

WATER SUPPLY and DEVELOPMENT AGREEMENT  
CITY OF LEOMINSTER, and  
702, LLC

This Water Supply Development Agreement ("Agreement") made this 4 day of December 2020 by and between the City of Leominster acting by and through its Mayor, a Massachusetts municipal corporation having an address at 25 West Street, Leominster, Massachusetts 01453, hereinafter referred to as the "City" and 702, LLC, a Massachusetts limited liability corporation having an address at 259 Turnpike Road, Suite 100, Southborough, Massachusetts 01772, hereinafter referred to as "702," and

WHEREAS, 702 is the owner of and desires to develop certain unimproved land in Lancaster, Massachusetts shown in the Assessors records Map 8 as Parcel 45; and as described in a deed dated November 8, 2019 and recorded with the Worcester Registry of Deeds at Book 59673 Page 28 containing 378.95 +/- acres (the "702 Property"); and

WHEREAS, the 702, LLC Property lacks adequate access to the water supply system in the Town of Lancaster or alternative means of obtaining water; and

WHEREAS, other land adjacent and/or proximate to the 702 Property ("Additional Properties") may also lack adequate access to the water supply system in the Town of Lancaster or alternative means of obtaining water, and

WHEREAS, 702 is desirous of connecting the 702 Property and facilities built thereon, as well as such other Additional Properties and the facilities built thereon, as determined by 702 in its sole discretion, to the City's water supply system through the water main located and currently ending at the intersection of Johnny Appleseed Lane and Baldwin Drive in the City; and

WHEREAS, such connection to said water main and the City's water supply system would require the extension of the existing water main to the Town of Lancaster Town Line; and

WHEREAS, the City is amenable to permitting 702 to connect to the City's water supply system dependent upon 702's payment of a one-time water connection fee and all costs associated with the extension of said water main to the Lancaster Town Line at the 702 Property as shown on the Water Main Extension Project Concept Plan attached hereto as Exhibit A and incorporated herein by reference.

NOW, THEREFORE, the City and 702 agree as follows:

1. Definitions. The following terms shall have the following meaning for the purposes of this Agreement:
  - a. 702 - 702, LLC, and any of its Successors and Assigns.
  - b. Additional Properties - those properties adjacent or proximate to the 702 Property which 702, in its sole discretion, determines to supply water to.
  - c. Effective Date - the date first referenced above.

- d. **Successors and Assigns** – Any person or entity to whom 702 or its successor or assigns or grants, conveys, or otherwise transfers title to, or any other interest in, the 702 Property or any portion thereof, and, in addition thereto, any condominium or other property owner entity, association or trust organized by 702 for the purpose of supplying water to the then owners or occupants of the 702 Property or any such Additional Property.
- e. **Water Connection Fee** – a one-time fee paid to compensate the City by 702 for the costs and expenses, now and in the future, of connecting to the Water Supply System.
- f. **Water Main** – the primary line or piping in the Water Supply System through which properties connect to the Water Supply System and that currently runs below Johnny Appleseed Lane in the City and ends at the intersection of Johnny Appleseed Lane and Baldwin Drive in the City.
- g. **Water Main Extension** – the portion of the Water Main to be constructed and installed in the City of Leominster by 702 and ending with a *dedicated water meter* to be installed at the Lancaster Town Line so as to allow the 702 Property and Additional Properties to connect, to the Water Supply System as contemplated by this Agreement and as shown in Exhibit A attached hereto.
- h. **Project Water Main Extension** – that portion of the Water Main to be constructed and installed by 702 in the Town of Lancaster commencing from the *dedicated water meter*, so as to service the 702 Property and Additional Properties.
- i. **Water Rate** – the fees charged by the City to 702 and its Successors and Assigns, from time to time revised, as set forth in City Ordinance Chapter 21, §21-11.1.
- j. **Water Supply System** – the complete network of pipes and appendages, equipment, machinery, buildings and facilities used to supply water to properties in and around the City generally, and the 702 Property and Additional Properties, specifically
- k. **Work** – all work necessary and appropriate to accomplish the purposes of this Agreement and related to the Water Main Extension, but not including the Project Water Main, including but not limited to the procurement and installation of all pipes and appendages, equipment, fixtures, and all attachments and materials related thereto, as shown on the engineering plan to be agreed to by the City and 702 within Forty-five (45) days of the Effective Date; provided that “work” shall also include all incidental, unanticipated, or necessary work required for the successful completion of the Water Main Extension project not heretofore anticipated or expected that may arise during the course of the Water Main Extension project construction and/or that is deemed reasonably necessary to the safe and successful completion of the Water Main Extension project and preservation of and safe attachment to the Water Supply System as reasonably determined by the City’s Department of Public Works (DPW). The “work” shall commence no later than two-years following the Effective Date, in 702’s sole discretion (the “Construction Commencement Date”).

2. Fee. In consideration hereof, 702 hereby agrees to pay the City a Water Connection Fee in the amount of Two Hundred and Fifty Thousand Dollars (\$250,000.00), due on or before the that date which is sixty (60) days prior to the connection of any building or facility located on the 702 or any Additional Property
3. Water Main Extension Project. 702 hereby agrees to pay for and perform all Work, as defined herein, required under this Agreement and necessary and appropriate for the completion of the Water Main Extension project and the connection of the 702 Property to the Water Supply System, as more particularly described in Exhibits A attached hereto.
4. Sole Responsibility. 702 and its authorized agents shall be solely responsible for completion of the Work, as defined herein, related to the Water Main Extension project and called for under this Agreement, including the purchasing of all supplies, materials, and labor required hereunder and the obtaining of all permits, easements, and other approvals necessary for the completion of the Work, the Water Main Extension, and the Project Water Main Extension.
5. Dedication of Water Main Extension. In the event that any portion of the Water Main Extension is located anywhere except a public way within the City, or within property owned or controlled by the City, 702 or its Successors and Assigns, shall transfer all of its right, title, and ownership interests in, and the City shall accept, the Water Main Extension and its associated infrastructure located within the City, upon the satisfaction of the following conditions: (i) Within sixty (60) days of the Construction Commencement Date, 702 shall deliver to the City all of the required easements, if any, for the purposes of construction, installation, excavation, operation, maintenance, inspection, repair, replacement, alteration, relocation, extension or removal of the Water Main lines or pipes (or the appurtenances related thereto) and the Water Main Extension in a form mutually acceptable to the City and 702 and fully executed and acceptable for registration with the Worcester Registry of Deeds; and (ii) the City Council at a meeting duly held shall have voted to accept, with approval of the Mayor, the Water Main Extension and all necessary easements for the land in which the Water Main Extension will run . Should it be necessary for the DPW to inspect and/or repair the Water Main Extension prior to the recording of any necessary easements, 702 hereby grants the City a license to enter upon private lands held by 702 for such limited purpose and only for as long as is necessary for the DPW to perform such inspections or repairs.
6. Water Supply. The City hereby represents that its Water Supply System has sufficient capacity to provide an adequate water supply to the 702 and Additional Properties based on the estimates provided by 702 and as set forth herein. The Water Main Extension project shall provide for and deliver, and 702, (and its Successors and Assigns) shall be limited to, the taking of one hundred thousand (100,000) gallons per day of water from the Water Supply System to the 702 Property. In the future, should 702 or its Successors and Assigns, (individually or collectively) cause to be taken or seek to take from the Water Supply System more than one hundred thousand (100,000)

gallons per day, said increased taking of water per day shall only be permitted with the prior written approval of the City, by and through its DPW, to take such additional gallons of water per day from the Water Supply System, which approval shall be subject to available capacity within the system and the costs, upgrades, or repairs necessary to provide the 702 Property with such additional water supply.

7. Additional Connections. 702 and its Successors and Assigns may not allow, direct additional connections to the Water Main Extension located within the City. 702 and its Successors and Assigns may allow an unlimited number of connections to the Project Water Main to be installed by 702 within the 702 Property or Additional Properties, which will be connected to the dedicated water meter as provided herein. All such connections shall be at 702's sole cost and expense, and without any additional connection fee due or owing to the City, but always subject to the terms and conditions of this Agreement.
8. Maintenance. The City agrees to maintain the Water Main Extension following completion of the Water Main Extension project up to the City limit, at which point 702 and its Successors and Assigns will be responsible for all maintenance and repairs, including routine and emergency repairs, to the Project Water Main Extension in the Town of Lancaster.
9. Right to Repair. The City reserves the right, but not the obligation to perform any emergency repairs and ordinary maintenance or repairs of the Project Water Main should 702 or its Successors and Assigns fail or refuse to perform such maintenance or repairs deemed necessary by the City, by and through its DPW, but only following written notice to 702, which notice shall include a reasonable period to first perform any such necessary maintenance or repair. In the event of an emergency, as determined by the City DPW in its sole discretion, advanced notice is not required. 702 and its Successors and Assigns shall be responsible for the costs of all such maintenance and repairs conducted hereunder and shall thereafter remit to the City the cost of said maintenance and repairs. Within sixty (60) days of the Construction Commencement Date, 702 shall deliver to the City all of the required easements for the purposes of inspection, maintenance, repair, replacement, alteration, relocation, or removal of the Project Water Main Extension lines or pipes (or the appurtenances related thereto), as permitted under this section, in a form mutually acceptable to the City and 702 and fully executed and acceptable for registration with the Worcester Registry of Deeds; and (ii) the City Council at a meeting duly held shall have voted to accept, with approval of the Mayor, said easements for the land in which the Project Water Main Extension will run. Should it be necessary for the DPW to inspect and/or repair the Project Water Main Extension prior to the recording of any necessary easements, 702 hereby grants the City a license to enter upon private lands held by 702 for such limited purpose and only for as long as is necessary for the DPW to perform such inspections or repairs.
10. Water Rate Payment. All water supplied under this Agreement shall be through the dedicated water meter. All bills for water fees, assessments and water use charges incurred

in relation to the water supplied by the City pursuant to this Agreement shall be to a single entity which shall be responsible for payment of all water supplied through the dedicated water meter. 702 and its Successors and Assigns, as that single entity, shall promptly pay any and all fees, assessments and water use charges incurred in relation to the water supplied by the City in accordance with the City's water rates and billing procedures. Promptly shall mean within thirty (30) days of the billing date, or any other time period set forth in the City's Water and Sewer Ordinance and the rules and regulations promulgated thereunder and from time to time amended. Interest shall accrue at a rate of fourteen percent (14%) per annum for any bills unpaid thirty-one (31) days after the billing date.

The City reserves the right to turn off or disconnect the water supply provided to the 702 Property through the Water Main Extension should 702 or its Successors and Assigns fail to pay, any rate, charge, fee, or bill provided for in this Paragraph 10 with 3-days written notice and regardless of any otherwise applicable ordinance or regulation but consistent with the public health and safety..

11. Lien to Secure Payment. 702, and its Successors and Assigns, waive(s) any right under any applicable general or special law or City ordinance to apportion such fees or assessments over a term of years and agrees that the City shall have the same lien upon the 702 Property or Additional Properties to enforce the collection of such fees, assessments and charges as it has under general or special law to enforce the collection of such fees, assessments and charges against property located within the City. The City's right to impose a lien upon the Property shall extend to the collection of any rates, fees, or costs incurred by the City under Paragraphs 8 or 9 of this Agreement.

12. Term. This Agreement shall be effective and binding upon on the Effective date as defined above. The initial term of water supply by the City as required in this Agreement (the "Water Supply Commencement Date"), shall be for twenty-five (25) years from the date that 702 connects to the meter at the City/Town line or that date on which 702 receives it first permit for construction of a building or other use within Lancaster to which water will be supplied, whichever shall later occur. Thereafter there shall be three (3) automatic additional twenty-five-year periods of water supply unless written notice of termination is delivered to the other party no later than ninety (90) days prior to the expiration of the then current term. This Agreement shall remain in full force and effect until such time as the City, terminates same for cause, and only as provided for in this Agreement, or 702 or its Successors and Assigns voluntarily disconnect from and cease using the Water Main Extension and taking water from the Water Supply System; provided, however, that the City shall provide eighteen (18) months prior written notice of its intention to terminate this Agreement for cause, which Notice shall include the specific reason for termination and a reasonable cure period. If 702 or its Successors and Assigns voluntarily disconnects from the Water Supply System, said party shall provide the City with twelve (12) months prior written notice of its intention to do so ("Property Owner Notice of Termination") and shall pay for any and all maintenance, repairs, or modifications to the Water Main Extension necessary to maintain and preserve the integrity and proper functioning of said Water Main Extension and Project Water Main.. For purposes of this Agreement "cause" shall mean that 702 or its Successors and Assigns are in default of

this Agreement, including but not limited to failing to pay a water bill as provided for in Paragraph 10 or repeatedly failed to maintain or repair the Project Water Main Extension, or have otherwise created, through their connection to the Water Supply System, a risk of substantial harm to the said System. In the event that 702 or its or its Successors and Assigns fails to cure such default as provided for herein they shall make alternative arrangements for its water supply for the 702 Property, which arrangements shall not result in a violation of any local, state or Federal law and which arrangements shall be complete within ninety (90) days of the expiration of the Cure Period..

13. Transfer of Title. This Agreement shall survive any and all subsequent transfers of title to the 702 Property or any portion thereof. 702 and its Successors and Assigns hereby covenant and warrant that all future deeds and/or conveyances of the 702 Property, or any portion thereof, shall include covenants transferring the rights and duties contained in this Agreement to any subsequent owners of the 702 Property or any portion thereof. The organizational documents of any condominium or other property owner entity, association or trust organized by 702 for the purpose of supplying water to the then owners or occupants of the 702 Property or any such Additional Property shall be duly recorded at the Worcester District Registry of Deeds and shall specifically provide that the supply of water to any such property from the Project Water Main is subject to the terms of this Agreement.

14. Indemnification

A. General Indemnification. 702 and its Successors and Assigns agree to indemnify, defend and hold harmless the City, and those acting by or through the City, from any and all liabilities, damages, loss, costs and expenses (including reasonable attorneys' fees), causes of action, suits, claims, demands or judgment, or claims of any kind or nature whatsoever which may at any time be imposed upon, incurred, asserted or awarded against the City or its employees and arising from in law or equity or any violation of Federal, state, or local law or regulation, with or without court order, including without limitation claims asserted by state and federal agencies, which arise out of or in any way relate to this Agreement, including the termination of this Agreement in accordance with Paragraph 12, and any and all claims arising out of the Work, the Water Main Extension, the Project Water Main Extension, or connection or disconnection from the Water Supply System.

B. Environmental Indemnification. 702, and its Successors and Assigns, shall indemnify, defend, and hold harmless the City, and those acting by or through the City, from any and all liabilities, damages, loss, costs and expenses (including reasonable attorneys' fees), causes of action, suits, claims, demands or judgments, clean-up costs, waste disposal costs and those costs and expenses, penalties and fines (within the meaning of any environmental law), and claims of any kind or nature whatsoever which may at any time be imposed upon, incurred, asserted or awarded against the City and arising from any violation or alleged violation of environmental laws, environmental problems, or other environmental matter described herein, relating to the 702 Property, or as a consequence of any of the Work, the Water Main Extension, the Project Water Main Extension, or connection or disconnection from the Water Supply System, or any other use or operation of the 702 Property in relation to this Agreement

and that may be asserted against the City, including, without limitation, matters arising out of any breach of 702, or its Successors' and Assigns', covenants, representations and warranties.

702 and its Successors and Assigns shall be solely responsible and shall assume full responsibility for paying any and all liabilities, damages, loss, costs, expenses, causes of action, suits, claims, demands or judgments (including, without limitation reasonable attorneys' fees, experts' fees, and expenses, clean-up costs, waste disposal costs, and other costs, expenses, penalties and fines within the meaning of any law, regulation, code or ordinance) that arise or are related to the use, contamination, or spillage of Hazardous Materials, as defined herein, in the course of the Work, or the use or operation of the 702 Property in relation to this Agreement and that may be successfully asserted against the City. Hazardous Material shall mean any chemical, waste or other substance (A) which now or hereafter becomes defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollution," "pollutants," "regulated substances," or words of similar import under any laws pertaining to the environment, health, safety or welfare, (B) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (C) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (D) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (E) for which remediation or cleanup is required by any Governmental Authority.

The provisions of this Paragraphs 14.A and 14.B shall survive the expiration or earlier termination of this Agreement; and in addition to the covenants and indemnities of 702 and its Successors and Assigns contained herein shall survive any exercise of any remedy under this Agreement arising out of or related to this Agreement.

**15. Liability Insurance.** 702 and its Successors and Assigns shall, at its own expense, directly or through affiliates, secure and maintain in force, through and including the completion of the Work and the connection to the Water Main Extension, General Liability Insurance, with competent and qualified issuing insurance companies, including the following coverages: Professional Liability; Automobile Liability; Hazard of Premises/Operations (including explosion, collapse and underground coverages); Independent Contractors; Products and Completed Operations; Blanket Contractual Liability (covering the liability assumed in this Agreement); Personal Injury (including death); and Broad Form Property Damage in policy or policies of insurance such that the total available limits to all insured will not be less than Two Million Dollars (\$2,000,000.00) Combined Single Limit for each occurrence and Two Million Dollars (\$2,000,000.00) aggregated for each annual period with a deductible not exceeding Five Hundred Thousand Dollars (\$500,000) per claim. 702 and its Successors and Assigns shall also carry such insurance as will protect it from all claims under any applicable Workers Compensation laws in effect.

Such insurance may be provided in policy or policies, primary and excess, including the so-called Umbrella or Catastrophe forms. 702 and its Successors and Assigns shall

notify the City not less than thirty (30) days in advance of the effective date of any policy cancellation, change, or modification. All policies required by this Paragraph 15, with the exception of Worker's Compensation Insurance, shall, to the extent possible, be endorsed to designate the City as an additional insured, as its interest may appear; require the insurance companies to notify the City at least thirty (30) days prior to the effective date of any cancellation or material modification of such policies; shall specify that the policy shall apply without consideration of other policies separately carried, and shall state that each insured is provided coverage as though a separate policy had been issued to each, except the insurer's liability shall not be increased beyond the amount for which the insurer would have been liable had only one insured been covered and only one deductible shall apply regardless of the number of insured covered.

16. Restriction on Use. Notwithstanding specific provisions contained within the Zoning Bylaw of the Town of Lancaster which may otherwise allow for such uses by right or by special permit, in additional consideration of the City's agreement to supply water as provided for herein, 702 for itself its Successors and Assigns covenants (1) that that it will neither construct or develop any building or facility on, and/or lease or sell any portion of the 702 Property to any person or entity for the retail purposes specifically set forth on **Exhibit B** attached hereto and by reference incorporated herein; 2) that it will not allow any Additional Property engaged in any such activity set forth on **Exhibit B** to connect to the Project Water Main or otherwise supply such Additional Property with water obtained from the City pursuant to this Agreement. This covenant shall be deemed to run with the land; is intended to be a restriction on the use of the 702 Property pursuant to G.L. c.184, s.26 and a limitation on the right to supply water to Additional Properties, is intended as a restriction to be held by a governmental body and intended to benefit the City, for the longest period permitted by law.

17. Assignment. This Agreement shall not be assigned by either party, including any Successors and Assigns, without the prior written consent of the other party, except that 702 or its Successors and Assigns may assign this Agreement to (i) any subsequent owners or occupants of the 702 Property or any portion thereof; (ii) any person or company with whom 702 or its Successors and Assigns merge or combine, or (iii) a successor which acquires substantially all of the assets 702 or its Successors and Assigns, without the consent of the City, provided the use remains consistent with the uses and activities approved by the City, and provided further that 702 or its Successors and Assigns is not in breach or default of this Agreement.

18. Compliance. All Work performed under this Agreement shall be conducted in compliance with all applicable Federal, state, or local law, including but not limited to the payment of minimum wages, posting of statutory bonds, and obtaining of worker's compensation insurance and any and all necessary permits and approvals.



19. Entire Agreement. This Agreement, executed in duplicate originals, including all documents attached hereto and incorporated by reference, constitutes the entire integrated agreement between the parties with respect to the matters described herein. This Agreement supersedes all prior agreements, negotiations, and representations, either written or oral, and shall not be modified or amended except by a written document executed by the parties hereto or any Successors and Assigns.

20. Severability. If any provision of this Agreement shall be unenforceable, the remaining provisions of this Agreement shall be unaffected thereby and shall continue in force and effect so that full effect is given to the intent of the parties.

21. Dispute Resolution. To the extent the parties cannot resolve any disputes that may arise hereunder, the parties agree to first submit such dispute to non-binding mediation and failing resolution, to a court of competent jurisdiction in Worcester County, Massachusetts.

22. Governing Law. The laws of the Commonwealth of Massachusetts shall govern this Agreement.

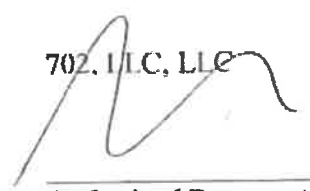
23. Recording. A copy of this Agreement shall be duly recorded by 702 at the Worcester District Registry of Deeds within sixty days of the Effective Date. Failure to timely record shall not affect the validity of the Agreement.

IN WITNESS WHEREOF, the parties to this Agreement have hereto set their hands and seals on the date and year first above written.

CITY OF LEOMINSTER,

  
\_\_\_\_\_  
Mayor, City of Leominster

702, LLC, LLC

  
\_\_\_\_\_  
Authorized Representative  
Name: William A. Depietri  
Title: Manager

CONSENTED TO:

The Town of Lancaster, by and through its Board of Selectmen hereby confirms that it has reviewed and approved the sale of water by the City of Leominster to 702, LLC as provided for in the within Agreement.

Town of Lancaster

By:   
\_\_\_\_\_

**CERTIFICATE OF TAX COMPLIANCE**

Pursuant to Chapter 62C of the Massachusetts General Laws, Section 49A(b), I, the undersigned, authorized signatory for the below named contractor/vendor, do hereby certify under the pains and penalties of perjury that said contractor has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

Signature

Date:

12/2/20

Name:

William A Depietri  
(Print Name)

Title:

MGR

Contractor/Vendor:

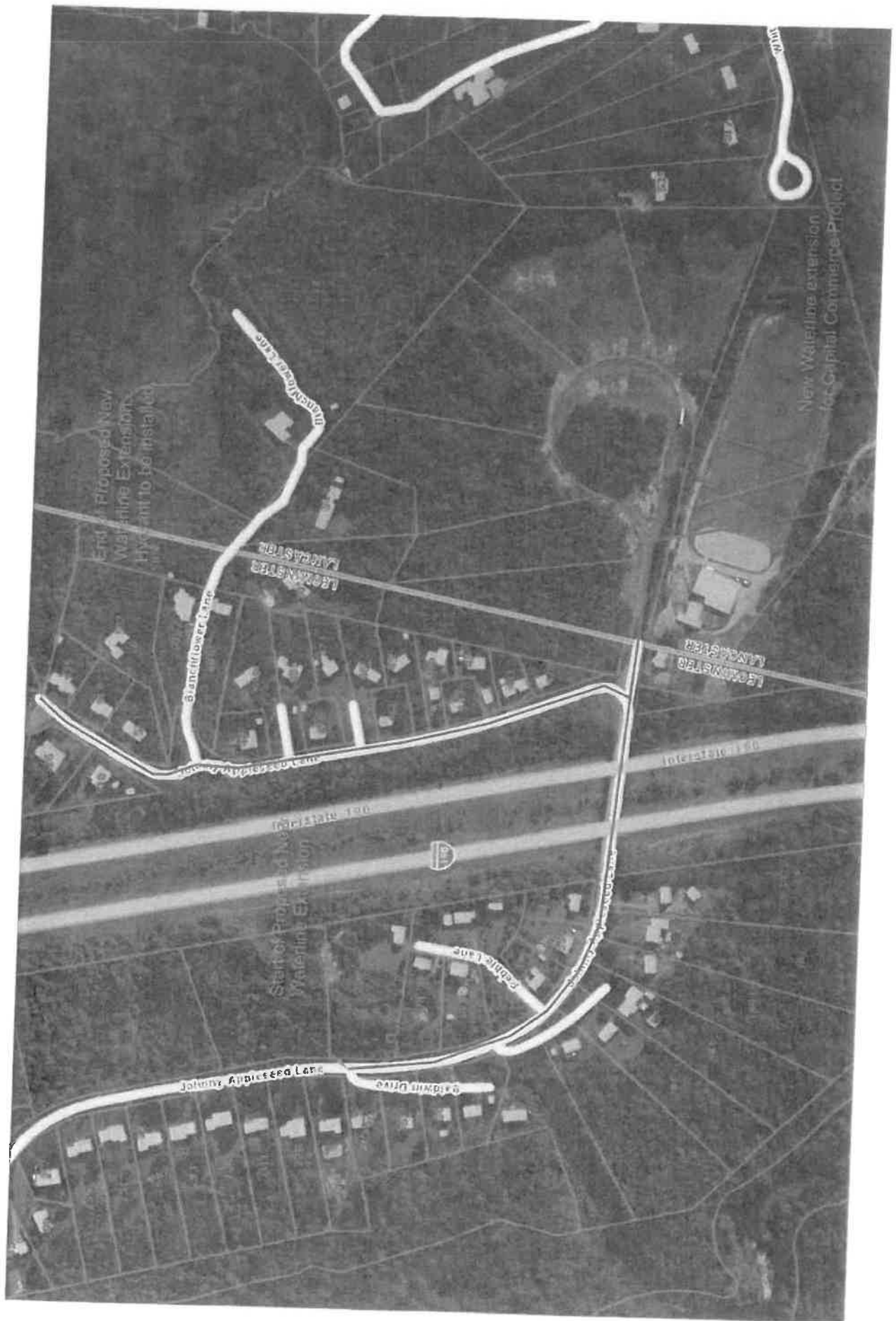
FDZ LLC

**WATER SUPPLY and DEVELOPMENT AGREEMENT  
CITY OF LEOMINSTER, and 702, LLC**

**EXHIBIT "B"**

702, LLC agrees to not allow the following uses to be connected into the City of Leominster waterline extension proposed under said Water Supply and Development Agreement. The uses prohibited from connecting to the City of Leominster waterline are as follows:

1. Hotel or motel
2. Big Box Retail including but not limited to Walmart, Target, Kohls, Best Buy, Macys, Home Depot (stores), Lowes (stores), etc.
3. The development of a major shopping center, other than the small retail/commercial land parcels along Lunenburg Road at the projects entrance on either side of McGovern Boulevard east of the McGovern Brook.



C-59  
LEOMINSTER CITY CLERK  
2021 MAR 9 PM 1:29:09

CITY OF LEOMINSTER  
CITY COUNCIL  
PUBLIC HEARING

In accordance with Chapter 40A, Section 5 of the Massachusetts General Laws, the Leominster City Council will hold a Public Hearing on Monday, March 15, 2021 at 6:00 P.M. virtually by telephone conference only.

Dean J. Mazzarella, Mayor: Request that the City Council review and accept the proposed Intermunicipal Agreement between the City of Leominster and Town of Lancaster for the Provision of Water Service.

Full petition available to view at the office of the City Clerk.

In accordance with Governor Baker's March 12, 2020 Executive Order modifying certain requirements of the Open Meeting Law and relieving public bodies of certain requirements, including the requirement that public bodies conduct its meetings in a public place that is open and physically accessible to the public, the City Council will be conducting this hearing virtually. This enables the City Council to carry out its responsibilities while adhering to public health recommendations and ensuring public access to its deliberations through adequate, alternative means. The public may listen to these hearings on LATV Comcast/Xfinity Channel 99; Verizon Channel 33. The public may also call into the meeting to participate via the following teleconference number: [+1 \(646\) 749-3122](tel:+16467493122) and enter the following code: **113-438-509**.

At the regular meeting of the City Council, February 22, 2021.  
Continued March 8, 2021.

Per Order Legal Affairs Committee  
John Dombrowski, Chairperson

Katelyn Huffman  
City Clerk

Exhibit 1  
C-59

EXECUTION VERSION – November 30, 2020

WATER SUPPLY and DEVELOPMENT AGREEMENT  
CITY OF LEOMINSTER, and  
702, LLC

This Water Supply Development Agreement ("Agreement") made this 4 day of December 2020 by and between the City of Leominster acting by and through its Mayor, a Massachusetts municipal corporation having an address at 25 West Street, Leominster, Massachusetts 01453, hereinafter referred to as the "City" and 702, LLC, a Massachusetts limited liability corporation having an address at 259 Turnpike Road, Suite 100, Southborough, Massachusetts 01772, hereinafter referred to as "702," and

WHEREAS, 702 is the owner of and desires to develop certain unimproved land in Lancaster, Massachusetts shown in the Assessors records Map 8 as Parcel 45; and as described in a deed dated November 8, 2019 and recorded with the Worcester Registry of Deeds at Book 59673 Page 28 containing 378.95 +/- acres (the "702 Property"); and

WHEREAS, the 702, LLC Property lacks adequate access to the water supply system in the Town of Lancaster or alternative means of obtaining water; and

WHEREAS, other land adjacent and/or proximate to the 702 Property ("Additional Properties") may also lack adequate access to the water supply system in the Town of Lancaster or alternative means of obtaining water, and

WHEREAS, 702 is desirous of connecting the 702 Property and facilities built thereon, as well as such other Additional Properties and the facilities built thereon, as determined by 702 in its sole discretion, to the City's water supply system through the water main located and currently ending at the intersection of Johnny Appleseed Lane and Baldwin Drive in the City; and

WHEREAS, such connection to said water main and the City's water supply system would require the extension of the existing water main to the Town of Lancaster Town Line; and

WHEREAS, the City is amenable to permitting 702 to connect to the City's water supply system dependent upon 702's payment of a one-time water connection fee and all costs associated with the extension of said water main to the Lancaster Town Line at the 702 Property as shown on the Water Main Extension Project Concept Plan attached hereto as Exhibit A and incorporated herein by reference.

NOW, THEREFORE, the City and 702 agree as follows:

1. Definitions. The following terms shall have the following meaning for the purposes of this Agreement:
  - a. 702 - 702, LLC, and any of its Successors and Assigns.
  - b. Additional Properties – those properties adjacent or proximate to the 702 Property which 702, in its sole discretion, determines to supply water to.
  - c. Effective Date – the date first referenced above.

- d. Successors and Assigns – Any person or entity to whom 702 or its successor or assigns or grants, conveys, or otherwise transfers title to, or any other interest in, the 702 Property or any portion thereof, and, in addition thereto, any condominium or other property owner entity, association or trust organized by 702 for the purpose of supplying water to the then owners or occupants of the 702 Property or any such Additional Property.
- e. Water Connection Fee – a one-time fee paid to compensate the City by 702 for the costs and expenses, now and in the future, of connecting to the Water Supply System.
- f. Water Main – the primary line or piping in the Water Supply System through which properties connect to the Water Supply System and that currently runs below Johnny Appleseed Lane in the City and ends at the intersection of Johnny Appleseed Lane and Baldwin Drive in the City.
- g. Water Main Extension – the portion of the Water Main to be constructed and installed in the City of Leominster by 702 and ending with a *dedicated water meter* to be installed at the Lancaster Town Line so as to allow the 702 Property and Additional Properties to connect, to the Water Supply System as contemplated by this Agreement and as shown in Exhibit A attached hereto.
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- i. Water Rate – the fees charged by the City to 702 and its Successors and Assigns, from time to time revised, as set forth in City Ordinance Chapter 21, §21-11.1.
- j. Water Supply System – the complete network of pipes and appendages, equipment, machinery, buildings and facilities used to supply water to properties in and around the City generally, and the 702 Property and Additional Properties, specifically
- k. Work – all work necessary and appropriate to accomplish the purposes of this Agreement and related to the Water Main Extension, but not including the Project Water Main, including but not limited to the procurement and installation of all pipes and appendages, equipment, fixtures, and all attachments and materials related thereto, as shown on the engineering plan to be agreed to by the City and 702 within Forty-five (45) days of the Effective Date; provided that “work” shall also include all incidental, unanticipated, or necessary work required for the successful completion of the Water Main Extension project not heretofore anticipated or expected that may arise during the course of the Water Main Extension project construction and/or that is deemed reasonably necessary to the safe and successful completion of the Water Main Extension project and preservation of and safe attachment to the Water Supply System as reasonably determined by the City’s Department of Public Works (DPW). The “work” shall commence no later than two-years following the Effective Date, in 702’s sole discretion (the “Construction Commencement Date”).



2. **Fee.** In consideration hereof, 702 hereby agrees to pay the City a Water Connection Fee in the amount of Two Hundred and Fifty Thousand Dollars (\$250,000.00), due on or before the that date which is sixty (60) days prior to the connection of any building or facility located on the 702 or any Additional Property
3. **Water Main Extension Project.** 702 hereby agrees to pay for and perform all Work, as defined herein, required under this Agreement and necessary and appropriate for the completion of the Water Main Extension project and the connection of the 702 Property to the Water Supply System, as more particularly described in Exhibits A attached hereto.
4. **Sole Responsibility.** 702 and its authorized agents shall be solely responsible for completion of the Work, as defined herein, related to the Water Main Extension project and called for under this Agreement, including the purchasing of all supplies, materials, and labor required hereunder and the obtaining of all permits, easements, and other approvals necessary for the completion of the Work, the Water Main Extension, and the Project Water Main Extension.
5. **Dedication of Water Main Extension.** In the event that any portion of the Water Main Extension is located anywhere except a public way within the City, or within property owned or controlled by the City, 702 or its Successors and Assigns, shall transfer all of its right, title, and ownership interests in, and the City shall accept, the Water Main Extension and its associated infrastructure located within the City, upon the satisfaction of the following conditions: (i) Within sixty (60) days of the Construction Commencement Date, 702 shall deliver to the City all of the required easements, if any, for the purposes of construction, installation, excavation, operation, maintenance, inspection, repair, replacement, alteration, relocation, extension or removal of the Water Main lines or pipes (or the appurtenances related thereto) and the Water Main Extension in a form mutually acceptable to the City and 702 and fully executed and acceptable for registration with the Worcester Registry of Deeds; and (ii) the City Council at a meeting duly held shall have voted to accept, with approval of the Mayor, the Water Main Extension and all necessary easements for the land in which the Water Main Extension will run . Should it be necessary for the DPW to inspect and/or repair the Water Main Extension prior to the recording of any necessary easements, 702 hereby grants the City a license to enter upon private lands held by 702 for such limited purpose and only for as long as is necessary for the DPW to perform such inspections or repairs.
6. **Water Supply.** The City hereby represents that its Water Supply System has sufficient capacity to provide an adequate water supply to the 702 and Additional Properties based on the estimates provided by 702 and as set forth herein. The Water Main Extension project shall provide for and deliver, and 702, (and its Successors and Assigns) shall be limited to, the taking of one hundred thousand (100,000) gallons per day of water from the Water Supply System to the 702 Property. In the future, should 702 or its Successors and Assigns, (individually or collectively) cause to be taken or seek to take from the Water Supply System more than one hundred thousand (100,000)



gallons per day, said increased taking of water per day shall only be permitted with the prior written approval of the City, by and through its DPW, to take such additional gallons of water per day from the Water Supply System, which approval shall be subject to available capacity within the system and the costs, upgrades, or repairs necessary to provide the 702 Property with such additional water supply.

7. Additional Connections. 702 and its Successors and Assigns may not allow, direct additional connections to the Water Main Extension located within the City. 702 and its Successors and Assigns may allow an unlimited number of connections to the Project Water Main to be installed by 702 within the 702 Property or Additional Properties, which will be connected to the dedicated water meter as provided herein. All such connections shall be at 702's sole cost and expense, and without any additional connection fee due or owing to the City, but always subject to the terms and conditions of this Agreement.
8. Maintenance. The City agrees to maintain the Water Main Extension following completion of the Water Main Extension project up to the City limit, at which point 702 and its Successors and Assigns will be responsible for all maintenance and repairs, including routine and emergency repairs, to the Project Water Main Extension in the Town of Lancaster.
9. Right to Repair. The City reserves the right, but not the obligation to perform any emergency repairs and ordinary maintenance or repairs of the Project Water Main should 702 or its Successors and Assigns fail or refuse to perform such maintenance or repairs deemed necessary by the City, by and through its DPW, but only following written notice to 702, which notice shall include a reasonable period to first perform any such necessary maintenance or repair. In the event of an emergency, as determined by the City DPW in its sole discretion, advanced notice is not required. 702 and its Successors and Assigns shall be responsible for the costs of all such maintenance and repairs conducted hereunder and shall thereafter remit to the City the cost of said maintenance and repairs. Within sixty (60) days of the Construction Commencement Date, 702 shall deliver to the City all of the required easements for the purposes of inspection, maintenance, repair, replacement, alteration, relocation, or removal of the Project Water Main Extension lines or pipes (or the appurtenances related thereto), as permitted under this section, in a form mutually acceptable to the City and 702 and fully executed and acceptable for registration with the Worcester Registry of Deeds; and (ii) the City Council at a meeting duly held shall have voted to accept, with approval of the Mayor, said easements for the land in which the Project Water Main Extension will run. Should it be necessary for the DPW to inspect and/or repair the Project Water Main Extension prior to the recording of any necessary easements, 702 hereby grants the City a license to enter upon private lands held by 702 for such limited purpose and only for as long as is necessary for the DPW to perform such inspections or repairs.
10. Water Rate Payment. All water supplied under this Agreement shall be through the dedicated water meter. All bills for water fees, assessments and water use charges incurred

in relation to the water supplied by the City pursuant to this Agreement shall be to a single entity which shall be responsible for payment of all water supplied through the dedicated water meter. 702 and its Successors and Assigns, as that single entity, shall promptly pay any and all fees, assessments and water use charges incurred in relation to the water supplied by the City in accordance with the City's water rates and billing procedures. Promptly shall mean within thirty (30) days of the billing date, or any other time period set forth in the City's Water and Sewer Ordinance and the rules and regulations promulgated thereunder and from time to time amended. Interest shall accrue at a rate of fourteen percent (14%) per annum for any bills unpaid thirty-one (31) days after the billing date.

The City reserves the right to turn off or disconnect the water supply provided to the 702 Property through the Water Main Extension should 702 or its Successors and Assigns fail to pay, any rate, charge, fee, or bill provided for in this Paragraph 10 with 3-days written notice and regardless of any otherwise applicable ordinance or regulation but consistent with the public health and safety..

**11. Lien to Secure Payment.** 702, and its Successors and Assigns, waive(s) any right under any applicable general or special law or City ordinance to apportion such fees or assessments over a term of years and agrees that the City shall have the same lien upon the 702 Property or Additional Properties to enforce the collection of such fees, assessments and charges as it has under general or special law to enforce the collection of such fees, assessments and charges against property located within the City. The City's right to impose a lien upon the Property shall extend to the collection of any rates, fees, or costs incurred by the City under Paragraphs 8 or 9 of this Agreement.

**12. Term.** This Agreement shall be effective and binding upon on the Effective date as defined above. The initial term of water supply by the City as required in this Agreement (the "Water Supply Commencement Date"), shall be for twenty-five (25) years from the date that 702 connects to the meter at the City/Town line or that date on which 702 receives it first permit for construction of a building or other use within Lancaster to which water will be supplied, whichever shall later occur. Thereafter there shall be three (3) automatic additional twenty-five-year periods of water supply unless written notice of termination is delivered to the other party no later than ninety (90) days prior to the expiration of the then current term. This Agreement shall remain in full force and effect until such time as the City, terminates same for cause, and only as provided for in this Agreement, or 702 or its Successors and Assigns voluntarily disconnect from and cease using the Water Main Extension and taking water from the Water Supply System; provided, however, that the City shall provide eighteen (18) months prior written notice of its intention to terminate this Agreement for cause, which Notice shall include the specific reason for termination and a reasonable cure period. If 702 or its Successors and Assigns voluntarily disconnects from the Water Supply System, said party shall provide the City with twelve (12) months prior written notice of its intention to do so ("Property Owner Notice of Termination") and shall pay for any and all maintenance, repairs, or modifications to the Water Main Extension necessary to maintain and preserve the integrity and proper functioning of said Water Main Extension and Project Water Main.. For purposes of this Agreement "cause" shall mean that 702 or its Successors and Assigns are in default of

this Agreement, including but not limited to failing to pay a water bill as provided for in Paragraph 10 or repeatedly failed to maintain or repair the Project Water Main Extension, or have otherwise created, through their connection to the Water Supply System, a risk of substantial harm to the said System. In the event that 702 or its or its Successors and Assigns fails to cure such default as provided for herein they shall make alternative arrangements for its water supply for the 702 Property, which arrangements shall not result in a violation of any local, state or Federal law and which arrangements shall be complete within ninety (90) days of the expiration of the Cure Period..

13. Transfer of Title. This Agreement shall survive any and all subsequent transfers of title to the 702 Property or any portion thereof. 702 and its Successors and Assigns hereby covenant and warrant that all future deeds and/or conveyances of the 702 Property, or any portion thereof, shall include covenants transferring the rights and duties contained in this Agreement to any subsequent owners of the 702 Property or any portion thereof. The organizational documents of any condominium or other property owner entity, association or trust organized by 702 for the purpose of supplying water to the then owners or occupants of the 702 Property or any such Additional Property shall be duly recorded at the Worcester District Registry of Deeds and shall specifically provide that the supply of water to any such property from the Project Water Main is subject to the terms of this Agreement.

#### 14. Indemnification

A. General Indemnification. 702 and its Successors and Assigns agree to indemnify, defend and hold harmless the City, and those acting by or through the City, from any and all liabilities, damages, loss, costs and expenses (including reasonable attorneys' fees), causes of action, suits, claims, demands or judgment, or claims of any kind or nature whatsoever which may at any time be imposed upon, incurred, asserted or awarded against the City or its employees and arising from in law or equity or any violation of Federal, state, or local law or regulation, with or without court order, including without limitation claims asserted by state and federal agencies, which arise out of or in any way relate to this Agreement, including the termination of this Agreement in accordance with Paragraph 12, and any and all claims arising out of the Work, the Water Main Extension, the Project Water Main Extension, or connection or disconnection from the Water Supply System.

B. Environmental Indemnification. 702, and its Successors and Assigns, shall indemnify, defend, and hold harmless the City, and those acting by or through the City, from any and all liabilities, damages, loss, costs and expenses (including reasonable attorneys' fees), causes of action, suits, claims, demands or judgments, clean-up costs, waste disposal costs and those costs and expenses, penalties and fines (within the meaning of any environmental law), and claims of any kind or nature whatsoever which may at any time be imposed upon, incurred, asserted or awarded against the City and arising from any violation or alleged violation of environmental laws, environmental problems, or other environmental matter described herein, relating to the 702 Property, or as a consequence of any of the Work, the Water Main Extension, the Project Water Main Extension, or connection or disconnection from the Water Supply System, or any other use or operation of the 702 Property in relation to this Agreement

and that may be asserted against the City, including, without limitation, matters arising out of any breach of 702, or its Successors' and Assigns', covenants, representations and warranties.

702 and its Successors and Assigns shall be solely responsible and shall assume full responsibility for paying any and all liabilities, damages, loss, costs, expenses, causes of action, suits, claims, demands or judgments (including, without limitation reasonable attorneys' fees, experts' fees, and expenses, clean-up costs, waste disposal costs, and other costs, expenses, penalties and fines within the meaning of any law, regulation, code or ordinance) that arise or are related to the use, contamination, or spillage of Hazardous Materials, as defined herein, in the course of the Work, or the use or operation of the 702 Property in relation to this Agreement and that may be successfully asserted against the City. Hazardous Material shall mean any chemical, waste or other substance (A) which now or hereafter becomes defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollution," "pollutants," "regulated substances," or words of similar import under any laws pertaining to the environment, health, safety or welfare, (B) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (C) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (D) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (E) for which remediation or cleanup is required by any Governmental Authority.

The provisions of this Paragraphs 14.A and 14.B shall survive the expiration or earlier termination of this Agreement; and in addition to the covenants and indemnities of 702 and its Successors and Assigns contained herein shall survive any exercise of any remedy under this Agreement arising out of or related to this Agreement.

15. Liability Insurance. 702 and its Successors and Assigns shall, at its own expense, directly or through affiliates, secure and maintain in force, through and including the completion of the Work and the connection to the Water Main Extension, General Liability Insurance, with competent and qualified issuing insurance companies, including the following coverages: Professional Liability; Automobile Liability; Hazard of Premises/Operations (including explosion, collapse and underground coverages); Independent Contractors; Products and Completed Operations; Blanket Contractual Liability (covering the liability assumed in this Agreement); Personal Injury (including death); and Broad Form Property Damage in policy or policies of insurance such that the total available limits to all insured will not be less than Two Million Dollars (\$2,000,000.00) Combined Single Limit for each occurrence and Two Million Dollars (\$2,000,000.00) aggregated for each annual period with a deductible not exceeding Five Hundred Thousand Dollars (\$500,000) per claim. 702 and its Successors and Assigns shall also carry such insurance as will protect it from all claims under any applicable Workers Compensation laws in effect.

Such insurance may be provided in policy or policies, primary and excess, including the so-called Umbrella or Catastrophe forms. 702 and its Successors and Assigns shall



notify the City not less than thirty (30) days in advance of the effective date of any policy cancellation, change, or modification. All policies required by this Paragraph 15, with the exception of Worker's Compensation Insurance, shall, to the extent possible, be endorsed to designate the City as an additional insured, as its interest may appear; require the insurance companies to notify the City at least thirty (30) days prior to the effective date of any cancellation or material modification of such policies; shall specify that the policy shall apply without consideration of other policies separately carried, and shall state that each insured is provided coverage as though a separate policy had been issued to each, except the insurer's liability shall not be increased beyond the amount for which the insurer would have been liable had only one insured been covered and only one deductible shall apply regardless of the number of insured covered.

16. Restriction on Use. Notwithstanding specific provisions contained within the Zoning Bylaw of the Town of Lancaster which may otherwise allow for such uses by right or by special permit, in additional consideration of the City's agreement to supply water as provided for herein, 702 for itself its Successors and Assigns covenants (1) that that it will neither construct or develop any building or facility on, and/or lease or sell any portion of the 702 Property to any person or entity for the retail purposes specifically set forth on **Exhibit B** attached hereto and by reference incorporated herein; 2) that it will not allow any Additional Property engaged in any such activity set forth on **Exhibit B** to connect to the Project Water Main or otherwise supply such Additional Property with water obtained from the City pursuant to this Agreement. This covenant shall be deemed to run with the land; is intended to be a restriction on the use of the 702 Property pursuant to G.L. c.184, s.26 and a limitation on the right to supply water to Additional Properties, is intended as a restriction to be held by a governmental body and intended to benefit the City, for the longest period permitted by law.

17. Assignment. This Agreement shall not be assigned by either party, including any Successors and Assigns, without the prior written consent of the other party, except that 702 or its Successors and Assigns may assign this Agreement to (i) any subsequent owners or occupants of the 702 Property or any portion thereof; (ii) any person or company with whom 702 or its Successors and Assigns merge or combine, or (iii) a successor which acquires substantially all of the assets 702 or its Successors and Assigns, without the consent of the City, provided the use remains consistent with the uses and activities approved by the City, and provided further that 702 or its Successors and Assigns is not in breach or default of this Agreement.

18. Compliance. All Work performed under this Agreement shall be conducted in compliance with all applicable Federal, state, or local law, including but not limited to the payment of minimum wages, posting of statutory bonds, and obtaining of worker's compensation insurance and any and all necessary permits and approvals.

19. Entire Agreement. This Agreement, executed in duplicate originals, including all documents attached hereto and incorporated by reference, constitutes the entire integrated agreement between the parties with respect to the matters described herein. This Agreement supersedes all prior agreements, negotiations, and representations, either written or oral, and shall not be modified or amended except by a written document executed by the parties hereto or any Successors and Assigns.

20. Severability. If any provision of this Agreement shall be unenforceable, the remaining provisions of this Agreement shall be unaffected thereby and shall continue in force and effect so that full effect is given to the intent of the parties.

21. Dispute Resolution. To the extent the parties cannot resolve any disputes that may arise hereunder, the parties agree to first submit such dispute to non-binding mediation and failing resolution, to a court of competent jurisdiction in Worcester County, Massachusetts.

22. Governing Law. The laws of the Commonwealth of Massachusetts shall govern this Agreement.

23. Recording. A copy of this Agreement shall be duly recorded by 702 at the Worcester District Registry of Deeds within sixty days of the Effective Date. Failure to timely record shall not affect the validity of the Agreement.

IN WITNESS WHEREOF, the parties to this Agreement have hereto set their hands and seals on the date and year first above written.

CITY OF LEOMINSTER,

  
\_\_\_\_\_  
Mayor, City of Leominster

702, LLC, LLC

  
\_\_\_\_\_  
Authorized Representative  
Name: William A. Depietri  
Title: Manager

CONSENTED TO:

The Town of Lancaster, by and through its Board of Selectmen hereby confirms that it has reviewed and approved the sale of water by the City of Leominster to 702, LLC as provided for in the within Agreement.

Town of Lancaster

By: 

CERTIFICATE OF TAX COMPLIANCE

Pursuant to Chapter 62C of the Massachusetts General Laws, Section 49A(b), I, the undersigned, authorized signatory for the below named contractor/vendor, do hereby certify under the pains and penalties of perjury that said contractor has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

  
Signature

Date:

12/2/20

Name:

William A De-pietri  
(Print Name)

Title:

MGR

Contractor/Vendor:

F02 LLC

C-59



## MAYOR'S OFFICE

*City of Leominster, Massachusetts*

CITY HALL - 25 WEST STREET  
LEOMINSTER, MASSACHUSETTS 01453  
[www.leominster-ma.gov](http://www.leominster-ma.gov)

TELEPHONE (978) 534-7500 FACSIMILE (978) 534-0668

DEAN J. MAZZARELLA  
Mayor

[dmazzarella@leominster-ma.gov](mailto:dmazzarella@leominster-ma.gov)

February 18, 2021

City Council Members  
25 West Street  
Leominster, MA 01453

LEOMINSTER CITY CLERK  
2021 FEB 18 AM 10:35:55

Dear Members of the City Council:

I respectfully request that the City Council review and accept the proposed Intermunicipal Agreement between the City of Leominster and Town of Lancaster for the Provision of Water Service.

If you have any questions, please feel free to contact my office anytime.

Sincerely,

  
Dean J. Mazzarella  
Mayor

DJM/mrn



**INTERMUNICIPAL AGREEMENT BETWEEN  
CITY OF LEOMINSTER AND TOWN OF LANCASTER  
FOR THE PROVISION OF WATER SERVICE**

This agreement, made and entered into this \_\_\_\_ day of March, 2021, by and between the City of Leominster, a municipal corporation within the County of Worcester, Commonwealth of Massachusetts, acting through its Mayor, hereinafter referred to as “the City” or “Leominster,” and the Town of Lancaster, a municipal corporation within the County of Worcester, Commonwealth of Massachusetts, acting through its Board of Selectmen, hereinafter referred to as “the Town” or “Lancaster” (hereinafter the “Agreement”).

**W I T N E S S E T H**

WHEREAS, the City owns and operates a water treatment and distribution system (the “water system”); and

WHEREAS, the City has received a third-party request to connect certain property located within the Town to the City’s water system, such property being identified by the Lancaster Assessors’ Maps as follows: Map 8, Parcel 45; and as described in a deed dated November 8, 2019 and recorded with the Worcester Registry of Deeds at Book 59673 Page 28 (the “Property”); and

WHEREAS, the City and the Town agree it is in the parties’ mutual interests to connect said Property to the City’s water system; and

WHEREAS, the City is willing to permit the connection of the Property to its water system under the terms and conditions set forth in this Agreement and the Development Agreement entered into between the City and the Property owner, 702, LLC (the “Owner”), which is attached hereto as Exhibit 1 and incorporated herein by reference (the “Development Agreement”); and

WHEREAS, the parties are authorized by General Laws Chapter 40, Sections 4 and 4A to enter into an Intermunicipal Agreement for the purpose of the City of Leominster supplying water service to the Town of Lancaster, subject to authorization by the Leominster City Council and the Lancaster Board of Selectmen;

NOW, THEREFORE, in consideration of the promises and mutual benefits to be derived by the parties hereto, the parties agree as follows:

General Terms

1. The City agrees to permit the water connection to serve the Property located in the Town of Lancaster. The Property currently consists of approximately 378.95 +/- acres of land identified on the Lancaster Assessor's Map 8, Parcel 45; and as described in a deed dated November 8, 2019 and recorded with the Worcester Registry of Deeds at Book 59673 Page 28. This Agreement does not apply to any other property, and no other Lancaster property shall be allowed to tie into the water system without a written agreement between the parties or a written amendment to this Agreement.

2. Lancaster shall bear no responsibility for the costs associated with the design and construction of the connection of the Property to the City's water system, or for any maintenance and repairs required for the upkeep of the Property, the Property's connection to the water system, or the water system. All costs associated with the water system connection contemplated by this Agreement, including but not limited to all construction and maintenance costs relating to the Property's connection to the water system, shall be allocated amongst the City and the Owner, or its successors and assigns, as set forth in the Development Agreement.

3. The connection to the Property shall consist of a water main extension, a dedicated water meter, and additional pumps, pipes, and conduits the City and the Owner deem reasonably necessary and appropriate, all of which shall comply fully with all applicable federal, state and local laws, rules and regulations applicable to such water services. Lancaster shall have the right to review and approve all specifications and plans prepared by the City and/or the Owner for said water system connection prior to the commencement of any construction, said approval not to be unreasonably withheld. Upon completion of construction, the City's Department of Public Works will provide the Town with an as-built plan of the Property's connection to the City's water supply as a condition precedent to the actual supply of service by the City.

4. The maximum flow transferred from Leominster to the Property pursuant to this Agreement shall be a total of 100,000 gallons per day, unless the Owner's water supply allocation is increased or otherwise altered pursuant to Section 6 of the Development Agreement, in which case the flow allowable into the Town under this provision shall automatically be increased or altered consistent with the terms agreed to between the City and the Owner. The City shall provide the Town with reasonably prompt notice in writing of any changes to the Owner's water supply allocation, which notice shall become an addendum to this Agreement. Pursuant to Section 1 of this Agreement, no increase in the Owner's water supply allocation may be used to serve any other property in the Town, including such other or neighboring properties the Owner, or its successors and assigns, may acquire in the future without approval of the Town and a written amendment to this Agreement.

5. The City shall ensure the Owner obtains all necessary permits, approvals and rights in real property required by federal, state and local law, rules and regulations for the excavation and construction associated with the Property's connection to the City's water system, and shall maintain same in full force and affect throughout the term of this Agreement.

6. Subject to the terms and limits of this Agreement and of applicable state and federal law, the City, acting through its Department of Public Works, will provide water service to the Property in the Town, in consideration for the Owner's payment of applicable water connection and user rates and fees. The City shall be responsible for maintenance of the portion of the water main extension, as defined in Exhibit 1, within its jurisdictional boundaries, and the Owner shall be responsible for the portion of the water main extension, as defined in Exhibit 1, within the Town. Lancaster shall not be responsible for the maintenance of the water main extension, or any other conduits or service lines within the Town's jurisdictional bounds, constructed and maintained for the purpose of providing water to the Property. The Town reserves the right to perform any maintenance or repairs if the City or the Owner, or its successors and assigns, fail to perform such maintenance or repairs in a timely manner, following notice to the City and the Owner and a reasonable time to cure, as well as the right to perform emergency repairs as necessary, without prior notice to the City and the Owner, with notice to be provided to the City and the Owner as soon as practicable. The costs of all such maintenance and emergency repairs shall be borne by the City and allocated in its discretion consistent with Section 9 of the Development Agreement. Leominster and Lancaster have the right to inspect facilities and equipment in Lancaster that may affect

the City's water system. These inspections and any inspections permitted under this Agreement may include any and all reasonable tests Leominster deems necessary. Lancaster hereby consents to Leominster's entry onto or into the Property for the purpose of any inspection or repair, installation or maintenance which Leominster deems necessary under this Agreement.

#### Insurance

7. The City shall obtain and maintain during the period of construction of the water maintain extension, as defined in Exhibit 1, the following insurance coverage in companies licensed to do business in the Commonwealth of Massachusetts, and acceptable to the Town.

The amounts of such insurance shall be for each policy, not less than:

- a) Bodily injury liability, including death - \$1,000,000.00 on account of any one person and \$2,000,000.00 aggregate limit.
- b) Property damage liability - \$1,000,000.00 on account of any one accident, and \$2,000,000.00 aggregate.

All policies shall identify the Town as an additional insured and shall provide that the City shall receive written notification at least 30 days prior to the effective date of any amendment or cancellation. The City shall provide the Town with appropriate certificate(s) of insurance evidencing compliance with this provision prior to the commencement of any construction.

Failure to provide or to continue in force such insurance shall be deemed a material breach of this Agreement and may result in termination of this Agreement.

#### User Fee and Billing

8. All connection and user fees, charges, water rates, costs, and expenses incurred in relation to the Property's connection to the City's water system shall be borne exclusively by the Owner or its successors and assigns. Lancaster will incur no debt or obligation, financial or otherwise, for payment of any connection fees, users fees, water rates, costs, expenses, or any other charges or assessments that may be incurred or imposed in relation to the Property's connection to the City's water system. The City shall bill or invoice the Owner, and its successors and assigns, for all water service contemplated under this Agreement and the Development Agreement and water system upgrades consistent with the terms and conditions of the Development Agreement. Lancaster acknowledges and consents to Leominster's right and ability to pursue all lawful means to collect any and all unpaid fees, charges, or rates issued in relation to the Property's connection to the City's water system. The Town shall not unreasonably interfere with the City's collection efforts or exercise of any and all rights and remedies contained in the Development Agreement, including but not limited to the City's ability to lien property within the Town.

9. Leominster shall furnish to Lancaster with the quarterly water meter readings for the Property by the subject connection.

#### Remedies

10. Either party may terminate the water service provided under this Agreement for any breach of the terms of this Agreement pursuant to the terms set forth herein, including but not limited to Section 13 of this Agreement.

11. Either party to this Agreement shall notify the other party in writing if it obtains actual notice of the Owner's failure to maintain and operate the water supply connection provided for in this Agreement and the Development Agreement in

compliance with all applicable rules and regulations of the City and the Town, and all federal and state laws, rules and regulations. Nothing herein shall be interpreted to impose an affirmative duty upon either party to monitor or inspect the Property, or to impose any responsibility or liability on either party for the Owner's, or its successors or assigns', failure to comply with any and all applicable laws, rules, or regulations.

12. In the case of an emergency creating a threat to the public health or safety as determined by the City, the City may suspend or terminate water service immediately and without prior written notice. Written notice shall be provided as soon as practicable thereafter.

13. In addition to the remedies, power and authority that the Department of Public Works has under the ordinances of the City of Leominster, the following remedies apply:

a) If either party fails to fulfill any obligation or condition of this Agreement, the other party has the right to terminate this Agreement by giving ninety (90) days notice, in writing, of its intent to do so. Upon receipt of such notice the party shall have the right to prevent termination by curing the default within sixty (60) days. Termination shall not release the Owner from its obligation to pay all bills or sums due in accordance with the Development Agreement.

b) Both parties reserve the right, either in law or equity, by suit, and complaint in the nature of mandamus; or other proceeding, to enforce or compel performance of any or all covenants herein.

c) This Agreement shall terminate automatically in the event the Development Agreement is terminated or expires without renewal.

d) If an administrative agency, board, commission or division of the

state or federal government or any court impairs, alters, restricts or limits, directly or indirectly, Leominster's rights, powers or authority to maintain, sell, contract for, or permit water supply services as described in this Agreement, Leominster in its sole discretion may terminate and void this Agreement by written notice to Lancaster. The notice of termination shall be given within five business days after Leominster receives written notice of the action or decision of such agency, board, commission, division or court. It is the intent of this notice provision to give Lancaster as much advance notice as possible consistent with Leominster's need to terminate. Leominster will notify Lancaster of the formal institution of any proceedings or the issuance of any formal order so that Lancaster may, if it chooses, participate in such proceedings or challenge any such order.

e) If either party fails to perform any obligation under this Agreement, the other party may perform on behalf of the defaulting party and charge the reasonable costs thereof, including administrative time and attorneys fees, to the defaulting party as a sum due under the Agreement provided written notice is given to the defaulting party allowing it a reasonable time to cure the default.

f) The remedies set forth in this Agreement are cumulative. The election of one does not preclude use of another, at any time or the same time.

#### Term of Agreement

14. The term of this Agreement shall be for a period of twenty-five (25) years from date that the Owner connects to the meter at the City and Town line or that date on which the Owner receives its first permit for construction of a building or other use within the Town to which water will be supplied, whichever occurs later, unless sooner



terminated as herein provided. Thereafter there shall be three (3) automatic, additional twenty-five-year periods of water supply under the terms contained herein, unless written notice of termination is delivered to the other party no later than ninety (90) days prior to the expiration of the then current term, or the Development Agreement is terminated as set forth therein. This Agreement shall terminate automatically upon the termination or expiration without renewal of the Development Agreement.

#### Liability and Indemnification

15. Employees, servants, or agents of either municipality shall not be deemed to be agents, servants or employees of the other municipality for any purpose, including but not limited to either Workers' Compensation or unemployment insurance purposes. The parties shall be liable for the acts and omissions of its own employees, servants, or agents and not for those of the other party in the performance of this Agreement to the extent provided by the Massachusetts Tort Claims Act, G.L. c. 258. Neither party to this Agreement has waived any governmental immunity or limitation of damages which may be extended to it by operation of law.

16. The City shall indemnify and hold the Town harmless from and against any and all claims, demands, liabilities, actions, costs and expenses, including reasonable attorney's fees, arising out of this Agreement and the City's supplying water to the Property, or the negligence or willful misconduct of the City, or its agents or employees.

#### Service of Notice

17. All notices or communications permitted or required by this Agreement must be in writing except in emergencies, and shall:

- a) As to Leominster, be delivered or mailed by certified mail, return receipt requested, to the Mayor's Office:

25 West Street, Leominster, MA 01453,

and the office of the Department of Public Works:

109 Graham Street, Leominster, MA 01453.

- b) As to Lancaster, be delivered or mailed by certified mail, return receipt requested, to the Board of Selectmen's Office:

701 Main Street, 2<sup>nd</sup> Floor, Lancaster, MA 01523.

#### Regulatory Authority

18. This Agreement is subject to the lawful rules, regulations, decisions, order or directives of any agency of the state and federal government with jurisdiction over the parties or subject matter of this Agreement. Any and all conditions, rules, regulations, orders or other requirements heretofore or hereafter placed upon Leominster or Lancaster by the EPA or by the Department of Environmental Protection or any other agency, division, office or department of the United States or the Commonwealth of Massachusetts or by any court of competent jurisdiction and by any other applicable Federal, state or county agency, shall be construed to become a part of this Agreement unless the Agreement is terminated hereunder.

#### Governing Law

19. This Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts, and Leominster and Lancaster

submit to the jurisdiction of any of its appropriate courts for the adjudication of disputes arising out of this Agreement.

Entire Agreement

20. This Agreement, including all documents incorporated herein by reference, constitutes the entire integrated agreement between the parties with respect to the matters described. This Agreement supersedes all prior agreements, negotiations and representations, either written or oral, and it shall not be modified or amended except by a written document executed by the parties hereto. To the extent this Agreement and the Development Agreement conflict, this Agreement shall control.

Severability

21. If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby, and all other parts of this Agreement shall remain in force and affect.

IN WITNESS WHEREOF, the parties to this Agreement have hereunto set their hands and seals on the date and year first above written.

CITY OF LEOMINSTER

TOWN OF LANCASTE  
Board of Selectmen

\_\_\_\_\_  
Mayor, City of Leominster

\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_



## TREASURER AND COLLECTOR

25 WEST STREET  
LEOMINSTER, MASSACHUSETTS 01453

[www. Leominster-ma.gov](http://www.Leominster-ma.gov)

TEL: 978-534-7509  
FAX: 978-534-7513

Paul P. Redmond  
Treasurer / Collector

Linda G. Rossi  
Assistant  
Treasurer / Collector

LEOMINSTER CITY CLERK  
2021 FEB 23 AM 11:19:26

February 23, 2021

City of Leominster  
City Council  
25 West Street  
Leominster, MA 01453

Dear City Council Members:

In reference to C-59:

I have no objection to the proposed Intermunicipal Agreement between the City of Leominster and the Town of Lancaster for the Provision of Water Service.

Sincerely,

Paul P. Redmond  
Treasurer / Collector

C-59

CITY OF LEOMINSTER  
CITY COUNCIL  
PUBLIC HEARING

LEOMINSTER CITY CLERK  
2021 FEB 28 12:45 PM

In accordance with Chapter 40A, Section 5 of the Massachusetts General Laws, the Leominster City Council will hold a Public Hearing on Monday, March 8, 2021 at 6:30 P.M. virtually by telephone conference only.

Dean J. Mazzearella, Mayor: Request that the City Council review and accept the proposed Intermunicipal Agreement between the City of Leominster and Town of Lancaster for the Provision of Water Service.

Full petition available to view at the office of the City Clerk.

In accordance with Governor Baker's March 12, 2020 Executive Order modifying certain requirements of the Open Meeting Law and relieving public bodies of certain requirements, including the requirement that public bodies conduct its meetings in a public place that is open and physically accessible to the public, the City Council will be conducting this hearing virtually. This enables the City Council to carry out its responsibilities while adhering to public health recommendations and ensuring public access to its deliberations through adequate, alternative means. The public may listen to these hearings on LATV Comcast/Xfinity Channel 99; Verizon Channel 33. The public may also call into the meeting to participate via the following teleconference number: [+1 \(669\) 224-3412](tel:+16692243412) and enter the following code: **215-490-341**.

At the regular meeting of the City Council, February 22, 2021.

Per Order Legal Affairs Committee  
John Dombrowski, Chairperson

Katelyn Huffman  
City Clerk



Raymond Racine

Department of Public Works  
*City of Leominster, Massachusetts 01453*  
109 Graham Street  
Tel: 978-534-7590  
Fax: 978-534-7599  
[www.leominster-ma.gov](http://www.leominster-ma.gov)



TREE CITY USA

February 24, 2021

LEOMINSTER CITY CLERK  
2021 FEB 24 PM3:09:12

Ms. Katelyn Huffman  
City Clerk  
25 West Street  
Leominster, MA 01453

**RE: Communication C-59: Dean J. Mazzarella, Mayor: Request that the City Council review and accept the proposed Intermunicipal Agreement between the City of Leominster and Town of Lancaster for the Provision of Water Service.**

Dear Katelyn,

The Leominster Department of Public Works has reviewed the communication to accept the Intermunicipal Agreement between the City of Leominster and the town of Lancaster for the Provision of Water Service.

The DPW approves the communication as submitted.

Please let us know if you have any questions.

Sincerely,

Raymond Racine  
DPW Director

WATER SUPPLY and DEVELOPMENT AGREEMENT  
CITY OF LEOMINSTER, and 702, LLC

**EXHIBIT B**

702, LLC agrees to not allow the following uses to be connected into the City of Leominster waterline extension proposed under said Water Supply and Development Agreement. The uses prohibited from connecting to the City of Leominster waterline are as follows:

1. Hotel or motel
2. Big Box Retail including but not limited to Walmart, Target, Kohls, Best Buy, Macys, Home Depot (stores), Lowes (stores), etc.
3. The development of a major shopping center, other than the small retail/commercial land parcels along Lunenburg Road at the projects entrance on either side of McGovern Boulevard east of the McGovern Brook.