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AMENDED AND RESTATED DEVELOPMENT AGREEMENT BY AND BETWEEN GREYSTAR GP II, LLC, A DELAWARE LIMITED LIABILITY COMPANY, THE LYNDON PAUL LORUSSO CHARITABLE FOUNDATION OF 2002, AND THE CAPE COD COMMISSION
(Commission Project Number 09016)

This Amended and Restated Development Agreement (this "**Agreement**") is entered into this _____ (___) day of _____ 2016, by and between the Cape Cod Commission (hereinafter the "**Commission**"), Greystar GP II, LLC, a Delaware limited liability company (hereinafter, together with its successors and assigns, "**Greystar**"), and The Lyndon Paul Lorusso Charitable Foundation of 2002 (the "**Foundation**"). (Greystar, and where the context allows pursuant to Section 11.2 below, the Foundation, is referred to as the "**Applicant**" herein.)

INTRODUCTION AND RECITALS

Whereas, the Commission was established by chapter 716 of the Acts of 1989, as amended (hereinafter "**Act**"), for the purpose, among others, of reviewing certain developments that, because of their impacts are likely to present development issues significant to or affecting more than one municipality; and

Whereas, certain developments that are likely to present development issues significant to or affecting more than one municipality are deemed for the Commission review Developments of Regional Impact (hereinafter "**DRIs**"); and

Whereas, the Commission has adopted the Code of Cape Cod Commission Regulations of General Application (hereinafter "**Code**"), including inter alia, Chapter A, Enabling Regulations Governing the Review of Developments of Regional Impact (hereinafter "**Regulations**"), as revised November 2014; Chapter D: Development Agreement Regulations Governing Provisions for Development Agreements, revised November 2014 ("**Chapter D**"); and Chapter B: The Regional Policy Plan for Barnstable County (hereinafter "**RPP**") as revised on August 12, 2012; and

Whereas, Section 14 of the Act provides that the Commission may enter into a development agreement with an applicant to permit development, subject to the provisions of Chapter D, where an applicant agrees to provide public benefits and improvements as part of its proposed development; and

Whereas, Chapter D provides for the review and approval of Development Agreements for developments that otherwise require DRI review and approval, and, in particular, Section 4 thereof outlines who may participate in a Development Agreement, Section 5 thereof outlines the procedure for adopting an Agreement by and between the Commission and a Qualified Applicant, and Section 8 thereof outlines the procedure for adopting an Amendment of an Agreement; and

Whereas, in accordance with Chapter D of the Code, Section 5(a), on October 30, 2009, the Lyndon Paul Lorusso Charitable Foundation of 2002 (the "**Foundation**") filed a Notice of Intent with the Commission's Regulatory Committee requesting a determination that the Original Proposal (defined below) was suitable and qualified for the Development Agreement process, and the Regulatory Committee determined that the project was suitable and qualified for a Development Agreement process; and

Whereas, the originally proposed project (the "**Original Proposal**") was described as the construction and operation of a continuing care retirement community located on an approximately 26 acre site in Independence Park, Hyannis, MA, comprised of ten (10) lots located at 0 to 265 Communication Way, in Independence Park, Hyannis, said lots being more particularly described in the list attached hereto as Appendix A and shown on a plan, a copy of which is attached hereto as Appendix B, (the "**Site**"); and

Whereas, the Original Proposal consisted of at least three construction phases, and at build-out would consist of six buildings for a total of approximately 743,397 square feet and included up to 340 independent living and assisted living units, a skilled nursing facility with up to 60 beds, an underground parking garage containing approximately 345 spaces and surface parking of approximately 221 spaces, and on-site amenities, including but not limited to a health spa with a swimming pool and fitness center, a bank, dining facilities with meal preparation, an auditorium, and other amenities customarily found in continuing care retirement communities;

Whereas, following a review process conducted in accordance with Chapter D, the Commission issued RPP Findings, which were attached as Appendix F to, and incorporated into, the Development Agreement dated October 28, 2010 (the "**Original Development Agreement**") with respect to the Original Proposal described therein, in which the Commission determined that the Original Proposal met the standards for approval of a development agreement in Chapter D, including the required determinations that the Original Proposal is consistent with the RPP and proposes to provide public benefits and improvements;

Whereas, on January 3, 2011 (the "**Effective Date**"), the Clerk of the Commission issued a Certificate relative to the Original Development Agreement as provided in Section 5 of Chapter D**,** a copy of which Certificate was recorded with the Barnstable County Registry of Deeds at Book 25151, Page 156;

Whereas, Greystar is the proposed purchaser of the Site by virtue of a certain Purchase and Sale Agreement by and between the Foundation and Greystar dated as of August 13, 2015, as supplemented by that certain Supplemental Agreement dated as of October 8, 2015, as further supplemented by that certain Supplemental Agreement No. 2 dated as of November 11, 2015, as further supplemented by that certain Supplemental Agreement No. 3 dated as of November 12,

2015, as further supplemented by that certain Supplemental Agreement No. 4 dated as of December 10, 2015, as further supplemented by that certain Supplemental Agreement No. 5 dated as of January 7, 2016, as further supplemented by that certain Supplemental Agreement No. 6 dated as of February 4, 2016, as further supplemented by that certain Supplemental Agreement No. 7 dated as of March 11, 2016, as further supplemented by that certain Supplemental Agreement No. 8 date as of March 16, 2016, and as further supplemented by that certain Supplemental Agreement No. 9 dated as of April 29, 2016 (as so amended and supplemented, and as the same may be further amended and supplemented, the "**Purchase Agreement**"), a redacted copy of which is attached hereto as Appendix C, and is therefore a Qualified Applicant, and as such may participate in an Agreement per Sections 1(c), 4(a) and 4(b) of Chapter D; and

Whereas, by a letter dated [_____ __, 201_], Greystar, by its attorney requested that the Executive Director of the Commission (the "**Executive Director"**) amend the Original Development Agreement to reflect and approve the project described herein (as further described below, the "**Revised Project**"), which is lesser in scope than the Original Proposal, as a Minor Modification as defined in Section 8(b)(1) of Chapter D of the Regulations; and

Whereas, the Revised Project consists of at least two construction phases as funding allows and, at build-out, would consist of four (4) buildings presently anticipated to be constructed in two phases described below, for a total of approximately [_____] square feet, and includes up to 340 residential units, which shall be (i) attached dwelling units (apartments) intended and operated for occupancy by persons 55 years of age or older in which at least eighty percent (80%) of the occupied units are occupied by at least one person who is 55 years of age or older in accordance with applicable requirements of federal and Massachusetts law ("**Active Adult**"), and/or (ii) residential dwelling units in which supportive services are offered for individuals who need assistance in activities of daily living ("**Assisted Living**"), an underground parking garage containing approximately [____] spaces and surface parking containing approximately [____] spaces, and on-site amenities, including without limitation a fitness center with yoga studio and swimming pool, a club room, theater room, demonstration kitchen, private dining facilities, and other amenities customarily found in Active Adult and/or Assisted Living communities; and

Whereas, the Revised Project no longer includes a skilled nursing facility and the Revised Project's affordable housing component will consist of up to thirty-four (34) affordable housing units located at the Site, as compared to the Original Proposal that was planned to include forty-two (42) affordable housing units located off-site at the Falmouth Road Site, which is no longer part of the Revised Project; and

Whereas, the Revised Project will result in lesser environmental impacts than were anticipated to result from the Original Proposal, including without limitation reductions with respect to the following projected impacts: (i) total number of housing units/beds (340 for the Revised Project versus 340 units plus up to a 60 bed skilled nursing facility for the Original Proposal; (ii) vehicular traffic generation (approximately [_____] average daily trips for the Revised Project versus 1,328 average daily trips for the Original Proposal); (iii) parking spaces (approximately [_____] spaces for the Revised Project, versus 566 spaces for the Original Proposal); (iv) building footprint (approximately [___] acres for the Revised Project versus 4.41

acres for the Original Proposal); (v) gross floor area (approximately [_____] sf for the Revised Project versus approximately 743,000 sf for the Original Proposal); (vi) impervious surface area (approximately [____] acres for the Revised Project versus 8.63 acres for the Original Proposal); (vii) water flows (approximately 56,100 gallons per day for the Revised Project versus 60,000 gallons per day for the Original Proposal); and (viii) wastewater flows (approximately 56,100 gallons per day for the Revised Project versus 60,000 gallons per day for the Original Proposal); and

Whereas, the Commission and the Applicant are Participating Parties (hereinafter, each a "**Party**") to this Agreement pursuant to Sections 1 and 4 of Chapter D of the Code and that the Foundation has agreed to the Revised Project as set forth herein; and

Whereas, per Chapter D, Section 4, the Town of Barnstable (the "**Town**") is not a Participating Party to this Agreement, but will review the Revised Project (defined below) according to the requirements of the Town's existing zoning and other municipal ordinances; and

Whereas, the Revised Project is located in the Town's Industrial Zoning District and within a Senior Continuing Care Retirement Community Overlay District and is allowed as-of-right pursuant to Barnstable Zoning Ordinance Section 240-21A(9)(j), subject to obtaining approval from the Town's Site Plan Review Committee, Sewer and Water Connection Permits from the Town's Department of Public Works, and applicable construction-related permits; and

Whereas, the Executive Director delegated authority to the Commission's Committee on Planning and Regulation to review the Revised Project, and the Committee has reviewed the Revised Project and has determined such Revised Project constitutes a Minor Modification as defined in Section 8(b)(1) of Chapter D of the Regulations;

Whereas, the Applicant is a Qualified Applicant which has voluntarily proposed a coordinated, planned development and/or redevelopment of the Site, which proposal is substantially similar to the Original Proposal for which the Commission previously granted approval under a development agreement; and

Whereas, the Site is situated within an Economic Center as identified on Barnstable's Land Use Vision Map; and

NOW THEREFORE, in consideration of the Applicant's agreeing to perform fully its obligations (a) under the Application and attachments, as modified and accepted by the Commission, and (b) under this Agreement, and the Commission's execution of this Agreement as authorized by Section 14 of the Act, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Signatories, the Parties hereto agree as follows:

SECTION 1. AMENDMENT AND RESTATEMENT OF AGREEMENT

1.1. Amendment and Restatement.

This Agreement amends and restates in its entirety the Original Development Agreement. The Applicant shall build Phase 1 (including all components thereof) in accordance with the

terms of this Agreement, and the plans accepted by the Commission pursuant to this Agreement, a list of which are attached hereto as Appendix D (the "**Revised Plans**"). The Revised Plans replace in full any plans and materials showing and describing the Original Proposal. Any modification of the Revised Project as modified and accepted by the Commission shall only be made in compliance with Section 8 of Chapter D of the Code.

1.2. Term.

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; provided, however, the Parties acknowledge and agree that by operation of the Permit Extension Act (Section 173 of Chapter 240 of the Acts of 2010, as amended by Sections 74 and 75 of Chapter 238 of the Acts of 2012), the term of this Agreement has automatically been extended for an additional four (4) years beyond the initial 12-year term and, therefore, unless extended pursuant to the relevant extension provisions in Chapter D of the Commission's Regulations, the term of this Agreement shall expire at midnight at the end of January 2, 2027. During the term of this Agreement: (i) the Commission's Regulations, including the RPP, as in effect on the Effective Date of this Agreement, shall apply to the Revised Project, notwithstanding any subsequent or intervening changes to said Regulations; (ii) the Applicant may obtain municipal development permits for the Revised Project pursuant to this Agreement; and (iii) the Revised Project shall not be subject to review as a Development of Regional Impact. Pursuant to Section 7 of Chapter D, this Agreement may be extended by consent of the Parties, subject to a public hearing in accordance with Sections 5 and 6 of Chapter D.

1.3. Enforcement.

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 subcommittee makes its determination and will resume should the 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.

1.4. Successors and Assigns.

This Agreement is appurtenant to and shall run with the Site, with any improvements thereon, and shall bind, and inure to the benefit of, the Applicant, its successors and assigns. The Applicant shall not assign or transfer this Agreement or its rights under this Agreement, in whole or in part, to any person except in accordance with Section 11.2, below.

1.5. Public Benefits and Improvements.

As the Applicant's consideration for this Agreement, the Revised Project shall provide public benefits and improvements as detailed herein below. The Parties hereto acknowledge that the Foundation, as a Qualified Applicant, already provided additional public benefits and improvements in connection with the Revised Project, including without limitation the following: (i) a $261,000 monetary contribution to the Lewis Bay Research Foundation to support its research purposes, including investment in equipment to conduct algae removal; (ii) a $500,000 pledge to the Barnstable Fire District Water Department for development of a new well; (iii) a $500,000 donation to the Town of Barnstable's Water Supply Division for construction of a new water tank; and (iv) construction of a right hand turn lane at the intersection of Independence Drive and Route 132. Because the proposed impacts of the Revised Project are less than or equal to those that were anticipated to result from the Original Proposal, no additional mitigation is required.

1.6. Consistency with Regional Policy Plan.

The Revised Project is subject to and consistent with the RPP, subject to the terms and conditions set forth herein below. The Commission issued RPP Findings for the Original Proposal attached to and incorporated into the Original Development Agreement as Appendix F. As used herein, "MPS" refers to the minimum performance standards contained in the RPP; "BDP" refers to the best development practices contained in the RPP.

The Applicant and the Commission agree that development constructed consistent with the terms and conditions of this Agreement and in compliance therewith shall not be subject to review as a Development of Regional Impact under sections 12 and 13 of the Cape Cod Commission Act for the term and duration of this Agreement.

1.7. Amendment.

This Agreement may be further amended pursuant to Section 8 of Chapter D.

SECTION 2. GENERAL TERMS AND CONDITIONS

2.1. Revised Project.

The Revised Project consists of development at the Site (hereinafter the "**Revised Project**"). The Site shall consist of up to 340 Active Adult and/or Assisted Living units, underground garaged and surface parking, and other on-site amenities.

2.2. Phases.

The Revised Project may be constructed in multiple phases or sub-phases. The Revised Project is planned to include two phases (each, a "**Phase**") and the Commission may, at its discretion, approve sub-phases within these two Phases. The first phase ("**Phase 1**") shall consist of the development of up to 225 Active Adult units ([___] one-bedroom units and [__] two-bedroom units). The second phase ("**Phase 2**") may include up to an additional 115 Active Adult and/or Assisted Living units. Each Phase or sub-phase thereof must consist of discrete and complete buildings with necessary supporting infrastructure and site improvements, and not portions or parts thereof. The Applicant's rights and obligations with respect to the development

of Phase 1 shall in no way require or depend upon the development of any subsequent phase, or portion thereof, including the timing with respect thereto. No less than ten percent (10%) of the housing units constructed as part of the Revised Project shall be designated and restricted as affordable units (the "**Affordable Units**"), as defined pursuant to Chapter 9 of the Municipal Code of the Town of Barnstable (the "**Town Code**").

2.3. Phase 1 Approved Plans.

Phase 1 is shown on the Revised Plans. Phase 1 shall be constructed, operated and maintained in accordance with the Revised Plans and other documents listed on Appendix E (the "**Revised Materials**" and, collectively with the Revised Plans, the "**Revised Plans and Materials**"). When redeveloped and renovated, Phase 1 shall not exceed [_____] square feet of new construction. A minimum of ten percent (10%) of the housing units constructed as part of Phase 1 shall be Affordable Units, as defined under the Barnstable Municipal Code.

2.4. Phase 2 Concept Plans.

Plans showing Phase 2, which are conceptual only, but shall allow not more than 115 units of active adult and/or assisted living, "Phase 1 and Phase 2 Full Layout Plans" prepared by Pesce Engineering and Associates dated _____ __, 2016, which are included with the Revised Plans (the "**Concept Plans**"). Prior to and as a condition to commencing, or obtaining the first building permit in connection with, Phase 2, the Applicant shall submit: (i) detailed plans and information to the Commission, which shall be reviewed for consistency with the Concept Plans; and (ii) a list of the performance standards to which Phase 2 will conform. To the extent such performance standards vary from those set forth in this Agreement, the Commission may approve such variations, in its discretion, if it determines that the Concept Plans and performance standards are substantially consistent with the terms and conditions of this Agreement. The Applicant shall not be required to construct any Phase beyond Phase 1, if it chooses to exercise the development rights hereunder for construction of Phase 1. If the Applicant does not intend to develop Phase 2, it shall not use, clear or develop any of the Site outside of the Phase 1 portion of the Site.

2.5. Preliminary Certificate/s of Compliance.

Prior to the commencement of, or issuance of a Building Permit for, any Revised Project Phase, or sub-phase thereof as recognized by the Commission, the Applicant shall first obtain a Preliminary Certificate of Compliance from the Commission which confirms that all conditions of this Agreement that are required to have been satisfied prior to issuance of a Preliminary Certificate of Compliance have been satisfied, and that the Revised Project is otherwise consistent with this Agreement.

2.6. Final Certificate of Compliance.

Prior to the use or occupancy of, or the issuance of a Certificate of Use/Occupancy for, any Revised Project Phase, or sub-phase thereof as recognized by the Commission, the Applicant shall first obtain a Final Certificate of Compliance from the Commission which confirms that all conditions of this Agreement that are required to have been satisfied prior to issuance of a Final

Certificate of Compliance have been satisfied, and that the Revised Project is otherwise consistent with this Agreement.

2.7. Commission Review.

Commission staff will undertake a review of the Project's compliance with this Agreement, including the applicable conditions hereof, upon the Applicant's request to the Commission for issuance of a Preliminary or Final Certificate of Compliance. At the time the Applicant requests such a certificate, it shall provide Commission staff a list of key project contact(s), along with their telephone numbers, mailing addresses, and email addresses, in the event questions arise during the Commission's compliance review. As part of its compliance review, Commission staff may make, and the Applicant hereby authorizes, a site inspection, as needed, at reasonable times and upon reasonable notice to the Applicant. Upon review, the Commission shall either prepare and issue the requested Certificate, or inform the Applicant in writing of any compliance deficiencies and the remedial action required for the issuance of the requested Certificate. If all required exterior lighting, site work or landscape improvements are not complete at the time a Final Certificate of Compliance is sought from the Commission, the Commission may, in its discretion, issue such Final Certificate of Compliance, subject to an escrow agreement that ensures such work will be timely completed, such escrow agreement to be reviewed and found satisfactory in form and content by Commission staff. The amount of the escrow agreement shall be equal to 150% of costs to complete the required, incomplete work.

2.8. Notice and Copy of Agreement.

Prior to and as a condition to issuance of the first Preliminary Certificate of Compliance for either Phase of the Revised Project, the Applicant shall evidence and certify to the Commission that a copy of this Agreement, and any modifications or rescissions, have been received by all site contractors, architects, engineers, landscape designers, and other firms or persons involved in the construction of the Revised Project. Such certification shall include the names of contractors and subcontractors, and that such contractors and subcontractors have been notified of permits required for the Revised Project that relate to the fire department and water supply at the Site. A copy of this Agreement and the Approved Plans shall be maintained on the Site through construction of the Revised Project.

2.9. Final Construction Drawings and Local Discretionary Permits

Prior to and as a condition to issuance of the first Preliminary Certificate of Compliance for either phase of the Revised Project, the Applicant shall submit for Commission staff review and approval, which approval shall not be unreasonably withheld or delayed, final permitting-level construction drawings, plans and specifications (including but not limited to site plans, floor plans, dimensioned architectural drawings, and roof plans) as well as copies of any local discretionary permits (the "**Construction Drawings and Permits**") for the Revised Project to confirm their consistency with this Agreement and the Revised Plans hereunder. To the extent the Construction Drawings and Permits depict or describe material changes from the Revised Plans, Commission staff may determine such material changes require further Modification to this Agreement.

SECTION 3. ECONOMIC DEVELOPMENT

3.1. Economic Center.

The Site is situated within an Economic Center as identified on Barnstable's Land Use Vision Map.

3.2. Economic Development Benefits from Revised Project.

Prior to and as a condition to issuance of a Final Certificate of Compliance, for any Phase or sub-phase-Phase, the Applicant shall submit to Commission staff a report for that Phase or sub-phase consistent with the Commission's Technical Bulletin 04-002 and RPP BDP ED2.2, BDP ED3.1, and BPD ED3.7, including the following information:

- Actual investment required to realize the Phase, including total investment cost, materials, labor and related development services
- Total investment in real property (building and structures)
- Total investment in personal property (machinery and equipment)
- Employment information for construction phase including total work hours required to complete the Phase, total labor costs and average wage
- Workforce data on total employment at the site after construction has been completed including full time, part time, temporary and seasonal workers
- Benefits data on types of benefits provided
- Data on benefits eligibility criteria
- Fiscal impact data to include tax liability basis, actual taxes paid to the Town of Barnstable, County and State levels
- Data on any tax abatements, tax increment financing, tax credits or tax breaks/incentives received at the Town, County or State levels, if any
- Data on local property taxes and fees
- Data on the Phase's services usage, including water, sewer, solid waste, schools, public safety, human services, parks and recreation and public transit

The Final Certificate of Compliance shall not be withheld should any projections not be realized.

SECTION 4. WATER RESOURCES

4.1. Water Conservation Measures.

Irrigation water for the Revised Project shall be supplied with a private on-site well. Each Phase of the Revised Project shall include in its design, construction and operation water-conserving measures including but not limited to low or dual-flush toilets, water conserving faucets and showerheads. Prior to and as a condition to issuance of a Preliminary Certificate of Compliance for any Phase or sub-phase, the Applicant shall provide to Commission staff for that

Phase or sub-phase, a checklist of all water conservation measures proposed to be installed to ensure consistency with the water conservation measures referenced in MPS WR1.5 and BPD WR1.7.

4.2. Water Resource Protection Measures for Landscape Maintenance.

The Revised Project's landscaping shall use native, non-invasive and drought- and pest-resistant plantings, drip irrigation, and shall minimize use of pesticides and chemical fertilizers in favor of organic products. Any application of such pesticides or chemical fertilizers shall comply with the Town's Fertilizer Nitrogen and Phosphorous Control Ordinance (Chapter 78 of the Town Code). The Revised Project shall be undertaken, operated and maintained in accordance with the approved landscaping plan and "**Landscape Maintenance Protocol**" included with the Revised Materials listed on Appendix E attached hereto.

Prior to and as a condition to issuance of a Preliminary Certificate of Compliance for any Phase or sub-phase, the Applicant shall provide for Commission staff review a copy of a contract/agreement for implementation and operation consistent with this Section 4.2, which contract/agreement include all material protocols and requirements set forth in the Landscape Maintenance Protocol.

4.3. Wellhead Protection.

The Site is located within a Wellhead Protection Area. Site-wide nitrogen loading shall be limited to 5ppm. The Revised Project shall connect to municipal sewer. Each housing unit at the Revised Project shall be limited to no more than a Household Quantity of Hazardous Materials and/or Hazardous Waste consistent with the provisions of MPS WR2.2 and MPS WM1.1. The limitation set forth in the preceding sentence shall be memorialized in each lease, in the case of rental units, and recorded condominium documents, in the case of any housing units controlled by a condominium regime, at the Revised Project. Prior to and as a condition to the issuance of the first Preliminary Certificate of Compliance for Phase 1, the Applicant shall provide to the Commission for review and approval, which approval shall not be unreasonably withheld, protocols for the use, handling, and storage of all other onsite Hazardous Materials used in connection with the operation and maintenance of the Revised Project, including without limitation those used in connection with any common areas or amenities.

4.4. Water Resource Protection during Construction.

Prior to and as a condition to issuance of a Preliminary Certificate of Compliance for any Phase or sub-phase, the Applicant shall provide for Commission staff review and approval, which approval shall not be unreasonably withheld, a written Pollution Prevention and Emergency Response Plan (Plan) for that Phase or sub-phase, consistent with MPS WR 1.4, which shall thereafter be implemented to address Hazardous Materials storage and handling, and spill response/contingency strategies from construction activities. This Plan shall specifically address the method for isolating potential spills from stormwater infiltration basin or sub-surface discharge.

4.5. Stormwater Management.

The final proposed stormwater design for each Phase shall be designed, constructed and maintained to meet all RPP MPS addressing stormwater quality under water resources Goal 7, the Town of Barnstable stormwater requirements under the Barnstable Zoning Ordinance, and the Massachusetts Stormwater Standards. All stormwater generated by each Phase shall be infiltrated onsite, and the design of the system shall be adequately sized to capture and infiltrate at least a 25-year/24-hour storm for post-development conditions. In addition, all stormwater generated by each Phase shall be treated with oil/grit separators, to achieve a minimum of 80% removal of Total Suspended Solids (TSS). At least 44% of TSS shall be removed prior to discharge into infiltration systems, consistent with the Massachusetts Stormwater Standards. The stormwater system of each Phase shall incorporate catch basis, subsurface detention structures, rain gardens, vegetated swales, surface retention basins, pervious (grassed) pavers, overflow devices within the bioretention areas to capture larger storm volumes and for frozen flow conditions, and a shut-off valve or other flow-arresting mechanism for catch basins that drain loading areas and areas where trash is stored. The systems shall also collect and infiltrate roof runoff separately into their respective subsurface infiltration systems. Consistent with MPS WR7.3, and as set forth in the Stormwater Certification included with the Revised Materials listed on Appendix E, the stormwater management system has been designed to treat the first inch from the development parking and roadways using bio-filtration practices, including without limitation the use of bioretention swales, rain gardens, and infiltration basins designed as bioretention basins, with a low exfiltration rate of only 0.52 in./hr. for loamy soils and 2.24 in./hr. for loamy-sandy soils.

4.6. Commission Review of Stormwater Management System.

Prior to and as a condition to issuance of a Preliminary Certificate of Compliance and prior to issuance of a Building Permit for each Phase or sub-phase, the Applicant shall provide for Commission staff review and approval which approval shall not be unreasonably withheld final stormwater design plans for that Phase or sub-phase consistent with Section 4.5 above.

4.7. [Intentionally omitted. To be deleted and subsequent sections to be re-numbered in final version]

4.8. Stormwater Pollution Prevention Plan.

Prior to and as a condition to issuance of a Preliminary Certificate of Compliance for any Phase or sub-phase, the Applicant shall submit for Commission staff review and approval which approval shall not be unreasonably withheld a construction sequencing plan including erosion and sedimentation controls, a Stormwater Pollution Prevention Plan and a copy of a Notice of Intent/Application for a NPDES stormwater permit for that Phase or sub-Phase consistent with MPS WR7.3 and MPS 7.4. Thereafter, the Revised Project shall be undertaken, operated and maintained consistent with the same.

4.9. Limitation of Impervious Surfaces.

Consistent with MPS WR7.6, Phase 1 including any associated sub-phases shall be constructed and maintained to minimize the use of impervious surfaces by providing underground parking (as designed, for up to [____] parking spaces). Gravel walking paths and

new recreational and landscaped courtyard areas along the south side of the buildings have been included in the revised design to further decrease impervious surfaces.

4.10. Operation and Maintenance Plan.

The stormwater management system for Phase 1 shall be constructed, operated and maintained in accordance the Operations and Maintenance Plan included with the Revised Materials listed on Appendix E attached hereto.

4.11. Certification of Stormwater Management System.

One calendar year from completion of the stormwater system for any Phase or sub-phase, the Applicant shall submit for Commission staff review and approval which approval shall not be unreasonably withheld a written certification by a Professional Engineer indicating that the Engineer inspected the relevant stormwater system, and certifying to the Commission that the stormwater system was installed and is functioning as designed and approved.

4.12. Additional Water Resources Contributions.

The Foundation has previously made the following monetary donations and mitigation payments related to water supply infrastructure, and no further mitigation related to water supply infrastructure is required hereunder:

(i) a $261,000 monetary contribution to the Lewis Bay Research Foundation to support its research purposes, including investment in equipment to conduct algae removal;

(ii) a $500,000 donation to the Barnstable Fire District Water Department for development of a new well; and

(iii) a $500,000 donation to the Town of Barnstable's Water Supply Division for construction of a new water tank.

SECTION 5. WILDLIFE AND PLANT HABITAT AND OPEN SPACE AND RECREATION

5.1. Preservation of Open Space.

In connection with the Project, the following three parcels of land (the "**Open Space Parcels**"), as depicted on the Project Open Space Map attached hereto as Appendix F (the "**Project Open Space Map**"), will be reserved for open space purposes in accordance with this Section 5:

(i) a portion of the Site comprising approximately 9.51 acres (the "**On-Site Open Space Parcel**");

(ii) a portion of the parcel located at 56 Communication Way (Assessor's Map 315, Lot 40) comprising approximately 2.63 acres (the "**Communication Way Open Space Parcel**"); and

(iii) a portion of the parcel located at 211 South Flint Rock Road (Assessor's Map 314, Lot 1) comprising approximately 2.00 acres (the "**Flint Rock Pond Open Space Parcel**").

5.2. On-Site Open Space Parcel.

Prior to and as conditions to issuance of a Preliminary Certificate of Compliance for Phase 1 or any sub-phase thereof, the following shall occur with respect to the On-Site Open Space Parcel:

(i) The Applicant shall submit for Commission staff review and approval, which approval shall not be unreasonably withheld, a restoration plan (a "**Restoration Plan**") to restore disturbed portions of the On-Site Open Space Parcel. The Restoration Plan shall be exclusive of, and in addition to, the Revised Project's landscaping plans, and substantially conform to the requirements set forth below in Section 5.5. In preparing the Restoration Plan, the Applicant shall confer with, and obtain approval from, Eversource Energy (or such other utility company owning the electric utility facilities and equipment located on the On-Site Open Space Parcel), as necessary to implement the On-Site Open Space Parcel Restoration Plan. The Commission shall accommodate any changes to the Restoration Plan that may be reasonably requested by the utility company. Except with respect to any ongoing maintenance obligations, the Applicant shall perform the initial work contemplated by the Restoration Plan prior to issuance of the first Final Certificate of Compliance for Phase 1.

(ii) The Applicant shall submit for Commission staff review and approval, which approval shall not be unreasonably withheld, a draft perpetual conservation restriction (the "**On-Site Conservation Restriction**") consistent with Massachusetts General Laws Chapter 184, §§31-33, and accompanying plans.

(iii) Subject to Section 5.6 below, the Applicant shall submit the foregoing draft On-Site Conservation Restriction, as approved by the Commission, for the review and approval of all appropriate state and local authorities, which may include, without limitation, the Town of Barnstable, its Conservation Commission, and the Executive Office of Energy and Environmental Affairs.

5.3. Communication Way Open Space Parcel.

Prior to and as conditions to issuance of a Preliminary Certificate of Compliance for Phase 1 or any sub-phase thereof, the following shall occur with respect to the Communication Way Open Space Parcel:

(i) The Applicant shall submit for Commission staff review and approval, which approval shall not be unreasonably withheld, a Restoration Plan to restore disturbed portions of the Communication Way Open Space Parcel. The Restoration Plan shall be exclusive of, and in addition to, the Revised Project's landscaping plans, and substantially conform to the requirements set forth below in Section 5.5. Except with respect to any ongoing maintenance obligations, the Applicant shall perform the initial work contemplated by the Restoration Plan.

(ii) The Applicant shall, at its option, submit for Commission staff review and approval, which approval shall not be unreasonably withheld, a draft of either: (A) a perpetual conservation restriction (the "**Communication Way Conservation Restriction**") consistent with Massachusetts General Laws Chapter 184, §§31-33, and accompanying plans; or (B) one or more instruments to convey the Communication Way Open Space Parcel to the Town of Barnstable for open space purposes (collectively, the "**Communication Way Conveyance Instrument**"); or (C) a self-imposed open space restriction in perpetuity in a form reasonably satisfactory to the Town of Barnstable.

(iii) Subject to Section 5.6 below, the Applicant shall submit the foregoing draft Communication Way Conservation Restriction or Communication Way Conveyance Instrument, as applicable, as approved by the Commission, for the review and approval of all appropriate state and local authorities, which may include, without limitation, the Town of Barnstable, its Conservation Commission, and the Executive Office of Energy and Environmental Affairs.

5.4. Flint Rock Pond Open Space Parcel.

Prior to and as conditions to issuance of a Preliminary Certificate of Compliance for Phase 1 or any sub-phase thereof, the following shall occur with respect to the Flint Rock Pond Open Space Parcel:

(i) The Applicant shall, at its option, submit for Commission staff review and approval, which approval shall not be unreasonably withheld, a draft of either: (A) a perpetual conservation restriction (the "**Flint Rock Pond Conservation Restriction**") consistent with Massachusetts General Laws Chapter 184, §§31-33, and accompanying plans; or (B) one or more instruments to convey the Flint Rock Pond Open Space Parcel to the Town of Barnstable for open space purposes (collectively, the "**Flint Rock Pond Conveyance Instrument**"); or (C) a self-imposed open space restriction in perpetuity in a form reasonably satisfactory to the Town of Barnstable.

(ii) Subject to Section 5.6 below, if applicable, the Applicant shall submit the foregoing draft Flint Rock Pond Conservation Restriction or Flint Rock Pond Conveyance Instrument, as applicable, as approved by the Commission, for the review and approval of all appropriate state and local authorities, which

may include, without limitation, the Town of Barnstable, its Conservation Commission, and the Executive Office of Energy and Environmental Affairs.

5.5. Restoration Plan Requirements.

The Restoration Plans shall, at a minimum, incorporate very drought and pest tolerant, native, non-invasive plants, which may include but not be limited to: Sweet fern (Comptonia peregrina), Bearberry (Arctostaphylos uva-ursa, Bayberry (Morella pensylvanicum), and Fragrant srmac (Rhus aromatica); a mix of native grasses and forbs, including Little Bluestein (Sclzizachryium scoparium), Panic grass (Panicum virgatum) and Sheep's fescue (Festuca sp.); and herbaceous materials that occur naturally on Cape Cod (Black Eye Susan, Yarrow, Ox eye Daisy. Grasses, forbs and herbaceous materials may be hydro seeded, ideally in the early fall, to enhance germination. The Restoration Plans shall also include:

(i) a maintenance plan that provides for an annual mowing in the fall;

(ii) a soil amendment for individual shrub plantings and a watering plan both to ensure establishment of re-vegetation on the site; and

(iii) methods to manage or eliminate existing invasive species within the restoration areas and to ensure that invasive species are not introduced to the site during construction, consistent with the Commission's Technical Bulletin 01-001.

Notwithstanding anything in this Agreement to the contrary, issuance of neither a Preliminary nor a Final Certificate of Compliance for Phase 1 shall be withheld due to the Applicant failing to perform all work obligations under a Restoration Plan as required by this Section 5, provided that the Applicant delivers funds to the Commission an amount equal to at least one hundred fifty percent (150%) of the reasonably estimated cost of performing all outstanding work obligations under such Restoration Plan, which obligations shall survive the issuance of any Preliminary or Final Certificate of Compliance.

5.6. Governmental Approvals.

The conservation restrictions and conveyance instruments contemplated by this Section 5 (each an "**Open Space Instrument**") shall be subject to the review and approval of appropriate state and local authorities. The Applicant agrees to use reasonable efforts to obtain all necessary approvals for the recording of the Open Space Instruments in accordance with the terms of this Section 5. The Commission shall accommodate any changes reasonably requested by the appropriate authorities. At the time of transfer of title to the Site by the Foundation to Greystar, the Applicant shall cause the Open Space Instruments to be recorded with the Barnstable Registry of Deeds or registered with the Barnstable Registry District of the Land Court, as applicable, with a copy and evidence of such recorded or registered document thereafter provided to the Commission. In the event any Open Space Instrument is not approved by all applicable authorities, or the Commission finds changes to an Open Space Instrument requested by such authorities to be unreasonable, the Commission shall not withhold issuance of a Preliminary or Final Certificate of Occupancy for the Project, provided the Applicant may take such other actions which, in the reasonable discretion of the Commission staff, appropriately

serve the purposes of preserving high quality open space, protecting wildlife and plant habitat, providing recreational opportunities, and reducing the effects of sprawl. Such actions may include but are not limited to recording an Open Space Instrument, as approved by the Commission pursuant to this Section 5, to effectuate a private restriction or conveyance 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 Open Space Instruments, as applicable, shall be made senior to any mortgage encumbrance.

5.7. Bicycle Easement.

If requested by the Town or other governmental authority in connection with obtaining approval for an Open Space Instrument, the Applicant agrees to record one or more easements (a "**Bicycle Path Easement**") for construction and maintenance of a bicycle path over the Open Space Parcels and the "Renewable Energy Parcel", approximately as shown on the Open Space Map. If requested, the Applicant shall cause the Bicycle Path Easement(s) to be recorded with the Barnstable Registry of Deeds or registered with the Barnstable Registry District of the Land Court, as applicable, with a copy and evidence of such recorded or registered document thereafter provided to the Commission.

SECTION 6. TRANSPORTATION

6.1 Trip Reduction Plan.

The Applicant shall implement the trip reduction plan attached hereto as Appendix G (the "**Trip Reduction Plan**"); prior to and as a condition to issuance of any Final Certificate of Compliance by the Commission for the Revised Project, Commission staff shall conduct a site inspection to confirm that the Trip Reduction Plan is in operation.

6.2 Trip Reduction Plan Reports.

Not more than twelve (12) consecutive months after issuance of any Final Certificate of Compliance by the Commission for the Revised Project, the Applicant shall provide for Commission staff review a written report of the effectiveness the Trip Reduction Plan over the preceding 12 consecutive months. Such report shall detail the manner in which the measures set forth the Trip Reduction Plan have been implemented or achieved.

6.3 Additional Traffic Mitigation.

The Foundation has constructed a right hand turn lane at the intersection of Independence Drive and Route 132, and no further monetary mitigation related to transportation is required hereunder.

SECTION 7. WASTE MANAGEMENT

7.1 Educational Flyer.

The Applicant shall develop and distribute to residents of the Revised Project an educational flyer that provides information on the Town of Barnstable's household hazardous

waste collection and recycling opportunities at the Flint Street Transfer Station, and of recycling facilities to be maintained on the Site. Prior to and as a condition to issuance of the first requested Final Certificate of Compliance for the Revised Project, the Applicant shall submit for Commission staff review and approval, which approval shall not be unreasonably withheld, a draft educational flyer for proposed distribution providing information on the Town of Barnstable's household hazardous waste collection and recycling opportunities at the Flint Street Transfer Station and about recycling facilities on-site which, when it is approved by Commission staff, shall thereafter be distributed to all future residents of the Revised Project.

7.2 Construction Waste Management Specifications.

Prior to and as a condition to issuance of a Preliminary Certificate of Compliance for any Phase or sub-phase-phase, the Applicant shall submit to the Commission construction bid documents, which Commission staff review to confirm that they contain specification for property management of construction-period waste, project construction bid documents, to ensure these specifications provide for proper management of solid waste, recyclables, land clearing debris, construction and demolition debris, and Waste Ban items.

7.3 Solid Waste and Recycling Management Plan.

The Applicant shall develop and implement a recycling management plan and maintain recycling facilities on-Site in the operation of the Revised Project. Prior to and as a condition to issuance of the first requested Final Certificate of Compliance for the Revised Project, the Applicant shall submit for Commission staff review and approval, which approval shall not be unreasonably withheld, a draft recycling management plan which details recycling facilities to be maintained on-site, and how recyclables, particularly Waste Ban items, will be collected, stored, and recycled in the operation of the Revised Project. When such plan is approved by Commission staff, it shall thereafter be implemented in the operation of the Revised Project.

SECTION 8. ENERGY

The Revised Project shall be designed to be "LEED Certifiable", in accordance with the standards established by the U.S. Green Building Council; eligible for Energy Star certification; and to be compliant with the American Society of Heating, Refrigerating and Air-Conditioning Engineers ("ASHRAE") Standard 90.1-2004, Section 5.4. Prior to issuance of a Preliminary Certificate of Compliance for any Phase or sub-phase-phase, the Revised Project's architect (the "**Architect**") shall submit with respect to the Phase or sub-phase- Phase for Commission staff review and approval, which approval shall not be unreasonably withheld; building permit/ construction plans; a completed LEED Construction and Major Renovations Project Checklist evidencing LEED certifiability; a completed Energy Star Certification Eligibility Form evidencing Energy Star eligibility; said ASHRAE Compliance documentation; and the Architect's certification to the Commission that the building permit/ construction plans for the Phase or sub-phase-phase are consistent with and incorporate the foregoing, and thus that the Phase or sub-phase-phase is Energy Star eligible, LEED certifiable and complies with said ASHRAE standards. Prior to and as a condition to issuance of a Final Certificate of Compliance for any Phase or sub-phase- Phase, the Architect shall certify to the Commission that such Phase

or sub-phase-phase constructed is in accordance with the foregoing documentation and is Energy Star eligible, LEED certifiable and complies with said ASHRAE standards.

SECTION 9. AFFORDABLE HOUSING

9.1 General Requirements.

A minimum of ten percent (10%) of the total number of residential units developed in the Revised Project shall be restricted as on-Site Affordable Housing Units in perpetuity. Affordable Housing Units for the Revised Project shall be developed and restricted according to the MPSs of the RPP's Affordable Housing Section.

9.2 Phase 1 – Affordable Housing Units.

Pursuant to MPS AH 1.8, MPS AH1.9, and MPS AH2.2, the on-Site Affordable Housing Units in Phase 1 shall:

(i) include approximately fifteen (15) 1-bedroom units, and eight (8) 2-bedroom units;

(ii) be constructed and occupied generally concurrent with construction and occupation of the market rate dwelling units to be developed as part of Phase 1;

(iii) provide at least 700 square feet of net livable space per 1-bedroom unit and 1100 square feet of net livable space per 2-bedroom unit (for the purposes of this condition, "livable space" shall not include interior mechanical rooms or spaces);

(iv) be constructed and initially located in accordance with the Revised Plans, subject to any changes in location permitted under a Regulatory Agreement entered into by the Applicant and the Town of Barnstable, and approved by the Department of Housing and Community Development (the "**Regulatory Agreement**");

(v) at least five (5) of the Affordable Units shall be visitable or disabled-accessible units; and

(vi) services and amenities included in any base residential package for market units shall be included in the residential package for Affordable Housing Units.

9.3 Regulatory Agreement and Use Restriction.

Prior to and as a condition to issuance of the first Preliminary Certificate of Compliance for the Revised Project, the Applicant shall submit to the Commission a copy of the Regulatory Agreement (as then drafted or executed). Commission Staff shall review the Regulatory Agreement to confirm it materially conforms to the standards set forth in MPS AH 1.11, MPS

AH1.12, MPS AH1.13, MPS AH 2.1 and MPS AH 2.3 with respect to the Revised Project's proposed rents for any and all Affordable Housing Units, monitoring, and 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.

SECTION 10. COMMUNITY CHARACTER

10.1 Exterior Signage.

The Applicant shall request and obtain approval from the Commission for any proposed exterior signage for the Revised Project. Prior to and as a condition to issuance of a Preliminary Certificate of Compliance for any Phase or sub-phase-phase of the Revised Project, the Applicant shall submit for Commission staff review and approval, which approval shall not be unreasonably withheld, proposed exterior signage designs for the Phase or sub-phase-phase, including any associated lighting, which shall be designed in conformance with MPS HPCC2.12. As and when approved by Commission staff, said signage designs shall thereby be incorporated herein as part of the Revised Plans approved hereunder.

10.2 Screening.

To comply with MPS HPCC2.5, each Phase shall provide full screening of the Site from Independence Drive by providing a vegetated buffer between it and Independence Drive in accordance with the Revised Plans and Materials. Such vegetated buffer shall be coordinated with landscape and stormwater management plans, and shall be consistent with the conditions set forth in Sections 4.6, 4.7, 10.11 and 10.12.

10.3 Landscape Buffers.

Pursuant to MPS HPCC 2.10 and HPCC2.5, the Applicant shall implement and maintain the Revised Project's landscaping, including vegetated screening buffers, in accordance with the approved landscaping plan and corresponding landscape maintenance protocols included in the Revised Plans and Materials. Such vegetated buffers shall be coordinated with the landscape and stormwater management plans approved hereunder, and shall be consistent with the relevant conditions set forth in Sections 4 and 10 herein. Surface parking areas on Phase 1 shall be located to the side or rear of buildings (relative to Independence Drive) as depicted on the Revised Plans.

10.4 Exterior Materials.

Any exterior building materials used in connection with the constructions, maintenance or repair of the Revised Project shall be substantially consistent with the [Siding Specifications (Section 074600)] referenced in the Exterior Elevations included with the Revised Plans and Materials. If unforeseen changes are made to the exterior materials used for any Phase or sub-phase of the Revised Project as construction proceeds, prior to selection and installation of exterior materials, the Applicant shall submit for Commission staff review and approval, which approval shall not be unreasonably withheld, additional exterior material information sufficient

to allow Commission staff to determine if the proposed alternate materials are consistent with this Section 10.4. Alternate exterior materials found to be consistent with this Section 10.4 may be utilized upon written Commission staff approval, and do not constitute an amendment of this Agreement per Section 8.0 of the Development Agreement Regulations

10.5 Exterior Lighting Fixtures.

All exterior lighting fixtures, including but not limited to all site lighting, used in connection with the construction, maintenance or repair of the Revised Project shall be substantially consistent with the lighting plans and fixtures depicted on sheets 7 and 8 of the Civil Site Plans included with the Revised Plans listed on Appendix D, attached hereto, unless otherwise approved in writing by Commission staff. If unforeseen changes are made to the exterior lighting design of a Phase as construction proceeds, prior to selection and installation of exterior lighting fixtures, the Applicant shall submit for Commission staff review and approval which approval shall not be unreasonably withheld additional exterior lighting design information sufficient to allow Commission staff to determine if the proposed alternate fixtures are consistent with this Section 10.5. Alternate exterior light fixtures found to be consistent with this Section 10.5 may be utilized upon written Commission staff approval, and do not constitute an amendment of this Agreement per Section 8.0 of the Development Agreement Regulations.

SECTION 11. MISCELLANEOUS.

11.1 Mitigation for Revised Project.

In the event that the Applicant does not commence construction of the Revised Project all mitigation proposed hereunder shall no longer be required. All actions of the Foundation for which it has been given credit for mitigation as enumerated herein may be credited as applicable as credits for future projects of the Foundation, or its assigns, as appropriate.

11.2 Assignment.

The obligations, covenants and agreements herein granted and established, including all benefits and burdens, shall run with the land comprising the Site, and shall be binding upon and inure to the benefit of the Parties hereto, their respective successors and assigns. The Parties acknowledge and agree that the term "**Applicant**" as used herein shall mean and refer to the Foundation until the Site is conveyed to Greystar or its designated assignee and, until such conveyance, the Foundation may exercise in full the rights and obligations of the Applicant hereunder. Upon said conveyance, the rights and obligations of the Applicant hereunder shall automatically be assigned to, and assumed by, Greystar or its designated assignee, and the Foundation shall no longer be a Party to this Agreement. Subject to the foregoing, any Party to this Agreement may assign its rights and obligations under this Agreement to another entity (each a "**New Entity**") without the consent of any other Party, 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) 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. For purposes of this Section, the Foundation shall not be deemed to be a predecessor in title.

11.3 Limitations on Liability.

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 11.2 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.

11.4 Estoppel Certificate.

Each Party agrees, from time to time, upon not less than twenty-one (21) days' prior written request from the other, to execute, acknowledge and deliver a statement in writing certifying: (i) that this Agreement is unmodified, and in full force and effect (or if there have been modifications, setting them forth in reasonable detail); (ii) that the Party delivering such statement has no defenses, offsets or counterclaims against its obligations to perform its covenants hereunder (or if there are any of the foregoing, setting them forth in reasonable detail); (iii) that there are no uncured defaults of either Party under this Agreement (or, if there are any defaults, setting them forth in reasonable detail); and (iv) any other information reasonably

requested by the Party seeking such statement. If the Party delivering an estoppel certificate is unable to verify compliance by the other Party with certain provisions hereof despite the use of due diligence, it shall so state with specificity in the estoppel certificate, and deliver an updated estoppels certificate as to such provisions as soon thereafter as practicable. Any such statement delivered pursuant to this Section 11.4 shall be in a form reasonably acceptable to, and may be relied upon by any, actual or prospective purchaser, tenant, mortgagee or other Party having an interest in the Project. The Executive Director or his designee is hereby authorized to execute and deliver any such estoppel certificate on behalf of the Commission.

11.5 Notices.

All notices and other communications that are required or may be given under this Agreement shall be in writing and shall be sent by certified mail return receipt requested to the following addresses or to such other place as any Party may designate by notice to the other Party:

If to the Commission:

Cape Cod Commission
3225 Main Street
P.O. Box 226
Attn: Chief Regulatory Officer
Phone: (508) 362-3828
Facsimile: (508) 362-3136

With a copy to:

Gareth Orsmond, Esq.
Pierce Atwood LLP
100 Summer Street, 22nd Floor
Boston, MA 02110

If to Greystar:

Brandon Henry
Greystar GP II, LLC
8405 Greensboro Drive, Suite 500
McLean, Virginia 22102
Phone: (703) 677-9111
Facsimile: (703) 714-1419
Email: bhenry@greystar.com

With a copy to:

Steven Schwartz, Esq.
400 Atlantic Avenue

Boston, Massachusetts 02110-3333
Phone: (617) 574-4147
Facsimile: (617) 574-7636
Email: sschwartz@goulstonstorrs.com

If to the Foundation:

Mark Thompson, President
The Lyndon Paul Lorusso Charitable Foundation of 2002
P.O. Box 1776
Hyannis, Massachusetts 02601
Email: independencepark1776@verizon.net

With a copy to:

Ron S. Jansson, Esq.
P.O. Box 147
Barnstable, Massachusetts 02630
Phone: (508) 362-3377
Facsimile: (508) 362-3333
Email: jansonlaw@comcast.net

And a further copy by email only to Steve Mack at smack10440@aol.com

11.6 Choice of Law, Etc.

This Development Agreement shall be construed and interpreted in accordance with the laws of the Commonwealth of Massachusetts. The state and federal courts sitting in the Commonwealth of Massachusetts shall have exclusive jurisdiction over any claim or dispute arising under or in connection with this Agreement.

11.7 Counterparts.

This Development 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 mall to another Party or counsel for another Party shall have the same force and effect as an original signature.

11.8 Entire Agreement; Amendments and Waivers.

This Development Agreement, together with the Appendices hereto (which are incorporated herein by reference and made a part hereof) constitute 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.

11.9 Invalidity.

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.

11.10 Limited Undertaking.

Nothing in this Agreement shall be construed as an undertaking by the Applicant to construct or complete the Revised Project, or any portion thereof, and the obligations hereunder being limited to compliance with the provisions hereof to the extent the Revised Project, 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.

[*Signatures on the following page(s)*]

IN WITNESS WHEREOF, the Parties have executed this Agreement under seal as of the day and year first above written.

Cape Cod Commission

By: _____
Name: _____
Title:_____

The Lyndon Paul Lorusso Charitable Foundation Of 2002

By: _____
Name: _____
Title:_____

GREYSTAR GP II, LLC, a Delaware limited liability company

By: _____
Name: Brandon Henry
Title: Vice President
Hereunto Duly Authorized

Appendix A

Description of Project Site

[NOTE: TO BE UPDATED BY REFERENCE TO NEW ANR PLAN UPON ITS RECORDING]

The land with any buildings thereon situated in Barnstable (Hyannis), Barnstable County, Massachusetts, described as follows:

Being LOTS 16A, 17A AND 18A located on 160, 180 and 200 Communication Way, respectively, as shown on a plan of land entitled "PLAN OF LAND IN BARNSTABLE, MA PREPARED FOR INDEPENDENCE PARK INC., Scale 1" = 60', Date: December 5, 1996, Down Cape Engineering, Inc.," which said plan has been duly recorded in the Barnstable County Registry of Deeds in Plan Book 536, Page 9.

Being LOTS 28A, 29A, 30A, 31A, 32A AND 33A located on 265, 225, 191, 175, 145 and 125 Communication Way, respectively, as shown on a plan of land entitled "PLAN OF LAND IN BARNSTABLE, MA PREPARED FOR INDEPENDENCE PARK INC., Scale 1" = 60', Date: December 5, 1996, Down Cape Engineering, Inc.," which said plan has been duly recorded in the Barnstable County Registry of Deeds in Plan Book 536, Page 12. Being LOT 14B located on Communication Way, as shown on a plan of land entitled ''PLAN OF LAND IN BARNSTABLE, MA PREPARED, FOR INDEPENDENCE PARK. INC., Scale 1" = 60', Date December 5, 1996, Down Cape Engineering, Inc.," which said plan has been duly recorded in the Barnstable County Registry of Deeds in Plan Book 536, Page 13.

Appendix B

Proposed Parcel Plan

(*To be attached*)

Appendix C

Redacted Copy of Purchase and Sale Agreement

(*To be attached*)

Appendix D

List of Revised Plans

1. Civil site plans entitled, "The Village at Barnstable, Proposed Active Adult Apartment Community, Phase 1 Site Plans, #125 - #265 Communication Way, Barnstable, Massachusetts" prepared by Pesce Engineering & Associated dated August 11, 2016 (last revised November 3, 2016), Sheets 1-11

2. Architectural plans entitled, "The Village at Barnstable, 125-265 Communication Way, Barnstable MA" prepared by the architectural team, issued November 3, 2016, Sheets T1.01 (Title Sheet), A100-A102 (Floor Plans), 4.00-4.05 (Elevations), and 5.00 (Building Sections)

3. Landscape plans entitled, "Village at Barnstable, Illustrative Landscape Plan" prepared by Blair Hines Design Associates, dated November 3, 2016

4. Site plan entitled, "Phase 1 and Phase 2 Full Layout Plans" prepared by Pesce Engineering & Associates dated August 11, 2016 (last revised September 23, 2016)

Appendix E

List of Additional Documents

1. Stormwater Operations and Maintenance Plan dated August 11, 2016

2. Exterior Building Materials Specifications (Section 074600-Siding) for Village at Barnstable, Barnstable, MA, TAT Project #14149, dated September 30, 2016

3. The Village at Barnstable Landscape Maintenance Protocol prepared by Blair Hines Design Associates and Pesce Engineering & Associates dated October 3, 2016

4. Stormwater Certification Letter from Pesce Engineering & Associates September 30, 2016

5. Nitrogen Loading Calculations prepared by Pesce Engineering Assoc., Inc. dated November 4, 2016

Appendix F

Project Open Space Plan

(*To be provided*)

Appendix G

Trip Reduction Plan

- Provide an on-site transportation coordinator to coordinate the trip reduction program, including coordination with Town of Barnstable, the Cape Cod Regional Transit Authority (CCRTA), MassRides, and the Cape Cod Commission to develop the elements of the trip reduction program for the project

- Coordinate with MassRides and the CCRTA with respect to carpooling/vanpooling and other alternative transportation programs relevant to the Revised Project

- Provide employees and residents with and post in a common area information regarding available public transportation resources, schedules, fare information, and stop/terminal locations

- Disseminate and post in a common area promotional materials to residents and employees regarding public and alternative transportation options

- Provide incentives used to encourage employees to use car/vanpool, public transportation or walk/bicycle to work

- Provide designated parking spaces will be provided on-site for car/vanpools, car sharing, and alternative fuel vehicles in preferred locations

- Provide on-site services to employees to decrease off-site trips, including but not limited to a lunchroom equipped with a microwave and refrigerator