

**MEMORANDUM OF AGREEMENT – 40R SMART GROWTH OVERLAY DISTRICT**

This Memorandum of Agreement (the “Agreement”) is entered into this \_\_ day of November, 2022, by and between the Town of Lancaster (the “Town”), acting by and through its Select Board and its Affordable Housing Trust (the “Trust”), 702, LLC, a business having its principal Massachusetts office at 259 Turnpike Road, Suite 100 Southborough, MA 01772 (“702”); and North Lancaster, LLC, a business having its principal Massachusetts office at 435 Lancaster Street, Leominster, MA 01453 (“North Lancaster”). Hereinafter the Town and the Trust may sometimes be collectively referred to as the “Town” and 702 and North Lancaster, their successors and assigns, may be 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 amenable to sponsoring an article on the warrant at a Special Town Meeting to be held on November 14, 2022, in the form attached as **Exhibit B**, that would amend the Lancaster Zoning Bylaw by adding the North Lancaster Smart Growth Overlay District, an overlay zoning district enacted pursuant to M.G.L. c. 40R and accompanying regulations at 760 CMR 59.00; (the “North Lancaster Smart Growth Overlay District Bylaw”); and

WHEREAS, the North Lancaster Smart Growth Overlay District is depicted on **Exhibit C**, and includes a portion of the Property, specifically Assessors’ Parcel 14-4.M, Parcel 14-4.L, Parcel 14-4.N, Parcel 14-4.G, Parcel 14-4.F, Parcel 14-4.K, Parcel 14-4.J, Parcel 14-4.I, Parcel 14-4.H, Parcel 14-4.A, Parcel 14-8.0 and Parcel 14-8.A (collectively the “North Lancaster Smart Growth Overlay District”); and

WHEREAS, the Massachusetts Department of Housing and Community Development (“DHCD”) issued a letter of conditional eligibility dated May 27, 2022 finding that the proposed North Lancaster Smart Growth Overlay District Overlay Bylaw (“NL-SGOD”) conditionally 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, the Owner contemplates construction of a mixed-use development including up to 146 new dwelling units and the maximum area of commercial space as conceptually describe below and in compliance with M.G.L. 40R mixed use ratio requirements (the “40R Project”) on a portion of the Property within the North Lancaster Smart Growth Overlay District defined as Assessors’ Parcel 14-4.I, Parcel 14-4.H, Parcel 14-4.A, Parcel 14-8.0, and Parcel 14-8.A (collectively, the “Site”); and

WHEREAS, the Owner, is concurrently seeking to expand the Enterprise Zoning District to include land owned or controlled by Owner, adjacent to the Site, namely specific areas of Assessor Parcels 008-0045.0, 009-0004.0, 014-0003.B & 014-0004.D (hereinafter the “Enterprise Project Site”), on which owner proposes to develop a

Commercial Center, containing a maximum building ground floor area of 2,450,000 square feet, along with associated parking, access, site circulation and infrastructure, including, without limitation, the installation of the Phase One Access Road on and within Parcel 014-0004.D (the “Enterprise Project”). The Enterprise Project is the subject of a companion Memorandum of Agreement (the “EZ MOA”) between the parties, an executed copy of which is attached hereto as **Exhibit D**, and will also require the adoption of separate zoning amendments by Special or Annual Town Meeting. Hereinafter the Enterprise Project and the 40R Project are sometimes referred to collectively as the “Owner’s Projects”. The Phase One Access Road will service both of Owner’s Projects. All obligations of Owner and Town set forth in the EZ MOA which are necessary for the permitting and development of the 40R Project are expressly incorporated by reference herein.

WHEREAS, based on the traffic and engineering studies performed by Owner, and reviewed by the Town’s consultants, the Parties have identified the water, sewer, traffic, public transit, pedestrian, cycling, 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 and the Property, (ii) facilitate the development of housing units that will count towards 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 SITE AND PROPERTY.

1.1 Subject to the terms of this Agreement generally, and final Town Meeting and Attorney General Approval of the North Lancaster Smart Growth Overlay District, and Town Meeting and Attorney General Approval of those Zoning Amendments set forth in the EZ MOA, Owner agrees, subject to market conditions, to pursue all permits, orders and approvals necessary and required for the development of the 40R Project in compliance with this Agreement. Owner shall pursue all necessary permits, orders and approvals for the 40R Project, and actual construction of the 40R Project, contemporaneously with its permitting and construction of the Enterprise Project.

1.2 Number of Dwelling Units.

a. The Owner agrees with the Town that there shall be a maximum of 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.

b. The Owner agrees that it shall not develop, apply for, permit or construct any dwelling units within the portion of the North Lancaster Smart Growth Overlay District located outside the Site pursuant to M.G.L. c.40B, Sections 20-23, unless such project is permitted as a Local Initiative Project (a/k/a a “friendly” 40B).

c. The Owner agrees, subject to and following the granting of final Site Plan Approval and the issuance a final building permit for any non-residential building located within the re-zoned portion of the Enterprise Project, that it shall not develop, apply for, permit or construct any dwelling units on the portions of the Property located outside the North Lancaster Smart Growth Overlay District, whether pursuant to the Town’s Zoning Bylaws, M.G.L. c.40B, Sections 20-23, or otherwise unless such project is permitted as a Local Initiative Project (a/k/a a “friendly” 40B). The Owner agrees that it shall withdraw, with prejudice, any and all pending applications concerning the development of housing on any portion of the Property located outside of the North Lancaster Smart Growth Overlay District.

1.3 The Owner covenants that there shall be no more than the maximum number of bedrooms on the Site allowed by applicable DCHD regulations for a project with no more than 146 units and 265 bedrooms. 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.

1.4 Housing Style. The Owner agrees that all dwelling units constructed on Site shall be apartment style.

1.5 Affordable Rental Housing. The Owner agrees that all residential housing units developed upon the Site up to the maximum of 146 units shall be rental housing, and that no less than 25% of such housing units shall be affordable units qualifying for enumeration under M.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.

1.6 Local Preference. From the date on which the marketing of residential units commences and continuing for a period of 60 calendar days, and 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 reasonably necessary.

1.7 Tenant Selection. The Owner, or Owners’ designated qualified Consultant, 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.

1.8 Commercial Space. The Owner agrees that, residential units shall equal no less than 51% of the gross floor area of the 40R Project. The total gross floor area devoted to non-residential uses may not exceed 49% of the total gross floor area of the 40R Project.

1.9 Required Additions to the Project. Owner agrees that its site plan for the 40R Project will be revised, prior to submission for permitting and approval by the Town's designated plan approval authority, to include:

- a. Pocket Park or Parks suitable for multi-age children.
- b. A dog park; and
- c. A minimum of three (3) electric vehicle charging stations.

1.10 Control Plan. Owner agrees that with the exception of (a) the required additions to the Project set forth in Section 1.9, (b) insubstantial field changes to the location of buildings and infrastructure, and/or (c) and any further plan revisions agreed to in writing by all parties to this Agreement, Owner shall develop the Site exclusively as shown on the Conceptual Layout Plan attached as **Exhibit E**.

1.11 No building contained within the EZ Project shall be visible from the residential units constructed on the Site. The view shall be protected by an existing, permanent treescape not to be altered and/or a vegetated berm.

1.12 Prior to the issuance of the first Building Permit for either the Enterprise Project or the 40R Project the Owner shall organize a **Common Roadway Association**, mandatory membership in which shall be enforced by deed restriction and/or duly recorded affirmative covenant and shall consist of all Owners of all properties, including without limitation the 40R Project, which front on or use the Common Roadway previously approved by the Lancaster Planning Board (*Amended Definitive Subdivision Plan for McGovern Place* approved on March 14, 2022 and recorded at the Worcester District Registry of Deeds in Book [REDACTED] Page [REDACTED],) or any extension thereof, for any purpose. The terms, conditions, management and operation of the Common Roadway Association shall be as Owner, in its sole discretion determines. As set forth in the EZ MOA the Common Roadway Association, as Owner's successor, may assume certain Obligations of Owner set forth herein or in the EZ MOA.

## 2. WATER AND SEWER.

2.1 Water Service. The Owner has arranged for the City of Leominster to provide potable water service to the Property pursuant to the Water Supply and Development Agreement dated December 4, 2020 a copy of which is attached hereto as **Exhibit F** and the Intermunicipal Agreement between the City of Leominster and the Town of Lancaster for the Provision of Water Service, dated March 17, 2021 a copy of which is attached hereto

as **Exhibit G**. The Town expressly disclaims any ability to provide potable water service to the 40R Project. Owner hereby acknowledges and agrees on behalf of itself, its successors and assigns, and any and all affiliated entities that the Town does not now have and will not have in the future any obligation, to provide water service to the 40R Project or to the Property for any reason whatsoever, regardless of the status of the Water Supply and Development Agreement dated December 4, 2020 or the availability of potable water from the City of Leominster. Connection to the Leominster Water Supply shall be available prior to the issuance of the first building permit for either of Owner's Projects. Notwithstanding the foregoing if, in the future, the Town determines to expand public water service to the area of the Property, the Town in its sole discretion, may elect to offer public water service to the Property.

2.2 Sewer Service. The Owner will be wholly responsible for permitting, construction, operation, and maintenance of a private wastewater treatment plant to serve both the 40R project and the Enterprise Project on the Enterprise Project Site. Owner's obligation under this Section 2.2 is specifically subject to Owner obtaining final approvals of the Enterprise Project as contemplated in the EZ MOA. The Town expressly disclaims any availability of Town sewer service to serve the Owner's Projects, and the Owner agrees that it shall construct and operate its private wastewater treatment plant in compliance with any permit issued by the Massachusetts Department of Environmental Protection. The Owner on behalf of itself, its successors and assigns, and any and all affiliated entities, agrees that, unless requested by the Town, the Town will have no obligation, now or in the future, to provide sewer service to the Project or to the Property

### 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 the Enterprise Project. The Traffic Study recommends a comprehensive program of traffic mitigation, as set forth in the EZ MOA. Provided that Town Meeting approves expansion of the Enterprise Zoning District and the "NL-SGOD" Bylaw set forth in **Exhibit B** the Owner hereby agrees to implement all recommended traffic mitigation in accordance with the Traffic Mitigation Matrix a copy of which is attached hereto as **Exhibit H** and to all of the transportation conditions included in Section 3 of the EZ MOA 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 Town Meeting does not adopt a zoning amendment to allow the Owner's proposed Enterprise Project, 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 implemented by Owner at its expense. Best efforts shall be used to ensure that mitigation measures shall be fully installed and/or implemented prior to issuance of Occupancy for the 40R Project, subject to MassDOT approval for timing of said improvements.

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 actual cost of providing Route #8 service to the Property, no later than thirty (30) days after delivery of an invoice from the Town. The onsite improvements required to allow for 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. It is expressly understood by the parties that actual operation of MART Route #8 is not the obligation of Owner.

b. As set forth in Section 3.9 of the EZ MOA, the Owner agrees to 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 Enterprise Project. The shelter located nearest the 40R Project shall be fully completed prior to issuance of the first certificate of occupancy for the 40R Project, 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.

3.4 Pedestrian Improvements. North Lancaster, LLC as part of the Phase One Roadway construction, shall construct a 5-foot sidewalk on McGovern Boulevard as per the approved subdivision plans to provide connectivity between land uses on the site and Lunenburg Road. This includes connectivity to the several retail parcels previously constructed (Dunkin Donuts and Mobil Station), future retail as programmed for the parcels on the west side of Lunenburg Road, and the existing Kimball Farm along the east side of Lunenburg Road. Additional pedestrian crossings will be provided across McGovern Boulevard within the site. Final layout of on-site pedestrian and bicycle accommodations, internal site circulation, and other on-site transportation networks will be designed in connection with the 40R Project approval process and constructed by North Lancaster, LLC in connection therewith.

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

#### 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 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 relating to the 40R portion of the development.

5. CONSERVATION/WETLANDS.

5.1 It is anticipated that onsite and offsite wetland resources and adjacent buffer zones to these resources may be impacted by the Project. To mitigate the impacts anticipated by the Project, in addition to any reasonable 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 off-site 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. To the extent that Owner is called upon to pay for costs of offsite stormwater improvements pursuant to this section, it shall provide the necessary funds to the Town within thirty (30) day after receipt of a written request.

6. LAND DONATION, OPEN SPACE AND TRAIL CONNECTIVITY.

6.1 Open Space. Parcel 014-0008.A shall be conserved and protected open space with the exception of the portion of the parcel needed for the 40R development and/or trail connection on adjacent Parcel 014-0004.A. Parcel 014-0008.B shall be conserved and protected open space.

6.2 Trail Connectivity. Provided that Town Meeting approves expansion of the Enterprise Zoning District and the "NL-SGOD" Bylaw Permitting Amendment set forth in **Exhibit B** the Owner hereby agrees to implement all trail connectivity and to grant necessary easements on the terms and conditions included in Section 6.5 of the EZ MOA which are incorporated herein by reference and which shall be fully binding on Owner. Trails shall be as shown on **Exhibit I**.

7. SUPPLEMENTAL USE RESTRICTIONS.

7.1 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.

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.

8.2 The Town agrees that prior to engaging a consultant, professional or an attorney or incurring any costs that will be the obligation of the Owner under this Agreement, the Town will: (i) provide written notice to and consult with the Owner regarding the necessity and selection of said consultant, professional or attorney; (ii) provide the Owner with a written scope of work and an estimated budget for the anticipated consultant, professional or attorney's work; (iii) not incur any such costs, or enter into any such contract, any contract amendments or any work order for extras without prior written notice to and

reasonable approval by the Owner; and (iv) upon request by the owner, provide a written accounting of all costs incurred and other expenditures made by or on behalf of Owner under this Agreement. Any objection from Owner pursuant to subsection (iii) shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum required qualifications, which shall consist either of an educational degree in or related to the field at issue or three or more years of practice in the field at issue or a related field. Failure by Owner to respond to any written notice within fourteen (14) days of receipt shall be deemed approval of the matter contained in such notice.

## 9. MISCELLANEOUS.

9.1 Effective Date. This Agreement shall become effective upon approval of the North Lancaster Smart Growth Overlay District Bylaw by the Massachusetts Attorney General, following its adoption by the Lancaster Town Meeting, and only following the Effective Date of the EZ MOA.

9.2 Failure to Obtain 40R Approvals. In the event that Owner fails despite applying all best efforts to obtain or maintain all final and effective federal, state and local permits necessary to allow for the construction and operation of the 40R Project, upon Owner's delivery of written notice to the Town, the Parties shall work together to establish a mutually acceptable alternative development plan for the Site, failing which Owner may terminate this Agreement without further recourse to any Party and all restrictions contained herein shall be deemed null and void and without legal recourse, such that Owner may develop and use the Property as allowed by applicable law then in effect.

9.3 Failure to Obtain Other Approvals. In the event that the zoning amendments expanding the Enterprise District and/or revising building height and/or signage requirements are disapproved by Town Meeting or the Massachusetts Attorney General, Sections 1.2. b. and/or c shall not be binding upon Owner. Upon Owner's delivery of written notice to the Town, the Parties shall work together to establish a mutually acceptable alternative development plan for the Site, failing which Owner may terminate this Agreement without further recourse to any Party and all restrictions contained herein shall be deemed null and void and without legal recourse, such that Owner may develop and use the Property as allowed by applicable law then in effect.

9.4 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 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: 702, LLC  
259 Turnpike Road  
Suite 100  
Southborough, MA 01772

with a copy to:

n/a

and

North Lancaster, LLC  
435 Lancaster Street  
Leominster, MA 01453

with a copy to:

n/a

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

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

with a copy to:

Ivria G. Fried, Esq.  
Miyares and Harrington LLP  
40 Grove Street

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

9.9 Default; Opportunity to Cure. Failure by either Party to perform any term or provision of this Agreement shall not constitute a default under this Agreement unless and until the defaulting Party fails to commence to cure, correct or remedy such failure within thirty (30) days of receipt of written notice of such failure from the other Party and thereafter fails to complete such cure, correction, or remedy within ninety days of the receipt of such written notice, or, with respect to defaults that cannot reasonably be cured, corrected or remedied within such ninety-days, within such additional period of time as is reasonably required to remedy such default, provided the defaulting Party exercises due diligence in the remedying of such default. Notwithstanding the foregoing, the Owner shall cure any monetary default hereunder within thirty days following the receipt of written notice of such default from the Town.

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

#### 9.11 Arbitration

(a) All disputes which may arise between the Owner and the Town out of or in relation to or in connection with this Agreement including without limitation, the determination of an event of default under the Agreement, shall be finally settled by personal or virtual arbitration in Worcester County, Massachusetts, in accordance with the applicable rules of JAMS Arbitration Service, Boston Massachusetts. Designation of a single Arbitrator shall be by mutual agreement of the parties, made within 30 days of the submission of a case for determination, failing which each party agrees that the matter shall be determined by one Arbitrator Selected by JAMS. The decision of such arbitration, including an award of

monetary damages, shall be binding on both parties, and a judgment on an award rendered shall be entered pursuant to paragraph (b). The parties agree to proceed with the arbitration process in a cooperative and timely manner. The cost of arbitration shall be paid by the non-prevailing party.

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

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

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

9.12 Estoppels. Each Party agrees, from time to time, upon not less than ten (10) 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.

9.13 Governing Law. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts. If any term, covenant, condition or provision of this Agreement or the application thereof to any person or circumstance shall be declared invalid or unenforceable by the final ruling of a court of competent jurisdiction having final review, then the remaining terms, covenants, conditions and provisions of this Agreement and their application to other persons or circumstances shall not be affected thereby and shall continue to be enforced and recognized as valid agreements of the Parties, and in the

place of such invalid or unenforceable provision, there shall be substituted a like, but valid and enforceable provision which comports to the findings of the aforesaid court and most nearly accomplishes the original intention of the Parties. The Parties hereby consent to jurisdiction of the courts of the Commonwealth of Massachusetts sitting in the County of Worcester.

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

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

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

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

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

9.19 Joint and Several Liability. 702 LLC and North Lancaster LLC shall be jointly and severally liable for all obligations attributed to the Owner in this Agreement.

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

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

TOWN OF LANCASTER SELECT BOARD

\_\_\_\_\_  
Stephen J. Kerrigan, Chair

\_\_\_\_\_  
Alexandra W. Turner, Clerk

\_\_\_\_\_  
Jason Allison

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

\_\_\_\_\_  
Stephen J. Kerrigan

\_\_\_\_\_  
Carolyn Read

\_\_\_\_\_  
Debra Williams

\_\_\_\_\_  
Kate Hodges, Town Administrator  
Ex Officio Member

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: William A. Depietri  
Its: Manager

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss

On this \_\_\_\_\_ day of \_\_\_\_\_, 2022, before me, the undersigned notary public, personally appeared \_\_\_\_\_ proved to me through satisfactory evidence of identification, which was (a driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the persons whose name is signed on the preceding or attached document, and acknowledged to me that s/he signed it voluntarily for its stated purposes.

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

North Lancaster, LLC

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Name: Steve Boucher  
Its: Manager

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss

On this \_\_\_\_\_ day of \_\_\_\_\_, 2022, before me, the undersigned notary public, personally appeared \_\_\_\_\_ proved to me through satisfactory evidence of identification, which was (a driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the persons whose name is signed on the preceding or attached document, and acknowledged to me that s/he signed it voluntarily for its stated purposes.

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Notary Public  
My Commission Expires:

## LIST OF EXHIBITS

- Exhibit A - Property Description CAPITAL GROUP
- Exhibit B - North Lancaster Smart Growth Overlay Amendment Warrant Article
- Exhibit C - 40R Smart Growth Zoning Map
- Exhibit D - EZ MOA
- Exhibit E - Conceptual Layout Plan for 40R Project CAPITAL GROUP
- Exhibit F - Water Supply and Development Agreement CAPITAL GROUP
- Exhibit G - Intermunicipal Agreement CAPITAL GROUP
- Exhibit H - Traffic Mitigation Matrix CAPITAL GROUP
- Exhibit I - Trail Map CAPITAL GROUP