

## MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (the “Agreement”) is entered into this \_\_\_ day of October, 2022 by and between the Town of Lancaster, acting by and through its Select Board, (the “Town”); 702, LLC, a limited liability company organized under the laws of the Commonwealth of Massachusetts with an address of 259 Turnpike Road, Suite 100 Southborough, MA 01772 (the “Owner”); and North Lancaster, LLC, a limited liability company organized under the laws of the Commonwealth of Massachusetts with an address of 1340 Lunenburg Road, Lancaster, Massachusetts (“North Lancaster”). North Lancaster’s obligation under this agreement is limited to the timely completion of the Phase One Access Road and related infrastructure as provided for in the Amended Definitive Subdivision Plan for McGovern Place approved by the Lancaster Planning Board on March 14, 2022 and recorded at the Worcester District Registry of Deeds in Book \_\_\_\_\_ Page \_\_\_\_\_, a copy of which Approval and duly endorsed Amended Definitive Subdivision Plan is Marked **Exhibit A**, is attached hereto and by reference is incorporated herein.

### RECITALS

WHEREAS, the Owner owns or controls property located in the Town of Lancaster shown as Parcel 1 on that certain plan entitled “Plan of Land, Capital Group Properties, McGovern Blvd. Town of Lancaster dated 6-11-18” prepared by Control Point Associates and recorded in the Worcester District Registry of Deeds as Plan \_\_\_\_\_ of 2022 (the “**Property Plan**”) and the Land shown as Assessors’ Parcel 014-0004.D, which Parcel is not of part of the Property Plan. Together Parcel 1 and Parcel 014-0004.D constitute the “Enterprise Project Site,” the **Deed** for which is attached hereto as **Exhibit B** and is duly recorded at the Worcester District Registry of Deeds in Book \_\_\_\_\_ Page \_\_\_\_\_; the **Property Plan** is attached hereto as **Exhibit C.**; a sketch copy of the **Assessors Map** showing area Assessors Parcels is attached hereto as **Exhibit C-1**; a copy of Owner’s Definitive Subdivision Plan approved by the Planning Board on \_\_\_\_\_ and the recorded at the Worcester District Registry of Deeds in Book \_\_\_\_\_ Page \_\_\_\_\_ is attached hereto as **Exhibit C-2**.

WHEREAS, the Owner proposes to use a portion of the Property, namely a specific area of Assessor Parcels 008-0045.0, 009-0004.0, 014-0003.B & 014-0004.D (hereinafter the “Enterprise Project Site”), subject to the exemptions and exclusions hereinafter set forth, only for those uses allowed in the Enterprise Zoning District (“EZ District”) by Use Regulation Schedule, §222-8 of the Zoning By-Law of the Town of Lancaster (the “Zoning Bylaw”) in effect as of the Effective Date (as defined below) of this Agreement, for a project containing a maximum building ground floor area of 2,450,000 square feet, along with associated parking, access, site circulation and infrastructure, including, without limitation, the installation of the Phase One Access Road on and within Parcel 014-0004.D; and

WHEREAS, the Owner’s presently anticipated project (the “Enterprise Project”) is detailed in the Concept Plan dated \_\_\_\_\_ (the “Concept Plan”) that the Owner, acting by and through its affiliated entity Capital Group Properties, LLC (“Capital Group”), prepared and submitted to the Planning Board for the October \_\_, 2022 public hearing on the proposed zoning change to the EZ District that was held pursuant to M.G.L. c.40A, §5; this Concept Plan was

required by §220-63 of the Lancaster Zoning Bylaw, and included plans, a detailed project narrative, and supporting materials and studies; and

WHEREAS, notwithstanding what is depicted on the Concept Plan, the Select Board wishes to ensure, in contract, that the permissible development of the Enterprise Project Site undertaken by Owner, and its successors and assigns, does not exceed 2,450,000 square feet in total and otherwise comports with the terms set forth herein, and that the impacts of the development of the Enterprise Project Site will be sufficiently mitigated by Owner and its successors and assigns; and

WHEREAS, a portion of the Enterprise Project is not allowed under the Town of Lancaster's current zoning as approximately 60% of the Enterprise Project Site is located within the EZ District, with the remainder being located within the Town's Residential Zoning District. Portions of the Enterprise Project Site are also within the Water Resource Overlay District. The boundaries of current zoning districts, including the overlay Water Resource District, and the boundaries of the proposed Enterprise Project Site are shown on the "Proposed amending and modifying Re-Zoning Plan" attached **Exhibit D**; and

WHEREAS, in order for the Enterprise Project to be constructed, the entirety of the Enterprise Project Site would need to be located within the Enterprise Zoning District; and

WHEREAS, the Select Board is amenable to sponsoring an article on the warrant at a Special Town Meeting in 2022 or the 2023 Annual Town Meeting, whichever sooner occurs, substantially in the form attached as **Exhibit E-1** the substance of which has been approved by the Owner that would expand and re-configure the EZ District by including all of the Property Project Site within the EZ District and allow, subject to all required permits and approvals, for the construction of the Enterprise Project on the Property, provided that adequate assurances are put in place to define the maximum development that may occur and to ensure that the Owner will address and offset all impacts associated with and resulting from the Enterprise Project, should it be allowed to proceed; and

WHEREAS, the Select Board is also amenable to sponsoring an article on the warrant at a Special Town Meeting in 2022, or at the 2023 Annual Town Meeting, substantially in the form attached as **Exhibit E-2** the substance of which has been approved by the Owner which addresses and amends Section \_\_\_\_\_ of Lancaster Zoning Bylaw, \_\_\_\_\_, increasing the maximum building height in the EZ District from forty (40) feet to fifty (50) feet; and

WHEREAS, the Select Board is also amenable to sponsoring an article on the warrant at the 2023 Annual Town Meeting, substantially in the form attached as **Exhibit E-3** the substance of which has been approved by the Owner, which addresses and amends Section \_\_\_\_\_ of Lancaster Zoning Bylaw, \_\_\_\_\_, increasing the maximum area of main entrance pylon signs in the EZ District \_\_\_\_\_ square feet to \_\_\_\_\_ square feet; and

WHEREAS, the Owner (on land owned or controlled by 702, LLC or North Lancaster, LLC) is concurrently pursuing a mixed-use development on a portions of assessor parcels 014-

0008.0, 014-008.A, 014-0004.A, 014-0004.H & 014-004.I pursuant to M.G.L. c.40R, which will contain a maximum of 146 dwelling units and a maximum commercial/retail ground floor building area of not more than 49% of the gross overall square footage of the residential buildings for commercial and/or, office, restaurant or retail purposes (the “40R Project”). Hereinafter the Enterprise Project and the 40R Project are sometimes referred to collectively as the “Owner’s Projects”; and

WHEREAS, the 40R Project will also require the adoption of separate zoning amendments by Special or Annual Town Meeting and is the subject of a companion Memorandum of Agreement (the “40R MOA”) between the parties of even date, an executed copy of which is attached hereto as **Exhibit F**; and

WHEREAS, based on the engineering and traffic studies performed by the Owner and as reviewed by the Town’s peer review consultants, the Parties have identified the water, sewer, traffic, environmental, open space, and recreational improvements, that are required in order to support the Enterprise Project and the 40R Project; and

WHEREAS, this Agreement is entered into by the Parties in an effort to establish a framework to supplement regulations contained in the Town’s Zoning Bylaw, General Bylaws, and any conditions that may be contained in permits associated with the Enterprise Project, and to (i) memorialize, in contract, the maximum commercial development that may occur on the Site, (ii) itemize infrastructure upgrades, traffic mitigation and monitoring, environmental mitigation, and other improvements to be undertaken by Owner to adequately support the Enterprise Project; and (iii) facilitate the local permitting process by memorializing in contract the Select Board’s support of the Enterprise Project.

NOW, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### AGREEMENT

#### 1. DEVELOPMENT OF THE SITE.

1.1 The Owner agrees to develop the Enterprise Project Site in compliance with the Use Regulation Schedule, §222-8 of the Zoning By-Law for the EZ District in effect as of the Effective Date of this Agreement; provided that, notwithstanding anything contained in the Zoning By-Law, the maximum ground floor area for the Enterprise Project Site shall not exceed 2,450,000 square feet, and the maximum impermeable coverage for the Enterprise Project Site shall not exceed \_\_\_\_\_ square feet .

1.2 The Owner agrees that the Enterprise Project Site shall be developed with the setbacks set forth in **Exhibit** \_\_\_\_ . *[Add new Exhibit, to be prepared by Capital Group, showing permissible building envelope for site].*

1.4 The Owner acknowledges that any modifications to the Concept Plan are subject to review by the Planning Board during site plan review for consistency with the Concept Plan

pursuant to §223-63.B of the Zoning Bylaw. Planning Board review pursuant to §223-63.B is a matter of zoning, and is outside the scope of the this Memorandum of Agreement.

substantially a minimum of 1,600,000 square feet of building floor area of substantially

1.6 Subject to the terms of this Agreement generally, the specific use restrictions set forth in Section 7.1 below, and final Town Meeting and Attorney General Approval of the Zoning Amendments contemplated herein, the Owner agrees not to develop, apply for, permit, or construct any different or additional uses on the Property, except as provided for in Section 1.1. In addition, , but only in the event that Owner obtains all other local, state or Federal approvals, orders or permits required to substantially construct the Enterprise Project, Owner acknowledges that this restriction expressly prohibits all residential development on the Enterprise Project Site whether pursuant to the Town’s Zoning By-Law, M.G.L. c.40B, §§20-23 and 760 CMR 56.00, or otherwise. If for any reason the Enterprise Project is not substantially permitted as aforesaid (meaning and intending to mean that unless all permits necessary for Owner to commence site development and install infrastructure improvements, construct and occupy a minimum of 1,600,000 square feet of building floor area of the buildings in the Enterprise Project as proposed in the Concept Plan, are issued and valid) the Enterprise Project shall be deemed “not substantially permitted,” the Parties acknowledge and agree that the all restrictions contained herein shall be deemed null and void and without legal recourse, such that Owner may develop and use, and or continue to develop and use the Property as allowed by applicable law then in effect. However, following any permitted non-residential construction within the re-zoned portion of the Project Site, this Agreement shall remain in full force as if Owner’s entire Enterprise Project had been fully permitted as per this Agreement.

1.5 The parties specifically understand and agree that as the result of Planning Board approval of a Definitive Subdivision Plan (see **Exhibit C-2** ) the current uses allowed for in the zoning districts which presently comprise the Project Site are frozen for 8 years from the date of approval. However, in the event new or amended Dimensional requirements for the EZ District are enacted, amended or changed from those in effect on the Effective Date as specified in Section 9.1 herein, or any other local regulation, Bylaw or ordinance which is applicable to Owner’s Project and materially impacts the Owner’s Projects, is or are enacted, amended or changed from those in effect on the Effective Date, prior to Owner formally applying for any such approval, order or permit required for construction of the Owner’s Projects, Owner may terminate this Agreement by written notice to the Town, whereupon this Agreement shall be null and void without recourse to the Town.

1.6 Prior to the issuance of the first Building Permit for either the Enterprise Project or the 40R Project the Owner shall organize a **Common Roadway Association**, mandatory membership in which shall be enforced by deed restriction and/or duly recorded affirmative covenant and shall consist of all Owners of all properties, including without limitation the 40R Project, which front on or use the Common Roadway previously approved by the Planning Board (See, **Exhibit A** hereof), or any extension thereof, for any purpose. The terms, conditions, management and operation of the Common Roadway Association shall be as Owner, in its sole discretion, determines provided that the applicable documents shall adequately provide that the road shall always remain private, and that all maintenance and plowing shall be the responsibility

of the owners without involvement or participation by the Town. The Common Roadway Association Agreement shall be subject to the reasonable review of the Planning Board prior to recording.

1.7 Without limiting the provisions of Section 1.1 or Section 1.2 above, this Agreement shall not be amended so as to increase the overall permissible ground floor area of the Enterprise Project unless approved by a majority vote of the Town of Lancaster Annual Town Meeting or a Special Town Meeting.

1.8 In consideration of the various commitments of Owner contained in this Memorandum of Agreement, the Town agrees that it will:

- Appoint a single municipal point of contact to assist Owner in navigating the local permitting process.
- Determine and make available to Owner and the public, the requirements for each permit if not readily available in current publicly available regulation or bylaw.
- Identify Owner all necessary permits for any phase of the Enterprise Project.
- Recommend to each subsequent municipal permit granting or approval authority, that the procedure for determining the completeness of a submission be provided to the Owner in writing upon request.
- Recommend to each subsequent municipal permit granting or approval authority a schedule for meetings and public hearings.
- Recommend to each subsequent municipal permit granting or approval authority that meetings and public hearings be promptly scheduled and that additional meetings and public hearings be conducted so as to facilitate the public hearing process and the dissemination of information to the public.

2. WATER AND SEWER. Water and sewer service shall be provided to all members of the Common Roadway Association, as defined in Section 1.4 above, as set forth immediately below.

2.1 Water Service. The Owner has arranged for the City of Leominster to provide potable water service to the Property pursuant to the Water Supply and Development Agreement dated December 4, 2020 a copy of which is attached hereto as **Exhibit “H”** and the Intermunicipal Agreement between the City of Leominster and the Town of Lancaster for the Provision of Water Service, dated March 17, 2021 a copy of which is attached hereto as **Exhibit “I”**. The Town expressly disclaims any ability to provide potable water service to the Enterprise Project. Owner hereby acknowledges and agrees on behalf of itself, its successors and assigns, and any and all affiliated entities that the Town does not now have and will not have in the future any obligation to provide water service to the Enterprise Project or to the Property for any reason whatsoever, regardless of the status of the Water Supply and Development Agreement dated December 4, 2020 or the availability of potable water from the City of Leominster. Connection to the Leominster Water Supply shall be completed as required by applicable local and state building regulations, codes and requirements and industry standards. Notwithstanding the

foregoing if, in the future, the Town determines to expand public water service to the area of the Property, the Town in its sole discretion, may elect to offer public water service to the Property.

2.2 Sewer Service. The Owner will be wholly responsible for permitting, construction, operation, and maintenance of a private wastewater treatment plant to serve the Enterprise Project and the 40R project. The Town expressly disclaims any availability of Town sewer service to serve the Owner's Projects, and the Owner agrees that it shall construct and operate its private wastewater treatment plant in compliance with any permit issued by the Massachusetts Department of Environmental Protection (DEP"). DEP approval of the wastewater treatment plant shall be final prior to the issuance of the first building permit for either of Owner's Projects. Construction of the waste water treatment plant shall be completed as required by applicable local and state building regulations, codes and requirements and industry standards. The Owner on behalf of itself, its successors and assigns, and any and all affiliated entities, agrees that, unless requested by the Town, the Town will have no obligation, now or in the future, to provide sewer service to the Project or to the Property. Notwithstanding the foregoing if, in the future, the Town determines to expand public water service to the area of the Property, the Town in its sole discretion, may elect to offer public water service to the Property.

### 3. TRANSPORTATION.

3.1 General. Transportation improvements and ongoing obligations supporting the Project are described in the Traffic Impact and Access Study (the "Traffic Study") prepared by TEC, Inc. dated May 5, 2021, and the peer review of the Traffic Study performed on behalf of the Town by Vanasse & Associates, Inc. dated September 7, 2021, *each of which are incorporated by reference herein*. The Owner agrees to construct, implement and manage all of the traffic mitigation set forth in this Section 3. All construction and installations shall be consistent with industry standard and compliant with all applicable local, state or Federal regulation. Following completion of all improvements by Owner required hereunder, the Common Roadway Association, as Owner's successor, shall assume all obligations of the Owner under this Section 3 and shall manage or operate, as necessary, all traffic mitigation required by this Agreement which are not managed or operated by or are otherwise under the jurisdiction of the Town or the Commonwealth.

#### 3.2 Lunenburg Road/McGovern Boulevard.

a. Owner will construct a fully actuated traffic signal, which shall include (i) new demand-based vehicular and bicycle detection, (ii) accommodations for emergency-vehicle pre-emption, and (iii) protected pedestrian phasing at the intersection of Lunenburg Road and McGovern Boulevard. The traffic signal at this location will be built in two stages:

- i. Subsurface and foundational infrastructure for the traffic signals will be constructed prior to issuance of the first certificate of occupancy for either the Enterprise Project or the 40R Project, and in conjunction with roadway improvements along both Lunenburg Road and McGovern Boulevard.

- ii. Traffic signal control and above-ground infrastructure for the traffic signals will be installed prior to building occupancy of a prospective tenant where the Manual on Uniform Traffic Control Devices (“MUTCD”) Warrant #1 or Warrant #2 are realized.
- b. North Lancaster, LLC shall widen McGovern Boulevard to provide two eastbound travel lanes including an exclusive left-turn lane and an exclusive right-turn lane.
- c. Owner will widen the Lunenburg Road northbound approach to the Site to introduce an exclusive left- turn lane operating under protected-permitted signal phasing.
- d. Owner will widen the Lunenburg Road southbound approach to the Site to introduce an exclusive right-turn lane operating under permissive-overlap signal phasing.
- e. Owner will provide ADA / AAB compliant pedestrian accommodations; including a crosswalk across McGovern Boulevard and Lunenburg Road, accessible ramps, and audio/vibratory pedestrian signal equipment.
- f. Owner will construct a 10-foot wide shared-use path along the westerly side of Lunenburg Road, north of McGovern Boulevard within the intersection limits including a pedestrian connection to Kimball Farm as identified on the “Shared Path Plan” showing the proposed main entrance traffic improvements, copy of which is attached hereto as **Exhibit J**.
- g. Owner will construct a 5-foot wide sidewalk along the westerly side of Lunenburg Road, south of McGovern Boulevard within the intersection limits.
- h. Owner will reconstruct all private commercial driveway aprons immediately north of McGovern Boulevard to accommodate the widened roadway within the limit of work areas of Owner’s Projects.

Owner will construct all mitigation improvements noted in this Section 3.2 prior to issuance of the first occupancy permit for the Enterprise Project or the 40R Project (which is the subject of the companion 40R MOA), with the exception of the above-ground traffic signal infrastructure noted in Section 3.2.a.ii. Owner will construct and install all said above-ground traffic signal infrastructure prior to building occupancy site generated trips reach a level where a minimum of *MUTCD* traffic signal warrants for Warrant #2 (four-hour traffic volumes) are met.

### 3.3 Lunenburg Road/Fort Pond Road/Woods Lane.

The Owner shall construct an interim / temporary traffic signal, without additional roadway widening, at the intersection of Lunenburg Road / Fort Pond Road / Woods Lane prior to any imminent building-occupancy where MUTCD Warrant #1 or Warrant #2 are met based on traffic counts conducted in conjunction with the Site’s mitigation. Therefore, prior to seeking any building occupancy from the Town, the Owner will reconduct traffic counts at the intersection for a typical weekday and add traffic to be generated by the immediate tenant. Upon credibly satisfying MUTCD Warrant #1 or Warrant #2, the Owner will install the temporary/interim

traffic signal. Without limitation, the interim traffic signal shall consist of the following elements:

- i. Maintain existing geometric layout of the intersection approaches;
- ii. Signal housings installed overhead utilizing span wire between utility poles (rated for loading);
- iii. Installation of emergency vehicle pre-emption system;
- iv. Installation of wire loop detectors on each approach within the pavement top- course; and
- v. Removal of all existing control signage in conflict with the interim traffic signal; such as stop-signage on the Fort Pond Road and Woods Lane approaches.

This mitigation measure is meant to be an interim measure to mitigate both existing and future traffic operations prior to the improvements being evaluated by MassDOT at Interchange 103 (formerly Interchange 35). As the build-out phasing of the Enterprise Project and the 40R Project are currently unknown, the level of traffic generated by the site will dictate when MUTCD traffic signal warrants are satisfied and will be evaluated at each perspective building occupancy stage.

#### 3.4 Route 2.

The Owner shall construct improvements along the Route 2 WB On and Off- Ramps at Interchange 103 (formerly Interchange 35) as a temporary measure prior to the full interchange reconstruction as part of an upcoming MassDOT Project. The construction will include the widening of pavement along the shoulder and marked deceleration lane for the Route 2 WB Off-Ramp in order to provide a consistent lane width and proper tapers to accommodate the 95<sup>th</sup> percentile queue for the stop-control movement along the ramp at Fort Pond Road. The construction will also include limited widening of pavement along the shoulder and marked acceleration area along the Route 2 WB On-Ramp based on the constraints of the Route 70 Bridge. Due to the bridge abutment conflict, the additional widening will extend approximately 375-feet and result in a 75-foot acceleration lane prior to the start of taper. The improvement will also modify the pavement markings on the Route 2 corridor to extend the taper to 720-feet.

#### 3.5 Main Street/Seven Bridge Road.

Owner shall modify traffic signal timings and parameters (traffic signal to be constructed as part of MassDOT Project No. 608779) post-occupancy (or at to-be agreed upon occupancy milestone intervals) to accommodate the additional traffic flow from the Site. The implementation of this improvement will be reviewed and coordinated with the Town, which will hold jurisdiction, at agreed upon occupancy thresholds.

#### 3.6 Lunenburg Road/Main Street.

Owner shall modify traffic signal timings and parameters (traffic signal to be constructed as part of MassDOT Project No. 608779) post-occupancy (or at to-be agreed upon occupancy milestone intervals) to accommodate the additional traffic flow from the Project site. The implementation

of this improvement will be reviewed and coordinated with the Town, which will hold jurisdiction, at agreed upon occupancy thresholds.

### 3.7 McGovern Boulevard.

North Lancaster, LLC shall reconstruct McGovern Boulevard from the existing FC Stars Soccer driveway connection to Lunenburg Road prior to issuance of the first occupancy permit in the Enterprise Project or the 40R Projects. For other portions of those projects west of this location, the Owner shall construct each segment of McGovern Boulevard as needed based on prospective building footprint location. Therefore, each new segment will advance further west into the projects up to the site driveway location of the subject building prior to occupancy of said building.

### 3.8 Additional Signage.

The Owner and the Town shall implement short-term, low-cost improvement measures at the intersections which were not included or superseded as part of MassDOT Project No. 608779; including the installation of advance speed reduction signage (W3-5) along Lunenburg Road southbound prior to the Main Street intersection. The cost of such improvement measures shall be shared equally by the Town and the Owner.

### 3.9 MART Bus Extension.

a. The Enterprise Project and the 40R Projects, pro-rated as determined by Owner, shall fund the cost of extending the Montachusett Regional Transit Authority (“MART”) Route #8 bus line to the Property to the extent that such funding is not fully covered by state or federal transit funding. The Owner’s Projects, through its Common Roadway Association will reimburse the Town for its share of the cost of providing this or similar bus service to the Property no later than thirty (30) days after delivery of an invoice from the Town. The Town shall use best efforts to ensure that the extension of the Route #8 bus line or similar bus service shall be in effect and operational prior to issuance of the first certificate of occupancy for the 40R Project. The Common Roadway Association’s funding obligation pursuant to this section shall remain in place as long as the Enterprise Project or the 40R Project exist on the Property or adjacent 40R Property. It is expressly understood by the parties that actual operation of MART Route #8 is not the obligation of Owner.

b. The Owner shall construct and maintain, at its sole expense, two (2) bus shelters for use as part of the MART Route #8 bus line or similar service, with one (1) shelter located within the 40R District adjacent to the housing and one (1) shelter within the Enterprise Project. Each shelter shall be fully completed prior to issuance of the first certificate of occupancy for the 40R Project and the Enterprise Project, respectively. The Common Roadway Association, as successor to Owner, shall be responsible for maintaining both shelters for as long as the Enterprise Project or the 40R project exist on the Property.

3.10 Pedestrian Improvements. North Lancaster, LLC as part of the Phase One Roadway construction, shall construct a 5-foot sidewalk on McGovern Boulevard as per the approved

subdivision plans (**Exhibit A** hereof) to provide connectivity between land uses on the site and Lunenburg Road. This includes connectivity to the several retail parcels previously constructed (Dunkin Donuts and Mobil Station), future retail as programmed for the parcels on the west side of Lunenburg Road, and the existing Kimball Farm along the east side of Lunenburg Road. Additional pedestrian crossings will be provided across McGovern Boulevard within the site. Final layout of on-site pedestrian and bicycle accommodations, internal site circulation, and other on-site transportation networks will be designed in connection with the 40R Project approval process and constructed by North Lancaster, LLC in connection therewith.

3.11 Bicycle Improvements. North Lancaster, LLC shall construct 5-foot bicycle lanes supplemented with MUTCD- compliant bicycle signage along McGovern Boulevard to provide connectivity between the Site and Lunenburg Road. In addition, bicycle racks will be provided on-site at various locations to promote the use of bicycle travel. Final layout of on-site pedestrian and bicycle accommodations, internal site circulation, and other on-site transportation networks will be designed in connection with the 40R Project approval process and constructed in connection therewith.

3.12 Traffic Demand Management Program. In order to encourage alternate means of transit and to minimize, to the extent practicable, the traffic impacts associated with the Master Plan, the Owner also agrees to identify and implement all Transportation Demand Management policies, measures and transportation improvements (“TDM Measures”) discussed in the Traffic Study at pages 56-58 a copy of which are attached hereto as **Exhibit \_J-1**.

3.13 Transportation Monitoring Program.

a. The Owner shall implement a Transportation Monitoring Program (“TMP”), which is intended to monitor traffic operations, parking occupancy, public transportation utilization, and pedestrian / bicycle use for the period, as defined in Section 3.13.d, below, following completion of the Project. The TMP will include providing traffic count information to the MassDOT District 3 office and the Town of Lancaster for use of tracking site-generated trips. The intent of the monitoring program is to ensure that the Project impacts are consistent with those predicted in the Traffic Study, evaluate the effectiveness of the mitigation agreed to herein and the TDM measures in meeting the mode share targets, and assess the need for additional off-site improvements or TDM measures.

b. The monitoring program shall include evaluation of the following:

i. Traffic operations at the intersections of:

- Main Street / Seven Bridge Road
- Main Street / Lunenburg Road
- Lunenburg Road / McGovern Boulevard
- Lunenburg Road / Old Union Turnpike
- Lunenburg Road / Fort Pond Road / Woods Lane

ii. Adequacy of the constructed parking supply.

iii. Effectiveness of TDM measures.

c. As part of the monitoring program, the Common Roadway Association, as Owner's successor, will complete the following tasks on an annual basis beginning six months following occupancy of more than 600,000 square feet, or full occupancy, of the first building completed in the Enterprise Project, or 50% occupancy in the 40R Project, whichever shall first occur, and shall continue for not more than five years following 90% occupancy of the combined Owner's Projects. The monitoring program may be suspended at any time upon agreement with MassDOT and the Town of Lancaster that the Owner's Projects have sufficiently provided evidence that the upper limits of vehicle delay and trip projection would not be feasibly reached. The annual nature of the monitoring program may be postponed in consultation with the Town and MassDOT based on lack of need circumstances if no new development has occurred during full build-out. The monitoring program may also be suspended if five years have passed since the issuance of an occupancy permit for the project and will recommence should an additional occupancy permit be issued.:

- i. Collect manual Turning Movement Counts (TMCs) during the weekday morning (7:00 AM to 9:00 AM), weekday evening (4:00 to 6:00 PM), and Saturday midday (11:00 AM to 2:00 PM) peak periods at the following intersections;
  - Main Street / Seven Bridge Road
  - Main Street / Lunenburg Road
  - Lunenburg Road / McGovern Boulevard
  - Lunenburg Road / Old Union Turnpike
  - Lunenburg Road / Fort Pond Road / Woods Lane
- ii. Collect ATR data for a continuous 7-day week-long period along Lunenburg Road and McGovern Boulevard;
- iii. Collect parking demand counts during the peak parking demand periods for the specific land use areas; including:
  - Residential – 5:00 AM to 9:00 AM;
  - Retail, Office, and Industrial – 10:00 AM to 1:00 PM; and
- iv. Collect motor vehicle crash reports from the Town of Lancaster Police Department for the most recent one-year period to ascertain changes in crash frequency, crash trends, and severity at the monitored locations;
- v. Complete an employee travel survey to gage employee travel patterns and mode share;
- vi. Compare the TMCs collected above with those projected within the TIAS for the Project to determine whether the total vehicles entering each intersection exceeds the volumes projected;
- vii. Perform a capacity and queuing analysis using Synchro analysis software to evaluate the traffic operations at each of the intersections listed above

and compare to the operations projected in the TIAS prepared for the Project;

- viii. Assess whether additional mitigation is necessary at any of the study intersections and identify measures to improve operations and/or reduce vehicular traffic volumes. Corrective actions to reduce the unmitigated impact of the Project (exclusive of impacts that may be created by future projects unrelated to Owner's Projects) should be proposed and implemented based on the thresholds listed above. The corrective actions should be documented in the TMP, approved and coordinated with the Town and/or MassDOT if desired by the agencies, and be undertaken by the Applicant subject to receipt of all necessary rights, permits, and approvals;
- ix. Assess whether the constructed parking supply is adequate for the parking demand as observed; and
- x. Prepare a memorandum summarizing the results of the TMCs, ATRs, parking demand counts, traffic impact analysis for submission to MassDOT District 3 and the Town of Lancaster.

3.14 Future Traffic Improvements. Providing that the additional traffic is being generated from the Enterprise Project or the 40R Project, the Owner acknowledges and agrees that additional traffic and pedestrian improvements may be required in conjunction with the Enterprise Project or the 40R Project. The Owner or the Common Roadway Association as Owner's Successor, shall assess traffic operations at the McGovern Boulevard and Lunenburg Road intersection as discussed in Section 3.13 above, and to the extent that the monitoring program indicates that existing operations depart from the predictions included in the Traffic Study and/or exceed one or more of the thresholds noted below, the Owner or Common Roadway Association shall propose and implement at its own expense additional traffic improvements to alleviate such impacts to the reasonable satisfaction of the Town. The Town and the Owner acknowledge that the commitments contained in this section constitute an ongoing financial obligation of the Owner and pursuant to Section 1.3 above, and the Owner and Common Roadway Association thereafter, and further acknowledge that any future traffic improvements may require final design and construction approval of the Town and MassDOT.

Without limiting the foregoing, the Owner, through the Common Roadway Association agrees that it shall propose and implement additional corrective actions to reduce the Owner's Projects traffic impacts to the extent that the any of the following are evidenced by the results of the Annual Traffic Monitoring Program:

- a. the measured traffic volumes for the Projects exceed the projected traffic volumes established in the July 2021 TIAS by more than 10 percent (i.e., 110 percent of the projected traffic volumes);
- b. one or more of the movements at a monitored intersection is identified to be operating at or over capacity (defined by a volume-to-capacity (v/c) ratio that equals or exceeds 1.0); and/or

- c. there is a pronounced increase in the frequency of occurrence of motor vehicle crashes at a monitored intersection and the calculated motor vehicle crash rate exceed the MassDOT average crash rate for similar intersections.

3.15 Site Roadways. All internal site streets and roads in the Enterprise and 40R Projects shall be private in perpetuity, and shall be properly maintained, plowed and kept clear by the Common Roadway Association. The Owner, agrees on behalf of itself and its successors and assigns that it, shall not petition the Town to accept the streets as a public way at any time. The Owner will separately record a covenant within the chain of title to the Property, in the form attached hereto as **Exhibit K**, binding on itself, its successors and assigns, that confirming that all internal streets and roads within Owner's Projects will remain private in perpetuity.

The Owner has represented to the Town in its Traffic Study and separately in this Agreement that it can and will perform that obligations contained in this Section 3 and its subsections. To the extent that the property affected by this Section is not presently owned or controlled by Owner, it shall obtain the necessary authorization from the relevant property owners to perform the work.

#### 4. CONSERVATION/WETLANDS.

4.1 In addition to any requirements imposed by the Town's regulatory boards, commissions and departments, prior to the issuance of any occupancy permit for a structure within the Project the Owner agrees to pay for the costs of all on and offsite stormwater management improvements necessitated by the Project, said improvements to be reasonably determined by the Town, and to be consistent with industry standards and requirements and standards of Federal, state and Town laws and regulations.

4.2 Owner and thereafter the Common Roadway Association as Owner's successor, agree to copy the Town of Lancaster Planning Director on all correspondence with MEPA, EPA, and/or any other regulatory authorities, including providing copies of all submissions at the time they are made.

4.3 Owner, and thereafter the Common Roadway Association as Owner's successor, agree to minimize the use of salt on all Enterprise and 40R Project roads, parking areas, and impermeable surfaces to minimize impacts on vegetation and ground water, and to use low or no sodium snow and ice removal products as much as possible.

4.4 Owner, and thereafter the Common Roadway Association as Owner's successor, agree to comply with Lancaster's dark skies requirements, as set out in Section 220-36.2. of the Lancaster Zoning Code and as it may be amended, to the best extent possible.

4.5 Owner and thereafter Common Roadway Association as Owner's successor, will prepare and submit to the Town, prior to the Owner's application for the first building permit for either of Owner's Projects, a baseline water quality analysis at four (4) designated locations along McGovern Brook, as determined by the Town and as shown on the Plan attached hereto as **Exhibit K-1**. The water quality testing and analysis shall be limited to testing for the the

following: \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_. Thereafter the Common Roadway Association, as Owner's successor, shall prepare and submit to the Town, no later than one year after issuance of the final Certificate of Occupancy either Project, and annually thereafter, a supplemental water quality analysis from each said location for the same substances. All such reports shall be prepared by a qualified environmental consultant acceptable to the Town, and the scope of the studies shall be subject to review and approval by the Town's conservation agent. The Owner/Common Roadway Association shall give the Town at least twenty-one (21) days advance notice of when the water collections will occur.

5. FINANCIAL CONTRIBUTION AND EXPEDITED PERMIT FEE.

In consideration of the Select Board placing the EZ zoning amendment on the warrant for consideration by Town Meeting, supporting the adoption of said article, and to offset the impacts of the Enterprise Project on the Town of Lancaster, and the Town, acting through its various Boards, Commissions and Departments, actively facilitating Town Meeting Approval of the zoning amendments provided for herein and the prompt and expeditious review, granting, issuance and delivery of final required local planning, zoning, environmental, roadway and other permits, orders or approvals required for development of infrastructure and construction of the Project Site, within one-hundred (120) days of formal and complete application by Owner, and in consideration the Town acting through its Building Inspector facilitating the prompt and expeditious review, granting, issuance and delivery final building permit for individual buildings or structures within thirty (30) days of formal and complete application by Owner, the Owner agrees to pay to the Town a financial Contribution and a Supplemental Fee as hereinafter set forth.

A. Financial Contribution.

1. Within twelve(12) months of the Effective Date of this Agreement as defined in Section 9.1 below, the Owner shall pay the Town the sum of One-hundred-thousand (\$100,000.00); and
2. Within twenty-four (24) months of the Effective Date of this Agreement as defined in Section 9.1 below, the Owner shall pay the Town the additional sum of One-hundred-thousand (\$100,000.00).
3. *Alternatively*, and in lieu of the contributions provided for in paragraph 1. and 2. Immediately above, at the Town's option to be exercised in writing within six(6) months following the Effective Date of this Agreement, the Owner shall make the following payments to the Town:
  - a. Within twelve(12) months of the Effective Date of this Agreement as defined in Section 9.1 below, the Owner shall pay the Town the sum of Fifty-thousand (\$50,000.00); and
  - b. Within twenty-four (24) months of the Effective Date of this Agreement as defined in Section 9.1 below, the Owner shall pay the Town the sum of Fifty-thousand (\$50,000.00); and

- c. Within thirty-six (36) months of the Effective Date of this Agreement as defined in Section 9.1 below, the Owner shall pay the Town the sum of Fifty-thousand (\$50,000.00); and
- d. Within forty-eight (48) months of the Effective Date of this Agreement as defined in Section 9.1 below, the Owner shall pay the Town the sum of Fifty-thousand (\$50,000.00); and
- e. Within sixty (60) months of the Effective Date of this Agreement as defined in Section 9.1 below, the Owner shall pay the Town the sum of Fifty-thousand (\$50,000.00).

**B. Supplemental Fee**

In addition to the Financial Contribution provided for above, upon the granting of such final occupancy permit for any building contained within the Enterprise Projects within the timeframe set forth hereinabove in this Section 5, Owner agrees to tender to the Town an amount equal to \$00.10 (10¢) per square foot for any building or structure to which the occupancy permit applies. This payment shall be made within ten (10) days following the issuance of a final occupancy permit for such building or structure in the Enterprise Project.

**6. LAND DONATION, OPEN SPACE AND TRAIL CONNECTIVITY.**

Owner agrees to convey those certain parcels of land and grant those certain easements and/or impose those restrictions on land use, as hereinafter set forth, upon the following the schedule and on the following terms and conditions. within. All plans required for said conveyances, the construction of any trail or connection thereto, or the granting of necessary easements required by this Agreement, shall be prepared by Owner at Owner’s sole cost and expense.

6.1 Conveyance Threshold 1. Within 60 days of the Effective Date of this Agreement Owner agrees to convey to the Town by Quitclaim Deed the following parcel of land: Assessors’ Parcel 14-15 which parcel is identified as “\_\_\_\_\_” on the **Land Transfer Sketch** attached hereto as **Exhibit L**. A copy of the proposed Deed is attached hereto as **Exhibit L-1**. The original Deed shall be delivered to the Town within ten (10) days of the signing of this Agreement by all parties and may be recorded immediately following the Effective Date of this Agreement as defined in Section 9.1 below. If the zoning amendments contemplated by this agreement are not approved by Town Meeting or the Attorney General the conveyance shall not be consummated, and the original deed shall be promptly returned to Owner.

6.2 Conveyance Threshold 2: Within thirty (30) days following the issuance of a building permit or permits necessary or required for Owner to commence construction for the *initial* 600,000 square feet of building ground floor area in the EZ Project (with a margin of difference of 50,000 square feet greater or lesser than the said 600,000 square feet)), Owner, agrees to convey to the Town by Quitclaim Deed the land identified as “\_\_\_\_\_” on the **Land Transfer ANR Plan** a *draft* of which attached hereto as **Exhibit L2**. A copy of the proposed **Deed** is attached hereto as **Exhibit L-3**. The original Deed shall be delivered to the Town within

ten (10) days of the signing of the Effective Date of this Agreement, to be held in Escrow by Town Counsel, and may *only* be released from such Escrow and recorded immediately following the issuance of said final building permit or permits as forth in this Section 6.2. Owner agrees to submit formal application for ANR endorsement to the Planning Board within the one-hundred and eighty-days of the Effective Date of this Agreement. If the threshold for this Conveyance is not met despite Owner's good faith application for all permits and approvals required for the issuance of such building permit, or permits, the original deed shall be promptly returned to the Owner and this Agreement shall terminate without future recourse to either party except as may be expressly provided for elsewhere in this Agreement.

6.3 Conveyance Threshold 3: Within thirty (30) days following the issuance of a building permit or permits, necessary or required for Owner to commence construction for the second 600,000 square feet of building ground floor area in the EZ Project (with a margin of difference of 50,000 square feet greater or lesser than 1,200,000 square feet in total) Owner will convey by Quitclaim Deed the area identified as “ \_\_\_\_\_ ” on the draft **Land Transfer ANR Plan** attached hereto as **Exhibit L2**. A copy of the proposed **Deed** is attached hereto as **Exhibit L-3**. The original Deed shall be delivered to the Town within ten (10) days of the Effective Date of this Agreement to be held in Escrow by Town Counsel, and may *only* be released from such Escrow and recorded following issuance of said final building permit or permits as set forth in this Section 6.3. If the threshold for this Conveyance is not met despite Owner's good faith application for all permits and approvals required for the issuance of such final building permit or permits, the original deed shall be promptly returned to the Owner and this Agreement shall terminate without future recourse to either party except as may be expressly provided for elsewhere in this Agreement.

6.4 Conveyance Threshold 4. Within 30 (thirty) days following the issuance of a building permit or permits necessary or required to commence site development and construction for the next 600,000 square feet of building ground floor area in the EZ Project (with a margin of difference of 50,000 square feet greater or lesser than 1,800,000 square feet in total) Owner will convey by Quitclaim Deed the area identified as “ \_\_\_\_\_ ” on the draft **Land Transfer ANR Plan** attached hereto as **Exhibit L2**. A copy of the proposed **Deed** is attached hereto as **Exhibit L-4**. The original Deed shall be delivered to the Town within ten (10) days of the signing of the Effective Date of this Agreement, to be held in Escrow by Town Counsel, and may *only* be released from such Escrow and recorded following the issuance of such final building permit or permits. As set forth in this Section 6.4. If the threshold for this Conveyance is not met despite Owner's good faith application for all permits and approvals required for the issuance of such final building permit or permits, the original deed shall be promptly returned to the Owner and this Agreement shall terminate without future recourse to either party except as may be expressly provided for elsewhere in this Agreement.

In the event that Owner, within seven (7) years following the issuance of a final occupancy permit for 1,200,000 square feet of building ground floor area in the EZ Project (with a margin of difference of 50,000 square feet above or below 1,200,000 square feet in total ) has not applied for the granting of all local, State or Federal approvals, permits and/or orders, with all appeal periods having expired and no appeals being filed, necessary or required for Owner to

commence site development and construction for the said 600,000 square feet of building ground floor area in the EZ Project, the Town may request Owner in writing to release said deed for the final land conveyance (Exhibit L-4) from escrow so that it may be recorded. Upon receipt of such written request Owner shall have sixty (60) days to provide the Town with a reasonably detailed concept plan as to the design and layout of the then remaining building square footage that can still be developed in the future with the EZ Project. The receipt of such Concept Plan by the Town shall operate to terminate the request for release and to toll the Town's right to seek future release of said Deed for seven (7) years from the date of the first request. This process may be repeated until such time as Owner formally declares that the Project has reached full development and no further permitting will be applied for.

Notwithstanding anything to the contrary set forth in this Section 6.4. Owner, in Owners sole discretion, and for any reason, or no reason at all, may agree to release the deed at any time regardless of the extent of actual building construction.

6.5 Once construction of the 40R Project is complete that portion of Assessors' Parcel 014-0008A not required for completion of the 40R Project shall be dedicated open space/land conservation and allowance for trail construction.

6.6 Trail Connectivity. Within 60 days following the completion of site development and building construction on Assessors' Parcel 13-8 the Owner will convey to the Town a permanent trail easement on said Assessors' Parcel 13-8 sufficient to allow the Town to maintain, alter or create an existing or revised network of trails on said parcel for public use and enjoyment. The approximate location of which trail network is shown on the **Trail Location and Connectivity Sketch Plan** attached hereto as **Exhibit M**. The final location of all trails shall be determined by mutual agreement of Owner and the Town within 60 days of the Effective Date of this Agreement, but subject to future change due to field conditions or site development or construction requirements Any plans required for conveyance of such easement shall be prepared by Owner at Owner's sole cost and expense. The Trail Easement document shall provide that the obligation of creating and maintaining all trails within the easement area and shall be the sole obligation and cost of the Town.

6.7 In addition to the Trail Network provided for in Section 6.6 above, a permanent recreational trail shall be established from the northern portion of Assessors' Parcel 014-0008.A and connecting to the Lancaster State Forest trail as shown on the Trail Location and Connection Easement Sketch Plan attached hereto as **Exhibit M**. This trail shall include the use of the existing pedestrian footbridge providing access from Assessors' Parcel 014-0008.A across McGovern Brook, traverse the southeast corner of Assessors' Parcel 014-0009.0, continue on Assessors' Parcel 008-0045.0, and connect to the Lancaster State Forest trail. Design and construction shall follow the Massachusetts Department of Conservation and Resources Trails Guidelines and Best Practices Manual. Trail design, approval and construction on Parcel 14.0008.A shall be completed at Owner's expense no later than eighteen months following the granting of all final local, State or Federal approvals permits and/or orders, with all appeal periods having expired and no appeals being filed, necessary or required for Owner to commence site development and construction of both of Owner's Projects. No less than 3 parking spaces on Assessors' Parcel 014-0004.A shall be reserved for access to the trailhead. Notwithstanding anything to the contrary implied or inferred by the foregoing Owner is not obligated for any trail

construction or connectivity on any land not owned by Owner. All plans required for construction of the trail conveyance of necessary easement shall be prepared by Owner at Owner's sole cost and expense. The Trail Connectivity Easement document shall provide that the obligation of maintaining the trail and the parking area within the easement area shall be the sole obligation of the Town.

## 7. SUPPLEMENTAL USE RESTRICTIONS.

Notwithstanding anything contained in the Zoning By-Law that may allow for the following uses to exist within the Enterprise Zoning District, the following uses shall not be allowed or otherwise be permitted to exist or operate in the Enterprise Project Site if not exempted by M.G.L. c. 40A, § 3:

- facilities for active outdoor recreation utilizing motorized equipment;
- gasoline service stations;
- on site dry-cleaning and laundry establishments;
- open storage facilities for lumber, stone, brick, gravel, cement or other bulk materials;
- contractor's yards;
- earth products removal;
- Class II or Class III motor vehicle dealers;
- outdoor storage accessory to a principal use;
- any residential development outside of the 40R Zone including, without limitation any affordable housing under Chapter 40B unless requested by the Town; and
- "adult entertainment uses" as defined in MGL c. 40A, §9A.

## 8. CONSULTANT COSTS.

8.1 The Owner shall pay the reasonable fees of the Town's peer review consultants and attorneys providing services in connection with the Town's review and consideration of the Owner's Projects. The Town's selection of consultants and attorneys shall be subject to Owner's reasonable approval and compliant with all applicable laws, rules and regulations pertaining to the engagement of such consultants and attorneys by municipalities in connection with the development of private projects. All such costs shall be paid by Owner within thirty (30) days after delivery of an invoice from the Town.

8.2 The Town agrees that prior to engaging a consultant, professional or an attorney or incurring any costs that will be the obligation of the Owner under this Agreement, the Town will: (i) provide written notice to and consult with the Owner regarding the necessity and selection of said consultant, professional or attorney; (ii) provide the Owner with a written scope of work and an estimated budget for the anticipated consultant, professional or attorney's work; (iii) not incur any such costs, or enter into any such contract, any contract amendments or any work order for extras without prior written notice to and reasonable approval by the Owner; and (iv) upon request by the owner, provide a written accounting of all costs incurred and other expenditures made by or on behalf of Owner under this Agreement.

9. MISCELLANEOUS.

9.1 Effective Date. This Agreement shall become effective upon final approval by the Town of Lancaster's Special Town Meeting in 2022 or its 2023 Annual Town Meeting, whichever first occurs, and approval by the Attorney General of the zoning amendments necessary to both expand the Enterprise District and allow for the permitting of Owner's Projects as shown on the Re-zoning Plan (see Exhibit D and Exhibits E-1, E-2 and E-3)(the "Effective Date").

9.2 Failure to Obtain Approvals. In the event that (i) the zoning amendment expanding the Enterprise District is not approved by Lancaster's Special Town Meeting in 2022 or its 2023 Annual Town Meeting, or is disapproved by the Massachusetts Attorney General by September 1, 2023, or (ii) Owner fails despite applying all best efforts to obtain or maintain all final and effective federal, state and local permits necessary to allow for the construction and operation of the Enterprise Project, upon Owner's delivery of written notice to the Town, the Parties shall work together to establish a mutually acceptable alternative development plan for the Site, failing which Owner may terminate this Agreement without further recourse to any Party and all restrictions contained herein shall be deemed null and void and without legal recourse, such that Owner may develop and use the Property as allowed by applicable law then in effect.

9.3 No Obligation to Build. Notwithstanding the Massachusetts Attorney General's approval of the Zoning Amendments proposed and contemplated in this Agreement, nothing contained herein shall create any obligation of the Owner to construct all or any portion of the Enterprise Project or the 40R Project, provided however, that the promises, covenants and restrictions contained herein shall remain binding upon the Owner, and the Town and their respective successors, assigns, mortgagees and all others taking title in fee or otherwise acquiring an interest to a part or all of the Property, for the longest period permitted by law.

9.4 Retention of Regulatory Authority. Nothing contained in this Agreement shall affect, limit, or control the authority of Town boards, commissions, and departments to carry out their respective powers and duties to decide upon and to issue, deny, or condition applicable permits and other approvals under the statutes and regulations of the Commonwealth, the General and Zoning Bylaws of the Town, or the applicable regulations of those boards, commissions, and departments, or to enforce said statutes, bylaws, and regulations. The Town, by entering into this Agreement, is not thereby required or obligated to issue such permits and approvals as may be necessary for the Project to proceed, or to refrain from enforcement action against the Project to whatever extent the Project is determined to be in violation of applicable law. Notwithstanding the foregoing the Town acknowledges that the essence of this Agreement is to encourage and support the development of the Enterprise Project as being in the best interest of the Town.

9.5 Cooperation. The Town agrees to cooperate with the Owner in the implementation of offsite traffic improvements, so long as such improvements are in compliance with permits and approvals issued by federal, state and Town authorities and are otherwise consistent with the Town's bylaws, rules, and regulations.

9.6 Successors and Assigns. This Agreement shall run with the Property and any portion thereof, and shall be binding upon the Owner, its successors and assigns. The Parties agree that this Agreement shall be recorded with the Worcester District Registry of Deeds, and agree to cooperate to execute any documents necessary to accomplish the recording of the Agreement.

9.7 Notices. Notices, when required hereunder, shall be deemed sufficient if sent certified mail to the Parties at the following addresses:

Owner: 702, LLC  
c/o Capital Group Properties  
259 Turnpike Road, Suite 100  
Southborough, MA 01752  
Attn: William A Depietri

North Lancaster:  
North Lancaster, LLC  
1340 Lunenburg Road  
Lancaster, MA 01523

With a copy to:  
Angelo P. Catanzaro, Esq.  
10 Northshore Drive  
Burlington, VT 05408

Town: Kate Hodges, Town Administrator  
Town of Lancaster  
701 Main Street  
Lancaster, MA 01523

with a copy to:

Ivria G. Fried, Esq.  
Miyares and Harrington LLP  
40 Grove Street  
Wellesley, MA 02482  
Attn: Ivria G. Fried, Esq.

9.8 Force Majeure. The Owner shall not be considered to be in breach of this Agreement for so long as the Owner is unable to complete any work or take any action required hereunder due to a *force majeure* event or other events beyond the reasonable control of the Owner.

9.9 Default; Opportunity to Cure. Failure by either Party to perform any term or provision of this Agreement shall not constitute a default under this Agreement unless and until the defaulting Party fails to commence to cure, correct or remedy such failure within thirty (30) days of receipt of written notice of such failure from the other Party and thereafter fails to complete such cure,

correction, or remedy within ninety days of the receipt of such written notice, or, with respect to defaults that cannot reasonably be cured, corrected or remedied within such ninety-days, within such additional period of time as is reasonably required to remedy such default, provided the defaulting Party exercises due diligence in the remedying of such default. Notwithstanding the foregoing, the Owner shall cure any monetary default hereunder within thirty days following the receipt of written notice of such default from the Town. Determination of an event of default, if not agreed to by the parties, shall be decided by binding arbitration as provided in Section 9.11 below.

9.10 Enforcement. The Parties agree that irreparable damage shall occur in the event that any provision of this Agreement is not performed in accordance with the terms hereof, and that the Parties shall be entitled to specific performance of all terms, in addition to other remedies at law or in equity. In addition to the foregoing, the Parties agree in contract if the Town has issued a written notice pursuant to Section 9.9 above and the Owner has not commenced cure as required therein, or has not initiated the arbitration process as provided for in Section 9.11 below, the Town shall have the authority to withhold building permits and/or certificates of occupancy, as most directly applicable, for any building or phase of the Project until such time as the Owner has addressed its failure to perform to the Town's reasonable satisfaction. Commencement of Arbitration shall operate as to stay the authority of the Town to demand payment or to withhold building permits or certificates of occupancy for any building or phase of the Project until such time as Arbitration is completed. Notwithstanding the foregoing, in the event that the Town determines any action or inaction by Owner or its agents, or any condition or activity on the Property constitutes an immediate and urgent risk to public health and safety, and to which concern Owner, after actual notice, refuses or fails to take immediate action, the Town may commence appropriate remedial judicial action.

9.11 Arbitration.

(a) All disputes which may arise between the Owner and the Town out of or in relation to or in connection with this Agreement including without limitation, the determination of an event of default under the Agreement, shall be finally settled by personal or virtual arbitration in Worcester County, Massachusetts, in accordance with the applicable rules of JAMS Arbitration Service, Boston Massachusetts. Designation of a single Arbitrator shall be by mutual agreement of the parties, made within 30 days of the submission of a case for determination, failing which each party agrees that the matter shall be determined by one Arbitrator Selected by JAMS. The decision of such arbitration, including an award of monetary damages, shall be binding on both parties, and a judgment on an award rendered shall be entered pursuant to paragraph (b). The parties agree to proceed with the arbitration process in a cooperative and timely manner. The cost of arbitration shall be paid by the non-prevailing party.

(b) Exclusive jurisdiction over entry of judgment on any arbitration award rendered pursuant to paragraph (a) or over any dispute, action or suit arising therefrom shall be in any court of appropriate subject matter jurisdiction located Worcester County and the parties by this Agreement expressly subject themselves to the personal jurisdiction of said court for the entry of any such judgment and for the resolution of any dispute, action, or suit arising in connection with the entry of such judgment while reserving all rights to appeal.

(c) Notwithstanding anything to the contrary set forth in subsections (a) and (b) immediately above, any and all disputes which arise during the local permitting process and are within the subject matter authority of the Planning Board, Conservation Commission, Zoning Board of Appeals, Building Commissioner, or any other local permitting authority are not subject to the Arbitration process required in this Agreement. Both the Town and Owner specifically retain all statutory, legal and equitable rights of judicial review and intervention in connection with such local permitting.

(d) Notwithstanding anything to the contrary set forth in subsection (a) and (b) above, any and all disputes pertaining to payment of money under the terms of this Agreement shall be exempt from the provisions of this Section 9.11.

9.12 Estoppels. Each Party agrees, from time to time, upon not less than twenty-one days' prior written request from the other, to execute, acknowledge and deliver a statement in writing certifying (i) that this Agreement is unmodified and in full force and effect (or if there have been modifications, setting them forth in reasonable detail); (ii) that the party delivering such statement has no defenses, offsets or counterclaims against its obligations to perform its covenants hereunder (or if there are any of the foregoing, setting them forth in reasonable detail); (iii) that there are no uncured defaults of either party under this Agreement (or, if there are any defaults, setting them forth in reasonable detail); and (iv) any other information reasonably requested by the party seeking such statement. If the Party delivering an estoppel certificate is unable to verify compliance by the other Party with certain provisions hereof despite the use of due diligence, it shall so state with specificity in the estoppel certificate, and deliver an updated estoppels certificate as to such provisions as soon thereafter as practicable. Any such statement delivered pursuant to this Section 9.12 shall be in a form reasonably acceptable to, and may be relied upon by any, actual or prospective purchaser, tenant, mortgagee or other party having an interest in the Project.

9.13 Governing Law. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts. If any term, covenant, condition or provision of this Agreement or the application thereof to any person or circumstance shall be declared invalid or unenforceable by the final ruling of a court of competent jurisdiction having final review, then the remaining terms, covenants, conditions and provisions of this Agreement and their application to other persons or circumstances shall not be affected thereby and shall continue to be enforced and recognized as valid agreements of the Parties, and in the place of such invalid or unenforceable provision, there shall be substituted a like, but valid and enforceable provision which comports to the findings of the aforesaid court and most nearly accomplishes the original intention of the Parties. The Parties hereby consent to jurisdiction of the courts of the Commonwealth of Massachusetts sitting in the County of Worcester.

9.14 Entire Agreement; Amendments. This Agreement sets forth the entire agreement of the Parties with respect to the subject matter hereof, and supersedes any prior agreements, discussions or understandings of the Parties and their respective agents and representatives. This Agreement may not be amended, altered or modified except by an instrument in writing and executed by all parties.

9.15 Severability. The invalidity of any provision of this Agreement as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision hereof. If any provision of this Agreement or its applicability to any person or circumstance shall be held invalid, the remainder thereof, or the application to other persons shall not be affected.

9.16 Time is of the Essence. Time shall be of the essence for this Agreement and, subject to economic conditions and approval of the zoning amendments referred to in Section 9.1 by the Annual or Special Town Meeting and the Massachusetts Attorney General, the Owner shall diligently pursue the remaining permitting, development, construction and residential occupancy of the Enterprise and 40R Projects. To the fullest extent legally possible and assuming Town Meeting approvals, the Town will cooperate with the Owner in the permitting process by refraining from undue delay in the scheduling of public hearings and by timely sharing and providing information and comment among all boards, commissions or departments required or request to do so.

9.17 Counterparts; Signatures. This Agreement may be executed in several counterparts and by each Party on a separate counterpart, each of which when so executed and delivered shall be an original, and all of which together shall constitute one instrument. It is agreed that electronic signatures shall constitute originals for all purposes.

9.18 No Third-Party Beneficiaries. Notwithstanding anything to the contrary in this Agreement, the Parties do not intend for any third party to be benefitted hereby.

9.19 Joint and Several Liability. 702, LLC, (the “Owner”) shall be jointly and severally liable for all of, Owner’s, Common Roadway Association’s, and North Lancaster LLC’s responsibilities and liabilities under the terms of this agreement.

[Remainder of this page intentionally left blank. Signature page follows.]

**EXECUTED** under seal as of the date and year first above written,

TOWN OF LANCASTER SELECT BOARD

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Clerk

\_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss

On this \_\_\_\_\_ day of \_\_\_\_\_, 2022, before me, the undersigned notary public,  
personally appeared

\_\_\_\_\_  
\_\_\_\_\_ proved to me through satisfactory evidence of identification, which was (a driver's  
license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be  
the persons whose name is signed on the preceding or attached document, and acknowledged to  
me that s/he signed it voluntarily for its stated purposes.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

**EXECUTED** under seal as of the date and year first above written,  
702, LLC

\_\_\_\_\_  
Name: William A. Depietri,  
Its: Manager

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss

On this \_\_\_\_\_ day of \_\_\_\_\_, 2022, before me, the undersigned notary public,  
personally appeared

\_\_\_\_\_  
proved to me through satisfactory evidence of identification, which was (a driver's license) (a  
current U.S. passport) (my personal knowledge of the identity of the principal), to be the persons  
whose name is signed on the preceding or attached document, and acknowledged to me that s/he  
signed it voluntarily for its stated purposes.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

## **LIST OF EXHIBITS**

[final copies of these Exhibits need to be added for review]