

**5.3.2018 PROPOSED CONDITIONS; NOT A FINAL DECISION OF THE BOARD**

**5.16.2018 Responses by Applicant**

**NOTE 1: DRAFT CONDITIONS REVIEWED BY BOARD ON 5.3.2018 - THESE CONDITIONS ARE PROPOSED AND DO NOT CONSTITUTE A VOTE OR FINAL DECISION OF THE BOARD**

**NOTE 2:**

Definitions to be included in body of decision:

The term "Project Plans" as used in this Comprehensive Permit shall mean the plans, studies, reports and other submissions of the Applicant made in connection with the Comprehensive Permit Application, as more particularly defined in Attachment A. Also included in the Project Plans are certain submissions by the Town's technical consultants as detailed in Attachment A.

The term "Approved Plans" as used in Attachment B hereto shall mean the Project Plans, as the same shall be revised in accordance with Condition C.1, together with the representations made to the Board by the Applicant in connection with the Comprehensive Permit Application for the Project, all of which were relied on by the Board in its vote to grant the Comprehensive Permit.

**START OF PROPOSED CONDITIONS:**

**ATTACHMENT B**

**River Stone, Off Ward Street/Viking Lane, Comprehensive Permit Conditions  
(Applicant shall include successor and assigns.)**



**A. General Conditions**

1. This Comprehensive Permit permits the construction, use and occupancy of a multifamily for-sale housing development on the Property consistent with the Approved Plans. The construction and use of the Property shall be in substantial conformity with the Approved Plans, and there shall be no subdivision of the Property, change in building typology, or the creation of additional housing units or any other structures or infrastructure, except that which is consistent with the Approved Plans and except as otherwise permitted in this Comprehensive Permit, without further approval of the Board, subject to the provisions of 760 CMR 56.00 et seq.
2. The Applicant shall record this Comprehensive Permit at the Plymouth County Registry of Deeds and provide evidence of said recording to the Zoning Administrator and the Building Commissioner prior to application for a Building Permit.
3. Each condition in this Comprehensive Permit shall, in accordance with its terms and applicable law, be applicable to and binding on the Applicant and the Applicant's successors and assigns, including without limitation, any property owners association comprised of the unit owners, or the unit owners jointly and severally if no association is formed, for as long as the Project and the use of the land does not strictly and fully conform with the requirements of the Hingham Zoning By-Law.

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4. The Applicant shall copy the Zoning Administrator and the Building Commissioner on all material correspondence between the Applicant and any federal, state or Town official, board or commission that concerns the conditions set forth in this Comprehensive Permit.
5. The Applicant shall comply with all local rules and regulations of the Town of Hingham and its boards and commissions in effect as of the date of the Application unless and only to the extent expressly waived in these conditions and in Attachment C, which Attachment C is incorporated into this Comprehensive Permit by reference and made a substantive part of these conditions.
6. The Applicant shall provide peer review funds as specified by this Comprehensive Permit. Any surplus funds remaining in a specific peer review fund may be utilized by the Board for other peer review expenses as necessary as determined by the Zoning Administrator. Any excess funds will be returned to the Applicant upon Project completion.
7. The grant of this Comprehensive Permit shall not be construed as a determination by the Board as to the private party rights of any party, including the Applicant, with respect to the private property that may be affected by the proposed Project. Nor shall any provision of this permit shall be construed to authorize the Applicant to engage in any activity that would interfere with the private property rights of abutters.

**B. General Pre-Construction Conditions**

1. Prior to the start of construction, the Applicant shall engage the services of a qualified professional engineer and/or registered architect to provide certification at the completion of work that the Project has been built in accordance with the Approved Plans and prior to the start of construction shall inform the Zoning Administrator of the name, business address, and telephone number of the engineer and/or architect retained. The engineer and/or architect shall perform site inspections at his/her own discretion through the construction process to enable accurate final certification to the Building Commissioner of compliance with this Comprehensive Permit upon Project completion.
2. Prior to the start of construction, the Applicant shall schedule a pre-construction meeting, including a site walk, with the Zoning Administrator, Building Commissioner, Conservation Officer, Executive Health Director, DPW Director, Town Engineer, Hingham Police Department and Fire Department representatives, the Board's Consulting Engineer/s, and the Applicant's Project engineer and/or architect, and contractor.
3. Prior to the start of construction, the Applicant shall submit the proposed transportation route for construction vehicles and material deliveries. Construction vehicles and delivery trucks shall be prohibited from traveling on Autumn Circle. Construction vehicles and delivery trucks shall be prohibited from traveling on Viking Lane except to the

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extent that safety measures for egress are approved by the Zoning Administrator and Hingham Police Department. Said prohibitions shall be included in all contracts for construction activities associated with the Project. Material suppliers shall be directed to use the Ward Street access to the Project. [A2]

**APPLICANT RESPONSE:** The Applicant agrees to direct construction vehicles and material suppliers to use the Ward Street access, but does not agree to an outright prohibition on the use of Autumn Circle because such prohibition against use of a public way would be inconsistent with requirements imposed on unsubsidized housing.

4. Prior to the start of construction, the Applicant shall submit a construction schedule.
5. Prior to the start of construction, the Applicant shall erect construction fencing along all property lines. Supplemental construction fencing may be required by the Zoning Administrator as necessary to adequately screen the construction site for abutters.

**APPLICANT RESPONSE:** The Applicant agrees to install typical construction fencing as would be required by state guidance for similar projects but disagrees with a condition requiring fencing along the entire property as it is uneconomic, is not justified by a legitimate local concern, and is inconsistent with treatment of unsubsidized housing developments.

6. The Applicant shall provide the Zoning Administrator with up to \$10,000 [A3] to support consultant review the Project Plans to confirm compliance with the conditions of this Comprehensive Permit, including Condition C.3, and as-built site plans, and such additional peer review funds as may be determined to be necessary by the Zoning Administrator in accordance with Condition A.6. This condition is not a limitation on Applicant's other peer review expenses that may be required by this Comprehensive Permit.

**APPLICANT RESPONSE:** The Applicant does not agree to the proposed condition because it is redundant as review fees are governed by 760 CMR 56.05(5). To the extent the Board requests any future review fees, such fees shall not be due and payable until the Applicant submits its final project plans.

7. The Applicant shall provide the Zoning Administrator with up to \$8,000 [A4] to support construction inspections of the Project infrastructure improvements, including but not limited to installation of staked limits of work and erosion controls; clearing, grubbing and sub-grade; drainage; roadway fill and foundation; and a final inspection.

**APPLICANT RESPONSE:** The Applicant does not agree to the proposed condition because it is redundant as review fees are governed by 760 CMR 56.05(5), construction inspections are available through municipal employees, is uneconomic, and does not advance a legitimate local concern.

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**C. Project-Specific Pre-Construction Conditions (Prior to Application of a Building Permit)**

1. **Modifications to Project Plans:** Prior to the application for a building permit, the Applicant shall submit revised Project Plans to reflect the conditions set forth in this Comprehensive Permit for review by the Board's agents (which shall be the Zoning Administrator and, as deemed necessary by the Zoning Administrator, other qualified town staff (such as the Town's conservation agent) and/or the Board's peer review consultants. The revised Project Plans shall be reviewed solely to ensure that they are consistent with this Comprehensive Permit and applicable federal and state laws and regulations. The Board's agents shall provide written comments to the Applicant requesting revisions, if any, that are required to make the same comply with this Comprehensive Permit and any applicable federal and state codes, or approve such revised Project Plans, in writing within thirty (30) days of submission of same, or else they shall be deemed approved. If revisions are required, then review, suggested revisions, and/or approval shall again take place within fifteen (15) days of submission of the revisions, or else they shall be deemed approved. Such review process shall be repeated until the revised Project Plans are in compliance with the conditions of this Comprehensive Permit. Upon confirmation in writing by the Zoning Administrator that the revised Project Plans are in compliance with the conditions of this Comprehensive Permit, they shall be deemed to be the "Approved Plans".

**APPLICANT RESPONSE:** The Applicant does not agree to the proposed condition because it is inconsistent with guidelines for post-approval review under 760 CMR 56.05(10), and it is superfluous because the Board is not the applicable authority to review compliance with state and federal requirements.

The Project Plans shall be modified as follows:

a. **Building Layout**<sup>[A5]</sup>:

- (i) Minimum front yard setback of not less than 35' measured between the Ward Street layout and any portion of a dwelling unit, including decks and porches.

**APPLICANT RESPONSE:** The Applicant does not agree to the proposed condition and waiver denial because it would render the project uneconomic by significantly reducing the available units, and it is not justified by a valid health, safety, environmental, design, open space, planning, or other local concern.

- (ii) Minimum side and rear yard setbacks of not less than 20' measured between side and rear property lines and a dwelling unit. Decks and porches, inclusive of any stairs, may extend up to 10' into the required side and rear yard setback, for a minimum side and rear yard setback of 10' for these attached accessory structures. <sup>[A6]</sup>

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**APPLICANT RESPONSE:** The Applicant does not agree to the proposed condition and waiver denial because it would render the project uneconomic by significantly reducing the available units, and it is not justified by a valid health, safety, environmental, design, open space, planning, or other local concern.

- (iii) Separation distance [A7] between buildings shall be increased to 20'.

**APPLICANT RESPONSE:** The Applicant does not agree to the proposed condition because it would render the project uneconomic by significantly reducing the available units, and it is not justified by a valid health, safety, environmental, design, open space, planning, or other local concern.

- (iv) Buildings including Units 22-23 and Units 19-21 shall be oriented to present a front façade to Ward Street [A8] in order to maintain the streetscape.

**APPLICANT RESPONSE:** The Applicant does not agree to the proposed condition because it is cosmetic only and is not justified by a valid health, safety, environmental, design, open space, planning, or other local concern.

b. Wetland Resource Area Protections [A9][A10]:

- (i) The Applicant shall delineate the limits of the vernal pool habitat [A11] identified by the Board's peer review wetland scientist within the bordering vegetated wetland and depict the limits and associated 100-foot Vernal Pool Protection Zone on the revised Project Plans.

**APPLICANT RESPONSE:** The Applicant does not agree to the proposed condition in connection with the opposition set forth in subsection (ii) below and because a vernal pool has not been legally established.

- (ii) All improvements, including but not limited to buildings, decks, and components of the stormwater management system, shall be located outside the 100-foot Vernal Pool Protection Zone associated with the onsite vernal pool.

**APPLICANT RESPONSE:** The Applicant does not agree to the proposed condition because it would render the project uneconomic by significantly reducing the available units, and it is not justified by a valid health, safety, environmental, design, open space, planning, or other local concern because the project will comply with state standards.

- (iii) The undisturbed portion of the 50-foot wetland buffer zone, shown on the Approved Plans as the existing Tree Line (see Legend on Sheet G-1 for symbology) shall serve as the limit of work and identified on the ground with

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monuments. No clearing, grading, or construction shall be shown on the final Project Plans or permitted within this area.

**APPLICANT RESPONSE:** The Applicant does not agree to the proposed condition because it would render the project uneconomic by significantly reducing the available units, and it is not justified by a valid health, safety, environmental, design, open space, planning, or other local concern because the project will comply with state standards.

- (iv) All construction proposed within the disturbed portion of the 50-foot wetland buffer zone, shown on the Approved Plans as outside the existing Tree Line, shall be mitigated by native plantings, at a ratio of 2:1 or greater, within the 50-foot buffer zone.

**APPLICANT RESPONSE:** The Applicant does not agree to the proposed condition because it is vague and it would render the project uneconomic by significantly reducing the available units, and it is not justified by a valid health, safety, environmental, design, open space, planning, or other local concern.

- (v) The Applicant shall submit a Spill Prevention, Control and Countermeasure Plan documenting the procedures to be implemented during construction to prevent and address spills of hazardous materials within the Property.

c. Internal Roadway, Pedestrian, and Parking Improvements:

- (i) All internal roadways shall provide a traveled-way of 24-feet in width [A12] in order to accommodate: 1) the turning and maneuvering requirements of emergency vehicles; 2) parking maneuvers to/from the visitor parking areas; and 3) occasional on-street parking, particularly in the vicinity of Ward Street where parents may park while waiting for the school bus.

**APPLICANT RESPONSE:** The Applicant does not agree to the proposed condition because it would render the project uneconomic in the aggregate, and it is not justified by a valid health, safety, environmental, design, open space, planning, or other local concern because the project will comply with state standards.

- (ii) [A13] All internal roadways shall include a sidewalk along at least one side.

**APPLICANT RESPONSE:** The Applicant does not agree to the proposed condition because it would render the project uneconomic in the aggregate, and it is not justified by a valid health, safety, environmental, design, open space, planning, or other local concern because the project includes a sidewalk along at least one side in the areas of primary pedestrian travel. Only portion of project with no sidewalk on one side is Units 8/9 and 17/18

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(iii) All sidewalks and pedestrian routes required in this Comprehensive Permit shall comply with applicable requirements of the state Architectural Access Board (AAB) and federal Americans with Disabilities Act (ADA) regulations.

(iv) Vertical granite curbing [A14] shall be installed along the edge of the Internal Roadways adjacent to sidewalks.

**APPLICANT RESPONSE:** The Applicant does not agree to the proposed condition because it would render the project uneconomic in the aggregate, and it is not justified by a valid health, safety, environmental, design, open space, planning, or other local concern because even the Town's peer review opined on February 6, 2018 that vertical curbing was not necessary.

(v) Two (2) means of access [A15] [A16] to the Project with sufficient width and grades to accommodate pedestrian and subdivision and safety standards.

**APPLICANT RESPONSE:** The Applicant does not agree to the proposed condition because it would render the project uneconomic in the aggregate, and it is not justified by a valid health, safety, environmental, design, open space, planning, or other local concern because the project will comply with state standards.

(vi) Fire truck turning analysis [A17] shall confirm that no portion of the fire truck design vehicle crosses the sidewalk area or extends into individual driveways in order to circulate the internal roadways.

**APPLICANT RESPONSE:** The Applicant does not agree to the proposed condition because it is redundant where the project plans comply with this recommendation.

(vii) Driveways [A18] to individual units shall be a minimum of 21-feet long measured between the garage door and the far edge of the sidewalk (edge closest to dwelling unit) where a sidewalk is provided, and 23-feet measured between the garage door and the edge of the traveled-way in locations without a sidewalk.

**APPLICANT RESPONSE:** The Applicant does not agree to the proposed condition because it is redundant where the project plans comply with this recommendation.

(viii) Sight Distance Requirements [A19]:

**APPLICANT RESPONSE:** The Applicant does not agree to the proposed condition, including subsections 1-3 below, because it is redundant where the project plans comply with this recommendation.

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1. The object height and the driver eye height shall both be set at 3.5-feet above the pavement surface. This revision will increase the line of sight that is shown and reduce the extent of the regrading that is required.
  2. Given that the sight line to the west from "Road C" will cross the ground surface and not an area that will be cleared during a snow storm, the ground surface shall be established a minimum of 1-foot below the sight line elevation in order to allow for snow accumulation.
  3. The stopping sight distance along Ward Street approaching "Road C" and along "Road C" approaching "Road D" shall be provided in both plan and profile view. The stopping sight distance is required in order to demonstrate that a motorist traveling along Ward Street and "Road C" (assumed eye height of 3.5-feet above the pavement surface) can see an object (established as 2-feet above the pavement surface) in the roadway at the intersections. A grade correction factor shall be applied to the calculated stopping sight distance requirements for "Road C" approaching "Road D" based on an 8 percent grade along "Road C".
- (x) Fire Department access [A20] into and out of the Property shall comply with all provisions of 527 CMR 1.00 2015 Ed. including, without limitation, the following:

**APPLICANT RESPONSE:** The Applicant does not agree to the proposed condition, including subsections 1-4 below, because it is redundant where the Applicant is bound to comply with all state regulations regardless of any such condition.

1. Fire Department Access Roads must extend to within 50 feet of an exterior access door for any dwelling unit in the Project.
  2. The gradient on any Fire Department Access Road shall not exceed 10%.
  3. No obstructions, including but not limited to parked vehicles, shall affect any portion of the minimum width for any Fire Department Access Roads.
  4. Fire Department Access Roads shall provide a vertical clearance of 13.6 feet.
- d. Demolition Plan [A21]: A demolition plan shall be included with the revised Project Plans and shall include the following:
- (i) Removal/protection of existing utilities/drainage infrastructure;
  - (ii) Tree clearing;
  - (iii) Removal of asphalt/sawcutting; and

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(iv) Removal of structures.

e. Grading Plans:

- (i) Cut and Fill Analysis [A22], including the destination of any soil that may need to be removed from the property in order to verify compliance with local earth removal regulations.
- (ii) Retaining walls [A23] greater than 6' in height shall be located no closer than 8' to a property line. Due to the proximity of proposed retaining walls to abutting properties, the Applicant shall provide details on methods of construction [A24] that will be employed to insure there is no disturbance to abutting properties.

**APPLICANT RESPONSE:** The Applicant directs the Board to the updated waiver list.

- (iii) Retaining walls [A25] shall be located a minimum of 10' from any structure or dwelling unit within the Project in order to support public safety access and provide sufficient natural light and air for residents of the Project.

**APPLICANT RESPONSE:** The Applicant directs the Board to the updated waiver list and does not agree to the proposed condition because it would render the project uneconomic in the aggregate, and it is not justified by a valid health, safety, environmental, design, open space, planning, or other local concern.

f. Limit of Work:

- (i) Clear indication of the limit of work to implement the proposed construction and detailed survey data, including spot elevations, due to the proximity of the proposed work to abutting properties.

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g. Utility Plans:

- (i) Utility plans including individual service locations and showing all pipe inverts, pump calculations, and profiles. The design shall provide adequate separation including consideration of the depth of utilities for repair and maintenance of all utilities, in accordance with utility provider requirements and standard engineering practice. Details of all utility components shall be shown on the plans, including but not limited to: catch basins, utility manholes, utility trench construction, water system components, wastewater disposal system components, conduit duct banks, etc. Materials used shall be consistent with utility provider requirements.
- (ii) Flow test results and will-serve letter [A26] from Aquarion Water Company to demonstrate that there is an adequate water supply for fire protection and domestic water supply.
- (iii) Fire hydrants [A27] in a number and location approved by the Fire Department and not greater than 800 feet from any dwelling unit in the Project.

**APPLICANT RESPONSE:** The Applicant disagrees on the grounds that this condition is redundant where the plan complies.

h. Stormwater:

**APPLICANT RESPONSE:** The Applicant does not agree to the proposed condition, including subsections (i)-(v) below, to the extent that it impermissibly grants post-approval review authority to the Board and its agents and specifically objects to subsection (iv) as set forth below.

- (i) The Applicant shall perform a minimum of one test pit/soil evaluation [A28] witnessed by an appropriate agent of the Town or its designee at the site of each proposed infiltration system to verify soil textural analysis and depth to seasonal high ground water prior to submission of revised Project Plans. Test pits shall be excavated to a minimum depth of four feet below the proposed bottom of each infiltration system and shall be witnessed by an agent of the Town or its designee. Test pit logs shall be submitted to the Zoning Administrator. The following actions shall be required based on test pit results:
  - 1. If the test pits confirm assumed soil textural analysis and depth to seasonal high groundwater then no further action is required.
  - 2. If the test pits indicate more-restrictive soil texture, then the design of the infiltration system(s) shall be reevaluated. Results of the reevaluation shall be submitted to the Zoning Administrator for review.

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3. If the seasonal high groundwater is found to be less than four feet from the bottom of any infiltration system a mounding analysis shall be performed and results submitted to the Zoning Administrator for review.

**APPLICANT RESPONSE:** The Applicant does not agree to the proposed condition, analysis is not required if no credit for infiltration is given for over 10-year storm event.

4. If the seasonal high groundwater is found to be less than two feet from the bottom of any infiltration system the system shall be redesigned to provide a minimum of two feet of separation.
5. Any modifications to an infiltration system design shall be submitted to the Zoning Administrator for review.

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- (ii) The Applicant shall submit a final storm water management plan and supporting calculations that document compliance with the DEP Storm Water Management Performance Standards. The plan shall include, but not be limited to, spot grades, limits of various soil components, infrastructure specifications and a construction period and post construction stormwater system Operation and Maintenance Plan.
- (iii) The Applicant shall submit a Storm Water Pollution Prevention Plan (SWPPP) consistent with National Pollution Discharge Elimination System (NPDES) Construction Stormwater General Permit for review at least one month prior to submission of a Building Permit application.
- (iv) Flared end sections shall be reinforced concrete [A29]. Plastic (HDPE) flared end sections are not allowed.

**APPLICANT RESPONSE:** The Applicant does not agree to this subsection of the proposed condition because it would render the project uneconomic in the aggregate, and it is not justified by a valid health, safety, environmental, design, open space, planning, or other local concern where the project will comply with state standards.

- (v) Verification of outlet configuration and modeling [A30] (i.e. topography around the entire wetland to clearly show the outlet(s)) to confirm that increase in volume of stormwater runoff to the wetland area to the east side of the development will not impact adjacent properties.
- i. Lighting Plans [A31]:
    - (i) Photometric plan [A32], with values not exceeding 0 candle foot overspill [A33] at any property line.

**APPLICANT RESPONSE:** The Applicant does not agree to the proposed condition because it would render the project uneconomic in the aggregate, and it is not justified by a valid health, safety, environmental, design, open space, planning, or other local concern.

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- (ii) Details and specifications for proposed light post and building lighting, if any.
- (iii) All site lighting shall be DarkSky compliant.
- (iv) Color temperature of any outdoor light source shall not exceed 3,500 Kelvin.
- (v) Building-mounted lighting, if any, shall be located at entries; mounted no higher than 8' above finished grade; and downward directed. No floodlights shall be permitted.

**APPLICANT RESPONSE:** The Applicant does not agree to the proposed condition because it would render the project uneconomic in the aggregate, and it is not justified by a valid health, safety, environmental, design, open space, planning, or other local concern.

#### j. Landscaping Plans:

- (i) Detailed landscape plan, including materials list specifying planting size and species, including a minimum of one roadway tree, not less than 12' in height, per unit on each side of the internal roadways. A minimum of four (4) roadway trees shall additionally be planted along the Project's southerly Ward Street frontage. Roadway trees shall not be less than twelve feet in height and of a species selected from the Hingham Shade Tree Committee's list of "Deciduous Tree Recommendations," revised Winter 2018. If the Applicant determines that such Recommendations are overly restriction, Applicant shall submit alternative proposed roadway trees to the Town Administrator for review. A mix of evergreen and deciduous trees, shrubs, and other plantings shall be shown on a portion of the former Viking Lane between the three visitor parking spaces and the Project's northerly Ward Street frontage.

**APPLICANT RESPONSE:** The Applicant does not agree to the proposed condition to the extent it requires compliance with regulations effective after the filing date of this application and to the extent that it impermissibly grants post-approval review authority to the Board and its agents, and the Applicant specifically objects because it would render the project uneconomic in the aggregate, it is not justified by a valid health, safety, environmental, design, open space, planning, or other local concern, and proposes to plant trees and other landscaping that will provide an adequate buffer in Applicant's discretion.

- (ii) A minimum 10' buffer area [A34] planted with a mix of evergreen and deciduous trees and shrubs to present a reasonably opaque, natural barrier to a height of 10' shall be planted between the rear of the units in the Project and all side and

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rear property lines. No fence greater than 4' [A35] in height shall be located within the front yard along Ward Street.

**APPLICANT RESPONSE:** The Applicant does not agree to the proposed condition because it would render the project uneconomic in the aggregate, and it is not justified by a valid health, safety, environmental, design, open space, planning, or other local concern.

(iii) Dedicated play area for children residing in the Project.

**APPLICANT RESPONSE:** The Applicant does not agree to the proposed condition because it is not justified by a valid health, safety, environmental, design, open space, planning, or other local concern, is inconsistent with requirements imposed on unsubsidized housing, and there are adequate play facilities in the area.

k. Detail Plans:

(i) Retaining wall details, prepared by a structural engineer, for each wall in excess of 4' in height. The detail shall specify structural concrete with a stone facing [A36].

**APPLICANT RESPONSE:** The Applicant does not agree to the proposed condition requiring stone facing because it would render the project uneconomic in the aggregate, and it is not justified by a valid health, safety, environmental, design, open space, planning, or other local concern.

(ii) Detail or specification sheet for the proposed 6' High Vinyl Privacy Fence shown on the Preliminary Landscaping Plan.

(iii) Details for the equipment and surfacing of the dedicated play area required by Condition C.1.k.(iii).

**APPLICANT RESPONSE:** Disagree, see comment to Condition C.1.k.(iii).

l. Architectural Plans:

(i) Elevation plans consistent with those depicted on the "Typical Building Elevations" referenced in the Project Plans.

(ii) Building typology shall be consistent with the architectural plans included in Project Plans, with a mix of single-family, two-family, three-family, and four-family dwelling units. Buildings shall not exceed more than four attached, townhouse-style dwelling units.

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2. Vernal Pool Studies [A37] [A38]: A confined depression within the western lobe of the Bordering Vegetated Wetland meets both the physical and biological criteria necessary to qualify, and is positively confirmed, as a vernal pool. In order to protect the wildlife habitat interest associated with the vernal pool resource area, the Applicant shall complete the following:

**APPLICANT RESPONSE:** The Applicant does not agree to the proposed condition, including subsections (a) and (b) below, because this area has not been legally confirmed as a vernal pool, it is the subject of a requested waiver, it would render the project uneconomic in the aggregate, it is not justified by a valid health, safety, environmental, design, open space, planning, or other local concern, and the Applicant will comply with state standards.

- a. Conduct additional field investigations during the months of April and May to determine the presence or absence of obligate vernal pool breeding amphibians within the pool and provide documentation to the Zoning Administrator regarding the findings. If obligate vernal pool breeding amphibians are present, the associated upland dispersal habitat within the buffer zone to the vernal pool shall also be identified.
  - b. Provide a narrative describing how the vernal pool habitat will be protected against adverse impacts associated with the proposed Project including the removal of buffer zone vegetation, modifications to the hydrologic regime of the vernal pool and best management practices to be implemented during construction.
3. Autumn Circle Access Road and Related Improvements: The Project Plans propose to connect the internal roadway for the Project to Autumn Circle by way of an access road ("Autumn Circle Access Road") through a purported access easement or right of way over a public drainage easement and portions of abutting property. In order to both accommodate safe vehicular and pedestrian travel for residents, visitors and abutters, and public safety responders and mitigate Project-related impacts on Autumn Circle, the Applicant shall revise the Project Plans prior to application for a Building Permit to include the following:
    - a. Identify the ownership of the proposed Autumn Circle Access Road [A39] between 18 and 23 Autumn Circle and the rights of others for its use.
    - b. Show the location of drainage easement held by the Town of Hingham in the area of the proposed access road pursuant to an instrument of taking recorded with the Plymouth Country Registry of Deeds in Book 3017, Page 400 and the location of existing subsurface drainage structures. Any subsurface drainage facilities designed by the Applicant in connection with the Project shall be subject to review by the Hingham Town Engineer to confirm that such structures do not encroach upon or interfere with the Town's drainage easement and drainage infrastructure.

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- c. The Autumn Circle Access Road shall be 24' wide with a sidewalk on one side consistent with the internal roadways of the Project.

**APPLICANT RESPONSE:** The Applicant does not agree to the proposed condition for the same reasons that it does not agree to other 24' wide and sidewalk conditions.

- d. The only utilities to be installed in the Autumn Circle Access Road shall be subsurface drainage facilities shown on the Approved Plan subject to subsection 3.b. above.

**APPLICANT RESPONSE:** The Applicant does not agree to the proposed condition because it conforms to the proposed plans and is therefore redundant, and the Applicant objects to the extent it bars the Applicant from placing utilities that are typically constructed under ways.

- e. Design/performance standards [A40] for the proposed conversion of the existing Autumn Circle cul-de-sac to a roundabout:

- (i) The circulating area within the roundabout shall provide a 30-foot wide paved area, with the inner circle designed to be traversable by an emergency vehicle and constructed of either sloped granite curbing or a flat cobblestone center that will support the weight of the Hingham Fire Department design vehicle;

**APPLICANT RESPONSE:** The Applicant does not agree to the proposed condition because it would render the project uneconomic in the aggregate, and it is not justified by a valid health, safety, environmental, design, open space, planning, or other local concern because inner circle to be constructed using materials to support weight of Fire Department design and 30-foot wide paved area is not required around inner circle where emergency vehicles can traverse the inner circle.

- (ii) The roundabout and the Autumn Circle Access Road shall be designed so as not to inhibit access to the residential properties abutting the roundabout or require that motorists exiting driveways within the roundabout back-up into the circulating area; and

**APPLICANT RESPONSE:** The Applicant does not agree to the proposed condition because it is vague, it would render the project uneconomic in the aggregate, and it is not justified by a valid health, safety, environmental, design, open space, planning, or other local concern because a minimal number of trips per day are expected along this route.

- (iii) The roundabout shall allow for on-street parking without impeding circulation within the paved area or inhibiting emergency vehicle access.

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**APPLICANT RESPONSE:** The Applicant does not agree to the proposed condition because it would render the project uneconomic in the aggregate, and it is not justified by a valid health, safety, environmental, design, open space, planning, or other local concern including fact that on-street parking obstructing traffic is not permitted on a public way and emergency vehicles can traverse the inner circle.

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- f. Submit a plan for additional traffic calming features<sup>[A41]</sup>, pedestrian improvements, and other appropriate measures to address travel speeds and the increased traffic, including that generated by the Project and potential cut-through traffic between Ward Street and High Street, that will be using Autumn Circle. The plan shall include a dedicated bus stop<sup>[A42]</sup> for school children at the intersection of Autumn Circle and High Street.

**APPLICANT RESPONSE:** The Applicant does not agree to the proposed condition because it requires the Applicant to incur costs of public infrastructure that address a pre-existing condition affecting the municipality, is disproportionate to the impacts reasonably attributable to the project, and would make the project uneconomic.

- g. Submit a plan for a sidewalk, with a minimum width of 5', to be constructed on the north side of Autumn Circle between the secondary Project drive and High Street, to conform to Town of Hingham DPW/Highway Department standards for public sidewalks within a public right of way.

**APPLICANT RESPONSE:** The Applicant does not agree to the proposed condition because it requires the Applicant to incur costs of public infrastructure that address a pre-existing condition affecting the municipality, is disproportionate to the impacts reasonably attributable to the project, and would make the project uneconomic.

3. High Street/French Street/Ward Street Improvements<sup>[A43]</sup>: In an effort to mitigate Project-related impacts on the intersection of High Street/French Street/Ward Street, the Applicant has agreed to conduct a Road Safety Audit (RSA) in order to identify corrective measures that can be undertaken at the intersection to improve safety.

**APPLICANT RESPONSE:** The Applicant does not agree to the proposed condition, including subsections a-c, because Applicant agreed to subsections (a) and (b) on a voluntary basis but not as a condition of the permit, and it could require the Applicant to incur costs of public infrastructure that address a pre-existing condition affecting the municipality that are disproportionate to the impacts reasonably attributable to the project. The Applicant objects specifically to (c) as set forth below.

- a. Prior to application for a Building Permit, the Applicant shall facilitate and fund the completion of the RSA to identify both short and long-term measures to improve safety at the intersection. The RSA shall be conducted by an independent consultant retained by the Applicant with experience in preparing RSAs, and the RSA shall follow the *MassDOT Road Safety Audit Guidelines*.
- b. Copies of the Draft and Final RSA shall be provided to the Zoning Administrator, Department of Public Works, Town Engineer, and Police Department.

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- c. Following completion of the RSA, the Applicant shall design the short-term improvements identified as a part of the RSA. Said plans to be filed prior to application for a Building Permit.

**APPLICANT RESPONSE:** The Applicant does not agree to the proposed condition because it would require the Applicant to incur costs of public infrastructure that address a pre-existing condition affecting the municipality that are disproportionate to the impacts reasonably attributable to the project and would render the project uneconomic in the aggregate, and it is not justified by a valid health, safety, environmental, design, open space, planning, or other local concern.

- 4. Wastewater Disposal<sup>[A44][A45]</sup>: The wastewater disposal system shall be designed in full compliance with Title 5 (310 CMR 15) and all local Board of Health Supplementary Rules and Regulations for the Disposal of Sanitary Sewage not expressly waived in Appendix C and the conditions set forth below:

**APPLICANT RESPONSE:** The Applicant does not agree to the proposed condition, including subsections a-f, because it is the subject of a requested waiver, local requirements beyond those mandated by Title V would render the project uneconomic in the aggregate and are not justified by a valid health, safety, environmental, design, open space, planning, or other local concern, and state Title V requirements are redundant where the Applicant is bound to comply with Title 5.

- a. In an effort to minimize Project-related impacts related to nitrogen loading on private drinking water wells in the area, the Applicant shall design the onsite wastewater disposal system as follows:
  - i. As the maximum daily sewage flow for the Project exceeds 7,500 gallons per day, the Applicant shall file a permit for a plant with the Zoning Administrator. In connection with the filing, the Applicant shall provide six (6) sets of plans prepared by a registered professional engineer. Said permit shall be subject to peer review (consistent with Condition A.6) to confirm compliance with all local Board of Health Supplementary Septic Regulations not expressly waived in Appendix C and the conditions set forth below.
  - ii. In accordance with a partial waiver from Section VI (8) of the local Board of Health Supplementary Septic Regulations, no sewage disposal system serving the Project shall be designed to discharge more than 110 gallons of design flow per day per 10,000 SF in lot area.
  - iii. In accordance with a partial waiver from Section VI (8) of the local Board of Health Supplementary Septic Regulations, the Applicant shall provide the following analyses identified in Title 5 of the state environmental

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code guidelines relative to nutrient loading and nitrogen sensitivity. This information reflects the components of a basic septic Site-Specific Mass Balance Analysis.

- (i) Hydrogeologic Assessment
- (ii) Mounding Analysis
- (iii) Nitrogen Analysis
- (iv) Groundwater Monitoring Program

- b. As an alternative [A46] to compliance with C.4.a above, the Applicant shall provide an advanced treatment, denitrifying wastewater disposal system which shall provide a level of treatment which would limit concentration of nitrate-nitrogen in groundwater to 10 milligrams per liter (mg/l) at the Project property boundaries, provided that this alternative shall not be deemed a waiver of any requirements of Title 5 related to such a system. Calculations shall be submitted to document that the design of the system will comply with this condition.
- c. All septic components under roadways [A47] shall be designed for loading of the Hingham Fire Department's largest apparatus (Tower Ladder). Leaching system piping under roadways shall consist of Schedule 80 PVC.
- d. New test pits [A48] shall be conducted and systematically located to confirm the subsurface characteristics of the soils in the area of the proposed soil absorption system.
- e. Separation [A49] from high groundwater shall be calculated after adding the effect of groundwater mounding to the high groundwater elevation as determined pursuant to 310 CMR 15.103(3).
- f. The system installed for the Project shall be equipped with sensors and alarms to protect against high water due to failure of the pump consistent with Title 5.

**D. Conditions in Effect During Construction** [A50]

- 1. A copy of this Comprehensive Permit shall be kept on the work site at all times during construction. The Applicant is responsible for providing a copy to all contractors and subcontractors, for informing them of its requirements, and for ensuring compliance with the conditions.
- 2. The Applicant shall comply with the State Building Code and any local regulations or fees of the Hingham Building Commissioner. The Applicant shall pay all required fees for all such building and other permits including any fees charged for inspections and permits.

**APPLICANT RESPONSE:** The Applicant does not agree to the proposed condition to the extent that it requires the Applicant to pay fees on the affordable units or pay fees

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beyond those permissible under 40B regulations because it would render the project uneconomic in the aggregate, and it is not justified by a valid health, safety, environmental, design, open space, planning, or other local concern. The condition is also redundant where the Applicant is required to comply with the State Building Code regardless of this condition.

3. The Board's agent(s) may enter onto and view the site during regular business hours to ensure compliance with the terms of this Comprehensive Permit, subject to applicable safety requirements.
4. The Applicant may display one, unlighted, temporary construction or marketing sign not exceeding 12 square feet [A51] at the site entrance, stating appropriate marketing information on the site, provided it otherwise complies with Section V-B of the Zoning By-Law. The temporary construction and marketing sign shall be displayed for no longer than three years from the date of issuance of a Building Permit, which term shall be renewable at the Board's discretion.

**APPLICANT RESPONSE:** The Applicant does not agree to the proposed condition because it would render the project uneconomic in the aggregate and it is not justified by a valid health, safety, environmental, design, open space, planning, or other local concern; the Applicant proposes that the condition be modified to allow at least 2 marketing signs of 20 square feet each and allow such signage until all units are sold.

5. All deliveries of construction materials and equipment shall be made only on Monday through Friday no earlier than 7:00 am and not later than 5:00 pm. As provided in Condition B.3, no construction vehicles or deliveries of construction materials shall be permitted to access or exit the Project site by way of Autumn Circle, except as specifically required by the conditions of this Comprehensive Permit. Construction operations shall be limited to the hours of 7:00 am to 6:00 pm Monday through Friday and 8:00 am to 4:00 pm on Saturday. After-hours activity shall be limited to interior work within a fully-enclosed building and site cleanup. Except for emergency conditions, no exterior construction work shall be allowed on Sundays. The Building Department shall be notified promptly of any such emergency conditions. Hours of operation may be enforced by the Police Department. Throughout construction, the Applicant shall comply with all local, state, and federal laws in effect as of the date of the Application regarding noise, vibration, dust and blocking of roadways.

**APPLICANT RESPONSE:** The Applicant does not agree to the proposed condition because it would render the project uneconomic in the aggregate, it could create a limitation on a public way, and it is not justified by a valid health, safety, environmental, design, open space, planning, or other local concern and proposes that the condition be modified to allow for access and construction between 6:30 am and 7:00 pm.

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6. During the period of construction and marketing, notwithstanding any pre-conditions for the issuance of a certificate of occupancy otherwise set forth herein, the Applicant shall be entitled to designate, construct and operate one (1) of the units as decorated, model units, but not to be used as a habitable unit.
7. The Applicant may locate up to two construction trailers on the Property, unless additional trailers are otherwise permitted by the Building Commissioner. All construction trailers shall be located within the fenced construction area of the Project. Placement, operation, and maintenance of the construction trailers shall not adversely impact parking, safety, or the surrounding neighborhood. Other conditions of this Decision required to be satisfied prior to issuance of a building permit or certificate of occupancy shall not apply to building permits or certificates of occupancy required for the construction trailers.
8. Portable bathroom facilities, trash containers, and portable generators shall be located within the fenced construction area for the Project, at least 50 feet from the boundary of the Property.

**APPLICANT RESPONSE:** The Applicant does not agree to the proposed condition because it is not justified by a valid health, safety, environmental, design, open space, planning, or other local concern, is inconsistent with other developments, and the Applicant proposes that the condition be modified to allow placement at least 10 feet from the boundary.

9. No construction worker vehicles, and no construction equipment (unless in connection with off-site mitigation while such work is underway), shall be parked on any public or private way outside of the Project site.
10. No construction vehicles or construction worker vehicles shall be permitted to idle their vehicles for more than 5 minutes, in accordance with MGL Chapter 90, Section 16A and 310 CMR 7.11.
11. The Applicant shall implement the Construction Period Pollution Prevention Plan & Erosion Control Plan<sup>[A52]</sup> until the site is fully stabilized and the temporary erosion and sedimentation controls are removed.
12. Pavement areas (including Ward Street) within the 100-foot buffer zone shall be swept daily at a minimum and more frequently as necessary to prevent tracking of soil into wetland resource areas and/or stormwater management facilities.
13. There shall be no stockpiling of soil or other materials within 100 feet of a wetland resource area. Stockpiles shall be protected with erosion control barriers or other means as necessary. Any soil stockpiles that will remain unworked for greater than 14 days shall be seeded with an annual rye grass or equivalent seed mixture.

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**APPLICANT RESPONSE:** The Applicant does not agree to the proposed condition because it would render the project uneconomic in the aggregate, and it is not justified by a valid health, safety, environmental, design, open space, planning, or other local concern and proposes that the condition be modified to change the 100 feet to 10 feet and 14 days to 30 days.

14. No construction materials, debris or stumps shall be buried within 100 feet of a wetland resource area.
15. As the Applicant has requested and the Board has granted a waiver of Section VI.22 of the Hingham Board of Health Supplementary Rules and Regulations for the Disposal of Sanitary Sewage [A53], prior to commencement of any site work, the Applicant shall, in order to protect the soil from compaction, install fencing around the entire area where the soil absorption system is to be constructed and shall maintain such fencing until the soil absorption system is fully constructed.

**APPLICANT RESPONSE:** The Applicant does not agree to the proposed condition because it would render the project uneconomic in the aggregate, and it is not justified by a valid health, safety, environmental, design, open space, planning, or other local concern and proposes to install typical construction fencing as would be required by state guidance for similar projects.

#### **E. Occupancy-Related Conditions**

1. **As-Built Plans:** [A54] Prior to the issuance of certificates of occupancy for more than 85% of the dwelling units within the Project, the Applicant shall submit as-built site and building plans stamped by the appropriate qualified professional with a certification that all site work improvements have been completed in accordance with the Approved Plans.

**APPLICANT RESPONSE:** The Applicant does not agree to the proposed condition because it is inconsistent with post-approval review under 760 CMR 56.05(10), construction inspections are available through municipal employees, and the proposed condition is uneconomic and does not advance a legitimate local concern. To the extent the Board denies its objection and requests as-built plans, the Applicant proposes to provide as-built plans at the end of construction.

2. **Traffic Improvements:** Prior to the issuance of any certificate of occupancy for the Project, in order to provide safe and efficient vehicular and pedestrian access to and from the Project and to promote public health, safety, and welfare of the residents of the Project and the public, and to address the Project's projected impacts on transportation and pedestrian infrastructure, the Applicant shall complete the traffic improvements in accordance with the Approved Plans and as described below:

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a. **Internal Roadway Improvements:** In order to accommodate safe vehicular and pedestrian travel for residents, visitors and public safety responders, the Applicant shall design and construct the following improvements in accordance with the Approved Plans:

(i) All internal roads shall maintain a minimum width of 24' and a sidewalk on at minimum of one side of each roadway.

**APPLICANT RESPONSE:** The Applicant does not agree to the proposed condition because it is duplicative and the Applicant objects for the reasons in C.1(c).

(ii) Traffic calming devices to include a raised crosswalks and a speed table on Road C shall be completed in an effort to minimize the potential for cut-through traffic and reduce vehicle travel speeds within the Project.

**APPLICANT RESPONSE:** The Applicant does not agree to the proposed condition for raised crosswalks as it makes the project uneconomic and does not serve a legitimate local concern.

(iii) Given the extent of the regrading activities that will be required to provide the necessary sight lines from both "Road C" and "Road D", the Applicant shall submit an affidavit from a Professional Engineer certifying that the required minimum sight lines are met at the Project site roadway intersections after the completion of the improvements<sup>[A55]</sup>.

b. High Street/French Street/Ward Street Improvements<sup>[A56]</sup>: In an effort to mitigate Project-related impacts on the intersection of High Street/French Street/Ward Street, and prior to issuance of any Certificate of Occupancy for the Project, the Applicant shall:

**APPLICANT RESPONSE:** The Applicant does not agree to the proposed condition with subsections below because it is duplicative and it would render the project uneconomic in the aggregate, and it is not justified by a valid health, safety, environmental, design, open space, planning, or other local concern.

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- (i) Construct short-term improvements identified in the RSA, subject to receipt of all necessary rights, permits and approvals; or
  - (ii) In the alternative, the Applicant shall provide funds to the Town in the amount of \$30,000, such lesser amount as is required, [A57] to be used toward the design and construction of the short-term improvements identified in the RSA.
- c. **Autumn Circle Improvements:** Prior to issuance of any Certificate of Occupancy for the Project, the Applicant shall complete all improvements to Autumn Circle and the Autumn Circle Access Road as identified in Condition C.3.

**APPLICANT RESPONSE:** The Applicant does not agree for the reasons in C.3.

3. **Stormwater Improvements:**

- a. The Applicant shall submit an **Operation & Maintenance (O&M) Compliance Statement** [A58] prior to application for any Certificate of Occupancy. The O&M Compliance Statement shall identify the party responsible for implementation of the Operation and Maintenance Plan and confirm the following:
  - (i) The site has been inspected for erosion and appropriate steps have been taken to permanently stabilize any eroded areas.
  - (ii) All aspects of the stormwater BMPs have been inspected for damage, wear and malfunction; and appropriate steps have been taken to repair or replace the system or portions of the system so that the stormwater at the site may be managed in accordance with the Stormwater Management Standards.
  - (iii) The Operation and Maintenance Plan is being implemented.
  - (iv) Future responsible parties have been notified by recorded instrument of their continuing legal responsibility to operate and maintain the structures.

**F. Post-Construction and Ongoing Conditions**

- 1. The Applicant shall undertake the following measures to maintain sight lines:
  - a. Ensure that signs, landscaping and other features located within the sight triangle areas of the Project site driveway intersection with Ward Street do not impede lines of sight. Such features shall be maintained so as to not exceed 2-feet in height as measured from the surface elevation of the Project site driveway. A recorded easement shall be secured by the Applicant to limit features greater than 2-feet in height within any portion of the sight triangle area that crosses private property.
  - b. Promptly remove snow windrows located within the sight triangle areas of the

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Project driveway intersection with Ward Street and at intersections within the Project that exceed 2.5-feet in height or that would otherwise inhibit sight lines.

**APPLICANT RESPONSE:** The Applicant does not agree to the proposed condition because it would render the project uneconomic in the aggregate, it is not justified by a valid health, safety, environmental, design, open space, planning, or other local concern, and it is inconsistent with treatment of other developments.

2. Parking outside of designated areas within the Project shall be prohibited in order to ensure that sufficient maneuvering areas are afforded for public safety vehicles.
3. The storm water drainage system shall be operated and maintained by the Applicant in accordance with the Operation and Maintenance Plan submitted under Condition C.1.h(ii).
4. The Applicant shall remove snow from the site as soon as practicable following large snow events when the site cannot itself accommodate snow storage without a loss of driving aisles. No snow [A59] shall be removed from the Project or the Autumn Circle Access Road onto any adjoining properties, including Autumn Circle, Autumn Circle Access Road, or Ward Street.

**APPLICANT RESPONSE:** The Applicant does not agree to the proposed condition with subsections below because it would render the project uneconomic in the aggregate, and it is not justified by a valid health, safety, environmental, design, open space, planning, or other local concern, and it is inconsistent with treatment of other developments. The Applicant will reasonably endeavor not to place snow on adjoining properties.

#### **G. Affordability Conditions**

1. The Project shall provide no fewer than twenty-five percent of the units to households at or below 80% of the area median income, subject to all applicable requirements of the subsidizing agency for the Project ("affordable units").
2. Upon submission by the Town to the Applicant of the Supporting Documentation and Justification pursuant to Section III-D of the G.L. c. 40B Comprehensive Permit Guidelines, the Applicant shall prepare an Affirmative Fair Marketing Plan which includes local preference for review by, and subject to the approval of, the subsidizing agency.
3. The affordable units in the Project shall remain affordable in perpetuity.
4. The Applicant shall make provisions for a monitoring agent to assume the functions specified in the Regulatory Agreement following expiration of the Subsidizing Agency's

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monitoring role. The recordable form of these provisions shall be submitted prior to application for a building permit and subject to review by Town Counsel.