

URBAN CENTER HOUSING TAX INCREMENT FINANCING AGREEMENT

BY AND BETWEEN

THE CITY OF HAVERHILL

AND

MERRIMACK STREET OWNER, LLC, AS DEVELOPER

(Harbor Place)

This Urban Center Housing Tax Increment Financing Agreement (this "Agreement") is made as of this \_\_\_ day of \_\_\_\_\_, 2014 by and between the City of Haverhill, a municipal corporation duly organized under the laws of the Commonwealth of Massachusetts, having an address of 4 Summer Street, Haverhill, Massachusetts 01830 (the "City") and MERRIMACK STREET OWNER, LLC having an address of c/o Planning Office for Urban Affairs, Inc., 84 State Street, Suite 600, Boston, MA 02109 (the "Developer").

RECITALS

1. The Developer owns that certain \_\_\_\_\_ acre parcel of land, located at 2-18 Merrimack Street, 20-22 Merrimack Street, 24-26 Merrimack Street, 28-40 Merrimack Street, 42-54 Merrimack Street and 72-74 Merrimack Street, Haverhill, Massachusetts, listed on the City of Haverhill Assessors' Map \_\_\_ as Lots \_\_\_, \_\_\_, \_\_\_, \_\_\_, \_\_\_ and \_\_\_ [DEVELOPER: PLEASE CONFIRM TAX ASSESSOR PARCELS], and legally described on Exhibit A attached hereto and incorporated herein (the "Property"), and is on this day closing on the debt financing and equity investments needed to finance the construction of the Development (as hereinafter defined).

2. The Developer will redevelop the Property into a primarily residential project containing [80] units of multi-family housing and [\_\_\_\_\_] [DEVELOPER: PLEASE CONFIRM] square feet of commercial space together with open space areas available to the public, accessory parking, and other landscape improvements (collectively, the "Development"), all as shown on the plans and specifications approved by the City acting by and through, *inter alia*, its Building Inspector.

3. Upon completion of construction of the Development, the Developer will cause the creation of a primary condominium under Chapter 183A of the Massachusetts General Laws comprised of two primary residential condominium units (one primary residential condominium unit being comprised of the Affordable Units (as defined below) (the "Primary Affordable Unit"), and the other primary residential condominium unit being comprised of the Market-Rate Units (as defined below) (the "Primary Market-Rate Unit")) and [one] [DEVELOPER: PLEASE CONFIRM] primary commercial condominium unit comprised of [\_\_\_] [DEVELOPER: PLEASE CONFIRM] commercial units (the "Primary Commercial Unit,"

together with the Primary Affordable Unit and the Primary Market-Rate Unit, the "Primary Units;" and each one individually, a "Primary Unit"). Contemporaneously therewith, the Developer will, or will cause the respective owners of each Primary Unit to, create a (a) secondary condominium within the Primary Affordable Unit under Chapter 183A of the Massachusetts General Laws consisting of the fifty (50) Affordable Units, (b) secondary condominium within the Primary Market-Rate Unit under Chapter 183A of the Massachusetts General Laws consisting of thirty (30) market-rate residential units (the "Market-Rate Units") [DEVELOPER: PLEASE CONFIRM] and (c) secondary condominium within the Commercial Condominium Unit under Chapter 183A of the Massachusetts General Laws consisting of [ ] commercial units and [ ] [DEVELOPER: PLEASE CONFIRM] square feet of commercial space in the aggregate (the "Commercial Units;" together with the Affordable Units and the Market-Rate Units, the "Secondary Units;" and each one individually, a "Secondary Unit"). The owner of any of the Secondary Units shall be referred to herein as a "Secondary Unit Owner." The number of Affordable Units and Market-Rate Units and the square footage of the Commercial Units are referred to herein as the "Project Requirements."

4. At least 25% of the residential units at the Development will be restricted in perpetuity, [for lease to households earning no more than 60% of the Area Median Income (as defined by the U.S. Department of Housing and Urban Development), and up to [ ] of such units may be restricted for lease to households earning no more than 30% of the Area Median Income] [DEVELOPER: PLEASE ADVISE ON AFFORDABILITY REQUIREMENTS] (such income-restricted units, the "Affordable Units").

5. The Development will be served by a new parking garage (the "Parking Garage") that will be financed, constructed, maintained and operated by the Developer on a portion of the Property. The City will assist in the financing of the Parking Garage by (a) obtaining a MassWorks grant under The MassWorks Infrastructure Program and pursuant to a Grant Agreement between the City and [the Executive Office of Housing and Economic Development] (the "City's MassWorks Grant Agreement"), and (b) providing a grant of the grant funds available to the City under the City's MassWorks Grant Agreement to the Developer pursuant to a Grant Agreement between the City and the Developer (the "MassWorks Grant Agreement").

6. The market rate and affordable housing opportunities and the commercial development at the Development will significantly broaden and enhance the residential and mixed-use opportunities in the City of Haverhill.

7. Increasing market-rate and affordable housing opportunities within the City, particularly within the TIF Zone (as defined below), is a key objective of the City.

8. The Development will evidence the goals of the Urban Center Housing Tax Increment Financing Program by providing affordable housing and generating additional real estate revenues from the Property.

9. The Developer is seeking an Urban Center Housing Tax Increment Financing exemption from the City to benefit the Development (the "Exemption").

10. The City, by a duly authorized vote of its City Council on \_\_\_\_\_, 2014 taken in accordance with the provisions of Chapter 40, Section 60 of the Massachusetts General Laws (the "UCH-TIF Law"), has approved (a) the creation of an Urban Center Housing – Tax Increment Financing Zone in the City of Haverhill (the "TIF Zone"), (b) an Urban Center Housing Tax Increment Financing Plan (the "TIF Plan"), including this Agreement with respect to the Property, and (c) the Mayor's execution of this Agreement and the Affordable Housing Restriction (as herein defined) and the submission of the TIF Plan for approval by the Commonwealth of Massachusetts Department of Housing and Community Development ("DHCD").

11. DHCD has approved the TIF Plan, including this Agreement and the Affordable Housing Restriction.

12. The Property is located within the TIF Zone.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises of the parties contained herein and other good and valuable consideration each to the other paid, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

#### A. TAX INCREMENT FINANCING EXEMPTION

1. The Developer agrees to construct the Development pursuant to and in substantial accordance with the plans approved by the City's Building Inspector. The Developer further agrees to operate the Development in accordance with an Urban Center Housing Tax Increment Financing Program Affordable Housing Restriction executed by the City and the Developer on the date hereof (the "Affordable Housing Restriction").

2. The Exemption is hereby granted by the City to the Developer in accordance with the UCH-TIF Law, and with Chapter 23B and Chapter 59, Section 5, Clause 51<sup>st</sup> of the Massachusetts General Laws, subject to the terms and conditions hereof.

3. The Exemption shall be for a period (the "Exemption Period") commencing on the date hereof and ending on June 30, 2025 (the "Expiration Date"), and shall provide a discounted dollar amount of annual taxation, as described below, based upon an adjustment in the fiscal year 2014 assessed value of the Property, as required by Chapter 40, Section 60 of The Massachusetts General Laws (such adjusted value being the "Adjusted FY 2014 Assessment").

4. The City fiscal year 2014 assessed valuation of the [DEVELOPER: PLEASE CONFIRM BREAKDOWN AND TAX PARCELS] tax parcels comprising the Property is as follows: (i) \$693,500 [Woolworth]; (ii) \$349,137 [Emerson Rug]; (iii) \$251,300 [Nail Clips]; (iv) \$770,300 [Newman]; (v) \$1,111,200 [Ocasio] and (vi) \$368,000 [Rose]. The Property's real estate taxes for fiscal year 2014 are thus \$95,375.42 [CONFIRM].

5. The Exemption shall be comprised of a real estate tax exemption applicable to the Primary Affordable Unit, the Primary Market-Rate Unit and the Primary Commercial Unit

(which Exemption shall be equitably apportioned to each Secondary Unit in each Primary Unit) in accordance with each Secondary Unit Owner's proportionate share allocated to such Secondary Unit under the applicable condominium documents), calculated as prescribed by the UCH-TIF Law and its implementing regulations at 760 CMR 58.01-58.18, as follows:

- (1) With respect to the Primary Affordable Unit, the Exemption shall equal the then-current fiscal year tax assessment for the Primary Affordable Unit (which shall include the aggregate real estate assessment for all Affordable Units after taking into account the Developer's construction of the Development) minus the product of the Adjusted FY 2014 Tax Assessment for the applicable fiscal year multiplied by [\_\_ percent (\_\_%)] **[DEVELOPER: PLEASE CONFIRM; NOTE: INSERT AGREED-UPON PERCENT OF THE PRIMARY AFFORDABLE UNIT TO THE WHOLE PROPERTY; NOTE, TOGETHER WITH THE MARKET-RATE UNIT PERCENTAGE, THIS PERCENTAGE SHOULD EQUAL 61.63%]** (the "Primary Affordable Increment"), which amount shall then be multiplied by the then-current residential tax rate for the City (provided, however, that until a final Certificate of Occupancy is issued for each Secondary Unit in the Primary Affordable Unit, the Primary Affordable Increment shall be multiplied by the then-current commercial tax rate for the City) multiplied by the Increment Percentage set forth below for the applicable fiscal year;
- (2) With respect to the Primary Market-Rate Unit, the Exemption shall equal the then-current fiscal year tax assessment for the Primary Market-Rate Unit (which shall include the aggregate real estate assessment for all Market-Rate Units after taking into account the Developer's construction of the Development) minus the product of the Adjusted FY 2014 Tax Assessment for the applicable fiscal year multiplied by [\_\_ percent (\_\_%)] **[DEVELOPER: PLEASE CONFIRM; NOTE: INSERT AGREED-UPON PERCENT OF THE PRIMARY MARKET-RATE UNIT TO THE WHOLE PROPERTY; NOTE, TOGETHER WITH THE AFFORDABLE-RATE UNIT PERCENTAGE, THIS PERCENTAGE SHOULD EQUAL 61.63%]** (the "Primary Market-Rate Increment"), which amount shall then be multiplied by the then-current residential tax rate for the City (provided, however, that until a final Certificate of Occupancy is issued for each Secondary Unit in the Primary Market-Rate Unit, the Primary Affordable Increment shall be multiplied by the then-current commercial tax rate for the City) multiplied by the Increment Percentage set forth below for the applicable fiscal year.
- (3) With respect to the Primary Commercial Unit, the Exemption shall equal the then-current fiscal year tax assessment for the Primary Commercial Unit (which shall include the aggregate real estate assessment for all Commercial Units after taking into account the Developer's construction of the Development) minus the product of the Adjusted FY 2014 Tax Assessment for the applicable fiscal year multiplied by 38.36%, which amount shall then be multiplied by the then-current commercial tax rate for the City multiplied by the Increment Percentage set forth below for the applicable fiscal year.
- (4) For purposes of calculating the Exemption, the "Increment Percentage" is set forth below. Year 1 below shall be the fiscal year of the City in which the Development

## Harbor Place TIF Agreement

6/11/14

<u>TIF</u> <u>Year</u>	<u>Fiscal Yr</u>	<u>TIF</u> <u>Agreed</u> <u>Tax</u> <u>Payment</u>	<u>%</u> <u>Increase</u>
1	2014	\$ 95,375	0
2	2015	\$ 95,375	0
3	2016	\$ 96,568	+1.25%
4	2017	\$ 97,775	+1.25%
5	2018	\$ 98,997	+1.25%
6	2019	\$ 100,234	+1.25%
7	2020	\$ 102,740	+2.50%
8	2021	\$ 105,309	+2.50%
9	2022	\$ 107,941	+2.50%
10	2023	\$ 110,640	+2.50%
11	2024	\$ 113,406	+2.50%
12	2025	\$ 116,241	+2.50%
		\$ 1,240,602	

is completed, evidenced by the issuance of the first certificate of occupancy by the City's Building Inspector for any portion of the Development.

Year	Fiscal Year	Increment Percentage
1	2014	100%
2	2015	100%
3	2016	92%
4	2017	92%
5	2018	90%
6	2019	90%
7	2020	90%
8	2021	89%
9	2022	88%
10	2023	85%
11	2024	82.5%
12	2025	77.5%

6. Intentionally Deleted.

7. Notwithstanding anything to the contrary herein, the parties intend and do hereby agree that upon the sale of each residential Secondary Unit to a *bona fide* third party, the new owner of such residential Secondary Unit shall thereafter pay taxes on the full assessed value of such unit (each such unit, being a "Full-Value Unit") and this Agreement shall have no benefit to such Secondary Unit or the applicable Secondary Unit Owner. The Developer shall obtain such third party purchaser's written acknowledgement that the third party purchaser will have no benefits or rights under this Agreement and shall deliver to the City such written acknowledgement upon any such sale and shall maintain a copy of such acknowledgement in the Developer's records.

8. From and after the Expiration Date, the owners of the Property shall pay the full amount of taxes assessed on the Property and/or any condominium units comprising the Development or any portion thereof.

9. The Developer hereby agrees that the allocation of real estate taxes it pays or causes to be paid to the City shall be in a manner and an amount consistent with this Agreement, pursuant to tax bills rendered by the City in its usual and customary manner. Notwithstanding any other provisions of this Agreement to the contrary, the parties agree that the payment

obligation under this Agreement shall be the legal responsibility of the owners of each Primary Unit and Secondary Unit; provided, however, that if the Developer fails to create the various condominium regimes contemplated hereunder, then the owner or owners of the Property shall be responsible for the payment obligations hereunder.

10. The Developer agrees for itself and any successor owner of the Development (or any portion thereof), that (i) in the event that any charitable, educational, or other non-profit organization established under the laws of the Commonwealth of Massachusetts or any other State or any other organization or entity that is then-currently statutorily exempt from the obligation to pay real estate taxes acquires the Development (or any portion thereof or any Primary Unit or Secondary Unit) and exercises its rights to be exempt from the payment of real estate taxes, then such organization's or entity's payments that would otherwise be due under this Agreement shall be paid by the owners of the Primary Units and the owners of those Secondary Units that are not Full Value Units and in their respective proportionate share based on a square footage basis; provided, however, that no unit owner shall be required to pay taxes in an amount greater than the amount of real estate taxes that it would be required to pay if such owner was not entitled to the Exemption as permitted hereunder.

**B. DEVELOPER'S COVENANTS AND AGREEMENTS**

1. As noted in Section A.1, the Developer shall undertake the redevelopment of the Property substantially in accordance with the plans approved by the City's Building Inspector and shall cause the redevelopment of the Property to comply with the Project Requirements as to the number of Affordable Units and Market-Rate Units and the square footage of the Commercial Units.

2. The Exemption granted by the City is in consideration of the recitals set forth at the beginning of this Agreement, and the Developer's covenants and agreements as stated below, which the Developer hereby affirms as follows:

a. To undertake the redevelopment of the Property and operation of the Development in accordance with the provisions hereof.

b. To keep the Development in good order and repair and maintain the Development in a decent, safe, and sanitary condition, all in accordance with applicable laws and ordinances and all rules, regulations and requirements of governmental authorities having jurisdiction.

c. To create and operate at least fifty (50) units of affordable housing in accordance with the Affordable Housing Restriction.

d. To ensure that the Affordable Units are occupied by income-eligible households in accordance with the terms of the Affordable Housing Restriction.

e. To comply with all applicable fair housing laws in the selection of tenants for the Development, including without limitation, the Affordable Units.

f. To comply with all income certification requirements with respect to occupants of the Affordable Units, as set forth in the Affordable Housing Restriction.

g. To cooperate in the City's administration, monitoring and enforcement of this Agreement, including such access rights to the Property (subject to any applicable leases) as are reasonably necessary to accomplish the same. The provisions of this Agreement shall not operate to circumscribe in any way, the access rights, if any, granted to the City by the Developer pursuant to other agreements being entered into by the parties as of the date hereof, relating to the Development and the Parking Garage.

h. To comply with the provisions of the MassWorks Grant Agreement and complete construction of the Parking Garage as required therein.

**C. AFFORDABLE HOUSING REQUIREMENTS AND RESTRICTION**

1. The parties hereto have agreed upon the form of Affordable Housing Restriction.

2. Contemporaneously with the execution of this Agreement, the Developer shall record or cause to be recorded, the Affordable Housing Restriction with the Essex County (Southern District) Registry of Deeds and provide a recorded copy thereof to the City. The Affordable Housing Restriction shall be forever senior in lien priority to all financing liens encumbering the Property or any portion thereof.

3. The City and the Developer expressly acknowledge and agree to the Department's rights of first refusal and purchase with respect to the Property, as set forth in [Sections 17 and 18] of the Affordable Housing Restriction.

4. In the event of any conflict between the provisions of this Agreement and the Affordable Housing Restriction, the Affordable Housing Restriction shall be dispositive.

**D. ADDITIONAL REQUIREMENTS AND AGREEMENTS**

1. This Agreement does not provide any exemption from personal property taxes with respect to the Property or the Development.

2. This Agreement does not serve to waive the Developer's obligations under any special assessment or betterment levied by the City or any constituent entity thereof against the Property, including with respect to the Parking Garage.

3. The City, the Developer and DHCD shall enter into the Affordable Housing Restriction.

4. Any failure of the Developer to (i) construct, operate and maintain the Development as required herein, (ii) comply with the terms of this Agreement or the Massworks Grant Agreement, or (iii) timely make any payments owed to the City hereunder or under the MassWorks Grant Agreement, shall constitute a default under this Agreement. If any such



default shall occur, the City may, in addition to such other remedies it may have at law or in equity, terminate this Agreement and discontinue the Exemption described above, commencing with the first day of the City fiscal year immediately following the City fiscal year in which the default has occurred. Prior to any discontinuance of the Exemption, however, the City shall provide to the Developer written notice of the alleged default and an opportunity to cure the default within a period of thirty (30) days from the date of any such notice. The City agrees to provide contemporaneous written notice of any such alleged default to any lender or investor entity providing financing for the Project, notice of which lenders and/or investors the Developer has provided to the City in accordance with Section E.1. Notwithstanding the foregoing, as of the date hereof, such lenders and investors are as set forth on Exhibit B attached hereto.

5. This Agreement shall automatically terminate on the Expiration Date, except for claims related to defaults or alleged defaults under this Agreement occurring prior to the Expiration Date.

**E. ADDITIONAL PROVISIONS**

1. Notices. All notices, requests and demands which any party is required or may desire to give to the other party pursuant to this Agreement must be in writing delivered to each party at the addresses set forth below:

If to the City:                      City of Haverhill  
   4 Summer Street  
   Haverhill, MA 01830  
   Attn: Mayor

with copies to:                      City of Haverhill  
   4 Summer Street  
   Haverhill, MA 01830  
   Attn: City Solicitor  
   and

Nutter, McClennen & Fish, LLP  
Seaport West  
155 Seaport Boulevard  
Boston, Massachusetts 02210-2604  
Attention: Michael A. Leon, Esq.

If to the Developer:                Merrimack Street Owner, LLC  
   c/o Planning Office for Urban Affairs, Inc.  
   84 State Street, Suite 600  
   Boston, MA 02109  
   **[DEVELOPER: PLEASE CONFIRM]**

with copies to: \_\_\_\_\_  
   \_\_\_\_\_  
   \_\_\_\_\_

[DEVELOPER: PLEASE PROVIDE]

Any notice party may designate a different address by notice given to the other parties as provided herein. Each notice, request and demand hereunder shall be deemed given or made as follows: (i) if sent by hand delivery, upon delivery; or (ii) if sent by certified mail, return receipt requested, or by nationally recognized overnight delivery service, upon receipt or refusal.

2. Further Assurances. At the request of either party hereto, the other party shall execute, acknowledge and deliver such other documents and/or instruments as may be reasonably required by the requesting party in order to carry out the purposes of this Agreement, provided that no such document or instrument shall modify the rights and obligations nor increase the liability of the parties set forth herein.

3. Successors and Assigns. The provisions of this Agreement shall benefit the Property and no other real property. This Agreement shall be binding upon and enure to the benefit of the successors and assigns of the City, and of the Developer as owner of the Property. The Developer may not assign its rights and obligations under this Agreement without the approval of the City in its sole discretion; provided, however, that the Developer may assign its rights and obligations hereunder to an assignee which acquires the Property through foreclosure or deed in lieu thereof and thereby assumes all of the Developer's rights hereunder (so long as notice of any such foreclosure or deed in lieu of foreclosure is promptly provided to the City in accordance with Section E.1 hereof). In addition, and notwithstanding the foregoing, the City acknowledges that the Developer intends to subject the Property to multiple condominium regimes as contemplated herein and that this Agreement shall be binding on and inure to the benefit of the owners of the Primary Units and the Secondary Unit Owners (except the owner of any Full-Value Unit).

4. Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without regard to principles of conflicts of laws. Any claim or action arising under this Agreement shall be tried in a court of competent jurisdiction sitting in Essex County, Massachusetts.

5. Entire Understanding. This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof, and supersedes all prior and current understandings and agreements with respect to the same, whether written or oral.

6. Headings. Headings are for convenience and reference only and in no way define or limit the provisions of this Agreement.

7. Severability. All provisions contained in this Agreement are severable and the invalidity or unenforceability of any provision shall not affect or impair the validity or enforceability of the remaining provisions of this Agreement. If any provision of this Agreement shall be found invalid for any reason, such invalidity shall be construed as narrowly as possible and the balance of this Agreement shall be deemed to be amended to the minimum extent necessary to provide the parties with the benefits and obligations set forth herein.

8. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but both of which together shall constitute and be construed as one and the same instrument.

9. Recitals. The recitals set forth above are incorporated herein by reference, as if fully re-stated herein.

10. Estoppel Certificates. Upon written request of either party made upon at least ten (10) business days' notice, the other party shall provide a certificate certifying to the best of its knowledge, that (if true) (i) this Agreement is in full force and effect, (ii) this Agreement has not been amended, except as may be set forth in such certificate, (iii) the requesting party is not in default of this Agreement (or if it is default, specifying the nature of the default), and (iv) such other factual matters as the requesting party may reasonably request.

11. Conflicts. In the event of any conflict between the provisions of this Agreement and the provisions of the TIF Plan, the provisions of this Agreement shall be dispositive.

*[The signature page is the next page.]*

This Agreement is executed as an instrument under seal as of the date first set forth above.

**CITY:**

CITY OF HAVERHILL, acting by and through its Mayor

By: \_\_\_\_\_  
James J. Fiorentini, Mayor

**DEVELOPER:**

MERRIMACK STREET OWNER, LLC, a  
Massachusetts limited liability company

By: Merrimack Street Ventures, LLC, a  
Massachusetts limited liability company  
Its Manager

By: \_\_\_\_\_  
Name:  
Title:

**Attachments:**

- Exhibit A: Legal Description of Property
- Exhibit B: Notice Addressees – Lender, Investor