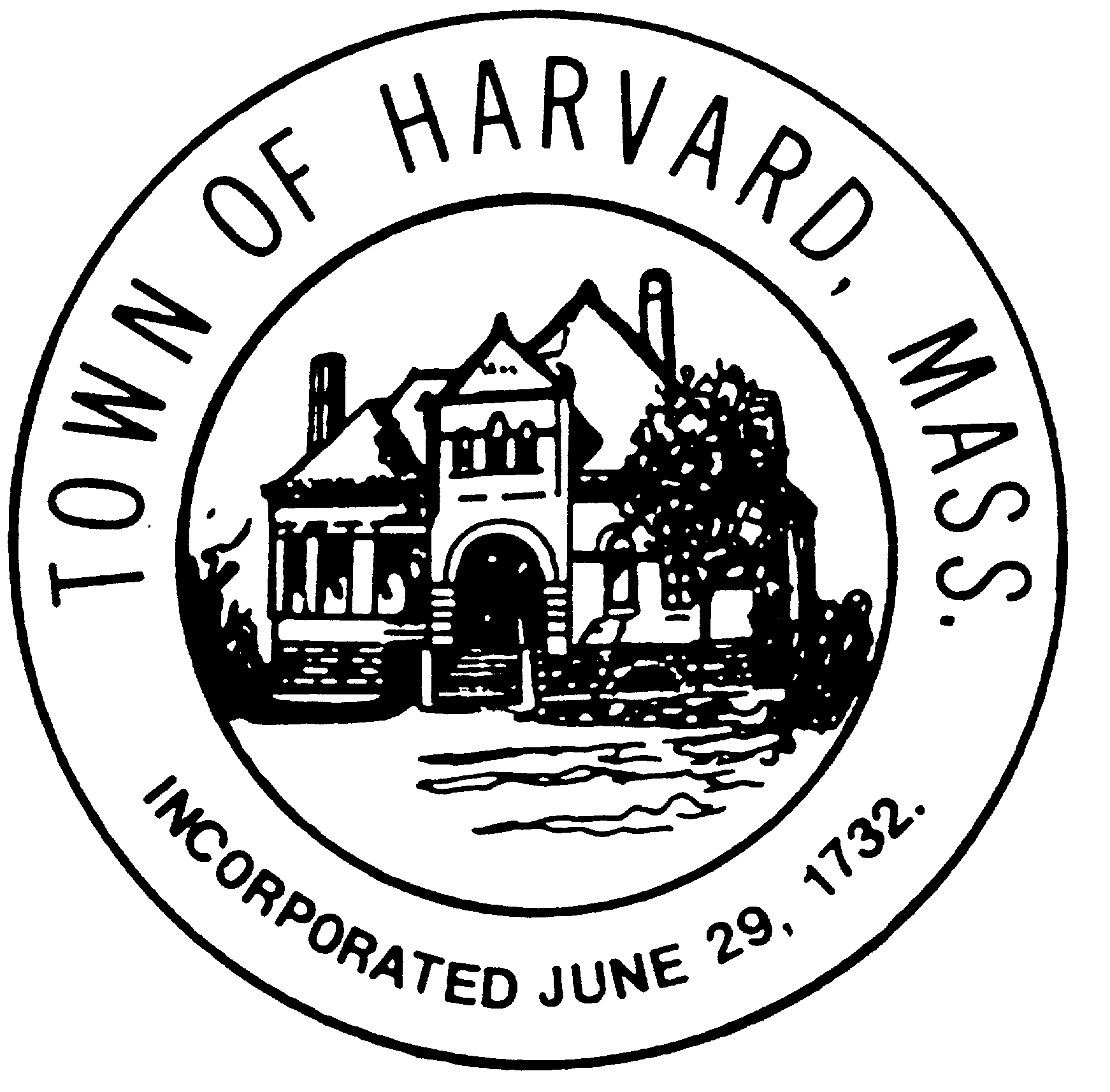
**TOWN OF HARVARD**

**REQUEST FOR PROPOSALS**

**SALE OF TOWN-OWNED LAND IN HARVARD CENTER**

**FOR SENIOR HOUSING**



**RFP Issued: August 23, 2017**

**Responses Due: September 25, 2017**

**Board of Selectmen**

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**TOWN OF HARVARD**

**BOARD OF SELECTMEN**

**REQUEST FOR PROPOSALS (RFP)**

**SALE OF LAND IN HARVARD CENTER**

# A. Introduction

## 1. Request for Proposals

The Harvard Board of Selectmen (“Selectmen”) is seeking proposals pursuant to Massachusetts General Laws Chapter 30B for the disposition by sale of 3.17 acres of Town-owned real property located in Harvard Center, Harvard, Massachusetts (the “Property”).

This RFP specifies the process for disposition. The purpose of this RFP is to enable the Selectmen to select a qualified purchaser who will acquire and develop the Property in accordance with this RFP and its Exhibits.

Copies of the RFP may be obtained in person from the Procurement Office, 13 Ayer Road, Harvard, Massachusetts 01451, Monday through Thursday, during the hours of 8:00 AM and 4:30 PM, by calling the Procurement Officer, Marie Sobalvarro, at (978) 456-4100 x330, or via email to [msobalvarro@harvard.ma.us](mailto:msobalvarro@harvard.ma.us).

## 2. Background

The intent of this RFP is to select a successful Proposer who will build a senior housing development on the Property. Harvard’s Master Plan and Housing Production Plan have identified a significant housing need for small, moderately-priced homes for the Town’s seniors. Many seniors raised families in large single family homes and now wish to down-size into smaller units with minimum maintenance responsibilities. There are few such units available in Harvard today, and the intent of this RFP is to help meet this need.

The Town identified undeveloped property behind the Hildreth House (aka the Harvard Senior Center) and Fire Station and determined the location would be a suitable site for a small senior housing development. The area is in close proximity to the Senior Center and the many municipal and other institutional uses in the Town Center. The Planning Board drafted a zoning overlay district bylaw to allow a senior housing development there, and Town Meeting approved the amendment in October, 2016. Senior housing developments are permitted by right in the district with site plan approval by the Planning Board. The text of the bylaw and map are provided in Exhibit 12. The overlay district bylaw does not contain a requirement to provide affordable housing as that term is used in the context of MGL c. 40B.

The Selectmen created an ad hoc task force to facilitate development of the Property. The goal of the H@HHC was to prepare a preferred development scheme to provide prospective Proposers with an accurate depiction of site conditions and layout of the roadway, utilities, and building locations. To help with this task, the Town hired the engineering firm of TTI Environmental Inc. TTI conducted a topographic survey of the site, identified subsurface conditions via soil logs, and prepared several development schemes for review by the H@HHC, which culminated in the selection of the preferred layout. These plans are contained in Exhibit 13.

The Plan was presented to the Planning Board for preliminary site plan approval, and at its meeting of July 10, 2017, the Board granted preliminary approval of the plan. Proposers should base their proposals upon these approved plans, but may make modifications as they deem necessary. Prior to commencing construction, the successful Proposer shall submit a final site plan to the Planning Board for approval.

## 3. RFP Schedule

The anticipated RFP Schedule is as follows:

|  |  |  |
| --- | --- | --- |
| **Date** | **Time** | **Milestone** |
| Wednesday, Aug. 23 |  | Publication in Central Register of Notice of RFP Availability |
| Thursday, Aug. 24 |  | Submit “Entry Only” listing with MLS |
| Friday, Sept. 1 and 8 |  | Notice of RFP appears in Harvard Press |
| Thursday, Sept. 7 | 10:00 AM | Site Walk for Prospective Proposers, followed by a Pre-Proposal Conference with the H@HHC |
| Thursday, Sept. 14 | 3:00 PM | Deadline for Written Questions |
| Monday, Sept. 25 | 2:00 PM | Deadline to Submit Proposals and Opening of Proposals |
| Tuesday, Oct. 17 |  | Selectmen vote to designate preferred developer, subject to Town Meeting vote in November to declare the property surplus |
| End of Nov. |  | Notice of Award by Selectmen |

## 4. Site Visit and Pre-Proposal Conference

Interested RFP Respondents are strongly encouraged to tour the site. . Participants in an on-site visit must sign a release in the form attached as Exhibit 1. The H@HHC will hold a non-mandatory site walk and pre-proposal conference on Thursday, September 7th at 10:00 AM. Prospective Proposers are encouraged to attend.

## 5. Written Questions Concerning RFP

All inquiries and requests for interpretation concerning this RFP must be submitted by email to Marie Sobalvarro at [msobalvarro@harvard.ma.us](mailto:msobalvarro@harvard.ma.us) with a subject line of “RFP – Sale of Town-Owned Land, Harvard, MA - RFP Questions”: The deadline for submitting questions is September 14th at 3:00 PM.

## 6. Addenda to RFP

If the Procurement Officer responds to any questions submitted pursuant to Section A.5 or to amend the RFP in response thereto, she will do so in the form of an Addendum to the RFP.Addenda will be sent by e-mail to all persons on record as having received the RFP and provided an email address. RFP holders may request to be included on the email distribution list for any Addenda by emailing [msobalvarro@harvard.ma.us](mailto:msobalvarro@harvard.ma.us) using the subject line of “RFP - Sale of Town-Owned Land in Harvard, MA – Addenda Request”. Notwithstanding any such request to be included on the email distribution list, it is the RFP Respondent’s responsibility to ensure that it has obtained all Addenda issued prior to the submission deadline.

## 7. Due Diligence by RFP Respondents

This RFP anticipates that prospective RFP Respondents will perform all due diligence activities involving the review of publicly available information concerning the Property prior to submitting an RFP Response. In addition, the Procurement Officer will promptly respond to any public records requests by prospective RFP Respondents for additional public documents, subject to the requestor’s commitment to pay the related search and copying costs in accordance with applicable public records regulations.

After receiving the Notice of Award, the Successful RFP Respondent may perform on-site environmental, engineering and similar on-site investigations and testing (“Due Diligence Investigations”), subject to the Successful RFP Respondent’s execution of a Right of Entry and License Agreement in the form attached as Exhibit 11. Based on the Due Diligence Investigations, the successful RFP Respondent may withdraw its bid, if and only if the Due Diligence Investigations reveal any significant and material conditions not disclosed in the Property Information made available by the Selectmen for review by RFP Respondents prior to the deadline for submission of RFP Responses.

## 8. Submission Process and Submission Deadline

Sealed proposals will be submitted and date and time stamped by the Town Clerk and received by the Procurement Officer at the address below until 2:00 PM on Monday, September 25, 2017.

Marie Sobalvarro

Procurement Officer

Harvard Town Hall

13 Ayer Road

Harvard, MA 01451

RFP Responses submitted after the deadline for submission, regardless of the cause of the delay, will not be accepted. It is the responsibility of each RFP Respondent to ensure the receipt of its RFP Response before the specified deadline.

Each RFP Respondent must submit one copy with original signatures and nine (9) photo copies of its Proposal, including the Price Proposal Form (Exhibit 2), in a sealed package plainly marked on the outside “RFP – Proposal for Sale of Land in Harvard Center.”

RFP Respondents may correct, modify or withdraw proposals, in writing only, prior to the RFP submission deadline. Corrections, modifications and withdrawals must be in a sealed envelope when submitted. The envelope must be plainly marked on the outside as appropriate: “[Correction/Modification/Withdrawal] to RFP – Proposal for Sale of Land in Harvard Center, MA." One original and nine (9) copies of the correction must be provided.

All proposals must remain in effect for a period of one hundred eighty (180) calendar days from the deadline for submission, or until the disposition has occurred, or this RFP is cancelled, whichever occurs first. RFP Respondents must complete all required forms and must include all required documents.

## 9. Disclaimers and Caveats

Each prospective RFP Respondent should consult with qualified professionals, review all information, data and documents provided or referenced in this RFP and any other information, data and documents considered relevant by the RFP Respondent, and conduct its own due diligence investigations to determine for itself the condition and suitability of the Property for the Project.

The Selectmen have attempted in this RFP to be accurate but are not responsible for any errors herein.

All proposals and inter-agency or intra-agency communications made in connection with an evaluation process for reviewing proposals shall be subject to the Massachusetts public records law which, in M.G.L. c. 4, § 7(26)(h), exempts from the definition of public records “proposals and bids to enter into any contract or agreement until the time for the opening of bids in the case of proposals or bids to be opened publicly, and until the time for the receipt of bids or proposals has expired in all other cases; and inter-agency or intra-agency communications made in connection with an evaluation process for reviewing bids or proposals, prior to a decision to enter into negotiations with or to award a contract to, a particular person.”

The award of the contract for the sale of the Property is subject to the provisions of MGL c. 30B, §16.

# B. The Property Subject to the RFP

## 1. Property Information

The Selectmen and H@HHC have assembled background information concerning the Property from a variety of sources. The Town makes no representation or warranty, express or implied, as to the accuracy or completeness of the information provided or referenced in this RFP, in its Exhibits, in any Addenda hereto, on the Town of Harvard’s website, in marketing information concerning the Property, or in public records available from the Selectmen (collectively the “Property Information”). The Town assumes no liability for any inaccuracy or incompleteness of the Property Information. Each RFP Respondent assumes all risk in connection with the use of the Property Information. By responding to the RFP, the RFP Respondent on behalf of itself and its parents, subsidiaries, affiliates, officers, directors, members, managers, predecessors, successors, contractors, subcontractors, assigns, agents, and representatives agrees to release the Selectmen and its employees, agents, and representatives from any liability whatsoever arising out of or in connection with the use of the Property Information by the RFP Respondent.

## 2. Property Description

Map 1 shows the locus of the Property in the Town Center. The Property that is the subject of this RFP consists of 3.17 ± acres of land with the improvements thereon situated in Harvard Center, MA.

The Property available for disposition is shown on a the “Roadway Layout and Property Line Plan” prepared by TTI Environmental, Inc., dated July 10, 2017, attached as Exhibit 13. The complete preliminary site plan accompanies this RFP as a separate attachment.

## 3. Road Access

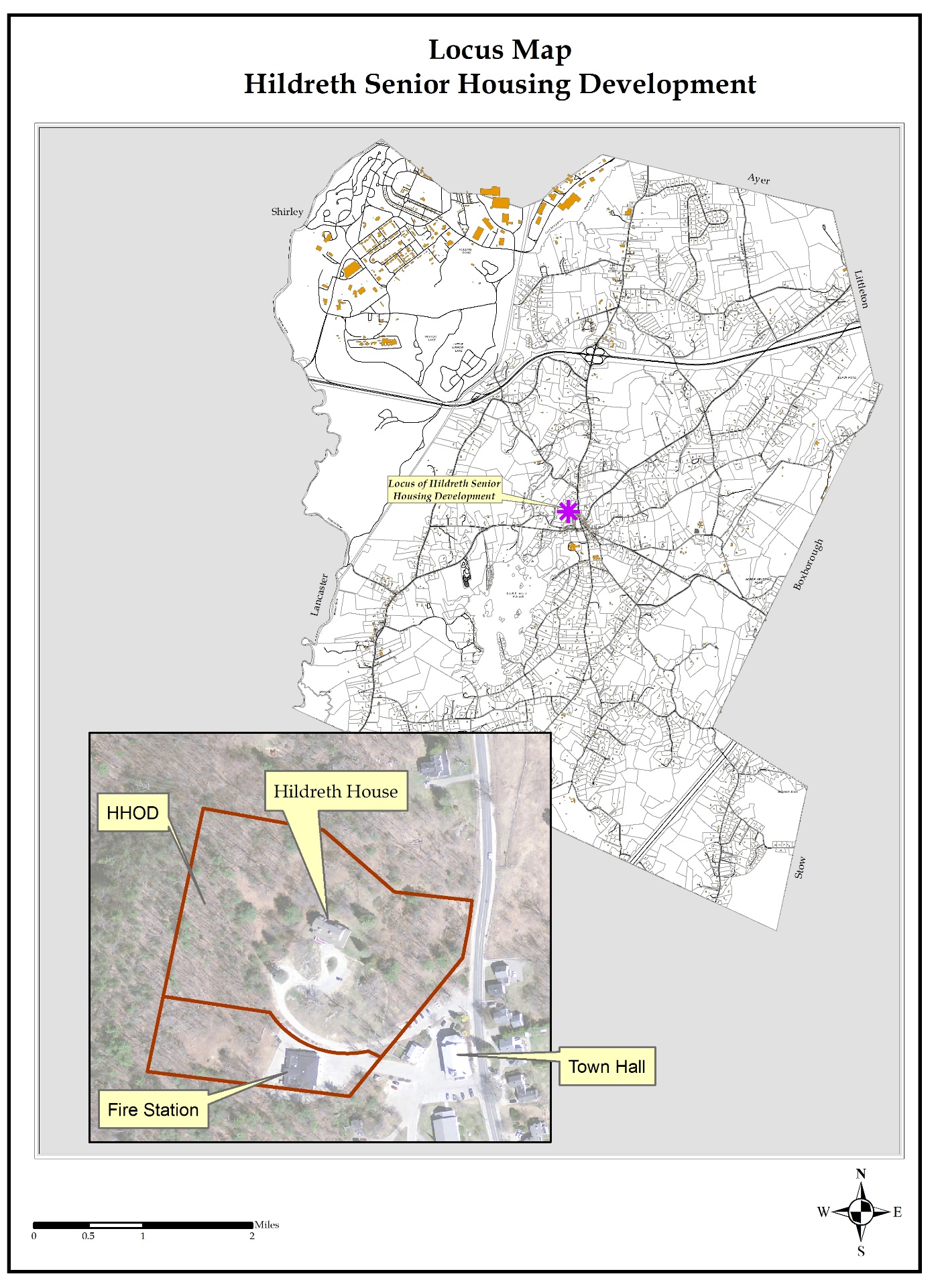
The Property has access off a municipal driveway that serves the Town’s Council on Aging facility (the Hildreth House) at 15 Elm Street.

## 4. Existing Buildings and Improvements

The property presently contains a movable tent behind the Fire Station that is used for storage by the Harvard Fire Department. The Town will move and re-assemble the tent a short distance to the location shown on the site plan.

## 5. Zoning

The Property is located in the AR (Agricultural Residential) zoning district and within the overlay of the Hildreth Housing Overlay District (HHOD). Exhibit 12 contains the text of the bylaw and map of the district. The Property proposed for disposition is located entirely within the overlay of the HHOD. Development schemes proposed by Respondents shall conform to the regulations of the HHOD.



### Map 1 Locus Map

## 6. Taxes and Assessment

As Town-owned land the Property is currently exempt from real property taxes. The Property is the result of combining portions of two Town-owned lots (the Hildreth House and Fire Station lots) and has not been assessed for tax purposes.

For property tax valuation immediately upon conveyance, the land value will be set at the purchase price of the Property, and taxes will be calculated and paid per Exhibit 6, Commitment for Payment in Lieu of Property Taxes as required by state law for previously municipally-owned properties.

Thereafter, the Property will be assessed based on the land value plus the value of any improvements as of June 30 of any given year for the following fiscal year, until such time as the Property becomes operational in full or in part. The individual homes may also be subject to partial assessments as of June 30.

## 7. Utilities - Natural Gas and Electricity

National Grid is the Town’s electricity provider. The successful RFP Respondent shall be responsible for obtaining and paying for all utility connections concerning the Property.

Natural gas is available in the public ways abutting the Property. National Grid is the Town’s gas provider. The Hildreth House heats with natural gas.

## 8. Water and Sewer Infrastructure

Public water and sewer are available to serve the property. The Hildreth House and Fire Station are both connected to the municipal water and sewer systems. Approximate locations of water and sewer mains are shown on the site plans in Exhibit 13. The systems are managed by the Water and Sewer Commissions and operated by the Harvard DPW. It is the Town’s intent to approve connections to both systems upon submission and approval of the appropriate plans and fees. The Water and Sewer Commissions has allocated 3,000 gpd of design sewage flow into the Town’s treatment facility. Respondents shall submit calculations of sewage flow for their proposed project based upon Title 5 requirements in 310 CMR 15.203, Sewage Flow Design Criteria, which shall not exceed 3,000 gpd.

## 9. Wetlands and Ledge

The preliminary site plan attached as Exhibit 13 indicates there are no wetlands on the Property as of the date of the plan. Ledge outcrops do exist on the property and portions of the site have shallow depth to bedrock. Refer to the soil logs on Sheet 3 of the Site Plan for information on the depth to bedrock throughout the Property.

## 10. Respondent’s Responsibility for Due Diligence

The RFP Respondent should undertake an independent review and analysis concerning the Property, its history and use, its physical conditions, environmental conditions, applicable zoning, and all other development and legal considerations pertaining to the Property and the proposed use. Respondents shall submit with their Proposal (a) a proposed Scope of Work for any on-site environmental and engineering investigations which the Respondent proposes to conduct on or beneath the Property as part of the Respondent’s Due Diligence Investigations to be completed during the due diligence period provided for in the Land Disposition Agreement (“LDA”).

The Town makes no representation or warranty with respect to the Property, including without limitation, the value, quality or character of the Property or its fitness or suitability for any particular use and/or the physical and environmental condition of the Property.

The successful RFP Respondent shall accept the Property on a strictly “as is” basis, with all faults, and without any warranty or obligation whatsoever on the part of the Town.

## 11. Closing

The Closing will occur within approximately one and one-half months of the execution of a Land Disposition Agreement.

# C. Evaluation of Proposals

The Selectmen will review all proposals received by the filing deadline in accordance with the Minimum Threshold and Comparative Evaluation Criteria in Section F and the following procedure.

The Selectmen reserve the right to accept or reject any or all proposals if the Board determines that it is in the Town’s best interests to do so. The Selectmen reserve the right to waive any informalities in a proposal and to accept the proposal for processing when deemed to be in the best interest of the Town. The Board reserves the right to make an award as deemed to be in the best interests of the Town.

The Board reserves the right to seek additional information from any RFP Respondent after the opening of Proposals but before issuing a Notice of Award or entering into a Land Disposition Agreement. The Selectmen reserve the right to reject any proposal if it deems it to be in the best interests of the Town, and to execute the Land Disposition Agreement to the next qualified respondent.

# D. Land Disposition Agreement

The successful RFP Proposer will have four (4) weeks from the receipt of a Notice of Award from the Selectmen to execute the Land Disposition Agreement substantially in the form set forth in Exhibit 9. The purpose of the LDA is to insure that all terms agreed upon by the Town and the successful Proposer are followed throughout the development period. The successful Proposer shall also execute the Escrow Agreement (Exhibit 10) and the Right of Entry and License Agreement (Exhibit 11).

If an RFP Respondent takes exception to any provision(s) of the proposed LDA (Exhibit 9), Escrow Agreement (Exhibit 10) or Right of Entry and License Agreement (Exhibit 11), the Respondent must identify with specificity in its Proposal the provision to which it takes exception, the basis for the exception, and the Respondent’s proposed alternative language or provision to address that exception. To do so, the Respondent must include with its Proposal a redlined copy of the proposed LDA and Exhibits 10 and 11 indicating the changes requested. Any exceptions or changes not so identified in the Proposal will be deemed waived.

The Board of Selectmen reserves the right to accept, reject, or negotiate proposed amendments to resolve any proposed exceptions or changes to the LDA, Escrow Agreement and Right of Entry and License Agreement at any time before the execution thereof.

If the successful Proposer fails to execute the LDA and Exhibits 10 and 11within three (3) weeks of Notice of Award (or within any extension to which the Selectmen may agree in writing), the Selectmen may cancel the Notice of Award and select another proposal. If the successful Proposer fails to close on the acquisition of the Property pursuant to the LDA, the Selectmen may terminate the LDA and its exhibits pursuant to their terms, cancel the Notice of Award, retain the Deposit under the LDA, and select another proposal.

# E. Submission Requirements

Provide ten copies (one original and nine photo-copies) of the Proposal. Identify the name of the Proposer on the outside envelope and labeled as “Proposal for the Hildreth Senior Housing Project”. The proposal must be complete and must conform to all submission requirements. Failure to provide any of the required documents may result in a determination that the Proposal is non-responsive. All proposals must include the following materials:

1. Cover letter outlining the capabilities of the development team and the key elements of the proposed housing plan.
2. A narrative of the housing concept proposed, including:
   1. square footage allocation for each unit, building stories and heights;
   2. description of building types and proposed exterior materials; respondents may include graphic illustration of the proposed building designs;
   3. universal design features proposed for senior citizens;
   4. foundation type;
   5. any proposed use(s) of common land.
3. Respondents must indicate their acceptance of the Preliminary Site Plan approved by the Town of Harvard Planning Board along with any non-material changes proposed.
4. Sewage flow calculations into the Town sewer system based upon Title 5 requirements in 310 CMR 15.203, Sewage Flow Design Criteria.
5. A Phasing Plan that describes the timing and sequence for construction of the residences. Include a Project Schedule with milestone dates for completing permitting and construction tasks from the date of award.
6. A Marketing Plan that contains the following information:
   1. The manner of advertising the availability of units, e.g. company web site, newspapers, housing organizations, MLS, printed materials, special events, etc.;
   2. A description of the application process;
   3. If demand for the units exceeds the supply. the criteria for selecting applicants and preference system, if any;
   4. The system for managing reservations.
7. Anticipated sale prices by type of unit with supporting documentation.
8. A description of the respondent team’s qualifications and experience, with:
   1. a designation of the project leader and contact information;
   2. information about the team’s experience in the real estate development business;
   3. examples of similar projects recently completed or under development; include photos or illustrations that convey a sense of the projects’ design; provide sale/rental price information;
   4. resumes of the key personnel indicating the role and experience of each person.
9. Information regarding the financial capability of the team, including available working capital, net worth, access to financing sources, and previous bankruptcies or foreclosures;
10. List of client references with phone, email contact information, and dates associated with the work performed.
11. A Certified Check payable to the Town of Harvard in the amount of $10,000 to be (a) forfeited to the Town in the event the Respondent is awarded the sale but fails or refuses to execute the required LDA within the time set forth in the Notice of Award, or (b) applied to the required deposit under the LDA in the event the Respondent is awarded the sale and timely executes the required LDA, or (c) returned to the Respondent in the event the Selectmen reject all proposals or reject the Respondent’s Proposal.
12. Submission of required forms, including:

|  |  |
| --- | --- |
| Proposal Price Form (does not need to be in a separate envelope) | Exhibit 2 |
| Certificate of Non-Collusion | Exhibit 3 |
| Disclosure of Beneficial Interest Form | Exhibit 4 |
| Non-Delinquency Statement | Exhibit 5 |
| Commitment for payment in lieu of taxes calculated in accordance with M.G.L. c. 44, § 63A | Exhibit 6 |
| Certification as to Payment of Taxes | Exhibit 7 |
| Evidence of Authorization for the RFP Respondent’s signatory to the RFP (e.g. Corporate Resolution or equivalent depending on form of entity) | Exhibit 8 |
| List of Exceptions (if any) to LDA and Exhibits. | Exhibits 9, 10 and 11 |

Updated originals of Exhibits 3-8 shall be executed and delivered by the Successful RFP Respondent at Closing and as a pre-condition to Closing.

# F. Design Requirements

The H@HHC has established the following design requirements, which are intended to achieve the type of development that will best meet the needs of Harvard’s senior citizens for moderate-income housing.

1. Total living area for all 17 homes cannot exceed 25,500 square feet for 17 units (an average of 1,500 sq. ft. per unit).
2. While there is no local preference requirement, units should be relatively affordable to Harvard seniors who wish to downsize from older single family homes.
3. Units can have no more than a one-car garage.
4. Within the HHOD bylaw, 25% of the units (4 units) may have three bedrooms; however, based on Title 5 calculations for sewage generation for senior housing, the project may not exceed a sewage flow of 3,000 gallons per day.
5. There can be a mix of single story and two-story buildings, but all dwellings must have a first floor master bedroom and bath.
6. Units should have “universal design” features to enable senior citizens to live independently.
7. The plan should provide a pedestrian path to the Hildreth House for ambulatory seniors.
8. It is the Town’s preference to have the property developed expeditiously, with a construction start by May 1, 2018. While market fluctuations could cause delays, Proposers should indicate in their marketing plan a proposed timeline for developing and selling the dwelling units.
9. The Town requires that at least one finished unit available for sale exist on the site during the construction period. When the one unit is under contract, the developer shall begin construction of at least one additional unit.
10. Each unit shall have a fire suppression sprinkler system.

# G. Rule of Award

The Town will select the responsive and responsible Proposer submitting the most advantageous proposal taking into consideration the firm’s experience in implementing senior housing developments and rankings of the comparative criteria, as well as the proposal price.

# H. Evaluation Criteria

The Selectmen will assign an Evaluation Committee to evaluate the proposals. After review of the technical proposals, the Evaluation Committee, if needed, will schedule interviews with those Proposers who are determined to be responsive and responsible based on the Minimum Threshold Criteria and who have received the highest composite rankings based on the Comparative Evaluation Criteria.

**1. Minimum Threshold Criteria**

To be responsive to this RFP, the Respondent must submit a Proposal meeting the following minimum threshold criteria:

a. The Proposal must be complete and conform to all submission requirements set forth in this RFP and any Addendum to this RFP issued before the submission deadline.

b. The Proposal must be timely submitted.

To be responsible under this RFP, the Respondent:

a. Must demonstrate through the information and documents submitted with its RFP Response that the RFP Respondent has the capability, integrity and reliability to acquire the Property under the LDA.

b. Must have a minimum purchase price for the property.

**2. Comparative Evaluation Criteria**

Each of the following criteria pertains to requirements listed in this RFP. These criteria will be applied to the Technical Proposals from the Proposers deemed to be responsive and responsible. Each member of the Evaluation Committee will assign a rating to each criterion of Highly Advantageous, Advantageous, Not Advantageous, or Unacceptable. The rating each criterion receives will be used to compile a composite rating for each Proposer. An “Unacceptable” rating in any one of the criteria will eliminate the proposal from further consideration.

|  |  |
| --- | --- |
| 1. Project Experience in permitting and constructing similar senior housing developments | |
| Highly Advantageous: | The Proposer has permitted and constructed three or more similar projects. |
| Advantageous: | The Proposer has permitted and constructed two similar projects. |
| Not Advantageous: | The Proposer has permitted or constructed one similar project. |
| Unacceptable: | The Proposer has not completed a similar project. |
| 1. Readiness to Proceed | |
| Highly Advantageous: | The Proposer is able to purchase the land upon award of the RFP and demonstrates a willingness and ability to begin the project within three months of the award. |
| Advantageous: | The Proposer is able to purchase the land upon award of the RFP and is able to begin the project within three to six months of the award. |
| Not Advantageous: | The Proposer is unable to purchase the land upon award of the RFP and is not able to begin the project for more than six months of the award. |
| Unacceptable: | The Proposer is unable to purchase the land upon award of the RFP and is not able to begin the project within one year of the award. |

|  |  |
| --- | --- |
| 1. Conformance to the design objectives of the Town as shown on the proposed site plan and presented in the Design Preferences in Section F | |
| Highly Advantageous: | The proposal conforms to the design preferences of the Town and any deviations are minor in nature or reasonably related to the design concept for the project. |
| Advantageous: | The proposal conforms to most of the design preferences of the Town but some deviations are inconsistent with the overall intent of the project. |
| Not Advantageous: | The proposal contains many deviations from the Town’s preferred design for the project. |
| Unacceptable: | The proposal lacks sufficient detail to determine if the project conforms to the site plan and design preferences of the Town. |
| 1. Quality of References | |
| Highly Advantageous: | All references indicate a very favorable performance record on similar projects. |
| Advantageous: | One or more references indicates a satisfactory performance record on similar projects. |
| Not Advantageous: | More than one reference indicates an unsatisfactory performance record on one or more similar projects. |
| Unacceptable: | One or more references indicate a negative performance record on one or more similar projects. |
| 1. Financial Capacity | |
| Highly Advantageous: | The Proposer demonstrates exceptional financial capacity to undertake the project proven by prior experience financing developments and shows an ability to secure financing as evidenced by letter(s) from prospective lender(s) and supporting material. |
| Advantageous: | The Proposer provides evidence of adequate financial capacity to undertake the project. |
| Not Advantageous: | The Proposer provides evidence of limited financial capacity to undertake the project or the ability to secure sources of funding is questionable. |
| Unacceptable: | The Proposer fails to prove that he/she has the financial capacity to undertake the project. |

# I. Exhibits

## Exhibit 1 Form of Release for Site Visit

**RELEASE OF LIABILITY**

The undersigned visitor (“Visitor”) voluntarily provides this Release of Liability (“Release”) to the Town of Harvard (the “Town”) on this \_\_\_ day of \_\_\_\_\_\_\_\_\_, 2017.

WHEREAS, The Town has agreed to provide Visitor with access to the Town property located at Ayer Road and Elm Street in Harvard, Massachusetts (the “Property”) for the purpose of Visitor inspecting the Selectmen Property in connection with a potential response to Selectmen Request for Proposals – Sale of Town-Owned Land in Harvard Center for Senior Housing.

NOW THEREFORE, in consideration for the Selectmen providing the Visitor with such access, Visitor states and agrees as follows:

1. Visitor acknowledges that physically accessing the Selectmen Property involves the risk of bodily injury to or damage to personal property of the Visitor.

2. Visitor agrees that Visitor has assumed all risk of such access and that the Visitor will not sue the Town or otherwise make any claim against the Town on account of any bodily injury, property damage or otherwise resulting from that access.

3. Visitor on behalf of himself or herself and on behalf of his or her heirs, executors, administrators, trustees, beneficiaries, employers, employees, agents, successors and assigns hereby releases the Town and its, employees, agents, attorneys, insurers, successors and assigns from any claims, damages, injuries, causes of action arising out of or relating to such access to the Property.

4. Visitor agrees to be solely responsible for his or her own safety and to take every precaution to provide for his or her own safety and well-being while accessing the Property. Visitor acknowledges that Visitor is not required to access the Property.

I have read this Release and sign it voluntarily and of my own free will.

VISITOR:

Name:

Title:

, 2017

Date

## Exhibit 2 Proposal Price Form

**Disposition of Real Estate – Land in Harvard, MA**

TOWN OF HARVARD BOARD OF SELECTMEN

13 Ayer Road

Harvard, Massachusetts 01451

**PURCHASE PRICE**

The RFP Respondent (as Buyer) agrees to pay to the Selectmen of Harvard (as Seller) the following purchase price for the purchase of the Property identified in the RFP (“Purchase Price”):

$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**On behalf of the Person or Business Submitting the Proposal (“the “RFP Respondent”), having been duly authorized, I represent that:**

The name and address of the RFP Respondent(s) is/are:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The name, address, email address, and business phone of the RFP Respondent’s principal contact person for all matters concerning this RFP are:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The RFP Respondent acknowledges receipt of the following Addenda to the RFP:

Addendum \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Addendum \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The RFP Respondent constitutes the following type of entity with the following principals (use separate sheet if necessary):

If a corporation, the State of Incorporation and the officers and directors are:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

If a limited liability company, the state of organization and the manager and members are:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

If a partnership or a limited partnership, the state of organization and the general partners are:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

If a trust, name of trust, the state of organization, the trustees and the Registry book and page for the recorded trust instrument are:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

If another form of person or entity, specify the type of entity, state of organization and its principals:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The following Selectmen and employees have a financial interest in the RFP Respondent or are related (by blood or marriage) to any of the partners, officers, directors, trustees, managers or employees of the RFP Respondent:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**On behalf of the RFP Respondent, having been duly authorized, I represent and agree that:**

1. The RFP Respondent is one of the following (specify yes or no to each):

* A public agency (\_\_\_\_)
* A non-profit organization (\_\_\_\_)
* A limited dividend organization (\_\_\_\_)
* A private party that shall form a limited dividend organization for purposes of the acquisition and development of the Property (\_\_\_\_) or
* Other

2. Within three (3) weeks from receipt of the Notice of Award, or such further time as Selectmen may agree in writing, the RFP Respondent will execute the Land Disposition Agreement (Exhibit 9), Escrow Agreement (Exhibit 10) and Right of Entry and License Agreement (Exhibit 11), each in the form attached to the RFP with such amendments thereto as are reflected in the above Addenda (if any) to the RFP or as may otherwise be approved by the Selectmen in accordance with the procedures set forth in the RFP.

3. This Proposal will remain subject to acceptance by the Selectmen for 180 days after the date of submission of proposals or for such additional time as the Selectmen and the RFP Respondent may agree in writing.

4 The RFP Respondent has enclosed with its proposal a Certified Check payable to the Town of Harvard in the amount of $10,000. The RFP Respondent understands and agrees that this Certified Check shall be (a) deposited by the Selectmen to general revenues and the $10,000 amount shall be forfeited to the Selectmen by the RFP Respondent in the event the RFP Respondent receives the Notice of Award for the sale from the Selectmen but fails or refuses to execute the required Land Disposition Agreement and the other documents identified in Section 2 above within 30 days from receipt of the Notice of Award, or (b) deposited by the Selectmen and applied toward the required deposit under Section \_\_\_\_ of the Land Disposition Agreement in the event the RFP Respondent receives the Notice of Award for the Project from the Selectmen and timely executes the required Land Disposition Agreement and the other documents identified in Section \_\_\_ above, or (c) returned to the RFP Respondent in the event the Selectmen reject all proposals or reject the RFP Respondent’s Proposal.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name of Person Signing

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name of Business

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date

## Exhibit 3 Certificate of Non-Collusion

The undersigned certifies under penalties of perjury that the bid or proposal submitted relative to this project is in all respects bona fide, fair and made without collusion or fraud with any other person, joint venture, partnership, corporation or other business or legal entity.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name (Person signing Proposal)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Company)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Date)

## Exhibit 4 Disclosure of Beneficial Interest Form

***DISCLOSURE STATEMENT FOR TRANSACTION WITH A PUBLIC AGENCY CONCERNING REAL PROPERTY M.G.L. c. 7C, s. 38 (formerly M.G.L. c. 7,* s. 40J)**

*The undersigned* party to a real property transaction with a public agency hereby discloses and certifies, under pains and penalties of perjury, the following information as required by law:

1. (1) REAL PROPERTY:
2. (2) TYPE OF TRANSACTION, AGREEMENT, or DOCUMENT:
3. (3) PUBLIC AGENCY PARTICIPATING in TRANSACTION:
4. (4) DISCLOSING PARTY’S NAME AND TYPE OF ENTITY (IF NOT AN INDIVIDUAL):
5. (5) ROLE OF DISCLOSING PARTY (Check appropriate role):

|  |  |
| --- | --- |
| *\_\_\_\_\_\_\_\_\_ Lessor/Landlord* | *\_\_\_\_\_\_\_\_\_ Lessee/Tenant* |
| *\_\_\_\_\_\_\_\_\_ Seller/Grantor* | *\_\_\_\_\_\_\_\_\_ Buyer/Grantee* |
| \_\_\_\_\_\_\_\_\_ Other (Please describe): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | |

1. (6) The names and addresses of all persons and individuals who have or will have a direct or indirect beneficial interest in the real property excluding only 1) a stockholder of a corporation the stock of which is listed for sale to the general public with the securities and exchange commission, if such stockholder holds less than ten per cent of the outstanding stock entitled to vote at the annual meeting of such corporation or 2) an owner of a time share that has an interest in a leasehold condominium meeting all of the conditions specified in M.G.L. c. 7C, s. 38, are hereby disclosed as follows (attach additional pages if necessary):

NAME RESIDENCE

1. (7) None of the above- named persons is an employee of the Division of Capital Asset Management and Maintenance or an official elected to public office in the Commonwealth of Massachusetts, except as listed below (insert “none” if none):
2. (8) The individual signing this statement on behalf of the above-named party acknowledges that he/she has read the following provisions of Chapter 7C, Section 38 (formerly Chapter 7, Section 40J) of the General Laws of Massachusetts:

*No agreement to rent or to sell real property to or to rent or purchase real property from a public agency, and no renewal or extension of such agreement, shall be valid and no payment shall be made to the lessor or seller of such property unless a statement, signed, under the penalties of perjury, has been filed by the lessor, lessee, seller or purchaser, and in the case of a corporation by a duly authorized officer thereof giving the true names and addresses of all persons who have or will have a direct or indirect beneficial interest in said property with the commissioner of capital asset management and maintenance. The provisions of this section shall not apply to any stockholder of a corporation the stock of which is listed for sale to the general public with the Securities and Exchange Commission, if such stockholder holds less than ten per cent of the outstanding stock entitled to vote at the annual meeting of such corporation. In the case of an agreement to rent property from a public agency where the lessee’s interest is held by the organization of unit owners of a leasehold condominium created under chapter one hundred and eighty-three A, and time- shares are created in the leasehold condominium under chapter one hundred and eighty-three B, the provisions of this section shall not apply to an owner of a time-share in the leasehold condominium who (i) acquires the time-share on or after a bona fide arm’s length transfer of such time-share made after the rental agreement with the public agency is executed and (ii) who holds less than three percent of the votes entitled to vote at the annual meeting of such organization of unit owners. A disclosure statement shall also be made in writing, under penalty of perjury, during the term of a rental agreement in case of any change of interest in such property, as provided for above, within thirty days of such change.*

*Any official elected to public office in the Commonwealth, or any employee of the division of capital asset management and maintenance disclosing beneficial interest in real property pursuant to this section, shall identify his position as part of the disclosure statement. The commissioner shall notify the state ethics commission of such names, and shall make copies of any and all disclosure statements received available to the state ethics commission upon request. The commissioner shall keep a copy of each disclosure statement received available for public inspection during regular business hours.*

1. (9) This Disclosure Statement is hereby signed under penalties of perjury.

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

*PRINT NAME OF DISCLOSING PARTY (from section 4, above)*

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

*AUTHORIZED SIGNATURE of DISLCOSING PARTY DATE (MM/ DD/ YYYY)*

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

*PRINT NAME & TITLE of AUTHORIZED SIGNER*

## Exhibit 5 Non-Delinquency Statement Required by MGL c. 60, §77B

I/We, the undersigned, under the pains and penalties of perjury, state that neither I/we nor any person who would gain equity in the Property that is the subject of this RFP Response has ever been convicted of a crime involving the willful and malicious setting of a fire or of a crime involving the aiding, counseling or procuring of a willful and malicious setting of a fire, or of a crime involving the fraudulent filing of a claim for fire insurance; or is delinquent in the payment of real estate taxes to the Town of Harvard, or if delinquent, that a pending application for abatement of such tax, or a pending petition before the appellate tax board or the county commissioners has been filed in good faith.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name of Person Signing

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name of Business

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Federal Identification Number or Social Security Number

**Note: If there is to be more than one grantee of the deed for the Property, each grantee must file such statement, and no such deed shall be valid unless it contains a recitation that the board or officer granting the deed has received such statement. See M.G.L. c. 60, § 77B.**

## Exhibit 6 Commitment for Payment in Lieu of Taxes Calculated In Accordance with MGL c. 44, §63A

I/We, the undersigned, acknowledge that General Laws Chapter 44, Section 63A, provides as follows:

Whenever in any fiscal year a town, which term, as used in this section, shall include a city, shall sell any real estate, the board or officer executing the deed therefor in the name and behalf of the town shall, as a condition precedent to the power to deliver such deed, receive from the grantee as a payment in lieu of taxes allocable to the days ensuing in said fiscal year after the date of such deed, a sum which shall be equal to such portion of a pro forma tax computed as hereinafter provided as would be allocable to the days aforesaid if such pro forma tax were apportioned pro rata according to the number of days in such fiscal year; provided, however, that whenever the said real estate shall be sold between January second and June thirtieth of the fiscal year, the town shall also receive an additional amount equal to the entire pro forma tax computed as hereinafter provided and allocable as a payment in lieu of taxes for the next succeeding fiscal year. Such pro forma tax shall be computed by applying the town's tax rate for the fiscal year of the sale, or, if such rate is not known, the town's tax rate for the fiscal year next preceding that of the sale, to the sale price after crediting any exemption to which, if the deed had been executed and delivered on January first of such next preceding fiscal year, the grantee would have been entitled under section five of chapter fifty-nine. A recitation in the deed that there has been full compliance with the provisions of this section shall be conclusive evidence of such fact. Sums received under this section shall not be subject to section sixty-three of this chapter or to section forty-three of chapter sixty, but shall be credited as general funds of the town.

If awarded the contract for the disposition of the Property, I/we commit to make at the closing the required Payment in Lieu of Taxes calculated in accordance with General Laws Chapter 44, Section 63A.

Signature

Name of Person Signing

Title

## Exhibit 7 **Certification as to Payment of Taxes**

Pursuant to G.L. c.62C, § 49A, I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, hereby certify under the pains and penalties of perjury that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (RFP Respondent) has complied with all laws of the Commonwealth of Massachusetts relating to the payment of taxes and has filed all state tax returns and paid all State taxes required under law.

Date Signature of Authorized Representative of RFP Respondent

Federal ID Number of Contractor Title

## Exhibit 8 Evidence of Authorization/Corporate Resolution

(to be filed if Contractor is a Corporation)

I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, certify that I am the duly qualified Secretary of

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and I further certify

(Name of Corporation)

that a meeting of the Directors of said Corporation duly called and held on

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, at which all (or a quorum) of the Directors were present and

voting, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, holding the position of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

was duly authorized to execute on behalf of the Corporation the Proposal Form, Proposal Price Form, Land Disposition Agreement, and related Forms, Contracts, and Agreements pertaining to RFP – Sale of Land in Harvard, MA.

I further certify that the above authority is still in effect and has not changed or modified in any respect.

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Secretary of Corporation)

A True Copy:

Attest: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Notary Public)

My Commission Expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

## Exhibit 9 Form of Land Disposition Agreement for the Property

## Exhibit 10 Form of Escrow Agreement

**ESCROW AGREEMENT**

WHEREAS, the Town of Harvard Board of Selectmen (“Seller”), as seller, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Buyer”), as buyer, entered into that certain Land Disposition Agreement dated \_\_\_\_\_\_\_\_\_\_ \_\_\_\_, 2017 (the “Agreement”) for the real property commonly known as Land In Harvard Center, Massachusetts 01451 (the “Property”);

WHEREAS, prior entering into the Land Disposition Agreement, Buyer made an initial non-refundable deposit with Seller in the amount of Ten Thousand and 00/100 Dollars ($10,000.00) in connection with its response to that certain Request for Proposals for the disposition and development of the Property for senior housing purposes (the “Initial Deposit”); and

WHEREAS, the Agreement calls for the deposit of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ($\_\_\_\_\_\_) of the purchase price (the “Additional Deposit”) to be placed in escrow, together with said Initial Deposit hereinafter referred to as the “Escrow Sum”.

NOW THEREFORE, in exchange for the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree to escrow the Escrow Sum as follows:

1. Buyer, Seller and the Escrow Agent agree to comply with the terms of the Agreement and this Escrow Agreement related to the Escrow Sum for the purposes hereof and acknowledge and agree that the terms of the Agreement shall govern disbursement of the Escrow Sum, subject to the terms provided herein..

2. The Escrow Sum shall be retained by the Escrow Agent, and it shall be held in accordance with the terms set forth below:

a) In the event of a dispute relating to the Escrow Sum, the Escrow Agent shall retain all or any portion of the Escrow Sum pending the receipt of written instructions agreed to and signed by Seller and Buyer or receipt of a court order directing the distribution of the Escrow Sum after all appeals therefrom have been taken or appeals periods relating thereto have expired. In the alternative, the Escrow Agent may resign at any time by transferring the Escrow Sum to a successor escrow agent reasonably acceptable to Seller and Buyer, which successor agrees in writing to act as escrow agent.

b) Buyer and Seller jointly and severally agree to indemnify and hold the Escrow Agent harmless for any and all costs and expenses, including reasonable attorney’s fees, incurred in connection with any dispute concerning the Escrow Sum.

c) The duties and responsibilities of the Escrow Agent shall be limited to those expressly set forth herein and in the Agreement, and the Escrow Agent shall not be subject to, nor obligated to recognize, any other agreement between, or direction or instructions of, any or all of the parties hereto.

d) The Escrow Agent, in its sole discretion, may institute legal proceedings of any kind, including, but not limited to, a legal proceeding in any court of competent jurisdiction, to determine the obligations of the parties hereunder and to deposit the Escrow Sum in such court; and upon such deposit and institution of legal proceedings, the duties of the Escrow Agent shall be fully terminated and the Escrow Agent shall be fully discharged from all such duties. The Escrow Agent shall not be required to institute or defend any administrative, arbitral, judicial or other action or legal process involving any matter referred to herein which in any manner affects it or its duties or liabilities hereunder unless and until it has received full indemnity as it shall in its sole discretion require against any and all claims, liabilities, judgments, attorneys' fees and other costs and expenses of any and every kind in relation thereto.

e) In taking any action hereunder, the Escrow Agent shall be protected and may rely upon any notice, paper or document or signature believed by it to be genuine or upon any evidence deemed by it to be sufficient. In no event shall the Escrow Agent be liable for any act performed or omitted to be performed by it hereunder in the absence of gross negligence or willful misconduct, and in no event shall it be liable or responsible for any failure of any banking institution in which the Escrow Sum is deposited to pay such Escrow Sum at the Escrow Agent's direction.

f) The Escrow Agent shall not be under a duty to give the funds held hereunder a greater degree of care than the Escrow Agent gives its own funds.

g) The rights and immunities of the Escrow Agent hereunder shall apply equally to its partners, of counsel, associates, employees, affiliates and agents.

h) Seller and Buyer agree that the Harvard Town Treasurer’s status as Escrow Agent shall not affect its ability to act as Seller’s counsel in the event a dispute arises regarding the Escrow Sum, or any other dispute under this Escrow Agreement or with respect to the sale of the Property, and Seller and Buyer hereby waive any current or future conflict of interest which may result from the same.

i) This Agreement sets forth exclusively the duties of Escrow Agent with respect to any and all matters pertinent hereto and no implied duties or obligations shall be read into this Escrow Agreement against Escrow Agent.

3. The Escrow Sum will be deposited in Escrow Agent’s interest-bearing account.

4. The Buyer and Seller agree to promptly deliver a completed Form W-9 to Escrow Agent within three (3) business days of execution of this Escrow Agreement.

5. Any capitalized terms that are not specifically defined herein shall have the meanings attributed to them in the Agreement.

This document is executed under seal as of this \_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2017

SELLER:

TOWN OF HARVARD BOARD OF SELECTMEN

By:

Name: Lucy Wallace

Title: Chairman

BUYER:

Company Name

By:

Name:

Title:

ESCROW AGENT:

By:

Name:

Title:

## Exhibit 11 Form of Right of Entry Agreement

**(For the Successful RFP Respondent’s Due Diligence Investigations after Execution of the Land Disposition Agreement** **and prior to Closing)**

**RIGHT OF ENTRY AND LICENSE AGREEMENT**

This RIGHT OF ENTRY AND LICENSE AGREEMENT (this "Agreement") dated as of \_\_\_\_\_\_\_\_\_\_\_\_, 2017, is made and entered into by and between the Town of Harvard Board of Selectmen, having an address of 13Ayer Road, Harvard, MA 01451 (the "Licensor") and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a having an address of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the "Licensee").

BACKGROUND

1. The Licensor is the owner of certain land in the Town of Harvard described on Attachment A hereto (the “Licensed Premises”).
2. The Licensor issued a Request for Proposals for the sale of the Licensed Premises for development of senior housing purposes (the “RFP”), pursuant to M.G.L. c. 30B.
3. The Licensee’s proposal in response to the RFP for the acquisition of the Licensed Premises was accepted by the Licensor.
4. Licensor and Licensee have, on or about the date hereof, entered into a Land Disposition Agreement (LDA) for the purchase and development of the Premises.
5. Pursuant to the LDA, Licensor and Licensee are entering into this Agreement to facilitate and govern Licensee’s access to the Licensed Premises to perform certain due diligence tasks set forth in the work plan to be provided by the Licensee and approved by Licensor hereunder (the "Work Plan").

AGREEMENTS

NOW, THEREFORE, in consideration of the mutual promises set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Grant of License, Terms, Purpose and Use.

The Licensor hereby grants a right of entry and license to the Licensee to use the Licensed Premises for the sole purposes set forth herein and in the Work Plan (the "Licensed Activities"), subject to the terms and conditions set forth herein.

The right of entry and use of the Licensed Premises is specifically granted to the Licensee, its contractors, consultants, agents, and employees, collectively referred to herein as the "Licensee," solely for the implementation and completion of the tasks set forth in the Work Plan and for no other purposes. Said rights may not be assigned by the Licensee without the prior written consent of the Licensor, which consent may be withheld for any reason or for no reason, at Licensor's sole and absolute discretion. In the event that the Licensee assigns its rights under this Agreement to another party with Licensor's approval, the Licensee shall remain liable for its obligations and duties contained herein.

The right of entry and use of the Licensed Premises by the Licensee hereunder shall be exercised beginning as of the date the Licensor approves in writing the Work Plan, such approval shall not be unreasonably withheld, conditioned or delayed (but subject to other terms of this Agreement) and such rights shall terminate on \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2017, unless extended or earlier terminated by the parties hereto. The parties acknowledge and confirm the rights being granted hereunder are a license and no greater rights in the Licensed Premises are being granted hereunder. The parties acknowledge and confirm that neither this Agreement nor the license granted hereunder shall be construed to create or vest in the Licensee any easement, estate or legal interest in the Licensed Premises but only the limited right of possession on the terms herein described.

The Licensed Premises and the activities undertaken thereon by the Licensee shall be subject to inspection by representatives of the Licensor at any time, and from time to time, without prior notice.

The rights of the Licensee granted hereunder shall be exercised solely for the purposes set forth in this Agreement, and for no other purposes.

2. Terms, Costs andRestoration.

Licensee shall perform all Licensed Activities, including without limitation all work under the Work Plan and all geotechnical and environmental site investigations, strictly in compliance with the provisions of this Section 2.

The Licensee shall be solely responsible for all costs and expenses associated with the exercise of the rights granted under this Agreement, including without limitation any costs associated with obtaining any permits, licenses or similar approvals necessary to undertake and/or complete the work contemplated herein.

The Licensee shall provide immediate notification to Licensor of any release or threat of release of oil or hazardous materials discovered during Licensee’s Activities, including without limitation its work under the Work Plan and its geotechnical or environmental site investigations, that is not already disclosed in any of the environmental reports or other materials provided to the Licensee from the Licensor in connection with the RFP.

In no event shall the Licensee perform any subsurface investigations or invasive testing of the Licensed Premises, or install any soil or groundwater monitoring wells or test pits on the Licensed Premises, without the Licensor's prior written approval, which approval may be withheld by Licensor for any reason or for no reason, at Licensor's sole and absolute discretion. If such approval is granted, Licensee shall be solely responsible for decommissioning and removing all such wells and test pits in accordance with the Massachusetts Department of Environmental Protection (DEP) guidelines. Following the completion of Licensee's geotechnical and environmental site investigations, the Licensee shall remove all materials, groundwater monitoring wells, equipment and machinery and other items brought on to the Licensed Premises by the Licensee and shall restore the Licensed Premises to substantially the same condition it was in prior to the exercise by the Licensee of the rights granted hereunder. In the event the Licensee in writing waives any right to terminate the LDA and unconditionally confirms that it will close on the purchase of the Licensed Premises in its as is condition and in accordance with the LDA, the Licensor may in writing waive the Licensee’s obligation to restore the Licensed Premises and remove the groundwater monitoring wells. Otherwise, the Licensor shall deduct from any funds of the Licensee held on deposit by the Licensor in connection with this Agreement, the RFP or the LDA any amounts expended by the Licensor to restore the Licensed Premises, including without limitation, to decommission and remove any groundwater wells installed by the Licensee on the Licensed Premises. The Licensee shall coordinate any removal and/or relocation of existing groundwater monitoring wells with the Licensor.

Licensee shall provide to Licensor copies of all reports and plans generated as a result of Licensee’s work under the Work Plan, including without limitation all geotechnical and environmental site investigations by the Licensee, within ten (10) days of completion; provided, however, that if any such work or investigations discovers any imminent hazard, Licensee shall immediately notify Licensor thereof. Licensee shall not report any release or threat of release of oil or hazardous materials reflected in such reports or plans, or otherwise identified during any Licensed Activities under this Agreement, to any government agency unless Licensee reasonably determines that it has a legal obligation to report such any release or threat of release of oil or hazardous materials to a government agency and Licensee has first notified the Licensor of the release or threat of release of oil or hazardous materials prior to making such report.

All materials resulting from any Licensed Activities under this Agreement, including without limitation (if Licensor grants Licensee permission to perform subsurface investigations or invasive testing of the Licensed Premises) all samples and any materials that may contain oil or hazardous materials that result from any Licensed Activities at the Licensed Premises shall become the property and responsibility of the Licensee, and shall be properly managed, transported and disposed of. At no time will Licensor assume or retain any responsibility or liability for the disposal of such materials and the removal of such materials from the Licensed Premises will remain the sole obligation of the Licensee, except to the extent that any liability arising out of the disposal or removal of such materials is the result of the gross negligence, willful misconduct or breach of contract of the Licensor or its agents.

3. Insurance and Indemnification.

Licensee shall carry and shall cause any contractor, consultant or agent engaged by it to perform the Licensed Activities at the Licensed Premises to maintain, at no cost to the Licensor, insurance in amounts as set forth below and with companies licensed to do business in the Commonwealth of Massachusetts, having an A.M. Best Company rating of "A-,VII" or better and otherwise satisfactory to Licensor at Licensee’s or such contractor's, consultant’s or agent’s own cost and expense as the case may be, to protect against claims under any Worker's Compensation Act; against claims for damages because of bodily injury including sickness, disease or death; against claims for damages because of injury to or destruction of tangible property; against claims for damages because of personal injury, economic loss or other covered conditions; and against claims arising out of the performance of professional services caused by errors, omissions or negligent acts for which Licensee or any such contractor, consultant or agent engaged may be legally liable.

Commercial general liability, including coverage for bodily injury, personal injury, property damages and completed operations coverage in the minimum amount of $1,000,000 per occurrence and $2,000,000 in the aggregate;

Automobile liability coverage for owned, hired and non-owned vehicles in the minimum amount of $1,000,000 per occurrence combined single limit;

Workers' compensation for all its employees, as required by statute, with employers' liability of $500,000.00 or more including $100,000 accident and $100,000 disease;

Umbrella Liability having limits of $5,000,000 per occurrence and $5,000,000 aggregate; and

Professional liability coverage of at least $1,000,000 per claim for any Licensed Site Professional, Professional Engineer, and other professional performing professional services as part of the Licensed Activities.

Prior to exercising any rights hereunder or entering the Licensed Premises, the Licensee shall furnish the Licensor with certificates of insurance showing that Licensee has complied with this Section, which certificates shall name Licensor as Additional Insured for the insurance required under (a), (b), and (d), above, and all such policies shall contain a provision providing that written notification of cancellation of the insurance policies required hereunder shall be given to Licensor and Licensee thirty (30) days prior to such cancellation.

To the fullest extent permitted by law, the Licensee shall defend, indemnify and hold the Licensor, its agents, subcontractors, boards, officials, and employees harmless from and against any and all claims, defense costs, including attorneys’ fees, damages and other liabilities, including, but not limited to, bodily injury, damage to property and personal injury, arising out of or relating to acts or omissions of the Licensee or its agents, employees or contractors in performing the Licensed Activities or any other inspections, tests or other work in, on or about the Licensed Premises.

The Licensee shall be responsible for any releases of oil or hazardous materials caused by the Licensee or its agents, employees, consultants or contractors, and the Licensee will be responsible for environmental conditions Licensee or its agents, employees, consultants or contractors create at the Licensed Premises while acting pursuant to this Agreement, including without limitation the exacerbation of any existing environmental conditions at the Licensed Premises.

The Licensor nay rely upon, use or disseminate any information, test results or reports generated or provided by the Licensee or its agents, employees, consultants or contractors pursuant to the work contemplated herein without the prior written consent of the Licensee.

4. Conduct.

During the exercise of rights hereby granted, the Licensee shall at all times take, and shall cause its agents, employees, consultants and contractors at all times to take, reasonable steps to conduct itself and themselves so as not to cause waste or damage to the Licensed Premises, and the Licensee and its agents, contractors and assigns shall not inany way interfere with operations of the Licensor. The Licensee shall observe and obey all applicable federal, state, and local laws, statutes, ordinances, rules and regulations in the conduct of its activities hereunder, and shall observe and comply with all licensing requirements provided by the Licensor, or as may be contained in the Work Plan. The Licensee shall notify the Licensor immediately upon the violation of any such law, statute, ordinance, regulation, or requirement, upon the release or threatened release of any oil or hazardous material as said terms are defined in Chapter 21E of the Massachusetts General Laws or the Massachusetts Contingency Plan promulgated pursuant thereto.

Unless otherwise provided in the Work Plan, the Licensee shall submit to the Licensor for the Licensor's approval a schedule of activities to be conducted under this Agreement prior to the exercise of Licensee’s rights hereunder.

5. Miscellaneous.

All provisions of this Agreement assigning obligations and allocating responsibility or liability between the Licensee and the Licensor shall survive the completion of the work set forth in the Work Plan and the expiration of this Agreement.

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

This Agreement represents the entire and integrated agreement between the Licensor and the Licensee and supersedes and replaces all terms and conditions of any prior agreements, arrangements, negotiations, or representations, written or oral, with respect to the subject matter hereof.

If any provision of this Agreement is declared or found to be illegal, unenforceable, or void, then both parties shall be relieved of all obligations under that provision. The remainder of this Agreement shall remain enforceable to the fullest extent permitted by law.

Any modification or amendment to this Agreement shall be in writing and duly executed by both parties hereto to be effective.

In the event that either party materially breaches this Agreement, the non-breaching party shall have the right to unilaterally terminate the Agreement by serving a written notice of termination upon the breaching party via certified mail.

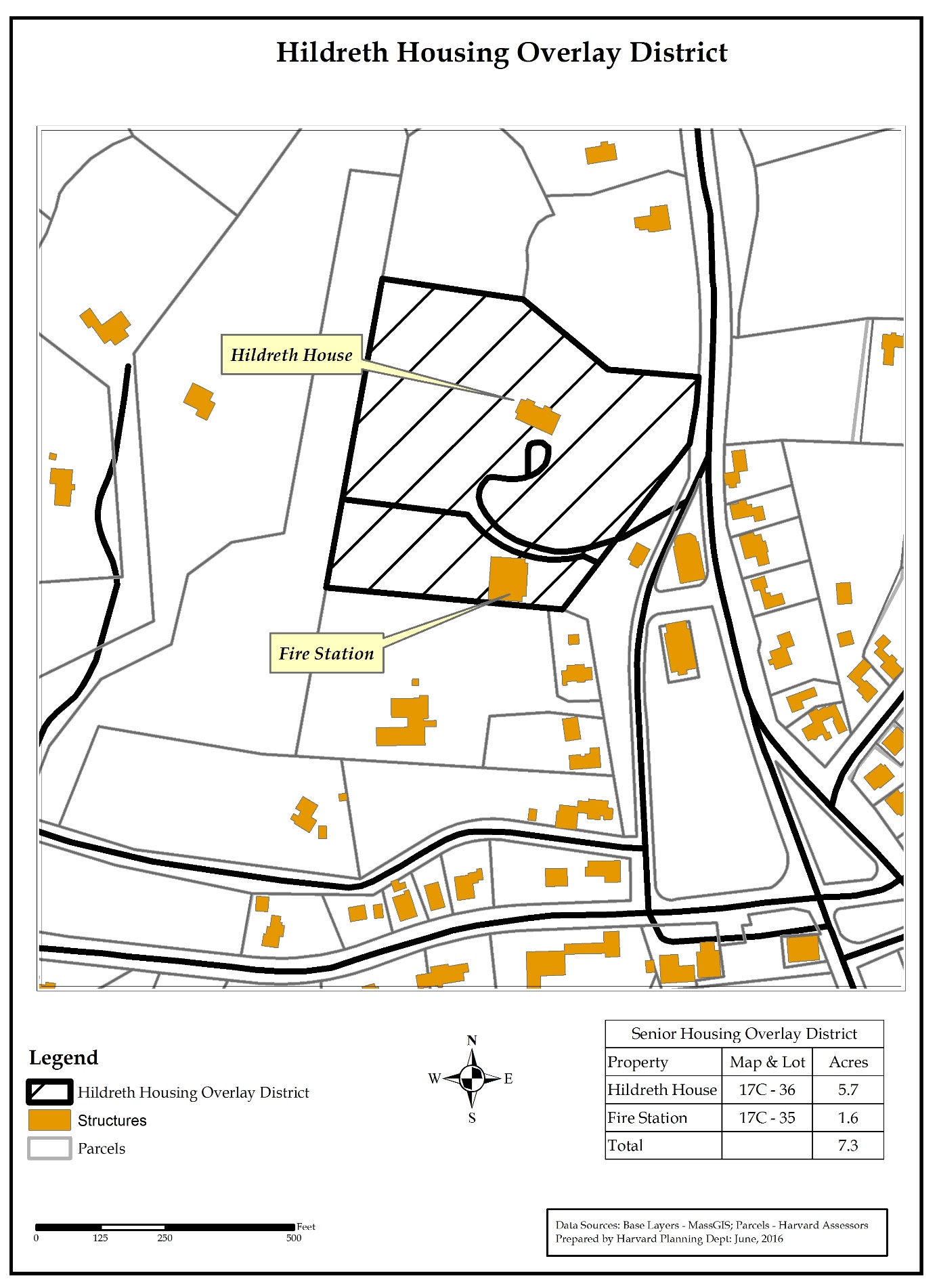
The Licensee will not place any liens or permit any liens to be placed upon the Licensed Premises related to the work contemplated herein and shall immediately discharge any such liens.

EXECUTED under seal as of the date first written above.

|  |  |
| --- | --- |
| **LICENSOR:** | TOWN OF HARVARD  BOARD OF Selectmen  By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name:  Title: |
| **LICENSEE:** | [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]  By:  Name:  Title: |

## Exhibit 12 §125-55 Hildreth Housing Overlay District (HHOD)

1. **Purpose:** The purposes of the Hildreth Housing Overlay District are to:
2. Provide an opportunity for development of dwellings containing two to six units;
3. Create multi-family housing consistent with Harvard’s New England style architecture and character of the Town Common/Town Center by following historic design principles;
4. Benefit the community by providing alternatives to conventional single-family homes for seniorcitizenswanting to down-size or live in a close-knit community;
5. Allow flexibility of structure placement to encourage New England-style development in harmony with the Town Common/Town Center;
6. Allow flexible land division in order to encourage private development of housing; and
7. Create designs that provides master bedrooms and active living areas on the first floor.
8. **Establishment of Overlay District.** The HHOD is established as an overlay district. The HHOD consists of parcels 35 and 36 on Assessors’ Map 17C containing approximately 7.27 acres in the aggregate. The boundaries of the HHOD are shown on the Hildreth Housing Overlay District Map on file with the Town Clerk. Within the HHOD, all regulations of the underlying district remain in effect, except to the extent the regulations are inconsistent with the provisions of the HHOD.
9. **Permitted Uses in the Hildreth Housing Overlay District**
10. Single- and two-family dwellings
11. Single-family attached units, not to exceed six units in a single building
12. Accessory residential/recreational uses that are integral to the development
13. **Density**
14. Density shall not exceed twelve dwelling units per acre.
15. A maximum of 25% of the units may have three bedrooms and the remainder shall consist of one and two bedroom units.
16. **Dimensional Requirements**
17. A lot proposed for development need not have the required street frontage but shall have legal and physical access to a public way. The Planning Board may require site improvements to provide adequate access for emergency and service vehicles.
18. There shall be no minimum lot size, lot width, lot setback, or dimensional requirements for dwellings within the development, except as set forth below. Each unit shall have an exclusive area of land for private outdoor use.
19. Buildings and parking areas shall be setback from exterior property lines by at least ten feet (10’).
20. The maximum building height is thirty-five feet (35’).
21. The minimum separation between buildings is twenty feet (20’).
22. During site plan review, the Planning Board may modify other applicable dimensional requirements in order to facilitate improved design and enhanced livability for the residents of the proposed development.
23. **Age Restriction.** Each dwelling unit shall be occupied by at least one permanent resident who is 60 years of age or older ~~to allow for change of occupancy to another qualifying household~~.
24. **Review Criteria and Considerations**
25. No building permit shall be issued for construction in the HHOD without prior approval by the Planning Board of a site plan in accordance with the provisions of 125-38 of this Protective Bylaw.
26. The application shall include a statement from the Water and Sewer Commissions specifying the number of units that may connect to the Town Center water and sewer systems. The number of units proposed may not exceed that which can be served by such systems.
27. The materials and architectural design of the dwellings shall be compatible with the historic character of the Town Center. The applicant shall submit architectural elevations denoting exterior features and preliminary floor plans.
28. At least 10% of the site shall be set aside as common open space for outdoor activities, such as hiking trails, picnic areas, or gardens.
29. All units shall be built in conformance with Universal Design Standards. Master bedrooms shall generally be located on the first floor.
30. Sidewalks shall connect units in the development to common facilities and to the Hildreth House/Senior Center.
31. **Homeowners’ Association.** If the development will contain ownership units, a Qualified Homeowners’ Association (as that term is defined in §125-2) shall be responsible for operation and maintenance of the common facilities of the development. If the development will contain rental units, a rental management company shall have similar responsibilities. The Town shall not be responsible for snow plowing, internal road and driveway maintenance, or upkeep of common facilities.



## Exhibit 13 Roadway Layout and Property Line Plan

