

Allocation of municipal/developer responsibilities.

ATTACHEMNT D
TEMPLATE LAND DEVELOPMENT AGREEMENT

LAND DEVELOPMENT AGREEMENT

This Land Development Agreement (this “LDA”) is made this ____ day of ____,
_____, by and between the **Town of Montague**, acting by and through its Selectboard, having
an address of One Avenue A, Turners Falls, MA 01376 (the “Town”), and _____, a
_____, having an address of _____ (the “Developer”).

WHEREAS, the Town has conveyed to the Developer a parcel of land, located on First
Street, Turners Falls, Montague, said parcel described in Exhibit A, and referred to as the
“Property”;

WHEREAS, the Town issued a Request for Proposals on December 12, 2022 (the
“Request for Proposals”) for the sale of the Property to a proponent that would develop
affordable housing units on the site;

WHEREAS, the Developer submitted a proposal in response to the Request for
Proposals, dated __ __, proposing to _____ (“Permitted Purpose”),
and was chosen as the successful proposer;

WHEREAS, the Town and the Developer entered into a Purchase and Sale Agreement
for the Property dated _____, _____ (“P&S”);

WHEREAS, pursuant to the provisions of the P&S, the Developer applied for and has
received permits (the “Permits”) allowing the development of the Property for the Permitted
Purpose (the “Project”); and

WHEREAS, the real estate comprising the Property is depicted on, and the Developer
intends to develop the Project on the Property in accordance with schedules describing the
improvements to the Property (the “Improvements”), which plans have been approved by the
Montague Selectboard (the “Approved Plans”), said Approved Plans attached hereto in Exhibit
B.

NOW, THEREFORE, in consideration of the mutual promises of the parties contained
herein and other good and valuable consideration each to the other paid, receipt of which is
hereby acknowledged, the parties hereby agree as follows:

A. CONSTRUCTION OBLIGATIONS

1. Financing: The Developer has funds on hand, and will obtain traditional construction financing from a lender (the “Lender”) in an amount sufficient to construct and complete the Project (the “Construction Loan”) secured by a mortgage on the Property to be recorded hereafter (the “Construction Mortgage”), which Construction Mortgage shall be expressly subject to this LDA.

2. Construction of the Project: The Developer shall construct the Project on the Property in accordance with this LDA and the terms and conditions set forth in the Permits (to the extent the conditions in the Permits are operative during the term of this LDA) and in a manner consistent with the Approved Plans.

3. Construction Schedule: The Developer shall (a) begin construction of the Project within ninety (90) days from the date this LDA is recorded with the Registry (the “Date of Recording”), and (b) Substantially Complete the Project within two (2) years from the Date of Recording in accordance with the Permits and the Approved Plans, and with the construction schedule (the “Construction Schedule”) attached hereto as Exhibit C. The Project shall be “Substantially Complete,” or “Substantial Completion” shall occur, when all the Improvements required of the Developer under the Permits have been built materially in accordance with the Approved Plans and a permanent Certificate of Occupancy has been issued for the Improvements. Substantial Completion may occur notwithstanding: (i) items of work and adjustment of equipment and fixtures that can be completed after occupancy has been taken, i.e., so-called punch list items, and (ii) landscaping and other similar work which cannot then be completed because of climatic conditions, provided that none of the foregoing interferes unreasonably with the use and occupancy of the Improvements. The Developer may request that the Town approve the extension of these deadlines provided the Developer has proceeded diligently in its performance and the Town’s consent shall not be unreasonably withheld, conditioned or delayed. The Town shall reasonably extend the deadlines for force majeure and other events beyond the control of the Developer.

B. TRANSFER AND MORTGAGE OF DEVELOPER’S INTEREST

4. General Terms Relating to Transfer of Interest in Parcels by Developer:

(a) Except as provided in Section 5 and subsection (b) below, until all of the Improvements have been Substantially Completed in accordance with this LDA, or approved phased subset, the Approved Plans, and the Permits, the Developer shall not sell, dispose, encumber, pledge, convey, assign or otherwise transfer any interest in the Property or any portion thereof or management of the Project (referred to herein as a “Transfer”) without the prior written approval of the Town, which may be withheld in the Town’s sole discretion. The Developer shall advise the Town of any and all such proposed changes in ownership. After Substantial Completion of the Improvements, the Developer may transfer the Property or any portion thereof, or the management thereof, without the Town’s prior consent.

(b) Notwithstanding the terms and conditions of the aforesaid subsection (a) to the contrary, the Town hereby expressly acknowledges and consents to the following:

- (i) A Transfer at any time by the Developer, upon prior written notice to the Town, of all or part of its right, title and interest in the Property to a Single-Purpose

entity, of which the Developer will be a member, provided that the Single-Purpose entity is wholly controlled by the Developer, and provided further that the permitted transferee shall execute, acknowledge and deliver to the Town an agreement, in form reasonably satisfactory to the Town, assuming the observance and performance of all of the terms, covenants and conditions of this LDA and the Permits on the Developer's part to be observed and/or performed;

- (ii) Granting any utility, access or similar easements or agreements relating to the construction of the Improvements and/or the use of or access to the Property;
- (iii) The Construction Mortgage; and
- (iv) A Transfer in accordance with Section 5 below.

(c) All Transfers shall be subject and subordinate to the terms of this LDA and the Permits. Subject to Section 5(b) below, any permitted transferee shall be obligated by this LDA to construct or complete the Project in accordance with its terms.

(d) Any Transfer permitted by the Town shall not be deemed assent to any subsequent Transfer.

5. Mortgage of the Property by the Developer:

(a) Notwithstanding the provisions of Section 4(a) or any other provision of this LDA, and in addition to or replacement of the Construction Mortgage, the Developer shall have the right to encumber, pledge, or convey its rights, title and interest in and to the Property, or any portion thereof, by way of a bona fide mortgage to the Lender or to another institutional or governmental lender to secure the payment of any commercially reasonable loan or loans obtained by the Developer to finance the design, construction, repair or maintenance of the Project and other improvements required to be constructed by the Developer on the Property as contemplated by this LDA, the Approved Plans, and the Permits (each such mortgage, together with the Construction Mortgage, being referred to as a "Permitted Mortgage," and each holder thereof, together with the Mortgagee, a "Permitted Mortgagee"), provided that the Developer shall give twenty-one (21) days prior written notice to the Town of its intent to exercise such rights hereunder, including in such notice the name(s) and address(es) of such Permitted Mortgagee, the amount of the loan secured by such mortgage, and any other information regarding the Permitted Mortgagee and/or the Permitted Mortgage. Any such Permitted Mortgage shall be expressly subject and subordinate to this LDA and the Permits.

(b) For the purpose of this LDA, the making of a Permitted Mortgage shall not be deemed to constitute a Transfer of this LDA or of the Property, nor shall any Permitted Mortgagee, as such, be deemed an assignee or transferee of this LDA or of the Project so as to require such Permitted Mortgagee to assume the performance of any of the terms, covenants or conditions on the part of the Developer to be performed hereunder; but the purchaser at any sale of the interest created by this LDA or the Property in any proceedings for the foreclosure of any Permitted Mortgage, or the assignee or transferee of such interest under any instrument of assignment or transfer in lieu of the foreclosure of any Permitted Mortgage, shall be deemed to be a transferee (without requiring the consent of the Town pursuant to Section 5(a) for such sale

or deed in lieu of foreclosure), and shall be deemed to have assumed the performance of all of the terms, covenants and conditions on the part of the Developer to be performed hereunder from and after the date of such purchase and conveyance/assignment, and shall execute a written instrument assuming the Developer's obligations hereunder to construct and/or operate the Project in accordance with the terms of this LDA, the Approved Plans and the Permits.

C. MAINTENANCE AND INSURANCE

6. Maintenance; Hazardous Substances. The Developer shall maintain the Property and improvements thereon in good order, condition and repair. The Developer represents and warrants to the Town that the Developer shall not release or permit any release or threat of release of oil, asbestos, urea formaldehyde foam insulation, nor any other hazardous material, hazardous waste or hazardous substance (hereinafter collectively called "hazardous substances"), as those terms are defined by any applicable law, rule or regulation, including without limitation, the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, G.L. c. 21E, the Massachusetts Hazardous Waste Management Act, G.L. c. 21C, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. Sections 9601 et seq., and the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Sections 6901 et seq., nor generate or permit any hazardous substances to be generated on the Property; nor store or permit any hazardous substances to be stored on the Property.

7. Insurance. The Developer agrees to maintain the following insurance:

(a) *Type of Insurance:* the Developer shall continuously maintain in full force a policy of comprehensive casualty, and property damage insurance insuring the Property and all improvements thereto in an amount equal to at least one hundred percent (100%) of the replacement costs thereof until the issuance of the Certificate of Substantial Completion. All such insurance shall be in the broadest form of coverage from time to time available in Massachusetts. The Developer shall submit to the Town evidence of such continuous insurance coverage satisfactory to the Town before any work is commenced on the Property and no less often than annually thereafter;

(b) *Minimum Limits:* the Developer shall, at a minimum, carry comprehensive public liability insurance in the amount of \$1,000,000.00/occurrence, \$3,000,000.00/aggregate with property damage liability insurance in limits of \$1,000,000.00/occurrence, \$3,000,000.00/aggregate. The Town shall have the right to require the Developer to increase such limits when the minimum limits of liability insurance commonly and customarily carried on properties comparable to the Property by responsible owners are more or less generally increased, it being the intention of this sentence to require the Developer to take account inflation in establishing minimum limits of liability insurance maintained from time to time on the Property;

(c) *Evidence of Insurance:* all policies shall be so written that the Town shall be notified of cancellation or restrictive amendment at least thirty (30) days prior to the effective date of such cancellation or amendment (10 days in the event of cancellation for non-payment). The Developer shall submit to the Town certificates of insurance for all the policies required to be maintained by the Developer hereunder, which certificates

shall show at least the coverage and limits of liability specified herein and the expiration date; and

(d) *Acceptable Insurers*: all insurance required hereunder shall be underwritten with an insurance company or companies with an AM Best Rating of A or better, licensed to write such insurance in the Commonwealth of Massachusetts and acceptable to the Town.

9. Obligation to Restore. In the event that any damage or destruction of the Property or any part thereof occurs as a result of fire or other casualty, the Developer shall be responsible for the restoration of the Property to the extent of its insurance proceeds, provided, however, that if such damage or destruction is caused as a result of the negligence or willful act or omission of the Developer, or of any of its employees, agents, members, lessees, assignees, licensees or invitees, the Developer shall be responsible for the full restoration of the damaged or destroyed Property regardless of the cost thereof, the available insurance proceeds, or the time remaining on the term of this Agreement.

10. Indemnification. Developer agrees to defend, indemnify, and hold the Town harmless from and against any and all liabilities, losses, costs, expenses (including attorneys' fees), causes of action, suits, claims, damages, demands, judgments or expenses from any and all claims, actions, or suits of any nature whatsoever that may be imposed upon, incurred by, or asserted against the Town by reason of this Agreement except insofar as due to the gross negligence of the Town, its employees, agents or representatives. This indemnity and hold harmless agreement shall include indemnity against all costs, expenses, and liabilities incurred in or in connection with any such claim or proceeding brought thereon, and the defense thereof. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

11. Survival. The provisions of this Article C are additional restrictions that shall survive the issuance of the Certificate of Substantial Completion.

D. DEFAULT

12. Default: If:

(a) The Developer fails, after all applicable cure periods, to observe or perform any of the Developer's covenants, agreements, or obligations stated in this LDA;

(b) The Developer is found to be in default under the Construction Loan by the Construction Lender;

(c) The Developer Transfers the Property or any portion thereof, other than to a Permitted Mortgagee, without the prior written consent of the Town; or

(d) The Developer shall have filed a voluntary petition, or there shall have been filed against the Developer an involuntary petition, in bankruptcy or insolvency or adjudication of bankruptcy or insolvency of the Developer, or the filing by the Developer of any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the present or any future federal bankruptcy act, or any other

present or future applicable federal, state, or other statute or law, or the assignment by the Developer for the benefit of creditors, or appointment of a trustee, receiver, or liquidator of all or any part of the assets of the Developer, and within one hundred twenty (120) days after the commencement of any such proceeding against the Developer, such proceeding shall not have been dismissed, or if, within one hundred twenty (120) days after the appointment of any trustee, receiver, or liquidator of the Developer or of all or any part of the Developer's property, without the consent or acquiescence of the Developer, such appointment shall not have been vacated or otherwise discharged;

then, the Town shall notify the Developer and the Permitted Mortgagees in writing of such failure or violation. The Developer shall thereupon have thirty (30) days from the receipt by it of such written notice (the "First Notice") to cure such failure or violation (or if such failure or violation is a non-monetary violation and cannot be cured within thirty (30) days, to commence to cure the same within said period and diligently to proceed thereafter to complete such curing, but in no event later than sixty (60) days from the date of the First Notice). If the Developer does not cure such failure or violation within the aforesaid periods (or within such extended period of time as set forth above), the Town shall give a second notice (the "Second Notice") of such failure or violation and the expiration of the grace period to Developer and the Permitted Mortgagees.

13. Developer Cure Period: If, on receipt of the First Notice, the Developer does not cure such failure or violation within the aforesaid periods and if the Permitted Mortgagees do not exercise their rights to cure such violations or failure (as provided in Section 15), or, having elected to cure, fail to complete such cure within a reasonable period of time (which in no event shall exceed one-hundred twenty (120) days from the date of the Second Notice), an Event of Default shall be deemed to exist.

14. Notice of Breaches to Mortgagees: If the Town gives written notice to the Developer of a default under this LDA as provided in Section 12, the Town shall forthwith furnish a copy of the notice to each Permitted Mortgagee, the notice addresses of which are attached hereto as Exhibit D. Failure to provide any such Permitted Mortgagee with a copy of a notice of default shall render such notice invalid and ineffective. To facilitate the operation of this Section, the Developer shall notify the Town in writing of the address of any new Permitted Mortgagee, and Exhibit D shall be deemed amended accordingly. In addition, any such Permitted Mortgagee may notify the Town of any change to its address.

15. Mortgagee May Cure Breach of Developer: In the event that the Developer fails to cure a breach of this LDA within the periods set forth in Section 12, the Permitted Mortgagee shall have the right, but not the obligation, to cure said breach provided that it gives the Town and the Developer written notice of its intention to cure said breach within thirty (30) days from the date of the Second Notice, and thereafter cures the same within sixty (60) days of the date of the Second Notice, or, if such default is a non-monetary default and cannot reasonably be cured within such sixty (60) days, within such longer period as is required to cure such default, including such period of time as may reasonably be required for Permitted Mortgagee to obtain possession of the Property, provided, that the Permitted Mortgagee shall have commenced cure or appropriate measures to obtain possession of the Property within such sixty (60) day period and thereafter continues diligently to effect such cure, or obtain such possession. Notwithstanding anything to the contrary, any cure undertaken by the Permitted Mortgagees

must be completed within one-hundred twenty (120) days from the date of the Second Notice. Any cure of a breach hereunder by a Permitted Mortgagee shall be deemed a cure of said breach by the Developer.

16. Rights Upon Default: Upon the occurrence of an Event of Default, the Town shall have the right to terminate this LDA and all other remedies available to it under law and in equity, including, without limitation, the right to bring an action for specific performance of the Developer's obligations hereunder.

E. GENERAL PROVISIONS

17. Access: The Developer shall permit the Town or its agents to enter the Property at any reasonable time, from time to time, to inspect the Property and to ensure compliance with the provisions of this LDA, the Approved Plans and the Permits, provided, however, that the Town provides the Developer at least twenty-four (24) hours' prior notice thereof, which may be oral notice. Nothing herein shall impair the rights of municipal employees and agents from entering the Property in the exercise of their regulatory duties in compliance with applicable laws, rules, regulations, bylaws and codes.

18. Costs of Enforcement: In the event that (a) the Town initiates enforcement or other legal proceedings to enforce this LDA or to otherwise redress a breach of this LDA by the Developer and (b) prevails in such proceedings, in addition to any other remedies to which the Town may be entitled, the Developer shall pay to the Town forthwith any and all costs and expenses, including attorneys' fees and court costs, that are incurred in enforcing this LDA or prosecuting any such proceedings.

19. Obligations and Rights and Remedies Cumulative and Separable: The respective rights and remedies of the Town and the Developer, whether provided by this LDA, or by law or equity, shall be cumulative, and the exercise of any one or more of such rights or remedies shall not preclude the exercise, at the same or different times of any other such rights or remedies.

20. Notices: Any and all notices required herein shall be in writing and shall be deemed properly given upon the earlier of: (1) two (2) business days after deposit with the United States Postal Service, if sent by registered or certified mail, return receipt requested, postage prepaid; (ii) one (1) business day after deposit with an express courier service such as Federal Express; (iii) actual receipt, or (iv) confirmed facsimile transmission (provided a copy is sent by any of the other permitted forms of notice). All such notices will be delivered to the address specified below or such other address as the respective parties may designate in writing:

If to the Town: Town of Montague
 1 Avenue A
 Turners Falls, MA 01376
 Attn: Town Administrator
 Phone: (413) 863-3200
 Fax: (413) 863-3231

With a copy to: KP Law, PC
 101 Arch Street

Boston, MA 02110
Attn: Katharine Lord Klein, Esq.
Phone: (617) 556-0007
Fax: (617) 654-1735
Email: kklein@k-plaw.com

If to Developer: Name
 Address
 Phone
 email

With a copy to: Name
 Address
 Phone
 email

21. Waiver. The failure on the part of the Developer or Town, as the case may be, to complain in any one or more cases of any action or non-action on the part of the other party, or to insist in any one or more cases upon the performance of any of the provisions, covenants, agreements or conditions of this LDA or to exercise any option contained herewith, no matter how long the same may continue, shall never be deemed or construed to be a waiver by such party of any of its rights hereunder, or a relinquishment for the future of any such provision, covenant, agreement, condition or option. Further it is covenanted and agreed that no waiver at any time of any of the provisions hereof by the Developer or the Town shall be construed as a waiver of any of the other provisions hereof, and that a waiver at any time of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions.

22. Headings and Captions for Convenience Only. The captions and headings throughout this LDA are for convenience of reference only and the words contained therein shall in no way be held or deemed to define, limit, explain, modify, amplify or add to the interpretation, construction or meaning of any provisions of, or the scope or intent of this LDA, nor in any way affect this LDA, and shall have no legal effect.

23. Term of Agreement. This LDA and the restrictions and covenants contained herein shall terminate upon Substantial Completion of the Project and the issuance of a final certificate of occupancy for the Project (the “Term”). Upon the end of the Term, the Town shall execute a certificate of completion evidencing that the Project has been Substantially Completed and that the Developer is released from all obligations of this LDA (the “Certificate of Completion”), which Certificate of Completion shall be recorded in the Registry. Alternatively, a certificate signed by the Developer stating that a final certificate of occupancy has been obtained for the Project, attaching a copy of said certificate of occupancy, will also release the Developer from all obligations of the LDA.

24. Binding. The terms of this LDA shall be binding on the parties, and their respective successors, heirs and assigns. All covenants, agreements, terms and conditions of this LDA shall be construed as covenants running with the land for the Term.

25. Limitation on Liability. Notwithstanding anything in this LDA to the contrary, neither party shall be liable to the other for consequential, incidental, or punitive damages.

26. No Partnership. Nothing contained under this LDA shall be construed to create a partnership or joint venture between the Town and the Developer or to make the Town an associate in any way of the Developer in the conduct of the Developer's business, nor shall the Town be liable for any debts incurred by the Developer in the conduct of the Developer's business.

27. Recording. Upon execution, the Developer shall immediately cause this LDA and any amendments hereto to be recorded or filed with the Registry, and the Developer shall pay all fees and charges incurred in connection therewith. Upon recording or filing, as applicable, the Developer shall immediately transmit to the Town evidence of such recording or filing including the date and instrument number, book and page, or registration number of this LDA. The LDA shall be recorded prior to the recording of any mortgages, including the Construction Mortgage and other Permitted Mortgages.

28. Recitals. The recitals stated in the preface of this LDA are true and accurate and are incorporated herein by reference.

29. Governing Law. This LDA shall be governed exclusively by the laws of the Commonwealth of Massachusetts.

[Remainder of Page Intentionally Blank]

WITNESS the above execution hereof under seal as of the day and year first above written.

DEVELOPER:

By its Selectboard

TOWN OF MONTAGUE,

By:

By: _____

COMMONWEALTH OF MASSACHUSETTS

Franklin, ss.

On this _____ day of June, 2022, before me, the undersigned Notary Public, personally appeared _____, member of the Town of Montague Selectboard, as aforesaid, who proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/they signed it voluntarily for its stated purpose on behalf of the Town of Montague.

Notary Public

My Commission Expires:

