

## AMENDMENT TO MEMORANDUM OF AGREEMENT

This Amendment to Memorandum of Agreement (the "**Amendment**") is entered into by and between the Town of Littleton, Massachusetts (the "**Town**"), acting by and through its Board of Selectmen (the "**Selectmen**"), and Littleton Commercial Investments, LLC (the "**Developer**"), a Delaware limited liability company having its principal office at c/o Sam Park & Company, One Center Plaza, Suite 910, Boston, MA 02108.

### RECITALS

WHEREAS, the Town and Developer are parties to a Memorandum of Agreement (the "**MoA**") with respect to the commitments by the Developer in connection with the development of a mixed use commercial development project consisting of approximately 480,000 square feet plus a hotel (the "**Project**") on approximately 90.27 acres of land comprising Lots 1-7 on the subdivision plan for Constitution Avenue in the Town of Littleton, situated in the northwest quadrant of the interchange at the intersection of Interstate 495 and Route 119/Great Road (the "**Site**"), and the agreements by the Town to support the Project;

WHEREAS, the Town has applied for and received a grant (the "**Grant**") from the Massachusetts Executive Office of Housing and Development through the MassWorks Infrastructure Program in the amount of \$1,800,000.00 for the Route 119 (Great Road)/I-495 Interchange Safety and Capacity Improvement Project (the "**Roadway Improvements Project**") related to roadway and signalization improvements on Route 119 (Great Road) and/or Russell Street;

WHEREAS, the scope of the Roadway Improvements Project is described generally on Exhibit B to the MoA;

WHEREAS, the Town has entered into a Contract dated as of June 6, 2012 with Onyx Corporation ("**Onyx**") for the completion of the Roadway Improvements Project, with the initial cost of the work estimated at \$2,334,620.00 (the "**Cost of the Work**");

WHEREAS, in connection with certain permits granted by the Town to Developer for the development of the Site, Developer agreed in the MoA to defray any additional costs associated with the Roadway Improvements Project in excess of the Cost of the Work;

WHEREAS, the Town and Onyx have agreed to revise the scope of the Roadway Improvements Project as described herein and the Town and the Developer desire to acknowledge their consent to the revision of the scope of the Roadway Improvements Project on the terms set forth herein;

WHEREAS, the Town and the Developer desire to memorialize their understanding and modify the MoA consistent therewith.

NOW, THEREFORE, in consideration of the mutual promises of the parties contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the Town and the Developer hereby agree as follows:



1. Capitalized terms used herein but not otherwise defined shall have meanings ascribed to them in the MoA.
2. In accordance with Section A.1 of the MoA, both the Town and the Developer hereby acknowledge their consent to the revisions to the scope of the Roadway Improvements Project contained in those certain change orders attached as Exhibit A to the Amendment to the Town's Agreement with Onyx Corporation dated May 20, 2013, which change orders are incorporated herein by reference.
3. In connection with the revised scope of the Roadway Improvements Project, the Cost of the Work shall increase by an estimated \$199,698.00 (the "Additional Cost"). The Developer hereby acknowledges its obligation under Section A.2 of the MoA to fund the Additional Cost of the Roadway Improvements Project. The Town shall not incur any additional project funding obligations in connection with the revisions to the scope of the Roadway Improvements Project described in this Amendment.
4. Developer further agrees to reimburse the Town for all costs paid by the Town to date for Town of Littleton police details required in connection with the completion of the Roadway Improvements Project. As of the date of this Amendment, the Town has incurred and paid \$68,673.00 for such police details. In addition, Developer shall deposit with the Town \$31,327.00 to be held and disbursed by the Town to pay the costs of any future police details. In the event that the cost of future police details exceeds \$31,327.00, Developer shall reimburse Contractor directly for such costs on a monthly basis. The Town shall not incur any additional project funding obligations for police details for the remainder of the Roadway Improvements Project.
5. This Amendment shall be binding upon the Town and the Developer and their respective successors and assigns, and shall run with the land.
6. This Amendment shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.
7. In all other respects, the terms and provisions of the MoA are ratified and reaffirmed hereby, are incorporated herein by this reference and shall be binding upon the parties to this Amendment.
8. Any inconsistencies or conflicts between the terms and provisions of the MoA and the terms and provisions of this Amendment shall be resolved in favor of the terms and provisions of this Amendment.
9. This Amendment sets forth the entire agreement of the parties hereto with respect to the subject matter hereof. The failure of any party to strictly enforce the provisions hereof shall not be construed as a waiver of any obligation hereunder. This Amendment may be modified only in a written instrument signed by the Selectmen and the Developer. The parties do not intend for any third party to be benefited hereby.

Executed under seal.

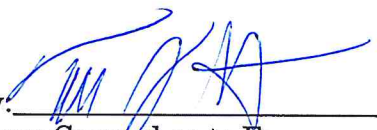
LITTLETON COMMERCIAL INVESTMENTS,  
LLC, a Delaware limited liability company

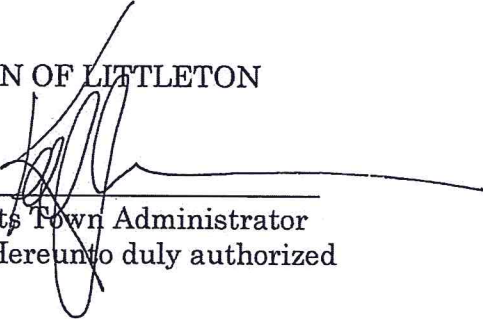
By: NEW HARBOR-BP INVESTORS, L.L.C.,  
a Delaware limited liability company

By: NEW HARBOR INVESTMENTS, LLC, its  
manager

By:   
Name: Samuel E. Park  
Title: Operating Manager

TOWN OF LITTLETON

By:   
Town Counsel as to Form

By:   
Its Town Administrator  
Hereunto duly authorized