

DECISION ON CHAPTER 40B COMPREHENSIVE PERMIT APPLICATION  
PUDDINGSTONE AT CHESTNUT HILL (265-299 GERRY RD.) – PUDDINGSTONE AT  
CHESTNUT HILL, LLC, BROOKLINE, MASSACHUSETTS  
BOARD OF APPEALS CASE NO. \_\_\_\_\_

Date: \_\_\_\_\_, 2018

PROCEDURAL HISTORY

1. On April 6, 2016, Massachusetts Development Finance Agency (“MassDevelopment”) issued a Project Eligibility Letter (“PEL”) for the Original Project (defined below).
2. On April 11, 2016, Puddingstone at Chestnut Hill, LLC (the “Applicant”), applied for a Comprehensive Permit pursuant to G.L. Ch. 40B, Sections 20-23 (the “Act”), to construct two hundred twenty-six (226) units of rental housing and three hundred fifty (350) parking spaces (the “Original Project”) on approximately 5.44 acres (the “Site” or shown on plans dated April 7, 2016...) in Hancock Village, a residential community of townhomes and apartments in [\_\_#\_\_] buildings comprising a total of [\_\_#\_\_] rental housing units located in the municipalities of Brookline and Boston (“Hancock Village”).
3. The materials submitted by the Applicant in its application and during the public hearing include:

Comprehensive Permit Application (the “Application”)

Comprehensive Permit Plans for Puddingstone at Chestnut Hill, Brookline, MA dated April 7, 2016, revised to October 5, 2018, prepared by Stantec Planning and Landscape Architecture, PC (“Stantec”)

**Sheet Numbers and Titles**

**Site Plans**

- L-0000 – Existing Conditions Plan
- L-0100 – Lease Lot Plan
- L-0200 – Overall Site Plan
- L-0300 – Zoning and Waiver Plan
- L-0301 – Height Calculation Plan
- L-0400 – Erosion Control Plan
- L-0500 – Layout and Materials Plan
- L-0600 – Grading Plan
- L-0700 – Utility Plan
- L-0701 – Basin Profile 1
- L-0702 – Basin Profile 2
- L-0800 – Planting Plan
- L-0900 – Lighting Plan

L-1000 – Site Details 1  
L-1001 – Site Details 2  
L-1002 – Site Details 3  
L-1003 – Site Details 4  
L-1004 – Site Details 5  
L-1100 – Site Sections

[“Site Plans”]

**Architectural Plans**

A-1 – Apartment Building Elevations  
A-2 – Apartment Building Schematic Floor Plans  
A-3 – Typical Apartment Floor Plans  
A-4 – Apartment Building Section  
A-5 – Infill Building Elevations  
A-6 – Infill Buildings Floor Plans  
A-7 – Infill Buildings Section

[“Architectural Plans”]

Stormwater Report prepared by Stantec dated April 7, 2016, revised July 5, 2018  
 (“Stormwater Management Report”)

Technical Memorandum-Traffic Impact Assessment prepared by MDM Transportation  
 Consultants, Inc. (“MDM”), dated March 10, 2016, revised March 27, 2018 (“Traffic  
 Report”)

Plan entitled, “Conceptual Roadway Improvements, Independence Drive, Brookline,  
 Massachusetts” prepared by MDM dated April 29, 2014 (the “Conceptual Roadway  
 Improvements Plan”).

Plan entitled “Puddingstone at Chestnut Hill Alternative Site Plan” prepared by Stantec  
 dated October 5, 2018, a copy of which is attached hereto as Exhibit 4 (the “Alternative  
 Site Plan”)

Plan entitled “Puddingstone at Chestnut Hill Playground Location Plan” prepared by  
 Stantec dated October 5, 2018, a copy of which is attached hereto as Exhibit 5.1 (the  
 “Playground Location Plan”)

Plan entitled “Puddingstone at Chestnut Hill Alternative Playground Location” prepared  
 by Stantec dated October 5, 2018, a copy of which is attached hereto as Exhibit 5.2 (the  
 “Alternative Playground Location Plan”)

4. The Brookline Board of Appeals (the “Board”), with the consent of the Applicant,  
 opened a duly advertised public hearing on May 9, 2016. The Board continued the  
 hearing and heard and/or deliberated on testimony on June 6, 2016. After the continued



1. According to the DHCD Subsidized Housing Inventory (“SHI”), as defined in 760 CMR 56.02, as of April 11, 2016, [eight and six-tenths of one percent (8.6%)] of the Town’s total housing stock constituted SHI Eligible Housing as defined in 760 CMR 56.02.
2. The Original Project proposal involved a total of 226 rental units located in a new six-story rental apartment building containing 186 units and three new 2½-story infill buildings containing twelve (12) new apartment units, as well as the renovation of twenty-eight (28) apartments located in three existing 2-story buildings. The Original Project proposed a total of three hundred fifty (350) parking spaces, including 67 surface spaces and 283 spaces in a two-level, below-grade garage.
3. 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 proposed plans were revised (i) to eliminate the renovation of twenty-eight (28) existing apartments, (ii) to demolish three existing apartment buildings in Hancock Village, two in the Town and one in the City of Boston, containing a total of twenty-two units, fourteen of which are in the Town, and (iii) instead to construct a total of 230 rental units, 218 in a single six-story building (the “Sherman Building”) and twelve (12) new apartment units in three new 2½-story infill buildings (the “Infill Buildings”). The bedroom mix is as follows: twelve (12) four-bedroom units, twenty-four (24) three-bedroom units, one hundred forty (140) two-bedroom units and fifty-four (54) one-bedroom units (the “Project”). The Project also includes 422 parking spaces of which 352 will be located in a substantially below-grade garage (the “garaged” spaces).
4. The Project will be serviced by Town water and sewer.
5. 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.
6. The Site is located in the M-0.5 Zoning District.
7. The Site is a part of Hancock Village.
8. The Project includes a single lot as defined in Article II, Section 2.12.5 of the Town of Brookline Zoning Bylaw (the “Zoning Bylaw”).
9. The Town has an ongoing, active program of: (i) promoting low- and moderate-income housing, including inclusionary zoning; (ii) financial and technical assistance to non- and for-profit property owners and developers; (iii) technical and financial assistance to those seeking to purchase, rent and rehabilitate affordable homes; and (iv) 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”.

10. 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.
11. 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.
12. The Board acknowledges that the Applicant is pursuing obtaining all necessary approvals for an alternative project to be developed in lieu of the Infill Buildings on a different site within Hancock Village, such alternative project to consist of a new apartment building containing thirty-six (36) dwelling units (48 total bedrooms), a new “recycle center”, and an approximately 24,500 square foot community center (the “Alternative Project”), all as shown on the Alternative Site Plan.

## **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 up to two hundred thirty (230) units of rental housing within Hancock Village, including a playground, with associated infrastructure improvements shown on the Site Plans, the Architectural Plans, and the Playground Location Plan, 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 3 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 3 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 of Appeals (the “Board”) per Condition 4 below, local zoning and

other bylaws and regulations. The Project shall include demolition of three apartment buildings in Hancock Village, two in the Town and one in Boston.

2. The Project shall include no more than two hundred thirty (230) units of rental housing in no more than four (4) buildings, which buildings are shown on the Site Plans and the Architectural Plans, and no more than 422 parking spaces, of which up to 352 will be garaged spaces.
3. The total maximum number of bedrooms shall be four hundred fifty-four (454) and the maximum number of units and the bedrooms per unit, shall be as listed in the following table:

Number of Units	Number of Bedrooms
54	One
140	Two
24	Three
12	Four

4. With respect to the Applicant’s Request for Waivers from local bylaws and regulations dated October 5, 2018, the Board approves those waivers listed on Exhibit 1. The Project must comply with all applicable bylaws and regulations not waived.

## HOUSING

5. All of the units in the Project shall be eligible for inclusion in the Subsidized Housing Inventory (“SHI”) as set forth in Section II.A.2.b(1) of the “Guidelines G.L. c. 40B Comprehensive Permit Projects Subsidized Housing Inventory,” MA Department of Housing and Community Development (as in effect as of the date hereof, the “Guidelines”) in perpetuity.
6. At least twenty percent (20%) of the units (“Affordable Units”) in the Project shall be occupied and rented by households earning fifty percent (50%) or less of the Area Median Income (“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. 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 ILA.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 two hundred thirty (230) units shall be forty-six (46) units and twenty-five percent (25%) shall be fifty-eight (58) units.
7. 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 of Brookline (“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 Public Schools of the Brookline School District.

8. 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.
9. 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 (“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 6 above; and (iii) 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 the Guidelines, in perpetuity. An outline of the terms of the Town Regulatory Agreement is attached as Exhibit 2.
10. When the Town Regulatory Agreement takes effect, the affordability requirements (which are set forth in Conditions 5, 6, and 7 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 annual fee to cover the costs of such monitoring and enforcement.
11. 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 Select Board of any and all certifications, statements, reports, appraisals, and notices, including but not limited to requests by the Applicant to the Subsidizing Agency to revalue the Applicant’s equity in the Project, made by the 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 the Massachusetts Development Finance Agency (“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.

12. 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 54 one-bedroom units in the Project or a ratio of 54:230, 140 two-bedroom units or a ratio of 140:230, 24 three-bedroom units or a ratio of 42:230 and 12 four-bedroom units or a ratio of 12:230. As a further example, if the Alternative Plan is constructed, thereby eliminating the 12 four-bedroom units, there are 54 one-bedroom units in the Project or a ratio of 54:218, 140 two bedroom units or a ratio of 140:218, and 24 three bedroom units or a ratio of 24:218.

## ARCHITECTURE

13. The buildings in the Project and units in the buildings shall conform to the Architectural Plans. The 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 3 under Procedural History and the Conditions of this Decision.

## OPEN SPACE AND LANDSCAPING

14. 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.
15. The 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 Select Board. 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 Council. The Applicant shall cooperate with Town Council to assure to the greatest extent possible that the Restriction runs in perpetuity, including, if determined necessary by Town Council, 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 G.L. c. 184, Section 27.
16. The Applicant shall demonstrate, to the satisfaction of the Planning Director, that (i) there is an adequate plan for maintaining, and replacing as necessary, the plantings on the Site, and (ii) 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.
17. The Applicant shall submit final landscaping plans to the Planning Director for review to determine that they are consistent with the Site Plans listed in Item 3 under Procedural History.

18. All exterior lighting on the Site shall be installed and maintained so that no direct light or glare shines on any public 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.

#### TRAFFIC AND VEHICULAR AND PEDESTRIAN CIRCULATION

19. Prior to application for a Building Permit, the Applicant shall provide the Town with Three Hundred Fifty Thousand Dollars (\$350,000.00) (the "Roadway Contribution"), which shall be held in a segregated, interest-bearing account (the "Roadway Account") to be used by the Town for construction of roadway improvements (the "Roadway Improvements") in and along Independence Drive, substantially as shown on the Conceptual Roadway Improvements Plan. In addition, the Applicant shall provide the Town with Five Thousand Dollars (\$5,000.00) (the "Signal Contribution" and, together with the Road Contribution, the "Roadway Contributions"), which shall be held in the Roadway Account and used for underground conduits and other improvements to be installed along with the Roadway Improvements as reasonably necessary to facilitate the installation of the Traffic Signal (defined below in Condition 21), if and as required pursuant to Condition 21 below. Notwithstanding the foregoing or anything herein to the contrary, if, at any time, the applicant under a separate decision (the "ROSB Decision") issued by the Board on February 12, 2015 (Case No. 2013-0094), with respect to The Residences of South Brookline (the "ROSB Project") provides the Town with funds for the Roadway Improvements as required under Condition 22 of the ROSB Decision, the Applicant hereunder shall be fully discharged of any and all obligations related to the Roadway Contributions, and the Applicant's obligations with respect to the Roadway Contributions set forth in this Condition 19 shall be deemed satisfied in full. Without limiting the foregoing, if and to the extent funds are provided to the Town pursuant to Condition 22 of the ROSB Decision after the Applicant has provided the Roadway Contribution, the Town shall promptly return to the Applicant, or reimburse the Applicant in the amount of, the Roadway Contributions (including interest thereon, if any). After construction of the Roadway Improvements, any remaining balance in the Roadway Account shall be returned to the Applicant.
20. 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 Engineering and Transportation. 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 car-sharing spaces among the 422 parking spaces that the Board has approved as part of the Project, but only if and to the extent warranted by demand for such services and spaces; (v) providing on-site secure bicycle storage at each of the four new buildings, including two inverted U-racks per every four units for each

townhouse and one or more storage areas in the basement of the Sherman Building to accommodate at least fifty (50) bicycles; (vi) expanding the existing shuttle service at Hancock Village to include the Project, and based on the demand identified in the post-occupancy Traffic Study referenced in Condition 21 increasing the number of trips and/or stops; and (vii) publicizing transit options.

21. 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 monitor traffic and prepare a traffic study (the "Traffic Study") for review and approval as to its scope by the Director of Engineering and Transportation to determine the impacts of the Project. The Traffic Study shall use existing traffic conditions as set forth in the Traffic Report (see Item 3 of Procedural History) as its baseline and shall include a warrant analysis with respect to a proposed signal at the intersection of Independence Drive with Sherman and Thornton Roads. If the Traffic Study reveals that the intersection meets applicable Massachusetts Amendments to the Manual on Uniform Traffic Control Devices Warrant volume thresholds, the Applicant shall with approval of the Director of Engineering and Transportation: (i) realign Sherman and Gerry Roads such that Gerry Road provides access to the Site and Sherman road provides egress; and (ii) design and install a traffic signal at the intersection of Sherman and Thornton Roads and Independence Drive (the "Traffic Signal") at its expense. Upon completion of its construction, the Town shall be solely responsible for maintaining the Traffic Signal.

## FIRE SAFETY

22. Final site plans that conform to the Site Plans. Prior to receiving a Building Permit, the Applicant shall submit such final site plans to the Fire Chief and the Director of Engineering and Transportation for approval of the Project's final: (i) water main sizing layout, valve, and curb stop locations; (ii) water and sewer lines, including coupling, joint restraints, and service connections; and (iii) fire department access routes and hydrant locations.
23. Prior to application for a Building Permit, the Applicant shall certify in writing to the Fire Chief and the Building Commissioner that: (i) all buildings in the Project have enhanced NFPA 13 designed sprinkler systems; (ii) all buildings in the Project have direct alarm notification to the Fire Department designed in accordance with Building and Fire codes; and (ii) the Sherman Building includes a Class I or III standpipe system.

## STORMWATER

24. The Applicant shall submit a final stormwater management report and plans for review and approval by the Director of Engineering and Transportation 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 contain an operations and maintenance plan

that includes a breakdown of the cost estimates for the maintenance of individual components of the stormwater management system.

- (b) There will be no standing water on the low-lying areas of the Site.
- 25. Prior to issuance of a Building Permit for the Project, the Applicant shall provide the Director of Engineering and Transportation buoyancy calculations demonstrating a factor of safety against uplift for Subsurface Basin D-1C. The calculations shall be certified by a registered Professional Engineer in the Commonwealth of Massachusetts.
- 26. The Applicant shall remove snow that cannot be stored on Site.
- 27. Where there is less than two feet (2') of cover over catch basin connections, ductile iron pipe shall be used.

## WATER

- 28. 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. In addition, prior to issuance of a Building Permit for the Sherman Building, the Applicant shall provide letters of approval from applicable City of Boston agencies, including the Boston Water & Sewer Commission for the proposed drainage work in the City of Boston required for the Project.
- 29. Prior to issuance of a Certificate of Occupancy, the 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, the Applicant shall submit a written report to the Health Department of such application.

## INFRASTRUCTURE

- 30. 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.
31. The Applicant shall operate and maintain all of the foregoing set forth in Condition 30 in good working condition and repair at all times at its sole cost.
32. 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 Engineering and Transportation for conformance to the Site Plans and Conditions of this Decision.
33. Prior to issuance of a Building Permit, the Applicant shall provide design calculations for the retaining wall identified on the Site Plan that address the possibility of saturated soil behind the wall. The calculations shall be certified by a registered Professional Engineer in the Commonwealth of Massachusetts.
34. 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 Engineering and Transportation 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, the Applicant shall notify the Director of Engineering and Transportation so the Town may inspect the installation of said systems to ensure compliance.

#### PRE-BUILDING PERMIT REVIEW

35. 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, 13, 16, and 17.
  - (b) The Director of Engineering and Transportation has reviewed the final stormwater management plans in accordance with Condition 24, the water; stormwater and sewage facility designs in accordance with Condition 32 the Stormwater Pollution Prevention Plan (SWPPP) in accordance with Condition 40 and the pavement surfaces in accordance with Condition 44 and all other items requiring review by the Director of Engineering and Transportation as listed in these Conditions.

- (c) It has paid all fees required pursuant to Condition 56 and, if applicable and timely, Condition 19.
- (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 Engineering and Transportation, Public Health Department 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 the Restriction on further development (referenced in Condition 15) and the Applicant has provided evidence of recording of same.
- (g) The Building Commissioner has approved the Construction Management Plan (Condition 37).
- (h) The preliminary rubbish plan has been reviewed in accordance with Condition 60.
- (i) The Subsidizing Agency has granted the Subsidy as provided in 760 CMR 56.05(8)(c)(I), if and as applicable.
- (j) All required approvals from the City of Boston have been received, including a demolition permit for the proposed removal of a building in Hancock Village on the Boston side of the property.

## CONSTRUCTION

36. 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, Public Health Department, Building Department and Fire 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.
37. For purposes of this Decision (with the exception of Condition 53 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: (i) designation of truck routes (the condition of pavement surfaces of such routes before and after

construction to be documented); (ii) a phasing plan prepared by the Applicant's contractor; (iii) a survey of existing trees and measures to ensure tree protection during construction, to the extent feasible; (iv) limit of work areas; (v) where construction vehicles, materials and equipment will be stored; (vi) parking hours and locations for construction workers' vehicles; (vii) location of portable toilets; (viii) rodent and insect control plan; (ix) dust/airborne particle control; (x) security fencing; trash areas; (xi) construction trailer locations; (xii) earthwork calculations to determine earth and rock removal; (xiii) the timetable for excavation and overall earthwork operation; and (xiv) the estimated number of necessary daily truck trips.

38. Ledge shall be removed at least twelve inches (12") below the Stormtank systems. The Applicant shall notify the Director of Engineering and Transportation at least forty-eight (48) hours prior to installing Stormtank systems, so that Town may inspect to ensure compliance.
39. The 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 for any Phase (as defined below in Condition 62 below) shall be no more than thirty-six (36) months subject to causes beyond the Applicant's reasonable control. The Applicant may seek an extension of the foregoing requirement pursuant to 760 CMR 56.05(11).
40. The 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, the Applicant shall provide the Director of Engineering and Transportation with a SWPPP 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) specific locations and construction details for the stabilized construction entrances;
  - (d) final locations of stockpile areas on erosion control plans; and
  - (e) construction detail for erosion controls at perimeter of stockpiles.
41. The Applicant shall keep in optimum working order, through regular maintenance, any and all equipment that makes sounds.
42. During construction, the Applicant shall provide the Director of Engineering and Transportation and the Building Commissioner with a written monthly report outlining the status of the Project. The monthly reports shall detail areas of noncompliance with this Decision, if any, and actions taken to resolve these issues.

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

## BLASTING

45. Prior to Commencement of Construction, the Applicant shall provide to the Town's Fire Chief and Building Commissioner, together with the Town's geotechnical blasting consultant (to be paid for by the Applicant), a final blasting/drilling plan that is substantially consistent with the Blasting Plan attached hereto as Exhibit 3 (the "Blasting Plan"). 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 Blasting Plan. In addition, the Applicant shall comply with the following conditions:
  - a. Prior to the initiation of blasting, the Applicant, together with its blasting consultant, shall: (i) hold a public meeting for all Project abutters regarding blasting that will provide an opportunity for members of the public to ask questions; (ii) distribute to all abutters a pre-blast information handout regarding the blasting that includes a blasting schedule and the Applicant's contact information for abutters to report concerns; and (iii) conduct pre-blast conditions surveys at 300' and 500' radius.
  - b. During blasting, the Applicant shall: (i) utilize an Electronic Blast Initiation System; (ii) will allow a member of the Town's Fire Department is present on site during blasting operations; (iii) ensure that the Project's blasting consultant is on site during all test blasts; (iv) maintain a secure blast area with designated access points and safe areas, with sentry locations; (v) post, guard and barricade all charged hole locations; (vi) utilize warning signals 3 (5 minute), 2 (1 minute), 1 (all clear); (vii) in coordination with the Town, shut down Sherman Road to vehicle and pedestrian traffic during live blasting operations; (viii) utilize shot cast control to limit fly rock, including matting and blast rock berms (all blast holes shall include a double layer of blasting mats); and (ix) install noise and dust barriers (including a return air vapor injection system).
  - c. The Applicant shall monitor the blast with equipment located: (i) on-site (27' to 110'); (ii) at the Baker School (720'); (iii) within the Beverly Road residential neighborhood (750'); (iv) near Harvard Vanguard Medical Associates (1,200'); and (v) within the Hoar Sanctuary (100').

- d. The Project's geotechnical engineer shall evaluate post rock wall stability and provide recommendations for temporary rock wall support as necessary.
- e. The Project's blasting contractor shall submit post-blast reports, including seismograph event reports, to the blasting consultant within 24 hours of blasting. Updated regression analysis and revised blast designs shall be submitted to the Blasting Consultant for review.

#### PRE-OCCUPANCY PERMIT REVIEW

46. 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 initial 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.

#### GENERAL

- 47. 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.
- 48. Any reference to Town staff shall include a designee (either another staff member or a consultant) of that person.
- 49. 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.
- 50. 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.
- 51. Any person aggrieved by this Decision may appeal pursuant to §21 of the Act.
- 52. 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.
- 53. 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).

54. If the Applicant revises any of the Site Plans or Architectural Plans (or other materials listed in Item 3 of Procedural History), it shall present the revised plans or other materials to the Board in accordance with 760 CMR 56.05(11).
55. This Comprehensive Permit may be transferred by the Applicant only upon compliance with the requirements of 760 CMR 56.05(12)(b).
56. Prior to making an application for a Building Permit, the 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 the Applicant.
57. All utilities shall be underground.
58. The Applicant shall pay for the Town's cost of police and fire details for the Project, in accordance with the Town's standard practices.
59. All Conditions in this Decision are to be interpreted and enforced to the extent permitted by the Act and the Regulations.
60. 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) the Applicant has provided sizes, number, and location of dumpsters, trash compactors, and recycling containers;
  - (c) the 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) the Applicant has provided a rodent and insect control plan.

61. If the Applicant successfully obtains zoning relief and all other necessary permits and approvals required to construct the Alternative Project, up to and including a building permit, each issued by the applicable governmental authority without any material condition that is unacceptable to the Applicant and with all applicable appeal periods having expired without any appeal or challenge thereto having been timely filed (collectively, the “Required Approvals”), then the Applicant shall return to the Board to request a modification pursuant to 760 CMR 56.05(11) that eliminates the Infill Buildings and adjusts, to the extent necessary, all related development, construction, and housing production aspects of the Project, such as parking, stormwater management, and paved surfaces. In such a case, provided the Board determines the request for modification is materially consistent with the Alternative Site Plan and this paragraph, it will consider such a modification to be insubstantial as defined in 760 CMR 56.07(4) (d) because the Alternative Project will obviate the need for the housing units contained in the Infill Buildings.
- 62.
63. The Project may be constructed in multiple phases or sub-phases (each, a “Phase”). The Applicant’s rights and obligations with respect to the development of any Phase shall in no way require or depend upon the development of any other Phase, including the timing with respect thereto.
64. Prior to commencement of construction of the Project, the Applicant shall diligently pursue obtaining all necessary approvals to construct a playground at Hancock Village in the off-site location shown as “Play Area” on the Playground Location Plan. If, prior to the issuance of building permit for the Project, the Applicant has been unable to obtain all necessary approvals to construct the playground in the off-site location, the Applicant shall instead construct the playground on the Site in the area shown as the “Alternative Play Area” on the Alternative Playground Location Plan. Construction of such playground shall be substantially completed within one (1) year of the date of issuance of the first final certificate of occupancy issued for a building as part of the Project.

**EXHIBIT 1**

**Waivers**

*(To be attached)*

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## 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 9 and 10 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 9 and 10 of the Comprehensive Permit (the “Town Regulatory Agreement.”)
3. Affordability Requirements. Pursuant to the terms of Condition 6 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 (ii) 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 Select Board, 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 Select Board 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 7 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, 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 10 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 of 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.

**EXHIBIT 3**

**Drilling and Blasting Plan**

*(To be attached – Appendix Omitted and on file with Board)*

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**EXHIBIT 4**

**Alternative Site Plan**

*(To be attached)*

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**EXHIBIT 5.1**

**Playground Location Plan**

*(To be attached)*

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**EXHIBIT 5.2**

**Alternative Playground Location Plan**

*(To be attached)*

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