

COMMONWEALTH OF MASSACHUSETTS

CITY OF LOWELL

In City Council

VOTE

Authorizing the City Manager to enter into a Land Disposition Agreement with S&R Corporation, regarding property located at Parcel 5, 291 Jackson Street, pursuant to the Jackson/Appleton/Middlesex Revitalization and Development Plan (JAM Plan) and to consummate the sale of said property.

The Jackson/Appleton/Middlesex Revitalization and Development Plan (JAM 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 Jackson/Appleton/Middlesex Revitalization and Development Plan (JAM Plan) are suitable for disposition by the City of Lowell for redevelopment subject to the terms and provisions of the Plan; and

Said properties, as assembled, comprise the Hamilton Canal Innovation District (hereinafter sometimes called the "property") within the Jackson/Appleton/Middlesex Urban Revitalization and Development Plan (The JAM Plan); and

The City of Lowell has determined that S&R Corporation's proposed use of the parcel would further the objectives of the Plan; and

The City of Lowell is desirous to sell and transfer the property located at Parcel 5, 291 Jackson Street, but subject to the Land Disposition Agreement; and

The disposition of such property under an approved Urban Revitalization and Development Plan is exempt from the provisions of Mass G.L. Chapter 30B; and

The City Manager recommends to the City Council that the City enter into a Land Disposition Agreement with S&R Corporation to convey the property at Parcel 5, 291 Jackson Street by sale, and under the conditions and provisions in the proposed Land Disposition Agreement and such other conditions as the City Manager deems in the best interest of the City of Lowell.

NOW, THEREFORE, BE IT VOTED BY A TWO-THIRDS VOTE:

That in furtherance of the Jackson/Appleton/Middlesex Revitalization and Development Plan (JAM 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 a Land Disposition Agreement with S&R Corporation, or such nominee as approved by the City Manager, with respect to the property at Parcel 5, 291 Jackson Street for the price of Two Hundred Fifty Thousand (\$250,000.00) Dollars, in accordance with the applicable provisions of Mass G.L. Chapter 40 and other applicable laws and regulations.

BE IT FURTHER VOTED:

That the City Manager and the City Treasurer be and is hereby authorized, in the name of the City of Lowell, to consummate the conveyance of the property at Parcel 5, 291 Jackson Street for the sum of Two Hundred Fifty Thousand (\$250,000.00) Dollars, and any and all other documents of conveyance related to the sale and conveyance of aforementioned property, on such terms and conditions as the City Manager deems in the best interest of the City of Lowell.

BE IT FURTHER VOTED:

That upon conveyance, the Vote, 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.

LAND DISPOSITION AGREEMENT

THIS LAND DISPOSITION AGREEMENT (the "Agreement" or "LDA") is made and entered into as of the ___ day of _____, 2017 ("Effective Date") pursuant to Chapter 121B of the Massachusetts General Laws by and between the City of Lowell, a municipal corporation (hereinafter with its successors and assigns referred to as the "City"), with an address of 375 Merrimack Street, Lowell, Massachusetts 01852, acting by and through the City of Lowell, Department of Planning and Development, and S&R Corporation, having its principal place of business at 706 Broadway Street, Lowell, MA 01854 (hereinafter with its successors and assigns referred to as the "Developer" or "S&R").

- 1. Description of Property:** The property to be conveyed to the Developer is Parcel 5, 291 Jackson Street, which is more particularly described in the attached legal description, marked as Exhibit A and incorporated in this Agreement (the "Property"). The Property totals approximately 22,688 square feet. No buildings are currently standing upon the Property.
- 2. Sale Terms:** Subject to all of the terms, covenants and conditions of this Agreement, the City shall sell and transfer good and marketable fee simple title to the Property in "as-is" condition to the Developer, and the Developer shall purchase the Property from the City for \$250,000.00 (the "Purchase Price").
- 3. Deposit:** Within two (2) business days after the Effective Date, Developer shall deliver to the City, in immediately available funds, to be held in escrow and delivered in accordance with this Agreement, a cash deposit in the amount of five percent (5%) of the purchase price set forth in Section 2 (the "Deposit"). The Deposit shall be held by Escrow Agent (as defined below) in an interest bearing account. All interest earned on the Deposit shall be deemed to be part of the Deposit and shall accrue to the benefit of Developer and shall be credited against the Purchase Price, except to the extent the Deposit becomes payable to the City pursuant to the terms of this Agreement, in which event the interest earned on the Deposit shall accrue to the benefit of the City.
- 4. Access; Termination:** Prior to the Closing Date (defined below), Developer shall have the right to inspect the Property and all documents and information related to the Property or the development thereof, including but not limited to, the physical and environmental condition of the Property, and to perform such zoning, land development, engineering and feasibility studies as Developer reasonably deems appropriate (the "Investigations"). Developer is hereby given the right to enter upon the Property for the purpose of conducting the Investigations. Prior to the Closing Date, Developer may terminate this Agreement for cause consisting of title defect or unforeseen material issues that have arisen from testing or inspection performed pursuant to this Agreement. In such event, the Developer shall give to the City written notice of its election to terminate prior to the Closing Date, in which event (i) the Deposit shall be returned promptly to Developer, and (ii) except as expressly set forth herein, neither party shall have any further liability or obligation to the other hereunder. In the absence of such written notice, this Agreement shall continue in full force and effect.

5. **Approval Period:** Developer, at its sole cost and expense, shall submit an application for, pursue and obtain final and un-appealable zoning and land development and construction approvals and permits from the appropriate governmental authorities necessary to commence construction of Developer's office building/mixed use proposed development at the Property (collectively, the "Development Approvals" or the "Approvals"). - The date on which Developer has received all Development Approvals shall be referred to as the "Approvals Issuance Date." Developer agrees to apply for, and pursue the Development Approvals promptly after the date of approval of the Design by the City pursuant to Section 8 below (the "Design Approval Date"). In applying for the Approvals Developer shall use commercially reasonable efforts to adhere to the following schedule:

Event	Date
Execution of this Agreement	October 17, 2017
Complete Geotechnical Testing	October 31, 2017
Submit Architectural Schematics & TIF Schedule for City Approval	November 30, 2017
Begin Permit Filings	January 2, 2018
Obtain Final Development Approvals	May 30, 2018
Obtain Financing Commitment	May 30, 2018
Closing under this Agreement	June 30, 2018
Commence Construction	July 15, 2018
Complete Construction	July 15, 2019

If the Developer is unable to obtain all Development Approvals on or before 6 months after the Design Approval Date (the "Approval Period"), Developer may elect to either (a) terminate this Agreement upon written notice to the City delivered on or before the expiration of the Approval Period, in which event, the Deposit will be returned promptly to Developer, and the parties shall have no further rights or obligations, except those which expressly survive termination of this Agreement, or (b) elect to proceed to Closing in accordance herewith notwithstanding Developer's failure to obtain all Development Approvals on or before the expiration of the Approval Period. Notwithstanding the foregoing or any provision contained in this Agreement to the contrary, Developer shall have the right, upon written notice to the City, to extend the Approval Period for a reasonable period of time as a result of delays in obtaining the Development Approvals, which delays arise as a result of events or circumstances outside of the Developer's control.

6. **Closing; Closing Procedure.**

a. **Closing.** The closing of the transactions contemplated by this Agreement (the "Closing") shall be the date which is not more than 30 days following Developer's receipt of the Approvals (the "Closing Date"). Closing will take place pursuant to an escrow-style closing with a title company or title company agent selected by Developer and reasonably approved by the City ("Escrow Agent"). Funds shall be deposited into and held by Escrow Agent in a closing escrow account. Upon satisfaction or completion of all closing conditions and deliveries, the parties shall direct Escrow Agent to immediately record and deliver the closing documents to the appropriate parties and make disbursements according to the closing statements executed by the City and Developer.

- b. **City's Deliveries in Escrow.** On or before the business day immediately prior to the Closing Date, the City shall deliver or cause to be delivered in escrow to Escrow Agent the following documents and instruments, duly executed and acknowledged (if applicable) by the City:
- i. A deed conveying good and clear, record and marketable fee simple title to the Property to Developer;
 - ii. Such conveyancing or transfer tax forms or returns, if any, as are required to be delivered or signed by the City, as necessary, by applicable state and local law in connection with the conveyance of the Property;
 - iii. A general assignment assigning to Developer all of the City's right, title and interest in and to any permits, licenses, plans, authorizations and approvals relating to ownership, operation or occupancy of the Property, in form and substance reasonably agreed by the parties;
 - iv. The Parking Easement (as defined below);
 - v. The Memorandum (as defined below); and
 - vi. Any additional documents or information that Developer or Escrow Agent may reasonably require for the proper consummation of the transaction contemplated by this Agreement.
- c. **Developer's Deliveries in Escrow.** On or before the business day immediately prior to the Closing Date, Developer shall deliver in escrow to Escrow Agent the following documents and instruments, duly executed and acknowledged (if applicable) by Developer:
- i. Such conveyancing or transfer tax forms or returns, if any, as are required to be delivered or signed by Developer by applicable state and local law in connection with the conveyance of the Property;
 - ii. The Parking Easement;
 - iii. The Memorandum; and
 - iv. Any additional documents that the City or Escrow Agent may reasonably require for the proper consummation of the transaction contemplated by this Agreement.
- d. **Purchase Price.** Developer shall deliver to Escrow Agent the Purchase Price, less the Deposit, plus or minus applicable proration and adjustments which are customary for transfers of vacant land in Middlesex County, Massachusetts.
- e. **Possession.** Possession of the Property shall be delivered to Developer at Closing unoccupied and free of any leases, other claims to or rights of possession by delivery of the Deed.
- f. **Recordings:** The Developer shall, within three business days of the Closing Date, record a memorandum of this Agreement in form and substance reasonably acceptable to both parties (the "Memorandum"), together with the Deed, and the Developer shall pay all costs of the recording of any and all closing documents, plans, etc. The City, being a party to this transfer, is exempt from payment of Massachusetts Deed Excise stamps on the Deed

under M.G.L. c. 64D, § 1.

- g. **Plans:** Any plans as may be required in connection with this Property transfer shall bathe Developer's obligation and expense to prepare and record. Developer will provide the City with detailed site and elevation plans within 90 days after the Effective Date. The City shall within 14 days following receipt of the plans, review the plans. In the event that the plans are deemed unsatisfactory by the City, the City may elect to terminate the LDA by written notice to Developer specifying the reasons for disapproval of the plans executed by the City Manager, or the City may elect to continue negotiating with Developer to agree on satisfactory plans without waiving its right to terminate in the event that such negotiations are unsuccessful.

- 7. **Acquisition Financing, Permitting & Title:** The parties agree that Developer's obligations under this Agreement are specifically subject to and contingent upon the Developer receiving prior to the Closing Date a commitment from an institutional mortgage lender selected by Developer to finance Developer's proposed acquisition and development at the Property on terms and conditions that are satisfactory to Developer in its sole discretion. If Developer has not received such a satisfactory financing commitment by the Closing Date Developer may terminate this Agreement, such termination to be in Developer's sole discretion upon notice of such election to the City any day prior to and including the Closing Date, in which event the Deposit shall be returned forthwith to Developer and, except as expressly set forth herein, neither party shall have any further liability or obligation to the other hereunder. In the absence of such notice given prior to the Closing Date, the contingency provided for in this Section shall no longer be applicable and this Agreement shall continue in full force and effect.

Developer's obligations are also contingent upon Developer's ability to obtain an owner's and lender's policy of insurance insuring title to said premises issued to Developer and its lender, respectively, free from encumbrances except as specifically set forth in this Agreement and for standard exceptions (as to the owner's policy only) issued by a title insurance company selected by Developer qualified to do business in Massachusetts. In connection with the issuance of the aforementioned title policies, the City agrees to execute documents reasonably required by said insurance company. The parties agree that in the event of a title matter for which a title insurance company is willing to issue a so-called "clean" policy or provide "affirmative coverage" over a known defect or problem, Developer may elect to accept same but shall not be required to do so, and shall have the right to deem title to the premises unacceptable or unmarketable and to terminate this Agreement and receive an immediate refund of the deposit.

Developer's obligations are also contingent upon Developer's obtaining approval of the design of the Project pursuant to Section 8 below. In the event Developer is unable to obtain such approval, or determines in its reasonable discretion that such approval is unlikely to be obtained, Developer may terminate this Agreement upon notice to the City any day prior to and including the Closing Date, in which event the Deposit shall be returned forthwith to Developer and, except as expressly set forth herein, neither party shall have any further liability or obligation to the other hereunder.

8. **Description of Improvements:** The Developer shall make improvements to the Property that shall include pavement, curbing construction, fencing, landscaping and the construction of an approximately 40,000 square foot office building of at least 4 stories with certain retail uses to be located on the first floor(the "Project"). The City of Lowell will endeavor to take all reasonable and necessary steps to construct a garage and or a surface parking lot in the vicinity of the Property (the "Parking Lot") and Developer, its employees, agents and invitees shall have the nonexclusive right to use any parking spaces located within the Parking Lot, provided, however, that at all times the City agrees to provide an adequate number of spaces (the "Parking Spaces") for the Project, taking into account reasonable and customary demands of similar commercial projects. The Parking Spaces shall be available for use by the Developer and its tenants and their respective employees, agents and invitees on or before the completion of the construction of the Project on the Property. Parking spaces shall be billed by the City and paid for by the Developer monthly at the most favorable monthly rate offered by the City to any other party using City parking facilities. At Closing the City shall execute, deliver and record an easement agreement with respect to the foregoing parking in form and substance reasonably acceptable to the parties (the "Parking Easement"). The Developer shall construct between 25 and 40 additional surface parking spaces on the Property at part of the Project for Developer's sole use for the Property. Final Design of the entire Project, including but not limited to the construction of the surface parking spaces, is subject to City approval as obtained in writing by the City Manager pursuant to this Section 8. The City shall use reasonable efforts to issue the approval or reasons for disapproval of the design within 15 days of submission of the design for approval.
9. **Project Schedule:** Following the Effective Date, the Developer shall undertake Site Design, Building Design and Engineering, and shall apply for and obtain all necessary permits and approvals for the development of the Property. Developer shall use commercially reasonable efforts to comply with the Schedule set forth in Section 5 above.
10. **Zoning and Other Government Approvals:** The Developer shall fully comply with all terms and conditions, if any, of the Lowell Planning Board, and/or the Lowell Zoning Board of Appeals and shall obtain all other governmental approvals that may be necessary for the proposed improvements to the Property.
11. **Federal and State Redevelopment Requirements:** The Developer shall fully comply with all Federal and State Redevelopment requirements as may be applicable to this Property.

In addition, the City shall update the Hamilton Canal District MEPA approval because site uses diverge from the pre-permitted Master Plan and the Developer shall provide to the City upon request any information required to update such approval.

12. **Representations and Warranties of the City.** In order to induce Developer to enter into this Agreement and purchase the Property, and with full knowledge that Developer is relying thereon, the City hereby warrants and represents to Developer as of the

Effective Date and as of the Closing Date, as follows:

- a. **Power to Perform.** The City owns fee simple title to the Property. The City (i) has duly authorized the execution and performance of this Agreement, and (ii) to the City's actual knowledge, such execution and performance will not conflict with or result in the breach of any law, judgment, order, writ, injunction, decree, rule or regulation, or conflict with or result in the breach of any other agreement, document or instrument to which the City is a party or by which it or the Property is bound or affected. This Agreement is the valid and legally binding obligation of the City, enforceable against the City in accordance with its terms.
- b. **No Contracts.** There are no management, employment, service, equipment, supply, maintenance, water, sewer, or other utility or concession agreements or agreements with municipalities (including improvement or development escrows or bonds) with respect to or affecting the Property which will burden the Property or Developer after Closing in any manner whatsoever, except for instruments of record.
- c. **No Leases.** There are no oral or written leases, agreements of sale, options, tenancies, licenses or any other claims to possession affecting the Property or any portion thereof, except for instruments of record.
- d. **No Options.** No party has, any right or option to acquire the Property or any portion thereof, except for instruments of record.
- e. **No Litigation.** There is no action, suit, investigation or proceeding pending or, to the knowledge of the City, threatened against or affecting the Property or any portion thereof or relating to or arising out of the ownership of the Property, in any court or before or by any federal, state, county or municipal department, commission, board, bureau or agency or other governmental instrumentality.
- f. **No Condemnation.** The City has not heretofore received any written notice of any condemnation proceeding or other proceeding in the nature of eminent domain in connection with the Property.
- g. **Environmental Condition.** To the City's actual knowledge and except as may be disclosed in any due diligence materials provided by the City to Developer:
 - i. there has been no disposal, burial or placement of toxic or hazardous waste, debris or other foreign material on or about the Property during the City's ownership of the Property;
 - ii. the City has not received any written notice that the Property or the City are in violation of any of the applicable requirements of law in connection with the disposal, storage, treatment, generation, processing and other handling of waste and the emission or discharge of any effluent, contaminants, pollution or other materials, and the City has not used all or part of the Property in violation of any of those requirements of law;
 - iii. there is no contamination, pollution or danger of pollution resulting from a condition on or under the Property;
 - iv. there are no storage tanks on the Property; and
 - v. the City has disclosed to Developer all information in the City's possession relating to the environmental condition of the Property. The City has not received any written information from neighboring property

owners indicating they have any concerns about existing environmental conditions which could affect the Property or suggesting they might look to the City for contribution to clean up such condition.

The representations and warranties of the City set forth in this Section 14 shall survive Closing for a period of 12 months (the "Survival Period") and shall not be merged with the execution and delivery of the closing documents or the recording of the Deed. The City shall have no liability for a breach or inaccuracy of any of the aforesaid representations, warranties and covenants unless Developer has delivered to the City written notice of such breach or inaccuracy on or prior to the expiration of the Survival Period. Developer shall have no claim against the City for any representation or warranty which Developer had actual knowledge prior to Closing and Developer nevertheless closed the acquisition of the Property and paid the Purchase Price to the City.

13. Covenants of the City. Prior to Closing:

- a. **Notifications.** The City shall notify Developer promptly of the occurrence of any of the following:
 - i. Receipt of written notice of eminent domain proceedings or condemnation of or affecting the Property or any portion thereof;
 - ii. Receipt of written notice from any governmental authorities or insurance underwriters relating to the condition, use or occupancy of the Property, or any portion thereof, or any real property adjacent to the Property, or setting forth any requirements with respect thereto; or
 - iii. Written notice of any actual or threatened litigation affecting or relating to the Property, or any portion thereof.
- b. **No Contracts.** No contract for or on behalf of or affecting the Property shall be negotiated or entered into which cannot be terminated by the City prior to Closing without charge, cost, penalty or premium.
- c. **No Leases.** The City shall not enter into any leases for any portion of the Property.

14. Representations and Warranties of Developer. In order to induce the City to enter into this Agreement and sell the Property, and with full knowledge that the City is relying thereon, the Developer hereby warrants and represents to the City as of the Effective Date and the Closing Date, as follows:

- a. **Power to Perform.** Developer (i) is duly organized and validly existing under the laws of the State in which it was organized, (ii) is authorized to do business in the State in which the Property is located, (iii) has duly authorized the execution and performance of this Agreement, and (iv) to Developer's actual knowledge, such execution and performance will not conflict with or result in the breach of any law, judgment, order, writ, injunction, decree, rule or regulation, or conflict with or result in the breach of any other agreement, document or instrument to which the Developer is a party (including, without limitation, the operating agreement or other organizational documents of Developer) or by which it is bound or affected. This Agreement is the valid and legally binding obligation of Developer, enforceable against Developer in accordance with its terms.

- b. **No Litigation.** To Developer's actual knowledge, there is no action, proceeding, litigation or investigation pending or threatened against Developer, which could have an adverse effect on Developer's ability to consummate the transactions contemplated under this Agreement.

The representations and warranties of Developer set forth in Section 16 shall survive Closing for the Survival Period.

15. **Condemnation.** If prior to Closing any condemnation proceeding or other proceeding in the nature of eminent domain in connection with the Property is commenced or any change is made, or proposed to be made, to the current means of ingress and egress to the Property or to the roads or driveways adjoining the Property, or to change such ingress or egress or to change the grade thereof, or to reduce the total square footage of the Property by 1,000 square feet of land or more, the City agrees promptly to notify Developer thereof. Developer then shall have the right, at Developer's option, to terminate this Agreement by giving written notice to the City within thirty (30) days after receipt of such notice, and upon such termination, the Deposit shall be returned to Developer and this Agreement shall, without any further action by Developer or the City, become null and void, and all of the parties to this Agreement shall be released from any and all further obligations or liabilities hereunder, other than those which expressly survive the termination of this Agreement. If Developer does not so terminate this Agreement, Developer shall proceed to Closing hereunder as if no such proceeding had commenced and will pay the City the full Purchase Price in accordance with this Agreement; the City shall assign to Developer all of its right, title and interest in and to any compensation for such condemnation, the City shall not negotiate or settle any claims for compensation prior to Closing, and Developer shall have the sole right (in the name of Developer or the City or both) to negotiate for, to agree to and to contest all offers and awards.
16. **Environmental Matters:** Subject to the City's representations and warranties made in Section 13(g) above, the Developer shall hold the City harmless with respect to oil or hazardous material at the Property and shall defend, indemnify and pay all losses, damages, costs, and expenses, including without limitation, court costs and reasonable attorney's fees arising out of any such matter. Except as expressly set forth herein, the City intends to sell the property "as-is". If Activity Use Limitations are recorded for the Property the Developer must remain in compliance with AUL conditions.
17. **Certificate of Compliance:** Upon the issuance of Certificates of Occupancy for the Property, the City, through and by its City Manager, shall issue and record (at Developer's sole cost and expense) a Certificate of Compliance stating that the Developer has met the requirements mandated by this Agreement.
18. **Cooperation with other developers:** The Developer shall use commercially reasonable efforts to cooperate reasonably and as necessary with other developers selected to develop parcels within the Hamilton Canal District (the "HCD"); provided, however, that such cooperation shall not, in Developer's reasonable discretion, materially adversely affect the development of the Property. The City shall use reasonable good faith efforts to facilitate and enable such reasonable cooperation.

19. **Access and Reports:** Periodic construction reports, as may be requested by the City, shall be provided by the Developer promptly upon the City's reasonable request for same. A City representative, agreeable to both parties, may attend Developer's construction meetings.
20. **Prohibition against Transfer:** 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 the Property or assignment of the obligations of the Developer hereunder until the date of issuance of the Certificate of Compliance. A transfer of all or substantially all of the legal or beneficial ownership in the Property shall be considered a transfer in violation of this section. Notwithstanding the foregoing or anything to the contrary contained herein, Developer may, without the City's consent but with written notice to the City, assign its right, title and interest in and to this Agreement immediately prior to Closing to any affiliate of Developer or to an entity which will provide financing for the purchase of the Property pursuant to a lease or similar financing arrangement between Developer or its affiliate and such entity; provided, however, that Developer shall not be released of its obligations under this Agreement as a result of any such assignment. Where the consent of the City to any transfer is sought, the Developer shall first notify the City in writing of all parties to whom such transfer applies. Within ten (10) days, the City shall notify the Developer in writing of any objection to the proposed transfer, specifying reasonable grounds for such objection, if any. If the City so objects, the Developer shall make no transfer without the subsequent written consent of the City. If the City makes no objection within the ten (10) 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.

It is the intent of this paragraph that the prohibition on transfer of the Property shall not apply to 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 LDA and the Deed, including but not limited to the obligation to construct the improvements, as modified with the consent of the City to suit the transferee's needs. Any such transferee shall take title subject to all obligations of the Developer and shall agree to assume the same.

21. **Force Majeure:** For the purpose of any of the provisions of this LDA, neither the City nor the Developer, 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 Developer or the City, including Acts of God such as floods earthquakes, and other unusually severe weather, fire, epidemics, material shortage resulting from strikes and/or freight embargos, and delays or refusals of any governmental authority to issue permits, approvals, and the like when the Developer's application conforms to all lawful requirements. It is the intent of this Paragraph that, in the event of the occurrence of any such enforced delay, the party seeking the benefit of the provisions of this section 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 any such excusable delay shall continue for more than nine (9) months, then either party may, by written notice to the other, terminate this LDA as to any future obligations. Except as provided for in this Section, in no event shall any financing difficulty or unavailability of equity capital or mortgage financing be cause for an extension of time for the performance of any obligation hereunder.

22. **Massachusetts Historical Commission:** The Master Plan has allowed the City to enter into a Memorandum of Understanding among the City, the Massachusetts Historical Commission, the National Park Service, Lowell National Historical Park and the former master developer to ensure that all public historic reviews, including review authority of the State Historical Preservation Officer and Lowell National Historical Park, are delegated to a single review process with the Lowell Historic Board ("LHB"). The Developer agrees to abide by the applicable terms of the Memorandum of Understanding, as the same may be amended to reflect the Project contemplated by this Agreement, in the event of such an amendment, the Developer agrees to enter into a substantially similar Memorandum of Agreement regarding the treatment of historic resources as part of the Project.
23. **Site Maintenance: Commencing with the execution of this Agreement, the Developer** will undertake to keep the undeveloped and unimproved portions of the Property free of trash and debris and cut the grass and pull weeds as necessary, but shall have no responsibility or liability with respect to the Property, except for personal injury or property damage arising from negligence in connection with Developer's maintenance thereof as required by this Paragraph, or arising from Developer's use of the Property, whether permitted or not.
24. **Form-Based Code and Other Local Entitlements:** The City has in place a form-based code for the HCD that creates new zoning and subdivision requirements for each parcel, including the parcel comprising the Property, and new right-of-way that match the HCD Master Plan and are in compliance with Massachusetts General Laws Chapter 40A. All construction in furtherance of the HCD Master Plan is as-of-right and no further discretionary zoning entitlements are required for development.

It is understood by the parties that the Developer's site plan diverges from the HCD Master Plan. Accordingly, the Developer must receive approval of the site plan by the Hamilton Canal District Review Group (HCSRG) and based on their approval, an amendment to the Form Based Code.

The Developer shall obtain all permits necessary for the construction and use of the Project, and shall provide the City with a copy of each before beginning any construction. The City shall cooperate with the Developer in obtaining or maintaining any such required permits, as the Developer may from time to time reasonably request. 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 permit and the performance of all construction required by the City. The City shall join with the Developer as an applicant under any application for any permits if so required, and the Developer and the City shall

cooperate in good faith to process the permits and perform inspections in a manner that will expedite the permitting and construction of the Project in accordance with the Project Schedule. 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. Nor shall anything in this Agreement constitute or imply approval or special handling and/or consideration for or exemption from any permit 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, provided that the Form-Based Code shall exclusively govern zoning and subdivision matters for the Project.

The City Administration may seek approval of an appropriate amendment to the JAM Plan if such is required for the Project by the Lowell City Council and DHCD. In such eventuality, the City will work with the Developer to undertake the Charrette or other public processes in connection therewith incorporated in DHCD's notice and public hearing requirements for an urban renewal plan amendment.

25. Termination of Agreement/Remedies:

In General: A defaulting party shall, upon receipt of written notice of default, immediately proceed 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 or such longer period of time as may be reasonably necessary to cure such default, provided the defaulting party has commenced and is diligently pursuing such cure (provided that the foregoing notice and cure period shall not apply to any actions or obligations of the parties to be taken on the Closing Date), the aggrieved party may avail itself of any and all remedies, including without limitation, curing the default itself and charging the defaulting party, bringing an action for damages, and/or proceedings to enjoin or compel specific performance.

- a. in the event City shall not be able to convey title to the Property on the date of Closing in accordance with the provisions of this Agreement and satisfy all conditions precedent thereto, then Developer shall have the option, exercisable by Notice to City at or prior to Closing, of (i) accepting at Closing such title as City is able to convey and/or waiving any unsatisfied condition precedent, with no deduction from or adjustment of the Purchase Price, (ii) postponing the date of Closing for a period of up to 30 days to permit City to satisfy any unsatisfied condition, which City agrees to use good faith reasonable efforts to do, or (iii) declining to proceed to Closing. In the last event, whether at the initial date fixed for Closing or on the date so extended as set forth in clause (ii) above, except as expressly set forth herein, all obligations, liabilities and rights of the parties under this Agreement shall terminate, and the Deposits shall be returned to Developer which shall be Developer's sole remedy for City's inability to convey title as aforesaid.

The City hereby covenants to and with Developer between the Effective Date

and the Closing Date as follows: (i) not to enter into any leases, occupancy agreements, leasing agency or management agreements, title encumbrances, or modify, amend, supplement or replace any other agreement with respect to the Property without in each instance obtaining and receiving the prior written direction and/or consent of the Developer, which consent may be granted or withheld in Developer's sole and absolute discretion; (ii) to continue to maintain the Property as currently maintained consistent with its past practices; and (iii) to promptly provide notice to Developer of (A) any notice of default sent by or delivered to City concerning any Lease or Contract affecting the Property, (B) any condemnation, eminent domain or other litigation proceeding concerning City or any part of the Property sent by or delivered to City, (C) any casualty that has occurred after the Effective Date at or that otherwise affects the Property, and (D) any notice pertaining to the Property issued or sent by any governmental authority.

- b. **Reversion of Title in City for Condition Broken:** If the Developer, or any successor or assignee, shall default in or violate its obligations, and such default or violation shall not be cured within sixty (60) days after notice in writing thereof or such longer period of time as may be reasonably necessary to cure such default, provided the Developer has commenced and is diligently pursuing such cure (provided that the foregoing notice and cure period shall not apply to any actions or obligations of the Developer to be taken on the Closing Date), the City, after expiration of the applicable cure period and provided a Certificate of Completion has not been issued, at its option, may declare a termination of title in favor of the City, whereupon the Developer shall cause such title to be transferred to the City. The City agrees to subordinate this provision to any first mortgagee of the Property providing financing to construct the Project required hereunder.

- c. **Resale of Re-acquired Property/Disposition of Proceeds:** Upon the reversion in the City of title to the Property or any part thereof as provided herein, the City shall use its best efforts to resell the Property or part thereof (subject to such mortgage liens as are provided for herein) as soon and in such manner as the City shall find feasible, to a qualified and responsible party or parties (as 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 property or part thereof in this LDA and in accordance with the JAM Plan. Upon such resale of the Property, the proceeds thereof shall be applied as follows:
 - i. First, to reimburse the City for all third party costs and expenses incurred by the City in connection with the recapture, management and resale of the Property or part thereof (but less any income derived from the Property or part thereof in connection with such management); all taxes, assessments, and water and sewer charges with respect to the Property or part thereof or, in the event the Property 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 reasonably determined by the appropriate City officials) as

would have been payable if the Property were not so exempt); any payments made or necessary to be made to discharge any monetary encumbrances or liens due to obligations defaults or acts of the Developer (or successors or assigns); any reasonable expenditures made or obligations incurred with respect to the making completion of the improvements on the Property or any part thereof, and any amounts otherwise owing the City by the Developer (or successors or assigns) under this Agreement.

ii. Second, to reimburse the Developer (or successors or assigns) up to the amount equal to the cash actually invested by it in making any of the improvements on the Property or part thereof, less any gains or income from the Property withdrawn 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 Paragraph 27 and its subparts, provided: that any delay by the City in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Paragraph 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 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).

26. Rights and Remedies Cumulative: The rights and remedies of the parties to this LDA, whether provided by law, in equity or by this LDA, 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 LDA.

27. Covenants; Binding Upon Successors in Interest; Period of Duration: : It is intended and agreed, and the Deed shall so expressly provide, that this LDA and the covenants provided in this LDA, shall be covenants running with the land 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 LDA, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the City and its successors and assigns, against the Developer, its successors and assigns. It is further intended and agreed that this LDA and the covenants provided herein shall remain in effect for the period of time from the date hereof until the issuance of a Certificate of Compliance, at which time such LDA and the covenants shall terminate.

28. Notices and Demands: A notice, demand, or other communication under this LDA by either party to the other shall be sufficiently given or delivered if it is dispatched by

certified or express mail, postage prepaid, return receipt requested, or delivered personally and:

In the case of the Developer, addressed to:

Mr. Steven Ploof
S&R Corporation
706 Broadway Street
Lowell, MA 01854

With a copy to:

William F. Martin Jr.
Eno, Martin, Donahue, LLP
21 George Street, Lowell, MA 01852
Phone: 978-452-8902
bmartin@enomartin.com

In the case of the City, addressed to or delivered personally to:

Kevin J. Murphy, City Manager
City of Lowell
375 Merrimack Street
Lowell, MA 01852-5985

With copies to:

Diane N. Tradd, Assistant City Manager/DPD Director
Department of Planning and Development
50 Arcand Drive, JFK Civic Center, 2nd Floor
Lowell, MA 01852-1025; and

Christine O'Connor, City Solicitor
Law Department -City Hall
375 Merrimack Street
Lowell, MA 01852-5986

Or such other persons at such other address as either party may, from time to time, designate in writing and forward to the other as provided in this paragraph.

- 29. Severability.** 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.

30. Any matter or practice arising under or relating to this Agreement which is the subject of a practice or title standard of the entity formerly known as the Massachusetts Conveyancer's Association ("MCA"), now known as the Real Estate Bar Association for Massachusetts ("REBA"), shall be governed by such standard to the extent applicable.

31. Additional Special Provisions:

a. **Consents:** Wherever in this LDA, the consent or approval of the City is required, such consent or approval shall not be unreasonably withheld or delayed.

b. **Litigation Costs:** In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

c. **No Merger:** None of the provisions of this LDA 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 LDA shall survive the delivery of the Deed.

d. **Successors and Assigns:** All provisions of this LDA shall be binding upon the successors and assigns of the Developer whether or not so specified in any given Section of this LDA. This LDA shall likewise be binding on any public body or bodies succeeding to the interests of the City.

e. **Governing Law:** This LDA is a Massachusetts contract and shall be governed by Massachusetts law.

f. **Counterparts:** This Agreement may be executed in counterparts, each of which shall be an original and all of which taken together shall constitute one and the same agreement. Facsimile and .PDF copies of executed counterparts of this Agreement shall be deemed originals.

Remainder of page intentionally blank; signatures on following page.

IN WITNESS WHEREOF, as of the Effective Date, the parties hereto have caused this Agreement to be executed 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.

CITY OF LOWELL

S&R CORPORATION

By: Kevin J. Murphy
City Manager

By: _____
Title: _____

APPROVED AS TO FORM:

Christine P. O'Connor
City Solicitor

Exhibit "A"
Legal Description