

Proposer / Bidder Registration Form

It is the Bidder's responsibility to make certain they have received any/all addenda relating to their bid / proposal prior to the bid opening date. If you are downloading a bid we strongly encourage you to notify the City of Beverly Purchasing Department at dgelineau@beverlyma.gov and provide us with the following information. In the event an addendum is issued it will be sent to all bidders who have provided the City with this information.

Request for Proposal or Invitation for Bid Number: 15-019

Contact Name:

Company Name:

Address:

City/Town:

State:

Zip Code:

Phone:

Fax:

Cell:

Email:

CITY OF BEVERLY, MASSACHUSETTS

REQUEST FOR PROPOSALS

#15-019

Ground Lease - 1 Water Street



Proposals Due:

Wednesday, August 19, 2015 at 11:00 A.M.

At the Office of the Purchasing Agent,

Beverly City Hall

191 Cabot Street,

Beverly, Massachusetts 01915

1. INTRODUCTION

1.1 Summary

The City of Beverly (“the City”) seeks sealed proposals from qualified parties for redevelopment and long-term ground lease of the City-owned lot located at 1 Water Street (Parcel ID# 1-85) on Beverly’s waterfront (hereinafter “Parcel 1-85” or the “Subject Property”).

The City intends to enter into a long-term ground lease of a minimum term of thirty (30) years with a development entity to redevelop an approximately one acre parcel on the City of Beverly waterfront for commercial and recreational uses. The preferred commercial use is a restaurant or similar foodservice facility that invites the public to enjoy the waterfront, complements existing maritime uses, recreational amenities, and includes amenities made available to the public as part of site redevelopment. Section 5 of the RFP provides greater detail relative to redevelopment requirements of the site. Respondents are expected to develop site plans and façade treatments of the highest quality that can set the tone for future public and private development along the waterfront.

The proposed redevelopment must be consistent with current State, Federal, and local permitting requirements, the City’s 2002 Master Plan and Harbor Plan, the Beverly Harbor zoning district and grant agreements between the City and the State. Parcel 1-85 is contiguous with a City-owned site known as the Ferry Way Landing (Parcel ID# 1-86), which abuts another City-owned property at 11 Cabot Street (Parcel ID# 1-87) consisting of two public marinas, a small public park and the offices of the Beverly Harbormaster.

1.2 Objectives

In issuing this request for proposals to redevelop the City owned parcel at 1 Water Street, the City seeks to achieve the following objectives:

- Redevelopment that protects the marine and waterfront resources while promoting mixed-use development and waterside recreational facilities;
- Redevelopment that will maximize the economic potential of waterfront parcels and serve as a destination for residents and visitors to the City;
- Redevelopment that will encourage public use of the waterfront by integrating shared uses of welcoming open space, marina operations, a restaurant, and shoreline waterfront access for the general public;
- The proposed development will be sited and designed to enliven public spaces with new mixed-use development that is architecturally pleasing, creating an inviting public realm that is well integrated with the scale of the surrounding neighborhood.

2. SITE INFORMATION

2.1 General

Parcel 1-85 consists of approximately 41,668 square feet of land. The property is currently improved by a one-story building with a footprint of approximately 3,162 sq. ft. The building also has a basement and a covered deck area that are not included in the calculation of the building's footprint. The building was originally the location of a McDonald's fast food restaurant, however, is currently utilized as offices and meeting space for the City of Beverly Harbormaster. It is expected the Harbormaster office and meeting space will move to the building located on an adjacent City owned parcel located at 11 Cabot Street (Parcel ID# 1-87) by end of 2015. See Appendix A for a copy of the assessors' map.

The Subject Property includes a wharf area with a pile supported concrete apron approximately 5,770 square feet in size. The wharf, commonly referred to as Glover's Wharf, is located at the southern extent of the Subject Property between the recreational marina and the land side of the parcel where the former restaurant and parking area is located. The wharf is not part of this RFP and will not be under consideration as part of a ground lease for redevelopment of the site. The City intends to retain control over this portion of the property and continue to make it available for public access to the waterfront.

The Subject Property is generally level and has access to municipal water and sewer, natural gas, cable, electricity and phone utilities. The property has frontage on and pedestrian access from Cabot Street. The property also has frontage on Water Street at the northeast corner of the property. Vehicular and pedestrian access is also provided from Water Street. There is a ten-foot wide utility easement along the eastern property line. There are no other recorded encroachments onto the property. A majority of the area not consisting of the existing building and wharf is paved. An area of approximately 9,000 square feet located between the existing building and wharf consists of a gravel surface

There are a number of public parking areas in the vicinity of the Subject Property available for use by boaters, fishermen, and patrons of facilities on City property. There are approximately 89 public parking spaces located in the vicinity. There are currently 36 parking spaces located on the Subject Property, 16 spaces available across the street on the former "Creamery" property (located at 12 Cabot Street – Parcel ID# 1 - 67), and 37 off-street parking spaces at or around 11 Cabot Street. The map in Appendix A shows the location of public parking facilities on or near the RFP site. Although the Subject Property currently contains approximately 36 parking spaces redevelopment of site could easily accommodate additional parking spaces to serve the proposed uses. Utilization of off-site parking spaces to support proposed uses for the Subject Property must conform to City of Beverly parking requirements.

2.2 Relevant City-Owned Parcels in Area

As discussed, the Subject Property includes the aforementioned building, approximately 36 parking spaces, and wharf (as noted the wharf area will not be available for redevelopment of the property and therefore not included as part of a ground lease). The parcel is adjacent to 23-slip publicly-owned recreational marina. At the east parcel boundary of the property is a privately-owned marina/boat yard that is separated by a chain link fence.

The adjacent parcel located to the west of the Subject Property is a City owned parcel (Parcel ID# 1-86), known as the “Ferry Way Landing”. The parcel is a small public park that contains outdated site amenities and a short segment of public walkway providing access from Cabot Street at the foot of the Salem Beverly Bridge to the public pier and wharf.

Given the objective to improve public access and enjoyment along the length of the waterfront the City is identifying the Ferry Way Landing in the RFP to provide respondents with the opportunity to offer improvements along with redevelopment plans for the Subject Property. Proposed activities may include aesthetic enhancements to park amenities that are visually consistent with existing public spaces in the area, provision of additional public amenities, or improved public access from Cabot Street. Parcel 1-86, however, is not part of the real property interest being leased under the ground lease.

Respondents should note that neither parking nor vehicular access may be introduced onto the Ferry Way Landing site due to restrictions. However, public walkways and other amenities such as benches, landscaping, and a water feature would be welcomed park additions.

A third lot is located at 11 Cabot Street (Parcel ID #1-87). It is adjacent to Parcel 1-86 and is not part of this RFP. The lot contains a commercial boating marina, public pier, and will be the future location of offices for the harbormaster. The Harbormaster building will include amenities available to tenants of the recreational and commercial marina operated by the City.

While technically three separate parcels, the site is one inter-related complex due to their proximity to one another and their collective visibility at one of the City’s gateways.

The proposed development must provide at a minimum a 10 foot wide public walkway parallel to the harbor shoreline, under M.G.L. Chapter 91, and allow marina operations to be maintained, including parking consistent with zoning requirements. The proposed walkway shall connect existing waterfront walkways and public spaces to the east and west of the Subject Property. Project proponents are encouraged to consider a design and layout of the proposed walkway that is integrated with existing public spaces located on the wharf area of 1 Water Street and the Ferry Landing

Way. Design of the shoreline walkway should include landscape elements that complement the adjacent public spaces and present a cohesive design motif.

As noted above, the City owns and operates a 23-slip recreational marina located directly adjacent to the Subject Property (Map 1, Lot 85), with access via a gangway leading from the Ferry Way Landing. Respondents should be aware that the City will consider a proposal that involves the opportunity to (lease) rent annually up to 5 slips for up to 5 boats located in the recreational marina for the sole use of the tenants of the proposed building on an annual basis with a first right option to renew any such rental each year at a rate that is 1 ½ times the public rate in effect at the time of any rental or renewal.

2.3 Building

The existing building located on 1 Water Street is a one-story building with a full basement. The structure housed a McDonald's fast food restaurant for about 30 years before it closed in the early 1990s. Demolition of the former restaurant structure will be necessary to maximize public open space and efficient use of the site.

Redevelopment of the Subject Property will require construction of a new building or structure that provides approximately 3,100 sq. ft. of publicly-accessible "park" or "recreation"-related space as mandated by the provisions of a grant agreement between the City and the State's Division of Conservation and Services ("DCS Grant Agreement" (see Appendix D for copy of grant agreement with amendment). The City expects that the selected proponent will be required to maintain all publicly accessible spaces provided as part of the redevelopment of the property throughout the term of any lease. At a minimum, restrooms available to the public will be required in conjunction with other amenities available to the public provided they are in line with the DCS Grant Agreement. See Section 5.2 of this RFP for additional discussion of this issue.

The City of Beverly has the authority to grant a license for the sale of all alcoholic beverages to be consumed on the premises under section 12 of chapter 138 for use at a restaurant located at 1 Water Street, Beverly. An applicant seeking such a license will be required to apply for such license and issuance will be subject to the discretion of the City's Licensing Board and approval by the ABCC. Any such license granted is not transferable and must be returned to the City if the license is cancelled, revoked or no longer in use. See Chapter 7 of the Acts of 2009 (Appendix F).

3 SITE HISTORY

3.1 General

As noted above, the City owns three contiguous parcels of waterfront land at the foot of the Beverly/Salem Bridge located at 1 Water Street (Subject Property of this

RFP), 11 Cabot Street (Parcel 1-87), and the Ferry Way Landing (Parcel 1-86). Please see assessors' map in Appendix A. 1 Water Street and 1 Cabot Street were acquired during the 1980s and 1990s. The Ferry Way Landing has been in public ownership for centuries. Photographs of Parcels #85, 86 and 87 are included in Appendix A, along with a sketch of the building's footprint.

3.2 1 Water Street (Subject Property)

1 Water Street was acquired by the City in 1996, in part with an Urban Self-Help Grant from the State. The parcel has approximately 41,818 square feet of land with access off of Water Street. Currently, the site is improved with the following:

- A 3,162 sq. ft. building that once housed a McDonald's restaurant. The City has used the building periodically for a number of uses since 1996, but by and large the structure has remained vacant in the interim. Most recently the building has been utilized for the Harbormaster's office;
- Glover Wharf & Recreational Marina – Not part of the ground lease
A recreational boat marina with 23 slips that is accessed via a gangway from the Ferry Way Landing and adjacent to the public pier. The slips are rented annually at market rates and are serviced with water and electric utilities. The City will continue managing the marina. The wharf area includes a pile supported concrete platform approximately 5,770 square feet in size. The wharf area is subject to public waterfront access usage and not be included as part of a ground lease.

3.3 Ferry Way Landing (Parcel 1-86)

The Ferry Way Landing is an 8,500 square foot parcel that is the site of a historical public landing that currently features a park area and walkway providing access to the waterfront from Cabot Street. The Ferry Way Landing has been in public ownership and providing public access to the harbor for many years. In addition to the park space and pathways, access to the City managed recreational marina is via gangway located on the Ferry Way Landing parcel.

3.4 11 Cabot Street (Parcel 1-87)

The third parcel is located at 11 Cabot Street. The parcel is approximately 23,000 square feet in size with access from Congress Street. The Subject Property includes the following:

- A two and ½ story wood framed building (the "Marina Building") which was recently relocated from the wharf at 1 Water Street and formerly served as the Marina maintenance shop, living quarters for the marina manager, laundry and restroom facilities for the recreational marina. As noted above, the building will serve as the Harbormaster's office and marina manager's office, and will provide bathroom and laundry facilities for the tenants of the recreational dock.

- Commercial marina providing berthing space for commercial fishing boats among other commercial vessels. The Commercial marina includes access to water and electric services and lobster trap hauling equipment.
- There is a public pier on this parcel utilized primarily as a pedestrian pier for public enjoyment of the waterfront. Recreational fishing is allowed on a portion of it. Facilities include short-term (30 minute) tie-up dockage for several visiting vessels and water service.

The City's Master Plan focused heavily on redevelopment of Beverly's two waterfronts, including its harbor front of which the Subject Property is a part. In particular, the community expressed its collective desire to establish a restaurant on the waterfront as a way to encourage the public to visit and use waterfront resources while maintaining marina operations and providing public access and welcoming open space along the water. Beginning spring of 2014 the City conducted a year long public process to craft new zoning requirements for development of the harbor front south of Water Street. Consistent with the vision stated in the Beverly Master Plan, the public expressed an interest in a restaurant or foodservice facility as an additional amenity and as a means to activate the waterfront. This RFP seeks proposals that are aligned with this vision.

3.5 Capital Improvements

The City has implemented a number of capital improvements to the Glover Wharf, Ferry Landing Park, public pier, and commercial marina located on parcels 85, 86, and 87 discussed above. Capital improvements over the past five years have exceeded \$4.2 million in investment in improving commercial and recreational access to the City's waterfront and include:

- \$2.5 million was invested during 2010 and 2011 including reconstruction of the seawall, reconstruction of the recreational marina, new public landing and removal of the old Harbor Master building located on parcel #87 (11 Cabot Street);
- \$1.6 million was invested during 2012 and 2013 to reconstruct the commercial dock including space for 26 commercial vessels.
- \$175,000 has been invested to relocate former marina manager's office and maintenance shop from wharf located on 1 Water Street (Parcel #85) to the Harbormaster property at 11 Cabot Street (Parcel# 87), and complete interior and exterior renovation of the building.

These investments have greatly enhanced public access to the waterfront and improved boating facilities available to recreational boaters and commercial vessels operating on Beverly's waterfront.

4 NEIGHBORHOOD CONTEXT

Located on the eastern end of the property at 1 Water Street at the foot of the Beverly/Salem bridge, the Subject Property is shown in context with the surrounding neighborhood and uses in Appendix C.

The neighborhood around the Subject Property is a mix of commercial and water-dependent uses abutted by several residential neighborhoods. Nearby properties include recreational marinas, commercial fishing operations, restaurants and retail establishments. There are several residential neighborhoods on the hills surrounding the commercial district at the foot of the bridge, where many of the homes are historic.

Several parcels of land in the vicinity of the Subject Property are poised for redevelopment in the near future, representing an exciting opportunity to create a revitalized and vibrant Beverly waterfront. The owners of a vacant, 4-acre waterfront tract located at 12 – 16 Congress Street have secured entitlements to redevelop the property. The project is approved for 72 residential condominium units and features a public walkway along the shoreline.

The City recently amended the local zoning ordinance to introduce a new zoning district called the Beverly Harbor District (BHD). The subject property is now located within the district. The purpose of the BHD is to protect and enhance Beverly's existing marine and waterfront uses and amenities and to expand public access to the water by creating continuous and inviting public spaces enlivened with new mixed use development and waterside recreational facilities that are well integrated with surrounding neighborhoods.

Projects submitted in response to this RFP should demonstrate that they are consistent with BHD standards. As previously noted the Beverly Master Plan establishes a number of objectives and recommendations relative to development along the waterfront. Respondents are encouraged to review the Master Plan in concert with requirements of BHD in formulating a plan to redevelop the subject property. A summary of the Master Plan Recommendations (Appendix B) along with BHD zoning standards Appendix (C) are included in the Appendices of this RFP.

5 PERMITTING & ZONING

5.1 General

The Subject Property located at 1 Water Street is within the Beverly Harbor District ("BHD") zoning district, where restaurants under 5,000 square feet selling food for consumption primarily on the premises along with a number of water dependent uses are allowed by right. Respondents to this RFP are expected to undertake a review and analysis of all City zoning requirements, regulations, and other requirements, physical and environmental conditions, State and Federal permitting

laws and regulations, required approvals, reuse potential, and other development and legal considerations beyond that provided in this RFP.

The City's zoning ordinance is available for public review in both the Planning and Development Department (City Hall, **191 Cabot Street**) and the Office of Municipal Inspections (former Memorial Middle School, **502 Cabot Street**). It is also available on line at www.beverlyma.gov by clicking on the "Beverly Municipal Documents" link on the Library's web page. For ease of reference Section 38-22 (Beverly Harbor District), for which the subject property is located, is included in Appendix C.

Proposals must adhere to all applicable Federal, State and local building codes, ordinances, regulations and bylaws, unless waivers or other relief are granted. Requests for waivers or variances must be identified in the proposal and will be considered as part of the selection process. These restrictions are discussed in greater detail in Section 5.2 below. However, the proponent is responsible for identifying and understanding any and all relevant codes, ordinances, regulations, laws and/or restrictions.

5.2 Limitations Affecting Redevelopment Options

Redevelopment of the Subject Property will be subject to review by a number of local and State permitting authorities since a variety of permits will be required to construct and operate the preferred use (restaurant and recreational use accessible to the public). The developer selected through this RFP process will be expected to seek all permits and approvals required of site redevelopment. The City will actively support the successful project proponent during the permitting processes, as reasonably necessary, for the proposed development.

The following is a summary of the status of licenses, permits, and zoning for both 1 Water Street, as well as the Ferry Way Landing in the case a proposal includes enhancements to that parcel:

1 Water Street (Subject Parcel)

Comprised of the former restaurant building and the Glover Wharf, this parcel was acquired utilizing grant funding from the Commonwealth of Massachusetts. The grant requires the property to be open to the general public and used for recreational purposes. See Appendix D for a copy of the Urban Self Help Project Agreement. Past experience demonstrates a restaurant is considered an allowed use per terms of the original grant application and that the granting authority (Massachusetts Executive Office of Energy and Environmental Affairs; Division of Conservation Services "DCS") will consider a restaurant to be a conforming use if it is provided in addition to the parcel's primary recreational purpose, loosely defined as an upper-story restaurant with recreation-related public uses on the first floor.

Acceptable first floor uses might include uses and programming such as sale of cruise tickets, kayak rentals, and kiosks providing maps and information on recreation opportunities in Beverly. It is expected that restrooms available to the

public shall be provided as part of the redevelopment of the Subject Property. The project proponent will be responsible for the ongoing maintenance of these public restrooms as well as all other facilities open to the public within the building. The City will work closely with the selected developer and the DCS to ensure grant compliance with respect to proposed uses.

The Harbormaster currently operates out of the former restaurant building and as noted will move to the newly renovated building located on the Harbormaster property by the end of 2015. The City currently operates the marina for recreational boat dockage on a year-round basis. The City will consider proposals that include rental of up to five slips on the recreational dock for the proponent's sole use.

The parcel is located within the City's Beverly Harbor District (BHD) as defined by the City's zoning ordinance. The site is on Filled Tidelands as defined by the Massachusetts Department of Environmental Protection (DEP) and as such is subject to applicable DEP licenses and regulations for non-water dependent purposes including the provision of public access.

At a minimum, redevelopment of 1 Water Street will require the following permits/approvals:

- Order of Conditions from the Beverly Conservation Commission;
- Chapter 91 license
- Massachusetts Environmental Policy Act (MEPA) EOECA Certificate
- Site Plan Review by Beverly Planning Board
- Special Permit by Beverly Planning Board if the proposed restaurant is in excess of 5,000 square feet in floor area or any other use allowed in the BHD by special permit.
- Compliance with DCS Project Agreement, Book 13634, Page 505, Essex County Registry of Deeds

Depending on the details of the development proposal, other permits may be needed for the proposed development. These include, but are not limited to, a U.S. Army Corps of Engineers Permit (if any work extends below mean high tide), and an Environmental Impact Report (if development occupies one acre or more of a filled tideland with a new non-water dependent use).

Respondents are solely responsible for researching and determining which permits will be required for their respective proposals, and for articulating those permitting requirements in their responses to this RFP and their proposed timeline or securing all necessary permits and approvals.

As stated previously, the City is obligated to ensure compliance with the restrictions contained in a grant agreement between the City and DCS that were imposed as a condition of receiving acquisition funds from this agency several years ago. The City expects to work closely with the selected developer to obtain confirmation from

DCS that the proposed redevelopment plan does not violate the terms and conditions of that agreement or the requirements of that agency.

6.0 PROPOSAL REQUIREMENTS

6.1 General

Copies of this Request for Proposals may be obtained directly from the City of Beverly Purchasing Department web page at the following web address: <http://www.beverlyma.gov/departments/procurement/>.

Hard copies of the RFP may be obtained for \$50.00 by contacting the City's Office of Purchasing at (978) 921-6000, extension 2350 or by visiting that office (address below) during normal City Hall business hours (Monday through Wednesday, 8:30 a.m. to 4:30 p.m.; Thursday, 8:30 a.m. to 7:30 p.m.; Friday, 8:30 a.m. to 1:00 p.m.).

A deposit of Five Thousand Dollars (\$5,000) (cash, treasurers' check or money order) must be submitted as part of the proposal package. Deposits shall be returned to unsuccessful proposers no later than seven (7) business days after the City executes an Initial Provisional Designation Agreement with the preferred developer. If the preferred developer (successful proposer) fails to execute a ground lease with the City after award, the deposit shall be retained by the City.

Submitted proposals must meet the City's General Conditions and Instructions for bids and responses to Requests for Proposals. A copy of the City's General Conditions and Instructions is attached as Appendix H.

6.2 Pre-Proposal Conference

A pre-proposal conference has been scheduled at the site for Wednesday, July 1st 2015 at 10:00 a.m. The building and grounds will be open for inspection at that time. Attendance at the pre-proposal conference is not mandatory, but site inspections at another time are subject to the City's availability.

6.3 Proposal Format and Deadline

Respondents must submit twelve (12) copies of their proposal containing complete information as requested and required by the terms of this RFP. Proposals must be submitted in a sealed envelope marked "Beverly Waterfront Redevelopment RFP" on the outside of the envelope. **Please take note that there is NOT a separate price proposal.** Proposals must be completed in ink or typewritten and delivered to:

City of Beverly Purchasing Department
City Hall, 191 Cabot Street
Beverly, Massachusetts 01915

on or before 11:00 a.m. on Friday, August 14, 2015 at which time proposals will be publicly opened and recorded. No late, incomplete, faxed or electronically mailed proposals will be accepted. Proposals must be in the actual possession of the Purchasing Department on or prior to the exact time and date indicated above to be considered.

6.4 Required Submissions

1. Letter of Transmittal

The proposal shall include a one-page letter of transmittal signed by the principal(s) of the proposer and addressed to: Purchasing Department, City of Beverly, City Hall, 191 Cabot Street, Beverly, Massachusetts 01915.

2. Summary of Price Proposal Form

The form included in Appendix I must be included in your proposal section of each submitted response as noted in Section 6.3.

3. Description of Redevelopment Proposal

The Proposal shall include a detailed description of the redevelopment concept including, without limitation, the development proposed for the property (Parcels #85 [Subject Property], demolition/reconstruction/replacement of the former McDonald's building and other site elements, and all associated improvements to the property including the benefits and impacts of the development on the neighborhood and the City, all as set forth below:

- A description of the proposed use(s) and estimated square footage by use for both the building and Subject Property. Include any proposed construction or demolition of structures, additions, outbuildings, parking lots, landscaped areas, driveways and other modifications to the site or abutting properties;
- A description of how the proposed site design supports or facilitates use of the site by multiple entities - the public, boaters, fishermen, and restaurant patrons;
- A description of the populace the development is expected and intended to serve including the expected number of employees and/or patrons;
- A description of the benefits of the project on the City's stream of tax revenue, expressed in terms of initial investment, future investment, expected real estate, excise, and other tax revenue resulting from the proposed redevelopment. Projects that include an option to utilize slips located on the recreational dock shall provide detail on rental arrangements and proposed fee over and above the minimum.

- A description of the benefits of the project to both the City in general and the neighborhood surrounding the project site;
- A detailed timeline for permitting and constructing improvements, and making capital investments. The proposer will be required to execute a Land Development Agreement consistent with the proposed timeline;
- A comprehensive listing of all permits and approvals that will be required for the proposed development;
- A narrative demonstrating at minimum how the project proposal meets general requirements of Chapter 91 (waterways) regulations, Beverly Zoning Requirements, Massachusetts Wetlands Protection Act, and Beverly Wetlands Ordinance.
- A discussion of municipal services required to service the new development, including traffic impacts, water consumption, and drainage;
- A detailed analysis of the ways in which the proposal satisfies the evaluation criteria listed below; and
- Adherence to the requirements of this RFP.

6.5 Design Drawings

Proposals must include 11”x 17” copies of the plans listed below sufficient to adequately describe the development concept. Color Illustrations are preferred for rendered images such as building elevations and perspective views of the project proposal.

- A site plan, renderings, and perspective views from multiple vantage points;
- Conceptual building elevations for all facades of the proposed building to include detail of proposed building materials;
- Typical floor plans;
- Landscaping and parking plan indicating open spaces, public walkways, planting areas, water feature(s), and parking spaces.

The plans shall include approximate dimensions and heights of proposed building(s) and other structures and site features, setback distances from property lines, parking calculations and total square footage estimates for all floors and structures.

6.6 Permitting, Construction, and Initial Investment Details and Timeline

Proposers shall provide a narrative description of the proposed project's permitting and construction phases, including permitting and construction milestones. Proposers must also provide a detailed breakdown of the investment expected to be made during the first twenty four (24) month period following execution of the Purchase and Sales Agreement.

6.7 Development Team Information

The proposal shall include a description of the development team and/or ownership entity, the individuals and organizations to be involved in the development, and their experience. The proposer may be an individual, group or organization, a public or private entity, profit or not-for-profit. Individuals and/or firms may be part of more than one team submitting proposals. The description of the development team must include the following information:

1. The name, address, and telephone number of the proposer, the name of any representative authorized to act on the proposer's behalf, the name and address of the contact to whom all correspondence should be addressed, and the names and primary responsibilities of each member of the development team;
2. A description of the organizational structure of the development team or ownership entity;
3. A summary of the team's/entity's experience, collectively and individually, with similar projects. Demonstrated ability to perform as proposed and to complete the project in a competent and timely manner including, without limitation, the ability to pursue and carry out permitting, financing, marketing, design, and construction;
4. If the proposer is not an individual doing business under his/her name, a description of the firm/organization and status of the organization (whether a for-profit, not-for-profit, or charitable institution, a general or limited partnership, a corporation, LLC, LLP, business association, or joint venture) and the jurisdictions in which it is registered to conduct business;
5. The legal entity owning any land other than the City land that may be included as part of the development proposal.

6.8 Project Financing and Financial Analysis

The proposer shall submit a financial analysis sufficient to demonstrate the financial feasibility of the proposal. At a minimum, the proposal shall include:

1. A plan for financing the development, including a "sources and uses" of funds statement, evidence that the proposer has the financial capability to obtain the necessary funding, and if the financing sources are not recognized

lending institutions, background information evidencing the soundness of such financing sources; and

2. A development budget for the project, including hard and soft construction costs, and an operating pro-forma or multi-year investment rate and schedule that includes relevant information through the first five years of anticipated occupancy and operation.

6.9 Projection of Municipal Revenue

The proposal shall contain a statement of the real estate taxes, excise tax revenue, marina slip rental along with other municipal revenue expected to be generated as a result of the development over the next ten years, with underlying calculations.

DO NOT INCLUDE PROPOSED LEASE PAYMENTS IN THIS SECTION. If the proposer is a tax-exempt organization, the proposal shall instead set forth a schedule and list of proposed Payments In Lieu of Taxes (PILOT) to be paid to the City of Beverly and an explanation of how the figure was determined. The schedule and list must clearly specify the intended duration of PILOT payments in years and must include a proposed legal mechanism to obligate payment.

6.10 References

The proposal shall include descriptions of at least two similar projects and references for those projects with names and telephone numbers. The proposal shall also include at least two (2) banking references.

6.11 Disclosure of Beneficial Interest in Real Estate Property Transaction Statement and Non-Collusion/ Tax Certification

The proposal must include an executed Disclosure of Beneficial Interest in Real Estate Property Transaction Statement as well as an executed Non-Collusion/Tax Certification in the form included in Appendix G.

6.12 Minority and Women Owned Business Enterprises

The City encourages, to the extent allowed under the law, the active and meaningful equity participation of Minority-Owned Business Enterprises (MBE's) and Women-Owned Business Enterprises (WBE's) as certified by the State Office of Minority and Women Owned Business Assistance (SOMWBA). Proposals shall state whether the development team or the proposed end user includes any MBE's or WBE's and shall state the commitment to MBE's or WBE's to be made during construction.

7.0 REQUIRED AGREEMENTS

7.1 Ground Lease Terms

The City shall require the successful proposer to execute a ground lease. Note that enclosed with this RFP (Appendix F) is a specimen ground lease that the City will require the successful proposer to execute with the possibility of mutually agreed upon terms that do not modify the essence of the ground lease specimen and or the response to the RFP. Any modification shall be at the City's sole discretion.

Respondents should note that the City seeks lease terms of a minimum of thirty (30) years, with the length of the term dependent on numerous factors including (but not limited to) proposed lease payments, escalators, and projected level of investment.

7.2 Land Development Agreement

Within 45 days of being selected, the successful proposer shall be required to execute a Land Development Agreement ("LDA") that sets forth and incorporates by reference, among other things, the detailed timeline for permitting, construction, implementing improvements, and making capital investments that are consistent with this RFP and the successful proposal, as well as expected lease terms as reflected in the specimen lease attached as Appendix E.

If the successful proposer does not execute the Land Development Agreement and/or Ground Lease as prescribed above the \$5,000 deposit submitted proposal package will be forfeited.

8. SELECTION PROCESS

8.1 Rule for Award

The most advantageous proposal from a responsive and responsible proposer, taking into consideration price and all other evaluation criteria set forth in the RFP, will be selected.

8.2 Evaluation Committee and Process

The City of Beverly will appoint an Evaluation Committee for the purposes of evaluating responses to this RFP. The Committee will be responsible for determining whether any or all proposals should be rejected in the best interest of the City, and for recommending to the Mayor as the City's Chief Procurement Officer which proposal, in its collective opinion, is the most advantageous proposal to the City.

Following the Committee's recommendation, the City will require the successful proposer to enter into the aforementioned Land Development Agreement. The Land Development Agreement shall, among other things, require the project proponent to begin the permitting and approval process, and establish a date for which construction shall begin all of which must be consistent with this RFP.

Should the City and the proposer who submits the most advantageous proposal not execute a Lease Agreement, the City may, at its sole discretion, enter into a Lease

Agreement with the next most advantageous proposal. The City may, at its sole discretion, repeat this procedure with each proposer who submits an advantageous proposal until a Lease Agreement is successfully executed between the City and a proposer.

9. RFP EVALUATION CRITERIA

9.1 Minimum Criteria

Only those proposers who submit all forms and materials listed in Section 4.0 “Proposal Requirements” of this RFP will be considered responsive and responsible proposers. Any proposal that fails to include all of the required submissions shall be deemed non-responsive and will not be further considered.

9.2 Evaluation Criteria

The following criteria will be used to rate the proposals:

1. Completeness of the proposal:
 - a. *Highly Advantageous:* The proposal contains a clear and comprehensive plan that addresses and/or complies with all of the core elements and required submissions stated in the RFP.
 - b. *Advantageous:* The proposal contains a clear plan that addresses and/or complies with most of the elements and required submissions stated in the RFP.
 - c. *Not Advantageous:* The proposal does not contain a clear plan that addresses and/or complies with most of the core elements and required submissions stated in the RFP.
2. Experience with similar projects:
 - a. *Highly Advantageous:* The proposer has prior successful experience designing, developing, marketing and, managing at least two (2) projects of similar size and scope to this project.
 - b. *Advantageous:* The proposer has prior successful experience designing, developing, marketing and, managing at least one (1) project of similar size and scope to this project.
 - c. *Not Advantageous:* The proposer has no experience designing, developing, marketing, and managing projects of similar size and scope to this project.
3. Evaluation of References:

- a. *Highly Advantageous*: All of the proposer's references indicate that the projects were completed and operated satisfactorily and on schedule or with minimal, insignificant delays.
 - b. *Advantageous*: Only one of the proposer's references indicates that the project was completed and/or operated unsatisfactorily, or with substantial delays attributable to the proposer.
 - c. *Unacceptable*: Two or more of the proposer's references indicate that the project was completed and/or operated unsatisfactorily, with substantial delays attributable to the proposer.
4. Level of Initial Investment
- a. *Highly Advantageous*: The proposal calls for the investment of at least Two Million Four Hundred Thousand Dollars (\$2,400,000) within the first twelve (12) months of site control, **exclusive of lease payments***.
 - b. *Advantageous*: The proposal calls for the investment of between One Million Five Hundred Thousand Dollars (\$1,500,000) and less than Two Million Four Hundred Thousand Dollars (\$2,400,000) within the first twelve months (12) months of site control, **exclusive of lease payments***.
 - c. *Not Advantageous*: The proposal calls for the investment of less than One Million Dollars (\$1,500,000) within the first twelve (12) months of ownership **exclusive of lease payments***.
5. Financial feasibility of the Proposal:
- a. *Highly Advantageous*: The proposal contains a clear, comprehensive, and substantiated plan for financing the development and the proposer has demonstrated financial capability and/or ability to obtain funds necessary to complete the project as proposed.
 - b. *Advantageous*: The proposal provides a general plan for financing the proposed development and the proposer has demonstrated financial capability and/or ability to obtain funds necessary to complete the project as proposed.
 - c. *Not Advantageous*: The proposal provides an incomplete plan for financing the proposed development and/or does not clearly demonstrate financial capability or ability to obtain funds necessary to complete the project as proposed.

6. Compatibility of Use, Site Design and Architecture

- a. *Highly Advantageous:* The combination of proposed site design, architecture, and uses create an integrated and welcoming public facility that is sensitive to the nearby residential neighborhoods; overall impact on the City in the long term is extremely positive in terms of spin-off benefits and impacts.
- b. *Advantageous:* The combination of proposed site design, architecture, and uses create an integrated and welcoming public facility that is sensitive to the nearby residential neighborhoods; overall impact on the City in the long term is acceptable in terms of spin-off benefits and impacts.
- c. *Not Advantageous:* The proposed site design, architecture, and/or uses do not create an integrated and welcoming public facility that is sensitive to the nearby residential neighborhoods; overall impact on the City is unacceptable in terms of spin-off benefits and impacts.

7. Consistency with City's Goals and Objectives

- a. *Highly Advantageous:* The proposed project meets and/or exceeds the City's stated goals of (i) protecting the marine and waterfront resources while promoting mixed use development and waterside recreational facilities, (ii) maximizing the economic potential of parcels on the waterfront and creating a magnet for tourism and commercial activity, and (iii) encouraging public use of the waterfront by integrating shared uses of welcoming open space, marina operations, a restaurant, and shoreline waterfront access.
- b. *Advantageous:* The proposed project meets most but not all of the City's stated goals for (i) protecting its marine and waterfront resources while promoting mixed use development and waterside recreational facilities, (ii) maximizing the economic potential of parcels on the waterfront and creating a magnet for tourism and commercial activity, and (iii) encouraging public use of the waterfront by integrating shared uses of welcoming open space, marina operations, a restaurant, and shoreline waterfront access.
- c. *Not Advantageous:* The proposed project does not meet most (or any) of the City's stated goals for (i) protecting its marine and waterfront resources while promoting mixed use development and waterside recreational facilities, (ii) maximizing the economic potential of parcels on the waterfront and creating a magnet for tourism and commercial activity, and (iii) encouraging public use of the waterfront by integrating shared uses of welcoming open space, marina operations, a restaurant, and shoreline waterfront access.

8. Provision of Public Access

- a. *Highly Advantageous.* The project proposal includes provision of public walkway along the project shoreline providing a continuous path between the two adjacent properties consistent with Chapter 91 (Waterways) regulations and the City of Beverly zoning code. The proposed walkway includes landscape elements and features that are inviting to the public, aesthetically pleasing and complements existing public spaces on the subject property as well as adjacent properties.
- b. *Advantageous.* The project proposal includes provision of public walkway along the project shoreline providing a continuous path between the two adjacent properties consistent with Chapter 91 (Waterways) regulations and the City of Beverly zoning code.
- c. *Unacceptable.* The project proposal does not include a public walkway along the project shoreline providing a continuous path between the two adjacent properties consistent with Chapter 91 (Waterways) regulations and the City of Beverly zoning code.

9. Consistency with State and local development regulations

- a. *Highly Advantageous.* The proposer has demonstrated a clear understanding of permitting requirements, and ability to manage State and local permitting processes. The proposal clearly demonstrates that the project is consistent with applicable zoning, wetlands, and Chapter 91 (waterways) regulations.
- b. *Advantageous:* The proposer has demonstrated a clear understanding of permitting requirements, and ability to manage State and local permitting processes. The proposal generally demonstrates that the project is consistent with applicable zoning, wetlands, and Chapter 91 (waterways) regulations.
- c. *Unacceptable:* The proposer has not demonstrated a clear understanding of permitting requirements, and ability to manage State and local permitting processes.

10. Permitting Timeline and Start of Construction

- a. *Highly Advantageous.* The proposal includes a development timeline whereby construction commences 275 days or less from the date of an executed Land Development Agreement.

- b. *Not Advantageous.* The proposal includes a development timeline whereby construction commences more than 275 days from the date of an executed Land Development Agreement.

10 OTHER GENERAL RFP PROVISIONS

Should the proposer find a discrepancy in, or omission from, the general terms and conditions or instructions to proposers, or should there be any doubt as to their meaning, proposers shall notify the Purchasing Department in writing at least seven (7) calendar days prior to the deadline for submission of responses for clarification. No oral interpretations shall be considered valid.

Any person, firm, or corporation desiring to submit a proposal for the land shall be responsible for examining the terms and conditions of this RFP and the inspection of the parcel which is to be sold, and shall judge for themselves all of the circumstances and conditions affecting their proposal. Failure on the part of any proposer to make such examination or to thoroughly investigate and research existing conditions shall not be grounds for any declaration that the proposer did not understand the conditions of the RFP or of their proposal.

No proposal will be considered from any person, firm, or corporation that is in arrears or is in default to the City of Beverly on any fees, taxes, debt or contract, or that is defaulter as surety or otherwise upon any obligations to the City of Beverly or has failed to faithfully perform any previous contract with the City of Beverly.

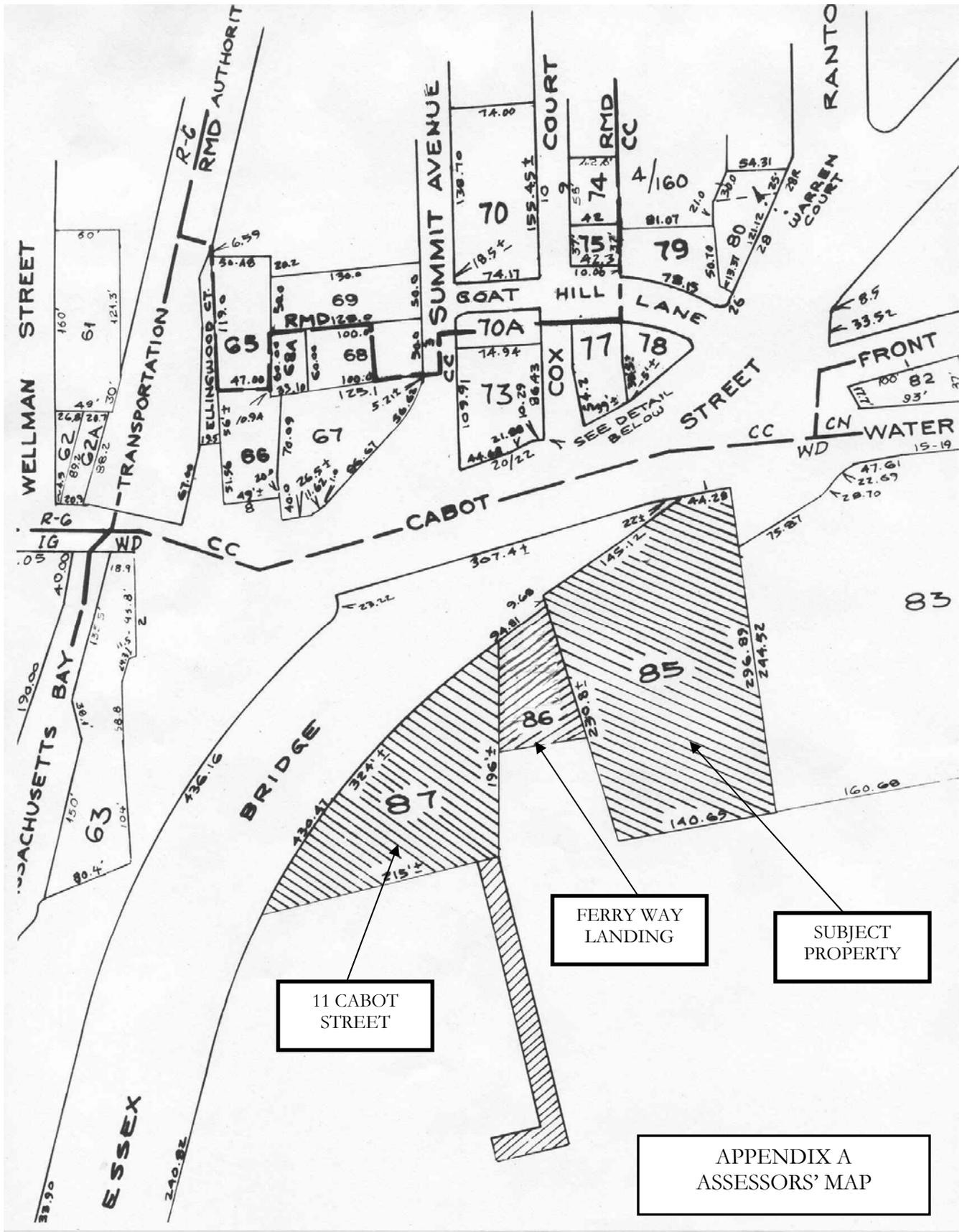
Written addenda are the sole source of correction or change to the RFP, and if any are required they shall be sent in writing to all individuals and/or firms registered with the Purchasing Department.

The City reserves the right to require the project team of one or more respondents to appear before the project review committee for an oral presentation of the project proposal.

The City of Beverly reserves the right to extend the deadline for submission of proposals, to request supplementary information and to negotiate the most favorable sale on behalf of the City. The City further reserves the right to reject any and all proposals, waive any defects, informalities, and minor irregularities, and make such award or act otherwise as it may deem in its best interest.

APPENDIX A

ASSESSOR MAP, SITE SURVEY, PROJECT LOCUS & SITE PHOTOGRAPHS



11 CABOT STREET

FERRY WAY LANDING

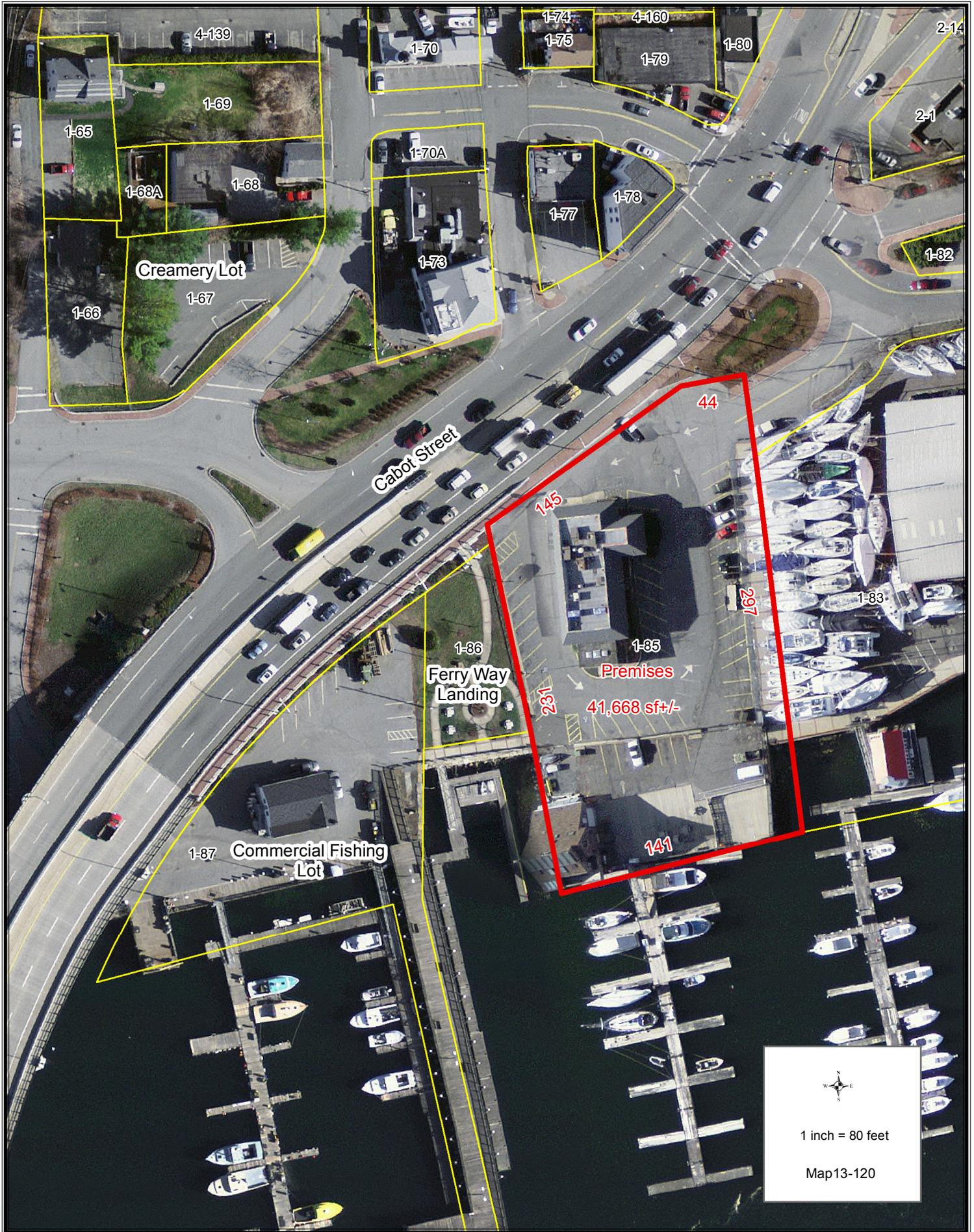
SUBJECT PROPERTY

APPENDIX A
ASSESSORS' MAP

SITE SURVEY

Please note that the attached plan entitled, “Plan of Land, City of Property Situated on Cabot & Water Streets” is the most recent survey available for the Subject Property and two adjacent City owned parcels referred to as Ferry Landing Way, and 11 Cabot Street in the RFP. This plan does not represent existing conditions however provides detail parcel boundary information and dimensions. Two relevant alterations to the site since the plan was prepared are the following:

- The Dock Master building shown on the area labeled “Pier Area” on the plan has been relocated to the location of the Harbormaster building;
- The gangway providing access to the recreational marina adjacent to the Subject Property is no longer made from the gangway at the Glover Wharf, labeled “Pier Area” on the following plan. Access to the recreational marina is from the gangway adjacent from Ferry Landing Way.



1 inch = 80 feet

Map13-120

PHOTOGRAPHS OF CITY OF BEVERLY OWNED WATERFRONT PARCELS



View of Subject Property from Veteran's Memorial Bridge with former McDonald's Building located left of center. The City Commercial Marina and public pier are in the foreground.



View of former McDonald's building looking north from southwest corner Glover's Wharf.



View of former McDonald's building looking north from southeast corner Glover's Wharf.



View of former McDonald's building from Water Street



View of former McDonald's building looking north from southeast corner of Glover's Wharf.



View from Veteran's Memorial Bridge with Commercial Marina in foreground, the Harbormaster Building at left and former McDonald's building left of center.



View of Subject Property from public pier

APPENDIX B

RELEVANT MASTER PLAN RECOMMENDATIONS

EXCERPTS FROM BEVERLY'S 2002 MASTER PLAN RELATIVE TO THE WORKING WATERFRONT

From Overall Community Vision (pages 2 & 3):

“The City of Beverly will continue to be a diverse and vital community whose quality of life includes access to education and to economic and recreational resources, preservation of the City's heritage, conservation of natural resources, and a strong community character protected for Beverly's present and future generations.

To focus the efforts and actions subsequent to the visioning process, ten Guiding Principles were established. The Guiding Principles start with the concepts necessary to protect and promote the City's natural resources, to focus on our community of citizens, and to suggest how the proper utilization of both natural and human resources can result in the enrichment of the community.

The Guiding Principles

1. Develop fully protective strategies and actively participate in the management of all of the City's water resources to ensure a long term, safe and adequate supply of water and a clean environment;
2. Recognize and enhance the City's cultural and historical assets as a means to retain a unique identity, respect the past, and enrich the present;
3. Provide enjoyable open space through active maintenance of existing facilities in conjunction with new improvements and strategic acquisitions;
4. Protect the City's marine and waterfront resources while providing expanded public access by promoting new mixed use development and waterside recreational facilities;
5. Maintain a diverse population within vital and distinct neighborhoods by providing the needed housing and amenities that recognize the unique conditions and requirements of each neighborhood;
6. Encourage academic excellence in the city schools with supporting investments, and integrate local business and industry into the educational programs;
7. Create conditions conducive to a well-balanced and vital local economy fueled by small businesses, corporate facilities and tourism;
8. Maintain and promote a vibrant downtown that is business and people friendly, and provides a distinctive, high quality atmosphere and destination point;

9. Utilize all of the unique historic and natural qualities of the City to bolster its image as a destination for activities and enjoyment for both residents and visiting tourists; and,
10. Support the efforts of an active citizenry that manages its destiny through a responsive City government, implementing its Master Plan and controlling the quality of growth.”

From Economic Development Goals (pages 6 & 7)

“Economic Development planning requires knowledge of the City's tax base and how it is structured to help identify ways that tax revenues could be enhanced. Those enhancements could include new high value land uses or incentives for reinvestment in properties to produce new tax revenues. To maintain a stable tax base over the long term, it is critical for Beverly to develop a well-planned and diverse investment in the community. Encouraging economic development stems from the need for the City to expand municipal revenues to help pay for increases in service delivery as the population expands, to replace older facilities as they become outdated, and to build new service delivery systems and facilities as they are needed.

A key example of the opportunities for economic development in Beverly is the conversion of the United Shoe Machinery complex from an outdated factory into the new and active, mixed-use Cummings Center commercial office complex. This project is now supplying a new source of jobs and tax revenues for the City.

Goals and Objectives

The Economic Development goals and objectives focus on the following areas within the city as the key opportunities:

- New industrial and commercial development and reinvestment in: Bass River, Waterfront, Downtown, along the Route 128 corridor, and in outlying commercial areas (North Beverly, Beverly Farms);
 - Utilization of the City's cultural assets to create a focus for recognition of the City, and the consequent development of tourism as a new revenue source.
- Goal: Redevelop portions of the commercial waterfront as mixed use residential, commercial, industrial, and recreational areas:*
- Determine the future of the Ventron site and McDonalds site;
 - Promote public and private investment in the Harbor;
 - Rezone the Bass River area to encourage mixed-use development;
 - Implement the recommendations of the Harbor Management Plan.”

From The Master Plan: Diversity, Character and Quality (pages 16 & 17)

“Downtown and Harbor Redevelopment:

Redevelop portions of the commercial waterfront for mixed residential, commercial, and recreational uses.

Accommodate selected industrial uses within the area.

Allow higher residential densities in the downtown area.

Determine the future of the Ventron site.

Rezone the Bass River area to encourage mixed-use development.

Encourage commercial redevelopment of the "working" section of the City's waterfront that maximizes the economic potential of the parcels and creates a magnet for tourism and commercial activity.

Maintain Historic Character:

New development must come under well-defined design guidelines to protect and enhance the architectural and historic character of Beverly's neighborhoods and significant properties.”

From Choices for Improvement: Programs, Initiatives and Actions (page 27)

Harborfront

One of the defining characteristics of the City is the Harbor. This area is more fully discussed in the Harbor Management Plan, which is incorporated by reference here, but is also given special attention in this Master Plan. Beverly Harbor stretches miles across the open water; however, the most active area with the greatest potential for new uses and improvement runs along the land adjacent to Bridge Street.

The land along River Street between Federal and Webber streets is zoned IG (see above discussion of IG zoning). The area, which is also adjacent to Bass River waterfront, should be revitalized with commercial business and has potential for office and similar developments. The River Street area has many small, developed lots that are less than one acre in size. There are also several large lots between two and five acres. It is possible to combine adjacent lots of various sizes and develop them with large buildings. However, new development may be constrained for the following reasons:

The context and type of the existing businesses may not be compatible and appropriate.

Any waterfront project will require Chapter 91 licensing, and will have use and development requirements intended to ensure public access and protection of water dependent uses. A waterfront project must meet these regulations regarding use, setbacks, height restrictions, parking, open space, and public access, in addition to local zoning requirements.

Permitted uses according to the existing zoning regulations may not allow preferred uses such as office and mixed-use developments.

Flood zone requirements and local building codes.

If this waterfront area is rezoned to accommodate new uses through revisions in the IG zone, the impact on the more inland properties along Park Street, which are also zoned IG, and the adjacent Central Commercial zoned (CC) properties along Rantoul Street must also be considered. Land use in the rest of the inner harbor area (outside of the land along Bridge Street) is zoned either Waterfront Development (WD) or Neighborhood Commercial (CN). These zoning designations, in conjunction with the state's "Designated Port Area" requirements limit the potential uses to those considered truly water dependent.

Recommendations for the Harborfront

Revise the zoning map and zoning designations for the Harborfront.

Create a new and comprehensive waterfront zoning district in place of the shorefront WD and IG zones.

Define the desired land uses on the remaining land available for redevelopment.

Create design guidelines and invite developer proposals for City-owned land.

Include the eastern side of the Upper Bass River as a location for connecting waterfront public access as part of a citywide access system.

Incorporate the other IG zoned areas along River Street into the CC district along Rantoul Street.

Use public-private partnerships to facilitate the redevelopment of the waterfront.

Link the downtown to the waterfront with physical access, signage, and design standards.

From The Master Plan: Programs and Financial Investment (page 37):

Encourage commercial redevelopment of the "working" section of the City's waterfront that maximizes the economic potential of the parcels and creates a magnet for tourism and commercial activity

Use the waterfront as a way to generate activity and revenues.

Develop tourism as a new opportunity using the city's historical aspects and waterfront as destinations.

From Industrial Zoned Land – Redevelopment Sites (pages 79 & 80)

Beverly Harbor Waterfront

The most realistic private use of the waterfront land (public or private lands) is multi-family, luxury residential. However, to encourage even this use, some density bonuses will probably be necessary. Density bonuses would allow a developer to construct more units than allowed under existing zoning in exchange for the construction of a residential, rather than more lucrative commercial or industrial development. Hospitality uses, which include uses such as hotels and extended stay units, are also possible and could even be part of the 'gateway' into the City. The typical buildings would likely be three to five stories in height and impact views of adjacent properties. The issue of the conditions necessary for successful residential development also applies to the other Downtown areas.

The City's main waterfront district does not have to be the current center of revitalization. Its redevelopment can instead be designed as a supporting role to the Downtown, to identify the City with a gateway, and to continue to maintain and support the existing commercial fisheries and boating operations. However, in the event that the status of waterfront land use, particularly fisheries and boating, changes considerably, the opportunity for more intensive development such as commercial and hospitality uses should be taken. However, until those uses are gone, the zoning should reflect the types of uses presently on the waterfront. There are two sites of particular importance that are highlighted here.

Gateway to Beverly - The potential “gateway” redevelopment area is the Ferry Landing site, adjacent City properties, and surrounding area. The City parcels contain roughly 10.7 acres situated at the foot of the Beverly-Salem Bridge and the entrance to the City center along Cabot and Rantoul Streets. There is a mix of uses in and adjacent to this area with an assortment of buildings and styles. This area has several zoning designations for residential and commercial uses (RMD, RHD, CC, WD and CN), which may be the reason for its variety of uses and styles. Zoning changes should be considered in order to facilitate long-term redevelopment. Future redevelopment in this area would establish a new “gateway” presence for the City and could link with the potential development of the Ventron/City parcels on the waterfront. This in turn would spillover into Beverly’s downtown.

Recommendations for Harbor Waterfront Use

Rezoning for new uses on the waterfront:

- Multifamily Residential at 20-25 units per acre;
- Focus on Hospitality;
- Require first floor uses and activities that promote public activity;
- Provide density bonuses for preferred uses;
- Require highly usable public access;
- Require viewshed access;

- Use a Marine zoning district to protect the existing boatyards and commercial fishing operations, but prepare to change that zoning in the future should those uses no longer be viable.

From Recommendations for Downtown Commercial (page 81)

Relate to and connect Cabot Street and Rantoul Street properties directly to the Harbor with physical connections and mixed land use options.

APPENDIX C

BEVERLY HARBER DISTRICT ZONING REQUIREMENTS

38-22 BHD – BEVERLY HARBOR DISTRICT

A General Description and Purpose

The Beverly Harbor District seeks to protect and enhance Beverly's existing marine and waterfront uses and amenities and to expand public access to the water by creating continuous and inviting public spaces enlivened with new mixed use development and waterside recreational facilities that are well integrated with surrounding neighborhoods. The Beverly Harbor District is established in order to facilitate the following objectives:

1. Support and grow commercial maritime uses, including commercial fishing vessels, as they are an integral part of the long-term vision of the Harbor District.
2. Facilitate use of the Harbor District's shoreline by commercial maritime, fishing, and recreational vessels.
3. Accommodate mixed-use development that is pedestrian friendly and will include recreational amenities to engender an inviting and active place.
4. Make the District accessible and designed to accommodate all modes of transportation.
5. Provide publicly accessible open spaces along the length of the Harbor District and will seek to connect with existing open spaces located elsewhere on Beverly's waterfront.
6. Complement the historical context of the waterfront with construction to a scale in keeping with the character of the surrounding neighborhood.
7. Enhance the visual appeal of the street, pedestrian paths, and other public areas within the Harbor District by minimizing the visual impact of overhead utilities, service equipment and other infrastructure and by the use of underground utilities where feasible.

B Uses by Right

1. Commercial fishing excluding the processing of fish, except as provided by Section 38-22.B8.
2. Commercial marina for the sale, mooring, and rental of boats, subject to the provisions of Section 38-22.G. (Rev. 6-26-87).

3. Public or private recreational boating facilities, including but not limited to ancillary office, kitchen facilities and meeting space.
4. Marine-related museums and/ or aquariums, and public service facilities including but not limited to harbormaster.
5. Boatyard for the construction, repair or maintenance of boats, including but not limited to ancillary office space.
6. Berthing and boat storage facility where a vessel is confined by wet slip, dry stack, float, mooring, jack stand, cradle or other type of docking facility.
7. Restaurants up to 5,000 square feet in gross floor area; provided however that fast food restaurant as defined in Section 38-2 of this zoning ordinance shall not be allowed.
8. Accessory buildings and uses required for and clearly incidental to the principle building or use are permitted.
9. Home occupation as defined herein, subject to the provisions of Section 38-22.G.

C Uses by Special Permit

1. Retail establishments subject to the provisions of Section 38-22.G.
2. Residential as part of a mixed-use commercial development where all residential units are located above the first (or ground) floor.
3. Business and professional offices as part of a mixed-use commercial development where all office related uses are located above the first (or ground) floor.
4. Hotel as part of a mixed-use commercial development where all lodging rooms are located above the first (or ground) floor and subject to provisions of section 38-22.G.
5. Restaurants with more than 5,000 square feet in gross floor area, provided however that fast food restaurants as defined in Section 38-2 of this zoning ordinance shall not be allowed.

D Building and Area Requirements

1. Minimum lot area: none required
2. Maximum Floor Area Ratio (FAR): 0.25, unless modified by Special Permit as provided in Section I below. FAR calculations do not include structured parking.
3. Minimum lot frontage: none

4. Minimum front yard setback: 20 feet, unless modified by Special Permit as provided in Section I below.
5. Minimum side yard setback: 5 feet
6. Minimum rear yard setback: 20 feet measured from the current mean high water mark, or the perimeter of any pier, wharf, or other structure supported by existing piles, whichever is further seaward.
7. Maximum building height: 35 feet measured as the vertical distance from the average existing street grade along the lot, to the top of the highest roof beams of a flat roof, or the top of the highest ridge of a sloped roof except that there may be uninhabited space under a sloped roof up to a total height of 40 feet.
8. Accessory Structures shall not be located in the front or rear yard of a lot.

E Parking Requirements

1. Off-street parking may be provided under or on the first floor of commercial or mixed use buildings provided an active ground floor use screens parking facilities from the public way and waterfront walkway.
2. Off-street surface parking located in the front or rear yard of a property must provide a minimum 5 foot landscape buffer from Water Street and the waterfront walkway.
3. Off-street parking shall be in accordance with the requirements set forth in Section 38-25 below.

F Sign Requirements

1. All signs in the BHD shall conform to the regulations set forth in Section 38-26 below.

G Minimum Development Standards

1. All proposals, including new construction of any building(s) or shoreline structure(s) (pier, slips, wharves, etc.) or any substantial addition(s) to same, must secure the appropriate federal, state, and local permits and licenses. These permits and licenses may include but are not limited to: U.S. Army Corps of Engineers Permit(s); MassDEP Division of Wetlands and Waterways Chapter 91 Waterways License; and City of Beverly Conservation Commission Order of Conditions.

Conditions imposed by any state or federal permit or license may be more restrictive or require certain public benefits not stated or identified in this Ordinance.

For any new development or improvements to existing structures within the BHD requiring site plan review under Section 38-29 or a special permit under the zoning ordinance, the project proponent shall establish the location, if applicable, of the Commonwealth tidelands and private tidelands on any plan or site plan(s) required under this Ordinance.

2. All proposals shall conform with MassDEP Waterways regulations, 310 CMR 9.00, as they may be amended, and shall provide or preserve any rights of access as required therein.
3. Any project that includes the use of filled tidelands for public access shall provide for long-term management of such areas that achieves effective public use and enjoyment while minimizing conflicts with interests as the protection of private property and natural resources. Such proposals shall provide rights of public access as follows:

- a. The provision, including construction and maintenance, of a public pedestrian walkway adjacent to the project shoreline, a minimum of 10 feet in width and including, but not limited to, pedestrian improvements such as landscaping, benches, lighting, and trash receptacles. The location and landscape elements shall be subject to approval by the Planning Board, and designed to connect to existing or future harbor front walkways on adjoining properties.

Should a proposed or existing water dependent use, such as boat launch or boat washing system, inhibit the project proponent's ability to provide a continuous walkway as prescribed above, the project proponent shall provide a reasonable alternative on the parcel providing access to the project shoreline and connecting the subject parcel to abutting parcels and walkways, subject to approval by the Planning Board.

- b. Access from the public street to the project shoreline walkway shall be required if there is no existing public access to said walkway and may be required by the Planning Board even if there is existing public access to the walkway elsewhere within the Beverly Harbor District; and in all cases shall be provided without time restriction except as authorized by the Planning Board or Mass DEP. Public access and use of public rights and ways shall be encouraged by the use of appropriate signage at all entryways and other reasonable locations on the project site.

- c. No gates, fences, or other structures may be placed on any areas open to public access in a manner that will impede the free flow of pedestrians.
4. Buildings shall be designed to the scale and character of the surrounding neighborhood, and shall incorporate design elements that create an attractive pedestrian realm. Proposals shall include the following elements:
- a. Buildings with architectural elevations facing both the public way and/or the waterfront shall be oriented and designed as though both are primary elevations.
 - b. Streets, driveways, parking lots, and principal facades shall include amenities that are conducive to an active pedestrian realm including sidewalks, landscaping, lights, and outdoor seating.
 - c. Development should be designed to facilitate and encourage use by alternative modes of transportation such as walking, biking, and public transit.
 - d. Building materials shall be of permanent and sturdy quality including brick, stone or wooden clapboard, or materials similar in appearance, texture, quality and scale to these materials.
 - e. Buildings facing the public way and/or the waterfront shall incorporate vertical design elements, operable doors, and/or entrances with public access and transparent windows at regular intervals in the principal façade(s).
 - f. Buildings within the Beverly Harbor District shall not have blank walls (without doors or windows) for a distance of greater than 10-feet in length.
 - g. Buildings shall be so designed and located to allow 50 feet wide views from the street to the harbor at intervals no greater than 150 feet. The longer side of each building should be sited approximately perpendicular to the street and the water's edge, or as the Planning Board may require, in order to preserve water views from the street.

The Planning Board may waive the above listed building placement and design requirements by special permit if it is found that such an alteration will better meet the objectives of this ordinance.

6. Surface level off-street parking shall be sited and screened so as to minimize the visual intrusion from public ways, waterfront walkways, and other public spaces that are provided for under this ordinance.
7. Rooftop and other mechanical equipment including HVAC systems, shall be screened, using materials similar in type, texture, and scale to the building, such as brick, slate, wood or other materials similar in appearance. No vinyl is permitted nor shall wood stockade or similar fencing be used on roofs. Solar panels are exempt from this requirement.
8. Mechanical equipment and other noise producing appurtenances shall comply with MassDEP noise control regulations (310 CMR 7.10) where a source sound shall not increase broadband sound level by more than 10 dB(A) above ambient levels or produce a pure tone condition. Measurements of sound levels shall be taken at the boundary of the subject property.

H Special Permit Criteria

When approving a special permit under the BHD the Planning Board shall make findings, in addition to any specific requirements or criteria set forth in Section 38-28.C of this Ordinance, that the project proposal meets the following special permit criteria:

1. The proposed development and associated uses are allowed and compatible with the purpose of the Beverly Harbor District.
2. The proposed development is consistent with the character, materials and scale of the surrounding neighborhood.
3. The proposed development is oriented to public ways and the project shoreline edge such that the project minimizes visual intrusion of parking, storage, and other outdoor service areas.
4. The proposed development shall provide direct access to public ways and the waterfront; buildings shall be oriented to complement public spaces.
5. Access is designed to provide an inviting pedestrian realm, and where necessary include signage to promote public access.
6. Buildings are oriented such that visual connection to the waterfront from streets and public ways is accommodated.

7. The proposed development will not prevent or materially interfere with the creation or preservation of adjacent water-related uses and public access and enjoyment on surrounding properties.
8. Project proponents of new residential uses allowed by special permit under this section shall certify that notice will be provided to residents, by deed or lease, that the Beverly Harbor District is intended for mixed uses including public access and enjoyment of the waterfront, commercial fishing, and other marine and water-related commercial uses. Notice shall at a minimum state that the residential building is in close proximity to water-related commercial uses which will continue to operate in accordance with normal business practices, which may include extended hours of operation, and use of public infrastructure. This provision shall be incorporated as a condition of special permit approvals under this ordinance that include a residential component.

In exercising its power under this section, the Planning Board may impose conditions to further the purposes and intent of the Beverly Harbor District.

I Special Requirements

For any use allowed in the BHD, the Planning Board through a Special Permit process may grant a bonus in Floor Area Ratio (FAR) increasing the existing maximum FAR of .25 up to 1.5, in return for the following public benefits (additional FAR of .25 may be granted by the Planning Board for one public benefit; .50 for a second public benefit; and .50 for a third public benefit):

1. For property which abuts Water Street, the provision, including construction (but not maintenance) of a public right-of-way along Water Street, so that there can be a minimum of a thirty (30) foot roadway and five (5) foot sidewalks on both sides in locations where the existing Water Street right-of-way is less than forty (40) feet.

The front yard setback requirement for projects providing additional public right-of-way is reduced from 20 ft. to 5ft.

2. The provision, including construction and maintenance, of a public pedestrian walkway along the project shoreline, a minimum of fifteen (15) feet in width, the exact location to be approved by the Planning Board, designed to connect to existing or future harbor front walkways on adjoining properties. Public access from the public street to the project shoreline walkway shall be required by the Planning Board if there is no existing public access. In addition, public access from the public street to the project shoreline walkway may be required by the Planning Board in its discretion.

3. 10% of the gross site area to be developed and maintained as public open space (as defined in section 38-2). This provision is in addition to any open space requirements which may otherwise be required by this ordinance.

Land set aside for the above public benefits shall remain included in the formula to determine FAR.

APPENDIX D

URBAN SELF-HELP PROJECT AGREEMENT

DIVISION OF CONSERVATION SERVICES
C. 933, ACTS OF 1977
URBAN SELF-HELP PROGRAM

PROJECT AGREEMENT

3
11

Made this 25th day of October between the City of Beverly, hereinafter referred to as the **PARTICIPANT**, and the Commonwealth of Massachusetts acting by and through the Secretary of the Executive Office of Environmental Affairs, hereinafter referred to as the **COMMONWEALTH**.

WHEREAS, the **PARTICIPANT** has established a Park, Recreation, or Conservation Commission under M.G.L. c.45 or c.40, s.8c and has made application to the **COMMONWEALTH** for assistance under the Massachusetts Urban Self-Help Program, so-called under Chapter 933, Acts of 1977, as it may be amended, for a project briefly described as follows: (describe project and include description of property), hereinafter referred to as the **PROJECT**.

Waterfront Acquisition, Urban Self-Help #4 @ 62% reimbursement.

This project shall consist of the acquisition, in fee simple, of .98+/- acres of waterfront land to be dedicated and used for recreational purposes.

WHEREAS, the **COMMONWEALTH** has received said application and found the application to be in conformance with the Statewide Comprehensive Outdoor Recreation Plan (and any other relevant statutes, regulations or state program).

WHEREAS, the **COMMONWEALTH** has approved said application and has obligated certain funds in the amount of Four hundred eighty three thousand, six hundred dollars and zero cents. (\$ 483,600.00).

1. **WITNESSETH**: The **COMMONWEALTH** and the **PARTICIPANT** mutually agree to perform this agreement in accordance with the Massachusetts Urban Self-Help Program, so-called, and M.G.L. c.45 or c.40 s.8c.
2. The **PARTICIPANT** agrees to perform the **PROJECT** described above by authorizing its **COMMISSION** to develop, manage, maintain, and operate the **PROJECT** in accordance with the terms of and the obligations contained in the **PARTICIPANT'S** applications and any other promises, conditions, plans, specification estimates, procedures, project proposals, maps, and assurances made a part thereof, and with any special terms and conditions attached hereto, all of which are incorporated by reference. All significant deviations from the **PROJECT** shall be submitted to the **COMMONWEALTH** for prior approval.

original grant agreement

3. The PARTICIPANT agrees that the facilities of the PROJECT shall be open to the general public and shall not be limited to residents of the PARTICIPANT. The PARTICIPANT shall prominently display on the PROJECT a sign designated by the COMMONWEALTH indicating the PROJECT received URBAN SELF-HELP FUNDS.
4. The PARTICIPANT acknowledges Article 97 of the Massachusetts Constitution which states, in part, that: "Lands or easements taken or acquired for such park, recreation or conservation purposes shall not be used for other purposes or otherwise disposed of except by laws enacted by a two-thirds vote, taken by yeas and nays, of each branch of the General Court." The PARTICIPANT hereby agrees that any property or facilities comprising the PROJECT will not be used for purposes other than those stipulated herein or otherwise disposed of unless the PARTICIPANT receives the appropriate authorization from the General Court, the approval of the Secretary of Environmental Affairs, and any authorization required by the provisions of M.G.L. C.40, s.15A.
5. The PARTICIPANT further agrees that despite any such authorization and approval, in the event the property or facilities comprising the PROJECT are used for purposes other than those described herein, the PARTICIPANT shall provide other property and facilities of equal value and utility and the proposed use of said other property and facilities is specifically agreed to by the Secretary of Environmental Affairs.
6. Failure by the PARTICIPANT to comply with this PROJECT agreement may, at the option of the COMMONWEALTH, suspend or terminate all obligations of the COMMONWEALTH hereunder.
7. Finally, since the benefit desired by the COMMONWEALTH from the full compliance by the PARTICIPANT is the existence, protection, and the net increase of park and recreation facilities and because such benefit exceeds to an immeasurable and unascertainable extent the amount granted by this agreement, the PARTICIPANT agrees that payment by the PARTICIPANT to the COMMONWEALTH of money would be an inadequate remedy for a breach by the PARTICIPANT of this agreement, and agrees therefore that as an alternative or additional remedy, specific performance of the PARTICIPANT'S obligation under either Article 2 or Article 5 may be enforced by the COMMONWEALTH.
8. The PARTICIPANT agrees to record a copy of this agreement at the Essex Registry of Deeds at the same time the deed for land comprising the PROJECT is recorded.

COMMONWEALTH OF MASSACHUSETTS

PARTICIPANT

BY *[Signature]*
Secretary, Executive Office
Environmental Affairs

BY William F. Scanlon, Jr.
[Signature]
Chief Executive
Officer

DATE: _____

BY PARK, RECREATION, OR
CONSERVATION COMMISSION
[Signature]

FOR THE BEVERLY HARBOR
MANAGEMENT AUTHORITY

Attached hereto evidence of authority to execute this contract on behalf of the PARTICIPANT. In the case of a municipality, a certified copy of the vote or votes of the governing body authorizing the PROJECT, appropriating the municipality's funds therefore, and authorizing execution of this Agreement by the Officer, Board, or Commission whose signature(s) appears above.



City of Beverly

IN CITY COUNCIL

BK 13634 PG 508

JUNE 27, 1996

The Committee on FINANCE AND PROPERTY

To whom was referred the matter of

AMENDMNET TO ADD PURCHASE OF PROPERTY AT 1 WATER ST.

have considered said matter and beg leave to report as follows, to wit:

SUBMIT THE ACCOMPANYING ORDER AND RECOMMEND ITS ADOPTION

A TRUE COPY

ATTEST: *James A. McDonald*
City Clerk



City of Beverly
IN CITY COUNCIL

BK 13634 PG 509

June 27, 1996

ORDERED:

THAT ORDER #233 BE AMENDED TO READ "THAT THE MAYOR AND THE CITY SOLICITOR SHALL NEGOTIATE AND EXECUTE THE PURCHASE AND SALE AGREEMENT AND TAKE ALL SUCH STEPS AS ARE NECESSARY TO PURCHASE THE PROPERTY AT 1 WATER STREET, FOR A PRICE NOT TO EXCEED *\$1,635,000.00 TO WHICH THE \$483,600 GRANT WILL BE APPLIED

Joyce A. Sobel

Patricia Gilmore

Benjamin Phillips

ATRUE COPY

ATTEST: *Janice A. McNeill*
City Clerk

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS
DIVISION OF CONSERVATION SERVICES

PARKLAND ACQUISITIONS AND RENOVATIONS FOR COMMUNITIES
PROGRAM
PROJECT AGREEMENT AMENDMENT No. 1

This Amendment No. 1 (Amendment) made this 30th day of August, 2010 modifies the project agreement by and between the City of Beverly (Participant) and the Commonwealth of Massachusetts acting by and through the Secretary of the Executive Office of Energy and Environmental Affairs (Commonwealth) dated October 25, 1995 for USH #4, Waterfront Acquisition, for approximately 0.96 acres of land including any buildings thereon located at Lot #86 on City of Beverly Assessors' Map #1, Essex County, Massachusetts, recorded at the Essex County Registry of Deeds Book 13634, Page 505-7, 511 (Agreement).

Pursuant to the terms and conditions of the Agreement and this Amendment, the parties hereto agree to amend the Agreement by adding the following Section:

11. The Agreement allows for restaurant use on the Project site per terms of the original grant application. The general public will have access to +/- 2,010 square feet of the ground floor and +/- 713 square feet of the upper level exterior deck of the restaurant, as well as +/- 1,720 square feet of the public wharf (see attached map). Six parking spaces on the Harbormasters lot (Parcel 87) are to be reserved for recreational users of the site. The Participant agrees to return the site to a grassy area should restaurant use at the site cease for more than two years.

All terms and conditions in the Agreement shall remain unchanged unless specifically amended by this Amendment.

COMMONWEALTH OF MASSACHUSETTS

BY

[Signature]
Secretary, Executive Office of
Energy and Environmental Affairs

DATE: 8-30-10

PARTICIPANT

BY

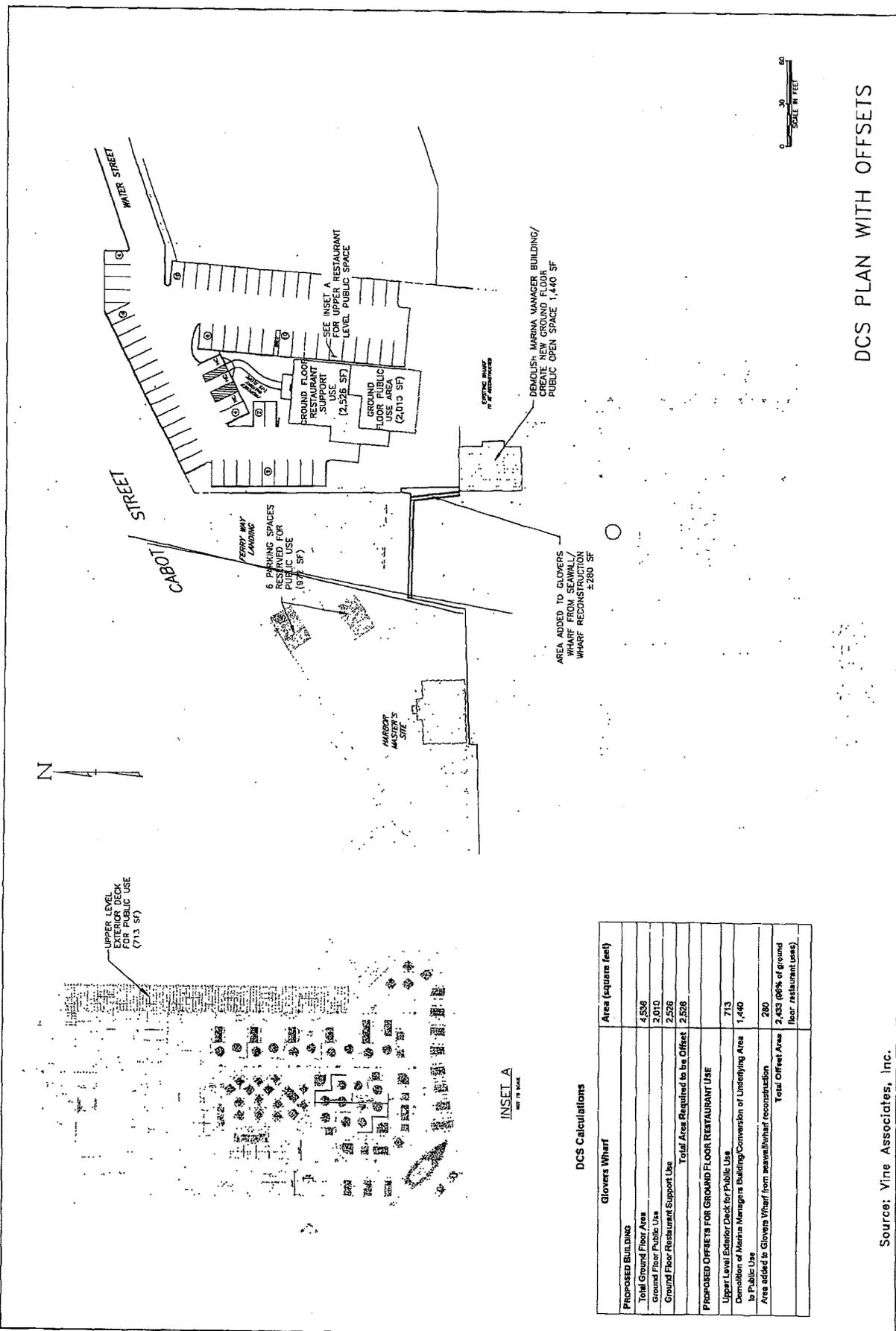
[Signature]
Chief Executive Officer

BEVERLY HARBOR
MANAGEMENT AUTHORITY

BY

[Signature]
[Signature]
[Signature]
[Signature]
[Signature]
DATE: 8/19/10

grant agreement
amendment #1



DCS Calculations

Glovers Wharf		Area (square feet)
PROPOSED BUILDING		
Total Ground Floor Area	4,536	
Ground Floor Public Use	2,010	
Ground Floor Restaurant Support Use	2,526	
Total Area Required to be Offset	2,526	
PROPOSED OFFSETS FOR GROUND FLOOR RESTAURANT USE		
Upper Level Exterior Deck for Public Use	713	
Conversion of Marina Managers building/Conversion of Underlying Area to Public Use	1,440	
Area added to Glovers Wharf from seawall/wharf reconstruction	280	
Total Offset Area	2,433 (96% of ground floor restaurant loss)	

DCS PLAN WITH OFFSETS

Source: Vine Associates, Inc.

APPENDIX E

SPECIMEN GROUND LEASE

GROUND LEASE

SAMPLE

June 17, 2015

This Lease Agreement ("Lease") dated as of the ----- day of _____ is by and between the City of Beverly with a principal place of business at 191 Cabot Street, Beverly, Massachusetts 01915, its successors and/or assigns ("Landlord") and _____ ("Tenant").

1. PREMISES

Landlord, for and in consideration of the covenants and agreements hereinafter set forth to be kept and performed by both parties hereto, demises and leases to Tenant, approximately 41,668 square feet of land which is located at 1 Water Street and known and numbered as Lot 85 on the City of Beverly's Assessor's Map 1, located Beverly, Massachusetts, [with the exception of the wharf area as per RFP] (the "Premises"), as identified and described in City of Beverly RFP # -----, dated -----.

1.1 CONDITION OF THE PREMISES. Tenant acknowledges that it has leased the Premises and agreed to construct the improvements after a full and complete examination of the Premises, including, without limitation, any encumbrances, subsurface conditions, existing structures thereon, if any, the presence of any asbestos or other Hazardous Materials (as defined in Section _____ below) located on, in or under the Premises or within such structures, legal title, their present uses and non-uses, and laws, ordinances, and regulations affecting the same and the ability of Tenant to use the Premises for their intended purposes, and accepts the same in the same condition in which they or any part thereof now are, and except as otherwise expressly provided in this Lease, waives all rights to object to the condition thereof and assumes all risks in connection therewith, without any representation or warranty, express or implied, in fact or by law, on the part of the City of Beverly and any other board, commission, or committee of the City and without recourse to the City or any other board, commission or committee of the City.

2. TERM

The term of this Lease shall be for a period of ----- years commencing on the "Rent Commencement Date" (as defined in Section 4(b) below) and ending (--) years from the Rent Commencement Date, unless sooner terminated (the "Term"). Upon occurrence of the Rent Commencement Date, either party will, upon the request of the other, execute a memorandum in recordable form confirming such date and all other dates set forth in this Lease that are determined with reference to such date.

3. RFP DOCUMENTS

The parties agree that they intend to be bound in accordance with the terms set forth herein. Additionally, the LANDLORD and TENANT agree that the project shall proceed in accordance with RFP --- and its proposal in response thereto, dated ----- and the Land Development Agreement dated _____.

4. RENT

Tenant shall pay to Landlord base rent ("Base Rent") starting with the Rent Commencement Date provided in Section 4(a) hereinbelow throughout the Term. All Base Rent shall be payable in equal monthly installments of one-twelfth (1/12th) of the annual amount thereof, in advance, on the first day of each calendar month during the Term. Base Rent and any additional rent (singly and collectively sometimes referred to as "Rent" or "rent") payable to Landlord hereunder shall be paid to Landlord at the address provided for in Section --- below, or at such other address that Landlord may designate by written notice to Tenant. Base Rent shall be paid to Landlord without notice or demand or set off. If the Rent Commencement Date shall not be on the first day of a calendar month, then Base Rent for any portion of a calendar month at the beginning or at the end of the Term shall be pro-rated for each day of a partial month.

(a) The Rent Commencement date shall be 60 days after the later of the date on which both parties to the lease have executed it. During the Term of this Lease, the Tenant shall pay to the Landlord Base Rent at the annual rates set forth herein with a "Year" or "Lease Year" being defined as each twelve month period and:

INSERT RENT PROVISIONS CONSISTENT WITH PROPOSAL IN
RESPONSE TO RFP

(b) Landlord shall notify Tenant in writing of its calculation of the increase in Base Rent pursuant to Sections _____ and _____ within thirty (30) days after the start of the applicable Lease Year. Tenant shall continue to pay the Base Rent for the prior Lease Year until the Tenant receives such notice from the Landlord, at which time Tenant will reimburse Landlord for any short fall in Base Rent due to Landlord in its next monthly payment of Base Rent.

(c) If Tenant shall fail to pay, within five (5) business days after the same is due and payable any Rent, Tenant shall pay, as Additional Rent, and in addition to the amounts due, the greater of ten percent (10%) of the amount due or (ii) five (5%) percent of the amount due for each month that the amount remains unpaid in full on each such obligation from the day it is due until received by Landlord (the "Default Rate"). If Landlord, in compliance with the provisions of this Lease, shall make any expenditure for which Tenant is responsible or liable under this Lease, or if Tenant shall become obligated to Landlord under this Lease for any sum other than Base Rent as herein above provided, Landlord shall notify Tenant in writing of such expenditure or obligation, together with reasonable documentation evidencing such expenditure or obligation, and the amount thereof shall be deemed also to constitute Additional Rent and shall be due and payable by Tenant to Landlord within thirty (30) days after Tenant's receipt of such notice, or such longer period as maybe provided in this Lease. In no event shall the Default Rate be computed in a way that is contrary to any applicable law.

5. TENANT EXPENSES-TAXES, MAINTENANCE, INSURANCE AND UTILITIES

Commencing upon the date of execution of this Lease, Tenant shall pay the following amounts with respect to the Premises:

(a) Tenant shall pay 100% of the water and sewer charges assessed on any building and/or structure on the Premises. Tenant shall pay when due such water and sewer charges directly to the water department.

Tenant shall pay 100% of all taxes, defined as all real estate, general and special taxes, including all betterment assessments, water and sewer taxes, rent, taxes and other governmental charges which may be lawfully charged, assessed, or imposed upon the Premises, including any building and/or structure thereon. Furthermore, in the event of any change in the method or system of taxation from that which is now applicable, including, without limitation, any change in the essential nature of the ad valorem real estate tax, such changed method or system of taxation shall be deemed taxes for purposes of this Lease. If any betterments assessments are payable by law in installments, said betterments assessments are deemed payable not for the period in which the same are assessed but in installments for the periods in which the installments thereof are payable. Taxes shall not include any franchise, capital levy or transfer tax of Landlord, or any income tax of Landlord.

(b) Tenant shall also pay when due all general and special taxes imposed upon all fixtures, equipment and personal property of every type that the Tenant maintains in any building and/or structure thereon directly to the taxing authority.

(c) Tenant shall obtain and pay for 100% of the cost of the insurance maintained on the Premises and/or any building or structure thereon pursuant to Section -- of this Lease. Tenant shall pay when due such insurance premiums directly to the insuring agency.

(d) Tenant shall make payment when due directly to the appropriate suppliers for all oil, gas,

electricity, light, heat, telephone, power, and other utilities and communications services used by Tenant in the Premises throughout the Term. Landlord shall have no obligation to provide utilities or equipment other than the utilities and equipment within the Premises as of the date hereof. In the event Tenant requires any or additional utilities or equipment, the installation and maintenance thereof shall be the Tenant's sole obligation.

(e) Tenant shall pay for 100% of the cost of performing the Tenant's maintenance obligations set forth in Section ---- below.

(f) Landlord and Tenant acknowledge and agree that both parties intend that this Lease shall be and constitute what is generally referred to as a "triple net" or "absolute net" lease, such that, except as may otherwise be provided herein or elsewhere in this Lease, Tenant shall be obligated hereunder to pay all costs and expenses incurred with respect to, and associated with, the Premises, including any building and/or thereon and the business operated thereon and therein, including, without limitation, all taxes and assessments, utility charges, insurance costs, together with any and all other assessments, charges, costs and expenses of any kind or nature whatsoever related to, or associated with, the Premises. Tenant shall be responsible for maintenance and repair of the Premises. Except as expressly provided in this Lease, Landlord shall bear no cost or expense of any type or nature with respect to, or associated with, the Premises.

6. USE OF LEASED PREMISES

(a) The Tenant shall use the Premises, including any building to be constructed thereon only for [insert description consistent with RFP Proposal], for purposes of complying with the Division of Conservation Services Urban Self-Help Project Agreement dated October 25, 1995 and recorded with Essex South District Registry of Deeds in Book 13634, Page 505 as affected by Project Agreement Amendment No. 1 dated August 30, 2010 and recorded in Book 33038, Page 548 (the "Project Agreement"), for purposes of providing to the public the following access and/or amenities: _____ and for no other purposes (the "Permitted Use or Permitted Uses").

(b) Tenant acknowledges the Division of Conservation Services Urban Self-Help Project Agreement dated October 25, 1995 and recorded with Essex South District Registry of Deeds in Book 13634, Page 505 as affected by Project Agreement Amendment No. 1 dated August 30, 2010 and recorded in Book 33038, Page 548 (the "Project Agreement") and agrees that any and all such use of the Premise shall comply with the Project Agreement and any amendment thereto executed in connection with RFP # ----. Tenant further acknowledges that any such use of the Premises and any building or structure thereon shall comply with all federal, state, county, regional municipal, local, and/or governmental authority written determinations, laws, codes, regulations, ordinances, rules permits, approvals, conditions and/or licenses (singly and collectively, "Applicable Laws").

(c) Tenant shall operate the Premises and any building or structure thereon in a manner that shall comply with the Project Agreement and any amendment thereto including:
INSERT LANGUAGE FROM PROPOSAL DEMONSTRATING USE IN COMPLIANCE
WITH PROJECT AGREEMENT. Tenant shall use all reasonable efforts and due diligence to

sublease approximately _____ of any building and/or structure located on the Premises for the purpose of complying the Project Agreement and to provide amenities available to the public as required by the RFP or shall operate such space itself to comply with the Project Agreement. Tenant shall be entitled to retain the proceeds, if any, received by Tenant from any such sublease, subject to section --- below.

- (d) Tenant agrees that no nuisance will be permitted on or at the Premises or any building and/or structure thereon by Tenant or its invitees; nothing will be done by Tenant upon or about any building or the Premises which shall be unlawful, improper, offensive, or contrary to any Applicable Laws. Tenant shall only use the Premises and any building and/or structure thereon in accordance with any and all Applicable Laws.

7. TENANT CONTINGENCIES

- (a) Tenant's obligations under this Lease are subject to Tenant satisfying the following conditions ("Tenant's Contingencies") within the time periods set forth herein [insert time period consistent with RFP and Proposal thereto if not incorporated into Land Development Agreement or if otherwise appropriate]:
 - (b) Required Permits. Tenant shall obtain all permits, approvals and licenses from governmental authorities, ("Required Permits") required for construction and use of the Tenant Alterations, Work and Improvements, and for any other alterations, removals, installations, additions, replacements or improvements to the Premises (collectively with the "Initial Improvements" or "Tenant Work"), and shall, provide the Landlord with a copy of each. Upon full or partial completion of the Improvements and prior to occupying any part of the Premises for any purpose other than performing the Improvements, and upon completion of any other Tenant Work, Tenant shall obtain from each authority granting the Required Permits such evidence of approval ("Required Approval") as may be necessary to permit such part of the Premises to be used and occupied for the Permitted Uses (as defined in Section ----). Tenant may occupy all or part of the Premises under temporary or conditional certificates of occupancy, but shall not be relieved from the obligation of obtaining permanent certificates of occupancy for the Improvements or other similar licenses or permits required to permit the Premises to be used and occupied for the Permitted Uses.
 - (c) Time is of the essence and the Tenant shall be obligated to proceed with due diligence in obtaining all Required Permits. The Tenant shall comply with the schedule and milestones set forth in the Land Development Agreement executed, ----- and such other schedule or timeline set forth herein.
 - (d) The Landlord shall promptly execute and deliver any reasonable documents which may be necessary to obtain or maintain any Required Permit or Required Approval and shall further cooperate with Tenant in obtaining or maintaining any Required Permit or Required Approval, as Tenant may from time to time reasonably request; provided, however, that with the exception of zoning or other matters, where the Landlord's execution of petitions, application, appeals or other documents or joinder in proceedings

may be required as a condition to Tenant's proposed action, the Landlord shall in no event be required to join in or become a party to any document or proceeding in which it will oppose the City of Beverly or the Commonwealth of Massachusetts or any agency, authority, branch, Landlord, division, office or subdivision of or for the City or the Commonwealth of Massachusetts, nor shall the Landlord be required in connection with any such document or proceeding or otherwise to oppose in any way any policy previously established by the City nor to take a position inconsistent with a position previously taken and made public by the City. The Landlord shall not be required to incur any costs in connection with any documentation under this Section. Tenant agrees to reimburse the Landlord within thirty (30) days from Landlord's request, for any reasonable third party costs it may incur in connection with the review of such documentation.

- (e) Either party may terminate this Lease upon seven days' written notice to the other if, after all appeals have been exhausted (local, administrative, regulatory, and court), the Tenant has not and/or cannot obtain the Required Permits with the conditions of any Required Permit not materially changed. Without regard to the status of any appeal, either party may terminate this Lease if the Tenant has not obtained for any reason obtained the Required Permits on or before the third (3rd) anniversary of the date of execution of the Land Development Agreement.

8. LANDLORD COVENANTS

- (a) Landlord hereby covenants and agrees to comply with all of its obligations under this Lease and as follows throughout the Term of the Lease, to the extent permitted by law.
- (b) To take all legal and governmentally approved steps reasonably necessary at no cost to the Landlord, and execute any and all true and accurate documents and instruments reasonably required by Tenant, to assist Tenant in satisfying all of the Tenant's Contingencies set forth in Section ____ of the Lease.

To deliver the Premises to Tenant free from all existing tenants, subtenants, employees and occupants of the Landlord ("Landlord Occupants"), provided that Landlord may remove any personal property and any portion of the existing building (such as any murals or other components of the building) on or prior to the date 30 days after the Tenant notifies the Landlord in writing that it will commence demolition of the existing building. Subject to Section ____ below, Tenant agrees to accept the existing building in whatever condition and with whatever personal property or fixtures it may contain when and as delivered by the Landlord.

9. INSURANCE AND INDEMNITY

At all times during the Term of this Lease, Tenant will maintain, at Tenant's expense, the

insurance policies required by the City set forth on Exhibit --- attached hereto, in the amounts set forth thereon. Tenant shall cause Tenant's contractor(s) to maintain the insurance policies set forth on Exhibit _____ attached hereto, to the extent applicable to Tenant's Work, in the amounts set forth thereon during the construction of Tenant's Work.

All insurance required to be carried by Tenant or its contractor(s) hereunder: (i) shall insure Tenant and Landlord as an additional named insured; (ii) shall contain a provision that it cannot be cancelled or amended, insofar as it relates to any building, without at least ten (10) days' prior notice to Landlord; and (iii) shall contain provisions under which the insurer agrees to save, defend, indemnify and hold harmless the Landlord from and against all costs, expenses and/or liability arising out of, resulting from or based upon any and all claims, accidents, injuries, and damages mentioned in Section _____ below. On or before the date of delivery of the Premises to Tenant by Landlord and at least thirty (30) days before any such policy shall expire, Tenant (or Tenant's contractor, as the case may be) shall deliver certificate of such insurance coverage to Landlord.

(a) Tenant agrees to indemnify, save, defend and hold harmless Landlord including its officers, employees, and/or agents, from and against any and all claims and demands of third persons (including, but not limited to, those for death, for personal injuries, or for loss of or damage to property) occurring in or arising, directly or indirectly, out of or in connection with Tenant's use and occupancy of the Premises and/or any building thereon, the business conducted in any building thereon, or (without limiting the foregoing) as a result of any acts, omissions or negligence of Tenant or any of Tenant's licensees, invitees, agents, servants, employees, subtenants or other persons in or about the Premises or any building thereon. This indemnity shall include indemnity against all costs, expenses, and liability occurring in or in connection with any such claim or proceeding brought thereon and the defense thereof.

(b) To the extent permitted by law and except to the extent otherwise provided herein or arising from the gross negligence or willful misconduct of Landlord or its agents, employees, contractors or licensees, Landlord shall not be liable to Tenant, its employees, agents, business invitees, licensees, customers, clients or guests for any damage, injury, loss, compensation or claim, including, but not limited to, claims for the interruption of or loss to Tenant's business, based on, arising out of or resulting from any cause including, but not limited to: (a) repairs to any portion of the Premises; (b) interruption in Tenant's use of the Premises; (c) any accident or damage resulting from the Use or operation (by Tenant or any other person or persons) of any equipment within the Premises, including without limitation, heating, cooling, electrical or plumbing equipment or apparatus; (d) the termination of this Lease by reason of the condemnation or destruction of the Premises in accordance with the provisions of this Lease; (e) any fire, robbery, theft or other casualty; (f) the actions of any other person or persons; and (g) any leakage or seepage in or from any part or portion of the Premises, whether from water, rain or other precipitation that may leak into, or flow from, any part of the Premises, or from drains, pipes or plumbing fixtures on the Premises.

10. ALTERATIONS AND IMPROVEMENTS

(a) Tenant's Work

Tenant accepts the Premises and the building thereon "as is" in the condition in which it is on the date of the execution of this Lease. Tenant acknowledges that Tenant shall be responsible, at its sole cost and expense, for making all necessary alterations; and improvements required to make the Premises suitable for the Permitted Use, including, but not limited to, any demolition of the existing building and constructing in a good and first class workmanlike manner the [insert description of proposed project] from which Tenant (and any subtenants) will operate under the Permitted Use.

Tenant shall have substantially completed Tenant's Work, in accordance with the schedule set forth in the Tenant's response to RFP # -----, the Land Development Agreement executed by the parties and :

[insert any additional required milestones]

(collectively, the "Milestones" or the "Schedule").

11. MAINTENANCE AND MANAGEMENT OBLIGATIONS

(a) Tenant Obligations.

Tenant agrees throughout the Term of this Lease, at Tenant's sole cost and expense, to maintain, or cause to be maintained, the Premises and any building and/or structure thereon and each and every part thereof, in good order and condition in all respects, subject to reasonable wear and tear, free of accumulation of rubbish, snow and ice, and to make all necessary repairs, interior and exterior, structural and nonstructural, ordinary as well as extraordinary, foreseen as well as unforeseen, in order to maintain such areas as required hereby and in compliance with all Applicable Laws. When used in this Section 11, the term "repair" shall include replacements when necessary, and all such repairs shall be at least equal in quality and class to the original work. Tenant's maintenance obligation under this Section 11(a) shall also include lighting, cleaning and landscaping such areas and snow removal and refuse removal from such areas. All repairs and maintenance are to be in a good and first-class workmanlike manner.

12. ASSIGNMENT; SUBLEASING

- (a) Subject to the provisions of this Section 12, Tenant shall have the right to assign this Lease or to sublease the Premises or any part thereof or any building and/or structure constructed by the Tenant or portion thereof, either absolutely or as security subject to Landlord's approval which approval by Landlord shall not be unreasonably withheld, provided all the provisions of this Section 12 and all Applicable Laws are complied with.

Tenant must submit any request to Landlord in writing and Landlord shall respond in writing to such request within 30 days of receipt of such. Any written consent by Landlord shall be held to apply only to the specific transaction thereby authorized. Such written consent shall not be construed as a waiver of the obligation of Tenant to obtain from Landlord written consent to any other or subsequent assignment or subletting period. The collection of rent by Landlord from any assignee, subtenant or other occupant shall not be deemed an acceptance of the assignee, subtenant or occupant as tenant or release of Tenant from its obligation under this Lease. This right contained herein is subject to and conditioned compliance with all applicable laws, rules, and/or regulations and compliance with the Project Agreement and any amendment thereto.

- (b) Notwithstanding the provisions of Section 12(a), above, any proposed assignee or sublessee submitted to the Landlord for approval (other than a sublessee of the area required for compliance with the Project Agreement) must have financial strength and/or health comparable to or greater than that of the Tenant at the time the Tenant was selected as the successful proposer in response to RFP # --- and must qualify to obtain a liquor license at the Premises. If Tenant requests permission to assign this Lease or sublet the Premises or any part thereof, Tenant shall, together with such request for consent thereto, inform Landlord of the rental and any other amounts to be paid by such assignee or subtenant in connection with such subletting or assignment regardless of the nomenclature such payment may take, the term of any subletting, and any financial information required or requested by Landlord to make the determination required by the first sentence of this Section 12(b).

- (c) Any written consent by Landlord to an assignment or subletting, shall be deemed conditioned upon Tenant's compliance with the following provisions and the failure to so comply shall be deemed to give Landlord reasonable cause for withholding or withdrawing its consent:

- (1) The assignment or subletting must be, respectively, of all Tenant's leasehold interest or of the entire Premises and, in the case of an assignment, shall also transfer to the assignee all of Tenant's obligations and rights in and interests under this Lease.
- (2) At the time of such assignment or subletting, this Lease must be in full force and effect without any breach or default hereunder on the part of Tenant.
- (3) The assignee or sublessee shall assume, by written recordable instrument, in form and content satisfactory to Landlord, the due performance of all Tenant's obligations under this Lease, including any accrued obligations at the time of the assignment or subletting.
- (4) A copy of the assignment or sublease and the original assumption agreement (both in form and content satisfactory to Landlord) fully executed and acknowledged by the assignee or sublessee, together with a certified copy of a properly executed corporate resolution authorizing such assumption agreement,

shall be received by Landlord within ten (10) days from the effective date of such assignment or subletting.

- (5) Such assignment or subletting shall be upon and subject to all the provisions, terms, covenants and conditions of this Lease including but without limitation the use permitted hereby and Tenant (and any assignee(s), subtenant(s) and guarantor(s) of this Lease) shall continue to be and remain primarily and unconditionally liable hereunder. In no event shall the Premises be used for any activity that is not in compliance with Beverly Zoning Ordinances and/or for any purpose that is not consistent with the purpose and objective of the zoning in the Beverly Harbor District.
- (6) Tenant shall reimburse Landlord for Landlord's reasonable attorneys' fees for examination of and/or preparation of any documents in connection with such assignment or subletting.
- (7) One hundred percent (100%) of rent, sum or other consideration to be paid or given in connection with such sublease or assignment, either initially or over time, in excess of the Annual Rent and/or Additional Rent and/or other charges to be paid under this Lease shall be paid directly to Landlord as if such amount were originally called for by the terms of this Lease as Additional Rent and Tenant shall be liable to Landlord for all such amounts upon receipt of same from such assignee or sublessee by Tenant.
- (d) Tenant has the authority to execute this Lease as reflected in [attach evidence of authority]. If there shall occur any change in the ownership of and/or power to vote the majority of the outstanding capital stock or membership interest or ownership interest in or of Tenant, whether such change of ownership is by sale, assignment, bequest, inheritance, operation of law or otherwise, without the prior written consent of Landlord, then Landlord shall have the option to terminate this lease upon thirty (30) days notice to Tenant.
- (e) Provided Tenant shall not be in default hereunder beyond any notice and cure period, Tenant may grant a Leasehold mortgage on this Lease to an institutional lender providing financing for use at the Premises with the written consent of the Landlord and provided that any such grant shall be subordinate to this Lease and the Landlord's interest in the Premises. Any leasehold mortgage shall be subject to the terms of this lease and any leasehold mortgagee shall not acquire any rights greater than that of the Tenant. Tenant shall provide Landlord written notice of such request to grant a leasehold mortgage and Landlord shall provide a written response within 14 days.
- (f) Any assignment and/or sublease shall be in full compliance with the Project Agreement and any and all licenses, permits, and/or conditions thereof.

13. LANDLORD'S ACCESS

Landlord shall have the right at all reasonable times during the Term of this Lease to enter upon the Premises for the purpose of inspecting the same and exercising its rights under this Lease, and during the twelve (12) months period prior to the expiration of the Term, Tenant will permit Landlord to enter upon the Premises at reasonable times for the purpose of showing the same to prospective tenants.

14. FIRE OR OTHER CASUALTY

(a) Damage.

In the event that during the Term hereof any building and/or structure on the Premises shall be damaged or destroyed by fire or other casualty, the risk of which is covered by insurance payable to Tenant, this Lease shall remain in full force and effect so long as the net insurance proceeds payable to Tenant for such damage is sufficient in Tenant's determination to restore any building and/or structure to substantially the same condition as prior to the fire or other casualty. The Tenant shall promptly, after the determination and receipt of the net amount of insurance proceeds available to Tenant, expend so much as may be necessary of such net amount of insurance to restore the building and/or structure to substantially the same condition, but Tenant shall not be responsible for any delay which may result from any cause beyond the reasonable control of Tenant. Should the net amount of insurance proceeds available to Tenant be insufficient to cover the cost of restoring any building and/or structure on the Premises, Tenant may, but shall have no obligation to, supply the amount of such insufficiency and restore the building and/or structure with all reasonable diligence or Tenant may terminate this Lease by giving written notice to Landlord within 30 days of Tenant determining that the estimated net amount of insurance proceeds available to Tenant and the estimated cost of such restoration. In case of damage or destruction, as a result of a risk that is not covered by insurance available to Tenant, Tenant shall be entitled to rebuild the building and/or structure, all as aforesaid, unless Tenant, within 90 days after the occurrence of such event, gives written notice to Landlord of Tenant's election to terminate this Lease.

In the event that the Tenant decides not to repair or replace the portion of the Premises, building and/or structure damaged and may terminate this Lease by giving notice to the Landlord (the "**Casualty Termination Notice**"). After delivery of the Casualty Termination Notice to the Landlord, (i) Tenant will vacate the Premises within 30 days of giving such notice; and (ii) assign to the Landlord all of its right, title and interest in and to any and all insurance proceeds related to such casualty within 30 days of giving such notice. Notwithstanding the foregoing, however, the Landlord shall not share in any casualty award with respect to the Improvements unless and until the unpaid balance of the Mortgage on the Premises, if any, is paid in full, all such casualty proceeds being used first to pay off and discharge such Mortgage. Tenant's obligations pursuant to Section 19 shall survive termination of the Lease.

15. CONDEMNATION

(a) Entire Taking.

If the whole of any building and/or the Premises shall be acquired or condemned under eminent domain proceedings, then the Term of this Lease shall cease and terminate when the Premises and/or any building and/or structure on the Premises is taken. All payment obligations of Tenant hereunder shall cease on said termination date.

(b) Partial Taking.

If, upon the taking of a portion of any building and/or the leased premises, the total interior floor area remaining in the Building or the leased premises shall be reduced to less than ninety percent (90%) of such areas at the commencement of the Term hereof, then at the election of Tenant; this Lease may be terminated as of the date when Tenant is required to vacate the portion of the building and/or leased premises so taken. In the event Tenant determines to remain in operation, all Base Rent and taxes under Section -- shall be equitably reduced and Tenant shall, within six (6) months after said condemnation, rebuild the building on the space available, unless delayed through causes beyond its control, including delay in receiving taking or insurance proceeds for the same; in which case Tenant shall rebuild the building in as diligent a manner as possible.

(c) Taking Award.

In any event, Tenant shall have no claim against Landlord by reason of such taking or termination. To the extent permitted by law, Landlord and Tenant shall jointly prosecute and settle the proceedings for the determination and payment of the award payable on account of any such taking, and the cost of such proceedings shall be first charged against the award received. Subject to the provisions of Section --- the net award shall be divided between Landlord and Tenant as follows: First, Landlord shall be entitled to so much of the net award as is fairly allocable to the then fair market value of the land taken; and second, Landlord and Tenant shall share so much of the net award as is fairly allocable to the building and improvements taken and Tenant's property on the basis of (i) the ratio of number of months expired in the lease term divided by [number of months of lease term] shall represent the ratio belonging to the Landlord and (ii) the ratio of (a) a number equal to [total lease term months] minus the number of months expired in the lease term divided by (b) [total lease term] months shall represent the ratio belonging to the Tenant; and then, the balance, if any, shall be allocable to Tenant. Tenant's right and the right of subtenants of Tenant to receive compensation or damages for its or their trade fixtures or personal property or for moving expenses shall not be affected in any manner by any provision in this Section so long as the award for the taking referred to in Section 15(a) and (b) is not affected or reduced. In determining fair market value, the parties acknowledge that the Base Rent may not be reflective of the fair market rent for the Premises.

16. DEFAULT

(a) Any of the following shall constitute a default by Tenant under this Lease:

- (i) The Tenant shall fail to make payment of any installment of rent or other sum herein specified and such default shall continue for five (5) business days after written notice thereof; or
- (ii) The Tenant shall fail to observe or perform any other of the Tenant's covenants, agreements, or obligations hereunder and such failure of performance shall not be corrected within thirty (30) days after written notice thereof; provided that if the nature of such failure is such that the same cannot reasonably be cured within a thirty (30) day period, Tenant shall not be deemed to be in default if it diligently commences such cure within such period and thereafter diligently proceeds to rectify and cure such failure, but in no event exceeding a period of time in excess of one hundred and eighty (180) days after written notice thereof from Landlord, or
- (iii) The Tenant shall be declared bankrupt or insolvent according to law and has not been discharged from same within sixty (60) days of said declaration, or if any assignment shall be made of Tenant's property for the benefit of creditors, or
- (iv) any person shall levy upon, or take this Leasehold interest or any part thereof upon, execution, attachment or other process of law, or
- (v) a receiver, trustee or assignee shall be appointed for the whole or any part of Tenant's property, or
- (vi) if Tenant shall default in the payment of any sum of money due hereunder or of any other obligation under this Lease even if the same were cured within any applicable grace period and if there shall have been three (3) or more of any such cured defaults during any twelve (12) consecutive monthly period.
- (vii) if, after the Tenant has initially opened any structure and/or building to operate for the Permitted Use or required uses, the Tenant fails or ceases to do so for a period of 30 consecutive days or more than 45 days in any twelve month period except for such reasonable periods of time as Tenant is closed for remodeling upon prior written notice to the Landlord.
- (viii) Tenant fails to obtain the Required Permits after all appeal periods or appeals and/or to comply with the terms of any license, permit, approval, and/or the Project Agreement as may be amended from time to time and/or to comply with the Tenant Contingencies.
- (ix) Tenant's failure and/or inability to comply with the Land Development Agreement, and/or achieve the agreed upon Milestones or comply with the agreed Schedule. Landlord shall deliver written notice to Tenant if Landlord deems Tenant has not complied with the Land Development

Agreement and/or Schedule and/or timely reached any of the Milestones and Tenant shall have up to thirty (30) days from such notice to cure any such performance problem and reach the Milestone within the end of such notice and cure period. In no event shall all such notice and cure period(s) exceed sixty (60) days in the aggregate.

- (b) In case of default as described in above Section 16(a), Landlord will have the right to the following remedies which are intended to be cumulative and in addition to any other remedies provided under applicable law:
- (i) Terminate this Lease without relieving Tenant from its obligation to pay damages.
 - (ii) Retake possession of the Premises by summary proceedings or otherwise, in which case Tenant's liability to Landlord for damages will survive the tenancy. Landlord may, after such retaking of possession, relet the Premises upon any reasonable terms. At Landlord's election, such reletting may be construed as an acceptance of a surrender of Tenant's leasehold interest.
 - (iii) Recover damages caused by Tenant's default less any rent and other amounts collected by Landlord in mitigation of the damages caused by Tenant's default hereunder; and any and all other remedies available to Landlord including declaring the entire rent reserved under this Lease to be due and payable
 - (iv) Make any payment or perform any obligation required of Tenant so as to cure Tenant's default, in which case Landlord will be entitled to recover all amounts so expended on Tenant's behalf from Tenant plus an administrative fee equal to 15% of such amount(s). Notwithstanding anything contained herein to the contrary, Landlord shall use reasonable efforts to mitigate its damages.
 - (v) Recover attorneys' fees and/or costs incurred in the event of default.
- (c) In the event of any alleged default in the obligations of Landlord under this Lease, Tenant will deliver to Landlord written notice and Landlord will have sixty (60) days following receipt of such notice to cure such alleged default, provided that if the nature of such failure is such that the same cannot reasonably be cured within a sixty (60) day period, Landlord shall not be deemed to be in default if it diligently commences such cure within such period and thereafter diligently proceeds to rectify and cure such failure, but in any event exceeding a period of time in excess of one hundred and eighty (180) days after written notice thereof from Tenant.
- (d) Notwithstanding anything in this Section 16 to the contrary, if Tenant fails at any time to perform any obligation under any license, permit, approval, and/or the Project Agreement, the Landlord shall have the right to seek enforcement of same.

17. NOTICE

All notices sent or required to be sent hereunder shall be in writing and sent by express mail or registered or certified mail, return receipt requested, postage prepaid or by private express carrier, express charges prepaid; if sent to Landlord, the same shall be addressed to the City of Beverly Mayor's Office, 191 Cabot Street, Beverly, Massachusetts 01915, with a copy, similarly sent, to Office of the City Solicitor, City of Beverly, 191 Cabot Street, Beverly, MA 01915 or to such other person(s) or address(es) as Landlord may hereafter designate by written notice to Tenant; if sent to Tenant, ----- or to such other person or address as Tenant may hereafter designate by written notice to Landlord. If Tenant has given notice to Landlord of the name and address of any mortgagee of its Leasehold interest in the demised premises, a duplicate copy of every notice to Tenant shall be given to said mortgagee at said address and such mortgagee shall have the same rights as Tenant to correct any failure of Tenant. If Landlord has given notice to Tenant of the name and address of any mortgagee of the fee of the Premises, a duplicate copy of every notice to Landlord shall be given to said mortgagee at said address and such mortgagee shall have the same rights as Landlord to correct any failure of Landlord.

18. NOTICE OF LEASE

The Tenant agrees to record a Notice of Lease at the Essex South County Registry of Deeds in accordance with all applicable rules and law. Tenant shall pay the cost of such recording.

19. ENVIRONMENTAL

19.1 In furtherance of Tenant's agreement to comply with all Applicable Laws and regulations, and not in limitation thereof, Tenant hereby agrees not to dump, flush, or in any way introduce any hazardous substances, hazardous material, oil, or any other toxic substances into the septic, sewage or other waste disposal system now or hereafter serving the Premises, not to generate hazardous substances, hazardous material, oil, or any other toxic substances in or on the Premises or dispose of hazardous substances, hazardous material, oil, or any other toxic substances from the Premises to any other location except in compliance with the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. §6901 et seq., the Massachusetts Hazardous Waste Management Act, as amended, M.G.L. c.21C, and regulations adopted pursuant thereto, and successors to such acts and regulations, as may be enacted from time to time, and all other applicable laws, by-laws and regulations; not to store hazardous substances, hazardous material, oil, or any other toxic substances on the Premises except for materials commonly found in the cleaning or operation of a restaurant so long as the same is stored and used in compliance with all Applicable Laws. Notwithstanding the provisions hereof, Tenant has no obligation with respect to environmental conditions existing at the Premises prior to the date of the delivery of the Premises to Tenant by Landlord. If as a result of any pre-existing environmental conditions existing as of the date of the delivery of the Premises to Tenant by Landlord the Tenant suffers any delays in obtaining any Tenant Permits or is delayed in commencing Tenant's Work, the Rent Commencement Date shall be extended on a day for day basis.

19.2 Environmental Laws Defined. "Environmental Laws" means, collectively, any federal,

state, or local law, rule or regulation (whether now existing or hereafter enacted or promulgated, as they may be amended from time to time) pertaining to environmental regulations, contamination, clean-up or disclosures, and any judicial or administrative interpretation thereof, including any judicial or administrative orders or judgments, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq. ("CERCLA"); the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq. ("RCRA"); the Clean Water Act, 33 U.S.C. §§ 1251 et seq.; the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq. ("SARA"); the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq. ("TSCA"); the Hazardous Materials Transportation Act, 49 U.S.C. Appx. §§ 1801 et seq.; the Massachusetts Hazardous Waste Management Act, Mass.Gen.L. c. 21C §§ 1 et seq.; the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, Mass.Gen.L. c. 21E §§ 1 et seq.; the Massachusetts Toxic Use Reduction Act, Mass.Gen.L. c. 21I §§ 1 et seq.; the Underground Storage Tank Petroleum Product Cleanup Fund, Mass.Gen.L. c. 21J §§ 1 et seq.; or any other applicable federal or state statute or city or county ordinance regulating the generation, storage, containment or disposal of any Hazardous Material (as defined in Section 20.4 below) or providing for the protection, preservation or enhancement of the natural environment, any rules or regulations promulgated pursuant to any of the foregoing statutes or ordinances, including but not limited to laws relating to groundwater and surface water pollution, air pollution, transportation, storage and disposal of oil and hazardous wastes, substances and materials, stormwater drainage, and underground and above ground storage tanks, and any amendments, modifications or supplements of any such statutes, ordinances, rules and regulations.

19.3

Tenant's Environmental Representations, Warranties and Covenants. Tenant hereby represents, warrants and covenants as follows:

- (a) Except as may be permitted by and only in accordance with Environmental Laws, Tenant shall not allow any Hazardous Materials (as defined in Section 20.4 below) to exist or be stored, located, discharged, possessed, managed, processed, or otherwise used or handled on the Premises, and shall strictly comply with all Environmental Laws affecting the Premises. Without limiting the generality of the foregoing, Tenant is not, and will not become, involved in operations at the Premises involving Hazardous Materials, except as expressly permitted by Legal Requirements.
- (b) No activity shall be undertaken on the Premises by Tenant which would cause (i) the Premises to be considered a hazardous waste treatment, storage or disposal facility as defined under any Environmental Laws; (ii) a release or threatened release of Hazardous Materials into any watercourse, surface or subsurface water or wetlands, or the discharged into the atmosphere of any Hazardous Materials in each case requiring a permit under any Environmental Laws and for which no such permit has been issued.

- (c) Tenant shall, with all due diligence, at its own cost and expense and in accordance with Environmental Laws (and in all events in a manner reasonably satisfactory to the Landlord), take all actions (to the extent and at the time or from time to time) as shall be necessary or appropriate for the remediation of all releases of Hazardous Materials at or from the Premises including all removal, containment and remedial actions. Tenant shall pay or cause to be paid at no expense to the Landlord all clean-up, administrative, and enforcement costs of applicable government agencies or the parties protected by such Environmental Laws which may be asserted against the Premises.
- (d) Tenant, upon execution of this Lease, shall furnish the Landlord with a copy of any Material Safety Data Sheets and any updates thereto or any list of substances listed on the so-called Massachusetts Substance List, established pursuant to Mass. Gen. L. c. 111F which Tenant is required to prepare, file or maintain pursuant to said chapter for any substances used or stored on the Premises. If said Material Safety Data Sheets or lists should be changed or updated during the Term of this Lease, Tenant shall promptly furnish a copy of such updated or changed Material Safety Data Sheets or list to the Landlord.

19.4 The Landlord's Environmental Representations, Warranties and Covenants. The Landlord hereby represents, warrants and covenants as of the date of the execution of this Lease as follows:

- (a) The Landlord, to the best of its knowledge, (i) has not received notice of any private or governmental lien or judicial or administrative notice, order or action relating to Hazardous Materials or environmental liabilities or violations with respect to the Premises, nor (ii) has in, or with any applicable notice or lapse of time, or failure to take certain curative or remedial actions, will be in, either direct or indirect violation of any Environmental Laws..
- (b) No activity shall be undertaken on the Premises by the Landlord which would cause (i) the Premises to be considered a hazardous waste treatment, storage or disposal facility as defined under any Environmental Laws; (ii) a release or threatened release of Hazardous Materials into any watercourse, surface or subsurface water or wetlands, or the discharge into the atmosphere of any Hazardous Materials in each case requiring a permit under any Environmental Laws and for which no such permit has been issued.

19.5 Hazardous Materials Defined. For purposes of this Lease, "Hazardous Materials" shall mean, but shall not be limited to, any oil, petroleum product and any hazardous or toxic waste or substance, any substance which because of its quantitative concentration, chemical, radioactive, flammable, explosive, infectious or other characteristics, constitutes or may reasonably be expected to constitute or contribute to a danger or hazard to public health, safety or welfare or to the environment, including without limitation any asbestos (whether or not friable) and any asbestos-containing materials,

lead paint, waste oils, solvents and chlorinated oils, polychlorinated biphenyls (PCBs), toxic metals, explosives, reactive metals and compounds, pesticides, herbicides, radon gas, urea formaldehyde foam insulation and chemical, biological and radioactive wastes, or any other similar materials which are included under or regulated by any Environmental Law.

19.6 Notices.

- (a) Tenant shall provide the LANDLORD with copies of any notices of releases of Hazardous Materials which are given by or on behalf of Tenant to any federal, state or local agencies or authorities with respect to the Premises. Such copies shall be sent to the Landlord concurrently with mailing or delivery to the governmental agencies or authorities. Tenant also shall provide the LANDLORD with copies of any notices of responsibility or any other notices received by or on behalf of Tenant from any such agencies or authorities concerning any non-compliance with Environmental Laws on or about the Premises, including but not limited to notices regarding Hazardous Materials or substances located on or about the Premises. In addition, in connection with any litigation or threat of litigation affecting the Premises, Tenant shall deliver to the LANDLORD any documentation or records as the Landlord may reasonably request and which are in Tenant's possession and may be lawfully delivered to the Landlord, and the LANDLORD shall deliver to Tenant any documentation or records as Tenant may reasonably request and which are in the LANDLORD's possession and may be lawfully delivered to Tenant.
- (b) Tenant or the LANDLORD shall immediately notify the other party in writing should Tenant or the LANDLORD become aware of (iii) any release or threatened release of Hazardous Materials or the occurrence of any other environmental problem or liability with respect to the Premises or any real property adjoining or in the vicinity of the Premises or such other property which could subject the LANDLORD, Tenant or the Premises to a Claim under any Environmental Laws or to any restriction in ownership, occupancy, transferability or use of the Premises under any Environmental Laws; (iv) any lien filed, action taken or notice given of the nature described in Sections 19.3(b) or 19.4(b) above; (v) any notice given to Tenant from any occupant of the Premises or any notice from any governmental authority with respect to any release or threatened release of Hazardous Materials; or (vi) the commencement of any litigation or any information relating to any threat of litigation relating to any alleged unauthorized release of any Hazardous Materials or other environmental contamination, liability or problem with respect to or arising out of or in connection with the Premises.

19.7 Environmental Indemnity. Tenant hereby presently, unconditionally, irrevocably and absolutely agrees to pay, indemnify, defend with counsel acceptable to the LANDLORD and save harmless the LANDLORD Parties for, from and against any and all Claims (including, without limitation attorneys' and experts' fees and expenses, clean-up costs,

waste disposal costs and those costs, expenses, penalties and fines within the meaning of CERCLA), of any kind or nature whatsoever which may at any time be imposed upon, incurred by or asserted or awarded against the Landlord and arising from any violation or alleged violation of Environmental Laws, environmental problem or other environmental matter described herein, relating to the Premises, or as a consequence of any of Tenant's or the Landlord's interest in or operation of the Premises, including, without limitation, matters arising out of any breach of Tenant's covenants, representations and warranties. Tenant does further agree and covenant that except as otherwise set forth in this Lease, the Landlord shall not assume any liability or obligation for loss, damage, fines, penalties, claims or duty to clean up or dispose of Hazardous Materials, or other wastes or materials on or relating to the Premises regardless of any inspections or other actions made or taken by the Landlord on such property or as a result of any re-entry by the Landlord onto the Premises or otherwise. All warranties, representations and obligations set forth herein shall be deemed to be continuing and shall survive termination of this Lease. In addition, the covenants and indemnities of Tenant contained herein shall survive any exercise of any remedy by the LANDLORD or LANDLORD Parties under the Lease. Tenant agrees that the indemnification granted herein may be enforced by any of the LANDLORD Parties; provided, however, that nothing contained herein shall prevent the LANDLORD from exercising any other rights under the Lease.

20. ADDITIONAL PROVISIONS

- SAMPLE**
- (a) **No Waiver.** No release, discharge or waiver of any provision hereof shall be enforceable against or binding upon either party unless in writing and executed by both parties. The waiver by either party of any agreement, condition, or provision contained in this Lease will not be deemed to be a waiver of any subsequent breach of the same or any other agreement, condition, or provision contained in this Lease, nor will any custom or practice that may grow up between the parties in the administration of the terms of this Lease be construed to waive or lessen the right of either party to insist upon the performance by the other party in strict accordance with the terms of this Lease. The subsequent acceptance of rent by Landlord will not be deemed to be a waiver of any preceding breach by Tenant of any agreement, condition, or provision of this Lease.
- (b) **Attorney's Fees: Disputes.** In any matter involving this Lease, the parties shall each pay for their own legal and professional fees and costs. Landlord, however, shall be entitled to recover its reasonable attorneys' fees and costs incurred in enforcing this Lease and in any bankruptcy action filed by or against Tenant, including, without limitation, those incurred in seeking relief from the automatic stay, in dealing with the assumption or rejection of this Lease, in any adversary proceeding, and in the preparation and filing of any proof of claim. Tenant shall promptly notify Landlord of any claim, action, proceeding or suit instituted or threatened against Tenant or Landlord of which Tenant receives notice. If Landlord becomes a party to any third party litigation concerning this Lease or the Premises, by reason of any act or omission of the Tenant or its representatives, or in the event Landlord is made a party to any action for damages or other relief, against which Tenant has indemnified Landlord, Tenant shall indemnify and

defend Landlord, pay all reasonable attorneys' fees and court costs, both at trial and on appeal, with counsel selected by Landlord.

(c) Subordination and Estoppel Certificates. This Lease is and shall be subject and subordinate to any and all matters of record that may now or hereafter affect the Premises. This provision shall be self-operative and no further instrument of subordination shall be necessary. However, in confirmation of this subordination, Tenant shall execute promptly any certificate or subordination that Landlord or its lender(s) may request. At any time and from time to time but within ten (10) days after written request by either party, the other party will execute, acknowledge, and deliver to the requesting party a certificate certifying (i) that this Lease is unmodified and in full force and effect or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the date and nature of each modification; (ii) the date, if any, to which rent and other sums payable under this Lease have been paid; (iii) that no notice has been received by either party of any default which has not been cured, except as to defaults specified in the certificate; and (iv) such other matters as may be reasonably requested by the requesting party. Any such certificate may be relied upon by any prospective purchaser or existing or prospective mortgagee or beneficiary.

(d) Surrender. The Tenant shall at the expiration or other termination of this Lease remove all Tenant's property, furniture, trade fixtures, equipment and other goods and effects from the Premises and any building and/or structure thereon, (including, without hereby limiting the generality of the foregoing, all signs and lettering affixed or painted by the Tenant, either inside or outside). Tenant shall deliver to the Landlord the Building and all keys, locks thereto, and other fixtures connected therewith and all alterations and additions made to or upon any building and/or structure, with same being in good order, condition and repair, in the same condition as existed at the time of the issuance of the original Certificate of Occupancy for any building except for subsequent improvements approved by the Landlord, reasonable wear and tear and damage from casualty excepted (but subject to the Tenant's obligations to rebuild as set forth in this Lease), free and clear of all liens and encumbrances imposed as a result of Tenant's actions, free of all Tenant's personal property and in broom clean condition. Upon the expiration or other termination of this Lease, any building and all fixtures (other than Tenant's trade fixtures which are removed prior to the expiration or other termination of this Lease) connected therewith and all alterations and additions made to or upon any building shall become the property of and be owned by the Landlord without the requirement of any further action by the Tenant. Without limiting the foregoing, Tenant agrees to execute and deliver and any all documents confirming the vesting of such ownership in the Landlord. In the event of the Tenant's failure to remove any of Tenant's property from any building or the Premises, Landlord is hereby authorized, without liability to Tenant for loss or damage thereto and without mitigating Tenant's obligation so to remove, and at the sole risk of Tenant, to remove and store any of the property at Tenant's expense, or to retain the same under Landlord's control or to sell at public or private sale, without notice any or all of the property not so removed and to apply the net proceeds of the sale to the payment of any sum due hereunder, or to destroy such property.

(d) Holding Over. Tenant will have no right to remain in possession of all or any part of the

Premises or any building and/or structure after the expiration of the Term. If Tenant remains in possession of all or any part of the Premises or building or structure after the expiration of the Term with the express or implied consent of Landlord: (i) such tenancy will be deemed to be a periodic tenancy from month-to-month only; (ii) such tenancy will not constitute a renewal or extension of this Lease for any further term; and (iii) such tenancy may be terminated by

Landlord upon the earlier of thirty (30) days prior written notice or the earliest date permitted by law. In such event, monthly Base Rent will be increased to an amount equal to three hundred (300%) percent of the monthly Base Rent payable during the last month of the Term, and any other sums due under this Lease will be payable in the amount and at the times specified in this Lease. Such month-to-month tenancy will be subject to every other term, condition, and covenant contained in this Lease.

- (e) Quiet Enjoyment. Landlord agrees that upon Tenant's paying the Rent and performing and observing the agreements, conditions and other provisions on its part to be performed and observed, Tenant shall and may peaceably and quietly have, hold and enjoy the Premises during the Term of this Lease without any manner of hindrance or molestation from Landlord or anyone lawfully claiming under Landlord, subject, however, to the terms of this Lease and any instruments or other matters having a prior lien.

S (f) Severability. If any provision of this Lease proves to be illegal, invalid, or unenforceable, the remainder of this Lease will not be affected by such finding, and in lieu of each provision of this Lease that is illegal, invalid, or unenforceable a provision will be added as a part of this Lease as similar in terms and intent to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid and enforceable. **E**

- (g) Written Amendment Required. No amendment, alteration, modification of, or addition to the Lease will be valid or binding unless expressed in writing and signed by the party or parties to be bound by such change.
- (h) Entire Agreement. This Lease, the exhibits, and schedules attached hereto; if any, contain the entire agreement between Landlord and Tenant and may be amended only by subsequent written agreement executed by both parties.
- (i) Time and Delays in Performance. Time is of the essence in every particular of this Lease, including, without limitation, obligations for the payment of money or the performance of obligations. In any case where either party hereto is required to do any act (other than make a payment of money) and experiences delays caused by or resulting from Act of God, war, terrorism, civil commotion, fire or other casualty, labor difficulties, general shortages of labor, materials or equipment, government regulations or other causes beyond such party's reasonable control then such delays shall not be counted in determining the time when the performance of such act must be completed, whether such time be designated by a fixed time, a fixed period of time or "a reasonable time".

- (j) Authority. (a) Tenant and the party executing this Lease on behalf of Tenant represent to Landlord that such party is authorized to do so by requisite action of the Tenant, and agrees upon request to certify same to Landlord a resolution or similar document to that effect; and (b) Landlord and the party executing this Lease on behalf of Landlord represent to Tenant that such party is authorized to do so by requisite action of the Landlord, and agrees upon request to certify same to Tenant.
- (k) Governing Law. This Lease will be governed by and construed pursuant to the laws of the Commonwealth of Massachusetts.
- (l) Binding Effect. The covenants, conditions, and agreements contained in this Lease will bind and inure to the benefit of Landlord and Tenant and their respective successors, and permitted assigns.
- (m) Negotiation. Both parties have read this Lease and had the opportunity to employ legal counsel and negotiate changes to the Lease. The Lease is the joint product of the parties and, in the event of any ambiguity herein, no inference shall be drawn against a party by reason of document preparation.
- (n) No Brokers. Landlord and Tenant hereby represent and warrant to each other that they have not engaged, employed or utilized the services of any business or real estate brokers, salesmen, agents or finders in the initiation, negotiation or consummation of the business and real estate transaction reflected in this Lease. On the basis of such representation and warranty, each party shall and hereby agrees to indemnify, save and hold the other party harmless from and against the payment of any commissions or fees to or claims for commissions or fees by any real estate or business broker, salesman, agent or finder resulting from or arising out of any actions taken or agreements made by them with respect to the business and real estate transaction reflected in this Lease.
- (o) No Partnership or Joint Venture. Landlord shall not, by virtue of this Lease, in any way or for any purpose, be deemed to be a partner of Tenant in the conduct of Tenant's business upon, within or from the Premises or otherwise, or a joint venturer or a member of a joint enterprise with Tenant.
- (p) Cumulative Rights. All rights and remedies of the parties herein created or otherwise existing at law or in equity are cumulative, and the exercise of one or more rights or remedies by either party may be exercised and enforced concurrently and whenever and as often as deemed desirable.
- (q) Sale of Premises by Landlord; limitations. In the event of any sale or conveyance of the Premises by Landlord or assignment by Landlord of this Lease, Landlord shall be entirely freed and relieved of all liability under any and all of its covenants and obligations contained in or derived from this Lease arising out of any act, occurrence or omission relating to the Premises or this Lease occurring after the consummation of such sale or exchange and assignment. The term Landlord shall be limited to mean only the owner at the time in question of the Premises and in the event of any transfer of title, the Landlord

shall be concurrently freed and relieved from and after the date of such transfer without any further action as respect the performance of any covenants or obligations on the part of the Landlord contained in this lease to be performed, it being the intention of the parties that the obligations contain in this lease to be performed by the Landlord shall be binding on the Landlord only during and in respect of its/their respective periods of ownership. Tenant, and its successors and assigns shall not assert nor seek to enforce any claim for breach of this lease against any of the Landlord's assets other than the Landlord's interest in the Premises, and Tenant agrees to look solely to such interest for the satisfaction of any liability or claim against the Landlord, it being specifically agreed that in no event whatsoever shall the Landlord ever be liable for any such liability in excess of Landlord's interest in the Premises.

- (r) Independent Covenants. It is the intention of the parties hereto that the obligations of Tenant hereunder shall be separate and independent covenants and agreements, and that Base Rent, Additional Rent and all other sums payable by Tenant hereunder shall continue to be payable in all events except as otherwise provided in this Lease, and that the obligations of Tenant hereunder shall continue unaffected, unless the requirement to pay or perform the same shall have been terminated pursuant to the express provisions of this Lease. This is a net Lease and Base Rent, Additional Rent and all other sums payable hereunder by Tenant shall be paid without notice or demand, and without setoff, counterclaim, recoupment, abatement (except as otherwise provided in this Lease), suspension, deferment, diminution, deduction, reduction or defense except as specifically set forth in this Lease. Tenant agrees that it shall not take any action to terminate, rescind or avoid this Lease notwithstanding any default by Landlord hereunder or under any other agreement between Landlord and Tenant except as except as specifically set forth in this Lease.
- (s) Exhibits. All exhibits and schedules attached to this Lease shall, by this reference, be incorporated into this Lease. [Attach appropriate exhibits consistent with RFP and Proposal and Required Permits].
- (t) Counterparts. This Lease may be executed by the parties signing different counterparts of this Lease, which counterparts together shall constitute the agreement of the parties.
- (u) Non-Discrimination. With respect to its exercise of all rights and privileges granted herein, Tenant agrees that Tenant, its successors in interest, sublessees, licensees, operators, and assigns shall not discriminate against any person, employee, or applicant for employment because of race, color, creed, religion, national origin, age, sex, sexual orientation, gender identity, marital status, handicap, veteran status or any other basis prohibited by law in Tenant's use of the Premises, including the hiring and discharging of employees, the provision or use of services, and the selection of suppliers and contractors. Tenant shall defend, indemnify and hold the Landlord harmless from and against any and all claims of third persons resulting from Tenant's non-compliance with any of the provisions of this Section.
- (v) The LANDLORD agrees to provide reasonable access rights and/or easements over the

Premises to utility companies for the purposes of bringing and connecting utility service to the Premises.

- w) Captions. The captions of the various articles and sections of this Lease are for convenience only and do not necessarily define, limit, describe, or construe the contents of such articles or sections.

SAMPLE

APPENDIX F

CHAPTER 7 OF THE ACTS OF 2009: LIQUOR LICENSE

THE COMMONWEALTH OF MASSACHUSETTS

In the Year Two Thousand and Nine

AN ACT AUTHORIZING THE CITY OF BEVERLY TO GRANT 2 ADDITIONAL LICENSES FOR THE SALE OF CERTAIN ALCOHOLIC BEVERAGES TO BE DRUNK ON THE PREMISES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Notwithstanding section 17 of chapter 138 of the General Laws, the licensing authority of the city of Beverly may grant an additional license for the sale of all alcoholic beverages to be drunk on the premises under section 12 of said chapter 138 to Joseph A. Leone, d/b/a The Black Cow, for a restaurant to be located at 1 Water street in said city of Beverly. The license shall be subject to all of said chapter 138 except said section 17.

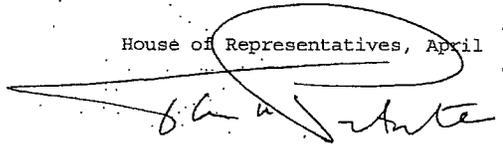
SECTION 2. Notwithstanding section 17 of chapter 138 of the General Laws, the licensing authority of the city of Beverly may grant an additional license for the sale of wines and malt beverages to be drunk on the premises under section 12 of said chapter 138 to the American BBQ, LLC d/b/a The American BBQ, 950 Cummings center, suite 96X, in the city of Beverly. The licenses shall be subject to all of said chapter 138 except said section 17.

SECTION 3. Notwithstanding any general or special law or any rule or regulation to the contrary, the licensing authority shall not approve the transfer of the licenses to any other locations. The licenses may be granted by the licensing authority to a new applicant at the same location if the applicant files with the authority a letter from the department of revenue indicating that the license is in good standing with the department and that all applicable taxes have been paid. If either of the licenses granted under this section is cancelled, revoked or no longer in use, it shall be returned physically, with all of the legal rights, privileges and restrictions pertaining thereto to the local licensing authority and the licensing authority may then grant the license to a new applicant at the same location and under the same conditions as specified in this section.

SECTION 4. This act shall take effect upon its passage.

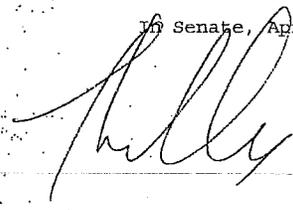
House of Representatives, April 7, 2009.

Passed to be enacted,

 , Speaker.

In Senate, April 8, 2009.

Passed to be enacted,

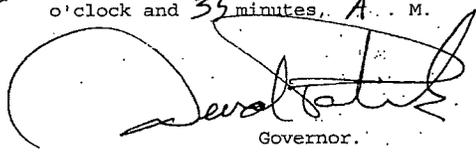


, President.

14 April, 2009.

Approved,

at 8 o'clock and 35 minutes, A. M.



Governor.

APPENDIX G

FORMS

NON-COLLUSION / TAX CERTIFICATION FORM

DISCLOSURE OF BENEFICIAL INTEREST FORM

SLIP RENTAL INDICATOR FORM

Non-Collusion / Tax Certification Form

Complete this page by signing in the space below and return with completed pricing pages.

As required under Chapter 233 and 701 of the Mass. Acts and Resolves of 1983 and Chapter 30B of Massachusetts General Laws, when returning the City's solicitation documents, certification must be made to the following by signing in the space indicated below.

Failure to offer such signature will result in rejection of the proposal.

1. *"The undersigned certifies under the penalties of perjury that this proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word person shall mean any natural person, business, partnership, corporation, union, committee, club or their organization, entity, or group or individuals" and,*
2. *"Pursuant to M.G.L. c.62C, §49A, I hereby certify, under penalties of perjury that to my best knowledge and belief the undersigned bidder has complied with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support."*

This bid is submitted by:

(Complete name of firm to be given here)

Signature: _____

Contract Person: _____

Business Address: _____

Email Address: _____

Telephone: _____ Employer I.D. # _____

**DISCLOSURE STATEMENT FOR
TRANSACTION WITH A PUBLIC AGENCY CONCERNING REAL PROPERTY
M.G.L. c. 7C, s. 38 (formerly M.G.L. c. 7, s. 40J)**

INSTRUCTION SHEET

NOTE: The Division of Capital Asset Management and Maintenance (DCAMM) shall have no responsibility for insuring that the Disclosure Statement has been properly completed as required by law. Acceptance by DCAMM of a Disclosure Statement for filing does not constitute DCAMM's approval of this Disclosure Statement or the information contained therein. Please carefully read M.G.L. c. 7C, s. 38 which is reprinted in Section 8 of this Disclosure Statement.

Section (1): Identify the real property, including its street address, and city or town. If there is no street address then identify the property in some other manner such as the nearest cross street and its tax assessors' parcel number.

Section (2): Identify the type of transaction to which this Disclosure Statement pertains --such as a sale, purchase, lease, etc.

Section (3): Insert the exact legal name of the Public Agency participating in this Transaction with the Disclosing Party. The Public Agency may be a Department of the Commonwealth of Massachusetts, or some other public entity. Please do not abbreviate.

Section (4): Insert the exact legal name of the Disclosing Party. Indicate whether the Disclosing Party is an individual, tenants in common, tenants by the entirety, corporation, general partnership, limited partnership, LLC, or other entity. If the Disclosing Party is the trustees of a trust then identify the trustees by name, indicate that they are trustees, and add the name of the trust.

Section (5): Indicate the role of the Disclosing Party in the transaction by checking one of the blanks. If the Disclosing Party's role in the transaction is not covered by one of the listed roles then describe the role in words.

Section (6): List the names and addresses of **every** legal entity and **every** natural person that has or will have a **direct or indirect** beneficial interest in the real property. The only exceptions are those stated in the first paragraph of the statute that is reprinted in Section 8 of this Disclosure Statement. If the Disclosing Party is another public entity such as a city or town, insert "inhabitants of the (name of public entity)." If the Disclosing Party is a non-profit with no individual persons having any beneficial interest then indicate the purpose or type of the non-profit entity. If additional space is needed, please attach a separate sheet and incorporate it by reference into Section 6.

Section (7): Write "none" in the blank if none of the persons mentioned in Section 6 is employed by DCAMM. Otherwise list any parties disclosed in Section 6 that are employees of DCAMM.

Section (8): The individual signing this statement on behalf of the Disclosing Party acknowledges that he/she has read the included provisions of Chapter 7C, Section 38 (formerly Chapter 7, Section 40J) of the General Laws of Massachusetts.

Section (9): Make sure that this Disclosure Statement is signed by the correct person. If the Disclosing Party is a corporation, please make sure that this Disclosure Statement is signed by a duly authorized officer of the corporation as required by the statute reprinted in Section 8 of this Disclosure Statement.

This completed and signed Disclosure Statement should be mailed or otherwise delivered to:

Deputy Commissioner for Real Estate
Division of Capital Asset Management and Maintenance
One Ashburton Place, 15th Floor, Boston, MA 02108

**DISCLOSURE STATEMENT FOR
TRANSACTION WITH A PUBLIC AGENCY CONCERNING REAL PROPERTY
M.G.L. c. 7C, s. 38 (formerly M.G.L. c. 7, s. 40J)**

The undersigned party to a real property transaction with a public agency hereby discloses and certifies, under pains and penalties of perjury, the following information as required by law:

- (1) REAL PROPERTY:

- (2) TYPE OF TRANSACTION, AGREEMENT, or DOCUMENT:

- (3) PUBLIC AGENCY PARTICIPATING in TRANSACTION:

- (4) DISCLOSING PARTY'S NAME AND TYPE OF ENTITY (IF NOT AN INDIVIDUAL):

- (5) ROLE OF DISCLOSING PARTY (Check appropriate role):

Lessor/Landlord Lessee/Tenant
 Seller/Grantor Buyer/Grantee
 Other (Please describe): _____

- (6) The names and addresses of all persons and individuals who have or will have a direct or indirect beneficial interest in the real property excluding only 1) a stockholder of a corporation the stock of which is listed for sale to the general public with the securities and exchange commission, if such stockholder holds less than ten per cent of the outstanding stock entitled to vote at the annual meeting of such corporation or 2) an owner of a time share that has an interest in a leasehold condominium meeting all of the conditions specified in M.G.L. c. 7C, s. 38, are hereby disclosed as follows (attach additional pages if necessary):

<u>NAME</u>	<u>RESIDENCE</u>
-------------	------------------

- (7) None of the above- named persons is an employee of the Division of Capital Asset Management and Maintenance or an official elected to public office in the Commonwealth of Massachusetts, except as listed below (insert "none" if none):

- (8) The individual signing this statement on behalf of the above-named party acknowledges that he/she has read the following provisions of Chapter 7C, Section 38 (formerly Chapter 7, Section 40J) of the General Laws of Massachusetts:

No agreement to rent or to sell real property to or to rent or purchase real property from a public agency, and no renewal or extension of such agreement, shall be valid and no payment shall be made to the lessor or seller of such property unless a statement, signed, under the penalties of perjury, has been

**DISCLOSURE STATEMENT FOR
TRANSACTION WITH A PUBLIC AGENCY CONCERNING REAL PROPERTY
M.G.L. c. 7C, s. 38 (formerly M.G.L. c. 7, s. 40J)**

filed by the lessor, lessee, seller or purchaser, and in the case of a corporation by a duly authorized officer thereof giving the true names and addresses of all persons who have or will have a direct or indirect beneficial interest in said property with the commissioner of capital asset management and maintenance. The provisions of this section shall not apply to any stockholder of a corporation the stock of which is listed for sale to the general public with the securities and exchange commission, if such stockholder holds less than ten per cent of the outstanding stock entitled to vote at the annual meeting of such corporation. In the case of an agreement to rent property from a public agency where the lessee's interest is held by the organization of unit owners of a leasehold condominium created under chapter one hundred and eighty-three A, and time-shares are created in the leasehold condominium under chapter one hundred and eighty-three B, the provisions of this section shall not apply to an owner of a time-share in the leasehold condominium who (i) acquires the time-share on or after a bona fide arms length transfer of such time-share made after the rental agreement with the public agency is executed and (ii) who holds less than three percent of the votes entitled to vote at the annual meeting of such organization of unit owners. A disclosure statement shall also be made in writing, under penalty of perjury, during the term of a rental agreement in case of any change of interest in such property, as provided for above, within thirty days of such change.

Any official elected to public office in the commonwealth, or any employee of the division of capital asset management and maintenance disclosing beneficial interest in real property pursuant to this section, shall identify his position as part of the disclosure statement. The commissioner shall notify the state ethics commission of such names, and shall make copies of any and all disclosure statements received available to the state ethics commission upon request.

The commissioner shall keep a copy of each disclosure statement received available for public inspection during regular business hours.

(9) This Disclosure Statement is hereby signed under penalties of perjury.

PRINT NAME OF DISCLOSING PARTY (from Section 4, above)

AUTHORIZED SIGNATURE of DISCLOSING PARTY

DATE (MM / DD / YYYY)

PRINT NAME & TITLE of AUTHORIZED SIGNER

Slip Rental Indicator Form

Include this Page with your Proposal

The successful proposer will be offered first refusal to rent between one and five slips in the Recreational Marina. The slip(s) will be offered at minimum one and one-half times the public rate in effect at the time of any rental or renewal. The rent shall be for one year and offered to the successful proposer on an annual seasonal basis. The rent shall continue to be at a minimum one and one-half times the current retail rental rate for each year thereafter, should you wish to exercise the right of first refusal. However, at no time shall the rental rate be lower than the multiplier you indicate below unless the City, at its sole discretion, allows a lower amount. In the event you are selected as the successful proposer please indicate how many slips you plan to rent in year one of the ground lease agreement.

If selected as the successful proposer I plan to rent:

– No (0) Slip in year one

– One (1) Slip in year one- I will pay _____% above the retail rental rate at time of ground lease execution (must be a minimum 150%).

– Two (2) Slips in year one- I will pay _____% above the retail rental rate at time of ground lease execution (must be a minimum 150%).

– Three (3) Slips in year one- I will pay _____% above the retail rental rate at time of ground lease execution (must be a minimum 150%).

– Four (4) Slips in year one- I will pay _____% above the retail rental rate at time of ground lease execution (must be a minimum 150%).

– Five (5) Slips in year one- I will pay _____% above the retail rental rate at time of ground lease execution (must be a minimum 150%).

Print Name: _____ Date: _____

Authorized Signature: _____

Company Name: _____

Email Address: _____

* The rental of slips will not be considered in the evaluation process to select the proposer. However, the expectation from the City is that the successful proposer has figured this into their business plan and will rent the number of slips in year one that are indicated on this form.

APPENDIX H

CITY OF BEVERLY GENERAL CONDITIONS AND
INSTRUCTIONS FOR BIDDERS AND RFP



David Gelineau
Purchasing Agent
Connie Linscott
Assistant Purchasing Agent

CITY OF BEVERLY
DEPARTMENT OF
PROCUREMENT & CONTRACT ADMINISTRATION
191 Cabot Street
Beverly, Massachusetts 01915

(978) 921-6000
Telephone
(978) 921-8301
Facsimile

Purchasing Office
Beverly City Hall
191 Cabot Street, Beverly, MA 01915

GENERAL CONDITIONS AND INSTRUCTIONS

- 1) The City of Beverly reserves the right to reject any or all proposals, accept any proposal, as deemed in the best interest of the City of Beverly, or to waive any informality in proposals.
- 2) Each proposal should give the full business address of the proposer and be signed by him/her with his/her usual signature. Proposals by partnerships should be signed with the partnership name by one of the members of the partnership, followed by the signature and designation of the person signing. Proposals by corporation should be signed with the name of the corporation followed by the signature of the person authorized to bind the matter.
- 3) Erasures or other changes in the proposal must be explained or noted over the signature of the proposer.
- 4) Proposals must be enclosed in a sealed envelope(s) marked to identify the proposal on the outside per this solicitation, and filed in the office of the of Purchasing Agent on or before the time and place stipulated in the proposal, at which time they will be publicly opened and recorded.
- 5) A proposer has the right to withdraw his/her proposal anytime prior to the time fixed for opening.
- 6) Proposals must be submitted on this form, unless otherwise specified or will be considered informal.
- 7) It is agreed that if this proposal be accepted and the proposer fails to comply with the terms of his/her proposal or shall fail to contract as required within the time limit specified, the City of Beverly may, at its option, determine that the proposer has abandoned his/her proposal, and thereupon this proposal and acceptance thereof shall become null and void.
- 8) *Minority Business Enterprises:* Minority business enterprises have full opportunity to submit proposals in response to this Advertisement and will not be discriminated against on the grounds of race, color, sex, religion or national origin in consideration for an award. All requirements of the Beverly Equal Opportunity Policy are in effect for this agreement. Policy is available for viewing at the Office of the Purchasing Agent.
- 9) *Rule for Award* - The most advantageous proposal from a responsible and responsive proposer, taking into consideration price and all other evaluation criteria set forth in the RFP, will be selected.

APPENDIX I

PRICE PROPOSAL FORM

Price Proposal Form

Include this Price Page with your Proposal

Proposers must at a minimum provide 30 years of lease payments.

Proposers may propose up to an additional 10 years of lease payments.

_____ (hereafter "Proposer") hereby proposes to lease the land known as 1 Water Street, Beverly, MA pursuant to the terms and conditions outlined in the Request for Proposals of the City of Beverly related to the lease of land located at 1 Water Street Beverly, MA

1. Consideration

The Proposer proposes to lease the property for an annual Consideration, due and payable in monthly installments, of:

Year 1 \$ _____

Numerals

Written

Year 2 \$ _____

Numerals

Written

Year 3 \$ _____

Numerals

Written

Year 4 \$ _____

Numerals

Written

Year 5 \$ _____

Numerals

Written

Year 6 \$ _____

Numerals

Written

Year 7 \$ _____

Numerals

Written

Year 8 \$ _____

Numerals

Written

Year 9 \$ _____

Numerals

Written

Year 10 \$ _____

Numerals

Written

Year 11 \$ _____

Numerals

Written

Year 12 \$ _____

Numerals

Written

Year 13 \$ _____

Numerals

Written

Year 14 \$ _____

Numerals

Written

Year 15	\$ _____	_____
	Numerals	Written
Year 16	\$ _____	_____
	Numerals	Written
Year 17	\$ _____	_____
	Numerals	Written
Year 18	\$ _____	_____
	Numerals	Written
Year 19	\$ _____	_____
	Numerals	Written
Year 20	\$ _____	_____
	Numerals	Written
Year 21	\$ _____	_____
	Numerals	Written
Year 22	\$ _____	_____
	Numerals	Written
Year 23	\$ _____	_____
	Numerals	Written
Year 24	\$ _____	_____
	Numerals	Written
Year 25	\$ _____	_____
	Numerals	Written
Year 26	\$ _____	_____
	Numerals	Written
Year 27	\$ _____	_____
	Numerals	Written
Year 28	\$ _____	_____
	Numerals	Written
Year 29	\$ _____	_____
	Numerals	Written
Year 30	\$ _____	_____
	Numerals	Written

Option Years

*Proposers may propose additional years of lease payments due in monthly installments. Proposers are welcome to include lease payments in addition to the ten additional years provided below. Use additional sheets if necessary.

Year 31	\$ _____	_____
	Numerals	Written

Year 32	\$ _____	_____
	Numerals	Written
Year 33	\$ _____	_____
	Numerals	Written
Year 34	\$ _____	_____
	Numerals	Written
Year 35	\$ _____	_____
	Numerals	Written
Year 36	\$ _____	_____
	Numerals	Written
Year 37	\$ _____	_____
	Numerals	Written
Year 38	\$ _____	_____
	Numerals	Written
Year 39	\$ _____	_____
	Numerals	Written
Year 40	\$ _____	_____
	Numerals	Written

*The payments for the option years will be required to be made to the City should the Proposer include them on this form. There is no maximum term limit.

EVALUATION OF CURRENT VALUE OF THE CASH FLOWS PROPOSED AS consideration. The annual payments as proposed by each Entity on this form will be presumed to be made in equal monthly installments unless otherwise noted. The total of the monthly cash flows (360) over the first thirty-year contract term, and, if proposed, shall also include all additional monthly cash flows will be discounted at 1.75% for each year into the future to yield a Present Value amount for the contract term. These Present Values will then be used to determine the total of the Price Proposal.

I am authorized to submit this Price Proposal attached as stated.

Print Name: _____ Date: _____

Authorized Signature: _____

Company Name: _____

Email Address: _____

In the event of a discrepancy between the “written” price and the “numeral” price, the higher price shall prevail.

APPENDIX J

REQUIRED SUBMISSION CHECKLIST

UPDATED REQUIRED SUBMISSION CHECKLIST

6.4.1 Letter of Transmittal YES NO
The proposal shall include a one-page letter of transmittal signed by the principal(s) of the proposer and addressed to the City's Purchasing Department.

6.4.2 Summary of Price Proposal Form YES NO
The form included in Appendix I must be included in your proposal section of each submitted response as noted in Section 6.3.

6.4.3 Description of Development Proposal YES NO
The proposal must include a detailed description of the proposed development concept including (but not limited to) the proposed use of the property, and all associated improvements arising from the development including the benefits and impacts of the development on the City, all as set forth below:

- A description of the proposed use(s) and estimated square footage by use for both the building and property. Include any proposed construction or demolition of structures, additions, outbuildings, parking lots, landscaped areas, driveways and other modifications to the site or abutting properties;
- A description of how the proposed site design supports or facilitates use of the site by multiple entities - the public, boaters, fishermen, and restaurant patrons;
- A description of the populace the development is expected and intended to serve including the expected number of employees and/or patrons;
- A description of the benefits of the project on the City's stream of tax revenue, expressed in terms of initial investment, future investment, expected real estate, excise, and other tax revenue resulting from the proposed redevelopment. Projects that include an option to utilize slips located on the recreational dock shall provide detail on rental arrangements and proposed fee over and above the minimum.
- A description of the benefits of the project to both the City in general and the neighborhood surrounding the project site;
- A detailed timeline for permitting and constructing improvements and making capital investments. The proposer will be required to execute a Land Development Agreement consistent with the proposed timeline;
- A comprehensive listing of all permits and approvals that will be required for the proposed development;
- A narrative demonstrating at minimum how the project proposal meets general requirements of Chapter 91 (waterways) regulations, Beverly Zoning Requirements, Massachusetts Wetlands Protection Act, and Beverly Wetlands Ordinance.
- A discussion of municipal services required to service the new development, including traffic impacts, water consumption, and drainage;
- An analysis of the ways in which the proposal satisfies the evaluation criteria in Section 8.0; and
- Adherence to the requirements of this RFP.

6.5 Design Drawings

YES

NO

Proposals must include 11"x17" copies of the plans listed below sufficient to adequately describe the development concept. Color Illustrations are preferred for rendered images such as building elevations and perspective views of the project proposal.

- Site plan, renderings, and perspective views from multiple vantage points.
- Typical floor plan(s)
- Landscaping and parking plan indicating open spaces, public walkways, planting areas, water feature(s), and parking spaces.

The plans shall include approximate dimensions and heights of proposed building(s) and other structures and site features, setback distances from property lines, parking calculations and total square footage estimates for all floors and structures.

6.6. Permitting, Construction, and Initial Investment Details and Timeline

YES

NO

Proposers shall provide a narrative description of the proposed project's permitting and construction phases, including permitting and construction milestones. Proposers must also provide a detailed breakdown of the investment expected to be made during the first twenty four (24) month period following execution of the Purchase and Sales Agreement.

6.7 Development Team Information

YES

NO

The proposal shall include a description of the development team and/or ownership entity, the individuals and organizations to be involved in the development, and their experience. The proposer may be an individual, group or organization, a public or private entity, profit or not-for-profit. Individuals and/or firms may be part of more than one team submitting proposals. The description of the development team must include the following information:

1. The name, address, and telephone number of the proposer, the name of any representative authorized to act on the proposer's behalf, the name and address of the contact to whom all correspondence should be addressed, and the names and primary responsibilities of each member of the development team;
2. A description of the organizational structure of the development team or ownership entity;
3. A summary of the team's/entity's experience, collectively and individually, with similar projects. Demonstrated ability to perform as proposed and to complete the project in a competent and timely manner including, without limitation, the ability to pursue and carry out permitting, financing, marketing, design, and construction;
4. If the proposer is not an individual doing business under his/her name, a description of the firm/organization and status of the organization (whether a for-profit, not-for-profit, or charitable institution, a general or limited partnership, a corporation, LLC, LLP, business association, or joint venture) and the jurisdictions in which it is registered to conduct business;
5. The legal entity owning any land other than the City land that may be included as part of the development proposal.

6.8 Project Financing and Financial Analysis YES NO

The proposer must submit a financial analysis sufficient to demonstrate the financial feasibility of the proposal. At a minimum, the proposal must include:

1. A plan for financing the development, including a “sources and uses” of funds statement, evidence that the proposer has the financial capability to obtain the necessary funding, and if the financing sources are not recognized lending institutions, background information evidencing the soundness of such financing sources; and
2. A development budget for the project, including hard and soft construction costs, and a five-year operating pro-forma (if applicable) or five-year investment rate and schedule.

6.9 Projection of Municipal Revenue YES NO

The proposal shall contain a statement of the real estate, personal property, excise and other tax revenue anticipated to be generated as a result of the development over the next ten years, with underlying calculations. If the proposer is a tax-exempt organization, the proposal shall instead set forth a schedule and list of proposed Payments In Lieu of Taxes (PILOT) to be paid to the City of Beverly and an explanation of how the figure was determined. The schedule and list must clearly specify the intended duration of PILOT payments in years and must include a proposed legal mechanism to obligate payment.

6.10 References YES NO

The proposal shall include descriptions of comparable projects and references for those projects with names and telephone numbers. At least three (3) letters of references shall be provided. The reference letters shall include at least one (1) banking or other financial reference and one (1) client reference.

6.11 Disclosure of Beneficial Interest in Real Estate Property Transaction Statement, Non-Collusion/Tax Certification and Slip Rental Indicator Form

YES NO

The proposal must include an executed Disclosure of Beneficial Interest in Real Estate Property Transaction Statement, an executed Non-Collusion/Tax Certification and a Slip Rental Indicator Form. These forms are included in Appendix G.

6.12 Minority and Women Owned Business Enterprises YES NO

The City encourages, to the extent allowed under the law, the active and meaningful equity participation of Minority-Owned Business Enterprises (MBE's) and Women-Owned Business Enterprises (WBE's) as certified by the State Office of Minority and Women Owned Business Assistance (SOMWBA). Proposals shall state whether the development team or the proposed end user includes any MBE's or WBE's and shall state the commitment to MBE's or WBE's to be made during construction.

Bid Deposit YES NO

A deposit of Five Thousand Dollars (\$5,000.00) (cash, treasurers' check, cashiers check, certified check or money order) is being submitted as part of the proposal package. **NO COMPANY OR PERSONAL CHECKS.**

Proposal Format and Deadline

YES

NO

Respondents must submit twelve (12) copies of their proposal containing complete information as requested and required by the terms of this RFP. Proposals must be submitted in a sealed envelope marked "Beverly Waterfront Redevelopment" on the outside of the envelope. **Please take note that there is NOT a separate price proposal.** Proposals must be completed in ink or typewritten and delivered to:

Office of the Purchasing Agent, Room 24, 191 Cabot St., Beverly City Hall, Beverly, MA. Not later than Wednesday, August 19, 2015 at 11:00 A.M.