

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (the “Agreement”) is entered into this __ day of April, 2022, by and between the Town of Lancaster, acting by and through its Select Board, (the “Town”) and Capital Group Properties, LLC, a business having its principal Massachusetts office at 259 Turnpike Road, Suite 100 Southborough MA 01772, and 702, LLC, a business having its principal Massachusetts office at 259 Turnpike Road, Suite 100 Southborough, MA 01772 (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, the Owner proposes to use a portion of the Property shown on the site plan attached as **Exhibit B** (the “Site”) as a commercial distribution/logistics center containing a maximum of _____ square feet within ____ buildings, along with associated parking, access, site circulation and infrastructure substantially as shown on **Exhibit B** (the “Project”); and

WHEREAS, the Owner’s proposed project is not allowed under the Town of Lancaster’s current zoning; approximately 60% of the Site is located within the Enterprise Zoning District, where the distribution/logistics center is an allowed use, and the remainder is located within the Residential Zoning District, where it is not; and

WHEREAS, in order for the Project to be constructed, the entirety of the Site would need to be placed within the Enterprise District; and

WHEREAS, the Select Board is amenable to placing an article on the warrant for the 2022 Annual Town Meeting, substantially in the form attached as **Exhibit C**, that would expand the Enterprise Zone and allow for construction of the Project, provided that adequate assurances put in place to define the maximum development that may occur and to ensure that the Owner will address and offset all impacts associated with the Project, should it be allowed to proceed; and

WHEREAS, the Owner is concurrently pursuing a mixed-use development of the remainder of the Property pursuant to M.G.L. c.40R, which will contain a maximum of 150 dwelling units and a maximum of ___ square feet of commercial space contained in _____ buildings (the “40R Project”); the 40R Project will also require the adoption of a separate zoning amendment by the 2022 Lancaster Annual Town Meeting, and is the subject of a companion Memorandum of Agreement between the parties of even date; and

WHEREAS, based on the engineering and traffic studies performed by Owner, the Parties have identified the water, sewer, traffic, environmental, open space and recreational improvements, and direct financial contributions, that are required in order to support the Project; and

WHEREAS, this Agreement is entered into by the Parties in an effort to establish a framework to supplement regulations contained in the Town’s Zoning Bylaw, General

Bylaws, and any conditions that may be contained in permits associated with the Project, and to (i) memorialize in contract the maximum commercial development that may occur on the Site, and (ii) itemize infrastructure upgrades, traffic mitigation and monitoring, environmental mitigation, and other improvements to be undertaken by Owner to adequately support the 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.

1.1 The Owner agrees to develop the Site as a distribution/logistics center to include a maximum of _____ square feet contained within ____ buildings, along with associated parking, access, site circulation and infrastructure substantially as shown on **Exhibit B**.

1.2 The Owner shall not develop, apply for, permit or construct any different or additional uses of the Site other than what is shown on **Exhibit B**. Without limiting the foregoing, this restriction expressly prohibits all residential development of the Site whether pursuant to the Town's Zoning By-Law, M.G.L. c.40B, §§20-23 and 760 CMR 56.00, or otherwise.

1.3 Neither the Project nor this Agreement may be amended so as to increase the overall floor area of the Project or to change the use of any building from that described in **Exhibit B** without the approval, by a majority vote, of the Town of Lancaster Annual Town Meeting or a Special Town Meeting.

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 General. Transportation improvements and ongoing obligations supporting the Project are informed by the Traffic Impact and Access Study (the “Traffic Study”) prepared by TEC, Inc. dated May 5, 2021, and the peer review of the Traffic Study performed on behalf of the Town by Vanasse & Associates, Inc. dated September 7, 2021. The Owner agrees to construct, implement and manage all of the traffic mitigation set forth in this Section 3.

3.2 Lunenburg Road/McGovern Boulevard.

a. Owner will construct a fully actuated traffic signal, which shall include (i) new demand-based vehicular and bicycle detection, (ii) accommodations for emergency-vehicle pre-emption, and (iii) a protected pedestrian crossing at the intersection of Lunenburg Road and McGovern Boulevard. This traffic signal will be constructed prior to issuance of the first certificate of occupancy either for the Project or the 40R Project, and in conjunction with roadway improvements along both Lunenburg Road and McGovern Boulevard.

i. b. Owner will widen McGovern Boulevard to provide two eastbound travel lanes including an exclusive left-turn lane and an exclusive right-turn lane.

c. Owner will widen the Lunenburg Road northbound approach to the Site to introduce an exclusive left- turn lane operating under protected-permitted signal phasing.

d. Owner will widen Lunenburg Road southbound approach to the Site to introduce an exclusive right-turn lane operating under permissive-overlap signal phasing.

e. Owner will provide ADA / AAB compliant pedestrian accommodations; including a crosswalk across McGovern Boulevard and Lunenburg Road, accessible ramps, and audio/vibratory pedestrian signal equipment.

f. Owner will construct new a 10-foot wide shared-use path along the westerly side of Lunenburg Road, north of McGovern Boulevard within the intersection limits including a pedestrian connection to Kimball Farm.

g. Owner will construct a 5-foot wide sidewalk along the westerly side of Lunenburg Road, south of McGovern Boulevard within the intersection limits.

h. Owner will maintain 5-foot minimum shoulders to accommodate bicycle access along each side of Lunenburg Road.

i. Owner will reconstruct all private commercial driveways immediately north of McGovern Boulevard to accommodate the widened roadway.

Owner will construct all mitigation improvements noted in this Section 3.2 prior to issuance of the first occupancy permit for the Project or the 40R Project (which is the subject of the companion Memorandum of Agreement with the Town).

3.3 Lunenburg Road/Fort Pond Road/Woods Lane.

a. Due to the onset of the COVID-19 pandemic, sufficient traffic volume data was not available for the intersection of Lunenburg Road / Fort Pond Road / Woods Lane to perform an 8-hour traffic signal warrant analysis at the time that Owner prepared the Traffic Study. Utilizing the peak hour traffic volumes from December 2018 at this location, the intersection would generally be expected to marginally meet only one traffic signal warrant, Warrant 2 – Four-Hour Volume, in an opening year condition without the Project. It is expected that the full build-out of the Project and the 40R Project will be completed over many years and will most likely not be completed prior to construction of MassDOT's improvements at Route 2 Interchange 103 (formerly Interchange 35). Each alternative for that project outlined by MassDOT would greatly enhance traffic operations and safety both with and without the related traffic volumes of the Project and the 40R Project.

b. The Owner shall construct an interim / temporary traffic signal, without additional roadway widening, at the intersection of Lunenburg Road / Fort Pond Road / Woods Lane prior to any imminent building-occupancy where MUTCD Warrant #1 or Warrant #2 are met. The temporary traffic signal will be dependent on updated MUTCD traffic signal warrants post COVID-19 pandemic. Therefore, prior to seeking any building occupancy from the Town, the Owner will reconduct traffic counts at the intersection (adjusted for COVID-19) for a typical weekday and add traffic to be generated by the immediate tenant. Upon credibly satisfying MUTCD Warrant #1 or Warrant #2, the Owner will install the temporary/interim traffic signal. Without limitation, the interim traffic signal shall consist of the following elements:

- i. Maintain existing geometric layout of the intersection approaches;
- ii. Signal housings installed overhead utilizing span wire between utility poles (rated for loading);
- iii. Installation of emergency vehicle pre-emption system;
- iv. Installation of wire loop detectors on each approach within the pavement top-course; and
- v. Removal of all existing control signage; such as stop-signage on the Fort Pond Road and Woods Lane approaches.

c. This mitigation measure is meant to be an interim measure to mitigate both existing and future traffic operations prior to the improvements being evaluated by MassDOT at Interchange 103 (formerly Interchange 35). As the build-out phasing is of the Project and the 40R Project are currently unknown, the level of traffic generated by the site will dictate when MUTCD traffic signal warrants are satisfied and will be evaluated at each perspective building occupancy stage.

3.4 Route 2. The Owner shall construct improvements along the Route 2 WB On and Off- Ramps at Interchange 103 (formerly Interchange 35) as a temporary measure prior to full interchange reconstruction as part of an upcoming MassDOT Project. The construction

will include the widening of pavement along the shoulder and marked deceleration lane for the Route 2 WB Off-Ramp in order to provide a consistent lane width and proper tapers to accommodate the 95th percentile queue (318-feet) for the stop-control movement along the ramp at Fort Pond Road. The construction will also include limited widening of pavement along the shoulder and marked acceleration area along the Route 2 WB On-Ramp based on the constraints of the Route 70 Bridge. Due to the bridge abutment conflict, the additional widening will extend approximately 375-feet and result in a 75-foot acceleration lane prior to the start of taper. The improvement will also modify the pavement markings on the Route 2 corridor to extend the taper to 720-feet.

3.5 Main Street/Seven Bridge Road. Owner shall modify traffic signal timings and parameters (traffic signal to be constructed as part of MassDOT Project No. 608779) post-occupancy (or at to-be agreed upon occupancy milestone intervals) to accommodate the additional traffic flow from the Site. The implementation of this improvement will be reviewed and coordinated with the Town, which will hold jurisdiction, at agreed upon occupancy thresholds as buildings are completed.

3.6 Lunenburg Road/Main Street. Owner shall modify traffic signal timings and parameters (traffic signal to be constructed as part of MassDOT Project No. 608779) post-occupancy (or at to-be agreed upon occupancy milestone intervals) to accommodate the additional traffic flow from the Project site. The implementation of this improvement will be reviewed and coordinated with the Town, which will hold jurisdiction, at agreed upon occupancy thresholds as buildings are completed.

3.7 McGovern Boulevard. Owner will reconstruct McGovern Boulevard from the existing FC Stars Soccer driveway connection to Lunenburg Road prior to issuance of the first occupancy permit in the Project or the 40R Projects. For other portions of those projects west of this location, the Owner shall construct each segment of McGovern Boulevard as needed based on building footprint location. Therefore, each new segment will advance further west into the projects up to the site driveway location of the subject building prior to occupancy of said building.

3.8 Additional Signage. Owner shall also implement short-term, low-cost improvement measures at the intersections which were not included or superseded as part of MassDOT Project No. 608779; including the installation of advance speed reduction signage (W3-5) along Lunenburg Road southbound.

3.9 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 40R Project. This Owner’s funding obligation pursuant to this section shall remain in place as long as the Project or the 40R Project exist 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 Industrial Commercial Overlay District near the largest distribution center. Each shelter shall be fully completed prior to issuance of the first certificate of occupancy for the 40R Project and the Project, respectively, and Owner shall be responsible for maintaining both shelters for as long as the Project or the 40R project exist on the Property.

3.10 Pedestrian Improvements. The Owner shall construct a 5-foot sidewalk along each side of McGovern Boulevard 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 in connection therewith.

The Owner shall also construct new 10-foot shared use path along the westerly side of Lunenburg Road north of McGovern Boulevard and a 5-foot sidewalk along the westerly side of Lunenburg Road south of McGovern Boulevard within the intersection reconstruction project limits, including a pedestrian connection to Kimball Farm under traffic signal control.

The Owner has represented to the Town in its Traffic Study and separately in this Agreement that it can and will perform that obligations contained in this Section. To the extent that the property affected by this Section Is not presently owned or controlled by Owner, it shall obtain the necessary authorization from the relevant property owners to perform the work.

3.11 Bicycle Improvements. The Owner 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.

The Owner is also committed to bicycle improvements along Lunenburg Road. The improvements along Lunenburg Road are generally short in nature and are along a high-speed arterial with wide shoulders. Within the reconstruction intersection zone, the Owner will maintain 5-foot minimum shoulders to accommodate bicycle access along each side of Lunenburg Road within the limits of improvements. In addition, the Owner will also construct a new 10-foot shared use path along the westerly side of Lunenburg Road north of McGovern Boulevard within the intersection reconstruction project limits to additionally facilitate bicycle travel.

3.12 Traffic Demand Management Program. In order to encourage alternate means of transit and to minimize, to the extent practicable, the traffic impacts associated with the Master Plan, the Owner also agrees to identify and implement all Transportation Demand Management policies, measures and transportation improvements (“TDM Measures”) discussed in the Traffic Study (at pages 56-58) and attached hereto as Exhibit D.

3.13 Transportation Monitoring Program.

a. The Owner shall implement a Transportation Monitoring Program (“TMP”), which is intended to monitor traffic operations, parking occupancy, public transportation utilization, and pedestrian / bicycle use for the period, as defined in Section 3.13.d, below, following completion of the Project. The TMP will include providing traffic count information to the MassDOT District 3 office and the Town of Lancaster for use of tracking site-generated trips. The intent of the monitoring program is to ensure that the Project impacts are consistent with those predicted in the Traffic Study, evaluate the effectiveness of the mitigation agreed to herein and the TDM measures in meeting the mode share targets, and assess the need for additional off-site improvements or TDM measures.

b. The monitoring program shall include evaluation of the following:

i. Traffic operations at the intersections of:

Main Street/Lunenburg Road
Main Street/Seven Bridge Road
LunenburgRoad/McGovernBoulevard
LunenburgRoad/OldUnionTurnpike
LunenburgRoad/FortPondRoad/WoodsLane

ii. Adequacy of the constructed parking supply.

ii. Effectiveness of TDM measures.

c. As part of the monitoring program, the Owner will complete the following tasks annually beginning upon issuance of the first occupancy permit for a building within the Project or the 40R Project, and continuing for five years following completion and full occupancy of the Project and the 40R Project:

i. Collect manual Turning Movement Counts (TMCs) during the weekday morning (7:00 AM to 9:00 AM) and weekday evening (4:00 to 6:00 PM) peak periods at the following intersections;

Main Street/Lunenburg Road
Main Street/Seven Bridge Road
LunenburgRoad/McGovernBoulevard
LunenburgRoad/OldUnionTurnpike
LunenburgRoad/FortPondRoad/WoodsLane

- ii. Collect ATR data for a continuous 72-hour period along Lunenburg Road and McGovern Boulevard;
- iii. Collect parking demand counts during the peak parking demand periods for the weekday evening (4:00 to 6:00 PM) peak period;
- iv. Complete an employee travel survey to gauge employee travel patterns and mode share;
- v. Compare the TMCs collected above with those projected within the TIAS for the Project to determine whether the total vehicles entering each intersection exceeds the volumes projected;
- vi. Perform a capacity and queuing analysis using Synchro analysis software to evaluate the traffic operations at each of the intersections listed above and compare to the operations projected in the TIAS prepared for the Project;
- vii. Assess whether additional mitigation is necessary at any of the study intersections and identify measures to improve operations and/or reduce vehicular traffic volumes (see Section 3.14, below);
- viii. Assess whether the constructed parking supply is adequate for the parking demand as observed; and
- ix. Prepare a memorandum summarizing the results of the TMCs, ATRs, parking demand counts and the Synchro analysis for submission to MassDOT and the Town of Lancaster.

d. The monitoring program will occur on an annual basis beginning six months after issuance of the first occupancy permit for either the Project or the 40R Project, whichever is sooner, and continuing for five years following full occupancy of both the Project and the 40R Project. The monitoring program may be suspended at any time upon agreement with the Town of Lancaster that the Project has sufficiently provided evidence that the upper limits of vehicle delay and trip projection would not be feasibly satisfied. The monitoring program may also be suspended if five years have passed since the issuance of an occupancy permit for the project and will recommence should an additional occupancy permit be issued.

3.14 Future Traffic Improvements. The Owner acknowledges and agrees that additional traffic and pedestrian improvements may be required in conjunction with the Project. The Owner agrees to assess traffic operations at the Site as discussed in Section 3.13 above, and to the extent that the monitoring program indicates that existing operations depart from the predictions included in the Traffic Study and/or exceed one or more of the thresholds noted below, the Owner shall propose and implement at its own expense additional traffic improvements to alleviate such impacts to the reasonable satisfaction of the Town. The Town and the Owner acknowledge that the commitments contained in this section constitute an ongoing financial obligation of the Owner. The Town and the Owner further acknowledge that any future traffic improvements may require final design and construction approval of the Town and MassDOT.

Without limiting the foregoing, the Owner agrees that it shall propose and implement additional corrective actions to reduce the traffic impacts of the Project to the extent that the any of the following are evidenced by the results of the Annual Traffic Monitoring Program:

- a. the measured traffic volumes for the Project exceed the projected traffic volumes established in the July 2021 TIAS by more than 10 percent (i.e., 110 percent of the projected traffic volumes);
- b. one or more of the movements at a monitored intersection is identified to be operating at or over capacity (defined by a volume-to-capacity (v/c) ratio that equals or exceeds 1.0); and/or
- c. there is a pronounced increase in the frequency of occurrence of motor vehicle crashes at a monitored intersection and the calculated motor vehicle crash rate exceed the MassDOT average crash rate for similar intersections.

3.15 Site Roadways. All internal site streets, roads, driveways and parking areas shall forever be private, and shall be properly maintained, plowed and kept clear by the Owner. Owner agrees on behalf of itself, its successors and assigns that it shall not petition the Town to accept the streets as a public way at any time. Owner, and all of its successors and assigns shall collaborate with abutting landowners to the extent necessary to arrange for joint plowing and maintenance of connecting private streets. The Owner will separately record covenant, in the form attached hereto as Exhibit E, within the chain of title to the Property that is binding on itself, its successors and assigns that provides the road will remain private.

4. CONSERVATION/WETLANDS.

4.1 It is anticipated that on and off site wetland resources and adjacent buffer zones to these resources will be impacted by the Project. To offset 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 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.

4.2 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.

5. FINANCIAL CONTRIBUTION.

5.1 In addition to all taxes and fees otherwise due to the Town of Lancaster, the Owner agrees to make payment of \$2,000,000.00 to the Town annually. The first such payment shall be made upon issuance of the first certificate of occupancy for a building within the Project, and the first payment shall be calculated on a *pro rata* share based on the

remainder of that calendar year. Owner shall make this annual payment for thirty (30) additional years thereafter, to be paid in one-fourth installments of \$500,000.00 on a quarterly basis (each due and payable on January 31, April 30, July 31 and October 31).

6. LAND DONATION, OPEN SPACE AND TRAIL CONNECTIVITY.

6.1 Upon execution of this Agreement, the Owner will convey to the Town the following parcels of land: Assessors' Parcel 14-15, Assessors' Parcel 19-11.

Chris – is this already part of this? “This transfer of land may not be used as ‘set aside open space’ as part of this development effort.”

6.2 Upon execution of this Agreement, the Owner shall convey to the Town a permanent easement on Assessors' Parcel 13-8 sufficient to allow the Town to maintain an existing network of trails on said parcel for public use and enjoyment, which trail network is approximately depicted on a sketch plan attached hereto as Exhibit F, provided that such easement may be over the existing trail system or other new trails of equivalent functional use and value as the existing trail system or some combination of both.

6.2 Open Space/Land Conservation. Parcel 014-0008.A shall be dedicated open space/land conservation with following exceptions (i) the northernmost 5% if needed for the edge of the residential fire lane access on Parcel 014-0004.A and (ii) allowance for trail construction.

6.3 Trail Connectivity. A permanent recreational trail shall be established and maintained annually at the Owner's expense from the northern portion of Parcel 014-0008.A and connecting to the Lancaster State Forest trail as shown in Exhibit [insert reference]. This trail shall include a pedestrian footbridge providing access from Parcel 014-0008.A across McGovern Brook, traverse the southeast corner of Parcel 014-0009.0, continue on Parcel 008-0045.0 and connect to the Lancaster State Forest trail. Design, construction and annual maintenance shall follow the Massachusetts Department of Conservation and Resources Trails Guidelines and Best Practices Manual. Trail design, approval and construction shall be complete no later than eighteen months from adoption of the 40R District at town meeting. No less than 3 parking spaces on Parcel 014-0004.A shall be reserved for access to the trailhead on Parcel 014-0008.A.

7. SUPPLEMENTAL USE RESTRICTIONS.

7.1 Notwithstanding anything contained in the Zoning By-Law that may allow for the following uses to exist within the Enterprise Zoning District, the following uses shall not be included in connection with the Owner's distribution/logistics center, and shall not otherwise be permitted to exist or operate on the Site: Boarding, training, or veterinary care of more than two animals within a structure (if not exempted by M.G.L. c. 40A, § 3); facilities for active outdoor recreation utilizing motorized equipment; gasoline service stations; car washing establishments; dry-cleaning and laundry establishments; nonprofit community centers, places of public assembly, lodges, service or fraternal or civic corporations; administrative offices of non-profit organizations; open storage facilities for

lumber, stone, brick, gravel, cement or other bulk materials and contractor's yards; earth products removal; Class II or Class III motor vehicle dealers; outdoor storage accessory to a principal use; any residential development, including senior housing; and "adult entertainment uses" as defined in MGL c. 40A, §9A.

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 by the Lancaster Annual Town Meeting, scheduled to begin on _____, 2022, of the zoning amendment to expand the Enterprise District over the entire Site

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 C.

9.3 No Obligation to Build. Nothing contained in this Agreement shall create any obligation of the Owner to construct all or any portion of the Project, provided however, that the promises, covenants and restrictions contained herein shall remain binding upon the Owner and the Town and their respective successors, assigns, mortgagees and all others taking title in fee or otherwise acquiring an interest to a part or all of the Property, for the longest period permitted by law.

9.4 Retention of Regulatory Authority. Nothing contained in this Agreement shall affect, limit, or control the authority of Town boards, commissions, 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
Town Administrator
701 Main Street
Lancaster, MA 01523

with a copy to:

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

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 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, 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 satisfaction.

9.11 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.

9.12 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.

9.13 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.

9.14 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.

9.15 Time is of the Essence. Time shall be of the essence for this Agreement and, subject to economic conditions and approval of the zoning amendment referred to in Section 9.1 by the Annual Town Meeting and the Massachusetts Attorney General, the Owner shall diligently pursue the remaining permitting, development, construction and residential occupancy of the Project .

9.16 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.

9.17 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

Alix 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:

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:

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:

[OTHER/DIFFERENT PARTIES TO BE ADDED?]

LIST OF EXHIBITS

Exhibit A – Property Description

Exhibit B – Warrant Article

Exhibit C – Site Plan Showing Project Layout

Exhibit D — Transportation Demand Management Program

Exhibit E — Covenant That Roadways Shall Remain Private

Exhibit F — Sketch Trail Map

Exhibit A:

[to be added]

Exhibit B:

ARTICLE 15
Zoning North Lancaster

To see if the Town will vote to amend the Official Zoning Map of the Town of Lancaster, attached as 220 Attachment 2, by rezoning those portion of the parcel identified as Assessors' Map 8, Lot 45 located within the Residential District, to the Enterprise District, such that the entirety of said parcel is located within the Enterprise District, and as further shown on a plan entitled [REDACTED] and on file with the Town Clerk; or to act in any manner relating thereto.

The Planning Board recommendation:

Summary:

Exhibit C:

[to be added]

Exhibit D:

[to be added]

Exhibit E:

COVENANT

702, LLC, a business having its principal Massachusetts office at 259 Turnpike Road, Suite 100 Southborough, MA 01772 (the "Owner"), as the owner of property located off Lunenburg Road in Lancaster Massachusetts described as Parcel I, Parcel II, Parcel III, Parcel V and Parcel VI in the deed dated November 8, 2018 and recorded with the Worcester District Registry of Deeds in Book 59673, Page 28, hereby covenants on behalf of itself, its successors and assigns, that all roads and driveways contained within the property, whether now in existence or constructed in the future, and specifically including McGovern Boulevard, shall remain private.

Without limiting the foregoing covenant and restriction on the property, no owner of the property or any party acting on owner's behalf, shall petition the Town of Lancaster to accept any road or driveway as a public way, or otherwise maintain, improve, or plow any such road or driveway.

This covenant and restriction is granted for the benefit of the Town of Lancaster, and may be enforced by said Town acting by and through its Select Board.

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: