

**MEMORANDUM OF AGREEMENT  
AMONG MASSACHUSETTS FINANCE HOUSING AGENCY,  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION AND THE  
MASSACHUSETTS STATE HISTORIC PRESERVATION OFFICER  
REGARDING KENSINGTON COURT AT LAKEVILLE STATION  
MHFA #06-104**

WHEREAS, the Massachusetts Housing Finance Agency (“MassHousing”) proposes to approve a loan insured by the U.S. Department of Housing and Urban Development (“HUD”) under the HUD Housing Finance Agency Risk Sharing Program, to assist in the permanent financing of the construction by KCLS Construction Holding Company LLC (“Owner”) of a 204 unit multi-family residential housing development known as Kensington Court at Lakeville Station (the “Project”) on six (6) parcels of land located in Lakeville, Massachusetts, designated Lots 62-3/7A, 62-3/7B, 62-3/10I, 62-3/10J, 62-3/7G, and 62-3/7E, and more particularly described in Exhibit A attached hereto (the “Property”);

WHEREAS, the Massachusetts Department of Housing and Community Development (“DHCD”) proposes to award Project Based Vouchers (“PBV”) under the United States Housing Act of 1937 (42 U.S.C. §§ 1437 et seq.) and regulations promulgated at 24 CFR Part 983;

WHEREAS, the federal loan insurance and PBV make the Project an undertaking subject to review under Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470f, and its implementing regulations, 36 CFR Part 800;

WHEREAS, MassHousing and DHCD are both acting as the “responsible entity” assuming HUD’s responsibilities under the environmental and related laws specified in 24 CFR Part 58, including compliance with the NHPA;

WHEREAS, MassHousing and DHCD have agreed that MassHousing has acted, is acting, and will act as “lead agency” pursuant to 36 CFR 800.2(a)(2), to fulfill both agencies’ respective obligations under Section 106 of the NHPA with respect to the Project in a consolidated manner;

WHEREAS, MassHousing has defined the area of potential effects on historic properties (“APE”) for the Project as the limit of construction for the Project as shown in Exhibit A;

WHEREAS, MassHousing, in consultation with the Massachusetts State Historic Preservation Officer (“SHPO”), has determined that the Project will have an adverse effect on the Riverside Archaeological District, a property determined to meet the Criteria of Eligibility (36 CFR Part 60) for listing in the National Register of Historic Places;

WHEREAS, in accordance with 36 CFR § 800.6(a)(1), on October 15, 2007, MassHousing notified the Advisory Council on Historic Preservation (“ACHP”) that the Project will have an adverse effect on historic properties;

WHEREAS, on November 5, 2007, the ACHP notified MassHousing that ACHP would participate in consultation, finding that criterion or criteria in Appendix A of 36 CFR Part 800,

May 2, 2008

*Criteria for Council Involvement in Reviewing Individual Section 106 Cases*, have or had been met;

WHEREAS, MassHousing has consulted with the Owner regarding the effects of the undertaking on historic properties and has invited the Owner to sign this MOA as an invited signatory;

WHEREAS, MassHousing has consulted with the Massachusetts Commission on Indian Affairs, the Town of Lakeville, and DHCD regarding the effects of the undertaking on historic properties and has invited them to sign this MOA as concurring parties;

WHEREAS, MassHousing has consulted with the Wampanoag Tribe of Gay Head (Aquinnah) ("THPO"), for which the Riverside Archaeological District has religious and cultural significance, and has invited the THPO to sign this Memorandum of Agreement ("MOA") as a concurring party;

WHEREAS, the Massachusetts Commission on Indian Affairs, the Town of Lakeville, the THPO, and DHCD, are the "Concurring Parties" to this MOA; and

WHEREAS, MassHousing, the SHPO, the ACHP, and the Owner are the "Signatories" to this MOA;

NOW, THEREFORE, MassHousing, the ACHP, the SHPO, and the Owner agree that the following stipulations shall be implemented in order to take into account the effect of the undertaking on historic properties, to resolve the potential adverse effect of the undertaking on historic properties, and to satisfy all responsibilities under Section 106 of the NHPA.

## STIPULATIONS

MassHousing shall ensure that the following stipulations of this MOA are implemented:

### I. PROJECT MODIFICATIONS AFTER EXECUTION OF THIS MOA

The Owner shall notify MassHousing, the SHPO, and the THPO of any proposed modification to the Project's geographic extent. The Owner shall provide to MassHousing and the SHPO documentation of the proposed modification that includes a USGS locus map, smaller-scale plans showing existing and proposed conditions, and current photographs of the location of the modification. For any proposed Project modification, MassHousing shall comply with Section 106 of the NHPA and 36 CFR Part 800 including reopening consultation as may be required to take into account any effects of the modification on historic properties. If MassHousing determines in consultation with the SHPO that the modifications will have an adverse effect on historic properties that is not resolved by this MOA, MassHousing will cause the MOA to be amended in accordance with Stipulation VII of this MOA to incorporate any additional mitigation measures that are necessary to resolve such adverse effect.

## II. TREATMENT

MassHousing, the SHPO, the ACHP, and the Owner agree that the archaeological research design and methodology described in the "Technical Proposal: Kensington Court at Lakeville Station, Lakeville, Massachusetts, Archaeological Investigations, Stripping, Mapping, and Excavation, August 20, 2007," prepared by the Public Archaeology Laboratory, Inc. ("PAL"); the "Technical Proposal: Kensington Court at Lakeville Station, Lakeville, Massachusetts, Archaeological Evaluation of Features, September 2007" prepared by PAL; and the clarifying letter from PAL to the SHPO dated October 1, 2007, all incorporated herein by reference (together, the "Treatment Plan"), are acceptable. The Treatment Plan shall be implemented in compliance with the Secretary of Interior's Standards and Guidelines for Archeology and Historic Preservation (48 Federal Register No. 190 (September 29, 1983)) and the Massachusetts State Archaeologist's permitting regulations (950 CMR 70.00).

### A. Participation of the THPO and the Massachusetts Commission on Indian Affairs.

The THPO and the Massachusetts Commission on Indian Affairs may designate representatives to be present at the Project to observe and to offer their views and interpretations of the findings during the archaeological data recovery program, as they may request of MassHousing and the Owner. The THPO has designated as its representative Bettina Washington, whose telephone number is (508)560-9014, and email address is [Bettina@wampanoagtribe.net](mailto:Bettina@wampanoagtribe.net). Within three days of the date of this MOA, the Massachusetts Commission on Indian Affairs should inform in writing MassHousing, the SHPO, and the Owner, of the name of its designated representatives and provide a means to contact the representative directly by telephone and electronic mail.

The Owner shall provide the representatives of the THPO and the Massachusetts Commission on Indian Affairs adequate advance notice by telephone and electronic mail of the schedule for commencing the fieldwork component ("Fieldwork") of the archaeological excavation and documentation phase of the archeological data recovery program ("Excavation Phase") outlined in the Treatment Plan, in any case no fewer than seven (7) days prior to the commencement of the Fieldwork. The absence of the representatives shall not impede the implementation of the Fieldwork.

During the Fieldwork, the representatives may convey their views and interpretations orally and/or in writing to the extent and in the manner considered appropriate by the representatives. If the representatives comment, the comments shall be taken into account and conveyed in the reporting and dissemination as described in Stipulations II.C and IV of this MOA.

The failure of the THPO or the Massachusetts Commission on Indian Affairs to exercise its opportunity to participate in the archaeological data recovery program shall not be deemed a violation of this MOA or otherwise impede its implementation.

### B. Implementation of Treatment and Commencement of Project.

Within seven (7) days after the date of this MOA, MassHousing shall provide the Owner with written notification that the Owner may commence to implement the measures outlined in the

Treatment Plan. The Owner will not allow any Project construction activities to occur at the locations of the archaeological features identified in the Treatment Plan until it (1) has completed all Fieldwork, (2) documented the completion of the Excavation Phase according to Stipulation II.C of this MOA, and (3) has received written confirmation from MassHousing pursuant to Stipulation II.C of this MOA that construction may proceed.

C. Fieldwork Completion Documentation.

The Owner shall submit, upon completion of the Fieldwork at the locations of the archaeological features identified for data recovery in the Treatment Plan, and any preliminary analyses of the results that may be necessary, a completion memorandum to MassHousing, the SHPO, and the THPO and other Concurring Parties, which memorandum provides the completion dates for the activities required by the Treatment Plan during the Excavation Phase, a brief description of the results of the Fieldwork and any preliminary analyses, and a detailed and specific schedule for completing the remaining aspects of the Treatment Plan. The SHPO, and the THPO and other Concurring Parties, shall submit any comments on the completion memorandum to MassHousing within seven (7) days of receipt. After taking into account any such comments received, within three (3) days of the receipt of such comments, MassHousing shall then determine and notify the Owner in writing that construction of the Project may proceed as planned at the locations identified in the Treatment Plan provided that the Fieldwork complies with the Treatment Plan, subject to the Owner's further compliance with all other stipulations of this MOA.

D. Discovery and Treatment of Human Remains.

Any human remains discovered during implementation of the Project shall be treated in accordance with the Massachusetts Unmarked Burial Law (Mass. Gen. Laws c. 114, § 17; c. 38, § 6; Mass. Gen. Laws c. 9, §§ 26A and 27C; and Mass. Gen. Laws 7, § 38A; all as amended and together, the "Unmarked Burial Law").

1. Discoveries. If diagnostic human skeletal remains, artifacts determined to be deliberate grave inclusions, and/or combinations of feature characteristics (e.g., linings, ochre, calcined human bone, etc.) typically present in unmarked graves are discovered during implementation of the Treatment Plan or subsequently during construction of the Project, then the Owner (or its designee) shall immediately notify MassHousing, the Massachusetts State Archaeologist, the Massachusetts Commission on Indian Affairs, and the THPO. The Owner shall protect the location of the unmarked grave discovery pending the results of consultation and treatment pursuant to Stipulation II.D.2 of this MOA. The implementation of the Treatment Plan may continue elsewhere within the Project area so that all other unmarked graves are identified and located, provided that the Owner (or its designee) shall make additional notifications regarding any further unmarked grave discoveries pursuant to this Stipulation.
2. Meeting, Consultation, and Unmarked Grave Strategy. Upon notification that all unmarked graves in the Project area have been identified and located, the Massachusetts State Archaeologist shall promptly arrange a meeting at the Property with the Massachusetts Commission on Indian Affairs, the Owner, MassHousing, and the THPO (or their designees). The meeting shall occur within ten (10) days of the notification that

all unmarked graves have been identified. The Massachusetts State Archaeologist may at her discretion, however, request a meeting after any notification pursuant to Stipulation II.D.1. The failure of the THPO to respond or to participate in the meeting(s) shall not be deemed a violation of this MOA or otherwise impede implementation of this stipulation. As stated above, within ten (10) days of the notification that all unmarked graves have been identified, the participating parties shall consult to determine the methods and procedures to be used in the treatment of the unmarked grave(s) consistent with professional archaeological standards and appropriate to the archaeological significance of the grave contents, including the scope and schedule for unmarked grave excavation; for any non-destructive, metric and visual analysis of human remains and for any retrieving of samples of associated, non-skeletal organic material for radiocarbon dating or for other scientific analyses that are beneficial to the archaeological study and are unobjectionable to the Massachusetts Commission on Indian Affairs and THPO if participating; for data recording and reporting; and, for the disposition by interment of the human remains and grave contents in accordance with Stipulation II.D.4 of this MOA and the Unmarked Burial Law. If any analysis of Native American skeletal remains is agreed to, then the analysis shall be conducted without delay by a qualified professional at the Property, in accordance with Stipulations II.D.6 and V of this MOA, to minimize the duration between the excavation of the remains and their immediate reinterment. The consultation shall be conducted in good faith and completed with all due speed and diligence to minimize delay. The Owner shall prepare (1) a summary of the results of the consultation and (2) a proposed strategy for treatment of unmarked graves, with a research design and methodology for archaeological data recovery of unmarked graves developed consistent with the Treatment Plan (together, the "Unmarked Grave Strategy"). The Owner shall deliver the Unmarked Grave Strategy to the Massachusetts State Archaeologist, the Massachusetts Commission on Indian Affairs, MassHousing, and the THPO, and these parties shall submit any comments thereon in writing within ten (10) days of receipt to the Owner with copies to all the other participating parties. The Owner shall address all comments received and respond in writing with copies to all the participating parties. The Owner shall submit the final Unmarked Grave Strategy that takes into account all comments received to the Massachusetts State Archaeologist as part of a Special Permit application for excavation and data recovery pursuant to 950 CMR 70.00. Excavation of an unmarked grave shall occur only after (1) the Owner receives approval of the Massachusetts Commission on Indian Affairs pursuant to Mass. Gen. Laws c. 7, § 38A, which approval shall be deemed granted if the Massachusetts Commission on Indian Affairs does not respond within ten (10) days, and (2) the Owner's professional archaeologist obtains a Special Permit from the Massachusetts State Archaeologist pursuant to 950 CMR 70.00, which permit shall be granted within ten (10) days of receipt by the State Archaeologist. Provided that the summary of consultation is accurate; that the Unmarked Grave Strategy is consistent with the Secretary of Interior's Standards and Guidelines for Archeology and Historic Preservation (48 Federal Register No. 190 (September 29, 1983)) and with 950 CMR 70.00; and that the Owner has reasonably and explicitly taken into account and addressed any comments received, then approval by the Massachusetts Commission on Indian Affairs, and the issuance of the Special Permit by the Massachusetts State Archaeologist, shall not be unreasonably withheld. The failure of the THPO to respond to submittals

shall not be deemed a violation of this MOA or otherwise impede implementation of this Stipulation.

3. Suspension of Project Activities. The Owner may not allow construction of the Project to occur at the locations of unmarked graves until it has completed the fieldwork outlined in the research design and methodology for archaeological data recovery of unmarked graves, including documentation thereof as provided by the Unmarked Grave Strategy, documented the completion of the Fieldwork provided for in the Treatment Plan, submitted all documentation under the Treatment Plan to MassHousing, the SHPO, the THPO, and the Massachusetts Commission on Indian Affairs for comment pursuant to Stipulation II.C of this MOA, and has received written confirmation from MassHousing pursuant to Stipulation II.C of this MOA that construction may proceed. If MassHousing has issued written confirmation that construction of the Project may proceed pursuant to Stipulation II.C of this MOA, then construction of the Project may proceed in areas other than at the locations of the unmarked graves.
4. Interment. Any Native American remains and grave contents that are excavated in accordance with Stipulation II.D.2 of this MOA shall be interred by the Massachusetts Commission on Indian Affairs in accordance with the Unmarked Burial Law. The Owner shall provide a protected location within the Project for the interment at one of the three locations designated in Exhibit B, attached hereto. To the extent interment will occur at the Property, such interment will occur at one of the three locations designated in Exhibit B, attached hereto, and the Massachusetts Commission on Indian Affairs shall choose the exact location. In accordance with the Unmarked Burial Law, the remains and grave contents shall be transferred to the Massachusetts Commission on Indian Affairs immediately after completing the analysis and recording aspect of the Unmarked Grave Strategy. The Owner shall develop and implement a protection plan for the interment location to ensure that the interment location is not affected by the construction of the Project.
5. Preservation Restriction. Within thirty (30) days after completion of data recovery fieldwork of unmarked graves, the Owner shall seek approval of Project mortgagees for the donation of an easement as a perpetual Preservation Restriction (Mass. Gen. Laws c. 184, §§ 31-33), developed in consultation with the Owner, the SHPO, the Massachusetts Commission on Indian Affairs, and the THPO, and approved by the SHPO as required by Mass. Gen. Laws c. 184, §§ 31-33, for the interment location. The Preservation Restriction shall be in the form attached hereto as Exhibit C. The Owner shall seek approval of Project mortgagees to subordinate the lien(s) of their mortgages to the easement as necessary by executing a Mortgage Subordination Agreement generally consistent with the example attached hereto as Exhibit D to ensure the right to enforce the perpetual preservation purposes of the Preservation Restriction for the interment location. The Owner and the Mortgagees shall execute and record the Preservation Restriction and Mortgage Subordination Agreements at the Plymouth County Registry of Deeds. Copies of the as-recorded Preservation Restriction and the Mortgage Subordination Agreement shall be provided by the Owner to the SHPO, the Massachusetts Commission on Indian Affairs, the THPO, the Clerk of the Town of Lakeville, the Project mortgagees and

MassHousing within thirty (30) days of recording at the Plymouth County Registry of Deeds. It is understood that if no unmarked graves are discovered, then no Preservation Restriction or Mortgage Subordination Agreement shall be necessary.

6. Responsibility for Expenses. The Owner shall be responsible for the cost of the excavation, analysis, reporting, and disposition of the unmarked graves, including their interment, and of the preparation and recording of the Preservation Restriction and the Mortgage Subordination Agreement in accordance with the requirements of the Plymouth County Registry of Deeds. The Owner shall not be responsible for the respective expenses of the Massachusetts State Archeologist, the Massachusetts Commission on Indian Affairs, MassHousing, the SHPO, and the THPO during consultations, reviews of submittals by the Owner and other parties, site visits, and other activities provided for in the Unmarked Graves Strategy or the Unmarked Burial Law not otherwise identified in this Stipulation II.D.6.
7. Unmarked Burial Law Takes Precedence. The Signatories and the Concurring Parties shall be guided by Stipulation II.D of this MOA in their efforts to comply with the Unmarked Burial Law, and agree that implementation of the terms of Stipulation II.D are acceptable to satisfactorily address unmarked graves discovered at the Project, but the terms of the Unmarked Burial Law shall take precedence over these stipulations to the extent inconsistent.

### III. CURATION

Other than human remains and grave contents the disposition of which shall be determined in consultation in accordance with Stipulations II.D.2 and II.D.4 of this MOA, all other artifacts, samples, materials, records and reports resulting from archaeological survey, testing, and data recovery program provided for in the Treatment Plan shall be curated in a manner consistent with 36 CFR Part 79 and with 950 CMR 70.14(4) and 70.14(5). The Owner shall be responsible for all costs relating to curation, documentation, and any deaccession or disposition relating to this Stipulation.

### IV. REPORTING AND DISSEMINATION

In order to disseminate the information gathered during the data recovery program, the Owner shall ensure that the deliverables listed below are produced:

#### A. Technical Reporting.

Within three (3) months after completion of the Fieldwork, the Owner shall submit a proposed draft technical report outline to MassHousing, the SHPO, the THPO, and the Massachusetts Commission on Indian Affairs, for review and comment within thirty (30) days of receipt. Lack of comments within the review period shall indicate no objections to the draft report outline.

Within twelve (12) months after completion of the Fieldwork, the Owner shall submit to MassHousing, the SHPO, the THPO, and the Massachusetts Commission on Indian Affairs for

review, a draft technical report that details the results of all archaeological survey, testing, and data recovery investigations for the entire Project. The draft report shall be prepared in accordance with the Secretary of Interior's Standards and Guidelines for Archeology and Historic Preservation (48 Federal Register No. 190 (September 29, 1983)), and with the Massachusetts Standards for Reports (950 CMR 70.14). The reviewers shall have forty-five (45) days to comment after receipt of the draft report. Lack of comments within the review period shall indicate no objections to the draft report.

The Owner shall ensure that a final report is produced within six (6) months after receiving comments on the draft reports. The final report shall address all comments on the draft report. Copies of the final report shall be filed with MassHousing, and with two (2) copies to the SHPO; and one (1) copy each with the THPO; Massachusetts Commission on Indian Affairs; Assonet Band of the Wampanoag Nation; Lakeville Public Library, Lakeville; Massachusetts Archaeological Society Library, Middleborough; UMass-Boston Healy Library, Boston; UMass-Amherst W.E.B. Dubois Library, Amherst; Boston University Stone Science Library, Boston; and Harvard University Tozzer Library, Cambridge, with a copy of the transmittal sheet for the distribution of the reports provided by the Owner to MassHousing and the SHPO. The Owner shall be responsible for all publication and distribution costs of the technical report.

B. Exhibit.

Within three (3) years after completion of the Fieldwork, the Owner shall cause a professionally designed exhibit in a display case to be developed and installed, at the Lakeville Public Library or at another location agreed to by the Town of Lakeville and the Owner, that conveys the significant results of the archaeological investigations conducted at the Property. Consultation shall occur among the Owner, the SHPO, the THPO, the Massachusetts Commission on Indian Affairs, and the Town of Lakeville, as to the design and content of the exhibit contained within the display case, by the Owner submitting conceptual, draft, and final exhibit design plans and specifications for their review and comment within forty-five (45) days of receipt. The Owner and its exhibit designer shall take into account these comments prior to installation of the exhibit. The Owner shall notify MassHousing, the SHPO, the THPO, the Massachusetts Commission on Indian Affairs, and the Town of Lakeville, in writing of the completed display case installation.

C. Brochure.

Within three (3) years after completion of the Fieldwork, the Owner shall have a brochure prepared by a qualified archaeologist that discusses the archaeological findings at the Property in the context of Native American lifeways in southeastern Massachusetts. The brochure/report shall not include any locational information regarding any archaeological site. The brochure/report shall be written to be comprehensible to a readership of 12 to 16 years of age. Subject to the final determination by the archaeological consultant, the brochure/report shall be the equivalent of approximately five pages of text and approximately ten pages of maps and photographs. The Owner shall provide a copy of the draft brochure/report to the SHPO, the THPO, the Massachusetts Commission on Indian Affairs, and the Town of Lakeville, for review and comment within forty-five (45) days of receipt, and these comments shall be taken into account to finalize and print the brochure/report. Twenty-five copies of the final brochure (and a

compact disk containing a pdf. file of the final brochure) shall be provided to the SHPO for its archive and for the SHPO to distribute to other libraries, archives, and other interested groups or individuals. In no event shall the Owner's commitments set forth in Stipulations IV.B and IV.C of this MOA exceed a total of five thousand dollars (\$5,000.00) to be incurred by the Owner.

## V. QUALIFICATIONS

MassHousing and the Owner shall ensure that the program of archaeological data recovery is conducted and completed by professionals who meet the Secretary of the Interior's draft Qualification Standards (62 Federal Register No. 119 (June 20, 1997)), and the Massachusetts Professional Qualifications (950 CMR 70.10).

## VI. DISPUTE RESOLUTION:

Should any Signatory object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, and provide written notice of such objection to the Signatories and the Concurring Parties together with an explanation of the objection, MassHousing shall, within fifteen (15) days, consult with such Signatory and the Concurring Parties to resolve the objection. If MassHousing determines that such objection cannot be resolved, MassHousing will:

A. Forward all documentation relevant to the dispute, including MassHousing's proposed resolution, to the ACHP, the SHPO, and the Concurring Parties. The ACHP shall provide MassHousing with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, MassHousing shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, Signatories and Concurring Parties, and provide them with a copy of this written response. MassHousing will then proceed according to its final decision.

B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, MassHousing may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, MassHousing shall prepare a written response that takes into account any timely comments regarding the dispute from the Signatories and Concurring Parties to the MOA, and provide them and the ACHP with a copy of such written response.

C. MassHousing's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remains unchanged.

## VII. AMENDMENT

This MOA may be amended when such an amendment is agreed to in writing by all Signatories. MassHousing shall inform all Concurring Parties of any proposed amendments and provide an opportunity for Concurring Parties to comment on such amendments. The amendment will be effective on the date it is signed by the Signatories and filed with the ACHP.

## VIII. TERMINATION

If a Signatory determines that the MOA will not or cannot be carried out, that party shall immediately consult with the other Signatories and the Concurring Parties to attempt to develop an amendment per Stipulation VII of this MOA. If within thirty (30) days an amendment cannot be reached, any Signatory may terminate the MOA upon written notification to the other Signatories and the Concurring Parties.

Once the MOA is terminated, and prior to work continuing on the undertaking, MassHousing must either (a) execute an MOA pursuant to 36 CFR § 800.6, or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. MassHousing shall notify the Signatories and Concurring Parties as to the course of action it will pursue.

Any Concurring Party may withdraw its concurrence from the MOA at any time upon notification of all Signatories and other Concurring Parties. In the event of and notwithstanding such a withdrawal, this MOA will remain in full force and effect as between the Signatories and the other Concurring Parties.

## IX. SCOPE

This MOA is limited in scope to the Project (MHFA #06-104).

## X. DURATION

Unless extended by agreement of the Signatories, this MOA will be null and void if its stipulations are not carried out within five (5) years from the date of its execution. At such time, and prior to work continuing on the undertaking, MassHousing shall either (a) execute a MOA pursuant to 36 CFR § 800.6, or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. Prior to such time, MassHousing may consult with the other Signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation VII of this MOA. MassHousing shall notify the Signatories and Concurring Parties as to the course of action it will pursue.

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EXECUTION of this MOA by MassHousing, the ACHP, the SHPO, and the Owner and implementation of its terms evidence that MassHousing has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment pursuant to Section 106 of NHPA.

This MOA is effective when executed by the Signatories.

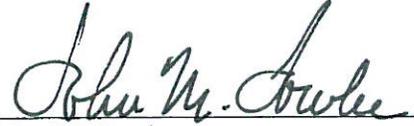
MASSACHUSETTS HOUSING FINANCE AGENCY

 5/6/08  
Thomas R. Gleason Date  
Executive Director

MASSACHUSETTS STATE HISTORIC PRESERVATION OFFICER

 5/5/08  
Brona Simon Date  
Massachusetts State Historic Preservation Officer  
Executive Director and State Archaeologist  
Massachusetts Historical Commission

ADVISORY COUNCIL ON HISTORIC PRESERVATION

 5/14/08  
John M. Fowler Date  
Executive Director

KCLS CONSTRUCTION HOLDING COMPANY LLC  
a Massachusetts limited liability company

By: KCLS Manager LLC

 5/5/08  
By: Elliot R. Schneider, Date  
its manager



**EXHIBIT A**  
**Legal Description of the Property**

**Lot 1**  
**(Map 62 Block 3 Lot 7A)**  
**Property Description**

Beginning at the southwesterly corner of the property on Commercial Drive thence running;  
By a curve to the left having a radius of 20.00 feet and a length of 29.18 feet to a point thence;  
N 12°15'15" E a distance of 456.66 feet to a point thence;  
S 62°38'13" E a distance of 325.00 feet to a point thence;  
S 27°51'43" W a distance of 446.50 feet to a point thence;  
By a curve to the left having a radius of 375.00 feet and a length of 217.88 feet along Commercial Drive to the point of beginning;  
Containing 2.68 acres more or less.

Subject to a 23,777 square foot Access & Utility Easement as described on a plan entitled "Definitive Subdivision Plan Modification, Lakeville Corporate Park, Canpro Investments Ltd.," Sheet 3 of 6, dated 12/20/04 (revised 3/13/06) and recorded in Plan Book 51, Page 789.

Shown as Lot 1 on a plan of entitled, "Riverside Park Definitive Plan of Land, Main Street, Lakeville, Massachusetts, Prepared for A.P. Whitaker & Sons," Sheet 2 of 6, dated 8/26/85 (revised 10/21/85) and recorded in Plan Book 26, Page 718.

**Lot 2**  
**(Map 82 Block 3 Lot 7B)**  
**Property Description**

Beginning at the southwesterly corner of the property on Commercial Drive thence running;  
N 27°51'43" E a distance of 446.50 feet to a point thence;  
S 62°38'13" E a distance of 329.29 feet to a point thence;  
S 39°08'39" W a distance of 505.10 feet to a point thence;  
N 50°51'21" W a distance of 235.00 feet along Commercial Drive to the point of beginning;  
Containing 3.05 acres more or less.

Shown as Lot 2 on a plan of entitled, "Riverside Park Definitive Plan of Land, Main Street, Lakeville, Massachusetts, Prepared for A.P. Whitaker & Sons," Sheet 2 of 6, dated 8/26/85 (revised 10/21/85) and recorded in Plan Book 26, Page 718.

**Lot 15**  
**(Map 62 Block 3 Lot 101)**  
**Property Description**

Beginning at the most westerly corner of the property on Route 105 thence running;

By a curve to the right having a radius of 20.00 feet and a length of 31.42 feet thence; S 84°08'45" E a distance of 336.47 feet along Commercial Drive to a point thence;

By a curve to the right having a radius of 325.00 feet and a length of 188.83 feet along Commercial Drive to a point thence;

S 50°51'21" E a distance of 48.50 feet along Commercial Drive to a point thence;

S 27°51'43" W a distance of 233.37 feet to a point thence;

N 69°16'10" W a distance of 291.30 feet to a point thence;

N 17°32'22" E a distance of 205.79 feet to a point thence;

N 84°08'45" W a distance of 248.09 feet to the point of beginning;

Containing 1.92 acres more or less.

Subject to an 11,722 square foot Access & Utility Easement as described on a plan entitled 'Definitive Subdivision Plan Modification, Lakeville Corporate Park, Canpro Investments Ltd.," Sheet 3 of 6, dated 12/20/04 (revised 3/13/06) and recorded in Plan Book 51, Page 789.

Shown as Lot 15 on a plan of entitled, 'Riverside Park Definitive Plan of Land, Main Street, Lakeville, Massachusetts, Prepared for A.P. Whitaker & Sons," Sheet 2 of 6, dated 8/26/85 (revised 10/21/85) and recorded in Plan Book 26, Page 718.

**Lot 16**  
**(Map 62 Block 3 Lot 10.1)**  
**Property Description**

Beginning at the northwesterly corner of the property on Commercial Drive thence running;

S 50°51'21" E a distance of 321.50 feet along Commercial Drive to a point thence;

S 33°59'10" W a distance of 225.27 feet to a point thence;

N 51°43'36" W a distance of 296.13 feet to a point thence;

N 27°51'43" E a distance of 233.37 feet to the point of beginning;

Containing 1.61 acres more or less.

Shown as Lot 16 on a plan of entitled, "Riverside Park Definitive Plan of Land, Main Street, Lakeville, Massachusetts, Prepared for A.P. Whitaker & Sons," Sheet 2 of 6, dated 8/26/85 (revised 10/21/85) and recorded in Plan Book 26, Page 718.

Lot 17  
(Mao 62 Block 3 Lot 7G)  
Property Description

Beginning at the northwesterly corner of the property on Commercial Drive thence running;  
S 50°51'21" E a distance of 363.11 feet along Commercial Drive to a point thence;  
S 39°08'39" W a distance of 205.09 feet to a point thence;  
N 54°04'21" W a distance of 343.40 feet to a point thence;  
N 33°59'10" E a distance of 225.27 feet to the point of beginning;  
Containing 1.74 acres more or less.

Subject to a 14,493 square foot 70' Wide Access Easement as described on a plan entitled "Definitive Subdivision Plan Modification, Lakeville Corporate Park, Canpro Investments Ltd.," Sheet 4 of 6, dated 12/20/04 (revised 3/13/06) and recorded in Plan Book 51, Page 790.

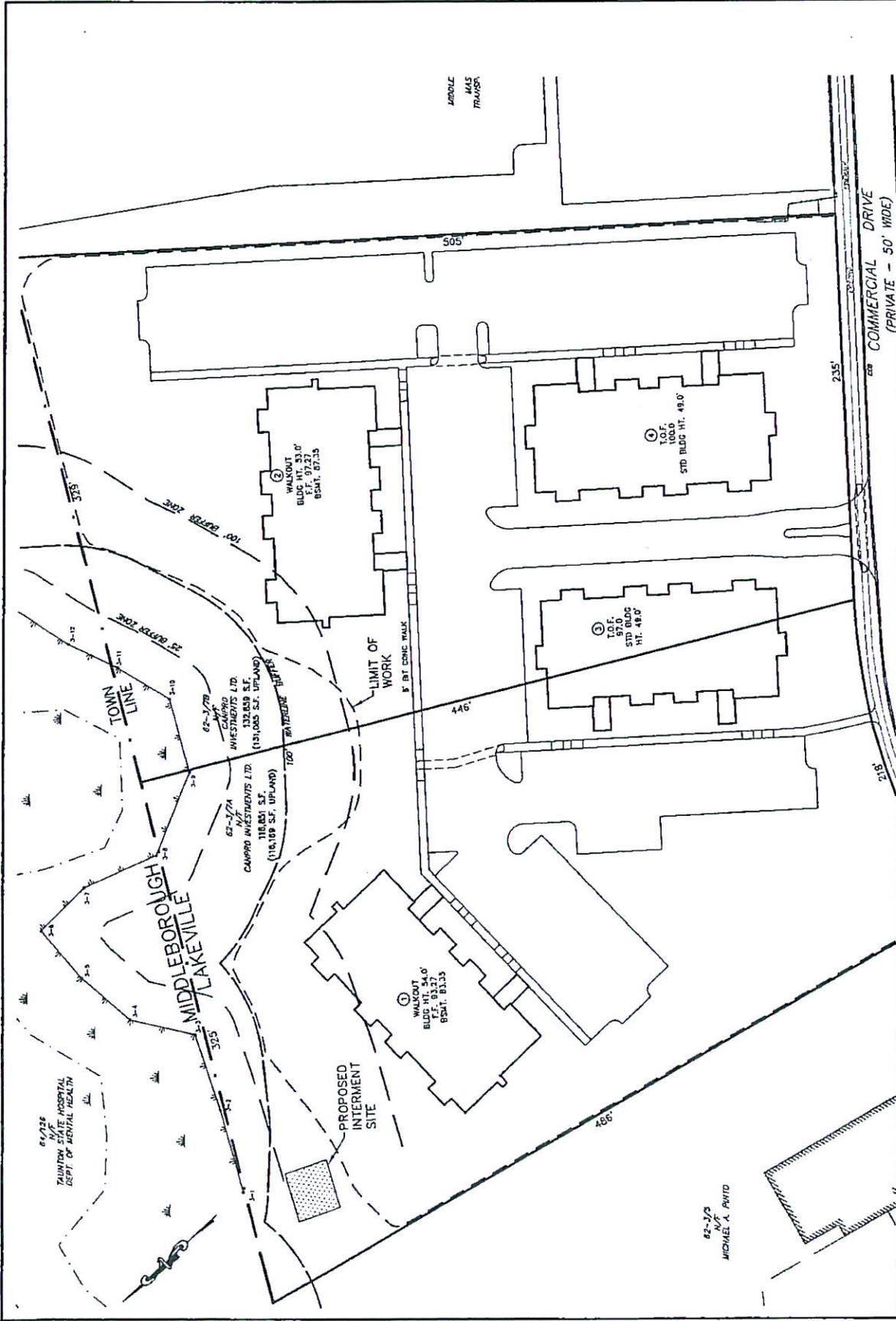
Shown as Lot 17 on a plan of entitled, "Riverside Park Definitive Plan of Land, Main Street, Lakeville, Massachusetts, Prepared for A.P. Whitaker & Sons," Sheet 3 of 6, dated 8/26/85 (revised 10/21/85) and recorded in Plan Book 26, Page 719.

Lot 62-3/7E  
(Mao 62 Block 3 Lot 7E)  
Property Description

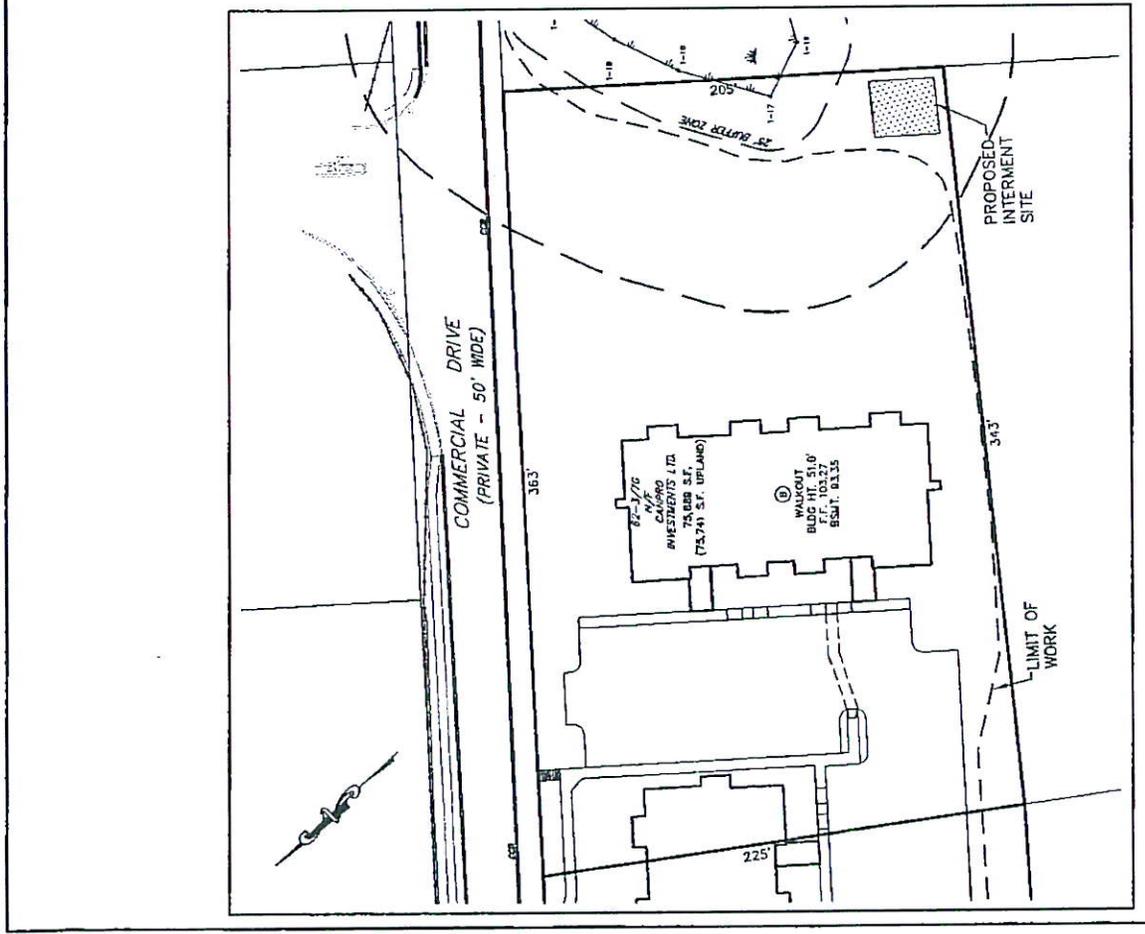
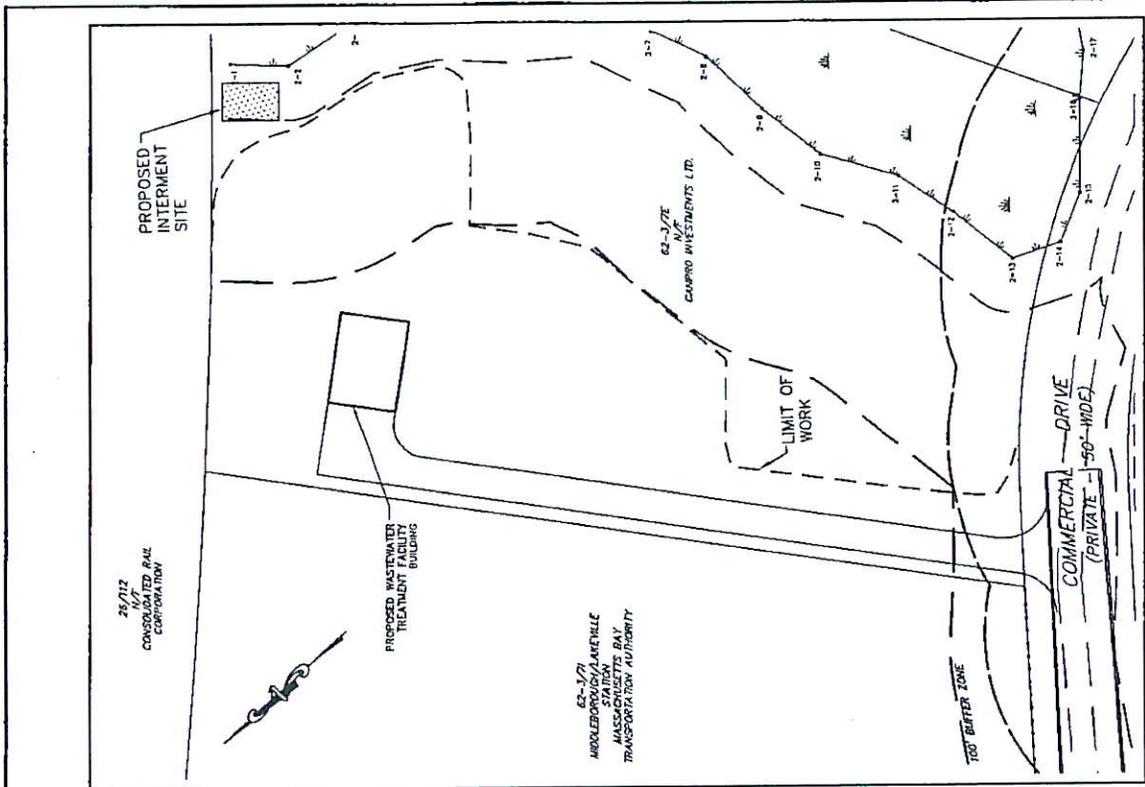
Beginning at the southwesterly corner of the property on Commercial Drive thence running;  
N 50°26'20" E a distance of 385.87 feet to a point thence;  
By a curve to the left having a radius of 3560.22 feet and a length of 318.63 feet to a point thence;  
S 61°56'32" W a distance of 443.88 feet to a point thence;  
By a curve to the left having a radius of 375.00 feet and a length of 187.24 feet along Commercial Drive to a point thence;  
N 50°51'21" W a distance of 42.19 feet along Commercial Drive to the point of beginning;  
Containing 2.45 acres more or less.

Shown as Lot 62-3/7E on a plan entitled "Definitive Subdivision Plan Modification, Lakeville Corporate Park, Canpro Investments Ltd.," Sheet 4 of 6, dated 12/20/04 (revised 3/13/06) and recorded in Plan Book 51, Page 790.

**EXHIBIT B**  
**Plans Showing Alternative Interment Locations**



<b>FIELD ENGINEERING CO., INC.</b> CONSULTING ENGINEERS		110 INDUSTRIAL DRIVE P.O. BOX 1178 MATTAPAN, MA 02739 TEL: (508) 756-2749 FAX: (508) 759-2649	THE OSCHER BUILDING 4 COURT STREET SUITE 104 TAUNTON, MA 02780 TEL: (508) 824-9279 FAX: (508) 824-9276
<b>ALTERNATIVE INTERMENT SITES          THE RESIDENCES AT LAKEVILLE STATION</b>			
COMMERCIAL DRIVE LAKEVILLE, MASSACHUSETTS			
Project No.	1122	Date	12/13/07
Scale	1"=80'	Sheet	1 OF 2



Project No.	1122	Date	12/13/07
Scale	1"=80'	Sheet	2 OF 2

ALTERNATIVE INTERMENT SITES  
 THE RESIDENCES AT LAKEVILLE STATION  
 COMMERCIAL DRIVE  
 LAKEVILLE, MASSACHUSETTS

110 INDUSTRIAL DRIVE  
 P.O. BOX 1178  
 MATTAPAN, MA 02739  
 TEL: (508) 756-2749  
 FAX: (508) 756-2849

THE CROCKER BUILDING  
 4 COURT STREET, SUITE 04  
 TAUNTON, MA 02780  
 TEL: (508) 824-9278  
 FAX: (508) 824-9276

**FIELD ENGINEERING CO., INC.**  
 CONSULTING ENGINEERS

## EXHIBIT C

### **PRESERVATION RESTRICTION AGREEMENT BETWEEN KCLS CONSTRUCTION HOLDING COMPANY, LLC, AND THE MASSACHUSETTS COMMISSION ON INDIAN AFFAIRS FOR UNMARKED GRAVES INTERMENT LOCATION LAKEVILLE, PLYMOUTH COUNTY, MASSACHUSETTS**

KCLS Construction Holding Company LLC, a Massachusetts limited liability company, ("Grantor"), with a usual place of business at 10 Owl Drive, Sharon, MA 02067, acting pursuant to Sections 31, 32 and 33 of Chapter 184 of the Massachusetts General Laws, hereby covenants on behalf of itself, its successors and assigns in perpetuity, to the Massachusetts Commission on Indian Affairs and its successors and assigns ("Grantee"), with a usual place of business at 100 Cambridge Street, Boston, MA 02114, to maintain and preserve the Unmarked Graves Interment Location (the "Preservation Area"), located in the Town of Lakeville, Plymouth County, Massachusetts which boundaries are described and shown on the plat attached hereto as Exhibit 1, for historic preservation purposes.

1. Except as hereinafter provided, the Preservation Area shall remain in its existing state in order to preserve the unmarked graves therein, and to that end, except as otherwise provided herein, the Grantor, and its successors or assigns to that shall neither perform nor permit others to perform any of the following:

- (a) Constructing, placing, or allowing any building, residential dwelling, tennis court, asphalt or concrete pavement, landing strip, mobile home, swimming pool, athletic facility or playing field, billboard or other advertising display, antenna, parking area, roadway, utility pole, tower, conduit, line, telecommunications tower, above or underground storage tanks, or other temporary or permanent structure or facility on, below, or above the Preservation Area;
- (b) The placement at the Preservation Area of any earth material or other substance on, above or below the ground, except native trees, grasses, or shrubs, sand, and loam in connection with a site restoration and landscape plan, and signage as authorized by the Massachusetts Commission on Indian Affairs, in order to preserve the site;
- (c) Cutting, removing or otherwise destroying, trees, grasses, shrubs or other vegetation, including firewood cutting (except as incidental for tick control, control or prevention of an imminent hazard to structure or life, control or prevention of a disease, control and removal of invasive or exotic species, to maintain the landscaped condition of the Preservation Area, or other vegetative management purposes in which case any trees, grasses, shrubs, or other vegetation shall be cut at or above ground level and the stumps and roots left in place).
- (d) The excavation or removal at any earth material, plant material, mineral substance or other substance or material, except to allow re-interment of human remains and grave contents pursuant to paragraph 5 below;
- (e) Placing, filling, storing or dumping, refuse, trash, equipment, mobile home, trailer, automotive vehicle or parts, vehicle bodies or parts, rubbish, debris, junk, or waste, at the Preservation Area.
- (f) Any other activity which by disturbing, altering or otherwise affecting the

existing surface or subsurface of the Preservation Area that would be detrimental to the appropriate preservation of the unmarked graves therein.

2. No disturbance of the ground surface or any other thing shall be undertaken or permitted to be undertaken which would affect the physical integrity of the Preservation Area.
3. Grantor and its successors and assigns shall make every reasonable effort to prohibit any person from vandalizing or otherwise disturbing the Preservation Area, and shall promptly report any such disturbance to the Massachusetts Commission on Indian Affairs, the Massachusetts Historical Commission, the Wampanoag Tribe of Gay Head (Aquinnah), or successor officials.
4. This Preservation Restriction does grant a right of access to the Massachusetts Commission on Indian Affairs to the Preservation Area:
  - (a) Upon advance notice to the then-existing owner, said owner shall permit Grantee access to the Preservation Area in the manner, time, and location reasonably specified by said owner, for the purpose of allowing Grantee to inspect the Preservation Area and determine whether the terms of this Preservation Restriction has been complied with.
  - (b) Upon advance notice to the then-existing owner, said owner shall permit Grantee and their authorized representatives access to the Preservation Area to conduct interment of human remains and grave contents, and shall permit Grantee and their guests (which may include the Wampanoag Tribe of Gay Head (Aquinnah)) access to the Preservation Area for the purposes of visitation and commemoration of the Native Americans (Indians) whose remains are interred there.
5. In the event that the Massachusetts Commission on Indian Affairs proposes to inter human remains and grave contents in the Preservation Area, such interments may occur in consultation with the Massachusetts Historical Commission so that the interments do not disturb any existing unmarked graves.
6. This Preservation Restriction shall be perpetual in duration. The parties agree that it is and shall be considered an easement in gross, and as such, is inheritable and assignable and runs with the land as an incorporeal property interest in the Preservation Area enforceable by the Grantee and its successors and assigns with respect to the Preservation Area and against Grantor and Grantor's successors, and assigns, all of whom are collectively referred to herein as "Grantee" and "Grantor," respectively.
7. The failure of the Massachusetts Commission on Indian Affairs to exercise any right or remedy granted under this instrument shall not have the effect of waiving or limiting the exercise of any other right or remedy or the use of such right or remedy at any other time.
8. Upon its execution, the Grantor shall promptly record this Preservation Restriction with the Plymouth County Registry of Deeds and file a copy of the recorded Preservation Restriction with the Grantee, the Massachusetts Historical Commission, the Tribal Historic Preservation Officer of the Wampanoag Tribe of Gay Head (Aquinnah), the Clerk of the Town of Lakeville, the Massachusetts Housing Finance Agency, and all Mortgagees who hold a lien on the Preservation Area.
9. The covenant shall be a binding servitude upon the real property that includes the Preservation Area and shall be deemed to run with the land. The Grantor agrees to incorporate by reference the terms of this Preservation Restriction in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Premises.
10. Execution of this covenant shall constitute conclusive evidence that Grantor agrees to be bound by the foregoing conditions and restrictions and to perform to obligations herein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

KCLS CONSTRUCTION HOLDING COMPANY LLC  
a Massachusetts limited liability company

By: KCLS Manager LLC

By: \_\_\_\_\_  
Jonathan White                      Date  
Its Manager

**THE COMMONWEALTH OF MASSACHUSETTS**

\_\_\_\_\_, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2008, before me, the undersigned notary public, personally appeared Jonathan White, proved to me through satisfactory evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purposes as Manager of KCLS Manager LLC, the Manager of KCLS Construction Holding Company LLC.

**ACCEPTANCE OF GRANT**

The above Preservation Restriction is accepted this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

**MASSACHUSETTS COMMISSION ON INDIAN AFFAIRS**

by \_\_\_\_\_  
John A. Peters, Jr.  
Executive Director

**THE COMMONWEALTH OF MASSACHUSETTS**

\_\_\_\_\_, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2008, before me, the undersigned notary public, personally appeared John A. Peters, Jr., proved to me through satisfactory evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purposes.

\_\_\_\_\_  
Notary Public:

My commission expires:

**APPROVAL BY THE MASSACHUSETTS HISTORICAL COMMISSION**

The undersigned hereby certifies that the foregoing preservation restriction has been approved pursuant to Massachusetts General Laws, Chapter 184, Section 32.

**MASSACHUSETTS HISTORICAL COMMISSION**

by \_\_\_\_\_  
Brona Simon  
Executive Director and Clerk  
Massachusetts Historical Commission

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2008, before me, the undersigned notary public, personally appeared Brona Simon, proved to me through satisfactory evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the person whose name is signed on the preceding or attached document, and acknowledge to me that he/she/they signed it voluntarily for its stated purposes.

\_\_\_\_\_  
Notary Public

My Commission Expires \_\_\_\_\_

*[Attach Preservation Restriction Agreement Exhibit 1, metes and bounds description of the Preservation Area and a recordable plat of the Preservation Area]*

**EXHIBIT D**

**Mortgage Subordination Agreement**

**SUBORDINATION OF MORTGAGE**

FOR AND IN CONSIDERATION of the sum of One Dollar (\$1.00), \_\_\_\_\_(Bank) does hereby subordinate the lien of its Mortgage from \_\_\_\_\_ and recorded in the \_\_\_\_\_ in Book \_\_\_\_\_, Page \_\_\_\_\_, covering property known as \_\_\_\_\_ (and more fully described in said mortgage), to the terms and conditions of the Preservation Restriction Agreement from Jonathan White, KCLS Construction Holding Company LLC, a Massachusetts limited liability company, its Managing Member, to the Massachusetts Commission on Indian Affairs, and recorded in the Plymouth County Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_, covering property known as the Unmarked Graves Interment Location (and more fully described in said Preservation Restriction Agreement as the "Preservation Area").

IN WITNESS WHEREOF, \_\_\_\_\_ has caused these presents to be executed this \_\_\_\_\_ day of \_\_\_\_\_.

IN THE PRESENCE OF: \_\_\_\_\_

\_\_\_\_\_  
(1st witness) By: \_\_\_\_\_

\_\_\_\_\_  
(2nd witness) Its: \_\_\_\_\_

**COMMONWEALTH OF MASSACHUSETTS, COUNTY OF \_\_\_\_\_**

On this \_\_\_\_\_ day of \_\_\_\_\_, 2008, before me, the undersigned notary public, personally appeared [names], proved to me through satisfactory evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the persons whose names are signed on the preceding or attached document, and acknowledge to me that they signed it voluntarily for its stated purposes.

\_\_\_\_\_  
Notary Public:

My commission expires: