

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (the "Agreement") is made as of the ^{26th} day of March 2015, by and between the **BOSTON REDEVELOPMENT AUTHORITY**, a public body politic and corporate, created pursuant to Chapter 121B of the Massachusetts General Laws, as amended, and acting in its capacity as the planning board for the City of Boston pursuant to Chapter 652 of the Acts of 1960, as amended, with a principal place of business at One City Hall Square, Boston, Massachusetts 02201-1007 (the "Authority") and **HARVARD REAL ESTATE-ALLSTON, INC.**, a Massachusetts corporation with an address of Harvard Real Estate Services, 1350 Massachusetts Avenue, Smith Campus Center, Eighth Floor, Cambridge MA 02138 ("Harvard"); the Authority and Harvard, collectively, shall be referred to herein as the "Parties."

RECITALS

WHEREAS, in accordance with the requirements of Article 80 of the Boston Zoning Code (the "Code"), Harvard submitted an Institutional Master Plan Notification Form (the "IMPNF") to the Authority on October 19, 2012. The Authority issued a Scoping Determination on March 29, 2013. Harvard, in response to the Scoping Determination, filed on July 26, 2013 an Institutional Master Plan for Harvard University's Campus in Allston (the "IMP") and a revised version of the IMP on October 31, 2013; and

WHEREAS, on October 17, 2013 the Authority's Board voted to: (1) approve the Harvard IMP and associated map amendment; (2) issue an Adequacy Determination approving the Harvard IMP pursuant to Section 80D-5.4 of the Code; (3) petition the Boston Zoning Commission (the "Zoning Commission") to approve the Harvard IMP and associated map amendment; (4) issue one or more Certifications of Consistency in connection with the Proposed Institutional Projects described in the Harvard IMP pursuant to Section 80D-10 of the Code; and (5) execute any and all documents deemed necessary and appropriate relative to the Harvard IMP, including, but not limited to, a Cooperation Agreement, as well as any amendments to the foregoing; and

WHEREAS, the Boston Zoning Commission approved the Harvard IMP on November 20, 2013, effective November 21, 2013; and

WHEREAS, on July 10, 2014 the Parties entered into a Cooperation Agreement for the purposes of: (i) setting forth the mitigation measures and other public benefits which Harvard has agreed to provide in connection with the IMP; (ii) acknowledging that public benefits should be addressed on an IMP level; and (iii) ensuring compliance of the IMP with Article 80 of the Boston Zoning Code (the "Cooperation Agreement"); and

WHEREAS, Harvard currently owns certain property commonly known as the Brookline Machine Site located at 90 Antwerp Street, Boston, MA (the "Site"), a legal description of which is attached hereto as Exhibit A; and

WHEREAS, pursuant to Section B.7 of the Cooperation Agreement, Harvard has agreed to donate the Site subject to certain terms and conditions; and

WHEREAS, the Parties wish to enter into this Agreement for the purpose of more specifically setting forth the terms and conditions of Harvard's donation of the Site and certain agreements of the Parties with respect to the Site prior to such donation.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Parties hereby agree as follows:

1. Future Site Use Determination.

Within eighteen (18) months of the date of the execution of this Agreement, *September 26,* 2016, (the "Determination Period"), the Authority will engage in and complete a community process with the Harvard Allston Task Force, abutters of the Site and neighborhood representatives to determine the proposed future use of the Site (the "Future Use"). The Authority will commence this community process not later than May 1, 2015. In addition to determining the Future Use, the Authority, during the Determination Period, will also determine whether the Authority, a City Agency or a third-party entity will be designated to receive title to the Site (the "Designated Grantee Entity").

2. Demolition and Response Actions at Site.

During the Determination Period, Harvard shall, at Harvard's sole cost and expense, demolish the existing building on the Site, cut and cap on-Site utilities and remove all demolition debris and related materials from the Site in accordance with applicable law, including, without limitation, an existing underground storage tank. Following building demolition and until the completion of the Authority's aforementioned public process and the conveyance of the Site by Harvard pursuant to this Agreement), the Site shall be closed to public access and Harvard shall, at Harvard's sole cost and expense (i) maintain the Site in a secure condition (e.g., fencing of entire perimeter); (ii) install planted buffers on the west side of the Site adjacent to residential properties; (iii) regularly remove litter from the Site; and (iv) take such environmental response actions as are recommended by Harvard's Licensed Site Professional ("LSP") or are otherwise required by the Massachusetts Contingency Plan, 310 CMR 40.0000 et seq. (the "MCP"), in order to stabilize the Site prior to the initiation of the Cleanup (defined below). Harvard shall, at Harvard's sole cost and expense, implement such response actions, including, without limitation, sampling and assessment activities and Activity and Use Limitations ("AULs"), as are necessary to allow passive recreational use of the Site in accordance with the MCP (the "Cleanup"). Harvard shall use reasonable efforts to promptly initiate and conduct the Cleanup in a timely manner at such time as the Authority agrees (but, in no event, shall Harvard be required to delay the initiation of the Cleanup for more than eighteen (18) months from the execution date of this Agreement and provided further that Harvard shall have the right to implement any or all measures of the Cleanup or such other necessary response actions earlier if so required by the MCP or other applicable law) and shall complete the Cleanup prior to conveyance of the Site by Harvard pursuant to this Agreement. The Authority hereby agrees that, in connection with the Cleanup, Harvard shall only be required to remove and replace such soils or perform such other

response actions at the Site as are recommended, in writing, by Harvard's LSP after using reasonable efforts to consult with the Authority, provided that such written recommendations (a) take into account the Future Use (e.g., if the Future Use will cause soils to be covered with building, pavement or another protective barrier, removal of soils from such covered areas that may have been required to allow passive recreational use may not be required), (b) is certified to Harvard and (c) said Licensed Site Professional provides a reliance letter to the Authority (and the entity that ultimately takes title as set forth below) with regard to such written recommendation, which reliance letter shall be in such form and of such substance as is reasonably acceptable to the Authority. Harvard shall not be obligated for (i) additional response actions required or for additional cleanup costs associated with any Future Use other than passive recreational use; (ii) any actions or costs to prepare the Site for the Future Use (other than to perform the Cleanup); or (iii) for any future construction or excavation activities, including, without limitation, the installation of building elements such as vapor barriers and/or venting systems, associated with any Future Use other than passive recreational use. Harvard shall share the Phase I Environmental Site Assessment previously prepared by Haley & Aldrich dated September 2012 and all final environmental reports and environmental data generated by Harvard's LSP as part of the Cleanup and any other response actions described above, including, without limitation, the results of all sampling and assessment activities (the "Environmental Data").

3. Data Evaluation and Conveyance of the Site

Within ninety (90) days of receipt of a notice from Harvard that all the Environmental Data required under the foregoing paragraph has been provided, the Designated Grantee Entity shall have the right to evaluate the Environmental Data and may elect to perform additional environmental sampling, at its sole cost and expense, pursuant to a reasonable and mutually agreeable form of access agreement, to determine if the environmental condition of the Site is acceptable to the Designated Grantee Entity.

If the Designated Grantee Entity determines that the environmental condition of the Site is not acceptable, the Authority shall select another entity (the "Secondary Grantee Entity") within thirty (30) days. Within ninety (90) days of receipt of a notice from Harvard that all the Environmental Data required under the foregoing paragraph has been provided, the Secondary Grantee Entity shall have the right to evaluate the Environmental Data and may elect to perform additional environmental sampling, at its sole cost and expense, pursuant to a reasonable and mutually agreeable form of access agreement, to determine if the environmental condition of the Site is acceptable to the Secondary Grantee Entity.

Harvard will convey the Site to the Designated Grantee Entity or the Secondary Grantee Entity, as appropriate, within ten (10) days of its determination that the environmental condition is acceptable. If the entity accepting title to the Site is not the Authority or a City Agency (i.e. it is an unaffiliated third-party), such conveyance will be by a deed substantially in the form attached hereto as Exhibit B. If the entity accepting title to the Site is the Authority or a City Agency, such conveyance will be by a deed substantially in the form attached hereto as Exhibit C. Notwithstanding anything to the contrary contained in this Agreement and as stated in Exhibit

B attached hereto, from and after the date of conveyance Harvard shall not be responsible for and shall be released from any costs, claims or obligations arising out of any use of the Site that is not a passive recreational use. Notwithstanding that the Future Use of the Site may be passive recreation and that the Site may be remediated to a standard that allows passive recreational use, the Parties acknowledge that the conveyance of the Site by Harvard is not intended to subject the Site to the jurisdiction of Article 97 of the Constitution of the Commonwealth unless the City of Boston Parks Department acquires title to the Site. If the Designated Grantee Entity and the Secondary Grantee Entity both determine that the environmental condition of the Site is unacceptable, the Authority and Harvard will enter into good faith discussions as to a mutually acceptable alternative process for Harvard's donation of the Site.

4. Term: Expiration.

Harvard's obligation to convey the Site shall expire ten (10) years from the date hereof provided that Harvard shall not be obligated to perform any remediation or site maintenance activities during that time, including without limitation, any remediation required for any Future Use other than passive recreational use, except for those obligations specifically set forth in Paragraph 2 above. Except as otherwise agreed to by Authority and Harvard as conditions of conveyance of the Site, no obligations shall survive the conveyance.

5. Limitation of Liability.

In no event shall any Party be liable to any other Party for any claim for any indirect, consequential or punitive damages, including loss of profits or business opportunity, arising under or in connection with this Agreement.

In no event shall any member, manager, director, officer, employee, shareholder, partner, trustee, member of governing boards, fellow, beneficiary, agent or representative of the Parties, or anyone claiming by, through, or under the Parties, ever be personally liable for the payment or performance of any obligations under this Agreement.

6. Notices.

All correspondence and notices regarding this Agreement shall be in writing and directed as follows:

If to Harvard: Harvard Real Estate – Allston, Inc.
Harvard Real Estate Services
Smith Campus Center, Eight Floor
1350 Massachusetts Avenue
Cambridge, MA 02138
Attn: Carolee Hill

With a copy to: Harvard Public Affairs and Communications
Smith Campus Center, Tenth Floor
1350 Massachusetts Avenue

Cambridge, MA 02138
Attn: Kevin Casey

And to: Office of General Counsel, Harvard University
Smith Campus Center, Suite 980
1350 Massachusetts Avenue
Cambridge, Massachusetts 02138
Attn: Daniel S. Rabinovitz, Esq.

And to: Goulston & Storrs, PC
400 Atlantic Avenue
Boston, MA 02110
Attn: Douglas M. Husid, Esq.,

If to the Authority: Boston Redevelopment Authority
One City Hall Square
Boston, MA 02201-1007
Attn: Director's Office

With a copy to: Boston Redevelopment Authority
One City Hall Square
Boston, MA 02201-1007
Attn: General Counsel

A notice shall be deemed to have been given on the earlier of (a) the date received, or (b) the date of delivery, refusal, or non-delivery indicated on the return receipt.

7. Miscellaneous.

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts. This Agreement may be signed in counterparts, which together shall constitute one original. This Agreement shall be binding upon the successors and assigns of each Party. This Agreement constitutes the entire agreement among the Parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, expectations and discussions of the Parties, whether oral or written, and there are no representations or other agreements between the Parties in connection with the subject matter herein except as specifically set forth in this Agreement. In the event that any court of competent jurisdiction shall hold any portion of this Agreement invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision hereof. No amendment of this Agreement shall be effective unless it is in writing and signed by all Parties to this Agreement.

[Signatures on the Following Page]

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the date first above written.

**HARVARD REAL ESTATE – ALLSTON,
INC.**

By: Carolee Hill

Carolee Hill, Vice President and Assistant
Treasurer
Duly Authorized

BOSTON REDEVELOPMENT AUTHORITY

By: Brian P. Golden

Brian P. Golden, Director
Duly Authorized

Schedule of Exhibits:

- Exhibit A: Legal Description**
- Exhibit B: Form of Deed (with third party entity as Grantee)**
- Exhibit C: Form of Deed (with Authority or City Agency as Grantee)**

EXHIBIT A

[Property description]

Four parcels of land situated in that part of Boston known as Brighton and described as follows:

Parcel 1, situated on the westerly side of Antwerp Street and the northerly side of Holton Street shown as Lots 72-A, 71, 70, 62 and 63-A on a plan entitled "Plan of Land in Brighton Mass. Showing Redivision of Lots, 67, 68, 72 and 73 as shown on Plan by Foster dated Jan 1897" by Winebaum & Wexler, Civil Engineers, dated January 29, 1924, recorded with Suffolk Registry of Deeds in Book 4572, Page 62, and being together bounded and described according to said plan as follows:

SOUTHEASTERLY	by Antwerp Street, one hundred seven (107) feet;
SOUTHWESTERLY	by Holton Street, one hundred sixty-five (165) feet;
NORTHWESTERLY	by Lots 64, 65 and 66 as shown on said plan, ninety-five (95) feet;
NORTHEASTERLY	by Lot 68-A as shown on said plan, forty-four (44) feet;
SOUTHEASTERLY	by Lot 69 as shown on said plan, five (5) feet;
NORTHEASTERLY	by said Lot 69, forty-four (44) feet;
NORTHWESTERLY	by said Lot 69, seventeen (17) feet; and
NORTHEASTERLY	by Lot 73-A, seventy-seven (77) feet.

Said premises containing 16, 379 square feet of land more or less.

Parcel 2, being Lot 69 on a plan entitled "Plan of Land on Litchfield & Antwerp Sts. Brighton" by Frank A. Foster, Civil Engineer, dated January 1, 1897, recorded with Suffolk Registry of Deeds, Book 2425, Page 597, is bounded and described according to said plan as follows, viz:

WESTERLY	by Lot 68, ninety (90) feet;
NORTHERLY	by a proposed street (now Gould Street), being land formerly of Fred H. Searles, forty-four (44) feet;
EASTERLY	by Lots 72 and 73, ninety (90) feet; and
SOUTHERLY	by Lot 62, forty-four (44) feet.

Containing 3,960 square feet of land according to said plan.

Parcel 3, situated on the westerly corner of Antwerp and Gould Streets, being Lot 73-A on a plan entitled "Plan of Land in Brighton, Mass. Showing Redivision of Lots 67, 68, 72 and 73 as shown on Plan by Foster dated Jan 1897" by Winebaum & Wexler, Civil Engineers, dated January 29, 1924, recorded with Suffolk Registry of Deeds in Book 4572, Page 62, is bounded and described according to said plan as follows:

NORTHEASTERLY	by land of owners unknown, called on said plan, Gould Street, seventy-seven (77) feet;
SOUTHEASTERLY	by Antwerp Street, seventy-three (73) feet;
SOUTHWESTERLY	by Lot 72A, seventy-seven (77) feet; and
NORTHWESTERLY	by Lot 69, seventy-three (73) feet.

Containing 5,621 square feet.

Said premises are also shown as Lot 73 and the larger portion of Lot 72 on said Frank A. Foster's plan dated January 1, 1897 and recorded with said Deeds in Book 2425, Page 597.

Parcel 4, situated on the southwesterly side of Gould Street, a short distance northwest of Antwerp Street, being Lot 68-A on said Winebaum & Wexler plan recorded in said Deeds in Book 4572, Page 62, bounded and described according to said plan as follows:

NORTHEASTERLY	by land of owners unknown, called on said plan Gould Street, forty-four (44) feet;
SOUTHEASTERLY	by Lot 69, eighty-five (85) feet;
SOUTHWESTERLY	by Lot 63-A, forty four (44) feet; and
NORTHWESTERLY	by Lots numbered 66 and 67, eighty-five (85) feet.

Containing 3,740 square feet.

Said premises are also shown as the larger portion of Lot 68 on said Frank A. Foster's plan dated January 1, 1897 and recorded with said Deeds, Book 2425, Page 597.

All four parcels being conveyed together with whatever rights the Grantor has in Gould Street and Antwerp Street shown on said plans.

Property Address: 90 Antwerp Street and 13 Holton Street, Boston

EXHIBIT B

**FORM OF DEED
(Non-City Entity as Grantee)**

DEED

HARVARD REAL ESTATE-ALLSTON, INC., a Massachusetts corporation with an address of 1350 Massachusetts Avenue, Smith Campus Center, Eighth Floor, Cambridge, Massachusetts 02138 (as successor-in-interest to Crown Mechanic LLC, a Massachusetts limited liability company, pursuant to that certain Certificate of Merger/Cancellation dated as of December 16th, 2008 and filed with the Secretary of the Commonwealth of the Commonwealth of Massachusetts on December 24, 2008, a copy of which was recorded in the Suffolk County Registry of Deeds in Book 47352, Page 330 (hereinafter referred to as the "Grantor") for consideration paid and in consideration under One Hundred Dollars, grants to the [**ENTITY INFORMATION**] ("Grantee"), any and all its rights, title and interest in and to the land situated on Antwerp Street and Holton Street in the Brighton Section of the City of Boston, Massachusetts, being more particularly described on Exhibit A attached hereto and incorporated herein (the "Premises").

The conveyance is made together with and subject to all recorded easements, conditions, covenants, restrictions, any existing provisions of local zoning laws, agreements and all other matters of record that lawfully apply to the property hereby conveyed.

By acceptance of this deed, Grantee accepts the Premises as is, without any representations or warranties, expressed or implied, as to the condition thereof, and releases the Grantor and its agents, representatives, employees, successors, and assigns with respect to any claims, liabilities, demands, damages, obligations, losses, penalties, judgments, response actions, costs and expenses, whether now existing or arising in the future, arising out of the actual or alleged presence of any "Hazardous Material" or "Oil" (as such terms are defined as of the date hereof in the Massachusetts Contingency Plan – 310 C.M.R. 40.0000) at, in, on or under the Premises (collectively, "Claims") but only to the extent such Claims arise out of or result from any future use of the Site other than passive recreational use (e.g., future residential development). This release shall run with the land and bind future owners and operators, including, without limitation, successors in title.

The Premises do not constitute all or substantially all of the Grantor's property located within the Commonwealth of Massachusetts.

Consideration is such that no revenue stamps are required by law.

For Grantor's title, see deed recorded in Suffolk County Registry of Deeds in Book 44326, Page 153 and Certificate of Merger into the Grantor recorded in Book 47352, Page 330.

Witness our hands and seals as of the ____ day of _____, 201_.

HARVARD REAL ESTATE-ALLSTON, INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

COMMONWEALTH OF MASSACHUSETTS

_____, SS
[County]

On this ____ day of _____, 201_, before me, the undersigned notary public, personally appeared _____, as _____ of Harvard Real Estate-Allston, Inc. and proved to me through satisfactory evidence of identification, which was personal knowledge/_____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Notary Public
My commission expires:

COMMONWEALTH OF MASSACHUSETTS

_____, SS
[County]

On this ____ day of _____, 201_, before me, the undersigned notary public, personally appeared _____, as _____ of Harvard Real Estate-Allston, Inc. and proved to me through satisfactory evidence of identification, which was personal knowledge/_____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Notary Public
My commission expires:

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[Property description]

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NORTHEASTERLY	by Lot 68-A as shown on said plan, forty-four (44) feet;
SOUTHEASTERLY	by Lot 69 as shown on said plan, five (5) feet;
NORTHEASTERLY	by said Lot 69, forty-four (44) feet;
NORTHWESTERLY	by said Lot 69, seventeen (17) feet; and
NORTHEASTERLY	by Lot 73-A, seventy-seven (77) feet.

Said premises containing 16, 379 square feet of land more or less.

Parcel 2, being Lot 69 on a plan entitled "Plan of Land on Litchfield & Antwerp Sts. Brighton" by Frank A. Foster, Civil Engineer, dated January 1, 1897, recorded with Suffolk Registry of Deeds, Book 2425, Page 597, is bounded and described according to said plan as follows, viz:

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NORTHERLY	by a proposed street (now Gould Street), being land formerly of Fred H. Searles, forty-four (44) feet;
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SOUTHERLY	by Lot 62, forty-four (44) feet.

Containing 3,960 square feet of land according to said plan.

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Containing 5,621 square feet.

Said premises are also shown as Lot 73 and the larger portion of Lot 72 on said Frank A. Foster's plan dated January 1, 1897 and recorded with said Deeds in Book 2425, Page 597.

Parcel 4, situated on the southwesterly side of Gould Street, a short distance northwest of Antwerp Street, being Lot 68-A on said Winebaum & Wexler plan recorded in said Deeds in Book 4572, Page 62, bounded and described according to said plan as follows:

NORTHEASTERLY by land of owners unknown, called on said plan Gould Street, forty-four (44) feet;
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SOUTHWESTERLY by Lot 63-A, forty four (44) feet; and
NORTHWESTERLY by Lots numbered 66 and 67, eighty-five (85) feet.

Containing 3,740 square feet.

Said premises are also shown as the larger portion of Lot 68 on said Frank A. Foster's plan dated January 1, 1897 and recorded with said Deeds, Book 2425, Page 597.

All four parcels being conveyed together with whatever rights the Grantor has in Gould Street and Antwerp Street shown on said plans and with such other rights, easements, privileges and appurtenances belonging to said premises, and subject to all easements, covenants and restrictions of record, to the extent in force and applicable.

EXHIBIT C

**FORM OF DEED
(City Entity as Grantee)**

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The conveyance is made together with and subject to all recorded easements, covenants, restrictions, any existing provisions of local zoning laws, agreements and all other matters of record that lawfully apply to the property hereby conveyed. By acceptance of this deed, Grantee accepts the Premises as is, without any representations or warranties, expressed or implied, as to the condition thereof.

The Premises do not constitute all or substantially all of the Grantor's property located within the Commonwealth of Massachusetts.

Consideration is such that no revenue stamps are required by law.

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[signatures appear on following pages]

Property Address: 90 Antwerp Street and 13 Holton Street, Boston

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By: _____
Name:
Title:

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Name:
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COMMONWEALTH OF MASSACHUSETTS

_____, ss
[County]

On this ____ day of _____, 201_, before me, the undersigned notary public, personally appeared _____, as _____ of Harvard Real Estate-Allston, Inc. and proved to me through satisfactory evidence of identification, which was personal knowledge/_____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Notary Public
My commission expires:

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[County]

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