

## DEVELOPMENT AGREEMENT

This Development Agreement (the "Agreement") is by and between **Summit Development LLC**, a Vermont limited liability company with a place of business in South Burlington, Vermont ("Summit") and the **TOWN OF MIDDLEBURY**, a Vermont municipality located in Addison County, Vermont (the "Town").

### Background

1. Summit obtained Final Plat/Plan and PUD Conditional Use Approval from the Town of Middlebury Development Review Board on \_\_\_\_\_, for a residential planned unit development project (the "Project") as shown on a plat entitled: "Final Plat, Stonecrop Meadows," prepared by Bernard & Gervais, dated \_\_\_\_\_ (the "Plat") and on a set of plans entitled: "Site Plan, Stonecrop Meadows" prepared by Krebs & Lansing, dated June 14, 2024, as updated \_\_\_\_\_, and consisting of Sheets C-2.0, C-2.1, C-2.2, C-2.3, C-2.4, C-2.5, C-3.0, C-3.1, C-3.2, C-3.3, C-3.4, CP-1, CP-2, CP-3, EPSC-1, EPSC-2, EPSC-3, EPSC-4, EPSC-5, EPSC-6, EPSC-7, EPSC-8, EPSC-9, CD-1, CD-2, CD-3, CD-4, CD-5, CD-6, CD-7, CD-8, CD-9, CD-10 (the "Plans").
2. The Project consists of 12 residential lots (depicted as Lots 5, 7-15, and 18-20 on the Plat) and an additional 6 common lots (depicted as Lots 3, 4, 6, 16, 17, and 21) containing natural wetlands, stormwater facilities, and common green spaces.
3. Summit is pursuing the development of the Project in accordance with the site development plan and phasing approved in the Final Plan/Pat and PUD Conditional Use Approval. A phasing plan for related Town road infrastructure and improvements and the water and sewer improvements for the related Town infrastructure is attached as Exhibit A (the "Phasing Plan").
4. Section 3 of the Conditions section of the Development Review Board's PUD Preliminary Plan Approval requires (i) the execution of an agreement between Summit and the Town of Middlebury "outlining a plan for shared maintenance of roads, sidewalks, lighting, trees, stormwater infrastructure, etc." (Section 3a), (ii) a "plan outlining the relative timing and responsibility (contractor, cost, etc.) for construction of a new section of sidewalk on Valley View Drive linking Seminary Street Ext. to the existing sidewalk at Brookside Drive" (Section 3e), and (iii) a "decision by the Selectboard (per Section 577 IV.) on what the developer will be required to provide for [the connection to the municipal sewer system] to be approved by the Town" (Section 3i).
5. Summit and the Town execute this Agreement to address the above requirements for the Project.

### N O W , T H E R E F O R E ,

In consideration of the foregoing, and the covenants and agreements herein contained, the parties hereto do hereby agree to the following terms and conditions:

**Section 1. Condition for Additional Permits.** Additional permits will be required for Summit's Project, including State wastewater and stormwater permits. Summit's obligations under this Agreement are conditioned upon its receipt of all such additional permits that are required for the construction of the Project without appeal, Summit's determination, in its sole discretion, that the conditions of such permits are acceptable, and Summit's election to proceed with the development of the Project. In the event that Summit does not proceed with the Project either due to the inability to obtain permits or for any other reason,

Summit's obligations under this Agreement shall be and become null and void. In the event Summit proceeds with the development of the Project, it shall observe the remaining terms and conditions of this Agreement.

**Section 2. Payment of Water and Sewer Connection Fees.** Summit shall pay a water connection fee of \$300.00 and a sewer connection fee of \$400.00 for each of the housing units on Lots 5, 7, 8, 9, 10, 11, 13, 14, 15, and 18 at the time for a Certificate of Occupancy for each respective lot.

Summit shall also pay a water connection fee of \$300.00 and a sewer connection fee of \$400.00 for each dwelling unit in the multifamily portion of the Project on Lots 12, 19, and 20 at the time for a Certificate of Occupancy for each respective lot.

**Section 3. Valley View Sidewalk Payment.** Summit shall make one lump sum payment of \$63,000 for the construction of a section of sidewalk along Valley View Road linking Seminary Street Ext and Brookside Drive. Summit's payment shall be due upon request by the Town on or about the date the Town will require the use of such funds for the construction of the sidewalk; provided, however, that Summit shall not be required to make such payment prior to receiving a Zoning Permit for the first parcel in the Project.

**Section 4. Sewer Line Improvement Payment.** Summit shall make one lump sum payment representing 50% of the total cost of upgrading up to 1,300 LF of Town sewer line between Washington Street Ext. and Seminary Street Ext; provided, however, that the lump sum payment shall not exceed \$75,000. Summit's payment shall be due upon request by the Town on or about the date the Town will require the use of such funds for the construction of its sewer line improvements; provided, however, that Summit shall not be required to make such payment prior to applying for a Certificate of Occupancy for the first building in the Project.

**Section 5. Completion of Road, Water and Sewer Facilities.** The Town agrees that if the roads depicted as Stonecrop Road, Barnes Brook Road, and Ledgemere Road on the Plat and Plans (the "Roads"), the water and sewer improvements located within the Road's Right of Way (the "ROW) or outside of the ROW and subject to an easement (together, the "Primary Infrastructure"), and the related sidewalks, street lighting, and plantings located within the ROW (the "Secondary Infrastructure") are constructed in accordance with the Plans, it will accept such improvements as public improvements, the future maintenance and repair of which will be the responsibility of the Town.

The Roads, Primary Infrastructure, and Secondary Infrastructure shall be completed in the following phasing, which are depicted on the Phasing Plan. The purpose of the articulated phasing is to construct only the Roads, Primary Infrastructure, and Secondary Infrastructure required to receive a Certificate of Occupancy ("CO") on structures that rely on such infrastructure. This phasing is subject to change based on mutually agreeable amendments to this Development Agreement.

**Phase A** – Summit shall complete the first course of paving on Phase A Roads, the Primary Infrastructure improvements, and Gravel Wetland 1 in accordance with the Plans on or before the date that Summit obtains its first CO for dwelling units on Lots 5 or 12. Summit shall complete the Secondary Infrastructure improvements in Phase A as needed for any dwelling structure to have pedestrian connectivity to Seminary Street Extension as a condition of each dwelling structure's CO. Summit shall complete the multi-modal path terminating at the ADA ramp access to the building on Lot 12 on or before the date that Summit obtains its last CO for dwelling units on Lots 5 and 12.

**Phase B-1** – Summit shall complete the first course of paving on Phase B-1 Roads and the Primary Infrastructure improvements in accordance with the Plans on or before the date that Summit obtains

its first CO for dwelling units on Lots 7, 8, or 9. Summit shall complete the Secondary Infrastructure improvements in Phase B-1 as needed for any dwelling structure to have pedestrian connectivity to the amenities and infrastructure constructed in previous phases as a condition of each dwelling structure's CO. Summit shall complete the sidewalks and bike rack on Lot 6, the Community Green on or before the date that Summit obtains its last CO for dwelling units on Lots 7, 8, and 9.

**Phase B-2** – Summit shall complete the first course of paving on Phase B-2 Roads and the Primary Infrastructure improvements in accordance with the Plans on or before the date that Summit obtains the first CO for dwelling units on Lots 11, 13, or 14. Summit shall complete the Secondary Infrastructure improvements in Phase B-2 as needed for any dwelling structure to have pedestrian connectivity to the amenities and infrastructure constructed in previous phases as a condition of each dwelling structure's CO. Summit shall complete the remaining amenities on Lot 6, the Community Green, on or before the date that Summit obtains its last CO for dwelling units on Lots 11, 13, or 14. In addition, Summit shall complete the sidewalk providing fire access to Lots 13 and 14, which is located on Lot 17, and extend the multi-modal path from its termination in Phase A to a connection with the fire access across Lot 17 as a condition of receiving a CO on Lots 13 or 14.

**Phase C** – Summit shall construct Gravel Wetland 3 on or before the date that Summit obtains its first CO for dwelling units on Lots 10 or 15. The Primary Infrastructure serving Phase C will have been constructed in Phases B-1 and B-2. Summit shall complete the Secondary Infrastructure improvements in Phase C as needed for any dwelling structure to have pedestrian connectivity to the amenities and infrastructure constructed in previous phases as a condition of each dwelling structure's CO. Summit understands that the Town water main will need to be partially redirected in Phase C as depicted on the plans to accommodate construction of the northernmost structure on Lot 15.

**Phase D** – Summit shall complete the first course of paving on Phase D Roads, the Primary Infrastructure improvements, including the replacement of the Town water main, and complete all sidewalks and lighting on Lot 17, the Village Green, on or before the date that Summit obtains its first CO for dwelling units on Lots 18 or 19. Summit shall complete the Secondary Infrastructure improvements in Phase D as needed for any dwelling structure to have pedestrian connectivity to the amenities and infrastructure constructed in previous phases as a condition of each dwelling structure's CO. Summit shall complete the remaining amenities on Lot 17, the Village Green, on or before the date that Summit obtains its last CO for dwelling units on Lots 18 and 19.

After the completion of the construction of each infrastructure phase, including final course of paving, Summit shall deliver legal documents to the Town for the conveyance of Town Roads and related infrastructure for that specific infrastructure phase. The conveyance of such infrastructure shall consist of an irrevocable offer of dedication and executed deeds, which will be accepted and effectuated by the Town within 30 days of receiving the necessary as-built certifications (described below). The water and sewer facilities located outside the ROW will be conveyed by easement deed and bill of sale which will provide the Town with rights of access for the future maintenance and repair of such systems.

After the completion of the construction of each infrastructure phase, Summit shall have its engineer deliver as-built plans and a certification that such improvements have been constructed in substantial accordance with the Plans.

**Section 6. Escrow Agreement.** The parties agree to execute the Escrow Agreement attached as Exhibit B (the "Escrow Agreement").

**Section 7. Stormwater Maintenance.** The Town agrees that if the Stormwater Gravel Wetlands (numbered #1 through #3 on the Plans) (the “Stormwater Ponds”) are constructed in accordance with the Plans, the Town will accept maintenance of the Stormwater Ponds pursuant to the terms of a separate Stormwater Maintenance Agreement to be entered into between the Town and Summit (or its successor in interest); provided, however, that the Town will not accept the maintenance of the Stormwater Ponds until the Notice of Termination for Vermont’s Stormwater Construction General Permit 3-9020 (the “CGP”) or the Individual Construction Stormwater Discharge Permit (the “INDC”) has been accepted by the State of Vermont, such terms being included in the Stormwater Maintenance Agreement.

**Section 8. Further Assurances.** The parties agree to execute, acknowledge, if necessary, and deliver such documents, certificates or other instruments and take such other actions as may be reasonably required from time to time to carry out the intents and purposes of this Agreement.

**Section 9. Binding Effect.** The terms and conditions of this Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of each of the parties hereto.

**Section 10 Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

**Section 11. Captions; Headings.** The captions and section numbers appearing in this Agreement are inserted only as a matter of convenience. They do not define, limit, construe or describe the scope or intent of such sections, nor in any way affect this Agreement or have any substantive effect.

**Section 12. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Vermont, without giving effect to such jurisdiction’s principles of conflict of laws.

**Section 13. Entire Agreement.** This Agreement embodies the entire agreement and understanding between the parties relating to the subject matter hereof and there are no covenants, promises, agreements, conditions or understandings, oral or written, except as herein set forth. This Agreement may not be amended, waived or discharged except by an instrument in writing executed by the party against whom such amendment waiver or discharge is to be enforced.

**Section 13. Effect of Agreement.** This Agreement supplements and clarifies the terms of the Development Review Board’s PUD Approval. Except as specifically amended or modified herein, all of the terms and conditions of the Development Review Board’s PUD Approval shall remain in full force and effect.

IN WITNESS WHEREOF, each party hereto has executed this Agreement this \_\_\_\_ day of \_\_\_\_\_, 2024.

IN PRESENCE OF:

SUMMIT DEVELOPMENT LLC

\_\_\_\_\_

Witness

By: \_\_\_\_\_  
Duly Authorized Agent

TOWN OF MIDDLEBURY

\_\_\_\_\_

Witness

By: \_\_\_\_\_  
Duly Authorized Agent