



2005 00020623  
Bk: 44884 Pg: 479 Doc: EASE  
Page: 1 of 87 01/31/2005 12:51 PM

**DECLARATION OF RECIPROCAL EASEMENTS  
AND AGREEMENTS**

BY

THE MCLEAN HOSPITAL CORPORATION

DATED: January 24, 2005

**RETURN TO  
HEMENWAY & BARNES  
60 State Street  
Boston, MA 02109  
Attn: SYB**

346774

*For title reference, see deed recorded  
with said Deeds, Book 14084, Page 272.*

*SEE PLAN IN RECORD BOOK 2005 PAGE 125*  
*SEE PLAN IN RECORD BOOK 2005 PAGE 126*  
*Belmont*  
*McLean Street "McLean District"*

*067*

## TABLE OF CONTENTS

ARTICLE 1	
CERTAIN DEFINITIONS .....	2
 ARTICLE 2	
GRANT OF EASEMENTS .....	14
2.1. Olmsted Drive Access and Utility Easement.....	14
2.2. McLean Drive Access and Utility Easement.....	14
2.3. Zone 1A Telecommunications Easement .....	15
2.4. Zone 1B Access and Utility Easement.....	15
2.5. Zone 1B Drainage and Sewer Easement.....	16
2.6. Zone 1B Utility Easement.....	16
2.7. Zone 2 Drainage Easement .....	17
2.8. Zone 2 Emergency Access Easement .....	16
2.9. Zone 3 Access Easement .....	16
2.10. Zone 3-A Utility Easement.....	17
2.11. Zone 3-B Utility Easement .....	17
2.12. Zone 3-C Utility Easement .....	17
2.13. Zone 3-D Utility Easement .....	17
2.14. Zone 4 Access Easement .....	18
2.15. Zone 4 Drainage Easement .....	19
2.16. Zone 4 Utility Easement .....	18
2.17. Zone 5 Emergency Access Easement .....	18
2.18. Zone 5 Slope and Grading Easement.....	19
2.19. Zone 6 Drainage Easement .....	19
2.20. McLean Pedestrian Easement.....	20
2.21. Private Open Space Easement No. 1.....	19
2.22. Private Open Space Easement No. 2.....	19
2.23. Private Open Space Easement No. 3.....	20
2.24. Private Open Space Easement No. 4.....	21
2.25. Public Open Space Easement No. 1.....	21
2.26. Further Grants of Easement Rights.....	20
2.27. As-Built Plans and Legal Descriptions.....	20
 ARTICLE 3	
MAINTENANCE AND OPERATION.....	21
3.1. Restrictions on Maintenance, Operation and Replacement Activities.....	21
3.2. Operation and Maintenance of Common Driveways and Emergency Access Driveways	21
3.3. Utility Facilities .....	23
3.4. Property Manager.....	24

3.5. Owner Contact .....	24
3.6. Self-Help Rights.....	24
3.7. Relocation Rights.....	25
3.8. Maintenance of Upham Bowl Detention Improvements .....	26
 ARTICLE 4	
USE OF INFRASTRUCTURE.....	26
4.1. Common Utility Facilities; Exclusive Utility Facilities.....	26
4.2. Common Driveways .....	27
4.3. Use of Infrastructure .....	27
4.4. Infrastructure Connections.....	28
4.5. New Infrastructure .....	30
 ARTICLE 5	
COVENANTS AND RESTRICTIONS .....	29
5.1. Construction, Maintenance and Repair Activities .....	29
5.2. Signs.....	32
5.3. Insurance.....	34
5.4. Right to Contest Legal Requirements .....	36
5.5. Eminent Domain .....	36
5.6. Future Easements Benefiting Zone 6 .....	36
5.7. Future Emergency Access Easement .....	37
5.8. Future Easements in Olmsted Drive Access and Utility Easement Area .....	38
 ARTICLE 6	
DESIGN REVIEW PROCESS.....	38
6.1. Approval Required.....	38
6.2. Approval or Denial .....	38
6.3. Certificate of Compliance.....	38
6.4. Failure to Act .....	39
6.5. Aggrieved Owner.....	39
 ARTICLE 7	
COMMON EXPENSES AND CHARGES .....	39
7.1. Common Charges.....	39
7.2. Assessment of Common Charges .....	41
7.3. Payment of Charges .....	42
7.4. Assessments after Transfer; Certificate re: Charges.....	42
7.5. Annual Projection .....	42
7.6. Audit Rights .....	42

ARTICLE 8	43
DEFAULT AND ENFORCEMENT .....	43
8.1. Events of Default .....	44
8.2. Remedies .....	44
8.3. Costs of Enforcement .....	44
8.4. Lien .....	45
8.5. Mortgagee's Rights .....	45
8.6. Limitations .....	45
8.7. Claims Against Condominium Association .....	45
ARTICLE 9	46
AMENDMENTS; SUBORDINATION; TERMINATIONS .....	46
9.1. Required Approval .....	46
9.2. Effective Date .....	46
9.3. Amendments Requested by Listed Mortgagee .....	46
ARTICLE 10	46
DURATION .....	46
10.1. Easements .....	47
10.2. Covenants, Restrictions and Development Standards .....	47
ARTICLE 11	47
MISCELLANEOUS .....	47
11.1. Rights Granted .....	47
11.2. Rights Reserved .....	47
11.3. Easement Relocation Rights .....	48
11.4. Transfer of Interest .....	48
11.5. Recordation and Mortgages .....	49
11.6. Further Instruments/Assurances .....	49
11.7. Headings .....	49
11.8. References to Articles and Sections .....	49
11.9. Exhibits .....	49
11.10. Binding .....	49
11.11. Non-Waiver .....	50
11.12. Excusable Delay .....	50
11.13. Notices .....	51
11.14. Estoppel Certificate/Compliance Certificate .....	51
11.15. No Partnership .....	51
11.16. No Merger .....	52
11.17. Limitation of Liability .....	52
11.18. Mortgagee Notice and Right to Cure .....	52
11.19. Not a Public Dedication .....	52

11.20. Dispute Resolution.....	53
11.21. Cooperation.....	54
11.22. Severability .....	54
11.23. Governing Law .....	54
11.24. Rule Against Perpetuities.....	54

## DECLARATION OF RECIPROCAL EASEMENTS AND AGREEMENTS

This DECLARATION OF RECIPROCAL EASEMENTS AND AGREEMENTS (this "Declaration") is made as of the 24<sup>th</sup> day of January, 2005 by THE MCLEAN HOSPITAL CORPORATION, a Massachusetts non-profit corporation, having an address at 115 Mill Street, Belmont, Massachusetts 02178 ("Declarant").

RECITALS

(A) Declarant is the owner of a fee simple interest in certain real property located in the Town of Belmont, Massachusetts consisting of approximately 238 acres of land together with all rights and easements appurtenant thereto and improvements thereon (the "McLean District"). The McLean District is depicted on that certain plan (the "Plan") entitled "McLean Hospital Reuse Master Plan, Belmont, Massachusetts", prepared by Design Consultants, Inc., dated February 22, 1999, signed by the Town of Belmont Planning Board on September 30, 2003 and recorded with the Registry of Deeds (hereinafter defined), Book 2005, Page 126.  
*Planbook*

(B) The McLean District consists, in part, of the following parcels of land, which are depicted on the Plan:

1. Zone 1A, Residential Subdistrict, consisting of certain real property described in Exhibit A-1A attached hereto, together with all rights and easements appurtenant thereto and improvements from time to time located thereon ("Zone 1-A");
2. Zone 1B, Residential Subdistrict, consisting of certain real property described in Exhibit A-1B attached hereto, together with all rights and easements appurtenant thereto and improvements from time to time located thereon ("Zone 1-B");
3. Zone 2, Residential Subdistrict consisting of certain real property described in Exhibit A-2 attached hereto, together with all rights and easements appurtenant thereto and improvements from time to time located thereon ("Zone 2");
4. Zone 3, Senior Living Subdistrict consisting of certain real property described in Exhibit A-3 attached hereto, together with all rights and easements appurtenant thereto and improvements from time to time located thereon ("Zone 3");
5. Zone 4, Research and Development Subdistrict consisting of certain real property described in Exhibit A-4 attached hereto, together with all rights and easements appurtenant thereto and improvements from time to time located thereon ("Zone 4");
6. Zone 5, Institutional Subdistrict consisting of certain real property described in Exhibit A-5 attached hereto, together with all rights and easements appurtenant thereto and improvements from time to time located thereon ("Zone 5"); and,

7. Zone 6, General Residence Subdistrict consisting of certain real property described in Exhibit A-6 attached hereto, together with all rights and easements appurtenant thereto and improvements from time to time located thereon ("Zone 6").

Subject to the terms and conditions of this Declaration, Declarant intends that the Zones (hereinafter defined) be developed for residential, senior living, research and development and institutional uses, and uses ancillary or incidental to any of the foregoing (the "McLean Development Community"). Declarant recognizes that, for the most favorable development of the McLean District, it is appropriate that the Owners (hereinafter defined) of the Zones (hereinafter defined) agree and cooperate with respect to the operation and maintenance of Infrastructure (hereinafter defined) serving the various Zones, and with respect to certain other matters relating to the Zones. Declarant intends herein to grant to each Owner certain reciprocal easements for pedestrian and vehicular ingress and egress over the Common Driveways (hereinafter defined) providing access to each Owner's Zone and to grant certain rights to install and maintain utility facilities within the Common Driveways and within certain other easement areas as more particularly specified herein.

NOW, THEREFORE, Declarant does hereby declare and establish the following covenants, agreements, easements and restrictions regarding The McLean District.

## ARTICLE 1

### CERTAIN DEFINITIONS

The following defined terms, whenever used in this Declaration, have the meanings set forth below:

1.1. "Access Purposes": Vehicular and pedestrian ingress and egress between any portion of a Zone and the streets or highways adjacent to the McLean District. Without limiting the generality of the foregoing, any Owner that has the right to use an Easement Area for Access Purposes shall also have the right to use such Easement Area for Emergency Access Purposes.

1.2. "Adjacent Property" shall have the meaning given to it in Section 5.6.1.

1.2.1. "Affordable or Elderly Housing" shall mean (i) any affordable residential units or mixed-income housing containing affordable residential units, and (ii) any multi-family housing for the elderly that is owned and operated by the Town.

1.3. "Ancillary Infrastructure": Driveways, sidewalks, curbcuts, signs, landscaping, lighting to illuminate driveways, walkways or signs, and all appurtenances to any of the foregoing.

1.4. "Ancillary Infrastructure Purposes": Installing, using, maintaining, servicing, repairing, removing and replacing Ancillary Infrastructure.

1.5. "Assessing Owner": An Owner that assesses one or more other Owners for Common Charges pursuant to the terms and provisions of this Declaration.

1.6. "Assessment Period" shall have the meaning given to it in Section 7.2.

1.7. "Benefited Owner": An Owner who has been injured, or has been threatened with injury, as the result of a Default by another Owner under this Declaration.

1.8. "CCIA": That certain Construction Coordination and Implementation Agreement dated as of the date hereof and recorded simultaneously herewith.

1.9. "Common Charges" shall have the meaning given to it in Section 7.1.

1.10. "Common Driveways": Olmsted Drive, McLean Drive, and the Zone 1B Driveway.

1.11. "Common Expenses": All reasonable costs incurred by an Owner to service, operate, inspect, maintain, repair and replace Infrastructure or Infrastructure Easement Areas pursuant to the terms and provisions of this Declaration. Common Expenses shall include, without limitation: premiums for property casualty, liability and other necessary insurance for the Infrastructure and the Infrastructure Easement Areas; wages, salary, fringe benefits, workmen's compensation insurance premiums, payroll taxes and any other compensation paid to, for, or with respect to all persons hired, the costs of any materials and equipment purchased or rented, and payments to independent contractors engaged to perform any and all of the obligations set forth in Article 3 with respect to Infrastructure and the Infrastructure Easement Areas; utility charges with respect to Infrastructure and Infrastructure Easement Areas; landscaping along the Common Driveways; amounts required to maintain reasonable general operating, working capital and replacement reserves with respect to the Infrastructure and Infrastructure Easement Areas; and reasonable costs incurred by an Owner in connection with the exercise of self-help rights pursuant to Section 3.6. Notwithstanding the foregoing, the following costs and expenses are expressly excluded from Common Expenses hereunder: (1) the original costs of designing and constructing Infrastructure, (2) any and all use charges relating to an Occupant's use of utility services provided through the Common Utility Facilities, which, pursuant to Section 4.4, shall be measured by separate meters at the point of each Zone's connection to the Common Utility Facilities, and paid for by the consuming Occupant, (3) any and all costs resulting from any breach by any Owner of any of the terms, covenants or restrictions set forth in this Declaration to be observed or performed by such Owner, which costs shall be paid by such Owner, (4) mortgage payments or title insurance premiums, and (5) any penalties, fines or interest imposed by any governmental authority (with proper jurisdiction) as the result of the Assessing Owner's breach of its respective obligations under this Declaration.

1.12. "Common Utility Facilities": Any and all Utility Facilities, or portions thereof, used in common by two or more Owners that (i) are installed with the approval



of Owners pursuant to Section 4.5, and (ii) are not Public Utility Facilities or Exclusive Utility Facilities. All Utility Facilities contemplated under the CCIA, except the Gas System and the Water System, shall be deemed to be Common Utility Facilities hereunder.

1.13. "Condominium Association": A corporation, trust or unincorporated association, formed pursuant to Massachusetts General Laws Chapter 183A (as from time to time amended), that is provided for in the master deed establishing a condominium in any Zone to manage and regulate such condominium.

1.14. "Conservation Restrictions": Those certain Conservation Restrictions (including all exhibits thereto), which will be granted by the Declarant to the Trustees of Reservations as contemplated under the Memorandum of Agreement dated as of November 22, 1999 by and between the Town and Declarant, which Conservation Restrictions will be recorded with the Registry of Deeds.

1.15. "Coordinating Owner" shall have the meaning given to it in Section 5.1.2.

1.16. "Curing Owner" shall have the meaning given to it in Section 3.6.2.

1.17. "Declarant" shall have the meaning given to it in the Recitals to this Declaration.

1.18. "Default" shall have the meaning given to it in Section 8.1.

1.19. "Defaulting Owner" shall have the meaning given to it in Section 8.1.

1.20. "Design and Site Plan Approval": With respect any development in a Zone, the approval issued by the Town pursuant to Section 6A.4 of the Zoning By-Law.

1.21. "Design Plans": Plans and specifications of reasonably sufficient detail depicting all proposed Improvements. Design Plans of Infrastructure shall be prepared by licensed engineers or architects in accordance with applicable professional standards. In the case of Design Plans for signs, such plans shall show the location, height, spacing, design and illumination of all signs, and shall comply with the Minimum Sign Design Requirements.

1.22. "Drainage System": All Utility Facilities comprising the storm water drainage system described in the CCIA, as the same may from time to time be modified, expanded or replaced.

1.23. "Driveway Maintenance Standard": In compliance with (1) the design standards of Olmsted Drive, McLean Drive, or the Zone 1B Driveway, as the case may be, at the time a certificate of occupancy is first issued for any improvements constructed in either (a) Zone 3 or Zone 4, in the case of Olmsted Drive, (b) Zone 1A, Zone 1B or Zone 2, in the case of McLean Drive, or (c) Zone 1A or Zone 1B, in the case of the Zone 1B driveway, and (2) all applicable and relevant provisions of the following Legal

Requirements, as the same may from time to time be amended, but subject to an Owner's right to contest such Legal Requirements pursuant to the terms of Section 5.4: (i) the Town's Board of Survey rules and regulations for ways, (ii) Massachusetts Highway Department construction and operating standards, and (iii) standards of the American Association of State Highway and Transportation Officials.

1.24. "Easement Areas": The Infrastructure Easement Areas, the Zone 5 Emergency Access Easement Area, the Zone 5 Slope and Grading Easement Area, the McLean Pedestrian Easement Area, the Zone 1A Telecommunications Easement Area, the Zone 1B Utility Easement Area, the Zone 2 Drainage Easement Area, the Zone 4 Drainage Easement Area, the Private Open Space Easement No. 1 Area, the Private Open Space Easement No. 3 Area, and any other easement area within the McLean District from time to time granted by any Owner pursuant to the terms and provisions of this Declaration.

1.25. "Electric and Telecommunications Purposes": Installing, using, maintaining, servicing, repairing, removing and replacing the following underground equipment: utility lines, utility facilities, pipes, ducts, conduits and connections, facilities, manholes, meters and submeters, and all appurtenances thereto, for the purpose of providing electric or telecommunications services to a Zone.

1.26. "Emergency Access Purposes": Vehicular and pedestrian ingress and egress between a portion of a Zone and the streets or highways adjacent to the McLean District in the Event of Emergency.

1.27. "Event of Default" shall have the meaning given to it in Section 8.1.

1.28. "Event of Emergency": Any condition immediately threatening either personal injury to individuals, or material property damage.

1.29. "Exclusive Utility Facilities": Any and all Utility Facilities, or portions thereof, that exclusively serve any one (1) Zone and which may or may not cross over, under, or through one or more other Zones.

1.30. "Excusable Delay" shall have the meaning given to it in Section 11.12.

1.31. "Gas System": All Utility Facilities comprising the natural gas system serving Zones, as the same may be modified, expanded or replaced, from time to time.

1.32. "Improvements": Infrastructure and Ancillary Infrastructure.

1.33. "Infrastructure" shall mean the Common Driveways and Common Utility Facilities, together with any additions to any of the foregoing from time to time constructed in accordance with the terms of this Declaration. Connections between a particular Zone and the Common Driveways and Common Utility Facilities, which connections exclusively serve such Zone and are located wholly within such Zone, are not a part of Infrastructure.

1.34. "Infrastructure Easement Areas": Collectively, the Olmsted Drive Access and Utility Easement Area, the McLean Drive Access and Utility Easement Area, the Zone 1B Access and Utility Easement Area, the Zone 1B Drainage and Sewer Easement Area, the Zone 2 Emergency Access Easement Area, the Zone 3 Access Easement Area, the Zone 3-A Utility Easement Area, the Zone 3-B Utility Easement Area, the Zone 3-C Utility Easement Area, the Zone 3-D Utility Easement Area, the Zone 4 Access Easement Area, the Zone 4 Utility Easement Area, the Zone 6 Drainage Easement Area, the Private Open Space Easement No. 2 Area, the Private Open Space Easement No. 4 Area, and the Public Open Space Easement No. 1 Area.

1.35. "Interest Rate" shall mean the lesser of (i) six percent (6%) per annum in excess of the highest prime rate published from time to time in the eastern edition of *The Wall Street Journal* or a comparable newspaper if *The Wall Street Journal* shall not publish the prime rate during such period, or (ii) the highest interest rate allowed by applicable law.

1.36. "Legal Requirements" (or any variation thereof): All applicable laws, by-laws, ordinances, codes, rules, regulations, orders, and other lawful requirements of the municipal, county, state or federal governmental authorities having jurisdiction, including, without limitation, the terms of all applicable Design and Site Plan Approvals.

1.37. "Leveraged Lease" shall have the meaning given to it in Section 8.4.

1.38. "Listed Mortgagee" shall mean any mortgagee as to whose name, address and mortgage each of the Owners has received actual written notice in accordance with Section 11.18.

1.39. "Master Easement Plan": That certain plan entitled "Easement Plan of Land in Belmont, Massachusetts" prepared by Design Consultants, Inc. (Project No. 1999-104.40), dated August 13, 2003 and signed on January 12, 2005, a copy of which has been recorded with the Registry of Deeds, Book 2005, Page 129.

1.40. "McLean Development Community" shall have the meaning given to it in the Recitals to this Declaration.

1.41. "McLean District" shall have the meaning given to it in the Recitals to this Declaration.

1.42. "McLean Drive": The portions of the McLean Drive Access and Utility Easement that will be graded and paved, and which will provide (i) access to and from Mill Street for Zones 1A, 1B and 2, (ii) emergency access to and from Mill Street (together with the Zone 2 Emergency Access Easement) for Zones 3 and 4, and (iii) emergency access to each of the Zones from Mill Street for the Town.

1.43. "McLean Drive Access and Utility Easement": The easement described in Section 2.2.

1.44. "McLean Drive Access and Utility Easement Area": The easement area depicted on the Master Easement Plan as the "Proposed McLean Drive Access and Utility Easement."

1.45. "McLean Pedestrian Easement": The easement described in Section 2.20.

1.46. "McLean Pedestrian Easement Area": The area situated in both the Olmsted Drive Access and Utility Easement Area and Zone 3, which is located along, and to the west or south of, Olmsted Drive that is from time to time graded and improved as a sidewalk.

1.47. "Minimum Sign Design Requirements": The following specifications shall apply to any and all signs installed in either the Olmsted Drive Access and Utility Easement Area or the McLean Drive Access and Utility Easement Area in accordance with the terms of this Declaration:

(a) Moving, flashing or neon signs are prohibited.

(b) All signs shall be constructed of durable, weather-protected materials and finishes.

1.48. "New Infrastructure": Common Driveways and Common Utility Facilities that are not contemplated under the CCLA.

1.49. "New Infrastructure Easement Area": Any area that is not an Infrastructure Easement Area hereunder, and in which an Owner grants one or more other Owners the right to install, use, operate, maintain, repair, remove, or replace New Infrastructure pursuant to Section 4.5.

1.50. "Non-Repairing Owner" shall have the meaning given to it in Section 5.1.4.

1.51. "Notice of MOA": That certain Notice of Agreement dated as of November 22, 1999 by Declarant with respect to that certain Memorandum of Agreement (including all exhibits thereto) dated as of November 22, 1999 by and between Declarant and the Town.

1.52. "Occupant": Any Owner or any other person entitled to use and occupy, from time to time, any land forming a part of, or any portion of a building located upon, a Zone under any deed or lease, sublease, license, or other similar agreement.

1.53. "Olmsted Drive Access and Utility Easement": The easement described in Section 2.1.

1.54. "Olmsted Drive Access and Utility Easement Area": The easement area depicted on the Master Easement Plan as the "Proposed Olmsted Drive Access and Utility Easement."

1.55. "Olmsted Drive": The portions of the Olmsted Drive Access and Utility Easement, the Zone 3 Access Easement, and the Zone 4 Access Easement that will be graded and paved, and which will provide (i) access to and from Pleasant Street for Zones 3 and 4, (ii) emergency access to and from Pleasant Street for Zones 1A, 1B, 2 and 5, and (iii) emergency access to each of the Zones from Pleasant Street for the Town.

1.56. "Owner": The owner of the fee simple interest in a Zone, as shown from time to time in the records of the Registry of Deeds, provided, however, that: (i) the term "Owner" shall not include a person holding an interest in any portion of a Zone merely as security for the repayment of a debt or satisfaction of any other obligation, unless and until such person succeeds to the fee simple interest or leasehold interest in the Zone, (ii) if a person leases or subleases a Zone or portion thereof (a "Leasehold Parcel") to another person for a term (including extension options) of twenty-five (25) years or more, then, unless the lease or sublease provides otherwise, for so long as the lease or sublease remains in effect, (a) the landlord and its successors and assigns under such a lease or sublease shall not be deemed to be the Owner of such Zone or applicable portion thereof, and (b) the tenant (or, in the case of a sublease, the subtenant) and its successors and assigns under such a lease or sublease shall be deemed to be the Owner of such Zone or applicable portion thereof, and (iii) an "Owner" may be any Condominium Association to which any owner of the fee simple interest in any of Zone assigns its rights and obligations as "Owner" hereunder pursuant to Section 11.4.

1.57. "Pedestrian Access Purposes": Pedestrian ingress and egress between any portion of a Zone and the streets or highways adjacent to the McLean District.

1.58. "Permittees": Each Owner's mortgagees and Occupants, and any of its or their customers, contractors, subcontractors, employees, guests, business invitees, agents, officers and directors.

1.59. The term "person" shall mean any individual, partnership, firm, association, corporation, trust, limited liability company, limited liability partnership, or any other form of business or government entity.

1.60. "Plan" shall have the meaning given to it in the Recitals to this Declaration.

1.61. "Private Open Space Easement No. 1": The easement described in Section 2.21.

1.62. "Private Open Space Easement No. 1 Area": The easement area depicted on the Master Easement Plan as the "Proposed Private Open Space Easement No. 1."

1.63. "Private Open Space Easement No. 2": The easement described in Section 2.22.

1.64. "Private Open Space Easement No. 2 Area": The easement area depicted on the Master Easement Plan as the "Proposed Private Open Space Easement No. 2."

1.65. "Private Open Space Easement No. 3": The easement described in Section 2.23.

1.66. "Private Open Space Easement No. 3 Area": The easement area depicted on the Master Easement Plan as the "Proposed Private Open Space Easement No. 3."

1.67. "Private Open Space Easement No. 4": The easement described in Section 2.24.

1.68. "Private Open Space Easement No. 4 Area": The easement area depicted on the Master Easement Plan as the "Proposed Private Open Space Easement No. 4."

1.69. "Public Open Space Easement No. 1": The easement described in Section 2.25.

1.70. "Public Open Space Easement No. 1 Area": The easement area depicted on the Master Easement Plan as the "Proposed Public Open Space Easement No. 1 Area".

1.71. "Public Utility Facilities": Utility Facilities owned or operated by any governmental or quasi-governmental authority, public utility company or common carrier that has expressly assumed responsibility for the servicing, maintenance, repair and replacement of such Utility Facilities. The Public Utility Facilities shall include, without limitation, the Gas System and the Water System.

1.72. "Registry of Deeds": The Middlesex South District Registry of Deeds.

1.73. "Repairing Owner" shall have the meaning given to it in Section 5.1.4.

1.74. "Reviewing Owners" (and any variation thereof): (i) in the context of any connections, additions or modifications to Common Utility Facilities, all Owners that are serviced by such Common Utility Facilities (or whose Permittees are serviced by such Common Utility Facilities); (ii) in the context of (a) the notification and cooperation provisions of Section 5.1.5 applicable to work in the Olmsted Drive Access and Utility Easement Area, the Zone 3 Access Easement Area or the Zone 4 Access Easement Area, (b) any connections, additions or modifications to Olmsted Drive, (c) any proposed Improvements in the Olmsted Drive Access and Utility Easement Area, or (d) the temporary closure of Olmsted Drive pursuant to Section 11.19, the Owner of Zone 3 and the Owner of Zone 4; (iii) in the context of (a) the notification and cooperation provisions of Section 5.1.5 applicable to work in the McLean Drive Access and Utility Easement Area, (b) any connections, additions or modifications to McLean Drive, (c) any proposed Improvements in the McLean Drive Access and Utility Easement Area, or (d) the temporary closure of McLean Drive pursuant to Section 11.19, the Owners of Zones 1A, 1B, 2 and 5; (iv) in the context of (a) the notification and cooperation provisions of Section 5.1.5 applicable to work in the Zone 1B Access and Utility Easement Area, (b) any connections, additions or modifications to the Zone 1B Driveway, (c) any proposed Improvements in the Zone 1B Access and Utility Easement Area, or (d) the temporary closure of the Zone 1B Driveway pursuant to Section 11.19, the Owners of Zones 1A and

1B; (v) in the context of any proposed Improvements in the Zone 6 Drainage Easement Area, the Owner of Zone 3.

1.75. "Self-Insurance Threshold" shall mean Two Hundred Million Dollars (\$200,000,000), which amount shall be increased each calendar year in proportion to any increases in the Consumer Price Index for All Urban Consumers (CPI-U) – Boston, All Items 1982-84 equals 100, as published by the United States Department of Labor, Bureau of Labor Statistics, or if no longer calculated, the most comparable replacement or substitute index from the date of this Declaration to the year in which the Self-Insurance Threshold is being determined.

1.76. "Served Owner" shall have the meaning given to it in Section 4.5.

1.77. "Sewer Purposes": Installing, using, maintaining, servicing, repairing, removing and replacing lines, pipes, ducts, conduits and connections, facilities, manholes, and all appurtenances thereto, for the purpose of providing sanitary sewer service to a Zone.

1.78. "Sewer System": All Utility Facilities comprising the sanitary sewer system described in the CCIA, as the same may from time to time be modified, expanded or replaced. The Sewer System does not include Utility Facilities comprising the sanitary sewer system located, in part, in the McLean Drive Access and Utility Easement Area, the Private Open Space Easement No. 2 Area or the Private Open Space No. 3 Area.

1.79. "Slope and Grading Purposes": Installing, using, repairing, maintaining, removing and replacing slopes to support Olmsted Drive and all appurtenances thereto.

1.80. "Storm Water Drainage Purposes": Using the Drainage System or the portions of any existing drainage system located in the McLean District that will remain in use following completion of the storm water drainage system described in the CCIA, as the same may from time to time be modified, expanded or replaced.

1.81. "Town": Any municipal department, board or commission of the Town of Belmont, Massachusetts. The rights of the "Town" hereunder shall not extend to the general public.

1.82. "Transfer" (and any variation thereof): Either (i) any conveyance of the fee or leasehold interest of an Owner in and to its Zone or any portion thereof, or (ii) any assignment by an Owner of its rights and obligations as "Owner" hereunder to a Condominium Association. Notwithstanding the foregoing, the granting of any mortgage or similar instrument shall not be deemed a "Transfer" hereunder, but the foreclosure thereof, or acceptance of a deed in lieu of foreclosure thereof, shall be a "Transfer" hereunder, subject to all of the terms and provisions hereof.

1.83. "Upham Bowl Detention Improvements": The berm, underground chambers or other modifications made to, or facilities installed in, the so-called "Upham

Bowl" portion of the Declarant's hospital campus in order to regulate the flow of storm water from the Upham Bowl area to downstream portions of the Drainage System.

1.84. "Utility Facilities": Any and all components (including, without limitation, lines, pipes, wires, ducts, conduits, vaults, transformers, meters, connections, valves, facilities, catch-basins, detention and retention basins, drainage lines, trench drains, manholes, inlets, outlets, hydrants, and all appurtenances to each of the foregoing) of the following utility systems: storm water drainage, sanitary sewer, domestic water, fire protection, electric power, fiber optic, gas, telecommunications, television, steam, streetlight, and any and all other utility systems as may now or hereafter be suitable for the development or operation of the McLean Development Community, including uses ancillary and accessory thereto.

1.85. "Utility Maintenance Standard": In good, working order, condition and repair for the respective intended capacity of the Utility Facilities in question, and in compliance with all Legal Requirements.

1.86. "Utility Purposes": Installation, use and operation, maintenance, repair, removal and replacement of Common Utility Facilities and Exclusive Utility Facilities.

1.87. "Water System": All Utility Facilities comprising the water system described in the CCIA, as the same may from time to time be modified, expanded or replaced. The Water System shall include the following facilities (which terms are used as defined in the CCIA): "Concord Avenue Water Line"; "Olmsted Drive Water Line"; and "Water Loop."

1.88. "Zone": Any of Zone 1A, Zone 1B, Zone 2, Zone 3, Zone 4 or Zone 5. No additional Zones shall be established under this Declaration, whether through subdivision of a Zone, creation of a Leasehold Parcel out of a portion (but not the whole) of any Zone, or otherwise. The foregoing definition shall not in any way limit the rights of the Zone 6 Owner under Section 5.6.

1.89. "Zone 1A Telecommunications Easement": The easement described in Section 2.3.

1.90. "Zone 1A Telecommunications Easement Area": The easement area depicted on the Master Easement Plan as the "Zone 1A Telecommunications Easement."

1.91. "Zone 1B" shall have the meaning given to it in the Recitals to this Declaration.

1.92. "Zone 1B Access and Utility Easement": The easement described in Section 2.4.

1.93. "Zone 1B Access and Utility Easement Area": The easement area depicted on the Master Easement Plan as the "Proposed Zone 1B Access and Utility Easement."



1.94. "Zone 1B Drainage and Sewer Easement": The easement described in Section 2.5.

1.95. "Zone 1B Drainage and Sewer Easement Area": The easement area depicted on the Master Easement Plan as the "Proposed Zone 1B Drainage and Sewer Easement."

1.96. "Zone 1B Driveway": The portions of the Zone 1B Access and Utility Easement Area that will be graded and paved, and which will provide access between McLean Drive and Zone 1A through Zone 1B and the Public Open Space Subdistrict of the McLean District.

1.97. "Zone 1B Utility Easement": The easement described in Section 2.6.

1.98. "Zone 1B Utility Easement Area": The easement area depicted on the Master Easement Plan as the "Proposed Zone 1B Utility Easement Area".

1.99. "Zone 2" shall have the meaning given to it in the Recitals to this Declaration.

1.100. "Zone 2 Drainage Easement": The easement described in Section 2.7.

1.101. "Zone 2 Drainage Easement Area": The easement area depicted on the Master Easement Plan as the "Proposed Zone 2 Drainage Easement Area".

1.102. "Zone 2 Emergency Access Easement": The easement described in Section 2.8.

1.103. "Zone 2 Emergency Access Easement Area": The easement area depicted on the Master Easement Plan as the "Proposed Zone 2 Emergency Access Easement."

1.104. "Zone 3" shall have the meaning given to it in the Recitals to this Declaration.

1.105. "Zone 3 Access Easement": The easement described in Section 2.9.

1.106. "Zone 3 Access Easement Area": The easement area depicted on the Master Easement Plan as the "Proposed Zone 3 Access Easement."

1.107. "Zone 3-A Utility Easement": The easement described in Section 2.10.

1.108. "Zone 3-A Utility Easement Area": The easement area depicted on the Master Easement Plan as the "Proposed Zone 3-A Utility Easement."

1.109. "Zone 3-B Utility Easement": The easement described in Section 2.11.

1.110. "Zone 3-B Utility Easement Area": The easement area depicted on the Master Easement Plan as the "Proposed Zone 3-B Utility Easement."

- 1.111. "Zone 3-C Utility Easement": The easement described in Section 2.12.
- 1.112. "Zone 3-C Utility Easement Area": The easement area depicted on the Master Easement Plan as the "Proposed Zone 3-C Utility Easement."
- 1.113. "Zone 3-D Utility Easement": The easement described in Section 2.13.
- 1.114. "Zone 3-D Utility Easement Area": The easement area depicted on the Master Easement Plan as the "Proposed Zone 3-D Utility Easement."
- 1.115. "Zone 4" shall have the meaning given to it in the Recitals to this Declaration.
- 1.116. "Zone 4 Access Easement": The easement described in Section 2.14.
- 1.117. "Zone 4 Access Easement Area": The easement area depicted on the Master Easement Plan as the "Proposed Zone 4 Access Easement."
- 1.118. "Zone 4 Drainage Easement": The easement described in Section 2.15.
- 1.119. "Zone 4 Drainage Easement Area": The easement area depicted on the Master Easement Plan as the "Proposed Zone 4 Drainage Easement".
- 1.120. "Zone 4 Utility Easement": The easement described in Section 2.16.
- 1.121. "Zone 4 Utility Easement Area": The easement area depicted on the Master Easement Plan as the "Proposed Zone 4 Utility Easement."
- 1.122. "Zone 5" shall have the meaning given to it in the Recitals to this Declaration.
- 1.123. "Zone 5 Emergency Access Easement": The easement described in Section 2.17.
- 1.124. "Zone 5 Emergency Access Easement Area": The easement area depicted on the Master Easement Plan as the "Proposed Zone 5 Emergency Access Easement."
- 1.125. "Zone 5 Slope and Grading Easement": The easement described in Section 2.18.
- 1.126. "Zone 5 Slope Easement Area": The easement area depicted on the Master Easement Plan as the "Proposed Zone 5 Slope and Grading Easement."
- 1.127. "Zone 6" shall have the meaning given to it in the Recitals to this Declaration.
- 1.128. "Zone 6 Drainage Easement": The easement described in Section 2.19.

1.129. "Zone 6 Drainage Easement Area": The easement area depicted on the Master Easement Plan as the "Proposed Zone 6 Drainage Easement."

1.130. "Zone 6 Owner" shall have the meaning given to it in Section 5.6.1.

1.131. "Zoning By-Law": The zoning by-law of the Town of Belmont, Massachusetts, as the same may from time to time be amended.

## ARTICLE 2

### GRANT OF EASEMENTS

#### 2.1. Olmsted Drive Access and Utility Easement.

(a) Utility Purposes. Declarant hereby establishes, grants and conveys to each Owner from time to time of a Zone, for its use, in common with others entitled to use the same, perpetual easements over, across, in, under and through the Olmsted Drive Access and Utility Easement Area for Utility Purposes.

(b) Access Purposes. Declarant hereby establishes, grants and conveys to each Owner from time to time of Zone 3 or Zone 4, for its use, in common with others entitled to use the same, perpetual easements over, across, in, under and through the Olmsted Drive Access and Utility Easement Area for Access Purposes.

(c) Emergency Access Purposes. Declarant hereby establishes, grants and conveys to each of (i) the Town, and (ii) each Owner from time to time of Zone 2 or Zone 5, for its use, in common with others entitled to use the same, perpetual easements over, across, in, under and through the Olmsted Drive Access and Utility Easement Area for Emergency Access Purposes.

(d) Ancillary Infrastructure Purposes. Declarant hereby establishes, grants and conveys to each Owner from time to time of Zone 3 or Zone 4, for its use, in common with others entitled to use the same, perpetual easements over, across, in, under and through the Olmsted Drive Access and Utility Easement Area for Ancillary Infrastructure Purposes.

#### 2.2. McLean Drive Access and Utility Easement.

(a) Utility Purposes. Declarant hereby establishes, grants and conveys to each Owner from time to time of Zone 1A, Zone 1B, Zone 2, Zone 3 or Zone 4, for its use, in common with others entitled to use the same, perpetual, non-exclusive easements over, across, in, under and through the McLean Drive Access and Utility Easement Area for Utility Purposes.

(b) Access Purposes. Declarant hereby establishes, grants and conveys to each Owner from time to time of Zone 1A, Zone 1B or Zone 2, for its use, in

common with others entitled to use the same, perpetual, non-exclusive easements over, across, in, under and through the McLean Drive Access and Utility Easement Area for Access Purposes.

(c) Emergency Access Purposes. Declarant hereby establishes, grants and conveys to each of (i) the Town, and (ii) each Owner from time to time of Zone 3 or Zone 4, for its use, in common with others entitled to use the same, perpetual, non-exclusive easements over, across, in, under and through the McLean Drive Access and Utility Easement Area for Emergency Access Purposes.

(d) Ancillary Infrastructure Purposes. Declarant hereby establishes, grants and conveys to each Owner from time to time of Zone 1A, Zone 1B or Zone 2, for its use, in common with others entitled to use the same, perpetual, non-exclusive easements over, across, in, under and through the McLean Drive Access and Utility Easement Area for Ancillary Infrastructure Purposes.

### 2.3. Zone 1A Telecommunications Easement.

(a) Electric and Telecommunications Purposes. Declarant hereby establishes, grants and conveys to the Owner from time to time of Zone 5, for its use, in common with others entitled to use the same, perpetual, non-exclusive easements over, across, in, under and through the Zone 1A Telecommunications Easement Area for Electric and Telecommunications Purposes.

### 2.4. Zone 1B Access and Utility Easement.

(a) Utility Purposes. Declarant hereby establishes, grants and conveys to each Owner from time to time of Zone 1A or Zone 5, for its use, in common with others entitled to use the same, perpetual, non-exclusive easements over, across, in, under and through the Zone 1B Access and Utility Easement Area for Utility Purposes.

(b) Access Purposes. Declarant hereby establishes, grants and conveys to the Owner from time to time of Zone 1A, for its use, in common with others entitled to use the same, perpetual, non-exclusive easements over, across, in, under and through the Zone 1B Access and Utility Easement Area for Access Purposes.

(c) Emergency Access Purposes. Declarant hereby establishes, grants and conveys to the Town, for its use, in common with others entitled to use the same, perpetual, non-exclusive easements over, across, in, under and through the Zone 1B Access and Utility Easement Area for Emergency Access Purposes.

(d) Ancillary Infrastructure Purposes. Declarant hereby establishes, grants and conveys to the Owner from time to time of Zone 1A, for its use, in common with others entitled to use the same, perpetual, non-exclusive easements

over, across, in, under and through the Zone 1B Access and Utility Easement Area for Ancillary Infrastructure Purposes.

**2.5. Zone 1B Drainage and Sewer Easement.**

(a) Storm Water Drainage Purposes. Declarant hereby establishes, grants and conveys to the Owner from time to time of Zone 5, for its use, in common with others entitled to use the same, perpetual, non-exclusive easements over, across, in, under and through the Zone 1B Drainage and Sewer Easement Area for Storm Water Drainage Purposes.

(b) Sewer Purposes. Declarant hereby establishes, grants and conveys to each Owner from time to time of Zone 1A or Zone 5, for its use, in common with others entitled to use the same, perpetual, non-exclusive easements over, across, in, under and through the Zone 1B Drainage and Sewer Easement Area for Sewer Purposes.

**2.6. Zone 1B Utility Easement.**

(a) Utility Purposes. Declarant hereby establishes, grants and conveys to the Owner from time to time of Zone 5, for its use, in common with others entitled to use the same, perpetual, non-exclusive easements over, across, in, under and through the Zone 1B Utility Easement Area for Utility Purposes.

**2.7. Zone 2 Drainage Easement.**

(a) Stormwater Drainage Purposes. Declarant hereby establishes, grants and conveys to the Owner from time to time of Zone 5, for its use, in common with others entitled to use the same, perpetual, non-exclusive easements over, across, in, under and through the Zone 2 Drainage Easement Area for Storm Water Drainage Purposes.

**2.8. Zone 2 Emergency Access Easement.**

(a) Emergency Access Purposes. Declarant hereby establishes, grants and conveys to the Town and each Owner from time to time of Zone 3 or Zone 4, for its use, in common with others entitled to use the same, perpetual, non-exclusive easements over, across, in, under and through the Zone 2 Emergency Access Easement Area for Emergency Access Purposes.

**2.9. Zone 3 Access Easement.**

(a) Access Purposes. Declarant hereby establishes, grants and conveys to the Owner from time to time of Zone 4, for its use, in common with others entitled to use the same, perpetual, non-exclusive easements over, across, in, under and through the Zone 3 Access Easement Area for Access Purposes.

(b) Emergency Access Purposes. Declarant hereby establishes, grants and conveys to each of (i) each Owner from time to time of Zone 1A, Zone 1B, Zone 2 or Zone 5, and (ii) the Town, for its use, in common with others entitled to use the same, perpetual, non-exclusive easements over, across, in, under and through the Zone 3 Access Easement Area for Emergency Access Purposes.

2.10. Zone 3-A Utility Easement.

(a) Utility Purposes. Declarant hereby establishes, grants and conveys to each Owner from time to time of a Zone, for its use, in common with others entitled to use the same, perpetual, non-exclusive easements over, across, in, under and through the Zone 3-A Utility Easement Area for Utility Purposes.

2.11. Zone 3-B Utility Easement.

(a) Electric and Telecommunications Purposes. Declarant hereby establishes, grants and conveys to the Owner from time to time of Zone 4, for its use, in common with others entitled to use the same, perpetual, non-exclusive easements over, across, in, under and through the Zone 3-B Utility Easement Area for Electric and Telecommunications Purposes.

(b) Storm Water Drainage Purposes. Declarant hereby establishes, grants and conveys to each Owner from time to time of Zone 4 or Zone 5, for its use, in common with others entitled to use the same, perpetual, non-exclusive easements over, across, in, under and through the Zone 3-B Utility Easement Area for Storm Water Drainage Purposes.

2.12. Zone 3-C Utility Easement.

(a) Sewer Purposes. Declarant hereby establishes, grants and conveys to each Owner from time to time of Zone 4 or Zone 5, for its use, in common with others entitled to use the same, perpetual, non-exclusive easements over, across, in, under and through the Zone 3-C Utility Easement Area for Sewer Purposes.

2.13. Zone 3-D Utility Easement.

(a) Electric and Telecommunications Purposes. Declarant hereby establishes, grants and conveys to the Owner from time to time of Zone 5, for its use, in common with others entitled to use the same, perpetual, non-exclusive easements over, across, in, under and through the Zone 3-D Utility Easement Area for Electric and Telecommunications Purposes.

(b) Storm Water Drainage Purposes. Declarant hereby establishes, grants and conveys to the Owner from time to time of Zone 5, for its use, in common with others entitled to use the same, perpetual, non-exclusive easements over, across, in, under and through the Zone 3-D Utility Easement Area for Storm Water Drainage Purposes.

2.14. Zone 4 Access Easement.

(a) Access Purposes. Declarant hereby establishes, grants and conveys to the Owner from time to time of Zone 3, for its use, in common with others entitled to use the same, perpetual, non-exclusive easements over, across, in, under and through the Zone 4 Access Easement Area for Access Purposes.

(b) Emergency Access Purposes. Declarant hereby establishes, grants and conveys to each of (i) the Owner from time to time of Zone 5, and (ii) the Town, for its use, in common with others entitled to use the same, perpetual, non-exclusive easements over, across, in, under and through the Zone 4 Access Easement Area for Emergency Access Purposes.

(c) Ancillary Infrastructure Purposes. Declarant hereby establishes, grants and conveys to the Owner from time to time of Zone 3, for its use, in common with others entitled to use the same, perpetual, non-exclusive easements over, across, in, under and through the Zone 4 Access Easement Area for Ancillary Infrastructure Purposes.

2.15. Zone 4 Drainage Easement.

(a) Stormwater Drainage Purposes. Declarant hereby establishes, grants and conveys to the Owner from time to time of Zone 5, for its use, in common with others entitled to use the same, perpetual, non-exclusive easements over, across, in, under and through the Zone 4 Drainage Easement Area for Storm Water Drainage Purposes.

2.16. Zone 4 Utility Easement.

(a) Utility Purposes. Declarant hereby establishes, grants and conveys to the Owner from time to time of Zone 3, for its use, in common with others entitled to use the same, perpetual, non-exclusive easements over, across, in, under and through the Zone 4 Utility Easement Area for Utility Purposes.

(b) Sewer Purposes. Declarant hereby establishes, grants and conveys to the Owner from time to time of Zone 5, for its use, in common with others entitled to use the same, perpetual, non-exclusive easements over, across, in, under and through the Zone 4 Utility Easement Area for Sewer Purposes.

2.17. Zone 5 Emergency Access Easement.

(a) Emergency Access Purposes. Declarant hereby establishes, grants and conveys to each of (i) the Owner from time to time of Zone 1A, and (ii) the Town, for its use, in common with others entitled to use the same, perpetual, non-exclusive easements over, across, in, under and through the Zone 5 Emergency Access Easement Area for Emergency Access Purposes.

**2.18. Zone 5 Slope and Grading Easement.**

(a) Slope and Grading Purposes. Declarant hereby establishes, grants and conveys to each Owner from time to time of Zone 3 or Zone 4, for its use, in common with others entitled to use the same, perpetual, non-exclusive easements over, across, in, under and through the Zone 5 Slope Easement Area for Slope and Grading Purposes.

**2.19. Zone 6 Drainage Easement.**

(a) Storm Water Drainage Purposes. Declarant hereby establishes, grants and conveys to each Owner from time to time of Zone 3, Zone 4 or Zone 5, for its use, in common with others entitled to use the same, perpetual, non-exclusive easements over, across, in, under and through the Zone 6 Drainage Easement Area for Storm Water Drainage Purposes.

**2.20. McLean Pedestrian Easement.**

(a) Pedestrian Access Purposes. Declarant hereby establishes, grants and conveys to each Owner from time to time of Zone 2 or Zone 5, for its use, in common with others entitled to use the same, perpetual, non-exclusive easements over, across, in, under and through the McLean Pedestrian Easement Area for Pedestrian Access Purposes.

**2.21. Private Open Space Easement No. 1.**

(a) Storm Water Drainage Purposes. Declarant hereby establishes, grants and conveys to the Owner from time to time of Zone 5, for its use, in common with others entitled to use the same, perpetual, non-exclusive easements over, across, in, under and through the Private Open Space Easement No. 1 Area for Storm Water Drainage Purposes.

**2.22. Private Open Space Easement No. 2.**

(a) Storm Water Drainage Purposes. Declarant hereby establishes, grants and conveys to the Owner from time to time of Zone 5, for its use, in common with others entitled to use the same, perpetual, non-exclusive easements over, across, in, under and through the Private Open Space Easement No. 2 Area for Storm Water Drainage Purposes.

(b) Sewer Purposes. Declarant hereby establishes, grants and conveys to each Owner from time to time of Zone 1A, Zone 1B or Zone 5, for its use, in common with others entitled to use the same, perpetual, non-exclusive easements over, across, in, under and through the Private Open Space Easement No. 2 Area for Sewer Purposes.



2.23. Private Open Space Easement No. 3.

(a) Storm Water Drainage Purposes. Declarant hereby establishes, grants and conveys to the Owner from time to time of Zone 2, for its use, in common with others entitled to use the same, perpetual, non-exclusive easements over, across, in, under and through the Private Open Space Easement No. 3 Area for Storm Water Drainage Purposes.

(b) Sewer Purposes. Declarant hereby establishes, grants and conveys to the Owner from time to time of Zone 2, for its use, in common with others entitled to use the same, perpetual, non-exclusive easements over, across, in, under and through the Private Open Space Easement No. 3 Area for Sewer Purposes.

2.24. Private Open Space Easement No. 4.

(a) Electric and Telecommunications Purposes. Declarant hereby establishes, grants and conveys to each Owner from time to time of Zone 1A, Zone 1B or Zone 2, for its use, in common with others entitled to use the same, perpetual, non-exclusive easements over, across, in, under and through the Private Open Space Easement No. 4 Area for Electric and Telecommunications Purposes.

2.25. Public Open Space Easement No. 1.

(a) Electric and Telecommunications Purposes. Declarant hereby establishes, grants and conveys to each Owner from time to time of Zone 1A, Zone 1B, Zone 2 or Zone 5, for its use, in common with others entitled to use the same, perpetual, non-exclusive easements over, across, in, under and through the Public Open Space Easement No. 1 Area for Electric and Telecommunications Purposes.

2.26. Further Grants of Easement Rights. Each Owner shall have the right to grant governmental or quasi-governmental authorities and third-party utility companies the right and easement to use, for Utility Purposes only, any Infrastructure Easement Area in which such Owner has easement rights for Utility Purposes. Any such grant of easement rights shall be subject to all of the applicable terms and provisions of this Declaration. No holder of easement rights granted pursuant to this Section 2.26 shall be deemed an "Owner" hereunder by virtue of such grant.

2.27. As-Built Plans and Legal Descriptions. The Easement Areas are generally depicted on the Master Easement Plan. It is anticipated that reasonably promptly after installation of the Infrastructure to be installed pursuant to the CCIA, Owners shall prepare as-built plans depicting, and legal descriptions describing, the exact location of the Easement Areas based on the actual location of Infrastructure. It is further anticipated that this Declaration shall be amended to incorporate such as-built plans and legal descriptions, and each Owner agrees to execute, acknowledge and deliver instruments to

memorialize each such amendment. Copies of such as-built plans shall be delivered to the Town.

### ARTICLE 3

#### MAINTENANCE AND OPERATION

3.1. Restrictions on Maintenance, Operation and Replacement Activities. As more particularly described in this Article 3, the obligations to service, maintain, repair and replace Infrastructure and Ancillary Infrastructure within the Olmsted Drive Access and Utility Easement Area, the McLean Drive Access and Utility Easement Area, and the Zone 1B Access and Utility Easement Area have been assigned to the Owner of Zone 3, the Owner of Zone 5, and the Owner of Zone 1B, respectively. Except as expressly provided in this Section 3.1, and notwithstanding any term or provision of this Declaration to the contrary: (i) only the Owner of Zone 3 shall construct, modify, service, maintain, repair and replace Infrastructure and Ancillary Infrastructure within the Olmsted Drive Access and Utility Easement Area, (ii) only the Owner of Zone 5 shall construct, modify, service, maintain, repair and replace Infrastructure and Ancillary Infrastructure within the McLean Drive Access and Utility Easement Area, and (iii) only the Owner of Zone 1B shall construct, modify, service, maintain, repair and replace Infrastructure and Ancillary Infrastructure within the Zone 1B Access and Utility Easement Area. To facilitate the coordination of all work relating to Utility Facilities and Common Driveways in the Olmsted Drive Access and Utility Easement Area, the McLean Drive Access and Utility Easement Area, and the Zone 1B Access and Utility Easement Area, no Owner (other than each of the Owners of Zones 3, 5 and 1B, as aforesaid) shall construct, modify, service, maintain, repair or replace Exclusive Utility Facilities, Infrastructure or Ancillary Infrastructure within such easement areas, except (1) in connection with the exercise of self-help remedies in accordance with the terms of Section 3.6, (2) in accordance with the terms of Section 4.5 with respect to installation of New Infrastructure, or (3) in accordance with the terms of Section 5.1.2 with respect to Exclusive Utility Facilities. The foregoing terms of this Section 3.1 shall not be deemed to modify the terms and provisions of the CCIA.

#### 3.2. Operation and Maintenance of Common Driveways and Emergency Access Driveways.

3.2.1. Olmsted Drive. The Owner of Zone 3 shall maintain, repair, and replace (as necessary) all portions of Olmsted Drive and the Ancillary Infrastructure appurtenant thereto in accordance with the Driveway Maintenance Standard. In connection with such operation, maintenance, repair, and replacement, but not in limitation thereof, the Owner of Zone 3 shall:

- (a) Repair all potholes and cracks, and resurface and restripe Olmsted Drive as necessary.

(b) Remove all debris and refuse from the Driveway and periodically sweep Olmsted Drive.

(c) Promptly clear snow and ice from Olmsted Drive.

(d) Maintain and replace all lighting facilities, bulbs and ballasts situated along Olmsted Drive.

(e) Maintain and replace directional and identification signs located in the Olmsted Drive Access and Utility Easement area along Olmsted Drive.

(f) Maintain and replant (as necessary) landscaping (endeavoring to preserve specimen trees) within fifteen (15) feet of Olmsted Drive, and maintain associated irrigation along Olmsted Drive.

(g) Maintain drainage facilities in Olmsted Drive.

(h) Maintain traffic counting facilities.

3.2.2. McLean Drive. The Owner of Zone 5 shall maintain, repair, and replace (as necessary) all portions of McLean Drive and Ancillary Infrastructure appurtenant thereto in accordance with the Driveway Maintenance Standard. In connection with such operation, maintenance, repair, and replacement, but not in limitation thereof, the Owner of Zone 5 shall:

(a) Repair all potholes and cracks, and resurface and restripe McLean Drive as necessary.

(b) Remove all debris and refuse from McLean Drive and periodically sweep McLean Drive.

(c) Promptly clear snow and ice from McLean Drive.

(d) Maintain and replace all lighting facilities, bulbs and ballasts situated along McLean Drive.

(e) Maintain and replace directional and identification signs located in the McLean Drive Access and Utility Easement area along McLean Drive.

(f) Maintain and replant (as necessary) landscaping (endeavoring to preserve specimen trees) within fifteen (15) feet of McLean Drive, and maintain associated irrigation along McLean Drive.

(g) Maintain drainage facilities in McLean Drive.

3.2.3. Zone 1B Driveway. The Owner of Zone 1B shall maintain, repair, and replace (as necessary) all portions of the Zone 1B Driveway and Ancillary Infrastructure

appurtenant thereto in accordance with the Driveway Maintenance Standard. In connection with such operation, maintenance, repair, and replacement, but not in limitation thereof, the Owner of Zone 1B shall:

- (a) Repair all potholes and cracks, and resurface and restripe the Zone 1B Driveway as necessary.
- (b) Remove all debris and refuse from the Zone 1B Driveway and periodically sweep the Zone 1B Driveway.
- (c) Promptly clear snow and ice from the Zone 1B Driveway.
- (d) Maintain and replace all lighting facilities, bulbs and ballasts situated along the Zone 1B Driveway.
- (e) Maintain and replace directional and identification signs located along the Zone 1B Driveway.
- (f) Maintain and replant (as necessary) landscaping (endeavoring to preserve specimen trees) within fifteen (15) feet of the Zone 1B Driveway, and maintain associated irrigation along the Zone 1B Driveway.
- (g) Maintain drainage facilities in the Zone 1B Driveway.

**3.2.4. Zone 2 Emergency Access Easement.** The Owner of Zone 2 shall maintain, repair, and replace (as necessary) all portions of the Zone 2 Emergency Access Easement Area so that the same remains a paved driveway that (i) complies with all Legal Requirements, and (ii) at all times provides safe and efficient emergency access between the McLean Drive Access and Utility Easement Area and the Zone 3 Access Easement Area for pedestrians and vehicles (including emergency vehicles).

**3.2.5. Zone 5 Emergency Access Easement.** The Owner of Zone 5 shall maintain, repair and replace (as necessary) all portions of the Zone 5 Emergency Access Easement Area so that the same remains a paved driveway that (i) complies with all Legal Requirements, and (ii) at all times provides safe and efficient emergency access between the McLean Drive Access and Utility Easement Area and Zone 1A for pedestrians and vehicles (including emergency vehicles).

### **3.3. Utility Facilities.**

**3.3.1. Common Utility Facilities.** Except as hereinafter provided in this Section 3.3.1, each Owner of a Zone shall service, maintain, repair and replace (as necessary) all portions of Common Utility Facilities located within such Owner's respective Zone in accordance with the Utility Maintenance Standard. The Owner of Zone 3 shall maintain, repair and replace (as necessary) all portions of Common Utility Facilities located in the Olmsted Drive Access and Utility Easement Area. The Owner of Zone 3 shall maintain, repair and replace (as necessary) all portions of Common Utility Facilities located in the

Zone 6 Drainage Easement Area. The Owner of Zone 5 shall maintain, repair and replace (as necessary) all portions of Common Utility Facilities located in the McLean Drive Access and Utility Easement Area. The Owner of Zone 1B shall maintain, repair and replace (as necessary) all portions of Common Utility Facilities located in the Zone 1B Access and Utility Easement Area. The Owners of Zone 1A and Zone 1B shall together maintain, repair and replace (as necessary) all portions of Common Utility Facilities located in the Private Open Space Easement No. 2 Area. The Owners of Zone 1A, Zone 1B and Zone 2 shall together maintain, repair and replace (as necessary) all portions of Common Utility Facilities located in the Private Open Space Easement No. 4 Area. The Owners of Zone 1A, Zone 1B and Zone 2 shall together maintain, repair and replace (as necessary) all portions of Common Utility Facilities located in the Public Open Space Easement No. 1 Area.

3.3.2. Exclusive Utility Facilities. The Exclusive Utility Facilities shall be serviced, maintained, repaired and replaced (as necessary) by the Owner exclusively serviced by such Exclusive Utility Facilities, in accordance with the Utility Maintenance Standard, at such Owner's sole cost and expense.

3.4. Property Manager. Each Owner may retain a property manager in connection with the performance of any or all of its respective obligations under this Article 3. Further, multiple Owners may together retain a single property manager to individually perform the respective obligations of such Owners under this Article 3. Any such property manager engaged by one or more Owners shall be an agent for such Owner or Owners, and such engagement shall not release such Owner or Owners from any of their obligations or liabilities hereunder.

3.5. Owner Contact. To facilitate efficient operation and maintenance of Utility Facilities and Common Driveways, each Owner shall annually designate (in a notice to each other Owner and to the Town's Building Commissioner, which notices need not be recorded with the Registry), the name and contact information (including emergency contact information) of an individual who will be responsible for overseeing the performance of such Owner's maintenance and operation responsibilities under this Article 3. Such individual may, at the option of the respective Owner, be the property manager retained by such Owner pursuant to Section 3.4.

### 3.6. Self-Help Rights.

3.6.1. Emergency Self-Help Rights. If an Event of Emergency has occurred and is continuing with respect to any Infrastructure or Ancillary Infrastructure, then any Owner materially affected by the condition giving rise to such Event of Emergency, may, at its option, without prejudice to any rights or remedies that such Owner may have with respect to such condition, cure such condition if (to the extent reasonably possible) such Owner first attempts to orally notify the Owner responsible for the necessary repairs, and the responsible Owner does not immediately elect to respond to the emergency. The curing Owner may enter upon any Zone necessary to implement such cure if (to the extent reasonably possible) such Owner first attempts to orally notify the Owner(s) of

such Zone(s). Any entry under the aforesaid right of access shall be limited to Easement Areas, and shall be made, and all work in connection with any such cure shall be conducted, in the most expeditious manner reasonably possible to minimize interference with the Owner's use and enjoyment of, and damage to, the Zone. To the extent prior notice of such cure was not reasonably possible, the curing Owner shall, as soon as practicable, notify the Owner responsible for the necessary repairs and the Owner of all Zones accessed by the curing Owner, describing, in each case, the nature of the Event of Emergency and the measures that the curing Owner has taken, and will take, in implementing the cure. Any such cure shall be diligently prosecuted to completion by the curing Owner. Upon completion, the curing Owner shall promptly restore the easement area to its condition prior to such work to the fullest extent practicable.

**3.6.2. Event of Default Self-Help Rights.** If an Event of Default occurs and is continuing with respect to any Owner's obligation hereunder to maintain, repair or replace Infrastructure or Ancillary Infrastructure, any Benefited Owner (the "Curing Owner") may provide the Defaulting Owner with a notice describing the Event of Default and the Curing Owner's intent to cure the same if such Event of Default continues. Upon receipt of any such notice from the Curing Owner, the Owner purportedly in Default may either: (i) dispute the alleged Default and submit the matter to arbitration pursuant to Section 11.20, or (ii) cure such Default. If such Default continues for a period of thirty (30) days after such notice from the Curing Owner, and such Default has not been submitted to arbitration as aforesaid, then the Curing Owner may, at its option, without prejudice to any rights or remedies that such Owner may have with respect to such Default, cure such Default. The Curing Owner may enter upon any Zone necessary to implement such cure after notice to the Owner(s) of such Zone(s) and after providing such Owner(s) a certificate of insurance showing that the Curing Owner and its contractors have obtained the minimum insurance required pursuant to Section 5.3. Any entry under the aforesaid right of access shall be limited to Easement Areas, and shall be made, and all work in connection with any such cure shall be conducted, in the most expeditious manner reasonably possible to minimize interference with the Owner's use and enjoyment of, and damage to, its Zone. Any such cure shall be diligently prosecuted to completion by the Curing Owner. Upon completion, the Curing Owner shall promptly restore the easement area to its condition prior to such work to the fullest extent practicable.

**3.7. Relocation Rights.** Each Owner shall have the right, at any time and from time to time, to relocate Exclusive Utility Facilities and Infrastructure located within its Zone upon twenty (20) days prior written notice to the benefited Owner(s), provided that such relocation shall (i) not interfere with, or diminish, the benefited Owner's use of such facilities after such relocation is completed, (ii) be expeditiously performed without cost or expense to the benefited Owner, (iii) shall be completed using materials and design standards that equal or exceed those originally used, (iv) shall be performed in accordance with all Legal Requirements and all necessary approvals from the appropriate utility company or the appropriate governmental or quasi-governmental agencies having jurisdiction thereover have been obtained, and (v) shall not increase the cost of the benefited Owner's operation of such facilities.

3.8. Maintenance of Upham Bowl Detention Improvements. The Owner of Zone 5 shall maintain, repair, and replace (as necessary) all portions of the Upham Bowl Detention Improvements in accordance with all Legal Requirements and all original design specifications and performance standards for the Upham Bowl Detention Improvements.

#### ARTICLE 4

##### USE OF INFRASTRUCTURE

##### 4.1. Common Utility Facilities: Exclusive Utility Facilities.

##### 4.1.1. Permitted Use of Common Utility Facilities.

(a) Subject to the terms and provisions of this Declaration, each Owner from time to time of Zone 3 or Zone 4 shall have the right to connect with, and to use, and to permit its respective Permittees to use, any and all portions of Common Utility Facilities that (i) constitute Infrastructure hereunder, and (ii) are located in any Infrastructure Easement Area, other than the Zone 1B Access and Utility Easement Area, the Private Open Space Easement No. 2 Area, the Private Open Space Easement No. 4 Area and the Public Open Space Easement No. 1 Area.

(b) Subject to the terms and provisions of this Declaration, each Owner from time to time of Zone 2 or Zone 5 shall have the right to connect with, and to use, and to permit its respective Permittees to use, any and all portions of the Sewer System.

(c) Subject to the terms and provisions of this Declaration, each Owner from time to time of Zone 5 shall have the right to connect with, and to use, and to permit its respective Permittees to use, any and all portions of the Drainage System.

(d) Subject to the terms and provisions of this Declaration, each Owner from time to time of Zone 1A, Zone 1B or Zone 5 shall have the right to connect with, and to use, and to permit its respective Permittees to use, any and all portions of the Common Utility Facilities located in the Private Open Space Easement No. 2 Area.

(e) Subject to the terms and provisions of this Declaration, each Owner from time to time of Zone 1A, Zone 1B or Zone 2 shall have the right to connect with, and to use, and to permit its respective Permittees to use, any and all portions of the Common Utility Facilities located in the Private Open Space Easement No. 4 Area.

(f) Subject to the terms and provisions of this Declaration, each Owner from time to time of Zone 1A, Zone 1B, Zone 2 or Zone 5 shall have the right to

connect with, and to use, and to permit its respective Permittees to use, any and all portions of the Common Utility Facilities located in the Public Open Space Easement No. 1 Area.

(g) Subject to the terms and provisions of this Declaration, each Served Owner shall have the right to connect with, and to use, and to permit its respective Permittees to use, any and all portions of Common Utility Facilities that constitute New Infrastructure hereunder.

4.1.2. Restrictions on Use of Common Utility Facilities. Except as provided above in Section 4.1.1 and in Section 5.6, no person shall have any right to connect with, or to use, Common Utility Facilities.

4.1.3. Restrictions on Use of Exclusive Utility Facilities. No Occupant shall have any right to connect with or use Exclusive Utility Facilities serving another Zone.

4.2. Common Driveways. Subject to the terms and provisions of this Declaration, (i) each Owner that is granted an easement to use any Infrastructure Easement Area for Access Purposes under Article 2 of this Declaration shall have the right to connect with and to use the Common Driveway located within such Infrastructure Easement Area, and to permit its respective Permittees to use such Common Driveway, for Access Purposes, (ii) each Owner that is granted an easement to use any Infrastructure Easement Area for Emergency Access Purposes under Article 2 of this Declaration shall have the right to connect with and to use the Common Driveway located within such Infrastructure Easement Area, and to permit its respective Permittees to use such Common Driveway, but only for Emergency Access Purposes, (iii) each Owner shall have the right to connect with and to use any portion of any Common Driveway located within such Owner's Zone for Access Purposes, (iv) the Town shall have the right to use the Common Driveways but only for Emergency Access Purposes, and (v) all public and quasi-public vehicles used to provide services to any of the Zones, including, without limitation, all police, fire, ambulance, emergency, garbage collection, mail, repair and delivery vehicles, may enter upon and use the Common Driveways in performance of their functions or duties. Except as provided in this Section 4.2 and in Section 5.6, no person shall have any right or easement to connect with, or to use, the Common Driveways, nor shall any Owner or its Permittees have any other right to connect with, or to use, the Common Driveways. Parking on the Common Driveways is prohibited.

4.3. Use of Infrastructure.

4.3.1. Generally. Owners shall not, and Owners shall not permit their respective Permittees to, injure, overload, misuse or otherwise harm the Infrastructure or the Ancillary Infrastructure. Owners shall comply with all laws and governmental regulations applicable to their use, and use by their respective Permittees, of the Infrastructure or the Ancillary Infrastructure. The Owner of Zone 3 may from time to time issue reasonable rules and regulations with respect to use of Infrastructure and Ancillary Infrastructure located within the Olmsted Drive Access and Utility Easement



Area or Zone 3; the Owner of Zone 5 may from time to time issue reasonable rules and regulations with respect to the use of Infrastructure and Ancillary Infrastructure located within the McLean Drive Access and Utility Easement Area; and the Owner of Zone 1B may from time to time issue reasonable rules and regulations with respect to the use of Infrastructure and Ancillary Infrastructure located within the Zone 1B Access and Utility Easement Area. All Owners using Infrastructure or Ancillary Infrastructure within any such Infrastructure Easement Area shall comply, and shall cause their respective Permittees to comply, with any such rules and regulations issued by such respective Owner.

**4.3.2. Storm Water Drainage Control.** No Owner shall use, or permit its respective Permittees to use, the Drainage System in a manner that (i) either substantially increases the rate of flow, or substantially degrades the quality of storm water, from such Owner's Zone as compared to the rate of flow and quality of storm water from such Owner's Zone that were contemplated in the original design of the Drainage System, or (ii) violates the terms and provisions of the Design and Site Plan Approval applicable to such Owner's Zone. Notwithstanding any term or provision herein to the contrary, the foregoing restriction shall be perpetual. If an Owner modifies its Zone in a manner that results in a material increase in the rate of flow of storm water from such Zone, or a material degradation in the quality of storm water from such Zone, then the Owner of such Zone shall, coincident with such modification, install such storm water controls within its Zone as are reasonably necessary to preserve existing rates and quality from such Zone.

**4.3.3. Sewer System Control.** In order for the McLean Development Community to comply with sewer connection permits issued by the Massachusetts Department of Environmental Protection and by the Town, no Owner shall discharge, or shall permit its respective Permittees to discharge, sanitary sewer flows into the Sewer System that, when aggregated with all other sanitary sewer flows from such Owner's Zone, exceed the maximum discharge amount allocated to such Owner's Zone. The maximum discharge amounts allocated to the respective Zones are as follows:

<u>Zone</u>	<u>Maximum Discharge</u>
Zone 2	20,460 gallons per day
Zone 3	72,000 gallons per day
Zone 4	11,250 gallons per day
Zone 5	3,750 gallons per day

**4.4. Infrastructure Connections.** Before making any connections with Infrastructure, an Owner shall obtain the approval of the proposed connection from each Reviewing Owner through the Design Review Process set forth in Article 6. Each

Reviewing Owner's approval shall not be unreasonably withheld, conditioned or delayed if there is adequate capacity and engineering compatibility between the proposed connection and the Infrastructure. The Owner making such connection shall (i) obtain all applicable permits or approvals required from any governmental authority, (ii) if connecting with Common Utility Facilities, provide for a meter at the point of connection to measure use of the applicable utility services by such Owner and its respective Permittees, (iii) complete all work related to such connection in accordance with all of the terms and provisions of this Declaration, and (iv) maintain, at its sole cost and expense, such connections and meters in good, working order, condition and repair. No other Owner shall have any responsibility to maintain or repair an Owner's connections.

4.5. New Infrastructure. No Owner shall install New Infrastructure, unless (i) such installation is approved by each Owner served by such Infrastructure (each, a "Served Owner"), (ii) Design Plans for such installation are approved by each Reviewing Owner through the Design Review process set forth in Article 6, and (iii) the Served Owners submit to the Reviewing Owners a description of the allocation of all Common Expenses with respect to such New Infrastructure and each New Infrastructure Easement Area therefor (if any) between or among the Served Owners, and each Reviewing Owner approves such allocation, which approval shall not be unreasonably withheld. Any such installation must be located in an existing Infrastructure Easement Area, or, if and only if each affected Owner consents in its sole discretion, in a New Infrastructure Easement Area acquired from one or more Owners for compensation. The Owners shall execute and record a supplement to this Declaration describing (a) any such installation and locating each New Infrastructure Easement Area therefor (if any) together with any necessary plans locating each New Easement Area (if any), and (b) the allocation of Common Expenses with respect to such New Infrastructure and each New Infrastructure Easement Area (if any), as approved by the Reviewing Owners. Any such installation must be in accordance with all of the terms and provisions of this Declaration. The terms "Infrastructure" and "Infrastructure Easement Areas" as used herein shall thereafter include all additions, installations and new easements described in such supplement; provided, however, that no Owner, other than the applicable Served Owners to the extent of their respective allocations as described above, shall have any obligation to pay Common Expenses in connection with the servicing, operation, inspection, maintenance, repair, or replacement of such additions, installations or new easements.

## ARTICLE 5

### COVENANTS AND RESTRICTIONS

#### 5.1. Construction, Maintenance and Repair Activities.

5.1.1. General Performance Requirements. All construction or maintenance activities performed by an Owner within any Infrastructure Easement Area shall be performed in a good and workmanlike manner and in compliance with all Legal Requirements generally in accordance with first-class practices. Each Owner shall obtain all necessary permits, licenses, and the like from any applicable governmental authority

prior to commencing any such construction or maintenance. Such construction or maintenance activities shall not: (i) materially interfere with access to and from, use, occupancy, or enjoyment of any other Zone by the respective Owner thereof or its respective Permittees, or (ii) cause any other Owner to be in violation of any Legal Requirement. In all events, any such construction or maintenance activities shall be conducted in the most expeditious manner reasonably possible to minimize interference with the use of, and damage to, the Infrastructure, Ancillary Infrastructure and Infrastructure Easement Areas and shall be diligently prosecuted to completion. Subject to the terms and provisions hereof, each Owner performing construction or maintenance activities within any Infrastructure Easement Area shall restore any damage to Infrastructure, Ancillary Infrastructure and Infrastructure Easement Areas caused by such construction or maintenance activities.

#### 5.1.2. Installation of Utility Facilities.

(a) The Common Utility Facilities and the Exclusive Utility Facilities shall be located underground to the extent reasonably feasible, and shall be installed in accordance with Legal Requirements. Except to the extent the same cannot reasonably be located underground, no Common Utility Facilities or Exclusive Utility Facilities shall be located above ground level without the consent of the Owner of the Zone within which such Common Utility Facilities or Exclusive Utility Facilities are to be located, or the Reviewing Owners in the case of Utility Facilities to be located in the Olmsted Drive Access and Utility Easement Area, the McLean Drive Access and Utility Easement Area, the Zone 1B Access and Utility Easement Area, or the Zone 6 Drainage Easement Area. Notwithstanding the foregoing, no Owner shall install above-ground lighting without the consent of the Owner of the Zone within which such Utility Facilities are to be located, or the Reviewing Owners in the case of any such lighting to be located in the Olmsted Drive Access and Utility Easement Area, the McLean Drive Access and Utility Easement Area, or the Zone 1B Access and Utility Easement Area.

(b) No Owner shall install Exclusive Utility Facilities in any Infrastructure Easement Area without first notifying the following applicable Owner (the "Coordinating Owner"): (i) with respect to Utility Facilities to be installed in the Olmsted Drive Access and Utility Easement Area, the Owner of Zone 3, (ii) with respect to Utility Facilities to be installed in the McLean Drive Access and Utility Easement Area, the Owner of Zone 5, (iii) with respect to Utility Facilities to be installed in the Zone 1B Access and Utility Easement Area, the Owner of Zone 1B, or (iv) with respect to Utility Facilities to be installed in any other Infrastructure Easement Area, the Owner of the Zone burdened by such easement rights.

(c) Installation of Exclusive Utility Facilities in any Infrastructure Easement Area shall be subject to the prior written approval of the Coordinating

Owner, which approval shall not be unreasonably withheld, delayed or conditioned.

(d) Upon request, the Owner benefited by Exclusive Utility Facilities shall provide the Coordinating Owner with an as-built survey depicting the location of such Exclusive Utility Facilities.

**5.1.3. Access to Other Infrastructure Easement Areas.** Owners may from time to time enter Infrastructure Easement Areas if necessary to (A) perform any of such Owner's obligations to service, maintain, repair or replace Exclusive Utility Lines, Infrastructure or Ancillary Infrastructure pursuant to the terms of this Declaration, or (B) exercise such Owner's right (if any) to install Exclusive Utility Facilities in such Infrastructure Easement Area in accordance with the terms of this Declaration. Prior to exercising such access rights, the Owner performing such service, maintenance, repair or replacement shall first provide the Owner(s) of the Zones to be accessed with (1) a written statement (i) describing the work to be performed, (ii) identifying the nature and estimated duration of the work to be performed, and (iii) identifying the existing location of the Exclusive Utility Facilities (if not readily known), and (2) a certificate of insurance showing that the Owner performing such work and its contractors have obtained the minimum insurance required pursuant to Section 5.3. All such work shall be performed using reasonable efforts to minimize any interference with the use and enjoyment of each affected Zone, and such work shall be prosecuted diligently to completion.

**5.1.4. Notice to Non-Repairing Owner.** Any Owner (the "Repairing Owner") intending to commence service, maintenance, repair or reconstruction of all or a part of the Infrastructure or Ancillary Infrastructure pursuant to the terms and provisions of this Declaration that is reasonably likely to materially interfere with use, occupancy, enjoyment, access to, or the operation of, any other Owner's Zone (the "Non-Repairing Owner") shall notify each such Non-Repairing Owner of such intention at least fifteen (15) days before starting such work, except in the Event of Emergency. The Repairing Owner shall diligently prosecute such work to completion in accordance with a schedule of performance which must be furnished to and approved by the Non-Repairing Owner prior to the Repairing Owner's commencing any such service, maintenance, repair or reconstruction, which approval shall not be unreasonably delayed or withheld. Such schedule shall detail the stages of any such work, the time for completion of each stage, and the portions of the Infrastructure that will be affected by such work at such times. All such work shall be performed in accordance with such schedule using reasonable efforts to minimize any interference with the other Owner's use and enjoyment of its Zone.

**5.1.5. Interference with Access to Common Driveways.** Except as is reasonably necessary for performance of maintenance and repair activities in accordance with the terms of Article 3, no Owner shall place or construct, or, with respect to its Zone, permit the placement or construction of, any berm, barrier, fence or other physical structure that prevents or materially interferes with the free and unobstructed flow of traffic across the Common Driveways. If any Owner benefited with the right to use Olmsted Drive,

McLean Drive or the Zone 1B Driveway for Access Purposes under this Declaration intends to use such Common Driveway in connection with the performance of any construction activities in such Owner's Zone, other than construction activities related to the initial installation of such Common Driveways, such Owner shall advise the Reviewing Owners. Such benefited Owner shall reasonably cooperate with the Reviewing Owners in establishing a schedule for use of the applicable Common Driveway by construction-related vehicles, and in taking such other reasonable measures, so as to minimize (i) interference with the use and enjoyment of Zones by Owners, and (ii) damage to Infrastructure.

## 5.2. Signs.

5.2.1. Olmsted Drive Access and Utility Easement Area. The Owner of Zone 3 and the Owner of Zone 4 may each erect the following signs, and no other signs, in the Olmsted Drive Access and Utility Easement Area:

(a) Directional, traffic and parking control signs, provided that such signs are restricted to the minimum number necessary for operational and safety purposes, are visually unobtrusive, and are consistent with each other in design, coloring, lettering and format.

(b) One (1) free-standing identification sign near the Pleasant Street entrance to Olmsted Drive. In lieu of separate identification signs, the Owners of Zones 3 and 4 may elect to install one or two common monument signs at the entrance to Olmsted Drive, whereupon an equal amount of space of equivalent prominence on each such monument sign shall be provided to the Owner of Zone 3 and the Owner of Zone 4.

5.2.2. McLean Drive Access and Utility Easement Area. Each of (i) the Owners of Zone 1A, Zone 1B, Zone 2, collectively, and (ii) the Owner of Zone 5, may erect the following signs, and no other signs, in the McLean Drive Access and Utility Easement Area:

(a) Directional, traffic and parking control signs, provided that such signs are restricted to the minimum number necessary for operational and safety purposes, are visually unobtrusive, and are consistent with each other in design, coloring, lettering and format.

(b) One (1) free-standing identification sign near the entrance to McLean Drive off Mill Street. In lieu of separate identification signs, the Owners of Zones 1A, 1B, 2 and 5 may elect to install one or two common monument signs at the entrance to McLean Drive, whereupon an equal amount of space of equivalent prominence on each such monument sign shall be provided to the Owners of Zones 1A, 1B and 2 (collectively), and the Owner of Zone 5.

**5.2.3. Zone 1B Access and Utility Easement Area.** The Owner of Zone 1A may erect the following signs, and no other signs, in the Zone 1B Access and Utility Easement Area:

(a) Directional, traffic and parking control signs, provided that such signs are restricted to the minimum number necessary for operational and safety purposes, are visually unobtrusive, and are consistent with each other in design, coloring, lettering and format.

**5.2.4. Design Approval Required.** Any and all signs installed pursuant to this Section 5.2 shall be subject to the prior approval of Reviewing Owners through the Design Review process set forth in Article 6; provided, however, that approval of the Owners of Zones 1A, 1B and 2 shall not be required in connection with the currently existing identification sign for Zone 5 or any replacement of such sign that is installed in the same location as such sign and that is reasonably similar to such sign in terms of size, design, coloring, lettering and format. Any relocation of such existing identification sign to a location that is closer to the main entrance to Zone 1B shall require the prior written consent of the Owner of Zone 1B, which consent may be withheld in such Owner's sole and absolute discretion.

**5.2.5. Compliance with Legal Requirements.** All signs installed pursuant to the terms of this Section 5.2 must comply with the applicable requirements of the Zoning By-Law and any and all other Legal Requirements, subject to the Owner's right to seek a variance, special permit or other form of relief from compliance with any such Legal Requirements in accordance with the terms of Section 5.4.

**5.2.6. Installation of Signs.** All signs shall be installed in accordance with Design Plans approved by each Reviewing Owner in accordance with the terms of Article 6, and in accordance with the other terms and conditions of this Declaration.

**5.2.7. Maintenance of Signs.**

(a) **Olmsted Drive Access and Utility Easement Area.** Each of the Owners of Zones 3 and 4 shall be responsible for insuring, maintaining, repairing and replacing (if necessary) its own signs within the Olmsted Drive Access and Utility Easement Area, provided, however, that if the Owners of Zones 3 and 4 elect to install one or two common monument signs in accordance with this Section 5.2, then the Owner of Zone 3 shall be responsible for insuring, maintaining, repairing and replacing (if necessary), each such sign. Any and all costs and expenses incurred by the Owner of Zone 3 in complying with its obligations hereunder with respect to each such common monument sign shall be reimbursable as Common Expenses in accordance with the terms of Article 7.

(b) **McLean Drive Access and Utility Easement Area.** Each of the Owners of Zones 1A, 1B, 2 and 5 shall be responsible for insuring, maintaining, repairing and replacing (if necessary) its own signs within the McLean Drive

Access and Utility Easement Area, provided, however, that if the Owners of Zones 1A, 1B, 2 and 5 elect to install one or two common monument signs in accordance with this Section 5.2, then the Owner of Zone 5 shall be responsible for insuring, maintaining, repairing and replacing (if necessary), each such sign. Any and all costs and expenses incurred by the Owner of Zone 5 in complying with its obligations hereunder with respect to each such common monument sign shall be reimbursable as Common Expenses in accordance with the terms of Article 7.

### 5.3. Insurance.

5.3.1. Olmsted Drive. The Owner of Zone 3 shall maintain, or cause to be maintained, public liability insurance insuring against claims on account of loss of life, bodily injury or property damage that may arise from, or be occasioned by, the condition, use or occupancy of Olmsted Drive. Such public liability insurance shall name the Owners of Zones 2, 4 and 5, and their respective Listed Mortgagees (if any) as additional insureds thereunder, as their respective interests may appear.

5.3.2. McLean Drive. The Owner of Zone 5 shall maintain, or cause to be maintained, public liability insurance insuring against claims on account of loss of life, bodily injury or property damage that may arise from, or be occasioned by, the condition, use or occupancy of McLean Drive. Such public liability insurance shall name the Owners of Zones 1A, 1B, 2, 3 and 4, and their respective Listed Mortgagees (if any) as additional insureds thereunder, as their respective interests may appear.

5.3.3. Zone 1B Driveway. The Owner of Zone 1B shall maintain, or cause to be maintained, public liability insurance insuring against claims on account of loss of life, bodily injury or property damage that may arise from, or be occasioned by, the condition, use or occupancy of the Zone 1B Driveway. Such public liability insurance shall name the Owners of Zones 1A and 1B, and their respective Listed Mortgagees (if any) as additional insureds thereunder, as their respective interests may appear.

5.3.4. Owner Insurance. Each Owner shall maintain, or cause to be maintained, public liability insurance insuring against claims on account of loss of life, bodily injury or property damage that may arise from, or be occasioned by, the exercise of any of such Owner's rights under this Declaration by such Owner and its Permittees. Such public liability insurance shall name each of the other Owners and their respective Listed Mortgagees (if any) as additional insureds thereunder, as their respective interests may appear.

5.3.5. General Insurance Requirements. Each public liability insurance policy required hereunder shall be carried by a financially responsible insurance company or companies qualified to do business in the Commonwealth of Massachusetts. Such insurance may be carried under a "blanket" policy or policies covering other properties of the insuring Owner and its parent, subsidiary or affiliated corporations or entities, so long as the amount of insurance required hereunder is not prejudiced by other losses insured

thereunder. Such insurance shall be written with limits (taking into account the amount of any deductibles) reasonably adequate to protect the named and additional insureds against judgments from time to time being awarded in Massachusetts for bodily injury, death and property damage, as evidenced by the insurance limits and deductibles from time to time customarily maintained by responsible owners and operators of similar properties in the Belmont, Massachusetts area. As of the date of this Declaration, such limits shall be at least \$5,000,000 combined single limit for personal injury, death and property damage, subject only to reasonable deductibles. No such insurance shall be subject to cancellation or termination without at least thirty days' prior written notice given by the insurance carrier to each of the insured parties. Each Owner shall, upon reasonable request of another Owner, provide certificates or duplicate policies as evidence that all insurance required to be maintained by such party is in full force and effect.

**5.3.6. Waiver of Subrogation.** No Owner shall be liable to the other Owners, or to any insurance company (by way of subrogation or otherwise) insuring any of such other Owners, for any loss or damage to their buildings, structures or tangible personal property, even though such loss or damage might have been occasioned by the negligence of such Owner, its agents or employees; provided, however, that if, by reason of the foregoing waiver, the other Owner(s) shall be unable to obtain any such insurance, such waiver shall be deemed not to have been made by such Owner(s) and, provided, further, that if the other Owner(s) shall be unable to obtain any such insurance without the payment of an additional premium therefor, then, unless the Owner claiming the benefit of such waiver shall agree to pay such other Owner for the cost of such additional premium within thirty (30) days after notice setting forth such requirements, such waiver shall be of no force and effect between such other Owner and such claiming Owner. Each Owner shall require its general contractors and subcontractors performing work within its Zone, or in any other portion of the McLean District pursuant to the terms and provisions of this Declaration, to provide a waiver for the benefit of the other Owners in like kind and fashion to that provided for herein. The terms of this Section 5.3.6 shall not release any Owner from any liability it may have under this Declaration for damage that it or any of its Permittees causes to any Infrastructure.

**5.3.7. Self-Insurance.** Any Owner may elect to assume, insure or maintain a plan of self-insurance for all or any part of the insurance required to be carried by such Owner under this Declaration, so long as such Owner has and continues to have a net worth equal to or greater than the Self Insurance Threshold and so long as the Owner desiring to self-insure delivers to the other Owners each year (i) a certificate (and, upon request, reasonable evidence) that the Owner desiring to self-insure hereunder has the required net worth, and (ii) a certificate stating that the Owner desiring to self insure is the insurer for all purposes under this Declaration for the particular risk being self insured. If any Owner so assumes, insures or maintains any such plan of self-insurance, no such self-insurance shall diminish the rights and privileges to which any other Owner is otherwise entitled under the terms of this Declaration when there is a third-party insurer, including, without limitation, any release from liability as set forth in this Declaration. If any Owner ceases to maintain a plan of self-insurance with respect to any



risk for which this Declaration requires insurance, or if Owner fails to meet the net worth requirements set forth above, such Owner shall give notice thereof to each other Owner and shall immediately comply with the provisions of this Declaration relating to the policies of insurance required.

5.4. Right to Contest Legal Requirements. Notwithstanding any term or provision herein to the contrary, if any term or provision of this Declaration requires an Owner to comply with a Legal Requirement, such Owner shall not be deemed to be in Default hereunder if such Owner has deferred such compliance while contesting, or seeking relief from, such Legal Requirement in good faith and in a lawful manner, but only if and for so long as there is no material interference with access to or from, and no material interruption of utility services to, any Zone of another Owner.

5.5. Eminent Domain. If all or any portion of the McLean District shall be taken by right of eminent domain or any similar authority of law or a Transfer in lieu thereof under threat of condemnation (a "Taking"), the entire award for the value of the land and the improvements so taken shall belong to the Owner of the property so taken, or to such Owner's mortgagees or tenants, as their interests may appear, and no other Owner shall have a right to claim any portion of such award by virtue of any interest created by this Declaration. Any Owner of a Zone that is not the subject of a Taking may, however, file a collateral claim with the condemning authority over and above the value of the property being so taken to the extent of any damage suffered by such Owner resulting from the severance of such property so taken, but only if such claim shall not operate to reduce the award allocable to the Owner of the property so taken (or its mortgagees or tenants, as aforesaid). Any Exclusive Utility Lines installed and solely maintained by an Owner within the Zone of another Owner shall be the property of the installing and maintaining Owner for the purposes of this Section 5.5; provided, however, said Owner's easement rights shall be the subject only of a collateral claim, as set forth above in this Section 5.5.

5.6. Future Easements Benefiting Zone 6.

5.6.1. Upon request by the owner of the fee simple interest in Zone 6 (from time to time, the "Zone 6 Owner"), or the Zone 6 Owner's agent, the Declarant shall grant to the Zone 6 Owner for the benefit of Zone 6, subject to the terms set forth in Section 5.6.2, perpetual, non-exclusive easements over, across, in, under and through the Olmsted Drive Access and Utility Easement Area (i) for Utility Purposes, but only to the extent related to systems serving Affordable or Elderly Housing located within Zone 6, (ii) to install a single curb-cut into Olmsted Drive and one (1) free-standing directional sign at such curb-cut, and (iii) to use the Olmsted Drive Access and Utility Easement Area between Pleasant Street and said curb cut for Access Purposes, but only to the extent necessary to serve (a) Affordable or Elderly Housing located within Zone 6, and/or (b) surface parking accessory to such Affordable or Elderly Housing or any other Affordable or Elderly Housing located within any property adjacent to Zone 6 ("Adjacent Property").

5.6.2. Easements granted by Declarant pursuant to Section 5.6.1 shall be subject to the following terms:

(a) Before making any connections with water, sewer and storm water drainage systems existing in the Olmsted Drive Access and Utility Easement Area, the Zone 6 Owner shall obtain the approval of the proposed connection from each Reviewing Owner through the Design Review Process set forth in Article 6; provided, however, that the approval of Reviewing Owners shall not be withheld if there is adequate capacity and engineering compatibility between the proposed connection and the applicable utility system, as reasonably determined by the Town's Building Commissioner or the Town's Engineer, acting in consultation with the Reviewing Owners. Rights to use such water, sewer and storm water drainage systems pursuant to such easements shall be subject to appropriate restrictions and limitations so as to ensure such use does not overburden such utility systems.

(b) The Zone 6 Owner shall be solely responsible for performing, and for paying all hard and soft costs and expenses relating to, the installation, maintenance, repair, removal and replacement of any and all improvements necessary to provide the access to Zone 6 that is contemplated in Section 5.6.1 and all Utility Facilities exclusively serving Zone 6 (or any Adjacent Property); provided, however, that the Zone 6 Owner shall not be responsible for costs and expenses incurred by any Reviewing Owner or any Coordinating Owner in connection with the review and approval of any such installation, maintenance, repair, removal and replacement activity by the Zone 6 Owner.

(c) The Zone 6 Owner shall be responsible for its equitable share of Common Expenses relating to Infrastructure located within the Olmsted Drive Access and Utility Easement Area, or the Olmsted Drive Access and Utility Easement Area. Each Assessing Owner shall simultaneously provide the Zone 6 Owner with a copy of each annual projection provided to Owners pursuant to Section 7.5. Subject to the terms and conditions set forth in Section 7.6, the Zone 6 Owner may audit the Assessing Owner's books and records relating to the Common Expenses assessed to the Zone 6 Owner in accordance with this Section 5.6.

(d) Each easement granted pursuant to Section 5.6.1 shall be subject to all of the terms and conditions of this Declaration.

5.7. Future Emergency Access Easement. It is anticipated that an additional easement will be required to provide additional means of emergency access to and from Zone 3 and Zone 4. Upon request by the Owner of Zone 3, the Owner of Zone 4, or both, the Owner of Zone 5 shall grant to the Owner of Zone 3, the Owner of Zone 4 and the Town, for the benefit of such Zones and the Town, perpetual, non-exclusive easements over, across, in, under and through Zone 5, in locations to be determined as hereinafter provided, for Emergency Access Purposes. The terms of such grant of easement shall be

subject to the approval of the Owner of Zone 3, the Owner of Zone 4 and the Owner of Zone 5, which approval shall not be unreasonably withheld. Such emergency access easement shall provide vehicular and pedestrian ingress and egress between Mill Street and Zones 3 and 4 through Zone 5. It is currently anticipated that such easement will connect to Mill Street at the intersection of Mill Street and McLean Drive, will continue through Zone 5 following the interior driveways then located in Zone 5, and connect to the Zone 4 Access Easement Area approximately in the location labeled on the Master Easement Plan as "10' Wide Emergency Access." The precise location of such easement shall be determined by the Owner of Zone 3, the Owner of Zone 4 and the Owner of Zone 5, and each of such Owners agrees to act reasonably in connection with the location of such easement. Such easement shall be subject to all of the terms and conditions of this Declaration. Each Owner agrees to execute, acknowledge and deliver an amendment to this Declaration to incorporate such easement on the terms and conditions set forth in this Section 5.7.

5.8. Future Easements in Olmsted Drive Access and Utility Easement Area. Except for (i) the easements expressly provided for in Section 2.1, and (ii) any future easements granted by Declarant pursuant to Section 5.6, the Declarant shall not grant to, or for the benefit of, any person or property, any easements in, or rights to use for any use or purpose, the Olmsted Drive Access and Utility Easement Area.

## ARTICLE 6

### DESIGN REVIEW PROCESS

6.1. Approval Required. Prior to installing any Ancillary Infrastructure, connecting to Infrastructure, or installing New Infrastructure, an Owner shall submit Design Plans to each Reviewing Owner and obtain the approval of each Reviewing Owner in accordance with the terms of this Article 6. Connections to Infrastructure made pursuant to the terms of the CCIA shall be deemed approved by each Reviewing Owner in accordance with the terms of this Article 6.

6.2. Approval or Denial. Within thirty (30) days after receipt of Design Plans, each Reviewing Owner shall approve or disapprove the Design Plans by written decision in recordable form. The Reviewing Owners shall not unreasonably withhold approval of the Design Plans, provided that the proposed Improvements comply with the terms hereof. The Reviewing Owners may reasonably condition their approval of the Design Plans. If the Design Plans are disapproved by the Reviewing Owners, the decision shall specify the reason for such denial.

6.3. Certificate of Compliance. After substantial completion of the proposed Improvements, the installing Owner may request a certificate of compliance from the Reviewing Owners in recordable form stating that such Improvements have been substantially constructed in accordance with (a) the approved Design Plans, (b) any conditions stated in the Reviewing Owners' decision, and (c) the other terms and conditions of the Declaration. Within fifteen (15) days after receipt of such request, the

Reviewing Owners shall either issue such certificate or provide the requesting Owner with a written statement indicating why such Improvements do not comply and what corrections are necessary to make them comply.

6.4. Failure to Act. If any of the Reviewing Owners fails to either approve or disapprove the Design Plans within the specified thirty (30) day period, or to grant or deny a certificate of compliance within the specified fifteen (15) day period, then the Design Plans shall be deemed approved by such Reviewing Owner, or the certificate shall be deemed approved by such Reviewing Owner, as the case may be. An affidavit of any Owner of record setting forth its submission of the Design Plans or request for certificate of compliance, stating a Reviewing Owner's failure to act and either identifying the applicable Design Plans or attaching copies stated to be true copies shall, when duly recorded, be conclusive evidence to any third party relying thereon that the Design Plans have been deemed approved or the certificate deemed granted (as the case may be), by the Reviewing Owner who failed to act.

6.5. Aggrieved Owner. Any disapproval of the Design Plans or conditional approval thereof, or failure to grant a certificate of compliance with respect thereto, may be submitted to arbitration by an aggrieved Owner pursuant to Section 11.20.

## ARTICLE 7

### COMMON EXPENSES AND CHARGES

7.1. Common Charges. "Common Charges" as used herein shall mean each Owner's share of Common Expenses for any given time period. Each Owner's share of Common Expenses shall be determined by adding each product of (i) Common Expenses incurred during such time period in respect of each category of costs set forth below, and (ii) such Owner's respective percentage set forth below.

<u>Category of Costs</u>	<u>Owner's Share</u>
<u>Olmsted Drive.</u> Common Expenses relating to Olmsted Drive and Ancillary Infrastructure appurtenant thereto.	Zone 3: 50% Zone 4: 50%
<u>McLean Drive.</u> Common Expenses relating to McLean Drive and Ancillary Infrastructure appurtenant thereto.	Zone 1A: 4% Zone 1B: 3% Zone 2: 8% Zone 5: 85%

<b>Zone 1B Driveway.</b> Common Expenses relating to the Zone 1B Driveway and Ancillary Infrastructure appurtenant thereto.	Zone 1A: 60% Zone 1B: 40%
<b>McLean Pedestrian Easement.</b> Common Expenses relating to Ancillary Infrastructure located in the McLean Pedestrian Easement Area.	Zone 2: 25% Zone 3: 25% Zone 4: 25% Zone 5: 25%
<b>Common Utility Facilities.</b> Common Expenses relating to the Common Utility Facilities.	
<b>The Sewer System</b>	Upstream of first Zone 3 connection point: Zone 4: 50% Zone 5: 50%  From first Zone 3 connection point to Zone 2 tie-in: Zone 3: 33.33% Zone 4: 33.33% Zone 5: 33.33%  From Zone 2 tie-in to Pleasant Street: Zone 2: 25% Zone 3: 25% Zone 4: 25% Zone 5: 25%
<b>The Drainage System</b>	Zone 3: 50% Zone 4: 50%
Electric and telecommunications facilities that are Common Utility Facilities and that are located in the Olmsted Drive Access and Utility Easement Area, the Zone 3-A Utility Easement Area, the Zone 3-B Utility Easement, the Zone 3-D Utility Easement Area, the Zone 4 Utility Easement Area, the Private Open Space No. 4 Easement Area or the Public Open Space Easement No. 1 Area.	Per capita among Owners who use such Common Utility Facilities.
<b>Zone 1B Access and Utility Easement Area</b> Common Utility Facilities	Zone 1A: 60% Zone 1B: 40%
<b>Sewer system located in Private Open Space Easement No. 2</b>	Zone 1A: 25% Zone 1B: 25%

	Zone 5: 50%
Sewer system located in Zone 1B Drainage and Sewer Easement Area.	Sewer from Zone 5 to Zone 1B tie-in: Zone 5: 100%  Sewer from Zone 1B tie-in to lower boundary: Zone 1A: 25% Zone 1B: 25% Zone 5: 50%  Drainage:  Zone 5: 100%
<u>Olmsted Drive Monument Signs.</u> Common Expenses relating to any monument sign or signs for Zones 3 and 4 installed in accordance with the terms of Section 5.2.	Zone 3: 50%  Zone 4: 50%
<u>McLean Drive Monument Signs.</u> Common Expenses relating to any monument sign or signs for Zones 1A, 1B, 2 and 5 installed in accordance with the terms of Section 5.2.	Zone 1A: 10%  Zone 1B: 10%  Zone 2: 10%  Zone 5: 70%
<u>Zone 1B Access and Utility Easement Area Signs.</u> Common Expenses relating to any monument sign or signs for Zone 1A installed in accordance with the terms of Section 5.2.	Zone 1A: 60%  Zone 1B: 40%

7.2. Assessment of Common Charges. Each Assessing Owner shall periodically (but not more frequently than monthly) assess Owners their Common Charges (if any) by providing such Owners a reasonably detailed invoice, together with reasonable back-up documentation, if requested, - setting forth, on a line-item basis, the Common Expenses and such Owner's Common Charges with respect thereto. Anything herein to the contrary notwithstanding, each Assessing Owner may, at its option, assess each Owner in advance (but not more than one (1) year in advance) for such Owner's reasonably estimated Common Charges, in which case the assessed Owner shall pay such estimated Common Charges in equal monthly installments over the period of time covered by such assessment (the "Assessment Period"). Such estimated Common Charges shall be consistent with any Annual Projection that may be prepared by the Assessing Owner in accordance with the terms of Section 7.5. Within sixty (60) days after the expiration of the Assessment Period, the Assessing Owner shall make adjustments as necessary so that the Assessing Owner shall receive only the actual Common Charges and any interest accrued thereon pursuant to the terms hereof, and no

more. If the Assessing Owner shall have received payment from an Owner in excess of such Owner's actual Common Charges (and any interest accrued thereon) in respect of the Assessment Period, the Assessing Owner shall promptly refund to the Owner the amount of such overpayment. If the estimated payments made by an Owner to an Assessing Owner are less than such Owner's actual Common Charges (and any interest accrued thereon) in respect of the Assessment Period, the Owner shall promptly pay the Assessing Owner the amount of such shortfall.

7.3. Payment of Charges. Each Owner shall pay its Common Charges within fifteen (15) days after assessment or, if such Common Charges are assessed in advance on an estimated basis pursuant to Section 7.2, then each Owner shall pay each monthly installment of Common Charges no later than the fifth (5<sup>th</sup>) day of each calendar month. If any such payment is not made when due, it shall bear interest from the due date until the date paid at the Interest Rate.

7.4. Assessments after Transfer; Certificate re: Charges. An Owner shall not be liable for Common Charges assessed against its Zone after any Transfer of record. A new Owner shall be jointly and severally liable with the prior Owner for any Common Charges assessed and unpaid prior to the Transfer. Notwithstanding the foregoing, a Listed Mortgagee which becomes an Owner of a Zone through foreclosure or deed in lieu thereof or a person claiming through such Listed Mortgagee shall not be jointly and severally liable with the prior Owner for any such assessed and unpaid Common Charges, but shall be liable only for any Common Charges accruing after such person becomes an Owner. Upon written request of an Owner or its Listed Mortgagee, each Assessing Owner shall promptly provide the requesting Owner or Listed Mortgagee and/or its Occupants with a certificate in recordable form setting forth all unpaid Common Charges or other amounts due with respect to the Owner's Zone or, if all Common Charges to the then date have been paid in full, so stating. The recording of such certificate shall operate to discharge the Zone from any lien pursuant to Section 8.4 for any sums not stated therein as unpaid.

7.5. Annual Projection. If, at the beginning of any calendar year, an Owner reasonably anticipates that it will incur Common Expenses during such year, such Owner shall provide each of the other Owners that is reasonably likely to be assessed with Common Charges pursuant to this Article 7 in respect of such Common Expenses, on or before January 31 of the calendar year in which such Common Expenses have been or will be incurred, with a statement of projected Common Expenses for such calendar year. Each such statement shall set forth the Assessing Owner's best estimate of such Common Expenses and the respective Common Charges to be assessed therefor. The Assessing Owner shall not, however, be bound by the categories or amounts set forth in such statement; each Assessing Owner shall have the right to assess and collect Common Charges for Common Expenses actually incurred, whether or not such Common Expenses are included in such statement.

7.6. Audit Rights. Any Owner assessed Common Charges pursuant to this Article 7 may, subject to the following terms, examine the Assessing Owner's books and

records in respect of the Common Expenses for which such Common Charges were assessed:

7.6.1. The examination of such books and records shall be conducted during normal business hours, after reasonable advance request by the examining Owner, and at a location designated by the Assessing Owner within the greater Boston area. All costs and expenses incurred in connection with any such examination shall be borne solely by the examining Owner.

7.6.2. The examining Owner shall have the right to make such an examination no more than once in any given calendar year.

7.6.3. To exercise audit rights under this Section 7.6, an Owner must (1) give written notice to the Assessing Owner no later than ninety (90) days after the last day of the calendar year in which the applicable Common Charges were assessed (provided, however, that if an Assessing Owner assesses Common Charges on an estimated basis pursuant to Section 7.2, then such 90-day period shall commence upon the date on which a final statement of actual Common Charges is provided to the examining Owner), and (2) complete such examination within 90 days after the examining Owner requests such audit. If any Owner shall fail to timely request or perform any audit for any calendar year in accordance with the terms of this Section 7.6, then such Owner shall be deemed to have irrevocably waived its right to conduct such an audit in respect of Common Charges assessed during such calendar year.

7.6.4. Any such examination shall be conducted by the examining Owner's employees or an independent certified public accountant retained by such Owner. No such accountant auditing books and records in respect of Common Expenses on behalf of an Owner shall be compensated on a contingent fee basis.

7.6.5. As a condition precedent to performing any such examination, the Assessing Owner may require the examining Owner and its examiners to execute and deliver to the Assessing Owner a confidentiality agreement, whereby the examining Owner and its examiners agree to keep confidential any information that they discover in the course of such examination.

7.6.6. No request for such an examination shall extend the time within which an Owner is required to pay amounts due hereunder in respect of Common Expenses, and no Owner may conduct any such examination at any time when such Owner is in Default hereunder beyond all applicable notice, grace and cure periods.

## ARTICLE 8

### DEFAULT AND ENFORCEMENT

8.1. Events of Default. If an Owner (a "Defaulting Owner") shall not keep or perform any of the respective terms, covenants or conditions imposed upon it pursuant to



this Declaration (a "Default"), and such Default shall continue for a period of (a) fifteen (15) days for monetary obligations, commencing upon written notice from an Owner benefited by such term, covenant or condition, or (b) thirty (30) days for non-monetary obligations, commencing upon written notice thereof from a Benefited Owner, unless such non-monetary obligation is not, by its nature, reasonably susceptible of cure within said thirty (30) day period, in which case the time for such Defaulting Owner to cure such Default shall be extended for such period of time as may be reasonably necessary to complete such cure, provided that such Defaulting Owner commences such cure within said thirty (30) day period, and thereafter diligently prosecutes such cure to completion, then, in any of such events (an "Event of Default"), any Benefited Owner may pursue the remedies specified in Section 8.2.

8.2. Remedies. If an Event of Default has occurred and is continuing with respect to an Owner, any Benefited Owner may:

- (a) Take action to collect unpaid Common Charges or other monies due from the Defaulting Owner pursuant to the terms of this Declaration;
- (b) Enforce this Declaration against the Defaulting Owner by an action at law or in equity, including, without limitation, an action for injunctive relief or specific performance;
- (c) Where applicable, foreclose the lien provided for in Section 8.4; and
- (d) Pursue any other remedy available to such Benefited Owner at law or in equity.

Notwithstanding the foregoing, in no event shall the Benefited Owner's remedies include the right to terminate this Declaration by reason of an Event of Default and, except for the foreclosure of a lien created pursuant to Section 8.4, the Benefited Owner shall have no equitable rights in a Defaulting Owner's Zone. Upon the written request of the Defaulting Owner, the Benefited Owner shall be required, before exercising one or more of the remedies set forth in (a) through (d) above, to submit the matter giving rise to the Event of Default to arbitration pursuant to Section 11.20.

8.3. Costs of Enforcement. If an Event of Default has occurred and is continuing with respect to any Owner's obligation to pay Common Charges, the Defaulting Owner shall pay the Assessing Owner within fifteen (15) days after billing for all reasonable costs and expenses, including reasonable attorneys' fees and court costs, incurred by the Assessing Owner in collecting such unpaid Common Charges, together with interest from the date of expenditure by the Assessing Owner to the date of payment by the Defaulting Owner at the Interest Rate until paid in full.

8.4. Lien. Subject to the terms of this Section 8.4, if any Owner fails to pay Common Charges within forty-five (45) days after billing therefor, the Assessing Owner shall have a lien on the Defaulting Owner's Zone for any unpaid Common Charges or

other amounts due hereunder from such Owner, including costs of enforcement as provided in Section 8.3. Except with respect to priority, which shall be governed by the terms of this Section 8.4, such lien shall be in the nature of a lien established under Section 6 of Massachusetts General Laws Chapter 183A and shall be enforced in the manner provided in Sections 5 and 5A of Massachusetts General Laws Chapter 254. Any lien pursuant to this Section 8.4 shall for all purposes be subject and subordinate to (i) any recorded mortgage on a Zone in favor of a Listed Mortgagee, and (ii) the interest of any party who has purchased the Zone and leased it back to the preceding Owner or any of its affiliates on a net lease basis in what is commonly referred to as a "sale-leaseback" transaction (a "Leveraged Lease"). Any purchaser at a foreclosure sale (as well as any grantee by deed in lieu of foreclosure) under any such mortgage, or any assignee of any such Leveraged Lease, shall take title subject only to liens accruing after the date of such foreclosure sale, grant in lieu of foreclosure, or assignment, as the case may be. If any Owner assigns its interests as "Owner" hereunder to a Condominium Association pursuant to the terms and provisions hereof, then the foregoing terms of this Section 8.4 shall not apply to such Condominium Association; rather, claims against such Condominium Association shall be enforced pursuant to the terms of Section 8.7.

8.5. Mortgagee's Rights. Prior to foreclosing the lien created by Section 8.4, the Assessing Owner shall send notice to any Listed Mortgagees of the Zone in question. If within thirty (30) days after such notice, a Listed Mortgagee shall (a) pay the Assessing Owner any unpaid Common Charges or other amounts due from the Owner, (b) commence foreclosure or other appropriate action to acquire title to the Zone, or (c) notify the Assessing Owner of its intention so to foreclose or acquire title, then the Assessing Owner shall not foreclose the lien, provided that (i) the Listed Mortgagee shall diligently prosecute any such foreclosure or other acquisition of title and (ii) the Listed Mortgagee or purchaser at foreclosure shall pay such unpaid amounts to the Assessing Owner within fifteen (15) days after the foreclosure is completed or after title has otherwise been acquired.

8.6. Limitations. Except as provided in Sections 7.4 and 11.4, no Owner shall be responsible for any violation of this Declaration except as occurs while it owns a Zone. Except for foreclosure of the lien provided for in Section 8.4 or enforcement of any court-awarded judgment for damages through the means normally available under law, no such violation shall result in a forfeiture or reversion of title.

8.7. Claims Against Condominium Association. If any Condominium Association, as Owner of a Zone, fails to pay Common Charges within forty-five (45) days after billing therefor, the Assessing Owner shall have, in addition to any and all rights available to it at law and in equity, the right to bring one or more claims against such Condominium Association pursuant to the terms and provisions of Section 13 of Massachusetts General Laws Chapter 183A for all amounts owed by such Condominium Association to such Assessing Owner. Pursuant to Section 13 of Massachusetts General Laws Chapter 183A, all attachments and executions related to such claim or claims shall be made only against common funds or property held by the Condominium Association and not against the common areas and facilities of the respective condominium. After

such common funds and property have been exhausted, individual unit owners in such condominium shall be liable for the balance due, if any, provided, however, that the amount for which a unit owner is liable shall be limited to a sum equal to the amount of his or her percentage interest in the common areas and facilities of such condominium, times the balance due.

## ARTICLE 9

### AMENDMENTS; SUBORDINATION; TERMINATIONS

9.1. Required Approval. Subject to the rights of Owners set forth in Section 11.3, this Declaration may be amended, modified, encumbered, subordinated, terminated or cancelled only (a) by unanimous vote of all Owners, (b) with the written consent of each Listed Mortgagee of every Owner, and (c) upon at least thirty (30) days prior written notice to the Planning Board of the Town. Except as otherwise expressly provided herein, each Owner and each Listed Mortgagee may act in its sole discretion with respect to any proposed amendment, modification, encumbrance, subordination, termination, or cancellation of this Declaration. Each Owner shall not unreasonably withhold its consent to any amendment to this Declaration reasonably requested by another Owner in good-faith, provided that such amendment does not (i) increase the amounts payable hereunder by the Owner whose consent is being sought; (ii) reduce the term of this Declaration; or (iii) materially increase the obligations of the Owner whose consent is being sought, or materially adversely affect the rights or interests of the Owner whose consent being sought.

9.2. Effective Date. No amendment, modification, encumbering, subordination, termination or cancellation of this Declaration shall be effective until an instrument of amendment, modification, encumbrance, subordination, termination or cancellation signed by all Owners and their respective Listed Mortgagees is recorded.

9.3. Amendments Requested by Listed Mortgagee. If, in connection with the financing of a Zone, a Listed Mortgagee or a person which intends to become a Listed Mortgagee shall request reasonable modifications of this Declaration in the nature of mortgagee protections, each Owner will not unreasonably withhold, delay or condition making such modifications provided that (a) the same do not (i) increase the amounts payable by any Owner hereunder; (ii) reduce the term of this Declaration; or (iii) materially increase any Owner's obligations, or materially adversely affect the rights or interests of any Owner under this Declaration and (b) the same affect all Zones in substantially the same way.

## ARTICLE 10

### DURATION

10.1. Easements. The easements granted or reserved by this Declaration shall be perpetual.

10.2. Covenants, Restrictions and Development Standards. Except as otherwise expressly set forth herein, the covenants and restrictions contained herein (including, without limitation, those set forth in Article 5) shall expire thirty (30) years from the date hereof, unless extended for further periods of not more than twenty (20) years each at a time by a notice of extension executed by more than fifty percent (50%) of the Owners and recorded prior to expiration of said thirty (30) years or the last such extension.

## ARTICLE 11

### MISCELLANEOUS

11.1. Rights Granted. The easements, restrictions, covenants, operating agreements, benefits and obligations set forth in this Declaration shall create mutual and reciprocal easements, restrictions, benefits and servitudes appurtenant to the Zones benefited and burdened thereby, running with the land, for the duration set forth in Article 10 above. The easements granted in this Declaration are subject to the limitations, terms and conditions set forth in this Declaration. Each Owner may grant to its Permittees the privilege to use, in common with the other Owners and other Permittees, the easements hereby granted to or conferred upon each of them, respectively; provided, however, that (a) neither such Permittees nor any other third parties shall be deemed third party beneficiaries under this Declaration, and (b) none of such Permittees shall have the right, solely by virtue of this Declaration, to enforce such benefits or to enjoin any actual or threatened violation of such benefits by the Owners or any other Permittee. Except as expressly set forth in this Declaration, no Owner shall grant any person or property the right to use Easement Areas in which such Owner has been granted easement rights pursuant to this Declaration.

11.2. Rights Reserved. The Declarant reserves, for the benefit of each respective Owner, all rights in the surface, subsurface and above-surface portions of all easement areas affecting such Owner's respective Zone, provided that such rights (i) shall not substantially interfere with the safe and efficient operation and maintenance of the Infrastructure or the Ancillary Infrastructure, and (ii) do not interfere with and are not inconsistent with the use of the easements granted herein.

11.3. Easement Relocation Rights. As long as it holds title to the land burdened by any of the easements granted in Article 2, an Owner may from time to time, with prior notice to each Owner benefited by such easement, narrow, widen or alter the location of any such easement (other than the Olmsted Drive Access and Utility Easement), if the resulting easement is reasonably sufficient for its intended purpose. Such burdened Owner shall be solely responsible for preparing, and paying the cost of, any and all amendments and other supplemental plans and instruments necessary to so modify the subject easement(s). Other Owners shall reasonably cooperate, at no cost or expense to such Owners, with the burdened Owner in the execution, acknowledgment and delivery of any and all such amendments and other supplemental plans and instruments. An Owner may, at its expense, from time to time relocate the Common Utility Facilities located in its Zone upon no less than thirty (30) days prior notice to the Owner(s)

benefited by such Common Utility Facilities, provided that such relocation (i) shall not interfere with or diminish the utility services to the benefited Owner, (ii) shall be expeditiously performed without cost or expense to the benefited Owner, (iii) shall be completed using materials and design standards that equal or exceed those originally used, (iv) shall have been approved by the utility company or the appropriate governmental or quasi-governmental agencies having jurisdiction thereover (if any), (v) shall not increase the cost of the benefited Owner's operation of such Common Utility Facilities, and (vi) is consistent with rules and regulations, if any, from time to time promulgated by either the Owner of Zone 3 or the Owner of Zone 5 pursuant to Section 4.3.1 regarding the engineering requirements and standards for all Infrastructure.

**11.4. Transfer of Interest.** In the event of a Transfer, the Transferring Owner shall (for the purpose of this Declaration only) be the agent of each of its transferees until the notice requirement set forth below is satisfied. Each Owner shall be liable for the performance of all covenants, obligations and undertakings herein set forth with respect to its Zone which accrue during the period that such Owner owns or leases its Zone, and such liability shall continue with respect to any portion in which it Transfers its interest as aforesaid until the notice requirement set forth below is complied with, at which time the Transferring Owner's liability hereunder shall, except as otherwise provided in Section 7.4, terminate with respect to such portion, or the whole, as applicable, and all transferees of each Zone shall thereafter collectively be deemed to be an "Owner" under this Declaration and shall automatically become liable for all obligations of the Transferring Owner hereunder with respect to such portion, or the whole, as applicable, and for all obligations arising after compliance with the notice requirement set forth below. An Owner Transferring all or any portion of its interest as the owner of its Zone shall give notice of such Transfer to each Assessing Owner that assessed the Transferring Owner with Common Charges in any of the three (3) full calendar years prior to the year in which the Transfer occurs. Such notice shall include, or be accompanied by, at least the following information: (i) the name and address of the transferee, (ii) a copy of the survey showing the location and indicating the legal description of the portion of the Zone Transferred, if less than all of the Zone is being Transferred, and (iii) in the case of any Transfer to a Condominium Association, a copy of all of the condominium documents for the applicable condominium. Any Transfer shall be subject to the terms of this Declaration and shall be subject to all applicable laws, ordinances and legal requirements. Nothing contained herein to the contrary shall affect the existence, priority, validity or enforceability of any lien permitted hereunder which is placed upon a Zone or portion thereof prior to receipt of the notice.

**11.5. Recordation and Mortgages.**

**11.5.1.** This Declaration shall be recorded in the Registry of Deeds. This Declaration shall be a first lien upon the McLean District and shall be recorded prior to the recordation of any mortgage or any other instrument creating a lien upon any portion of the McLean District, except that the Conservation Restrictions and/or the Notice of MOA may be recorded prior to the recordation of this Declaration.

11.5.2. Any mortgage or similar instrument duly and properly recorded after the recording of this Declaration which encumbers any portion of the McLean District shall at all times be subordinate to the terms of this Declaration and any party foreclosing any such mortgage or similar instrument or taking possession of a Zone, or acquiring title by deed in lieu of foreclosure, trustee's sale, foreclosure sale or otherwise, or any party claiming title by, through or under the mortgagee of such Zone, shall acquire title subject to all of the terms and provisions of this Declaration, provided that such party shall be liable for the payment and performance of all covenants, obligations and undertakings herein set forth with respect to its Zone which accrue during its period of ownership, and such party shall not be liable for any act or omission of the prior Owner of the Zone acquired.

11.6. Further Instruments/Assurances. Within fifteen (15) days after receipt of a written request therefor from another Owner, each Owner shall execute and deliver, in recordable form when necessary and/or desirable, any and all documentation as is reasonably necessary and applicable to effectuate or confirm the intentions of the parties hereto set forth herein or to implement the grants of easements, covenants and restrictions contained in this Declaration. The Owner requesting the execution of any such documents shall bear all costs of preparing and recording such documents.

11.7. Headings. Headings are for convenience or reference only and shall not affect meanings or interpretations of the contents of this Declaration.

11.8. References to Articles and Sections. Unless otherwise expressly provided, all references herein to Articles or Sections shall mean the Articles and Sections of this Declaration.

11.9. Exhibits. All exhibits attached to this Declaration are incorporated by reference herein and are made an integral part hereof.

11.10. Binding. Except as specifically provided herein to the contrary, this Declaration shall be binding upon, enforceable by and against, and inure to the benefit of the Declarant, each of the Owners, and their respective successors and assigns.

11.11. Non-Waiver. No delay or omission by any Owner in the exercise of any right accruing upon any Default of any other Owner or its Permittees shall impair such right or be construed to be a waiver thereof, unless expressly waived in writing by the nondefaulting Owner(s). A waiver by any Owner of a breach of, or a default in, any of the terms and conditions of this Declaration by any other Owner shall not be construed to be a waiver of any subsequent breach of or default in the same or any other provision of this Declaration. Exercise by an Owner, or the beginning of the exercise by an Owner, of any one or more of the rights or remedies provided for in this Declaration, now or hereafter existing at law or in equity, shall not be considered as an election of remedies so as to preclude the simultaneous or subsequent exercise by such Owner of any other right or remedy for such breach.

11.12. Excusable Delay. Whenever performance is required of an Owner under the terms of this Declaration, that Owner 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 Owner's architect or engineer, war, civil commotion, riots, strikes, picketing or other labor disputes, unavailability of labor or materials, government action or inaction, damage to work in progress by reason of fire or other casualty, or any other cause beyond the reasonable control of the Owner, then the time for performance as herein specified shall be appropriately extended by the amount of the delay actually so caused ("Excusable Delay"); provided that written notice is given by the Owner claiming the benefit of Excusable Delay to each of the Owners to be benefited by such Owner's performance, which notice shall specify the nature and anticipated duration of the Excusable Delay. Notwithstanding the foregoing, lack of adequate funds or financial inability to perform shall not be deemed to be a cause beyond the control of an Owner. The provisions of this Section 11.12 shall not operate to excuse any Owner from the prompt payment of any monies required by this Declaration.

11.13. Notices. All notices and other communications authorized or required hereunder shall be in writing and shall be given by mailing the same by certified mail or registered mail, return receipt requested, postage prepaid, or by overnight air courier or express delivery service with proof of delivery acknowledged, and 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 notice to Declarant shall be addressed as follows:

Michele Gougeon, Executive Vice President  
and Chief Operating Officer  
The McLean Hospital Corporation  
115 Mill Street  
Belmont, MA 02178

with a copy to: Stephen W. Kidder, Esq.  
Hemenway & Barnes  
60 State Street  
Boston, MA 02109

and: Partners HealthCare System, Inc.  
Office of the General Counsel  
50 Staniford Street  
Suite 1000  
Boston, MA 02114

All notices and other communications to an Owner that are authorized or required hereunder shall be addressed to the receiving Owner at the address set forth in any recorded instrument conveying the interest in a Zone or portion thereof to such Owner (such as a deed or notice of lease), or to such other address or addresses as such Owner may hereafter designate by written notice to all other Owners. For further notice requirements, see Section 11.18 below.

**11.14. Estoppel Certificate/Compliance Certificate.**

**11.14.1.** Upon not less than fifteen (15) days' prior written request by any Owner in connection with the sale or transfer by fee interest, assignment, lease or sublease of all or a portion of such Owner's Zone or in connection with the financing or refinancing of such Owner's Zone by mortgage or sale-leaseback, the other Owners shall execute, acknowledge, and deliver to such Owner or its designee, a statement certifying, to the other Owner's knowledge, that: (i) this Declaration is in full force and effect and is binding upon the Owners, if true, (ii) this Declaration has not been amended or modified, either orally or in writing, or, if there have been amendments or modifications, this Declaration has been amended or modified (attaching accurate and complete copies of the modifications), (iii) that the requesting Owner or each of the other Owners, as applicable, is not in default in the performance of its obligations under this Declaration or, if in default, specifying the nature of any and all defaults, and (iv) such other reasonable information as the requesting party may request. Any such certificates may be relied upon by transferees, Occupants, mortgagees, deed of trust beneficiaries and leaseback-lessors. Each Owner may by written instrument delegate the authority to execute, acknowledge and deliver such certificates pursuant to this Section 11.14.1 to a property manager engaged by such Owner pursuant to the terms of Section 3.4. Any such delegation shall not release the delegating Owner from any of its obligations or liabilities hereunder. Certificates executed, acknowledged and delivered by such a property manager pursuant to authority delegated pursuant to this Section 11.14.1 shall have the same force and effect as if such certificates were executed, acknowledged and delivered by the delegating Owner.

**11.14.2.** Upon request by the Town's Building Commissioner from time to time (but not more frequently than annually), each Owner shall certify to the Town that, to such Owner's knowledge, it is in material compliance with the terms and provisions of this Declaration to be performed or observed by such Owner (or, if applicable, the manner in which such Owner is not in such compliance).

**11.15. No Partnership.** Nothing contained in this Declaration or any acts of the Owners shall be deemed by the Owners or by any third person to create the relationship of principal and agent, or of partnership, or of joint venture between the Owners or their successors in interest.

**11.16. No Merger.** Although the Zones are as of the date of this Declaration, and may from time to time hereafter be, in common ownership, the easements and covenants created hereby shall not be extinguished by merger or otherwise.



11.17. Limitation of Liability. No partner, shareholder, trustee, beneficiary, director, officer, partner, member, or employee of any Owner or any other affiliated person of any Owner shall have any personal liability under this Declaration. If any person obtains a judgment against any Owner in connection with this Declaration, such person's sole recourse shall be to the estate and interest of such Owner in and to its Zone(s). Nothing in this Section 11.17 shall limit in any way any person's right to pursue equitable remedies in the event of a Default by the Owner under this Declaration, as more particularly set forth herein.

11.18. Mortgagee Notice and Right to Cure. The holder of a mortgage affecting an Owner's Zone, during such period of time as such mortgage shall be of record in the office of the Registry of Deeds, shall be entitled to receive notice of any Default or an Event of Default by such Owner, provided that prior to the giving of the notice of Default such mortgagee shall have delivered a notice in the form hereinafter contained to each of the Assessing Owners. The form of such notice shall be as follows:

The undersigned, whose address is \_\_\_\_\_ does hereby certify that it is the holder of a (first/second/etc.) mortgage (the "Mortgage") upon the tract of land or leasehold interest therein described on Exhibit "A" attached hereto and made a part hereof and being the Zone of (Name of Owner) in the McLean District. In the event that any notice shall be given of the Default or Event of Default of the Owner upon whose Zone this Mortgage applies, a copy thereof shall be delivered to the undersigned at the address set forth herein, and the undersigned shall thereafter have all rights of such Owner to cure such Default or Event of Default. Failure to deliver a copy of such notice to the undersigned shall in no way affect the validity of the notice of Default or Event of Default as to such Owner, but shall make the same invalid as it respects the interest of the undersigned.

Any notice to such mortgagee shall be mailed to the address in the United States referred to in the form of notice set forth above and in the same manner as provided in Section 11.13. The giving of or failure to give any notice of Default or Event of Default or the failure to deliver a copy to any such mortgagee shall in no event create any liability on the part of any Owner so declaring or entitled to declare a Default or Event of Default. Such mortgagee shall be permitted to cure any such Default or Event of Default within thirty (30) days after a copy of the notice of Default or Event of Default shall have been sent to such mortgagee, provided that, in the case of a Default or Event of Default which cannot with due diligence be remedied within such period of thirty (30) days, if it has notified the Owner claiming such Default or Event of Default that it is curing the Default or Event of Default and if it has promptly commenced within the thirty (30) day period and has proceeded and is proceeding with all due diligence to remedy such Default or Event of Default, then such mortgagee shall have such additional reasonably required period as may be necessary to remedy such Default or Event of Default.

11.19. Not a Public Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of any part of the McLean District to the general public,

or for the general public, it being the intention of Declarant that this Declaration shall be strictly limited to and for the purposes herein expressed. Any Owner that has the right to use a Common Driveway for Access Purposes may temporarily close such Common Driveway, or any portion thereof, as and to the extent necessary to prevent the acquisition of public rights therein; provided, however, that prior to implementing any such temporary closure, the Owner desiring such closure shall give reasonable prior notice to, and obtain the prior written consent of (which consent shall not be unreasonably withheld), each Reviewing Owner with respect to the Infrastructure Easement Area in which such Common Driveway is located (and the Zone 6 Owner in the case of any such temporary closure of Olmsted Drive after easement rights for Access Purposes have been granted to the Zone 6 Owner pursuant to the terms of Section 5.6). In implementing any such permitted temporary closure, the Owner desiring such closure shall reasonably cooperate with each Owner (and the Zone 6 Owner in the case of any such temporary closure of Olmsted Drive after easement rights for Access Purposes have been granted to the Zone 6 Owner pursuant to the terms of Section 5.6) that has the right to use the affected Common Driveway for Access Purposes so as to minimize any interference with the rights of such Owners to use such Common Driveway. Under no circumstances, however, shall the temporary closure of any Common Driveway pursuant to this Section 11.19 prevent benefited Owners and the Town from using such Common Driveway for Emergency Access Purposes.

11.20. Dispute Resolution. The following matters shall be subject to the arbitration provisions of this Section 11.20: (i) disputes regarding the reasonableness of Common Expenses; (ii) disputes submitted to arbitration by an Owner pursuant to Section 3.6.2 or Section 6.5; and (iii) an Owner's failure to cooperate as provided in Section 11.21. No other provisions of this Declaration shall be subject to the arbitration provisions under this Section 11.20, unless all parties to a dispute otherwise agree.

Any disputes between the parties hereto with respect to this Declaration that are subject to arbitration as described above or elsewhere in this Declaration shall be submitted to arbitration in accordance with the provisions of Massachusetts law, as from time to time amended. Arbitration proceedings, including the selection of an arbitrator, shall be conducted pursuant to the accelerated rules, regulations and procedures from time to time in effect as promulgated by the American Arbitration Association. Prior written notice of application by either party for arbitration shall be given to the other at least ten (10) days before submission of the application to the said Association's office in Boston, Massachusetts. The arbitrator shall hear the parties and their evidence. The decision of the arbitrator shall be binding and conclusive, and judgment upon the award or decision of the arbitrator may be entered in the appropriate court of law; and the parties shall consent to the jurisdiction of such court and further agree that any process or notice of motion or application to the Court or a Judge thereof may be served outside of Massachusetts by registered mail or by personal service, provided a reasonable time for appearance is allowed. The costs and expenses of each arbitration and their apportionment between the parties shall be determined by the arbitrator in his or her award or decision. No arbitrable dispute shall be deemed to have arisen prior to the expiration of the period of fifteen (15) days after the date of giving of written notice by

the party asserting the existence of the dispute together with a description thereof sufficient for an understanding thereof.

11.21. Cooperation. The Owners agree to cooperate jointly to the fullest extent possible using good faith, diligent, commercially reasonable efforts to effectuate the intent of this Declaration. Unless otherwise expressly provided to the contrary in this Declaration, use of the term "Approval", "approval", "consent" or any variation thereof means that such approval or consent shall not be unreasonably withheld, delayed or conditioned by the Owners.

11.22. 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.

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

11.24. Rule Against Perpetuities. If the rule against perpetuities or any rule of law with respect to restrictions on the alienation of property or any other rule of law shall limit the time when any event contemplated by this Declaration may occur, the happening of such event shall not be impaired within any period permitted by such rule. Such period with respect to the rule against perpetuities shall expire upon the expiration of 20 years after the death of the last surviving member of the Harvard University Class of 2005. The intent of this provision is to allow to the maximum extent permissible by any applicable rule of law the occurrence of any event contemplated by this Declaration.

[Signatures Appear on the Following Page]

IN WITNESS WHEREOF, the Declarant has executed this Declaration under seal, with the intent that it be a sealed instrument, on the day and year first above written.

THE MCLEAN HOSPITAL CORPORATION, a  
Massachusetts non-profit corporation

By: Michele L. Gougeon  
Name: Michele L. Gougeon  
Title: Executive Vice President  
Chief Operating officer

By: Bruce M. Cohen  
Name:  
Title: Bruce M. Cohen, M.D., Ph.D.  
President & Psychiatrist in Chief

COMMONWEALTH OF MASSACHUSETTS  
COUNTY OF Middlesex

Before me, the undersigned notary public, on this 18th day of January, 2005, personally appeared Michele L. Gougeon and Bruce M. Cohen, who are personally known to me or were each proved to me through a current document issued by a federal or state government agency bearing a photographic image of the signatory's face and signature, to be the persons whose names are signed to the foregoing instrument and acknowledged to me that they signed it as their free act and deed and the free act and deed of The Mclean Hospital Corporation, as Ex. V.P. & C.O.O. and President & P.I.C., respectively, of the Mclean Hospital Corporation, for its stated purpose.

Catherine F. Bowen

CATHERINE F. BOWEN  
NOTARY PUBLIC  
MY COMMISSION EXPIRES OCT. 10, 2008

[notary seal]

**EXHIBIT A-1A**

**Description of Zone 1A, Residential Subdistrict**

**That certain parcel of land shown as "Zone 1A, Residential Subdistrict" on the Plan,  
containing 8.81 acres.**

**EXHIBIT A-1B**

**Description of Zone 1B, Residential Subdistrict**

**That certain parcel of land shown as "Zone 1B, Residential Subdistrict" on the Plan, containing 6.21 acres.**

**EXHIBIT A-2**

**Description of Zone 2, Residential Subdistrict**

**That certain parcel of land shown as "Zone 2, Residential Subdistrict" on the Plan, containing 11.18 acres.**

EXHIBIT A-3

Description of Zone 3, Senior Living Subdistrict

That certain parcel of land shown as "Zone 3, Senior Living Subdistrict" on the Plan, containing 12.83 acres.



**EXHIBIT A-4**

**Description of Zone 4, Research and Development Subdistrict**

**That certain parcel of land shown as "Zone 4, Research & Development Subdistrict" on the Plan, containing 11.58 acres.**

EXHIBIT A-5

Description of Zone 5, Institutional Subdistrict

That certain parcel of land shown as "Zone 5, McLean Institutional Subdistrict"  
on the Plan, containing 46.17 acres.

EXHIBIT A-6

**Description of Zone 6, General Residence Subdistrict**

**That certain parcel of land shown as "Zone 6, General Residence District" on the Plan, containing 1.34 acres.**

*[Handwritten signature]*  
ATTEST: *[Signature]*  
COUNTY CLERK

