



189 MAIN STREET
THIRD FLOOR
POST OFFICE BOX 170
MILFORD, MA 01757-0170

TEL (508) 478-2054
FAX (508) 478-7394

ALDO B. CONSIGLI, JR.— aldo@consigliandbrucato.com
CHARLES J. BRUCATO, JR.— charlie@consigliandbrucato.com
BRIAN A. CONSIGLI— brian@consigliandbrucato.com
SUZETTE A. FERREIRA— suzette@consigliandbrucato.com

January 6, 2022

Conservation Commission
Town of Upton
One Main Street
Upton, MA 01568

Re: **Mechanic Street and Fowler Streets, Upton, Massachusetts**
Upton Assessors Map14, Lots 48 and 55

Ladies and Gentlemen:

Please be advised that this Office represents Richard J. Henderson, Sr and Edward L. Gorman, Trustees of the Mechanic Street Realty Trust, of 20 Brooks Street, Upton, Massachusetts, record owners of the above captioned property. The Trustees have entered into a bona fide agreement to sell their property consisting of approximately 94.22 acres of land on Mechanic Street and Fowler Street, Upton, Massachusetts for the sum of \$900,000.00, (see Exhibit "A" attached hereto).

Inasmuch as we have been informed that the purchaser intends to convert this property to a residential use consisting of a multi-family apartment development with a minimum of 200 Units under the provisions of M.G.L. Chapter 40B, formal notice is hereby given to you in accordance with the provisions of M.G.L. Chapter 61B Section 9 of the Trustees intent to sell the property and remove the same from the provisions of said Chapter 61B.

As noted above, the property is currently held by Richard J. Henderson, Sr and Edward L. Gorman, Trustees of the Mechanic Street Realty Trust, established under a Declaration of Trust dated April 11, 1991 and recorded in the Worcester District Registry of Deeds in Book 13344, Page 282. We have been informed that the real estate is described on Upton Assessors Map14, Lots 48 and 55. We have been further informed that Parcels 48 and 55 are subject to a Recreational Land Tax Lien recorded in said Worcester District Registry of Deeds Book 47043, Page 93, (see Exhibit "B" attached hereto).

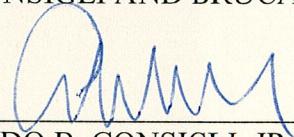
While we realize that you have 120 days subsequent to this notification to exercise your right of first refusal to meet this offer, or determine that you are not interested in purchasing the same, it is my clients' sincerest hope that you will use every effort to handle this matter expeditiously.

Please refer all questions and forward all communications concerning this matter directly to Attorney Aldo B. Consigli, Jr., of the law firm of Consigli and Brucato, PC, P.O. Box 170, 189 Main Street, Third Floor, Milford, Massachusetts, Telephone (508) 478-2054, Telefax (508) 478-7394.

We would appreciate hearing from you as soon as you have had an opportunity to review the enclosed notice.

Very truly yours,

CONSIGLI AND BRUCATO, P.C.



ALDO B. CONSIGLI, JR.

ABC/pjb
Enclosures
certified mail, return receipt requested

Saxon Partners LLC
25 Recreation Park Drive, Suite 204
Hingham, MA 02043

December 2, 2021

Via email to: sterrell@erakey.com

Mr. Sean Terrell, Realtor
Ms. Robyn Nasuti, Realtor

ERA Key Realty Services
76 Church Street
Whitinsville, MA 01588

Re: Offer to Purchase for approximately 94.22 acres of vacant land abutting Mechanic Street and Fowler Street, Upton, Worcester County, Massachusetts, consisting of an 87.88-acre lot at 0 Mechanic Street shown on the Town of Upton Assessors Map 14 as Lot 55; and a 6.34-acre lot at 0 Fowler Street shown on Assessors Map 14 as Lot 48; land subject to a recreational tax lien under M.G.L. Chapter 61B

Dear Mr. Terrell and Ms. Nasuti:

This Offer to Purchase, upon the Seller's signed acceptance, shall constitute an agreement between Saxon Partners, LLC and the Seller named below to purchase the Property (defined herein) on the terms and conditions set forth herein (hereinafter referred to as the "Agreement"). The Seller and Buyer agree that the Agreement shall constitute a purchase and sale agreement within the meaning of M.G.L. Chapter 61B, Section 9, and a certified copy of this agreement shall be appended to the Notice of Intent to Sell to be presented to the Town of Upton.

SELLER:

Edward S. Henderson Sr., Edward L. Gorman, and Richard J. Henderson Sr., as Trustees of the Mechanic Street Realty Trust, established under a Declaration of Trust dated April 11, 1991, and recorded with Worcester County Registry of Deeds in Book 13344, Page 282, with a mailing address at 20 Brook Road, Upton, MA 01568

BUYER:

Saxon Partners, LLC, a Massachusetts limited liability company, and/or its assigns, of 25 Recreation Park Drive, Suite 204, Hingham, MA 02043.

PROPERTY:

94.22 acres of vacant land abutting Mechanic Street and Fowler Street, Upton, Worcester County, Massachusetts, consisting of an 87.88-acre lot at 0 Mechanic Street shown on the Town of Upton Assessors Map 14 as Lot 55; and a 6.34-acre lot at 0 Fowler Street shown on Assessors Map 14 as Lot 48 (said two lots are hereinafter collectively referred to as the "Property").

EXHIBIT "A"

For the Seller's title to the Property, see the Deed from Robert D. Henderson and Cecelia E. Henderson dated April 11, 1991, and recorded with Worcester County Registry of Deeds in Book 13344, Page 291 (concerning the 6.34-acre parcel); and the Deed from Robert D. Henderson and Cecelia E. Henderson dated April 11, 1991, and recorded with Worcester County Registry of Deeds in Book 13344, Page 295 (concerning the 87.88-acre parcel). The Property is depicted on the Upton Assessors Plan (Map No. 14) attached hereto as **EXHIBIT A** (the "Assessors Plan").

PURCHASE PRICE:

The purchase price is **NINE HUNDRED THOUSAND DOLLARS (\$900,000.00)**.

DEPOSITS:

The Buyer's Deposit upon the mutual execution of this Agreement shall be **Twenty Thousand Dollars (\$20,000.00)** to be held by Commonwealth Land Title Insurance Company, National Commercial Services Department, 265 Franklin Street, 8th Floor, Boston, MA 02110 (*c/o Robert E. Sullivan, Esq. Assistant Vice-President and Commercial Counsel, phone: 617-619-4819*), as Escrow Agent, to be deposited by the Buyer within **three (3) days** of the Seller's execution of this Agreement and delivery of the same to the Buyer by e-mail (the "Effective Date"). If the Buyer does not terminate this Agreement during the Due Diligence Period (as defined below), the Buyer shall within two (2) business days thereof deposit an additional **Eighty Thousand Dollars (\$80,000.00)** that shall remain refundable to the Buyer and applicable to the Purchase Price as set forth herein. All Deposits tendered under this Agreement and the subsequently executed Purchase and Sale Agreement shall remain refundable to the Buyer and be applicable to the Purchase Price through the completion of the Permitting Period (defined below).

TERMS OF PAYMENT:

At closing, the Purchase Price shall be paid by the Buyer to the Escrow Agent by wire transfer, plus or minus any prorations. Funds shall be released by the Escrow Agent to the Seller only upon the recording of the Deed by the Escrow Agent's representatives.

TITLE:

Seller shall deliver the Property free and clear of all occupants, personal property, and encumbrances (except for those encumbrances that would not interfere with the Buyer's intended use of the Property for multi-family housing with at least three-hundred-twenty [320] units, comprised of a mix of one, two, and three-bedroom units necessary to meet Mass Housing requirements) with required parking, and with good, clear, record, and marketable title that is acceptable to the Buyer's attorney and the Buyer's title insurance company at their absolute discretion. The Property, which does not include any structures, shall be delivered vacant and free of all debris, trash, hazardous materials, and personal property. The Buyer's obligations to perform

are contingent upon the Seller delivering good, clear, record, and marketable title to the entire Property depicted on the Assessors Plan.

TITLE INSURANCE:

The Buyer shall pay the premium for the Buyer's owner's title insurance policy.

DUE DILIGENCE PERIOD (90 days):

Buyer shall have a **ninety (90) day** due diligence period from the Effective Date of this Agreement to review all pertinent information regarding the Property, to meet with Town officials to determine the viability of the proposed development, to review Due Diligence materials (defined below), and to conduct tests and inspections of the Property (the "Due Diligence Period"). During the Due Diligence Period, Seller shall make all portions of the Property available to Buyer to permit tests, studies and other inspections as Buyer deems appropriate, provided that Buyer shall notify Seller at least **one (1) business day** prior to the date on which it wishes to undertake the same. Buyer shall restore any portion of the Property affected by such tests, studies, and inspections to its original condition, at Buyer's sole expense.

During the Due Diligence Period, Buyer will provide the Seller with a more detailed Purchase and Sale Agreement that will include such additional terms as are customary for commercial real estate transactions in Massachusetts. At any time during the Due Diligence Period, Buyer may, in its sole discretion, elect to terminate this Agreement and the Purchase and Sale Agreement for any reason, in which event all Deposits shall be returned to Buyer and the said agreements shall terminate.

Among the items to be reviewed prior to the expiration of the Due Diligence Period are the following:

1. Title reports, title insurance commitments, plans and specifications, construction documents and contracts, and all zoning, architectural, engineering, and environmental inspection reports currently in the possession of the Seller. Seller agrees to provide (if any) all existing environmental reports and surveys pertaining to this Property in Seller's possession.
2. Any leases, ground leases, service contracts, operating agreements, maintenance agreements, or any other agreement or contract relating to or affecting the Property.
3. Determination that any improvements on the Property are in compliance with all applicable zoning and other laws pertinent to the Property and that the intended use of the Property is in compliance with current zoning or that it will be feasible to secure satisfactory permits for the intended use of the Property.

4. Determination that there are not any recorded encumbrances that may impair the buildability and marketability of the Property or would preclude the Buyer from securing satisfactory title insurance coverage and endorsements.
5. The environmental and geotechnical condition of the Property and the Property's suitability for Buyer's proposed development.
6. Confirmation of any other information or any other matters which the Buyer in its sole discretion deems pertinent to the Property or this transaction.
7. Confirmation that the Town of Upton will consent to and approve the development of a project on the Property pursuant to M.G.L. Chapter 40B supporting three hundred and twenty rental units (a so-called "Friendly 40B approval").

RIGHTS OF PARTIES IN THE ABSENCE OF A "FRIENDLY 40B APPROVAL"

In the event that the Buyer does not secure a "Friendly 40B Approval" from the Town of Upton prior to expiration of the ninety (90) day Due Diligence Period, the Buyer may within said time period, at its absolute and sole discretion: (A) terminate the Agreement and immediately recover the full Deposit; or (B) give written notice to the Seller that the Buyer elects to waive the "Friendly 40B Approval" contingency referenced above and to proceed with the purchase of the Property subject to the remaining terms and conditions of this Agreement (the "Friendly 40B Waiver Notice").

The Seller shall reserve the right to terminate the Agreement in the event that: (A) the Buyer does not secure the Friendly 40B Approval within the Due Diligence Period; and (B) the Buyer does not provide the Friendly 40B Waiver Notice to the Seller within the Due Diligence Period. The Seller shall send such termination notice (the "Seller 40B Termination Notice") to the Buyer within seven (7) days of the expiration of the Due Diligence Period, and whereupon, the entire Deposit shall be immediately refunded to the Buyer.

WAIVER OF THE TOWN OF UPTON'S RIGHT OF FIRST REFUSAL UNDER M.G.L. CHAPTER 61B

The parties acknowledge that the Property is subject to a lien under Massachusetts General Laws Chapter 61B and that the Town of Upton has a right of first refusal concerning the sale of the Property to a buyer that will not retain the Chapter 61B classification for the Property. As a condition of the sale of the Property to the Buyer, the Seller shall be obligated to: (1) secure from the Town a notice of non-exercise (a "Waiver of Right of First Refusal") and record the same at the Registry of Deeds; (2) pay all roll-back real estate taxes and fees that may be due to the Town pursuant to Chapter 61B; and (3) secure from the Town of Upton a Release of Recreational Land Tax Lien and record the same at the Registry of Deeds.

PERMITTING PERIOD – six (6) months:

Buyer shall have **six (6) months** from the Effective Date of this Agreement (subject to the tolling period set forth below) to investigate and make appropriate submittals for the permitting of the Property under M.G.L. Chapter 40B for a multi-family apartment development with a minimum of **three hundred and twenty (320) units** (the “Proposed Development”), and to secure necessary permits and approvals for the Proposed Development. Permits and approvals shall include, but not be limited to, all necessary government approvals, title insurance commitments (satisfactory to the Buyer), development agreements, tax impact fee agreements, utility availability, and public commitments and conditions. Seller agrees to cooperate with Buyer’s submittals and to execute any documents required for such submittals at no expense to Seller. Buyer agrees that any such submittals will not bind the Seller or the Property to Buyer’s intended use of the Property for the Proposed Development. Notwithstanding the foregoing provisions, the parties agree that the Permitting Period will be tolled and not commence until the Town of Upton has executed a Waiver of Right of First Refusal in accordance with M.G.L. Chapter 61B and delivered the same to the Seller (with a copy to the Buyer).

EXTENSION OF THE PERMITTING PERIOD:

Buyer may extend the Permitting Period by **four (4) additional sixty (60) day** extension periods commencing at the completion of Permitting Period by delivering written notice to Seller for each **sixty (60) day** extension, whereupon for each extension the sum of **Ten Thousand (\$10,000.00)** of the Deposits (an “Extension Fee”) shall be deemed non-refundable but remain applicable to the Purchase Price, except in the event of a Seller default all Deposits shall remain refundable to the Buyer. Notwithstanding the foregoing, in the event that any person or entity files any administrative appeals, judicial appeals, or other forms of legal actions in objection to the applied-for permits and approvals (collectively referred to as “Appeals”) at any time during the Permitting Period (as the same may be extended), and the Buyer provides the Seller or Seller’s attorney with written notice of the filing of any Appeals within the Permitting Period (as the same may be extended), the Permitting Period shall be extended until the Appeals have been fully exhausted (with final decisions in favor of the Buyer) without requiring any payment from the Buyer. The Buyer shall make diligent efforts to resolve the Appeals in its favor, and upon the request of the Seller’s attorney, provide a written update as to the status of the Appeals.

CLOSING:

Thirty (30) days from when the Buyer has secured all permits and approvals for a M.G.L. Chapter 40B multi-family project with at least **three-hundred-twenty (320) units** (with all appeal periods having been exhausted), or at Buyer’s discretion, upon **thirty (30) days** written notice from the Buyer to Seller of an earlier Closing Date. The Closing shall take place at the Worcester County Registry of Deeds at 11 AM on the above date, except that if that date is not a business day the closing shall be continued to the next business day on which the Worcester County Registry of Deeds is open for recording. Notwithstanding the foregoing, the Buyer shall reserve the right to

provide seven days advance notice from the Buyer to Seller to relocate the Closing to the office of the Escrow Agent (Commonwealth Land Title Insurance Company, National Commercial Services Department, 265 Franklin Street, 8th Floor, Boston, MA 02110). In addition, notwithstanding the foregoing, in the event that the Permitting Period is extended due to any Appeals (as defined above), the Closing Date will be the first business date that is **thirty (30)** days from when the Buyer has secured all permits and approvals following the exhaustion of all Appeals.

CLOSING COSTS:

The Seller will pay for all Seller transfer taxes and recording fees attributable to the Seller in accordance with the requirements of the Commonwealth of Massachusetts. The Buyer will pay for all recording fees attributable to the Buyer. The Buyer and Seller will divide on an equal basis all customary closing costs (including the Escrow Agent fees for the settlement and closing services) except those that have otherwise been described herein. Buyer and Seller will prorate all real estate taxes as of the date of closing. Buyer and Seller will each pay their own legal fees.

BROKER REPRESENTATION:

Ms. Robyn Nasuti, Realtor, and Mr. Sean Terrell, Realtor of ERA Key Realty Services, 76 Church Street, Whitinsville, MA 01588, represents the Seller in this transaction and is to be paid under a separate agreement with the Seller. The Seller shall be responsible for payment of its real estate broker fees.

ACCEPTANCE:

This Offer to Purchase shall remain open for acceptance until **five (5)** days from the delivery via e-mail. If Seller has not delivered to Buyer an executed and accepted copy of this Offer to Purchase to Buyer by e-mail by this time, then this Offer to Purchase shall be null and void and of no further force and effect.

MARKETING OF PROPERTY:

The Seller agrees to not market or present the Property for sale or enter into any discussions or negotiations with any prospective purchasers during the term of this Agreement or the Purchase and Sale Agreement. This Agreement shall constitute a binding agreement between Seller and Buyer for the Property on the terms and conditions set forth herein, even though Seller and Buyer may replace this Agreement with a more detailed Purchase and Sale Agreement that will include such additional terms as are customary for commercial real estate transactions in Massachusetts. Each party shall be responsible for its own legal, advisory, and miscellaneous expenses associated with the completion of this transaction.

Sincerely,

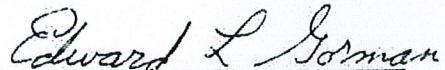

Donald S. Smith, as
Manager of Saxon Partners LLC

Cc: Mr. David Calhoun, Saxon Partners

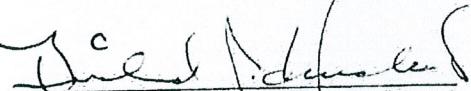
Agreed to and Accepted by Seller:

Date: _____

Edward S. Henderson, Sr. as Trustee
of the Mechanic Street Realty Trust


Date: 12-5-2021

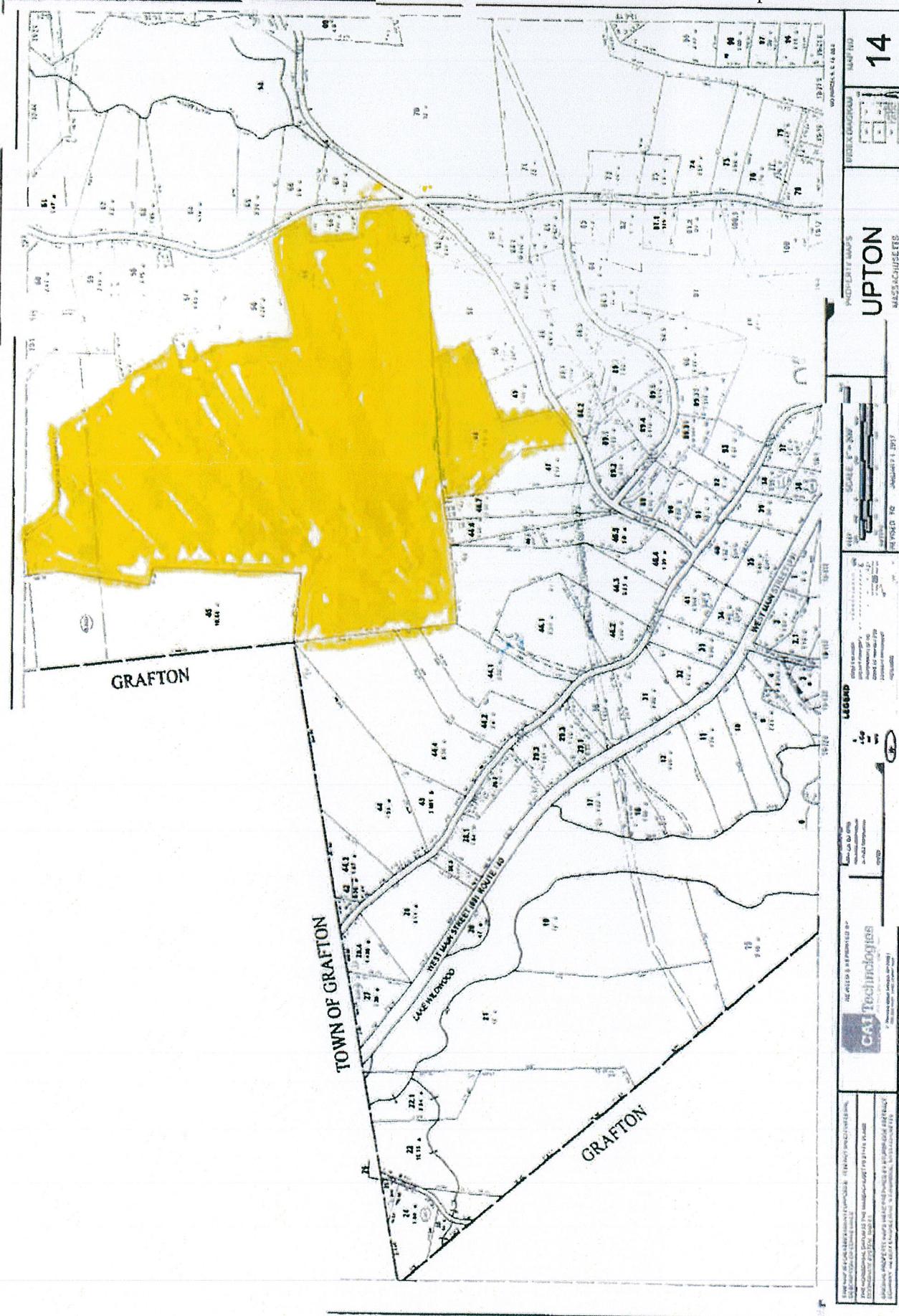
Edward L. Gorman, as Trustee of
the Mechanic Street Realty Trust


Date: 12/5/2021

Richard J. Henderson, Sr. as Trustee
of the Mechanic Street Realty Trust

Attached hereto as EXHIBIT "A" is a copy of the Assessors Plan (Map 14)

14 as Lot 55; and a 6.34-acre lot at 0 Fowler Street shown on Assessors Map 14 as Lot 48



FIRST AMENDMENT TO AGREEMENT

Date: December 16, 2021

SELLER:

Edward L. Gorman, and Richard J. Henderson Sr., as Trustees of the Mechanic Street Realty Trust, established under a Declaration of Trust dated April 11, 1991, and recorded with Worcester County Registry of Deeds in Book 13344, Page 282, with a mailing address at 20 Brook Road, Upton, MA 01568

BUYER:

Saxon Partners, LLC, a Massachusetts limited liability company, and/or its assigns, of 25 Recreation Park Drive, Suite 204, Hingham, MA 02043.

PROPERTY:

94.22 acres of vacant land abutting Mechanic Street and Fowler Street, Upton, Worcester County, Massachusetts, consisting of an 87.88-acre lot at 0 Mechanic Street shown on the Town of Upton Assessors Map 14 as Lot 55; and a 6.34-acre lot at 0 Fowler Street shown on Assessors Map 14 as Lot 48 (said two lots are hereinafter collectively referred to as the "Property").

AGREEMENT:

The **Offer to Purchase** from the Buyer to Seller dated December 2, 2021, accepted by the Seller on December 5, 2021 (with an Effective Date of December 5, 2021), regarding the Buyer's purchase of the Property

The Seller and Buyer agree to amend the Agreement as follows:

1. In the **TITLE** section (page 2), the following text shall be modified:

Seller shall deliver the Property free and clear of all occupants, personal property, and encumbrances (except for those encumbrances that would not interfere with the Buyer's intended use of the Property for multi-family housing with at least three-hundred-twenty [320] units, comprised of a mix of one, two, and three-bedroom units necessary to meet Mass Housing requirements)

"three-hundred-twenty [320] units" is stricken and replaced with "two hundred [200] units."

2. In the **DUE DILIGENCE** section (page 3), the following sub-paragraph (7) shall be stricken and replaced:

Confirmation that the Town of Upton will consent to and approve the development of a project on the Property pursuant to M.G.L. Chapter 40B supporting three hundred and twenty rental units (a so-called “Friendly 40B approval”).

The above sub-paragraph (7) text is stricken and replaced with the following:

“Confirmation that the Town of Upton will consent to and approve the development of a project on the Property pursuant to M.G.L. Chapter 40B supporting two hundred [200] rental units.”

3. The **RIGHTS OF PARTIES IN THE ABSENCE OF A “FRIENDLY 40B APPROVAL** section (page 4) is stricken in its entirety.
4. In the **PERMITTING PERIOD** section (page 5), the Buyer’s Permitting Period shall be extended to “**twelve (12) months from the Effective Date of this Agreement, to wit, December 6, 2022...**”
5. In the **CLOSING COSTS** section (page 6), the Seller’s one-half share of the Escrow Agent fees for settlement and closing services will be limited to a maximum payment of Seven Hundred Fifty (\$750.00) Dollars. The Buyer will pay any remaining amount due for the Escrow Agent fee.

All other terms and conditions of the Original Agreement shall remain in full force and effect.

Seller

Edward L Gorman dotloop verified
12/18/21 8:26 PM EST
A5VO-X1R8-DI0D-4IKUX Date: 12/18/2021

Edward L. Gorman, as Trustee of
the Mechanic Street Realty Trust

WJ/AB dotloop verified
12/19/21 5:44 PM EST
RVGZ-YH6Q-HQ1-B7QE 12/18/2021

Richard J. Henderson, Sr. as Trustee
of the Mechanic Street Realty Trust

Buyer

Saxon Partners, LLC

By: D. S. Smith
Donald S. Smith, as Manager

The Commonwealth of Massachusetts
UPTON

Name of City or Town

Office of the Board of Assessors



2011 00011817

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Page: 1 of 1 02/01/2011 02:31 PM WD

Classified Forest-Agricultural or Horticultural-Recreational Land Tax Lien

The Board of Assessors in the city/town of UPTON hereby states it has accepted and approved the application of RICHARD HENDERSON & EWARD GORMAN

owner(s) of the real property described below, for the valuation, assessment and taxation of that property as classified forest agricultural or horticultural recreational land under the provisions of General Laws Chapter 61 61A 61B . This classification is effective as of January 1, 2011, for the fiscal year beginning July 1, 2010 .

DESCRIPTION OF PROPERTY

(The description must be sufficiently accurate to identify the property. In the case of registered land, the Certificate of Title Number and the Registry Volume and Page must be given.)

TWO PARCELS OF LAND LOCATED IN THE TOWN OF UPTON KNOWN ON THE ASSESSORS TAX MAPS AS

MAP 014 LOT 048 CONTAINING 6.34+- ACRES REG OF DEED REF 13344-295 AND MAP 014 LOT 055

CONTAINING 87.88+- ACRES REG OF DEED REF 14402-124. A TOTAL OF 94.22+- ACRES TO BE PUT INTO CHAPTER LAND 61B

This statement made on the 7/1/10 day of October, 2010 constitutes a lien upon the property as provided in General Laws Chapter 61, § 2 61A, § 9 61B, § 6 .

Clark T. Mann
Teresa Ambrose
Glenn Fowler
Board of Assessors

The Commonwealth of Massachusetts

Worcester

ss.

On this 7 day of October, 2010, before me, the undersigned notary public, personally appeared Glenn Fowler, as Board of Assessors for the city/town of Upton, proved to me through satisfactory evidence of identification, which were personal knowledge, to be the persons whose names are signed on the preceding document in my presence, and acknowledged to me that they signed it voluntarily for its stated purpose.

M. Denise Smith

Notary Public

My commission expires

1-21-2016

THIS FORM APPROVED BY THE COMMISSIONER OF REVENUE

ATTEST: WORC. Anthony J. Viggiani, Register

EXHIBIT B

