



259 TURNPIKE ROAD SOUTHBOROUGH, MASSACHUSETTS 01772 www.capitalgroupproperties.com

October 18, 2021

Mr. Orlando Pacheco
Town Administrator
Town of Lancaster
Prescott Building
701 Main Street
Lancaster, MA 01523

RE: Land Confirmation, Acquisition and Use Agreement and the First Amendment to the Land Confirmation, Acquisition and Use Agreement between the Town of Lancaster and North Lancaster, LLC

Dear Orlando:

I am writing this letter to clarify 702, LLC's understanding of the circumstances that led up to the execution of the October 19, 2017 "Land Confirmation, Acquisition and Use Agreement" ("the Agreement") between North Lancaster, LLC and the Town of Lancaster as well as the goals at that time of both parties moving forward namely; 1) on behalf of North Lancaster, LLC, the development of a mixed use development on the North Lancaster, LLC land and 2) on behalf of the Town of Lancaster, the acquisition of parcels 14-15 and 19-11 then owned by North Lancaster, LLC as well as the events that have occurred after the Agreement was executed.

For your reference I am enclosing executed copies of both the original Land Confirmation, Acquisition and Use Agreement and the First Amendment to Land Confirmation, Acquisition and Use Agreement. I have highlighted in yellow and numbered certain sections of these agreements which I will be referring to in this letter.

The main goals of the parties in the original Agreement were as follows:

1. The Town of Lancaster desired to acquire Parcel 19-11, Parcel 14-15 and a permanent easement on a portion of Parcel 13-8 from North Lancaster, LLC. (See page 2, highlight #1 on the attached original agreement.
2. North Lancaster desired to see parcels 19-11, 14-15 and a portion of 13-8 protected and maintained as open space and conservation land **as part of an overall use and**

development plan for the area. (See page 2, highlight #2 on the attached original agreement.)

3. North Lancaster desired that other portions of the **LAND used or considered for incorporation into a mixed-use development that would include residential and open-space components.** (See page 2, highlight #3 on the attached original agreement.)
4. **The parties agreed that a comprehensive and desirable land use approach for the use and development of the LAND is in the best interests or the parties to preserve certain acres for open space and conservation land (parcels 19-11, 14-15 and 13-8) and facilitate development of other areas in a manner that addresses community needs and provides significant tax revenues for the Town.** (See page 2, highlight #4 on the attached original agreement.)

Bullet points 1-4 above outline the goals of North Lancaster, LLC and the Town of Lancaster and the premise on which the Agreement was based on. The acquisition of the land parcels by the Town and the development of the remainder of the Land were clearly tied together in the Agreement, which is contrary to what several Planning Board members and a Conservation Commission member have stated in numerous public hearings since the spring in regards to the Agreement, clearly designed to mislead and confuse Lancaster residents as to what the obligations of the parties involved in the original 2017 Agreement were, and the considerations required for those obligations to be met.

Under the terms of the Agreement, specifically in regard to the Town acquiring parcels 19-11 & 14-15 from North Lancaster, LLC, the Agreement called for the following to occur:

5. Section 1.5 of the Agreement entitled “Initial Closing” called for the Closing on Parcel 14-15 and a portion of 19-11 (19A) to occur within 120-days of the execution of the Agreement by all parties which occurred on October 19, 2017. That would place the Closing Date for the Initial Closing on or about February 19, 2018. Section 1.5 also states; “Time is of the essence.” (See page 3, highlight #5A on the attached original agreement.)

Within the 120-day required Initial Closing period the Town **did not** prepare and send to North Lancaster, LLC the required deeds needed for North Lancaster, LLC to review and execute in order for the Land parcels to be transferred to the Town. Section 2.4 of the Agreement entitled “Deeds” stated; **“The Town shall be responsible for drafting the Deeds.”** (See page 7, highlight #9 on the attached original agreement.)

6. The Initial Closing having not occurred by the required Initial Closing Date (February 19, 2018) and North Lancaster, LLC receiving virtually no correspondence from the Town in regard to the Closing, Section 2.12 entitled “Contingencies” kicked in and states the following: *“North Lancaster and the Town agree to diligently pursue satisfaction of the above conditions. If any of the above conditions are not satisfied as of the date and time of the closing, provided that the closing date shall not be extended more than six (6) months beyond the closing date, other than by agreement or the parties, and further provided that the each party shall give the other party three days written notice of its*

*exercise of this option and shall give the other party ten days written notice of the new closing date. If neither party extends the closing date (this is what actually occurred) and such conditions have not been timely satisfied, or alternatively waived by the applicable party **the Agreement shall be deemed terminated whereupon all obligations of the parties not then performed shall cease and this Agreement shall be void and without recourse to the parties hereto.*** (See page 9, highlight #11 on the attached original agreement.)

Since neither party took action to extend the Agreement prior to the February 19, 2018, the outside date for closing under the terms of the Agreement, the Agreement was deemed terminated at that point.

That said, in the early fall of 2018 North Lancaster reached out to the Town to inquire whether or not the Town was interested in reinstating the Agreement which had expired in February 2018. A “First Amendment to Land Confirmation, Acquisition and Use Agreement” was prepared by North Lancaster, LLC and in mid-October 2018 the Amended Agreement was signed by North Lancaster, LLC and the Town of Lancaster through its Board of Selectmen and Conservation Commission.

The Amended Agreement contained the following changes to the original Agreement:

7. Section 1. – “Performance to Date” states the following: *“As of the Effective Date, the Town acknowledges and agrees that: (i) North Lancaster has paid all fees and expenses owed under the Agreement and (ii) **North Lancaster is not in default of its obligations under the Agreement**”* (See page 1, highlight #1 on the attached Amended Agreement.
8. North Lancaster, LLC informs the Town that it has entered into a Purchase & Sales Agreement with 702, LLC with respect to the land that is subject of the Agreement (parcels 14-15, 19-11 & 13-8) and that it will be assigning its rights and obligations under the Agreement to 702, LLC (See page 1, highlight A. on the attached Amended Agreement.
9. Section 6. – “Date of Initial Closing” of the amendment states the following: *“The date set forth in a written notice from North Lancaster or its successor, as the case may be, to the Town, said date to be between March 15, 2019 and July 1, 2019.”* (See page 2, highlight #2 on the attached Amended Agreement.
10. Section 7. – “Conveyance of Parcel 14-15” of the amendment states the following: *“Within Sixty (60) days after the Effective Date (as defined in the Amendment which would be October 15, 2018)”* North Lancaster or Assignee, as the case may be, shall convey Parcel 14-15 to the Town, acting through its Conservation Commission, by good and sufficient quitclaim deed. (See page 2, highlight #3 on the attached Amended Agreement.

Other than the establishment of new closing dates for parcels 14-15 & 19-11, for the most part, the remainder of the original Agreement. (See page 3, highlight #4 on the attached Amended

Agreement). Key provisions of the original decision relating to the drafting of the deeds and timely closing as described in 5 & 6 above remained unchanged. As with the original Agreement the time for the first closing (60 days from October 15, 2018) came and went without any deed being drafted by the Town as required per Section 2.4 of the original Agreement and no written notice for a six-month extension was received from the Town as required under Section 2.12 of the original Agreement, so for a second time the amended Agreement was deemed terminated as per Section 2.12 of the original Agreement.

That said, and with the original Agreement and Amended Agreement both technically terminated, North Lancaster, LLC on February 1, 2019 had its attorney reach out to Town Council regarding the draft deed. Town Counsel responded on February 1, 2019 by sending an example of a deed pertaining to another parcel of land in Town that was transferred to the Town. On February 12, 2019, the attorney for North Lancaster, LLC sent a draft deed (even though it was the Town's responsibility to draft the deed per the Agreement) pertaining to the conveyance of parcels 19-11 & 14-15 from 702, LLC (the new owner of the parcels) to the Town of Lancaster.

On February 24, 2019, North Lancaster's attorney received an email from Lancaster's Town Counsel stating: "*Thank you. I will review with the Town.*" North Lancaster's attorney never heard back from Town Counsel on whether or not the draft deed and acceptance documents required to be signed by the Board of Selectmen and the Conservation Commission were acceptable to the Town or not.

North Lancaster, LLC was perplexed as to why its attorney had not heard back from Town Counsel regarding the deed and acceptance documents presented to them. North Lancaster was told by Town officials they talked to that the Town apparently "had issues with the title to the properties," but they were not aware as to what the title issues were.

North Lancaster was surprised by these comments because Section 2.3 of the original Agreement states the following: *Following the recording of the Deeds, North Lancaster shall deliver to the Town, at its cost, an owner's title insurance policy that insures title to the parcels conveyed to the Town in accordance with the terms of this section.*" North Lancaster's attorney was prepared to issue this title insurance policy once the deeds were recorded by the Town as required under section 2.3 of the Agreement.

The Agreement and Amended Agreement had both been deemed terminated for a second time as per section 2.12 of the original Agreement as the Closing times had expired and the six (6) month extension option had not been exercised by the Town pertaining to either the original Agreement or the Amended Agreement. So as of this date there is no agreement in place for the Town to acquire parcels 19-11 & 14-15 from 702, LLC, the current owner of the two land parcels.

That said, if the Town is still interested, 702, LLC is willing to negotiate a new agreement with the Town to acquire parcels 19-11 & 14-15. As with the original Agreement, this new agreement would be in conjunction with a re-zoning for a mixed-use development that 702, LLC desires to build on the land it owns or controls in the area.

702, LLC is requesting a meeting with the Lancaster Select Board to discuss the above reference letter as well as 702's desire to rezone the entire 702, LLC to Limited Industrial instead of the other options currently being discussing related to the land use of the 702, LLC property namely, 1) the proposed ICOD; 2) amending the existing IPOD or 3) rezoning the portion of the 702, LLC land that is in the residential zone to the Enterprise zone.

Timing is becoming a serious issue for us at this time. If we cannot see a clear path to having an acceptable re-zoning option brought forth promptly to a Special Town Meeting for consideration by Lancaster residents by the end of the year, then 702, LLC will have no option but to move forward with by-right development options on its property, which it is prepared to do.

We are available to meet at your convenience. Thank you.

Very truly yours,
Capital Group Properties, LLC

Bill Depietri

William A. Depietri
President