

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the “Agreement” or “Development Agreement”) is entered into as of the effective date, by and between the Grantham Group, LLC., a Massachusetts limited liability company (the “Developer”) and Concord Housing Development Corporation, a Massachusetts not-for-profit corporation (“CHDC”).

RECITALS

Whereas, this Development Agreement is for the purposes of setting forth the applicable development standards and other provision related to the development described herein, and is agreed to by the Parties hereto.

Whereas, the Town of Concord 2010 Housing Production Plan identified that 39% of the Town’s elderly residents have incomes below 60% of area median income and that there exists a critical shortage of affordable housing options for low- and moderate-income senior citizens. The 2010 Housing Production Plan identified that this shortage was particularly acute for housing units serving elderly, disabled, or handicapped persons and as a result wait times for these units can range from one to seven years depending upon the residency of the applicant.

Whereas, in April 2013 over two decades worth of work by the Town of Concord, the Walden Woods Foundation, and the Concord Housing Development Corporation culminated in the transfer of a 12 acre parcel of land known as the Junction Village Site (the “Site”) from the Department of Correction to the Town of Concord and Concord Housing Development Corporation for the express purpose of creating affordable housing and open space.

Whereas, in June of 2014 the CHDC selected Grantham and asked the selectmen for support in the Comprehensive Permit process in an effort to address the shortage in Concord of housing opportunities for low- and moderate-income senior citizens.

Whereas, the Concord Housing Development Corporation has selected the Grantham Group as Developer for the Site in recognition of the Grantham Group’s substantial experience in the development and management of affordable assisted living facilities in Massachusetts.

Whereas, the Grantham Group will undertake in accordance with its designation as Developer of the Site, will undertake the planning, development and construction of an approximately 55,000 square foot 83-unit affordable assisted living facility (the “Project”) on the Site as well as preserve the balance of the Site as open space and will do so as part of a Local Initiative Process.

NOW, THEREFORE, Grantham and Concord Housing Development Corporation, in consideration of the foregoing and the mutual covenants set forth herein, hereby agree as follows:

I. RESPONSIBILITIES OF DEVELOPER

Developer shall devote all such time, effort, resources, and skill as may be necessary for the efficient development of the Project. Such responsibilities shall include but shall not be limited to the following:

A. Development Plan Components

- (1) Must Meet Affordable Assisted Living Facility Project Criteria.** Developer must submit a Development Plan for the Project which at a minimum must feature the construction of a new 83-unit affordable assisted living facility on the Site. The Facility shall feature a total building square footage of approximately 55,000 square feet inclusive of individual apartment units, building common space, and other facility amenities. The Project shall be financed through a combination of the federal Section 42 Low Income Housing Tax Credit¹, private conventional financing, as well as other affordable housing program funding sources to the extent that the same are available. The Project shall carry a deed restriction covenant restricting occupancy of affordable units to eligible low- and moderate-income persons in accordance with the regulatory mandate of the federal Section 42 Low Income Housing Tax Credit program consistent with the affordability restriction on the parcel.
- (2) Development Standards and Sustainability.** The Project shall be developed in accordance with the design standards established by the Commonwealth of Massachusetts Department of Housing and Community Development (“DHCD”) under the federal Section 42 Low Income Housing Tax Credit program. The Developer will submit a Development Plan for the Project that will meet the Town of Concord’s Stretch Code. It is anticipated that Project will be LEED rated thereby ensuring that the Project is affordable in terms of both occupancy and maintenance to its low- and moderate-income residents.
- (3) Execution of Ground Lease.** The Developer shall enter into a Ground Lease with Concord Housing Development Corporation for the Site for a minimum term of eighty-five (85) years for a sum not to exceed thirty-five thousand dollars per annum or such lessor amount as may be consistent with Developer’s development pro forma and CHDC’s obligation to make payments to the Town of Concord, payable to CHDC or its successors, once the Project has received its Certificate of Occupancy from the Town of Concord Building Department. The annual ground lease payment sum shall be contingent on negotiation of a real property tax abatement, a tax increment financing (“TIF”) agreement, payment in lieu of tax (“PILOT”) agreement or other agreement which reflects the reduced market value of the Project given the affordability restrictions attendant with it. The parties recognize that CHDC cannot commit the Town of Concord to enter into a TIF or PILOT agreement. The Developer and CHDC shall enter into a Ground Lease

¹ 26 United State Code § 42, et seq.

prior to the submission to the Department of Housing and Community Development of any Low Income Housing Tax Credit applications by the Developer. The Ground Lease shall be executed in a manner consistent with any deed restricted use of the Site and shall include provisions ensuring public access of open space areas on the Site. The Ground Lease shall also provide that provision be made by CHDC that: a septic system providing 110 gallons of septic capacity be built on site or that stubbed sewer feeding into the Town of Concord sewerage system be made available on site. Further, the Ground lease shall ensure that stubbed utilities including water, gas, phone, and cable be made available at a mutually agreed location on site so as to facilitate future affordable housing development.

- (4) **Preservation of Open Space on Junction Village Site.** The Developer shall devise in consultation with Concord Housing Development Corporation, abutters, local residents, and other community stakeholders, on a Site Development Plan which incorporates to maximum extent practicable the preservation of existing open space on the Junction Village Site. The Developer shall ensure that the Development Plan is consistent with the need to preserve public access to the open space areas on the Junction Village Site.
- (5) **Development Plan Area Set Aside for Group Home.** The Developer shall include an area on the Site as part of the Development Plan that may be utilized in future for the purpose of developing a Group Home facility to service individuals with special needs that are clients of the Massachusetts Department of Developmental Services. The Developer shall make provision within the Development Plan to identify an area on the Site which features proximity to public utilities access to which will be built by others and is of a sufficient size to accommodate the development of a Group Home. The siting and disposition of the area for development of the Group Home shall be done in a manner such that it does not interfere with the financing or operation of the Project.
- (6) **Submission of Local Initiative Petition.** The Developer shall prepare and submit in consultation with the Concord Housing Development Corporation, the Board of Selectmen, Planning Board and Zoning Board of Appeals of the Town of Concord, a Local Initiative Petition for a comprehensive permit to the Department of Housing and Community Development in accordance with the provisions of M.G.L. c. 40B or any other alternative process deemed appropriate by the Parties in furtherance of a comprehensive permit process. As part of the Local Initiative Process, the Developer shall work with the Zoning Board of Appeals, town residents, abutters, community stakeholders, including the West Concord Advisory Committee as part of the planning process.
- (7) **Submission of Low Income Housing Tax Credit Application.** The Developer shall submit or cause to submit on behalf of the Project an application to the Department of Housing and Community Development for an annual allocation of federal Section 42 Low Income Housing Tax Credits consistent with the terms of the DHCD's annual Qualified Allocation Plan ("QAP"). In the event that Developer's initial QAP submission is not funded due to limited availability of applicable Low Income Housing Tax Credits or any other factor, Developer shall be obligated to submit subsequent applications to

DHCD for the same. The Developer's obligation to submit subsequent application shall be contingent on the receipt of local approvals for the Project and shall remain in force for four (4) years from the date of receipt of site plan approval from the Town Board or State agency responsible for providing final site plan approval for the Project.

- B. Development and Construction of Affordable Assisted Living Facility.** Upon receipt of an award of federal Low Income Housing Tax Credits from the Department of Housing and Community Development the Developer shall commence construction of the Project within eighteen (18) months of such award, provided that the Project's financing is in place. Developer shall exercise due care and expertise in the construction of the affordable assisted living facility. Developer shall ensure that Project is constructed in a manner consistent with local and state energy and building codes. Developer will ensure that the Project conforms to the design standards established by the Department of Housing and Community Development as per the regulatory requirements of the Section 42 Low Income Housing Tax Credit Program as well as the affordability restrictions imposed pursuant to the deed restrictions already existing on the Site.
- C. Operation of Assisted Living Facility, Occupancy by Low- and Moderate-Income Persons and Commitment to Affordability.** Upon completion of the Project as determined by the date of issuance of a certificate of occupancy by the Town of Concord Building Department, the Developer shall commence assisted living operations. The Developer shall create a marketing plan for the Project that is consistent with the provisions of the federal Fair Housing Act. Developer shall covenant that the Project's units will be occupied by income eligible individuals that are deemed to be low- and moderate-income persons within the meaning provided under the federal Section 42 Low Income Housing Tax Credit Program. The Developer covenants that the Project will occupied by low- and moderate-income persons and shall remain affordable in perpetuity subject to a deed restriction.

II. RESPONSIBILITIES OF CONCORD HOUSING DEVELOPMENT CORPORATION

- A. Development Plan Collaboration.** CHDC shall collaborate with Developer on the creation of a Development Plan for the Site. CHDC will assist Developer as Developer performs outreach to abutters, local residents, and other community stakeholders, on a Site Development Plan. CHDC will assist Developer in the creation of a Development Plan which at a minimum shall consist of a 55,000 square foot 83-unit affordable assisted living facility and shall provide for the preservation of existing open space on the Junction Village Site.
- B. Execution of Ground Lease with Developer.** CHDC will execute a ground lease or other evidence of site control with Developer sufficient for purposes of the demonstrating "site control" within the meaning of the applicable regulations governing M.G.L. c. 40B as well as in relation to the site control criteria established under DHCD's Qualified Allocation Plan ("QAP") for the federal Section 42 Low Income Housing Tax Credit program. CHDC will enter into a Ground Lease with Developer for a term of eighty-five (85) years at a rate of not to exceed thirty-five thousand dollars annually (\$35,000). In recognition of the need for the

Developer to demonstrate adequate site control in support of a Local Initiative Petition pursuant to M.G.L. c. 40B, CHDC shall formalize a Ground Lease with Developer within a six (6) month period from the date of execution of this Agreement; provided however that this time period may be extended for an additional period of six (6) months at the election of the Developer or by mutual agreement by both Parties to this Agreement. CHDC will make reasonable efforts to assist Developer in the negotiation of a local real property tax assessment that reflects the affordable housing use of the property or CHDC shall support the Developer in its efforts to secure a tax increment financing arrangement that will serve to reduce the real property tax levy on the Project.

- C. Secure Community Preservation Act Support.** CHDC shall provide the Developer with assistance in securing locally-controlled affordable housing development funding under the Community Preservation Act.
- D. Participate in Local Initiative Petition.** CHDC shall facilitate in conjunction with the Developer community outreach activities related to the initiation of a M.G.L. 40B comprehensive permit process. CHDC shall assist Developer to work with the Board of Selectmen, Planning Board and Zoning Board of Appeals of the Town of Concord, in support of Developer's application for a Local Initiative Petition for a comprehensive permit from the Department of Housing and Community Development in accordance with the provisions of M.G.L. c. 40B. As part of the Local Initiative Process or any alternative process deemed appropriate by the Parties, CHDC shall assist Developer in its outreach to the Zoning Board of Appeals, town residents, abutters, community stakeholders, including the West Concord Advisory Committee as part of the Local Initiative Petition process.
- E. Letters of Support for Developer's Application for Low Income Housing Tax Credits.** CHDC shall provide Developer with Letters of Support in connection with Developer's QAP Application for an allocation of federal Section 42 Low Income Housing Tax Credits. CHDC shall furnish Developer with written letters demonstrating the Board of CHDC institutional support for the proposed Project. These letters of support shall be addressed to the Department of Housing and Community Development in a form to be provided if necessary by Developer.

III. GENERAL PROVISIONS

- A. Term, Amendment, and Termination.** This Development Agreement shall go into effect on the date it is executed by the Developer and the CHDC (the "Effective Date"). This Development Agreement shall be effective for a term of five (5) years from the Effective Date; provided that the term shall automatically be extended for an additional two years so long as the Developer has filed an application for an allocation of federal Section 42 Low Income Housing Tax Credits during the calendar year on which the initial term of this Agreement was due to expire. Upon expiration of such period, except as may be extended as provided for above, this Agreement shall automatically terminate. No amendment to this Agreement shall be effective unless approved by both Parties in writing.

B. Binding Effect; Assignability. This Development Agreement shall bind and inure to the benefit of the Parties hereto and their respective successors, heirs, legatees, representatives, receivers, trustees, successors, transferees and assigns. Prior to submittal of an application for an allocation of federal Section 42 Low Income Housing Tax Credits consistent with this Agreement, Developer may not assign its interest or obligations under this Agreement without the CHDC's prior written consent, which shall not be unreasonably withheld.

Notwithstanding the foregoing, Developer may assign its interest and obligations hereunder to an affiliate or related entity owned, controlled by or under common control with Developer without necessity of CHDC's consent but only following delivery of written notice of such assignment to CHDC, together with such documents as are reasonably necessary to confirm the relationship between Developer and such affiliated entity.

C. Representations and Warranties. Each signatory to this Development Agreement represents and warrants that he or she has full power and authority to execute and deliver this Development Agreement on behalf of the Party for which he or she is signing, and that he or she will defend and hold harmless the other Parties and signatories from any claim that he or she was not fully authorized to execute this Development Agreement on behalf of the person or entity for whom he or she signed. Upon proper execution and delivery, this Development Agreement will have been duly entered into by the Parties, will constitute as against each Party a valid, legal and binding obligation that shall run with the land, and will be enforceable against each Party in accordance with the terms herein.

D. Specific Performance and Enforcement. The Parties specifically agree that damages are not an adequate remedy for breach of this Development Agreement and that the Parties are entitled to compel specific performance of all material terms of this Development Agreement by any Party in default hereof. All terms and provisions of this Development Agreement are material.

E. Governing Law and Venue. This Development Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts. Jurisdiction over and venue for any action arising out of or relating to this Development Agreement shall be exclusively in the state and federal courts of Middlesex County, Massachusetts. In the event of any apparent conflicts between the provisions of the local code or town ordinances and this Development Agreement, this Development Agreement shall prevail.

F. Full Understanding. The Parties each acknowledge, represent and agree that they have read this Development Agreement; that they fully understand the terms thereof; that they have had the opportunity to be fully advised by their legal counsel and any other advisors with respect

thereto; and that they are executing this Development Agreement after sufficient review and understanding of its contents.

- G. Counterparts; Facsimile Signatures.** This Agreement may be executed in more than one counterpart, each of which shall be deemed an original, and all of which shall constitute one and the same instrument. Facsimile signatures on this Agreement shall constitute original signatures of the Parties.

- H. Waiver.** The waiver by a party of a breach of any provision of this Development Agreement by the other party shall not operate or be construed as a waiver of any subsequent breach by that party. No waiver shall be valid unless in writing and signed by the party against whom enforcement of the waiver is sought.

- I. Severability.** This Development Agreement does not violate any federal or state statute, rule, regulation or common law known; but any provision which is found to be invalid or in violation of any statute, rule, regulation or common law shall be considered null and void, with the remaining provisions remaining in full force and effect.

- J. Equal Opportunity to Participate in Drafting.** The Parties have participated and had an equal opportunity to participate in the drafting of this Development Agreement. No ambiguity shall be construed against any Party based upon a claim that the Party drafted the ambiguous language.

- K. Notice.** All correspondence and any notice required in this Development Agreement shall be delivered to the following parties:

CONCORD HOUSING DEVELOPMENT CORPORATION

Attention: President
Concord Housing Development Corporation
P.O. Box 195
Concord, MA 01742

With a copy to:

**SelectBoard
Town House
Concord, MA 01742**

THE GRANTHAM GROUP, LLC.

Attention: Walter Ohanian, Managing Director

The Grantham Group, LLC.
99 Pleasant Street
Marlborough, MA 01752

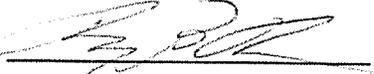
With a copy to:

Daniel F. Lenzo, Esq
Counsel to the Grantham Group, LLC.
~~109 State Street, Suite 404~~ 12 Hayloft Lane
~~Boston MA 02109~~ Marshfield, MA 02050

L. Final and Complete Agreement. This Development Agreement constitutes the final and complete expression of the Parties on the development standards governing the Developer's development of the Site. This Development Agreement may not be modified, interpreted, amended, waived or revoked orally, but only by a writing signed by all Parties. This Development Agreement supersedes and replaces all prior agreements, discussions and representations on all subjects discussed herein, without limitation. No Party is entering into this Development Agreement in reliance on any oral or written promises, inducements, representations, understandings, interpretations or agreements other than those contained in this Development Agreement.

M. Execution and Effective Date. The Effective Date of this Agreement is the date on which it is executed by the Developer and CHDC representatives. The following representatives of the Parties are authorized to, and do hereby, execute on behalf of the party so indicated.

Concord Housing Development Corporation

By: 

Its: Co-President

Date: 2-17-16

The Grantham Group, LLC.

By: 

Its: Managing Director

Date: 2/23/16