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RECEIVED  
TOWN MANAGER'S OFFICE

DEC 14 2020

December 10, 2020

AUBURN, MA 01501

**NOTICE OF INTENT TO SELL LAND**  
(Pursuant to Massachusetts General Laws Chapter 61)

TO:

✓ Board of Selectmen  
Town of Auburn  
104 Central Street  
Auburn, MA 01501

Board of Assessors  
Town of Auburn  
104 Central Street  
Auburn, MA 01501

Planning Board  
Town of Auburn  
104 Central Street  
Auburn, MA 01501

Conservation Commission  
Town of Auburn  
104 Central Street  
Auburn, MA 01501

Department of Conservation and Recreation  
Attn: Bureau of Forestry  
355 West Boylston Street  
Clinton, MA 01510

FROM:

T. Ashley Edwards, Attorney for James G. Cutting and Laurel A. Post  
(Record owners)  
Lane, Greene, Murtha & Edwards, LLP  
370 Main Street, Suite 350  
Worcester, MA 01608-1732

**Statement of Intent**

The above-named record owners intend to sell a parcel of land which they own in Auburn to 190 Washington Auburn, LLC, a Massachusetts limited liability company.

**Statement of Proposed Use**

The proposed use of the land is commercial.



Location and Acreage

The land which is the subject of this notice is located on 50 Washington Street, in the Town of Auburn, Worcester County, Massachusetts, (Assessor Parcel ID: 027\_014), containing 30.5 acres of land and being further described in deeds recorded with the Worcester District Registry of Deeds in Book Book 44037, Page 370 and 63687, Page 297. See description attached hereto as Exhibit A.

Names, Addresses and Telephone Numbers of the Land Owners

James G. Cutting  
30 Goddard Drive  
Auburn, MA 01501  
Tel: 508-735-1376

Laurel A. Post  
24 Maple Street  
Douglas, MA 01516  
Tel: 508-277-7493

Certified Copy of Executed Purchase and Sale Agreement

A certified copy of the executed Purchase and Sale Agreement between James G. Cutting and Laurel A. Post, Sellers, and 190 Washington Auburn, LLC, Buyer, which specifies the purchase price and all terms and conditions of the proposed sale is attached as Exhibit B.

Notice of the exercise or waiver of the option for first refusal as specified in Massachusetts General Laws Chapter 61, may be mailed by certified mail to James G. Cutting and Laurel A. Post c/o T. Ashley Edwards, Lane, Greene, Murtha & Edwards, LLP, 370 Main Street, Suite 350, Worcester, Massachusetts 01608.

Sincerely,



T. Ashley Edwards  
Attorney for James G. Cutting  
and Laurel A. Post

TAE/tvg  
Enc.

CERTIFIED MAIL/RETURN RECEIPT REQUESTED



EXHIBIT A

DESCRIPTION

The land in Auburn, Worcester County, Massachusetts, bounded and described as follows:

All right, title and interest in all of the land described in Worcester District Registry of Deeds Book 2867, Page 143, and Book 3265, Page 281, which lies southerly of the Worcester Flood Diversion Channel and northerly of Washington Street (Route 20), excepting deeds of record and subject to takings, easements, right of ways and other matters of record, if any.

Meaning and intending to convey and hereby conveying the land shown as Parcel 14 on Map 27 of the Auburn Board of Assessors, however that parcel may be described.

Being the same premises described in deed of Marjorie J. Cutting to James Cutting dated March 27, 2009, and recorded in the Worcester District Registry of Deeds Book 44037, Page 370.


Also being the same premises described in deed of Sylvia C. Post Family Limited Partnership V to Laurel A. Post dated October 29, 2020, and recorded in the Worcester District Registry of Deeds Book 63687, Page 297.

This conveyance creates no new boundaries.



EXHIBIT B  
CERTIFICATE OF  
PURCHASE AND SALE AGREEMENT

I hereby certify that this is a true and correct copy of the Purchase and Sale Agreement dated December 8, 2020, between James G. Cutting and Laurel A. Post, Sellers and 190 Washington Auburn, LLC, Buyer.

  
\_\_\_\_\_  
T. Ashley Edwards, Attorney for  
James G. Cutting and Laurel A. Post





## PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (this "Agreement") is made this 8<sup>th</sup> day of December, 2020, by and between James G. Cutting of 30 Goddard Drive, Auburn, Massachusetts 01501 and Laurel A. Post of 24 Maple Street, Douglas, Massachusetts 01516 (Collectively, the "Seller"), and 190 Washington Auburn, LLC, a Massachusetts limited liability company with a principal place of business located at 997 Millbury Street, Worcester, Massachusetts 01607, or its nominee, (the "Buyer").

### 1. Purchase and Sale

Seller agrees to sell, and Buyer agrees to buy, the premises described in Paragraph 2 upon the terms and conditions set forth in this Agreement.

### 2. Description

That certain parcel of land, containing thirty and one half (30.5) acres of land, situated at 50 Washington Street, Auburn, Worcester County, Massachusetts, being further described in a deed recorded with the Worcester District Registry of Deeds in Deeds in Book 63687, Page 297, and in a deed recorded with said Deeds in Book 44037, Page 370, including all of the Seller's right, title and interest in and to any street, road, avenue or way, open or proposed, in front of or otherwise adjoining or abutting said property, together with all rights, privileges and appurtenances thereto, and with the benefit of any and all easements, rights of ways, reservations, restrictions and encumbrances of record and also including all of the Seller's right, title and interest in, to and with respect to any and all utility agreements, governmental permits, licenses and approvals, engineering plans and data, and any other agreements and rights relating to the Property. Said parcel of land together with all of Seller's other rights included above are hereinafter referred to as the "Premises", and more particularly described in Exhibit A attached to this Agreement.

### 3. Title Deed

The Premises shall be conveyed by a good and sufficient quitclaim deed running to Buyer, or to the nominee designated by Buyer by written notice to Seller delivered at least seven (7) days before the Closing (the "Deed"). The Deed shall convey good, clear, record and marketable title to the Premises, free from encumbrances, except:

- a. Provisions of existing and future building and zoning laws;
- b. Taxes for the then-current fiscal year as are not due and payable on the date of the Closing;
- c. Any liens for municipal betterments assessed after the date of the Closing; and
- d. Easements, restrictions and reservations of record, if any, so long as same do not affect or interfere with Buyer's use and development of the Premises;

### 4. Plans

If the Deed refers to a plan that must be recorded with the Deed, Seller shall deliver such

plan with the Deed in form adequate for recording or registration.

**5. Registered Title**

If the title to the Premises is registered, the Deed shall be in form sufficient to entitle Buyer to a Certificate of Title to the Premises, and Seller shall deliver with the Deed all instruments, if any, necessary to enable Buyer to obtain such Certificate of Title.

**6. Purchase Price**

The agreed purchase price for the Premises is **Four Hundred and Fifty Thousand and 00/100 (\$450,000.00) Dollars**, of which:

\$ 15,000.00          have been paid as a deposit this day (the "Agreement Deposit");

\$ 435,000.00          are to be paid at the Closing upon the recording of the Deed, by certified check, bank check or wire transfer. All checks shall be made payable to Seller and be without any intervening endorsement or as otherwise instructed by Seller.

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\$450,000.00          TOTAL

The Agreement Deposit made under this Agreement are collectively referred to as the "Deposit." The Deposit shall be held in escrow pursuant to Paragraph 17 and shall be credited towards the Purchase Price at Closing.

**7. Time for Performance; Closing**

A good and sufficient quitclaim deed for the Premises is to be delivered at the office of Buyer's attorney or at the Worcester District Registry of Deeds, at 11:00 A.M. on a date set forth in a written notice sent from Buyer to Seller, said date to be not later than thirty (30) days after Buyer has obtained the Licenses, Permits and Approvals (as hereinafter defined), with all appeal periods having passed, with no appeals having been taken, or in the event of such an appeal, at such time as same has been dismissed or resolved in Buyer's favor, but in any event not later than one (1) year from the date that the Town of Auburn either expressly waives its right to purchase the Premises, or fails or neglects to exercise its right to purchase the Premises within the required time to do so pursuant to Chapter 61, (the "Original Closing Date"). Notwithstanding the foregoing, in the event that Buyer has not obtained the Licenses, Permits and Approvals on or before the Original Closing Date, notwithstanding Buyer's exercise of diligent efforts to obtain the Licenses, Permits and Approvals, Buyer may extend the Original Closing Date for a period of up to sixty (60) days after the Original Closing Date by written notice from the Buyer to the Seller given prior to the Original Closing Date. It is agreed that time is of the essence with respect to all time periods in this Agreement. For the purposes of this Agreement, the delivery of the deed shall be hereinafter referred to as the "Closing".

**8. Possession and Condition of the Premises**

The Premises is to be delivered at the Closing in compliance with the provisions of any instrument referred to in Paragraph 3. Additionally the Premises shall be free and clear of all tenants and occupants, in the same condition as they now are, reasonable use and wear thereof

excepted, not in violation of building, health or zoning laws, and free of any and all personal property of the Seller. In addition to Buyer's other rights of access as set forth in Paragraph 21, Buyer shall be entitled to inspect the Premises prior to the Closing in order to determine whether the condition of the Premises complies with the terms of this Agreement.

**9. Extension to Perfect Title or Make Premises Conform**

If Seller shall be unable to give title, make conveyance or deliver possession of the Premises as required by this Agreement, or if at the Closing the Premises do not conform with the provisions of this Agreement, then Seller shall use reasonable efforts to remove any defects in title, deliver possession or make the Premises conform to the provisions of this Agreement, as the case may be, in which event Seller shall give written notice to Buyer on or before the Closing, and the Closing shall be extended for a period of up to sixty (60) days as designated by Seller in the written notice (the "Extended Time"). "Reasonable Efforts" for the purposes hereof shall not require Seller to expend more than \$5,000.00 to remove any defects in title, deliver possession or make the Premises conform to the provisions of this Agreement, which amount shall be exclusive of attorneys' fees, mortgages and voluntary liens, all of which shall be paid by Seller at Closing regardless of the amount.

**10. Failure to Perfect Title or Make Premises Conform, etc.**

If, at the expiration of the Extended Time, Seller shall have failed to remove any defects in title, deliver possession or make the Premises conform, as the case may be, all as set forth in this Agreement, then this Agreement shall be void without further recourse to the parties hereto.

**11. Buyer's Election to Accept Title**

Notwithstanding the provisions of Paragraph 10, Buyer shall have the election, on either the date of the Closing or at the expiration of the Extended Time, to accept such title as Seller can deliver for the Premises in their then condition and to pay the purchase price without deduction, in which case Seller shall convey such title.

**12. Acceptance of Deed**

The acceptance and recording of the Deed by Buyer or Buyer's nominee as the case may be, shall be deemed to be a full performance and discharge of every obligation contained or expressed in this Agreement, except for those obligations that are to be performed after the Closing in accordance with the terms of this Agreement.

**13. Use of Money to Clear Title**

Seller may use the purchase money to clear the title of any or all encumbrances or interests to enable Seller to make conveyance as provided in this Agreement. All instruments procured to clear the title shall be recorded within a reasonable time after the Closing, except for private mortgages and liens, releases and discharges for which shall be delivered at Closing.

**14. Insurance**

Until the Closing, Seller shall maintain the same insurance on the Premises as existing on the date of this Agreement.

**15. Adjustments**

As of the Closing, real estate taxes for the then-current fiscal year shall be adjusted

pursuant to the practice standards of the Real Estate Bar Association for Massachusetts, and the net amount of the adjustment shall be added to or deducted from, as the case may be, the purchase price payable by Buyer at the Closing.

#### **16. Adjustment of Unassessed and Abated Taxes**

If the amount of real estate taxes is not known at the Closing, real estate taxes shall be apportioned on the basis of the real estate taxes assessed for the preceding fiscal year, with a reapportionment as soon as the new tax rate and valuation can be ascertained; and, if the real estate taxes that are to be apportioned shall subsequently be reduced by abatement, the amount of such abatement, less the reasonable cost of obtaining the same, shall be apportioned between the parties, provided that neither party shall be obligated to institute or prosecute proceedings for an abatement. The provisions of this Paragraph 16 shall survive the Closing.

#### **17. Deposit**

The Deposit shall be held in escrow by Lane, Greene, Murtha & Edwards, LLP, Seller's attorney, (the "Escrow Agent") in a non-interest bearing account, subject to the terms of this Agreement and shall be duly accounted for at the Closing. In the event of any disagreement between the parties, the Escrow Agent shall retain the Deposit pending instructions mutually given in writing by Seller and Buyer or a court of competent jurisdiction. Buyer and Seller agree (i) to defend, indemnify and hold the Escrow Agent harmless from any loss, cost or damage incurred by the Escrow Agent in connection with the performance of its duties under this Agreement, and (ii) that if a dispute arises regarding the Deposit or this Agreement, the Escrow Agent shall not be precluded from representing Seller with respect to the dispute.

#### **18. Buyer's Default; Damages**

- a) If the Buyer shall default in its obligations hereunder and (i) the Seller has performed all of its obligations and is ready and willing and able to perform the remainder of its obligations under this Agreement, and (ii) the Buyer's default has caused the Closing not to occur, then the Deposit paid by Buyer and the interest earned thereon, if any, shall be retained by the Seller and said retention shall constitute the Seller's sole and exclusive remedy, at law and in equity, for the Buyer's breach and as full liquidated damages for such breach in view of the uncertainty and impossibility of ascertaining such damages to the Seller. The Seller and the Buyer hereby agree that the aforesaid amount constitutes a reasonable forecast of the damages that would be sustained by the Seller in the event of breach by the Buyer. In such event, the respective obligations contained herein of the Seller to sell and the Buyer to purchase the Property shall terminate and become null and the Buyer and the Seller shall be released and discharged of all further claims and obligations to each other hereunder.
- b) If the Seller fails to perform any of its obligations under this Agreement, then Buyer, as its sole remedy for such failure, may either: (i) terminate this Agreement by written notice to Seller given prior to or on the Closing Date whereupon Seller shall pay to the Buyer the Deposit; or (ii) enforce specific performance of Seller's obligations under this Purchase and Sale Agreement in which event Seller shall be responsible for all attorneys fees and costs incurred by Buyer (provided that Buyer prevails in any such action); provided, however, that if Seller willfully and intentionally conveys the Premises to a bona fide third-party buyer or encumbers the Premises in favor of a bona fide third party

in a manner the result of which is that specific performance is not an available remedy, then Buyer may seek to recover Buyer's damages arising therefrom.

**19. Liability of Trustee, Shareholder, Beneficiary, etc.**

If Seller or Buyer executes this Agreement in a representative or fiduciary capacity, (i) only the principal or the estate represented shall be bound, and (ii) neither Seller nor Buyer, nor any shareholders or beneficiaries of any trust, shall be personally liable for any obligation, express or implied, in this Agreement. Seller reserves the right to convey the Premises into a Trust.

**20. Title Standards**

Any title matter or conveyancing practice that is the subject of a title standard or practice standard of the Real Estate Bar Association for Massachusetts shall be governed by said title standard or practice standard to the extent applicable

Notwithstanding the foregoing and without limitation of any other provisions in this Agreement, the Premises shall not be considered to be in compliance with the provisions of this Agreement with respect to title unless:

(a) All buildings, structures and improvements, including but not limited to, any driveways, garages, septic systems and cesspools and all means of access to and egress from the Premises shall be wholly within located completely within the boundary lines of said Premises and shall not encroach upon or under the property of any other person or entity;

(b) No building, structure or improvement of any kind belonging to any other person or entity shall encroach upon or under said Premises. Notwithstanding the foregoing, Buyer acknowledges that there is an encroachment of a road and trailers by the abutter, Windbrook Acres;

(c) The Premises shall abut a public way or private way to which Buyer shall have both pedestrian and vehicular access, and if a private way, that such private way in turn has legal access to a public way, which public way is duly laid out or accepted as such by the city or town in which said Premises are located;

(d) Title to the Premises is insurable for the benefit of Buyer by a title insurance company at normal premium rates in the American Land Title Association form currently in use, subject only to those printed exceptions to title normally included in the "jacket" to such form and to the exceptions set forth in this Agreement but not subject to any exception or exclusion for so-called "mechanic's liens" or for "creditors' rights";

**21. Due Diligence Period**

Buyer may perform a due diligence investigation of the Premises and shall have the right to enter onto the Premises with equipment and machinery of all types and kinds and the full opportunity to: (i) inspect, take measurements and conduct surveys, including investigations regarding the presence of Hazardous Materials, including testing of soil or groundwater for the presence of Hazardous Materials; (ii) show the Premises to contractors, architects, surveyors,

engineers, insurers, banks and other lenders and investors; (iii) make legal, financial, zoning, engineering, accounting and other reviews or investigations of the Premises; (iv) have review and examine such permits, licenses, plans, engineering and any and all other documents relating to the Premises of every name, nature and description; and (v) perform title research and obtain financing for the transaction at terms acceptable to Buyer in its sole discretion (collectively "Buyer's Due Diligence Period"). As used in this Agreement, "Hazardous Materials" means all chemicals, materials, substances, pollutants, contaminants and wastes, including, without limitation, oil, petroleum, petroleum-containing substances, PCBs, asbestos-containing materials, mold, mildew, fungus, microbial contaminants or pathogenic organisms or any other chemicals, materials, substances, pollutants, contaminants or wastes regulated under the Comprehensive Environmental Response Compensation and Liability Act of 1980, the Superfund Amendments and Reauthorization Act, the Resource Conservation and Recovery Act, Chapter 21E and Chapter 21C of the Massachusetts General Laws, all regulations promulgated under the foregoing and any other federal, state or local law, ordinance, bylaw or regulation applicable to the Premises.

- a. Buyer shall promptly repair all damage to the Premises arising from any such inspections or tests and shall restore the Premises to substantially the same condition existing as reasonably practicable immediately prior to such inspections and tests. In the event Buyer discovers any matter during the course of its investigations and tests which may be reportable under applicable law, Buyer acknowledges and agrees that it shall not undertake any such reporting, unless required by law to do so, but shall notify Seller immediately of any such discovery. For the purposes hereof, the decision of Buyer's LSP as to whether the results of any testing requires mandatory reporting by law shall be final and binding on both Buyer and Seller. In performing any such inspections or tests, Buyer shall not unreasonably interfere with the activities on the Premises. Notwithstanding anything contained herein to the contrary, prior to and after the termination of the Due Diligence Period, in the event that Buyer discovers Hazardous Materials on the Premises in levels that would be reportable under state or federal law, Buyer may terminate this Agreement in which event all deposits shall be returned to the Buyer and the parties shall have no further recourse hereunder.
- b. Assumption of Risk, Indemnification and Insurance. Buyer, its employees, agents, contractors, subcontractors, consultants and other representatives ("Buyer's Representatives") shall assume all risks associated with conducting Buyer's Due Diligence and agree to protect, defend, indemnify and hold harmless Seller and its officers, directors, shareholders, employees, successors and assigns from and against any and all costs, losses, claims, demands, damages, liabilities and expenses and other obligations (including, without limitation, reasonable attorneys' fees and court costs) arising from, out of or in connection with or otherwise relating to, the entry by and the activities, studies and tests performed by Buyer or any one or more of Buyer's Representatives in or upon the Premises, unless caused by Seller's willful conduct or gross negligence. Buyer agrees to provide to Seller, and to cause each of Buyer's Representatives who enter upon the Premises to provide to Seller, prior to any such entry, evidence of insurance, covering the activities to be conducted by Buyer and Buyer's Representatives. Additionally, Buyer acknowledges and understands that the Premises are hayed by a third party, and Buyer shall not interfere with such haying operation.

- c. Termination. If Buyer is not satisfied with Buyer's Due Diligence for any reason or no reason, then Buyer may terminate this Agreement by written notice to Seller delivered not later than 5:00 P.M. on that date which is one hundred and twenty (120) days after the Town of Auburn either expressly waives its right to purchase the Premises, or fails or neglects to exercise its right to purchase the Premises within the required time to do so pursuant to Chapter 61 (the "Due Diligence Termination Date"), in which case the Deposit in full shall be promptly refunded to Buyer
- d. Access. In the even the Buyer does not terminate this Agreement as aforesaid, prior to the Due Diligence Termination Date, Buyer's right of access to the Premises shall continue through the Closing.
- e. Confidentiality. Buyer and Seller agree to keep the provisions of this Agreement confidential and not to divulge the contents thereof to any other party except Seller's attorney, unless specifically required by law. All information and material furnished or made available by Seller to Buyer in accordance with this Agreement or obtained by Buyer in the course of Buyer's Due Diligence Investigation shall be treated as confidential information by Buyer and Buyer will not divulge and will use its best efforts to prevent Buyer's Related Parties (as hereinafter defined) from divulging such information except as required by law, and as reasonably necessary to third parties engaged by Buyer for the limited purpose of analyzing and investigating such information for the purpose of consummating the transaction, including Buyer's attorneys and representatives, current and prospective financial partners in this transaction, engineers, consultants, and prospective lenders, (collectively "Buyer's Related Parties"), or as may be necessary to give notice pursuant to MGL. ch. 61 and to apply for and obtain the Licenses, Permits and Approvals.

## 22. Permitting and Approvals

- a. G.L. Chapter 61. The Premises are subject to the provisions of G.L. Chapter 61, ("Chapter 61") pursuant to which the Town of Auburn has a right of first refusal to purchase the Premises. At Seller's sole cost and expense, Seller shall provide notice, in accordance with the requirements of Chapter 61, of Seller's intent to sell the Premises, to obtain a release of the right of the Town of Auburn's option under Chapter 61 to purchase the Premises, and to remove the Premises from the provisions of Chapter 61 (the "61 Notice"). The 61 Notice, together with any necessary supplemental information, shall be submitted to Buyer within ten (10) business days of the date of this Agreement. Seller shall draft the 61 Notice which form of 61 Notice is attached hereto as Exhibit B. Upon any revision of the 61 Notice, Seller shall submit the revised 61 Notice to Buyer for further review. If, in any instance Buyer fails or neglects to approve the 61 Notice within five (5) business days of receipt of a copy thereof, Buyer shall be deemed to have approved the form and substance of such notice and waived its right to review, further review, or approve any such notice.

Upon receipt of Buyer's approval or waiver of approval of the 61 Notice, as the case may be, Seller or Seller's attorney shall execute the 61 Notice and Seller's attorney shall submit the 61 Notice to the Town of Auburn, in accordance with the requirements of Chapter 61.

In the event that the Town of Auburn properly elects to purchase the Premises pursuant to Chapter 61, this Agreement shall be null and void, the Deposit shall be returned to Buyer, and the parties shall have no further recourse hereunder.

In the event that the Town of Auburn either expressly waives its right to purchase the Premises, or fails or neglects to exercise its right to purchase the Premises within the required time to do so, Seller shall, prior to the Closing hereunder, obtain a release in recordable form, Buyer shall pay any applicable rollback taxes and obtain an acknowledgement of same in recordable form, both of which shall be reasonably satisfactory to Buyer's title insurance company, to be recorded at Closing, at Seller's expense. In any event, Seller shall give Buyer notice of the date that the Town of Auburn either expressly waives its right to purchase or the expiration of the time to do so.

- b. Buyer's Permits and Approvals. The obligation of Buyer to consummate the transaction contemplated by this Agreement is contingent upon Buyer obtaining, at Buyer's sole cost and expense, any and all local, state and federal governmental and quasi-governmental licenses, permits and approvals in form and substance satisfactory to Buyer, that Buyer, in its sole discretion deems necessary for the development of the Premises, with all applicable appeal periods having expired with no appeals having been taken, or in the event of any appeal, with same having been dismissed or decided in Buyer's favor (the "Licenses, Permits and Approvals") on or before the Original Closing Date, or the extended Closing Date, if Buyer has exercised its right to extend pursuant to Paragraph 7 of this Agreement, failing which, at Buyer's option, Buyer may terminate this Agreement, the Deposit shall be returned to Buyer and the parties shall have no further recourse hereunder. Notwithstanding the foregoing, in the event of such an appeal of any of the Licenses, Permits and Approvals, Buyer shall have no obligation to defend such appeal and upon such appeal may elect to terminate this Agreement, whereupon the Deposits shall be returned to Buyer and the parties shall have no further recourse hereunder. If Buyer elects to defend such appeal, the Original Closing Date shall automatically be extended until the appeal has been resolved, and Buyer has otherwise obtained all of the Licenses, Permits and Approvals. Seller shall cooperate fully with Buyer in obtaining all the Licenses, Permits and Approvals, at no cost to Seller.

### 23. Seller's Obligation

Seller agrees to cooperate with the Buyer in executing any necessary, reasonable and customary documents as may be required by Buyer's attorney and Buyer's title insurance company including but not limited to FRPTA, Mechanics Lien and Parties in Possession of Affidavits, as well as any documentation related to the filing of IRS form 1099.

### 24. Seller Cooperation

Seller acknowledges that Buyer, at Buyer's sole expense, will submit applications and seek additional governmental licenses, permits and approvals for the Premises prior to the Closing Date. Seller hereby consents and authorizes Buyer to make such applications and agrees to cooperate with Buyer and not to oppose, delay or interfere with same. Seller's cooperation shall include, but not be limited to signing applications and other documents. Seller agrees to sign the



authorization attached hereto as Exhibit C allowing Buyer to seek such licenses, permits and approvals. Buyer shall have the absolute and unconditional right to discuss the Premises with and made inquiries of any parties that the Buyer deems to be appropriate in connection with the Buyer's intended and subsequent use of the Premises, including federal, state and local governmental officials and/or authorities.

**25. Existing Documents**

At the time of execution of this Purchase and Sale Agreement, Seller shall deliver to the Buyer copies of any and all documents, applications, plans, information, environmental assessments, engineering, soils testing, permits and approvals of every name, nature and description that the Seller has or can obtain with respect to the Premises, including CAD files.

**26. Zoning Or Regulation Change**

If prior to Closing, the Commonwealth of Massachusetts or the Town of Auburn passes or proposes any changes in its Zoning By-Laws, Subdivision Control Laws, Board of Health regulations or any utility moratorium that materially affects the use of the Premises as contemplated by the Buyer or the obtaining of other necessary governmental licenses, permits and approvals, the Buyer may terminate this Purchase and Sale Agreement, all deposits paid hereunder shall forthwith be returned to Buyer, and the parties shall have no further recourse hereunder.

**27. Notices**

All notices required under this Agreement shall be in writing and shall be deemed received (i) one (1) business day after being sent by reputable overnight delivery or courier service providing for receipted delivery, or (ii) two (2) business days after being sent by certified or registered mail, return receipt requested, postage prepaid, or (iii) the same business day after being sent by facsimile or electronically, during normal business hours with confirmation of transmission, and addressed as follows:

If to Seller:

T. Ashley Edwards  
Lane, Greene, Murtha & Edwards, LLP  
370 Main Street, Suite 350  
Worcester, MA 01608  
Direct Dial: 508-929-0404  
Facsimile: 508-929-0450  
Email: [tae@lgme.com](mailto:tae@lgme.com)

If to Buyer:

Cathy S. Netburn  
D'Agostine, Levine, Parra & Netburn, P.C.  
268 Main Street

Acton, Massachusetts 01720  
(978) 263-7777  
(978) 264-4868 (facsimile)  
cnetburn@dlpnlaw.com

or to such other party or address or addressee as may from time to time be designated by either party by written notice to the other as provided in this Paragraph 27.

**28. Amendment By Attorney**

Seller hereby authorizes Seller's attorney set forth in Paragraph 27 above, and Buyer hereby authorizes Buyer's attorney set forth in Paragraph 27 above, to execute any amendments or extensions of time for performance under this Agreement.

**29. Facsimile Copy / Counterpart Copy**

A signed facsimile copy of this Agreement or a signed portable document format (.pdf) copy of this Agreement shall be binding upon the parties to this Agreement as fully and to the same extent as an original signed copy. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document.

**30. Broker's Commission**

The Buyer and Seller represent and warrant that they have not dealt with any person or entity in connection with the transaction contemplated hereby who or which would be entitled to a brokerage commission, finder's fee or other similar compensation. The Buyer and Seller shall indemnify, protect and save each other and hold each other forever harmless, from and against, and reimburse either party for, any and all obligations, claims, demands, causes of action, liabilities, losses, damages, judgments, penalties and costs and expenses (including, without limitation, attorneys' fees) which may be imposed upon, asserted against or incurred or paid by either party, or for which either party may become obligated or liable, by reason of, on account of or in connection with a breach of the aforesaid representation and warranty by either party. The aforesaid provisions and warranties shall survive the delivery of the Deed or any expiration or termination of this Purchase and Sale Agreement.

**31. Seller Representations and Warranties**

Seller represents and warrants to Buyer as follows:

(a) The execution and delivery of this Agreement and the consummation of the transactions contemplated hereunder on the part of Seller do not and will not conflict with or result in the breach of any terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge, or encumbrance upon the Premises, by reason of the terms of any contract, mortgage, lien, lease, agreement, indenture, instrument or judgment to which Seller is a party or which is or purports to be binding upon Seller or which otherwise affects Seller, which will not be discharged, assumed or released at the Closing. No action by any federal, state, municipal or other governmental department, commission, board, bureau or instrumentality is necessary to make this Agreement a valid instrument binding upon Seller in accordance with its terms.

(b) Seller has not (i) commenced a voluntary case, or had entered against it a petition,

for relief under the federal Bankruptcy Act or any similar petition, order or decree under the federal or state law or statute relative to bankruptcy, insolvency or other relief for debtors, or (ii) caused, suffered or consented to the appointment of a receiver, trustee, administrator, conservator, liquidator or similar functionary in any federal, state or foreign judicial or nonjudicial proceeding, to hold, administer and/or liquidate any of its assets.

(c) There are no pending or, to Seller's knowledge, contemplated condemnation, eminent domain or similar proceedings with respect to all or any portion of the Premises.

(d) There is no action, suit or proceeding pending or, to the best of Seller's actual knowledge, threatened against or affecting the Premises, or arising out of the ownership, management or operation of the Premises, this Agreement or the transactions contemplated hereby.

(e) Seller has not received any written notice of, and is not aware of, any pending or contemplated zoning change or similar proceeding with respect to all or any portion of the Premises.

(f) Seller has neither disposed of, deposited on the Premises, nor has any knowledge of any Hazardous Materials which have been generated, stored, treated or disposed of, or otherwise deposited in, on or about the Premises (including, without limitation, the surface and subsurface waters of the Premises) and Seller has no knowledge of any substances or conditions in or on the Premises that would support a claim or cause of action under a federal, state or local environmental statutes, regulations, ordinances or other environmental regulatory requirements.

(g) Seller has received no notice and is otherwise not aware that all or any part of the Premises is in violation of (i) any zoning, subdivision, building, health, traffic, environmental, flood control or other applicable rules, regulations, ordinances or statutes of any local, state or federal authorities or any other governmental entity having jurisdiction over the Premises, or (ii) any outstanding covenants or title encumbrance affecting the Premises.

(h) All bills and claims for labor performed and materials furnished to or for the benefit of Seller with respect to the Premises shall be paid in full by Seller at or before the Closing.

(i) There are no service, maintenance, supply or management contracts affecting the Premises that will survive the Closing and be binding on Buyer (unless Buyer elects to keep the same in force). Buyer acknowledges that the Premises are being hayed by a third party and shall work with Seller to terminate the haying contract at a reasonable date prior to or, at Buyer's option, after closing.

(j) The purchase price is sufficient to satisfy all monetary obligations of Seller in connection with the Premises.

(k) At the Closing, Seller shall execute all documents and certificates reasonably required by Buyer's counsel, mortgage lender and title insurance company.

(l) The representations of the Seller set forth in this Paragraph 31 shall be deemed to be remade as of the Closing Date with the same force and effect as if first made on and as of such date and shall survive the Closing and the delivery of the deed.

### **32. Next Business Day**

If the scheduled closing date, or the date any notice required pursuant to this Agreement is due, falls on a Saturday, Sunday or legal holiday, the Closing Date or due date of said Notice, shall be the next business day.

**33. Non-Foreign**

The Seller warrants and represents that Seller is not a "foreign person" as defined in I.R.C. Section 1445. The Seller will provide the Settlement Agent with a tax identification or social security number incident to the closing. This warranty shall survive delivery of the deed.

**34. Liability Of Trustee, Shareholder, Beneficiary, Etc.**

If the Seller or Buyer executes this Agreement in a representative or fiduciary capacity, only the principal or the estate represented shall be bound, and neither the Seller or Buyer so executing, nor any shareholder, or beneficiary of any trust, shall be personally liable for any obligation, express or implied hereunder.

**35. 1099 S Tax Filing Information**

In accordance with Internal Revenue Code, Section 6045(e), under the Tax Reform Act of 1986, information must be supplied to the Internal Revenue Service regarding all real estate transactions. It is understood and agreed that in the event the Buyer's lender does not designate itself as the reporting agent, the Buyer's attorney shall report the information needed to comply with said Section 6045 (e).

**36. Affidavits**

At the time of delivery of the Deed, Seller shall execute and deliver to Buyer and any title insurance company insuring title to the Premises (for Buyer with respect to the Premises): (a) either (i) affidavits setting forth that Seller is not a foreign person or foreign corporation and providing Seller's United States taxpayer identification number; or (ii) such other documentation as is required by Section 1445 of the Internal Revenue Code and any regulations promulgated thereunder to exempt Seller and/or the sale of the Premises from the provisions of said Section 1445; and (b) any other usual and customary affidavits, documents and certificates required by Buyer's title insurance company.

**37. Control Document**

This Agreement supersedes all prior agreements between the parties, either oral or written, including Offer To Purchase Real Estate dated November 12, 2020 heretofore executed by the parties, which are hereby deemed null and void.

**38. Electronic Transmission And Counterparts**

This Agreement may be transmitted between the parties electronically. In such event, it is recognized by the parties that differences in computer software and hardware may result in the Agreement being printed in two or more different locations resulting in the form of the Agreement being visually dissimilar, though substantively identical. This difference in form shall in no way diminish the validity or enforceability of this Agreement if it has been properly

executed by the parties as provided herein. Each party agrees to circulate original execution counterparts of this Agreement to the other party, so that ultimately there will be at least one fully executed original for each party, in form and substance one identical to the other, but failure to do so shall not affect the validity or enforceability of this Agreement, it being expressly agreed that each party to this Agreement shall be bound by its own executed copy. This Agreement may also be executed in any number of counterparts each of which when so executed and delivered shall be deemed an original, but all of which together shall constitute one and the same instrument.

**39. Mutual Drafting**

Seller and Buyer acknowledge that this Agreement has been mutually drafted by both parties.

**40. Construction And Interpretation Of Agreement**

This Agreement, executed in multiple counterparts, is to be construed as a Massachusetts contract, is to take effect as a sealed instrument, sets forth the entire contract between the parties, is fully assignable, is binding upon and inures to the benefit of the parties and their respective heirs, devisees, executors, administrators, successors and assigns, and, except as provided in Paragraph 28, may be cancelled, modified or amended only by a written instrument executed by both Seller and Buyer. If two or more persons are named in this Agreement as Buyer, their obligations shall be joint and several.

The submission of this Agreement for examination and negotiation does not constitute an offer to sell and this Agreement shall become effective and binding only upon the execution and delivery of this Agreement by both Buyer and Seller.

The section headings contained in this Agreement are for convenience and reference only, and the words contained in a section heading shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

The provisions of this Agreement shall be construed as a whole, according to their common meaning (except where a precise legal interpretation is clearly evidenced, and not for or against either party). Use in this Agreement of the word "including" or words of similar import, when followed by any general term, statement or matter, shall not be construed to limit such term, statement or matter to the specified items, whether or not language of non-limitation, such as "without limitation" or "including, but not limited to," or words of similar import, are used, but rather shall be deemed to refer to all other terms or matters that could fall within a reasonably broad scope of such term, statement or matter.

**41. Chapter 21E Liability After Closing**

Buyer shall be provided full and complete access to the Premises for the purpose of examining and testing the Premises for, among other matters, the presence of hazardous material or oil as defined in the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, G.L.c. 21E ("Hazardous Materials"). Buyer's obligation to purchase the Premises is subject to Buyer's receipt prior to the Due Diligence Termination Date of an environmental

site assessment which does not show the presence of Hazardous Materials above any reportable concentrations for those reporting categories applicable to the proposed uses of the Premises, such site assessment to be performed at Buyer's sole cost and expense. Buyer is purchasing the Premises having full knowledge of the condition of the Premises based upon its own inspection and not in reliance upon any statement, warranty or representation made by the Seller. Buyer agrees that in the event it is later determined that there are Hazardous Materials in, on or within the Premises, Buyer shall be liable for all costs, expenses and liability relating thereto, including the liability for removal or remediation or for damage incurred by any other party, it being the express intention of the parties to shift the risk of the presence of Hazardous Materials to the Buyer and to fully release and discharge the Seller from all such liability. Buyer agrees, upon purchase of the Premises by Buyer or its nominee, that Buyer and the purchaser shall indemnify and hold harmless the Seller from and against any and all claims, demands, losses, judgments, expenses and other damages relating in any fashion to the presence of Hazardous Materials on, in or within the Premises. In confirmation of the foregoing, Buyer shall, as a condition of closing, deliver to Seller an acknowledgment and assumption of these provisions executed by Buyer and any nominee of Buyer which takes title to the Premises under this Agreement.

**[SIGNATURE PAGE FOLLOWS]**

EXECUTED as a sealed instrument on the date first mentioned above.

**SELLER:**

\_\_\_\_\_  
**James G. Cutting**

\_\_\_\_\_  
**Laurel A. Post**

**BUYER:**

190 Washington Auburn, LLC

By: 

Logan R. Huffman, Manager

EXECUTED as a sealed instrument on the date first mentioned above.

SELLER:

  
James G. Cutting

\_\_\_\_\_  
Laurel A. Post

BUYER:

190 Washington Auburn, LLC

By:   
Logan R. Infantino, Manager



EXECUTED as a sealed instrument on the date first mentioned above.


SELLER:

BUYER:

190 Washington Auburn, LLC

By:   
Logan R. Huffman, Manager

\_\_\_\_\_  
James G. Cutting

  
\_\_\_\_\_  
Laurel A. Post

**EXHIBIT A TO PURCHASE AND SALE AGREEMENT**

**DESCRIPTION OF THE PREMISES**

The land in Auburn, Worcester County, Massachusetts, bounded and described as follows:

All right, title and interest in all of the land described in Worcester District Registry of Deeds Book 2867, Page 143, and Book 3265, Page 281, which lies southerly of the Worcester Flood Diversion Channel and northerly of Washington Street (Route 20), excepting deeds of record and subject to takings, easements, right of ways and other matters of record, if any.

Meaning and intending to convey and hereby conveying the land shown as Parcel 14 on Map 27 of the Auburn Board of Assessors, however that parcel may be described.

Being the same premises described in deed of Marjorie J. Cutting to James Cutting dated March 27, 2009, and recorded in the Worcester District Registry of Deeds Book 44037, Page 370.

Also being the same premises described in deed of Sylvia C. Post Family Limited Partnership V to Laurel A. Post dated October 29, 2020, and recorded in the Worcester District Registry of Deeds Book 63687, Page 297.

**EXHIBIT B TO PURCHASE AND SALE AGREEMENT**

**Ch. 61 Notice Form**

**LANE, GREENE, MURTHA & EDWARDS, LLP**

**ATTORNEYS AT LAW**

**370 MAIN STREET, SUITE 350  
WORCESTER, MASSACHUSETTS 01608-1723**

**TELEPHONE (508) 929-0400  
FACSIMILE (508) 929-0450**

**T. ASHLEY EDWARDS  
EMAIL: TAE@LGME.COM  
DIRECT TELEPHONE: 508-929-0404  
DIRECT FAX: 508-929-0454**

December \_\_\_\_, 2020

**NOTICE OF INTENT TO SELL LAND  
(Pursuant to Massachusetts General Laws Chapter 61)**

**TO:**

<b>Board of Selectmen Town of Auburn 104 Central Street Auburn, MA 01501</b>	<b>Board of Assessors Town of Auburn 104 Central Street Auburn, MA 01501</b>
<b>Planning Board Town of Auburn 104 Central Street Auburn, MA 01501</b>	<b>Conservation Commission Town of Auburn 104 Central Street Auburn, MA 01501</b>

**Department of Conservation and Recreation  
Attn: Bureau of Forestry  
355 West Boylston Street  
Clinton, MA 01510**

**FROM:** **T. Ashley Edwards, Attorney for James G. Cutting and Laurel A. Post  
(Record owners)  
Lane, Greene, Murtha & Edwards, LLP  
370 Main Street, Suite 350  
Worcester, MA 01608-1732**

**Statement of Intent**

The above-named record owners intend to sell a parcel of land which they own in Auburn to 190 Washington Auburn, LLC, a Massachusetts limited liability company.

**Statement of Proposed Use**

The proposed use of the land is commercial.

Location and Acreage

The land which is the subject of this notice is located on 50 Washington Street, in the Town of Auburn, Worcester County, Massachusetts, (Assessor Parcel ID: 027\_014), containing 30.5 acres of land and being further described in deeds recorded with the Worcester District Registry of Deeds in Book Book 44037, Page 370 and 63687, Page 297. See description attached hereto as Exhibit A.

Names, Addresses and Telephone Numbers of the Land Owners

James G. Cutting  
30 Goddard Drive  
Auburn, MA 01501  
Tel: 508-735-1376

Laurel A. Post  
24 Maple Street  
Douglas, MA 01516  
Tel: 508-277-7493

Certified Copy of Executed Purchase and Sale Agreement

A certified copy of the executed Purchase and Sale Agreement between James G. Cutting and Laurel A. Post, Sellers, and 190 Washington Auburn, LLC, Buyer, which specifies the purchase price and all terms and conditions of the proposed sale is attached as Exhibit B.

Notice of the exercise or waiver of the option for first refusal as specified in Massachusetts General Laws Chapter 61, may be mailed by certified mail to James G. Cutting and Laurel A. Post c/o T. Ashley Edwards, Lane, Greene, Murtha & Edwards, LLP, 370 Main Street, Suite 350, Worcester, Massachusetts 01608.

Sincerely,

T. Ashley Edwards  
Attorney for James G. Cutting  
and Laurel A. Post

TAE/tvg  
Enc.

CERTIFIED MAIL/RETURN RECEIPT REQUESTED

EXHIBIT A  
DESCRIPTION

The land in Auburn, Worcester County, Massachusetts, bounded and described as follows:

All right, title and interest in all of the land described in Worcester District Registry of Deeds Book 2867, Page 143, and Book 3265, Page 281, which lies southerly of the Worcester Flood Diversion Channel and northerly of Washington Street (Route 20), excepting deeds of record and subject to takings, easements, right of ways and other matters of record, if any.

Meaning and intending to convey and hereby conveying the land shown as Parcel 14 on Map 27 of the Auburn Board of Assessors, however that parcel may be described.

Being the same premises described in deed of Marjorie J. Cutting to James Cutting dated March 27, 2009, and recorded in the Worcester District Registry of Deeds Book 44037, Page 370.

Also being the same premises described in deed of Sylvia C. Post Family Limited Partnership V to Laurel A. Post dated October 29, 2020, and recorded in the Worcester District Registry of Deeds Book 63687, Page 297.

This conveyance creates no new boundaries.

**PURCHASE AND SALE AGREEMENT**

**EXHIBIT B**

**CERTIFICATE OF  
PURCHASE AND SALE AGREEMENT**

I hereby certify that this is a true and correct copy of the Purchase and Sale Agreement dated December \_\_\_\_, 2020, between James G. Cutting and Laurel A. Post, Sellers and 190 Washington Auburn, LLC, Buyer.

---

T. Ashley Edwards, Attorney for  
James G. Cutting and Laurel A. Post

EXHIBIT C TO PURCHASE AND SALE AGREEMENT  
AUTHORIZATION

The undersigned, being the owner of the Premises located at 50 Washington Street, Auburn, Worcester County, Massachusetts hereby authorize 190 Washington Auburn, LLC. or its assigns, the right to make and file applications on our behalf, to any and all governmental and quasi-governmental entities for licenses, permits and approvals relating to the Premises.

Executed this 9<sup>th</sup> day of December, 2020.

  
\_\_\_\_\_  
James G. Cutting

\_\_\_\_\_  
Latrell A. Post

**EXHIBIT C TO PURCHASE AND SALE AGREEMENT**  
**AUTHORIZATION**

The undersigned, being the owner of the Premises located at 50 Washington Street, Auburn, Worcester County, Massachusetts hereby authorize 190 Washington Auburn, LLC. or its assigns, the right to make and file applications on our behalf, to any and all governmental and quasi-governmental entities for licenses, permits and approvals relating to the Premises.

Executed this 9<sup>th</sup> day of December, 2020.

\_\_\_\_\_  
James G. Cutting

  
\_\_\_\_\_  
Laurel A. Post



NOTICE OF NONEXERCISE OF FIRST REFUSAL OPTION

PURSUANT TO G.L. c. 61, § 14, the Town of Auburn ("Town") hereby gives notice that by vote of its Board of Selectmen duly taken on \_\_\_\_\_, 202\_, the Town elected not to exercise or assign its first refusal option to purchase land containing approximately 30.5 acres owned by James G. Cutting and Laurel A. Post located on 50 Washington Street, Auburn, Worcester County, Massachusetts, and further described in Exhibit A attached hereto.

Property Address: 50 Washington Street, Auburn, Massachusetts

Executed under seal this this \_\_\_ day of \_\_\_\_\_, 202\_.

TOWN OF AUBURN

BY ITS BOARD OF SELECTMEN

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

County of Worcester

On this \_\_\_ day of \_\_\_\_\_, 202\_, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_, in their capacity as members of the Town of Auburn, Board of Selectmen, and acknowledged to me that they signed the preceding or attached document voluntarily for its stated purpose and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of their knowledge and belief. They proved to me through satisfactory evidence of identification that they are the persons whose names are signed on the preceding or attached document. The satisfactory evidence of identification provided to me was my own personal knowledge of identity of the signatory, to be the person whose name is signed above.

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

My commission expires:

