

Draft #4: October 23, 2011

DEVELOPMENT AGREEMENT

This Agreement dated as of ____, 2011, is entered into by and between the Town of Maynard, acting by and through its Board of Selectmen (“Maynard”) and WRMM Rosewood Maynard Mills Limited Partnership, a Massachusetts Limited Partnership (“WRMM”), with a principal place of business located at 2 Clock Tower Place, Maynard, MA 01754 (the “Subject Property”).

RECITALS

WRMM has asked Maynard to consider amending the Maynard Zoning Bylaw (“Zoning Bylaw”) by adopting Article 3, pursuant to G.L. Chapter 40A, s. 5, a copy of which is attached as **Exhibit A**, at a Town Meeting to be held October 26, 2011 (“Town Meeting”) The adoption of Article 3 would enable WRMM to alter the uses currently available in Clock Tower Place on the Subject Property.

AGREEMENT

Now, therefore, for mutual consideration, the receipt and sufficiency of which are hereby acknowledged, Maynard and WRMM agree that, if, and only if, Article 3 is adopted at the Special Town Meeting in the form attached hereto as **Exhibit A**, without modification which materially affects WRMM’s rights as set forth herein and WRMM applies for and is issued a building permit thereafter, then Maynard and WRMM shall each perform the actions as set forth herein; provided, however, that with respect to the actions described in Section C.1, WRMM shall perform its obligations regardless of the action of such Special Town Meeting, or the status of any building permit application.

A. TRAFFIC IMPROVEMENTS

1. Off-Site and Site Access Traffic Improvements. WRMM shall pay for planning, permitting, and design, and shall, to the extent not funded by a state or federal agency, construct at its sole expense, such off-site and site access traffic improvements and mitigation (the “Traffic Improvements”), as set forth on the attached Exhibit B.

[Insert Doug Prentiss recommendations as Exhibit B]

2. Specifications. Traffic control equipment provided as part of the Traffic Improvements shall be as per Planning Board approval, including, without limitation, ornamental, post-mounted signal poles painted as prescribed by the Board, and shall include control preemption equipment for emergency vehicles at the sole expense of WRMM.

B. PROJECT DESIGN

1. Aggregate Limits. The Subject Property shall remain in compliance with the Zoning By-Law and the following aggregate limits:

- A. No restaurant with less than 5,000 square feet of gross floor area shall be permitted;
- B. No supermarket with less than 20,000 square feet of gross floor area shall be permitted.
- C. No retail establishment with less than 10,000 square feet of gross floor area or more than 50,000 square feet shall be permitted.

2. Fuel Distribution. No fuel distribution facility shall sell gasoline or diesel at retail. Such fuel distribution facilities shall be limited to emerging fuel technologies.

3. Dwelling Units. All dwelling units shall contain one bedroom only.

4. Water Reclamation. In order to minimize water use on the Subject Property, new building construction shall, to the extent feasible, be designed to use roof water to reduce outdoor watering, lawn watering, nursery consumption, or any other applicable needs. Such conditions shall be imposed in any special permit.

5. Charging Station. WRMM shall study and, if deemed practical and economically feasible, install an electric charging station in a suitable location within the Subject Property.

C. ENGAGEMENT OF CONSULTANTS; REIMBURSEMENT FOR COSTS

1. Payment of Consultants and Special Legal Counsel during the Rezoning Process. Within thirty (30) days of the execution of this Agreement, WRMM agrees to replenish the existing escrow account(s) in the office of the Maynard Treasurer in an amount sufficient to pay for all documented costs of Maynard's consultants and legal counsel in the rezoning process up to and including the conclusion of the Special Town Meeting at which Article 3 is considered.

D. SEWER

1. Sudbury Street Sewer Line. Prior to the issuance of any certificate of occupancy for any new building construction after issuance of a special permit, WRMM shall identify, at its sole expense, any problem areas in the Sudbury Street sewer line by performing a camera inspection of said line, with results to be provided to the Town.

E. ASSABET RIVER RAIL TRAIL

1. Donation. WRMM shall participate in the Town's planning and location of the Assabet River Rail Trail to the extent such trail involves the Subject Property, and shall donate an easement to the Town for such purposes, the location and extent of which shall be mutually agreed upon. The approximate location of this easement is shown on Exhibit C.

F. MISCELLANEOUS PROVISIONS

1. Invalidity. Maynard and WRMM agree that if the Town's adoption of Article 3 is determined to be invalid, illegal, or unconstitutional by the Attorney General of the Commonwealth of Massachusetts or by a court of competent jurisdiction prior to the performing of the actions described herein, then the provisions of this Memorandum and each of the agreements and documents referenced herein shall be null and void; provided, however, that the provisions of Section C.1 shall survive any such determination and shall continue to be in full force and effect.

2. Intent to Bind Successors, Heirs and Assigns. The foregoing obligations shall run with the land now owned by WRMM and shall be binding upon and inure to the benefit and burden of WRMM, its heirs, successors, and assigns.

3. Effect; Amendment. This Agreement shall not take effect until voted and executed by the Board of Selectmen of the Town of Maynard. Upon such vote, this Agreement shall not be amended in any material respect except by a further majority vote of the Board of Selectmen.

4. Sale to Tax Exempt Entity. Wellesley understands that the Town supports this Agreement, in part, due to the fact that the proposed redevelopment of the Property will generate significant revenue benefiting the Town, including without limitation, real property tax revenue. In order to assure the Town of the continuation of such revenue in an amount proportional to the tax revenue anticipated from the Property during the period of this Agreement, in the event the Property during such period is sold to an entity or organization that is exempt from paying local real property taxes, WRMM, on behalf of its heirs, successors, and assigns, hereby agrees that it shall, within sixty (60) days after such sale, shall make a annual payment on January first of each year for a period of ten (10) years, to Maynard in the amount of Seven Hundred Thousand (\$700,000.00) Dollars, which sum the parties fix and settle as liquidated damages for a default under this paragraph and the receipt of which shall be Maynard's sole remedy against WRMM under this Agreement, at law or in equity.

5. Required Notice. Unless otherwise specified in this Agreement, any notice to be given under this Agreement shall be in writing and signed by the party (or the party's attorney) and shall be deemed to have been given (a) when delivered, if delivered by hand, or (b) two business days after the date mailed, if mailed by registered or certified mail, all charges prepaid, in either event addressed as follows:

In the case of the Town, to:

Michael Sullivan
Town Manager
Town Hall
Maynard, MA

In the case of WRMM, to:

Joseph Mullin

Wellesley Management
2 Clock Tower Place
Maynard, MA

By such notice, either party (or such party's attorney) may specify a new address, which thereafter shall be used for subsequent notices.

6. Default and Notice.

A. **By WRMM.** If WRMM shall default in the performance of any term, covenant or condition of this Development Agreement, which default shall continue for more than thirty (30) days after written notice to WRMM (or if such default shall be reasonably expected to take more than thirty (30) days to cure, said longer period of time), Maynard shall have the right to (i) terminate this Development Agreement; (ii) withhold any Approvals issued by Maynard; or (iii) exercise any other remedy available at law or in equity, including commencing an action for specific performance. Maynard agrees that if, within ten (10) days after WRMM's receipt of a notice of a claim of default, WRMM shall give notice to Maynard that WRMM contests the same, then Maynard shall not have the right to exercise any of the foregoing rights in respect thereto until such claim shall have been finally adjudicated in such contest. WRMM agrees to diligently prosecute any such contest and if such adjudication is in favor of WRMM, then WRMM shall be reimbursed its reasonable legal fees and other expenses in prosecuting such contest by Maynard; if such matter is determined adversely to WRMM, WRMM shall have sixty (60) days (or such longer period of time as shall be reasonable under the circumstances) to effect such cure and in addition thereto, WRMM shall reimburse Maynard its reasonable legal fees and other expenses in defending any such contest.

B. **By Maynard.** If Maynard shall default in the performance of any term, covenant or condition of this Development Agreement, which default shall continue for more than thirty (30) days after written notice to Maynard (or if such default shall be reasonably expected to take more than thirty (30) days to cure, said longer period of time), WRMM shall have the right to (i) terminate this Development Agreement; or (ii) exercise any other remedy available at law or in equity, including commencing an action for specific performance.

7. Effective Date of Agreement. This Development Agreement shall be effective as of the date it shall be executed by both WRMM and Maynard.

8. Dispute Resolution. Prior to the initiation of any court proceeding regarding the terms of this Agreement or performance thereunder, Maynard and WRMM agree that such disputes shall be first subject to nonbinding arbitration or mediation, for a period not longer than ninety (90) days.

9. Applicable Law; Construction.

A. This Development Agreement shall be deemed to have been executed within the

Commonwealth of Massachusetts, and the rights and obligations of the parties hereto shall be construed and enforced in accordance with, and governed by, the laws of the Commonwealth of Massachusetts.

B. This Development Agreement is the entire agreement among the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions.

Executed under seal as of the date first above written.

TOWN OF MAYNARD

By: _____
Selectman _____, Chairman

By: _____
Selectman _____

By: _____
Selectman

By: _____
Selectman _____

By: _____
Selectman

WRMM ROSEWOOD MAYNARD MILLS LIMITED PARTNERSHIP

By: _____
Its duly authorized Agent or Partner

SCHEDULE OF EXHIBITS

- Exhibit A: Article 3
- Exhibit B: Traffic Improvements
- Exhibit C: Assabet River Rail Trail Easement