

MEMORANDUM OF AGREEMENT – 40R SMART GROWTH OVERLAY DISTRICT

This Memorandum of Agreement (the “Agreement”) is entered into this __ day of April, 2022, by and between the Town of Lancaster (the “Town”), acting by and through its Select Board and its Affordable Housing Trust, Capital Group Properties, LLC, a business having its principal Massachusetts office at 259 Turnpike Road, Suite 100 Southborough MA 01772, North Lancaster, LLC, a business having its principal place of business at 435 Lancaster Street, Leominster, MA 01453, and 702, LLC, a business having its principal Massachusetts office at 259 Turnpike Road, Suite 100 Southborough, MA 01772 (Capital Group, Properties, LLC, North Lancaster, LLC and 702, LLC being collectively referred to as the “Owner”).

RECITALS

WHEREAS, the Owner owns or controls property located in the Town of Lancaster described more fully in **Exhibit A** (the “Property”); and

WHEREAS, to further the Town’s housing production goals and help attain the state-mandated minimum affordability threshold, the Town is seeking approval by the 2022 Annual Town Meeting scheduled to open on May 2, 2022 (the “Annual Town Meeting”) of the North Lancaster Smart Growth Overlay District, an overlay zoning district prepared pursuant to M.G.L. c. 40R and accompanying regulations at 760 CMR 59.00, encompassing a portion of the Property; and

WHEREAS, a copy of the North Lancaster Smart Growth Overlay District bylaw is attached hereto as **Exhibit B**,

WHEREAS, the Massachusetts Department of Housing and Community Development (“DHCD”) is expected to find that the proposed North Lancaster Smart Growth Overlay District (“NL-SGOD”) bylaw meets the approval requirements established pursuant to M.G.L. c. 40R and 760 CMR 59.04(1) in order to establish a “Smart Growth” overlay zoning district; and

WHEREAS, a portion of the Property is included within the proposed 40R District (said portion is hereinafter referred to as the “Site”), as shown on the site plan attached hereto as **Exhibit C**, and the Owner contemplates a mixed-use development of this portion of the Property including ~~150~~ **146** new dwelling units and approximately 42,000 square feet of commercial space as described further below and in compliance with M.G.L. 40R mixed use ratio requirements (the “40R Project”); and

WHEREAS, based on the traffic and engineering studies performed by Owner, the Parties have identified the water, sewer, traffic, public transit, pedestrian, environmental, open space and recreational improvements that are required in order to support the 40R Project; and

WHEREAS, this Agreement is entered into by the Parties in an effort to establish a framework to supplement the North Lancaster Smart Growth Overlay District bylaw and to (i) memorialize the maximum residential and commercial development that may occur on the Site, (ii) facilitate the development of housing units that will count on the Town’s

Subsidized Housing Inventory (“SHI”), and (iii) itemize infrastructure upgrades, as well as environmental mitigation, and other improvements to be undertaken by Owner to adequately support the 40R 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 PROPERTY.

1.1 Number of Dwelling Units. The Owner agrees with the Town that there shall be a maximum of ~~150-146~~ dwelling units constructed upon the Site. The Owner shall not develop, apply for, permit or construct any additional dwelling units on the Site, whether pursuant to the Town’s Zoning Bylaws, M.G.L. c.40B, Sections 20-23, or otherwise. Pursuant to Chapter 40R, residential units shall equal no less than 51% of the gross floor area of the Project.

1.2 The Owner covenants that there shall be no more than a total of approximately ~~240~~ ~~232~~ bedrooms in the ~~150-146~~-unit residential component of the Project. The distribution of bedroom count across the total units shall adhere to DHCD policies ensuring the inclusivity of families with children, and notably not less than 10% of units shall be 3-bedroom units. This covenant shall be deemed to run with the land and is intended to be a restriction to be held by a governmental body and intended to benefit the Town of Lancaster, for the longest period permitted by law.

1.3 Housing Style. The Owner agrees that all dwelling units constructed on Site shall be apartment style arranged in the configuration shown on the site plan attached as **Exhibit D.**

1.4 Affordable Rental Housing. The Owner agrees that all residential housing units developed upon the Site up to the maximum of ~~150-146~~ units shall be rental housing, and that no less than 25% of such housing units shall be affordable units qualifying for enumeration under G.L. c. 40B, Sections 20-23 (the “Affordable Units”), to ensure that all housing units contained in the Project (both affordable and market rate) count on the Town’s SHI in perpetuity or for the longest period permitted by law. Units must comply with all aspects of the Town's NL SGOD 40R bylaw, including design, landscaping, lighting and pedestrian and cycle-friendly measures. In addition, not less than 8% of the housing units shall be affordable to a qualifying household earning 60% or less of the area median income (“AMI”), with the remainder of the affordable units to be affordable to those earning no more than 80% of AMI.

1.5 Local Preference. To the maximum extent permitted by law and applicable regulation, local preference for the initial occupancy of Affordable Units within the Project shall be given to residents of the Town, employees of the Town and businesses located in the Town, and households with children attending the Town’s schools, satisfying all applicable eligibility requirements. The Owner agrees to pursue DHCD approval of a local preference to the extent necessary.

1.6 Tenant Selection. The Owner shall undertake a lottery and implement an Affirmative Fair Housing Marketing Plan to solicit interest for the occupancy of the Affordable Units in accordance with applicable DHCD procedures then in effect. Consistent with the terms and conditions established in this section, the Owner and the Town, in concert with DHCD's review and approval, shall draft, execute and record a DHCD regulatory agreement that will detail the protocol for the marketing, leasing, management and oversight of the Affordable Units.

1.7 Commercial Space. The Owner agrees that there shall be a maximum of approximately 42,000 square feet of commercial space located on the Site, which shall be located within approximately three buildings configured and sized substantially as shown on Exhibit D. Pursuant to Chapter 40R, the total gross floor area devoted to non-residential uses may not exceed 49% of the total gross floor area of the Project.

1.8 Required Additions to the Project. Owner agrees that its site plan for the Project will be revised, prior to submission for permitting and approval by the Town's designated plan approval authority, to include:

- a. A multi-age children's playground with sports court;
- b. A community garden;
- c. A dog park; and
- d. A minimum of [insert number] electric vehicle charging stations.

1.9 The distribution center shall not be visible from the residential units, whether by an existing, permanent treescape not to be altered and/or vegetated berm.

2. WATER AND SEWER.

2.1 Water Service. The Owner has arranged for the City of Leominster to provide potable water service to the Project pursuant to the Water Supply and Development Agreement dated December 4, 2020. The Town expressly disclaims any ability to provide potable water service to the Project, and the Owner hereby agrees on behalf of itself, its successors and assigns, and any and all affiliated entities, that it will not request to connect the Project or the Property to the Town of Lancaster's municipal water system at any point, and that the Town will have no obligation, now or in the future, to provide water service to the 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.

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 Project. The Town expressly disclaims any availability of Town sewer service to serve the Owner's Project, 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. The Owner on behalf of itself, its successors and assigns, and any and all affiliated entities agrees that the Town will have no obligation, now or in the future, to provide sewer service to the Project or to the Property.

3. TRANSPORTATION.

3.1 Traffic Mitigation. Owner has provided the Town with the Traffic Impact and Access Study prepared by TEC, Inc. dated May 5, 2021 (the “Traffic Study”), and the Town has arranged for the Traffic Study to be peer reviewed on its behalf. The Traffic Study evaluates the combined traffic impacts of the 40R Project and a separate commercial distribution center that the Owner intends to construct on the remainder of the Property located outside of the 40R District (the “Distribution Center Project”), provided the Town Meeting approves expansion of the Enterprise Zoning District to allow for said distribution center to be constructed. The Traffic Study recommends a comprehensive program of traffic mitigation, and the Owner has agreed to implement all recommended traffic mitigation at its own cost. This agreement is memorialized in detail in the separate Memorandum of Agreement (the “Distribution Center Agreement”) of even date. The Owner hereby agrees to all of the transportation conditions included in Section 3 of the Distribution Center Agreement, which are incorporated herein by reference and which shall be fully binding on Owner.

3.2 Notwithstanding the provisions of Section 3.1 above, if the 2022 Annual Town Meeting does not adopt a zoning amendment to allow the Owner’s proposed distribution center, and the Owner elects to permit and construct the 40R Project only, the Owner shall prepare and provide to Town a revised traffic study devoted exclusively to the 40R Project. Upon receipt of such a study, the Town shall arrange for review by its peer review consultant, and the parties shall collaborate on a revised transportation mitigation package to be performed by Owner at its expense. All agreed to mitigation measures shall be fully installed and/or implemented prior to issuance of any Certificate of Occupancy for the Project.

3.3 A recorded security easement currently exists between the proposed distribution center site and Old Union Turnpike through adjacent land owned by Massachusetts Youth Soccer Association. This easement shall be amended to provide permanent secondary ingress and egress to the distribution center in order to reduce the distribution center traffic on McGovern Boulevard and Lunenburg Road/Route 70.

3.3 MART Bus Extension. The Owner shall:

a. 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 and federal transit funding. The Owner will reimburse the Town for its share of the cost of providing Route #8 service to the Property, no later than thirty (30) days after delivery of an invoice from the Town. The extension of the Route #8 bus line shall be in effect and operational prior to issuance of the first certificate of occupancy for the Project. The Owner’s funding obligation pursuant to this section shall remain in place as long as the Project exists on the Property.

b. Construct and maintain, at its sole expense, two (2) bus shelters for use as part of the MART Route #8 bus line, with one (1) shelter located within the 40R District adjacent to the housing, and one (1) shelter within the distribution//logistics center project near the largest distribution center building. Each shelter shall be fully completed prior to issuance of the first certificate of occupancy for the Project and the distribution/logistics center

project, respectively, and Owner shall be responsible for maintaining both shelters for as long as the Project and/or the distribution/logistics center project exist on the Property.

4. LOCAL TAXES.

4.1 All real property and commercial personal property contained within the Project shall be taxable, and all real estate and personal property taxes shall be paid by Owner or its tenants, as applicable. The Owner and tenants shall not request any abatement, or object to or otherwise challenge the taxability of such property, and shall not seek a nonprofit, agricultural, or other exemption or reduction with respect to such taxes, including without limitation through Tax Increment Financing Agreement with the Town.

5. CONSERVATION/WETLANDS.

5.1 It is anticipated that onsite and offsite wetland resources and adjacent buffer zones to these resources will be impacted by the Project. To mitigate the impacts anticipated by the Project, 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-site and offsite stormwater management improvements necessitated by the Project, said improvements to be determined by the Town, and to be consistent with requirements and standards of federal, state and Town laws and regulations.

5.2 Owner will prepare and submit to the Town, prior to submitting an application for the first building permit for the Project, a baseline water quality analysis of all running water bodies that exist on the Property. Owner shall prepare and submit to the Town, no later than one year after issuance of the final Certificate of Occupancy for the Project, and annually thereafter, a supplemental water quality analysis of all running water bodies that exist on the Property. 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. Members of the public shall be allowed to attend and observe the water collection for all such reports, and the Owner shall give the Town at least 21 days advance notice of when the water collection will occur.

6. ENVIRONMENTAL MITIGATION.

6.1 Open Space. Parcel 014-0008.A shall be conserved and protected open space with the exception of the northernmost 5% as needed for the edge of the residential fire lane access and/or trail connection on adjacent Parcel 014-0004.A. Parcel 014-0008.B shall be conserved and protected open space. Portions of Parcel 008-0045.0 shall be conserved and protected open space, notably the areas shown on **Exhibits E & F** to be surveyed.

6.2 Trail Connectivity. A permanent recreational trail connection shall be established and maintained annually at the Owner's expense from the eastern portion of Parcel 014.0004.A (from the Site) connecting to Parcel 014-0009.0 at the permanent pedestrian lane between the existing soccer fields, leading to the Lancaster State Forest trail as shown in **Exhibit G**. This trail shall include a pedestrian footbridge providing access from Parcel 014.0004.A across McGovern Brook.

A second permanent recreational trail connection shall be established and maintained annually at the Owner's expense from Parcel 008-0039.A through the eastern portion of Parcel 008-0045.0 and connecting to the existing trail as shown in **Exhibit G**. This trail shall be conveyed to the Town either through an easement or land transfer prior to twelve months from the execution of this Agreement.

The design, approval and construction of both trail connections shall be complete no later than twelve months from adoption of the 40R District at town meeting. Design, construction and annual maintenance shall follow the Massachusetts Department of Conservation and Resources Trails Guidelines and Best Practices Manual.

6.3 Riparian Buffer Restoration. The McGovern Brook riverfront on Parcels 014-0004.J, 014-0004.I, 014-0004.A and 014-0008.A shall benefit from riparian vegetated buffer restoration with the annual removal of invasive species, planting of native-only vegetation reviewed with the Conservation Agent, and protection of mature trees greater than 6" in diameter.

7. SUPPLEMENTAL USE RESTRICTIONS.

7.1 The Owner covenants there shall not be drive through businesses in the Project with the exception of one car wash. This covenant shall be deemed to run with the land and is intended to be a restriction to be held by a governmental body and intended to benefit the Town of Lancaster, for the longest period permitted by law.

7.2 The Owner covenants not to allow so-called "adult entertainment uses" on the Property or within the Project. This covenant shall be deemed to run with the land and is intended to be a restriction to be held by a governmental body and intended to benefit the Town of Lancaster, for the longest period permitted by law.

7.3 There shall be no industrial use allowed in the Project or elsewhere on parcels within the 40R District owned or controlled by the Signees of this Agreement.

8. CONSULTANT COSTS.

8.1 The Owner shall pay the reasonable fees of the Town's review consultants and attorneys providing services in connection with the Town's review and consideration of the Project. All such costs shall be paid by Owner within thirty (30) days after delivery of an invoice from the Town.

9. MISCELLANEOUS.

9.1 Effective Date. This Agreement shall become effective upon approval of the North Lancaster Overlay District Bylaw by the Lancaster Annual Town Meeting scheduled to begin on May 2, 2022.

9.2 Failure to Obtain Approvals. In the event that (i) the zoning amendment expanding the Enterprise District is disapproved by the Massachusetts Attorney General, or (ii) Owner fails despite applying all best efforts to obtain or maintain all final and effective

discretionary federal, state and local permits necessary to allow for the construction and operation of the 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; provided, however, that the prohibition on residential development of the Site, whether pursuant to the Zoning By-Law, M.G.L. c.40B, §§20-23 and 760 CMR 56.00, or otherwise, contained in Section 1.2 shall remain in full force and effect. Nothing contained herein shall prevent the Owner from pursuing development of some revised version of the Project that is otherwise smaller than that depicted on Exhibit D.

9.4 Retention of Regulatory Authority. Nothing contained in this Agreement shall affect, limit, or control the authority of Town boards, commissions, Plan Approval Authority ("PAA") 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.

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: [Contact info to be added]

Town: Town Administrator
Town of Lancaster
Prescott Building 701 Main Street – 2nd Floor
Lancaster, MA 01523

with a copy to:

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

Lancaster Affordable Housing Trust
Prescott Building
701 Main Street – Suite 2
Lancaster, MA 01523

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 fifteen days of receipt of written notice of such failure from the other Party and thereafter fails to complete such cure, correction, or remedy within sixty days of the receipt of such written notice, or, with respect to defaults that cannot reasonably be cured, corrected or remedied within such sixty-day period, 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.

9.10 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 __ 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.

9.11 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.

9.12 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.

9.13 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.

9.14 Time is of the Essence. Time shall be of the essence for this Agreement and, subject to economic conditions and approval of the District Bylaw by the Town at the Annual Town Meeting, DHCD, and the Massachusetts Attorney General, the Owner shall diligently pursue the remaining permitting, development, construction and residential occupancy of the Project .

9.15 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.

9.16 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.

[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

Jason Allison, Chair

~~Jay M. Moody, Clerk~~
Stephen J. Kerrigan

Alexandra W. Turner

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:

TOWN OF LANCASTER AFFORDABLE HOUSING TRUST

Victoria Petracca, Chair

Frank Streeter, Secretary

~~Jay M. Moody~~ Stephen J. Kerrigan

Carolyn Read

Debra Williams

~~Marilyn Largey~~ Kate Hodges, Ex Officio ~~Non-Voting Member~~ and Town Administrator

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:

CAPITAL GROUP PROPERTIES, LLC

Name:

Its:

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:

North Lancaster, LLC

Name:

Its:

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:

702, LLC

Name:

Its:

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

Exhibit A – Property Description

Exhibit B – North Lancaster Smart Growth Overlay District

Exhibit C – Site Plan

Exhibit D – Site Plan Showing Project Layout

Exhibit G — Trail Connectivity Map