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Attested hereto

*Francis M. Roache*

Francis M. Roache  
Register of Deeds

Attested hereto

*Francis M. Roache*

Francis M. Roache  
Register of Deeds

### DECLARATION OF DEVELOPMENT RESTRICTIONS

This Declaration of Development Restrictions (the "Declaration") is made as of June 22, 2009 by President and Fellows of Harvard College, an educational and charitable corporation existing under the laws and the Constitution of The Commonwealth of Massachusetts ("Declarant" or "Harvard").

As used herein, the following terms have the following meanings:

- BRA: The Boston Redevelopment Authority, a public body politic and corporate created and existing pursuant to Chapter 121B of the Massachusetts General Laws, as amended, acting in its capacity as the planning board for the City of Boston pursuant to Chapter 652 of the Acts of 1960, as amended, or any successor planning board of the City of Boston should the Boston Redevelopment Authority cease to be in existence.
- Arboretum: The Arnold Arboretum of Harvard University, an administrative and academic unit of President and Fellows of Harvard College. Hereinafter, any reference to "Harvard" includes the Arboretum.
- Arboretum  
Park Land: The land in the aggregate that is leased to Harvard by the City of Boston by the 1882 Indenture (as defined below) and by that certain other lease indenture between the same parties recorded with the Suffolk Registry of Deeds (the "Registry") in Book 2285, Page 530 and dated April 22, 1895.
- 1882  
Indenture: That certain lease indenture dated December 30, 1882 made between President and Fellows of Harvard College and the City of Boston recorded with the Registry in Book 1584, Page 502, as amended on March 13, 1996 by Amendment to 1882 Indenture, recorded with the Registry in Book 20414, Page 25, having an initial term expiring December 29, 2882.

1300 Centre St, Roslindale

*ASZ*  
*14*

Weld Hill

Parcel: The 14.2 acre parcel of land more particularly described on Exhibit A hereto owned by Harvard, located in the Roslindale neighborhood of Boston bounded by Weld, Walter, and Centre Streets, and land now or formerly of Hebrew Rehabilitation Center, and located across the street from the Arboretum Park Land. The Weld Hill Parcel is not part of the Arboretum Park Land.

Horticultural  
and Botanical  
Resource

Study Area: The portion of the Weld Hill Parcel containing approximately 6.4 acres shown as the Horticultural and Botanical Resource Study Area on the Plan (as defined below).

Designated  
Development

Area: The portion of the Weld Hill Parcel containing approximately 7.8 acres and shown as the Designated Development Area on the Plan.

Plan: The plan entitled "Plan of Weld Hill Parcel for President and Fellows of Harvard College Weld St., Walter St. & Centre St. Boston (West Roxbury) Mass." dated July 11, 2007, most recently revised January 16, 2009, prepared by R.E. Cameron and Associates, Inc., recorded with the Registry at the same time that this Declaration of Development Restrictions is recorded.

Registry: Suffolk County Registry of Deeds.

Term: The period beginning on the date that a notice of the issuance of a certificate of occupancy for the Research and Administration Building is recorded with the Registry and ending on the earlier of: (a) December 29, 2882; (b) the earlier expiration or termination of the initial term of the 1882 Indenture; or (c) upon termination as provided in Section 2.

1. Imposition of Development Restriction. Harvard hereby voluntarily declares and imposes upon the Horticultural and Botanical Resource Study Area portion of the Weld Hill Parcel for the benefit of the BRA the following development controls and use restrictions for the Term set forth in this Declaration.

a. Harvard's use and development of the Horticultural and Botanical Resource Study Area during the Term shall be subject to the development and use controls set forth in Exhibit B and as further provided in this Declaration. (The development controls and use restrictions for the Horticultural and Botanical Resource Study Area are referred to herein as the "Development Controls".) The imposition of the Development Controls imposes no requirement that the Horticultural and Botanical Resource Study Area or other areas of the Weld Hill Parcel be maintained, operated, or used in any particular manner or condition other than as expressly specified by the Development Controls, and Harvard reserves all rights of use and development

not inconsistent with the Development Controls including without limitation the right to grant easements of access and for utilities to any person for any purpose under, over, or on the Horticultural and Botanical Resource Study Area. No other limitations or restrictions on the Weld Hill Parcel shall be otherwise implied hereunder, it being intended that the sole limitations and restrictions thereon are those set forth in the Development Controls for the Horticultural and Botanical Resource Study Area.

b. The Development Controls shall automatically expire without any action by Harvard or any person or entity, private or public, upon the expiration date of the Term. Any termination or amendment of the Development Controls, other than termination or expiration upon the termination or expiration of the initial term of the 1882 Indenture or termination as provided in Section 2, shall require a two-thirds vote of both houses of the Massachusetts legislature in accordance with the procedures applicable under Article 97 of the Amendments to the Massachusetts Constitution. Upon the expiration or termination of the Term, whether pursuant to Section 1.b, Section 2, or otherwise, either Harvard or the BRA may record a statement of this termination as notice thereof and shall promptly provide a copy of the notice as recorded to the other party.

2. Purpose. Harvard's willingness to impose the Development Controls, the purpose of which is that the land within the Horticultural and Botanical Resource Study Area remain and be maintained in a scenic and landscaped condition for public enjoyment to the extent otherwise consistent with the uses permitted under Exhibit B, paragraph 3, is contingent upon and in consideration of the benefit to Harvard of: (a) the right to future development within the Designated Development Area in accordance with the development rights and uses set forth in Exhibit C and (b) the use of the Horticultural and Botanical Resource Study Area subject only to the Development Controls; and therefore, subject to the provisions set forth below in this Section 2, the Development Controls shall terminate upon the enactment of any zoning or other land use constraints by the City of Boston, its authorities, agencies, departments, commissions, boards, or other political or departmental subdivisions of the City of Boston, or by any successor agencies to the BRA or the City of Boston having planning and zoning authority that regulates use and development affecting the Weld Hill Parcel that limit, restrict, or reduce the development rights and uses set forth on Exhibit C or that are more restrictive than the Development Controls applicable to the Horticultural and Botanical Resource Study Area. Termination of the Development Controls under this Section 2 shall occur only after Harvard shall have provided prior notice (the "Notice") to the BRA of its intent to terminate as a result of any such enacted zoning or other land use constraint, identifying, in that Notice, the basis of the intended termination, and allowing the BRA a period of time, of not less than one year (the "Response Period") to respond to Harvard by either (a) certifying and providing conclusive evidence that the enactment does not result in more restrictive, limited, or reduced development rights on the Weld Hill Parcel (and explaining its reasoning for such conclusion) or (b) certifying and providing conclusive evidence that the enacted zoning or other land use constraint was not (or no longer is) in effect and applicable to the Weld Hill Parcel. Any such certification issued by the BRA shall be binding upon the BRA and the City of Boston. Harvard shall publish in a newspaper of general circulation in the City of Boston and in a newspaper having circulation in the neighborhood of the Weld Hill Parcel (or in a comparable media if there is no newspaper of general and neighborhood circulation) a notice of its submission of the Notice to the BRA, such notice to be published not less than 90 days prior to recording any notice of termination under this Section 2. Either the BRA or Harvard may, not later than one hundred twenty (120) days

after the giving of the Notice, file an action in the state courts in the Commonwealth of Massachusetts seeking a declaratory judgment to determine whether the enactment in issue will reduce, limit or restrict the development rights and uses set forth on Exhibit C or imposes more restrictive limits than the Development Controls applicable to the Horticultural and Botanical Resource Study Area. If such an action has been filed, then if and only if the enactment in issue is adjudged by such court to have reduced, limited or restricted the development rights and uses set forth on Exhibit C or to have imposed more restrictive limits than the Development Controls applicable to the Horticultural and Botanical Resource Study Area, Harvard shall have the right, to be exercised not less than ten (10) days after the issuance of such judgment, to record in the Registry a notice of termination of the Development Controls. If neither the BRA nor Harvard has filed such a declaratory judgment action within such one hundred twenty (120) day period and the BRA has not responded to Harvard within the Response Period and provided the certification required by clauses (a) or (b) herein, then Harvard also shall have the right upon the expiration of the Response Period to record in the Registry a notice of termination of the Development Controls. In the event of an enactment by the Commonwealth of Massachusetts or any agency, authority, department, commission or other political subdivision thereof (by statute, regulation, order, judicial decision, or otherwise) that limits, restricts, or reduces Harvard's development rights as described in this Section 2, the BRA shall cooperate with, and exercise diligent efforts to support, Harvard's efforts to cure, remove and/or obtain a binding determination of inapplicability with respect to any such enacted development constraints. Notwithstanding any provision herein, Harvard and the BRA agree that nothing in this Section 2 is intended to alter, diminish, or constitute any waiver of the otherwise existing rights under statutory or common law or in equity of either party to seek judicial or governmental enforcement, relief, and/or interpretation with respect to Harvard's termination right under this Section 2. Termination of the Development Controls under this Section 2 shall not require any vote of the legislature under Article 97 or otherwise.

3. Enforcement. This Declaration shall not be deemed to create any rights or obligations in any party other than as specified herein. The Development Controls are imposed for the benefit of the BRA. Either and only the BRA or the Corporation Counsel of the City of Boston shall have the authority and right to enforce the Development Controls. The BRA or the Corporation Counsel of the City of Boston may bring proceedings in law or in equity against any party or parties violating or attempting to violate the Development Controls after providing written notice to such party or parties and a reasonable opportunity to cure such violation. The BRA, either acting under the enforcement authority herein or as directed by the Corporation Counsel of the City of Boston, is hereby granted the right to enter upon the Horticultural and Botanical Resource Study Area at reasonable times in a reasonable manner and upon reasonable prior written notice for the purpose of inspecting the same to determine compliance with the terms hereof.

4. Binding Effect. The Development Controls imposed by this Declaration shall run with the title to the Horticultural and Botanical Resource Study Area and shall inure to the benefit of and be binding upon Harvard, its successors or assigns and any other party having a property interest therein, or in any portion thereof, as fee owner, tenant, or otherwise.

5. Miscellaneous. This Declaration shall be governed by the law of The Commonwealth of Massachusetts. No officer, director, shareholder, trustee, member of any governing board, student, or employee, or partner of either of Harvard or the BRA shall be

personally responsible or liable with respect to any of the conditions or provisions of this Declaration.

6. Notices. Any notice permitted or desired to be given under this Declaration shall be in writing and shall be deemed to have been sufficiently given or served for all purposes if it is delivered (i) personally, or (ii) by overnight courier prepaid by the sender, or (iii) mailed by registered or certified mail, return receipt requested, postage prepaid to the parties at the addresses shown below or to such other address as the parties may from time to time designate or are reasonably ascertainable. Each such notice shall be effective upon being so delivered. Rejection or refusal to accept delivery shall all be deemed to be receipt of the notice or statement sent, and the date of the rejection or refusal to deliver shall be deemed to be the date notice was given. Such addresses shall be as follows:

If to Harvard:

President and Fellows of Harvard College  
c/o Vice President for Administration  
Massachusetts Hall  
Cambridge, Massachusetts 02138

With a copy to:

President and Fellows of Harvard College  
c/o Office of the President of Harvard University  
Massachusetts Hall  
Cambridge, Massachusetts 02138

And to:

Office of the General Counsel  
Harvard University  
Holyoke Center  
1350 Massachusetts Avenue  
Cambridge, Massachusetts 02138

If to BRA :

Boston Redevelopment Authority  
One City Hall Square  
Boston, MA 02201-1007  
Attention: Director

With a copy to:

Boston Redevelopment Authority  
One City Hall Square  
Boston, MA 02201-1007  
Attention: General Counsel

7. Certificate of Status of Declaration The BRA shall, within forty-five (45) days after a written request therefor by Harvard, provide a certificate in writing, as requested or applicable, that this Declaration or the Development Controls imposed hereby is in full force and effect and unmodified, that Harvard is in compliance with this Declaration or the Development Controls, or in what respects there is noncompliance, or as to any other matter reasonably related hereto which Harvard may reasonably request of the BRA.

*[Signatures on next page]*

IN WITNESS WHEREOF, Harvard has caused this Declaration to be executed as an instrument under seal in its name and behalf by persons duly authorized as of the day and year first above set forth.

PRESIDENT AND FELLOWS  
OF HARVARD COLLEGE

By: Sally Zeckhauser  
Sally Zeckhauser  
Vice President for Administration

By: James W. Gray  
James W. Gray  
Authorized Signatory

The BRA hereby joins in this Declaration for the purposes set forth herein.

Approved as to Form:

BOSTON REDEVELOPMENT AUTHORITY

Kevin J. Morrison, Esq. SC  
General Counsel  
Boston Redevelopment Authority

By: John F. Palmieri  
John F. Palmieri, Director  
Duly Authorized

THE COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this 22 day of June 2009, before me, the undersigned notary public, personally appeared Sally Zeckhauser, proved to me through satisfactory evidence of identification, which was  photographic identification with signature issued by a federal or state governmental agency,  oath or affirmation of a credible witness,  personal knowledge of the undersigned, to be the person whose name is signed on the preceding or attached document(s), and acknowledged to me that she signed it voluntarily for its stated purpose as Vice President for Administration of President and Fellows of Harvard College

(official seal)

*Elizabeth Flanagan*  
Elizabeth Flanagan Notary Public  
My commission expires: 3/9/2012

THE COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this 23 day of JUNE, 2009, before me, the undersigned notary public, personally appeared JAMES GEM, proved to me through satisfactory evidence of identification, which was  photographic identification with signature issued by a federal or state governmental agency,  oath or affirmation of a credible witness,  personal knowledge of the undersigned, to be the person whose name is signed on the preceding or attached document(s), and acknowledged to me that she/he signed it voluntarily for its stated purpose as a duly authorized signatory of President and Fellows of Harvard College.

(official seal)

*Stephanie Fillios*  
Stephanie Fillios Notary Public  
My commission expires:



STEPHANIE FILLIOS  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires  
August 25, 2011

THE COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On this 3rd day of August, 2009, before me, the undersigned notary public, personally appeared John F. Palmeri proved to me through satisfactory evidence of identification, which was  photographic identification with signature issued by a federal or state governmental agency,  oath or affirmation of a credible witness,  personal knowledge of the undersigned, to be the person whose name is signed on the preceding or attached document(s), and acknowledged to me that he signed it voluntarily for its stated purpose on behalf of the Boston Redevelopment Authority as Director of the Boston Redevelopment Authority.



ELLEN T. HARROWER  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires  
March 5, 2015

*Ellen T. Harrower*

(official seal)

My commission expires: 3/5/15 Notary Public

**Exhibit A**

Legal Description of Weld Hill Parcel

A certain parcel of land in that part of Boston, which was formerly West Roxbury, bounded and described as follows: Beginning at a point at the junction of Centre Street and Weld Street, thence running South eighty-five degrees, East eighty-eight rods and eighteen links on Weld Street to Walter Street; Thence turning and running Northeasterly on the new line of Walter Street (see release from Alice Williams et al to the City of Boston, dated January 23, 1902 and recorded with Suffolk Deeds, Book 2806, page 203) six hundred seventy-five and 31/100 feet to land conveyed by said Alice Williams et al. to the City of Boston for park purposes by deed dated March 28, 1896, recorded with said Deeds Book 2348, page 129; Thence running in a general Westerly and Northwesterly direction, and bounded Northerly and Northeasterly by said land so conveyed to said City of Boston, eleven hundred seventy-seven and 31/100 feet to said Centre Street; Thence turning and running Southwesterly and bounded Northwesterly by said Centre Street to the point of beginning.

For Harvard's title to the Weld Hill parcel, see deed from Ralph B. Williams to President and Fellows of Harvard College dated September 7, 1922 recorded with the Registry in Book 4397, Page 121.

**Exhibit B**

Development Controls for the  
Horticultural and Botanical Resource Study Area of the Weld Hill Parcel

1. The restrictions on development and uses applicable to the Horticultural and Botanical Resource Study Area of the Weld Hill Parcel for the Term are set forth in items (i), (ii), (iii), and (iv) as follows:
  - (i) No above-ground enclosed structures (including without limitation, greenhouses), and no amphitheatres, stadiums, or other constructed places of assembly may be constructed within the Horticultural and Botanical Resource Study Area other than temporary enclosed structures during the growing season that are used in connection with nurseries, plant breeding experiments, and horticultural and botanical research and study and temporary enclosed structures placed during construction on the Weld Hill Parcel and removed at the completion of construction;
  - (ii) No above-grade or below-grade parking areas will be permitted within the Horticultural and Botanical Resource Study Area, including without limitation, surface or structured parking areas or parking decks;
  - (iii) The land within the Horticultural and Botanical Resource Study Area shall remain and be maintained in a landscaped condition (and shall be returned to a landscaped condition following completion of any below-grade installations) to the extent otherwise consistent with the uses permitted under Paragraph 3 below;
  - (iv) Any fence constructed within the Horticultural and Botanical Resource Study Area shall be light pervious to the extent otherwise consistent with the uses permitted in Paragraph 3 below.
2. Subsurface geothermal heat exchange systems and associated components and any other below grade installations (except for below-grade parking facilities) may be located within the Horticultural and Botanical Resource Study Area.
3. Subject to the prohibitions and restrictions set forth in subparagraphs (i), (ii), and (iii) above, the land within the Horticultural and Botanical Resource Study Area may be used otherwise for the uses authorized by law or regulation on the Weld Hill Parcel; specifically permitted are those uses (including without limitation light-pervious fences and similar improvements) that are consistent with the research and education mission and purposes of the Arnold Arboretum including without limitation the past and existing Arboretum uses of the Weld Hill Parcel for plant accessions, nurseries, plant breeding experiments, natural woodland plantings, and horticultural and botanical research and study.

4. The public shall be afforded pedestrian access to the land within the Horticultural and Botanical Resource Study Area subject to, and to the extent otherwise consistent with the uses permitted under, Paragraph 3 above and such pedestrian access shall be subject to restrictions and regulations reasonably deemed necessary by Harvard in connection with the uses permitted under Paragraph 3.

**Exhibit C**

Development Rights in the Designated Development Area

This Exhibit C identifying the minimum development rights within the Designated Development Area is included in this Declaration for and solely for the purposes set forth in Section 2 and shall not be deemed to impose development controls or restrictions within the Designated Development Area.

Permitted Uses: College or University Uses (as defined below) consistent with the mission and purposes of the Arnold Arboretum, including its research and education mission, and not including the Prohibited Uses. Prohibited Uses are: undergraduate and graduate student dormitories; the relocation or establishment of the Arboretum's centralized maintenance garage facility; and non-accessory parking.

Maximum Floor Area Ratio (as defined below): 0.3, as applied to the entire Weld Hill Parcel.

Maximum Building Height: No future improvements constructed in the Designated Development Area on the Weld Hill Parcel shall exceed a plane defined as 180 feet vertical elevation, Boston City Base Datum, except within the Restricted Height Setback Area as shown on the Plan, where Building Height (as defined below) shall not exceed 35 feet.

Yard Setbacks:

(as defined below)

- Weld Street lot line: 25 feet
- Centre Street lot line: 25 feet
- Walter Street lot line: 25 feet (50 feet within the Designated Development Area)
- Hebrew Rehabilitation Center lot line: 0 feet

Parking:

parking for at least 50 passenger vehicles shall be permitted on the Designated Development Area.

Definitions of phrases used above are as follows:

Building Height: the vertical distance from grade to the top of the highest point of the roof beams of a flat roof, or the mean level of the highest gable or of the slope of a hip roof, excluding belfries, cupolas, domes, monuments, church spires, water, observation, radio and transmission towers, windmills, chimneys, smokestacks, silos, derricks, conveyors, masts, flagpoles, aerials, elevator penthouses, water tanks, monitors, signs, or other roof structures and penthouses normally built above the roof and not used or designed to be used for human occupancy, but such structures shall be erected only to such heights, and cover only such areas, as are necessary to accomplish the purpose they are intended to serve, provided that in any event, the total area of such roof structures and penthouses does not exceed 33 1/3 percent of the total of all roof areas, measured horizontally, of such building.

Grade: the average elevation of the nearest sidewalk at the line of the street or streets on

which the building abuts, except in the case of a building not abutting on a street, the average elevation of the ground between the building and the lot line or a line twenty (20) feet from the building, whichever is nearer; but in no event shall the average elevation of such ground be taken to be more than five (5) feet above or below the average elevation of the ground immediately contiguous to the building.

College and University Use: means college or university use, including subuses such as classrooms, dormitories, student housing, eating facilities, research laboratories, athletic facilities, libraries, faculty and other offices, museums, auditoria and other facilities of public assembly, parking, and other similar uses. Property owned or occupied by a college or university not having a use that is substantially related to education at the post-secondary level, research, scholarship, or student life shall not be deemed to be a college or university use merely by reason of such ownership or occupancy. College or university use shall not include property held by a college or university for investment purposes only. College or university subuses shall not be treated as accessory or ancillary uses or as independent uses. The substitution of one such subuse for another such subuse shall not by itself constitute a change in use for zoning review purposes unless the new subuse is a High Impact Subuse. A college or university subuse is a High Impact Subuse if it is a dormitory, student housing, athletic facility, facility of public assembly, parking facility, power plant, or centralized heating or cooling plant.

Floor Area Ratio: the ratio of gross floor area of a structure to the total area of the lot.

Floor Area, Gross: the sum of areas of the several floors of the structure, as measured by the exterior faces of the walls, including fully enclosed porches and the like as measured by the exterior limits thereof, but excluding (a) garage space which is in the basement of a building or, in the case of garage space accessory to a dwelling, is at grade, (b) basement and cellar areas devoted exclusively to uses accessory to the operation of the structure, (c) areas elsewhere in the structure devoted to housing mechanical equipment customarily located in the basement or cellar such as heating and air conditioning equipment, plumbing, electrical equipment, laundry facilities and storage facilities, and (d) public transit improvements by or for a public agency within the Lot, above or below grade, including head houses and/or structures designated for use by, access to or egress from public transit services, provided that any exterior changes are subject to Small Project Review.

Lot: a parcel of land including land under water, whether or not platted, in single ownership, and not divided by a street.

Structure: a combination of materials assembled at a fixed location to give support or shelter, such as a building, bridge, trestle, tower, framework, retaining wall, tank, tunnel, tent, stadium, reviewing stand, platform, bin, fence, sign, flagpole, or the like. The word "structure" shall be construed, where the context allows, as though followed by the words "or part thereof".

Yard Setbacks: an open space extending across the full width of the lot and lying between the applicable lot line and the nearest building. Within a required yard setback, no structure shall be erected except (1) fences and walls not over five (5) feet in height above the average natural grade in such yard; (2) steps, terraces, open porches without roofs, and the like, if not extending more than three (3) feet above the floor of the first story; and (3) signs that conform with applicable zoning regulations.





- Legend**
- Designated Development Area (7.8 acres)
  - Outside Development Area (6.4 acres)
  - 25' Setback
  - 50' Setback

REVISED JULY 2007



The Arnold Arboretum of Harvard University  
 Institutional Master Plan

Figure 5-16  
 Designated Development Area,  
 Weld Hill Parcel

