

## MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT (this "Agreement") is made and entered into as of this 14<sup>th</sup> day of May, 2014, by and among CHILDREN'S ONE BROOKLINE PLACE LLC, a Massachusetts limited liability company having an address c/o The Children's Hospital Corporation, 300 Longwood Avenue, Boston, Massachusetts 02115 ("Children's 1BP"), and CHILDREN'S BROOKLINE PLACE LLC, a Massachusetts limited liability company having an address c/o The Children's Hospital Corporation, 300 Longwood Avenue, Boston, Massachusetts 02115 ("Children's 2 BP") ( Children's 1BP and Children's 2 BP, together with their respective successors and assigns, are hereinafter collectively referred to as "BCH") and the TOWN OF BROOKLINE, a municipal corporation, acting by and through its Board of Selectmen (the "Town") with a principal place of business at 333 Washington Street, Brookline, MA 02445.

### RECITALS

WHEREAS, BCH owns, ground leases, operates and/or has a legal interest with options to purchase certain parcels of real property, with buildings and improvements thereon, located in Brookline, Norfolk County, Massachusetts, commonly known as One Brookline Place ("1 BP") and 2-4 Brookline Place ("2-4 BP"), which parcels comprise approximately 144,508 ± square feet, as more particularly described on Exhibit A attached hereto and incorporated herein (1 BP and 2-4 BP are hereinafter collectively referred to as the "Property");

WHEREAS, the Property, along with a separate parcel comprising approximately 12,242± square feet commonly known as 5 Brookline Place ("5 BP"), were rezoned by the Town at a Special Town Meeting convened on June 2, 2004, which rezoning created a special General Business and Medical Research District ("GMR District") under the Town of Brookline Zoning By-Law (the "Zoning By-Law"), which, among other things, required that certain developments within the GMR District provide no less than sixty percent (60%) of all parking spaces completely below grade, and also increased the permissible height and floor area ratio for certain buildings within the GMR District, all subject to the receipt of a special permit, and which rezoning was approved by the Attorney General of the Commonwealth of Massachusetts on August 25, 2004 (the "2004 GMR District Zoning Provisions");

WHEREAS, the Town approved the GMR District in order that Children's 2 BP could proceed with its then-contemplated redevelopment of 2-4 BP, which proposed redevelopment then included an 8-story office building containing 252,596 square feet and 624 new below grade parking spaces, of which 586 spaces were ultimately approved. The remainder of the block, consisting of the building and garage at 1 BP (containing approximately 105,120 square feet) and 377 parking spaces and of the building at 5 BP (containing approximately 10,711 square feet), were to remain unchanged (the "2004 Project");

WHEREAS, in 2008, Children's 2 BP applied for the special permits and other necessary zoning relief to permit the development of the 2004 Project, and, in 2009, the Town of Brookline Zoning Board of Appeals (the "Board of Appeals") granted the special permits to Children's 2 BP to develop 2-4 BP in accordance with the 2004 GMR District Zoning Provisions (the "2009 Special Permit"), which 2009 Special Permit, as extended by the Board of Appeals in 2010 and

as further extended by the so-called Permit Extension Act, remains in force and effect as of the date of this Agreement;

WHEREAS, as a result of the national economic downturn and credit crisis commencing in 2009, the extensive costs required to construct the subsurface parking spaces on 2-4 BP and the projected rental costs achievable in the current market, Children's 2 BP has been unable to develop the 2004 Project under the building program approved by the 2009 Special Permit and required by the 2004 GMR District Zoning Provisions;

WHEREAS, BCH has approached the Town with a revised development proposal consisting of an 8-story office building containing approximately 182,500 square feet at 2-4 BP and an expansion of 1 BP by construction of a medical office building addition containing approximately 47,000 square feet and by replacement of the 1 BP garage and existing on-site parking spaces with a new garage containing not less than 683 spaces [435 existing spaces plus 248 net new spaces] (the "**Proposed Project**"), which garage would serve the entire Property and 5 BP. The Proposed Project is depicted on the site plan and elevations plans and notes thereto attached hereto as **Exhibit B** and incorporated herein, which may be subject to modification as hereinafter set forth;

WHEREAS, the Proposed Project would require changes to the Zoning By-Law, including, but not limited to, changes to the 2004 GMR District Zoning Provisions, which would, among other things, permit BCH to provide the required parking above-grade, all as more specifically described in Article 15 of the Warrant for the 2014 Annual Town Meeting (the "**Proposed Amended GMR District Zoning Provisions**"), a copy of which is attached hereto as **Exhibit C** and incorporated herein, which may be subject to modifications as hereinafter set forth;

WHEREAS, the Proposed Amended GMR District Zoning Provisions would facilitate the construction of the Proposed Project and, among other things, modify Section 5.06(d) of the Zoning By-Law to facilitate integrated development of the GMR 2.0 District to include all of 1 BP and 2-4 BP. The zoning structure also will facilitate the creation of new lot lines for separate lots (1 Brookline, 2 Brookline, 5 Brookline and/or Garage Parcel) to allow separate financing of the new lot configurations and to allow marketability of new lot configurations to separate owners while retaining Property-wide zoning controls;

WHEREAS, part of the 2004 Project included agreements, currently being held in escrow, that provide tax certainty and environmental protections for the 2-4 BP portion of the Property, including provisions whereby the Town would own the land at 2-4 BP and, upon acquiring title to such land, the Town would ground lease the land to the ultimate developer and operator of the 2004 Project for a 95-year term (the "**Prior Agreements**");

WHEREAS, the Parties now seek to replace the Prior Agreements by entering into and recording a Restrictive Covenant, substantially in the form attached hereto as **Exhibit D** and incorporated herein, to assure the long-term certainty of the payment of real estate taxes on the Property to the Town (the "**Restrictive Covenant**") and by providing for environmental protection through this Agreement, as hereinafter set forth;

WHEREAS, BCH has agreed to grant to the Town an Easement Agreement for pedestrian access and landscaping (the “**Easement Agreement**”) substantially in the form attached hereto as **Exhibit E** attached hereto and incorporated herein, as hereinafter set forth;

WHEREAS, adoption of the Proposed Amended GMR Zoning Provisions and acceptance of the Restrictive Covenant and Easement Agreement all require approval by the Town Meeting of the Town of Brookline;

WHEREAS, the Town intends to proceed with demolition of the Hearthstone Plaza Bridge at Route 9 prior to commencement of the Proposed Project, that will benefit BCH, the Property, the Proposed Project and 5 BP;

WHEREAS, the Town intends to proceed with a significant public works project which may occur prior to the commencement of construction of the Proposed Project, referred to as the Gateway East Project, that will benefit BCH, the Property, the Proposed Project and 5 BP, a portion of which Gateway East Project consists of the so-called Village Square Circulation Improvements (hereinafter for the purposes of this Agreement referred to simply as the “**Gateway East Project**”), all as more generally described as follows:

The reconfiguration of the existing circulation system in Brookline at Washington Street, Route 9, Walnut Street, High Street, and Pearl Street. The existing jughandle used to provide access to Washington Street from Route 9 eastbound would be removed and replaced with a new four-way intersection at Pearl Street. Signals would be relocated and upgraded and a new ADA-compliant surface-level pedestrian crosswalk with walk signal would cross Route 9 just west of Pearl Street as part of a new four-way intersection, replacing the existing pedestrian bridge that crosses Route 9. The bicycle and pedestrian connection at the Riverway across Route 9 will be improved. In addition, lighting and landscaping improvements will be made in the area, improving the overall aesthetics of this portion of Route 9 and Brookline Village;

WHEREAS, the Parties agree that the Gateway East Project will benefit BCH, the Property and the Proposed Project by increasing pedestrian and traffic flow and improving the design and aesthetics of the site, thereby increasing the value and marketability of the Property for BCH;

WHEREAS, the Parties agree that the Proposed Project will benefit the Town and BCH, but will also have impacts on the Town and, accordingly, BCH agrees to take steps to mitigate the impacts of the Proposed Project on the Town, as hereinafter set forth;

WHEREAS, the provisions of this Agreement are available for consideration by the Planning Board and the Board of Appeals in reviewing any application for a special permit authorizing the Proposed Project;

WHEREAS, the Parties wish to enter into this Agreement to memorialize their mutual understandings and undertakings with respect to the Proposed Project and certain permits to be

considered for the Proposed Project, as well as other agreements between BCH and the Town on the terms and conditions hereinafter set forth;

WHEREAS, the Parties contemplate entering into such further binding agreements as reasonably appropriate and approved by both Parties to proceed with the Proposed Project and to satisfy the mutual obligations contained herein.

NOW, THEREFORE, for good and sufficient consideration, the receipt of which is hereby acknowledged, and the mutual covenants and agreements herein contained, the Parties hereby agree as follows:

1. All references herein to following terms shall have the meanings hereinafter set forth:

- a) All references to the “**Proposed Amended GMR Zoning Provisions**” shall be construed as a reference to the text of the Warrant Article attached hereto as **Exhibit C**, as such text may be amended at Town Meeting, provided that such amendments do not impose burdens on the Proposed Project which are adverse to the feasibility of construction or to the operational or financial feasibility of the Proposed Project in the reasonable judgment of BCH.
- b) All references herein to the “**Proposed Project**” shall be construed as a reference to the Proposed Project depicted on the site plan and elevations plans and notes thereto attached hereto as **Exhibit B** and incorporated herein, as such plans may be modified during the Design Approval Process and the special permit process, provided that such modifications do not detract from BCH’s ability to construct and operate an 8-story office building containing approximately 182,500 square feet at 2-4 BP and an expansion of 1 BP by construction of a medical office building addition containing approximately 47,000 square feet and replacement of the 1 BP garage and existing on-site spaces with a new garage containing not less than 683 spaces [435 existing spaces plus 248 net new spaces], including the ability to park 15 % additional vehicles which may be in tandem parking arrangement, and/or any other parking arrangement, operation or devices that enable additional vehicles to be accommodated within parking garages, including, but not limited to, valet or other managed parking, and do not impose burdens on the Proposed Project which are adverse to the feasibility of construction or to the operational or financial feasibility of the Proposed Project in the reasonable judgment of BCH.
- c) All references to the “**Town Meeting Approval Conditions**” shall be construed as references to: (i) approval of the Proposed Amended GMR District Zoning Provisions by Town Meeting and the Attorney General; (ii) authorization by Town Meeting of the acceptance of the Restrictive Covenant; (iii) authorization by Town Meeting of acceptance of the Easement Agreement; (iv) authorization by Town Meeting and vote of the Board of Selectmen to terminate the Prior Agreements; and (v) general authorization by Town Meeting of the execution by the Board of Selectmen of this Agreement and of any other documents or agreements necessary or appropriate for implementation of the Proposed Project, in each case with all

challenge periods to all such Town Meeting actions having passed (which, in the case of the zoning amendment, shall be the challenge period under G.L. c. 40 Secs. 32 and 32A), no challenges by unrelated third parties pending or, if any of such actions is challenged, the same having been finally disposed of favorably to the Town Meeting action, not later than two (2) years from the date of approval by Town Meeting.

- d) All references to the “**Other Required Approvals**” shall be construed as references to such other permits, licenses and/or other approvals, additional to the special permit under the Proposed Amended GMR District Zoning Provision, necessary, in BCH’s reasonable determination, to allow for the construction and operation of the Proposed Project, exclusive of building permits which will be issued in the ordinary course conditioned only upon payment of the building permit fee and subject to the provisions of Section 6(c) below.. The Other Required Approvals shall include, without limitation, (i) a special permit under Section 5.43 of the Zoning By-Laws to permit construction of the 1 BP expansion substantially as shown on **Exhibit B** within the setback of 9 feet from Washington Street and Brookline Avenue; (ii) a special permit permitting signage on building walls not parallel or within 45 degrees of parallel to the street; (iii) if required, a special permit allowing mechanical equipment to exceed the height limits by more than 10 feet; and (iv) if required, a further amendment to the Board of Appeals Zoning Decision No. 2703 dated March 22, 1985 re: Lot C (Five Brookline Place), as modified by Board of Appeals Zoning Decision No. 2703-A dated June 13, 1997 (the “**Existing 5 BP Zoning Decision**”), to allow the parking requirements for 5 BP to be met by means of parking located in the garage to be expanded or constructed under the special permit for the Proposed Project issued under the Proposed Amended GMR District Zoning Provision.
  
- e) All references to the “**Special Permit and Other Required Approvals Conditions**” shall be construed as references to issuance by the Board of Appeals of a special permit under the Proposed Amended GMR District Zoning Provisions to proceed with the Proposed Project and issuance of by any other public board, committee or body having jurisdiction or enforcement powers over the Property or Proposed Project of the Other Required Approvals, all in a manner which does not impose burdens on the Proposed Project which are adverse to the operational or financial feasibility of the Proposed Project in the reasonable judgment of BCH, with all appeal periods having passed, no appeals pending or, if any such Special Permit or Other Required Approval is appealed (i) in the event the appeal was filed by unrelated third parties, the same having been finally disposed of favorably to BCH not later than two (2) years from the date of issuance of the Special Permit or Other Required Approval which is subject of the appeal, and (ii) in the event the appeal was filed by BCH, the same having been finally disposed of favorably to the Town.

2. On or before the earlier of August 31, 2014 or the expiration of thirty (30) days from the satisfaction of the Town Meeting Approval Conditions, BCH shall make a non-refundable gift to the Town of \$300,000 in accordance with G.L. c. 44 Sec. 53A to be used by the Town for the demolition of the Hearthstone Plaza Bridge at Route 9 (the “**Bridge Demolition Payment**”), provided that the Town Meeting Approval Conditions shall have occurred. If BCH proceeds with the Proposed Project, but except as provided in Section 4

below, then the Bridge Demolition Payment shall be deducted from the 1% of hard construction costs (exclusive of tenant fit-up) due to the Town for the Proposed Project under the applicable section of the Proposed Amended GMR District Zoning Provisions.

3. On or before August 31, 2015 or such later date as is provided under Section 4 below, BCH shall make a non-refundable gift to the Town of \$750,000 in accordance with G.L. c. 44 Sec. 53A to be used by the Town for the Gateway East Project (the “**Gateway East Payment**”), provided that the Town Meeting Approval Conditions and the Special Permit and Other Required Approval Conditions shall have occurred. If BCH proceeds with the Proposed Project, then the Gateway East Payment shall be credited toward the 1% of hard construction costs due to the Town under the applicable section of the Proposed Amended GMR District Zoning Provisions.

4. BCH acknowledges that time is of the essence in making the Gateway East Payment and that the Property and the Proposed Project are major beneficiaries of the traffic, access and other improvements contemplated as part of the Gateway East Project. Therefore, BCH agrees that, upon the satisfaction of the Town Meeting Conditions, BCH shall diligently pursue the Special Permit and Other Required Approvals for the Proposed Project, with the goal that the Special Permit and Other Required Approval Conditions will have been met prior to August 31, 2015.

Notwithstanding the foregoing, (i) in the event that the Town Meeting Approval Conditions shall have occurred but BCH does not apply for a special permit for the Proposed Project under the Proposed Amended GMR District Zoning Provisions on or before 120 days from satisfaction of the Town Meeting Approval Conditions, then the Bridge Demolition Payment shall not be credited against the 1% of hard construction costs (exclusive of tenant fit-up) due to the Town for the Proposed Project under the applicable section of the Proposed Amended GMR District Zoning Provisions; and (ii) in the event that the Town Meeting Approval Conditions shall have occurred but BCH does not apply for a special permit for the Proposed Project under the Proposed Amended GMR District Zoning Provisions on or before 240 days from satisfaction of the Town Meeting Approval Conditions, then the Gateway East Payment shall be made to the Town on an accelerated basis on the earlier of: (x) the expiration of 240 days from satisfaction of the Town Meeting Approval Conditions, or (y) August 31, 2015.

Further, in the event that BCH applies for a special permit for the Proposed Project under the Proposed Amended GMR District Zoning Provisions on or before 240 days from the satisfaction of the Town Meeting Approval Conditions and thereafter diligently applies for the Other Required Approvals in the ordinary course (recognizing that some Required Approvals may not be applied for until subsequent to issuance of the special permit for the Proposed Project) but the Special Permit and Other Required Approval Conditions have not been satisfied by August 31, 2015 but are thereafter met, then BCH shall make the Gateway East Payment to the Town within thirty (30) days of the date of satisfaction of the Special Permit and Other Required Approval Conditions.

5. (a) Upon satisfaction of the Town Meeting Approval Conditions, BCH shall immediately record this Agreement with the Norfolk Registry of Deeds and/or the Norfolk

Registry District of the Land Court, as appropriate and at its own expense and shall provide evidence of such recording to Town Counsel.

(b) Upon satisfaction of the Town Meeting Approval Conditions, BCH and the Town shall execute the Restrictive Covenant and Easement Agreement and BCH shall deliver the same to the Office of Town Counsel or a mutually agreed upon escrow agent to be held in escrow pursuant to mutually agreed upon conditions under the provisions of this Agreement (the “**Escrow Agent**”). BCH shall not proceed with the application for special permit(s) or any Other Required Approvals for the Proposed Project, unless and until it has executed and delivered the Restrictive Covenant and Easement Agreement to the Escrow Agent. BCH agrees that, under no circumstances, shall it avail itself of the Zoning By-Laws and the Proposed Amended GMR District Zoning Provisions by proceeding with the construction of the Proposed Project, unless and until the foregoing provisions are satisfied.

In the event that the Special Permit and Other Required Approvals Condition is satisfied, BCH shall deliver notice thereof to the Escrow Agent, who shall thereafter immediately record with the Norfolk Registry of Deeds and the Norfolk Registry District of the Land Court, as appropriate at the time of recording, the Restrictive Covenant, the Easement Agreement and the Subordination of the Mortgages by the Mortgagee(s) executing the Joinder attached to this Agreement, so that the Restrictive Covenant and Easement Agreement shall have record priority over any recorded financial encumbrance on the Property.

In the event that the Special Permit and Other Required Approvals Conditions are not satisfied, BCH or the Town may deliver notice thereof to the Escrow Agent, who shall thereafter immediately return the original copies of the Restrictive Covenant, the Easement Agreement and any Subordination of Mortgages to BCH and shall simultaneously notify the Town that such original copies have been returned to BCH.

6. BCH hereby acknowledges that the following conditions of the special permit for the Proposed Project and Other Required Approvals shall be acceptable to BCH and shall not be grounds for objection to the special permit or Other Required Approvals:

(a) inclusion of a provision in the special permit for the Proposed Project to the effect that the payment of 1% of the hard construction costs (exclusive of tenant fit-up) shall be first devoted to the Bridge Demolition and/or Gateway East Project, provided that the Bridge Demolition Payment and the Gateway East Payment may be considered in satisfaction of the 1% payment requirement, notwithstanding that such payments may have been made prior to the issuance of the Special Permit;

(b) mitigation payments and obligations consistent with the Mitigation Obligations set forth in Section 7 below;

(c) inclusion of a condition in the special permit for the Proposed Project that BCH will not commence demolition of the existing structure at 2 Brookline Place until a building permit for the garage component of the Proposed Project is issued with evidence reasonably satisfactory to the Planning Director and Town Counsel, provided on a confidential basis, that financing is or will be in place for construction of the entire Proposed Project;

(d) limitation of parking spaces to not less than 683 parking stalls for the Property and 5 BP, collectively, excluding drop-off and loading zones, together with ability to park 15% additional number of vehicles through valet or other managed parking, subject to operational provisions reasonably imposed by the Director of Transportation;

(e) inclusion of a provision in the special permit prohibiting use of the garage for satellite parking (through use of techniques including preferential parking rates for tenants and visitors and higher parking rates for parking for non-tenants over a specified number of hours per day);

(f) to ensure compliance with the Transportation Demand Management Program, a requirement for traffic monitoring and annual reporting to the Town of Brookline, including the following features: (i) Not later than thirty (30) days prior to the anticipated issuance of a building permit for the 2 BP or 1 BP expansion, whichever first occurs, a TDM plan shall be submitted to the Town, for review and approval by the Director of Transportation/Engineering and the Planning and Community Development Director (or designee); (ii) In connection with preparation of the TDM plan, Children's shall provide information as to its existing policies relating to employee transportation then in effect, and the mode use resulting from such existing policies. Any tenant at the Proposed Project which has executed a lease for occupancy of 2 BP or the 1 BP expansion not later than 120 days prior to the anticipated issuance of a building permit for the 2 BP or 1 BP expansion, whichever first occurs, shall be requested to provide such information as to its existing policies relating to employee transportation then in effect in other locations operated by such tenants, and the mode use resulting from such existing policies in such other locations; (iii) An annual monitoring and reporting program will commence after receipt of the final Certificate of Occupancy for the Proposed Project. If the final Certificate of Occupancy for the Proposed Project is issued between September 1 and February 29, the monitoring will take place during the months of September or October and a report provided to the Town no later than November 30. If the final Certificate of Occupancy for the Proposed Project is issued between March 1 and August 31, monitoring will take place during the months of April or May and be reported to the Town no later than June 30; (iv) The monitoring program will be based on traffic counts and employee surveys as to vehicle, transit, pedestrian, and bicycle usage to the Proposed Project. The monitoring program will provide detailed information on the travel modes to work and overall transportation characteristics by type of traveler (employee, visitor, etc.). The survey instrument to be used for mode share monitoring will be provided to the Director of Transportation/Engineering for approval prior to conducting the survey. The employee survey (which may be conducted through electronic means) will be sent out to all employees, with a goal of securing a 60 percent minimum response rate. A patient/visitor survey shall be conducted during normal business hours, with a goal of securing at least 200 patient/visitor surveys;

(g) prior to the issuance of a building permit, the Applicant shall provide evidence to the satisfaction of the Building Commissioner and Director of Planning & Community Development that each of 2 BP and the 1 BP expansion is a LEED certifiable Silver Building or higher rating via the provision of a LEED scoring sheet. The construction of such buildings consistent with these plans shall be confirmed prior to the issuance of a Certificate of Occupancy for the building lobby of each such building;

(h) compliance with the terms of this Agreement, the Restrictive Covenant and the Easement Agreement; and

(i) inclusion of a provision in the special permit requiring, prior to issuance of a demolition permit, a final construction management plan that includes protocols to insure protection of persons in the vicinity of the construction work, including air quality monitoring during activities involving disturbance of contaminated soils or management of any contaminated media, such plan to be subject to review and approval by the Health Director and Director of Engineering.

7. In the event the Special Permit and Other Required Approvals Conditions are satisfied and BCH proceeds with the Proposed Project, then BCH agrees to provide the following public benefits and improvements to mitigate the impacts to the Town and the public from the Proposed Project which may include, but not necessarily include or be limited to, pedestrian and bicycle improvements, traffic signal timing and landscaping (the “**Mitigation Obligations**”):

- a) Payment of the Town’s reasonably incurred out-of-pocket peer review costs and legal fees not to exceed \$150,000 calculated from commencement of review of the Proposed Project by Town staff and consultants;
- b) Payment to the Town of the greater of: (a) the 1% of hard construction costs (exclusive of tenant fit-up) due to the Town as provided in the Proposed Amended GMR District Zoning Provisions, against which shall be credited the Bridge Demolition Payment and the Gateway East Payment as set forth above, or (b) the aggregate of (i) the \$300,000 Bridge Demolition Payment, (ii) the \$750,000 Gateway East Payment, and (iii) the “**Community Benefits Mitigation Payment**” (hereinafter defined).

The Community Benefits Mitigation Payment shall be calculated as follows:

- (x) \$250,000 shall be due to the Town on or before December 31, 2019, and an additional \$200,000 shall be due to the Town on December 31, 2020 if substantial completion for the Proposed Project is not achieved on or before December 30, 2020, and a final additional \$150,000 shall be due to the Town on December 31, 2021 if substantial completion for the Proposed Project is not achieved on or before December 30, 2021; however, the foregoing dates shall be tolled for any period during which an appeal by an unrelated third party is pending or any stop work order is issued by a governmental authority, until final resolution satisfactory to BCH; and (y) there shall be deducted from the foregoing amount the reasonable costs of all off-site mitigation measures under this Agreement except with respect to the Bridge Demolition Payment and Gateway East Payment, and the Required Approvals, excluding the costs of the improvements as described below in sub-section c.

The Community Benefits Mitigation Payment shall be paid to the Town in accordance with G.L. c. 44 Sec. 53A not later than the date of issuance of the certificate of

occupancy for the 2 Brookline Place component of the Proposed Project, and shall be earmarked for further improvements related to the Gateway East Project and/or public benefits and improvements to mitigate the impacts to the Town and the public from the Proposed Project;

c) BCH shall provide the following off-site transportation and pedestrian improvements as may be approved by the Town's Director of Transportation and Engineering and/or the Planning Board, each acting in their reasonable discretion:

i. Pearl Street Reconstruction consisting of improvements to the street lighting system on the south side of Pearl Street, reconstruction and installation of pavement and curbing along Pearl Street and landscaping and pedestrian markings and/or pavers that visually connect the Property to the Brookline Village MBTA station, as substantially described on **Exhibit F** at a cost not to exceed \$335,000; and

ii. Installation of an audible traffic signal at Pearl Street and Brookline Avenue;

d) To allow current businesses/tenants at 2-4 BP to continue to lease currently-leased space at the rates being charged by BCH to such tenants for such space and utilities, as of the date of this Agreement, until construction of the Proposed Project commences;

e) To the extent permitted by law, BCH shall implement for the benefit of Brookline residents and in particular residents of the Brookline Housing Authority and Village Way a "Brookline Residents Permanent Employment Program", a copy of which is attached hereto as **Exhibit G** and incorporated herein. Nothing contained herein shall prevent BCH from filling job vacancies or newly created positions without compliance with the foregoing procedures by transfer or promotion from the existing staff of any of BCH's affiliates or from a file of qualified applicants maintained by BCH, any of its affiliates or union referral in accordance with applicable union contracts to which BCH or any of its affiliates are a party and are applicable to the Property. Further, nothing contained herein shall be construed to require BCH, any BCH affiliate or any service, maintenance, security or management agent or independent contractor engaged by BCH (1) to hire any candidate referred by the Town of Brookline, (2) to hire or train persons that BCH (or any service, maintenance, security or management agent or independent contractor engaged by BCH, as the case may be) does not consider qualified based on the standards BCH or its affiliates applies to all job applicants, or (3) to terminate the employment of existing workers;

f) As part of the Proposed Amended GMR District Zoning Provisions' requirement to provide landscaped open space, BCH agrees that, so long as the Proposed Project is in existence and BCH is exercising its rights under the special permit granted for the Proposed Project, an appropriate portion of the "Landscaped Area" as described in the Easement Agreement shall be made available for periodic use by the Town for community events and/or use by the public or BCH for outdoor seating and dining without payment of a license fee by the Town, but subject to such limitations with regard to frequency, timing and use as the Town and BCH shall reasonably agree (currently

contemplated to be approximately 3 or 4 community events annually) and such reasonable rules and regulations as BCH may impose, from time to time, with the Town agreeing to bear the responsibility of any clean-up, damage and/or to the extent permitted by law any liability associated with such use (the “**Landscaped Area**”);

g) Accessory to the Landscaped Area, BCH agrees that the Town shall have the right to utilize a shed or storage area of approximately 400 square feet attached to or integrated into the garage component of the Proposed Project for the storage of certain recreational equipment associated with the Town’s use of the Community Event Area, subject to such limitations with regard to use as the Town and BCH shall reasonably agree and such reasonable rules and regulations as BCH may impose, from time to time, with the Town agreeing to bear the responsibility of any clean-up, damage and/or to the extent permitted by law any liability associated with such use; and

h) Subject to receiving a license from the Town for entry onto the area between the Property line and the back of sidewalk along Brookline Avenue and Washington Street substantially as shown on a conceptual level on the plan attached hereto as **Exhibit H** and incorporated herein, BCH shall install and maintain the landscaping as shown on such plan, with the Town agreeing to the extent permitted by law to bear the responsibility for any slip and fall or other liability related to such landscaped area, unless caused by the negligence or intentional act of BCH.

8. Environmental Matters:

8.1 Children’s 1 BP agrees to indemnify, defend and hold harmless the Town from and against any and all claims, charges, costs, damages or liabilities resulting from any construction or excavation work undertaken on 1 BP in connection with the Proposed Project by Children’s 1 BP or any of Children’s 1 BP’s contractors, Licensed Site Professionals or agents, but only to the extent that (a) such construction or excavation work exacerbates or exposes additional persons to the “Previously Reported 1 BP Conditions” (hereinafter defined) or (b) the claims, charges, costs, damages or liabilities arise as a result of the gross negligence or willful misconduct of Children’s 1 BP or any of Children’s 1 BP’s contractors, Licensed Site Professionals or agents. For the purposes of this Agreement, “**Previously Reported 1 BP Conditions**” shall mean the presence or release on or before the date hereof of any “Hazardous Materials” or “Oil” (as such terms are defined in the Massachusetts Contingency Plan or “MCP” - - 310 CMR 40.0000) on, in, under or migrating from 1 BP, including without limitation releases reported to the Massachusetts Department of Environmental Protection (“**DEP**”) and assigned Release Tracking Numbers 3-25819 and 3-1188 (to the extent RTN 3-1188 relates to 1 BP). The Previously Reported 1 BP Conditions shall not include any Hazardous Materials or Oil located outside the boundaries of 1 BP (except to the extent such Hazardous Materials or Oil are migrating from 1 BP).

8.2 With respect to the Previously Reported 1 BP Conditions, Children’s 1 BP, on behalf of itself and its successors (including without limitation, future owners of 1 BP or any portion of 1 BP) and assigns, agrees to release the Town from all damages, including property damages, liabilities, obligations, penalties, claims, demands, costs, disbursements, and expenses (including claims by Children’s 1 BP) for (a) investigation and remediation expenses

associated with the Previously Reported 1 BP Conditions; and (b) claims by Children's 1 BP or any future owner of 1 BP for bodily injury or property damages which may at any time be incurred by or imposed upon Children's 1 BP or any future owner of 1 BP or any portion of 1 BP.

8.3 Children's 2 BP agrees to indemnify, defend and hold harmless the Town from and against any and all claims, charges, costs, damages or liabilities resulting from any construction or excavation work undertaken on 2-4 BP in connection with the Proposed Project by Children's 1 BP or any of Children's 2 BP's contractors, Licensed Site Professionals or agents, but only to the extent that (a) such construction or excavation work exacerbates or exposes additional persons to the "Previously Reported 2-4 BP Conditions" (hereinafter defined) or (b) the claims, charges, costs, damages or liabilities arise as a result of the gross negligence or willful misconduct of Children's 2 BP or any of Children's 2 BP's contractors, Licensed Site Professionals or agents. For the purposes of this Agreement, "**Previously Reported 2-4 BP Conditions**" shall mean the presence or release on or before the date hereof of any "Hazardous Materials" or "Oil" (as such terms are defined in the MCP) on, in, under or migrating from 2-4 BP, including without limitation releases reported to DEP and assigned Release Tracking Numbers 3-25820 and 3-1188 (to the extent RTN 3-1188 relates to 2-4 BP). The Previously Reported 2-4 BP Conditions shall not include any Hazardous Materials or Oil located outside the boundaries of 2-4 BP (except to the extent such Hazardous Materials or Oil are migrating from 2-4 BP).

8.4 With respect to the Previously Reported 2-4 BP Conditions, Children's 2 BP, on behalf of itself and its successors (including without limitation, future owners of 2-4 BP or any portion of 2-4 BP) and assigns, agrees to release the Town from all damages, including property damages, liabilities, obligations, penalties, claims, demands, costs, disbursements, and expenses (including claims by Children's 2 BP) for (a) investigation and remediation expenses associated with the Previously Reported 2-4 BP Conditions; and (b) claims by Children's 2 BP for bodily injury or property damages which may at any time be incurred by or imposed upon Children's 2 BP or any future owner of 2-4 BP or any portion of 2-4 BP.

8.5 Children's 2 BP shall perform or cause to be performed, at its sole cost and expense, any investigation, testing, assessment, monitoring, reporting, remediation, clean up, removal, disposal, excavation, construction, abatement, encapsulation, containment, risk assessments, or any other response actions (as defined in the MCP) necessary or reasonably advisable in order to complete the filing of an MCP Permanent Solution Class A-3 Response Action Outcome ("**RAO**") with respect to the Previously Reported 2-4 BP Conditions (or, in the event certain currently proposed regulations are adopted, a Permanent Solution With Conditions).

8.6 Children's 1 BP (with respect to work on 1 BP) and Children's 2 BP (with respect to work on 2-4 BP) shall be responsible for performing or causing to be performed, at their sole cost and expense, all work related to excavating, transporting and disposing of soil from the Property in connection with the Proposed Project and all related testing, monitoring, odor control and dewatering activities required on the Property in connection with the Proposed Project. All excavation and subsurface construction work performed on 1 BP or 2-4 BP in connection with the Proposed Project shall be performed (and conditions encountered in

connection with such work shall be addressed) in accordance with the MCP and Release Abatement Measure plans prepared by a Licensed Site Professional, filed with DEP, and subject to paragraph 8.11 below, such Release Abatement Measures to include (a) specifications for health and safety plans, and (b) management procedures for contaminated media that include, among other details, air quality monitoring in connection with activities involving disturbance of contaminated soils or management of contaminated media to ensure protection of persons in the vicinity of the construction work.

8.7 Children's 1BP (with respect to new buildings to be located on 1 BP, other than the parking garage) and Children's 2-4 BP (with respect to new buildings to be located on 2-4 BP) shall: (a) install, as a voluntary precautionary measure, subslab venting systems and vapor barriers beneath such new buildings in connection with construction of the Proposed Project, such venting systems to be constructed such that they can be made active if necessary, (b) cause its Licensed Site Professional to send a letter to the Health Director and Director of Transportation/Engineering, prior to occupancy of each new building, confirming that such subslab venting systems and vapor barriers have been installed and are operational, and (c) cause its Licensed Site Professional to evaluate the performance and effectiveness of the installed subslab venting systems during normal building use. The Licensed Site Professional's evaluation of the performance and effectiveness of the subslab venting systems shall be addressed in appropriate MCP Submittals (as hereinafter defined). Such submittals shall be subject to paragraph 8.11 below.

8.8 Children's 1 BP hereby agrees to be responsible for conducting and paying for (or causing others to conduct and pay for) any work required to respond to and comply with any DEP audit regarding, or other subsequent DEP order or notice relating to, the existing RAO for the Previously Reported 1 BP Conditions, including, without limitation, preparing regulatory submittals and conducting any additional assessment or response actions required by DEP in connection with the Previously Reported 1 BP Conditions.

8.9 Children's 2-4 BP hereby agrees to be responsible for conducting and paying for (or causing others to conduct and pay for) any work required to respond to and comply with any DEP audit regarding, or other subsequent DEP order or notice relating to, the RAO to be filed by Children's 2-4 BP for the Previously Reported 2-4 BP Conditions, including, without limitation, preparing regulatory submittals and conducting any additional assessment or response actions required by DEP in connection with the Previously Reported 2-4 BP Conditions.

8.10 Children's 1 BP and Children's 2 BP are each listed as named insureds on a certain ten (10) year "Pollution Legal Liability Select" policy issued by AIG on December 19, 2008 (Policy Number 14234561). A written certificate of insurance listing coverages has been provided to Town Counsel. Upon the issuance of a Permanent Solution Class A-3 RAO (or, in the event certain currently proposed regulations are adopted, a Permanent Solution With Conditions) with respect to the Previously Reported 2-4 BP Conditions, Children's 1 BP and Children's 2 BP will each use commercially reasonable efforts to obtain "reopener" coverage under said policy for response costs arising out of any DEP audit regarding MCP submittals filed in connection with the RAOs for their respective properties. Children's 1 BP and Children's 2 BP shall use commercially reasonable efforts to extend the term of the existing policy until at

least December 19, 2023 or purchase a new policy providing similar coverage (provided that the additional premium for any such policy extension or new policy shall not exceed \$100,000).

8.11 Children's 1 BP and Children's 2 BP (as applicable) hereby agree to provide to the Town (including its Town Counsel, Health Director and Director of Transportation/Engineering) drafts of the RAO for 2-4 BP and any and all submittals to be made to DEP in accordance with the MCP ("**MCP Submittals**") with regard to 1 BP and/or 2 BP, including any draft responses to any audit by DEP, and will reasonably consider and incorporate any comments made by the Town to same (if the LSP for Children's 1 BP or Children's 2 BP, as the case may be, reasonably deems those comments appropriate). All such MCP Submittals shall be provided to the Town for review reasonably in advance of any applicable filing deadlines and the Town shall comment within fifteen (15) business days. In the event of an emergency filing deadline (e.g., a two hour or 72 hour reporting condition), drafts or copies, as the case may be, shall be provided as soon as reasonably practicable. Provided, however, the Town shall not have approval rights over any MCP Submittals. Children's 1 BP and Children's 2 BP hereby further agree to provide to the Town copies of any and all MCP Submittals simultaneously with the filing thereof with DEP.

8.12 The provisions of this Section 8 shall run with Children's 1 BP's and Children's 2 BP's respective interests in the land of the Property, whether in leasehold or in fee, and shall be binding upon Children's 1 BP and Children's 2 BP and their respective successors and assigns that succeed to the interest of such entity in 1 BP or 2 BP. For the purposes of this Section 8 (excluding Section 8.2 which shall continue to bind Children's 1 BP and each of its successors and assigns), the term "Children's 1 BP" shall mean Children's 1 BP, for so long as it has a ground leasehold or fee ownership interest in 1 BP, and thereafter it shall mean the successor(s) in title to Children's 1 BP from time to time with respect thereto, for so long as such successor(s) shall ground lease or own, as the case may be, 1 BP. For the purposes of this Section 8 (excluding Section 8.4 which shall continue to bind Children's 2 BP and each of its successors and assigns), the term "Children's 2 BP" shall mean Children's 2 BP, for so long as it has a ground leasehold or fee ownership interest in 2-4 BP, and thereafter it shall mean the successor(s) in title to Children's 2 BP from time to time with respect thereto, for so long as such successor(s) shall ground lease or own, as the case may be, 2-4 BP.

## 9. Undertakings by the Town:

9.1 On April 8, 2014, the Board of Selectmen voted favorable action on Articles 15 (Zoning), 17 (Easement), 18 (Restrictive Covenant) and 19 (Release of Escrow and General Authorization) subject to the terms and conditions of this Agreement and shall convey its vote and favorable report to the Advisory Committee and in the Combined Reports which shall be delivered to all Town Meeting Members. The Selectmen shall also, to extent appropriate, cooperate with BCH and shall encourage other Town Boards to cooperate with BCH in issuing in a timely and expeditious manner any required permits and approvals for the Proposed Project. The Selectmen shall support and undertake action necessary to obtain the approval of the Attorney General of The Commonwealth of Massachusetts of the Proposed Amended GMR District Zoning Provisions in as expeditious a manner as is feasible, following the adoption of the Proposed Amended GMR District Zoning Provisions by Town Meeting.

10. Miscellaneous:

10.1 If either Party brings a legal action to enforce the provisions hereof, the prevailing party shall be entitled to recover reasonable attorneys' fees, as determined by the court that decides the matter in dispute. However, prior to the initiation of any court proceeding regarding the terms of this Agreement or performance thereunder, the Town and BCH agree that such disputes shall first be subject to non-binding mediation, for a period not to exceed ninety (90) days. Costs of such mediation shall be shared equally by the Parties.

10.2 It is the intent of the Parties that the obligations in this Agreement shall run with the land comprising the Property and be binding upon and inure to the benefit and burden of BCH and its heirs, successors and assigns during their respective periods of ownership of the Property and shall survive any transfer of the Property or any portion thereof. BCH agrees to provide a copy of this Agreement to any transferee of the Property or any portion thereof. However, from and after the issuance of a Certificate of Occupancy with respect to any structure within the Property, such structure and any lot containing only such structure, shall not be subject to, and shall be released from, any further liability under this Agreement excepting any continuing obligations under Section 8 above and excepting as otherwise provided in the Restrictive Covenant or Easement Agreement.

10.3 If BCH fails to deliver the Restrictive Covenant and Easement Agreement in escrow on or before the date required by this Agreement, the Town shall have the right of specific performance to compel BCH to fulfill its obligation with respect to the terms of this Agreement.

10.4 Each of the Parties signing below hereby represents and warrants that it is authorized to enter into this Agreement and execute the same on behalf of, and to bind legally, such Party.

10.5 All notices or requests required or permitted hereunder shall be in writing and addressed, if to the Town as follows:

Board of Selectmen  
Town of Brookline  
333 Washington Street  
Brookline, MA 0 2445  
with a copy to:

Joslin Murphy, Town Counsel  
Office of Town Counsel  
333 Washington Street  
Brookline, MA 02445

If to BCH, addressed as follows:

Boston Children's Hospital  
300 Longwood Avenue  
Boston, MA  
Attn: Charles Weinstein, Esq.  
and  
Attn: General Counsel

with a copy to:

Goulston & Storrs, P.C.  
400 Atlantic Avenue  
Boston, MA 02110  
Attn: Marilyn L. Sticklor, Esq.  
and  
Attn: Darren M. Baird, Esq.

Each of the Parties shall have the right by notice to the other to designate additional parties to whom copies of notices must be sent, and to designate changes in address. Any notice shall have been deemed duly given if mailed to such address postage prepaid, registered or certified mail, return receipt requested, on the date the same is received or when delivery is refused, or if delivered to such address by hand or by nationally recognized overnight courier service, fees prepaid, when delivery is received or when delivery is refused, or if transmitted by facsimile or other electronic means with confirmatory original by one of the other methods of delivery herein described, on the date so transmitted by facsimile or other electronic means.

10.6 If and to the extent that either of the Parties is prevented from performing its obligations hereunder by an event of force majeure, such party shall be excused from performing hereunder and shall not be liable in damages or otherwise, and the Parties instead shall negotiate in good faith with respect to appropriate modifications to the terms hereof. For purposes of this Agreement, the term force majeure shall mean any cause beyond the reasonable control of the affected party, including without limitation requirement of statute or regulation; action of any court, regulatory authority, or public authority having jurisdiction; acts of God, fire, earthquake, floods, explosion, actions of the elements, war, terrorism, riots, mob violence, inability to procure or a general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, actions of labor unions, condemnation, laws or orders of governmental or military authorities, or any other cause similar to the foregoing, not within the reasonable control of such party obligated to perform such obligation. With respect to any particular obligation of BCH only, the term force majeure shall include the denial of, refusal to grant or appeals of any permit, approval or action of any public or quasi-public authority, official, agency or subdivision and any litigation brought by a third party relating to such particular obligation, or any other cause similar to the foregoing, not within the reasonable control of such party obligated to perform such obligation.

10.7 Failure by BCH to perform any term or provision of this Agreement shall

not constitute a default under this Agreement unless and until BCH fails to commence to cure, correct or remedy such failure within thirty (30) days of the receipt of written notice of such failure from the Town to BCH and thereafter fails to complete such cure, correction or remedy within sixty (60) days of receipt of such written notice or, with respect to defaults which cannot reasonably be cured, corrected or remedied within such sixty (60) day period, within such additional period of time as is reasonably required to remedy such default, provided BCH exercises due diligence in the remedying of such default and notifies the Town of the steps being taken to remedy the default.

10.8 The obligations of Children's 1 BP or Children's 2 BP do not constitute the personal obligations of Children's 1 BP or Children's 2 BP or of the members, trustees, partners, directors, officers, or shareholders of Children's 1 BP or Children's 2 BP or of any direct or indirect constituent entity of Children's 1 BP or Children's 2 BP or any of its or their affiliates or agents, and the Town shall not seek recourse against any of the foregoing or any of their personal assets for satisfaction of any liability with respect to this Agreement or otherwise. In no event shall Children's 1 BP or Children's 2 BP be liable for any incidental, indirect, punitive or special or consequential damages, but the Town shall have the recourse to injunctive relief or specific performance to enforce this Agreement in the event of default by Children's 1 BP or Children's 2 BP and the right to lien the Property or any improvements to the Property for amounts due the Town under this Agreement. For the purposes of this Agreement any amounts due the Town may be considered municipal charges or fees for the purposes of collection.

10.9 Each Party agrees from time to time, upon not less than ten (10) days' prior written request from the other, to execute and deliver a statement in writing certifying that this Agreement is in full force and effect (or if there have been any modifications, setting them forth in reasonable detail), and that there are no uncured defaults of either Party under this Agreement (or, if not, specifying the respects in which the requesting party is not in compliance in reasonable detail), in form reasonably acceptable to and which may be relied upon by any prospective purchaser, tenant, mortgagee or other party having an interest in the Property and any component of the Proposed Project. With the exception of any provision of Section 8 that survives this Agreement, upon the full performance by BCH of its obligations hereunder, the Town, at BCH's request, shall issue a statement in form appropriate for recording with the Norfolk County Registry of Deeds and filing with the Norfolk Registry District stating that all of the terms of this Agreement have been satisfied and that this Agreement is of no further force and effect.

10.10 Whenever the consent or approval of any party is required under this Agreement, such consent or approval shall not unreasonably be withheld, delayed or conditioned. Such approvals shall be deemed given if no written response is received within ten (10) business days of the request for approval having been so delivered; provided, however, that, in the event that the Town Administrator or his/her designee provides notice within such ten (10) business day period that additional time is needed for the Town to provide such written response not to exceed twenty (20) additional business days, the requested approval shall not be deemed given if a written response is received as soon as practicable but not later than the expiration of the time specified in such notice.

10.11 This Agreement shall be deemed to have been executed within the

Commonwealth of Massachusetts and the rights and obligations of the Parties shall be governed by Massachusetts law. Any action to enforce the terms of this Agreement shall be brought in Norfolk County Superior Court.

10.12 If any provision of this Agreement or the application of such provision to any person or circumstances shall be determined to be invalid or unenforceable, the remaining provisions of this Agreement or the application of the provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected and shall be valid and enforceable to the fullest extent.

10.13 Upon execution and recording of this Agreement and upon the vote of Board of Selectmen authorizing the termination of the Prior Agreements, this Agreement shall replace the Prior Agreements and the Town and BCH each hereby agree that the Prior Agreements, shall be deemed terminated and without further force or effect and the parties shall cause Marsh, Moriarty, Ontell & Golder, PC, to return the original signature pages to such documents to the parties that executed the same.

10.14 This Agreement sets forth the entire agreement of the Parties with respect to the subject matter thereto. The failure of any party to strictly enforce the provisions hereof shall not be construed as a waiver of any obligation hereunder. This Agreement may be modified only in a written instrument signed by the Selectmen and BCH. The Parties do not intend for any third party to be benefited hereby.

10.15 BCH hereby agrees and acknowledges that before it commences the construction of the Proposed Project, it shall either (a) acquire the fee simple interest in and to the Property from the current owners thereof; or (b) obtain a written consent and acknowledgement from the owner of each of the 1 BP Parcel and the 2-4 BP Parcel, binding the fee simple interest in and to each of the parcels to the provisions of this Agreement in the event that the ground lease associated with either Parcel is terminated, provided, however, in the instance of a consent under clause (b) above, that the owner of the property, if such entity is not an affiliate of BCH, shall have no liability, either direct or indirect, with regard to the covenants, agreements, obligations and liabilities contained herein.

10.16 Except as provided in Article 8, this Agreement shall terminate ten (10) years after the date hereof.

**[Remainder of Page Intentionally Left Blank.]**

IN WITNESS WHEREOF, the parties have executed this Agreement as a sealed instrument as of the day and year first above written.

TOWN:

TOWN OF BROOKLINE  
By its Board of Selectmen

Betsy DeWitt  
Betsy DeWitt

Richard Benka  
Richard Benka

Nancy Daly  
Nancy Daly

Kenneth Goldstein  
Kenneth Goldstein

Neil Wishinsky  
Neil Wishinsky

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss

I hereby certify that on this 29<sup>th</sup> day of April, 2014, personally appeared the above named Betsy DeWitt, Nancy Daly, Richard Benka, Kenneth Goldstein and Neil Wishinsky, personally known to me and who executed the foregoing as their free act and deed as members of the Board of Selectmen of the Town of Brookline acting on behalf of the Town of Brookline.

Appointed to Sign 5/13/14

Witness my hand and seal at Norfolk County, Brookline, Massachusetts, this 29<sup>th</sup> of April, 2014.

[Signature] 5/13/14

[Signature]

Notary Public  
My Commission Expires:

6/11/15

**PATRICIA T. PARKS**  
NOTARY PUBLIC  
My commission expires June 11, 2015

[Signatures continued on next page]

**PATRICIA T. PARKS**  
NOTARY PUBLIC  
My commission expires June 11, 2015

BCH:

Witness:

CHILDREN'S ONE BROOKLINE PLACE LLC

By: Fenmore Realty Corporation, its sole manager

Print Name \_\_\_\_\_

By: Sandra L Fenwick  
Name: Sandra L Fenwick  
Title: President + CEO

Witness:

CHILDREN'S BROOKLINE PLACE LLC

By: Fenmore Realty Corporation, its sole manager

Print Name \_\_\_\_\_

By: Sandra L Fenwick  
Name: Sandra L Fenwick  
Title: President + CEO

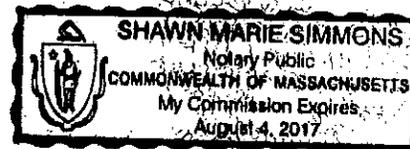
COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

On this 14<sup>th</sup> day of May, 2014, before me, the undersigned notary public, personally appeared the above named Sandra L. Fenwick, and proved to me through satisfactory evidence of identification in the form of personal knowledge, to be the person whose name appears above and that he signed voluntarily for its stated purpose as President + CEO of Fenmore Realty Corporation, the sole manager of Children's One Brookline Place LLC.

Witness my hand and seal at Suffolk County, Boston, Massachusetts, this 14<sup>th</sup> of May, 2014.

Shawn Marie Simmons  
Notary Public Shawn Marie Simmons  
My Commission Expires: 8/4/17

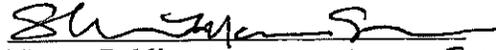


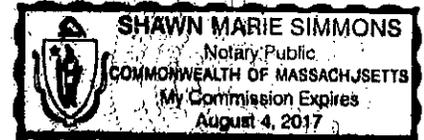
COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

On this 14<sup>th</sup> day of May, 2014, before me, the undersigned notary public, personally appeared the above named Sandra L. Fenwick, and proved to me through satisfactory evidence of identification in the form of personal knowledge, to be the person whose name appears above and that he signed voluntarily for its stated purpose as President + CEO of Fenmore Realty Corporation, the sole manager of Children's Brookline Place LLC.

Witness my hand and seal at Suffolk County, Boston, Massachusetts, this 14<sup>th</sup> of May, 2014.

  
Notary Public Shawn Marie Simmons  
My Commission Expires: 8/4/17



**JOINDER**

The undersigned \_\_\_\_\_ (the "**Lender**") is the holder of that certain Mortgage and Security Agreement from \_\_\_\_\_, dated \_\_\_\_\_, and recorded with the Norfolk County Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_ (the "**Mortgage**") encumbering certain property including a portion of the Property described in the Restrictive Covenant (the "**Restrictive Covenant**") attached as **Exhibit D** and in the Easement Agreement (the "**Easement Agreement**") attached as **Exhibit E** to the Agreement (the "**Agreement**") to which this Joinder is attached.

The Lender hereby acknowledges that, upon satisfaction of the conditions set forth in Section \_\_\_ of the Agreement, that the Lender will subordinate the Mortgage to the provisions of the Restrictive Covenant and the Easement Agreement, so that, in the event the property encumbered by the Mortgage is acquired by the Mortgagee, its successors and/or assigns, whether by foreclosure or deed in lieu of foreclosure, title thereto shall be and remain subject to Restrictive Covenant and Easement Agreement.

\_\_\_\_\_  
(MORTGAGEE)

By: \_\_\_\_\_  
Name:  
Title:

Date:



feet, 30.95 feet and 139.02 feet, respectively;

NORTHWESTERLY  
NORTHERLY AND  
NORTHEASTERLY

by Pearl Street, 393.75 feet; and

SOUTHEASTERLY  
EASTERLY AND  
SOUTHWESTERLY

by Lot C shown on said plan by three courses measuring 65.74  
feet, 48.82 feet and  
95.09 feet, respectively.

The above-described premises contains the following parcels of registered land:

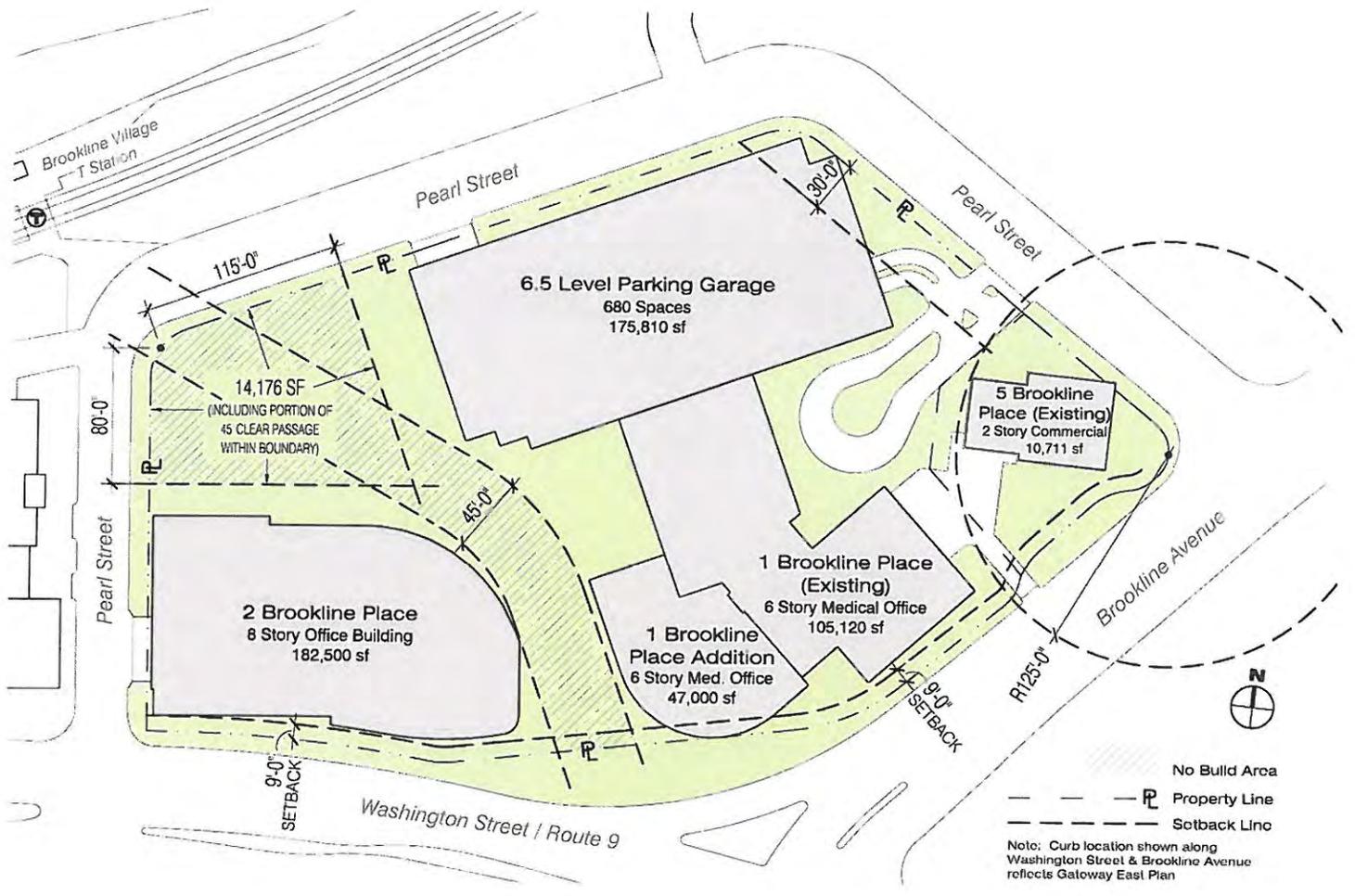
Lots 1 through 5 on Land Court Plan 24371<sup>A</sup> and a “way” shown on said plan.

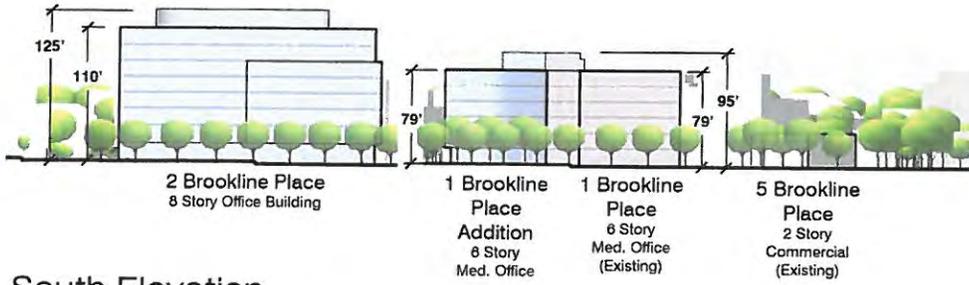
Together with the benefit of terms and provisions of Easement Agreement dated October 31, 2006 by and among Brookline Village II Limited Partnership, Village Plaza Limited Partnership and Village Waterworks Limited Partnership and recorded in Book 24255, Page 389, and filed as Document No. 1115033.

**EXHIBIT B**

**DESCRIPTION OF PROPOSED PROJECT**

**[SITE PLAN AND ELEVATION PLANS AND NOTES]**





South Elevation



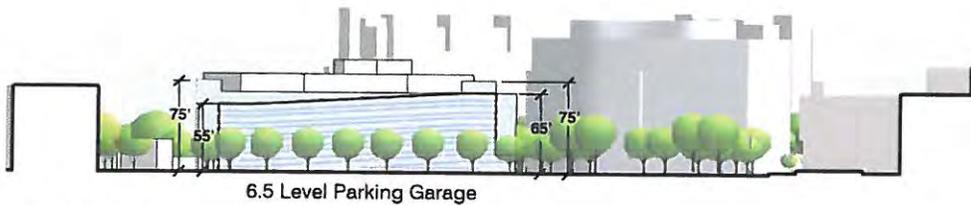
South Key Plan



West Elevation



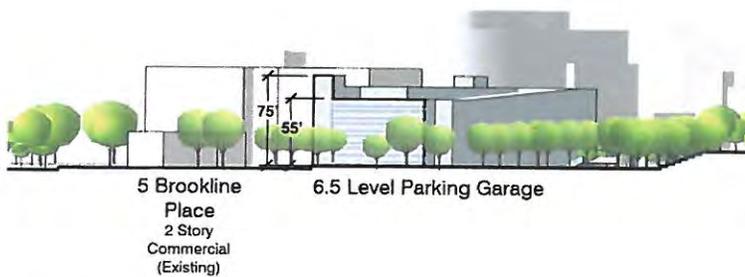
West Key Plan



North Elevation



North Key Plan



East Elevation



East Key Plan

Blue Shading Indicates New Construction

**EXHIBIT C**

**PROPOSED AMENDED GMR DISTRICT ZONING PROVISIONS**

ARTICLE 15

FIFTEENTH ARTICLE

Submitted by: Selectmen's Brookline Place Advisory Committee

To see if the Town will amend the Brookline Zoning By-Law as follows: (new language in bold; deleted language stricken):

Section 2.07—"G" DEFINITIONS, 1. GROSS FLOOR AREA, as follows:

1. GROSS FLOOR AREA—The sum of the areas of all floors of all principal and accessory buildings whether or not habitable except as excluded. Gross floor area shall include enclosed porches and the horizontal area at each floor level devoted to stairwells and elevator shafts. Gross floor area shall exclude (a) portions of cellars, basements, attics, penthouses and historically and architecturally significant accessory buildings that are not habitable, provided however that space that has been decommissioned shall not be excluded from gross floor area; (b) except as required in §5.06, paragraph 4, subparagraph b(3) relating to the parking in Coolidge Corner **and as required in §5.06, paragraph 4, subparagraph d(1)(c)(iv) relating to the parking in the GMR-2.0 District**, any floor space in accessory buildings or in the main building intended and designed for parking of motor vehicles in order to meet the parking requirements of this By-law, provided, however, that for single and two-family dwellings the floor space thereby exempted from the calculation of gross floor area shall not exceed 360 square feet per required parking space; (c) elevator penthouses and mechanical equipment enclosures located above the roof, if not habitable; (d) necessary mechanical equipment space in the basement; and (e) up to 150 square feet of area in an accessory structure such as a garden or equipment shed. Measurements shall be from the exterior faces of the walls or from the centerlines of the walls for adjoining buildings. For one-, two-, and three-family buildings where the ceiling height measured from the finished floor to the ceiling exceeds 12 feet (including without limitation atriums, vaulted ceilings and cathedral ceilings), gross floor area shall be calculated by dividing by 12 the maximum ceiling height in such areas where the ceiling height exceeds 12 feet, and multiplying the result by the horizontal square footage in such areas where the ceiling height exceeds 12 feet. Space that has been decommissioned shall be included in the gross floor area of a building.

Section 5.00, Table 5.01 – Table of Dimensional Requirements, provisions applicable to GMR - 2.0 DISTRICT, as follows:

| DISTRICT | USE  | LOT SIZE MINIMUM (sq. ft.) | FLOOR AREA RATIO MAXIMUM          | PBI <sup>11</sup> NB ONLY | LOT WIDTH <sup>4</sup> MINIMUM (feet) | HEIGHT <sup>9</sup> MAXIMUM | PBI <sup>11</sup> |     | MINIMUM YARD <sup>3</sup> (feet) |                     |                   | OPEN SPACE (% of gross floor area) |                     |
|----------|--|----------------------------|-----------------------------------|---------------------------|---------------------------------------|-----------------------------|-------------------|-----|----------------------------------|---------------------|-------------------|------------------------------------|---------------------|
|          |  |                            |                                   |                           |                                       |                             | B                 | NB  | Front <sup>1,6</sup>             | Side <sup>2,7</sup> | Rear <sup>8</sup> | Landsc.                            | Usable <sup>1</sup> |
| GMR-2.0  | Any structure or principal use (dwelling-footnote 5) | none <sup>4</sup>          | 2.0                               | 2.5                       | none                                  | 45                          | 60                | 100 | none                             | none                | 10+L/10           | none                               | none <sup>5</sup>   |
|          |  |                            | <del>4.0</del> 3.45 <sup>17</sup> | N/A                       |                                       | N/A                         | N/A               |     |                                  |                     |                   |                                    |                     |

FOOTNOTES:

17. See SECTION 5.06-SPECIAL DISTRICT REGULATIONS, d. General Business and Medical Research (GMR).

Section 5.06-SPECIAL DISTRICT REGULATIONS, 4.d. General Business and Medical Research (GMR), as follows:

§5.06 – SPECIAL DISTRICT REGULATIONS

4. Special Districts

d. *General Business and Medical Research (GMR)*

1) All **major impact** applications for new structures, outdoor uses, and exterior alterations or additions in the GMR-2.0 District ~~which exceed a floor area ratio of 2.5 or a height of 100 feet shall be permitted only on a lot no less than 50,000 square feet and no greater than 65,000 square feet in area and~~ shall be subject to the requirements of §5.09, Design Review, obtain a special permit per §9.03, and meet the following requirements:

a) the maximum height shall not exceed 115 feet ~~and the maximum gross floor area shall not exceed 4.0. The maximum gross floor area and open space requirements as described in Table 5.01 shall be determined based on the combined total area of all lots within the GMR-2.0 District.~~

b) no less than ~~25%~~ **35%** of the ~~Lot Area~~ **total area of all lots within the GMR-2.0 District** shall be devoted to ~~landscaped and usable~~ open space, consisting of the part or parts of the lots at ground level designed and developed for pleasant appearance with trees and shrubs, ground covers and grass, including other landscaped elements such as natural features of the site and walks and including

areas developed for outdoor use for recreation. Such space may not include lot area used for automotive circulation or parking. Hard surfaced walks and plazas may not exceed 55% of the total area required for such open space.

c) ~~no less than 60% of the parking spaces required by the Board of Appeals shall be provided completely below grade.~~ The buildings shall be subject to the following special dimensional requirements, as illustrated in the Figure at the end of §5.06(4)d:

i) No buildings shall be constructed within the area defined by the north and west Pearl Street property lines, and lines perpendicular to said boundary lines, one line 80 feet from the intersection of the west and north boundary lines on the west boundary line, and the other line 115 feet from the intersection of the west and north boundary lines on the north boundary line. In a situation where the interpretation of the boundaries of such area is not clear, the Board of Appeals may determine a no-build area that it deems will best approximate the requirements of this subsection;

ii) Any development that has frontage on both Pearl Street and Washington Street shall contain an area designed and intended for non-vehicular use not less than 45 feet in width that is interior to such development area and not on the perimeter bounding Pearl Street or Washington Street, which area shall be kept open for public pedestrian passage;

iii) The maximum height of any building measured to the top of the railings or parapet above the roof shall not exceed 65'-0" within the area defined by the Pearl Street north and east property lines, a line parallel to the north boundary line located 130'-0" from said boundary line, and a line perpendicular to the north boundary line located 115 feet from the intersection of the north and west boundary lines. It shall not exceed 55 feet within the portion of this area defined by the Pearl Street north and east property lines, and a line 30' from the east boundary line and parallel to said boundary line. In a situation where the interpretation of the boundaries of such area is not clear, the Board of Appeals may determine an area that it deems will best approximate the requirements of this subsection. Only in the area in which the height of 65'-0" is permitted, substantial rooftop structures such as observation towers, elevator penthouses and mechanical equipment may exceed this height limit by 10 feet or such greater amount as may be authorized by special permit granted by the Board of Appeals;

iv) The gross floor area of the buildings used to calculate the maximum permitted floor area ratio shall include the floor space at or above grade

**in an accessory building or in a main building intended and designed for the parking of motor vehicles, but such floor space shall not be included in the gross floor area for the purpose of calculating parking requirements;**

**v) There shall be a front yard setback of 9 feet from the front lot line bordering Washington Street and Brookline Avenue, subject to modification by the Board of Appeals as provided in Section 5.43.**

d) no less than 25% of the provided total number of parking spaces shall be offered to residents for overnight parking.

e) no less than 1% of the hard construction costs of constructing a building ~~on a lot~~ **within the GMR-2.0 District** (exclusive of tenant fit-up) shall be devoted to making off-site streetscape improvements (such as, but not limited to, lighting, street furniture and widening sidewalks) and undertaking transportation **and community benefit** mitigation measures. **In addition to review by the Planning Board**, a plan of the proposed off-site streetscape improvements and a description of the proposed transportation mitigation measures shall be submitted for the review and approval of the ~~Planning Board~~ **Director of Transportation and the Director of Parks and Open Space** or ~~its designee~~ **their designees.**

2) The parking requirements for applications in the GMR-2.0 District **shall be reviewed as a single lot without regard to lot ownership and** in light of the proximity to rapid public transit shall be as follows:

a) retail use: one parking space per ~~400~~ **533** g.s.f. of floor area

b) office use: one parking space per ~~600~~ **800** g.s.f of floor area

c) research laboratory use (Use 36B): one parking space per ~~1,000~~ **1,250** g.s.f. of **floor area**

d) medical office use: one parking space per ~~350~~ **467** g.s.f. of **floor area**

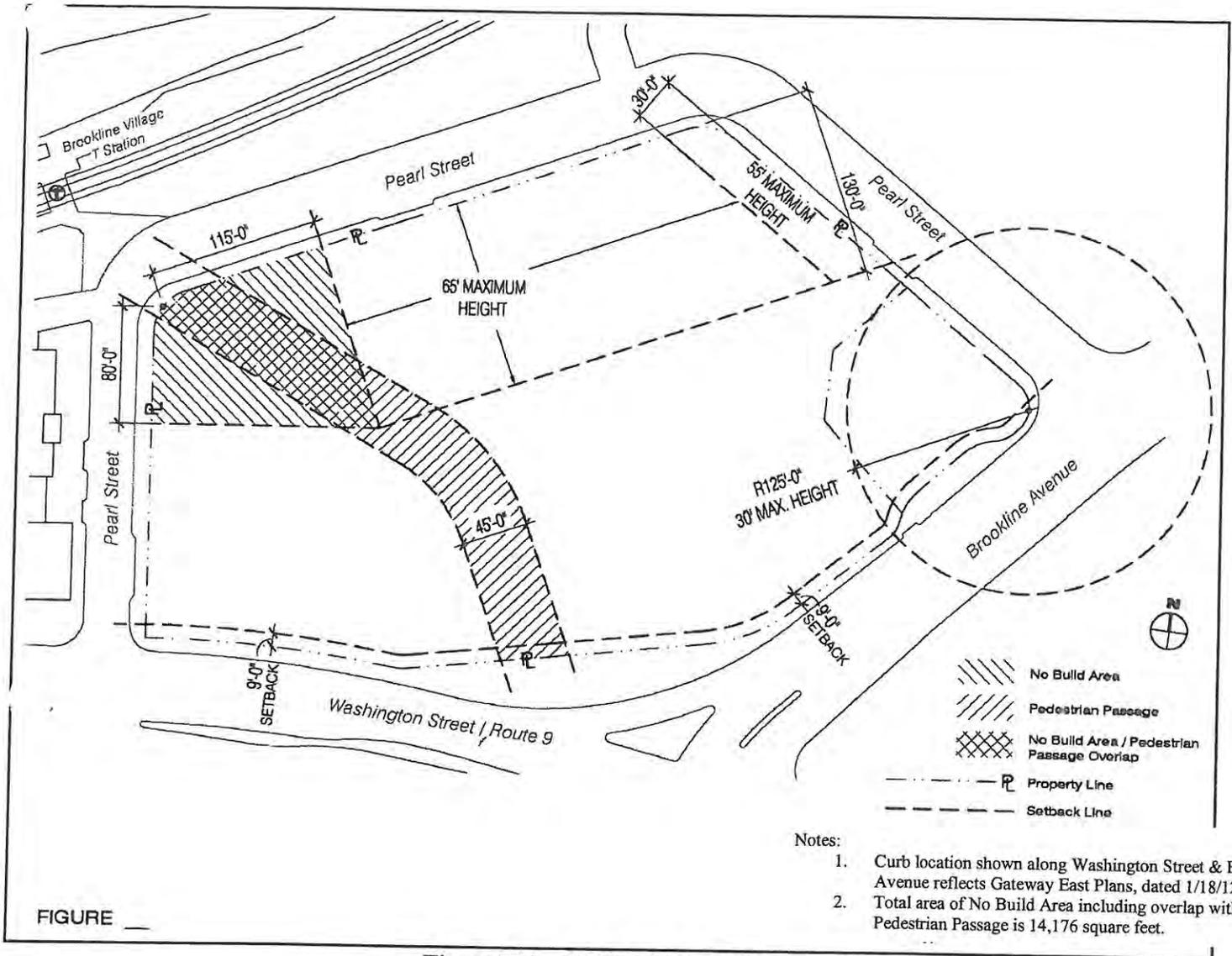
e) **For any major impact project within the GMR-2.0 District, a Transportation Access Plan Agreement ("TAPA") that includes recognized Transportation Demand Management ("TDM") programs shall be a condition of the special permit. Such TAPA shall be submitted to the Director of Transportation and the Director of Planning and Community Development for their review and approval. All owner(s) of the property or properties subject to the special permit shall submit an annual report for review and approval to the Director of Transportation relative to the implementation and effectiveness of the TAPA. The Director of Transportation in consultation with the Director of Planning and Community Development shall determine whether the TAPA is working satisfactorily or whether reasonable modifications to the TAPA are required.**

The TAPA shall be modified to incorporate any reasonable requests of the Director of Transportation within sixty (60) days after he/she issues his/her determination. Failure to issue such a determination within sixty (60) days of receiving the annual report shall be deemed acceptance of the report and existing provisions of the TAPA. If any owner objects to any new request as being unreasonable or not required, such matter may be presented to the Transportation Board for recommendation to the Board of Appeals for determination.

~~The number of parking spaces for the above uses in a GMR-2.0 District may be reduced by special permit, however, by no more than 25%, where it can be demonstrated to the Board of Appeals that is warranted due to provisions in a Transportation Access Plan that includes recognized Transportation Demand Management programs. A Transportation Access Plan Agreement shall be a condition of the special permit, shall be submitted for review to the Director of Transportation and the Director of Planning and Community Development, and shall require an annual report to the Director of Transportation. This annual report shall be accepted only after a determination by the Director of Transportation and Director of Planning and Community Development that the Transportation Access Plan is working satisfactorily and, if not, that the plan will be changed and implemented to their satisfaction. The Board of Appeals may also approve parking facilities that employ a tandem parking arrangement and/or mechanical devices that enable vehicles to be stacked vertically inside a garage subject to a report and recommendation from the Town's Director of Engineering and Transportation.~~

- f) The maximum number of parking stalls within the GMR-2.0 District shall not exceed 683, excluding drop-off and loading zones. The Board of Appeals may also approve, based on the criteria set forth in §9.05, accommodation of up to 20% additional number of vehicles, which may be in tandem parking arrangement, and/or any other parking arrangement, operation or devices that enable additional vehicles to be accommodated within parking garages.
- 3) All structures and uses in the GMR-2.0 District shall be subject to the following provisions, including both developments that constitute major impact projects and developments that do not constitute major impact projects:
- a) Notwithstanding any other provision of this by-law with respect to calculating allowable height of a building, within the GMR-2.0 District the height for a building shall be measured from the mean natural grade of ground contiguous to such building. In a situation where the interpretation of natural grade is not clear, the Board of Appeals may determine height that it deems will best approximate the requirements of this subsection.
  - b) All lot lines which are not front lot lines shall be subject to the provisions applicable to side lot lines.

- c) **Buildings within 125 feet of the intersection of Pearl Street and Brookline Avenue property lines shall be no taller than 30 feet, as illustrated in the Figure at the end of §5.06(4)d. In a situation where the interpretation of the point from which the height restriction is measured is not clear, the Board of Appeals may determine the restricted area that it deems will best approximate the requirements of this subsection.**
- d) **Prior to the issuance of any special permit for a major impact project under §5.06(4)d(1), the maximum gross floor area and open space requirements as described in Table 5.01 shall be determined based on the Lot Area and not based on the combined total area of all lots within the GMR-2.0 District. Subsequent to the issuance of any special permit for a major impact project under §5.06(4)d(1) that has not lapsed, the maximum gross floor area and open space requirements as described in Table 5.01 shall be determined based on the combined total area of all lots within the GMR-2.0 District.**
- 4) **A special permit granted under this section as well as special permits granted under other sections of the Zoning By-law that are combined in a single decision with the special permit granted under this section shall lapse within 2 years if a building permit is not issued and construction has not begun by such date except for good cause.**
- 5) **By special permit of the Board of Appeals, signs may be permitted on building walls not parallel or within 45 degrees of parallel to the street.**



**Figure XX – GMR-2.0 District Regulations**

**Illustration of §5.06(4)d(1)c(i-iii) and §5.06(4)d(3)c.**

Or act on anything relative thereto.

**PETITIONER’S ARTICLE DESCRIPTION**

This article is submitted by the members of the Brookline Place Advisory Committee (BPLAC) appointed by the Board of Selectmen, as well as a resident. The Committee was given the responsibility of reviewing and analyzing current physical and economic conditions, zoning, proposed conceptual building massing and the impacts of the proposed project by affiliates of Boston Children’s Hospital (BCH), open space, and the locations, size and design of parking

**EXHIBIT D**

**RESTRICTIVE COVENANT**

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

Jennifer Dopazo Gilbert, Esq.  
Law Office of Robert L. Allen, Jr., LLP  
300 Washington Street  
Brookline, Massachusetts 02445

SPACE ABOVE FOR REGISTRY USE ONLY

### DECLARATION OF RESTRICTIVE COVENANT

This **DECLARATION OF RESTRICTIVE COVENANT** (this “**Declaration**”) is made as of this \_\_\_ day of \_\_\_\_\_, 201\_ (the “**Effective Date**”), by **CHILDREN’S BROOKLINE PLACE LLC**, a Massachusetts limited liability company having an address c/o The Children’s Hospital Corporation, 300 Longwood Avenue, Boston, Massachusetts (“**Children 2-4 BP**”), and **CHILDREN’S ONE BROOKLINE PLACE LLC**, a Massachusetts limited liability company having an address c/o The Children’s Hospital Corporation, 300 Longwood Avenue, Boston, Massachusetts (“**Children’s 1 BP**” and, collectively, at times herein with Children’s 2-4 BP, the “**Declarant**”), as the owners of those certain parcels of real property comprised of approximately 3.318 acres, in the aggregate, within the Town of Brookline, together with the improvements located thereon, hereby declares that the Property (as more particularly defined below) shall be subject to and have the benefit of the covenants and restrictions set forth herein.

#### WITNESSETH:

WHEREAS, Children’s 2-4 BP is the owner of certain property situated at and known as 2-4 Brookline Place in Town of Brookline, Norfolk County, Commonwealth of Massachusetts, containing approximately 57,040 square feet (the “**2-4 BP Property**”), and which is more particularly described on Exhibit A, and Children’s 1 BP is the owner of certain property situated at and known as 1 Brookline Place in said Town of Brookline, containing approximately 87,468 square feet (the “**1 BP Property**”), and which is more particularly described on Exhibit B attached hereto and incorporated herein by reference (collectively, the “**Property**”); and

WHEREAS, the Town is the holder of certain easement rights for pedestrian access purposes on over the Property, pursuant to that certain Easement Agreement dated of even date herewith, and recorded with the Norfolk Registry of Deeds (the “**Registry**”) in Book \_\_\_\_\_, at Page \_\_\_ (the “**Town Easement**”), which Town Easement is immediately adjacent to the Property; and

WHEREAS, the Town, at its Annual Town Meeting held on May 27, 2014, adopted certain amendments to the zoning district containing the Property, in order to permit the redevelopment of the Property (the “**Amended Zoning**”), as more particularly defined in that certain Memorandum of Agreement (“MOA”) entered into by and among the Declarant and the Town, acting by and through its Board of Selectmen, dated as of April 29, 2014 (the “**Development Agreement**”); and

WHEREAS, pursuant to Section 5(b) of the MOA, Declarant covenanted and agreed to execute and deliver this Declaration, in consideration for the adoption and continued effectiveness of the Amended Zoning, and the Town desired to accept the same, which Declaration shall inure to the benefit of the Town Easement, in order to ensure, subject to the terms and provisions of this Declaration, the long-term real estate tax certainty of the Property for a term of up to ninety-five (95) years from the Effective Date.

NOW, THEREFORE, in consideration of the Town’s adoption of the Amended Zoning and the continued effectiveness thereof, the undersigned hereby represents, covenants and agrees with the inhabitants of the Town as follows:

1. Restriction. Except for conveyances to the Town or the Commonwealth of Massachusetts, neither the Property nor any portion thereof shall be sold, conveyed or otherwise transferred to an entity that qualifies for an exemption from property taxation under Massachusetts General Laws Chapter 59, Section 5, unless prior to such sale, conveyance, or other transfer, the exempt entity enters into an agreement with the Town for Payment-In-Lieu-Of-Taxes or such other substantively similar agreement (such an agreement, a “**PILOT**”) with regard to the Property or portion thereof to be sold, conveyed or otherwise transferred, on such terms and conditions as are reasonably acceptable to the Board of Selectmen, that provides, among other things, the following:
  - (a) That the owner of the applicable portion of the Property shall be required to pay to the Town a Voluntary Real Estate Tax Payment in quarterly installments on the date that real property taxes are due and payable in the Town in each applicable fiscal tax year for the then-remaining Term of this Declaration;
  - (b) The total Voluntary Real Estate Tax Payment paid with respect to the 2-4 BP Property shall be equal to the amount of real property taxes that would otherwise have been levied by and owed to the Town for all or any portion of the 2-4 BP Property were it not used for an exempt use or uses and thus not exempt from real property taxes under applicable law in the relevant fiscal tax year;
  - (c) The total Voluntary Real Estate Tax Payment paid with respect to the 1 BP Property shall be equal to the amount of real property taxes that would otherwise have been levied by and owed to the Town for all or any portion of the following components of the Property, were it not used for an exempt use or uses and thus not exempt from real property taxes under applicable law in the relevant fiscal year: (i) the 47,000 +/- square foot

addition constructed on the 1 BP Property pursuant to the Amended Zoning and any subsequently issued special permit; (ii) subject to the limitations of this subparagraph (c), the entire garage situated on the 1 BP Property, if such garage is redeveloped and or a new garage is constructed on the 1 BP Property pursuant to the Amended Zoning and any subsequently issued special permit; (iii) and/or any improvements that have been constructed pursuant to the Amended Zoning and any subsequently issued special permit.

Notwithstanding the above, in the event that the PILOT is entered into between the Town and the exempt entity before the date that the Leasehold Mortgage, Assignment of Leases and Rents and Security Agreement dated as of August 1, 2008, granted by Children's 1 BP and Children's Five Brookline Place LLC to John Hancock Life Insurance Company (U.S.A.), and recorded with the Norfolk Registry of Deeds in Book 25954, at Page 1, and the Norfolk Registry District of the Land Court as Document No. 1157966, as the same may be amended and restated from time to time (the "**Mortgage**"), is discharged as a result of Children's 1 BP's pay-off of the underlying indebtedness secured by said Mortgage, the PILOT shall provide that the total Voluntary Real Estate Tax Payment to be paid with respect to the garage, shall be limited to the amount equal to the amount of real property taxes that would otherwise have been levied by and owed to the Town for the addition to the garage situated on the 1 BP Property as of the Effective Date of this Declaration or, in instance of construction of a new garage, the increased value of the 1 BP Property, resulting from the addition of the net new parking spaces on the 1 BP Property pursuant to the Amended Zoning and any subsequently issued special permit (such incremental amount, the "**Partial Garage Tax Amount**"), in the event that John Hancock Life Insurance Company (U.S.A.) or any of its affiliates, successors and/or assigns holding the Mortgagee's interest in such Mortgage (collectively, "**JHUSA**") (i) forecloses on the Mortgage or (ii) takes possession of the 1 BP Property. In the event that the PILOT is entered into after the date that the Mortgage is foreclosed on or JHUSA has taken possession of the 1 BP Property pursuant to its rights under the Mortgage, the PILOT shall provide that the total Voluntary Real Estate Tax Payment to be paid by the exempt entity with respect to the garage, shall thereafter be limited to the Partial Garage Tax Amount. The Town hereby agrees that any consent and/or subordination agreement granted by JHUSA with regard to this Declaration, shall not affect JHUSA's or any party claiming by, through or under JHUSA's, rights to enforce the limitations contained in this subparagraph 1(c). The limitations contained in this subparagraph shall not apply after a discharge of the Mortgage resulting from the pay-off of the underlying indebtedness by Children's 1 BP, even if such pay-off is the result of a refinancing of such indebtedness by any lender or lending institution, including, without limitation, John Hancock Life Insurance Company (U.S.A.);

- (d) That the owner shall have the right to contest the amount of the Voluntary Real Estate Tax Payment on the basis of over valuation or disproportionate valuation in comparison to similar properties or by another measure of taxable value used by the Town Assessors for similarly situated uses, provided that such owner and the Town shall, before commencing legal action or commencing collection activity, first use good faith efforts to mediate the issue of valuation with the Assessors;
- (e) For the purposes of the PILOT, the term "Exempt Use" shall mean those uses of real property that render such property eligible from real property taxation pursuant to Massachusetts General Laws c. 59, Section 5, Clause Third or any other subsequent amendment thereto or other law enacted which effects the tax status of the property adopted during the Term of this Declaration;
- (f) The owner shall have the right, at any time following the expiration of the twentieth (20<sup>th</sup>) fiscal year of such PILOT to terminate the PILOT Agreement with regard to either or both of the 1 BP Property and the 2-4 BP Property, by making a one-time Voluntary Real Estate Tax Payment to the Town equal to the net present value of the Voluntary Real Estate Tax Payments that would be due to the Town for the balance of the term of the PILOT on such Property, the amount of which prepayment shall equal the net present value, as of the date of such prepayment, of all of the remaining payments that are scheduled to be made to the Town under the PILOT, discounted to the date of such prepayment at an annual rate that is equal to the most recent 30-year U.S. Treasury bond, with the remaining payments under the PILOT to be determined by applying to each annual payment an increase based on the average of the increase in taxes, on a percentage basis, for the commercial properties class in the Town of Brookline for the immediately preceding 20-year period.; and
- (g) The PILOT shall require the Town to provide the owner with a written statement of the amount due not less than thirty (30) days prior to the due date; and
- (h) The PILOT shall contain a provision with respect to lien/collection remedies that upon the failure to make any payment due to the Town, the Town may take whatever action it deems feasible to collect said payment whether in law or equity and the parties shall agree that payments due may constitute a fee for collection proceedings and may constitute a lien on the property for collection purposes. Upon written request from time to time to the Town Tax Collector, the Tax Collector shall provide the record owner of the Premises with a written statement in recordable form certifying compliance with this Agreement as of said date and otherwise stating any amounts due and payable and the amount of the payment.

The Town hereby acknowledges that Children's 1 BP may in the future subdivide the 1 BP Property, thereby creating separate lots for each of (a) the office/medical office building, as improved by the above-referenced addition, and (b) the redeveloped parking garage. The parties hereby agree that in the event of such a subdivision, (1) the Voluntary Tax Payment payable pursuant to subparagraph (c) above, by the owner of the parcel containing the office/medical office building shall be limited to the 47,000 square foot addition to such building, and, by the owner of the garage, for the garage (or relevant portion thereof in the event of a foreclosure by JHLICO) if the garage is redeveloped and/or reconstructed; and (2) the owner of each parcel shall each have the rights, with regard to its respective parcels, of Children's 1 BP under this Declaration, including, without limitation, the rights under subparagraph (f) above to prepay the Voluntary Tax Payments allocable to its parcel.

Declarant, for and on behalf of itself and its successors and/or assigns, hereby agrees and covenants that in the event that it or any other owner of any portion of the Property, after the date that it acquires its ownership interest in such portion of the Property, becomes qualified to apply for and receive an exemption from property taxation under applicable law, such entity, prior to applying for an exemption from property taxation, shall enter into a PILOT containing the provisions set forth in this Section 1.

2. Benefit and Burden. The covenants and restrictions contained in Article 1 shall attach to, bind and run with the Property for the term specified in Article 4 of this Declaration and shall inure to the benefit of the Town as the holder of the Town Easement, which Easement, pursuant to its terms, is not assignable by the Town, and shall be enforceable by appropriate injunctive or other equitable relief.
3. Conveyances Voidable. A deed for the Property or any portion thereof in violation of this covenant shall be voidable by the Town.
4. Period of Restrictions.
  - (a) Except as set forth in subparagraph (b) below, the restrictions set forth herein are imposed for a term of ninety-five (95) years from the Effective Date hereof (the "**Term**"), and Declarant hereby agrees and acknowledges that the restrictions shall not be deemed to be "unlimited as to time" within the meaning of Massachusetts General Laws, Chapter 184, Section 23, and that prior to the expiration of the initial thirty (30) years and prior to the expiration of any subsequent renewal period, such restrictions may be renewed from time to time thereafter for additional periods not in excess of twenty (20) years each, in accordance with the provisions of Massachusetts General Laws, Chapter 184, Section 27 or any successor statute.
  - (b) Notwithstanding the above, the Town, by executing and acknowledging this Covenant, hereby agrees that in the event that Declarant fails to obtain

a building permit for the construction of the improvements permitted by the Amended Zoning prior to the date on which the Special Permit, as the same may be extended, lapses, this Declaration shall automatically terminate and be deemed null and void and without any further force or effect in the event that (i) Declarant applies for a special permit and/or any other permits, licenses and/or other approvals necessary, in the Declarant's reasonable discretion, to allow for the construction of improvements under the Amended Zoning (collectively, the "**Required Approvals**") and (ii) the Board of Appeals of the Town of Brookline or any other public board, committee or body having jurisdiction or enforcement powers over the Property or the proposed project fails to grant such Required Approvals in form and condition satisfactory to Declarant, with all appeal periods having passed, no appeals pending, or, if any such Required Approval is appealed (x) in the event the appeal was filed by unrelated third parties, the same having been finally disposed of favorably to the third party or favorably to the Declarant, more than two (2) years from the date of the issuance of the Required Approval which is subject of the appeal; and (ii) in the event that the appeal was filed by the Declarant, the same having been finally disposed of favorably to the Town. Upon such termination, Declarant shall have the right to file with the Registry a notice, executed by the Declarant, stating that this Declaration has terminated, provided that Declarant delivers a copy of said certificate to the Town Clerk of the Town immediately following the recording of said certificate with the Registry.

5. Force Majeure. Whenever performance is required by the Declarant under the terms of this Declaration, the Declarant shall use all due diligence to perform and take all necessary measures in good faith to effect the necessary or required performance; provided, however, that if completion of performance shall be delayed at any time by reason of Acts of God, adverse weather conditions preventing the performance of work as certified by such party's architect or engineer, war, civil commotion, riots, strikes, picketing or other labor disputes, unavailability of labor or materials, government action or inaction (including, without limitation, action or inaction by the Town), damage to work in progress by reason of fire or other casualty, or any other cause beyond the reasonable control of the Declarant or not caused by such party, as applicable ("**Force Majeure**"), then the time for performance as herein specified shall be appropriately extended by the amount of the delay actually so caused; provided that Declarant provides the Town with written notice specifying the nature and anticipated duration of the Force Majeure circumstance. Notwithstanding the foregoing, lack of adequate funds or financial inability to perform shall not be deemed to be a cause beyond the control of the Declarant.

6. Severability. If any term or provision of this Declaration or the application thereof to any person or circumstance shall, to any extent, be declared to be invalid or unenforceable, then the remainder of this Declaration or the application of such term or provision to other persons or circumstances, other than those as to which it would become invalid or unenforceable, shall not be affected thereby, and each term and provision of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

7. Governing Law. This Declaration shall be construed and governed in accordance with the laws of the Commonwealth of Massachusetts.

8. Recording. Wherever this Declaration requires or permits a recording, such recording shall be in the Registry.

9. Limited Undertaking. Nothing in this Declaration shall be construed as an undertaking by the Declarant to commence or complete the construction of the improvements on the Property.

For Declarant's title to the Property, see that certain Deed to Children's 2-4 BP recorded with the Registry in Book \_\_\_\_\_, at Page \_\_\_\_, and that certain Deed to Children's 1 BP recorded with the Registry in Book \_\_\_\_\_, at Page \_\_\_\_.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

EXECUTED as a sealed instrument as of \_\_\_\_\_, 2014.

**DECLARANT:**

**CHILDREN'S BROOKLINE PLACE LLC**, a  
Massachusetts limited liability company

By: Fenmore Realty Corporation, a Massachusetts non-  
profit corporation, its sole manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Hereunto Duly Authorized

**CHILDREN'S ONE BROOKLINE PLACE LLC**, a  
Massachusetts limited liability company

By: Fenmore Realty Corporation, a Massachusetts non-  
profit corporation, its sole manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Hereunto Duly Authorized

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss:

On this \_\_\_ day of \_\_\_\_\_, 2014, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the \_\_\_\_\_ of Fenmore Realty Corporation, the sole manager of Children's Brookline Place LLC, and acknowledged to me that he signed it voluntarily for its stated purpose as the \_\_\_\_\_ of the corporation on behalf of the limited liability company.

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

Print Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

[affix seal]

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss:

On this \_\_\_ day of \_\_\_\_\_, 2014, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the \_\_\_\_\_ of Fenmore Realty Corporation, the sole manager of Children's One Brookline Place LLC, and acknowledged to me that he signed it voluntarily for its stated purpose as the \_\_\_\_\_ of the corporation on behalf of the limited liability company.

Notary Public

\_\_\_\_\_

**Accepted:**

**Town of Brookline Board of Selectmen:**

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**EXHIBIT A**

**Legal Description of 2-4 BP Property**

The land in Brookline, Norfolk County, Massachusetts, known as One Brookline Place and shown as Lot A on a plan entitled "Subdivision Plan of Land/Marsh Project - B-2 Parcel/Brookline, MA/Norfolk County" by J.F. Hennessey Co., dated January 15, 1985, recorded with the Norfolk County Registry of Deeds in Plan Book 324, Plan 927 of 1985, bounded and described as follows:

|                                |  |
|--------------------------------|--|
| SOUTHEASTERLY<br>and SOUTHERLY | by Washington Street 213.30 feet;  |
| WESTERLY and<br>NORTHWESTERLY  | by Pearl Street 400.31 feet;   |
| EASTERLY                       | by Lot B shown on said plan by 3 courses measuring 139.02 feet,<br>30.95 feet and 156.61 feet. |

Together with the benefit of terms and provisions of Easement Agreement dated October 31, 2006 by and among Brookline Village II Limited Partnership, Village Plaza Limited Partnership and Village Waterworks Limited Partnership and recorded in Book 24255, Page 389, and filed as Document No. 1115033.

**EXHIBIT B**

**Legal Description of 1 BP Property**

The land in Brookline, Norfolk County, Massachusetts, known as One Brookline Place and shown as Lot B on a plan entitled "Subdivision Plan of Land/Marsh Project - B-2 Parcel/Brookline, MA/Norfolk County" by J.F. Hennessey Co., dated January 15, 1985, recorded with the Norfolk County Registry of Deeds in Plan Book 324, Plan 927 of 1985, bounded and described as follows:

|   |  |
|---|--|
| SOUTHEASTERLY                                   | by Brookline Avenue and Washington Street by four courses, measuring 99.69 feet, 19.06 feet, 42.73 feet and 175.33 feet, respectively; |
| WESTERLY  | by Lot A shown on said plan by three courses measuring 156.61 feet, 30.95 feet and 139.02 feet, respectively;                          |
| NORTHWESTERLY<br>NORTHERLY AND<br>NORTHEASTERLY | by Pearl Street, 393.75 feet; and  |
| SOUTHEASTERLY<br>EASTERLY AND<br>SOUTHWESTERLY  | by Lot C shown on said plan by three courses measuring 65.74 feet, 48.82 feet and 95.09 feet, respectively.                            |

**EXHIBIT E**

**EASEMENT AGREEMENT**

## EASEMENT AGREEMENT

This EASEMENT AGREEMENT (this "**Easement**") is made as of this \_\_\_ day of \_\_\_\_\_, 201\_ (the "**Effective Date**"), by and among CHILDREN'S BROOKLINE PLACE LLC, a Massachusetts limited liability company, having an address c/o The Children's Hospital Corporation, 300 Longwood Avenue, Boston, Massachusetts 02115 ("**Children 2-4 BP**"), and CHILDREN'S ONE BROOKLINE PLACE LLC, a Massachusetts limited liability company, having an address c/o The Children's Hospital Corporation, 300 Longwood Avenue, Boston, Massachusetts 02115 ("**Children's 1 BP**" and, collectively, at times herein with Children's 2-4 BP, the "**Grantors**", and each sometimes referred to herein as a "**Grantor**"), and the TOWN OF BROOKLINE, a municipal corporation, having an address c/o Brookline Town Hall, 333 Washington Street, Brookline, Massachusetts 02445, acting by and through its Board of Selectmen as duly authorized by vote under Article 17 at the May 27, 2014 Annual Town Meeting (the "**Town**", and, sometimes referred to herein as the "**Grantee**").

WITNESSETH:

WHEREAS, Children's 2-4 BP is the owner of certain property situated at and known as 2-4 Brookline Place in the Town of Brookline, Norfolk County, Commonwealth of Massachusetts, containing approximately 57,040 square feet (the "**2-4 BP Property**"), and which is more particularly described on Exhibit A, and Children's 1 BP is the owner of certain property situated at and known as 1 Brookline Place in said Town of Brookline, containing approximately 87,468 square feet (the "**1 BP Property**"), and which is more particularly described on Exhibit B attached hereto and incorporated herein by reference (the 2-4 BP Property and the 1 BP Property shall, at times herein, be collectively referred to as the "**Property**");

WHEREAS, the Town, at its Annual Town Meeting held on May 27, 2014, adopted certain amendments to the GMR-2.0 Zoning District, in which the Property is situated, in order to permit the redevelopment of portions of the Property (the "**Amended Zoning**"), as more particularly defined in that certain Memorandum of Agreement entered into by and among the Grantors and the Town, acting by and through its Board of Selectmen, dated as of April 29, 2014 (the "**Memorandum of Agreement**"), and as such proposed redevelopment (the "**Proposed Redevelopment**") is conceptually depicted on that certain plan entitled "Conceptual Site Plan", prepared by Elkus Manfredi Architects, LTD, dated March \_\_, 2014, and attached hereto as Exhibit C (the "**Conceptual Redevelopment Plan**"); and

WHEREAS, Grantee has requested from the Grantors, and the Grantors are desirous of granting to the Grantee, a non-exclusive easement for pedestrian ingress and egress over, across and through the Property, which easement will run (i) until the commencement of the construction of the Proposed Redevelopment, over the pedestrian walkways currently situated on the Property that connect the northwesterly corner of the 2-4 BP Parcel immediately adjacent to the Brookline Village Massachusetts Bay Transportation Authority station (the "**MBTA Station**") to Washington Street (Route 9) and Brookline Avenue, along the southerly boundary of the Property (the "**Initial Pedestrian Easement Area**"), as such pedestrian walkways are more particularly shown on that certain plan entitled "Existing Conditions Plan", prepared by

Elkus Manfredi Architects, LTD., dated March \_\_, 2014, and attached hereto as Exhibit D and incorporated herein by reference (the "Existing Conditions Plan"); and (ii) following the issuance of a Certificate of Occupancy for all of the improvements constructed as part of the Proposed Redevelopment (collectively, the "Improvements"), over an area that is materially consistent with the area depicted as "Easement Area" on the Conceptual Redevelopment Plan and shall have a minimum width of forty-five feet (45') and contain approximately 23,916 square feet in total, with a portion of such land situated at the northwest corner of the 2-4 BP Property, measuring approximately 14,176 square feet (such 14,176 square foot area, the "Landscaped Area"), which may be used from time to time for public events as set forth more specifically herein (the "Redeveloped Easement Area").

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Grant of Easement; Redevelopment; Grantors' Retained Rights.**

- a. Grant of Easement; Use. Each Grantor hereby grants to the Grantee, for the benefit of the inhabitants of the Town of Brookline and the general public, a non-exclusive right and easement over, across and through the Initial Pedestrian Easement Area for pedestrian ingress to and egress from Washington Street to and from Pearl Street, to the extent such Pedestrian Easement Area runs over the portion of the Property that it owns as such walkways and extent of ownership of each Grantor is shown on the Existing Conditions Plan. Grantee hereby agrees and acknowledges that Grantors shall have the right, upon the completion of the construction of the Improvements, to relocate the Initial Pedestrian Easement Area to the Redeveloped Easement Area, pursuant to the provisions of subparagraph 1.b., below. For the purposes of this Easement, use of the term "Pedestrian Easement Area" shall refer to each of the Initial Pedestrian Easement Area and the Redeveloped Easement Area, as such Easement Area may then be in force and effect on the Property.

Grantors hereby agree and acknowledge that Grantee shall have the right and easement to utilize the Landscaped Area for such special public activities and events as the Town may desire to sponsor, from time to time, provided, however, that (i) such use by the Town shall be subject to the reasonable rules and regulations as Grantors may establish from time to time for the Property; (ii) to the extent permitted by law, Grantee agrees to indemnify and hold Grantors harmless from any and all claims, damages, liabilities, obligations, costs and/or expenses, including, without limitation, reasonable attorneys' fees, incurred or suffered by Grantors as a result any injury, death or property damage suffered by any parties, as the result of the Town's use of the Landscaped Area for such purposes; (iii) to the extent that the Town carries insurance or self-insures against liabilities with respect to public roadways and/or sidewalks within the Town, it will use reasonable efforts to ensure that such self-insurance will cover its use of the Landscaped Area for the above purposes; and (iv) in no event shall the Town

be permitted to utilize the Landscaped Area for more than four (4) days per calendar year, in the aggregate, without the prior written consent of Grantors, which consent may be granted, withheld or conditioned in Grantor's sole discretion.

- b. Redevelopment of the Property. Notwithstanding the provisions of Section 1.a. hereof, Grantee hereby agrees that its rights to utilize the Pedestrian Easement be suspended on the date set forth in a written notice from the Grantors (the "**Suspension Date**"), delivered (or deemed delivered) to Grantee pursuant to the terms of Section 3.d. of this Easement, that specifically states (i) when the redevelopment of the Property shall commence and (ii) the period of time whereby Grantee's use of the pedestrian easement will be restricted and/or unavailable due to the development (the "**Redevelopment Notice**"). In no event shall the Redevelopment Notice provide for a Suspension Date that is less than thirty (30) days from the date on which Grantee receives, or is deemed to have received, the Redevelopment Notice. Within thirty (30) days of the Town issuing a certificate of occupancy for all of the Improvements, Grantors shall deliver to Grantee an as-built plan showing the location of the Redeveloped Easement Area (the "**As-Built Easement Plan**"), which As-Built Easement Plan shall contain the square footage of the Redeveloped Easement Area, shall depict a Redeveloped Easement Area that is materially consistent with the location and extent of the same depicted on the Conceptual Redevelopment Plan and shall otherwise be reasonably acceptable to Grantee. In the event that the Grantee does not approve the As-Built Easement Plan within twenty (20) days of its receipt (or deemed receipt) thereof, the As-Built Easement Plan shall be deemed approved by the Town. Upon the Town's approval, whether actual or deemed, of the As-Built Plan, the Grantors shall cause the As-Built Plan to be recorded with the Registry and provide the recording information of such Plan to the Town upon the Grantors receipt thereof.
- c. Grantors' Retained Rights. Grantors hereby agree and acknowledge that they shall keep the Pedestrian Easement Area open and unobstructed at all times, subject, however, to Grantors' rights contained subparagraph 1.b. above, and to the following further limitations:
  - i. the Grantors specifically reserve the right, but shall not be required, to construct a covered walkway between the Improvements to be constructed on the 2-4 BP Property and the redeveloped garage to be constructed on the 1 BP Property, if and to the extent that such covered walkway is approved in connection with the granting of a Special Permit for the Proposed Redevelopment;

- ii. the Grantors specifically reserve the right to construct and install utilities, as well as landscaping, lighting and other amenities, upon, above and below the surface of the Pedestrian Easement Area; provided, however, that such installation of such utilities, as well as landscaping, lighting and other amenities, do not materially interfere with the Town's use and enjoyment of the Pedestrian Easement Area; and
  - iii. the Grantors reserve the right to perform any maintenance, repair, and/or replacement of any and all improvements and utilities upon, above, or below the Pedestrian Easement Area, including, without limitation, hardscaped and landscaped elements within such Area, and, in connection with such activities to temporarily close of the Pedestrian Easement Area or to restrict pedestrian access to portions thereof. Except in cases of emergency (i.e. occurrences involving an imminent threat of damage or injury to persons or property), which shall be determined in the sole discretion of the Grantors, the Grantors will provide reasonable advance written notice to Grantee before commencing any work in the Pedestrian Easement Area that will disrupt, in whole or in part, Grantee's use thereof. Whenever any work is to be performed upon the Pedestrian Easement Area, such work shall be performed (a) in a safe, diligent and workmanlike manner and in compliance with all applicable laws, ordinances, orders, rules, regulations and requirements of all governmental authorities having jurisdiction thereover and with all necessary permits and approvals having been issued therefor, and (b) in a manner that causes the minimum amount of interference with the Town's use and enjoyment of the Pedestrian Easement Area.
2. Term. The rights and easements granted herein shall commence on the Effective Date and shall remain in full force and effect for so long as the Improvements are constructed and continue to exist on the Property and Grantors are exercising their respective rights with regard to the same under any Special Permit granted by the Town of Brookline Zoning Board of Appeals pursuant to the Amended Zoning. Notwithstanding the above, the parties hereby agree that if Grantors do not commence the Proposed Redevelopment and, as a result, the Declaration of Restrictive Covenant entered into among Grantors and Grantee, dated of even date and recorded with the Norfolk Registry of Deeds (the "Registry") herewith, terminates, this Easement shall automatically terminate and shall deemed null and void and without further force or effect, without the need for the parties to execute or record any release or any other document.
3. Miscellaneous Provisions. Notwithstanding anything to the contrary contained herein, the rights with respect to the Pedestrian Easement Area are granted subject to the following:

- a. Non-Interference. The Grantee's use of the Pedestrian Easement Area shall not materially interfere with the use and enjoyment of the Property by the Grantors or their respective successors and assigns. Except for the rights and easement expressly granted herein, no other easements, whether express or implied, are granted or created by this instrument. Without limitation of the foregoing, nothing herein shall be deemed to create any rights on the part of the Grantee outside of the Pedestrian Easement Area or any rights to enter onto the Pedestrian Easement Area for maintenance and repair purposes.
- b. Article 97. Without limitation of the foregoing, nothing herein shall be deemed to create any rights on the part of the Grantee, the inhabitants of the Town of Brookline or members of the general public under Article 97 of the Declaration of the Rights of Inhabitants of the Commonwealth of Massachusetts.
- c. Notices. All notices and other communications authorized or required hereunder shall be in writing and shall be given (1) by hand delivery; (2) by mailing the same by certified mail or registered mail, return receipt requested, postage prepaid, or (3) by overnight air courier or express delivery service with proof of delivery acknowledged. Any such notice or other communication shall be deemed to have been given when received by the party to whom such notice or other communication shall be addressed, or on the date noted that the addressee has refused delivery, or on the date that the notice is returned to sender due to the inability of the postal authorities to deliver. Any party hereto may change the address to which notices to it shall be sent by a notice sent in accordance with the requirements of this Section 3.d. Notice shall be given to the following:

**To Grantors:**

Children's One Brookline Place LLC  
Children's Brookline Place LLC  
c/o The Children's Hospital Corporation  
300 Longwood Avenue  
Boston, MA 02115  
Attn.: Vice President for Real Estate, Planning and Development

**With copies to:**

The Children's Hospital Corporation  
300 Longwood Avenue  
Boston, MA 02115  
Attn.: General Counsel

**and**

Goulston & Storrs PC  
400 Atlantic Avenue  
Boston, MA 02110

Attn.: Darren M. Baird, Esq.

**To Grantee:**

Town of Brookline  
Brookline Town Hall  
333 Washington Street  
Brookline, MA 02445  
Attn.: Town Administrator

**With a copy to:**

The Office of the Town Counsel  
Brookline Town Hall  
333 Washington Street, 6<sup>th</sup> floor  
Brookline, MA 02445  
Attn.: Town Counsel

- d. Successors and Assigns. The rights, easement, liabilities, agreements and other obligations as set forth shall inure to the benefit of and be binding upon the heirs, successors and assigns of the Grantors; provided, however, that the Grantors shall only be responsible hereunder for matters occurring and claims arising on or with respect to the Pedestrian Easement Area, and only during its period of ownership of the Property. In no event shall any member, manager, director, officer, employee, shareholder, partner, trustee, tenant, agent or representative of the Grantors, any condominium association hereafter an owner of all or any portion of the Property, or any mortgagee ever be personally liable for the payment or performance of any obligations under this Easement, and the Grantee agrees to look solely to the Property, in satisfaction of Grantors' obligations under this Easement. The Grantee acknowledges that it shall not have the right to assign any rights granted hereunder to any party without the written consent of the Grantors, which consent may be granted, withheld, conditioned or delayed in Grantors' sole and absolute discretion. Upon the expiration of the Term as set forth in Section 2 above, Grantors may record an affidavit evidencing such expiration with the Registry.
- e. Subject to Existing Record Matters. The rights and easement herein granted are subject to all restrictions, covenants, easements and other encumbrances of record to the extent in force and applicable.
- f. Amendments. This Easement may be amended or modified at any time by a declaration in writing mutually agreed to, executed and acknowledged by each of the parties hereto, and thereafter duly recorded in the Registry.

- g. Severability. If any term, provision, covenant or condition of this Agreement shall be or become invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions (or the application of such term, provision, covenant or condition to persons or circumstances other than those in respect of which it is invalid or unenforceable), except those terms, provisions, covenants or conditions which are made subject to or conditioned upon such invalid or unenforceable term, provision, covenant or condition, shall not be affected thereby, and each other term, provision, covenant and condition of this Agreement, unless conditioned upon such invalid or unenforceable term, provision, covenant or condition, shall be valid and enforceable to the fullest extent permitted by law.
- h. Effect on Other Agreements. This Easement does not affect the rights and obligations of the parties under any other agreement between the parties.
- i. Counterparts; Headings. This Easement may be executed in multiple counterparts, each of which shall be deemed an original and all of which, collectively, shall be deemed one and the same instrument. The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.
- j. Governing Law. This Easement shall be governed by the laws of the Commonwealth of Massachusetts as the same may now exist or may be hereinafter enacted.

*[Signatures appear on the following page]*

EXECUTED as a sealed instrument as of \_\_\_\_\_, 201\_.

**GRANTOR:**

**CHILDREN'S BROOKLINE PLACE LLC, a**  
Massachusetts limited liability company

By: Fenmore Realty Corporation, a Massachusetts non-profit corporation, its sole manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Hereunto Duly Authorized

**CHILDREN'S ONE BROOKLINE PLACE LLC, a**  
Massachusetts limited liability company

By: Fenmore Realty Corporation, a Massachusetts non-profit corporation, its sole manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Hereunto Duly Authorized

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss:

On this \_\_\_ day of \_\_\_\_\_, 2014, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the \_\_\_\_\_ of Fenmore Realty Corporation, the sole manager of Children's Brookline Place LLC, and acknowledged to me that he signed it voluntarily for its stated purpose as the \_\_\_\_\_ of the corporation on behalf of the limited liability company.

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

Print Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

[affix seal]

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss:

On this \_\_\_ day of \_\_\_\_\_, 2014, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the \_\_\_\_\_ of Fenmore Realty Corporation, the sole manager of Children's One Brookline Place LLC, and acknowledged to me that he signed it voluntarily for its stated purpose as the \_\_\_\_\_ of the corporation on behalf of the limited liability company.

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

**GRANTEE:**

**TOWN OF BROOKLINE BOARD OF  
SELECTMEN:**

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**EXHIBIT A**

**2-4 BP PROPERTY**

The land in Brookline, Norfolk County, Massachusetts, known as Two and Four Brookline Place and shown as Lot A on a plan entitled "Subdivision Plan of Land/Marsh Project - B-2 Parcel/Brookline, MA/Norfolk County" by J.F. Hennessey Co., dated January 15, 1985, recorded with the Norfolk County Registry of Deeds in Plan Book 324, Plan 927 of 1985, bounded and described as follows:

SOUTHEASTERLY  
and SOUTHERLY                   by Washington Street 213.30 feet;

WESTERLY and  
NORTHWESTERLY               by Pearl Street 400.31 feet; and

EASTERLY                        by Lot B shown on said plan by 3 courses measuring 139.02 feet,  
30.95 feet and 156.61 feet.

The above-described premises contains the following parcels of registered land:

Lot B and Lot C on Land Court Plan 687<sup>B</sup>  
Lot D and Lot E on Land Court Plan 687<sup>C</sup>  
Lot B on Land Court Plan 3182<sup>A</sup>  
Lot A-1 on Land Court Plan 3182<sup>B</sup>  
Lot A2 on Land Court Plan 3182<sup>C</sup>

Together with the benefit of terms and provisions of Easement Agreement dated October 31, 2006 by and among Brookline Village II Limited Partnership, Village Plaza Limited Partnership and Village Waterworks Limited Partnership and recorded in Book 24255, Page 389, and filed as Document No. 1115033.

**EXHIBIT B**

**1 BP PROPERTY**

The land in Brookline, Norfolk County, Massachusetts, known as One Brookline Place and shown as Lot B on a plan entitled "Subdivision Plan of Land/Marsh Project - B-2 Parcel/Brookline, MA/Norfolk County" by J.F. Hennessey Co., dated January 15, 1985, recorded with the Norfolk County Registry of Deeds in Plan Book 324, Plan 927 of 1985, bounded and described as follows:

SOUTHEASTERLY                    by Brookline Avenue and Washington Street by four courses, measuring 99.69 feet, 19.06 feet, 42.73 feet and 175.33 feet, respectively;

WESTERLY                            by Lot A shown on said plan by three courses measuring 156.61 feet, 30.95 feet and 139.02 feet, respectively;

NORTHWESTERLY  
NORTHERLY AND  
NORTHEASTERLY                    by Pearl Street, 393.75 feet; and

SOUTHEASTERLY  
EASTERLY AND  
SOUTHWESTERLY                    by Lot C shown on said plan by three courses measuring 65.74 feet, 48.82 feet and 95.09 feet, respectively.

The above-described premises contains the following parcels of registered land:

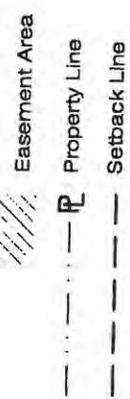
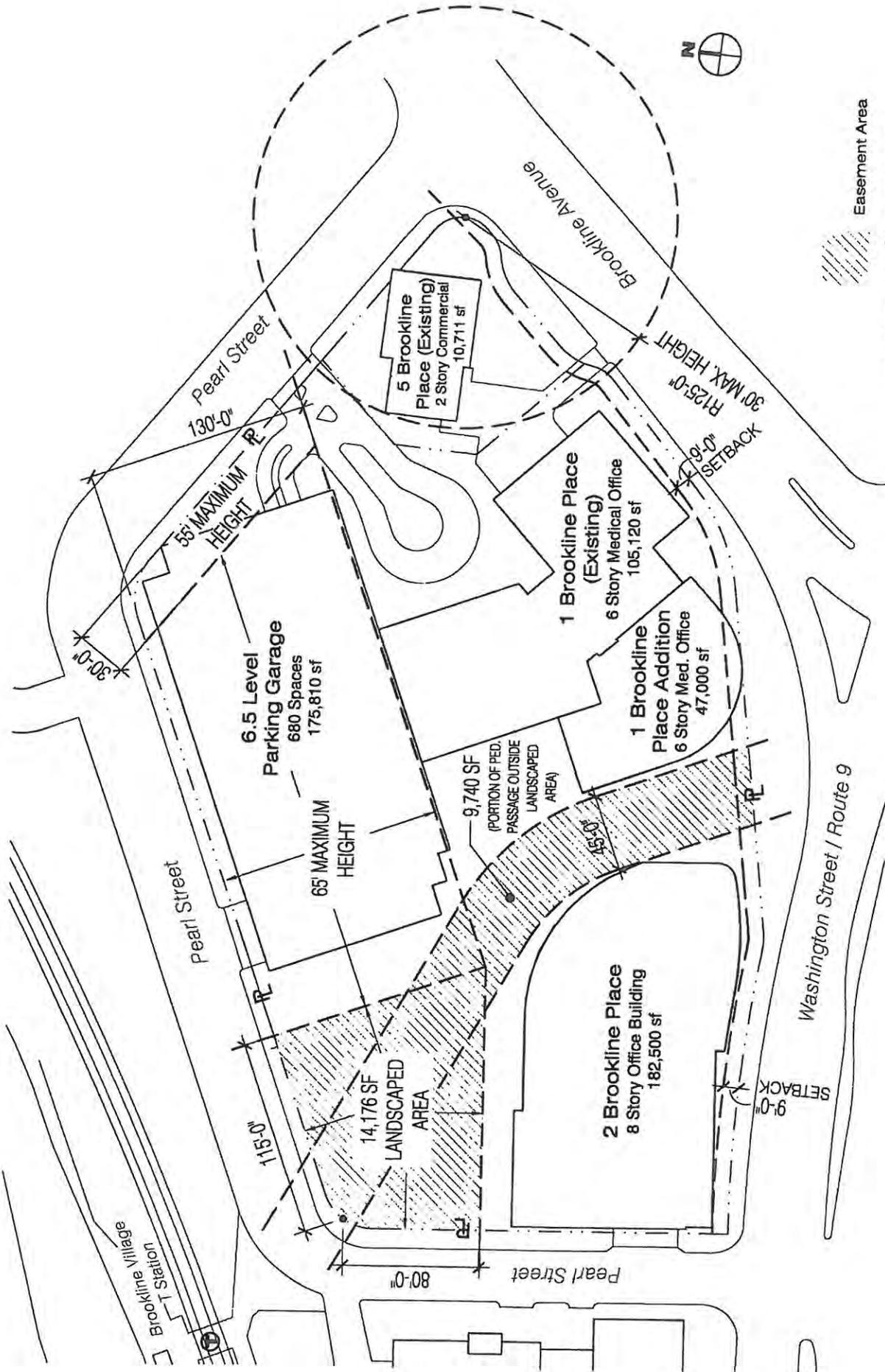
Lots 1 through 5 on Land Court Plan 24371<sup>A</sup> and a "way" shown on said plan.

Together with the benefit of terms and provisions of Easement Agreement dated October 31, 2006 by and among Brookline Village II Limited Partnership, Village Plaza Limited Partnership and Village Waterworks Limited Partnership and recorded in Book 24255, Page 389, and filed as Document No. 1115033.

**EXHIBIT C**

**CONCEPTUAL REDEVELOPMENT PLAN**

[attached behind]



Notes:

1. Curb location shown along Washington Street & Brookline Avenue reflects Gateway East Plan
2. Plan shows total FAR of 3.32 in GMR District
3. Plan shows 39.3% total Open Space in GMR District

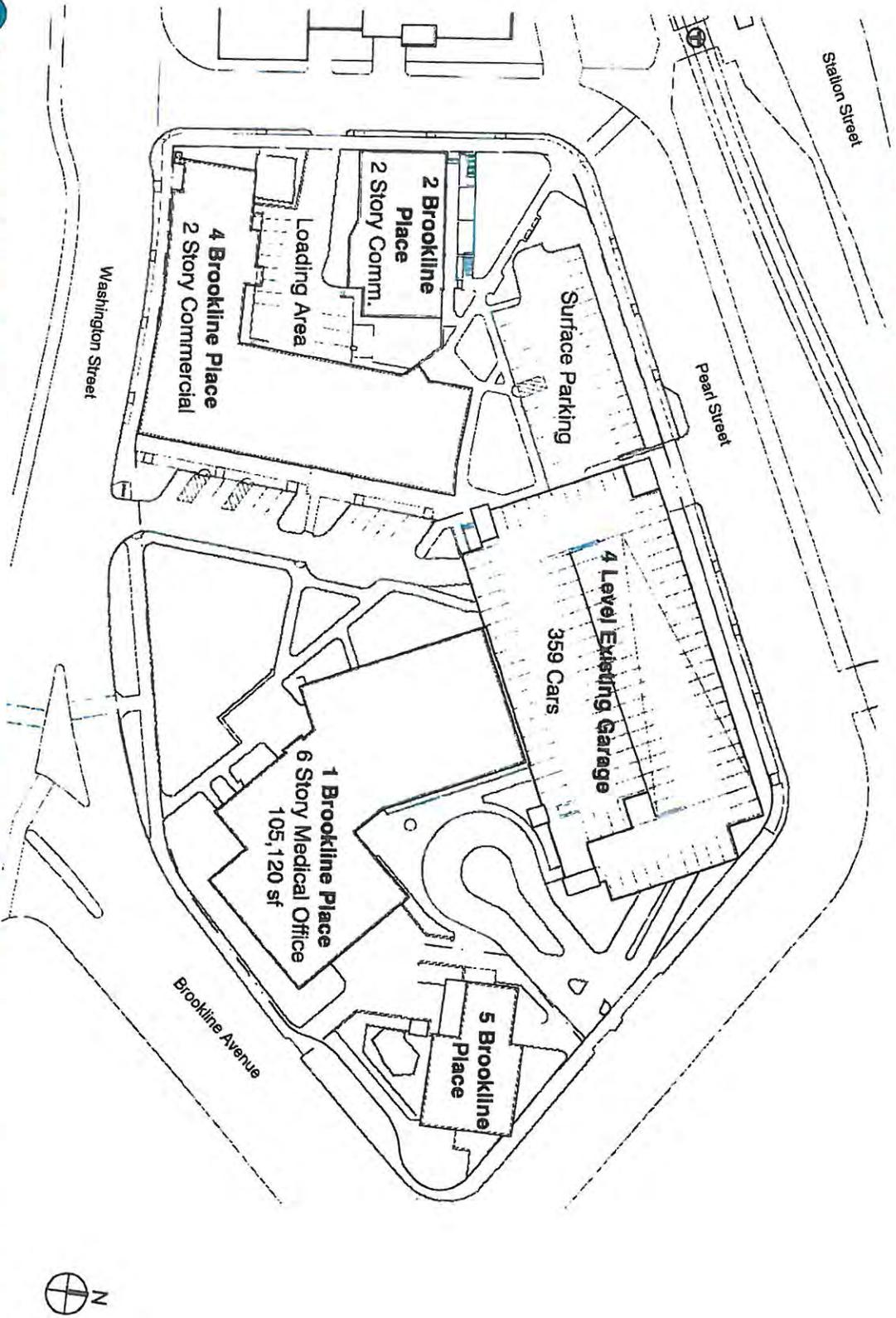
CONCEPTUAL REDEVELOPMENT PLAN

**EXHIBIT D**

**EXISTING CONDITIONS PLAN**

[attached behind]

# Existing Conditions



**After recording return to:**

**Goulston & Storrs PC  
400 Atlantic Avenue  
Boston, MA 02110-3333  
Attn: Darren M. Baird, Esq.**

**EASEMENT AGREEMENT**

by and among

**CHILDREN'S ONE BROOKLINE PLACE LLC,**

**CHILDREN'S BROOKLINE PLACE LLC**

and

**TOWN OF BROOKLINE**

Dated: as of \_\_\_\_\_, 201\_

## EXHIBIT F

# Pearl St Reconstruction Scope of Work

### Road Work

- Mill & Overlay entire limits of road (2" Depth)
- Repair isolated areas of base failure
  - Remove failed asphalt and base material replace with 4" DGCS and 3" State Dense Binder
- Adjust Structures and Water Gates as determined by the town engineer
  - Town will supply new castings in places where old ones need to be replaced, contractor will pick up at Town of Brookline lay down yard. Installation of new castings will be considered an adjustment for payment purposes
- Remove and reset granite curb as directed by the engineer
- Replace curb as directed by the engineer
- Rebuild sidewalks, driveways, and WCR to ADA/MA AAB standards as directed by the engineer
  
- Install new striping in road

### Lighting

- Remove, transport and stack existing cobra head light fixtures.
- Install new ornamental lighting, (includes new hand holes, conduit and wire)
- Retrofit the existing ornamental lights with LED lights
- Supply and install new lighting load center

## EXHIBIT G

### **BROOKLINE RESIDENTS PERMANENT EMPLOYMENT PROGRAM**

#### **Brookline Residents Permanent Employment Program**

The following is an outline of a program to be implemented by the owner (the "**Owner**") of 1 and 2 Brookline Place (the "**Project**") to make local Brookline Residents, in particular residents of Village Way and the Brookline Housing Authority, aware of permanent jobs opportunities at the Project.

The Program will apply to entry-level job vacancies and new entry-level jobs related to operation, management, maintenance, and provision of security to the Project filled by employees hired directly by Owner or by independent contractors engaged by the Owner providing services exclusively to the Project, and will also apply to permanent jobs at the Project for any space at the Project used by Owner in the course of Owner's business. The Program will apply whether positions are full-time, part-time or seasonal, excluding short-term, non-recurring positions, employees hired for special functions, employees hired outside of normal day-to-day operations and maintenance, and independent contractors hired to perform speciality maintenance or repairs on a job by job basis.

In filling such jobs for operation, security, maintenance and management personnel employed directly by the Owner at the Project or for any space at the Project used by Owner in the course of Owner's business (a "**Permanent Job**"), the Owner will adhere to the following procedures:

- At least five days prior to publicly announcing or advertising the availability of a Permanent Job, the Owner will send a job description via email to the Brookline Housing Authority Executive Director; Town Meeting Members from Precincts 4, 5, and 6; the Brookline Adult & Community Education Director; and the Brookline Residents Permanent Employment Program Email List. The Owner is not required to so notify if the Owner intends to fill the opening via transfer or promotion from its existing staff or by union referral in accordance with a union contract.

- The Owner will provide an email notification system such that interested Brookline residents are able to subscribe to the early job description notification described above. The Planning & Community Development Department will provide a link to the email subscription program on their webpage, within periodic mailings and/or newsletters.

- The Owner will physically post job descriptions in a prominent public location within the building.

- The Owner will give first consideration to qualified Brookline applicants, but is not required to hire such candidates.

- The Owner will assign an individual on the Project's management staff to be responsible for ongoing compliance the Brookline Residents Permanent Employment Program. Annual updates including the total number of employees related to operation, management, maintenance, and provision of security to the Project, percentage of Brookline residents, and staff

contact information will be sent to the Brookline Director of Planning & Community Development or his designee.

The Owner will require that any independent contractors engaged by the Owner providing such services exclusively to the Project follow procedures similar to those set forth above. Also, after the execution of any lease for space in the Project, the Owner will send to each tenant a letter urging that the tenant, in its new hiring, adhere to the goals of the Brookline Residents Permanent Employment Program.

**EXHIBIT H**

**BROOKLINE AVENUE/WASHINGTON STREET  
SIDEWALK GREENSPACE LANDSCAPING PLAN**

