

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.

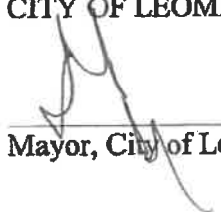
21. Dispute Resolution. To the extent the parties cannot resolve any disputes that may arise hereunder, the parties agree to first submit such dispute to non-binding mediation and failing resolution, to a court of competent jurisdiction in Worcester County, Massachusetts.

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.

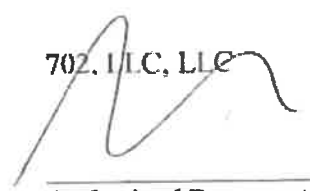
IN WITNESS WHEREOF, the parties to this Agreement have hereto set their hands and seals on the date and year first above written.

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:

702 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.

