

LAND DISPOSITION AGREEMENT

This Land Disposition Agreement (“LDA”) dated this ____ day of _____, 2016, is made by and between the City of Somerville, a body corporate and politic and a political subdivision of the Commonwealth of Massachusetts, with usual offices at 93 Highland Avenue, Somerville, MA (“City” or “Seller”), acting by and through the Mayor’s Office of Strategic Planning and Community Development (“OSPCD”) and MarKa, LLC, and its assignees, a Massachusetts Limited Liability Company duly organized and existing under Chapter 156C of the Commonwealth of Massachusetts General Laws, with usual offices at 202 River Street, Cambridge, Massachusetts (the “Buyer” or “Developer”).

In consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the City and the Buyer hereby agree as follows:

A. PROPERTY

The City agrees to sell to Buyer and Buyer agrees to purchase, upon the terms and conditions hereinafter set forth all the City’s right, title and interest in a portion of one parcel of land, known as Somerville Assessor’s Map 12/Block A/Lot 11, also being known as a portion of the former Powder House Community School property, located at 1060 Broadway in Somerville, Massachusetts (the “Property”), more particularly described in EXHIBIT A attached hereto and incorporated as part of this LDA. The Buyer and OSPCD may mutually agree that while only a portion of the former Powder House Community School property will be conveyed to Buyer; the Purchase Price as set forth in Buyer’s response to the City’s Request for Proposals shall not change.

B. PURCHASE PRICE

City agrees to sell and the Developer agrees to purchase a portion of the Powder House Community School property as shown on the proposed subdivision plan attached hereto as EXHIBIT B (the “Property”) for a sum equal to Two Million Seven Hundred Seventy-Four Thousand Eight Hundred (\$2,774,800) Dollars, in monetary and in kind consideration, as follows:

Monetary Payment:

Consideration for land value	\$1,646,883
Consideration for the structural elements that will remain in place	<u>\$ 353,117</u>
Sub-Total Monetary Payment:	\$2,000,000

Value of In-Kind Payment:

Developer Improvements to the portion of the former Powder House Community School Property which is not being purchased by Developer, for use as Usable Open Space (“Open Space Parcel”)	\$ 754,800
Developer Improvements to Offsite Streetscape along Broadway	<u>\$ 20,000</u>

Sub-Total Value of In-Kind Payment: \$ 774,800

Total Purchase Price: \$2,774,800

C. DEPOSIT

A refundable deposit (the "Deposit") shall be paid by the Buyer as follows:

\$ 20,000.00 previously paid with the Exclusive Negotiating Agreement

\$380,000.00 paid with the execution of this LDA

\$400,000.00 TOTAL DEPOSIT

The Deposit shall be credited toward the Purchase Price at the Closing.

If, on or before the Closing Date, the Buyer is unable to obtain all necessary, final and unappealed permits, variances, licenses and approvals, which do not substantially or unreasonably interfere with Developer's ability to construct, operate and occupy the Project (as defined herein) at the Property, or if this LDA is not executed by the Somerville Mayor and approved by the required vote of the Somerville Board of Aldermen, then the Buyer may terminate this LDA, in which event the Deposit shall be refunded to the Buyer forthwith, and this LDA shall be null and void and of no further force or effect.

The Deposit shall be held in escrow by the OSPCD Director of Administration and Finance ("Escrow Agent"), subject to the terms of this Agreement. The Escrow Agent shall be liable only for willful default or misconduct. In the case of a dispute, the Escrow Agent shall retain the Deposit pending written receipt of instructions signed by both the City and the Buyer, or Court Order. The City shall have no obligation to pay interest on the Deposit to the Buyer.

The parties agree that it would be impractical and extremely difficult to estimate the damages which the City may suffer in the event that the Buyer fails to purchase the Property on the Closing Date herein. Therefore, the parties hereby agree that a reasonable estimate of the total net detriment that the City would suffer in the event of any such Buyer default is and shall be the retention of the Deposit and any interest thereon as liquidated damages and as the City's sole remedy at Law and in Equity.

Beginning on the date which is thirty-one (31) days after Developer has received all necessary, final and unappealed permits, variances, licenses, and approvals, the City may refuse to convey the Property to Developer, and Developer's sole remedy at Law and in Equity shall be the return of Developer's Deposit and any interest thereon as liquidated damages, if the Property is required for a legitimate public purpose, in the City's sole discretion. . Beginning on the date when Developer has received all necessary, final and unappealed permits, variances, licenses, and approvals, and running for thirty (30) days thereafter, the Developer may seek specific performance of the City to compel adherence to the terms of this Agreement. For purposes of this paragraph, "legitimate public purpose" shall mean all purposes and powers conferred upon the City of Somerville by either general law or special act. Should Closing occur, then the City's ability to terminate the sale shall be null and void and of no further force or effect.

D. DEED

The City shall convey its right, title and interest in the Property to the Buyer by a Quitclaim Deed in substantially the form attached as EXHIBIT C ("Deed"). The Deed shall convey good, clear record and marketable title to the Property, free from all encumbrances except for:

1. provisions of the existing laws, rules, and regulations, including without limitation, building, and zoning laws;
2. any liens for municipal betterments first assessed after the date of this LDA;
3. real estate taxes not yet due and payable;
4. rights, easements, restrictions, and reservations of record, if any;
5. any provisions of this LDA, that, by their terms, survive the Closing Date, being as follows:

The Deed from the City to the Buyer will include the following restrictive covenants, which shall run with the land and be binding upon the grantee and the grantee's successors and assigns:

- a) that the nature of the Property remain mixed-use for a period of twenty (20) years from the Closing Date unless the City has given its prior written consent to such change; provided, however, that notwithstanding the foregoing, not fewer than 8 artist live/work units shall be occupied and maintained on the Property for a period of twenty (20) years from the Closing Date, and not fewer than 14 units of senior housing shall be occupied and maintained on the Property for a period of thirty (30) years from the Closing Date, with one additional senior housing unit also being an inclusionary housing unit, for a total of 15 senior housing units.
- b) that there be no transfer of title of any portion of the Property to a tax-exempt owner unless the City has given its prior written consent to such transfer and the City may condition its consent upon the tax-exempt owner's entering into a Payment in Lieu of Taxes ("PILOT") Agreement. This shall not restrict the Buyer from leasing all or any part of the Property to a tax-exempt tenant;
- c) the Property shall revert to the City at no cost if Buyer does not break ground on the Project by the third anniversary of the Closing Date; and
- d) that 40% of the total land area of the former Powder House Community School property (including both the land being purchased hereunder by the Developer and the land not being purchased by the Developer) be set aside as open space in perpetuity, unless otherwise determined by the Consent of the City. The "Consent of the City" shall mean the consent of both the Mayor and the required vote of the Somerville Board of Aldermen.
- e) that a 7' wide Pedestrian Way for non-motorized public passage between Holland Street and Broadway be maintained across the Property; provided, however, that it may be relocated from its location at the time of conveyance.

Nothing in this Agreement shall be construed as preventing the Buyer from selling the Property or the Project.

E. TIME FOR PERFORMANCE/DELIVERY OF THE DEED

The Buyer, an affiliated entity of the Buyer, or another nominee acceptable to the City, shall acquire the Property by accepting delivery of the Deed from the City and paying the balance of the Purchase Price to the City on a date of the Buyer's choosing which is after the Buyer receives all necessary, final and unappealed site plan approvals, subdivision approvals, special permits and variances to construct, operate and occupy the Project at the Property, but in no event later than December 31, 2016 ("Closing Date") at City Hall or such other place as may be mutually agreed upon by the parties. Time is of the Essence of this Agreement. The City will not deliver the Deed prior to the Developer securing zoning relief.

F. ACCEPTANCE OF THE DEED

The acceptance of the Deed to the Property by the Buyer and the payment by the Buyer of the Purchase Price shall be deemed a full performance by the parties hereto and shall discharge every agreement and obligation of the parties herein contained, except those express terms of the LDA which state herein that they are to survive the Closing Date.

G. CONDITION OF THE PROPERTY ON THE CLOSING DATE

On the Closing Date, the Property shall be conveyed "as is", in substantially the same condition as it is as of the date hereof, reasonable wear and tear excepted.

H. USE OF PURCHASE MONEY TO CLEAR TITLE

To enable the City to make conveyance, the City may, at the Closing Date, use the purchase money or a portion thereof to clear the title of any or all encumbrances, provided that all instruments so procured are recorded promptly after the delivery of the Deed.

I. BROKER'S FEE

The City and the Buyer each represent and warrant to the other that neither has dealt with any real estate broker or other person who would be entitled to be paid a commission by reason of the procurement of this Agreement or the sale of the Property, and each agrees to defend, indemnify and hold the other harmless from and against any loss, damage or expense arising out of any breach by the indemnifying party of such representation and warranty. These warranties, representations, and indemnifications shall survive the delivery of the Deed.

J. CONSTRUCTION OF THE PROPOSED DEVELOPMENT

Buyer acknowledges that the City has agreed to sell the Property to Buyer so that Buyer can construct at the Property a project (“the Project”), consisting of a mixed-use program of residential units and other commercial and open space, subject to modifications subsequently adopted as part of a continuing community process and the permitting process before the Planning Board or Zoning Board of Appeals of the City of Somerville:

Residential Component

Size to be as permitted, comprised of 48 units, of which 8 shall be designated as artist’s live/work units, and 15 shall be group housing for seniors. Eight units shall be affordable units in perpetuity; the distribution of such units among the various types of units (artist/senior/undesignated), as well as the mix of 1-, 2- and 3- bedroom units, shall be mutually agreed by Buyer and City.

Commercial Component

Not less than 10,000 s.f. of front commercial space, excluding back of house areas. Allowable uses are more specifically set forth in the proposed zoning attached hereto as EXHIBIT D.

Garage – Size to be as permitted, accommodating at least 48 parking spaces, 118 bicycle parking spaces, storage, dumpsters, mechanical equipment and one loading area.

Open Space Programming:

As part of the Project, the Buyer shall make improvements to the remainder of the Powder House Community School parcel, which has a land area of approximately 27,767 s.f.±, and which shall be publicly accessible open space in perpetuity (“Usable Open Space”), all in accordance with the design plans attached hereto as EXHIBIT E, subject to modifications subsequently adopted as part of the ongoing community process. In addition to the improvements made to the City's Usable Open Space, the project offers onsite areas that shall be publicly accessible (16,500sf+), including an amphitheater, public seating area, artists’ exhibition space, and mural space, and such other programs and amenities approved through the permitting process before the Planning Board or Zoning Board of Appeals of the City of Somerville.

The Project will be eligible for LEED Gold certification for rehabilitation projects, and meet certain sustainability goals, as determined in an ongoing community process and through the permitting process before the Planning Board or Zoning Board of Appeals of the City of Somerville.

1. Development Team: The Buyer’s Development Team shall consist of :

a. Applicant:

MarKa, LLC, and its assignees

b. Attorney:

Adam Dash & Associates

c. Architect:

Sebastian Mariscal Studio, Inc.

d. Engineer:

TBD

b. Lender(s):

TBD

c. Equity Partners

MarKa, LLC.

2. Description of the Project. The Project is defined above.
3. Development Milestones. Buyer shall commence and complete construction of the Project within thirty-six (36) months after the Closing Date. Construction shall be phased as described in EXHIBIT F.
4. Force Majeure. Notwithstanding the foregoing, the Buyer shall not be in default of this Agreement for failure to meet development milestone dates if such failure is due to a cause beyond the Buyer's reasonable control, such as a flood, earthquake, fire, epidemic, material shortages resulting from strikes and/or freight embargoes. It is the intent of this section that, in such event or events, such date(s) shall be extended for the period of the enforced delay; provided, however, that the period of the extension and the reasons therefor shall be in writing signed by both the Buyer and City. The City shall not unreasonably withhold or delay its written consent to such extension.
5. Security for Performance. The Buyer shall obtain from the general contractor for the Project, performance and payment bonds in the amount of 100% of the contract price naming the City of Somerville as an additional obligee. In addition, the Buyer shall post a bond or letter of credit or other security satisfactory to the City, in an amount equal to the cost of constructing the Project, to secure performance of the Buyer's obligation to construct the Project.
6. Survival. This Section J shall survive the Closing Date.

K. IDENTITY OF BUYER AND DEVELOPMENT TEAM /PROHIBITION AGAINST CHANGE OF USE.

1. The Buyer represents that it is acquiring the Property for purposes of development and not for speculation.
2. The Buyer acknowledges that, in view of the importance of the undertakings set forth herein to the general welfare of the community, the identity of the Buyer is material.
3. The Buyer covenants not to transfer the Property, other than to an entity affiliated with Buyer, without the City's prior written consent until such time as the Project has been fully constructed and all final certificates of occupancy have been issued.
4. The Buyer covenants not to make any material change in the mixed-use development concept as set forth in the Buyer's Proposal (as modified to comply with the ongoing community process, Planning Board and/or Somerville Board of Zoning Appeal requirements) for twenty (20) years from the Closing Date ; provided, however, that notwithstanding the foregoing, not fewer than 8

artist live/work units shall be occupied and maintained on the Property for a period of twenty (20) years from the Closing Date, and not fewer than 1413 units of senior housing shall be occupied and maintained on the Property for a period of thirty (30) years from the Closing Date.

5. The covenants contained in this Section K are expressly stated to be covenants which shall survive the Closing and run with the land. They shall be stated or incorporated by reference in any instrument of conveyance or long term lease relating to the Property or any portion of the Property. They shall, to the fullest extent permitted by law and equity, be binding for the benefit of the City and be enforceable by the City against the Buyer and the Buyer's successors and assigns.

L. ACQUISITION AND DEVELOPMENT FINANCING.

The Buyer represents that it has adequate financial resources to acquire the Property and to construct the Project and shall, upon execution of the LDA and again at the Closing Date, upon the request of the City, make available for review by the City current versions of the financial statements and pro formas provided by the Buyer under an Exclusive Negotiating Agreement ("ENA") dated September 23, 2015, as amended, demonstrating to the reasonable satisfaction of the City that the Buyer is in stable financial condition, not the subject of nor threatened with a bankruptcy, receivership, assignment for the benefit of creditors or other insolvency type proceeding, and is financially capable of developing the Project as contemplated by this Agreement. To the extent permitted by law, the City shall keep all financial information provided by the Buyer confidential.

M. ENVIRONMENTAL TESTING /TITLE / PERMITS AND APPROVALS

During the Exclusive Negotiating Agreement period ending on March 21, 2016, as it may be extended by mutual agreement of the Buyer and OSPCD:

- (1) the Buyer tested the Property for the presence of oil and hazardous materials and substances and expressly waives any objection to Closing based on the environmental condition of the Property; and
- (2) the Buyer conducted a title examination of the Property and expressly waives any objection to Closing based on issues related to title.

The Buyer shall not be liable for any environmental conditions or contamination regarding any land to which Buyer has not taken title ownership, unless Buyer's activities on such land result in a release or creation of environmental condition or contamination.

N. DEFAULT/TERMINATION/REMEDIES.

If the Buyer is in default in its obligations, the City shall send written notice of such default to Buyer, stating what actions are required to cure the default and stating the time period within which the default must be cured. If the Buyer fails to promptly take and diligently pursue action designed to cure the default, or if the default is not cured within thirty (30) days of receipt of written notice of default, or if a default cannot with due diligence be cured within thirty (30) days and Buyer does not commence the cure of such default within such thirty (30) days and diligently prosecute the same to completion, the City may avail itself of any and all remedies, including without limitation, enforcing the bonds of the general

contractor, looking to the letter of credit, bond, or other security provided by the Buyer to secure the Buyer's performance, or bringing an action for damages and/or to enjoin or compel specific performance.

No delay by the City in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this section shall operate as a waiver of such rights or limit such rights in any way. The City shall not, because of concepts of waiver or laches or otherwise, feel constrained to exercise such remedy at a time when it may still hope to resolve by other methods the problems created by the default; nor shall the City's waiver of any specific default be treated as a waiver of the City's rights with respect to any other default or, for that matter, as a waiver with respect to the particular default. This Section shall survive the Closing Date.

If the City is in default in its obligations, the Buyer shall send written notice of such default to the City, stating what actions are required to cure the default and stating the time period within which the default must be cured. If the City fails to promptly take and diligently pursue action designed to cure the default, or if the default is not cured within thirty (30) days of receipt of written notice of default, or if a default cannot with due diligence be cured within thirty (30) days and the City does not commence the cure of such default within such thirty (30) days and diligently prosecute the same to completion, the Buyer may avail itself of any and all remedies, permitted under this LDA, including but not limited to injunctive relief.

No delay by the Buyer in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this section shall operate as a waiver of such rights or limit such rights in any way. The Buyer shall not, because of concepts of waiver or laches or otherwise, feel constrained to exercise such remedy at a time when it may still hope to resolve by other methods the problems created by the default; nor shall the Buyer's waiver of any specific default be treated as a waiver of the Buyer's rights with respect to any other default or, for that matter, as a waiver with respect to the particular default. This Section shall survive the Date of Closing

O. NOTICE

All notices required or permitted to be given hereunder shall be in writing and delivered by hand or mailed postage prepaid, by registered or certified mail, or by Express Mail or FedEx or other nationally recognized delivery service with tracking capability, addressed in case of the City to:

CITY:

c/o Eileen McGettigan, Esq.
OSPCD - Legal Department
City Hall
93 Highland Avenue
Somerville, Massachusetts
02143

and in the case of the Buyer to:

BUYER:

c/o Steven Azar, Director of Development
MarKa, LLC
202 River Street
Cambridge, Massachusetts
02143

With a copy to:

Adam Dash, Esq.
Adam Dash & Associates
48 Grove Street, Suite 304
Somerville, Massachusetts
02144

or to such other address as shall be designated by written notice given to the other party. Any such notice shall be deemed given when so delivered by hand or upon mailing.

P. REPRESENTATIONS AND WARRANTIES

1. The Buyer represents and warrants and delivers herewith an opinion of its legal counsel, that the Buyer is a Massachusetts Limited Liability Company, organized, validly existing and in good standing under the laws of the Commonwealth of Massachusetts; that the Buyer has the legal right, power and authority to enter into and perform all of its obligations under this Agreement; and that the individuals executing this Agreement have been duly authorized to execute the same on behalf of and to bind, the Buyer.
2. The Buyer represents and warrants that the execution of this Agreement and compliance with its terms will not conflict with or result in a breach of any agreement, contract, law, judgment, order, writ, injunction, decree, rule or regulation of any court, administrative agency or other governmental authority of which the Buyer has knowledge or notice, or any other agreement, document or instrument by which the Buyer is bound. The Buyer further represents and warrants that there are no claims, lawsuits or proceedings pending in any court or government agency the outcome of which could materially and adversely affect the Buyer's ability to perform its obligations under this Agreement.
3. The Buyer acknowledges that the Seller has made no representations or warranties regarding the Property.
4. The City represents and warrants that the execution of this Agreement and compliance with its terms will not conflict with or result in a breach of any agreement, contract, law, judgment, order, writ, injunction, decree, rule or regulation of any court, administrative agency or other governmental authority of which the City has knowledge or notice, or any other agreement, document or instrument by which the City is bound. The City further represents and warrants that there are no claims, lawsuits or proceedings pending in any court or government agency the outcome of which could materially and adversely affect the City's ability to perform its obligations under this Agreement.

Q. CLOSING DOCUMENTS/ADJUSTMENTS TO THE PURCHASE PRICE

The City shall execute and deliver closing documents reasonably and customarily required from a seller of real property in the Commonwealth of Massachusetts, as requested by Buyer's or Buyer's mortgagee's counsel.

The following charges shall be adjusted as of the Date of Closing and added to or deducted from the Purchase Price, as the case may be:

- 1) any water and sewer use charges;
- 2) any outstanding oil, gas, or electric for the Property; and
- 3) tax due from the Buyer under G.L. c. 59, s.2C.

R. MISCELLANEOUS PROVISIONS

1. This Agreement shall be binding on the Buyer's successors and assigns, and shall run with the land.
2. This Agreement shall be governed by Massachusetts law, shall be construed as a Massachusetts contract, shall take effect as a sealed instrument, and may be modified or amended by a written instrument executed by City and the Buyer.
3. Captions are for convenience only and shall not limit the scope or substance of this Agreement.
4. Time is of the essence of this Agreement.
5. No official or employee of the City of Somerville shall have any personal interest, direct or indirect, in this Agreement or in the Buyer, nor shall such officials or employees participate in any decision relating to this Agreement which affects their personal interest or the interests of any corporation, partnership, or association in which they are, directly or indirectly, interested. No official or employee of the City of Somerville shall be personally liable to the Buyer or any successor in interest in the event of any default or breach by the City of Somerville or for any amount which may become due to the Buyer or to its successor or on any obligations under the terms of this Agreement.

No officer, manager, director, member, owner or employee of the Buyer shall be personally liable to the City or any successor in interest in the event of any default or breach by the Buyer or for any amount which may become due to the City or to its successor or on any obligations under the terms of this Agreement.
6. Wherever the consent or approval of the City is required herein, it shall mean the consent or approval of both the Somerville Mayor and any required vote of the Somerville Board of Aldermen. This LDA is not binding upon the parties until it has been approved by the required vote of the Somerville Board of Aldermen, and executed by the Somerville Mayor. A certified copy of the vote of the Somerville Board of Aldermen is attached hereto.
7. This LDA ~~may~~shall be recorded by either party at the Middlesex South District Registry of Deeds.
8. This LDA may be executed in multiple counterparts, each of which shall be treated as an original.
9. At the time of the delivery of the City's Deed, the City shall have removed all of its personal property not included in the sale, except as stated elsewhere in this Agreement.
10. Notwithstanding anything herein contained to the contrary, the Property shall not be considered to be in compliance with the provisions of this Agreement with respect to title unless title to the Property is insurable, for the benefit of the Buyer in a fee owner's policy of title insurance at normal premium rates, on a standard ALTA insurance policy by a title insurance company licensed to do business in the Commonwealth of

Massachusetts subject only to the printed exceptions to title normally included in the "jacket" to such form and exceptions permitted in accordance with this Agreement.

11. The City warrants that there are no pending actions, suits or proceedings pending against the City regarding the Property or City's ownership thereof. City warrants that City has not received any notice of any outstanding violation of any federal, state or local law or ordinance affecting all or a portion of the Property.

12. Notwithstanding anything herein contained, the Property shall not be considered to be in compliance with the provisions of this Agreement with respect to title unless:

- a. all structures and improvements, including but not limited to any driveway(s), garage(s), and all means of access to the Property shall be wholly within the lot lines of the Property and shall not encroach upon or under any property not within such lot lines, unless permitted through easement or other agreement;
- b. the Property abut a public way, duly laid out or accepted as such by the City;
- c. no building, structure, improvement or property of any kind encroaches upon or under the Property from other property, unless permitted through easement or other agreement; and
- d. the Property is not located in a HUD Flood Hazard Zone requiring the Buyer's purchase of Flood Insurance, or within any locally designated wetlands area.

The terms of this section shall survive the Closing.

13. Seller warrants that the Property is connected to, and served by, municipal water and sewer. The terms of this paragraph shall survive the Closing.

14. Full possession of the Property free of tenants and occupants is to be delivered at the time of the delivery of the Deed.

15. If the City shall be unable to give title or to make conveyance, or to deliver possession of the Property, all as herein stipulated, or if at the time of the delivery of the Deed the Property does not conform with the provisions hereof, then the City shall use best and diligent efforts to remove any defects in title, or to deliver possession as provided herein, or to make the said Property conform to the provisions hereof, as the case may be, in which event the City shall give written notice thereof to the Buyer at or before the time for performance hereunder, and thereupon the time for performance hereof shall be extended for a mutually agreed upon period of no less than thirty days.

16. If at the expiration of the extended time, or any subsequent mutually agreed upon extension of time, the City shall have failed so to remove any defects in title, deliver possession, or to make the Property conform, as the case may be, all as herein agreed, then any payments made under this Agreement shall be forthwith refunded and all other obligations of the parties hereto shall cease and this agreement shall be void without recourse to the parties hereto.

17. The Buyer shall have the election, at either the original or any extended time for performance, to accept such title as the City can deliver to the said Property in its then condition and to pay therefore the purchase price without deduction, in which case the City shall convey such title, except that in the event of such conveyance in accord with the provisions of this clause, if the said Property shall have been damaged by fire or casualty insured against, then the City shall, unless the City have previously restored

the Property to its former condition, give to the Buyer a credit against the purchase price, on delivery of the Deed, equal to the insurance proceeds received by City..

18. Until the delivery of the Deed, the City shall maintain its current insurance on the Property.

19. The Buyer and its contractors, agents, employees, attorneys, lenders, inspectors and appraiser and the like may enter onto the Property at any time prior to the Closing with twenty-four hours' notice to City. The City shall then, promptly after the giving of said notice, unlock the building at the Property and allow the entry of Buyer and its contractors, agents, employees, attorneys, lenders, inspectors and appraiser and the like. The City shall leave all utilities connected, and billed to the City until the Closing.

20. The portion of the former Powder House Community School property not acquired by the Buyer shall remain owned by the City and used only as publicly accessible "Usable Open Space" as defined by the Somerville Zoning Ordinance in effect on the date of the execution of this Agreement. The City shall cooperate with any subdivision approval required for a division of the former Powder House Community School property as described in this paragraph. Should Buyer not obtain the required approvals and permits for such a subdivision, then the Buyer may terminate this Agreement and have all of Buyer's Deposit refunded forthwith, such that this Agreement shall be null and void and of no further force or effect.

21. All "Usable Open Space", as defined by the Somerville Zoning Ordinance in effect on the date of the execution of this Agreement, located on the portion of the former Powder House Community School property not actually acquired by the Buyer ("Open Space Parcel"), shall be improved by Buyer in accordance with the plan set forth as Exhibit E, as it may be modified by the ongoing community process, on the schedule set forth in Exhibit F. The Developer agrees that, until such time as the Open Space Parcel improvements have been completed to the City's satisfaction, the City will not issue Certificates of Occupancy on four of the Project's market rate units. Upon acceptance by the City, the Open Space Parcel shall be maintained by the City at the City's sole expense, and shall be programmed for activities scheduled and approved by the City. The Buyer, its successors and assigns, shall have no preference or priority in the use of the Open Space Parcel. The Buyer may use the Open Space Parcel for staging during the Buyer's construction and other work at the Property which the Buyer is acquiring, but Buyer shall maintain a safe pedestrian passageway from Broadway to Holland Street through the Open Space Parcel at all times during construction. The terms of this paragraph shall survive the Closing.

22. The City shall cooperate with any permits, variances, licenses or approval application by the Buyer regarding the Project, including but not limited to executing documents, appearing at meetings and hearings, and providing requested documentation.

THE CITY

THE BUYER

Hon. Joseph A. Curtatone,
Mayor of Somerville

Sebastian Mariscal, Manager of
Mariscal Development, LLC, which is the
Manager of MarKa, LLC

Approved as to form by:

Francis X. Wright, Jr., Esq.,
Somerville City Solicitor

EXHIBIT A
Legal Description

EXHIBIT B
Draft Subdivision Plan

Exhibit C
Form of Deed

Exhibit D
Proposed Zoning

Exhibit E
Design Plan

Exhibit F
Construction Phasing Plan