

Letter of Intent for the Ames Shovel Works Redevelopment

April ____, 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 space open to the public, and cultural/historical facilities (“Project”). This Letter of Intent 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 Restriction;
- 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 Restriction Purchase

Description: Subject to the terms and conditions set forth in this Letter of Intent, the Town shall purchase an historic preservation restriction that will bind the Property (the “Preservation Restriction”). The Preservation Restriction 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 or structures 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 management and maintenance standards, and (iv) provide for Town review and approval after the Project is completed consistent with the Town-approved plans, 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 be required to 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 Restriction 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 Preservation Restriction shall be senior in lien priority to any financing for the acquisition of the Property and/or the development of the Project. The Bank shall guarantee repayment of the \$3,000,000 assistance payment to the Town in the event the Project construction is not completed, and the 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 Restriction 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 Restriction'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 Restriction. 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 Restriction would reduce the development 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 Restriction 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 Restriction is appraised at less than \$3,000,000, the amount of the Town's payment to Beacon to purchase the Preservation Restriction would be commensurately less. In no event would the purchase price of the Preservation Restriction exceed \$3,000,000. The amount of the Preservation Restriction would also be adjusted downward, dollar-for-dollar, by the stated amount of any charitable donations for the Project or by any Greater Attleboro-Taunton HOME Consortium funds or any "Save America's Treasures" funds received by Beacon or any affiliate thereof in connection with the Project.

II. Project Loan

Description: On the Closing Date, the Town shall provide a loan of up to \$4,500,000 (the “Loan”) to Beacon for Approved Project Costs (as that term is defined on Page 7), and subject to the terms and conditions of the Town’s Loan (as described on Page 4).

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. Beacon may choose to serve as the property manager, or it may choose to bring in a third-party property manager. However, after the condominium conversion occurs (see description below), the Massachusetts General Law governing condominiums (MGL Chapter 183A) provides that the condominium association may terminate the initial property management contract and choose another property manager, at its discretion. (However, Beacon would remain the owner of any unsold condominium units until Beacon sells them.) The Town’s requirement that Beacon remain as the manager or managing member of the Borrower entity 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 investors pursuant to 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 Town shall fund the Loan from its Community Preservation Fund. As noted above, the Loan will be extended at such time as all of the other financing and equity investments for the Project are in place, and Beacon has secured all necessary permits to build the Project; such event is the “Closing.”

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 (including property management fees not to exceed 5% of property revenues or such lesser percentage as is approved by the permanent lender for the Project), *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%)

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 on Page 7). The deposit of the Loan funds with the Bank and the disbursement of such funds by the Bank will be governed by a binding agreement (either an intercreditor and subordination agreement or another contract mutually acceptable to the Bank and the Town), to ensure that the Town Loan funds are used as required for Approved Project Costs. The Bank will guarantee repayment of the Loan to the Town in the event of a Borrower default, or if construction of the Project is not completed, or if 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 insurance policy and as an additional insured on the liability insurance policy for the Property. 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, approval of all requisitions to be funded by proceeds of the Loan.

Developer Fee: Beacon Communities Services LLC, or an affiliated Beacon entity, shall be entitled to earn a Developer Fee as regulated by the Massachusetts Department of Housing and Community Development ("DHCD") under the Chapter 40B program. (The amount of the permitted Developer Fee under the Chapter 40B program will be confirmed by means of DHCD's required approval of the Project cost certification which Beacon will submit to DHCD upon the Project's construction completion.) The Developer Fee shall be inclusive of Beacon's internal administrative and overhead costs and shall be paid in three installments. Beacon shall be entitled to receive the first Developer Fee installment of \$2,000,000 over the course of the construction period pursuant to a schedule mutually agreed to by the Bank, the Town, and Beacon. The remaining unpaid amount of the 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 shall be paid in two additional installments in accordance with the Condominium Conversion section below. Beacon shall be entitled to fees from the Project only as set forth in this Letter of Intent.

Condominium Conversion: The Loan Agreement will provide that it is Beacon's and the Town's expectation that the market rate units will be converted to condominiums after the five-year "hold" period under the Historic Tax Credits program expires. Beacon will have ample incentives to convert the market rate units to condominiums: (1) Beacon will receive the remainder of its Developer Fee only if there are condominium sales proceeds, as provided below, and (2) the UCH-TIF Agreement will expire ten years after the permanent financing closes (see Section IV below) and after that time, the Property will be subject to taxation at its full market value.

At such time prior to the Maturity Date as Beacon converts the market rate units at the Property to condominiums, the Loan Amount plus accrued interest shall be repaid in installments upon the sale of each condominium unit per the following calculation:

- Gross Sales Price, *LESS*
- Broker's Fees¹, *LESS*
- Condominium Conversion Costs², *LESS*
- Full repayment of the outstanding first mortgage, *LESS*
- Payment to Beacon of the second of the three Developer Fee installment payments (an additional \$2.2m + 3% accrued interest)³, *EQUALS*
- Cash Available for Loan repayment to the Town

Once the Town Loan plus accrued interest has been fully repaid, any excess Condominium Conversion proceeds shall be distributed 25% to the Town and 75% to Beacon, but only until Beacon has received the third installment of their Developer Fee payments (which three payments shall equal in the aggregate, the total amount allowed under the Chapter 40B program). Once that has occurred, the Town shall receive all additional net Condominium Conversion proceeds upon the conveyance of each unit (i.e., all proceeds less brokers' fees and usual and customary residential closing costs like real estate transfer taxes and reasonable attorneys' fees).

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 (sales) prices for the units.

Use of Loan Proceeds: Loan repayments (principal and interest) shall be deposited into the Town's Community Preservation Fund until the Loan has been repaid in full, and any additional Loan proceeds shall be deposited into the Town's General Fund.

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. Thus, the Town will not be exposed to any costs whatsoever relating to environmental conditions at the Property or caused by uses at the Property -- past, present, or future. The intercreditor and subordination agreement between the Town and the Bank shall include mutually agreed-upon restrictions on 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 an environmental indemnity agreement for the benefit of the Town. At the Closing, the Town shall also require such opinions of Beacon's counsel as are usual and customary in loan transactions.

¹ If a Beacon affiliate 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 estimated by Beacon 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 the unit is 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 on Page 5.

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.

Other Requirements:

- The Town shall review and approve a budget for the total estimated costs that will be incurred by Beacon in connection with the construction of the Project ("Approved Project Costs").
- All manufacturer's or cash rebates and/or discounts for Project construction elements and the like shall be credited to the Project budget that is approved by the Town.
- 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 one or more wastewater treatment plants (each, a "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 redevelopment 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 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 operation of 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, at no cost to the

Town, for the structure to house the WWTP(s), and the operation and maintenance of the WWTP(s) and related leaching field (the “WWTP Land”). 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. The parties acknowledge at this time that they are exploring the feasibility of utilizing an existing structure at the Property to house the WWTP(s). If the parties agree that such adaptive reuse is feasible, then the cost of preparing such structure to house the WWTP(s) shall be the responsibility of the Town, and Beacon shall be responsible for any additional permitting and/or construction costs required to cause such structure to comply with the Historic Standards. If the parties agree that such adaptive re-use is not possible, then the Town shall construct the structure to house the WWTP(s) on the WWTP Land, and any additional design, permitting, and/or construction costs required to cause such structure to comply with the Historic Standards shall be borne by Beacon.

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 bonds. 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 such infrastructure costs. The Town shall have sole responsibility for establishing the Fee amount.

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

Permitting: Beacon and the Town shall work cooperatively to complete the WWTP permitting process, including the structure to house the WWTP(s) and an amendment to the existing DEP Groundwater Discharge Permit (or new Groundwater Discharge Permit) to accommodate discharge capacity of up to approximately 50,000 GPD. The Town shall be responsible for the permitting costs associated with increasing the GPD discharge capacity at the Property, any Town-requested change in the method of wastewater treatment, and any change in location of the WWTP(s) caused by any Town-requested increase in capacity or change in method of treatment. 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 any 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, Beacon and the Town will enter into a UCH-TIF Agreement on the Closing Date that will provide as follows: (1) Beacon shall pay real estate taxes on the Property as assessed by the Town in Fiscal Year 2011, which taxes shall increase at a rate of 2.5% per year for a term ending on the tenth (10th) anniversary of the date of the permanent loan closing (which is expected to be within 24 months of the Closing Date), (2) the amount of taxes paid by the Property owner

under the UCH-TIF Agreement shall decrease proportionately as condominium units are sold, (3) upon the sale of each condominium unit, the owner of such condominium unit shall pay taxes based upon the full assessed value of his/her unit, and (4) on the tenth (10th) anniversary of the permanent loan closing date, the UCH-TIF Agreement shall expire, whether or not all of the condominium units have been sold. Thereafter, the Property owner shall pay the full taxes assessed on the Property.

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. Beacon is proposing that 20% of the units at the Property be made available to households with annual incomes of 50% or less of the area median income.

Future Approvals: On April 5, 2010, a Special Town Meeting approved a UCH-TIF Plan and the creation of UCH-TIF Zone that will encompass an area of North Easton Village larger than the Property. The applicable Town Meeting warrant permits 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 provide for elements 1-4 as described in the UCH-TIF "Description" paragraph, including the provision that after a condominium is sold, its owner shall pay taxes at the condominium's full market value in compliance with applicable law.

Affordable Housing Restriction: A perpetual 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 and construction 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 as reimbursement towards the Town's Project-related expenses. On the Closing Date, Beacon shall reimburse the Town for the balance of all of the Town's Project-related expenses.

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.

[Signatures on next page.]

[Signature page to Shovel Works Letter of Intent.]

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