

DEVELOPMENT AGREEMENT

THIS AGREEMENT, dated as of _____, 2007, by Michael J. Connolly (the "Owner"), in favor of 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 in Exhibit A hereto (such parcels being collectively referred to as the "Property"). The Property together contains approximately Sixteen Thousand Four Hundred Seventeen (16,417) square feet of land, more or less. For owner's title, see deed(s) recorded in the Norfolk Registry of Deeds, in Book _____, Page _____.

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 constructing four (4) dwelling units, two each on each parcel, 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 to be held on or about March 26, 2007 (the "Town Meeting"), a citizen's petition for the adoption of a motion rezoning the Property to multi-family residence, which, if enacted, would permit the Project as hereinafter defined to proceed as a matter of right. 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.

NOW, THEREFORE, 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 as shall be approved by the Owner or its counsel; (ii) all subsequent steps shall be taken in a reasonable time 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, (containing such conditions as may be acceptable to the Owner, as may be required for the Project pursuant to the Wellesley Zoning Bylaw, as amended by the Article, such as, but not limited to, approval by the Board of Selectmen and the Planning 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 that certain plan entitled "Hillside Estates", prepared by Cynthia Solarz, AIA, dated April 9, 2007, a copy of which is attached to this Agreement as Exhibit B, 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 Plan"). The Project will be commenced within 6 months of the Attorney General's approval of the zoning change, and be constructed at substantially the same time, with diligence and continuity, until completed. The Owner commits to undertaking the Project and no other at the Property. 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.

(b) The Project as constructed will consist of two (2) buildings and improvements shown on the Project Plan. Each of the two buildings will contain two (2) dwelling units. The buildings will be separated by a courtyard and parking area as shown on the Project Plan. The Owner agrees that the Project, as constructed, will continue to conform in all material respects to the Project Plan. The architecture for the Project will be consistent in all material respects with the architectural theses and materials as currently developed and presented at meetings and hearings (Advisory Board to the Town Meeting, Board of Selectmen and Planning Board) by the Owner.

(c) The Owner agrees that the Project will not exceed seven thousand four hundred and thirty (7,430) square feet in ground footprint, and that each of the four (4) dwelling units will not exceed 2,450 square feet in livable space.

(d) Buffered areas and retaining walls and structures shall be as shown on the Project Plan, to include natural stone slope wall, one thousand three hundred and fifty (1,350) face square feet and mortared stone walls, two thousand (2,000) face square feet. The materials and design of such retaining walls and structures are shown on the Project Plan and detail attached as Exhibit B. The final design of the buffered areas, retaining walls and structures shall be subject to review and approval the Board of Selectmen with the advice of the Town Engineer. Any HVAC will 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.

(e) Vehicular access shall be from one curb cut on Washington Street as shown on the Project Plan. 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.

(f) Storm water drainage and other public works shall be approved by the Town Engineer and Department of Public Works. The Project will incorporate storm water management techniques required under said approval process. The impervious surfaces within the development site shall be limited in order to reduce the overall rate and volume of storm water runoff to Washington Street as required in said approval process.

DRAFT

(g) The Owner agrees that exterior lighting will be pursuant to all applicable laws, rules and regulations of the Commonwealth of Massachusetts, and zoning by-laws and building codes for the Town.

(h) A tree preservation area will be created on the parcel presently known as 65 Washington Street, Lot #2 of approximately the same size as the tree preservation area currently on the parcel presently known as One Hillside Road. The existing tree preservation area at One Hillside Road shall be respected.

(i) The exterior façades of the dwelling units facing Washington Street shall consist of red brick. The exterior facades of the dwelling units facing Hillside Road and Orchard Street shall consist of clapboard. Any change in the materials for the exterior facades of the dwelling units will be subject to the approval of a majority of the Board of Selectmen.

(j) The Owner will plant landscaping materials as shown on the landscaping plan, and in all respects comply with said plan. The landscaping plan is attached as Exhibit B and includes, seven (7) deciduous trees, twenty (20) evergreen trees and one hundred and fifty (150) shrubs.

2. Sale/Rental/Home Occupancy. (a) Units 1, 2, 3 and 4 will be sold by the owner on the market at their fair market value following completion of construction.

(b) The Owner agrees to develop the four (4) residential townhouse style units in the following details: none will exceed Two Thousand Four Hundred Fifty (2,450) square feet of living space, and each will contain no more than four (4) bedrooms, no more than three and one-half (3 ½) bathrooms, a living room, kitchen, storage areas and garage under for two (2) cars for each unit. 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.

3. 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 time of the closing of the sale of each of the respective units 1, 2, 3, and 4.

4. Mortgage Contingency Clause. The Owner and the Town agree and acknowledge that the Owner's obligations pursuant to this Agreement are subject to the Owner obtaining construction financing at prevailing market rates.

5. Binding Effect. Subject to the terms and conditions set forth herein, this Agreement shall be binding on the Owner and his 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 Owner and the Town, and may be

DRAFT

enforced by any remedy provided at law or in equity. 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). Prior to the issuance of a building permit for any portion of the Project, the Owner shall provide to the Board of Selectmen evidence reasonably satisfactory to the Town that this Agreement has been recorded 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. The Owner shall incorporate by reference in any subsequent transfer of the Property the obligations incurred by him pursuant to this Agreement.

6. **Term of Agreement.** Except as otherwise expressly set forth in this Agreement, the terms and conditions hereof shall be perpetual. 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.

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:

Town of Wellesley

By: _____
Chair, Board of Selectmen