

## EASEMENT AGREEMENT

This EASEMENT AGREEMENT (this "Easement") is made as of this \_\_\_ day of \_\_\_\_\_, 201\_ (the "Effective Date"), by and among CHILDREN'S BROOKLINE PLACE LLC, a Massachusetts limited liability company, having an address c/o The Children's Hospital Corporation, 300 Longwood Avenue, Boston, Massachusetts 02115 ("Children 2-4 BP"), and CHILDREN'S ONE BROOKLINE PLACE LLC, a Massachusetts limited liability company, having an address c/o The Children's Hospital Corporation, 300 Longwood Avenue, Boston, Massachusetts 02115 ("Children's 1 BP" and, collectively, at times herein with Children's 2-4 BP, the "Grantors", and each sometimes referred to herein as a "Grantor"), and the TOWN OF BROOKLINE, a municipal corporation, having an address c/o Brookline Town Hall, 333 Washington Street, Brookline, Massachusetts 02445, acting by and through its Board of Selectmen as duly authorized by vote under Article 17 at the May 27, 2014 Annual Town Meeting (the "Town", and, sometimes referred to herein as the "Grantee").

### WITNESSETH:

WHEREAS, Children's 2-4 BP is the owner of certain property situated at and known as 2-4 Brookline Place in the Town of Brookline, Norfolk County, Commonwealth of Massachusetts, containing approximately 57,040 square feet (the "2-4 BP Property"), and which is more particularly described on Exhibit A, and Children's 1 BP is the owner of certain property situated at and known as 1 Brookline Place in said Town of Brookline, containing approximately 87,468 square feet (the "1 BP Property"), and which is more particularly described on Exhibit B attached hereto and incorporated herein by reference (the 2-4 BP Property and the 1 BP Property shall, at times herein, be collectively referred to as the "Property");

WHEREAS, the Town, at its Annual Town Meeting held on May 27, 2014, adopted certain amendments to the GMR-2.0 Zoning District, in which the Property is situated, in order to permit the redevelopment of portions of the Property (the "Amended Zoning"), as more particularly defined in that certain Memorandum of Agreement entered into by and among the Grantors and the Town, acting by and through its Board of Selectmen, dated as of April 29, 2014 (the "Memorandum of Agreement"), and as such proposed redevelopment (the "Proposed Redevelopment") is conceptually depicted on that certain plan entitled "Conceptual Site Plan", prepared by Elkus Manfredi Architects, LTD, dated March \_\_, 2014, and attached hereto as Exhibit C (the "Conceptual Redevelopment Plan"); and

WHEREAS, Grantee has requested from the Grantors, and the Grantors are desirous of granting to the Grantee, a non-exclusive easement for pedestrian ingress and egress over, across and through the Property, which easement will run (i) until the commencement of the construction of the Proposed Redevelopment, over the pedestrian walkways currently situated on the Property that connect the northwesterly corner of the 2-4 BP Parcel immediately adjacent to the Brookline Village Massachusetts Bay Transportation Authority station (the "MBTA Station") to Washington Street (Route 9) and Brookline Avenue, along the southerly boundary of the Property (the "Initial Pedestrian Easement Area"), as such pedestrian walkways are more particularly shown on that certain plan entitled "Existing Conditions Plan", prepared by

Elkus Manfredi Architects, LTD., dated March \_\_, 2014, and attached hereto as Exhibit D and incorporated herein by reference (the “Existing Conditions Plan”); and (ii) following the issuance of a Certificate of Occupancy for all of the improvements constructed as part of the Proposed Redevelopment (collectively, the “Improvements”), over an area that is materially consistent with the area depicted as “Easement Area” on the Conceptual Redevelopment Plan and shall have a minimum width of forty-five feet (45’) and contain approximately 23,916 square feet in total, with a portion of such land situated at the northwest corner of the 2-4 BP Property, measuring approximately 14,176 square feet (such 14,176 square foot area, the “Landscaped Area”), which may be used from time to time for public events as set forth more specifically herein (the “Redeveloped Easement Area”).

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Grant of Easement; Redevelopment; Grantors’ Retained Rights.**

- a. Grant of Easement; Use. Each Grantor hereby grants to the Grantee, for the benefit of the inhabitants of the Town of Brookline and the general public, a non-exclusive right and easement over, across and through the Initial Pedestrian Easement Area for pedestrian ingress to and egress from Washington Street to and from Pearl Street, to the extent such Pedestrian Easement Area runs over the portion of the Property that it owns as such walkways and extent of ownership of each Grantor is shown on the Existing Conditions Plan. Grantee hereby agrees and acknowledges that Grantors shall have the right, upon the completion of the construction of the Improvements, to relocate the Initial Pedestrian Easement Area to the Redeveloped Easement Area, pursuant to the provisions of subparagraph 1.b., below. For the purposes of this Easement, use of the term “Pedestrian Easement Area” shall refer to each of the Initial Pedestrian Easement Area and the Redeveloped Easement Area, as such Easement Area may then be in force and effect on the Property.

Grantors hereby agree and acknowledge that Grantee shall have the right and easement to utilize the Landscaped Area for such special public activities and events as the Town may desire to sponsor, from time to time, provided, however, that (i) such use by the Town shall be subject to the reasonable rules and regulations as Grantors may establish from time to time for the Property; (ii) to the extent permitted by law, Grantee agrees to indemnify and hold Grantors harmless from any and all claims, damages, liabilities, obligations, costs and/or expenses, including, without limitation, reasonable attorneys’ fees, incurred or suffered by Grantors as a result any injury, death or property damage suffered by any parties, as the result of the Town’s use of the Landscaped Area for such purposes; (iii) to the extent that the Town carries insurance or self-insures against liabilities with respect to public roadways and/or sidewalks within the Town, it will use reasonable efforts to ensure that such self-insurance will cover its use of the Landscaped Area for the above purposes; and (iv) in no event shall the Town

be permitted to utilize the Landscaped Area for more than four (4) days per calendar year, in the aggregate, without the prior written consent of Grantors, which consent may be granted, withheld or conditioned in Grantor's sole discretion.

- b. Redevelopment of the Property. Notwithstanding the provisions of Section 1.a. hereof, Grantee hereby agrees that its rights to utilize the Pedestrian Easement be suspended on the date set forth in a written notice from the Grantors (the "**Suspension Date**"), delivered (or deemed delivered) to Grantee pursuant to the terms of Section 3.d. of this Easement, that specifically states (i) when the redevelopment of the Property shall commence and (ii) the period of time whereby Grantee's use of the pedestrian easement will be restricted and/or unavailable due to the development (the "**Redevelopment Notice**"). In no event shall the Redevelopment Notice provide for a Suspension Date that is less than thirty (30) days from the date on which Grantee receives, or is deemed to have received, the Redevelopment Notice. Within thirty (30) days of the Town issuing a certificate of occupancy for all of the Improvements, Grantors shall deliver to Grantee an as-built plan showing the location of the Redeveloped Easement Area (the "**As-Built Easement Plan**"), which As-Built Easement Plan shall contain the square footage of the Redeveloped Easement Area, shall depict a Redeveloped Easement Area that is materially consistent with the location and extent of the same depicted on the Conceptual Redevelopment Plan and shall otherwise be reasonably acceptable to Grantee. In the event that the Grantee does not approve the As-Built Easement Plan within twenty (20) days of its receipt (or deemed receipt) thereof, the As-Built Easement Plan shall be deemed approved by the Town. Upon the Town's approval, whether actual or deemed, of the As-Built Plan, the Grantors shall cause the As-Built Plan to be recorded with the Registry and provide the recording information of such Plan to the Town upon the Grantors receipt thereof.
- c. Grantors' Retained Rights. Grantors hereby agree and acknowledge that they shall keep the Pedestrian Easement Area open and unobstructed at all times, subject, however, to Grantors' rights contained subparagraph 1.b. above, and to the following further limitations:
  - i. the Grantors specifically reserve the right, but shall not be required, to construct a covered walkway between the Improvements to be constructed on the 2-4 BP Property and the redeveloped garage to be constructed on the 1 BP Property, if and to the extent that such covered walkway is approved in connection with the granting of a Special Permit for the Proposed Redevelopment;

- ii. the Grantors specifically reserve the right to construct and install utilities, as well as landscaping, lighting and other amenities, upon, above and below the surface of the Pedestrian Easement Area; provided, however, that such installation of such utilities, as well as landscaping, lighting and other amenities, do not materially interfere with the Town's use and enjoyment of the Pedestrian Easement Area; and
  - iii. the Grantors reserve the right to perform any maintenance, repair, and/or replacement of any and all improvements and utilities upon, above, or below the Pedestrian Easement Area, including, without limitation, hardscaped and landscaped elements within such Area, and, in connection with such activities to temporarily close of the Pedestrian Easement Area or to restrict pedestrian access to portions thereof. Except in cases of emergency (i.e. occurrences involving an imminent threat of damage or injury to persons or property), which shall be determined in the sole discretion of the Grantors, the Grantors will provide reasonable advance written notice to Grantee before commencing any work in the Pedestrian Easement Area that will disrupt, in whole or in part, Grantee's use thereof. Whenever any work is to be performed upon the Pedestrian Easement Area, such work shall be performed (a) in a safe, diligent and workmanlike manner and in compliance with all applicable laws, ordinances, orders, rules, regulations and requirements of all governmental authorities having jurisdiction thereover and with all necessary permits and approvals having been issued therefor, and (b) in a manner that causes the minimum amount of interference with the Town's use and enjoyment of the Pedestrian Easement Area.
2. Term. The rights and easements granted herein shall commence on the Effective Date and shall remain in full force and effect for so long as the Improvements are constructed and continue to exist on the Property and Grantors are exercising their respective rights with regard to the same under any Special Permit granted by the Town of Brookline Zoning Board of Appeals pursuant to the Amended Zoning. Notwithstanding the above, the parties hereby agree that if Grantors do not commence the Proposed Redevelopment and, as a result, the Declaration of Restrictive Covenant entered into among Grantors and Grantee, dated of even date and recorded with the Norfolk Registry of Deeds (the "**Registry**") herewith, terminates, this Easement shall automatically terminate and shall deemed null and void and without further force or effect, without the need for the parties to execute or record any release or any other document.
  3. Miscellaneous Provisions. Notwithstanding anything to the contrary contained herein, the rights with respect to the Pedestrian Easement Area are granted subject to the following:

- a. Non-Interference. The Grantee's use of the Pedestrian Easement Area shall not materially interfere with the use and enjoyment of the Property by the Grantors or their respective successors and assigns. Except for the rights and easement expressly granted herein, no other easements, whether express or implied, are granted or created by this instrument. Without limitation of the foregoing, nothing herein shall be deemed to create any rights on the part of the Grantee outside of the Pedestrian Easement Area or any rights to enter onto the Pedestrian Easement Area for maintenance and repair purposes.
- b. Article 97. Without limitation of the foregoing, nothing herein shall be deemed to create any rights on the part of the Grantee, the inhabitants of the Town of Brookline or members of the general public under Article 97 of the Declaration of the Rights of Inhabitants of the Commonwealth of Massachusetts.
- c. Notices. All notices and other communications authorized or required hereunder shall be in writing and shall be given (1) by hand delivery; (2) by mailing the same by certified mail or registered mail, return receipt requested, postage prepaid, or (3) by overnight air courier or express delivery service with proof of delivery acknowledged. Any such notice or other communication shall be deemed to have been given when received by the party to whom such notice or other communication shall be addressed, or on the date noted that the addressee has refused delivery, or on the date that the notice is returned to sender due to the inability of the postal authorities to deliver. Any party hereto may change the address to which notices to it shall be sent by a notice sent in accordance with the requirements of this Section 3.d. Notice shall be given to the following:

**To Grantors:**

Children's One Brookline Place LLC  
Children's Brookline Place LLC  
c/o The Children's Hospital Corporation  
300 Longwood Avenue  
Boston, MA 02115  
Attn.: Vice President for Real Estate, Planning and Development

**With copies to:**

The Children's Hospital Corporation  
300 Longwood Avenue  
Boston, MA 02115  
Attn.: General Counsel

**and**

Goulston & Storrs PC  
400 Atlantic Avenue  
Boston, MA 02110

Attn.: Darren M. Baird, Esq.

**To Grantee:**

Town of Brookline  
Brookline Town Hall  
333 Washington Street  
Brookline, MA 02445  
Attn.: Town Administrator

**With a copy to:**

The Office of the Town Counsel  
Brookline Town Hall  
333 Washington Street, 6<sup>th</sup> floor  
Brookline, MA 02445  
Attn.: Town Counsel

- d. Successors and Assigns. The rights, easement, liabilities, agreements and other obligations as set forth shall inure to the benefit of and be binding upon the heirs, successors and assigns of the Grantors; provided, however, that the Grantors shall only be responsible hereunder for matters occurring and claims arising on or with respect to the Pedestrian Easement Area, and only during its period of ownership of the Property. In no event shall any member, manager, director, officer, employee, shareholder, partner, trustee, tenant, agent or representative of the Grantors, any condominium association hereafter an owner of all or any portion of the Property, or any mortgagee ever be personally liable for the payment or performance of any obligations under this Easement, and the Grantee agrees to look solely to the Property, in satisfaction of Grantors' obligations under this Easement. The Grantee acknowledges that it shall not have the right to assign any rights granted hereunder to any party without the written consent of the Grantors, which consent may be granted, withheld, conditioned or delayed in Grantors' sole and absolute discretion. Upon the expiration of the Term as set forth in Section 2 above, Grantors may record an affidavit evidencing such expiration with the Registry.
- e. Subject to Existing Record Matters. The rights and easement herein granted are subject to all restrictions, covenants, easements and other encumbrances of record to the extent in force and applicable.
- f. Amendments. This Easement may be amended or modified at any time by a declaration in writing mutually agreed to, executed and acknowledged by each of the parties hereto, and thereafter duly recorded in the Registry.

- g. Severability. If any term, provision, covenant or condition of this Agreement shall be or become invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions (or the application of such term, provision, covenant or condition to persons or circumstances other than those in respect of which it is invalid or unenforceable), except those terms, provisions, covenants or conditions which are made subject to or conditioned upon such invalid or unenforceable term, provision, covenant or condition, shall not be affected thereby, and each other term, provision, covenant and condition of this Agreement, unless conditioned upon such invalid or unenforceable term, provision, covenant or condition, shall be valid and enforceable to the fullest extent permitted by law.
- h. Effect on Other Agreements. This Easement does not affect the rights and obligations of the parties under any other agreement between the parties.
- i. Counterparts; Headings. This Easement may be executed in multiple counterparts, each of which shall be deemed an original and all of which, collectively, shall be deemed one and the same instrument. The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.
- j. Governing Law. This Easement shall be governed by the laws of the Commonwealth of Massachusetts as the same may now exist or may be hereinafter enacted.

*[Signatures appear on the following page]*

EXECUTED as a sealed instrument as of \_\_\_\_\_, 201\_.

**GRANTOR:**

**CHILDREN'S BROOKLINE PLACE LLC**, a  
Massachusetts limited liability company

By: Fenmore Realty Corporation, a Massachusetts non-  
profit corporation, its sole manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Hereunto Duly Authorized

**CHILDREN'S ONE BROOKLINE PLACE LLC**, a  
Massachusetts limited liability company

By: Fenmore Realty Corporation, a Massachusetts non-  
profit corporation, its sole manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Hereunto Duly Authorized

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss:

On this \_\_\_ day of \_\_\_\_\_, 2014, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the \_\_\_\_\_ of Fenmore Realty Corporation, the sole manager of Children's Brookline Place LLC, and acknowledged to me that he signed it voluntarily for its stated purpose as the \_\_\_\_\_ of the corporation on behalf of the limited liability company.

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

Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

[affix seal]

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss:

On this \_\_\_ day of \_\_\_\_\_, 2014, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the \_\_\_\_\_ of Fenmore Realty Corporation, the sole manager of Children's One Brookline Place LLC, and acknowledged to me that he signed it voluntarily for its stated purpose as the \_\_\_\_\_ of the corporation on behalf of the limited liability company.

Notary Public

\_\_\_\_\_

**GRANTEE:**

**TOWN OF BROOKLINE BOARD OF  
SELECTMEN:**

---

---

---

---

---

---

---

---

**EXHIBIT A**

**2-4 BP PROPERTY**

The land in Brookline, Norfolk County, Massachusetts, known as Two and Four Brookline Place and shown as Lot A on a plan entitled "Subdivision Plan of Land/Marsh Project - B-2 Parcel/Brookline, MA/Norfolk County" by J.F. Hennessey Co., dated January 15, 1985, recorded with the Norfolk County Registry of Deeds in Plan Book 324, Plan 927 of 1985, bounded and described as follows:

SOUTHEASTERLY  
and SOUTHERLY                    by Washington Street 213.30 feet;

WESTERLY and  
NORTHWESTERLY                by Pearl Street 400.31 feet; and

EASTERLY                        by Lot B shown on said plan by 3 courses measuring 139.02 feet,  
30.95 feet and 156.61 feet.

The above-described premises contains the following parcels of registered land:

Lot B and Lot C on Land Court Plan 687<sup>B</sup>  
Lot D and Lot E on Land Court Plan 687<sup>C</sup>  
Lot B on Land Court Plan 3182<sup>A</sup>  
Lot A-1 on Land Court Plan 3182<sup>B</sup>  
Lot A2 on Land Court Plan 3182<sup>C</sup>

Together with the benefit of terms and provisions of Easement Agreement dated October 31, 2006 by and among Brookline Village II Limited Partnership, Village Plaza Limited Partnership and Village Waterworks Limited Partnership and recorded in Book 24255, Page 389, and filed as Document No. 1115033.

**EXHIBIT B**

**1 BP PROPERTY**

The land in Brookline, Norfolk County, Massachusetts, known as One Brookline Place and shown as Lot B on a plan entitled "Subdivision Plan of Land/Marsh Project - B-2 Parcel/Brookline, MA/Norfolk County" by J.F. Hennessey Co., dated January 15, 1985, recorded with the Norfolk County Registry of Deeds in Plan Book 324, Plan 927 of 1985, bounded and described as follows:

SOUTHEASTERLY	by Brookline Avenue and Washington Street by four courses, measuring 99.69 feet, 19.06 feet, 42.73 feet and 175.33 feet, respectively;
WESTERLY	by Lot A shown on said plan by three courses measuring 156.61 feet, 30.95 feet and 139.02 feet, respectively;
NORTHWESTERLY NORTHERLY AND NORTHEASTERLY	by Pearl Street, 393.75 feet; and
SOUTHEASTERLY EASTERLY AND SOUTHWESTERLY	by Lot C shown on said plan by three courses measuring 65.74 feet, 48.82 feet and 95.09 feet, respectively.

The above-described premises contains the following parcels of registered land:

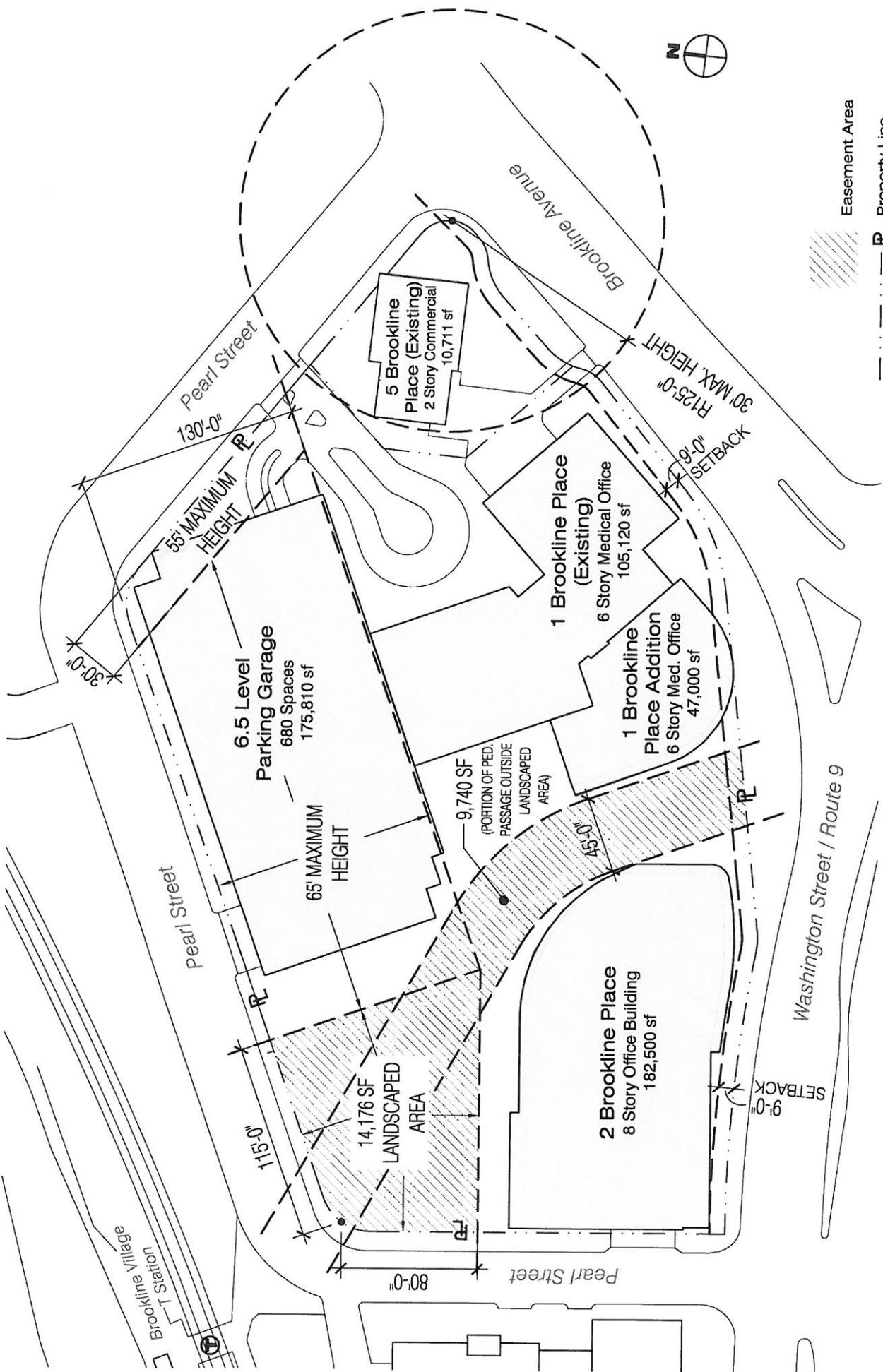
Lots 1 through 5 on Land Court Plan 24371<sup>A</sup> and a "way" shown on said plan.

Together with the benefit of terms and provisions of Easement Agreement dated October 31, 2006 by and among Brookline Village II Limited Partnership, Village Plaza Limited Partnership and Village Waterworks Limited Partnership and recorded in Book 24255, Page 389, and filed as Document No. 1115033.

**EXHIBIT C**

**CONCEPTUAL REDEVELOPMENT PLAN**

[attached behind]



Notes:

1. Curb location shown along Washington Street & Brookline Avenue reflects Gateway East Plan
2. Plan shows total FAR of 3.32 in GMR District
3. Plan shows 39.3% total Open Space in GMR District

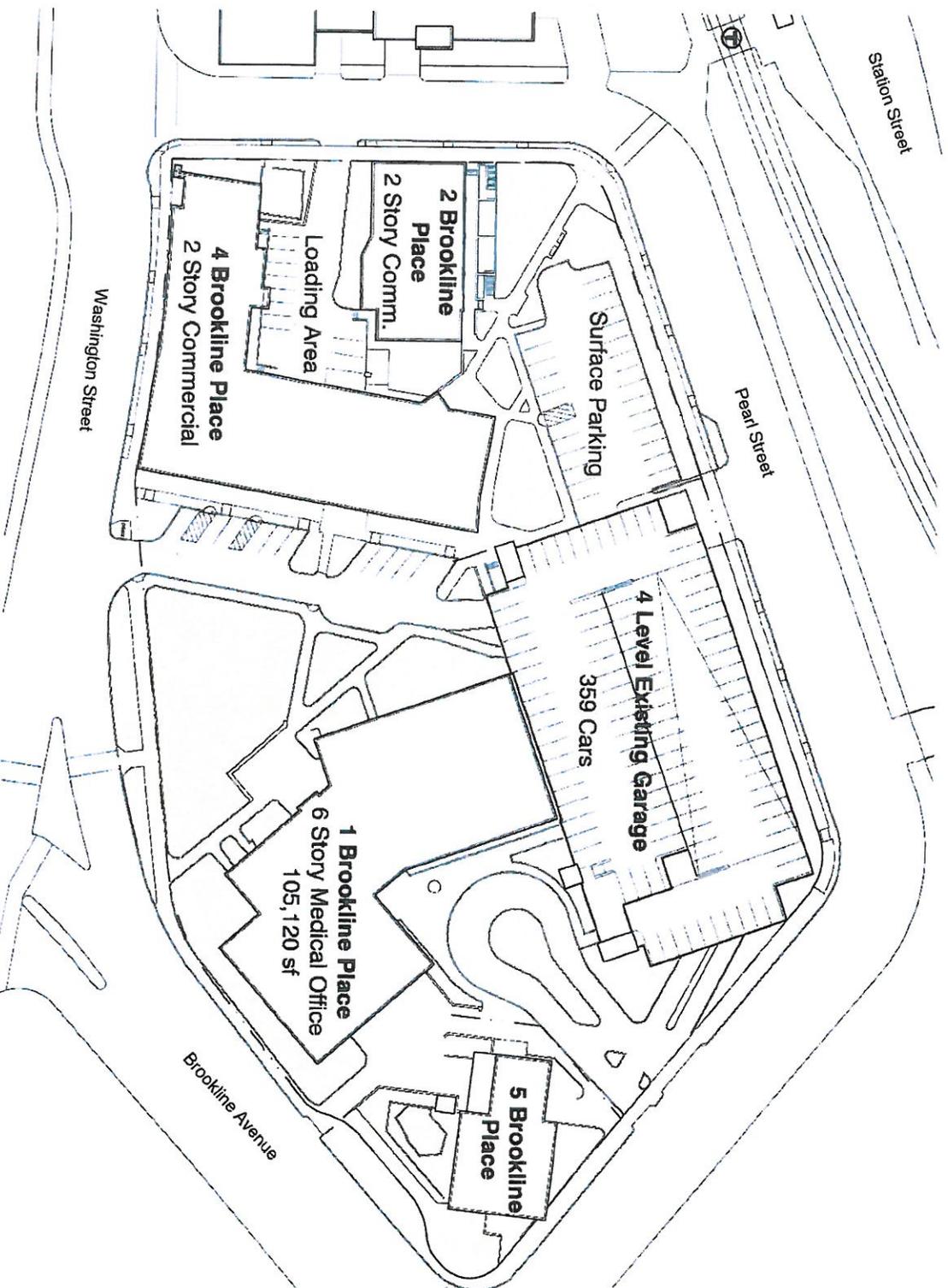
## CONCEPTUAL REDEVELOPMENT PLAN

**EXHIBIT D**

**EXISTING CONDITIONS PLAN**

[attached behind]

# Existing Conditions



**Boston Children's Hospital**

mikyounghkim design

ELKUS | MANFREDI  
ARCHITECTS

After recording return to:

**Goulston & Storrs PC**  
**400 Atlantic Avenue**  
**Boston, MA 02110-3333**  
**Attn: Darren M. Baird, Esq.**

EASEMENT AGREEMENT

by and among

CHILDREN'S ONE BROOKLINE PLACE LLC,

CHILDREN'S BROOKLINE PLACE LLC

and

TOWN OF BROOKLINE

Dated: as of \_\_\_\_\_, 201\_