

FIRST AMENDMENT TO ESCROW AGREEMENT

THIS FIRST AMENDMENT TO ESCROW AGREEMENT (this “Amendment”) is made and entered into as of the ____ day of _____, 2022 by and among the Town of Winchester, acting by and through its Board of Selectmen (the “Town”), Five Points Development, LLC (the “Developer”), Anderson & Kreiger LLP, as “Original Escrow Agent”, and Mead, Talerman & Costa, LLC, as “New Escrow Agent”.

BACKGROUND

WHEREAS, the Town, Developer, and Original Escrow Agent entered into that certain Escrow Agreement dated as of March ____ 2019 (the “Escrow Agreement”);

WHEREAS, pursuant to the terms and provisions of the Escrow Agreement and certain Development Agreement governing the sale of Property to the Town, at the closing on such sale, the Escrow Sum of \$5000.00 was held back from the Developer’s sales proceeds and deposited with the Original Escrow Agent;

WHEREAS, the Original Escrow Agent has held the Escrow Sum in a non-interest-bearing escrow account pursuant to the terms and provisions of the Escrow Agreement; and

WHEREAS, the Town and the Developer desire to amend the Escrow Agreement to assign, from Original Escrow Agent to New Escrow Agent, all of Original Escrow Agent’s rights, interests, and obligations as “Escrow Agent” under the Escrow Agreement, pursuant to the terms and provisions of this Amendment.

NOW THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Capitalized terms used but not defined in this Amendment shall have the meanings ascribed to them in the Escrow Agreement.
2. Original Escrow Agent hereby conveys, transfers and assigns to New Escrow Agent all of its rights, interests, and obligations as “Escrow Agent” under the Escrow Agreement, and New Escrow Agent accepts such assignment and agrees to be bound by all of the terms and conditions of the Escrow Agreement and the obligations and liabilities of Original Escrow Agent as “Escrow Agent” thereunder, whether arising before or after the date of this Amendment.
3. Simultaneously with the execution of this Amendment, New Escrow Agent shall provide Original Escrow Agent with wire instructions for the transfer of the Escrow Sum from Original Escrow Agent to New Escrow Agent. Within three (3) business days of the full execution and delivery of this Amendment and receipt of New Escrow Agent’s wire instructions, Original Escrow Agent shall transfer the Escrow Sum to New Escrow Agent pursuant to such wire instructions.

4. Original Escrow Agent shall indemnify, defend and hold New Escrow Agent harmless against all claims, suits, obligations, liabilities, damages, losses, costs, and expenses, including without limitation, reasonable attorneys' fees and disbursements, based upon, arising out of, or resulting from Original Escrow Agent's obligations under the Escrow Agreement occurring prior to the date of this Amendment. New Escrow Agent shall indemnify and hold Original Escrow Agent harmless against all claims, suits, obligations, liabilities, damages, losses, costs, and expenses, including, without limitation, reasonable attorneys' fees and disbursements, based upon, arising out of, or resulting from New Escrow Agent's obligations under the Escrow Agreement occurring on or after the date of this Amendment.

5. The Town and the Developer hereby consent to the assignment, from Original Escrow Agent to New Escrow Agent, of all of Original Escrow Agent's rights, interests, and obligations as "Escrow Agent" under the Escrow Agreement, pursuant to the terms and provisions of this Amendment.

6. The Agreement, as by this Amendment, constitutes full and final expression of the agreement between the parties and contains all terms of their agreement. This Amendment shall be interpreted, construed, applied and enforced in accordance with the laws of the Commonwealth of Massachusetts. If any provision of this Amendment shall be held or deemed to be, or shall in fact be, invalid, inoperative or unenforceable because of the conflict of such provision with any constitution or statute or rule or public policy or for any other reason, such circumstance shall not have the effect of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable, but this Amendment shall be reformed and construed as if such invalid, inoperative or unenforceable provision had never been contained herein and such provision reformed so that it would be valid, operative and enforceable to the maximum extent permitted. This Amendment is binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns. This Amendment may only be amended by a written instrument, clearly designated to be an amendment, signed by all parties. This Amendment may be executed in a number of identical counterparts, each of which for all purposes is deemed an original, and all of which constitute collectively one agreement. Signatures transmitted by email, facsimile, pdf, or electronic means shall be acceptable to give full force and effect to this Amendment as if such signatures were originals.

[Signature Page Follows]

EXECUTED under seal as of the date first written above.

FIVE POINTS DEVELOPMENT, LLC

By: _____

Name: Craig Miller

Title: Manager

TOWN OF WINCHESTER
By its Select Board

By: _____
Name:
Title:

ORIGINAL ESCROW AGENT:

ANDERSON & KREIGER LLP

By: _____

NEW ESCROW AGENT:

MEAD, TALERMAN & COSTA, LLC

By: _____