

Draft Term Sheet for the Ames Shovel Works Redevelopment

_____, 2010

By and between:

Beacon Communities Development LLC
c/o Howard E. Cohen
100 High Street, 5th Floor
Boston, MA 02110

and

Town of Easton
c/o Colleen Corona, Board of Selectmen
136 Elm Street
Easton, MA 02356

The proposed terms and conditions herein are provided to outline the specific elements of the proposed public/private collaboration between the Town of Easton (“Town”) and a single purpose entity affiliate of Beacon Communities Development LLC as more particularly described below (“Beacon”) in connection with the proposed redevelopment of the Ames Shovel Works property located in Easton, MA (“Property”) into affordable and market rate housing, park and open space open to the public, and cultural/historical facilities (“Project”). This term sheet is divided into the following four sections that detail the commitments of Beacon and the Town with respect to the Project:

- I. Town purchase of an Historic Preservation Easement;
- II. Loan to Beacon for Project development costs;
- III. Town establishment of a Sewer Enterprise Zone that will serve the Property and other users at the Town’s sole discretion; and
- IV. Town establishment of an Urban Center Housing – Tax Increment Financing District (“UCH-TIF”) and the Town/Beacon agreement related thereto.

The cultural/historical facilities will be developed by Beacon as part of the Project and shall be operated and maintained by third parties.

I. Preservation Easement Purchase

Description: Subject to the terms and conditions set forth herein, the Town shall purchase an historic preservation easement on the Property (the “Preservation Easement”) that would allow development of the Project in accordance with plans approved by the Town. However, it would also (i) prohibit alterations and additions to the existing historical buildings that are inconsistent with the United State Secretary of the Interior’s Standards for the Treatment of Historic Properties (the “Historic Standards”), (ii) prohibit construction of new, non-accessory buildings on the Property without Town approval, (iii) preserve the park area for public use in perpetuity, and provide for the maintenance and management costs of the park area to be borne in perpetuity

by parties other than the Town, subject to the Town's enforcement of mutually agreed-upon maintenance standards, and (iv) provide for Town review and approval after the Project is completed, of all exterior alterations to any structures on the Property for consistency with the Historic Standards. These Town review and approval rights would be exercised by the Town's Historical Commission.

Funding Source: Funding shall be provided as a recoverable assistance payment to Beacon from the Town's Community Preservation Fund.

Security: On the date upon which Beacon acquires the Property and closes on all of the construction financing for the Project, i.e., all debt and equity financing, such as the tax credits syndication (the "Closing Date"), (i) the Town shall make a payment of up to \$3,000,000 to Beacon, and Beacon shall deposit such funds with Beacon's first mortgage holder/construction lender (the "Bank"), and (ii) in exchange for the assistance payment, Beacon shall record the Preservation Easement with the Bristol County Registry of Deeds, thereby encumbering the entirety of the Property in perpetuity with the restrictions described in the "Description" paragraph above. The Bank shall guarantee repayment of the \$3,000,000 assistance payment to the Town in the event the Project construction is not so completed, and this guaranty document will be signed by the parties (the Bank and the Town) before the Town makes its assistance payment to Beacon. Once construction of the Project is completed, the Bank guaranty shall expire and the assistance payment shall no longer be recoverable by the Town.

Requirements: The value of the Preservation Easement shall be determined by an independent appraisal undertaken by a certified appraiser selected solely by the Town. For purposes of this Letter of Intent, it is assumed that the Preservation Easement's value can be calculated on the value of the residential units that could not be constructed because of the construction and alteration restrictions on the Property to be imposed by the Preservation Easement. For example, the seller of the Property obtained a Chapter 40B comprehensive permit (currently under appeal by the seller) that contemplates the construction of 182 housing units and 35,000 square feet of commercial space (equivalent to 35 housing units, for a total of approximately 217 units). In contrast, the Preservation Easement would reduce the capacity of the Property to 119 apartments, or 98 fewer equivalent units than shown on the seller's approved plans. Beacon has advised the Town that based on previous appraisals of comparable Chapter 40B land costs per unit, each unit's land value is worth approximately \$30,000-\$35,000. Using this valuation approach, the Preservation Easement purchased by the Town would result in at least a \$3,000,000 (98 x \$30,000) reduction in the Property's value. In the event the value of the Preservation Easement is appraised at less than \$3,000,000, the amount of the Town's payment to Beacon to purchase the Preservation Easement would be commensurately less. In no event would the purchase price of the Preservation Easement exceed \$3,000,000. The amount of the Preservation Easement would also be decreased dollar-for-dollar, by the amount of any HOME funds secured by Beacon for the Project.

II. Project Loan

Description: At the closing of the construction financing for the Project (the "Closing"), the Town shall provide loan of up to \$4,500,000 (the "Loan") to Beacon for Approved Project Costs, as defined below.

Borrower: The Borrower shall be a single purpose entity reasonably acceptable to the Town that is an affiliate of Beacon Communities Development LLC. Beacon shall remain the manager or managing member of the Borrower, with control over all major decisions of the Borrower and day-to-day responsibility for overseeing the development of the Project, until the permanent financing closing has occurred and 90% of the market rate condominium units are sold, or as may be earlier agreed by the Town, This requirement shall be subject to the rights of the Bank under its loan documents (e.g., in the event of a foreclosure) and the tax credit investor(s) pursuant to its/their syndication documents (i.e., their rights in the event of a Beacon event of default).

Loan Amount: The Loan Amount shall not exceed \$4,500,000. Beacon shall use commercially reasonable efforts to identify and maximize the use of other financial resources (debt, equity, and/or grants) for the Project. The Loan Amount shall be adjusted downward, dollar-for-dollar, by the stated amount of any charitable donations or “Save America’s Treasures” funds received by Beacon or any affiliate thereof in connection with the Project. The Town shall fund the Loan from its Community Preservation Fund.

Maturity Date and Term: The term of the Loan shall be sixteen (16) years from the closing of the permanent financing for the Project (i.e., the Maturity Date shall be the sixteenth (16th) anniversary of the closing of the permanent financing for the Project). As a condition to the Closing and any disbursement of the Loan funds, Beacon shall obtain a lender commitment for the permanent financing for the Project, which shall include lease-up requirements that are mutually acceptable to the Bank, the permanent lender and the Town.

Amortization: None; interest and principal shall be payable as set forth below.

Interest Rate: 3%, compounded annually.

Payments: Interest shall accrue and be payable only from 50% of “Cash Flow Available for Distribution,” as defined below. Principal, together with accrued and unpaid interest, shall be due and payable in full no later than the Maturity Date as defined above. “Cash Flow Available for Distribution” shall be calculated as follows:

- Gross rents received, *LESS*
- All operating expenses, reasonable and customary reserves, and other expensed items, *EQUALS*
- Net Operating Income, *LESS*
- Permanent lender debt service, *EQUALS*
- Net Cash Flow, *LESS*
- 25% distribution of Net Cash Flow to tax credit investor, *LESS*
- Beacon asset management fee equal to \$75,000 in year 1, inflated 3% annually, *EQUALS*
- **Cash Flow Available for Distribution:**
- 50% of Cash Flow Available for Distribution shall equal the payment due to the Town

The following Year 1 example is provided for illustrative purposes only:

- Gross Rents = \$2,100,000
- Operating expenses = (\$750,000)

- Net Operating Income = \$1,350,000 (\$2,100,000 - \$750,000)
- First Mortgage = (\$1,160,000)
- Net Cash Flow = \$190,000 (\$1,350,000 – \$1,160,000)
- 25% Tax Credit Investor Dist. = (\$47,500)
- Beacon asset management fee = (\$75,000)
- Cash Flow Available for Dist. = \$67,500 (\$190,000 – \$47,500 – \$75,000)
- Payment to Town = \$33,750 (\$67,500 x 50%)

All payments of interest and principal under the Loan shall be deposited into the Town’s Community Preservation Fund.

Prepayment: The Loan may be repaid without penalty, in whole or in part.

Security: Subject to the provisions of loan documents reasonably acceptable to the Town, and the simultaneous closing of all other debt and equity financing for the Project, the full amount of the Loan shall be disbursed to Beacon at the Closing and deposited with the Bank, to be disbursed with other subordinate loan proceeds to pay for Approved Project Costs (as defined below). Such disbursements will be addressed in an intercreditor and subordination agreement mutually acceptable to the Bank and the Town. The Bank will guarantee repayment of the Loan to the Town in the event of a borrower default, construction of the Project is not completed, or the permanent financing closing does not occur. A Beacon affiliate acceptable to the Town shall unconditionally guarantee the Project’s construction completion and lease-up to a permanent financing closing.

At Closing, the Loan will be secured by a second mortgage lien on the Property and all of the improvements thereon (existing and future). On the Closing Date, Beacon shall also provide the Town with an acceptable Lender’s Title Policy insuring the second lien of the Town’s mortgage. Beacon shall name the Town as the second mortgagee/loss payee on the Property’s property insurance policy and as an additional insured on the Property’s liability insurance policy. The Town’s additional insurance requirements shall be set forth in the Loan Documents, as described below.

Approvals: The Town’s making of the Loan shall be conditioned, among other things, upon receipt of evidence that Beacon has obtained all necessary federal, state and municipal approvals required to construct the Project, including without limitation, a building permit. Prior to the Closing, the Town shall conduct such due diligence with respect to Beacon, the Property, and the Project as is reasonable and customary in loan transactions. The Town will use reasonable efforts to coordinate its due diligence efforts with those of the Bank, any other subordinate lenders for the Project, and any tax credit investor(s) in the Project.

Loan Draws: Prior to the Closing, Beacon shall submit a final Project budget to the Town for its review and approval (“Approved Project Costs”). The Town may retain, at Beacon’s sole cost and expense, a construction consultant to assist in the Town’s review and approval of the construction component of such budget. Proceeds of the Loan shall be disbursed by the Bank pursuant to requisitions in the form mutually agreed upon by the Bank, Beacon and the Town. If the construction inspection consultant for the Bank and/or Beacon’s tax credit equity provider for the Project is willing to allow the Town to rely on its reports, the Town will consider jointly utilizing the services of said construction inspection consultant, subject to the Town’s review and

approval of the selected construction inspection consultant and the contract for such services. Otherwise, the Town may elect to retain, at Beacon's sole cost and expense, an independent construction inspection consultant to review and recommend to the Town, approve of all requisitions to be funded by proceeds of the Loan.

Condominium Conversion: If prior to the Maturity Date, Beacon converts the market rate units in the Property to condominiums, the Loan Amount plus accrued interest shall be repaid prior to the Maturity Date per the following calculation:

- Gross Sales Price, *LESS*
- Broker's Fees¹, *LESS*
- Condominium Conversion Costs², *LESS*
- Full repayment of the outstanding first mortgage, *LESS*
- Full payment of Beacon's unrealized Developer Fee and accrued interest³, *EQUALS*
- Cash Available for Loan Amount

Once the Loan Amount plus accrued interest has been fully repaid, any excess Condominium Conversion proceeds shall be distributed 25% to the Town and 75% to Beacon. Once Beacon has earned its profit as permitted under the Chapter 40B program, the Town shall receive all additional Condominium Conversion proceeds upon the conveyance of each unit.

Loan repayments (principal and interest) shall be deposited into the Town's Community Preservation Fund until the Loan has been paid, and any additional Loan proceeds shall be deposited into the Town's General Fund.

The loan agreement between the Town and Beacon shall require the Town's approval of (i) the condominium documents that govern the Property, (ii) the marketing plan for the condominiums, which plan shall be in compliance with all applicable legal requirements; and (iii) the minimum release prices for the units.

Loan Documents: The Loan will be evidenced by a loan agreement, second mortgage, second assignment of leases, second assignment of contracts and permits, and such other agreements and documents as the Town may reasonably require and as are usual and customary for loan transactions. The Town shall be indemnified against all environmental liability, including, without limitation, all consultant and legal fees related thereto. The intercreditor and subordination agreement between the Town and the Bank shall include mutually agreed upon restrictions upon changes to the terms and conditions of the Bank loan. A Beacon affiliate reasonably acceptable to the Town shall execute and deliver a non-recourse carve-out guaranty and environmental indemnity agreement for the benefit of the Town. At the Closing, the Town

¹ If Beacon acts as a broker, the total Broker's Fee shall not exceed 5% of the Gross Sales Price, inclusive of co-broker commissions.

² Condominium Conversion Costs are currently estimated at \$30,000 per unit. This number includes new appliances, repainting, refinishing the floors, new bath and kitchen fixtures, and new cabinets. It also includes carrying costs (insurance, loan interest, etc.) between the time the unit is vacated by a renter and sold. Only the actual Condominium Conversion Costs incurred at the time will be attributed to this line item. These costs must be approved by the Town.

³ As more fully described in the Developer Fee section herein.

shall also require such opinions of Beacon’s counsel as are usual and customary in loan transactions.

Restriction on Transfer: The loan agreement shall provide that the Property cannot be transferred prior to the condominium conversion without the Town’s approval, not to be unreasonably withheld.

Developer Fee: Beacon Communities Services LLC, or an affiliated Beacon entity, shall be entitled to earn the Developer Fee as regulated by the Massachusetts Department of Housing and Community Development (“DHCD”) under the Chapter 40B program. The Developer Fee shall be inclusive of Beacon’s internal administrative and overhead costs and Beacon shall be entitled to receive 50% of its Developer Fee over the course of the construction period, not to exceed \$2,000,000, pursuant to a schedule mutually agreed to by the Bank, the Town, and Beacon. The remaining unpaid Developer Fee shall accrue at a 3% compounded interest rate beginning at Project completion (i.e., at the issuance of Certificates of Occupancy for all of the buildings in the Project), and be paid in accordance with the Condominium Conversion section herein.

Other Requirements:

- The Town shall review and approve a budget for the Project for the total estimated costs that will be incurred by Beacon in connection with the construction (“Approved Project Costs”).
- All permits, plans, specifications, contracts and construction documents shall be reviewed and approved by the Town and its Project consultants.
- The Property must have satisfied all reasonable engineering and environmental requirements, including at a minimum, a Phase I Site Assessment which indicates the Property is in compliance with applicable environmental laws and regulations (or if it is not so compliant, the Town Loan Documents shall require that, as part of the Project activities, the Property be remediated in accordance with all applicable environmental laws and regulations). Beacon shall provide reliance letters granting the Town reliance on all of Beacon’s environmental and engineering reports.
- The Town shall receive at Beacon’s sole cost and expense, an independent appraisal of the Project (whether commissioned by the Town or by the Bank and the Town jointly) that shall support the proposed equity/debt structure for the Project.
- The General Contractor shall provide 100% payment, performance, and lien bonds. The Town may review the General Contractor in terms of experience, financial strength and bonding capacity.

III. Sewer Enterprise Zone

Description: The Town shall establish a Sewer Enterprise Zone that will result in the issuance of municipal bonds to fund the construction of a wastewater treatment plant (“WWTP”) to serve the Property, and at the Town’s discretion, other users as well. The draft Groundwater Discharge Permit approved by the State Department of Environmental Protection (“DEP”) to Easton Shovel Shop, LLC, the Property’s current owner, allows for discharge of up to 36,000 GPD. Based on Beacon’s current plan, it anticipates utilizing approximately 21,500 GPD, resulting in approximately 14,500 GPD of net capacity under the existing Groundwater Discharge Permit that can be utilized by other users designated by the Town in its discretion. At the Town’s

discretion, the design capacity of the building structure that will house the WWTP shall accommodate an additional WWTP to create total wastewater treatment capacity at the Property of up to approximately 50,000 GPD. The parties acknowledge and agree that at the Town's election, the Town may construct such second WWTP to provide such additional wastewater treatment capacity.

Construction, Operations and Maintenance: The Town shall construct, operate, maintain and be responsible for regulatory requirements with regard to the WWTP (and any additional WWTP installed by the Town as contemplated above), other than the DEP Groundwater Discharge Permit to be assigned to the Town on the Closing Date (see Permitting Section below). Beacon shall grant a perpetual real estate interest to the Town for the construction, operation, and maintenance of the WWTP(s) and related leaching field. The Town shall ensure that the initial WWTP is completed and operational prior to the Project's receiving its first Certificate of Occupancy. The Town and Beacon shall work together to obtain an easement or fee simple interest (at no cost to the Town) in the NStar parcel located along Oliver Street that could serve as additional land for the leaching field as well as passive open space available to the public.

Funding: The proceeds for the approximately \$1,500,000 cost of the initial WWTP's design, permitting, and construction shall be generated through the issuance of municipal bond financing. Beacon shall make available land on the Property (at no cost to the Town) for the WWTP(s), the structure containing the same, and the leaching field. Each user shall be assessed a quarterly debt service fee and a quarterly operating and maintenance fee based on a percentage that represents its actual usage (collectively the "Fee"). Included in the Fee for users other than those located on the Property shall be a reasonable charge to be mutually established by Beacon and the Town for the use of the Property. The Town intends to assess against each user not located on the Property, a one-time betterment fee for street infrastructure costs. The Town shall be the sole party responsible for establishing the Fee amount.

Other Users: The net excess capacity of the initial WWTP or of any subsequent WWTP constructed by the Town shall be distributed to additional users at the Town's sole discretion.

Permitting: Beacon and the Town shall work cooperatively to complete the WWTP's permitting process. The Town shall be responsible, at its sole cost and expense, for permitting the structure in which the WWTP(s) shall be located. On the Closing Date, Beacon shall cause the DEP Groundwater Discharge Permit for the Property to be assigned to the Town for nominal consideration, and cause any notice thereof required under applicable regulations to be provided to DEP.

IV. Urban Center Housing – Tax Increment Financing (UCH-TIF) District

Description: In order for Beacon to obtain the required amount of debt necessary to finance the Property, real estate taxes shall be set at the level existing when the Closing occurs, plus an annual adjustment factor as noted below, until the market rate units are converted to condominiums or twenty years, whichever occurs first. DHCD requires that a portion of the new housing units be made affordable to households with incomes at 80% of area median income or less.

Approval Process: The Town shall recommend for approval at Town Meeting, a UCH-TIF Plan and Zone that will encompass an area of North Easton Village larger than the Property. The Town Meeting warrant shall permit the Selectmen and Beacon to negotiate and execute, subject to DHCD's approval, a UCH-TIF Agreement that shall comply with the requirements of the applicable State regulations (760 CMR 58.07). The UCH-TIF Agreement shall state that the assessed value of the Property will be equal to the assessed value of the Property in the Town fiscal year in which the agreement is entered into, which is expected to be fiscal year 2011 (defined in 760 CMR 58.03 as the "Base Value"). The Base Value shall increase each fiscal year by a formula mutually agreeable to Beacon and the Town and in accordance with the UCH-TIF regulations. The Town and Beacon intend, to the extent permitted by applicable law, that after the Property is converted into condominiums, each unit conveyed will be assessed and taxed at its full market value in compliance with applicable law (i.e., in the next Town fiscal year).

Affordable Housing Restriction. In accordance with DHCD regulations (760 CMR 58.08), a 40-year affordable housing restriction will be recorded against the Property with respect to the affordable apartment units. This recording will occur at the Closing.

Beacon shall reimburse the Town for the Town's fees and expenses (legal, engineering, financial consultant, etc.) incurred in connection with the Project, other than (i) the Town's permitting of the structure that will house the wastewater treatment plant(s), and (ii) the costs of amending the DEP Groundwater Discharge Permit to allow for greater daily discharge, for which the Town shall be responsible. Commencing on May 1, 2010, and thereafter on the first day of each month until the Closing Date, Beacon shall make a \$5,000 payment to the Town to as reimbursement towards the Town's Project-related expenses. On the Closing Date, Beacon shall pay to the Town any remaining Project-related expenses incurred by the Town.

Beacon currently contemplates that the Closing will occur in the 4th quarter of 2011 and that construction will commence soon thereafter. Beacon also anticipates that construction will occur in a single phase and be completed within 12-14 months, subject to weather delays and the like. Construction completion and other Project milestones shall be set forth in the loan agreement to be negotiated between Beacon and the Town.

This letter of intent is non-binding and is intended to set forth the framework within which Beacon and the Town agree to work cooperatively towards the Closing and the redevelopment of the Property, thereby enriching the cultural heritage of the Town, adding to its housing stock and open space resources, and preserving an important complex of historical buildings.

Sincerely,

TOWN OF EASTON

BEACON COMMUNITIES
DEVELOPMENT LLC

By: Beacon Communities Corp., its
Manager

By: _____
Colleen Corona, Chair
Board of Selectmen
Duly Authorized

By: _____
Howard E. Cohen
Duly Authorized