

EMERGENCY ACCESS EASEMENT AGREEMENT

This EMERGENCY ACCESS EASEMENT AGREEMENT (this "**Agreement**") is made as of the ___ day of _____, 2021, by ROSB REALTY LLC, a Massachusetts limited liability company (the "**Grantor**"), to THE TOWN OF BROOKLINE, acting by and through its SELECT BOARD (the "**Grantee**"), as authorized by an affirmative Town Meeting vote at the 2021 Annual Town Meeting, a certified copy of which is attached to this Agreement as Exhibit A. The Residences of South Brookline LLC, a Massachusetts limited liability company ("**Ground Lessee**"), joins in the execution and delivery of this Agreement to be bound by the obligations of Grantor as set forth herein.

WITNESSETH:

WHEREAS, Grantor is the owner of the fee interest in that certain property located in Brookline, Norfolk County, Massachusetts, as more particularly described on Exhibit B attached hereto (the "**Property**"), pursuant to Quitclaim Deed dated November 7, 2019, and recorded with the Norfolk County Registry of Deeds (the "**Registry**") on November 18, 2019 in Book 37352, Page 154.

WHEREAS, the Brookline Zoning Board of Appeals (the "**Board**") granted a comprehensive permit to Ground Lessee, pursuant to M.G.L. c. 40B by virtue of a Decision filed with the Brookline Town Clerk (the "**Town Clerk**") on February 20, 2015 and recorded with the Registry on November 1, 2019 in Book 37307, Page 241, as amended by the Board's Decision approving insubstantial changes to the comprehensive permit filed with the Town Clerk on April 30, 2019 and recorded with the Registry on November 1, 2019 in Book 37307, Page 277, the Board's Decision approving insubstantial changes to the comprehensive permit filed with the Town Clerk on November 6, 2019 and recorded with the Registry on November 18, 2019 in Book 37352, Page 116, and the Board's approval of insubstantial changes to the comprehensive permit pursuant to the Board's unanimous vote at a public meeting held on December 7, 2020 (as of the date hereof, the Board's issuance of its Decision is forthcoming) (as so amended, and as may be further amended from time to time, the "**Comprehensive Permit**").

WHEREAS, Ground Lessee intends to improve the Property with a multi-family residential development (the "**Development**") pursuant to the terms and conditions of the Comprehensive Permit.

WHEREAS, in connection with the Development, Grantee has required that emergency access be provided to and from that certain surface parking lot located on Lot E1¹ of the Property (the "**Lot E1 Surface Parking Lot**") to Thornton Road (the "**Emergency Access Lane**"). The Emergency Access Lane shall be depicted as the "Easement Area" on the Easement Plan attached hereto as Exhibit C.

¹ Lot E1 is located on Parcel 3B shown on a plan entitled "Hancock Village, Plan of Land in Brookline/Boston, MA (Norfolk/Suffolk County) Scale 1" = 100', Date: September 20, 2018 by Precision Land Surveying, Inc." recorded with the Registry at Plan Book 684 of 2019, at Page 61.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, Grantor hereby grants to Grantee, with QUITCLAIM COVENANTS, the following rights and easement:

1. The non-exclusive easement for ingress and egress in, over and through the Emergency Access Lane for the sole and exclusive purpose of providing vehicular access between the Lot E1 Surface Parking Lot and Thornton Road by fire and other public emergency vehicles only in the event of an emergency.

Notwithstanding anything to the contrary contained herein, the rights and easement granted herein are subject to the following:

- A. Emergency Use. Any use by Grantee of the Emergency Access Lane shall be limited only to emergency access by public emergency vehicles, including, without limitation, fire trucks and other public emergency apparatus.
- B. Non-Exclusivity. The rights and easement granted hereby are non-exclusive and shall be exercisable in common with all rights of the Grantor, and its successors and assigns, with respect to the Property (including, but not limited to, all easements and other rights now or hereafter affecting any portion of the Property), and the Grantor expressly reserves and retains the right to (and grant others the right to) use, or grant to others the right to use the surface and subsurface of, and the air space above, the Emergency Access Lane so long as the ability of the Grantee to utilize its rights herein for emergency access are not compromised.
- C. No Surface Rights. Absolutely no surface or subsurface rights are granted to Grantee herein, except for such temporary access rights over the Emergency Access Lane. Grantor expressly reserves and retains the right to use, or to grant to others the right to use, the surface and subsurface of, and the air space above, the Emergency Access Lane.
- D. Insurance. Grantee is self-insured. Grantee shall cause any Town contractor accessing Grantor's Property pursuant to this Agreement to, maintain, in a company or companies authorized to do business in the Commonwealth of Massachusetts:
 - (i) Commercial general liability insurance insuring against claims on account of loss of life, bodily injury or property damage that may arise from the exercise of Grantee's rights hereunder, naming Grantee and Grantor as additional insureds and having single limit coverage of not less than Two Million Dollars (\$2,000,000) per occurrence, Three Million Dollars (\$3,000,000) aggregate (or such higher amounts reasonably required by Grantee);
 - (ii) Business auto liability insurance covering auto (including owned, if any, hired and non-owned autos), with a limit of not less than One Million Dollars (\$1,000,000) each accident (or such higher amount reasonably required by Grantor);

- (iii) Workers compensation insurance in compliance with applicable statutory requirements; and
- (iv) Employers liability insurance with limits of not less than One Million Dollars (\$1,000,000) each accident for bodily injury by accident, One Million Dollars (\$1,000,000) each employee for bodily injury by disease, and One Million Dollars (\$1,000,000) policy limit for bodily injury by disease (or such higher amounts reasonably required by Grantor).

Grantee shall, upon written request from Grantor, furnish to Grantor certificates of insurance evidencing the requirements of this Section D. The foregoing insurance requirements may, from time to time, be subject to increased minimum coverage limits as may be reasonably required by Grantor, upon prior written notice to Grantee.

- E. No Liability. Grantee agrees that it will exercise the rights granted to it hereby at its own risk and neither Grantor nor any of its members, officers, agents and employees shall have any liability to Grantee for any actions, claims, costs, fees, expenses, liabilities and damages (including reasonable attorneys' fees and expenses and costs of investigation and litigation) whatsoever which may be incurred or for which liability may be asserted as a result of any activities undertaken by or for Grantee in connection with its exercise of the rights granted herein.
- F. Further Assurances. Each party shall cooperate with the other and execute such instruments or documents and take such other actions as may reasonably be requested from time to time in order to carry out, evidence or confirm their rights or obligations under, or as may be reasonably necessary or helpful to give effect to, this Agreement.
- G. Relocation. Grantor shall have the right from time to time, at its own cost and expense, to relocate the Emergency Access Lane in any manner that provides for the ability of emergency vehicles to pass from the Lot E1 Surface Parking Lot to Thornton Road. Upon recording in the Registry of an instrument signed by Grantor and Grantee, indicating a relocation of the Emergency Access Lane, the rights and easement herein granted with respect to the original Emergency Access Lane shall cease and terminate, and shall attach to the relocated Emergency Access Lane, and such relocated Emergency Access Lane shall be treated as the land subject to the rights and easement granted herein.
- H. Notices. All notices, demands, requests, and other communications required or permitted hereunder shall be in writing (by a party or by such party's attorney), and shall be sent by (i) personal delivery, (ii) delivery by a recognized overnight courier, (iii) United States mail, postage prepaid, registered or certified mail, or (iv) email, with proof of transmission, addressed as follows:

If to Grantor:

ROSB Realty LLC
c/o Chestnut Hill Realty Corp.

300 Independence Drive
Chestnut Hill, MA 02467
Attn: Peter F. Poras
Email: pporas@chestnuthillrealty.com

With a copy to:

Goulston & Storrs PC
400 Atlantic Avenue
Boston, MA 02110
Attn: Steven Schwartz, Esq.
Email: sschwartz@goulstonstorrs.com

If to Grantee:

Select Board
Town of Brookline
333 Washington Street
Brookline, MA 02445

With a copy to:

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

- I. Amendment. This Agreement may be modified or amended only by agreement, in writing, signed by the parties hereto or their respective successors and assigns.
- J. Successors and Assigns. All rights and privileges herein granted shall run with the land and shall be binding upon Grantor, its successors and assigns, except that in the event of an assignment by Grantee, if the assignee is not a government or governmental authority, such assignment shall be of no force or effect unless approved in advance by the Grantor in writing, which approval may be conditioned or withheld in Grantor's sole and absolute discretion. Notwithstanding anything to the contrary set forth in this Agreement, in the event that the Property ceases to be used for the purposes contemplated under the Comprehensive Permit, then this Agreement shall terminate and be of no further force and effect.
- K. Section Headings. Section headings used herein are intended for reference and convenience only, and shall not affect the interpretation of the agreements contained herein or the rights granted hereby.

L. Governing Law. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts and shall be enforceable in its courts of competent jurisdiction without regard to conflicts of law.

[Signature Pages to Follow]

GROUND LESSEE:

**THE RESIDENCES OF SOUTH BROOKLINE
LLC, a Massachusetts limited liability company**

By: CM-RSB Corp.,
a Massachusetts corporation,
its Manager

By: _____
Name: Peter F. Poras
Title: Vice President and Treasurer
Hereunto duly authorized

ACKNOWLEDGMENT

COMMONWEALTH OF MASSACHUSETTS)
) ss.
County of _____)

On this day, before me, the undersigned notary public, personally appeared Peter F. Poras, proved to me through satisfactory evidence of identification, being (check whichever applies): driver's license or other state or federal governmental document bearing a photographic image; oath or affirmation of a credible witness known to me who knows the above signatory; or my own personal knowledge of the identity of the signatory, to be the person whose name is signed above, and acknowledged the foregoing to be signed by him as his free act and deed, voluntarily for its stated purpose as Vice President and Treasurer of CM-RSB Corp., a Massachusetts corporation, as Manager of The Residences of South Brookline LLC, a Massachusetts limited liability company, and acknowledged said instrument to be the free act and deed of The Residences of South Brookline LLC.

_____, Notary Public

My Commission Expires: _____

[Signatures continue on following page.]

GRANTEE:

TOWN OF BROOKLINE,
acting by and through its SELECT BOARD

By: *Bernard*
Name:
Title:
Hereunto duly authorized

COMMONWEALTH OF MASSACHUSETTS)
County of *Norfolk*) ss

On this *18* day of *March*, *2019*, before me, the undersigned notary public, personally appeared *Bernard Green* proved to me through satisfactory evidence of identification which was *personally known* to be the person whose name is signed on the preceding or attached document, and acknowledged to me that _____ signed it voluntarily for its stated purpose as *Chair, Select Board* for the Town of Brookline, acting by and through its Select Board.

Kate Macgillivray
Notary Public
My Commission Expires: *August 8, 2025*

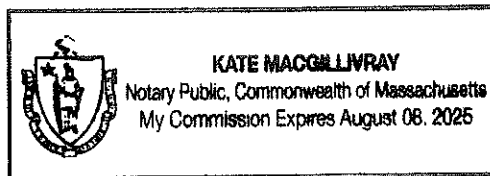


EXHIBIT A

2021 ANNUAL TOWN MEETING VOTE

(See Attached.)

[Exhibit A to Emergency Access Easement Agreement]

Error! Unknown document property name.

EXHIBIT B

PROPERTY DESCRIPTION

Real property in the Town and City of Brookline and Boston (West Roxbury District), Counties of Norfolk and Suffolk, respectively, and Commonwealth Massachusetts, described as follows:

Those certain parcels of land with the buildings and improvements thereon situated in Brookline, Norfolk County, Massachusetts, shown as Parcels 3A, 3B, 3C and 3D on that certain plan entitled "Plan of Land in Brookline/Boston, Massachusetts (Norfolk/Suffolk County)" dated September 20, 2018 prepared by Precision Land Surveying, Inc. (the "Plan"), which Plan is recorded with the Registry of Deeds in Plan Book 684 at Pages 61-66.

Appurtenant Rights:

Together with the appurtenant rights created under that certain Cross Easement Agreement between Edward E. Zuker and Hawood SC Corp., Trustees of Westbrook Village Realty Trust, and Edward E. Zuker, Trustee of Hancock Village Realty Trust, dated August 25, 1992, filed with Suffolk as Document No. 489914.

Together with the appurtenant rights created under that certain Amendment of Easement between Independence Drive Limited Partnership and Edward E. Zuker, Trustee of Hancock Village Realty Trust, dated December 15, 1995, filed with Suffolk as Document No. 534918. Together with the appurtenant rights created under that certain Reciprocal Easement and Maintenance Agreement between Hancock Village I LLC and Hancock Village II LLC dated as of March 3, 2008, recorded with Norfolk in Book 29555, Page 65, and filed with Norfolk as Document No. 1148137, and filed with Suffolk as Document No. 749174.

EXHIBIT C

EASEMENT PLAN

