

## EXHIBIT A

### HOST COMMUNITY AGREEMENT

This Host Community Agreement (the "**Agreement**") is entered into by and between the Town of Hopkinton (the "**Town**"), acting by and through its Board of Selectmen (the "**Selectmen**"); REC Hopkinton, LLC, a Massachusetts limited liability company having its principal office at 77 West Main Street, Suite 213, Hopkinton, MA 01748 (REC Hopkinton, together with its successors and assigns, to be referred to collectively as the "**Owner**"); and Hopkinton Mews, LLC, a Massachusetts limited liability company having its principal office at 15 New England Executive Park, Burlington, MA 01803 (the "**Developer**").

This Agreement represents the understanding among the Town, the Owner and the Developer (the "**Parties**") with respect to the commitments by the Owner and/or Developer in connection with the development of a project (the "**Project**"), containing both residential and commercial components, on approximately 95 acres of land off of Lumber Street in the Town of Hopkinton (the "**Site**"). A map of the land included within the Site is attached hereto as Exhibit A.

### RECITALS

WHEREAS the Site is owned by the Owner by virtue of a deed dated April 20, 2012, and recorded in the Middlesex South District Registry of Deeds in Book 59029, Page 240 (the "**Deed**"), and is shown on a plan entitled "Plan of Land in Hopkinton, Property of Rutherford Day, Scale 1" = 80', April 15, 1970, Essex Survey Service, Inc., 47 Federal Street, Salem," which plan is recorded at the Middlesex South District Registry of Deeds as Plan No. 1350 of 1978 in Book 13951, Page 874;

WHEREAS the Owner is also the owner of an adjacent parcel of land (the "**Adjacent Parcel**"), containing approximately 105 acres, by virtue of the Deed. The Adjacent Parcel is shown as Parcel #3 on a plan entitled "Plan of Land in Hopkinton, Mass., Scale 1" = 200', October 8, 1968, Schofield Brothers, Inc., Registered Land Surveyors, 48 Park Street, Framingham, Mass.," which plan is recorded at the Middlesex South District Registry of Deeds as Plan No. 62 (4 of 4) of 1969 in Book 11634, Page End;

WHEREAS, by vote taken May 7, 2014, the 2014 Annual Town Meeting, to amend the Hopkinton Zoning Bylaws by adding a new Article (the "**NMU Article**"), defining and regulating a Neighborhood Mixed-Use (NMU) District, and adopting a map amendment (the "**NMU Map Amendment**"), locating the Site within such District;

WHEREAS, the NMU Article and NMU Map Amendment allow the Owner to seek a Master Plan Special Permit from the Planning Board authorizing the Project, which will consist of components required, permitted or permissible pursuant to the NMU Article as more specifically described and conditioned in this Agreement;

WHEREAS, the Parties wish to enter into this non-regulatory Agreement to memorialize their mutual understandings and undertakings with respect to the Project, on the terms and conditions hereinafter set forth; and

WHEREAS, the provisions of this Agreement are available for consideration by the Planning Board in reviewing any application for a Master Plan Special Permit authorizing the Project and by the Board of Appeals (“ZBA”) in reviewing any application for a comprehensive permit for the residential portion of the Project.

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

## **I. Implementation of Project Components**

### **A. Project Description**

1. The residential portion of the Project shall include up to 280 Dwelling Units. Twenty-five percent of Dwelling Units shall be affordable and eligible for inclusion in the Subsidized Housing Inventory of the Massachusetts Department of Housing and Community Development (“DHCD”). At the Developer’s option, these Dwelling Units may be approved pursuant to a Comprehensive Permit issued pursuant to M.G.L. c.40B (“**40B**”) and, if so approved, shall be subject only to such conditions and requirements specified in the Comprehensive Permit.
2. Upon the Town’s satisfaction of the obligations set forth in Section III.E.2, Developer shall submit a revised site plan for the residential portion of the Project reflecting 280 Dwelling Units for the ZBA’s review.
3. Any Comprehensive Permit or Master Plan Special Permit for the portion of the Site containing the Dwelling Units shall include a condition that they remain as rental units eligible for inclusion on the Subsidized Housing Inventory for so long as the rules, regulations or guidelines of DHCD issued pursuant to M.G.L. c.40B, §§20-23 continue to provide that all the units in a rental development that contains at least 25% affordable housing units are eligible for inclusion on the Subsidized Housing inventory.
4. The Developer or its successor and assign as owner of the Dwelling Units shall provide the Selectmen with copies of the annual reports submitted to the Massachusetts Housing Finance Agency (“MassHousing”) as Administrator of the residential portion of the Project. The Developer agrees to reimburse the Town for its reasonable costs and expenses to review the Developer’s cost certification after preliminary review thereof by MassHousing, up to a maximum of \$2500. In addition, the Developer further agrees to reimburse the Town for its reasonable costs and expenses of its review, if requested by MassHousing, of 40B compliance matters.
5. The Project may also include commercial development as allowed in the NMU District, and which may be developed in phases.

6. The commercial portion of the Project shall be based on low-impact design principles, a set of strategies that seek to maintain natural systems during the development process by creating development that, to the extent feasible, is integrated into the landscape and not imposed on it. Such principles shall include, without limitation, the use of best management practices for stormwater management. The residential portion of the Project will be subject to MassHousing's review for consistency with the Commonwealth's Sustainable Development Principles.

## **B. Project Schedule**

1. The Developer intends to apply for the first building permit for the residential portion of the Project within one year of the date on which the Comprehensive Permit becomes final pursuant to 760 CMR 56.05(12)(c).
2. The Developer agrees to apply for certificates of occupancy for the residential portion of the Project in compliance with the requirements of the Developer's construction lender.
3. The Owner shall apply for a final base building Certificate of Occupancy for the 35,000 square foot commercial building adjacent to 77 West Main Street no later than one year after issuance of the first Certificate of Occupancy for any Dwelling Unit in the residential portion of the Project.

## **II. Project Mitigation**

### **A. Affordable Housing Limitation**

1. The Owner agrees, on behalf of itself and its successors and assigns, that it will not seek a Comprehensive Permit for any other development within the Site or the Adjacent Parcel pursuant to M.G.L. c.40B, §§20-23,

### **B. Traffic**

1. Prior to the issuance of the first Certificate of Occupancy for a Dwelling Unit in the residential portion of the Project, the Developer shall install an electrical vehicle charging station and in the vicinity of the portion of the Site containing the Dwelling Units.
2. Prior to the issuance of the first Certificate of Occupancy for a commercial component of the Project, the Developer shall install an electrical vehicle charging station in the vicinity of such commercial component.
3. Within 90 days of the issuance of a Master Plan Special Permit, the Owner shall install a bike rack on property it owns at 77 West Main Street, Hopkinton, MA.

### **C. Expansion of Water Service**

1. The Town shall provide water service for the Project by means of a connection to the Town's municipal water supply system.
2. The Developer shall pay for the design, engineering and construction costs and the Town's peer review engineering and permitting costs directly associated with extending water lines and service to the Project, including the Town's legal and consulting fees and costs associated with obtaining an amendment to its Water Management Act ("WMA") permit. The amount to be paid to the Town for WMA permitting costs shall not exceed \$50,000, which shall be placed into escrow prior to the issuance of the first building permit for any portion of the Project.
3. Upon payment by the Owner or Developer of all connection fees required by the Hopkinton Water Department, pursuant to its applicable fee schedule as in effect on the date of execution of this Agreement, a copy of which is attached to this Agreement, for any component of the project, the Town shall provide water service to the corresponding component of the Project, in an amount not to exceed an aggregate total of .065 MGD, whether or not the expansion of water service pursuant to Section III.A.1 has been completed.
4. The Owner and the Developer, each on its own behalf and on behalf of all its successors and assigns, hereby forever waives its right to challenge the imposition or amount of any water connection fees referenced in Section II.C.3 above imposed for connection of the Project to the Town's water system.
5. In the event that any water pressure boosting pump stations are required on the Site in order to provide water service to the Project, such pump stations shall remain the responsibility of the Owner or Developer, as applicable, depending on which portion of the Project any such boosting pump station serves, for future maintenance, repair and all associated costs.

#### **D. Mitigation Payment**

1. Within seven days of the sale of a portion of land from the Owner to the Developer for the Dwelling Units, the Developer shall make a payment to the Town in the amount of \$1 million, to be placed into a gift account and to be used for Project mitigation as the Town, in its sole discretion, deems appropriate. If fewer than 280, but at least 250, Dwelling Units are approved by the applicable Town boards and departments for the residential portion of the Project, the amount of such payment shall be reduced to \$400,000 plus \$20,000 per Dwelling Unit over 250. The amount of such mitigation payment shall be calculated based on the number of Dwelling Units approved in an acceptable Comprehensive Permit, whether or not the Developer constructs the approved number. For the purposes of this Section, a Comprehensive Permit shall be

conclusively deemed to be “acceptable” if the Developer elects to apply for a building permit for any Dwelling Unit authorized by the Comprehensive Permit.

#### **E. Sewer Service**

1. The Developer shall construct, at its sole expense, an on-site wastewater treatment facility to service the residential portion of the Project. The Town shall not be required at any time to extend public sewer and wastewater treatment or disposal services to the residential portion of the Project. The Comprehensive Permit issued for the residential portion of the Project shall include this as a condition.
2. The Owner acknowledges that the Town is not committed to extending public sewer and wastewater treatment or disposal services to any commercial component of the Project that is not currently served.
3. The Town shall not oppose the permitting of the Developer’s or Owner’s wastewater treatment facility by the Department of Environmental Protection (DEP) provided that the facility is designed in compliance with DEP Regulations.

#### **F. Repair of Damages**

1. If, in the course of laying water mains or other utilities in connection to the Project, the Owner or Developer damages any municipal facilities, the Owner or Developer, as applicable, depending on which party caused the damage, shall repair such municipal facilities under the supervision of the Hopkinton Department of Public Works, at the sole cost of the Owner or Developer.

#### **G. Planning Board Mitigation**

1. Nothing contained in this Agreement shall be construed to restrict the Planning Board’s discretion, pursuant to the NMU Article, to require mitigation by or from Owner of specific Project impacts generated by the commercial portion of the Project in its grant of a Master Plan Special Permit or Site Plan Approvals for the commercial portion of the Project.

### **III. Town Obligations**

#### **A. Expansion of Town Water Service**

1. Upon receiving notice that the escrow payment provided for in Section II.C.2 has been made, the Town shall undertake, in cooperation with the Developer, to increase the water withdrawal volume authorized by the Town’s WMA permit so that total system withdrawals of at least .065 million gallons per day are authorized.

## **B. Affordable Housing**

1. If requested by Developer, the Selectmen shall approve and execute a “Local Initiative Project” (“LIP”) application to the Massachusetts Department of Housing and Community Development and take such other action as may be necessary for the residential portion of the Project to be eligible for inclusion on the Subsidized Housing Inventory. In any case, the Selectmen shall approve the residential portion of the Project’s inclusion of up to 280 Dwelling Units notwithstanding its thereby qualifying as a Large Project pursuant to 960 CMR 56.03(6).

## **C. Roadways**

1. The Selectmen shall grant such temporary access licenses as reasonably necessary for construction of the Project and associated utilities, and shall grant curb cut approvals for the Project consistent with applicable Town standards; provided, however, that the Owner or Developer, as applicable, shall promptly restore the surface of any portion of any public way disturbed in the course of construction of the Project or associated utilities by placing bituminous pavement between the edges of the existing pavement of such public way in accordance with (a) the Town’s Application for a Permit to Open, Occupy, or Obstruct a Street; (b) the Town’s Conditions and Requirements Pursuant to M. G.L. 0.82A and 520 CMR 7.00, et seq.; and (c) the Town’s Road Opening Permit Policy.

## **D. Access to Town Land**

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

## **E. Cooperation**

1. As a prerequisite to this Agreement remaining effective, within thirty (30) days after the execution of this Agreement:
  - (a) The Selectmen shall vote to request the inclusion of 280 Dwelling Units in the residential portion of the Project notwithstanding the Project’s qualification as a Large Project pursuant to 960 CMR 56.03(6); and
  - (b) The Selectmen, the Planning Board and the ZBA shall request by majority vote of each of them that MassHousing review the increase in Dwelling Units and associated revisions to the residential portion of the Project contemplated in this Agreement during the Final Approval process under 40B, rather than requiring a revised Project Eligibility Letter.

2. The Selectmen shall cooperate with Developer's and Owner's permitting efforts for all Project characteristics specifically referenced in this Agreement. Upon request, the Selectmen shall provide statements of support to the Planning Board, ZBA or other permitting authority as appropriate.

#### **IV. Miscellaneous**

- A. The Planning Board may choose to incorporate the terms of this Agreement by reference and make it a part of any Master Plan Special Permit issued for the Project.
- B. This Agreement shall be binding on the Developer only if Developer obtains a Comprehensive Permit for at least 250 Dwelling Units on the Property, which contains only conditions consistent with this Agreement or as otherwise as acceptable to Developer, and which has become final and not subject to any appeal. For the purposes of this Section, a Comprehensive Permit condition shall be conclusively deemed to be "acceptable to Developer" if the Developer elects to apply for a building permit for any Dwelling Unit authorized by the Comprehensive Permit.
- C. If and to the extent that either of the Parties is prevented from performing any particular obligation hereunder by an event of force majeure, such party shall be excused from performing such obligation and shall not be liable in damages or otherwise, and the Parties instead shall negotiate in good faith with respect to appropriate modifications to the terms hereof. For purposes of this Agreement, the term force majeure shall mean any cause beyond the reasonable control of the affected party, including without limitation requirement of statute or regulation; action of any court, regulatory authority, or public authority having jurisdiction; acts of God, fire, earthquake, floods, explosion, actions of the elements, war, terrorism, riots, mob violence, inability to procure or a general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, actions of labor unions, condemnation, laws or orders of governmental or military authorities, or any other cause similar to the foregoing, not within the reasonable control of such party obligated to perform such obligation. With respect to any obligation of the Owner or Developer, the term force majeure shall also include the denial of, refusal to grant or appeals of any permit, approval or action of any public or quasi public authority, official, agency or subdivision and any litigation relating to such particular obligation, or any other cause similar to the foregoing.
- D. Failure by the Owner or Developer to perform any term or provision of this Agreement shall not constitute a default under this Agreement unless and until such Party fails to commence to cure, correct or remedy such failure within thirty (30) days of the receipt of written notice of such failure from the Town to the Owner or Developer and thereafter fails to complete such cure, correction or remedy within sixty (60) days of receipt of such written notice or, with respect

to defaults which cannot reasonably be cured, corrected or remedied within such sixty (60) day period, within such addition period of time as is reasonably required to remedy such default, provided that the Owner or Developer exercises due diligence in the remedying of such default. In addition, the obligations of Owner and Developer hereunder shall be separate, not joint. The Selectmen specifically acknowledge and agree that the obligations of Owner hereunder can only be enforced against Owner and not Developer, and the obligations of Developer hereunder can only be enforced against Developer and not Owner, such that no default by one party shall have any impact on the other party or its portion of the Project.

- E. No officer, director, member, employee, or other principal, agent or representative (whether disclosed or undisclosed) of any party, nor any participant with any party, shall be personally liable to the other parties hereunder for any of such party's obligations herein. In no event shall the parties ever be liable hereunder for any damages, incidental, indirect, punitive or special or consequential damages.
- F. This Agreement shall be binding upon the Parties and their successors and assigns, and shall run with the land. Consistent with the above provisions of this Section IV, the Developer's obligations shall run only with the land of the portion of the Property it acquires from Owner, and Owner's obligations shall only run with the land of the portion of the Property not conveyed to Developer. If this Agreement is executed prior to the subdivision of the Property as contemplated, the parties shall execute partial releases of this Agreement to effectuate the immediately preceding sentence.
- G. Each Party agrees from time to time, upon not less than twenty one (21) days' prior written request from the other, to execute and deliver a statement in writing certifying that this Agreement is in full force and effect (or if there have been any modifications, setting them forth in reasonable detail), and that there are no uncured defaults of either Party under this Agreement, in a form reasonably acceptable to, and which may be relied upon by, any prospective purchaser, tenant, mortgagee or other party having an interest in the Project, the Site or the Adjacent Parcel.
- H. Whenever the consent or approval of any party is required under this Agreement, such consent or approval shall not unreasonably be withheld, delayed or conditioned. Such approvals shall be deemed given if no written response is received within ten (10) business days of the request for approval having been so delivered; provided, however, that, in the event that the Town Manager or his designee provides notice within such ten (10) business day period that additional time is needed for the Town to provide such written response not to exceed twenty (20) additional business days, the requested approval shall not be deemed given if a written response is received as soon as practicable but not later than the expiration of the time specified in such notice.



- I. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.
- J. This Agreement sets forth the entire agreement of the Parties with respect to the subject matter thereto and supersedes all prior negotiations, representations or agreements, either written or oral. The failure of any party to strictly enforce the provisions hereof shall not be construed as a waiver of any obligation hereunder.
- K. If any provision of this Agreement shall be found invalid for any reason in a court of competent jurisdiction, such invalidity shall be construed as narrowly as possible, and the balance of the Agreement shall be deemed to be amended to the minimum extent necessary, so as to secure the purposes thereof.
- L. Paragraph headings are included herein for reference purposes only and in no way define, limit or describe the scope or intent of any of the provisions of this Agreement.
- M. It is expected that any work associated with expanding the Town's water and sewer systems that is undertaken by the Town and not by the Developer shall be subject to applicable public construction, procurement and prevailing wage laws.
- N. The Parties shall endeavor to resolve their disputes by negotiation. Disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof that cannot be resolved by negotiation shall be subject to and decided by the Superior Court of Massachusetts in Middlesex County or another court in Massachusetts with jurisdiction.
- A. The Parties stipulate to the applicability of the State Conflict of Interest Law (General Laws Chapter 268A), and this Agreement expressly prohibits any activity that constitutes a violation of that law. The Owner and Developer shall be deemed to have investigated the law's applicability to the performance of this Agreement, and, by executing the Agreement, the Owner and Developer certify to the Town that neither of them, nor any of their agents, members, trustees, partners, directors, officers, or shareholders, are in violation of M.G.L. c.268A.
- B. This Agreement may be executed in several counterparts and by each Party on a separate counterpart, each of which when so executed and delivered shall be an original, but all of which together shall constitute one instrument.

C. This Agreement shall be binding upon the Owner and Developer as well as their successors and assigns, and shall run with the land.

Executed under seal as of the \_\_\_\_  
day of October, 2014.

REC HOPKINTON, LLC

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

HOPKINTON MEWS, LLC

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

TOWN OF HOPKINTON BOARD OF  
SELECTMEN

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

Its Chair

Hereunto duly authorized

By: \_\_\_\_\_  
Town Counsel as to Form