Date November 12, 2014

Todd Cestari, Chairman Hopkinton Board of Selectmen

Town Hall 75 Main Street Hopkinton, Mass 01748

Re: 203 Pond Street, Notice of Intent to Sell

Dear Todd,

In compliance with M.G.L. Chapter 61A, this letter shall serve as a Notice of Intent to Sell the property located at 203 Pond Street, Hopkinton, MA identified as Assessors Map 21, Lot 12 consisting of 40 acres.

We are the current owners of 203 Pond Street which is subject to M.G.L. Chapter 61A, Tax Lien recorded at Middlesex South District Registry of Deeds in Book 917, Page 40.

We have recently entered into a Purchase and Sale Agreement with Diamond Builders, Dmitry Deych President for a purchase price of \$2,000,000, a copy of which is attached hereto. The Buyer intends to develop the property for residential use, according to the recently approved subdivision plan.

Please inform us about the Town's decision to exercise its Option to Purchase as soon as possible. In the event the Town does not exercise its Option to Purchase, please provide me with your Notice of Nonexercise, regarding the property.

Thank you for your assistance.

Abl H Colle

John H Coolidge Anne H. Richards 203 Pond St.

Hopkinton, Ma 01748

LAND PURCHASE & SALE AGREEMENT

This 11th day of November, 2014.

1. PARTIES: Anne H. Richards and John H. Coolidge both of 203 Pond Street Hopkinton MA, 01748 hereinafter called the SELLER, agrees to SELL and

Diamond Builders, Inc., 5 Springdale Avenue, Canton Ma 02021, its successors or assigns hereinafter called the BUYER, agrees to BUY, upon the terms hereinafter set forth, the following described premises:

- 2. DESCRIPTION: The land, having an area of 40 acres more or less together with the improvements now located thereon known and numbered as 203 Pond Street, Hopkinton MA as described in a deed recorded on January 7, 1981 at the Middlesex County South District Registry of Deeds in Book 1917 Page 40 and as shown on the Exhibit A attached hereto, excluding the 32.43 acres of Open Space as shown on the Definitive Subdivision Plan entitled "203 Pond Street" revised through September 17, 2014 and approved by the Town of Hopkinton Planning Board on September 25, 2014, which Open Space shall be conveyed to the Sudbury Valley Trustees.
- 3. TITLE DEED: Said premises are to be conveyed by a good and sufficient quitclaim deed running to the BUYER, or to the nominee designated by the BUYER by written notice to the SELLER at least seven calendar days before the deed is to be delivered as herein provided, and said deed shall convey a good and clear record and marketable title thereto, free from encumbrances, except

Provisions of existing building and zoning laws;

b. Such taxes for the then current year as are not due and payable on the date of the delivery of

Any liens for municipal betterments assessed after the date of this agreement; C.

- Open Space and Land Preservation Development Special Permit issued by the Town of Hopkinton Planning Board dated March 18, 2013 and Definitive Subdivision Plan entitled "203 Pond Street" revised through September 17, 2014 and approved by the Town of Hopkinton Planning Board on September 25, 2014; and
- e. Easements, restrictions and reservations of record, if any, so long as the same do not prohibit or materially interfere with the current use of said premises for single family residential development purposes consistent with the Special Permit and Definitive Subdivision Plan referenced in clause (d) above.
- 4. PLANS: If said deed refers to a plan necessary to be recorded therewith the SELLER shall deliver such plan with the deed in form adequate for recording or registration.
- 5. REGISTERED TITLE: In addition to the foregoing, if the title to said premises is registered, said deed shall be in form sufficient for issuance of a Certificate of Title of said premises, and the SELLER shall deliver with said deed all instruments, if any, necessary to enable such Certificate of Title to be issued.
- 6. PURCHASE PRICE: The agreed purchase price for said premises is \$ 2,000,000.00 Two Million dollars, of which

25,000.00 have been paid as a deposit this day and

975,000.00 are to be paid at the time of delivery of the deed in cash, or by certified, cashier's, check(s).for which the BUYER shall obtain four (4) lot

releases from the SELLER

\$ 1,000,000.00 mortgage at a 6% interest rate to be taken back by the SELLER in a note

in a form substantially as attached subordinate to Buyer's construction financing (as further defined in Par 24) and to be paid back on final lot sales at a price of \$125,000 per lot for each of the remaining 8 lots plus

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accrued interest.

\$ 2,000,000.00 TOTAL

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- 7. TIME FOR PERFORMANCE: Such deed is to be delivered within 30 days from the earlier of (i) the expiration of the Town's rights to purchase the land under MGL Ch 61(A) or (ii) the Town's written decision to not purchase the land, but in no event later than May 1, 2015. It is agreed that time is of the essence of this agreement.
- 8. POSSESSION AND CONDITION OF PREMISES: Full possession of said premises free of all tenants and occupants, except as herein provided and subject to SELLER's license in Paragraph 39 hereof, is to be delivered at the time of the delivery of the deed, said premises to be then in compliance with the provisions of any instrument referred to in clause 3 hereof. The parties acknowledge that the Buyer intends to demolish the existing improvements on the Premises after the expiration of SELLER's license in Paragraph 39 hereof, which license shall expire 1 year from the date hereof. Accordingly, the Seller shall have the right to remove any and all fixtures, outbuildings and plantings as Seller may desire prior to the expiration of the license period.
- 9. EXTENSION TO PERFECT TITLE OR MAKE PREMISES CONFORM: If the SELLER shall be unable to give title or to make conveyance, or to deliver possession of the premises, all as herein stipulated, or if at the time of the delivery of the deed the premises do not conform with the provisions hereof, then the SELLER shall use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or to make the said premises conform to the provisions hereof, as the case may be, and thereupon the time for performance hereof shall be extended for a period of (30) thirty days.
- 10. FAILURE TO PERFECT TITLE OR MAKE PREMISES CONFORM: If at the expiration of the extended time the SELLER shall have failed to remove any defects in title, deliver possession, or make the premises 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.
- 11. BUYERS ELECTION TO ACCEPT TITLE: The BUYER shall have the election, at either the original or any extended time for performance, to accept such title as the SELLER can deliver to the said premises in their then condition and to pay therefore the purchase price without deduction, in which case the SELLER shall convey such title.
- 12. ACCEPTANCE OF DEED: The acceptance of a deed by the BUYER or the BUYER's nominee as the case may be, shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed, except such as are, by the terms hereof, to be performed after the delivery of said deed.
- 13. USE OF MONEY TO CLEAR TITLE: To enable the SELLER to make conveyance as herein provided the SELLER may, at the time of delivery of the deed, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, provided that all instruments so procured are recorded simultaneously with the delivery of said deed or in accordance with local conveyancing practices.
- 14. ADJUSTMENTS: Taxes for the then current fiscal year shall be apportioned as of the day of performance of this agreement and the net amount thereof shall be added to or deducted from, as the case may be, the purchase price payable by the BUYER at the time of delivery of the deed.
- 15. ADJUSTMENT OF UNASSESSED AND ABATED TAXES: If the amount of said taxes is not known at the time of the delivery of the deed, they shall be apportioned on the basis of the taxes assessed for the preceding fiscal year, with a reapportionment as soon as the new tax rate and valuation can be ascertained; and, if the taxes which are to be apportioned shall thereafter be reduced by abatement, the amount of such abatement, less the reasonable cost of obtaining the same, shall be apportioned between the parties, provided that neither party shall be obligated to institute or prosecute proceedings for an abatement unless herein otherwise agreed.

16.BROKER'S FEE: A Broker's fee for professional services as per separate agreement is due from the SELLER upon the delivery of the deed and recording thereof to Wluka Real Estate Corp. the Broker(s)

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- 17. BROKER(S) WARRANTY: The Broker(s) named herein, David Wluka warrant(s) that the Broker(s) is (are) duly licensed as such by the Commonwealth of Massachusetts.
- 18. DEPOSIT: All deposits made hereunder shall be held in escrow by Wluka Real Estate Corp. as Escrow Agent subject to the terms of this agreement and shall be duly accounted for at the time of performance of the agreement. In the event of any disagreement between the parties, the escrow agent shall retain all deposits made under this agreement pending instructions mutually given in writing by the SELLER and the BUYER or in the event of a dispute by a court of competent jurisdiction.
- 19. BUYERS DEFAULT DAMAGES: If the BUYER shall fail to fulfill the BUYER's agreements herein, all deposits made hereunder by the BUYER shall be retained by the SELLER as liquidated damages and this shall be the Seller's sole recourse at law and in equity. The Parties acknowledge and agree that SELLER has no adequate remedy in the event of BUYER's default under this Agreement because it is impossible to compute exactly the damages which would accrue to SELLER in such event. Therefore, the Parties have taken these facts into account in setting the amount of the deposit hereunder and hereby agree that: (i) the deposit hereunder is the best estimate of such damages which would accrue to SELLER in the event of BUYER's default hereunder; (ii) said deposit represents damages and not a penalty against BUYER, and (iii) the Parties have been afforded the opportunity to consult an attorney with regard to the provisions of this Paragraph.
- 20. <u>RELEASE BY HUSBAND OR WIFE:</u> The Seller's spouse hereby agrees to join in said deed and to release and convey all statutory and other rights and interests in said premises
- 21. BROKER AS PARTY: The Broker(s) named herein join(s) in this agreement and become(s) a party hereto, insofar as any provisions of this agreement expressly apply to the Broker(s), and to any amendments or modifications of such provisions to which the Broker(s) agree(s) in writing.
- **22. LIABILITY OF TRUSTEE, SHAREHOLDER, BENEFICIARY, ETC.:** If the SELLER or BUYER executes this agreement in a representative or fiduciary capacity, only the principal or the estate represented shall be bound, and neither the SELLER or BUYER so executing, nor any shareholder or beneficiary of any trust, shall be personally liable for any obligation, express or implied, hereunder.
- 23. WARRANTIES AND REPRESENTATIONS: The BUYER acknowledges that the BUYER has not been influenced to enter into this transaction nor has he relied upon any warranties or representations not set forth or incorporated in this agreement or previously made in writing, except for the following additional warranties and representations, if any, made by either the SELLER or the Broker(s): NONE
- 24. SELLER FINANCING. SELLER shall provide BUYER purchase financing in the amount of \$1,000,000, at 6% interest per annum, for a 4 year term, to be secured by a mortgage on the premises which mortgage shall be subordinate to Buyer's construction financing. Principal of \$125,000 per lot (plus accrued interest) shall be due and payable upon sale of each of the remaining 8 lots by BUYER. The balance of the note and all accrued interest shall be due and payable 4 years from the date of closing, regardless of number of lots sold. Buyer's construction financing shall be on commercially reasonable terms and shall not exceed \$2,000,000.00. SELLER agrees to execute commercially reasonable subordination agreements. This paragraph shall survive delivery of the Deed.
- 25. CONSTRUCTION OF AGREEMENT: This instrument, executed in multiple counterparts, is to be construed as a Massachusetts contract, is to take effect as a sealed instrument, sets forth the entire contract between the parties, is binding upon and inures to the benefit of the parties hereto and their respective heirs, devisees, executors, administrators successors and assigns, and may be cancelled, modified or amended only by a written instrument executed by both the SELLER and the BUYER. If two or more persons are named herein as BUYER their obligations hereunder shall be joint and several. The captions and marginal notes are used only as a matter of convenience and are not to be considered a part of this agreement or to be used in determining the intent of the parties to it.

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26.ADDITIONAL PROVISIONS: The initialed rider(s), if any, attached hereto, are incorporated herein by reference. See attached:

A. Exhibit A: Reference Plan of Property from Paragraph 2 herein.

B. Exhibit B: Form of Note and Mortgage referenced in Paragraph 24 herein

- C. Title Insurance: The BUYER's performance hereunder is conditioned upon title to the premises being insurable for the benefit of the BUYER on a standard American Land Title Association form insurance policy currently in use by title insurance companies licensed to do business in the Commonwealth of Massachusetts, at normal premium rates, subject only to those printed exclusions to title normally included in the "Jacket" to such forms and to the exceptions set forth in Paragraph 4 of this Agreement.
- **D. Notices:** All notices required or permitted to be given hereunder shall be in writing and delivered by registered or certified mail, return receipt requested, all charges prepaid, addressed to the BUYER or SELLER at their respective addresses designated in Paragraph 1 above and additionally,

in the case of the SELLER to:

John Coolidge Anne Richards 203 Pond Street Hopkinton MA 01748 Phone: 508-435-5412

Email: ahr2@att.net / jcoolidge@att.net

in the case of the BUYER, to:

Dmitry Deych
Diamond Builders, Inc.
5 Springdale Avenue
Canton MA 02021
Phone:508-384-0939

Email: dmitrydeych@diamondbuilderscorp.com

with a copy to Attorney:

Jennifer C. Platt, Esq. Lynch, Brewer, Hoffman & Fink, LLP 75 Federal Street, 7th floor Boston MA 02110 Phone: 617-951-0800

Email: jplatt@lynchbrewer.com

with a copy to Attorney:

Stephen M. Litwin, Esq. 1 Ship Street Providence, RI 02903 Phone: 401-273-5155

Email: attysml@aol.com

or, in the case of either party, 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 by fax, if so mailed, when deposited with the U.S. Postal Service.

27 SELLER'S DULY AUTHORIZED. The Sellers represent that they have the legal right, power and authority to enter into this Agreement and to perform all of the Seller's obligations hereunder and that the execution and delivery of this Agreement and the performance by the Sellers of the Seller's obligations hereunder;

- [a] have, if necessary, been duly authorized by all necessary parties; and
- [b] will not conflict with, or result in breach of, any of the terms, covenants and provisions of any law, regulation, order, judgment, writ, injunction or decree of any court or governmental authority or any agreement or instrument to which the Sellers are a party or by which the Sellers are bound.
- 28. SELLER'S FURTHER REPRESENTATION. The Sellers represent to their knowledge, without independent inquiry:
- [a] that there is no notice, suit, order, decree, claim, writ, injunction or judgment relating to violations of any laws, ordinances, codes, regulations or other similarly related requirements with respect to 358595_4.DOCX

the Premises (or any portion thereof) in, of or by any court or governmental authority having jurisdiction over the Premises.

- [b] that there are no suits, actions or proceedings pending or threatened against the Sellers before any court or administrative agency or office which would affect the Premises or the Seller's right or power to complete the transaction contemplated by this Agreement.
- [c] there are no pending bankruptcy, mortgage foreclosure, or other proceeding that could or would adversely impact the Premises or the Seller's ability to perform under this Agreement in any manner.
- [d] the Sellers have not received written notice of any condemnation proceeding pending or threatened against any portion of the Premises.
- [e] Other than those provided, the Sellers have not received written notice of any betterments approved or pending by the municipality where the Premises is located.
- [f] that there are no agreements or contracts affecting any of the Premises or any use of the Premises that would not be terminable at will by the Buyer without penalty from and after the date of delivery of the deed other than a certain Confidential Settlement Agreement dated August 2, 2013 with the owner of 199 Pond Street, Hopkinton, MA.
- 29. SELLER'S AFFIDAVIT. At the time of closing, the Sellers will execute all warranties, affidavits and documents that the Buyer's lender or attorney may reasonably require including but not limited to: the title insurance affidavit with respect to parties in possession and mechanic's liens; affidavit with respect to final payment of utilities, real estate taxes and mortgage payments; agreement with respect to execution of confirmatory instruments; and IRS Form 1099S and W9.
- 30. THIS AGREEMENT SUPERSEDES ALL OTHERS. This Agreement supersedes all prior agreements, if any, and other understandings between the parties hereto, and they shall not be bound by any terms, conditions, statements or representations, oral or written, not contained herein.
- 31. NONFOREIGN CERTIFICATION. At the Time of Closing, the Sellers shall execute an affidavit under the Deficit Reduction Act of 1984, 26 USCA Sec. 1445, certifying that the Seller is not a non-resident alien for purposes of United States income taxation.
- 32. SELLER DEFAULT. If the Sellers shall either default or be unable to give title to the Premises in compliance with this Agreement, or to make the conveyance as above stipulated, the Deposit shall be refunded to Buyer, such right to be without prejudice to the Buyer to require specific performance under this Agreement.
- 33. UNDERGROUND TANKS. The Sellers represent, to the best of their knowledge and belief that during the Seller's period of ownership no underground fuel storage tanks were installed on the Premises and further represent that Sellers have no knowledge regarding the existence of any underground fuel storage tanks on the Premises. This paragraph shall survive delivery of the deed.
- 34. SATURDAY, SUNDAY OR HOLIDAYS/EXTENSION. If the time period by which any right, option or election provided under this Agreement must be exercised, or by which any act required hereunder must be performed or by which the Closing must be held expires on a Saturday, Sunday, federal holiday or legal bank holiday in the state where the Premises are located, then such time period shall automatically be extended to 358595_4.DOCX

the close of business of the next business day.

- 35. MECHANIC'S AND MATERIALMEN'S LIENS. The Seller agrees to indemnify and hold the Buyer harmless from and against any loss, cost or expense, including reasonable attorney's fees, which the Buyer may incur by reason of mechanic's and materialmen's liens which may be filed against the Premises by virtue of nonpayment of contractors, subcontractors or suppliers, for work, materials and labor performed or claimed to be performed at the Premises prior to the Time of Closing at the direction of and authorized by the Seller. The provisions of this paragraph shall survive deliver of the deed.
- 36. AS-IS. Buyer represents and agrees that Buyer has been provided ample opportunity to conduct any and all inspections of the Premises desired by the Buyer, including, without limitation, zoning, mechanical, structural, utility systems, pest, termite, lead paint, asbestos, radon, mold and any hazardous chemicals, materials or substances and any and all appliances and personal property being conveyed with the Premises as provided in this Agreement, and that Buyer is fully satisfied with the results of same, the condition of the Premises, and accepts the Premises "AS IS", reasonable use and wear thereof excepted, and is not relying upon any representations of the Seller or Seller's agents regarding the Premises, including, without limitation, as to the character, quality, use, value, quantity or condition of the Premises, except as expressly set forth herein. Any statements which may have previously been made by the Seller, including without limitation in any "Seller's Disclosure Statement" or property listing information, if any, are, specifically hereby voided and are superseded by this Agreement. Buyer further acknowledges and agrees that this provision has been specifically negotiated between Seller and Buyer, that Buyer has been represented by counsel in said negotiation, and that Seller would not enter into this Agreement but for the inclusion of this acknowledgment and disclaimer herein. The provisions of this Paragraph shall survive the Closing and delivery of the Deed hereunder.
- 37. BROKERS. Each of Seller and Buyer warrants and represents to the other, that it has dealt with no broker or agent in connection with this transaction (or other person or entity who might claim a fee or commission in the nature of a broker's fee on account of this transaction), other than the broker(s) named in Paragraph 16 above, if any, their agents and employees, and agrees to defend, hold harmless and indemnify the other from and against any loss or damage, including reasonable attorney's fees and expenses, incurred as a result of such party's misrepresenting any of the above facts. The provisions of this Paragraph shall survive delivery of the deed.
- 38. APPLICABLE STANDARDS/REBA. Any matter or practice arising under or relating to this Agreement which is the subject of a title, ethical or practice standard of the Real Estate Bar Association shall be governed by such standard to the extent applicable, unless otherwise provided for herein.
- 39. LICENSE. Seller shall have the right to use the Premises, including the existing residential dwelling and outbuildings, after Closing for residential purposes, at Seller's sole risk, for one year from the date of this agreement ("license period"). Seller shall vacate the Premises on or before the end of the license period. During Seller's occupancy, Seller shall pay for insurance on the dwelling and real estate taxes for the Premises (at the rate currently assessed). Seller shall name Buyer as an additional insured on such insurance policy. The parties acknowledge that Buyer may commence construction on the Premises after Closing (other than the existing residential dwelling and outbuildings which shall not be disturbed during the license period). This paragraph shall survive delivery of the Deed.
- 40. MGL c61A. Buyer acknowledges that the Premises are subject to the provisions of Massachusetts General Laws Chapter 61A. The Seller agrees to initiate, within seven (7) days from the execution of this Agreement, action to secure the release of the Town of Hopkinton's right of first refusal with respect to the

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Premises. The Seller shall be responsible for any roll-back taxes due to the Town of Hopkinton in connection with the sale. The Buyer and Seller acknowledge and agree that in the event that the Town, or such other agency as is contemplated by the provisions of Chapter 61A, shall exercise its right to purchase the Premises, the Buyer's Deposit shall be immediately refunded and all other obligations of the parties hereto shall cease and this Agreement shall be void without recourse to the parties hereto.

- 41. HOPKINTON AFFORDABLE HOUSING TRUST FUND. Buyer agrees to contribute to the Town of Hopkinton Affordable Housing Trust Fund all amounts due for each lot developed on the Premises, which payment shall be due to the Town of Hopkinton Affordable Housing Trust Fund prior to the issuance of a certificate of occupancy for each dwelling unit. This paragraph shall survive delivery of the Deed.
- 42. NOTICE: This is a legal document that creates binding obligations. All parties are urged to consult an attorney.

SELLER: Anne H. Richards

LLER: John H. Coolidge

Diamond Builders Inc.

BUYER: Umitry Deych, President

EXHIBIT A

