

# South Shore Tri-Town Development Corporation

223 Shea Memorial Drive, South Weymouth, MA 02190

Measure #10-040

## SPECIAL PERMIT GRANTING AUTHORITY

### DECISION ON REVISIONS TO APPLICATION FOR DEVELOPMENT PLAN APPROVAL

APPLICANT: LNR South Shore, LLC, a Delaware limited liability company ("Applicant")

PROPERTY LOCATION: Portion of Phase 1A, Southfield, comprising land in Weymouth, Massachusetts shown as Lot R5A, Lot R5B and a portion of Lot R3E (the "Revised Premises") shown on a Approval-Not-Required Plan entitled "Southfield—Phase 1A," dated September 3, 2010, by Surveying and Mapping Consultants; LNR South Shore, LLC, applicant, recorded with the Norfolk County Registry of Deeds (the "Registry") in Plan Book \_\_\_\_\_, Page \_\_\_\_ (the "ANR Plan"). The Revised Premises were originally shown as Lot R4 and Lot R5 on a plan entitled "Southfield—Phase 1A," dated April 6, 2007, recorded with the Registry in Plan Book 569, Page 1, as amended by (i) plan entitled "Southfield—Phase 1A" dated June 27, 2008, recorded with the Registry in Plan Book 589, Page 1, (ii) Approval-Not-Required Plan entitled "SouthField-Phase 1A," dated June 28, 2010, recorded with the Registry in Plan Book 601, Page 24, and (iii) plan entitled "SouthField-Phase 1A," dated September 3, 2010, recorded with the Registry in Plan Book \_\_\_\_\_, Page \_\_\_\_\_ (as amended, the "Subdivision Plan").

Reference is made to a Decision on Application for Development Plan Approval issued by the South Shore Tri-Town Development Corporation (the "Corporation"), dated August 23, 2007, recorded with the Registry in Book 25184, Page 27, as amended by (i) Decision on Revisions to Application for Development Plan Approval issued by the Corporation, dated August 25, 2008, recorded with the Registry in Book 26182, Page 315, (ii) Decision on Revisions to Application for Development Plan Approval issued by the Corporation, dated August 9, 2010, recorded with the Registry in Book 28000, Page 301 (as amended, the "Existing Phase 1A Development Plan Approval"), and the Memorandum of Understanding dated as of November 13, 2007, recorded with the Registry in Book 25327, Page 22, as affected by that certain Affidavit and Certificate dated December 5, 2007, recorded with the Registry in Book 25380, Page 500 (collectively, the "Memorandum of Understanding"). The Existing Phase 1A Development Plan Approval also included Lots R1, R2A, R2B, R2C, R2D, R2E, R3A, R3B, R3C, R3D, R6, R7, R8, R9, R10, R11, R12, C1 and C2 on the Subdivision Plan.

By application ("Application") dated August 12, 2010, filed with the filing clerk of the Corporation, the Applicant petitioned the Corporation, as the Special Permit Granting Authority (as defined in the Zoning and Land Use By-Laws for NAS South Weymouth (the "By-Laws")),

for approval of revisions to the Existing Phase 1A Development Plan Approval, pursuant to Article 5 of the Administrative Rules and Regulations for NAS South Weymouth (the “Administrative Regulations”) and Article 13 of the By-Laws. In addition to the Application, the Corporation received a letter, dated August 26, 2010, from Applicant’s legal counsel, Edward S. Hershfield, Esq., of Brown Rudnick LLP, regarding the classification of a long-term care facility as commercial space.

The Application proposes the following proposed uses and development on the Revised Premises:

<u>Use</u>	<u>Development Program</u>
Independent Living Facility	221 Units
Long-Term Care Facility	40,000 sf commercial

The filing clerk of the Corporation received the requisite number of copies of the Application, including all required submissions, and forwarded the Application package to the Corporation.

The Application did not request the issuance of any Special Permit under Article 11 of the By-Laws nor did the Application request Site Plan approval under Article 12 of the By-Laws.

The Application only relates to the Revised Premises, and the revisions to the Existing Phase 1A Development Plan Approval for the Revised Premises. The Revised Premises are located entirely within the Central Redevelopment Area (as defined in the By-Laws).

The Application included all of the “Basic Information” as defined and specified in Section 5.3 of the Administrative Regulations.

As provided in Section 13.4 of the By-Laws and Section 5.4 of the Administrative Regulations, the Town Boards (as defined in the Administrative Regulations) were invited to attend and offer testimony at the public hearing to consider the Revisions to the Existing Phase 1A Development Plan Approval. Additionally, pursuant to Section 13.4 of the By-Laws and Section 5.4 of the Administrative Regulations, the Town Boards were entitled to submit to the Corporation their written comments concerning the proposed project reflected in the Application, accompanied by a listing of their concerns and issues regarding the Application. No comments were received by the Corporation from the Town Boards (as defined in the Administrative Regulations).

Notification and public advertisement of the hearing (the “Hearing”) on the Application was conducted according to the provisions of MGL, Ch. 40, § 11.

The Hearing was held at the Corporation’s offices on September 13, 2010 at 6:30 p.m. Corporation Board Members Joseph Connolly, Gerard Eramo, James W. Lavin, Jeffrey D. Wall and John R. Ward were present at the Hearing. Also present at the Hearing were Kevin R. Donovan, Chief Executive Office of the Corporation, the Corporation’s Project Manager, James

Young, and the Corporation's legal counsel, Brent M. McDonald of Nutter McClennen & Fish LLP. Kevin Chase, Robin Daniels and William Ryan appeared on behalf of the Applicant, along with Edward S. Hershfield, Esq., of Brown Rudnick LLP, Brian Brewer of Kimley-Horn and Associates, Inc., and Evan Rose of Urban Design Plus.

At the Hearing, the Applicant described the revisions to the Existing Phase 1A Development Plan Approval proposed in the Application.

As documented in the Corporation's meeting minutes for September 13, 2010, public comments were received from Mr. Dominic Galluzzo, Mr. Michael Smart and Mr. John Smith, all of Weymouth.

The Hearing was closed on September 13, 2010.

### STANDARD OF REVIEW

In reviewing the Application, the Corporation applied the standards and criteria set forth in Section 13.5 of the By-Laws and Section 5.6 of the Administrative Regulations.

### FINDINGS

The Corporation hereby makes the following findings and determinations with respect to the Application, as required by Section 13.6 of the By-Laws and Section 5.7 of the Administrative Regulations:

- A. Application and Information Supplied is Complete. The Application is complete and contains all information required and necessary to make the findings and determinations set forth below.
- B. Consistency with Reuse Plan. The proposed uses and development program are in general conformity to the Reuse Plan (as defined in the By-Laws) containing a mix of uses. This is a revision to the Existing Phase 1A Development Plan Approval, which was the first development plan submitted for any development within NAS South Weymouth. Therefore, with the exception of the Existing Phase 1A Development Plan, there have been no other building permits, special permits or development plans that have been approved or issued.
- C. Consistency with Purposes.
  - The proposed uses and development program are consistent with the general purposes of the By-Laws.
  - The proposed uses and development program are consistent with the applicable purposes and objectives set forth in the various Articles of the By-Laws and the Regulations (as defined in the By-Laws) and as set forth for the

zoning districts in which the proposed uses and development program are to be located.

- D. Consistency with Other Developments. This is a revision to the Existing Phase 1A Development Plan Approval, which was the first development plan submitted for any development within NAS South Weymouth. Therefore, with the exception of the Existing Phase 1A Development Plan, there is no adjacent development within NAS South Weymouth and no building permits, special permits or development plans have been approved or issued.
- E. Compliance with Standards for Development Plans.
- The proposed uses and development program comply fully with the standards and criteria set forth in Article 13 of the By-Laws and in the Regulations (as defined in the By-Laws).
  - The Corporation has imposed conditions and/or safeguards, enumerated below, to adequately ensure that the proposed uses and development program shall operate or continue to operate in conformity with required standards and criteria.
- F. Consistency with Zoning Standards. The proposed uses and development program comply fully with the By-Laws and the Regulations (as defined in the By-Laws), including all applicable zoning requirements (use, density, locational, dimensional, and design standards) and the specific standards of the zoning districts in which the proposed uses and development program are to be located.
- G. Site and Area Compatibility. The proposed uses and development program are designed in a manner that is compatible with the existing natural features of the site and are compatible with the characteristics of the built environment and surrounding natural areas, including adjacent land uses.
- H. Modification of Density of Use. The proposed uses and development program do not have the potential to adversely impact the area surrounding its site due to its size and density. Accordingly, the Corporation is not requiring modification to the size of the proposed uses, structures, buildings or other improvements or the selection of different Building Forms (as defined in the By-Laws).
- I. Orientations of Vehicular/Pedestrian Access Ways and Ground Floor Uses. The Corporation has considered the context of the project site in terms of its locational attributes and the nature of abutting land uses, and established the degree of compatibility of proposed uses with adjacent existing or approved uses. However, in connection with approving the revisions to the Existing Phase 1A Development Plan, the Corporation is not requiring that the proposed vehicular and pedestrian access ways and/or the uses and occupancies of the ground floor of a building be

physically situated and oriented to face adjacent streets or pedestrian ways. These issues will be subject to review and approval during Site Plan Review (as defined in the By-Laws).

- J. Signage. The revisions to the Existing Phase 1A Development Plan do not propose any signage. The location of, and controls for, the lighting of free-standing signs and any other allowable sign that would be visible from a residential use, shall be in accordance with the provisions of the Regulations (as defined in the By-Laws) applicable to signs. All signs shall be subject to review and approval during Site Plan Review (as defined in the By-Laws).
- K. Documentation of Findings. The Corporation finds no need to require alteration or modification of proposed uses, structures, buildings, or other development under the standards and criteria of Article 13 of the By-Laws.
- L. Master Plan Conformity. The proposed use and development are in general conformity to the Master Plan adopted and approved by the Corporation on April 29, 2005, resubmitted to the Corporation with all approved revisions incorporated on December 1, 2005, and are consistent with the goals and objectives of such master plan, taking into account all other development with NAS South Weymouth for which building permits, site plan approvals, special permits or development plans have been approved or issued.
- M. Regulatory Compliance. The proposed use and development are in compliance with all applicable provisions of the Regulations (as defined in the By-Laws) including, without limitation, the Architectural and Urban Design Standards and the Sustainable Design Standards and, subject to the conditions and safeguards discussed below, the Affordable and Workforce Housing Regulations (the "Housing Regulations").
- N. Plan Conformity. The proposed use and development are in substantial conformity with the applicable Street, Infrastructures and Utility, Landscape and Lighting Plans contained in the Subdivision Rules and Regulations of Naval Air Station (NAS) South Weymouth, except as modified or waived in the Subdivision Plan.

#### CONDITIONS

- A. The conditions imposed in the Existing Phase 1A Development Plan Approval are hereby incorporated by reference into this decision, and shall apply to all revisions proposed in the Application.
- B. Within thirty (30) days from the date this decision is filed with the Corporation, or such extended time as the Corporation may agree to in its sole discretion, the Applicant shall record an Amended and Restated Memorandum of Understanding,

in substantially the form attached hereto as Exhibit A, with such changes as may be approved by the Chief Executive Officer of the Corporation and the Corporation's legal counsel (the "Amended MOU"), in the Norfolk County Registry of Deeds, as required by Section 6.1(C)(b)(3) of the Housing Regulations.

- C. Within fourteen (14) days from the date this decision is filed with the Corporation, the Applicant shall submit a project review fee of Twenty-four Thousand Five Hundred Dollars (\$24,500.00) to the Corporation for the purpose of engaging consultants, including legal counsel, for review of the Application and associated plans and regulations, as well as reimbursement of miscellaneous administrative costs (legal notices, etc.). Said funds can be used for payment for plan review work already conducted to date.

### DECISION

At a public meeting on September 13, 2010, the Corporation voted to approve the Application, subject to the above conditions. The vote of each member was as follows:

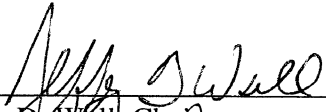
<u>Member</u>	<u>Vote</u>
Jeffrey D. Wall	Approve
Joseph Connolly	Approve
Gerard Eramo	Approve
James W. Lavin	Approve
John R. Ward	Approve

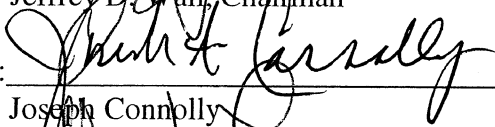
This written decision regarding the Application shall be filed with the official records of the Corporation and in the offices of the Town Clerk of Abington, the Town Clerk of Rockland and the Town Clerk of Weymouth within 14 days after the decision was rendered. Notice of the decision shall be mailed forthwith to the Applicant.

Appeals, if any, shall be made pursuant to Article 15 of the By-Laws that shall be filed within 20 days after the last date of filing of notice of this decision with the Corporation, the Town Clerk of Abington, the Town Clerk of Rockland and the Town Clerk of Weymouth.

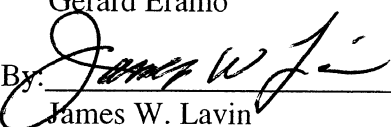
IN WITNESS WHEREOF, the undersigned has executed this instrument under seal as of the date set forth below.

SOUTH SHORE TRI-TOWN DEVELOPMENT CORPORATION

By:   
Jeffrey D. Wall, Chairman

By:   
Joseph Connolly

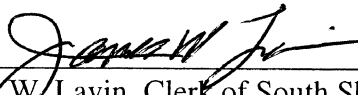
By:   
Gerard Eramo

By:   
James W. Lavin

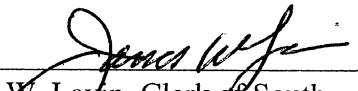
By:   
John R. Ward

Dated: September 17, 2010

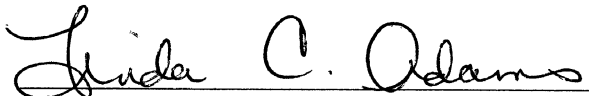
I, James W. Lavin, Clerk of South Shore Tri-Town Development Corporation, hereby certify on behalf of South Shore Tri-Town Development Corporation that the foregoing is a true copy of the Decision of South Shore Tri-Town Development Corporation and that certified copies of the Decision have been filed with the official records of South Shore Tri-Town Development Corporation and in the offices of the Abington Town Clerk, the Rockland Town Clerk and the Weymouth Town Clerk.

  
James W. Lavin, Clerk of South Shore Tri-Town  
Development Corporation

14<sup>th</sup> Filed with the official records of South Shore Tri-Town Development Corporation on the September, 2010.

  
James W. Lavin, Clerk of South  
Shore Tri-Town Development Corporation

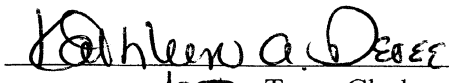
Filed with the office of the Abington Town Clerk on the 17<sup>th</sup> day of September, 2010.

  
Linda C. Adams  
, Town Clerk

Filed with the office of the Rockland Town Clerk on the 17<sup>th</sup> day of September, 2010.

  
Mary Pat Kaszaneck  
, Town Clerk

Filed with the office of the Weymouth Town Clerk on the 16<sup>th</sup> day of September, 2010.

  
Kathleen A. Deese  
Asst., Town Clerk

I, James W. Lavin, Clerk of South Shore Tri-Town Development Corporation, hereby certify that the foregoing is a true copy of the Decision of South Shore Tri-Town Development Corporation dated September 13, 2010 and filed with the official records of South Shore Tri-Town Development Corporation on September 14, 2010, with the Abington Town Clerk on September 17, 2010, with the Rockland Town Clerk September 17, 2010 and the Weymouth Town Clerk on September 16, 2010 and that twenty (20) days have elapsed after the latest date of such filing, without the filing of any appeal on such Decision.

Dated: October 8, 2010

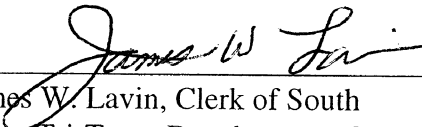
  
\_\_\_\_\_  
James W. Lavin, Clerk of South  
Shore Tri-Town Development Corporation

EXHIBIT A

Amended and Restated Memorandum of Understanding

1949244.4

## AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING

This Amended and Restated Memorandum of Understanding ("Amended MOU") is entered into as of the \_\_\_\_ day of September, 2010 by and between South Shore Tri-Town Development Corporation, a body politic and corporate established by and pursuant to Chapter 301 of the 1998 Massachusetts Acts and Resolves, as amended by Chapter 303 of the 2008 Massachusetts Acts and Resolves ("Corporation"), and LNR South Shore, LLC, a Delaware limited liability company, having a principal place of business and mailing at 1900 Crown Colony Drive, Quincy, Massachusetts 02169 ("LNR").

### RECITALS:

1. The Corporation issued a certain Decision on Application for Development Plan Approval with respect to "Phase 1A, Southfield," dated August 23, 2007, recorded with the Norfolk County Registry of Deeds (the "Registry") in Book 25184, Page 27 (the "Original Decision").

2. Condition A of the Original Decision required that LNR record a Memorandum of Understanding ("Initial MOU") in the Registry, as required by Section 6.1(C)(b)(3) of the Affordable and Workforce Housing Regulations for NAS South Weymouth (the "Housing Regulations").

3. The Initial MOU was recorded with the Registry in Book 25327, Page 22.

4. An Affidavit and Certificate under Massachusetts General Laws, Chapter 183, Section 53 with respect to the Initial MOU was recorded with the Registry in Book 25380, Page 500 ("Affidavit"). (The Initial MOU, as affected by the Affidavit, is referred to herein as the "Original MOU").

5. The Corporation issued (a) a Decision on Revisions to Application for Development Plan Approval dated August 26, 2008 and recorded with the Registry in Book 26182, Page 315, which amended the Original Decision (the "First Amendment"), (ii) a Decision on Additional Revisions to Application for Development Plan Approval dated August 9, 2010, recorded with the Registry in Book \_\_\_\_\_, Page \_\_\_\_\_, which further amended Original Decision and the First Amendment (the "Second Amendment"), and Decision on Additional Revisions to Application for Development Plan Approval dated September \_\_\_\_, 2010, recorded with the Registry herewith, which

further amended the Original Decision, the First Amendment and the Second Amendment (the "Third Amendment").

6. Condition B of the Third Amendment requires that LNR record this Amended MOU in the Registry, as required by Section 6.1(C)(b)(3) of the Housing Regulations.

7. LNR is the current owner of those certain parcels of land shown as Lots R1, R2B, R2C, R2D, R2E, R3B, R3C, R3D, R3E, R5A, R5B, R6, R7, R8, R9, R10, R11, R12, C1 and C2 on a Definitive Subdivision Plan entitled "Southfield—Phase 1A," dated April 6, 2007, recorded with the Registry in Plan Book 569, Page 1, as affected by (a) Definitive Subdivision Plan entitled "Southfield—Phase 1A," dated June 27, 2008, recorded with the Registry in Plan Book 589, Page 1, (b) "Approval-Not-Required Plan of Land, Southfield Phase 1A, Naval Air Station, South Weymouth, MA," dated June 28, 2010, recorded with the Registry in Plan Book 601, Page 24 (the "ANR Plan"), (c) Definitive Subdivision Plan entitled "SouthField – Phase 1A," dated September 3, 2010, recorded with the Registry herewith, and (d) "Approval-Not-Required Plan of Land, Parcels R4 and R5, Parkview Street, SouthField, Weymouth, MA," dated September 3, 2010, recorded with the Registry herewith (the "Phase 1A Land").

8. LNR is the current owner of that certain property shown as "Phase 1B" on the plan attached hereto and incorporated herein by reference as Exhibit A (the "Phase 1B Land").

9. For purposes of this MOU, the term "Phase 1" shall mean the development of (a) the Phase 1A Land, (b) the Phase 1B Land, (c) Lot R2A as shown on the ANR Plan, and (d) Lot R3A as shown on the ANR Plan.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, LNR and the Corporation hereby agree as follows:

1. LNR, its successors and assigns shall cause the following to be constructed on the Phase 1A Land and on the Phase 1B Land:

- (a) Affordable Housing Units (as defined in the Housing Regulations) such that the total number of Affordable Housing Units (as defined in the Housing Regulations) in Phase 1 shall be at least 10% of the aggregate number of housing units produced in Phase 1; and
- (b) Workforce Housing Units (as defined in the Housing Regulations) such that the total number of Workforce Housing Units (as defined in the Housing Regulations) in Phase 1 shall be at least 10% of the aggregate number of housing units produced in Phase 1.

2. This Amended MOU shall run with the Phase 1A Land and the Phase 1B Land and be binding on LNR, its successors and assigns, and any and all future owner(s) of the Phase 1A Land and the Phase 1B Land.

3. This Amended MOU shall automatically terminate once the Corporation has issued certificates of occupancy for Phase 1 for (a) 150 units of Senior Housing (as defined in the Reuse Plan for NAS South Weymouth), which Senior Housing shall contain the requisite amount of Age Restricted Units (as more particularly described in the Housing Regulations), (b) the required number of Affordable Housing Units (as defined in the Housing Regulations) provided for in Section 1 above, and (c) the required number of Workforce Housing Units (as defined in the Housing Regulations) provided for in Section 1 above.

4. Prior to the termination of this Amended MOU pursuant to Section 3 above, from time to time, the Corporation may, at the request of LNR, release a portion of the Phase 1A Land and/or the Phase 1B Land from the terms and conditions of this Amended MOU if LNR demonstrates, to the satisfaction of the Corporation, that the requirements of Section 1 above will be satisfied through other means, including through (a) Affordable Housing Units (as defined in the Housing Regulations) and Workforce Housing Units (as defined in the Housing Regulations) which have been constructed or proposed in an approved site plan, or (b) anticipated construction on Phase 1A Land and Phase 1B Land.

5. This MOU may be executed in any number of counterparts, which when taken together, shall constitute one in the same instrument.

6. This MOU may not be amended or modified except in a writing signed by both parties.

7. This MOU and the performance thereof shall be governed, interpreted and regulated by the laws of the Commonwealth of Massachusetts.

8. If any provision of this MOU shall be found invalid for any reason, such invalidity shall be construed as narrowly as possible and the balance of this MOU shall be deemed to be amended to the minimum extent necessary to provide to LNR and the Corporation substantially the benefits set forth in this MOU.

[signatures on following page]

IN WITNESS WHEREOF, the parties have caused this Memorandum of Understanding to be executed under seal as of the date first written above.

LNR SOUTH SHORE, LLC, a Delaware limited liability company

By: LNR Development Properties, LLC, a Delaware limited liability company, its sole member

By: \_\_\_\_\_  
Name:  
Title:

SOUTH SHORE TRI-TOWN  
DEVELOPMENT CORPORATION

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CALIFORNIA ALL-PURPOSE  
CERTIFICATE OF ACKNOWLEDGEMENT

State of California  
County of Orange, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2010, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_

- personally known to me -- or --
  - proved to me on the basis of satisfactory evidence:
    - form(s) of identification \_\_\_\_\_
    - credible witness(es) \_\_\_\_\_
- the undersigned notary public, personally appeared \_\_\_\_\_,

to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
(Seal)

\_\_\_\_\_  
Signature of Notary Public

COMMONWEALTH OF MASSACHUSETTS

Norfolk , ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2010, before me, the undersigned notary public, personally appeared \_\_\_\_\_ proved to me through satisfactory evidence of identification, which was personal knowledge, to be the people whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose, as Directors of South Shore Tri-Town Development Corporation.

\_\_\_\_\_  
Notary Public  
Print Name:  
My Commission Expires: \_\_\_\_\_

EXHIBIT A  
PLAN OF PHASE 1B LAND

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