



TOWN OF CHAPEL HILL

405 Martin Luther King Jr. Blvd,
Chapel Hill, NC 27514-5705

www.Townofchapelhill.org

June 28, 2017

Mr. Tim Jezisek
Vice President of Development
Grubb Properties
Email: TJezisek@grubbproperties.com

Subject: Glen Lennox Development Agreement Minor Modification 2017-1 APPROVAL

Mr. Jezisek:

I am writing in response to your request for a Minor Modification to the Glen Lennox Development Agreement to clarify the decision-making authority and review process for subdivisions. Specifically, your request proposes to revise the Development Agreement to create a new section that explicitly authorizes administrative review of all subdivision requests that are not inconsistent with the Development Agreement.

In my May 16th letter to you I determined that the proposed change is a *Minor Modification*, and therefore may be decided by the Town Manager. Furthermore, the modification is publicly posted, fulfilling the requirements of 4.10.i, and notice was provided to the Town Council as prescribed in 4.10.j.

After reviewing this request, I hereby approve *Minor Modification* 2017-1, which is memorialized in the Minor Modification Number 1 approval document provided with your request, and attached hereto.

Sincerely,

A handwritten signature in blue ink, appearing to read "Roger L. Stancil", written over a circular stamp.

Roger L. Stancil
Town Manager

MINOR MODIFICATION NUMBER 2017-1

TO THE DEVELOPMENT AGREEMENT BY AND BETWEEN

THE TOWN OF CHAPEL HILL, NORTH CAROLINA AND

GLEN LENNOX APARTMENTS, LLC AND GLEN LENNOX SHOPPING CENTER
OWNER, LLC

This Minor Modification Number 1 to the Development Agreement between Glen Lennox Apartments, LLC and Glen Lennox Shopping Center Owner, LLC (hereinafter the "Owners") and the Town of Chapel Hill, North Carolina (hereinafter the "Town") is made and entered into as of the 17th day of ~~May~~, 2017. *June July*

WITNESSETH:

WHEREAS, the Owners and the Town entered into a Development Agreement (the "Agreement") dated December 10, 2014, relating to the redevelopment of the Glen Lennox Shopping Center Tract and the Glen Lennox Apartment Tract situated at the intersection of Highway 54/Raleigh Road and Highway 15-501/Fordham Boulevard (the "Properties"); and

WHEREAS, after signing the Agreement, the Owners have proceeded with efforts to redevelop the Properties, including installation of infrastructure consistent with the Agreement; and

WHEREAS, the Owners have identified a need to subdivide a parcel within the Properties and has recognized the Agreement does not explicitly address the process for subdivision; and

WHEREAS, the Owners seek to bring certainty to the subdivision process consistent with the purpose and intent of the Agreement by clarifying that major or minor subdivisions within the Properties covered by the Agreement follow the process contained in the Town of Chapel Hill Land Use Management Ordinance (LUMO) Section 4.6.3(a)(1) Minor Subdivision – Administrative Review; and

WHEREAS, the Parties agree that such process shall be contained in Section 4.8 of the Agreement captioned Local Development Permits/Approvals and provide that any such subdivision shall be subject to the terms of the Agreement and the LUMO as of the effective date of the Agreement as required in Section 4.6 of the Agreement; and

WHEREAS, the Owners do not seek to modify other processes established by the Town through its LUMO such as those applying to the establishment of condominiums and public street dedication nor does the Owner seek to alter the approved public street network as reflected in Exhibit B to the Agreement; and

WHEREAS, on April 27, 2017, the Owners submitted a request for a minor modification to the Agreement (Minor Modification Number 1) in order to clarify the process for subdivisions within the Properties; and

WHEREAS, the Town received this revised request on April 27, 2017 and the Town Manager classified the request as a minor modification pursuant to Section 4.10(g) of the Agreement; and

WHEREAS, the Town Manager has reviewed the request for Minor Modification Number 1 and determined that it should be approved based on the terms of the original Agreement and the standards set forth in the LUMO; and

WHEREAS, this document shall constitute the memorialization of such approval by letter from the Town Manager and acknowledgement by the Developer Owners as described in Section 4.10(g) of the Agreement.

NOW, THEREFORE, the Owner and the Town, by and through their undersigned authorized representatives, and pursuant to Section 4.10(g) of the Agreement, hereby enter into this Minor Modification Number 1 to the Agreement as follows:

1. The heading in the Agreement for Section 4.8 shall be modified so that it is captioned "Local Development Permits/Approvals" and contain the following subsection (c):

All subdivision requests, minor or major, made to facilitate development of the Property covered by the Development Agreement and which are not inconsistent with the Development Agreement shall follow the procedures in the LUMO under Section 4.6.3(a)(1) for Minor Subdivision – Administrative Review.

IN WITNESS WHEREOF, the parties hereby set their hands and seals effective the date first above written.

Town of Chapel Hill

By: 
Title: Town Manager

Glen Lennox Apartments, LLC (f/k/a FCP Glen Lennox, LLC)

a Delaware limited liability company

By: Grubb Fund Management, Inc., Manager

By: Grubb Management, Inc., Manager

By: 
Title: CEO

Glen Lennox Shopping Center Owner, LLC (f/k/a Glen Lennox Shopping Center, LLC)

A Delaware limited liability company

By: GRUBB FUND MANAGEMENT, INC., Manager

By: GRUBB MANAGEMENT, INC., a North Carolina corporation, its manager

By: 

Title: CEO



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April 26, 2017

Mr. Roger Stancil, Town Manager
Town of Chapel Hill
405 Martin Luther King, Jr. Blvd
Chapel Hill, NC 27514

Re: Request for Minor Modification to Development Agreement

Dear Mr. Stancil,

On behalf of FCP Glen Lennox, LLC and Glen Lennox Shopping Center, LLC ("Owners"), I am writing to request a minor modification to the Development Agreement (the "Agreement") between the Owners and the Town of Chapel Hill. Section 4.10(g) provides that all minor modifications to the Development Agreement require notice to the Town Council after review and approval by the Town Manager.

The proposed minor modification seeks to clarify one aspect of the Agreement. Although the Agreement covers a variety of approvals in connection with "Development of the Property," it does not specifically mention subdivisions. Since subdivisions are an integral part of development activities and the Agreement specifically contemplates conveyance of parcels (which typically require a subdivision), subdivisions should be included in the Agreement. Specifically, we propose explicitly addressing the process for subdivisions by adding a subsection (c) to Section 4.8 Local Development Permits, which relates to subdivisions made under the Agreement. Attached is a blackline of the Agreement, showing the proposed minor modification.

We have also included a draft letter memorializing such proposed minor modification for signature by the Town Manager and the Owners as required by Section 4.10(g) of the Agreement.

If you have any questions or would like for us to provide you with any additional information, please let me know.

Sincerely,

MORNINGSTAR LAW GROUP

A handwritten signature in black ink that reads "Mack Paul". The signature is fluid and cursive, written over the printed name.

Mack Paul



Mack Paul | Partner
630 Davis Drive, Suite 200
Morrisville, NC 27560
919-590-0377
mpaul@morningstarlawgroup.com
www.morningstarlawgroup.com

MEMORANDUM

TO: Roger Stancil, Town Manager, Chapel Hill

FROM: Mack Paul on behalf of Grubb Properties

DATE: April 27, 2017

RE: Minor Modification to the Glen Lennox Development Agreement

I. Issue

The owners of Glen Lennox, FCP Glen Lennox, LLC and Glen Lennox Shopping Center, LLC (the "Owners"), seek to subdivide a parcel of land within Glen Lennox as part of the development process. The Development Agreement (the "Agreement") entered into between the Town of Chapel Hill and the Owners contemplates that subdivisions will occur in connection with development of the property under the Agreement. For example, the Agreement defines "parcel" and the conveyance of parcels to third parties, for which a subdivision is a prerequisite. Article 4 of the Agreement addresses permits and other approvals in connection with development of the property. However, it does not expressly mention subdivisions. To avoid any ambiguity, the Owner proposes a modification to the Agreement to clarify for all parties the process for subdivisions within Glen Lennox by adding a subsection that defines the process for subdivision approval. Based on the reasons stated below, the proposed revision to the Agreement to clarify the process for subdivisions would constitute a Minor Modification to the Agreement, which is subject to approval by the Town Manager. After thorough internal review and discussions with Town staff, we believe that such amendment is consistent with the intent of the Agreement and should be approved.

II. Modifications to the Agreement

Based on the terms of the Agreement, a revision clarifying the process for subdivision would constitute a Minor Modification. Section 4.10 of the Agreement provides that "the terms of the Agreement may be amended or modified by the mutual consent of the Parties...." This section defines whether an amendment constitutes a Major Modification or a Minor Modification as well as the process relating to each type of modification.

The Agreement clearly enumerates those actions which constitute a “Major Modification.” All of the actions constituting a Major Modification involve an expansion to the geographic area of the Glen Lennox development or an expansion to the development program as reflected in the Glen Lennox Area Neighborhood Conservation District Plan for CD-8C and as depicted in Exhibit H to the Agreement. For example, 4.10(a) identifies “a substantial change in the boundaries of Property subject to this Agreement” as a major amendment. Sections 4.10(b) through (f) all relate to increases in development intensity as reflected in impervious surface, building height, setbacks and trip generation. None of these triggers for a Major Modification relates in any way to the development process such as a subdivision.

Section 4.10(g) states that “All other amendments or modifications to this Agreement are considered Minor Modifications and therefore would not require the procedures for adoption of a development agreement.” In other words, any amendment to the Agreement that does not fall within the parameters set forth for a Major Modification is automatically defined as a Minor Modification no matter what that proposed amendment may be. This conclusion is further supported by Section 4.10(h), which provides that “... some proposed changes to this Agreement that do not meet the threshold to constitute a Major Modification may in the judgment of the Town Manager, because of size, perimeter location or transportation impacts, merit public review.” Therefore, to the extent the Town Manager has any discretion to determine whether a proposed change to the Agreement constitutes a Major Modification, the change must be in the nature of an increase in development intensity and/or impact.

III. Process for Minor Modifications

Section 4.10(g) sets forth the process of Minor Modifications. It provides that, “[A]ll Minor Amendments require notice to Town Council and shall be subject to review and approval by the Town Manager. Such approval shall be memorialized by letter from the Town Manager and acknowledged by the Developer Owners ... and shall be maintained on file by the Town Clerk...” The Town Manager has 15 days to determine whether a proposed adjustment to the Agreement is a Major Modification or a Minor Modification and shall promptly notify the Town Council and applicant of that determination. In sum, the Town Manager has authority to approve adjustments to the Agreement once it is determined such adjustment is not a Major Modification.

IV. Support for Amendment

The Owner of the Property proposes to amend the Agreement to clarify the process to approve subdivisions made under the Agreement. As stated above, the Agreement does not explicitly address subdivisions. The Agreement contemplates that subdivisions will occur and that parcels will be conveyed to third parties. For example, Section 4.34 provides that the Agreement will apply to all Parcels and Parcel Owners such that the Agreement continues to apply subsequent to conveyance of a Parcel. Section 2.13 defines Parcel as a subdivided tract of the Property conveyed by the Developer Owner to a third party. Therefore, embedded in the Agreement is the concept that the Owner can subdivide parcels and convey them while the Agreement remains in force on those subdivided tracts.

In addition, the intent of the Agreement is to facilitate administrative approvals so long as any development meets the terms of existing legal entitlements. For example, Section 3.21 provides that the Developer Owner and Town desire to enter into the Agreement to provide certainty that Developer Owner “can obtain permits necessary for the Development pursuant to a non-discretionary, predictable and expeditious process.” Section 5.4(d)(5) states that the Town Manager will approve roadway improvements shown in Exhibit G. That exhibit reflects the creation of Muirhead, which requires a subdivision to accomplish. Therefore, the Agreement supports nondiscretionary approvals, including subdivisions, so that development consistent with the existing entitlements can occur.

V. Proposed Amendment

To clarify the process governing subdivisions, the Owner proposes to revise Section 4.08 Local Development Permits, which covers local approvals such as subdivisions that are not otherwise covered in the Agreement. The revision would modify the caption to include “Approvals” in addition to “Local Development Permits.” Further, it would add a new subsection (c) that addresses subdivision requests, minor or major, made to facilitate the development of the property covered by the Agreement and which are not inconsistent with the Agreement so that subdivisions would follow the procedures in the Land Use Management Ordinance (LUMO) Section 4.6.3(a)(1) Minor Subdivision – Administrative Review. Such revision is consistent with N.C. General Statute 160A-400.25(a)(6), which allows Development Agreements to cover processes in connection with local development approvals.

VI. Conclusion

As the Owner proceeds with development of the Property, it is necessary to look to the Agreement to understand how aspects of the development will be processed by the Town. One of the key benefits of the Agreement is to facilitate administrative approvals in an expeditious manner. Although the Agreement clearly contemplates subdividing parcels, it does not explicitly address the process for subdivisions. To clarify this issue, the Owner proposes to amend the Agreement to address subdivisions. Based on the terms of the Agreement, any modification relating to process clearly falls within the category of Minor Modifications. As such, the Town Manager has authority to approve such amendment. Given the intent of the Agreement and existing references to subdivision, the proposed modification is consistent with the spirit of the Agreement. Based on this, the Owners respectfully request that this proposed Minor Modification to the Agreement be approved.



measures approved by the Parties as set forth in Article 5 of this Agreement. Any future modifications or revisions to the LUMO or any other Town ordinances would not apply to Development on the Property. The maximum height, bulk, size, and design of buildings and the placement, location, and configuration of the development sites, infrastructure, open space, streets, sidewalks and other public improvements shall be in substantial compliance with the NCDP and Article 5 of this Agreement. Except as limited by this Agreement or as otherwise provided in this Agreement, Development shall be substantially consistent with the Town's Design Guidelines, Design Manual, Engineering Standards and other Town standards or policies in effect as of the effective date (collectively, "Town Regulations"). Notwithstanding the foregoing, in the event of any conflict between the provisions of the Town Regulations, and the express provisions of this Agreement, the terms of the Agreement shall be controlling. A certified copy of the LUMO and any other applicable Town ordinances in effect as of the Effective Date shall be provided to and maintained on file and online by the Town Clerk, the Developer Owners and the Representative.

4.7 Development of the Property - Special Uses. In the event a proposed Development does not comply with this Agreement and applicable Town Regulations and is not considered a Minor Modification (as hereinafter defined) to this Agreement, the applicant, in the applicant's sole discretion, may:

- a) apply to the Town Council for an amendment to this Agreement as a Major Modification (as hereinafter defined), or
- b) apply for a special use permit under Section 4.5 of the LUMO to permit the proposed Development.

4.8 Local Development Permits/Approvals.

- a) In accordance with G.S. 160A-400.25(a)(6), the local development permits approved or needed to be approved for the Development shall include the following: (1) Individual Development Agreement Compliance Permits; (2) Building and other applicable construction permits; and (3) Engineering Construction Permits, Street Cut Permits, Street Closure Permits for work in Town rights of way. Any such approvals and permits shall be consistent with the requirements of Article 5 of this Agreement. The failure of this Agreement to address a particular permit, condition, term or restriction does not relieve the Developer Owners, the Parcel Owners or the Representative of the necessity of complying with such permitting requirements, conditions, terms or restrictions, except as may be limited or otherwise provided in this Agreement.
- b) Application may be made for more than one type of local permit at a time, and such permit applications shall be reviewed concurrently by the Town to the extent possible. Additionally, the Town shall exercise reasonable diligence to expedite the processing of the required permit and approval applications for the Development of the Property. The Developer Owners, Parcel Owners and the Representative shall in a timely manner provide the Town with all documents, applications, plans, and other information necessary for the Town to carry out its obligations hereunder.

c) All subdivision requests, minor or major, made to facilitate development of the Property covered by the Development Agreement and which are not inconsistent with the Development Agreement shall follow the procedures in the LUMO under Section 4.6.3(a)(1) for Minor Subdivision - Administrative Review.

4.9 Development of the Property - Development Agreement Compliance Permit.

- a) Permit Required. A Development Agreement Compliance Permit shall be required prior to the commencement of any Development or construction work related to Development except as otherwise indicated in this Agreement. The



Development Agreement Compliance Permit required by this section shall be in lieu of any Zoning Compliance Permit that might otherwise be required by Section 4.9 of the LUMO. The Developer Owners and/or Parcel Owners Intending to undertake Development of the Property (the "Applicant") shall apply for a Development Agreement Compliance Permit by filing the application provided for in Exhibit I.

b) Schedule of Review

- 1) Prior to submitting an application for a Development Agreement Compliance Permit, the Applicant shall meet with the Town to review the proposed Development.
- 2) Within five (5) working days following submission of an application for a Development Agreement Compliance Permit, the Town shall provide the applicant with a completeness determination.
- 3) The Town shall review the application for compliance with this Agreement and the applicable Town regulations that are not expressly superseded by this Agreement.
- 4) Within fifteen (15) working days following the date on which an application is deemed complete, the Town shall provide written comments to the Applicant regarding whether the submitted application is in compliance with this Agreement and applicable Town regulations or whether the submitted application requires revision.
- 5) If the application is not in compliance, the Applicant shall submit a revised application to the Town. Upon submitting a revised application, the Town shall process the revised application in the manner described in Section 4.9, including the fifteen (15) day time frame set forth in subsection (b)(4), and such process shall be repeated until the application is in compliance with this Agreement and applicable Town regulations. Throughout this review period, the Applicant and the Town will strive to review and respond to information in an expeditious manner and provide updates to one another every ten (10) working days to ensure open communication and accountability.
- 6) The Town Manager shall approve or deny the Development Agreement Compliance Permit application within seventy-five (75) working days following submission of a complete application, unless (i) an extension of time is requested by the Applicant, or (ii) the Applicant submits a revised application to the Town fewer than fifteen (15) working days before the seventy-fifth (75th) day of the review period, in which case the review period shall be automatically extended by fifteen (15) working days.
 1. The Town Manager shall approve the application upon finding it complies with and does not violate any term of this Agreement and the applicable Town regulations, and shall deny the application upon finding it does not comply with the terms of this Agreement and the applicable Town regulations.
- 7) If the application is approved, the Town shall issue the Applicant a Compliance with Development Agreement Approval Letter.
- 8) If the application is denied, the Town Manager shall specify the grounds for finding that it is inconsistent or in violation and refer the Applicant to the special use permit process described in Section 4.5 of the LUMO. Alternatively, the applicant may modify the Development Agreement