

## PARKING MANAGEMENT AGREEMENT

This Parking Management Agreement (the “Agreement”) is made effective as of this \_\_\_ day of \_\_\_\_\_, 2016 (the “Effective Date”) by and among \_\_\_\_\_, its successors and assigns (“DEVELOPER”), \_\_\_\_\_, and the **TOWN OF BELMONT, MASSACHUSETTS** (the “Town”), a body politic, having a principal place of business at 455 Concord Avenue, Belmont, Massachusetts 02478.

### RECITALS

**WHEREAS**, DEVELOPER owns certain property in the Town of Belmont, Massachusetts (the “Property”), which is more particularly described in Exhibit A hereto, which has been approved for construction of a mixed use development commonly known as Cushing Village pursuant to a legally operative decision of the Belmont Planning Board dated July 24, 2013 and recorded at the Middlesex South District Registry of Deeds in Book \_\_\_\_, Page \_\_\_\_, as amended of record and

**WHEREAS**, DEVELOPER has acquired certain property at 116 Trapelo Road, Belmont, Massachusetts from the Town pursuant to a deed dated \_\_\_\_\_, 2016 and recorded herewith, which property at 116 Trapelo Road comprises part of Cushing Village; and

**WHEREAS**, in conjunction with the conveyance of the property at 116 Trapelo Road, the Town was granted a Parking Easement by DEVELOPER in and to fifty (50) parking spaces within a garage (the “Parking Garage”) to be constructed by DEVELOPER and to be located on the Property (the “Town Spaces”), as more fully set forth in an Easement Deed of DEVELOPER to the Town recorded herewith (the “Easement Deed”); and

**WHEREAS**, DEVELOPER will convey the commercial components of Cushing Village to a third party (the “Commercial Owner”) who will manage the Town Spaces pursuant to this Agreement in conjunction with Commercial Owner’s management of all of the other commercial parking created on or within the Property, it being understood that the commercial parking will include 104 intermediate term Parking Garage spaces (50 of which will be the Town Spaces) and 22 short term surface parking spaces, all as hereinafter described; and

**WHEREAS**, upon DEVELOPER’S conveyance to the Commercial Owner of the commercial components of Cushing Village, which conveyance will include all rights to the commercial parking (the “Commercial Components”), the Commercial Owner will be assigned all rights of Developer, and the Commercial Owner will assume all obligations of Developer, under this Agreement, and the Town will release Developer from all obligations under this Agreement and will seek performance thereof solely from the Commercial Owner; and

**WHEREAS**, the Town acknowledges that the Parking Garage may be completed in stages, and accordingly if one third of the Parking Garage is completed, then one third of the Town Spaces will be made available to the Town and will be managed by the Commercial Owner in conformance with the terms of this Agreement, and accordingly Commercial Owner will assume the obligations of Developer under this Agreement with respect thereto only;

**WHEREAS**, the parties believe it to be in their mutual interest for the Town to grant to DEVELOPER (and upon DEVELOPER'S designation, the Commercial Owner) the right to manage the Town Spaces in conjunction with the commercial parking pursuant to the terms and conditions hereof.

**NOW, THEREFORE**, in consideration of the covenants and conditions hereinafter set forth it is hereby agreed as follows:

ARTICLE 1  
PARKING PLAN

1.01 DEVELOPER has developed a plan for utilization of all parking spaces created on the Property which parking spaces are shown on the plan attached as Exhibit B to this Agreement (the "Parking Plan"). The Parking Plan identifies three (3) separate and distinct parking areas ("Parking Areas") to be used for parking in conjunction with the construction of Cushing Village on the Property. The Parking Areas are as follows:

A. Dedicated Residential Parking. Dedicated residential parking (shown as "Residential Parking 99 Spaces" on Exhibit B), consisting of ninety nine (99) total spaces, to be limited for utilization of parking for residents of the Property upon such terms and conditions as DEVELOPER may determine in its sole discretion. The Residential Parking spaces will not be the subject of this Agreement;

B. Short Term Parking. A total of twenty two (22) spaces are located within the short term parking identified on Exhibit B as "Short Term Parking on-Grade-22 Spaces". It is anticipated by DEVELOPER that nine (9) of the parking spaces within the short term Parking Area shall be designated for use without charge by patrons of specific businesses within Cushing Village. Thirteen (13) of the short term parking spaces shall be provided signage at the sole cost and expense of DEVELOPER pursuant to which signage seven (7) parking spaces will be designated as limited to thirty (30) minute parking and six (6) parking spaces will be limited to one (1) hour parking only.

C. Intermediate Term Parking. A total of one hundred and four (104) parking spaces, which includes the Town Spaces (it being agreed that the Town Spaces will not be expressly designated or reserved and will only be available to pass holders under Section 1.02 below on a first come basis, it being acknowledged that if all 104 Parking Spaces fill up then pass holders who were unable to obtain parking spaces will not be provided alternate parking arrangements), are proposed for public intermediate term parking. All public intermediate term parking shall be identified by signage provided at the sole cost of DEVELOPER as parking permitted for a two (2) hour time period (except for such longer time period as may be allowed by permit described in Section 1.02 below) that will be strictly enforced between the hours of 8:00 a.m. and 7:00 p.m. Intermediate term parking spaces shall be available without charge between the hours of 8:00 a.m. and 7:00 p.m. for use by the general public regardless of the destination intended by the party utilizing the parking space. Except for enforcing this two (2) hour time limit (or the time limit imposed in Section 1.02 below) in such manner as may be determined by DEVELOPER in DEVELOPER'S discretion, DEVELOPER shall not create any enforcement, limitation or interference with the use of the intermediate term parking spaces by the general public seeking to

park between the hours of 8:00 a.m. and 7:00 p.m. to visit any other business or residence in or about the Cushing Square area.

1.02 Notwithstanding the provisions of Section 1.01(C) above, the Town shall retain the right to issue on a monthly basis for a reasonable fee to businesses in the Cushing Square area up to thirty five (35) passes to use Town Spaces, which passes shall be prominently displayed on the dashboard or driver's side window of any vehicle for which the pass has been issued so as to permit said vehicle to park within the Parking Garage areas to be used for intermediate term parking as described in Section 1.01(C) for a period of time of up to eight (8) hours (excluding in all events parking between the hours of 8:00 p.m. and 8:00 a.m.).

1.03 DEVELOPER agrees to operate all commercial parking on the Property (i.e. those parking areas described in Sections 1.01(B) and 1.01(C)) in accordance with this Agreement and the Parking Plan and any modification to the Parking Plan shall require the approval of the Town, which approval shall not be unreasonably withheld or delayed.

1.04 All enforcement of the time limitations on parking set forth in Sections 1.01 and 1.02 of this Agreement and the Parking Plan shall be at the sole and absolute discretion of DEVELOPER, subject only to applicable law, rule or regulation.

1.05 In consideration of the Town not issuing passes for fifteen (15) of the Town Spaces (meaning the Town has agreed to issue passes only for thirty five (35) of the Town Spaces), DEVELOPER shall pay to the Town the sum of Ten Thousand Eight Hundred (\$10,800.00) Dollars annually (the "Parking Management Fee"). The issuance of passes, and accordingly the Parking Management Fee, will be prorated based upon the number of Town Spaces delivered to the Town as noted above in the Recitals section of this Agreement. The first annual payment due of the Parking Management Fee (or prorated portion thereof) will be payable sixty (60) days following the issuance of the first Certificate of Occupancy for the Parking Garage within Cushing Village and annually thereafter. At DEVELOPER's option, the Parking Management Fee may be paid monthly in advance in twelve (12) equal monthly installments. The Town agrees that during the term of this Agreement the Town Spaces shall not be subject to any metering, stickering or any other similar charge that derives revenue to the Town in any form or fashion except as specifically provided for in this Agreement.

## ARTICLE 2

### APPOINTMENT

2.01 The Town hereby designates and appoints DEVELOPER to provide complete management and administration for the Town Spaces consistent with this Agreement and the Parking Plan, and DEVELOPER accepts such designation and appointment. In connection with such management and administration, DEVELOPER shall have full responsibility and authority to operate, maintain and manage the Town Spaces consistent with this Agreement and the Parking Plan, subject to and on the terms and conditions set forth in this Agreement.

## ARTICLE 3

### TERM OF AGREEMENT

3.01 The original term of this Agreement shall commence as of the Effective Date and shall continue in full force for five (5) years (the “Initial Term”), with five (5) automatically renewing 5-year terms, for a total term of thirty (30) years, subject to further extension by agreement of the parties hereto and earlier termination or nonrenewal pursuant to Article 7 of this Agreement. Notwithstanding the foregoing, DEVELOPER and the Town shall meet and review the Parking Plan outlined in Article I hereof annually on the anniversary of the first payment of the Parking Management Fee and every year thereafter for the purposes of making written modifications to this Agreement and the Parking Plan that will meet the mutual needs of DEVELOPER and the Town, including, without limitation, reasonable adjustments in the Parking Management Fee to reflect changes in market conditions.

## ARTICLE 4

### MANAGEMENT SERVICES

4.01 Status; Standards. DEVELOPER shall perform its services with the quality of such services, in all respects and at all times, to be equal to the highest standards of professional parking management for similar such properties in the Greater Boston area.

4.02 Personnel. Subject to Section 4.03 hereof, DEVELOPER shall have full responsibility and authority and will use reasonable care in selecting, recruiting, hiring, firing, training, supervising and scheduling work for all permanent or part-time personnel necessary to perform the services of DEVELOPER under this Agreement. DEVELOPER shall carry any workmen’s compensation insurance required by the laws of The Commonwealth of Massachusetts for employees, if any, of DEVELOPER. DEVELOPER shall be responsible for the preparation of and shall timely file all payroll tax reports and make timely payment of all withholding and other payroll taxes applicable to its personnel.

4.03 Property Manager. DEVELOPER shall retain a property management firm which shall perform duties that include having primary responsibility for the performance of DEVELOPER’s duties hereunder (the “Property Manager”). Alternatively, DEVELOPER may self perform the duties of the Property Manager. DEVELOPER shall, by written notice, inform the Town of the identity of the Property Manager and, if the Property Manager is to be changed, DEVELOPER shall similarly inform the Town not less than thirty (30) days prior to its replacement with like capabilities and experience. The Property Manager and DEVELOPER shall meet with a designated representative of the Town on an annual basis to review performance by DEVELOPER pursuant to this Agreement.

4.04 Maintenance and Repairs; Other Operational Duties. DEVELOPER shall during the Term of this Agreement (as described in Section 3.01 above) maintain the Parking Areas in good order and repair and be fully, solely and exclusively responsible for all repair, maintenance and condition of the Property including without limitation the Town Spaces.

4.05 Fees. DEVELOPER shall not be paid in any form or manner by the Town pursuant to this this Agreement.

## ARTICLE 5

### INSURANCE AND INDEMNIFICATION

5.01 Required Insurance. DEVELOPER shall keep in effect at all times through the termination of this Agreement (and any longer period during which DEVELOPER has or is provided sole and exclusive management of the Town Spaces): (1) worker's compensation insurance and employer's liability insurance with limits as required by applicable law; (2) commercial general liability coverage in reference to all activities at and entry onto the Property, in an amount not less than \$2,000,000.00 per occurrence and with an annual aggregate of at least \$2,000,000.00 for (a) bodily injury, death and property damage, including damage to the Property, and (b) contractual liability; and (3) automobile liability insurance with a minimum limit of \$2,000,000.00 per occurrence with an annual aggregate of at least \$2,000,000.00 for bodily injury, death and property damage with respect to any vehicles used in connection with the activities of DEVELOPER or DEVELOPER's agents on the Property. DEVELOPER shall name the Town as an additional insured on all of the above referenced insurance (excluding workers compensation), and shall provide the Town with an accord certificate, reasonably acceptable to the Town, evidencing such coverages. The Town shall have the right to require DEVELOPER to increase such limits when the minimum limits of liability insurance commonly and customarily carried on properties comparable to the Property by responsible owners are more or less generally increased, it being the intention of this sentence to require DEVELOPER to take account of inflation in establishing minimum limits of liability insurance maintained from time to time on the Property.

5.02 DEVELOPER shall indemnify, reimburse, defend and hold the Town and the Town's affiliates, subsidiaries, members, managers, employees and agents ("Town's Agents") harmless for, from and against all actions, suits, liens, claims, damages, expenses (including reasonable attorney fees) losses, penalties, taxes and liabilities ("Losses") arising out of or attributable to the negligent acts/omissions or willful misconduct of DEVELOPER in the performance of this Agreement or the maintenance, operation and repair of the Property in any manner whatsoever, but excepting for matters which are the result of the negligence or willful misconduct of the Town or its employees or Town's Agents.

## ARTICLE 6

### CASUALTY

6.01 Casualty. In the event that the Property is damaged by fire, earthquake or other casualty, this Agreement shall remain in full force and effect; provided, however, that DEVELOPER shall have no obligation to provide the Town Spaces or pay the Parking Management Fee until all necessary repairs and replacements required due to the casualty have been completed in accordance with all applicable laws, rules and regulations and all of the Parking Areas as identified in the Parking Plan have been fully restored and available for use. In the event of such casualty, DEVELOPER shall proceed promptly to exercise diligent efforts to restore, or cause to be restored, the Town Spaces to substantially the condition thereof just prior to time of such damage.

ARTICLE 7  
TERMINATION

7.01 Termination. During the term hereof, the Town shall have the right to terminate this Agreement by advance written notice to DEVELOPER and each Lender (as such term is hereinafter defined) effective upon the date stated in such notice based on the following:

A. For any default by DEVELOPER in the performance of its duties hereunder, provided that the Town shall give DEVELOPER thirty (30) days written notice and an opportunity to cure such default during such period in the event of a default involving payment of money, or sixty (60) days (or such longer time as may be reasonably necessary if the nature of the default requires additional time for cure) written notice and an opportunity to cure such default during such period in the event of any other default.

B. Either party hereto may give the other party written notice of its intention not to renew this Agreement at least six (6) months prior to the end of the Initial Term, or any 5-year extension thereof but any notice not to renew this Agreement by DEVELOPER, its successors or assigns shall require the prior written consent of each Lender. The parties shall meet within thirty (30) days of said notice of non-renewal, or such later time as they may agree, to negotiate in good faith regarding any issues concerning the implementation of this Agreement that would be resolved through amendment of this Agreement. In the event that no agreement is reached, and the notice of non-renewal is not withdrawn, this Agreement shall terminate at the expiration of the 5-year term then in effect.

7.02 Upon termination of this Agreement, the Town will continue to have its rights to the Town Spaces in the manner described in the Easement Deed. Such use shall expressly not include the right to use the Town Spaces for long term, overflow or permanent parking, including but not limited to the parking of Town-owned vehicles. For purposes of this Agreement and the Easement Deed, “overflow” parking shall refer to the use of the Town Spaces to supplement parking for residents and businesses not located in the Cushing Square area, and “permanent” parking shall refer to the stationing of Town-owned or other fleet or commercial vehicles, and “long term” means durations other than (a) “short term” or “intermediate” as described in this Agreement, or (b) overnight parking (i.e. parking between the hours of 8 p.m. and 8 a.m.)

In the event the Town offers to lease or sell the Town Spaces other than through a public bid process under G.L. c. 30B, § 16, written notice of which shall be given to the Developer in addition to any other notices required by law, the same shall first be offered to the Developer on the same terms and conditions upon which will be offered for sale or lease. The Developer shall have forty-five (45) days within which to accept such offer. This provision will survive termination of this Agreement.

ARTICLE 8  
MISCELLANEOUS

8.01 Notice. Any and all notices, demands, requests, consents, or other communications or documents required to be, or which may be, given, delivered or served under or by the terms and provisions of this Agreement or pursuant to regulations or otherwise

(collectively “Notices”) shall be in writing and shall be deemed to have been duly given, delivered or served if and when delivered personally or sent postage prepaid, by registered or certified mail, return receipt requested, or by a nationally recognized next day delivery service for which a receipt is provided, addressed as follows:

Town: Town of Belmont  
455 Concord Avenue  
Belmont, Massachusetts 02478  
Attention: Town Administrator /  
Manager

DEVELOPER:

or to such other addressee or addressees as may be designated in writing by the Town and DEVELOPER. All notices referred to under this Agreement shall be deemed given and received upon the earlier of (i) the date received or (ii) three (3) days after the date such notice is mailed by United States registered or certified mail as provided above, or placed in the hands of the nationally recognized next day delivery service.

8.02 Assignment; Binding Effect. DEVELOPER shall have no right to assign or transfer this Agreement or any of its rights or duties hereunder in whole or in part or by operation of law or otherwise without the prior written consent of the Town, which consent shall not unreasonably be withheld, provided, however, DEVELOPER without the Town’s consent, may assign this Agreement (a) to any lender (A) providing financing to DEVELOPER, its successors and assigns secured, in whole or in part, by the Property, or (B) providing financing to any entity which controls, directly or indirectly, DEVELOPER, its successors and assigns and secured by a pledge or assignment of such entity’s ownership interests (a “Lender” or “Lenders” or (b) to a corporation or other entity controlled by, or under the common control of DEVELOPER, whereupon DEVELOPER or its successor or assign shall notify the Town of the identity and address of such Lender(s), corporation or entity, or (c) to the Commercial Owner (which may be a third party), or (d) to a joint venture in which Toll Bros., Inc. (or a commonly controlled or wholly owned affiliate thereof) retains at least a twenty five percent (25%) interest. DEVELOPER shall notify Town in writing of any such assignments ten (10) days prior to such assignments taking effect. Subject to the foregoing, this Agreement shall be binding on and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

The Town agrees that the following transfers of ownership interest in the Developer will not be prohibited assignments in any manner under this Agreement: (A) a direct or indirect transfer of the stock of a public company, (B) the direct or indirect creation of new stock in such public company, (C) direct or indirect stock splits or reverse stock splits in such public company, (D) redemption of stock by such public company, (E) the conversion of such public company from a

public to a private company, (F) any reorganization, merger, consolidation, recapitalization, or similar transaction with respect to such public company, or (G) any other transaction that modifies, changes, or affects the ownership or control of such public company.

8.03 Headings. The headings used in this Agreement are for convenience only and are not to be considered in connection with the interpretation or construction of this Agreement.

8.04 Applicable Law. This Agreement and the rights and obligations of the parties hereunder shall be governed by the laws of The Commonwealth of Massachusetts.

IN WITNESS WHEREOF, this Agreement is executed as of the date set forth above.

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

TOWN OF BELMONT

\_\_\_\_\_  
By: Mark A. Paolillo, Chair,  
Board of Selectmen

COMMONWEALTH OF MASSACHUSETTS

Middlesex County, ss.

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

\_\_\_\_\_  
Notary Public  
My Commission Expires:



COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_ County, ss.

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

\_\_\_\_\_  
Notary Public  
My Commission Expires:

DRAFT

**EXHIBIT A**

Property Description  
(attached)

DRAFT

**EXHIBIT B**

Parking Plan  
(attached)

ARTICLE 9

DRAFT