

COMMONWEALTH OF MASSACHUSETTS
CITY OF LOWELL

In City Council

VOTE

Authorizing the City Manager to enter into an Amended and Restated Land Disposition Agreement with Lupoli Companies, LLC, regarding properties located at 291, 330, 341.1, 341.2 and 341.3 Jackson Street, otherwise known as Parcels 2, 3A, 4 and 5 in the Hamilton Canal Innovation District, within the Jackson/Appleton/Middlesex (JAM) Urban Revitalization and Development Project area.

The JAM Urban Revitalization and Development Project (Plan) was approved and accepted by the City Council by Vote dated March 28, 2000, which Plan was further approved by the Department of Housing and Community Development of the Commonwealth of Massachusetts on November 2, 2000, which plan, as amended, is incorporated herein by reference and a copy is on file with the office of Department of Planning and Development; and

In furtherance of the Plan certain designated properties within the JAM Urban Revitalization Development Project are suitable for disposition by the City of Lowell for redevelopment subject to the terms and provisions of the Plan; and

The City of Lowell has determined that amending and restating the original Land Disposition Agreement with Lupoli Companies, LLC, dated December 18, 2020, provides the greatest opportunity to complete the development of these parcels in accordance with the Plan; and

The City of Lowell agrees to allow Lupoli Companies, LLC transfer ownership of properties located at 291, 330, 341.1, 341.2 and 341.3 Jackson Street, otherwise known as Parcels 2, 3A, 4 and 5, but subject to the Amended and Restated Land Disposition Agreement.

Disposition under an approved Urban Revitalization and Development Plan is exempt from the provisions of Mass. G.L. Chapter 30B. Additionally this disposition must be approved by the Executive Office of Housing and Livable Communities (EOHLC); and

The City Manager recommends to the City Council that the City enter into an Amended and Restated Land Disposition Agreement with Lupoli Companies, LLC of said properties under the conditions and provisions in the proposed Amended and Restated Land Disposition Agreement and other conditions the City Manager deems in the best interest of the City of Lowell.

BE IT VOTED BY A TWO-THIRDS VOTE:

That in furtherance of the JAM Urban Revitalization and Development Project (Plan), in the name of the City of Lowell, acting in its capacity as a Redevelopment Authority pursuant to Chapter 353 of the Acts of 1976, the City Manager is authorized to execute and to enter into an Amended and Restated Land Disposition Agreement, including any other required documentation or necessary modifications as determined by the City Manager, with Lupoli Companies, LLC, or such nominee as approved by the City Manager, for the properties located at 291, 330, 341.1, 341.2 and 341.3 Jackson Street, Lowell otherwise known as Parcels 2, 3A, 4 and 5 consistent with the conditions, provisions, and intent of this vote; and

BE IT FURTHER VOTED:

That the City of Lowell, acting in its capacity as a Redevelopment Authority, hereby authorizes the City Manager to consummate the transfer of these properties at 291, 330, 341.1, 341.2 and 341.3 Jackson Street, Lowell, otherwise known as Parcels 2, 3A, 4 and 5, and to execute and deliver a deed and any and all other documents of conveyance related to the transfer and disposition of the aforementioned properties, on such terms and conditions as the City Manager deems in the best interest of the City of Lowell and as provided in the Amended and Restated Land Disposition Agreement. For purposes of calculating the amount of pro-forma taxes to be collected by the City pursuant to MGL c. 44, §63A, the current assessed value shall be used in said calculations.

BE IT FURTHER VOTED:

That upon conveyance, the Vote, Amended and Restated Land Disposition Agreement, Deed and any and all related documents and plans shall be duly recorded in the Registry of Deeds, all at the expense of the grantee.

V:revit/lupoli/

Execution Version

AMENDED AND RESTATED LAND DISPOSITION AGREEMENT

THIS AMENDED AND RESTATED LAND DISPOSITION AGREEMENT (this "Agreement") is made and entered into this ___ day of _____, 202__ ("Effective Date") pursuant to Chapter 121B of the Massachusetts General Laws, by and between the City of Lowell, a municipal corporation with an address of 375 Merrimack Street, Lowell, Massachusetts 01852, acting by and through the City of Lowell, Office of the City Manager (together with its successors and assigns, the "City"), and Lupoli Companies, LLC, a Massachusetts limited liability company headquartered at 290 Merrimack St, Lawrence, MA 01843 (together with its successors and assigns, the "Developer" or "Lupoli"). The City and the Developer or Lupoli are referred to collectively herein as the "parties" and each individually, as a "party." For the purposes set forth below, each of 341 Jackson Street, LLC (together with its successors and assigns, "341 LLC"), 291 Jackson Street, LLC (together with its successors and assigns, "291 LLC") and 330 Jackson Street, LLC (together with its successors and assigns, "330 LLC"), each of which is a Massachusetts limited liability company with an address c/o Lupoli Companies, 290 Merrimack Street, Lawrence, MA 01843, has executed the consent and joinder attached hereto and incorporated herein (the "Consent and Joinder"), and the City and Lupoli hereby acknowledge the Consent and Joinder. 341 LLC, 330 LLC and 291 LLC are sometimes referred to individually herein as a "Joinder Party" and collectively, as the "Joinder Parties."

WITNESSETH

WHEREAS, the City is engaged in carrying out an Urban Renewal Project in an area of the City of Lowell (the "Project Area") known as the Jackson/Appleton/Middlesex ("JAM") area, in accordance with the terms and provisions of the "Jackson/Appleton/Middlesex (JAM) Urban Revitalization and Development Plan" (the "JAM Plan"), which was approved by the Lowell City Council on March 28, 2000 and by the Commonwealth of Massachusetts Department of Housing and Community Development, now known as the Executive Office of Housing and Livable Cities, on November 2, 2000, which JAM Plan, as the same may be amended in accordance with Section 19.a of this Agreement, is hereby incorporated herein by reference. In furtherance of the JAM Plan, the City has acquired a substantial amount of land in the Project Area; and

WHEREAS, in order to enable the City to achieve the objectives of the JAM Plan and particularly, to make the land and improvements in the Project Area available for redevelopment for and in accordance with the JAM Plan, the United States Department of Housing and Urban Development, The Commonwealth of Massachusetts, and the City have undertaken to provide substantial funding for the redevelopment of the Project Area; and

WHEREAS, on January 31, 2020, the Developer submitted a document entitled “Proposal for Parcels 1-5 Hamilton Canal Innovation District” to the City; and

WHEREAS, on October 13, 2020, the Lowell City Council voted to accept such proposal and authorize the disposition to Developer or affiliates thereof, of certain properties known as Parcels 1, 2, 3A, 4 and 5 of the Hamilton Canal Innovation District (“HCID”) (each such property is referred to individually herein as a “Development Parcel” and they are referred to collectively, as the “Development Parcels” or the “Property”), and the Property is more particularly described on Exhibit A attached hereto and incorporated herein; and

WHEREAS, on October 14, 2021, 330 LLC acquired Development Parcel 1 and certain land adjacent thereto by a deed recorded with the Middlesex North County Registry of Deeds (the “Registry”) at Book 36488, Page 119 (the “Parcel 1 Property”); on June 10, 2021, 341 LLC acquired Development Parcels 2, 3A and 4 by a deed recorded with the Registry at Book 35861, Page 177; and on October 14, 2021, 291 LLC acquired Development Parcel 5 by a deed recorded with the Registry at Book 35861, Page 170 (the foregoing deeds are sometimes referred to herein as the “Deeds”); and

WHEREAS, with respect to the disposition of the Development Parcels as aforesaid, Lupoli and the City entered into a Land Disposition Agreement dated as of December 18, 2020 and recorded with the Registry at Book 35681, Page 1 to govern the future development and use of the Development Parcels, which agreement was amended by a First Amendment thereto dated as of June 9, 2021 and recorded with the Registry at Book 35681, Page 138 (as so amended, the “Original LDA”); and

WHEREAS, 330 LLC subsequently developed an approximately 541 space parking garage on Development Parcel 1 in accordance with design plans therefor approved by the City;

WHEREAS, the City and the Developer, with the assent of 341 LLC, 291 LLC, and 330 LLC, wish to amend and restate the Original LDA in its entirety to reflect, *inter alia*, changed redevelopment plans for Development Parcels 2, 3A, 4 and 5 as well as certain other provisions, which redevelopment shall nonetheless be consistent with the JAM Plan and the terms, covenants, and conditions of this Agreement, as the same may be modified in writing from time to time as provided herein; and

WHEREAS, such redevelopment will include residential buildings containing commercial, retail, restaurant, cultural and/or civic space, and which may include accessory parking as well. This multi-phased development on the Property, together with the parking garage already constructed as referenced above, is more particularly described below and is hereinafter referred to as the “Project.”

NOW, THEREFORE, in consideration of the terms and conditions of this Agreement which are set forth in greater detail below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

- 1. Original LDA is Superseded.** This Agreement amends, restates and supersedes in its entirety, the Original LDA.

2. **Description of Property; Development Parcel Liability.** The Property conveyed by the City to the Joinder Parties constitutes Development Parcels 1, 2, 3A, 4 and 5 of the 17-parcel HCID, and such Development Parcels are sometimes known as 291, 330, 341.1, 341.2 and 341.3 Jackson Street (or 341 Jackson Street), as more particularly described in Exhibit A and shown on Exhibit A-1, each of which is attached hereto and incorporated herein by reference. The Development Parcels total approximately 2.3 acres of land. Although the Property consists of a number of Development Parcels, the City agrees and acknowledges that (i) any failure of any Development Parcel owner to comply with the provisions of this Agreement with respect to a Development Parcel shall only affect that Development Parcel, (ii) any such failure shall not affect any other Development Parcel, and (iii) the owner of each Development Parcel shall only have responsibility to the City under this Agreement with respect to the Development Parcel and the component of the Project (each, a "Project Component") constructed on such owner's Development Parcel. In the event of any inconsistency between the provisions of the immediately prior sentence and any other provisions of this Agreement, the provisions of the immediately prior sentence shall control.
3. **Compliance with JAM Plan.** By their execution of the Consent and Joinder incorporated herein and acceptance of their respective Deed, the Joinder Parties agree that they will abide by the terms and conditions of the JAM Plan as to conditions of land development and use relative to their respective Development Parcels; provided however, that any amendments to the JAM Plan shall be subject to the provisions of Section 19.a hereof.
4. **Survival.** The following provisions of this Agreement have survived, and shall continue to survive, acceptance of the Deeds:
 - a. The provisions of this Agreement set forth in Sections 6-26;
 - b. The submission of affidavits of compliance pursuant to M.G.L. c. 60, § 77B, M.G.L. c. 44, § 63A, M.G.L. c. 7C, § 38, and a Massachusetts Department of Capital Asset Management and Maintenance disclosure form; and
 - c. The terms and conditions of the JAM Plan, subject to the provisions of Section 19.a hereof.
5. **Recording of this Agreement.** Developer shall cause this Agreement to be recorded with the Registry and provide the City with a copy thereof as so recorded in accordance with the notice requirements set forth in Section 24.
6. **Plans.** Notice of Approval of the JAM Plan is recorded with the Registry at Book 13182, Page 249, and subsequent notices recorded with the Registry.
7. **Use of the Property and Related Developer Covenants:** The Developer agrees for itself and its successors and assigns with respect to the Development Parcels or any of them, that the Developer and such successors and assigns shall:
 - a. Devote the Property only to the uses specified in the JAM Plan, as the same may be amended in accordance with Section 19.a of this Agreement;

- b. Devote the Property only to the uses specified in the HCID Master Plan (the “Master Plan”), as the Master Plan applies to the whole HCID in implementation of the JAM Plan¹;
 - i. Insofar as the Developer’s proposed development of the Property or any Development Parcel(s) does not comply with the form-based code the City has adopted for the HCID (the “Form-Based Code”), the Developer may seek approval of an appropriate amendment to the Form-Based Code. In such eventuality, the City will work with the Developer to undertake any public processes necessary to amend the Form-Based Code appropriately;
- c. Not discriminate upon the basis of race, color, sex, religious creed, national origin, gender identity, sexual orientation, genetic information, pregnancy, ancestry, veteran status, age or disabilities in the sale, lease or rental or in the use or occupancy of the Property or any improvements erected or to be erected thereon, or any part thereof;
- d. Comply with ordinances and regulations which the City requires be complied with on projects similar to the Project and pertaining to the prioritization of job opportunities for minority or women-owned businesses; and
- e. With respect to the employment of Lowell residents: (A), foster and encourage the employment of Lowell residents for skilled trade work to be performed during the initial construction of each Project Component, (B) work with, and encourage its commercial tenants to work with (at no material cost to either), the Lowell Career Center or similar workforce development initiatives aimed at encouraging the employment and job training/advancement of Lowell residents, and (C) cooperate, and encourage its commercial tenants to cooperate (at no material cost to either) with City-led efforts to promote the employment and advancement of Lowell residents, such as job fairs and other initiatives.

Developer acknowledges that in order to be eligible for the Massachusetts Economic Development Incentive Program (the “EDIP”) and receive Tax Increment Financing (“TIF”) under the EDIP, the Developer must create jobs during the construction and occupancy phases of the Project or the applicable Project Component or portion thereof, pursuant to reasonable terms set forth in any TIF Agreement applicable to the Project, Project Component, or portion thereof. Further, the Developer agrees to make commercially reasonable efforts throughout the development process to maximize the total job creation from the Project. In furtherance of these efforts, the owner of each Project Component shall report to the City periodically regarding job creation during the initial construction and occupancy phase of such Project Component in accordance with the TIF Agreement being executed by the City and the Developer contemporaneously herewith.

From and after the issuance of a Certificate of Occupancy for the Project Component on Development Parcels 2, 3A and 4, the owner of such Development Parcels shall keep all canal ways along the Development Parcels free of trash/debris and provide day-to-day

¹ See <https://www.lowellma.gov/731/Hamilton-Canal-District-Plan>.

maintenance services at the City-owned Utopian Park (including without limitation, weekly trash removal, periodic sweeping, renewal of ground plantings each spring, and fall/spring “clean-ups,” but not including snow/ice removal, lighting maintenance and repair, public art maintenance or repair, or capital/street furniture repairs).

- 8. Description of Improvements.** The Developer shall make improvements to the Property that shall include pavement, curbing, fencing, landscaping, and the construction of two (2) multi-story residential buildings (which together, shall contain at least 10,000 square feet of commercial, retail, restaurant, cultural and/or civic space with a minimum ten-foot ceiling height clearance, and at least two hundred seventy (270) market-rate apartments) – one on Development Parcel 5, and the other on Development Parcels 2, 3A and 4. Any accessory parking created within such buildings shall be covered in accordance with design plans therefor approved by the City. The City acknowledges that the parking garage improvements on Parcel 1 have been completed and a Certificate of Occupancy issued therefor. The parties further agree that upon at least thirty (30) days’ prior notice to the City, the Developer shall have the right to convert all or any portion of ground-floor space designated for commercial, retail, restaurant, cultural and/or civic uses pursuant to this Section 8 into additional residential units if: (a) at least two (2) years have elapsed since the issuance of a certificate of occupancy for the subject building, and (b) the Developer of such building has been unsuccessful in marketing such space for such uses, despite such Developer’s exercise of usual and customary, commercially reasonable efforts to market such space for such uses. Notwithstanding the foregoing, any such conversion shall be subject to all applicable Laws and during such thirty (30) - day period, Developer shall, upon request of the City, provide evidence that it has exercised usual and customary, commercially reasonable efforts to market such space for commercial, retail, restaurant, cultural and/or civic uses for the prior two (2) or more years.

9. Project Sequencing and Schedule.

- a. Milestones. The Developer shall proceed with the redevelopment of the Property in accordance with the following milestones:
- i. Milestone 1: Due diligence reports shall be commissioned as follows for all of the Development Parcels, at the applicable owner’s expense:
- Geotechnical investigation report – within six (6) months after the Effective Date;
 - Wetlands report – within six (6) months after the Effective Date; and
 - Environmental site assessment – within six (6) months after the Effective Date for Development Parcel 5, and within ten (10) months of the Effective Date for Development Parcels 2, 3A, 4.

Executive summaries of the geotechnical and wetlands reports as completed shall be provided to the City within eight (8) months after the Effective Date. Copies of all filings to the Massachusetts Department of Environmental Protection in respect of the Development Parcels shall be provided to the City promptly after the filing thereof.

- ii. **Milestone 2:** Civil engineering plans and design development level architectural drawings (60-70% complete) for the first building to be constructed (the "First Building") shall be completed by the end of the tenth (10th) month after the Effective Date. Such plans/drawings shall be provided to the City for its review and comment.
- iii. **Milestone 3:** Developer shall obtain the necessary city and state permits and approvals for the First Building within eighteen (18) months after the Effective Date. Such deadline shall be tolled if an appeal is filed with respect to any such permit and approval, and such tolling period shall continue until the appeal is settled by the parties thereto or is adjudicated in favor of the owner by a court in a final, non-appealable judgment.
- iv. **Milestone 4:** If financing and governmental approvals are obtained within two (2) years of the Effective Date, construction of the First Building shall commence no later than the first business day after the second (2nd) anniversary after the Effective Date, subject to *Force Majeure* (as defined herein) or the Developer's one-time extension right for up to one (1) year for "good cause shown" and the payment of Twenty-Five Thousand Dollars (\$25,000) to the City (which funds shall be used for City maintenance and/or improvements at Utopian Park). If the Developer is unable to begin construction of the First Building within two (2) years after the Effective Date and subsequently elects its one-time extension option, then construction of the First Building shall begin not later than the third (3rd) anniversary of the Effective Date, subject to *Force Majeure*.

For the purposes of this Section 9(d), "good cause shown" shall mean that Developer: (A) has been unable to secure investor equity and/or construction financing on commercially reasonable terms despite diligent efforts to procure the same, (B) has not been able to secure all necessary public agency permits and approvals for such construction, and/or (C) any such public agency permit or approval has been appealed and such appeal has not been resolved in a manner satisfactory to Developer by settlement or by a final, non-appealable judgment by a court of competent jurisdiction.

Completion of Milestones 1, 2 and 3 must occur with respect to the First Building before the one-time extension right for the second residential building to be constructed (the "Second Building") may be elected by Developer.

- v. **Milestone 5:** Developer shall obtain the necessary city and state approvals for the Second Building not later than the construction commencement date for the First Building. Such deadline shall be tolled if an appeal is filed with respect to any such permit and approval, and such tolling period shall continue until the appeal is settled by the parties thereto or is adjudicated in favor of the owner by a court in a final, non-appealable judgment.

- vi. **Milestone 6:** Developer shall complete the civil engineering plans and design development level architectural drawings (60-70% complete) for the Second Building not later than twelve (12) months after the construction commencement date for the First Building.
 - vii. **Milestone 7:** Developer shall begin construction of the Second Building not later than eighteen (18) months after a Certificate of Occupancy is issued for the First Building, subject to *Force Majeure* or Developer's one-time extension right for up to one (1) year for good cause shown and the payment of Twenty-Five Thousand Dollars (\$25,000) to the City (which payment shall be used for City maintenance and/or improvements at Utopian Park). If Developer is unable to begin construction of the Second Building within eighteen (18) months after the issuance of a Certificate of Occupancy is issued for the First Building and elects its one-time extension right with respect to the Second Building, then construction of the Second Building shall begin not later than twenty eight (28) months after a Certificate of Occupancy is issued for the First Building, subject to *Force Majeure*.
 - viii. **Milestone 8:** Completion of the Second Building shall occur no later than the seventh (7th) anniversary of the Effective Date, subject to *Force Majeure*.
- b. **Construction Status Reports.** From and after the issuance of a building permit for either building, the Developer shall prosecute the construction of the same diligently (subject to *Force Majeure*) and upon receipt of a permanent Certificate of Occupancy, the Developer shall provide a copy thereof to the City. Design and construction status reports on each Project Component for which a Certificate of Occupancy has not yet been issued shall be provided quarterly to the City, commencing on the first quarter (*i.e.*, on January 1, April 1, July 1 or October 1) following the Effective Date, until a Certificate of Occupancy has been issued for the applicable Project Component.
 - c. **Non-Residential Space.** The Developer acknowledges and agrees that the First Building and the Second Building shall together, contain not less than 10,000 square feet of ground floor commercial, retail, restaurant, civic and/or cultural space as described in Section 8 hereof, but subject to the conversion provisions set forth in Section 8, in order to enliven the pedestrian realm within the HCID, in addition to providing desired services, products and experiences to area residents, employees and visitors.
- 10. Zoning and Other Government Approvals:** The owner of each Development Parcel shall fully comply with all terms and conditions, if any, imposed by the Lowell Historic Board, the Lowell Planning Board, and/or the Lowell Zoning Board of Appeals with respect to such owner's Development Parcel(s), and shall obtain all other Approvals that may be necessary for the proposed improvements on such Development Parcel.
- 11. Federal and State Redevelopment Requirements:** The owner of each Development Parcel shall comply fully with such Federal and Massachusetts redevelopment

requirements as may be applicable to such Development Parcel and any construction thereon. In addition, the Developer shall prepare and file, on behalf of the City, a Notice of Project Change to the HCID MEPA approval which reflects changes to the development of the HCID from the development previously reviewed and approved pursuant to MEPA. Such Notice of Project Change will be filed at such time that an approval of such Notice of Project Change is needed in order to commence construction of any Project Component.

12. **Environmental Matters:** The owner of each Development Parcel shall hold the City harmless with respect to oil or hazardous material on such Development Parcel introduced during the period in which such owner held title to the applicable Development Parcel, and shall defend, indemnify and pay all actual losses, damages, costs, and expenses of the City, including without limitation, court costs and reasonable attorney's fees, arising out of the presence of any oil or hazardous materials introduced on such Development Parcel during such period. Each such owner shall comply with all applicable environmental laws and regulations with respect to the development, use and occupancy of its Development Parcel(s).
13. **Certificate of Compliance:** Upon the issuance of a Certificate of Occupancy for each Project Component and a request therefor from the owner of the applicable Project Component, the City, acting through and by its City Manager, shall issue a Certificate of Compliance in recordable form, stating that the owner of the applicable Development Parcel(s) has met the requirements mandated by this Agreement with respect to the applicable Development Parcel(s). Such Certificate shall be issued within fifteen (15) business days of the written request therefor. Any such Certificate of Compliance shall be binding on the City, may be relied upon by any successor owner of the applicable Development Parcel(s) as well as any holder of a mortgage or other security interest thereon, and shall operate to render null and void the restrictions on transfer set forth in Section 16 hereof.
14. **Cooperation with Other Developers.** The Developer shall, at no cost or liability to Developer, use good faith efforts to cooperate reasonably and as the City may deem necessary, with other developers selected to develop parcels within the HCID, and the City shall use reasonable good faith efforts to facilitate and enable such reasonable cooperation, provided that such cooperation shall be at no out-of-pocket cost to the Developer.
15. **Access.** The City shall have reasonable access to the Property, upon reasonable notice to the Developer and the rights of tenants or other parties then in legal occupancy, to verify information and observe the progress of the construction of the Project.
16. **Restrictions on Transfer; Transfer Fee.**
 - a. Except as otherwise provided below in this Section 16, in the absence of the prior written consent of the City, the Developer agrees for itself and its successors and approved assigns that there shall be no transfer of a Development Parcel or assignment of the obligations of the Developer hereunder with respect to such Development Parcel to an entity unrelated to the Developer without the prior written consent of the City, which shall not be unreasonably withheld,

conditioned or delayed. Where the consent of the City to any such transfer is sought, the Developer shall first notify the City in writing of all parties to whom such transfer applies. Within thirty (30) days, the City shall notify the Developer in writing of any objection to the proposed transfer, specifying reasonable grounds for such objection. If the City so objects, the Developer shall make no transfer without the subsequent written consent of the City, which shall not be unreasonably withheld, conditioned or delayed. If the City makes no objection within such thirty (30) day period, or such longer period as may be requested by the City and approved by the Developer, then the proposed transfer shall be deemed to be approved by the City.

- b. It is the intent of this Section 16 that the prohibition on transfer of a Development Parcel shall not apply to mortgage foreclosures, deeds in lieu of foreclosure or any other involuntary transfer caused by the bankruptcy or insolvency of the Developer, provided that the transferee assumes and agrees to comply with all conditions and agreements contained in this Agreement and the applicable Deed. Any such transferee shall take title subject to all obligations of the Developer hereunder and shall agree to assume the same.
- c. It also is the intent of this Section 16 that the prohibition on transfer of a Development Parcel or assignment of the obligations of the Developer hereunder shall not apply to any transfer of a Development Parcel by the Developer or assignment of the obligations of Developer to a limited liability company or other entity that is controlled by, or under common control with, the Developer.
- d. The provisions of this Section 16 shall not apply to the grant of any mortgage secured by a Development Parcel, nor the pledge of the beneficial interests in any owner(s) thereof to secure debt related to such Development Parcel or the development or operation thereof. For the avoidance of doubt, the provisions of this Section 16 shall not apply to any Development Parcel for which a Certificate of Compliance has been issued and recorded with the Registry in accordance with the provisions hereof.
- e. By its execution hereof, the City expressly approves (A) the assignment of Developer's obligations under this Agreement with respect to Development Parcel 5 and the conveyance of Development Parcel 5 to a limited liability company that is an affiliate of Cabot, Cabot & Forbes, and (B) the assignment of Developer's obligations under this Agreement with respect to Development Parcels 2, 3A and 4 and the conveyance of Development Parcels 2, 3A and 4 to another limited liability company that is an affiliate of Cabot, Cabot & Forbes. Such conveyances are to become of record immediately after the recording of this Agreement with the Registry and such assignments will occur by operation of law. From and after such assignments and such conveyances of record, Lupoli shall have no further obligations under this Agreement or the Deeds. *For the avoidance of doubt, the consent set forth in this Section 16(e) is the only consent to transfer of the Development Parcels set forth in this Agreement; all future transfers shall be effectuated in accordance with the other provisions of this Section 16.*

f. Upon any sale of the Property or any Development Parcel that occurs within ten (10) years after the Effective Date, a transfer fee shall be paid to the City at the closing. For any such transactions occurring within five (5) years after the Effective Date, the transfer fee shall be two percent (2%) of the net sales proceeds. For any such transactions occurring more than five (5) years but less than ten (10) years after the Effective Date, the transfer fee shall be one percent (1%) of the net sales proceeds. No transfer fee shall be payable for sale transactions occurring more than ten (10) years after the Effective Date. As used in this Section 16(f), the term “net sales proceeds” shall mean the gross sales proceeds of such sale transaction less outstanding debt, invested equity, and closing costs and fees. At the closing, the Developer or its successor and assign shall provide a certification to the City of such net sales proceeds, and such transfer fee shall be paid in accordance with wiring instructions provided in writing by the City at least three (3) business days in advance of such closing. For the avoidance of doubt, no transfer fee shall be payable by any Mortgagee (as defined below), acquiring any portion of the Property by foreclosure or deed in lieu of foreclosure.

17. ***Force Majeure.*** For the purpose of any of the provisions of this Agreement, neither the City nor the Developer, nor the owner of any Development Parcel, as the case may be, shall be considered in breach of or default in any of its obligations hereunder on account of delays, if such delays are unavoidable due to causes beyond the reasonable control of the applicable party, including without limitation, Acts of God such as floods, earthquakes, and other unusually severe weather; fire, epidemics, pandemics, materials shortages resulting from strikes and/or freight embargos; and delays, moratoriums, or refusals of any governmental authority to issue permits, approvals, and the like when an application conforms to all lawful requirements (such delays, “*Force Majeure*”). It is the intent of this Section 17 that, in the event of the occurrence of any such enforced delay, the party seeking the benefit of the provisions of this Section 17 shall be required, within a reasonable period of time after the beginning of such enforced delay, to notify the other party in writing, stating the cause or causes thereof, and requesting an extension for the period of the enforced delay. In calculating the length of the delay, there shall be taken into consideration not only actual work stoppages but also, any consequential delays resulting from such stoppages as well. If financing difficulties or the unavailability of equity capital or mortgage financing contribute to the failure of Final Completion to occur by the fifth (5th) anniversary of the Effective Date, then the Developer shall respond to any written request by the City effected in accordance with the provisions of Section 8 hereof.
18. **Form-Based Code and Other Local Entitlements.** The City has in place the Form-Based Code for the HCID that creates zoning and subdivision requirements for each parcel, including the Development Parcels, and new rights-of-way that are consistent with the Master Plan and Massachusetts General Laws Chapter 40A. All construction in furtherance of the Master Plan is as-of-right and no further discretionary zoning entitlements are required for the development of the Property, provided that such development is undertaken in accordance with the terms and conditions of this Agreement, the Master Plan, and the JAM Plan.

- a. It is understood that the Developer's site plan may diverge from the Form-Based Code. In the event that the plan diverges from the Form-Based Code, the Developer must receive approval of the site plan by the Hamilton Canal District Review Group.
- b. The owner of each Development Parcel shall obtain all additional Approvals necessary for the construction of the Project Component on such Development Parcel, and shall provide the City with a copy of each Approval before beginning any vertical construction with respect to such Development Parcel. The City shall cooperate with the Developer in obtaining or maintaining any such required Approvals as the Developer may from time-to-time reasonably request, and the City shall periodically review its permitting processes with the Developer in an effort to identify potential permitting or construction difficulties and to develop ways in which to expedite the issuance of said Approvals and the performance of all construction that may be required by the City. The City shall join with the Developer as co-applicant under any application for any Approvals if so required, and the Developer and the City shall cooperate in good faith to process the Approval applications and perform inspections in a manner that will expedite the permitting and construction of the Project in accordance with the provisions hereof. Notwithstanding anything in this Agreement to the contrary, nothing contained in this Agreement shall in any way stop, limit or impair the City from exercising or performing any regulatory, policing, legislative, governmental or other powers or functions with respect to the Project or otherwise, including, by way of illustration but not limitation, inspection of the Project in the performance of such functions. Nothing in this Agreement constitutes or shall be deemed to imply approval or special handling and/or consideration for or exemption from any Approval required by the planning, zoning or regulatory authorities of the City, and the Developer shall be required to comply with all procedures and requirements applicable to the Project that would also be applicable to similar development projects in the City of Lowell; provided however, that the Form-Based Code shall exclusively govern zoning and subdivision matters for the Project.

19. City Covenants.

- a. The City Administration may seek approval of an amendment to the JAM Plan if such is required under 760 CMR 12 for the Project, but only if (i) such amendment does not adversely affect the construction, use or occupancy of the Project or any Project Component, and (ii) such amendment is approved by Developer, in Developer's sole discretion. In such eventuality, the City will work with the Developer to undertake any public processes required under 760 DMR 12 in connection therewith.
- b. The City shall sponsor appropriate MassWorks Grant applications for the benefit of the Project to support costs associated with infrastructure required for the Project provided that there are no other City priorities for a MassWorks grant at that time.

- c. The City shall support the Developer in securing additional program benefits to mitigate the costs of construction and development for the benefit of both parties.

20. Termination of Agreement/Remedies.

- a. In General: A defaulting party shall, upon receipt of written notice of default under this Agreement from the non-defaulting party, promptly take and diligently pursue to cure such default. If the defaulting party fails to promptly take and diligently pursue action designed to cure the default, or if the default is not cured within sixty (60) days of receipt of written notice of default (if such default is reasonably capable of being cured within sixty (60) days, and if not, the defaulting party shall have such amount of time as is reasonable provided the defaulting party continues to diligently pursue cure), the non-defaulting party may avail itself of any and all remedies, including without limitation, curing the default itself after providing the defaulting party with at least ten (10) business days' notice thereof and charging the defaulting party, bringing an action for damages, and/or proceedings to enjoin or compel specific performance. The City agrees and acknowledges that a default with respect to a particular Development Parcel or particular Development Parcels shall not constitute a default with respect to any other Development Parcel(s).
- b. Reversion of Title in City for Condition Broken: If, prior to the issuance of a Certificate of Compliance for a Development Parcel, the Developer, or any successor or assign, shall default in or violate its obligations under this Agreement to proceed with the design and development of such Development Parcel in accordance with this Agreement, and such default or violation shall not be cured within one hundred eighty (180) days after notice in writing thereof, the City, after expiration of the applicable cure period, at its option, may declare a termination of title to such Development Parcel in favor of the City, whereupon such title shall revert to the City, but shall be subject to any mortgage which has been placed on the Development Parcel, it being the intent of the City that the estate conveyed to the Developer or its successors and assigns shall be a fee simple subject to a right of entry for condition broken. The City shall not have the right to exercise its remedy under this Section 20(b) to the extent that the Developer is working diligently to cure such default or violation of its obligations under this Agreement to proceed with the design and development of such Development Parcel in accordance with this Agreement.
- c. Resale of Re-acquired Property/Disposition of Proceeds: Upon the reversion in the City of title to a Development Parcel or any part thereof as provided herein, the City shall use its best efforts to resell the Development Parcel or part thereof (subject to such mortgage liens as may then be in place with respect to the Development Parcel) as soon and in such manner as the City shall find feasible and is commercially reasonable, to a qualified and responsible party or parties (as reasonably determined by the City), who will assume the obligation of making or completing the improvements or such other improvements in their stead as shall be satisfactory to the City and in accordance with the uses specified for such Development Parcel or part thereof in this Agreement and in accordance with the

JAM Plan. Upon any such resale of the Development Parcel or part thereof, the proceeds thereof shall be applied as follows:

- i. First, to reimburse the City for all costs and expenses, including but not limited to salaries of City personnel, in connection with the recapture, management and resale of the Development Parcel or part thereof (but less any income derived from the Development Parcel or part thereof in connection with such management); all unpaid taxes, assessments, and water and sewer charges with respect to the Development Parcel or part thereof or, in the event the Development Parcel is exempt from taxation or assessment or water and sewer charges during the period of ownership thereof by the City, an amount equal to such taxes, assessment, or charges (as determined by the appropriate City officials) as would have been payable if the Development Parcel were not so exempt); any payments made or necessary to be made to discharge any mortgages or other encumbrances or liens due to obligations, defaults or acts of the Developer (or successors or assigns); any expenditures made or obligations incurred with respect to the making or completion of the improvements on the Development Parcel or any part thereof, and any amounts otherwise owing the City by the Developer (or successors or assigns) relative to the Development Parcel(s) in question.
 - ii. Second, to reimburse the Developer (or successors or assigns) up to the amount equal to the funds actually invested by it in making any of the improvements on the Development Parcel(s) or part thereof, less any gains or income from the Development Parcel obtained by the Developer (or successors or assigns). Any balance remaining after such reimbursements shall be retained by the City as its property.
- d. Other Rights and Remedies of the City/No Waiver by Delay: The City shall have the right to institute such actions or proceedings as it may deem desirable for effectuating the purposes of this Section 20 and its subparts, including the right to execute and record in the Registry, a written declaration of the termination of all right, title, and interest of the Developer as to any Development Parcels which have been re-acquired by the City and, subject to such mortgage liens as are provided for herein, its successors in interest and assigns in such Development Parcels which have been re-acquired by the City, the Property, and the reversion of title thereto in the City; provided however, that any delay by the City in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Section 20 shall not operate as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this Section 20 that the City should not, because of concepts of waiver or laches or otherwise, feel constrained to exercise such remedy at a time when it may still hope to resolve by other methods the problems created by the default; nor shall the City's waiver of any specific default be treated as a waiver of the City's rights with respect to any other default or, for that matter, as a waiver with respect to the particular default, except and only to the extent specifically waived in writing).

21. **Rights and Remedies Cumulative.** The rights and remedies of the parties to this Agreement (including without limitation, the Joinder Parties), whether provided by law or by this Agreement, shall be cumulative, and the exercise by either party of any one or more such remedies shall not preclude the exercise of any or all such remedies for any other default under this Agreement.
22. **Mortgagee Rights.** The parties expressly acknowledge and agree that, notwithstanding any provision to the contrary in this Agreement, the following terms and provisions of this Section 22 (collectively, the "Mortgagee Rights") shall apply to, are for the benefit of, may be relied upon, and shall be enforceable by each mortgagee of any Development Parcel of which the City has been given notice in accordance with the provisions hereof (each such entity, a "Mortgagee"), and as a third-party beneficiary of this Agreement, the same as if such Mortgagee were a party to this Agreement:
- a. A Mortgagee shall have the right to exercise all rights and remedies contained in its mortgage, including rights and remedies available to such Mortgagee upon any default by Developer or its successors and assigns under this Agreement and expressly including, without limitation, foreclosure or a deed in lieu of such foreclosure, without the consent of the City. Any Mortgagee shall provide prompt notice of the commencement of any such foreclosure or deed in lieu of foreclosure proceeding to the City in accordance with the notice requirements of this Agreement. In no event, however, shall the failure to give such notice prohibit, forestall or otherwise impair such Mortgagee's rights hereunder or pursuant to the terms of its mortgage, but such failure to provide notice timely to the City shall be remedied as soon as practicable by the subject Mortgagee.
 - b. Upon any foreclosure sale under a mortgage or the delivery of a deed in lieu of such foreclosure, the City will recognize the recipient of such transfer as an assignee or transferee under this Agreement, and such party, as the successor to Developer hereunder, shall be deemed to have assumed all of the obligations of the Developer hereunder with respect to the subject Development Parcel(s), commencing as of the effective date of such foreclosure or other transfer and ending as of the date of any subsequent transfer of such mortgagor's interest under this Agreement by such successor Development Parcel owner effectuated in accordance with the provisions of this Agreement. In connection with the foregoing, upon any such foreclosure or other transfer in lieu of foreclosure by a Mortgagee under its mortgage and/or the exercise of other rights and remedies under such mortgage, such Mortgagee (and its successors and assigns) shall in no event be obligated to indemnify, defend or hold harmless the City under this Agreement with respect to any hazardous materials placed on, in or under the subject Development Parcel(s), or any violation of environmental laws, occurring prior to the effective date of such foreclosure or other transfer in lieu of foreclosure.
 - c. If a Mortgagee cures or otherwise remedies a default hereunder within the time period allowed hereunder, or if the applicable Development Parcel owner cures or remedies such default within the time period allowed hereunder, then regardless of whether a Mortgagee has commenced a cure or other remedy, the Mortgagee

shall have the right to elect not to commence (or, if previously commenced, not to continue) foreclosure proceedings.

- d. No amendment of this Agreement shall be binding or effective upon any Mortgagee if such amendment affects a Development Parcel secured by a mortgage of which the City has been provided written notice in accordance with the notice provisions of this Agreement.
- e. The City shall provide copies of any notices of default issued hereunder to any applicable Mortgagee and no such notice by the City to the Developer or any successor or assign thereof (including without limitation, the applicable Joinder Party or Parties) shall be deemed duly given unless and until a copy thereof has been so provided to the applicable Mortgagee(s).
- f. Each Mortgagee shall have the same period as is given Developer or its successors under this Agreement (commencing upon such Mortgagee's receipt of such notice from the City) within which to cure or otherwise remedy (or cause to be cured or otherwise remedied by its designee), the default(s), act(s) or omission(s) that are the subject matter of such notice, *plus*, an additional sixty (60) days to commence the cure or other remedy of such default(s) or act(s) or omission(s); provided, however, that nothing herein shall require any Mortgagee (or its designee), as a condition to the exercise of its rights hereunder, to cure or otherwise remedy any default of the applicable owner not reasonably susceptible of being cured or otherwise remedied by such Mortgagee (it being expressly agreed that the foregoing shall not be deemed to excuse a Mortgagee or its designee from performing obligations under this Agreement relating to the development of the applicable Development Parcel that require access to and/or control thereof from and after such access and/or control has been duly achieved). The City shall accept any such performance by or at the instigation of a Mortgagee for the account of and as if the same had been done by the owner of the applicable Development Parcel, and Mortgagee shall not thereby be or be deemed to be in possession of the subject Development Parcel or to have assumed such owner's obligations under this Agreement.
- g. If a Mortgagee elects to exercise its foreclosure rights, the cure period for any default under this Agreement shall be tolled during any period in which a Mortgagee is stayed or otherwise prevented by law from commencing or continuing any foreclosure proceedings.
- h. Notwithstanding any other provision of this Agreement to the contrary, in no event shall any Mortgagee be obligated to complete construction of any Project Component.
- i. In the event of any conflict between any other term or provision of this Agreement and any term or provision of these Mortgagee Rights, the Mortgagee Rights term or provision shall govern and apply.

23. Covenants Binding Upon Successors in Interest; Period of Duration. It is intended and agreed that this Agreement and the covenants provided in this Agreement, shall be

covenants running separately with each Development Parcel and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise and except only as otherwise specifically provided in this Agreement, be binding to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable, on a Development Parcel by Development Parcel basis, by, the City against the Developer and the Joinder Parties and their respective successors and assigns (including without limitation, each every successor in interest to each of the Development Parcels), and any party in possession or occupancy of the Property or any part thereof. It is further intended and agreed that this Agreement and the covenants provided herein shall remain in effect for the period of time from the Effective Date to the expiration date specified or referred to in the JAM Plan, at which time this Agreement and the covenants contained herein shall terminate. Notwithstanding the foregoing, it is intended and agreed that the covenants contained herein shall no longer bind Lupoli from and after Effective Date but rather, shall be binding upon the successors and assigns of the Joinder Parties, as owners of the Development Parcels.

- 24. Notices and Demands.** A notice, demand, or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is delivered (i) personally, (ii) by certified mail, return receipt request, or (iii) by nationally recognized overnight delivery service such as Federal Express, DHL or the U.S. Postal Service, and addressed as follows:

In the case of the Developer and/or the Joinder Parties:

c/o Lupoli Companies, LLC
290 Merrimack Street
Lawrence, Massachusetts 01843
Attention: Salvatore Lupoli

with a copy to:

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
One Financial Center
Boston, MA 02111
Attention: Kurt Steinkrauss, Esq.

In the case of the City:

Thomas A. Golden, Jr., City Manager
City of Lowell
375 Merrimack Street
Lowell, MA 01852-5985

With copies to:

Yovani Baez-Rose, Assistant City Manager/DPD Director
City of Lowell Department of Planning and Development
50 Arcand Drive, JFK Civic Center, 2nd Floor
Lowell, MA 01852-1025

and

Corey Williams, Esq.
City Solicitor
Law Department –City Hall
375 Merrimack Street
Lowell, MA 01852-5986

Notices shall be deemed delivered upon receipt or upon the date when delivery is first refused. Notices shall be sent to such other persons at such other address(es) as either party or any Joinder Party may from time to time designate in writing by notice provided to the other party and all Joinder Parties in accordance with this Section 24.

25. **Invalidity.** If any provision of this Agreement is held to be illegal, invalid, or unenforceable in whole or in part under present or future applicable laws, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by the severance of such provision from this Agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as part of this

Agreement, a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and still be legal, valid and enforceable, and this Agreement shall be deemed reformed accordingly. At the request of either party, such substitute provision shall be memorialized in an amendment to this Agreement recorded with the Registry.

26. Additional Special Provisions.

- a. Consents: Wherever in this Agreement, the consent or approval of the City is required, such consent or approval shall not be unreasonably withheld, conditioned or delayed.
- b. Litigation Costs: The Developer shall pay all reasonable costs and expenses of the City, including reasonable out-of-pocket attorney's fees, incurred in any legal proceedings arising out of this Agreement in which the City is the prevailing party in a final, non-appealable judgment.
- c. No Merger: None of the provisions of this Agreement are intended to or shall be merged by reason of any Deed transferring title to the Property from the City to the Developer or any successor in interest, but on the contrary, this Agreement shall survive the delivery of the Deeds.
- d. Successors and Assigns: All provisions of this Agreement shall be binding upon the successors and assigns of the Developer, whether or not so specified in any given section of this Agreement. This Agreement shall likewise be binding on any public body or bodies succeeding to the interests of the City hereunder.
- e. Governing Law; Venue: This Agreement is a Massachusetts contract and shall be construed and governed by Massachusetts law, without regard to principles of conflicts of laws. Any action arising under this Agreement may be brought only in a court of competent jurisdiction in The Commonwealth of Massachusetts.
- f. Counterparts; Integration; Amendment: This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. This Agreement sets forth the entire contract between the parties and supersedes any other agreement, whether written or oral (including without limitation, the Original LDA) between the parties. This Agreement may be modified or amended only by a written instrument executed by both the City and the Developer, with the written consent of the owner of any affected Development Parcel.
- g. Limitation of Liability: Notwithstanding anything to the contrary contained herein, the direct and indirect shareholders, partners, members, trustees, officers, directors, employees, agents, and security holders of the Developer are not assuming any, and shall have no, personal liability for any obligations of the Developer under this Agreement. The liability of the Developer hereunder is limited to its interest in the Property, and the liability of 291 LLC, 330 LLC and 341 LLC hereunder shall be limited to their respective interests in their respective

Development Parcel(s). No official, employee, representative or agent of the City shall have any personal liability under this Agreement.

- h. Recitals. The recitals set forth at the beginning of this Agreement are incorporated herein as if fully set forth.
- i. Third Party Beneficiaries. The parties acknowledge that the Joinder Parties shall be third-party beneficiaries of this Agreement.

[Signatures on following pages]

WITNESS WHEREOF, the parties hereto have caused this Agreement in multiple counterparts (each of which together shall constitute an original for all purposes) to be signed, sealed, and delivered by their duly authorized officers or representatives, respectively, as of the Effective Date.

CITY

DEVELOPER

CITY OF LOWELL

LUPOLI COMPANIES, LLC

By: _____
Thomas A. Golden, Jr.
City Manager

By: _____
Name _____
Title: _____

Approved as to form:

By: _____
Corey Williams, Esq.
City Solicitor

[Signatures continue on following page]

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this ____ day of _____, 202_, before me, the undersigned notary public, personally appeared Thomas A. Golden, Jr., City Manager, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it on behalf of the City of Lowell, voluntarily for its stated purpose.

Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this ____ day of _____, 202_, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it as the _____ of Lupoli Companies, LLC, as the voluntary act of said limited liability company.

Notary Public
My Commission Expires:

CONSENT AND JOINDER

By their execution hereof, each of the undersigned consents to this Agreement and agrees that its respective Development Parcel(s) and the development, use and occupancy thereof shall be governed by the provisions of this Agreement.

PARCEL 1 DEVELOPMENT PARCEL OWNER

330 Jackson Street, LLC

By: _____
Name: _____
Title: _____

DEVELOPMENT PARCELS 2, 3A AND 4 OWNER

341 Jackson Street, LLC

By: _____
Name: _____
Title: _____

DEVELOPMENT PARCEL 5 OWNER

291 Jackson Street, LLC

By: _____
Name: _____
Title: _____

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this ____ day of _____, 202__, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it as the _____ of 330 Jackson Street, LLC, as the voluntary act of such limited liability company.

Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this ____ day of _____, 202__, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it as the _____ of 341 Jackson Street, LLC, as the voluntary act of such limited liability company.

Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this ____ day of _____, 202__, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it as the _____ of 291 Jackson Street, LLC, as the voluntary act of such limited liability company.

Notary Public
My Commission Expires:

Exhibit A

Legal Description – Property

291 Jackson Street, Lowell, Massachusetts

The land in Lowell, Middlesex County, Commonwealth of Massachusetts shown as Lot 5 on a plan entitled "Phase I, Definitive Subdivision Plan of Land, Hamilton Canal District, located in Lowell, Massachusetts," dated January 30, 2009, revised February 25, 2009 and March 16, 2009, prepared by Meridian Associates, recorded in the Middlesex North District Registry of Deeds as Plan Book 228, Plan 127, Sheet 5 of 12.

341 Jackson Street, Lowell, Massachusetts

The land in Lowell, Middlesex County, Commonwealth of Massachusetts shown as Lots 2, 3A, and 4 on a plan entitled "Phase I, Definitive Subdivision Plan of Land, Hamilton Canal District, located in Lowell, Massachusetts," dated January 30, 2009, revised February 25, 2009 and March 16, 2009, prepared by Meridian Associates, recorded in the Middlesex North District Registry of Deeds as Plan Book 228, Plan 127, Sheet 5 of 12.

330 Jackson Street, Lowell, Massachusetts

The land in Lowell, Middlesex County, Commonwealth of Massachusetts described as follows:

Parcel I

The land in Lowell, Middlesex County, Commonwealth of Massachusetts shown as Lot 1 on a plan entitled "Phase I, Definitive Subdivision Plan of Land, Hamilton Canal District, located in Lowell, Massachusetts," dated January 30, 2009, revised February 25, 2009 and March 16, 2009, prepared by Meridian Associates, recorded with the Middlesex North Registry District in Plan Book 228, Plan 127, Sheet 5 of 12.

Being more particularly described according to said plan as follows:

Beginning at a point in the northerly line of Middlesex Street, such point being thirty and 00/100 feet (30.00') from the northwesterly intersection of Revere Street and Middlesex Street, as shown on said plan;

Thence running S 67° 01' 37" W, by Middlesex Street, as shown on said plan, one hundred ten and 00/100 feet (110.00');

Thence running N 22° 58' 23" W, by Land now or formerly of the City of Lowell and by remaining area of 360 Jackson, as shown on said plan, two hundred five and 33/100 feet (205.33');

Thence running N 67° 01' 37" E, by Jackson Street, as shown on said plan, one hundred ten and 00/100 feet (110.00');

Thence running S 22° 58'-.23" E, by the area entitled "Proposed Street Widening", as shown on said plan, two hundred five and 33/100 feet (205.33') to the point of beginning.

Containing 22,586 square feet, more or less.

Parcel II

The land in Lowell, Middlesex County, Commonwealth of Massachusetts, being more particularly described on plan entitled, "Discontinuance Plan of Land Located in Lowell, Massachusetts, prepared for City of Lowell" by Meridian Associates, Inc. dated April 27, 2021, and recorded with the Middlesex North District Registry of Deeds in Plan Book 249, Plan 5.

Commencing at a stone bound drill hole on the northerly sideline of Middlesex Street at the easterly sideline of Canal Street, as described in Order of Acceptance and Taking recorded with the Middlesex North District Registry of Deeds in Book 26590, Page 248; thence running S 67° 01' 37" W sixty and no hundredths (60.00') feet by Middlesex Street to the westerly sideline of said Canal Street, at the southeasterly corner of Lot 1, depicted on said plan; thence N 22° 58' 23" W eleven and fifty hundredths (11.50') feet by said Lot 1 along the westerly sideline of said Canal Street to the true point of beginning:

Thence running N 22° 58' 23" W one hundred eighty seven and eighty three hundredths (187.83') feet by said Lot 1 to a point that lies S 22° 58' 23" E six and no hundredths (6.00') feet from the southerly sideline of Jackson Street; this last course passes through a portion of registered land lying within the "Proposed Street Widening" parcel shown on the first mentioned plan;

Thence running N 67° 01' 37" E fourteen and no hundredths (14.00') feet;

Thence running S 22° 58' 23" E one hundred eighty seven and eighty three hundredths (187.83') feet;

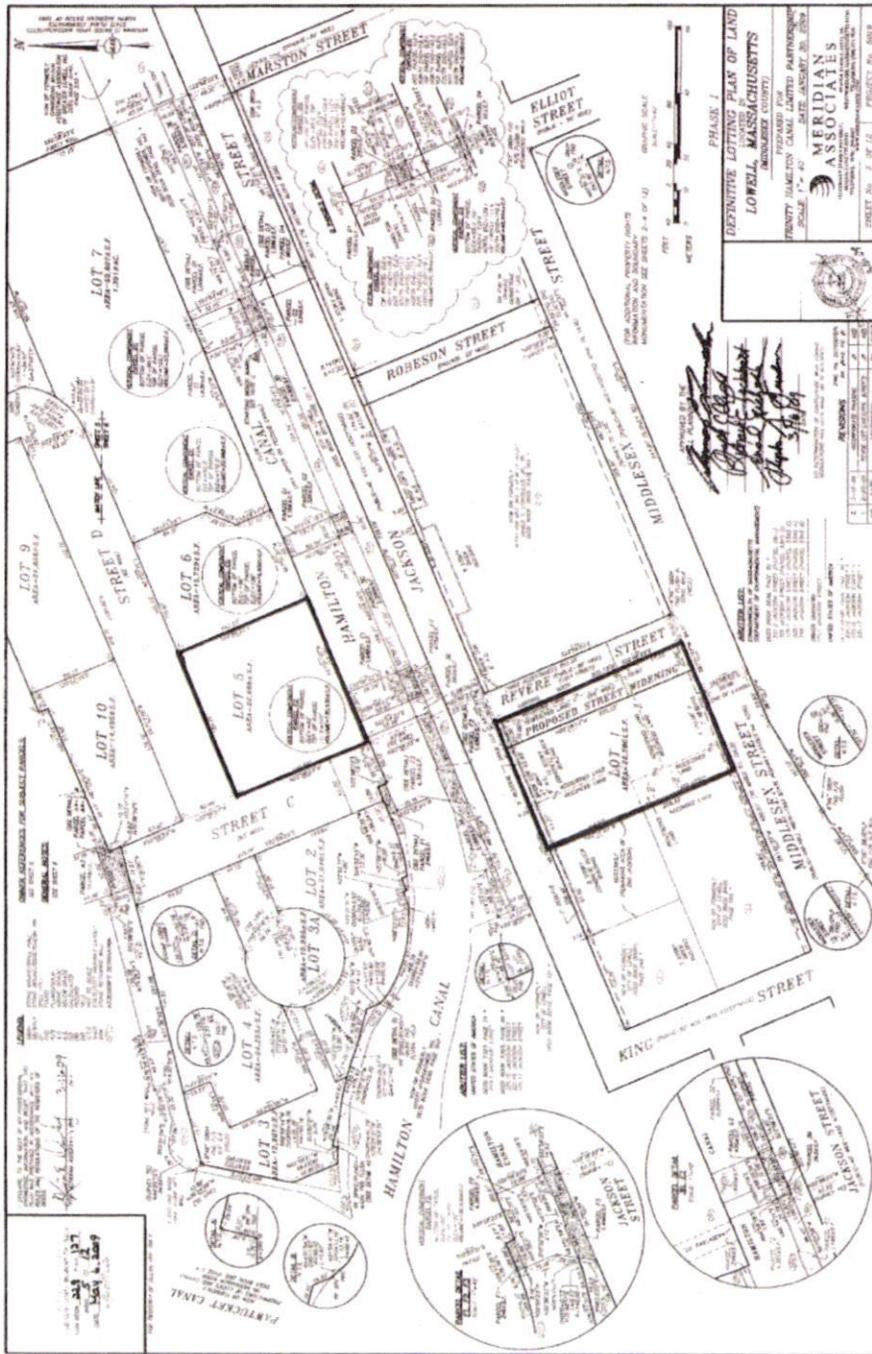
Thence running S 67° 01' 37" W fourteen and no hundredths (14.00') feet to said Lot 1 and the westerly sideline of said Canal Street, previously accepted, and the point of beginning.

Said parcel contains 2,630 more or less square feet.

Exhibit A-1

Development Parcel Plan

[See attached]



523511931v.9

ASSIGNMENT AND ASSUMPTION OF TAX AGREEMENTS

Re: 291 Jackson Street, Lowell, Massachusetts (the “Property”)

This ASSIGNMENT AND ASSUMPTION OF TAX AGREEMENTS (this “Assignment and Assumption”) is made as of the ____ day of _____, 202_, by and between 291 JACKSON STREET LLC, a Massachusetts limited liability company with an address c/o Lupoli Companies, 290 Merrimack Street, Lawrence, MA 01843 (“Assignor”) and [_____] a _____ limited liability company with an address c/o Cabot, Cabot and Forbes, 185 Dartmouth Street, Suite 402, Boston, Massachusetts 02116 (“Assignee”). By its execution hereof, the City of Lowell consents to this Assignment and Assumption.

WITNESSETH

A, Pursuant to that certain Purchase and Sale Agreement dated as of February 19, 2025 by and between Assignor, as Seller and Assignee, as Buyer (Assignee as the successor-in-interest to Cabot, Cabot & Forbes, LLC with respect to the Property), with 291 Jackson Street LLC as a joinder party thereto (the “Agreement”), contemporaneously with the execution and delivery hereof, Assignor has sold the Property to Assignee. In connection with the sale of the Property and, pursuant to the terms and conditions of the Agreement, Assignor has agreed to assign the Tax Agreements (as defined below) affecting the Property to Assignee and Assignee has agreed to assume the rights and obligations of Assignor under such Tax Agreements.

B. The City of Lowell, Massachusetts, has agreed to this Assignment, as evidenced by its consent hereto.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the sufficiency and receipt whereof is hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

1. Assignor hereby conveys, assigns, transfers and sets over unto Assignee all of its right, title, and interest in, to, and under certain tax exemption agreements pertaining to the Property and listed on Exhibit A attached hereto and incorporated herein (the “Tax Agreements”).

2. Assignee hereby accepts the conveyance, transfer and assignment of the Tax Agreements and assumes, from and after the date hereof, the obligations of Assignor arising and accruing on or after the date of this Assignment and Assumption. Assignee agrees to perform, fulfill and observe all the covenants, agreements, warranties, obligations and liabilities of Assignor under the Tax Agreements arising from and after the date hereof.

3. Assignee agrees to indemnify and hold Assignor harmless from and against any claims, demands, causes of action, losses, damages, liabilities, and costs and expenses (including attorneys’ fees and disbursements) arising out of Assignee’s breach of the Tax Agreements arising or accruing on or after the date hereof.

4. The terms and provisions of this Assignment and Assumption shall be binding upon and inure to the benefit of the parties hereto and their respective successors, and assigns.

5. This Assignment and Assumption may be executed in multiple counterparts, each of which shall be deemed an original and together, shall constitute one and the same document. To facilitate execution of this Assignment and Assumption by all of the parties hereto, Portable Document Format (PDF) signatures (including any electronic signature covered by the U.S. Federal E-SIGN Act of 2000, Uniform Electronic Transactions Act, the Electronic Signatures and Records Act or other applicable law (*e.g.*, www.docusign.com)) shall have the same validity and effect as original signatures.

6. This Assignment and Assumption shall be governed by the laws of The Commonwealth of Massachusetts, without regard to principles of conflicts of laws.

[SIGNATURES ON FOLLOWING PAGE]

This Assignment and Assumption is executed as an instrument under seal as of the date set forth above.

ASSIGNOR:

291 JACKSON STREET, LLC,
a Massachusetts limited liability company

By: _____

Name:

Title:

ASSIGNEE:

[_____]

By: _____

Name:

Title:

By its execution of this Assignment and Assumption, the City of Lowell, Massachusetts consents thereto.

CITY OF LOWELL

By: _____

Thomas A. Golden, Jr.

City Manager

Approved as to form:

By: _____

Corey Williams, Esq.

Lowell City Solicitor

Exhibit A

Tax Agreements

1. Tax Increment Financing Agreement by and between the City of Lowell, Massachusetts and 291 Jackson Street, LLC, dated of even date herewith.
2. Housing Development Incentive Program Tax Increment Exemption Agreement between the City of Lowell, Massachusetts and 291 Jackson Street, LLC dated of even date herewith.

ASSIGNMENT AND ASSUMPTION OF TAX AGREEMENTS

Re: 341 Jackson Street, Lowell, Massachusetts (the “Property”)

This ASSIGNMENT AND ASSUMPTION OF TAX AGREEMENTS (this “Assignment and Assumption”) is made as of the ____ day of _____, 202_, by and between 341 JACKSON STREET, LLC, a Massachusetts limited liability company with an address c/o Lupoli Companies, 290 Merrimack Street, Lawrence, MA 01843 (“Assignor”) and [_____], a _____ limited liability company with an address c/o Cabot, Cabot and Forbes, 185 Dartmouth Street, Suite 402, Boston, Massachusetts 02116 (“Assignee”). By its execution hereof, the City of Lowell consents to this Assignment and Assumption.

WITNESSETH

A. Pursuant to that certain Purchase and Sale Agreement dated as of February 19, 2025 by and between Assignor as Seller and Assignee as Buyer (Assignee as the successor-in-interest to Cabot, Cabot & Forbes, LLC with respect to the Property), with 341 Jackson Street, LLC as a joinder party thereto (the “Agreement”), contemporaneously with the execution and delivery hereof, Assignor has sold the Property to Assignee. In connection with such sale of the Property and, pursuant to the terms and conditions of the Agreement, Assignor has agreed to assign the Tax Agreements (as defined below) affecting the Property to Assignee and Assignee has agreed to assume the rights and obligations of Assignor under such Tax Agreements as of the date hereof.

B. The City of Lowell, Massachusetts, has agreed to this Assignment and Assumption, as evidenced by its consent hereto.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the sufficiency and receipt whereof is hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

1. Assignor hereby conveys, assigns, transfers and sets over unto Assignee all of its right, title, and interest in, to, and under certain tax exemption agreements pertaining to the Property and listed on Exhibit A attached hereto and incorporated herein (the “Tax Agreements”).

2. Assignee hereby accepts the conveyance, transfer and assignment of the Tax Agreements and assumes, from and after the date hereof, the obligations of Assignor arising and accruing on or after the date of this Assignment and Assumption. Assignee agrees to perform, fulfill and observe all the covenants, agreements, warranties, obligations and liabilities of Assignor under the Tax Agreements arising from and after the date hereof.

3. Assignee agrees to indemnify and hold Assignor harmless from and against any claims, demands, causes of action, losses, damages, liabilities, and costs and expenses (including attorneys’ fees and disbursements) arising out of Assignee’s breach of the Tax Agreements arising or accruing on or after the date hereof.

4. The terms and provisions of this Assignment and Assumption shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

5. This Assignment and Assumption may be executed in multiple counterparts, each of which shall be deemed an original and together, shall constitute one and the same document. To facilitate execution of this Assignment and Assumption by all of the parties hereto, Portable Document Format (PDF) signatures (including any electronic signature covered by the U.S. Federal E-SIGN Act of 2000, Uniform Electronic Transactions Act, the Electronic Signatures and Records Act or other applicable law (*e.g.*, www.docusign.com)) shall have the same validity and effect as original signatures.

6. This Assignment and Assumption shall be governed by the laws of The Commonwealth of Massachusetts, without regard to principles of conflicts of laws.

[SIGNATURES ON FOLLOWING PAGE]

This Assignment and Assumption is executed as an instrument under seal as of the date set forth above.

ASSIGNOR:

341 JACKSON STREET, LLC,
a Massachusetts limited liability company

By: _____

Name:

Title:

ASSIGNEE:

[_____]

By: _____

Name:

Title:

By its execution of this Assignment and Assumption, the City of Lowell, Massachusetts consents hereto.

CITY OF LOWELL

By: _____

Thomas A. Golden, Jr.

City Manager

Approved as to form:

By: _____

Corey Williams, Esq.

Lowell City Solicitor

Exhibit A

Tax Agreements

1. Tax Increment Financing Agreement by and between the City of Lowell, Massachusetts and 341 Jackson Street, LLC, dated of even date herewith.
2. Housing Development Incentive Program Tax Increment Exemption Agreement between the City of Lowell, Massachusetts and 341 Jackson Street, LLC dated of even date herewith.



One Financial Center
Boston, MA 02111
617 542 6000
mintz.com

March __, 2025

By Email

Mr. Thomas A. Golden, Jr.
City Manager
City of Lowell
375 Merrimack Street
Lowell, MA 01852

Re: Escrow Agreement – City Agreements for HCID Parcels 1, 2, 3A, 4 and 5
(the “Property”)

Dear Mr. Golden:

This letter constitutes an escrow agreement (“Agreement”) among (i) the City of Lowell (the “City”), (ii) Lupoli Companies, LLC (“Lupoli LLC”), 291 Jackson Street, LLC (“291 LLC”), 341 Jackson Street, LLC (“341 LLC”) and 330 Jackson Street, LLC (“330 LLC” and collectively with Lupoli LLC, 291 LLC, and 341 LLC, “Lupoli”) regarding certain documents related to Parcels 1, 2, 3A, 4 and 5 within the Hamilton Canal Innovation District in Lowell, MA. Lupoli and the City are referred to herein as the “parties.” The law firm of Mintz, Cohen, Ferris, Glovsky and Popeo, P.C is joining in this Agreement as escrow agent with respect to this Agreement (“Mintz”).

On the date hereof, each of the City, Lupoli LLC, 291 LLC, 341 LLC and 330 LLC have placed into escrow with Mintz, as escrow agent, three fully executed but undated original counterparts of the each of the following documents to which it is a party:

1. An Amended and Restated Land Disposition Agreement by and between the City and Lupoli LLC, joined in by 291 LLC, 341 LLC and 330 LLC (the “LDA”).
2. A Tax Incentive Exemption Agreement by and between the City and 291 LLC.
3. A Tax Incentive Exemption Agreement by and between the City and 341 LLC.
4. A Tax Increment Financing Agreement by and between the City and 291 LLC;
5. A Tax Increment Financing Agreement by and between the City and 341 LLC.
6. An Assignment and Assumption Agreement by and between 291 LLC and [_____], as consented to by the City.
7. An Assignment and Assumption Agreement by and between 341 LLC and [_____], as consented to by the City.

Collectively, the foregoing documents constitute the “City Agreements.”

The parties have agreed that the City Agreements shall be held in escrow by Mintz, as escrow agent, strictly in accordance with the provisions of this Agreement. By its execution of this Agreement, Mintz agrees to hold the City Agreements strictly in accordance with the provisions of this Agreement, and to release them only as provided in this Agreement.

In addition, contemporaneously with the execution of this Agreement, the City is delivering to Lupoli LLC, a letter rescinding the City’s October 29, 2024 notice of default to Lupoli LLC with respect to the existing Land Disposition Agreement governing the Property. When recorded with the Middlesex North District Registry of Deeds (the “Registry”), the new LDA will supersede such existing Land Disposition Agreement, as amended.

The parties have agreed that the City Agreements shall be released from escrow only upon the following conditions:

1. Lupoli LLC shall have provided at least two (2) business days’ written notice to the City by electronic mail to the City’s counsel for the City Agreements, Brian Golden, Esq. (BGolden@Keeganwerlin.com; “City’s Counsel”) of the closing of the transaction in which 291 LLC and 341 LLC shall convey their respective portions of Parcels 2, 3A, 4 and 5 to affiliates of Cabot, Cabot & Forbes, as buyer (such parties, the “Buyer” and such transaction, the “Sale Transaction”). Such notice shall specify a date for the closing of the Sale Transaction (the “Closing Date”).
2. On the Closing Date, Mintz, as counsel to Lupoli, shall provide electronic mail written notice to the City’s Counsel that the Buyer’s funds have been received in escrow by the title company for the Sale Transaction, Fidelity National Title Insurance Company (the “Title Company”), and that the parties to the Sale Transaction are in a position to close the Sale Transaction.
3. On the Closing Date:
 - (a) Mintz, as escrow agent, shall date the LDA as of the Closing Date and deliver the same to the Title Company for recording in the Registry; the LDA shall be recorded prior to the recording of the deeds for the Sale Transaction and thereby govern the redevelopment of the parcels described therein; and
 - (b) Mintz, as escrow agent, shall date the remainder of the City Agreements and send pdf copies of each such dated and fully executed document to the City’s Counsel and to the other parties thereto.



4. Within two (2) business days after the Closing Date, Mintz shall (i) deliver one original of each City Agreement other than the LDA by nationally recognized overnight delivery service to the City's Solicitor, Corey Williams, Esq., 375 Merrimack Street, Lowell, MA 01852, together with a copy of the LDA as recorded, and (ii) deliver to the City's Counsel by electronic mail, pdf copies of all of the City Agreements, including the LDA as recorded.

The parties expressly acknowledge that pursuant to this Agreement, Mintz is serving as Escrow Agent as provided herein concurrently with Mintz' representation of Lupoli with respect to the City Agreements and the Sale Transaction. By its execution of this Agreement, the City expressly waives any conflict of interest that currently exists or which may arise at any time in the future, in connection with such concurrent representation.

[Signatures on following pages]



March __, 2025
Page 4

Please acknowledge your agreement to the foregoing by signing where indicated below.
Thank you.

Sincerely,

Mintz, Levin, Cohen, Ferris, Glovsky and
Popeo, P.C., as Escrow Agent

CITY OF LOWELL

By: _____
Thomas A. Golden, Jr.
City Manager

Approved as to form:

By: _____
Corey Williams, Esq.
City Solicitor

[Signatures continue on following page]



March __, 2025
Page 5

ACKNOWLEDGED AND AGREED:

341 Jackson Street, LLC

By: _____
Name: _____
Title: _____

291 Jackson Street, LLC

By: _____
Name: _____
Title: _____

330 Jackson Street, LLC

By: _____
Name: _____
Title: _____

Lupoli Companies, LLC

By: _____
Name: _____
Title: _____



Thomas A. Golden, Jr.
City Manager

Shawn Machado
Assistant City Manager

March 18, 2025

Mr. Salvatore N. Lupoli
Lupoli Companies, LLC
290 Merrimack St.
Lawrence, MA 01843

Re: Land Disposition Agreement dated December 18, 2020, by and between Lupoli Companies LLC (“Lupoli”) and the City of Lowell (such agreement, as amended, the “LDA”).

Dear Mr. Lupoli:

This letter comprises formal notice that on [March 11, 2025], the City Council of the City of Lowell (the “City”) voted to authorize the rescission of the October 29, 2024 Notice of Default (“October Notice”) issued to Lupoli, conditioned upon the occurrence of the following:

1. The placing into escrow by the City and Lupoli, of executed counterparts of an Amended and Restated Land Disposition Agreement to govern the future redevelopment of HCID Parcels 2, 3A, 4 and 5;
2. The placing into escrow by the City and affiliates of Lupoli, of executed counterparts of TIF Agreements with respect to the 291 Jackson Street and 341 Jackson Street properties;
3. The placing into escrow by the City and affiliates of Lupoli, of executed counterparts of TIE Agreements with respect to the 291 Jackson Street and 341 Jackson Street properties; and
4. The placing into escrow by the City, affiliates of Lupoli and the prospective buyer of the 291 Jackson Street and 341 Jackson Street properties (the “Buyer”), of executed counterparts of Assignment and Assumption Agreements with respect to the tax agreements referenced in clauses 2 and 3 above, each as consented to by the City.

It is our understanding that the foregoing conditions have been satisfied, said documents having been placed into escrow with the law firm of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. as escrow agent pending the closing of the sale of HCID Parcels 2, 3A, 4 and 5 to the Buyer (the “Sale Transaction”).



Thomas A. Golden, Jr.
City Manager

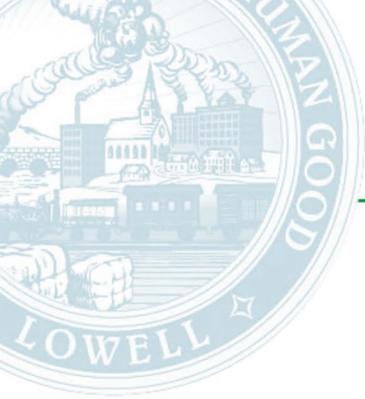
Shawn Machado
Assistant City Manager

As a consequence, this letter comprises a rescission of the October Notice and the City agrees that its rights and remedies pursuant to Section 23(b) of the LDA are no longer enforceable with respect to the October Notice. Lupoli and the City hereby agree that by rescinding the October Notice, neither party waives any other rights, remedies, claims, or defenses as set forth in the LDA, including but not limited to the City's right to issue a future Notice of Default under the LDA. Furthermore, the rescission of the October Notice of Default does not constitute an admission of liability or wrongdoing by either party.

Sincerely,

Thomas A. Golden, Jr.
City Manager

cc: Scott Ford, Esq.



Thomas A. Golden, Jr.
City Manager

March 25, 2025

Mayor Daniel Rourke
and
Members of City Council

REFERENCE: HCID Amended and Restated LDA Vote

Dear Mayor Rourke and Members of The City Council,

On March 11, 2025, the City Council, in executive session, voted to approve (9-2) an amended and restated Land Disposition Agreement (LDA) with Lupoli Companies.

I am requesting the City Council confirm their approval by authorizing the City Manager to execute the LDA, including any additional required documents, with Lupoli Companies for parcels 2-5 in the Hamilton Canal Innovation District. This amendment provides several negotiated changes to the original LDA and will authorize Lupoli Companies to transfer the properties to a third party.

If you have additional questions about this project, please do not hesitate to contact Assistant City Manager/DPD Director Yovani Baez-Rose at 978-674-4252.

Sincerely,

Thomas A. Golden Jr.
City Manager