

**PRINCETON WILMINGTON LOCAL INITIATIVE PROJECT
MEMORANDUM OF AGREEMENT**

This Agreement (“Agreement”) is entered into this _____ day of _____, 2020 by and between Princeton Development LLC or nominee, a Massachusetts limited liability company, with a usual place of business at 1115 Westford Street, Lowell, MA (“Princeton”), the owner and/or proposed purchaser of premises, located on Middlesex Avenue, Wilmington, Middlesex County, MA and shown on Wilmington Assessors Map 89, as a portion of Lot 8, and a portion of Lot 9 and all of Lots 10, 13A and 13B, with approximately 23 acres (“Premises”), and the Town of Wilmington, a municipal corporation organized under the laws of the Commonwealth of Massachusetts, with a usual place of business at 121 Glen Road, Wilmington, MA (“Town”), acting by and through its duly elected Board of Selectmen (“Board of Selectmen”). Princeton, the Town and Board of Selectmen are collectively referred to herein as the “Parties.”

WHEREAS, the Town seeks to achieve and maintain the goal of ten percent of Subsidized Housing Inventory Eligible Housing as defined under the affordable housing statute and regulations, respectively, G.L. c.40B, §§20-23 and 760 CMR 56.00;

WHEREAS, Princeton seeks to develop a multi-family affordable rental housing community at the Premises, to be known as “Princeton Wilmington,” pursuant to the affordable housing statute and regulations, with up to 108 rental units (“Project”) , in conjunction with the Town as a Local Initiative Project (“LIP”) under Massachusetts Department of Housing and Community Development (“DHCD”)’s Guidelines and 760 CMR 56.00

WHEREAS, Princeton intends to seek a Comprehensive Permit for the Project from the Wilmington Zoning Board of Appeals (“ZBA”) and the Town and Princeton prefer that Princeton’s affordable housing rental community Project proceed as a LIP under DHCD’s Local Initiative Program, through a state subsidized housing program, which shall require that the Project’s Project Eligibility application be signed by the Chief Executive Officer of the Town (i.e., the Board of Selectmen);

WHEREAS, to accomplish the above goals, Princeton is amenable to constructing and maintaining an affordable rental housing community at the density and affordability and with the mitigation set forth below;

WHEREAS, Princeton has filed a LIP application with the Board of Selectmen seeking the Board’s written endorsement;

WHEREAS, the Parties agree that cost certification shall occur as required under the DHCD Guidelines for G.L.C. 40B Comprehensive Permits dated May 2013 (“Guidelines”); and

NOW THEREFORE, based upon good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Town and Princeton agree as follows:

I. Princeton’s Undertakings

Princeton shall seek a Project Eligibility Letter from DHCD and a Comprehensive Permit from the ZBA for a rental project with a maximum of 108 units, with a maximum of 173 bedrooms, with a minimum of 20 percent affordable units restricted to families whose household income does not exceed 50% AMI under the following terms, conditions and limitations (“Project”):

- A. The 108 residential rental units at the Project shall contain no more than 173 bedrooms, with the following mix of bedrooms:

One Bedrooms:	54
Two Bedrooms:	43
Three Bedrooms:	11

No unit shall include “bonus rooms”, lofts, studies or other rooms that may readily be converted to or used as additional bedrooms.

- B. The affordable units at the Project shall be permanently restricted as affordable or for the longest period permitted by law and shall remain affordable so long as the Project continues to benefit from the Comprehensive Permit because the Project does not conform to zoning requirements. If practicable, the affordable units shall be “floating units.” In any event, the affordable units shall be spread throughout the Project and shall be indistinguishable in fixtures, design and finish from the market rate units. The Town shall have the right to enforce the affordability requirements. To the fullest extent allowed under G.L. c. 40B and the regulations promulgated thereunder and other applicable law, Princeton shall provide a Wilmington preference category at initial lease up of the rental of the Affordable Units. Princeton shall maintain records of its marketing efforts and its efforts to provide such local preference, which records shall be open to review by the Town for compliance with the local preference set forth herein, to the extent such local preference has been allowed by the Subsidizing Agency. The foregoing local preference shall be implemented pursuant to procedures approved by the Subsidizing Agency and through the Comprehensive Permit approval process before the ZBA.
- C. The Project shall contain no buildings taller than four stories or 50 feet, unless a full peaked roof is required by the ZBA, in which case no building shall be taller than four stories or 55 feet.

- D. As part of the Project, and prior to issuance of any certificates of occupancy for units within the Project, Princeton shall complete improvements to the portion of Jefferson Road north of the municipal parking lot parcel (from a point approximately 310 feet from the intersection with Middlesex Avenue) to the access drive and parking areas serving proposed Building B of the Project. Subject to receipt of MassWorks grant funds, as set forth herein, the Town shall complete improvement to the portion of Jefferson Road abutting the municipal parking lot parcel (to a point approximately 310 feet from the intersection with Middlesex Avenue). Such improvements to Jefferson Road shall be made to the following standards: installation of vertical granite curbing Type VA-4 (along both sides for the entire length of Jefferson Road), concrete sidewalks (along both sides of the road to meet the existing sidewalks on Middlesex Avenue), 4-inch (minimum) pavement thickness, and 12-inch (minimum) base course as specified in the Town's Rules and Regulations Governing the Subdivision of Land and the crosswalk and accessible ramps at the Jefferson Road and Middlesex Avenue intersection shall be improved to meet current ADA requirements (collectively "Roadway Improvements"). All of the above described improvements by the Town shall be funded through the MassWorks Grant, where applicable, and the Town shall be under no obligation to expend funds for any such improvements above or beyond any MassWorks Grant awarded for such improvements. Upon completion of the improvements to Jefferson Road set forth herein, as confirmed by the Department of Public Works, the Town Manager and Board of Selectmen shall support the acceptance of Jefferson Road as a public way at the next available Town Meeting at which public ways can be accepted.
- E. Princeton will, at its sole expense, prepare a MassWorks grant application to be submitted by the Town for a sewer extension along Middlesex Avenue ("Sewer Extension"), as conceptually depicted on the Sewer Extension Exhibit Plan, attached hereto as Exhibit A, to include a funding request to replace the culvert under Route 62/Middlesex Avenue for Lubbers Brook ("Culvert Replacement") and the Town's Roadway Improvements described in Paragraph I.D. and I.H. Princeton understands and agrees that this Agreement is contingent upon full funding of the Sewer Extension, the Culvert Replacement, and the Town's Roadway Improvements through the MassWorks Grant. In the event said application is unsuccessful, or if any funds awarded under such grant are insufficient, Princeton shall have the option of abandoning the project or paying for any otherwise unfunded portions of the Sewer Extension, Culvert Replacement, and Roadway Improvements. The Town shall not be responsible for any costs related to the Sewer Extension, the Roadway Improvements (described in I.D and I.H.), or the Culvert Replacement, including without limitation for design, permitting, bid document preparation, project management, or construction thereof.

- F. Princeton agrees not to propose construction of additional housing units on any property abutting or located within 300 feet of the Premises. This Agreement is contingent upon the Town reaching an agreement with the current owner of the Premises regarding Tax Map Parcel 89, Lot 7 such that any development of the same be limited to commercial and retail uses. This Agreement is also contingent upon the Town reaching an agreement with the current owner of the Premises to donate any excess land for the reconstruction of the existing MBTA commuter rail stop proximate to the Premises, if deemed necessary for such reconstruction.
- G. The maximum lot coverage (buildings and parking areas and driveways) shall not exceed 25%. There shall be a minimum of 40% open space (and recreational areas that are provided shall count toward the open space.).
- H. As part of the Project, and prior to issuance of the final certificates of occupancy for units within the Project, Town shall fund and complete improvements to the existing crosswalk across Middlesex Avenue (located along the parcel's frontage on Middlesex Avenue) including ensuring compliance with current ADA regulations and installation of two (2) new solar powered rectangular rapid flashing beacons (RRFB) that meets the specifications of the Town of Wilmington Department of Public Works. All of the above described improvements shall be funded through the MassWorks Grant, and the Town shall be under no obligation to expend funds for any such improvements above or beyond any MassWorks Grant awarded for such improvements, subject to Princeton's option to install the same in the manner set forth in Paragraph IE.
- I. The Project shall be connected to municipal water and sewer infrastructure and all water and sewer connection fees and fire protection fees may be applicable for both the market rate and affordable units, except as expressly waived by the Zoning Board of Appeals, in its sole discretion. The Board of Selectmen and Town Manager shall support a waiver of 50% of the fire protection fees for the affordable units to the ZBA.
- J. Before performing any blasting to support the improvements detailed in this Agreement, either on or off of the Premises, Princeton or its contractor shall perform surveys of the adjacent properties that could be impacted by the blasting, provided access is granted by the owners of the adjacent properties, and shall obtain and maintain sufficient liability insurance in the amount of at least \$2 million and shall either not use perchlorate or any other material or substance that can cause environmental harm or, if any such materials or substances are used, then separate environmental impairment insurance in the amount of not less than \$5 million shall be maintained.

- K. The 108 units shall be subject to a permanent deed restriction that shall be delivered to the Town and accepted and recorded which shall require that the 108 units shall remain rental units and shall not be converted to ownership units without the approval of the Board of Selectmen and Town Meeting to release the restriction.
- L. With its Comprehensive Permit application, Princeton shall provide the ZBA with a report regarding the projected total number of children to reside at the Project and the projected number of school aged children that are to reside at the Project and attend public schools, and the report shall be provided to the Superintendent of Schools, for planning purposes. The ZBA may have said report peer reviewed at Princeton's expense.
- M. Princeton shall provide the following information and satisfy the following design standards during the public hearing before the ZBA:
- i. Sight distances at each means of egress for the Project shall be designed in accordance with best engineering practices, using AASHTO specifications, and each shall be established and installed and maintained at all times.
 - ii. The Project shall fully comply with the Town of Wilmington's Comprehensive Stormwater Management Bylaw and Regulations, and the Massachusetts Department of Environmental Protection (MassDEP) Stormwater Policy (the Policy). All impervious area, existing and proposed, within the redevelopment area shall fully comply with the Policy's standards for New Development unless any provisions of the Town By-laws and Regulations are specifically waived by the ZBA during the Comprehensive Permit process.
 - iii. The soil testing necessary to support the proper design of the stormwater management system(s) shall be witnessed by Town Officials or agents, as required by the Zoning Board of Appeals, by either a peer review consultant or the Health Director or Town Engineer.
 - iv. A snow storage and removal plan that protects the safety of the residents of the Project.
 - v. A lighting plan, which provides safe on-site lighting to protect the residents, but which does not create adverse impacts for abutting properties shall be designed and may be peer reviewed by the Zoning Board of Appeals at Princeton's expense and then installed and maintained by Princeton or its successors. All external lights at the project shall be shielded so as to not cast light onto abutting properties.
 - vi. A detailed landscaping plan shall be provided with the Comprehensive Permit application, and said plan may be peer reviewed at Princeton's expense by a consultant chosen by the ZBA, for the purpose of (without limitation) recommending revisions to the landscape plan to protect and screen abutting

properties to enhance the streetscape and ensure that native species are used throughout the project.

- vii. The buildings that face the rear of the Premises and that face abutting residential properties shall have design elements, to mitigate the massing impact of the buildings on the abutting residential properties owners. The ZBA may retain an architect to review the proposed designs and recommend conditions for the ZBA's consideration.

- N. In addition to any other consultants referenced herein, Princeton shall pay the reasonable cost of any consultants retained by the Zoning Board of Appeals, including without limitation for civil engineering review, including review of the stormwater management design (plan, details, specifications, report, calculations, and computations), pro forma review; legal assistance, traffic analyses; and review of the water and sewer infrastructure proposed for the Project, and the peer review fees shall be disclosed and paid for in advance and held and expended under G.L. c.44, §53G.

- O. Princeton shall pay all costs of the Town reasonably incurred, including reasonable legal fees, in connection with the review, consideration and permitting of the Project, including without limitation negotiation of this Agreement and pursuit of the MassWorks grant. Princeton shall reimburse the Town for any such costs within fourteen days after receipt of an invoice from the Town

- P. Princeton agrees that it shall not assert to the ZBA or to the Housing Appeals Committee or to any other party that the payment of any of the improvements or costs detailed in this Agreement causes or contributes towards causing the Project to be uneconomic under G.L. c.40B or 760 CMR 56.00, et seq., provided that all of the terms of this Agreement are satisfied.

- Q. Issuance of a Comprehensive Permit for the Project from the ZBA shall not alter the material terms set forth herein, Princeton or its successor shall seek building permits for the Project within one year of the issuance of the Comprehensive Permit taking final effect.

- R. Princeton shall pay all reasonable construction inspection fees charged by independent inspector(s) designated by the Town or Town inspectors to perform necessary inspections for the Project to ensure compliance with any permits or approvals during construction and post-construction, within 30 days of receipt of any such invoice. In the event that such fee is not timely paid, the Certificate(s) of Occupancy may be withheld until the fee is paid.

- S. Princeton shall cooperate with the Town and timely provide the Town Manager with all relevant information and material to support applications by the Town to DHCD to add the Project's units to the Town's SHI.

- T. Princeton shall pay all reasonable monitoring fees as provided for under DHCD's LIP Guidelines.
- U. The Project shall be built in a single phase. Princeton agrees that it shall provide as-built plans to the Town for all project infrastructure, including without limitation, roadway, stormwater, water and sewer main infrastructure, within 90 days of completion of the infrastructure and prior to issuance of any occupancy permits. A full set of as-built plans for the Project shall be submitted within six months of completion of the Project.
- V. Prior to issuance of the final certificate of occupancy permits for all the units within the Project, Princeton shall make an initial donation to the Town in the amount of \$50,000, with subsequent donations of \$20,000 each year on the month and date of the initial donation for the next ten (10) years for a total subsequent donation of \$250,000, which the Town intends to apply to the cost of designing, permitting and constructing a Fire Department substation in North Wilmington.
- W. Princeton agrees that subject to its rights under the Purchase and Sale Agreement with the current Owner dated March 3, 2020, incorporated herein by reference, this Agreement shall bind it and its successors in interest and that a Notice of this Agreement may be recorded against the Premises by the Town and that Princeton shall provide a certification by its attorney, to the Town that based upon representations and an examination of title that all owners and lienholders recognize and accept the terms of this Agreement and have assented to or subordinated their interests.

II. Town's Undertakings

- A. Upon execution of this Agreement by the Parties, the Board of Selectmen shall promptly supply Princeton with the necessary signatures and documentation for Princeton to seek a Project Eligibility Letter from DHCD under the LIP Program in accordance with the material terms set forth above.
- B. Upon request by Princeton, the Town Manager shall review and respond to any inquiry by Princeton regarding proposed changes to the Project and the Manager shall refer any change that he deems substantial to the Board of Selectmen for a determination as to whether the proposed change would or would not cause the Selectmen to exercise its rights to cancel this Agreement as provided for hereunder or meet with to review the impacts of such changes to the Project, which changes the Board of Selectmen shall not unreasonably determine to be substantial. The following changes shall, without limitation, be considered substantial: (i) change from rental to ownership units, or any other change that would result in fewer than all of the units in the development being counted on the Town's SHI; (ii) increase in the total number of units or bedrooms; (iii) increase in the height of any buildings.

- C. The Board of Selectmen shall provide a letter of support for the LIP application and Project before the Zoning Board of Appeals and any other Town Board or Commission as to the material terms set forth above. Princeton recognizes and agrees that no assurance or representation is made hereby that the ZBA will grant a comprehensive permit for the project, and Princeton hereby acknowledges that the ZBA, which is not a party to this Agreement, retains its full rights and discretion in reviewing and acting upon the comprehensive permit application.
- D. The Board of Selectmen shall not withdraw its approval and endorsement of the LIP application at any time, before or after the issuance of the Comprehensive Permit, as long as no unapproved substantial change to this Agreement has occurred.

III. Parties' Right to Cancellation

- A. In the event that Princeton does not cooperate in the filing of an application with DHCD for a Project Eligibility Letter within 120 days of the execution of this Agreement, a Project Eligibility Letter is not approved by DHCD, or Princeton exercises its rights under its Purchase and Sale Agreement with the Owner dated March 3, 2020 incorporated herein by reference, this Agreement shall automatically be null and void, unless extended in writing signed by the Parties, and the Parties shall have no further recourse against one another, except with respect to any consultant fees or costs incurred as of such date by the Town, for which Princeton shall continue to be responsible.
- B. If the ZBA denies the Comprehensive Permit application or issues a Comprehensive Permit that (a) decreases the number of units or bedrooms as agreed to above; (b) increases the number of affordable units other than as agreed to above; or (c) issues a Comprehensive Permit that contains unreasonable terms (not included herein) that affect the costs to develop and operate the Project and, unless voluntarily agreed to by Princeton with the ZBA, then this Agreement is void, and the Parties shall have no further recourse against one another except with respect to any consultant fees or costs incurred as of such date by the Town, for which Princeton shall continue to be responsible.
- C. If the Comprehensive Permit issued to Princeton (a) does not include the improvements and costs required by this Agreement; (b) increases the number of units or bedrooms other than as agreed to above; (c) decreases the number of affordable units agreed to above; (d) substantially changes the location and/or size and height of the structures, buildings and/or infrastructure as shown on the Plans considered by the Board of Selectmen, the Board of Selectmen shall have the right for those reasons, in its discretion, to void this Agreement by providing written notice of the same to Princeton and DHCD within 30 days of the filing of the Comprehensive Permit with the Town Clerk, and the Parties shall have no further recourse against one another, except with respect to any

consultant fees or costs incurred as of such date by the Town, for which Princeton shall continue to be responsible.

IV. Miscellaneous

- A. Any breach of this Agreement shall be enforceable by the Parties. In any such litigation arising hereunder, in which the Town is the prevailing party, it shall be entitled to recover from Princeton its counsel fees and costs incurred in connection with such litigation.
- B. Excluding any Claims (as herein defined) caused by the gross negligence and/or willful misconduct of the Town, its officials, agents, boards, commissions, consultants and contractors Princeton shall indemnify, defend, and hold the Town harmless from and against any and all claims, demands, liabilities, actions, causes of actions, defenses, proceedings, subpoenas, document requests and/or reasonable costs and expenses, including attorney's fees (collectively, the "Claims"), brought against or initiated as to the Town, its agents, departments, officials, employees, insurers and/or successors, by any third party, including any private or public entity, arising from or relating to the this Agreement and/or Project. Such indemnification shall include, but shall not be limited to, all reasonable fees and reasonable costs of attorneys and consultants of the Town's choosing incurred in defending or responding to such Claims; provided that, with respect to any appeal from the issuance of any permit or approval relative to the Project, which does not include any claim for monetary damages against the Town, such indemnification shall include reasonable fees and costs of the Town's attorneys and consultants only to the extent the attorneys and consultants of the Town are required by the rules or orders of court to participate in such appeal and/or are requested by Princeton to assist in the defense or response to such claims. Princeton agrees, within thirty (30) days of written notice by the Town, to reimburse the Town for any and all costs and fees incurred in defending itself from or responding to such Claims.
- C. Any amendment to this Agreement shall occur only pursuant to a written amendment that is duly voted and authorized by the Parties and then duly executed by the Parties.
- D. The Parties acknowledge they had advice of counsel before executing the Agreement.
- E. Notice of this Agreement may be recorded by either party when the application for the Comprehensive Permit is submitted.
- F. This Agreement may be executed in any number of counterparts which together shall constitute one instrument. An electronic signature on this Agreement shall have the same effect as an original.

G. All notices and other communications required or permitted to be given under or by reason of this Agreement shall be in writing and may be delivered by electronic mail, facsimile, US mail or overnight mail. Notices, demands, and communications will, unless another address is specified in writing, be sent to the persons and at the addresses indicated below:

To: Town Manager
Town of Wilmington
121 Glen Road
Wilmington, MA 01887

With a copy to:
Jonathan M. Silverstein
KP Law, P.C.
Town Counsel
101 Arch Street
12th Floor
Boston, MA 02110

To: Andrew M. Chaban
Princeton Development LLC
1115 Westford Street, 4th Floor
Lowell MA 01851

with a copy to:
Maurice H. (Skip) Sullivan, III
Morgan, Lewis & Bockius LLP
One Federal Street
Boston, MA 02110

Jeffrey M. Brown
Princeton Development LLC
1115 Westford Street, 4th Floor
Lowell, MA 01851

IN WITNESS, the parties hereunto set their hands and fixed their seals as of _____,
2020.

WILMINGTON BOARD OF SELECTMEN*

By:

Gregory B. Bendel, Chairman

Kevin A. Caira, Member

Jonathan R. Eaton, Member

Michael V. McCoy, Member

Jomarie F. O'Mahoney, Member

PRINCETON DEVELOPMENT LLC

By: Princeton MGR, Inc., its Manager

Andrew M. Chaban, President, but not individually

*Pursuant to a vote taken by the Board of Selectmen on _____, 2020.

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