

RECORDING REQUESTED BY, AND
WHEN RECORDED, RETURN TO:

Goulston & Storrs PC
400 Atlantic Avenue
Boston, MA 02110
Attn: Steven Schwartz, Esq.

DECLARATION OF RESTRICTIVE COVENANT

This DECLARATION OF RESTRICTIVE COVENANT (the “**Restrictive Covenant**”) is executed effective as of this ____ day of February, 2021 (the “**Effective Date**”), by THE RESIDENCES OF SOUTH BROOKLINE, LLC, a Massachusetts limited liability company (“**Owner**”), in favor of THE TOWN OF BROOKLINE, acting by and through its SELECT BOARD (the “**Town**”), as authorized by an affirmative Town Meeting vote at the 2021 Annual Town Meeting, a certified copy of which is attached to this Restrictive Covenant as Exhibit A. ROSB Realty LLC, a Massachusetts limited liability company (“**Ground Lessor**”), joins in the execution and delivery of this Restrictive Covenant to be bound by the obligations of Owner as set forth herein.

RECITALS

A. Ground Lessor 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.

B. Ground Lessor conveyed a leasehold interest in the Property to Owner pursuant to that certain Ground Lease dated as of December 30, 2019, evidenced by that certain Notice of Ground Lease dated as of December 30, 2019, and recorded with the Registry on December 31, 2019 in Book 37492, Page 62.

C. The Town’s Zoning Board of Appeals (the “**Board**”) granted a comprehensive permit to Owner pursuant to M.G.L. c. 40B by virtue of a Decision filed with 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").

D. Owner intends to improve the Property with a multi-family residential development (the "Development") pursuant to the terms and conditions of the Comprehensive Permit.

E. As a condition to granting the Comprehensive Permit, the Town has required that Owner make certain covenants and agreements prohibiting the construction of additional new buildings or paved surfaces on the Property not permitted under the Comprehensive Permit.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, Owner hereby agrees as follows:

1. Owner shall not construct, or allow any other party to construct, any additional new buildings or paved surfaces on the Property not permitted by the Comprehensive Permit.

2. The restrictions set forth in this Restrictive Covenant shall not prohibit Owner from seeking or obtaining approval from the Board to amend the Comprehensive Permit.

3. Owner and the Town acknowledge that, by reason of the applicability of M.G.L. c. 184, sec. 27, the restrictions set forth in this Restrictive Covenant will not be enforceable after the date that is thirty (30) years after the Effective Date unless a notice of restriction is recorded with the Registry in accordance with the requirements set forth in M.G.L. c. 184, sec. 27, as the same may hereafter be amended. Accordingly, Owner and the Town hereby agree to execute, deliver and record with the Registry, from time to time such documents and instruments as may be necessary under M.G.L. c. 184, sec. 27, as the same may hereafter be amended, to extend the effect of the restrictions set forth in this Restrictive Covenant.

4. Notwithstanding anything to the contrary set forth in this Restrictive Covenant, in the event that the Property ceases to be used for the purposes contemplated under the Comprehensive Permit, then this Restrictive Covenant shall terminate and be of no further force and effect. Furthermore, if after the date that Owner commences construction of the Development, any portion of the Property or Development is damaged by casualty, condemnation or force majeure, such that Owner, in its sole and absolute discretion, cannot operate the Property or the Development as contemplated under the Comprehensive Permit, then this Restrictive Covenant shall terminate and be of no further force and effect.

5. This Restrictive Covenant shall be governed by the laws of the Commonwealth of Massachusetts. This Restrictive Covenant may be executed in counterparts, all of which shall constitute a single Restrictive Covenant.

6. This Restrictive Covenant may not be modified or amended in any respect unless such modification or amendment is consented to in writing by Owner and the Town and recorded with the Registry.

[Signature Pages to Follow]

EXECUTED as of the dates set forth in the acknowledgements below to be effective as of the Effective Date.

OWNER:

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.]

GROUND LESSOR:

ROSB REALTY LLC,
a Massachusetts limited liability company

By: CM-CHR, Inc.,
a Massachusetts corporation,
its Manager

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

ACKNOWLEDGMENT

COMMONWEALTH OF MASSACHUSETTS)
County of _____) ss.

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-CHR, Inc., a Massachusetts corporation, as Manager of ROSB Realty LLC, a Massachusetts limited liability company, and acknowledged said instrument to be the free act and deed of ROSB Realty LLC.

_____, Notary Public

My Commission Expires: _____

[Signatures continue on following page.]

TOWN:

TOWN OF BROOKLINE,
acting by and through its SELECT BOARD

By: 

Name:


Title:

Hereunto duly authorized

COMMONWEALTH OF MASSACHUSETTS)

County of Norfolk) ss
)

On this 25 day of February, 2021, before me, the undersigned notary public, personally appeared Bernard Greene 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 Bernard Greene signed it voluntarily for its stated purpose as Select Board Chair for the Town of Brookline, acting by and through its Select Board.


Notary Public

My Commission Expires: August 8, 2025

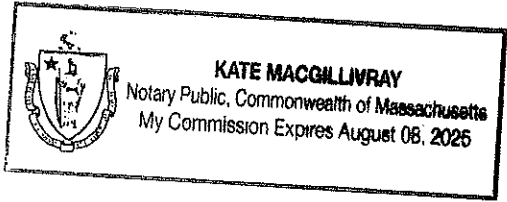


EXHIBIT A

2021 ANNUAL TOWN MEETING VOTE

(See Attached.)

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.