

Bk 32435 Pg 289 #54747
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AMENDMENT OF LAND DEVELOPMENT AGREEMENT

Reference is made to that certain Land Development Agreement (the "LDA") dated October 24, 2006 between the Town of Provincetown (the "Town") and NEDA Cape Manager, Inc. (now, by change of corporate name, Seashore Point - Deaconess, Inc. (the "Developer")), recorded in the Barnstable County Registry of Deeds in Book 21620, Page 16. Capitalized terms used in this Amendment of Land Development Agreement (this "Amendment") and not otherwise defined herein shall have the meaning set forth in the LDA.

RECITALS

- A. Developer has completed the first phase of the "Project" described in the LDA (which is also sometimes referred to herein as "Seashore Point"), which first phase consists of (i) 43 multi-family housing units to be used either for assisted living or independent living (the "Units"), (ii) a new skilled nursing facility containing 41 beds; and (iii) an outpatient therapy facility. Developer intends to begin construction of the second phase of the Project, which will consist of 38 Units, parking facilities and common space.
- B. Although the LDA required Developer to Substantially Complete the Project within forty-eight (48) months from the date of the LDA, the Board of Selectmen of the Town, acting on behalf of the Town, has determined that, despite recent economic conditions beyond Developer's reasonable control, including economic disruption, recession, and upheaval in the capital markets and residential real estate markets, which affected the Developer's ability to complete the Project within the time set forth in the LDA, the Developer has proceeded diligently in its performance, and the Board of Selectmen is amenable to extending the date of Substantial Completion to allow Developer additional time to construct Phase 2 of the Project.
- C. In marketing the Units, the Developer has received frequent inquiries whether the Market Rate Units (as defined below) can be purchased as condominium units. The Developer is considering organizing Seashore Point as a mixed-use condominium in order to permit the sale of Market Rate Units at Seashore Point as condominium units. Organization of the Project as a mixed-use condominium would require amendment of various provisions of the LDA as set forth in this Amendment.

To facilitate the completion of the Project and accommodate potential marketing proposals, the parties hereby amend the LDA as follows:

1. Construction Schedule. The provision of clause (b) of Subsection I.A. 3 of the LDA is hereby amended by deleting "within forty-eight (48) months from the date of this LDA" and inserting "not later than December 31, 2014".
2. PILOT. Subsection I.B. 1 of the LDA is hereby amended by inserting the following provisions at the end of said Subsection:

Notwithstanding the foregoing, from and after the date on which Developer submits the Property or any portion thereof to the provisions of G.L. c. 183A, Developer shall pay to the Town annually thirty (30) days after the end of each fiscal year, in perpetuity, a PILOT in the amount of twenty percent (20%) of Developer's net operating income generated by the portion of the Project consisting of the skilled nursing facility, the outpatient therapy facility, the Affordable Units (defined in Section I.B.3), and any Units that are not Affordable Units (the "Market Rate Units") and are owned by the Developer (the foregoing referred to, collectively, as the "Developer Retained Project"), which net operating income shall be calculated by deducting Developer's total expenses (including, without limitation, operating expenses, debt service payments and replacement of reserve accounts) from the gross revenue from the Developer Retained Project (but excluding proceeds from the sale of the Market Rate Units), on the express condition that all such funds be paid to, and held in trust by, the Community Preservation Committee for affordable housing purposes in perpetuity. Market Rate Units that are sold as residential condominium units shall be taxed at their fair market value. The foregoing shall not alter or affect the Developer's obligations under the AHR (as that term is defined in Section I.B.3 of the LDA).

3. Sale Assignment. Section II.2 of the LDA is amended by adding the following sentence at the end of Section II.2:

The foregoing shall not apply to the sale of the Market Rate Units as residential condominium units.

4. Default. Subsection II.6 (iv) of the LDA is revised by inserting the words "other than the sale of the Market Rate Units as residential condominium units," after the phrase "or any part thereof."

Except as amended hereby, all other terms and conditions of the LDA remain in full force and effect.

Witness the execution of this instrument under seal as of this 28 day of February, 2011.

Town of Provincetown
By its Board of Selectmen

[Signature]
[Signature]
[Signature]

Seashore Point - Deaconess, Inc.

By: [Signature]


By: _____

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF BARNSTABLE, ss.

On this 28 day of February, 2011, before me, the undersigned notary public, personally appeared Michele Conforte, member of the Provincetown Board of Selectmen, as aforesaid, proved to me through satisfactory evidence of identification, which was driver's license or other state or federal governmental document bearing a photographic image, oath or affirmation of a credible witness known to me who knows the above signatory, or my own personal knowledge of the identity of the signatory, to be the person whose name is signed above, and acknowledged that he/she/they signed it voluntarily for its stated purpose on behalf of the Town of Provincetown.

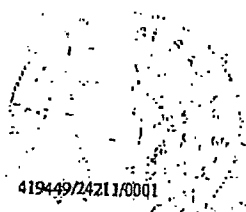
[Signature]
Notary Public: Brian M. Carlson
My commission expires: October 22, 2015

 **BRIAN M. CARLSON**
Notary Public
Commonwealth of Massachusetts
My Commission Expires
October 22, 2015

COMMONWEALTH OF MASSACHUSETTS

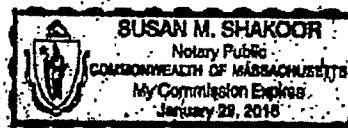
COUNTY OF Middlesex, ss.

On this 25 day of February, 2011, before me, the undersigned notary public, personally appeared Herbert B. Taylor proved to me through satisfactory evidence of identification, which was driver's license or other state or federal governmental document bearing a photographic image, oath or affirmation of a credible witness known to me who knows the above signatory, or my own personal knowledge of the identity of the signatory, to be the person whose name is signed above, to be the person whose name is signed on the foregoing power of attorney, and he acknowledged that he signed it voluntarily for its stated purpose, as President of Seashore - Point Deaconess, Inc.



SUSAN SHARCOOR
Notary Public [Signature]
My commission expires: 1/28/11

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