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CAPE COD  
COMMISSION

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This Development Agreement (this “Agreement”) is entered into as of this \_\_\_ day of \_\_\_ 2023 (the “Effective Date”), by and among the Cape Cod Commission (the “Commission”), and Lennar Multifamily Communities, LLC (“LMC”) and each of their respective successors and assigns. The Commission and LMC shall collectively be referred to herein as the “Parties”.

### **PARTIES**

**WHEREAS**, LMC is a Limited Liability Company in the business of real estate development; and

**WHEREAS**, the Commission is the regional planning agency for Barnstable County established by Chapter 716 of the Acts of 1989, as amended (the “Act”); and

### **BACKGROUND**

**WHEREAS**, pursuant to the Act, the Commission has the authority to review certain developments of regional impact (“DRI”) which, due to their size, location, or character are likely to affect more than one community; and

**WHEREAS**, the Commission has adopted the Code of Cape Cod Commission Regulations of General Application, including inter alia, Chapter A: Enabling Regulations Governing Review of Developments of Regional Impact, (“Chapter A”) for the purpose of reviewing proposed DRIs; and Chapter D: Enabling Regulations Governing the Provisions for Development Agreements, (“Chapter D”); and

**WHEREAS**, for a project otherwise requiring review as a DRI, Chapter D provides for the approval of Development Agreements, which is a contract entered into in lieu of Development of Regional Impact review and in particular Section 5 thereof, which outlines the process by which a Development Agreement may be entered into by and between the Commission and a Qualified Applicant; and

## PROCEDURAL HISTORY

**WHEREAS**, on December 18, 2020, LMC filed a Notice of Intent to file a Development Agreement Application (the "NOI") with the Commission; and

**WHEREAS**, on February 25, 2021, the Commission determined that the proposed Project as described in the NOI application was eligible and suitable to be the subject of a Development Agreement; (See Commission NOI decision) and

**WHEREAS**, on May 28, 2021 LMC filed a Development Agreement Application with the Commission;

**WHEREAS**, on January 5, 2022, the Commission deemed the application complete;

**WHEREAS**, on January 18, 2022, the Commission Chair appointed a subcommittee ("Subcommittee") to represent the Commission in negotiating a Development Agreement;

**WHEREAS**, the appointed Commission subcommittee held duly noticed public hearings and meetings on the Project and to negotiate this Development Agreement on March 22, 2022, April 12, 2022, May 17, 2022, May 31, 2022, June 8, 2022, July 12, 2022, July 28, 2022, December 20, 2022, and January 5, 2023 in accordance with Chapter D; and

## PROPOSED PROJECT

**WHEREAS**, LMC proposes to redevelop a portion of the 54-acre +/- property at 35 Scudder Avenue in Barnstable, Massachusetts (the "Property"), which Property was previously used as the Twin Brooks golf course;

**WHEREAS**, LMC proposes to divide the Property into two lots: a 14-acre +/- lot and a 40-acre +/- lot, as shown on Exhibit 1 (Proposed Parcel Plan); and

**WHEREAS**, LMC proposes to redevelop the 40-acre +/- lot ("Site"), with a residential development consisting of 312 new rental units located in thirteen (13) multifamily buildings, a recreation building, and other associated improvements and amenities ("Project"); and

**WHEREAS**, LMC proposes to record a Conservation Restriction to protect approximately 20.11 acres of the Site ("CR Area"), as shown on Exhibit 2(i) (Conceptual Conservation Restriction Plan); and

**WHEREAS**, LMC proposes to restore approximately 9.84 acres of the CR Area, which is currently disturbed golf course area ("Restoration Area"), as outlined in Exhibit 3 (Emblem-Hyannis Restoration Plan) (the "Restoration Plan"); and

**WHEREAS**, no less than 13% of the units within the Project will be Affordable Units as such term is defined in the Commission’s Housing Technical Bulletin; and

**WHEREAS**, in connection with the Project, LMC will provide transportation improvements, as outlined in Exhibit 3 (Emblem Hyannis Transportation Improvement Program Memorandum) and shown in Exhibit 4 (Scudder Avenue/West End Rotary/Main Street Safety and Mobility Improvements); and

**WHEREAS**, in connection with the Project, LMC will connect the Project to the Town’s sewer and make a payment to offset the cost of upgrading the Town’s wastewater infrastructure; and

**WHEREAS**, in connection with the Project, LMC will make efforts to improve the West End Rotary by providing for cross connections to reduce curb-cuts as shown on Exhibit 5 (Potential Cross Connections to Reduce Curb-Cuts);

**WHEREAS**, the Project will be developed as shown on the following plans and documents (the “Approved Project Plans”):

- Exhibit 1 Proposed Parcel Plan (DRAFT), Sheet C1.0, 35 Scudder Avenue Hyannis, MA 02601, prepared for Lennar Multifamily Communities, LLC by Baxter Nye Engineering & Surveying (dated 12-10-2020)
- Exhibit 2 The Proposed Emblem at Hyannis Residences, 17 Sheets, 35 Scudder Avenue, Hyannis, Massachusetts, prepared for Quarterra by Pesce Engineering (revised 09-23-2022)
  - (a) Cover Sheet, Sheet 1 of 17,
  - (b) Existing Conditions Plan, Sheet 2 of 17
  - (c) Site Overview Plan, Sheet 3 of 17
  - (d) Layout and Parking Plan (3 Sheets), Sheets 4-6 of 17
  - (e) Grading & Drainage Plan (3 Sheets), Sheets 7-9 of 17
  - (f) Utilities Plan (3 Sheets), Sheets 10-12 of 17
  - (g) Erosion Control Plan, Sheet 13 of 17
  - (h) Emergency Access Plan, Sheet 14 of 17
  - (i) Conservation Restriction Plan, Sheet 15 of 17
  - (j) Detail Sheet (2 Sheets), Sheets 16-17 of 17
- Exhibit 3 Scudder Avenue/West End Rotary/Main Street Safety and Mobility Improvements, 3 Sheets, Transportation Impact Assessment-Proposed Residential Development- Hyannis, Massachusetts, prepared by Vanasse & Associates inc, (dated 09-12-2022)
- Exhibit 4 Potential Cross Connections to Reduce Curb-Cuts, 1 Sheet, Transportation Impact Assessment-Proposed Residential Development-Hyannis, Massachusetts, prepared by Vanasse & Associates inc (dated 09-14-2022)
- Exhibit 5 Emblem-Hyannis Restoration Plan, prepared for Quarterra by ILEX Environmental, Inc. (revised 12-08-2022)
- Exhibit 6 Emblem Hyannis (Landscape Plans), 10 Sheets, 35 Scudder Avenue, Hyannis, MA, prepared by Michael D' Angelo Architecture LLC (revised 10/21/2022)

- (a) L0 Layout Key Plan, Sheet 1 of 10
  - (b) L1 Planting and Lighting Plan, Sheet 2 of 10
  - (c) L2 Planting and Lighting Plan, Sheet 3 of 10
  - (d) L3 Planting and Lighting Plan, Sheet 4 of 10
  - (e) L4 Planting and Lighting Plan, Sheet 5 of 10
  - (f) L5 Typical Building Planting Enlargement, Sheet 6 of 10
  - (g) L6, Photometric Plan, Sheet 7 of 10
  - (h) L7, Photometric Plan, Sheet 8 of 10
  - (i) L8, Photometric Plan, Sheet 9 of 10
  - (j) L9, Landscape Details, Sheet 10 of 10
- Exhibit 7 Enhanced and Redesigned Building Elevations, 2 Sheets, Emblem Hyannis, MA prepared for Quarterra by BSB Design (dated 12-01-2022)
- Exhibit 8 Enhanced and Redesigned Building Elevations, 1 Sheet, Emblem Hyannis, MA prepared for Quarterra by BSB Design (dated 11-17-2022)
- Exhibit 9 Unanticipated Discovery Plan (DRAFT), 10 pages, for Development of a Parcel of Land at 35 Scudder Avenue in Hyannis, Massachusetts, prepared for Lennar Multifamily Communities (dated 07-2022)
- Exhibit 10 Drainage Analysis Report, 14 Pages & Appendices A-H, Emblem Hyannis, Proposed Multifamily Residences located at 35 Scudder Avenue, Hyannis, Massachusetts, prepared for Quarterra by Pesce Engineering & Associates, Inc. (dated 10-11-2022)

## **DESCRIPTION OF PUBLIC BENEFITS AND IMPROVEMENTS**

**WHEREAS**, LMC has agreed to provide the following public benefits and improvements:

- (1) The provision of 312 units of year-round, market rate, affordable, and workforce rental housing, which will contribute to housing choice and attainability for year-round residents of Cape Cod;
- (2) Contributions to public infrastructure, including:
  - a. Adding sidewalk and crosswalk infrastructure proximate to the Site;
  - b. Upgrading existing pedestrian and crossing infrastructure proximate to the Site and to the West End Rotary to meet the requirements of the Americans with Disabilities Act (ADA);
  - c. Constructing a shared use path along Scudder Ave between Greenwood Avenue and the West End Rotary and along Main Street between the West End Rotary and Potter Avenue;
- (3) Conservation of approximately 20.11 acres of the Site by recorded Conservation Restriction; and

- (4) Restoration of 9.82 acres of previously disturbed golf course areas under a restoration plan that includes monitoring and maintenance for a minimum of three years post-construction to ensure restoration goals are met.

#### **STATEMENT OF COMPLIANCE WITH THE ACT AND THE REGIONAL POLICY PLAN**

**WHEREAS**, the Act charges the Commission with the protection, preservation and enhancement of the unique natural, coastal, scientific, historical, cultural, architectural archaeological, recreational and other values of Cape Cod; and

**WHEREAS**, the Act provides that the further purposes of the Commission are the conservation and preservation of natural undeveloped areas, wildlife, flora and habitats for endangered species; the preservation of coastal resources including aquaculture; the protection of groundwater, surface water and ocean water quality, as well as the other natural resources of Cape Cod; balanced economic growth; the provision of adequate capital facilities, including transportation, water supply, and solid, sanitary and hazardous waste disposal facilities; the coordination of the provision of adequate capital facilities with the achievement of other goals; the development of an adequate supply of fair affordable housing; and the preservation of historical, cultural, archaeological, architectural, and recreational values; and

**WHEREAS**, the Act requires the preparation of a Regional Policy Plan that presents a coherent set of regional planning policies and objectives to guide development throughout Barnstable County, to protect the region's resources, and to reflect and reinforce the goals and purposes of the Act; and

**WHEREAS**, the most recent update to the Regional Policy Plan was approved as Barnstable County Ordinance 19-01, effective February 22, 2019 (the "RPP"); and

**WHEREAS**, the goals and objectives of the RPP derive from the values and purposes set out in section 1 of the Act. The goals and objectives guide and plan for the future of the region in a manner consistent with the vision and growth policy, around the region's natural, built, and community systems; and

**WHEREAS**, in support of the RPP, the Commission developed Technical Guidance. The primary application of the Technical Guidance is to assist the Commission in its determination of whether a project is consistent with applicable RPP goals and objectives, and additionally, to detail how an applicant could design and pursue its project to meet the applicable RPP goals and objectives; and

**WHEREAS**, the RPP identifies the need to promote housing diversity and an increase in year-round housing supply to provide an adequate supply of housing that is attainable for people with different income levels and diverse needs; and

**WHEREAS**, the Commission, in its Housing Technical Bulletin, defines the terms:

“AMI” as Area Median Income as determined by the U.S. Department of Housing and Urban Development (HUD);

“Affordable Housing” as housing for households earning at or below 80% of AMI;

**WHEREAS**, pursuant to the RPP, the Project context, as defined by Placetype, provides a lens through which the Project should be considered, relative to existing development in the area; and

**WHEREAS**, the Property includes both land that is mapped as Community Activity Center Placetype and land that is mapped as Natural Area Placetype as defined by the RPP; and

**WHEREAS**, Community Activity Centers are areas with a concentration of business activity, community activity, and a compact built environment that are more walkable and densely developed than other Placetypes and typically have ample access to transit, bike connections, and sidewalks; the RPP vision for Community Activity Centers is to accommodate mixed-use and multifamily residential development in a walkable, vibrant area, and, among other things, to provide diverse services, housing, and job opportunities with adequate infrastructure and pedestrian amenities to support development; and

**WHEREAS**, Natural Areas are generally the region’s least developed and most sensitive areas and the RPP vision for Natural Areas is to minimize adverse development impacts to sensitive resource areas, to preserve lands that define Cape Cod’s natural landscape and contribute to its scenic character, and to improve the Cape’s resilience to severe storms and the effects of climate change; Natural Areas are lands with the highest significance for resource protection or conservation and are appropriate for permanent protection through acquisition and conservation restriction or for transfer of development rights to less vulnerable areas; and

**WHEREAS**, the residential development will be constructed within the area mapped as Community Activity Center Placetype and the undeveloped areas that make up the eastern, southern, and western boundaries of the property that are mapped as the Natural Areas Placetype will be preserved as open space and/or restored; and

**WHEREAS**, at public meetings and hearings on July 28, 2022 and December 20, 2022, the Commission through its subcommittee made findings with respect to the Project’s consistency

with the RPP. The Project's RPP consistency is summarized in Exhibit 11 (Regional Policy Plan Consistency) of this Agreement;

**WHEREAS**, as shown in Exhibit 11 (Regional Policy Plan Consistency), the Project is consistent with all applicable goals and objectives of the RPP, with the exception of Objective WET1, because it proposes development in the area of an isolated vegetated wetland and Objective WR4, because redevelopment of the golf course with housing will not reduce impervious area.

**WHEREAS**, Chapter D, Development Agreement Regulations provide that the Commission may approve a development agreement which is inconsistent with the RPP if the inconsistency is necessary to enable a substantial segment of the population to secure adequate opportunities for, *inter alia*, housing and the interests protected by the Act and RPP can be advanced or protected by an alternate approach, which shall include appropriate mitigation;

**WHEREAS**, the Commission through its subcommittee at a meeting on July 28, 2022 found that the Project's inconsistency with RPP Objective WET1 is necessary to enable a substantial segment of the population to secure adequate housing and that the Project advances and protects the interests protected by the Act and the RPP through the alternative approach of providing wetlands mitigation in the form of a recorded conservation restriction on approximately 20.11 acres of the site and restoration of approximately 9.84 acres of previously disturbed golf course areas; and

**WHEREAS**, the Commission through its subcommittee at a meeting on December 20, 2022 found that the Project's inconsistency with RPP Objective WR4 is necessary to enable a substantial segment of the population to secure adequate housing and that the Project advances and protects the interests protected by the Act and the RPP through the alternative approach of providing mitigation in the form of clustering development on the site; directly infiltrating roof runoff; reducing impervious area in Wellhead Protection Overlay district; incorporating bioretention areas in parking and roadway areas; designing the stormwater system design according to Massachusetts Stormwater Handbook standards; reducing fertilized turf and treats stormwater runoff to reduce sitewide nitrogen loading over current conditions; and adding additional bioretention capacity within the clubhouse traffic circle; and

**WHEREAS**, the Commission at meetings and hearings on July 28, 2022 and December 20, 2022 found that, as mitigated through the terms and conditions of this Agreement, the Project is consistent with the RPP and the Act; and

### **STATEMENT OF COMPLIANCE WITH THE LOCAL COMPREHENSIVE PLAN AND LOCAL ZONING**

**WHEREAS**, The Town of Barnstable Director of Planning and Development submitted a letter to the Commission on March 22, 2022, which letter is attached hereto as Exhibit 12; and

**WHEREAS**, the Project is located within a Regulatory Agreement District under the Town of Barnstable Zoning Ordinance and will be subject to a regulatory agreement process with the Town of Barnstable pursuant to Section 168 of the Barnstable Zoning Ordinance; and

**WHEREAS**, pursuant to Section 168-6 of the Barnstable Zoning Ordinance, the Town of Barnstable may grant waivers from any inconsistencies with applicable zoning requirements; and

**WHEREAS**, the Local Comprehensive Plan (LCP) for the Town of Barnstable seeks to provide additional housing options in downtown Hyannis that could provide multimodal connectivity to the downtown economic center and potentially protect environmentally sensitive areas and preserve undisturbed natural areas; and

**WHEREAS**, the Regulatory Agreement review process and related Site Plan Review of the Project, the Town of Barnstable will continue to evaluate the Project's consistency with the LCP; and

**WHEREAS**, at a meeting on July 28, 2022, the Commission through its Subcommittee found that, subject to completion of the Town Regulatory Agreement process, the Project will be consistent with the Town's Local Comprehensive Plan, local development ordinances, and applicable state law; and

## **AGREEMENT**

**NOW, THEREFORE**, in consideration of the public benefits and improvements LMC has agreed to provide as described above, and the mutual covenants contained herein, the Parties agree as follows:

### **Project Development and Review**

1. LMC will develop the Project in accordance with the Approved Project Plans, and shall provide all mitigation, infrastructure and monetary contributions described in this Agreement.
2. This Agreement is effective as of the Effective Date and the term or duration of this Agreement shall be twelve (12) years from the Effective Date. During the term of this Agreement, provided that the Project is constructed consistent with the terms and



conditions of this Agreement, and in compliance therewith, it shall not be subject to review as a DRI pursuant to Sections 12 and 13 of the Act.

3. The Commission will limit regulatory review of the development of the Project to consistency with the RPP as provided for within this Agreement and with the Approved Project Plans incorporated herein.
4. The Project authorized by this Agreement shall be subject to a freeze of the application of DRI Review thresholds under Sections 12 and 13 of the Act and Chapter A.

LMC, as further consideration for this Development Agreement, agrees to be bound by the following conditions on the Project:

### **GENERAL CONDITIONS**

- C1. Prior to issuance of a building permit for any building(s) constructed on the Property, LMC, will obtain a Preliminary Certificate of Compliance from the Commission confirming that all applicable terms, conditions, and provisions of this Agreement to allow for commencement of construction of that building or identified group of buildings (each, a "Phase") have been satisfied or completed.
- C2. Prior to and as a condition to the issuance of a Preliminary Certificate of Compliance, LMC shall provide to the Commission a draft form of lease that will be offered to prospective tenants. The form lease shall provide for a standard term of not less than twelve (12) months.
- C3. Prior to and as a condition to the issuance of a Preliminary Certificate of Compliance, LMC shall provide to the Commission an executed Regulatory Agreement with the Town of Barnstable (the "Regulatory Agreement")
- C4. Prior to the issuance of a Certificate of Occupancy from the Town for any Phase of the Project, LMC will obtain a partial Certificate of Compliance with respect to such Phase (a "Partial Certificate of Compliance") from the Commission for such Phase confirming that the building(s) and relevant site work have been constructed in full compliance with all applicable terms and conditions contained herein.
- C5. A Final Certificate of Compliance may be issued by the Commission following or in lieu of partial Certificate(s) for the full completion of the Project, so long as each such Phase of the Project is in full compliance with all terms and conditions contained herein.
- C6. All proposed buildings, structures, infrastructure, landscaping, and sitework for the Development will be in substantial conformity with the Approved Project Plans referenced herein; provided however, that where terms or conditions of this

Agreement are more restrictive than what is shown on the Approved Project Plans, the terms and conditions of this Agreement shall govern.

### **NATURAL RESOURCES CONDITIONS**

- C7. If a material change is made to the Restoration Plan as a result of a requirement imposed by a state or municipal entity and such modification is deemed by Commission staff to be more restrictive than those set forth in the Approved Project Plans, then such change shall not require modification pursuant to Section 8 of Chapter D. Any modified plans approved pursuant to this provision shall be incorporated into the Approved Project Plans.
- C8. The Restoration Plan shall be implemented by a third party, experienced in landscaping and ecological restoration, selected by LMC and approved by Commission staff. LMC shall enter into an agreement with such third party to monitor and maintain work performed under the Restoration Plan for a period of three years after construction. LMC shall provide the third party's contact to Commission staff and the third party shall provide periodic updates to Commission staff at intervals of no less than every six months. If at any time during the monitoring period, the third party recommends more plantings for the purposes of successful restoration, LMC shall add the recommended plantings.
- C8A. Prior to and as a condition to issuance of a Final Certificate of Compliance, LMC shall provide an executed monitoring agreement, as required under C8, with a third party, approved by Commission staff.

### **WATER RESOURCES CONDITIONS**

- C9. All wastewater from the Property will be pumped to and treated at the Town of Barnstable's municipal wastewater treatment facility.
- C10. Prior to and as a condition to the issuance of a Partial Certificate of Compliance for the first phase of the Project, LMC shall provide a monetary offset in the amount of \$175,000 payable to the Barnstable County Treasurer to be distributed to the Town of Barnstable for the purpose of upgrading an existing municipal sewer pump station.
- C11. Stormwater infrastructure will be designed in accordance with an approved storm water management plan and constructed to adequately infiltrate runoff based on a 100-year storm event.
- C12. Stormwater management systems will include Low Impact Design-focused practices, with distributed bioretention and other Best Management Practices designed to allow for infiltration while routing overflow to the infiltration basins.

C12A. Prior to final design, the Applicant shall evaluate the feasibility of adding an additional bioretention area in the vicinity of the roundabout located adjacent to the clubhouse. Final plans for the bioretention areas shall be approved by Commission staff prior to issuance of a Preliminary Certificate of Compliance. Bioretention plantings may be determined based on availability at time of construction. Any species to be planted in bioretention areas that are not included in the Landscape Plan's "Bioretention Palette" shall be checked against the list of suggested species for bioretention plantings in Volume 2 Chapter 2 of the Massachusetts Stormwater Handbook, and approved by Commission staff as an appropriate native or non-invasive species for the site.

- C13. Prior to and as a condition to the issuance of a Preliminary Certificate of Compliance, LMC will submit for review and approval by Commission staff final stormwater management plans and an updated stormwater management report in substantially conformity with Exhibit 10 (Drainage Analysis Report) with updated stormwater treatment and capacity calculations, including updated nitrogen loading calculations.

C13A. Prior to and as a condition to the issuance of a Preliminary Certificate of Compliance, LMC shall provide a re-calculated estimate of seasonal high groundwater using actual depth to groundwater measurements from previous or upcoming site investigations and the appropriate adjustment factor and used to verify sufficient separation between stormwater infiltration BMPs and the seasonal high groundwater level.

- C14. Prior to and as a condition to the issuance of a preliminary Certificate of Compliance, LMC shall submit for review and approval by Commission staff an Operations and Maintenance Plan, which will confirm that the Project (including any Phase thereof) has been designed to meet all stormwater quality under the Town of Barnstable stormwater requirements and the Stormwater Management Guidelines of the Massachusetts Department of Environmental Protection.
- C15. Prior to and as a condition to the issuance of a Preliminary Certificate of Compliance, LMC shall submit for review and approval by Commission staff a Stormwater Pollution Prevention Plan that details phasing of the stormwater management system during construction.

## **OPEN SPACE CONDITIONS**

- C16. Prior to and as a condition to the issuance of a Preliminary Certificate of Compliance by the Commission, LMC shall submit for Commission staff review and approval,

which approval shall not be unreasonably withheld, a draft perpetual conservation restriction (the "Conservation Restriction") consistent with Massachusetts General Laws Chapter 184, §§31-33, and accompanying plans. Said draft conservation restriction shall be accompanied by correspondence identifying a grantee willing and able to hold the restriction on the 20.11-acre +/- Conservation Area (the "Conservation Area") (identified on Exhibit 2(i)).

C16A. Prior to and as a condition to issuance of a Partial or Final Certificate of Compliance by the Commission, the LMC shall provide to the Commission a copy of the instrument or instruments restricting the Conservation Area as registered with the Barnstable County Registry of Deeds, and as previously reviewed and approved by Commission staff.

C16B. The Conservation Restriction contemplated by this Condition C16 is subject to the review and approval of appropriate state and local authorities. The Applicant shall use all reasonable efforts to obtain all necessary approvals for the recording of the Conservation Restriction in accordance with the terms of this Condition C16. The Commission shall accommodate any changes reasonably requested by the appropriate authorities. In the event the Conservation Restriction is not approved by all applicable authorities, the Commission finds changes to Conservation Restriction requested by such authorities to be unreasonable, or some other circumstances out of the Applicant's control prevent or interfere with execution, recording or registration of such Conservation Restriction, the Commission may issue such Certificate of Compliance requested by the Applicant, provided the Applicant takes such other actions which, in the reasonable discretion of the Commission staff, appropriately serves the purposes of preserving high quality open space, protecting wildlife and plant habitat or other natural resources, providing recreational opportunities, and reducing the effects of sprawl. Such actions may include but are not limited to recording an instrument, as approved by the Commission, to effectuate a private open space restriction, renewable by its own terms and under Chapter 184 of the General Laws in favor of a body or instrumentality of the Town, private trust, or such other entity as the Commission, in its reasonable discretion, deems appropriate for such purposes. The Conservation Restriction, as applicable, shall be made senior to any mortgage encumbrance.

C17. In connection with obtaining approval of the proposed Conservation Restriction, LMC shall provide a recreational trail on the Project Site. A plan showing such recreational trail shall be reviewed and approved by Commission staff prior to issuance of a Preliminary Certificate of Compliance.

## **WASTE MANAGEMENT CONDITIONS**

- C18. Prior to and as a condition to issuance of a Preliminary Certificate of Compliance, LMC or its designee will submit to the Commission a plan detailing how residential recycling will be provided to residents for review and approval by Commission staff. The approved plan will be incorporated into the Approved Project Plans.

### **COMMUNITY DESIGN CONDITIONS**

- C19. Facades and proportions of all buildings shall be in substantial conformity with the buildings shown on Exhibit 8 and Exhibit 9 (Enhanced and Redesigned Building Elevations); provided however, that the following conditions must be met: no building may exceed 42' 6" in measurement from grade to roof ridge; hip roofs shall be used on all buildings and shall not exceed 10' 8" in measurement from eave to ridge; if building length exceeds the length shown in Exhibit 8 and Exhibit 9, façades must have an equal or greater proportion of façade variation to length.
- C20. Prior to and as a condition to issuance of a Preliminary Certificate of Compliance, LMC shall submit construction plans including site plans, elevation plans for all facades of all buildings with an appropriate scale, and landscaping plans associated with screening and revegetation areas, to Commission staff for review and approval. Submitted plans will be reviewed for consistency with the Approved Project Plans and the terms and conditions herein, with particular attention to the height and roof form and overall dimensions of the buildings.
- C21. Prior to and as a condition to issuance of a Final Certificate of Compliance, LMC shall submit as-built plans including site plans, elevation plans for all facades of all buildings with an appropriate scale, and landscaping plans to Commission staff for review and approval. Submitted plans will be reviewed for consistency with the Approved Project Plans and the terms and conditions hereof.
- C22. If LMC proposes a building design that substantially deviates from the Approved Project Plans approved herein, a request for modification shall be submitted pursuant to Section 8 of Chapter D. However, if a change is made to the design as a result of a requirement imposed by the Town and such modification is deemed by Commission staff to be more restrictive than those set forth in the Approved Project Plans approved by the Commission, then such design change shall not require modification pursuant to Section 8 of Chapter D. Any modified plans approved pursuant to this provision shall be incorporated into the Approved Project Plans.
- C23. Prior to and as a condition to issuance of a preliminary Certificate of Compliance for any building, LMC will submit a draft landscape maintenance agreement for approval by Commission staff for that building or buildings, as applicable, will provide a fully executed landscape maintenance contract for landscaping associated

with each building(s) at the time of planting and prior to the issuance of a partial Certificate of Compliance for that building or buildings. The length of the contract will be for three (3) full growing seasons for the landscaping of each building(s). Amendments of an existing maintenance contract to incorporate subsequent building(s) may be allowed. The contract will include irrigation, pruning, guying, mulching, pest management, fertilizing, erosion repair, lawn maintenance, and replacement of dead vegetation, including grass, trees, and shrubs.

- C24. All Project lighting will have a full cut-off of light at no less than 90-degrees from vertical and no site lighting will extend beyond the boundaries of the Property.

### **TRANSPORTATION CONDITIONS**

- C25. A Transportation Demand Management (TDM) program shall be implemented for the Project and shall include the following measures:

- Transportation Demand Management Coordinators (TDMC) (who may also have other duties and responsibilities) will be designated to serve as the single point of contact for residents and employees, as applicable, and to lead the TDM program and associated marketing and outreach activities;
- Information regarding public transportation services, maps, schedules and fare information will be posted in a central location and/or otherwise made available to residents and employees;
- A “welcome packet” will be provided to residents and employees detailing available commuter options and will include the contact information for the TDMC and information to enroll in the employee rideshare program;
- Work-at-home workspaces (i.e., meeting/collaboration areas or similar) will be provided within the development to support telecommuting by residents;
- Pedestrian accommodations will be incorporated into the Project and consist of sidewalks and Americans with Disabilities Act (ADA)-compliant wheelchair ramps at all pedestrian crossings internal to the Property that will link building entrances to the sidewalk infrastructure;
- Exterior and interior weather-protected bicycle parking/storage

- C26. Prior to and as a condition to the issuance of a preliminary Certificate of Compliance, LMC shall make all reasonable efforts to obtain all necessary rights, permits and approvals to implement the transportation improvements under C27, and as may be further shown on Exhibit 3 and Exhibit 4 (the “Transportation Improvements”).

C26A. In the event the permits and approvals for the Transportation Improvements are not approved by all applicable authorities, the Commission

finds changes to proposed traffic mitigation program that are requested by such authorities to be unreasonable, or some other circumstances out of the Applicant's control prevent or interfere with implementing the Transportation Improvements, the Commission may issue such Preliminary Certificate of Compliance requested by the Applicant, provided the Applicant takes such other actions which, in the reasonable discretion of the Commission staff, appropriately serves the purposes of mitigating and improving transportation infrastructures in the vicinity of the Site. Such actions may include but are not limited to implementing alternative improvements that result in traffic impacts that are less than are currently anticipated to result from the Redevelopment, accounting for the implementation of the Traffic Improvements.

C26B. If a Preliminary Certificate of Compliance is issued under C26A, prior to and as a condition to issuance of a Final Certificate of Compliance, LMC shall complete any other actions or alternative improvements that were required under C26A.

C27. Prior to and as a condition to the issuance of a Final Certificate of Compliance, and subject to obtaining all necessary rights, permits and approvals set forth in C26 above, LMC shall implement the following Transportation Improvements, as further shown on Exhibit 3 and Exhibit 4:

- Replace the existing sidewalk on Scudder Avenue from Greenwood Avenue to the West End Rotary with a 10-foot-wide shared use path on the southern side of the roadway.
- Relocate the existing pedestrian crossing across Scudder Avenue that is situated proximate to 100 Scudder Avenue (Capeway Towing) to the northeast leg of the Scudder Avenue/Greenwood Avenue intersection and install a pedestrian actuated Rectangular Rapid Flashing Beacon (RRFB) with accompanying pedestrian crossing warning signs.
- Improve the existing crosswalk across Scudder Avenue between The Resort & Conference Center at Hyannis and the Melody Tent to include ADA compliant wheelchair ramps and a pedestrian actuated RRFB with accompanying pedestrian crossing warning signs.
- Reconstruct the driveway that serves the Hyannis Package Store, at 775 Main St, to reduce conflicts with pedestrians, bicyclists and motor vehicles and provide for interconnections as shown on Exhibit 4.
- Install crosswalks with accompanying ADA compliant wheelchair ramps and pedestrian actuated RRFBs with pedestrian crossing warning signs on the

Scudder Avenue, Main Street and West Main Street approaches of the West End Rotary.

- Replace the existing sidewalk on the southern side of the roadway with a 10-foot-wide shared use path to extend from the West End Rotary to Potter Avenue.
  - Reconstruct the existing median island at the intersection of Main Street and Potter Avenue/Stevens Streets to include a pedestrian crosswalk with ADA compliant wheelchair ramps and a pedestrian actuated RRFB with accompanying pedestrian crossing warning signs.
  - Install a 5-foot-wide sidewalk along the north side of North Street from the West End Rotary to existing crosswalk approximately 700 feet east of the West End Rotary
  - Improve the existing crosswalk across North Street approximately 700 feet east of the West End Rotary to include ADA compliant wheelchair ramps and a pedestrian actuated RRFB with accompanying pedestrian crossing warning signs.
  - Relocate the driveway to the West End Restaurant, at 20 Scudder Avenue, from the rotary to West Main Street to reduce conflicts within the rotary and with pedestrians and bicyclists.
  - Restripe the circulating area within the rotary to reduce the width of the circulating area and expand the shoulders in order to improve the definition of the traveled way to a single lane. and to accommodate bicycle circulation within the rotary.
  - Upgrade, replace and supplement regulatory and guide signs on the approaches to and within the rotary.
  - Fund the completion of a Road Safety Audit (RSA) for North Street and Stevens Street and design and construct the short-term safety improvements identified in the RSA.
- C28. Prior to and as a condition to the issuance of a final Certificate of Compliance, LMC shall provide a fair share mitigation payment, in the amount of \$15,672, payable to Barnstable County Treasurer, to address congestion impacts at the intersection of North Street and Stevens Street.
- C29. Prior to and as a condition to the issuance of a final Certificate of Compliance, LMC shall provide a fair share mitigation payment, in the amount of \$8,000, payable to Barnstable County Treasurer, to address congestion impacts at the intersection of West Main Street and Pitcher's Way.
- C30. Fair share congestion mitigation payments made pursuant to C28 and C29 shall be held for and made available to the Town of Barnstable to support projects or strategies within



the village of Hyannis that encourage alternative to automobile transportation or to congestion mitigation strategies including but not limited to planning, engineering, permitting, and construction. A 4% annual inflation rate shall be applied to the congestion mitigation payment for the period of time from the date of the final Commission decisions until the funds are paid.

## **ENERGY CONDITIONS**

- C31. Buildings will have all necessary conduits to allow for roof-mounted solar panel installation. If installation of the roof-mounted solar panels is not feasible prior to LMC requesting a Final Certificate of Compliance, LMC will provide an executed Power Purchase Agreement or Net Metering Credit Purchase Agreement for Renewable Energy Certificates (RECs) to provide at least 25% of on-site energy usage. Prior to and as a condition to issuance of a final Certificate of Compliance, the agreement shall be evaluated by Commission staff for consistency with this condition.
- C32. The Project will contain 26 Electric Vehicle Supply Equipment Parking (EVSE) spaces, with two charging spaces dedicated to each residential building, located in the surface parking area and available for residents' use. EVSE Spaces shall include wiring, electrical service, and EVSE sufficient to provide Level 2 EVSE or equivalent EV charging at a minimum power of 7kW, as defined by Standard SAE J1772 for EVSE servicing light duty Electric Vehicles. The Project will contain infrastructure, including panel capacity and conduit/raceway to accommodate future build-out, for an additional 26 Capable Spaces.
- C33. The Project will include conservation strategies such as individual metering of utilities, Energy Star appliances, and all LED lighting. Utilities serving the residential buildings will be located underground.
- C34. The Project will utilize electric heat pumps for all heating and air conditioning in the residential units.

## **HOUSING CONDITIONS**

- C35. The Project shall at all times remain a 100% rental development of 312 units. No less than 10% of units shall be leased to Eligible Tenants earning up to 65% of AMI (hereinafter, "Low-Income Units") and no less than 3% of the units shall be leased to Eligible Tenants earning up to 80% AMI (hereinafter, "Affordable Units") where an "Eligible Tenant" is a family or individual who will live in the Unit as their primary residence.

- C36. The monthly rents charged to Eligible Tenants of the Affordable Units shall not exceed an amount equal to 30% of the monthly adjusted income of an Eligible Tenant whose gross income equals 80% of the AMI, with adjustment for the number of bedrooms in the Unit, as provided by HUD.
- C37. The monthly rents charged to Eligible Tenants of the Low-Income Units shall not exceed an amount equal to 30% of the monthly adjusted income of an Eligible Tenant whose gross income equals 65% of the AMI, with adjustment for the number of bedrooms in the Unit, as provided by HUD.
- C38. Prior to and as a condition to issuance of the first Preliminary Certificate of Compliance for the Redevelopment, the Applicant shall submit to the Commission a copy of the housing regulatory agreement (as then drafted or executed with the Town of Barnstable and Department of Housing and Community Development, the "Housing Regulatory Agreement"). Commission Staff shall review the Regulatory Agreement to confirm it materially conforms to this Agreement, the RPP requirements and standards set forth in Housing Technical Bulletin with respect to (i) ensuring the Low-Income Units and Affordable Units are identical to all other similarly sized units in the Redevelopment in terms of design, construction, access, and amenities, (ii) the Redevelopment's proposed rents for any and all Affordable Units and Low-Income Units, (iii) monitoring, and (iv) tenant marketing and selection. The Applicant shall record with the Barnstable Registry of Deeds or register with the Barnstable Registry District of the Land Court, as applicable, a copy of an affordable housing use restriction in accordance with the terms and conditions set forth in the Regulatory Agreement and provide the Commission of a copy the Regulatory Agreement as so recorded or registered.
- C38A. Affordable Units and Low-Income Units shall be constructed such that a proportional share of Affordable Units and Low-Income Units to total residential units will be included in each phase of development, i.e., if the first phase of the Project is 25% of the total residential units, then approximately 25% of the total Affordable Units and Low-Income Units must be completed in that first phase, etc. In addition, the unit mix of the Affordable Units and Low-Income Units shall be proportionate to all other units within the Project, i.e., if the Project is comprised of 40% one-bedroom, 50% two-bedroom and 10% three-bedroom, then the bedroom count for the Affordable Units and Low-Income Units shall be similarly allocated.
- C39. No short-term leases are permitted. In connection with the foregoing, all units shall be leased for a term of no less than twelve (12) months; provided however, that 5% of units may be leased for a term of no less than nine (9) months.

## **CULTURAL HERITAGE CONDITIONS**

- C40. Prior to and as a condition to issuance of a preliminary Certificate of Compliance, LMC shall submit for the review and approval of Commission staff a final protocol for addressing unexpected archaeological discoveries during the construction period. The approved protocol will be incorporated into this Agreement and shall replace Exhibit 9 (Unanticipated Discovery Plan DRAFT).

## **MISCELLANEOUS PROVISIONS**

- M1. Any party to this Agreement, may file an action for equitable relief in Barnstable Superior Court to enforce the terms and conditions of this Agreement. The terms of this Agreement shall be specifically enforceable in a court of equity, after the giving of notice and an opportunity to cure, as described below. In the event the Commission believes the Applicant has violated or is about to violate any of its obligations hereunder, the Commission shall give the Applicant written notice of such actual or prospective violation and a 60-day period to commence corrective action provided the Applicant will move forward to correct any such violation and continue until such cure is completed. If the Applicant believes no violation has occurred or is about to occur, it may request a hearing before the Commission or a subcommittee thereof. The 60-day period to commence such action should be suspended until the Commission or subcommittee makes its determination and will resume should the Commission or subcommittee determine a cure is needed. The subcommittee or Commission shall hold its hearing within 45 days of such request. If no amicable resolution is reached within 30 days after the hearing, either Party may seek a judicial resolution.
- M2. This Agreement will be governed by and interpreted under the laws of the Commonwealth of Massachusetts.
- M3. This Agreement shall become effective following the endorsement of this Agreement by the parties hereto, and the issuance and recording of the certificates as provided for in Section 5 of Chapter D.
- M4. LMC will comply with all applicable state and local permitting requirements.
- M5. The burdens of this Agreement will be binding upon, and the benefits will inure to, all successors in interest to its Parties, each as such benefits and burdens apply exclusively or collectively to such Parties, as applicable, as set forth herein. Subject to the foregoing, the Applicant may assign its rights and obligations under this

Agreement to another entity (each a "New Entity") without the consent of the Commission, provided that any such assignment shall be in writing, shall clearly identify the scope of the rights or obligations assigned, and the rights and obligations, if any, retained by the assignor. Without limiting the foregoing, the Applicant may subdivide (including through the creation of one or more condominiums or long term ground leases or such other lawful means in accordance with applicable laws, ordinances, rules and regulations; provided that any condominium created pursuant to this M5 shall not alter the Applicant's obligation to create and maintain 312 rental housing units) the Site so long as such subdivision is consistent with the terms and conditions of this Agreement, and the Applicant may transfer all or any subdivided portion of the Site to a New Entity, subject to the Applicant's and any New Entity's acknowledgement that this Agreement shall run with title to each subdivided portion of the Site and shall be binding upon the Applicant or New Entity insofar as it is the owner of the Site, and each of its successors or assigns as to the obligations which arise under this Agreement during their respective periods of ownership of the Site and/or their respective subdivided portion(s) thereof, provided that each predecessor-in-title shall be forever released from this Agreement upon procuring a written acknowledgement from its immediate successor, addressed to the Commission, acknowledging and agreeing that such successor-in-title is bound by the terms of this Agreement and that this Agreement shall be enforceable against such successor by the Commission with respect to such successor's subdivided portion(s) of the Site the obligations created hereunder shall not be treated as assumed by any New Entity until such notice is delivered to the Commission.

- M6. This Agreement may be modified pursuant to Section 8 of Chapter D of the Enabling Regulations Governing the Provisions for Development Agreements.
- M7. Consistent with Section 4(a)(20) and Section 14 of the Act, the Commission has the authority to negotiate and enter this Agreement, which establishes the permitted uses, densities, and traffic within the development, the duration of the Agreement, and other terms or conditions mutually agreed upon between LMC and the Commission. This Development Agreement vests land use development rights in the Property for the duration of the Agreement, and such rights shall not be subject to subsequent changes in development by-laws or Commission regulations and designations.
- M8. If LMC breaches any terms and/or conditions of this Agreement, the Commission, or its designee, and the breaching party will, as soon as reasonably practicable, meet to discuss the reasons for the breach in an attempt to avoid termination. If, in the Commission's, or its designee's, reasonable judgment, the dispute cannot be

resolved, the Commission, or its designee, will send written notice to the breaching party. The parties agree for notice purposes, written notice shall be sent certified mail, return receipt requested and be addressed as follows:

For the Commission:  
Executive Director  
Cape Cod Commission  
P.O. Box 226  
3225 Main Street  
Barnstable, MA 02630

For LMC:

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Upon receipt of the written notice, the breaching party will have sixty (60) days to cure such breach, or to provide evidence that such party is acting in good faith to attempt to cure the breach. If the breaching party fails to so cure, and notify the Commission, the Commission, or its designee, may vote to send written notice to all parties that this Agreement is terminated and that all further development work by the breaching party(ies) will cease until it has been reviewed as a DRI in accordance with the Act, Chapter A and the RPP in effect at that time.

- M9. The obligations of the Applicant or any New Entity do not constitute personal obligations of their members, trustees, partners, directors, officers or shareholders, or any direct or indirect constituent entity or any of their affiliates or agents. The Commission 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. The liability of the Applicant or a New Entity is in all cases limited to their interest in the Site or subdivided portion thereof at the time such liability is incurred and shall not extend to any other portion of the Site for which another Party has assumed responsibility pursuant to Section M5 hereof. In the event that all or any portion of the Site is subjected to a condominium regime or a long-term ground lease, the condominium association or the ground lessee, as applicable, shall be deemed to be the owner/New Entity of the affected portion of the Site. In no event shall the Applicant or New Entity be liable for any incidental, indirect, punitive, special or consequential damages. No entity comprising the Applicant or any New Entity shall be liable for any obligation or covenant hereunder not arising during the time of its ownership or interest in the Site or the applicable subdivided portion

thereof. Notwithstanding anything to the contrary in this Agreement, the issuance of a Final Certificate of Compliance for any particular Phase (or sub-phase or component thereof) shall be conclusive evidence of the compliance of such Phase (or sub-phase or component) with this Agreement the time such certificate was issued, and shall terminate the obligations and liabilities of the owner of such Phase (or sub-phase or component) under this Agreement, except for any ongoing maintenance, repair, operational and related obligations, which shall survive the issuance of a Final Certificate of Compliance.

- M10. Commission staff shall cooperate as reasonably necessary in connection with the Town's Regulatory Agreement review process, including, without limitation, acknowledging that the Redevelopment is no longer DRI or participating in such Regulatory Agreement as may be necessary to comply with the procedural requirements set forth in Section 168-8 of the Town's Code of Ordinances.
- M11. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which taken together shall constitute one and the same instrument. The Parties agree that a signature sent by facsimile or electronic mail to another Party or counsel for another Party shall have the same force and effect as an original signature.
- M12. This Agreement, together with the Exhibits attached hereto (which are incorporated herein by reference and made a part hereof), constitutes the entire agreement among the Parties pertaining to the subject matter hereof and supersede all prior agreements, understandings, negotiations, and discussions, whether oral or written, of the Parties with respect thereto. No amendment, supplement, modification or waiver of this Agreement shall be binding unless executed in writing by the Party to be bound thereby.
- M13. If any of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, then, to the maximum extent permitted by law, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement
- M14. Nothing in this Agreement shall be construed as an undertaking by the Applicant to construct or complete the Redevelopment, or any portion thereof, and the obligations hereunder being limited to compliance with the provisions hereof to the extent the Redevelopment, or any portion thereof, is commenced, constructed or completed. The Applicant's rights and obligations with respect to the development of any Phase shall in no way require or depend upon the development of any subsequent Phase, including the timing with respect thereto.

M15. Prior to issuance of a Preliminary Certificate, a copy of this Agreement shall be recorded with the Barnstable Registry of Deeds, the costs of recording to be paid by the Applicant.

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