

Hillsborough Lit.

2-27-96

- Muni ~~and~~ development agreement
for PAC/HCF
(AKA-Exhibit A)

11 pgs.

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EXHIBIT A

MUNICIPAL DEVELOPMENT AGREEMENT - 1
HILLSBOROUGH ALLIANCE FOR ADULT LIVING, L.P.
(FORMERLY PAC/HCF JOINT VENTURE)
APPLICATION NUMBERS: 91-PB-19-PAC, 95-PB-46-GPP

THIS AGREEMENT, made and entered into this 27th day of February 1996, by and between HILLSBOROUGH ALLIANCE FOR ADULT LIVING, L.P., located in Hillsborough Township, Somerset County, New Jersey, hereinafter referred to as the "developer" and HILLSBOROUGH TOWNSHIP, a municipal corporation of the State of New Jersey, with offices located at 555 Amwell Road, Neshanic, Hillsborough Township, Somerset County, New Jersey, hereinafter referred to as the "Township".

WHEREAS, the developer has acquired title to or has a contract interest in that certain tract or parcel of land (hereinafter referred to as the "Property") designated as Lots 1, 6, 10A, 13, 27, 28, 34, 44, and 44A in Block 11 and Lots 13A, 26, 27, 28, 29A, 33, 44, 45, and 47 in Block 122 of the Hillsborough Township Tax Map; and

WHEREAS, the developer has expressed an intent to develop the Property in accordance with Ordinance No. 91-6 (Section 77-91.1 of the Hillsborough Township Development Regulation), and as amended, and was granted classification as a Planned Adult Community/Health Care Facility by resolution of the Hillsborough Township Planning Board dated September 5, 1991, received approval of its General Development Plan by resolution of the Hillsborough Township Planning Board dated January 2, 1992, and further received approval of an amended General Development Plan by resolution of the Hillsborough Township Planning Board dated December 7, 1995; and,

WHEREAS, pursuant to said application for the General Development Plan, the developer has submitted an informal plat prepared by Van Cleef Engineering Associates dated July 17, 1991, a general development plan prepared by Van Cleef Engineering Associates dated November 1, 1991, and a revised general development plan prepared by Van Cleef Engineering Associates revised to September 27, 1995, a general development plan-land area plan prepared by Van Cleef Engineering Associates dated November 4, 1991, a storm water management, sanitary sewer and water line feasibility plan prepared by Van Cleef Engineering Associates dated November 22, 1991, and a report entitled General Development Plan for the proposed facilities dated November 22, 1991, and prepared by EcoSciences, Inc.; A. Joseph Massimo Associates, P.A., Architects, Engineers and Planners; Van Cleef Engineering Associates; McDonough and Rea Associates, Traffic and Transportation Consultants; and Gulick Planning Services; and,

WHEREAS, the developer has submitted additional revisions and reports to Hillsborough Township, as required by the Township; and,

WHEREAS, in accordance with the provisions of the Fair Housing Act of 1985 (N.J.S.A. 52:27D-301 et. seq.), the Township has applied for substantive certification in order to meet its low and moderate income housing requirements as established by the Council on Affordable Housing (COAH); and,

WHEREAS, in accordance with the Hillsborough Township PAC/HCF Ordinance the developer has certain responsibilities to comply with affordable housing obligations and in consideration for meeting said obligations, the developer and the Township are entering into this agreement; and,

WHEREAS, COAH requires an agreement between the developer and Hillsborough Township concerning the construction of the municipality's second cycle affordable housing obligation within the developers tract; and,

WHEREAS, N.J.S.A. 40:55D-45.2(1) provides for a municipal development agreement between a municipality and a developer which deals with matters relating to the municipality and methods of mitigating the impact of the development on the municipality.

NOW, THEREFORE, in consideration of the foregoing and the agreements and conditions of the previously granted approvals and the anticipated applications and approvals of the preliminary and final major subdivision and site plan approvals to be made pursuant to the General Development Plan referred to above, it is mutually agreed by and between the parties hereto as follows:

1. In connection with the second cycle substantive certification, the PAC/HCF shall build one hundred thirty-six (136) affordable unites (15% x 906 units -- Phase I), in accordance with the terms and conditions of this agreement, which in turn will provide Hillsborough Township with a one hundred sixty (160) credit which, in turn, represents its final inclusionary component. Ninety-six (96) of those units (48 low and 48 moderate) shall be age restricted units, either for sale or rental or any combination as may be determined at the time of preliminary site plan and subdivision approval. Forty (40) units shall be non-age restricted rentals (20 low and 20 moderate) which in turn will produce a twenty-four (24) unit rental bonus credit. The developer understands that the formula which allows the Township to meet its final and inclusionary component is:

96	age restricted units
40	non-age restricted rental

24 rental bonus credit for committing to build

— 40 non-age restricted rentals

160

If, for any reason, COAH shall require a greater number than one hundred sixty (160) for Hillsborough to meet its obligation, the developer agrees to use best efforts to build such additional affordable housing units subject to the terms and conditions of this agreement.

2. The ninety-six (96) age-restricted fee simple or rental units shall constitute any combination of duplexes, townhomes, patio homes, apartments, condominiums and/or single family detached dwellings as the Hillsborough Township Planning Board and the developer may mutually determine is consistent with appropriate planning practices and subject to receipt of all approvals from Hillsborough Township and all other relevant agencies.

With regard to the forty (40) non-age restricted units, the developer shall comply in all respects with the rules and regulations promulgated by COAH so that the Township of Hillsborough shall receive a 2:1 credit bonus for each complying rental unit. The developer shall have the right to recapture the subsidized rental units following the termination of the thirty (30)-year rent restriction, subject to New Jersey Statutes and COAH rules.

The developer agrees to deliver thirty-two low and moderate age-restricted or non-age restricted units for occupancy at each of the 30th, 60th, and 80th percentile of certificates of occupancy issued for the fair market units of the development or more specifically on or before the 231st, 462nd, and 616th fair market certificates.

Further the balance of the forty (40) low and moderate non-age restricted units will be delivered on or before issue of a certificate of occupancy for the 693rd fair market unit, except that all low and moderate units shall be delivered no later than June 30, 2001, or five(5) years

from the date of Substantive Certification of Hillsborough Township's Fair Share Plan, whichever is later subject to certain occurrences as hereafter enumerated.

3. Nothing in this agreement shall relieve the developer of his responsibilities to comply with his affordable or least cost housing obligations under the Hillsborough Township PAC/HCF Ordinance.

4. Pursuant to the developer's approval for an amendment to its General Development Plan, the developer shall have the right, with Planning Board approval, to build a maximum of three thousand (3,000) single family residential units exclusive of those living quarters which may be constructed as part of the obligation to build health care or health monitored living facilities.

5. Of the aforesaid three thousand (3,000) total units, 15% of them shall be set aside as affordable housing units making a total of four hundred fifty (450) such units. Assuming one hundred thirty six (136) affordable housing units are built in connection with the present substantive certification, up to three hundred fourteen (314) additional units shall be set aside to meet future fair share obligations on the part of Hillsborough Township over the next two or three cycles of substantive certification. The 15% set aside is based on a residential density of four (4) units per acre.

6. Waiver of Development Fees: the first phase of the inclusionary development shall consist of nine hundred six (906) units of which the aforementioned one hundred thirty six (136) units shall be low and moderate units. The remaining seven hundred seventy (770) units shall be market value or least cost units and there shall be no development fees applied with respect to those units. With respect to the remaining two thousand ninety four (2,094) units,

development fees shall be applicable unless 15% of these units are set aside as affordable. Any other waiver would be subject to Township and COAH approval.

7. The developer hereby commits, subject to approval of Hillsborough Township Planning Board and all other approval authorities and in accordance with the terms and conditions of this agreement, to the construction of the forty (40) non-age restricted rental units so that the Township may obtain the rental bonus credit referred to in N. J. A. C. 5:93:- 5.14(c)6(d).

8. It is acknowledged that forty-two (42) acres of the developer's tract is located in Planning Area 2 with the remaining acreage presently being located in Planning Area 4. The parties acknowledge that substantive certification by COAH, and any obligation of the developer to proceed is premised upon the fact that sewers shall be made available to this site by reason of the site:

(a) Having received General Development approval prior to the New Jersey State Development and Redevelopment Plan.

(b) Being included, in its entirety, in the Somerset County Waste Water Management Plan which has received preliminary comments by NJDEP and is presently being reviewed by Somerset County for resubmission to DEP by April 1996.

(c) Having been reviewed by the Office of State Planning (OSP) and the assurance given to COAH by OSP that during 1996 cross acceptance process for the State Development Plan that the PAC site in Planning Area 4 will be recommended for inclusion in Planning Area 2. This inclusion would not prohibit the approval of sewers by NJDEP, but rather encourages such infrastructure.

(d) It is acknowledged and agreed that the approval of sewers for this project is essential for the development to begin and for the developer to proceed in good faith to construct the housing described in this agreement. When approval for sewers is received so the developer is able to obtain a CP-1 for the extension of the sanitary sewer lines throughout the development, the developer shall, within eight (8) months of the issuance of the CP-1 permit, submit a complete application to the Hillsborough Township Planning Board for preliminary subdivision and site plan approval for the units described in this agreement. It is acknowledged that this process may require such an interval of time that the anticipated timetable for the construction and delivery of Mt. Laurel housing as described in Paragraph 2 above, may not be met and the absorption rate of market units not fulfilled. In the event the anticipated timetable cannot be met, developer shall notify Hillsborough Township of its inability to provide all of the necessary Mt. Laurel housing in a timeframe specified. This notification may be made at any time but shall be made by the developer prior to December 31, 1998, so that alternative plans as described in this agreement may be instituted either by the developer and/or the Township.

9. At the Township's discretion, in order to insure that the Township can meet its fair share obligation through means other than the PAC, if circumstances beyond the control of the developer should occur and the developer notifies the Township that it has been unable to provide the necessary Mt. Laurel housing and/or has not been able to provide the Mt. Laurel housing within the timeframe specified or any extension thereto approved by COAH, the developer shall reserve and convey to the Township up to ten (10) acres of land with sewer availability, as is deemed necessary and suitable by the Township, for the construction of the

aforementioned one hundred thirty-six (136) affordable housing units or portion thereof not previously completed under this contract.

10. If for any reason the developer is unable to meet its obligations under this agreement for construction of affordable housing units including, but not limited to, the failure to obtain DEP sewer approval or approval of other agencies, the lands provided by the developer in Paragraph ~~2~~^{9.97} above, if transferred may be used by the Township of Hillsborough for Municipally sponsored affordable housing. The developer, in this case, shall have the right of first refusal to provide such Municipally sponsored housing on these lands.

11. All issues not specifically addressed in the agreement are preserved for consideration by the Planning Board at the time of any application for approval submitted to that body by the developer.

12. It is understood that a development with the complexity of the PAC/HFC cannot and should not have all its issues addressed and resolved in this agreement. The parties understand that the primary purpose of this agreement is:

(a) Provide COAH with reasonable assurance that the one hundred thirty-six (136) affordable housing units will be constructed

(b) That the developer will meet its obligation with respect to the forty (40) non-age restricted rental units

13. Developer agrees to cooperate with the Township of Hillsborough and provide any requested information for the designation of the Property as Planning Area 2 by the Office of State Planning.

14. The developer shall continue to pursue in every way possible sewer approval from NJDEP.

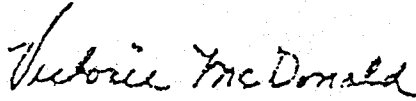
15. The administrative agency which shall administer the low and moderate income housing for this Development shall be the Somerset County Coalition on Housing whose cost shall be borne by the Developer pursuant to the agreement between the parties. It is understood that this cost will be \$350 per unit in 1996.

16. This agreement shall be binding upon the developer and its successors and/or assigns notwithstanding the fact that it may sell, transfer, encumber or otherwise dispose of the property or any portion thereof. The developer agrees to make this agreement a part of any contract for the sale of the Property as it may affect any lands which are intended to be the subject of this agreement. The Township shall have the right to record this agreement and/or place a notation on the Township tax or assessment search reflecting this agreement.

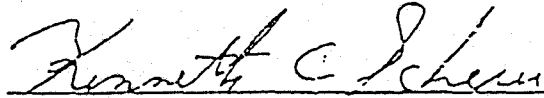
IN WITNESS WHEREOF, the said parties have hereunto caused this agreement to be signed by their proper corporate officers and have caused their proper seal to be affixed the day and year first above written.

Attest:

TOWNSHIP OF HILLSBOROUGH



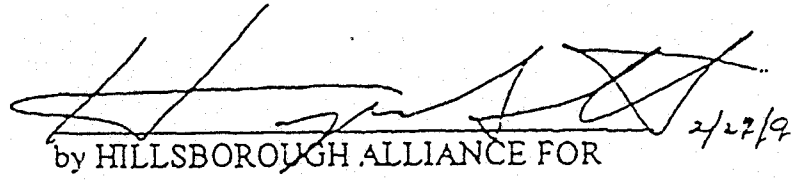
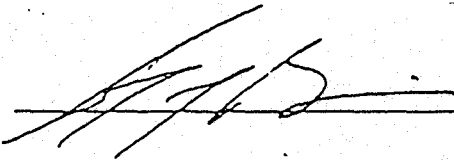
Victoria McDonald, RMC, CMC, AAE
Township Clerk



Kenneth Scherer
Mayor

Attest:

HILLSBOROUGH ALLIANCE FOR
ADULT LIVING, L. P.

 2/22/9

by HILLSBOROUGH ALLIANCE FOR
ADULT LIVING, INC., G. P.

Harry B. Smith
President