

STONEHAM
TOWN CLERK
REGISTRARS

2023 DEC -5 P 8:59

MEMORANDUM OF AGREEMENT

THIS AGREEMENT is made by and between Fellsway Development LLC, a Massachusetts Limited Liability Company with a principal place of business at 200 Summit Drive, Suite 400, Burlington, Massachusetts 01830 (“Fellsway”), on the one hand, and the Town of Stoneham, (the “Town”), acting by and through its duly elected Select Board, a Massachusetts municipal corporation with a principal place of business at 35 Central Street, Stoneham, Massachusetts, on the other hand.

WHEREAS Fellsway is seeking to propose a multifamily residential development pursuant to M.G.L. Ch. 40B Sections 20-23 (“the Project”) on the site of the former Boston Regional Medical Center Hospital (“the Hospital”) shown as Lot F-3 on Plan No. 1363 of 2007 which is recorded at Middlesex South District Registry of Deeds and also shown as parcel Tax ID #27-0-3 on the Town of Stoneham Assessor’s records.

WHEREAS Fellsway waived in perpetuity any right to file or seek a comprehensive permit pursuant to M.G.L. Ch. 40B or any successor affordable housing statute for all or any portion of said Lot F-3 and also for all or any portion of Lot M-2, said Lot M-2 being shown on a plan dated October 23, 2009 entitled, “3-5 Woodland Road, Stoneham, Mass.” recorded at Middlesex South District Registry of Deeds as Plan No. 57 (sheet 1 of 3) of 2010 and Fellsway executed a written agreement with the Town evidencing said waiver entitled “Irrevocable Waiver Agreement” which is now recorded at the Middlesex South District Registry of Deeds at Book 68759, Page 73 (the “Waiver”).

WHEREAS the Town has made significant progress towards reaching its state mandated affordable housing goals but, as of the date of this Memorandum of Agreement, less than ten percent of the Town's housing stock qualifies as affordable under state regulations and guidance; and therefore, the Town recognizes there may be a potential benefit associated with adding more affordable housing units on the above-referred to Lot F-3.

WHEREAS the Massachusetts Housing Finance Agency has on November 8, 2023 issued a Determination of Project Eligibility pursuant to M.G.L., Ch. 40B and 760 CMR 56.00 for the above-referred to Lot F-3;

WHEREAS the Select Board has met with Fellsway to discuss a conceptual Project, the possibility of terminating the Waiver, and has proposed to include in the Project elements that are designed to mitigate certain aspects of the Project on the Town and the abutting properties, streets and ways, and infrastructure.

Accordingly, Fellsway and the Town hereby agree as follows:

1. Fellsway acknowledges and agrees that so long as the Waiver is in full force and effect, Fellsway shall include a complete description of the Waiver in any current or subsequent filing for a low and moderate income housing project with the Zoning Board of Appeals and shall affirmatively propose a condition of any decision in which it agrees on behalf of itself, its successors and assigns, that the Waiver shall be effective to void, without objection or appeal by Fellsway, or its agents, successors and assigns, any Comprehensive Permit, until and unless the Town agrees to a termination of the Waiver, meaning and

intending that Fellsway, its agents, successors and assigns cannot claim waiver, estoppel or any other form of legal or equitable release by the Town of the Waiver. Fellsway also covenants and agrees, on behalf of its agents, successors and assigns, that it will not claim in any proceeding of any nature or type that the submission of an application to the Zoning Board of Appeals effectively terminates the Waiver.

2. If Fellsway, its agents, successors and assigns, are granted any Comprehensive Permit in the discretion of the Zoning Board of Appeals of the Town or denied any such Comprehensive Permit, Fellsway, on behalf of itself, its agents, successors and assigns covenants and agrees on behalf of itself, its agents, successors and assigns that it shall not appeal the condition set forth in the above paragraph 1 regarding the Waiver or in any way seek to amend the terms and conditions of the Comprehensive Permit to alter or remove said condition, said term being of the essence of this agreement. Fellsway, and its agents, successors and assigns also covenant and agree that the Comprehensive Permit is void in the absence of a termination of the Waiver granted by the Town and shall execute and deliver any form requested by the Town confirming the same.
3. Upon the earlier of a) the issuance of a Comprehensive Permit on terms and conditions consistent herewith and expiration of all applicable appeal periods (with no appeals having been filed), or b) if an appeal has been filed, then thirty (30) days following the date of the

appeal being filed, Fellsway, its agents, successors or assigns, agrees to convey good clear record and marketable title of Lot M-2 (Tax ID #27-0-3E2) free and clear of all voluntary liens and mortgages to the Town for use by the Town for any municipal purposes for nominal consideration (the "Deed").

4. Upon execution and delivery of the Deed as set forth in paragraph 3 above, the Town will simultaneously execute and deliver to Fellsway a termination of the Waiver (the "Termination"). Fellsway shall then be free to record the Termination and the Town shall then be free to record the Deed.
5. Fellsway, on behalf itself, its agents, servants and employees, and its successors or assigns agrees to submit an application for a Comprehensive Permit for the Project to the Town within sixty (60) days of receipt of the letter of site eligibility issued by MassHousing. The review of such Comprehensive Permit and any other related application for the Project shall be processed by the appropriate town officials and boards in the ordinary course and as required by law. Fellsway on behalf itself, its agents, servants and employees, and its successors or assigns agrees to pay the filing fees, building permit fees, water and sewer connection fees, all peer review consultant and project monitoring fees associated with the project according to the fee schedules in effect as of the date and time of the issuance of the Comprehensive Permit or any later adjustment to said fees if the

project construction is delayed for greater than one year without protest.

6. Within three (3) days of execution of this Agreement, Fellsway shall provide a \$25,000.00 payment to the Town (the "Payment"). The Payment shall be credited against the cost of any subsequent comprehensive permit application fee for the Project assessed by the Town. However, the Payment shall not be refundable to Fellsway if Fellsway does not apply for a Comprehensive Permit for any reason or discontinues with its application after its filing.
7. Subject to compliance with Massachusetts laws and regulations and subject to MassHousing approval, Fellsway shall provide a local preference for the affordable residential units in the Project, with such preference managed by the Town for qualified persons currently residing, or employed, in the Town.
8. Upon issuance of the first Certificate of Occupancy or as otherwise determined by the Board of Appeals, Fellsway shall provide a one-time, lump sum, payment of \$200 per approved residential unit to the Stoneham Affordable Housing Trust Fund.
9. Upon the issuance of a Comprehensive Permit on terms and conditions consistent herewith and expiration of all applicable appeal periods (with no appeals having been filed), Fellsway or its agents, successors and assigns, agrees to support any change and promptly execute all customary and necessary documents to remove the restriction in the

Master Deed recorded with Middlesex South District Deeds at Book 19664 Page 94 and as same has been amended of record (“the Master Deed”) governing the office condominiums adjacent to the Project, which currently limits the use to solely medical offices, such that the Master Deed be amended to allow all office and office related uses allowed by right in the Medical/Office/Residential District, which include, but would not be limited to, medical offices, other professional offices, administrative, executive or management offices.

10. The Fellsway and the Town parties hereto agree that they do not intend for any third party to be specifically benefitted hereby. This Agreement shall only be enforceable by the parties hereto and their successors in title and assigns.
11. Nothing herein shall be construed as limiting or altering the authority, discretion and/or rights of the Zoning Board of Appeals during any proceedings before it concerning the proposed Project.

(The remainder of this page left intentionally blank)

ACKNOWLEDGED AND AGREED TO ON THIS

5TH DAY OF DEC, 2023

FELLSWAY:

FELLSWAY DEVELOPMENT LLC

By The Gutierrez Company, Manager



Arthur J. Gutierrez, Jr., President

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this 5th day of December, 2023, before me, the undersigned Notary Public personally appeared, Arthur J. Gutierrez, Jr. President, who proved to me through satisfactory evidence of identification, which was a Massachusetts Driver's License, to be the person whose name is signed on this Memorandum of Agreement and who swore or affirmed to me that the contents of this document are truthful accurate to the best of his knowledge and belief and acknowledged to me that he signed said document voluntarily for its stated purpose in his capacity as President of The Gutierrez Company.



Notary Public:
My Commission Expires:



ROBERTA A. MARTINIELLO
Notary Public
Commonwealth of Massachusetts
My Commission Expires
July 5, 2030

TOWN OF STONEHAM

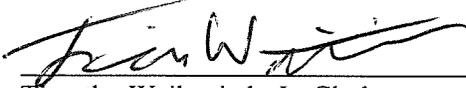
By its SELECT BOARD and
TOWN ADMINISTRATOR



David P. Pignone, Jr., Chairman



Heidi Bilbo, Vice Chairman



Timothy Waivevitch, Jr. Clerk

Raymie Parker, Select Board Member



George E. Seibold, Select Board Member

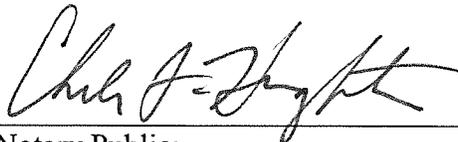


Dennis Sheehan, Town Administrator

COMMONWEALTH OF MASSACHUSETTS

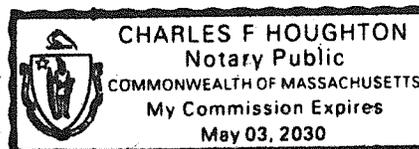
Middlesex, ss.

On this 5TH day of DECEMBER, 2019, before me, the undersigned Notary Public personally appeared, David P. Pignone, Jr., Heidi Bilbo, Timothy Waitkevitch, Jr., ~~Raymie Parker~~, George E. Seibold and Dennis Sheehan, who proved to me through satisfactory evidence of identification, which was a Massachusetts Driver's License, to be the person whose name is signed on this Memorandum of Agreement and who swore or affirmed to me that the contents of this document are truthful accurate to the best of their knowledge and belief and acknowledged to me that they signed said document voluntarily for its stated purpose in their capacity as members of the Select Board and Town Administrator of the Town of Stoneham.



Notary Public:

My Commission Expires:



APPROVED AS TO FORM:



Robert W. Galvin, Town Counsel