

MEMORANDUM OF AGREEMENT
33 and 39 MAIN STREET, MEDWAY
January 7, 2019

This Agreement ("Agreement") is entered into by and between SLV Medway I, LLC ("Developer"), with a usual place of business at 257 Hillside Avenue, Needham, MA 02494, and the Town of Medway, a municipal corporation organized under the laws of the Commonwealth of Massachusetts, with a usual place of business at 155 Village Street, Medway, MA ("Town"), acting by and through its duly elected Board of Selectmen ("Board of Selectmen"), regarding the proposed Local Initiative Program development at 33 and 39 Main Street, Medway, MA, said property shown on Medway Assessor's maps as Parcel 41-035 and 41-035-0001 consisting of 12.32 acres more or less ("Property"), for the development of said parcel into affordable rental housing and further to be managed by a professional property management company with extensive experience with multi-family properties, with the Developer, Town and Board of Selectmen collectively referred to herein as the "Parties." Prior to the issuance of any certificate of occupancy, the Developer shall notify the Town in writing of the identity and contact information for the property management company and shall notify the Town of any changes thereto for as long as the project is subject to this Agreement.

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

WHEREAS, the Town has been certified by Department of Housing and Community Development ("DHCD") as in compliance with its Housing Production Plan, thus placing the Town in a "safe harbor" until August 15, 2019;

WHEREAS, the Town desires to consider the approval of additional affordable housing prior to the expiration of the safe harbor;

WHEREAS, the Developer has submitted a Local Initiative Program ("LIP") application to the Board of Selectmen for its review and approval, said application seeking approval of 190 units of rental housing, of which 25% shall be low and moderate income housing units, under G.L. c. 40B, §§20-23 (the "LIP Application") as set forth in the LIP Application (the "Project");

WHEREAS, the Property is currently owned by Notwen Realty Trust ("Owner"), and SEB, LLC and Krebs Investor Group, LLC have executed a Purchase and Sale Agreement to acquire the Property from the Owner;

WHEREAS, SEB, LLC ("SEB") and Krebs Investor Group, LLC ("Krebs") will transfer the Property or assign their rights to the Property under the Purchase and Sale Agreement to SLV Medway I, LLC prior to filing the LIP Application with DHCD and thereafter, such interest in the Property may be transferred to SLV Medway I, LLC or an affiliated entity controlled by the principals of SEB and Krebs;

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

WHEREAS, the construction of the Project will require the Town to purchase additional sewage capacity to be used to dispose of sewage at the Charles River Pollution Control District, as the Town does not presently have sufficient additional sewage capacity for the Project;

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

I. DEVELOPER'S UNDERTAKINGS

Upon approval of the LIP Application by the Board of Selectmen, Developer shall promptly, and in any event within five business days of the Board of Selectman signing the LIP Application, apply to DHCD for approval of a Local Initiative Program development on the Property, as set forth in its LIP Application. Upon issuance of a Project Eligibility Letter from DHCD, Developer shall promptly, and in any event within ten business days, apply to the Zoning Board of Appeals ("ZBA") for a comprehensive permit for the Project in accordance with the LIP Application and this Agreement.

- A. The Project shall consist of no more than 190 residential rental units, of which the maximum allowed by DHCD shall be targeted for local preference, and such marketing plan details to ensure this standard is met shall be filed prior to the issuance of any occupancy permit. The Project shall be constructed in accordance with the LIP Application and this Agreement.

- B. The 190 residential rental units shall consist of the following mix of bedrooms:
- | | |
|-----------------|----------|
| One Bedroom: | 76 units |
| Two Bedrooms: | 95 units |
| Three Bedrooms: | 19 units |

However, such distribution may be adjusted based on DHCD requirements and discussion with Town Administrator (the phrase "Town Administrator" shall include the Town of Medway Town Manager if the Town Charter is amended to provide for a Town Manager) and shall require modification of this Agreement.

- C. Developer agrees to pay the Town a total of \$2,000,000 in sewer and water connection fees, and mitigation funds. This amount encompasses: the required Town sewer and water connection fees; \$50,000 to be used toward construction and rehabilitation of school playgrounds; \$50,000 to be used for an athletic training (weight) room at Medway High School; funds to allow the Town to design and construct a sidewalk along Main Street (Route 109) from the entrance to the Project westward to the existing sidewalk; and funds toward the purchase of additional sewer capacity for the Charles River Pollution Control District. Of this amount, \$100,000 shall be paid to the Town on or before May 9, 2019 (this payment shall be refunded if the Zoning Board of Appeals does not issue a comprehensive permit for the Project in substantial conformity with the LIP Application); \$150,000 shall be paid within sixty days of the issuance of a comprehensive permit that is in substantial conformity with the LIP Application

and this Agreement (unless the comprehensive permit is appealed by a person that is not a party to this Agreement, in which case the payment shall be made when the comprehensive permit becomes final and all appeals have been exhausted and completed) and the balance of \$1,750,000 shall be paid within forty-five days of the date of the issuance of any building permit for the development. All Parties agree that failure of the Developer to make payment of the balance will constitute grounds for rescission of any building permit(s) that have been issued for the Project and that no party will assert otherwise in any proceeding. Town building and other permit and inspectional fees shall be paid in full by the Developer.

- D. Twenty-five percent of the units shall be reserved for rental to low and moderate income tenants, in conformity with DHCD requirements such that these units qualify as low or moderate income housing units under G.L. c. 40B, §§20-23 (the "Affordable Units"). The Affordable Units at the Project shall be permanently restricted as affordable, and shall remain affordable so long as the Project continues to benefit from the comprehensive permit because the Project does not conform to zoning requirements.
- E. There shall be a boulevard style access from Route 109 as shown on the LIP Application plans. The building shall be fully sprinklered, including attic spaces. There shall be at least two elevators in the building which reach all floors and are of sufficient size to accommodate a stretcher and two personnel.
- F. The Property shall be subject to a permanent affordable housing restriction that shall be recorded after the Developer acquires title to the Property and before the first building permit is issued, but not before the final comprehensive permit is issued and all rights of appeal have been exhausted, which will require that the building created and the 190 units shall remain rental units and shall not be converted to permit individual ownership of individual units. The Town may also require that a separate permanent restrictive covenant providing for a right to enforce affordability restrictions in the event that the DHCD Affordable Housing Restriction expires be provided by the Developer.
- G. Developer shall provide the following information and satisfy the following design standards during the public hearing before the ZBA:
 - i. Sight distances at the egress for the Project shall be designed in accordance with best engineering practices, using AASHTO specifications, and shall be established and maintained at all times.
 - ii. The Project shall comply with Massachusetts Stormwater Management Standards and Town of Medway General Bylaws Article XXVI, Stormwater Management and Land Disturbance.
 - iii. Developer shall provide a management plan that details a schedule of maintenance and inspections of all buildings structures, mechanical systems, and outdoor equipment and amenities.

- iv. Developer shall comply with the 25 foot no disturb zone surrounding a wetlands resource area as set forth in Article XXI of the Town of Medway General Bylaws. If the Developer cannot comply with the 25 foot no disturb zone in a small section of the property, the Developer will review the deviation with the Director of Community and Economic Development to assess consistency with the original plan. The Director of Community and Economic Development Department will provide advice to the Town Administrator as to whether the proposed modification is material or substantial under Section II.2 of this Agreement. Any determination by the Director, Town Administrator, or Board of Selectmen as to whether such deviation requires modification of this Agreement shall not affect whether the plans are in compliance with Article XXI; the Developer shall have all of the rights under Article XXI to request a waiver of the 25 foot no disturb zone from the Conservation Commission.
 - v. Developer agrees not to request any modification to this Agreement or to any comprehensive permit granted for this Project that would convert the rental units to condominiums.
- H. Developer agrees that it shall not assert to the ZBA or to the Housing Appeals Committee or to any other entity that the payment of any of the improvements or costs detailed in this agreement causes or contributes towards causing the Project to be uneconomic under G.L. c. 40B or 760 CMR 56.00, et seq., provided that all of the terms of this Agreement are satisfied.
- I. The obligations hereunder shall be enforceable only if a comprehensive permit is granted in substantial conformity with the LIP Application and takes final effect without altering the terms and conditions of this Agreement. If there are changes to the Project in the future that are not detailed in this Agreement, then Developer shall return to the Board of Selectmen to seek to amend this Agreement.
- J. Commencement of construction of the Project shall begin no later than 12 months from the date the comprehensive permit is recorded as defined in 760 CMR 56.03(2)(b).1. The Developer will record the decision at the Registry of Deeds no later than 7 days after a certificate of no appeal has been issued by the Medway Town Clerk. Developer shall make diligent efforts to ensure that construction of the Project continues without interruption or unreasonable delay so as to satisfy the requirements of 760 CMR 56.03(2)(c) for the units to be counted and remain on the Town's Subsidized Housing Inventory as maintained by DHCD.
- K. Developer shall cooperate with the Town and in a timely manner, provide the Town Administrator with all relevant information and material to support applications by the Town to DHCD to add the Project's units to the Subsidized Housing Inventory (SHI).

- L. Developer shall pay all reasonable monitoring fees required by DHCD and enumerated in the Regulatory Agreement to be executed with the Town and DHCD. If DHCD discontinues monitoring this project, and the Town is required to take on that role, then the Developer will pay such monitoring fees which are consistent with those specified in the Regulatory Agreement to the Town or other entity which acts as Monitoring Agent.
- M. Developer shall place a prohibition in each lease for each rental unit that strictly prohibits off road recreational motorized vehicles, including mopeds, motor homes, any unlicensed and derelict vehicles, or boats larger than 8 feet, and on-site boat and vehicle repairs of any type, unless prohibited by law. These restrictions shall be strictly enforced by the management.
- N. Developer agrees that this Agreement shall bind it and its successors in interest and that the Town may record a Notice of this Agreement against the Property once the Developer takes title to the Property and the comprehensive permit has been issued.

II. TOWN'S UNDERTAKINGS

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

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

III. PARTIES' RIGHT TO CANCELLATION

1. If the comprehensive permit issued for the Project: (a) increases the number of units or bedrooms other than as agreed to above; (b) decreases the number of Affordable Units agreed to above; or (c) substantially changes the location and/or size and height of the buildings as shown on the Plans presented to the Board of Selectmen by Developer and filed with the LIP Application, the Board of Selectmen may, within thirty days of issuance of the comprehensive permit, give written notice of such inconsistency to Developer, and if Developer fails to initiate and diligently pursue a conforming amendment to the comprehensive permit, the Board of Selectmen may withdraw its support of the LIP Application and the Project by providing written notice of the same to Developer and DHCD. However, if the Developer initiates and diligently pursues a conforming amendment to the comprehensive permit per the request of the Board of Selectmen and the Zoning Board of Appeals does not grant the comprehensive permit amendment, then the comprehensive permit as originally approved is deemed to be valid and the Board of Selectmen may not withdraw its support of the LIP Application and the Project.
2. If the Property is not conveyed to the Developer or an affiliated entity controlled by the principals of SEB and Krebs, this Agreement is deemed null and void.

IV. MISCELLANEOUS

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

unless another address is specified in writing, be sent to the persons and at the addresses indicated below:

For the Board of Selectmen: KP Law, P.C.
101 Arch Street
Boston, MA 02110

With a copy to the Town Administrator and Board of Selectmen Chairman at:
155 Village Street
Medway MA 02053


To Developer: SLV Medway I, LLC
C/O Geoff Engler
257 Hillside Avenue
Needham, MA. 02494

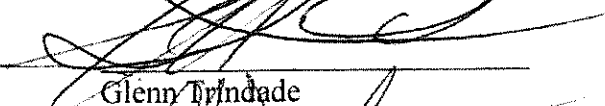
With a copy to:
Jason A. Pithie, Esq.
Pithie & Associates, P.C.
158 Pleasant Street
South Weymouth, MA 02190

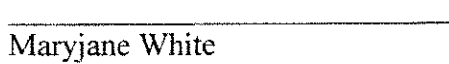
IN WITNESS, the parties hereunto set their hands and fixed their seals as of January 7, 2019.

By: **MEDWAY BOARD OF SELECTMEN***


Dennis Crowley, Chairman


John Forester, Vice Chairman


Glenn Trindade


Maryjane White

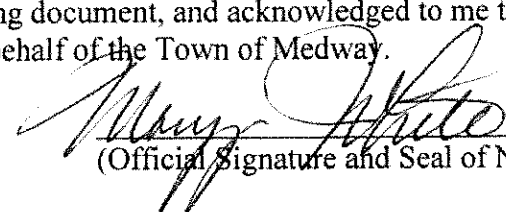

Richard D'Innocenzo

*Pursuant to a vote taken by the Board of Selectmen on January 7, 2019.

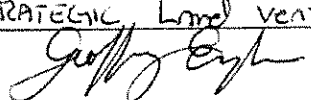
COMMONWEALTH OF MASSACHUSETTS

Norfolk, SS.

On this 7th day of January, 2019, before me, the undersigned Notary Public, personally appeared ~~Dennis Crowley, Richard D'Innocenzo, John Forester, Glenn Trindade~~ of the Medway Board of Selectmen, as aforesaid, who proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose on behalf of the Town of Medway.

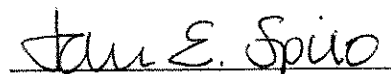

(Official Signature and Seal of Notary)

Developer
SLV Medway I, LLC

By: STRATEGIC Land ventures, LLC
, Manager & authorized signatory

COMMONWEALTH OF MASSACHUSETTS
Middlesex, SS.

On this 7th day of January, 2019, before me, the undersigned Notary Public, personally appeared Geoffrey Engler, as Manager of SLV Medway I, LLC who proved to me through satisfactory evidence of identification, which was ~~personal knowledge~~ to be the person whose name is signed above, and acknowledged s/he signed it voluntarily for its stated purpose on behalf of SLV Medway I, LLC.


(Official Signature and Seal of Notary)
Jan E. Spiro

