

DEVELOPMENT AGREEMENT

This Development Agreement (this “Agreement”) is entered into as of this ___ day of _____, 2017, by and between the Town of Brookline (the “Town”), acting by and through its Board of Selectmen, and Hancock Village I LLC, a Massachusetts limited liability company in its capacity as owner of the Site (as hereinafter defined) (together, with its successors and assigns, the “Owner,” and together with the Town, the “Parties”).

Pursuant to that certain Deed dated March 3, 2008, and recorded with the Norfolk County Registry of Deeds (the “Registry”) in Book 25555, Page 59, and filed with the Norfolk County Land Court as Document No. 1,148,137 (Certificate #176360), the Owner is the owner of certain parcels of land located within the Town (such parcels collectively, as further described on **Exhibit A**, the “Site”).

This Agreement is entered into by the Parties to establish the framework for the redevelopment of certain portions of the Site. The existing improvements on, and the agreed-upon future development of certain portions of, the Site are more particularly described and depicted on a certain plan of land entitled “Master Development Plan”, attached hereto and incorporated herein as **Exhibit B** (the “Master Development Plan”).

The Owner has proposed to construct a mixed-income multifamily residential development at the Site consisting of not more than 382 total dwelling units (368 net new units within the Town) and uses accessory thereto, including without limitation, leasing, management offices, accessory parking, a social and community center, a private swimming pool, health and fitness center, other amenity space, and recycling centers, and to renovate existing dwelling units within the Site by converting laundry/utility rooms to bedrooms, creating an additional 13 bedrooms (collectively, the “Project” or the “HVOD Project”). The Owner has agreed that if and to the extent it pursues development of the HVOD Project, all development of the Site shall be performed pursuant to, and subject to the requirements and limitations of, the Master Development Plan and the HVOD By-Law (as hereinafter defined), subject to the provisions of Sections 1.1 and 1.2 below.

In furtherance of the foregoing objectives, the Town will present certain warrant articles to a Town Meeting, including, without limitation: (i) amendment of the Town’s Zoning Map to create a new Hancock Village Overlay District (“HVOD”); (ii) the adoption of a new zoning by-law to govern the Site, entitled, “Hancock Village Overlay District” (the “HVOD By-Law”); (iii) the approval of the Master Development Plan; (iv) the authorization for the Board of Selectmen to accept the conveyance of certain land and easements to the Town, and, if necessary, to convey easements to the Owner; (v) certain amendments to Section 5.10 of the Town’s General By-Laws governing Neighborhood Conservation Districts; and (vi) the authorization for the Board of Selectmen to execute this Development Agreement (collectively, the “Town Meeting Articles”).

The development of the Project shall be subject to the terms and restrictions set forth in this Agreement. The Owner shall impose such restrictions and undertake and complete such obligations, as set forth in this Agreement.

The Parties wish to enter into this Agreement to memorialize their mutual understandings, commitments, and agreements regarding the Project.

1. MASTER DEVELOPMENT PLAN AND PROJECT

1.1 If all of the Town Meeting Articles are adopted as set forth in the Warrant for such Articles (or the same are adopted with such changes as are accepted by both the Town and the Owner in writing), then the Owner shall not commence Construction Activity at the Site except for that which is authorized by the HVOD By-Law and this Agreement. Notwithstanding anything herein to the contrary, the provisions of this Section 1.1 shall be binding and effective immediately upon passage of the Town Meeting Articles; provided, in the event that the Attorney General fails to approve explicitly or otherwise the Town Meeting Articles or any provision thereof after this Section 1.1 becomes effective, (i) the Parties shall continue to be bound by this Section 1.1 if the Town Meeting Articles (as amended and approved by the Attorney General) are accepted by both the Town and the Owner in writing; or (ii) if the Town Meeting Articles (as amended and approved by the Attorney General) are not so accepted in writing, the Parties agree to confer in good faith until the next annual Town Meeting regarding the implementation of alternatives which comport to the findings of the aforesaid Attorney General and most nearly accomplish the original intention of the Parties. If the Parties are unable to agree upon and obtain approval for the implementation of such alternatives by the next annual Town Meeting, then the Town Meeting Articles shall be deemed not adopted, and this entire Agreement shall be deemed null and void in accordance with Section 1.2 below.

1.2 If all of the Town Meeting Articles are not adopted as set forth in the Warrant for such Articles (or the same are adopted with such changes as are not accepted by both the Town and the Owner in writing), then this Agreement shall be null and void and of no further force and effect, and the Owner shall retain all of its rights to develop the Site, including, without limitation: (i) to pursue development of the 40B Projects (as defined in Section 3.7 below); (ii) to pursue development in accordance with the Town's Zoning By-Law; and (iii) to challenge the validity of the Town's Neighborhood Conservation District By-Law (Article 5.10 of the Town's General By-Laws).

1.3 Subject to the foregoing Sections 1.1 and 1.2 above, (i) upon adoption of the Town Meeting Warrant Articles, the HVOD Project may be developed and constructed solely in accordance with the Master Development Plan, and the provisions of Section 5.06.4.k.4.b of the HVOD By-Law shall apply to preexisting structures located at the Site; (ii) all use of the Site shall be consistent with the Master Development Plan (as the same may be amended pursuant to the HVOD By-Law) and the HVOD By-Law; and (iii) this Agreement is effective and shall be binding upon the Parties upon execution of this Master Development Agreement, notwithstanding anything contained in Section 5.06.4.k.4.c of the HVOD By-Law to the contrary, and is contingent upon the Owner's receipt of the Conformance Determination(s) required for the Owner to pursue construction of the HVOD Project as provided for in the HVOD By-Law.

1.4 In accordance with the Master Development Plan, the Owner shall construct up to 382 new housing units at the Site (22 of which will replace existing units, 14 of which are located within the Town, resulting in 368 net new housing units within the Town). The total

number of bedrooms in these 382 new units shall not exceed 546 bedrooms. In addition to the new units and in accordance with the Master Development Plan, as part of the HVOD Project, the Owner may renovate existing dwelling units within the Site by converting laundry/utility rooms to bedrooms, creating up to an additional 13 bedrooms at the Site.

1.5 The unit mix in the Master Development Plan shall be comprised of 1-bedroom units, 2-bedroom units, and 3-bedroom units, in accordance with the Unit Summary that is attached hereto and incorporated herein by reference as **Exhibit C**; provided, however, that nothing in this Agreement shall restrict the Owner from converting any additional 2-bedroom units to 1-bedroom units with dens.

1.6 The Unit Summary that is attached hereto and incorporated herein by reference as **Exhibit C** includes details of the anticipated breakdown of proposed buildings and unit type that are included in the Master Development Plan. Of the 382 new units to be constructed as set forth in Section 1.4 above, at least fifty-five (55) of the units (the “Affordable Units”) shall be “Affordable Units” and subject to the guidelines related to affordable units stated in Section 5.06.4.k.4.a. Without limiting the foregoing, the issuance of certificates of occupancy for market rate units at the HVOD Project are subject to the timing requirements set forth in Section 5.06.4.k.4.a.K.

1.7 Of the 382 total new units to be developed as part of the Project, 148 units shall be subject to and developed in accordance with the terms and conditions set forth in a separate Development Agreement for Local Action Units by and between the Parties of even date herewith (the “LAU Development Agreement”). The Parties shall take any and all necessary actions within their respective authority and control, pursuant to the LAU Development or otherwise, for the Department of Housing and Community Development (“DHCD”) to place all 148 units from the Gerry and Asheville Buildings on the Town’s Subsidized Housing Inventory (SHI). Provided the Town has performed all such actions in a timely manner, the Developer agrees that no building permit for construction of the so-called “Sherman Building” shall be issued until DHCD has placed the 148 units on the SHI and Developer has commenced and is continuing or has completed construction activities in connection with such units and, to the extent the Developer is proposing to provide the “100 AMI” units within existing townhouses pursuant to Footnote 3 of Figure 5.06.4.k.1 of the HVOD By-Law, then certificates of occupancy have been issued for all 100% AMI units. In no event shall a building permit for the Sherman Building be withheld or delayed due to the 148 units not being placed on the SHI if the Town has not performed all of its obligations under this Section 1.7.

1.8 Eighteen (18) units (10 one-bedroom units and 8 two-bedroom units) in the so-called “Gerry Building” shall be made available for rent to an Eligible Household (as defined in Section 4.08.2.d of the Town’s Zoning By-Law) earning less than or equal to 100% of the AMI. These units shall be provided pursuant to the guidelines set forth in Section 5.06.4.k.4.a of the HVOD By-Law, and shall be the subject of a Town Rental Agreement, which shall be executed and recorded prior to the issuance of any certificates of occupancy for the Gerry Building. All requirements of this Section 1.8, with the exception of the requirement as to location, shall apply in equal scope and force should the Owner elect to exercise its rights under Footnote 3 to Figure 5.06.4.k.1 and provide 26 units (18 one-bedroom units and 8 two-bedroom units) within pre-existing townhouse buildings at the Site.

1.9 No building permit authorizing subsequent development that would increase the total square footage of any building at the Site, and that is not part of the HVOD Project, shall be issued sooner than ten (10) years after the recording of the Notice specified in Section 5.06.4.k.4.c of the HVOD By-Law. Further, such development shall not include additional bedrooms, units or buildings, and shall not result in the gross floor area of all buildings within the Site exceeding 1,021,773 square feet, including all floor area to be constructed as part of the HVOD Project, regardless of whether such floor area has actually been constructed at the time of such subsequent development. Such further development shall be permitted pursuant to, and shall conform to Design Guidelines set forth in, Section 5.06.4.k.4.b.ii of the HVOD By-Law.

2. TRAFFIC IMPROVEMENTS AND MITIGATION

2.1 The final site plans submitted in connection with the Owner's application for Conformance Review pursuant to Section 5.06.4.k.12 of the HVOD By-Law shall include the following improvements (the "Roadway Improvements"):

- (a) construction of a new pedestrian crossing at the East Hancock Village driveway with pedestrian push button actuated rectangular rapid flash beacons;
- (b) realignment of the crosswalk on the south leg of the Independence Drive at Beverly road and Russet Road intersection to provide a shorter, perpendicular crossing;
- (c) marking of the pedestrian crossings across Independence Drive with the Town of Brookline standard decorative brick paver material;
- (d) reduction of the travel lanes to one lane in each direction from the City of Boston / Town of Brookline line to the proposed Hancock Village East driveway, with corresponding widening to two lanes in each direction near the Independence Drive and Beverly Road and Russet Road intersection;
- (e) implementation of a road diet allowing the formalization of travel lanes and parking lanes on the east and west side of the street; and
- (f) provision of enhanced bicycle accommodations with curbside street grade cycle track with a painted buffer and delineator posts providing separation between the cyclist and the motor vehicle parking lane.

In addition, the Owner agrees to implement the following improvements to the private roadways and driveways of the Site (the "Site Improvements"):

- (a) a curb cut on the westbound side of Independence Drive (approximately two hundred fifty feet (250') southwest of Beverly Road);
- (b) a curb cut on the eastbound side of Independence Drive (approximately one hundred feet (100') east of Gerry Road);
- (c) a curb cut on the westbound side of Independence Drive at the location of the proposed Community Center Building;

(d) installation of STOP signs (R1-1 series) and STOP pavement line markings on the driveways connecting to Independence Drive;

(e) construction of sidewalks and marked crosswalks (i) along the driveways connecting to Independence Drive, (ii) from the Project to the Baker School, and (iii) from the Project to the sidewalks in the existing portions of the Site.

(f) installation of a new bus shelter at the far side of the intersection at Gerry Road, the design and location of which shall be mutually agreed upon by the Parties, as well as the coordination of the necessary petition to the MBTA for approval and siting.

No certificate of occupancy shall be issued for the Sherman Building until construction of the Roadway Improvements and the Site Improvements has been substantially completed to the reasonable satisfaction of the Director of Engineering and Transportation unless the Owner either (a) posts a bond with the Town in the amount reasonably necessary to perform the work required under this Section 2.1; or (b) obtains written consent from the Town.

2.2 The Owner and the Town agree to cooperate as necessary to terminate and shut off the public Asheville Road entrance/exit to the Site, except for emergency vehicle access, and to install and maintain an “Opticom” gate for such emergency access prior to the occupancy of the Asheville Building. All costs associated with terminating and shutting off the Asheville Road entrance/exit shall be the responsibility of the Owner. No certificate of occupancy shall be issued for the Asheville Building until such “shut off” work has been substantially completed to the reasonable satisfaction of the Director of Transportation and Engineering unless the Owner either (a) posts a bond with the Town in the amount reasonably necessary to perform the work required under this Section 2.2; or (b) obtains written consent from the Town. The Owner agrees to replace or modify such gate, if and when necessary, with a comparable gate or operating mechanism acceptable to the Fire Chief.

2.3 In addition to construction of the Roadway Improvements and the Site Improvements described in Section 2.1 above, the Owner shall design and install a traffic signal at the intersection of Sherman and Thornton Roads and Independence Drive (the “Traffic Signal”) at its expense. No certificate of occupancy for the Asheville Building may issue until the Owner has substantially completed installation of the Traffic Signal unless the Owner either (a) posts a bond with the Town in the amount reasonably necessary to perform the work required under this Section 2.3; or (b) obtains written consent from the Town. The Owner shall be responsible for preparing an analysis confirming the Traffic Signal is appropriate and meets applicable Massachusetts Amendments to the Manual on Uniform Traffic Control Devices Warrant 3 (1-hour Warrant) volume thresholds. Upon completion of its construction, the Town shall be solely responsible for maintaining the Traffic Signal.

2.4 The Owner agrees to implement a Transportation Access Plan (TAP), prepared in accordance with the *Transportation Access Plan Guidelines* of the Town, which shall be submitted for review and approval by the Director of Engineering and Transportation. Mitigation measures in the TAP shall include the Applicant (i) providing employee and resident parking stickers or tags; (ii) providing fifty (50%) subsidies for its employees’ public transit costs; (iii) providing on-site sale of MBTA passes; (iv) expanding the existing car-sharing

service at the Site and including additional car-sharing spaces among the spaces allowed under Section 5.06.4.k.6 of the HVOD By-Law (if and to the extent warranted by demand for such services and spaces); (v) providing on-site secure bicycle storage at each of the four new buildings; (vi) expanding the existing shuttle service to include Project, and based on the demand identified in the post-occupancy Traffic Study referenced in Section 2.6, increasing the number of trip and/or stops; and (vii) publicizing transit options. The approved TAP shall be submitted as one of the Final Plans for the HVCRC Conformance Review pursuant to Section 5.06.4.k.12 of the HVOD By-Law. The TAP shall contain a provision allowing the Director of Engineering and Transportation to enforce its provisions, and in the event of a breach thereof (subject to reasonable notice and cure provisions to be set forth in the TAP), such breach shall be treated as a violation subject to the general penalty provisions set forth in Article 10.1 of the Town's General By-Laws.

2.5 After ninety (90) days have elapsed since the Town has issued Certificates of Occupancy for the Sherman Building, and the Owner certifies that at least ninety percent (90%) of the units in all the new buildings identified on the Master Development Plan are occupied, the Owner shall prepare a traffic study ("Traffic Study") for review and approval by the Director of Engineering and Transportation and the Transportation Board. The scope of the Traffic Study shall be consistent with the Traffic Impact Assessment prepared by MDM Transportation Consultants, Inc. dated November 18, 2013, and revised July 17, 2014 (the "Initial Traffic Assessment"), and shall use the existing traffic conditions as set forth in the Initial Traffic Assessment as its baseline for determining the impacts of the Project and evaluating the need for traffic calming. The Owner shall propose traffic calming measures needed to mitigate the adverse impacts of the Project revealed by the Traffic Study, if any, on the public portion of Asheville, Russett, Bonad, and Beverly roads. Prior to issuance of a building permit for any Construction Activity, as that term is defined in Section 5.06.4.k.2 of the HVOD By-Law, within the HVOD, the Owner shall deposit sixty-four thousand dollars (\$64,000) into a segregated account to be used by the Town for traffic calming purposes on those roads, any unused funds to be returned to the Owner on the date that shall be the third (3rd) anniversary of the acceptance of the Traffic Study by the Town.

2.6 The Town shall cooperate, to the extent permissible by law, with all of Owner's efforts to perform the work and install the improvements contemplated under this Article 2, including, without limitation, the construction of the Roadway Improvements, Site Improvements, and Traffic Signal. Such cooperation shall include, without limitation, issuance of all reasonable or necessary permits and approvals (provided that all such improvements, to the extent applicable, shall be designed and constructed in accordance with standard practices for construction, installation, and maintenance of traffic signs, signals, markings, parking meters and other devices for the control of traffic and parking in the town in the Town, most particularly review and approval by the Transportation Board, as applicable).

3. COMMUNITY BENEFITS

3.1 The following community impact mitigation elements and exaction payments shall be performed or paid by the Owner, subject to the terms of this Agreement. There shall be no further mitigation, linkage or exaction payments required by the Town in connection with the approval, construction and occupancy of the Project constructed in accordance with the Master

Development Plan. All of the mitigation measures set forth in this Section 3 shall be subject to and conditioned upon the receipt of all permits, approvals and third party consents necessary therefor.

3.2 Within one year of the recording of the Notice specified in Section 5.06.4.k.4.c of the HVOD By-Law, the Owner shall complete a renovation of the tennis courts at the Baker School, in accordance with a renovation plan developed in cooperation with the Town and approved by the Town's Parks and Open Space Director. If the required renovation has not been completed upon the expiration of such year, no certificates of occupancy shall be issued in connection with the first building for which a building permit was issued for vertical construction as part of the HVOD Project until the required renovation has been completed unless the Owner either (a) posts a bond with the Town in the amount reasonably necessary to perform the work required under this Section 3.2; or (b) obtains written consent from the Town.

3.3 The Owner shall construct a playground at the location shown as "Play Area" on **Exhibit B**, which shall be consistent with a design plan developed in cooperation with the Town and approved by the Town's Parks and Open Space Director. Construction of such playground shall be overseen by a representative from the Town and shall be substantially completed within one (1) year of the date of issuance of the first final certificate of occupancy issued for a building within the HVOD Project. If, upon the expiration of such year, construction of the required playground has not been substantially completed, the Town shall have the right to complete construction of the playground, and to recover from the Owner (or in the event ownership of the Site is subdivided, to recover from the Owner of the building for which such final certificate of occupancy was issued) all out-of-pocket costs reasonably incurred by the Town in connection with completing construction of said playground.

3.4 Within thirty (30) days of issuance of the final certificate of occupancy for the Sherman Building or ten (10) years after the recording of the Notice specified in Section 5.06.4.k.4.c of the HVOD By-Law (whichever is earlier), unless such period is extended with the agreement of the Parties, the Owner shall convey to Town for consideration of \$10.00, a parcel of land (approximately 155,116 square feet in area) shown as "HVOD Buffer Area" on the plan attached hereto as Exhibit D (the "Future Park") (which Future Park shall include the playground fully completed as described in the foregoing Section 3.3), along with any necessary accompanying easements for public access or otherwise, for use as a public park. Without limiting the generality of the foregoing, the Parties acknowledge and agree that it is the intent of the Town that the areas to be conveyed to the Town may qualify as so-called "Article 97" land. Said conveyance of the Future Park shall be subject to the following rights of the Owner(s) of the Site: (i) such easements benefiting the Project as may be reasonable or necessary, including, without limitation, for stormwater drainage and landscaping improvements for screening purposes; and (ii) a covenant that the Future Park shall not be used for any purposes other than public park purposes, which shall be limited to open space and passive recreational uses such as dog-walking, impromptu sports and other unstructured activities and which shall allow customary park improvements such as benches or pathways but shall prohibit any structures or other improvements, including, without limitation, athletic fields or courts, with the exception of the playground described above in Section 3.3. If the Owner fails to complete the required conveyance by the deadline specified herein, the Town shall be entitled to exercise its eminent domain power to acquire the Open Space Areas, and the Owner shall be deemed to have waived

any claim for compensation therefor, provided that in exercising its eminent domain power, the Town's acquisition of the Open Space Areas is subject to the rights of the Owner(s) referenced in the preceding sentence. Notwithstanding anything herein to the contrary, nothing herein shall prevent the Owner from conveying the Future Park, or any portion thereof, to the Town prior to the date specified in this Section 3.4, provided that the conveyance of any such portion containing the Play Area shall occur after the construction of the playground described in Section 3.3.

3.5 The Owner agrees to perform, at no cost or expense to the Town, regular landscape maintenance of the Future Park, in conjunction with its regular maintenance of the Project, for a period of thirty (30) years from the date that the Town acquires title to the HVOD Buffer Area. Notwithstanding anything herein to the contrary, in the event ownership of the Site is divided, the party holding the covenant described in Section 3.4 above related to the use of the Future Park shall be responsible for fulfillment of the Owner's obligations in this Section 3.5. The Parties shall enter into a license agreement and any other agreements as may be reasonable or necessary for the Owner to perform such maintenance work, which license agreement or other agreements shall include provisions for notice and cure of defaults, and the right to exercise self-help thereunder. Without waiving the Town's immunity under M.G.L. c.21, §17C, or indemnifying the Owner, the Parties acknowledge and agree that the Town, not the Owner, shall be the party responsible as the owner of the Future Park from and after the conveyance contemplated in Section 3.4 above.

3.6 In addition to the conveyance of the Future Park conditionally required in Section 3.4 and the landscaping maintenance described in Section 3.5, above, the Owner shall gift to the Town one million dollars (\$1,000,000.00). The gift payment shall be due and payable upon the issuance of a building permit for the Sherman Building or ten (10) years after the recording of the Notice specified in Section 5.06.4.k.4.c of the HVOD By-Law (whichever is earlier). The gift payment shall be placed in a fund pursuant to M.G.L. c.44, §53A, the proceeds of which will be used to pay for improvements to the Brookline community in the vicinity of the Project. The Town shall use best efforts to utilize such funds within three (3) years of funding by the Owner. Notwithstanding anything herein to the contrary, in the event ownership of the Site is divided, the record owner of the portion of the Site that is proposed to contain the building footprint of the proposed Sherman building, as shown on the Master Development Plan, shall be responsible for fulfillment of the Owner's obligations in this Section 3.6.

3.7 Upon receipt of a building permit for the Sherman Building or within twenty (20) years of the execution of this Agreement (whichever is earlier), the Owner shall relinquish the Comprehensive Permit issued in Board of Appeals Case No. 2013-0094 and dated February 12, 2015 (the "ROSB Comprehensive Permit"), for the project referred to as "The Residences of South Brookline" and shall withdraw, by written notice, its application for a Comprehensive Permit (the "Puddingstone Application") for the project referred to as "Puddingstone at Chestnut Hill" (collectively, the "40B Projects"). Construction of the Asheville Building as provided for in this Agreement shall not be deemed to constitute the exercise of the ROSB Comprehensive Permit. During the term of this Agreement and until the Owner relinquishes the ROSB Comprehensive Permit and the Puddingstone Application is withdrawn in accordance with this Section 3.7, and provided there are no defaults by either of the Parties hereunder, the Owner and the Town shall cooperate to request from the Town's Zoning Board of Appeals serial extensions,

in one-year increments, of: (i) with respect to the ROSB Comprehensive Permit, the lapse period under 700 C.M.R. 56.05(12)(c); and (ii) the time for said Zoning Board of Appeals to conduct the public hearing on the Puddingstone Application.

3.8 All recycle centers located on the Site will be monitored with security cameras to alert the management team of any misuse. The entity responsible for managing trash removal at the Site shall assign an employee to check all recycle centers at intervals every day to ensure it is being used as designed, and shall have the trash and recyclables removed from the Site as many times per week as is necessary to maintain an appropriate standard of cleanliness and hygiene, but shall in no event schedule trash and recyclables pick up less often than once per week. These obligations are incurred by the Owners of the land underlying the recycle centers, and those Owners are responsible for the fulfillment of those obligations. The Owner(s) of the Asheville, Sherman and Gerry buildings are responsible for insuring that each of those buildings includes internal trash rooms dedicated to satisfying the waste disposal and recycling needs of the residents of those buildings.

4. CONSTRUCTION

4.1 During construction, the Owner shall conform to all local, state, and federal laws regarding air quality, noise, vibration, dust, and blocking of any roads. The Owner shall at all times use reasonable means to minimize inconvenience to residents in the general area of the Project. The Owner shall provide the Police Department with the name and 24-hour telephone number for the project manager responsible for construction. The hours for operation of construction equipment, deliveries and personnel shall be limited to: Monday through Saturday (excluding Federal and State holidays): 7:00 am to 5:00 pm. Any noise or traffic complaints during these hours will be investigated by the appropriate Town agencies and departments.

4.2 Before site clearing or grubbing (removal of stumps and soil) in connection with any Phase (as defined below in Section 6.8) ("Commencement of Construction"), and subject to approval by the Building Commissioner, the Owner shall provide, with respect to such Phase, a Construction Management Plan that shall include but not be limited to:

- (a) designation of truck routes (the condition of pavement surfaces of such routes before and after construction to be documented) and an estimate of the number of average daily truck trips;
- (b) a phasing plan prepared by Owner's contractor that includes provisions to protect the crushed stone reservoir course and the one porous asphalt pavement lot north of Asheville Road during construction;
- (c) a survey of existing trees and measures to ensure tree protection during construction;
- (d) a plan showing the limit of work areas and the locations of construction vehicles, material and equipment storage, construction workers' parking (with an indication of parking hours), portable toilets, trailers, security fencing, trash areas, and a plan for restoring portions of the HVOD Buffer Areas disturbed during construction;

(e) plans for control of rodents and insects, and for dust and other airborne particles; and

(f) earthwork calculations to determine earth and rock removal and a timetable for excavation and overall earthwork operation.

4.3 The Owner shall make all commercially reasonable efforts to ensure that the entire construction period from Commencement of Construction for any Phase (as defined below in Section 6.8) to the date of issuance of the final certificate of occupancy for such Phase shall be no more than thirty (30) months.

4.4 The Owner shall ensure that no erosion from the Site occurs that will cause deposition of soil or sediment upon adjacent properties or public ways. Prior to Commencement of Construction of any Phase (as defined below in Section 6.8), the Owner shall provide the Director of Engineering and Transportation with plans showing, for such Phase, the following:

- (a) catch basins, with both silt sacks and hay bales;
- (b) site perimeter controls and drainage structure inlet sediment protection measures;
- (c) specific locations and construction details for the stabilized construction entrances;
- (d) final locations of stockpile areas on erosion control plans; and
- (e) construction detail for erosion controls at perimeter of stockpiles.

4.5 Prior to Commencement of Construction for any Phase (as defined below in Section 6.8), the Owner shall, for such Phase: (i) provide a blasting/drilling plan, for review and approval by the Fire Chief and the Building Commissioner, with the assistance of the Town's geotechnical blasting consultant, that includes methods to protect buildings, residents, pedestrians, vehicles, and utilities on and off-site and provides for coordination with utility owners; and (ii) deposit funds in a segregated account to pay for the reasonable fees charged by a geotechnical consultant to be hired by the Town to review the blasting/drilling plan and oversee blasting and drilling performed by the Owner on the Site. All drilling and blasting pertaining to the Project or the Site, shall be in accordance with federal, state and local blasting permit laws and regulations and in accordance with the conditions contained therein as well as the conditions listed in **Exhibit E** attached hereto.

4.6 Water

Prior to application for a building permit for any Phase (as defined below in Section 6.8), the Owner's engineer shall demonstrate in a written certification, made to the satisfaction of the Fire Chief, that there is adequate water flow and pressure (as set forth in applicable codes) for the Project's domestic and fire-fighting purposes, or that a fire pump has been or will be installed as part of construction to meet applicable code requirements.

4.7 Fire Safety

Prior to application for any building permit in connection with the Project, the Owner shall certify in writing to the Town's Fire Chief and Building Commissioner that: (a) all buildings in the Project have been designed to include enhanced NFPA 13 designed sprinkler systems; (b) all buildings in the Project have been designed to include direct alarm notification to the Fire department designed in accordance with building and fire codes; and (c) the Sherman and Asheville Buildings, as shown on the Master Development Plan, include a Class I or III standpipe system.

5. STORMWATER MANAGEMENT

5.1 Prior to application for Conformance Review conducted pursuant to Section 5.06.4.k.12 of the HVOD By-Law, the Owner shall submit final stormwater management plans and information for review and approval by the Director of Engineering and Transportation. Such final stormwater plans shall be consistent with the Master Development Plan and the Stormwater Management Report prepared by Stantec Planning and Landscape Architecture, PC dated June 27, 2017.

5.2 The Project's stormwater management system shall be designed to ensure there will be no standing water on the low-lying areas of the Site and shall be consistent with the Massachusetts Department of Environmental Protection's *Stormwater Management Standards*.

5.3 The Owner shall take water quality samples at the intersections of the twenty-seven inch (27") and eighteen inch (18") drains in Independence Drive and the twenty-seven inch (27") and forty-two inch (42") drains in Gerry Road and at the outfall. If the results indicate cross-contamination between the sewer and the stormwater system caused by the Project or by the existing development at the Site, further investigation and mitigation shall be required as directed by the Commissioner of Public Works.

6. MISCELLANEOUS

6.1 Forbearance from Suit

The Parties shall forego any actions at law or equity attempting to contest the validity or prevent the enforceability of any provision(s) of this Agreement or the development of the Project contemplated hereby. This Agreement shall be a recordable instrument, the obligations of which shall run with the land, and the Owner shall, in addition, procure written acknowledgment that such forbearance shall bind any successor or assign. Such forbearance shall not preclude any Party from bringing any action for breach of contract on the part of the other Party or acts of intentional misconduct with respect to matters contemplated herein.

6.2 Cooperation

To facilitate the development of the Project and the realization of the provision of open space, affordable housing, transportation improvements, and other benefits contemplated under this Agreement, the Town agrees, to the extent permissible by law, to cooperate with the Owner in obtaining any necessary permits and approvals (or modifications thereto) to construct and

operate the Project. Without limiting the generality of the foregoing, the Owner and the Town further agree as follows:

(a) The Parties shall cooperate in granting one another all necessary right-of-way easements over the ways and parking lots shown on said plan for access/egress and utilities to and from the Future Park and the Project.

(b) The Town shall not pursue or otherwise support, directly or indirectly, the designation of the Site, or any portion of the Hancock Village development, to be listed or eligible for listing on the Federal or State Register of Historic Places. If at any time the Site, or any portion of Hancock Village, becomes listed on the Federal or State Register of Historic Places, the Town agrees to take such reasonable steps and to cooperate so as to permit the Owner to construct the Project in accordance with the Master Development Plan without undue delay. Upon the issuance of building permits for the buildings constructed under the Master Development Plan, the Owner and the Town shall jointly consider pursuing the Town's application for such listing.

(c) The Parties agree to work cooperatively, on a going-forward basis, to execute and deliver documents, and take such other actions, whether or not explicitly set forth herein, that may be necessary in connection with the development of the Project or the implementation of the goals and objectives of this Agreement.

6.3 Successors and Assigns

This Agreement shall be binding upon the Owner and its successors and assigns, shall run with the land described in **Exhibit A**, and shall be recorded with the Registry and properly indexed to the chain of title.

The Parties agree that the Owner may subdivide, or seek endorsement of an Approval Not Required Plan for division of, the Site (including, without limitation, through the creation of one or more condominiums or long term ground leases) and may transfer all or any subdivided portion of the Site to another entity (each a "New Entity"), with this Agreement and all its provisions and requirements running with the land, such that:

(a) this Agreement shall run with the land to each subdivided portion of the Site, shall be binding upon and inure to the benefit of the Owner in so far it is the owner of the Site, and to each of its successors and assigns as to the rights and obligations that arise under this Agreement during their respective period of ownership of the Site and/or their respective subdivided portion(s) of the Site, and each predecessor-in-title shall be forever released from this Agreement with respect to a subdivided portion of the Site upon providing the Town with a copy of a written acknowledgment from its immediate successor-in-title that: (i) such successor-in-title is bound by the terms of this Agreement and (ii) this Agreement shall be enforceable against such successor by the Board of Selectmen with respect to such successor's subdivided portion(s) of the Site; and

(b) the obligations created hereunder shall not be treated as assigned by the Owner until the written acknowledgment from a New Entity is provided to the Town in accordance with the foregoing Section 6.3(a); provided, however, failure to provide the

written acknowledgement specified in the foregoing Section 6.3(a) shall not affect the applicability of this Agreement on any New Entity or successor-in-title to the Site or any portion thereof.

6.4 Subordination

This Agreement shall be recorded so as to be senior to all mortgages and liens of record, and the Owner shall arrange for all necessary subordinations to be provided in a form reasonably satisfactory to Town Counsel, and recorded herewith.

6.5 Notices

Notices, when required hereunder, shall be deemed sufficient if sent by registered mail or overnight delivery (e.g., Fed Ex or UPS) to the Parties at the following addresses:

Town: Town of Brookline
Brookline Town Hall
333 Washington Street, 6th Floor
Brookline, MA 02445
Attn: Town Administrator

with a copy to: Brookline Town Hall
333 Washington St.
6th Floor
Brookline, MA 02445
Attn: Town Counsel, Joslin Ham Murphy, Esq.

Owner: Hancock Village I LLC
c/o Chestnut Hill Realty
300 Independence Drive
Chestnut Hill, MA 02467
Attn: Edward Zuker
Attn: Marc Levin

with a copy to: Goulston & Storrs PC
400 Atlantic Avenue
Boston, MA 02110-3333
Attn: Steven Schwartz, Esq.

Notices shall also be given to such other parties as a Party may reasonably request.

6.6 Force Majeure

The Owner shall not be considered to be in breach of this Agreement for so long as the Owner is unable to complete work or take action as required under this Agreement due to a force majeure event, including, but not limited to, acts of God, war, embargo, acts or threats of terrorism, general strikes or riot, or other events beyond the reasonable control of the Owner,

including without limitation, Owner's inability to obtain any and all governmental approvals as may be reasonable or necessary to complete the development of the HVOD Project.

6.7 Default; Opportunity to Cure

Failure by either Party to perform any term or provision of this Agreement shall not constitute a default under this Agreement unless and until the defaulting Party fails to commence to cure, correct or remedy such failure within fifteen (15) days of receipt of written notice of such failure from the other Party and thereafter fails to complete such cure, correction, or remedy within sixty (60) days of the receipt of such written notice, or, with respect to defaults that cannot reasonably be cured, corrected or remedied within such 60-day period, within such additional period of time as is reasonably required to remedy such default, provided the defaulting Party exercises due diligence in the remedying of such default. Notwithstanding the foregoing, the Owner shall cure any monetary default hereunder within thirty (30) days following the receipt of written notice of such default from the Town. No default hereunder by the Owner (whether the Owner or a new Entity) of any subdivided portion of the Site shall be deemed a default by any other Owner (whether the Owner or a New Entity) of any other subdivided portion of the Site.

6.8 Limited Undertaking

Nothing in this Agreement shall be construed as an undertaking by the Owner to construct or complete the HVOD Project, or any portion thereof, and the obligations hereunder being limited to compliance with the provisions hereof to the extent the HVOD Project, or any portion thereof, is commenced, constructed or completed. The HVOD Project may be constructed in multiple phases or sub-phases (each, a "Phase"). With the exception of the requirements in Section 1.7 above, the Owner's rights and obligations with respect to the development of any Phase shall in no way require or depend upon the development of any other Phase, including the timing with respect thereto. Where the context allows, the term Project or HVOD Project, as used herein, may refer to a particular Phase, rather than the HVOD Project as a whole.

6.9 Limitations on Liability

The obligations of the Owner or any New Entity do not constitute personal obligations of their members, trustees, partners, directors, officers or shareholders, or any direct or indirect constituent entity or any of their affiliates or agents. The Town shall not seek recourse against any of the foregoing or any of their personal assets for satisfaction of any liability with respect to this Agreement or otherwise. The liability of the Owner or a New Entity is in all cases limited to their interest in the Site or subdivided portion thereof, at the time such liability is incurred, and shall not extend to any other portion of the Site for which another party is the Owner and has assumed responsibility pursuant to Section 6.3 hereof, as applicable. In the event that all or any portion of the Site is subjected to a condominium regime or a long-term ground lease, the condominium association or the ground lessee, as applicable, shall be deemed an Owner or New Entity of the affected portion of the Site.

6.10 Estoppels

Each Party agrees, from time to time, upon not less than twenty-one days' prior written request from the other, to execute, acknowledge and deliver a statement in writing certifying: (i) that this Agreement is unmodified and in full force and effect (or if there have been modifications, setting them forth in reasonable detail); (ii) that the Party delivering such statement has no defenses, offsets or counterclaims against its obligations to perform its covenants hereunder (or if there are any of the foregoing, setting them forth in reasonable detail); (iii) that there are no uncured defaults of either Party under this Agreement (or, if there are any defaults, setting them forth in reasonable detail); and (iv) any other information reasonably requested by the Party seeking such statement. If the Party delivering an estoppel certificate is unable to verify compliance by the other Party with certain provisions hereof despite the use of due diligence, it shall so state with specificity in the estoppel certificate, and deliver an updated estoppels certificate as to such provisions as soon thereafter as practicable. Any such statement delivered pursuant to this Section 6.10 shall be in a form reasonably acceptable to, and may be relied upon by any, actual or prospective purchaser, tenant, lender, mortgagee or other party having an interest in the Project. The Town Administrator is hereby authorized to execute and deliver any such estoppel certificate on behalf of the Board of Selectmen.

6.11 Governing Law

This Agreement shall be governed by the laws of the Commonwealth of Massachusetts. If any term, covenant, condition or provision of this Agreement or the application thereof to any person or circumstance shall be declared invalid or unenforceable by the final ruling of a court of competent jurisdiction having final review, then the remaining terms, covenants, conditions and provisions of this Agreement and their application to other persons or circumstances shall not be affected thereby and shall continue to be enforced and recognized as valid agreements of the Parties, and in the place of such invalid or unenforceable provision, there shall be substituted a like, but valid and enforceable provision which comports to the findings of the aforesaid court and most nearly accomplishes the original intention of the Parties. The Parties hereby consent to jurisdiction of the courts of the Commonwealth of Massachusetts sitting in the County of Norfolk.

6.12 Entire Agreement; Amendments

This Agreement sets forth the entire agreement of the Parties with respect to the subject matter hereof, and supersedes any prior agreements, discussions or understandings of the Parties and their respective agents and representatives, including, without limitation, that certain Memorandum of Agreement by and between The Town, Chestnut Hill Realty, Stephen Chiumenti, William Pu, and William M. Varrell, III dated November 17, 2016 (as between the Parties hereto). Without limiting the foregoing, the Parties acknowledge and agree that: (i) the Project shall be subject to the terms, conditions and requirements of (a) the LAU Development Agreement as they apply to the development and subject matter described therein, and (b) the Town's Zoning By-Law (including, for purposes of this Section 6.12, any approvals or permits issued pursuant thereto); and (ii) in the event of any inconsistency or conflict between this Agreement and either the LAU Development Agreement or the Town's Zoning By-Law, the terms of the LAU Development Agreement or the Town's Zoning By-Law, as applicable, shall control. This Agreement may not be amended, altered or modified except by an instrument in writing and signed by the Parties hereto. Amendments to the terms of this Agreement may be

agreed to on behalf of the Town by its Board of Selectmen. No representation, promise or other agreement with respect to the subject matter hereof shall be binding on any Party unless it is expressly set forth herein. The Parties expressly acknowledge and agree that this Agreement does not and shall not apply to any development by Owner, or any of its affiliates, other than the Project.

6.13 Interpretation

Capitalized terms used but not defined herein shall have the meanings assigned to them under the Town of Brookline Zoning By-Law.

6.14 Compliance

The Owner acknowledges and agrees that the Town, operating through its officers and employees and upon notice to the Owner, shall have the right to enter the Site as reasonably necessary to inspect to confirm compliance with the terms of this Agreement.

6.15 Counterparts; Signatures

This Agreement may be executed in several counterparts and by each Party on a separate counterpart, each of which when so executed and delivered shall be an original, and all of which together shall constitute one instrument. It is agreed that electronic signatures shall constitute originals for all purposes.

6.16 Recording of Agreement

This Agreement shall be recorded with the Registry.

6.17 Deed Restriction

Upon the Owner's receipt of all certificates of occupancy from the Town's building commissioner for construction of the Sherman Building, or ten (10) years after the recording of the Notice specified in Section 5.06.4.k.4.c of the HVOD By-Law (whichever is earlier), the Owner shall execute and record a deed restriction substantially in form attached hereto as Exhibit F, amended as necessary to accurately reflect the land, ownership, and title references to any subdivided portions of the Site the sole purpose of which will be to prohibit the Owner from seeking to override the provisions of the Brookline Zoning By-Laws with regard to the development of the Site by means of a comprehensive permit issued under M.G.L. c. 40B or by another state program which allows such an override of the applicable zoning regulations. Notwithstanding anything to the contrary herein, the obligations set forth in this Section 6.17 shall run with the land and be binding upon all successors and assigns, including any current or future owner of the Site, or any portion thereof.

6.18 No Third-Party Beneficiaries

Notwithstanding anything to the contrary in this Agreement, the Parties do not intend for any third party to be benefitted hereby, and no third party shall have any right to enforce any obligations or exercise any rights hereunder.

6.19 Effectiveness; Term

Nothing in this Agreement shall be construed to require the Owner to construct or complete all or any portion of the HVOD Project. This Agreement shall not become effective until the applicable Town Meeting Articles are approved or deemed approved, substantially in the form submitted for Town Meeting vote, by the Attorney General's Office of the Commonwealth of Massachusetts in accordance with M.G.L. c. 40, §§ 32, 32A and M.G.L. c. 40A, § 5, the date on which this Agreement becomes effective being referred to as the "Effective Date". This Agreement is effective as of the Effective Date and the term or duration of this Agreement shall be until all obligations stated in the Community Benefits section of this Agreement except for those set forth in Section 3.5 as they pertain to ongoing maintenance of the Future Park, are delivered in full; unless extended by mutual agreement of the Parties. Upon completion of the Project in accordance with this Agreement, issuance of such final certificate of occupancy and delivery of all Community Benefits obligations in full with the exception of Section 3.5 as noted above, the Town's Building Commissioner shall issue a certificate of completion confirming the same, which shall be conclusive evidence that the Project has been completed in compliance with this Agreement and applicable provisions of the Town's Zoning By-Law. Development of the Site is limited to the Project as proposed; any modification or extension of the Project, other than *de minimis* changes, shall require an amendment to this Agreement.

6.20 Headings.

Headings are inserted for convenience only and do not form part of this Agreement.

[Signatures on following page(s)]

EXECUTED under seal as of the date and year first above written,

TOWN OF BROOKLINE BOARD OF
SELECTMEN

By: _____

[INSERT CHR SIGNATURE BLOCKS]

LIST OF EXHIBITS

- Exhibit A – Legal Description
- Exhibit B – Master Development Plan
- Exhibit C – Unit Summary
- Exhibit D – Future Park
- Exhibit E– Drilling and Blasting Requirements
- Exhibit F – Form of Restriction

EXHIBIT A

PARCEL ONE (Brookline, Registered Land)

- SOUTHEASTERLY: by Independence Drive, One Thousand One Hundred Fifty-Seven and 15/100 (1,157.15) feet;
- SOUTHWESTERLY: by Parcel C as shown on the plan next hereinafter mentioned, being the line between the City of Boston and the Town of Brookline, One Thousand Two Hundred Thirty-Eight and 90/100 (1,238.90) feet;
- NORTHWESTERLY: by land now or formerly of the Town of Brookline, One Thousand Eighty-Six and 29/100 (1,086.29) feet;
- NORTHEASTERLY: by lands of sundry adjoining owners as shown on the plan hereinafter mentioned, One Thousand Sixty-Eight and 89/100 (1,068.89) feet;
- NORTHEASTERLY: again Fifteen (15) feet;
- NORTHWESTERLY: Four and 76/100 (4.76) feet by lines in said Independence Drive;
- EASTERLY: by land now or formerly of Samuel Einstein et al, One Hundred One and 13/100 (101.13) feet; and
- SOUTHWESTERLY: by a line crossing said Independence Drive, Sixty-Five (65) feet.

Said Parcel One is shown as Lot A on Land Court Plan No. 20164A as modified and approved by the Court and filed with the Land Registration Office, a copy of a portion of which is filed with Certificate of Title No. 34486, for the Registry District of Norfolk County in Registration Book 173, Page 86.

PARCEL TWO (Brookline, Registered Land)

- NORTHEASTERLY: by Independence Drive, Nine Hundred Sixty-Three and 30/100 (963.30) feet;
- NORTHEASTERLY: by Lot 8 as shown on Land Court Plan No. 20164D, referred to below, Twenty-Five and 23/100 (25.23) feet;
- SOUTHEASTERLY: by land now or formerly of Samuel Einstein, et al, Thirty-Four and 9/100 (34.09) feet;
- NORTHEASTERLY: by said land of Einstein, Seventy-Three and 4/100 (73.04) feet;

NORTHEASTERLY,
SOUTHEASTERLY,
NORTHEASTERLY and
NORTHWESTERLY:

by Lot 11 as shown on Land Court Plan No. 20164D, referred to below, in four courses measuring respectively Forty-Seven and 46/100 (47.46) feet, Forty-Seven and 25/100 (47.25) feet, Sixty (60.0) feet, and Fifty-Nine and 30/100 (59.30) feet;

NORTHEASTERLY:

by lands of sundry adjoining landowners as shown on Land Court Plan No. 20164D, referred to below, One Thousand Four Hundred Seventy-Eight and 90/100 (1,478.90) feet;

SOUTHEASTERLY:

by the northwesterly line of Veterans of Foreign Wars Parkway, Two Hundred Sixty-Eight and 83/100 (268.83) feet; and

SOUTHWESTERLY:

by Lot 5 as shown on Land Court Plan No. 20164C, being the line between the City of Boston and the Town of Brookline, One Thousand One Hundred Seventy-Two and 93/100 (1,172.93) feet.

Said Parcel Two is shown as Lot 7 on a plan drawn by Hayes Engineering, Inc., dated March 11, 1983, as approved and modified by the Land Court and filed in the Land Registration Office as Plan No. 20164D ("Land Court Plan No. 20164D") with Certificate of Title No. 116289.

PARCEL FIVE (Brookline, Unregistered Land)

A parcel of land shown as Lot U-4 on a plan of land entitled "Subdivision Plan of Land in Brookline, Mass." by Hayes Engineering, Inc., dated March 11, 1983, recorded with Norfolk County Registry of Deeds as Plan No. 378 of 1983, in Plan Book 302, and bounded and described according to said plan as follows:

NORTHWESTERLY:

by Lot R-4A (also being Lot 7 as shown on Land Court Plan No. 20164D), Thirty-Four and 9/100 (34.09) feet;

NORTHEASTERLY:

by Lot U-3A, as shown on said plan, Sixty-Two and 83/100 (62.83) feet; and

SOUTHWESTERLY:

by said Lot R-4A, Seventy-Three and 4/100 (73.04) feet.

PARCEL SIX (Brookline, Registered Land)

SOUTHWESTERLY:

Two Hundred Seventy-One and 37/100 (271.37) feet;

WESTERLY:

One Hundred Eighty-Four and 15/100 (184.15) feet, by land now or formerly of Bonelli Adams Co.; and

NORTHEASTERLY: by lots numbered 21 to 27, inclusive, shown on the plan hereinafter referred to, Four Hundred Twenty-Five and 79/100 (425.79) feet.

The above-described land is shown as Lot A on plan numbered 10950D, Sheet 6, filed in Norfolk County Registry District of the Land Court with Certificate of Title No. 10931, Vol. 55, the same being compiled from a plan drawn by Henry C. Sheils, Surveyor, dated Jan. 1927, and additional data on file in the Land Registration Office, all as modified and approved by the Court, and all of said boundaries are determined by the Court to be located as shown on said first mentioned plan.

DRAFT

EXHIBIT B

Master Development Plan

EXHIBIT C

Unit Summary

EXHIBIT D

Future Park

DRAFT

EXHIBIT E

Drilling and Blasting Requirements

DRAFT

Exhibit F

Form of Restriction