

MEMORANDUM OF AGREEMENT
BY AND BETWEEN

THE TOWN OF BROOKLINE AND CHR PLEASANT, LLC, ~~EDWARD E. ZUKER, WALDO STREET, LLC, AND CM-WS CORP~~ TRUSTEE OF 16 JOHN STREET REALTY TRUST U/D/T-AND WALDO STREET, LLC

This Memorandum of Agreement between CHR Pleasant, LLC and Waldo Street, LLC, Massachusetts limited liability companies with a principal place of business at Chestnut Hill Realty Corp., Inc., 300 Independence Drive, Chestnut Hill MA 02467 and ~~Edward E. Zuker CM-WS CORP~~, Trustee of 16 John Street Realty Trust U/D/T, their successors and assigns ("hereinafter collectively referred to as "CHR") and the Town of Brookline, a municipal corporation ("Town"), located in Norfolk County, Massachusetts and acting by and through its Select Board (the "Board"), (collectively referred to as the "Parties") is made and entered into this ___ day of _____, 2019, upon the mutual promises and obligations hereinafter set forth and additional consideration which the parties acknowledge is adequate and appropriate, upon the following terms and conditions:

WHEREAS, CHR seeks to construct a mixed use project, including a select service hotel with up to 210 rooms (the "Hotel ~~Project~~ Building") and a primarily residential building with up to 143 units with retail or restaurant space on the ground floor and potentially a shared office use on the first and second floors (the "Residential ~~Project~~ Building") and underground parking of approximately 289 parking spaces (the "Parking Garage ~~(/)~~ ") (hereinafter collectively referred to as the "Mixed Use Project") a summary of the proposed Mixed Use Project and associated concept site plan, and concept building plans and elevations massing are attached hereto as Exhibit A;

WHEREAS, the proposed location for the Mixed Use Project is made up of several parcels located at 8-10 Waldo Street, 10-18 Pleasant Street and 16 John Street all as more particularly described in the legal descriptions contained in Exhibit B, attached hereto and incorporated herein by reference (collectively referred to as the "Property" or the "Site" unless otherwise indicated);

WHEREAS, CHR received a project eligibility letter from Mass Development and currently has an application for a Comprehensive Permit for the same Property pursuant to G.L.c.40B pending before the Zoning Board of Appeals to build 299 residential units and 333 parking spaces (the "40B Project");

WHEREAS, the Parties agree that the Mixed Use Project will benefit the Town in many ways including but not limited to: providing eleven (11) affordable units on-site in the Residential Building; a cash-payment in the amount of \$3.275 Million for ten (10) of the twenty-one (21) required affordable units made payable to the Affordable Housing Trust Fund; a 95-year Tax Certainty Agreement; improvements to the public realm including a public area easement connecting the Site from John Street through the

Property to Pleasant Street (the "Public Area Easement"), increased open and green space, improved pedestrian and bike amenities and improved design and aesthetics; and access to meeting space for non-profit Brookline community groups;

WHEREAS, the Coolidge Corner Study Committee ("the Committee") intends to submit a zoning by-law amendment (the "Proposed Zoning Amendment") for consideration at the Town Meeting commencing May 21, 2019 that if approved would permit the Mixed Use Project to proceed; and in recognition of the intent and spirit of the vision of the Committee as expressed in the Proposed Zoning Amendment and ~~draft~~the adopted Waldo-Durgin Overlay District Design Guidelines ~~submitted to the Planning Board for adoption~~, CHR has expressed its commitment to work with the Town to provide a project with buildings of high quality architecture, urban and sustainable design;

WHEREAS, the Parties agree that the Mixed Use Project is ~~beneficial~~ to the Coolidge Corner neighborhood and Town, but will also have impacts on the Town; accordingly, if CHR proceeds with the Mixed Use Project it agrees to take steps to mitigate the impacts of the Mixed Use Project on the Town, as hereinafter set forth;

WHEREAS, the provisions of this Agreement are available for consideration by the Planning Board and the Board of Appeals in reviewing any application for a special permit(s) for the Mixed Use Project;

WHEREAS, the Parties wish to enter into this Agreement to memorialize their mutual understandings and obligations with respect to the Mixed Use Project and those certain permits and approvals required for the Mixed Use Project, as well as any other agreements between CHR and the Town pertaining to the Mixed Use Project, including a 95-year Tax Certainty Agreement, ~~the~~ Public Area Easement, all on the terms and conditions hereinafter set forth;

WHEREAS, the Parties contemplate entering into such further binding agreements as reasonably appropriate and approved by both Parties to proceed with the Mixed Use Project and to satisfy the mutual obligations contained herein;

WHEREAS, the Parties have discussed the terms and conditions to be included in the Agreement in connection with the Mixed Use Project and in order to mitigate ~~impact(s)~~impacts upon the Town;

NOW THEREFORE, in consideration of the promises and mutual obligations of the Parties hereto and upon good and valuable consideration the receipt and sufficiency of which the Parties acknowledge, each of them does hereby covenant and agree as follows:

1. All references herein to the following terms shall have the meanings hereinafter set forth:

~~a-a)~~ All references to the “Proposed Zoning Amendment” shall be construed as a reference to the text of a Warrant Article prepared for the Town Meeting commencing May 21, 2019, a copy of which is attached hereto as Exhibit C, as such text may be amended at Town Meeting, provided that such amendments do not impose burdens on the Mixed Use Project which are materially adverse to the ~~feasibility of construction or to the operational or~~ financial feasibility of the Project in the reasonable judgement of CHR, ~~(which may include construction or operation costs)~~. If any such amendment/s to the text of the Proposed Zoning Warrant Article (Exhibit C) do impose burdens on the Mixed Use Project which are materially adverse to the ~~feasibility of construction or to the operational or~~ financial feasibility of the Project in the reasonable judgment of CHR, and as a result CHR decides in its sole discretion not to proceed with the Mixed Use Project or that the amendment/s prohibits CHR from proceeding with the Mixed Use Project as proposed then CHR shall so notify the Town in writing within forty-five (45) days of the conclusion of Town Meeting, and in such case this Agreement shall immediately become null and void and of no force and effect.

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~~b-b)~~ All references to the “Town Meeting Approval Conditions” shall be construed as references to: (i) approval by the May 2019 Town Meeting and the Attorney General of the Proposed Zoning Amendment; (ii) authorization by Town Meeting of the acceptance of the 95-year Tax Certainty Agreement attached hereto as Exhibit ~~ED~~; (iii) authorization by Town Meeting for the Select Board to execute this Agreement and ~~of~~ any other documents or agreements necessary or appropriate for implementation of the proposed Mixed Use Project; (iv) written confirmation from CHR to the Town that the Proposed Zoning Amendment as passed and approved by Town Meeting and the Attorney General will allow it to proceed with the Mixed Use Project as currently contemplated including as modified with CHR’s approval, and in each case with challenge periods to all such Town Meeting actions having passed (which, in the case of the Proposed Zoning Amendment, shall be the challenge period under G.L. c. 40, Secs. 32 and 32A) with no challenges by unrelated third parties pending or, if any of such actions is are challenged, the same having been finally disposed of in a manner favorable to the Town Meeting action, not later than June 1, 2021.

~~e-c)~~ All references to the “Special Permit and Other Required Approvals” shall be construed as references to such other special permits, variances, licenses and/or other approvals, including but not limited to ~~the acceptance and approval of the Public Easement at a future Town Meeting and~~ any additional special permits under the existing Zoning By-Law and Proposed Zoning

Amendment, including building permits and certificates of occupancy, which are necessary, in CHR's reasonable determination, to allow for the construction and operation of the Mixed Use Project such that a majority of the ground floor area of each of the Residential and Hotel Buildings are open and operating, with all the appeal periods having passed, with no appeals pending or, if any such permit or approval is appealed, the same having been finally disposed of favorably to CHR not later than two (2) years from the date of issuance of the permit or approval which is the subject of the appeal.

2. Unless this Agreement has been terminated CHR agrees to request continuations of the public hearings on the 40B Project until all Special Permit and Other Required Approvals have been met.
3. Upon satisfaction of the Town Meeting Approval Conditions, i) CHR shall immediately record this Agreement with the Norfolk Registry of Deeds and/or Norfolk Registry District of the Land Court, as appropriate and at its own expense and shall provide evidence of such recording to Town Counsel; and ii) CHR and the Town shall execute the 95-year Tax Certainty Agreement and ~~the Public Easement and~~ CHR shall deliver the same to Town Counsel or a mutually agreed upon escrow agent to be held in escrow pursuant to mutually agreed upon conditions under the provisions of this Agreement (the "Escrow Agent"). In the event the Town Meeting Approval Conditions are not satisfied by June 1, 2021, this Agreement and the obligations set forth in the 95-year Tax Certainty Agreement ~~and Public Easement~~ shall become null and void and of no force and effect.
4. If CHR decides to apply for a Special Permit for the Site that includes less than 86,250 square feet of underground parking infrastructure ("Smaller Parking Area"), then CHR agrees to appear at a duly noticed public hearing before the Economic Development Advisory Board (EDAB) to review the ~~financially~~ financial feasibility of the Mixed Use Project with Smaller Parking Area prior to applying for a Special Permit. Based on the information presented by CHR and/or EDAB's consultant(s), if any, EDAB may make a recommendation to the Planning Board and Board of Appeals as to whether the size of the building area (not including parking) is reasonable or not.
5. Upon satisfaction of the Town Meeting Approval Conditions, CHR agrees to use best efforts to diligently apply for all permits and approvals necessary to proceed with the Mixed Use Project subject to financing and economic conditions.
6. In the event that the Special Permit and Other Required Approvals are satisfied, CHR shall deliver notice thereof to Town Counsel or the Escrow Agent, as the case may be, who shall thereafter record with Norfolk Registry of Deeds and/or the Norfolk Registry District of the Land Court, as appropriate, the 95-year Tax Certainty Agreement ~~and the Public Area Easement.~~ In the event that the

Special Permit and Other Required Approvals are not satisfied, or CHR does not proceed with the Mixed Use Project, CHR or the Town may deliver notice to the Escrow Agent who shall thereafter immediately return the original copy of the Tax Certainty Agreement and ~~the Public Area Easement and~~ simultaneously notify the Town that such original was returned to CHR. In such case where the Tax Agreement ~~and Public Area Easement are~~ returned to CHR, all obligations set forth in this Agreement shall become null and void and of no force and effect.

7. In the event that the Special Permit and Other Required Approvals are satisfied, CHR shall immediately deliver notice to the Zoning Board of Appeals with a copy to Town Counsel withdrawing its Comprehensive Permit application for the Property with prejudice.

8. Upon execution of this Agreement CHR will negotiate in good faith with the two tenants currently occupying the space fronting on the first floor of Pleasant Street (Jerusalem Pita and Brookline Superette) in order to enter into a written agreement which will, among other terms and conditions negotiated by the parties, provide six months' rent free occupancy starting April 1, 2019 after which time the tenant(s) shall vacate the property. If the tenant(s) vacate prior to the end of the 6-month extended tenancy then CHR will pay the tenant(s) the cash equivalent of the rent they would have had to pay to CHR under their prior lease agreements for the remainder of that 6-month period. Should Village Collision vacate the building then all remaining tenancies shall immediately terminate and CHR shall make payments as stated for the remainder of the 6-month period. Notwithstanding the foregoing commitment, if at any time the Building Commissioner deems the property unsafe for habitation all tenancies shall terminate.

9. Upon execution of this Agreement, the Town and CHR agree to work in a voluntary partnership such that the development process of the Mixed Use Project will explore, pilot and innovate sustainable practices from conceptual design through full occupancy ("Voluntary Sustainability Partnership"). The purpose of this Voluntary Sustainability Partnership is to create replicable best practices that will be shared by the Town and CHR, to the benefit of the Town, CHR, and the larger community. Both parties envision a time commitment of at least 4 to 5 meetings with the Town's Sustainability Office and CHR. Goals and potential benefits of the Voluntary Sustainability Partnership to be discussed include:

a) Reducing building electrical and thermal energy demand and consumption, and greenhouse gas emissions, by implementing cost-effective design alternatives early, before the end of design development, when changes are still feasible.

- b) Fostering an integrated, iterative and collaborative development process, to the benefit of all parties, furthering their sustainability goals and outcomes.
- c) Designing the Mixed Use Project, including future facility operations, such that by 2050, 100% of the operational energy use associated with the Mixed Use Project will be offset by new on- or off-site renewable energy.
- d) The goal that the Mixed Use Project will not rely on fossil fuels by 2050.

8-10. Voluntary Special Permit Conditions: CHR hereby acknowledges that the following conditions of the Special Permits for the Mixed Use Project shall be acceptable to CHR and shall not be grounds for objection to the Special Permits granted by the Brookline Zoning Board of Appeals: (Board of Appeals):

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- a) The approved Special Permit plans are titled ~~X~~7, and dated ~~Y~~7. Related to these plans, the following use restrictions are noted:
 - i. The required 1,200 sq. ft. minimum retail or restaurant space on Pleasant Street shall be open to the general public without requiring a membership fee, so long as economically viable ~~{("Pleasant Street Retail Area")}~~. If this Pleasant Street Retail Area, or any portion thereof, remains vacant and not under agreement for more than a year, the space shall be made available to the Town of Brookline for an art gallery or other Town use approved in advance by CHR ~~with~~with a short-term Use and Occupancy Agreement ~~Not~~not to exceed six (6) months, at a maximum fee to cover the property taxes, insurance, and utilities.
 - ii. The Residential Project does not include more than 132 ~~market-rate units~~Market-Rate Units (hereinafter defined as units that are not subject to the requirements of Affordable Units as defined by Section 4.08 of the Zoning By-Law).
 - iii. The duration of overnight occupancy of the hotel rooms to individual hotel patrons shall not exceed ninety (90) consecutive days as to each hotel room.
 - iv. ~~Public meeting~~Meeting space in the ~~hotel~~Hotel Building will be made available to the Town and Brookline community non-profits upon a cost reimbursement basis including payment of related custodial fees, as scheduling permits. In addition to other arrangements mutually agreed to, the manager of the hotel building shall accommodate a minimum of 6 times per year

reservation requests by Brookline community non-profits made more than six (6) weeks in advance.

- v. For all users of the Mixed Use Project, parking fees must be separate (unbundled) from any rental, lease, sale, employment, contract, or other arrangement that permits a user to occupy the building.
 - vi. ~~In order to convert any~~Conversion of the parking area(s) to another use will require ~~a~~ modification to the Special Permit~~(s)~~.
 - vii. In addition to the one hundred and thirty two (132) Market Rate Units, eleven (11) residential units shall be provided on-site serving households earning up to 80% of area median income. In compliance with Section 4.08(5)(b) of the Town's Zoning By-Law, these on-site units shall consist of six one-bedroom units and five two-bedroom units, all of which ~~will~~ shall meet the requirements of Zoning By-Law Section 4.08 and shall follow the Department of Housing and Community Development Local Initiative Petition (LIP) Guidelines, and adhere to all requirements necessary to ensure that these 11 on-site units are included on the State's Subsidized Housing Inventory (SHI) and are permanently affordable.
- b) CHR shall make a payment to the Town's ~~Affordable~~ Housing Trust Fund in the amount of \$3,275,000 for the buy-out of ten (10) of the twenty-one (21) required on-site affordable units (the "Partial Buy-Out"). Per Section 4.08 of the Town's Zoning By-Law, this obligation (minus the initial 25% payment if paid in advance) shall be secured via a recorded legal instrument or letter of credit satisfactory to the Community Development Division prior to issuance of a building permit ~~for the Residential Building~~. Twenty~~Five~~five percent (25%) of the ~~total Cash Payment~~Partial Buy-Out will be ~~made paid~~ upon issuance of a non-appealable building permit for the Residential Building with the balance due prior to the issuance of the Certificate of Occupancy of the Residential Building. Early advances on the 75% final payment may be made on a mutually agreed upon basis between the Housing Advisory Board and CHR with incentives for early payments to be negotiated in good faith. Any unpaid balance 48 months following an appeal-free Special Permit shall accrue interest at an annual ~~interest equivalent rate equal~~ to the ~~most recently published monthly~~ 10-year U.S. Treasury ~~index rate~~.

As agreed to by the Housing Advisory Board on October 20, 2018, the Partial Buy-Out will serve as full compliance with the affordable housing

requirements relating to ~~on-site units under~~ Section 4.08(7)(c) of the Zoning Bylaw, subject to the following buy-out schedule:

Buy-Out for each Unit not provided on-site	Household Income 100% of Area Median	Household Income 80% of Area Median
1 Bedroom	Four units @ \$300,000 per unit ea. = \$1,200,000	Two units @ \$325,000 per unit ea. = \$650,000
2 Bedroom	Three units @ \$350,000 per unit ea. = \$1,050,000	One unit @ \$375,000 per unit ea. = 375,000

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Other than the above ~~onsite affordable unit 'buyout'~~ Partial Buy-Out provision, the proposed development ~~will~~ shall be required to comply with all other provisions of Section 4.08 of the Zoning By-Law (Inclusionary Zoning).

- c) All illuminated exterior signage shall be designed and installed with the ability to be automatically dimmed after ~~Midnight~~midnight.
- d) Unless demolition is ordered by the Building Commissioner of any of the existing structures CHR shall not commence demolition of any existing structure at the Site, until a building permit ~~or permits of the proposed project is issued with for either the Garage, the Hotel or Residential Building has been applied for and~~ evidence ~~reasonably satisfactory~~has been submitted by CHR on a confidential basis to the Planning and Community Development Director and Town Counsel, ~~provided on a confidential basis for each phase of the Mixed Use Project,~~ that shows ~~that~~ financing is, or will be in place for ~~construction of the entire Mixed Use project~~that phase of construction for which the application is pending. Notwithstanding the foregoing, building permit(s) for the Residential Building will not be issued until evidence of financing for the Hotel Building is provided to the Town.
- e) ~~Prior~~CHR supports the 2018 Brookline Climate Action Plan goal to prioritize planning to achieve zero emissions by 2050 (no reliance on fossil fuels) Town and community-wide. Taking this goal into account, prior to issuing a Building Permit, CHR shall provide evidence to the Building Commissioner that the following sustainable design

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~~elements/strategies~~ have been incorporated into the Mixed Use Project:
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e) ~~i.~~ That the Mixed Use Project is LEED Silver Certifiable; and (ii),
Energy Use Intensity (“EUI”) building efficiency target ranges that
are more efficient than otherwise required by the ~~building code~~
~~applicable to the Town~~applicable State Building Codes at the time
of the building permit application, and any locally adopted
Stretch Energy Code in effect as of the date of this Agreement;
and documenting the economic viability of all electric HVAC
systems including Variable Refrigerant Flow and Water Sourced
Heat Pumps potentially coupled with ground source heating
through wells.

~~ii.~~ -That the Mixed Use Project has been developed to incorporate,
to the extent economically feasible as determined by CHR, best
practices identified during the Voluntary Sustainability
Partnership’s iterative design process.

f) Two (2) years from the date of the last Certificate of Occupancy for the
Mixed Use Project is issued CHR shall provide a letter from a qualified
licensed professional to the Building Commissioner that reports the EUI
for the Mixed Use Project.

g) Unless otherwise agreed to by Preservation Staff, prior to the issuance of
a demolition or other building permit, the applicant shall provide historic
documentation of the Durgin Garage at 10-18 Pleasant Street to
Brookline Preservation staff. Issuance of the demolition permit shall be
evidence that this condition has been satisfied.

i. This documentation shall include:

1. background information: the historic and common names
of the property, documentation of date of construction,
complete stylistic and/or architectural description of the
resource including documentation of changes that have
occurred over time, description of architectural and/or
associative significance using reliable sources, contextual
information that equates the significance of the property,
original and current function, ownership/occupancy
history, and the name and biographical information of
architect and/or builder.

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2. drawings, maps, and historic images: site plan showing footprint of the subject resource and surrounding buildings; sketch floor plans of existing conditions of all levels of each building, or copies of original plans if available (8 ½ x 11 format or digital format); if available, clear copies of historic photographs; USGS quad/topo map indicating location of property with UTM's;
 3. photographs of: overall site showing context and setting; each exterior elevation of subject property; detail images of significant character-defining features, such as windows, doors, eave details, porches, balconies, etc.; general views of all significant interior spaces; detail images of significant structural details if building is of a rare construction method (i.e. post and beam, balloon framing, mortise and tenon joinery, etc.). All photos must be identified with a list of the photographs indicating property name, address (city, county), date of photograph(s), and view; unmounted.
 - ii. All non-photographic documentation shall be submitted in 8 ½ x 11 format and printed on archivally stable paper (25% cotton bond or better) and provided in digital format (min 300dpi).
 - iii. All photographic documentation shall be provided in 5x7 or 8x10 format using archival quality (hand-processed and/or printed on Fiber-based paper or Resin-coated paper which has been washed with a hypo-clearing or neutralizing agent) paper meeting a 75 year standard, and provided in digital format (min 300 dpi).
- h) To ensure compliance with the Town's Transportation Demand Management Policy, the property owner shall be subject to traffic monitoring and annual reporting to the Town of Brookline, including the following features: (i) No later than thirty (30) days prior to the anticipated issuance of a building permit for the Proposed Project, a TDM plan shall be submitted to the Town, for review and approval by the Director of Engineering & Transportation/~~Engineering~~ and the Planning and Community Development Director (or designee); (ii) In connection with preparation of the TDM plan, CHR shall provide information as to its existing policies relating to employee transportation then in effect, and the mode use resulting from such existing policies; (iii) in connection with preparation of the TDM plan, CHR shall propose vehicular mode share goals for each user type; (iv) An annual monitoring and reporting program will commence after receipt of the final Certificate of Occupancy

for the Proposed Mixed Use Project. If the final Certificate of Occupancy for the Proposed Mixed Use Project is issued between September 1 and February 29, the monitoring will take place during the months of September or October and a report provided to the Town no later than November 30. If the final Certificate of Occupancy for the Proposed Mixed Use Project is issued between March 1 and August 31, monitoring will take place during the months of April or May and be reported to the Town no later than June 30; (v) The monitoring program will be based on traffic counts and employee surveys as to vehicle, transit, pedestrian, and bicycle usage to the Proposed Mixed Use Project. The monitoring program will provide detailed information on the travel modes to work and overall transportation characteristics by type of traveler (employee, visitor, etc.). The survey instrument to be used for mode share monitoring will be provided to the Director of Engineering & Transportation/Engineering for approval prior to conducting the survey. The employee survey (which may be conducted through electronic means) will be sent out to all employees, with a goal of securing a 60 percent minimum response rate. A hotel guest/visitor survey shall be conducted during normal business hours, with a goal of securing at least 200 hotel guest/visitor surveys. Notwithstanding the foregoing, any annual monitoring requirements shall apply only to non-residential uses.

- i) In the event the employee vehicular mode share is greater than the target vehicular modes in the TDM plan, then the TDM plan shall be modified to incorporate any reasonable requests of the Director of Engineering & Transportation within sixty (60) days after he/she issues his/her determination. Failure to issue such a determination within sixty (60) days of receiving the Annual Report shall be deemed acceptance of the Annual Report and the existing provisions of the TDM plan. If any owner objects to any new request as being unreasonable or not required, such matter may be presented to the Transportation Board for recommendation to the Board of Appeals for determination, and during such process the applicant will not be considered out of compliance with Section 5.09 3.c.6.d of the Zoning By-law. Following the issuance (or deemed issuance) of the foregoing determination, the Building Department shall use its best efforts to issue the annual permit for the Transportation Access Plan Agreement (TAPA) under Section 5.09 3.c.6.d of the Zoning By-law with appropriate due diligence.
- j) The Project shall contain 14 underground parking spaces reserved which shall be made available for commercial merchant parking during the day at a reduction of at least twenty percent (20%) from the prevailing market rate for all-day garaged parking and to Brookline residents during the for evening and overnight parking at a reduction of at least fifteen

percent (15%) from the rate paid by the tenants in the Residential Building. In addition to these spaces, up to 33 underground parking spaces may be rented to users of abutting properties. Following the first annual TAPA ~~report, and upon permit, including a~~ positive recommendation by the Transportation Division, additional spaces may be rented to offsite users.

- k) A Certificate of Occupancy for the Residential ~~Project~~Building shall not be issued until the Hotel ~~Project~~Building is ~~{weather-tight}.~~

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9-11. Additional Voluntary Special Permit Conditions: ~~In the event~~CHR hereby acknowledges that the following additional conditions of the Special Permits for the Mixed Use Project shall be acceptable to CHR and shall not be grounds for objection to the Special Permits granted by the Board of Appeals, as long as the following conditions are only required if any and all Town approvals ~~required for~~are received for CHR to provide a Public Area Easement on private property and to make improvements on public property and public rights-of-way ~~are received, including the Town's acceptance of the Public Area Easement and the Board's execution of same when requested by CHR (the "Additional Public Benefits") then CHR agrees to the following additional Special Permit Conditions to provide the Additional Public Benefits in order to mitigate the impacts to the Town and the public from the Proposed Project.~~

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- a) On-site and off-site pedestrian and landscaping improvements equivalent to those shown and diagrammed on Exhibit ~~AE~~;
- b) Additional pedestrian, bicycle, and traffic infrastructure mitigation may be required subject to further study and analysis during the Major Impact Project ~~review~~ process. Such mitigation is anticipated by CHR to include the following: (i) providing a space on private property for a shared bicycle share station; (ii) funding such shared bicycle ~~-station~~ for two years; (iii) providing 25% level concept plans for expanding the sidewalk on the east side of Harvard ~~street~~Street from Beacon to Green Streets; (iv) providing 25% level concept plans for bike lanes on John Street between Babcock and Pleasant Streets.
- c) ~~Enter~~Prior to issuance of a building permit CHR shall enter into a Memorandum of Understanding with Revocable License ~~and granting with the Town, which will grant CHR~~ a license ~~to CHR~~ to: (i) install a landscaping irrigation system and landscaped area at the Coolidge Corner Branch of the Public Library on Pleasant Street as proposed on Exhibit ~~XF~~, and (ii) remove the 14 parking meters and hardscape at the municipal parking lot on the corner of John and Green Streets and provide landscaping ~~(or equivalent funding to be determined by the Director of~~

~~Public Works) and irrigation~~ in order to create a small park as proposed on Exhibit ~~Y. The~~G. If preferred by the Director of Public Works, a payment to the Town equivalent to the work required as stated above is at the Library and John/Green Street municipal lot may be paid to the Town in lieu of this work, currently estimated by CHR at \$300,000.

d) ~~Prior to receiving a~~Concurrent with the issuance of the Certificate of Occupancy ~~for the Residential Project,~~ CHR shall provide a permanent Public Area Easement ~~to the Town totaling approximately 1,000 +/- square feet in the location on the Property as generally depicted on Exhibit EH with terms and conditions that retain reasonable site control for CHR (the "Public Area Easement ");~~

10.12. Access Agreement:

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~~a.a)~~ a.a) No later than 60 days prior to applying for the Special Permit(s) for the ~~Proposed Mixed Use~~ Project, and using best efforts, CHR shall offer an Access Agreement with the existing tenant of 279 Harvard Street subject to terms and conditions agreed to by CHR and the Brookline Booksmith or other similar commercial bookstore tenant operating its business at 279 Harvard Street (the "Adjacent Tenant") in order to facilitate a connection to the proposed ~~hotel~~Hotel Building from and through this commercial property that permits the Adjacent Tenant to utilize the connection for its customers and also to provide access for the hotel guests through the Bookstore to Harvard Street ("Hotel and Bookstore Access"). If an Access Agreement is signed by all required parties to pursue ~~at~~the Hotel and Bookstore Access, then plans submitted as part of the Special Permit shall reflect this Hotel and Bookstore Access.

~~b.b)~~ b.b) It is understood that the Adjacent Tenant shall be required to get any necessary approvals from the Landlord/Owner of 279 Harvard Street or any of its mortgagee(s) as may be required to utilize or accept the Access Agreement. CHR agrees to include a mutual cooperation clause in the Access Agreement requiring that CHR and the Adjacent Tenant shall at all times cooperate in good faith with respect to both the development of the ~~Mixed-Use~~ Project; and in obtaining all permits or other approvals necessary to utilize the Hotel and Bookstore Access, including, but not limited to, a special permit for use of a common entrance or exit.

~~c.c)~~ c.c) Any Access Agreement shall be registered at the Registry of Deeds for both properties and shall take effect at the time of a Certificate of Occupancy for the Hotel Project, and remain in place for a minimum of two years from Certificate of Occupancy.

d) After using reasonable efforts to provide the Adjacent Tenant and Owner

with a mutually agreeable Hotel and Bookstore Access Agreement, CHR shall have no further obligation to provide such access.

13. Goals for Sustainable Facility Operations:

- a) CHR is committed to exploring ways to increase its percentage of renewable energy for the Residential Building common areas electricity use by any of the following: (i) incrementally purchasing additional renewable energy, in order to try to achieve 100% renewable electricity by 2050; (ii) at the time of renewing electricity contracts, CHR will consider matching the Town's percentage and quality of renewable electricity used for its municipal facilities; or (iii) considering phasing in by 2050 renewable energy generation (including power purchase agreements).
- b) As part of CHR's selection of an appropriate hotel operator for the Hotel Building, CHR will in good faith work to recruit and identify an operator willing to integrate sustainable practices in their facility and business operations.

11.14. Undertakings of the Town:

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On _____, 2019 the Select Board voted favorable action on the Proposed Zoning Amendment, 95-year Tax Certainty Agreement and a Warrant Article related to the general authorization for this Memorandum of Agreement subject to the terms and conditions of this Agreement and shall convey its ~~vote(s)/votes~~ and favorable report to the Advisory Committee and in the Combined Reports which shall be delivered to all Town Meeting Members. The Select Board ~~or its designee~~ shall ~~also file a Warrant Article for consideration at a future Town Meeting in order for~~ support and undertake action necessary to ~~obtain~~ the ~~Board to accept~~ approval of the ~~Public Easement offered~~ Attorney General of The Commonwealth of Massachusetts of the Proposed Zoning Amendment by CHR. ~~Town Meeting.~~ The Select Board shall also, to the extent appropriate, cooperate with CHR and shall encourage Town staff to cooperate with CHR in reviewing in a timely and expeditious manner any required permits and approvals for the Project. The Select Board ~~or its designee~~ shall ~~support and undertake action necessary to obtain~~ also file a Warrant Article for consideration at a future Town Meeting in order for the ~~approval of~~ Board to accept the Attorney General of The Commonwealth of Massachusetts of the Proposed Zoning Amendment ~~Public Area Easement offered~~ by ~~Town Meeting~~ CHR.

11As part of the Voluntary Sustainability Partnership, if the Residential or Hotel Building is the first in Brookline to receive any certification from the International Living Future Institute (ILFI), the Select Board and the Town's Sustainability Office will: (i) in good faith, work to identify funding to reimburse CHR for any

registration, audit/certification costs paid to ILFI and their independent auditors, up to \$20,000; and (ii) host a community ceremony to recognize CHR's leadership and extraordinary accomplishment in sustainability.

15. Miscellaneous:

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- a) It is the intent of the Parties that the obligations in this Agreement shall run with the land comprising the ~~Property~~Mixed Use Project and be binding upon and inure to the benefit and burden of CHR and its mortgage lenders and their heirs, successors and assigns during their respective periods of ownership of ~~the Property~~and/or interests in the Mixed Use Project and its components and shall survive any transfer of the Property or any portion thereof. CHR agrees to provide a copy of this Agreement to any transferee of the Property or any portion thereof.
- b) Each of the Parties signing below hereby represents and warrants that it is authorized to enter into this Agreement and execute the same on behalf of, and to bind legally, such Party.
- c) All notices or requests required or permitted hereunder shall be in writing and addressed, if to the Town as follows:

Select Board
Town of Brookline
333 Washington Street
Brookline, MA 0 2445

with a copy to:

Town Counsel
Office of Town Counsel
333 Washington Street
Brookline, MA 02445

If to CHR addressed as follows:

Ed Zuker, President
Chestnut Hill Realty Corp., Inc.
300 Independence Drive
Chestnut Hill, MA 02467

And a copy to:

Jennifer Dopazo Gilbert, Esq.
Law Office of Robert L. Allen, LLP
300 Washington Street
Brookline, MA 02445

Each of the Parties shall have the right by notice to the other to designate additional parties to whom copies of notices must be sent, and to designate changes in address. Any notice shall have been deemed duly given if mailed to such address postage prepaid, registered or certified mail, return receipt requested, on the date the same is received or when delivery is refused, or if delivered to such address by hand or by nationally recognized overnight courier service, fees prepaid, when delivery is received or when delivery is refused, or if transmitted by facsimile or other electronic means with confirmatory original by one of the other methods of delivery herein described, on the date so transmitted by facsimile or other electronic means. If and to the extent that either of the Parties is prevented from performing its obligations hereunder by an event of force majeure, such party shall be excused from performing hereunder and shall not be liable in damages or otherwise, and the Parties instead shall negotiate in good faith with respect to appropriate modifications to the terms hereof to confer the benefits to each respective party as contemplated by this Agreement. For purposes of this Agreement, the term force majeure shall mean any cause beyond the reasonable control of the affected party, including without limitation: acts of God, fire, earthquake, floods, explosion, actions of the elements, war, terrorism, riots, mob violence, inability to procure or a general shortage of labor, equipment, facilities, materials or supplies in the open market; failure of transportation, strikes, lockouts; actions of labor unions; condemnation, laws or orders of governmental or military authorities, requirement of statute or regulation, action of any court, regulatory authority, or public authority having jurisdiction; or any other cause similar to the foregoing, not within the reasonable control of such party obligated to perform such obligation. With respect to any particular obligation of CHR only, the term force majeure shall include the denial of, refusal to grant or appeals of any permit or approval of any public ~~(including any required Town Meeting approvals)~~ related to Town Meeting Approval Conditions and Special Permit and Other Required Approvals, official, agency

or subdivision and any litigation brought by a third party relating to such particular obligation.

- d) Failure by CHR to perform any term or provision of this Agreement shall not constitute a default under this Agreement unless and until CHR fails to commence to cure, correct or remedy such failure within sixty (60) days of the receipt of written notice of such failure from the Town to CHR and thereafter fails to complete such cure, correction or remedy within ninety (90) days of receipt of such written notice or, with respect to defaults which cannot reasonably be cured, corrected or remedied within such ninety (90) day period, within such additional period of time as is reasonably required to remedy such default, provided CHR exercises due diligence in the remedying of such default and notifies the Town of the steps being taken to remedy the default.
- e) The Parties agree that time is of the essence with respect to the obligations of the Parties as set forth herein. Subject to market conditions and financing availability, CHR agrees to use best efforts to diligently apply for the necessary special permits and then expeditiously as possible after the issuance of the Special Permit(s) for the Proposed Mixed Use Project to apply for all necessary building permit(s) and to diligently commence work on the Proposed Mixed Use Project subject to the terms herein. The Town agrees to request an expedited determination from the Office of the Attorney General with respect to any Proposed Zoning Amendment.
- f) The obligations of CHR do not constitute the personal obligations of CHR's employees, directors or officers and 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. In no event shall CHR be liable for any incidental, indirect, punitive or special or consequential damages.
- g) Each Party agrees from time to time, upon not less than ten (10) days' prior written request from the other, to execute and deliver a statement in writing certifying that this Agreement is in full force and effect (or if there have been any modifications, setting them forth in reasonable detail), and that there are no uncured defaults of either Party under this Agreement (or, if not, specifying the respects in which the requesting party is not in compliance in reasonable detail), in form reasonably acceptable to and which may be relied upon by any prospective purchaser, tenant, mortgagee or other party having an interest in the Property and any component of the Proposed Mixed Use Project. Upon full performance by CHR of its obligations hereunder, the Town, at CHR's request shall issue a statement in a form appropriate for recording with the Norfolk County Registry of Deeds and filing with the

Norfolk Registry District stating that all of the terms of this Agreement have been satisfied.

- h) Whenever the consent or approval of any party is required under this Agreement, such consent or approval shall not unreasonably be withheld, delayed or conditioned.
- i) This Agreement shall be deemed to have been executed within the Commonwealth of Massachusetts and the rights and obligations of the Parties shall be governed by Massachusetts law. Any action to enforce the terms of this Agreement shall be brought in Norfolk County Superior Court.
- j) If any provision of this Agreement or the application of such provision to any person or circumstances shall be determined to be invalid or unenforceable, the remaining provisions of this Agreement or the application of the provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected and shall be valid and enforceable to the fullest extent.
- k) This Agreement and the accompanying PLOT95-year Tax Certainty Agreement set forth the entire agreement of the Parties with respect to the subject matter thereto. The failure of any party to strictly enforce the provisions hereof shall not be construed as a waiver of any obligation hereunder. This Agreement may be modified only in a written instrument signed by the Selectmen~~Select Board~~ and CHR. The Parties do not intend for any third party to be benefited hereby.
- l) This Agreement and the accompanying PLOT95-year Tax Certainty Agreement shall be deemed null and void and of no force and effect if Town Meeting Approval Conditions are not met.

(The Remainder of this Page is Intentionally Left Blank – Signature Pages follow)

IN WITNESS WHEREOF, the parties have executed this Agreement under seal as of the date first written above.

CHR (all legal entities will be added) Town of Brookline
Board of Selectmen,

By _____
President

Dated: _____

_____ Dated: _____
CHR Pleasant, LLC Town of Brookline Select Board

By _____

Peter Poras, Treasurer

Duly Authorized on behalf of

CM-WS Corp. its Manager

Dated: _____ Dated: _____

Waldo Street, LLC,

By _____ Dated: _____

Peter Poras, Treasurer

Duly Authorized on behalf of CM-WS Corp. its Manager

16 John Street Realty Trust,

By _____ Dated: _____
Peter Poras, Treasurer of CM-WS Corp., Trustee of the
16 John Street Realty Trust

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss

I hereby certify that on this _____ day of _____, 2019, personally
appeared the above named _____
_____, Peter Poras, and provided identification in the form of
_____, and who executed the foregoing as his free act and deed
as Treasurer of the CM-WS Corp. the Manager of _____, CHR Pleasant, LLC.

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Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss

I hereby certify that on this _____ day of _____, 2019, personally
appeared the above named Peter Poras, and provided identification in the form of
_____ , and who executed the foregoing as his free act and deed
as Treasurer of the CM-WS Corp. the Manager of Waldo Street, LLC.

Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss

I hereby certify that on this _____ day of _____, 2019, personally appeared the above named Peter Poras, and provided identification in the form of _____, and who executed the foregoing as his free act and deed as Treasurer of CM-WS Corp. the Trustee of 16 John Street Realty Trust.

Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss

I hereby certify that on this _____ day of _____, 2019, personally appeared the above named _____, _____, and _____, personally known to me and who executed the foregoing as their free act and deed as members of the Select Board ~~of Selectmen~~ of the Town of Brookline acting on behalf of the Town of Brookline.

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Witness our hands and seals at Norfolk County, Brookline, Massachusetts, this ____ of _____, 2019.

Notary Public
My Commission Expires: