

## PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT (this "Agreement") is made as of the 21<sup>st</sup> day of March, 2011, by and between the TOWN OF BELMONT, a Massachusetts municipal corporation, acting by and through its Board of Selectmen, with an address of 455 Concord Avenue, Belmont, Massachusetts 02478, hereinafter referred to as "Seller" or "Town," and SMITH LEGACY PARTNERS SERIES LLC, a Delaware limited liability company, having its principal office at 6 Littlefield Road, Acton, Massachusetts 01720, hereinafter referred to as "Buyer" or "Developer."

1. Premises. Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, upon the terms and conditions hereinafter set forth, a parcel of land, located at 116 Trapelo Road, Belmont, shown on Assessor's Map 12, Parcel 211A, described in a deed or other instrument recorded with the Middlesex Registry of Deeds on August 17, 1923 in Book 4647, Page 232, (referred to as the "Premises"). Seller shall convey the Premise subject (as noted below) to: (a) an easement for fifty (50) public parking spaces (the "Parking Spaces"); (b) a pedestrian access and utility easement in Horne Road; (c) a sewer and stormwater easement; and (d) a Land Development Agreement.

2. Title. Said Premises are to be conveyed by a good and sufficient quitclaim deed running to Buyer, and said deed shall convey a good and clear record and marketable title thereto, free from encumbrances, except

- (a) Provisions of existing building and zoning laws;
- (b) Existing rights and obligations in party walls which are not the subject of written agreement;
- (c) Such taxes for the then current year as are not due and payable on the date of the delivery of such deed;
- (d) Any liens for municipal betterments assessed after the date of this Agreement;
- (e) Easements, restrictions and reservations of record, if any, provided the same do not interfere in Buyer's reasonable opinion with use of and access to the Premises for the Buyer's intended use of the Premises as the site of a mixed use development with other properties owned and/or controlled by the Buyer;
- (f) A 7 ½ foot wide easement, upon mutually acceptable and reasonable terms, owned by the Town for a sewer and stormwater line, running parallel with the property line shared with 13 Horne Road and 19 Horne Road, and extending 7 ½ feet into those properties;
- (g) An easement for fifty (50) public parking spaces, upon mutually acceptable and reasonable terms, to be retained by Seller upon the Premises or granted to Seller upon the Adjoining Property as defined below;
- (h) An easement, upon mutually acceptable and reasonable terms, for public pedestrian access and utilities within Horne Road, to be retained by Seller and granted by Buyer to Seller (Horne Road to be discontinued as a public way); and
- (i) The Land Development Agreement, requiring the Premises to be used for a mixed use development with other properties owned and/or controlled by the Buyer (the Adjoining Property as defined below), as set forth more particularly in Section 18 below.

3. Consideration. The total purchase price for the Premises is Eight Hundred and Fifty Thousand (\$850,000.00) Dollars, which shall be payable in cash, certified or bank check on the Date of Closing, as hereinafter defined, payable as follows:

\$42,500.00	Paid Upon Submittal of the Proposal
\$42,500.00	Due Upon Signing of this Agreement
\$765,000.00	Due at the Time of Closing

4. Plans. If the deed refers to a plan necessary to be recorded therewith, Buyer shall deliver such plan with the deed in form adequate for recording or registration.

5. Registered Land. In addition to the foregoing, if the title to said Premises is registered, said deed shall be in form sufficient to entitle Buyer to a certificate of title of said Premises, and Seller shall deliver with said deed all instruments, if any, necessary to enable Buyer to obtain such certificate of title.

6. Date of Closing. Such deed is to be delivered within sixty (60) days from satisfaction of the contingencies set forth at Section 19 hereof, at the Belmont Town Hall or at the office of Buyer's lender, but in no event shall the closing be later than three years from the date of this Agreement, unless extended pursuant to this Agreement. It is agreed that time is of the essence of this Agreement.

7. Possession and Condition of Premises. Full possession of said Premises free of all tenants and occupants, except as herein provided, is to be delivered at the time of the delivery of the deed, said Premises to be then in the same condition as they now are, reasonable use and wear thereof excepted. Buyer shall be entitled personally to inspect said Premises prior to the delivery of the deed in order to determine whether the condition thereof complies with the terms of this Section.

8. Extension to Perfect Title or Make Premises Conform. If Seller shall be unable to give title or to make conveyance, or to deliver possession of the Premises, all as herein stipulated, or if at the time of the delivery of the deed the Premises do not conform with the provisions hereof, then Seller shall use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or to make the said Premises conform to the provisions hereof, as the case may be, in which event Seller shall give written notice thereof to Buyer at or before the time for performance hereunder, and thereupon the time for performance hereof shall be extended for a period of thirty (30) calendar days. In no event, however, shall reasonable efforts require Seller to expend more than \$5,000.00, including attorneys' fees.

9. Failure to Make Premises Conform. If at the expiration of the extended time Seller shall have failed so to remove any defects in title, deliver possession, or make the Premises conform, as the case may be, all as herein agreed, or if at any time during the period of this Agreement or any extension thereof, the holder of a mortgage on said Premises shall refuse to permit the insurance proceeds, if any, to be used for such purposes, then all obligations of the parties hereto shall cease and this Agreement shall be void without recourse to the parties hereto.

10. Buyer's Election to Accept Title. Buyer shall have the election, at either the original or any extended time for performance, to accept such title as Seller can deliver to the said Premises in their then condition and to pay therefor the purchase price, without deduction, in which case Seller shall convey such title, or to receive the return of its deposit and other payments made hereunder.

11. Acceptance of Deed. The acceptance and recording of a deed by Buyer shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed, except such as are, by the terms hereof, to be performed after the delivery of said deed, including without limitation the obligations in the Land Development Agreement.

12. Use of Money to Cure Title. To enable Seller to make conveyance as herein provided, Seller may, at the time of delivery of this deed, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, provided that all instruments so procured are recorded in accordance with customary conveyancing practices.

13. Insurance. Until the delivery of the deed, Seller shall maintain insurance on the Premises as it presently has.

14. Adjustments. A payment in lieu of taxes shall be paid in accordance with G.L.c. 44, §63A as of the day of performance of this Agreement and the amount thereof shall be added to the purchase price payable by Buyer at the time of delivery of the deed.

15. Liability of Trustee, Shareholder, Fiduciary. If Seller or Buyer executes this Agreement in a representative or fiduciary capacity, only the principal or the estate represented shall be bound, and neither Seller or Buyer so executing, nor any shareholder or beneficiary of any trust, shall be personally liable for any obligation, express or implied, hereunder.

16. Representations and Warranties. Buyer acknowledges that Buyer has not been influenced to enter into this transaction nor has it relied upon any warranties or representations not set forth or incorporated in this Agreement or previously made in writing, except for the following additional warranties and representations, if any, made by Seller: NONE.

17. Brokers. Buyer and Seller each represent and warrant to the other that each has not contacted any real estate broker in connection with this transaction and was not directed to the other as a result of any services or facilities of any real estate broker. Buyer and Seller agree to defend, indemnify the other against and hold the other harmless, to the extent permitted by law, from any claim, loss, damage, costs or liabilities for any brokerage commission or fee which may be asserted against the other by any broker in connection with this transaction. The provisions of this Section shall survive the delivery of the deed.

18. Land Development Agreement. Seller shall convey the Premises to Buyer subject to a Land Development Agreement substantially similar in form and in content to the Land Development Agreement attached hereto as Exhibit A and incorporated herein (the "LDA"), which the parties shall execute at the closing and record immediately after the recording of the

deed and prior to any mortgages. Said LDA shall govern the development of the Premises and require, among other things, the following mandatory terms:

- (a) *Construction Obligation:* Buyer shall, at its sole cost and expense, construct on the Premises and upon other property owned by and/or controlled by Buyer (said property shown on the Plan attached hereto as Exhibit B and incorporated herein (the "Adjoining Property," together with the Premises, being the "Property") the development shown on the Approved Plans, as defined below (the "Development"). The Development will consist of three parcels, being the Premises and the parcels known as the Trapelo/Common area and the Common/Belmont area. The Development will contain residences and either or both retail and offices, in a mixed-use arrangement with parking (both surface and underground), all as subject to a special permit to be issued by the Planning Board. The Development shall be Substantially Completed (as defined in the LDA), as evidenced by Certificates of Occupancy for all the buildings, within thirty (30) months from sixty (60) days after the date on which the deed to the Premises is recorded (the "Completion Deadline") or within such extended period as is set forth more particularly in the LDA;

19. Contingencies. The obligations of Buyer to pay the consideration and Seller to deliver the deed are contingent upon the satisfaction of each of the following conditions:

- (a) *Financing:* Buyer shall have obtained financing for Buyer to construct the Development and other improvements required under the LDA, as evidenced by a commitment letter with contingencies acceptable to both Seller and Buyer; prior to issuance of the Building Permit, Developer shall submit proposed financing structure to the Town for a twenty-one (21) day review period. The Town's, or the professional's (referenced below) only basis on which to object to financing proposed by the Developer shall be: (a) failure of such financing to be consistent with commercially reasonable financing practices structured to assure the completion of the Development; or (b) failure of such financing to be from a financing source of commercially reasonable repute for projects of similar size and character). If the Town objects to financing proposed by the Developer, Town and Developer will each propose a professional to review and approve the project's proposed financing structure. If such professionals disagree, they will choose a third professional, and his/her decision will be final, provided that if such proposed financing is not approved by such third professional, Developer will have the option to provide up to three additional alternative financing structures to be reviewed by professionals in a similar manner and consistent with the terms hereof. If no proposed financing structure is presented to the Town or if all proposed financings structures are rejected by such chosen professional(s), the deposit shall be refunded to Buyer but the Town shall retain \$42,500 of the deposit;
- (b) *Horne Road:* Any and all preconditions for the discontinuance of a portion of Horne Road as a public way for all purposes for a distance of approximately 125 feet on the southerly side of the way and approximately 150 feet on the northerly

side of the way and shown as "the Discontinued Section of Horne Road" on a plan entitled "Cushing Square, Belmont, MA 02478, Lot Compilation Plan," dated March 3, 2008, made by R.K. O'Connell & Associates, Inc., subject to the reservation by Seller and a grant by Buyer to Seller of a pedestrian access easement and a utility easement in said way, the Seller's interest in Horne Road having been acquired by Order of Taking dated March 26, 1951, recorded with the Middlesex South District Registry of Deeds on April 9, 1951 in Book 7726, Page 11 . NOTE: this is the Buyer's contingency;

- (c) *Site Plan and Approved Plans*: Buyer shall, at its sole cost and expense, prepare site plans and elevation plans (together the "Site Plan") showing the Development (as herein described) to be constructed, and submit the same to the Planning Board for its approval under the Cushing Square Overlay District ("CSOD") provisions of the Zoning Bylaw (the plans approved by the Planning Board being referred to herein as the "Approved Plans");
- (d) *Permits and Approvals*: Buyer shall have obtained all permits and approvals necessary to commence construction of a mixed use development of at least 186,753 sq. ft. of total area for retail and housing uses, with at least nineteen percent (19%) of such square footage being retail and at least fifty-five percent (55%) being housing (the "Development"), other than a building permit and other incidental permits which Buyer may obtain after the closing, and the period for appeal under each of such permits shall have expired without appeal by a third party (or without appeal by the Buyer in the limited circumstances set forth in this Section 19 below) or, if appealed, such appeal has been successfully resolved in the reasonable determination of Buyer; and, further, that none of such permits shall have a condition(s) which renders the Development uneconomic. The Seller agrees to execute any and all applications for such permits and approvals as may be required by governmental authorities due to the Seller's ownership of the Premises. NOTE: the Seller is willing to convey the Premises whether or not the Planning Board approves at least 186,753 sq. ft. of total area for retail and housing uses, with at least nineteen percent (19%) of such square footage being retail and at least fifty-five percent (55%) being housing, provided there is an Approved Plan under the CSOD for a mixed-use development including retail establishments and multi-family housing;
- (e) *Disclosure*: Buyer shall have complied with the disclosure provisions of G.L. c.7, § 40J, and Seller and Buyer agree to diligently pursue full compliance with said statute. Seller shall prepare and file, and Buyer shall sign, all required statements;
- (f) *Compliance*: Compliance with any other requirements of the Massachusetts General or Special Laws relative to the sale of the Premises by Seller;
- (g) *Hazardous Materials*: Buyer shall have a right of entry as set forth in the Agreement attached hereto, for the purpose of environmental and geotechnical inspection of the Premises. Buyer shall have sixty (60) days from the date of this Agreement (not the longer period provide below for other contingencies) to

determine whether Buyer wishes to proceed with the purchase of the Premises, based on the results of its inspection; and

- (h) *Parking Area Operating Agreement*: Seller and Buyer shall have agreed upon the terms and form of a parking area operating agreement to be attached as Exhibit G to the Land Development Agreement; such agreement shall not dictate to the Seller whether municipal parking spaces shall be metered or not, which shall be within the discretion of the Seller, and shall not prohibit the Seller from leasing or licensing such municipal spaces on a short or long-term basis.

Provided, however, that if any of the foregoing conditions are not satisfied by three years from the date of this Agreement, Buyer shall have the option of extending the closing date for up to two (2) years by exercise of the Extension Options set forth below until such conditions are satisfied, provided that the Buyer shall give the Seller three (3) days written notice of its exercise of this option and shall give seven (7) days written notice of the new closing date. Buyer shall have twenty-four (24) one-month Closing Date extension options ("Extension Options"). The first 12 Extension Options shall each cost the Buyer \$20,000, and the next successive 12 Extension Options shall each cost \$30,000, with one half of each of such 24 Extension Option Payments being applicable to the purchase price unless the Buyer fails to purchase the Property notwithstanding that Buyer's closing pre-conditions have been satisfied, in which case the Seller shall retain all of such payments. An appeal by the Buyer of a Special Permit decision imposing a condition that renders the Project uneconomic (an "Allowed Buyer Appeal") shall allow the Buyer to extend the closing date as set forth above, provided that no appeal by the Buyer of a Special Permit denial, and no appeal by the Buyer of a Special Permit limited by condition or otherwise to fewer residential units or less area than provided for in 19(d) above, whether or not such limitation renders the Project uneconomic, shall be an Allowed Buyer Appeal or extend the Closing Date and in the event of a Buyer appeal other than an Allowed Buyer Appeal, the Seller may terminate this Agreement by written notice to the Buyer at any time and provide Buyer with a refund of Buyer's deposit; furthermore, if the Special Permit is denied this Agreement shall be deemed terminated as of the date the decision denying the Special Permit is filed with the Town Clerk, and if the Special Permit is approved for fewer residential units or less area than provided for in 19(d) above, the Buyer may terminate this Agreement by written notice to the Seller within sixty (60) days of the filing of such Special Permit decision and receive a refund of Buyer's deposit. The Closing Date shall not be extended beyond five years from the date of this Agreement under any circumstances without the approval of the Seller.

Buyer shall use diligent efforts to satisfy all contingencies; and Seller shall use diligent efforts to discontinue Horne Road as described in 19 (b) above. If the Buyer is unable to obtain permits and approvals or if preconditions for the discontinuance of Horne Road are not satisfied, or if Buyer is not satisfied with its environmental inspection under 19 (g) above, Buyer may terminate this Agreement and receive a refund of Buyer's deposit.

20. Affidavits. At the time of delivery of the deed, Seller shall execute and deliver all the usual and customary affidavits required by Buyer's attorney, including but not limited to a statement under oath to any title insurance company issuing a policy to Buyer and/or Buyer's mortgagee and/or Buyer individually to the effect that: (1) there are no tenants, lessees or parties

in possession of the Premises, except as noted herein; and (2) that Seller is not a foreign person subject to the withholding provisions of the Internal Revenue Code of 1986, as amended (FIRPTA).

21. Hazardous Materials. Effective upon Buyer's inspection provided for in Section 19 (g), Buyer acknowledges that Buyer has not been influenced to enter into this transaction and that it has not relied upon any warranties or representations not set forth in this Agreement. Buyer represents and warrants that it or its agents have conducted a full inspection of the Premises, and based upon Buyer's investigation, Buyer is aware of the condition of the Premises and will accept the Premises "AS IS". Buyer acknowledges that Seller has no responsibility for hazardous waste, oil, hazardous material or hazardous substances, as those terms are defined by any applicable law, rule or regulation, including, without limitation, the Massachusetts Oil and Hazardous Materials Release Prevention and Response Act, M.G. L. c. 21E, the Massachusetts Hazardous Waste Management Act, M.G.L. c. 21C, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9601 et seq. and the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq. (herein collectively referred to as "Hazardous Waste") on, in, under or emitting from the Premises or for any other condition or defect on the Premises.

22. Assignment. Buyer shall not assign this Agreement or any of its rights hereunder without prior written consent of Seller. The Seller recognizes that the Buyer is part of a joint venture with Oaktree Development, LLC to form Cushing Village LLC, whose managers are Oaktree Cushing LLC, a Massachusetts limited liability company, and SLP Holdings LLC, a Massachusetts limited liability company. The Seller consent provisions of this paragraph shall not apply to assignment to Cushing Village LLC or any other partnership entity formed by Smith Legacy Partners Series LLC or SLP Holdings LLC and Oaktree Development, LLC or Oaktree Cushing LLC. Except as otherwise provided in this Section 22, it is hereby agreed that there shall be no (i) change in the identity of the parties holding a legal or beneficial interest in the Buyer, (ii) transfer or pledge in the aggregate of a majority of the beneficial ownership or control of Buyer or (iii) transfer, by assignment or otherwise, of the Buyer's rights under this Agreement or of the Buyer's legal or beneficial interest in the Property to any person (including but not limited to, any partnership, joint venture or corporation) (all such changes being referred to herein as a "Change in Identity"), unless in each instance, (a) the Buyer gives the Seller prior written notice of a proposed Change in Identity, which notice shall provide sufficient information to enable the Seller to evaluate the acceptability of the proposed Change in Identity, and (b) the Seller, within thirty (30) days from the date on which the Seller receives said written notice or such longer period as may be approved by the Buyer and the Seller, approves of such change in writing, or fails to object, in which case the proposed Change in Identity shall be deemed to be approved. If the Seller notifies the Developer in writing within said thirty (30) day period (or longer period agreed to by the parties) of its objection to the proposed Change in Identity, specifying reasonable grounds for such objection, the Buyer shall make no Change in Identity without the subsequent written consent of the Seller. Any attempted Change in Identity made contrary to this Section shall be void.

23. Property Inspection, Condition of Premises. Buyer or Buyer's agent(s) shall have the right, at any time, to enter the Premises at Buyer's own risk for the purposes of inspecting the Premises, provided that Buyer shall not conduct any subsurface tests without the Seller's prior

written consent, not to be unreasonably withheld. Buyer shall indemnify and defend and hold Seller harmless against any claim by Buyer or Buyer's agents, employees or invitees for any harm to them arising from said entry and shall restore the Premises to substantially the same condition as prior to such entry if the closing does not occur. The provisions of this Section shall survive the expiration or termination of this Agreement. Buyer acknowledges that hazardous materials exist upon all or a portion of the parcel referred to herein as the Trapelo/Common area located at the corner of Common Street and Trapelo Road between the Premises and Horne Road, which is a portion of the Adjoining Property, and that contamination may have migrated to other portions of the Adjoining Property and the Premises, and that the presence of said contamination shall not constitute a reason for Buyer not to perform under this Agreement, and, furthermore, Buyer shall be responsible to remediate any contamination upon the Adjoining Property and the Premises comprising the Development.

24. Title or Practice Standards. Any matter or practice arising under or relating to this Agreement which is the subject of a title standard or a practice standard of the Real Estate Bar Association of Massachusetts at the time for delivery of the deed shall be covered by said title standard or practice standard to the extent applicable.

25. Closing. The deed and other documents required by this Agreement are to be delivered and the Purchase Price paid at the Date and Time of Closing and at the Place of Closing. Unless the Closing takes place at the appropriate Registry of Deeds, all documents and funds are to be delivered in escrow subject to prompt rundown of title and recording, which term shall include registration in the case of registered land. Unless otherwise agreed, Seller's attorney may disburse the funds if no report has been received by 5:00 p.m. of the next business day following the date of the delivery of the deed that the documents have not been recorded, due to some problem beyond the recording attorney's control.

26. Buyer's Warranties. Buyer hereby represents and warrants:

- (a) This Agreement and all documents to be executed by Buyer and delivered to Buyer at the closing are, or at the time of the closing will be, duly authorized, executed and delivered by Buyer;
- (b) Buyer hereby acknowledges and agrees that, except for the representations and warranties of Seller expressly set forth in this Agreement, Buyer has not relied upon nor been induced by any representations, warranties, guarantees, promises or statements, whether written or oral, express or implied, or whether made by Seller or any employee or representative of Seller; and
- (c) As the Seller, acting by its Board of Selectmen, has executed this Agreement, Buyer has and makes no claim against Seller based on any action prior to the execution of this Purchase and Sale Agreement and relating to the negotiation of this Purchase and Sale agreement.

27. Notice. Any notice required or permitted to be given under this Agreement shall be in writing and signed by the party or the party's attorney or agent and shall be deemed to have

been given (a) when delivered by hand, or (b) when mailed by Federal Express or other similar courier service, or (c) by facsimile, addressed:

In the case of Seller: Board of Selectmen  
Belmont Town Hall  
455 Concord Avenue  
Belmont, MA 02478  
Telephone: (617) 993-2610  
Facsimile: (617) 993-2611

With a copy to: Jeanne S. McKnight, Esq.  
Kopelman and Paige, P.C  
101 Arch Street  
Boston, MA 02110  
Telephone: 617-556-0007  
Facsimile: 617-654-1735

In the case of Buyer: SMITH LEGACY PARTNER SERIES, LLC  
6 Littlefield Road  
Acton, MA 01720  
Telephone: (978) 502-2276  
Facsimile: (978) 263-1086

With a copy to: Christopher L. Starr  
SLP Holdings LLC  
6 Littlefield Road  
Acton, MA 01720  
Telephone: (978) 502-2276  
Facsimile: (978) 263-1086

With a copy to: Gwendolen G. Noyes and Arthur A. Klipfel  
Oaktree Cushing LLC  
129 Mt Auburn St. 3rd Floor  
Cambridge, MA 02138  
Telephone (617) 491-9100

And with a copy to: Ronald W. Ruth, Esq.  
Sherin and Lodgen LLP  
101 Federal Street  
Boston, MA 02110  
Telephone: (617) 646-2165  
Facsimile: (617) 646-2222

By such notice, either party may notify the other of a new address, in which case such new address shall be employed for all subsequent deliveries and mailings.

28. Captions. The captions and headings throughout this Agreement are for convenience of reference only and the words contained therein shall in no way be held or deemed to define, limit, explain, modify, amplify or add to the interpretation, construction or meaning of any provisions of, or the scope or intent of this Agreement, nor in any way affect this Agreement, and shall have no legal effect.

29. Insurable Title. It is understood and agreed by the parties that the Premises shall not be in conformity with this Purchase and Sale Agreement unless title to the Premises is also insurable at ordinary rates for the benefit of Buyer in a fee owner's ALTA-form policy, and for the benefit of Buyer's lender, if any, in an ALTA-form loan policy, subject to the standard printed exceptions provided that such exceptions do not render title to the Premises unmarketable.

30. Encumbrances. It is understood and agreed by the parties that the Premises shall not be in conformity with title provisions of this Agreement unless:

- (a) improvements, if any, and all means of access to the Premises, shall be located completely within the boundary lines of said Premises and shall not encroach upon or under the property of any other person or entities;
- (b) no building, structure, or improvement of any kind belonging to any other person or entity shall encroach upon or under said premises;
- (c) the Premises shall abut a public way, or a private way to which Buyer shall have both pedestrian and vehicular access, leading to a public way.

31. Errors. If any errors or omissions are found to have occurred in any calculations or figures used in the settlement statement signed by the parties (or would have been included if not for any such error or omission) and notice thereof is given within sixty (60) days of the date of delivery of the deed to the party to be charged, then such party agrees to make payment to correct the error or omission.

32. Enforcement. In the event of default hereunder by either the Buyer or Seller, as the case may be, the other party shall have the right to institute such actions and proceedings as may be appropriate against the party in default (including without limitation actions and proceedings to compel specific performance). Monetary damages, if sought by the Seller, shall be limited to the amount of the deposit (and the amount, if any, of other payments made or obliged to be made by the Buyer hereunder, including without limitation the payments under Paragraph 19 hereof). NOTE: This limitation on monetary damages does not apply once the Closing has occurred and the LDA, with the liquidated damages clause provided for thereunder, is in effect. Buyer's remedies against the Seller shall be limited to actions and proceedings to compel specific performance, and no monetary damages shall be sought against the Seller. In the event that the Buyer prevails in an action against the Seller for specific performance, and Seller's failure to perform is determined in such action to have been in bad faith, or arbitrary and capricious, then Seller shall pay Buyer's reasonable costs and attorneys' fees in such action.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as a sealed instrument as of the date first written above.

TOWN OF BELMONT,  
By its Board of Selectmen

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SMITH LEGACY PARTNERS  
SERIES, LLC

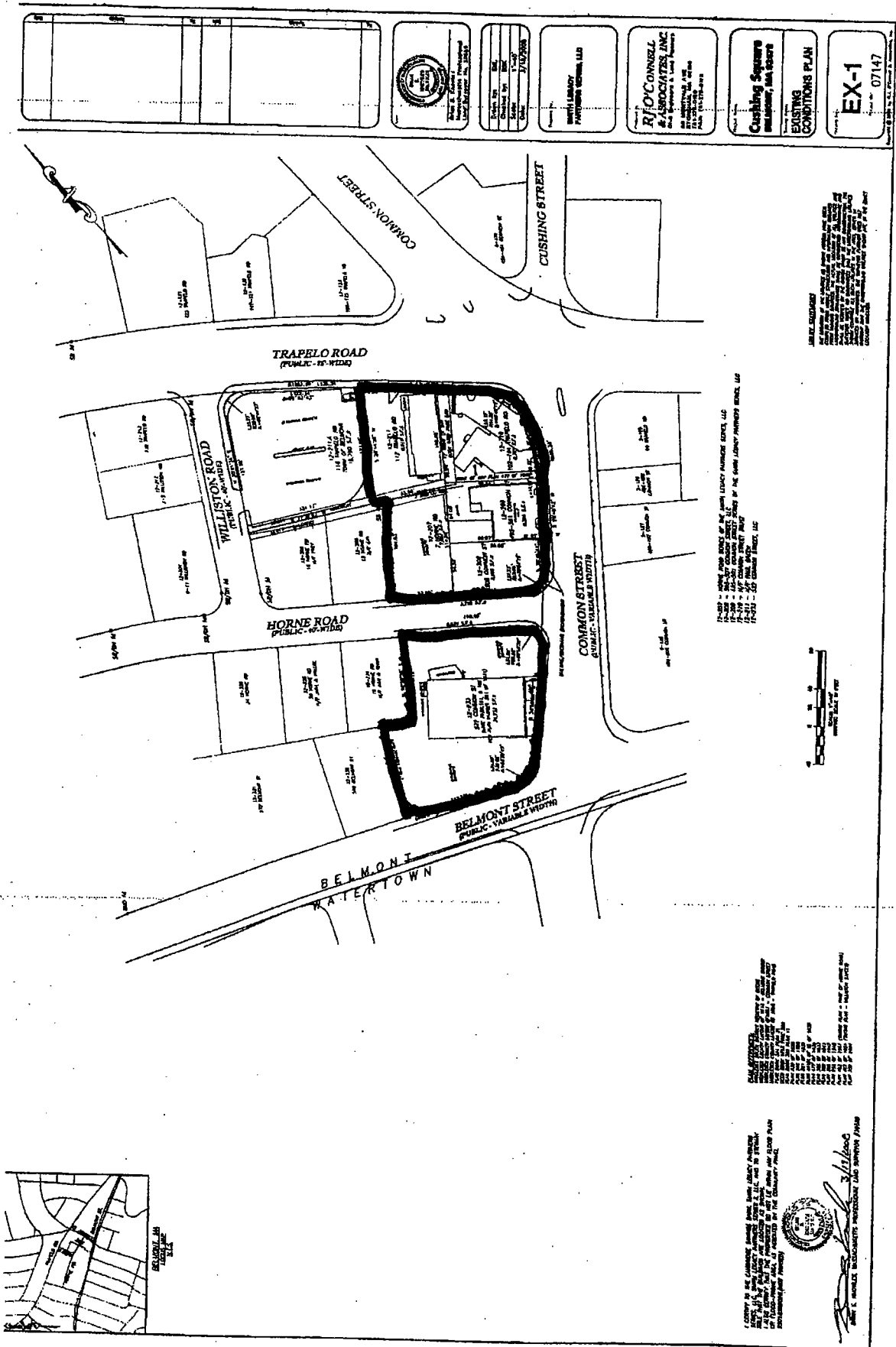
By: \_\_\_\_\_  
Duly Authorized

Exhibits

- Exhibit A: Land Development Agreement
- Exhibit B: Plan showing Adjoining Property

415243v.7/BELM/0080

# EXHIBIT B ADJOINING PROPERTY



NO.	DATE	DESCRIPTION



DATE: 11/10/2009  
 DRAWN BY: [Name]  
 CHECKED BY: [Name]  
 SCALE: 1/8" = 1'-0"

PROJECT: [Name]  
 DRAWING NO.: [Number]

PREPARED BY: [Name]  
 COMPANY: [Name]

R/O'CONNELL & ASSOCIATES, INC.  
 100 [Address]  
 [City, State, Zip]

**Cushing Square**  
 [Address]  
 [City, State, Zip]

**EXISTING CONDITIONS PLAN**  
 EX-1  
 07147

17-023 - [Address] - [Name]  
 17-024 - [Address] - [Name]  
 17-025 - [Address] - [Name]  
 17-026 - [Address] - [Name]  
 17-027 - [Address] - [Name]

17-028 - [Address] - [Name]  
 17-029 - [Address] - [Name]  
 17-030 - [Address] - [Name]  
 17-031 - [Address] - [Name]  
 17-032 - [Address] - [Name]

17-033 - [Address] - [Name]  
 17-034 - [Address] - [Name]  
 17-035 - [Address] - [Name]  
 17-036 - [Address] - [Name]  
 17-037 - [Address] - [Name]  
 17-038 - [Address] - [Name]  
 17-039 - [Address] - [Name]  
 17-040 - [Address] - [Name]  
 17-041 - [Address] - [Name]  
 17-042 - [Address] - [Name]  
 17-043 - [Address] - [Name]  
 17-044 - [Address] - [Name]  
 17-045 - [Address] - [Name]  
 17-046 - [Address] - [Name]  
 17-047 - [Address] - [Name]  
 17-048 - [Address] - [Name]  
 17-049 - [Address] - [Name]  
 17-050 - [Address] - [Name]



[Signature]  
 [Name]  
 [Title]