdivision approval. The Developer agrees that if the completed road is laid out by the Selectmen as a public town way and presented to the Town for acceptance at a Town Meeting, the Developer shall convey the fee or necessary easements in the road to the Town free of charge and hereby waives appraisal and damages if the Town chooses to take such fee or easements by eminent domain. If the Town Meeting accepts the road, it shall be owned and maintained by the Town. If the Town Meeting does not accept the road, it shall be managed and maintained by the title holders of the two parcels (6A and 6B) as a private road.

L. To the extent that the Zoning By-laws allow shared parking (Article 8 of the Berlin Zoning By-laws), the Parties hereby agree to allow such shared parking if desired by either party, provided that no party shall be required to

provide any parking area that is not needed for its own use, and no party shall be required to provide a larger shared area than is provided by the other party.

M. Both the Town and the Developer agree that, with regard to the cooperation envisioned by this paragraph 14.7, when either party is ready to develop its parcel, all necessary actions and decisions shall be taken quickly and fairly so that such development may be accomplished with all due expediency. The Board of Selectmen will make known to other permit and approval-granting boards the Town's support for the development of the River Run Property as provided in this section 14.7, but the Developer acknowledges that the Board of Selectmen cannot control or predict the conditions that may be imposed by other boards or officers exercising authority under state or local law.

15. MISCELLANEOUS

15.1 Security:

The Town acknowledges that certain improvements and conditions as may have been required in this Agreement may not be fully completed or satisfied at the time of the issuance of the final Occupancy Permit (due to weather conditions, local, state or federal approvals or other matters beyond the Developer's control). In addition, certain conditions may be ongoing requirements, which are unable to be satisfied prior to the issuance of a final Occupancy Permit. In those instances when conditions requiring construction of an improvement are not so satisfied prior to the issuance of the final Occupancy Permit, due to delay or other matters beyond Developer's control, the Developer shall agree, pursuant to the VO Site Plan Approval process, on the amount and nature of mutually agreed upon adequate security to ensure completion of those conditions not yet satisfied and the Building Inspector, upon notification that such security is satisfactory, shall issue the Occupancy Permit.

15.2 Documentary Production

Concurrent with the presentation of this Agreement, the Developer shall provide the following documentation.

- (1) Representation from an authorized signatory of each entity signing for the Developer that it intends to maintain itself as a going concern able to discharge its responsibilities hereunder.
- (2) Opinion of counsel from counsel for each entity signing for the Developer that the execution of this Agreement and the representations required are duly authorized and binding upon the party executing such document.

- (3) Opinion of counsel from the Property Owners' counsel indicating that the Property Owners have good record title to the Site, free from encumbrances; and
- (4) Opinion of counsel from Riverbridge's counsel that Riverbridge has site control by means of a purchase and sale agreement or option with the Property Owners and the owners of the River Run Property.

15.3 Forbearance from Suit

Developer shall forego any actions at law or equity attempting to contest the validity or prevent the enforceability of any provisions of this Agreement and shall procure written acknowledgment that such forbearance shall bind any successor or assign. Such forbearance shall not preclude the Developer from bringing any action for breach of contract on the part of the Town for acts of gross negligence or intentional misconduct on the part of the Town with respect to matters contemplated herein.

15.4 Successors and Assigns

- (a) All terms of this Agreement shall bind any successor or assign of this Agreement or any successor or assign of land within the Site.
- (b) This agreement shall be recorded and run with the land.
- (c) Any allocation of development rights and responsibilities, including without limitation all mitigation payment obligations, under the provisions of this Agreement resulting from the sale of any part of the Site shall be subject to approval of the Board of Selectmen, such consent not to be unreasonably withheld. In the absence of such approval, all such rights and responsibilities shall remain those of the Developer.

15.5 Notices

Notices, when required hereunder shall be deemed sufficient if sent registered mail to the parties at the following addresses:

Town: Town of Berlin
 Town Clerk's Office
 23 Linden St.
 Berlin, MA 01503
 Attn: Town Clerk

Developer: Riverbridge North, LLC
 5 East Main Street.

Suite 4
Westborough, MA 01581

Property Owners: Attorney Joseph E. Olbrys
Cawley & Olbrys, LLP
382 Boston Turnpike
Suite 204
Shrewsbury, MA 01545

15.6 Governing Law

This Agreement shall be governed by the laws of the Commonwealth of Massachusetts. The parties hereby consent to non-exclusive jurisdiction of the courts of the Commonwealth of Massachusetts sitting in the county of Worcester.

15.7 Amendments to this Agreement

Amendments to the terms of this Agreement may be agreed to on behalf of the Town by the Board of Selectmen provided that no such amendment shall relieve the Developer of any Material obligation, as determined by the Board of Selectmen, without prior approval of Town Meeting.

15.8 Interpretation

For purposes of the operation of this Agreement under Section 459.9 of the Zoning By-Laws, the term "Developer" shall include any proponent of the Mixed Use Village use for this Site, whether or not a successor or assign of any signatory of this Agreement. Capitalized terms not defined herein shall have the meaning assigned under the Zoning By-Laws.

15.9 Miscellaneous

(a) The Developer acknowledges and agrees that this Agreement shall be binding upon the Developer and each of its successors or assigns as to the obligations which arise under this Agreement during their respective periods of ownership of the Project, provided that each predecessor in interest shall be released of all the Developer's obligations hereunder once it has procured a written acknowledgment from its immediate successor addressed to the Town that such successor is bound by the terms of this Agreement, and that this Agreement shall be enforceable by the Board of Selectmen. As and when requested by the Developer, the Town will promptly advise, in writing, the status of the Developer's obligations under this Agreement for the benefit of

existing and prospective mortgagees of all or a portion of the Project and such other persons as the Developer may designate. Developer also acknowledges and agrees that the Town of Berlin, operating through its officers and employees and upon notice to the Developer, shall have the right to enter the property as reasonably necessary to confirm compliance with the terms of this Agreement.

(b) The Developer shall not be considered to be in breach of this Agreement for so long as the Developer is unable to complete any work required hereunder due to a force majeure event or other events beyond the reasonable control of Developer. In the event that the Town believes that a breach by Developer under this Agreement exists, it shall give written notice of the same to the Developer and give the Developer a reasonable period of time to cure such breach before taking any action on the same.

(c) The Developer covenants and agrees that the restrictions set out in this Agreement (1) touch and concern the Site, (2) are for the purpose of facilitating orderly and harmonious development of the Project, (3) are held in gross by the Town as a restriction held by a governmental body under G.L. c. 184, §26 and not for the benefit of any land of the Town, (4) are now and shall continue to be of actual and substantial benefit to the Town, (5) do not impede the reasonable use of the Site for which it is most suitable, and (6) are enforceable in perpetuity or for the longest term permitted by law and in any event for one hundred years. The Developer further covenants that, as an "other restriction held by a governmental body" as that term is used in G.L. c. 184, § 26, such restrictions are not subject to the limitations on the enforceability of restriction in G.L. c. 184, §§26-30. Nevertheless, if recording of a notice is ever needed to extend the time period for enforceability of such restrictions, the Developer hereby appoints the Board of Selectmen of the Town of Berlin as the Developer's agent to execute and record such notice and agrees that the Developer shall execute and record such notice upon request.

(d) Recognizing the pending Notice of Intent to Sell some lots within the Village Overlay District which are subject to a Chapter 61A right of first refusal enjoyed by the Town, and respecting the voters' wishes as to the overlay zoning, if the Village Overlay District rezoning article ("Rezoning Article" related to the project) being considered at the December 2, 2009 Berlin Special Town Meeting is adopted (by a 2/3rd vote as required by law), the Board of Selectmen shall, within the 120 period prescribed by statute, issue a written decision to the Seller, and that decision shall decline to purchase the 61A encumbered parcels.

(e) The Developer agrees to work with the Town as it approaches its Bicentennial celebrations (2012, but with some events in 2011). The Developer will make available to the Town during 2011 and 2012 at reasonable times

reasonable portions of: (1) the area of its property identified on the Detail Development Plan as "Conservation Restriction Areas", including access to Barefoot Brook, North Brook and the Assabet River for battle re-enactments, tours, walks and other bicentennial events, and (2) to the greatest extent possible without disturbing or interfering with construction activities or the use and enjoyment of occupied buildings constructed within the "Permissible Building Area" as shown on said Detail Development Plan, parking areas and other constructed facilities to help facilitate such Town celebrations. All such use (under (1) & (2) above) shall be made available at no cost to the Town in terms of rent, but the appropriate Town bodies shall cover any out of pocket or clean up expenses related thereto.

This Agreement shall become effective at such time that Article 2 (the "Rezoning Article" related to the Project) to be considered at the December 2, 2009 Town of Berlin Special Town Meeting is approved or deemed approved by the Attorney General's Office of the Commonwealth of Massachusetts. In the event that the Attorney General's Office approves the Rezoning Article, or the same is deemed approved, but a third party commences legal proceedings claiming invalidity of the Rezoning Article and as a result of such proceeding the Rezoning Article is finally adjudicated to be invalid, either in whole or in part, by decision of a court of competent jurisdiction (and all appeal periods with respect to such decision have lapsed), then this Agreement, at the option of the Developer may be terminated by notice to the Town and shall thereupon be of no further force or effect. It is expressly agreed that the Agreement may only be so terminated if the Developer abandons all efforts to construct the Project pursuant to the Rezoning Article by like written notice to the Town. In the event that only a part of the Rezoning Article is finally adjudicated to be invalid, and the Developer wishes to proceed with or authorize others to proceed with construction of the Project or other substantially similar improvements on the Site pursuant to the Rezoning Article, it shall give written notice of such intent to the Town and such written notice shall ratify and confirm this Agreement. The parties agree to cooperate and to act in good faith for the purpose of carrying out the provisions of this paragraph.

EXECUTED under seal as of the date and year first above written, pursuant to the vote under Article 1 of the December 2, 2009 Special Town Meeting.

RIVERBRIDGE NORTH, LLC

Commonwealth of Massachusetts

Worcester S.S.

On this 2nd day of December 2009 before me the undersigned notary public, personally appeared



Christopher G. Senie

Name: Christopher G. Senie

proved to me through satisfactory evidence of identification which were

personal knowledge, to be

the person whose name is signed on the preceding or attached document, and acknowledged to me that

he signed it voluntarily for its stated purpose.



AMY L. MCINTYRE
Notary Public
Commonwealth of Massachusetts
My Commission Expires
June 15, 2012

Commonwealth of Massachusetts
Worcester S.S.

On this 2nd day of December 2009 before me
the undersigned notary public, personally appeared

Susan G. Senie By: Susan G. Senie
proved to me through satisfactory evidence of
identification which were

personal knowledge, to be
the person whose name is signed on the preceding
or attached document, and acknowledged to me that

she signed it voluntarily for its stated purpose.
By: W. Matthew Senie
Name: W. Matthew Senie
Its: Member
Hereunto Duly Authorized

Its: Member
Hereunto Duly Authorized

Susan G. Senie
Name: Susan Senie
Its: Member
Hereunto Duly Authorized



AMY L. McINTYRE
Notary Public
Commonwealth of Massachusetts
My Commission Expires
June 15, 2012

Worcester S.S.
On this 2nd day of December 2009 before me
the undersigned notary public, personally appeared

W. Matthew Senie
proved to me through satisfactory evidence of
identification which were

personal knowledge, to be
the person whose name is signed on the preceding
or attached document, and acknowledged to me that

he signed it voluntarily for its stated purpose.
By: Valerie C. Longone
Name: Valerie C. Longone,
Trustee of the Risi Family Trust
and not Individually,
Hereunto Duly Authorized

Name: W. Matthew Senie
Its: Member
Hereunto Duly Authorized



AMY L. McINTYRE
Notary Public
Commonwealth of Massachusetts
My Commission Expires
June 15, 2012

Worcester S.S.
On this 13th day of December 2009 before me
the undersigned notary public, personally appeared

Valerie C. Longone
proved to me through satisfactory evidence of
identification which were

Massachusetts Driver's License, to be
the person whose name is signed on the preceding
or attached document, and acknowledged to me that

she signed it voluntarily for its stated purpose.
By: Sharon M. Risi
Name: Sharon M. Risi,
Trustee of the Risi Family Trust
and not Individually,
Hereunto Duly Authorized

Sharon M. Risi
Name: Sharon M. Risi,
Trustee of the Risi Family Trust
and not Individually,
Hereunto Duly Authorized

Worcester S.S.
On this 28th day of December 2009 before me
the undersigned notary public, personally appeared

Sharon M. Risi
proved to me through satisfactory evidence of
identification which were

Massachusetts Driver's License, to be
the person whose name is signed on the preceding
or attached document, and acknowledged to me that

she signed it voluntarily for its stated purpose.

Commonwealth of Massachusetts
Worcester S.S.
On this 23rd day of December 2009 before me
the undersigned notary public, personally appeared

Carl P. Risi, Jr.
proved to me through satisfactory evidence of
identification which were

Massachusetts Driver's License, to be
the person whose name is signed on the preceding
or attached document, and acknowledged to me that

he signed it voluntarily for its stated purpose.
By: James W. Cawley
Notary Public

TOWN OF BERLIN
BOARD OF SELECTMEN

By: Valary Bradley
Name: VALARY BRADLEY
Hereunto Duly Authorized

By: Thomas Andrew
Name: THOMAS ANDREW
Hereunto Duly Authorized

By: Judith Booman
Name: JUDITH BOOMAN
Hereunto Duly Authorized

COMMONWEALTH OF MASSACHUSETTS

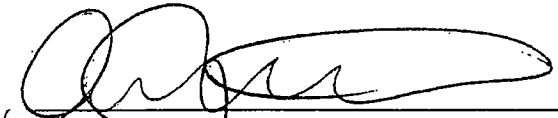
Worcester County, ss.

On this 2nd day of December, 2009, before me, the undersigned Notary Public, personally appeared Valary Bradley, Judith Booman and Thomas Andrew

_____, Selectmen of the Town of Berlin, who proved to me through satisfactory evidence of identification which was personal knowledge to be the persons whose names are signed on the preceding document and acknowledged to me that they signed it voluntarily for its stated purpose.



AMY L. McINTYRE
Notary Public
Commonwealth of Massachusetts
My Commission Expires
June 15, 2012


Notary Public Amy L. McIntyre, Notary Public
My Commission Expires: June 15, 2012

388331/02805/0002

