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NORFOLK ZONING BOARD OF APPEALS
DECISION ON THE APPLICATION OF NORFOLK HOLDING, LLC
FOR A COMPREHENSIVE PERMIT UNDER G.L. c. 40B, §§ 20-23

PETITION NUMBER: 2017-09

APPLICANT: Norfolk Holding, LLC (the "Applicant")

LOCATION OF PROPERTY: Assessor's Parcels 15-54-87 and 15-54-11A
(off Village Green)

DATE: April 24, 2019

DECISION: Approved, with Conditions

I. PROCEDURAL HISTORY

1. On June 19, 2017 the Applicant submitted a Comprehensive Permit Application to construct "The Enclave at Norfolk" consisting of fifty-six (56) homes for sale on approximately 32 acres of land at 16 Village Green, shown on the Norfolk Assessors Maps as Parcels 15-54-87 and 15-54-11A (the "Project Site"). The current owner's deed to the Property is recorded with the Norfolk County Registry of Deeds at Book 31395, Page 185.

2. The Project Site is currently undeveloped and located in the Residential R-1 zoning district under the Norfolk Zoning Bylaws. A wetland system crosses the Site west to east. The Site's frontage and access is limited to approximately 80 feet on the north boundary of Parcel 15-54-11A.

3. The Norfolk Zoning Board of Appeals ("Board" or "ZBA") opened a duly noticed public hearing on July 26, 2017, with the consent of the Applicant. At that hearing, the ZBA invoked the provisions of Chapter 40B regulation 760 CMR 56.05(3), and stayed the commencement of the Board's public hearing on the application until there were no longer three comprehensive permit applications pending before the Board that collectively propose the construction of more than 200 housing units. The public hearing was re-opened on February 28, 2018, and continued sessions were held on April 18, 2018, April 26, 2018, May 30, 2018, July 12, 2018, July 17, 2018, August 1, 2018, October 17, 2018, October 30, 2018, November 14, 2018, January 2, 2019, February 26, 2019, February 27, 2019, March 6, 2019, March 20, 2019, April 3, 2019, and April 24, 2019. The Board closed the public hearing and voted to grant this Comprehensive Permit, with conditions, on April 24, 2019.

4. To evaluate the Applicant's plans, documents, and testimony, the Board received technical assistance and comments from Town staff and other boards and commissions. The Board also retained outside consultants to review the Applicant's traffic study, site plan, plans

for stormwater management, and architectural and landscape design. In addition, the Board received comments from abutters and other interested parties at the public hearing.

5. The Board retained BETA Group Inc. (“BETA”), as peer review consultants for landscaping design, traffic and architecture. The Board retained Tetra Tech, Inc. as peer review consultants for general civil engineering and stormwater management. BETA was represented by William P. McGrath, P.E. Tetra Tech was represented by Sean Reardon, P.E. The Applicant funded these services in accordance with the Board’s rules and regulations and 760 CMR 56.05(5).

6. The Board also retained special counsel Daniel C. Hill, Esq. of Hill Law to provide the Board with technical expertise and guidance regarding the Chapter 40B review process.

7. Sitting for the Board and present throughout the public hearing process were Christopher Wider, Chair, Michael Kulesza, Robert Luciano, Joseph Sebastiano, Devin Howe, and Medora Champagne. Member Donald Hanssen initially served on the panel, but later recused himself.

8. The minutes and exhibits from the public hearing are available for public inspection in the office of the Town Clerk.

II. GOVERNING LAW

The law governing this decision is The Low and Moderate Income Housing Act, Massachusetts General Laws Chapter 40B, §§ 20-23 (the “Act”), and the regulations promulgated by the Department of Housing and Community Development (“DHCD”) Housing Appeals Committee, 760 CMR 56.00, et seq. (the “Regulations”).

The Act prohibits the use by cities and towns of exclusionary local bylaws to shut out needed low and moderate income housing. Board of Appeals of Hanover v. Housing Appeals Comm., 363 Mass. 339 (1973). The purposes of the Act are satisfied if (a) a town has low or moderate income housing (i) exceeding 10% of the housing units reported in the latest decennial census or (ii) on sites comprising 1.5% or more of the town’s total land area zoned for residential, commercial or industrial use, or (b) if the application results in the commencement of low and moderate income housing construction on sites comprising more than 0.3% of such total area or 10 acres, whichever is larger, in one year.

Norfolk does not currently meet any of these criteria. Accordingly, the Zoning Bylaws and Norfolk’s other local bylaws and regulations that ordinarily govern development in the Town may be waived to extent necessary to make the construction of low or moderate income housing financially feasible. Board of Appeals of Hanover. The standards to be applied by local zoning boards in deciding whether to issue comprehensive permit for construction of low or moderate income housing are the same as those applied by the Housing Appeals Committee in reviewing the boards’ decisions, namely, whether grant of permit is reasonable and “consistent with local needs” and whether any conditions imposed on the permit are uneconomic. Id. In determining whether the project is “consistent with local needs,” the ZBA must balance the

regional need for low and moderate income housing against any local objection to the proposed plan. Id. If the ZBA issues an approval with conditions, the Applicant may challenge the conditions as being “uneconomic.” G.L. c. 40B, §22. If the Applicant can satisfy that evidentiary burden, the ZBA must then demonstrate that the conditions are “consistent with local needs” in order for the conditions to be preserved. Board of Appeals of Woburn v. Housing Appeals Comm, 451 Mass. 851 (2008).

III. JURISDICTIONAL ELEMENTS

Pursuant to the Act and the Regulations, an applicant for a comprehensive permit must fulfill three initial jurisdictional requirements:

1. The applicant must be a public agency, a non-profit organization, or a limited dividend organization;
2. The project must be fundable by a subsidizing agency under a low and moderate income housing subsidy program; and
3. The applicant must “control the site.”

The ZBA finds that the Applicant has provided sufficient information to establish that it will qualify as a limited dividend organization, that the proposed project is fundable under a low and moderate income housing subsidy program (MassHousing), and that it owns the Site.

IV. FINDINGS OF FACT

1. The Applicant, Norfolk Holding, LLC, is a Massachusetts limited liability company having an address c/o: Thomas W. DiPlacido, Jr., Manager, c/o DiPlacido Development Corp., 200 Stonewall Blvd., Suite #4, Wrentham, Massachusetts 02093.

2. Based on the information submitted by the Applicant as part of the Application, which was filed with the ZBA on June 21, 2017, and as supplemented by documentation and site plans filed with the ZBA, the Applicant contends it is qualified to make the Application pursuant to 760 CMR 56.04 in that (a) it is a "limited dividend organization" as that term is used in G.L. c.40B, s. 21 and 760 CMR 56.02; (b) the project is fundable by a subsidizing agency under a low and moderate income housing subsidy program as evidenced by the project eligibility/site approval letter issued by MassHousing, dated January 26, 2016 pursuant to the Federal Home Loan Bank of Boston's New England Fund (“NEF”) Program where MassHousing acts as the Project Administrator, and (c) it has "control of the site.”

3. The Applicant proposes to comply with the limited dividend requirement of G.L. c. 40B, § 20, by executing and recording a Regulatory Agreement in accordance with the rules governing the NEF program, and agreeing to restrict its profit to not exceed 20% of the Project's total development costs.

4. The Applicant has submitted a complete application and other information as required by, and in accordance with, Mass. G.L. c. 40B (the “Act”), the Comprehensive Permit

Regulations promulgated by the Massachusetts Department of Housing and Community Development (DHCD) at 760 CMR 56.00 (the "40B Rules"), and Section 7 (Comprehensive Permit Rules of the Zoning Board of Appeals for Application of Comprehensive Permits, MGL c. 40B) of the Rules and Regulations Required By Section 12 of Chapter 40A of the General Laws of Massachusetts (the "ZBA Rules").

5. The original proposal featured 56 units contained within 28 buildings (two units in each building). On October 30, 2018, the Applicant proposed two alternative designs and layouts, one containing 44 units and the other containing 40 units. The homes would be age-restricted and contain two bedrooms each. By the February 27, 2019 hearing, the Applicant settled on the 40-unit proposal, which is the layout approved by this Decision. The buildings are at least 25 feet apart, and there is a 50-foot natural vegetated buffer running parallel to the northern property boundary, separating the Project from the direct abutters on Village Green.

6. The Applicant is proposing to construct a nature trail across the wetlands connecting the Project to Juniper Road, and will convey an easement for the public's use of that trail. All of the buildings and roadways are located outside of the 100-foot buffer associated with the wetlands on the Site. The Applicant is proposing to install subsurface propane tanks for serve the new homes. The homes will each have their own septic system. The common areas including the drainage facilities located outside of the roadway right-of-way will be maintained by a homeowners' association. The roadway is proposed to be conveyed to and accepted by the Town of Norfolk as a public way. The Applicant will plant street trees, which shall be perpetually maintained by the homeowners' association. The stormwater management system and other civil design elements of the Project were extensively reviewed by Beta and Tetra Tech during the public hearing.

A. Traffic Impacts and Public Safety

7. The ZBA's traffic peer review engineer initially commented that the 56-unit Project would have a deleterious effect on the level of service at the intersection of Cleveland Street and Rockwood Road, and recommended that the Applicant propose mitigation to offset that impact. The engineer later noted, however, that the Applicant was not using appropriate trip generation statistics in its modeling, and that when adjusting those statistics for age-restricted housing, combined with the reduction in density from 56 to 40 units, the impacts on the intersection were marginal.

8. The Town's Subdivision Rules and Regulations require that any development containing more than 25 lots shall have at least two points of access/egress. The Rules and Regulations also prohibit dead-end roads in excess of 500 feet. The proposed Project violated those provisions, and actually extends an existing nonconforming dead-end road network that starts at the intersection of Cleveland Street and Rockwood Road. To mitigate and address the public safety concerns raised by these nonconformities, the Applicant has agreed to repair and widen Village Green from the Project's entrance to Cleveland Street, and to add a new sidewalk along Village Green. It is also incorporating a sidewalk within the Project to encourage residents to walk whenever possible, rather than drive. The Project's roadway will be paved at a width of 24 feet, with a right-of-way of 50 feet. The sidewalk will be separated from the road by a 5-6-

foot wide grass strip. The reduction in density also mitigates the public safety concern.

B. Density and Project Design

9. The original 56-unit design had significant shortcomings, which were raised by ZBA members and their technical peer review consultants during the hearing. Specifically, the original design featured seven buildings (14 units) set back just 26-27 feet from the existing residential properties on Village Green, and setback from their own internal side property line by just 10-11 feet. The inside curb radius of the road was just 30 feet, and the depth of the individual driveways was a mere 16 feet. The intensity of the use of the Site combined with the problematic site access was untenable, and the Board encouraged the Applicant to reconsider its design and density.

10. The revised 40-unit plan addresses most of the ZBA's concerns with the 56-unit plan. Traffic impacts have been mitigated, and the nonconformities with the Town's Subdivision Rules and Regulations have been reduced. The reconstruction of Village Green and the addition of a sidewalk will improve access and pedestrian safety for the entire neighborhood. And with 40 units, 10 of which will be permanently restricted as affordable, the Project will provide a meaningful contribution to the Town's affordable housing inventory.

C. Conservation and Open Space Issues

11. The Project Site is located within a mapped "Priority and Estimated Habitat" for the Eastern Box Turtle, a species state-listed as "special concern" in the Massachusetts Natural Heritage Atlas (14th ed). The state Division of Fisheries and Wildlife has confirmed that the Project as proposed will result in a "take" of the Eastern Box Turtle, pursuant to 321 CMR 10.18(2)(b) due to the permanent loss of suitable forested habitat and interference with the feeding, breeding, nesting and migratory activities of this species. As such, to comply with the state Endangered Species Act (MESA), the Project must apply for and obtain a Conservation and Management Permit, and demonstrate compliance with the performance standards set forth in the MESA regulations. Among those standards, the Applicant must develop and implement a conservation and management plan that provides a long-term net benefit to the conservation of the local population of the impacted species. No site clearing may commence until after a Permit has been issued.

12. The Applicant has agreed to permanently restrict 21.14 acres on the Site (the "Open Space"), most of which is comprised of jurisdictional wetland resource areas. The Applicant has also agreed to create a walking trail across the Open Space, to include a boardwalk-style crossing over the wetland and stream, between the Road "A" as shown on the Site Plans and Juniper Lane.

SUMMARY OF DECISION

For the reasons stated below, the ZBA approves, by a vote of 5 to 0, with the conditions set forth below the application of Norfolk Holding, LLC, for a comprehensive permit for the Project consisting of Forty (40) units of ownership housing under the Act.

V. CONDITIONS ATTACHED TO COMPREHENSIVE PERMIT:

For the foregoing reasons, the ZBA grants the application of Norfolk Holding, LLC for a comprehensive permit for the Project consisting of 40 housing units on the Site under Chapter 40B, subject to each and every one of the following conditions:

A. General Conditions

- A.1 Prior to the commencement of construction or any site clearing activities, (“Construction Activities”), the Applicant shall submit to the ZBA a final set of comprehensive permit site plans, calculations and related documentation, for technical/peer review by the ZBA for conformity with this Decision. Upon a finding by the ZBA that the plans are consistent and in conformity with this Decision, said plans shall be approved and endorsed by the ZBA, and shall be thereafter referred to as the “Approved Plans.” Construction and operation of the Project shall be in conformity with the Approved Plans and this Decision.
- A.2 The Approved Plans shall incorporate the changes recommended by the ZBA’s consulting engineer Tetra Tech, Inc. in its February 26, 2019 letter.
- A.3 This Decision shall be noted on the endorsed Approved Plans and both this Decision and the Approved Plans shall be recorded with the Norfolk Registry of Deeds. Proof of recording shall be forwarded to the ZBA prior to issuance of a building permit.
- A.4 The Applicant shall comply with all local bylaws, rules and regulations of the Town of Norfolk and its boards and commissions in effect as of June 19, 2017, unless expressly waived herein or as otherwise addressed in these conditions.
- A.5 The Applicant shall pay all fees of the Town of Norfolk imposed generally in respect of construction projects and for the purposes of monitoring compliance of the construction and occupancy of the Project in accordance with this Comprehensive Permit unless otherwise waived in this Decision.
- A.6 The Applicant shall copy the ZBA on correspondence between the Applicant and any federal, state, or Town official, board or commission that concerns the conditions set forth in this Decision, including but not limited to all official filings and other permits issued for the Project.

- A.7 The Applicant shall comply with the State Building Code and any local regulations or fees of the Building Commissioner unless otherwise waived in this Decision. The Applicant shall pay all required fees for all such building permits including any fees customarily charged for inspections and permits unless otherwise waived in this Decision.
- A.8 The Applicant shall maintain a copy of the endorsed Approved Plan and this Decision at the Site during construction.
- A.9 Each condition in this Decision shall run with the land and shall, in accordance with its terms, be applicable to and binding on the Applicant and the Applicant's successors and assigns; and reference to this Decision shall be incorporated in the deed for any unit in the Project.
- A.10 The Applicant shall obtain temporary easements, licenses or written permission from any abutting property owner if, during the course of construction, it becomes necessary to enter upon abutting land for construction or planting.
- A.11 This Decision permits the construction, use, and occupancy of no greater than forty (40) housing units on the Site and construction and use of the Site shall be in conformity with the following set of plans: (1) site plans entitled "Preliminary Plan for Comprehensive Permit Proposed The Enclave at Norfolk" dated June 13, 2017, revised through January 25, 2019, prepared by Bohler Engineering, containing Sheets C-1 through C-35; (2) plan entitled "Wetland Crossing Exhibit," dated February 26, 2019, revised through April 9, 2019; (3) architectural plans entitled "The Enclave at Norfolk," prepared by HPA Design Inc., dated March 6, 2019, revised through March 19, 2019, Sheets A1.1, 1.2, 1.3, B1.1, 1.2, 1.3, 1.4, and C1.1, 1.2 and 1.3 (collectively, the "Site Plans").
- Site Plans as modified by the Approved Plan, and there shall be no creation of additional housing units or any other structures or infrastructure except that which is shown on the Approved Plan, without further approval of the ZBA in the form of an amendment to this Decision pursuant to Section K below. This paragraph shall not be construed as evidence that the ZBA anticipates any changes to the Approved Plans, including but not limited to increasing the number of buildings or housing units on the Site, or that the ZBA would approve any such request.
- A.12 If, at any time after the date of this Decision, the Applicant's subsidizing agency rescinds or revokes its project eligibility determination for the Project, this comprehensive permit shall be deemed null and void and have no further effect unless Applicant secures an alternative project eligibility determination letter.
- B. Submission Requirements
- B.1 Pre-Construction Submissions: Before the Applicant begins any Construction Activities, the Applicant shall have:

- a. Obtained the ZBA's approval of the "Approved Plans" pursuant to Section A.1 above, including the Sidewalk Construction Plan required under Condition F.1 below, which shall include the technical review of the ZBA's consulting engineer(s) (the "Consulting Engineer"), of the Applicant's fully-engineered stormwater management system, roadway plans, final landscaping plan, and its utility plans and the Approved Plan's conformity with the conditions of this Decision, which technical review shall be completed within 30 days after the Consulting Engineer's receipt of complete written materials from the Applicant;

- b. Obtained the ZBA's approval of the Applicant's Construction Management Plan, which shall address the following topics at a minimum:
 - i. Hours of construction

[Construction and installation of the roadway and municipal services shall only occur Monday through Friday between the hours of 7:00 a.m. and 5:00 p.m., and Saturday 8:00 AM to 5:00 PM, and there shall be no construction activity on State or Federal holidays.]

 - ii. Truck routes
 - number of truck trips
 - hours of operation for truck trips
 - size of and specification of trucks, and plans to mark truck with identification placards

 - iii. Trash and debris removal

 - iv. Construction Phasing and Schedule (critical path)
 - timing and phasing of construction
 - site clearing; construction of roadways and utilities; buildings, etc.

 - v. Communications
 - (Emergency Contacts)

 - vi. Noise and Dust Control
 - Control Plan
 - Mitigation Measures
 - Monitoring
 - Reporting
 - Tree removal (chipping, etc.)
 - Public street cleaning and repair

 - vii. Blasting (if necessary)

Blasting Plan
Identification of petitioner's blasting consultant (if required by Fire Chief)
Selection of independent blasting consultant (if required by Fire Chief)
Selection of blasting contractor
Pre- and post-blast survey (scope and content)
Insurance coverage
Blasting limits
Notification to abutters of blasting schedule
Road closures (if necessary)
School bus conflicts (limits on hours)

viii. Construction Staging
Staging areas
Site office trailers
Storage trailers/containers
Open storage areas
Delivery truck holding areas
Re-fueling areas

ix. Traffic and Parking (during construction)
On-site locations
Off-site locations
Snow removal
Police details
Warning signs

(the "CMP");

- c. Obtained all approvals from the Norfolk Board of Health and/or Massachusetts Department of Environmental Protection ("MassDEP") that may be required under any statute, code or regulation affecting public health, including for the on-site septic systems, not otherwise preempted by Chapter 40B or expressly waived under this Decision;
- d. Obtained a Water Connection Permit and Street Opening Permit for the Project from the Norfolk Department of Public Works, which approvals will be subject only to technical review of compliance with non-waived regulations;
- e. Obtained all approvals for the Project from the Norfolk Conservation Commission or MassDEP required under any statute, code or regulation under its jurisdiction not otherwise preempted by Chapter 40B;

- f. Received final subsidy approval from MassHousing. Evidence of the execution and recording of a Regulatory Agreement to govern the affordability and profit limitation requirements set forth under Section G of this Decision, in a form approved by Town Counsel for consistency with this Decision, shall be forwarded to the ZBA;
- g. Obtained and filed with the ZBA proof of Project coverage under the United States Environmental Protection Agency (USEPA) National Pollutant Discharge Elimination System ("NPDES") General Permit for Discharges from Construction Activities, or an individual permit;
- h. Where an Environmental Impact Report (EIR) under the Massachusetts Environmental Policy Act (MEPA) is required, obtained and filed with the ZBA a copy of a Certificate of the Secretary of Environmental Affairs of compliance pursuant to 301 CMR 11.08(8)(a);
- i. Where no EIR is required, obtained and filed with the ZBA a copy of a Certificate of the Secretary of Environmental Affairs pursuant to 301 CMR 11.06(7) that no EIR is required; and,
- j. Obtained and filed with the ZBA a Conservation and Management Permit for the Project from the Massachusetts Division of Fisheries and Wildlife under the state Endangered Species Act concerning the proposed construction activity within a mapped "Priority and Estimated Habitat" for the Eastern Box Turtle, a species state-listed as "special concern" in the Massachusetts Natural Heritage Atlas (14th ed);
- k. Delivered to the Town Treasurer an initial deposit of funds into an escrow account established pursuant to G.L. c. 44, §53G (the "Escrow Account") for the costs of the Town's inspectors and engineering consultants performing the tasks set forth in this Decision, representing 25% of the cost of the Approved Bid (as defined below) as reasonably determined by the ZBA. The ZBA will solicit bids for a civil engineering firm (the "Consulting Engineer") to provide consulting engineering services during the construction phase of the Project, as set forth in this Decision, including but not limited to the review of construction plans and documents and inspection of roads, drainage facilities, utilities and other Project-related infrastructure. The ZBA shall select the most responsive bidder, which need not be the lowest price bidder. The Approved Bid shall be the total estimated fees that the selected engineering firm will charge to the Town of Norfolk for its consulting engineering services over the course of the contract. The Applicant shall replenish the Escrow Account from time to time and upon requests from the Town until the the Consulting Engineer's services are completed.

C. Site Development Construction Conditions

- C.1 Prior to the commencement of Construction Activities, a pre-construction meeting shall take place where the Applicant shall meet with representatives from the Planning Department, Building Department, Police Department, Fire Department, the ZBA's Consulting Engineer, Department of Public Works, and the Chair of the ZBA or his representative at a mutually convenient time and place to review the CMP and coordinate inspections of the Project.
- C.2 The Applicant shall accommodate inspections during the construction of the Project, to ensure compliance with the terms of this Decision and for consistency with generally-accepted construction and engineering practices for individual lot development, the installation of roadways, stormwater management facilities, utilities, and other common development infrastructure. Inspections during the construction phase shall be conducted at the expense of the Applicant, from funds deposited in the Escrow Account. The contractor shall coordinate inspection and construction of residential structures within the Project. The Applicant shall ensure safe and convenient vehicular access to the Site during the entire duration of the Project in accordance with the CMP. All units shall be clearly marked with signage at the frontage at the time of permit issuance.
- C.3 The Applicant shall conduct all construction activity in accordance with the CMP, including but not limited to: inspections, the control and management of dust, odors, noise and vibrations; blasting, if necessary; the implementation of necessary traffic safety controls to ensure a safe and convenient vehicular access in and around the site; sweeping, removal of snow, and sanding of the internal roadways and driveways permitting access to residents, emergency vehicles, and others during construction; the installation of utilities; stabilization requirements, [sediment and erosion control] and other requirements as established in the CMP, as may be adjusted by the Order of Conditions described under Paragraph V. B.1.(e) and/or the Conservation and Management Permit described under Paragraph V. B.1.(j).
- C.4 The Applicant shall provide permanent central mailbox units (CMU) for all of the Project's housing units.
- C.5 As Built Plans - Prior to the occupancy or use of the final building constituting a part of the Project, the Applicant shall submit to the ZBA and Building Department an "As Built Plan" showing all pavement, buildings, stormwater management structures, and other infrastructure as they exist on the Site, above and below grade, including appropriate grades and elevations. The plans shall be signed by a registered land surveyor and civil engineer, certifying that the Project as built conforms and complies with the conditions of this Comprehensive Permit. The purpose of this provision is to facilitate the Consulting Engineer's review of the project for compliance with the comprehensive permit before the final

occupancy permit is issued. [Elevations must be to a known datum (NAVD 1988)].

- C.6 As Built Utilities Plan - An accurate as-built utilities plan and profile, showing actual in-ground installation of all utilities, shall be submitted to the Department of Public Works after completion of construction.
- C.7 The Applicant shall ensure that nuisance conditions do not exist in and around the site during construction. The Applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area. During construction, the Applicant shall provide means to secure the front entrance to the Site at appropriate times to protect against unauthorized entry or vandalism, and all construction materials shall be stored or stockpiled in a safe manner. Any floodlights used during the construction period shall be located and directed so as to prevent spillover or illumination onto adjacent properties. All construction activities are to be conducted in a workmanlike manner.
- C.8 Hours – Site clearing or construction work shall not occur before 7:00 AM or after 5:00 PM Monday-Friday, and shall not occur at all on Sundays or federal and Massachusetts state holidays, and shall otherwise be in accordance with Sections 3536 of Article X (Police Regulations) of the Town of Norfolk General Bylaws. The idling of vehicles belonging to construction workers shall be prohibited. Construction equipment on the Site shall not be turned on until 7:00 AM. All deliveries of construction materials must be made on-site and off of public ways. On Saturdays, construction shall be limited to 8:00 AM -5:00 PM, provided that work to interior areas can start at 7:00 AM on Saturdays. The Applicant can request relief to work on hours outside of these proscribed hours with the Town Administrator at least 72 hours in advance. The Applicant shall make all commercially reasonable efforts to ensure that the entire construction period from Commencement of Construction to the date of issuance of the final Certificate of Occupancy shall be no more than 60 months.
- C.9 Dust - Methods of controlling dust shall meet all air pollutant standards as set forth by Federal and State regulatory agencies. The Applicant shall implement dust control measures as directed by the Town Planner. The Applicant shall take all necessary measures to minimize dust from rising and blowing across the site and onto roads and adjacent properties. Any sediment or dirt tracked onto public ways shall be swept prior to the end of the construction day
- C.10 Vibrations – The Applicant shall implement measures to ensure that earth vibrations from project construction activities do not exceed acceptable levels, as set forth by Federal and State regulatory agencies, and shall implement vibration control measures as directed by the Consulting Engineer. The Applicant shall implement necessary controls to ensure that vibration does not create more than a temporary or isolated nuisance or hazard beyond the subject Site.

- C.11 Traffic – The Applicant shall implement necessary traffic safety controls to ensure a safe and convenient vehicular access in and around the site. Any traffic problems that occur as a result of site operations and construction shall be mitigated immediately, at the expense of the Applicant.
- C.12 Roads – The Applicant and its successors are responsible for the sweeping, removal of snow and sanding of the Project’s roads and driveways permitting access to residents, emergency vehicles, and others during construction and until the roads have been formally accepted as public ways. The final coat of pavement on the roadways shall be installed after the base course has endured a full winter season. The Applicant shall promptly clean any debris or dirt deposited on Norfolk streets as a result of the Project and shall periodically sweep adjacent streets as necessary to remove construction-related dirt and debris.
- C.13 Burial of any stumps or solid debris onsite is expressly prohibited. Localized burial of stones and/or boulders is prohibited to prevent the creation of voids from soil settlement over time.
- C.14 Gravel for roadways shall be tested at the expense of the Applicant by a geotechnical testing firm. Testing of said gravel shall be performed in conformance with standards and frequencies reasonably established by the ZBA’s Consulting Engineer. Protocols for installing subsurface utilities in conventional subdivision shall be complied with, except as specifically waived herein.
- C.15 Utilities, including but not limited to water, sewer, electric, cable and telephone, shall be located underground except for so-called “green boxes” or other customary above-ground utility improvements as may be required by such utility companies. A final utility plan approved by the applicable public utilities shall be submitted to the Consulting Engineer before the installation of the applicable utilities.
- C.16 Stabilization Requirements - No disturbed areas that are not under active construction shall be left in an open, unstabilized condition, except as may be allowed by a NPDES permit. Temporary stabilization shall be accomplished by hay bales, hay coverings or matting. Final stabilization shall be accomplished by loaming and seeding exposed areas in accordance with the landscaping plans reviewed during the course of the public hearing by the ZBA’s Consulting Engineer.
- C.17 Construction vehicles shall be parked on the Site, and off of public streets at all times except for any off-site work as required under this Decision.
- C.18 Blasting - Any rock blasting shall be performed by a licensed blasting professional, who shall first obtain all required permits from the Norfolk Fire Department. All blasting and removal of debris shall be performed in accordance

with state regulations and local Fire Department requirements, and the Applicant shall provide evidence thereof to the Fire Chief.

- C.19 50-Foot Buffer – There shall be a 50-foot wide buffer along the northerly property line abutting the homes known and numbers as 10, 12, 14 and 16 Village Green Street, the boundary of which is delineated on the Site Plans as the “limit of work” (the “50-Foot Buffer”). No vegetation shall be removed from the 50-Foot Buffer with the exception of diseased or dead trees. The 50-Foot Buffer shall be staked and a temporary fence shall be installed along the southern perimeter of the 50-Foot Buffer prior to any Construction Activities to ensure that any vegetation within the 50-Foot Buffer including trees are not be touched during construction. The Applicant shall obtain the ZBA’s Consulting Engineer’s confirmation that the fence and stakes are properly located. All trees with a DBH of 4 inches or more inside the 50-Foot Buffer but within 20 feet of the Buffer boundary shall be identified, marked with a ribbon, and noted on the Approved Plans before the plans are submitted to the ZBA for approval under Condition A.1. Tree wells shall be installed prior to Construction Activity for any tree at risk of injury from excavation, as determined by the Tree Warden.
- C.20 Scenic Road - Prior to any tree removal within the right-of-way of Village Green, the Applicant shall identify and tag all trees within the right-of-way that it determines must be removed to ensure adequate sight distances, or to do any work on Village Green including the installation of a sidewalk, and shall stake the intersection sight triangles on the ground. No trees shall be removed until after the Tree Warden has reviewed the tagged trees and stakes and have confirmed the necessity of removing said trees.
- C.21 Driveways - All proposed driveways, parking lots, and utility constructions, grading and appurtenant work shall be described in complete detail to readily enable peer review and construction. A note shall be placed on each pertinent sheet of the Approved Plans stating that the Project is the subject of a comprehensive permit under G.L. c. 40B, § 20-23, that the driveways within the Project in some cases may, and in other cases may not, conform to the standards and requirements of the Planning Board’s Subdivision Rules and Regulations. The Approved Plans shall, however, indicate that driveway construction materials and thicknesses conform to the standards set forth in the Subdivision Rules and Regulations. All parking areas shall conform to all applicable Americans with Disabilities Act requirements.
- C.22 The Applicant shall submit to the ZBA, the Building Commissioner and the Fire Chief final and detailed scaled architectural drawings for all building as approved by this Decision as construction of the Project is phased, including interior floor plans, current and finished elevations, construction type and exterior finishes to the detail required under the State Building Code for review for consistency with the conditions in this Decision. Any substantive deviations as determined by the Town Planner from the preliminary architectural renderings shall be subject to the ZBA’s approval and treated as a request for a modification of this comprehensive

permit.

- C.23 The Project shall conform to all requirements of the Norfolk Department of Public Works for utility connections, including the payment of all connection and service fees, unless waived hereunder.
- C.24 Fieldstone shall be used for all retaining walls that are visible from abutting properties or public or private ways, provided that a retaining wall on the southern side of Road A that is visible from abutting properties but not visible from a public or private way may be constructed of other materials as approved by the ZBA.
- C.25 The Approved Plans shall show snow storage areas, the adequacy of which shall be determined by the ZBA.
- C.26 No construction activities shall occur within 100 feet of a wetland resource area except as may be permitted by the Conservation Commission or MassDEP pursuant to an Order of Conditions issued under the Wetlands Protection Act.
- C.27 Prior to Construction Activities the Applicant shall propose an alternative design for the speed tables/cross walks within the Project Site to the DPW, and shall incorporate the design approved by the DPW. In the event of a conflict between the Applicant and the DPW, the Applicant shall seek approval for the speed table/cross walk design from the ZBA, which approval shall not be unreasonably withheld.

D. Age Restriction

- D.1 The Project is intended to be an age-restricted community for residents who are 55 years old or older. Occupancy of the residential units in the Project shall be restricted to households in which at least one member is at least 55 years old, and no unit shall be occupied by any person younger than 18 years old unless such restriction is prohibited by federal or state fair housing laws, subject to the exceptions set forth below. This age restriction shall be imposed as a condition in the Master Deed for the Project, and as a restriction in each deed to any unit in the Project. The re-sale of all units in the Project shall be subject to this age restriction. All leases of individual units shall comply with this age restriction.
- D.2 At least one record owner shall be an age-qualified occupant. The qualified owner-occupant shall own their dwelling unit individually, or jointly with another or others, or as a beneficiary of a Trust recorded with the Norfolk Registry of Deeds. For trusts in which the beneficiary is not identified in documents recorded at the Registry of Deeds, the Trustee shall provide the Town Planner with a statement, under oath, certifying the beneficiary or beneficiaries, who must be a qualified occupant. The qualifying owner shall reside in the dwelling unit, and shall not vacate the premises and rent or lease to an unqualified occupant without written permission of the homeowners association and the ZBA.

- D.3 Notwithstanding the foregoing, in the event of the death of the qualifying owner-occupant(s) of a dwelling unit, or in the event that the qualifying owner-occupant is admitted to an assisted living facility, or nursing home, or other long term residential/hospital care facility in which the owner-occupant has no expectation of returning to the unit, or in the event of any other substantial hardship as approved by the ZBA, household members who resided in the unit for a continuous period of two years prior to the death of the qualifying owner-occupant, or prior to the qualifying owner-occupant's admission to an assisted living facility, or nursing home, or other long term residential/hospital care facility may continue to reside in the unit regardless of age, provided that such residence is not interrupted by a period not to exceed thirty days. Persons who are not qualified occupants may not move into the unit except as herein provided.
- D.4 Children younger than 18 years old may temporarily reside in a unit in the Project, for a period not to exceed three (3) months within any nine (9) month period.

E. Legal Requirements

- E.1 Any sale or transfer of rights or interest in all or any part of the Site shall include a condition that successors are bound to the terms and conditions of this Decision. This Comprehensive Permit may not be transferred to a person other than the Applicant, or to an entity of which the Applicant controls less than 50%, without the written approval of the ZBA and the execution of any instruments or documents that may be required for the perpetual enforcement of this Comprehensive Permit pursuant to Town Counsel's direction. The scope of the ZBA's review of a proposed transfer shall be limited to the review of the transferee's qualifications, experience, and capacity.
- E.2 The Applicant may convey the 486 square-foot parcel of land shown on Sheet C-7 of the Site Plans to the owner of 16 Village Green, as noted on Sheet C-7, provided that the Applicant reserve for itself and its successors-in-title an easement over said area for drainage, grading and the proposed sidewalk as shown on said plan.
- E.3 The Applicant and/or subsequent Owner(s) shall be bound by all conditions and requirements set forth in this Comprehensive Permit.
- E.4 The Applicant shall reimburse the ZBA for its legal expenses in reviewing the Regulatory Agreement, Monitoring Services Agreement, Affordable Housing Restriction (Deed Rider), and Lottery Plan which shall not exceed \$2,000.
- E.5 The Applicant shall create a Homeowners' Association for the Project ("HOA") and shall convey all common areas to the HOA, the form for said title instruments shall be subject to the approval of Town Counsel. All exterior landscaping, lawns,

lighting (lamp posts), fencing, walls, recreational areas, trails, the Open Space, the CMU area, and the common visitor parking areas shall be perpetually maintained in good working order by the Applicant and the successor HOA, and any elements of the same shall be replaced with like-kind materials if and when necessary for as long as this Decision remains in effect. If Road A is formally accepted by the Town as a public way, then the HOA shall be relieved of the responsibility to maintain the trail to Juniper Road.

- E.6 The ZBA reserves the right, at its sole discretion, to re-open the public hearing and amend this Decision if the ZBA finds that there is a material breach of the conditions set forth in this Decision.
- E.7 It is the intention of the Applicant to obtain Town Meeting approval for the acceptance of "Road A" as shown on the Site Plans as a public way, including the grass strip and sidewalks adjacent to the roadway. The Applicant shall not request Town acceptance of the roadway area until it has obtained a letter from the ZBA's Consulting Engineer certifying completion of the Road in compliance with all conditions of this Decision and any un-waived subdivision rules and regulations, as confirmed by the ZBA, and a final Certificate of Compliance from the Conservation Commission for any Orders of Conditions. The associated drainage areas shall remain the property of the HOA, and shall be kept in good working order pursuant to Condition H.4 below.

F. Traffic, Public Safety and Fire Protection

- F.1 Off-Site Sidewalk Mitigation. The Applicant shall construct a continuous bituminous sidewalk along Village Green and Cleveland Street, from the entrance to the Project Site to Rockwood Road. Contemporaneous with the Applicant's submission of its final civil engineered site plans pursuant to Condition B.1(a), the Applicant shall submit a proposed Sidewalk Construction Plan to the ZBA, providing all design details that would be required under the Planning Board's Subdivision Rules and Regulations for sidewalks within a subdivision. The design of the sidewalk shall be subject to the review of the DPW Director. If the DPW Director and Applicant cannot come to agreement on said design, then the requirements shall be determined by the ZBA.
- F.2 The Applicant shall repair Village Green from the Project's entrance to Cleveland Street using the "reclamation" process, following completion of the construction of the sidewalk, and in doing so shall increase the width of the paved surface of Village Green to a continuous width of 22 feet (measured from the outside edge of the berm) with a monolithic berm, a 3-foot grass strip and the 5-foot asphalt sidewalk described in ¶F.1. Transitioning from the existing 27' wide pavement with abutting sidewalk to the 22' proposal will be worked out in the field. The scope of reclamation shall adhere to the DPW Director's requirements, consistent with his recommendations to the ZBA dated April 4, 2019. The sidewalk and repaving shall be completed before the issuance of the 24th certificate of

occupancy for the market rate units in the Project, and no more than 25 certificates of occupancy for market rate units shall be issued until the sidewalk has been completely installed, and the ZBA's Consulting Engineer has provided a letter indicating that the work has been completed in accordance with the Approved Plans and Section 5.2.10 of the Rules and Regulations. As an alternative to the limitation on certificates of occupancy, the Applicant may provide the Town of Norfolk with performance security in a form of a tri-party agreement with the Applicant's lender.

- F.3 As proposed in the Applicant's Traffic Impact and Access Study, page 26, the Applicant shall install advance curve warning signs (W1-1) facing each direction ahead of the horizontal curve in Village Green Street, approximately 500 feet west of the Project entrance. The selection and installation of the signage shall be coordinated with the DPW.
- F.4 To ensure adequate sight distances at the intersection of the Project's roadway and Village Green Street, the Applicant shall, prior to the issuance of the first building permit, clear vegetation within the "sight triangle area" delineated on the plan prepared by the Applicant's traffic engineer on March 6, 2019, and maintain that area free of signage, vegetation and any other vertical obstacles. Occasional clearing of vegetation shall be included in the Landscaping Maintenance Plan set forth in Condition G.1 below.
- F.5 Driveways, sidewalks and curbing, sufficient for the safe separation of pedestrians from moving vehicles, shall be provided throughout the Site substantially as shown on the Site Plans or otherwise to allow safe vehicular and pedestrian access within the site and between all units.
- F.6 The Applicant shall install traffic signs wherever they are deemed necessary and appropriate by the Department of Public Works, and shall bear the cost of all such signage and installation.
- F.7 All traffic improvements shall be completed in accordance with the standards set forth in the most recent edition of the Federal Highway Administration's Manual on Uniform Traffic Control Devices (MUTCD), and shall be in place prior to project occupancy.
- F.8 The street name, house numbering system, and the identification of the dwelling units for emergency response purposes shall be subject to the approval of the Town Planner after consulting both the Fire Chief and Police Chief.
- F.9 The final design of all driveways and parking areas shall be submitted to the Fire Chief for confirmation that the paved width, shoulders and turning radii of all internal roadways are adequate to accommodate all public safety vehicles before the final Approved Plans are presented to the ZBA for approval pursuant to Condition A.1.

- F.10 No vehicle shall park in a manner that extends into sidewalks or roadways in driveways on the Project Site. If the driveway and parking areas of the Project are redesigned to accommodate other conditions in this Decision, then any such redesign shall be subject to review and approval by the Norfolk Fire Chief pursuant his authority under G.L. c. 148 § 28 and the state Fire Prevention Code. Final hydrants locations shall be subject to the approval of the Norfolk Fire Chief.
- F.11 Road A, which is proposed to be conveyed to the Town shall be constructed to the road design specifications within the Planning Board's Subdivision Rules and Regulations, except as waived herein. Sidewalks and ramps are to be built in compliance with ADA standards.
- F.12 The design, size, and location of any propane gas storage tanks shall be subject to the approval of the Fire Chief. The Applicant shall install a permanent marker or bound on the surface above any underground tank.
- F.13 No occupancy permit for a building in the Project shall be issued until the base and binder coat of pavement for the portion of the driveway serving that building has been installed. Access to all construction areas shall be sufficient for all Norfolk emergency vehicles.
- F.14 In accordance with NFPA §8.7.2.3, all underground water lines and hydrants shall be installed and operational prior to the issuance of any building permits for the construction of residential structures.

G. Landscaping and Open Space

- G.1 All of the landscaping elements shown on the landscaping plan sheets (C-32 – C-34) contained within the Site Plans shall be perpetually maintained by the Applicant or the successor HOA that will be established by the Applicant pursuant to Condition E.5. Prior to the issuance of the 21st occupancy permit for a residential unit in the Project, the Applicant shall prepare and submit a proposed Landscaping Maintenance Plan to the ZBA, and obtain the ZBA's approval of the same. The Landscaping Maintenance Plan shall address and contain (a) an adequate plan for maintaining the landscaping improvements in the common areas and rights of way, including any special maintenance conditions for the first two years after planting including but not limited to replacement plants, labor, watering, and fertilizing; (b) an adequate plan for replacing as necessary plantings on the Site; (c) evidence that the Applicant has pre-funded the necessary maintenance for the first two years from the installation of the plantings with the HOA; and (d) operation and maintenance protocols for all other common areas within the Site, including any accessory structures, common trash collection areas, common parking areas, the CMU area, the walking trail to Juniper Lane, and any other recreational amenities.

- G.2 The Applicant shall complete the common area landscaping improvements on the Site as depicted on the Approved Plans and exhibits filed with the ZBA and the off-site improvements at 15 Village Green prior to issuance of the 37th certificate of occupancy for a residential unit in the Project, and no more than 36 certificates of occupancy shall be issued until the Applicant has obtained the ZBA's approval of the Landscaping Maintenance Plan. If, in Applicant's reasonable judgment, weather circumstances preclude the installation of plantings to complete landscaping before the issuance of occupancy permits, or if the landscaping has otherwise not been completed and the Applicant would like to obtain additional occupancy permits, the Applicant shall post a bond or a deposit with the ZBA an amount equivalent to 1.5 times the retail cost of the plantings to ensure completion by the Applicant as soon as weather allows, and in no event later than the first growing season following the issuance of the Certificate of Occupancy.
- G.3 The street trees shown on the landscaping plans shall have a minimum caliper of three inches at the time of installation. The street trees shall be planted outside the boundary of the roadway right-of-way, on private house lots, but shall be perpetually maintained by the HOA per Condition G.1 above.
- G.4 The Applicant shall encumber the Open Space with a permanent conservation restriction, which shall be conveyed to Conservation Commission if it will accept it, otherwise to a non-profit organization acceptable to the ZBA unless otherwise required by the Massachusetts Natural Heritage and Endangered Species Program (NHESP). There shall be no construction activity within in the Open Space, and no structures, utilities or improvements of any kind, except for the boardwalk trail, shall be permitted within the Open Space.
- G.5 Subject to obtaining all applicable permits and approvals the Applicant shall construct a walking trail from "Road A" in the approximate location of the existing cart path on the Site to Juniper Road, which shall include a "boardwalk"-type crossing of the intervening wetland and stream. Subject to obtaining all applicable permits and approvals, contemporaneously with the Town's acceptance of the roadway as a public way the Applicant shall convey an easement for the walking trail to the Town of Norfolk in a form acceptable to Town Counsel to allow for public access
- G.6 A private lamp post, not exceeding ten feet in height or 50 watts or its equivalent (approximately 700 lumens), shall be installed on each single-family residential lot having a dwelling thereon as shown on the Site Plans. Once installed, such lamp posts and related lighting shall be uniform and shall be perpetually maintained and the successor HOA.
- G.7 The Applicant shall maintain the landscaping as shown on the landscaping plans as well as the drainage easement areas and other stormwater management facilities and any other utilities until the common areas have been turned over to the HOA and the HOA has assumed responsibility for the same.

- G.8 If irrigation is incorporated into the plans or used for landscaping maintenance, municipal water shall not be used; the Applicant or its successors shall seek an irrigation well permit from the Board of Health, and no waivers from the Board of Health's regulations regarding irrigation wells are granted.
- G.9 No vegetation shall be removed from the 50-Foot Buffer (Section C.19) by the Applicant, HOA, or any individual lot owners. This restriction shall be referenced by the Applicant in all deeds to individual lots.

H. Stormwater Management System

- H.1 The Project's stormwater management infrastructure shall be designed and constructed in compliance with the current Massachusetts Stormwater Management Standards and Handbook as incorporated by reference in the state Wetland Protection Act regulations, and Section 4.19 of the Subdivision Rules and Regulations except as waived herein. Nothing in this Decision shall supersede the Conservation Commission's authority and jurisdiction over stormwater management systems under the state Wetlands Protection Act.
- H.2 Before any site clearing or construction, the Applicant shall provide fully engineered stormwater management plans and calculations, prepared and stamped by a Registered Professional Engineer, for review and approval by the ZBA and its Consulting Engineer, to confirm consistency with this Decision, state and local regulations and policies not waived herein, and with generally-accepted engineering practices. The stormwater management system shall be designed to provide, in the reasonable opinion of the Consulting Engineer, sufficient means of artificially recharging precipitation to the groundwater to compensate for the loss of pervious areas on the Site.
- H.3 The ZBA's expenses in reviewing the stormwater management plans and subsequent reports shall be borne by the Applicant. If the Norfolk Conservation Commission (or DEP) engages the services of someone other than the ZBA's Consulting Engineer to review the Project stormwater management system, including the review and approval of a stormwater management system operation and maintenance plan, in connection with the review of a Notice of Intent under the State Wetlands Protection Act, the Applicant may arrange for such alternate consultant to perform the stormwater management review required by the ZBA under this Section in lieu of the ZBA's Consulting Engineer.
- H.4 The Applicant shall prepare a stormwater management system operation and maintenance plan, which shall be subject to the approval of the Consulting Engineer for consistency with this Decision and best management practices unless reviewed and approved by the Conservation Commission's peer review consultant pursuant to a Wetlands Order of Conditions, in which case, no other peer review

of the same is required. All drainage areas and structures located outside of the Road A right-of-way shall be perpetually, cleaned and maintained (including grass cutting) in good working order by the Applicant and the successor HOA in accordance with said plan. The Applicant or HOA shall provide any maintenance records or documentation to the Town as may be requested for MS-4 compliance.

- H.5 The Applicant shall construct a gravel access road from Road A to the proposed detention basins on the south side of the Project Site to facilitate maintenance and repair, and shall convey an access easement to the Town of Norfolk over said access road to provide vehicular access to and from all drainage infrastructure constructed on the Site from Village Green Street, said easement in a form acceptable to Town Counsel. The access road shall be constructed in a manner that will allow an excavator and a dump truck to have unimpeded access to all detention basins and related swales and outlets.
- H.6 The Applicant shall maintain and repair the drainage structures and stormwater management system within the Project until it assigns or otherwise transfers those responsibilities to the successor HOA or the Town of Norfolk (for the Road).
- H.7 Prior to starting any site work, the Applicant shall provide a copy of the final Stormwater Pollution Prevention Plan (SWPPP) and NPDES Construction General Permit to the Board. The SWPPP shall be provided to the contractors during construction and a copy must be kept on site during construction. The Applicant shall comply with the SWPPP during construction.
- H.8 Any drain structures (i.e., catchbasins) that require cleaning shall be designed with an opening large enough to accommodate the “clamshell” buckets on the current Norfolk DPW trucks..

I. Affordability Requirements

- I.1 No less than twenty-five percent of the units within the Project shall be made available for purchase by households whose aggregate income is no greater than 80% of the area median income, adjusted for household size, as published by the Department of Housing and Urban Development for the Boston Primary Metropolitan Statistical Area (the “Affordable Units”).
- I.2 Sale Prices: The Affordable Units shall be sold to qualified households at prices deemed affordable to households earning 70% of the area median income, adjusted for household size, utilizing cost assumptions developed under the NEF Program.

The maximum sale prices for the Affordable Units shall be subject to review and approval by a monitoring agent (the “Affordability Monitoring Agent”), which shall be selected by MassHousing. The sale prices shall be reviewed for consistency with Chapter 40B guidelines and regulations and determined at the time of the lottery for the selection of buyers of the Affordable Units. If for any

reason the designated Affordability Monitoring Agent fails or refuses to administer the Affordable Units, or if the Agent ceases to exist, the Applicant shall notify MassHousing and the ZBA, and MassHousing shall designate another entity to administer those units. If for whatever reason MassHousing fails to designate an Affordability Monitoring Agent, the ZBA or its designee may elect to serve that role, subject to approval by MassHousing within sixty (60) days after being notified by the ZBA of such designation, and MassHousing's failure to respond within said timeframe shall result in the designation being deemed approved.

- I.3 Selection of Buyers for Affordable Units: The Applicant shall obtain the Monitoring Agent's approval of a Buyer Selection Plan for the sale of the Affordable Units prior to putting the Affordable Units on the market. Buyers shall be selected through a fair lottery process (the "Lottery").

To the maximum extent permitted by law, first preference for the purchase of 70% of the Affordable Units shall be given to households that meet one or more of the following "Norfolk Connection" preference criteria:

- (a) Current residents: A household in which one or more members is living in the Town of Norfolk at the time of application. Documentation of residency should be provided, such as rent receipts, utility bills, street listing or voter registration listing.
- (b) Municipal Employees: Employees of the Town of Norfolk, such as teachers, janitors, firefighters, police officers, librarians, or town hall employees.
- (c) Employees of Local Businesses: Employees of businesses located in the Town of Norfolk.
- (d) Veterans.

The selection of purchasers for the Affordable Units, including the administration of the Lottery, shall be administered by a consultant retained by the Applicant, subject to the Monitoring Agent's approval. The Lottery shall be implemented pursuant to a Lottery Plan developed by the lottery consultant and approved by the Monitoring Agent. The Monitoring Agent shall oversee the lottery.

The Monitoring Agent shall develop rules and guidelines to carry out the provisions of this section, as necessary. Income eligibility shall be governed by the rules and regulations of MassHousing under the NEF Program, or in default, the rules and standards employed by the Massachusetts Department of Housing and Community Development (DHCD) or the Department of Housing and Urban Development in the selection of income-eligible tenants for publicly subsidized housing.

Disputes concerning Norfolk Connection qualification shall be resolved in the first instance by the Affordability Monitoring Agent. A party aggrieved by a qualification-related decision of the Affordability Monitoring Agent may appeal the decision to MassHousing for a final determination.

The provisions of this section are intended to complement and not to override or supersede any applicable fair marketing regulations of the Department of Housing and Community Development, the Massachusetts Commission Against Discrimination, MassHousing, or any authority with jurisdiction and like purpose, to provide low and/or moderate income housing.

- I.4 Affordability Restriction: Prior to the issuance of any building permits, a Regulatory Agreement, in the form approved by MassHousing and the ZBA, shall be executed and recorded. The Regulatory Agreement shall provide, among other things, that (a) 25% of the units in the Project will be sold and resold subject to a Deed Rider approved as to form by MassHousing and the Board, and (b) the Project Owner's profit shall be limited as defined by G.L. c. 40B, Sections 20 - 23 (the "Act"), the Regulatory Agreement and applicable regulations as well as subsidy program and cost certification guidance.

A Deed Rider shall be attached to and recorded with the Deed for each and every Affordable Unit in the Project at the time of each sale and resale, and the Deed Rider shall restrict each such affordable unit pursuant to this Decision in perpetuity (subject to the standard exceptions set forth in the standard NEF Program form of Deed Rider to be incorporated into the Deed) in accordance with the requirements of M.G.L. c. 184, Sections 31-33. The Deed Rider shall give the Town of Norfolk a right of first refusal to purchase the Affordable Unit upon any notice of an impending mortgage foreclosure.

In any event, as this Decision grants permission to build the Project under the Act, and as the Applicant has obtained the benefits of a comprehensive permit, the Project shall remain subject to the affordability restrictions imposed by this Decision so long as the Project is not in compliance with the Town of Norfolk zoning requirements which otherwise would be applicable to the Site and the Project but for the comprehensive permit's override of local bylaws and other local requirements to promote affordable housing. It is the express intention of this Decision that the period of affordability shall be the longest period allowed by law. In no event shall the period of affordability be less than ninety-nine years subject to the standard exceptions set forth in the Deed Rider.

- I.5 Profit Cap: To conform to the intent of the Act that profits from the Project be reasonable and limited, the Applicant's profits from the Project shall be limited to 20% of total development costs as governed by the applicable Chapter 40B guidelines and regulations, and those of MassHousing. Moreover, the Applicant shall follow the cost examination and certification requirements described and as

required in 760 CMR 56.04(8) and in MassHousing and DHCD's guidance and policies, as amended.

In accordance with Section 56.04(8) of the 40B Rules, the Applicant shall comply with the cost examination requirements defined in 760 CMR 56.04(8) under the pains and penalties of perjury, and adequate financial surety, as defined in guidelines issued by the DHCD, has been secured by the Subsidizing Agency sufficient to ensure completion of the cost examination to the satisfaction of the Subsidizing Agency and the distribution of excess funds as required at 760 CMR 56.04(8)(e).

I.6 Monitoring Services Agreement: Any Limited Dividend Monitoring Agreement and/or Affordability Monitoring Agreement that MassHousing requires to be executed by the Applicant under its program guidelines rules shall be executed and delivered prior to the issuance of any building permits for the Project. The Agreements shall be in a form used by MassHousing under the NEF Program, and shall be subject to the approval of Town Counsel for consistency with this Decision only, such approval not to be unreasonably withheld or delayed. The Applicant shall pay a reasonable monitoring services fee to the Monitoring Agent(s).

I.7 The affordable units shall be constructed on a schedule that provides substantially for the construction of at least one affordable unit for every three market-rate units, provided that under no circumstances may more than four (4) certificates of occupancy be issued for market rate units until at least one certificate of occupancy is issued for an affordable unit, which ratio shall be maintained through the course of the construction of the Project. If a purchaser for an Affordable Unit cannot be located after a reasonable marketing period, the Applicant may lease the Affordable Unit to an income-qualified tenant on a temporary basis, not to exceed 18 months. No more than four Affordable Units may be leased at any one period of time.

The low- or moderate-income units shall be indistinguishable from the exterior from the market-rate units in the Project. If an individual with a physical disability is a member of a household that has been selected to purchase an affordable unit through the lottery, the Applicant shall provide an affordable unit meeting accessibility requirement as may be required by law or the Applicant's subsidy program.

The Affordable Units shall be scattered randomly throughout the Project (i.e., not clustered together). The Applicant shall submit its proposed lotting plan, showing the locations of the Affordable Units within the Project, to the ZBA for review for conformity with this Condition together with the proposed Regulatory Agreement under Section I.4 above, and no building permits shall issue until after the lotting plan has been approved by the ZBA.

J. Surety & Covenants

J.1 As security for the completion of the infrastructure related to the Project as shown on the Approved Plan, including, but not limited to, the roadway, sidewalks, parking areas, common areas, recreational areas, drainage facilities, utilities, landscaping, and any other specific infrastructure shown on the plan (the "Infrastructure"), the release of occupancy permits for all housing units and the sale of all housing units in the Project shall be subject to the following restrictions:

a. No more than 20 building permits shall be issued, no occupancy permit for a unit in any building shall be issued, and no sale of any unit shall be permitted, until: (1) the base and binder course for the roadways and common parking areas shown on the Plan have been completely installed (intentionally excluding the final coat of pavement on the roadway, the grass strips, sidewalks and the monolithic berm); (2) all utilities including stormwater management facilities and infrastructure as shown on the Plan have been completely constructed; (3) the boardwalk trail to Juniper Road has been completed constructed; and (4) all conditions of this Comprehensive Permit that require action or resolution by the Applicant prior to the issuance of occupancy permits have been completed to the satisfaction of the Building Commissioner.

b. No more than 26 occupancy permits for the Project's market rate units shall be issued before all the Infrastructure shown on the Approved Plan (including the final coat of pavement on the roadway, the grass strips, sidewalks and the monolithic berm) is fully installed. The final coat of pavement shall not be installed until after the base and binder coat has endured a full winter season. To obtain additional occupancy permits before completing all of the Infrastructure, the Applicant may propose a Tri-Party Agreement with its construction lender as a means of providing security for the completion of the Project's infrastructure, with a holdback amount set by the ZBA with the advice of the Consulting Engineer that is sufficient to complete the items that remain incomplete at such time. The ZBA's Consultant Engineer shall review the construction costs and recommend adjustments based on best practices and prevailing wage requirements. The performance guarantee shall be in a form acceptable to the ZBA. The performance guarantee may be reduced from time to time as completion of such items progresses and shall be released upon approval by the ZBA. No more than 36 occupancy permits shall be issued until all of the Infrastructure shown on the Approved Plan is fully installed, inspected and approved by the ZBA's Consulting Engineer.

J.2 Prior to the issuance of the final certificate of occupancy, the Applicant shall submit to the Board an "As-Built Plan" in paper and CAD format, showing all pavement, building locations, stormwater management structures and other infrastructure as they exist on the Site, above and below grade, including

appropriate grades and elevations. The plans shall be signed by a registered land surveyor and civil engineer, certifying that the Project as built conforms and complies with the conditions of this Comprehensive Permit. The purpose of this provision is to facilitate the Consulting Engineer's review of the Project for compliance with this Decision before the final occupancy permit is issued. The Applicant shall also submit to the Building Inspector as-built plans for all buildings in the Project.

- J.3 Prior to the commencement of Construction Activities (i.e., site clearing), the Applicant shall post a bond or enter into a Tri-Party Agreement with its construction lender in the amount of \$25,000 to provide surety to the Town in the event that the Project Site is disturbed, cleared, grubbed, etc. and abandoned in a state with insufficient erosion control, site stabilization or interim stormwater management. The surety shall be released by the Board upon completion of the roadway and all other Infrastructure (or posting of financial surety for the completion of the roadway and infrastructure).

K. Amendments

- K.1 If, between the date this Decision is filed in the office of the Norfolk Town Clerk and the completion of the Project, the Applicant desires to change in a material way and/or to a significant degree the proposed Project as reflected in and approved by this Decision, such changes shall be governed by 760 CMR 56.05(11).
- K.2 No structure constructed under this Comprehensive Permit shall be altered, reconstructed, extended, or changed unless authorized by the ZBA using the procedures set forth under 760 CMR 56.05(11). Upon such application, the Board shall determine, in the first instance, whether such alteration, reconstruction, extension or change is "substantial" or "insubstantial." For all applications for such insubstantial changes, the ZBA shall employ the standards of review set forth under 760 CMR 56.05(11) which uses the factors at 760 CMR 56.07(4) as guidance.

L. Expiration Date

As provided under Section 56.05(12)(a) of the 40B Rules Comprehensive Permit shall become final on the date that the written decision of the Board is filed in the office of the Town Clerk, if no appeal is filed. Otherwise, it shall become final on the date the last appeal is decided or otherwise disposed of

As provided under Section 56.05(12)(c) of the 40B Rules, if construction authorized by a Comprehensive Permit has not begun within three years of the date on which the permit becomes final except for good cause, the permit shall lapse. This time period shall be tolled for the time required to pursue or await the determination on any appeal on any other state or federal permit or approval

required for the Project. The ZBA may set a later date for lapse of the permit, and it may extend any such date. An extension may not be unreasonably denied or denied due to other Projects built or approved in the interim. Extension of a permit shall not, by itself, constitute a substantial change pursuant to 760 CMR 56.07(4). The Decision shall become final on the date that the written decision is filed in the office of the Norfolk Town Clerk if no appeal is filed. Otherwise, it shall become final on the date the last appeal is decided or otherwise disposed of.

VI. Applicant's Requested Waivers

The Applicant has requested waivers from the General Bylaws, the Zoning Bylaws, the Rules and Regulations Governing the Subdivision of Land and other local rules and regulations. The Applicant's requested waivers are set forth in its Application, as supplemented through the public hearing process. The ZBA's grant of waivers shall be subject to the terms and conditions imposed under this Decision, and to the extent that any waiver is inconsistent with a term or condition set forth elsewhere in this Decision, such term or condition shall govern. No grant of any waiver shall be deemed to waive compliance with any condition of approval of this Decision. The ZBA has voted unanimously to grant such waivers as described in the List of Waivers attached hereto as **Exhibit A**.

VII. CONCLUSION

The Application for a comprehensive permit for the Project, including the requested waivers, is granted for the reasons stated above, subject to the conditions provided herein. This concludes the Decision of the Board.

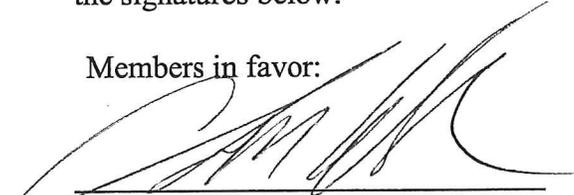
TOWN CLERK
NORFOLK

RECORD OF VOTE

2019 APR 25 AM 9:04

The Board of Appeals voted 5-0 at its public meeting on April 24, 2019 to grant a Comprehensive Permit subject to the above-stated Conditions, with this decision as attested by the signatures below.

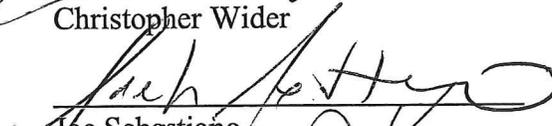
Members in favor:



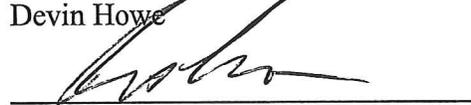
Christopher Wider



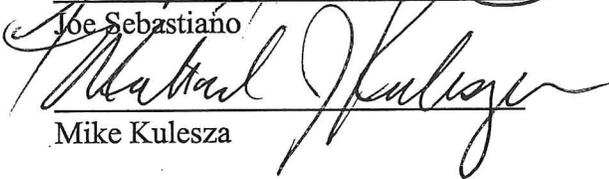
Devin Howe



Joe Sebastiano



Robert Luciano



Mike Kulesza

Dated: April 24, 2019

Filed with Town Clerk on April 25, 2019

Assistant 

Town Clerk

Notice: Appeals, if any, shall be made pursuant to Massachusetts General Laws, Chapter 40A, s. 17, and shall be filed within twenty (20) days after the filing of this notice in the Office of the Town Clerk, Town Hall, Norfolk, Massachusetts.