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TOWN OF CONCORD

BOARD OF APPEALS

TOWN HOUSE



Bk: 51469 Pg: 227 Doc: DECIS
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48 and 54 Old Powder Mill Road and 236 Main Street, Concord

Please take notice that in the matter of the APPLICATION OF WEST CONCORD DEVELOPMENT, LLC, for a Comprehensive Permit, under Massachusetts General Law Chapter 40B to construct a three hundred and fifty (350) unit multi-family residential rental community, with eighty-eight (88) being affordable, at 48 and 54 Old Powder Mill Road and 236X Main Street, Concord, Massachusetts, the Board of Appeals has this day rendered a decision GRANTING said application, and the record therein has this day been filed with the Town Clerk, Town House, Concord, Massachusetts. Appeals, if any, shall be made pursuant to Section 17 of the Zoning Act, Chapter 40A of the Massachusetts General Laws, or Section 22 of said Chapter 40B, as applicable, and in either case shall be filed within 20 days after the date of this notice.

Paula Fretino
CLERK, BOARD OF APPEALS

June 18, 2008
DATE

Land America
125 Summer Street
Suite 2100
Boston MA 02110
Attn: ANW File No. C9611

TOWN OF CONCORD

BOARD OF APPEALS

The APPLICATION OF WEST CONCORD DEVELOPMENT, LLC, for a Comprehensive Permit, under Massachusetts General Law Chapter 40B to construct a three hundred and fifty (350) unit multi-family residential rental community, with eighty-eight (88) being affordable, at 48 and 54 Old Powder Mill Road and 236X Main Street, Concord, Massachusetts.

RECORD OF PROCEEDINGS

The Applicant, WEST CONCORD DEVELOPMENT, LLC, 48 and 54 Old Powder Mill Road and 236X Main Street, Concord, Massachusetts, filed with the Board of Appeals on October 31, 2007, an application.

The Board determined that the following constituted the parties interested in the application and the owners of all property affected thereby, as they appear upon the most recent tax list, viz:

Note: The following list includes abutters from the Towns of Acton, Concord, Maynard and Sudbury.

FTN Limited Partnership
Town of Concord
Hayes Pump Nominee Trust
Concord Land Company LLC
Hayes Pump Nominee
Camp Thoreau Inc.
John Ross Minty Jr. TR
Concord Housing Authority
Virginia L. Swanson
Patricia LeClair
Teresa A. Ho TR
Agnes Pallozzi
Lois S. Luberti
Genevra Valvo
George C. Logan
Dianne E. Velardocchia
Valerio O. Pinci
Stephanie Antonuccio
Kevin P. Hurley
Keith & Lynne Darcy
Charlene Garabedian
Geoffrey A. Jr. & Laura H. Gardiner

David J. & Judith A. Landry
 John M. Jenkins & Christine F. Lamb
 Gordon S. & Cynthia P. Fraser
 Lawrence P. & Carol A. Smith
 Todd A. Pulis TR Thoreau Realty Trust
 Joseph L. Maillet Trustee Candlewood Trust
 A. A. DeGugliemo
 Boston Edison Company
 Stuart and Lisa M. Joseph
 William W. Ray and Kerry A. Garvey
 David A. and Nicole N. Gardner
 Cynthia L. Kennelly
 Gregory R. Wolf and Karen M. Reitzi
 George T. and Lucy Koshy
 David B. and Pamela R. Lowe
 Kenneth D. and Patricia A. Pastel
 Jill R. Hyde
 Anthony P. and Karen C. DaSilva
 Peter F. and Julie H. Dorey
 Douglas D. and Laurie A. Beattie
 Andrew S. and Ulrike A. Novick
 Walter C. and Nancy R. Morgan
 Jamie B. and Thea T. Bader
 Victoria K. Jacobson
 Town of Sudbury Conservation Commission
 Parsekh A. and Leona H. Arsenian TR
 John C. and Jeanne P. Darcey
 Sudbury Water District
 Roger N. and Jacqueline E. Pearse
 Powder Ridge Realty Company and Leo Bertolami
 Old Mill Development Trust
 John E. Swanson
 Larue Renfroe Trustee 30 Sudbury Road Realty Trust
 Leo F. Bertolami Jr. Trustee Old Mill Development Trust
 Westside Realty LLP c/o Town of Acton
 NStar Electric Company

The Board set the 13th day of December, 2007 at 8:00 P.M. as the time, and the Meeting Room, 141 Keyes Road, Concord, Massachusetts, as the place of the public hearing upon said application. The December 13, 2007 Meeting was postponed to January 3, 2008 as a result of a snow storm. The hearing was opened on January 3, 2008, and continued to February 14, 2008, March 13, 2008 (at the Concord Carlisle Regional High School), April 10, 2008 (in the Hearing Room at the Town House), May 8, 2008 (in the Hearing Room at the Town House) and June 12, 2008 (in the Hearing Room at the Town House).

The following notice was published in *THE CONCORD JOURNAL* in the issues of November 29, 2007 and December 6, 2007, and a copy of said notice was sent by mail to each of the aforementioned parties in interest and property owners.

ZBA/OLD POWDER MILL RD.
LEGAL NOTICE
 Board of Appeals
 Public Hearing

A public hearing of the Concord Zoning Board of Appeals will be held on Thursday, December 13, 2007, in the First Floor Meeting Room, 141 Keyes Road, Concord, Massachusetts, at 8:00 P.M. on an application by Timothy W. O'Connor, on behalf of West Concord Development LLC, for a Comprehensive Permit, under Massachusetts General Law Chapter 40B, to construct a three hundred and fifty unit multi-family residential rental community at 48 and 54 Old Powder Mill Road and 236X Main Street.

AD#11524018
 Concord Journal 11/29, 12/6/07

A hearing on said application was held at the time and place above specified.

The following persons appeared in support of the appeal:

NONE

The following persons appeared in opposition thereto:

- Laurence W. O'Brien, Vice Chairman of the Sudbury Selectman
- Cindy Kennelly of 26 Tavern Circle, Sudbury
- Roland Bartl, Town of Acton Town Planner
- Bob Jacobson of 99 Cranberry Circle, Sudbury
- Tricia Pastel of 76 Cranberry Circle, Sudbury
- Doug Beattie of 46 Cranberry Circle, Sudbury
- Kathy Hingston of 288 Border Road, Concord
- Peter Flynn of 149 Central Street, Concord
- Heath Umbach of 47 Cedar Creek Road, Sudbury,
- Lawrence Chiango of 77 Powder Mill Road, Sudbury
- Rob Kornblum of 22 Virginia Ridge Road, Sudbury
- Cary Forman of 120 Powers Road, Sudbury
- David Moony of 27 Powers Road, Sudbury
- Janet Chin of 77 Powder Mill Road, Sudbury
- Richard Loynd of 20 Crest Street, Concord
- Robert Jacobson of 99 Cranberry Circle, Sudbury
- Mark Sears of 13 Westside Drive, Acton
- Ulli Novid of 38 Cranberry Circle, Sudbury

The Planning Board reported its action on the matter as follows:

See letters dated April 10, 2008 and May 8, 2008.
See Memorandum from Marcia Rasmussen, Director
of Planning and Land Management dated June 12, 2008.

The Board obtained peer review reports of various aspects of the Application including the following:

Traffic – Vanasse Hangen Brustlin, Inc.
Fiscal Impact – Community Opportunities Group, Inc.
Wastewater Treatment, Hydrogeological and Stormwater Management – Woodard and Curran, Inc.

A copy of the Development Agreement, as executed on the 8th day of May, 2008 by duly authorized representatives of West Concord Development LLC and the Chair of the Concord Board of Selectman, Gregory Howes and Concord Town Manager Christopher Whelan, was accepted by the Board for inclusion in the record of these proceedings.

The Board thereupon took the following action:

VOTED: To grant the application of West Concord Development, LLC for a Comprehensive Permit, under Massachusetts General Law Chapter 40B to construct a three hundred and fifty (350) unit multi-family residential rental community, with eighty-eight (88) being affordable, at 48 and 54 Old Powder Mill Road and 236X Main Street, Concord, Massachusetts, together with a community center and related infrastructure and amenities, all in accordance with the requirements set forth in the MassHousing Project Eligibility Letter dated September 10, 2007 and grant the waivers requested as set forth in Exhibit A and based on the findings reviewed and amended at the June 12, 2008 Meeting and subject to the following conditions:

1. Approval is based on plans prepared for West Concord Development LLC, entitled Alexan Concord An Apartment Community, Concord, Massachusetts, Comprehensive Permit Set, prepared by Beals Associates Inc., Precision Land Surveying, Inc., Sheskey Architects and Vanasse & Associates, Inc., including the following sheets:
 - A-00 Cover Sheet, dated October 26, 2007 and updated 3/26/08
 - 1 of 1 Conceptual Improvement Plan Sudbury Road October 26, 2007, as revised through March 25, 2008
 - C-1 Existing Conditions October 26, 2007
 - C-2 Draft Layout Plan, Oct. 26, 2007, as revised through March 25, 2008

- C-3 Grading and Drainage Plan Oct. 26, 2007, as revised through March 25, 2008
 - C-4 Sewage Disposal Plan October 26, 2007, as revised through March 25, 2008
 - C-5 Utility Plan October 26, 2007, as revised through March 25, 2008
 - A-1 Building 1400, Clubhouse, Floor Plan, dated Oct. 26, 2007
 - A-2 Building 1400, Clubhouse, Roof Plan, dated Oct. 26, 2007
 - A-3 Building 1400, Clubhouse, Building Elevations, dated Oct. 26, 2007
 - A-4 Building 1400, Clubhouse, Building Elevations, dated Oct. 26, 2007
 - A-5 Typical Building 200-1100, First Floor Plan, dated Oct. 26, 2007
 - A-6 Typical Building 200-1100, Second Floor Plan, dated Oct. 26, 2007
 - A-7 Typical Building 200-1100, Third Floor Plan, dated Oct. 26, 2007
 - A-8 Typical Building 200-1100, Loft Level Plan, dated Oct. 26, 2007
 - A-9 Typical Building 200-1100, Roof Plan, dated Oct. 26, 2007
 - A-10 Typical Building 200-1100, Building Elevations, dated Oct. 26, 2007
 - A-11 Typical Building 200-1100, Building Elevations, dated Oct. 26, 2007
 - A-12 Building 1201 to 1242, 4-Unit Townhouses, Floor Plans and Elevations, dated Oct. 26, 2007
 - A-13 Building 1201 to 1242, 6-Unit Townhouses, Floor Plans and Elevations, dated Oct. 26, 2007
 - Snow Storage Plan dated February 1, 2008 and revised 3/25/08
 - Schematic Design for landscaping and lighting prepared by Stantec Consulting dated April 2, 2008 comprised of eight plans illustrating proposed planting, typical planting at buildings, lighting and entry drive details, as reviewed by the Planning Board. These plans supersede the original landscape plan submitted as C6 with a date of October 26, 2007.
2. The Applicant shall notify the Board of Appeals in writing of any proposed change to the Project which the Consulting Building Inspector determines to be material, and if the Board determines that the change is substantial, it shall require a public hearing and modification of this Comprehensive Permit by the Board of Appeals, all as set forth in 760 CMR 56.05(11). Any such change that the Board of Appeals determines or that is deemed to be insubstantial shall be automatically incorporated into this decision by reference.
 3. The development shall be limited to three hundred fifty (350) rental dwelling units, comprised of 132 one-bedroom units, 194 two-bedroom units and 24 three-bedroom units. Eighty-eight (88) dwelling units (or 25% of the total number of units) within the apartment community (hereinafter, the "Affordable Units") shall be restricted for 99 years, or for so long as the apartment community is not in full compliance with the Town's Zoning Bylaw, for rental to households whose maximum income does not exceed eighty percent (80%) of the Boston area median income, adjusted for household size, as published by the Massachusetts Department of Housing and Community Development (DHCD). The Affordable Units shall not be situated so as to segregate such units from the market rate units and shall be dispersed proportionately amongst the 1-, 2-, and 3-bedroom units. The Developer shall construct and make available for lease, affordable and market rate units proportionately based upon the 75/25 % ratio.

4. The Applicant shall comply at all times with all provisions of its Affirmative Fair Housing Marketing Plan (the "AFHMP"), including, without limitation, the initial lottery and other tenant selection procedures, all as required by the Guidelines for G.L. c.40B Comprehensive Permit Projects applicable to the Project promulgated by DHCD (the "40B Guidelines"). To the extent permitted by applicable law, the AFHMP shall include a local selection preference for 60 units or up to 70% of the Affordable Units for the following categories: (a) current residents of Concord, Acton, Sudbury and Maynard, (b) parents and children of current residents of Concord, Acton, Sudbury and Maynard, (c) employees of the Towns of Concord, Acton, Sudbury and Maynard (including Public School employees, Water District employees, Regional High School employees, Housing Authority employees and other similar municipal employees), and (d) employees of Hanscom Air Force Base, which is located partially in Concord. Of these local preference units, 70% shall be reserved for Concord preference except in the event that a qualified Concord preference applicant is not available. An annual report of rental or leasing activity to such local preference categories shall be submitted to the Concord Planning Division.
5. Prior to the issuance of a building permit, the Applicant shall submit a Regulatory Agreement regarding the rental and affordability of the development to the Board of Appeals in the form required by MassHousing.
6. Prior to the issuance of a building permit, the Applicant shall provide the Planning Division, for review and written confirmation of compliance, two (2) sets of revised plans showing:
 - The location of bicycle storage areas
 - Final landscaping plan
 - Final lighting plan
 - Final locations of mailboxes
 - One or more low earthen berms along the internal roadway that runs along the Sudbury border to further screen the parking lots (and car headlights).
 - Final location of the trash/recycling center facilities
7. Prior to the issuance of a building permit, customary load data sheets, including secondary voltages, shall be submitted to the Concord Municipal Light Plant ("CMLP") and the Applicant shall meet with CMLP staff to ensure adequate design of the distribution system, together with a plan showing the location of the distribution facilities including the underground duct bank, hand holes, splice vaults, transformers and associated facilities serving the site. In addition, the plan shall show the location of an existing CMLP easement on site which contains two 115,000 volt circuits and fiber optics cables. Applicant shall notify CMLP at least 48 hours prior to commencing construction work in or adjacent to any existing CMLP easement area.
8. Prior to the issuance of a building permit, the Applicant shall submit to the Fire Department for review two (2) sets of stamped plans from a fire protection engineer for the fire alarm system, or as required by the Fire Department for similar projects.
9. Prior to the issuance of a certificate of occupancy, the Applicant shall obtain a groundwater discharge permit from the Massachusetts Department of Environmental Protection ("DEP") for its onsite sewage disposal system. During the permitting process for that permit, the Applicant shall submit to the Town all information

submitted to DEP regarding the effectiveness of the wastewater treatment system proposed for the Project and measures proposed by the Applicant to ensure the aquifer of Second Division Brook is protected. During the DEP permitting process, the Applicant shall deliver to DEP a copy of Woodard & Curran's recommendations resulting from its hydrogeological analyses for the Project contained in its letter to the Board dated May 5, 2008 for DEP's information and consideration. Any and all conditions of approval imposed by the DEP shall be incorporated into the Concord comprehensive permit for this Project.

10. The Town of Concord will hire a Consulting Building Inspector or Inspectional Services for this Project to review the plans, issue permits, inspect construction activities and ensure compliance with this Comprehensive Permit. The Applicant shall be responsible for the reasonable costs associated with this consultant.
11. Prior to the issuance of a building permit, the Applicant shall submit detailed construction drawings to the Consulting Building Inspector to ensure that the final plans are consistent with the Comprehensive Permit, with local requirements not waived in the Comprehensive Permit, and with state and federal codes.
12. Prior to the issuance of a certificate of occupancy, the Applicant shall submit to the Fire Department an emergency access plan consistent with the Fire Chief's April 7, 2008 letter to the Board, which has been entered into the official record for the application. In the event that emergency access is proposed to cross over Town owned land in the final emergency access plan, the Applicant shall construct, at the Applicant's cost, necessary improvements therein to facilitate such emergency access to the site, subject to approval by the Town of the design of and schedule for such improvements, and upon completion, said improvements shall become property of the Town.
13. Prior to the removal of any earth from the site, the Applicant shall provide to the Consulting Building Inspector, written notification of the approximate volume of earth to be removed and approval from the Chief of Police as to the days and hours of operation and type of vehicle to be used on any street for removal of earth. The truck route shall be via Route 62, not from Powdermill Road or Route 117 in Sudbury. This information shall be provided to the Consulting Building Inspector at least forty-eight (48) business hours prior to any removal of earth.
14. Prior to the issuance of a building permit for the Project, the Applicant shall deliver to the Planning Director final stormwater management design plans and construction details evidencing compliance with the Massachusetts Department of Environmental Protection's Stormwater Management Policy as it is applicable to this Project, including compliance with the 80% Total Suspended Solids removal requirement. In addition, prior to the issuance of a building permit for the Project, the Applicant shall submit a revised snow removal plan to the Planning Director incorporating operations and maintenance measures that will be employed to ensure the snow removal contractor will not push snow into the basins and forebays.
15. Prior to the issuance of a building permit for the Project, the Applicant shall deliver to the Planning Director a written description of the sustainable design/green building features which have been incorporated into the Project.

16. Prior to commencement of construction, the Applicant and contractor shall conduct a preconstruction conference with Town Staff, including the Consulting Building Inspector, Health, Engineering, Fire, and Police and other staff as appropriate.
17. Prior to the issuance of any Certificate of Occupancy, the Applicant shall submit to the Consulting Building Inspector a certification from a professional engineer or architect that the applicable portion of the Project has been constructed in accordance with the approved construction drawings.
18. Prior to the issuance of any Certificate of Occupancy, the Applicant shall submit to the CPW-Engineering Division a certification from a professional engineer that the Project has complied with all applicable stormwater management requirements as specified by the Federal Clean Water Act National Pollution Discharge Elimination Systems (NPDES).
19. Prior to the issuance of the final Certificate of Occupancy, the Applicant shall submit to the Consulting Building Inspector, the Planning Division and the Fire Department an as-built site plan showing all structures, paving, utilities and the location of the Fire Department connections, fire hydrant(s) and "Fire Lane" striping as required by the Concord Fire Department. Additionally, the Applicant shall submit this information to the Engineering Division in an electronic format compatible with AutoCAD 14.
20. Prior to the issuance of any final Certificate of Occupancy, all site work required for the applicable portion of the Project, including landscaping, shall be completed or an assignment of security by performance bond in an amount approved by the Board of Appeals or such other form of security acceptable to the Board shall be submitted to the Town to assure completion of any site work which has not been completed. Said security may be reduced by the Board as work is completed and will be released after completion of such work.
21. Prior to the issuance of any final Certificate of Occupancy, the Applicant shall provide to the Building Inspector and the Engineering Division a Drainage Maintenance Program indicating that all on-site drainage structures and all paved areas on the site will be cleaned and maintained at least two (2) times annually, once in the Fall and once in the Spring, and immediately after any chemical release equal to or greater than five (5) gallons. Such Program shall include a maintenance schedule.
22. Prior to the issuance of any final Certificate of Occupancy, the Applicant shall submit to the Building Inspector, evidence that this Comprehensive Permit and the Regulatory Agreement have been fully executed and recorded with the Middlesex South Registry of Deeds.
23. There shall be no on-site storage of fuels, oils, automotive fluids, fertilizers, pesticides, insecticides, herbicides, cleaning chemicals, and other hazardous materials of significant concern, other than quantities for domestic use.
24. The Applicant shall be responsible for maintaining all improvements within the Project, including, but not limited to, drainage systems and structures, sewer system, water lines, the pavement surface, curbing, and other required utility improvements, in a satisfactory manner.

25. The Applicant shall provide, and shall bear the costs associated with, the following mitigation prior to the issuance of the final certificate of occupancy for the Project, except as the timing may otherwise be specified below:
- Purchase and installation of a radio frequency repeater antenna for use by the Town of Concord Fire Department. Details on this equipment have not yet been provided to the Developer as of the date hereof, however, Concord Fire Department officials have estimated the cost of such an antenna to be \$16,000.
 - Fitout of a portion of the community center/clubhouse in the Project with additional phone and data ports for use by the Town of Concord Fire Department as an alternative emergency command center.
 - Purchase and storage on-site of one emergency evacuation chair (such as Garaventa Evacu-Trac) as recommended by the Town of Concord Fire Department.
 - Reclamation (resurfacing), reconstruction and realignment of the Project's access drive as described in the Traffic Impact and Access Study for the Project prepared by Vanasse & Associates, Inc., dated February 20, 2008 (the "Traffic Study") and subject to the approval of the Town of Acton.
 - Reconstruction of Sudbury Road to provide a minimum roadway cross-section of 22 feet within the available public right of way; flattening of the existing roadway profile to the south of the Site access and pavement markings as described in the Traffic Study subject to the approval by the Town of Acton. If additional or different improvements to Sudbury Road are required by any other permit for the Project, as long as such additional or modified improvements provide substantially similar levels of safety and operations as those described in the Traffic Study, such additional or modified improvements shall be substituted for the foregoing. Applicant shall provide notice of the same to the Board upon the issuance of such a permit.
 - To the extent approved by the Town of Maynard, the Applicant agrees to repave the existing deteriorated portion of Sudbury Road from the Acton/Maynard town line to the Maynard/Sudbury town line to provide a more consistent surface from Route 117 to Route 62.
 - Design and implementation of an optimal traffic signal timing and phasing plan for the intersection of Route 62 and High Street within one year of the issuance of the final certificate of occupancy for the Project as described in the Traffic Study and subject to the approval by the Town of Acton.
 - Design and implementation of an optimal traffic signal timing and phasing plan for the intersection of Route 62 and Commonwealth Avenue in the Town of Concord within one year of the issuance of the final certificate of occupancy for the Project as described in the Traffic Study.
 - In a letter from Vanasse & Associates, Inc. dated April 4, 2008 addressed to the Board (the "Supplemental Traffic Information"), the Applicant's traffic engineer described certain improvements that would be appropriate for the intersections located in Maynard at Route 62/Route 27/Summer Street and Route 62/Route 27/Waltham Street if the 129 Parker Street project is not advanced. If the 129 Parker Street project has been abandoned or withdrawn, then prior to the issuance of the final certificate of occupancy of the Project, the Applicant shall implement the

- proposed intersection improvements described in Section 5 of the Supplemental Traffic Information subject to approval by the Town of Maynard.
26. The Applicant shall comply with the terms of a Development Agreement between the Applicant and the Concord Board of Selectmen, dated May 8, 2008.
 27. Prior to the issuance of the final certificate of occupancy for the Project, the Applicant shall install a 6 foot high, non-continuous but overlapping fence on the Town of Concord property adjacent to the Project in substantially the location shown on the Schematic Planting Plan p-1.1 and P-1.2 prepared by Stantec and listed under condition #1. The fence shall be of a natural material and allowed to weather to a gray color or painted a dark green. The Applicant shall assume continuing maintenance responsibilities for said fence. Additional plantings (up to \$5,000) may be installed along the fence to augment the screening effect as needed and as approved by the Planning Director.
 28. Prior to the issuance of a certificate of occupancy, the Applicant shall submit to the Police Department and the Planning Director the following:
 - A description of how the Applicant intends to manage responses to resident issues on site as well as contact information for after hour issues or situations.
 - Site plans showing adequate Handicapped parking on site.
 - Buildings shall be differentiated and defined so that they may be readily identified and located for emergency personnel responding to an incident.
 - Plan showing clear and complete signage for emergency response vehicles.
 29. Prior to the issuance of a certificate of occupancy, the Applicant shall submit to the Fire Department and the Planning Director the following:
 - Confirmation that the automated traffic control arrangements for the emergency access points are equipped with Opticom control modules or another form of equipment acceptable to the Fire Department.
 - Site plans noting all the assigned street name(s), community name and the building numbering arrangements.
 - A site plan showing adequate access by road for emergency vehicles to the sewage treatment facility.
 30. Prior to the issuance of a building permit, the Applicant shall submit the following to the Water and Sewer Division and the Planning Director:
 - Site plan showing water services with separate domestic and fire protection services from each building to the water main.
 - Site plan showing a water main loop through this development, connecting Border Road to the water main near the Hayes Pump facility.
 - Site plan showing new cement lined ductile iron pipe installed to replace the AC portions of the existing water main on site. Town practices normally involve abandoning AC pipe in place to avoid creating airborne asbestos. However, the Water and Sewer Division is aware that a portion of the existing AC main is located where building foundations are proposed, thus requiring removal during excavation. The Applicant is responsible for following all applicable DEP and EPA procedures for the removal and disposal of AC pipe. The Applicant shall also develop any ownership agreements with adjacent property owners required for the shared water main.

- Site plan showing reclaimed water pipes to ensure cross-connections with potable water pipes are prevented, if water reuse is proposed.
31. Prior to the issuance of a certificate of occupancy, the Applicant shall submit to the Concord Water and Sewer Division an application for service for all proposed water utilities. Such an application shall include submittal of detailed utility design plans, including all existing and proposed potable water utilities on site. All applications must be in accordance with the requirements of the Division's Rules and Regulations. Any deviations from these Rules and Regulations must be approved by the Public Works Commission prior to issuance of a building permit. It is the Applicant's responsibility to ensure these requirements have been met. The building permit may be issued prior to receipt of a service application approval letter from the Water and Sewer Division. This condition is intended to give the Water and Sewer Division the ability to review the engineering and design details for the Project's water utilities to ensure that they are designed in accordance with professional engineering standards. Issues of capacity and the Applicant's general right to connect to the municipal water service were reviewed as part of the hearing process and are hereby granted.
 32. Prior to issuance of an Occupancy Permit, all utility mains, services, and appurtenances shall be constructed in accordance with Town standards. As-built drawings of any potable water utility work connected to the Town's system shall be submitted to the Water and Sewer Division upon completion of the Project.
 33. Prior to approval of the Water Service Application, an impact assessment and conservation plan shall be submitted for proposed developments that will place a significant demand on the municipal water system (peak design flows of 30 gallons-per-minute or more.) These documents shall be prepared with attention to the integration of demand management and conservation options. The Applicant has been in contact with Joanne Bissetta, the Division's Conservation Coordinator, and shall continue to work with her or her designee to incorporate water conservation measures where feasible.
 34. Water and Sewer Division policy dictates that a building cannot be connected to both a private water system and the Town system, due to the risk of cross-connections that are difficult to monitor and enforce. All private well permits issued by the Concord Health Division contain a condition that the "well shall not be connected to the plumbing system of any building that is connected to the town water supply." If the design involves any such connections of one building to both the private and public supply, review and approval from the Water and Sewer Division shall be required prior to the issuance of a certificate of occupancy.
 35. All costs associated with CMLP's portion of the construction shall be paid for in advance by either the contractor or the Applicant, and such costs shall be reasonable and consistent with CMLP's past practice for such work. Similarly, any fees charged by CMLP for the Project shall be reasonable and consistent with CMLP's past practice. The contractor or Applicant shall deposit 100% of the CMLP construction estimate as an Advance prior to CMLP work commencing or stock being purchased or issued. Upon completion of the project, CMLP will bill the customer for any additional costs or overruns; likewise, if the project cost is less than the advance, then CMLP will return excess funds to the contractor or Applicant. In

addition, a bond will be required in advance of placing an order for the transformers required for this project.

- 36. Prior to issuance of a certificate of occupancy, Applicant shall provide a maintenance schedule for all proposed road/sidewalks/drainage systems and all ancillary utility systems as such shall remain private.
- 37. The Applicant shall provide mitigation to the Town of Sudbury as outlined in a letter to Maureen G. Valente, Town Manager for the Town of Sudbury dated June 12, 2008. These conditions are incorporated by reference in the event that they have not already been incorporated.
- 38. Dumpsters shall be used during the building construction process to contain waste construction materials and debris.
- 39. Demolition and/or exterior construction activity shall be limited to Monday through Friday from 7 a.m. to 6 p.m. and Saturday from 8 a.m. to 4 p.m. except as otherwise permitted by the Consulting Building Inspector. No exterior construction activities shall be performed on Sunday, except as otherwise permitted by the Consulting Building Inspector. The Applicant shall instruct its contractors and vendors that all construction vehicles and similar trucks must use Route 62 to access the site. The Applicant shall include such instructions in its construction contracts for the Project.
- 40. The Applicant shall include in all resident leases the requirement that all moving trucks and vans must access the development from Route 62 on an ongoing basis.
- 41. Prior to the issuance of a building permit for the Project, the Applicant shall rename the Project so that the name of the Project is not too similar to other developments in Concord.
- 42. All landscaping shall be properly maintained in a healthy condition.
- 43. This Comprehensive Permit shall control the development of the Project and, to the extent of any inconsistency between this Comprehensive Permit and any other instrument, document or agreement delivered as part of the Application for this Comprehensive Permit, the terms, conditions and limitations of this Comprehensive Permit and the Regulatory Agreement incorporated by reference herein shall govern and control.
- 44. If in the future the Applicant or Owner wants to convert the units to condominium units, an amendment to the Comprehensive Permit from the Board of Appeals shall be required.
- 45. Attached hereto as Exhibit A is a list of the waivers the Board of Appeals hereby grants (to the extent that the Board can lawfully grant such waivers) from the local Rules and Regulations.
- 46. This Comprehensive Permit may be assigned or transferred only in accordance with the provisions of 760 CMR 56.05(12)(b).

The members of the Board voted thereon as follows:

C. WILLIAM BARRETT	GRANTED
PATRICK C. TOOMEY	GRANTED
STEVEN NG	GRANTED

The Board assigns the following as the reasons for the foregoing finding, ruling and decision:

The Applicant has received a Site Eligibility Letter issued by MassHousing that the site and the Applicant qualify for a Comprehensive Permit in the development of affordable housing in connection with the New England Fund or other appropriate financing. In that Site Eligibility Letter, MassHousing noted that the proposed development would exceed the Large Scale Project limitation for Concord, however, Concord had provided a letter to MassHousing, dated December 28, 2006 acknowledging that the application exceeded this "large project cap" and provided its consent for the applicant to submit an application for 350 units.

The Applicant is qualified to make an Application for a Comprehensive Permit because it is a limited dividend organization that will be subject to the profit limitations as set forth in the Regulatory Agreement by and between the Applicant and MassHousing.

The proposed development site is comprised of three parcels of land located in the Town of Concord: Assessor's Parcel # 2971-4, 2971-6 and 2973. The three parcels contain approximately 30 acres total. The property is located within the Limited Industrial Park zoning district; multi-family residential use is not an allowed use in this zoning district. The Applicant has demonstrated that it has site control of the Property.

The Town of Concord has not met any of the Statutory Minimum, as set forth in M.G.L. Chapter 40B, Section 20 or 760 CMR 56.03(3). The number of low or moderate income housing units in the Town of Concord constitutes less than ten per cent (10%) of the Town's total housing stock according to the latest decennial census of the Town, and reported in DHCD's Subsidized Housing Inventory as of May 2, 2008.

The Applicant submitted sufficient information concerning an assessment of impacts to municipal services resulting from the proposed development. The Planning Board received comments from various departments and boards of the Town of Concord and reported the same with its comments and recommendation in a letter dated April 10, 2008. The Planning Board's report indicates that the development of this Project would not endanger public health or safety or the environment, or impair critically needed open space.

The Applicant has obtained a negative Determination of Applicability from the Concord Natural Resources Commission under the Massachusetts Wetlands Protection Act.

The Applicant has obtained a Certificate from the Massachusetts Secretary of Environmental Affairs under the Massachusetts Environmental Policy Act (MEPA) confirming that no further MEPA review is required.

The Board finds that the type of housing proposed—rental units—is greatly needed in the community and region, and will provide housing options to a range of individuals and families.

The Board finds that the development, as proposed and subject to the conditions contained in this Decision, is consistent with local needs within the meaning of Massachusetts General Laws, Chapter 40B, Section 20.

A TRUE COPY: ATTEST



Clerk, Board of Appeals



Date

Filed with Town Clerk

48 and 54 Old Powder Mill Road and 236X Main Street

Exhibit A
48 & 54 Old Powder Mill Road
Concord, Massachusetts

WAIVERS FROM LOCAL RULES AND REGULATIONS

Section	Rationale
Town of Concord Zoning Bylaw adopted April 1977, as amended through April 2006	
§ 3.1, Table I	<p>This section contains a general prohibition against any use of land, or the erection of buildings for any use, unless Table I indicates that such use is specifically permitted for the district in which the subject property is located.</p> <p>The proposed development site is located in the Limited Industrial Park District. Multi-family residential uses are generally not permitted within the Limited Industrial Park District, and Applicant seeks a waiver of this section so as to permit a multi-family residential development to be erected and operated at the proposed development site.</p>
§ 4.2.1	<p>While this section may be intended to elaborate upon the parameters of permissible uses in Residential Use districts, the language contains a literal prohibition against locating more than one dwelling unit upon any lot, unless permitted under subsections 4.2.2, 4.2.3 and 4.2.4.</p> <p>Because none of subsections 4.2.2, 4.2.3 and 4.2.4 would permit more than one dwelling unit to be located upon the proposed development site, Applicant seeks a waiver of this section.</p>
§ 4.7.1	<p>This section contains an express prohibition against all uses not specifically permitted by the Zoning Bylaw for a particular zoning district in the Town.</p> <p>The proposed development site is located in the Limited Industrial Park District. Because multi-family residential uses are not specifically permitted within the Limited Industrial Park District, Applicant seeks a waiver of this section so as to permit a multi-family residential development to be erected and operated at the proposed development site.</p>
§ 5.4.1.1	<p>This section provides that the Building Inspector may authorize the use of a trailer or mobile home as a construction site office upon certain conditions.</p> <p>Application requests a waiver of this section insofar as it is necessary to permit the Zoning Board of Appeals to also authorize the use of a trailer or mobile home as a construction site administration, management and/or leasing office, upon any conditions that the Zoning Board of Appeals may deem appropriate.</p>
§ 6.1; Table III	<p>This section contains a general requirement that dimensions of any lot, and structures erected upon the lot, must comply with the corresponding dimensional requirements for the applicable zoning district as set forth in Table III. Sections 6.2.3 (frontage), 6.2.6 (front yard), 6.2.7 (side yard), 6.2.8 (rear yard), 6.2.11 (height), 6.2.12 (maximum lot coverage) and 6.2.13 (maximum floor area) provide specific information as to how the dimensions of a particular lot should be measured to determine compliance with Table III and other aspects of the dimensional requirements in Table III.</p> <p>Because (a) the proposed development site has no frontage, (b) the proposed development site has no front yard, (c) the structures to be erected upon the proposed development site would be located within 20 feet of a side lot line, (d) some of the structures to be erected upon the proposed development site would reach approximately 49 feet in height, (e) the percentage of the proposed development site to be covered by buildings and paved areas would comprise approximately 45%, and (f) the gross floor area of the structures to be</p>

	erected upon the proposed development site would comprise approximately 12,750 square feet per acre of the development site, the proposed development would contravene the dimensional requirements for the Limited Industrial Park District. As such, the Applicant requests a waiver of these sections and Table III so as to permit the proposed structures to be constructed upon the proposed development site, notwithstanding any nonconforming dimensions.
§ 7.5.1	<p>This section contains a general prohibition against the removal of “earth” from any property not in public use, except in connection with construction authorized by the Zoning Bylaw.</p> <p>As set forth above, because the construction of the proposed development is not specifically permitted by the Zoning Bylaw, the Zoning Bylaw would prohibit the removal of earth during the construction of the proposed development. Therefore, Applicant requests a waiver from this section so as to permit the removal of earth during the construction of the proposed development.</p>
§ 7.6	<p>This section generally applies to the use of property located within a Groundwater Conservancy Overlay District. Specifically, Subsection 7.6.3 provides that land within a Groundwater Conservancy District will be subject to the provisions of Section 7.6, and Subsection 7.6.6.1 prohibits any use that would be prohibited under Section 4.7.1.</p> <p>As set forth above, Section 4.7.1 would prohibit the use of the proposed development site for Applicant’s proposed development; and because the proposed development site is within a Groundwater Conservancy District, Subsection 7.6.6.1 would also prohibit the use of the proposed development site for Applicant’s proposed development. Therefore, Applicant requests a waiver from this section so as to permit a multi-family residential development to be erected and operated at the proposed development site.</p>
§ 7.7.2; Table IV	<p>This section requires that a lot must contain the minimum number of parking spaces prescribed for the lot’s particular principal use.</p> <p>Applicant requests a general waiver of this Section so as to permit the Zoning Board of Appeals to determine (with the input of the Planning Board) the appropriate parking requirements for the proposed development.</p>
§ 7.7.4	<p>This section generally describes design standards with which certain lots must comply.</p> <p>Applicant requests a general waiver of this section so as to permit the Zoning Board of Appeals to determine (with the input of the Planning Board) the appropriate design requirements for the proposed development.</p>
§ 11.2	<p>This section prohibits the Building Inspector from granting a permit for the construction of any structure if such construction would be in violation of the Zoning Bylaw. This section also prohibits any officer of the Town of Concord from granting any permit or license for the use of any land or structure if such use would be in violation of the Zoning Bylaw.</p> <p>As set forth above, the construction of the proposed structures and Applicant’s proposed use of the development site would contravene various provisions of the Zoning Bylaw. Therefore, Applicant requests a general waiver from this section so as to permit the Building Inspector and other Town or Concord officers to issue such permits and licenses as may be necessary to permit the construction and use of the proposed development.</p>
§ 11.3	<p>This section prohibits the use or occupation of land for any purpose for which a certificate of occupancy is required until the Building Inspector has issued a certificate of occupancy stating that the use of the land and structure complies with the Zoning Bylaw.</p>

	As set forth above, the Applicant's proposed use for the development site would contravene various provisions of the Zoning Bylaw. Therefore, Applicant requests a waiver of this section so as to permit the Building Inspector to issue a certificate of occupancy for the proposed development despite the fact that it does not comply with the Zoning Bylaw in certain respects.
Town of Concord Board of Health Regulations, CBHR 3.00: On-Site Disposal Systems, adopted February 17, 2004, as amended through June 15, 2004	
§ 3.42	<p>This section creates certain general requirements for the design, review and approval for an on-site wastewater disposal system. Specifically, Table 4 requires that the leaching area and other components of an on-site wastewater disposal system be set back from the edge of pavement of a public street or private way by at least 15 feet. Also, Subsection 3.42(F)(6) prohibits the design of any on-site wastewater disposal system to locate reserve leaching trenches between the primary leaching trenches as per section 15.251(4) of Title 5.</p> <p>The proposed development will include an on-site wastewater disposal system, which may include leaching areas and or other system components adjacent to or under paved areas of the site. The Applicant seeks flexibility in the design of the common leaching areas for the proposed development, and is otherwise prepared to comply with all relevant provisions of Title 5. Thus, Applicant seeks a general waiver of this section.</p>
Town of Concord Sign Bylaw, as amended through April/May 1998	
§ 2	<p>This section creates a general prohibition against erecting any sign without a permit issued by the Building Inspector, and it describes the sign permit application requirements.</p> <p>Applicant requests a general waiver of this section so as to permit the Zoning Board of Appeals to authorize the erection of any signs to be included in the proposed development.</p>
§ 6	<p>This section creates a general prohibition against erecting any sign that does not comply with the requirements of the Sign Bylaw.</p> <p>Again, Applicant will seek to erect any signs at the proposed development in accordance with any requirements set forth in a Comprehensive Permit to be issued by the Zoning Board of Appeals. Thus, Applicant seeks a general waiver of this section.</p>
General	
	This waiver is required to ensure the Applicant can comply with the condition in this Decision requiring installation of a fence on town owned property.
	This waiver is required to ensure the Applicant can comply with the condition in this Decision requiring installation of an emergency access drive in the event the drive is located on Town-owned property.



TOWN OF CONCORD PLANNING BOARD

141 KEYES ROAD, CONCORD, MASSACHUSETTS 01742
TEL. (978) 318-3290 FAX (978) 318-3291

MARCIA A. RASMUSSEN, PLANNING DIRECTOR

April 10, 2008

Mr. C. William Barrett, Chairman
Concord Board of Appeals
Concord, MA 01742

Re: Preliminary recommendation to the ZBA for a comprehensive permit application to construct a 350 unit rental development under MGL Chapter 40B at 48 Powdermill Road.

Dear Mr. Barrett:

At its regular meeting held on Tuesday, April 8, 2008, the Planning Board heard the Applicant's presentation and reviewed the Planning Division report for the requested comprehensive permit to construct 350 rental units on 30 acres of land at 48 Powdermill Road. Please review the attached supplemental staff report revised to reflect the Board's discussion.

The Planning Board offers the following the following draft conditions and request for additional information for the Board of Appeals consideration in making its decision on the comprehensive permit:

- 1) Recommendation to the ZBA would require a complete set of revised plans. These draft recommendations are based on the Comprehensive Permit for Alexan Concord, revised on March 25, 2008 prepared by Beals and Associates, Inc. 96 N. Washington Street, Boston, MA 02114.
- 2) **Prior to issuance of a building permit**, Applicant needs to rename the project as the proposed name is too similar to other developments in Concord, and the project cannot continue under its currently proposed name.
- 3) **Prior to issuance of a building permit**, Applicant must provide to, and for approval by, the Planning Division site plans that show:
 - Additional storage space available for resident's use;
 - Air-conditioning units should be located on the ground, but in a line perpendicular to the building rather than parallel with the building and appropriately screened with fencing and/or landscaping as discussed;
 - Storage facilities for bicycles shall be as discussed (adjacent to buildings and within the buildings);
 - Architectural features that are two-toned colors with a darker color on bottom, and to present a color pattern and palette that will visually reduce the building massing;

- At least two emergency response access points;
- The addition of earthen mounds to define and screen the road, to shield car lights and provide for additional screening for the parking lots.
- Designated "Reserved Parking" spaces that do not need to be constructed until such time as they are determined to be needed (up to 53 additional spaces have been shown on the plan).
- Height of fence on Town land adjacent to Sudbury residents shall be overlapped by at least 3 feet in length and shall not be higher than 6 feet. No earth berm is recommended on the Town land.

Police Department

- 4) **Prior to issuance of a building permit**, Applicant shall submit:
- Site security as well as contact information for after hour contacts.
 - Site plans showing adequate Handicapped parking on site
 - Assign building names or designations for response.
 - Present clear and complete signage for emergency response vehicles.
 - Submit a plan for overflow parking for large events.

Fire Department

- 5) **Prior to issuance of a building permit**, Applicant shall submit:
- Plans that show the details on the emergency access to demonstrate that the emergency vehicle access will be able to support the weight and turning requirements of emergency apparatus.
 - Confirmation that the automated traffic control arrangements are equipped with opticom control modules.
 - Site plans noting all the assigned street name(s), complex name and the building numbering arrangements reviewed by the Fire Department.
- 6) **Prior to issuance of a building permit**, the Applicant shall have the final plans be reviewed by the Fire Department to insure that the site plan continues to show adequate access by road for emergency vehicles to any sewage treatment facility.
- 7) **Per notice of the Fire Department**, the Applicant should be aware that all submittals will be subject to review and approval under the provisions of MGL Chapters 143 and 148.

Engineering Division

- 8) **Prior to issuance of a building permit**, Applicant shall submit:
- Information/calculations for the stormwater mitigation for the project.
 - Provide site plans showing pollutant removal treatment for the stormwater runoff prior to infiltration.

Water and Sewer

9) **Prior to issuance of a building permit**, the Applicant needs to submit the following:

- Site plan showing water services with separate domestic and fire protection services from each building to the water main.
- Site plan showing a water main loop through this development, connecting Border Road to the water main near the Hayes Pump facility.
- Site plan showing that a new cement lined ductile iron pipe to be installed to replace the AC portions of the existing water main. Town practices normally involve abandoning AC pipe in place to avoid creating airborne asbestos. However, the Division is aware that a portion of the existing AC main is in a location where building foundations are proposed, thus requiring removal during excavation. The applicant is responsible for following all applicable DEP and EPA procedures for the removal and disposal of AC pipe. The property owner should also be prepared to develop any ownership agreements required for the shared water main with adjacent property owners.
- Site plan showing reclaimed water pipes to ensure cross-connections with potable water pipes are prevented, if water reuse is proposed.
- Provide more information on the potential beneficial reuse of the wastewater effluent, given the high quality of wastewater treatment likely to be required for groundwater discharge in proximity to the Town's water supply wells. The Division is aware of discussion of using treated wastewater effluent for drip irrigation on the site. While the requirements for water reuse are outside of the jurisdiction of this Division, the Division encourages the appropriate reuse of treated water to reduce demand on the municipal water supply system and the local groundwater table.
- Provide more information on the methods employed to reduce phosphorus from the wastewater treatment plant. The applicant should be aware of the current emphasis by State regulators on phosphorus inputs into the SuAsCo (Sudbury/Assabet/Concord River) Watershed. The Town is currently implementing new wastewater treatment technology to reduce point-source phosphorus inputs to the watershed to extremely low levels. In order for benefits of phosphorus reduction to be realized in the watershed, non-point source reduction is also critical. While the wastewater discharge and landscaping fertilizer treatments do not fall under the Division's jurisdiction, the Division hopes that the applicant is considering these impacts in the development of the design and operations and maintenance practices.

10) **Prior to the issuance of a building permit**, the applicant shall submit to the Concord Water and Sewer Division an application for service for all proposed water utilities. Such an application shall include submittal of detailed utility design plans, including all existing and proposed utilities onsite. All applications must be in accordance with the eligibility requirements of the Division's Rules and Regulations. Any deviations from these Rules and Regulations must be approved by the Public Works Commission prior to issuance of a building permit. It is the applicant's responsibility to ensure these requirements have been met. The building permit may be issued prior to receipt of a service application approval letter from the Water and Sewer Division. However, construction of water utilities is not permitted until an

approval letter has been issued and an inspection scheduled. The Division does not intend to review all of the engineering and design details for the purposes of the Comprehensive Permit Review, as this will be performed as part of the service application review process.

11) **Prior to issuance of a building permit**, design of structures and discharges of treated wastewater and/or stormwater into the Zone II will require approval of the Division as a portion of the site is located within a Zone II to the Town's water supply.

12) **Prior to issuance of an Occupancy Permit**, all utility mains, services, and appurtenances shall be constructed in accordance with Town standards. As-built drawings of any water utility work connected to the Town's system shall be submitted to the Water and Sewer Division upon completion of the project.

13) **Prior to approval of the Water Service Application**, an impact assessment and conservation plan must be submitted for proposed developments that will place a significant demand on the municipal water system (peak design flows of 30 gallons-per-minute or more.) These documents shall be prepared with attention placed on the integration of demand management and conservation options. The applicant has been in contact with Joanne Bissetta, the Division's Conservation Coordinator, and should continue to work with her to incorporate water conservation measures where feasible.

14) **Per notice of the Concord Water and Sewer Division**, Town policy dictates that a building cannot be connected to both a private water system and the Town system, due to the risk of cross-connections that becomes very difficult to monitor and enforce. All private well permits issued by the Concord Health Division contain a condition that the "well shall not be connected to the plumbing system of any building that is connected to the town water supply." If the design involves any such connections of one building to both the private and public supply, review and approval from this Division would be required.

15) **Per notice of the Concord Water and Sewer Division**, the Applicant should become familiar with the State's Water Management Act regulations and be aware of the potential for future regulation by the Town of private water withdrawals in "stressed" water basins, if so required by the State.

CMLP

16) **Prior to issuance of a building permit**, the Applicant needs to submit more information to the CMLP such as:

- Provide the CMLP the loading information as soon as possible. This information will also necessitate requested secondary voltages. This is important as CMLP will need to order transformers for the project and lead times on transformers are running in the range of 28-52 weeks
- Provide a site plan showing the Town's easement for the underground duct bank, which contains two 115000 Volt circuits and fiber optic cable.
- Provide a site showing the locations of the transformers.
- Provide a site plan showing an easement to CMLP for the new electrical distribution system, which will be fed from Forest Ridge Road.

17) **Prior to issuance of a building permit**, all meter locations require approval from the CMLP Meter Supervisor.

18) **Per notice of the CLMP**, the Applicant or constructor notify 48 hrs in advance the CLMP if any work takes place near the easement.

19) **Per notice of the CLMP**, all costs associated with CMLP's portion of the job will be paid for in advance by either the contractor or property owner as per CMLP's terms and conditions.

20) **Per notice of the CLMP**, all common area lighting will be considered private and will need to be metered by a "house meter". CMLP does not maintain private lighting.

Health Division

21) **Prior to issuance of an Occupancy Permit**, the Applicant shall have plan reviewed and permitted by the Concord Board of Health for the onsite wastewater treatment facility and the swimming pool facility.

Natural Resources Division (NRD)

Applicant is encouraged to demonstrate addressing the comments of the NRD such as:

- Clearly identify the open space; describe how these open spaces relate to existing open space parcels or trail system.
- Provide a site plan noting the appropriate protective measures of the vernal pools, including a vegetated upland buffer.
- The Applicant needs to provide a list of specific techniques used, scoring for LEED and the list of LEED criteria being used to measure the sustainability of the project.

22) Applicant is strongly encouraged to work with the Natural Resources Administrator to determine the options to create a mixed ownership as it tends to be more conducive to land stewardship.

Planning Division

23) Application needs to submit more information on the details on the equal dispersion of market-rate and affordable homes throughout the development, identical design between the market-rate and affordable homes and exact same construction between the market-rate and affordable homes.

24) The Town of Concord will allow construction of a wood fence or screen on its land located between this development and the adjacent Cranberry Circle properties in Sudbury to provide additional and suitable screening for headlights from the Cranberry Circle homes, with the express understanding that the Sudbury residents will not encroach or use the town of Concord land for their own purposes.

General Conditions

24) **Prior to issuance of a building permit**, the Applicant shall request that a pre-construction meeting be held with the general contractor and subcontractors prior to the commencement of construction to ensure that the public safety departments have reviewed the plans and methods of construction.

25) **Prior to issuance of a Building Permit**, Applicant shall provide a maintenance schedule for all proposed road/sidewalks/drainage systems and all ancillary utility systems as such shall remain private.

26) The Applicant shall coordinate and require construction and delivery vehicles to access this site via Route 62 and Sudbury Road (not through Sudbury and Powdermill Road). The Applicant shall also require that moving and delivery vehicles access the site via Route 62 and Sudbury Road in Acton.

Housing-related Conditions (these will need to be modified to reflect new regulations issued by the Department of Housing and Community Development that went into effect in February 2008).

27) Substantial changes, as determined by the Building Commissioner, shall be reviewed by the Board of Appeals for approval. Any substantial deviation from these plans and/or documents shall require a modification of this Comprehensive Permit by the Zoning Board of Appeals as set forth in 760 CMR 31.03.

28) The development shall be limited to 350 dwelling units. Twenty-five percent (25%) of all units constructed pursuant to this Permit shall be reserved for rental or lease by households at or below eighty (80%) percent of the Boston Primary Metropolitan Statistical Area median household income (or twenty percent if rented/leased by households at or below fifty percent (50%) of the Boston PMSA median household income) for a period 99 years, or for as long as the developer is not in full conformity with the Town's Zoning Bylaw, whichever is longer. The affordable units shall not be situated so as to segregate the affordable units from the market rate units.

29) There should be a Local Preference for the renting or leasing of 70% of the 350 affordable units (87 or 88). 70% of this number shall be given preference to Concord and 30% of this number shall be given preference to Maynard, Acton and Sudbury. pursuant to a lottery or selection process that is reviewed and approved by the Board

of Appeals (or its designee) and administered by the Applicant, with an annual report of renting or leasing activity submitted to the Concord Planning Division.

30) The affordable units shall not be situated so as to segregate the affordable units from the market rate units.

31) Prior to the issuance of any certificate of occupancy, the applicant shall submit a final draft of a Regulatory Agreement regarding the rental and affordability of the development to the Board of Appeals for approval as to form by Town Counsel. The Regulatory Agreement shall contain, at a minimum, the following terms: The affordable units shall be restricted as affordable for 99 years, to households at or below eighty (80%) percent of the Boston Primary Metropolitan Statistical Area median household income (or twenty percent if rented/leased by households at or below fifty percent (50%) of the Boston PMSA median household income), upon conclusion of such period, the Applicant or its successors or assigns shall offer to the Town or its designee an option to contract to subsidize the units in order to maintain such units' affordability with such subsidy equal to the difference between the then current fair market rental rate of the units and the allowable "affordable" rental rate under the applicable state or federal affordable housing program, with later increases in the contracted subsidy limited to no greater than the corresponding increases in the market rental rates. The Monitoring Agent shall be identified in the Regulatory Agreement, and approved by the Board of Appeals, with a copy of the agreement to be provided to the Town.

32) The Regulatory Agreement shall also contain the requirements for the review of the profit limitations for the Applicant and provide for the necessary certifications of said costs in compliance with the provisions of M.G.L. Chapter 40B and the Regulations issued pursuant thereto.

33) Prior to issuance of a final Certificate of Occupancy for the project (or within the timeframe required of the financing agency, as may be determined), the Applicant shall provide for the review of the costs of the project and confirmation that the project was constructed in accordance with requirements of Chapter 40B.

34) The affordable rents for 25% of the total number of units shall be affordable in perpetuity.

Additional Conditions for consideration:

35) In consideration of the increased traffic exiting this site and heading southerly toward Route 117 over Powdermill Road in Sudbury and decreasing the safety for residents walking along Powdermill Road as well as further reducing the level of service at the intersection of Powdermill Road and Route 117, the Applicant shall provide \$40,000 to the Town of Sudbury, which shall be used toward the design of traffic signals or other improvements at the intersection of Powdermill Road and Route 117 and for pedestrian improvements along Powdermill Road. Said funds shall be provided to the Town of Sudbury prior to issuance of the final certificate of occupancy for the first half of the project.

Additional items that the Planning Board intends to provide recommendations after its next meeting tentatively scheduled for May 6th (provided Town Meeting has ended) include:

- Site lighting,
- Final locations for mail boxes,
- Landscaping design,
- Details of the exterior and interior for the Clubhouse
- Earthen berms intended to screen parking areas and headlights from the abutting Sudbury neighborhood.

Please contact me if you have any questions or require further clarification.

On behalf of the Concord Planning Board,



Marcia Rasmussen, Director of Planning & Land Management

cc: Christopher Whelan, Town Manager



TOWN OF CONCORD PLANNING BOARD

141 KEYES ROAD, CONCORD, MASSACHUSETTS 01742
TEL. (978) 318-3290 FAX (978) 318-3291

MARCIA A. RASMUSSEN, PLANNING DIRECTOR

May 8, 2008

Mr. C. William Barrett, Chairman
Concord Board of Appeals
Concord, MA 01742

Re: Recommendation to the ZBA for a comprehensive permit application to construct a 350 unit rental development under MGL Chapter 40B at 48 Powdermill Road.

Dear Mr. Barrett:

At its regular meeting held on Tuesday, May 6, 2008, the Planning Board heard additional information from the Applicant and reviewed the Planning Board letter of April 10, 2008 prepared by Planning Division staff for the requested comprehensive permit to construct 350 rental units on 30 acres of land at 48 Powdermill Road. The Planning Board voted to affirm its letter and add information regarding lighting, landscaping and earthberms. The Planning Board was satisfied with the preliminary design and programming discussion of the Clubhouse.

The Planning Board offers the following conditions for the Board of Appeals consideration in making its decision on the comprehensive permit, and notes that the Director of Planning and Land Management is available to coordinate with Town Counsel on finalizing these recommendations:

- 1) ZBA shall require a complete set of revised plans for the project. These Planning Board recommendations are based on the Comprehensive Permit for Alexan Concord, revised on March 25, 2008 prepared by Beals and Associates, Inc. 96 N. Washington Street, Boston, MA 02114.
- 2) **Prior to issuance of a building permit**, Applicant needs to rename the project as the proposed name is too generic and should reflect the history, geology or natural features in the area without duplicating or being too similar to other projects in the area.
- 3) **Prior to issuance of a building permit**, Applicant must provide to, and for approval by, the Planning Division site plans that show:
 - Additional storage space available for resident's use;
 - Air-conditioning units located on the ground, but in a grouping perpendicular to the building rather than parallel with the building and appropriately screened with fencing and/or landscaping as discussed;
 - Storage facilities for bicycles shall be as discussed (adjacent to buildings and within the buildings);
 - Architectural features that are two-toned colors with a darker color on bottom, and to present a color pattern and palette that will visually reduce the building massing;

- At least two emergency response access points;
- The addition of earthen mounds to define and screen the road, to shield car lights and provide for additional screening for the parking lots.
- Designated "Reserved Parking" spaces that do not need to be constructed until such time as they are determined to be needed (up to 53 additional spaces have been shown on the plan).
- Height of fence on Town land adjacent to Sudbury residents shall be overlapped by at least 3 feet in length and shall not be higher than 6 feet. No earth berm is recommended on the Town land.
- Landscaping and lighting shall be consistent with plans presented to the Planning Board at the May 6, 2008 meeting.

Police Department

- 4) **Prior to issuance of a building permit**, Applicant shall submit:
- Site security as well as contact information for after hour contacts.
 - Site plans showing adequate Handicapped parking on site
 - Assignment of building names or designations for improved emergency response.
 - Present clear and complete signage for emergency response vehicles.
 - Submit a plan for overflow parking for large events.

Fire Department

- 5) **Prior to issuance of a building permit**, Applicant shall submit:
- Plans that show the details on the emergency access to demonstrate that the emergency vehicle access will be able to support the weight and turning requirements of emergency apparatus.
 - Confirmation that the automated traffic control arrangements are equipped with opticom control modules.
 - Site plans noting all the assigned street name(s), complex name and the building numbering arrangements reviewed by the Fire Department.
 - Plans stamped by a Fire Protection Engineer confirming compliance with Fire Safety and State Building codes.
- 6) **Prior to issuance of a building permit**, the Applicant shall have the final plans be reviewed by the Fire Department to insure that the site plan continues to show adequate access by road for emergency vehicles to any sewage treatment facility.
- 7) **Per notice of the Fire Department**, the Applicant should be aware that all submittals will be subject to review and approval under the provisions of MGL Chapters 143 and 148.

Engineering Division

- 8) **Prior to issuance of a building permit**, Applicant shall submit:
- Information/calculations for the stormwater mitigation for the project.
 - Provide site plans showing pollutant removal treatment for the stormwater runoff prior to infiltration.

Water and Sewer

9) **Prior to issuance of a building permit**, the Applicant needs to submit the following:

- Site plan showing water services with separate domestic and fire protection services from each building to the water main.
- Site plan showing a water main loop through this development, connecting Border Road to the water main near the Hayes Pump facility.
- Site plan showing that a new cement lined ductile iron pipe to be installed to replace the AC portions of the existing water main. Town practices normally involve abandoning AC pipe in place to avoid creating airborne asbestos. However, the Division is aware that a portion of the existing AC main is in a location where building foundations are proposed, thus requiring removal during excavation. The applicant is responsible for following all applicable DEP and EPA procedures for the removal and disposal of AC pipe. The property owner should also be prepared to develop any ownership agreements required for the shared water main with adjacent property owners.
- Site plan showing reclaimed water pipes to ensure cross-connections with potable water pipes are prevented, if water reuse is proposed.
- Provide more information on the potential beneficial reuse of the wastewater effluent, given the high quality of wastewater treatment likely to be required for groundwater discharge in proximity to the Town's water supply wells. The Division is aware of discussion of using treated wastewater effluent for drip irrigation on the site. While the requirements for water reuse are outside of the jurisdiction of this Division, the Division encourages the appropriate reuse of treated water to reduce demand on the municipal water supply system and the local groundwater table.
- Provide more information on the methods employed to reduce phosphorus from the wastewater treatment plant. The applicant should be aware of the current emphasis by State regulators on phosphorus inputs into the SuAsCo (Sudbury/Assabet/Concord River) Watershed. The Town is currently implementing new wastewater treatment technology to reduce point-source phosphorus inputs to the watershed to extremely low levels. In order for benefits of phosphorus reduction to be realized in the watershed, non-point source reduction is also critical. While the wastewater discharge and landscaping fertilizer treatments do not fall under the Division's jurisdiction, the Division hopes that the applicant is considering these impacts in the development of the design and operations and maintenance practices.

10) **Prior to the issuance of a building permit**, the applicant shall submit to the Concord Water and Sewer Division an application for service for all proposed water utilities. Such an application shall include submittal of detailed utility design plans, including all existing and proposed utilities onsite. All applications must be in accordance with the eligibility requirements of the Division's Rules and Regulations. Any deviations from these Rules and Regulations must be approved by the Public Works Commission prior to issuance of a building permit. It is the applicant's responsibility to ensure these requirements have been met. The building permit may be issued prior to receipt of a service application approval letter from the Water and Sewer Division. However, construction of water utilities is not permitted until an approval letter has been issued and an inspection scheduled. The Division does not intend to review all of the engineering and design details for the purposes of the

Comprehensive Permit Review, as this will be performed as part of the service application review process.

11) **Prior to issuance of a building permit**, design of structures and discharges of treated wastewater and/or stormwater into the Zone II will require approval of the Division as a portion of the site is located within a Zone II to the Town's water supply.

12) **Prior to issuance of an Occupancy Permit**, all utility mains, services, and appurtenances shall be constructed in accordance with Town standards. As-built drawings of any water utility work connected to the Town's system shall be submitted to the Water and Sewer Division upon completion of the project.

13) **Prior to approval of the Water Service Application**, an impact assessment and conservation plan must be submitted for proposed developments that will place a significant demand on the municipal water system (peak design flows of 30 gallons-per-minute or more.) These documents shall be prepared with attention placed on the integration of demand management and conservation options. The applicant has been in contact with Joanne Bissetta, the Division's Conservation Coordinator, and should continue to work with her to incorporate water conservation measures where feasible.

14) **Per notice of the Concord Water and Sewer Division**, Town policy dictates that a building cannot be connected to both a private water system and the Town system, due to the risk of cross-connections that becomes very difficult to monitor and enforce. All private well permits issued by the Concord Health Division contain a condition that the "well shall not be connected to the plumbing system of any building that is connected to the town water supply." If the design involves any such connections of one building to both the private and public supply, review and approval from this Division would be required.

15) **Per notice of the Concord Water and Sewer Division**, the Applicant should become familiar with the State's Water Management Act regulations and be aware of the potential for future regulation by the Town of private water withdrawals in "stressed" water basins, if so required by the State.

CMLP

16) **Prior to issuance of a building permit**, the Applicant needs to submit more information to the CMLP such as:

- Provide the CMLP the loading information as soon as possible. This information will also necessitate requested secondary voltages. This is important as CMLP will need to order transformers for the project and lead times on transformers are running in the range of 28-52 weeks
- Provide a site plan showing the Town's easement for the underground duct bank, which contains two 115000 Volt circuits and fiber optic cable.
- Provide a site showing the locations of the transformers.
- Provide a site plan showing an easement to CMLP for the new electrical distribution system, which will be fed from Forest Ridge Road.

17) **Prior to issuance of a building permit**, all meter locations require approval from the CMLP Meter Supervisor.

18) **Per notice of the CLMP**, the Applicant or constructor notify 48 hrs in advance the CLMP if any work takes place near the easement.

19) **Per notice of the CLMP**, all costs associated with CMLP's portion of the job will be paid for in advance by either the contractor or property owner as per CMLP's terms and conditions.

20) **Per notice of the CLMP**, all common area lighting will be considered private and will need to be metered by a "house meter". CMLP does not maintain private lighting.

Health Division

21) **Prior to issuance of an Occupancy Permit**, the Applicant shall have plan reviewed and permitted by the Concord Board of Health for the onsite wastewater treatment facility and the swimming pool facility.

Natural Resources Division (NRD)

Applicant is encouraged to demonstrate addressing the comments of the NRD such as:

- Clearly identify the open space; describe how these open spaces relate to existing open space parcels or trail system.
- Provide a site plan noting the appropriate protective measures of the vernal pools, including a vegetated upland buffer.
- The Applicant needs to provide a list of specific techniques used, scoring for LEED and the list of LEED criteria being used to measure the sustainability of the project.

22) Applicant is strongly encouraged to work with the Natural Resources Administrator to determine the options to create a mixed ownership as it tends to be more conducive to land stewardship.

Planning Division

23) Application needs to submit more information on the details on the equal dispersion of market-rate and affordable homes throughout the development, identical design between the market-rate and affordable homes and exact same construction between the market-rate and affordable homes.

24) The Town of Concord will allow construction of a wood fence or screen on its land located between this development and the adjacent Cranberry Circle properties in Sudbury to provide additional and suitable screening for headlights from the Cranberry Circle homes, with the express understanding that the Sudbury residents will not encroach or use the town of Concord land for their own purposes.

General Conditions

24) **Prior to issuance of a building permit**, the Applicant shall request that a pre-construction meeting be held with Town staff (Fire, Police, CPW-Engineering and Building consultant) and the general contractor and subcontractors prior to the commencement of

construction to ensure that the public safety departments have reviewed the plans and methods of construction.

25) **Prior to issuance of a Building Permit**, Applicant shall provide a maintenance schedule for all proposed road/sidewalks/drainage systems and all ancillary utility systems as such shall remain private.

26) The Applicant shall coordinate and require construction and delivery vehicles to access this site via Route 62 and Sudbury Road (not through Sudbury and Powdermill Road). The Applicant shall also require that moving and delivery vehicles access the site via Route 62 and Sudbury Road in Acton.

Housing-related Conditions (these will need to be modified to reflect new regulations issued by the Department of Housing and Community Development that went into effect in February 2008).

27) Substantial changes, as determined by the Building Commissioner, shall be reviewed by the Board of Appeals for approval. Any substantial deviation from these plans and/or documents shall require a modification of this Comprehensive Permit by the Zoning Board of Appeals as set forth in 760 CMR 31.03.

28) The development shall be limited to 350 dwelling units. Twenty-five percent (25%) of all units constructed pursuant to this Permit shall be reserved for rental or lease by households at or below eighty (80%) percent of the Boston Primary Metropolitan Statistical Area median household income for a period 99 years, or for as long as the developer is not in full conformity with the Town's Zoning Bylaw, whichever is longer. The affordable units shall not be situated so as to segregate the affordable units from the market rate units.

29) There should be a Local Preference for the renting or leasing of 70% of the 350 affordable units (87 or 88). 70% of this number shall be given preference to Concord and 30% of this number shall be given preference to Maynard, Acton and Sudbury. pursuant to a lottery or selection process that is reviewed and approved by the Board of Appeals (or its designee) and administered by the Applicant, with an annual report of renting or leasing activity submitted to the Concord Planning Division.

30) The affordable units shall not be situated so as to segregate the affordable units from the market rate units.

31) Prior to the issuance of any certificate of occupancy, the applicant shall submit a final draft of a Regulatory Agreement regarding the rental and affordability of the development to the Board of Appeals for approval as to form by Town Counsel. The Regulatory Agreement shall contain, at a minimum, the following terms: The affordable units shall be restricted as affordable for 99 years, to households at or below eighty (80%) percent of the Boston Primary Metropolitan Statistical Area median household income, upon conclusion of such period, the Applicant or its successors or assigns shall offer to the Town or its designee an option to contract to subsidize the units in order to maintain such units' affordability with such subsidy equal to the difference between the then current fair market rental rate of the units and the allowable "affordable" rental rate under the applicable state or federal affordable housing program, with later increases in the contracted subsidy limited to no greater than the corresponding increases in the market rental rates. The Monitoring Agent shall be identified in the Regulatory Agreement, and approved by the Board of Appeals, with

a copy of the agreement to be provided to the Town, or as required by recent changes to the 40B regulations.

32) The Regulatory Agreement shall also contain the requirements for the review of the profit limitations for the Applicant and provide for the necessary certifications of said costs in compliance with the provisions of M.G.L. Chapter 40B and the Regulations issued pursuant thereto.

33) Prior to issuance of a final Certificate of Occupancy for the project (or within the timeframe required of the financing agency, as may be determined), the Applicant shall provide for the review of the costs of the project and confirmation that the project was constructed in accordance with requirements of Chapter 40B.

34) The affordable rents for 25% of the total number of units shall be affordable in perpetuity.

Additional Conditions for consideration:

35) In consideration of the increased traffic exiting this site and heading southerly toward Route 117 over Powdermill Road in Sudbury and decreasing the safety for residents walking along Powdermill Road as well as further reducing the level of service at the intersection of Powdermill Road and Route 117, the Applicant shall provide \$40,000 to the Town of Sudbury, which shall be used toward the design of traffic signals or other improvements at the intersection of Powdermill Road and Route 117 and for pedestrian improvements along Powdermill Road. Said funds shall be provided to the Town of Sudbury prior to issuance of the final certificate of occupancy for the first half of the project.

One additional item was not able to be addressed by the Planning Board, which is the final design of the mail boxes. The Planning Board understands that Planning Division staff will be meeting with the U.S. Postal Service and the developer to finalize the design and location of the mailboxes. The Planning Board recommends a condition that, prior to issuance of any Certificate of Occupancy, the mailboxes and locations be finalized with input from the USPS.

Please contact me if you have any questions or require further clarification.

On behalf of the Concord Planning Board,



Marcia Rasmussen, Director of Planning & Land Management

cc: Christopher Whelan, Town Manager

To: Concord Board of Appeals
 From: Marcia Rasmussen, Director *MAR*
 Re: Further Revised Recommended Conditions for the Alexan Concord 40B project
 Date: June 12, 2008

The following draft conditions are for your consideration and have been further updated based on review of the files and additional information provided by the Applicant relative to a letter from West Concord Development LLC to the Town of Sudbury Town Manager.

1. Approval is based on plans prepared for West Concord Development LLC, entitled Alexan Concord An Apartment Community, Concord, Massachusetts, Comprehensive Permit Set, prepared by Beals Associates Inc., Precision Land Surveying, Inc., Sheskey Architects and Vanasse & Associates, Inc., including the following sheets:
 - A-00 Cover Sheet, dated October 26, 2007 and updated 3/26/08
 - 1 of 1 Conceptual Improvement Plan Sudbury Road October 26, 2007, as revised through March 25, 2008
 - C-1 Existing Conditions
 - C-2 Draft Layout Plan, Oct. 26, 2007, as revised through March 25, 2008
 - C-3 Grading and Drainage Plan Oct. 26, 2007, as revised through March 25, 2008
 - C-4 Sewage Disposal Plan October 26, 2007, as revised through March 25, 2008
 - C-5 Utility Plan October 26, 2007, as revised through March 25, 2008
 - A-1 Building 1400, Clubhouse, Floor Plan, dated Oct. 26, 2007A-2 Building 1400, Clubhouse, Roof Plan, dated Oct. 26, 2007
 - A-3 Building 1400, Clubhouse, Building Elevations, dated Oct. 26, 2007
 - A-4 Building 1400, Clubhouse, Building Elevations, dated Oct. 26, 2007
 - A-5 Typical Building 200-1100, First Floor Plan, dated Oct. 26, 2007
 - A-6 Typical Building 200-1100, Second Floor Plan, dated Oct. 26, 2007
 - A-7 Typical Building 200-1100, Third Floor Plan, dated Oct. 26, 2007
 - A-8 Typical Building 200-1100, Loft Level Plan, dated Oct. 26, 2007
 - A-9 Typical Building 200-1100, Roof Plan, dated Oct. 26, 2007
 - A-10 Typical Building 200-1100, Building Elevations, dated Oct. 26, 2007
 - A-11 Typical Building 200-1100, Building Elevations, dated Oct. 26, 2007
 - A-12 Building 1201 to 1242, 4-Unit Townhouses, Floor Plans and Elevations, dated Oct. 26, 2007
 - A-13 Building 1201 to 1242, 6-Unit Townhouses, Floor Plans and Elevations, dated Oct. 26, 2007
 - Snow Storage Plan dated February 1, 2008 and revised 3/25/08
 - Schematic Design for landscaping and lighting prepared by Stantec Consulting dated April 2, 2008 comprised of eight plans illustrating proposed planting, typical planting at buildings, lighting and entry drive details, as reviewed by the Planning Board. These plans supersede the original landscape plan submitted as C6 with a date of October 26, 2007.
2. The Applicant shall notify the Board of Appeals in writing of any proposed change to the Project which the Consulting Building Inspector determines to be material, and if the Board determines that the change is substantial, it shall require a public hearing and modification of

this Comprehensive Permit by the Board of Appeals, all as set forth in 760 CMR 56.05(11). Any such change that the Board of Appeals determines or that is deemed to be insubstantial shall be automatically incorporated into this decision by reference.

3. The development shall be limited to three hundred fifty (350) rental dwelling units, comprised of 132 one-bedroom units, 194 two-bedroom units and 24 three-bedroom units. Eighty-eight (88) dwelling units (or 25% of the total number of units) within the apartment community (hereinafter, the "Affordable Units") shall be restricted for 99 years, or for so long as the apartment community is not in full compliance with the Town's Zoning Bylaw, for rental to households whose maximum income does not exceed eighty percent (80%) of the Boston area median income, adjusted for household size, as published by the Massachusetts Department of Housing and Community Development (DHCD). The Affordable Units shall not be situated so as to segregate such units from the market rate units and shall be dispersed proportionately amongst the 1-, 2-, and 3-bedroom units.
4. Applicant shall comply at all times with all provisions of its Affirmative Fair Housing Marketing Plan (the "AFHMP"), including, without limitation, the initial lottery and other tenant selection procedures, all as required by the Guidelines for G.L. c.40B Comprehensive Permit Projects applicable to the Project promulgated by DHCD (the "40B Guidelines"). To the extent permitted by applicable law, the AFHMP shall include a local selection preference for 60 units or up to 70% of the Affordable Units for the following categories: (a) current residents of Concord, Acton, Sudbury and Maynard, (b) parents and children of current residents of Concord, Acton, Sudbury and Maynard, (c) employees of the Towns of Concord, Acton, Sudbury and Maynard (including Public School employees, Water District employees, Regional High School employees, Housing Authority employees and other similar municipal employees), and (d) employees of Hanscom Air Force Base, which is located partially in Concord. Of these local preference units, 70% shall be reserved for Concord preference except in the event that a qualified Concord preference applicant is not available. An annual report of rental or leasing activity to such local preference categories shall be submitted to the Concord Planning Division.
5. Prior to the issuance of a building permit, the Applicant shall submit a Regulatory Agreement regarding the rental and affordability of the development to the Board of Appeals in the form required by MassHousing.
6. Prior to the issuance of a building permit, the Applicant shall provide the Planning Division, for review and written confirmation of compliance, two (2) sets of revised plans showing:
 - The location of bicycle storage areas
 - Final landscaping plan
 - Final lighting plan
 - Final locations of mailboxes
 - One or more low earthen berms along the internal roadway that runs along the Sudbury border to further screen the parking lots (and car headlights).
 - Final location of the trash/recycling center facilities
7. Prior to the issuance of a building permit, customary load data sheets, including secondary voltages, shall be submitted to the Concord Municipal Light Plant ("CMLP") and the Applicant shall meet with CMLP staff to ensure adequate design of the distribution system, together with a plan showing the location of the distribution facilities including the underground duct bank, hand holes, splice vaults, transformers and associated facilities serving the site. In addition, the plan shall show the location of an existing CMLP easement

on site which contains two 115,000 volt circuits and fiber optics cables. Applicant shall notify CMLP at least 48 hours prior to commencing construction work in or adjacent to any existing CMLP easement area.

8. Prior to the issuance of a building permit, the Applicant shall submit to the Fire Department for review two (2) sets of stamped plans from a fire protection engineer for the fire alarm system, or as required by the Fire Department for similar projects.
9. Prior to the issuance of a certificate of occupancy, the Applicant shall obtain a groundwater discharge permit from the Massachusetts Department of Environmental Protection ("DEP") for its onsite sewage disposal system. During the permitting process for that permit, the Applicant shall submit to the Town all information submitted to DEP regarding the effectiveness of the wastewater treatment system proposed for the Project and measures proposed by the Applicant to ensure the aquifer of Second Division Brook is protected. During the DEP permitting process, the Applicant shall deliver to DEP a copy of Woodard & Curran's recommendations resulting from its hydrogeological analyses for the Project contained in its letter to the Board dated May 5, 2008 for DEP's information and consideration. Any conditions of approval imposed by DEP shall be incorporated into the comprehensive permit for this Project.
10. The Town of Concord will hire a Consulting Building Inspector or Inspectional Services for this Project to review the plans, issue permits, inspect construction activities and ensure compliance with this Comprehensive Permit. The Applicant shall be responsible for the reasonable costs associated with this consultant.
11. Prior to the issuance of a building permit, the Applicant shall submit detailed construction drawings to the Consulting Building Inspector to ensure that the final plans are consistent with the Comprehensive Permit, with local requirements not waived in the Comprehensive Permit, and with state and federal codes.
12. Prior to the issuance of a certificate of occupancy, the Applicant shall submit to the Fire Department an emergency access plan consistent with the Fire Chief's April 7, 2008 letter to the Board, which has been entered into the official record for the application. In the event that emergency access is proposed to cross over Town owned land in the final emergency access plan, the Applicant shall construct, at the Applicant's cost, necessary improvements therein to facilitate such emergency access to the site, subject to approval by the Town of the design of and schedule for such improvements, and upon completion, said improvements shall become property of the Town.
13. Prior to the removal of any earth from the site, the Applicant shall provide to the Consulting Building Inspector, written notification of the approximate volume of earth to be removed and approval from the Chief of Police as to the days and hours of operation and type of vehicle to be used on any street for removal of earth. The truck route shall be via Route 62, not from Powdermill Road or Route 117 in Sudbury. This information shall be provided to the Consulting Building Inspector at least forty-eight (48) business hours prior to any removal of earth.
14. Prior to the issuance of a building permit for the Project, the Applicant shall deliver to the ZBA final stormwater management design plans and construction details evidencing compliance with the Massachusetts Department of Environmental Protection's Stormwater Management Policy as it is applicable to this Project, including compliance with the 80% Total Suspended Solids removal requirement. In addition, prior to the issuance of a building permit for the Project, the Applicant shall submit a revised snow removal plan to the ZBA

- incorporating operations and maintenance measures that will be employed to ensure the snow removal contractor will not push snow into the basins and forebays. .
15. Prior to the issuance of a building permit for the Project, the Applicant shall deliver to the Planning Director a written description of the sustainable design/green building features which have been incorporated into the Project.
 16. Prior to commencement of construction, the Applicant and contractor shall conduct a preconstruction conference with Town Staff, including the Consulting Building Inspector, Health, Engineering, Fire, and Police and other staff as appropriate.
 17. Prior to the issuance of any Certificate of Occupancy, the Applicant shall submit to the Consulting Building Inspector a certification from a professional engineer or architect that the applicable portion of the Project has been constructed in accordance with the approved construction drawings.
 18. Prior to the issuance of any Certificate of Occupancy, the Applicant shall submit to the CPW-Engineering Division a certification from a professional engineer that the Project has complied with all applicable stormwater management requirements as specified by the Federal Clean Water Act National Pollution Discharge Elimination Systems (NPDES).
 19. Prior to the issuance of the final Certificate of Occupancy, the Applicant shall submit to the Consulting Building Inspector, the Planning Division and the Fire Department an as-built site plan showing all structures, paving, utilities and the location of the Fire Department connections, fire hydrant(s) and "Fire Lane" striping as required by the Concord Fire Department. Additionally, the Applicant shall submit this information to the Engineering Division in an electronic format compatible with AutoCad 14.
 20. Prior to the issuance of any final Certificate of Occupancy, all site work required for the applicable portion of the Project, including landscaping, shall be completed or an assignment of security by performance bond in an amount approved by the Board of Appeals or such other form of security acceptable to the Board shall be submitted to the Town to assure completion of any site work which has not been completed. Said security may be reduced by the Board as work is completed and will be released after completion of such work.
 21. Prior to the issuance of any final Certificate of Occupancy, the Applicant shall provide to the Building Inspector and the Engineering Division a Drainage Maintenance Program indicating that all on-site drainage structures and all paved areas on the site will be cleaned and maintained at least two (2) times annually, once in the Fall and once in the Spring, and immediately after any chemical release equal to or greater than five (5) gallons. Such Program shall include a maintenance schedule.
 22. Prior to the issuance of any final Certificate of Occupancy, the Applicant shall submit to the Building Inspector, evidence that this Comprehensive Permit and the Regulatory Agreement have been fully executed and recorded with the Middlesex South Registry of Deeds.
 23. There shall be no on-site storage of fuels, oils, automotive fluids, fertilizers, pesticides, insecticides, herbicides, cleaning chemicals, and other hazardous materials of significant concern, other than quantities for domestic use.
 24. The Applicant shall be responsible for maintaining all improvements within the Project, including, but not limited to, drainage systems and structures, sewer system, water lines, the pavement surface, curbing, and other required utility improvements, in a satisfactory manner.
 25. The Applicant shall provide, and shall bear the costs associated with, the following mitigation prior to the issuance of the final certificate of occupancy for the Project, except as the timing may otherwise be specified below:

- Purchase and installation of a radio frequency repeater antenna for use by the Town of Concord Fire Department. Details on this equipment have not yet been provided to the Developer as of the date hereof, however, Concord Fire Department officials have estimated the cost of such an antenna to be \$16,000.
 - Fitout of a portion of the community center/clubhouse in the Project with additional phone and data ports for use by the Town of Concord Fire Department as an alternative emergency command center.
 - Purchase and storage on-site of one emergency evacuation chair (such as Garaventa Evacu-Trac) as recommended by the Town of Concord Fire Department.
 - Reclamation (resurfacing), reconstruction and realignment of the Project's access drive as described in the Traffic Impact and Access Study for the Project prepared by Vanasse & Associates, Inc., dated February 20, 2008 (the "Traffic Study").
 - Reconstruction of Sudbury Road to provide a minimum roadway cross-section of 22 feet within the available public right of way; flattening of the existing roadway profile to the south of the Site access and pavement markings as described in the Traffic Study. If additional or different improvements to Sudbury Road are required by any other permit for the Project, as long as such additional or modified improvements provide substantially similar levels of safety and operations as those described in the Traffic Study, such additional or modified improvements shall be substituted for the foregoing. Applicant shall provide notice of the same to the Board upon the issuance of such a permit.
 - To the extent approved by the Town of Maynard, the Applicant agrees to repave the existing deteriorated portion of Sudbury Road from the Acton/Maynard town line to the Maynard/Sudbury town line to provide a more consistent surface from Route 117 to Route 62.
 - Design and implementation of an optimal traffic signal timing and phasing plan for the intersection of Route 62 and High Street within one year of the issuance of the final certificate of occupancy for the Project as described in the Traffic Study.
 - Design and implementation of an optimal traffic signal timing and phasing plan for the intersection of Route 62 and Commonwealth Avenue within one year of the issuance of the final certificate of occupancy for the Project as described in the Traffic Study.
 - In a letter from Vanasse & Associates, Inc. dated April 4, 2008 addressed to the Board (the "Supplemental Traffic Information"), the Applicant's traffic engineer described certain improvements that would be appropriate for the intersections located in Maynard at Route 62/Route 27/Summer Street and Route 62/Route 27/Waltham Street if the 129 Parker Street project is not advanced. If the 129 Parker Street project has been abandoned or withdrawn, then prior to the issuance of the final certificate of occupancy of the Project, the Applicant shall implement the proposed intersection improvements described in Section 5 of the Supplemental Traffic Information.
26. The Applicant shall comply with the terms of a Development Agreement between the Applicant and the Concord Board of Selectmen, dated May 8, 2008.
27. Prior to the issuance of the final certificate of occupancy for the Project, the Applicant shall install a 6 foot high, non-continuous but overlapping fence on the Town of Concord property adjacent to the Project in substantially the location shown on the Schematic Planting Plan p-1.1 and P-1.2 prepared by Stantec and listed under condition #1. The fence shall be of a natural material and allowed to weather to a gray color or painted a dark green. The Applicant shall assume continuing maintenance responsibilities for said fence. Additional

plantings (up to \$5,000) may be installed along the fence to augment the screening effect as needed and as approved by the Director of Planning and Land Management.

28. Prior to the issuance of a certificate of occupancy, the Applicant shall submit to the Police Department the following:
- A description of how the Applicant intends to manage responses to resident issues on site as well as contact information for after hour issues or situations.
 - Site plans showing adequate Handicapped parking on site.
 - Buildings shall be differentiated and defined so that they may be readily identified and located for emergency personnel responding to an incident.
 - Plan showing clear and complete signage for emergency response vehicles.
29. Prior to the issuance of a certificate of occupancy, the Applicant shall submit to the Fire Department the following:
- Confirmation that the automated traffic control arrangements for the emergency access points are equipped with Opticom control modules or another form of equipment acceptable to the Fire Department.
 - Site plans noting all the assigned street name(s), community name and the building numbering arrangements.
 - A site plan showing adequate access by road for emergency vehicles to the sewage treatment facility.
30. Prior to the issuance of a building permit, the Applicant shall submit the following to the Water and Sewer Division:
- Site plan showing water services with separate domestic and fire protection services from each building to the water main.
 - Site plan showing a water main loop through this development, connecting Border Road to the water main near the Hayes Pump facility.
 - Site plan showing new cement lined ductile iron pipe installed to replace the AC portions of the existing water main on site. Town practices normally involve abandoning AC pipe in place to avoid creating airborne asbestos. However, the Water and Sewer Division is aware that a portion of the existing AC main is located where building foundations are proposed, thus requiring removal during excavation. The Applicant is responsible for following all applicable DEP and EPA procedures for the removal and disposal of AC pipe. The Applicant shall also develop any ownership agreements with adjacent property owners required for the shared water main.
 - Site plan showing reclaimed water pipes to ensure cross-connections with potable water pipes are prevented, if water reuse is proposed.
31. Prior to the issuance of a certificate of occupancy, the Applicant shall submit to the Concord Water and Sewer Division an application for service for all proposed water utilities. Such an application shall include submittal of detailed utility design plans, including all existing and proposed potable water utilities on site. All applications must be in accordance with the requirements of the Division's Rules and Regulations. Any deviations from these Rules and Regulations must be approved by the Public Works Commission prior to issuance of a building permit. It is the Applicant's responsibility to ensure these requirements have been met. The building permit may be issued prior to receipt of a service application approval letter from the Water and Sewer Division. This condition is intended to give the Water and Sewer Division the ability to review the engineering and design details for the Project's water utilities to ensure that they are designed in accordance with professional engineering

- standards. Issues of capacity and the Applicant's general right to connect to the municipal water service were reviewed as part of the hearing process and are hereby granted.
32. Prior to issuance of an Occupancy Permit, all utility mains, services, and appurtenances shall be constructed in accordance with Town standards. As-built drawings of any potable water utility work connected to the Town's system shall be submitted to the Water and Sewer Division upon completion of the Project.
 33. Prior to approval of the Water Service Application, an impact assessment and conservation plan shall be submitted for proposed developments that will place a significant demand on the municipal water system (peak design flows of 30 gallons-per-minute or more.) These documents shall be prepared with attention to the integration of demand management and conservation options. The Applicant has been in contact with Joanne Bissetta, the Division's Conservation Coordinator, and shall continue to work with her or her designee to incorporate water conservation measures where feasible.
 34. Water and Sewer Division policy dictates that a building cannot be connected to both a private water system and the Town system, due to the risk of cross-connections that are difficult to monitor and enforce. All private well permits issued by the Concord Health Division contain a condition that the "well shall not be connected to the plumbing system of any building that is connected to the town water supply." If the design involves any such connections of one building to both the private and public supply, review and approval from the Water and Sewer Division shall be required prior to the issuance of a certificate of occupancy.
 35. All costs associated with CMLP's portion of the construction shall be paid for in advance by either the contractor or the Applicant, and such costs shall be reasonable and consistent with CMLP's past practice for such work. Similarly, any fees charged by CMLP for the Project shall be reasonable and consistent with CMLP's past practice. The contractor or Applicant shall deposit 100% of the CMLP construction estimate as an Advance prior to CMLP work commencing or stock being purchased or issued. Upon completion of the project, CMLP will bill the customer for any additional costs or overruns; likewise, if the project cost is less than the advance, then CMLP will return excess funds to the contractor or Applicant. In addition, a bond will be required in advance of placing an order for the transformers required for this project.
 36. Prior to issuance of a certificate of occupancy, Applicant shall provide a maintenance schedule for all proposed road/sidewalks/drainage systems and all ancillary utility systems as such shall remain private.
 37. The Applicant shall provide mitigation to the Town of Sudbury as outlined in a letter to Ms. Valente, Town Manager for the Town of Sudbury dated June 12, 2008.
 38. A dumpster shall be used during the building construction process to contain waste construction materials and debris.
 39. Demolition and/or exterior construction activity shall be limited to Monday through Friday from 7 a.m. to 6 p.m. and Saturday from 8 a.m. to 4 p.m. except as otherwise permitted by the Consulting Building Inspector. No exterior construction activities shall be performed on Sunday, except as otherwise permitted by the Consulting Building Inspector. The Applicant shall instruct its contractors, vendors and tenants that all construction vehicles, moving vans and similar trucks must use Route 62 to access the site. Applicant shall include such instructions in its construction contracts and resident leases for the Project.

40. Prior to the issuance of a building permit for the Project, the Applicant shall rename the Project so that the name of the Project is not too similar to other developments in Concord.
41. All landscaping shall be properly maintained in a healthy condition.
42. This Comprehensive Permit shall control the development of the Project and, to the extent of any inconsistency between this Comprehensive Permit and any other instrument, document or agreement delivered as part of the Application for this Comprehensive Permit, the terms, conditions and limitations of this Comprehensive Permit and the Regulatory Agreement incorporated by reference herein shall govern and control.
43. If in the future the Applicant or Owner wants to convert the units to condominium units, an amendment to the Comprehensive Permit from the Board of Appeals shall be required.
44. Attached hereto as Exhibit A is a list of the waivers the Board of Appeals hereby grants from the local Rules and Regulations.
45. This Comprehensive Permit may be assigned or transferred only in accordance with the provisions of 760 CMR 56.05(12)(b).



OLD NORTH BRIDGE

TOWN OF CONCORD

TOWN MANAGER'S OFFICE
22 MONUMENT SQUARE - P.O. BOX 535
CONCORD, MASSACHUSETTS 01742

TELEPHONE (978) 318-3000
FAX (978) 318-3002

CHRISTOPHER WHELAN, TOWN MANAGER

May 8, 2008

William Barrett
Concord Zoning Board of Appeals
141 Keyes Road
Concord, MA 01742

**RE: Application for Comprehensive Permit for Alexan Concord Project at
48 Powdermill Road, Concord**

Dear Bill:

Kindly accept a copy of a Development Agreement, as executed by duly authorized representatives of West Concord Development LLC and the chair of the Concord Board of Selectmen, Gregory Howes, and myself, regarding the Alexan Concord project at 48 Powdermill Road in Concord, for inclusion in the record of proceedings on the application for a comprehensive permit for that project.

Yours Truly,

Christopher Whelan

cc: West Concord Development LLC

DEVELOPMENT AGREEMENT

This Development Agreement (this "Agreement") is entered into as of this 8 day of May, 2008, by and between WEST CONCORD DEVELOPMENT LLC, a Delaware limited liability company (the "Developer"), and the TOWN OF CONCORD, acting by and through its Board of Selectmen and its town manager, CHRISTOPHER WHELAN (the "Town"), for good and valuable consideration the receipt and sufficiency of which are hereby acknowledged. This Agreement represents the understanding between the parties with respect to the contributions and commitments of the Developer with respect to mitigating impacts arising from the development of a multifamily housing community by an affiliate of Trammell Crow Residential (the "Project"), located on Old Powdermill Road in the Town of Concord, as more particularly described on Exhibit A attached hereto (the "Site").

1. GENERAL

- 1.1 The Developer has applied for a so-called comprehensive permit under M.G.L. c. 40B (a "comprehensive permit") from the Town of Concord Zoning Board of Appeals (the "Concord ZBA") to permit development of the Project. The Project proposes 350 units of multifamily rental housing, a community center and related other amenities and infrastructure on the Site. The Town has and will continue to be supportive of the Project including 350 units. In order to mitigate various potential impacts of the Project on the Town, the Developer has agreed to pay for and/or construct certain improvements as specified herein.
- 1.2 Construction of the Project is contingent on the granting of a comprehensive permit from the Concord ZBA, a comprehensive permit from the Zoning Board of Appeals of the Town of Acton (the "Acton ZBA"), permits and approvals from the Town of Acton and the Massachusetts Highway Department regarding various off-site traffic and roadway improvements, a groundwater discharge permit from the Massachusetts Department of Environmental Protection, and various other permits and approvals (collectively, the "Required Permits").
- 1.3 In consideration of the Developer's promises contained herein, the Town agrees to support the Developer's requests for the Required Permits in order to effectuate the terms and intent of this Agreement. Such support may include attendance by appropriate Town representatives at public meetings in Concord, Acton, Maynard and Sudbury, attendance at meetings with municipal officials and written expressions of support to municipal and state boards and officials. Nothing contained herein shall be deemed to be a guarantee of the successful or affirmative vote on any such Required Permit.

1.4 In order to allow the Developer to implement the conditions of the comprehensive permit from the Concord ZBA, the Town hereby grants the Developer a license to enter onto Town owned property to install a fence and to construct one or more emergency access drives to serve the Project, if and to the extent necessary to comply with the conditions of the Required Permits, subject to a writing approved by the Town Manager regarding procedures for such access, final design review of such fence and/or drive(s) by the Concord Planning Director and/or the Concord Fire Chief or as otherwise required by the applicable Required Permit, maintenance of said improvements and protection of Town property.

2. MITIGATION

2.1 In conjunction with the development of the Project, and to mitigate certain impacts of the development on its emergency response capacity and on public safety, the Developer agrees to contribute an amount to the Town (the "Mitigation Payment") as further defined herein. The Town intends to use this payment to mitigate the impact of the Project on its emergency response capacity, including the development of expanded facilities, acquisition of additional emergency response vehicles and equipment, and an increase in permanent emergency response staffing. The amount of the mitigation payment shall be proportional to the number of rental housing units approved through the permitting process in accordance with the following:

- a. \$500,000 for approval of 250 units;
- b. \$750,000 for approval of 300 units;
- c. \$875,000 for approval of 325 units; and
- d. \$1,000,000 for approval of 350 units.

2.2 Notwithstanding any other provision of this Agreement, the obligation of the Developer to pay the Mitigation Payment hereunder will become effective only if and when all Required Permits have been issued (and all appeal periods applicable thereto have expired without contest or appeal, or any such contests or appeals have been concluded in favor of Developer) for the Project permitting at least 250 rental units. Further, if any such Required Permits are conditioned upon other substantial monetary payments or improvements which are not on account of material adverse impacts directly caused by the Project, the Mitigation Payment shall be reduced by the amount of such other payments and/or the reasonably estimated cost of such improvements.

2.3 Upon becoming effective as aforesaid, the Mitigation Payment shall be paid to the Town by certified cashier's, treasurer's or bank check, or by wire transfer by the Developer as a condition for the issuance of the first certificate of occupancy for a residential unit or building in the Project.

2.4 In addition to the Mitigation Payment, the Developer shall provide the following mitigation prior to the issuance of the final certificate of occupancy for the Project, except as the timing may otherwise be specified below:

a. Purchase and installation of a radio frequency repeater antenna for use by the Town of Concord Fire Department. Details on this equipment have not yet been provided to the Developer as of the date hereof, however, Concord Fire Department officials have estimated the cost of such an antenna to be \$16,000.

b. Fitout of a portion of the community center/clubhouse in the Project with additional phone and data ports for use by the Town of Concord Fire Department as an alternative emergency command center.

c. Purchase and storage on-site of one emergency evacuation chair (such as Garaventa Evacu-Trac) as recommended by the Town of Concord Fire Department.

d. Reclamation (resurfacing), reconstruction and realignment of the Project's access drive as described in the Traffic Impact and Access Study for the Project prepared by Vanasse & Associates, Inc., dated February 20, 2008 (the "Traffic Study")

e. Reconstruction of Sudbury Road to provide a minimum roadway cross-section of 22-feet within the available public right of way; flattening of the existing roadway profile to the south of the Site access and pavement markings as described in the Traffic Study.

f. Design and implementation of an optimal traffic signal timing and phasing plan for the intersection of Route 62 and High Street within one year of the issuance of the final certificate of occupancy for the Project as described in the Traffic Study.

g. Design and implementation of an optimal traffic signal timing and phasing plan for the intersection of Route 62 and Commonwealth Avenue within one year of the issuance of the final certificate of occupancy for the Project as described in the Traffic Study.

h. Design and construction of a comprehensive sign and pavement marking improvement program for the segment of Powers Road between Powder Mill Road and the Concord Town line.

i. Any other requirements imposed as conditions of the Required Permits, to the extent such requirements are imposed as mitigation for adverse impacts directly caused by the Project, including but not limited to improvements within the Site or on properties abutting the Site, and improvements required for emergency access to the Site.

3. MISCELLANEOUS

3.1 The Town acknowledges that nothing contained herein shall prohibit or hinder the Developer from exercising Developer's rights to use the Site alternatively for the uses and

purposes currently allowed under the current Zoning By-Law if and to the extent Developer does not elect to exercise its rights under the Required Permits.

3.2 The Developer may assign the rights and obligations contained in this Agreement. At least 10 days in advance of any such assignment, Developer shall provide the Town with written notice of the same together with reasonable evidence of the capacity and experience of the proposed transferee and its ability to perform the Developer's obligations hereunder. At the request of the Town, the Developer and/or the proposed transferee will attend a meeting of the Board of Selectmen in order to discuss the transferee's said capacity and the overall status of the Project at that time. All terms of this Agreement shall bind and inure to the benefit or burden of any successor or assign of this Agreement or any successor or assign of the Site, and all such successors or assigns shall assume the obligations hereunder in a writing which shall be delivered to the Town promptly after the assignment of this Agreement. Such written assumption shall include contact name(s) and information for the assignee.

3.3 The parties anticipate that, if the Project is approved as proposed, this Agreement will be incorporated into the comprehensive permit from the Concord ZBA.

3.4 Notices

Unless otherwise specified herein, all required Notices hereunder shall be deemed sufficient if sent registered mail to the parties at the following addresses:

Town: Town of Concord
Town Manager
Town House
22 Monument Square
Concord, MA 01742
Attn: Town Manager

with a copy to

Concord Town Counsel
Anderson & Kreiger, LLP
One Canal Park, Suite 200
Cambridge, MA 02141
Attn: Kevin D. Batt

Developer: West Concord Development LLC
c/o Trammell Crow Residential
160 Gould Street, Suite 100
Needham, MA 02494
Attn: Robert D. Hewitt

with a copy to:

Goulston & Storrs, P.C.
400 Atlantic Avenue
Boston, MA 02110-3333
Attn: Deborah S. Horwitz

- 3.5 The Developer acknowledges and agrees that this Agreement shall be binding upon the Developer and each of its successors or assigns as to the obligations which arise under this Agreement during their respective periods of ownership of the Project.
- 3.6 As and when requested by the Developer, the Town will promptly advise, in writing, the status of the Developer's obligations or satisfaction thereof under this Agreement for the benefit of existing and prospective mortgagees of all or a portion of the Project and such other persons as the Developer may designate.
- 3.7 Amendments to this Agreement must be in writing and signed by both parties. Amendments to the terms of this Agreement may be agreed to on behalf of the Town by the Board of Selectmen.
- 3.8 This Agreement shall be governed by the laws of the Commonwealth of Massachusetts. The parties hereby consent to non-exclusive jurisdiction of the courts of the Commonwealth of Massachusetts sitting in the Counties of Middlesex or Suffolk.

EXECUTED under seal as of the date and year first above written.

WEST CONCORD DEVELOPMENT, LLC

By: _____

Name:

Its:

Hereunto Duly Authorized

TOWN OF CONCORD BOARD OF SELECTMEN

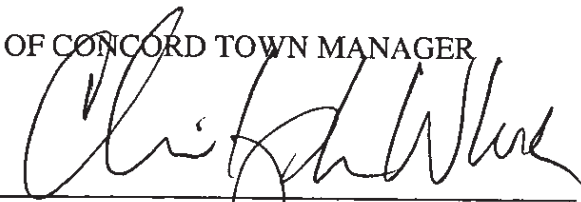
By:  _____

Name: Gregory P. Howes

Its: Chairman

Hereunto Duly Authorized

TOWN OF CONCORD TOWN MANAGER

By:  _____

Christopher Whelan

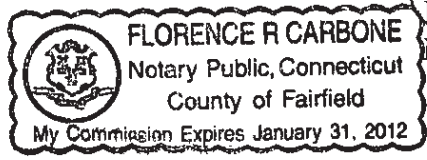
Hereunto Duly Authorized

~~State of Connecticut~~
COMMONWEALTH OF MASSACHUSETTS

County of Fairfield, ss.

On this 8th day of May, 2008, before me, the undersigned notary public, personally appeared Joseph S. Torg, proved to me through satisfactory evidence of identification, which was CT 012137453437, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose, as VP of West Concord Development, LLC.

Florence R. Carbone
Notary Public



My Commission Expires: 1/31/12

COMMONWEALTH OF MASSACHUSETTS

County of _____, ss.

On this ____ day of May, 2008, before me, the undersigned notary public, personally appeared Gregory P. Howes, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose, as Chair of the Town of Concord Board of Selectmen.

Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

County of _____, ss.

On this ____ day of May, 2008, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose, as _____ of West Concord Development, LLC.

Notary Public
My Commission Expires:

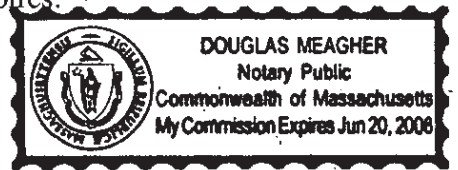
COMMONWEALTH OF MASSACHUSETTS

County of Middlesex, ss.

On this 8 day of May, 2008, before me, the undersigned notary public, personally appeared Gregory P. Howes, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose, as Chair of the Town of Concord Board of Selectmen.

Douglas Meagher

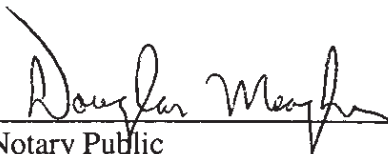
Notary Public
My Commission Expires:



COMMONWEALTH OF MASSACHUSETTS

County of middlesex, ss.

On this 8 day of May, 2008, before me, the undersigned notary public, personally appeared Christopher Whelan, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose, as Town Manager of the Town of Concord.



Notary Public
My Commission Expires:

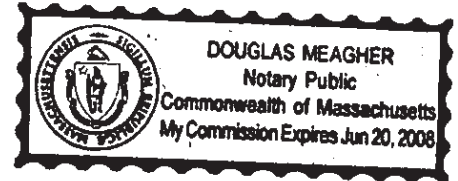


EXHIBIT A

[Legal Description of Site]

EXHIBIT "A"**PARCEL 1**

The land, with the buildings thereon, located in Concord, Middlesex County, Massachusetts, being shown as Lot 1 on a plan entitled "Land in Concord, Mass. Surveyed for Electronic Space Systems Corporations, Scale 1"= 40', February, 1982" by Charles A. Perkins Co., Inc., Civil Engineers and Surveyors, recorded with the Middlesex South Registry of Deeds in Book 14545, Page 486, bounded and described according to said plan as follows:

- NORTHWESTERLY** by land now or formerly of Digital Marine Electronics Corporation four hundred feet (400);
- NORTHEASTERLY** by land now or formerly of Marshall B. Dalton, et al., two thousand three hundred sixty-eight and 15/100 (2,368.15);
- SOUTHERLY** by land now or formerly of said Marshall B. Dalton, et al., by measuring three lines respectively forty-two and 31/100 feet (42.31), one hundred nineteen and 78/100 feet (119.78) and two hundred ninety-eight and 36/100 feet (298.36); and
- SOUTHWESTERLY** by land now or formerly of said Marshall B. Dalton, et al., by five lines measuring respectively five hundred seventy-eight and 80/100 feet (578.80), one hundred eighty-eight and 81/100 feet (188.81), two hundred thirty-eight and 72/100 feet (238.72), one hundred ninety-seven and 33/100 feet (197.33), and eight hundred sixty-nine and 99/100 feet (869.99).

Said premises contain 20.08 acres, more or less, according to said plan. Together with rights of ingress to and egress from the premises over a right of way running along the southwest boundary of the premises to Sudbury Road marked as a "forty foot right of way to Sudbury Road" on plan entitled "Plan of Land in Concord, Mass., November 26, 1956, scale 1 inch equals one hundred feet, Laurence A. Murray, Engineer, Concord, Mass.", recorded in the Middlesex South Registry of Deeds as Plan Number 2071 of 1956.

PARCEL 2

The land with the buildings thereon situated off the northeasterly side of Old Powder Mill Road and on the southerly side of the Assabet River in Concord, Middlesex County, Massachusetts, the same being shown as Lot E, containing 15.8 acres of land, more or less, on a plan by Laurence A. Murray, Engineer, dated May 11, 1968, recorded with said Deeds Book 11511, Page 662, and being more particularly bounded and described as follows:

- SOUTHWESTERLY** by land now or formerly of John T. Spinelli, seven hundred twenty-six feet;
- NORTHWESTERLY** by land now or formerly of Hayes and Swett, nine hundred ninety-five feet, more or less;
- NORTHERLY** by a curved line following the thread of said Assabet River, five hundred thirty feet, more or less;

EASTERLY by land of Marshall B. Dalton, et als., Trustees, one thousand one hundred sixty feet, more or less; and

SOUTHEASTERLY by said land of Marshall B. Dalton, et als., Trustees, three hundred feet.

Excepting from the above, a certain parcel of land with the buildings thereon in Concord, Middlesex County, Massachusetts thereon being shown as Lot 2 on a plan entitled "Hayes Pump & Machinery Co." Definitive Subdivision Plan, Land in Concord, Mass., Owner and Developer:

Hayes Real Estate Trust" by R.D. Nelson, Civil Engineers" dated March 24, 1977, April 29, 1977 and recorded with Middlesex South District Registry of Deeds in Book 13203, Page End and bounded and described as follows:

NORTHWESTERLY by the dividing line between the Town of Acton and Concord as shown on said plan Seventy-Five (75) feet, more or less;

NORTHERLY by the thread of the stream of the Assabet River Five Hundred Thirty (530) feet, more or less;

EASTERLY by land of Marshall B. Dalton and Royal Little, as shown on said plan One Thousand One Hundred Sixty (1,160) feet, more or less;

SOUTHEASTERLY by said land of Dalton and Little Three Hundred and 00/100 (300.00) feet;

SOUTHWESTERLY by land of John T. Spinelli, Two Hundred Eighty-Six and 00/100;

NORTHWESTERLY by Lot 1 as shown on said plan Three Hundred Forty-Five and 00/100 (345.00) feet;

NORTHERLY by Lot 3 as shown on said plan Two Hundred Five and 02/100 (205.02) feet;

WESTERLY by Lot 3 as shown on said plan Five Hundred Thirty and 00/100 (530.00) feet; and

SOUTHWESTERLY by Lot 3 and part of Lot 1 as shown on said plan, Four Hundred Nineteen and 91/100 (419.19) feet.

Containing 5.50 + acres according to said plan.

TOWN OF CONCORD
BOARD OF APPEALS

THE BOARD OF APPEALS CERTIFIES as follows:

Name and Address of Owner: FTN Limited Partnership

48 Old Powder Mill Road

Concord, MA 01742

Property Identification: 48 and 54 Old Powder Mill Road
and 236 Main Street

Concord, Massachusetts

25984-26

This application and all subsequent proceedings comply with the requirements of General Laws, Chapter 40A, Section 1, et seq., for the issuance of variances and permits. Copies of this decision and all plans referenced to herein have been filed with the Concord Planning Board and the Concord Town Clerk.

(Signature)
(Signature)
Patrick C. Bomey

I, ANITA S. TEKLE, Town Clerk for the Town of Concord, hereby certify that twenty (20) days have elapsed since the filing of this decision and no appeal has been filed, or, if filed, has been dismissed or denied.

Anita S. Tekle

JUL 09 2008

An appeal from this decision shall be made pursuant to General Laws, Chapter 40A, Section 17, and shall be filed within twenty (20) days after the date of filing such decision or notice thereof in the office of the Town Clerk.

Forms: Sig. pg.

Eugene C. Brune
Attest Middlesex S. Register