

**FIRST AMENDMENT TO WAKEFIELD AMENDED AND RESTATED
SEWER AGREEMENT AND TO MWRA SUPPLEMENTAL SEWER AGREEMENT
FOR LYNNFIELD PROJECT**

This First Amendment to both the Wakefield Amended and Restated Sewer Agreement and to the MWRA Supplemental Sewer Agreement, as each is defined below, is made as of this _____ day of _____, 2017, among the **Massachusetts Water Resources Authority**, an independent Massachusetts authority established pursuant to Chapter 372 of the Acts of 1984 as amended (hereinafter referred to as “MWRA”), the **Town of Wakefield**, a municipal corporation within the County of Middlesex, Commonwealth of Massachusetts (hereinafter referred to as “Wakefield”), the **Town of Lynnfield**, a municipal corporation within the County of Essex, Commonwealth of Massachusetts (hereinafter referred to as “Lynnfield”), and **Market Street Retail South LLC**, a Delaware limited liability company, having an address c/o National Development, 2310 Washington Street, Newton Lower Falls, Massachusetts 02462 (hereinafter referred to as “MarketStreet”).

BACKGROUND TO THIS AMENDMENT

1. Reference is made to the Amended and Restated Sewer Agreement dated April 14, 2008 by and among the MWRA, Wakefield, Lynnfield and PHF-ND Colonial LLC (hereinafter referred to as “Colonial”), the predecessor in interest to Market Street (the “Wakefield Sewer Agreement”).
2. Reference is also made to the related Supplemental Sewer Agreement between the MWRA and Colonial also dated April 14, 2008 (the “MWRA Sewer Agreement”).

3. MarketStreet is the successor to PHF-ND Colonial LLC as the owner of the office/retail portion of the Lynnfield Project as defined in both the Wakefield Sewer Agreement and the MWRA Sewer Agreement.
4. As of the date of this First Amendment, (a) 370,645 square feet of the office/retail portion, (b) all 180 units of the residential portion, and (c) the LIFE portion of the Lynnfield Project have been constructed.
5. When the Wakefield Sewer Agreement and the MWRA Sewer Agreement were executed in 2008, the net increase in the average daily sanitary sewer flow from the Lynnfield Project into the Wakefield sewage system was anticipated to be 76,350 gallons per day as provided for in Section 2(b) and Exhibit B of the Wakefield Sewer Agreement and Section 3 of the MWRA Sewer Agreement.
6. As required by Section 2(c) of the Wakefield Sewer Agreement, except as provided in Section 2(b) thereof, any net increase in total average daily sanitary sewage flow of more than 76,350 gallons per day to the Wakefield sewage system from the Lynnfield Project requires that MarketStreet, as the successor to Colonial, negotiate and execute an amendment to the Wakefield Sewer Agreement with all other parties thereto.
7. The second phase of the office/retail portion of the Lynnfield Project is now substantially open. Wakefield recently calculated the updated sewer flow based on the actual mix of uses within Phases 1 and 2. The actual measured flow exceeds the projected amount and, therefore, requires an additional payment to Wakefield. In its letter dated February 7, 2017, Wakefield calculated the current average daily

sanitary sewage flow from the Lynnfield Project into the Wakefield sewer system as 97,643 gallons per day.

8. The purpose of this First Amendment is (a) to provide for the payment by MarketStreet to Wakefield for the additional sewage flow referenced in No. 7 above, retroactive to [DATE], and (b) to establish the procedure and methodology by which MarketStreet will make a one-time payment to Wakefield on account of the actual future additional sewage flows to be created by the current office/retail buildout of the Lynnfield Project as described herein authorized and approved by Lynnfield.

Now, Therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, for themselves and their respective successors and assigns, agree to amend both the Wakefield Sewer Agreement and the MWRA Sewer Agreement as follows:

1. In accordance with the provisions of Sections 2(b)-2(d) of the Wakefield Sewer Agreement and Section 3 of the MWRA Sewer Agreement:

(a) Within thirty (30) days following the execution hereof, MarketStreet shall make the following payments to Wakefield: (i) a payment in the amount of \$425,860 on account of the 21,293 additional gallons (said payment calculated as four (4) times the difference between 97,643 gallons per day and 76,350 gallons per day multiplied by \$5.00 per gallon), and (ii) a payment in the amount of \$100,000 to be used solely for purposes which will benefit the residents of Wakefield, as determined by Wakefield.

(b) Two hundred ten (210) days following the completion (as defined below) of the office/retail portion of the Lynnfield Project, MarketStreet shall make a further, one-time payment to Wakefield calculated in the same manner as (a) above based upon the difference in gallonage between (i) the present 97,643 gallons per day, and (ii) the average daily sewer flows from the Lynnfield Project calculated over the one hundred eighty (180) day period following said completion.

For purposes of determining the timing of said final payment, the completion of the office/retail portion of the Lynnfield Project shall occur when MarketStreet gives written notice to Wakefield that at least ninety percent (90%) of the full 475,000 square feet of authorized construction has been both completed and occupied.

2. Wakefield and MWRA each acknowledge that the payments by MarketStreet under Section 1 above shall satisfy all obligations to each of them under Section 2 of the Wakefield Sewer Agreement and under Section 3 of the MWRA Sewer Agreement, respectively, relating to the sanitary sewage flows from the entire Lynnfield Project.
3. MarketStreet acknowledges that it shall continue to be obligated to pay the sewer use charges set forth in Section 4 of the Wakefield Sewer Agreement and otherwise to fulfill all other obligations of Colonial set forth in the Wakefield Sewer Agreement and the MWRA Sewer Agreement.
4. MarketStreet hereby reaffirms and reiterates herein its obligations pursuant to conditions 2-6 of the Wakefield Zoning Board of Appeals decision titled Market Street South LLC and REDUS WAKEFIELD dated January 24, 2013 recorded in the Middlesex South District

Registry of Deeds in Book 61288 Page 593 (hereinafter "Wakefield ZBA Decision"). This reaffirmation and reiteration shall remain in full force and effect pursuant to this Agreement, separate and apart from any subsequent modification, determination, or termination relative to said conditions within the Wakefield ZBA Decision. A copy of said Wakefield ZBA Decision is attached hereto and incorporated herein by reference.

5. All notices required to be given to Colonial under Section 9 of the Wakefield Sewer Agreement and under Section 13 of the MWRA Sewer Agreement shall be given to Market Street and to and at the same addresses as set forth in said sections.
6. Each party hereto acknowledges that, except for the payments required from MarketStreet hereunder, no party has any claim against any other party on account of any violation or alleged violation of either the Wakefield Sewer Agreement or the MWRA Sewer Agreement as of the date hereof.
7. Except as amended hereby, each of the Wakefield Sewer Agreement and the MWRA Sewer Agreement remains in full force and effect and unmodified.

[signature pages to follow]

IN WITNESS WHEREOF, (a) the Massachusetts Water Resources Authority has caused its corporate seal to be hereto affixed and these presents to be executed in quadruplicate in its name and on its behalf by its Executive Director duly authorized by a majority of its Board; (b) the Town of Wakefield has caused its corporate seal to be hereto affixed and these presents to be executed in quadruplicate in its name and on its behalf by a majority of its Board of Selectmen acting as its Board of Public Works herewith duly authorized, (c) the Town of Lynnfield has caused its corporate seal to be hereto affixed and these presents to be executed in quadruplicate in its name and on its behalf by a majority of its Board of Selectmen, and (d) MarketStreet has caused these presents to be executed in quadruplicate by its duly Authorized Member and Signatory.

MASSACHUSETTS WATER RESOURCES
AUTHORITY

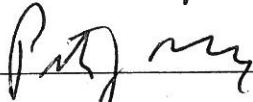
By: _____

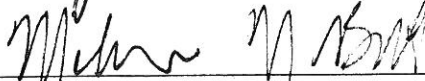
Its Executive Director, Hereunto duly authorized by
a majority of the MWRA Board

TOWN OF WAKEFIELD

By: _____

_____

_____

_____

_____

Hereunto duly authorized as a majority of the Board
of Selectmen acting as the Wakefield Board of
Public Works

TOWN OF LYNNFIELD

By: _____

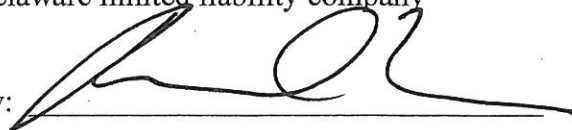
Hereunto duly authorized as a majority of the Board
of Selectmen

OWNER

MARKET STREET RETAIL SOUTH LLC, a

Delaware limited liability company

By:

A handwritten signature in black ink, appearing to read 'R. Tye', is written over a horizontal line.

Name: Theodore R. Tye

Title: Authorized Real Estate

Signatory and not individually

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Book 55109 PAGE 64TOWN CLERK
WAKEFIELD, MA

2013 JUN 24 AM 11: 02

Df-4



2013 00045456

Bk: 61288 Pg: 593 Doc: DECIS
Page: 1 of 4 02/27/2013 11:06 AM

DECISION of the Board of Appeals (hereinafter referred to as the "Board") on the Petition of **MARKET STREET SOUTH LLC and REDUS WAKEFIELD LLC**, (hereinafter collectively referred to as the "Petitioner") asking the Board to **GRANT a VARIANCE** from the requirements of Article XIII of the Wakefield Zoning Bylaw (hereinafter referred to as the "Bylaw") relating to signs. The Petitioner has property rights and/or is the owner of the subject property located at ☒ 1 Audubon Road, Wakefield, Massachusetts (hereinafter referred to as the "Property"). The Property is located in the Limited Business Zoning District and is the land shown as Lot 07A on Map 36W of the Assessors Map of the Town of Wakefield.

The Petitioner was seeking a variance from Article XIII of the Bylaw including, but not limited to, Section 190-77 allowing one free standing sign as depicted on the Site Plan and the Final Sign Plan to be constructed and to exist on the Property relating to uses on the Property and on the neighboring properties.

A public hearing on the variance application was held on November 14, 2012 and it was continued to the subsequent dates of December 12, 2012 and January 9, 2013. The Board closed the public hearing to further comment by the Petitioners and to the public on January 9, 2013 and held its deliberations on the question of whether to grant the variance. A vote by the five members of the Board who are sitting on this case, each of whom was present at every public meeting and public hearing portion of this application, was taken on January 9, 2013.

The site plan entitled "Wakefield Signage" prepared by Stantec Planning and Landscape Architecture P.C., dated January 9, 2013 (hereinafter the "Site Plan") was submitted to the Board and is incorporated herein by reference and is on file in the Board office.

The final sign elevation design plan consisting of three sheets all entitled "Revised Design" (hereinafter the "Final Sign Plan") was submitted to the Board and is incorporated herein by reference and is on file in the Board office.

Brian D. McGrail, Esq.

599 North Avenue
Suite 7 Second Floor
Wakefield, MA 01880

The Board found that the land, proposed buildings and uses on the Property and neighboring properties fits the criteria of unusual circumstances and substantial hardship justifying the granting of the variance pursuant to Section 190-80G of the Bylaw to allow the sign as depicted on the Site Plan and the Final Sign Plan to be constructed and to exist on the Property. The Board recognized the need for adequate signage at the Audubon Road intersection, where the sign is to be located, to provide motorists advance guidance to the locations of the entities depicted on the sign. A failure to provide adequate signage could result in confusion amongst motorists, in the intersection, searching for an access point to the location of the entities included on the sign. This confusion could promote unnecessary u-turns or stopping within the intersection and result in motor vehicle accidents. The Board reviewed various sign designs and determined that the Site Plan and Final Sign Plan illustrate a sign of appropriate scale and style.

In considering whether the desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Bylaw, the Board heavily considered the potential dangers in the intersection, as elaborated above, if an appropriate sized sign were not allowed to exist.

Based on the above, the Board voted 4 to 1 to GRANT a variance pursuant to Section 190-80G of the Bylaw from Article XIII of the Bylaw including, but not limited to, Section 190-77 allowing one free standing sign relating to uses on the Property and on the neighboring properties in accordance with and subject to the terms and conditions stated below.

1. The sign shall be as shown on Site Plan and Final Sign Plan. Any substantial changes to the sign (e.g., location, lettering, colors, materials, illumination) shall be approved by the Board. The Board in its discretion may allow changes to the approved sign as a minor modification without the need for a public hearing, or via formal amendment. Any minor modification in this regard shall require the same vote that would be required for the issuance of a new Variance as of the date the change is voted upon.
2. Any and all marketing materials (e.g., advertising of any nature, literature, and promotional materials, including but not limited to websites, signs, billboards, radio, television, print or state highway signs) relating to the Market Street development that provides directions shall refer patrons or employees exclusively to the Walnut Street-Lynnfield access/egress and not the Audubon Road-Wakefield access/egress.
3. Any and all marketing materials (as defined above) relating to the Market Street development that provide an exit number off of Route 95/128 shall refer to the current exit 43 and shall not mention the current exit 42. In the event the Route number and/or the exit numbers are changed in the future this condition shall be automatically modified to reflect the new route number and the new exit numbers. Thus, by way of example, in the event Route 95/128 becomes Route 15 and Exit 43 becomes exit 53 and exit 42 becomes exit 52 in the future, with no need of any action by the Board, the condition would be automatically modified to state: Any and all marketing materials (as defined above) relating to the Market Street development that provides

an exit number off of Route 15 shall refer to the current exit 53 and shall not mention the current exit 52."

4. The Petitioner shall use good faith efforts to have GPS or online direction services—such as Navteq, Google Maps, Bing and MapQuest—refer users seeking directions to the Market Street development utilizing Route 95/128 directed to the current exit 43 and not the current exit 42. As with condition number 3 above, in the event the Route number and/or the exit numbers are changed in the future this condition shall be automatically modified to reflect the new route number and the new exit numbers. When requested by the Board, the Petitioner shall provide documentation evidencing compliance with this condition.
5. Delivery hours for the development are between 6:00 am and 9:00 pm. Deliveries shall not be made using Audubon Road outside of such hours, regardless of whether the delivery hours of the underlying development are changed or enlarged in any fashion. If the allowed delivery hours are narrowed and/or reduced in any way in Lynnfield, then the allowed delivery hours in this condition number 5 shall be automatically narrowed and/or reduced to coincide with the reduction and/or narrowing of delivery hours in Lynnfield.
6. The Petitioner shall make tenants (which term shall be construed broadly to encompass any person or business attracting patrons) in the Market Street development subject to conditions 2 through 5 above. All such "tenants" shall be required to comply with the terms and conditions of any permits, variance, or other public relief granted to the Development, and compliance with the conditions set forth herein shall be incorporated into the rules and regulations of the development, which all tenants must follow. Petitioner shall also provide formal written notice annually to each tenant of conditions 2 through 5 above. When requested by the Board, the Petitioner shall provide documentation evidencing compliance with this condition.
7. It is expressly understood that this variance is appurtenant to the land and as such its benefits and burdens shall run with the land and be beneficial and binding on any subsequent purchaser, owner, or other party having an interest in such land or variance.
8. The existing freestanding Sheraton Hotel sign on Audubon Road shall be removed.
9. Other than as set forth above, at no time shall delivery or service vehicles be restricted from using Exit 43 or the Walnut Street access/egress to the Market Street development.
10. Other than as set forth above, at no time shall patrons, customers, residents, or visitors be restricted from using Exit 42 or the Audubon Road access/egress to the Market Street development.
11. The materials used to construct the sign shall be of the same quality as the materials used for the sign at the Walnut Street access/egress to the Market Street development. If natural stone is not used to construct the base of the sign a substitute material shall be presented to and approved by the Board.
12. The term "Market Street development" as used in this decision is intended to include all retail, office, residential, and/or other uses taking place in the Massachusetts General Laws Chapter 40R development known as "Market Street", which is situated in Lynnfield, Massachusetts neighboring the Property.

The Board certifies that this Decision has been filed with the Wakefield Town Clerk and Planning Board. Any person aggrieved by the Decision of the Board has the right to appeal to the Land Court or Superior Court within twenty (20) days from the date of filing of this Decision with the Town Clerk under Section 17 of the Massachusetts General Law, Chapter 40A.

Board members voting in favor:

Michael I. Pierce
Michael I. Pierce, Chairman

Charles L. Tarbell, Jr.
Charles L. Tarbell, Jr.

James H. McBain
James H. McBain

David W. Hatfield
David W. Hatfield

Board members voting in opposition:

Jennifer L. DiCarlo
Jennifer L. DiCarlo

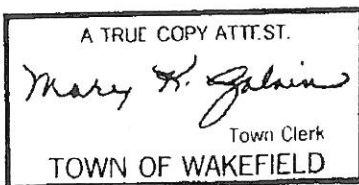
WAKEFIELD BOARD OF APPEALS
January 24, 2013

CERTIFICATION OF DECISION (Acts of '78 Chap 829, 2A)

I, Mary K. Galvin, Clerk of Wakefield, MA hereby Certify, that the decision from the Board of Appeals has been received and recorded at this office and no appeal was received during the twenty days next after such receipt and recording of said decision.

Date Feb 26, 2013

Mary K. Galvin
Town Clerk



Sup. Ct. McGowan Esq.
1000 N. Avenue
Boston, MA 02111
617-552-1100