



TOWN OF GROTON  
Affordable Housing Trust



Becky Pine, *Chair*  
David A. Wilder, *Vice Chair*  
Colleen A. Neff, *Treasurer*  
Sheila Julien, *Member*  
Stuart M. Schulman, *Member*

May 14, 2020

*Via email to [bfrance@senateconstruction.com](mailto:bfrance@senateconstruction.com) and first-class mail*

Mr. Robert D. France  
Manager  
Mount Laurel Development, LLC  
1000 Mount Laurel Circle Suite 4  
Shirley, MA 01464

Re: Preferred Membership Unit Investor Agreement dated March 22, 2012,  
Boynton Meadows Project; Demand for Accounting

Dear Mr. France:

In connection with the Preferred Membership Unit Investor Agreement between the Groton Affordable Housing Trust and Mount Laurel Development, LLC dated March 22, 2012 (the "Agreement"), the Groton Affordable Housing Trust presents this demand for an accounting of the Boynton Meadows project's financial performance. The Trust will expect to receive a full accounting, prepared by or on behalf of the Project Accountant and through the period ending April 30, 2020, no later than June 5, 2020. This demand is based on the following facts and the below-referenced provisions of the Agreement. Capitalized terms in this letter have the same meanings as are given those terms in the Agreement.

As you know, under the Agreement the Trust made a \$400,000 Capital Contribution to Mount Laurel Development (the "Company") for use in connection with the Company's purchase and development of the Project Site at 134 Main Street, Groton, Massachusetts. In exchange, the Trust acquired the rights of a Preferred Membership Interest Holder. (section 1) Those rights include a dividend based on the Trust's proportionate share (33.3%) of the Project Profit (subsection 3.b.i); and a Return of Capital, based on "remaining income, or profit, from the sale of the residential and/or commercial units of the Project, and/or the Site." (subsection 3.b.ii)

While the Agreement states that Project Profit is determined when all Project units have been sold to an initial purchaser, the Agreement entitles the Investor to an accounting prior to that time, as set forth below. In addition, given the passage of eight years since the

Agreement was signed, the fact that all but one unit has been sold to an initial purchaser (a commercial unit in the 134 Main Street building), and the fact that the initial sale of all the other units had occurred by November of 2018 (*a year and a half ago*), an accounting is long overdue.

Subsection 4.b of the Agreement states the applicable standard for the Company's retention of the Investors' Capital Contributions: "The Company shall have the right to retain the Capital Contribution as the Company, in its sole and absolute discretion, deems necessary to fund the on-going operations of the Project, ***but shall not be entitled to retain any greater amount of the Capital Contribution than is reasonably required to complete the Project, based on Project records.***" (emphasis supplied) At this stage of the Project, as noted above, and where Project site work and land use permit requirements have been completed, there can be no legitimate reason for the Company to continue to retain the full Capital Contribution. To the extent that the Company continues to retain any portion of the Capital Contribution, the Company must justify that retention based on Project records.

Subsection 4.b also provides that, at "the Investor's election," the determination of the amount of the Capital Contribution reasonably required for completion of the Project shall also be based on "financial documentation verified by the Project Accountant." The Trust so elects. Though that subsection states that the requesting Investor is responsible for the associated accounting costs, the present circumstances, the other provisions of the Agreement, and the Company's dealings with the Trust to date make any such payment by the Trust an unreasonable and unenforceable obligation.

As a contractual arrangement, the Agreement includes an implied covenant by the Company that it will deal fairly and in good faith with the Trust, meaning that the Company promised not to do anything that would have the effect of destroying or injuring the Trust's right to receive the benefits of the Agreement. (See Anthony's Pier Four, Inc. v. HBC Associates, 411 Mass. 451, 471-472 (1991).) In addition, section 6 of the Agreement contains a requirement of financial disclosure in carrying out the purpose of the Agreement, as follows: "This Preferred Interest program, meaning the rights and obligations associated with the Investor's Preferred Interest set forth herein, shall be administered by the Company and ***shall be accounted for by the Project Accountant***, or his at least similarly qualified successor appointed by the Company, subject to the review and advice of the Investor." (emphasis supplied)

Further, section 18 of the Agreement holds the Company to an obligation of full disclosure, specifically:

No representation or warranty of the Company in this Agreement or in any other agreement, instrument, certificate, or other document delivered by the Company in connection with this Agreement or any of the other transactions contemplated hereby contains or will contain any known or intentionally untrue statement of a material fact or omits or will omit to state a known material fact required to be stated herein or therein necessary to make the statements contained herein or therein not false or misleading or necessary in order to provide the Investor with proper

and complete information as to the business, condition, operations, and prospects of the Company and the Project.

Unfortunately, contrary to these contractual and legal obligations, there is a record of actions and omissions which shows that the Company has breached its obligations. Some of these were previously identified to you, in the Trust's letter of April 6, 2017 (copy enclosed):

- inconsistent and incomplete disclosures of other Project Investors and terms of investment in the various Preferred Membership Unit Investor Agreements;
- inconsistent treatment of Investor, individual and Company funds respecting Project receipts and payments.

More recently, according to records at the Middlesex South Registry of Deeds, on May 6, 2019 the Company gave an Assignment of Leases and Rents respecting the property at 134 Main Street to KMPD Capital LLC. This can only be viewed as another action to the detriment of the Trust and the Project's other Investors.

Please confirm receipt of this letter and take the steps required to comply with the Trust's demand.

Sincerely,



Rebecca Pine  
Chair

Enclosure: April 6, 2017 from Affordable Housing Trust to Mt. Laurel Dev.

cc: Mark Haddad, Town Manager (mhaddad@townofgroton.org)  
Attorney David Doneski (ddoneski@k-plaw.com)  
Attorney John J. Davis (jdavis@piercedavis.com)



**TOWN OF GROTON**  
Affordable Housing Trust



Joshua A. Degen, *Chair*  
Stuart M. Schulman, *Vice Chair*  
Fredrick J. Dunn, *Treasurer*  
Sheila Julien, *Secretary*  
David A. Wilder, *Member*

April 6, 2017

Mr. Robert D. France  
Manager  
Mount Laurel Development, LLC  
1000 Mount Laurel Circle Suite 4  
Shirley, MA 01464

Re: Boynton Meadows Project

Dear Mr. France:

As the Groton Affordable Housing Trust has continued to review and analyze the history, progress and financial and contract documentation for the Boynton Meadows development, it has become clear that the Trust has been ill-served by the actions of Mount Laurel Development in carrying out the project. The financial and contract documents you have provided in response to our requests have suggested that the best interest of the Trust, as a substantial investor in the project, has not been respected. We have had the documentation reviewed by a CPA and have also obtained additional information regarding the project and financial arrangements made by Mount Laurel Development with other investors. All of this information points us to the conclusion that the expenditure of project funds and monies contributed as the Trust's investment in the development has not been undertaken in good faith.

Our observations to date raise the following serious concerns:

-Monies paid for various construction elements, including monies paid to entities related to or controlled by you or Mount Laurel, exceed the reasonably expected cost for such work and materials for a project such as this;

-Construction costs per square feet have substantially exceeded pro forma cost estimates, but without complete explanation for the differential;

-Allegations in a lawsuit filed by a prospective buyer seeking return of a purchase deposit for failure to complete the unit on time that Mount Laurel responded to a notice of termination of the purchase and sale agreement by stating it lacked funds to return the deposit even if it desired to do so (Smith v. Mount Laurel Development, LLC, Middlesex Superior Court civil action no. 1781CV00149) and issuance of a writ of attachment by the court;

-Inconsistent and incomplete disclosures of other project investors and terms of investment in the various Preferred Membership Unit Investor Agreements;

-Inconsistent treatment of investor, individual and LLC funds respecting project receipts and payments, including, and particularly distressing, an undisclosed reduction in your equity position in Mount Laurel (to negative equity) as a result of a Mount Laurel distribution to you in the same amount as the investment of MB Realty in Mount Laurel, which was \$250,000 according to MB Realty's Preferred Membership Unit Investor Agreement – an amount greater than your equity contribution to Mount Laurel at the time.

173 Main Street  
Groton, MA 01450

Tel: 978.732.1913  
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Fran Stanley, Housing Coordinator  
[fstanley@townofgroton.org](mailto:fstanley@townofgroton.org)

**Mr. Robert France**  
**April 6, 2017**  
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With particular regard to the investor agreements, the Trust understands there are three investors in addition to the Trust: William P. Buck, Dawn Nelson Buck, and M. B. Realty Corporation. However, the various agreements with the investors do not accurately and consistently disclose to the individual investors the existence and nature of other investment agreements. Moreover, the M.B. Realty agreement includes an additional compensation provision neither given to nor revealed to the other investors: a payment of \$5,000 for each of the first 15 residential units sold.

Quite simply, the Trust has been misled, by what the information we have so far indicates is deceptive and fraudulent behavior. This situation cannot go on, and the Trust must be made whole now.

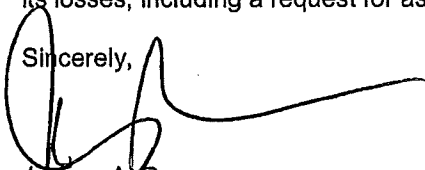
Therefore, please consider this letter as a demand for the following:

- **A return of the Trust's \$400,000 investment in the project;**
- **Reimbursement of the Trust's attorneys' fees for services related to the examination of Mount Laurel's actions as described in this letter and previous correspondence to you;**
- **Reimbursement of the Trust's expenses for the services of an auditor to review financial documents related to the Trust's inquiry into this matter.**

The Trust will expect an answer and a commitment to take the necessary action to honor the Trust's demand no later than April 15, 2017.

PLEASE NOTE: If Mount Laurel Development does not accept responsibility in this matter and take action to restore the Trust to its pre-investment position, the Trust will be forced to consider formal legal action to recover for its losses, including a request for assistance from any proper law enforcement authorities.

Sincerely,



Joshua A. Degen  
Chair

cc: Town Manager  
Town Counsel