

5

J



2016 00185781

Bk: 68239 Pg: 115 Doc: AGR  
Page: 1 of 5 10/19/2016 11:00 AM

**NOTICE OF LEASE TERMINATION AGREEMENT AND  
RESTRICTIVE COVENANT FOR RECORDING**

THIS AGREEMENT, dated this 30 day of SEPT, 2016, by and between 527 Common Street, LLC, a Massachusetts limited liability company, with a place of business at 6 Littlefield Road, Acton, Massachusetts 01720 ("Landlord"), and CVS Pharmacy, Inc., a Rhode Island corporation, having its office at One CVS Drive, Woonsocket, Rhode Island 02895, Attention Property Administration, CVS Store No. 1848-01 ("Tenant").

WITNESSETH:

WHEREAS, Landlord as successor-in-interest to, Robert Yanofsky, as Trustee under Declaration of Trust dated May 10, 1950, recorded with Middlesex South District Registry of Deeds in Book 7577, Page 297, but not individually ("Original Landlord") and Tenant as successor-in-interest to Highland Market CVS, Inc., a Massachusetts corporation ("Original Tenant") entered into a Lease Agreement dated September 24, 1992 ("Lease") for that certain property owned by Landlord, together with the building and improvements thereon, and easements and rights of way appurtenant thereto, and situated at 529 Common Street, Town of Belmont, Commonwealth of Massachusetts, ("Premises"), as said Premises are more particularly described in the Lease; and

WHEREAS, Landlord and Tenant have entered into that certain Lease Termination Agreement dated as of the date hereof (the "Lease Termination Agreement") upon the terms and conditions set forth below and the purpose of this Notice is to give record notice thereof; and

WHEREAS, any capitalized term used herein and not defined herein shall have the meaning set forth in the Lease Termination Agreement.

NOW, THEREFORE, Landlord and Tenant, in consideration of the mutual promises hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, do hereby mutually agree as follows:

1. As of 11:59 p.m. on September 30, 2016 (the "Termination Date"), the Lease shall be canceled and terminated, and shall be of no further force or effect; and neither party shall have any further obligations under the terms of the Lease.

2. (a) In complete and full consideration of Tenant's agreement to the early termination of the Lease, Landlord agrees not to lease or rent any space in the shopping center as set forth below.

(b) In consideration of Tenant's agreement to the early termination of the Lease, Landlord hereby agrees and covenants with Tenant that Landlord shall not allow any portion of the Premises and any property immediately adjacent to the Premises which Landlord may now or hereafter own or control (whether accomplished directly by means of direct ownership, or indirectly through the use of leases, cross-easement agreements or similar techniques and documents) to be leased, rented or to be used by any person, corporation or any other entity whatsoever for the purpose of operating a pharmacy, drug store, or a mail-order drug store or pharmacy prescription department for a period commencing on the Termination Date and continuing through January 31, 2018, provided, however, that the foregoing shall not preclude the sale of non-prescription items sold in drug stores as part of the operation of a salon, spa, health club or such similar business operation. Neither Landlord, nor any of its officers, directors, trustees, members or partners shall sell or transfer any interest in the Premises if the intended use after such sale would violate this Section.

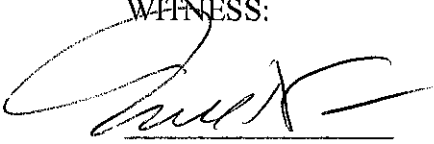
3. This Agreement shall be governed and construed and enforced in accordance with the laws of the State in which the Premises are located. This instrument is only a brief summary of certain provisions for the purpose of giving notice of the Lease Termination Agreement and is not deemed to amend the Lease Termination Agreement in any respect. Reference is hereby made to the Lease Termination Agreement for a more complete description of the terms. In the event of any conflict or inconsistency between the terms hereof and the terms of the Lease Termination Agreement, the terms of the Lease Termination Agreement shall govern. This Notice of Lease Termination Agreement and Restrictive Covenant may be signed in counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Agreement as of the day and year first above written.

WITNESS:

LANDLORD: 527 COMMON STREET, LLC

  
\_\_\_\_\_

BY:

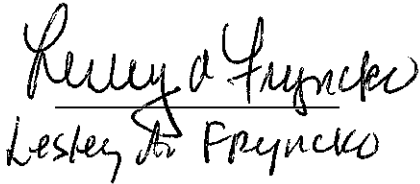
  
\_\_\_\_\_

NAME: CHRIS STARK

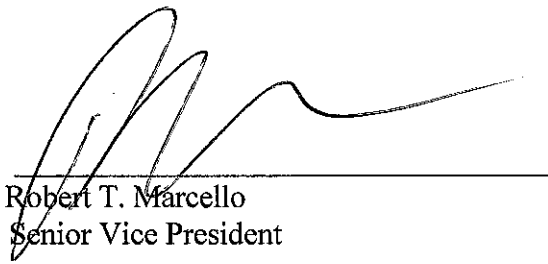
TITLE: MANAGER

WITNESS:

TENANT: CVS PHARMACY, INC.

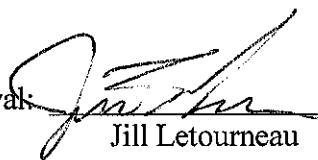
  
Lester A. Frayncko

BY:

  
\_\_\_\_\_

Robert T. Marcello  
Senior Vice President

CVS Legal Approval:

  
\_\_\_\_\_

Jill Letourneau

STATE OF MASS )  
COUNTY OF SUFFOLK ) ss:

On this 28 day of September, 2016 before me personally appeared \_\_\_\_\_  
Chris Star, Manager of 527 Common St, LLC, and that he executed this  
instrument on behalf of 527 Common Street, LLC, Landlord, and that he had authority to do so.

Stephanie Larsen  
NOTARY PUBLIC

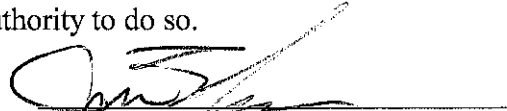


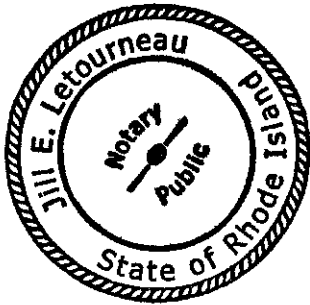
STATE OF RHODE ISLAND)

) ss:

COUNTY OF PROVIDENCE )

On this 20 day of September 2016, before me personally appeared Robert T. Marcello, personally known by me, who, being by me duly sworn, did depose and say that he is Senior Vice-President of CVS Pharmacy, Inc., corporation described in this instrument, and that he executed this instrument on behalf of said corporation and that he had authority to do so.

  
NOTARY PUBLIC



JILL E. LETOURNEAU  
Notary Public  
State of Rhode Island  
My Commission Expires September 10, 2018

3

PR12-01 Extension

RECEIVED  
TOWN CLERK  
BELMONT, MA

89



2016 00185782

Bk: 68233 Pg: 120 Doc: EXT  
Page: 1 of 3 10/19/2016 11:00 AM

Town of Belmont  
PLANNING BOARD  
EXTENSION FOR

2016 SEP -9 PM 1:25

A SPECIAL PERMIT WITH DESIGN AND SITE PLAN REVIEW AND WAIVERS  
PURSUANT TO SECTION 8  
(Cushing Square Overlay District)  
OF THE TOWN OF BELMONT ZONING BY-LAW

September 9, 2016

Toll Brothers, Inc., in its capacity as contract purchaser of Cushing Village<sup>1</sup>, and on behalf of and with the consent of Smith Legacy Partners, LLC (the purchaser under the Town Agreement<sup>2</sup> and grantee of the Special Permit), submitted a request to the Planning Board on August 31, 2016 for an extension of the Special Permit to July 27, 2017. The Special Permit for this development was previously granted on July 27, 2013 after a duly noticed public hearing and previously extended by action of the Planning Board on August 19, 2015 and thereafter by action of the Planning Board on November 17, 2015, December 3, 2015, and again on April 6, 2016. The previous extension granted on April 6, 2016 was further modified to include Toll Brothers, hereinafter referred to as 'the Applicant', as party to a Purchase and Sale Agreement with Smith Legacy Partners, LLC, the grantee of the Special Permit.

On September 6, 2016, at a duly noticed public meeting and after reviewing the Applicant's request, the Planning Board granted the extension as requested, except that the Planning Board may terminate the Special Permit prior to the expiration of said extension if the Applicant fails (subject to extension for Force Majeure, as provided in the following paragraph) to achieve each of the specific benchmarks in the development of Cushing Village as follows:

- A. The Applicant shall complete the acquisition of the municipal parking lot on or before the date required by the applicable Purchase and Sale Agreement with the Town of Belmont.

<sup>1</sup> The Planning Board granted a Special Permit and Site Plan Review and Waivers pursuant to Section 8 of the Town of Belmont Zoning By-Law, 'the Special Permit', for a mixed-use development, commonly referred to as 'Cushing Village'.

<sup>2</sup> Smith Legacy entered into a Purchase and Sale Agreement, as amended, with the Town of Belmont, 'the Town Agreement', to purchase 116 Trapelo Road, commonly referred to as the Municipal Parking Lot.

527 Common Street, Belmont

Original Permit Book 62578, page 101

- B. Within forty five (45) days following the date of acquisition of the municipal parking lot as described in A. above, the Applicant shall have submitted:
- 1) an application for a demolition permit to the Office of Community Development for the existing structures currently on the property, all in accordance with the Special Permit, and
  - 2) submitted an application to the Office of Community Development for a foundation permit for at least one (1) of the three (3) buildings at Cushing Village.
- C. Within 30 days after receipt of the applicable demolition permits for which application was submitted under B. above, demolition of the applicable structure (s) will commence.

The time for performance by the Applicant or any successor thereto of the benchmarks identified as B. and C. above shall be extended by any period of time for which that performance or satisfaction shall have been delayed due to any cause beyond the Applicant's reasonable control, such as any act of God, inclement weather, labor dispute, any delay in the issuance of any permits, licenses or authorizations by the Town of Belmont, unusual transportation failure, inability to obtain labor, equipment or materials, any material casualty to the property as described in the Special Permit, civil commotion, riot, mob violence, insurrection, malicious mischief, sabotage, rebellion, terrorism, enemy action, hostilities, war or invasion (but not including any insolvency, financial condition or inability to obtain financing) ("Force Majeure"). If the Applicant or any successor believes or intends to assert that any period of time has been extended due to Force Majeure, the Applicant shall provide prompt written notice to the Planning Board of such occurrence and provide periodic updates as to the status of such Force Majeure event or events and the anticipated time the Applicant will be able to comply with such benchmarks.

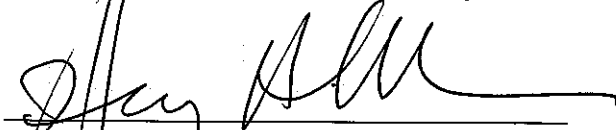
In the event that Applicant has complied with benchmarks A., B. and C. above, then failure of the Office of Community Development to issue a foundation permit in a timely manner in order to allow the Applicant to commence foundation excavation prior to the expiration date of the Special Permit, shall be considered a Force Majeure event and shall extend the expiration date of the Special Permit a reasonable timeframe to allow excavation to commence.

The Applicant shall provide a written certification to the Planning Board upon achieving each of the specified benchmarks which certification shall be conclusively deemed accurate and accepted by the Planning Board absent written objection by the Planning Board to the Applicant within 30 days of such certification.

Subject to the foregoing, the failure of the Applicant to achieve any of the benchmarks referred to above by the time set forth herein, shall authorize the Planning Board, on its own Motion and after written notice to the Applicant and Smith Legacy Partners, LLC (as party to a Purchase and Sale with the Applicant) and an opportunity for the Applicant and Smith Legacy Partners, LLC to appear before the Planning Board, by majority vote to notify the Office of Community Development that the Special Permit has lapsed. Notices to Toll Bros., Inc. shall be addressed to Toll Bros., Inc., 250 Gibraltar Road, Legal – 3W, Horsham, PA, 19044, ATTN: John McDonald, General Counsel.

This Extension supersedes and replaces in whole any and all Extensions and/or modifications previously granted by the Planning Board regarding the Special Permit and Site Plan Review and Waivers granted pursuant to Section 8 of the Town of Belmont Zoning By-Law for the construction of a mixed use development commonly referred to as Cushing Village.

Submitted on Behalf of the Planning Board,



Jeffrey A. Wheeler, AICP  
Senior Planner

Dated: September 9, 2016

I, Ellen O'Brien Cushman, hereby certify that twenty (20) days have elapsed after the September 9, 2016 Planning Board Extension for a Special Permit with Design and Site Plan Review and Waivers, Pursuant to Section 8 (Cushing Square Overlay District) of the Town of Belmont Zoning By-Law, was filed in the office of the Belmont Town Clerk on September 9, 2016, and further I certify that no appeal has been filed with regard to the granting of said Extension.

September 30, 2016



Ellen O'Brien Cushman, Town Clerk  
Belmont, MA



102-104 Trapelo Road, Belmont; 505-507 Common Street, Belmont  
112 Trapelo Road, Belmont; 7 Horne Road, Belmont; 495-501 Common Street, Belmont; 527 Common Street, Belmont  
505-507 Common Street, Belmont; 527 Common Street, Belmont

f



Bk: 68233 Pg: 123 Doc: DEED  
Page: 1 of 9 10/19/2016 11:00 AM

**102-104 Trapelo Road, Belmont,  
112 Trapelo Road, Belmont,  
7 Horne Road, Belmont,  
495-501 Common Street, Belmont,  
505-507 Common Street, Belmont, &  
527 Common Street, Belmont  
Middlesex County, Massachusetts**

**QUITCLAIM DEED**

Smith Legacy Partners II, LLC, a Massachusetts Limited Liability Company, having a principal place of business at 6 Littlefield Road, Acton, MA 01720 ("Grantor, Parcels 1 & 2")

Smith Legacy Partners Series, LLC, a Delaware Limited Liability Company, having a principal place of business at 6 Littlefield Road, Acton, MA 01720 ("Grantor, Parcels 3 & 4")

505-507 Common Street, LLC, a Massachusetts Limited Liability Company, having a principal place of business at 6 Littlefield Road, Acton, MA 01720 ("Grantor, Parcel 5")

527 Common Street, LLC, a Massachusetts Limited Liability Company, having a principal place of business at 6 Littlefield Road, Acton, MA 01720 ("Grantor, Parcel 6")

Together and jointly herein being the Grantors

For consideration paid of Fourteen Million, Two Hundred Sixty Thousand Dollars (\$14,260,000.00),

Grant to Belmont Residential LLC, a Delaware Limited Liability Company, having a principal place of business at 250 Gibraltar Road, Horsham, PA 19044 ("Grantee")

**WITH QUITCLAIM COVENANTS**

Those certain parcels of land, with the buildings and improvements thereon, being described as Parcels 1 through 6 inclusive herein, as follows:

~~MASSACHUSETTS EXCISE TAX  
Southern Middlesex District ROD # 001  
Date: 10/19/2016 11:00 AM  
Ctrl# 262244 16956 Doc# 00185783  
Fee: \$65,025.60 Cons: \$14,260,000.00~~

**Quitclaim Deed**  
**Page 2 of 9**

**Parcel 1**

That certain parcel of land, with the buildings and improvements thereon, known as 102-104 Trapelo Road, Belmont, Middlesex County, MA, shown as Lot C on a Plan of Land in Belmont, Mass. By Fred A. Joyce, Surveyor, dated June 8, 1936, recorded with the Middlesex County, Southern District, Registry of Deeds in Book 6041, Page 237, being more particularly bounded and described as follows:

- NORTHEASTERLY by Trapelo Road, fifty-two and 52/100 (52.52) feet;  
EASTERLY by the intersection of Trapelo Road and Common Street, fifty-three and 20/100 (53.20) feet;  
SOUTHEASTERLY by said Common Street, about sixty-five and 32/100 (65.32) feet;  
SOUTHEASTERLY by land now or formerly of William A. Doe described in a deed by Mary B. Horne to said William A. Doe, dated October 4, 1922 and recorded with said Deeds in Book 4559, Page 159, ninety-nine and 90/100 (99.90) feet; and  
NORTHWESTERLY by land now or late of Anna G. Horne, et al, ninety-nine and 09/100 (99.09) feet.

Said parcel of land contains 8,714 square feet of land, being all said measurements more or less.

Said premises are conveyed subject to and with the benefit of the rights and easements referred to in the deed of S.S. Pierce Company, dated January 7, 1948, recorded with said Deeds in Book 7240, Page 305, insofar as they are now in force and applicable.

For title, see Deed dated April 1, 2008, recorded with said Deeds in Book 50982, Page 390.

**Parcel 2**

That certain parcel of land, with the buildings and improvements thereon, known as 112 Trapelo Road, Belmont, Middlesex County, MA, more fully described as follows:

Beginning at a point on the southerly side of Trapelo Road, six (6) feet more or less westerly from a stone bound, said stone bound being at the point of curve of south side of said Trapelo Road; thence running southerly along land now or formerly of the Town of Belmont, known as the Fire Station lot, 123.48 feet; thence running easterly along land now or formerly of Mary B. Horne, 79.17 feet; thence running northerly, 103.13 feet to the south side of Trapelo Road; thence running westerly along the south side of Trapelo Road, 80 feet, to the point of beginning.

Also, a right of way, 12 feet in width over the lands now or formerly of Mary B. Horne, on the easterly side of the above parcel and adjacent to it, said right of way to be kept open and used for ingress and egress and for all purposes for which rights of way are commonly used in Massachusetts.

For title, see Deed dated February 24, 2010, recorded with said Deeds in Book 54333, Page 196.

**Quitclaim Deed**  
**Page 3 of 9**

**Parcel 3**

That certain parcel of land, with the buildings and improvements thereon, known as 7 Horne Road, Belmont, Middlesex County, MA, shown as Lot 77 on a plan entitled "Samuel Barnard Estate, Belmont, Mass." dated January 2, 1928, by Fred A. Joyce, Surveyor, recorded with the Middlesex County, Southern District, Registry of Deeds at the end of Book 5260, being more particularly bounded and described as follows:

- SOUTHWESTERLY by said Horne Road, sixty three (63) feet;
- NORTHWESTERLY by Lot 76 as shown on said Plan, one hundred four and 63/100 (104.63) feet;
- NORTHEASTERLY by land now or formerly of the Barnard Estate, sixty-five and 43/100 (65.43) feet; and
- SOUTHEASTERLY in part by the first parcel conveyed by deed of Ruth H. Jenkins, dated December 19, 2000 and recorded with said Deeds in Book 32171, Page 482, and in part by Lot 78 as shown on said Plan, in all one hundred fourteen and 50/100 (114.50) feet.

.Said parcel of land contains 6,944 square feet of land.

Subject to and with the benefit of restrictions, of record applicable thereto, if and so far as they are now in force and applicable, without re-imposing the same.

For title, see Deed dated March 31, 2006, recorded with said Deeds in Book 47242, Page 339, and Confirmatory Deed dated April 1, 2008, recorded with said Deeds in Book 50982, Page 361.

**Parcel 4**

That certain parcel of land, with the buildings and improvements thereon, known as 495-501 Common Street, Belmont, Middlesex County, MA, being more particularly bounded and described as follows:

- SOUTHEASTERLY by Common Street, sixty four (64) feet;
- SOUTHWESTERLY by Lot 78 on a plan entitled "Samuel Barnard Estate, Belmont, Mass." dated January 2, 1928, by Fred A. Joyce, Surveyor,, recorded with the Middlesex County, Southern District, Registry of Deeds at the end of Book 5260, one hundred (100) feet;
- NORTHWESTERLY by Lot 77 as shown on said Plan and land now or formerly of Mary B. Horne, sixty-four (64) feet; and
- NORTHEASTERLY by land now or formerly of Mary B. Horne, one hundred (100) feet.

Subject to and with the benefit of restrictions, of record applicable thereto, if and so far as they are now in force and applicable, without re-imposing the same.

For title, see Deed dated March 31, 2006, recorded with said Deeds in Book 47242, Page 343, and Confirmatory Deed dated April 1, 2008, recorded with said Deeds in Book 50982, Page 363.

**Quitclaim Deed**  
**Page 4 of 9**

**Parcel 5**

That certain parcel of land, with the buildings and improvements thereon, known as 505-507 Common Street, Belmont, Middlesex County, MA, shown as Lot 78 on a plan entitled "Samuel Barnard Estate, Belmont, Mass." dated January 2, 1928, by Fred A. Joyce, Surveyor, recorded with the Middlesex County, Southern District, Registry of Deeds at the end of Book 5260, being more particularly bounded and described according to said plan as follows:

SOUTHEASTERLY by said Common Street, thirty one and 99/100 (31.99) feet;

SOUTHEASTERLY,  
SOUTHERLY, and  
SOUTHWESTERLY

by the junction of said Common Street and Horne Road, thirty and 78/100 (30.78) feet;

SOUTHWESTERLY by said Horne Road, seventy-eight and 95/100 (78.95) feet;

NORTHEASTERLY by Lot 77 as shown on said Plan, fifty-four and 50/100 (54.50) feet; and

NORTHEASTERLY by land now or formerly of Mary B. Horne, one hundred (100) feet.

Or however otherwise said premises may be bounded measured or described.

Subject to and excepting the taking relating to the street line by the Town of Belmont, as shown on Plan recorded with said Deeds in Book 7314, Page 45. Subject to and with the benefit of easements, rights and restrictions, of record insofar as they are now in force and applicable.

For title, see Deed dated June 29, 2007, recorded with said Deeds in Book 49728, Page 416.

**The balance of this page is intentionally left blank.**

**Quitclaim Deed**  
**Page 5 of 9**

**Parcel 6**

That certain parcel of land, with the buildings and improvements thereon, known as 527 Common Street, Belmont, Middlesex County, MA, shown on a plan of land in Belmont, dated May 24, 1939, made by S. Albert Kaufman, C.E., recorded with the Middlesex County, Southern District, Registry of Deeds at the end of Book 6297, and also shown as Lots 79, 80, 101 and 102 on a plan entitled "Plan shown Portion of Samuel Barnard Estate, Belmont, Mass." dated September 3, 1931, by Fred A. Joyce, Surveyor, recorded with said Deeds in Book 5595, Page 311, being more particularly bounded and described as follows:

SOUTHWESTERLY by Belmont Street, one hundred forty-eight and 35/100 (148.35) feet;  
SOUTHEASTERLY by Common Street, by two (2) lines, one hundred thirty-five and 53/100 (135.53) feet;  
EASTERLY by a curved line forming the juncture of Horne Road and Common Street, thirty-two and 05/100 (32.05) feet;  
NORTHEASTERLY by Horne Road, one hundred thirty-three and 39/100 (133.39) feet;  
NORTHWESTERLY by Lot 81 as shown on said Joyce Plan, ninety and 12/100 (90.12) feet;  
NORTHEASTERLY again by said Lot 81, thirty-one and 12/100 (31.12) feet; and  
NORTHWESTERLY again, by Lot 100 on said Joyce Plan, ninety-nine and 27/100 (99.27) feet.

Containing 27,405 square feet of land, be any or all of said measurements more or less, or however otherwise said premises may be bounded, measured or described.

Excepting the strip of land conveyed by deed of Benjamin Yanofsky to the Inhabitants of Belmont, dated May 12 1941 and recorded with said Deeds in Book 6520, Page 458.

Subject to and with the benefit of easements, rights and restrictions, of record applicable thereto, if and so far as they are now in force and applicable.

For title, see Deed dated June 29, 2007, recorded with said Deeds in Book 49728, Page 483.

**The balance of this page is intentionally left blank.**

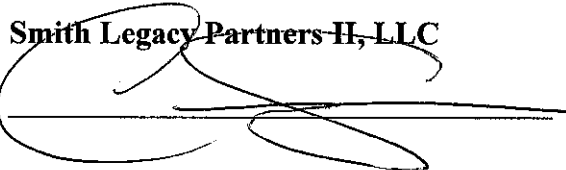
**Quitclaim Deed**  
**Page 6 of 9**

Smith Legacy Partners II, LLC, as grantor, is not an entity treated as a corporation for tax purposes.

EXECUTED AS A SEALED INSTRUMENT this 30<sup>th</sup> day of September, 2016.

**Smith Legacy Partners II, LLC**

By:

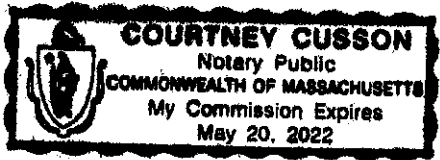


Authorized Signatory

**COMMONWEALTH OF MASSACHUSETTS**

Worcester, SS

On this 30<sup>th</sup> day of September, 2016, before me, the undersigned notary public, personally appeared Christopher Starr, proved to me through satisfactory evidence of identification, which was MA Drivers license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily, as his/her free act and deed, for its stated purpose as Authorized Signatory for Smith Legacy Partners II, LLC.



Courtney Cusson

Notary Public

My commission expires:

Seal of Notary

**The balance of this page is intentionally left blank.**

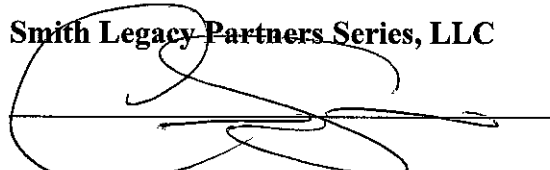
**Quitclaim Deed**  
**Page 7 of 9**

Smith Legacy Partners Series, LLC, as grantor, is not an entity treated as a corporation for tax purposes.

EXECUTED AS A SEALED INSTRUMENT this 30<sup>th</sup> day of September, 2016.

~~Smith Legacy Partners Series, LLC~~

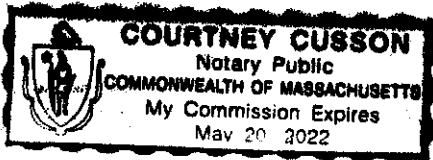
By:

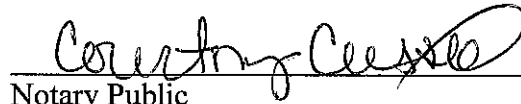
  
Authorized Signatory

**COMMONWEALTH OF MASSACHUSETTS**

Worcester, SS

On this 30<sup>th</sup> day of September, 2016, before me, the undersigned notary public, personally appeared Christopher Starr, proved to me through satisfactory evidence of identification, which was MA Drivers license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily, as his/her free act and deed, for its stated purpose as Authorized Signatory for Smith Legacy Partners Series, LLC.



  
Notary Public  
My commission expires:  
Seal of Notary

**The balance of this page is intentionally left blank.**

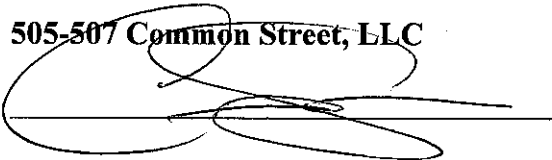
**Quitclaim Deed**  
**Page 8 of 9**

505-507 Common Street, LLC, as grantor, is not an entity treated as a corporation for tax purposes.

EXECUTED AS A SEALED INSTRUMENT this 30<sup>th</sup> day of September, 2016.

505-507 Common Street, LLC

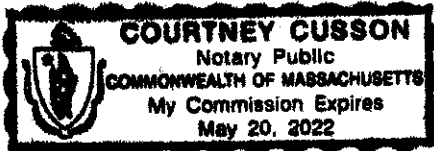
By:

  
Authorized Signatory

**COMMONWEALTH OF MASSACHUSETTS**

Worcester, SS

On this 30<sup>th</sup> day of September, 2016, before me, the undersigned notary public, personally appeared Christopher Starr, proved to me through satisfactory evidence of identification, which was MA Drivers license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily, as his/her free act and deed, for its stated purpose as Authorized Signatory for 505-507 Common Street, LLC.



Courtney Cusson  
Notary Public  
My commission expires:  
Seal of Notary

The balance of this page is intentionally left blank.



527 Common Street, LLC, as grantor, is not an entity treated as a corporation for tax purposes.

EXECUTED AS A SEALED INSTRUMENT this 30<sup>th</sup> day of September, 2016.

527 Common Street, LLC

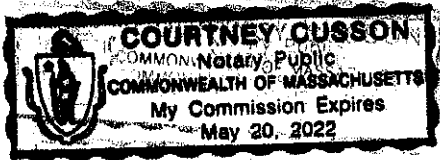


By:  
Authorized Signatory

**COMMONWEALTH OF MASSACHUSETTS**

Worcester, SS

On this 30<sup>th</sup> day of September, 2016, before me, the undersigned notary public, personally appeared Christopher Starr, proved to me through satisfactory evidence of identification, which was MA Drivers license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily, as his/her free act and deed, for its stated purpose as Authorized Signatory for 527 Common Street, LLC.



Courtney Cusson  
Notary Public  
My commission expires:  
Seal of Notary

BELMONT ANNUAL TOWN MEETING

APRIL 28, 2008

Certification of Votes

Article 20: Cushing Square Road Discontinuance and Property Conveyance

MOVED: That the Town discontinue a portion of Horne Road as a public way for all purposes for a distance of approximately 125 feet on the southerly side of the way and approximately 150 feet on the northerly side of the way and shown as "the Discontinued Section of Horne Road" on a Plan entitled "Cushing Square, Belmont, MA 02478, Lot Compilation Plan," dated March 3, 2008, made by R.J. O'Connell & Associates, Inc.; a copy of which is on file with the Town Clerk, subject to the reservation of pedestrian access in said way; and further authorize the Board of Selectmen to acquire by purchase, gift, eminent domain or otherwise a pedestrian access easement and a utility easement over the discontinued portion of Horne Road in a location and width to be determined by the Board of Selectmen; provided that the petitioner of the request to discontinue Horne Road shall provide satisfactory security to the Board of Selectmen indemnifying the Town for all damages arising from said discontinuance as required under General Laws, Chapter 82, Section 24, and provided further that said discontinuance shall become effective only upon the conveyance of the parcel of land identified as Lot 12-211A pursuant to the vote of the Town Meeting under this Article 20.

The Motion: was approved at the Annual Town Meeting of May 5, 2008 held in the Belmont High School Auditorium.

True Copy, Attest:

  
Ellen O'Brien Cushman, Town Clerk  
Belmont, MA



2016 00185784

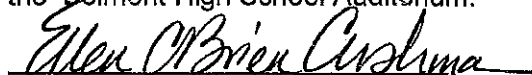
Bk: 68233 Pg: 132 Doc: VOTE

Page: 1 of 2 10/19/2016 11:00 AM

MOVED: That the Town transfer the care, custody, management, and control of a parcel of land identified as Lot 12-211A, also shown as 116 Trapelo Road, as shown on a Plan entitled, "Cushing Square, Belmont, MA 02478, Lot Compilation Plan," dated March 3, 2008, made by R.J. O'Connell & Associates, Inc.; on file with the Town Clerk, from the Board of Selectmen currently held for fire station and general municipal purposes to the Board of Selectmen to be held for the purpose of conveyance; and authorize the Board of Selectmen to convey said parcel, in accordance with the requirements of the Uniform Procurement Act, General Laws, Chapter 30B, Section 16, provided, however that said conveyance shall be conditioned on: (a) the Town's acquiring by purchase, gift, eminent domain or otherwise a public parking easement for at least 50 parking spaces within the Cushing Square Overlay Zoning District, which the Board of Selectmen is hereby authorized to acquire in the name of the Town, and (b) design and site plan approval of the Planning Board for any improvement of said land, and (c) issuance of any and all special permits which may be required for development of said parcel in accordance with the requirements of the Zoning By-Law applicable to the Cushing Square Overlay District or otherwise, and Paragraph (d) the expiration of all applicable appeal periods therefor, without appeal by parties in interest; and further authorize the Board of Selectmen to take all necessary action to accomplish this vote.

The Motion: was approved by more than two thirds majority at the Annual Town Meeting of May 5, 2008 held in the Belmont High School Auditorium.

True Copy, Attest:

  
Ellen O'Brien Cushman, Town Clerk  
Belmont, MA



1

✓

JL



2016 00185785

Bk: 68233 Pg: 134 Doc: VOTE  
Page: 1 of 1 10/19/2016 11:00 AM

**BELMONT, MASSACHUSETTS  
ANNUAL TOWN MEETING  
MAY 2, 2016**

**CERTIFICATION OF VOTES**

**ARTICLE 3: ABANDONMENT OF UTILITY EASEMENT**

**MOVED:** That the Town vote to authorize the Board of Selectmen to abandon and release an easement for sanitary sewerage and storm drainage as shown on a plan entitled "Plan Showing Easement for 112 Trapelo Road, 102/104 Trapelo Road, 489-493 Common Street, 495-501 Common Street, and Parcel 207 in Belmont, MA" dated April 5, 2016 and prepared by Rober Survey, said area being a portion of the easement accepted at Town Meeting on December 11, 1922, and described in a grant of easement from Mary B. Home to the Inhabitants of Belmont dated March 13, 1929 and recorded in the Middlesex South District Registry of Deeds in Book 5337, Page 1.

The Motion was adopted unanimously at the Annual Town Meeting held May 2, 2016 at the Belmont High School Auditorium.

A True Copy, Attest: Ellen O'Brien Cushman  
Ellen O'Brien Cushman, Town Clerk  
Belmont, MA

June 30, 2016.  
Date



Bk: 68233 Pg: 135 Doc: DEED  
Page: 1 of 2 10/19/2016 11:00 AM

**RELEASE DEED**

The **TOWN OF BELMONT**, a body politic having a principal place of business at 455 Concord Avenue, Belmont, Massachusetts, 02478 ("Town"), for consideration paid and in consideration of less than One Hundred Dollars (< \$100)

Grant to:

**BELMONT RESIDENTIAL LLC**, a Delaware limited liability company having its principal office at 250 Gibraltar Road, Horsham, PA 19044 ("Grantee")

***WITHOUT COVENANTS***

FIRST: All of the Town's right, title and interest, if any, in the easement area shown as "This Section of Easement to be Abandoned" on the plan entitled "Plan Showing Easement for 112 Trapelo Road, 102/104 Trapelo Road, 489-493 Common Street, 495-501 Common Street and Parcel 207 in Belmont, MA" dated April 5, 2016, prepared by Rober Survey, 1072A Massachusetts Avenue, Arlington, MA 02476," (the "Easement Plan"), to be recorded herewith; meaning and intending to release only that portion of the easement lying with the lot shown as "Lot Area 36,076± S.F." on the said Easement Plan; and

SECOND: All of the Town's right, title and interest, if any, in so much of the land formerly within the layout of Horne Road as is shown as "Discontinued at Town Meeting May 5, 2008 – Article 20" on the said Easement Plan, being the portion of Horne Road bounded by the lot shown as "Lot Area 36,076± S.F." on the said Easement Plan; meaning and intending to release any interest in said land acquired by the Town prior to the date of this instrument, and not to release any interest acquired by the Town in the "Parking and Utility Easement" to be recorded herewith.

For title to the first parcel herein described, see deed from Mary B. Horne dated July 10, 1923 and recorded at the Middlesex South District Registry of Deeds Book 5337, Page 1. For title to Horne Road, see Order recorded at said Registry at Book 7726, Page 11.

The Grantee herein has fully complied with the provisions of M.G.L. c. 44, § 63A.

This Deed is exempt from documentary stamp excise taxes pursuant to M.G.L. c. 64D, §1.

Property Address: 102-104 Trapelo Road and Horne Road, Belmont, MA

2

gr

4

For authority of the Grantor see attested copy of the town meeting votes attached hereto.

Witness the hand and seal of the Grantor as of this \_\_\_ day of September, 2016.

Town of Belmont  
By and through its Board of Selectman

[Signature]  
By:

[Signature]  
By:

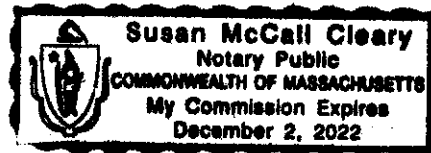
[Signature]  
By:

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this 26 day of September, 2016, before me, the undersigned notary public, personally appeared mark Paolillo, Sami Baghdady James Williams proved to me through satisfactory evidence of identification, which was  photographic identification with signature issued by a federal or state governmental agency,  oath or affirmation of a credible witness,  personal knowledge of the undersigned, to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as a member of the Board of Selectman for the Town of Belmont.

Susan McCall Cleary  
Notary Public



7

3

7



Bk: 68233 Pg: 137 Doc: DEED  
Page: 1 of 3 10/19/2016 11:00 AM

**QUITCLAIM DEED**

The **TOWN OF BELMONT**, a body politic having a principal place of business at 455 Concord Avenue, Belmont, Massachusetts, 02478 ("Grantor"), for consideration paid and in consideration of

**ONE MILLION (\$1,000,000.00) DOLLARS**

Grant to:

**BELMONT RESIDENTIAL LLC**, a Delaware limited liability company having a principal place of business at 250 Gibraltar Road, Horsham, PA 19044 ("Grantee")

**WITH QUITCLAIM COVENANTS**

A certain parcel of land located at the corner of Trapelo Road and Williston Road in the Town of Belmont, Middlesex County, Massachusetts, bounded and described as follows:

Northwesterly by said Williston Road, one hundred twenty-seven and 68/100 (127.68) feet, more or less;

Northerly by the curved intersection of said Williston Road and said Trapelo Road, thirty-three and 77/100 (33.77) feet, more or less;

Northeasterly by said Trapelo Road, one hundred twenty-two and 5/10 (122.5) feet, more or less;

Southeasterly by land now or formerly of Anna G. Horne and Mary B. Horne, one hundred twenty-three and 48/100 (123.48) feet, more or less;

Southwesterly by land now or formerly of Mary A. Gay and Ernest L. Drew Jr., one hundred thirty one (131) feet, more or less.

Containing 18,720 square feet of land, more or less and being the parcel of land designated "Town of Belmont" as shown on "Belmont Planning Board Pan of Land in Belmont, Mass." dated December 29, 1944, on file in the Town Clerk's Office and recorded with the Middlesex South District Registry of Deeds as Plan No. 200 of 1947.

Property Address: 116 Trapelo Road, Belmont, MA

Being the same premises conveyed to the Inhabitants of Belmont by deed of Massachusetts Amusement Corporation dated December 29, 1958 and recorded at Middlesex South District Registry of Deeds in Book 9297, Page 525.

Reserving to the Grantor a perpetual and nonexclusive easement to design, construct, install, repair, replace, maintain and use within a 7.5 foot area the existing sewage and surface water drainage systems as currently in existence in or within the land hereby conveyed.

The premises are conveyed in conjunction with the Grantor of certain easements granted to the Grantor by Grantee pursuant to Easement Deed recorded herewith.

The premises are further conveyed subject to that certain Amended and Restated Land Development Agreement between Grantor and Grantee dated August \_\_\_\_, 2016 and recorded herewith.

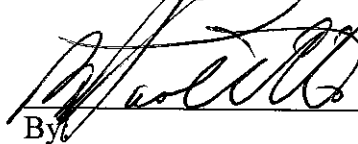
The Grantee herein has fully complied with the provisions of M.G.L. c. 44, § 63A.

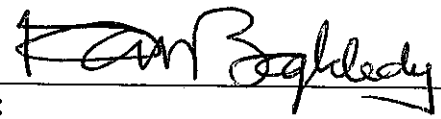
This Deed is exempt from documentary stamp excise taxes pursuant to M.G.L. c. 64D, §1. ✓


For authority of the Grantor see attested copy of the town meeting vote attached hereto.

Witness the hand and seal of the Grantor as of this \_\_\_\_ day of September, 2016.

Town of Belmont  
By and through its Board of Selectman

  
By: \_\_\_\_\_

  
By: \_\_\_\_\_

  
By: \_\_\_\_\_

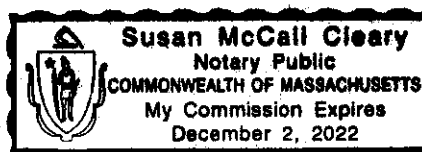


THE COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this 26 day of Sept., 2016, before me, the undersigned notary public, personally appeared mark Paolillo, Sami Baghdady, James Williams, proved to me through satisfactory evidence of identification, which was  photographic identification with signature issued by a federal or state governmental agency,  oath or affirmation of a credible witness,  personal knowledge of the undersigned, to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as a member of the Board of Selectman for the Town of Belmont.

Susan McCall Cleary  
Notary Public



59

J



Bk: 68233 Pg: 140 Doc: AGR  
Page: 1 of 59 10/19/2016 11:00 AM

**AMENDED AND RESTATED LAND DEVELOPMENT AGREEMENT**  
**116 Trapelo Road, Belmont, Massachusetts**  
**BETWEEN TOWN OF BELMONT AND**  
**BELMONT RESIDENTIAL LLC**

THIS AMENDED AND RESTATED LAND DEVELOPMENT AGREEMENT (this "LDA" or "Agreement"), dated as of this <sup>18<sup>th</sup></sup> ~~September~~ <sup>October</sup>, 2016 ("Effective Date") is made by and between the TOWN OF BELMONT, MASSACHUSETTS, a Massachusetts municipal corporation, acting by and through its Board of Selectmen, with an address of 455 Concord Avenue, Belmont, Massachusetts 02478 (hereinafter, with its successors and assigns, referred to as the "Town"), and BELMONT RESIDENTIAL LLC, a Delaware limited liability company and wholly owned subsidiary of Toll Brothers, Inc., having its principal office at 250 Gibraltar Road, Horsham, PA 19044(hereinafter, with its successors and permitted assigns, referred to as the "Developer").

**RECITALS**

WHEREAS, the Town, in recognition of the unique location, function and character of the Cushing Square commercial area, adopted the Cushing Square Overlay District, a copy of which is attached hereto as Exhibit A and incorporated herein (the "CSOD"), being Section 8 of the Belmont Zoning By-Law, in order to, among other objectives, encourage revitalization of Cushing Square and promote the redevelopment of the Cushing Square properties and the creation of mixed-use development, incorporating residential use and either or both retail and office uses; and

WHEREAS, the Town, as owner of a certain parcel, used as a municipal parking lot, issued a Request for Proposals (the "RFP"), dated July 30, 2008, for the disposition of said property, located at 116 Trapelo Road, Belmont, Massachusetts, being Assessor's Map 12, Parcel 211A, described in a deed, recorded with the Middlesex South District Registry of Deeds (the "Registry") in Book 4647, Page 232, and more particularly described in Exhibit B attached hereto (the "Premises"), to further the goals and objectives of the CSOD; and

WHEREAS, Smith Legacy Partners Series, LLC ("Smith") submitted a proposal in response to the RFP (the "Proposal"), for a mixed-use development, partially located upon the Premises, partially located on the portion of Horne Road in Belmont, Massachusetts to be

discontinued by the Town and acquired by the Developer by operation of law (such portion being referred to herein as "Horne Road"), and partially located upon other property owned and/or controlled by the Developer, being Assessor's Map 12, Parcels 207 through 211 and Parcel 233 (the "Adjoining Property," together with Horne Road and the Premises, the "Property"), said mixed-use development to contain residential use and either or both retail and office uses, and parking to accommodate both such uses, and an additional fifty (50) spaces for use by the Town in accordance with an Easement Deed (as hereinafter described) and Parking Management Agreement (Exhibit C) (all as further described herein, the "Project"); and

WHEREAS, Smith has designed a development to, among other objectives, encourage revitalization of Cushing Square; promote the redevelopment of under-utilized properties in a coordinated and well-planned manner and promote mixed-used development, incorporating residential use and either or both retail and office uses; and

WHEREAS, the Town, for consideration of One Million and no/100 (\$1,000,000.00) Dollars, and pursuant to a Purchase and Sale Agreement (the "P&S Agreement") dated March 28, 2011 by and between the Town and Smith, and amended March 2016 pursuant to a First Amendment to Purchase and Sale Agreement, and as further amended August 22, 2016 pursuant to a Second Amendment to Purchase and Sale, will convey the Premises to the Developer, as permitted assignee of Smith, by deed (the "Deed") to be recorded immediately prior hereto; and

WHEREAS, the Developer, in partial consideration for the conveyance of the Premises by the Town, will simultaneous with recording the aforementioned deed, execute an Easement Deed (the "Easement Deed"), to be recorded immediately after the recording of this Agreement, pursuant to which the Developer has granted to the Town a non-exclusive easement (i) to install underground pipes, wires, or conduits for the transmission of water or sewer service to or from Horne Road, together with the right of the public to pass and repass by pedestrian travel over and upon Horne Road, all in harmony and in coordination with the Project Plans (as such term is herein defined) and (ii) for the use of fifty (50) passenger vehicle parking spaces for intermediate term public parking use (the "Parking Spaces"), each as more fully described in the Easement Deed, and which Parking Spaces are to be managed pursuant to a Parking Management Agreement attached hereto as Exhibit C to the extent that such Parking Management Agreement remains in force and applicable; and

WHEREAS, pursuant to this Agreement the Developer has agreed to construct the Project as generally described in the Decision of the Belmont Planning Board (the "Planning Board") dated July 27, 2013 and recorded with the Registry in Book 62578, Page 101 (the "Special Permit") as it has been extended by the Planning Board; and

WHEREAS, the Developer, in partial consideration for the conveyance of the Premises by the Town, agrees to develop the Property and undertake, at its sole cost and expense, all the work that is required to be done under this LDA to construct, develop and complete the Project (the "Work"); and

WHEREAS, the Town and Smith have executed a Land Development Agreement dated August 18, 2015 (the "Original LDA") and by execution hereof, the Town and the

Developer have agreed that the Original LDA shall be amended and restated in its entirety by this Agreement and that the Original LDA shall be void and of no further force or effect.

NOW, THEREFORE, each of the parties hereto for and in consideration of the promises and mutual obligations herein contained does hereby covenant and agree with the other as follows:

## AGREEMENT

### I. RECITALS AND DEFINITIONS

The Recitals stated above are true and accurate and are incorporated herein by reference. The Project is generally shown on the Project Plans, as such term is defined in the Special Permit, which Permit has legally been extended until July 27, 2017. The "Completion Deadline" means that date which is no later than thirty-six (36) months from the Construction Commencement Date, subject to Unavoidable Delays (as such term is herein defined) and extensions set forth in this Agreement.

### II. DEVELOPMENT AGREEMENT

Developer agrees to develop the Property and undertake the Project as follows:

#### A. Construction Obligations

1. Construction of Project. The Developer shall design and construct on the Property the following improvements:

(a) Buildings: the Property is to be used for a mixed-use development including residential uses in several buildings as shown on the Project Plans (the "Buildings"), with parking, to be constructed in accordance with the Project Plans as same may be amended from time to time; and

(b) During construction of the Project, if reasonably feasible, interim parking spaces (until the planned Parking Spaces are available) for use by the public may be provided somewhere on the Property, it being understood that in the reasonable judgment of the Developer, the status of active construction precludes such use. During such times as the status of active construction precludes use of the Parking Spaces on the Property, the Developer, in consultation with the Town, will try to locate and secure alternative, interim public parking off site. If there is any cost to acquire the same, it is not reasonable to require Developer pay more than \$883.33 per month in the aggregate. The Town recognizes that as of the Effective Date the Developer has informed the Town that it is unlikely that there will be any Parking Spaces provided on the Property during construction and, further, that as of the Effective Date, the Developer and the Town have not located, much less received, alternative, interim parking, and that is not likely to change.

2. Project Plans. The Project shall be constructed in all material respects in accordance with the Project Plans as same may be amended by the Developer and approved by the Planning Board. Nothing herein shall be deemed to waive the Developer's obligations

to apply for and comply with all other permits, approvals and conditions governing the Property or the Project.

3. Construction Schedule. The Developer shall:

(a) commence construction of the Project by obtaining a building permit for any aspect of the Project (not a demolition permit or a foundation permit) to be issued by the Town. Subject to the terms hereof and "Unavoidable Delays" (as defined in Section II.A.4. below) and the extensions described in Section II. A.4 below, the date on which construction of the Project shall commence (the "Construction Commencement Date") shall be the date that is no later than six (6) months after the date of recording the Deed to the Premises.

(b) perform remedial actions pursuant to the Massachusetts Contingency Plan, 310 CMR 40.000 ("MCP"), under the direction and supervision of a Licensed Site Professional, to achieve a Permanent Solution with or without conditions, a Temporary Solution, or Remedy Operation Status with respect to a release or releases of hazardous materials on the parcel known as Trapelo/Common area (Assessor's Map 12, Parcels 207 through 211) and upon other portions of the Property to the extent required by the MCP; it is understood that any such remediation under the MCP will likely include ongoing monitoring following the filing of Certificates of Substantial Completion for all components of the Work comprising the Project;

(c) substantially complete all Work comprising the Project in accordance with the terms of this LDA by the Completion Deadline. The term "Substantially Complete," or "Substantial Completion" or words of similar import shall mean that the Work described in a permit obtained from the Town has been completed. Completion shall be conclusive on all Parties when the Developer obtains a Certificate of Occupancy for the subject Work, (with only "punch list" items remaining that will not materially interfere with said use and occupancy of a majority of the area which is the subject of the Work); or a Temporary Certificate of Occupancy or if the Work for which the Permit was obtained is not sufficient to issue a Certificate of Occupancy (permanent or temporary) or "sign-offs" from the appropriate Town department (if neither a Certificate of Occupancy nor a Temporary Certificate of Occupancy is applicable). Without limiting the foregoing, but by way of example, Substantial Completion will include the issuance of a temporary certificate of occupancy for components of the commercial space which have achieved the state of a "warm dark shell". Accordingly, it is understood that the Developer will be "Substantially Completing" the Project in stages, with Certificates of Occupancy, Temporary Certificates of Occupancy or "sign-offs", as applicable, issued upon completion of the work described in such building permit. The entire Project will not be deemed "substantially complete" until all components of Work comprising the Project have been Substantially Completed. The unfinished interior of any commercial space not leased and occupied or under construction by a tenant by the Completion Deadline shall be screened from public view (such as by installing window displays or signage).

4. Construction Schedule Extensions. The Town, at its sole option, may extend the Construction Commencement Date and the Completion Date if the Town determines that the Developer has proceeded with reasonable diligence in its performance under this Agreement. The Town shall reasonably extend the Construction Commencement Date and the Completion Date under this Agreement for "Unavoidable Delays" and other events beyond the control of the

Developer. For purposes of this Agreement, “Unavoidable Delays” shall mean any delay, obstruction or interference resulting from any act or event whether affecting the Project or the Developer, which has a material adverse effect on the Developer’s rights or duties, provided that such act or event is beyond the reasonable control of the Developer after pursuing diligent efforts to remedy the delaying condition in an expedient and efficient manner and was not separately or concurrently caused by any negligent or willful act or omission of the Developer or likely could not have been prevented by reasonable actions on the Developer’s part and the Developer shall have notified the Town herein not later than thirty (30) days after discovering the occurrence of the Unavoidable Delay enumerated herein and within a reasonable time, including but not limited to, delay, obstruction or interference resulting from: (i) an act of God, landslide, lightning, earthquake, fire, explosion, flood, sabotage or similar occurrence, acts of a public enemy, war, blockage or insurrection, international geopolitical crisis, riot or civil disturbance; (ii) any legal proceeding commenced by any bona-fide third party seeking judicial review of this Agreement or any governmental approvals, or any restraint of law (e.g., injunctions, court or administrative orders, or moratorium imposed by a court, or administrative or governmental authority); (iii) the failure of any utility or governmental entity required by law to provide and maintain utilities, services, water and sewer lines and power transmission lines to the Property, which are required for the construction of the Project or for other obligations of the Developer; (iv) any unexpected or unforeseen subsurface condition at the Property inconsistent with typical background conditions of a similar site, which shall prevent construction, or require a material redesign or change in the construction of, or materially adversely affect the construction schedule for, the Project, such determination to be made by a qualified engineer; (v) any unexpected or unforeseen subsurface environmental conditions on or from or otherwise affecting the Property but not readily identifiable by visual inspection and which originated from the Buildings or Property; (vi) strikes, work stoppages or other substantial labor disputes; (vii) the failure or inability of any subcontractor or supplier to furnish supplies or services if such failure or inability is itself caused by an Unavoidable Delay and/or could not have been reasonably prevented and the affected party cannot reasonably obtain substitutes therefore; (viii) a change in Funding Sources (as such term is hereinafter defined) which could not have been reasonably anticipated by Developer; (ix) with respect to “Mezzanine Lender” or a “Mortgage Lender” (as such terms are hereinafter defined), transitional issues arising from Mezzanine Lender’s or Mortgage Lender’s exercise of remedies (such as delays attendant to foreclosure or succeeding to the rights of the equity interests in the Developer); or (x) any delay which is cause or created by a board, officer, department or authority of the Town from whom a Project approval is sought, whether or not such fault is caused by negligent or willful acts or omissions, provided that the Developer shall have timely complied with the reasonable requests and requirements of any governmental authority. The time or times for performance under this Agreement shall be extended for the period of each Unavoidable Delay, and in calculating the length of each Unavoidable Delay, there shall be considered not only actual work stoppages but also any consequential delays resulting from such stoppages as well.

5. Quality of Work. The Developer shall procure all necessary permits before undertaking any Work requested in the Permit application, and shall cause all the Work to be performed in a good and competent manner in compliance with good engineering and construction practices, and using new materials of customary quality or appropriate preservation measures for redevelopment projects in the greater Belmont area similar to the Project, all generally in accordance with the Project Plans and all applicable

laws, ordinances, codes, regulations, permits, approvals and conditions. As and to the extent required in the Project Plans, the Developer shall take all reasonably necessary measures to (i) minimize dust, noise and construction traffic, (ii) minimize any damage, disruption or inconvenience caused by the Project, and (iii) make adequate provision for the safety and convenience of all persons affected thereby and to police the same. The Developer shall provide a certification to the Town by a licensed architect, at the Developer's expense, that the Work has been substantially completed in accordance with the Project Plans (the "Independent Architect"). Submission of the same to the Town shall be evidence of Substantial Completion of the Work described in such certification.

6. Certificate of Substantial Completion.

(a) Promptly after "Substantial Completion" of the Work for which a particular permit has been obtained, as the term "Substantial Completion" is defined in Section II.A.3.(c) above, the Town's issuance of the Certificate of Occupancy, Temporary Certificate of Occupancy or sign-offs shall acknowledge the same and it shall be binding on the Parties. When all the work for which all issued permits have been Substantially Completed as defined in Section II.(3)(c), the Town shall furnish the Developer within fourteen (14) days of request by Developer an appropriate instrument so certifying that all aspects of the Work to satisfy the Developer's obligations hereunder have been completed (the "Certificate of Substantial Completion"). A Certificate of Substantial Completion shall be in such form as will enable it to be recorded with the Registry of Deeds.

(b) If the Town shall refuse or fail to provide the Certificate of Substantial Completion in accordance with the provisions of this Section, the Town or a representative of the Town shall, within fourteen (14) days after written request by the Developer, provide the Developer with a written statement indicating in adequate detail in what respects the Developer has failed to complete the Work in accordance with the provisions of this Agreement, or is otherwise in default, and what measures or acts will be necessary, in the opinion of the Town, for the Developer to take or perform in order to obtain such Certificate of Substantial Completion.

(c) Notwithstanding anything to the contrary in this Agreement, a Certificate of Substantial Completion issued by the Town pursuant to Section II.A.6(a), above, shall be a conclusive determination of satisfaction and termination of this Agreement and all covenants in this Agreement with respect to the subject component of the Work, except those that expressly survive the termination of this Agreement. The Certificate of Substantial Completion shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any Funding Source, including any Holder (as such term is hereinafter defined) or any insurer of a mortgage securing money loaned to finance the Project, or any part thereof. The issuance of a Certificate of Substantial Completion shall bar the exercise of any remedies by the Town set forth in this LDA (other than as to obligations hereunder that expressly survive the issuance of the Certificate of Substantial Completion) as to the Work described in such Certificate of Substantial Completion filed in accordance herewith. The issuance of the Certificate of Substantial Completion shall bar the exercise of any remedies by the Town set forth in this LDA (other than as to obligations hereunder that expressly survive the issuance of the Certificate of Substantial Completion).

7. Liquidated Damages. Subject to "Unavoidable Delays", if substantial construction of the Project does not commence by the Construction Commencement Date as it may be extended, or if construction is discontinued for a continuous period of 30 days or more at any time prior to Substantial Completion (provided that the Town gives written notice of observed discontinuance and provides Developer and each Holder with a 15-day period to cure), or if the Project is not Substantially Completed by the Completion Date, then in any or all of these events, the Developer shall commence making monthly payments to the Town at the rate of \$33,333 per month and the Construction Commencement Date, resumption of construction or the Completion Date, respectively, shall be extended for each month for which payment is received by the Town, such extensions not to exceed a cumulative total of 24 months unless additional funds of \$33,333 per month are remitted by the Developer to the Town for each additional month of extension beyond 24 months of extension. The Developer's liabilities to the Town for any reason, shall not exceed \$800,000.00 ("Liquidated Damages") in the aggregate. As security (the "Town Security") for such payments, on the Closing Date, the Developer, shall provide the Town a bond in the total combined amount of \$800,000.00, (the "Bond") with the amount of the Bond being (A) reduced to reflect each \$33,333 extension payment received by the Town, and (B) released to the Developer upon the issuance of the Certificate of Substantial Completion. The Parties agree that the Liquidated Damages of \$800,000 shall be the Town's sole remedy at law or in equity for Developer's failure to commence construction of the Project by the Construction Commencement Date, any discontinuance of construction as defined in this Agreement prior to Substantial Completion or failure to Substantially Complete construction by the Completion Date; provided, however, nothing herein shall be deemed to limit the Town's remedies for any violation or infringement of its rights under the Easement Deed recorded herewith, or to alter the Town's right to assess civil or other penalties against Developer for, and solely to the extent of, Developer's violations of any applicable laws in connection with the construction of the Project (but only to the extent the Town has the right under applicable law to assess such penalties).

B. Financial Obligations

1. Financing. The Developer has funds sufficient to purchase the Premises and to construct and complete the Project. The Developer shall have the right to obtain (and the Town will have no right to review or approve the terms of) financing for the acquisition and/or construction of the Project from one or more lenders or mortgage holders secured by one or more mortgages, deeds of trust or other instruments creating an encumbrance or lien upon the Property (the "Mortgage") to be recorded hereafter ("Mortgage Lender") and other funding financing sources secured by pledges or assignments ("Pledges") of the ownership interest of any person, firm or entity owning a direct or indirect interest in the Developer ("Mezzanine Lender"; unless otherwise identified, singularly a "Funding Source" and collectively the "Funding Sources"). Developer agrees to pay all amounts due in accordance with the requirements of the Funding Sources. The Mortgage and Pledge(s) shall be subject to and subordinate to this LDA except as specifically provided herein. The Town shall provide to the Funding Sources advance written notice and an opportunity to cure any default under this LDA not cured by Developer within the applicable grace or cure period provided herein, and the Town hereby consents to the Funding Sources exercising any rights under their respective Mortgage, Pledge(s) and other security agreements, including but not limited to the right to take title to and/or control of the Project or Developer pursuant to Mortgage or Pledge(s), as applicable, and any other collateral security,



financing or loan documents entered into between the Developer and any of the Mortgage Lender or the Mezzanine Lender, so long as the Mortgages and/or Pledges are subject to the terms and provisions of this LDA . The rights of Funding Sources hereunder shall inure to the benefit of the successors and assigns of the Funding Sources. The Town shall be given written notice of any assignment of the interests of a Funding Source to another person or entity, and of the name and address of the assignee. Thereafter, such assignee shall be deemed to be a "Funding Source" under this Agreement.

In the event that the Developer is not a wholly owned direct or indirect subsidiary of Toll Brothers, Inc., and instead is a joint venture in which Toll Brothers, Inc. (or a commonly controlled or wholly owned affiliate thereof) retains at least a twenty-five percent (25%) interest conforming to the requirements of Section III.A.1.(d), below, then such Developer (as a precondition to being permitted to be a Developer hereunder) must have obtained financing (1) that complies with the terms of Section II.B.2. below; (2) that is for at least fifty percent (50%) of the Project budget costs as approved by the lender, with at least twenty five percent (25%) of the remaining Project budget costs being equity funded directly or indirectly by Toll Brothers, Inc., and the balance of the Project budget costs being equity funded by the venture partner(s) which are not wholly owned direct or indirect subsidiaries of Toll Brothers, Inc., (3) that includes a completion guaranty to the lender from Toll Brothers, Inc., pursuant to which such guarantor will cause the Project to be completed in conformance with the lender-approved Project budget and timeline as long as the lender funds the loan proceeds, and (4) that includes a requirement that Toll Brothers, Inc. shall maintain fifteen million (\$15,000,000) in liquid assets during construction of the Project.

2. Refinancing/Additional Financing. The Developer shall provide the Town with not less than thirty (30) days prior written notice of any intended financing/refinancing of the loan made by Mortgage Lender and/or the loan made by the Mezzanine Lender that is to occur prior to Substantial Completion, which shall be deemed and is hereby approved by the Town provided that the total indebtedness of any such financing/refinancing (a) shall not exceed the greater of the debt being refinanced (if applicable) and the then appraised value of the to-be-completed Project, (b) is consistent with commercially reasonable financing practices then available to owners of properties similar to the Project and (c) is from a bank, insurance company, quasi federal agency (such as Freddie Mac or Fannie Mae or any successor thereto), debt fund, mortgage REIT or other funding source of commercially reasonable repute for projects of a similar size and character as the Project. Any other financing/refinancing or additional financing prior to Substantial Completion shall require the written confirmation by the Town that the same meets the requirements hereof, which confirmation shall not unreasonably be withheld or denied (and to the extent denied, the Town shall explain with reasonable specificity the basis of its denial). The term "Mortgage(s)", "Pledge(s)", "Mortgage Lender", "Mezzanine Lender" or "Funding Sources" shall include and be deemed to refer to said later approved refinancing or additional financing and the mortgage and/or security interests granted by Developer or the assignment and/or pledge of equity interests in Developer.

3. Obligation to Pay Taxes and Assessments. The Developer shall pay or cause to be paid all taxes, assessments and other charges, fines and impositions attributable to the Property, which may attain a priority over any Mortgage or Pledge, but this clause shall not be

deemed to preclude Developer from contesting the validity or amount of such taxes, assessments, charges, fines or impositions, which may be paid under protest.

4. Representatives. The Developer hereby designates William (Bill) Lovett as its representative authorized to act on its behalf. Unless and until the Town has received written notice that such authority has been revoked, the Town shall be entitled to rely upon the written directives of such representative. The Town shall act by and through the Office of the Town Administrator of the Town and the Developer and each Holder shall be entitled to rely upon the written directives of the Town Administrator. Upon any exercise of remedies by a Funding Source that results in a transfer of title of the Project or the equity interests in the Developer, as applicable, such Funding Source shall be entitled to unilaterally appoint a new representative to interact with the Town and upon such exercise William(Bill) Lovett shall have no further right to act as representative or have any authority hereunder.

### III. RESTRICTIONS

A. From the Effective Date and until the Certificate of Substantial Completion has been issued from the Town, the following restrictions shall bind the Developer and the remaining Property for which Substantial Completion of Work described in an applicable building permit has not been achieved:

1. Prohibition Against Change in Identity and Ownership. This LDA is being entered into as a means of permitting and encouraging the development of the Property in accordance with the CSOD and achieving the objectives of the Town for the redevelopment of the Property as set forth in the Recitals, and not for speculation in landholding. The Developer acknowledges that, in view of:

(a) The importance of the undertakings set forth herein to the general welfare of the community; and

(b) The importance of the identity of the parties in control of the Developer and the Project; and

(c) The fact that a transfer of all or a majority of the legal or beneficial ownership in the Developer, or any other act or transaction involving or resulting in a significant change in the ownership or distribution of such ownership or change in the identity of the parties in control of the Developer or Project, is for practical purposes a transfer or disposition of the Developer's interest in the Project; and

(d) Except as otherwise provided in this Section III.A. and aside from Developer's right (without the Town's consent) to convey the Project, in whole or in part, and directly or indirectly, to a commonly controlled or wholly owned subsidiary of Toll Brothers, Inc., or to a joint venture in which Toll Brothers., Inc. (or a commonly controlled or wholly owned affiliate thereof) retains at least a twenty-five percent (25%) interest, provided no such conveyance to any such joint venture will be permitted (without the Town's consent) unless simultaneously with the conveyance to such joint venture such joint venture will have obtained financing which conforms with Section II.B.1 above, as well as Developer's right (without the Town's consent) to convey, in

whole or in part, the commercial portions of the Project to Starr Capital Partners, LLC following the delivery of such commercial portion to said third party in a "warm dark shell" form with a temporary certificate of occupancy. The Town expressly confirms its consent to any reduction in Toll Brothers, Inc.'s interest in such joint venture below twenty five (25%) arising solely from the exercise of remedies by the non-Toll Brothers, Inc. joint venture partners in a manner that is approved by the lender identified under II.B.1 or 2;

it is hereby agreed that, commencing on the Effective Date and continuing until the issuance of a Certificate of Substantial Completion by the Town, and except by reason of death, the execution of any Mortgage or Pledge, the exercise of any rights by any Funding Source as provided in this Agreement and/or and Mortgage or such Pledge(s) or transfers among existing members of the Developer, or the filing of a master deed for purposes of condominizing the Project, there shall be no (i) change in the identity of the parties holding a legal or beneficial interest in the Developer, (ii) transfer or pledge in the aggregate of a majority of the beneficial ownership or control of Developer or (iii) transfer, by assignment or otherwise, of the Developer's rights under this LDA or of the Developer's legal or beneficial interest in the portions of the Property for which a Certification of Substantial Completion has not been issued to any person (including but not limited to, any partnership, joint venture or corporation) (all such changes being referred to herein as a "Change in Identity"), unless in each instance, (a) the Developer gives the Town prior written notice of a proposed Change in Identity, which notice shall provide sufficient information to enable the Town to evaluate the acceptability of the proposed Change in Identity, and (b) the Town, within thirty (30) days from the date on which the Town receives said written notice or such longer period as may be approved by the Developer and the Town, approves of such change in writing, or fails to object, in which case the proposed Change in Identity shall be deemed to be approved. If the Town notifies the Developer in writing within said thirty (30) day period (or longer period agreed to by the parties) of its objection to the proposed Change in Identity, specifying reasonable grounds for such objection, the Developer shall make no Change in Identity without the subsequent written consent of the Town. Any attempted Change in Identity made contrary to this Section shall be void.

The Town agrees that the following transfers of ownership interest in the Developer will not be prohibited in any manner under this Agreement: (A) a direct or indirect transfer of the stock of a public company, (B) the direct or indirect creation of new stock in such public company, (C) direct or indirect stock splits or reverse stock splits in such public company, (D) redemption of stock by such public company, (E) the conversion of such public company from a public to a private company, (F) any reorganization, merger, consolidation, recapitalization, or similar transaction with respect to such public company, or (G) any other transaction that modifies, changes, or affects the ownership or control of such public company.

2. Prohibition Against Transfer of Property. The Developer represents and agrees for itself, and its successors and assigns, that, except for transfers permitted hereunder (i.e. as noted in Section III.A.1 above), the granting of liens and security interests pursuant to the Mortgage and Pledge(s) to Funding Sources, and the financing and/or refinancing of the same to the extent permitted under Sections II.B.1 and 2. above, and entering into other customary security agreements with the Funding Sources, and the granting of easements necessary for the construction of the Project, including utilities, the Developer shall not sell, assign or otherwise

transfer any portion of the Premises prior to the issuance of a Certificate of Occupancy or Temporary Certificate of Occupancy for such portion of the Premises without the prior written consent of the Town, which may be withheld in the Town's reasonable discretion. The term "transfer" shall include, without limitation, any total or partial sale, lease (not including the transfer or lease of the residential units or lease of the non-residential space in the ordinary course of business), or contract or agreement for any of the same. The prohibition on transfer of the Property shall not apply to transfers resulting from the granting or foreclosure of any Mortgage, the execution and delivery of a deed in lieu of foreclosure of a Mortgage, the appointment of a receiver by a Funding Source, foreclosure by Mezzanine Lender under any Pledge(s), the execution and delivery of an assignment in lieu of foreclosure of a Pledge, or the exercise of any other rights or remedies of any Funding Source, provided that the transferee acknowledges that its Mortgage or the Developer upon foreclosure of any such Pledge(s), as applicable, is subject to this LDA. Anything in this Agreement to the contrary notwithstanding, no Funding Source or any person or entity owned or controlled by a Funding Source shall be obligated to assume or perform any obligation of the Developer pursuant to this Agreement, whether before or after the foreclosure of any Mortgage, the execution and delivery of a deed in lieu of foreclosure, the appointment of a receiver by a Funding Source, foreclosure by Mezzanine Lender under any Pledge(s), the execution and delivery of an assignment in lieu of foreclosure of a Pledge or the exercise of any right or remedy by a Funding Source, but the Funding Source and any purchaser at a foreclosure of a Mortgage, a purchaser of the Property after a foreclosure of a Mortgage or the acceptance by a Mortgage Lender of a deed in lieu of foreclosure, a receiver appointed by a Funding Source or a purchaser of the Property from such receiver, the purchaser at a sale of the equity interests subject to a Pledge or the assignee of such equity interest pursuant an assignment in lieu of foreclosure shall be subject to this Agreement, including, without limitation, the Restriction on Alterations or Changes of Use contained in Section III.B, below. No transfer shall relieve the Developer of its obligations hereunder as it relates to components that have not been transferred.

Upon written request to the Town, the Town will confirm any transfer that has been completed in the manner permitted under this Agreement (including Sections III.A.1 and 2 above), which confirmation shall not be unreasonably delayed or denied. The Town expressly confirms that with respect to a joint venture in which Toll Brothers, Inc. (or a commonly controlled or wholly owned affiliate thereof) retains at least a twenty-five percent (25%) interest, satisfactory evidence of compliance with II.B.1 and II.B.2 will be certification of compliance therewith from Toll Brothers, Inc. (without the need by the Town to review any financial or loan documentation). Upon completion and confirmation of any permitted transfer, the transferring Developer will be released from all obligations under the terms and conditions of this Agreement with respect to the transferred component, and the subject transferee (i.e., successor in interest) shall be solely responsible for the performance of the Developer's obligations hereunder with respect to the transferred component.

3. Restriction on Alterations or Changes of Use. The Developer shall not, for a period of thirty (30) years from the filing of the Final Certificate of Substantial Completion (1) alter, demolish, subtract therefrom, reconstruct, make any additions thereto or extensions thereof, or change the materials, design, dimensions or color thereof, unless such reconstruction, demolition, subtraction, alteration, addition, extension or change is performed using materials of customary quality or appropriate for preservation measures for

redevelopment projects in the greater Belmont area similar to the Project and will not materially affect the external appearance or design of the Buildings so as to deviate substantially from the general Project Plans or the CSOD as the Town of Belmont Director of Community Development shall reasonably determine, nor (2) shall the Developer change the use of the Project without first obtaining Town Zoning approval if required at that time. No application for a change of use of any portion of the Property shall be filed with the Planning Board or Zoning Board of Appeals prior to the filing of the Certificate of Substantial Completion for that portion of the Property without the express written consent of the Board of Selectmen. Nothing herein shall be construed to prevent the ordinary maintenance, repair or replacement of any exterior feature of the Buildings required by the Special Permit which does not involve a change in design, material or color of such exterior feature of the Buildings required by the Special Permit or otherwise change the outward appearance of the façade of the Buildings required by the Special Permit, nor to prevent landscaping the Property with plants, trees or shrubs, nor construed to prevent the meeting of requirements certified by a duly authorized public officer to be necessary for public safety because of an unsafe or dangerous condition or to comply with any federal, state or local law, rule or regulation. This restriction shall survive the issuance of the Certificate of Substantial Completion. Further, nothing herein shall be construed to restrict the rights of the Developer with respect to the restoration or replacement of any Building within the Project in the event of a material casualty to that Building. For the purposes of this Agreement, a material casualty shall be deemed to be a casualty in which the cost of restoration of the Building exceeds fifty (50%) percent of the value of the applicable Building in the Project

#### IV. MAINTENANCE OF PROPERTY; INSURANCE

1. Maintenance of Property. The Developer shall maintain all portions of the Property and improvements thereon for which Certificates of Substantial Completion have not been filed, in good order, condition and repair. Except in compliance with law, the Developer shall not release or permit any new release or threat of release of oil, asbestos, urea formaldehyde foam insulation, nor any other hazardous material, hazardous waste or hazardous substance (hereinafter collectively called "hazardous substances"), as those terms are defined by any applicable law, rule or regulation including without limitation, the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, G.L. c. 21E, the Massachusetts Hazardous Waste Management Act, G.L. c. 21C, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. Sections 9601 et seq., and the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Sections 6901 et seq., nor, except in compliance with applicable law, generate or permit any hazardous substances to be generated on the Property; nor, except in compliance with applicable law, store or permit any hazardous substances to be stored on the Property.

2. Insurance. The Developer agrees to maintain the following insurance:

(a) Casualty and Property Insurance. The Developer shall continuously maintain in full force, for the term hereof, a policy of comprehensive casualty, and property damage insurance insuring the Property and all improvements thereto in an amount equal to at least one hundred percent (100%) of the replacement costs thereof. All such insurance shall be in the broadest form of coverage from time to time available in Massachusetts. The Developer

shall submit to the Town evidence of such continuous insurance coverage satisfactory to the Town before any Work is commenced on the Property and no less often than annually thereafter. Casualty and property damage insurance that is acceptable to the holder of a first mortgage on the Property shall be acceptable to the Town;

(b) Liability Insurance. The Developer shall, at a minimum, carry comprehensive public liability insurance in the amount of \$1,000,000.00/occurrence, \$3,000,000.00/aggregate with property damage liability insurance in limits of \$1,000,000.00/occurrence, \$3,000,000.00/aggregate under which the Town shall be named as additional insured and under which the insurer agrees to defend, indemnify and hold the Town harmless from and against all cost, expense and/or liability arising out of or based upon any and all claims, accidents, injuries and damages related to: the Project; the condition of the Property; any act or omission of the Developer, its contractors, licensees, agents, servants, employees, customers, invitees, guests or visitors, or anyone claiming by, through or under the Developer. The Town shall have the right to require the Developer to increase such limits when the minimum limits of liability insurance commonly and customarily carried on properties comparable to the Property by responsible owners are more or less generally increased, it being the intention of this sentence to require the Developer to take account of inflation in establishing minimum limits of liability insurance maintained from time to time on the Property;

(c) Evidence of Insurance. All policies shall be so written that the Town shall be notified of cancellation or restrictive amendment at least thirty (30) days prior to the effective date of such cancellation or amendment. The Developer shall submit to the Town certificates of insurance for all the policies required to be maintained by the Developer hereunder, which certificates shall show at least the coverage and limits of liability specified herein and the expiration date; and

(d) Acceptable Insurers. All insurance required hereunder shall be underwritten with an insurance company or companies with an AM Best Rating of A-1 or better, licensed to write such insurance in the Commonwealth of Massachusetts.

3. The provisions of this Section IV, except subsection 2(a), shall survive the issuance of the Certificate of Substantial Completion.

## V. NOTICE AND DEFAULT PROVISIONS

### A. Default of Developer and Rights of Parties.

1. Developer Default. The following (after receipt of notice and the expiration of the applicable grace and cure periods) shall be an event of default by the Developer (referred to herein as "Developer Default"):

(a) Failure by the Developer to observe or perform any of the Developer's covenants, agreements, or obligations set forth in this LDA within such notice period (which shall in all instances include thirty (30) days after written notice of default provided to Developer by the Town or if such Developer Default is not capable of being cured within thirty (30) days, such other time as may be reasonably required to cure such Developer Default, and provided that

the Developer commences diligent efforts to cure such default as soon as practicable) and subject to such cure provisions as are provided for in this Agreement;

(b) Prior to filing of the Certificate of Substantial Completion, failure by the Developer, after expiration of all applicable cure periods (which shall in all instances include thirty (30) days after written notice of default provided to Developer by the Town or if such Developer Default is not capable of being cured within thirty (30) days, such other time as may be reasonably required to cure such Developer Default, and provided that the Developer commences diligent efforts to cure such default as soon as practicable), to observe or perform any of the Developer's covenants, agreements, or obligations pursuant to the requirements of loan documents with a Funding Source, but nothing in this Section V.A. 1.(b) or in this Agreement shall affect or amend any term or provision of such loan document, including, without limitation, any applicable notice or cure period set forth therein;

(c) Prior to filing of the Certificate of Substantial Completion and in violation of the terms hereof, the sale or other transfer of any kind or nature of the Property for which no Certificate of Occupancy, Temporary Certificate of Occupancy or sign-offs has been issued by the Town, and other than the sale/lease of any completed residential/commercial space in the ordinary course of business, without the prior written consent of the Town;

(d) Prior to filing of the Certificate of Substantial Completion, the filing by Developer of a voluntary petition, or the filing against Developer of an involuntary petition, in bankruptcy or insolvency or adjudication of bankruptcy or insolvency of Developer, or the filing by Developer of any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the present or any future federal bankruptcy act, or any other present or future applicable federal, state, or other statute or law, or the assignment by Developer for the benefit of creditors, or appointment of a trustee, receiver (other than the appointment of a receiver by any of the Funding Source), or liquidator of all or any part of the assets of Developer, and within one hundred twenty (120) days after the commencement of any such proceeding against Developer, such proceeding shall not have been dismissed, or if, within one hundred twenty (120) days after the appointment of any trustee, receiver (other than the appointment of a by any of the Funding Sources), or liquidator of Developer or of all or any part of Developer's property, without the consent or acquiescence of Developer, such appointment shall not have been vacated or otherwise discharged.

2. Rights of Town Upon Developer Default. In the event of an uncured Developer Default, the Town shall have the right to recover damages not to exceed the \$800,000.00 Bond, upon occurrence of the events set forth in Section II.A.7. of this Agreement and titled "Liquidated Damages." Anything in this Agreement to the contrary notwithstanding, no action or proceeding instituted by the Town, and no termination of this Agreement, shall affect or impair any loan document executed by Developer or any related party in connection with the loans made by the Funding Sources, all of which shall continue in full force and effect. It is understood and agreed to by the Town that under no circumstances shall any Funding Source have any personal recourse for any Developer Default, whether before or after exercise of remedies of any Funding Source pursuant to its Mortgage or Pledge (as applicable).

3. Rights of Holders Upon Developer Default. In the event of an uncured Developer Default, any Funding Source shall have the right, but not the obligation, to cure any such Developer Default within the cure period as hereinafter set forth.

4. Town's Option To Cure Developer Default. The Town may, at its option, cure any Developer Default, other than a Developer Default pursuant to Section V.A.1.(b) hereof, in which case the Town shall be entitled, in addition to and without limitation upon any other rights or remedies to which it shall be entitled by this LDA, operation of law, or otherwise, to reimbursement from the Developer of all costs and expenses incurred by the Town in curing such Developer Default subject to the \$800,000 Bonded liquidated damage amount described herein. Anything in this Agreement to the contrary notwithstanding, the Town acknowledges that the Town's sole and exclusive remedy with respect to any uncured Developer Default shall be by recourse to the Bond, and the Town shall look solely to the Bond for the satisfaction of any claim against, or liability of, the Developer pursuant to this Agreement. Further, to the extent either Developer or a Funding Source (upon foreclosure of such party's Mortgage or Pledge(s), respectively) achieves Substantial Completion (whether before or after the expiration of all applicable cure periods in favor of Developer and Funding Sources), the Town agrees that the Developer, any successor or assign of the Developer and any person or entity owning the Property shall be liable for only actual damages incurred by the Town and not for any consequential, incidental, indirect or other damages, and such damages will be offset by and limited to the amount of recoveries of the Town from the Bond. Without limiting the generality of the foregoing, if in any action or proceeding instituted by the Town when and as permitted by Section V.A.2., the Town obtains a lien upon the Property or a lien or any interest in the Developer, each such lien shall be subject and subordinate in all respects to the liens of all Mortgages and Pledges then in effect. Nothing in this paragraph shall be deemed to impair the priority of any statutory lien for municipal taxes or charges not incurred pursuant to this LDA.

5. Notice of Foreclosure. The Developer shall give written notice to the Town, by registered mail, of Mortgage Lender's intention to foreclose upon its Mortgage or to accept a conveyance of the Property in lieu of foreclosure, or the exercise by a Mezzanine Lender of its rights pursuant to a Pledge or to accept an assignment of the equity interests in Developer in lieu of such foreclosure, as applicable, forthwith upon the Developer obtaining knowledge thereof.

B. Rights of Funding Sources.

1. No amendment to or modification of this Agreement shall be effective or binding without the prior written consent of each Funding Source.

2. If the Town shall give any notice, demand, election or other communication (hereinafter in this Section V.B.2 collectively referred to as "notices") to the Developer hereunder, the Town shall at the same time give a copy of each such notice to any Funding Source at the address theretofore designated by each Funding Source in the manner provided in Section VI.F. hereof and the giving of such notice shall be deemed complete when such notice is served upon the Funding Source. No notice given by the Town to the Developer shall be binding upon or affect said Funding Source unless a copy of said notice shall be given to said Funding Source pursuant to and in accordance with this Section V.B.2.



3. Subject to the limitations set forth in Section V.D. below, any Funding Source shall have the right, but not the obligation, to perform any term, covenant, condition or agreement of this Agreement to be performed by the Developer and to remedy any default by the Developer hereunder, and the Town shall accept such performance by any Funding Source with the same force and effect as if furnished by the Developer and thereupon such Funding Source shall be subrogated to the rights of the Town.

To the extent a Developer Default exists (which Developer Default shall not have been remedied by Developer within any applicable cure period pursuant to the provisions of this Agreement) and the Town shall otherwise become entitled to take any action to remedy such Developer Default or to enforce this Agreement against the Developer, then the Town shall give each Funding Source written notice of the same and a period of thirty (30) days from Funding Sources' receipt of such notice within which to cure the Developer Default; provided however, in the case of a Developer Default which cannot in the exercise of diligence be cured within said thirty (30) day period, such additional time to diligently commence the curing of the Developer Default, in which event the Town shall not take any action to remedy such Developer Default or to enforce this Agreement so long as any Funding Source is using commercially reasonable efforts to cure the Developer Default. The rights of any Funding Source under this Section V.B.3. are in addition to such rights as are given to any Funding Source under Section V.B.4. hereof and any other provision of this Agreement. In the case of a Developer Default which cannot be cured by any Funding Source without the Funding Source either taking possession of the Property or (in the case of a Mezzanine Lender, foreclosing upon the equity interests in the Developer), the Town agrees that Funding Sources' cure period shall further be extended so long as a Funding Source is proceeding diligently, subject to any stay in any proceedings involving the insolvency of the Developer, to obtain possession of the Property as mortgagee (including possession by a receiver) or the equity interests in the Developer. Upon obtaining such possession, Funding Sources may proceed to cure such Developer Default which cure shall be completed, under all the prevailing circumstances, within a reasonable period of time.

In the case of a Developer Default which is not capable of being cured by any Funding Source (such as achieving Substantial Completion by the Completion Date), the Town shall not exercise its remedies hereunder so long as (a) Funding Sources are curing all Developer Defaults susceptible of cure when and as provided in Section V.B.3. above and (b) upon the Funding Sources succeeding to the interests of Developer in the Property or the equity interests in the Developer (as applicable), such Funding Source diligently thereafter proceeds to complete construction of the Project; provided, however, nothing herein shall be deemed a waiver of the Town's rights to recover from the Bond as herein provided. Upon any such foreclosure, and the cure of all Developer Defaults susceptible of cure by a Funding Source, all Developer Defaults that are not capable of being cured by any Funding Source (or by such purchaser) shall no longer be deemed to be Developer Defaults hereunder.

4. In the event of any conflict between the terms of this Section V.B. and any other term of this Agreement, the terms of this Section V.B. shall control.

C. Default of Town.

1. The following shall be an event of default by the Town (referred to herein as "Town Default"):

The failure of the Town to observe or perform any of the Town's covenants, agreements, or obligations hereunder, which failure continues for sixty (60) days following receipt of written notice from the Developer (or its successors or assigns, or any Funding Source) specifying such failure, or such longer period reasonably required to cure the breach, provided the cure is commenced immediately after receipt of said notice and continuously and diligently prosecuted (said cure period, the "Town Cure Period").

2. Rights of Developer Upon Town Default. In the event that a Town Default has occurred and is continuing, the Developer's sole remedy shall be to institute actions and proceedings to compel specific performance and to bring a claim in a court of competent jurisdiction, and no monetary damages shall be sought against the Town. In the event that the Developer prevails in an action against the Town for specific performance, and the Town's failure to perform is determined in such action to have been in bad faith, or arbitrary and capricious, then the Town shall pay the Developer's reasonable costs and attorneys' fees in such action.

D. Funding Source's Option to Cure Developer Defaults.

If the Developer Default is the failure of Developer to perform the Work in accordance with Project Plans, nothing contained within this LDA shall be deemed to authorize or permit such Funding Source, either before or after foreclosure or deed in lieu thereof, to undertake or continue the construction or completion of the Work (beyond the extent necessary to conserve or protect improvements or construction already made) other than in accordance with the Project Plans, or to effect any alteration or change of use of the Property in violation of Section III.B. of this LDA. Any such Funding Source that shall complete the Work or applicable part thereof in accordance with the Project Plans shall be entitled, upon written request made to the Town, to a Certificate of Substantial Completion in the manner provided in Section II.A.7.a. Nothing in this LDA shall be construed to impair the right of the Town, in the event that the Work is suspended after foreclosure or during the pendency thereof, to issue appropriate Orders under applicable building, health and sanitary codes requiring that the Property be secured or cleared of debris or other hazards as the public health or safety may require.

VI. GENERAL PROVISIONS

A. Access. The Developer shall permit the Town or its agents to enter the Property at any reasonable time, from time to time, to inspect the Property and to ensure compliance with the provisions of this LDA, provided, however, that the Town provides the Developer at least twenty-four hours' prior notice thereof, except in the event of an emergency.

B. Compliance with Laws. The Developer shall carry out the Project in compliance with all applicable federal, state and local laws, codes, ordinances, rules and regulations and with all necessary permits.

C. Development Costs. The Developer shall be solely liable for all costs incurred in construction of all the Work for which Developer obtains permits required under this LDA and all costs required to comply with all laws, ordinances, rules, regulations and codes applicable to the Project.

D. Enforcement. The Town and the Developer covenant and agree that the losing party will reimburse the winning party for all reasonable costs and expenses (including without limitation attorney's fees) incurred in enforcing (but not defending against the enforcement action of the other party) this LDA or in remedying or abating any violation thereof, provided that no obligation shall arise under this section until a court of competent jurisdiction shall have determined that the party from whom reimbursement is being sought has violated this LDA and, with regard to any violation by the Town, such court shall also have determined that the Town has acted in bad faith or arbitrarily and capriciously.

E. Indemnification/Liability. The Developer agrees to defend, indemnify, and hold the Town harmless from and against any and all liabilities, losses, costs, expenses (including attorney's fees), causes of action, suits, claims, damages, demands, judgments or expenses from any and all claims, actions, or suits of any nature whatsoever that may be imposed upon, incurred by, or asserted against the Town by reason of the Developer's negligent or willful misconduct under this LDA, including, but not limited to, those arising from any release or threat of release of any hazardous materials which are placed on, in or under all of any portion of the Property by the Developer, after the date of this LDA, but excepting for matters which are the result of the negligence or willful misconduct of the Town or its employees or agents. This indemnity and hold harmless agreement shall include indemnity against all costs, expenses, and liabilities incurred in or in connection with any such claim or proceeding brought thereon, and the defense thereof.

F. Notices. Any and all notices required herein shall be in writing and shall be deemed properly given upon the earlier of: (i) two business days after deposit with the United States Postal Service, if sent by registered or certified mail, return receipt requested, postage prepaid; (ii) one business day after deposit with an express courier service such as Federal Express; or (iii) actual receipt. All such notices will be delivered to the address specified below or such other address as the respective parties may designate in writing:

TOWN:

If to the Town of Belmont:

Town Administrator  
Belmont Town Hall  
455 Concord Avenue  
Belmont, MA 02478  
Telephone: (617) 993-2612  
Facsimile: (617) 993-2611

With a copy to:

George A. Hall, Jr.  
Anderson & Kreiger, LLP  
1 Canal Park, Suite 200  
Cambridge, MA 02141  
Telephone: (617) 621-6500  
Facsimile: (617) 621-6630

DEVELOPER:

If to the Developer:

BELMONT RESIDENTIAL LLC  
c/o Toll Apartment Living  
Attn: Charles Elliott, Managing Director  
250 Gibraltar Road  
Horsham, PA 19044  
Telephone: (215) 938-8000  
Facsimile: (215) 938-8255

With a copy to:

Toll Bros., Inc.  
c/o Legal Department  
Attn: General Counsel  
250 Gibraltar Road  
Horsham, PA 19044  
Telephone: (215) 938-8000  
Facsimile: (215) 938-8255

and

Partridge Snow & Hahn LLP  
Attn: Jay R. Peabody, Esq.  
40 Westminister Street, Suite 1100  
Providence, RI 02903  
Telephone: (401) 861-8200  
Facsimile: (401) 861-8210

G. Notice of Funding Sources. The Developer shall, at all times, provide the Town with an up-to-date list of names and addresses of Funding Sources. Any Funding Source may also notify the Town of its address. In the case of any change in address of any Funding Source or any assignment of a Mortgage or a Pledge, the Funding Source or such assignee, by written notice to the Town, may change the address or name of such Funding Source and/or the address to which such copies of notices are to be sent by notice to the Town given in the manner provided in Section V.1.F. hereof.

H. Waiver. The failure on the part of the Developer or Town, as the case may be, to complain in any one or more cases of any action or non-action on the part of the other party, or to insist in any one or more cases upon the performance of any of the provisions, covenants, agreements or conditions of this LDA or to exercise any option contained herewith, no matter how long the same may continue, shall never be deemed or construed to be a waiver by such party of any of its rights hereunder, or a relinquishment for the future of any such provision, covenant, agreement, condition or option. Further it is covenanted and agreed that no waiver at any time of any of the provisions hereof by the Developer or the Town shall be construed as a waiver of any of the other provisions hereof, and that a waiver at any time of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions.

I. Headings and Captions for Convenience Only. The captions and headings throughout this LDA are for convenience of reference only and the words contained therein shall in no way be held or deemed to define, limit, explain, modify, amplify or add to the interpretation, construction or meaning of any provisions of, or the scope or intent of this LDA, nor in any way affect this LDA, and shall have no legal effect.

J. Binding. The terms of this LDA shall be binding on the parties, and their respective successors and assigns except for any Funding Source, unless such Funding Source agrees in writing to assume this LDA, or except as expressly set forth in this LDA. All covenants, agreements, terms and conditions of this LDA shall be construed as covenants running with the land.

K. Entire Agreement of Parties: No Oral Agreement. There are no oral agreements between the parties hereto affecting this LDA, and this LDA supersedes and cancels any and all previous negotiations, arrangements, agreements, and undertakings, if any, between the parties hereto with respect to the subject matter hereof including, without limitation, the Purchase and Sale Agreement dated March 28, 2011 between the Town and Smith, as amended (the "PSA"), which PSA shall be deemed cancelled as of the Effective Date hereof. Additionally, none of the aforementioned negotiations, arrangements, agreements and/or undertakings between the parties shall be used to interpret or construe this LDA.

L. Governing Law. This LDA shall be governed exclusively by the provisions of the laws of the Commonwealth of Massachusetts.

**[Signature Pages Follow]**

WITNESS the above execution hereof under seal as of the day and year first above written.

TOWN OF BELMONT,  
MASSACHUSETTS  
By its Board of Selectmen

BELMONT RESIDENTIAL LLC

By: [Signature]

By: \_\_\_\_\_  
Charles Elliott, Vice President  
Duly Authorized

By: [Signature]

By: [Signature]

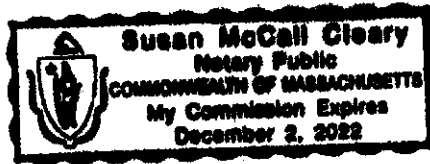
COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

On this 26 day of Sept, 2016, before me, the undersigned notary public, personally appeared maric paglitta, James Williams, Sam S. Baghdady, proved to me through satisfactory evidence of identification, which was  photographic identification with signature issued by a federal or state governmental agency,  oath or affirmation of a credible witness,  personal knowledge of the undersigned, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as Board of of the Town of Belmont.  
Selectmen

Susan McCall Cleary  
Notary Public

My Commission Expires:




WITNESS the above execution hereof under seal as of the day and year first above written.

TOWN OF BELMONT,  
MASSACHUSETTS  
By its Board of Selectmen

BELMONT RESIDENTIAL LLC

By: \_\_\_\_\_

By:   
Charles Elliott, Vice President  
Duly Authorized

By: \_\_\_\_\_

By: \_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was  photographic identification with signature issued by a federal or state governmental agency,  oath or affirmation of a credible witness,  personal knowledge of the undersigned, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as \_\_\_\_\_ of the Town of Belmont.

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

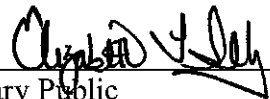
My Commission Expires:

COMMONWEALTH OF PENNSYLVANIA:

ss.

COUNTY OF MONTGOMERY:

On this 20<sup>th</sup> day of SEPTEMBER, 2016, before me, the undersigned notary public, personally appeared Charles Elliott, proved to me through satisfactory evidence of identification, which was  photographic identification with signature issued by a federal or state governmental agency,  oath or affirmation of a credible witness,  personal knowledge of the undersigned, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as Vice President of Belmont Residential LLC.

  
\_\_\_\_\_  
Notary Public  
My Commission Expires: 4/6/19

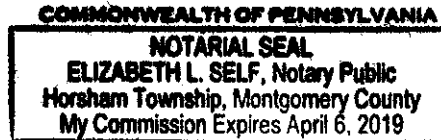




EXHIBIT A

CSOD

(Attached)

EXHIBIT B

Description of Premises

(to be provided)

EXHIBIT C  
Parking Management Agreement  
(attached)

EXHIBIT A

CSOD

(Attached)

## **SECTION 8. CUSHING SQUARE OVERLAY DISTRICT**

*Note: §8 was adopted under Article 3 at the 2006 Special Town Meeting.*

### **8.1 General**

#### **8.1.1 Purpose**

In recognition of the unique location, function and character of land uses in the Cushing Square commercial area, the Cushing Square Overlay District (CSOD) is intended to:

- a) encourage revitalization of the Square;
- b) promote the redevelopment of under utilized properties in a coordinated and well-planned manner;
- c) promote mixed-use development, incorporating retail, restaurant, office, and residential uses;
- d) improve the design of new and renovated buildings by providing greater flexibility while remaining sensitive to abutting residential districts, environmental impacts, and historic preservation;
- e) improve the streetscape, including but not limited to, such features as trees, shrubs, and other plantings, as well as walkways, plazas, benches, and other site furnishings and lighting; and
- f) encourage development of a more pedestrian-oriented and safer Square.

#### **8.1.2 Boundary of Cushing Square Overlay District**

The CSOD boundary is shown on the Cushing Square Overlay District Map and is generally described as the area surrounding the intersection of Trapelo Road and Common Street including all of the underlying Local Business I Zoning District and also including parcels 12-207 and 12-211A as listed on the Town's Tax Assessors Map. The CSOD boundaries shall be superimposed on the Town of Belmont Zoning District Map so as to indicate the extent of the CSOD.

#### **8.1.3 Applicability**

The CSOD shall be considered as overlaying other existing zoning districts. The CSOD confers additional development options to be employed at the discretion of the property owner, subject to the requirements of this Section 8. CSOD development projects shall be subject to a Design and Site Plan Review in accordance with Section 8.3. Certain CSOD development projects will also be eligible for a Special Permit to increase building height and/or to exceed otherwise applicable square footage limitations.

#### **g: Existing Zoning Districts**

The CSOD does not in any manner remove or alter the zoning rights permitted by the underlying, existing zoning districts.

#### 8.1.4 Eligibility

Projects allowed by-right under the underlying, existing zoning are not eligible to apply under the CSOD unless meeting the requirements of Section 8.2.1 d).

#### 8.1.5 Authority

The Planning Board shall have Design and Site Plan Review authority for all projects in the CSOD. As part of its Design and Site Plan Review authority under this Section, the Planning Board may waive some or all of the dimensional and parking requirements of this Section if, in its determination, such waiver will result in an improved design. In addition, the Planning Board is also the Special Permit Granting Authority (SPGA) for CSOD developments requiring a Special Permit.

### 8.2 Uses

#### 8.2.1 Uses Permitted in the Cushing Square Overlay District

The following uses shall be allowed within a CSOD development project. Uses in excess of the sizes permitted below may be allowed by Special Permit subject to the requirements of Section 7.4.3 and Section 8.3:

- a) Retail sales and services up to 12,000 square feet but not including banks, credit unions or similar establishments;
- b) Office, but not including banks, credit unions or similar establishments;
- c) Restaurant up to 12,000 square feet, but not including fast food or take out restaurants;
- d) Mixed use development projects consisting of a combination of retail sales, office, restaurant, movie theater, art gallery or commercial off-street parking facility uses provided that the development project also includes a residential component and will be subject to the requirements of Section 6.10 and Section 8.3;
- e) Movie theaters up to 10,000 square feet;
- f) Art galleries up to 10,000 square feet; and
- g) Commercial parking lot or facility.

#### 8.2.2 The following are expressly prohibited uses in a CSOD development project

- a) Exterior mounted or stand alone automated banking facility;
- b) Banks, credit unions and similar establishments;
- c) Drive-through establishments;
- d) Adult entertainment establishments; or
- e) Storage trailers and outdoor storage of goods associated with a commercial use unless use of such structure is necessary during construction.

#### 8.2.2.1 Existing Uses

Any use otherwise permitted in the underlying district and which already exists on the premises proposed for a CSOD development project shall be allowed to remain as part of the development project.

### 8.3 Performance and Design Standards

All development projects proposed within the CSOD require Design and Site Plan Review by the Planning Board to ensure conformance with the following Performance and Design standards:

#### 8.3.1 Performance Standards

##### A) Mixed Uses

The mix of uses shall be balanced and compatible and shall contribute to a vibrant atmosphere, including first floor street-front uses comprised of retail, restaurants, and services.

##### 1. Ground Floor Uses

The ground floor of any building shall be reserved for allowed business uses except as specified below:

- i. office use shall not exceed 2,500 square feet on the ground floor; and
- ii. residential uses shall be allowed on ground floors of buildings where the building façade does not front on Trapelo Road or Common Street and the Planning Board has determined that the street front residential use will not have an adverse impact on the continuity of the commercial street-front uses of other properties.

##### 2. Uses Above Ground Floor

Above the ground floor uses shall be residential use with the following exceptions:

- i. retail uses may be permitted on the second floor; and
- ii. office uses may be permitted on the second and third floors.

##### B) Dimensional Regulations

##### 1. Setbacks

- i. Front: The maximum front setback shall be zero (0) feet for the front and street-side façades.
- ii. Side: The minimum side setback shall be zero (0) feet. When abutting a residential district, the minimum side setback shall be 20 feet.
- iii. Rear: Rear yard setbacks shall be 20 feet.

The Planning Board may modify all setback requirements if, in its opinion, such waiver will result in improved design.

2. Height of Structures

The maximum height of buildings is 28 feet and two stories, above ambient sidewalk grade.

A building height of up to 36 feet and three stories, may be allowed by Special Permit from the Planning Board taking into account the criteria provided in Section 4.4 and Section 7.4.3 and subject to Section 8.3.

A building height of up to 48 feet and four stories, may be allowed by Special Permit from the Planning Board subject to Section 8.4.

Development projects which abut a residential district may be required to reduce building mass by providing additional setbacks on upper stories of buildings to minimize any impact to surrounding residential properties.

3. Floor Area Ratio (FAR)

Size of Proposed Site	Maximum Allowable Floor Area Ratio
> Less than 15,000 square feet	Not Applicable
> Greater than or equal to 15,000 square feet	<ul style="list-style-type: none"> <li>▪ 2.75 for three-story buildings</li> <li>▪ 3.0 for buildings greater than three stories</li> </ul>

Calculation of floor area ratio shall not include areas contained within the cellar as defined in Section 1.4.

8.3.2 Parking Requirements

- A) Parking spaces shall be provided for new and/or expanded building area in the CSOD, as follows:
- i. Residential: One parking space for each dwelling unit.
  - ii. Restaurant: One parking space per every 4 persons seating capacity. Requirements for outdoor café parking can be modified during Design and Site Plan Review.
  - iii. Other service establishments, retail businesses and offices: One parking space per 550 square feet of ground floor gross floor area, plus one space per 800 square feet gross floor area on other floors. Excluded from these calculations shall be floor area used for parking or loading.
  - iv. Other uses: A number of spaces to be determined by the Planning Board. The Planning Board may consider evidence from similar uses under similar circumstances.



- v. Mixed Use Development. The total number of spaces shall be determined by adding each separate use together.

B) Reduction of Parking

The Planning Board may reduce the on-site parking requirements for all uses in a CSOD development project, based upon a consideration of:

- i. Availability of shared parking on another property within 300 feet; however, parking spaces for one use shall not be considered as providing the required spaces for any other use, except when it can be clearly demonstrated that the need for parking occurs at different times. The Planning Board may require a shared parking agreement to be submitted as part of the Design and Site Plan Review application. The agreement shall address issues such as the times of use, maintenance, striping, and snow plowing of the shared parking area.
- ii. Other factors supporting the reduction in the number of required parking spaces such as staggered hours or other opportunities for shared parking among different uses.
- iii. Uses within 250 feet of municipal parking garages or lots may be entitled to a 20% reduction in required parking.
- iv. Parking waiver agreement between the applicant and the town in which a fee is paid by the applicant which would be set aside for the creation of future municipal parking facilities to service the district.
- v. Uses within 200 feet of public transportation may be entitled to a 10% reduction in required parking.

C) Bicycle Parking

Long term bicycle parking shall be provided for all new mixed-use development projects in the CSOD. Long-term bicycle parking shall be at least 50% sheltered from the elements. The following requirements apply to any new developments:

- i. Residential - at least one bicycle parking or storage space shall be provided. However, no bicycle parking is required for residential components where there are fewer than two residential units.
- ii. Business - at least two bicycle parking spaces shall be created.
- iii. Any property owner required to have bicycle parking may elect to establish a shared bicycle parking facility with any other property owner in close proximity to each development utilizing the shared parking.

8.3.3 Design Standards

A) General Guidelines

The Planning Board shall consider the architectural and aesthetic compatibility of the proposed development project with the character of the Overlay District, taking into account appropriate scale, massing, and location of buildings on the lot, roof slopes, street façade, exterior building materials, historic significance and similar factors. The

following objectives and criteria shall be considered in reviewing development projects in the CSOD:

- i. Appropriateness of the proposed design and materials of proposed buildings;
- ii. Adequacy of the site in terms of the size of the proposed use(s);
- iii. Adequacy of the provision of open space, its accessibility to the general public, and/or its association with adjacent or proximate open space areas;
- iv. Impact on traffic and pedestrian flow and safety;
- v. Impact on the visual character of the Cushing Square commercial area and surrounding residential neighborhood;
- vi. Adequacy of utilities, including sewage disposal, water supply and storm water drainage;
- vii. Impact of the proposal on the existing mix of structures and businesses in the CSOD;
- viii. Determination that there will be no serious hazard to vehicles or pedestrians within the site or on adjacent streets or sidewalks;
- ix. Adequacy of the arrangement of parking and loading spaces in relation to the proposed uses of the buildings;
- x. Appropriateness of the proposed methods of disposal of refuse and other wastes resulting from the uses permitted on the site, including size, location and landscape screening of dumpsters or other trash receptacles;
- xi. Determination that the height and bulk of the proposed buildings will not be injurious to surrounding property;
- xii. Obtain appropriate evidence of compliance of the proposal with the applicable requirements of this By-Law other than this Section; and
- xiii. Adequacy of landscaping/site improvements.

#### B) Building Design

The detailed design standards below are intended to promote quality development consistent with the Square's sense of history, human scale, and pedestrian-oriented character. To provide additional guidance, the Planning Board may promulgate more detailed design guidelines.

To the extent feasible, building and site design shall incorporate best-practices in energy efficiency, environmental protection, and storm water management; shall address current Leadership in Energy and Environmental Design (LEED) standards (or other comparable standards), as promulgated by the U.S. Green Building Council; and shall incorporate Low Impact Development site design components.

##### 1. Scale

The size and detailing of buildings shall be pedestrian oriented and shall reflect community preference for moderate-scale structures that reflect the residential character of the Town, rather than city blocks. Building design shall incorporate

features to add visual interest while reducing appearance of bulk or mass. Such features include, as appropriate, varied facades, rooflines, dormers, roof heights, materials, and details such as brick chimneys or shutters.

2. External Materials and Appearance

Except for windows and minor trim, buildings shall avoid reflective materials such as porcelain enamel or sheet metal.

Predominant wall materials shall have the appearance of wood, brick, or stone painted or coated in a non-metallic finish. Window openings shall be maximized in order to increase visibility into storefronts and add vibrancy to Cushing Square.

Any alteration of, or addition to, an existing historic structure shall employ materials, colors, and textures that are compatible with the original structure.

3. Architectural Details

Architectural features shall be compatible with other structures in Cushing Square. Distinctive features, finishes, and construction techniques shall be utilized in the design of new buildings or additions. Renovated structures shall maintain the unique architectural details of the building.

4. Awnings and Signs

Sections 5.2.4 b) 1 and 5.2.4 b) 4 shall apply to signs. The following requirements shall also apply to awnings on buildings within CSOD development projects:

- i. Hardware should be hidden from view. Supports should be located on walls or window frames, and painted to complement the building's color scheme.
- ii. Adequate ventilation should be provided around air conditioners.
- iii. Periodic maintenance is required for awnings, in addition to full replacement every ten years, depending on the color, exposure to the sun, and fabric.
- iv. All awnings should have a similar design, function (fixed or retractable), material, shape, color, and appearance.
- v. The preferred materials for awnings are canvas or acrylics.
- vi. Awnings should be practical, durable, and not impede other building functions.

5. Preservation of Historic Structures

Proposed CSOD development projects shall protect and preserve the historic and cultural character of Cushing Square by promoting the conservation of buildings that have historic significance or are determined by the Planning Board to contribute to the character of Cushing Square. When it deems appropriate, the Planning Board may consult with and request opinions and information from the Belmont Historic District Commission.

To preserve and enhance Cushing Square's historical resources, the Planning Board may consider the following guidelines when reviewing a proposed CSOD development project:

- i. That proposed new buildings respect adjacent historic structures,

- ii. Rehabilitation of historic structures shall be done with sensitivity to the historic character of the structure.
  - iii. Proposals for a façade renovation or new building construction that use a particular historical style shall utilize accurate elements of that style.
  - iv. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize the historic property shall be preserved. The renovation or alteration of historic structures shall:
    - a. Maintain size and proportions of windows and doors. Any new work shall fit within the scale of the existing windows and doors and repeat the window and door rhythms that already exist.
    - b. Maintain the original materials if possible; new materials shall reflect the original textures and visual effect.
    - c. Maintain, or replace if previously removed, building details such as molding, coping lines or parapets, columns and piers.
    - d. Install signage that is fitting with the image of the building.
    - e. Provide color schemes typical of the original building.
6. Vehicle and Pedestrian Features
- Buildings should be designed to enhance the pedestrian environment. The following vehicle and pedestrian guidelines apply to CSOD development projects:
- i. Curb cuts shall be allowed only at the discretion of the Planning Board.
  - ii. The Planning Board may allow pedestrian and vehicular access to existing or future development on abutting properties in order to facilitate pedestrian access and to minimize curb cuts.
  - iii. The provision of parking shall be designed taking into consideration the extent to which the design maximizes pedestrian flow within the development and maximizes the efficient use of existing and proposed parking facilities.
  - iv. Parking lots and driveways shall have landscaped "buffer zones" separating cars from pedestrians. The Planning Board shall determine an adequate buffer zone for each project.
  - v. Underground parking is strongly encouraged where feasible.
  - vi. Vehicle, pedestrian, and bicycle features shall be designed to provide a network of pathways and promote walking within the District.
7. Lighting
- The following lighting requirements concerning lighting shall apply to buildings within a CSOD development project:
- i. Exterior signs should have lights for visibility at night.

- ii. Landscaped paths and walkways should always be comfortably and safely lit. Consider low-placed lamps, wall sconces, and pedestrian-scale pole-mounted fixtures.
  - iii. Awnings and canopies may be illuminated from within to make them glow at night.
  - iv. Lights may be required to be appropriately screened so as to prevent them from reflecting in the eyes of people on the sidewalks, in buildings, or in cars.
  - v. Exterior light fixtures shall be shielded from view or blended into the building's lines. Decorative fixtures may be exposed as a design element.
  - vi. Building entries and display windows shall be lit with incandescent or warm-toned fluorescent lighting.
  - vii. To highlight landscaping, up-light into trees or strings of lights among branches may be required.
  - viii. Electrical conduit shall be concealed within the moldings and lines of the building.
  - ix. There shall be no neon or flashing signs.
8. Landscaping and Off-Site Improvements

The applicant may be required to install street furniture and landscaping on public property abutting and within the proximity of the proposed development project to ensure the integrity of design in the Overlay District. Site improvements, such as window boxes or potted plants, may be installed outside a development project storefront.

Street furniture includes benches, planters, trash receptacles, lamps, bike racks, and signs. If a front setback is provided, those portions of the front yard not occupied by public amenities shall be landscaped to enhance the streetscape.

The following landscaping and site improvement guidelines apply to the CSOD:

- i. All site open space (yards, parking lots, setbacks) should be planned carefully, with appropriate plantings or landscaping. Open space shall be usable, open, and available to the general public and may consist of landscaped gardens, plazas, sitting areas, sidewalks or similar features.
- ii. Open spaces shall be utilized to break up a block of buildings in order to provide visual relief.
- iii. Street furniture shall be provided for public use.
- iv. Street furniture should be made of solid wood or recycled plastic lumber to ease maintenance.
- v. Trash receptacles shall be provided at all gathering places and properly maintained.
- vi. Window boxes, gardens, or hanging planters shall be located in appropriate locations.

- vii. Landscaping and plantings shall be maintained so as not to interfere with entry to stores or block visibility of signs.
- viii. Climate requirements, growth potential, and adaptability to the urban environment shall be considered when selecting plant types and species.
- ix. Landscaping shall be installed to properly screen dumpsters, transformers, air conditioning equipment, and other similar building equipment.

## **8.4 Four Story Development Projects**

For CSOD development projects that meet the eligibility requirements specified below, the Planning Board may grant a Special Permit to allow an increase in building height and up to 48 feet and 4 stories.

### **8.4.1 Eligible Development Projects**

- a) The development project shall be located on either a single lot, or on a single premises consisting of an assemblage of lots, whether or not in common ownership having an area of or exceeding 15,000 square feet in size; or
- b) Development projects including underground parking areas on the site.

### **8.4.2 Requirements**

All development projects proposed for a Special Permit under Section 8.4 are subject to the requirements of Section 8.3 with the exception of building heights.

#### **a) Building Heights**

By Special Permit under this Section, the Planning Board may allow the maximum height of buildings in a CSOD development project to be increased up to 48 feet and/or four stories (above ambient sidewalk grade). Said story shall be allowed for residential use only. The Board, in granting a Special Permit, may require that development projects which abut residential property reduce building mass by providing stepped back buildings on the above ground floors, to minimize any impact to surrounding residential property.

### **8.4.3 Additional Criteria**

Development projects with Special Permits under this Section shall also be subject to the Special Permit Criteria specified in Section 7.4.3.

## **8.5 Submittal Requirements**

Any person seeking Design and Site Plan Approval or a Special Permit for a CSOD development shall submit 13 copies of the application in such form as the Planning Board may require which shall include the following:

- a) Development plans bearing the seal of a MA Registered Architect, MA Registered Landscape Architect, Registered Civil Engineer, or similar professional as appropriate;
- b) Narrative description of the proposed work affecting the exterior of the building or structure, including a description of the materials to be used;

- c) Site plans and specifications showing total square footage and dimensions of all buildings and site improvements, including:
  - i. New buildings, additions, adjacent structures;
  - ii. Streets, sidewalks and crosswalks;
  - iii. Existing and proposed open spaces, including, existing and proposed walls, fences, outdoor lighting, street furniture, new paving and ground surface materials;
  - iv. Points of vehicular and pedestrian access/egress;
  - v. All utilities, easements or service facilities, insofar as they relate to the project; and
  - vi. Proposed site grading, including existing and proposed grades at property lines.
- d) A certified plot plan less than 6 months old;
- e) Architectural Layout Plans at a scale of 1/8" = 1' or appropriate scale. All spaces within the proposal must be properly labeled and all dimensions must be clearly shown;
- f) Site perspective, sections, elevations 1/8" = 1';
- g) Detailed description of the proposed use of the building, including hours of operation, numbers of employees, method and types of deliveries, etc;
- h) Detailed plans for disposal of sanitary sewage;
- i) Detailed plans for landscaping;
- j) Parking plan;
- k) Plan for lighting, including the type of fixtures, and the off-site overspill (foot candles) of the lighting;
- l) Signage plans; and,
- m) The proposed method of storm water removal accompanied by calculations for a 20-year storm event.

The Planning Board may also require the following prior to acting on the application:

- i. Material boards of proposed buildings; and
- ii. An estimate of municipal revenues and costs expected to be generated by the project, including anticipated real estate valuation and public service needs.

The Planning Board may request additional information necessary in their deliberations relative to the application for the Special Permit.

## **8.6 Procedures**

### **8.6.1 Design and Site Plan Review**

The Planning Board shall promulgate rules and regulations requiring an applicant for Design and Site Plan Review under this Section to pay a review fee in an amount to be determined by the Planning Board to cover the reasonable costs of the Planning Board for the employment of any independent consultants determined to be needed to assist in the review of the application for Design and Site Plan Review. Such consultants shall be qualified professionals in the relevant fields of expertise as determined by the Planning Board.

Review of a submitted application shall follow the procedures below and as specified in Section 7.3.3 of the Zoning By-Laws. Where there is a conflict in procedures, those specified below shall prevail. The Planning Board, or its designee, shall review a submitted application for completeness and shall notify the Applicant within thirty (30) days of its submission whether the application is complete or, if not, what items are missing. If the Planning Board fails to so notify the Applicant within such time, the application shall be deemed complete; provided that nothing herein shall be interpreted to limit the ability of the Planning Board to require additional information. The time for holding a public hearing shall not commence until the Planning Board has received a complete application.

An application for Design and Site Plan Review hereunder shall be approved if such application, as affected by such reasonable conditions as the Planning Board may impose, is consistent with the objectives in this Section and all other requirements of this By-Law. The Planning Board may impose such reasonable conditions on its approval as it shall deem appropriate to assure the continuing consistency of the development project with the purposes of Section 8.

An application may be denied where:

- a) An application is incomplete; or
- b) No reasonable conditions will ensure that the proposed development is consistent with the standards and criteria set forth in Section 8.3. Such a denial shall be in writing and shall set forth the reasons for denial.

Any proposed amendment to an Approval under this Section shall follow the procedures set forth herein for an initial application.

Notwithstanding any provisions hereof to the contrary, Design and Site Plan Review shall not be required for alterations or repairs to an existing building in a previously approved CSOD development project which do not increase the height, bulk, or footprint thereof, which are not being performed to provide for its use for a substantially different purpose and which do not violate the conditions contained within any prior Design and Site Plan Approval applicable to such building.

#### 8.6.2 Special Permit Application

All applications for a Special Permit in the CSOD will follow Sections 7.4.4 and 7.4.5 of the Town of Belmont Zoning By-Law for the application procedures.

#### 8.6.3 Coordination with Other Provisions of By-Law

This Section 8 together with the rest of this By-Law constitutes the zoning regulations for the CSOD. Where conflicts exist between this Section 8 and the rest of the By-Law, the provisions of this Section shall govern.



EXHIBIT B

Description of Premises

(to be provided)

EXHIBIT

That certain land located in the Town of Belmont, County of Middlesex, Commonwealth of Massachusetts commonly known and numbered as 116 Trapelo Road, as more particularly described as follows:

A certain parcel of land, located in Belmont, Middlesex County, Massachusetts, together with the trees and shrubbery thereon, bounded and described as follows:

Northeasterly by Trapelo Road one hundred forty-five (145) feet;

Northwesterly by a way one hundred and fifty (150) feet;

Southwesterly by other land of Mary B. Horne, one hundred thirty-one (131) feet more or less; and

Southeasterly by other land of said Mary B. Horne, one hundred twenty-four (124) feet more or less;

Containing 18,720 square feet of land, as shown on a plan on file in the Town Clerk's Office of said Town, a copy of which is recorded with Middlesex South District Deeds in Plan Book 314, Plan 31, and being the same premises taken by said Town by its Board of Selectmen on March 30, 1923, by an order duly recorded aforesaid in Book 5602, Page 1.

For title see Deed dated July 10, 1923 and recorded with Middlesex South District Registry of Deeds in Book 4647, Page 432.

EXHIBIT C

Parking Management Agreement

(attached)

## PARKING MANAGEMENT AGREEMENT

This Parking Management Agreement (the "Agreement") is made effective as of this 30<sup>th</sup> day of September, 2016 (the "Effective Date") by and among BELMONT RESIDENTIAL LLC, a Delaware limited liability company, its successors and assigns ("DEVELOPER") and the **TOWN OF BELMONT, MASSACHUSETTS** (the "Town"), a body politic, having a principal place of business at 455 Concord Avenue, Belmont, Massachusetts 02478.

### RECITALS

**WHEREAS**, DEVELOPER owns certain property in the Town of Belmont, Massachusetts (the "Property"), which is more particularly described in Exhibit A hereto, which has been approved for construction of a mixed use development commonly known as Cushing Village pursuant to a legally operative decision of the Belmont Planning Board dated July 24, 2013 and recorded at the Middlesex South District Registry of Deeds in Book 62578, Page 101, as amended of record and

**WHEREAS**, DEVELOPER has acquired certain property at 116 Trapelo Road, Belmont, Massachusetts from the Town pursuant to a deed dated September 26, 2016 and recorded herewith, which property at 116 Trapelo Road comprises part of Cushing Village; and

**WHEREAS**, in conjunction with the conveyance of the property at 116 Trapelo Road, the Town was granted a Parking Easement by DEVELOPER in and to fifty (50) parking spaces within a garage (the "Parking Garage") to be constructed by DEVELOPER and to be located on the Property (the "Town Spaces"), as more fully set forth in an Easement Deed of DEVELOPER to the Town recorded herewith (the "Easement Deed"); and

**WHEREAS**, DEVELOPER will convey the commercial components of Cushing Village to a third party (the "Commercial Owner") who will manage the Town Spaces pursuant to this Agreement in conjunction with Commercial Owner's management of all of the other commercial parking created on or within the Property, it being understood that the commercial parking will include 104 intermediate term Parking Garage spaces (50 of which will be the Town Spaces) and 22 short term surface parking spaces, all as hereinafter described; and

**WHEREAS**, upon DEVELOPER'S conveyance to the Commercial Owner of the commercial components of Cushing Village, which conveyance will include all rights to the commercial parking (the "Commercial Components"), the Commercial Owner will be assigned all rights of Developer, and the Commercial Owner will assume all obligations of Developer, under this Agreement, and the Town will release Developer from all obligations under this Agreement and will seek performance thereof solely from the Commercial Owner; and

**WHEREAS**, the Town acknowledges that the Parking Garage may be completed in stages, and accordingly if one third of the Parking Garage is completed, then one third of the Town Spaces will be made available to the Town and will be managed by the Commercial Owner in conformance with the terms of this Agreement, and accordingly Commercial Owner will assume the obligations of Developer under this Agreement with respect thereto only;

**WHEREAS**, the parties believe it to be in their mutual interest for the Town to grant to DEVELOPER (and upon DEVELOPER'S designation, the Commercial Owner) the right to manage the Town Spaces in conjunction with the commercial parking pursuant to the terms and conditions hereof.

**NOW, THEREFORE**, in consideration of the covenants and conditions hereinafter set forth it is hereby agreed as follows:

## ARTICLE 1

### PARKING PLAN

1.01 DEVELOPER has developed a plan for utilization of all parking spaces created on the Property which parking spaces are shown on the plan attached as Exhibit B to this Agreement (the "Parking Plan"). The Parking Plan identifies three (3) separate and distinct parking areas ("Parking Areas") to be used for parking in conjunction with the construction of Cushing Village on the Property. The Parking Areas are as follows:

A. Dedicated Residential Parking. Dedicated residential parking (shown as "Residential Parking 99 Spaces" on Exhibit B), consisting of ninety nine (99) total spaces, to be limited for utilization of parking for residents of the Property upon such terms and conditions as DEVELOPER may determine in its sole discretion. The Residential Parking spaces will not be the subject of this Agreement;

B. Short Term Parking. A total of twenty two (22) spaces are located within the short term parking identified on Exhibit B as "Short Term Parking on-Grade-22 Spaces". It is anticipated by DEVELOPER that nine (9) of the parking spaces within the short term Parking Area shall be designated for use without charge by patrons of specific businesses within Cushing Village. Thirteen (13) of the short term parking spaces shall be provided signage at the sole cost and expense of DEVELOPER pursuant to which signage seven (7) parking spaces will be designated as limited to thirty (30) minute parking and six (6) parking spaces will be limited to one (1) hour parking only.

C. Intermediate Term Parking. A total of one hundred and four (104) parking spaces, which includes the Town Spaces (it being agreed that the Town Spaces will not be expressly designated or reserved and will only be available to pass holders under Section 1.02 below on a first come basis, it being acknowledged that if all 104 Parking Spaces fill up then pass holders who were unable to obtain parking spaces will not be provided alternate parking arrangements), are proposed for public intermediate term parking. All public intermediate term parking shall be identified by signage provided at the sole cost of DEVELOPER as parking permitted for a two (2) hour time period (except for such longer time period as may be allowed by permit described in Section 1.02 below) that will be strictly enforced between the hours of 8:00 a.m. and 7:00 p.m. Intermediate term parking spaces shall be available without charge between the hours of 8:00 a.m. and 7:00 p.m. for use by the general public regardless of the destination intended by the party utilizing the parking space. Except for enforcing this two (2) hour time limit (or the time limit imposed in Section 1.02 below) in such manner as may be determined by DEVELOPER in DEVELOPER'S discretion, DEVELOPER shall not create any enforcement, limitation or interference with the use of the intermediate term parking spaces by the general public seeking to

park between the hours of 8:00 a.m. and 7:00 p.m. to visit any other business or residence in or about the Cushing Square area.

1.02 Notwithstanding the provisions of Section 1.01(C) above, the Town shall retain the right to issue on a monthly basis for a reasonable fee to businesses in the Cushing Square area up to thirty five (35) passes to use Town Spaces, which passes shall be prominently displayed on the dashboard or driver's side window of any vehicle for which the pass has been issued so as to permit said vehicle to park within the Parking Garage areas to be used for intermediate term parking as described in Section 1.01(C) for a period of time of up to eight (8) hours (excluding in all events parking between the hours of 8:00 p.m. and 8:00 a.m.).

1.03 DEVELOPER agrees to operate all commercial parking on the Property (i.e. those parking areas described in Sections 1.01(B) and 1.01(C)) in accordance with this Agreement and the Parking Plan and any modification to the Parking Plan shall require the approval of the Town, which approval shall not be unreasonably withheld or delayed.

1.04 All enforcement of the time limitations on parking set forth in Sections 1.01 and 1.02 of this Agreement and the Parking Plan shall be at the sole and absolute discretion of DEVELOPER, subject only to applicable law, rule or regulation.

1.05 In consideration of the Town not issuing passes for fifteen (15) of the Town Spaces (meaning the Town has agreed to issue passes only for thirty five (35) of the Town Spaces), DEVELOPER shall pay to the Town the sum of Ten Thousand Eight Hundred (\$10,800.00) Dollars annually (the "Parking Management Fee"). The issuance of passes, and accordingly the Parking Management Fee, will be prorated based upon the number of Town Spaces delivered to the Town as noted above in the Recitals section of this Agreement. The first annual payment due of the Parking Management Fee (or prorated portion thereof) will be payable sixty (60) days following the issuance of the first Certificate of Occupancy for the Parking Garage within Cushing Village and annually thereafter. At DEVELOPER's option, the Parking Management Fee may be paid monthly in advance in twelve (12) equal monthly installments. The Town agrees that during the term of this Agreement the Town Spaces shall not be subject to any metering, stickering or any other similar charge that derives revenue to the Town in any form or fashion except as specifically provided for in this Agreement.

## ARTICLE 2

### APPOINTMENT

2.01 The Town hereby designates and appoints DEVELOPER to provide complete management and administration for the Town Spaces consistent with this Agreement and the Parking Plan, and DEVELOPER accepts such designation and appointment. In connection with such management and administration, DEVELOPER shall have full responsibility and authority to operate, maintain and manage the Town Spaces consistent with this Agreement and the Parking Plan, subject to and on the terms and conditions set forth in this Agreement.

## ARTICLE 3

### TERM OF AGREEMENT

3.01 The original term of this Agreement shall commence as of the Effective Date and shall continue in full force for five (5) years (the "Initial Term"), with five (5) automatically renewing 5-year terms, for a total term of thirty (30) years, subject to further extension by agreement of the parties hereto and earlier termination or nonrenewal pursuant to Article 7 of this Agreement. Notwithstanding the foregoing, DEVELOPER and the Town shall meet and review the Parking Plan outlined in Article I hereof annually on the anniversary of the first payment of the Parking Management Fee and every year thereafter for the purposes of making written modifications to this Agreement and the Parking Plan that will meet the mutual needs of DEVELOPER and the Town, including, without limitation, reasonable adjustments in the Parking Management Fee to reflect changes in market conditions.

## ARTICLE 4

### MANAGEMENT SERVICES

4.01 Status; Standards. DEVELOPER shall perform its services with the quality of such services, in all respects and at all times, to be equal to the highest standards of professional parking management for similar such properties in the Greater Boston area.

4.02 Personnel. Subject to Section 4.03 hereof, DEVELOPER shall have full responsibility and authority and will use reasonable care in selecting, recruiting, hiring, firing, training, supervising and scheduling work for all permanent or part-time personnel necessary to perform the services of DEVELOPER under this Agreement. DEVELOPER shall carry any workmen's compensation insurance required by the laws of The Commonwealth of Massachusetts for employees, if any, of DEVELOPER. DEVELOPER shall be responsible for the preparation of and shall timely file all payroll tax reports and make timely payment of all withholding and other payroll taxes applicable to its personnel.

4.03 Property Manager. DEVELOPER shall retain a property management firm which shall perform duties that include having primary responsibility for the performance of DEVELOPER's duties hereunder (the "Property Manager"). Alternatively, DEVELOPER may self perform the duties of the Property Manager. DEVELOPER shall, by written notice, inform the Town of the identity of the Property Manager and, if the Property Manager is to be changed, DEVELOPER shall similarly inform the Town not less than thirty (30) days prior to its replacement with like capabilities and experience. The Property Manager and DEVELOPER shall meet with a designated representative of the Town on an annual basis to review performance by DEVELOPER pursuant to this Agreement.

4.04 Maintenance and Repairs; Other Operational Duties. DEVELOPER shall during the Term of this Agreement (as described in Section 3.01 above) maintain the Parking Areas in good order and repair and be fully, solely and exclusively responsible for all repair, maintenance and condition of the Property including without limitation the Town Spaces.

4.05 Fees. DEVELOPER shall not be paid in any form or manner by the Town pursuant to this this Agreement.

## ARTICLE 5

### INSURANCE AND INDEMNIFICATION

5.01 Required Insurance. DEVELOPER shall keep in effect at all times through the termination of this Agreement (and any longer period during which DEVELOPER has or is provided sole and exclusive management of the Town Spaces): (1) worker's compensation insurance and employer's liability insurance with limits as required by applicable law; (2) commercial general liability coverage in reference to all activities at and entry onto the Property, in an amount not less than \$2,000,000.00 per occurrence and with an annual aggregate of at least \$2,000,000.00 for (a) bodily injury, death and property damage, including damage to the Property, and (b) contractual liability; and (3) automobile liability insurance with a minimum limit of \$2,000,000.00 per occurrence with an annual aggregate of at least \$2,000,000.00 for bodily injury, death and property damage with respect to any vehicles used in connection with the activities of DEVELOPER or DEVELOPER's agents on the Property. DEVELOPER shall name the Town as an additional insured on all of the above referenced insurance (excluding workers compensation), and shall provide the Town with an accord certificate, reasonably acceptable to the Town, evidencing such coverages. The Town shall have the right to require DEVELOPER to increase such limits when the minimum limits of liability insurance commonly and customarily carried on properties comparable to the Property by responsible owners are more or less generally increased, it being the intention of this sentence to require DEVELOPER to take account of inflation in establishing minimum limits of liability insurance maintained from time to time on the Property.

5.02 DEVELOPER shall indemnify, reimburse, defend and hold the Town and the Town's affiliates, subsidiaries, members, managers, employees and agents ("Town's Agents") harmless for, from and against all actions, suits, liens, claims, damages, expenses (including reasonable attorney fees) losses, penalties, taxes and liabilities ("Losses") arising out of or attributable to the negligent acts/omissions or willful misconduct of DEVELOPER in the performance of this Agreement or the maintenance, operation and repair of the Property in any manner whatsoever, but excepting for matters which are the result of the negligence or willful misconduct of the Town or its employees or Town's Agents.

## ARTICLE 6

### CASUALTY

6.01 Casualty. In the event that the Property is damaged by fire, earthquake or other casualty, this Agreement shall remain in full force and effect; provided, however, that DEVELOPER shall have no obligation to provide the Town Spaces or pay the Parking Management Fee until all necessary repairs and replacements required due to the casualty have been completed in accordance with all applicable laws, rules and regulations and all of the Parking Areas as identified in the Parking Plan have been fully restored and available for use. In the event of such casualty, DEVELOPER shall proceed promptly to exercise diligent efforts to restore, or cause to be restored, the Town Spaces to substantially the condition thereof just prior to time of such damage.



ARTICLE 7  
TERMINATION

7.01 Termination. During the term hereof, the Town shall have the right to terminate this Agreement by advance written notice to DEVELOPER and each Lender (as such term is hereinafter defined) effective upon the date stated in such notice based on the following:

A. For any default by DEVELOPER in the performance of its duties hereunder, provided that the Town shall give DEVELOPER thirty (30) days written notice and an opportunity to cure such default during such period in the event of a default involving payment of money, or sixty (60) days (or such longer time as may be reasonably necessary if the nature of the default requires additional time for cure) written notice and an opportunity to cure such default during such period in the event of any other default.

B. Either party hereto may give the other party written notice of its intention not to renew this Agreement at least six (6) months prior to the end of the Initial Term, or any 5-year extension thereof but any notice not to renew this Agreement by DEVELOPER, its successors or assigns shall require the prior written consent of each Lender. The parties shall meet within thirty (30) days of said notice of non-renewal, or such later time as they may agree, to negotiate in good faith regarding any issues concerning the implementation of this Agreement that would be resolved through amendment of this Agreement. In the event that no agreement is reached, and the notice of non-renewal is not withdrawn, this Agreement shall terminate at the expiration of the 5-year term then in effect.

7.02 Upon termination of this Agreement, the Town will continue to have its rights to the Town Spaces in the manner described in the Easement Deed. Such use shall expressly not include the right to use the Town Spaces for long term, overflow or permanent parking, including but not limited to the parking of Town-owned vehicles. For purposes of this Agreement and the Easement Deed, "overflow" parking shall refer to the use of the Town Spaces to supplement parking for residents and businesses not located in the Cushing Square area, and "permanent" parking shall refer to the stationing of Town-owned or other fleet or commercial vehicles, and "long term" means durations other than (a) "short term" or "intermediate" as described in this Agreement, or (b) overnight parking (i.e. parking between the hours of 8 p.m. and 8 a.m.)

In the event the Town offers to lease or sell the Town Spaces other than through a public bid process under G.L. c. 30B, § 16, written notice of which shall be given to the Developer in addition to any other notices required by law, the same shall first be offered to the Developer on the same terms and conditions upon which will be offered for sale or lease. The Developer shall have forty-five (45) days within which to accept such offer. This provision will survive termination of this Agreement.

ARTICLE 8  
MISCELLANEOUS

8.01 Notice. Any and all notices, demands, requests, consents, or other communications or documents required to be, or which may be, given, delivered or served under or by the terms and provisions of this Agreement or pursuant to regulations or otherwise

(collectively "Notices") shall be in writing and shall be deemed to have been duly given, delivered or served if and when delivered personally or sent postage prepaid, by registered or certified mail, return receipt requested, or by a nationally recognized next day delivery service for which a receipt is provided, addressed as follows:

Town: Town of Belmont  
455 Concord Avenue  
Belmont, Massachusetts 02478  
Attention: Town Administrator /  
Manager

DEVELOPER: Belmont Residential LLC  
Charles Elliott, Vice President  
250 Gibraltar Road  
Horsham, PA 19044

or to such other addressee or addressees as may be designated in writing by the Town and DEVELOPER. All notices referred to under this Agreement shall be deemed given and received upon the earlier of (i) the date received or (ii) three (3) days after the date such notice is mailed by United States registered or certified mail as provided above, or placed in the hands of the nationally recognized next day delivery service.

8.02 Assignment; Binding Effect. DEVELOPER shall have no right to assign or transfer this Agreement or any of its rights or duties hereunder in whole or in part or by operation of law or otherwise without the prior written consent of the Town, which consent shall not unreasonably be withheld, provided, however, DEVELOPER without the Town's consent, may assign this Agreement (a) to any lender (A) providing financing to DEVELOPER, its successors and assigns secured, in whole or in part, by the Property, or (B) providing financing to any entity which controls, directly or indirectly, DEVELOPER, its successors and assigns and secured by a pledge or assignment of such entity's ownership interests (a "Lender" or "Lenders" or (b) to a corporation or other entity controlled by, or under the common control of DEVELOPER, whereupon DEVELOPER or its successor or assign shall notify the Town of the identity and address of such Lender(s), corporation or entity, or (c) to the Commercial Owner (which may be a third party), or (d) to a joint venture in which Toll Bros., Inc. (or a commonly controlled or wholly owned affiliate thereof) retains at least a twenty five percent (25%) interest. DEVELOPER shall notify Town in writing of any such assignments ten (10) days prior to such assignments taking effect. Subject to the foregoing, this Agreement shall be binding on and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

The Town agrees that the following transfers of ownership interest in the Developer will not be prohibited assignments in any manner under this Agreement: (A) a direct or indirect transfer of the stock of a public company, (B) the direct or indirect creation of new stock in such public company, (C) direct or indirect stock splits or reverse stock splits in such public company, (D) redemption of stock by such public company, (E) the conversion of such public company from a public to a private company, (F) any reorganization, merger, consolidation, recapitalization, or

similar transaction with respect to such public company, or (G) any other transaction that modifies, changes, or affects the ownership or control of such public company.

8.03 Headings. The headings used in this Agreement are for convenience only and are not to be considered in connection with the interpretation or construction of this Agreement.


8.04 Applicable Law. This Agreement and the rights and obligations of the parties hereunder shall be governed by the laws of The Commonwealth of Massachusetts.

IN WITNESS WHEREOF, this Agreement is executed as of the date set forth above.

BELMONT RESIDENTIAL LLC

By: Charles Elliott, Vice President

TOWN OF BELMONT

  
By: Mark A. Paolillo, Chair,  
Board of Selectmen

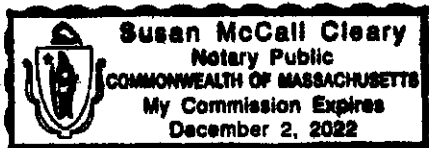
COMMONWEALTH OF MASSACHUSETTS

Middlesex County, ss.

On this 26 day of Sept, 2016, before me, the undersigned notary public, personally appeared Mark Paolillo, proved to me through satisfactory evidence of identification, which was  photographic identification with signature issued by a federal or state governmental agency,  oath or affirmation of a credible witness,  personal knowledge of the undersigned, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as Bos chair of the Town of Belmont.

Susan McCall Cleary  
Notary Public  
My Commission Expires:

McCall Cleary  
Public  
SSACHUSETTS  
ires

  
Susan McCall Cleary  
Notary Public  
COMMONWEALTH OF MASSACHUSETTS  
My Commission Expires  
December 2, 2022

  
Susan McCall Cleary  
Notary Public  
COMMONWEALTH OF MASSACHUSETTS  
ires

COMMONWEALTH OF PENNSYLVANIA: ss.

County of Montgomery:

On this \_\_\_\_\_ day of September, 2016, before me, the undersigned notary public, personally appeared Charles Elliott, proved to me through satisfactory evidence of identification, which was  photographic identification with signature issued by a federal or state governmental agency,  oath or affirmation of a credible witness,  personal knowledge of the undersigned, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as Vice President of BELMONT RESIDENTIAL LLC.

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

**EXHIBIT A**

**Property Description**  
**(attached)**

**EXHIBIT A**

**Parcel 1 - 505-507 Common Street, Belmont, MA**

The land with the buildings thereon in Belmont, Middlesex County, Massachusetts being shown as Lot 78 on a plan entitled "Samuel Barnard Estate, Belmont, Mass. dated January 2, 1928 by Fred A. Joyce, Surveyor", recorded with Middlesex South District Registry of Deeds at the end of Book 5260 and bounded and described according to said plan as follows:

SOUTHEASTERLY by said Common Street, thirty-one and 99/100 (31.99) feet;

SOUTHEASTERLY, SOUTHERLY and SOUTHWESTERLY by the Junction of said Common Street and Horne Road, thirty and 78/100 (30.78) feet;

SOUTHWESTERLY by said Horne Road, seventy-eight and 95/100 (78.95) feet;

NORTHWESTERLY by lot 77 on said plan, fifty-four and 50/100 (54.50) feet; and

NORTHEASTERLY by land now or formerly of Mary B. Horne, one hundred (100) feet; subject to and excepting the taking relating to the street line by the Town of Belmont, as shown on plan recorded with said Deeds, Book 7314, Page 45; or, however otherwise said premises may be bounded, measured or described.

**Parcel 2- 7 Horne Road, Belmont, MA**

A parcel of vacant land situated on the northeasterly side of Horne Road and shown as lot 77 on a plan entitled "Samuel Barnard Estate, Belmont, Mass." dated January 2, 1928, by Fred A. Joyce, Surveyor, recorded with Middlesex South District Deeds on the end of Book 5260, bounded and described as follows:

SOUTHWESTERLY by said Horne Road, sixty-three (63) feet;

NORTHWESTERLY by lot 76 shown on said plan, one hundred four and 63/100 (104.63) feet;

NORTHEASTERLY by land now or formerly of the Barnard Estate, sixty-five and 43/100 (65.43) feet; and

SOUTHEASTERLY in part by the first parcel conveyed by deed of Ruth H. Jenkins dated December 19, 2000 and recorded at the Middlesex South Registry of Deeds in Book 32171, Page 482, and in part by lot 78 shown on said plan, in all one hundred fourteen and 50/100 (114.50) feet.

Containing according to said plan 6944 square feet of land.

**Parcel 3 - 495-501 Common Street, Belmont, MA**

The land with the buildings thereon now numbered 495-501 on Common Street in Belmont bounded and described as follows:

SOUTHEASTERLY by said Common Street, sixty-four (64) feet;

SOUTHWESTERLY by lot 78 on a plan entitled "Samuel Barnard Estate, Belmont, Mass." dated January 2, 1928, by Fred A. Joyce, Surveyor, recorded with Middlesex South District Deeds on the end of Book 5260, one hundred (100) feet;

NORTHWESTERLY by lot 77 shown on said plan and land now or formerly of Mary B. Horne, sixty-four (64) feet; and

NORTHEASTERLY by land now or formerly of Mary B. Horne, one hundred (100) feet.

**Parcel 4 - 527 Common Street, Belmont, MA**

The land with the buildings thereon in Belmont, Middlesex County, Massachusetts, shown on a plan of land in Belmont, dated May 24, 1939, made by S. Albert Kaufman, C.E., recorded with the Middlesex South District Registry of Deeds at the end of Book 6297 and also shown as Lots 79, 80, 101, and 102 on a plan entitled "Plan showing Portion of Samuel Barnard Estate, Belmont, Mass.", dated September 3, 1931, by Fred A. Joyce, Surveyor, recorded with said Deeds, Book 5595, Page 311, and bounded and described as follows:

SOUTHWESTERLY by Belmont Street, 148.35 feet;

SOUTHEASTERLY by Common Street, by two lines, 135.53 feet;

EASTERLY by a curved line forming the juncture of Horne Road and Common Street, 32.05 feet;

NORTHEASTERLY by Horne Road, 133.39 feet;

NORTHWESTERLY by Lot 81 on said Joyce plan, 90.12 feet;

NORTHEASTERLY again by said Lot 81, 31.12 feet;

NORTHWESTERLY again by Lot 100 on said Joyce plan, 99.27 feet.

Containing 27,405 square feet of land, be any and all of said measurements more or less, or however otherwise said premises may be bounded, measured or described.

Excepting the strip of land conveyed by deed of Benjamin Yanofsky to the Inhabitants of Belmont, dated May 12, 1941 and recorded with the Middlesex South District Registry of Deeds in Book 6520, Page 458.

**Parcel 5 - 102-104 Trapelo Road, Belmont, MA**

The land with the buildings thereon situated at the corner of Trapelo Road and Common Street in the Town of Belmont, Middlesex County, Massachusetts, and bounded:

NORTHEASTERLY by Trapelo Road fifty-two and 52/100 (52.52) feet;

EASTERLY by the intersection of said Trapelo Road and Common Street, fifty-three and 20/100 (53.20) feet;

SOUTHEASTERLY by said Common Street about sixty-five and 32/100 (65.32) feet;

SOUTHEASTERLY by land now or formerly of William A. Doe described in deed by Mary B. Horne to said William A. Doe dated October 4, 1922 and recorded with Middlesex South District Deeds, Book 4559, Page 159, ninety-nine and 90/100 (99.90) feet; and

NORTHWESTERLY by land now or late of Anna G. Horne, et al, ninety-nine and 9/100 (99.09) feet.

Containing 8714 sq. ft. being all said measurements, more or less, said premises being Lot C on a Plan of Land in Belmont, Mass. By Fred A. Joyce, Surveyor, dated June 8, 1936, recorded with Middlesex South District Registry of Deeds, Book 6041, Page 237.

**Parcel 6 - 112 Trapelo Road, Belmont, MA**

That certain parcel of land situated in the Town of Belmont, County of Middlesex, State of Massachusetts, more fully described as follows:

Beginning at a point on the southerly side of Trapelo Road, 6 feet, more or less, westerly from a stone bound said stone bound being at the point of curve of the south side of said Trapelo Road; thence running southerly along land now or formerly of the Town of Belmont, known as the Fire Station lot 123.48 feet; thence running easterly along land now or formerly of Mary B. Horne, 79.17 feet; thence running northerly, 103.13 feet to the south side of Trapelo Road; thence running westerly along the south side of Trapelo Road, 80 feet to the point of beginning.

**Parcel 7 - 116 Trapelo Road, Belmont, MA**

A certain parcel of land located at the corner of Trapelo Road and Williston Road in the Town of Belmont, Middlesex County, Massachusetts, bounded and described as follows:

Northwesterly by said Williston Road, one hundred twenty-seven and 68/100 (127.68) feet, more or less;

Northerly by the curved intersection of said Williston Road and said Trapelo Road, thirty-three and 77/100 (33.77) feet, more or less;

Northeasterly by said Trapelo Road, one hundred twenty-two and 5/10 (122.5) feet, more or less;

Southeasterly by land now or formerly of Anna G. Horne and Mary B. Horne, one hundred twenty-three and 48/100 (123.48) feet, more or less;

Southwesterly by land now or formerly of Mary A. Gay and Ernest L. Drew Jr., one hundred thirty one (131) feet, more or less.

Containing 18,720 square feet of land, more or less and being the parcel of land designated "Town of Belmont" as shown on "Belmont Planning Board Pan of Land in Belmont, Mass."



dated December 29, 1944, on file in the Town Clerk's Office and recorded with the Middlesex South District Registry of Deeds as Plan No. 200 of 1947.

**Parcel 8 – Portion of Horne Road, Belmont, MA**

That certain parcel of land located in Belmont, Middlesex County, Commonwealth of Massachusetts, shown as "Portion to be Discontinued and Easement for Utilities and Right of Way" on a plan entitled "Plan of Land in Belmont, MA (Middlesex County)", dated December 22, 2014, Scale: 1" = 20', Prepared by Rober Survey, recorded with the Middlesex South District Registry of Deeds as Plan No. \_\_\_ of 2015 and more particularly described as follows.

Beginning at a point on the northwesterly side of Common Street, said point being the most southeasterly corner of said parcel; thence running

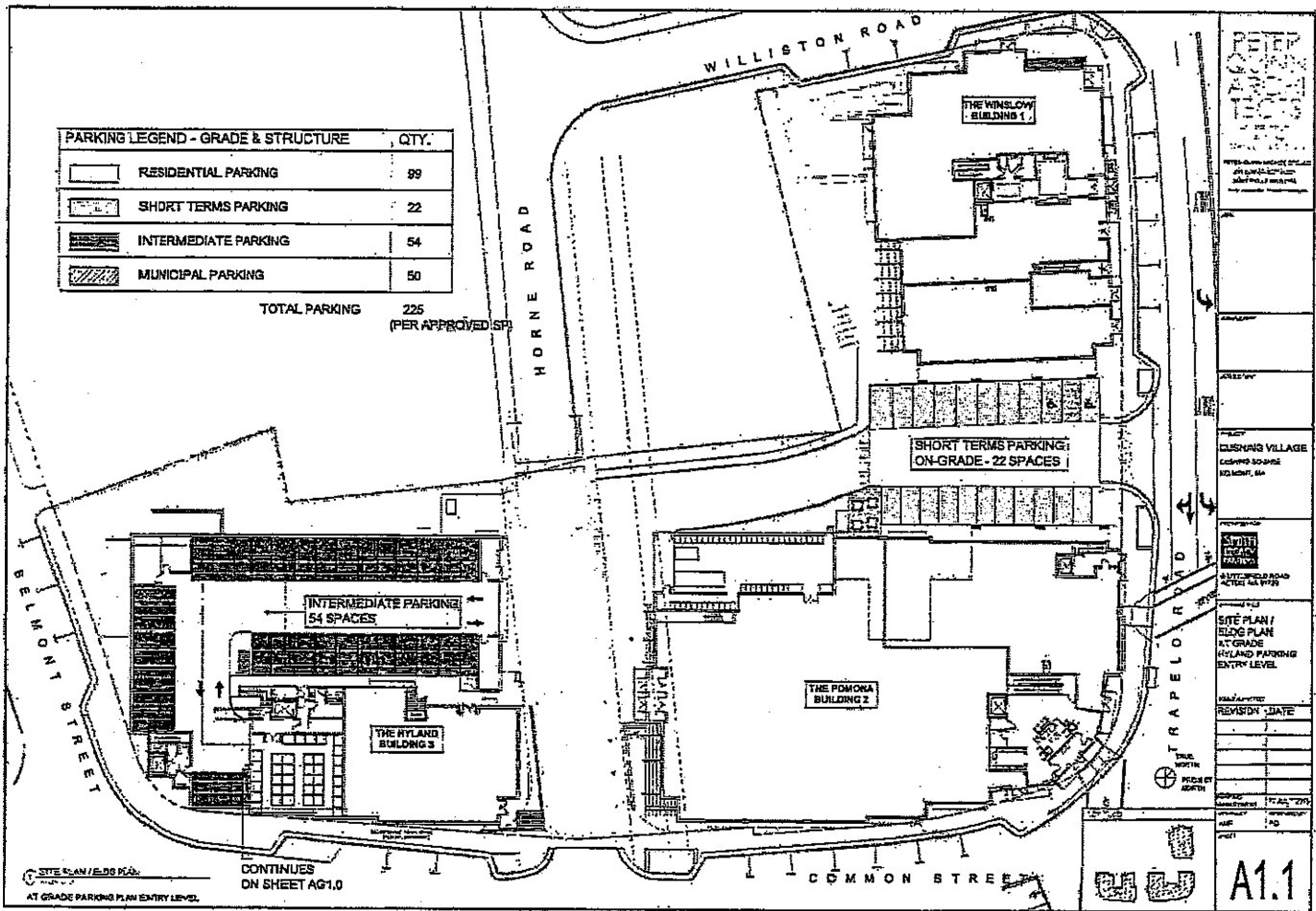
NORTHERLY	34.90' by a curve to the left having a radius of 20.00' to a point of tangency; thence running
N49°36'19"W	124.76' to a point; thence turning and running
N40°23'41"E	20.00' to a point; thence turning and running
N49°36'19"W	6.03' to a point; thence turning and running
N40°23'41"E	20.00' to a point; thence turning and running
S49°36'19"E	141.95' to a point; thence running
EASTERLY	27.49' by a curve to the left having a radius of 22.00' to a point of tangency; thence turning and running
S42°12'11"W	by Common Street, 19.48' to a point; thence turning and running
S47°17'09"W	by Common Street, 63.94' to the point of beginning.

Said parcel containing 6,305± S.F. of land according to said plan.

**EXHIBIT B**

Parking Plan  
(attached)

ARTICLE 9



**PETER QUINN ARCHITECTS**  
 1000 W. 10TH ST. SUITE 100  
 DENVER, CO 80202  
 TEL: 303.733.1100  
 FAX: 303.733.1101  
 WWW.PETERQUINNARCHITECTS.COM

PROPOSED DEVELOPMENT  
 CUSHING VILLAGE  
 1000 W. 10TH ST. SUITE 100  
 DENVER, CO 80202

PROJECT NO. 1000 W. 10TH ST. SUITE 100  
 ACTED AS 1000

SITE PLAN /  
 EXISTING PLAN  
 AT GRADE  
 INLAND PARKING  
 ENTRY LEVEL

REVISION DATE

SCALE: 1" = 40'





DATE: 10/10/2011

PROJECT NO. 1000 W. 10TH ST. SUITE 100

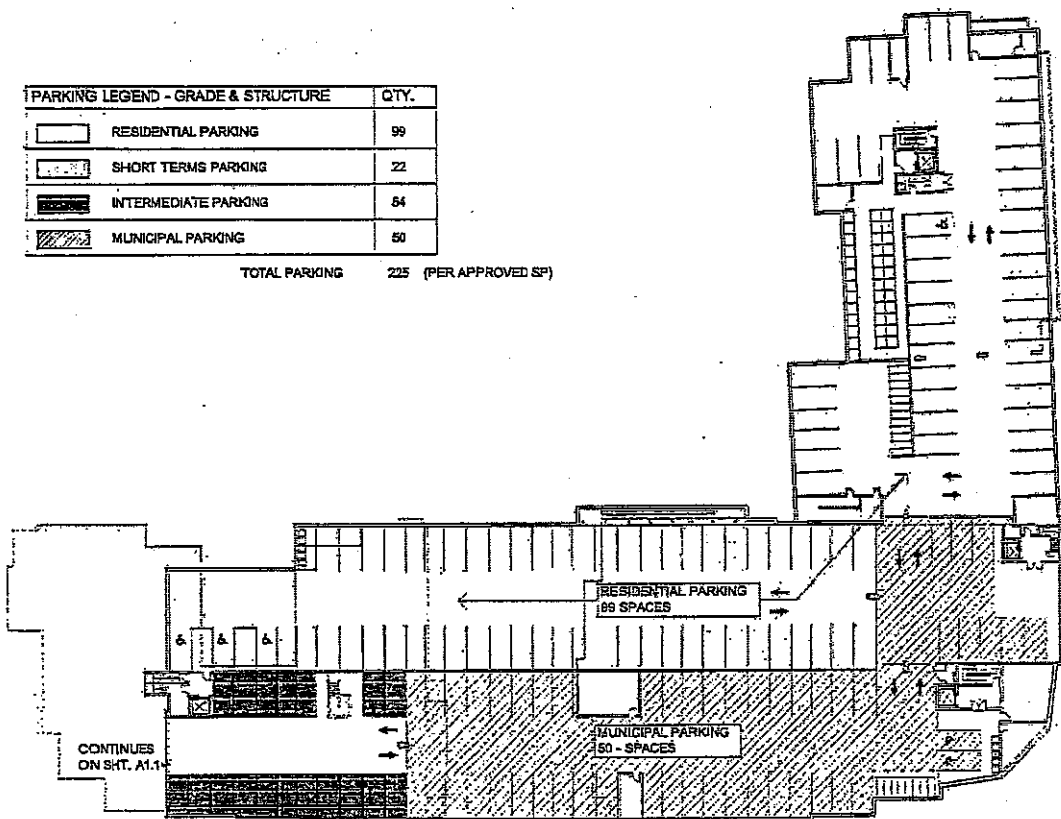
**A1.1**

CONTINUES  
 ON SHEET AG1.0

AT GRADE PARKING PLAN ENTRY LEVEL.

PARKING LEGEND - GRADE & STRUCTURE		QTY.
	RESIDENTIAL PARKING	99
	SHORT TERMS PARKING	22
	INTERMEDIATE PARKING	84
	MUNICIPAL PARKING	50

TOTAL PARKING 225 (PER APPROVED SP)



**PETER QUINN ARCHITECTS**  
 1000 W. 10TH AVENUE  
 SUITE 100  
 DENVER, CO 80202  
 (303) 733-1111  
 WWW.PETERQUINNARCHITECTS.COM

---

**CLUSHING VILLAGE**  
 CLUSHING SQUARE  
 DENVER, CO

---

**SMITH GROUP ARCHITECTS**  
 1411 FIELD ROAD  
 SUITE 100  
 DENVER, CO 80202

---

**UNDERGROUND PARKING PLAN**  
 (ALL CELLAR BELOW GRADE)

SCALE: AS NOTED

REVISION	DATE

DATE: 07/20/2010  
 DRAWN BY: [Name]  
 CHECKED BY: [Name]  
 PROJECT NO: [Number]

**AG1.0**

UNDERGROUND PARKING PLAN