

May 1, 2007

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT, dated as of _____, 2007, by and between Michael J. Connolly and Lynda M. Connolly, husband and wife as tenants by the entirety, of 42 Cerdan Avenue, Roslindale, MA 02131 (the "Owner"), and the Town of Wellesley, Massachusetts, a Municipal Corporation of the Commonwealth of Massachusetts (the "Town"), acting by and through its Board of Selectmen (the "Selectmen").

Reference is made to the following facts:

A. The Owner owns two (2) abutting parcels of real property on the north side of Washington Street at Hillside Road, public ways in Wellesley, Massachusetts. Said parcels are more particularly described as Lot 2 (65 Washington Street) 16,416.95 sq. ft. and Lot 3 (1 Hillside Road) 15,000 sq. ft., the deeds for which are in Exhibit A hereto (such parcels being collectively referred to as the "Property"). The Property together contains approximately 31,416.95 square feet of land. The deeds are recorded in the Norfolk Registry of Deeds, in Book 23167, Page 2 and 23631, Page 329 respectively. The lots are also shown on an ANR plan endorsed by the Wellesley Planning Board on August 2, 1999, shown on Exhibit B.

B. The Property is currently unimproved, and within a Single Residence District under Wellesley's Zoning Bylaw.

C. The Owner proposes to develop the property by merging the two lots, and constructing four (4) dwelling units, as more fully described hereinafter (the "Project").

D. To permit the Project to proceed, the Owner has filed with the Town for consideration at the 2007 Annual Town Meeting at a session to be held on or about April 30, 2007 (the "Town Meeting") a citizen's petition for the adoption of a motion rezoning the Property to a multi-family residence district, which, if enacted, would permit the Project as hereinafter defined to proceed. The Town Meeting petition appears as Article 53 on the Warrant for the Town Meeting.

E. The Owner has made certain commitments to the Town in furtherance of the Project in the event that the Article is adopted at Town Meeting as proposed, and approved by the Attorney General, and it is the purpose of this Agreement to document such commitments, and to make them binding on the Owner, the Owner's successors and assigns, to run with the land.

NOW, THEREFORE, in consideration of the foregoing, the Owner and the Town agree as follows, provided that the Owner's obligations under this Agreement are contingent on satisfaction of the following conditions: (i) the Wellesley Town Meeting adopts the Article, with such amendments thereto, if any, as shall be approved by the Owner; (ii) all subsequent steps shall be taken in order to cause such Article to be incorporated into the Wellesley Zoning Bylaw,

(the “Bylaw”) such as approval by the Attorney General; (iii) issuance of all permits and approvals, which approvals shall not be unreasonably withheld or unreasonably conditioned, as may be required for the Project pursuant to the Wellesley Zoning Bylaw, as amended by the Article, and this Development Agreement, such as, but not limited to, approval by the Board of Selectmen, the Planning Board, the Board of Public Works, the Zoning Board of Appeals for site plan review, and the Design Review Board, and the expiration of applicable appeal periods; and (iv) issuance of one or more building permits for each of the dwelling units as required.

1. Development Sequence and Design. (a) The Owner agrees that the Project will be undertaken and developed substantially in accordance with the plans identified in Exhibits C and D, and as more fully described herein, as the same may be varied or altered in connection with the granting or maintenance of necessary development or operating permits or approvals (the “Project Plans”). The Project will be commenced promptly after the Attorney General’s approval of the zoning change, and be constructed with diligence and continuity, until completed. If the zoning bylaw is amended as aforesaid the Owner commits to exercising the Owner’s rights under the zoning change only by developing the Project and no other on the Property. In consideration of the Town voting the zoning change and entering into this Agreement, the Owner hereby waives any right the Owner may have had to apply for a Comprehensive Permit pursuant to G.L. c.40B. The Owner’s rights under the existing single-family zoning are unaffected, so if the Owner elects to proceed with one single-family dwelling on each of the lots the Owner may do so provided they conform to zoning. The Owner will use diligent effort to control the development’s schedule having in mind the impact of construction on the adjacent neighborhood and on traffic in the vicinity of the Property, particularly Washington Street. If the Project is begun but then destroyed in whole or in part by fire or other casualty, or completed and subsequently destroyed, the Owner shall be entitled to rebuild as herein provided as this Agreement shall continue to be in full force and effect as to such rebuild.

(b) The parties intend for the Project to comply in all respects with the zoning as amended. To provide for this, Lots 2 and 3 will be merged, thus eliminating the question of set-backs on account of the lot division line shown on the ANR plan. The owner will present the merger plan to the Planning Board for its approval forthwith.

(c) The Project as constructed will consist of two (2) buildings (stick-built) and improvements shown on the Project Plans. Two (2) dwelling units will be in each of the two buildings. The buildings will be separated by a courtyard as shown on the Project Plans. The Owner agrees that the Project, as constructed, will continue to conform in all material respects to the Project Plans. The architecture for the Project will be consistent in all material respects with the architectural theme and materials as currently developed and presented at meetings and hearings (Board of Selectmen, Planning Board, Design Review Board, and others) by the Owner.

(d) The Owner agrees that the Project will not exceed 1,215 sq. ft. per each of the four units in ground footprint, and that each of the four (4) dwelling units will not exceed 2,430 sq. ft. in livable floor space. Each unit shall not exceed three bedrooms plus study. (The floor plan in Exhibit C will be corrected in this regard). There will be no habitable or occupiable space (as these terms are defined in the State Building Code) on the third floor which will be

limited exclusively to utility or storage. There will be no third floor windows (other than ornamental windows). Each unit shall have no more than three full bathrooms, a living room, kitchen, storage areas and garage under each building for two (2) cars for each unit. There will be no balconies. There will be no outside trash receptacle/dumpster. A deck will be permitted only at ground floor level of unit 4, and only if approved by the Design Review Board, which approval shall not be unreasonably withheld or unreasonably conditioned. The Owner agrees to construct the units in a good and workmanlike manner employing new materials of superior quality and in compliance with all applicable laws and codes. The floor plans and quality of exterior fixtures shall be subject to the approval of the Design Review Board and Board of Selectmen, which approval shall not be unreasonably withheld or unreasonably conditioned. Vehicular access to the parking garage for each unit shall be from the courtyard as shown on the Project Plan. Each unit will have its “front” entry door as shown on the project plans, but the bulk of the building as seen from Washington Street and Hillside Road shall be minimized as approved by the Design Review Board, which approval shall not be unreasonably withheld or unreasonably conditioned.

(e) Buffered areas and retaining walls and structures, and fencing, shall be as shown on the Project Plans. The parties agree that site topography contour is difficult and will require substantial retention of earth. The materials and design of such retaining walls and structures and fencing, and also screening, are shown on the Project Plans and detail attached in Exhibit C. The final site design, including without limitation the buffered areas, retaining walls and structures and fencing shall be subject to review and approval by the Design Review Board, the Board of Selectmen with the advice of the Town Engineer, and the Zoning Board of Appeals pursuant to Site Plan Review, all of which approvals aforesaid shall not be unreasonably withheld or unreasonably conditioned. Any HVAC will conform to zoning, and be configured and screened on all sides, so as to reduce any unreasonable level of noise that would otherwise be audible under normal circumstances from the abutting residential neighborhoods, the final design of which will be subject to review and approval by the Design Review Board and Site Plan Review by the Zoning Board of Appeals which approvals shall not be unreasonably withheld or unreasonably conditioned.

(f) Vehicular access shall be from one curb cut on Washington Street as shown on the Project Plans. The driveway shall end at the courtyard on site as shown, from which entry shall be had into the four parking spaces under each of the structures, two (2) parking spaces to be dedicated to each dwelling unit. Parking in the garages will not be stacked (in tandem). The courtyard and driveway will be lined with concrete curbing to ensure parking and vehicular traffic is held to the impervious/paved surface. Overnight outdoor parking will be allowed only in the courtyard (not on the driveway or elsewhere on the Property) to a maximum of 4 vehicles (each of the 4 allowed vehicles to be parked parallel to each unit’s garage) for use by guests of the unit owners.

(g) Storm water drainage and other public works are not yet shown on the Project Plans. An Erosion and Sedimentation Control Plan will be submitted, and be approved by the Town Engineer and Department of Public Works and the Zoning Board of Appeals as a part of its Site Plan Review which approvals shall not be unreasonably withheld or unreasonably

conditioned. The Project will incorporate storm water management techniques required under said approval process, including connection with the Town's storm water drainage system if required by the Town Engineer. Best management practices shall be applied. The impervious surfaces within the development site shall be limited by use of proper materials and otherwise as the Design Review Board and Town Engineer may reasonably require in order to reduce the overall rate of storm water runoff to Washington Street and the Town's stormwater drainage system as required in said approval process. If cutting into Washington Street is required, resurfacing shall be finished to the requirements and specifications of the Department of Public Works, recognizing that this stretch of Washington Street was completely reconstructed only about three years ago.

(h) The Owner agrees that exterior lighting serving the project will be pursuant to a site lighting plan approved in advance of the construction of the Project by the Design Review Board which approval shall not be unreasonably withheld or unreasonably conditioned.

(i) The Owner has described a "tree restriction area" area existing on Lot 3, which does not appear in the Owner's chain of Title but is a matter of record in the Norfolk Registry at Book 14476, Page 335. See Exhibit E. The Owner agrees to comply with this "tree restriction area", and also to provide a similar "tree restriction area" on Lot 2, in form approved by the Planning Board suitable for recording in Norfolk Registry, which approval shall not be unreasonably withheld or unreasonably conditioned. Before commencing any site work, the Owner will submit for Board of Selectmen approval a plan showing the trees and vegetation to be removed, such approval not to be unreasonably withheld or unreasonably conditioned.

(j) The exterior façade of the dwelling units 2 and 3 facing Washington Street shall consist of Glen-Gery brick. The roofing material will be asphalt shingle "Pewterwood". The other facades shall consist of cedar clapboard "Dover White". The shutters will be either "Rockwood Shutter Green" or Black. All of the foregoing shall be or equivalent as determined by the Design Review Board. Beyond these details the final design and materials shall be as approved by the Board of Selectmen and the Design Review Board, which approvals shall not be unreasonably withheld or unreasonably conditioned.

(k) The Owner will plant landscaping materials as shown on the Project Plans, and in all respects comply with said plan. Final design shall be approved by the Design Review Board, which approval shall not be unreasonably withheld or unreasonably conditioned. If the four existing maple trees on the property above at 7 Hillside Road, as shown on Exhibit C die on account of the site development, the Owner shall replace them using mature trees, after reasonable consultation with the Town's tree warden. The parties agree that loss of such trees, without replacement, would constitute irreparable harm such that a financial penalty would be insufficient to correct the loss. Such replacement shall constitute full and complete satisfaction for the death of such trees, and Owner's obligation to replace the trees shall expire five years from the completion of the project.

(1) The Project is planned as a condominium. The condominium master deed, trust agreement, bylaws and all relevant documents shall be subject to Town approval which approval shall not be unreasonably withheld or unreasonably conditioned and shall reference this Development Agreement and bind the condominium to complying with it. If a Homeowner's Association or Cooperative is planned, the same approval process, standard and referencing shall apply. All such documents shall be recorded in the Norfolk County Registry of Deeds (or, if apt, filed in the Norfolk County Registry District of the Land Court).

2. Monetary Payment. As an inducement for the Town to enter into this Agreement and for Town Meeting to vote the zoning change being proposed, the Owner agrees to pay to the Town the sum of Three Hundred Ten Thousand Dollars (\$310,000.00) payable to the Town in four (4) installments of Seventy-seven Thousand Five Hundred Dollars (\$77,500.00) each at the earlier of occupancy or the time of the closing of the sale of each of the respective units 1, 2, 3, and 4. Such sum will be paid directly to the Wellesley Housing Development Corporation (WHDC) and applied by it in accordance with its charter. The Owner's obligation under this paragraph shall not be subordinated to any indebtedness on the Property and will appear on the municipal lien certificate for each unit until paid.

3. Performance Bond. At the time of filing an application for a building permit, the Owner shall file with the Town a Performance Bond Agreement, providing for a line of credit, in the form attached, or in form comparable to the form attached, as approved by the Planning Board, such approval not to be unreasonably withheld or unreasonably conditioned. The amount of said line of credit shall be equal to the amount certified to the Building Department as the total construction cost, plus the monetary payment as herein provided, plus five hundred thousand (\$500,000) dollars, enabling the Town to require completion of the project in the event the Owner fails to do so. The Town agrees the amount of the bond may be reduced to an amount or amounts commensurate with construction progress, as approved by the Planning Board, such approval not to be unreasonably withheld or unreasonably conditioned.

4. Construction Mitigation. Prior to the issuance of any building permit for the Project, the Owner will provide a construction mitigation plan to minimize the impact of construction on the project's neighbors, which plan shall be reasonably acceptable to the Town.

5. Binding Effect; Enforcement. This Agreement shall (subject to the terms and conditions set forth herein) be binding on the Owner and its successors and assigns, and on the Town, and is intended to run with the Property, and be binding on the owner of the Owner's interest therein from time to time. This Agreement is for the benefit of the Town, and may be enforced by any remedy provided at law or in equity. In the event that any additional act is required to ensure the rights of the Town hereunder are perfected, and the Owner (meaning to include the Owner's successors and assigns) shall fail to execute, acknowledge and deliver to the Selectmen such instruments as the Town Counsel may reasonably determine to be necessary to so perfect the Town's rights hereunder within thirty (30) days after written request therefor, the Owner hereby irrevocably designates the then Chairperson of the Board of Selectmen of the Town of Wellesley as the Owner's attorney-in-fact to execute, acknowledge and deliver the same, such appointment to be coupled with an interest. The enforcement officer for the Town

will be the Selectmen, aided by the Building Inspector/Zoning Enforcement Officer and Department of Public Works. The parties agree that any non-compliance of this Agreement by the Owner, its successors and assigns would constitute irreparable harm such that a financial penalty would be insufficient to correct the loss. A certificate of occupancy for each of the 4 units shall constitute full and complete satisfaction of this Agreement except to those obligations which by their terms pertain subsequent to the issuance as said certificates. All attorneys fees incurred by the Town to enforce the terms of this Agreement shall be paid by the Owner, except such as are deemed by a court of competent jurisdiction not to have been incurred in good faith or not to have been reasonably incurred. This Agreement and the Bylaw shall be construed in such a way as to harmonize any conflicting provisions to the greatest extent reasonably possible, but in the event of irreconcilable conflict between this Agreement and any provision of the Bylaw (as amended by the Article), the provisions of the Bylaw shall control (subject always to the provisions of General Laws, Chapter 40A as amended). Immediately upon the bylaw amendment becoming final, the Town shall record this Agreement with the Norfolk County Registry of Deeds (and/or the Norfolk County Registry District of the Land Court, if any or all of the Property is registered land). All indebtedness existing on the Property at the time of recording and all subsequent indebtedness will be subordinated to this Agreement. The Owner shall incorporate by reference in any subsequent transfer of the Property the obligations incurred by it pursuant to this Agreement.

6. Amendment or Modification. This Agreement may not be amended, modified or terminated except by a written instrument executed by the Owner and by a majority of the then Board of Selectmen of the Town and approved by a majority vote of Town Meeting when said Board determines Town Meeting approval is warranted or advisable. Any significant decision by the Board of Selectmen shall only be made after convening a public hearing on the matter.

7. No Waiver. The failure of the Town to enforce this Agreement shall not be deemed a waiver of the Town's right to do so thereafter. If any provision of this Agreement or its applicability to any person or circumstance shall be held to be invalid, the remainder thereof, or the application to other persons or circumstances, shall not be affected.

8. Severability. The invalidity of any provision of this Agreement as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision hereof.

9. Applicable Law. This Agreement shall be governed by and according to the laws of the Commonwealth of Massachusetts, as amended from time to time. Any action brought by the Town hereunder may be brought in the Superior Court in and for the County of Norfolk, and the Owner hereby agrees to the jurisdiction of such court.

IN WITNESS WHEREOF, this Agreement has been signed as an instrument under seal as of the day and year first above written.

Owner:

Michael J. Connolly

Lynda M. Connolly

Town of Wellesley

By: _____
Chair, Board of Selectmen

Approved as to form:

Albert S. Robinson, Esq., Town Counsel

COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss.

On this _____ day of _____, 2007, before me, the undersigned notary public, personally appeared Michael J. Connolly and Lynda M. Connolly, proved to me through satisfactory evidence of identification, being (check whichever applies): () driver=s license or () other state or federal governmental document bearing a photographic image, () oath or affirmation of credible witness known to me who knows the above signatories, or () my own personal knowledge of the identity of the signatories, to be the persons whose names are signed above, and acknowledged the foregoing to be signed by them voluntarily for its stated purpose.

Notary Public _____
My Commission Expires: _____

List of Exhibits:

- A. Two deeds
- B. ANR Plan
- C. Project Plans:
 - (1) Existing conditions Site Plan
 - (2) Rendering 2/20/07
 - (3) Roof Plan and Site Section/elevation
 - (4) Elevations Units 1 and 2
 - (5) Elevations Units 3 and 4
 - (6) Floor Plans Units 1, 2, 3, 4 (to be corrected to show 3 bedrooms plus study)
 - (7) Site Plan with Grading and Landscape
 - (8) Site Sections A-A and B-B
- D. Architect's Verbal Description of the Project
- E. Tree Restriction Area, plan and deed
- F. Performance Bond Agreement

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