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February 21, 2008

<u>BY FEDERAL EXPRESS (AM DELIVERY)</u>	<u>BY FEDERAL EXPRESS</u>
John Murray Temporary Town Manager Town of Acton 472 Main Street Acton, MA 01720	Diane L. McGlynn, Esq. McGlynn & McGlynn 4 Norman Street Salem, MA 01970

RE: Acton/Sewer Faulkner – 4 High Street Project

Dear John and Diane:

I have enclosed for John two originals of the sewer privilege fee Agreement. The exhibits are as follows:

- Exhibit A – The list of the most recent plans for the proposed 20 condominium unit project;
- Exhibit B – The Town's Sewer Bylaw;
- Exhibit C – The Town's Sewer Use Regulations;
- Exhibit D – The Town's Sewer Privilege Fee Schedule; and
- Exhibit E – Local Initiative Program Affordable Housing Deed Rider in the form prescribed by the Massachusetts Department of Housing and Community Development.

Mr. Fenton and Mr. Jeanson need to come to Town Hall to sign the Agreement before a notary. Assuming they do so before Monday evening, the Agreement will be ready for execution by the Board of Selectmen that night.

John Murray and Diane L. McGlynn
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A copy of the enclosed Agreement and Exhibits is enclosed for Diane.

Sincerely,

A handwritten signature in black ink, appearing to read "SDA", with a long, sweeping horizontal stroke extending to the right.

Stephen D. Anderson

SDA:lb

AGREEMENT

THIS AGREEMENT is made this 25th day of February, 2008, by, between and among the following parties:

- The Town of Acton, a municipal corporation, having its principal office at Town Hall, 472 Main Street, Acton MA 01720 (the "Town"), acting by and through the Acton Board of Selectmen for itself and as the Sewer Commissioners of the Town (the "Board");
- Faulkner Mill Realty, LLC, a Massachusetts limited liability company with a principal place of business at 25 Westford Lane, Acton, MA 01720, by its duly authorized manager, on behalf of itself and its successors and assigns (the "Owner");

WHEREAS the Owner intends to build a development of condominium 20 units substantially in accordance with the plans listed on Exhibit A hereto (the "Project") on the property located at 4 High Street in Acton, identified as Lot 64 on Assessor's Map H2A, and described in the deed recorded in the Middlesex South District Registry of Deeds at Book 42341, Page 484 (the "Project Site").

WHEREAS the Town has completed construction of the Fort Pond Brook Sewage Treatment Plant and its associated public sewer lines and facilities (the "Town Sewer").

WHEREAS the Owner proposes to connect the Project to the Town Sewer by means of an easement across property identified as Lot 57 on Assessor's Map H2A.

WHEREAS the Town and the Board have respectively adopted a sewer Bylaw and Sewer Use Regulations applicable to sewer connections and sewer use in the Town of Acton, copies of which are attached as Exhibits B (the "Bylaw") and C (the "Regulations").

WHEREAS the Board is authorized by Section D.10.2 of the Bylaw to assess sewer betterments in accordance with the Uniform Unit Method.

WHEREAS the Board is authorized by Section D.10.5 of the Bylaw to "establish reasonable fees pursuant to G.L. c. 83, § 17, to cover costs of construction of common sewers and other facilities required to serve land not previously served by the sewer system and not previously assessed to the owner of such land."

WHEREAS the Board has adopted a Sewer Privilege Fee Schedule, a true copy of which is attached as Exhibit D (the "Sewer Privilege Fee Schedule").

WHEREAS, pursuant to the Bylaw and the Regulations, the Board has assessed actual sewer betterments for land benefited by the Town Sewer.

WHEREAS any final approval of the Project would occur after actual sewer betterments have been issued.

WHEREAS the Owner seeks a commitment from the Board to allow connection of the Project to the Town Sewer.

WHEREAS the Board is willing to provide that commitment in return for the commitments by the Owner as set forth herein

NOW THEREFORE, for one dollar and other adequate consideration the receipt and sufficiency of which are hereby acknowledged, the Town, the Board, and the Owner agree as follows:

1. **Permits and Approvals, Compliance with Laws**

The Owner shall apply for all necessary governmental licenses, permits, approvals or other relief required for the Project and the connection of the Project to the Town Sewer ("Governmental Approvals"). The Owner shall pay for all costs and expenses incurred in connection with applying for, obtaining and maintaining all necessary Government Approvals for the Project and the connection of the Project to the Town Sewer.

The Owner shall design, construct, operate, maintain, repair, upgrade and replace the sewer system on the Project Site and its connection to the Town Sewer in conformity with and subject to all applicable statutes, laws, rules, regulations, guidelines and permits now in force or hereafter in effect including, without limitation, the following: the Bylaw, the Regulations, any and all applicable Rules and Regulations of the United States Environmental Protection Agency ("EPA"), the Massachusetts Department of Environmental Protection ("DEP"), the Massachusetts Department of Public Health ("MDPH"), and any other governmental agency or authority having competent jurisdiction, as amended from time to time.

2. **Construction of the Sewer Connection for the Project**

Upon receipt of all necessary Government Approvals the Project and the connection of the Project to the Town Sewer, the Owner shall construct the Project and the connection of the Project to the Town Sewer in accordance with the Government Approvals. The Owner shall pay for all costs and expenses of the construction of the Project and the connection of the Project to the Town Sewer in accordance with the Town's specifications. Without limiting the generality of the foregoing, the Owner shall undertake the following actions within the following time frames:

- Prior to the issuance of a sewer connection permit for the Project to the Town Sewer, the Owner shall offer for sale to the Town of Acton or its nominee (to be designated pursuant to a vote of the Board of Selectmen) one 2-bedroom unit in

the Project at a price affordable to persons or households whose aggregate family income does not exceed 80% of the median gross income for the area ("AMI"), as established by the United States Department of Housing and Urban Development. The unit so offered shall be one of the first five units completed in the Project. Unless extended by agreement of the parties, the Town of Acton or its nominee shall have ninety (90) days from receipt of the offer to accept the offer, enter a purchase and sale agreement, and close on the purchase of the unit. The Town may impose or cause to be imposed an affordable housing restriction on the unit so purchased or may resell the unit at market value and, subject to appropriation, may use the proceeds of the sale for affordable housing or other purposes in the Town.

- In the event the Town or its designee does not purchase the unit under the prior subparagraph, then prior to first issuance of an occupancy permit for any unit in the Project, the Owner shall cause one 2-bedroom unit in the Project (which shall also be one of the first five units completed in the Project) to be restricted in perpetuity for occupancy by persons or households whose aggregate family income does not exceed 80% of the median gross income for the area ("AMI"), as established by the United States Department of Housing and Urban Development, consistent with the terms and policies of the Department of Housing and Community Development's Local Initiative Program, such that this unit shall be eligible for qualification in and a new addition to the Town's Subsidized Housing Inventory under General Laws Chapter 40B.
- Provided that the Owner complies with the provisions of the foregoing two bulleted subparagraphs regarding offering the unit to the Town of Acton or its nominee and restricting the unit with a deed rider as aforesaid, the Owner is not required to close the sale of the affordable unit before the sewer connection permit is issued.
- The Owner shall cooperate with the Town and shall take all actions and execute all instruments reasonably required to render this unit as restricted eligible for qualification as a new addition to the Town's Subsidized Housing Inventory under General Laws Chapter 40B.
- Under the above bulleted subparagraphs, the affordable housing restriction shall be in the form of a duly executed and recorded "Local Initiative Program Affordable Housing Deed Rider" substantially in the form prescribed by the Massachusetts Department of Housing and Community Development ("DHCD") attached hereto as Exhibit E, or such other form of Regulatory Agreement and Declaration of Restrictive Covenants as is acceptable in form and substance to the Commonwealth of Massachusetts acting by and through DHCD and to the Town of Acton acting by and through the Board of Selectmen.

- To ensure that such affordable housing restriction shall survive foreclosure of any mortgage on the Project Site, prior to the first issuance of an occupancy permit for any unit in the Project, the Owner shall cause every holder of a mortgage or security interest in the Project Site that would or might otherwise have record priority over any such affordable housing restriction to execute and deliver to the Town a recordable Subordination, Non-Disturbance and Attornment Agreement in a form acceptable to Town Counsel recognizing and agreeing that the affordable housing restriction shall survive any foreclosure of the mortgage or security interest in the Project Site or the affordable unit substantially as set forth in Section 7 of the "Local Initiative Program Affordable Housing Deed Rider" attached hereto as Exhibit E.
- Prior to submission of a building permit application, submit architectural plans and elevations for the Project to the Acton Historic District Commission ("AHDC") in conformance with its rules and regulations, attend one or more design review sessions as reasonably requested by the AHDC, and attempt in good faith to adhere to the reasonable recommendations of the AHDC unless those recommendations would render the Project uneconomic.
- Prior to the first issuance of an occupancy permit for any unit in the Project, build a sidewalk along the Project's High Street frontage in conformance with the plans prepared by Stamski & McNary, dated August 4, 2005, entitled Sidewalk Plan and Site Plan Special Permit Plan (5 of 5) and with the Special Permit/Site Plan Special Permit #09/24/04-399.

3. **Payment of Sewer Privilege Fee**

Section D.10.2.b.2 of the Bylaw provides in relevant part that:

The Sewer Commissioners shall establish sewer assessment units, as follows:

- (i) The owner of land used for a single family residence shall be assessed on the basis of one sewer unit. The owner of undeveloped land zoned for single family residential use shall be assessed on the basis of the maximum number of single family residences which may be constructed on such land as of right under the zoning requirements then in effect, without approval of the further subdivision of such land under the Subdivision Control Law.
- (ii) The owner of land used for multi-family residential use, shall be assessed on the basis of .67 times the number of dwelling units presently existing on such land, provided each unit has fewer than three bedrooms as defined by Title V. Vacant land zoned for multi-family use shall be assessed on the basis of .67 times the

maximum number of units which can be constructed as of right under the zoning then in effect, without approval of further subdivision of such land under the Subdivision Control Law. Multi-family units with three or more bedrooms shall be assessed on the basis of one sewer unit per dwelling unit. Each owner of a condominium or cooperative dwelling unit in a multi-family residential building shall be assessed only for his or her dwelling unit.

The Owner agrees that the Project Site shall be assessed a Sewer Privilege Fee in accordance with the Sewer Privilege Fee Schedule. In that assessment, the Project Site shall be assigned thirteen point four (13.4) Sewer Betterment Units (“SBU”), which shall be multiplied by \$12,311.52 (the standard dollar amount per SBU established by the Board when the Town issued final sewer betterment assessments for properties within the sewer betterment district eligible to connect to the Town Sewer (the “per SBU charge”)) to establish the Sewer Privilege Fee. Added to this number shall be the usual sewer connection fee for each new connection to the sewer resulting in a “Total Sewer Privilege Fee” (equaling the Sewer Privilege Fee plus the added amount). There shall be no reduction, deduction or set-off from the Total Sewer Privilege Fee for any costs incurred by the Owner or for any affordable units within the Project.

The Owner shall be jointly and severally responsible to timely pay to the Town the Total Sewer Privilege Fee. The Owner agrees that it shall not seek an abatement of the Total Sewer Privilege Fee so assessed.

Pursuant to Chapter D10-5b of the Town of Acton Bylaws, the Owner shall pay the Total Sewer Privilege Fee in full prior to the issuance by the Town of the sewer connection permit or any building permit for the Project.

4. **Sewer Use Charges**

The Owner agrees that it shall incorporate in the Master Deed for the Project’s condominium documents a binding obligation for the unit owners to timely pay any and all sewer use charges and other costs and assessments with respect to the Town’s sewers in accordance with the General Laws and the Bylaw and Regulations, and that all such charges and other costs and assessments shall have priority over other liens to the same extent as a municipal lien for local real estate taxes.

5. **Future Betterments**

The Owner agrees that they shall incorporate in the Master Deed for the Project’s condominium documents a binding obligation for the unit owners to timely pay (a) an adjusted Sewer Privilege Fee in the event the Town re-determines and increases the per SBU charge pursuant to G.L. c. 83, § 15A, and (b) the Project Site’s allocated share of any future sewer betterments assessed by the Town generally with respect to property within the bettered sewer

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district fronting on Main Street, in accordance with the General Laws and the Bylaw and Regulations, as if the Project Site and each unit in the Project had actual frontage on Main Street within the bettered sewer district, and that all such betterments and other costs and assessments shall have priority over other liens to the same extent as a municipal lien for local real estate taxes.

6. Obligations Run With the Land

Because this Agreement makes municipal sewer available to the Project Site for the Project and thereby increases the value of the Project Site and the Project, the Owner and the Town agree that all future betterments, charges, costs and assessments pursuant to this Agreement shall be assessed and collected pursuant to the General Laws applicable to sewer betterments, charges, costs and assessments and shall have priority over other liens on the Project Site to the same extent as a municipal lien for local real estate taxes. To that end, the Owner and the Town agree as follows:

- Pursuant to Massachusetts General Law Chapter 80, Section 4, Chapter 83, Sections 14 and 15, Chapter 340 of the Acts of 2000, and the Town of Acton Sewer Assessment By-law (Chapter D, Section 10 of the Town of Acton Bylaws, the "Bylaw") and regulations promulgated pursuant thereto, and all acts in addition thereto and in amendment thereof and every other power and authority them thereto enabling, the Acton Board of Selectmen acting as the Board of Sewer Commissioners may in its discretion take all actions and record all instruments that may be necessary to incorporate the Project Site into the Town's Middle Fort Pond Brook Sewer Betterment Area.
- The Town may record this Agreement in the chain of title for the Project Site. In so doing, the Town need not record the Exhibits to this Agreement for said recording to be valid notice of this Agreement and its Exhibits. In the event the Registry and/or Registration office requires changes to the form of this Agreement to render it recordable, the Owner shall cooperate with the Town and shall forthwith take all actions reasonably required by the Town to render this Agreement or notice hereof recordable.
- The Owner shall incorporate reference to this Agreement and its Exhibits in the Master Deed for the Project's condominium documents.
- All obligations of the Owner set forth in this Agreement shall run with the land that is the Project Site and be binding upon the Owner and its respective successors and assigns.
- Prior to the connection of the Project to the Town Sewer, the Owner shall use its best efforts to cause every holder of a mortgage or security interest in the Project Site that would or might otherwise have record priority over the Town of Acton's rights under this Agreement to execute and deliver to the Town a recordable Subordination, Non-Disturbance and Attornment Agreement ("SNDA") in a form acceptable to Town Counsel recognizing and agreeing that the Town of Acton's rights under this Agreement

shall survive any foreclosure of the mortgage or security interest and shall have priority over all such mortgages and security interests to the same extent as a municipal lien for local real estate taxes. In the event that any holder of a mortgage or security interest in the Project Site fails or refuses to execute and deliver to the Town a recordable SNDA, the Town may by written notice to the Owner sent prior to the connection of the Project to the Town Sewer terminate this Agreement and return the Sewer Privilege Fee to the Owner, in which case this Agreement shall be null and void and without recourse to the parties hereto.

7. **Miscellaneous**

No Other Connections or Additions: The sewer connection from the Project Site to the Town Sewer authorized by this Agreement shall be used exclusively for the 20-unit condominium Project located on the Project Site and constructed in accordance with this Agreement. There shall be no further connection of any other property, any other project, or any other unit(s) directly or indirectly to the Town Sewer on, at, to, from or through the Project Site.

Termination: In the event construction of the Project has not commenced within one year of the date hereof or construction of the Project has not been substantially completed within three years of the date hereof, then the Board of Selectmen may terminate this Agreement by written notice to the Owner sent by certified or overnight mail to the Owner's address listed on page 1 hereof, in which case this Agreement shall be null and void and without further force or effect.

Binding Effect. The terms and covenants of this Agreement shall run with the land comprising the Project Site and shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns. The provisions of this Agreement shall be binding upon all the parties having or acquiring any right, title or interest in all or any of portion of the Project Site.

Each owner of the Project Site or any portion thereof or interest therein, by accepting delivery of a deed to the Project Site, or any portion thereof or interest therein, subject to this Agreement, agrees and covenants that the terms and conditions of this Agreement are reasonable and agrees to be bound thereby.

Governing Law. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts.

Authorization. This Agreement has been duly authorized by all necessary actions of the Owner and the signators below are duly authorized to execute this Agreement on behalf of the Owner, respectively.

WHEREFORE the parties have set their hands and seal to this Agreement as of this 25th day of February, 2008.

**Town of Acton,
By its Board of Selectmen,**

F. Dore' Hunter, Chairman

Lauren Rosenzweig, Vice-Chairman

Andrew Magee, Clerk

Peter Berry, Member

Paulina Knibbe, Member

TOWN ACKNOWLEDGEMENT

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF MIDDLESEX

On this ____ day of _____, 2008, before me, the undersigned Notary Public, personally appeared each of the foregoing named members of the Board of Selectmen of the Town of Acton, proved to me through satisfactory evidence of identification, which was: examination of _____, to be the person whose name is signed on the preceding document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as the foregoing named members of the Board of Selectmen of the Town of Acton, a municipal corporation.

_____(official signature and seal of notary)

My commission expires _____

Owner, Faulkner Mill Realty, LLC

Michael J. Jeanson

James Fenton

LLC ACKNOWLEDGMENT

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF MIDDLESEX

On this ____ day of _____, 2008, before me, the undersigned Notary Public, personally appeared Michael J. Jeanson and James Fenton, proved to me through satisfactory evidence of identification, which were _____, to be the persons whose name is signed on the preceding or attached document, and acknowledged to me that each signed it voluntarily for its stated purpose as a Member of Faulkner Mill Realty, LLC, Owner.

_____(official signature and seal of notary)

My commission expires _____

