

FIRST AMENDMENT OF MEMORANDUM OF AGREEMENT

This First Amendment of Memorandum of Agreement (the "Amendment") is made this 11th day of March 2013 by and between the Board of Selectmen of the Town of Wellesley (the "Town") and HRV Development, LLC (the "Redeveloper").

W I T N E S S E T H:

The following sets forth the factual background of this Amendment:

- A. The Redeveloper is the owner of the property numbered 53 Grove Street and 576 Washington Street in Wellesley, being the site of the former Wellesley Inn (the "Property").
- B. The Redeveloper's predecessor in title, WB Wellesley Inn, LLC (the "Prior Owner") and the Town previously entered into a Memorandum of Agreement (the "Original Agreement") dated as of February 12, 2007 relating to a redevelopment plan for the Property (the "Original Redevelopment Plan"). The Original Redevelopment Plan provided for the construction of a new building on the Property with nineteen (19) market rate residential units and approximately 9,000 square feet of ground floor commercial space. The Original Redevelopment Plan also provided for the conversion of the existing cottage (the "Cottage") located at 53 Grove Street on the Property into two (2) Assisted Units (as the term is defined in the Zoning Bylaw) and the construction of four (4) additional Assisted Units at locations other than the Property, including two (2) units to be constructed on Town-owned land on Boulevard Road.
- C. The Prior Owner obtained the necessary permits and approvals (the "Approvals") to construct the Original Redevelopment Plan, which Approvals remain in effect. Due to changed economic and market conditions, the Prior Owner did not proceed to construct the Original Redevelopment Plan and the Property remains vacant except for the Cottage.
- D. The Redeveloper intends to redevelop the Property consistent with the Original Redevelopment Plan, subject to certain necessary modifications (the "Revised Redevelopment Plan") as depicted conceptually on the site plan attached hereto as Exhibit A. The Redeveloper has had preliminary meetings with representatives of the Town to discuss and review the changes required in connection with the Revised Redevelopment Plan.
- E. Based on these meetings, representatives of the Town provided initial feedback requesting that the Revised Redevelopment Plan reflecting the following desired changes to the affordable housing component from the approved Redevelopment Plan: (i) that no Assisted Units be constructed on the Town-owned parcel at Boulevard Road and (ii) that, to the extent practicable, all five required Assisted Units be constructed on the Property, as a preferred location for multi-family housing as compared to other potential off-site locations in Wellesley, considering the proximity to services and transit. The Town also requested that the Redeveloper

expressly assume responsibility for the \$250,000.00 mitigation payment for municipal parking and traffic improvements and other mitigation commitments previously agreed to by the Prior Owner in the Original Agreement.

- F. In response to the Town's requests, the Redeveloper modified the Revised Redevelopment Plan to provide for all five (5) required Assisted Units on the Property to be constructed as new multi-family residences in place of the Cottage. The Revised Redevelopment Plan also reflects a reduction in the average unit size and an increase in the number of residential units (by six units) to permit the construction of twenty-five (25) market rate residential units while maintaining both the general massing of the principal building to be constructed on the Property and the approximate size of the commercial component approved by the Redevelopment Plan, which commercial area allows for a restaurant of up to 3,000 square feet.
- G. The Cottage is generally in poor condition and cannot, practically, be renovated for multi-family use. It is necessary to remove the Cottage from the Property in order to construct the five required Assisted Units at 53 Grove Street.
- H. In order to promote the vitality of the Wellesley Square Commercial District ("WSCD"), the Selectmen and Planning Board have placed on the warrant for Town Meeting two articles for consideration by Town Meeting, that, if approved would authorize (i) an amendment of the Wellesley Zoning Bylaws to allow for a special permit (the "Special Permit Amendment") to reduce the minimum lot density requirement applicable in the WSCD and (ii) a change to the applicable zoning district affecting that portion of the Property (as well as that portion of neighboring property at 40 Grove Street) located in the Educational District as shown on the Wellesley Zoning Map (the "Map Amendment") so that the entirety of the Property is contained within the WSCD, to permit the five Assisted Units to be constructed on the Property at 53 Grove Street (the Special Permit Amendment and Map Amendment are defined hereinafter, collectively, as the "Zoning Approvals").
- I. The Zoning Approvals as set forth on the Town Meeting warrant, attached hereto as Exhibit B, are to be subject to a public hearing and considered by Town Meeting in April 2013. If Town Meeting approves the Zoning Approvals, in order to construct the Revised Redevelopment Plan, the Redeveloper will then need to seek and obtain the special permit as contemplated by the Special Permit Amendment as well as necessary amendments to the Approvals previously granted by various Town boards and committees, in order to construct the Revised Redevelopment Plan, as set forth on the list attached hereto as Exhibit C (the "Additional Approvals").

Accordingly, if the Zoning Approvals and Additional Approvals are granted, the Town, and the Redeveloper hereby agree as follows:

- 1. The Original Agreement and all of the obligations set forth therein, including without limitation the obligation to make the \$250,000.00 payment to the Town and such other mitigation commitments as are described in the Original Agreement, shall remain in full force and effect and shall be binding on the Redeveloper upon such terms as previously agreed to by and between the Prior Owner and the Town, modified only as set forth in Paragraphs 2-5 below;

2. The Assisted Units required in connection with the Revised Redevelopment Plan to satisfy the requirements of the Wellesley Inclusionary Housing Bylaw (Section XVIB of the Zoning Bylaws) shall consist of five (5) newly-constructed multifamily housing units in the approximate location of the Cottage and a cash payment to the Town attributable to the retail component of the Revised Redevelopment Plan, calculated in accordance with Section XVIB.E of the Zoning Bylaws. The five (5) on-site Assisted Units shall consist of one (1) three-bedroom unit, three (3) two-bedroom units and one (1) one-bedroom unit, unless an alternate unit mix proposed by the Redeveloper is approved by the Housing Development Corporation. All five (5) Assisted Units shall count on the Subsidized Housing Inventory as administered by the Department of Housing and Community Development following review of architectural plans for the Assisted Units. The external design of the Affordable Units shall be compatible and harmonious with the design of the principal mixed-use building. Occupancy permits for the Assisted Units shall be issued in a ratio proportional to the Conventional Units and the cash payment referenced herein shall be made in accordance with Section XVIB.G.1 of the Zoning Bylaws;
3. The Redeveloper agrees to promptly seek the Additional Approvals by commencing the application process associated with the initial permit filings with the Town no later than thirty (30) days from the approval by Town Meeting of the Zoning Approvals. Thereafter, the Redeveloper agrees to diligently prosecute the redevelopment of the Property substantially in accordance with the Revised Redevelopment Plan by breaking ground within six (6) months following Redeveloper's receipt of all final and unappealable Additional Approvals necessary to construct the Revised Redevelopment Plan (anticipated to be issued in the Spring of 2013), subject to economic conditions and any other circumstances beyond Redeveloper's control that are not caused by the fault or negligence of Redeveloper;
4. The Redeveloper agrees to continue to coordinate with the Wellesley Historical Commission (the "Commission") on the identification and removal of any building components of the Cottage determined by the Commission to be of value, prior to its demolition. The Redeveloper shall consider incorporating any such elements within the Revised Redevelopment Plan. Additionally, while the Cottage has no local, state or federal historic designation that affords it preservation protection, the Redeveloper agrees that the Cottage shall not be demolished prior to August 1, 2013 (the "Demolition Delay Period"), subject to there being no further efforts taken towards historic designation or other legal protection. Upon the adoption of the Zoning Approvals, the Redeveloper agrees to provide reasonable assistance and coordination in the removal of the Cottage from the Property (at no cost to the Redeveloper), in the event the Wellesley Historical Commission notifies the Redeveloper within thirty (30) days prior to the end of the Demolition Delay Period of a plan to relocate the Cottage from the Property within the Demolition Delay Period; and
5. This Amendment may be executed in two (2) or more counterparts, each of which shall be an original but such counterparts together shall constitute one and the same instrument. Except to the extent expressly modified by this Amendment, the

Original Agreement as modified by this Amendment is hereby ratified and confirmed. In the event any of the Zoning Approvals or Additional Approvals are not deemed finally approved and effective, this Amendment shall automatically terminate and be of no further force or effect.

[Signature pages follow]

EXECUTED as a sealed instrument as of the day and year first above written.

TOWN

Temi Tzagaris
Gen G. P. Hill

Amberia D. Seane

Katherine L. Babson Jr

Being the Members of the Wellesley
Board of Selectmen

Approved as to form:

[Signature]

Town Counsel

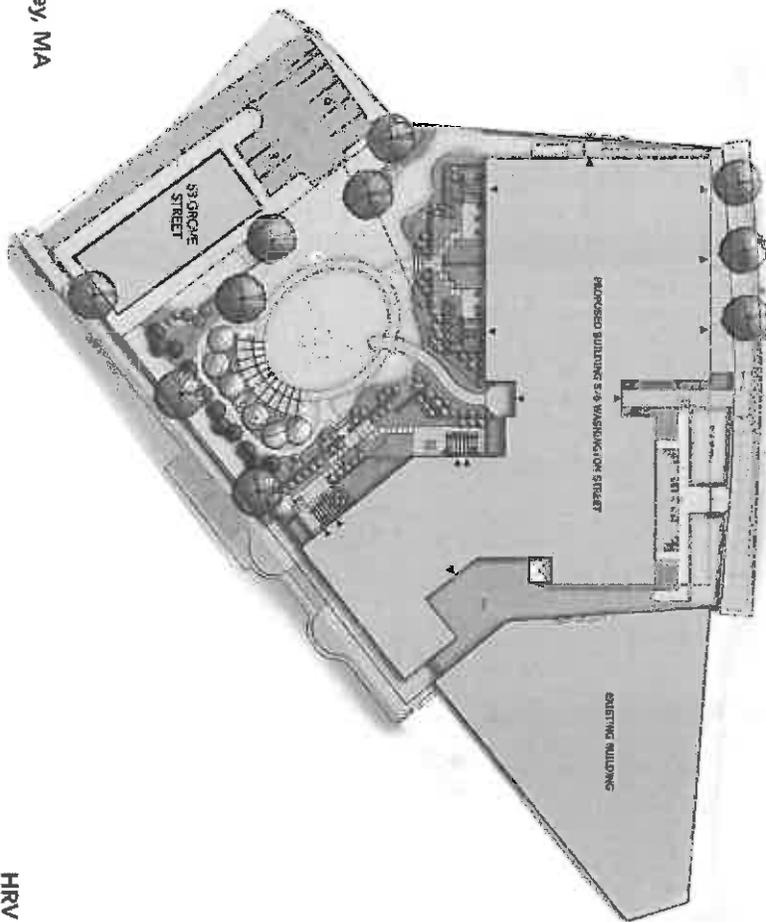
REDEVELOPER:

HRV Development, LLC

By: [Signature]
Name: JORDAN O. WARSZAW
Title: MANAGER

EXHIBIT A

Durant Process Package, Wellesley, MA
October 24th, 2012



cbt
HRV Development, LLC

EXHIBIT B

Zoning Map Amendment



Amend Zoning Map by extending the Wellesley Square Commercial District to include those properties, or portions there of that are currently zoned Educational and located at #40 Grove Street, #53 Grove Street, and #576 Washington Street.

EXHIBIT B

SECTION XVIII. AREA REGULATIONS.

D. Ratio of Families to Lot Area.

1. In General Residence Districts and General Residence Districts A there shall be provided for each dwelling hereafter constructed or placed therein a lot containing not less than 5,000 square feet for each family for whose habitation such building is designed or adapted or the minimum area required for lots in the area regulation district in which the building is located, whichever is greater.

Except that town houses may be constructed at a ratio in accordance with and subject to the provisions of SECTION IV. GENERAL RESIDENCE DISTRICTS. A. 3.

2. In Educational, Business and Industrial Districts and in Educational Districts A, Educational Districts B, Lower Falls Village Commercial Districts, Wellesley Square Commercial District, Business Districts A and Industrial Districts A there shall be provided for each apartment house, apartment hotel, hotel, inn or town house, hereafter constructed or placed therein a lot containing not less than 2,500 square feet for each family for whose habitation such building is designed or adapted or the minimum area required for lots in the area regulation district in which the building is located, whichever is greater.

3. **In the Wellesley Square Commercial District, the 2,500 square foot minimum lot area requirement per family set forth in Section XVIII.D.2 above, may be reduced to no less than 1,800 square feet per family subject to the terms of a special permit granted by the Planning Board, acting as the Special Permit Granting Authority, in accordance with the following performance standards:**

- a. **A report shall have been received from the Design Review Board finding the proposed project is consistent with the design criteria listed in Section XXII.DESIGN REVIEW and that the project is an improvement of building facades to enhance the pedestrian experience and contribute toward the vitality of Wellesley Square; and**
- b. **All whole Assisted Units required to comply with Section XVIB. INCLUSIONARY ZONING (excepting any fractional Assisted Unit) are to be constructed on the Development Area; and**
- c. **There shall be provided for each project a minimum open space (as defined under Section I.A), equal to at least twenty (20%) of the area of the Development Area; and**

- d. **There shall be provided for each unit parking for two vehicles.**

EXHIBIT C

Additional Approvals

Permit/ Approval	Authority	Original Date of Issuance*	Anticipated Additional Approval
Inclusionary Housing Special Permit	Planning Board	1/10/06	Permit Amendment
PSI Review	Planning Board	2/13/07	Negative determination re: Municipal Impact Analysis (PSI)
Site Plan Review	Board of Appeals	7/29/08	Permit Amendment/Findings
Design Review	Design Review Board	3/12/08	Recommendation of Revised Redevelopment Plan
Residential Density Special Permit	Planning Board	N/A	Special Permit (pending Town Meeting approval of Zoning Approvals)

*Existing permits for Original Redevelopment Plan as amended/extended and extended by Permit Extension Act.