

HOST COMMUNITY AGREEMENT

This Host Community Agreement (the “**Agreement**”) is entered into by and between the Town of Hopkinton (the “**Town**”), acting by and through its Board of Selectmen (the “**Selectmen**”), and Legacy Farms LLC (the “**Developer**”), a Massachusetts limited liability company having its principal office at c/o Boulder Capital, LLC, 21 Center Street, Weston, MA 02493 . This Agreement represents the understanding between the Town and the Developer (the “**Parties**”) with respect to the commitments by the Developer in connection with the development of Legacy Farms as an open-space mixed-use project (the “**Project**”) on approximately 733 acres of land off East Main Street in the Town of Hopkinton (the “**Site**”) and the agreements by the Town to support the Project. A map of the land included within the Site is attached hereto as **Exhibit A**.

RECITALS

WHEREAS, at a Special Town Meeting held on June 11, 2007, the Town voted not to exercise its “right of first refusal” to purchase those portions of the Site that were subject to *M.G.L. c.61A*;

WHEREAS, by vote taken March 24, 2008, the Hopkinton Planning Board recommended approval of an article on the warrant of the 2008 Annual Town Meeting to amend the Hopkinton Zoning Bylaws by adding a new Article (the “**OSMUD Article**”), defining and regulating an Open-Space Mixed-Use Development (OSMUD) overlay district, and to adopt a map amendment (the “**OSMUD Map Amendment**”), which would locate the Site within such District;

WHEREAS, if approved by a two-thirds vote of the Hopkinton Town Meeting, the OSMUD Article and OSMUD Map Amendment would allow the Developer to seek a Master Plan Special Permit from the Planning Board authorizing the Project which will consist of components required, permitted or permissible pursuant to the OSMUD Article and more specifically set forth in this Agreement;

WHEREAS, the Parties wish to enter into this non-regulatory Agreement to memorialize their mutual understandings and undertakings with respect to the Project and certain permits to be considered for the Project, as well as other agreements between the Developer and the Town on the terms and conditions hereinafter set forth; and

WHEREAS, the provisions of this Agreement are available for consideration by the Planning Board in reviewing any application for a Master Plan Special Permit authorizing the Project.

NOW, THEREFORE, in consideration of the mutual promises of the parties contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties hereby agree as set forth herein. Capitalized terms used herein that are not otherwise defined shall have the same meaning as such terms are defined in the OSMUD Article.

A. Implementation of the Project Components

1. The Project shall be based on low-impact design principles, a set of strategies that seek to maintain natural systems during the development process by creating development that, to the extent feasible, is integrated into the landscape and not imposed on it.

2. The Parties mutually intend and anticipate that the Project will have a positive financial impact on the Town both during the build-out period and at full build-out, in that the incremental revenue to the Town through increased real estate taxes, excise taxes, building permit and other construction-related permit fees is expected to exceed the incremental operational and capital costs to the Town incurred as a result of the Project, while leaving the Developer flexibility to take advantage of market opportunities as they arise. Toward that end, the Developer agrees not to seek Certificates of Occupancy for any component of the Project that is anticipated to have a negative financial effect on the Town unless that effect is expected to be offset by the prior issuance of Certificates of Occupancy for components that are anticipated to have at least as great a positive financial impact on the Town; provided, however, that, the computation of Project component offsets pursuant to this paragraph shall include only the positive financial impacts of Project components that have not previously been considered as offsetting prior Project components with negative financial effects.

Notwithstanding the terms of this Section A(2), Certificates of Occupancy may be sought for a 324-Bedroom Apartment Rental Project, pursuant to Section A(5)(b) herein, prior to the issuance of Certificates of Occupancy for other components of the Project; provided, however, that if, on the date that is six (6) months after Certificates of Occupancy have been issued for 156 Units in the 324-Bedroom Apartment Rental Project (the “**Offset Date**”), there have not been Certificates of Occupancy issued for other residential or commercial components of the Project sufficient to provide that the Legacy Farms Project generates a net financial benefit to the Town, as measured according to the Matrix set forth herein, the Developer shall make a payment to the Town in the amount of the Initial Offset Amount (hereinafter defined) not later than the date the quarterly payments of Hopkinton Real Estate Taxes are next payable after the Offset Date; and thereafter, the Developer shall make quarterly payments to the Town in the amount of the Adjusted Offset Amount (hereinafter defined) at each due date of the quarterly payments of Real Estate Taxes, until such time as Certificates of Occupancy have been issued for such other residential or commercial components of the Project sufficient to provide that the Legacy Farms Project generates a net financial benefit to the Town, as measured according to such Matrix (the “**Financial Parity Date**”); and in the event the Financial Parity Date is achieved prior to the next date on which an Adjusted Offset Amount would be due, the Adjusted Offset Amount shall be prorated.

For the purposes of the foregoing paragraph, the following terms shall be defined as follows: (i) The “**Initial Offset Amount**” shall be twenty-five percent (25%) of the net financial loss to the Town imposed by the 324-Bedroom Apartment Rental Project (the “**Net Loss Amount**”); and (ii) the “**Adjusted Offset Amount**” shall be determined by multiplying the Initial Offset Amount by a fraction, the numerator of which shall be the Net Loss Amount minus the net financial benefit to the Town as determined according to the Matrix set forth herein of

other residential or commercial components of the Project for which Certificates of Occupancy have been issued and the denominator of which shall be the Net Loss Amount.

The computation of Project component offsets shall be determined utilizing the following matrix (the “**Matrix**”), which is based on analysis prepared for the Town by the Town’s fiscal consultant, as adjusted for the purposes of this Agreement (and which solely reflects anticipated increases in real estate taxes and excise taxes and does not include building permit and other construction-related permit fees).

Base Line Discrete Component	Projected Base Assessed Value (Town Consultant)	Fiscal Estimate \$ Gain (Loss)	\$ Gain (Loss)/ Dwelling Unit	\$ Gain(Loss) /SF
240-Unit Apartment Rental Project (Rental Occupancy)	Dependent on bedroom count and affordability restrictions	-----	1 bedroom: \$500 2 bedroom: (\$1,400) 3 bedroom: (\$1,800)	-----
Apartment (Owner Occupancy) <i>Market-Rate</i>	1 bedroom: \$295,000 2 bedroom: \$338,000 3 bedroom: \$415,000	-----	1 bedroom: \$3,700 2 bedroom: \$1,900 3 bedroom: \$400	-----
Apartment (Owner Occupancy) <i>Affordable</i>	1 bedroom: \$145,000 2 bedroom: \$160,000 3 bedroom: \$175,000	-----	1 bedroom: \$1,100 2 bedroom: (\$1,100) 3 bedroom: (\$4,200)	-----
Detached Single-Family Dwelling (not including Simplex)	2 bedroom: \$425,000 3 bedroom: \$650,000 4 bedroom: \$800,000 5 bedroom: \$1,100,000	-----	2 bedroom: (\$700) 3 bedroom: (\$7,300) 4 bedroom: (\$9,000) 5 bedroom: (\$5,700)	-----
Townhouse <i>Market-Rate</i>	1 bedroom: \$315,000 2 bedroom: \$479,000 3 bedroom: \$519,000	-----	1 bedroom: \$3,300 2 bedroom: \$3,600 3 bedroom: \$3,500	-----
Townhouse <i>Affordable</i>	1 bedroom: \$145,000 2 bedroom: \$160,000 3 bedroom: \$175,000	-----	1 bedroom: (\$100) 2 bedroom: (\$3,000) 3 bedroom: (\$6,500)	-----
Simplex, Duplex or Semi-Attached Dwelling <i>Market-Rate</i>	1 bedroom: \$415,000 2 bedroom: \$525,000 3 bedroom: \$650,000	-----	1 bedroom: \$5,000 2 bedroom: \$4,600 3 bedroom: \$5,600	-----
Simplex, Duplex or Semi-Attached Dwelling <i>Affordable</i>	1 bedroom: \$145,000 2 bedroom: \$160,000 3 bedroom: \$175,000	-----	1 bedroom: \$1,000 2 bedroom: (\$1,800) 3 bedroom: (\$5,300)	-----
93,000 SF Retail	\$170/SF	\$120,900	-----	* \$1.30

Base Line Discrete Component	Projected Base Assessed Value (Town Consultant)	Fiscal Estimate \$ Gain (Loss)	\$ Gain (Loss)/ Dwelling Unit	\$ Gain(Loss) /SF
357,000 SF General Commercial	\$95/SF	\$285,600	-----	* \$0.80
Alternative: 120,000 SF Hotel	\$160/SF	\$420,000	-----	\$3.50
Alternative: 200,000 SF Assisted Living/CCRC	\$125/SF	\$200,000	-----	\$1.00
Senior Housing Development <i>Market-rate</i>	<i>\$455,000</i>	<i>\$5,800</i>		
Senior Housing Development <i>Affordable</i>	<i>\$180,000</i>	<i>\$800</i>		

*93,000 SF and 357,000 SF are estimates. The SF rate is to apply to all retail and other commercial approved under Site Plan Approvals.

The foregoing shall not be construed to limit rental of individual condominium units by the owners of such units or to limit Development Projects additional to the 240-Unit Apartment Rental Development Project from being developed on a rental basis. Nor shall any provision of the Host Community Agreement be construed to amend or alter the interpretation of any provision of the Town of Hopkinton Zoning Bylaws.

The Parties acknowledge that the Matrix is based on assumed assessed valuations of improvements within the Project as projected by the Town’s consultant, and that the Developer anticipates that the actual sales and rental prices for improvements within the Project will be in excess of the levels projected by the Town’s consultant. Accordingly, at the request of either Party, the Matrix shall be amended from time to time to reflect the amount by which assessed values for portions of the Project theretofore constructed, as adjusted to reflect May 2008 values i) based (with respect to dwelling uses) on the S&P/Case-Shiller Boston Home Price Index or comparable index in the event the S&P/Case-Shiller Boston Home Price Index ceases to be published, ii) based (with respect to office or light industrial uses) on the CB Richard Ellis Route 495 Mass Pike West Market Snapshot Index or comparable index in the event the CB Richard Ellis Route 495 Mass Pike West Market Snapshot Index ceases to be published, and iii) based (with respect to retail uses) on the Marcus Millchap Index or comparable index in the event the Marcus Millchap Index ceases to be published (the “**Index**”), exceed the Projected Base Assessed Value set forth in the Matrix. From and after any amendment of the Matrix to reflect adjustment in assessed values (the “**Adjusted Assessed Value**”), the Adjusted Assessed Value

shall be applied with respect to Certificates of Occupancy to be issued until a subsequent amendment of the Matrix becomes effective. However, in the event the average assessed values, as adjusted to reflect 2008 values based on the Index, for any component in the Project thereafter constructed are below the Adjusted Assessed Value, the Matrix shall be amended to reflect such reduction of the Adjusted Assessed Value of such component which shall be applied to subsequent determinations under this paragraph. By way of reference, as of January 2008 the S&P/ Case-Shiller Boston Home Price Index is 160, the CB Richard Ellis Route 495 Mass Pike West Market Snapshot Index for office use is \$19.39/SF rent for office use, and the Marcus Millchap Index is \$34.70/SF rent for retail use.

Such adjustment shall be made as follows :

Step 1: For dwelling units, each \$1,000 in Adjusted Assessed Value per dwelling unit in excess of the Projected Base Assessed Value shall be multiplied by \$14.15. By way of example, if the first 50 town-homes, which have a Projected Base Assessed Value of \$479,000, are sold and assessed at \$600,000, the difference in the Projected Base Assessed Value versus Adjusted Assessed Value is \$121,000. Divided by \$1000 would provide a quotient of 121. This 121 would be multiplied by \$14.15 and then multiplied by the number of town-homes (50) to arrive at a product of \$85,607.50.

Similarly, for retail and commercial uses, each \$10 in Adjusted Assessed Value per SF of retail and commercial uses in excess of the Projected Base Assessed Value shall be multiplied by \$1.415. By way of example, if retail space, which has a Projected Base Assessed Value of \$170/ square foot is assessed at \$180/ square foot for 10,000 SF, the difference in the Projected Base Assessed Value versus Adjusted Assessed Value is \$10/SF. The \$10 would be multiplied by \$1.415 and then multiplied by the 10,000 SF to arrive at a product of \$14,150.

Step 2: The number determined under Step 1 shall be multiplied by a fraction. For dwelling units, the numerator of the fraction shall be the total number of the dwelling units of the particular component set forth in the Matrix, and the denominator of the fraction shall be the remaining number of dwelling units of the particular component that had not yet received Certificates of Occupancy. By way of example, if 50 town-homes have received Certificates of Occupancy, the fraction would be 325/275. For retail and commercial uses, the numerator of the fraction shall be the total amount of SF of the particular component set forth in the Matrix and the denominator of the fraction shall be the remaining amount of SF of the particular component which has not yet received Certificates of Occupancy. By way of example, if 10,000 SF of retail use have received Certificates of Occupancy, the fraction would be 93,000/83,000.

Step 3: The number determined under Step 1 shall be multiplied by the fraction determined under Step 2. With respect to dwelling units, to extend the example of 50 town-homes constructed and assessed at \$600,000, the product of \$85,607.50 would be multiplied by 1.181 (which is 325/275) for an adjustment of \$101,172.49. With respect to retail and commercial uses, to extend the example of the 10,000 SF retail use constructed and assessed at \$180/SF, the product of \$14,150 would be multiplied by 1.12 (which is 93,000/83,000) for an adjustment of \$15,848.

Step 4: The number determined under Step 3 shall then be added to the Fiscal Estimate \$Gain (Loss) for the particular component. To extend the example of 50 town homes constructed and assessed at \$600,000, the number \$101,172.49 would be added to \$926,250 for a revised Fiscal Estimate of Gain of \$1,027,422.40 or \$3,161.30 per town-home dwelling unit. To extend the example of the 10,000 SF retail use constructed and assessed at \$180/SF, the number of \$15,848 would be added to \$120,900 for a revised Fiscal Estimate of Gain of \$136,748 or \$1.47/SF.

In order to give the Developer the level of reliance needed to go forward with construction and financing of the Project, any adjustments to the Matrix shall in no event result in a decrease in projected gain or an increase in projected loss than as shown as the Projected Base Assessed Value in the Matrix. Further, prior to commencing construction of any building in the Project, the Board of Selectmen shall issue, if so requested by the Developer, a certification which may be relied on by the Developer that, on the basis of the Matrix as in effect as of the date of the application for the building permit, the Developer may seek a Certificate of Occupancy for such component of the Project upon completion of such building or component with respect to which the certification is issued.

The Parties further agree that, in the event that either (i) a payment is made pursuant to Paragraph 24 of this Agreement, or (ii) the Town does not proceed to construct a fire substation or public safety facility to serve the East Hopkinton area, either exclusively or jointly with a portion of the Town of Ashland, within 15 years from the filing of a Notice pursuant to the provisions of §210-172 of the OSMUD Article, the amount of \$500,000 shall be added to the total \$Gain set forth in the Matrix allocated to any component(s) designated by the Developer, provided that the total credit does not exceed \$500,000, to offset the fact that it would no longer be appropriate to include the cost of a fire substation or public safety facility as a cost element to be incurred by the Town.

3. The Developer agrees that it will not apply for endorsement by the Planning Board of any plan purporting to create lots having frontage on any portion of the Project's so-called "Spine Road" (shown on **Exhibit A**), such as pursuant to *M.G.L. c.41, §81P*, unless creation of such lots is authorized by the approved Master Plan Special Permit. The foregoing shall not restrict the endorsement as so-called "Approval Not Required" lots of parcels of land, containing existing buildings that have frontage on public ways in existence as of the date of this Agreement.

4. Consistent with the Parties' mutual desire to ensure that the traffic and public safety impacts of the commercial development component of the Project proposed to be located in the Commercial Subdistrict at the northernmost portion of the Site (known as "Legacy Park") are properly mitigated, the Developer agrees that it will not seek a Certificate of Occupancy for any portion of such Project component until after the Northern Spine Road component of the Project is constructed and available for travel and any Performance Guarantee required by the Planning Board for the Northern Spine Road pursuant to the Town's Subdivision Control Rules and Regulations has been provided.

5. The Project shall include no more than 940 new Dwelling Units constructed after May 5, 2008, plus no more than 180 Dwelling Units in Senior Housing Developments, which are multifamily residential land uses, constructed after May 5, 2014, consisting of multiple Dwelling Units on one single contiguous parcel, operated with the intent that at least one resident of every unit be 55 years of age or older.

The 940 Dwelling Units may contain a mix of one-bedroom, two-bedroom, three-bedroom, four-bedroom and five-bedroom units; provided, however, that no dwelling unit shall contain a number of bedrooms other than one of the numbers listed in the Matrix for that Unit's dwelling type; and provided that the total number of single family dwellings in the Project shall not exceed 15 single family dwellings; and provided further that the portion of the Project consisting of the 940 Dwelling Units shall not exceed 1943 bedrooms in the aggregate and that the portion of the Project consisting of 180 Dwelling Units in Senior Housing Developments shall not exceed 360 bedrooms in the aggregate.

With respect to the additional 180 Dwelling Units in Senior Housing Developments, no child under the age of 18 may be a resident of any such Dwelling Unit. Such requirement shall be reflected and shall be enforced through deed restrictions, condominium documents, leases, rental agreements or other appropriate instruments enforceable by the Legacy Farms Landowners Association, the Village Association for the Senior Housing Development Project and/or the owner of the Senior Housing Development Project, the form and adequacy of which have been approved by the Planning Board.

With respect to the 240-Unit Apartment Rental Development Project, the Developer may elect to obtain Site Plan Approval for one of the following configurations:

(a) 378-Bedroom Apartment Rental Project

Of the 940 Dwelling Units located within the OSMUD District, the Project shall include not fewer than 240 Dwelling Units that are eligible for inclusion in the Massachusetts Department of Housing and Community Development's Affordable Housing Inventory. Such 378-Bedroom Apartment Rental Project shall contain not more than 378 bedrooms in the aggregate, allocated as follows: 112 one-bedroom units; 118 two-bedroom units; and 10 three-bedroom units.

The Developer or its successor and assign as owner of the 378-Bedroom Apartment Rental Project (the "**Project Proponent**") shall comply with the provisions of the Regulatory Agreement with the Department of Housing and Community Development ("**DHCD**") in connection with the Local Action Unit Program. The Project Proponent shall be responsible for the initial qualification of all dwelling units of affordable housing to be included in the 378-Bedroom Apartment Rental Project and for the initial certification of the eligibility of the tenant of any such dwelling unit.

Thereafter, the Project Proponent shall annually certify to the Town that the tenant of each dwelling unit of affordable housing remains an Eligible Tenant (as defined in the Regulatory Agreement), so that, based on the information provided to the Town, the

Town may so annually certify to DHCD. The Project Proponent shall reimburse the Town or its designee for any direct and indirect costs reasonably incurred in certifying or recertifying the continuing eligibility of the tenants of any such units, as well as any other documented direct or indirect costs reasonably incurred by the Town in establishing or monitoring the affordability of the dwelling units of affordable housing in the 378-Bedroom Apartment Rental Project.

As provided in the OSMUD Article, the foregoing paragraph shall not apply in the event that, prior to the issuance of a building permit for the rental development, either M.G.L. c.40B, §§20-23 or the rules, regulations or guidelines issued thereunder are modified so as no longer to provide that all of the units in a rental development that contains at least 25% affordable housing are eligible for inclusion in the Affordable Housing Inventory; provided, however, that, in such case, the Project shall include ninety-four (94) dwelling units of affordable housing which shall contain not more than 145 bedrooms in the aggregate, allocated as follows: 46 one-bedroom units; 45 two-bedroom units; and 3 three-bedroom units.

(b) 324-Bedroom Apartment Rental Project

The Developer may elect to obtain Site Plan Approval for a 324-Bedroom Apartment Rental Project, containing not more than 324 bedrooms, which shall adhere to the following:

Of the 940 Dwelling Units located within the OSMUD District, the Project shall include not fewer than 240 Dwelling Units that are eligible for inclusion in the Massachusetts Department of Housing and Community Development's Affordable Housing Inventory. The 324-Bedroom Apartment Rental Project shall be developed as a rental community consistent with the quality theme of the master planned Legacy Farms community and shall contain not more than 324 bedrooms in the aggregate, allocated as follows: 156 one-bedroom units and 84 two-bedroom units.

The Developer or its successor and assign as owner of the 324-Bedroom Apartment Rental Project (the "**Project Proponent**") shall comply with the provisions of the Regulatory Agreement with the Department of Housing and Community Development ("**DHCD**") in connection with the Local Action Unit Program. The Project Proponent shall be responsible for the initial qualification of all dwelling units of affordable housing to be included in the 324-Bedroom Apartment Rental Project and for the initial certification of the eligibility of the tenant of any such dwelling unit.

Thereafter, the Project Proponent shall annually certify to the Town that the tenant of each dwelling unit of affordable housing remains an Eligible Tenant (as defined in the Regulatory Agreement), so that, based on the information provided to the Town, the Town may so annually certify to DHCD. The Project Proponent shall reimburse the Town or its designee for any direct and indirect costs reasonably incurred in certifying or recertifying the continuing eligibility of the tenants of any such units, as well as any other documented direct or indirect costs reasonably incurred by the Town in establishing or monitoring the affordability of the dwelling units of affordable housing in

the 324-Bedroom Apartment Rental Project.

Not later than the date on which Certificates of Occupancy have been issued for all units in the 324-Bedroom Apartment Rental Project as defined herein, the Developer shall make a one-time payment of \$47,000 to the Town's Affordable Housing Trust Fund.

As provided in the OSMUD Article, the foregoing paragraphs shall not apply in the event that, prior to the issuance of a building permit for the rental development, either M.G.L. c.40B, §§20-23 or the rules, regulations or guidelines issued thereunder are modified so as no longer to provide that all of the units in a rental development that contains at least 25% affordable housing are eligible for inclusion in the Affordable Housing Inventory; provided, however, that, in such case, the Project shall include ninety-four (94) dwelling units of affordable housing which shall contain not more than 145 bedrooms in the aggregate, allocated as follows: 46 one-bedroom units; 45 two-bedroom units; and 3 three-bedroom units.

5.1 Any application to the Planning Board for Site Plan Approval in connection with any Senior Housing Development shall include proposed Senior Housing Design Guidelines. These Design Guidelines shall be in addition to the Design Guidelines previously approved in connection with the Master Plan Special Permit. The Senior Housing Design Guidelines shall, at a minimum, include the following design objectives:

- i. Among the buildings proposed for Senior Housing Developments there shall be a mixture of styles. The diversity of styles shall be in keeping with the architecture of housing already found in the Town, but effort shall be made to distinguish the styles of the Senior Housing Development buildings from their neighbors.
- ii. Buildings proposed for the Senior Housing Developments shall be placed, aligned and orientated on their sites with due regard for their relationship to nearby streetscape layouts and design.

6. The Project may include up to 450,000 square feet of commercial development, of which no more than 200,000 square feet may be used for one or more Continuing Care Retirement Communities, Assisted Living Facilities, Skilled Nursing Facilities or similar uses. Such uses shall be limited to 150 units or beds, which may contain a maximum of 50 units classifiable as "separate living quarters" by the U.S. Census Bureau (The U.S. Census Bureau currently defines "separate living quarters [as] those in which the occupants live and eat separately from any other persons in the building and which have direct access from the outside of the building or through a common hall." Federal Register, Vol. 73, No. 30, February 13, 2008 Issued by Department of Commerce, Bureau of the Census Entitled Program for the 2010 Census—Final Criteria). The Developer will use best efforts to receive administrative or staff guidance from the U.S. Census Bureau as to whether the units in any such use will be classifiable as separate living quarters. With respect to the number of units, if any, that are classifiable as separate living quarters by the U.S. Census Bureau, either: (i) 10% of such number of units shall be "Affordable" if M.G.L. c.40B, §§ 20-23 is in effect; or (ii) the Developer may contribute

funds to the Town of Hopkinton Affordable Housing Trust Fund or Hopkinton Community Housing Task Force, Inc. in an amount mutually agreed upon by the Developer and the Planning Board. In addition, as a condition to the issuance of a building permit for any units classifiable as separate living quarters by the U.S. Census Bureau, the Developer shall contribute an amount equal to \$3,000 multiplied by the number of market rate units so classified to be held in a gift account to be used for public safety purposes.

(a) Intensity of Commercial Uses

Upon the issuance of any building permit for a Dwelling Unit in a Senior Housing Development that causes the total number of Dwelling Units within the Project to exceed 940, the amount of commercial development allowed within the OSMUD District shall be reduced to 250,000 square feet of Gross Floor Area in the aggregate, none of which shall be located in the area designated as “Legacy Park” in the Legacy Farms Master Plan, as approved by the Master Plan Special Permit issued therefor, dated May 13, 2010, as amended.

(b) Affordable Housing in Senior Housing Developments

To the extent that Dwelling Units in the Senior Housing Developments cause the total number of Dwelling Units within the Project to exceed 940, there shall be, in the aggregate, one Dwelling Unit of Affordable Housing for every 10 Dwelling Units in Senior Housing Developments, but not to exceed eighteen (18) Dwelling Units of Affordable Housing in the aggregate. The additional Dwelling Units of Affordable Housing required under this section may be constructed or provided anywhere within the Town with the approval of the Planning Board; provided, however, that all Dwelling Units designated to satisfy the requirements of this subparagraph shall be subject to deed restrictions or other recordable instruments guaranteeing that they remain as Affordable Housing Dwelling Units.

In lieu of constructing or providing some or all of the Dwelling Units of Affordable Housing required by this subparagraph, funds may be contributed to the Town of Hopkinton Affordable Housing Trust Fund to be used for the development or creation of Affordable Housing. For each Affordable Unit not constructed or provided, the fee shall be an amount equal to the purchase price of a three-bedroom home that is affordable to a qualified affordable housing unit purchaser, as contained in the Department of Housing and Community Development Local Initiative Program guidelines regardless of what type of Dwelling Units are proposed, approved or constructed. Payments shall be made according to a schedule agreed upon with the Planning Board.

The Developer or its successor and assign as owner of the Senior Housing Development Project shall provide written annual reports to the Town setting forth the total number of Dwelling Units to which this subparagraph applies that were rented or sold during the foregoing annual period, the total number of such Dwelling Units that qualify as Affordable Housing, and the rental payment or sale price of such Dwelling

Units that qualify as Affordable Housing. Such report may be in the format of a digital spreadsheet.

7. Consistent with the Town's desire to obtain the affordable housing benefits of the rental housing component of the Project in the event that *M.G.L. c.40B, §§20-23* remains in effect and the rules, regulations or guidelines of the Massachusetts Department of Housing and Community Development issued pursuant to *M.G.L. c.40B, §§20-23* continue to provide that all the units in a rental development that contains at least 25% affordable housing units are eligible for inclusion on the Subsidized Housing Inventory, the Developer agrees to apply for the necessary building permits for the full 240 units of rental housing proposed within one year of obtaining final Site Plan Approval therefor.

(a) Filing of Notice

Not later than one hundred eighty (180) days after the execution of this Amendment December 22, 2010, the Developer shall file the Notice pursuant to the provisions of §210-172.B of the Zoning Bylaw; provided, however, that if, within one hundred eighty (180) days after the execution of this Amendment December 22, 2010, the Developer files an application for Site Plan Approval for a 324-Bedroom Apartment Rental Project, pursuant to Section A(5)(b) herein, then the Developer shall file the Notice pursuant to the provisions of §210-172.B of the Zoning Bylaw not later than the issuance of Site Plan Approval for the 324-Bedroom Apartment Rental Project, with all appeal periods having passed without the filing of an appeal, and the execution of a Regulatory Agreement with DHCD.

B. Traffic-Related Community Benefits

8. The Developer shall undertake two (2) Off-Site Traffic Improvements proposed in the Traffic Impact and Access Study dated March 2008 prepared by Developer's Consultant, Vanasse Hangen Brustlin, Inc. (the "**TIAS**") as follows:

- (a) The Developer shall itself undertake upgrades to the traffic controls at the intersection of Routes 85 and 135 to improve the downtown intersection, as more specifically described in the TIAS as "Minor Modification--Upgrades to the Traffic Controls for the Main Street, Cedar Street Intersection" (Page 10); and
- (b) The Developer shall itself undertake or reimburse the Town for the full reasonable cost of relocating the pedestrian cross-walk at the intersection of West Main Street and Wood Street from its current location over Route 135 to the western approach to that intersection, as more specifically described in the TIAS on Pages 11 and 12; or, at the discretion of the Director of the Department of Public Works, the Developer shall make a one-time contribution of \$5,000 to fund pedestrian improvements in Town.

As provided in Paragraph 30 of this Agreement, the work specified in this paragraph shall be performed forthwith after approval of the OSMUD Article and OSMUD Map Amendment by the

Attorney General, without a challenge to the OSMUD Article having been filed or, if filed, upon final resolution of such challenge in a manner favorable to the OSMUD Article and OSMUD Map Amendment not later than one (1) year from the date of adoption by Town Meeting of the OSMUD Article and OSMUD Map Amendment; provided, however, that, notwithstanding the foregoing, the work specified in this paragraph shall be performed forthwith in the event of the filing of a Notice pursuant to the provisions of §210-172 of the OSMUD Article; and provided further that such work shall be subject to review and approval by the Department of Public Works.

9. The Project shall include transportation mitigations as set forth in the TIAS including, but not limited to, the following, subject to the approval by the Planning Board in the Master Plan Special Permit and the Department of Public Works:

- (a) Northern and Southern Spine Road bypass of Downtown Hopkinton (subject to approval by Conservation Commission);
- (b) The relocation of Frankland Road and Peach Street; and
- (c) The abandonment of a portion of Phipps Street, if required.

10. In any application for a Master Plan Special Permit for the Project, the Developer shall propose phased implementation of traffic improvements that are consistent, to the extent feasible, with maintaining the community character of the Town. Towards that end, the Developer shall, to the extent feasible, minimize widenings of roadways or rights of way, except if required to alleviate a Level of Service (LOS) F condition or conditions that are deemed to be detrimental to the public safety anticipated to result, in whole or in part, from the Project's implementation. The Developer shall consider and study all reasonable alternative mitigation measures and demonstrate the results to the Planning Board prior to recommending to the Planning Board the implementation of roadway or rights of way widening.

11. Implementation of the Project shall incorporate Traffic Demand Management (“**TDM**”) measures to minimize or lessen the impact of vehicular traffic. Such TDM measures shall, at a minimum, include the elements discussed in the TIAS on Pages 14-17.

12. With the exception of the Northern Spine Road and the Southern Spine Road (as shown on **Exhibit A**), which shall become public ways upon acceptance by the Town pursuant to the applicable standards and processes of the Town, all other roads within the Project shall be privately owned and maintained. The Developer agrees that it will never petition the Town to accept such other roads as public ways.

C. Undertakings Pertaining to Restricted Land

13. The Project shall include not less than 500 acres of Restricted Land to be maintained via a Landowners' Association or agreements by particular land owners, easement holders or lessees within the Project to ensure stewardship at no cost to the Town (excepting costs related to improvement or maintenance of any portion that may be conveyed to the Town

or subject to a grant of easement or lease to the Town for active recreation or other municipal or cultural uses). Except for the land to be used for agricultural purposes or as open space for the benefit of specific neighborhoods within the Project or land used for cemetery or other municipal or cultural uses approved by 2/3 vote of Town Meeting, all the remaining Restricted Land shall be used as open space, including active and passive recreation, in which shall be ensured public access, through internal and intra-municipal connecting trails, subject to appropriate rules and regulations.

14. The Developer shall make available to the Town or its nominee, a certain parcel of approximately 19 acres, shown on **Exhibit B**, which may be used for any purposes consistent with Section 210-170.A of the Zoning Bylaw, including, but not limited to, municipal or cultural uses (the “**Museum Parcel**”). Additionally, the Developer shall make available to the Town or its nominee, as part of the Restricted Land, a certain parcel of approximately 21 acres, shown on **Exhibit B**, which may be used for other municipal uses if the Board of Selectmen so elect; provided, however, that such land shall not be used for municipal uses other than active or passive recreation or cemetery use unless specifically approved by a 2/3 vote of Town Meeting. Further, (a) if land areas not to exceed 1,600 SF in the aggregate are approved by 2/3 vote of Town Meeting for use as one or more municipal sewage pump stations, each not to exceed 300 SF in surface area and 10 feet in height for a flat roof or 15 feet in height for a peaked or gabled roof, the Developer shall make such land areas available to the Town or its nominee, and/or (b) if the Department of Public Works and the Developer jointly determine based on a distribution system evaluation study that a water storage structure or tank for use by the OSMUD District should be located on the Site, the Developer shall make the required areas available to the Town for the location of such water storage structure serving all or a portion of the OSMUD District; provided, in each such case, that the Developer determines that a suitable location is available therefor, taking into consideration the improvements for the Project constructed or proposed, and that the location, plans, exterior appearance and landscaping of such municipal facility are approved by Developer.

The foregoing parcels and land areas shall be made available to the Town by means of conveyance executed after April 1, 2010, or by means of an easement or lease, for no monetary consideration payment by the Town. The Developer shall have the right to approve the plans and specifications for any improvements to be made by the Town or its nominee to such parcels or land areas, and approve the coordination of the timing of work by the Town with the Developer’s work in constructing the Project.

15. In order to facilitate pedestrian connections to the **Museum Parcel**, the application for the Master Plan Special Permit shall, to the extent feasible, propose, as part of the Project, the creation of meandering pedestrian connections along East Main Street from Ray Street to the **Museum Parcel** and pedestrian connections from areas within the Site (both northerly and southerly of East Main Street) to the **Museum Parcel**, which shall consist of pervious or impervious durable surfaces; provided, however, that the Town shall be responsible for any land takings required to construct such pedestrian connections along East Main Street and that no utility relocations shall be required to be made at the Developer’s expense.

(a) Permitting and Construction of Pedestrian Connection Along East Main Street

Simultaneously with the filing for Site Plan Approval for a 324-Bedroom Apartment Rental Project, pursuant to Section A(5)(b) herein, the Developer shall apply for the permits and approvals required for the meandering pedestrian connection along East Main Street from Ray Street to the Athletic Field Parcel, which is described in Section 15 of the Host Community Agreement. Not later than ninety (90) days after such permits and approvals have been issued, with all appeal periods having passed without the filing of an appeal, the Developer shall commence construction of such pedestrian path and shall diligently pursue such construction to completion.

16. Provided that the Commonwealth of Massachusetts Department of Agricultural Resources agrees that the following shall fulfill the obligations of the Town to mitigate the use of eleven (11) acres of Town-owned land suitable for agricultural use for the site of the high school facility, as set forth in an Agreement between the Town and the Commonwealth dated August 16, 1999, eleven (11) acres of land within the Project designated by the Developer to be part of the land to be used by Weston Nurseries, Inc. shall be made subject to an Agricultural Preservation Restriction, in satisfaction of Executive Order 193 and the Agreement between the Town and the Commonwealth dated August 16, 1999; provided, however, that the Developer shall have no obligation with respect to Executive Order 193 in the event the Commonwealth does not approve the eleven (11) acres of land designated by Developer to be used by Weston Nurseries, Inc. in satisfaction of the foregoing.

17. The North Parcel (as shown on **Exhibit A**) shall be made subject to a Restricted Land Covenant that will control development and protect the North Parcel as open space Restricted Land to be left in substantially its natural state, restored or landscaped so as to protect the North Parcel's view characteristics.

D. Other Project Elements

18. The Developer shall work with the Town to develop the Alprilla Farms Well and associated public water supply infrastructure, in accordance with the Alprilla Farms Well Agreement between the Developer and the Board of Selectmen, the Planning Board and the Department of Public Works, dated March 12, 2008 (the "**Alprilla Farms Well Agreement**"). The Developer agrees that, in no event, shall the Town have the obligation to allocate water to customers located on the Site in excess of the total aggregated volume of gpd (average daily flow) of the Alprilla Farms Well Expansion (as defined in the Alprilla Farms Well Agreement). Further, the Town's obligations to allocate water to customers located on the Site shall be subject to adjustment to the total aggregated volume permitted by DEP or other State authority or otherwise available to be withdrawn and distributed from the Alprilla Farms Well in the event that such permitted or available volume is reduced below 170,000 gpd due to regulatory action or a change in safe yield or water quality and, consistent with the Alprilla Farms Well Agreement, shall be subject to proportionate adjustment to reflect any conservation or use restrictions imposed under federal or state law which are applicable generally to users of water throughout the Town.

19. The Project shall include the development and operation of a private wastewater treatment facility and associated sewerage infrastructure to serve the Site at no cost to the Town. Such facility and infrastructure, including specifically infrastructure located in public rights of way, shall be privately owned and operated. Subject to the requirements of applicable law and the requirements imposed on all landowners served by such private wastewater treatment facility, the Developer shall make the opportunity available to up to 29 single-family homes outside of the Site in the area of Clinton Street, Linden Street and Curtis Road, at the sole cost and expense of the owners of such homes for all matters related to extension of the sewer service to such homes, to be served by the private wastewater treatment facility being developed for the Project at usage rates equal to those available to comparable users within the Site.

20. Reference is made to the fact that the buildings located at 82 East Main Street, 83 East Main Street, 26 Clinton Street, and 97 East Main Street (the Pearson House) are listed on the *Inventory of Historical and Archaeological Assets of the Commonwealth*. The Developer agrees that these structures will not be demolished, although they may be renovated and expanded and 97 East Main Street (the Pearson House) may be relocated on the Site or elsewhere within Town. The foregoing shall not be modified unless consented to by the Hopkinton Historical Commission.

E. Additional Financial Matters

21. The Landowners' Association documents referred to in the OSMUD Article shall include a restriction for the benefit of the Town that no property within the Site, other than Restricted Land approved by the Planning Board, shall be conveyed to a tax-exempt entity unless: (i) such entity agrees that the property will be subject to taxation under *M.G.L. c.59*, without any claim of exemption on the basis of the entity's tax-exempt status; or (ii) such entity enters into an agreement for Payment in Lieu of Taxes ("**PILOT Agreement**") that provides for payments in lieu of taxes and /or other benefits to the Town not less than the amount that would otherwise be due to the Town in property taxes and personal property excise taxes under *M.G.L. c.59* for as long as the entity continues to be exempt from such property or excise taxation; or (iii) the Developer, or its successor, enters into an agreement with the Town that provides for payment and/or other benefits to the Town, on behalf of such entity, not less than the amount that would otherwise be due to the Town in property taxes and personal property excise taxes under *M.G.L. c.59*, for as long as the entity continues to be exempt from such property or excise taxation; provided, however, that the Town shall have the right at its sole discretion to determine whether to accept benefits so provided in fulfillment of the obligations herein, and the Developer shall provide documents necessary for the Town to make such determination. The restrictions set forth in this paragraph shall apply to any lease by an owner of property within the Site to a tax-exempt entity if the legal effect of such lease would otherwise be to exempt the owner or lessee of the leased property from the payment of real estate taxes.

22. In the event that enrollment in the Hopkinton public schools by residents of the Project exceeds 250 students during the period expiring six (6) years from the date of issuance of the first Certificate of Occupancy for a Dwelling Unit in the Project, the Developer shall make a

one-time payment of \$500,000 to the Town to be held in a gift account for purposes of use by the Hopkinton School Committee.

Additionally, in the event enrollment in the Hopkinton public schools by residents of the Project exceeds 266 students at any time during the period expiring one (1) year after the date of issuance of a Certificate of Occupancy for the final Dwelling Unit authorized by the Master Plan Special Permit or the expiration of eighteen (18) years from the filing of a Notice pursuant to the provisions of §210-172 of the OSMUD Article, whichever is earlier, the Developer shall make a one-time payment, for each increment of 30 students at the end of the Fiscal Year in which the excess over a 30-student increment first occurs, in the amount of \$270,000 based on \$9,000 per pupil (in October 2008 dollars, to be compounded at 4% annually), to be held in a gift account for purposes of use by the Hopkinton School Committee.

Additionally, in recognition of the Parties' joint desire that the Senior Housing Developments have a minimal impact on the Hopkinton public schools, if, at any point in time after an amendment to the Town's Zoning Bylaws, substantially in the form set forth in Article 33 of the Town's 2014 Annual Town Meeting (with only such amendments necessary to authorize up to 180 Dwelling Units located within a Senior Housing Development, and such other amendments made with the agreement of the Developer) has become effective, more than three students residing in any Senior Housing Development constructed pursuant to this Agreement are enrolled in the Hopkinton public schools, the Developer or its successor and assign as owner of the Senior Housing Development Project or any Village Association for the Senior Housing Development Project shall, no later than the next following July 1, annually pay to the Town, as liquidated damages, \$9,000 per excess pupil per year, prorated for the academic year, until the number of such students is reduced to three or fewer.

23. The Developer has agreed to reimburse the Town for the costs of various consultants to the Town providing peer review and other services related to the Project as set forth in that certain Fee Letter transmitted to Town Counsel on January 28, 2008 and accepted by the Town through Town Counsel (the "**Fee Letter**"), as it may be amended from time to time, and in the Alprilla Farms Well Agreement. The payment of such costs shall not be deemed to affect the right of the Planning Board or other Town permitting authorities under applicable law to set review fees in connection with applications filed by the Developer for the Project or any component thereof with respect to fees which are not currently subject to reimbursement under the Fee Letter.

24. (a). Upon the issuance of a building permit for a fire substation or public safety facility to serve the East Hopkinton area, either exclusively or jointly with a portion of the Town of Ashland, the Developer shall make a payment to the Town in the amount of \$500,000, to be held in a gift account for the purpose of defraying the Town's capital costs of such facility. The foregoing obligation shall remain in effect for 15 years from the filing of a Notice pursuant to the provisions of §210-172 of the OSMUD Article.

(b). If an amendment to the Town's Zoning Bylaws, substantially in the form set forth in Article 33 of the Town's 2014 Annual Town Meeting (with only such amendments necessary to authorize up to 180 Dwelling Units located within a Senior Housing Development, and such other amendments made with the agreement of the Developer) has become effective, the

Developer or its successor and assign as owner of the Senior Housing Development Project shall make a payment of \$120,000 as mitigation for the costs incurred by the Town in dealing with the increased demands on its public safety agencies and infrastructure on each of the following dates:

- The date of issuance of a certificate of occupancy for the first Dwelling Unit located within a Senior Housing Development;
- The date of issuance of a certificate of occupancy for the 90th Dwelling Unit located within a Senior Housing Development; and
- The earlier of November 15, 2018 or the date of issuance of a certificate of occupancy for the 180th Dwelling Unit located within a Senior Housing Development;

(c). As further mitigation for the costs incurred by the Town in dealing with the increased demands from the Project on its public utility and recreational services and infrastructure, the Developer shall make the following payments to the Town.

- By June 30, 2016, an amount equal to seven-and-a-half percent (7.5%) of the sum previously received as a grant award, pursuant to the Town's August 18, 2014 MassWorks Infrastructure Program application, and used for the construction of Legacy Farms Road North (hereinafter, the "Award Sum") half of which amount is to be used for the development of a Town-wide trail network and half to be used for the installation, improvement and maintenance of underground utilities in the Town's downtown area; plus, in the event that, prior to such date, an amendment to the Town's Zoning Bylaws, substantially in the form set forth in Article 33 of the Town's 2014 Annual Town Meeting (with only such amendments necessary to authorize up to 180 Dwelling Units located within a Senior Housing Development, and such other amendments made with the agreement of the Developer) has become effective, an additional seven-and-a-half percent (7.5%) of the Award Sum to be used at the Town's sole and exclusive discretion.
- By June 30, 2017, an amount equal to seven-and-a-half percent (7.5%) of the Award Sum, half of which amount is to be used for the development of a Town-wide trail network and half to be used for the installation, improvement and maintenance of underground utilities in the Town's downtown area; plus, in the event that, prior to such date, an amendment to the Town's Zoning Bylaws substantially in the form set forth in Article 33 of the Town's 2014 Annual Town Meeting (with only such amendments necessary to authorize up to 180 Dwelling Units located within a Senior Housing Development, and such other amendments made with the agreement of the Developer) has become effective, an additional seven-and-a-half percent (7.5%) of the Award Sum to be used at the Town's sole and exclusive discretion.
- By December 31, 2017, an amount equal to fifteen percent (15%) of the Award Sum, half of which amount is to be used for the development of a Town-wide trail network and half to be used for the installation, improvement and maintenance of underground utilities in the Town's downtown area; plus, in the event that, prior to such date, an amendment to

the Town's Zoning Bylaws substantially in the form set forth in Article 33 of the Town's 2014 Annual Town Meeting (with only such amendments necessary to authorize up to 180 Dwelling Units located within a Senior Housing Development, and such other amendments made with the agreement of the Developer) has become effective, an additional fifteen percent (15%) of the Award Sum to be used at the Town's sole and exclusive discretion.

25. At the request of the Town, the Developer will cooperate with the Town to support legislative authorization for a mechanism to allow some or all of the incremental revenue expected to accrue to the Town through increased real estate and excise taxes as a result of the Project to be earmarked for use to defray the Town's incremental capital and/or operating costs associated with the Project, as determined by the Board of Selectmen; provided that such support shall not require any expenditures by the Developer (other than incidental expenditures such as those involved in attendance at meetings or preparing letters of support), result in any increased anticipated taxation or other requirement for monetary contribution, or result directly or indirectly in a delay of the Project.

F. Undertakings by the Town

26. The Selectmen shall support the adoption of the OSMUD Article and the OSMUD Map Amendment at the Town Meeting, and shall encourage other Town Boards and departments to support adoption of the OSMUD Article and OSMUD Map Amendment. The Selectmen shall, to the extent appropriate, cooperate with the Developer and shall encourage other Town Boards and departments to cooperate with the Developer in issuing local and state permits and approvals required for the Project in a timely and expeditious manner, including, without limitation, approvals by the Planning Board, Conservation Commission and Department of Public Works, cooperation in MEPA review and other state permit review of both the Project and the Alprilla Farms Water System Expansion.

27. Without limitation of the foregoing, the Selectmen shall support and undertake action required to effectuate the following in a timely manner upon applications by Developer, subject to requirements of law:

(a) The Selectmen shall, subject to the applicable processes and standards of the Town, grant two (2) licenses for the sale of all alcoholic beverages to be drunk on the premises and one (1) package store license if applied for by the Developer or its designee(s), subject to construction of facilities, for land located within the Project. Such licenses shall be transferable to successor tenants or Developers of facilities at the Project from time to time, after customary review by the Selectmen of the identity and suitability of the transferees. In reviewing the suitability of transferees, the Selectmen shall be allowed to take into account their judgment as to whether the nature of an establishment, based upon its ambiance, signage, employee dress and similar factors, is suitable for a neighborhood in Hopkinton that contains residential units and is adjacent to a neighborhood of single-family homes in Hopkinton. The Developer's application for all such licenses shall be on the condition, and the licenses shall so state, that the licenses may not be exercised in any geographical location other than the Project.

(b) The Selectmen shall approve and execute a so-called “Local Initiative Project” (“**LIP**”) application to the Massachusetts Department of Housing and Community Development and take such other action as may be necessary for the 240 rental housing component of the Project to be eligible for inclusion on the Subsidized Housing Inventory.

(c) The Selectmen shall, as necessary, grant the Developer such licenses to enter onto Town land to perform any mitigation or fulfill any other obligation set forth in this Agreement.

(d) The Selectmen shall exercise the powers and authorities granted to them to allow the abandonment or relocation of public ways (Peach Street, Frankland Road, Phipps Street, Curve Street, and East Main Street) as required for Developer’s traffic mitigation as approved by the Planning Board, shall grant temporary and permanent easements for construction and utilities, and shall grant curb cut approvals for the Project consistent with applicable Town standards and processes; provided, however that the Developer shall arrange for the conveyance to the Town of any easements required for existing utilities within any rights of way to be abandoned unless such utilities are relocated to other rights of way.

(e) The Selectmen shall recommend to Town Meeting the acceptance of the Northern and Southern Spine Road Components as public ways after satisfactory completion thereof pursuant to the applicable standards and processes of the Town.

G. Conditions to Agreement

28. Except as otherwise provided in Paragraphs 29, 30 and 31 of this Agreement, the obligations of the Parties under this Agreement shall be contingent upon the following:

(a) The adoption by Town Meeting of the OSMUD Article and OSMUD Map Amendment in the form recommended for approval by the Planning Board on March 24, 2008, or in a form and condition satisfactory to Developer, and approval of such Article and Amendment by the Attorney General, with all challenge periods having passed, no challenges pending or, if such Article or Amendment is challenged, the same having been finally disposed of favorably to the Article or Amendment not later than one (1) year from the date of adoption by Town Meeting.

(b) The issuance, in a form and condition satisfactory to the Developer, of a Master Plan Special Permit for the Project, with all appeal periods having passed, no appeals pending, or if any such Master Plan Special Permit is appealed, the same having been finally disposed of favorably to the Developer not later than one (1) year from the issuance of the Master Plan Special Permit.

(c) The issuance, in a form and condition satisfactory to the Developer, of all other state and local approvals applied for and required for the Project, with all appeals periods having passed, no appeals pending, or if any such permit or approval is appealed, the same having been finally disposed of favorably to the Developer not later than one (1) year from the issuance of the permit or approval which is subject of the appeal.

(d) The filing by the Developer of the Notice under section 210-172 of the OSMUD Zoning Article.

(e) The obligations of the Developer under Paragraph 22 of this Agreement shall be contingent upon the adoption by the Hopkinton School Committee of a resolution in support of the adoption of the OSMUD Article and OSMUD Map Amendment by the Town Meeting.

(f) Without limitation of the foregoing, the obligations of the Developer under this Agreement shall be contingent upon the following actions by the Planning Board undertaken in a timely and expeditious manner in a form and condition satisfactory to Developer, subject to the requirements of law:

(i) Issuance of a Master Plan Special Permit for the Project and subsequent issuance of Site Plan Approvals for the Development Projects within the OSMUD District;

(ii) Confirmation in the Master Plan Special Permit that traffic mitigation measures identified in the Master Plan Special Permit and acceptable to the Developer will be approved by the Planning Board under Site Plan approvals to be issued thereunder for the various Development Project components of the Project as generally sufficient to mitigate the Project's traffic impact on community roadways and to support the full Intensity of Uses permitted under the OSMUD Article; provided, however, that additional mitigation measures may be required during the Site Plan review process if deemed necessary based on analysis of more detailed information relative to site design and actual use;

(iii) Support of the waiver of, or amendment to, the Town's Subdivision Regulations as may be appropriate to allow definitive subdivision approval or endorsement as so-called "Approval Not Required" lots to be granted consistent with the requirements of the OSMUD Zoning Article and the Master Plan Special Permit including Design Guidelines to be incorporated therein which reflect the width and configuration of roadways appropriate to their setting;

(iv) Approval of the acceptance of the Northern and Southern Spine Road Components as public ways after satisfactory completion thereof pursuant to the applicable standards and processes of the Town.

(g) Without limitation of the foregoing, the obligations of the Developer under this Agreement shall be contingent upon approval by the Conservation Commission, in a timely and expeditious manner upon application by the Developer, and in a form and condition satisfactory to the Developer, of a so-called "Limited Project" for the Spine Road (as shown on **Exhibit A**), subject to requirements of applicable law.

(h) Without limitation of the foregoing, the obligations of the Developer under this Agreement shall be contingent upon such actions by the Department of Public Works, undertaken in a timely and expeditious manner and in a form and condition reasonably satisfactory to the Developer:

- (i) such actions as are required under the Alprilla Farms Well Agreement;
- (ii) the approval of the work as referenced in Section 8 of this Agreement;
- (iii) the approval of the transportation mitigation in the TIAS as referenced in Paragraph 9 of this Agreement.

29. Notwithstanding the foregoing, it is agreed that the obligations of the Town under Paragraph 26 of this Agreement shall be in effect upon execution of this Agreement.

30. Notwithstanding the foregoing, it is agreed that the obligations of the Developer under Paragraph 8 of this Agreement shall be in effect following the adoption by Town Meeting of the OSMUD Article and OSMUD Map Amendment in the form recommended for adoption by the Planning Board on March 24, 2008, or in a form and condition satisfactory to Developer, and approval of such Article and Amendment by the Attorney General, with all challenge periods having passed, no challenges pending or, if any such zoning amendment is challenged, the same having been finally disposed of favorably to the Article or Amendment not later than one (1) year from the date of adoption by Town Meeting; provided, however, that, the work specified in Paragraph 8 of this Agreement shall be performed forthwith in the event of the filing of a Notice pursuant to the provisions of §210-172 of the OSMUD Article.

31. Notwithstanding the foregoing, it is agreed that all obligations of the Developer under this Agreement shall be in effect upon the filing of a Notice pursuant to the provisions of §210-172 of the OSMUD Article.

H. Miscellaneous

32. The Planning Board may choose to incorporate the terms of this Agreement by reference and make it a part of any Master Plan Special Permit issued for the Project.

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

Board of Selectmen
Town of Hopkinton
Hopkinton Town Hall
18 Main Street
Hopkinton, MA 01748

with a copy to:

J. Raymond Miyares, Esq.
Miyares and Harrington LLP
50 Leonard Street
Belmont, MA 02478

If to the Developer to:

Legacy Farms LLC
c/o Boulder Capital
21 Center Street
Weston, MA 02493

with a copy to:

Marilyn L. Sticklor, Esq.
Goulston & Storrs
400 Atlantic Avenue
Boston, MA 02110.

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

34. If and to the extent that either of the Parties is prevented from performing its obligations hereunder by an event of *force majeure*, such party shall be excused from performing hereunder and shall not be liable in damages or otherwise, and the Parties instead shall negotiate in good faith with respect to appropriate modifications to the terms hereof. For purposes of this Agreement, the term *force majeure* shall mean any cause beyond the reasonable control of the affected party, including without limitation requirement of statute or regulation; action of any court, regulatory authority, or public authority having jurisdiction; acts of God, fire, earthquake, floods, explosion, actions of the elements, war, terrorism, riots, mob violence, inability to procure or a general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, actions of labor unions, condemnation, laws or orders of governmental or military authorities, or any other cause similar to the foregoing, not within the reasonable control of such party obligated to perform such obligation. With respect to any particular obligation of the Developer only, the term *force majeure* shall include the denial of, refusal to grant or appeals of any permit, approval or action of any public or quasi public authority, official, agency or subdivision and any litigation relating to such particular obligation, or any other cause similar to the foregoing, not within the reasonable control of such party obligated to perform such obligation, but the obligation of the Developer under Paragraph 8 of this Agreement shall not include any denial of, refusal to grant or appeal of any permit, approval or action identified in Paragraph 28 of this Agreement.

35. Failure by the Developer to perform any term or provision of this Agreement shall not constitute a default under this Agreement unless and until the Developer fails to commence

to cure, correct or remedy such failure within thirty (30) days of the receipt of written notice of such failure from the Town to the Developer and thereafter fails to complete such cure, correction or remedy within sixty (60) days of receipt of such written notice or, with respect to defaults which cannot reasonably be cured, corrected or remedied within such sixty (60) day period, within such addition period of time as is reasonably required to remedy such default, provided the Developer exercises due diligence in the remedying of such default.

36. The obligations of the Developer, with the exception of those set forth in the Fee Letter, do not constitute the personal obligations of Developer or of the members, trustees, partners, directors, officers, or shareholders of Developer or any direct or indirect constituent entity of Developer or any of its or their affiliates or agents, and the Town shall not seek recourse against any of the foregoing or any of their personal assets for satisfaction of any liability with respect to this Agreement or otherwise. In no event shall Developer be liable for any damages, incidental, indirect, punitive or special or consequential damages, but the Town shall have the recourse to injunctive relief or specific performance to enforce this Agreement in the event of default by Developer.

37. This Agreement shall be binding upon the Parties and their successors and assigns, and shall run with the land. However, from and after the issuance of a Certificate of Occupancy with respect to any Buildable Area within the Site, such Buildable Area and any Restricted Land made subject to a Restricted Land Covenant in connection with such Buildable Area, shall not be subject to, and shall be released from, any further liability under this Agreement.

(a) Transfer of Development Projects; Release of Developer from Obligations

For all purposes under this Host Community Agreement with respect to obligations of an on-going nature related to the operation of any particular Development Project, upon the transfer of a Developer Project by the Developer to a successor by an instrument which contains a requirement that such successor fulfill all applicable provisions of the Host Community Agreement and upon the issuance of a Completion Certificate with respect to such Development Project or phase thereof by the Director of Municipal Inspections, the Developer shall be released from the particular obligations which shall remain binding on such successors and assigns.

38. Each Party agrees from time to time, upon not less than twenty one (21) days' prior written request from the other, to execute and deliver a statement in writing certifying that this Agreement is in full force and effect (or if there have been any modifications, setting them forth in reasonable detail), and that there are no uncured defaults of either Party under this Agreement, in form reasonably acceptable to and which may be relied upon by any prospective purchaser, tenant, mortgagee or other party having an interest in the Project.

39. Whenever the consent or approval of any party is required under this Agreement, such consent or approval shall not unreasonably be withheld, delayed or conditioned. Such approval shall be deemed given if no written response is received within ten (10) business days of the request for approval having been so delivered; provided, however, that, in the event that

the Town Manager or his designee provides notice within such ten (10) business day period that additional time is needed for the Town to provide such written response not to exceed twenty (20) additional business days, the requested approval shall not be deemed given if a written response is received as soon as practicable but not later than the expiration of the time specified in such notice.

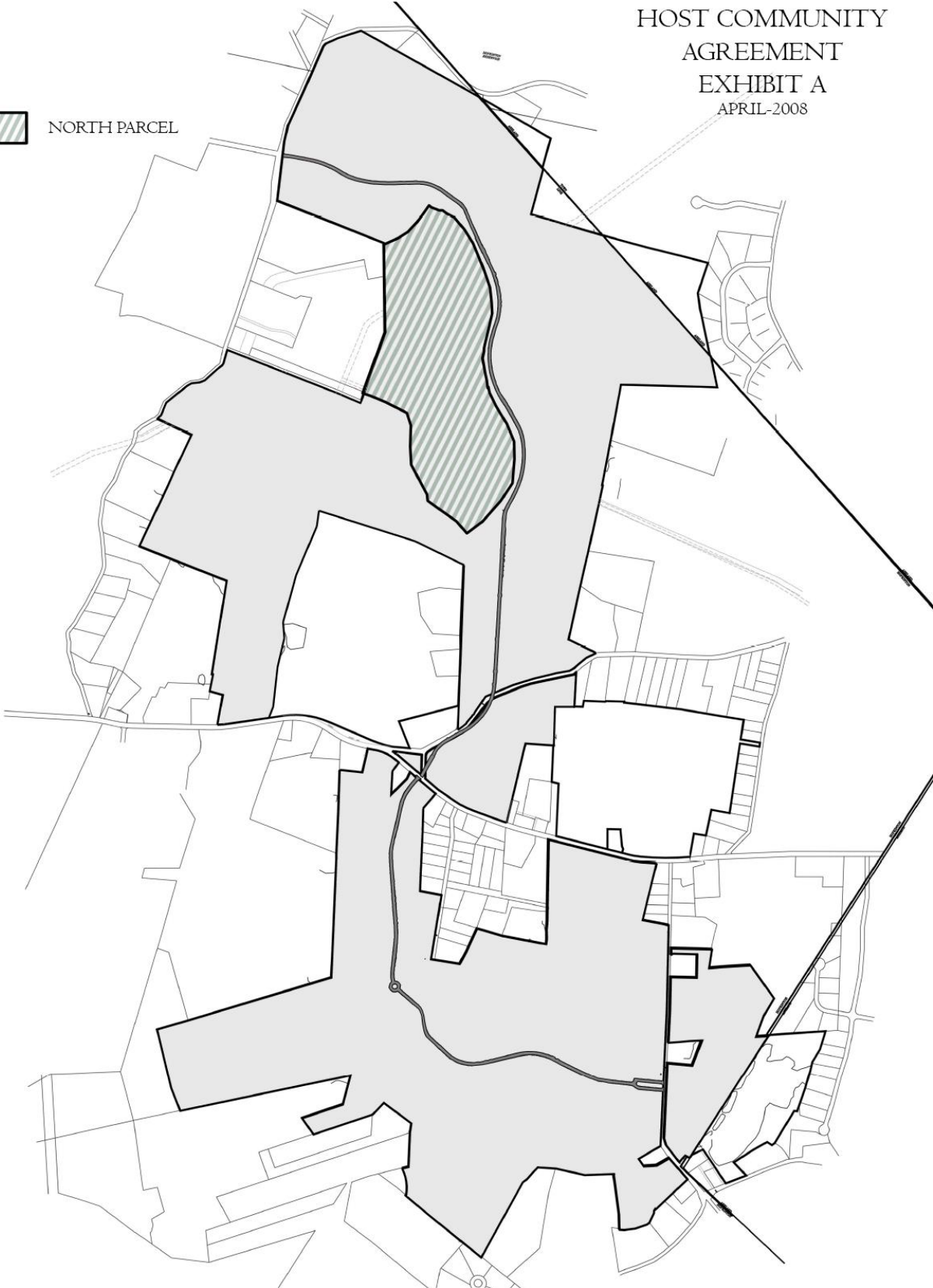
40. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

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

Executed under seal.

HOST COMMUNITY
AGREEMENT
EXHIBIT A
APRIL-2008

 NORTH PARCEL



HOST COMMUNITY
AGREEMENT
EXHIBIT B
APRIL-2008

