

AMENDED AND RESTATED LAND DEVELOPMENT AGREEMENT
116 Trapelo Road, Belmont, Massachusetts
BETWEEN TOWN OF BELMONT AND
BELMONT RESIDENTIAL LLC

THIS AMENDED AND RESTATED LAND DEVELOPMENT AGREEMENT (this “LDA” or “Agreement”), dated as of this ____ day of _____, 2016 (“Effective Date”) is made by and between the TOWN OF BELMONT, MASSACHUSETTS, a Massachusetts municipal corporation, acting by and through its Board of Selectmen, with an address of 455 Concord Avenue, Belmont, Massachusetts 02478 (hereinafter, with its successors and assigns, referred to as the “Town”), and BELMONT RESIDENTIAL LLC, a Delaware limited liability company and wholly owned subsidiary of Toll Brothers, Inc., having its principal office at 250 Gibraltar Road, Horsham, PA 19044 (hereinafter, with its successors and permitted assigns, referred to as the “Developer”).

RECITALS

WHEREAS, the Town, in recognition of the unique location, function and character of the Cushing Square commercial area, adopted the Cushing Square Overlay District, a copy of which is attached hereto as Exhibit A and incorporated herein (the “CSOD”), being Section 8 of the Belmont Zoning By-Law, in order to, among other objectives, encourage revitalization of Cushing Square and promote the redevelopment of the Cushing Square properties and the creation of mixed-use development, incorporating residential use and either or both retail and office uses; and

WHEREAS, the Town, as owner of a certain parcel, used as a municipal parking lot, issued a Request for Proposals (the “RFP”), dated July 30, 2008, for the disposition of said property, located at 116 Trapelo Road, Belmont, Massachusetts, being Assessor’s Map 12, Parcel 211A, described in a deed recorded with the Middlesex South District Registry of Deeds (the “Registry”) in Book 4647, Page 232, and more particularly described in Exhibit B attached hereto (the “Premises”), to further the goals and objectives of the CSOD; and

WHEREAS, Smith Legacy Partners Series, LLC (“Smith”) submitted a proposal in response to the RFP (the “Proposal”), for a mixed-use development, partially located upon the Premises, partially located on the portion of Horne Road in Belmont, Massachusetts to be

discontinued by the Town and acquired by the Developer by operation of law (such portion being referred to herein as "Horne Road"), and partially located upon other property owned and/or controlled by the Developer, being Assessor's Map 12, Parcels 207 through 211 and Parcel 233 (the "Adjoining Property," together with Horne Road and the Premises, the "Property"), said mixed-use development to contain residential use and either or both retail and office uses, and parking to accommodate both such uses, and an additional fifty (50) spaces for use by the Town in accordance with an Easement Deed (as hereinafter described) and Parking Management Agreement (Exhibit C) (all as further described herein, the "Project"); and

WHEREAS, Smith has designed a development to, among other objectives, encourage revitalization of Cushing Square; promote the redevelopment of under-utilized properties in a coordinated and well-planned manner and promote mixed-used development, incorporating residential use and either or both retail and office uses; and

WHEREAS, the Town, for consideration of One Million and no/100 (\$1,000,000.00) Dollars, and pursuant to a Purchase and Sale Agreement (the "P&S Agreement") dated March 28, 2011 by and between the Town and Smith, and amended March 2016 pursuant to a First Amendment to Purchase and Sale Agreement, and as further amended August __, 2016 pursuant to a Second Amendment to Purchase and Sale, will convey the Premises to the Developer, as permitted assignee of Smith, by deed (the "Deed") to be recorded immediately prior hereto; and

WHEREAS, the Developer, in partial consideration for the conveyance of the Premises by the Town, will simultaneous with recording the aforementioned deed, execute an Easement Deed (the "Easement Deed"), to be recorded immediately after the recording of this Agreement, pursuant to which the Developer has granted to the Town a non-exclusive easement (i) to install underground pipes, wires, or conduits for the transmission of water or sewer service to or from Horne Road, together with the right of the public to pass and repass by pedestrian travel over and upon Horne Road, all in harmony and in coordination with the Project Plans (as such term is herein defined) and (ii) for the use of fifty (50) passenger vehicle parking spaces for intermediate term public parking use (the "Parking Spaces"), each as more fully described in the Easement Deed, and which Parking Spaces are to be managed pursuant to a Parking Management Agreement attached hereto as Exhibit C to the extent that such Parking Management Agreement remains in force and applicable; and

WHEREAS, pursuant to this Agreement the Developer has agreed to construct the Project as generally described in the Decision of the Belmont Planning Board (the "Planning Board") dated July 27, 2013 and recorded with the Registry in Book 62578, Page 101 (the "Special Permit") as it has been extended by the Planning Board; and

WHEREAS, the Developer, in partial consideration for the conveyance of the Premises by the Town, agrees to develop the Property and undertake, at its sole cost and expense, all the work that is required to be done under this LDA to construct, develop and complete the Project (the "Work"); and

WHEREAS, the Town and the Developer have executed a Land Development Agreement dated _____, 2016 (the "Original LDA") and by execution hereof, the Town and the Developer have agreed that the Original LDA shall be amended and restated in its

entirety by this Agreement and that the Original LDA shall be void and of no further force or effect.

NOW, THEREFORE, each of the parties hereto for and in consideration of the promises and mutual obligations herein contained does hereby covenant and agree with the other as follows:

AGREEMENT

I. RECITALS AND DEFINITIONS

The Recitals stated above are true and accurate and are incorporated herein by reference. The Project is generally shown on the Project Plans, as such term is defined in the Special Permit, which Permit has legally been extended until _____. The “Completion Deadline” means that date which is no later than thirty-six (36) months from the Construction Commencement Date, subject to Unavoidable Delays (as such term is herein defined) and extensions set forth in this Agreement.

II. DEVELOPMENT AGREEMENT

Developer agrees to develop the Property and undertake the Project as follows:

A. Construction Obligations

1. Construction of Project. The Developer shall design and construct on the Property the following improvements:

(a) Buildings: the Property is to be used for a mixed-use development including residential uses in several buildings as shown on the Project Plans (the “Buildings”), with parking, to be constructed in accordance with the Project Plans as same may be amended from time to time; and

(b) During construction of the Project, if reasonably feasible, interim parking spaces (until the planned Parking Spaces are available) for use by the public may be provided somewhere on the Property, it being understood that in the reasonable judgment of the Developer, the status of active construction precludes such use. During such times as the status of active construction precludes use of the Parking Spaces on the Property, the Developer, in consultation with the Town, will try to locate and secure alternative, interim public parking off site. If there is any cost to acquire the same, it is not reasonable to require Developer pay more than \$883.33 per month in the aggregate. The Town recognizes that as of the Effective Date the Developer has informed the Town that it is unlikely that there will be any Parking Spaces provided on the Property during construction and, further, that as of the Effective Date, the Developer and the Town have not located, much less received, alternative, interim parking, and that is not likely to change.

2. Project Plans. The Project shall be constructed in all material respects in accordance with the Project Plans as same may be amended by the Developer and approved by the Planning Board. Nothing herein shall be deemed to waive the Developer’s obligations

to apply for and comply with all other permits, approvals and conditions governing the Property or the Project.

3. Construction Schedule. The Developer shall:

(a) commence construction of the Project by obtaining a building permit for any aspect of the Project (not a demolition permit or a foundation permit) to be issued by the Town. Subject to the terms hereof and “Unavoidable Delays” (as defined in Section II.A.4. below) and the extensions described in Section II. A.4 below, the date on which construction of the Project shall commence (the “Construction Commencement Date”) shall be the date that is no later than six (6) months after the date of recording the Deed to the Premises.

(b) perform remedial actions pursuant to the Massachusetts Contingency Plan, 310 CMR 40.000 (“MCP”), under the direction and supervision of a Licensed Site Professional, to achieve a Permanent Solution with or without conditions, a Temporary Solution, or Remedy Operation Status with respect to a release or releases of hazardous materials on the parcel known as Trapelo/Common area (Assessor’s Map 12, Parcels 207 through 211) and upon other portions of the Property to the extent required by the MCP; it is understood that any such remediation under the MCP will likely include ongoing monitoring following the filing of Certificates of Substantial Completion for all components of the Work comprising the Project;

(c) substantially complete all Work comprising the Project in accordance with the terms of this LDA by the Completion Deadline. The term “Substantially Complete,” or “Substantial Completion” or words of similar import shall mean that the Work described in a permit obtained from the Town has been completed. Completion shall be conclusive on all Parties when the Developer obtains a Certificate of Occupancy for the subject Work, (with only “punch list” items remaining that will not materially interfere with said use and occupancy of a majority of the area which is the subject of the Work); or a Temporary Certificate of Occupancy or if the Work for which the Permit was obtained is not sufficient to issue a Certificate of Occupancy (permanent or temporary) or “sign-offs” from the appropriate Town department (if neither a Certificate of Occupancy nor a Temporary Certificate of Occupancy is applicable). Without limiting the foregoing, but by way of example, Substantial Completion will include the issuance of a temporary certificate of occupancy for components of the commercial space which have achieved the state of a “warm dark shell”. Accordingly, it is understood that the Developer will be “Substantially Completing” the Project in stages, with Certificates of Occupancy, Temporary Certificates of Occupancy or “sign-offs”, as applicable, issued upon completion of the work described in such building permit. The entire Project will not be deemed “substantially complete” until all components of Work comprising the Project have been Substantially Completed. The unfinished interior of any commercial space not leased and occupied or under construction by a tenant by the Completion Deadline shall be screened from public view (such as by installing window displays or signage).

4. Construction Schedule Extensions. The Town, at its sole option, may extend the Construction Commencement Date and the Completion Date if the Town determines that the Developer has proceeded with reasonable diligence in its performance under this Agreement. The Town shall reasonably extend the Construction Commencement Date and the Completion Date under this Agreement for “Unavoidable Delays” and other events beyond the control of the

Developer. For purposes of this Agreement, “Unavoidable Delays” shall mean any delay, obstruction or interference resulting from any act or event whether affecting the Project or the Developer, which has a material adverse effect on the Developer’s rights or duties, provided that such act or event is beyond the reasonable control of the Developer after pursuing diligent efforts to remedy the delaying condition in an expedient and efficient manner and was not separately or concurrently caused by any negligent or willful act or omission of the Developer or likely could not have been prevented by reasonable actions on the Developer’s part and the Developer shall have notified the Town herein not later than thirty (30) days after discovering the occurrence of the Unavoidable Delay enumerated herein and within a reasonable time, including but not limited to, delay, obstruction or interference resulting from: (i) an act of God, landslide, lightning, earthquake, fire, explosion, flood, sabotage or similar occurrence, acts of a public enemy, war, blockage or insurrection, international geopolitical crisis, riot or civil disturbance; (ii) any legal proceeding commenced by any bona-fide third party seeking judicial review of this Agreement or any governmental approvals, or any restraint of law (e.g., injunctions, court or administrative orders, or moratorium imposed by a court, or administrative or governmental authority); (iii) the failure of any utility or governmental entity required by law to provide and maintain utilities, services, water and sewer lines and power transmission lines to the Property, which are required for the construction of the Project or for other obligations of the Developer; (iv) any unexpected or unforeseen subsurface condition at the Property inconsistent with typical background conditions of a similar site, which shall prevent construction, or require a material redesign or change in the construction of, or materially adversely affect the construction schedule for, the Project, such determination to be made by a qualified engineer; (v) any unexpected or unforeseen subsurface environmental conditions on or from or otherwise affecting the Property but not readily identifiable by visual inspection and which originated from the Buildings or Property; (vi) strikes, work stoppages or other substantial labor disputes; (vii) the failure or inability of any subcontractor or supplier to furnish supplies or services if such failure or inability is itself caused by an Unavoidable Delay and/or could not have been reasonably prevented and the affected party cannot reasonably obtain substitutes therefore; (viii) a change in Funding Sources (as such term is hereinafter defined) which could not have been reasonably anticipated by Developer; (ix) with respect to “Mezzanine Lender” or a “Mortgage Lender” (as such terms are hereinafter defined), transitional issues arising from Mezzanine Lender’s or Mortgage Lender’s exercise of remedies (such as delays attendant to foreclosure or succeeding to the rights of the equity interests in the Developer); or (x) any delay which is cause or created by a board, officer, department or authority of the Town from whom a Project approval is sought, whether or not such fault is caused by negligent or willful acts or omissions, provided that the Developer shall have timely complied with the reasonable requests and requirements of any governmental authority. The time or times for performance under this Agreement shall be extended for the period of each Unavoidable Delay, and in calculating the length of each Unavoidable Delay, there shall be considered not only actual work stoppages but also any consequential delays resulting from such stoppages as well.

5. Quality of Work. The Developer shall procure all necessary permits before undertaking any Work requested in the Permit application, and shall cause all the Work to be performed in a good and competent manner in compliance with good engineering and construction practices, and using new materials of customary quality or appropriate preservation measures for redevelopment projects in the greater Belmont area similar to the Project, all generally in accordance with the Project Plans and all applicable

laws, ordinances, codes, regulations, permits, approvals and conditions. As and to the extent required in the Project Plans, the Developer shall take all reasonably necessary measures to (i) minimize dust, noise and construction traffic, (ii) minimize any damage, disruption or inconvenience caused by the Project, and (iii) make adequate provision for the safety and convenience of all persons affected thereby and to police the same. The Developer shall provide a certification to the Town by a licensed architect, at the Developer's expense, that the Work has been substantially completed in accordance with the Project Plans (the "Independent Architect"). Submission of the same to the Town shall be evidence of Substantial Completion of the Work described in such certification.

6. Certificate of Substantial Completion.

(a) Promptly after "Substantial Completion" of the Work for which a particular permit has been obtained, as the term "Substantial Completion" is defined in Section II.A.3.(c) above, the Town's issuance of the Certificate of Occupancy, Temporary Certificate of Occupancy or sign-offs shall acknowledge the same and it shall be binding on the Parties. When all the work for which all issued permits have been Substantially Completed as defined in Section II.(3)(c), the Town shall furnish the Developer within fourteen (14) days of request by Developer an appropriate instrument so certifying that all aspects of the Work to satisfy the Developer's obligations hereunder have been completed (the "Certificate of Substantial Completion"). A Certificate of Substantial Completion shall be in such form as will enable it to be recorded with the Registry of Deeds.

(b) If the Town shall refuse or fail to provide the Certificate of Substantial Completion in accordance with the provisions of this Section, the Town or a representative of the Town shall, within fourteen (14) days after written request by the Developer, provide the Developer with a written statement indicating in adequate detail in what respects the Developer has failed to complete the Work in accordance with the provisions of this Agreement, or is otherwise in default, and what measures or acts will be necessary, in the opinion of the Town, for the Developer to take or perform in order to obtain such Certificate of Substantial Completion.

(c) Notwithstanding anything to the contrary in this Agreement, a Certificate of Substantial Completion issued by the Town pursuant to Section II.A.6(a), above, shall be a conclusive determination of satisfaction and termination of this Agreement and all covenants in this Agreement with respect to the subject component of the Work, except those that expressly survive the termination of this Agreement. The Certificate of Substantial Completion shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any Funding Source, including any Holder (as such term is hereinafter defined) or any insurer of a mortgage securing money loaned to finance the Project, or any part thereof. The issuance of a Certificate of Substantial Completion shall bar the exercise of any remedies by the Town set forth in this LDA (other than as to obligations hereunder that expressly survive the issuance of the Certificate of Substantial Completion) as to the Work described in such Certificate of Substantial Completion filed in accordance herewith. The issuance of the Certificate of Substantial Completion shall bar the exercise of any remedies by the Town set forth in this LDA (other than as to obligations hereunder that expressly survive the issuance of the Certificate of Substantial Completion).

7. Liquidated Damages. Subject to “Unavoidable Delays”, if substantial construction of the Project does not commence by the Construction Commencement Date as it may be extended, or if construction is discontinued for a continuous period of 30 days or more at any time prior to Substantial Completion (provided that the Town gives written notice of observed discontinuance and provides Developer and each Holder with a 15-day period to cure), or if the Project is not Substantially Completed by the Completion Date, then in any or all of these events, the Developer shall commence making monthly payments to the Town at the rate of \$33,333 per month and the Construction Commencement Date, resumption of construction or the Completion Date, respectively, shall be extended for each month for which payment is received by the Town, such extensions not to exceed a cumulative total of 24 months unless additional funds of \$33,333 per month are remitted by the Developer to the Town for each additional month of extension beyond 24 months of extension. The Developer’s liabilities to the Town for any reason, shall not exceed \$800,000.00 (“Liquidated Damages”) in the aggregate. As security (the “Town Security”) for such payments, on the Closing Date, the Developer, shall provide the Town a bond in the total combined amount of \$800,000.00, (the “Bond”) with the amount of the Bond being (A) reduced to reflect each \$33,333 extension payment received by the Town, and (B) released to the Developer upon the issuance of the Certificate of Substantial Completion. The Parties agree that the Liquidated Damages of \$800,000 shall be the Town’s sole remedy at law or in equity for Developer’s failure to commence construction of the Project by the Construction Commencement Date, any discontinuance of construction as defined in this Agreement prior to Substantial Completion or failure to Substantially Complete construction by the Completion Date; provided, however, nothing herein shall be deemed to limit the Town’s remedies for any violation or infringement of its rights under the Easement Deed recorded herewith, or to alter the Town’s right to assess civil or other penalties against Developer for, and solely to the extent of, Developer’s violations of any applicable laws in connection with the construction of the Project (but only to the extent the Town has the right under applicable law to assess such penalties).

B. Financial Obligations

1. Financing. The Developer has funds sufficient to purchase the Premises and to construct and complete the Project. The Developer shall have the right to obtain (and the Town will have no right to review or approve the terms of) financing for the acquisition and/or construction of the Project from one or more lenders or mortgage holders secured by one or more mortgages, deeds of trust or other instruments creating an encumbrance or lien upon the Property (the “Mortgage”) to be recorded hereafter (“Mortgage Lender”) and other funding financing sources secured by pledges or assignments (“Pledges”) of the ownership interest of any person, firm or entity owning a direct or indirect interest in the Developer (“Mezzanine Lender”; unless otherwise identified, singularly a “Funding Source” and collectively the “Funding Sources”). Developer agrees to pay all amounts due in accordance with the requirements of the Funding Sources. The Mortgage and Pledge(s) shall be subject to and subordinate to this LDA except as specifically provided herein. The Town shall provide to the Funding Sources advance written notice and an opportunity to cure any default under this LDA not cured by Developer within the applicable grace or cure period provided herein, and the Town hereby consents to the Funding Sources exercising any rights under their respective Mortgage, Pledge(s) and other security agreements, including but not limited to the right to take title to and/or control of the Project or Developer pursuant to Mortgage or Pledge(s), as applicable, and any other collateral security,

financing or loan documents entered into between the Developer and any of the Mortgage Lender or the Mezzanine Lender, so long as the Mortgages and/or Pledges are subject to the terms and provisions of this LDA . The rights of Funding Sources hereunder shall inure to the benefit of the successors and assigns of the Funding Sources. The Town shall be given written notice of any assignment of the interests of a Funding Source to another person or entity, and of the name and address of the assignee. Thereafter, such assignee shall be deemed to be a "Funding Source" under this Agreement.

In the event that the Developer is not a wholly owned direct or indirect subsidiary of Toll Brothers, Inc., and instead is a joint venture in which Toll Brothers, Inc. (or a commonly controlled or wholly owned affiliate thereof) retains at least a twenty-five percent (25%) interest conforming to the requirements of Section III.A.1.(d), below, then such Developer (as a precondition to being permitted to be a Developer hereunder) must have obtained financing (1) that complies with the terms of Section II.B.2. below; (2) that is for at least fifty percent (50%) of the Project budget costs as approved by the lender, with at least twenty five percent (25%) of the remaining Project budget costs being equity funded directly or indirectly by Toll Brothers, Inc., and the balance of the Project budget costs being equity funded by the venture partner(s) which are not wholly owned direct or indirect subsidiaries of Toll Brothers, Inc., (3) that includes a completion guaranty to the lender from Toll Brothers, Inc., pursuant to which such guarantor will cause the Project to be completed in conformance with the lender-approved Project budget and timeline as long as the lender funds the loan proceeds, and (4) that includes a requirement that Toll Brothers, Inc. shall maintain fifteen million (\$15,000,000) in liquid assets during construction of the Project.

2. Refinancing/Additional Financing. The Developer shall provide the Town with not less than thirty (30) days prior written notice of any intended financing/refinancing of the loan made by Mortgage Lender and/or the loan made by the Mezzanine Lender that is to occur prior to Substantial Completion, which shall be deemed and is hereby approved by the Town provided that the total indebtedness of any such financing/refinancing (a) shall not exceed the greater of the debt being refinanced (if applicable) and the then appraised value of the to-be-completed Project, (b) is consistent with commercially reasonable financing practices then available to owners of properties similar to the Project and (c) is from a bank, insurance company, quasi federal agency (such as Freddie Mac or Fannie Mae or any successor thereto), debt fund, mortgage REIT or other funding source of commercially reasonable repute for projects of a similar size and character as the Project. Any other financing/refinancing or additional financing prior to Substantial Completion shall require the written confirmation by the Town that the same meets the requirements hereof, which confirmation shall not unreasonably be withheld or denied (and to the extent denied, the Town shall explain with reasonable specificity the basis of its denial). The term "Mortgage(s)", "Pledge(s)", "Mortgage Lender", "Mezzanine Lender" or "Funding Sources" shall include and be deemed to refer to said later approved refinancing or additional financing and the mortgage and/or security interests granted by Developer or the assignment and/or pledge of equity interests in Developer.

3. Obligation to Pay Taxes and Assessments. The Developer shall pay or cause to be paid all taxes, assessments and other charges, fines and impositions attributable to the Property, which may attain a priority over any Mortgage or Pledge, but this clause shall not be

deemed to preclude Developer from contesting the validity or amount of such taxes, assessments, charges, fines or impositions, which may be paid under protest.

4. Representatives. The Developer hereby designates _____ as its representative authorized to act on its behalf. Unless and until the Town has received written notice that such authority has been revoked, the Town shall be entitled to rely upon the written directives of such representative. The Town shall act by and through the Office of the Town Administrator of the Town and the Developer and each Holder shall be entitled to rely upon the written directives of the Town Administrator. Upon any exercise of remedies by a Funding Source that results in a transfer of title of the Project or the equity interests in the Developer, as applicable, such Funding Source shall be entitled to unilaterally appoint a new representative to interact with the Town and upon such exercise _____ shall have no further right to act as representative or have any authority hereunder.

III. RESTRICTIONS

A. From the Effective Date and until the Certificate of Substantial Completion has been issued from the Town, the following restrictions shall bind the Developer and the remaining Property for which Substantial Completion of Work described in an applicable building permit has not been achieved:

1. Prohibition Against Change in Identity and Ownership. This LDA is being entered into as a means of permitting and encouraging the development of the Property in accordance with the CSOD and achieving the objectives of the Town for the redevelopment of the Property as set forth in the Recitals, and not for speculation in landholding. The Developer acknowledges that, in view of:

(a) The importance of the undertakings set forth herein to the general welfare of the community; and

(b) The importance of the identity of the parties in control of the Developer and the Project; and

(c) The fact that a transfer of all or a majority of the legal or beneficial ownership in the Developer, or any other act or transaction involving or resulting in a significant change in the ownership or distribution of such ownership or change in the identity of the parties in control of the Developer or Project, is for practical purposes a transfer or disposition of the Developer's interest in the Project; and

(d) Except as otherwise provided in this Section III.A. and aside from Developer's right (without the Town's consent) to convey the Project, in whole or in part, and directly or indirectly, to a commonly controlled or wholly owned subsidiary of Toll Brothers, Inc., or to a joint venture in which Toll Brothers, Inc. (or a commonly controlled or wholly owned affiliate thereof) retains at least a twenty-five percent (25%) interest, provided no such conveyance to any such joint venture will be permitted (without the Town's consent) unless simultaneously with the conveyance to such joint venture such joint venture will have obtained financing which conforms with Section II.B.1 above, as well as Developer's right (without the Town's consent) to convey, in

whole or in part, the commercial portions of the Project to Starr Capital Partners, LLC following the delivery of such commercial portion to said third party in a “warm dark shell” form with a temporary certificate of occupancy. The Town expressly confirms its consent to any reduction in Toll Brothers, Inc.’s interest in such joint venture below twenty five (25%) arising solely from the exercise of remedies by the non-Toll Brothers, Inc. joint venture partners in a manner that is approved by the lender identified under II.B.1 or 2;

it is hereby agreed that, commencing on the Effective Date and continuing until the issuance of a Certificate of Substantial Completion by the Town, and except by reason of death, the execution of any Mortgage or Pledge, the exercise of any rights by any Funding Source as provided in this Agreement and/or and Mortgage or such Pledge(s) or transfers among existing members of the Developer, or the filing of a master deed for purposes of condominimizing the Project, there shall be no (i) change in the identity of the parties holding a legal or beneficial interest in the Developer, (ii) transfer or pledge in the aggregate of a majority of the beneficial ownership or control of Developer or (iii) transfer, by assignment or otherwise, of the Developer’s rights under this LDA or of the Developer’s legal or beneficial interest in the portions of the Property for which a Certification of Substantial Completion has not been issued to any person (including but not limited to, any partnership, joint venture or corporation) (all such changes being referred to herein as a “Change in Identity”), unless in each instance, (a) the Developer gives the Town prior written notice of a proposed Change in Identity, which notice shall provide sufficient information to enable the Town to evaluate the acceptability of the proposed Change in Identity, and (b) the Town, within thirty (30) days from the date on which the Town receives said written notice or such longer period as may be approved by the Developer and the Town, approves of such change in writing, or fails to object, in which case the proposed Change in Identity shall be deemed to be approved. If the Town notifies the Developer in writing within said thirty (30) day period (or longer period agreed to by the parties) of its objection to the proposed Change in Identity, specifying reasonable grounds for such objection, the Developer shall make no Change in Identity without the subsequent written consent of the Town. Any attempted Change in Identity made contrary to this Section shall be void.

The Town agrees that the following transfers of ownership interest in the Developer will not be prohibited in any manner under this Agreement: (A) a direct or indirect transfer of the stock of a public company, (B) the direct or indirect creation of new stock in such public company, (C) direct or indirect stock splits or reverse stock splits in such public company, (D) redemption of stock by such public company, (E) the conversion of such public company from a public to a private company, (F) any reorganization, merger, consolidation, recapitalization, or similar transaction with respect to such public company, or (G) any other transaction that modifies, changes, or affects the ownership or control of such public company.

2. Prohibition Against Transfer of Property. The Developer represents and agrees for itself, and its successors and assigns, that, except for transfers permitted hereunder (i.e. as noted in Section III.A.1 above), the granting of liens and security interests pursuant to the Mortgage and Pledge(s) to Funding Sources, and the financing and/or refinancing of the same to the extent permitted under Sections II.B.1 and 2. above, and entering into other customary security agreements with the Funding Sources, and the granting of easements necessary for the construction of the Project, including utilities, the Developer shall not sell, assign or otherwise

transfer any portion of the Premises prior to the issuance of a Certificate of Occupancy or Temporary Certificate of Occupancy for such portion of the Premises without the prior written consent of the Town, which may be withheld in the Town's reasonable discretion. The term "transfer" shall include, without limitation, any total or partial sale, lease (not including the transfer or lease of the residential units or lease of the non-residential space in the ordinary course of business), or contract or agreement for any of the same. The prohibition on transfer of the Property shall not apply to transfers resulting from the granting or foreclosure of any Mortgage, the execution and delivery of a deed in lieu of foreclosure of a Mortgage, the appointment of a receiver by a Funding Source, foreclosure by Mezzanine Lender under any Pledge(s), the execution and delivery of an assignment in lieu of foreclosure of a Pledge, or the exercise of any other rights or remedies of any Funding Source, provided that the transferee acknowledges that its Mortgage or the Developer upon foreclosure of any such Pledge(s), as applicable, is subject to this LDA. Anything in this Agreement to the contrary notwithstanding, no Funding Source or any person or entity owned or controlled by a Funding Source shall be obligated to assume or perform any obligation of the Developer pursuant to this Agreement, whether before or after the foreclosure of any Mortgage, the execution and delivery of a deed in lieu of foreclosure, the appointment of a receiver by a Funding Source, foreclosure by Mezzanine Lender under any Pledge(s), the execution and delivery of an assignment in lieu of foreclosure of a Pledge or the exercise of any right or remedy by a Funding Source, but the Funding Source and any purchaser at a foreclosure of a Mortgage, a purchaser of the Property after a foreclosure of a Mortgage or the acceptance by a Mortgage Lender of a deed in lieu of foreclosure, a receiver appointed by a Funding Source or a purchaser of the Property from such receiver, the purchaser at a sale of the equity interests subject to a Pledge or the assignee of such equity interest pursuant to an assignment in lieu of foreclosure shall be subject to this Agreement, including, without limitation, the Restriction on Alterations or Changes of Use contained in Section III.B, below. No transfer shall relieve the Developer of its obligations hereunder as it relates to components that have not been transferred.

Upon written request to the Town, the Town will confirm any transfer that has been completed in the manner permitted under this Agreement (including Sections III.A.1 and 2 above), which confirmation shall not be unreasonably delayed or denied. The Town expressly confirms that with respect to a joint venture in which Toll Brothers, Inc. (or a commonly controlled or wholly owned affiliate thereof) retains at least a twenty-five percent (25%) interest, satisfactory evidence of compliance with II.B.1 and II.B.2 will be certification of compliance therewith from Toll Brothers, Inc. (without the need by the Town to review any financial or loan documentation). Upon completion and confirmation of any permitted transfer, the transferring Developer will be released from all obligations under the terms and conditions of this Agreement with respect to the transferred component, and the subject transferee (i.e., successor in interest) shall be solely responsible for the performance of the Developer's obligations hereunder with respect to the transferred component.

3. Restriction on Alterations or Changes of Use. The Developer shall not, for a period of thirty (30) years from the filing of the Final Certificate of Substantial Completion (1) alter, demolish, subtract therefrom, reconstruct, make any additions thereto or extensions thereof, or change the materials, design, dimensions or color thereof, unless such reconstruction, demolition, subtraction, alteration, addition, extension or change is performed using materials of customary quality or appropriate for preservation measures for

redevelopment projects in the greater Belmont area similar to the Project and will not materially affect the external appearance or design of the Buildings so as to deviate substantially from the general Project Plans or the CSOD as the Town of Belmont Director of Community Development shall reasonably determine, nor (2) shall the Developer change the use of the Project without first obtaining Town Zoning approval if required at that time. No application for a change of use of any portion of the Property shall be filed with the Planning Board or Zoning Board of Appeals prior to the filing of the Certificate of Substantial Completion for that portion of the Property without the express written consent of the Board of Selectmen. Nothing herein shall be construed to prevent the ordinary maintenance, repair or replacement of any exterior feature of the Buildings required by the Special Permit which does not involve a change in design, material or color of such exterior feature of the Buildings required by the Special Permit or otherwise change the outward appearance of the façade of the Buildings required by the Special Permit, nor to prevent landscaping the Property with plants, trees or shrubs, nor construed to prevent the meeting of requirements certified by a duly authorized public officer to be necessary for public safety because of an unsafe or dangerous condition or to comply with any federal, state or local law, rule or regulation. This restriction shall survive the issuance of the Certificate of Substantial Completion. Further, nothing herein shall be construed to restrict the rights of the Developer with respect to the restoration or replacement of any Building within the Project in the event of a material casualty to that Building. For the purposes of this Agreement, a material casualty shall be deemed to be a casualty in which the cost of restoration of the Building exceeds fifty (50%) percent of the value of the applicable Building in the Project

IV. MAINTENANCE OF PROPERTY; INSURANCE

1. Maintenance of Property. The Developer shall maintain all portions of the Property and improvements thereon for which Certificates of Substantial Completion have not been filed, in good order, condition and repair. Except in compliance with law, the Developer shall not release or permit any new release or threat of release of oil, asbestos, urea formaldehyde foam insulation, nor any other hazardous material, hazardous waste or hazardous substance (hereinafter collectively called “hazardous substances”), as those terms are defined by any applicable law, rule or regulation including without limitation, the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, G.L. c. 21E, the Massachusetts Hazardous Waste Management Act, G.L. c. 21C, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. Sections 9601 et seq., and the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Sections 6901 et seq., nor, except in compliance with applicable law, generate or permit any hazardous substances to be generated on the Property; nor, except in compliance with applicable law, store or permit any hazardous substances to be stored on the Property.

2. Insurance. The Developer agrees to maintain the following insurance:

(a) Casualty and Property Insurance. The Developer shall continuously maintain in full force, for the term hereof, a policy of comprehensive casualty, and property damage insurance insuring the Property and all improvements thereto in an amount equal to at least one hundred percent (100%) of the replacement costs thereof. All such insurance shall be in the broadest form of coverage from time to time available in Massachusetts. The Developer

shall submit to the Town evidence of such continuous insurance coverage satisfactory to the Town before any Work is commenced on the Property and no less often than annually thereafter. Casualty and property damage insurance that is acceptable to the holder of a first mortgage on the Property shall be acceptable to the Town;

(b) Liability Insurance. The Developer shall, at a minimum, carry comprehensive public liability insurance in the amount of \$1,000,000.00/occurrence, \$3,000,000.00/aggregate with property damage liability insurance in limits of \$1,000,000.00/occurrence, \$3,000,000.00/aggregate under which the Town shall be named as additional insured and under which the insurer agrees to defend, indemnify and hold the Town harmless from and against all cost, expense and/or liability arising out of or based upon any and all claims, accidents, injuries and damages related to: the Project; the condition of the Property; any act or omission of the Developer, its contractors, licensees, agents, servants, employees, customers, invitees, guests or visitors, or anyone claiming by, through or under the Developer. The Town shall have the right to require the Developer to increase such limits when the minimum limits of liability insurance commonly and customarily carried on properties comparable to the Property by responsible owners are more or less generally increased, it being the intention of this sentence to require the Developer to take account of inflation in establishing minimum limits of liability insurance maintained from time to time on the Property;

(c) Evidence of Insurance. All policies shall be so written that the Town shall be notified of cancellation or restrictive amendment at least thirty (30) days prior to the effective date of such cancellation or amendment. The Developer shall submit to the Town certificates of insurance for all the policies required to be maintained by the Developer hereunder, which certificates shall show at least the coverage and limits of liability specified herein and the expiration date; and

(d) Acceptable Insurers. All insurance required hereunder shall be underwritten with an insurance company or companies with an AM Best Rating of A-1 or better, licensed to write such insurance in the Commonwealth of Massachusetts.

3. The provisions of this Section IV, except subsection 2(a), shall survive the issuance of the Certificate of Substantial Completion.

V. NOTICE AND DEFAULT PROVISIONS

A. Default of Developer and Rights of Parties.

1. Developer Default. The following (after receipt of notice and the expiration of the applicable grace and cure periods) shall be an event of default by the Developer (referred to herein as "Developer Default"):

(a) Failure by the Developer to observe or perform any of the Developer's covenants, agreements, or obligations set forth in this LDA within such notice period (which shall in all instances include thirty (30) days after written notice of default provided to Developer by the Town or if such Developer Default is not capable of being cured within thirty (30) days, such other time as may be reasonably required to cure such Developer Default, and provided that

the Developer commences diligent efforts to cure such default as soon as practicable) and subject to such cure provisions as are provided for in this Agreement;

(b) Prior to filing of the Certificate of Substantial Completion, failure by the Developer, after expiration of all applicable cure periods (which shall in all instances include thirty (30) days after written notice of default provided to Developer by the Town or if such Developer Default is not capable of being cured within thirty (30) days, such other time as may be reasonably required to cure such Developer Default, and provided that the Developer commences diligent efforts to cure such default as soon as practicable), to observe or perform any of the Developer's covenants, agreements, or obligations pursuant to the requirements of loan documents with a Funding Source, but nothing in this Section V.A. 1.(b) or in this Agreement shall affect or amend any term or provision of such loan document, including, without limitation, any applicable notice or cure period set forth therein;

(c) Prior to filing of the Certificate of Substantial Completion and in violation of the terms hereof, the sale or other transfer of any kind or nature of the Property for which no Certificate of Occupancy, Temporary Certificate of Occupancy or sign-offs has been issued by the Town, and other than the sale/lease of any completed residential/commercial space in the ordinary course of business, without the prior written consent of the Town;

(d) Prior to filing of the Certificate of Substantial Completion, the filing by Developer of a voluntary petition, or the filing against Developer of an involuntary petition, in bankruptcy or insolvency or adjudication of bankruptcy or insolvency of Developer, or the filing by Developer of any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the present or any future federal bankruptcy act, or any other present or future applicable federal, state, or other statute or law, or the assignment by Developer for the benefit of creditors, or appointment of a trustee, receiver (other than the appointment of a receiver by any of the Funding Source), or liquidator of all or any part of the assets of Developer, and within one hundred twenty (120) days after the commencement of any such proceeding against Developer, such proceeding shall not have been dismissed, or if, within one hundred twenty (120) days after the appointment of any trustee, receiver (other than the appointment of a by any of the Funding Sources), or liquidator of Developer or of all or any part of Developer's property, without the consent or acquiescence of Developer, such appointment shall not have been vacated or otherwise discharged.

2. Rights of Town Upon Developer Default. In the event of an uncured Developer Default, the Town shall have the right to recover damages not to exceed the \$800,000.00 Bond, upon occurrence of the events set forth in Section II.A.7. of this Agreement and titled "Liquidated Damages." Anything in this Agreement to the contrary notwithstanding, no action or proceeding instituted by the Town, and no termination of this Agreement, shall affect or impair any loan document executed by Developer or any related party in connection with the loans made by the Funding Sources, all of which shall continue in full force and effect. It is understood and agreed to by the Town that under no circumstances shall any Funding Source have any personal recourse for any Developer Default, whether before or after exercise of remedies of any Funding Source pursuant to its Mortgage or Pledge (as applicable).

3. Rights of Holders Upon Developer Default. In the event of an uncured Developer Default, any Funding Source shall have the right, but not the obligation, to cure any such Developer Default within the cure period as hereinafter set forth.

4. Town's Option To Cure Developer Default. The Town may, at its option, cure any Developer Default, other than a Developer Default pursuant to Section V.A.1.(b) hereof, in which case the Town shall be entitled, in addition to and without limitation upon any other rights or remedies to which it shall be entitled by this LDA, operation of law, or otherwise, to reimbursement from the Developer of all costs and expenses incurred by the Town in curing such Developer Default subject to the \$800,000 Bonded liquidated damage amount described herein. Anything in this Agreement to the contrary notwithstanding, the Town acknowledges that the Town's sole and exclusive remedy with respect to any uncured Developer Default shall be by recourse to the Bond, and the Town shall look solely to the Bond for the satisfaction of any claim against, or liability of, the Developer pursuant to this Agreement. Further, to the extent either Developer or a Funding Source (upon foreclosure of such party's Mortgage or Pledge(s), respectively) achieves Substantial Completion (whether before or after the expiration of all applicable cure periods in favor of Developer and Funding Sources), the Town agrees that the Developer, any successor or assign of the Developer and any person or entity owning the Property shall be liable for only actual damages incurred by the Town and not for any consequential, incidental, indirect or other damages, and such damages will be offset by and limited to the amount of recoveries of the Town from the Bond. Without limiting the generality of the foregoing, if in any action or proceeding instituted by the Town when and as permitted by Section V.A.2., the Town obtains a lien upon the Property or a lien or any interest in the Developer, each such lien shall be subject and subordinate in all respects to the liens of all Mortgages and Pledges then in effect. Nothing in this paragraph shall be deemed to impair the priority of any statutory lien for municipal taxes or charges not incurred pursuant to this LDA.

5. Notice of Foreclosure. The Developer shall give written notice to the Town, by registered mail, of Mortgage Lender's intention to foreclose upon its Mortgage or to accept a conveyance of the Property in lieu of foreclosure, or the exercise by a Mezzanine Lender of its rights pursuant to a Pledge or to accept an assignment of the equity interests in Developer in lieu of such foreclosure, as applicable, forthwith upon the Developer obtaining knowledge thereof.

B. Rights of Funding Sources.

1. No amendment to or modification of this Agreement shall be effective or binding without the prior written consent of each Funding Source.

2. If the Town shall give any notice, demand, election or other communication (hereinafter in this Section V.B.2 collectively referred to as "notices") to the Developer hereunder, the Town shall at the same time give a copy of each such notice to any Funding Source at the address theretofore designated by each Funding Source in the manner provided in Section VI.F. hereof and the giving of such notice shall be deemed complete when such notice is served upon the Funding Source. No notice given by the Town to the Developer shall be binding upon or affect said Funding Source unless a copy of said notice shall be given to said Funding Source pursuant to and in accordance with this Section V.B.2.

3. Subject to the limitations set forth in Section V.D. below, any Funding Source shall have the right, but not the obligation, to perform any term, covenant, condition or agreement of this Agreement to be performed by the Developer and to remedy any default by the Developer hereunder, and the Town shall accept such performance by any Funding Source with the same force and effect as if furnished by the Developer and thereupon such Funding Source shall be subrogated to the rights of the Town.

To the extent a Developer Default exists (which Developer Default shall not have been remedied by Developer within any applicable cure period pursuant to the provisions of this Agreement) and the Town shall otherwise become entitled to take any action to remedy such Developer Default or to enforce this Agreement against the Developer, then the Town shall give each Funding Source written notice of the same and a period of thirty (30) days from Funding Sources' receipt of such notice within which to cure the Developer Default; provided however, in the case of a Developer Default which cannot in the exercise of diligence be cured within said thirty (30) day period, such additional time to diligently commence the curing of the Developer Default, in which event the Town shall not take any action to remedy such Developer Default or to enforce this Agreement so long as any Funding Source is using commercially reasonable efforts to cure the Developer Default. The rights of any Funding Source under this Section V.B.3. are in addition to such rights as are given to any Funding Source under Section V.B.4. hereof and any other provision of this Agreement. In the case of a Developer Default which cannot be cured by any Funding Source without the Funding Source either taking possession of the Property or (in the case of a Mezzanine Lender, foreclosing upon the equity interests in the Developer), the Town agrees that Funding Sources' cure period shall further be extended so long as a Funding Source is proceeding diligently, subject to any stay in any proceedings involving the insolvency of the Developer, to obtain possession of the Property as mortgagee (including possession by a receiver) or the equity interests in the Developer. Upon obtaining such possession, Funding Sources may proceed to cure such Developer Default which cure shall be completed, under all the prevailing circumstances, within a reasonable period of time.

In the case of a Developer Default which is not capable of being cured by any Funding Source (such as achieving Substantial Completion by the Completion Date), the Town shall not exercise its remedies hereunder so long as (a) Funding Sources are curing all Developer Defaults susceptible of cure when and as provided in Section V.B.3. above and (b) upon the Funding Sources succeeding to the interests of Developer in the Property or the equity interests in the Developer (as applicable), such Funding Source diligently thereafter proceeds to complete construction of the Project; provided, however, nothing herein shall be deemed a waiver of the Town's rights to recover from the Bond as herein provided. Upon any such foreclosure, and the cure of all Developer Defaults susceptible of cure by a Funding Source, all Developer Defaults that are not capable of being cured by any Funding Source (or by such purchaser) shall no longer be deemed to be Developer Defaults hereunder.

4. In the event of any conflict between the terms of this Section V.B. and any other term of this Agreement, the terms of this Section V.B. shall control.

C. Default of Town.

1. The following shall be an event of default by the Town (referred to herein as “Town Default”):

The failure of the Town to observe or perform any of the Town’s covenants, agreements, or obligations hereunder, which failure continues for sixty (60) days following receipt of written notice from the Developer (or its successors or assigns, or any Funding Source) specifying such failure, or such longer period reasonably required to cure the breach, provided the cure is commenced immediately after receipt of said notice and continuously and diligently prosecuted (said cure period, the “Town Cure Period”).

2. Rights of Developer Upon Town Default. In the event that a Town Default has occurred and is continuing, the Developer’s sole remedy shall be to institute actions and proceedings to compel specific performance and to bring a claim in a court of competent jurisdiction, and no monetary damages shall be sought against the Town. In the event that the Developer prevails in an action against the Town for specific performance, and the Town’s failure to perform is determined in such action to have been in bad faith, or arbitrary and capricious, then the Town shall pay the Developer’s reasonable costs and attorneys’ fees in such action.

D. Funding Source’s Option to Cure Developer Defaults.

If the Developer Default is the failure of Developer to perform the Work in accordance with Project Plans, nothing contained within this LDA shall be deemed to authorize or permit such Funding Source, either before or after foreclosure or deed in lieu thereof, to undertake or continue the construction or completion of the Work (beyond the extent necessary to conserve or protect improvements or construction already made) other than in accordance with the Project Plans, or to effect any alteration or change of use of the Property in violation of Section III.B. of this LDA. Any such Funding Source that shall complete the Work or applicable part thereof in accordance with the Project Plans shall be entitled, upon written request made to the Town, to a Certificate of Substantial Completion in the manner provided in Section II.A.7.a. Nothing in this LDA shall be construed to impair the right of the Town, in the event that the Work is suspended after foreclosure or during the pendency thereof, to issue appropriate Orders under applicable building, health and sanitary codes requiring that the Property be secured or cleared of debris or other hazards as the public health or safety may require.

VI. GENERAL PROVISIONS

A. Access. The Developer shall permit the Town or its agents to enter the Property at any reasonable time, from time to time, to inspect the Property and to ensure compliance with the provisions of this LDA, provided, however, that the Town provides the Developer at least twenty-four hours’ prior notice thereof, except in the event of an emergency.

B. Compliance with Laws. The Developer shall carry out the Project in compliance with all applicable federal, state and local laws, codes, ordinances, rules and regulations and with all necessary permits.

C. Development Costs. The Developer shall be solely liable for all costs incurred in construction of all the Work for which Developer obtains permits required under this LDA and all costs required to comply with all laws, ordinances, rules, regulations and codes applicable to the Project.

D. Enforcement. The Town and the Developer covenant and agree that the losing party will reimburse the winning party for all reasonable costs and expenses (including without limitation attorney's fees) incurred in enforcing (but not defending against the enforcement action of the other party) this LDA or in remedying or abating any violation thereof, provided that no obligation shall arise under this section until a court of competent jurisdiction shall have determined that the party from whom reimbursement is being sought has violated this LDA and, with regard to any violation by the Town, such court shall also have determined that the Town has acted in bad faith or arbitrarily and capriciously.

E. Indemnification/Liability. The Developer agrees to defend, indemnify, and hold the Town harmless from and against any and all liabilities, losses, costs, expenses (including attorney's fees), causes of action, suits, claims, damages, demands, judgments or expenses from any and all claims, actions, or suits of any nature whatsoever that may be imposed upon, incurred by, or asserted against the Town by reason of the Developer's negligent or willful misconduct under this LDA, including, but not limited to, those arising from any release or threat of release of any hazardous materials which are placed on, in or under all of any portion of the Property by the Developer, after the date of this LDA, but excepting for matters which are the result of the negligence or willful misconduct of the Town or its employees or agents. This indemnity and hold harmless agreement shall include indemnity against all costs, expenses, and liabilities incurred in or in connection with any such claim or proceeding brought thereon, and the defense thereof.

F. Notices. Any and all notices required herein shall be in writing and shall be deemed properly given upon the earlier of: (i) two business days after deposit with the United States Postal Service, if sent by registered or certified mail, return receipt requested, postage prepaid; (ii) one business day after deposit with an express courier service such as Federal Express; or (iii) actual receipt. All such notices will be delivered to the address specified below or such other address as the respective parties may designate in writing:

TOWN:

If to the Town of Belmont:

Town Administrator
Belmont Town Hall
455 Concord Avenue
Belmont, MA 02478
Telephone: (617) 993-2612
Facsimile: (617) 993-2611

With a copy to:

George A. Hall, Jr.
Anderson & Kreiger, LLP
1 Canal Park, Suite 200
Cambridge, MA 02141
Telephone: (617) 621-6500
Facsimile: (617) 621-6630

DEVELOPER:

If to the Developer:

BELMONT RESIDENTIAL LLC
c/o Toll Apartment Living
Attn: Charles Elliott, Managing Director
250 Gibraltar Road
Horsham, PA 19044
Telephone: (215) 938-8000
Facsimile: (215) 938-8255

With a copy to:

Toll Bros., Inc.
c/o Legal Department
Attn: General Counsel
250 Gibraltar Road
Horsham, PA 19044
Telephone: (215) 938-8000
Facsimile: (215) 938-8255

and

Partridge Snow & Hahn LLP
Attn: Jay R. Peabody, Esq.
40 Westminister Street, Suite 1100
Providence, RI 02903
Telephone: (401) 861-8200
Facsimile: (401) 861-8210

G. Notice of Funding Sources. The Developer shall, at all times, provide the Town with an up-to-date list of names and addresses of Funding Sources. Any Funding Source may also notify the Town of its address. In the case of any change in address of any Funding Source or any assignment of a Mortgage or a Pledge, the Funding Source or such assignee, by written notice to the Town, may change the address or name of such Funding Source and/or the address to which such copies of notices are to be sent by notice to the Town given in the manner provided in Section V.1.F. hereof.

H. Waiver. The failure on the part of the Developer or Town, as the case may be, to complain in any one or more cases of any action or non-action on the part of the other party, or to insist in any one or more cases upon the performance of any of the provisions, covenants, agreements or conditions of this LDA or to exercise any option contained herewith, no matter how long the same may continue, shall never be deemed or construed to be a waiver by such party of any of its rights hereunder, or a relinquishment for the future of any such provision, covenant, agreement, condition or option. Further it is covenanted and agreed that no waiver at any time of any of the provisions hereof by the Developer or the Town shall be construed as a waiver of any of the other provisions hereof, and that a waiver at any time of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions.

I. Headings and Captions for Convenience Only. The captions and headings throughout this LDA are for convenience of reference only and the words contained therein shall in no way be held or deemed to define, limit, explain, modify, amplify or add to the interpretation, construction or meaning of any provisions of, or the scope or intent of this LDA, nor in any way affect this LDA, and shall have no legal effect.

J. Binding. The terms of this LDA shall be binding on the parties, and their respective successors and assigns except for any Funding Source, unless such Funding Source agrees in writing to assume this LDA, or except as expressly set forth in this LDA. All covenants, agreements, terms and conditions of this LDA shall be construed as covenants running with the land.

K. Entire Agreement of Parties: No Oral Agreement. There are no oral agreements between the parties hereto affecting this LDA, and this LDA supersedes and cancels any and all previous negotiations, arrangements, agreements, and undertakings, if any, between the parties hereto with respect to the subject matter hereof including, without limitation, the Purchase and Sale Agreement dated March 28, 2011 between the Town and Smith, as amended (the "PSA"), which PSA shall be deemed cancelled as of the Effective Date hereof. Additionally, none of the aforementioned negotiations, arrangements, agreements and/or undertakings between the parties shall be used to interpret or construe this LDA.

L. Governing Law. This LDA shall be governed exclusively by the provisions of the laws of the Commonwealth of Massachusetts.

[Signature Page Follows]

WITNESS the above execution hereof under seal as of the day and year first above written.

TOWN OF BELMONT,
MASSACHUSETTS
By its Board of Selectmen

BELMONT RESIDENTIAL LLC

By: _____

By: _____
Duly Authorized

By: _____

By: _____

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

On this ____ day of _____, 2016, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which was photographic identification with signature issued by a federal or state governmental agency, oath or affirmation of a credible witness, personal knowledge of the undersigned, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as _____ of the Town of Belmont.

Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

On this ____ day of _____, 2016, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which was photographic identification with signature issued by a federal or state governmental agency, oath or affirmation of a credible witness, personal knowledge of the undersigned, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as _____ of Belmont Residential LLC.

Notary Public
My Commission Expires:

EXHIBIT A

CSOD

(Attached)

DRAFT

EXHIBIT B

Description of Premises

(to be provided)

DRAFT

EXHIBIT C

Parking Management Agreement

(attached)

DRAFT