

### THIRD AMENDMENT TO MEMORANDUM OF AGREEMENT

This Third 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 dated May 14, 2012 as amended by an Amendment to Memorandum of Agreement dated May 20, 2013 and a Second Amendment to Memorandum of Agreement dated August 11, 2014 (as amended, the “**MOA**”) with respect to 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; and

WHEREAS, the MOA provided that the Town had 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 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; and

WHEREAS, the scope of the Roadway Improvements Project was described generally on Exhibit B to the MOA; and

WHEREAS, the Developer agreed in the MOA to defray any costs associated with the Roadway Improvements Project that exceeded the Grant, and pursuant to this agreement has gifted to the Town \$1,029,328 for use in connection with the Roadway Improvements Project; and

WHEREAS, as of the date of this instrument, there remains an unexpended balance of \$22,430.37 of said gift (the “**Unexpended Balance**”); and

WHEREAS, Section C of the MOA states as follows:

1. The Parties acknowledge that the Town intends to construct a sidewalk servicing Russell Street. Once the Town obtains all necessary rights of way and permits to construct said sidewalk, the Board of Selectmen may send a written request to the Developer to contribute to the construction of the Russell Street Sidewalk. Upon

receiving such a request, the Developer shall make a gift of \$65,000 to the Town of Littleton Sidewalk Fund for the purpose of defraying the cost of the Russell Street Sidewalk project; and

WHEREAS, design plans for the Russell Street Sidewalk have now been completed, and the Board of Selectmen voted at its April 10, 2017 meeting to send the written request called for by Section C of the MOA; and

WHEREAS, notwithstanding the foregoing, the Parties now wish to enlarge the purposes for which the gift provided for in Section C of the MOA may be used, so that said funds may be spent for the purposes of defraying the cost of the Russell Street Sidewalk Project and also for the design cost of the Town's Complete Streets Improvement Project (which includes the Russell Street Sidewalk as well as pedestrian and bicycle improvements elsewhere in Town); and

WHEREAS the Parties also now wish to use the Unexpended Balance for the purposes of defraying the cost of the Russell Street Sidewalk Project and for the design cost of the Town's Complete Streets Improvement Project, and to apply the amount of the Unexpended Balance towards the amount that would otherwise be due under Section C of the MOA, so that the amount that the Developer commits to provide Section C is reduced from \$65,000 to \$42,569.63.

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 the meanings ascribed to the in the MOA.
2. The Developer shall, upon execution of this Third Amendment to Memorandum of Agreement, make a gift to the Town of \$42,569.63 for the purposes of defraying the cost of the Russell Street Sidewalk Project and of funding the design cost of the Town's Complete Streets Improvement Project.
3. The Developer agrees that the Unexpended Balance shall be retained by the Town and, notwithstanding the purpose for which it was originally provided under the MOA, may be used by the Town for the purposes of defraying the cost of the Russell Street Sidewalk Project and of funding the Town's Complete Streets Improvement Project.
4. Upon (i) execution of this Third Amendment to Memorandum of Agreement and (ii) delivery to the Town of the \$42,569.63 called for in Section 2, above, the Developer shall be deemed to have satisfied its obligations under Section C of the MOA.
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.

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Executed under seal.

LITTLETON COMMERCIAL INVESTMENTS,  
LLC, a Delaware limited liability company

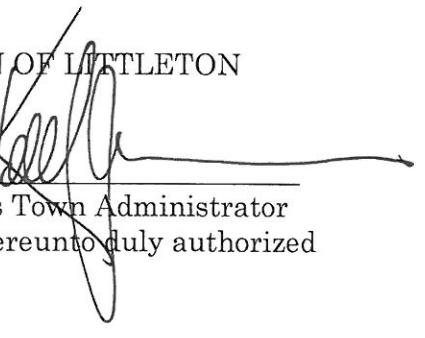
By: NEW HARBOR-BP INVESTORS, L.L.C.,  
a Delaware limited liability company

By: NEW HARBOR INVESTMENTS, LLC, its  
manager

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

By:   
Town Counsel as to Form

TOWN OF LITTLETON

By:   
Its Town Administrator  
Hereunto duly authorized