

SETTLEMENT AGREEMENT

This **SETTLEMENT AGREEMENT** ("Agreement") is made and entered into on this 5th day of February, 2018, by and between Twenty Wayland, LLC, a Massachusetts limited liability corporation, having an address of c/o KGI Properties, LLC, 10 Memorial Blvd., Suite 901, Providence, RI 02903 ("Donor"), and the Town of Wayland, a Massachusetts municipal corporation, having an address of 41 Cochituate Road, Wayland, MA 01778 (the "Town", together with Donor, the "Parties").

WHEREAS, on May 18, 2007, Donor (together with its successor and assigns) applied to the Wayland Planning Board for a Master Special Permit and subsequent, associated Special Permits pursuant to the Town Zoning By-Laws and Site Plan Approvals for the construction of a mixed-use project at property located at 400-440 Boston Post Road (Route 20) in Wayland, Massachusetts (the "Development"); and

WHEREAS, by Decision dated January 17, 2008, and modified on January 23, 2008, the Town Planning Board granted the Donor a Master Special Permit and the associated Special Permits subjected to the conditions stated therein (the "Permits"); and

WHEREAS, Donor and the Town are parties to a Memorandum of Agreement dated March 28, 2006 as modified by Amendment No. 1 dated October 20, 2009 (the "Development Agreement"); and

WHEREAS, Donor is the owner of certain parcels of land shown on a plan prepared by Hancock Associates entitled "Plan of Land in Wayland, MA" dated January 20, 2012, recorded with the Middlesex South Registry of Deeds as Plan 305 (1 of 2) of 2012 and "Plan of land Wayland, Massachusetts Showing Proposed Municipal Parcels" dated July 21, 2015 and recorded with the Middlesex South Registry of Deeds as Plan 616 of 2015 and described in a deed recorded with the Middlesex South Registry of Deeds (the "Registry") in Book 1307, Page 766, (collectively, the "Property"); and

WHEREAS, the Donor has represented that Property is the site of a disposal site as the result of the release of oil and/or hazardous materials, which has been assigned Release Tracking Numbers ("RTN") 3-13302, 3-13574, and 4-14042 by the Massachusetts Department of Environmental Protection ("MassDEP"), and is subject to an Activity and Use Limitation ("AUL"), recorded with the Registry in Book 27793, Page 141 dated October 21, 1997; an AUL recorded with the Registry in Book 30045, Page 132 dated February 16, 1999; and an AUL recorded with the Registry in Book 58135, Page 87 dated December 21, 2011, which are attached as **Exhibit A** hereto, and incorporated herein; and

WHEREAS, differences have arisen between the Parties as to claims and responsibilities arising under the Development Agreement and the Permits; and

WHEREAS, the Parties recognize and agree that it is in their best interests to resolve their differences as set forth herein. The Parties also recognize and agree that none admit to any

wrongdoing, and that the agreements and releases set forth below represent the Parties' compromise of disputed matters in order to avoid the delay and uncertainties of litigation; and

WHEREAS, the Town voted to accept the following parcels of the Property at a Special Town Meeting on November 9, 2015: Wayland Assessor Parcels, Map 23, Lot 052K, Map 23, Lot 052L, and Map 23, Lot 052S and Lot 9-1B, shown on a plan prepared by the Town Surveyor entitled "Plan of land Wayland, Massachusetts Showing Proposed Municipal Parcels" dated July 21, 2015 and recorded with the Middlesex South Registry of Deeds as Plan 616 of 2015 (the "Accepted Parcels"); and

WHEREAS, the Town will, in good faith, continue to endeavor to accept the remaining parcels consisting of Lot 3-1 (Wayland Assessor Parcel Map 23, Lot 052I); Parcel 14 (Wayland Assessor Parcel Map 23, Lot 052O); Parcel 15 (Wayland Assessor Parcel Map 23, Lot 052P); and Parcel 16 (Wayland Assessor Parcel Map 23, Lot 052Q) , shown on a plan prepared by Hancock Associates entitled "Plan of Land in Wayland, MA" dated January 20, 2012, recorded with the Middlesex South Registry of Deeds as Plan 305 (1 of 2) of 2012. Lot 3-1 (Wayland Assessor Parcel Map 23, Lot 052I) is also depicted on a plan prepared by the Town Surveyor entitled "Plan of land Wayland, Massachusetts Showing Proposed Municipal Parcels" dated July 21, 2015 and recorded with the Middlesex South Registry of Deeds as Plan 616 of 2015 (the "Remaining Parcels");

WHEREAS, the Town will schedule a vote to be taken at the Annual Town Meeting to occur in April, 2018 to accept Lot 3-1 (Wayland Assessor Parcel Map 23, Lot 052I) and Parcel 14 (Wayland Assessor Parcel Map 23, Lot 052O), shown on a plan prepared by Hancock Associates entitled "Plan of Land in Wayland, MA" dated January 20, 2012, recorded with the Middlesex South Registry of Deeds as Plan 305 (1 of 2) of 2012. Lot 3-1 is also shown on a plan prepared by the Town Surveyor entitled "Plan of land Wayland, Massachusetts Showing Proposed Municipal Parcels" dated July 21, 2015 and recorded with the Middlesex South Registry of Deeds as Plan 616 of 2015. Additionally, the Town, through its Conservation Commission, has in good faith voted to accept two of the Remaining Parcels, Parcel 15 (Wayland Assessor Parcel Map 23, Lot 052P) and Parcel 16 (Wayland Assessor Parcel Map 23, Lot 052Q on August 24, 2017).

NOW, THEREFORE, in consideration of the foregoing promises, the following promises and covenants, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Donor and the Town agree as follows:

1. Donation of Property. Subject to the terms and conditions of this Agreement, at the Closing, as hereinafter defined, Donor agrees to give, grant, convey, and transfer to the Town all of Donor's right, title and interest in and to the Property, and the Town agrees to accept and receive all of Donor's right, title and interest in and to the Property, in accordance with the terms and conditions contained in this Agreement. Donor shall convey the Property to the Town for no monetary consideration. It is the intent of the Parties that this conveyance be by gift. Accordingly, at the time of the conveyance of the Property (the "Closing"), the Parties shall

jointly execute and deliver Internal Revenue Service ("IRS") Form 8283, "Non-Cash Charitable Contributions," which Donor is required to file with the IRS.

The parties agree that a Town Meeting vote is required to accept the gift of the Remaining Parcels for general municipal use. If only a portion of the Remaining Parcels is voted as accepted, this Agreement shall for all intents and purposes nonetheless be deemed fully valid and binding, but modified as expressed herein and to remove those parcels which are not accepted at the Town Meeting from those which Donor is required to donate hereunder. The Town shall not assume any responsibilities for parcels not transferred and the Donor shall not be released from any permit obligations associated with any parcels not transferred.

2. Closing.

(a) Closing Date. The Closing shall occur on or before June 30, 2018 (the "Closing Date"). The parties hereby acknowledge that time is of the essence.

(b) Time and Place. The Closing shall take place on the Closing Date at a location reasonably acceptable to the Donor and the Town or, if acceptable to them, by mail pursuant to mutually agreed escrow instructions.

(c) Closing Costs. Donor and Town shall each be responsible for paying their own costs relating to the Closing.

(d) Deed. At the Closing, Donor shall deliver a Quitclaim Deed, in the form of Exhibit B, executed by and notarized on behalf of Donor, and accepted by the Town, conveying Donor's interest in the Property to the Town. If the Town votes to accept less than all of the Property, then the deed shall convey the Accepted Parcels and such of the Remaining Parcels as the Town has voted to accept.

3. Real Estate Taxes and Charges. Donor shall pay real estate taxes and other property charges through the Closing Date. Donor waives its right to file abatements of property taxes or file petitions to the Appellate Tax Board from the date of this Agreement to the Closing Date. If taxes are outstanding as of the date of the Closing, taxes will be apportioned as of the Closing Date in accordance with G.L. c. 59, § 72A. If, however, Donor has paid taxes through and past the Closing Date, such payments shall not be refunded, it being acknowledged that the Town has no funds to refund Donor for such taxes paid and the Town, being tax exempt, has no obligation to pay taxes upon acquisition of the Property.

4. Orders of Conditions. Donor shall apply for, obtain, and record Certificates of Compliance from the Town of Wayland Conservation Commission and the MassDEP, Northeast Region, for all outstanding Orders of Conditions and Superseding Orders of Conditions related to the Development prior to Closing. As soon as possible, but not more than 5 business days after recording all such Certificates of Compliance from the Town of Wayland, the Town will return to Donor the escrow funds being held by the Conservation Commission. Should the Town not return the escrow funds within 5 business days, then the Closing Date is extended the same

number of days that payment was extended to the Donor. Extension of the Closing Date due to the late payment pursuant to this paragraph shall not result in the \$75,750 referenced in Paragraph 11 being reduced.

5. Permits. All obligations of the Master Special Permit and associated Special Permit decisions shall be satisfied by the Donor or specifically transferred to and accepted by the Town prior to Closing.

6. Condition of Property.

(a) Disclosure and Acknowledgement. The Town acknowledges receipt of the AULs and access to related environmental studies and reports and further represents that the Town is willing to accept the Property "as is" on the terms and conditions set forth in this Agreement. Said applicable AULs are attached hereto as Exhibit A and the parties acknowledge that if there is a conflict between the AULs found in Exhibit A and the AULs as recorded at the Middlesex South Registry of Deeds, the recorded documents shall control.

(b) Entry, Inspection. The Town or its authorized agents shall have reasonable access to the Property prior to Closing. The Town shall have the right at any time to enter the Property at the Town's own risk for the purpose of surface surveys, inspections and tests, provided, however, that the Town has given Donor at least twenty-four (24) hours' notice thereof. The Town, to the extent permitted by law, shall hold harmless Donor against any claim by the Town or its authorized agent(s), of any harm to the Town arising from said entry and shall restore the Property to substantially the same condition as prior to such entry if the Closing does not occur.

(c) Indemnities. Any and all indemnity agreements in favor of the Donor that do not run with the land shall be assigned to the Town upon Closing. Donor has represented that all indemnity agreements in favor of the Donor are on record at the Middlesex South Registry of Deeds. Additionally, Town shall be able to inspect and approve all indemnity agreements prior to Closing.

7. Title and Deed. The Property is to be conveyed by good and sufficient deed, with Quitclaim Covenants, running to the Town, and said deed shall convey a good and clear record and marketable title thereto, free and clear of all liens, easements, leases and encumbrances of any kind, except:

- (a) Provisions of existing, continuing permit obligations associated with the Accepted and Remaining Parcels that are transferred to the Town, along with building and zoning laws;
- (b) Such taxes for the then current year as are not due and payable on the date of delivery of such deed;
- (c) Any liens for municipal betterments after the date of this Agreement; and
- (d) Easements, restrictions and reservations of record.

8. Deed and Plans. Donor shall be responsible for drafting a deed to the Property, in a form and in content reasonably satisfactory to the Town. If said deed refers to a plan necessary to be recorded therewith for the Property, Donor shall deliver such plan with the deed in form adequate for filing.

9. Possession and Condition of Premises. Full possession of the Property free of all tenants and occupants, is to be delivered at the time of Closing, the Property to be in the same condition as it is now, reasonable use and wear thereof excepted. The Town shall be entitled to inspect the Property prior to the Closing in order to determine whether the condition thereof complies with the terms of this Section.

10. Escrow. Notwithstanding Sections B(4), B(5), B(6), and B(7) of the Development Agreement, no further escrow amounts shall be due from Donor to the Town.

11. Gift Fund Account. Subject to the terms and conditions of this Agreement, at the transfer of the Remaining Parcels, the Town (i) will refund \$75,750.00 of the Financial Gift identified in Section J(1) of the Development Agreement (the "Financial Gift"), and (ii) will release its claim to monies associated with the Financial Gift.

The Parties acknowledge that the Donor must obtain Certificates of Compliance from both the Wayland Conservation Commission and the Massachusetts Department of Environmental Protection. The Town agrees to work cooperatively with the Donor in acquiring the required Certificates of Compliance from the Conservation Commission provided the Donor applies for said Certificates of Compliance prior to February 15, 2018. The Donor agrees to address any outstanding requirements to effectuate said Certificates of Compliance in a timely manner. Should the Donor not work diligently with the Wayland Conservation Commission and/or the Massachusetts Department of Environmental Protection to secure the Certificates of Compliance prior to the Closing Date, then the Closing Date shall be extended and the \$75,750.00 referenced in this Paragraph 11(i) shall be reduced to \$50,000.00.

12. Easements. Any and all easements or rights associated with the Property shall run with the land and transfer to the Town. Any and all obligations or rights conveyed in the Permits, Development Agreement, and/or the Declaration of Easements, Covenants and Restrictions dated October 23, 2012 (the "ECR") shall run with the land and transfer to the Town. This Agreement is subject to the rights and obligations set forth in the ECR recorded with the Middlesex South Registry of Deeds at Book 60431, Page 111.

13. Conditions Precedent to Closing

(a) Compliance with Agreement. Donor shall have substantially performed and complied with all of its covenants and conditions contained in this Agreement.

(b) Title. The Town shall have the right to satisfy itself that Donor has good and clear record and marketable title to the Property. The Town's performance hereunder is expressly conditional, at the Town's option, upon the Town being satisfied with Donor's title to the Property, in its sole and absolute discretion. The Town's performance is further contingent upon a final title rundown through the date and time of Closing.

14. Insurance. Until the delivery of the deed, Donor shall maintain insurance on the Property as it currently has.

15. Release. The Town agrees that, upon delivery of the deed to the Accepted Parcels and such of the Remaining Parcels as the Town has voted to accept by Donor, the Town releases and forever discharges Donor, its assigns, successors, heirs, officers, officials, servants, employees, offices, departments, directors, beneficiaries, trustees, members, agents, representatives, insurers, and attorneys, mutually release and forever discharge from any and all manner of action and causes of action, suits at common law-statutory or otherwise, debts, dues, sums of money, covenants, contracts, controversies, agreements, promises, trespasses, damages, judgments, costs, claims and demands whatsoever, in law or in equity and whether known or unknown, which any of them ever had, or now has, against any party for, upon, or by reason of any matter arising out of or relating in any way to the Development Agreement.

The Town agrees that, upon delivery of the deed to the Accepted Parcels and such of the Remaining Parcels as the Town has voted to accept by Donor, the Town releases and forever discharges Donor, its assigns, successors, heirs, officers, officials, servants, employees, offices, departments, directors, beneficiaries, trustees, members, agents, representatives, insurers, and attorneys, from all obligations of the Permits associated with the Property or portion thereof transferred to the Town.

The Parties reserve their right to seek enforcement of this Agreement in the event of any breach hereof, in the event either party is required to enforce any of the provisions herein through a court action, the prevailing party shall be entitled to recover its reasonable attorneys' fees.

16. Representations and Warranties of Donor. Donor represents and warrants to the Town, as of the Closing Date, that:

(a) Status of and Execution by Donor. Donor is in good standing and validly existing as a Massachusetts limited liability company; and is duly authorized, qualified and licensed to do all things required of it under or in connection with this Agreement, including to execute and deliver and perform this Agreement.

(b) Title to the Property. Donor is the current record owner of the Property and none of the Property is encumbered by monetary liens.

(c) No Consent Necessary. There is no consent of any third party which Donor has not obtained as of the date hereof and as of the Closing Date which is necessary to enable Donor to execute, deliver and perform its obligations under this Agreement.

(d) Binding. Agreements, instruments, and documents herein provided to be executed by Donor will be duly executed by and binding upon Donor as of the Closing Date.

(e) No Violation of Law. Neither this Agreement nor any of the agreements, instruments and documents herein provided to be executed or to be caused to be executed by Donor violate or will violate any provision of any agreement, law, regulation or judicial order to which Donor is a party or by which it is bound.

(f) Full Disclosure. To the best of Donor's knowledge and belief, all documents and materials respecting the condition of the Property that have been provided by Donor to the Town reflect the true and accurate condition of the Property in all materials respects stated therein as of the Closing Date.

17. Representations and Warranties of Town.

(a) Status of and Execution by the Town. The Town is now and on the Closing Date will be (i) duly formed and validly existing, (ii) duly authorized, qualified and licensed under the laws of the Commonwealth of Massachusetts to conduct business and to acquire the Property, (iii) duly authorized, qualified, and licensed to do all things required of it under or in connection with this Agreement, including to execute, deliver and perform this Agreement; and (iv) a duly constituted Massachusetts municipality.

(b) Binding. Agreements, instruments, and documents herein provided to be executed by the Town will be duly executed by and binding upon the Town as of the Closing Date.

(c) No Violation of Law. Neither this Agreement nor any of the agreements, instruments and documents herein provided to be executed or to be caused to be executed by the Town violate or will violate any provision of any agreement, law, regulation or judicial order to which the Town is a party or by which it is bound.

18. Miscellaneous.

(a) Entire Agreement. This Agreement supersedes all prior discussions, agreements and understandings between Donor and the Town and constitutes the entire agreement between Donor and the Town with respect to the transaction being contemplated. This Agreement may be amended or modified only by a written instrument executed by Donor and the Town.

(b) Further Assurances. Each party hereto shall do such further acts and execute and deliver such further agreements and assurances as the other party may reasonably require to give full effect and meaning to this Agreement.

(c) Notices. All notices, demands, consents, approvals and other communications given pursuant to this Agreement (each, a "Notice") must be in writing and must be sent by hand, or by telecopy (with verbal confirmation by the addresses of the receipt thereof), or by certified or registered mail, postage prepaid, return receipt requested, or by reputable overnight courier service, postage prepaid, addressed to the party to be notified as set forth below and will be effective when received.

To Town of Wayland: Wayland Board of Selectmen
Wayland Town Building
41 Cochituate Road
Wayland, MA 01778-2614

With a copy to: Amy Kwesell, Esq.
Town Counsel
KP Law, P.C.
101 Arch Street
Boston, MA 02110

To Donor: Twenty Wayland, LLC
c/o KGI Properties, LLC
10 Memorial Blvd., Suite 901
Providence, RI 02903

With a copy to:

(d) Facsimile Signatures. For the purposes of this Agreement, facsimile or emailed signatures shall be considered originals.

(e) Successors and Assigns; Survival. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. Any provision of this Agreement which, by its terms, is to be performed after the Closing, shall survive the Closing Date until full performance thereof.


(f) Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, and the venue shall be the court of Massachusetts.

(g) Construction; Severability. The section titles or captions in this Agreement are for convenience only and shall not be deemed to be part of this Agreement. If any term, covenant, condition, or provision of this Agreement or the application thereof to any person or circumstance shall, at any time or to any extent, be found to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which is held to be invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law.


(h) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which taken together shall be deemed one and the same instrument.


Signed under seal as of the date first written above.

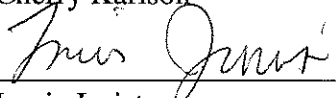
TWENTY WAYLAND, LLC

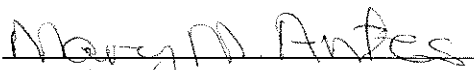
By: 
Name: Anthony J. DeLuca
Title: As Authorized Signatory


TOWN OF WAYLAND
By Its Board of Selectmen


Lea Anderson


Cherry Karlson


Louis Jurist


Mary Antes


Douglas Levine

Exhibits Attached:
Exhibit A: Activity and Use Limitations
Exhibit B: Quitclaim Deed
602678/WAYL/0046