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CIP/MCRT LONGVIEW MEADOWS LLC
15 New England Executive Park
Burlington, MA 01803

January 10, 2014

Town of Acton
Board of Selectmen
472 Main Street
Acton, MA 01720
Attn.: Town Manager

Re: Development Agreement dated as of October 6, 2008, by and between WEST CONCORD DEVELOPMENT LLC, and the TOWN OF ACTON, acting by and through its Board of Selectmen (the "Development Agreement")

Dear Board Members and Town Manager,

We refer to the above-described Development Agreement entered into in connection with the development of a multifamily housing community by West Concord Development LLC on Old Powdermill Road in Concord (the "Development"). West Concord Development LLC is an affiliated entity and the predecessor of the current owner of the Development, CIP/MCRT Longview Meadows LLC (the "Developer"). A copy of the Development Agreement is attached to this letter for your reference.

Pursuant to Section 3.6 of the Development Agreement, we hereby request that the Town of Acton confirm the Developer has complied with and/or satisfied the Developer's obligations under the Development Agreement and that there exists no default thereunder. Please confirm the Town's agreement with the foregoing statement by having the enclosed copy

of this letter executed in the space provided below and returning the original Town signatures to Developer at 1 Nathan Pratt Drive, Concord, MA 01742, with the understanding that Developer may rely on the same for all purposes.

CIP/MCRT LONGVIEW MEADOWS LLC, a
Delaware limited liability company

By: MCRT/NE 104 Longview Meadows LLC,
a Delaware limited liability company,
its Manager

By: MCRT Longview Meadows LLC,
a Delaware limited liability company,
its Manager

By: Robert D. Hewitt (cm)
Name: Robert D. Hewitt
Title: Managing Director

ACKNOWLEDGED AND CONFIRMED

As of January __, 2014:

TOWN OF ACTON BOARD OF SELECTMEN

By: _____
Name: _____
Title: _____

Encl.

cc: Gregor McGregor, Esquire, McGregor & Associates, PC

DEVELOPMENT AGREEMENT

This Development Agreement (this "Agreement") is entered into as of this 6th day of October, 2008, by and between WEST CONCORD DEVELOPMENT LLC, a Delaware limited liability company (the "Developer"), and the TOWN OF ACTON, acting by and through its Board of Selectmen, (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 potential 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, with access off of Sudbury Road in the Town of Acton, as more particularly described on Exhibit A attached hereto (the "Site") and, in general, to promote the creation of affordable housing and the public welfare in the Town of Acton.

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 Acton Zoning Board of Appeals (the "Acton ZBA") in connection with access to the Project. The Project-related work in Acton involves primarily improvements to Sudbury Road and Powdermill Road. The Project includes 350 units of multi-family housing in Concord. In order to mitigate various potential impacts of the Project on the Town and to promote the creation of affordable housing and the public welfare, the Developer has agreed to pay for certain improvements as specified herein.
- 1.2 Construction of the Project is contingent on the granting of a comprehensive permit from the Acton ZBA, the granting of an order of conditions by the Acton Conservation Commission, permits and approvals from the Town of Concord 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 Acton Board of Selectmen agree not to oppose the Developer's requests for the Required Permits in order to effectuate the terms and intent of this Agreement. Nothing contained herein shall be deemed to be a guarantee of the successful or affirmative vote on any such Required Permit.
- 1.4 The Developer and the Town incorporate by reference an agreement, executed by the parties on August 14, 2008, which expresses the intent of the parties to enter into this Agreement and outlines the terms of this Agreement.

2. MITIGATION

2.1 In conjunction with the development of the Project, and to mitigate potential impacts of the development, the Developer agrees to contribute to the Town (the "Mitigation Payment") the following sums for the following purposes:

- a. \$500,000 to the Acton Community Housing Program Fund, a 501(c)(3) organization;
- b. \$250,000 for sidewalk construction in Acton in the vicinity of the Project (this \$250,000 portion of the Mitigation Payment does not include the construction of sidewalks along Sudbury Road and Acton's Powdermill Road (Route 62), which are improvements that the Developer has agreed to undertake in its written submissions to the ZBA independent of this Agreement);
- c. \$150,000 for unanticipated costs associated with the Project, to be used as determined by the Acton Board of Selectmen.

2.1.1 The Mitigation Payment amount shall remain the same for a period of five (5) years. Said five (5) year period shall commence on the date of issuance of a Comprehensive Permit from the Acton ZBA approving the Project, which permit and all conditions therein or related thereto must be consistent in all material respects with the Project as applied for by the Developer and as previously approved by the Concord ZBA and in all other respects acceptable to the Developer. After the expiration of said five (5) year period, the Mitigation Payment amount (or any portion thereof that remains unpaid at that time), shall be increased by the "CPI" from the date of issuance of the Comprehensive Permit by the Acton ZBA. "CPI" means the Consumer Price Index For All Urban Consumers (CPI-U) for the Boston area published by the Bureau of Labor Statistics, U.S. Department of Labor. If the Bureau of Labor Statistics should cease to publish such an Index in its present form and calculated on the present basis, a comparable Index or an Index reflecting change in the cost of living determined in a similar manner shall be utilized to calculate the payments due hereunder.

2.1.2 The Mitigation Payment amount is over and above any costs or payments associated with infrastructure improvements or other requirements upon which any of the Required Permits are conditioned. Nothing contained herein shall be deemed to limit the Developer's rights to appeal any condition of the Comprehensive Permit that renders the Project uneconomic. *The Developer agrees not to appeal solely on*

the basis of the Mitigation Payment.
2.1.3 The Mitigation Payment shall be due and payable pursuant to the following schedule:

- a. One-third (1/3) shall be paid upon the issuance of an occupancy permit for the Project's fiftieth (50th) residential unit;
- b. One-third (1/3) shall be paid upon the issuance of an occupancy permit for the Project's one hundredth (100th) residential unit;

- c. One-third (1/3) shall be paid upon the issuance of an occupancy permit for the Project's one hundred and fiftieth (150th) residential unit.
- 2.2 Notwithstanding any other provision of this Agreement, the obligation of the Developer to pay the Mitigation Payment hereunder shall 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 350 rental units.
- 2.3 Upon becoming effective as aforesaid, each portion of 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 within ten (10) days of its respective due date.
- 2.4 In the event that, prior to issuance of an occupancy permit for the Project's one hundred and fiftieth (150th) residential unit, the Town delivers to the Developer all necessary permissions, easements, and any other authorization required to allow construction of sidewalks in Acton (other than the sidewalks that the Developer has agreed in its written submissions to the ZBA to construct along Sudbury Road and Acton's Powdermill Road (Route 62) independent of this Agreement), the parties may discuss making the \$250,000 payment (or a portion thereof) for the sidewalk component of the Mitigation Payment (as described in paragraph 2.1(b) above) "in-kind," meaning that the Developer would construct the sidewalks during construction of the Project. In the event that Developer agrees to make the sidewalk component of the Mitigation Payment, or any portion thereof "in-kind," the Developer shall document the actual cost of constructing any sidewalk(s) that it builds, and the Town shall be entitled to receive the balance, if any, between the cost to the Developer and the \$250,000 portion of the Mitigation Payment for sidewalks, to be used by the Town for construction of additional sidewalks to offset impacts from the Project.

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 to an assignee or transferee of the Required Permits. 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 Acton 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 Acton
472 Main Street
Acton, MA 01720
Attn: Town Manager

with a copy to

McGregor & Associates, P.C.
15 Court Square - Suite 500
Boston, MA 02108
Attn: Gregor McGregor

Developer: West Concord Development LLC
c/o Trammell Crow Residential
35 Corporate Drive, Suite 400
Burlington, MA 01803
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.

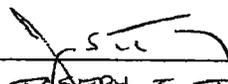
3.7 Amendments to this Agreement must be in writing and signed by both parties. Amendments to the terms of this Agreement may be agreed to on behalf of the Town by the Board of Selectmen. This Agreement shall be null and void and of no further force and effect if the

Developer withdraws its application for a comprehensive permit from the Acton ZBA, or advises the Acton ZBA that it relinquishes said permit.

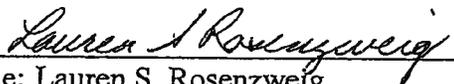
- 3.8 This Agreement is an enforceable contract, and shall be governed by the laws of the Commonwealth of Massachusetts. The parties hereby consent to non-exclusive jurisdiction of the courts of the Commonwealth of Massachusetts sitting in the Counties of Middlesex or Suffolk.

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

WEST CONCORD DEVELOPMENT, LLC

By: 
Name: JOSEPH S. TOZ
Its: Vice President of its General Partner
Hereunto Duly Authorized

TOWN OF ACTON BOARD OF SELECTMEN

By: 
Name: Lauren S. Rosenzweig
Its: Chair
Hereunto Duly Authorized

Sept 10, 2015

STATE OF NEW YORK

County of NASSAU, ss.

On this 3rd day of October, 2008, before me, the undersigned notary public, personally appeared Joseph S. Toca, 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 Vice president of West Concord Development, LLC.
of his GP

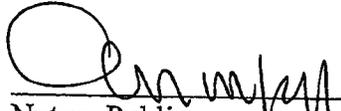
Esther Levi
Notary Public
My Commission Expires: 12/7/2011

ESTHER LEVI
NOTARY PUBLIC STATE OF NEW YORK
NASSAU COUNTY
LIC. #01LE6099868
COMM. EXP. 12/7/2011

COMMONWEALTH OF MASSACHUSETTS

County of Middlesex, ss.

On this 6 day of October, 2008, before me, the undersigned notary public, personally appeared Lauren S. Rosenzweig, proved to me through satisfactory evidence of identification, which was known to me, 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 Acton Board of Selectmen.



Notary Public
My Commission Expires: 10/10/2015

EXHIBIT A

Description of Premises

Parcel 1

The land, together 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 Corporation, Scale 1" = 40', February, 1982" by Charles A. Perkins Co., Inc., Civil Engineers and Surveyors, recorded in the Middlesex South Registry of Deeds with Deed recorded February 1, 1984 at 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), on 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 (869.99).

Said premises contain 20.08 acres, more or less, according to said plan.

Subject to and with the benefit of rights of way and easements of record, the same as now are in force and applicable. 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 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

Property Address: Old Powder Mill Road Concord

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 al., Trustees, one thousand one hundred sixty feet, more or less; and
- SOUTHEASTERLY** by said land of Marshall B. Dalton, et al., Trustees, three hundred feet.

Being the premises described in deed dated May 23, 1968 recorded with said Deeds, Book 11511, Page 662.

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 (286.00) feet;
- 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.

For title reference see deed from Electronics Space Systems Corporation dated January 16, 1996 and recorded with said Deeds on January 19, 1996 at Book 25984, Page 26.