

**FIRST AMENDMENT TO AGREEMENT**  
**VERSION B**

This First Amendment to Agreement is entered into as of \_\_\_\_\_, ~~2016~~2017, 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" (recorded with Middlesex North District Registry of Deeds at Book 8569, Page 242), "APR 2" (recorded with said Registry of Deeds at Book 8569, Page 257) and "APR 3" (recorded with said Registry of Deeds at Book 10124, Page 169) 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 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 in association with an article appearing on the 2017 Annual 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 Agreement, the Town will inform 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.~~

~~3.2~~ 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 plan 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~~ On Petition, an Article will appear on the Warrant for the ~~April 2, 2016 Annual~~ 2017 Annual -Town Meeting for authorization to amend APR 3 to (a) allow the construction and operation of an up to 46,500 ~~8,130 gross~~ square foot building footprint farm to table restaurant ~~and function room~~ with no more than 14,976 sq. ft of gross occupied floor area (-with related parking and utilities (including storm water management features and a septic system), and (b) amend the Right of First Refusal provisions attached to APR 3, said amendments 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

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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.

~~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 \$50,000, payable in three annual installments of \$16,666.67, with the first installment due and payable on the second anniversary of the issuance of a certificate of occupancy by the Building Inspector.~~ 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.

~~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. In the event that APR 3 is so amended, and the Buyer secures all licenses, permits and approvals needed to complete the Project (not subject to appeal) and the Buyer exercises such permits, the Buyer agrees to the following additional terms:

a. - Such a farm to table restaurant ("Restaurant") shall be subject to the following agricultural uses obligations:

- After the third growing season, during the harvest season of the primary crop raised on the land, at least twenty five (25%) percent of the Produce (which term "Produce" will hereinafter refer to all fruits and vegetables, sold or served raw, cooked, or otherwise prepared for consumption) sold in the Restaurant facility shall be grown on the site.
- During the months of June, July, August and September of each year, at least fifty (50%) percent of the Produce sold in the restaurant facility shall be grown at Massachusetts farms; with a preference toward local farmers.

- The balance of the year, the operator of the Restaurant will do its best to source its Produce from Massachusetts farms.
- At least eighty percent (80%) of the beef, pork, lamb, and veal served at the Restaurant will come from Massachusetts farms, with a preference for local farmers.
- At least fifty percent (50%) of the poultry served at the Restaurant will come from Vermont farms that do not use growth hormones or other non-organic means, and the balance will come from local farms in Massachusetts.
- At least ninety (90%) of the seafood served at the Restaurant will come from fishermen/women based in Massachusetts with the remaining ten percent (10%) sourced within New England; and

b. The Buyer agrees to cooperate with the Town to add to APR 1 and APR 2 the Approval of the Massachusetts Department of Agricultural Resources in accordance with the first paragraph of MGL Chapter 184, Section 32.

~~11.~~

~~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~~2017.

EBRAHIM MASALEHDAN  
WESTFORD GATEWAY, LLC

TOWN OF WESTFORD  
By its Board of Selectmen

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BY: EBRAHIM MASALEHDAN, MANAGER

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BY: CHUNG MOU WONG, MANAGER

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EXHIBIT A  
CONCEPTUAL PLAN OF PROJECT

2. Proposed Restaurant at: 66-68 Boston Road, Westford, Massachusetts, prepared by Domenic Sicari Associates, LTD dated as revised through 11/08/2016. [to be updated if and when plans change per discussions with the boards]

EXHIBIT B  
AMENDMENT TO APR 3