

**RIGHT OF FIRST OFFER AGREEMENT**

This Right of First Offer Agreement (“ROFO”) is entered into between the Town of Acton, a municipality located at 472 Main Street, Acton, MA 01720 (the “Town”) and the Chabad Center of Acton, Inc., a religious corporation, with its principal place of operation at 148 Great Road, Acton, MA 01720 (“Chabad”) (together, the “Parties”) as of this \_\_\_\_ day of September, 2016.

WHEREAS, Chabad owns the property known and numbered as 148 Great Road, Acton, Massachusetts (the “Property”), more particularly described in deed dated November 23, 1999, recorded with the Middlesex South District Registry of Deeds at Book 30895, Page 339;

WHEREAS, Chabad has applied to the Town for a building permit to add the addition to the existing building on the Property shown on the plan attached hereto as Exhibit A (the “Addition”), which would cause the building to exceed the maximum floor area ratio (FAR) permitted under the Acton Zoning Bylaw;

WHEREAS, the Property already fails to comply with the parking requirements of the Acton Zoning Bylaw, and the Addition would increase that non-compliance;

WHEREAS, in view of the FAR and parking issues, Chabad is basing its application for a building permit for the addition on G.L. Chapter 40A, Section 3, 2<sup>nd</sup> paragraph (the Dover Amendment); and

WHEREAS, the Town recognizes its obligations under the Dover Amendment but is concerned that, after the Addition is built, the Property may be acquired and used by an entity not entitled to protection under the Dover Amendment.

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

1. Upon receipt of the required plans and other submittals, the Town shall issue a building permit for the Addition. Chabad may alter the Addition, provided that (a) the floor area ratio of the altered Addition does not exceed that of the Addition shown on Exhibit A and (b) the altered Addition is entirely within the footprint shown on Exhibit A.

Property: 148 Great Road, Acton, Massachusetts 01720

2. The Town or its designee shall have a right of first offer on the Property on the terms described below (the "ROFO"). In acquiring the Property, the Town shall not be required to pay any brokers fees or to pay for avoided fees. However, the Town shall be responsible to pay all fees and costs customarily paid by a buyer of real estate in Acton, Middlesex County, Massachusetts.

3. Subject to the provisions of Paragraph 9, Chabad shall not sell the Property to any entity not entitled to protection under the Dover Amendment without first giving the Town a notice setting forth the terms and conditions, including the purchase price, upon which Chabad is willing to sell it (the "Option Notice"). The Option Notice shall be deemed to be an offer to sell the Property to the Town on those terms and conditions.

4. Upon receipt of the Option Notice, the Town shall have seventy-five (75) days to give Chabad a written and dated notice stating whether the Town wants to purchase the Property (the "Election Notice"), accompanied, if so, by a deposit of ten percent (10%) of the purchase price stated in the Option Notice. If the Town notifies Chabad that it wants to purchase the Property, and the notice is accompanied by the required deposit, Chabad will sell the Property to the Town for the purchase price stated in the Option Notice and on commercially reasonable terms and schedule. The closing and transfer of title shall occur within sixty (60) days of the date of the Town's Election Notice.

5. If the Town gives Chabad a timely Election Notice and deposit but makes a written counteroffer (the "Counteroffer") for the Property, and Chabad declines the Counteroffer, Chabad (a) shall promptly return the Town's deposit and (b) shall not sell the Property to any other party for less than the Counteroffer without first giving the Town another right of first offer at the purchase price set forth in the Counteroffer.

6. If, within the 75-day period set out in Paragraph 4, the Town fails to notify Chabad that it wants to purchase the Property and pay the deposit, or notifies Chabad that it does not want to purchase the Property (in either instance, the "ROFO Termination Date"), Chabad shall be free to sell the Property without restriction for 12 months from the ROFO Termination Date. If there is no such sale (*i.e.*, closing) during that 12-month period, the ROFO will resume effect and the procedures described above shall apply again.

7. Any notice under this Agreement shall be given by hand delivery to the following addresses or such other addresses as the parties shall provide in writing:

To the Town:  
Office of the Town Clerk  
Town of Acton  
472 Main Street  
Acton, MA 01720

To Chabad:  
Rabbi Yosef Y. Polter, President  
(or successor)  
Chabad Center of Acton, Inc.  
148 Great Road  
Acton, MA 01720

With copies to:  
Manager's Department  
Town of Acton  
472 Main Street

Acton, MA 01720

Nina Pickering-Cook  
Anderson & Kreiger LLP  
50 Milk Street  
Boston, MA 02109

8. This Agreement shall inure to the benefit of, and be binding on, the Parties' successors and assigns.

9. This Agreement shall become effective upon the commencement of construction of the Addition. It shall terminate upon (a) the transfer of the Property to an individual(s) or entity not entitled to protection under the Dover Amendment following full compliance with the terms of this Agreement; or (b) the complete removal of the Addition.

10. Either Party may record this Agreement or a notice of this Agreement in the Middlesex County Registry of Deeds at its own expense.

11. In executing and performing under this Agreement, neither Party makes any admission of fact or law.

12. This Agreement may not be altered, amended, modified or otherwise changed except by a writing duly executed by all Parties.

13. This Agreement may be executed in counterparts.

14. Both parties participated in the drafting of this Agreement, and it shall not be construed against either party as drafter.

15. If any dispute arises regarding the interpretation or implementation of this Agreement, the Parties will use good faith efforts to resolve it amicably, including by non-binding mediation, before commencing litigation.

*[Remainder of page intentionally left blank]*

This document is executed under seal as of the date first set forth above.

TOWN OF ACTON  
By its Board of Selectmen

CHABAD CENTER OF ACTON, INC.

\_\_\_\_\_  
Peter J. Berry, Chair

\_\_\_\_\_  
By: Yosef Y. Polter  
Its: President

\_\_\_\_\_  
Janet K. Adachi, Vice-Chair

\_\_\_\_\_  
Frances J. Osman, Clerk

\_\_\_\_\_  
By: Shterna Polter  
Its: Treasurer

\_\_\_\_\_  
Katie Green

\_\_\_\_\_  
Chingsung Chang

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

On this \_\_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned Notary Public, personally appeared Peter J. Berry, Janet K. Adachi, Frances J. Osman, Katie Green, and Chingsung Chang, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the persons whose names are signed on the preceding document, and each acknowledged to me that he/she signed it voluntarily in his/her respective capacity as a Member of the Board of Selectmen of the Town of Action for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF \_\_\_\_\_

On this \_\_ day of August, 2016, before me, the undersigned notary public, personally appeared \_\_\_\_\_, President of the Chabad Center of Acton, Inc., proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose names is signed on the preceding document and acknowledged to me that he/she signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Official signature and seal of notary  
Notary Public:

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF \_\_\_\_\_

On this \_\_ day of August, 2016, before me, the undersigned notary public, personally appeared \_\_\_\_\_, Treasurer of the Chabad Center of Acton, Inc., proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose names is signed on the preceding document and acknowledged to me that he/she signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Official signature and seal of notary  
Notary Public: