

PACKET

May 29

2019



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TOWN OF WAYLAND

41 COCHITUATE ROAD
WAYLAND, MASSACHUSETTS 01778

BOARD OF SELECTMEN

LEA T. ANDERSON
MARY M. ANTES
THOMAS J. FAY
CHERRY C. KARLSON
DOUGLAS A. LEVINE

BOARD OF SELECTMEN
Wednesday, May 29, 2019
8:30 a.m.
Wayland Town Building
Selectmen's Meeting Room
41 Cochituate Road, Wayland, MA
Proposed Agenda

Note: Items may not be discussed in the order listed or at the specific time estimated. Times are approximate.

- 8:30 am 1. Public Comment
- 8:35 am 2. River's Edge: Discuss and vote on 10th Amendment to Land Disposition Agreement
- 8:50 am 3. Adjourn

**TENTH AMENDMENT TO
LAND DISPOSITION AGREEMENT**

This Tenth Amendment to Land Disposition Agreement (this "Amendment") is made and entered into by and between **TOWN OF WAYLAND**, acting by and through its Board of Selectmen (hereinafter "Seller"), a Massachusetts municipal corporation, and **WP EAST ACQUISITIONS, L.L.C.**, a Georgia limited liability company (hereinafter "Buyer").

Recitals:

A. Seller and Buyer previously entered into that certain Land Disposition Agreement with an effective date of June 28, 2017 (the "Original Contract"), as amended by that certain First Amendment to Land Disposition Agreement dated as of October 24, 2017, as further amended by that certain Second Amendment to Land Disposition Agreement dated as of October 31, 2017, as further amended by that certain Third Amendment to Land Disposition Agreement dated as of December 18, 2017, as further amended by that certain Fourth Amendment to Land Disposition Agreement dated as of February 26, 2018, as further amended by that certain Fifth Amendment to the Land Disposition Agreement dated May 23, 2018, as further amended by that certain Sixth Amendment to the Land Disposition Agreement dated August 29, 2018, as further amended by that certain Seventh Amendment to the Land Disposition Agreement dated February 28, 2019, as further amended by that certain Eighth Amendment to Land Disposition Agreement dated March 7, 2019, and as further amended by that certain Ninth Amendment to Land Disposition Agreement dated April 29, 2019 (as amended, the "Contract") for the purchase and sale of that certain parcel of land located 484-490 Boston Post Road, Wayland, Massachusetts (the "Property"), as is more fully described in the Contract.

B. The Contract provides, among other things, that the Conceptual Design Plans for the Buyer's Project must be in conformity with (i) the requirements of the Wayland Zoning Bylaw relative to the River's Edge Housing Overlay District (the "REHOD Requirements"), (ii) the River's Edge Design Guidelines (the "Design Guidelines"), and (iii) Legal Requirements (collectively with the REHOD Requirements and the Design Guidelines, "Applicable Design Requirements").

C. The Buyer has come to learn that certain design aspects of Buyer's Project, as currently proposed, may not conform with Applicable Design Requirements, and Buyer may require certain variances, confirmations and/or modifications from or to Applicable Design Requirements and applicable governing authorities as part of the Approvals (collectively, "Buyer's Project Variances"), which potential Buyer's Project Variances are more particularly described in Exhibit A attached hereto and made a part hereof.

D. The Parties wish to amend the Contract to, among other things, document the fact that Buyer will require the Buyer's Project Variances as part of the required Approvals for the Buyer's Project.

Terms and Conditions:

In consideration of the mutual covenants, agreements, and undertakings set forth in the Contract and in this Amendment, the sufficiency of which is hereby acknowledged, and intending to be legally bound, Seller and Buyer agree as follows:

1. Capitalized Terms; Recitals. All capitalized terms used herein but undefined (including those set forth in the Recitals) shall have the meaning as defined in the Contract. The foregoing Recitals are hereby incorporated as agreements of the parties hereto.

2. Buyer's Project Variances. Notwithstanding anything to the contrary contained in the Contract, including Sections 3.7 and 3.8 thereof, the Parties acknowledge that certain design aspects of Buyer's Project may not currently conform to Applicable Legal Requirements, and that therefore the Buyer's Project Variances may be required. In furtherance of the foregoing, (i) Buyer's Project Variances, if deemed necessary, will be deemed part of the required Approvals for all purposes under the Contract, and (ii) Exhibit I to the Contract is hereby deleted and replaced with Exhibit I attached hereto.

3. Buyer's Third Party Submittals. Buyer hereby issues Third Party Submittals with respect to the Demolition of Wayland/Sudbury Septage Facility and the On-Site Soil Removal Work, as evidenced by the cost estimates attached hereto as Exhibit B, which indicate an estimated cost of \$560,317 for the Demolition of Wayland/Sudbury Septage Facility (compared to the \$351,876 Site Conditions Estimate set forth in the Contract) and an estimated cost of \$3,647,296 for the On-Site Soil Removal Work (compared to the \$2,998,110 Site Conditions Estimate set forth in the Contract). Seller acknowledges the receipt of such Third Party Submittals as of the date hereof, and the Parties agree that any adjustments to the Net Purchase Price based on such Third Party Submittals will be determined through the process outlined in the Contract.

4. Ratification. Except as expressly amended by this Amendment, the Contract remains in full force and effect and is hereby expressly ratified and confirmed in its entirety by the parties hereto.

5. Multiple Counterparts. An executed facsimile or "PDF" of this Amendment is an acceptable form of acceptance of this Amendment and the parties may execute this Amendment in counterparts. This Amendment shall from this date forward be considered a part of the Contract.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed under seal by persons duly empowered to bind the parties to perform their respective obligations under this Amendment to be effective on the last date set forth below.

BUYER:

WP EAST ACQUISITIONS, L.L.C.,
a Georgia limited liability company

By: _____

Name:

Title:

Date: _____

SELLER:

TOWN OF WAYLAND

By: _____

Name:

Title:

Date: _____

EXHIBIT A TO TENTH AMENDMENT

BUYER'S PROPOSED VARIANCES

1. Article 25. River's Edge Housing Overlay District, 2505.2
 - This section of the REHOD states that, "not more than six feet of a parking level may be exposed". Buyer's current design does not conform to this language, so Buyer will need a variance to allow for such deviation from the REHOD Requirements.
2. Article 25. River's Edge Housing Overlay District, 2505.3
 - This section states, "no building shall exceed 150,000 square feet of gross floor area". Buyer has combined two buildings to become one, however they are separated by a firewall and are technically two buildings by building code. While Buyer believes this conforms with the zoning language, Buyer requires confirmation of such conformance with the Zoning Board of Appeals.
3. Maximum Lot Coverage
 - The REHOD does not directly address maximum lot coverage. Seller has taken the position that the lack of direct mention of lot coverage in the REHOD means that there is no maximum lot coverage. However, Buyer's interpretation of the zoning bylaws is that any lack of affirmative mention of a requirement means that it defaults to the underlying zoning which in this case is Single Residence. The Single Residence district has a Maximum Lot Coverage of 20%, and Buyer's current design exceeds 20% lot coverage. Accordingly, a variance is likely needed.

EXHIBIT B TO TENTH AMENDMENT

THIRD PARTY SUBMITTALS

[SEE ATTACHED]

REPLACEMENT EXHIBIT I TO CONTRACT

EXHIBIT I

Approvals (timeline of application submission)

Approval Type	Approval Agency	Timing of Application
Site Plan Approval	Wayland Planning Board/Zoning Board of Appeals	4 months from expiration of due diligence
Zoning Variances (if necessary)	Wayland Zoning Board of Appeals	4 months from expiration of due diligence
Wetlands/Stormwater	Wayland Conservation Commission	4 months from expiration of due diligence
Water Connection	Wayland Department of Public Works	4 months from expiration of due diligence
WWTP Hydrogeological (Phase I)	MA DEP	4 months from expiration of due diligence
Highway Access Permit (curb cut)	MA DOT	4 months from expiration of due diligence
Installation of water line	MA DOT	4 months from expiration of due diligence
WWTP Groundwater Discharge Permit (Phase II)	MA DEP	2 months from receipt of Phase I approval
Building Permit	Wayland Building Department	7 months from receipt of Site Plan Approval

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BUYER:

WP EAST ACQUISITIONS, L.L.C.,
a Georgia limited liability company

By: _____

Name:

Title:

Date: _____

SELLER:

TOWN OF WAYLAND

By: _____

Name:

Title:

Date: _____

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<u>WWTW Hydrogeological (Phase I)</u>	<u>MA DEP</u>	<u>4 months from expiration of due diligence</u>
<u>Highway Access Permit (curb cut)</u>	<u>MA DOI</u>	<u>4 months from expiration of due diligence</u>
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<u>Building Permit</u>	<u>Wavland Building Department</u>	<u>7 months from receipt of Site Plan Approval</u>

Summary report:
Litéra® Change-Pro TDC 10.1.0.400 Document comparison done on
5/23/2019 10:00:16 AM

Style name: Default Style	
Intelligent Table Comparison: Active	
Original DMS: iw://IWDMSATL/LEGAL02/38977220/2	
Modified DMS: iw://IWDMSATL/LEGAL02/38977220/3	
Changes:	
Add	9
Delete	6
Move From	0
Move To	0
Table Insert	1
Table Delete	0
Table moves to	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	16