



Town Council Meeting  
January 6, 2022



A quorum being duly present, President Matthew Levesque called the January 6, 2022, Town Council meeting to order at 7:05 PM.

An announcement was made by President Levesque regarding the meeting being televised live and questioning if anyone was actively taping the session to please make their presence known. This session is recorded and broadcast on Channel 18.

**PRESENT:** (On Zoom) Nikolas Atsalis, David Bogan, Kristine Clark, Jennifer Cullum, Jessica Rapp Grasseti, Paul Hebert, Matthew Levesque, Jeffrey Mendes, Paul Neary, Paula Schnepf, Tracy Shaughnessy, Gordon Starr, Eric Steinhilber

The Pledge of Allegiance was led by Councilor Bogan, followed by a moment of silence for those that might be suffering from COVID.

**PUBLIC COMMENT:**

Betty Ludtke speaking to the 80 Pearl Street project that encompasses missing middle housing a beautiful location on South Street and it is on the sewer. Eight units of affordable housing for young families, please pass this unanimously.

Eric Schwaab supports the efforts to preserve Twin Brooks, would like to know the individual Councilors thoughts about Twin Brooks and particularly the Councilor from Precinct 3.  
Close Public Comment

**Response to Public Comment:**

(Hebert) My position is very clear, I can always be reached through the Council office, would love to see it remain as open space, and a preserve. The fact is that it is private property, it is currently going before the Cape Cod Commission, and we are going by the book and following the law. (Shaughnessy) To Ms. Ludtke we hope that the residents will maintain the property well, acutely aware that housing is a priority, we need the kind of housing where people want to live. Twin Brooks we have no power over it right now, we have to wait for the Commission to make a decision, this is privately held property, we have no power over that

**Town Manager's Report: (Exhibit A)**

- o Andy Clyburn, Assistant Town Manager provided updates on our efforts to manage COVID related issues and on the Rental Registration Program utilizing a Power Point presentation.

**Councilor questions and comments:**

(Cullum) How is Cape Cod Hospital managing as far as hospitalization (Clyburn) It is on the uptick, but not as bad as before, fewer in Intensive Care (Mendes) How many town employees have COVID and are currently out of work (Clyburn) Will check with Bill Cole, HR Director for

that information and get back to you. (Cullum) in regards to the Rental Registration if the ownership is in an LLC do we know who the owner is? (Clyburn) if it is in a trust or LLC we have not drilled down further, this is just a first look. (Cullum) As we learned everyone is afraid of the investors that would be a good data point to go down to owner's name. (Shaughnessy) How many per village would be a good data point (Hebert) Ownership data is important, and correlation between the information the Department of Revenue (DOR) is showing and the registrations with the town. DOR shows a thousand units, as opposed to our 612 to 689 units (Clyburn) the numbers we have are those that are being advertised at any one time, some fall off and some come on at the height of the season we saw 689. Perhaps 1,000 people registered at one point; there is no definitive way of finding that out. (Hebert) will the data show up for a season versus year round (Clyburn) we can show verified stays, which has to be documented by the people who did stay at a Short Term Rental (STR). (Clyburn) the presentation will be on the website tomorrow along with all the other information we have presented previously. (Hebert) can you capture the information of how many units are up for rental on a daily basis (Clyburn) we can work on that; (Clark) What are the consequences for those who have not been compliant (Clyburn) we are 96% today, but it has an ebb and flow, we have Commissioner Florence available for more information, and if they do not comply we can ticket them and eventually go to court. (Clark) If they are not compliant in 2021 and they want to register in 2022 what will happen (Florence) Priorities are people in violation, if they try to register next year, we will make sure they are ticketed, and we will watch for those that are not registering. We make phone calls to those that are not registered, if they continue to advertise, we then issue a ticket. (Shaughnessy) Curious about the loss of municipal tax revenue, are we assessing those that do not register, (Clyburn) that falls back on the DOR, and we would notify the DOR. (Shaughnessy) Is Craigslist one of the areas monitored (Clyburn) not sure if that is one of the 30 plus platforms monitored. (Carter) They do not monitor Craigslist or facebook. (Schnepf) STR's may be competing with entry level housing markets, maybe we could see some information of what kind of properties are in the STR market (Cullum) Annual Cost for this service; (Florence) 68 thousand dollars that we recoup with the registration fees (Hebert) Are the STR's part of why housing values may have gone up, so that the assessment of housing may go up (Atsalis) Increase in values is directly related to the low inventory and demand being high, interest rates are low. Less to do with the fact there are more STR's, the demand is outpacing the inventory.

#### **Town Manager Report continues:**

- Late communication from the School Superintendent she noted that on Monday, January 10<sup>th</sup> interviews with the top three candidates for Superintendent will take place at the Barnstable Adult Community Center (BACC)
- Ann Quirk, Town Clerk reports the draft proposal of precinct lines has been accepted by the Local Election Districts Review Commission (LEDRC).
- Proceeding with the Budget Action Calendar
- "Property Lookup" feature on the Town website now includes the FY22 assessed valuations.
- Staff has completed the draft Management Plan for Long Beach Conservation.
- Recreation Division is proud to share an overall customer satisfaction rating of 9.8 out of 10 for the 2021 programming year.
- Patti Machado is retiring on January 31, 2022 after decades of dedicated service to the Town of Barnstable.

#### **Councilor Questions and Comments:**

(Levesque) Urges everyone to watch the School Committee meetings and to watch the recordings and the update on the Superintendent interviews; (Cullum) Now is the time to tribute

Patti Machado after 45 years working for the town it is an amazing contribution she has made to this town and the impact on the kids. So compassionate and caring for the community, thank you Patti for your dedication (Atsalis) Patti has had an impact on my family; she was always there and always listened. There aren't enough words to describe her impact on this community, Patti see you around town. (Schnepp) Patti served all of our youth; she has a soft spot for all of the people who had unstable housing in our community. (Levesque) You will be able to find Patti at Kalmus Beach in the summer. She will continue to serve our community in big and small ways.

- Elizabeth Jenkins, Director of Planning and Development provided an update on the Local Comprehensive Plan (LCP), utilizing a Power Point presentation.

Town Attorney, Karen Nober, noted that the members of the committee will be subject to Conflict of Interest Law.

### **Councilor Questions and Comments:**

(Starr) This committee is a public outreach committee it is part of a larger process, this one committee will not make all the decisions (Bogan) About the public comments, I could not find them on the website (Jenkins) Public comments were shared with all the Councilors, but are not on the website. (Bogan) Please put them up on the website. Did the consultant have input on the 9 to 17 people (Jenkins) Yes we reviewed in depth with our lead consultant, her input was concern about the size and manageability of the committee, and she recommended adding representation from the Housing Committee; (Bogan) How did this happen, email, phone calls, meetings (Jenkins) through emails, a number of phone calls and through a meeting. (Bogan) reread the minutes of one particular Town Council meeting, how important the villages plans were to provide input in the LCP, now I see that we are going to solicit input from the villages, but my concern is that we are not endorsing as part of the process, this is not a decision made by this Council. (Levesque) the guidelines going before us for ratification, were put in place by the Cape Cod Commission to pursue their ratification of our plan. (Ells) He was asked if the Village Associations were to write sections of the LCP and give them to us. This is the Barnstable LCP they would be participants as well as the entire community. He is tasked under the act to create this LCP. They do not report to the Town Manager directly we provide staff support to bring forward a draft of an LCP committee. (Jenkins) The slate is blank in terms of how we proceed. (Levesque) the LCP committee is to go out to where people are including the Civic Associations (Jenkins) I believe the LCP will go to Civic Associations; to reach out to the community, to as many people as we can engage. (Levesque) let your Civic Associations know that their voices will be heard and that they are part of the process. When the application takes place, how many meetings and how long the process will take, do have that information now. (Jenkins) we do not have a clear plan at this time, but I would say it would take at least a year or two, that will come from the LCP structure (Cullum) Are we going to have Zoom as it has brought out a different set of voices, and make it as flexible as possible, I hope we will be able to offer that (Jenkins) That is a good strategy to be able to engage people, that would bring diversity of outreach technique, we could do many options for community engagement. (Hebert) Two big concerns, on the issue of Perfluorooctanesulfonic acid (PFOS), three wells have some level of PFOS contamination; asks what we can do as a community to get PFOS out of our water. (Ells) Nationwide this is an issue; we are vulnerable because of where our drinking water comes from. We are living on our water supply, we can try to educate, try to prevent, everyone probably has a Teflon pan or Scotchgard in their cabinets, and those have PFOS. PFOS is a forever chemical. Education is critical; this is everywhere, present in the products we use every day, lot of discussion of it in our sludge. Not clearly regulated yet, we can do some preventative programs, educate our community. As we look at our water resources, doesn't end with our

drinking water, it is in our embayment, our ponds, our streams. Starts with us, where does this stuff come from, check it out on our website. (Hebert) Hope this becomes part of our Local Comprehensive Plan; 2nd item, recently on Main Street a homeless person set up a shelter, some people are panhandling, will work for food, where do we go from here; I call on your leadership, much bigger than me, now it is cold and we have people sleeping outside again. (Cullum) Update at the next meeting on the Opioids lawsuit regarding the formula of how the money was to be divided up; and an idea of where we would be spending that money (Ells) to my knowledge we have not received official notice of any portion of that settlement. We expect to hear at some point, whatever we receive will probably come with conditions; we will come up with a plan. (Nober) The town has opted in to the settlement; our outside counsel is working with the state, still under discussion through the Attorney General's Office (AG's). (Cullum) Suggest we have a workshop with the shelter, how they are helping people (Rapp Grassetti) it is a paltry amount that Barnstable will receive with regards to the opioids settlement.

**ACT ON MINUTES:**

Upon a motion duly made and seconded it was to accept the minutes of December 16, 2021 as presented.

**VOTE: PASSES 13 YES**

**Roll Call: Atsalis, Bogan, Clark, Cullum, Rapp Grassetti, Hebert, Mendes, Levesque, Neary, Schnepf, Shaughnessy, Starr, Steinhilber.**

**COMMUNICATIONS- from elected officials, boards, committees, and staff commission reports, correspondence and announcements:**

(Clark) Kudo's to Centerville Osterville Marstons Mills Fire Chief Michael Winn for leading a search in Massachusetts, to locate a surplus fire truck (found in Rochester), and sent it to a city in Kentucky,

Short Break at 8:56 PM

<b>2022-059 ORDER TO APPROVE TERM OF CONTRACT FOR BARNSTABLE PUBLIC SCHOOLS FOOD SERVICE MANAGEMENT CONTRACT INTRO: 12/16/2021, 1/6/2022</b>
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Deputy Finance Director, Gareth Markwell gave the rationale for a five year contract

**Councilor Questions and Comments:**

(Clark) Did this company also provide the free meals during the pandemic (Markwell) Yes, through the Barnstable Public Schools (Starr) Is all the food that is served at the schools does that originate at the high school (Markwell) not entirely, we receive the larger shipments of food and have food delivered to individual sites (Starr) are hot meals cooked at each building (Markwell) Yes; (Starr) Are there any provisions for recycling food waste and packaging materials (Markwell) will double check on that for you, USDA has stringent guidelines which we follow for food waste and materials.

Upon a motion duly made and seconded it was

**ORDERED:** That the Town Council, under the provisions of M.G.L. c. 30B, § 12 (b), does hereby authorize the School Committee to enter into a one (1) year contract with up to four (4) one year extensions for the management of the Barnstable Public Schools Food Service program.

**VOTE: PASSES 13 YES**

**Roll Call: Atsalis, Bogan, Clark, Cullum, Rapp Grassetti, Hebert, Mendes, Levesque, Neary, Schnepf, Shaughnessy, Starr, Steinhilber**

**2022-063 AUTHORIZING THE TOWN MANAGER TO EXECUTE A REGULATORY AGREEMENT BETWEEN THE TOWN OF BARNSTABLE AND LYON INVESTMENT REALTY TRUST FOR 80 PEARL STREET, HYANNIS INTRO: 12/16/2021, 1/6/2022**

Open Public Hearing

Planning and Development Director Jenkins for the introductions and turned it over to Paul Revere on behalf of the applicants, the Lyon Investment Realty Trust.

No public comment at this time

**Councilor Questions and Comments:**

(Starr) This is a good project, how is the 50 foot buffer zone going to be delineated (Revere) It is just outside of the parking lot, borders are impenetrable a few feet beyond the parking lot, proposed emergency egress nothing else proposed within conservation restrictions. Nothing in a regulatory agreement waives conservation restrictions. (Starr) This project has to go through the Conservation Commission, has this been presented at a Conservation Commission meeting (Revere) no it has not (Starr) How do these people get mail, will it be outside or inside (Lyon) mailboxes will be attached to the side of the building (Starr) in terms of recycling, does this have a dumpster, how is the recycling going to be provided for the building (Revere) Either the rental registration or the town would have to make sure we are in compliance for recycling (Starr) So where would this fit in to the process (Jenkins) I would believe during the inspection process, I will get back to you. (Mendes) Went by the Winter Street Apartments, to see how they were maintained, they were in disarray, ripped screens, broken window casings, and refuse concerned about the upkeep of that property; (Lyons) One of the properties is not mine, (Mendes) How about the garbage and broken fence (Lyons) 164 is not my fence. (Cullum) Agree it looks nice on paper, am concerned about the upkeep of the properties you own. How are we (Lyons) have owned property for a lot of years, can I finish! (Levesque) Let Councilor Cullum finish her question. (Cullum) How can we be sure that the dumpsters will not be overflowing, and it will be properly managed? (Lyons) there will be a dumpster, because the town does not offer municipal trash pick-up, many people poach into our dumpsters, not there 24/7 we do the best we can do, eleven instances in all the years (Cullum) Making sure the dumpsters are emptied is not a huge ask. (Lyon) all the properties we own we make sure the dumpsters are emptied, we are fencing the dumpsters (Cullum) do you have another regulatory agreement with the town (Revere) Yes at 49 Elm Avenue (Cullum) is that property in compliance? (Revere) we corrected a few problems, the type of fencing and the bike rack wooden or metal and hydrangeas; these have all been resolved, lease agreements needed to be submitted to the legal department before occupancy permits would be given. As soon as it was discovered we went through the legal department. (Cullum) Director Jenkins is that your recollection of the compliance (Jenkins) we asked the Building Commissioner to make sure everything was compliant at 49 Elm Avenue, some of the site issues of landscaping, bike rack, fencing and trash being screened, the split rail fence still has not been completed (Cullum) How many people are living at 80 South Street right now. (Carter) Cannot answer that until I review this matter; (Cullum) My concern is that this little corner of Barnstable is cleaner and more attractive, when I see current housing on Winter Street and the issues, I don't think I can support this item. (Starr) a regulatory agreement is accepted by both parties, the process is clearly defined and we expect it to be done (Lyon) Once we have a regulatory agreement, then we are handed over to Brian Florence, Building Commissioner, who does an excellent job, without an agenda unlike a lot of the people here tonight; it is a step by step process, there has to be a fudge factor, we went back and forth for about three months with Commissioner Florence, he signed off, the building was 99% of what was needed. how this is going, Councilor Cullum just wants this to be

I am operating and giving people good, safe affordable housing. (Hebert) Commissioner Florence is back, could you let him speak; am taken aback by how this is proceeding Councilor Cullum just wants this to be as good as it can be; she is just doing her due diligence. I am going to support this item. (Cullum) the reason I sponsored this item, I find the other properties problematic, I wanted this to come up for discussion with all my colleagues, when you have precedence you have to answer for it; Mr. Florence, could you tell us how many families are living at 80 Pearl. (Florence) I do not have that information with me. (Revere) police reports at properties owned by the Lyons, there is a series concentrated at one single property, it sounds to me to be a domestic dispute. (Atsalis) Never met Mr. Lyon, the comment "seems like people have an agenda here" we have a job to do, we were elected to do this, gather as much information as possible to make an informed decision. Accusing people of having an agenda, that is way off base; let's take the defensiveness out of this. (Shaughnessy) number of questions, building currently has two ramps are both going to remain (Revere) Yes. (Shaughnessy) Is the first floor common area going to remain accessible (Lyon) Yes, and it has oversized doors. (Shaughnessy) From the plan it looks like 8 one bedroom units. (Lyon) This has seven one bedrooms, plus one studio. (Shaughnessy) The rubber playground area is going to be removed, how much actual outdoor yard space will these tenants have (Revere) some of the rubber playground area will remain, and the patio will remain in place (Shaughnessy) Item Number 14, sublease for 90 days; will you be allowing this (Lyon) have no interest in the sublease, I do not want subleases (Revere) did not even notice this until now (Jenkins) It seems to me it could be one that was copied from another regulatory agreement. (Shaughnessy) Charles and Winter Street property has improved in the last three years, with the housing crisis as it is, what I would love to ask of you, maybe a little more curb appeal, neighbors and tenants would appreciate it. You were quick to remedy the issues. I am going to support this project (Neary) Is this going to be basically an interior gut, (Lyon) 200 year old building, it is not going to be a complete gut, it is already basically cut up into rooms, the sprinkler will cost \$50,000. (Neary) Workforce housing what range of prices (Lyon) \$1,400 including all utilities, huge demand for units that include utilities. (Neary) What would the maximum number of tenants at full capacity (Lyon) 16 considering a couple for each room. (Neary) This is a suggestion, have you considered a property manager to help with this number of properties; if you properly vet, you can get a great number of people that would jump at this type of housing. I would support.

(Starr) Upon a motion duly made and seconded it was to amend Town Council item #2022-063 by deleting the second sentence of Paragraph 14 of the regulatory agreement, which reads as follows: "Sublease of rental units if permitted by the Developer, shall be for a minimum of 90 days."

**VOTE: TO AMEND PASSES 13 YES**

**Roll Call: Atsalis, Bogan, Clark, Cullum, Rapp Grassetti, Hebert, Mendes, Levesque, Neary, Schnepf, Shaughnessy, Starr, Steinhilber**

(Schnepf) Heard the concerns, regarding other properties, understand the struggle to manage properties; the Regulatory Agreement states the landscaping plan to be submitted to Director Jenkins, before issuance of occupancy permit, do you feel this is strong enough (Jenkins) Certain changes would be made for landscaping, a specification regarding the landscape materials, the Planning Department has worked with the Building Commissioner, we do have a sign off, very confident of the plan as specified (Schnepf) Understand the desire not to completely tear down this building, little concerned about the noise, when creating multiple units without additional insulation, (Florence) An architect has to do an existing building code analysis, which will trigger the building permit to bring the building up to code, if walls are opened they own it. (Schnepf) Conceptually it meets the current building code (Florence) Site Plan review looks at the site not the building code, the regulations such as drainage, things like

that (Schnepp) in the regulatory agreement, shows the process is in place to be good units and to be a good neighbor in Hyannis (Rapp Grassetto) Glad to see you are not tearing the building down, it would be nice to see some buffering and enhanced landscape setback to improve the streetscape, all of the units will be rental units, no manager on site. (Lyon) we live nearby, manage properties ourselves, visit the properties, do the troubleshooting, hands on manager. (Rapp Grassetto) with regard to the ADA you have just one handicapped spot, so the only waiver is the zoning from single family (Jenkins) that is the one that does not comply (Rapp Grassetto) I am familiar with Main Street, anything to encourage living in the area, walking distance of stores and the waterfront. The leases get reviewed; make sure all of this is done by the books. (Atsalis) We talk about Hyannis, the stigma that Hyannis sometimes has, poorly kept up; to be part of the solution not part of the problem, what we want to see, is to be proactive, not reactive. Correct an issue before it becomes noticed by the public; make it a beautiful place to be

Upon a motion duly made and seconded it was

**ORDERED:** That the Town Council hereby authorizes the Town Manager pursuant to Section 168-5, General Ordinances of the Code of the Town of Barnstable (the "Code"), to enter into and execute a Regulatory Agreement between the Town of Barnstable and Lyon Investment Realty Trust, for the property at 80 Pearl Street, Hyannis, 0.94± acres, shown on Town of Barnstable Assessor's Map 326 as Parcel 008, and whose boundaries are shown on Land Court Plan 25652-A ("the Property"); and further authorizing the renovation and reuse of the Property and granting the requested zoning relief pursuant to and as described in this Regulatory Agreement.

**REGULATORY AGREEMENT**  
**LYON INVESTMENT REALTY TRUST**  
**80 PEARL STREET, HYANNIS, MA 02601**

This Regulatory Agreement (the "Agreement") is entered into by Jennifer and Jeffrey Lyon, Trustees of the Lyon Investment Realty Trust u/d/t dated August 13, 2019, with an abstract of trust recorded as Document No. 1,382,713, and an address of Post Office Box 611, Hyannis, Massachusetts 02647 (the "Applicant" and the "Developer"), including successors and assigns, and the Town of Barnstable, a municipal corporation with a place of business at 367 Main Street, Hyannis, MA 02601 (the "Town") on this \_\_\_ day of \_\_\_\_\_, 2021 (the "Effective Date") pursuant to Section 240-24.1 of the Barnstable Zoning Ordinance and Section 168 of the Barnstable Code.

WHEREAS, this Agreement shall establish the permitted use and density with the development on the hereinafter identified Property, the duration of the Agreement, and any other terms or conditions mutually agreed upon between the Applicant and the Town;

WHEREAS, the Applicant is the legal owner of the real property located at 80 Pearl Street, Hyannis, Massachusetts which has an area of approximately 0.94 acres and is shown on Barnstable Assessor's Map 326, Page 008, the title to which is evidenced by Certificate of Title No. 222052 recorded with the Barnstable Registry District of the Land Court and whose boundaries are shown on Land Court Plan 25652-A ("Property");

WHEREAS, the Property is located in the SF Single Family Residential District §240.24.1.5;

WHEREAS, the Property is improved with a two-story building with 3,285 square feet on the first and second floor and 1,196 square feet of a walkout basement (the "Building");

WHEREAS, the Building was constructed circa 1820 and has been used for the last forty plus years as office, day care, and commercial kitchen space by Cape Cod Child Development as an exempt zoning use;

WHEREAS, the Applicant proposes to renovate the Building into eight apartments (one rear walkout, four first floor, and three second floor units) which would be studio and one bedroom units as set forth in proposed plans submitted with the application for this Regulatory Agreement;

WHEREAS, the Property has sufficient parking in a pre-existing parking lot on the Property which is being modified solely to improve handicap parking;

WHEREAS, to proceed with the project, the Applicant requires relief from Section 240-24.1.5.A to allow a multi-family dwelling in a single family residence district;

WHEREAS all properties which abut the Property are not currently being used for single residential use and the Property is buffered from impacting the nearest single family neighborhood by natural and manmade impediments;

WHEREAS, the Town is authorized to enter into this Agreement pursuant to Chapter 168 of the Barnstable Code;

WHEREAS, the Town and the Applicant desire to set forth their respective understandings and agreements regarding the reuse of the Property;

WHEREAS, the Applicant shall reuse the Property substantially in accordance with this Agreement;

WHEREAS, the proposed development of the Property will not require regulatory review under the Massachusetts Environmental Policy Act (MEPA);

WHEREAS, the Development is located in the Downtown Hyannis Growth Incentive Zone (GIZ) as originally approved by the Cape Cod Commission by decision dated April 6, 2006, and re-designated by decision dated April 19, 2018, as authorized by Barnstable County Ordinance 2005-13, as amended by Barnstable County Ordinance 10-19, 14-05, 17-11 and 18-02 Chapter G, Growth Incentive Zone Regulations of the Cape Cod Commission Regulations of General Application;

WHEREAS, the Development is not subject to review by the Cape Cod Commission as a Development of Regional Impact due to its location in the GIZ and due to the adoption of Barnstable County Ordinance 2006-06, as amended by Barnstable County Ordinance 10-19, 14-05, 17-11 and 18-02, establishing revised development thresholds within the GIZ, under which this development may proceed and Developer has submitted a Jurisdictional Determination to the Town of Barnstable Building Department to confirm the same;

WHEREAS, prior to applying for approval of this Agreement, the Development was reviewed by the Town of Barnstable Site Plan Review Committee and the Site Plan Review Committee voted to find the development proposal approvable subject to the grant of a Regulatory Agreement and other conditions on January 21, 2021 and Formal Site Plan Review on September 16, 2021;

WHEREAS, the Town acknowledges that this Regulatory Agreement will result in a material increase in the number of year-round residential units for lower to middle income residents;

WHEREAS, the Town acknowledged through the recently completed Housing Needs Assessment dated December 2014 that the Town of Barnstable's primary housing need is additional year-round rental housing and Hyannis is in need of additional rental housing stock;

WHEREAS, Applicant would require zoning relief to allow for multi-family residential development in the Single Family Residential District;

WHEREAS, the Applicant has obtained administrative approval from the Barnstable Historical Commission (BHC) Chair to replace the existing window on the rear elevation with a door providing access to the proposed deck;

WHEREAS, the project is consistent with the Downtown Hyannis Design & Infrastructure Plan in that it contributes to the plan's goals of creating livable neighborhoods for year-round residents; creates housing opportunities for persons and households of all income levels; is compatible with the historic and maritime character of the Downtown Hyannis as it shall preserve an existing historic structure;

WHEREAS, the Property is within walking distance to the Downtown Hyannis business district and Cape Cod Regional Transit Authority Hyannis Transportation Center, making the multi-family residential reuse of Property appropriate;

WHEREAS, the proposal has undergone a public hearing opened on August 23, 2021 and closed on November 8, 2021 on the Agreement application and received an affirmative majority vote from the Planning Board on November 8, 2021;

WHEREAS, the proposal has undergone a public hearing opened on \_\_\_\_\_ and closed on \_\_\_\_\_ on the Agreement application before the Town Council and received no less than a two-thirds vote approving the application on \_\_\_\_\_;

NOW THEREFORE, in consideration of the mutual agreements and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which each of the parties hereto acknowledged to each other, the Applicant and Town do enter into this Agreement, and hereby agree to covenant as follows:

1. The Applicant shall renovate and maintain the Building and Property at 80 Pearl Street and construct eight apartment units, in substantial compliance with the site plan entitled "Site Improvement Plan" 80 Pearl Street, Hyannis, MA prepared for "Jeffrey Lyon" dated October 8, 2021 as revised November 5, 2021, scale 1'=20', prepared and stamped by Tarja McGrail, P.E., Coastal Engineering Co., 260 Cranberry Hwy, Orleans, MA 02653; and the floor plans entitled "Initial Drawing Release As Built Plan Showing Proposed Building Floor Plan" 5 Pages, client Jeff Lyon, 80 Pearl Street, Hyannis, MA dated December 22, 2020, prepared by Glen A. Mitchell.
2. The Applicant shall not change the exterior of the Building in any substantial or material manner.
3. This Agreement shall vest land use development rights with the Applicant/Owner and/or its successors for the duration of this Agreement and such rights shall not be subject to

subsequent changes in local development ordinances, with the exception of changes necessary to protect the public health.

4. This Agreement authorizes only the uses and intensity of use and mitigation stipulation, if any, specified herein. Any minor amendment to the authorized terms of this Agreement may be made by the Town Manager pursuant to Section 168-5D; any substantial amendment to the authorized terms of this Agreement shall require review by the Town Council and Planning Board pursuant to Section 168-10 of the Town Code.
5. The Applicant is permitted to the use of one (1) residential unit in accordance with §240-24.1.5.A. In addition, this Agreement permits the construction of a total of seven additional units as shown on the Plan on file with the Barnstable Planning Board. All units shall remain rental units in perpetuity and shall not be converted into a condominium form of ownership.
6. Any future partial and/or to total demolition of the Building shall constitute a substantial change to the Property and require review by Town Council and Planning Board pursuant to Section 168-10 of the Town Code, in addition to any partial and/or total demolition of the Building shall require review and approval from the Barnstable Historical Commission (BHC) in accordance with Article I, Chapter 112, Sections 1-7.
7. The Applicant shall be responsible for obtaining all necessary building permits and all necessary approvals from the Town of Barnstable Public Works Water Supply Division as necessary and their use and construction of the Building shall be in compliance with all Building, Fire and Health Codes.
8. Prior to the issuance of any building permit, the Developer shall submit a Landscape Plan for the Property that is consistent with Downtown Hyannis Design & Infrastructure Plan. All landscaping within the development shall be low water use and shall minimize the use of fertilizers and pesticides. The Landscape Plan shall be approved by the Director of Planning & Development, or their designee, prior to issuance of any building permit. The implementation and completion of the Landscape Plan shall be reviewed and approved by the Director of Planning and Development, or their designee, prior to occupancy permit.
9. Lighting for the Development shall be contained on-site, shall be down cast, and shall not contribute to light pollution of the area.
10. The existing detached structure on the property shall be used exclusively for storage accessory to the multi-family use and shall not be used as living area.
11. Developer shall be responsible for snow plowing and snow removal on the Development site in perpetuity.
12. Developer shall be responsible for providing trash removal on the Development site in perpetuity as is required by Section 54-5(2) of the Code of the Town of Barnstable.
13. All plumbing fixtures in the new units and any replacement plumbing fixtures in the existing units shall be low water use fixtures and other water conservation measures are encouraged in the design and development of the project.

14. Developer's minimum lease term of rental units shall be twelve (12) months. The lease documents shall be reviewed by the Town Attorney for consistency with the conditions of this Agreement prior to issuance of the first Certificate of Occupancy.
15. Subsequent to the issuance of a Certificate of Occupancy for the units, each apartment shall be registered with the Health Division's Rental Registration Program.
16. The Project shall be completed in compliance with all requirements and conditions of the Site Plan Review approval issued on January 21, 2021 and Formal Site Plan Review on September 16, 2021; the conditions of that approval are attached and shall be incorporated herein.
17. All development rights granted under the Agreement shall run with the land and all of the terms, conditions, and obligations contained in this Agreement shall be binding on any successor or assignor of the Applicant. However, the Applicant agrees that 30 days prior to any change of ownership of the Property that written notice shall be sent to the Planning Board, Town Council, and the Town Manager and further agrees that all terms and conditions of this Regulatory Agreement and amendments thereto, shall be binding on successive owners of the Property.
18. All terms, conditions, and obligations contained in this Regulatory Agreement shall be binding on any successor or assignee of the Applicant.
19. The Town hereby grants the following waiver from the Town of Barnstable Zoning Ordinance for the Redevelopment, as requested by the Developer:
  - A. Section 240-24.1.5.A Principal permitted uses to allow multi-family development comprised of eight units in a single family residence district.
20. The Redevelopment provides, without limitation, the following site design, traffic safety, and community benefits:

An enhanced landscape setback along Pearl Street to improve the neighborhood streetscape and to provide a buffer between the redevelopment and the adjacent property to the south.
21. The term of this Agreement shall be five (5) years from the effective date of the Agreement (hereafter, the "Term"), and the development rights authorized herein must be exercised prior to expiration of the Term of this Agreement or it shall be null and void. Once the development rights authorized herein have been timely exercised, all terms and conditions of this Agreement shall remain in effect until the Property is no longer used in accordance with the Redevelopment Plans in a manner that requires additional zoning relief.
22. The development allowed in this permit shall be considered full build-out of the property. The structures authorized shall not be expanded nor other buildings and structures added without compliance with §168-10 of the Barnstable Code.

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be executed on the date first above written.

Town of Barnstable,  
By,

Lyon Investment Realty Trust,  
By,

\_\_\_\_\_  
Mark S. Ells, Town Manager

\_\_\_\_\_  
Jennifer Lyon, Trustee

\_\_\_\_\_  
Jeffrey Lyon, Trustee

#### Certificate of Trustee

We, Jennifer Lyon and Jeffrey Lyon, Trustees of the Lyon Investment Realty Trust, u u/d/t dated August 13, 2019, with an abstract of trust recorded as Document No. 1,382,713, and an address of Post Office Box 611, Hyannis, Massachusetts 02601, hereby certify as follows:

1. We are presently the Trustees of said Trust;
2. That said Trust has not been altered, revoked, or terminated since its inception of August 13, 2019;
3. That pursuant to said Trust, upon the specific direction of the Beneficiaries of the Trust, the Trustee(s) have the power and authority to purchase and sell real estate, to construct or alter buildings, to borrow money, to grant the Trust estate as security for such borrowing and to execute and deliver all notes, mortgages, discharges, and assignments to implement the purposes of the Trust including the power and authority to enter into a regulatory agreement; with the Town of Barnstable
4. That all of the Beneficiaries of the Trust have authorized and directed the Trustee(s) to enter into a regulatory agreement with the Town of Barnstable.
5. That pursuant to the terms of the Trust every agreement or action authorization to be taken by the Trustee(s) may be taken by the Trustee(s) of record;
6. That the undersigned Trustee has been authorized and empowered to execute such documentation as they deem necessary in order to effectuate the above-described documentation as they deem necessary in order to effectuate the above described conveyance as the Trustee(s) so determines; and
7. That all of the beneficiaries of the Trust are the age of majority and are not under any disability.

WITNESS my hand and seal this \_\_\_\_ day of November 2021.

Lyon Investment Realty Trust,  
By,

\_\_\_\_\_  
Jennifer Lyon  
Trustee

\_\_\_\_\_  
Jeffrey Lyon  
Trustee

#### **EXHIBIT A: REDEVELOPMENT PLANS**

**VOTE: PASSES 12 YES AS AMENDED, 1 NO (Cullum)**

**Roll Call: Atsalis, Bogan, Clark, Rapp Grassetti, Hebert, Mendes, Levesque, Neary, Schnepf, Shaughnessy, Starr, Steinhilber**

**2022-066 APPROPRIATION ORDER IN THE AMOUNT OF \$214,240 FOR THE HYANNIS YOUTH AND COMMUNITY CENTER ENTERPRISE FUND FISCAL YEAR 2022 OPERATING EXPENSE BUDGET INTRO: 1/6/2022**

Finance Director, Mark Milne gave the rationale

Upon a motion duly made and seconded it was

**ORDERED:** That the amount of **\$214,240** be appropriated for the purpose of funding the Hyannis Youth and Community Center's Fiscal Year 2022 Operating Expense Budget and that to fund the appropriation, that \$214,240 be provided from the Hyannis Youth and Community Center Enterprise Fund Surplus.

**VOTE: TO A PUBLIC HEARING ON 1/20/2022-PASSES 13 YES**

**Roll Call: Atsalis, Bogan, Clark, Cullum, Rapp Grassetti, Hebert, Mendes, Levesque, Neary, Schnepf, Shaughnessy, Starr, Steinhilber**

**2022-067 AUTHORIZATION TO EXPEND A GIFT IN THE AMOUNT OF \$2,500 FROM THE CORSON FAMILY TO SUPPORT THE BARNSTABLE RECREATION DIVISION'S FRIDAY NIGHT SOCIAL PROGRAM INTRO: 1/6/2022**

Communications Director, Lynne Poyant gave the rationale

Upon a motion duly made and seconded it was

**RESOLVED:** That the Barnstable Town Council does hereby authorize the Town Manager to expend a gift in the amount of **\$2,500** from the Corson Family to support the Barnstable Recreation Division's Friday Night Social Program.

**VOTE: PASSES 13 YES**

**Roll Call: Atsalis, Bogan, Clark, Cullum, Rapp Grassetti, Hebert, Mendes, Levesque, Neary, Schnepf, Shaughnessy, Starr, Steinhilber**

**2022-068 RESOLVE DESIGNATING THE ASSISTANT TOWN MANAGER TO SERVE AS THE APPOINTING AUTHORITY FOR PURPOSES OF G.L. CHAPTER 31, THE STATE CIVIL SERVICE LAW, IN MATTERS IN WHICH THE TOWN MANAGER HAS RECUSED HIMSELF OR IS OTHERWISE UNABLE TO PERFORM THE DUTIES OF THE APPOINTING AUTHORITY DUE TO A CONFLICT OF INTEREST INTRO: 1/6/2022**

Town Attorney, Karen Nober gave the rationale

Upon a motion duly made and seconded it was

**RESOLVED:** That the Town Council does hereby designate the Assistant Town Manager to serve as the appointing authority for purposes of G.L. c. 31, the state civil service law, in matters in which the Town Manager has recused himself or is otherwise unable to perform the duties of the appointing authority due to an actual or apparent conflict of interest.

**VOTE: PASSES 13 YES**

**Roll Call: Atsalis, Bogan, Clark, Cullum, Rapp Grassetti, Hebert, Mendes, Levesque, Neary, Schnepf, Shaughnessy, Starr, Steinhilber**

**2022-069 AUTHORIZING THE TOWN MANAGER TO EXECUTE A MAJOR AMENDMENT TO THE ORIGINAL REGULATORY AGREEMENT 2019-03 BETWEEN THE TOWN OF BARNSTABLE AND AIRVIEW, LLC FOR THE PROPERTIES LOCATED AT 451 AND 467 IYANNOUGH ROAD, HYANNIS INTRO: 1/6/2022**

Upon a motion duly made and seconded it was

**ORDERED:** That the Town Council hereby authorizes the Town Manager pursuant to Sections

168-5 and 168-10 of Chapter 168 of the General Ordinances of the Code of the Town of Barnstable (the "Code") to amend the original Regulatory Agreement 2019-03 between the Town of Barnstable and Airview, LLC for the properties located at 451 and 467 Iyannough Road/Route 28, Hyannis, Massachusetts, shown on Town of Barnstable Assessor's Map 311 as Parcels 027, 081 and 082, respectively, and which are more particularly described in the deed recorded with the Barnstable County Registry of Deeds in Book 28116, Page 008 (collectively, the "Property"), consisting of approximately 2.108 acres of land, and further authorizing a drive-through with supplemental site improvements and granting the requested zoning relief pursuant to and as described in this First Major Amendment to Regulatory Agreement.

### **FIRST MAJOR AMENDMENT TO REGULATORY AGREEMENT**

AIRVIEW, LLC

451 AND 467 IYANNOUGH ROAD, HYANNIS, MA 02601

This Regulatory Agreement Amendment ("Amended Agreement" or "Amended RA") is entered into by and between the applicant, **Airview, LLC** (the "Applicant" and/or "Developer"), a Massachusetts limited liability company with a mailing address of 297 North Street, Hyannis, MA 02601, and the **Town of Barnstable** (the "Town"), a municipal corporation with a mailing address of 367 Main Street, Hyannis, MA 02601, on this \_\_\_\_ day of \_\_\_\_\_, 2021, pursuant to Section 240-24.1 of the Barnstable Zoning Ordinance and Chapter 168 of the Code of the Town of Barnstable.

WITNESS:

WHEREAS, the Applicant and the Town entered into a Regulatory Agreement dated July 15, 2020 ("RA 2019-03"), which is recorded in the Barnstable County Registry of Deed in Book 33111, Page 187;

WHEREAS, the Applicant has constructed Building A, a one-story retail pharmacy building with a drive through lane and a gross floor area of approximately 10,000 square feet, and Building B an approximately 6,000 square foot building together with numerous site improvements, including a significant reduction in curb-cuts, increased landscaping, new parking, pedestrian and site amenities, and new storm-water drainage;

WHEREAS, The Applicant applied for an amendment to RA 2019-03 to allow for a drive through window, additional signage, and minor revisions to the site plan to accommodate a drive through for a 2,500 square foot food service establishment/coffee shop located in Building B as shown on the Amended Redevelopment Plans are hereafter referred to herein, collectively, as the "Amended Redevelopment", all as shown on the plans submitted and attached hereto as **Exhibit A** (hereafter, the "Amended Redevelopment Plans");

WHEREAS, pursuant to sections 168-3 and 168-10 of the Code of the Town of Barnstable, the Town of Barnstable is authorized to amend RA 2019-03 with the Applicant;

WHEREAS, the Applicant continues to own the properties known as and numbered 451 and 467 Iyannough Road, Hyannis, which are shown on Barnstable Assessor's Map 311, as Parcels 027, 081 and 082 respectively, and which are more particularly described in the deed recorded with the Barnstable County Registry of Deeds in Book 28116, Page 008 (hereafter, collectively, the "Property");

WHEREAS, the Applicant commenced development of the Property consistent with the

approvals under RA 2019-03 by constructing Buildings A and B, with Building A already occupied by a Walgreens Drug Store;

WHEREAS, this Amended Agreement shall establish additional permitted uses, densities, signage, traffic, and the drive through, within the approved Redevelopment (as defined within the original RA 2019-03), the duration of this Amended Agreement, and any other terms and conditions mutually agreed upon between the Applicant and the Town;

WHEREAS, the scale, placement, materials, design, and details of the buildings comply with the Design and Infrastructure Plan guidelines; and the Project and its supported mitigation provide the infrastructure necessary to support the project;

WHEREAS, the Town and Applicant desire to amend RA 2019-03 and this Amended Agreement reflects their respective understandings and agreements with regard to the Amended Redevelopment;

WHEREAS, the Applicant commits to use of the Property in accordance with this Amended Agreement and desires to have a reasonable amount of flexibility to carry out the amended use and therefore considers this Amended Agreement to be in its best interests;

WHEREAS, the Amended Agreement will not require regulatory review under the Massachusetts Environmental Policy Act (MEPA);

WHEREAS, the Amended Agreement is not subject to review by the Cape Cod Commission as a Development of Regional Impact due to its location in the GIZ and due to the adoption of Barnstable County Ordinance 2006-06 establishing a cumulative development threshold within the GIZ, under which this Redevelopment may proceed;

WHEREAS, the Amended Redevelopment proposal was reviewed by the Site Plan Review Committee (Building, Department of Public Works, Hyannis Fire District, etc.) pursuant to Article IX of the Zoning Ordinance. Per the Site Plan Review Letter dated February 8, 2021, the Committee determined that the proposal was approvable subject to obtaining Planning Board approval for the modification to the approved Regulatory Agreement, with recommendations for sufficient stacking and a focus on site improvements to ensure that pedestrian and vehicle circulation would be sufficient and safe provided the added drive-through.

WHEREAS, pursuant to Section 168 of the Code of the Town of Barnstable, the Town of Barnstable may enter into Regulatory Agreements with qualified applicants in areas shown on the Regulatory Agreements District Map. The subject property is located within the area delineated for regulatory agreements. Regulatory agreements may be amended pursuant to §168-5(D). This request qualifies as a substantial amendment, as additional zoning relief is necessary, and must be approved by the Planning Board and Town Council;

WHEREAS, the Applicant submitted a "Traffic Impact and Assess Study" dated May 27, 2021 performed by WorldTech Engineering ("WorldTech") and an additional Traffic Report in July 2021;

WHEREAS, after the initial hearing on the Application to amend RA 2019-03, the Planning Board requested a Peer Review of the traffic implications of the proposed amendments;

WHEREAS, the Planning Board hired Vanasse & Associates Inc. "Vanasse") to conduct the peer review ("Peer Review" at the Applicant's expense) and;

Vanasse submitted the Peer Review on October 5, 2021;

and WorldTech Engineering submitted a "Peer Review Memo Response" dated October 21, 2021;

WHEREAS, the final Traffic Impact and Assessment Study showed that anticipated traffic impacts are 97 new trips during the peak hour. This was deemed to create significant queuing leaving the Site as well as adding vehicular trips to an already congested regional roadway;

WHEREAS, the Applicant submitted a revised Site Plan dated November 22, 2021 from Baxter Nye Engineering & Surveying with additional signage and modifications to the parking lot layout;

WHEREAS, the Applicant submitted signage design and specifications and a rendering for the proposed drive through;

WHEREAS, the Amended Agreement application has undergone a public hearing opened on 08/23/2021 and closed on 11/22/2021 and received an affirmative majority vote from the Planning Board on 11/22/2021;

WHEREAS, the Amended Agreement has undergone a public hearing opened on XX/XX/XXXX and closed on XX/XX/XXXX before the Barnstable Town Council and received a \_\_\_\_\_ vote \_\_\_\_\_ the Agreement on \_\_\_\_\_, 2022;

NOW, THEREFORE, in consideration of the agreements and covenants set forth hereinafter, and for other good and valuable consideration, the receipt and sufficiency of which each of the parties hereby acknowledge to each other, the Applicant and Town do enter into this Amended Agreement, and hereby agree to covenant as follows:

NOW, THEREFORE, in consideration of the agreements and covenants set forth hereinafter, and for other good and valuable consideration, the receipt and sufficiency of which each of the parties hereby acknowledge to each other, the Applicant and Town do enter into this Amended Agreement, and hereby agree to covenant as follows:

1. All conditions defined within the original RA 2019-03 shall remain in full force and effect.
2. The Amended Redevelopment shall consist of:
  - Addition of a drive-through for a 2,500 square foot food service establishment/coffee shop located in Building B with a drive through lane and additional site improvements including wayfinding, drive through and traffic control signage, a clearance bar and a patio.
  - A reduction in provided parking from 80 to 78 paved parking spaces.
  - The island directly at the rear of the Building B was increased to accommodate the drive through menu boards.

- The southeast rear corner of the site was established as one-way circulation counter clockwise around Building B.
  - Within the southeast corner, parking was modified from ninety degree parking to angled parking to better accommodate one-way traffic and the reduced drive aisle width.
  - Modification to the median on Route 28, including addition of two flexible bollards, to be coordinated with MassDOT for approval in an effort to further limit the ability to take a left turn into the site.
  - Addition of a bike rack.
3. The Developer constructed the Redevelopment on the Property in accordance RA 2019-03.
  4. This Amended Agreement shall vest land use development rights in the Property for the duration of this Agreement, and such rights shall not be subject to subsequent changes in local development ordinances, with the exception of changes necessary to protect the public health, safety or welfare.
  5. Any substantial deviation from the authorized terms of this Amended Agreement shall require review by the Town Council and Planning Board pursuant to Chapter 168-10 of the Code.
  6. The Developer agrees to construct the Amended Redevelopment on the Property in accordance with the Amended Redevelopment Plans which are submitted herewith and which are entitled as follows:
    - a. "Layout and Dimension Plan", Sheet C3.0, revised November 22, 2021
    - b. "Landscape Planting Plan", Sheet L1, dated November 17, 2021
    - c. Building B Floor Plan and Elevation drawings as follows:
      - i. "FF & E Plan ", Sheet I101, dated November 22, 2021
      - ii. "Building Exterior Elevations", Sheet A201, dated September 3, 2021
      - iii. "Building Exterior Elevations", Sheet A202, dated September 3, 2021
    - d. Signage Plan "Starbucks Coffee #66563 467 Iyannough Road Hyannis, MA 02601", Sheets 1-11, dated November 19, 2021 and revised November 22, 2021
  7. This Agreement shall run with the land, and all of the terms, conditions, and obligations contained in this Agreement shall be binding on any successor or assignor of the Applicant.
  8. The remaining 3,500 square feet of space of Building "B" shall be occupied by office use or low impact retail use not to exceed the traffic impact established for office use (58 new total daily trips, 7 new AM peak hour trips and 9 PM peak hour trips) in accordance with the Traffic Impact and Access Study prepared by WorldTech Engineering dated July 2021. Office use shall not include medical or dental offices or clinics, unless approved by the Planning Board at a public hearing.

9. All new exterior lighting shall be "dark sky complaint" in order to retain all exterior lighting on the site.
10. All deliveries for both Building A and Building B shall be during non-peak hours. Deliveries shall be limited to the hours when the Starbucks is closed. Limited small deliveries may occur during the day via small vans, which can park in front of the store drop off and leave.
11. The northeastern driveway island shall be constructed substantial in conformance with the Layout and Dimension Plan updated November 22, 2021. The Massachusetts Department of Transportation shall review and approve the final design on the northeastern driveway island.
12. As a result of the traffic impacts to the surrounding roadways, the Applicant has agreed to provide \$100,000 towards the study and/or design of roadway and multi-modal improvements along the Route 132 and/or Route 28 corridor(s).
13. The Developer is responsible for obtaining all applicable permits and licenses.
14. No Certificate of Occupancy shall be issued until all conditions of this Amended Agreement have been met and Design and Infrastructure Plan approval has been issued.
15. Prior to the issuance of any building permits the Developer shall submit a bike rack detail.
16. This Amended Agreement is transferable to a person or entity other than the Applicant (hereafter, the "Transferee") with prior written notice to the Town Manager and contingent upon the Applicant being in compliance with all the requirements of this Agreement. However, no such notice to the Town shall be effective unless it includes a written acknowledgement by the Transferee that they have read this Regulatory Agreement, and any amendments thereto, and they agree to be bound by the terms and conditions set forth herein, in which event after such assignment the transferor shall be relieved of liability from and after the date of transfer. Upon receipt of such written notice of transfer, and subject to a determination by the Town Manager that that the Applicant is in compliance with all the then applicable requirements of the Agreement, the Transferee and the Town Manager shall execute a minor amendment of this Regulatory Agreement acknowledging the Transferee is a signatory of this Regulatory Agreement, agreeing to be bound by the terms and conditions set forth herein, and any subsequent amendments hereto, and assuming liability as of the date of transfer. No Planning Board or Town Council approval is required for such a minor amendment acknowledging such a transfer in ownership.
17. The Developer estimates that construction will commence within 30 days of the granting of the Building permits.
18. To the extent that the Amended Redevelopment Plans referenced in this Amended Agreement do not depict all the findings and conditions set forth in this Agreement, revised plans and/or notations shall be provided with the submission of final plans to the Building Commissioner. The amended Redevelopment shall remain in substantial conformance with the Site Plan Review approvals dated July 2, 2019 and February 8, 2021 and all conditions thereof and any modifications thereto including any conditions required should the Building Commissioner determine that modifications to the Site Plan Review approval are necessary as reflected in the

final approved site plan.

19. Upon completion of all work, a registered engineer or land surveyor shall submit a letter of certification and an as-built plan, made upon knowledge and belief in accordance with professional standards that all work has been done in substantial compliance with the approved site plan (Barnstable Code Section 240-104(G)). This document shall be submitted before the issuance of the final certificate of occupancy.
20. The Town hereby grants the following waivers from the Town of Barnstable Zoning Ordinance for the Redevelopment, as requested by the Developer:
  - a. Section 240-24.1.4.1.11(A) (3) Drive-through windows. Drive-through windows are prohibited within the Hyannis Village Zoning Districts; with the exception that banks allowed as a principal permitted use may construct and operate a drive-through window upon the issuance of a special permit.
    - i. The proposed amendment to the RA 2019-03 requests the ability to construct a second drive through window for a 2,500 square foot food service establishment/coffee shop within Building B.
  - b. Sections 240-24.1.11(A) (6); 240-67(A), (B), and (C), and 240-65 (A)-(I), Signage. Airview, LLC seeks to amend the original RA 2019-03 to update the request associated with the need for the previously approved signage waivers to incorporate signage proposed for the food service establishment/coffee shop and to modify the request associated with signage established for Building A.
    - ii. Section 240-67(B) limits the maximum square footage of all signs to the lesser of 50 square feet or 10% of the building face. Excluding directional drive thru signage, the total square footage of signage for Building A (pharmacy) is 177.54 square feet and the total square footage of signage for Building B (proposed retail space) is 150 square feet.
    - iii. Section 240-67(C) limits the maximum size of any freestanding sign to 10 square feet except that the Building Commissioner can grant up to 24 square feet. The project proposes two freestanding signs each totaling 30 square feet.
    - iv. Section 240-65(A) limits each business to a total of two signs. Building A (proposed pharmacy) proposes 6 signs (four building signs and one panel on each of the two freestanding pylon signs). Building B (retail space) proposes four signs (a panel on each of the freestanding pylon signs for each location) with additional signage to be determined.
    - v. Section 240-65(d) allows one freestanding sign per business, which may not exceed half of the allowable size as permitted. The project proposes two freestanding signs each of which exceeds the allowable size.
    - vi. Section 240-65 and 240-67 Signs in the HG District. Redevelopment proposes two free-standing signs – one along Route 28 and one along Barnstable Road. The Ordinance allows for only one free-standing sign

per business.

- vii. Section 240-78 Internal Illumination drive through menu signage will be internally illuminated.
- viii. Section 240-75 allows for directional or safety signs provided such signs do not exceed one square foot in area, nor be more than three feet high. No more than four such signs are allowed per site. Building B proposes the following directional/safety signs:

18" CHANNEL LETTERS ON BUILDING (A)	22.94 SQ. FT.
48" DT WALL SIGN (B)	6.96 SQ. FT.
CLEARANCE BAR (C)	2.29 SQ. FT.
46" ILLUMINATED DIRECTIONAL TYEO (D)	7.99 SQ. FT.
Sign cabinet only	2.6 SQ. FT.
PRE-MENU BOARD (G)	6.72 SQ. FT.
FREESTANDING 5-PANEL MENU (H)	22.9 SQ. FT.
DOS ON CANOPY (I)	9.62 SQ. FT.

- c. Section 240-24.1.8(B) (3), Special Permit for retail uses that increase the number of vehicle trips per day and/or increase peak hour vehicle trips.
  - ix. Proposed 2,500 square foot food service establishment/coffee shop will result in increase of vehicle trips.

- d. Section 240-24.1.8(C)(2)(a), Special Permit for new vehicular access/change in use that increases vehicle trips per day and/or peak hour roadway use for existing curb cuts on Route 28.
  - x. Proposed retail uses will result in increase of vehicle trips.

21. The failure of this agreement to address a particular permit, condition, term, or restrictions shall not relieve the qualified applicant of the necessity of complying with the law governing said permitting requirements, conditions, term or restriction;

22. Section 240-24.1.11(A) (4) (a) [1] and Section 240-56, Schedule of Parking Spaces.

- xi. Airview, LLC seeks to amend the original RA 2019-3 to update the request associated with the need for a reduction from the required parking. The Amended Redevelopment provides a total of 78 parking spaces. The proposed redevelopment, with the remaining 3,500 square of Building B being used as office, requires a total of 83 parking spaces. If the remaining 3,500 square feet of Building B is used for low impact retail, the required parking would be 89 parking spaces. In either scenario, the required parking exceeds the provided parking.

23. This amended Regulatory Agreement may not be used to prevent the Town of Barnstable or other governmental agency from requiring the qualified applicant to comply with the laws, rules and regulations and policies enacted after the date of the regulatory agreement, if the Town of Barnstable or governmental agency determines that the imposition of and compliance with the newly effective laws and regulations are essential to ensure the public health, safety or welfare of the residents of all or part of the jurisdiction.

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be executed on the day and year first above written.

Town of Barnstable,  
By,

\_\_\_\_\_  
Mark S. Ells  
Town Manager

Date \_\_\_\_\_

Airview LLC,  
By,

\_\_\_\_\_  
Stuart Bornstein

Date \_\_\_\_\_

PROPERTY DESCRIPTION

The land, together with the buildings thereon, situated in Barnstable (Hyannis), Barnstable County, Commonwealth of Massachusetts, consisting of two parcels, bounded and described as follows:

Parcel I

A certain parcel of land with the buildings thereon situated in Barnstable (Hyannis), Barnstable County, Commonwealth of Massachusetts, bounded and described as follows:

NORTHERLY by Hyannough Road - Route 28, a public way, as shown on a plan hereinafter mentioned, 175.90 feet;

EASTERLY by land now or formerly of Henry Murphy, et ali, as shown on said plan, 202.99 feet;

SOUTHERLY by land now or formerly of Allan F. Jones, as shown on said plan, by two courses, 96.24 feet and 49.34 feet, respectively; and

WESTERLY by Parcel II described below, as shown on said plan, 247.96 feet.

The above described parcel contains 34,450 square feet of land, more or less, according to said plan.

The above described premises are shown on a plan entitled "Plan of Land in Hyannis - Barnstable - Mass. for Armands Restaurant, Scale: 1 IN = 40 FT, Date: 3 July 1958, Charles N. Savery, Co., Engineers & Surveyors, Cotuit- Falmouth Mass., Plan No. 75839," which said plan is recorded with the Barnstable County Registry of Deeds in Plan Book 144, Page 85.

Property Address: 451 Iyannough Road - Route 28, Hyannis, Massachusetts.

#### Parcel II

A certain parcel of land with the buildings thereon situated in Barnstable (Hyannis), Barnstable County, Commonwealth of Massachusetts, bounded and described as follows:

NORTHERLY by Route 28, a public way, as shown on a plan hereinafter mentioned, 150.00 feet;

EASTERLY by other land of the Town of Barnstable Cobb Trust as shown on said plan, 248.47 feet, being Parcel I described above;

SOUTHERLY by land now or formerly of Allan F. Jones as shown on said plan, 231.98 feet;

WESTERLY by land now or formerly of N. W. Kalat and M. H. Segel, Trustees, as shown on said plan, 236.98 feet;

NORTHERLY by other land of the Town of Barnstable Cobb Trust as shown on said plan, 100.00 feet; and

WESTERLY by said Cobb Trust land as shown on said plan, 107.97 feet.

The above described parcel contains 1.34 acres of land, more or less, according to said plan.

The above described premises are shown on a plan entitled "Town of Barnstable Plan of a portion of a Cobb Lot in Hyannis (Barn's) Mass. to be conveyed to the Dennis F. Thomas Post No. 2578 Veterans Of Foreign Wars Building Association, Inc., Engineering Section D. P. W., Scale: 1 in. = 30 ft., Date: Aug. 18, 1982," and recorded with the Barnstable County Registry of Deeds in Plan Book 368, Page 97.

Property Address: 467 Iyannough Road – Route 28, Hyannis, Massachusetts 02601.

For title to Parcels and II see deed recorded in the Barnstable County Registry of Deeds in Book 28116, Page 008.

ASSENT TO REGULATORY AGREEMENT

The undersigned, Airview, LLC, a Massachusetts limited liability company, of 297 North Street, Hyannis, Massachusetts 02601, the owner of property in Hyannis, Barnstable County, Massachusetts, described in a Deed recorded in Book 28116, Page 008, does hereby consent to the recording of a Regulatory Agreement by and between Airview, LLC, a Massachusetts limited liability company and the Town of Barnstable dated \_\_\_\_\_, 2022. Airview, LLC further agrees to be bound by the terms and conditions contained in said Regulatory Agreement.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

Applicant:

Signature:

\_\_\_\_\_

Print: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A: REDEVELOPMENT PLANS**

**VOTE: TO A PUBLIC HEARING ON 2/3/2022-PASSES 13 YES**

**Roll Call: Atsalis, Bogan, Clark, Cullum, Rapp Grassetti, Hebert, Mendes, Levesque, Neary, Schnepf, Shaughnessy, Starr, Steinhilber**

<p><b>2022-070      RESOLVE DIRECTING THE TOWN MANAGER OR HIS DESIGNEE(S) TO IDENTIFY AND UNDERTAKE ANY STEPS NEEDED FOR THE TOWN TO CONTINUE TO MEET CRITERIA 2, 3 AND 4 OF THE GREEN COMMUNITY DESIGNATION AND GRANT PROGRAM INTRO: 1/6/2022</b></p>
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Per President Levesque, he and Vice President Schnepf felt that it was important that the town continues to do this work and that we communicate this to everyone.

Upon a motion duly made and seconded it was

**WHEREAS**, the Green Community Designation and Grant Program (the "Program") established pursuant to G.L. c. 25A, § 10, the Green Communities Act, sets forth five criteria which municipalities must meet in order to be designated as a Green Community;

**WHEREAS**, Criteria 2, 3 and 4 are within the purview and authority of the Town Manager;

**WHEREAS**, Criteria 2 requires the Town to adopt an expedited application and permitting of one year at most, under which facilities interested in locating their facility in a designated renewable zone may be sited within the Town, and such expedited permitting process was adopted by the Town in 2010;

**WHEREAS**, Criterion 3 requires the Town to establish an energy use baseline inventory for municipal buildings and facilities, street and traffic lighting and vehicles; and adopt an Energy

Reduction Plan demonstrating a reduction of twenty percent (20%) of energy use after five (5) years of implementation, and such energy use baseline was established in 2019, along with the preparation by staff of an Energy Reduction Plan to achieve the 20% reduction in five years; and

**WHEREAS**, Criterion 4 requires the Town to adopt a Fuel-Efficient Vehicle Policy requiring all municipal departments and divisions to purchase fuel-efficient vehicles; develop and maintain a vehicle inventory for all four-wheeled vehicles; and provide a plan for replacing non-exempt vehicles with vehicles that meet specified fuel efficiency ratings, and such Policy was adopted by the Town Manager in 2010;

**THEREFORE, BE IT RESOLVED:** That the Town Council does hereby direct the Town Manager or his designee(s) to review the steps that have been taken by the Town to meet Criteria 2, 3 and 4 of the Program, and identify and undertake actions and updates, if any, which are needed for the Town to meet or continue to meet those criteria, including, but not limited to, adoption by the Town Manager of the Energy Reduction Plan prepared by staff, monitoring the Town's efforts in complying with the 2010 Fuel-Efficient Vehicle Policy, and, if appropriate, re-issuing or reaffirming any relevant policy directives.

**VOTE: PASSES 13 YES**

**Roll Call: Atsalis, Bogan, Clark, Cullum, Rapp Grassetti, Hebert, Mendes, Levesque, Neary, Schnepf, Shaughnessy, Starr, Steinhilber**

<b>2022-071 APPROVAL OF THE APPOINTMENTS TO THE APPOINTMENTS COMMITTEE</b> <b>INTRO: 1/6/2022</b>
--

Town Attorney, Karen Nober gave the rationale

Upon a motion duly made and seconded it was

**RESOLVED:** That the Town Council does hereby approve the Town Council President's appointments of Councilors David Bogan, Jennifer Cullum, Jeffrey Mendes, Paul Neary and Tracy Shaughnessy as members of the standing Appointments Committee of the Town Council.

**VOTE: PASSES 13 YES**

**Roll Call: Atsalis, Bogan, Clark, Cullum, Rapp Grassetti, Hebert, Mendes, Levesque, Neary, Schnepf, Shaughnessy, Starr, Steinhilber**

**VOTE: ADJOURNMENT:**

Upon a motion duly made and seconded it was

**VOTED TO ADJOURN:**

**VOTE: PASSES 13 YES**

**Roll Call: Atsalis, Bogan, Clark, Cullum, Rapp Grassetti, Hebert, Mendes, Levesque, Neary, Schnepf, Shaughnessy, Starr, Steinhilber.**

**Adjourned at 11:08 PM**

Respectfully submitted,

Ann M. Quirk  
Town Clerk/Town of Barnstable

NEXT MEETING: January 20, 2022

Exhibits:

A Town Manager update