

JOINT DEVELOPMENT AGREEMENT St. John's Project

THIS JOINT DEVELOPMENT AGREEMENT (this "Agreement") is dated as of 7.1.2020, between The Community Builders, Inc. ("TCB"), a nonprofit corporation organized and existing under the laws of the Commonwealth of Massachusetts and St. John's Episcopal Church ("St. John's"), a nonprofit corporation organized and existing under the laws of the Commonwealth of Massachusetts.

Background

St. John's owns that certain land located at 237 Pleasant St. Franklin, MA more particularly described in Exhibit A (the "Property"). St. John's plans to develop a portion of the land as affordable housing. TCB is an experienced nonprofit developer, owner and manager of affordable and mixed income housing. St. John's and TCB intend to work together to refine and implement a development plan, which is currently anticipated to include the development of at least 40 units of affordable housing (as revised from time to time, the "Development Plan"). As part of the process the possibility of a "land swap" for a portion of the adjacent DelCorte Conservation Area with the Town of Franklin will be explored.

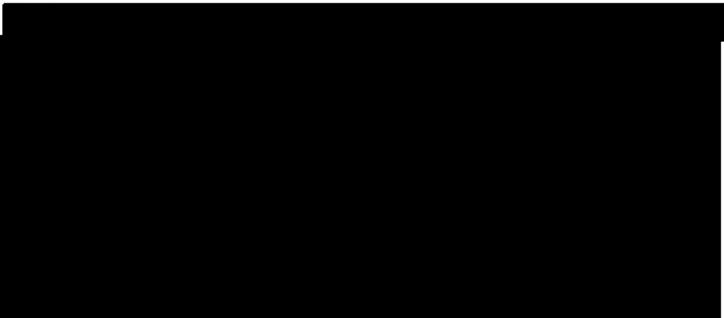
St. John's and TCB wish to enter into this Agreement to set forth the terms under which they will work together to implement the Development Plan, as it may be revised from time to time.

Now, therefore, in consideration of the mutual obligations set forth below and for other good and valuable consideration, and intending to be legally bound, the parties agree as set forth below.

Agreement

- Agreement to Work Cooperatively: Roles TCB and St. John's agree to work cooperatively in good faith to implement the Development Plan and agree to carry out the undertakings and obligations set forth in this Agreement. In general, TCB will have the role of "developer" and be responsible for all development activities, including financial structuring, engaging third party consultants and contractors, assembling financial resources, and carrying out the development and construction of the Project. St. John's will provide the existing land (to be acquired by the Ownership Entity, as it is defined below), assist with refining the Development Plan, selection of major third party consultants, securing financial resources, and play a key role in the community process and zoning approvals needed for the project, and provide a long term stewardship role for the project. All such activities will be carried out exclusively in the name of the party undertaking them, or in the name of the General Partner and/or the Ownership Entity (as such terms are defined below). Except as otherwise explicitly provided, nothing in this Agreement (or otherwise) will be deemed to constitute either party a partner, agent, or legal representative of the other party or to create any fiduciary relationship between the parties.
- Formation and Control of Ownership Entities The development to be constructed on the Property (the "Project") will be owned and operated by a single-purpose Massachusetts limited partnership or limited liability company (the "Ownership Entity") which will be controlled by a single-purpose Massachusetts general partner or managing member entity (referred to, in either case, as the "General Partner") controlled by TCB. The parties will jointly determine the structure of those entities and negotiate organizational documents appropriate to the Project financing and the requirements of the Project financing, but intend that ownership of the General Partner will be jointly controlled by TCB and St. John's in a 49% 51% split, with TCB as the minority member and St. John's as the majority member. The governing document of the General Partner will stipulate that all major decisions of the Ownership Entity relating to the development and operation of the Project will require the joint agreement of TCB and St. John's, provided, however, that the parties intend to agree upon, negotiate

and set forth specific areas of primary responsibility and authority as appropriate to each party's capacities, roles and risks with respect to the Project, and provided further that in the event the parties cannot agree on a major decision with respect to the Project, if TCB makes the reasonable determination that a delay in such decision could materially impact the timely or satisfactory completion of the Project in accordance with the applicable financing documents or reasonably believes that failure to adopt the major decision is likely to give rise to liability or exposure under its guarantees to its lenders or investors, then TCB will have the right to make a decision without St. John's consent after reasonable notice to St. John's.

3. Financing. TCB will take the lead, with assistance from St. John's in applying for, arranging, and performing all activities related to any predevelopment, construction and permanent loans for the Project, and New Hope Community Capital, Inc., a Massachusetts nonprofit which provides equity syndication services to TCB (and which charges a fee for those services), will be responsible, in consultation with TCB, for recruiting and selecting tax credit equity investor(s) acceptable to the parties. Funds required for predevelopment expenses that cannot be funded with third party predevelopment financing will be advanced by TCB as a loan, to be repaid from proceeds of construction financing.
4. Development Activities. As noted in Section 2 above, major decisions will be further defined in the governing document of the General Partner, however TCB and St. John's initially agree that the following items constitute major decisions, requiring the approval of both parties: (i) selection of the architect, (ii) selection of the program for the building or buildings, (iii) selection of key architectural design elements, (iv) determining the local permitting and zoning approach, (v) designing the community engagement approach, and (vi) designing the social services plan. Notwithstanding the foregoing, TCB will be primarily responsible for day to day real estate development tasks, including but not limited to: (vii) financial structuring and planning; (viii) assembly of financing; (ix) the negotiation and closing of financing arrangements; (x) selection of third-party consultants/professionals (other than the architect); (xi) selecting the investor(s), lender(s), general contractor; (xii) staffing the zoning, permitting and entitlements process; (xiii) construction management; (xiv) managing the community engagement process; (xv) soliciting and securing of community support (with St. John's playing a large role in this part of the process as well); and (xvi) procuring all licenses, approvals, clearances, or other cooperation from the Commonwealth of Massachusetts, federal agencies, and other local governing bodies.
5. Development Fee and Cash Flow 
6. Property Acquisition - Ground Lease. The parties currently contemplate that the Ownership Entity will enter into a 99-year ground lease of the Property with St. John's, upon terms mutually agreeable to the parties that fairly compensate St. John's for the value of the ground lease without rendering the project financially infeasible. To that end, the parties agree to negotiate in good faith the method for calculating the value of the ground lease. In order to evidence formal "site control" in connection with applying for funding for the Project, St. John's will timely enter into an option agreement or intent to lease agreement with the Ownership Entity for lease of the Property on the terms described in this section or substantially similar terms.

7. Guaranties. All guaranties, including completion, tax credit, construction loan, and operating guaranties during the development and operating phases will be the sole responsibility of TCB. Final details and aggregate amounts of these guaranties will be determined through negotiations with the Project's equity investor and lenders. TCB reserves the right to negotiate that such guaranties will be limited as necessary to preserve TCB's charitable status. St. John's will not be required to provide any guaranties, nor to provide any cash needed to cover any development or operating period shortfalls. St. John's will have no financial risk associated with the development and operation of the project, except for the risk of development or operating shortfalls that cause the project to defer the developer fee and/or ground lease payments due to St. John's.
8. Management of the Project. TCB will provide property management services for the completed Project. The Ownership Entity will enter into a management agreement, on commercially reasonable terms, with TCB for the management of the Project. The Ownership Entity, acting through the management agent, will be responsible for marketing the Project to potential residents and for initial lease-up following the requirements of the LIHTC program, HUD requirements, and any other applicable agreements, law, or regulations, and for managing the Project for the full term of the tax credit compliance period.
9. Provision of Resident Services. Assuming that TCB and St. John's agree that resident services are part of the program of the project, and provided that there is sufficient income from operating budget and/or other sources to cover the cost, TCB will be responsible for providing Resident Services to the residents, through its Community Life staff.
10. Disadvantaged Business and Labor Participation. The parties jointly desire to maximize the extent to which Minority Business Enterprises ("MBEs"), Women-Owned Business Enterprises ("WBEs") and local small or disadvantaged business entities ("LSDBEs"), are able to participate in the Project, either independently or through business associations, such as joint ventures, between minority and non-minority firms. To achieve greater participation of MBEs, WBEs and LSDBEs in the Project, the parties will implement the following steps with respect to contracts relating to the development phase:
 - (a) Placing qualified MBEs and WBEs and LSDBEs on solicitation lists;
 - (b) Dividing the total requirements when feasible, into smaller tasks or quantities to permit maximum participation by MBEs and WBEs and LSDBEs;
 - (c) Establishing delivery schedules where possible, in a manner that encourages participation by MBEs, WBEs and LSDBEs;
 - (d) Using the services and assistance of the U.S. Small Business Administration, the Minority Business Development Agency of the U.S. Department of Commerce, any local minority assistance organizations and various state and local government small business agencies; and
 - (e) Jointly establishing goals with respect to subcontracting and hiring, based in part on TCB's identified Opportunity Contracting and Hiring (OCH) goals detailed in Exhibit B which may include awarding a particular percentage of the dollar value of the construction contract for the development phase to MBE, WBE and LSDBE businesses and/or establishing a percentage of the labor hours in connection with the construction contract for the development phase to be performed by minority, female or Section 3 workers; and
 - (f) Jointly establishing goals with respect to hiring of site staff and vendors within Property Management; and

(g) Taking such additional steps as may be required by the Project's funders or regulators.

11. Term. The term of this Agreement will begin on the date first stated above (the "Commencement Date") and will continue in force and effect until the sooner of (a) the tax-credit equity and construction loan closing for Project, which will include the acquisition of the Property from St. John's by the Ownership Entity, or (b) termination under this Section 12. Either party may terminate this Agreement for default by written notice giving the allegedly defaulting party at least 30 days (or such longer period, not to exceed 90 days, as may be reasonably required to cure the default), stating clearly the reasons for the proposed termination. For this purpose, a "default" means the material and continuing failure to carry out any specific obligations under this Agreement to act in good faith and cooperate with the other party to pursue the Project in an expeditious manner. Notwithstanding the foregoing or any other provision to the contrary contained herein, if, despite the parties' diligent efforts to agree on a development program and/or to identify viable funding for the Project, it is finally determined, in TCB's sole but reasonable discretion, that the Project is not feasible, TCB may terminate this Agreement upon written notice to St. John's. Upon termination of this Agreement, the obligations of TCB and St. John's will cease and be of no further effect; provided, however, that any obligation for payment from either party to the other under arising from the conduct of the parties pursuant to this Agreement prior to the termination will not be affected by the termination and will remain in effect.
12. Assignment. This Agreement may not be assigned by either party without the prior written consent of the other party, which ay be granted or withheld in such party's sole discretion.
13. Indemnification with Respect to Activities of Ownership Entity. To the fullest extent permitted by law, except as otherwise provided in the Project's closing documents, the Ownership Entity performing activities described in this Agreement will indemnify and hold harmless TCB, St. John's and their respective officers, directors, agents and employees from and against all claims, damages, losses and expenses arising out of or resulting from the activities of the Ownership Entity and the development and operation of the Project.
14. Notice. All notices and other formal communications which either party may give to the other under or in connection with this Agreement must be in writing, will be deemed delivered upon receipt (except that notice provided by email will only be deemed delivered upon confirmation of receipt, of which auto-reply is insufficient), and may be sent by any of the following methods: hand delivery; reputable overnight courier; certified mail, return receipt requested; or email transmission. Either party may change its address for notice by giving notice as set forth in this Section 15.

To TCB

The Community Builders, Inc.
185 Dartmouth Street, Suite 900
Boston, MA 02116
Attention: Regional Vice President of Development, New
England
Phone: 857-221-8645
Email: andy.waxman@tcblnc.org

With a copy to: The Community Builders, Inc.

185 Dartmouth Street, Suite 900
Boston, MA 02116
Attention: General Counsel
Phone: 857-221-8639
Email: carrie.tennant@tcblnc.org

To St. John's.

St. John's Episcopal Church of Franklin
PO Box 287
Franklin, MA 02038

Attention: ~~Jane Farrell~~, Senior Warden

Phone: ~~508-526-2338~~

Email: ~~farrellj@northemmitwork.com~~

With a copy to: Episcopal Diocese of Massachusetts

138 Tremont Street

Boston, MA 02111

Attention: The Rev Canon William Parnell

Phone: 617-482-4826 ext 205

Email: bparnell@diomass.org

16. Waiver. The failure of any party to insist in any one or more cases upon the strict performance of any of the obligations under this Agreement or to exercise any right or remedy contained will not be construed as a waiver or a relinquishment for the future of such obligation, right or remedy. No waiver by any party of any provision of this Agreement will be deemed to have been made unless set forth in writing and signed by the party to be charged.
17. Governing Law. This Agreement will not be construed against the party who prepared it but will be construed as though prepared by both parties. This Agreement will be construed, interpreted, and governed by the laws of the Commonwealth of Massachusetts.
18. Multiple Counterparts. This Agreement may be executed in counterparts, and may be executed (and will be considered binding) by delivery of a so-called .pdf document or other electronic format which evidences the party's intent to "execute and deliver" the document.
19. Severability. In the event that any provision of this Agreement will, for any reason, be determined to be invalid, illegal, or unenforceable in any respect, the parties hereto will negotiate in good faith to agree to such amendments, modifications, or supplements of or to this Agreement and take such other appropriate actions as will, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the parties as reflected, and the other provisions of this Agreement will, as so amended, modified, or supplemented or otherwise affected by such action, remain in full force and effect.
20. Further Assurances. Each party will execute and deliver such other and further documents as may be reasonably necessary or proper to advance the Project as contemplated by this Agreement, including without limitation applications, certifications, and purchase and sale agreements.
21. Certain Approvals. Unless otherwise stated, all approvals or consents required of either party hereunder will not be unreasonably withheld, conditioned or delayed.
22. No Partnership Created; No Third-party Beneficiaries. The parties agree that nothing contained in this Agreement or any other agreement or contract between them, nor any act of ICB or St. John's, will be deemed or construed to create any relationship of third party beneficiary, principal and agent, limited or general partnership, general or co-venturer, or any association or relationship affecting the parties, other than as expressly set forth in this Agreement.

- 23 Mediation, Litigation. In the event that the parties are unable to agree on any material decision affecting the affairs contemplated in this Agreement, any party may notify the other party that unless the issue is resolved within five business days from sending the notice, the matter will be referred to mediation. If the issue is not timely resolved following such notice, any party may refer the matter to mediation as provided above, which mediation will be completed and a decision rendered within thirty days unless the parties mutually agree to a later date or unless the circumstances warrant a reduced period and the mediator so finds. The decision of the mediator will not be final, binding and a conclusive judgment on the parties unless the parties agree in writing to such a binding judgment by the mediator. The cost of mediation will be borne equally by the parties. Notwithstanding the preceding sentences of this Section 23, either party at all times will have the right to commence and prosecute litigation with respect to any disputed matter in any court of competent jurisdiction.

IN WITNESS WHEREOF, the parties hereto have executed this Joint Development Agreement under seal with the intent to be legally bound as of the date and year first written above.

ST. JOHN'S EPISCOPAL CHURCH OF FRANKLIN

By:

Name: ~~Samuel Farrell~~ *Kate Verrey*
Title: Senior Warden

THE COMMUNITY BUILDERS, INC.

DocuSigned by:

By:

Name: *Andy Waxman*
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Title: Authorized Agent