

DEVELOPMENT AGREEMENT

This AGREEMENT (“AGREEMENT”) is made and entered into as of this ___ day of March, 2021, by and between the TOWN OF BOYLSTON, MASSACHUSETTS, (the “TOWN”), a Massachusetts municipal corporation with its usual place of business at 221 Main Street, Boylston, Massachusetts 01505, acting by and through its Board of Selectmen, and Trailside Apartments, LLC (the “DEVELOPER”), a Massachusetts limited liability company with an address of c/o Steven F. Venincasa, Manager, 1 Golden Court, Westborough, Massachusetts 01581.

WHEREAS the DEVELOPER has an agreement with DMG Realty Trust, Gregory Dionis, Trustee, the owner-of-record of the Locus, (the “OWNER”) to purchase a certain parcel of land in Boylston (the “LOCUS”) known as and numbered 100 Shrewsbury Street, as further identified in the TOWN Assessor’s records as Map 12, Parcel 25-2; and

WHEREAS the DEVELOPER wishes to develop a portion of the LOCUS comprised of 19.22 acres, more or less, with up to 81 bedrooms of rental housing, to consist of one-and/or two-bedroom units and up to but no more than 10 percent three-bedroom units, (the “PROJECT”) with the remainder of the LOCUS to be dedicated to such other uses as are or may be permitted by the TOWN without a comprehensive permit; and

WHEREAS the PROJECT will be pursued under and in accordance with G.L. c. 40B, §§ 20-23, a.k.a. the Comprehensive Permit Law, (“CHAPTER 40B”) and specifically the Local Initiative Program (LIP) administered by the Commonwealth’s Department of Housing and Community Development (DHCD); and

WHEREAS, as required by the LIP, the DEVELOPER seeks an endorsement of its application by the TOWN’s Board of Selectmen, as Chief Executive Officer of the municipality, per 760 CMR 56.04(2); and

WHEREAS, in exchange for the DEVELOPER’s cooperation in its pursuit of PROJECT approval(s) and the DEVELOPER’s commitments as hereinafter enumerated, the TOWN’s Board of Selectmen wishes to give its endorsement as aforesaid and join in submittal of a LIP application for the PROJECT to DHCD;

NOW, THEREFORE, for good and valuable consideration and the mutual promises hereinafter specified, the receipt and sufficiency of which is hereby acknowledged, the parties hereto (the “PARTIES”) agree as follows:

1. If the DEVELOPER constructs the PROJECT, it shall develop and operate the PROJECT in substantial compliance with the foregoing and subject to the following commitments:

- (a) Acknowledging that CHAPTER 40B authorizes an applicant to request and a zoning board of appeals to issue waiver(s) from local requirements and regulations, see 760 CMR 56.05(7), the DEVELOPER nonetheless agrees NOT to

request waivers from the TOWN's standard fees for the issuance of building permits, water connections and septic approvals and installations, but to pay the same in full.

(b) The DEVELOPER shall coordinate its submittal and pursuit of a comprehensive permit application for the PROJECT, to the TOWN's Zoning Board of Appeals, so as to allow the TOWN until December 8, 2021, to obtain DHCD approval of a Housing Production Plan (HPP) pursuant to 760 CMR 56.03(4)(e), it being the express purpose and intent of the foregoing that the units in the PROJECT will qualify the TOWN for a certification of municipal compliance with its HPP, per 760 CMR 56.03(4)(f). The provisions of this Subparagraph (b) shall be of no further force and effect after December 8, 2021.

(c) For all areas of PROJECT disturbance within 25 feet of a wetland resource area, except for walking trail(s) proposed as a part of the PROJECT, the DEVELOPER agrees to replicate wetlands at a 1:1 ratio elsewhere on the site a location(s) determined by the TOWN's Conservation Commission during and as part of its review of the DEVELOPER's Notice of Intent filing, provided that said replication shall be acceptable to the Massachusetts Department of Environmental Protection (MassDEP).

(d) The DEVELOPER agrees to install any improvements to the public water system, which system is administered and operated by the independent Boylston Water District, that are directly and solely related to the PROJECT. The DEVELOPER makes no commitment hereunder to otherwise contribute to the Boylston Water District.

(e) A minimum number of units in the PROJECT shall be restricted as affordable to qualifying households in accordance with the LIP and DHCD's "Guidelines, G.L. c. 40B Comprehensive Permit Projects, Subsidized Housing Inventory" (December 2014) (the "GUIDELINES"), § VI.B.6.c, and so as to ensure that all of the units in the DEVELOPMENT shall be eligible for inclusion on the Subsidized Housing Inventory (SHI) per the GUIDELINES, § II.A.2.b.1. Subject to approval by the DHCD and in accordance with the GUIDELINES, the DEVELOPER shall provide a local selection preference for tenants who qualify for the PROJECT's affordable units.

(f) The DEVELOPER shall provide reasonable public access during reasonable times to the walking trail proposed as a part of the PROJECT, if said walking trail is approved by all governmental authorities having jurisdiction with respect to said walking trail.

(g) The DEVELOPER has offered, and the TOWN hereby accepts its promise to provide, a monetary gift or donation to the TOWN's Board of Selectmen in the amount of \$140,000.00 (the "DONATION"). Said DONATION shall only be due and payable, if and when, but not otherwise, occupancy permit is issued for the PROJECT. Said DONATION is in addition to and not as a substitute for the other commitments above, which DONATION shall be made pursuant to G.L. c. 44, § 53A. The TOWN intends to use the DONATION to offset or mitigate potential or

perceived PROJECT impacts, or to improve TOWN infrastructure that may be affected thereby, including but not necessarily limited to the purchase of certain fire equipment and apparatus, emergency radio communications system upgrade(s), roadway and intersection improvements, etc. Expenditure(s) of the DONATION shall be by the TOWN's Board of Selectmen, in its sole discretion.

2. Simultaneously with the execution hereof, the DEVELOPER shall provide for the TOWN's review a LIP application form as prescribed by the DHCD, together with the supporting materials required to be submitted therewith; and the TOWN shall endorse the same.

3. If and after a written determination of PROJECT eligibility is made by the DHCD, the DEVELOPER in its sole and absolute discretion may complete, file with the TOWN's Zoning Board of Appeals and pursue an application for a comprehensive permit. The DEVELOPER understands and acknowledges that, while the TOWN's Board of Selectmen, by execution hereof, has endorsed the PROJECT as now presented to it, the TOWN's other permitting authorities, including the aforementioned Zoning Board of Appeals but also the TOWN's Conservation Commission and its Board of Health, are independent and the Board of Selectmen cannot unduly influence proceedings before these authorities or guarantee the outcome(s) of the same. The DEVELOPER further understands and acknowledges that these other permitting authorities may perform review(s) of certain aspects or components of the PROJECT within their respective jurisdictions; and that additional mitigation may be requested or required by them.

4. Nothing herein shall be deemed to relieve or release the DEVELOPER from its obligation(s) to make proper application for and obtain all permit(s), license(s) and other approval(s) as may be required for the PROJECT to proceed, if separate from and not subsumed by the comprehensive permit per CHAPTER 40B, whether from a board, commission, official or other agency or agent of the TOWN or from an agency of the Commonwealth or the federal government.

5. The PROJECT's units shall be subject to all requirements of the LIP, as specified by the DHCD, such that said units qualify for inclusion on the SHI as indicated above. The DEVELOPER shall be responsible for the lottery and marketing requirements associated with affordable units developed under the LIP, as well as any and all costs associated with monitoring responsibilities thereunder.

6. The obligations provided for herein shall run with the LOCUS and shall be binding upon the DEVELOPER, the OWNER and their respective successors and assigns. Once executed by all PARTIES hereto, this AGREEMENT shall in its entirety be recorded by the DEVELOPER, at its sole cost and expense, with the Worcester County Registry of Deeds. Should a comprehensive permit not be issued, nor its denial appealed by the DEVELOPER, or should this AGREEMENT be terminated for any other reason hereinafter authorized, the TOWN agrees to record with the aforesaid Registry of Deeds a release hereof. In the event that the TOWN fails to record such a release within 30 days thereof, the DEVELOPER may record the same, accompanied by an affidavit certifying under the pains and penalties of perjury that this AGREEMENT has been terminated by the PARTIES hereto or by its own terms.

7. If the DEVELOPER shall default in the performance of any term, covenant or condition of this AGREEMENT, which default shall continue for more than thirty (30) days after written notice to DEVELOPER at the address first stated above (or, if the default shall be reasonably expected to take more than thirty (30) days to cure, such longer period of time), the TOWN shall have the right to: terminate this AGREEMENT; withhold any permits, license or other approvals issued by the TOWN or its subdivisions; or exercise any other remedy available to it at law or in equity, including commencing an action for specific performance hereof. The DEVELOPER and the TOWN shall reimburse the prevailing party for its reasonable legal fees and other expenses in seeking judicial enforcement. Any and all amounts due hereunder and the obligations hereof, if any, by the DEVELOPER shall be considered a municipal charge and may consequently be enforced pursuant to G.L. c. 40, § 57.

8. It is the express intention of the PARTIES hereto that each and every term, condition and provision hereof be fully enforceable and binding on and against the PARTIES and the LOCUS; and that any PARTY may pursue enforcement of this AGREEMENT or any component hereof in the event of a breach or default, with all remedies at law and in equity available to it, explicitly including but not limited to specific performance of the duties and obligations established hereunder.

9. Each PARTY affirms to the other that the foregoing constitutes the sole and entire agreement between them with respect to the subject matter hereof; that neither PARTY has made any representation or promise regarding any of the foregoing except for those expressly stated herein; and that no claim or liability shall be asserted for nor shall either PARTY be liable by reason of a failure to comply with any representations or promises not expressly stated herein.

10. The PARTIES do hereby represent and acknowledge that this AGREEMENT is given and executed voluntarily; that they are duly authorized to execute this AGREEMENT on behalf of the TOWN or DEVELOPER, as the case may be; that they have each been afforded an opportunity to consider and negotiate this AGREEMENT and its terms and conditions; that they have read and fully understand the terms of this AGREEMENT; and that they have been given an opportunity to consult with legal counsel of their choice prior to executing this AGREEMENT.

11. No modification of this AGREEMENT shall be effective, or of any consequence to the PARTIES hereto, unless in writing and signed by each of the PARTIES hereto, by their respective duly-authorized agent(s).

12. Should any provision of this AGREEMENT be deemed invalid, illegal or unenforceable under any law applicable thereto, then said provision shall be excluded to the extent of such invalidity; all other terms and conditions hereof shall remain in full force and effect; and, to the extent permitted and possible, the invalid provision shall be replaced with terms and/or conditions that are valid and enforceable and that come closest to expressing the intentions of the PARTIES hereto as of the date hereof.

13. This AGREEMENT shall be governed by, constructed in accordance with and enforced under the laws of the Commonwealth of Massachusetts. Nothing in this

AGREEMENT shall affect the rights of the TOWN in the exercise of any of its powers under applicable law with respect to the proposed development of the LOCUS, including but not limited to the powers of TOWN's Zoning Board of Appeals, pursuant to CHAPTER 40B and 760 CMR 56.00, *et seq.*, the TOWN's Conservation Commission, under G.L. c. 131, § 40, or the TOWN's Board of Health, under 310 CMR 15.00, *et seq.* Nor shall anything in this AGREEMENT release the developer from its obligation(s) to satisfy all applicable provisions of law in the proposed development of the LOCUS.

14. Prior to the initiation of any judicial proceeding regarding the term(s) of this AGREEMENT or performance hereunder, the TOWN and the DEVELOPER shall, absent mutual agreement to the contrary, submit their dispute(s) to nonbinding mediation for a period of sixty (60) days.

15. This AGREEMENT may be executed in counterparts, each to be considered an original insofar as the PARTIES hereto are concerned, but together said counterparts shall comprise one (1) agreement. A signed copy of this AGREEMENT transmitted by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy hereof for all purposes.

16. This AGREEMENT may be terminated by DEVELOPER in its sole and absolute discretion by written notice to the TOWN, in which case this AGREEMENT shall no longer be of any force and effect, if:

(a) the TOWN's Zoning Board of Appeals denies a comprehensive permit for the PROJECT;

(b) the DEVELOPER, in its sole and absolute discretion, elects not to submit or withdraws its application for a comprehensive permit for the PROJECT or elects not to construct the PROJECT; or

(c) a comprehensive permit for the PROJECT is applied for and thereafter appealed to the Housing Appeals Committee and any condition of the comprehensive permit as issued by the TOWN's Zoning Board of Appeals is overturned or eliminated by the Housing Appeals Committee;

17. All notices to be given pursuant to this AGREEMENT shall be in writing and shall be deemed given when: delivered by hand; delivered by certified mail, postage prepaid, return receipt requested; delivered by overnight carrier (e.g. Federal Express); or sent by e-mail (with written confirmation of the e-mail sent by first-class mail the date the e-mail is sent) to the parties hereto at the addresses set forth below, or to such other place as a party (or its successor, assign, nominee, affiliate and designee) may from time to time designate by written notice:

DEVELOPER:

Trailside Apartments, LLC
Attn: Steven F. Venincasa, Manager
1 Golden Court, Westborough, Massachusetts 01581

E-mail: sv@svcasa.com

Copied to:

D'Agostine, Levine, Parra & Netburn, P.C.
Attention: Louis N. Levine
268 Main Street
Acton, Massachusetts 01720
E-mail: llevine@dlpnlaw.com

TOWN:

Town of Boylston
Attention: April C. Steward, Town Administrator
221 Main Street
Boylston, Massachusetts 01505
E-mail: asteward@boylston-ma.gov

Copied:

Mead, Talerman & Costa, LLC
Attention: Adam J. Costa
30 Green Street
Newburyport, Massachusetts 01950
E-mail: adam@mtclawyers.com

18. This AGREEMENT shall be effective as of the latest date it shall be executed by the DEVELOPER or the TOWN.

IN WITNESS WHEREOF, the PARTIES execute this AGREEMENT, under seal, as of and effective on the latest of the dates indicated below.

Town of Boylston,
acting by and through its Board of Selectmen

Date: March ____, 2021

By: _____

By: _____

Date: March ____, 2021

By: _____
Steven F. Venincasa, Manager
Duly-authorized