



Bk: 19995 Pg: 145 Page: 1 of 7
Recorded: 04/14/2006 11:49 AM

MONITORING SERVICES AGREEMENT

THIS AGREEMENT is made as of this 13th day of May, 2004 by and between Princeton Commons LLC, a Massachusetts Limited Liability Company having an address at Princeton Corporate Centre, 1115 Westford Street, Lowell, MA 01851 ("Developer") and the Chelmsford Housing Authority, having an address at 10 Wilson Street, Chelmsford, MA 01824 ("Monitoring Agent").

I. Background

A. The Developer intends to construct a 120-unit rental apartment community (the "Development") on approximately 5.66 acres at One Technology Drive in Chelmsford, Massachusetts, more particularly described in Exhibit A attached hereto and made a part hereof (the "Property");

B. The Developer anticipates receiving a Comprehensive Permit for the Development from the Zoning Board of Appeals for the Town of Chelmsford (the "ZBA") pursuant to Chapter 40B, Section 21 of the Massachusetts General Laws, which permit will be recorded at the Middlesex North Registry of Deeds (the "Comprehensive Permit") as well as all other permits necessary to construct and occupy the Development (collectively the "Permits"), all appeal periods for said Permits having expired or if appealed, the Developer having received a ruling in favor of the issuance of said Permits;

C. The Development is being subsidized with funding under the MassHousing 80/20 Housing Program, administered by the Massachusetts Housing Finance Agency ("MassHousing");

D. The Developer has specified that 20% of the total approved units ("Affordable Units") in the Development shall be made available for rental at a cost not to exceed 110% of the fair market rent published the U.S. Department of Housing and Urban Development ("HUD"), or such maximum amount as is permissible under the applicable rental subsidy or funding program, and shall be restricted for rental by households earning 50%, or the maximum percentage now or later allowed under this specific program of the median income in the Lowell Metropolitan Statistical Area (the "Base Income"), including but not limited to current participants of the Section 8 Housing Choice Program or similar subsidy program. The Affordable Units shall remain restricted to households at or below the above-stated Base Income and the rent, and other basic utilities, shall not exceed 30% of such Base Income; or such maximum amount as is permissible under the applicable rental subsidy or funding program, and that the Affordable Units will remain restricted for a period of 90 years (the "Affordability Requirement");

E. Pursuant to the guidelines of the MassHousing 80/20 Housing Program, the Comprehensive Permit and a Regulatory Agreement to be executed by the Developer, the distribution of return (profit) to the Developer or to the members or other owners of

Property: 1 Technology Drive, Chelmsford, Ma. 01863

Bk
139

the Developer shall not exceed ten percent (10%) of the Developer's equity in the Project per year as well as other permissible disbursements to the Developer allowed under the said program (the "Limited Dividend Requirement"). The Monitoring Agent acknowledges that irrespective of the term of affordability of the Affordable Units that the Limited Dividend Requirement applies for 15 years from the date of the issuance of the Comprehensive Permit for the Development;

F. Upon the condition of the issuance of a Comprehensive Permit and all other Permits and execution of a Regulatory Agreement, pursuant to the requirements of the same, the Developer has agreed that the Chelmsford Housing Authority (the "CHA" or "Monitoring Agreement") will perform monitoring and enforcement services regarding compliance of the Development with the Affordability Requirement and that MassHousing will perform the monitoring services with respect to the Limited Dividend Requirement.

II. Agreement

In consideration of the mutual covenants and conditions set forth herein, and for one dollar and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and shall be conclusively presumed, the parties, agree as follows:

1. Monitoring Services. Monitoring Agent shall monitor the compliance of the Development with the Affordability Requirement, including, but not limited to:
 - (i) Review of the Developer's substantive compliance of the Development with the Affordability Requirement.
 - (ii) Review of annual reports from the Developer, within 90 days after the end of each calendar year, with respect to compliance of the Development with the Affordability Requirements, which reports shall include copies of tenant income certifications.
 - (iii) Preparation annually of a report (the "Annual Compliance Report") within 120 days after the end of each fiscal year of the Development to the Board of Appeals for the Town of Chelmsford (or its designee) evidencing the compliance of the Developer with the reporting requirements and of the Development with the Affordability Requirement. The Annual Compliance Report shall indicate the extent of noncompliance with the relevant reporting and/or substantive requirements, describe efforts being made by the Developer to remedy such noncompliance and, if appropriate, recommend possible enforcement action against the Developer.

The Monitoring Agent may provide reasonable supplemental monitoring on its own initiative in order to ensure to the extent practicable the compliance of the Development and the Developer with the Affordability Requirement. The services under this

Agreement shall not include any construction period monitoring. The services under this Agreement shall include follow-up discussions with the Developer, if appropriate, after an event of noncompliance and/or review the Developer's efforts to address issues raised in the Annual Compliance Report.

2. Monitoring, Services Fee. The Monitoring Agent shall receive a fee of \$5,000.00 from the Developer at the time of issuance of a Comprehensive Permit for the affordable units, and thereafter on an annual basis the Monitoring Agency shall receive a fee from Developer in the amount of \$100.00 per Affordable Housing Unit, payable with the reports due on March 31st of each year, provided the same is one year from the date of the issuance of the said Comprehensive Permit, and continuing each year thereafter for so long as the affordability restrictions are in effect for any apartments in the Development. Except as may be set forth otherwise in this Agreement, such fee shall constitute payment in full for the services of the Monitoring Agent hereunder over the term of this Agreement.

3. Enforcement Services. In the event of serious or repeated violations of the substantive or reporting requirements of the Regulatory Agreement or Comprehensive Permit relative to the Affordability Requirements and a failure by the Developer to take appropriate actions to cure any such default under the Regulatory Agreement or Comprehensive Permit within sixty (60) days of receipt of written notice of the same or such shorter period as may be set forth in the Regulatory Agreement or the Comprehensive Permit, ("event of noncompliance") in such an event of noncompliance the Monitoring Agent shall have the right, at its discretion, to take appropriate enforcement action against the Developer, including, without limitation, notice to the MassHousing or to the Board of Appeals for the Town of Chelmsford, or legal action to compel the Developer to comply with the requirements of the Regulatory Agreement or the Comprehensive Permit. The Regulatory Agreement provides, inter alia, for payment by the Developer of fees and expenses (including legal fees) of the Monitoring Agent in the event enforcement action is taken against the Developer thereunder or under this Agreement. In the event the Developer fails to rectify said default within the time frame set forth herein, the Monitoring Agent shall be entitled to seek recovery of its reasonable fees and expenses incurred in enforcing the Regulatory Agreement against the Developer and to seek an attachment, including an attachment of the interest of the Developer in the Project, in connection with any action to recover its fees and expenses, and to assert the lien described in the Regulatory Agreement. Nothing in this Agreement shall be construed to require the Monitoring Agent to expend more than \$2,000 in enforcing the provisions of the Regulatory Agreement or to take any particular enforcement action against Developer.

4. Term. The monitoring services in compliance with the Affordability Requirement are to be provided for 90 years.

5. Referral Services. Initial tenants of the Affordable Units and all tenants that fill subsequent vacancies in the same may be referred by the Chelmsford Housing Authority (CHA) subject to any preference the Developer may be required to grant to

Chelmsford residents, employees and their families under the Comprehensive Permit. Thereafter, the CHA will refer potential income eligible applicants for the Affordable Units on an on-going basis to allow the developer to maintain its own list. In the event that the Developer notifies the CHA, in writing, that it has exhausted its list of income eligible applicants, the CHA will begin immediate outreach efforts and provide referrals within a 30-day period. In order to reduce any vacancy loss, the Developer shall notify the CHA when its list has dropped below five income eligible candidates. If after 30 days, the CHA has not been able to referral an income eligible applicant, the Developer shall have the right to locate an income-eligible tenant on its own, subject to any applicable terms and provisions of the Regulatory and Monitoring Agreements executed hereunder. Notwithstanding the ability of CHA to refer tenants for the Affordable Units, the Developer shall apply its own criteria for tenant approval, for all apartments within the Development including but not limited to, credit worthiness, tenant history, and prior rental references, in accordance with recognized fair housing standards, prior to accepting any prospective tenant. As such, the referral of a prospective tenant by CHA or any other public agency shall create no legal presumption as to the Developer's obligation to accept that tenant for an apartment within the Development.

6. Responsibility of Monitoring Agent. The Monitoring Agent shall not be held liable for any action taken or omitted under this Agreement so long as it shall have acted in good faith and without gross negligence.

7. Indemnity. The Developer, for itself and its successors and assigns, agrees to indemnify and hold harmless the Monitoring Agent against all damages, costs and liabilities, including reasonable attorney's fees, asserted against the Monitoring Agent by reason of its performance of the services described in this Agreement excluding only claims, damages, expenses, costs or fees (including attorneys' fees) directly attributable to Monitoring Agent having acted in bad faith and/or with gross negligence for which the Monitoring Agreement shall indemnify and hold harmless the Developer, its officers, employees and agents from all claims, damages, costs and causes of action which are asserted against the Developer. Said indemnification to include all reasonable attorney fees and costs to defend such claims.

8. Applicable Law. This Agreement, and the application or interpretation of this Agreement, shall be governed by the laws of the Commonwealth of Massachusetts.

10. Binding Agreement. This Agreement shall be binding on the parties to this Agreement, their heirs, executors, personal representatives, officers, employees, successors and assigns. Each Party executing this Agreement represents that it possesses proper authority to execute the same to bind their respective party to all of the terms, conditions and obligations contained herein. In the event that the Monitoring Agent shall cease to exist under this Agreement, any successor Monitoring Agent may be appointed by the Board of Appeals for the Town of Chelmsford of equal ability and experience to perform the monitoring services described herein, and the Successor Monitoring Agent shall be bound by all of the terms of this agreement.

11. Headings. All paragraph headings in this Agreement are for convenience of reference only and are not intended to qualify the meaning of the paragraph.

12. PreCondition. The provisions of this agreement shall only become effective upon the issuance of a Comprehensive Permit and all other Permits described or generally referenced herein, the execution of a Regulatory Agreement and the construction of the Development as described herein.

13. In the event there should be a change in any law, regulation or provision of funding program applicable to this Development that affects a term or condition of this agreement, said term(s) or condition(s) or the paragraph(s) containing the same shall be modified to reflect the change in the law, regulation or provision and the terms, conditions and provisions of this agreement shall be interpreted and enforced in a manner consistent with said change.

IN WITNESS WHEREOF, the parties to this Agreement have caused this Agreement to be duly executed as of this 13th day of ~~April~~ ^{May}, 2004.

PRINCETON COMMONS LLC

By: _____

Princeton MGR, Inc., its Manager

By: Andrew M. Chaban

Title: President, and not individually

CHELMSFORD HOUSING AUTHORITY

By: _____

David J. Hedison, Executive Director

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this 13th day of ~~April~~ ^{May}, 2004, before me, the undersigned notary public, personally appeared Andrew M. Chaban, proved to me through satisfactory evidence of identification, being a driver's license, to be the person whose name is signed above, and acknowledged the foregoing to be signed by him voluntarily for its stated purpose, as the duly authorized President of Princeton MGR Inc.

Notary Public: Jeffrey M. Smith
My Commission Expires: 2/13/09

Qualified in the Commonwealth of Massachusetts

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this 13th day of ~~April~~ ^{May}, 2004, before me, the undersigned notary public, personally appeared David J. Hedison, proved to me through satisfactory evidence of identification, being a driver's license, to be the person whose name is signed above, and acknowledged the foregoing to be signed by him voluntarily for its stated purpose, as the duly authorized Executive Director of the Chelmsford Housing Authority.

Notary Public: _____
My Commission Expires: _____

Qualified in the Commonwealth of Massachusetts

Charene M. McGuire, Notary Public
My Commission Expires 8/15/08

Exhibit A

All that tract or parcel of land lying and being in the Town of Chelmsford, Middlesex County, Massachusetts depicted as Lot 6A on the plan entitled "Subdivision Plan of Land in Chelmsford, Massachusetts, Prepared for: Nordblom Companies, Prepared By: Vanasse Hangen Brustlin, Inc.," dated February 3, 1999 and recorded with the Middlesex North District Registry of Deeds at Plan Book 200, Plan 19 and containing 5.666 acres as shown on said plan.

Together with the right to use Technology Drive and Research Place as shown on the above referenced plan for those purposes for which roadways may be used in the Town of Chelmsford, including but not limited to the right to pass, and repass at any time and from time to time for access and egress to the Premises, as well as the right to construct, install, maintain, repair, rebuild and operate poles, underground conduits, pipelines, pedestals and lines and appurtenances for electricity, water, sewer, telephone, cable and other utilities in Technology Drive and Research Place and to connect the Premises to said utilities and to the utilities already existing in Research Place and to connect with any and all utilities in said roadways.

Said Parcel 6A is conveyed subject to and with the benefit of the rights, restrictions, easements and agreements of record including but not limited to the following:

1. Subject to the Utility Easement as shown on the above referenced plan;
2. With the benefit of the nonexclusive easement for passage, and the laying and maintaining of a roadway as set forth in that certain instrument entitled "Roadway Easement" between Stonegate Development Corporation and Grantor dated June 25, 1998 and recorded with said Registry of Deeds in Book 9377, Page 99;
3. Subject to and with the benefit of the matters contained in that certain instrument entitled "Drum Hill Technology Center Declaration of Easements and Owners Associated" dated June 25, 1998 and recorded with said Registry of Deeds in Book 9377, Page 106;
4. Subject to and with the benefit of the matters contained in that certain instrument entitled "Declaration of Covenants Drum Hill Technology Center" dated June 25, 1998 and recorded with said Registry of Deeds in Book 9377, Page 133;

END OF DOCUMENT

Richard P. Howe Jr.