

GROUND LEASE PRELIMINARY TERM SHEET

DATE: May 12, 2015

LANDLORD: City of Newton, a municipal corporation with an address of c/o City Solicitor, 1000 Commonwealth Avenue, Newton, MA 02459.

TENANT: Austin Street Partners LLC a Massachusetts limited liability company with an address at c/o Oaktree Partners, 84 Sherman Street, Cambridge MA 02140.

LEASE PARCEL: Approximately 74,480 s.f. of land known as Section 24 Block 9 Lot 15, 28 Austin Street Newton, MA 02460.

**DISPOSITION
AUTHORITY:**

Landlord wishes to enter into a Ground Lease for the Lease Parcel pursuant to Board of Aldermen Order #150-09 (6) and Request for Proposals #13-51 and a Memorandum of Intent to Negotiate signed by Tenant June 19, 2014. This Ground Lease Preliminary Term Sheet is intended to be a further step towards the Land Disposition Agreement referred to in the Memorandum of Intent to Negotiate.

PROJECT:

The Tenant wishes to lease the Lease Parcel in order to develop and construct a mixed use development of approximately 5,000 s.f. of commercial space and 68 dwelling units in a single building (the "Building") to be owned by the Tenant plus appurtenant parking within and under the Building and a facility for public parking consisting of 127 public parking spaces to be controlled and operated by the Landlord as well as public access through "Bram Way" so-called (the Building, the facility for public parking and "Bram Way" collectively the "Project").

The Project is currently conceived and will be submitted to the Board of Aldermen for approval of a special permit (the "Special Permit") to include 68 total dwelling units of which 17 units will be income restricted to tenants with incomes not to exceed 80% of the AMI applicable to Newton as determined by applicable HUD or DHCD regulations. 51 units will be rented at market rates calculated in the Tenant's feasibility pro forma projections to reflect rents comparable to market rate rents at Newton's other mixed income housing developments, including for example as of the date hereof AvalonBay and Arborpoint.

DOCUMENTS:

Landlord and Tenant shall use commercially reasonable efforts to enter into a mutually satisfactory Development Agreement within 180 days of

execution of this Preliminary Term Sheet. The Development Agreement will provide (i) terms for planning, permitting and financing of the Project, and (ii) a form of Ground Lease to be executed on the Commencement Date. Tenant shall provide Landlord with the first draft of the Development Agreement and of the Ground Lease. The Development Agreement will be the Land Disposition Agreement contemplated by the Memorandum of Intent to Negotiate.

LEASE TERM: Ninety Nine (99) years from the Commencement Date. Tenant shall have an option to extend the Lease Term for up to an additional Ninety Nine (99) years.

COMMENCEMENT DATE: The earlier of (i) the date on which Tenant closes on construction financing for the Project; or (ii) the date on which Tenant enters into possession of the Lease Parcel. In the event that the Commencement Date has not occurred by December 31, 2018 then the Landlord in its sole discretion and without cost shall be entitled under the Development Agreement to terminate the Development Agreement unless the Tenant is effectively prevented from exercising its right on account of pending litigation.

RENT: A single payment of Rent in the amount of \$1,050,000 shall be payable by Tenant to Landlord on the Commencement Date.

RESERVED RIGHTS: The Landlord in its municipal capacity shall maintain reserved rights (the "Reserved Rights") to operate, maintain and repair a currently proposed 127 space municipal parking facility on the Lease Parcel. The Reserved Rights may, as determined by the Landlord and Tenant be either a reservation by Landlord in the Lease or a sublease back from Tenant to Landlord or an easement granted with the Ground Lease. Public access over "Bram Way" as well as access to and from the rear of commercial properties abutting "Bram Way" shall be included in the Reserved Rights.

Tenant will construct the parking area and improvements to "Bram Way" to the extent required by and consistent with the plans approved by the Special Permit.

REAL ESTATE TAXES AND OPERATING EXPENSES: Tenant shall be responsible for all real estate taxes, assessments, utilities and operating expenses associated with the Building and its appurtenant parking during the term of the Ground Lease. Landlord shall be

responsible for any real estate taxes, assessments or similar charges affecting the Reserved Rights.

**COMMON AREA
MAINTENANCE
EXPENSES:**

The area comprising (i) Tenant's access ways to its appurtenant parking under the Building and (ii) other areas of the exterior of the Property subject to public access ("Common Areas") excluding the Landlord's Reserved Rights will be maintained and repaired, as necessary by Tenant including without limitation pavement repairs, maintenance of landscaping and lighting and insurance against loss from property damage or personal injury.

Installation, maintenance, repair and replacement of parking meters or other payment equipment related to the Reserved Rights as well as maintenance and repair of Bram Way shall be undertaken and paid for by Landlord.

FINANCING:

Tenant may mortgage Tenant's leasehold interest in the Lease Parcel.

**APPROVAL
PERIOD:**

Tenant at Tenant's sole cost and expense, shall use commercially reasonable efforts to obtain all necessary Federal, State and local permits and approvals necessary to construct and operate the Project including without limitation a building permit (the "Permits and Approvals"). Tenant shall have until June 30, 2016 (the "Initial Approval Period") to obtain the Permits and Approvals for the Project. Landlord agrees to cooperate with Tenant in this effort in all reasonable respects including without limitation execution of applications for permits to be made by the owner of the Property but without any requirement that it expend its own funds to do so.

So long as Tenant is proceeding diligently to obtain the Permits and Approvals, the Initial Approval Period may be extended by Tenant for up to 4 (4) additional six (6) month periods (each, an "Extension Period"). The Development Agreement shall provide for the Approval Period to be further extended beyond the four (4) Extension Periods to resolve or defend any and all appeals.

If at any time during the Approval Period as it may be extended (a) Tenant has not yet obtained the Permits and Approvals for the Project, or (b) the Permits and Approvals have been issued with conditions which are not acceptable to Tenant in Tenant's sole discretion, or (c) Tenant determines in its sole discretion that it is unlikely that the Permits and Approvals will be issued or will be issued with conditions that are unacceptable to Tenant, then Tenant shall have the right in its sole

discretion to terminate this Agreement or the Development Agreement by written notice given to the Landlord, in which event this Agreement or the Development Agreement as the case may be shall be of no further force or effect, except for the provisions thereof, such as provisions for confidentiality and indemnification, that the parties agree shall survive any termination of the Development Agreement.

If at the end of the Initial Approval Period prior to any extensions (a) the Tenant has not yet obtained the Permits and Approvals for the Project and (b) the Landlord acting through its Mayor in his sole discretion concludes that continuing with the Development Agreement is not in the best interests of the City of Newton, then the Landlord and Tenant shall enter into good faith but exclusive negotiations for a period not to exceed sixty (60) days in order to determine whether there is common ground between them for amendments to the Development Agreement to allow for further efforts to develop the Project or a different project at the Lease Parcel. In the event such negotiations are not successful within such sixty (60) day period the Landlord shall have the right in its sole discretion and without cost to terminate the Development Agreement by written notice given to the Tenant given within thirty (30) days of the end of the sixty (60) day exclusive negotiation period, in which event the Development Agreement shall be terminated by such notice and of no further force or effect, except for the provisions thereof, such as provisions for confidentiality and indemnification, that the parties agree shall survive any termination of the Development Agreement.

In the event the Landlord shall not give any such notice of termination then the Development Agreement shall remain in full force and effect without amendment.

**CONDITIONS
OF
COMMENCE-
MENT:**

Occurrence of the Commencement Date shall be subject to such conditions of permitting, title, condition of the Property, authority of the parties, representations and financing as shall be mutually determined by the parties and set forth in the Development Agreement. The Development Agreement shall be subject to termination upon the failure of the conditions precedent for occurrence of the Commencement Date.

**THIRD-PARTY
EXPENSES:**

Each Party shall be responsible for its own legal, advisory and other expenses associated with completion of this transaction.

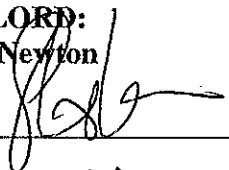
EXCLUSIVITY: During the period of negotiation of the Documents and thereafter in accordance with the Development Agreement, Landlord shall not solicit or accept any other offers for purchase or lease of the Lease Parcel.

OTHER PROVISIONS: The Ground Lease will contain mortgagee protective covenants in favor of Tenant's mortgagees from time to time, including the right to cure any default by the Tenant under the Ground Lease, a right to obtain a new Ground Lease on the same terms and conditions and with no additional payment of rent in the event of any termination of the Ground Lease without the consent of the Mortgagee, and such other protections as will allow the Tenant to obtain financing substantially similar in form and terms as would be available for a fee purchase of the Property. The financing will also include a non-disturbance agreement allowing the Landlord to operate its public parking facility and affording public access through Bram Way as well as access for the commercial properties abutting Bram Way notwithstanding any default by the Tenant.

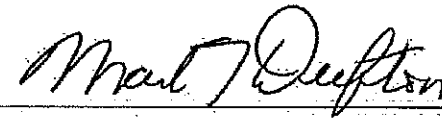
This Ground Lease Preliminary Term Sheet is not intended to be and shall not constitute a legally binding agreement to lease the Property, but each party agrees to negotiate exclusively to execute a Development Agreement.

Acknowledged and Agreed To:

LANDLORD:
City of Newton

By:  Date: 5/12/15
Title: Mayor

TENANT:
Austin Street Partners LLC

By:  Date: May 12, 2015
Title: Manager