

MEMORANDUM OF AGREEMENT
1015 East Street, Walpole
November 8, 2022

This Agreement (“Agreement”) is entered into by and between KIG/Silverstrand Walpole LLC (“Developer”), with a usual place of business at 257 Hillside Avenue, Needham, MA 02494, and the Town of Walpole, a municipal corporation organized under the laws of the Commonwealth of Massachusetts, with a usual place of business at 135 School St., Walpole, MA (“Town”), acting by and through its duly elected Select Board, regarding the proposed Local Initiative Program development at 1015 East Street, Walpole, MA, said property shown on Walpole’s Assessor’s maps as Parcel 25-164 consisting of 67,329 square feet more or less (“Property”), furthermore the developer also placed under contract lots 25-165 (989 East St.) and 25-166 (981 East St.) (“Secondary Property”) for inclusion in the development of said parcel(s) into affordable and market rate rental housing and further to be managed by a professional property management company with extensive experience with multi-family properties, with the Developer, Town and Select Board collectively referred to herein as the “Parties.” Prior to the issuance of any certificate of occupancy, the Developer shall notify the Town in writing of the identity and contact information for the property management company and shall notify the Town of any changes thereto for as long as the project is subject to this Agreement.

WHEREAS, the Town has not yet achieved and seeks to achieve the goal of ten percent affordable housing as defined under the affordable housing statute and regulations, respectively, G.L. c. 40B, §§20-23 and 760 CMR 56.00;

WHEREAS, the Town has been certified by Department of Housing and Community Development (“DHCD”) as in compliance with its Housing Production Plan, thus placing the Town in a “safe harbor” until April 26, 2023;

WHEREAS, the Town desires to consider the approval of additional affordable housing to increase its affordable housing stock in an effort to reach ten percent;

WHEREAS, the Developer has submitted a Local Initiative Program (“LIP”) application to the Select Board for its review and approval, said application seeking approval of 142 units of rental housing, of which 25% shall be low and moderate income housing units, under G.L. c. 40B, §§20-23 (the “LIP Application”) as set forth in the LIP Application (the “Project”);

WHEREAS, the Property is currently owned by Gilmores, Inc. (“Owner”), and KIG/Silverstrand Walpole, LLC have executed a Purchase and Sale Agreement to acquire the Property from the Owner and have also executed a Purchase and Sale Agreement for the Secondary Property, currently owned by Station House, LLC ;

WHEREAS, the obligations and benefits as stated in this Agreement are contingent upon the Developer acquiring title to the Property from the Owner;

NOW THEREFORE, based upon good and valuable consideration, the receipt of which is hereby acknowledged by the Parties, the Parties agree as follows:

I. DEVELOPER'S UNDERTAKINGS

Upon approval of the LIP Application by the Select Board, Developer shall promptly, and in any event within ten business days of the Select Board signing the LIP Application, apply to DHCD for approval of a Local Initiative Program development on the Property, as set forth in its LIP Application. Upon issuance of a Project Eligibility Letter from DHCD, Developer shall promptly, and in any event within twenty business days, apply to the Zoning Board of Appeals (“ZBA”) for a comprehensive permit for the Project in accordance with the LIP Application and this Agreement subject to any required changes by DHCD, whereas Select Board will provide a reasonable time-period to make these changes prior to applying to the ZBA.

- A. The Project shall consist of no more than 142 residential rental units, of which the maximum allowed by DHCD shall be targeted for local preference, and such marketing plan details to ensure this standard is met shall be filed prior to the issuance of any occupancy permit. The Project shall be constructed in accordance with the LIP Application and this Agreement.

- B. The 142 residential rental units shall consist of the following mix of bedrooms:
 - Studio 15 units
 - One Bedroom: 87 units
 - Two Bedrooms: 26 units
 - Three Bedrooms: 14 units

However, such distribution may be adjusted based on DHCD requirements and discussion with Town Administrator and shall require modification of this Agreement.

- C. Developer agrees to pay the Town a total of \$1,100,000 (“Project Costs”) comprising sewer and water connection fees, and sidewalk and roadway improvements, traffic, and Project related mitigation payments.
 - 1. This Project Costs encompass the required Town sewer and water connection fees (“Water & Sewer Connection Fee”) as follows:
 - i. \$300,000 - water connection fees
 - ii. \$200,000 - sewer connection fees

The above constitutes the total Water & Sewer Connection Fee to be paid for this Project, but shall not include standard Water & Sewer use fees.

- 2. The Project Costs include foreseeable mitigation funds for impacts upon the Town incurred as a result of the Project (“Mitigation Funds”), in addition to and separate from the Water & Sewer Connection Fees. Mitigation Funds shall include funds to design, construct and reconstruct sidewalks along Elm Street; funds towards traffic mitigation as identified during the ZBA hearings; funds to pave the roadway on East Street between Main Street and Elm St. and install sidewalks on the south side of East Street along the same roadway,

and funds for traffic mitigation at the Elm St. School. For the sake of clarity, there shall be no additional Project Costs to construct this Project, other than standard Building Permit Fees.

Payment of the Mitigation Funds shall be undertaken as follows:

- i. \$50,000 shall be paid within sixty (60) days of the issuance of a comprehensive permit that is in substantial conformity with the LIP Application and this Agreement (unless the comprehensive permit is appealed by a person that is not a party to this Agreement, in which case the payment shall be made when the comprehensive permit becomes final and all appeals have been exhausted and completed)
- ii. \$650,000 upon the date when the Building Permit application is filed by the Developer
- iii. \$400,000 will be paid prior to issuance of either a permanent or temporary Certificate of Occupancy for the Project.

It is the Town's intention that the Mitigation Funds are being provided to the Town for the specific purposes as outlined above as mitigation of the impacts incurred by the Town as a result of the Project.

3. The Developer acknowledges and agrees to its obligations herein stated and shall be bound in contract to such obligations, said obligations to be enforceable by a court of competent jurisdiction.
 4. The Parties agree that failure of the Developer to make payment of the amount specified in Item C.2.iii above will constitute grounds for rescission of any building permit(s) that have been issued for the Project and that no party will assert otherwise in any proceeding. Town building and other permit and inspectional fees shall be paid in full by the Developer.
- D. Twenty-five percent of the units shall be reserved for rental to low and moderate income tenants, in conformity with DHCD requirements such that these units qualify as low or moderate income housing units under G.L. c. 40B, §§20-23 (the "Affordable Units"). The Affordable Units at the Project shall be permanently restricted as affordable, and shall remain affordable so long as the Project continues to benefit from the comprehensive permit because the Project does not conform to zoning requirements.
- E. There shall be access from East St. as shown on the LIP Application plans. The entrance will comply with 527CMR1. The Developer will attempt to work with the owner of the abutting property (CVS plaza) to develop a walking path easement to allow for pedestrian access between the properties. If the Developer is unable to reach an agreement with the abutting property owner the walking path easement shall dead-end at the abutting property line in anticipation of future cooperation to preserve connectivity. And furthermore, the Developer will ensure the area is constructed to allow for an access way in the future. The building shall be fully sprinklered, including attic spaces and in the parking garage if necessary for the

parking lifts that have been proposed by the Developer. There shall be at least two elevators in the building which reach all occupied floors and are of sufficient size to accommodate a stretcher and two personnel. The developer agrees that the Secondary Property will be used to address the additional need for parking, landscape buffer, public safety access to the site and snow storage as was conceptually presented to the Select Board on November 8, 2022. The Select Board and Zoning Board will be provided with time to review the design of the entire project and provide comments and suggestions on the proposed layout during the Zoning Board's hearing process based on feedback from the Zoning Board and Peer review. The Developer will work with the Town Administrator to collect these comments through the design and through the Town's statutory Zoning Board hearing process

- F. The Property shall be subject to a permanent affordable housing restriction that shall be recorded after the Developer acquires title to the Property and before the first building permit is issued, but not before the final comprehensive permit is issued and all rights of appeal have been exhausted, which will require that the building created and the 142 units shall remain rental units and shall not be converted to permit individual ownership of individual units. The Town may also require that a separate permanent restrictive covenant providing for a right to enforce affordability restrictions in the event that the DHCD Affordable Housing Restriction is not sufficient.
- G. Developer shall provide the following information and satisfy the following design standards during the public hearing before the ZBA:
 - i. Sight distances at the egress for the Project shall be designed in accordance with best engineering practices, using AASHTO specifications, and shall be established and maintained at all times.
 - ii. The Project shall comply with Massachusetts Stormwater Management Standards and Chapter 499, Stormwater Management and Erosion Control of the Town's General Bylaws.
 - iii. Developer shall provide a management plan that details a schedule of maintenance and inspections of all buildings structures, mechanical systems, and outdoor equipment and amenities subject to the availability of these items.
 - iv. If applicable the Developer shall comply with the 25 foot no disturb zone surrounding a wetlands resource area as set forth in Chapter 561 Wetland Protection of the Town's General Bylaws. If the Developer cannot comply with the 25 foot no disturb zone in a small section of the property, the Developer will review the deviation with the Community Development Director to assess consistency with the original plan. The Community

Development Director will provide advice to the Town Administrator as to whether the proposed modification is material or substantial under Section II.2 of this Agreement. Any determination by the Director, Town Administrator, or Select Board as to whether such deviation requires modification of this Agreement shall not affect whether the plans are in compliance with Chapter 561 Wetland Protection of the Town's General Bylaws.)

- v. Developer agrees not to request any modification to this Agreement or to any comprehensive permit granted for this Project that would convert the rental units to condominiums.

- H. Developer agrees that it shall not assert to the ZBA or to the Housing Appeals Committee or to any other entity that the payment of any of the improvements or costs detailed in this agreement causes or contributes towards causing the Project to be uneconomic under G.L. c. 40B or 760 CMR 56.00, et seq., provided that all of the terms of this Agreement are satisfied.

- I. The obligations hereunder shall be enforceable only if a comprehensive permit is granted in substantial conformity with the LIP Application and takes final effect without altering the terms and conditions of this Agreement. If there are changes to the Project in the future that are not detailed in this Agreement, then Developer shall return to the Select Board to seek to amend this Agreement.

- J. Commencement of construction of the Project shall begin no later than 24 months from the date the comprehensive permit is recorded as defined in 760 CMR 56.03(2)(b).1. (unless the comprehensive permit is appealed by a person that is not a party to this Agreement, in which case construction shall commence six months after the comprehensive permit becomes final and all appeals have been exhausted and completed) The Developer agrees to file the necessary paperwork with the Building Commissioner to obtain the necessary building permits within 12 months of recording the comprehensive permit is recorded as defined in 760 CMR 56.03(2)(b).1, subject to the Developers election to extend this up to 6 additional months with notice up to 30 days prior to the end of the 12-month period. Developer will record the decision at the Registry of Deeds no later than 7 days after a certificate of no appeal has been issued by the Walpole Town Clerk. Developer shall make diligent efforts to ensure that construction of the Project continues without interruption or unreasonable delay so as to satisfy the requirements of 760 CMR 56.03(2)(c) for the units to be counted and remain on the Town's Subsidized Housing Inventory as maintained by DHCD.

- K. Developer shall cooperate with the Town and in a timely manner, provide the Town Administrator with all relevant information and material to support applications by the Town to DHCD to add the Project's units to the Subsidized Housing Inventory (SHI).

- L. Developer shall pay all reasonable monitoring fees required by DHCD and enumerated in the Regulatory Agreement to be executed with the Town and DHCD. If DHCD discontinues monitoring this project, and the Town is required to take on that role, then the Developer will pay such monitoring fees which are consistent with those specified in the Regulatory Agreement to the Town or other entity which acts as Monitoring Agent.
- M. Developer shall place a prohibition in each lease for each rental unit that strictly prohibits off road recreational motorized vehicles, including mopeds, motor homes, any unlicensed and derelict vehicles, or boats, and on-site boat and vehicle repairs of any type, unless prohibited by law. These restrictions shall be strictly enforced by the management.
- N. Developer agrees that this Agreement shall bind it and its successors in interest and that the Town may record a Notice of this Agreement against the Property once the Developer takes title to the Property and the comprehensive permit has been issued.

II. TOWN'S UNDERTAKINGS

- 1. The Select Board support and will continue to support the Project as presented by the Developer and as subject to this Memorandum of Agreement including, but not limited to signing the LIP Application to be submitted to DHCD.
- 2. The Developer shall notify the Town Administrator, Building Commissioner and the Community Development Director of any proposed changes to the Project. The Town Administrator shall review and inform the Developer within seven business days of receipt of said proposed changes as to whether the proposed changes require modification of this Agreement or would cause the Select Board to exercise its rights to cancel this Agreement as provided for hereunder. The Parties agree that only material or substantial changes to the Project that affect or alter any provision of this Agreement or are inconsistent with the LIP Application shall require modification of this Agreement. The Parties agree that the Town Administrator shall have the ability to approve proposed changes to the Project, for the purposes of this Agreement, which he finds are not material or substantial. Should the Town Administrator deem the changes to be material or substantial, the Developer will have 30 days to seek the approval from the Select Board on such changes.

If DHCD proposes any material or substantial changes to this Project which affect or alter any provision of this Agreement, the Developer shall present such change to the Town Administrator Building Commissioner and the Community Development Director. The Town Administrator shall assess consistency with the original LIP application and make a determination if the Developer needs to seek the approval of the Select Board, and/or if the Parties shall negotiate any amendments to this Agreement.

III. PARTIES' RIGHT TO CANCELLATION

- 1. If the comprehensive permit issued for the Project: (a) increases the number of units or bedrooms other than as agreed to above; (b) decreases the number of Affordable Units agreed to above; or (c) substantially changes the location and/or size and height of the

buildings as shown on the Plans presented to the Select Board by Developer and filed with the LIP Application, the Select Board may, within thirty days of issuance of the comprehensive permit, give written notice of such inconsistency to Developer, and if Developer fails to initiate and diligently pursue a conforming amendment to the comprehensive permit, the Select Board may withdraw its support of the LIP Application and the Project by providing written notice of the same to Developer and DHCD. However, if the Developer initiates and diligently pursues a conforming amendment to the comprehensive permit per the request of the Select Board and the Zoning Board of Appeals does not grant the comprehensive permit amendment, then the comprehensive permit as originally approved is deemed to be valid and the Select Board may not withdraw its support of the LIP Application and the Project.

2. If the Property is not conveyed to the Developer or an affiliated entity controlled by the principals of KIG/Silverstrand Walpole LLC, this Agreement is deemed null and void.

IV. MISCELLANEOUS

1. Any breach of this Agreement shall be enforceable by the Parties.
2. Any amendment to this Agreement shall occur only pursuant to a written amendment that is duly authorized by the Parties and then duly executed by the Parties.
3. The Parties acknowledge they had advice of counsel before executing the Agreement.
4. Notice of this Agreement may be recorded by either party when or after the application for the comprehensive permit is submitted, but a discharge shall be provided if the Agreement is cancelled as provided for hereunder; otherwise this Agreement shall bind all of Developer's successors in interest including any transferee pursuant to 760 CMR 56.05(12)(b).
5. This Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts and Developer and its successors in interest agree to submit to the jurisdiction of any appropriate Massachusetts court for the adjudication of any dispute arising out of this Agreement.
6. This Agreement may be executed in any number of counterparts, which together shall constitute one instrument. An electronic signature on this Agreement shall have the same effect as an original.
7. All notices and other communications required or permitted to be given under or by reason of this Agreement shall be in writing and may be delivered by electronic mail, facsimile, US mail or overnight mail. Notices, demands, and communications will, unless another address is specified in writing, be sent to the persons and at the addresses indicated below:

For the Select Board: KP Law, P.C.

101 Arch Street
Boston, MA 02110

With a copy to the Town Administrator and Select Board Chair:

Town Administrator
135 School Street
Walpole MA 02081

To Developer: KIG/Silverstrand Walpole LLC

C/O Justin Krebs
257 Hillside Avenue
Needham, MA. 02494

With a copy to: John Balboni

Nelson Mullins
One Financial Center, Suite 3500
Boston, MA 02111

Jason A. Pithie, Esq.
Pithie & Associates, P.C.
158 Pleasant Street
South Weymouth, MA 02190

IN WITNESS, the parties hereunto set their hands and fixed their seals as of November 9, 2022.

By: Walpole Select Board*

[Signature]
James O'Neil, Chair

[Signature]
Glenn Maffei, Vice Chair

[Signature]
Allyson Hamilton, Clerk

[Signature]
Mark Gallivan, Member

[Signature]
Benjamin Barrett, Member

*Pursuant to a vote taken by the Select Board on November 8, 2022.

COMMONWEALTH OF MASSACHUSETTS

Norfolk, SS. 9th

On this 9 day of November, 2022, before me, the undersigned Notary Public, personally appeared All members of the Walpole Select Board, as aforesaid, who proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose on behalf of the Town of Walpole.

[Signature]
(Official Signature and Seal of Notary)
Comm Expires July 5, 2024

Developer
KIG/Silverstrand Walpole LLC

By: [Signature]
Manager

COMMONWEALTH OF MASSACHUSETTS South Carolina
SS. Berkeley County

On this 10th day of November, 2022, before me, the undersigned Notary Public, personally appeared Justin D. Krebs, as Manager of KIG/Silverstrand Walpole LLC, LLC who proved to me through satisfactory evidence of identification, which was SC Drivers License, to be the person whose name is signed above, and acknowledged s/he signed it voluntarily for its stated purpose on behalf of KIG/Silverstrand Walpole LLC

(Official Signature and Seal of Notary)

My Commission
Expires: 11/04/2026

[Signature]
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