

Appendix C238

Uniondale Union Free School District Agreement

AGREEMENT

AGREEMENT made this 30th day of July, 2009 by and between the Uniondale Union Free School District (the "School District"), a school district formed and operating under the Education Law of the State of New York, having an address at 933 Goodrich Street, Uniondale, New York 11553-2499 and Lighthouse Development Group, LLC ("Lighthouse"), a Delaware limited liability company, having an address at 1600 Old Country Road, Plainview, New York 11803.

WHEREAS, Lighthouse has made application to the Town Board of the Town of Hempstead (the "Town") for an amendment to its Building Zone Ordinance permitting the creation of a mixed use zoning district known as the Planned Development District (the "PDD") concerning approximately 150 acres of land located at Uniondale, New York on which there are currently located the Nassau County Veterans Memorial Coliseum (the "Coliseum"), the Marriott Hotel and parking adjacent thereto (collectively, the "Property"); and

WHEREAS, the majority of the Property lies within the boundaries of the School District; and

WHEREAS, the Planned Development District will provide the zoning authorization to construct on the Property a mixed use project to be known as the Lighthouse at Long Island consisting of the upgrade and renovation of the Coliseum as well as the construction of new hotels, convention facilities, offices, retail establishments, sports facilities and residential housing (the "Project"); and

WHEREAS, the residential housing component of the Project as currently proposed by Lighthouse will consist of 2,190 units intended to house residential occupants but shall not include units restricted to persons of age 55 or over or to students enrolled in a college, university or other higher educational institution ("Residential Units"); and

WHEREAS, the School District finds that the increased tax revenues anticipated to result from the construction and operation of the Project, the new jobs and career opportunities projected to be generated thereby, the anticipated ability to grow existing businesses within the community and to attract new businesses and the projected increase in property values resulting from the Project will create an environment conducive to the achievement of the mission of the District;

NOW THEREFORE, in order to mitigate any potential impact of additional students enrolled as a result of the construction of the Residential Units, Lighthouse and the School District agree as follows:

1. Lighthouse, its successors and assigns, subject to the other and further provisions of this Agreement, shall, no later than five (5) business days after the date upon which Lighthouse shall receive a building permit (the "Residential Building Permit") for the first Residential Building to be constructed at the Project, pay to the School District, or to any trust or not-for-profit entity that the School District, at its sole discretion, shall designate, the sum of \$4,000,000 (the "Lighthouse Contribution"). In connection with said Residential Building Permit, Lighthouse shall be obligated to send the following notices to the School District:

(i) a notice notifying the School District of the date upon which the Building Department of the Town of Hempstead (the "Building Department") approves the Lighthouse application for the Residential Building Permit, said notice to be sent no later than ten (10) days after receipt by Lighthouse of said approval; and

(ii) a notice to the School District notifying it of the date upon which Lighthouse receives the Residential Building Permit, said notice to be accompanied by either (1) a check in the amount of the Lighthouse Contribution payable to the entity specified by the School District or (2) confirmation of the wire transfer of the Lighthouse Contribution to the entity specified by the School District, said notice to be given no later than five (5) business days after the date of receipt of the Residential Building Permit.

2. The Lighthouse Contribution shall be subject to adjustment by the percentage difference (positive or negative) between 2,190 and the number of Residential Units approved by the Town on the Conceptual Master Plan referred to in the PDD.¹

3. Notwithstanding anything to the contrary contained in this Agreement, no building permit issued by the Building Department shall be deemed a Residential Building Permit if it is issued in connection with (i) any portion of a Residential Building that will be devoted to a garage, commercial unit, or to any other use that will not directly be related to the enclosure of residential occupants or (ii) any improvements (on or off the Property) that relate to roadways, curb cuts, driveways, utilities, landscaping, lighting or any other structures generally acknowledged to constitute infrastructure improvements.

4. Lighthouse shall not be relieved of its obligation to pay the Lighthouse Contribution to the School District under the terms of this Agreement if Lighthouse should hereafter sell, assign, lease or otherwise devise or convey its interest in the entire Property to another developer or convey, sell, assign or lease to another party any part of the Property that may be designated under the approved Conceptual Master Plan to be improved with Residential Units.

5. The School District shall not be obligated to spend the Lighthouse Contribution in any specific manner or for any specific purpose.

6. All notices under this Agreement shall be in writing and delivered personally (with receipt obtained) or mailed by certified mail, postage prepaid, or by overnight delivery service, addressed to the parties and their attorneys at the addresses specified below or any other address as to which the party giving such notice shall have been notified or by facsimile transmission at the facsimile number as to which the party giving such notice shall have been notified followed by mailing in accordance with the provisions of this Paragraph. Either party hereto (or its attorney) may change the persons to be notified hereunder or the address or facsimile number thereof upon notice to the other party. Any notice given hereunder shall be deemed given (1) when received by personal delivery or by overnight delivery service or (2) five business days after mailing a facsimile transmission with confirmation of receipt followed by mailing in the manner prescribed herein.

¹ In other words, if the Town approves only 2,102 Residential Units on the Conceptual Master Plan (a reduction of 4%), the Lighthouse Contribution shall be reduced by 4% to \$3,840,000. Alternatively, if the Town approves 2,278 Residential Units on the Conceptual Master Plan or does not restrict any of such units to occupancy by persons age 55 and over or to occupancy by students enrolled in a college, university or institution of higher education (an increase of 4%), the Lighthouse Contribution shall be increased by 4% to \$4,160,000.

If to Lighthouse:

Lighthouse Development Group, LLC
1600 Old Country Road
Plainview, NY 11803
Attention: Michael J. Picker, President

with a copy to:

Lighthouse Development Group, LLC
1600 Old Country Road
Plainview, NY 11803
Attention: Robert V. Guido, Esq., Assistant General Counsel

If to Uniondale School District:

Superintendent William Lloyd
933 Goodrich Street
Uniondale, N.Y. 11553

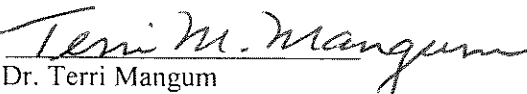
with a copy to:

Maureen Liccione, Esq.
Jaspan Schlesinger LLP
300 Garden City Plaza
Garden City, New York 11530

7. The provisions of this Agreement shall be deemed binding on the successors and assigns of each of the parties hereto until such time as the Lighthouse Contribution shall have been paid in full to the School District.
8. The School District accepts the Lighthouse Contribution as a mitigation measure, which, combined with the anticipated real property tax revenue, will address the potential impacts that the Lighthouse at Long Island will have upon the School District.
9. The School District will inform the Town prior to August 17, 2009 of its acceptance of this mitigation measure in accordance with the attached letter. The Lighthouse will have no obligation to make the Payment unless the attached letter is received by the Town on or before August 17, 2009.
10. The School District and Lighthouse agree that this Agreement sets forth the entire agreement between them and that no communications, documents, letters or other conversations, negotiations or representations not expressly incorporated herein are made a part of this Agreement. Any amendment to this Agreement shall be in writing, dated, and signed and agreed to by both parties hereto.
11. The person signing this Agreement on behalf of each party represents and warrants that he or she has been duly authorized by said party to sign this Agreement on its behalf and bind said party thereto.

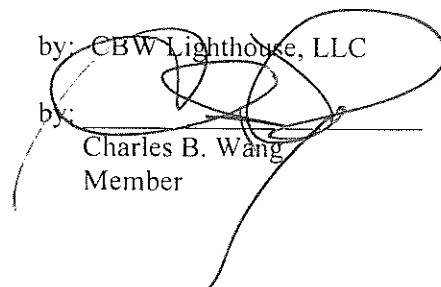
12. This Agreement shall not be binding upon either party until signed by both parties.
13. The failure of any party to insist upon the strict performance of any covenant, agreement, provision, or condition of this Agreement shall not constitute a waiver thereof. No waiver by any party of any of the terms or provisions of this Agreement shall be enforceable unless expressed in writing and signed by the party against whom enforcement is sought.
14. If any provision of this Agreement or the application thereof to any party or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to any other party or circumstance shall not be affected thereby and shall be enforced to the greatest extent permitted by Law.
15. This Agreement may be executed in separate facsimile counterparts. It shall be deemed fully executed when each party has signed at least one facsimile counterpart, even though no single facsimile counterpart contains the signature of all the parties.
16. All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural; and the plural shall include the singular. This Agreement shall not be interpreted in favor of any party by virtue of said party not having prepared this Agreement. If any time period provided for in this Agreement ends on a day other than a business day, the time period shall be extended to the next business day.
17. This Agreement shall be governed by the laws of the State of New York.

UNIONDALE UNION FREE SCHOOL DISTRICT

by: 
Dr. Terri Mangum
President

LIGHTHOUSE DEVELOPMENT GROUP, LLC

by: CBW Lighthouse, LLC

by: 
Charles B. Wang
Member

UNIONDALE UNION FREE SCHOOL DISTRICT

933 GOODRICH STREET, UNIONDALE, NEW YORK 11553-2499

Website: uniondale.k12.ny.us

BOARD OF EDUCATION

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DEBORAH R. MABRY, *Trustee*
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JAMES SHARPE III, *Trustee*
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WILLIAM K. LLOYD, PH.D.

Superintendent of Schools
516-560-8824 • FAX 516-292-2659
E-MAIL: wllloyd@uniondaleschools.org

ADMINISTRATION

JACQUELINE PEEK-DAVIS, ED.D.
Assistant Superintendent for Curriculum and Instruction
516-560-8825 • FAX 516-560-8917
KENNETH W. RODGERS, ED.D.
Assistant Superintendent for Business Affairs
516-560-8801 • FAX 516-539-1743
MYRTLE E. DICKSON
Assistant Superintendent for Human Resources
516-560-8822 • FAX 516-560-8927

DISTRICT CLERK

SELMA RUBIN
516-560-8945 • FAX 516-918-1060

July 30, 2009

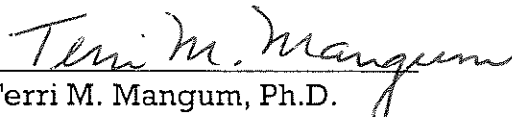
The Honorable Kate Murray
Supervisor
Town of Hempstead
One Washington Street
Hempstead, NY 11550

Dear Honorable Supervisor Murray:

The purpose of this letter is to inform the Town that the School District and the Lighthouse have agreed upon measures intended to mitigate the impact of the development of the Lighthouse Residential Units upon the School District in accordance with the attached Agreement.

The School District hereby authorizes the Town to include specific reference to the mitigation measures described in the Agreement in the Final General Environmental Impact Statement and SEQRA Findings it may issue in connection with the Project.

Uniondale Union Free School District
Board of Education

By: 
Terri M. Mangum, Ph.D.
President

Attachment