Execution Version 2/12/15

DECISION ON CHAPTER 40B COMPREHENSIVE PERMIT APPLICATION THE RESIDENCES OF SOUTH BROOKLINE - THE RESIDENCES OF SOUTH BROOKLINE, LLC BROOKLINE, MASSACHUSETTS

BOARD OF APPEALS CASE NO. 2013-0094

Date: February 12, 2015

PROCEDURAL HISTORY

1. On October 8, 2013 Massachusetts Development Finance Agency ("MassDevelopment") issued a Project Eligibility Letter ("PEL").

2. On November 19, 2013 the Town of Brookline ("Town") filed a lawsuit (Town of Brookline, et al v. MassDevelopment, et al, Norfolk Superior Court No. CV2013-01710) maintaining that MassDevelopment failed to issue the PEL in accordance with the requirements set forth at 760 CMR 56.04(4).

3. On November 26, 2013 The Residences of South Brookline, LLC (the "Applicant"), applied for a Comprehensive Permit, pursuant to G.L. Ch. 40B, Sections 20-23 (the "Act"), to construct one hundred ninety-two (192) units of rental housing and three hundred forty-five (345) parking spaces (the "Original Project") on approximately 9.32 acres located in Hancock Village along Independence Drive in Brookline, Massachusetts (the "Site").

4. The materials submitted by the Applicant in its application and during the public hearing include:

Comprehensive Permit Application (the "Application")

Comprehensive Permit Plans for The Residences of South Brookline, Brookline, MA dated November 26, 2013, revised to January 9, 2015, prepared by Stantec Planning and Landscape Architecture, PC.

Sheet Numbers and Titles

Site Plans

EX 100 – Overall Site Plan
EX101 – Key Plan
EX102 – Existing Conditions Survey
EX103 – Existing Conditions Survey
EX104 – Existing Conditions Survey
EX105 – Existing Conditions Survey
EX106 – Existing Conditions Survey
EX107 – Existing Conditions Plan
EX108 – Existing Conditions Plan

EX109 – Existing Conditions Plan
EX110 – No Disturb Zone West
EX111 – No Disturb Zone Northeast
EX112 – No Disturb Zone Southeast
Exhibit 1 – Proposed Site Plan – December 8, 2014
EX-113 – Rendered Site Plan Sketch Overlay – West
EX-114 – Rendered Site Plan Sketch Overlay - Northeast
EX-115 – Rendered Site Plan Sketch Overlay – Southeast
H101 – Height Calculation Plan West
H102 – Height Calculation Plan Northeast
H103 - Height Calculation Plan Southeast
L104 – Open Space Plan West
L105 – Open Space Plan Northeast
L106 – Open Space Plan Southeast
W101 – Waiver Plan West
W102 – Waiver Plan Northeast
L107 – Lease Line Comparison West
L108 – Lease Line Comparison Northeast
L109 – Lease Line Comparison Southeast
L201 – Erosion Control Plan West
L202 – Erosion Control Plan Northeast
L203 – Erosion Control Plan Southeast
L301 – Layout Plan West
L302 – Layout Plan Northeast
L303 – Layout Plan Southeast
L401 – Grading Plan West
L402 – Grading Plan Northeast
L403 – Grading Plan Southeast
L501 – Composite Utility Plan West
L502 – Composite Utility Plan Northeast
L503 – Composite Utility Plan Southeast
L504 – Drainage Plan West
L505 – Drainage Plan Northeast
L506 – Drainage Plan Southeast
L507 – Water and Sewer Plan West
L508 – Water and Sewer Plan Northeast
L509 – Water and Sewer Plan Southeast
L601 – Landscape and Buffer Plan West
L602 – Landscape and Buffer Plan Northeast
L603 – Landscape and Buffer Plan Southeast
L604 – Planting Details
L701 –Lighting Plan West
L702 –Lighting Plan Northeast
L703 –Lighting Plan Southeast
L801 – Site Details 1
L802 – Site Details 2

L803 – Site Details 3
L804 – Utility Details 1
L805 – Utility Details 2
L806 – Utility Details 3
L807 – Utility Details 4
L808 – Basin Profiles
L809 – Basin Profiles
L810 – Basin Profiles
L901 – Site Sections
L902 – Site Sections
L903 – Site Sections
L904 – Site Sections
L905 – Site Sections
L906 – Site Sections
L907 – Site Sections
L908 – Site Sections
L909 – Site Sections
L910 – Site Sections
L911 – Site Sections

["Site Plans"]

Architectural plans dated December 5, 2014 (or as noted) by Lowe Associates Architects, Inc:

A-1 –2-1/2 Story Infill Buildings Typical for Building Nos. 1, 2, 3, 6, 9, 10, 11 Floor Plans
A-2 – 2-1/2 Story Infill Buildings Building No. 4 Floor Plans
A-3 – 2-1/2 Story Infill Buildings Building No. 5 Floor Plans
A-4 – 2-1/2 Story Infill Buildings Typical for Building Nos. 7 & 8 Floor Plans
A-5 –2-1/2 Story Infill Buildings Building Section Building Nos. 1, 2, 3, 4, 6, 7, 8, 9, 10, 11
A-6 –2-1/2 Story Infill Buildings Building Section Building No. 5
A-7 – Apartment Building Lower Level Garage Plan
A-8 –Apartment Building Upper Level Garage Plan
A-9 – Apartment Building First Floor Plan
A-10 – Apartment Building Second and Third Floor Plans
A-11 – Apartment Building Fourth Floor Plan
A-12 – Apartment Building Schematic Roof Plan
A-13 – Apartment Building - Building Section
A-14 – 2-1/2 Story Infill Buildings Typical for Building Nos. 1, 2, 3, & 10 Elevations
A-15 – 2-1/2 Story Infill Buildings Typical for Building Nos. 6, 9, & 11 Elevations
A-16 – 2-1/2 Story Infill Buildings Building No. 4 Elevations
A-17 – 2-1/2 Story Infill Buildings Typical for Building No. 5 Elevations

A-18 – 2-1/2 Story Infill Buildings Typical for Building Nos. 7 & 8 Elevations
A-19 – Elevations Apartment Building dated 12/19/2014
A-20 – Elevations Apartment Building dated 11/26/2014

["Architectural Plans"]

Stormwater Management Report prepared by Stantec Planning and Landscape Architecture, PC dated September 30, 2013, revised July 11, 2014, August 22, 2014 and December 11, 2014 ("Stormwater Management Report")

Technical Memorandum—Traffic Impact Assessment prepared by MDM Transportation Consultants, Inc. dated November 18, 2013, revised July 17, 2014. ("Traffic Report")

5. The Brookline Board of Appeals (the "Board"), with the consent of the Applicant, opened a duly advertised public hearing on January 16, 2014. On the following dates the Board continued the hearing and heard and/or deliberated on testimony: February 24, 2014, March 5, 2014, March 26, 2014, April 10, 2014, May 8, 2014, June 5, 2014, June 19, 2014, July 23, 2014, August 13, 2014, September 8, 2014, September 15, 2014, October 20, 2014, October 29, 2014, November 3, 2014, November 12, 2014, November 24, 2014, December 1, 2014, December 8, 2014, December 22, 2014, January 5, 2015 and January 12, 2015. All continuances beyond 180 days from January 16, 2014 were with the Applicant's written consent.

6. The Board conducted duly noticed site visits on January 24, 2014 and July 10, 2014.

7. On September 23, 2014 the Superior Court entered judgment in Town of Brookline v. MassDevelopment and on November 14, 2014 the Town appealed (Appeals Court Case No. 2014-P-1817).

8. On January 12, 2015 the Board closed the public hearing.

9. The Board deliberated on the Application at public meetings held on January 28, 2015 and February 4, 2015 and voted to grant a Comprehensive Permit subject to the conditions listed below.

10. The following consultants assisted the Board in its review of the Application:

Engineering and Traffic:	Kien Ho, PE, PTOE, Philip F. Paradis, Jr., PE (and others) BETA Group, Inc. Norwood, MA

Site and Building Design	Theodore Touloukian, AIA Touloukian Touloukian, Inc. Boston, MA
Special Counsel to Zoning Board	Kathryn C. Murphy, Esq., Samuel Nagler, Esq. Krokidas & Bluestein LLP Boston, MA
MHP Fund: (Ch. 40B Advisor)	Edith M. Netter, Esq. Edith M. Netter & Associates, P.C. Waltham, MA

11. As required by the Act, the Board notified all applicable local boards and commissions of the filing of the Application by sending a copy thereof to such local boards and commissions for their recommendations, all of which have been made a part of the record of these proceedings and have been taken into consideration by the Board in rendering its Decision.

12. During the course of the public hearing, Town boards and neighbors submitted extensive oral and written testimony with respect to the Original Project and the Project on issues such as the height, scale, and density of the "mid-rise" apartment building, the location of "infill" units in the greenbelt, the stormwater management system and traffic generated by the proposed development. More specifically, the testimony (i) described the apartment building as too large and out-of-scale with the single-family homes in the abutting neighborhood and overly dense compared to the neighborhood, (ii) stated that the greenbelt should remain "green" (no development should be located in the greenbelt), and (iii) declared that the consequences of the proposed development on stormwater runoff and traffic in the neighborhood would be dire.

FINDINGS

1. According to the DHCD Subsidized Housing Inventory ("SHI"), as defined in 760 CMR 56.02, as of November 26, 2013, eight percent (8%) of the Town's total housing stock constituted SHI Eligible Housing as defined in 760 CMR 56.02.

2. As proposed in the Original Project, the mid-rise apartment building was incongruous with the existing context of multi-family townhouses and single-family homes.

3. The Original Project proposed twelve (12) residential buildings and seven (7) structured garages in the "greenbelt" (S-7 Zoning District) portion of the Site, an area used by Hancock Village tenants and neighbors for recreational use. The "greenbelt" is

not "Open Space" as defined in 760 CMR 56.02. As proposed in the Original Project, the number, size, and placement of the units in the "greenbelt" (S-7 Zoning District portion of the Site) was out-of-scale with the surrounding single-family neighborhood.

4. The Original Project proposed three hundred forty-five (345) parking spaces, which the Board found was too much parking.

5. As proposed in the Original Project, the roofline of the mid-rise building emphasized the monolithic quality and horizontal massing of the structure.

6. During the public hearing process, in response to comments made during the course of the hearing by local boards and commissions, the neighbors and the Board, the Original Project was revised to consist of one hundred sixty-one (161) rental units in twelve (12) buildings, and in so doing, the total acreage of the Site was reduced to approximately 8.72 acres. Of these units, one hundred nine (109) units are in a 3- and 4-story building, and fifty-two (52) units are in the remaining eleven (11) buildings. The bedroom mix is as follows: twenty-three (23) four bedroom units, twenty-two (22) three-bedroom units, fifty-nine (59) two-bedroom units and fifty-seven (57) one-bedroom units (the "Project"). Additionally, the Project includes two hundred ninety-two (292) parking spaces of which ninety-nine (99) will be located in a substantially below-grade garage within Building 12 (the "garaged" spaces).

7. The Project will be serviced by Town water and sewer.

8. MassDevelopment has determined that the Original Project was eligible for MassDevelopment Tax-Exempt Bond Financing Program (the "Program") which Program requires that at least twenty percent (20%) of the units in the Project will be restricted for rental by households earning at or below fifty (50%) percent of the Boston area median income ("AMI") adjusted for household size.

9. The Site abuts a single-family neighborhood running along Beverly and Russett roads to the north and the existing multi-family development known as Hancock Village to the south. As revised during the public hearing process, the Site includes approximately 6.62 acres in the S-7 Zoning District and approximately 2.10 acres in the M-0.5 Zoning District.

10. The Project includes four (4) Lots as defined in Article II, Section 2.12.5 of the Town of Brookline Zoning Bylaw (the "Zoning Bylaw").

11. The Town has an ongoing, active program of promoting low- and moderate-income housing, including inclusionary zoning; financial and technical assistance to non- and for-profit property owners and developers; technical and financial assistance to those seeking to purchase, rent and rehabilitate affordable homes; and other Chapter 40B affordable housing developments. In 2004, the Town prepared a Comprehensive Plan for the years 2005-2015, which contains a chapter on Affordable

Housing. A map included in the Plan identified potential sites including Hancock Village for "Housing Opportunities".

12. Throughout the public hearing process, the public and certain Town boards provided written and oral testimony expressing continued objections to the Project as it was revised over the course of the hearing, all of which the Board has carefully reviewed and taken into consideration in rendering its decision. The Board incorporated into this Decision those comments that it deemed Consistent with Local Needs. The Board determined, *inter alia*, in reliance on peer review and other testimony, that: (i) the Project would not result in a significant increase in vehicle trips or transportation demands adversely affecting the surrounding area or that conditions (as included in the Decision) would adequately address any increase in vehicle trips or transportation demands; (ii) the Project would not increase the rate of stormwater runoff from the Site to abutting properties and that conditions (as included in this Decision) adequately address technical requirements for the Project, including stormwater runoff; (iii) fire and safety concerns related to the Project were adequately addressed by the Applicant by modifications to the Project in concert with recommendations made by the Fire Chief and/or conditions included in this Decision; and (iv) concerns with construction of this Project and required blasting related thereto can adequately be addressed by conditions as provided in this Decision.

13. Hancock Village was a planned development inspired by the Garden Village model and has been determined to be eligible for listing in the National Register of Historic Places.

14. The Project, as conditioned below, is Consistent with Local Needs, as that term is defined in 760 CMR 56.02, as required by the Act.

DECISION

Pursuant to the Act, the Board, after convening a public hearing and making findings of fact, grants a Comprehensive Permit to the Applicant for the construction of one hundred sixty-one (161) units of rental housing, with associated infrastructure improvements shown on the Site Plans and the Architectural Plans, subject to all of the conditions listed below.

CONDITIONS:

1. The Project shall be constructed in conformance with the Site Plans and the Architectural Plans listed above in item 4 under Procedural History and the Conditions in this Decision. The Applicant shall submit final site and architectural plans for review by the Planning Director to determine whether they conform to the Site Plans and Architectural Plans listed in Item 4 under Procedural History. Conformance with the Site Plans and/or the Architectural Plans includes conformance with all applicable laws

including, unless waived by the Board [see Condition 4], local zoning and other bylaws and regulations.

2. The Project shall include no more than one hundred sixty-one (161) units of rental housing in no more than twelve (12) buildings, which buildings are shown on the Site Plans and the Architectural Plans, and no more than ninety-nine (99) garaged parking spaces and one hundred ninety-three (193) surface parking spaces.

3. The total maximum number of bedrooms shall be three hundred thirty-three (333) and the maximum number of units and the maximum number of bedrooms shall be as listed in the following table:

Number of Units	Number of Bedrooms
57	One
59	Two
22	Three
23	Four

4. With respect to the Applicant's Request for Waivers from local bylaws and regulations dated January 9, 2015, the Board approves those waivers listed in Exhibit 1. The Project must comply with bylaws and regulations not waived.

5. Applicant shall implement and enforce a parking permit system to ensure that parking is restricted to tenants of the Project and their visitors. Parking under Building 12 (mid-rise apartment building) shall be assigned and restricted to the tenants of Building 12. Twenty-five (25) parking spaces shall be designated for visitors of tenants of the Project and distributed across the Site. "Handicapped spaces" shall be designated as required by state law.

Housing

6. All of the units in the Project shall be eligible for inclusion in the SHI as set forth in Section II.A.2.b.1 of "Guidelines G.L.c. 40B Comprehensive Permit Projects Subsidized Housing Inventory," MA Department of Housing and Community Development ("Guidelines") in perpetuity.

7. At least twenty percent (20%) of the units in the Project shall be occupied and rented by households earning fifty percent (50%) or less of AMI as defined by the U.S. Department of Housing and Urban Development pursuant to section 3 of 42 U.S.C. 1437 [the Housing Act of 1937] or, alternatively, at least twenty-five percent (25%) of the units in the Project shall be occupied and rented by households earning eighty percent (80%) or less of AMI ("Affordable Units"). The Affordable Units shall be Low or Moderate Income Housing, as defined in 760 CMR 56.02, for rental and occupancy, in perpetuity, by Income Eligible Households, as defined in 760 CMR 56.02, and shall meet the criteria outlined in Section I of the "Guidelines." In accordance with Section II.A.2.b(1) of the Guidelines and unless otherwise required by the Subsidizing Agency, as defined in 760

CMR 56.02, twenty percent (20%) of one-hundred-sixty-one (161) units shall be thirty-three (33) units and twenty-five percent (25%) shall be forty-one (41) units.

8. In accordance with the Guidelines, and to the extent allowed by law, preference for renting up to seventy percent (70%) of the Affordable Units shall be given to residents of the Town, which for this purpose is defined as anyone currently living in the Town (at the time of application to rent a unit), employees of businesses located in Town, Town employees, or households with children attending school in the Brookline School District.

9. All leases for the units in the Project shall include language stating that tenants may not use any rooms other than bedrooms for sleeping purposes. Living rooms or dining rooms may not be used as bedrooms.

10. After the Subsidizing Agency has given written notice to the Town, as set forth in 760 CMR 56.05(13), that the Subsidy, as defined in 760 CMR 56.02, will expire and prior to the expiration of the Subsidy, the Applicant shall enter into a Permanent Restriction/Regulatory Agreement with the Town (the "Town Regulatory Agreement"), which the Applicant shall record with the Norfolk County Registry of Deeds. The Town Regulatory Agreement shall require that (i) the Project shall remain a rental project in perpetuity, (ii) there shall be Affordable Units in perpetuity as set forth in Condition 7 above and (iii) all of the units in the Project shall be eligible for inclusion in the SHI in perpetuity. An outline of the terms of the Town Regulatory Agreement is attached as Exhibit 2.

11. When the Town Regulatory Agreement takes effect, the affordability requirements (which are set forth in Conditions 6, 7, and 8 above) shall be monitored and enforceable by the Town. From and after such time as the Town becomes responsible for monitoring the affordability requirements, the Applicant shall provide the Town with a reasonable fee to cover the costs of such monitoring and enforcement.

12. Subject to the requirements of the Subsidizing Agency to monitor and enforce the provisions of the Subsidizing Agency Agreements (as defined in Exhibit 2, Terms to Be Included in Replacement Town Regulatory Agreement) relative to limited dividends from the Project during the Subsidy Period (as defined in Exhibit 2, Terms to Be Included in Replacement Town Regulatory Agreement), the Applicant shall provide a copy to the Board of Selectmen of any and all certifications, statements, reports, appraisals, and notices, including but not limited to requests by Applicant to the Subsidizing Agency to revalue Applicant's equity in the Project, made by Applicant to the Subsidizing Agency (or its monitoring agent) relative to the Applicant's compliance with the limited dividend provisions in the Subsidizing Agency Agreements (e.g. all statements required to be submitted to MassDevelopment as set forth in the MassDevelopment regulatory agreement), contemporaneous with the Applicant's delivery of such documents to the Subsidizing Agency (or its monitoring agent). If, at any time during the Subsidy Period, the Subsidizing Agency determines that, in accordance with the Subsidizing Agency's limited dividend policies and the Guidelines,

there is cash available for distribution in any year in excess of twenty percent (20%) of owner's equity, subject to payment of cumulative deficiencies as provided in the Guidelines ("Excess Profits") then the Applicant shall cooperate in good faith with any effort by the Town to have the Subsidizing Agency direct the Excess Profits to the Town's affordable housing trust fund.

13. Unless otherwise required by the Subsidizing Agency, the Affordable Units shall be dispersed throughout the Project and shall have the same bedroom "ratio" or "mix" as the other units in the Project. For example, there are 57 one-bedroom units in the Project or a ratio of 57:161, 59 two-bedroom units or a ratio of 59:161, 22 three-bedroom units or a ratio of 22:161 and 23 four-bedroom units or a ratio of 23:161.

Architecture

14. The buildings in the Project and units in the buildings shall conform to the Architectural Plans. Applicant shall submit the final architectural plans for review by the Planning Director to determine whether they conform to the Architectural Plans listed in Item 4 under Procedural History and the Conditions of this Decision.

15. Air conditioning condensers and other mechanicals installed on the roof of Building 12 shall not be visible from the single-family homes abutting the Site. No structures or exterior architectural details (other than those shown on the Site Plans and Architectural Plans) shall be located within the side setback line parallel to Beverly and Russett roads on Lots W, E1, E2, and E3, extending from the property line on Lot W and to the property line on Lot E3. Notwithstanding the foregoing, air conditioning condensers may be installed and maintained within six (6) feet of any building.

Open Space and Landscaping

16. There shall be no structures or buildings or paved surfaces on the Site other than those shown on the Site Plans. Notwithstanding the foregoing, insubstantial changes to the Project, as determined by the Board in accordance with 760 CMR 56.05(11), shall be allowed.

17. Applicant shall execute and cause to be recorded, prior to the issuance of a Certificate of Occupancy, a restriction (the "Restriction") in favor of the Town, acting through its Board of Selectmen. The Restriction shall run by its terms in perpetuity and shall prohibit additional structures or buildings or paved surfaces on the Site. The language shall be subject to review and reasonable approval by Town Counsel. Applicant shall cooperate with Town Counsel to assure to the greatest extent possible that the Restriction runs in perpetuity, including, if determined necessary by Town Counsel, seeking applicable state approval for the Restriction. The Restriction shall not prohibit insubstantial changes to the Project as determined by the Board in accordance with 760

CMR 56.05(11). The Restriction shall provide that notices of extension shall be recorded as set forth in Ch. 184, Section 27.

18. Applicant shall demonstrate, to the satisfaction of the Planning Director, that (i) the structures comprising the Project and parking areas are reasonably screened from view from streets and abutting and other nearby properties, (ii) there is an adequate plan for maintaining, and replacing as necessary, the plantings on the Site, and (iii) where new plantings are proposed, there shall be at least three feet (3') of soil depth unless not feasible in which case another planting method shall be used, subject to review and approval by the Town Arborist that this "other method" will ensure that the new plantings thrive.

19. Applicant shall submit final landscaping plans to the Planning Director for review to determine (a) whether they include measures that adequately ensure that the trees and rock outcropping shown on the No Disturb Zones (sheets numbered EX110, EX111, and EX112) will be preserved, and (b) that they are consistent with the Site Plans listed in Item 4 under Procedural History.

20. All exterior lighting on the Site shall be installed and maintained so that no direct light or glare shines on any street or any nearby single-family homes and headlight glare from vehicles entering or leaving the Site or parking on the Site shall be shielded in accordance with the Zoning Bylaw. The mounting height of the Site lights shall be no higher than fifteen feet (15') as shown on Exhibit 3 entitled Site Light Mounting Height.

Traffic and Vehicular and Pedestrian Circulation

21. Prior to application for a Building Permit, Applicant shall submit final site plans to the Director of Transportation and Engineering so that he may determine whether they conform to the Site Plans listed in Item 4 under Procedural History and whether they depict or indicate, as required, that:

(a) A curbcut on the westbound side of Independence Drive (approximately two hundred fifty feet (250') west of Beverly Road) provides access to the driveway on Lot W to Independence Drive.

(b) A curbcut on the eastbound side of Independence Drive (approximately one hundred feet (100') east of Gerry Road) provides access to the driveway on Lot E1 to Independence Drive.

(c) The minimum width of the portion of Asheville Road that is in the Limit of Work area shown on Sheet EX112 and the driveways connecting to Independence Drive is twenty-three feet (23').

(d) There are STOP signs (R1-1 series) and STOP pavement line markings on the driveways connecting to Independence Drive.

(e) There are sidewalks and marked crosswalks (i) along the driveways connecting to Independence Drive, (ii) from Lot W to the Baker School, (iii) between the front entrance of Building 9 and the surface parking lot north of Building 12, (iv) from the driveway of Building 9 continuing southeast to the front entrance of Building 10, and (v) from the portion of Asheville Road that is in the Limit of Work area shown on Sheet EX112 from Building 12 to the sidewalks in Hancock Village.

(f) Where surfaces are impervious, at a minimum there is 4" of black top, 12" of gravel, and a suitable sub-base that is not mud or peat. Where porous pavement will be used, at a minimum there shall be 4" of porous asphalt pavement, 3" of choker course, ¾"-1½"of crushed stone reservoir course and 4" of PVC perforated under drain wrapped in geotextile fabric.

22. Upon written request by the Town at the time the Town seeks bids for construction of improvements to Independence Drive, the Applicant shall provide the Town with Three Hundred-Fifty Thousand Dollars ($350,000.), adjusted for inflation, which shall be held in a segregated account for use by the Town for constructing a re-designed Independence Drive (from the intersection of Beverly and Russett roads to the boundary between Brookline and Boston), the principal purpose of which is to mitigate the potential impacts of the Project on pedestrian safety. After construction of improvements to Independence Drive, any remaining balance shall be returned to Applicant.

23. Prior to issuance of a Building Permit, the Applicant shall submit a Transportation Access Plan ("TAP") for reducing the number of vehicular trips to and from the Project, to be prepared in accordance with the *Transportation Access Plan Guidelines* of the Town (§5.09.3.c.6 of the Zoning Bylaw), and which shall be subject to review by the Director of Transportation and Engineering. Mitigation measures in the TAP shall include the Applicant (i) providing employee and resident parking stickers or tags; (ii) providing fifty percent (50%) subsidies for its employees' public transit costs; (iii) providing on-site sale of MBTA passes; (iv) expanding the existing car-sharing service at Hancock Village to include the Project and including car-sharing spaces among the 292 parking spaces that the Board has approved as part of the Project; (v) providing on-site secure bicycle storage including two inverted U-racks per every four units (for Buildings 1-11) and one or more storage areas in the basement of Building 12 to accommodate at least fifty (50) bicycles; (vi) expanding the existing shuttle service to include the Project, and based on the demand identified in the post-occupancy Traffic Study referenced in Condition 26, increasing the number of trips and/or stops; and (vii) publicizing transit options.

24. As quickly as feasible and in no event later than application for a Building Permit for the Project, Applicant shall take all commercially reasonable steps to secure a curbcut onto Lot E3 to provide access and egress to and from VFW Parkway to the Site (the "VFW Curbcut"). Applicant shall include, as it and the Town deem desirable, the

Town in its meetings with the agencies having jurisdiction over the VFW Curbcut. The Town shall have the right to participate in all such meetings.

25. Upon approval of the VFW Curbcut, Applicant shall submit to the Board for its review and approval, revised site plans (including revised lease lot line and landscaping plans if necessary), which may show up to ten (10) additional parking spaces in the parking areas in Lots E2 and E3. A prerequisite to the construction and use of the ten (10) additional parking spaces is the Applicant's construction of the VFW Curbcut to the satisfaction of the Director of Transportation and Engineering.

26. After ninety (90) days have elapsed since the Town has issued Certificates of Occupancy for all buildings and the Applicant certifies that at least ninety percent (90%) of the units are occupied, the Applicant shall prepare a traffic study ("Traffic Study") for review and approval as to its scope by the Director of Transportation and Engineering and the Transportation Board, which study shall use existing traffic conditions as set forth in the Traffic Report (see Item 4 of Procedural History) as its baseline for determining the impacts of the Project and evaluating the need for traffic calming and shall propose traffic calming measures needed to mitigate the adverse impacts of the Project, if any, on the public portion of Asheville, Russett, Bonad, and Beverly roads. Prior to issuance of a Building Permit, Applicant shall deposit sixty-four thousand dollars ($64,000), adjusted for inflation, into a segregated account to be used by the Town for traffic calming purposes on those roads, any unused funds to be returned to the Applicant.

Fire safety

27. The Site Plans for Lot E2 shall be modified so that (i) the design of the driveway leading to the fire lane on Lot E2 is changed so that emergency vehicles can enter and egress the fire lane unimpeded by obstacles, and (ii) landscaping does not impede firefighter access to the lower windows of Building 12. The Applicant shall submit the final site plans to the Director of Transportation and Engineering so that he may determine whether (a) these modifications have been made and the purpose of each modification as set forth in (i) and (ii) above has been achieved, and (b) the Site circulation and the emergency access roadway system and signage conforms to the Site Plans listed in Item 4 under Procedural History.

28. Applicant shall provide emergency access and egress to and from the surface parking lot on Lot E1 to Thornton Road ("Lot E1/Thornton Road Fire Lane") and an easement in favor of the Town for such emergency access, which easement shall be subject to review and reasonable approval by Town Counsel.

29. Applicant shall install and maintain an Opticom gate, and replace, if and when necessary, such gate with a comparable gate acceptable to the Fire Chief, on the boundary line of the Site where Grassmere Road becomes Thornton Road.

30. In those areas where Applicant proposes to use grass concrete paving (at

the rear of Building 12 on Lot E2 and on the surface parking lot on Lot E1/Thornton Road Fire Lane), the following apply:

(a) Applicant's Engineer shall certify in writing the load bearing capacity of the grass concrete and demonstrate to the satisfaction of the Fire Chief that the grass concrete and any pedestrian pathways that cross areas paved with grass concrete will support the weight of emergency apparatus.

(b) The final landscaping plans shall include visual clues around the grass concrete paving that indicate where emergency responders can drive their vehicles.

(c) The areas shall be designated as Fire Lanes and restricted for use by emergency vehicles only.

(d) Applicant shall maintain the Fire Lanes to ensure they are clear of snow, leaves, debris, or other obstacles.

31. Prior to application for a Building Permit, Applicant shall certify in writing to the Fire Chief and the Building Commissioner that (a) all buildings in the Project have enhanced NFPA 13 designed sprinkler systems, (b) all buildings in the Project have direct alarm notification to the Fire Department designed in accordance with Building and Fire codes, and (c) Building 12 includes a Class I or III standpipe system.

Stormwater

32. Applicant shall submit a final stormwater management report and plans for review and approval by the Director of Transportation and Engineering to ensure that:

(a) The final stormwater management plans are consistent with the Site Plans and the Stormwater Management Report and the Conditions of this Decision. The final stormwater management report shall include a breakdown of the cost estimates for the maintenance of individual components of the stormwater management system and the manufacturer's specifications for the grass concrete paving.

(b) There will be no standing water on the low-lying areas of the Site.

(c) The detail for the Bio-Retention Basin includes material types and depths.

(d) Porous pavement on the parking lot north of Asheville Road is at least thirty feet (30') from any residential structure.

33. Applicant shall remove snow that cannot be stored on Site.

34. Where there is less than two feet (2') of cover over catch basin connections, ductile iron pipe shall be used.

35. Applicant shall take water quality samples at the intersections of the 27" and 18" drains in Independence Drive and the 27" and 42" drains in Gerry Road and at the outfall. If the results indicate cross-contamination between the sewer and the stormwater system caused by the Project or by the existing Hancock Village development, further investigation and mitigation shall be required as directed by the Commissioner of Public Works.

Water

36. Prior to application for a Building Permit, the Applicant's engineer shall demonstrate in a written certification made to the satisfaction of the Fire Chief that for domestic and fire-fighting purposes there is adequate water flow and pressure (as set forth in applicable codes) for the Project.

37. Prior to issuance of a Certificate of Occupancy, Applicant shall submit, for review and approval by the Chief of Environmental Health, a mosquito control plan which shall include seasonal treatment of all storm drains with larvicide applied by a licensed Pest Control Operator, in accordance with standards and practices applicable to the Town with respect to Town property. After each larvicide application, Applicant shall submit a written report to the Health Department of such application.

Historic Preservation; Environmental Filings

38. Contemporaneously with sending or within ten (10) days of receiving any and all correspondence with the Massachusetts Historical Commission or the Massachusetts Secretary of Energy & Environmental Affairs concerning the Project, Applicant shall provide the Board and the Brookline Preservation Commission with copies.

Infrastructure

39. The following portions of the Project shall be and shall remain forever private and the Town shall not have, now or ever, any legal responsibility for their operation, maintenance, repair or replacement:

(a) The on-site stormwater management system;
(b) Interior roadways, driveways and parking areas;
(c) Open space including landscaping and paths;
(d) Snow plowing and removal;

(e) All sewer, stormwater and water connections, lines and equipment required, from the public way to the buildings;
(f) Lighting;
(g) Trash disposal and recycling; and
(h) All site utilities including domestic water, fire protection, gas if applicable, electric, telephone, and cable system.

40. Applicant shall operate and maintain all of the foregoing in Condition 39 in good working condition and repair at all times at its sole cost.

41. Prior to issuance of a Building Permit, all water, stormwater and sewage facility designs shall be subject to review and approval by the Director of Transportation and Engineering.

42. During the construction of water, sewer and stormwater systems, the Applicant's Project Engineer shall be on-site at least weekly to inspect the installation of all such systems and, on a monthly basis, shall certify in writing to the Director of Transportation and Engineering that all aspects of such systems were properly installed in accordance with approved plans. At least forty-eight (48) hours prior to backfilling any utility, Applicant shall notify the Director of Transportation and Engineering so the Town may inspect to ensure compliance.

Pre-Building Permit Review

43. Prior to issuance of a Building Permit, the Applicant shall demonstrate to the satisfaction of the Building Commissioner that:

(a) Final site plans and architectural plans have been reviewed by the Planning Director in accordance with Conditions 1, 14, 18, and 19.

(b) The Director of Transportation and Engineering has reviewed the final site plans in accordance Conditions 21 and 27, the TAP in accordance with Condition 23, the final stormwater management plans in accordance with Condition 32, the water, stormwater and sewage facility designs in accordance with Condition 41, the erosion control plans in accordance with Condition 48 and the pavement surfaces in accordance with Condition 52 and all other items requiring review by the Director of Transportation and Engineering as listed in these Conditions.

(c) It has paid all fees required pursuant to Conditions 26, 54 and 65, and, if timely, Condition 22.

(d) It has initiated and participated in a pre-construction meeting to discuss the proposed construction schedule with its contractor and the

Town, including but not limited to the Building Commissioner, Director of Transportation and Engineering and the Fire Chief.

(e) All required local, state and federal approvals and permits have been obtained and it has obtained Final Approval from the Subsidizing Agency as provided in 760 CMR 56.05(8)(c)(2) and (3).

(f) Town Counsel has approved (i) an easement for emergency access and egress (referenced in Condition 28) and Applicant has provided evidence of recording of same, and (ii) the Restriction on further development (referenced in Condition 17) and Applicant has provided evidence of recording of same.

(g) The Building Commissioner has approved the Construction Management Plan (Condition 45).

(h) The preliminary rubbish plan has been reviewed in accordance with Condition 69.

(i) The Subsidizing Agency has granted the Subsidy as provided in 760 CMR 56.05(8)(c)(1).

Construction

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

45. For purposes of this Decision (with the exception of Condition 62 below) "Commencement of Construction" shall mean that the Applicant has begun clearing and grubbing (removal of stumps and topsoil). Prior to Commencement of Construction and subject to approval by the Building Commissioner, the Applicant shall provide a Construction Management Plan that shall include but not be limited to: designation of truck routes (the condition of pavement surfaces of such routes before and after construction to be documented); a phasing plan prepared by Applicant's contractor that includes provisions to protect the crushed stone reservoir course and the one porous asphalt pavement lot north of Asheville Road during construction; a survey of existing trees and measures to ensure tree protection during construction; limit of work areas; where construction vehicles, materials and equipment will be stored; parking hours and

locations for construction workers' vehicles; location of portable toilets; rodent and insect control plan; dust/airborne particle control; security fencing; trash areas; construction trailer locations; earthwork calculations to determine earth and rock removal; the timetable for excavation and overall earthwork operation; and the number of necessary truck trips.

46. Ledge shall be removed at least four feet (4') below the Stormtank systems. Applicant shall notify the Director of Transportation and Engineering at least forty-eight (48) hours prior to installing Stormtank systems, so that Town may inspect to ensure compliance.

47. Applicant shall make all commercially reasonable efforts to ensure that the entire construction period from Commencement of Construction to the date of issuance of the final Certificate of Occupancy shall be no more than thirty (30) months subject to causes beyond the Applicant's reasonable control. Applicant may seek an extension of the foregoing requirement pursuant to 760 CMR 56.05(11).

48. Applicant shall ensure that no erosion from the Site occurs that will cause deposition of soil or sediment upon adjacent properties or public ways. Prior to Commencement of Construction, Applicant shall provide the Director of Transportation and Engineering with plans showing the following:

(a) catch basins, with both silt sacks and hay bales;

(b) site perimeter controls and drainage structure inlet sediment protection measures;

(c) a temporary sediment basin at the proposed Bio-retention Basin at Building 4;

(d) construction drawings showing filter fabric at a temporary basin that is to be removed prior to the construction of the Bio-retention Basin;

(e) specific locations and construction details for the stabilized construction entrances;

(f) final locations of stockpile areas on erosion control plans; and

(g) construction detail for erosion controls at perimeter of stockpiles.

49. Applicant shall keep in optimum working order, through regular maintenance, any and all equipment that makes sounds.

50. During construction, Applicant shall provide the Director of Transportation and Engineering and the Building Commissioner with a written monthly

report outlining the status of the Project. The monthly reports shall detail areas of non-compliance with this Decision, if any, and actions taken to resolve these issues.

51. During construction, Applicant may post on Site no more than one (1) temporary construction and/or development sign for the Project, no greater than twenty square feet (20 sf), with the design and location subject to review and approval by the Assistant Director for Regulatory Planning.

52. Prior to Commencement of Construction, Applicant shall provide the Director of Transportation and Engineering with a report and photographs of the condition of pavement surfaces along truck routes before Construction Commencement and then again prior to issuance of a Certificate of Occupancy to ensure construction traffic does not adversely affect the pavement.

53. Prior to Commencement of Construction, Applicant shall provide a blasting/drilling plan, for review and approval by the Fire Chief and the Building Commissioner, with the assistance of the Town's geotechnical blasting consultant, that includes methods to protect buildings, residents, pedestrians, vehicles, and utilities on- and off-site and provides for coordination with utility owners. All drilling and blasting pertaining to the Project and/or the Site, shall be in accordance with federal, state and local blasting permit laws and regulations and in accordance with the conditions contained therein as well as the conditions listed in Exhibit 4 attached.

54. Prior to Commencement of Construction, Applicant shall deposit funds in a segregated account to pay for the fees charged by a geotechnical consultant to be hired by the Town to review the blasting/drilling plan and oversee blasting and drilling performed by the Applicant on the Site.

Pre-Occupancy Permit Review

55. Prior to issuance of a Certificate of Occupancy for each building or portion thereof, the Applicant shall comply with the Public Works Department's Site Plan Review Checklist and with the Building Department's Certificate of Occupancy Process. Prior to the issuance of the final Certificate of Occupancy for the Project, the Applicant's registered architect and professional engineer shall certify in writing to the Building Commissioner that the Project complies with the Site Plans and the Architectural Plans, as modified as required by this Decision (e.g. Condition 27).

General

56. The provisions of this Comprehensive Permit shall be binding upon the heirs, successors and assigns of the Applicant and the obligations shall run with the land.

57. Any reference to Town staff shall include a designee (either another staff member or a consultant) of that person.

58. If any part of this Decision is for any reason held invalid or unenforceable, such invalidity or unenforceability shall not affect the validity of any other portion of this Decision.

59. Upon execution by the members of the Board, the Clerk of the Board is directed to file this Decision with the Town Clerk and send a copy to the Applicant by certified mail, return receipt requested.

60. Any person aggrieved by this Decision may appeal pursuant to §21 of the Act.

61. Subsequent to the end of all applicable appeal periods and prior to the Commencement of Construction, the Applicant shall record this Decision in the Norfolk County Registry of Deeds and shall provide the Board and the Building Commissioner with a copy of this Decision endorsed with the applicable recording information.

62. This Comprehensive Permit shall expire if construction is not commenced within three (3) years from the date this Decision becomes final as provided in 760 CMR 56.05(12)(c), subject to the tolling provisions of 760 CMR 56.05(12)(c). For purposes of this paragraph only, *commencement of construction* is defined as the construction of the foundation of at least one of the Project's buildings. The Applicant may apply to the Board for extensions of this Comprehensive Permit in accordance with 760 CMR 56.05(12)(c).

63. If the Applicant revises any of the Plans (or other materials listed in Item 4 of Procedural History), it shall present the revised plans or other materials to the Board in accordance with 760 CMR 56.05(11).

64. This Comprehensive Permit may be transferred by the Applicant only upon compliance with the requirements of 760 CMR 56.05(12)(b).

65. Prior to making an application for a Building Permit, Applicant shall deposit twenty-eight thousand dollars ($28,000), adjusted for inflation, in a segregated account or accounts, the funds to be used by the Building Department and/or the Division of Engineering and Transportation to cover the cost of plumbing, gas and electrical inspections and engineering fees (for plan review and inspection), any balance remaining after the issuance of the final Certificate of Occupancy to be returned to Applicant.

66. All utilities shall be underground.

67. Applicant shall pay for the Town's cost of police and fire details for the Project, in accordance with the Town's standard practices.

68. All Conditions in this Decision are to be interpreted and enforced to the extent permitted by the Act and the Regulations.

69. Prior to the issuance of a Building Permit, the Applicant shall submit a preliminary rubbish/recycling plan and schedule to the Chief of Environmental Health for review and a determination of compliance with Town regulations. After ninety (90) days have elapsed since the Town has issued Certificates of Occupancy for all buildings and the Applicant certifies that at least ninety percent (90%) of the units are occupied, the Applicant shall submit a final rubbish/recycling plan and schedule to the Chief of Environmental Health for review and approval to determine that:

(a) all rubbish generated from the Project will be handled and disposed of in compliance with all applicable regulations;

(b) Applicant has provided sizes, number, and location of dumpsters, trash compactors, and recycling containers;

(c) Applicant has provided a schedule for trash and recycling pick-up demonstrating compliance with Town bylaws;

(d) dumpsters are fully screened on three sides with solid walls of a sufficient height with a solid front gate;

(e) trash compactors are enclosed; and

(f) Applicant has provided a rodent and insect control plan.

70. The Applicant has advised the Board that it does not intend to commence construction until the appeal in the lawsuit described in Paragraph 2 of the Procedural History (the "Appeal") is resolved. In the event the Applicant nonetheless does commence construction prior to resolution of the Appeal, any such construction shall be at the Applicant's sole risk, and if the result of the final disposition of the Appeal is that the PEL is rendered null and void, this Comprehensive Permit shall accordingly be rendered null and void as well, and in such case the Applicant, at its sole expense, shall restore the Project to the condition it was in prior to construction.

RECORD OF VOTE

The following members of the Board vote as follows to grant a Comprehensive Permit subject to the above-stated conditions:

BROOKLINE BOARD OF APPEALS

By: _____ Jesse Geller, Chairman

By: _____ Christopher Hussey, Member

By: _____ Jonathan Book, Member

Wherefore a Comprehensive Permit, consistent with the conditions of this Decision, is granted to the Applicant.

Filed with the Town Clerk on 2/20/15

_____

, Town Clerk

RECEIVED
TOWN OF BROOKLINE
TOWN CLERK
2015 FEB 20 A 10: 59

EXHIBIT 1
WAIVERS

The following waivers are granted to the extent they are required for the Project as shown on the Site Plans as revised by the Conditions in this Decision:

THE RESIDENCES OF SOUTH BROOKLINE
PROPOSED WAIVER LIST
January 9, 2015

Brookline Zoning Bylaws						
Bylaw Section	**Requirement**	**Applicable District(s)**	**Lot(s) Affected**	**Requested Waiver(s)**	**Details of Proposal Requiring Waiver**	**Waiver No.**
§4.04	Limitation of Area of Accessory Uses	S-7; M-0.5	W, E1, E2, E3	Waiver to allow accessory uses (parking) within front and side setback areas.	The Development will include parking within required setback areas.	A
§4.07(6) – *Table of Use Regulations* and §4.08	Multifamily Uses	S-7	W, E1, E2, E3	Waiver to allow multifamily uses within the S-7 zoning district. Special permit and local affordability requirements inapplicable.	The Development is a multifamily housing development containing 12 buildings and 161 dwelling units, of which 10 "infill" buildings and 48 dwelling units will be located in the S-7 zoning district.[1] The Comprehensive Permit, as may be granted by Zoning Board of Appeals, shall provide all local permits per M.G.L. c. 40B.	B
§4.07(22) and (55) – *Table of Use Regulations*	Residential Parking Areas	S-7; M-0.5	W, E1, E2, E3	Waivers to allow residential parking areas with more than three spaces as a secondary use for storage of vehicles of residents on other lots in excess of 1,400' distant.	Except for the parking garage, which will be available to only residents of Building 12, the Development's parking spaces will be available to all of its residents, regardless of whether such residents live on the same lot, and regardless of the distance between the relevant parking space and lot.	C
§5.03	Spacing of Residential Uses on the Same Lot	S-7	E3	Waiver to allow construction of two or more main residential buildings without providing front, side, and rear yards between each building.	As shown on the Waiver Plan, in one location on the Site, Building 9 will be located approximately 28' from Building 10, within the required front yard of Building 10.	D
§5.04(1)	Residential Building on Rear of a Lot	S-7	E3	Waiver to allow residential buildings located on the rear of the lots to have less than an 80' rear yard.	As shown on the Waiver Plan, in one location on the Site, Building 10 will be located approximately 28' from Building 9, within the required rear yard of Building 9.	E
§5.09	Design Review	S-7; M-0.5	W, E1, E2, E3	Design Review requirements not applicable under M.G.L. c. 40B.	Comprehensive Permit, as may be granted by Zoning Board of Appeals, shall provide all local permits per M.G.L. c. 40B.	F

[1] Building 3 (containing four units) will technically be located within the portion of Lot W located within the M-0.5; however, except as expressly noted herein, for purposes of evaluating zoning compliance, the more restrictive use and dimensional regulations applicable in the S-7 have been applied to Building 3.

§5.10, §5.12, and Table 5.01	Minimum Lot Size, Minimum Lot Area Per Dwelling Unit	M-0.5	E2, W	Waiver from minimum lot size of 3,000 sf for first dwelling unit and 2,000 sf for each additional dwelling unit.	On Lot E2, the Development will have a lot size of approximately 89,266 sf within the M-0.5 District, allowing 44 total units. On Lot W, the Development will have a lot size of approximately 8,270 sf within the M-0.5 District, allowing 3.64 total units. Within the M-0.5 District, the Development will include approximately 109 on Lot E2 and 4 units on Lot W. The entire development will have a lot size of approximately 379,933 sf, allowing a total of 189 units (161 units are proposed).	G
§5.20 and Table 5.01	Maximum FAR	S-7 M-0.5	E1, E2, W	Waiver from maximum ratios of gross floor area to lot area (0.5 in M-0.5 district and 0.35 in the S-7 District).	On Lot E1, the Development will have a FAR of approximately 0.51. On Lot E2, within the M-0.5 District, the Development will have an FAR of approximately 1.55. On Lot W, within the M-0.5 District, the Development will have an FAR of approximately 0.88. The entire Development will have an FAR of approximately 0.60.	H
§5.30-5.32 and Table 5.01	Maximum Height of Buildings	S-7 M-0.5	W, E1, E2	Waiver from maximum building height limitations, as calculated pursuant to Sections 5.30-5.32.[2]	On Lot W, Building 1 will have a height of approximately 206.83', which is approximately 6.2' over the allowed height of 200.63'. Building 2 will have a height of approximately 203.83', which is approximately 3.2' over the allowed height of 200.63'. Building 3 will have a height of approximately 199.83', which is approximately 0.57' over the allowed height of 199.26'. On Lot E1, Building 5 will have a height of approximately 199.33', which is approximately 0.93' over the allowed height of 198.40'. Building 6 will have a height of approximately 206.33', which is approximately 2.13' over the allowed height of 204.20'. Building 7 will have a height of approximately 211.13', which is approximately 7.13' over the allowed height of 204.20'. On Lot E2,	I

[2] See separate "Building Height Calculation Plan" prepared by Stantec dated January 9, 2015. All height measurements provided in this table represent the building's elevation above the Brookline Town Base Elevation.

					Building 12 will have a height of approximately 237.44', which is approximately 21.66' over the allowed height of 215.78'.	
§5.50, §5.52 and Table 5.01	Minimum Front Yard[3]	S-7; M-0.5	W, E1, E2, E3	Waiver from 30'minimum front yard requirement.	Minimum 19'6" setback provided for Building 4. Minimum 22' setback provided for Building 5. Minimum 8' setback provided for Building 12. Minimum 3' setback provided for Building 9. Retaining walls within front yards of Buildings 9 and 12 may exceed 7' in height.	J
§5.55	Front Yard for Rear Lot	S-7	W	Waiver to allow less than required front yard depth for building located on rear lot.	Building 3 will be set back approximately 1' from lot line parallel to Independence Drive.	K
§5.60, §5.62, 5.63, and Table 5.01	Minimum Side Yard[3]	M-0.5	E2	Waiver from minimum side yard requirement of 10 + L/10 (where "L" is the dimension of that portion of the wall required to be set back from the side lot line), and to allow light poles in excess of 15' in height within side yard.	Minimum 10' setback provided for Building 12. Light poles will be approximately 17' in height.	L
		S-7	W, E1, E2, E3	Waiver from minimum side yard requirement of 20' and to allow retaining walls in excess of 7' in height within required side setback areas, and to allow light poles in excess of 15' in height within side yard.	Minimum 2'4" setback provided for Building 1. Minimum 1' setback provided for Building 3. Minimum 4' provided for Building 7. Minimum 5' provided for Building 8. Minimum 6' setback provided for Building 9. Minimum 7'3" setback provided for Building 10. Minimum 10' setback provided for Building 11. Retaining walls within side yards of Buildings 9 and 12 may exceed 7' in height. Light poles will be approximately 17' in height.	M
§5.70, §5.72, §5.74 and Table 5.01	Minimum Rear Yard[3]	M-0.5	E2	Waiver from 30' minimum rear yard requirement, and to allow light poles in excess of 15' in height within rear yard.	Minimum 19' setback provided for Building 12. Light poles will be approximately 17' in height.	N
		S-7	E1, E2,	Waiver from 40' minimum rear	Minimum 1' setback provided for Building 3.	O

[3] Section 5.40 of the Zoning Bylaw allows for a less restrictive interpretation of minimum yard requirements where a structure is not parallel to the lot line; for the sake of clarity, all minimum yard requirements have been applied as if the buildings were parallel to lot lines.

			E3, W	yard requirement and allow light poles in excess of 15' in height within rear yard.	Minimum 1' provided for Building 7. Minimum 1' provided for Building 8. Minimum 14' setback provided for Building 11. Retaining walls within rear yards of Building 12 may exceed 7' in height. Light poles will be approximately 17' in height.	
§5.91 and Table 5.01	Minimum Usable Open Space	M-0.5	W, E2	Waiver from the requirement that at least 30% of the gross floor area on each lot will be usable open space.	On Lot W, within the M-0.5 District, 0 sf of Usable Open Space will be provided. On Lot E2, within the M-0.5 District, 14,361 sf of Usable Open Space will be provided, which is approximately 10% of the gross floor area of the structure on Lot E2 in the M-0.5 District.	P
§6.02, Paragraph 1, Table of Off-Street Parking Requirements	Number of Parking Spaces per Dwelling Unit	M-0.5	E2	Waiver from the requirement to provide 2.0 spaces per 1 and 2 bedroom unit and 2.3 per 3-bedroom units.	On Lot E2 in the M-0.5 District, the Development will provide 1.26 parking spaces per 1 or 2-bedroom dwelling unit.	Q
§6.04.5.c.4	Parking area setback	S-7	W, E1, E2, E3	Waiver from the requirement to setback parking spaces from the front lot line a distance equal to the greater of the required building setback (30') or the average of the setbacks of buildings on adjacent lots on either side.	On all lots within the S-7, parking areas will contain more than six spaces, but will be set back less than 30' from front, side, and rear lot lines.	R
§7.01.1, §7.02.1	Signage	S-7; M-0.5	W, E1, E2, E3	Waiver from the limitations on the number, size, and types of permanent and construction signs allowed in the S-7.	The Project shall have identification signs measuring approximately 15 sf in area in the locations shown on Sheets L301, L302, and L303 of the Plans. During construction, each lot will have a temporary construction sign of approximately 20 square feet in area.	S

Brookline General Bylaws					
Bylaw Section	**Requirement**	**Lot(s) Affected**	**Requested Waiver or Waiver**	**Details of Proposal Requiring Waiver**	**Waiver No.**
§5.10.3.d	Neighborhood Conservation District	W, E1, E2, E3	Waiver from conservation district permit requirements and applicable design standards and restrictions.	Comprehensive Permit as may be granted by Zoning Board of Appeals shall provide all local permits per MGL c. 40B.	T

Exhibit 2

TERMS TO BE INCLUDED IN REPLACEMENT TOWN REGULATORY AGREEMENT

1. Subsidizing Agency Regulatory Agreement. Construction and/or permanent financing for the Project will be obtained from the Massachusetts Development Finance Agency or another qualified subsidizing agency (the "Subsidizing Agency"). As a component of such financing, Developer will be entering into a Regulatory Agreement and other agreements with respect to the Project which, inter alia, will set forth certain restrictions as to low or moderate income housing to be provided as part of the Project as the same may be hereafter extended or amended (the "Subsidizing Agency Agreements").

2. Regulatory Agreements. It is the intention of the Comprehensive Permit that the Project would, in perpetuity and without interruption, be subject to a suitable regulatory agreement consistent with the Comprehensive Permit governing the low or moderate income housing (the "Affordable Units") in the Project. For so long as the Subsidizing Agency Agreements are in effect, the Subsidizing Agency Agreements satisfy in full the requirements set forth in Conditions 10 and 11 for a regulatory agreement. From and immediately after the expiration or termination of the Subsidizing Agency Agreements, an Agreement shall be entered containing the terms of this exhibit to satisfy the requirements of Conditions 10 and 11 of the Comprehensive Permit (the "Town Regulatory Agreement.")

3. Affordability Requirements. Pursuant to the terms of Condition 7 of the Comprehensive Permit, the Developer will restrict certain units in the Project (the "Affordable Units") as follows: either (i) twenty percent (20%) of the units in the Project to be occupied and rented by households earning not more than fifty percent (50%) of the median income for the Boston area, adjusted for household size ("AMI"), or twenty five (25%) of the units in the Project to be occupied and rented by households earning not more than eighty percent (80%) of the AMI. During the Subsidy Period (as defined below), rents for the Affordable Units shall be no greater than those permitted by the Subsidizing Agency Agreements, all in accordance with the applicable rules, regulations and guidelines of the Subsidizing Agency. Without derogating from the provisions of Paragraph 5 below relative to the exclusive jurisdiction of the Subsidizing Agency to monitor and enforce the affordability requirements, during the period (hereinafter, the "Subsidy Period") that the Subsidizing Agency Agreements are in force and effect, the Developer shall provide a copy to the Town, care of the Board of Selectmen, of any statements, reports, notices or certifications made by the Developer to the Subsidizing Agency (or its monitoring agent) relative to the Developer's compliance with the affordability requirements in the Subsidizing Agency Agreements contemporaneously with the Developer's delivery of the documents to the Subsidizing Agency.

From and after the Subsidy Period, the Affordable Units shall continue to be restricted as set forth in the preceding paragraph in accordance with the applicable rules, regulations and guidelines of the Subsidizing Agency (or its successor agency) that existed prior to the expiration or termination of the Subsidizing Agency Agreements, all as though the Subsidizing Agency Agreements were still in force and effect. To the extent that the Subsidizing Agency (or its successor agency) has ceased to promulgate such applicable rules, regulations and policies, then the Affordable Units shall be determined based on substitute regulations of a federal or state

governmental agency providing subsidies for low or moderate income housing as shall be reasonably determined by the Developer and the Town, in order to ensure the continued availability of the Affordable Units for the purposes set forth herein and in the Comprehensive Permit for the entire term of the Agreement. Further, if after the Subsidy Period, M.G.L. c. 40B (or its successor statute) still provides a mandate for municipalities to provide low or moderate income housing, then the Developer agrees to continue to operate and manage the Project as would permit the Project to be credited toward the Town's Subsidized Housing Inventory for purposes of Chapter 40B.

The Board of Selectmen shall establish reasonable rules and protocols to govern the monitoring of the affordability requirements, including any reporting and notice obligations, and may designate an entity to serve as its monitoring agent to monitor the Developer's compliance with the affordability requirements. The selection of tenants in the event of unit vacancies shall be governed by the applicable rules of the Subsidizing Agency just prior to the expiration or termination of the Subsidizing Agency Agreements, and in the absence of such rules, by the rules of another subsidizing agency that are reasonably acceptable to the Town and the Developer.

4. Local Preference. In accordance with the terms of the Comprehensive Permit, to the maximum extent permitted by law, Brookline residents shall have first preference for the rental of 70% of the Affordable Units, all in accordance with the terms of Condition 8 of the Comprehensive Permit.

5. Monitoring and Enforcement. During the Subsidy Period, the Subsidizing Agency shall have exclusive authority and jurisdiction for all monitoring, oversight and enforcement functions with respect to the Affordable Units, including without limitation, provision of the Affordable Units, monitoring eligibility for tenancy, calculation of affordable rentals and all matters related to limited dividend restrictions. Notwithstanding the foregoing, throughout the term of this Agreement (including, without limitation, during the Subsidy Period), the Town shall have the right to monitor the Developer's compliance with the local preference requirement set forth in Paragraph 4 above, and the Developer shall reasonably cooperate with the Town in its tenant selection processes to ensure that the local preference set forth herein is complied with, to the maximum extent permitted by law and the requirements of the Subsidizing Agency.

From and after the Subsidy Period, the Town shall have the right to monitor the Developer's compliance with the terms of Paragraphs 3 and 4 above. The Town may retain a monitoring agent (the "Town Monitoring Agent") the reasonable fees for which shall be paid by the Developer (as provided in Condition 11 of the Comprehensive Permit), to monitor the Developer's compliance with the requirements of the Town Regulatory Agreement. The Developer agrees to submit to the Town Monitoring Agent all certifications in the same form, and with the same level of detail, as were made by the Developer to the Subsidizing Agency during the Subsidy Period relative to its compliance with the provisions of Paragraph 3 above.

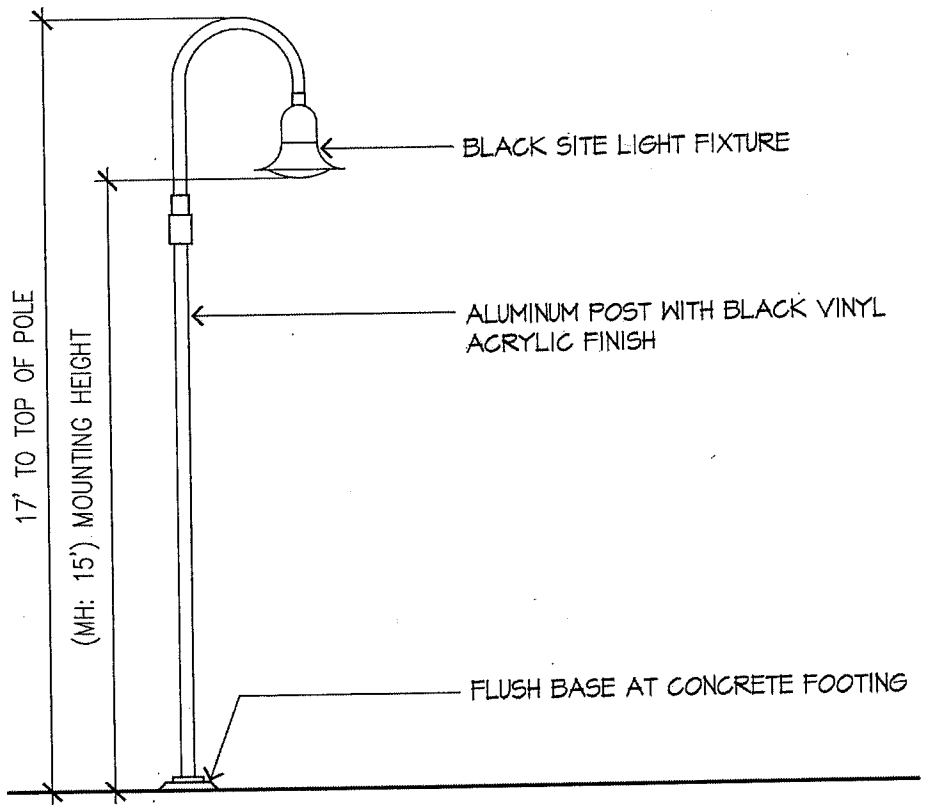
6. Term of Town Regulatory Agreement. The Town Regulatory Agreement and all of the covenants, agreements and restrictions contained therein shall be deemed to be an affordable housing restriction as that term is defined in G.L. c. 184, § 31 and as that term is used in G.L. c.184, § 26, 31, 32 and 33. The Town Regulatory Agreement shall be made for the benefit of the

Town, and the Town shall be deemed to be the holder of the affordable housing restriction created thereby. The Town has determined that the acquiring of such affordable housing restriction is in the public interest. The term the Town Regulatory Agreement, the rental restrictions, and other requirements provided therein shall remain for so long as the Project exists.

The Town Regulatory Agreement and the covenants, agreements and restrictions contained herein shall be covenants running with the land, encumbering the Development for the term thereof, and shall be (i) binding upon Developer's successors in title, (ii) not merely personal covenants of Developer, and (iii) binding on Developer, its successors and assigns for the term thereof, and shall inure to the benefit of the parties thereto and their respective successors and assigns. Any and all requirements of the laws of the Commonwealth of Massachusetts to be satisfied in order for the provisions of the Town Regulatory Agreement to constitute restrictions and covenants running with the land shall be deemed to be satisfied in full and that any requirements of privileges of estate are shall also be deemed to be satisfied in full. Promptly upon the execution thereof, Developer shall cause the Town Regulatory to be recorded in the Norfolk Registry of Deeds (or, if the Property consists of registered land, to be filed in the Norfolk Registry District of the Land Court). Developer shall pay all fees and charges incurred in connection with such recording or filing.

7. Reporting on Limited Dividend. Without derogating from the provisions of Section 5 above relative to the exclusive jurisdiction of the Subsidizing Agency to monitor and enforce the provisions of the Subsidizing Agency Agreements relative to limited dividends from the Project during the Subsidy Period, the Developer shall provide a copy to the Board of Selectmen of any and all certifications, statements, reports, appraisals, and notices, including but not limited to requests by Developer to the Subsidizing Agency to revalue Developer's equity in the Project, made by Developer to the Subsidizing Agency (or its monitoring agent) relative to the Developer's compliance with the limited dividend provisions in the Subsidizing Agency Agreements (e.g. all statements required to be submitted to MassDevelopment in accordance with the MassDevelopment regulatory agreement), contemporaneous with the Developer's delivery of such documents to the Subsidizing Agency (or its monitoring agent.) If, at any time during the Subsidy Period, the Subsidizing Agency determines that in accordance with the Subsidizing Agency's limited dividend policies and the Guidelines there is cash available for distribution in any year in excess of 20% of owner's equity, subject to payment of cumulative deficiencies as provided in the Guidelines ("Excess Profits") then the Developer shall cooperate in good faith with any effort by the Town to have the Subsidizing Agency direct the Excess Profits to the Town's affordable housing trust fund.

Residences of South Brookline
Site Light



SITE LIGHT MOUNTING HEIGHT

Stantec Presentation
ZBA Public Hearing
Additional Requested Waivers
January 12, 2015

Exhibit 3 Site Light Mounting Height

Exhibit 4
DRILLING AND BLASTING

I. **Drilling and Blasting**

a.) The Town's geotechnical blasting consultant (the "Consultant") shall review the qualifications of the Applicant's blasting contractor and Applicant's proposed blasting plan, check the calibration of the seismograph monitors, approve the location and installation of the seismograph monitors, provide ongoing review of blast vibration data, and shall consult with the Brookline Fire Department on an as-needed basis throughout the blasting period.

b.) The Applicant shall hire its blasting contractor after approval of its qualifications by the Consultant and the Brookline Fire Department.

c.) Applicant shall conduct a pre-blast survey done in accordance with State law for the interior and exterior of all structures for properties that abut the site or are within three hundred feet (300') of anticipated blasting areas; except in the area of Building 12, where approximately thirty-foot rock cuts are anticipated. Pre-Blast surveys shall be done for all structures within five hundred feet (500') of Building 12.

d.) The Applicant's blasting contractor shall carry a minimum of five million dollars ($5,000,000.) in comprehensive liability insurance for damage to structures caused by underground explosion and collapse hazard, which coverage shall be in force for the duration of the blasting at the Site and shall be documented by Applicant.

e.) The State blasting limits shall be observed, specifically peak particle velocity (PPV) of ground vibration at the nearest residences shall be kept within the USBM RI 8507, Appendix B Limits, which are incorporated in Board of Fire Prevention Regulations 527 CMR 13.09 (9) (b), Option 2, Figure (a).

f.) The State blasting limits shall be observed, specifically airblast overpressure at the nearest residences shall be kept within 133 dB Peak (0.013 psi). This will minimize the possibility of window damage and also minimize annoyance due to rattling of windows and walls.

g.) Not less than seventy-two (72) hours prior to the commencement of any blasting, Applicant shall deliver by hand written notification to all properties that were entitled to a pre-blast survey under Paragraph c (above). Such notification shall state when the blasting period shall begin and shall include an explanation of the warning procedures for blasting including soundings. Applicant shall send another letter notifying the same parties that the blasting has been completed.

h.) Any necessary closures of adjacent streets shall be kept to a minimum and shall be coordinated with the Police Department, Fire Department, and Engineering Department.

II. Additional Blasting Impact Mitigation Measures

In order to help minimize blasting impacts on adjacent residences, the following additional controls shall be implemented:

a.) A detailed Blast Plan shall be provided by Applicant's Blasting Contractor to the Fire Department prior to blasting at the Site, detailing the planned procedures to be used at the Site limits closest to the nearest residences, and also detailing procedures to be used at the deepest rock cut areas in the area of the underground parking garage. The plan shall also provide details of a test blast program, consisting of a least three (3) small blasts, to be used to assess the planned procedures and adjust the scaled distance relationships at the site. The Blast Plan shall also contain a Blast Site Security Plan showing the locations of sentries to be provided prior to each blast round to keep unauthorized personnel from entering the blast area, and the means of communication from the blaster to the sentry to ensure the area is clear prior to detonation.

b.) Blast vibration monitoring shall be performed and reported for each round by a qualified firm under contract to the Applicant or Applicant's Blasting Contractor, at a minimum of five (5) locations around the blast area. Monitoring reports shall be kept on file at the Site for review by the Fire Department and the Town's Blasting Contractor, and the Fire Department and the Town's Blasting Contractor shall be notified immediately if any vibrations exceed the regulatory limits.

c.) Drilling of blast holes and detonation of blast rounds shall be limited to between the hours of 9:00 am to 4:00 pm, Monday through Friday, to minimize disturbance to the residents near the site.

d.) A system of warning signals shall be used by the Applicant's Blasting Contractor to warn personnel at the site and nearby residents prior to each blast. The warning signals shall be audible at least five hundred feet (500') from the blasting area.

e.) The following controls shall be in place to reduce the potential for flyrock:

i) Blasting mats shall be used to fully cover the blast area for every blast.

ii) Drillers logs shall be kept for all blast holes drilled, documenting open joints, seams and other anomalies; and the logs shall be reviewed by the blaster prior to each blast.

iii) Ammonium Nitrate Fuel Oil (ANFO) shall not be used on the Project and/or the Site.

iv) A videotape shall be taken of each blast round detonated so that small problems can be detected and corrected before they become big problems.

f.) Noise from the drilling operations shall be minimized through the use of appropriate mufflers and the use of water or other fluid to control dust at its source. Noise levels at the

Site shall comply with the Town's Noise Bylaws. In addition, noise levels from rock drills at the nearest affected residential property shall be kept to 86 dBA. Noise levels from various noise-producing drilling and other equipment shall be periodically measured using Type I or II A-weighted sound level meter. Records of readings, if they exceed any noise specification, will be reported to appropriate Town departments, along with steps being taken to reduce the noise levels.

g.) Dust: Rock crushing and material mixing shall not be allowed at the Site in order to reduce potential dust. The Contractor shall take appropriate steps to minimize dust generation during drilling of blast holes and other excavation and construction operations including, but not limited to: wetting down materials when appropriate, and installing dust collectors on all drill rigs, and stone mats as appropriate; and shall require covers to be placed over any open trucks transporting debris or fill to and from the property. Dust levels at the property limits will be set to a maximum level of 150 micrograms per cubic meter of air (PM10, breathable particulate matter), based on National Ambient Air Quality Standards set by the Environmental Protection Agency (EPA). Levels will be measured and recorded continuously during construction at a minimum of five (5) locations at the property line near the closest residences to construction activities, and dust producing construction activities will be stopped and then modified if any exceedances are recorded. The Brookline Public Health Department will be notified in the event of any exceedances, and told of steps to be taken to reduce dust levels to below the safe levels.

h.) At the underground parking garage and at other areas where permanent rock cut slopes are over ten (10) feet high, blasting procedures shall utilize perimeter control procedures: presplitting, cushion blasting (or trim blasting) or line drilling, to maintain a stable final slope.

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