

**BROADSTONE BARE COVE  
MEMORANDUM OF AGREEMENT**

This Memorandum of Agreement (“Agreement”) is entered into by and between Broadstone Bare Cove Alliance, LLC, a Delaware limited liability company authorized to do business in Massachusetts, with a usual place of business at 184 High Street, Suite 401, Boston, Massachusetts, 02110, its successors and assigns (“Alliance”), and the Town of Hingham, a municipal corporation organized under the laws of the Commonwealth of Massachusetts, with a usual place of business at 210 Central Street, Hingham, MA, 02043 (the “Town”), acting by and through its duly elected Board of Selectmen (the “Board”).

**RECITALS**

**WHEREAS**, Alliance has filed an application, dated August 19, 2016 (the “Original Application”) with the Hingham Zoning Board of Appeals (the “ZBA”) for a comprehensive permit (the “Comprehensive Permit”) under Chapter 40B (as defined below) to develop a multi-family rental housing project comprised of no more than three hundred (300) rental units at the premises known as and numbered 230 Beal Street, Hingham, Massachusetts and shown on Hingham Assessors’ Map 46, Lot 17, (the “Premises”), to be known as “Broadstone Bare Cove”;

**WHEREAS**, the Town asserts that the so-called “10%” statutory minimum has been achieved, as defined under M.G.L. c. 40B, §§ 20-23 and its implementing regulations (“Chapter 40B”) at 760 CMR 56.03(3)(a) and the so-called “Recent Progress Safe Harbor” pursuant to 760 CMR 56.03(1)(c) and 760 CMR 56.03(5) (collectively, the “Town’s Safe Harbor Assertion”);

**WHEREAS**, notwithstanding the Town’s position on the so-called “10%” statutory minimum, the Department of Housing and Community Development (“DHCD”) recognizes only 8.49% of Hingham’s housing stock as eligible for inclusion on the Subsidized Housing Inventory (“SHI”);

**WHEREAS**, Alliance shall submit a modification to the Original Application (as modified, the “Application”) reducing the project to a total of two hundred twenty (220) units (as modified, the “Project”);

**WHEREAS**, approval of the Project by the ZBA would add up to two hundred twenty (220) units to the Town’s housing inventory, 100% of which would be eligible for inclusion on the Town’s SHI;

**WHEREAS**, to accomplish the above goals, Alliance is amenable to constructing and maintaining the Project at the density and affordability and with the mitigation set forth below; subject to the conditions set forth herein;

**WHEREAS**, Alliance agrees that this Agreement shall bind it and its successors in interest; and

**WHEREAS**, the parties wish to enter into this non-regulatory Agreement to memorialize their mutual understandings.

**NOW, THEREFORE**, in consideration of the mutual promises of the parties contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged by the parties, on behalf of themselves, their successors and assigns, the parties hereby covenant and agree as set forth herein.

1. The obligations contained in this Agreement are contractual and not regulatory. The terms of this Agreement shall not be the subject of any regulatory or permitting appeal to the Housing Appeals Committee (the “Committee”) or otherwise. Alliance agrees that it shall not assert to the ZBA, the Committee or any other party that the payment of any of the sums detailed in this Agreement causes or contributes towards causing the Project to be uneconomic under Chapter 40B. The foregoing shall not preclude Alliance from taking any legal action against the Town to enforce the provisions of this Agreement.
2. The parties acknowledge that although certain terms and provisions of this Agreement are conditioned upon actions or inactions on the part of the ZBA, pursuant to Chapter 40B the ZBA is the sole local board authorized to hear and decide applications for comprehensive permits and the ZBA acts independently in doing so. The ZBA is not a party to this Agreement, and no provision of this Agreement shall be construed as a directive to, or binding upon, the ZBA in connection with its review and decision of the Application. Rather, this Agreement sets forth terms that shall be determined to apply only if and when the ZBA has independently acted with respect to Alliance’s Application.
3. Alliance covenants and agrees that the final Project shall be no more than two hundred twenty (220) units with no more than the number of three bedroom units as set forth in the Comprehensive Permit, and shall be in substantial conformity with the plans submitted with the Application, subject to modifications (other than increase in the number of such units) approved during the ZBA hearing and incorporated into the Comprehensive Permit. Alliance hereby waives any and all right pursuant to Chapter 40B or any other applicable law or regulation to increase the number of units above 220 units or increase the number of three bedroom units within the Project. In furtherance of this covenant with the Town, Alliance shall also agree in writing, in a form reasonably acceptable to the ZBA, that, notwithstanding any provision of Chapter 40B or any other applicable law or regulation, it has voluntarily agreed to the imposition of a condition to the Comprehensive Permit restricting the total number of the units, and three bedroom units, in the Project as set forth herein.
4. Alliance covenants and agrees that at least 25% of the units within the Project shall qualify as affordable units in perpetuity. For purposes of the preceding sentence, the term “perpetuity” shall mean for so long as the Project exists on the Premises.
5. Alliance, in consultation with the Board, shall withdraw in writing the letter, dated October 14, 2016, submitted to DHCD pursuant to 760 CMR 56.03(8)(a) in opposition to the Town’s Safe Harbor Assertion (“Safe Harbor Opposition”) and shall submit a letter to the ZBA in form reasonably acceptable to the Board acknowledging such withdrawal. Alliance acknowledges that Alliance’s obligations under this Agreement shall not be contingent upon a withdrawal of the Town’s Safe Harbor Assertion by the ZBA. Alliance shall deposit the original written withdrawal to the Board simultaneously with the

execution of this Agreement, provided that submission of Alliance's withdrawal letter to DHCD shall be subject to the Board's execution of this Agreement on behalf of the Town.

6. Subject to the provisions of Section 7, Alliance agrees to contribute the following benefits to the Town:

a. Alliance hereby agrees to pay to the Town the sums of:

- (i) One Million Dollars (\$1,000,000) to be applied toward the following purpose: replacement of windows at Plymouth River School. The sum payable pursuant to this subsection (a)(i) shall be paid as follows:
  - (x) one-third (1/3) upon issuance of the first building permit for the Project;
  - (y) one-third (1/3) upon issuance of the first certificate of occupancy and
  - (iii) one-third (1/3) upon the earlier of (A) issuance of the final certificate of occupancy for the Project or (B) six (6) months after issuance of the first certificate of occupancy; and
- (ii) Twenty-Five Thousand (\$25,000) to be applied toward the following purpose: two (2) digital sign trailers for the Town's Police Department. The sum payable pursuant to this subsection (a)(ii) shall be payable upon issuance of the first certificate of occupancy for the Project; and
- (iii) Fifty-Thousand Dollars (\$50,000) to be applied toward the improvement and maintenance (including equipment therefor) of Bare Cove Park (which, for the purposes of this Agreement, shall mean that portion of the Town-owned land abutting the Project within the gates at Sheltry Path and the end of Bare Cove Park Drive). The sum payable pursuant to this subsection (a)(iii) shall be payable upon issuance of the first certificate of occupancy for the Project.

b. Alliance shall construct, at its own expense, a new sidewalk and parallel parking on the southerly side of Beal Street along Lynch Field as shown on the plans submitted with the Application (as the same may be modified during the ZBA hearing). Such work shall be completed prior to the issuance of the first certificate of occupancy for the Project; and

c. Alliance shall grant a conservation restriction pursuant to M.G.L. c. 184, § 31 to the Hingham Conservation Commission for an area of approximately 3 acres on the southerly side of the Premises abutting Bare Cove Park to be more particularly determined in consultation with the ZBA and the Conservation Commission, and subject to reasonable terms allowing for the construction and maintenance of access to Bare Cove Park across the area to be conserved. Except as otherwise provided therein, the conservation restriction shall be conveyed to the Conservation Commission free and clear of any and all encumbrances, easements, rights or restrictions of record benefitting any third party, and Alliance shall use diligent efforts to resolve any issues related to other third party use to the reasonable satisfaction of the Conservation Commission. Such conservation

restriction shall be delivered to the Conservation Commission prior to the issuance of the first Certificate of Occupancy to Alliance (its successor or assign), provided, that period may be extended upon request of Alliance to, and review by, the conservation agent, to allow for completion of improvements consistent with the Project within or adjacent to the area to be conserved.

7. Alliance's obligation to deliver the amounts and other items set forth in Section 6 shall be conditioned upon each of the following:
  - a. The conclusion of a full hearing without a denial of the Application by the ZBA. The parties acknowledge that the full hearing may occur under one of the following circumstances:
    - i. If DHCD acknowledges Alliance's withdrawal of the Safe Harbor Opposition without a negative determination on the Town's Safe Harbor Assertion, the full hearing of the Project will proceed before the ZBA; or
    - ii. If DHCD does not accept Alliance's withdrawal of the Safe Harbor Opposition and issues a negative determination regarding the Town's Safe Harbor Assertion, and the ZBA elects not to appeal such determination to the Committee, the full hearing of the Project will proceed; or
    - iii. If DHCD does not accept Alliance's withdrawal of the Safe Harbor Opposition and issues a negative determination regarding the Town's Safe Harbor Assertion, and the ZBA elects to appeal such determination to the Committee, and Alliance and the ZBA (at its election) request, and the Committee grants, a stay of such interlocutory appeal, the full hearing of the Project will proceed. Alliance will file the request for stay of the interlocutory appeal within seven (7) days of the filing of any appeal by the ZBA and request the assent of the ZBA thereto; or
    - iv. If DHCD does not accept Alliance's withdrawal of the Safe Harbor Opposition and issues a negative determination regarding the Town's Safe Harbor Assertion, and the ZBA elects to appeal such determination to the Committee, and the Committee does not grant a stay of such interlocutory appeal, the hearing shall be stayed until issuance of the Committee's interlocutory order and then proceed to a full hearing in accordance with the Chapter 40B regulations.
  - b. The ZBA issues a Comprehensive Permit within regulatory timeframes in a form reasonably acceptable to Alliance. Reasonably acceptable shall mean that there shall be no conditions which, except as expressly agreed to by Alliance in the Application or during the public hearing after consideration of a full draft of the Comprehensive Permit decision (i) will reduce the density of the Project below two hundred twenty (220) units, (ii) require significant modifications to the design of the Project as submitted to the ZBA on October 26, 2016, or (iii) impose other mitigation requirements that are not directly attributable to the impacts of the

Project. This condition shall be deemed satisfied if the Comprehensive Permit is deemed constructively approved.

- c. Following issuance of the Comprehensive Permit, if requested by Alliance, the Board reasonably cooperates, at Alliance's sole cost and expense (including the Town's reasonable legal fees) in the conversion of the project to a so-called Local Initiative Program ("LIP") project, and, upon application therefor to the ZBA pursuant to 760 CMR 56.05(11), the ZBA makes a determination that the conversion to a LIP is an insubstantial change or the conversion is deemed an insubstantial change. The Board's cooperation shall include signing a LIP application with Alliance for submission to DHCD consistent with the Project as approved in the Comprehensive Permit within thirty (30) days of receipt from Alliance of a complete LIP application. The Board shall not require any further mitigation or payments of any kind from Alliance in connection therewith. The Board further covenants and agrees to cooperate with Alliance, at Alliance's sole cost and expense (including the Town's reasonable legal fees), as it takes whatever further steps as may be reasonably necessary to seek approval of the LIP application by DHCD.
  - d. Alliance obtains, in addition to the Comprehensive Permit in the form provided in this Agreement, all other necessary permits and approvals for the construction, use and occupancy of the apartment units within the Project (the "Additional Approvals") on terms that are reasonably acceptable to Alliance without any appeal having been taken (or if such an appeal is taken, the same is found in favor of Alliance or is dismissed on terms that are reasonably acceptable to Alliance). Any such conditions or terms shall be deemed acceptable if consistent with the Project as approved by the Comprehensive Permit, or if otherwise required by applicable law or regulation for the occupancy of residential dwellings.
8. If: (a) the Application is denied; or (b) the Comprehensive Permit is not issued in accordance Section 7(b); or (c) the Board's obligations as set forth in Section 7(c) are not timely satisfied; or (d) Alliance is unable to obtain the Additional Approvals, after diligently pursuing the same in good faith; then Alliance, upon thirty (30) days prior written notice to the Board expressly stating which condition(s) have not been satisfied and the reasons therefore ("Notice Period"), may terminate this Agreement in which event neither party shall have any further obligations hereunder. Notwithstanding the foregoing, if such failures are cured within the Notice Period, the Board may, upon written notice to Alliance of such cure, void Alliance's termination notice and this Agreement shall remain in full force and effect.
9. The Board covenants and agrees that upon Alliance's filing with DHCD of Alliance's withdrawal of its Safe Harbor Opposition to the Town's Safe Harbor Assertion, the Board shall not support any other project that could move ahead of Alliance's Project during the Recent Progress Safe Harbor period, which as calculated by the Town would end on May 16, 2017, including but not limited to the property at 2 Beal Street, which is the subject of the Town's Request for Proposal for the sale and development for the purpose

of constructing approximately 100 units of rental housing pursuant to a comprehensive permit issued under Chapter 40B.

10. Alliance covenants and agrees that it will diligently pursue approval of the Application and issuance of a Comprehensive Permit by the ZBA by May 15, 2017, provided that hearings are timely scheduled by the ZBA.
11. Should the ZBA impose conditions requiring the construction of or payment for infrastructure improvements on public land or public ways, the Board will cooperate, at no cost to the Town, with any necessary approvals or permitting expeditiously and in good faith with Alliance.
12. In the event that Alliance voluntarily withdraws its Application at any time for any reason, except after a termination of this Agreement pursuant to Section 8 above, Alliance agrees that any subsequent application filed under Chapter 40B for a project on the Premises by Alliance, its successors or assigns, directly or indirectly, shall be subject to the terms this Agreement for a period of two (2) years from the date of such withdrawal.
13. This Agreement reflects the entire agreement between the parties. Any prior correspondence, understandings, agreements, and representations are null and void upon execution hereof, unless set out in this Agreement.
14. This Agreement is executed on behalf of the Town by a member or members of the Board, each acting in his/her capacity as a Board member, and not individually. Alliance and each person dealing with the Town, or claiming any rights or interests herein or hereunder, agrees to look solely to the Town for satisfaction of any obligations of the Town, and they further agree that no employee or agent of the Town shall have any personal liability hereunder or otherwise. The Town agrees that no employee or agent of Alliance shall have any personal liability hereunder or otherwise. In consideration of the undertakings of Alliance contained herein, to the maximum extent permitted by law, the Board agrees not to take any steps to oppose the construction, use and operation of the Project so long as the Project is in compliance with this Agreement, all applicable permits, Massachusetts General Laws and regulations, and Town of Hingham bylaws and regulations. In no event shall any party hereto ever be liable for any indirect, consequential or punitive damages.
15. Any amendment to this Agreement shall occur only pursuant to a written amendment that is duly authorized by the parties and then duly executed by the parties.
16. Notice of this Agreement may be recorded by either party provided that in no event shall any economic terms of this Agreement be included in such notice, but a discharge shall be provided if the Agreement is terminated as provided for hereunder.
17. Alliance and the Board represent and warrant that each has, the full right, power and authority and are duly authorized to enter into this Agreement, to perform each of the covenants on its part to be performed hereunder and to execute and deliver, and to perform its obligations under all documents required to be executed and delivered by it pursuant to this Agreement.

18. All notices or requests required or permitted hereunder shall be in writing and addressed, if to the Town as follows:

Board of Selectmen  
Town of Hingham  
210 Central Street  
Hingham, MA 02043  
Attention: Town Administrator

with a copy to:

Susan C. Murphy  
Dain, Torpy, Le Ray, Wiest & Garner, P.C.  
745 Atlantic Avenue, 5th Floor  
Boston, MA 02111

If to Alliance:

Michael Boujoulian  
Alliance Realty Partners, LLC  
184 High Street, Suite 401  
Boston, MA 02210

with a copy to:

James G. Ward  
Nutter McClennen & Fish  
155 Seaport Boulevard, Seaport West  
Boston, MA 02210

with a copy to:

Jeffery A. Tocchio, Esq.  
Drohan Tocchio & Morgan, P.C.  
175 Derby Street  
Hingham, MA 02043

Each of the parties shall have the right by notice to the others to designate additional parties to whom copies of notices must be sent, and to designate changes in address. Any notice shall have been deemed duly given if delivered to such address by hand or one business day after delivery to a nationally recognized overnight courier service, fees prepaid.

19. Alliance shall not transfer Alliance's fee interest in the Premises and/or assign its rights or obligations under this Agreement, without the consent of the Board, which consent shall not be unreasonably withheld or conditioned provided that the transferee/assignee assumes, in writing in a form reasonably acceptable to the Board, all obligations

hereunder and Alliance remains liable for satisfying (or causing the satisfaction) of all of the obligations set forth in Section 6.

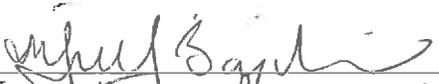
Notwithstanding the foregoing, (x) the provisions of this Section 19 shall not preclude the transfer of the fee interest in the Premises or the assignment of the rights and obligations under this Agreement to an entity that controls, is controlled by or is under common control with Alliance (“Related Party”) provided that such Related Party assumes in writing all obligations hereunder, and (y) no consent shall be required upon a transfer and/or assignment to any other person or an entity that is not a Related Party provided that (i) prior to such transfer and/or assignment all non-monetary obligations required under Section 6 have been completed, (ii) payment in full is made to the Town of all remaining funds due under Section 6, and (iii) prior to such transfer and/or assignment such transferee/assignee assumes, in writing in form reasonably acceptable to the Board, the continuing obligations under this Agreement.

20. Alliance agrees that any violation on its part of this Agreement may cause immediate and irreparable harm to the Town for which a legal remedy alone may not be sufficient, and in addition to any relief at law which may be available to the Town, the Town shall be entitled to seek injunctive relief and any other appropriate equitable relief.
21. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.
22. If any term or provision of this Agreement, or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons, entities or circumstances other than those as to which it is held invalid or unenforceable, shall remain in effect.
23. 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. Signatures to this Agreement transmitted by electronic means shall be valid and effective to bind the party so signing. Each of the parties hereto shall execute and deliver such documents as the other party shall reasonably request in order to consummate and make effective the matters specified herein; provided, however, the execution and delivery of such documents shall not result in any additional liability or cost to the executing party.
24. Each party has participated in the drafting and preparation of this Agreement and has reviewed the same, and if any construction is to be made, the same shall not be construed against any party.

*[Remainder of page intentionally left blank]*

Executed as an instrument under seal this 27<sup>th</sup> day of October, 2016.

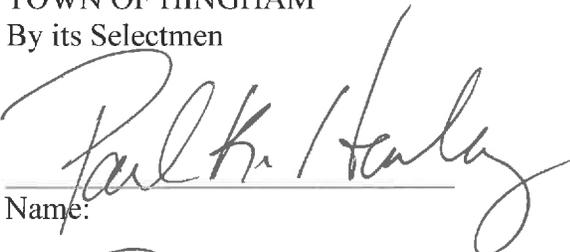
BROADSTONE BARE COVE ALLIANCE, LLC

By:   
Name: MICHELE ROSSOUW  
Title: VICE PRESIDENT

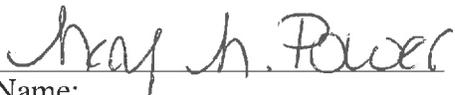
TOWN:

TOWN OF HINGHAM

By its Selectmen

  
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