

MEMORANDUM OF UNDERSTANDING

1. PARTIES

This Memorandum of Understanding (hereinafter the “Memorandum”) is entered into as of the date on which this Memorandum was executed (the “Effective Date”) by and between the Town of Lincoln, a Massachusetts municipality and trustee of the Deed Trust (as defined in the Operating Agreement) (the “TOWN”), and DeCordova and Dana Museum and Park, a Massachusetts charitable corporation (“DECORDOVA”).

2. PREAMBLE AND REFERENCED DOCUMENTS

- A. Pursuant to a deed to the TOWN dated November 29, 1930 and recorded on December 1, 1930 in the Middlesex South Registry of Deeds at Book 5519, Page 537 (as interpreted or modified by a court of competent jurisdiction from time to time, the “DeCordova Deed”), Julian de Cordova generously gave his land, home, and art collection in trust to the TOWN to serve as a public park and public museum. In his Will, he also bequeathed the income from nearly all his estate in trust to the TOWN to support the park and museum. The TOWN chose to operate the park and museum through a corporation, while the TOWN retained title to the land, home and art collection as trustee. DECORDOVA was therefore founded in 1948, and it has grown into a nationally and internationally recognized museum for contemporary art. The sculpture park was inaugurated in 1966 and has become a signature feature of the park. Visitors enjoy outdoor sculpture displays and curated indoor exhibits, enhanced by innovative learning and engagement programs designed for all ages.
- B. The Trustees of Reservations, a Massachusetts corporation (“TTOR”), was founded in 1891 by landscape architect Charles Eliot. TTOR’s mission is to preserve, for public use and enjoyment, properties of exceptional scenic, historic, cultural, and ecological value in Massachusetts. TTOR currently protects and manages 117 properties across Massachusetts and enjoys a stellar reputation of quality property care and public programming, with leading expertise across technical fields like horticulture, ecology and land management.
- C. DECORDOVA and TTOR share overlapping purposes in seeking to connect people to special places of cultural and natural importance and inspire unique experiences that improve quality of life. DECORDOVA and TTOR have therefore entered into an Integration Agreement dated June 6, 2018 (the “Integration Agreement”), with the intent of creating a partnership to ensure the long-term viability and success of DECORDOVA.

- D. The TOWN's values and history include land conservation, historic preservation, and serving as charitable trustee for donated properties. Therefore, the TOWN and DECORDOVA have entered into this Memorandum, and the TOWN and TTOR have entered into an Operating Agreement of even date herewith (the "Operating Agreement"), with the intent of creating a partnership to ensure the long-term viability and success of DECORDOVA.

3. DEFINITION OF "PROPERTY" AND RIGHT TO OCCUPY

To enable DECORDOVA to comply with Section 2.A.4. of the Integration Agreement, the TOWN hereby confirms DECORDOVA's right to occupy and use the land, buildings, and structures given to the TOWN pursuant to the DeCordova Deed (the "Deeded Property"), including all additions thereto. The Deeded Property, along with all land, buildings, and structures owned by DECORDOVA from time to time, are referred to hereinafter collectively as the "Property" and are uniformly subject to this Memorandum.

4. PERMITTED USE

DECORDOVA is permitted to occupy and use the Property to engage in activities that are not inconsistent with the charitable purposes stated in the DeCordova Deed, which reads as follows: "to maintain said land as a public park for the benefit of the inhabitants of the Town of Lincoln in perpetuity, and the residence and art gallery, and any buildings erected in substitution and addition thereto, to maintain in perpetuity as a public museum under the name of 'The de Cordova and Dana Museum' in memory of myself and my wife for the benefit of the inhabitants of the Town of Lincoln." The activities permitted by this Section 4 are sometimes referred to hereinafter as the "Permitted Use".

5. SELECTMEN CONSENT

If the consent of the TOWN is required for any matter pursuant to this Memorandum, the Board of Selectmen, as the chief elected officers of the TOWN, shall have the right to grant or withhold such consent, unless another TOWN agency is expressly named herein.

6. CONDITION AND MAINTENANCE OF THE PROPERTY

DECORDOVA accepts the condition of the Property "as is" as of the date of this Memorandum, including existing access to public utilities. The TOWN has made no

representation or warranty regarding the fitness of the Property for the Permitted Use. DECORDOVA shall be responsible for all repairs, maintenance, and upkeep of the Property, and shall bear all associated costs.

7. PERMITS AND CODE COMPLIANCE

DECORDOVA shall obtain and comply with all permits required to engage in the Permitted Use in accordance with all applicable laws, regulations and governmental requirements from those governmental agencies having jurisdiction.

8. WATER RESERVOIR PROTECTIONS

Because the Property abuts the TOWN's water reservoir, protection of the public water supply is a shared priority. To this end, DECORDOVA shall:

- A. Comply with the terms and conditions of all easements and conservation restrictions related to protection of the reservoir, including such easements and conservation restrictions in place as of the date of this Memorandum and other rules and regulations applicable to the Property from time to time. The TOWN confirms that all such easements and restrictions in effect as of the Effective Date are listed on Schedule A hereto.
- B. Maintain the fence on the Property parallel to the shoreline of Flint's Pond in materially its current state (the purpose of which fence is to discourage public access to the reservoir), as well as post adequate notice on or near the fence stating that public access from the Property to Flint's Pond is prohibited, and take reasonable measures to enforce the prohibition.
- C. In all art studios, DECORDOVA shall utilize only specialized sinks that will prevent the release of chemicals into the ground or damage to the septic system from clay, acrylics and similar materials.
- D. With respect to the following protected areas, DECORDOVA shall comply with the following: (i) the Massachusetts Wetlands Protection Act and the Town of Lincoln Wetlands Protection Bylaw, as interpreted and applied in the reasonable discretion of the Town of Lincoln Conservation Commission, with respect to all activities in wetlands and within the 100-foot wetlands buffer zone resource area; and (ii) the Town of Lincoln Surface Water Supply Protection Bylaw (with respect to activity within Zone A that extends 400-feet from Flint's Pond's bank) and Section 12.4 of the Town of Lincoln Zoning Bylaw for the Watershed Protection Overlay District (with respect to activity on all of the Property), in either case as interpreted and applied in

the reasonable discretion of the Town of Lincoln Water Commission and/or the Town of Lincoln Conservation Commission. Any significant changes that are proposed on the slope between the main museum building and Flint's Pond shall be reviewed by the Conservation Commission and Water Commission to determine whether permitting will be required. For avoidance of doubt, to the best of the parties' information and belief, DECORDOVA's past and current activities as of the Effective Date (including without limitation the Ponside Renewal project and all current walking trails, sculpture displays, and maintenance activities) are consistent with the such rules and bylaws.

9. DECORDOVA'S EQUIPMENT AND OPERATIONS

- A. DECORDOVA shall be solely responsible for operations at the Property, including hiring or otherwise engaging and managing staff, managing volunteers, and adopting and implementing appropriate safety procedures. No staff or other personnel shall be considered employees of the TOWN for any purposes.
- B. DECORDOVA may not engage in or permit tented events outside of public opening hours that involve outdoor amplified music after 11:00 p.m. on Fridays and Saturdays, 9:00 pm on Sundays (except for the Sundays of Memorial Day, Fourth of July and Labor Day weekends, when outdoor amplified music may continue until 11:00 p.m.), and 9:00 p.m. on all other days; provided that, with respect to such music, DECORDOVA shall at all times comply with Massachusetts law regarding noise restrictions, including (M.G.L., c. 111, s. 142B and 142D, and 310 CMR 7.10). The TOWN will, upon request from DECORDOVA, consider granting exceptions to any one or more of the foregoing hour-limitations on a case-by-case basis, and the granting of such exceptions shall not be unreasonably withheld. The parties acknowledge that the intent of the foregoing provisions is to limit any aggregate increased (over current levels) adverse impact on residential properties arising from outdoor amplified events.

10. TOWN AND PUBLIC ACCESS TO THE PROPERTY

- A. Continue to permit public access to the walking trails shown on Schedule B hereto.
- B. Any resident of the TOWN, with proof of residency by a driver's license or equivalent photo identification, shall be admitted without charge to park on the Property and without charge to enter the Museum, subject to such rules and regulations to which all visitors are subject (including, without limitation, opening hours, access limitations, restrictions regarding activities on the property, etc.). Notwithstanding the prior sentence, DECORDOVA may charge a fee to any such

persons for entry into any special exhibition within the Museum or special event in the park for which all attendees of such exhibition or special event must pay a separate entry fee, and may restrict availability of parking generally for such special events.

C. The TOWN reserves the right of its employees and authorized contractors to enter upon and inspect the Property during normal business hours.

D. DECORDOVA agrees that the TOWN may use and occupy the Property:

- a. to use the parking lots on July 4 of each year to enable attendees of the TOWN's Independence Day activities to park cars, and to charge for and retain the revenue from such parking; provided that the TOWN shall incur all costs for security and cleanup or otherwise directly related thereto, including for DECORDOVA employees that DECORDOVA management deems necessary to staff the event in order to protect DECORDOVA property;
- b. to maintain clear access to all TOWN-owned or TOWN-permitted walking trails that cross the Property for the purpose of using and accessing such trails;
- c. to use the Property as an evacuation site in the case of an emergency on the Lincoln Schools campus, in coordination with DECORDOVA and consistent with procedures reasonably requested by the TOWN's Public Safety Departments;
- d. for a reasonable number of visits per year during the school-day by teachers and students of the Lincoln Schools (including the Hanscom Schools) for organized educational activities, at no charge.

E. In connection with the activities described in Section 10.D., the TOWN shall provide DECORDOVA with evidence of appropriate insurance held by the TOWN against property damage or personal liability.

F. DECORDOVA shall engage in dialogue as the TOWN may reasonably request from time to time regarding potential enhancements to the energy efficiency of the Property and potential activities by DECORDOVA to assist the TOWN to meet its sustainability and energy efficiency objectives.

11. CONDUCT OF DECORDOVA

- A. Compliance with Laws: The Permitted Use shall be conducted in accordance with all applicable laws, statutes, ordinances, regulations, permits, licenses, orders and requirements of governmental authorities and with all requirements of applicable insurance policies. The parties confirm that, to the best of their knowledge and belief, as of the Effective Date, DECORDOVA is in compliance with the requirements of this Memorandum (including without limitation the requirements of this Section 11.A) and DECORDOVA's past activities, including the Permitted Uses, are consistent with such requirements. The parties agree that no failure to comply with any such requirement arising from an event or situation occurring or existing prior to the Effective Date shall be treated as a breach of this Memorandum.
- B. Repair of Damage: DECORDOVA shall neither cause nor suffer any waste of the Property, and DECORDOVA shall maintain the Property in good order at all times. DECORDOVA's responsibilities shall include the restoration or repair of damage to the Property that materially affects the Property resulting from any act, failure to act or negligence of DECORDOVA. Notwithstanding the foregoing provisions of this Section 11.D, DECORDOVA will not be in breach of this Agreement with respect to any condition existing as of the Effective Date to the extent that DECORDOVA acts in good faith within a reasonable period of time after the Effective Date to address any condition that is inconsistent with such provisions.
- C. Security: The TOWN is not responsible for the security on the Property, which shall be the sole responsibility of DECORDOVA, except that the TOWN shall be responsible for security for any activities described in Section 10.D.
- D. DECORDOVA represents that it is and intends to continue to be a museum accredited by the American Alliance of Museums and that it abides and will continue to abide by all ethical standards consistent with such accreditation, including those pertaining to sale, transfer or maintenance of accessioned artwork (or comparable standards of any successor or similar alliance).
- E. DECORDOVA shall not, without the prior written consent of the TOWN (which consent shall not be unreasonably withheld), mortgage or otherwise encumber, lease, license, or otherwise permit occupancy of any of the buildings, structures or land owned or used by DECORDOVA, except (i) renewals, renegotiations or replacements of any loans, mortgages, leases and licenses in existence as of the Effective Date, including without limitation those described on Schedule C hereto, and (ii) leases or licenses in the nature of contracts entered into in the ordinary course of the Museum's business with a duration of not more than ten (10) years including any tenant or licensee options to extend; provided that, each such lease and license shall include a provision stating that upon any termination of this

Memorandum as provided in Section 15 below, the TOWN may, without premium or penalty, terminate any such lease or license.

- F. DECORDOVA shall not, without the prior written consent of the TOWN (which consent shall not be unreasonably withheld), (a) construct or install any new building or material structure (except sculpture or other artwork), (b) increase or decrease the footprint or square footage of any building or material structure; or (c) add parking spaces or roadways.

12. RISK OF LOSS

DECORDOVA shall use and occupy the Property at its own risk, and the TOWN shall not be liable to DECORDOVA for any injury or death to persons entering the Property pursuant to the Memorandum, or loss or damage to vehicles, equipment, structures or other personal property of any nature whatsoever of DECORDOVA, or of anyone claiming by or through any of them, that are brought upon the Property pursuant to the Memorandum, except if such injury, death, loss or damages is caused by the willful act or negligence of the TOWN, or its employees, agents, contractors or invitees.

13. INDEMNIFICATION

DECORDOVA agrees to indemnify, defend and hold harmless the TOWN against any claim by any person for any injury or death to persons or loss or damage to or diminution in value of any property occurring upon the Property or relating in any way to DECORDOVA's exercise of its rights under this Memorandum, except if such injury, death, loss, damages or diminution of value is caused by the willful act or negligence of the TOWN, or its employees, agents, contractors or invitees.

14. INSURANCE

DECORDOVA shall keep in force, at its sole cost and expense, during the full term of this Memorandum, comprehensive public liability insurance, with limits of \$_____, insuring DECORDOVA and the TOWN against all claims and demands for personal injury or damage to or diminution in value of any property which may be claimed to have occurred upon the Property or as a result of the exercise by DECORDOVA of the rights granted by this Memorandum and naming the Town as a named insured. DECORDOVA shall provide the TOWN certificates evidencing such insurance upon request.

15. TERM and TERMINATION

- A. The term of this Memorandum shall continue, subject to termination as provided in this Section 15.
- B. This Memorandum shall terminate automatically if the Operating Agreement terminates or expires for any reason.
- C. This Memorandum may be terminated by either party for a material breach of this Memorandum by the other party, provided that written notice is delivered by the party alleging such breach (the “delivering party”) to the party which is alleged to have committed such breach (the “receiving party”), describing such breach in sufficient detail to inform the receiving party of the nature of such breach; such breach is not materially cured by the receiving party within ninety (90) days after delivery of such written notice, or within a reasonable time thereafter provided that the receiving party in good faith, prior to the expiration of such ninety (90) day period, has commenced such cure, continues diligently to pursue such cure, and is taking all reasonable steps to eliminate material adverse public impacts of such breach; and, if such cure is impossible or impracticable, the parties have in good faith attempted to agree upon an alternative arrangement in lieu of such cure that is not inconsistent with the charitable purposes set forth in the DeCordova Deed. Any dispute as to any of the foregoing, including without limitation the existence or materiality of any breach, the sufficiency of any such written notice, the necessity, nature or sufficiency of any such cure or attempted cure or alternative arrangement, or the expiration of any period described herein will be deemed waived if a legal action relating to such breach is not instituted in a court of competent jurisdiction within one hundred and eighty (180) days after delivery of such written notice. Each party recognizes that monetary damages may not be sufficient on account of a breach and therefore acknowledges that each party may seek injunctive or other equitable relief in a court of competent jurisdiction, enforcing specifically the terms and provisions of this Memorandum. If the delivering party determines that, pending resolution of a purported breach as described herein, such purported breach is causing material, ongoing damages to the delivering party, it may, pending resolution of the purported breach and potential cure as described herein, take reasonable steps to mitigate such damages after written notice to the receiving party. For the TOWN, breach shall include any material breach by DECORDOVA of any provision of Section 11.D-F of this Memorandum
- D. Upon termination of this Memorandum, the Property shall be surrendered in its then “as is” condition.

16. NO ESTATE CREATED

This Memorandum shall not be construed as creating or vesting in DECORDOVA any estate in the Property or any interest in real property but, rather, as allowing the right to use the Property as an agent of the town according to the terms hereof.

17. WAY-FINDING SIGNAGE

DECORDOVA and the TOWN acknowledge that it is in their mutual interest to cooperate on marketing and way-finding activities. Without limiting the foregoing, within one year after the Implementation Date as defined in the Integration Agreement, DECORDOVA shall contribute \$10,000 to the TOWN for purchase and installation of way-finding signage within the TOWN with respect to DECORDOVA, provided that such signage has been reviewed and approved by DECORDOVA.

18. MISCELLANEOUS

- A. This Memorandum may not be modified except in writing, duly executed by both parties.
- B. DECORDOVA is not authorized to bind or otherwise involve the TOWN in any contract, or incur any liability, for or on the part of the TOWN. The TOWN is not authorized to bind or otherwise involve DECORDOVA in any contract, or incur any liability, for or on the part of DECORDOVA.
- C. No personal liability shall accrue to any director, officer, shareholder, employee or agent of DECORDOVA, except to the extent that liability arises directly from the gross negligence or willful malfeasance of such director, officer, shareholder, employee or agent of DECORDOVA.
- D. If any portion of this Memorandum is declared to be illegal, unenforceable or void, then all parties to this Memorandum shall be relieved of all obligations under that portion; provided, however, that the remainder of this Memorandum shall be enforced to the fullest extent permitted by law.
- E. The captions in this Memorandum are inserted for convenience of reference only and in no way define, describe or limit the scope or intent of this Memorandum or any of the provisions thereof.
- F. This Memorandum shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, and any and all legal actions brought in connection with this Memorandum shall be brought in courts within the Commonwealth of Massachusetts.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum on the ____ day of _____, 2019, to take effect as a sealed instrument on the Implementation Date as defined in the Integration Agreement.

TOWN OF LINCOLN

DECORDOVA AND DANA MUSEUM AND PARK

Chairman, Board of Selectmen

Linda Hammett Ory
President

John Ravenal
Executive Director

SCHEDULE A

Reservoir Easements and Conservation Restrictions

SCHEDULE B

Walking Trails

SCHEDULE C

Loans, Mortgages, Leases, and Licenses as of the Effective Date

Loan and Trust Agreement with Cambridge Savings Bank (\$2,137,824 original principal amount, dated September 13, 2012)

Wireless Communication Lease with T13 Unison Site Management LLC dated June 28, 2013

Lease with Lincoln Nursery School dated May 1, 2016