

SETTLEMENT AGREEMENT FOR *Crossover Properties, LLC vs. Valley Community Development Corporation, Gail LaBarge, City of Northampton and Northampton Planning Board, 2015 PS 000023 (Foster, J.)*

Dated: September 8, 2015, 2015 at Northampton, Massachusetts

The parties to this Settlement Agreement are Crossover Properties, LLC (Crossover), Valley Community Development Corporation (Valley CDC), Gail LaBarge, the City of Northampton, and the Northampton Planning Board and the City of Northampton (consisting of the following individuals: William Grinnell, Alan Verson, Dan Felten, John Lutz, A Karla Youngblood, Debin Bruce, Ann DeWitt Brooks, Theresa Perrone Poe, and Mark Sullivan).

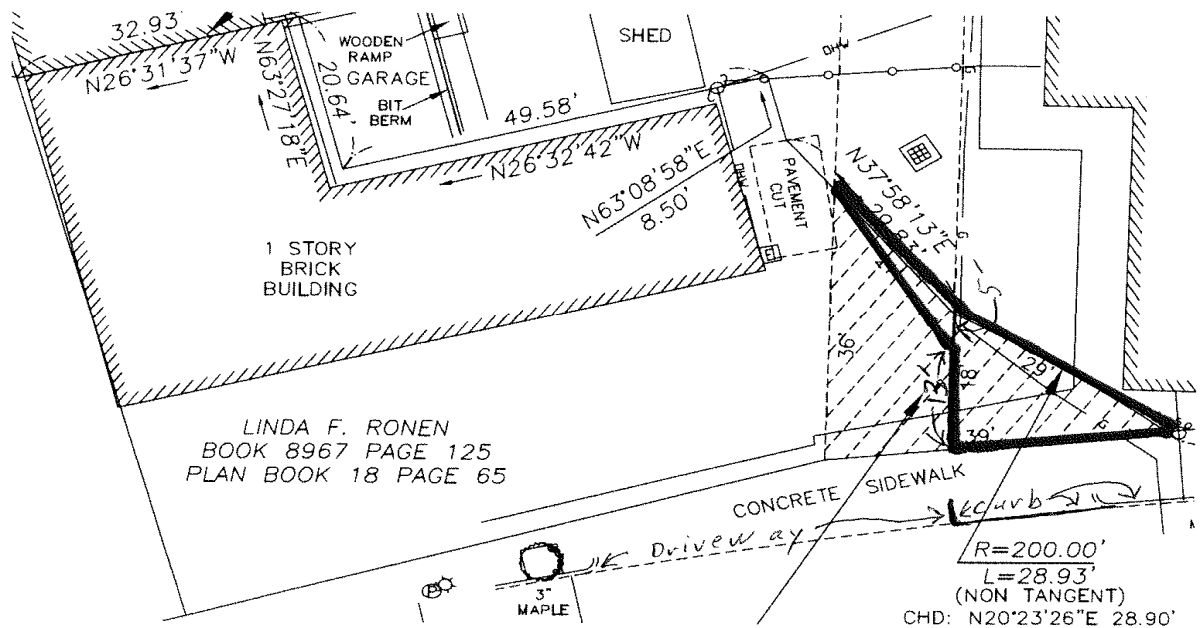
Definitions

The term, the “Decision” means the Planning Decision for Hearing No.: PLN-2015-0022 issued January 13, 2015 by the Planning Board of the City of Northampton.

- A. The term “LaBarge Brick Mill Building” means the brick mill building located at 256 Pleasant Street and proposed to be demolished as part of the Project.
- B. The term “LaBarge Frame Building” means the frame structure that was formerly the retail store for the lumber yard, located at 256 Pleasant Street and proposed to be demolished as part of the Project.
- C. “Crossover land” means the real property known as and numbered 236 Pleasant Street, Northampton, and owned by the Plaintiff Crossover.
- D. The term “Planning Board files”, as used herein, means the publicly-accessible, online file of the City of Northampton for the Project.
- E. The term “Project”, as used herein, means Valley CDC’s proposed development project at 256 Pleasant Street, Northampton, Hearing No. PLN-2015-0022, as approved by the Defendant Planning Board in its grant of Major Site Plan Approval on January 13, 2015, and as modified by the Defendant Planning Board on August 13, 2015.
- F. The term, the “Proposed Building” is the structure proposed to be built on the property known as and numbered 256 Pleasant Street in conjunction with the Project.
- G. The term, the “Purchase Closing” shall mean the closing for the conveyance in fee from Gail LaBarge to Valley CDC or its nominee of the real property at 256 Pleasant Street in Northampton, shown on the ALTA Plan as “Parcel A, Total Area = 1.125 Acres.” Valley CDC expects this closing to occur on or before March 31, 2016.

Terms

- (1) For consideration of \$30,000.00 (thirty thousand and no/100 U.S. dollars), Crossover will convey a quitclaim deed to Valley CDC in fee, with good clear record and marketable and insurable title free of all encumbrances, in the form attached hereto as Exhibit A, a small strip of land at the southerly end of the Crossover land (the "Crossover Strip"), shown as being enclosed by heavy black lines on the drawing below, which is an excerpt from "ALTA/ASCM Land Title Survey in Northampton, Massachusetts, surveyed for Valley Community Development Corp., Scale 1" = 20', dated January 2, 2014, prepared by Heritage Surveys, Inc. of Southamptn, Massachusetts (hereafter the "ALTA Plan"; a reduced copy of the ALTA Plan is attached hereto as Appendix No. 1 and incorporated herein by reference):



- (a) Valley CDC will prepare (at its sole cost and expense), and submit to the Northampton Planning Board for ANR (Approval Not Required under subdivision control law) endorsement a plan prepared by a registered professional surveyor of Valley CDC's choosing, which plan shall be approved by Crossover prior to its endorsement, such approval not to be unreasonably withheld or delayed.
- (b) Unless otherwise mutually agreed upon by the attorneys for the parties, the closing for the conveyance in fee described above shall occur at the same date, time and place as the Purchase Closing.
- (c) At the Purchase Closing, Valley CDC shall deliver to Crossover a Release Deed in recordable form in the form attached as Exhibit B attached hereto.
- (d) Crossover will obtain (at its sole cost and expense) and deliver to Valley CDC at the closing a partial mortgage discharge, covering the property shown above to be

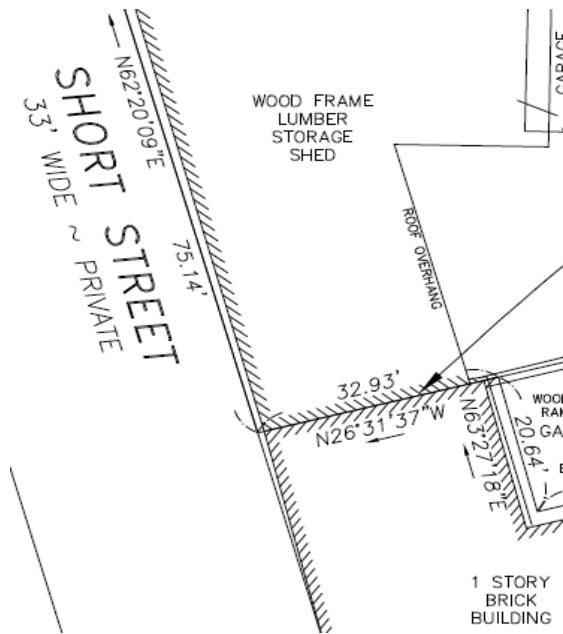
conveyed, of the mortgage to Alden Credit Union, recorded March 31, 2014, and recorded in the Hampshire County Registry of Deeds, Book 11611, Page 056. Crossover will use best efforts to obtain, within 90 days of the execution of this Agreement, from the Alden Credit Union, a writing indicating the Alden Credit Union's willingness to issue said partial discharge. Should Crossover be unable to obtain such a writing, all terms of this Agreement remain in full force and effect.

If, at the time of the Purchase Closing, despite using best efforts Crossover is unable to provide the partial mortgage discharge, or if Crossover despite using best efforts is otherwise unable to deliver good clear record and marketable and insurable title to the Crossover Strip free of all encumbrances Valley CDC shall have the right, at its sole discretion, to waive and terminate the provisions of Paragraph (1) (i.e. the first paragraph above), and of subparagraphs (1)(b) and (1)(c) above, whereupon the remainder of this Agreement shall remain in full force and effect.

- (e) Other than as expressly stated herein, any matter or practice arising under or relating to this agreement which is the subject of a practice standard of the Real Estate Bar Association of Massachusetts shall be governed by such standard to the extent applicable.
- (2) The Northampton Planning Board, at its meeting on August 13, 2015, modified its site plan approval decision for the Project to require closure only of that portion of the existing driveway which abuts along the street side of the area to be conveyed to Valley CDC, as shown on the above drawing.

The parties acknowledge that the policy of the City of Northampton is to limit curb cuts within the Central Business District in which the property is located in order to foster a pedestrian-friendly district. Nothing herein shall be construed to limit, constrain or prevent the City from closing or realigning any curb cut located on the property in its sole discretion so long as the property has access to the public way.

- (3) Where a "wood frame lumber storage shed" (to be demolished) touches Crossover property, Valley CDC will remove rake board and finish off/repair the surface of the section of the Crossover building exposed by the demolition, in a workmanlike manner, under sole control of Valley CDC's architect, in accordance with specifications to be prepared by Valley CDC's architect Davis Square Architects, Inc. This area is shown as follows on the ALTA Plan:



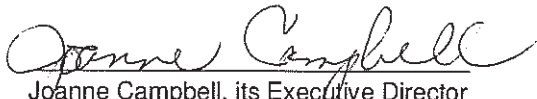
- (a) The rear (easterly) wall of the existing Crossover Building has a roof overhang of several inches. Valley CDC acknowledges that Crossover has an easement by prescription solely for the existing roof overhang.
 - (b) Valley CDC will be responsible (meaning it will pay for at its sole cost and expense) for repair of actual historical damage, if any, to the Crossover building caused by the construction of the existing Northampton Lumber Yard buildings, as well as any damage, if any, to any Crossover building elements caused by demolition of the Northampton Lumber Yard Buildings, when and if Valley CDC carries out such demolition.
 - (c) The limit of Valley CDC's responsibility is to bring the repair up to the same condition as the existing building (i.e., Valley CDC is not going to replace the roof on the Crossover building, but will replace shingles or that portion of the membrane material requiring repair solely on that part of the roof exposed by shed demolition), when Valley CDC carries out such demolition.
 - (d) This provision does not release Valley CDC or any other party from liability for injury caused by or on behalf of Valley CDC, including injury to any real or personal property, including structures, owned by or located on the real property of, Crossover.
 - (e) The obligations of Valley CDC set forth in Subparagraphs 3(b) – 3(c) are contingent upon Valley CDC commencing such demolition of the existing Northampton Lumber Yard buildings.
- (4) This settlement agreement is contingent upon the occurrence of the Purchase Closing

- (5) The terms of this settlement agreement shall be binding on the parties hereto)and their respective successors and assigns. The parties agree to provide a true copy of this settlement agreement to any prospective successor or assigns.
- (6) (a) The person(s) signing below for Valley CDC warrant and represent that he/she/they have the legal authority to sign for and bind Valley CDC to the terms and conditions of this agreement.
- (b) The person(s) signing below for Crossover warrant and represent that he/she/they have the legal authority to sign for and bind Crossover to the terms and conditions of this settlement agreement.
- (7) Fees and Costs: All parties to this settlement agreement shall bear their own fees and costs.
- (8) Termination of Court Action: In consideration of the mutual obligations set forth in this settlement agreement, the parties shall execute at the time this settlement agreement is executed, and the attorney for Valley CDC shall file with the court promptly thereafter, a stipulation of dismissal of the above-entitled Land Court litigation, stating as follows:
- Come now the parties in the above-captioned action and hereby stipulate that all claims be dismissed with prejudice, except the **easement** claims made by **and against** Gail LaBarge, which claims shall be dismissed without prejudice.
- This stipulation is made pursuant to Mass.R.Civ.P. 41(a)(ii), which states that a claim may be dismissed “by filing a stipulation of dismissal signed by all parties who have appeared in the action.”
- The parties further stipulate that there shall be no award of costs or attorneys fees, and that they waive all appellate rights. This case is now closed.
- (9) Global Release: In further mutual consideration of the parties’ respective obligations stated herein:
- All PARTIES hereto, along with his/her/its heirs, assigns, subsidiaries, affiliates, officers, directors, members, managers, authorized signatories, executives, employees, attorneys and agents, hereby release all other PARTIES hereto, along with his/her/its heirs, assigns, subsidiaries, affiliates, officers, directors, members, managers, authorized signatories, executives, employees, attorneys and agents, from any and all claims, causes of action, liens, encumbrances and obligations, whether known or unknown, past or present, which were raised or could have been raised in the Land Court case referenced above, excluding any obligations or agreements entered into in this Settlement Agreement.
- (10) Covenant Not to Sue: Crossover, along with its heirs, assigns, subsidiaries, affiliates, officers, directors, members, managers, authorized signatories, executives, and agents,

agrees not to join as a party or contribute financially in or to any administrative or judicial proceeding opposing the Valley CDC Project, prior to (1) the issuance of all Certificates of Occupancy required to operate the Project, or (2) the conveyance of 256 Pleasant Street in Northampton to an unrelated third party who is not constructing the Project. This Paragraph does not bar (i) tort claims for property damage or personal injury, (ii) any action seeking to enforce this settlement agreement, (iii) any zoning enforcement request under G.L. c. 40A, §7, (iv) changes to the Project that require public notice and a public hearing; and (v) participating orally or in writing in any public hearing or a public meeting concerning the Project. This provision terminates upon the transfer of Crossover's property to a bona fide third party purchaser.

- (11) No Admission of Liability, Wrongdoing or Error: In making this settlement agreement, none of the parties admit to any liability, wrongdoing or error and the fact that they have entered into this settlement agreement should not be construed as evidencing any liability, wrongdoing or error by any party.
- (12) Choice of Law; Consent to Jurisdiction: The parties agree that this settlement agreement shall be construed in accordance with the laws of the Commonwealth of Massachusetts. Further, each party agrees that the state courts located in Massachusetts shall have exclusive jurisdiction over disputes that arise among the parties concerning this settlement agreement, and each party consents to the jurisdiction of the Massachusetts state courts with respect to such disputes.
- (13) Specific Performance. This settlement agreement shall be enforceable by an action for specific performance, as well as any other remedy permitted by law
- (14) Counterparts. This Settlement Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together will constitute one instrument binding upon all hereto notwithstanding that all such Parties may not have executed the same counterpart. Each Party may execute a signature page that may be appended to a single original of this Settlement Agreement. Facsimile, scanned or PDF signatures shall be treated as originals.
- (15) Entire Agreement: This instrument shall be and is the final repository of the intentions of the parties hereto and there are no other agreements, written or oral, between the parties. The parties hereto each acknowledge that there have been no representations other than those contained herein.
- (16) Nothing herein shall abridge or modify any of the rights and obligations of Gail LaBarge and Valley CDC as set forth in the current option agreement between them.

Valley Community Development Corporation, by


Joanne Campbell, its Executive Director

Crossover Properties, LLC, by

_____, its _____, its _____

Gail LaBarge:

Northampton Planning Board and City of Northampton, by

_____, its _____, its _____

Valley Community Development Corporation, by

Joanne Campbell, its Executive Director

Crossover Properties, LLC, by

[Signature] Authorized by its manager Amy Rayl
_____, its _____, its _____

Gail LaBarge:

Northampton Planning Board and City of Northampton, by

_____, its _____, its _____

Valley Community Development Corporation, by

Joanne Campbell, its Executive Director

Crossover Properties, LLC, by

_____, its _____, its _____

Gail LaBarge:



Northampton Planning Board and City of Northampton, by

_____, its _____, its _____

Valley Community Development Corporation, by


Joanne Campbell, its Executive Director

Crossover Properties, LLC, by

_____, its _____

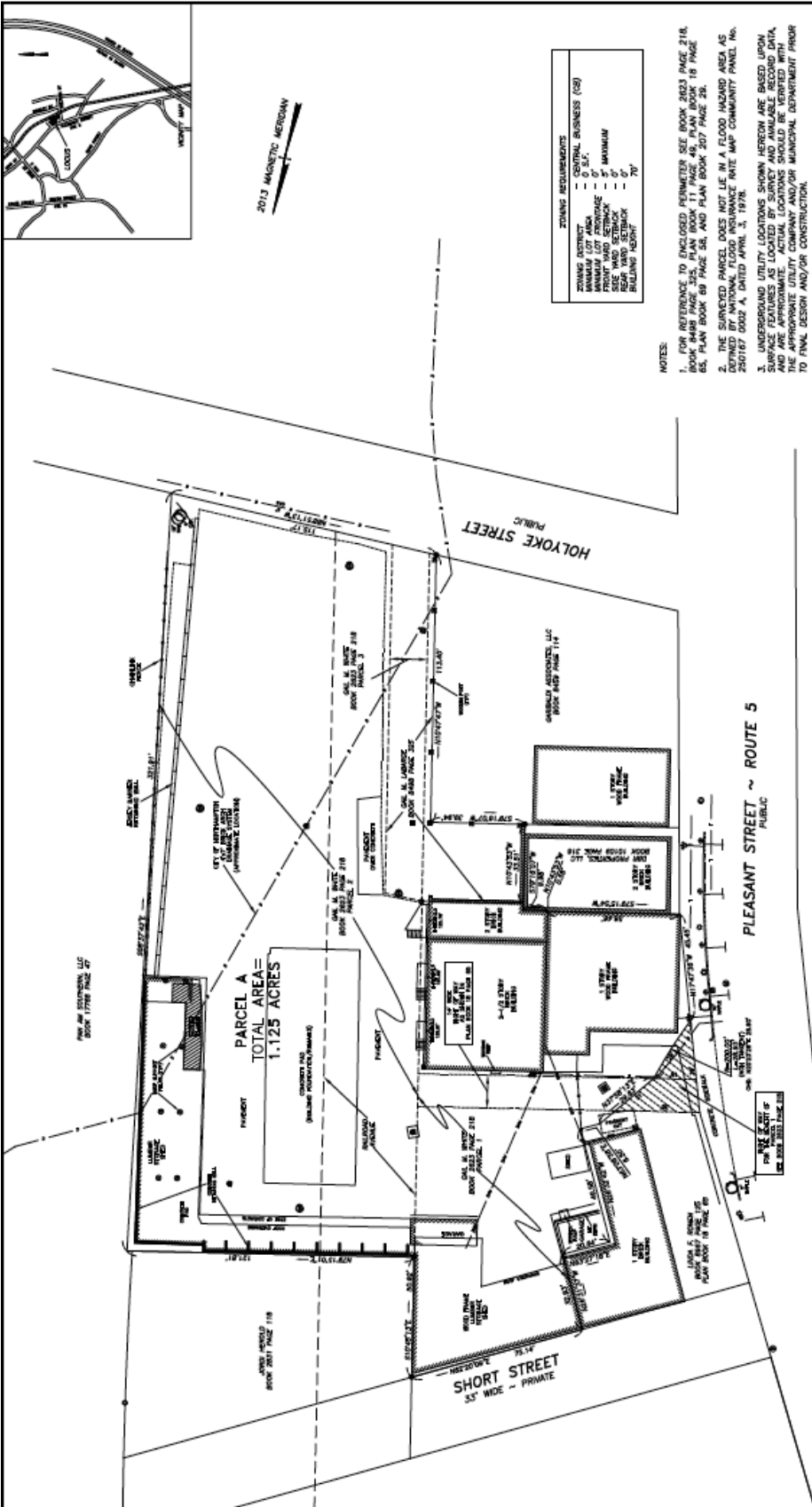
Gail LaBarge:

Northampton Planning Board and City of Northampton, by



David J. Narkewicz, its Mayor _____

APPENDIX 1



PRELIMINARY

TO: VALLEY COMMUNITY DEVELOPMENT CORPORATION, (TITLE INSURANCE COMPANY), (OTHERS SPECIFIED BY CLIENT).
 THIS IS TO CERTIFY THAT THIS MAP AND SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE 2011 MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/ACSM LAND TITLE SURVEYS, JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND NSPS. THE FIELD WORK WAS COMPLETED ON 12/24/2013.

LEGEND

BOUND FOUND	UTILITY POLE	36"
IRON PIPE FOUND	LIGHT POLE	36"
IRON ROD FOUND	HORIZONTAL	36"
CROWN	VERTICAL	36"
CROWN	WATER	36"
DRAINAGE MANHOLE	GAS	36"
SAWTOOTH MANHOLE	ELECTRIC METER	36"
ELECTRIC MANHOLE	GAS METER	36"
ELECTRIC MANHOLE	PARKING METER	36"
CONTOUR	CONTOUR	36"
GAS LINE	CHAM LINK PRICE	36"
WATER LINE		36"
SPRING		36"
BARBED ELECTRIC		36"
STORM WATER DRAIN		36"
SAWTOOTH CENTER		36"

ZONING REQUIREMENTS

ZONING DISTRICT	CENTRAL BUSINESS (CB)
MINIMUM LOT AREA	5,000 SF
MINIMUM LOT COVERAGE	5%
FRONT YARD SETBACK	5'
REAR YARD SETBACK	5'
SIDE YARD SETBACK	5'
REAR YARD SETBACK	5'
BUILDING HEIGHT	70'

NOTES:

- FOR REFERENCE TO ENCLOSED PERIMETER SEE BOOK 2823 PAGE 218, BOOK 8488 PAGE 325, PLAN BOOK 11 PAGE 48, PLAN BOOK 18 PAGE 85, PLAN BOOK 89 PAGE 58, AND PLAN BOOK 207 PAGE 26.
- THE SURVEYED PARCEL DOES NOT LIE IN A FLOOD HAZARD AREA AS DEFINED BY NATIONAL FLOOD INSURANCE RATE MAP COMMUNITY PANEL No. 250167 5002 A, DATED APRIL 3, 1976.
- UNDERGROUND UTILITY LOCATIONS SHOWN HEREON ARE BASED UPON RECORD DRAWINGS, FIELD LOCATIONS, AND OTHER AVAILABLE DATA AND ARE APPROXIMATE. ACTUAL LOCATIONS SHOULD BE VERIFIED WITH THE APPROPRIATE UTILITY COMPANY AND/OR MUNICIPAL DEPARTMENT PRIOR TO FINAL DESIGN AND/OR CONSTRUCTION.

ALTA/ACSM LAND TITLE SURVEY IN
 NORTHAMPTON, MASSACHUSETTS
 SURVEYED FOR
 VALLEY COMMUNITY DEVELOPMENT CORP.

SCALE 1" = 20'
 DATE: JANUARY 2, 2014

HERITAGE SURVEYS, INC.
 REGISTERED PROFESSIONAL LAND SURVEYORS
 COLLEGE STREET, BOX 1
 SOUTHAMPTON, MASSACHUSETTS
 (413) 347-3388

REG. # 7127-13105 REG. # 7127d91 Exp. # 7127-16102

EXHIBIT A

**Premises:
Pleasant Street
Northampton, MA**

QUITCLAIM DEED

KNOW ALL PERSONS BY THESE PRESENTS

That **CROSSOVER PROPERTIES, L.L.C.**, a Massachusetts limited liability company with an address at 270 Pleasant Street, Northampton, Massachusetts 01060

in full consideration of **THIRTY THOUSAND (\$30,000.00) DOLLARS,**

grants to **VALLEY COMMUNITY DEVELOPMENT CORPORATION**, a Massachusetts non-profit corporation with an address at 30 Market Street, Northampton, Massachusetts 01060

with QUITCLAIM COVENANTS

A parcel of land situated in Northampton, Hampshire County, Massachusetts, designated as "Parcel 2" on a survey entitled "Plan of Land in Northampton, Massachusetts Surveyed for Valley Community Development Corp." dated _____, 2015, prepared by Heritage Surveys, Inc., and recorded in the Hampshire Registry of Deeds in Plan Book _____, Page _____.

Being a portion of the premises conveyed to Grantor by deed of Linda F. Ronen dated March 27, 2014, and recorded in the Hampshire Registry of Deeds in Book 11611, Page 54.

Crossover Properties, L.L.C., was not taxed as a corporation in the current tax year.

Executed as a sealed instrument this _____ day of _____, 2015.

**CROSSOVER PROPERTIES,
L.L.C.**

Witness:

By: _____
Amy B. Royal, Manager

COMMONWEALTH OF MASSACHUSETTS

Hampshire County, ss.

On this _____ day of _____, 2015, before me, the undersigned notary public, personally appeared Amy B. Royal, Manager of Crossover Properties, L.L.C., proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily as her free act and deed for its stated purpose as Manager of Crossover Properties, L.L.C., and as the free act and deed of Crossover Properties, L.L.C.

Notary Public
My commission expires:

EXHIBIT B

**Premises:
Pleasant Street
Northampton, MA**

RELEASE DEED

KNOW ALL PERSONS BY THESE PRESENTS

That **VALLEY COMMUNITY DEVELOPMENT CORPORATION**, a Massachusetts non-profit corporation with an address at 30 Market Street, Northampton, Massachusetts 01060

in full consideration of **ONE (\$1.00) DOLLAR**,

releases to **CROSSOVER PROPERTIES, L.L.C.**, a Massachusetts limited liability company with an address at 270 Pleasant Street, Northampton, Massachusetts 01060

all of Grantor's right title and interest in and to a parcel of land situated in Northampton, Hampshire County, Massachusetts, designated as "Easement to be Released" on a survey entitled "Plan of Land in Northampton, Massachusetts Surveyed for Valley Community Development Corp." dated _____, 2015, prepared by Heritage Surveys, Inc., and recorded in the Hampshire Registry of Deeds in Plan Book _____, Page _____.

This conveyance does not constitute a conveyance of all or substantially all of the assets of Valley Community Development Corporation in the Commonwealth of Massachusetts.

Executed as a sealed instrument this _____ day of _____, 2015.

Valley Community Development Corporation

Witness:

By: _____
(PRESIDENT)

Witness:

By: _____
(TREASURER)

COMMONWEALTH OF MASSACHUSETTS

Hampshire County, ss.

On this _____ day of _____, 2015, before me, the undersigned notary public, personally appeared (**PRESIDENT AND TREASURER**) of Valley Community Development Corporation, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that _____ signed it voluntarily as her free act and deed for its stated purpose as (**PRESIDENT AND TREASURER**) of Valley Community Development Corporation, and as the free act and deed of Valley Community Development Corporation.

Notary Public
My commission expires: