

MEMORANDUM OF AGREEMENT

May __, 2025

This Memorandum of Agreement dated as of May __, 2025 (“Agreement”), is entered into by and between the Town of Concord, Massachusetts, acting by and through its Select Board (the “Town”), with a principal place of business at Town Hall, 22 Monument Square, Concord, MA 01742, and New England Deaconess Association – Abundant Life Communities, Inc. (“NEDA”), a Massachusetts nonprofit corporation with a principal place of business located at 80 Deaconess Road, Concord, MA 01742.

RECITALS

WHEREAS, NEDA has asked the Town to consider amending the Concord Zoning Bylaw (the “Zoning Bylaw”) by adopting Article 46 at the 2025 Annual Town Meeting, entitled “Continuing Care Retirement Community Overlay District,” (“CCRCOD”) pursuant to G.L. c. 40A, s. 5, a copy of which is attached as **Exhibit A**; and

WHEREAS, the CCRCOD shall be considered at the Annual Town Meeting to commence on June 2, 2025 (the “Town Meeting”); and

WHEREAS, the CCRCOD would rezone a parcel of land consisting of approximately 12.1 acres, more or less, (the “Property”) owned by NEDA and more particularly shown on the plan attached hereto as **Exhibit B** and incorporated by reference; and

WHEREAS, NEDA’s Deed to the Property is recorded in the Middlesex South Registry of Deeds at Book 83104, Page 244; and

WHEREAS, the adoption of the CCRCOD and the inclusion of the Property within the CCRCOD would enable NEDA to apply to the Concord Planning Board (“Planning Board”) for Site Plan Approval as required under the proposed CCRCOD for development of a Continuing Care Retirement Community on the Property (the “Project”); and

WHEREAS, the Town has entered into this Agreement in order to clarify, secure, and memorialize certain commitments made by NEDA in the rezoning process:

AGREEMENT

Now, therefore, for mutual consideration, the receipt and sufficiency of which are hereby acknowledged, the Town and NEDA agree that, if, and only if, (i) the CCRCOD is adopted at Town Meeting in the form attached hereto as Exhibit A, without modification which materially affects NEDA’s rights as set forth herein and (ii) NEDA applies for and is issued a building permit in accordance with Site Plan Approval granted by the Planning Board for a Project as described in the CCRCOD, then the Town and NEDA shall each perform the actions as set forth herein:

A. PAYMENT OF TAXES BY NEDA

- 1. Property Taxes.** NEDA shall pay all real property taxes on the Property, without seeking an abatement, exemption or adjustment, until the issuance of the first certificate of occupancy for the Project. If, thereafter, NEDA elects to seek a tax exemption, abatement, or adjustment on the Property on the basis of charitable or otherwise tax-exempt use thereof, NEDA may apply for such exemption, abatement or adjustment in the proper course, including by making an appropriate application to the Town’s Board of Assessors. If the Town’s Board of Assessors or another body with adequate jurisdiction, including the Appellate Tax Board, determines that the use of the Property is eligible for the requested exemption, abatement or adjustment, then NEDA and the Town shall enter into good faith negotiations to reach an Agreement on Payment in Lieu of Taxes (“PILOT Agreement”). If the parties are unable to reach a PILOT Agreement prior to the conclusion of the first fiscal year in which such requested exemption, abatement or adjustment is granted, NEDA agrees that it shall not reapply for such exemption, abatement, or adjustment for the following four (4) fiscal years and NEDA shall agree to pay property taxes on the Property to be calculated pursuant to the methodology utilized for tax assessments on similarly situated properties providing comparable services in the Town; provided, however, that nothing herein shall be deemed as a waiver of NEDA’s rights to challenge the amounts of any assessment made to it during that time. In the event the Town’s Board of Assessors or another body with adequate jurisdiction determines that the use of the Property is not eligible for the requested exemption, abatement or adjustment, NEDA shall pay all assessed taxes, reserving its rights to challenge the amounts of any assessment made to it during that time.
- 2. Motor Vehicle Excise Taxes.** NEDA’s motor vehicles in service for the Property shall be registered in Concord and NEDA shall pay associated motor vehicle excise taxes to the Town.

B. NEDA CONTRIBUTION FOR THE SPECIAL NEEDS OF ELDERLY CITIZENS

NEDA shall continue to serve the special needs of Concord’s elderly citizens, consistent with the requirements of IRS REV. Ruling 72-124, as it has done for more than fifty years. These special needs include housing, health care, and financial security.

In addition to NEDA’s charitable contributions under IRS REV. Ruling 72-124, NEDA shall make the following contribution to the Town (the “Contribution”):

1. Total Amount.

- a. The total amount of the Contribution shall be \$200,000 x ten percent (10%) of the number of units approved for the Project in the certificate(s) of occupancy issued for the Project . For example, if the certificate(s) of occupancy for the Project

- approve occupancy for a total of 100 units, the total amount of the Contribution will be $.10 \times 100 \times \$200,000$, or \$2,000,000.
- b. The Project may, subject to approval by the Planning Board during the Site Plan Review process, be permitted to proceed in distinct phases (each a “Project Phase”), in which case the total amount of the Contribution shall be allocated to each Project Phase based on the number of units approved for each Project Phase. For example, if the Project is approved for 100 units, in two Project Phases of 40 and 60 units respectively, the Contribution for Project Phase I shall be $.10 \times 40 \times \$200,000$, or \$800,000, and the Contribution for Project Phase II shall be $.10 \times 60 \times \$200,000$, or \$1,200,000.
 - c. The Contribution payment for the Project or a Project Phase shall be made in ten (10) equal annual installments beginning on the date identified in Subsection 2 below.

2. Commencement of the Contribution.

- a. The first Contribution payment shall be due on the earlier of (i) thirty (30) days after the date by which ninety percent (90%) of the units permitted for the Project or each applicable Project Phase have been leased; or (ii) eighteen (18) months after the date of the Town’s issuance of a Certificate Occupancy for the Project or a Project Phase. In order to permit the Town to track the commencement date of the Contribution payment, NEDA will, report to the Town the amount of leased units in the Project and each Project Phase no less than quarterly after the commencement of the Project.
- b. The Contribution payments shall be made annually on the date selected by the parties for ten (10) consecutive years beginning on the applicable date for the Project or Project Phase in Subsection (a), above, and continuing for nine (9) consecutive years thereafter.
- c. In the event that the CEO of NEDA determines that a timely payment to the Town will put NEDA’s obligations as a tax-exempt organization in jeopardy, the CEO may seek a reasonable extension of time to make the payment from the Town Manager. The Town Manager may request reasonable evidence of the need for delayed payment, including without limitation, a signed statement of NEDA’s auditors or certified public accountants to that effect.

- 3. Use of NEDA Contribution.** The Town shall spend the funds contributed by NEDA on issues related to housing, health care, and financial security for persons aged fifty-five (55) or older. The Town shall, in years where the NEDA contribution is used, provide an annual report to NEDA Chief Financial Officer verifying such that expenditures are consistent with NEDA’s mission under Rev. Ruling 72-124.

C. CONNECTION BY NEDA TO CONCORD'S MUNICIPAL SEWER SYSTEM

NEDA may apply to connect to the municipal sewer system prior to NEDA's first application for a building permit for the Project. In the event there is capacity in the system to serve NEDA's Project, NEDA shall, if otherwise eligible to make such connection, be deemed to have a right to the connection(s) in accordance with all applicable laws.

D. VEHICULAR ACCESS FROM AND EGRESS TO OLD MARLBORO ROAD

The Planning Board may, in the course of Site Plan Approval, impose a condition limiting access to and egress from Old Marlboro Road to the Project to emergency vehicles only. In the alternative, the Planning Board may determine that non-emergency vehicles may enter the Project from the east bound lane of Old Marlboro Road (i.e., a right-hand turn into the site only from Old Marlboro Road), but in no event shall egress from the Project be allowed to Old Marlboro Road.

E. MITIGATION OF ORNAC AND OLD MARLBORO ROAD INTERSECTION

In order to conduct Site Plan Approval of the Project, the Planning Board shall engage the peer review services, using funds provided by G.L. c. 44, s. 53G, of a qualified Traffic and Transportation Engineer, licensed to practice as a Professional Engineer in Massachusetts, and who is also a certified Professional Traffic Operations Engineer through the Institute of Transportation Engineers (the "Traffic Peer Reviewer"). In the event that the Planning Board, in the course of Site Plan Approval and after consultation with its Traffic Peer Reviewer, deems reasonable improvements desirable to mitigate traffic impacts to the intersection of Old Road to Nine Acre Corner ("ORNAC") and Old Marlboro Road (the "Intersection"), NEDA shall contribute funding toward future safety, capacity and/or pedestrian improvements for the Intersection in proportion to the relative change in peak hour traffic volumes generated at the Intersection.

F. PEDESTRIAN IMPROVEMENTS

The Planning Board may, in the course of Site Plan Approval, impose a condition requiring pedestrian improvements within the layout of ORNAC and Old Marlboro Road. NEDA 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 pedestrian improvements (the "Pedestrian Improvements"). As part of the Site Plan Approval application, NEDA shall conduct a safety study for any proposed crosswalk on ORNAC or Old Marlboro Road and shall construct at its sole expense, such crosswalk improvements and any additional safety measures as recommended in the safety study. NEDA will not be held responsible for maintenance costs of the Pedestrian Improvements or crosswalk(s) thereafter. The Town agrees that it will reasonably cooperate with NEDA (at no cost to the Town) in its efforts to obtain any and all approvals required from state agencies or unrelated third parties.

G. SITE SERVICES

1. **Private Traffic Facilities.** NEDA shall construct the streets and parking areas within the Project. All such streets and parking areas shall remain privately owned. NEDA will maintain said streets and parking areas at its sole cost and expense.
2. **Private Amenities.** NEDA shall be solely responsible for the maintenance and operation, including but not limited to refuse and trash removal, snow removal, road and sidewalk maintenance, lighting, landscape maintenance and similar activities of the Project to be built within the Property, but not within the layout of any public ways.
3. **Performance Guarantee.** It is reasonably anticipated by and between the parties that some improvements or mitigation may not be completed prior to the issuance of a certificate of occupancy for any building constructed as part of the Project on the Property. To the extent that for any reason an improvements or mitigation is not completed prior to NEDA's application for a certificate of occupancy, the Planning Board may require, in the course of Site Plan Approval, as a condition for the issuance of any such certificate of occupancy, security for such incomplete work in the manner provided for securing construction of ways and the installation of municipal services set forth in G.L. c. 41, §81U, paragraphs (1) and (2). The amount of such security shall be determined by the Planning Board after consultation with NEDA and shall be sufficient to cover the design and construction of any such incomplete work required under the Site Plan Approval.

H. MISCELLANEOUS PROVISIONS

1. **Binding Effect.** This Agreement shall run with the Property as an encumbrance and shall bind and inure to the benefit of NEDA and its successors and assigns as owners of the Property for as long as use of the Property is subject to the uses permitted in the CCROD. The Town and NEDA agree that NEDA may transfer all, a portion of, or an interest in the Project to a new entity provided that any new entity acknowledges that:
 - a. This Agreement shall run with title to each portion of, or interest in, the Property and shall be binding upon any entity with an ownership interest in the Property, and each of its successors or assigns as to the obligations which arise under this Agreement during their respective periods of ownership of the Property or relating only to their respective portion(s) thereof, provided that each predecessor-in-title shall be forever released from this Agreement upon procuring a written acknowledgment from its immediate successor, addressed to the Town, acknowledging and agreeing that such successor-in-title is bound by the terms of this Agreement and that this Agreement shall be enforceable against such successor by the Town with respect to such successor's portion(s) of the Property; and

- b. The obligations created hereunder shall not be treated as assumed by any new entity, and no prior entity shall be released from such obligations, until such notice is delivered to the Town.
- 2. Relationship to Zoning Bylaw.** This Agreement and the Zoning Bylaw, as modified by the CCROD, shall be construed in such a way as to reasonably harmonize any conflicting provisions, but in the event of any irreconcilable conflict between this Agreement and the Zoning Bylaw as so modified, the Zoning Bylaw as so modified shall control, subject to the provisions of any applicable state or federal law.
- 3. Recording.** NEDA shall, prior to the issuance of a building permit for the Project, promptly record a Notice of this Agreement with the Middlesex South Registry of Deeds and furnish proof of the recorded notice to the Town.
- 4. NEDA Existence and Authority.** NEDA represents that it is a Massachusetts corporation duly formed, validly existing, in good standing under the laws of Commonwealth of Massachusetts. This Agreement constitutes a valid and legally binding obligation of NEDA, enforceable against NEDA in accordance with its terms, and neither the execution, delivery or performance of this Agreement nor compliance herewith conflicts with or will conflict with or results or will result in a breach of or constitutes or will constitute a default under (i) the organizational documents of NEDA, (ii) any law or any order, written injunction or decree of any court or governmental authority, or (iii) any agreement or instrument to which NEDA is a party by which it is bound.
- 5. Permitting.** The execution and delivery of this Agreement does not constitute an agreement by the Town that any necessary permit, certificate or approval for the Project will in fact be granted, including, without limitation, approval of the CCRCOD by Town Meeting. The execution of this Agreement shall supplement the terms and conditions of the CCRCOD, and this Agreement may be made a condition of any site approval issued in connection with the Project subsequent to such approval. Further, nothing herein shall limit the ability of the Town, or any board, committee or official thereof to impose additional conditions on the Project in addition to those in this Agreement.
- 6. Invalidity.** The Town and NEDA agree that if the adoption of the proposed CCRCOD by Town Meeting 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 Agreement and each of the agreements and documents referenced herein shall be null and void.
- 7. Compliance.** NEDA agrees that during the Site Plan Approval process it shall submit all necessary evidence, to the satisfaction of the Planning Board, to show compliance with the terms of this Agreement.

- 8. Effect; Amendment.** This Agreement shall not take effect until voted and executed by the Select Board of the Town of Concord. Upon such vote, this Agreement shall not be amended in any material respect except by a further majority vote of the Select Board.
- 9. Non-Waiver.** The failure of the Town or NEDA to enforce this Agreement shall not be deemed a waiver of the Town or NEDA's right to do so thereafter.
- 10. 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:

Concord Town Manager
Town Hall
22 Monument Square
Concord, MA 01742

In the case of the NEDA, to:

Chief Executive Office
New England Deaconess Association
80 Deaconess Road
Concord, MA 01742

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

11. Default and Notice.

A. By NEDA. If NEDA shall default in the performance of any term, covenant or condition of this Agreement, which default shall continue for more than thirty (30) days after written notice to NEDA (or if such default shall be reasonably expected to take more than thirty (30) days to cure, said longer period of time), the Town shall have the right to (i) terminate this Agreement; or (ii) exercise any other remedy available at law or in equity, including commencing an action for specific performance. The Town agrees that if, within ten (10) days after NEDA's receipt of a notice of a claim of default, NEDA shall give notice to the Town that NEDA contests the same, then the Town 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. NEDA agrees to diligently prosecute any such contest; if such matter is determined adversely to NEDA, NEDA shall have thirty (30) days (or such longer period of time as agreed upon by NEDA and the Town) to effect such cure.

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

C. Reservation of Rights. Nothing herein shall limit or prohibit the Town or NEDA from bringing any legal action regarding the Project which is not based on this Agreement.

12. Effective Date of Agreement. This Agreement shall be effective as of the date it shall be executed by both NEDA and the Town.

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

14. Applicable Law; Construction. This 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. Any action brought by the Town hereunder may be brought in the Land Court or the Superior Court in and for the County of Middlesex, and NEDA hereby agrees to the jurisdiction of such court.

15. Entire Agreement. This 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.

16. Counterparts. This Agreement may be signed in any number of counterparts, and each thereof shall be deemed to be an original, and all of such counterparts are one and the same Agreement.

[Signature Page Follows]

NEDA/Concord MOA
FINAL DRAFT

Executed under seal as of the date first above written.

TOWN OF CONCORD

By: _____
Select Board _____, Chair, hereunto duly authorized

NEW ENGLAND DEACONESS ASSOCIATION – ABUNDANT LIFE COMMUNITIES,
INC.

By: _____
Its duly authorized Chief Executive Officer

NEDA/Concord MOA
FINAL DRAFT

SCHEDULE OF EXHIBITS

Exhibit A: CCRCOD

Exhibit B: Legal Description of the Property