

FIRST AMENDMENT TO AGREEMENT

This First Amendment to Agreement is entered into as of _____, 2016, by and between the Town of Westford, by and through its Board of Selectmen, a municipal corporation with a business address of 55 Main Street, Westford, Massachusetts (hereinafter referred to as the "Town"), and ~~Ebrahim Masalehdan, an individual~~ Westford Gateway, LLC, a duly organized and existing Massachusetts limited liability company with an address of 31 Progress Avenue, Tyngsboro, Massachusetts (hereinafter referred to as the "Buyer").

RECITALS

WHEREAS, the Town is the holder of three Agricultural Preservation Restrictions (hereinafter referred to as "APR 1", "APR 2" and "APR 3" and collectively referred to as the "APRs") on two contiguous parcels of land in the Town of Westford, which are collectively known as 66-68 Boston Road, Westford, Massachusetts (hereinafter referred to as the "Property");

WHEREAS, APR 1 and APR 2 generally prohibit the use of the land for ~~+~~non-agricultural purposes, and APR 3 generally prohibits the use of the land for non-agricultural purposes and generally allows for continued use of an existing "country store" building;

WHEREAS, the APRs include a right-of-first refusal, which allows the TOWN to purchase the properties in accordance with the terms of any bona fide offer received by the current owner;

WHEREAS, the parcels have been allowed to lie fallow for several years, and the "country store" building is vacant and in disrepair, such that they have become a blight on the surrounding neighborhood;

WHEREAS, ~~the Buyer has~~ provided within an Agreement dated January 12, 2016 ("January Agreement") by and between the Town and Ebrahim Masalehdan, as the predecessor to Westford Gateway, LLC, and Ebrahim Masalehdan made a bona fide offer to purchase the two parcels, and has submitted a development plan to reestablish the agricultural use of the land covered by APR 1 and APR 2 through the installation and maintenance of a high tensile orchard, cherry trees, a greenhouse, and row crops;

~~WHEREAS, the~~

WHEREAS, in conformity with the January 2016 Agreement, after the Town waived its right of first refusal, the Buyer took title to the Property by deed dated February 17, 2016 recorded with Middlesex North District Registry of Deeds at Book 29812, Page 168; and

WHEREAS, the Board of Selectmen placed an article on the Warrant for the April 2, 2016 Annual Town Meeting for authorization to amend APR 3 to allow the construction and operation of an up to 16,500 square foot building footprint farm to table restaurant and function room with related parking and utilities, but the article failed at Town Meeting; and

WHEREAS, the parties agree that Buyer's ability to maintain his proposed agricultural uses is dependent upon his ability to use APR 3 for a farm-to-table restaurant and function room with related parking, which necessitates the removal of the "country store" structures; and

WHEREAS, the Town ~~recognizes~~continues to recognize that the viability of the two parcels for sustained agricultural use is limited due to their small size, topography, cost of land and location, and that allowing the use of one of the APR areas for the purposes described herein will have a positive effect on the public good and will yield a substantial benefit to the agricultural resources of the Town; and

WHEREAS, the Buyer has submitted revised plans for a smaller farm-to-table restaurant and function room than what was presented to the April 2, 2016 Annual Town Meeting; and

WHEREAS, the parties wish to amend the January 2016 Agreement to incorporate such revised plans and modified terms for the submission of an article on the next Special Town Meeting Warrant,

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises, covenants and agreements contained herein, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

~~1. Within five (5) business days of execution of this The January 2016 Agreement, is hereby amended by the Town will inform replacement of the current owner, in writing with copy to the Buyer, that it will waive its right of first refusal under the APRs.~~

~~1. Upon receipt of written notice of the Town's waiver of its right of first refusal, the Buyer will purchase the Property in accordance with the following terms of the Purchase and Sale conditions and the provisions of this First Amendment to Agreement dated October 30, 2015 shall replace and will close on supersede the transaction prior to April 2, terms and conditions of the January 2016 Agreement in their entirety.~~

~~2.~~
~~2. Buyer agrees that it will pursue development of the Property so as to reestablish the agricultural use of the land covered by APR 1 and APR 2 through the installation and maintenance of a high tensile orchard, cherry-fruit trees, a greenhouse, and row crops, and, on the land covered by APR 3, a farm-to-table restaurant and function room with related parking, as shown on the conceptual plans attached hereto as "Exhibit A" and hereinafter referred to as the "Project".~~

~~4. Upon execution of this Agreement, the Buyer will begin working to finalize the plans for the Project and to obtain the licenses, permits and approvals necessary to complete the Project. On or before March 25, 2016, the Buyer shall provide the Board of Selectmen with construction documents that are near complete.~~

~~5.3. The Board of Selectmen will place an article on the Warrant for the April 2, 2016 Annual next Special Town Meeting for authorization to amend APR 3 to allow the construction and operation of an up to 46,500 11,337 gross square foot building footprint farm to table restaurant and function room with no more than 19,787 sq. ft of gross occupied floor area -with related parking and utilities, said amendment to be substantially in the form attached hereto as "Exhibit B", provided, however, that the Board will have no obligation to put the article to a vote by Town Meeting unless the Buyer has purchased the Property and recorded a deed in his name or the name of an entity owned and/or controlled by him, and has provided the Town with the construction documents described above."~~

~~6.4. If Town Meeting authorizes the amendment, the Buyer will complete the Project in accordance with the construction documents described above -as may be amended and conditioned through the Zoning Board of Appeals, Planning Board, and Conservation Commission. All work in connection with the Project shall be at the Buyer's sole cost and expense and the Buyer assumes all risk of liability and loss in connection therewith. The Town shall bear no liability or expense in connection with the Project or on account thereof.~~

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~~7.5.~~ The Buyer acknowledges and agrees that the Board of Selectmen shall have no obligation to execute and record the amendment to APR 3 unless and until Town Meeting approves the amendment and all licenses, permits and approvals for the Project have been obtained by the Buyer and construction on the Project is ready to proceed.

~~8.6.~~ As consideration for the amendment to APR 3, the Buyer will pay the Town the sum of ~~\$50175,000.00~~, payable in ~~three~~two (2) annual installments of ~~\$16,666,6787,500.00~~, with the first installment due and payable on the second anniversary of the issuance of a certificate of occupancy by the Building Inspector ~~and the restaurant and function room opening for business~~. The Buyer also agrees that it will build sidewalks along Boston Road for the length of Property, in accordance with specifications and a schedule to be provided by the Town at a later date.

~~9.7.~~ If Town Meeting does not approve the amendment to APR 3, or if the Buyer fails to secure all licenses, permits and approvals needed to complete the Project, or if the Buyer abandons the Project, or if the Project is not completed for any reason, the Buyer acknowledges and agrees that it will own the Property subject to the existing APRs and that it will use diligent efforts to comply with the terms of the APRs by developing active agricultural uses on the Property.

~~10.8.~~ The Buyer acknowledges and agrees that certain discretionary permits, licenses and approvals will be required to complete the Project and that nothing herein shall be deemed to waive the Buyer's obligations to apply for and comply with all such permits, approvals and conditions governing the Project, and the Town does not hereby promise or guarantee that any such permits, licenses or approvals will be granted. The Buyer further acknowledges and agrees that, to the extent that it is required to obtain such licenses, permits and approvals from Town officials, boards and/or committees, that the Buyer shall receive no preferential treatment as a result of this Agreement and that it shall be treated in the same manner as any other property owner in the Town.

~~11.9.~~ The Buyer acknowledges and agrees that it has inspected the Property and is familiar with the conditions thereof, and the Town is making no representations or warranties, express or implied, as to the suitability of the Property for the Project and that the Buyer is proceeding with the Project at his own risk.

~~12.10.~~ The provisions, terms and conditions of this Agreement, may not be modified except in writing, duly executed by both parties.

~~13.11.~~ If any portion of this Agreement is declared to be illegal, unenforceable or void, then all parties to this Agreement shall be relieved of all obligations under that portion; provided, however, that the remainder of this Agreement shall be enforced to the fullest extent permitted by law.

~~14.12.~~ This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, and any and all legal actions brought in connection with this Agreement shall be brought in courts within the Commonwealth of Massachusetts.

This Agreement is to take effect as a sealed instrument, this ___ day of _____, 2016.

EBRAHIM MASALEHDAN
WESTFORD GATEWAY, LLC

TOWN OF WESTFORD
By its Board of Selectmen

BY: EBRAHIM MASALEHDAN, MANAGER

BY: CHUNG MOU WONG, MANAGER

EXHIBIT A
CONCEPTUAL PLAN OF PROJECT

1. "Site Layout Plan, Proposed Restaurant, 66 Boston Road, Westford, MA Owned by & Prepared For Ebi Masahehdan, Scale: 1" = 40', February 22, 2016 (revised through 7/27/16) prepared by TFM [to be updated if and when plans change per discussions with the boards]

2. Proposed Restaurant at: 66-68 Boston Road, Westford, Massachusetts, prepared by Domenic Sicari Associates, LTD dated as revised through 7/26/2016. [to be updated if and when plans change per discussions with the boards]

EXHIBIT B
AMENDMENT TO APR 3