COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX

SUPERIOR COURT
C.A. NO.:

STARR CAPITAL PARTNERS, LLC, SMITH LEGACY PARTNERS SERIES, LLC, SMITH LEGACY PARTNERS II, LLC, 505-507 COMMON STREET, LLC, and 527 COMMON STREET, LLC,
Plaintiffs,

v.

TOLL BROTHERS, INC. and BELMONT RESIDENTIAL, LLC, Defendants.

VERIFIED COMPLAINT

Starr Capital Partners, LLC; Smith Legacy Partners Series, LLC; Smith Legacy Partners II, LLC; 505-507 Common Street, LLC; and 527 Common Street, LLC (collectively, the "Plaintiffs") hereby bring this action against Toll Brothers, Inc. and Belmont Residential, LLC (collectively, the "Toll Defendants") for breach of contract, breach of the covenant of good faith and fair dealing, and misrepresentation. The Plaintiffs further bring claims pursuant to M.G.L. c. 93A and declaratory judgment against the Toll Defendants. The Plaintiffs further seek that a temporary restraining order or preliminary injunction against the Toll Defendants.

I. PARTIES

1. The Plaintiff Starr Capital Partners, LLC is a Delaware limited liability company with a principal place of business located at 6 Littlefield Road, Acton, Massachusetts, 01720.

2. The Plaintiff Smith Legacy Partners Series, LLC is a Delaware limited liability company with a principal place of business located at 6 Littlefield Road, Acton, Massachusetts, 01720.
3. The Plaintiff Smith Legacy Partners II, LLC is a Massachusetts limited liability company with a principal place of business located at 6 Littlefield Road, Acton, Massachusetts, 01720.
4. The Plaintiff 505-507 Common Street, LLC is a Massachusetts limited liability company with a principal place of business located at 6 Littlefield Road, Acton, Massachusetts, 01720.
5. The Plaintiff 527 Common Street, LLC is a Massachusetts limited liability company with a principal place of business located at 6 Littlefield Road, Acton, Massachusetts, 01720.
6. The above Plaintiffs will be collectively referred to as "SLP," "Starr," "Seller," or "Plaintiffs."
7. The Defendant Toll Brothers, Inc. is a Pennsylvania corporation with a principal place of business at 250 Gibraltar Road, Horsham, Pennsylvania, 10944. Toll conducted business in and purchased real estate, which is the subject of this action, in Belmont, Middlesex County, Massachusetts.
8. Belmont Residential, LLC is a Delaware limited liability company with its principal place of business located at 250 Gibraltar Road, Horsham, Pennsylvania, 19044. Belmont Residential, LLC conducted business in and purchased real estate, which is the subject of this action, in Belmont, Middlesex County, Massachusetts.
9. Toll Brothers, Inc. and Belmont Residential, LLC will collectively be referred to as "Toll" or the "Buyer."

II. JURISDICTION

10. The Court has jurisdiction over the parties pursuant to M.G.L. c. 223A, §§2 and 3.
11. Venue is proper pursuant to M.G.L. c. 223 as the cause of action arises out of Middlesex County, Massachusetts.

III. FACTS COMMON TO ALL COUNTS
(Background and Terms of Agreement)

12. The Sellers entered into an Agreement of Sale dated March 14, 2016, a First Amendment dated April 13, 2016, a Second Amendment dated September 2, 2016, and Third Amendment dated September 28, 2016 (collectively as amended, the "Agreement"). See Agreement of Sale and Associated Amendments, Exhibit 1.

13. In the Agreement, the Seller agreed to sell to Toll certain property, consisting of the several parcels of land (hereinafter referred to as "Parcels," the "Property" or the "Project"), being more particularly bounded and described as set forth on Exhibit "A" to the Agreement. See Site Plan, Exhibit 2.

14. The "Property" also included, among other things as described by the Agreement, (iv) all of the rights, title, interest, powers, privileges, benefits and options of Seller, or otherwise accruing to the owner of the Property...(v) all rights, title and interest in and to an Option Agreement with purchase additional Property from the Town of Belmont and an Option to Buy the Retail Space of the Cushing Village Project (as hereinafter defined and defined with the Agreement)...." See Agreement.

15. Seller provided to Buyer complete copies of Seller's Plans, numerous Environmental Assessment Reports, a Remediation Budget estimate (which included at least three independent cost estimates) and numerous other documents as required under the Agreement, on or before the date on which the Due Diligence Period (as hereinafter defined) commenced and later terminated as described and attached to Exhibit C of the Agreement as referenced thereafter and hereto as (the "Existing Environmental Condition").

16. The Existing Environmental Condition included Environmental Reports provided by Seller to the Buyer and listed in Exhibit C of the Agreement that existed at the time and represented to the best of Seller's then current and actual knowledge of the conditions of the Property that contained any hazardous, toxic, chemical or radioactive substance, contaminant or pollutant (together, "Hazardous Substances") as defined in the Agreement and under applicable laws or which may require cleanup, remediation or other corrective action.

17. Toll engaged in extensive additional due diligence on its own including on-site and off-site properties assessments, including but not limited to additional soil, soil gas, groundwater, and indoor air testing on-site and off-site.

18. The Seller fully cooperated and extended the Due Diligence several times to enable Toll to have a total of at least six months of Due Diligence from the entering of Toll's first Offer and/or the Agreement. Toll completed its Due Diligence on September 2, 2017 at the time the Second Amendment to the Agreement was executed by the parties.

19. The Purchase Price (the "Purchase Price") for the Property was in total Fourteen Million Two Hundred Sixty Thousand and no/100 Dollars ($14,260,000.00) based upon a per unit price of One Hundred Twenty-four Thousand and no/100 Dollars ($124,000.00) (the "Per Unit Price") for one hundred fifteen (115) residential Units (as hereinafter defined) as set forth in Seller's Plans for which the development approvals and assignments of all rights were delivered at a closing.

20. Key to the Agreement was the Remediation Budget. The Remediation Budget was originally prepared by SLP, was shared with Toll during the Due Diligence period, and then mutually agreed upon by both parties.

21. The Remediation Budget was created based upon informed input from numerous contractors, environmental consultants (including CHA, AEI, and Cooperstown Environmental) and various other sources obtained over several years as a result of SLP's extensive due diligence, site assessments, and remediation at the Property. All of this information was shared with Toll during and after its Due Diligence Period.

22. A Remediation Budget and Scope of $1,310,000 was prepared and integrated into the Agreement signed on March 14, 2016 and ratified and referenced in the First Amendment dated April 13, 2016 and the Second Amendment at Section 26(b)(4) dated September 2, 2016. SLP also shared with Toll at least three versions of the Remediation Budget in the form of Excel spreadsheets prior to the end of the Due Diligence Period on September 2, 2016, which was extended numerous times and lasted for over seven months. (See Second Amendment to Agreement,)

23. The Remediation Budget also included a detailed Scope of Work and narrative which was sent by Chris Starr, Managing Member of SLP to Bill Lovett, Senior Development Manager of Toll Brothers in August 2016. (See Remediation Budget and Narrative, Exhibit 3).

24. The narrative Scope of the Remediation was discussed by Mr. Starr and Mr. Lovett on numerous occasions throughout the Due Diligence period including several times during the month of August 2016.

25. Instead of including the detailed narrative with the Remediation Budget in the Agreement, Mr. Lovett insisted on a shorter and general statement called the Remediation Scope (referenced as Exhibit C to the Second Amendment). At the time, Mr. Lovett claimed that Toll did not have sufficient time for the narrative Remediation Scope to be reviewed

internally and that a more detailed narrative scope could be agreed upon later, after the closing. Mr. Lovett stated that the Remediation Budget and conceptual scope was of most importance.

26. SLP shared with Toll at least three versions of the Remediation Budget in the form of Excel spreadsheets prior to the end of the Due Diligence Period; these versions ranged from $1,310,000 to approximately $1,366,000, all of which included a ten percent (10%) contingency.

27. Mr. Starr and Mr. Lovett agreed to a concept of a range of costs, with the Seller taking on more risks, including the Seller bearing more than a pro-rata share of the total costs of the development beyond the square foot total costs of the Retail Space that Seller has an option to buy, if the remediation of the Existing and Unknown Conditions exceeded the mutually agreed upon Remediation Budget of $1,310,000.

28. SLP was confident with its remediation scope and budget and believed that the parties would work in "good faith" to mutually agree upon any Remediation Budget increases, as was required by the Agreement, and thus was prepared to bear more of the risk.

29. While the Agreement stated that the costs of Remediation may exceed the "mutually agreed Remediation budget," the amended Section 26(b)(4) (attached as Ex. J to the Second Amendment), of the Agreement also stated that the parties agree that "the budget for the Remediation of the Existing Environmental Conditions is $1,310,000..." and further that "any changes in the scope of work for the Remediation will be subject to the parties' mutual approval, not to be unreasonably withheld or delayed." (Emphasis added.)

30. Section 26(b)(4) clearly addresses the Remediation Budget of $1,310,000 and no other budget or scope, and thus the Remediation budget is clearly subject to the parties' mutual approval.

31. It should be noted that Exhibit C of the Second Amendment defines the Remediation Scope as "all costs associated with the onsite, or offsite cleanup or remediation associated with the property..." Given that this definition "scope" is "costs" and vice versa, changes in costs are changes to scope, and thus are subject to mutual approval.

32. Fundamental to the Agreement is the Seller's right to exercise its Option to Purchase the Retail Unit of the Cushing Village Development provided under Section 26. "The Seller's right to purchase the Retail Unit was a material inducement for its agreement to sell the Property to Buyer." In fact, SLP borrowed an additional $4,000,000 in funds to buy a municipal parking lot from the Town of Belmont and clear the title (e.g, pay off architects, debtors, etc.) all of which debts SLP anticipated recovering from the leasing of the Retail Unit over a period of time. See Section 26. Provided the Seller is not in default of the Agreement, the Seller has a right to exercise the Option to Buy 100% of the Retail Unit.

33. Under the Agreement, as the costs of the remediation of the Site increase, the Seller is obligated to bear more than its pro-rata share of costs based on the square footage cost to construct the development, including the Retail Unit. Section 26(b) of the Agreement defines specifically how the costs of Remediation are borne.

34. For example, if the cost of Remediation of the Existing Environmental Conditions for the Project exceeds One Million Four Hundred Forty One Thousand and no/100 Dollars ($1,441,000), then if SLP exercise its right to purchase the Retail Unit, it will be

responsible for 100% of remediation overruns for known conditions, and not simply the pro-rata portion thereof attributable to the Retail Unit. See Section 26(b)(2).

35. Further, if the cost of Remediation of the Existing Environmental Conditions and any Unknown Conditions exceeds Two Millions Five Hundred Thousand and no/100 Dollars ($2,500,000), then SLP will pay the actual amount of all such Remediation costs in excess of the upset threshold as such costs are incurred and billed to Seller by Buyer (not as an increase in the Retail Price, but to be paid irrespective of whether Seller elects to purchase the Retail Unit, failing which Seller will forfeit its right to purchase the Retail Unit under this Section). See Section 26(b)(3).

Changes to Remediation Budget and Scope After Closing and Related Issues

36. Following the closing on the Property, which occurred on October 19, 2016, the Parties worked in good faith to assign permitting and approval rights to construct Cushing Village. SLP also worked diligently and in good faith to secure the most cost-efficient methods to implement further assessment and remediation. This included among other things the need to complete additional soil sampling and selecting locations for trucking and disposal of non-hazardous and hazardous soil to the most cost-efficient locations as well as on-site remediation to reduce the volume of materials that would have to be disposed of as hazardous waste.

37. Extensive soil sampling and remediation planning was done prior to the Due Diligence Period by CHA on behalf of SLP (over 100 samples at the cost of approximately $225,000) and additional soil samples were collected by Sage for Toll.

38. A revised Response Action Measure ("RAM") Plan was prepared by Sage for Toll and presented to the public and DEP during a Public Involvement Plan (PIP) process in late

2016 and early 2017. The initial RAM Plan and subsequent version prepared by Sage were not shared with SLP prior to making them public and Toll and Sage ignored almost all of SLP's comments on the Plan.

39. .Despite SLP's multiple requests that Sage properly define the boundaries of the Disposal Site to include only those areas where oil and/or hazardous materials (OHM) have come to be located based on extensive testing, in accordance with the DEP requirements, Sage and Toll has continued to define the Disposal Site to include the entire Property – even those areas that have not been affected by contaminants. This definition of a Disposal Site was not in compliance with the Massachusetts Contingency Plan (MCP).

40. SLP and Cooperstown, since early February 2017, attended many meetings, convened conference calls, and sent emails to attempt to obtain data and/or an explanation from Sage and Toll to support its purported Disposal Site, questions regarding the RAM Plan, and inquiries regarding expected costs to attempt to come to agreement on reasonable assumptions and a reasonable and mutually agreeable Remediation Budget.

41. Many of SLP's requests have been ignored and when responded to by Toll or Sage these requests were often addressed with incomplete, illegible, or in some cases even inaccurate information and misrepresentations.

42. During January and February 2017, and specifically on February 1, 2017 during a meeting with SLP, Toll proposed to update the Remediation Budget from the mutually agreed upon Remediation Budget of $1,310,000 to an expanded proposed budget of $1,900,000.

43. At that meeting in February 2017, Mr. Lovett suggested that it would be in SLP's best interest to sell its option to buy the Retail Unit to another interested party if it could not afford the Remediation Budget increase. Mr. Lovett told SLP that it had a short window of

time to act to transfer the option to another interested party. Mr. Starr rejected this proposal and made it clear that SLP had no interest in selling its Option to Buy the Retail Unit to another third party.

44. Approximately one month later, Toll forwarded a new proposed budget that had ballooned to over $4,200,000, without any explanation or legitimate justification based in empirical data, accurate assumptions, or valid changes in scope or the underlying environmental conditions of the site.

45. In contrast, SLP and Cooperstown Environmental provided to Toll updated detailed estimates showing that Toll could have disposed of contaminated materials at considerably lower costs than they cited in their updated budget (in-line with the mutually agreed upon Remediation Budget and estimates provided by SLP under the Agreement).

46. Toll has repeatedly refused to explain or justify its decision to use a higher priced contractor or the decision to dispose of non-hazardous material as hazardous or rational means to save money on disposal costs.

47. Additional meetings were held in March and April with Sage and Toll in an attempt to obtain meaningful data to support assumptions made by Sage. SLP and Cooperstown tried repeatedly to obtain consensus with Toll on assumptions and cost estimate, but most requests have gone unanswered or dismissed without justification.

48. Throughout meetings in the Winter and Spring of 2017, Toll mentioned several times to SLP that it had other persons and business partners that would be interested in purchasing the Retail Unit in the event that SLP could not meet its obligations to pay the remediation cost beyond the $1,410,000 as provided in the Agreement.

49. SLP viewed these statements by Toll, (especially given that Toll knew of SLP's dire financial position prior to the closing and having to contribute an additional $4,000,000 to the deal) as threats to bring in other interested parties and to breach the contractual rights of SLP by deliberately inflating the remediation costs to a level where SLP could not pay causing SLP would be forced to give up its Option to Buy the Retail Space.

50. Toll has attempted to argue that SLP has no approval rights over Remediation costs by citing to the "Nauset Scope" and a provision from Section 4(C) of the Second Amendment to the Agreement, which are inapplicable and irrelevant. Section 4(C) refers to the general project construction budget and specifically the Starbuck's location, and clearly does not apply to the Remediation budget. The "Nauset Scope" expressly states, "This Budget is exclusive of any Starbuck Closure Costs, delivery, delay, penalties, rent offsets or fees or Environmental Costs other than those in the Nauset Scope." There are few Environmental Costs in the Nauset Scope. This is because the Environmental costs are addressed in the Remediation Budget, which was an entirely different Excel spreadsheet as referenced in the Agreement and Second Amendment.

51. Toll has also inaccurately stated that SLP did not reserve "approval rights over costs." The provision in the Second Amendment regarding limiting Seller's approval rights over costs that Toll refers to is located in Section 4(C) of the Agreement and relates to Non-Closure Costs, as opposed to Remediation costs. Non-Closure costs are irrelevant here because they only result if Starbucks had not timely vacated the Property. Starbuck timely vacated the Property in June of 2017 as agreed and accepted by Toll, thus Non Closure costs were not incurred.

52. Most recently, on May 23, 2017, Mr. Starr sent an email to Mr. Weiss responding to the latest proposed Toll Remediation estimate along with a detailed Memorandum from James Curtis, LSP, PE and President of Cooperstown. (See May 23, 2017 Email, Exhibit 4) which explains how the new budget of approximately $4,200,000 was excessive.

53. Toll responded to this email but failed to address most of the points and questions raised by SLP and Cooperstown, and instead attempted merely to compare on a summary basis the costs of the mutually agreed upon Remediation Budget and a new proposed $4,000,000 dollar budget. (See May 30, 2017 Email, Exhibit 5)

54. SLP sent a detailed follow-up letter dated June 6, 2017 (See June 6, 2017 Letter, Exhibit 6) to Toll and a summary Memo and plan of the Disposal Site prepared by Cooperstown. SLP reiterated many of the points made throughout the process and provided additional detail regarding the Remediation Budget. SLP did not receive much of the requested information nor has Toll identified any underlying environmental conditions that would account for such a drastic and dramatic budget increase despite repeated requests for such information. SLP reiterated that many of its requests for information or recommendations to save costs have been ignored or Toll has provided it inaccurate and misleading information, particularly as relates to the following, as detailed further in the June 6, 2017 letter: dewatering, soil disposal, on-site soil treatment, and professional services.

55. For example, as relates to dewatering costs, SLP explained in its June 6, 2017 letter that dewatering costs are required at any site that encounters groundwater regardless if any contamination is present and de-watering permitting, discharge oversight, and removal of non-MCP contaminants (e.g., particulates) are all necessary regardless of contamination;

therefore, much of these are not considered environmental remediation costs or incremental environmental costs, but rather they are normal construction costs.

56. SLP provided an estimate of $50,000 for the incremental environmental costs associated with dewatering, as opposed to Toll's Budget Comparison of $330,000, which clearly includes costs that are unnecessary and excessive, including multiple personnel to monitor dewatering continuously throughout the construction project because such costs are unreasonable and simply unnecessary, as SLP has pointed out repeatedly.

57. As to soil disposal, SLP stated in its June 6, 2017 letter that all soils are not required to be disposed of as Remediation Waste because extensive pre-characterization of soils justified much lower quantities of Remediation Waste.

58. Limiting the scope of the "Disposal Site" that requires remediation based on extensive pre-characterization of soil is imperative to correctly estimating the Remediation Budget, rather than considering the entire property as the Disposal Site.

59. Excavation, transportation and disposal of relatively clean (<RCS-1) or uncontaminated soils, as well as the monitoring of such soils, are not environmental costs but rather construction costs and should be removed from the Remediation Budget.

60. Multiple environmental consultants are not needed to manage and supervise soil characterization and disposal; Toll/Sage's estimate of $262,000 is excessive and unnecessary (SLP's estimates in the mutually agreed upon Remediation Budget ranged from $57,090 to $76,000). One technical field person (instead of three) is sufficient to supervise soil disposal.

61. The estimate for equipment rental to perform monitoring (e.g., ambient air monitoring) during excavation of $150,000 is excessive and unnecessary and not required by DEP

regulations or guidance. It should be drastically reduced or eliminated to only that monitoring that is required to meet DEP's requirements.

62. The costs presented by Toll for soil transport and disposal appear excessive and do not reflect more cost-effective options; a proposal to SLP from TAZ Enterprises is about $450,000 less than Toll's price from WL French. It is not clear why a reasonable person would select a much higher-priced proposal.

63. There also may be double-counting of soil costs in both the soil treatment line item and the soil T&D line items. SLP requested greater transparency regarding the soil costs especially considering that this is the largest cost driver.

64. As to costs related to On-Site Soil Treatment, SLP stated in its June 6, 2017 letter that Onsite treatment originally was estimated by SLP at $167,500; Sage's estimate in March 2017 was $427,000, which later was inexplicably was raised to $882,000. That cost is excessive, unjustified based on the extensive soil characterization, and is misleading.

65. Also chem ox on-site treatment was used as opposed to the thermal treatment, which was not approved by SLP. This type of remediation scope change increased costs drastically and was ineffective. Not only did the chem ox treatment not work in reducing the mass of contamination, but it made the hazardous release and conditions worse since chem ox generated break-down products from the PCE such as TCE, DCE and VC which are much more difficult to remedy and are more toxic to humans at lower concentrations. These costs include $399,000 for the treatment of the actual PCE-contaminated soil (1900 cy).

66. An additional $374,000 was included in the soil treatment budget for non-PCE-contaminated soil (PCE levels of <1 ppm) "to facilitate the treatment of the PCE-contaminated soil" (approximately doubling the volume and cost).

67. An additional $109,000 was included for removing and disposing non-PCE-contaminated soil that simply happens to be near the clean treated soil that is near the dirty treated soil.

68. SLP questioned the volume, merits, and cost estimate given the extensive soil testing performed to date that justifies a much smaller volume, disputed that Sage's estimate was accurate or appropriate, and asked that the budget for treated soil be recast as the actual cost for soil that requires in situ treatment and not the other, surrounding soil.

69. As to professional services fees, SLP stated in its June 6, 2017 demand letter that Sage had provided an "updated" cost estimate for their Professional Services of $1,112,900, which included costs for certain items that had not been included in SLP's cost estimate and were not agreed to by SLP thus changing not only the scope but the cost significantly and materially of the mutually agreed upon Remediation Budget.

70. SLP updated its original cost estimates for professional services (based on three separate consultants' estimates that were relatively consistent) to reflect reasonable costs to compare to Sage's estimates. Even when using very conservative assumptions regarding the ultimate scope of services and pricing, Cooperstown's updated number on behalf of SLP is $338,000 versus Sage's proposed cost of $1,112,900.

71. SLP observed that Sage's (undocumented) "billed to date" ($388,364) is far higher than Sage's budget for the entire project that was provided in March of 2017, just weeks earlier. During these weeks, there were no additional analytical data that could have conceivably changed the fundamental cost assumption. This is clearly evidence that costs are completely out of control and that Toll and Sage have failed to adequately forecast and manage their costs.

72. SLP demanded a process and protocol where SLP and Toll would mutually agree upon any substantial deviation from the remediation budget.

73. SLP demanded that any requests for cost reimbursement would have to be documented by detailed invoices, timesheets, personnel qualifications and expense reimbursements and any and all additional reasonable documentation that is typically required for any reimbursement scenario. Toll provided no response to these multiple requests.

74. SLP disagrees with the need to prepare any Phase II, III or IV reports since those filings are unnecessary as the updated Phase II information can be included in the Permanent Solution expected at the completion of the remediation.

75. SLP believes that significant costs allegedly spent on the Phase II and RAM plan process were redundant and excessive, particularly seeing that CHA, a vendor that Toll has worked with extensively in the past, drafted a reasonable RAM Plan. These efforts were duplicated without justifiable reason.

76. SLP stated that Sage's estimated time to complete the remediation (six months) is excessive and misleading because once the areas of the building foundations are excavated, and the soil removed and disposed, the work will transition from remediation to construction and Sage will not need to be present daily for MCP purposes.

77. SLP also objected to Sage's budget for on-site supervision, which included 24 person-hours per day, contending that Sage should limit personnel to supervising remediation activities only at periodic and reasonable times. Sage's estimated monthly supervision costs $45,950 (and 6-month budget of $434,300) for excavation monitoring is ridiculous and irrational, far above any reasonable budget.

78. SLP pointed out that the proposed extensive confirmatory soil sampling post remediation or removal (estimated at $95,000 by Sage) cannot be justified since most of the excavation will proceed to the underlying bedrock. Cooperstown noted that cost of post-excavation testing, assuming two samples per grid within the disposal site that are analyzed for EPH, VPH, VOCs, and metals (the contaminants of concern) would be, at most, $10,000 - $15,000.

79. SLP's letter to Toll provided Toll with another two weeks to respond (until June 21, 2017). Toll provided no meaningful or substantive response and rather suggested a meeting at the Cushing Village property for the parties to review the progress made so far with the excavation and remediation of the Site.

80. A site visit did occur on June 28, 2017 and in light of the results of the post-treatment soil samples, which appear to show that the on-site treatment by chem ox performed by Toll's vendor had no discernible effect in reducing contaminant concentrations. SLP requested the opportunity to perform independent testing at the Site to confirm the current concentrations of contamination in the soil. Toll refused to allow such testing without justification.

81. On June 30, 2017, the Plaintiffs sent a Demand Letter pursuant to Chapter 93A to the Defendants in this action. See Demand Letter, Exhibit 7.

82. Toll requested an extension of time to respond to the Demand Letter and SLP provided another week. Toll sent a response to SLP's Demand Letter on July 7, 2017 refuting many of SLP's claims and providing some information that had been requested by SLP for months. Toll provided a limited but unacceptable settlement offer as it addressed only two (2) issues of the myriad of concerns presented by SLP as stated above: namely disposal of

clean fill as hazardous material and the dewatering of the construction site, which are normal construction costs and were not remediation costs to begin with.

83. The information provided by Toll in its Response to SLP's Demand Letter included documentation of excessive and unjustified costs that Toll is attempting to characterize as Remediation Costs and that Toll expects SLP to pay that are not required or justified under the Agreement. As one example, Toll included in a summary of Environmental costs that totaled approximately $1,900,000 as of that date, which included approximately $600,000 of due diligence costs it allegedly incurred on Sage for several months prior to the closing that occurred on October 19, 2016. Nothing in the Agreement requires the Seller, SLP to pay for the Buyer's Toll's due diligence costs. Moreover, these due diligence activities and corresponding costs were not included the mutually agreed Remediation budget. This is only one example of the numerous unscrupulous, deceitful and unfair practices of Toll as further elaborated above with respect to its business dealings with SLP during the past year or more relating to Cushing Village.

Damages

84. As a result of the Defendants actions, including but not limited to misrepresenting and attempting to force SLP to immediately pay exorbitant and inflated remediation costs beyond $2,500,000 dollars to the estimated current Remediation Budget of at least $4,200,000 or more, SLP expects to lose the ability to exercise its Option on the Retail Units, which it expects to be approximately $14,000,000 to $15,000,000 in net profit.

85. Further, SLP expects that unjustified increases in the remediation costs based on Sage and Toll's misrepresented and exaggerated costs of $4,200,000 could be approximately $3,000,000 more than the mutually agreed upon budget of $1,300,000.

86. Moreover, based on numerous requests by SLP of Toll to provide new and updated estimated construction budgets and cooperate with SLP in its efforts to build out and lease the Retail Space, most of which have been unanswered or ignored by Toll since the February 2017 meeting, SLP believes that Toll will attempt to shift costs from the Remediation Budget to general Construction costs and exaggerate construction costs as well and which could be at least $2,000,000 to $3,000,000 in line with the Remediation Budget exceedances.

87. SLP further expects to incur additional attorney fees and consulting fees as a result of the Defendants' actions to be approximately $250,000 to $400,000.

88. All of such costs and losses will collectively amount to approximately $19,000,000 to $20,000,000 in damages and losses to SLP which should be doubled or trebled as a result of the unfair and deceptive practices in violation of c. 93A by Toll.

COUNT I
(Breach of Contract – Toll Defendants)

89. The Plaintiffs repeat and reallege the allegations in paragraphs 1 – 88 of the Complaint.

90. The Agreement clearly provided in the amended Section 26(b)(4) that "any changes in the scope for work for the Remediation will be subject to the parties' mutual approval, not to be unreasonably withheld or delayed." (Emphasis added.)

91. As stated in detail above, Toll drastically increased the Remediation Budget of $1,310,000 to $4,200,000 with one month's time and changed the scope of work which was not approved or consented to by SLP.

92. While the Seller attempted numerous times to come to an agreement as to a revised Remediation Budget, for example, as described above, by providing detailed facts, assumptions and explanations for why the $4,200,000 proposal was much too high, Toll

failed to provide similar details that may have helped the parties to agree to an increase in the Remediation Budget that was reasonable.

93. Toll's drastic and unjustified increase in the Remediation Budget and scope, and refusal to cooperate and agree upon a mutually agreed upon and reasonable Remediation Budget and scope is unreasonable and in breach of Section 26(b)(4).

94. As a result of this breach, SLP will suffer significant damages, including a loss in profits on the Retail Unit due to its inability to exercise the Option to purchase the Retail Units, increased remediation and construction costs, attorney fees, and consulting fees.

COUNT II
(Breach of Implied Covenant of Good Faith and Fair Dealing – Toll Defendants)

95. The Plaintiffs repeat and reallege the allegations in paragraphs 1 – 94 of the Complaint.

96. Contracts in Massachusetts have an implied covenant of good faith and fair dealing. *Anthony's Pier Four, Inc. v. HBC Assocs.*, 411 Mass. 451, 471 (1991). This covenant provides that neither party "shall do anything that will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract." *Id.* at 471-72.

97. Toll breached the implied covenant of good faith and fair dealing in the Agreement by increasing the Remediation Budget and changing the Scope to a cost that it knew or suspected the Seller could not afford and threatening that other parties would purchase the Retail Unit, which will have the effect of destroying or injuring the right of the Seller to receive the benefits of the contract.

98. As stated, it is clear that central aspect and material inducement to the Agreement was that the Seller would have the Option to Purchase the Retail Unit. Toll's actions, as described in detail above, are clearly a breach of this covenant.

99. As a result of this bad faith breach, SLP will suffer significant damages, including a loss in profits due to the inability to exercise the Option to purchase the Retail Units, increased remediation and construction costs, attorney fees, and consulting fees.

COUNT III
(M.G.L. c.93A, §11 – Toll Defendants)

100. The Plaintiffs repeat and reallege the allegations of paragraphs 1 – 99 of the Complaint.

101. The Defendants knowingly and willfully engaged in unfair or deceptive acts and practice in the conduct of commerce in violation of M.G.L. c.93A, §2.

102. Chapter 93A, Section 11, provides that "any person who engages in the conduct of any trade or commerce and who suffers any loss of money or property, real or personal, as a result of the use or employment by another person who engages in any trade or commerce of an unfair method of competition or an unfair or deceptive act or practice declared unlawful by section two...may...bring an action in the superior court..."

103. Further, pursuant to Section 11, "such person, if he has not suffered any loss of money or property, may obtain such an injunction if it can be shown that the aforementioned unfair method of competition, act or practice may have the effect of causing such loss of money or property."

104. Here, Toll's actions, as described in detail above, are both unfair and deceptive in violation of M.G.L. c.93A, §11. As stated, key to the Agreement and expressly included in the Agreement was the Remediation Budget of $1,310,000, which was mutually agreed upon by SLP and Toll during the Due Diligence period as a result of an extensive compilation of data, site assessment and remediation, proposals, consultant and contractor bids and estimates, and detailed plans.

105. While the Agreement did state that the costs of remediation may exceed the mutually agreed Remediation Budget, the amended Section 26(b)(4) also clearly stated that "any changes in the scope for work for the Remediation will be subject to the parties' mutual approval, not to be unreasonably withheld or delayed." (Emphasis added.)

106. As a result of the Seller believing that the parties would work in good faith to mutually agree upon any Remediation Budget increases, as set forth in Section 26(b)(4) and as a result of the extensive due diligence on the property and discussions with Toll, the Seller was willing to bear more risk as part of the Agreement. For example, the Seller agreed that if the Remediation Budget exceeded $1,310,000, the Seller would bear more of a pro-rata share of the total costs of the development beyond the square foot total costs of the Retail Space that the Seller has the option to buy.

107. This Seller's Option to Purchase the Retail Unit of the Cushing Village Development pursuant to Section 26 was fundamental to the Agreement, and was "a material inducement for its [the Seller] agreement to sell the Property to Buyer." See Section 26. However, the Seller reasonably believed that the parties would mutually agree on Remediation Budget increases, any change of scope, and that any increases would be reasonable and so was willing to take this risk.

108. However, as stated above, from the period of January to February 2017, the Remediation Budget increased from the mutually agreed upon Budget of $1,310,000 to a proposed budget of $1,900,000. Further, a month later, the budget ballooned to $4,200,000 without any legitimate justification. In addition, Toll and Sage materially changed the scope and costs of the Remediation Budget as comprehensively set forth above and herein.

109. Despite SLP's repeated efforts and request orally in meeting and by numerous emails and written correspondence, Toll has refused to provide material and accurate documentation of the its alleged costs, and intentionally misrepresented these costs.

110. Further, during meetings between the Seller and Toll in February and March 2017, Toll mentioned to SLP that it had other persons and business partners that would be interested in purchasing the Retail Unit, in the event that the Seller could not meet its obligations to pay the remediation costs beyond the $1,310,000 Remediation Budget.

111. The Seller viewed these statements by Toll as threats to bring in interested parties by intentionally inflating the actual remediation costs to a number that the Seller could not afford, given that Toll knew of the Seller's dire financial position prior to the closing on the Property.

112. The above actions by Toll were unfair and deceptive. It is clear that Toll's and Sage's actions and increase in the Remediation Budget are being used to prevent the Seller from an opportunity to exercise the Option to Purchase the Retail Unit, especially, as stated, that Toll mentioned it has other interested buyers.

113. These actions are unfair because they not only are contrary to the established concept of fairness, but they also will cause substantial injury to the Seller as the Seller will lose a significant business opportunity that he intended to have in exercising the Option to Purchase the Retail Unit. Further, the above described actions are deceptive because the Seller, SLP if it had not thought that the agreed Remediation Budget of $1,310,000 was a fair budget and may only be increased to reasonable levels, would not have entered into the Agreement as the Option to Purchase was a material inducement of the agreement.

114. Toll's representations that it would work in good faith to an agreed upon Remediation Budget, even if it increased slightly, misled the Seller to enter into the Agreement. Those representations by Toll were clearly false and misleading as is seen in Toll's drastic increase in the Budget and pressure on the Seller that other parties' may exercise the option.

115. Moreover, as described, since Toll's actions were also clearly willful, knowing, and in bad faith, a Court can award damages up to three, but not less than two times the amount. See *Heller v. Silverbranch*, 376 Mass. 621 (1978).

116. As a result of the Defendants' actions, SLP will suffer significant damages, including a loss of its ability to raise the funds at any reasonable interest rates given escalating environmental cost projections necessary to purchase the Retail Unit and thus significant loss in profits due to the inability to exercise the Option to purchase the Retail Units, unjustified and unreasonable increased remediation and construction costs, attorney fees, and consulting fees, and are entitled to double or triple these costs.

COUNT IV
(Misrepresentation – the Toll Defendants)

117. The Plaintiffs repeat and reallege the allegations in paragraphs 1 - 116 of the Complaint.

118. The Toll Defendants' actions and inactions constitute intentional and/or negligent misrepresentation because the Defendants made false statements of material fact, both orally and in written correspondence, to induce the Plaintiffs to enter the Agreement, and the Plaintiffs relied on those statements to their detriment all as provided above including but not limited to multiple factual and legal allegations that amount to c. 93A violations as well.

119. The Plaintiffs relied on the Toll Defendants' statements to their detriment and will suffer significant damages, including a loss in profits due to the inability to exercise the Option to purchase the Retail Units, increased remediation costs, attorney fees, and consulting fees.

COUNT V
(Declaratory Judgment – Against Toll Defendants)

120. The Plaintiffs repeat and reallege the allegations in paragraphs 1 – 119 of this Complaint.

121. An actual controversy exists as to whether the Toll Defendants are liable for breach of contract, breach of the implied covenant of good faith and fair dealing, misrepresentation, and whether the Toll Defendants is liable pursuant to M.G.L. c.93A.

122. Wherefore, the Plaintiffs request a declaration that the Defendants are liable under the above claims, a declaration of what are fair and reasonable Remediation and construction costs, and seek damages, including a loss of profits due to the inability to exercise the Option to purchase the Retail Units, increased remediation and construction costs, attorney fees, and consulting fees.

COUNT VI
(Injunctive Relief - Temporary Restraining Order/Preliminary Injunction – Toll Defendants)

123. The Plaintiffs repeat and reallege the allegations of paragraphs 1 - 127 of the Complaint.

124. Pursuant to Chapter 93A, Section 11, "such person, if he has not suffered any loss of money or property, may obtain such an injunction if it can be shown that the aforementioned unfair method of competition, act or practice may have the effect of causing such loss of money or property."

125. The Plaintiffs request that this Court issue a temporary restraining order or a preliminary injunction preventing the Defendants, and any and all of their agents from increasing the

Remediation Budget over an amount that is not mutually agreed upon by the parties as is required by the Agreement.

126. The Plaintiffs further request that this Court issue a temporary restraining order or a preliminary injunction preventing the Toll Defendants to allow any third party other than the SLP entities to exercise the Option to Purchase the Retail Units until a final decision including all rights of appeal is concluded is issued in this civil action.

127. Without this injunction, the Plaintiffs will suffer significant damages, including a loss of profits due to the inability to exercise the Option to purchase the Retail Units, increased remediation and construction costs, attorney fees, and consulting fees.

JURY CLAIM

Plaintiffs demand Trial by Jury on all triable claims.

RELIEF REQUESTED

WHEREFORE, the Plaintiffs move that this Court enter judgment against the Defendants and award the following relief:

1. Award the Plaintiffs damages, including property and economic damages, and attorney fees in an amount to be determined at trial related their breach of contract, breach of the implied covenant of good faith and fair dealing, misrepresentation, and M.G.L. c.93A claims;
2. Award the Plaintiffs damages, including double or treble damages, pursuant to M.G.L. c. 93A;
3. Award the Plaintiffs attorney fees, expert fees and other costs and interest;
4. Issue a Temporary Restraining Order and/or a Preliminary Injunction preventing the Defendants from increasing the Remediation Budget to an amount not agreed

upon by the parties as required in the Agreement, increasing unjustifiably and unreasonably the construction budget, and preventing the Defendants from allowing any other third party except for the SLP entities to exercise the Option to Purchase the Retail Units.

5. Award the Plaintiffs any other relief the Court deems appropriate.

Respectfully submitted,

STARR CAPITAL PARTNERS, LLC, SMITH LEGACY PARTNERS SERIES, LLC, SMITH LEGACY PARTNERS II, LLC, 505-507 COMMON STREET, LLC, AND 527 COMMON STREET, LLC,

By their attorney,

Robert A. Fasanella (BBO #548282)
rfasanella@rubinrudman.com
Michele A. Hunton (BBO #667766)
Rubin and Rudman LLP
50 Rowes Wharf
Boston, MA 02110
(617) 330-7000

Dated: September 7, 2017

CERTIFICATION OF VERIFICATION

I, Christopher Starr, Manager of Starr Capital Partners, LLC; Smith Legacy Partners Series, LLC; Smith Legacy Partners II, LLC; 505-507 Common Street, LLC; and 527 Common Street, LLC (collectively, the "SLP" or "Plaintiffs") hereby subscribe and swear under the pains and penalties of perjury, that I have read the foregoing Verified Complaint and that the allegations set forth are true, except for those made upon information and belief, which are true to the best of my personal knowledge, information, and belief. There are no material facts which have been omitted from the Complaint.

Christopher Starr, Manager of Starr Capital Partners, LLC; Smith Legacy Partners Series, LLC; Smith Legacy Partners II, LLC; 505-507 Common Street, LLC; and 527 Common Street, LLC

Dated: September 7, 2017

EXHIBIT 1

AGREEMENT OF SALE

THIS AGREEMENT (this "Agreement") is made this 17th day of March, 2016 (the "Effective Date"), by and among **STARR CAPITAL PARTNERS, LLC,** a Delaware limited liability company, **SMITH LEGACY PARTNERS SERIES, LLC,** a Delaware limited liability, **SMITH LEGACY PARTNERS II, LLC,** a Massachusetts limited liability, **505-507 COMMON STREET, LLC,** a Massachusetts limited liability, and **527 COMMON STREET, LLC,** a Massachusetts limited liability, all with a principal place of business at 6 Littlefield Road, Acton, MA 01720, Attn: Christopher L. Starr, Email: chrisstarr123@gmail.com (collectively, the "Seller"), and **TOLL BROS., INC.,** a Pennsylvania corporation, with a principal place of business at 250 Gibraltar Road, Horsham, PA 19044 (the "Buyer").

WITNESSETH:

In consideration of the covenants and provisions contained herein, and subject to the terms and conditions hereinafter set forth, the parties hereto, intending to be legally bound, agree as follows:

1. Sale. Seller hereby agrees to sell and convey to Buyer, and Buyer hereby agrees to purchase from Seller, land lying and being in the Town of Belmont (the "Town"), in Middlesex County (the "County"), in the Commonwealth of Massachusetts (the "State"), and more particularly described on Exhibit A attached hereto and made a part hereof (the "Property"). The Property includes (i) all tenements, hereditaments, appurtenances, easements, permits, approvals, and other rights arising from or appertaining to the Property; (ii) all improvements, topsoil, trees, shrubbery and landscaping situated on, in or under the land, including the rights to any land lying in the bed of any street, road, avenue, or way, open or proposed in front of or otherwise adjoining the land; (iii) all surveys, plans, development approvals, permits, specifications, reports and other engineering and/or environmental information to which Seller has access regarding the Property, if any (together, "Seller's Plans"); (iv) all of the rights, title, interest, powers, privileges, benefits and options of Seller, or otherwise accruing to the owner of the Property, in and to (a) any impact fee credits with, or impact fee payments to, any county or municipality in which the land is located arising from any construction of improvements, or dedication or contribution of property, by Seller, or its predecessor in title or interest, related to the land, (b) any development rights, allocations of development density or other similar rights allocated to or attributable to the land or the improvements thereon, and (c) any utility capacity allocated to or attributable to the land or the improvements, whether the matters described in the preceding clauses (a), (b) and (c) arise under or pursuant to governmental requirements, administrative or formal action by governmental authorities, or agreement with governmental authorities or third parties (herein called the "Entitlements"); and (v) all rights, title and interest in and to the Option Agreement (as hereinafter defined), Land Development Agreement (as hereinafter defined), Parking Easement Agreement (as described in the Land Development Agreement), and Parking Management Agreement (which is an attachment to the Land Development Agreement). Seller agrees to provide to Buyer complete copies of Seller's

Plans, if any, on or before the date on which the Due Diligence Period (as hereinafter defined) commences.

2. Purchase Price. The purchase price (the "Purchase Price") for the Property shall be Fourteen Million Two Hundred Sixty Thousand and no/100 Dollars ($14,260,000.00) based upon a per unit price of One Hundred Twenty-four Thousand and no/100 Dollars ($124,000.00) (the "Per Unit Price") for one hundred fifteen (115) Units (as hereinafter defined) set forth in Seller's Plans (as hereinafter defined) for which the development approvals are delivered at Closing in conformance with Section 18 below.

(a) Within three (3) business days of the date hereof, Buyer shall deliver to the Title Company (as hereinafter defined), as escrow agent ("Escrow Agent"), by Buyer's check or wire good and ready funds in the amount of Two Hundred Fifty Thousand and no/100 Dollars ($250,000.00) (such amount and any interest thereon shall hereinafter be referred to as the "Initial Deposit") to be held in escrow until the earlier of Closing (as hereinafter defined), termination of this Agreement or as allowed to be used pursuant to the terms of this Agreement prior to Closing.

(b) By the third (3rd) business day to occur after the expiration of the Due Diligence Period, Buyer shall deliver to the Escrow Agent by Buyer's check or wire good and ready funds in the amount of Two Hundred Fifty Thousand and no/100 Dollars ($250,000.00) (such amount and any interest thereon shall hereinafter be referred to as the "Second Deposit") to be held in escrow until the earlier of Closing, termination of this Agreement or as allowed to be used pursuant to the terms of this Agreement prior to Closing. In the event Buyer elects to proceed after the expiration of the Due Diligence Period, the Deposits shall become non-refundable to Buyer subject to and in conformance with the terms of Section 2(c) below.

(c) The Initial Deposit and the Second Deposit and any other deposits hereunder shall collectively be referred to as the "Deposit". All portions of the Deposit shall be: (y) a credit against and applicable to the Purchase Price, and (z) non-refundable and payable to Seller, unless Buyer terminated this Agreement prior to the expiration of the Due Diligence Period or if Closing shall not occur pursuant to Sections 3, 6, 9, 10 or 18 of this Agreement.

(d) Buyer hereby agrees that Seller may collaterally assign its interest in the Deposit to the Town under the Option Agreement and Land Development Agreement (it being understood, accordingly, that the Town's right to the Deposit under such collateral assignment are subject in all respects to the terms of this Agreement).

(e) At Closing, the previously unreleased portions of the Deposit shall be paid to Seller, and the full Deposit (including all released portions thereof) credited to Buyer and Buyer shall pay Seller the balance of the Purchase Price, subject to all

adjustments as provided herein, by certified or title company check or by wire transfer of immediately available funds.

3. Title.

(a) **TITLE COMMITMENT**: Within thirty (30) days after the date of this Agreement, Buyer will, at Buyer's election, either obtain, at Buyer's sole cost and expense, a current title insurance commitment (the "Title Commitment") from a reputable title insurance company licensed in the Commonwealth of Massachusetts and selected by Buyer (the "Title Company") or accept the title commitment obtained by Seller provided Buyer pays for such title commitment and obtains, at its sole expense, an assignment of all rights. Buyer may object to any exceptions which appear in the Title Commitment. Such objection(s) must be made in writing (an "Objection Notice") on or prior to the expiration of the Due Diligence Period (hereinafter defined).

(b) **PERMITTED AND UNPERMITTED TITLE EXCEPTIONS**:

(1) Any title exception appearing in the Title Commitment which is not objected to by Buyer shall be deemed a "Permitted Exception". Seller shall have the right, but not the obligation, to cure all title exceptions which are the subject of an Objection Notice.

If Seller elects in writing to cure a title exception which is the subject of an Objection Notice then that exception shall be deemed an "Unpermitted Exception". If Seller does not elect in writing to cure a title exception which is the subject of an Objection Notice then that exception shall be deemed an "Unresolved Exception". If Seller shall fail to deliver a response to an Objection Notice in a timely manner, Seller shall be deemed to have declined to cure the subject title exception and such title exception shall be deemed an Unresolved Exception. In addition to those matters otherwise deemed Permitted Exceptions under this Section 3, Permitted Exceptions shall include (i) provisions of existing building and zoning laws which are consistent with the Approvals (as hereinafter defined); (ii) such taxes for the then current year as are not due and payable on the date of the delivery of the deed at Closing, subject to the apportionments required pursuant to Section 6 below; and (iii) any liens for municipal betterments assessed after Closing (assessments due before Closing shall be paid by Seller and those due after Closing assumed by Buyer).

(2) If Buyer is not satisfied with the matters which are deemed Unresolved Exceptions, then Buyer's sole remedy shall be to terminate this Agreement by written notice to Seller given on or prior to the conclusion of the Due Diligence Period, whereupon Escrow Agent shall immediately return the Deposit plus any accrued interest to Buyer, and the parties shall thereafter have no further liabilities, rights or obligations under to this Agreement except for those which expressly survive termination of this Agreement. If Buyer does not elect to

terminate the Agreement on or prior to the conclusion of the Due Diligence Period, then Buyer shall be deemed to have accepted all Permitted Exceptions as well as the Unresolved Exceptions, and thereafter such Unresolved Exceptions shall be deemed Permitted Exceptions.

(3) "Monetary Encumbrances" shall mean collectively any (I) mortgages or related security documents or similar encumbrances given to secure indebtedness for money borrowed, (II) mechanic's liens, or (III) judgment liens and/or specified sum attachments, which by their nature may be discharged by the payment of a specific sum of money at the Closing with Closing proceeds. All Monetary Encumbrances affecting the Property at Closing shall be deemed Unpermitted Exceptions.

(4) All matters affecting title to the Property which first appear of record after the Effective Date shall also be deemed Unpermitted Exceptions.

(c) **TITLE AT CLOSING**:

(1) The Property is to be conveyed to Buyer at Closing subject only to the Permitted Exceptions. At Closing, title to the Property shall be good and marketable and such as will be insured by the Title Company, at regular rates. Seller shall execute and deliver to the Title Company such standard form affidavits and indemnities (including an affidavit of title) as shall be necessary for the elimination of exceptions in Buyer's final title policy (the "Title Policy") for parties in possession, filed and unfiled mechanics' liens and the satisfaction of any Internal Revenue Service disclosure and reporting requirements (i.e., "Form 1099"). Seller shall be entitled to use the proceeds of the sale of the Property to effect any cure of Monetary Encumbrances. Buyer shall be responsible to pay all premiums with respect to the Title Policy.

(2) In the event at Closing the title to the Property does not conform with the requirements of this Section 3, then Closing shall automatically be extended for a period of up to thirty (30) days (the "Extended Closing Date") in order to permit Seller to remove any Unpermitted Exceptions.

If thereafter Seller continues to be unable to convey title, or to deliver possession of the Property, all as herein stipulated, or if at the time of the delivery of the deed the Property does not conform with the provisions hereof, then (A) Buyer shall have the right to terminate this Agreement and obtain a refund of the Deposit, (B) Buyer shall have the right to accept title in the manner in which Seller is able to deliver it, and (C) if Seller's inability to deliver title in conformance with this Section 3 is the result of Seller's bad faith or wilfull misconduct then Seller shall be deemed in default for which Buyer will have the remedies specified in Section 9 below.

(3) If Seller's failure to deliver title in the manner required under this Section 3 is caused by the Town under the Option Agreement and is therefore outside of the reasonable control of Seller, then Buyer's sole remedy shall be to either (1) enforce any rights Seller may have against the Town under the Option Agreement (it being agreed that if Buyer intends to enforce such rights, then Buyer must notify Seller of such election within fifteen (15) days of Seller's notice of a failure caused by the Town, and Buyer must thereafter diligently in good faith prosecute such enforcement, at Buyer's sole cost and expense), but in no event shall Buyer be permitted to pursue such enforcement action beyond sixty (60) days unless Buyer is diligently in good faith pursuing such enforcement action at Buyer's sole cost and expense (including the payment of Monthly Payments and Parking Payments if applicable hereunder and subject to all applicable terms hereunder), it being further understood that Seller will assign its rights under the Option Agreement to Buyer at Buyer's direction, or (2) terminate this Agreement and receive a full refund of the Deposit. Buyer acknowledges that Seller is acquiring a portion of the Property from the Town pursuant to the Option Agreement and has not yet closed on the acquisition. Accordingly, if the Town is in default under the Option Agreement and Buyer does not elect option (1) from the preceding sentence, then Seller shall have the right to terminate this Agreement, and in such event, the Deposit shall be fully refunded to Buyer.

4. Closing. The conveyance of fee simple title by Seller to Buyer by quitclaim deeds to the Property (the legal descriptions of which shall conform to the descriptions in Exhibit A hereto) and the payment of the Purchase Price ("Closing") shall occur at the offices of the Seller's attorney and on the date (the "Estimated Approval Date") that is the first business day to occur within thirty (30) days after the satisfaction of the conditions contained herein, including those set forth in Section 18 herein, upon at least five (5) (days' notice from Seller to Buyer.) If the Closing falls on a Saturday, a Sunday or legal holiday in Massachusetts, the Closing shall take place on the next business day which is not a legal holiday. The acceptance of a deed by the Buyer shall be deemed to be full performance and discharge every agreement and obligation herein contained or expressed, except such as are, by the terms hereof, to be performed after the delivery of said deed or expressly survive Closing.

5. Possession and Closing Deliveries. Vacant possession of the Property is to be given at the time of Closing, free of all leases and other occupancy, except for certain Lease Agreements identified on Exhibit I (the "Existing Leases").

At Closing, Seller shall also deliver to Buyer:

A. a bill of sale, which shall convey to Buyer title, free and clear of liens and encumbrances, to the owned Building Service Equipment and the Improvements, which bill of sale shall be in the form attached hereto as Exhibit L;

B. an assignment, which shall assign to Buyer the service contracts (to the extent Buyer elects to assume, and to the extent assignable and as applicable, it being

agreed that any service contracts which Buyer does not elect to assume will be terminated by Seller prior to Closing at Seller's cost), the plans, permits and approvals, equipment rental agreements (to the extent Buyer elects to assume and to the extent assignable and as applicable, otherwise such rental agreements will be terminated by Seller at Seller's cost prior to Closing), which assignment shall be in the form attached hereto as Exhibit M;

C. an assignment of the Existing Leases, including without limitation all security deposits held by Seller or its agents pursuant thereto, and any pre-paid rent for the period of time following Closing, which assignment shall be in the form attached hereto as Exhibit N; and

D. such other commercially reasonable transfer documentation as may be required in order to cause Toll Brothers, Inc., Toll Bros., Inc. and affiliates thereof to be named (at Seller's cost) as "Named Insured" under that certain Environmental Liability Insurance for Starr Capital Partners, LLC with the Producer being Tclamon Insurance & Financial Network LLC and Chubb Servicing Office being Chubb Group of Insurance Companies, a true and complete copy of which is attached as Exhibit P (the "Environmental Insurance Policy").

6. Apportionments. Taxes shall be apportioned pro-rata as of the Closing. Any transfer taxes (including such taxes as may be imposed upon the transfer under the Option Agreement), including interest, shall be the responsibility of Seller. Any taxes which may be imposed due to rebates or reductions in assessments due to the conversion or use of the Property (for example, roll-back taxes, agricultural recoupment taxes, horticultural taxes, forest land taxes) and similar such "recapture" taxes, including those established under Massachusetts General Laws Chapter 61(A) and (B) et seq., shall be the responsibility of Seller.

If the Property is taxed and classified as agricultural/horticultural land under Chapter 61(A) and/or recreational land under 61(B) pursuant to the provisions of Massachusetts General Laws Chapters 61(A) and (B), and the Town has a right of first refusal to purchase the property pursuant thereto, then within thirty (30) days of the execution of this Agreement, Seller shall provide to the Town such notice of intent to sell as may be required under the applicable provisions of Chapter 61(A)and/or (B), together with all supporting documents required by statute, including a certified copy of this Agreement, and the Due Diligence Period shall be deemed extended until such time as the Town issues a waiver of any right of first refusal it may have. If the Town does not waive any right of first refusal it may have within the time period required under Chapters 61(A) and/or (B), as applicable, then Buyer may either (A) waive any conditions to the Agreement associated with the right of first refusal or (B) terminate the Agreement by written notice to Seller, and upon any such termination the entire Deposit shall be refunded to Buyer.

7. Formal Tender Waived. Formal tender of an executed deed and purchase money is hereby waived in order to declare default.

8. Buyer's Default. Should Buyer fail to perform any of Buyer's obligations under this Agreement within thirty (30) days after written notice from Seller (or ten (10) days written notice in the event of a monetary default), then the Deposit shall be retained by Seller as Seller's sole and exclusive remedy for such breach as liquidated damages. The foregoing shall not limit Buyer's obligations under Sections 12, 13, and 25(e) hereof.

Seller and Buyer acknowledge that Seller's actual damages in the event of a default by Buyer under this Agreement will be difficult to ascertain, that such liquidated damages represent the Seller's and Buyer's best estimate of such damages, and that Seller and Buyer believe such liquidated damages are a reasonable estimate of such damages. Seller and Buyer expressly acknowledge that the foregoing liquidated damages are intended not as a penalty, but as full liquidated damages, in the event of Buyer's default and as compensation for Seller's taking the Property off the market during the term of this Agreement. Such delivery of the Deposit shall be the sole and exclusive remedy of Seller by reason of a default by Buyer under this Agreement, and Seller hereby waives and releases any right to sue Buyer, and hereby covenants not to sue Buyer, for specific performance of this Agreement or to prove that Seller's actual damages exceed the Deposit which is herein provided Seller as full liquidated damages.

9. Seller's Default. Should Seller fail, on or prior to Closing, to perform any material obligations of Seller under this Agreement within (30) days after written notice from Buyer (or ten (10) days' notice if a monetary default), then Buyer shall be entitled to pursue, as its sole and exclusive remedies, either (1) the right to specifically enforce this Agreement against Seller, or (2) the right to terminate this Agreement, obtain a refund of the Deposit, and pursue reimbursement of all actual third party costs incurred in connection with this Agreement.

Notwithstanding the foregoing, however, Buyer acknowledges and agrees that Seller is a contract purchaser with respect to a portion of the Property based upon the Option Agreement and in the event that Seller is unable to perform the terms of this Agreement as a result of the Town's default under the Option Agreement, Seller shall provide Buyer with written notice of such event and Buyer shall then have the right to immediately terminate this Agreement and upon any such termination the Deposit shall be fully refunded to Buyer. If Buyer does not elect to immediately terminate this Agreement, Seller shall have the right to seek to enforce its Option Agreement and in the event that Seller seeks to enforce its Option Agreement, this Agreement shall remain in effect pending the final adjudication of such enforcement action and the Closing shall be deemed tolled until such claim has been adjudicated such that Seller may perform the terms of this Agreement or the date Seller notifies Buyer that it has elected not to continue to pursue enforcement of the Option Agreement or has not succeeded on its enforcement of the Option Agreement. In the event that Seller notifies Buyer that it has elected not to continue to pursue enforcement of the Option Agreement or has not succeeded in its enforcement of the Option Agreement, then, in such event, Buyer shall have the right, at Buyer's sole cost, to assume the pursuit of the enforcement of the Option Agreement (it being agreed that if Buyer intends to enforce such rights, then Buyer must notify Seller of such election within fifteen (15) days of Seller's notice of a

failure caused by the Town, and Buyer must thereafter diligently in good faith prosecute such enforcement, at Buyer's sole cost and expense, but in no event shall Buyer be permitted to pursue such enforcement action beyond sixty (60) days unless Buyer is diligently in good faith pursuing such enforcement action at Buyer's sole cost and expense (including the payment of Monthly Payments and Parking Payments if applicable hereunder and subject to all applicable terms hereunder)), and if Buyer does not elect within such fifteen (15) day period to assume pursuit of the enforcement of the Option Agreement, then this Agreement shall be deemed terminated (except with respect to those provisions which expressly survive the termination thereof) and the Deposit shall be returned to Buyer.

10. Condemnation; Casualty.

(a) All risk of loss or damage to the Property by casualty of any nature prior to Closing shall be borne by Seller. The parties agree that any damage to those portions of the property and existing improvements which are contemplated to be immediately demolished following Closing will not be deemed "material" under Section 10(b), will not impact Buyer's obligation to proceed to Closing, and will not give any rights or remedies to Buyer under Section 10(b) below.

(b) Subject to the second sentence of Section 10(a) above, if, prior to Closing, any material portion of the Property is condemned or destroyed (to the best of the parties' respective knowledge as of the date hereof, the condemnation or destruction of any part of the Property which is the subject of any Existing Lease, such as the premises currently used by Starbucks and associated parking facilities, is the only condemnation or casualty that would be considered "material" hereunder), Buyer shall have the option of (i) terminating this Agreement, in which event this Agreement shall be null and void and Buyer shall be entitled to a refund of the Deposit or (ii) proceeding with the Closing, in which event the entire condemnation or insurance proceeds shall be delivered to Buyer at Closing hereunder (and, in connection with the foregoing, Seller expressly acknowledges and agrees that the foregoing insurance or condemnation proceeds shall not be applied to restoration of the Property without Buyer's prior written consent, given or withheld in Buyer's sole discretion), or, if they have not yet been paid, the right to receive such proceeds shall be assigned to Buyer at Closing hereunder by instrument acceptable to Buyer. Buyer shall exercise its option within fifteen (15) days after it receives notice from Seller of any such condemnation or casualty.

11. Compliance with Notices, Ordinances. Seller shall comply with any notices of legal violations given to Seller or ordinances enacted by any governing authority prior to the date of Closing for which a lien could be filed against the Property. To the extent Seller is merely a contract purchaser of a portion of the Property, and such compliance does not occur, then the terms of the second paragraph of Section 9 above shall control, with Buyer having the right to terminate this Agreement and obtain a refund of the Deposit.

12. Brokers. Seller will be responsible for (1) any fees or commissions due Boston Realty Advisors (if applicable, it being understood that Seller believes that Boston Realty Advisors is not entitled to a commission due to the expiration of the listing agreement between Seller and Boston Realty Advisors), and (2) any fees or commissions due any other broker or finder or agent with whom Seller has dealt with in connection with this Agreement or the conveyance of the Property to Buyer, it being understood that Seller represents to Buyer it has not dealt with any broker, finder or agent other than Boston Realty Advisors. Buyer represents to Seller that other than Boston Realty Advisors, Buyer has dealt with no broker, agent or finder in connection with this Agreement or the conveyance of the Property to Buyer. Buyer and Seller mutually defend, indemnify and hold one another harmless from and against any liability arising from their respective breach of the terms of this Section 12.

13. Due Diligence Period. Between the time of execution of this Agreement and Closing, Seller agrees that Buyer, its representatives and consultants shall have the right, upon prior written notice to Seller, to enter upon the Property (and at Seller's election, Seller may have a representative of the Seller accompany Buyer), to perform engineering, environmental and such other feasibility studies as Buyer determines in its sole discretion. In connection with such access, Buyer shall provide Seller with at least seventy-two (72) hours prior written notice before entering the Property. Said access shall be performed so as to cause minimal disruption with Seller's tenants and without disclosing any of the economic terms of this Agreement (as restricted in Section 25(g) below).

Such due diligence items that Seller shall provide to Buyer upon execution of this Agreement include but are not limited to presently available Phase 1 or 2 ASTM and 21E reports, permits and approvals, copies of leases and legal descriptions and other items customarily provided by Seller, if available for a due diligence inspection and to the extent available such information as may be reasonably within the possession or control of the Seller. During the period of time (the "Due Diligence Period") commencing upon the execution of this Agreement and expiring on the later of (A) sixty (60) days thereafter, and (B) thirty five (35) days after receipt by Buyer from Seller of the Recognition Agreement (as hereinafter defined), the Consent and Estoppel (as hereinafter defined), and the CHA Consent (as hereinafter defined), should Buyer desire not to purchase the Property as a result of such studies, or as a result of Buyer's dissatisfaction with the Property based upon Buyer's review of Seller's Plans or for any other reason whatsoever, Buyer shall have the right to terminate this Agreement upon written notice to Seller in which case the Deposit shall be returned to Buyer and there shall be no further liability of the parties hereunder. Notwithstanding the foregoing, Buyer agrees that if Seller is unable to obtain one or more of the Recognition Agreement, the Consent and Estoppel and/or the CHA Consent by July 15, 2016, then Buyer agrees that the Due Diligence Period will be deemed to expire no later than August 19, 2016 irrespective of whether Seller has obtained the Recognition Agreement, Consent and Estoppel and/or the CHA Consent by August 19, 2016. Failure to notify Seller prior to the expiration of the Due Diligence Period shall act as Buyer's election to waive this contingency. If Buyer causes any damage to the Property as a result of its studies performed pursuant to this

Section, and Buyer elects not to purchase the Property, Buyer shall reasonably repair such damage. Buyer shall indemnify and hold Seller harmless from any loss, liability, lien or claim to the extent arising out of such right of entry or such studies performed by Buyer or Buyer's representatives or consultants upon the Property, subject to existing environmental conditions (except to the extent any such conditions are negligently and materially aggravated by Buyer or its representatives or consultants, Buyer is not liable for merely discovering an existing condition).

Seller, in its sole discretion, may elect to observe and monitor any site investigation activities undertaken by Buyer, and may request, at Buyer's reasonable nominal expense, duplicate reports regarding any materials sampled by Buyer. Buyer shall provide, upon written request by Seller, a copy of all data and reports resulting from its environmental investigation. Buyer will have the right to make any disclosure of its feasibility findings as may be required under law; however, if such disclosure is not required by law then Buyer shall not report such findings except to such third parties (including the Town, contractors, attorneys, potential lenders and partners, agents and consultants) as reasonably deemed necessary by Buyer in the performance of Buyer's feasibility analysis. This nondisclosure obligation shall survive termination of this Agreement but will not survive Closing.

The terms of this Section shall survive termination of this Agreement and (other than the nondisclosure obligation noted in the preceding paragraph) shall also survive Closing.

14. Seller's Representations, Warranties and Covenants. Seller covenants, represents and warrants to Buyer as follows (each such representation and warranty being true and correct as of the date of the Agreement and shall be true and correct on the date of Closing):

(a) Except for the portion of the Property that is the subject of the Option Agreement (as defined below), and except for the Existing Leases, Seller is the sole legal owner of the Property in fee simple and the Property is not subject to any lease, option, right of first refusal or agreement of sale. Seller has the full power and authority to execute, deliver and perform this Agreement and all agreements and documents referred to in this Agreement. The person who has executed this Agreement on behalf of Seller has the authority to do so. To Seller's knowledge, the Parking Property (as hereinafter defined) is not subject to any lease, option, right of first refusal or agreement of sale other than the Option Agreement.

(b) There is no action, suit or proceeding pending or (to the best of Seller's current actual knowledge and without further inquiry) threatened against or affecting Seller or the Property or relating to or arising out of the ownership of the Property (except for an action by CHA, an environmental engineer, for payment of fees due under contract in an approximate amount equal to $123,353.48 and secured by a mechanic lien and attachment to be paid at the Closing by Seller using the proceeds of the Purchase Price), including without limitation, general or special

assessment proceedings of any kind, or condemnation or eminent domain actions or proceedings of any kind.

Seller will exercise good faith efforts to obtain (at Seller's cost) from CHA written confirmation (the "CHA Confirmation") to the reasonable satisfaction of Buyer and Buyer's LSP (as defined in Section 17) that Buyer's LSP may utilize (at no further cost to Buyer or Buyer's LSP) CHA's reports and data in connection with satisfying the RAM Condition.

(c) To the best of Seller's current actual knowledge and without further inquiry, neither the entering into of this Agreement, the consummation of the sale, nor the conveyance of the Property to Buyer, has or will constitute a violation or breach of any of the terms of any contract or other instrument to which Seller is a party or to which Seller is subject.

(d) Except as disclosed on Seller's environmental reports which have been delivered to Buyer and are described on Exhibit C hereto (the "Existing Environmental Condition"), to the best of Seller's current actual knowledge and without further inquiry, no portion of the Property contains any substance which may be classified as a hazardous, toxic, chemical or radioactive substance, or a contaminant or pollutant (together, "Hazardous Substances") under applicable federal, state or local law, ordinance, rule or regulation ("Applicable Laws") or which may require any cleanup, remediation or other corrective action pursuant to such Applicable Laws. Seller has not used any portion of the Property, nor to the best of Seller's current actual knowledge and without further inquiry, permitted any other person or entity to use the Property for the purpose of storage, generation, manufacture, disposal, transportation or treatment of any such Hazardous Substances in violation of Applicable Laws. Seller is not aware of any underground storage tanks (USTs) or other hazardous material releases other than those disclosed in the Environmental Reports. For purposes of this Agreement, the term "Unknown Conditions" shall refer to the presence of Hazardous Materials and any environmental conditions other than the Existing Environmental Condition. To the best of Seller's knowledge, there are no Unknown Conditions. To the extent either party becomes aware of any Unknown Condition prior to Closing, each party will advise the other of such Unknown Condition.

(f) Except as noted in Section 14 (b) above and Sections 16(h) and 16(i) below, and except for any costs required to be incurred by Buyer following Closing under the Loan Documents, Parking Easement Agreement, Parking Management Agreement, Land Development Agreement, Option Agreement, and Special Permit, to the best of Seller's current actual knowledge and without further inquiry, there are no commitments or agreements which require Buyer to pay any money or perform any obligation or which otherwise affect the ownership or development of the Property by Buyer. To the best of Seller's knowledge there

are no restrictions on the availability of potable water to the Property for the intended development.

Seller confirms that there are no construction agreements affecting the Property (including any such agreements between Seller and any third party) that will be binding on the Property or Buyer following Closing and Seller will be solely responsible for the termination of, and any fees associated with, any such agreements which may be in affect prior to Closing.

Following receipt by Seller of the Recognition Agreement during the Due Diligence Period, Seller confirms that Seller will have sufficient proceeds from the Purchase Price at Closing to satisfy all outstanding obligations to the professionals who have provided services to the Seller with respect to the Property, including CHA, and sufficient funds to discharge all mortgage liens against the Property.

(f) No notice by any governmental or other public authority has been served upon Seller, or to the best of Seller's current actual knowledge and without further inquiry, anyone on Seller's behalf, or to the Town, relating to violations of any applicable housing, building, safety, fire or other ordinances or any of the Applicable Laws relating the Property.

(g) Seller's Plans have been provided to Buyer on or before the date of this Agreement in accordance with Section 1 above and shall be paid for in full by Seller at or prior to the Closing. Seller represents that Seller's Plans are complete and accurate copies of the materials in Seller's files. Seller will obtain the consent of all engineer(s), architect(s), surveyor(s) and/or consultant(s) that prepared the Seller's Plans to cooperate with Buyer during the Due Diligence Period by providing Buyer with all necessary materials (including architecture and engineering and CAD files and survey materials) for Buyer's complete review of the feasibility of Seller's Plans.

(h) At Closing, Seller shall deliver to Buyer a complete set of Seller's Plans including, without limitation, a complete CAD file on disk (final subdivision approval, construction drawings, grading plans, and the like) free and clear of liens and paid for in full by Seller for all work through the date of Closing. Further, at Closing, Seller shall assign to Buyer a nonexclusive right to use all of Seller's Plans, evidenced by an assignment executed by Seller and an assignment executed by the engineer(s), architect(s), surveyor(s) and/or consultant(s) that prepared the Seller's Plans. If requested by the architect or engineer in connection with the execution of any such assignment, Buyer shall confirm to said architect or engineer that said parties are released from any claims by Buyer arising from modifications made by Buyer to the architecture and/or engineering plans (unless such modifications are performed by the subject architect or engineer.)

(i) Seller is the contract purchaser under that certain Purchase and Sale Agreement with the Town dated March 28, 2011 (the "Option Agreement") pursuant to which Seller has the right to purchase from the Town a municipal parking lot which comprises a portion of the Property which is the subject of this Agreement (the "Parking Property"), subject to the Parking Management Agreement. Accordingly, as of the date hereof Seller is not the fee owner of the Parking Property, and is instead the contract purchaser of the Parking Property. To the best of Seller's knowledge, there is no uncured default by the Town, as seller, or the Seller, as purchaser, under the Option Agreement. The Option Agreement has not been terminated, discharged, modified or amended in any way, and it is in full force and effect. A true and complete copy of the Option Agreement is attached as Exhibit E. The Option Agreement together with the Land Development Agreement (as hereinafter defined) represent the entire agreement between Seller and the Town regarding the Parking Property, and there are no other agreements between Seller and the Town regarding the Parking Property. Seller agrees that it shall not enter into any amendment or modification of the Option Agreement without the prior written consent of Buyer. The parties agree that the term "Option Agreement" will include any amendments or modifications that have been approved by Buyer. Buyer acknowledges that the Option Agreement currently expires March 28, 2016 and Seller acknowledges that Buyer will require a reasonable extension of the Option Agreement (with terms consistent with Section 16(i) below) be obtained prior to the expiration of the Due Diligence Period.

(j) Seller further represents that Seller is the Developer under that certain Amended and Restated Land Development Agreement between the Town and Seller, executed by the Town on October 15, 2015 (the "Land Development Agreement"), but not yet executed by the Seller. A copy of the Land Development Agreement is attached as Exhibit J. Seller agrees that it shall not execute, amend or modify of the Land Development Agreement without the prior written consent of Buyer. The parties agree that the term "Land Development Agreement" will include any amendments or modifications that have been approved by Buyer.

(k) Seller agrees to fully perform all of its obligations under the Option Agreement except as noted in Section 16 below, at such times and in such manner as is required thereunder, and Seller hereby covenants to assign the Option Agreement (with Town approval as evidenced by the Consent and Estoppel to be obtained by Seller during the Due Diligence Period) at Closing to Buyer, at which time there will be a simultaneous closing under the Option Agreement and this Agreement. In the event the Town is in default under the Option Agreement, Seller further agrees to either enforce the terms of the Option Agreement against the Town at Seller's sole cost and expense within thirty (30) days, or assign its rights against the Town to Buyer in order to allow Buyer, at Buyer's sole election and cost, to enforce the subject rights against the Town. If neither Seller nor Buyer elect to enforce the terms of the Option Agreement against the Town (it being agreed that

if Buyer intends to enforce such rights, then Buyer must notify Seller of such election within fifteen (15) days of Seller's notice of a failure caused by the Town, but in no event shall Buyer be permitted to pursue such enforcement action beyond sixty (60) days unless Buyer is diligently in good faith pursuing such enforcement action at Buyer's sole cost and expense (including the payment of Monthly Payments and Parking Payments if applicable hereunder and subject to all applicable terms hereunder)), then either Seller or Buyer may terminate this Agreement and upon any such termination the Deposit shall be fully refunded to Buyer.

(l) Seller agrees to fully perform all of its obligations under the Land Development Agreement through Closing, at such times and in such manner as is required thereunder. In the event the Town is in default under the Land Development Agreement, Seller further agrees to either enforce the terms of the Land Development Agreement against the Town at Seller's sole cost and expense, or assign its rights against the Town to Buyer in order to allow Buyer, at Buyer's sole election and cost, to enforce the subject rights against the Town. If neither Seller nor Buyer elect to enforce the terms of the Land Development Agreement against the Town, then either Seller or Buyer may terminate this Agreement and upon any such termination the Deposit shall be fully refunded to Buyer.

(m) The Land Development Agreement, Parking Easement Agreement, Parking Management Agreement, Option Agreement and Special Permit will be assigned to Buyer at Closing pursuant to a form prepared by Buyer and reasonably acceptable to Seller. Seller will use commercially reasonable efforts to provide Buyer with a fully executed Consent and Estoppel from the Town during the Due Diligence Period in the form annexed hereto as Exhibit K (the "Consent and Estoppel"). Buyer shall have the right to cure any defaults of the Seller under the referenced agreements as noted in the Consent and Estoppel.

(n) Prior to Closing, Seller shall add Toll Brothers, Inc., Toll Bros., Inc. and affiliates thereof identified by Buyer prior to the end of the Due Diligence Period, to the Environmental Insurance Policy as the Named Insureds listed in the Declarations of the Environmental Insurance Policy. Seller will pay all premiums necessary to keep the Environmental Insurance Policy in full force and effect through Closing.

15. Seller's Certificate. At Closing, Seller shall execute a certificate ("Seller's Closing Certificate") evidencing the reaffirmation of the truth and accuracy of the Seller's representations and warranties set forth in Section 14 hereof. In Seller's Closing Certificate, Seller shall be entitled to modify any such representation or warranty of Seller for a change first arising after the date hereof and of which Seller did not have actual knowledge as of the date hereof and is not attributable to and/or caused by or arising out of any intentional act or omission of Seller. The Seller's Closing Certificate shall identify the representation or warranty which is no longer true and correct as of the Closing in reasonable detail and explain the state of facts giving rise to the change in accordance with the requirements of the preceding sentence. At Buyer's election, Buyer may extend the Closing to review Seller's Closing Certificate for a reasonable period of

time not to exceed thirty (30) days. Seller shall not be in default for any change described in Seller's Closing Certificate that occurs between the date hereof and the date of Closing not attributable to, arising out of or caused by the intentional act or omission of Seller and complying with the second sentence of this Section 15; provided, however, that if Seller's Closing Certificate indicates a matter materially adverse to Buyer, Buyer shall have the option to terminate this Agreement, and the Deposit, including any accrued interest thereon, shall be returned to Buyer. If, despite Seller's Closing Certificate, the Closing occurs, Seller's representations and warranties set forth in this Agreement shall be deemed to have been modified by Seller's Closing Certificate complying with this Section. A breach of Section 14 that does not meet the requirements of Section 15 nonetheless shall be governed by Section 9 hereof.

16. Operations Pending Closing. Between the date of execution of this Agreement and the date of the Closing:

(a) Seller shall maintain the Property (or if applicable enforce its rights against the Town to maintain the Parking Property) in its present state of repair and in substantially the same condition as on the date hereof; provided that Buyer shall not unreasonably withhold or delay its consent to a total or partial removal or demolition of any structures or improvements on the Property.

(b) Seller shall not (and shall enforce its rights against the Town such the Town shall not) enter into (i) any agreement of sale or option, or (ii) any lease, other agreement or contract which would be binding on Buyer or survive the Closing, nor shall Seller grant (nor shall Seller allow the Town to grant) any easements or further encumber the Property, without the prior written consent of Buyer, unless so required by governmental authority.

Seller shall not assign, pledge, mortgage, or otherwise encumber the Retail Space prior to conveyance of the Retail Space to Seller under Section 26 below. Any such attempted assignment, pledge, mortgage or encumbrance of the Retail Space in violation of the preceding sentence shall be null and void and of no force or effect. Seller may, however, enter into any lease with respect to the Retail Space following Closing under this Agreement (and prior to Seller's acquisition of the Retail Space under Section 26) provided, however, that if such lease will encumber the Retail Space irrespective of whether Seller acquires the Retail Space under Section 26, then such lease must be pre-approved in writing by Buyer, which approval will not be unreasonably withheld or delayed. If Seller acquires the Retail Space under Section 26, then Seller agrees that it will reimburse Buyer (as part of the actual costs incurred by Buyer in connection with the Retail Space under Section 26(a)(1)) all reasonable attorney's fees incurred by Buyer in reviewing and commenting on any such lease, and Buyer will advise Seller of the anticipated attorney's fees to be incurred by Buyer in reviewing and commenting on any lease within seven (7) days following Seller's request for Buyer's approval of any such lease.

(c) Seller shall comply with all covenants, conditions, restrictions and any Applicable Laws affecting the Property.

(d) Except for agricultural fertilizers and other products and materials customarily used for household purposes and used in accordance with Applicable Laws, Seller shall not (and Seller shall enforce its rights against the Town such that the Town shall not) use, manufacture, store, generate, handle, or dispose of any Hazardous Substances, or knowingly use or permit the Property to be used for such purposes, or emit, release or discharge any such Hazardous Substances into the air, soil, surface water or groundwater comprising the Property.

(g) Seller shall not (and Seller shall enforce its rights against the Town such that the Town shall not) remove or damage in any material respect any standing trees, shrubbery, plants, landscaping or soil now in or on the Property during the term of this Agreement. Seller shall not (and Seller shall enforce its rights against the Town such that the Town shall not) dispose of any trash, debris, building materials or organic material (including trees and stumps) on the Property.

(h) Seller advises Buyer that the Property is subject to a first mortgage lien in favor of Northern Bank and Trust (the "Bank") pursuant to loan documents between Bank and Seller (the "Loan Documents"). Seller will obtain a recognition agreement for Buyer in the form annexed hereto as Exhibit B (or such other form as shall be mutually acceptable to Bank, Seller and Buyer) during the Due Diligence Period (the "Recognition Agreement"). Buyer agrees to make debt service payments under the Loan Documents of fifteen thousand and no/100 dollars ($15,000) per month commencing as of the expiration of the Due Diligence Period (assuming Buyer proceeds with the Agreement) (the "Monthly Payments") provided that, as a condition precedent to making any such Monthly Payments, Seller delivers to Buyer a fully executed (A) modification to the Recognition Agreement providing for the terms set forth on Exhibit Q hereto including the granting of a second mortgage lien in favor of Buyer (the "Modified Recognition Agreement"), and (B) guaranty of payment executed by Christopher Starr in the form annexed hereto as Exhibit D ("Guaranty of Payment"). Buyer may use Deposit funds to make Monthly Payments. All Monthly Payments made by Buyer will be applied as a credit to the Purchase Price for Buyer's benefit at Closing. If this Agreement is terminated, (A) irrespective of whether Buyer is in default, Seller shall reimburse Buyer all Monthly Payments made using Buyer's independent funds (as opposed to Deposit funds), and (B) if Buyer is entitled to a reimbursement of the Deposit, then Seller will also promptly reimburse Buyer all Monthly Payments made using Deposit funds. Seller represents that the only mortgage lien encumbering the Property is the mortgage lien that is part of the Loan Documents. If Closing does not occur due to default by the Buyer, then as liquidated damages, Seller shall retain all Deposits.

(i) The parties expect for the Option Agreement to be amended during the Due Diligence Period to provide that commencing April 2016 Seller will be required to make monthly option payments of up to forty thousand and no/100 dollar ($40,000) (the "Parking Payments"), in addition to currently past due $30,000 monthly option payments for January, February and March 2016. Buyer agrees to make monthly Parking Payments commencing as of the expiration of the Due Diligence Period (assuming Buyer proceeds with the Agreement), provided that, as a condition precedent to making any such Parking Payments, Seller delivers to Buyer a fully executed (A) Modified Recognition Agreement, (B) Guaranty of Payment, and (C) Consent and Estoppel, together with confirmation from the Town that all option payments are current (including Seller's payment of any shortfall for January through March, 2016). Buyer may use Deposit funds to make Parking Payments. All Parking Payments made by Buyer will be applied as a credit to the Purchase Price for Buyer's benefit at Closing (notwithstanding that the monthly payments under the Option Agreement may only be partially (if at all) applicable as a credit to the purchase price under the Option Agreement with the Town; for example, the Town may only allow $20,000 of the monthly option payments to be credited against the Purchase Price under the Option Agreement, but nevertheless the Buyer will receive a credit for the full $40,000 monthly option payment against the Purchase Price under this Agreement). If this Agreement is terminated, (A) irrespective of whether Buyer is in default, Seller shall reimburse Buyer all Parking Payments made using Buyer's independent funds, and (B) if Buyer is entitled to a reimbursement of the Deposit, then Seller will also promptly reimburse Buyer all Parking Payments made using Deposit funds.

(j) Seller shall perform and not default on its obligations under the Existing Leases, and shall not make any amendments thereto absent Buyer's prior written approval not to be unreasonably withheld, conditioned or delayed. Seller shall immediately notify Buyer of any Seller or tenant default occurring under the Existing Leases, or any condition which but for the passage of time and/or giving of notice would be a default thereunder. Seller shall enforce its rights as landlord under the Existing Leases, provided however that Seller shall first obtain Buyer's written consent before exercising any remedies against a tenant, said consent not to be unreasonably withheld, conditioned or delayed. Seller shall use good faith efforts to deliver to Buyer an estoppel certificate, in the form attached hereto as Exhibit O, signed by each tenant dated no more than thirty (30) days prior to Closing (collectively, the "**Estoppel Certificates**").

17. (a) Condition of Property. Except as provided in this Agreement, the Property shall be sold and conveyed strictly "as is", "where is" and "with all defects", as it exists on the date hereof, ordinary wear and tear excepted. Except as provided in this Agreement and except for warranties of title to be contained in the limited warranty deeds from Seller to Purchaser, the Property shall be conveyed without representation, warranty or covenant, express, implied or statutory, of any kind whatsoever, including, without limitation, representation, warranty or covenant as to structural condition, environmental condition,

mechanical condition or otherwise, except for the express warranties and representations described elsewhere herein. There shall be no warranty of past or present use, compliance with law, habitability, merchantability or suitability for any purpose, all of which are hereby expressly disclaimed, except as expressly contained in this Agreement.

BUYER FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PROVIDED OR TO BE PROVIDED WITH RESPECT TO THE PREMISES WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT SELLER HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, MAKES NO REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. EXCEPT FOR THIS AGREEMENT AND THE DOCUMENTS AND CONVEYANCES TO BE EXECUTED BY SELLER IN CONNECTION WITH THIS AGREEMENT, SELLER IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PREMISES, OR THE OPERATION THEREOF, FURNISHED BY ANY REAL ESTATE BROKER, AGENT, EMPLOYEE, SERVANT OR OTHER PERSON. EXCEPT AS OTHERWISE PROVIDED HEREIN AND/OR IN THE DOCUMENTS TO BE DELIVERED AT CLOSING, BUYER FURTHER ACKNOWLEDGES AND AGREES THAT TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE SALE OF THE PREMISES AS PROVIDED FOR HEREIN IS MADE ON AN "AS IS," "WHERE IS" AND "WITH ALL FAULTS" CONDITION AND BASIS.

(b) Existing Environmental Conditions

Upon Closing, Buyer shall assume responsibility, at Buyer's cost, for remediation of the Existing Environmental Conditions (the "Remediation"). As a condition (the "RAM Condition") to Buyer's obligation to proceed to Closing (unless this condition is expressly waived by Buyer in writing), Buyer's licensed site professional (the "Buyer's LSP") will have filed with the Massachusetts Department of Environmental Protection ("MassDEP"), at Buyer's cost, a release abatement measure plan ("RAM") defining the Remediation process which will be pursued by Buyer with the goal of prosecuting the Remediation of the Existing Environmental Conditions to achieve Permanent Solution status without conditions as defined in the MCP, all in conformance with M.G.L. c.21E and the Massachusetts Contingency Plan (MCP), 310 CMR 40.0000 et seq..

If Buyer does not waive the RAM Condition, then Buyer agrees that Buyer will cause Buyer's LSP to submit the draft RAM for public comment within two (2) weeks following the expiration of the Due Diligence Period.

Provided the RAM has been filed by Buyer's LSP with MassDEP, Seller agrees that at Buyer's election, Buyer may proceed with the Remediation prior to Closing, it being acknowledged, however, that the scope of such pre-Closing Remediation will be determined by Buyer in Buyer's discretion (for example, Buyer may elect for pre-Closing Remediation to be limited to demolition of existing structures in order to obtain additional environmental data, or, alternatively, Buyer may elect for pre-Closing

Remediation to include the actual removal of contaminated soil and other such measures). Closing will not be contingent on the completion of any aspect of the Remediation, it being understood that Remediation will not be completed until after Closing. If Buyer discovers Unknown Conditions prior to Closing then Buyer will have the right to terminate this Agreement and obtain a refund of the Deposit. If Buyer proceeds with pre-Closing Remediation and it is reasonably determined during pre-Closing Remediation that the cost of completing Remediation (of the Existing Environmental Condition) together with the cost of remediating any Unknown Conditions, will exceed One Million Eight Hundred Thirty Four Thousand and no/100 Dollars ($1,834,000), then Buyer shall have the right to terminate the Agreement and obtain a refund of the Deposit, it being agreed, however, that Buyer will have the specifically enforceable obligation of promptly backfilling to grade, stabilizing and seeding any areas of the Property disturbed through such pre-Closing Remediation activities.

If Buyer diligently pursues either (or both) of the following two (2) items, it will be a condition precedent to Buyer's obligation to proceed to Closing (the "Special Condition") that Buyer obtain either (1) a so called "cost cap" environmental insurance policy on terms acceptable to Buyer with respect to the Existing Environmental Conditions, or (2) a fixed sum contract for completion of the Remediation (the "Fixed Sum Contract") on terms acceptable to Buyer. Buyer acknowledges, however, that if all other conditions to Closing have been satisfied but for this Special Condition, then satisfaction of the Special Condition must be completed by July 28, 2016, failing which Buyer's sole remedy shall be to waive the Special Condition and proceed to Closing or to terminate this Agreement for a failure to satisfy the conditions, in which event the Deposit will be refunded to Buyer.

Buyer and Seller may also qualify for a tax credit from the Massachusetts Department of Revenue (MADOR) which may allow Buyer and Seller to obtain up to a 50% tax credit on response costs incurred at the Property, except for funds borrowed from Mass Development. If allowed under law, Buyer and Seller shall retain their respective right to apply for a tax credit based on all response costs and attorney fees each has incurred, for which Buyer or Seller may be eligible based upon the costs incurred by the Buyer or Seller in connection with any site assessment or remediation completed by Buyer or Seller. To the extent Seller and Buyer are entitled to any such tax credits, such tax credits will be shared based upon a pro rata share of the fees incurred by each party in connection with any site assessment or the Remediation. The parties will coordinate their application for the tax credits and neither party will submit an application without the knowledge and written consent of the other. In the event Seller is not eligible to submit an application for tax credits after the Closing for response costs (whether incurred prior to closing or after closing) as Seller would no longer be the owner of the Property, the Buyer, if Buyer is the owner, may submit the application for all response costs incurred by Buyer (to the extent allowed under the applicable statutes, guidance, and regulations) and for all response costs incurred by Seller (again to the extent allowed under the applicable statutes, guidance, and regulations) and apportion the tax credit to Seller based on Buyer's and Seller's respective pro-rata share of response costs and fees incurred prior to and after the Closing (again, only to the extent allowed under the applicable statutes, guidance, and regulations). Seller specifically acknowledges that it is both parties'

understanding that as of the date hereof neither Buyer (nor Seller) may be eligible to submit an application for any response costs incurred prior to Closing (due to the applicable ownership requirements), but to the extent such parties are eligible they will coordinate efforts to maximize the available tax credits. For example, if Buyer is able to obtain tax credits for post-Closing response costs, and Seller acquires the Retail Space and therefore reimburses Buyer for a pro-rata share of response costs incurred, then Buyer will assign (to the extent assignable) to Seller the same pro-rata share of tax credits received and applicable to the reimbursed costs. Seller acknowledges that Buyer's ownership of the Project following Closing may change to a joint venture or other forms of ownership (or Buyer may convey the Property to a third party), and all of such transactions may impact the availability of tax credits and Buyer makes no representations or warranties in this regard, nor shall Buyer have any obligation to maintain ownership of the Property in any specific name or form in order to preserve eligibility for tax credits. Seller finally acknowledges that if Buyer receives tax credits to which Seller is entitled under this paragraph, the only means by which the value of such tax credits will be realized by Seller will be through a transfer/assignment of such tax credits (to the extent permitted by law) from Buyer to Seller.

Without limiting the effect of Section 17 hereof, and provided that Seller is not in breach of this Agreement, Buyer further agrees solely with respect to the Remediation of the Existing Environmental Condition and with respect to any Unknown Conditions, to release Seller for all environmental or other liabilities, any and all claims for past, present or future response costs, site assessment costs, remediation costs, property damages, economic losses, diminution in property value, personal injuries, negligence, nuisance, trespass, violation of any federal, state or common law claims whether based in law or equity that Buyer or any of its related entities, predecessors, successors, agents, assigns, had or could have had from the beginning of the world to now and in the future with respect to such Remediation of the Existing Environmental Conditions as well as any Unknown Conditions on the Property (provided, of course, that Seller has disclosed to Buyer any Unknown Conditions of which Seller becomes aware prior to Closing).

Seller agrees that if Seller acquires the Retail Space, then solely with respect to the Remediation of the Existing Environmental Condition and with respect to any Unknown Conditions, Seller will release Buyer for all environmental or other liabilities, any and all claims for past, present or future response costs, site assessment costs, remediation costs, property damages, economic losses, diminution in property value, personal injuries, negligence, nuisance, trespass, violation of any federal, state or common law claims whether based in law or equity that Seller or any of its related entities, predecessors, successors, agents, assigns, had or could have had from the beginning of the world to now and in the future with respect to such Remediation of the Existing Environmental Conditions as well as any Unknown Conditions on the Property.

For purposes of this Agreement, the term "Hazardous Materials" or "Hazardous Substances" means any substance, chemical, compound, product, solid, gas, liquid, waste, byproduct, pollutant, contaminant or other material that is hazardous, toxic, ignitable, corrosive, carcinogenic or otherwise presents a risk of danger to human, plant or animal life or the environment or that is defined, determined or identified as such in

any federal, state or local law, rule or regulation (whether now existing or hereafter enacted or promulgated) and any judicial or administrative order or judgment, in each case relating to the protection of human health, safety, natural resources and/or the environment, including, but not limited to, any materials, wastes or substances that are included within the definition of (A) "hazardous waste" in the federal Resource Conservation and Recovery Act; (B) "hazardous substances" in the federal Comprehensive Environmental Response, Compensation and Liability Act; (C) "pollutants" in the federal Clean Water Act; (D) "toxic substances" in the federal Toxic Substances Control Act; (E) "oil or hazardous materials" in the laws or regulations of any State; (F) radon; (G) asbestos and/or asbestos containing materials; (H) lead paint; and (I) urea formaldehyde;

Buyer hereby acknowledges that a reduction has been made to the Purchase Price as recited in herein, in full consideration of accepting the Property "AS IS" (except as expressly otherwise provided in this Agreement) as fully stated in Sections 2 and 17 and elsewhere herein and for this Section 17.

The provisions in this Section shall expressly survive the transfer of the Deed and Closing.

18. Conditions to Buyer's Obligations.

(a) Buyer's obligation to complete the Closing under this Agreement is expressly conditioned upon the following (collectively, the "Approvals"), and Buyer shall have the further right, exercisable at any time and from time to time, to waive any one or more of such conditions (in whole or in part) without affecting any of Buyer's other rights, conditions or obligations:

(i) All representations and warranties of Seller herein being true and correct at the time of the Closing subject to Section 15 hereof; and

(ii) Seller having performed in all material respects its covenants and obligations hereunder; and

(iii) The receipt by Seller for Buyer of the special permit for the "Project" defined on Seller's Plans and comprised of (A) one hundred fifteen (115) apartment units (each a "Unit" and collectively, the "Units"), (B) all associated amenities including clubhouse and common areas, (C) thirty seven thousand five hundred (37,500) square feet of retail space (the "Retail Space"), (D) two hundred seven (207) structured garage parking spaces, (E) twenty two (22) surface parking spaces. The applicable appeals period for such approvals will have expired without appeal and/or any appeal having been dismissed with prejudice in favor of Buyer, and Seller will have satisfied all conditions to the final approvals such that upon Closing the Buyer will be immediately permitted to proceed with the construction, installation, marketing, rental and operation of the Project.

Not more than ten (10) of the one hundred fifteen (115) Units will be affordable units. No modifications will be made to Seller's Plans without Buyer's consent; and

(iv) The receipt by Seller for Buyer of all written agreements, "will serve letters", arrangements and other evidence satisfactory to Buyer (as determined in its reasonable discretion) to the effect that for the Project as described in subsection (iii) above: (a) public sewer treatment and capacity is immediately available at the Property to service the intended development, (b) sufficient public water and storm drainage are immediately available at the Property to service the intended development, and (c) electric, gas and other utilities are available at the Property, with (a) through (c) being available at connecting fees and expenses that are not greater than those which are customary and ordinary for similar developments in the County; and

(v) The receipt of a modification and/or extension of the Special Permit on terms reasonably satisfactory to Buyer; and

(vi) No adoption of ordinances or regulations which prohibit the issuance of building permits and/or certificates of occupancy for rental units to be constructed on the Property pursuant to the development approvals and permits; and

(vii) No material adverse change in the approvals and permits for the Property following the Effective Date; and

(viii) Satisfaction of the RAM Condition (as defined in Section 17 above); and

(ix) Satisfaction of the Special Condition (as defined in Section 17 above and subject to the terms set forth in Section 17 above).

(b) The satisfaction of the conditions set forth in Section 18(a)(iii) through (vi) shall be unappealable at the time of Closing and shall be subject only to such conditions as Buyer may approve in Buyer's sole discretion.

(c) If on or before the date of Closing all contingencies and conditions specified herein are not or cannot be satisfied, then Buyer shall have the option of (i) completing Closing hereunder if it so chooses at the Purchase Price adjusted for the number of Units for which the conditions are satisfied, or (ii) canceling this Agreement in which case this Agreement shall become null and void and the Deposit shall be paid to Buyer. In the event such failure constitutes a failure of the condition set forth in Section 18(a)(i) or 18(a)(ii), Buyer shall be entitled to treat such failure as Seller's Default entitling Buyer to exercise the remedies set forth in Section 9 above.

(d) The parties agree that at Closing, Buyer will reimburse Seller the actual third party costs incurred by Seller in obtaining a foundation permit for the entire intended development (up to eighty thousand and no/100 dollars ($80,000)) provided that (1) the subject foundation permit is in full force and effect, (2) the foundation permit has an expiration date reasonably acceptable to Buyer, and (3) the foundation permit has been assigned to Buyer with the Town's written approval.

19. Survival. Sections 6, 12, 13, 14 and 19 of this Agreement shall survive the Closing hereunder provided that Seller's representations and warranties in Section 14 hereof shall expire on the later of (1) the expiration of Seller's right to purchase the Retail Space under Section 26, and (2) the date of settlement on the conveyance of the Retail Space to Seller if Seller exercises Seller's right to purchase the Retail Space under Section 26. Except as aforesaid, any covenant, promise or obligation in this Agreement which is not by expressed language intended to be fulfilled or performed at Closing shall not merge into the deed of conveyance but shall remain in full force and effect and be binding on the parties hereto until fully performed or fulfilled.

20. 1031 Exchange. Each party hereto recognizes that the other (or its assigns) reserves the right to structure this transaction as a like-kind exchange intended to qualify under § 1031 of the Internal Revenue Code. Accordingly, each party agrees to cooperate with the other to facilitate the qualification of the exchange, provided the other party incurs no additional risk or expense, and Closing is not delayed. In addition, each party agrees to consent to an assignment of this Agreement to the § 1031 qualified intermediary; however, such party shall remain liable under this Agreement.

21. Notices. Any notice required to be given hereunder shall be given in writing and either (i) sent by United States registered or certified mail, with postage prepaid, return receipt requested, (ii) sent by UPS or another nationally recognized overnight courier, (iii) hand delivered, or (iv) sent by e-mail or facsimile transmission with a hard copy sent on the same day by a nationally recognized overnight courier. All notices shall be deemed to have been given 48 hours following deposit in the United States Postal Service, or upon delivery (or refusal thereof) if sent by overnight courier service, facsimile, e-mail, courier or hand delivery. All notices shall be addressed to the following address or at such other address as may hereafter be substituted by notice in writing thereof.

If to Seller: [At the Address Set Forth Above]

With a copy to: Rubin & Rudman LLP
Attn: Robert A. Fasanella
Michael Novaria
50 Rowes Wharf
Boston, MA 02110

If to Buyer:

Toll Bros., Inc.
Attn: John McDonald, General Counsel
250 Gibraltar Road
Legal – 3W
Horsham, PA 19044
Fax: (215) 938-8255

And with a copy to:

Toll Brothers
Attn: Charles Elliott
250 Gibraltar Road
Horsham, PA 19044
Fax: (215) 938-8342

22. Entire Agreement. This Agreement contains the entire agreement between Seller and Buyer and there are no other terms, obligations, covenants, representations, statements or conditions, oral or otherwise, of any kind whatsoever. This Agreement may be amended only by a writing signed by all parties.

23. Assignment. This Agreement may not be assigned or transferred by Buyer without the prior written consent of Seller, except that Buyer may assign this Agreement without Seller's consent to any subsidiary of Buyer or any entity in which Buyer has a controlling interest and/or to a joint venture of which Buyer or its affiliate is a partner. This Agreement shall extend to and bind the heirs, executors, administrators and assigns of the respective parties hereto. Subject to the said provision regarding assignment by Buyer, this Agreement shall extend to and bind the heirs, executors, administrators and assigns of the respective parties hereto.

This Agreement may not be assigned or transferred by Seller without the prior written consent of Buyer, except that Seller may, without Buyer's consent, nominate any subsidiary of Seller or any entity in which Seller has a controlling interest and/or to a joint venture of which Seller or its affiliate is a partner, to take title to the Retail Space at settlement on the conveyance thereof pursuant to Section 26 below.

24. Escrow of Deposit.

(a) Subject to the provisions of Section 2 hereof, the parties and the Escrow Agent agree that the Deposit shall be applied as follows:

(i) If the Closing shall occur, the remaining Deposit shall be paid over to Seller and the Deposit (including all previously released portions thereof) shall be credited to the Purchase Price, as set forth in Section 2 hereof.

(ii) If the Closing shall not occur by reason of Buyer's default and the expiration of all notice and cure periods, then the Deposit shall be immediately paid over to Seller and shall be retained by Seller as provided for in Section 8 above.

(iii) If the Closing shall not occur by reason of Seller's default, the Deposit shall be paid over to Buyer for use and application by Buyer as provided for in Section 9 above.

(iv) If Closing shall not occur by reason of a failure of the conditions specified in Section 18(a)(iii), (iv), (v), or (vi) and not by reason of a default by Seller or Buyer hereunder, the Deposit shall be paid over to Buyer, neither party shall have any further liability or obligation hereunder (except as otherwise expressly provided herein), and this Agreement shall terminate.

(d) The Deposit shall be held in one or more interest bearing money-market type accounts. Escrow Agent and its partners and employees are acting as agents only, and will in no case be held liable either jointly or severally to either party for the performance of any term or covenant of this Agreement or for damages for the nonperformance hereof, nor shall Escrow Agent be required or obligated to determine any questions of fact or law. Escrow Agent's only responsibility hereunder shall be for the safekeeping of the Deposit and the full and faithful performance by Escrow Agent of the duties imposed by this Section 24.

(c) Escrow Agent shall be obligated to disburse the Deposit upon any cancellation or termination of this Agreement, only upon the written instructions of both parties, should Escrow Agent in its sole discretion request such instructions; and in the absence of such instructions or in the event of any dispute, Escrow Agent shall be and is hereby authorized, but not obligated, to pay the entire amount of the Deposit into court, and any expenses to Escrow Agent for so doing shall be payable out of the Deposit. Notwithstanding the foregoing, until the expiration of the Due Diligence Period, Escrow Agent shall be obligated to return the Deposit to Buyer upon the unilateral instructions of Buyer following notice of Buyer's termination of this Agreement in accordance with the terms hereof.

25. Miscellaneous.

(a) As used herein, the phrases "the date hereof" and "the date of this Agreement" shall mean the date inserted on the first page of this Agreement, which date shall be the date of execution by the last party to sign this Agreement. As used herein, the term "including" shall mean "including without limitation".

(b) If any date on which a time period scheduled to expire herein is a Saturday, Sunday or holiday, the subject date shall be extended to the next business day.

(c) This Agreement may be signed in one or more counterparts (or with counterpart signature pages) which, taken together, shall constitute a fully executed Agreement and shall be considered a single document.

(d) This Agreement has been drafted by counsel for both the Seller and Buyer, and accordingly, any ambiguities contained herein shall not be interpreted in favor of or against either party.

(e) After the end of the Due Diligence Period, Buyer shall have the right to record a memorandum of this Agreement in the local land records against the Property. Seller agrees to join in any such memorandum and to otherwise cooperate with Buyer in protecting Buyer's right hereunder. Buyer shall provide Seller's counsel with a fully executed and recordable discharge of memorandum to be held in escrow and released to the Seller upon the proper termination of this Agreement.

(f) Buyer and Seller agree to cooperate with each other and to take such further actions as may be requested by the other in order to facilitate the timely purchase and sale of the Property, and Buyer's development of the Property following the Closing. Accordingly, Seller agrees to execute such other documents reasonably requested by Buyer, including any agreements of easement over other lands now or hereafter owned by Seller for stormwater drainage, utilities or access in connection with such development.

(g) Seller agrees to keep confidential the economic terms of this Agreement, including the Purchase Price.

(h) If the date of a Closing should fall within the last two (2) weeks of any of Buyer's fiscal quarters (i.e., the last 2 weeks of January, April, July and/or October), then notwithstanding anything to the contrary herein, Buyer shall have the right to extend the applicable date of Closing to the first week of the next fiscal quarter.

26. Retail Space Purchase Right. The sale of the Retail Space to Seller is a material inducement for its agreement to sell the Property to Buyer. Accordingly, following Closing and completion of the Retail Space in accordance with the terms of the Approvals and hereof, and provided Seller is not in default under this Agreement, Buyer shall notify Seller in writing of Seller's right to purchase the Retail Space at the Project (the "**Sale Notice**"), which notice shall be sent no earlier than the date that is one (1) month following the date Buyer receives its

temporary certificate of occupancy for the Retail Space portion of the Property. Buyer will in good faith endeavor to deliver the Sale Notice on or about the date specified in the preceding sentence. For a period of thirty (30) days following the date Seller receives the Sale Notice, Seller shall have the right to purchase one hundred percent (100%) of the Retail Space at the Property from Buyer, by delivery of written notice to Buyer on or before the expiration of such period, which purchase shall be subject to the following terms and conditions:

(a) the purchase price (the "Retail Price") to be paid by Seller to Buyer for the Retail Space will be equal to the sum of (1) the actual cost incurred by Buyer of delivering the Retail Space to Seller, plus (2) a fee of 1.5% of the actual cost under (1) above. Actual costs of delivering the Retail Space will include, without limitation, all soft costs (approvals, permits, design and engineering), hard costs (materials and labor), management costs and fees (costs of construction management and general contractor which may or may not be based on a guaranteed maximum price), insurance costs, financing costs (interest and fees), all costs under the Existing Leases (including delivery delay penalties and fees charged by tenants, and related rent offsets), a prorata share of the costs of Remediation of the Existing Environmental Conditions including the costs of the so-called "cost cap" environmental insurance and any deductibles thereunder (which proration of Remediation costs will be fifty two percent (52%) of the Remediation costs being paid by Seller and forty eight percent (48%) of the Remediation costs being paid by Buyer, it being understood that such proration is determined by the proportion of structured parking spaces allocated to the Retail Space (i.e. 108) in comparison to the number structured parking spaces allocated to the residential component of the Project (i.e. 99)), and a prorata share of the costs of remediation of any Unknown Conditions with the same remediation proration formula (52% to 48%) being applied to the costs of remediating any Unknown Conditions (which will be subject to adjustment for any insurance proceeds obtained under the Environmental Insurance Policy and accounting for any deductibles required to be paid thereunder), with all of the foregoing costs being documented to Seller's reasonable satisfaction. Buyer agrees that the actual costs will not include any portion of the Purchase Price for the Property or financing thereof. The Retail Space shall be deemed to include (x) 108 of the 207 structured parking spaces and the prorata costs of such 108 parking spaces will be paid by Seller in conformance with this Section 26(a), and (y) all 22 surface parking spaces and the pro-rata costs of such 22 parking spaces will be paid by Seller in conformance with this Section 26(a). Seller acknowledges that the so-called 50 Town parking spaces under the Option Agreement and Land Development Agreement are a subset of the 108 structured parking spaces delivered to Seller as part of the Retail Space, and such Retail Space and Town parking spaces are so encumbered by the terms of the Land Development Agreement and Option Agreement and any associated licenses and easements thereunder (it being understood that the owner of the Retail Space will assume all obligations under the Parking Management Agreement). Buyer will be responsible for selecting all contractors and determining the budget but will provide Seller notice of the selected contractors and the budget at Closing;

(b) Seller acknowledges that costs of the Remediation of the Existing Environmental Conditions for the Project may exceed the mutually agreed Remediation budget of One Million Three Hundred Ten Thousand and no/100 dollars ($1,310,000). In addition, if there are Unknown Conditions which are not fully covered by the Environmental Insurance Policy (including any deductibles thereunder), then there may be additional remediation costs in connection with the Project ("Remediation Costs – Unknown Conditions"). In regards to these elements, the parties agree as follows:

(1) all costs of remediation (whether for Remediation of Existing Environmental Conditions or for remediation of Unknown Conditions) shall be components of determining the "actual costs" (on a pro-rata basis as described in Section 26(a) above) of delivering the Retail Space under Section 26(a)(1) above.

(2) if the cost of Remediation of the Existing Environmental Conditions for the Project exceeds One Million Four Hundred Forty One Thousand and no/100 Dollars ($1,441,000) (after adjustment for the receipt of any net proceeds under the Environmental Insurance Policy as described in Section 26(a) above), then all such excess costs are herein referred to as "Remediation Overruns - Known Conditions". If Seller exercises its right to purchase the Retail Space then Seller will be responsible for one hundred percent (100%) of the Remediation Overruns – Known Conditions, not simply the prorata portion thereof attributable to the Retail Space.

(3) if the cost of Remediation of Existing Environmental Conditions and any Unknown Conditions exceeds Two Million Five Hundred Thousand and no/100 Dollars ($2,500,000) (the "Upset Threshold") (after adjustment for the receipt of any net proceeds under the Environmental Insurance Policy as described in Section 26(a) above), then Seller will pay the actual amount of all such Remediation costs in excess of the Upset Threshold as such costs are incurred and billed to Seller by Buyer (not as an increase in the Retail Price, but to be paid irrespective of whether Seller elects to purchase the Retail Space), failing which Seller will forfeit its right to purchase the Retail Space under this Section 26.

(4) Seller and Buyer agree that the budget for the Remediation of the Existing Environmental Conditions is One Million

Three Hundred Ten Thousand and no/100 Dollars ($1,310,000). Seller and Buyer further agree that during the Due Diligence Period a mutually approved scope of work for the Remediation (with the intended goal of obtaining "Permanent Solution Status without Conditions") will be established. Any changes in the scope for work for the Remediation will be subject to the parties' mutual approval, not to be unreasonably withheld or delayed.

(c) Seller shall deliver to Buyer with its election to purchase the Retail Space a non-refundable deposit (except if Buyer defaults on its obligations pursuant to this Section) equal to ten percent (10%) of the Retail Price as established at the time of the Sale Notice;

(d) good and marketable title to the Retail Space shall be conveyed to Seller or its designee as a condominium unit, or units, at settlement by special warranty deed in form and content satisfactory to the parties, subject to all matters of record other than mechanics' liens, mortgages and other security instruments capable of satisfaction by the payment of money, all of which Buyer shall satisfy on or before settlement of the conveyance of the Retail Space;

(e) the Retail Space shall be delivered to Seller as fully demised, unfinished "warm dark shell" space, in accordance with the specifications attached hereto as Exhibit F (the "**Retail Specifications**");

(f) in connection with the settlement, Buyer and Seller shall split any applicable transfer and recordation taxes and costs (other than any costs in connection with any Seller financing which shall be borne solely by Seller);

(g) settlement on the conveyance of the Retail Space shall occur at a location mutually agreed upon by Buyer and Seller and shall occur on a date to be determined by Seller, but shall in no event be beyond the date that is sixty (60) days following Buyer's receipt of Seller's election to purchase the Retail Space;

(h) at settlement, Buyer will represent and warrant that the Retail Space has been constructed in a good and workmanlike manner in compliance with all applicable laws and ordinances, and shall be free from material defects in materials and workmanship, which representation and warranty shall survive for a period of one (1) year following the date the certificate of occupancy is issued. At settlement, Buyer shall assign to Seller or its designee all warranties from contractors, manufacturers and suppliers with respect to the Retail Space;

(i) taxes and other applicable charges shall be apportioned at settlement;

(j) in the event a party defaults on its obligations set forth in this Section, Buyer's sole remedy shall be to retain the deposit paid by Seller as liquidated damages,

and Seller's sole remedy shall be to pursue specific performance and recover its costs of enforcement, including reasonable attorney's fees; provided however that if specific performance is unavailable due to the intentional and wrongful actions of Buyer (i.e. sale to a third party), then Seller shall be entitled to pursue an action for damages, provided in all events Buyer shall not be liable for punitive, special or consequential damages. Seller's action for specific performance must be commenced, if at all, within sixty (60) days of the expiration of the cure period specified in any notice; and if not so commenced, Seller shall be deemed to have terminated its option to purchase the Retail Space and if Buyer was in default then the deposit shall be returned to Seller;

(k) All condominium documents and other encumbrances affecting the Retail Space that did not exist as of Closing shall be subject to the reasonable approval of Seller, and such documents shall be prepared using customary forms containing (i) appropriate protections for owners of retail or commercial units in residential condominiums, including reasonable provisions for construction of improvements, signage and access easements, and, as appropriate, right to use the roof for the Grease Duct (as defined in Exhibit G) and fan, and chases and conduits through the building for the installation of equipment and wiring necessary for the use of the Retail Space for retail uses, including restaurant use, as set forth in the Retail Specifications, and (ii) appropriate protections for owners of residential units in a building containing retail/commercial uses including, without limitation, noise and hours of operation restrictions (provided operating hours shall be commensurate with similar (permitted per Exhibit H) restaurant establishments in the area), but in no event shall any use stay open beyond 11:00 p.m.), and the prohibition of uplighting or flashing lights and easements for building maintenance. The parties further agree that the condominium documents will reasonably address the allocation of costs (such as "CAM") between the retail, parking and residential uses in a customary and reasonable manner, accounting for the benefits derived from common areas by each party in a fair manner (for example, it is expected that the costs of maintaining parking will be allocated on the basis of parking spots in the parking facility; however, if the retail condominium unit is the sole user of the surface parking, then all costs associated with the surface parking will be allocated to the retail component/condominium; finally, those costs which are appropriate to be prorated on the standard of square footage will accordingly be so prorated).

If Seller does not timely exercise its right to purchase the Retail Space as set forth above, or if following such exercise Seller fails to perform the obligations set forth herein, Seller's option to purchase the Retail Space pursuant hereto shall expire and be null and void, and Buyer shall be permitted to market and sell the Retail Space to a third-party, or retain the Retail Space, free of any Seller interest therein.

Further, in no event shall the Retail Space contain any of the uses identified on Exhibit H attached hereto (the "**Prohibited Uses**"). The deed of conveyance of the Retail Space to Seller shall include the foregoing restriction against Prohibited Uses. Until the earlier of

(a) the date Buyer conveys all Units at the Property to third-party homebuyers or the condominium association, and (b) the date Seller or Seller's tenant(s) occupy the Retail Space, Buyer shall have the right to install and maintain on the interior side of the Retail Space windows, such covering thereof (including without limitation paint or film) shielding the unfinished Retail Space from public view and/or advertising products and services including without limitation the Units.

In order to protect the right of Seller to purchase the Retail Space, at the time of Closing the parties shall record in the land records of Middlesex County a Memorandum of Contract or similar agreement obligating Buyer to construct the Retail Space as part of its development of the Property and to offer such Retail Space to Seller in accordance with the terms of this Agreement.

The terms of this Section 26 shall survive Closing and shall be binding on and inure to the benefit of Buyer's and Seller's successors and assigns.

27. Option Agreement. Seller is solely responsible for the payment of all consideration due the Town to acquire the Parking Property under the Option Agreement and to deliver the Parking Property to the Buyer as part of the Property at Closing under this Agreement; however, the parties agree that at Closing under this Agreement the Buyer will pay (using Purchase Price proceeds), at the Seller's direction, the purchase price required under the Option Agreement to the Town and the balance of the Purchase Price (less the amount so paid under the Option Agreement) will be paid to the Seller as the Purchase Price hereunder.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

BUYER:

TOLL BROS., INC.

Attest: _____
Name: Jeffrey M. Colagni
Title: V.P.

(Corporate Seal)

By: _____ (SEAL)
Name: Charles Elliott
Title: Vice President
Date of Execution: _____

SELLER:

STARR CAPITAL PARTNERS, LLC,
a Delaware limited liability company

By: Cushing Village Investment, LLC
Its Sole Member and Manager

By: Starr Cushing, LLC
Its: Sole Member and Manager

Attest: Nancy Zaik
Name: Nancy Zaik
Title: Asst. Mgr.

By: _____ (SEAL)
Christopher L. Starr, Manager
Date of Execution: 3/14/2016

SMITH LEGACY PARTNERS SERIES, LLC,
a Delaware limited liability company

Attest: Nancy Zaik
Name: Nancy Zaik
Title: Asst. Mgr.

By: _____ (SEAL)
Christopher L. Starr, Manager
Date of Execution: 3/14/2016

SMITH LEGACY PARTNERS II, LLC,
a Massachusetts limited liability company

Attest: Nancy Zaik
Name: Nancy Zaik
Title: Asst. Mgr.

By: _____ (SEAL)
Christopher L. Starr, Manager
Date of Execution: 3/14/2016

505-507 COMMON STREET, LLC,
a Massachusetts limited liability company

Attest: Nancy Zink
Name: Nancy Zink
Title: Asst. Mgr.

By: _____ (SEAL)
Christopher L. Starr, Manager
Date of Execution: 3/14/2016

527 COMMON STREET, LLC,
a Massachusetts limited liability company

Attest: Nancy Zink
Name: Nancy Zink
Title: Asst. Mgr.

By: _____ (SEAL)
Christopher L. Starr, Manager
Date of Execution: 3/14/2016

JOINDER BY ESCROW AGENT

_____, as Escrow Agent and agent for the Title Company named in the foregoing Agreement of Sale, hereby joins in such Agreement to evidence its agreement to hold the Deposit, and otherwise to perform its obligations as escrow agent.

ESCROW AGENT:

_____

By:_____
Name:
Title:
Date of Execution:_____

EXHIBIT A

DESCRIPTION OF PROPERTY

EXHIBIT A

Parcel 1 - 505-507 Common Street, Belmont, MA

The land with the buildings thereon in Belmont, Middlesex County, Massachusetts being shown as Lot 78 on a plan entitled "Samuel Barnard Estate, Belmont, Mass. dated January 2, 1928 by Fred A. Joyce, Surveyor", recorded with Middlesex South District Registry of Deeds at the end of Book 5260 and bounded and described according to said plan as follows:

SOUTHEASTERLY by said Common Street, thirty-one and 99/100 (31.99) feet;

SOUTHEASTERLY, SOUTHERLY and SOUTHWESTERLY by the Junction of said Common Street and Horne Road, thirty and 78/100 (30.78) feet;

SOUTHWESTERLY by said Horne Road, seventy-eight and 95/100 (78.95) feet;

NORTHWESTERLY by lot 77 on said plan, fifty-four and 50/100 (54.50) feet; and

NORTHEASTERLY by land now or formerly of Mary B. Horne, one hundred (100) feet; subject to and excepting the taking relating to the street line by the Town of Belmont, as shown on plan recorded with said Deeds, Book 7314, Page 45; or, however otherwise said premises may be bounded, measured or described.

Parcel 2- 7 Horne Road, Belmont, MA

A parcel of vacant land situated on the northeasterly side of Horne Road and shown as lot 77 on a plan entitled "Samuel Barnard Estate, Belmont, Mass." dated January 2, 1928, by Fred A. Joyce, Surveyor, recorded with Middlesex South District Deeds on the end of Book 5260, bounded and described as follows:

SOUTHWESTERLY by said Horne Road, sixty-three (63) feet;

NORTHWESTERLY by lot 76 shown on said plan, one hundred four and 63/100 (104.63) feet;

NORTHEASTERLY by land now or formerly of the Barnard Estate, sixty-five and 43/100 (65.43) feet; and

SOUTHEASTERLY in part by the first parcel conveyed by deed of Ruth H. Jenkins dated December 19, 2000 and recorded at the Middlesex South Registry of Deeds in Book 32171, Page 482, and in part by lot 78 shown on said plan, in all one hundred fourteen and 50/100 (114.50) feet.

Containing according to said plan 6944 square feet of land.

Parcel 3 - 495-501 Common Street, Belmont, MA

The land with the buildings thereon now numbered 495-501 on Common Street in Belmont bounded and described as follows:

SOUTHEASTERLY by said Common Street, sixty-four (64) feet;

SOUTHWESTERLY by lot 78 on a plan entitled "Samuel Barnard Estate, Belmont, Mass." dated January 2, 1928, by Fred A. Joyce, Surveyor, recorded with Middlesex South District Deeds on the end of Book 5260, one hundred (100) feet;

NORTHWESTERLY by lot 77 shown on said plan and land now or formerly of Mary B. Horne, sixty-four (64) feet; and

NORTHEASTERLY by land now or formerly of Mary B. Horne, one hundred (100) feet.

Parcel 4 - 527 Common Street, Belmont, MA

The land with the buildings thereon in Belmont, Middlesex County, Massachusetts, shown on a plan of land in Belmont, dated May 24, 1939, made by S. Albert Kaufman, C.E., recorded with the Middlesex South District Registry of Deeds at the end of Book 6297 and also shown as Lots 79, 80, 101, and 102 on a plan entitled "Plan showing Portion of Samuel Barnard Estate, Belmont, Mass.", dated September 3, 1931, by Fred A. Joyce, Surveyor, recorded with said Deeds, Book 5595, Page 311, and bounded and described as follows:

SOUTHWESTERLY by Belmont Street, 148.35 feet;
SOUTHEASTERLY by Common Street, by two lines, 135.53 feet;
EASTERLY by a curved line forming the juncture of Horne Road and Common Street, 32.05 feet;
NORTHEASTERLY by Horne Road, 133.39 feet;
NORTHWESTERLY by Lot 81 on said Joyce plan, 90.12 feet;
NORTHEASTERLY again by said Lot 81, 31.12 feet;
NORTHWESTERLY again by Lot 100 on said Joyce plan, 99.27 feet.

Containing 27,405 square feet of land, be any and all of said measurements more or less, or however otherwise said premises may be bounded, measured or described.

Excepting the strip of land conveyed by deed of Benjamin Yanofsky to the Inhabitants of Belmont, dated May 12, 1941 and recorded with the Middlesex South District Registry of Deeds in Book 6520, Page 458.

Parcel 5 - 102-104 Trapelo Road, Belmont, MA

The land with the buildings thereon situated at the corner of Trapelo Road and Common Street in the Town of Belmont, Middlesex County, Massachusetts, and bounded:

NORTHEASTERLY by Trapelo Road fifty-two and 52/100 (52.52) feet;

EASTERLY by the intersection of said Trapelo Road and Common Street, fifty-three and 20/100 (53.20) feet;

SOUTHEASTERLY by said Common Street about sixty-five and 32/100 (65.32) feet;

SOUTHEASTERLY	by land now or formerly of William A. Doe described in deed by Mary B. Horne to said William A. Doe dated October 4, 1922 and recorded with Middlesex South District Deeds, Book 4559, Page 159, ninety-nine and 90/100 (99.90) feet; and
NORTHWESTERLY	by land now or late of Anna G. Horne, et al, ninety-nine and 9/100 (99.09) feet.

Containing 8714 sq. ft. being all said measurements, more or less, said premises being Lot C on a Plan of Land in Belmont, Mass. By Fred A. Joyce, Surveyor, dated June 8, 1936, recorded with Middlesex South District Registry of Deeds, Book 6041, Page 237.

Parcel 6 - 112 Trapelo Road, Belmont, MA

That certain parcel of land situated in the Town of Belmont, County of Middlesex, State of Massachusetts, more fully described as follows:

Beginning at a point on the southerly side of Trapelo Road, 6 feet, more or less, westerly from a stone bound said stone bound being at the point of curve of the south side of said Trapelo Road; thence running southerly along land now or formerly of the Town of Belmont, known as the Fire Station lot 123.48 feet; thence running easterly along land now or formerly of Mary B. Horne, 79.17 feet; thence running northerly, 103.13 feet to the south side of Trapelo Road; thence running westerly along the south side of Trapelo Road, 80 feet to the point of beginning.

Parcel 7 - 116 Trapelo Road, Belmont, MA

A certain parcel of land located at the corner of Trapelo Road and Williston Road in the Town of Belmont, Middlesex County, Massachusetts, bounded and described as follows:

Northwesterly by said Williston Road, one hundred twenty-seven and 68/100 (127.68) feet, more or less;

Northerly by the curved intersection of said Williston Road and said Trapelo Road, thirty-three and 77/100 (33.77) feet, more or less;

Northeasterly by said Trapelo Road, one hundred twenty-two and 5/10 (122.5) feet, more or less;

Southeasterly by land now or formerly of Anna G. Horne and Mary B. Horne, one hundred twenty-three and 48/100 (123.48) feet, more or less;

Southwesterly by land now or formerly of Mary A. Gay and Ernest L. Drew Jr., one hundred thirty one (131) feet, more or less.

Containing 18,720 square feet of land, more or less and being the parcel of land designated "Town of Belmont" as shown on "Belmont Planning Board Pan of Land in Belmont, Mass."

dated December 29, 1944, on file in the Town Clerk's Office and recorded with the Middlesex South District Registry of Deeds as Plan No. 200 of 1947.

Parcel 8 – Portion of Horne Road, Belmont, MA

That certain parcel of land located in Belmont, Middlesex County, Commonwealth of Massachusetts, shown as "Portion to be Discontinued and Easement for Utilities and Right of Way" on a plan entitled "Plan of Land in Belmont, MA (Middlesex County)", dated December 22, 2014, Scale: 1" = 20', Prepared by Rober Survey, recorded with the Middlesex South District Registry of Deeds as Plan No. ___ of 2015 and more particularly described as follows.

Beginning at a point on the northwesterly side of Common Street, said point being the most southeasterly corner of said parcel; thence running

NORTHERLY	34.90' by a curve to the left having a radius of 20.00' to a point of tangency; thence running
N49°36'19"W	124.76' to a point; thence turning and running
N40°23'41"E	20.00' to a point; thence turning and running
N49°36'19"W	6.03' to a point; thence turning and running
N40°23'41"E	20.00' to a point; thence turning and running
S49°36'19"E	141.95' to a point; thence running
EASTERLY	27.49' by a curve to the left having a radius of 22.00' to a point of tangency; thence turning and running
S42°12'11"W	by Common Street, 19.48' to a point; thence turning and running
S47°17'09"W	by Common Street, 63.94' to the point of beginning.

Said parcel containing 6,305± S.F. of land according to said plan.

Exhibit B

Recognition Agreement

RECOGNITION AGREEMENT

This Recognition Agreement ("Agreement") is made as of the ___ day of _____, 2016 by and among Northern Bank and Trust ("Bank"), ***Toll Bros., Inc.*** a Pennsylvania corporation, having an office at 250 Gibraltar Road, Horsham, PA 19044 ("Toll") and Smith Legacy Partners Series, LLC, having an office at 6 Littlefield Road, Acton, MA 01720 ("Borrower").

RECITALS:

A. Toll is the "Buyer" under a certain Agreement of Sale dated as of _____ (as heretofore amended, the "Purchase Agreement") with respect to those certain premises more particularly described on Exhibit A made a part hereof (the "Property"). Terms not otherwise defined herein shall have their respective meanings as set forth in the Purchase Agreement; and

B. Borrower is the owner in fee simple of the Property; and

C. Reference is made to a certain _____ dated _____ by and among Bank, Borrower, and other parties (the "Loan Documents"). Bank has made loans or is about to make loans to Borrower and others pursuant to the Loan Documents. The Loan Documents include a Note and Mortgage, which Mortgage encumbers the Property;

D. Bank has agreed to recognize Toll under the Purchase Agreement on the terms and conditions hereinafter set forth.

AGREEMENT:

For good and valuable consideration, Toll, Borrower and Bank agree as follows:

1. **Maximum Loan Amount**. Bank and Borrower acknowledge and agree that as of the date hereof the indebtedness evidenced by the Loan Documents totals $_____. No new debt will be advanced to Borrower which will be secured by the Mortgage against the Property.

2. **Recognition**. If any action or proceeding is commenced by Bank for the foreclosure of the Mortgage or the sale of the Property or so much of the Property that remains encumbered by the Mortgage at that time, Toll shall not be named as a party therein unless such joinder shall be required by law; provided, however, such joinder shall not result in the termination of the Purchase Agreement or disturb Toll's possession or use of the Property that has been conveyed to Toll, and the sale of the Property or so much of the Property that remains encumbered by the Mortgage at that time in any such action or proceeding and the exercise by Bank of any of its other rights under the Note or the Mortgage shall be made subject to all rights of Toll under the Purchase Agreement, provided that at the time of the commencement of any such action or proceeding or at the time of any such sale or exercise of any such other rights by Bank, Toll shall not be in default under any of the terms, covenants or conditions of the Purchase Agreement or of this Agreement on Toll's part to be observed or performed beyond any applicable notice or grace period.

3. **Recognition**. If Bank or any other subsequent purchaser of the Property shall become the owner of the Property by reason of the foreclosure of the Mortgages or the acceptance of a deed or assignment in lieu of foreclosure or by reason of any other enforcement of the Mortgages (Bank or such other purchaser being hereinafter referred as "Purchaser"), and the conditions set forth in Section 2 above have been met at the time Purchaser becomes owner of the Property, the Purchase Agreement shall not be terminated or affected thereby but shall continue in full force and effect as a direct Purchase Agreement between Purchaser and Toll upon all of the terms, covenants and conditions set forth in the Purchase Agreement and in that event, Toll agrees to attorn to Purchaser and Purchaser by virtue of such acquisition of the Property shall be deemed to have agreed to accept such attornment, whereupon, subject to the observance and performance by Toll of all the terms, covenants and conditions of the Purchase Agreement on the part of Toll to be observed and performed, Purchaser shall recognize the interest of Toll under all of the terms, covenants and conditions of the Purchase Agreement for the remaining balance of the term with the same force and effect as if Purchaser were the "Seller" under the Purchase Agreement, subject to the terms of Section 4 of this Agreement.

   In the event that any liability of Purchaser does arise pursuant to this Agreement, such liability shall be limited and restricted to Purchaser's interest in the Property and shall in no event exceed such interest.

4. **Notice to Toll.** After notice is given to Toll by Bank that the Borrower or any Mortgagor is in default beyond any applicable notice and grace period under the Note and the Mortgages and that the payments under the Purchase Agreement should be paid to Bank pursuant to the terms of the Loan Documents executed and delivered by the Mortgagors to Bank in connection therewith, Toll shall thereafter (until notified by Bank that Borrower and/or Mortgagors are no longer in default) pay to Bank or as directed by the Bank, all Purchase Agreement payments and interest thereon and all other monies due or to become due to Borrower under the Purchase Agreement and Borrower hereby expressly authorizes Toll to make such payments to Bank and hereby releases and discharges Toll from any liability to Borrower on account of any such payments.

5. **Notice to Bank and Right to Cure**. Prior to exercising any of Toll's remedies under the Purchase Agreement if Borrower is in default thereof, Toll agrees to notify Bank in accordance with Section 8 below of any default on the part of Borrower under the Purchase Agreement that would entitle Toll to cancel or terminate the Purchase Agreement or to abate or reduce the amount of payments and/or interest payable thereunder. Toll further agrees that, notwithstanding any provisions of the Purchase Agreement to the contrary, no cancellation or termination of the Purchase Agreement and no abatement or reduction of the payments payable thereunder shall be effective unless Bank has received notice of the same and has failed within sixty (60) days after Bank's receipt of said notice to cure the default which gave rise to the cancellation or termination of the Purchase Agreement or abatement or reduction of the Purchase Agreement payments thereon. Notwithstanding the foregoing, Bank shall have no obligation to cure any default by Borrower except as provided in Section 3 of this Agreement in the event Bank shall become the owner of the Property by reason of the foreclosure of the Mortgages or the acceptance of a deed or assignment in lieu of foreclosure or by reason of any other enforcement of the Mortgages.

6. **Payments**. Until Toll is informed by Bank that the Bank's loans to Borrower have been paid in full and all indebtedness of Borrower to Bank has been satisfied, Toll will pay to Bank all payments of the Purchase Price (as defined in the Purchase Agreement) in accordance with and at the times provided in the Purchase Agreement.

7. **Releases/Discharges**. Provided that Toll is not in default under any of Toll's obligations under the Purchase Agreement, then irrespective of whether Borrower is in default of its obligations to Bank under the Loan Agreement and Loan Documents and/or any Borrower default exists and is continuing under the terms and provisions of the Purchase Agreement, Bank hereby agrees that it will provide a discharge of the lien and encumbrance of the Mortgages and other security instruments from the property which is the subject of the Settlement under the Purchase Agreement to Toll upon payment of an amount equal to the outstanding balance of the Note, in good U.S. funds.

8. **Notices.** All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person with receipt acknowledged by the recipient thereof or by facsimile transmission followed by prepaid overnight courier delivery, (ii) one (1) Business Day (hereinafter defined) after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Toll: Toll Bros., Inc.
250 Gibraltar Road
Horsham, PA 19044
Facsimile: 215-938-8255
Attention: General Counsel and Senior Vice President

If to Bank:
Facsimile:
Attention:

With a copy to:

Facsimile:
Attention:

If to Borrower:
Facsimile:
Attention:

With a copy to:

or addressed as such party may from time to time designate by written notice to the other parties. For purposes of this Section 8, the term "Business Day" shall mean a day on which commercial banks are not authorized or required by law to close in the state where the Property is located. Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

9. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of Bank, Borrower, Purchaser and Toll and their respective successors and assigns. Bank hereby confirms that the Bank may not transfer its interest in the Note, Mortgages and/or any other Loan Documents without Toll's prior written consent.

10. **Governing Law.** This Agreement shall be deemed to be a contract entered into pursuant to the laws of Massachusetts and shall in all respects be governed, construed, applied and enforced in accordance with the internal laws of Massachusetts.

11. **Miscellaneous.** This Agreement may not be modified in any manner or terminated except by an instrument in writing executed by the parties hereto. If any term, covenant or condition of this Agreement is held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

IN WITNESS WHEREOF, Bank, Borrower and Toll have duly executed this Agreement as of the date first above written.

Bank:
Northern Bank and Trust

By:_____
Name:
Its:

STATE OF)
)ss
COUNTY OF)

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by _____, an authorized representative of Northern Bank and Trust, on behalf of the corporation.

_____
Notary Public, County

My commission expires:

(signatures continued on following page)

(signature continuation page)

Toll:
Toll Bros., Inc., a Pennsylvania corporation

By:_____
Name:
Its:

STATE OF _____)
)ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, by _____, the _____ of Toll Bros., Inc., a Pennsylvania corporation, on behalf of the corporation.

_____
Notary Public, County
My commission expires:

(signatures continued on following page)

(signature continuation page)

Borrower:
_____, **LLC**

By:_____
Name:
Its:

STATE OF _____)
)ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2016 by _____, an authorized representative of _____, a _____ limited liability company, on behalf of the limited liability company.

_____
Notary Public, County
My commission expires:

DRAFTED BY:

WHEN RECORDED RETURN TO:

Exhibit A

Property

Exhibit C

Seller's Environmental Reports

1) Phase I Environmental Site Assessment for 116 Trapelo Road, Belmont, MA; Prepared for Cushing Village, LLC; Prepared by Coler & Colantino, Inc. – Project No. 11-1226.10 dated June 27, 2011

2) Phase IV Remedy Implementation Completion Statement for 495 Common Street, Belmont, MA; Submitted to Massachusetts Department of Environmental Protection Northeast Regional Office; Prepared for Mr. Christopher Star, Jenkins-Starr, LLC; Prepared by Coler & Colantino, Inc. – Project No. 11-1226.09 dated March 9, 2012

3) Remedy Operation Status Submittal for 495 Common Street, Belmont, MA; Submitted to Massachusetts Department of Environmental Protection Northeast Regional Office; Prepared for Mr. Christopher Star, Jenkins-Starr, LLC & Smith Legacy Partners Series, LLC; Prepared by Coler & Colantino, Inc. – Project No. 11-1226.00 dated March 22, 2012

4) Phase I Environmental Site Assessment for Cushing Village Portfolio, 527 Common St., 112 Trapelo Road, 505 Common St., 507 Common St., 102-104 Trapelo Rd., 495-501 Common St., 7 Horne Road, Belmont, MA; Prepared for Northern Bank & Trust Company, Woburn, MA; Prepared by EBI Consulting – EBI Project No. 11124698 dated August 17, 2012

5) DRAFT Release Abatement Measure (RAM) Plan for Public Comment; Cushing Village Common Street & Trapelo Road, Belmont, MA; RTNs 3-23300, 3-20284, 3-26360, 3-20385 & 3-26566; Prepared for Mr. Christopher Starr, Smith Legacy Partners Series III, LLC; Prepared by CHA (Cha Consulting Inc.) – CHA Project Number 25236 dated August 14, 2014

6) Phase V Remedy Operation Status Report #6 (Reporting Period: August 23, 2014 to February 23, 2015); 495 Common Street, Belmont, MA; Prepared for Mr. Christopher Starr, Smith Legacy Partners Series III, LLC; Prepared by CHA (Cha Consulting Inc.) – CHA Project Number 25236 dated August 23, 2015

7) Phase 1 Environmental Site Assessment – Proposed Cushing Village Mixed Use Development, Belmont, MA; Prepared for Smith Legacy Partners Series III, LLC; Prepared by CHA (Cha Consulting Inc.) – CHA Project Number 25236.1000.31000 dated May 15, 2015

PHASE I
ENVIRONMENTAL SITE ASSESSMENT

116 TRAPELO ROAD
BELMONT, MA

June 27, 2011

Prepared for:

Cushing Village, LLC
129 Mount Auburn Street
Cambridge, Massachusetts 02138

Prepared by:

Coler & Colantonio, Inc.
101 Accord Park Drive
Norwell, Massachusetts 02061-1685
(781)-982-5400

Prepared by:	*Reviewed by:*
Marisa L. Ross	William R. Hoyerman, LSP
Project Scientist	Assistant Division Manager

Project No. 11-1226.10

PHASE IV REMEDY IMPLEMENTATION COMPLETION STATEMENT

for

495 COMMON STREET
BELMONT, MASSACHUSETTS

RTN 3-23300

March 9, 2012

Submitted to:

Massachusetts Department of Environmental Protection
Northeast Regional Office
205B Lowell Street
Wilmington, Massachusetts 01887

Prepared for:

Mr. Christopher Starr
Jenkins-Starr, LLC
6 Littlefield Road
Acton, Massachusetts 01720

Prepared by:

Lauren Konetzny
Project Engineer

Reviewed by:

Ronald K. Burns, PE, LSP
Division Manager

Coler & Colantonio, Inc.
101 Accord Park Drive
Norwell, Massachusetts 02061-1685
(781)-982-5400

Project No. 11-1226.09

REMEDY OPERATION STATUS
SUBMITTAL

495 COMMON STREET
BELMONT, MASSACHUSETTS

RTN 3-23300

March 22, 2012

Submitted To:

Massachusetts Department of Environmental Protection
Northeast Regional Office
205B Lowell Street
Wilmington, Massachusetts 01887

Prepared for:

Mr. Christopher Starr
Jenkins-Starr, LLC &
Smith Legacy Partners Series, LLC
6 Littlefield Road
Acton, Massachusetts 01720

Prepared by:

Lauren Konetzny
Project Engineer

Reviewed by:

Ronald K. Burns, LSP, PE
Division Manager

Coler & Colantonio, Inc.
101 Accord Park Drive
Norwell, Massachusetts 02061-1685
(781)-982-5400

Project No. 11-1226.00

Phase I Environmental Site Assessment

Cushing Village Portfolio

527 Common St., 112 Trapelo Road 505 Common St., 507 Common St., 102-104 Trapelo Rd., 495-501 Common St., 7 Horne Road
Belmont, Massachusetts

EBI Project No. 11124698

August 17, 2012

Prepared for:

Northern Bank & Trust Company
275 Mishawum Road
Woburn, MA 01801

Prepared by:

EBI Consulting
environmental | engineering | due diligence

DRAFT Release Abatement Measure (RAM) Plan for Public Comment

Cushing Village
Common Street & Trapelo Road
Belmont, Massachusetts

RTNs 3-23300, 3-20284, 3-26360, 3-20385 & 3-26566

CHA Project Number: 25236

Prepared for:
Mr. Christopher Starr
Smith Legacy Partners
Series III, LLC
6 Littlefield Road
Acton, Massachusetts 01720

101 Accord Park Drive
Norwell, MA, 02061
Phone: (781) 982-5400
Fax: (781) 982-5490

August 14, 2014

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Phase V Remedy Operation Status Report #6

(Reporting Period: August 23, 2014 to February 23, 2015)

495 Common Street
Belmont, Massachusetts
RTN: 3-23300

CHA Project Number: 25236

Prepared for:
Mr. Christopher Starr

Smith Legacy
Partners Series III, LLC
6 Littlefield Road
Acton, Massachusetts 01720

101 Accord Park Drive
Norwell, MA, 02061
Phone: (781) 982-5400
Fax: (781) 982-5490

April 23, 2015

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Phase I Environmental Site Assessment

Proposed Cushing Village Mixed Use Development Belmont, Massachusetts

CHA Project Number:25236.1000.31000

Prepared for:
Smith Legacy Partners Series III, LLC
6 Littlefield Road
Acton, MA 01720

Prepared by:

101 Accord Park Drive
Norwell, MA, 02061
Phone: (781) 982-5400
Fax: (781) 982-5490

May 15, 2015

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Exhibit D

Guaranty of Payment

GUARANTY OF PAYMENT

WHEREAS, _____ ("Seller") and TOLL BROS., INC. ("Buyer") entered into that certain Agreement of Sale dated _____ ("Agreement of Sale") wherein Seller agreed to sell to Buyer and Buyer agreed to purchase from Seller the Property (as defined in the Agreement of Sale) subject to the terms and conditions of the Agreement of Sale;

WHEREAS, pursuant to the terms of the Agreement of Sale, Buyer has delivered or caused to be delivered on behalf of Seller, Monthly Payments and/or Parking Payments (as defined in the Agreement of Sale) using either Buyer's independent funds or the Deposit funds (as defined in the Agreement of Sale);

WHEREAS, Buyer was willing to enter into the Agreement of Sale and make such payments utilizing either Buyer's independent funds or the Deposit funds only if _____ executed and delivered this Guaranty of Payment (this "Guaranty") and guaranteed repayment to Buyer of such funds in the manner hereinafter provided;

WHEREAS, _____ acknowledges that _____ benefits from Buyer entering in the Agreement of Sale and making such Monthly Payments and/or Parking Payments;

NOW, THEREFORE, in consideration of the Agreement of Sale and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to induce Buyer to enter into the Agreement of Sale and make such Monthly Payments and/or Parking Payments, Buyer and Seller covenant and agree as follows:

1. The undersigned hereby guarantees absolutely and unconditionally to Buyer the repayment to Buyer (the "Repayment Obligations") upon termination of the Agreement of Sale (A) of all Monthly Payments and Parking Payments made by Buyer using Buyer's independent funds, and (B) if following such termination Buyer is entitled to a refund of the Deposit under the Agreement of Sale, a repayment of any Deposit funds released for Monthly Payments and/or Parking Payments.

2. The undersigned agrees that, with or without notice or demand, the undersigned will reimburse Buyer for all costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by Buyer in connection with the collection of the Repayment Obligations or any portion thereof or in any action, cause or proceeding brought by Buyer to enforce the Repayment Obligations of the undersigned under this Guaranty.

3. The undersigned hereby consents that from time to time, before or after any default by Seller, with or without further notice to or assent from the undersigned, any security at any time held by or available to Buyer for any Repayment Obligations, or any security at any time held by or available to Buyer for any Repayment Obligations of any other person or party secondarily or otherwise liable for all or any portion of the Repayment Obligations may be exchanged, surrendered or released and any obligation of Seller, or of any such other person or party, may be changed, altered, renewed, extended, continued, surrendered, compromised,

waived or released in whole or in part, or any default with respect thereto waived, and Buyer may fail to set off and may release, in whole or in part, any balance of any deposit account or credit on its books in favor of Seller, or of any such other person or party, and may extend further credit in any manner whatsoever to Seller, and generally deal with Seller or any such security or other person or party as Buyer may see fit; and the undersigned shall remain bound under this Guaranty notwithstanding any such exchange, surrender, release, change, alteration, renewal, extension, continuance, compromise, waiver, inaction, extension of further credit or other dealing.

4. The undersigned hereby waives (a) notice of acceptance of this Guaranty; (b) presentment and demand for payment of the Repayment Obligations or any portion thereof; (c) protest and notice of dishonor or default to the undersigned or to any other person or party with respect to the Repayment Obligations or any portion thereof; (d) all other notices to which the undersigned might otherwise be entitled; (e) any demand for payment under this Guaranty; (f) any defense arising by reason of any disability, bankruptcy, insolvency, liquidation or dissolution of the Seller; (g) any rights to extension, composition or otherwise under the Bankruptcy Code or any composition or any amendments thereof, or under any state of other federal statute; and (h) any right or claim of right to cause a marshaling of the Seller's assets.

5. This Guaranty is a guaranty of payment and not of collection and the undersigned further waives any right to require that any action, case or proceeding be brought against Seller or any other person or party or to require that resort be had to any security or any other person or party.

6. Each reference herein to Buyer shall be deemed to include its successors and assigns, in whose favor the provisions of this Guaranty shall also inure. Each reference herein to the undersigned shall be deemed to include the permitted successors and assigns of the undersigned, all of who shall be bound by the provisions of this Guaranty.

7. The term "undersigned" as used herein shall, if this Guaranty is signed by more than one party, mean the "undersigned and each of them" and each undertaking herein contained shall be their joint and several undertaking.

8. No delay on the part of Buyer in exercising any right or remedy under this Guaranty or failure to exercise the same shall operate as a waiver in whole or in part of any such right or remedy. No notice to or demand on the undersigned shall be deemed to be a waiver of the obligation of the undersigned or of the right of Buyer to take further action without notice or demand as provided in this Guaranty.

9. The Guaranty may only be modified, amended, changed or terminated by an agreement in writing signed by Buyer and the undersigned. No waiver of any term, covenant or provision of this Guaranty shall be effective unless given in writing by Buyer and if so given by Buyer, shall only be effective in the specific instance in which given.

10. Any notice, request or demand given or made under this Guaranty shall be in writing and shall be delivered as provided in the Agreement of Sale.

11. This Guaranty is, and shall be deemed to be, a contract entered into under and pursuant to the laws of the State of Massachusetts and shall be in all respects governed, construed, applied and enforced in accordance with the laws of the State of Massachusetts. No defense given or allowed by the laws of any other state or country shall be interposed in any action, case or proceeding hereon unless such defense is also given or allowed by the laws of the State of Massachusetts.

12. This Guaranty may be executed in one or more counterparts by some or all of the parties hereto, each of which counterparts shall be an original and all of which together shall constitute a single agreement of guaranty. The failure of any party listed below to execute this Guaranty, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

13. All rights, powers and remedies of Seller hereunder and under any other agreement now or at any time hereafter in force between Seller and the Buyer shall be cumulative and not alternative and shall be in addition to all rights, powers and remedies given to Buyer by law.

14. The liability of the undersigned shall in no way be affected or impaired by: (i) the filing by or against Seller of bankruptcy, insolvency, reorganization or other debtor's relief afforded the Seller pursuant to the present or future provisions of Title 11 of the United States Code (the "Bankruptcy Code") or any other state or federal statute or by the decision of any court; or (ii) any other matter whether similar or dissimilar to the foregoing.

15. This Guaranty shall continue to be effective, or be reinstated, as the case may be, if at any time payment of any of the Repayment Obligations is rescinded or must otherwise be restored or returned by Buyer upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Seller, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Seller or any substantial part of the property of the Seller, or otherwise, all as though such payments had not been made.

16. This Guarantee is freely and voluntarily given to Buyer by the undersigned without any duress or coercion, and after the undersigned has either consulted with counsel or been given an opportunity to do so, and the undersigned has carefully and completely read all of the terms and provisions of this Guaranty.

IN WITNESS WHEREOF, the undersigned has duly executed this Guaranty the day and year first above set forth.

_____

Exhibit E

Option Agreement

PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT (this "Agreement") is made as of the 28th day of March, 2011, by and between the TOWN OF BELMONT, a Massachusetts municipal corporation, acting by and through its Board of Selectmen, with an address of 455 Concord Avenue, Belmont, Massachusetts 02478, hereinafter referred to as "Seller" or "Town," and SMITH LEGACY PARTNERS SERIES LLC, a Delaware limited liability company, having its principal office at 6 Littlefield Road, Acton, Massachusetts 01720, hereinafter referred to as "Buyer" or "Developer."

1. Premises. Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, upon the terms and conditions hereinafter set forth, a parcel of land, located at 116 Trapelo Road, Belmont, shown on Assessor's Map 12, Parcel 211A, described in a deed or other instrument recorded with the Middlesex Registry of Deeds on August 17, 1923 in Book 4647, Page 232, (referred to as the "Premises"). Seller shall convey the Premise subject (as noted below) to: (a) an easement for fifty (50) public parking spaces (the "Parking Spaces"); (b) a pedestrian access and utility easement in Horne Road; (c) a sewer and stormwater easement; and (d) a Land Development Agreement.

2. Title. Said Premises are to be conveyed by a good and sufficient quitclaim deed running to Buyer, and said deed shall convey a good and clear record and marketable title thereto, free from encumbrances, except

(a) Provisions of existing building and zoning laws;
(b) Existing rights and obligations in party walls which are not the subject of written agreement;
(c) Such taxes for the then current year as are not due and payable on the date of the delivery of such deed;
(d) Any liens for municipal betterments assessed after the date of this Agreement;
(e) Easements, restrictions and reservations of record, if any, provided the same do not interfere in Buyer's reasonable opinion with use of and access to the Premises for the Buyer's intended use of the Premises as the site of a mixed use development with other properties owned and/or controlled by the Buyer;
(f) A 7 ½ foot wide easement, upon mutually acceptable and reasonable terms, owned by the Town for a sewer and stormwater line, running parallel with the property line shared with 13 Horne Road and 19 Horne Road, and extending 7 ½ feet into those properties;
(g) An easement for fifty (50) public parking spaces, upon mutually acceptable and reasonable terms, to be retained by Seller upon the Premises or granted to Seller upon the Adjoining Property as defined below;
(h) An easement, upon mutually acceptable and reasonable terms, for public pedestrian access and utilities within Horne Road, to be retained by Seller and granted by Buyer to Seller (Horne Road to be discontinued as a public way); and
(i) The Land Development Agreement, requiring the Premises to be used for a mixed use development with other properties owned and/or controlled by the Buyer (the Adjoining Property as defined below), as set forth more particularly in Section 18 below.

3. Consideration. The total purchase price for the Premises is Eight Hundred and Fifty Thousand ($850,000.00) Dollars, which shall be payable in cash, certified or bank check on the Date of Closing, as hereinafter defined, payable as follows:

$42,500.00	Paid Upon Submittal of the Proposal
$42,500.00	Due Upon Signing of this Agreement
$765,000.00	Due at the Time of Closing

4. Plans. If the deed refers to a plan necessary to be recorded therewith, Buyer shall deliver such plan with the deed in form adequate for recording or registration.

5. Registered Land. In addition to the foregoing, if the title to said Premises is registered, said deed shall be in form sufficient to entitle Buyer to a certificate of title of said Premises, and Seller shall deliver with said deed all instruments, if any, necessary to enable Buyer to obtain such certificate of title.

6. Date of Closing. Such deed is to be delivered within sixty (60) days from satisfaction of the contingencies set forth at Section 19 hereof, at the Belmont Town Hall or at the office of Buyer's lender, but in no event shall the closing be later than three years from the date of this Agreement, unless extended pursuant to this Agreement. It is agreed that time is of the essence of this Agreement.

7. Possession and Condition of Premises. Full possession of said Premises free of all tenants and occupants, except as herein provided, is to be delivered at the time of the delivery of the deed, said Premises to be then in the same condition as they now are, reasonable use and wear thereof excepted. Buyer shall be entitled personally to inspect said Premises prior to the delivery of the deed in order to determine whether the condition thereof complies with the terms of this Section.

8. Extension to Perfect Title or Make Premises Conform. If Seller shall be unable to give title or to make conveyance, or to deliver possession of the Premises, all as herein stipulated, or if at the time of the delivery of the deed the Premises do not conform with the provisions hereof, then Seller shall use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or to make the said Premises conform to the provisions hereof, as the case may be, in which event Seller shall give written notice thereof to Buyer at or before the time for performance hereunder, and thereupon the time for performance hereof shall be extended for a period of thirty (30) calendar days. In no event, however, shall reasonable efforts require Seller to expend more than $5,000.00, including attorneys' fees.

9. Failure to Make Premises Conform. If at the expiration of the extended time Seller shall have failed so to remove any defects in title, deliver possession, or make the Premises conform, as the case may be, all as herein agreed, or if at any time during the period of this Agreement or any extension thereof, the holder of a mortgage on said Premises shall refuse to permit the insurance proceeds, if any, to be used for such purposes, then all obligations of the parties hereto shall cease and this Agreement shall be void without recourse to the parties hereto.

10. Buyer's Election to Accept Title. Buyer shall have the election, at either the original or any extended time for performance, to accept such title as Seller can deliver to the said Premises in their then condition and to pay therefor the purchase price, without deduction, in which case Seller shall convey such title, or to receive the return of its deposit and other payments made hereunder.

11. Acceptance of Deed. The acceptance and recording of a deed by Buyer shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed, except such as are, by the terms hereof, to be performed after the delivery of said deed, including without limitation the obligations in the Land Development Agreement.

12. Use of Money to Cure Title. To enable Seller to make conveyance as herein provided, Seller may, at the time of delivery of this deed, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, provided that all instruments so procured are recorded in accordance with customary conveyancing practices.

13. Insurance. Until the delivery of the deed, Seller shall maintain insurance on the Premises as it presently has.

14. Adjustments. A payment in lieu of taxes shall be paid in accordance with G.L.c. 44, §63A as of the day of performance of this Agreement and the amount thereof shall be added to the purchase price payable by Buyer at the time of delivery of the deed.

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

16. Representations and Warranties. Buyer acknowledges that Buyer has not been influenced to enter into this transaction nor has it relied upon any warranties or representations not set forth or incorporated in this Agreement or previously made in writing, except for the following additional warranties and representations, if any, made by Seller: NONE.

17. Brokers. Buyer and Seller each represent and warrant to the other that each has not contacted any real estate broker in connection with this transaction and was not directed to the other as a result of any services or facilities of any real estate broker. Buyer and Seller agree to defend, indemnify the other against and hold the other harmless, to the extent permitted by law, from any claim, loss, damage, costs or liabilities for any brokerage commission or fee which may be asserted against the other by any broker in connection with this transaction. The provisions of this Section shall survive the delivery of the deed.

18. Land Development Agreement. Seller shall convey the Premises to Buyer subject to a Land Development Agreement substantially similar in form and in content to the Land Development Agreement attached hereto as Exhibit A and incorporated herein (the "LDA"), which the parties shall execute at the closing and record immediately after the recording of the

deed and prior to any mortgages. Said LDA shall govern the development of the Premises and require, among other things, the following mandatory terms:

(a) *Construction Obligation*: Buyer shall, at its sole cost and expense, construct on the Premises and upon other property owned by and/or controlled by Buyer (said property shown on the Plan attached hereto as Exhibit B and incorporated herein (the "Adjoining Property," together with the Premises, being the "Property") the development shown on the Approved Plans, as defined below (the "Development"). The Development will consist of three parcels, being the Premises and the parcels known as the Trapelo/Common area and the Common/Belmont area. The Development will contain residences and either or both retail and offices, in a mixed-use arrangement with parking (both surface and underground), all as subject to a special permit to be issued by the Planning Board. The Development shall be Substantially Completed (as defined in the LDA), as evidenced by Certificates of Occupancy for all the buildings, within thirty (30) months from sixty (60) days after the date on which the deed to the Premises is recorded (the "Completion Deadline") or within such extended period as is set forth more particularly in the LDA;

19. Contingencies. The obligations of Buyer to pay the consideration and Seller to deliver the deed are contingent upon the satisfaction of each of the following conditions:

(a) *Financing*: Buyer shall have obtained financing for Buyer to construct the Development and other improvements required under the LDA, as evidenced by a commitment letter with contingencies acceptable to both Seller and Buyer; prior to issuance of the Building Permit, Developer shall submit proposed financing structure to the Town for a twenty-one (21) day review period. The Town's, or the professional's (referenced below) only basis on which to object to financing proposed by the Developer shall be: (a) failure of such financing to be consistent with commercially reasonable financing practices structured to assure the completion of the Development; or (b) failure of such financing to be from a financing source of commercially reasonable repute for projects of similar size and character). If the Town objects to financing proposed by the Developer, Town and Developer will each propose a professional to review and approve the project's proposed financing structure. If such professionals disagree, they will choose a third professional, and his/her decision will be final, provided that if such proposed financing is not approved by such third professional, Developer will have the option to provide up to three additional alternative financing structures to be reviewed by professionals in a similar manner and consistent with the terms hereof. If no proposed financing structure is presented to the Town or if all proposed financings structures are rejected by such chosen professional(s), the deposit shall be refunded to Buyer but the Town shall retain $42,500 of the deposit;

(b) *Horne Road*: Any and all preconditions for the discontinuance of a portion of Horne Road as a public way for all purposes for a distance of approximately 125 feet on the southerly side of the way and approximately 150 feet on the northerly

side of the way and shown as "the Discontinued Section of Horne Road" on a plan entitled "Cushing Square, Belmont, MA 02478, Lot Compilation Plan," dated March 3, 2008, made by R.K. O'Connell & Associates, Inc., subject to the reservation by Seller and a grant by Buyer to Seller of a pedestrian access easement and a utility easement in said way, the Seller's interest in Horne Road having been acquired by Order of Taking dated March 26, 1951, recorded with the Middlesex South District Registry of Deeds on April 9, 1951 in Book 7726, Page 11 . NOTE: this is the Buyer's contingency;

(c) *Site Plan and Approved Plans*: Buyer shall, at its sole cost and expense, prepare site plans and elevation plans (together the "Site Plan") showing the Development (as herein described) to be constructed, and submit the same to the Planning Board for its approval under the Cushing Square Overlay District ("CSOD") provisions of the Zoning Bylaw (the plans approved by the Planning Board being referred to herein as the "Approved Plans");

(d) *Permits and Approvals*: Buyer shall have obtained all permits and approvals necessary to commence construction of a mixed use development of at least 186,753 sq. ft. of total area for retail and housing uses, with at least nineteen percent (19%) of such square footage being retail and at least fifty-five percent (55%) being housing (the "Development"), other than a building permit and other incidental permits which Buyer may obtain after the closing, and the period for appeal under each of such permits shall have expired without appeal by a third party (or without appeal by the Buyer in the limited circumstances set forth in this Section 19 below) or, if appealed, such appeal has been successfully resolved in the reasonable determination of Buyer; and, further, that none of such permits shall have a condition(s) which renders the Development uneconomic. The Seller agrees to execute any and all applications for such permits and approvals as may be required by governmental authorities due to the Seller's ownership of the Premises. NOTE: the Seller is willing to convey the Premises whether or not the Planning Board approves at least 186,753 sq. ft. of total area for retail and housing uses, with at least nineteen percent (19%) of such square footage being retail and at least fifty-five percent (55%) being housing, provided there is an Approved Plan under the CSOD for a mixed-use development including retail establishments and multi-family housing;

(e) *Disclosure*: Buyer shall have complied with the disclosure provisions of G.L. c.7, § 40J, and Seller and Buyer agree to diligently pursue full compliance with said statute. Seller shall prepare and file, and Buyer shall sign, all required statements;

(f) *Compliance:* Compliance with any other requirements of the Massachusetts General or Special Laws relative to the sale of the Premises by Seller;

(g) *Hazardous Materials:* Buyer shall have a right of entry as set forth in the Agreement attached hereto, for the purpose of environmental and geotechnical inspection of the Premises. Buyer shall have sixty (60) days from the date of this Agreement (not the longer period provide below for other contingencies) to

determine whether Buyer wishes to proceed with the purchase of the Premises, based on the results of its inspection; and

(h) *Parking Area Operating Agreement*: Seller and Buyer shall have agreed upon the terms and form of a parking area operating agreement to be attached as Exhibit G to the Land Development Agreement; such agreement shall not dictate to the Seller whether municipal parking spaces shall be metered or not, which shall be within the discretion of the Seller, and shall not prohibit the Seller from leasing or licensing such municipal spaces on a short or long-term basis.

Provided, however, that if any of the foregoing conditions are not satisfied by three years from the date of this Agreement, Buyer shall have the option of extending the closing date for up to two (2) years by exercise of the Extension Options set forth below until such conditions are satisfied, provided that the Buyer shall give the Seller three (3) days written notice of its exercise of this option and shall give seven (7) days written notice of the new closing date. Buyer shall have twenty-four (24) one-month Closing Date extension options ("Extension Options"). The first 12 Extension Options shall each cost the Buyer $20,000, and the next successive 12 Extension Options shall each cost $30,000, with one half of each of such 24 Extension Option Payments being applicable to the purchase price unless the Buyer fails to purchase the Property notwithstanding that Buyer's closing pre-conditions have been satisfied, in which case the Seller shall retain all of such payments. An appeal by the Buyer of a Special Permit decision imposing a condition that renders the Project uneconomic (an "Allowed Buyer Appeal") shall allow the Buyer to extend the closing date as set forth above, provided that no appeal by the Buyer of a Special Permit denial, and no appeal by the Buyer of a Special Permit limited by condition or otherwise to fewer residential units or less area than provided for in 19(d) above, whether or not such limitation renders the Project uneconomic, shall be an Allowed Buyer Appeal or extend the Closing Date and in the event of a Buyer appeal other than an Allowed Buyer Appeal, the Seller may terminate this Agreement by written notice to the Buyer at any time and provide Buyer with a refund of Buyer's deposit; furthermore, if the Special Permit is denied this Agreement shall be deemed terminated as of the date the decision denying the Special Permit is filed with the Town Clerk, and if the Special Permit is approved for fewer residential units or less area than provided for in 19(d) above, the Buyer may terminate this Agreement by written notice to the Seller within sixty (60) days of the filing of such Special Permit decision and receive a refund of Buyer's deposit. The Closing Date shall not be extended beyond five years from the date of this Agreement under any circumstances without the approval of the Seller.

Buyer shall use diligent efforts to satisfy all contingencies; and Seller shall use diligent efforts to discontinue Horne Road as described in 19 (b) above. If the Buyer is unable to obtain permits and approvals or if preconditions for the discontinuance of Horne Road are not satisfied, or if Buyer is not satisfied with its environmental inspection under 19 (g) above, Buyer may terminate this Agreement and receive a refund of Buyer's deposit.

20. Affidavits. At the time of delivery of the deed, Seller shall execute and deliver all the usual and customary affidavits required by Buyer's attorney, including but not limited to a statement under oath to any title insurance company issuing a policy to Buyer and/or Buyer's mortgagee and/or Buyer individually to the effect that: (1) there are no tenants, lessees or parties

in possession of the Premises, except as noted herein; and (2) that Seller is not a foreign person subject to the withholding provisions of the Internal Revenue Code of 1986, as amended (FIRPTA).

21. Hazardous Materials. Effective upon Buyer's inspection provided for in Section 19 (g), Buyer acknowledges that Buyer has not been influenced to enter into this transaction and that it has not relied upon any warranties or representations not set forth in this Agreement. Buyer represents and warrants that it or its agents have conducted a full inspection of the Premises, and based upon Buyer's investigation, Buyer is aware of the condition of the Premises and will accept the Premises "AS IS". Buyer acknowledges that Seller has no responsibility for hazardous waste, oil, hazardous material or hazardous substances, as those terms are defined by any applicable law, rule or regulation, including, without limitation, the Massachusetts Oil and Hazardous Materials Release Prevention and Response Act, M.G. L. c. 21E, the Massachusetts Hazardous Waste Management Act, M.G.L. c. 21C, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9601 et seq. and the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq. (herein collectively referred to as "Hazardous Waste") on, in, under or emitting from the Premises or for any other condition or defect on the Premises.

22. Assignment. Buyer shall not assign this Agreement or any of its rights hereunder without prior written consent of Seller. The Seller recognizes that the Buyer is part of a joint venture with Oaktree Development, LLC to form Cushing Village LLC, whose managers are Oaktree Cushing LLC, a Massachusetts limited liability company, and SLP Holdings LLC, a Massachusetts limited liability company. The Seller consent provisions of this paragraph shall not apply to assignment to Cushing Village LLC or any other partnership entity formed by Smith Legacy Partners Series LLC or SLP Holdings LLC and Oaktree Development, LLC or Oaktree Cushing LLC. Except as otherwise provided in this Section 22, it is hereby agreed that there shall be no (i) change in the identity of the parties holding a legal or beneficial interest in the Buyer, (ii) transfer or pledge in the aggregate of a majority of the beneficial ownership or control of Buyer or (iii) transfer, by assignment or otherwise, of the Buyer's rights under this Agreement or of the Buyer's legal or beneficial interest in the Property to any person (including but not limited to, any partnership, joint venture or corporation) (all such changes being referred to herein as a "Change in Identity"), unless in each instance, (a) the Buyer gives the Seller prior written notice of a proposed Change in Identity, which notice shall provide sufficient information to enable the Seller to evaluate the acceptability of the proposed Change in Identity, and (b) the Seller, within thirty (30) days from the date on which the Seller receives said written notice or such longer period as may be approved by the Buyer and the Seller, approves of such change in writing, or fails to object, in which case the proposed Change in Identity shall be deemed to be approved. If the Seller notifies the Developer in writing within said thirty (30) day period (or longer period agreed to by the parties) of its objection to the proposed Change in Identity, specifying reasonable grounds for such objection, the Buyer shall make no Change in Identity without the subsequent written consent of the Seller. Any attempted Change in Identity made contrary to this Section shall be void.

23. Property Inspection, Condition of Premises. Buyer or Buyer's agent(s) shall have the right, at any time, to enter the Premises at Buyer's own risk for the purposes of inspecting the Premises, provided that Buyer shall not conduct any subsurface tests without the Seller's prior

written consent, not to be unreasonably withheld. Buyer shall indemnify and defend and hold Seller harmless against any claim by Buyer or Buyer's agents, employees or invitees for any harm to them arising from said entry and shall restore the Premises to substantially the same condition as prior to such entry if the closing does not occur. The provisions of this Section shall survive the expiration or termination of this Agreement. Buyer acknowledges that hazardous materials exist upon all or a portion of the parcel referred to herein as the Trapelo/Common area located at the corner of Common Street and Trapelo Road between the Premises and Horne Road, which is a portion of the Adjoining Property, and that contamination may have migrated to other portions of the Adjoining Property and the Premises, and that the presence of said contamination shall not constitute a reason for Buyer not to perform under this Agreement, and, furthermore, Buyer shall be responsible to remediate any contamination upon the Adjoining Property and the Premises comprising the Development.

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

25. Closing. The deed and other documents required by this Agreement are to be delivered and the Purchase Price paid at the Date and Time of Closing and at the Place of Closing. Unless the Closing takes place at the appropriate Registry of Deeds, all documents and funds are to be delivered in escrow subject to prompt rundown of title and recording, which term shall include registration in the case of registered land. Unless otherwise agreed, Seller's attorney may disburse the funds if no report has been received by 5:00 p.m. of the next business day following the date of the delivery of the deed that the documents have not been recorded, due to some problem beyond the recording attorney's control.

26. Buyer's Warranties. Buyer hereby represents and warrants:

(a) This Agreement and all documents to be executed by Buyer and delivered to Buyer at the closing are, or at the time of the closing will be, duly authorized, executed and delivered by Buyer;

(b) Buyer hereby acknowledges and agrees that, except for the representations and warranties of Seller expressly set forth in this Agreement, Buyer has not relied upon nor been induced by any representations, warranties, guarantees, promises or statements, whether written or oral, express or implied, or whether made by Seller or any employee or representative of Seller; and

(c) As the Seller, acting by its Board of Selectmen, has executed this Agreement, Buyer has and makes no claim against Seller based on any action prior to the execution of this Purchase and Sale Agreement and relating to the negotiation of this Purchase and Sale agreement.

27. Notice. Any notice required or permitted to be given under this Agreement shall be in writing and signed by the party or the party's attorney or agent and shall be deemed to have

been given (a) when delivered by hand, or (b) when mailed by Federal Express or other similar courier service, or (c) by facsimile, addressed:

In the case of Seller:	Board of Selectmen Belmont Town Hall 455 Concord Avenue Belmont, MA 02478 Telephone: (617) 993-2610 Facsimile: (617) 993-2611
With a copy to:	Jeanne S. McKnight, Esq. Kopelman and Paige, P.C 101 Arch Street Boston, MA 02110 Telephone: 617-556-0007 Facsimile: 617-654-1735
In the case of Buyer:	SMITH LEGACY PARTNER SERIES, LLC 6 Littlefield Road Acton, MA 01720 Telephone: (978) 502-2276 Facsimile: (978) 263-1086
With a copy to:	Christopher L. Starr SLP Holdings LLC 6 Littlefield Road Acton, MA 01720 Telephone: (978) 502-2276 Facsimile: (978) 263-1086
With a copy to:	Gwendolen G. Noyes and Arthur A. Klipfel Oaktree Cushing LLC 129 Mt Auburn St. 3rd Floor Cambridge, MA 02138 Telephone (617) 491-9100
And with a copy to:	Ronald W. Ruth, Esq. Sherin and Lodgen LLP 101 Federal Street Boston, MA 02110 Telephone: (617) 646-2165 Facsimile: (617) 646-2222

By such notice, either party may notify the other of a new address, in which case such new address shall be employed for all subsequent deliveries and mailings.

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

29. Insurable Title. It is understood and agreed by the parties that the Premises shall not be in conformity with this Purchase and Sale Agreement unless title to the Premises is also insurable at ordinary rates for the benefit of Buyer in a fee owner's ALTA-form policy, and for the benefit of Buyer's lender, if any, in an ALTA-form loan policy, subject to the standard printed exceptions provided that such exceptions do not render title to the Premises unmarketable.

30. Encumbrances. It is understood and agreed by the parties that the Premises shall not be in conformity with title provisions of this Agreement unless:

(a) improvements, if any, and all means of access to the Premises, shall be located completely within the boundary lines of said Premises and shall not encroach upon or under the property of any other person or entities;

(b) no building, structure, or improvement of any kind belonging to any other person or entity shall encroach upon or under said premises;

(c) the Premises shall abut a public way, or a private way to which Buyer shall have both pedestrian and vehicular access, leading to a public way.

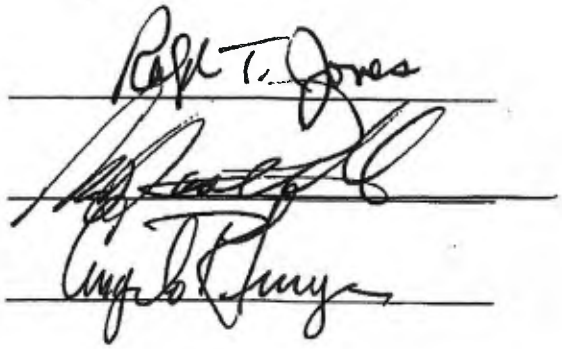
31. Errors. If any errors or omissions are found to have occurred in any calculations or figures used in the settlement statement signed by the parties (or would have been included if not for any such error or omission) and notice thereof is given within sixty (60) days of the date of delivery of the deed to the party to be charged, then such party agrees to make payment to correct the error or omission.

32. Enforcement. In the event of default hereunder by either the Buyer or Seller, as the case may be, the other party shall have the right to institute such actions and proceedings as may be appropriate against the party in default (including without limitation actions and proceedings to compel specific performance). Monetary damages, if sought by the Seller, shall be limited to the amount of the deposit (and the amount, if any, of other payments made or obliged to be made by the Buyer hereunder, including without limitation the payments under Paragraph 19 hereof). NOTE: This limitation on monetary damages does not apply once the Closing has occurred and the LDA, with the liquidated damages clause provided for thereunder, is in effect. Buyer's remedies against the Seller shall be limited to actions and proceedings to compel specific performance, and no monetary damages shall be sought against the Seller. In the event that the Buyer prevails in an action against the Seller for specific performance, and Seller's failure to perform is determined in such action to have been in bad faith, or arbitrary and capricious, then Seller shall pay Buyer's reasonable costs and attorneys' fees in such action.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as a sealed instrument as of the date first written above.

TOWN OF BELMONT,
By its Board of Selectmen



SMITH LEGACY PARTNERS
SERIES, LLC

By: _____
Duly Authorized

Exhibits

Exhibit A: Land Development Agreement
Exhibit B: Plan showing Adjoining Property

415243v.7/BELM/0080

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as a sealed instrument as of the date first written above.

TOWN OF BELMONT,
By its Board of Selectmen

_____

_____

_____

SMITH LEGACY PARTNERS SERIES, LLC

By: _____
Duly Authorized
Christopher L. Stack

Exhibits

Exhibit A: Land Development Agreement
Exhibit B: Plan showing Adjoining Property

415243v.7/BELM/0080

EXHIBIT A TO PURCHASE AND SALE AGREEMENT BETWEEN TOWN OF BELMONT AND SMITH LEGACY PARTNERS SERIES LLC

LAND DEVELOPMENT AGREEMENT
116 Trapelo Road, Belmont, Massachusetts

PARTIES

THIS LAND DEVELOPMENT AGREEMENT (this "LDA" or "Agreement"), dated as of this _____ day of _____, 20__, is made by and between the TOWN OF BELMONT, a Massachusetts municipal corporation, acting by and through its Board of Selectmen, with an address of 455 Concord Avenue, Belmont, Massachusetts 02478 (hereinafter, with its successors and assigns, referred to as the "Town"), and SMITH LEGACY PARTNERS SERIES LLC, a Delaware limited liability company, having its principal office at 6 Littlefield Road, Acton, Massachusetts 01720 (hereinafter, with its successors and permitted assigns, referred to as the "Developer").

RECITALS

WHEREAS, the Town, in recognition of the unique location, function and character of the Cushing Square commercial area, adopted the Cushing Square Overlay District, a copy of which is attached hereto as Exhibit A and incorporated herein (the "CSOD"), being Section 8 of the Belmont Zoning By-Law, in order to, among other objectives, encourage revitalization of Cushing Square and promote the redevelopment of the Cushing Square properties and the creation of mixed-use development, incorporating residential use and either or both retail and office uses;

WHEREAS, the Town, as owner of a certain parcel, used as a municipal parking lot, issued a Request for Proposals, attached hereto as Exhibit B and incorporated herein (the "RFP"), dated July 30, 2008, for the disposition of said property, located at 116 Trapelo Road, Belmont, being Assessor's Map 12, Lot 211A, described in a deed recorded with the Middlesex Registry of Deeds in Book 4647, Page 232 , more particularly described in Exhibit I attached hereto (the "Premises"), to further the goals and objectives of the CSOD;

WHEREAS, the Developer submitted a proposal in response to the RFP, attached hereto as Exhibit C and incorporated herein (the "Proposal"), for a mixed-use development, partially located upon the Premises, and partially located upon other property owned and/or controlled by the Developer, being Assessor's Map 12, Lots 207 through 211 and Lot 233, more particularly described in Exhibit J attached hereto (the "Adjoining Property," together with the Premises, the "Property"), said mixed-use development containing residential use and either or both retail and office uses, and parking to accommodate both the Project, and an additional fifty (50) spaces for the public;

WHEREAS, the Developer has designed a development to, among other objectives, encourage revitalization of Cushing Square; promote the redevelopment of under-utilized

properties in a coordinated and well-planned manner and promote mixed-used development, incorporating residential use and either or both retail and office uses;

WHEREAS, the Town, for consideration of Eight Hundred Fifty Thousand ($850,000.00) Dollars, and pursuant to a Purchase and Sale Agreement (the "P&S Agreement") dated March 21, 2011 by and between the Town and Developer, a copy of which is attached hereto as Exhibit H, conveyed the Premises to the Developer by deed of even date herewith and recorded immediately prior hereto, subject to: (a) an easement for fifty (50) public parking spaces (the "Parking Spaces"), pursuant to a parking area operating agreement [to be] attached hereto as Exhibit G), (b) a pedestrian access and utility easement in Horne Road; (c) a sewer and stormwater easement; and (d) this Land Development Agreement.

WHEREAS, the conveyance is conditioned upon the Developer constructing the Development as defined in the P&S Agreement and below, plus an additional fifty (50) public spaces (the same as further described herein, the "Project"); and

WHEREAS, the Developer, in partial consideration for the Property, agrees to develop the Property and undertake, at its sole cost and expense, all the work that is required to be done under this LDA to construct, develop and complete the Project (the "Work").

NOW, THEREFORE, each of the parties hereto for and in consideration of the promises and mutual obligations herein contained, does hereby covenant and agree with the other as follows:

AGREEMENT

I. RECITALS and DEFINITIONS

The Recitals stated above are true and accurate and are incorporated herein by reference. Relevant definitions from the P&S Agreement are hereafter set forth: "Development" means the development shown on the Approved Plans defined in Section II A. 2 below and "Completion Deadline" means within thirty (30) months from sixty (60) days after the date on which the deed to the Premises was recorded.

II. DEVELOPMENT AGREEMENT

Developer agrees (for itself and any successors and assigns) to develop the Property and undertake the Project as follows:

A. Construction Obligations

1. Construction of Project. The Developer shall design and construct on the Property the following improvements:

(a) *Buildings*: the Property is to be used for a mixed-use development including residential uses and either or both retail or office uses (the "Buildings"), with parking, to be constructed in accordance with the Approved Plans, as hereinafter defined;

(b) *Parking*: parking spaces adequate to serve the Buildings, pursuant to the requirements of the Zoning By-Law, plus fifty (50) spaces for use by the public, at the locations identified on the Approved Plans, as hereinafter defined. During construction of the Project, fifty (50) spaces for use by the public must be provided somewhere on the Property at all times as provided below. Developer commits to provide 50 parking spaces of alternative, interim parking during construction, with location and the number of spaces at each interim site (always totaling 50) during construction to be as approved in his reasonable discretion by Ralph T. Jones, who currently serves as the Chairman of the Board of Selectmen, to whom this discretion shall be delegated by the Board of Selectmen, this delegation or appointment to continue whether or not Ralph T. Jones continues to serve as Chairman or member of the Board of Selectmen, based on the proximity of the alternative site(s) to the existing parking, anticipated traffic flow and public safety for both vehicles and pedestrians, recognizing the need to satisfy parking demand for these operating businesses in the area formerly served by the 116 Trapelo Road municipal lot ("Municipal Lot" or sometimes referred to in this Agreement and the P&S Agreement as the "Premises") and the limitations of a private developer acting without benefit of "taking" authority.

2. Approved Plans. The Project shall be constructed in accordance with site plans and elevation plans approved by the Town, through its Planning Board, (the "Approved Plans"), which shall be attached hereto, prior to the closing, as Exhibit D and incorporated herein. The Developer agrees not to make any substantial changes or revisions to the Project as shown on the Approved Plans, including, without limitation, any changes to the Buildings, parking, roads and footpaths, and landscaping of a temporary or permanent nature during the course of construction unless such changes are approved by the Planning Board and allowed by right or by special permit under CSOD if still a part of the Zoning Bylaw and otherwise under then-applicable provisions of the Zoning Bylaw. Nothing herein shall be deemed to waive the Developer's obligations to apply for and comply with all other permits, approvals and conditions governing the Property or the Project.

3. Construction Schedule. The Developer shall:

(a) commence construction of the Project pursuant to the building permit(s) issued by the Town, as provided below: subject to the terms hereof and "unavoidable delays"/force majeure and the Extensions described below, the date on which construction of the Project shall commence (the "Construction Commencement Date") shall be either: (a) the date that is no later than 12 months after the appeal period pertaining to the Special Permit has expired without an appeal having been filed or (b) the date that is no later than 12 months after any appeal (by any party, including without limitation the Developer to the limited extent that a Developer appeal may extend deadlines under the Purchase and Sale Agreement) is fully and finally disposed of.

Extension Options: Developer shall have 24 one-month Construction Commencement Date Extension Options. The first 12 Extension Options shall each cost the Developer $20,000, and the next successive 12 Extension Options shall each cost $30,000.

(b) complete remediation of any contamination of the parcel known as Trapelo/Common area (Assessor's Map 12, Lots 207 through 211), including release of any

hazardous materials upon other portions of the Property, as required by law during its construction;

(c) substantially complete the Project in accordance with the terms of this LDA by the Completion Deadline, as defined in the P&S Agreement and above. The Project shall be "Substantially Complete," or "Substantial Completion" shall occur, when the Project has been constructed such that Developer has obtained certificates of occupancy for the Buildings, with only minor "punch list" items remaining that will not materially interfere with said use and occupancy.

4. Construction Schedule Extensions. The Town, at its sole option, may extend these deadlines if the Town determines that the Developer has proceeded with reasonable diligence in its performance under this Agreement. The Town shall reasonably extend the deadlines under this Agreement for "Unavoidable Delays" and other events beyond the control of the Developer. For purposes of this Agreement, "Unavoidable Delays" shall mean any delay, obstruction or interference resulting from any act or event whether affecting the Project or the Developer, which has a material adverse effect on the Developer's rights or duties, provided that such act or event is beyond the reasonable control of the Developer after pursuing diligent efforts to remedy the delaying condition in an expedient and efficient manner and was not separately or concurrently caused by any negligent or willful act or omission of the Developer or could not have been prevented by reasonable actions on the Developer's part and the Developer shall have notified the Town herein not later than thirty (30) days after discovering the occurrence of the Unavoidable Delay enumerated herein and within a reasonable time, including but not limited to, delay, obstruction or interference resulting from: (i) an act of God, landslide, lightning, earthquake, fire, explosion, flood, sabotage or similar occurrence, acts of a public enemy, war, blockage or insurrection, international geopolitical crisis, riot or civil disturbance; (ii) any legal proceeding commenced by any bona-fide third party seeking judicial review of this Agreement or any governmental approvals, or any restraint of law (e.g., injunctions, court or administrative orders, or moratorium imposed by a court, or administrative or governmental authority); (iii) the failure of any utility or governmental entity required by law to provide and maintain utilities, services, water and sewer lines and power transmission lines to the Property, which are required for the construction of the Project or for other obligations of the Developer; (iv) any unexpected or unforeseen subsurface condition at the construction site inconsistent with typical background conditions of a similar site, which shall prevent construction, or require a material redesign or change in the construction of, or materially adversely affect the completion schedule for, the Project, such determination to be made by a qualified engineer; (v) any unexpected or unforeseen subsurface environmental conditions on or from or otherwise affecting the Property but not readily identifiable by visual inspection and which originated from the Buildings or Property; (vi) strikes, work stoppages or other substantial labor disputes; (vii) the failure or inability of any subcontractor or supplier to furnish supplies or services if such failure or inability is itself caused by an Unavoidable Delay and/or could not have been reasonably prevented and the affected party cannot reasonably obtain substitutes therefore; (viii) a change in Developer Financing which could not have been reasonably anticipated by Developer; or (ix) any unreasonable delay which is caused or created by a board, officer, department or authority of the Town from whom a Project approval is sought, whether or not such fault is caused by negligent or willful acts or omissions, provided that the Developer shall have timely complied with the reasonable requests

and requirements of any governmental authority. The time or times for performance under this Agreement shall be extended for the period of the Unavoidable Delay, and in calculating the length of the Unavoidable Delay, there shall be considered not only actual work stoppages but also any consequential delays resulting from such stoppages as well.

5. Quality of Work. The Developer shall procure all necessary permits before undertaking any Work, and shall cause all the Work to be performed in a good and competent manner in compliance with good engineering and construction practices, and using new materials of customary quality or appropriate preservation measures for redevelopment projects in the greater Belmont area similar to the Project, all in accordance with the Approved Plans and all applicable laws, ordinances, codes, regulations, permits, approvals and conditions. As and to the extent required in the Approved Plans, the Developer shall take all reasonably necessary measures to (i) minimize dust, noise and construction traffic, (ii) minimize any damage, disruption or inconvenience caused by the Project, and (iii) make adequate provision for the safety and convenience of all persons affected thereby and to police the same. As a precondition for the issuance of any Certificate of Substantial Completion hereunder, the Developer shall provide a certification to the Town by a licensed architect, at the Developer's expense, that the Work is done substantially in accordance with the Approved Plans (the "Independent Architect").

6. Certificate of Substantial Completion:

(a) Promptly after "Substantial Completion" of the Project as the term "Substantial Completion" is defined in Section II.A.3.(c) above, the Town will furnish the Developer with an appropriate instrument so certifying (the "Certificate of Substantial Completion"). The Certificate of Substantial Completion shall be in such form as will enable it to be recorded in the Middlesex South District Registry of Deeds.

(b) If the Town shall refuse or fail to provide the Certificate of Substantial Completion in accordance with the provisions of this Section, the Town or a representative of the Town shall, within thirty (30) days after written request by the Developer, provide the Developer with a written statement indicating in adequate detail in what respects the Developer has failed to complete the improvements in accordance with the provisions of this Agreement, or is otherwise in default, and what measures or acts it will be necessary, in the opinion of the Town, for the Developer to take or perform in order to obtain such certification.

(c) Notwithstanding anything to the contrary in this Agreement, the Certificate of Substantial Completion, issued by the Town pursuant to Section II.A.6(a), above, shall be a conclusive determination of satisfaction and termination of this Agreement and covenants in this Agreement, except those that expressly survive the termination of this Agreement. Any such certification shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any Funding Source, including any Mortgage Holder or any insurer of a mortgage securing money loaned to finance the improvements, or any part thereof. The issuance of the Certificate of Substantial Completion shall bar the exercise of any remedies by the Town set forth in this LDA other than as to obligations hereunder that survive the issuance of the Certificate of Substantial Completion.

FIRST AMENDMENT TO AGREEMENT OF SALE

This First Amendment to Agreement of Sale (the "**First Amendment**") is made this 13th day of April, 2106 by and among **STARR CAPITAL PARTNERS, LLC**, a Delaware limited liability company, **SMITH LEGACY PARTNERS SERIES, LLC**, a Delaware limited liability, **SMITH LEGACY PARTNERS II, LLC**, a Massachusetts limited liability, **505-507 COMMON STREET, LLC**, a Massachusetts limited liability and **527 COMMON STREET, LLC**, a Massachusetts limited liability, all with a principal place of business at 6 Littlefield Road, Acton, Massachusetts 01720, ATTN: Christopher L. Starr, Email: chrisstarr123@gmail.com (collectively, the "**Seller**"), and **TOLL BROS., INC.**, a Pennsylvania corporation, with a principal place of business at 250 Gibraltar Road, Horsham, Pennsylvania, 19044 (the "**Buyer**").

WHEREAS, Seller and Buyer are parties to that certain Agreement for Sale pertaining to certain property located in Belmont, Middlesex County, Massachusetts dated March 14, 2016 (the "**Agreement**"); and

WHEREAS, the parties wish to amend certain provisions of the Agreement as set forth herein.

NOW, THEREFORE, for consideration paid, the receipt and sufficiency of which is hereby acknowledged, the Buyer and Seller do hereby agree as follows:

1. Section 16(h) of the Agreement is deleted in its entirety and the following is substituted therefor:

> (h) Seller advises Buyer that the Property is subject to a first mortgage lien and a second mortgage lien in favor of Northern Bank & Trust (the "**Bank**") pursuant to loan documents between the Bank and Seller (the "**Loan Documents**"). Seller further advises Buyer that the Seller has entered into a Conditional Forbearance and Loan Modification Agreement with the Bank as of April 11, 2016 in the form annexed hereto as Exhibit A (or such other form as shall be mutually acceptable to the Bank, Seller and Buyer) (the "**Recognition Agreement**"). Seller represents that the only Mortgage Liens encumbering the Property are the Mortgage Liens that are part of the Loan Documents. If the closing does not occur due to default of the Buyer, then as liquidated damages, Seller shall retain all Deposits.

2. Exhibit A attached to this Amendment supersedes and replaces Exhibit B to the Agreement.

3. (A) The following sentence in Section 13 of the Agreement:

> "During the period of time (the "Due Diligence Period") commencing upon the execution of this Agreement and expiring on the later of (A) sixty (60) days thereafter, and (B) thirty five (35) days after receipt by Buyer from Seller of the Recognition Agreement (as hereinafter defined), the Consent and Estoppel (as hereinafter defined), and the CHA Consent (as hereinafter defined), should Buyer desire not to purchase the Property as a result of such studies, or as a result of Buyer's dissatisfaction with the Property based upon Buyer's review of Seller's Plans or for any other reason whatsoever, Buyer shall have the right to terminate

this Agreement upon written notice to Seller in which case the Deposit shall be returned to Buyer and there shall be no further liability of the parties hereunder."

is amended and restated as follows:

"During the period of time (the "Due Diligence Period") commencing upon the execution of this Agreement and expiring on the later of (A) sixty (60) days thereafter, (B) thirty five (35) days after receipt by Buyer from Seller of the Recognition Agreement (as hereinafter defined), the Consent and Estoppel (as hereinafter defined), and the CHA Consent (as hereinafter defined), **and (C) thirty five (35) days after receipt by Buyer from Seller of written confirmation from the Lender under the Recognition Agreement that the conditions to the Lender's agreements under the Recognition Agreement (as set forth in Section 3 thereof) have been satisfied in full**, should Buyer desire not to purchase the Property as a result of such studies, or as a result of Buyer's dissatisfaction with the Property based upon Buyer's review of Seller's Plans or for any other reason whatsoever, Buyer shall have the right to terminate this Agreement upon written notice to Seller in which case the Deposit shall be returned to Buyer and there shall be no further liability of the parties hereunder."

(B) Section 16(i) of the Agreement is hereby deleted in its entirety.

4. All references to the defined term "**Monthly Payments**" or to the defined term "**Parking Payments**" in the Agreement are hereby deleted.

5. Pursuant to Section 16(b) of the Agreement Buyer consents to Seller granting amended and restated mortgage(s)/security document(s) to the Bank to secure additional borrowing of Five Hundred Ten Thousand ($510,000.00) Dollars.

6. Exhibit Q is hereby deleted.

7. 6. In all other respects, the Agreement is hereby ratified and confirmed.

8. 7. This Amendment may be executed in counterparts, each of which shall be an original all which, when taken together, shall constitute one Agreement. Executed copies of this Agreement may be delivered by facsimile, pdf or email transaction. This Amendment will not be valid unless all parties have signed and a pdf copy thereof has been provided to each of the signatories.

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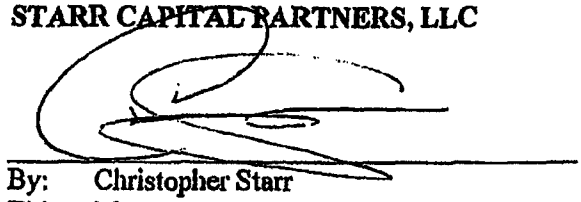
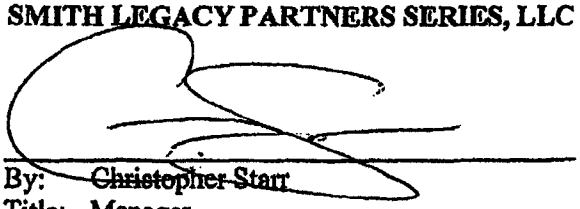
STARR CAPITAL PARTNERS, LLC



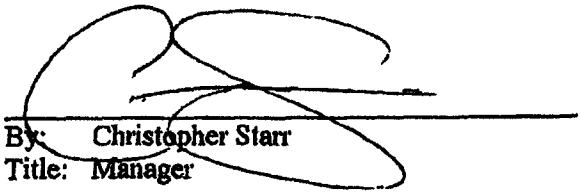
By: Christopher Starr
Title: Manager

SMITH LEGACY PARTNERS SERIES, LLC



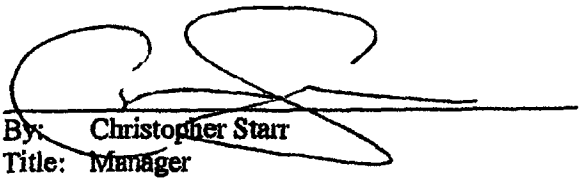
By: Christopher Starr
Title: Manager

SMITH LEGACY PARTNERS II, LLC



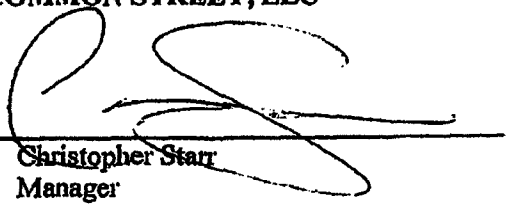
By: Christopher Starr
Title: Manager

505-507 COMMON STREET, LLC



By: Christopher Starr
Title: Manager

527 COMMON STREET, LLC



By: Christopher Starr
Title: Manager

TOLL BROS., INC.,

By: Jeffrey M. Calcagni, V.P.

Exhibit A

CONDITIONAL FORBEARANCE AND LOAN MODIFICATION AGREEMENT

This Conditional Forbearance and Loan Modification Agreement ("Agreement") made as of the 11th day of April, 2016, by and between **Smith Legacy Partners Series, LLC**, a Delaware limited liability company, **Smith Legacy Partners II, LLC, Smith Legacy Partners III, LLC, 505-507 Common Street, LLC, 527 Common Street, LLC**, all Massachusetts limited liability companies and **S.J.S. Realty Corp.**, a Massachusetts Corporation (hereinafter collectively referred to as the "Borrower"); **Christopher L. Starr** and the **Ruth S. Jenkins Irrevocable Trust dated February 27, 2006** (hereinafter collectively referred to as the "Guarantors"); and **Northern Bank & Trust Company**, a Massachusetts chartered bank with a principal address located at 275 Mishawum Road, Woburn, MA 01801 (hereinafter referred to as the "Lender").

WHEREAS, prior hereto, Borrower did enter into the following loan arrangements with Lender (hereinafter sometime collectively referred to as the "Loans"):

1. Term Loan in the original principal amount of $10,000,000.00 as evidenced by a Term Note dated October 1, 2012 given by the Borrower to Lender, and secured by those certain Commercial Mortgages, Security Agreements and Assignments of Leases and Rents of same date encumbering the following properties:

    a. Commercial Mortgage, Assignment of Leases and Rents and Security Agreement dated October 1, 2012 and recorded with the Middlesex South District Registry of Deeds at Book 60157, Page 201 (as previously amended, modified or supplemented), given by Smith Legacy Partners Series, LLC and encumbering certain real property located at 495-501 Common Street, Belmont, Massachusetts 02478;
    b. Commercial Mortgage, Assignment of Leases and Rents and Security Agreement dated October 1, 2012 and recorded with the said Deeds at Book 60157, Page 173 (as previously amended, modified or supplemented), given by 505-507 Common Street, LLC and encumbering certain real property located at 505-507 Common Street, Belmont, Massachusetts;
    c. Commercial Mortgage, Assignment of Leases and Rents and Security Agreement dated October 1, 2012 and recorded with said of Deeds at Book 60157, Page 215 (as previously amended, modified or supplemented), given by 527 Common Street, LLC and encumbering certain real property located at 527 Common Street, Belmont, Massachusetts;
    d. Commercial Mortgage, Assignment of Leases and Rents and Security Agreement dated October 1, 2012 and recorded with said Deeds at Book 60157, Page 187 (as previously amended, modified or supplemented), given by Smith Legacy Partners III, LLC and encumbering certain real property located at 2-8 Trapelo Road, Belmont;

e. Commercial Mortgage, Assignment of Leases and Rents and Security Agreement dated October 1, 2012 and recorded with said Deeds at Book 60157, Page 243 (as previously amended, modified or supplemented), given by Smith Legacy Partners II, LLC and encumbering certain real property located at 102-104 Trapelo Road, Belmont, Massachusetts;

f. Commercial Mortgage, Assignment of Leases and Rents and Security Agreement dated October 1, 2012 and recorded with said Deeds at Book 60157, Page 229 (as previously amended, modified or supplemented), given by Smith Legacy Partners II, LLC and encumbering certain real property located at 112 Trapelo Road, Belmont, Massachusetts;

g. Commercial Mortgage, Assignment of Leases and Rents and Security Agreement dated October 1, 2012 and recorded with said Deeds at Book 60157, Page 159 (as previously amended, modified or supplemented), given by Smith Legacy Partners Series, LLC and encumbering certain real property located at 7 Horne Road, Belmont, Massachusetts;

h. Commercial Mortgage, Assignment of Leases and Rents and Security Deposit dated October 1, 2012 and recorded at the Worcester South District Registry of Deeds at Book 49724, Page 1 (as previously amended, modified or supplemented), given by S.J.S. Realty Corp. and encumbering certain real property located at 38-40 Cedar Street, Worcester; and

i. Commercial Mortgage, Assignment of Lease and Rents and Security Deposit dated October 1, 2012 and recorded with the Worcester South District Registry of Deeds at Book 49723, Page 374 (as previously amended, modified or supplemented), given by Smith Legacy Partners Series, LLC and encumbering certain real property located at 480 Salisbury Street, Worcester, Massachusetts;

(said Commercial Mortgages, Security Agreements and Assignments of Leases and Rents, as amended and restated, are hereinafter collectively referred to as the "Mortgages"; said properties are hereinafter collectively referred to as the "Properties"; said Term Loan is sometimes hereinafter referred to as the "Term Loan"); and

2. Revolving Term Loan in the original principal amount of $1,125,000.00 as evidenced by a Revolving Term Note dated September 24, 2013 given by Borrower to Lender, and secured by the Properties; as affected by Amended and Restated Revolving Term Note dated May 8, 2014 increasing the revolving loan amount to $1,500,000; as further affected by Amended and Restated Revolving Term Note dated October 21, 2014 increasing the revolving loan amount to $2,000,000.00; as further affected by Amended and Restated Revolving Term Note dated March 12, 2015 increasing the revolving loan amount to $2,250,000.00 (the "Revolving Term Note") and secured by those certain Amended and Restated Commercial Mortgages, Security Agreements and Assignments of Leases and Rents of same date encumbering the Properties as follows:

a. Amended and Restated Commercial Mortgage, Assignment of Leases and Rents and Security Agreement dated March 12, 2015 and recorded with the Middlesex South District Registry of Deeds at Book 65045, Page 14 (as previously amended, modified

or supplemented), given by Smith Legacy Partners Series, LLC and encumbering certain real property located at 495-501 Common Street, Belmont, Massachusetts;

b. Amended and Restated Commercial Mortgage, Assignment of Leases and Rents and Security Agreement dated March 12, 2015 and recorded with the said Deeds at Book 65045, Page 66 (as previously amended, modified or supplemented), given by 505-507 Common Street, LLC and encumbering certain real property located at 505-507 Common Street, Belmont, Massachusetts;

c. Amended and Restated Commercial Mortgage, Assignment of Leases and Rents and Security Agreement dated March 12, 2015 and recorded with said of Deeds at Book 65045, Page 79 (as previously amended, modified or supplemented), given by 527 Common Street, LLC and encumbering certain real property located at 527 Common Street, Belmont, Massachusetts;

d. Amended and Restated Commercial Mortgage, Assignment of Leases and Rents and Security Agreement dated March 12, 2015 and recorded with said Deeds at Book 65045, Page 53 (as previously amended, modified or supplemented), given by Smith Legacy Partners III, LLC and encumbering certain real property located at 2-8 Trapelo Road, Belmont;

e. Amended and Restated Commercial Mortgage, Assignment of Leases and Rents and Security Agreement dated March 12, 2015 and recorded with said Deeds at Book 65045, Page 27 (as previously amended, modified or supplemented), given by Smith Legacy Partners II, LLC and encumbering certain real property located at 102-104 Trapelo Road, Belmont, Massachusetts;

f. Amended and Restated Commercial Mortgage, Assignment of Leases and Rents and Security Agreement dated March 12, 2015 and recorded with said Deeds at Book 65045, Page 40 (as previously amended, modified or supplemented), given by Smith Legacy Partners II, LLC and encumbering certain real property located at 112 Trapelo Road, Belmont, Massachusetts;

g. Amended and Restated Commercial Mortgage, Assignment of Leases and Rents and Security Agreement dated March 12, 2015 and recorded with said Deeds at Book 65045, Page 1 (as previously amended, modified or supplemented), given by Smith Legacy Partners Series, LLC and encumbering certain real property located at 7 Horne Road, Belmont, Massachusetts;

h. Amended and Restated Commercial Mortgage, Assignment of Leases and Rents and Security Deposit dated March 12, 2015 and recorded at the Worcester South District Registry of Deeds at Book 53463, Page 1 (as previously amended, modified or supplemented), given by S.J.S. Realty Corp. and encumbering certain real property located at 38-40 Cedar Street, Worcester; and

i. Amended and Restated Commercial Mortgage, Assignment of Lease and Rents and Security Deposit dated March 12, 2015 and recorded with the Worcester South District Registry of Deeds at Book 53462, Page 383 (as previously amended, modified or supplemented), given by Smith Legacy Partners Series, LLC and encumbering certain real property located at 480 Salisbury Street, Worcester, Massachusetts;

All documents executed in connection with the above-referenced Term Loan and Revolving Term Loan, including without limitation, the notes, the loan agreements, the

Mortgages, together with any amendments thereto, and all other documents executed by Borrower in favor of Lender are hereinafter collectively referred to as the "Loan Documents"; and

WHEREAS, the obligations of Borrower under both the Term Note and Revolving Term Note have been guaranteed in full by Guarantors pursuant to those certain Unlimited Guaranties executed by each Guarantor in connection with each of the Loans; and

WHEREAS, Smith Legacy Partners Series, LLC has entered into a Purchase and Sale Agreement dated as of March 28, 2011 with the Town of Belmont, as affected by First Amendment to Purchase and Sale Agreement dated March 22, 2016, pursuant to which it will purchase the property located at 116 Trapelo Road, Belmont, Massachusetts (hereinafter referred to as the "Town Purchase Agreement"); and

WHEREAS, Starr Capital Partners, LLC, Smith Legacy Partners Series, LLC, Smith Legacy Partners II, LLC 505-507 Common Street, LLC and 527 Common Street, LLC have entered into an Agreement of Sale dated as of March __, 2016 with Toll Bros., Inc. pursuant to which Toll Bros., Inc. will acquire certain of the Properties (related the Cushing Village development) (hereinafter referred to as the "Toll Sale Agreement"); and

WHEREAS, the closing date(s) for the Town Purchase Agreement and the Toll Sale Agreement are expected to occur during or about August, 2016, subject to the terms, conditions and provisions set forth in the Town Purchase Agreement and the Toll Sale Agreement; and

WHEREAS, Borrower has requested that Lender provide Borrower with additional funds to: (a) pay certain fees and payments due under the Town Purchase Agreement, (b) pay certain other fees owed by Borrower, and (c) service Borrower's debt obligations under the Term Note and Revolving Term Note through August 31, 2016; and

WHEREAS, the Term Note did mature by its terms on January 1, 2016; and

WHEREAS, the Revolving Term Note did mature by its terms on December 24, 2015; and

WHEREAS, Borrower has failed to pay the Term Loan and the Revolving Term Loan upon maturity; and

WHEREAS, Borrower acknowledges that both the Term Note and the Revolving Term Note are due and payable immediately; and

WHEREAS, Borrower and Lender acknowledge and agree that the total amount outstanding from the Borrower to the Lender as of April 13, 2016 is $12,316,101.20, not inclusive of the additional $510,000.00 that shall be disbursed in accordance with, and subject to, the terms of this Agreement and not inclusive of the $350,000.00 due from Borrower to Lender pursuant to Section 5 hereof.

WHEREAS, notwithstanding the foregoing, Borrower has requested that Lender (a) extend the maturity dates of both the Term Note and the Revolving Term Note, (b) provide additional funds to Borrower, and (c) forbear from exercising its rights and remedies under the Loan Documents; and

WHEREAS, Lender is agreeable to so extending the maturity dates of both the Term Note and the Revolving Term Note, providing additional funds to Borrower, and forbearing from exercising its rights and remedies under the Loan Documents solely upon the terms and conditions more particularly set forth hereinafter.

NOW, THEREFORE, in consideration of the mutual covenants and promises between the parties set forth herein, the receipt and sufficiency of such consideration being hereby acknowledged, the parties do hereby agree as follows:

1. **Modification to Term Note**. Subject to satisfaction of the conditions set forth in Section 3 below and upon execution of this Agreement by Borrower and Lender, the Term Note shall be modified and amended to provide as follows:

   a. The Maturity Date of the Term Note shall be extended to August 31, 2016.

   b. The interest rate of the Term Note shall remain at a floating rate equal to one (1%) percent above Wall Street Journal Prime Rate (as defined in the Term Note) with a minimum interest rate of four and one half (4.50%) percent and with a default interest rate of five (5%) percent plus the rate pursuant to the Term Note.

2. **Modification to Revolving Term Note**. Subject to satisfaction of the conditions set forth in Section 3 below and upon execution of this Agreement by Borrower and Lender, the Revolving Term Note shall be modified and amended to provide as follows:

   a. The revolving loan amount shall be increased by Five Hundred Ten Thousand and 00/100 ($510,000.00) Dollars to an aggregate of Two Million Seven Hundred Sixty Thousand and 00/100 ($2,760,000.00) Dollars. Said additional funds shall be disbursed as follows:

      i. $150,000.00 shall be paid to the Town of Belmont pursuant to the terms of the First Amendment to Purchase and Sale Agreement which requires the payment by Borrower of funds in the amount of $130,000.00 for Extension Option payments and funds in the amount of $20,000.00 for payment for attorneys' fees incurred by the Town of Belmont;
      ii. $30,000.00 shall be paid to CHA Consulting, Inc. to be applied to outstanding amounts owed by Borrower;

iii. Up to $30,000.00 shall be paid to Telaman Insurance & Financial Network as partial payment on the premium for an environmental pollution liability policy;
iv. $25,000.00 shall be paid to Fletcher Tilton, P.C. to be applied to outstanding attorneys' fees;
v. $191,250.00 shall be retained by Lender to be applied to debt service requirements under the Term Note for the period April 1, 2016 through August 1, 2016; and
vi. $83,750.00 shall be retained by Lender to be applied to debt service requirements under the Revolving Term Note for the period April 24, 2016 through August 24, 2016.

b. The Maturity Date of the Revolving Term Note shall be extended to August 31, 2016.

c. The interest rate of the Revolving Term Note shall remain at a floating rate equal to four and one quarter (4.25%) percent above the Wall Street Journal Prime Rate (as defined in the Revolving Term Note) with a minimum interest rate of seven and one half (7.50%) percent and with a default interest rate of five (5%) percent plus the rate pursuant to the Revolving Term Note.

Borrower shall execute such documents, including without limitation, an Amended and Restated Revolving Term Note, Amended and Restated Business Loan Agreement(s), Amended and Restated Commercial Mortgages, Assignments of Leases and Rents and Security Agreements, and a Collateral Assignment and Security Agreement in Respect of Contracts, Licenses, Permits and Approvals further encumbering the Properties, as required by Lender.

3. **Conditions.** Lender's agreements hereunder are subject to Borrower complying with each of the following conditions:

a. Delivery to Lender of a fully executed sale agreement with Toll Bros., Inc. (acceptable to Lender);
b. Delivery to Lender of fully executed purchase agreement and amendment (acceptable to Lender) with the Town of Belmont;
c. Delivery to Lender of the approved modification, acceptable to Lender, of the milestones set forth in that certain Town of Belmont Planning Board Extension for Special Permit with Design and Site Plan Review and waivers dated December 4, 2015;
d. Delivery to Lender of an acceptable agreement executed by CHA Consulting, Inc. subordinating its mechanics lien to the advances to be made under the Amended and Restated Revolving Term Note and related Amended and Restated Mortgages, Assignments of Leases and Rents and Security Agreements (see Notice of Contract recorded with Middlesex South District Registry of Deeds in Book 65099, Page 475; Statement of Account recorded

in Book 66754, Page 195; Verified Complaint recorded in Book 66773, Page 89);

e. Zoning opinion from Borrower's counsel opining that all permits and approvals issued for the Cushing Village development remain in full force and effect; and

f. Payment of Lender's counsel's fees.

4. **Forbearance.** Lender agrees that, subject to the Borrower's compliance with each and every term contained herein, it shall forbear from exercising its rights and remedies under the Term Note Loan Documents and the Revolving Term Note Loan Documents, and shall waive its right to collect interest at the default rate of interest provided for in the Term Note and the Revolving Term Note, through the new maturity date of August 31, 2016 (hereinafter referred to as the "Forbearance Period"), further provided that Borrower shall remain in compliance with all terms and provisions of the Loan Documents.

Upon not less than three (3) business days advance written notice, and on not more than three occasions between the date of this Agreement and August 31, 2016, Lender shall provide Toll Bros., Inc. a written statement as to all amounts due from Borrower to Lender and required to be paid to release all of the Mortgages and related security agreements granted by Borrower to secure the Term Loan and the Revolving Term Loan. Borrower hereby authorizes Lender to provide to such written statements to Toll Bros., Inc. as set forth herein without further consent from Borrower.

5. **Forbearance Fee.** Borrower acknowledges that the Term Note and the Revolving Term Note each provide for a default rate of interest equal to the aggregate of five (5%) percent plus the applicable rate of interest provided for under the applicable Note. Lender has agreed to waive its right to collect interest at the default rate through August 31, 2016. To induce Lender to consent to the requested actions, and in consideration of Lender's waiver of its right to collect the default rate of interest through August 31, 2016, in addition to all amounts payable under the Term Note and the Revolving Term Note, Borrower agrees that it shall pay to Lender an amount equal to Three Hundred Fifty Thousand and 00/100 ($350,000.00) Dollars upon payment in full of said Notes or upon acceleration of all amounts due under said Notes.

6. **Termination of Forbearance, Forgiveness and Modification.** Notwithstanding anything herein to the contrary, in addition to the events of default provided in the Loan Documents, the failure by the Borrower to strictly comply with each and every term and condition contained herein or in any document executed in connection herewith shall constitute an event of default. Upon such an event of default:

a. Lender's agreement to postpone or suspend its right to exercise its rights and remedies under the Loan Documents shall automatically and without further action terminate and be of no force and effect, without any further passage of

time or forbearance of any kind and without notice except as may be required by law; and

b. Lender's agreement to extend the Maturity Dates of the Term Note and the Revolving Term Note, and to otherwise modify the terms of each of said notes as more particularly set forth herein, shall terminate and the original provisions of said notes, including without limitation any default interest rates, shall be reinstated.

7. **Rights and Remedies Not Exclusive; No Waiver**. Except as expressly provided herein, nothing contained herein shall be deemed to be a waiver by Lender of any of its rights and remedies against Borrower, nor a waiver of any defaults, whether now existing or hereafter arising. Further, other than as expressly stated in this Agreement, the failure by Lender heretofore or hereafter to have exercised its rights and remedies shall not: (a) constitute a waiver of the right to exercise any or all of such rights and remedies hereafter without notice, demand or protest; (b) constitute an agreement to forbear from at any time or from time to time thereafter exercising such rights or remedies; (c) constitute any sort of course of dealing, novation or accord and satisfaction; or (d) in any way prejudice, impair, or limit any of Lender's rights or remedies against Borrower.

8. **Release of the Lender**. Each Borrower hereby confirms that as of the date hereof each has no claim, set-off, counterclaim, defense, or other cause of action against Lender, its directors, officers, shareholders, employees or agents, including, but not limited to, a defense of usury, any claim or cause of action at common law, in equity, statutory or otherwise, in contract or in tort, for fraud, malfeasance, misrepresentation, financial loss, usury, deceptive trade practice, or any other loss, damage or liability of any kind, including, without limitation, any claim to exemplary or punitive damages arising out of any transaction between Borrower and Lender. To the extent that any such set-off, counterclaim, defense, or other cause of action may exist or might hereafter arise based on facts known or unknown that exist as of this date, such set-off, counterclaim, defense and other cause of action is hereby expressly and knowingly waived and released by Borrower. Borrower acknowledges that this release is part of the consideration to Lender for the financial and other accommodations granted by Lender in this Agreement.

9. Borrower represents and warrants to Lender that each understands the terms of this Agreement and the consequences of the execution and delivery of this Agreement and has entered into this Agreement and executed and delivered all documents in connection herewith of their free will and accord and without threat, duress or other coercion of any kind by any person.

9. **Complete Agreement; Waivers and Amendments, Other**. This Agreement is the entire agreement with respect to the matters contemplated hereby, and supersedes any prior understandings and contemporaneous oral agreements, if any, of the parties. No change, addition to, amendment or modification of the

terms of this Agreement shall be effective unless in writing and executed by all the parties hereto. Lender is under no obligation to extend, or consider extensions of the terms hereof and of the Loan Documents. This Agreement may be executed in counterparts, and a fax or electronic image of a signature constitutes an original.

10. **Waiver of Automatic Stay**.

(a) Each Borrower recognizes that Lender's execution and delivery of this Agreement and the performance by Lender of its obligations hereunder, furnish to each Borrower a reasonable opportunity to satisfy Borrower's obligations to Lender and thereby confers a significant benefit upon Borrower.

(b) Each Borrower agrees that, in the event of a voluntary or involuntary liquidation or reorganization case by or against said Borrower under bankruptcy, receivership or other insolvency law, Lender shall be free to pursue collection and other remedies with respect to the collateral and the additional collateral provided hereunder without opposition or interference by Borrower, that Lender shall be entitled to seek and obtain relief from the automatic stay under Section 362 of the Bankruptcy Code without objection by Borrower, and that any rights to stay, enjoin, or otherwise delay or impede Lender's remedies against the collateral and additional collateral which might be available to Borrower, including any rights under Sections 105 and 362 of the Bankruptcy Code, are hereby released and waived by Borrower to the extent permitted by applicable law.

11. **Confirmation**. The Term Note, the Revolving Term Note and the other Loan Documents evidencing the loans herein referenced, together with interest accrued and accruing thereon, and all fees, costs, expenses (including legal fees and expenses) and other charges now or hereafter arising are due unconditionally by Borrower without offset, and without defenses or counterclaims.

12. **Confirmation of Guarantors**. Guarantors hereby (i) consent to the modifications to the Term Note and Revolving Term Note and (ii) agree and confirm that the respective Unlimited Guaranties continue in full force and effect as to all obligations contained therein and the execution and delivery of this Agreement, nor the amended and restated documents executed in connection herewith, in no way impairs or adversely affects or limits the validity, existence or enforceability of the Unlimited Guaranties.

13. **Binding Effect of Documents**. Borrower acknowledges, confirms and agrees that (a) each of the Loan Documents to which Borrower is a party has been duly executed and delivered by Borrower, and each is in full force and effect as of the

date hereof, (b) the agreements and obligations of Borrower contained in such documents and in this Agreement constitute the legal, valid and binding obligations of each, enforceable against each in accordance with their respective terms, and Borrower has no defense to the enforcement of such obligations, and (c) Lender is and shall be entitled to the rights, remedies and benefits provided for in the Loan Documents and applicable law. Borrower reaffirms and republishes each of the Loan Documents to which Borrower is a party.

14. **Governing Law**. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts. Borrower irrevocably submits to the nonexclusive jurisdiction of any Federal or state court sitting in Massachusetts, over any suit, action or proceeding arising out of or relating to this Agreement. In the event that any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

15. ***JURY WAIVER. BORROWER AND LENDER EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY, AND AFTER AN OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL, WAIVE (A) ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING IN CONNECTION WITH THIS AGREEMENT, THE OBLIGATIONS, ALL MATTERS CONTEMPLATED HEREBY AND DOCUMENTS EXECUTED IN CONNECTION HEREWITH AND (B) AGREE NOT TO SEEK TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CAN NOT BE, OR HAS NOT BEEN WAIVED. BORROWER CERTIFIES THAT NEITHER LENDER NOR ANY OF ITS REPRESENTATIVES, AGENTS OR COUNSEL HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT LENDER WOULD NOT IN THE EVENT OF ANY SUCH PROCEEDING SEEK TO ENFORCE THIS WAIVER OF RIGHT TO TRIAL BY JURY.***

16. **Time of the Essence**. Time is of the essence of this Agreement.

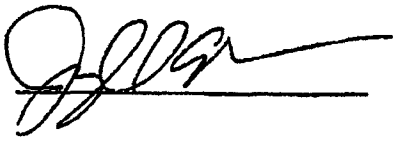
This Conditional Forbearance and Loan Modification Agreement is executed as a sealed instrument as of the date stated herein.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed.

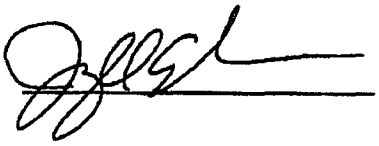
Witness:

Borrower:



Smith Legacy Partners Series, LLC

By: _____
Christopher Starr, Manager



Smith Legacy Partners II, LLC

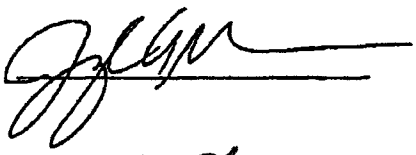
By: _____
Christopher L. Starr, Manager

Smith Legacy Partners III, LLC

By: _____
Christopher L. Starr, Manager

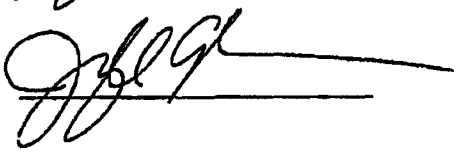
505-507 Common Street, LLC

By: _____
Christopher L. Starr, Manager



527 Common Street, LLC

By: _____
Christopher L. Starr, Manager



S.J.S. Realty Corp.

By: _____
Christopher Starr, Vice President

Witness:

Guarantor:

Christopher L. Starr

Ruth S. Jenkins Irrevocable Trust dated February 27, 2006

By: _____
Christopher L. Starr, Trustee

By: _____
Annette S. Loring, Trustee

By: _____
Stephen D. Starr, Trustee

NORTHERN BANK & TRUST COMPANY

By: _____
John P. Dilorio, Jr., Senior Vice President

SECOND AMENDMENT TO AGREEMENT OF SALE

This Second Amendment to Agreement of Sale (the "**Second Amendment**") is made this ___ day of September, 2016 by and among **STARR CAPITAL PARTNERS, LLC**, a Delaware limited liability company, **SMITH LEGACY PARTNERS SERIES, LLC**, a Delaware limited liability, **SMITH LEGACY PARTNERS II, LLC**, a Massachusetts limited liability, **505-507 COMMON STREET, LLC**, a Massachusetts limited liability and **527 COMMON STREET, LLC**, a Massachusetts limited liability, all with a principal place of business at 6 Littlefield Road, Acton, Massachusetts 01720, ATTN: Christopher L. Starr, Email: chrisstarr123@gmail.com (collectively, the "**Seller**"), and **TOLL BROS., INC.**, a Pennsylvania corporation, with a principal place of business at 250 Gibraltar Road, Horsham, Pennsylvania, 19044 (the "**Buyer**").

WHEREAS, Seller and Buyer are parties to that certain Agreement for Sale pertaining to certain property located in Belmont, Middlesex County, Massachusetts dated March 14, 2016 (as heretofore amended, the "**Agreement**"). Capitalized terms not otherwise defined in this Second Amendment will have their respective meanings as set forth in the Agreement; and

WHEREAS, the parties wish to amend certain provisions of the Agreement as set forth herein.

NOW, THEREFORE, for consideration paid, the receipt and sufficiency of which is hereby acknowledged, the Buyer and Seller do hereby agree as follows:

1. Reference is made to a letter from Mark Donahue to Chairman Michael Battista dated July 27, 2015 and attached hereto as Exhibit A (the "Special Permit Extension Request"). Seller confirms that such letter was physically delivered (either by hand, facsimile, electronic mail or courier) on July 27, 2015 (not simply deposited in the mail).

2. The parties confirm that the Property being purchased by Buyer includes Seller's Plans as the same relate to the environmental condition and remediation of the land components of the Property. The Purchase Price includes a reimbursement to the Seller for the costs incurred by Seller in connection with obtaining such Seller's Plans, obtaining insurance coverage for environmental risks through the date of Closing, and performing remediation of the environmental conditions up to the date of Closing (the "Environmental Reimbursement Component"). The parties agree that the portion of the total Purchase Price (such total Purchase Price being Fourteen Million Two Hundred Sixty Thousand and no/100 Dollars ($14,260,000)) which constitutes the Environmental Reimbursement Component for the purposes of applying for Brownfield tax credits is $1,689,461.73. For purposes of clarity, the total Purchase Price of $14,260,000 is accordingly the sum of the $1,689,461.73 Environmental Reimbursement Component plus a balance of $12,570,538.27. The amount of the Environmental Reimbursement Component has been documented by Seller to Buyer.

Seller confirms that the Buyer will have no obligation to pay the premiums necessary to keep the Environmental Insurance Policy in full force and effect after Closing. However, if Buyer elects to pay such premiums to keep the Environmental Insurance Policy in full force and effect for any period of time following Closing up to and including November 2025, then the

costs thereof will be deemed to be Remediation Costs for purposes of Section 26. Any costs associated with the extension of the Environmental Insurance Policy beyond November 2025 will not be deemed Remediation Costs unless approved in writing by Seller as part of the mutually approved scope of Remediation.

3. Exhibit I to the Agreement is hereby amended to delete item 1 (Arigna Belmont, LLC).

4. (A) The term "Retail Space" throughout the Agreement is replaced with the term "Retail Unit".

(B) Section 26 of the Agreement is amended and restated as set forth on Exhibit J hereto.

(C) (1) Pursuant to Section 26(a), attached hereto as Exhibit B is a list of the contractors selected by Buyer and the budget for the work described in Section 26(a). Any adjustments to Exhibit B made by Buyer prior to Closing will be provided to Seller pursuant to Section 26(a). The parties acknowledge that the attached budget is prepared under the assumption that Starbucks (a tenant under an Existing Lease) vacates the Property during the time frame specified in the budget. If Starbucks does not vacate, then the costs of delivering the Retail Unit as well as the costs of performing all other work necessary for the Project (both residential and retail components) will be increased (all such costs resulting from Starbucks not timely vacating the Property are herein referred to as the "Non-Closure Cost Increases"). Seller agrees that the Retail Price will include one hundred percent (100%) of the Non-Closure Cost Increases (for example, and without limitation, if Starbucks' failure to vacate the Property during construction requires phasing of the delivery of the Project and implementation of associated measures such as the installation of a temporary "breakdown wall" in the parking structure, or the demobilization and remobilization costs of various contractors due to project phasing coordination, all associated additional costs, whether with respect to the retail components only, the residential components only, or both, will be deemed Non-Closure Cost Increases included in the Retail Price).

(2) With respect to Non-Closure Cost Increases, when commercially reasonable and feasible, Buyer will provide Seller an opportunity to review anticipated Non-Closure Cost Increases and to consult with Buyer regarding the same. Seller acknowledges that Seller will have no approval rights over the incurring of such Non-Closure Cost Increases, it being understood that such determinations will be solely within Buyer's control. The intention of this provision is to provide the Seller the opportunity to demonstrate potential cost savings opportunities to Buyer for Buyer's consideration.

5. Pursuant to Section 26(b)(4), attached hereto as Exhibit C is the mutually approved scope of work for the Remediation.

6. Attached as Exhibit D is a complete copy of the initial March 14, 2016 Agreement of Sale with all Exhibits thereto. Exhibit D is included to confirm the parties' mutual agreement as to the Exhibits to the initial Agreement of Sale.

7. The Due Diligence Period will expire upon the mutual execution of this Second Amendment.

8. The Closing under the Option Agreement has been extended to September 30, 2016 as provided on the Second Amendment to Purchase and Sale Agreement attached hereto as Exhibit

G. If Closing occurs, Buyer agrees to be solely responsible (as additional Purchase Price) for the payment of the additional fifteen thousand and no/100 dollars ($15,000) referenced in Section 2/Section 33 of the referenced Second Amendment.

9. Attached hereto as Exhibit H is a draft Closing Statement prepared by Seller detailing to the best of Seller's knowledge, as of the date hereof, the extension fees, closing costs, attorneys' fees, creditors, back taxes, and liens that Seller is required to satisfy, payoff and discharge at Closing (assuming a Closing date of September 30, 2016), together with an accounting of the sources of funds necessary to satisfy and discharge all such extension fees, closing costs, attorneys' fees, creditors, back taxes and liens. While Seller and Buyer recognize that such extension fees, closing costs, attorneys' fees, creditors, back taxes and liens are continuing to accrue through Closing, Seller acknowledges it will in good faith obtain institutional payoff letters (where applicable) and such other information as reasonably necessary to provide reasonable estimates of such items (assuming a September 30, 2016 Closing) on the Exhibit H draft Closing Statement.

10. (A) Section 18(a) of the Agreement is amended by deleting conditions (viii) and (ix) (it being acknowledged by Buyer that neither the Special Condition nor the RAM Condition will be conditions to Closing;

(B) Section 18(a) of the Agreement is amended to include the following as additional conditions to Closing:

"(x) receipt by Buyer of a fully executed amendment to the Starbucks Existing Lease(s) (the "Starbucks Amendment") in form satisfactory to Buyer, in Buyer's discretion. If Buyer fails to provide to Seller a draft Starbucks Amendment in a form acceptable to Buyer (the "Target Amendment") no later than September 16, 2016, then Buyer will either waive this condition to Closing or Buyer will terminate this Agreement pursuant to Section 18(c) of the Agreement based on a failure of this condition. If Buyer provides the Target Amendment to Seller by the stated date, then the first clause of this condition will be amended to provide for the receipt by Buyer of a fully executed Starbucks Amendment in reasonable conformance with the Target Amendment in all material respects;

(xi) unappealable extension of the Special Permit to July 27, 2017. In the event the Planning Board grants an extension for a shorter period of time, Buyer will within three (3) business days thereafter either confirm in writing to Seller such shorter time is acceptable or elect to terminate this Agreement pursuant to Section 18(c) of the Agreement based on a failure of this condition. For the purpose of this Agreement, the term "unappealable" shall mean that any applicable appeal period within which to appeal the subject matter shall have elapsed without any appeal thereof having been filed;

(xii) unappealable final execution and delivery by Town to Buyer of the documents set forth on Exhibit E hereto (the Land Development Agreement, Parking Management Agreement and Parking Easement Agreement) recognizing Buyer as the developer of the Project;

(xiii) reasonable evidence that all preconditions for the discontinuance of the portion of Horne Road described in the Option Agreement have been unappealably satisfied (Buyer confirms that this condition will be satisfied at Closing by delivery to Buyer from the Town of (1) a fully executed and recordable quitclaim release deed from the Board of Selectman for such portion of Horne Road stating compliance with M.G.L. c.82, Section 32A and M.G.L. c.44,

Section 63A, (2) a certified copy of Town Meeting vote supporting abandonment, and (3) certified copy of the abandonment plan);

(xiv) delivery to Buyer of a fully executed and recordable Notice of Lease Termination Agreement and Restrictive Covenant with respect to the CVS Pharmacy, Inc. lease, in the form attached as Exhibit I hereto, modified to remove the phrase "shall become null and void at the option of Tenant" from Section 1 of such document."

11. Attached hereto as Exhibit E are mutually approved versions of the Land Development Agreement, Parking Management Agreement and Parking Easement Agreement/Easement Deed to be executed and delivered by the Closing. Seller acknowledges that pursuant to the Easement Deed, the owner of the Retail Unit will be responsible for paying the costs of maintaining the parking spots controlled by the Town pursuant to the Parking Easement Agreement/Easement Deed (regardless of whether or not the Parking Management Agreement continues to be in full force and effect or is terminated/not renewed).

12. Attached hereto as Exhibit F is the fully executed and delivered Starbucks Estoppel.

13. The parties acknowledge that Buyer is currently in the process of updating/performing an ALTA Survey for the Property (the "Updated Survey"). If the Updated Survey indicates any material adverse matters not shown on the Seller's Plans, such matters will be deemed "Unpermitted Exceptions" under Section 3(c)(2)(A) for which Buyer's sole remedy will be to terminate the Agreement and obtain a refund of the Deposit.

14. All terms, covenants, conditions and provisions of the Agreement shall remain unchanged and are hereby reinstated, ratified, affirmed and remain in full force and effect, as modified by this Second Amendment.

15. This Second Amendment may be executed in counterparts, each of which shall be an original all which, when taken together, shall constitute one Agreement. Executed copies of this Agreement may be delivered by facsimile, pdf or email transaction. This Second Amendment will not be valid unless all parties have signed and a pdf copy thereof has been provided to each of the signatories.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

STARR CAPITAL PARTNERS, LLC

By: Christopher Starr
Title: Manager

SMITH LEGACY PARTNERS SERIES, LLC

By: Christopher Starr
Title: Manager

SMITH LEGACY PARTNERS II, LLC

By: Christopher Starr
Title: Manager

505-507 COMMON STREET, LLC

By: Christopher Starr
Title: Manager

527 COMMON STREET, LLC

By: Christopher Starr
Title: Manager

TOLL BROS., INC.,

By: John McHugh

Exhibit A

Battista Letter – July 27, 2015

Exhibit B

Contractors and Budget

Exhibit C

Scope of Work for Remediation

Exhibit D

Confirmation of original Exhibits to Agreement of Sale

Exhibit E

Form of Land Development Agreement, Parking Management Agreement and Easement Deed

Exhibit F

Starbucks Estoppel

Exhibit G

Second Amendment to Purchase and Sale Agreement (Parking Lot Option Agreement with Town)

Exhibit H

Draft Closing Statement

Exhibit I

CVS Termination

Exhibit J

Section 26 Amended and Restated

26. Retail Unit Purchase Right. The Seller's option to purchase the Retail Unit is a material inducement for its agreement to sell the Property to Buyer. Accordingly, following Closing and completion of the Retail Unit in accordance with the terms of the Approvals and hereof, and provided Seller is not in default under this Agreement, Buyer shall notify Seller in writing of Seller's right to purchase the Retail Unit at the Project (the "**Sale Notice**"), which notice shall be sent no earlier than the date that is one (1) month following the date Buyer receives its temporary certificate of occupancy for the Retail Unit portion of the Property. Buyer will in good faith endeavor to deliver the Sale Notice on or about the date specified in the preceding sentence. For a period of thirty (30) days following the date Seller receives the Sale Notice, Seller shall have the right to purchase one hundred percent (100%) of the Retail Unit at the Property from Buyer, by delivery of written notice (the "Option Exercise Notice") to Buyer on or before the expiration of such period, which purchase shall be subject to the following terms and conditions:

(a) Following substantial completion of the Project and approval of the condominium documents for the Project in the manner hereinafter provided (the "Condominium Documents"), Buyer will submit the Project to a condominium regime (the "Condominium") in accordance with the provisions of M.G.L. c.183A. It is anticipated that the Condominium will consist of two primary units: the Retail Unit and a residential unit containing one hundred fifteen (115) apartment units (the "Residential Unit"), which Residential Unit may then be subject to a so-called secondary condominium regime. The foregoing shall not prohibit Buyer from creating more than one Residential Unit at the primary level, or establishing the parking areas as a separate unit. Seller acknowledges that it is the current intent that all of the parking spaces at the Condominium will be a common element managed by a garage manager employed by the condominium association for the Condominium (the "Association"), and that the Buyer's and Seller's rights to their respective parking spaces will be in the form of exclusive easement rights.

The purchase price (the "Retail Price") to be paid by Seller to Buyer for the Retail Unit will be equal to the sum of (1) the actual cost incurred by Buyer of delivering the Retail Unit to Seller, plus (2) a fee of 1.5% of the actual cost under (1) above. Actual costs of delivering the Retail Unit will include, without limitation, all soft costs (approvals, permits, design and engineering), hard costs (materials and labor), management costs and fees (costs of construction management and general contractor which may or may not be based on a guaranteed maximum price), insurance costs, financing costs (including interest and fees; if no third party financing has been obtained in connection herewith, then financing costs will be deemed to be the Prime Rate, as published in the Wall Street Journal, plus two percent (2%), but not more than six percent (6%) per annum; if third party financing has been obtained, then the actual costs of the third party financing will determine the financing costs), all costs under the Existing Leases (including delivery delay penalties and fees charged by tenants, damages of any nature, including consequential, from closure of any tenants under Existing Leases, and related rent offsets), a prorata share of the costs of Remediation of the Existing Environmental Conditions including the costs of the so-called "cost cap" environmental insurance and any deductibles thereunder (which proration of Remediation costs will be fifty two percent (52%) of the Remediation costs being paid by Seller and forty eight percent (48%) of the Remediation costs being paid by Buyer, it being understood that such proration is determined by the proportion of structured parking spaces allocated to the Retail Unit (i.e. 108) in comparison to the number structured parking spaces allocated to the residential

component of the Project (i.e. 99)), and a prorata share of the costs of remediation of any Unknown Conditions with the same remediation proration formula (52% to 48%) being applied to the costs of remediating any Unknown Conditions (which will be subject to adjustment for any insurance proceeds obtained under the Environmental Insurance Policy and accounting for any deductibles required to be paid thereunder), with all of the foregoing costs being documented to Seller's reasonable satisfaction. Buyer agrees that the actual costs will not include any portion of the Purchase Price for the Property or financing thereof. The Retail Unit shall be deemed to include (x) the exclusive right and easement to use 108 of the 207 structured parking spaces and the prorata costs of such 108 parking spaces will be paid by Seller in conformance with this Section 26(a), and (y) the exclusive right and easement to use all 22 surface parking spaces and the pro-rata costs of such 22 parking spaces will be paid by Seller in conformance with this Section 26(a). Seller acknowledges that the so-called 50 Town parking spaces under the Option Agreement and Land Development Agreement are a subset of the 108 structured parking spaces delivered to Seller as part of the Retail Unit, and such Retail Unit and Town parking spaces are so encumbered by the terms of the Land Development Agreement and Option Agreement and any associated licenses and easements thereunder (it being understood that the owner of the Retail Unit will assume all obligations under the Parking Management Agreement). Buyer will be responsible for selecting all contractors and determining the budget but will provide Seller notice of the selected contractors and the budget at Closing;

(b) Seller acknowledges that costs of the Remediation of the Existing Environmental Conditions for the Project may exceed the mutually agreed Remediation budget of One Million Three Hundred Ten Thousand and no/100 dollars ($1,310,000). In addition, if there are Unknown Conditions which are not fully covered by the Environmental Insurance Policy (including any deductibles thereunder), then there may be additional remediation costs in connection with the Project ("Remediation Costs – Unknown Conditions"). In regards to these elements, the parties agree as follows:

(1) all costs of remediation (whether for Remediation of Existing Environmental Conditions or for remediation of Unknown Conditions) shall be components of determining the "actual costs" (on a pro-rata basis as described in Section 26(a) above) of delivering the Retail Unit under Section 26(a)(1) above.

(2) if the cost of Remediation of the Existing Environmental Conditions for the Project exceeds One Million Four Hundred Forty One Thousand and no/100 Dollars ($1,441,000) (after adjustment for the receipt of any net proceeds under the Environmental Insurance Policy as described in Section 26(a) above), then all such excess costs are herein referred to as "Remediation Overruns - Known Conditions". If Seller exercises its right to purchase the Retail Unit then Seller will be responsible for one hundred percent (100%) of the Remediation Overruns – Known Conditions, not simply the prorata portion thereof attributable to the Retail Unit.

(3) if the cost of Remediation of Existing Environmental Conditions and any

Unknown Conditions exceeds Two Million Five Hundred Thousand and no/100 Dollars ($2,500,000) (the "Upset Threshold") (after adjustment for the receipt of any net proceeds under the Environmental Insurance Policy as described in Section 26(a) above), then Seller will pay the actual amount of all such Remediation costs in excess of the Upset Threshold as such costs are incurred and billed to Seller by Buyer (not as an increase in the Retail Price, but to be paid irrespective of whether Seller elects to purchase the Retail Unit), failing which Seller will forfeit its right to purchase the Retail Unit under this Section 26.

(4) Seller and Buyer agree that the budget for the Remediation of the Existing Environmental Conditions is One Million Three Hundred Ten Thousand and no/100 Dollars ($1,310,000). Seller and Buyer further agree that during the Due Diligence Period a mutually approved scope of work for the Remediation (with the intended goal of obtaining "Permanent Solution Status without Conditions") will be established. Any changes in the scope for work for the Remediation will be subject to the parties' mutual approval, not to be unreasonably withheld or delayed.

(c) Seller shall deliver to Buyer with its election to purchase the Retail Unit a non-refundable deposit (except if Buyer defaults on its obligations pursuant to this Section) equal to ten percent (10%) of the Retail Price as established at the time of the Sale Notice;

(d) good and marketable title to the Retail Unit shall be conveyed to Seller or its designee as a condominium unit, or units, at settlement by Massachusetts Quitclaim deed in form and content satisfactory to the parties, subject to the Existing Leases and all matters of record, other than mechanics' liens, mortgages and other security instruments caused by Buyer or resulting from Buyer's activities and affecting the Retail Unit capable of satisfaction by the payment of money, all of which Buyer shall satisfy with respect to the Retail Unit on or before the Retail Unit Closing (as defined below);

(e) the Retail Unit shall be delivered to Seller as fully demised, unfinished "warm dark shell" space, in accordance with the specifications attached hereto as Exhibit F (the "**Retail Specifications**");

(f) in connection with the settlement, Buyer and Seller shall split any applicable transfer and recordation taxes and costs (other than any costs in connection with any Seller financing which shall be borne solely by Seller);

(g) settlement on the conveyance of the Retail Unit shall occur at a location mutually agreed upon by Buyer and Seller and shall occur on a date to be determined by Seller, but shall in no event be beyond the date that is sixty (60) days following Buyer's receipt of Seller's election to purchase the Retail Unit;

(h) at settlement, Buyer will represent and warrant that the Retail Unit has been constructed in a good and workmanlike manner in compliance with all applicable laws and ordinances in all material respects, and shall be free from material defects in materials and workmanship, which representation and warranty shall survive for a

period of one (1) year following the date the certificate of occupancy is issued. At settlement, Buyer shall assign to Seller or its designee all warranties from contractors, manufacturers and suppliers with respect to the Retail Unit;

(i) taxes and other applicable charges shall be apportioned at settlement;

(j) in the event a party defaults on its obligations set forth in this Section, Buyer's sole remedy shall be to retain the deposit paid by Seller as liquidated damages, and Seller's sole remedy shall be to pursue specific performance and recover its costs of enforcement, including reasonable attorney's fees; provided however that if specific performance is unavailable due to the intentional and wrongful actions of Buyer (i.e. sale to a third party), then Seller shall be entitled to pursue an action for damages, provided in all events Buyer shall not be liable for punitive, special or consequential damages. Seller's action for specific performance must be commenced, if at all, within sixty (60) days of the expiration of the cure period specified in any notice; and if not so commenced, Seller shall be deemed to have terminated its option to purchase the Retail Unit and if Buyer was in default then the deposit shall be returned to Seller;

(k) Condominium Documents

(i) Upon completion of the Condominium Documents (but in no event later than thirty (30) days prior to substantial completion of the Retail Unit), the Buyer shall deliver to the Seller one (1) copy of the proposed Condominium Documents, including one set of any plans attached to or included in the Condominium Documents, for the Seller's review and approval (except as set forth in Paragraph (v) below). The Seller's approval of such proposed Condominium Documents shall not be unreasonably withheld, delayed or conditioned. The Seller shall have the right to withhold or condition its approval with respect to any aspect of the Condominium Documents which the Seller determines, in its reasonable discretion, will materially and adversely affect or interfere with Seller's right to (1) complete construction of the improvements within the Retail Unit; (2) display reasonable signage relating to the Retail Unit; (3) access the Retail Unit, (4) as appropriate, use the roof (provided the same does not interfere with residential uses associated with the Residential Unit) for all reasonably necessary ducts, HVAC equipment, grease duct(s) and fans; and (5) install or utilize (provided the same does not interfere with residential uses associated with the Residential Unit) chases and conduits through the Project for the installation of equipment and wiring necessary for the use of Retail Unit for retail uses, including restaurant use, as set forth in the Retail Specifications. The parties further agree that the Condominium Documents will reasonably address the allocation of costs (such as "CAM") between the retail, parking and residential uses in a customary and reasonable manner, accounting for the benefits derived from common areas by each party in a fair manner (for example, it is expected that the costs of maintaining parking will be allocated on the basis of parking spots in the parking facility; however, if the Retail Unit is the sole user of the surface parking, then all costs associated with the surface parking will be allocated to the Retail Unit; finally, those costs which are appropriate to be prorated on the standard of square footage will accordingly be so prorated).

(ii) If the Seller does not provide Buyer with written notice of its approval or disapproval of the proposed Condominium Documents within sixty (60) days of the

Seller's receipt of same, the Seller shall be deemed to have approved such Condominium Documents, provided that in submitting the proposed Condominium Documents for the Seller's review and approval, Buyer shall place the following legend prominently on the outside of the envelope containing such submittal as well as at the top of the transmittal letter: **"IMPORTANT RIGHTS MAY BE LOST BY FAILURE TO ACT PROMPTLY. THIS SUBMISSION WILL BE DEEMED APPROVED 60 DAYS AFTER RECEIPT."**

(iii) If the Condominium Documents are disapproved by the Seller as provided in Section 26(k)(i)(1)-(5) above, Seller and Buyer shall consult with each other and use reasonable good faith efforts to address Seller's concerns within thirty (30) days of such disapproval by Seller. If, despite such diligent and good faith efforts, the parties are unable to agree within such thirty (30) day period, the issue shall be resolved by an Arbitrator identified by JAMS or another mutually approved Arbitrator as possessing the requisite knowledge-base and skill set to arbitrate the matter at issue. The decision rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

(iv) After Seller's approval or deemed approval of the proposed Condominium Documents, Buyer shall not materially modify, change, amend or vary from any aspect of the Condominium Documents described in Section 26(k)(i)(1)-(5) above without the Seller's prior written approval in each instance, which approval may be withheld or conditioned solely and only in accordance with the provisions hereof.

(v) The Seller shall have no right of review or approval of, or objection to, any matter in the proposed Condominium Documents relating to (1) the pricing for sale or leasing of any residential unit (or any portion thereof) or other terms of sale or leasing thereof or manner of payment therefor, (2) the number of or combination or subdivision of any residential condominium unit or residential condominium units; (3) the composition or identity of the members of the board of managers (other than the manager allocated to the Retail Unit), the Seller hereby expressly acknowledging and agreeing that the owner of the Residential Unit will, except as otherwise expressly provided herein, have control over all day-to-day decisions, Condominium Document amendments, and board voting matters for the Condominium; (4) the budget or assessment of common or special charges or collection thereof, other than provisions therein relating solely to the payment of costs associated with parking areas, provided, however, that Seller (as owner of the Retail Unit) will have no right to object to such shared parking area costs so long as the same are at commercially reasonable rates; (5) protections for owners of residential units in a building containing retail/commercial uses including, without limitation, noise and hours of operation restrictions (provided operating hours shall be commensurate with similar (permitted per Exhibit H) restaurant establishments in the area), but in no event shall any use stay open beyond 11:00 p.m.), and the prohibition of uplighting or flashing lights and easements for building maintenance; or (6) any other aspect of the Condominium Documents that does not materially and adversely affect the Retail Unit.

If Seller does not timely exercise its right to purchase the Retail Unit by delivery of the Option Exercise Notice (time being of the essence) as set forth above, or if following such exercise Seller fails to perform the obligations set forth herein, Seller's option to purchase the Retail Unit pursuant hereto shall expire and be null and void, and Buyer shall be permitted to market and sell the Retail Unit to a third-party, or retain the Retail Unit, free of any Seller interest therein. If Seller does timely deliver the Option Exercise Notice, the settlement of such transaction (the "Retail Unit Closing") shall occur within 60 days of Buyer's receipt of said notice.

Further, in no event shall the Retail Unit contain any of the uses identified on Exhibit H attached hereto (the **"Prohibited Uses"**). The deed of conveyance of the Retail Unit to Seller shall include the foregoing restriction against Prohibited Uses. Until the earlier of (a) the date Buyer conveys all Units at the Property to third-party homebuyers or the condominium association, and (b) the date Seller or Seller's tenant(s) occupy the Retail Unit, Buyer shall have the right to install and maintain on the interior side of the Retail Unit windows, such covering thereof (including without limitation paint or film) shielding the unfinished Retail Unit from public view and/or advertising products and services including without limitation the Units.

In order to protect the right of Seller to purchase the Retail Unit, at the time of Closing the parties shall record in the land records of Middlesex County a Memorandum of Contract or similar agreement obligating Buyer to construct the Retail Unit as part of its development of the Property and to offer such Retail Unit to Seller in accordance with the terms of this Agreement.

The terms of this Section 26 shall survive Closing and shall be binding on and inure to the benefit of Buyer's and Seller's successors and assigns.

THIRD AMENDMENT TO AGREEMENT OF SALE

This Third Amendment to Agreement of Sale (the "**Third Amendment**") is made this 28th day of September, 2016 by and among **STARR CAPITAL PARTNERS, LLC**, a Delaware limited liability company, **SMITH LEGACY PARTNERS SERIES, LLC**, a Delaware limited liability, **SMITH LEGACY PARTNERS II, LLC**, a Massachusetts limited liability, **505-507 COMMON STREET, LLC**, a Massachusetts limited liability and **527 COMMON STREET, LLC**, a Massachusetts limited liability, all with a principal place of business at 6 Littlefield Road, Acton, Massachusetts 01720, ATTN: Christopher L. Starr, Email: chrisstarr123@gmail.com (collectively, the "**Seller**"), and **TOLL BROS., INC.**, a Pennsylvania corporation, with a principal place of business at 250 Gibraltar Road, Horsham, Pennsylvania, 19044 (the "**Buyer**").

WHEREAS, Seller and Buyer are parties to that certain Agreement for Sale pertaining to certain property located in Belmont, Middlesex County, Massachusetts dated March 14, 2016 (as heretofore amended, the "**Agreement**"). Capitalized terms not otherwise defined in this Third Amendment will have their respective meanings as set forth in the Agreement; and

WHEREAS, the parties wish to amend certain provisions of the Agreement as set forth herein.

NOW, THEREFORE, for consideration paid, the receipt and sufficiency of which is hereby acknowledged, the Buyer and Seller do hereby agree as follows:

1. Attached hereto as Exhibit A is the Target Amendment (as defined in Section 18(a)(x) of the Agreement).

2. The Retail Unit (as defined it the Agreement) is deemed to include approximately 38,282 sq.ft. instead of 37,500, as shown on the attached Exhibit B.

3. Seller acknowledges that if Starbucks continues to occupy the Retail Unit, then the actual costs of delivering the Retail Unit (i.e. the Retail Price) will include the Tenant Allowance of Two Hundred Thousand and no/100 Dollars ($200,000) and the costs of performing Landlord's Work (all as defined under the Target Amendment and the Starbucks lease for new retail space within the Retail Unit.) In addition, Seller acknowledges that if Seller exercises the option to purchase the Retail Unit as described in Section 26 of the Agreement, it is understood that while the Retail Unit will be delivered to Seller as a "warm dark shell" as described in Section 26(e), with respect to Starbucks only (assuming Starbucks continues to occupy the Retail Unit), such delivery of the Retail Unit may include the performance of Landlord's Work in addition to the performance of Tenant's Initial Improvements. The parties further understand that the Retail Unit will be offered to Seller in its entirety (not in phases), such that when Seller acquires the Retail Unit it will acquire the same at one closing (i.e. the Retail Unit Closing) in which the entire approximately 38,282 sq. ft. of retail space will be conveyed as a "warm dark shell" (excepting only, as described above, the potential for the Starbucks retail space (assuming Starbucks continues to occupy the Retail Unit) to be delivered to Seller with Landlord's Work and Tenant's Initial Improvements work complete. Accordingly, given the scheduled

development of the entire Property, it is understood that at the time of the Retail Unit Closing, Starbucks may be in full operation.

4. All terms, covenants, conditions and provisions of the Agreement shall remain unchanged and are hereby reinstated, ratified, affirmed and remain in full force and effect, as modified by this Third Amendment.

5. This Third Amendment may be executed in counterparts, each of which shall be an original all which, when taken together, shall constitute one Agreement. Executed copies of this Agreement may be delivered by facsimile, pdf or email transaction. This Third Amendment will not be valid unless all parties have signed and a pdf copy thereof has been provided to each of the signatories.

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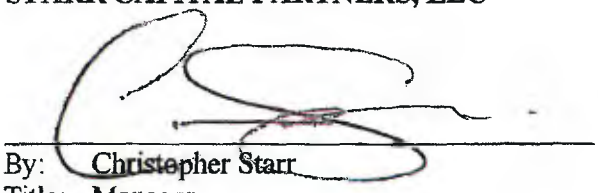
STARR CAPITAL PARTNERS, LLC



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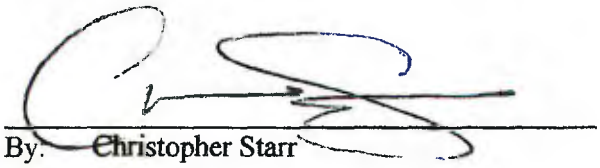
Title: Manager

SMITH LEGACY PARTNERS SERIES, LLC

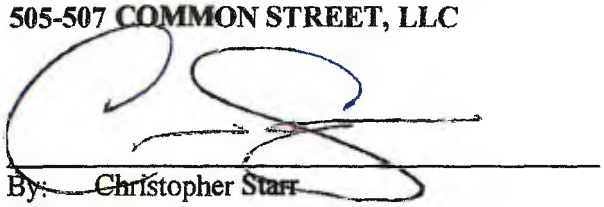
By: Christopher Starr
Title: Manager

SMITH LEGACY PARTNERS II, LLC



By: Christopher Starr
Title: Manager

505-507 COMMON STREET, LLC

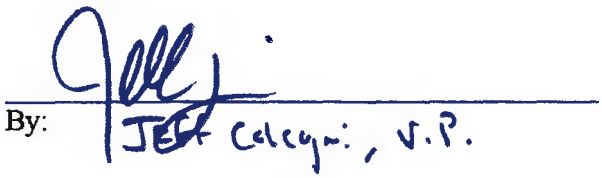


By: Christopher Starr
Title: Manager

527 COMMON STREET, LLC

By: Christopher Starr
Title: Manager

TOLL BROS., INC.,



By:

Exhibit A

Target Amendment

SECOND AMENDMENT AND MODIFICATION OF LEASE

THIS SECOND AMENDMENT AND MODIFICATION OF LEASE (this "Second Amendment") is made as of September __, 2016 (the "Effective Date") by and between SMITH LEGACY PARTNERS II, LLC, a Delaware limited liability company ("Landlord"), and STARBUCKS CORPORATION, a Washington corporation ("Tenant").

WITNESSETH

A. Pursuant to the provisions of that certain Commercial Lease dated as of October 16, 2000, as amended by that certain First Amendment and Modification of Lease dated as of June 6, 2002 (collectively, the "Lease), Tenant leased from Landlord and Landlord leased to Tenant the entire free standing building located at 112 Trapelo Road, Belmont, Massachusetts (the "Building"). Capitalized terms used and not defined herein shall have the respective meanings ascribed to them in the Lease.

B. Landlord is the owner of certain land located on Trapelo Road, Cushing Village, Belmont, Massachusetts which includes the Building, (the "Property"), which will be redeveloped into a mixed use project (the "Project") to be commonly known as Cushing Village.

C. In order for the Property to be redeveloped, (i) the Building will be demolished, and (ii) the Tenant will be relocated to certain new premises containing approximately 2,400 square feet (the 'New Premises") to be located within the Project in a new building to be known as the Winslow Building (the "New Building"), and shown on **Exhibit A**, attached hereto and made a part hereof, pursuant to and in accordance with the terms and conditions of the Commercial Lease to be entered into as of the date hereof (the "New Lease").

D. In addition, in order to redevelop the Property and construct the Project, during the construction of the Project, if Tenant elects to remain open for business to the public in the Building, Landlord will need to replace Tenant's current parking, at no cost or expense to Tenant and/or its employees or customers, with temporary parking adjacent to the Building as set forth on **Exhibit B** attached hereto and by this reference incorporated herein (the "Temporary Parking") until such time as Tenant takes possession of the premises located in the New Building.

E. Tenant shall have the right to remain open in the Building during the redevelopment of the Project, or cease operating and close for business during the redevelopment as provided below.

F. Landlord and Tenant desire to enter into this Second Amendment to amend the Lease in accordance with the terms and conditions set forth herein.

Agreement

NOW, THEREFORE, for and in consideration of the foregoing and mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant hereby agree to modify and amend the Lease as follows:

1. Redevelopment Notice. Landlord shall provide at least fifteen (15) days prior written notice to Tenant of its intention to "Commence Construction" (as hereinafter defined) on the Property ("Landlord's Commencement Notice"). The Landlord Commencement Notice will provide a date by which the Tenant will be required to vacate the Premises if it elects to close as hereinafter provided. Within forty-five (45) days after receipt of Landlord's Commencement Notice, Tenant will advise Landlord, in writing, as to whether it elects to remain open and operating in the Building during construction, or vacate and terminate the Lease. If Tenant does not notify Landlord of its intentions within forty-five (45) days after receipt of Landlord's Commencement Notice, it will be deemed to have elected to remain open and operating in the Premises. If Tenant elects, (or is deemed to have elected), to remain open during construction on the Property, at any time after Landlord Commences Construction on the Property, Landlord may provide Tenant with a second notice (the "Termination Option Notice"). The Termination

Option Notice will provide a second date by which the Tenant will be required to vacate the Premises if it elects to close as hereinafter provided. Tenant shall then, within forty-five (45) days after receipt of Termination Option Notice advise Landlord, in writing, as to whether it elects to remain open and operating in the Building, or vacate and terminate the Lease on the date set out in the Termination Option Notice. If Tenant does not notify Landlord of its intention to cease operating in the Building within forty-five (45) days after the Termination Option Date, Tenant will be deemed to have elected to remain open for business in the Building (and the Lease shall remain in effect) until the earlier to occur of (i) the "Lease Commencement Date" as defined in the New Lease, or (ii) such other date as provided herein or otherwise agreed to by the parties. "Commence Construction" as used herein, shall mean that Landlord begins actual construction work, including excavation and utility work on the Property but shall specifically not include the performance of demolition work or the preparation of land for "Temporary Parking" as defined in Paragraph 2 below.

2. Temporary Parking. If Tenant elects or is deemed to have elected, to remain open and operating in the Building during the redevelopment of the Property, Landlord shall notify Tenant as to the date upon which it will take the current parking used by Tenant located adjacent to the Building (the "Existing Parking") in connection with the redevelopment of the Property. Upon taking the Existing Parking as provided above, Landlord shall, at no cost or expense to Tenant and/or its employees or customer, provide Temporary Parking for Tenant's customers in the location shown on **Exhibit B**. Landlord shall not vary or permit to be varied the existing means of ingress and egress to the Building. Landlord shall not reduce the number of parking spaces below the greater of (i) six (6) or (ii) that which is required by law for Tenant to maintain its permit to use and occupy the Building nor shall Landlord realign the parking spaces in a manner that makes them substantially less accessible to the Building. Landlord shall place reasonable time limits on the Temporary Parking. Landlord acknowledges that parking is vital to Tenant's business operations, and that a delay in delivering and/or making the Temporary Parking available to Tenant simultaneously with Landlord's taking of the Existing Parking will cause Tenant to suffer certain losses which are difficult to quantify including, by way of illustration and not of limitation, lost profits and employee wages. Accordingly, if the Temporary Parking is not delivered and/or made available to Tenant and its customers simultaneously with the taking of the Existing Parking or anytime thereafter for any reason whatsoever, then, as compensation in the form of liquidated damages, there shall be no Base Rent or Annual Additional Rent due and payable under the Lease until such time as the Temporary Parking has been delivered and/or made available to Tenant and its customers. If, however, the Temporary Parking is not delivered and/or made available to Tenant and its customers within fifteen (15) days after the Existing Parking has been taken or at any time thereafter for any reason whatsoever, then, as additional compensation in the form of liquidated damages, Tenant shall be entitled to one (1) day of free Base Rent and Annual Additional Rent for each day of delay accruing from and after the fifteenth (15^{th}) day following the taking of the Existing Parking to the actual date that the Temporary Parking is delivered and/or made available to Tenant and its customers or, Tenant, at its sole option, may close its business operations at the Building or terminate the Lease by written notice to Landlord. If Tenant elects to close its business or terminate the Lease as aforesaid, the day for day free rent shall cease, the Lease shall terminate as provided below and Landlord shall make "Closure Payments" (as defined in paragraph 5 below) to Tenant as provided below. Landlord shall also return all monies previously deposited by Tenant, if any. Landlord and Tenant agree that the foregoing free rent and the Closure Payments are a liquidated damages remedy to compensate Tenant based on Landlord and Tenant's best estimate of the daily damages, including but not limited to lost sales and business opportunity that Tenant will incur as a result of Landlord's failure to deliver the Temporary Parking timely and/or make it available to Tenant and its customers, and such amount is not to be deemed a penalty.

3. Construction Rent. Notwithstanding anything in this Lease to the contrary, if Tenant elects, or is deemed to have elected, to remain open for business to the public during the construction and redevelopment of the Property, from and after the date that Landlord Commences Construction at the Property and/or takes the Existing Parking, Base Rent and Annual Additional Rent shall be reduced by fifty percent (50%) of the amounts otherwise due and payable under the Lease. During such period of construction (provided Tenant remains open for business to the public from the Building) , Landlord shall (a) not impair access to, visibility of or frontage of the Building; (b) not materially affect the conduct of Tenant's business therein by making it unsafe or dangerous for Tenant to operate, recognizing that

Tenant will be operating at a construction site; (c) not detract from Tenant's signage, create confusion regarding the business conducted in the Building, or materially and adversely affect the presentation of Tenant's exterior signage and storefront; and (d) shall use its commercially reasonable efforts to safe guard the Building from the ongoing construction disruption. Without limiting the foregoing, in the event that Landlord has not met its obligations with respect to any one or more of items (a) – (d) of this Section 3 during said construction period, and Tenant has provided Landlord with written notice of such failure, and the Landlord does not to cure such violation within thirty (30) days after written notice thereof, in addition to any other remedy provided by applicable law or in the Lease, Tenant shall be entitled, at its sole option, to either (i) close its business operation at the Building until such time as said obligations are met to Tenant's satisfaction during which time the Base Rent and Annual Additional Rent shall abate, or (ii) close its business operation at the Building and terminate the Lease, vacate the Premises, and receive Closure Payments from Landlord beginning as of the date of closure and vacation, which Closure Payments shall constitute complete and liquidated damages as provided in paragraph 5 below.

4. Election to Close and Cease Operations. Notwithstanding anything contained in this Lease to the contrary, if (i) Tenant elects to cease operating in the Premises during the construction of the Project on the Property as set forth in either the Landlord Commencement Notice or the Termination Option Notice, as applicable, or (ii) ceases operating as a result of the unavailability of parking or Landlord's inability to perform its obligations in any one or more of items (a)-(d) of paragraph 3 above after written notice from Tenant and failure to cure as provided above, Tenant shall, within thirty (30) days after cessation of operations, vacate the Premises and remove from the Premises any and all equipment, furnishing, signage or improvements which it is entitled to remove pursuant to the Lease ("Tenant's Vacation"). Tenant's Vacation under sub-clause (i) of the preceding sentence will occur no later than the date required in either the Landlord Commencement Notice or the Termination Option Notice, as applicable, (but in no event will Tenant be required to vacate the Premises prior to the end of the forty-five (45) day period in which Tenant shall make its election in accordance with Paragraph 1 above); Tenant Vacation under sub-clause (ii) of the preceding sentence will occur no later than the thirty (30) days following cessation of operations. Any items remaining in the Premises after Tenant's vacation shall become the property of Landlord and may be demolished as part of the redevelopment. If, and to the extent Tenant elects to cease operations in the Premises pursuant to the terms of this Second Amendment, which cessation occurs during the period of Landlord's construction, Tenant's obligation to pay Base Rent and Annual Additional Rent shall cease in total, and Landlord's obligation to provide Temporary Parking and access as set forth in Paragraph 2 above shall similarly cease, and the Lease shall terminate.

5. Closure Payment. Should Tenant agree to cease operating in the Premises during the Landlord's construction as provided in this Second Amendment, then in consideration for such closure, Landlord shall pay to Tenant the sum of (i) $35,000 per month for the first ten (10) months after "Closure" (as hereinafter defined), and then (ii) $60,000 per month thereafter until the Commencement Date under the New Lease, and then (iii) from and after the Commencement Date under the New Lease, until the earlier to occur of (A) the date Tenant opens for business to the public from the Premises, and (B) the Lease Commencement Date, $17,500 per month, but in no event more than $35,000 in the aggregate. The aforesaid $35,000 monthly sum, the $60,000 monthly sum and the $17,500 monthly sum are hereinafter collectively, and individually, referred to as the "Closure Payment(s)". The parties acknowledge that the Closure Payments constitute complete and liquidated damages and compensation to Tenant for any loss of profits, income, or other remuneration as a result of the closure of the Premises pursuant to the terms of this Second Amendment. Notwithstanding anything to the contrary contained herein, Closure Payments shall not be made unless and until Tenant Vacation has occurred. In addition, in the event Tenant elects to cease operations under Paragraph 1 above, then Closure Payments with respect thereto will not be required to be paid earlier than the date Tenant is required to cease operating in, and vacates the Premises as provided in the Landlord Commencement Notice or the Termination Option Notice, as applicable. As used herein, the term "Closure" shall mean (i) the date Tenant is obligated to close pursuant to the Landlord Commencement Notice or the Termination Option Notice (but in no event will Tenant be required to vacate the Premises prior to the end of the forty-five (45) day period in which Tenant shall make its election in accordance with Paragraph 1 above), or (ii) if Tenant elects to cease operating in accordance with any other provisions of this Second Amendment, then it is

the date of Tenant's Vacation, but in no event later than thirty (30) days after the date Tenant elects to cease operating for business in the Premises .

6. Termination and Surrender of Lease. The Lease shall automatically terminate and all of Tenant's right title and interest in and to the Building will terminate and, except for provisions of the Lease which by their express terms survive the expiration or earlier termination of the Lease, and the Lease shall be of no further force and effect upon the earlier of the following (i) the Closure, (ii) thirty (30) days after any other termination of the Lease in accordance with its terms, (iii) upon the Lease Commencement Date under the New Lease, (iv) the date Tenant elects to terminate the New Lease in accordance with the terms of the New Lease, or (v) the date the New Lease is terminated in accordance with its terms.

7. Notices. Effective as of the date of this Second Amendment, the Lease shall be amended in the following additional respects:

NOTICES. Whenever a provision is made under the Lease for any demand, notice or declaration of any kind (even if the provision does not expressly require notice in writing), or where it is deemed desirable or necessary by either party to give or serve any such notice, demand or declaration to the other party, it shall be in writing and served either personally or sent by United States mail, certified, postage prepaid, or by pre-paid nationally recognized overnight courier service, addressed at the addresses set forth below or at such address as either party may advise the other from time to time. In the event a party refuses to accept delivery of a properly issued notice, the date of refection shall be deemed the date notice has been received. Any such notice, demand or declaration which does not comply with the foregoing requirements above shall be ineffective for purposes of the Lease.

To Landlord at:	Smith Legacy Partners II, LLC 6 Littlefield Road Acton, MA 01720 Phone: (978) 502-2276
To Tenant at:	Starbucks Corporation Attn: Property Management Department RE: Starbucks Coffee Company Store #7538 Mailstop S-RE3
by mail at:	P.O. Box 34067 Seattle, WA 98124-1067
or by overnight delivery to:	2401 Utah Avenue South, Suite 800 Seattle, WA 98134 Phone: (206) 447-1575

Notices, demands, or declarations given under this Lease will be deemed to have been given when received or when receipt is refused.

Landlord shall send a duplicate copy of any notice given under Article 14 of the Lease to (i) the attention of the Law and Corporate Affairs Department at the same address, Mailstop S-LA1 and (ii) Westerman Ball Ederer Miller Zucker & Sharfstein, LLP, 1201 RXR Plaza, Uniondale, New York 11556, Attn: Stuart S. Ball, Esq.

8. Representations and Warranties. Each party hereby represents and warrants to the other that, as of the date hereof, (a) the Lease is in full force and effect and has not been modified except pursuant to this Second Amendment; (b) to the best of the representing party's knowledge, there are no defaults existing under the Lease subject to any applicable notice and/or cure periods; (c) to the best of the representing party's knowledge there exist no valid abatements, causes of action, counterclaims,

disputes, defenses, offsets, credits, deductions, or claims against the enforcement of any of the terms and conditions of the Lease; (d) this Second Amendment has been duly authorized, executed and delivered by the representing party and constitutes the legal, valid and binding obligation of the representing party.

9. Ratification of Lease Provisions. Except as otherwise expressly amended, modified and provided for in this Second Amendment, Landlord and Tenant hereby ratify all of the provisions, covenants and conditions of the Lease, and such provisions, covenants and conditions shall be deemed to be incorporated herein and made a part hereof and shall continue in full force and effect.

10. Entire Amendment. This Second Amendment contains all the agreements of the parties with respect to the subject matter hereof and supersedes all prior dealings between the parties with respect to such subject matter.

11. Binding Amendment. This Second Amendment shall be binding upon, and shall inure to the benefit of the parties hereto, and their respective successors and assigns.

12. Governing Law. This Second Amendment shall be governed by the laws of the Commonwealth of Massachusetts without regard to conflict of laws principles.

13. No Reservation. Submission of this Second Amendment for examination or signature is without prejudice and does not constitute a reservation, option or offer, and this Second Amendment shall not be effective until execution and delivery by each of the parties hereto.

14. Counterparts. This Second Amendment may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. An electronic mail or facsimile version of an executed original of this Second Amendment shall be deemed an original, and each of the parties hereto intends to be bound by an electronic mail or facsimile version of a fully-executed original hereof or of an electronic mail or facsimile version of executed counterpart originals hereof.

[SIGNATURES ON FOLLOWING PAGE]

EXECUTED under seal as of the date first above written.

LANDLORD:

SMITH LEGACY PARTNERS II, LLC,
a Delaware limited liability company

By:_____

Name:_____

Title:_____

TENANT:

STARBUCKS CORPORATION,
a Washington corporation

By:_____

Name:_____

Title:_____

EXHIBIT A

NEW BUILDING

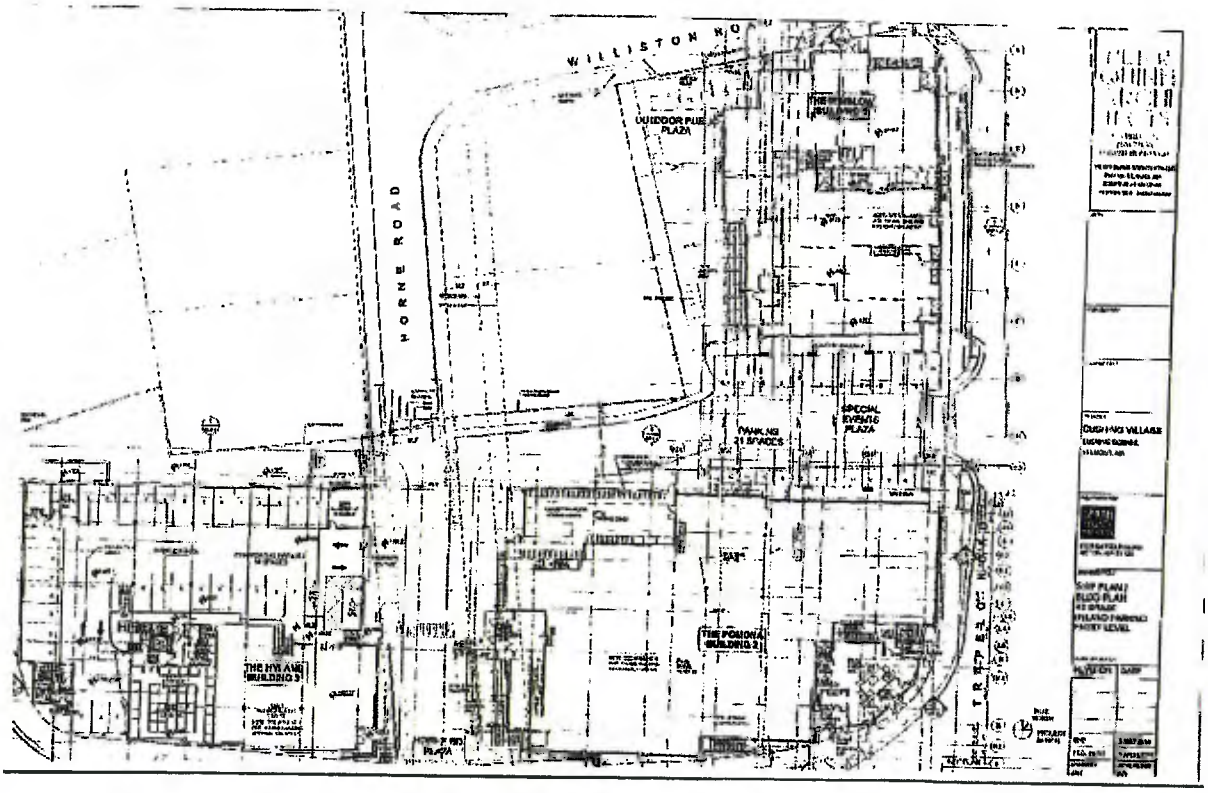
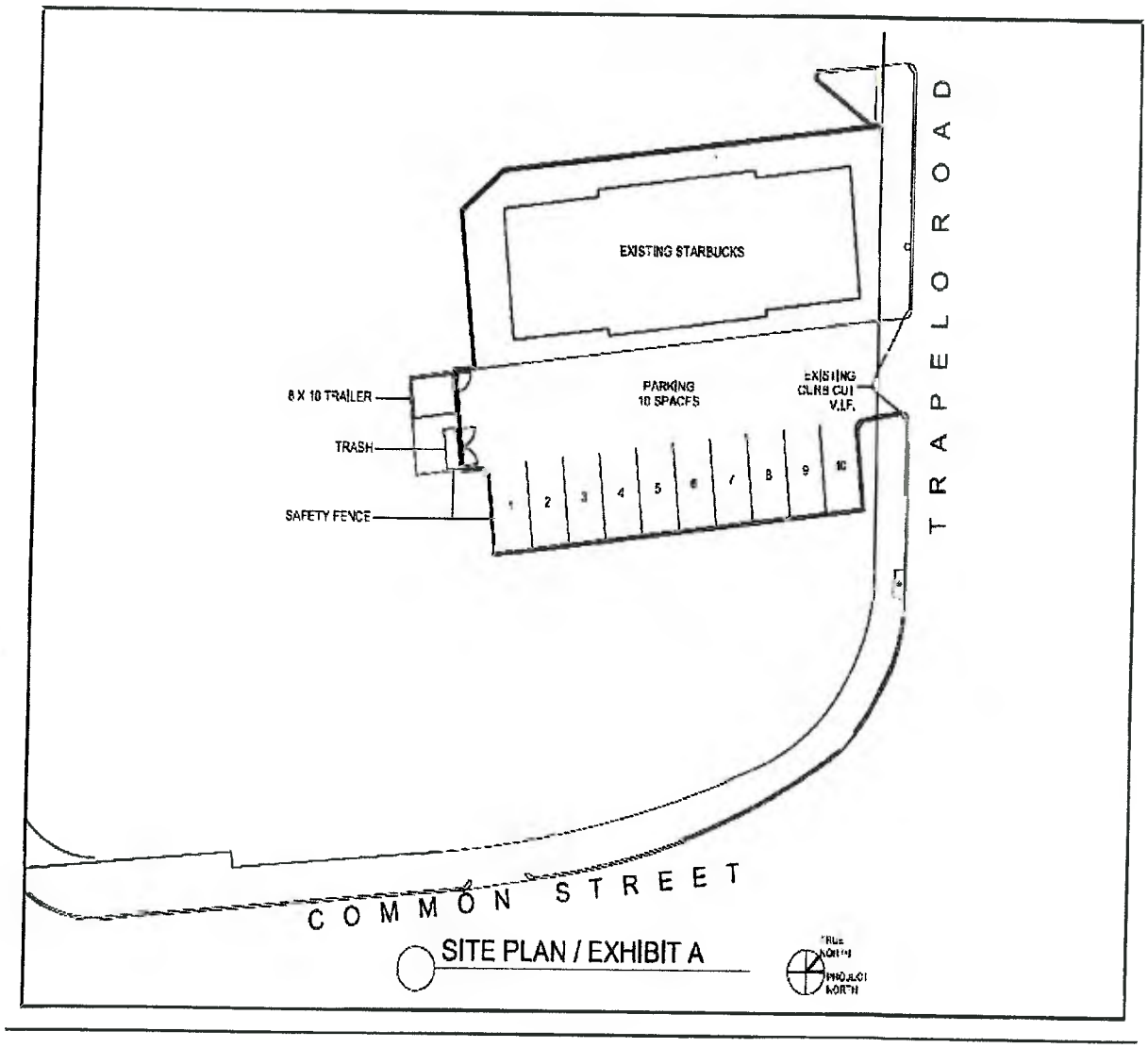


EXHIBIT B

TEMPORARY PARKING


EXISTING STARBUCKS
TRAPELO ROAD
8 X 10 TRAILER
TRASH
SAFETY FENCE
PARKING
10 SPACES
EXISTING
CURB CUT
V.I.F.
1
2
3
4
5
6
7
8
9
10
COMMON STREET
SITE PLAN / EXHIBIT A
TRUE
NORTH
PROJECT
NORTH

Janis Schiff redraft 9/28/16

COMMERCIAL LEASE

WINSLOW BUILDING

(CUSHING VILLAGE)

BELMONT, MASSACHUSETTS

between

BELMONT RESIDENTIAL, LLC

and

STARBUCKS CORPORATION

TABLE OF CONTENTS

COMMERCIAL LEASE
Multi –Tenant Building in Mixed Use Project

THIS COMMERCIAL LEASE (**"Lease"**), is made and entered into as of _____, 2016, by and between **BELMONT RESIDENTIAL, LLC**, a Delaware limited liability company, (**"Landlord"**), and **STARBUCKS CORPORATION**, a Washington corporation (**"Tenant"**).

1. PREMISES.

1.1 PREMISES. Landlord is the owner of certain land upon which a building will be built and located on Trapelo Road, Cushing Village, Belmont, Massachusetts (the **"Building"**) in a mixed –use development to be commonly known as Cushing Village (the **"Development"**) situated upon the real property legally described in **Exhibit A** attached hereto and by this reference incorporated herein (the **"Property"**). The Development will contain retail uses (the **"Retail Portion"** and residential uses (the "**Residential Portion**"). In consideration of the mutual promises, covenants, and conditions herein set forth, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, for the Term (defined below) of this Lease, those certain premises in the Retail Portion of the Building with an address of 112 Trapelo Road, Belmont, Massachusetts, containing approximately 2,400 square feet of Gross Leasable Area (as defined below) as shown by cross-hatching on **Exhibit B** attached hereto and by this reference incorporated herein (the **"Premises"**). For purposes of this Lease, the **"Gross Leasable Area"** of the Premises means the interior space of the Premises as measured from the inside face of all walls within the Premises, and shall not include the outdoor seating area, common areas or any other areas exterior to the Premises.

2. TERM.

2.1 TERM. The **"Initial Term"** shall mean ten (10) Lease Years, commencing on the Rent Commencement Date (as defined in Section 3.1 below), and ending on the last day of the tenth (10^{th}) Lease Year, unless sooner terminated or extended as provided herein. For purposes of this Lease, the word **"Term"** shall mean the Initial Term and any Extension Term (as defined in Section 2.4.1 below), and the **"Expiration Date"** shall mean the last day of the last Lease Year of the Term. Promptly after the Rent Commencement Date, Landlord and Tenant shall execute a certificate in the form of **Exhibit F** stating the actual Commencement Date (as defined in Section 2.2. below), the Rent Commencement Date, and the Expiration Date.

2.2 DELIVERY. The **"Commencement Date"** shall mean the date on which all of the following conditions have been satisfied, or waived by Tenant in writing:

(a) Landlord has substantially completed Landlord's Work (as defined in Section 4.2), excluding the Outdoor Café Area (as defined in Section 18) and the patio work described in Exhibit C, which outdoor work shall be completed within the Building Construction Contingency Period (as defined in Section 5.5);

(b) Landlord has delivered actual possession and control of the Premises to Tenant;

(c) Landlord and Tenant have executed and delivered a written notice of delivery and acceptance of the Premises in the form attached hereto as **Exhibit D** which both parties shall execute promptly and in good faith; provided however, if the Premises is not delivered to Tenant in the condition required under this Lease, Tenant shall, within such thirty (30) days, provide Landlord with a detailed statement as to why the Premises is not in such condition, including what actions need to be taken to put the Premises in the required condition (the **"Deficiency List"**);

(d) Landlord has delivered a fully executed copy of this Lease to Tenant;

(e) Landlord has removed or caused to be removed all Hazardous Substances from the Property and the Premises in compliance with Environmental Law (as hereinafter defined) accordance with Section 8.7 (B) below and provided evidence thereof from the applicable government agency or certified environmental consultant and Landlord has complied with Section 8.7(B) below; and

(f) The Premises and the Building are free and clear of all Hazardous Substances, the presence of which is in violation of applicable law.

(g) Landlord has completed certain portions of the Common Areas, consisting of the grading and surfacing of the Temporary Parking (as defined in Section 21) and the driveways, curb cuts and sidewalks serving the Building and the installation of lighting for the Temporary Parking in accordance with the terms of Section 4.1 of this Lease.

(h) Tenant has received a SNDA (hereinafter defined) signed by Landlord's mortgagee in accordance with Section 23.13 of this Lease.

Landlord shall deliver the Premises to Tenant, in the condition called for in subsections (a) through (h) above on or before (i) fifteen (15) months following the date that Landlord receives all requisite governmental approvals necessary to commence Landlord's Work provided the "**Existing Lease**" (as hereinafter defined in Section 23.23 below) is terminated in accordance with the "**Landlord's Commencement Notice**" and/or the **"Termination Option Notice"**, both as defined "**Second Amendment to Existing Lease**" (defined in Section 23.23 below) , or (ii) twenty-one (21) months following the date that Landlord receives all requisite governmental approvals necessary to commence Landlord's Work if the Existing Lease is not terminated (in accordance with the Landlord's Commencement Notice or Termination Option Notice, as applicable) and Tenant elects to remain open for business in the "**Existing Premises**" (as hereinafter defined in Section 23.12) but in no event later than thirty-six (36) months from the date that Landlord receives all requisite governmental approvals necessary to commence Landlord's Work. (the **"Scheduled Delivery Date"**). Tenant, in its sole discretion, may elect to accept delivery of the Premises prior to the aforesaid date, but is not required to do so. Tenant's election to accept delivery of the Premises prior to the Scheduled Delivery Date (or any other changes to the Scheduled Delivery Date) must be in writing and signed by a duly authorized signatory of Tenant in order to be effective. If Tenant accepts possession prior to the Scheduled Delivery Date as provided above, the Commencement Date will be deemed to have occurred for purposes of this Lease, provided that the conditions set forth above have been satisfied, and nothing herein shall derogate from Landlord's obligations with respect to subsections (a) through (h) above.

2.3 LEASE YEAR. For the purpose of this Lease, subject to the two additional provisions set forth below in this Section 2.3, the term **"Lease Year"** shall mean and refer to that period of twelve (12) full consecutive calendar months beginning with the first full calendar month of the Term and each subsequent period of twelve (12) consecutive calendar months during the Term. If the Term commences on a day other than the first day of a calendar month, then the initial fractional month of the Term plus the next succeeding twelve (12) full calendar months shall constitute the first Lease Year of the Term. If the last day of the first Lease Year falls between September 1 and January 31, then the first Lease Year shall be extended to end on the last day in February and each subsequent Lease Year shall begin on March 1.

2.4 EXTENSION. Provided Tenant, or its permitted successors and/or assigns are open and operating in the Premises in accordance with this Lease, and are not in default beyond applicable notice and cure periods provided herein at the commencement of the applicable Term, Tenant shall have the option to extend the Term for seven (7) consecutive five (5)-year period(s) (each an **"Extension Term"**) upon the same terms and conditions as contained in this Lease. The Base Rent for each Extension Term shall be as set forth in Article 3 below. To exercise an extension option, Tenant shall give Landlord notice (**"Tenant's Extension Notice"**) at least ninety (90) days prior to the then-current Expiration Date (the **"Extension Deadline"**). Tenant's Extension Notice shall be effective to extend the Term without further documentation.

3. RENT.

3.1 BASE RENT. Subject to the potential rent adjustment set forth in the paragraph below the rent schedule, Tenant shall pay to Landlord at Landlord's address provided in Section 25 of this Lease, or to such other person or at such other place as Landlord may designate in writing, rent as follows (**"Base Rent"**):

Lease Years	$ Per Square Foot Per Year	Monthly Installment	Annual Rent
1	$46.69	$9,338.00	$112,056.00
2-6	$53.69	$10,738.70	$128,864.40
7-10	$61.75	$12,349.51	$148,194.06
Extension Term(s):			
11-15	$71.01	$14,201.93	$170,423.17
16-20	$81.66	$16,332.22	$195,986.64
21-25	$93.91	$18,782.05	$225,384.64
26-30	$108.00	$21,599.36	$259,192.34
31-35	$124.20	$24,839.26	$298,071.19
36-40	$142.82	$28,565.15	$342,781.87
41-45	$164.25	$32,849.93	$394,199.15

Except as otherwise provided in Section 5.5 below, Tenant shall begin to pay Base Rent and all other charges hereunder on the date (the **"Rent Commencement Date"**) that is the earlier to occur of (a) the date Tenant opens for business in the Premises, and (b) sixty (60) days after the later to occur of: (i) the Commencement Date, and (ii) the date of Tenant's receipt of all Governmental Approvals pursuant to Section 17 below, and shall continue to pay Base Rent in monthly installments on or before the first day of every month thereafter during the Term. Tenant shall have a thirty (30) day grace period to pay Base Rent, Annual Additional Rent (as defined in Article 12) and any other charges due for the initial month of the Term (or partial month as the case may be) in order to initialize its administrative procedures. During such grace period, no late fees, interest or penalties shall accrue, nor shall Tenant be deemed to be in default. Base Rent, Annual Additional Rent (and any other charges due) for any period during the Term less than one calendar month shall be prorated on a daily basis based on a three hundred sixty-five (365) day year. Except for paying Base Rent, Annual Additional Rent and the other charges expressly provided elsewhere in this Lease, Tenant has no obligation to pay Landlord any other amounts. Landlord acknowledges and agrees that Tenant, at Tenant's option, shall have the right to pay amounts due under this Lease to Landlord via electronic funds transfer, and that Landlord shall cooperate with Tenant, if necessary, to establish that manner of payment by Tenant.

Tenant shall pay all Rent when due and payable, without any setoff, deduction or prior demand therefor whatsoever (except as otherwise expressly provided herein). If any amount of Rent is not paid within ten (10) days after notice from Landlord that such amount is past due, then in addition to paying the amount of Rent then due, the second time this occurs in any twelve (12) month period Tenant shall also pay to Landlord interest on the unpaid Rent from its due date at the rate of two percent (2%) in excess of the prime rate of interest of Bank of America or its successor (the "**Prime Rate**"); provided however, that nothing contained in this Lease shall be construed or applied in such a manner as to allow Landlord to charge or receive interest in excess of the maximum legal rate then allowed by law. Such interest shall be paid within ten (10) days of Landlord's demand therefor.

4. CONDITION OF THE PREMISES, POSSESSION, AND TENANT ALLOWANCE.

4.1 CONDITION OF THE PREMISES. Landlord shall cause the Property, including the Premises, the Building, the Development, and parking spaces, to be designed and constructed substantially as shown on **Exhibits B, B-1 and B-2,** subject to Landlord obtaining all required

governmental approvals . Subject to Section 5.5 of this Lease and the Building Construction Contingency set forth therein, Landlord represents and warrants that, as of the Commencement Date, Landlord's Work, the Common Areas, and all parts of the Premises, and the Building, including, without limitation, sidewalks, parking areas, driveways, all structural elements, the foundation, roof, roof membrane and roof system, exterior walls, plumbing, electrical, and other mechanical systems (a) shall be substantially complete and comply with all federal, state, and local laws, codes, rules and regulations, including, without limitation, grease traps, and all handicapped accessibility standards, such as those promulgated under the Americans With Disabilities Act; (**"ADA"**), and (b) shall be seismically and otherwise sound and in good, workable, and sanitary order, condition, and repair at the time of delivery of the Premises to Tenant. Landlord shall correct any latent defects that occur within one (1) year after the Commencement Date promptly after Tenant notifies Landlord of any such defect. Notwithstanding the foregoing, nothing contained in this Section 4.1 shall impair or diminish Landlord's obligations under Section 6.2 hereof.

4.2 LANDLORD'S OBLIGATIONS. At no cost to Tenant, Landlord shall provide to Tenant final plans of the Premises, the Building, and the Development that have been approved by all applicable government entities in an industry standard electronic or digital format. Landlord shall complete all items described on **Exhibit C** attached hereto and by this reference incorporated herein, and any work necessary to bring the Premises, the Building, and the Development into the condition required under Section 4.1 (collectively, **"Landlord's Work"**) at its sole cost and expense in a good and workmanlike manner before delivering the Premises to Tenant. At least ninety (90) days prior to commencing construction of Landlord's Work, Landlord shall provide Tenant a written copy of Landlord's construction schedule. Landlord shall notify Tenant in writing at least thirty (30) days prior to the date that Landlord anticipates that the Premises will be ready for Tenant's occupancy and Tenant shall arrange for Landlord and Tenant to promptly jointly inspect the Premises. At the time of the joint inspection, Landlord shall demonstrate all of Landlord's Work, including (without limitation) the matters identified in Section 4.1, such as the legal compliance, working order, condition and repair of all mechanical, electrical and other Building-wide systems serving the Premises. Within thirty (30) days after the joint inspection, Tenant shall deliver to Landlord a written punch list of all incomplete or faulty items of construction or mechanical installation, and any necessary mechanical adjustments and Landlord shall finish work needed to bring the Premises and the Building into the condition required under this Article.

If the Premises and the Building are in the condition required under this Article on the Scheduled Delivery Date but subject only to minor punch list items, Tenant shall accept delivery of the Premises and Landlord shall complete the punch list items within thirty (30) days after the date Landlord receives Tenant's notice of such punch list items, subject to Force Majeure ad Tenant Delay. If the Premises or the Building are not in the condition required under this Article on the Scheduled Delivery Date, then Tenant may, at its option, either: (a) delay acceptance of possession until the Premises and the Building are in the condition required under this Article and pursue its remedies under Section 4.3; or (b) accept possession of the Premises and complete all work necessary to bring the Premises into the required condition. It is understood and agreed that Tenant shall have no right to complete any work necessary to bring the Building (or any other part of the Development) to the required condition, that being the sole responsibility and right of Landlord, unless such work is required in order to complete the Premises as aforesaid, then, and in such event, Tenant may enter the Building upon prior written notice to Landlord identifying the areas to which Tenant will need access in order to perform limited work to support the completion of the Premises. If Tenant elects to proceed under the subsection (a), Tenant may enter the Premises to begin performing Tenant's work (at Tenant's cost and expense) without prejudicing Tenant's rights and remedies under Section 4.3. If Tenant elects to proceed under the subsection (b), then Landlord shall reimburse Tenant for the actual cost of such work and any additional amounts Landlord agreed to pay Tenant pursuant to other written agreements such as the Landlord Work Modification Letter attached hereto as **Exhibit E**, plus an administrative surcharge of ten percent (10%) of the amount otherwise due Tenant, to compensate Tenant for its employees' time, within thirty (30) days of receipt of an invoice for such sums. Tenant's and its contractor's determination of the cost of such work shall be final and binding on Landlord and Landlord acknowledges that Landlord can control the cost by performing the work under this Article in a timely manner. If Landlord does not reimburse Tenant as required by this Section 4.2, then Tenant may offset such sum against Base Rent and all other charges

payable by Tenant under this Lease until such sum has been fully recouped.

4.3 DELAY IN DELIVERY OF POSSESSION. Landlord shall satisfy all conditions listed in Section 2.2 (a) through (f) above on or before the Scheduled Delivery Date. Landlord acknowledges that Tenant intends to start construction of Tenant's improvements on the Scheduled Delivery Date, and that a delay beyond such date will cause Tenant to suffer certain losses which are difficult to quantify, including, by way of illustration and not of limitation, lost profits, construction delay costs, and employee wages. Subject to Section 21 below, as it relates to Landlord's failure to deliver the "Temporary Parking", if the Commencement Date does not occur within ten (10) days after the Scheduled Delivery Date for any reason, other than a Force Majeure Event (as defined in Section 23.17 below),(it being understood that if the delay is caused by Force Majeure Event, the Scheduled Delivery Date shall be deemed extended by a period during which said Force Majeure Event shall cause such delay but such deferral of the Scheduled Delivery Date shall in no event be deferred by a Force Majeure Event for more than forty-five (45) days)), or "Tenant Delay" (as hereinafter defined), (it being understood that if such delay is caused by a Tenant Delay, the Scheduled Delivery Date shall be deemed extended day for day of the Tenant Delay), and regardless of the fact that Tenant may have elected to enter the Premises to perform Tenant's work prior to Landlord's Work being completed, then, provided that Tenant is not then receiving Closure Payments under the Second Amendment to the Existing Lease, Tenant, as compensation in the form of liquidated damages, shall be entitled to five (5) days of free Base Rent and Annual Additional Rent for each day of delay accruing from and after the tenth (10th) day following the Scheduled Delivery Date to the actual Commencement Date. Landlord and Tenant agree that the foregoing free rent determination is a liquidated damages remedy to compensate Tenant based on Landlord and Tenant's best estimate of the daily damages, including, but not limited to lost sales and business opportunity that Tenant will incur as a result of Landlord's failure to deliver the Premises timely, and such amount is not deemed a penalty. If the Commencement Date does not occur within one hundred eighty (180) days after the Scheduled Delivery Date, (for any reason other than a Force Majeure Event, subject to the terms noted above, or a Tenant Delay also as provided above, then Tenant, at its option, may terminate this Lease by written notice to Landlord, given , if at all, not later than 30 days following the 180 day period unless Landlord has delivered the Premises prior to Tenant's termination notice. The termination date shall not be subject to extensions for any reason whatsoever, including, without limitation, delays described in Section 23.17 of this Lease. If Tenant elects to terminate this Lease as a result of a delay in delivery, Landlord shall reimburse Tenant an amount equal to the accrued free Base Rent as provided above, and Landlord shall reimburse Tenant all of Tenant's actual and reasonable expenses incurred in connection with this Lease, including, without limitation, site selection and lease negotiation costs and expenses, including the allocated cost of in-house personnel, not to exceed $600,000.00, less any "Allowance" (as hereinafter defined) paid to Tenant by Landlord . In addition, Landlord shall also return all monies previously deposited by Tenant, if any. As used herein, the term "Tenant Delay", shall mean any actual delay caused by the action or inaction of Tenant in connection with the performance of its obligations hereunder, subject to Tenant's right to receive notice from Landlord and have no more than 48 hours to cure such delay. By way of example and not of limitation, the following are examples of circumstances giving rise to "Tenant Delay": (i) Tenant failing to respond to requests for information requested by the governmental authorities, (ii) Tenant not responding to requests by Landlord for approval in accordance with the time frames set out in this Lease, (iii) Tenant electing to apply for variances or special signage permits, (iv) Tenant changing the design and thereafter the plans for the Premises after Landlord has initially approved such plans, (v) Tenant entering the Premises while Landlord is performing its work and delaying Landlord's completion of its work, and (vi) any other similar delay precipitated by Tenant's actions or inaction.

4.4 TENANT ALLOWANCE. In addition to Landlord's obligations under Sections 4.1 and 4.2 above, Landlord shall provide Tenant with an improvement allowance in the amount of Two Hundred Thousand and 00/100 Dollars ($200,000.00) (the **"Allowance"**) which shall be paid in full by Landlord to Tenant no later than thirty (30) days after the submission by Tenant to Landlord of copies of invoices for labor, materials or equipment charges equal to the Allowance incurred by Tenant in connection with the completion of Tenant's improvements. The Allowance shall not be reduced by costs incurred by Landlord in constructing the Premises, the Building or the Development and can be modified only by an amendment to this Lease that has been duly executed by Landlord and Tenant. If Landlord has not paid

Tenant the Allowance within thirty (30) days after submission by Tenant to Landlord of copies of invoices for labor, materials or equipment charges as aforesaid, then in addition to any other remedies Tenant has, Tenant may offset the unpaid amount, against Base Rent due and all other charges (at Tenant's discretion) under this Lease until the Allowance is fully offset. In addition, if Landlord shall fail to pay the Allowance when the same is due and payable, such unpaid amounts shall bear interest at the greater of twelve percent (12%) per annum or the prime interest rate charged by Bank of America plus three percentage points (but in no event to exceed the maximum lawful rate) from the date the unpaid amount was initially due, to and including the date of payment.

4.5 INDEPENDENT MEASUREMENT OF THE PREMISES. At any time prior to the Rent Commencement Date, Tenant (in its sole discretion) may engage an independent certified architect or surveyor to measure the Gross Leasable Area of the Premises (as defined in Article 1 above). If the architect's or surveyor's measurement of the Gross Leasable Area of the Premises is less than the Gross Leasable Area of the Premises set forth in Article 1 above by three percent (3%) or more, Base Rent and Tenant's Pro Rata Share (as defined in Section 12.2 below) shall be proportionally reduced. If the variance is less than three percent (3%), Landlord and Tenant shall make no adjustments to this Lease. Landlord acknowledges and agrees that Landlord shall not have the right to re-measure the Premises.

4.6 LANDLORD'S BUILDING PLANS. Tenant has heretofore approved Landlord's plans for configuration of the Premises, the Building, the Development, and the parking area dated May 5, 2014 (**"Landlord's Plans"**), but Landlord has not yet obtained its permits for the work to be performed by Landlord as shown on the Landlord's Plans. If Landlord changes Landlord's Plans in a way that will materially and adversely impact (i) the Premises, or (ii) the common areas in the courtyard area immediately adjacent to the Premises, or the parking in the Building (hereinafter the "Protected Area") as shown on **Exhibit B**, (whether or not the changes are being required by a governing authority), then Landlord shall re-submit Landlord's Plans clearly indicating the changes (**"Landlord's New Plans"**) to Tenant for Tenant's review and approval. Tenant shall either approve Landlord's New Plans or request modifications to Landlord's New Plans. If Tenant does not approve Landlord's New Plans or if Landlord and Tenant fail to agree on acceptable revisions to Landlord's New Plans, Tenant may terminate this Lease by giving written notice to Landlord. The parties agree to work in good faith to agree on any plan changes as provided above. If Tenant does not respond with its approval or disapproval (which disapproval shall contain comments thereto) to Landlord's New Plans within twenty (20) days after Landlord's submission of same to Tenant, Landlord shall thereafter send Tenant a second written request for approval or disapproval of Landlord's New Plans, which request must set forth in bold and 14-point capitalized type on the first page thereof the following statement: "SECOND AND FINAL REQUEST—TENANT HAS 10 DAYS TO RESPOND PURSUANT TO SECTION 4.6 OF THE LEASE OTHERWISE LANDLORD'S NEW PLANS SHALL BE DEEMED APPROVED. If Tenant does not respond with its approval or disapproval (which disapproval shall contain comments thereto) to Landlord's New Plans within ten (10) days after Landlord's second request for approval or disapproval, Landlord's New Plans shall be deemed approved by Tenant. If, as a result of changes set out in Landlord's New Plans, Tenant must re-draw its plans to correspond to the Landlord' New Plans, Landlord shall reimburse Tenant for the actual cost for Tenant to redraw its plans for the Premises (**"Re-draw Costs"**) to correspond with Landlord's New Plans. If Tenant does not terminate this Lease and Landlord has not paid Tenant its Re-Draw Costs within thirty (30) days after Tenant opens for business in the Premises, then in addition to any other remedies Tenant has, Tenant may offset the unpaid amount against Base Rent and all other charges (at Tenant's discretion) until the Re-Draw Costs are fully offset.

5. USE.

5.1 USE. Except as otherwise specifically provided herein, Tenant may use and occupy the Premises and outdoor seating area (as provided below) as a coffee shop including, at Tenant's discretion, the retail sale of: (a) whole and ground coffee beans, (b) coffee by the cup, (c) espresso/coffee/tea-based drinks, (d) teas and spices, (e) blended beverages, (f) espresso/coffee/tea related equipment, supplies and accessories, (g) seasonal, promotional and Tenant branded merchandise, (h) assorted food items including but not limited to baked goods, desserts, frozen desserts, salads, sandwiches, juices, candies and novelties, (i) beer and wine (subject to obtaining the required

governmental permits and approvals therefore), (j) books, magazines and newspapers, (k) music merchandise and digital media content, (l) non-food items not prohibited by the written exclusive use rights of other retail tenants in the Development with fully executed leases as of the date of this Lease, all of which are set forth in **Exhibit G** (if any) (the "**Existing Exclusives**"), and (m) other items that Tenant or its successors make available for sale in the ordinary course of business not prohibited by the Existing Exclusives and not prohibited by "**Prohibited Uses**" set forth on **Exhibit H-1**. Landlord represents and warrants to Tenant that **Exhibit G** contains complete and correct verbatim excerpts of all Existing Exclusives and the name of the tenant which each Existing Exclusive benefits. Landlord acknowledges that, except as expressly set forth in this Section, Tenant is entering into this Lease in reliance upon its ability to conduct the use described above without any limitation or restriction by reason of any governmental zoning or use restriction, exclusive provision, contractual restriction or limitation granted to any other party which applies to the Premises or Tenant's use thereof. Landlord acknowledges that Tenant may use the Premises to accept returns of merchandise not purchased from Tenant.

5.2 COMPLIANCE WITH LAW. During the Term, Tenant, at its expense, shall comply promptly with all laws, rules, and regulations made by any governmental authority having jurisdiction over Tenant's use of the Premises pertaining to: (a) the physical condition of any improvements constructed by Tenant in the Premises; and (b) Tenant's specific business operations in the Premises. Tenant shall not be required to make any seismic or structural upgrades, repairs, improvements or alterations to the Premises, the Building, or the Development in order to comply with the requirements of this Section. Landlord, at its sole cost and expense, shall comply with all other laws, rules, regulations, and ordinances made by any governmental authority affecting the Premises, areas adjacent to the Premises, the Common Areas, the Building, the Development, and the Property including, without limitation, all accessibility for the disabled requirements.

5.3 OPERATIONS AND RECAPTURE. Tenant may operate (or not operate) its business in such manner and at such hours as Tenant considers proper in Tenant's sole business judgment. It is expressly understood and agreed that Tenant makes no representations or warranties, oral or written, as to the level of gross sales it may generate from the Premises or the number of customers that it will bring to the Development. The parties acknowledge that Tenant has no obligation to open or operate at the Premises, but in the event Tenant either (i) elects not to open for business within sixty (60) days after the Rent Commencement Date, or (ii) after opening for business, thereafter ceases operating at the Premises for a period of sixty (60) consecutive days, excluding any closure(s) due to any Force Majeure Event, casualty, condemnation, inventory, renovation, remodeling, or assignment of this Lease or subletting of the Premises, then Landlord may, at any time thereafter (in the event of (i) or (ii)), recapture the Premises and terminate this Lease upon thirty (30) days' prior written notice to Tenant unless Tenant resumes operation in the Premises prior to the expiration of such thirty (30)-day notice period, in which case, Landlord's recapture and termination notice shall be null and void. If Landlord terminates this Lease, Landlord shall reimburse Tenant for the unamortized cost of Tenant's improvements to the Premises. The foregoing recapture right shall be Landlord's sole remedy in the event Tenant elects not to operate in the Premises, unless Tenant is also in default hereunder, in which case the provisions of Section 14 shall also be available to Landlord.

5.4 EXCLUSIVITY. So long as Tenant is open for business and operating as a coffee store on the Premises, and is not in default beyond applicable notice and cure periods provided herein, Landlord shall not use or allow any other person or entity (except Tenant) to use any portion of the Property for the sale of (the "Restricted Items"): (a) whole or ground coffee beans; (b) espresso, espresso-based drinks, or coffee-based drinks; (c) tea or tea-based drinks; (d) brewed coffee; and/or (e) blended beverages including, without limitation, those containing any of the following: ice, coffee, espresso, tea, milk, cream, juice and/or fruit. The foregoing shall not apply to the following: (i) the sale of Restricted Items provided, that, the sales do not exceed five percent (5%) of such tenant's total sales volume; (ii) the sale of non-gourmet, non-brand identified brewed coffee or brewed tea; (iii) the sale of pre-bottled tea or pre-bottled tea-based beverages, and (iv) the sale of brewed coffee or tea and hot espresso drinks for on-premises consumption only served in a full service, sit-down restaurant with a wait staff and table service serving a complete dinner menu. For purposes of this Lease, "gourmet" shall be defined as: (a) beverages made using Arabica beans, or (b) sourced from a gourmet coffee brand such

as Coffee Bean & Tea Leaf, Intelligentsia, Peets, Caribou or other coffee purveyor. For purposes of this Lease, "brand identified" shall mean beverages advertised or marketed within the applicable retail space using a brand name. If Landlord or an offending party contests Tenant's claim of such exclusive sales violation, Tenant shall be entitled, with Landlord's full assistance, to audit the alleged offender's sales records for a full accounting of any such violations in order to make a proper determination.

In the event of a violation of Tenant's exclusive use, Tenant shall provide Landlord with written notice of the alleged violation setting forth the information giving rise to the allegation of a violation, and where such violation continues for more than sixty (60) days after Tenant's notice to Landlord, all Base Rent due under the Lease shall be reduced by fifty percent (50%) ("**Alternate Rent**") until the violation has been cured and the competing tenant(s) on the Property cease the sale of any of the products protected by Tenant's exclusive use described above. In the event that the violation continues for more than one (1) year after said rent reduction, and Landlord has not cured the violation, Tenant shall have the right to terminate the Lease upon thirty (30) days' written notice to Landlord, which notice shall be given, if at all, no later than twenty (20) days after the end of the one (1) year period, and Tenant shall be entitled to reimbursement by Landlord of the unamortized amount of Tenant's improvements to the Premises as of the effective date of the early termination of the Lease. If Tenant elects not to terminate the Lease, Tenant shall resume paying the full amount of the Base Rent and all Annual Additional Rent due under this Lease. Notwithstanding the foregoing, if a breach of the exclusive use is due to the breach by another tenant of its lease without the consent of Landlord ("**Rogue Tenant Violation**"), Landlord shall immediately proceed diligently and in good faith to pursue the enforcement of Tenant's exclusive rights (including filing suit) and cause such Rogue Tenant Violation to be cured. In the event such Rogue Tenant Violation continues for a period of ninety (90) days, Tenant shall then be entitled to pay Alternate Rent (in lieu of Base Rent set forth in this Lease) until the date such Rogue Tenant Violation ceases. In the event such violation continues for one (1) year, Tenant may thereafter elect to terminate this Lease upon thirty (30) days' written notice thereof to Landlord, which notice shall, if at all, no later than twenty (20) days after the end of the one (1) year period. If Tenant elects not to terminate the Lease, Tenant shall resume paying the full amount of the Base Rent and all Annual Additional Rent due under this Lease.

Notwithstanding anything contained herein to the contrary, full service, sit-down restaurants with a wait staff and table service serving a complete breakfast, lunch and/or dinner menu may sell, in conjunction with a sale of a meal, brewed coffee, tea and hot espresso drinks for on-premises consumption only.

5.5 NEW CONSTRUCTION CONTINGENCY. Subject to the terms of Article 5.3, and notwithstanding anything in this Lease to the contrary (including, without limitation, Article 3), until such time (the "**Development Construction Contingency Period**") as the construction of all Common Areas, including (without limitation) all parking areas are substantially complete, all construction equipment and debris have been removed (excluding other tenant's improvement work and residential interior work), Landlord has completed all work (other than Tenant's Initial Improvements) that would prevent Tenant from obtaining a certificate of occupancy, (or temporary certificate of occupancy, as applicable) for the Premises, and Tenant is permitted to legally to conduct business operations in the Premises without being in violation of any applicable law (the "**Development Construction Contingency**"), Base Rent and Annual Additional Rent shall be reduced by fifty percent (50%) of the amounts otherwise due and payable hereunder until such time as the foregoing conditions are satisfied. During the Development Construction Contingency Period, Landlord shall (a) not impair access to, visibility of or frontage of the Premises; (b) not materially affect the conduct of Tenant's customary business therein; and (c) not detract from Tenant's signage, create confusion regarding the business conducted in the Premises, or adversely affect the presentation of Tenant's exterior signage and storefront. Without limiting the foregoing, in the event that the construction of the exterior shell/roof of all buildings in the Development and all Common Areas, including (without limitation), all parking, patio and landscaping areas are not substantially complete, the interior portions of all buildings in the Development together with the individual commercial and residential spaces located therein do not have installed floors, ceilings, walls covered with gypsum board and all systems (including, (without limitation), the plumbing, heating, air conditioning, ventilating, sprinkler, mechanical, life safety and electrical systems) that are fully operational, all

construction equipment and debris have not been removed from the Development, and/or Landlord has not obtained a permanent Certificate of Occupancy for the Building (or its equivalent) (the "**Building Construction Contingency**") within eighteen (18) months from the "Lease Commencement Date" (as hereinafter defined) with time being of the essence (the "**Building Construction Contingency Period**"), subject to Tenant Delay and Force Majeure (not to exceed forty-five (45) days), or Landlord has not met its obligations with respect to items (a) – (c) of this Section 5.5 during the Development Construction Contingency Period, in addition to any other remedy provided by applicable law or in this Lease, Tenant, upon written notice, shall be entitled to either (i) terminate this Lease in which case, upon demand, Landlord shall reimburse Tenant for its costs incurred in developing, constructing and operating its store in the Premises, including (without limitation) site selection, brokerage, legal, design, permitting and other fees and costs, as well as Tenant's costs of construction, not to exceed $600,000.00, less any Allowance paid by Landlord ; or (ii) with regard to Landlord's failure to meets its obligations as to items (a) – (c) of this Section 5.5 during the Development Construction Contingency Period, close its business operation at the Premises until such time as said obligations are met to Tenant's satisfaction during which time the Base Rent and Annual Additional Rent shall abate. Notwithstanding the provisions of the foregoing sentence, Tenant will not seek to terminate the Lease by reason of Landlord's failure to satisfy the Building Construction Contingency within the Building Construction Contingency Period or Landlord's failure to meet its obligations with respect to items (a) – (c) of this Section 5.5 during the Development Construction Contingency Period, until Tenant shall have given written notice of such failure and Tenant's intention to terminate this Lease (a "**Termination Notice**") to the mortgagee ("**Mortgagee**") at Mortgagee's address furnished to Tenant, (each, a "**Notice Party**") relating to this Lease (the "**SNDA**"). Mortgagee or any other Notice Party shall have fifteen (15) business days, time being of the essence, after such Termination Notice is sent by Tenant to give written notice to Tenant of its intention to cure such failure (the "**Response Notice**"). If such Response Notice is timely received by Tenant as aforesaid, then Mortgagee and/or any other Notice Party shall have a period of ninety (90) days, time being of the essence, from the date such Termination Notice is sent by Tenant to the Mortgagee and the other Notice Party (the "**Lender's Cure Period**"), during which time Mortgagee and/or the Notice Party shall have the obligation to cure such failure by Landlord. Notwithstanding anything to the contrary contained herein or in the SNDA, if neither the Mortgagee nor any other Notice Party has (A) given a Response Notice to Tenant within such fifteen (15) business day period, time being of the essence, this Lease shall be deemed to have been terminated on the date of the Termination Notice, or (B) cured such failure by Landlord to Tenant's satisfaction within the Lender's Cure Period, to the extent that the Response Notice was delivered to Tenant hereunder, this Lease shall be deemed to have terminated on the last day of the Lender's Cure Period.

6. MAINTENANCE, REPAIRS, AND ALTERATIONS.

6.1 TENANT'S OBLIGATIONS. Subject to the provisions of Sections 6.2 and 6.3 and Articles 9 and 15, Tenant, at Tenant's expense, shall keep the Premises in good order and repair, including maintaining all plumbing, HVAC, electrical and lighting facilities and equipment within the Premises and exclusively serving the Premises, and the store front, doors, and plate glass of the Premises. At Tenant's request, Landlord shall transfer or assign to Tenant all warranties, express or implied, under any contract or subcontracts relating to any improvements or equipment Landlord built or installed within the Premises to serve the Premises exclusively, including, without limitation, the warranty for the HVAC system. Notwithstanding any provision to the contrary, Tenant's obligations under this Section shall not include making: (a) any repair or improvement necessitated by the negligence or willful misconduct of Landlord, its agents, employees or servants; (b) any repair or improvement caused by Landlord's failure to perform its obligations hereunder or under any other agreement between Landlord and Tenant; or (c) any structural or seismic repairs, improvements or alterations to the Premises, the Building, or the Development.

6.2 LANDLORD'S OBLIGATIONS. Except for repairs, maintenance and replacements to the Premises and the Building for which Tenant is responsible under Section 6.1, Landlord shall maintain, repair and make replacements to the Premises, the Building, and the Development (including the Common Areas) and cause same to be maintained. Landlord shall, at its sole cost and expense (subject to Tenant's payment obligations, if any, pursuant to Article 12 below), make (or cause to be made) the

repairs and replacements and perform such work that is necessary to maintain the Building and the Development in a condition comparable to other first-class buildings and mixed use developments in the Boston metropolitan area. Such repairs, replacements and maintenance shall include (without limitation): (a) the upkeep of the roof, roof membrane and roof systems (gutters, downspouts and the like), foundation, exterior walls, interior structural walls, and all structural components of the Premises, the Building, and the Development, and (b) the maintenance and repair of all parking areas, sidewalks, landscaping and drainage systems on the Property and all utility systems (including mechanical, electrical, and HVAC systems) and plumbing systems which serve the Building and the Retail Portion of the Development a whole and not a particular tenant's premises. Landlord may allocate the cost of such maintenance and repairs equitably among all tenants, if and to the extent provided in Article 12. Landlord shall not be required to maintain the interior surface of exterior walls, windows, doors or plate glass and store fronts (except where maintenance of the same is caused by Landlord's negligence or failure to perform its obligations under this Section). Landlord shall make all repairs under this Section promptly after Landlord learns of the need for such repairs but in any event within thirty (30) days after Tenant notifies Landlord of the need for such repairs. If Landlord fails to make such repairs within thirty (30) days after Tenant's written notice (except when the repairs require more than thirty (30) days for performance and Landlord commences the repair within thirty (30) days and diligently pursues the repair to completion), Tenant may, at its option, undertake such repairs and deduct the cost thereof from the installments of Base Rent and Annual Additional Rent next falling due until Tenant is fully reimbursed. Notwithstanding the foregoing, in the event of an emergency, Tenant may give Landlord such shorter notice as is practicable under the circumstances, and if Landlord fails to make such repairs immediately after being notified by Tenant, Tenant may immediately undertake such repairs and deduct the cost thereof from the installments of Base Rent and Annual Additional Rent next falling due until Tenant is fully reimbursed. Notwithstanding the foregoing, but subject to Section 7.4 below, Landlord's obligations under this Section 6.2 shall not include making any repairs or improvements necessitated by the negligence or willful misconduct of Tenant, its agents, employees, servants or any repair or improvement caused as a result of Tenant's failure to perform its obligations hereunder.

6.3 SURRENDER. Upon the expiration or termination of this Lease, Tenant shall surrender the Premises to Landlord in broom clean condition, except for ordinary wear and tear and damage caused by fire or other casualty, whether or not insured or insurable.

6.4 LANDLORD'S RIGHTS. If Tenant fails to perform Tenant's obligations under this Article, Landlord may, but shall not be required to, enter upon the Premises, after thirty (30) days prior written notice to Tenant, and put the same in good order, condition and repair, and the reasonable costs thereof shall become due and payable as additional rental to Landlord together with Tenant's next Base Rent installment falling due after Tenant's receipt of an invoice for such costs. In no event shall Landlord be liable to Tenant for any loss or damage that may, in any way, accrue to Tenant or Tenant's business as a result of Landlord's exercise of its rights under this Section 6.4, except as a result of any negligence or willful misconduct of Landlord or any of its agents, employees, or contractors. Notwithstanding the foregoing, in the event of an emergency (i.e., immediate peril or imminent danger to person or property), Landlord shall have the right to make such repairs or replacements without notice to Tenant. No exercise by Landlord of any right reserved in this Section 6.4 shall entitle Tenant to any damage for any injury or inconvenience occasioned thereby or to any abatement of Base Rent or Operating Expenses reserved hereunder, except as otherwise provided herein. Notwithstanding the foregoing, Landlord's rights under this Section shall be subject to Section 23.14.

6.5 ALTERATIONS AND ADDITIONS.

6.5.1 Initial Improvements. Tenant, at Tenant's cost, may install such fixtures and finishes and other initial tenant improvements in the Premises as Tenant deems necessary or desirable for the conduct of Tenant's business therein (the "**Initial Improvements**") provided that the Initial Improvements are in accordance with the Plans as defined below. Tenant shall submit Tenant's plans and specification (the "**Plans**") for the Initial Improvements to Landlord for Landlord's review and approval, not to be unreasonably withheld, delayed or conditioned, no later than six (6) months from the Effective Date. Landlord shall have a period of ten (10) days following receipt (the "**Review Period**") to

review the Plans. Landlord shall not unreasonably withhold, condition or delay its approval of the Plans. On or before the last day of the Review Period, Landlord shall (i) deliver to Tenant a written description of the specific items in the Plans that are not reasonably acceptable and a description of the specific reasonable changes that must be made to the Plans to secure Landlord's approval (collectively, "**Landlord's Comments**"), or (ii) approve the Plans as presented. If Landlord fails to deliver to Tenant its Landlord's Comments on or before the last day of the Review Period, if the Plans have not yet been approved, the Plans shall be deemed approved. The review and approval process described above shall continue until such time as Landlord has approved the Plans in writing (the "**Final Plans**"). The parties agree to work cooperatively and use good faith efforts to reach approval on the Final Plans. In addition, Landlord acknowledges and agrees that Tenant intends to seek certification of the Premises through the then-current standards established by the United States Green Building Council (the "**USGBC**") for the certification of green buildings, commercial and retail interiors and other facilities ("**LEED Certification**"). Landlord acknowledges that LEED Certification may be awarded at various certification levels as determined by the USGBC. Accordingly, notwithstanding anything in this Lease to the contrary, Landlord agrees, without incurring any cost or expense, to provide information to Tenant in Tenant's efforts to achieve LEED certification (in a manner and at a level which shall be determined by Tenant in its sole discretion) and to take all reasonable steps requested by Tenant to achieve such certification, at no cost or detriment to Landlord. Further, Landlord agrees to assist Tenant in its efforts to maintain LEED Certification for the Premises throughout the Term, at no cost or detriment to Landlord.

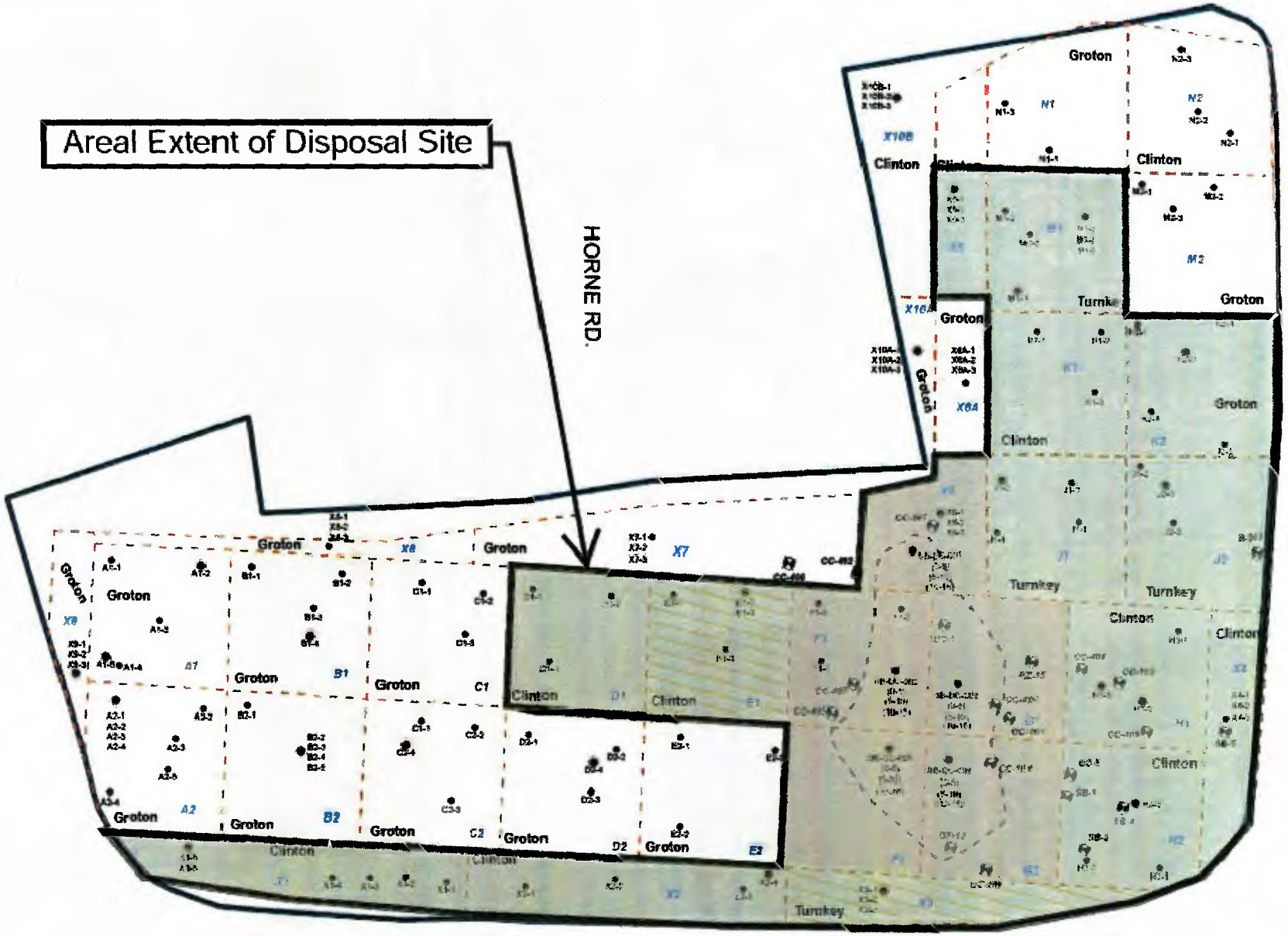
6.5.2 Subsequent Improvements. After the installation of the Initial Improvements, Tenant may make such interior non-structural alterations, improvements and additions to the Premises including, without limitation, changing color schemes, installing new countertops, flooring, wall-covering and modifying the layout of the tenant fixtures, as Tenant deems necessary or desirable without obtaining Landlord's consent. Notwithstanding the foregoing, Tenant shall not make any alterations, improvements, additions or repairs in, on, or about the Premises which affect the structure or the mechanical systems of the Building (to the extent the mechanical systems do not exclusively serve the Premises) without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Landlord shall be deemed to have approved any subsequent improvement proposed by Tenant unless Landlord disapproves of Tenant's written proposal in writing within fifteen (15) days of receiving Tenant's written proposal and request for consent. In connection with any subsequent improvements that Tenant desires to make to the Premises after the Initial Improvements, regardless of whether or not Landlord has the right to approve same under this Section 6.5.2, Tenant shall deliver written notice to Landlord prior to commencement of construction of such improvements together with, if applicable, copies of all permits for same as well as "as built" Plans once the work is complete, if applicable.

6.5.3 Liens. Before commencing any alterations, additions or improvements using outside contractors, Tenant shall notify Landlord of the expected commencement and completion dates of the work. Tenant shall not permit any mechanics' or materialmen's liens to be levied against the Premises for any labor or material furnished to Tenant or to its agents or contractors; provided, however, that Tenant shall not be required to pay or otherwise satisfy any claims or discharge such liens so long as Tenant, in good faith and at its own expense, contests the same or the validity thereof by appropriate proceedings and posts a bond or takes other steps acceptable to Landlord that remove such lien or stay enforcement thereof. Tenant agrees to, and shall, protect, indemnify, defend, and save Landlord, and Landlord's officers, shareholders, directors, managers, members, owners, parents, employees and subsidiaries (collectively, the "**Landlord Parties**") within thirty (30) days after written demand therefor, from and against all liability, actual losses, damages, reasonable costs, reasonable attorneys' fees and all other reasonable expenses incurred by the Landlord Parties by reason of the failure to remove such lien in accordance with the terms of this Lease.

6.6 OWNERSHIP AND REMOVAL OF IMPROVEMENTS, FIXTURES, EQUIPMENT AND FURNISHINGS.

6.6.1 The term **"Tenant's Property"** shall mean all personal property, furnishings, machinery, trade fixtures, equipment and improvements (trade or otherwise) which Tenant

EXHIBIT 2



COOPERSTOWN environmental
23 Main Street • Andover, MA • 01810
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www.cooperstownenv.com

Disposal Site Boundaries

495 Common Street
Belmont, Massachusetts

SOURCE: SAGE Environmental

FIGURE 1

N

EXHIBIT 3

CUSHING VILLAGE (BELMONT, MA)
CLEAN-UP ESTIMATED COSTS

Soil Disposal - Landfills	$	449,713.08
Soil Transportation - Landfill	$	255,189.88
Professional Fees	$	200,991.67
On-Site Soil Treatment	$	167,500.00
Excavation	$	117,880.67
Incremental Cost Dewatering	$	51,000.00
SUM w/o Contingecy	$	1,242,275.29
Contingecy (10%)	$	124,227.53
SUM w/ Contingecy	$	1,366,502.82

Assumptions

Site Prep		
Crew (Days)		3
Site Fencing	$	12,000.00
Construction Ramps and exits (riprap)	$	2,000.00
Erosion Control	$	12,000.00
Soil Conversion Factor (CY/Ton)		1.5
Soil Fluff Factor (dimensionless)		25%
Soil Volumes (CY)		
Cat 1 - Reused on other construction sites		32,100
Cat 2 - In-State Landfill		5,000
Cat 3 - Out-of-State Landfill		4,800
TOTAL		41,900
Crew and Equipment		
Site Prep ($ per Day)	$	4,000.00
Excavation ($ per Day)	$	6,000.00
Equipment		
Dump Truck ($ per Day)	$	1,200.00
# of Dump Trucks Needed		17
Truck Volume (CY)		25

Load and Transport	
Cue and Load Time (Hrs)	1.0
Cat 1 - Trans each way (Hrs)	1.0
Cat 2 - Trans each way (Hrs)	1.0
Cat 3 - Trans each way (Hrs)	1.0
# of Hours Per Day	9
Ave. Tons per Truck	30
Excavation	
Days of Excavation	42
Contingency	10%

NE TANKS

Category	Category Description	CY
1	reused on construction sites	32,100
2	landfill (in-state)	5,000
3	landfill (out-of-state)	4,800
	SUM	41,900
	* conservative number	

A-PLUS

1	Reusable clean soil	27600
2 & 3	Soil for Unlined Landfill (Waste Man. - Barre, MA)	5600
4	Soil for Lined Landfill (Waste Man. - Westminster, MA)	4100
4	Treated Delisted Soils	1300
		38600

CE ENVIRONMENTAL - TRANPORT AND DISPOSAL PROPOSAL

PROJECT: Cushing Village - Belmont, MA

ESTIMATED COST FOR T&D

Soil Category	Estimated Quantity CY	Tons
Like Site/<RCS-1	19886.63	29829.945
Like Site/<RCS-2	3075.99	4613.985
In-state Unlined LF	3440.02	5160.03
in-State Lined LF	900.93	1351.395
Recycling/Out of State	3491.35	5237.025
Weathered Bedrock	6170.8	9256.2
TOTAL	36966	55449

NOTES

1 - Raw Data taken from Soil Disposal Facilities By Cell dated 7/31/14, prepared by WL French

2 - Approval fees extra (but trivial)

3 - high clay content, debris, etc. could result in upcharge or swapping into a more expensive landfill.

4 - more sampling is required to support disposal options/meet the necessary testing frequencies

5 - Excavation & loading not included

T/CY *	Tons	$ / T (Just Disp Only)	$$$
1.5	48,150	$ -	NIC
1.5	7,500	$ 21.00	$ 157,500.00
1.5	7,200	$ 47.00	$ 338,400.00
		SUM	$ 495,900.00
1.5	41,400	$ 4.00	NIC
1.5	8,400	$ 17.00	$ 142,800.00
1.5	6,150	$ 28.00	$ 172,200.00
1.5	1,950	$ 28.00	$ 54,600.00
		SUM	$ 369,600.00

% of total	$/ton (T&Disp)	Subtotal	
728%	$17	NIC	
113%	$17	NIC	
126%	$31	$159,961	
33%	$38	$51,353	
128%	$52	$272,325	
226%	$17	NIC	
		$483,639	
	AVG		$ 449,713.08

June 25 2015

TASK		VENDOR CHA		Cooperstown		AEI
Soil disposal pricing					$	12,500.00
Additional Precharacterization						
Winslow - 4 addtl samples from 20 soil borings	$	9,000.00	$	12,148.00	$	10,574.00
Hyland/Pomona - 49 disposal samples from 95 borings	$	65,000.00	$	75,270.00	$	70,135.00
NPDES Permit for construction dewatering						
New RTN Filing						
RAM Submittal						
LSP/Geotech/Engineering support for design team						
LSP Services						
Oversight of PCE Remediation	$	40,000.00	$	22,725.00	$	19,438.00
Monitor excavation	$	76,000.00	$	57,090.00	$	66,545.00
Reporting	$	29,000.00	$	14,500.00	$	23,050.00
TOTAL	$	219,000.00	$	181,733.00	$	202,242.00
			Avg.		$	200,991.67

CHA Proposal		
600 CY (Hot Zone) Mobile Thermal Treatment		$ 170,000.00
$$$/CY		$ 283.33
Midwest Soil Remediation ($/CY)		
$$$/CY		$ 175.00
Mobilization		$ 30,000.00
	AVG ($$$/CY)	$ 229.17

	#	Units	Cost per Unit	$$$
Site Fencing				$ 12,000.00
Construction Ramps and exits (riprap)				$ 2,000.00
Equipment Crew		3 per day of crew & equip	$ 4,000.00	$ 12,000.00
Erosion Control				$ 12,000.00
			SUM	$ 38,000.00

	#	Units	Cost per Unit		$$$
Excavation - Clean	32.2	per day equip & crew	$ 6,000.00	$	193,059.67
Excavation - Dirty	19.6	per day equip & crew	$ 6,000.00	$	117,880.67
SUM	51.8		SUM	$	310,940.33

Multiplied 2x to account for stockpiling and reuse

	#	Units	Cost Per Unit	$$$
Frac Tank - 21,000 gallons	6	Per Month	$ 900.00	$ 5,400.00
DV100 4" Filtration Pump (790 gpm)	6	Per Month	$ 3,500.00	$ 21,000.00
(2) 2,000 lb. carbon vessels with carbine	1	Per Project	$ 51,000.00	$ 51,000.00
(2) BF 100 Bag Filters	1	Per Project	$ 1,800.00	$ 1,800.00
Set of high flow switches	6	Per Month	$ 600.00	$ 3,600.00
(8) boxes of filter bags	1	Per Project	$ 2,400.00	$ 2,400.00
Mob and Demob Frac Tank	1	Per Project	$ 2,400.00	$ 2,400.00
Clean frac tank (no disp assumed)	1	Per Project	$ 1,100.00	$ 1,100.00
Flow Meter	1	Per Project	$ 1,100.00	$ 1,100.00
(3) Sample ports	1	Per Project	$ -	NIC
Pumps, hoses, etc...	1	Per Project	$ 11,000.00	$ 11,000.00
Sand filter	1	Per Project	$ 9,200.00	$ 9,200.00
Labor (Based upon day rate)	1	Per Project	$ 81,000.00	$ 81,000.00
			SUM	$ 191,000.00

Item	#	Units	Cost Per Unit	$$$
Labor	3	days	$ 4,000.00	$ 12,000.00
Stone, PVC pipe	1	per project	$ 8,200.00	$ 8,200.00
			SUM	$ 20,200.00

Ron Rate	Steve Rate	John Rate	John driving	Ron # of piles	$$$
2-3 per day	100 ft day	4 per day	15 - 20 /day	150	$ 222,000.00
					$ 200,000.00
		$800/day			$ 30,000.00
	$3/sf mtl @ 23,000 sf	$3K-$4K/crew day			$ 275,000.00
	sum				$ 727,000.00

	$$$/Unit	$$$	Ron	Steve	John	Days
Drill rigs	10000	375000	$3K -- $4K per day	$3K - $5K	($2K / day * 2 rigs) + $	37.5
H Piles						
Concrete						
Lagging						
Tiebacks						
Whalers						
Testing						

	#	Day Rate	Days	NE TANKS $$$	WT FRENCH $$$
Dump trucks - Clean	17	$ 1,200.00	32.2	$ 656,402.86	$ 372,533.85
Dump trucks - Dirty	12	$ 1,200.00	19.6	$ 282,913.60	$ 227,466.15
			TOTAL	$ 939,316.47	$ 600,000.00
			AVG DIRTY EXCAVATION ($$$)		$ 255,189.88

Capacity vs Project Check				
Calculated Loads/Day	Capacity Volume (CY)	Projected Volume (CY)	Capacity Weight (Tons)	Projected Amts (Tons)
3.0	41025.18	32100.00	49230.21	48150
3.0	17682.10	9800.00	21218.52	14700

Cushing Village Project
Remediation Scope

Primarily, based on CHA's remediation strategy and supplemented from information provided by Cooperstown, Northeast Tanks, French and APlus, the following summary is provided for the remedial/closure plan and strategy for the known releases of oil and/or hazardous material (OHM) at the proposed Cushing Village Development. The releases discussed are those cited in the Phase I Environmental Site Assessment for the above referenced project dated May 15, 2015 and the CHA Pre-Characterization Report dated May 30, 2014. The Pre-Characterization Report is the basis for the soil categories and volumes referenced in this scope.

Soil Disposal, Treatment and Transportation

Remediation will require the excavation and disposal of approximately 9,700 cubic yards of contaminated soil outside the PCE treatment and 1,600 cubic yards within the PCE Treatment Area. The remaining soils are categorized as reusable fill (Category 1) and are outside this remediation scope.

Inside Treatment Area

It is currently estimated that approximately 1,900 cubic yards of PCE contaminated soil above 1 mg/kg exist at the site. 1,300cy of lightly impacted soils is planned for reuse on the site (e.g., backfill) and the remaining 600 cubic yards of more highly-impacted material will be treated on-site using mobile thermal desorption technology and/or chemical oxidation to reduce the PCE concentrations below "delisting" thresholds so that it can be disposed/reused as non-hazardous soils. The 1,300cy will be disposed off-site in a lined landfill. Following the excavation work, basal excavation samples will be collected to document residual soil conditions to evaluate compliance with the "action levels" developed for a site specific Method 3 risk characterization. Using thermal desorption, treatment of 600cy is estimated $229.17/cy (average of two estimates) totaling $137,502 in treatment costs plus an additional $30,000 in mobilization costs.

Outside the PCE Treatment Area

The following utilizes A-Plus soil disposal costing:

- Category 4 Soils: 5,400 cubic yards will be disposed at the Waste Management lined landfill on Westminister Rd. in Fitchburg, MA or similar facility. Estimated costs for disposal of these soils amount to $226,800.
- Categories 2 & 3: 5,600 cubic yards will be disposed at the Waste Management unlined landfill on Barre Depot Rd. Barre, MA or similar

facility. Estimated costs for disposal of these soils amount to $142,800.

Additional costs for soil transportation for dirty soils are estimated at $255,189.88 based upon the average of two estimates provide by Northeast Tanks and WT French. Details on these estimates and their assumptions are provided on the attached Remediation Budget spreadsheet.

Excavation and Dewatering

The excavation of the soil will require excavation and dewatering of the site, so the baseline costs for these that would be required for a normal excavation (non-remediation) are out of scope. Additional excavation costs associated with handling impacted soils are estimated at $117,880, as described in the attached Remediation Budget spreadsheet. Additional dewatering costs will be incurred for dewatering activities during remediation consist of the use of two 2,000 lb. carbon vessels with carbine and their associated disposal estimated at $51,000. This dewatering will be conducted in compliance with USEPA NPDES remediation general permit (RGP) that will be submitted prior to construction. The NPDES RGP application has been prepared by CHA and is ready for submittal.

The excavation of soil and groundwater with the exception of the chlorinated volatile organic compounds (CVOCs) contamination related to the old drycleaner (RTNs- 3-23300, 3-23658) will be performed in compliance with plans and procedures in a Soil Management Plan/Release Abatement Measure that has been drafted and will be submitted to MassDEP prior to the start of construction. This soil has been precharacterized for disposal parameters based on 109 soil borings and 71 soil samples. This soil pre-characterization will allow the use of a "load and go" site work approach.

The requirements in the RAM plan include an environmental engineer to observe and screen the soil to evaluate if the soil is consistent with pre-characterization results for that area of the site. These costs and scope are addressed in section Profession Fees, hereunder. Soil excavation and remedial response action in the area of the CVOCs contamination will be conducted in compliance with a RAM plan that will be submitted prior to remediation.

Professional Fees

LSP Services and DEP Reporting

The LSP shall prepare and submit all reports required under all local, state and federal laws and regulations. The LSP shall prepare and submit the required reports to the Massachusetts Department of Environmental Protection (DEP). A Release Abatement Measure (RAM) Plan will be needed to address the building demolition and soil excavation. This plan will document the site conditions, the estimated extent of contamination, the investigation results to date, and the planned actions to

remediate the site. Incorporating many of the planned activities – building demolition, shoring, excavation, soil transport, and disposal in the RAM Plan will support the eventual application for a Brownfields Tax Credit – and therefore the LSP shall recommend including all of these planned activities in the RAM Plan.

A RAM Status Report would be due to the DEP 120 days after the RAM Plan is submitted unless the project is completed within that window (our proposal assumes that one status report is required). A RAM Completion Report is required at the completion of response actions. This scope assumes the Completion Report is part of the Permanent Solutions Statement. Depending on the timing of the project, one or more ROS Status Reports may also be required.

Soil Characterization Sampling and Analyses

Additional soil characterization sampling will be required prior to removing the contaminated soil from this site to a licensed facility. Based on the expected volume of soils requiring off-site disposal (approximately 37,000 cubic yards or approximately 55,500 tons), and the characterization sampling ratios for each facility, additional soil characterization sampling and analyses will be required. The additional sampling also will be used to delineate certain soil grids more carefully between those with and without PCE.

The specific parameters for analysis will depend on the requirements of the specific receiving facility, though experience suggests the LSP will be required to test for RCRA 8 metals, volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs), polychlorinated biphenyls (PCBs), total petroleum hydrocarbons (TPH), conductivity, ignitability, pH, and reactivity at a minimum.

Construction Dewatering Testing, Treatment and Permit

Groundwater will likely be encountered during excavation. Removal, treatment, and disposal of this water will be required to allow excavation to proceed below the water level. The LSP will revise CHA's NPDES Remediation General Permit application for any remediation wastewater that is generated during site activities. The RGP requires a significant number of sample analyses both prior to application and upon receipt of the permit.

Treatment of the influent will be required at some level, depending on the influent quality characteristics. The LSP will work with your GC to design, furnish, and install the required treatment works. LSP will also oversee the operation of the treatment works as a Licensed Waste Water Treatment Plant (WWTP) Operator, in accordance with 310 CMR 40.0045.

Soil Transportation and Disposal Oversight

Soil contaminant concentrations were identified that will necessitate disposal in regulated landfill facilities. Additional LSP support will be required for the regulated handling, transportation, and disposal documentation that will be required to remove these materials. For this task, the LSP would:

- Identify potential disposal alternatives based on the initial characterization test results;
- Prepare the required disposal characterization LSP Opinion letters;
- Coordinate with the contractor, the generator, and the disposal facilities;
- Prepare Bills of Lading to manage the movement of the soil and stamp these documents as the LSP;
- Close the loop to confirm proper disposal of all soils at licensed facilities.

Construction Monitoring

The LSP will coordinate our activities with the selected General Contractor and Sitework Contractor to ensure that the excavation process proceeds smoothly and that all required submittals are in hand to facilitate the work. The LSP shall be present on site during soil excavation activities to monitor subsurface conditions, perform the required dust monitoring, manage Bills of Lading and the tracking of materials leaving the site, and to collect post-excavation samples to document soil conditions as required to close out the site for incorporation in the Permanent Solution Statement. Sitework is assumed to require approximately 15 weeks or approximately 75 working days for soil handing, excavation, and planned transport and disposal.

It is likely the LSP will need a monitor on-site for most of the work. For planning purposes, this scope assumes 8 hours/day support over 75 days in our budget. Included is a budget for analytical expenses for post-excavation sampling documentation; for planning purposes, the scopes assumes 30 post-excavation samples for the tetrachloroethylene (PCE) area and 40 post-excavation samples for the remainder of the site. These samples will be used to document that residual conditions meet the DEP standards.

Permanent Solution Statement

For all MCP sites, a Permanent Solution Statement is required to close out MCP activities once a condition of No Significant Risk has been achieved.

Further, details for costing and scope are provided on the attached cost matrix.

TASK DESCRIPTION & ASSUMPTIONS	LABOR HOURS	$/HR	SUBTOTAL	EXPENSES UNITS	# OF UNITS	SUBTOTAL	TASK TOTAL
1 Soil Disposal Characterization - Winslow							$12,148
Drilling Subcontractor (assume 2 days)				2	$3,000	$6,000	
Laboratory Analyses (4 samples - full suite)				4	$600	$2,400	
Field Expenses (per day)				2	$125	$250	
Labor - Field	16	$78	$1,248				
Labor - Proj Mgt	4	$105	$420				
Labor - LSP	1	$165	$165				
Labor - Admin	2	$58	$115				
DigSafe			$300				
Letter Report/Summary			$1,250				
2 NPDES - Construction Dewatering Permit							$4,000
3 New RTN							$300
4 RAM Plan Submittal							$2,500
5 ASTM Phase I ESA							$2,500
6 On-going LSP Services							$0
as needed - T&M basis							
7 LSP SERVICES							
7a Soil Pre-Characterization - Hyland & Pomona							$75,270
- 95 soil borings & 49 samples							
- assume GeoProbe, 8 borings/day							
Drilling Subcontractor (assume 12 days)				12	$2,750	$33,000	
Laboratory Analyses (49 samples - full suite)				49	$600	$29,400	
Field Expenses (per day)				12	$125	$1,500	
Labor - Field	100	$78	$7,800				
Labor - Proj Mgt	16	$105	$1,680				
Labor - LSP	4	$165	$660				
Labor - Admin	4	$58	$230				
Letter Report/Summary			$1,000				
7b PCE-Contaminated Soil Remediation							$22,725
- 3 weeks of excavation (15 days)							
- 30 post-ex samples							
- 4 dewatering samples							
- Non-haz delisting petition							
- BOLs, shipping paperwork, Coordination with disposal facilities							
- Surveying							
Laboratory Analyses (30 samples - VOCs only)				30	$85	$2,550	
Field Expenses (per day)				15	$125	$1,875	
Labor - Field	125	$78	$9,750				
Labor - Proj Mgt	20	$105	$2,100				
Labor - LSP	6	$165	$990				
Labor - Admin	8	$58	$460				
Non-haz delisting paperwork			$2,250				
BOLs, shipping paperwork, Coord. with disposal facilities			$1,500				
Surveying			$1,250				

7c	**Monitoring of Soil Excavation**						$57,090
	- 12 weeks of excavation						
	- 40 post-ex samples						
	- BOLs, shipping paperwork, Coordination with disposal facilities						
	Laboratory Analyses (40 samples - VOCs only)				40	$80	$3,200
	Field Expenses (per day)				15	$100	$1,500
	Labor - Field	500	$78	$39,000			
	Labor - Proj Mgt	48	$105	$5,040			
	Labor - LSP	18	$165	$2,970			
	Labor - Admin	24	$58	$1,380			
	BOLs, shipping paperwork, Coord. with disposal facilities			$4,000			
7d	**MCP Paperwork**						$14,500
	ROS Status Report	24		$2,000			
	RAM Status Report	24		$2,000			
	Risk Characterization (Method 3)	40		$5,000			
	Permanent Solution	40		$4,500			
	Public Notification provisions - PS	8		$1,000			
							$191,033
		1032		$ 100,058		$	81,675
				$ 96.96			

EXHIBIT 4

Robert A. Fasanella

From:	Chris Starr <chrisstarr123@gmail.com>
Sent:	Tuesday, May 23, 2017 6:46 PM
To:	Otto Weiss
Cc:	Bill Lovett; Rob Loring; Robert A. Fasanella; Jim Curtis
Subject:	Remediation Budget
Attachments:	2017.05.23 Memo re Cost Projections .docx; ATT00001.htm; Fig 1 Disposal Site Boundary.pdf; ATT00002.htm; CV Env Remediation Budget Sept 2 2016.xlsx; ATT00003.htm; LSP Services Cost Matrix.pdf; ATT00004.htm

Otto,

I respectfully disagree with your interpretation of the Second Amendment for Agreement of Sale in your email of May 8, 2017,especially after reviewing the latest "updated environmental cost projection" you sent me by email on late Friday, May 12, 2017 and after having a preliminary opportunity to review it with our environmental consultant Cooperstown Environmental .

While it is true that you state that we agreed that the costs of Remediation may exceed the "mutually agreed Remediation budget", the amended Section 26(b)(4) (attached as Ex. J) clearly states that the parties agree that "the budget for the Remediation of the Existing Environmental Conditions is $1,310,000..." and further that "any changes in the scope for work for the Remediation will be subject to the parties' mutual approval, not to be unreasonably withheld or delayed."

As Section 26(b)(4) clearly addresses the Remediation budget of $1,310,000 and no other budget or scope, the Remediation budget is clearly subject to the parties' mutual approval. While I understand that the costs may exceed that Remediation budget, any exceedances in cost and scope are clearly subject to our mutual approval. I provided at least three versions of a detailed Remediation budget to Bill Lovett in late August to early September of 2016, which the Second Amendment refers to. We have all been operating off that detailed Remediation budget for months as the primary Remediation budget and the scope of work as Exhibit C (scope) provides no meaningful details to the Remediation budget compared to my attached Remediation budget which we all have been using as a more accurate and reasonable basis for Remediation of the property.

Further, I should note that Exhibit C of the Second Amendment defines the Remediation Scope as "all costs associated with the onsite, or offsite cleanup or remediation associated with the property...". So, given that by virtue of this definition "scope" is "costs" and vis versa, therefore changes in costs are changes to scope, and thus are subject to mutual approval.

Your reference to the "Nauset Scope", in your May 8th email, is misplaced as this scope refers to the general project construction budget, and is clearly not the Remediation budget – and so is irrelevant to our discussion of the Remediation budget. The Nauset Scope expressly states "This Budget is exclusive of any StarbucksClosure Costs, delivery, delay, penalties , rent offsets or fees or Environmental Costs other than those in the Nauset Scope." There are few if any Environmental Costs in the Nauset Scope.

You further inaccurately state that Starr did not reserve "approval rights over costs." The provision in the Second Amendment regarding limiting Seller's approval rights over costs that you are referring to is located in

Section 4(C) and relates to Non-Closure Costs, as opposed to Remediation costs. The Non-Closure costs clearly address costs resulting from Starbucks not timely vacating retail components and its present location. As you are aware, Starbucks will be vacating in June so there will be no Non-Closure costs. Therefore, Section 4 relating to Non-Closure costs is irrelevant. Your statement regarding Starr not having approval rights over costs clearly is located within Section 4(C), which specifically relates to Non-Closure costs and not Remediation costs. Section 4(C)(2) states that "Seller acknowledges that Seller will have no approval rights over the incurring of such Non-Closure Cost Increases, it being understood that such determinations will be solely within Buyer's control." It cannot be disputed that these "no approval rights" specifically relate to Non-Closure Cost Increases and not Remediation costs.

To the contrary, Remediation costs, are addressed in Section 26(b)(4), as stated above, and require the parties' mutual approval. Further, your reference to the "scope" attached as Ex. C to the Second Amendment rather than the clearly agreed upon Remediation budget of $1,310,000 is misplaced as Section 26(b)(4) clearly addresses the Remediation budget itself of $1,310,000 being subject to the parties' mutual approval.

I am providing you with a Memo prepared by Cooperstown addressing in detail why we believe that the latest Remediation cost projection proposed by Sage and Toll is clearly excessive and our lack of approval of this "environmental cost projection" or budget, is not unreasonable or delayed given that your proposedcurrent Remediation budget ($4,161,441) exceeds the mutually agreed Remediation budget by over $2,851,441, which is over 350 percent of what we agreed upon. Once you review our response to your latest proposed budget increase, we believe you and Sage will agree that we are not being unreasonable.

Since early February, our team has repeatedly reached out to Toll and Sage to come to mutual assumptions for a reasonable mutually agreeable Remediation budget. Many of our requests have been ignored and when responded to it is often with incomplete or in some cases inaccurate information. We have taken great pains to to work in good faith to work with you, and Bill, and Sage for months and are hoping that we do not have to resort to more aggressive legal steps to protect our interests.

Please respond to this email by Wednesday, May 31st, to let us know if you are willing to participate in a good faith negotiated remediation budget or not. We will act accordingly based upon your decision.

Thanks,

Chris

"Confidential Work Product"

May 23, 2017

Mr. Christopher Starr, Managing Partner
Smith Legacy Partners Series LLC
6 Littlefield Road
Acton, MA 01720

Re: Revised Cost Projections
Cushing Village Redevelopment Project
495-501 Common Street, Belmont, Massachusetts

Dear Mr. Starr:

Cooperstown Environmental LLC (Cooperstown) has reviewed the "updated environmental cost projection" provided to you by Otto Weiss by email at 4:35 PM Friday, May 12, 2017. Per your request, we provide the following observations regarding the information included in that document. The information purports to summarize the estimated "known and anticipated costs at this time" (with various caveats and limitations) for the project formerly known as Cushing Village currently underway and being conducted by Belmont Residential LLC.

Our initial reaction to the information is that it does not appear to be a realistic or credible attempt at categorizing the actual, necessary, or reasonable costs of environmental remediation for the site. The unit prices are above market price, the proposed level of effort is far disproportionate to the scope of work, there are innumerable unnecessary tasks included in the scope, and non-environmental construction costs are included in what is supposed to be an environmental remediation budget.

GENERAL OBSERVATIONS

Lack of Documentation. The cover page summarizes costs by broad categories and documentation and backup for the numbers presented therein are included only for the Professional Fees/Services to be provided by Sage. From other sources that have been provided to us, we have WL French's soil budgets by soil type (not by disposal facility). We have an Excel printout for the in-Situ soil treatment costs but are unsure where it originated or on what it is based. Missing completely from the document is any cost information about dewatering and excavation, even though we assume Nauset has provided its costs for these services to the owner.

Relationship to Prior Cost Estimates. The costs on this summary bear little relationship to the environmental remediation budgets or cost estimates that have been agreed to previously by Sage and Toll, and which have been on the table for many months and used as working figures by all parties throughout that time. This document includes no explanation provided for the fantastic increases, compromising the credibility of the information. For example:

- Soil Disposal *more than doubled* (increased by $879,149)
- Professional Services *increased more than 6x* (increased by $1,180,714)
- On Site Soil Treatment *increased by almost 5x* (increased by 687,700)

Such increases in the estimates strain credulity and cannot be explained by an increase in the scope of work or market conditions.

Costs to Date. Sage's budget summary includes $388,364 as "Billed to Date" for the period 11/1/16 – 4/30/17. There is no documentation of those charges. Included within this cost are $76,000 for excavation and disposal oversight (excavation has yet to begin as of April); $81,891 for dewatering, and $131,064 for disposal characterization (much of which was already done by CHA and paid for by SLP prior to 11/1/16). We note that the amounts expended to date far exceed Sage's original cost estimate to complete the entire project.

Disposal Site Boundaries. To our knowledge, Sage has still not accurately defined the limits of the disposal site to include only those areas with oil and/or hazardous materials (OHM) either documented (based on sample results) or suspected (based on a Conceptual Site Model). Instead, Sage continues to define the entire property as the disposal site, despite the lack of any rationale for doing so and in contradiction to the existing data and its own CSM.

The delineation of the disposal site boundaries does require a degree of judgment from the LSP. The disposal site, however, should not be defined by property lines but rather by the CSM and empirical data. Areas of the property where contamination would not be expected based on the CSM and where no releases exist (as proven by copious sampling data) are properly excluded from the disposal site.

Furthermore, the delineation of the disposal site is required in three dimensions, with both areal extent and depth aspects. Some areas of the site have OHM impacts only at the surface or only at depth, and those findings should be properly addressed.

We have analyzed the information available to us and suggest the disposal site boundary as shown on the figure attached. As shown, even under a conservative interpretation of the data and site history, there is a significant percentage of the property that is not included as part of the disposal site. Work in those areas outside of the disposal site boundaries (vertical and horizontal) should not be included as part of the "environmental budget" because those are construction costs, not remediation costs.

On Site Treatment. Treatment in place has been discussed for years as a potential money-saving alternative to costly offsite disposal as hazardous waste for the soil affected by the tetrachloroethylene (PCE). The comparative costs discussed through the winter were $427,500 for treatment and removal versus $712,500 for disposal without treatment. The proposed budget for on-site treatment is now shown as $882,000, and is purportedly documented by a table dated 4.26.17 of unknown provenance. This cost increase appears to be driven by an increase in volume to 5500 cubic yards (8250 tons), versus the previous estimate from extensive soil characterization to be 1900 cubic yards (2850 tons).

Dewatering. We have discussed many times the fact that dewatering is required for the construction project given the underground parking and foundation and that the costs attributable thereto are not environmental costs except to the extent that they exceed what would be otherwise be required. This includes the equipment to conduct the dewatering, the labor to oversee and operate the equipment (to the degree that is necessary), the treatment required for any discharge (even not including OHM), and the permitting and sampling requirements of a Construction General Permit (CGP). The budget presented in the latest estimate does not reflect incremental costs but rather total costs.

Unnecessary Tasks. Sage includes in its budget a provision for Phase II, Phase III, and Phase IV reports and multiple years of additional sampling at the site prior to closure. Updated interim reports are not necessary or required under the MCP but rather, any new information can be incorporated into the Permanent Solution without need for separate reports. Further, no justification is provided for the assumption of multiple years of additional sampling given the extent of soil proposed to be removed from the site and extent of dewatering. It is reasonable to think that a Permanent Solution could be filed within several months of completing the remediation portion of the project assuming the risk assessment demonstrates No Significant Risk.

SPECIFIC OBSERVATIONS

Soil Disposal

- We do not have the source of the revised budget for soil disposal by WL French that appear in the latest budget ($1,696,836) as it does not match another table we have been given that shows French's costs to be $1,927,650. Neither budget is reasonable given the soil pre-characterization and ability to select far less expensive soil transport and disposal options that were provided to Toll (several weeks or months ago).
- French's cost table provides three separate prices for Category 4 soil ranging in price from $39/ton to $85/ton. There is no information to indicate the difference among these three options, how the decision is made as to which facility to use, and who is making that choice. Why would soil go to a facility at $85/ton that was eligible for disposal at a far lower price? What process will be followed to ensure the lowest cost facilities are utilized rather than the more expensive? This not explained in the proposed budget.
- Based on our review, the French proposal appears to be directing soil in Categories 2 and 3 that is eligible for disposal at Westford a qualified facility that is far less expensive, instead to facilities at greater cost. You should request an explanation as to why the cheaper facility is not being utilized to dispose of soil that has been accepted by Westford at a lower price.
- It is not clear if the soil costs included within the $882,000 "on-site treatment" line item cost are double-counted in both line items. There is 8250 tons of soil priced in on-site treatment; is this also in the environmental soil T&D price?
- The proposal from TAZ Enterprises for soil disposal appears to be about $450,000 less than the price from WL French; it is not clear why a reasonable person would select a much higher-priced proposal.

Professional Services/LSP (Labor)

- The level of effort proposed by Sage is excessive. They propose administrative support for "excavation oversight" at 80 hours per month (half-time), well beyond any reasonable demand for office support to field staff
- Field staff for excavation monitoring includes two full-time staff; one person at the site should be capable of monitoring the work.
- There is no provision for project delays and shutdowns or other situations where work is not being performed and so full time monitoring would not be required
- There is no recognition of a lack of need to perform full-time monitoring when work is being performed in areas outside the proper limits of the disposal site
- The hourly rates for the LSP and the field staff are above market rates for this area

- The idea that dewatering requires full-time monitoring as Sage contends is ludicrous; in fact, as Sage admits, the system will operate 24 hours per day and the system will be operating unmonitored during most of the day and night. If the system runs fine 16 hours per day, the contention that it "requires" full-time monitoring during the other 8 hours is spurious;
- Dewatering costs have not been adjusted for "incremental" costs above and beyond what would be necessary for any construction project
- The line item for "MCP Reporting & PIP, LSP Oversight" ($42,600) basically covers a RAM Status report, for which a reasonable budget would be less than $5,000; a provision for LSP and Senior PM time is already included elsewhere – in the excavation budget at $48,000 – so this entire line item is duplicative.

Professional Services/LSP (Other)

- The budget includes an allowance for both "vehicle charges" and "mileage" both of which appear to relate to the same cost. The total is $11,400 for the project, extremely excessive for actual costs. The mileage rate of $0.75 is far above the IRS-designated rate of $0.54/mile.
- Soil Sampling Equipment at $900/month or a total of $5,400: soil samples are generally collected with hand trowels or a bucket auger, either of which cost a few dollars up to a couple of hundred dollars
- Demobilization of frac tanks should not be included as they are required by general construction dewatering, not due to contamination

Professional Services/LSP (Lab Analyses)

- The costs quoted for NetLabs are far above that firm's normal rates.
- Many of the soil analyses do not make sense for confirmatory samples; for example, total organic carbon, chloride, reactivity, alkalinity, etc. These analyses do not measure constituents that are needed for MCP purposes.
- Many of the analyses (PCBs, pesticides, herbicides, flashpoint, etc.) are relevant only for disposal characterization, not MCP purposes; soil disposal characterization sampling is accounted for elsewhere in the budget and that work has already been completed, so this is double counted.
- The number of soil samples proposed is excessive considering the plan to excavate to the underlying bedrock, which will obviously minimize the need for post-excavation samples at the base of the excavation.
- Groundwater samples are included for NPDES purposes but we do not have any information regarding sampling requirements
- There will be no need for Air sampling unless the dust monitoring detects certain exceedances so this line item is speculative (and likely unnecessary).

Professional Services/LSP (Subcontracted)

- The costs quoted for "Equipment Rental" ($150,000) are far above what Sage provided in the meeting with Sage and Toll on 2/1/17. At that time, Sage stated that of the $107,000 cost for air monitoring, "$90,000 was for equipment rental alone." Sage has not explained why the rental cost has increased from $90,000 to $150,000 with no change in the protocols.
- Sage stated in February that the air monitoring budget was constructed assuming that every piece of monitoring equipment was used every day for 6 months; at that time, they explained that they had an agreement from the rental firm that they would not be charged for days when

the equipment was not in use and so the actual cost would be less (perhaps far less) than the $90,000 in the budget.

- We do not have any support for the claimed budget of $16,500/month ($99,000 total) for groundwater treatment equipment. Considering that the incremental cost of groundwater treatment is likely to be GAC canisters only (frac tanks, bag filters, pumps, and hoses would be required for dewatering in any case), this cost appears quite excessive

MCP Services (Labor)

- The costs quoted for "Phase II to Closure" ($74,470) seem to presume an extensive effort related to examining the nature and extent of contamination off-site, as further on-site investigations do not seem needed based on the remediation work being conducted. An additional $75,000 of site investigations cannot be explained by the MCP requirements given the amount of work conducted in 2016 and the results of that work, which appear to have delineated the extent to a reasonable degree. The budget has approximately 700 labor hours devoted to this effort.
- Sage's budget includes time for a revised Phase II and Phase III reports. Neither report is required under the circumstances given the RAM plan will have been completed and the Permanent Solution Statement will likely be filed shortly afterwards. Any new information developed during the remediation can be incorporated within the final project documents (a Permanent Solution Statement).

MCP Services (Other)

- The budget includes an allowance for both "vehicle charges" and "mileage" both of which appear to relate to the same cost. The mileage rate of $0.75 is far above the IRS-designated rate of $0.54/mile.
- Soil Sampling Equipment at $540 has no basis in actual costs, certainly not at that level. Similarly, an additional $600 for "gloves, etc." is inflated beyond any reasonable cost basis.
- An additional $5,000 or so for sampling equipment rental implies a scope of work far beyond what would be considered reasonable

MCP (Lab Analyses)

- The costs quoted for NetLabs are far above that firm's normal rates.
- The number of soil samples proposed (16) implies an extensive additional off-site investigation program, which appears unnecessary considering the results to date.
- Groundwater samples (60) imply an extensive additional off-site investigation program, which appears unnecessary considering the results to date.
- Indoor air samples (40) imply an extensive additional off-site investigation program, which appears unnecessary considering the results to date.

MCP (Subcontracted)

- The costs quoted include 10 additional days of drilling, which implies an investigation throughout the neighborhood, which is unnecessary given that such drilling was already completed in 2016 before the end of Toll's due diligence period. Given that prior investigations have delineated the extent, for an additional $52,000 of drilling is not reasonable or necessary.
- In addition, the cost per day for drilling is excessive.

Dewatering

- It is not clear where the $32,000 figure originated in the dewatering line item and why this has not been incorporated in any of the many other portions of the budget (labor, labs, equipment rental, subcontracted, etc.).
- The dewatering costs generally (including those captured in the Billed to Date section) have not been adjusted to reflect the incremental costs attributed to the contamination (i.e., the "environmental costs") and therefore are significantly inflated. Dewatering is required for the construction of the underground parking lot even in the absence of contamination, and would require labor, equipment, and sampling as well as a Construction General Permit (CGP). All costs related to these aspects need to be removed from the environmental budget.

Excavation

- Costs for excavation of soils without impact from OHM should be excluded from the environmental budget as these are construction costs

DOCUMENTATION AND COST CONTROL

Simply as a matter of quality control and good practice, we suggest the following steps be implemented as part of your verification of the costs:

- Sage should provide for your review a copy of their proposals, executed contracts, and rate schedules
- You should receive copies of all invoices for the work and documentation of payment
- Invoices should include all the necessary backup for labor (timecards), expenses (receipts), and subcontracted services (invoices)

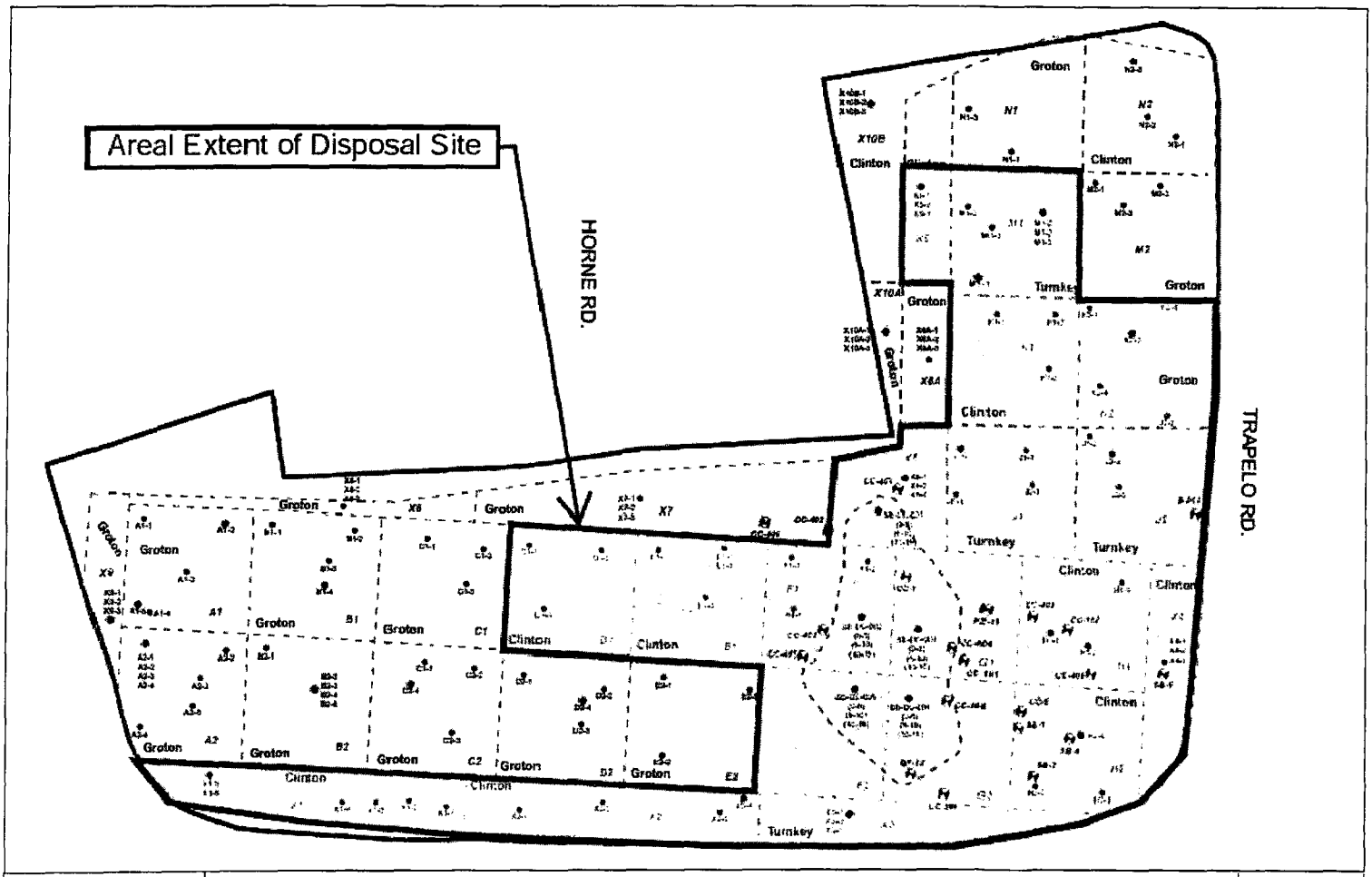
This type of documentation is the same as would be required for a Brownfields Tax Credit application, a 21J submittal, an insurance claim, or any other situation where a third-party is being asked to pay for costs being incurred by another party.

Please contact me by phone or email at Jim@CooperstownEnv.com to discuss this letter.

Very sincerely yours,
Cooperstown Environmental LLC

James T. Curtis

James T. Curtis, PE, LSP
President



COOPERSTOWN environmental
23 Main Street • Andover, MA • 01810
Phone (978) 470-4755 • Fax (978) 470-4756
www.cooperstownenv.com

Disposal Site Boundaries

495 Common Street
Belmont, Massachusetts

SOURCE: SAGE Environmental

FIGURE 1

N

TASK DESCRIPTION & ASSUMPTIONS	LABOR HOURS	$/HR	SUBTOTAL	EXPENSES UNITS	# OF UNITS	SUBTOTAL	TASK TOTAL
1 Soil Disposal Characterization - Winslow							$12,148
Drilling Subcontractor (assume 2 days)				2	$3,000	$6,000	
Laboratory Analyses (4 samples - full suite)				4	$600	$2,400	
Field Expenses (per day)				2	$125	$250	
Labor - Field	16	$78	$1,248				
Labor - Proj Mgt	4	$105	$420				
Labor - LSP	1	$165	$165				
Labor - Admin	2	$58	$115				
DigSafe			$300				
Letter Report/Summary			$1,250				
2 NPDES - Construction Dewatering Permit							$4,000
3 New RTN							$300
4 RAM Plan Submittal							$2,500
5 ASTM Phase I ESA							$2,500
6 On-going LSP Services							$0
as needed - T&M basis							
7 LSP SERVICES							
7a Soil Pre-Characterization - Hyland & Pomona							$75,270
- 95 soil borings & 49 samples							
- assume GeoProbe, 8 borings/day							
Drilling Subcontractor (assume 12 days)				12	$2,750	$33,000	
Laboratory Analyses (49 samples - full suite)				49	$600	$29,400	
Field Expenses (per day)				12	$125	$1,500	
Labor - Field	100	$78	$7,800				
Labor - Proj Mgt	16	$105	$1,680				
Labor - LSP	4	$165	$660				
Labor - Admin	4	$58	$230				
Letter Report/Summary			$1,000				
7b PCE-Contaminated Soil Remediation							$22,725
- 3 weeks of excavation (15 days)							
- 30 post-ex samples							
- 4 dewatering samples							
- Non-haz delisting petition							
- BOLs, shipping paperwork, Coordination with disposal facilities							
- Surveying							
Laboratory Analyses (30 samples - VOCs only)				30	$85	$2,550	
Field Expenses (per day)				15	$125	$1,875	
Labor - Field	125	$78	$9,750				
Labor - Proj Mgt	20	$105	$2,100				
Labor - LSP	6	$165	$990				
Labor - Admin	8	$58	$460				
Non-haz delisting paperwork			$2,250				
BOLs, shipping paperwork, Coord. with disposal facilities			$1,500				
Surveying			$1,250				

7c	**Monitoring of Soil Excavation**						$57,090
	- 12 weeks of excavation						
	- 40 post-ex samples						
	- BOLs, shipping paperwork, Coordination with disposal facilities						
	Laboratory Analyses (40 samples - VOCs only)				40	$80	$3,200
	Field Expenses (per day)				15	$100	$1,500
	Labor - Field	500	$78	$39,000			
	Labor - Proj Mgt	48	$105	$5,040			
	Labor - LSP	18	$165	$2,970			
	Labor - Admin	24	$58	$1,380			
	BOLs, shipping paperwork, Coord. with disposal facilities			$4,000			
7d	**MCP Paperwork**						$14,500
	ROS Status Report	24		$2,000			
	RAM Status Report	24		$2,000			
	Risk Characterization (Method 3)	40		$5,000			
	Permanent Solution	40		$4,500			
	Public Notification provisions - PS	8		$1,000			
							$191,033
		1032		$ 100,058		$	81,675
				$ 96.96			

EXHIBIT 5

Robert A. Fasanella

From: [redacted]
Sent:
To:
Subject:
Attachments:

[redacted]

---------- Forwarded message ----------
From: **Otto Weiss** <oweiss@tollbrothers.com>
Date: Tue, May 30, 2017 at 4:40 PM
Subject: Belmont professional services cost update
To: "Chris Starr (chrisstarr123@gmail.com)" <chrisstarr123@gmail.com>, "Robert Loring (rloring303@gmail.com) (rloring303@gmail.com)" <rloring303@gmail.com>
Cc: Bill Lovett <blovett@tollbrothers.com>, Jeff Calcagni <JCALCAGNI@tollbrothers.com>

Chris,

Enclosed please find the current budgets and breakdowns for the professional services for Belmont. In the attached file you will find:

Page 1: The remediation budget comparison sheet. This shows projected cost relative to your original budget (based on our interpretation, please see below) .

Page 2: Professional service budget with costs to date. I have listed on the right side the projected costs from your budget for some of the line item.

Pages 3 and 4: Costing sheets (2) for RAM implementation and Phase II to closure. These provide the back up for the projections made in the first two attachments.

As you will see, we have broken the costs out into great detail and made budget assumptions based upon anticipated schedule, hourly rates, required tasks and the requirements to address the environmental conditions on the site in accordance with the requirements of DEP. We have put your budget assumptions into some of the attached, however, we are unclear if they are specific to where you had intended them. We believe that the costs that we have identified are the costs associated with the aforementioned, however, we are unclear from the budgets that were provided by you how you anticipated covering these costs. If you could please take the time to put your assumptions specifically against the one's provided, this would be very beneficial. It appears that your preliminary assumptions may not have contemplated the appropriate durations of tasks, or some of the

tasks required. If you could please provide detail in a similar format to the one we have provided, we believe we can have a clearer understanding of your assumptions. Please appreciate, that we have put our budgets in place because we are seeking financing for the deal from an equity partner and the banks. We need to represent to these groups what we believe to be the potential cost exposure to the best of our ability, we do not want to misrepresent costs. As we have discussed, we are working to minimize the costs to the project, however, we will do everything in accordance with the requirements of DEP, and the environmental requirements of the project and cannot take "short cuts"

Also as an update on the soils disposal, we have received all final Contained In Determinations from DEP and will be updating our projected soils disposal cost I the next few days and will get this to you as well.

Otto Weiss
Project Manager | Toll Brothers Apartment Living
189 B Street | Needham, MA 02494

oweiss@tollbrothersinc.com | TollBrothersApartmentLiving.com

C: 617.959.4194

Toll Brothers APARTMENT LIVING

--
Chris Starr
Managing Member
Smith Legacy Partners Series, LLC
v.978.502.2276

DRAFT

June 25 2015

RAM IMPLEMENTATION COSTS

Item	TASK	VENDOR CHA	Cooperstown	AEI	SAGE	
		(estimated 3 month implementation timeframe)			(6 month timeframe)	
1	Soil disposal pricing			$ 12,500.00	$ 61,000.00	Soil disposal facility applications & coord. w/ treatment facilities Includes time spent for A-Plus approvals
2	Additional Precharacterization				$ 75,000.00	Actual analytical costs
	2a. Winslow - 4 addtl samples from 20 soil borings	$ 9,000.00	$ 12,148.00	$ 10,574.00		
	2b. Hyland/Pomona - 49 disposal samples from 95 borings	$ 65,000.00	$ 75,270.00	$ 70,135.00		
3	NPDES Permit for construction dewatering				$ 5,400.00	
4	New RTN Filing				$ 3,500.00	Tier Re-Classification
5	RAM Submittal				$ 40,000.00	Incl meeting-coord. with MassDEP
					$ 22,000.00	PIP Expenses
6	LSP/Geotech/Engineering support for design team					included in line 7 below
7	LSP Services				$ 24,000.00	As-needed consulting services
8	Oversight of PCE Remediation	$ 40,000.00	$ 22,725.00	$ 19,438.00		Included in item 9 below
9	Monitor excavation	$ 76,000.00	$ 57,090.00	$ 66,545.00	$ 262,000.00	Total for oversight of in-situ treatment & excavation
					$ 95,000.00	Confirmatory soil sampling and post-treatment soil sampling
					$ 150,000.00	Environmental monitoring equipment rental - MassDEP required
					$ 330,000.00	Dewatering system install & dewatering during construction
10	Reporting	$ 29,000.00	$ 14,500.00	$ 23,050.00	$ 45,000.00	Post RAM Plan submittal - LSP Services, PIP and reporting
	TOTAL	$ 219,000.00	$ 181,733.00	$ 202,242.00		
			Avg.	$ 200,991.67	$ 1,112,900.00	Approximately $380,000.00 of this already billed.

NOTES:

1. Based on Nauset schedule, SAGE budget - costs include 6 months of RAM oversight on-Site. Prior budgets were for 12 weeks.
2. Dewatering and treatment costs include approximately $100,000.00 in equipment rental and approx. $20,000.00 in subcontracted drilling services (not included in prior budgets).
3. Prior budgets did not include any costs asociated with PIP activity.
4. Prior budgets did not include costs assocaited with environmetal monitoring required by MassDEP.
5. Prior budgets did not quantify LSP costs.

Cushing Village Project Environmental Budget

5/10/2017

	PROJECT TASKS	LABOR COST ($)	EQUIP. RENTAL COST ($)	ANALYTICAL COST ($)	OTHER COST ($)	TOTAL PER TASK	BILLED TO DATE
RAM Implementation (May through October 2017)	Excavation & Disposal Oversight & Environmental Monitoring[1,2]	$275,700.00	$150,000.00	$65,800.00	$15,800.00	$507,300.00	$76,000.00
	Dewatering & Groundwater Treatment[3]	$116,000.00	$99,000.00	$6,200.00	$34,900.00	$256,100.00	$81,891.00
	MCP Reporting, LSP Services & PIP Activity	$42,600.00	$0.00	$0.00	$0.00	$42,600.00	$71,047.00
	Soil Disposal Characterization and Coordination w/ Treatment Facilities	$0.00	$0.00	$0.00	$0.00	$0.00	$131,064.00
	Subtotal	**$434,300.00**	**$249,000.00**	**$72,000.00**	**$50,700.00**	**$806,000.00**	

[1] Assumes (1) Field Project Manager and (1) Field Scientist on-Site (5) days per week for (6) months. Includes documentation for soil disposal.

[2] Includes HAPSite, Dustrak Rental, sample collection and anytical for soil disposal and confirmatory samples and any required indoor air sampling and analytical.

[3] Assumes a "second shift" field scientist is required for O&M of groundwater treatment system. Includes frac tank rental, carbon filters, Greensand filter, 3 carbon changouts

Phase II Comprehensive Site Assessment (Spring 2017 through December 2019)	Phase II SOW Preparation (incl. PIP comments period & responses)	$7,400.00	$0.00	$0.00	$0.00	$7,400.00	
	Phase II Field Work (on & off-Site asssessment of soil, groundwater, air)[4]	$31,000.00	$52,000.00	$35,000.00	$8,300.00	$126,300.00	$5,080.00
	DRAFT Phase II Report & Method 3 Risk Assessment	$18,800.00	$0.00	$0.00	$0.00	$18,800.00	
	Public Comment Period & Responses	$5,300.00	$0.00	$0.00	$0.00	$5,300.00	
	FINAL Phase II Report Prep & Submittal	$3,400.00	$0.00	$0.00	$0.00	$3,400.00	
	Subtotal	**$65,900.00**	**$52,000.00**	**$35,000.00**	**$8,300.00**	**$161,200.00**	

[4] Includes subcontracted drilling services in Equip Rental Column

MCP Closure	Phase III Remedial Action Plan (if necessary)[5,6]	$8,900.00	$0.00	$0.00	$0.00	$8,900.00	
	Phase IV Remedy Implementation Plan (if necessary)[5]	$5,200.00	$0.00	$0.00	$0.00	$5,200.00	
	Phase IV Implementation (if necessary)[5]	$0.00	$6,500.00	$3,200.00	$0.00	$9,700.00	
	Phase IV Completion Statement - Remedy Operation Status Submittal (if necessary)	$8,000.00	$0.00	$0.00	$0.00	$8,000.00	
	Permanent Solution	$18,000.00	$0.00	$0.00	$0.00	$18,000.00	
	AUL if necessary (survey by others)	$3,500.00	$0.00	$0.00	$5,000.00	$8,500.00	
	Subtotal	**$43,600.00**	**$6,500.00**	**$3,200.00**	**$5,000.00**	**$58,300.00**	

[5] If Phase II conclusion is that condition of No Significant Risk not attained

[6] Includes Draft, public comments, and final.

OTHER COST	As-needed consulting services	$0.00	$0.00	$0.00	$0.00	$0.00	$23,282.00
	Other cost	$0.00	$0.00	$0.00	$0.00	$0.00	
	Subtotal	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$388,364.08**

Subtotals	**$543,800.00**	**$307,500.00**	**$110,200.00**	**$64,000.00**	**$1,025,500.00**	
Risk (Contingency)	$0.00	$0.00	$0.00	$0.00	**$0.00**	
Total (Scheduled)	**$543,800.00**	**$307,500.00**	**$110,200.00**	**$64,000.00**	**$1,025,500.00**	**$388,364.00**

Total billed 11/1/16 - 4/30/17

SAGE ENVIRONMENTAL, INC.
PROJECT BUDGET ESTIMATE

Project Description: Cushing Village
Project Address: Belmont
Prepared By: M Cote
Task Description: Phase II to Closure 2017 - 2018
Date: 5/5/2017

LABOR (two lines are provided for select tasks in the event more than one person is required to complete the task)

Task	Description	$105 Prin.	$150 SPM	$200 LSP	$110 S2	$95 S1	$75 TW	$70 T3	$65 T2	$60 CAD	$50 ADM	Task Subtotal
1	Phase II Scope of Work - April/May 2017											$0.00
	Prep Phase II SOW		12	2						4	6	$2,800.00
	Public Comment Period and Responses		12	2						2	4	$2,560.00
	Prep Final Phase II SOW		8	2						2	4	$1,960.00
												$0.00
2	Phase II Field Work June 2017 - Dec, 2018)											$0.00
	Project Management - Access etc		40									$6,000.00
	Soil boring/monitoring well installation		10			80				10	10	$9,500.00
	Groundwater sampling - survey		6			80		40				$10,500.00
	Sub-slab Soil Gas & Indoor Air Sampling		6			32		16				$4,740.00
												$0.00
3	Phase II Report Prep											$0.00
	Data reduction/analysis		20	4		8				6	10	$5,440.00
	Method 3 RC		30	4							2	$5,420.00
	DRAFT Report for Public Comment		30	8		10				6	10	$7,910.00
	Public Comment Period and Responses		30	2						2	6	$5,380.00
	FINAL Report		10	4						6	10	$3,260.00
												$0.00
4	Phase III Remedial Action Plan											$0.00
	Prep Draft Phase III		20	2						3	8	$4,060.00
	Public Comment Period & Responses		12	2						2	4	$2,560.00
	Prep Final Phase III		10	2						2	6	$2,380.00
												$0.00
												$0.00
												$0.00
	Subtotal SAGE Labor	0	256	34	0	210	0	56	0	46	80	$74,479.00

SAGE Other

Description	Quantity	Unit Price	Cost
Vehicle Charge (0-100 Miles)	25	$50.00	$1,250.00
Vehicle Charge (100+ Miles)		$75.00	$0.00
Mileage	900	$0.75	$675.00
Soil Sampling Equipment	6	$90.00	$540.00
Field Filters		$25.00	$0.00
Groundwater Gauging Equipment		$40.00	$0.00
Groundwater Sampling Equipment	6	$275.00	$1,650.00
Groundwater Sampling Equipment w/GPS	2	$350.00	$700.00
Groundwater Sampling w/Elevation Survey Equipment	4	$300.00	$1,200.00
Groundwater Sampling w/YSI Equipment		$400.00	$0.00
SVE/Soil Gas Monitoring Equipment	6	$100.00	$600.00
Soil Gas Installation Package	6	$100.00	$600.00
Soil Gas Points	12	$35.00	$420.00
Potassium Permanganate Injection Equipment		$200.00	$0.00
Potassium Permanganate		$4.90	$0.00
Oxidant Injection Equipment		$100.00	$0.00
Oxidant		$5.42	$0.00
Air Sampling Pump		$35.00	$0.00
Asbestos Sampling Equipment		$50.00	$0.00
Confirmed Space Entry Equipment		$185.00	$0.00
Core Drill		$200.00	$0.00
Demolition Hammer		$110.00	$0.00
Ferromagnetic Detector		$25.00	$0.00
GPS Equipment		$150.00	$0.00
Hand Augering Equipment		$25.00	$0.00
Interface Probe		$25.00	$0.00
Landfill Gas Meter		$75.00	$0.00
Mold Air-O-Cell Cassettes		$6.00	$0.00
Mold Sampling Equipment		$40.00	$0.00
Photoionization Detector		$75.00	$0.00
Product Recovery Baller		$4.00	$0.00
Regenerative Vacuum Blower		$60.00	$0.00
Regeneralive Vacuum Blower w/Knockout		$70.00	$0.00
Roadboxes - 6"		$55.00	$0.00
Rotometer		$10.00	$0.00
Wetland Flagging Equipment		$75.00	$0.00
YSI Meter		$125.00	$0.00
Misc. (gloves, etc.)	12	$50.00	$600.00
Subtotal SAGE Other Fees			**$6,235.00**

Subcontracted Laboratory Analytical (Pl pl X in box for Price Level Needed)

Matria	Quantity	Test	Premier	X NetLabs	Cost
Soil		TPH 8100	$102.35	$57.50	$0.00
	16	VOC 8260	$95.45	$80.50	$1,288.00
		VOC a260 (BTEX & MTBE)	$59.80		$0.00
		VOC 80218 (Halogens)	$77.05		$0.00
		VPH	$89.70	$80.50	$0.00
		SVOCs	$204.70	$184.00	$0.00
		SVOCs - PAH only 8270	$140.30	$161.00	$0.00
		EPH	$179.40	$161.00	$0.00
	16	RCRA 8 Metals	$127.65	$112.70	$1,803.20
	16	PP13 Metals	$127.65	$135.70	$2,171.20
		Individual Metals	$14.95	$23.00	$0.00
		TCLP Metals (extra above Metals charge)	$57.50	$23.00	$0.00
		SPLP Metals (extra above Metals charge)	$57.50	$23.00	$0.00
		PCB,8082	$85.10	$69.00	$0.00
		Flashpoint	$29.90	$34.50	$0.00
		Alkalinity	$19.55		$0.00
		Reactivity	$75.90	$46.00	$0.00
		pH	$6.90	$5.75	$0.00
		Free Liquids	$19.55	$5.75	$0.00
		Chloride	$25.30	$11.50	$0.00
		Total Organic Carbon	$78.20	$28.75	$0.00
		Pesticides		$126.50	$0.00
		Herbicides		$172.50	$0.00
					$0.00
					$0.00
Groundwater		TPH 8100	$102.35	$57.50	$0.00
	60	VOC 8260	$95.45	$80.50	$4,830.00
		VOC 8260 (BTEX & MTBE)	$59.80		$0.00
		VOC 80218 (Halogens)	$77.05		$0.00
		VPH	$89.70	$80.50	$0.00
	60	SVOCs	$204.70	$184.00	$11,040.00
		SVOCs - PAH only 8270	$140.30	$161.00	$0.00
		EPH	$179.40	$161.00	$0.00
		RCRA 8 Metals	$127.65	$112.70	$0.00
	30	PP13 Metals	$127.65	$135.70	$4,071.00
	30	Individual Metals	$14.95	$23.00	$690.00
		pH	$6.90	$5.75	$0.00
		Chloride	$12.65	$11.50	$0.00
		Total Suspended Solids (TSS)	$20.70	$17.25	$0.00
		Chemical Oxygen Demand (COD)	$37.95		$0.00
					$0.00
					$0.00
Soil Vapor/Air		APH		$224.25	$0.00
		PCM Niash 7400 6 Hour TAT	$3.00	$12.10	$0.00
	40	TO-15		$224.25	$8,970.00
Subtotal Analytical					**$34,863.48**

Additional Sucontracted/Expenses

Description	Quantity	Unit Price	Cost
Subcontracted Drilling Sevices (10 days)	1	$52,000.00	$52,000.00
			$0.00
			$0.00
			$0.00
			$0.00
			$0.00
			$0.00
Subtotal Addidtional Subcontracted & Expenses			**$52,000.00**

TOTAL BUDGET ESTIMATE: **$169,588.40**

SAGE ENVIRONMENTAL, INC.
PROJECT BUDGET ESTIMATE

Project Description: Cushing Village — Project Address: Trapelo Road and Common Street

Prepared By: M Cole — Task Description: RAM Implementation and Oversight - per month

Date: 5/3/2017

LABOR (two lines are provided for select tasks in the event more than one person is required to complete the task)

Description	$195 Prin.	$150 SPM	$200 LSP	$118 S2	$85 S1	$75 HD	$78 T3	$65 T2	$60 CAD	$60 ADM	Task Subtotal
RAM Implementation (Per Month)	10										$1,950.00
Excavation oversight & monitoring		40	10	160	190					80	$46,550.00
											$0.00
Dewatering and Groundwater Treatment		10		40	10	168					$19,350.00
											$0.00
											$0.00
MCP Reporting & PIP, LSP Oversight		30	10							10	$7,100.00
Subtotal SAGE Labor	10	88	20	200	200	168	0	0	0	90	$74,950.80

NOTES: Excavation oversight and dewatering/treatment will require the field PM and field scientist on-Site for the entire day so 10 hour days are budgeted. This will include some oversight of the dewatering and treatment system. A "second shift" person will be required to monitor the dewatering-treatment system, which is reflected in that line item. This person will cover nights and weekends.

$45,958 per month * 6
$275,700.00 total 6 mo
$116 000 total 6 mo
$42,600.00 total 6 mo

6 Month Cost Labor
$434,300.00

SAGE Other

Description	Quantity	Unit Price	Cost
Vehicle Charge (0-100 Miles)	20	$50.00	$1,000.00
Vehicle Charge (100+ Miles)		$75.00	$0.00
Mileage	1200	$0.75	$900.00
Soil Sampling Equipment	10	$90.00	$900.00
Field Filters		$25.00	$0.00
Groundwater Gauging Equipment		$40.00	$0.00
Groundwater Sampling Equipment		$275.00	$0.00
Groundwater Sampling Equipment w/GPS		$350.00	$0.00
Groundwater Sampling w/Elevation Survey Equipment		$300.00	$0.00
Groundwater Sampling w/YSI Equipment		$400.00	$0.00
SVE/Soil Gas Monitoring Equipment		$100.00	$0.00
Soil Gas Installation Package		$100.00	$0.00
Soil Gas Points		$35.00	$0.00
Potassium Permanganate Injection Equipment		$200.00	$0.00
Potassium Permanganate		$4.90	$0.00
Oxidant Injection Equipment		$100.00	$0.00
Oxidant		$5.42	$0.00
Air Sampling Pump		$35.00	$0.00
Asbestos Sampling Equipment		$50.00	$0.00
Confined Space Entry Equipment		$185.00	$0.00
Core Drill		$200.00	$0.00
Demolition Hammer		$110.00	$0.00
Ferromagnetic Detector		$25.00	$0.00
GPS Equipment		$150.00	$0.00
Hand Augering Equipment		$25.00	$0.00
Interface Probe		$25.00	$0.00
Landfill Gas Meter		$75.00	$0.00
Mold Air-O-Cell Cassettes		$6.00	$0.00
Mold Sampling Equipment		$40.00	$0.00
Photoionization Detector		$75.00	$0.00
Product Recovery Bailer		$4.00	$0.00
Regenerative Vacuum Blower		$60.00	$0.00
Regenerative Vacuum Blower w/Knockout		$70.00	$0.00
Roadboxes - 6"		$55.00	$0.00
Rotometer		$10.00	$0.00
DEMOBILIZATION of FRAC TANKS	1	$2,500.00	$2,500.00
CARBON CHANGEOUT	3	$5,000.00	$15,000.00
Misc. (gloves, etc.)	12	$50.00	$600.00
Subtotal SAGE Other Fees			$20,908.80

$2800 per month
$16800 for 6 mo

16800
2500
15000
600
equals

6 Month Other Cost
$50,700.00

Subcontracted Laboratory Analytical (please place X in box / Price Level Needed)

Matrix	Quantity	Test	Premier	NetLabs	Cost
Soil		TPH 8100	$102.35	$57.50	$0.00
	100	VOC 8260	$95.45	$80.50	$8,050.00
confirmatory = 115		VOC 8260 (BTEX & MTBE)	$59.80		$0.00
		VOC 8021B (Halogens)	$77.05		$0.00
and post	30	VPH	$89.70	$80.50	$2,415.00
treatment = 30		SVOCs	$204.70	$184.00	$0.00
	100	SVOCs - PAH only 8270	$140.30	$161.00	$16,100.00
	30	EPH	$179.40	$161.00	$4,930.00
		RCRA 8 Metals	$127.65	$112.70	$0.00
	100	PP13 Metals	$127.65	$135.70	$13,570.00
	100	Individual Metals	$14.95	$23.00	$2,300.00
		TCLP Metals (extra above Metals charge)	$57.50	$23.00	$0.00
		SPLP Metals (extra above Metals charge)	$57.50	$23.00	$0.00
	30	PCB 8082	$85.10	$69.00	$2,070.00
	30	Flashpoint	$29.90	$34.50	$1,035.00
	30	Alkalinity	$18.55		$0.00
	30	Reactivity	$75.80	$46.00	$1,380.00
	30	pH	$6.80	$5.75	$172.50
	30	Free Liquids	$19.55	$5.75	$172.50
	30	Chloride	$25.30	$11.50	$345.00
	30	Total Organic Carbon	$78.20	$28.75	$862.50
	30	Pesticides		$126.50	$3,795.00
	30	Herbicides		$172.50	$5,175.00
					$0.00
					$0.00
Groundwater	12	TPH 8100	$102.35	$57.50	$690.00
	12	VOC 8260	$95.45	$80.50	$966.00
NPDES		VOC 8260 (BTEX & MTBE)	$59.80		$0.00
requirements		VOC 8021B (Halogens)	$77.05		$0.00
		VPH	$89.70	$80.50	$0.00
	12	SVOCs	$204.70	$184.00	$2,208.00
		SVOCs - PAH only 8270	$140.30	$161.00	$0.00
		EPH	$179.40	$161.00	$0.00
		RCRA 8 Metals	$127.65	$112.70	$0.00
	12	PP13 Metals	$127.65	$135.70	$1,628.40
	12	Individual Metals	$14.95	$23.00	$276.00
	12	pH	$6.90	$5.75	$69.00
	12	Chloride	$12.65	$11.50	$138.00
	12	Total Suspended Solids (TSS)	$20.70	$17.25	$207.00
	12	Chemical Oxygen Demand (COD)	$37.95		$0.00
					$0.00
					$0.00
Soil Vapor/Air		APH		$224.25	$0.00
		PCM Niosh 7400 6 Hour TAT	$3.00	$12.10	$0.00
	12	TO-15		$224.25	$2,691.00
Subtotal Analytical 6 months					$71,145.90

Soil Sampling & Air Monitoring
$65,800.00 Total

Groundwater Treatment Monitoring
$6200.00 total

$72,000.00 Total

Additional Sucontracted/Expenses

Description	Quantity	Unit Price	Cost
Equipment Rental Air Monitoring	6	$25,000.00	$150,000.00
			$0.00
Equipment Rental Groundwater Treatment	6	$16,500.00	$99,000.00
Demobilization	0		
Subtotal Additional Subcontracted & Expenses			$249,000.00

TOTAL BUDGET ESTIMATE: $415 995.90

6 Month Total = $789,300.00

Cushing Village Project Environmental Budget

5/10/2017

SAGE ENVIRONMENTAL

	PROJECT TASKS	LABOR COST ($)	EQUIP. RENTAL COST ($)	ANALYTICAL COST ($)	OTHER COST ($)	TOTAL PER TASK	BILLED TO DATE	Starr Budget
RAM Implementation (May through October 2017)	Excavation & Disposal Oversight & Environmental Monitoring[1,2]	$275,700.00	$150,000.00	$65,800.00	$15,800.00	$507,300.00	$76,000.00	$75,000.00
	Dewatering & Groundwater Treatment[3]	$116,000.00	$99,000.00	$6,200.00	$34,900.00	$256,100.00	$81,891.00	$0.00
	MCP Reporting, LSP Services & PIP Activity	$42,600.00	$0.00	$0.00	$0.00	$42,600.00	$71,047.00	$30,000.00
	Soil Disposal Characterization and Coordination w/ Treatment Facilities	$0.00	$0.00	$0.00	$0.00	$0.00	$131,064.00	$12,500.00
	Subtotal	**$434,300.00**	**$249,000.00**	**$72,000.00**	**$50,700.00**	**$806,000.00**		

[1] Assumes (1) Field Project Manager and (1) Field Scientist on-Site (5) days per week for (6) months. Includes documentation for soil disposal.

[2] Includes HAPSite, Dustrak Rental, sample collection and anytical for soil disposal and confirmatory samples and any required indoor air sampling and analytical.

[3] Assumes a "second shift" field scientist is required for O&M of groundwater treatment system. Includes frac tank rental, carbon filters, Greensand filter, 3 carbon changouts

Starr Budget

Phase II Comprehensive Site Assessment (Spring 2017 through December 2019)	Phase II SOW Preparation (incl. PIP comments period & responses)	$7,400.00	$0.00	$0.00	$0.00	$7,400.00		
	Phase II Field Work (on & off-Site asssessment of soil, groundwater, air)[4]	$31,000.00	$52,000.00	$35,000.00	$8,300.00	$126,300.00	$5,080.00	$0.00
	DRAFT Phase II Report & Method 3 Risk Assessment	$18,800.00	$0.00	$0.00	$0.00	$18,800.00		
	Public Comment Period & Responses	$5,300.00	$0.00	$0.00	$0.00	$5,300.00		
	FINAL Phase II Report Prep & Submittal	$3,400.00	$0.00	$0.00	$0.00	$3,400.00		
	Subtotal	**$65,900.00**	**$52,000.00**	**$35,000.00**	**$8,300.00**	**$161,200.00**		

[4] Includes subcontracted drilling services in Equip Rental Column

MCP Closure	Phase III Remedial Action Plan (if necessary)[5,6]	$8,900.00	$0.00	$0.00	$0.00	$8,900.00	
	Phase IV Remedy Implementation Plan (if necessary)[5]	$5,200.00	$0.00	$0.00	$0.00	$5,200.00	
	Phase IV Implementation (if necessary)[5]	$0.00	$6,500.00	$3,200.00	$0.00	$9,700.00	
	Phase IV Completion Statement - Remedy Operation Status Submittal (if necessary)	$8,000.00	$0.00	$0.00	$0.00	$8,000.00	
	Permanent Solution	$18,000.00	$0.00	$0.00	$0.00	$18,000.00	
	AUL if necessary (survey by others)	$3,500.00	$0.00	$0.00	$5,000.00	$8,500.00	
	Subtotal	**$43,600.00**	**$6,500.00**	**$3,200.00**	**$5,000.00**	**$58,300.00**	

[5] If Phase II conclusion is that condition of No Significant Risk not attained

[6] Includes Draft, public comments, and final.

Starr Budget

OTHER COST	As-needed consulting services	$0.00	$0.00	$0.00	$0.00	$0.00	$23,282.00	$0.00
	Other cost	$0.00	$0.00	$0.00	$0.00	$0.00		
	Subtotal	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$388,364.00**	

Subtotals	**$543,800.00**	**$307,500.00**	**$110,200.00**	**$64,000.00**	**$1,025,500.00**	
Risk (Contingency)	$0.00	$0.00	$0.00	$0.00	**$0.00**	
Total (Scheduled)	**$543,800.00**	**$307,500.00**	**$110,200.00**	**$64,000.00**	**$1,025,500.00**	**$388,364.00**

Total billed 11/1/16 - 4/30/17

EXHIBIT 6

Christopher Starr, Managing Partner
Smith Legacy Partners Series, LLC
6 Littlefield Road
Acton, MA 01720

June 6, 2017

Mr. Otto Weiss, Project Manager
Toll Brothers Apartment Living
189 B Street
Needham, MA 02494

RE: Remediation Budget – Notice of Objections
Cushing Village, Belmont

By Email & Certified Mail - Return Receipt Requested

Dear Otto:

This responds to your e-mail dated May 30, 2017 regarding our mutually agreed upon Remediation Budget and Toll's new proposed Remediation Budget and the comparison you provided. It appears you have not reviewed carefully the Cooperstown memorandum I sent to you on May 23, 2017, which included their assumptions and commentary regarding Toll's and Sage's proposed new Remediation Budget. We appreciate your statement that Toll needs to represent what we believe to be "...potential cost exposure to the best of our ability, we do not want to misrepresent costs." Smith Legacy Partners Series, LLC ("SLP") similarly has no intent to misrepresent the Remediation Budget and has made good faith attempts since the outset and during the entire P&S process up to the present to reach a "mutually agreed upon Remediation budget" as was set forth in the original and Second Amendment to the Agreement of Sale (See Section 26(b)(4)).

Further, it should be noted that it is equally disingenuous to your lenders and/or potential partners to overstate remediation costs, as SLP will not pay more than its fair share of remediation costs and to suggest otherwise would be potentially deceiving your potential lenders/partners. It is ill-advised for any company, particularly publicly-held companies like Toll Brothers to misrepresent costs to potential equity investors or financial institutions. SLP will not be a party to any such unfair or deceptive practices. Given this, we would recommend that you revise the project economics potentially disclosed to your potential lenders/partners, accordingly, and give them a fair representation of remediation costs, not ones that suggest that SLP will be paying a disproportionate share of misleading and inaccurate costs.

You appear to recognize that the parties agreed that "the budget for the remediation of the existing environmental conditions is One Million Three Hundred and Ten Thousand Dollars ($1,310,000) ..." and further that "any changes in the scope of work for the remediation will be subject to the parties' mutual approval, not to be unreasonably withheld or delayed." While I understand that some costs may exceed the original Remediation Budget, any exceedance of

costs and scope are clearly subject to our mutual approval. The proposed remediation budget presented most recently by Toll indicates that the remediation costs are over three times the mutual approved budget. I demand information on why Toll accepted a budget that in their opinion was vastly inadequate given that Toll had over six months to perform its due diligence before agreeing to the mutually approved Remediation budget of $1,310,000 and closing on the property. When was the determination made that the mutually agreed Remediation budget was underestimated according to Toll's analysis and how long was this opinion concealed from SLP? Further, what underlying environmental conditions changed to drastically impact the budget? Our review of the extensive additional testing implemented by Sage turned up nothing of significance to drastically change the mutually agreed upon Remediation budget.

From August 2016 and continuing through the present, our team has repeatedly reached out to Toll and Sage to provide correct assumptions to reach a reasonable mutually agreeable Remediation Budget. Many of our requests for information or recommendations to save costs have been ignored or we have been provided inaccurate information to support Toll's contrary assumptions regarding remediation costs or incremental environmental costs, which are environmental costs that are above regularly incurred costs during construction. For example, dewatering costs would be required at Cushing Village given the construction of underground parking and the depth of the excavation, which encounters groundwater regardless if any contamination was present. Further, de-watering permitting, discharge oversight and non-MCP contaminants (e.g., particulates) are typically incurred during any excavation, not just excavations of MCP sites. These are not costs that are considered environmental remediation costs or incremental environmental costs; they are normal construction costs.

Therefore, only incremental costs associated with actual contamination above regulatory standards caused directly by OHM should be considered an environmental cost. We provided in the mutually agreed upon Remediation Budget a fair estimate of approximately $50,000 for the incremental environmental costs associated with dewatering costs. SLP does not have to pay for excessive or total costs associated with construction dewatering apparently included in Toll's Budget Comparison of $330,000. The costs suggested by Sage are unnecessary and excessive. SLP should not have to pay for costs of multiple personnel to monitor dewatering continuously throughout the construction project when such costs are unreasonable and simply unnecessary, as we have pointed out repeatedly.

Furthermore, SLP should not have to pay for all soils to be disposed of as Remediation Waste, when in fact extensive pre-characterization of soils justified much lower quantities of soil to be transported and disposed of as Remediation Waste. SLP paid CHA for extensive soil disposal characterization testing at a cost of approximately $230,000 prior to the closing. Limiting the scope of the "Disposal Site" that requires remediation based on extensive pre-characterization of soil types completed by CHA, and later confirmed by Sage, is imperative to correctly estimating the Remediation Budget, rather than considering the entire property as the Disposal Site. Excavation, transportation and disposal of relatively clean (<RCS-1) or uncontaminated soils, as well as the monitoring of such soils, are not environmental costs but

rather construction costs and should be removed from the Remediation Budget. Your potential lenders/partners should not be misled to believe that SLP will somehow subsidize the overall excavation and other costs of the project, through inappropriate allocation of spurious remediation costs. Any such representation to these potential lenders/partners should be corrected immediately. We need to be assured that there is no deception, misrepresentation or potential fraud in this regard and demand appropriate and reliable documentation to confirm this.

Additionally, SLP should not have to pay for multiple environmental consultants to manage and supervise soil characterization and disposal when these costs have already been incurred to economize the costs of transport and disposal. Toll/Sage's estimate of $262,000 is excessive and unnecessary. SLP had three estimates in the mutually agreed upon Remediation Budget ranging from $57,090 to $76,000. One technical field person instead of three and not including a LSP is sufficient to supervise soil disposal given the extensive pre-characterization of soils done to date. The estimate for equipment rental to perform monitoring (e.g., ambient air monitoring) during excavation of $150,000 is excessive and unnecessary and not required by DEP regulations or guidance. It should be drastically reduced or eliminated from the Remediation budget to only that monitoring that is required to meet DEP's requirements.

Onsite treatment of soils to reduce the volume of the soil to be disposed of as hazardous materials was estimated by two vendors recommended by SLP at $167,500 and estimated by Sage in March 2017 at $427,000. The present estimate by Sage/Toll of $882,000 is excessive, unjustified based on the extensive soil characterization, and is misleading. That cost includes $399,000 for the treatment of the actual PCE-contaminated soil (1900 cy). An additional $374,000 is attributed to treat non-PCE-contaminated soil (PCE levels of <1 ppm) that is described as "additional volume required to facilitate the treatment of the PCE-contaminated soil" (approximately doubling the volume and cost). There is an additional $109,000 that is included for removing and disposing non-PCE-contaminated soil that simply happens to be near the clean treated soil that is near the dirty treated soil. The earlier estimate was based on much less volume of soil being treated. SLP questions the volume, merits and cost estimate by Sage given the extensive soil testing performed to date that justifies a much smaller volume. SLP disputes that Sage's estimate is accurate or appropriate, and asks that the budget for treated soil be recast as the actual cost to treat soil that requires in situ treatment and not T&D or treatment of the surrounding soil.

The costs presented by Toll for soil transport and disposal appear excessive and do not appear to reflect more cost-effective options that Cooperstown identified and has shared with you. For example, the proposal from TAZ Enterprises for soil disposal appears to be about $450,000 less than the price from WL French; it is not clear why a reasonable person would select a much higher-priced proposal. In addition, it appears there may be double-counting of soil costs in both the soil treatment line item and the soil T&D line items. Clearly, there needs to be greater transparency regarding the soil costs especially considering that this is the largest cost drivers for the work.

Regarding the Professional Services budget, you requested additional information regarding our LSP's assumptions and detail about those costs. We have indicated on an attached spreadsheet using your Remediation Budget Comparison Sheet our original cost estimates (that utilized three separate consultant estimates obtained by SLP) our original budget estimate; all were relatively consistent. Cooperstown has updated these estimates to reflect what they believe are reasonable costs for these services compared to Sage's estimates. Please refer to the attached Exhibit that shows Cooperstown's updated cost estimates on an "apples to apples" basis for your review. As you may observe, we have added several previously-missing items to make the numbers more comparable. Even when using very conservative assumptions regarding the ultimate scope of services and pricing, Cooperstown's updated number for Professional Services is $296,000 versus Sage's proposed cost of $1,112,900.

SLP demands that there be a process and protocol where upon SLP and Toll can mutually agree upon any substantial deviation from the remediation budget. Toll does not have unilateral control over the remediation budget as noted above by Section 26(b)(4) of the Second Amended P&S. SLP will require detailed invoices, timesheets, and expense reimbursements to substantiate any substantial deviation from the mutually agreed upon Remediation Budget that has incurred to date, including but not limited to soil characterization, excavation, dewatering and any environmental consultant services. The amount apparently billed to date by Sage ($388,364) is not documented and is far higher than the budget for the entire project that Sage provided in March! SLP demands to see all detailed tasks, billings and costs. Further, we need to have documentation that none of these costs including all costs incurred to date were incurred during due diligence as those costs are clearly Toll's under the Purchase and Sale agreement

Furthermore, SLP disagrees with the need to prepare any Phase II, III or IV reports since those filings are unnecessary as the updated Phase II information can be included in the Permanent Solution expected at the completion of the remediation. In addition, a draft RAM Plan was prepared by CHA, but Sage then prepared another RAM Plan from scratch, which was not necessary. Sage's RAM Plan was proposed and approved during the PIP process even though SLP disagreed with the approach in that Plan; for example, it apparently classified the entire property to be a Disposal Site despite extensive soil and groundwater testing showing that interpretation was not justified. Cooperstown provided a more accurate interpretation (based on the data and a Conceptual Site Model) of the Disposal Site that was attached to their Memo dated 5/23/17, which is a conservative interpretation and could be reduced more by using the data obtained by CHA and Sage. We believe that significant costs allegedly spent on the Phase II and RAM plan process were redundant and excessive.

A Permanent Solution report will be adequate in describing the completion of activities that are projected to take place over the next three to six months. Thus, no Phase II, III or Phase IV reports are necessary during this time. We also disagree with the length of time estimated to complete the remediation which has been estimated by Sage to take up to six months. Once the areas of the building foundations are excavated, and the soil removed and disposed, the remediation work will transition to construction and Sage personnel do not need to be present

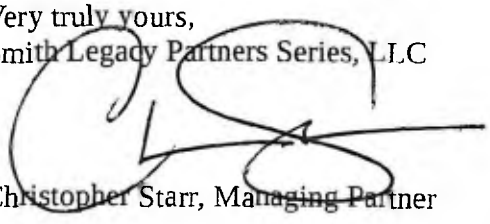
daily for MCP purposes. Sage can also limit personnel to supervising remediation activities only at periodic and reasonable times. There is no need for supervision 24 person-hours per day as assumed by Sage. The monthly supervision costs estimated by Sage of $45,950 are excessive and unnecessary. The budget of $434,300 for excavation monitoring over six months is ridiculous and irrational, far above any reasonable budget.

Also, given the magnitude of the remediation proposed or being conducted, it seems unlikely that an AUL will be necessary, nor does SLP agree that an AUL should be placed on the property thereby reducing potential Brownfield Tax Credit from 50% to 25%. Moreover, it should be noted that Paragraph 26 of the Purchase and Sale indicates that the remediation should achieve a Permanent Solution without conditions, and therefore an AUL must not be applied to the property. Nor is the proposed extensive confirmatory (post-excavation) soil sampling, presently estimated at $95,000.00 by Sage, justified since most of the excavation will proceed to the underlying bedrock. Cooperstown believes that post-excavation testing, assuming two samples per grid within the disposal site that are analyzed for EPH, VPH, VOCs, and metals (the contaminants of concern) would be, at most, $10,000 - $15,000.

SLP recommends that weekly or at least bi-monthly meetings take place during the next three to four months in which Toll and Sage present updates on the status of remediation and any substantial deviations from the expected and mutually agreed upon Remediation Budget given that SLP has mutual approval rights, not to be unreasonable withheld or delayed, in accordance with Section 26(b)(2) and (4). We expect such participation and cooperation within the Remediation Budget process and implementation of the remediation at the site until a Permanent Solution is achieved that is mutually agreeable. SLP will not consent to unreasonable and unrealistic remediation cost overruns now projected at more than $4 Million by Sage given that the mutually agreed upon budget was $1,310,000 based on three independent estimates obtained by SLP and extensive testing and analysis done over the past six to twelve months that continues to support the mutually agreed upon original Remediation budget.

SLP demands the information/documentation outlined in this letter, including indicia that your lenders/investors have been notified of the true remediation costs, along with Toll's official response to this letter by June 21, 2017. SLP appreciates the opportunity to work in good faith to reach a mutually agreeable Remediation budget that is reasonable and accurate.

Very truly yours,
Smith Legacy Partners Series, LLC



Christopher Starr, Managing Partner

Copy: James Curtis, LSP Cooperstown Environmental
Robert Loring, SLP
Robert A. Fasanella, Esq.
William Lovett, Toll Bros.
Charles Elliot, Toll Bros.

Updated June 6, 2017	Original Budget Estimates (June 25, 2015) based on three LSP proposals			**Updated June 6, 2017**	Sage (per Otto memo)	Cooperstown Comments
TASK	CHA	Cooperstown	AEI	**Cooperstown**		
1 Soil disposal pricing/profiling/etc.			$12,500	$16,000	$61,000	
2 Additional Precharacterization				$87,418	$75,000	did not change our original estimate
2a. Winslow - 4 addtl samples from 20 soil borings	$9,000	$12,148	$10,574			
2b. Hyland/Pomona - 49 disposal samples, 95 borings	$65,000	$75,270	$70,135			
3 NPDES Permit for construction dewatering				$5,000	$5,400	
4 New RTN Filing/Tier Extension				$3,500	$3,500	also includes ROS termination
5 RAM Plan and RAM Status Report				$10,000	$40,000	
PIP Expenses				$14,000	$22,000	do not have independent estimate for PIP
6 LSP/Geotech/Engineering support for design team				in Item 7	in Item 7	
7 LSP Services (that are not included elsewhere)				$0	$24,000	anything imaginable is covered elsewhere
8 Oversight of PCE Remediation	$40,000	$22,725	$19,438	in Item 9	in Item 9	
9 Monitor excavation	$76,000	$57,090	$66,545			
- oversight				$60,000	$262,000	
- confirmatory soil sampling				$15,000	$95,000	
- monitoring equipment rental				$45,000	$150,000	Used $90k rental cost, assumed not all of equipment would be required entire project
Dewatering - including NPDES sampling				$25,000	$330,000	cost for GAC treatment system, sampling
10 Reporting (Permanent Solution Statement)	$29,000	$14,500	$23,050	$15,000	$45,000	
TOTAL	$219,000	$181,733	$202,242	$295,918	$1,112,900	
		Avg.	$200,992			

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E-mail: RFasanella@rubinrudman.com
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June 30, 2017

Via First Class and Certified Mail
Return Receipt Requested

Mr. Otto Weiss, Project Manager
Toll Brothers Apartment Living
189 B Street
Needham, MA 02494

Richard J. Mandile
Sage Environmental, Inc.
172 Armistice Blvd.
Pawtucket, RI 02860

Mr. Douglas C. Yearley, Jr.
Chief Executive Officer
Toll Bros Inc.
250 Gibraltar Road
Horsham, Pennsylvania, 19044

RE: **Notice of Claim/Demand Letter Pursuant to M.G.L.c.93A**
Remediation Budget/Option to Buy –
Cushing Village, Belmont

Dear Mr. Weiss, Mr. Yearley, and Mr. Madile:

We are writing this Demand Letter on behalf of our clients STARR CAPITAL PARTNERS, LLC, a Delaware limited liability company, SMITH LEGACY PARTNERS SERIES, LLC, a Delaware limited liability, SMITH LEGACY PARTNERS II, LLC, a Massachusetts limited liability, 505-507 COMMON STREET, LLC, a Massachusetts limited liability and 527 COMMON STREET, LLC, a Massachusetts limited liability, all with a principal place of business at 6 Littlefield Road, Acton, Massachusetts 01720 (collectively these entities may be referred to hereinafter as "SLP" or "Starr" or the "Seller" depending upon the context used). This letter constitutes a formal Demand Letter against the following entities, including but not limited to TOLL BROS., INC., a Pennsylvania corporation, with a principal place of business at 250 Gibraltar Road, Horsham, Pennsylvania, 19044 and BELMONT RESIDENTIAL LLC a Delaware limited liability company, its successors and assigns ("Assignee") (collectively which hereinafter may be referred to as "Toll" or the "Buyer"), as well

as Sage Environmental, Inc. ("Sage"), who has a principal place of business located at 172 Armistice Blvd., Pawtucket, RI 02860, who as described below in more detail, have engaged in unfair and deceptive trade practices pursuant to M.G.L. c.93A, § 11.

I. Factual Background

The Sellers entered into entered into an Agreement of Sale dated March 14, 2016, a First Amendment dated April 13, 2016, and a Second Amendment dated September 2, 2016 and Third Amendment dated September 28, 2016 (collectively as amended, the "Agreement"), whereby the Assignor/Seller agreed to sell to Toll Bros., Inc. certain property, consisting of the several parcels of land (hereinafter referred to as "Parcels", the "Property" or the "Project" as the context requires), being more particularly bounded and described as set forth on Exhibit "A" to the Agreement (collectively the "Property" aka the "Cushing Village Property" or Project). The Property sold included land in the Town of Belmont (the "Town"), in Middlesex County (the "County"), in the Commonwealth of Massachusetts (the "State"), and more particularly described on Exhibit A attached to the Agreement or subsequent Amendments hereto and made a part hereof (the "Property"). See Site Plan, Exhibit A to this letter.

The Property also included (i) all tenements, hereditaments, appurtenances, easements, permits, approvals, and other rights arising from or appertaining to the Property; (ii) all improvements, topsoil, trees, shrubbery and landscaping situated on, in or under the land, including the rights to any land lying in the bed of any street, road, avenue, or way, open or proposed in front of or otherwise adjoining the land; (iii) all surveys, plans, development approvals, permits, specifications, reports and other engineering and/or environmental information to which Seller has access regarding the Property, if any (together, "Seller's Plans"); (iv) all of the rights, title, interest, powers, privileges, benefits and options of Seller, or otherwise accruing to the owner of the Property, in and to (a) any impact fee credits with, or impact fee payments to, any county or municipality in which the land is located arising from any construction of improvements, or dedication or contribution of property, by Seller, or its predecessor in title or interest, related to the land, (b) any development rights, allocations of development density or other similar rights allocated to or attributable to the land or the improvements thereon, and (c) any utility capacity allocated to or attributable to the land or the improvements, whether the matters described in the preceding clauses (a), (b) and (c) arise under or pursuant to governmental requirements, administrative or formal action by governmental authorities, or agreement with governmental authorities or third parties (herein called the "Entitlements"); and (v) all rights, title and interest in and to an Option Agreement with purchase additional Property from the Town of Belmont and an Option to Buy the Retail Space of the Cushing Village Project (as hereinafter defined and defined with the Agreement), Land Development Agreement (as hereinafter defined), Parking Easement Agreement (as described in the Land Development Agreement), and Parking Management Agreement (which is an attachment to the Land Development Agreement).

Seller provided to Buyer complete copies of Seller's Plans, numerous Environmental Assessment Reports, a Remediation Budget estimate (which included at least three independent cost estimates) and numerous other documents as required under the Agreement, on or before the date on which the Due Diligence Period (as hereinafter defined) commenced and later terminated as described and attached to Exhibit C of the Agreement as referenced thereafter and hereto as (the "Existing Environmental Condition"). The Existing Environmental Condition represented to the best of Seller's then current and actual knowledge and without further inquiry, the conditions of the Property that contained any substance which may be classified as a hazardous, toxic, chemical or radioactive substance, or a contaminant or pollutant (together, "Hazardous Substances") as defined in the Agreement and under applicable federal, state or local law, ordinance, rule or regulation ("Applicable Laws") or which may require cleanup, remediation or other corrective action pursuant to such Applicable Laws.

Toll was allowed to complete additional environmental site assessment on, under and beyond the Property boundaries and engaged in extensive additional due diligence including on-site and off-site properties. Toll also completed extensive testing, including but not limited to additional soil, soil gas, groundwater, and indoor air testing on-site and off-site. The Seller fully cooperated and extended the Due Diligence several times to enable Toll to have a total of at least six months of Due Diligence from the entering of Toll's first Offer and/or the Agreement and completing its Due Diligence on September 2, 2017 at the time the Second Amendment to the Agreement was executed by the parties.

The Purchase Price (the "Purchase Price") for the Property was in total Fourteen Million Two Hundred Sixty Thousand and no/100 Dollars ($14,260,000.00) based upon a per unit price of One Hundred Twenty-four Thousand and no/100 Dollars ($124,000.00) (the "Per Unit Price") for one hundred fifteen (115) Units (as hereinafter defined) as set forth in Seller's Plans (as hereinafter defined) for which the development approvals and assignments of all rights were delivered at Closing in conformance with Section 18 of the Agreement.

Key to the Agreement and the core issue in dispute in this Demand Letter was the Remediation Budget. The Remediation Budget estimate that was originally prepared by SLP, that was shared with Toll during the Due Diligence period, and mutually agreed upon by both parties and included independent estimates from numerous environmental consultants and contractors. The Remediation Budget was created based upon informed input from numerous contractors, consultants and various other sources obtained over several years as a result of SLP's extensive due diligence, site assessments, and remediation performed by consultants and contractors for SLP over several years before the Due Diligence Period. It included a compilation of data and estimates of numerous consultants (including CHA, AEI, and Cooperstown Environmental); several contractors, including Nauset Construction (subsequently retained by Toll as General Contractor for the Project) and other general contractors who provided estimates for site work, excavation, foundation and construction bids for the development; several other environmental and remediation contractors including excavation, trucking, and soil disposal contractors and facilities such as NE Tank, Cooperstown Environmental, W.L. French, A-Plus, Newport Materials aka Westford, and TAZ Enterprises.;

and several other response contractors who provided bids for ground water and onsite soil treatment including Coler & Colantonio, CHA, Midwest Soil Treatment, OHI, and Cooperstown. All of this information was shared with Toll during and after its Due Diligence Period.

As a result of this extensive compilation of site assessment data, soil and groundwater remediation, proposals, consultant and contractor bids and estimates, detailed plans and estimates, a mutually agreed upon Remediation Budget and Scope of $1,310,000 was prepared and integrated into the Agreement and referenced in the First and Second Amendment to the Agreement at Section 26 (b)(4). (See Second Amendment to Agreement, Exhibit B to this letter.) The Remediation Budget also included a detailed Scope of Work and detailed narrative which was sent by Chris Starr, Managing Member of SLP to Bill Lovett, Senior Development Manager of Toll Brothers in August 2016. (See Remediation Budget and Narrative, Exhibit C to this letter). The narrative Scope of the Remediation was discussed by Mr. Starr and Mr. Lovett on numerous occasions throughout the Due Diligence period including several times during the month of August 2016. After Mr. Lovett reviewed the written narrative, he claimed it was too long and detailed even though it described with particularity the basis for the Remediation Budget and contained detailed Excel spreadsheets that comprised the mutually agreed upon Remediation Budget of $1,310,000 referenced in the Agreement Section 26(b)(4). Instead of including the detailed narrative with the Remediation Budget in the Agreement, Mr. Lovett insisted on a shorter, ambiguous, and general statement called the Remediation Scope (referenced as Exhibit C to the Second Amendment) to describe the Remediation Budget. At the time, Mr. Lovett claimed that Toll did not have sufficient time for the Remediation Scope to be reviewed internally, that the Remediation Budget was agreed upon, and that a more detailed narrative scope could be agreed upon later, after the closing. All that was important to Toll at the time, according to Mr. Lovett, was the Remediation Budget and conceptual scope as further detailed in the Excel spreadsheets provided by Mr. Starr.

SLP shared with Toll at least three versions of the Remediation Budget in the form of Excel spreadsheets prior to the end of the Due Diligence Period; these versions ranged from $1,310,000 to approximately $1,366,000, all of which included a ten percent (10%) contingency. Based on discussions, Mr. Starr and Mr. Lovett agreed to a concept of a range of costs, with the Seller taking on more risks if the mutually agreed upon Remediation Budget exceeded $1,310,000, including the Seller bearing more than a *pro-rata* share of the total costs of the development beyond the square foot total costs of the Retail Space that Seller has an option to buy, if the remediation of the Existing and Unknown Conditions exceeded the mutually agreed upon Remediation Budget. Given that SLP was confident with its remediation estimates because of its extensive due diligence on the Property, the numerous estimates it had obtained from several independent consultants and contractors, and its belief that the parties would work in "good faith" to mutually agree upon any Remediation Budget increases, SLP was prepared to bear more of the risk. Also, it was clear both from discussions between the parties and the explicit terms of the Agreement that both parties would have to agree upon any changes to the budget and scope of the Remediation before any cost overruns could be authorized. The Agreement and its amendments stated that the costs of Remediation may exceed the "mutually agreed Remediation budget," the amended Section 26(b)(4) (attached as Ex. J to the Second

Amendment); however, the Agreement clearly also stated that the parties agree that "the budget for the Remediation of the Existing Environmental Conditions is $1,310,000..." and further that "any changes in the scope for work for the Remediation will be subject to the parties' mutual approval, not to be unreasonably withheld or delayed." (Emphasis added.)

As Section 26(b)(4) clearly addresses the Remediation Budget of $1,310,000 and no other budget or scope, the Remediation budget is clearly subject to the parties' mutual approval. While the costs may exceed that Remediation budget, any exceedances in cost and scope are clearly subject to mutual approval. SLP and Toll have both been operating from that detailed Remediation Budget for months as the primary Remediation Budget and the scope of work as Exhibit C (scope) to the Second Amendment provides no meaningful details to the Remediation Budget compared to the Remediation Budget and narrative supplied by SLP to Toll in August 2016, which both SLP and Toll had been using as a more accurate and reasonable basis for Remediation of the property.

Furthermore, it should be noted that Exhibit C of the Second Amendment defines the Remediation Scope as "all costs associated with the onsite, or offsite cleanup or remediation associated with the property..." So, given that by virtue of this definition "scope" is "costs" and vice versa, changes in costs are changes to scope, and thus are subject to mutual approval.

Also, at the core of the dispute and fundamental to the Agreement is the Seller's right to exercise its Option to Purchase the Retail Unit of the Cushing Village Development provided under Section 26 of the Agreement. As stated explicitly in the Agreement "the Seller's right to purchase the Retail Unit was a material inducement for its agreement to sell the Property to Buyer." See Section 26. Provided the Seller is not in default of the Agreement, the Seller has a right to exercise the Option to Buy 100% of the Retail Unit. Under the Agreement, as the costs of the remediation of the Site increase, the Seller is obligated to bear more than its *pro-rata* share of costs based on the square footage cost to construct the development, including the Retail Unit. As structured under Section 26(b) of the Agreement, the costs of Remediation are borne as follows as the costs increase for both Existing and Unknown Conditions:

> (b) Seller acknowledges that costs of the Remediation of the Existing Environmental Conditions for the Project may exceed the mutually agreed Remediation budget of One Million Three Hundred Ten Thousand and no/100 dollars ($1,310,000). In addition, if there are Unknown Conditions which are not fully covered by the Environmental Insurance Policy (including any deductibles thereunder), then there may be additional remediation costs in connection with the Project ("Remediation Costs – Unknown Conditions"). In regards to these elements, the parties agree as follows:
>
> (1) all costs of remediation (whether for Remediation of Existing Environmental Conditions or for remediation of Unknown Conditions) shall be components of determining the "actual costs" (on a pro-rata basis

as described in Section 26(a) above) of delivering the Retail Unit under Section 26(a)(1) above.

(2) if the cost of Remediation of the Existing Environmental Conditions for the Project exceeds One Million Four Hundred Forty One Thousand and no/100 Dollars ($1,441,000) (after adjustment for the receipt of any net proceeds under the Environmental Insurance Policy as described in Section 26(a) above), then all such excess costs are herein referred to as "Remediation Overruns - Known Conditions." If Seller exercises its right to purchase the Retail Unit then Seller will be responsible for one hundred percent (100%) of the Remediation Overruns – Known Conditions, not simply the *pro- rata* portion thereof attributable to the Retail Unit.

(3) if the cost of Remediation of Existing Environmental Conditions and any Unknown Conditions exceeds Two Million Five Hundred Thousand and no/100 Dollars ($2,500,000) (the "Upset Threshold") (after adjustment for the receipt of any net proceeds under the Environmental Insurance Policy as described in Section 26(a) above), then Seller will pay the actual amount of all such Remediation costs in excess of the Upset Threshold as such costs are incurred and billed to Seller by Buyer (not as an increase in the Retail Price, but to be paid irrespective of whether Seller elects to purchase the Retail Unit, failing which Seller will forfeit its right to purchase the Retail Unit under this Section 26.

(4) Seller and Buyer agree that the budget for the Remediation of the Existing Environmental Conditions is One Million Three Hundred Ten Thousand and no/100 Dollars ($1,310,000). Seller and Buyer further agree that during the Due Diligence Period a mutually approved scope of work for the Remediation (with the intended goal of obtaining "Permanent Solution Status without Conditions") will be established. Any changes in the scope for work for the Remediation will be subject to the parties' mutual approval, not to be unreasonably withheld or delayed.

(5) Seller shall deliver to Buyer with its election to purchase the Retail Unit a non-refundable deposit (except if Buyer defaults on its obligations pursuant to this Section) equal to ten percent (10%) of the Retail Price as established at the time of the Sale Notice.

Emphasis Added.

Following the closing on the Property, which occurred on October 19, 2016, the Parties worked in good faith to assign permitting and approval rights to construct Cushing Village. SLP also worked diligently and in good faith to secure the most cost-efficient methods to implement further assessment and remediation following the Closing. This included among other things the

need to complete additional soil sampling to characterize the soil for reuse on and off-site if considered non-hazardous, selecting locations for reuse off-site site, trucking and disposal of non-hazardous and hazardous soil to the most cost-efficient locations and disposal and on-site remediation to reduce the volume of materials that would have to be disposed at additional costs as "F-listed" hazardous materials or remediation waste. Extensive soil sampling was done prior to the Due Diligence Period by CHA on behalf of SLP (over 100 samples at the cost of approximately $230,000) and additional samples by Sage at an unknown cost (despite repeated request for such information) for Toll. A revised Response Action Measure (RAM) Plan was prepared by Sage for Toll and presented to the public and DEP during a Public Involvement Plan (PIP) process in late 2016 and early 2017. Despite SLP's best efforts and multiple requests that Sage properly define the boundaries of the Disposal Site to include only those areas where oil and/or hazardous materials (OHM) have come to be located, in accordance with the DEP requirements, Sage and Toll has continued to define the Disposal Site to include the entire Property – even those areas that have not been affected by contaminants. This decision was unreasonable, unnecessary, and incorrect under c.21E and its regulations, the Massachusetts Contingency Plan (MCP).

SLP, with the support of its consultant Cooperstown, sent numerous emails demonstrating that the Conceptual Site Model, as well as empirical soil and groundwater data, to support a much more confined and far less extensive Disposal Site. SLP and Cooperstown attended many meetings, convened conference calls, and sent emails to attempt to obtain data and/or an explanation from Sage and Toll to support its purported Disposal Site, questions regarding the RAM Plan, and inquiries regarding expected costs associated with soil treatment, disposal and ground water contamination and treatment. Since early February, SLP's team has repeatedly reached out to Toll and Sage to attempt to come to agreement on reasonable assumptions and a reasonable and mutually agreeable Remediation budget. Many of SLP's requests have been ignored and when responded to these requests were often addressed with incomplete, illegible, or in some cases even inaccurate information. SLP and Cooperstown have taken great pains to work in good faith to work with Otto Weiss, Toll's Project Manager, Bill Lovett, and Sage for months and were hoping that SLP would not have to resort to more aggressive legal steps to protect its interests.

During January and February 2017, and specifically on February 1, 2017 during a meeting with SLP, Toll proposed to update the Remediation Budget from the mutually agreed upon Remediation Budget of $1,310,000 to an expanded proposed budget of $1,900,000. Moreover at the end of the meeting on February 1, 2017, Mr. Lovett suggested that it would be in SLP's best interest to sell its option to buy the Retail Unit to another interested party if they could not afford the Remediation Budget increase. Mr. Lovett told Mr. Starr and Mr. Loring, who was also present at the meeting, that they had a short window of time to act to transfer the option to another interested party. Mr. Starr rejected this proposal and made it clear that SLP had no interest in selling its Option to Buy the Retail Unit another third party. Furthermore, SLP did not agree with this budget but did participate in phone calls and meetings to understand the proposal. Then, suddenly and unjustifiably a month later, Toll forwarded a new proposed budget that had ballooned to over $4,200,000, without any explanation or legitimate justification based

in empirical data, assumptions, or changes in scope. In contrast, SLP and Cooperstown Environmental provided to Toll updated detailed estimates based on several subcontractor estimates and bids based on extensive soil characterization assessments, trucking estimates, and feedback from licensed and approved soil disposal facilities. The information from these contractors and facilities, including using TAZ Enterprises and Westford for soil disposal, documented that Toll could have disposed of contaminated materials at considerably lower costs than they cited in their updated budget (in-line with the mutually agreed upon Remediation Budget and estimates provided by SLP under the Agreement). Toll has repeatedly refused to explain its decision to use a higher priced contractor.

Additional meetings were held in March and April with Sage and Toll in an attempt to obtain meaningful data to support assumptions made by Sage. SLP and Cooperstown tried repeatedly to obtain consensus with Toll on assumptions and cost estimates. SLP and Cooperstown sent additional emails and Memos requesting explanation and justification for the enormous, unjustified and unexplained changes in the budget, most of which have gone unanswered. Sage and Toll appear determined to obfuscate, unwilling to cooperate, and have ignored many legitimate questions raised by SLP in seeking to justify changes to the mutually agreed upon Remediation budget.

It is also very troubling that during the meetings with Toll in February and March, in which SLP attempted numerous times to work in good faith to reach a mutually agreed upon Remediation budget, Mr. Lovett on behalf of Toll mentioned several times to Mr. Starr that Toll had other persons and business partners that would be interested in purchasing the Retail Unit in the event that SLP could not meet its obligations to pay the remediation cost beyond the $1,410,000 as provided in the Agreement. SLP viewed these statements by Mr. Lovett and Toll as thinly veiled threats to bring in other interested parties and to intentionally and in bad faith breach the contractual rights of SLP by deliberately inflating the remediation costs to a level where SLP could not pay and therefore, that SLP would be forced to give up its Option to Buy the Retail Space. Given that Toll knew of SLP's dire financial position prior to the closing on the Property, SLP viewed Mr. Lovett's statements as usurial means to tortiously and maliciously breach Buyer's obligation to sell the Retail space to SLP. SLP has other reliable sources who have made it known that Toll has been speaking to other persons and entities who are interested in obtaining the Retail Unit at Cushing Village.

Furthermore, on May 8, 2017, Otto Weiss sent an email in which he referred to the "Nauset Scope" and a provision from Section 4(C) of the Second Amendment to the Agreement as a basis to take the position that SLP has no ability to control the budget, no approval rights over the Remediation costs, and that Toll believes SLP has no mutual approval rights with regard to Remediation budget, scope or costs. Toll's position is incorrect and its attempt to rely on the Section 4(C) of the Second Amendment of the Agreement is flawed, disingenuous and advanced in bad faith. Section 4(C) refers to the general project construction budget and specifically the Starbuck's location, and clearly does not apply to the Remediation budget. The "Nauset Scope" expressly states, "This Budget is exclusive of any Starbuck Closure Costs, delivery, delay, penalties, rent offsets or fees or Environmental Costs other than those in the Nauset Scope."

There are few if any Environmental Costs in the Nauset Scope. This is because the Environmental costs are addressed in the Remediation Budget, which was an entirely different Excel spreadsheet as referenced in the Agreement and Second Amendment.

Otto Weiss on behalf of Toll further inaccurately states in his email that Starr did not reserve "approval rights over costs." The provision in the Second Amendment regarding limiting Seller's approval rights over costs that Mr. Weiss apparently is referring to is located in Section 4(C) and relates to Non-Closure Costs, as opposed to Remediation costs. The Non-Closure costs clearly address costs resulting from Starbucks not timely vacating retail components and its present location. Mr. Starr on behalf of SLP noted in his May 23, 2017 response to Mr. Weiss' email that "as you are aware, Starbucks will be vacating in June so there will be no Non-Closure costs. Therefore, Section 4 relating to Non-Closure costs is irrelevant. Section 4(C)(2) states that "Seller acknowledges that Seller will have no approval rights over the incurring of such Non-Closure Cost Increases, it being understood that such determinations will be solely within Buyer's control." It cannot be disputed that these "no approval rights" specifically relate to Non-Closure Cost Increases and not Remediation costs.

To the contrary, Remediation costs, are addressed in Section 26(b)(4), as stated above, and require the parties' mutual approval. Further, your reference to the "scope" attached as Ex. C to the Second Amendment rather than the clearly agreed upon Remediation Budget of $1,310,000 is misplaced as Section 26(b)(4) clearly addresses the Remediation Budget itself of $1,310,000 being subject to the parties' mutual approval. Moreover, it should be noted that the Second Amendment clearly states that the terms of Section 26(b) are reinstated from the original Agreement. Thus this confirms that the mutual approval rights are clearly different and distinct from the approval rights of the Seller with regard to Section 4 (C).

Section 4(C) of the Second Amendment clearly does not reference the Remediation Budget referenced in Section 26(b)(4) of the Agreement. It also includes a separate standard that "Seller acknowledges that Seller will have no approval rights over incurring of such Non Closure Costs Increases, it being understood that such determinations will be solely within the Buyer's control. The intention of this provision is to provide the Seller the opportunity to demonstrate potential cost savings opportunities to Buyer for Buyer's consideration." Fortunately for the Seller, Starbuck's agreed to relocate and spare SLP extra costs associated with Non-Closure costs. In fact, Starbuck's vacated as planned by June, 2017; therefore no extra construction or remediation cost were necessary to be incurred.

On May 23, 2017, Mr. Starr sent an email to Mr. Weiss responding to the latest proposed Toll Remediation estimate along with a detailed Memorandum from James Curtis, LSP, PE and President of Cooperstown. (See May 23, 2017 Email, Exhibit D to this Letter.) The email stated as follows:

> I am providing you with a Memo prepared by Cooperstown addressing in detail why we believe that the latest Remediation cost projection proposed by Sage and Toll is clearly excessive and our lack of approval of this "environmental cost projection" or budget, is

not unreasonable or delayed given that your proposed current Remediation budget ($4,161,441) exceeds the mutually agreed Remediation budget by over $2,851,441, which is over 350 percent of what we agreed upon. Once you review our response to your latest proposed budget increase, we believe you and Sage will agree that we are not being unreasonable.

Mr. Weiss followed up on May 30, 2017 with an email, which failed to address most of the points and questions raised by SLP and Cooperstown, in an effort to compare on a summary basis the costs of the mutually agreed upon Remediation Budget and a new proposed $4.2 Million dollar budget. (See May 30, 2017 Email, Exhibit E to this Letter.) Given that Mr. Weiss and Toll failed to respond in substance to any of the detailed issues and objections raised by SLP to the newly proposed Remediation Budget of Toll, SLP sent a detailed follow-up letter dated June 6, 2017 (See June 6, 2017 Letter, Exhibit F to this Letter) and a summary Memo and plan of the Disposal Site prepared by Cooperstown based on extensive testing and soil characterization done by both SLP and Toll. SLP reiterated many of the points made throughout the process and provided additional detail regarding the Remediation Budget. SLP observed in that memo that "It appears you have not reviewed carefully the Cooperstown memorandum I sent to you on May 23, 2017, which included their assumptions and commentary regarding Toll's and Sage's proposed new Remediation Budget."

In response to Toll's comments regarding providing information to its lenders, SLP stated "it is equally disingenuous to your lenders and/or potential partners to overstate remediation costs, as SLP will not pay more than its fair share of remediation costs and to suggest otherwise would be potentially deceiving your potential lenders/partners. SLP will not be a party to any such unfair or deceptive practices. Given this, we would recommend that you revise the project economics potentially disclosed to your potential lenders/partners, accordingly, and give them a fair representation of remediation costs, not ones that suggest that SLP will be paying a disproportionate share of misleading and inaccurate costs."

SLP's memo observed that the "proposed remediation budget presented most recently by Toll indicates that the remediation costs are over three times the mutual approved budget" and Starr demanded "information on why Toll accepted a budget that in their opinion was vastly inadequate given that Toll had over six months to perform its due diligence before agreeing to the mutually approved Remediation budget of $1,310,000 and closing on the property." SLP asked "what underlying [environmental conditions changed] drastically impact the budget? Our review of the extensive additional testing implemented by Sage turned up nothing of significance to drastically change the mutually agreed upon Remediation budget." SLP has not received the requested information nor has Toll identified any underlying environmental conditions that would account for such a drastic and dramatic budget increase.

SLP also reminded Toll that "From August 2016 and continuing through the present, our team has repeatedly reached out to Toll and Sage to provide correct assumptions to reach a reasonable mutually agreeable Remediation Budget. Many of our requests for information or recommendations to save costs have been ignored or we have been provided inaccurate

information to support Toll's contrary assumptions regarding remediation costs . . ." As examples, the letter included the following:

Dewatering

- dewatering costs are required at any site that encounters groundwater regardless if any contamination is present and de-watering permitting, discharge oversight, and removal of non-MCP contaminants (e.g., particulates) are all necessary regardless of contamination; therefore, these are not costs that are considered environmental remediation costs or incremental environmental costs, but rather they are normal construction costs.
- SLP provided an estimate of $50,000 for the incremental environmental costs associated with dewatering, as opposed to Toll's Budget Comparison of $330,000, which clearly includes costs that are unnecessary and excessive, including multiple personnel to monitor dewatering continuously throughout the construction project because such costs are unreasonable and simply unnecessary, as SLP has pointed out repeatedly.

Soil Disposal

- all soils are not required to be disposed of as Remediation Waste because extensive pre-characterization of soils justified much lower quantities of soil to be transported and disposed of as Remediation Waste.
- Limiting the scope of the "Disposal Site" that requires remediation based on extensive pre-characterization of soil is imperative to correctly estimating the Remediation Budget, rather than considering the entire property as the Disposal Site.
- Excavation, transportation and disposal of relatively clean (<RCS-1) or uncontaminated soils, as well as the monitoring of such soils, are not environmental costs but rather construction costs and should be removed from the Remediation Budget.
- multiple environmental consultants are not needed to manage and supervise soil characterization and disposal; Toll/Sage's estimate of $262,000 is excessive and unnecessary (SLP's estimates in the mutually agreed upon Remediation Budget ranged from $57,090 to $76,000). One technical field person (instead of three) is sufficient to supervise soil disposal.
- The estimate for equipment rental to perform monitoring (e.g., ambient air monitoring) during excavation of $150,000 is excessive and unnecessary and not required by DEP regulations or guidance. It should be drastically reduced or eliminated to only that monitoring that is required to meet DEP's requirements.
- The costs presented by Toll for soil transport and disposal appear excessive and do not reflect more cost-effective options; a proposal to SLP from TAZ Enterprises is about $450,000 less than Toll's price from WL French; it is not clear why a reasonable person would select a much higher-priced proposal.

- There may be double-counting of soil costs in both the soil treatment line item and the soil T&D line items. SLP requested greater transparency regarding the soil costs especially considering that this is the largest cost driver.

On-Site Soil Treatment

- Onsite treatment originally was estimated by SLP at $167,500; Sage's estimate in March 2017 was $427,000, which later was inexplicably was raised to $882,000. That cost is excessive, unjustified based on the extensive soil characterization, and is misleading. Also chem ox on-site treatment was used as opposed to the thermal treatment, which was not approved by SLP. This type of remediation scope change increased costs drastically and was ineffective.
- That cost includes $399,000 for the treatment of the actual PCE-contaminated soil (1900 cy),
- An additional $374,000 was included for non-PCE-contaminated soil (PCE levels of <1 ppm) "to facilitate the treatment of the PCE-contaminated soil" (approximately doubling the volume and cost).
- An additional $109,000 was included for removing and disposing non-PCE-contaminated soil that simply happens to be near the clean treated soil that is near the dirty treated soil.
- SLP questioned the volume, merits, and cost estimate given the extensive soil testing performed to date that justifies a much smaller volume, disputed that Sage's estimate was accurate or appropriate, and asked that the budget for treated soil be recast as the actual cost for soil that requires in situ treatment and not the other, surrounding soil.

Professional Services

- Sage had provided an "updated" cost estimate for their Professional Services of $1,112,900, which included costs for certain items that had not been included in SLP's cost estimate. Therefore, Toll had asked SLP to revise its costs to an "apples to apples" comparison could be made.
- SLP updated its original cost estimates (based on three separate consultants' estimates that were relatively consistent) to reflect reasonable costs to compare to Sage's estimates. Even when using very conservative assumptions regarding the ultimate scope of services and pricing, Cooperstown's updated number is $338,000 versus Sage's proposed cost of $1,112,900.
- SLP observed that Sage's (undocumented) "billed to date" ($388,364) is far higher than Sage's budget for the entire project that was provided in March, just weeks earlier. This is clearly evidence that costs are completely out of control and that Toll and Sage have failed to adequately forecast and manage their costs.
- SLP demanded a process and protocol where SLP and Toll would mutually agree upon any substantial deviation from the remediation budget.
- SLP stipulated that any requests for cost reimbursement would have to be documented by detailed invoices, timesheets, and expense reimbursements and any

and all additional reasonable documentation that is typically required for any reimbursement scenario.

- SLP disagrees with the need to prepare any Phase II, III or IV reports since those filings are unnecessary as the updated Phase II information can be included in the Permanent Solution expected at the completion of the remediation.
- Significant costs allegedly spent on the Phase II and RAM plan process were redundant and excessive.
- SLP stated that Sage's estimated time to complete the remediation (six months) is excessive and misleading because once the areas of the building foundations are excavated, and the soil removed and disposed, the work will transition from remediation to construction and Sage will not need to be present daily for MCP purposes.
- SLP also objected to Sage's budget for on-site supervision, which included 24 person-hours per day, contending that Sage limit personnel to supervising remediation activities only at periodic and reasonable times. Sage's estimated monthly supervision costs $45,950 (and 6-month budget of $434,300) for excavation monitoring is ridiculous and irrational, far above any reasonable budget.
- SLP pointed out that the proposed extensive confirmatory soil sampling, estimated at $95,000 by Sage, cannot be justified since most of the excavation will proceed to the underlying bedrock. Cooperstown noted that cost of post-excavation testing, assuming two samples per grid within the disposal site that are analyzed for EPH, VPH, VOCs, and metals (the contaminants of concern) would be, at most, $10,000 - $15,000.

In the memo's conclusion, SLP requested weekly or at least bi-monthly meetings so that Toll and Sage could present updates on the status of remediation and any substantial budget deviations, and reiterated that they do not and will not consent to the unreasonable and unrealistic remediation cost overruns being projected.

SLP's letter to Toll provided Toll with another two weeks to respond (until June 21, 2017). However, Toll provided no meaningful response. Instead, Toll suggested a meeting at the Cushing Village property for the parties to review the progress made so far with the excavation and remediation of the Site. We find the lack of any written response to SLP's last two detailed, written requests for information and a legitimate justification of the enormous deviation in the budget without SLP's mutual consent and agreement to be very telling regarding the underlying motives and intentions of Toll. We find Toll's position to be a tortious and malicious breach of its contractual duties under the Agreement, advanced in bad faith, and to constitute unfair and deceptive conduct in violation of the M.G. L. c. 93A section 11.

In light of the results of the post-treatment soil samples, which appear to show that the on-site treatment performed by Toll's vendor had no discernible effect in reducing contaminant concentrations, SLP requested the opportunity to perform independent testing at the Site to

confirm the current concentrations of contamination in the soil. Toll's refusal to allow such testing, although it was requested it in advance, provides another example of unfair and deceptive conduct.

II. Legal Liability of Toll and Belmont Residential LLC

A. Liability Pursuant to M.G.L. c.93A, §11.

Chapter 93A, Section 2 provides that (a) unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful. Chapter 93A, Section 11, provides that "any person who engages in the conduct of any trade or commerce and who suffers any loss of money or property, real or personal, as a result of the use or employment by another person who engages in any trade or commerce of an unfair method of competition or an unfair or deceptive act or practice declared unlawful by section two...may...bring an action in the superior court..." Further, pursuant to Section 11, "such person, if he has not suffered any loss of money or property, may obtain such an injunction if it can be shown that the aforementioned unfair method of competition, act or practice may have the effect of causing such loss of money or property."

Chapter 93A does not contemplate an overly precious standard of ethical or moral behavior rather it is standard of the commercial marketplace. The standard developed in litigation brought under Chapter 93A, known as the rascality standard, is that objectionable conduct must attain level of rascality that would raise eyebrow of someone inured to rough and tumble of world of commerce. Also, a party bringing action under this chapter must establish that defendants' actions fall at least within penumbra of some common law, statutory, or other established concept of unfairness, or were immoral, unethical, oppressive or unscrupulous, and resulted in substantial injury to competitors or other business people. *Brennan v. Carvel Corp.* 929 F2d 801, (1991). However, a Chapter 93A claim does not require showing that defendant's unfair or deceptive conduct was knowing or willful. *Giannasca v. Everett Aluminum, Inc.*, 13 Mass App 208 (1982).

If the Court finds for the plaintiffs, recovery shall be in the amount of actual damages, or up to three, but not less than two, times that amount if the court finds that the use or employment of the method of competition or the act or practice was a willing or knowing violation of Section 2. G.L. c.93A, Section 11. In *Heller v. Silverbranch*, 376 Mass. 621 (1978), the Court found that Chapter 93A allows a court to award up to three but not less than two times the amount of actual damages if he finds that refusal to grant relief on demand was made in bad faith with knowledge or a reason to know that the trade practice complained of violated the statute.

An unfair act is not defined by G.L. c. 93A, but is to be determined on case by case basis. Standards for determining whether trade practice is "unfair" include whether (1) it is within penumbra of common law, statutory or other established concept of unfairness, (2) it is immoral, unethical, oppressive or unscrupulous, or (3) it causes substantial injury to consumers or

competitors or other businessmen. *PMP Associates, Inc. v. Globe Newspaper Co.*, 366 Mass 593 (1975).

A practice may be "deceptive" if it could reasonably be found to have caused person to act differently from way he otherwise would have acted. *Purity Supreme, Inc. v. Attorney Gen.* 380 Mass 762 (1980). Deceptive conduct is violation of statute even if it is not actually false, as long as it is likely to mislead a plaintiff acting reasonably under the circumstances. *Sladen v. Passaro,* 1994 Mass App Div 29, 1994. Failure to disclose any fact disclosure of which may have influenced person not to enter into transaction is violation of G.L. c. 93*A*. *Grossman v. Waltham Chemical Co.*, 14 Mass App. 932 (1982).

Here, Toll's actions, as described in detail above, are both unfair and deceptive in violation of M.G.L. c.93A, §11. As stated, key to the Agreement and expressly included in the Agreement was the Remediation Budget of $1,310,000, which was mutually agreed upon by SLP and Toll during the Due Diligence period as a result of an extensive compilation of data, site assessment and remediation, proposals, consultant and contractor bids and estimates, and detailed plans. While the Agreement did state that the costs of remediation may exceed the mutually agreed Remediation Budget, the amended Section 26(b)(4) also clearly stated that "any changes in the scope for work for the Remediation will be subject to the parties' mutual approval, not to be unreasonably withheld or delayed." (Emphasis added.)

As a result of the Seller believing that the parties would work in good faith to mutually agree upon any Remediation Budget increases, as set forth in Section 26(b)(4) and as a result of the extensive due diligence on the property and discussions with Toll, the Seller was willing to bear more risk as part of the Agreement. For example, the Seller agreed that if the Remediation Budget exceeded $1,310,000, the Seller would bear more of a pro-rata share of the total costs of the development beyond the square foot total costs of the Retail Space that the Seller has the option to buy. This Seller's option to buy is its Option to Purchase the Retail Unit of the Cushing Village Development pursuant to Section 26. This Option was fundamental to the Agreement, and was "a material inducement for its [the Seller] agreement to sell the Property to Buyer." See Section 26. However, the Seller reasonably believed that the parties would mutually agree on Remediation Budget increases and that any minor increases would be reasonable and so was willing to take this risk.

However, as stated above, from the period of January to February 2017, the Remediation Budget increased from the mutually agreed upon Budget of $1,310,000 to a proposed budget of $1,900,000. Further, a month later, the budget ballooned to $4,200,000 without any legitimate justification. Also the extent of the unfair and deceptive conduct by Toll is borne out by the extent of the increases in the mutually agreed upon Remediation Budget and vast difference in budget estimates and purported costs that Toll has or will incur as stated by Toll and Sage in that last several Budget Estimates and purported costs incurred to date. Despite SLP's repeated efforts and request orally in meeting and by numerous emails, Toll has refused to provide documentation of the its alleged costs, and intentionally misrepresented these costs.

During meetings between the Seller and Toll in February and March 2017 in which the Seller attempted in good faith to reach a mutually agreed upon remediation budget, Bill Lovett, on behalf of Toll, mentioned several times to Chris Starr that Toll had other persons and business partners that would be interested in purchasing the Retail Unit, in the event that the Seller could not meet its obligations to pay the remediation costs beyond the $1,310,000 Remediation Budget. Specifically, the Seller is aware that Toll has spoken with Davis Partners and other grocery tenants regarding purchase of the Retail Unit. These are parties who were interested in buying or joint venturing with SLP prior to Toll buying the development from SLP in the case of Davis or parties interested leasing space with SLP in the case of other tenants, who had entered long and written lease negotiations with SLP during 2015 and 2016. Now Toll is attempting to circumvent SLP and entered into joint ventures or leases with parties that were dealing with SLP without disclosing these negotiations to SLP.

The Seller viewed these statements by Toll as threats to bring in interested parties by intentionally inflating the actual remediation costs to a number that the Seller could not afford, given that Toll knew of the Seller's dire financial position prior to the closing on the Property. The Seller attempted numerous times to work on an agreed budget with Toll; however, Toll has refused to engage in detailed conversations and has failed to provide support for the drastic increase in the Remediation Budget.

The above actions by Toll, particularly the drastic unjustified increase in the Remediation Budget and associated threats that Toll would bring in a third party to purchase the Retail Unit squarely fall within what a Court would consider unfair and deceptive actions. It is clear that Toll's actions and increase in the Remediation Budget are being used to prevent the Seller from an opportunity to exercise the Option to Purchase the Retail Unit, especially, as stated, that Toll mentioned it has other interested buyers.

These actions are unfair because they not only are contrary to the established concept of fairness, but they also will cause substantial injury to the Seller as the Seller will lose a significant business opportunity that he intended to have in exercising the Option to Purchase the Retail Unit. See *PMP Associates, Inc. v. Globe Newspaper Co.*, 366 Mass 593 (1975). Further, the above described actions are deceptive because the Seller, if he had not thought that the agreed Remediation Budget of $1,310,000 was a fair budget and may only be increased to reasonable levels, would not have entered into the Agreement as the Option to Purchase was a material inducement of the agreement. Toll's representations that it would work in good faith to an agreed upon Remediation Budget, even if it increased slightly, misled the Seller to enter into the Agreement. Those representations by Toll were clearly false as is seen in Toll's drastic increase in the Budget and pressure on the Seller that other parties' may exercise the option. See *Purity Supreme, Inc. v. Attorney Gen.*, 380 Mass 762 (1980).

Moreover, as described, since Toll's actions were also clearly willful, knowing, and in bad faith, a Court can award damages up to three, but not less than two times the amount. See *Heller v. Silverbranch*, 376 Mass. 621 (1978).

For all of the above reasons, Toll is liable pursuant to M.G.L. c.93A, §11.

Additionally, Sage is also liable pursuant to M.G.L. c.93A, §11, as a result of its actions in working with Toll to drastically increase the cost estimates for remediation to approximately $4,200,000 when it was part of the original discussions and fully understood the agreed upon Remediation Budget in the amount of approximately $1,310,000. Sage is liable similar reasons as Toll, as described in detail above.

B. Breach of Contract, Breach of the Implied Covenant of Good Faith and Fair Dealing, and Intentional Interference with Contractual Relations

Contracts in Massachusetts have an implied covenant of good faith and fair dealing. *Anthony's Pier Four, Inc. v. HBC Assocs.*, 411 Mass. 451, 471 (1991). This covenant provides that neither party "shall do anything that will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract." *Id.* at 471-72. This covenant does not create rights and duties not otherwise provided for in the existing contractual relationship. *Uno Rests., Inc. v. Boston Kenmore Realty Corp.*, 441 Mass. 376, 385 (2004).

Here, the Agreement clearly provided in the amended Section 26(b)(4) that "any changes in the scope for work for the Remediation will be subject to the parties' mutual approval, not to be unreasonably withheld or delayed." (emphasis added.) As stated in detail above, Toll drastically increased the Remediation Budget of $1,310,000 to $4,200,000 with one month's time with no change in the scope of work. While the Seller attempted numerous times to come to an agreement as to a revised Remediation Budget, for example, as described, by providing detailed facts and explanations for why the $4,200,000 proposal was much too high, Toll failed to provide similar details that may have helped the parties to agree to an increase in the Remediation Budget that was reasonable. Toll's drastic increase in the Budget and refusal to compromise is unreasonable and in breach of Section 26(b)(4).

Further, in addition to a simple breach of contract, Toll also breached the implied covenant of good faith and fair dealing by increasing the Remediation Budget to a number that it knew the Seller could not afford and threatening that other parties would purchase the Retail Unit, which will have the effect of destroying or injuring the right of the Seller to receive the fruits of the contract. As stated, it is clear that the "fruits" or central aspect to the Agreement was that the Seller would have the Option to Purchase the Retail Unit. Toll's actions, as described in detail above, are clearly a breach of this covenant.

Additionally, Toll's actions in discussing the Option to Purchase the Retail Unit with other interested parties and business partners, as Mr. Lovett told Mr. Starr, amounts to an intentional interference with contractual relations on the part of these other parties. A claim for intentional interference with contractual relations requires proof of four elements: (1) a contract between a plaintiff and third party; (2) the defendant's purposeful inducement of the third party to breach the contract in whole or in party; (3) the interference must not only be intentional, but

also improper in motive or means of accomplishment; and (4) resulting in harm to the plaintiff. *G.S. Enterprises, Inc. v. Falmouth Marine, Inc.*, 410 Mass. 262, 272 (1991).

Here, first, Toll and the Seller clearly had an Agreement whereby the Seller had an Option to Purchase the Retail Unit. Second, the interested partners/business partners appear to be inducing Toll to breach the contract with the Seller by drastically increasing the Remediation Budget to a level where the Seller does not have the financial ability to exercise the Option to Purchase. Third, this interference appears to be intentional and as a means to cause SLP to default on its ability to purchase the Retail Unit. Finally, this interference will result in harm to the Seller, who will lose any future profits that may result from exercising this Option to Purchase.

III. Request for Information/Responses

SLP has repeatedly asked for information and documentation that it has a right to obtain as specified in its Letter referenced above dated June 6, 2017, much of which it requested months ago. SLP demands this documentation in full and in the detail it has requested. SLP is entitled to this documentation regardless of Toll's or SLP's differing interpretation of the Agreement given SLP has mutual approval rights to any substantial changes to the Remediation Budget. To be more specific SLP demands that Toll provide the following:

1. When was the determination made that the mutually agreed Remediation budget was underestimated according to Toll's analysis and how long was this opinion concealed from SLP?
2. What underlying environmental conditions changed to drastically impact the budget? Our review of the extensive additional testing implemented by Sage turned up nothing of significance to drastically change the mutually agreed upon Remediation budget.
3. What dewatering costs would be required at Cushing Village given the construction of underground parking and the depth of the excavation, which encounters groundwater regardless if any contamination was present?
4. How many environmental consultants has Sage assigned to manage and supervise soil characterization and disposal when these costs have already been incurred to economize the costs of transport and disposal. What are the hours, costs, and billing rates of the environmental consultants assigned to this task?
5. How many environmental consultants have been assigned to manage the dewatering of the excavation and what are the hours, costs and billing rates of the personnel assigned to this task to date and per the entire budget?
6. The amount allegedly billed to date by Sage ($500,000) has not been documented with specific line items by person and by task and is far higher than the budget for the entire project that Sage provided in March. SLP demands to see all detailed backup regarding tasks, billings and costs.
7. Provide detailed documentation for the alleged ($735,000) on-site treatment of soils, which was estimated by two vendors for SLP at $167,500 and which was

priced by Sage in March 2017 at $427,000. The present estimate by Sage/Toll of $882,000 is excessive, unjustified based on the extensive soil characterization, and is misleading.

8. Furthermore, test results appear to show that this treatment had no discernible effect on the concentrations of contaminants in the material as a result of using chem ox treatment as opposed to thermal treatment which was not approved by SLP, raising the question of the adequacy of Toll's contract in requiring a performance guarantee. Please provide justification for this change in treatment without SLP's approval.
9. Provide detailed documentation for the alleged ($500,000) spent on excavation and disposal of the soil as classified by category of the type of soils from pre-characterization testing including what volume, tonnage, location of disposal, transportation and disposal costs including manifestation records (BOLs) and receipts.
10. Provide an explanation pursuant to the MCP regulations as to the need to prepare any III or IV or V reports since those filings are unnecessary as the updated Phase II information can be included in the Permanent Solution expected at the completion of the remediation.
11. Provide an explanation of why given the magnitude of the remediation proposed or being conducted, that an AUL will be necessary along with a Permanent Solution Statement.
12. Provide an explanation of why Toll refused to allow SLP's consultant Cooperstown to collect independent samples to confirm current site conditions despite SLP's request to do so.
13. Provide documentation that your lenders/investors have been notified of the same estimated costs of remediation that has been sent to SLP along with the names and contact for such persons and institutions.
14. Provide documentation and detailed billing information for environmental service companies (e.g., Sage, drillers, dewatering subcontractors), excavation, soil disposal and soil hauling (e.g., W.L. French) for Cushing Village and any other Toll projects that they are working on at this time.
15. Provide a detailed spreadsheet and certified statement by an authorized Toll official of the environmental cost and hard cost development budgets for the overall projected budget for all-in development costs for Cushing Village.
16. Provide a statement signed by an authorized Toll official that they will cooperate with our financing efforts to raise additional funds to meet potential future environmental cap calls. This should include a statement that the option is reasonably financable and assignable.

Conclusion

It is apparent that Toll has conspired with Sage and other interested persons to attempt to eliminate SLP rights under the Agreement to exercise its Option to Buy the Retail Unit, colluded with other interested third parties to offer the Option to the Retail Unit and has committed

knowing and willful violations of c.93A, entitling SLP to double or treble damages for any and all economic losses, attorney fees and costs. The damages of SLP could amount to tens of millions of dollars if SLP's damages are trebled. Please respond with a reasonable offer of settlement and the documentation and responses requested above within thirty (30) days as required by c.93A.

Very truly yours,
Rubin and Rudman LLP

Robert A. Fasanella

Enclosures
cc: Christopher Starr, SLP LLC, Managing Partner
James Curtis, P.E., LSP, Cooperstown Environmental Inc.
Robert Loring, SLP
William Lovett, Toll Bros. Inc.