

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 ("Developer") and the **TOWN OF MIDDLEBURY**, a Vermont municipality located in Addison County, Vermont (the "Town").

Background

1. Developer obtained Final Plat/Plan and PUD Conditional Use Approval from the Town of Middlebury Development Review Board on August 28, 2024 (the "PUD Approval"), for a residential planned unit development project (the "Project") as shown on a plat entitled: "19 Lot Planned Unit Development Survey Plat" consisting of Sheets PL-1, PL-2 and PL-3," prepared by Barnard & Gervais, dated 6/14/24 (the "Plat") and on a set of civil engineering plans entitled: "Stonecrop Meadows" prepared by Krebs & Lansing, dated June 14, 2024, and consisting of Sheets C-1.0, 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; and a set of landscaping plans prepared by T.J. Boyle Associates, dated 6/14/24 consisting of Sheets L-1.0, L-1.1, L-1.2, L-1.3, L-1.4, L-1.5, L-2.0, L-2.1, L-2.2, L-3.1, EX1, EX2 and EX-3. (the "Plans").
2. The Project consists of 12 residential lots (depicted as Lots 5, 7-15, and 18-19 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. Lot 20 is lot set aside for future development, which was not part of the PUD Approval.
3. Developer is pursuing the development of the Project in accordance with the site development plan and phasing approved in the PUD 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. Condition #9 of the PUD Approval requires the execution of an agreement between Developer and the Town of Middlebury to "stipulate shared maintenance responsibilities for roads, water and wastewater infrastructure, stormwater facilities and other improvements made by the Applicant that will be dedicated to and/or maintained by the Town."
5. Developer and the Town execute this Agreement to address the above requirements for the Project and to further define the timing and the parties' respective responsibilities for completion of improvements related to 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. Termination Prior to Commencement of Construction. The parties acknowledge that additional permits will be required for Developer's Project, including State wastewater and stormwater permits. In the event that Developer elects, prior to the commencement of construction, not to proceed with the Project either due to the inability to obtain permits or for any other reason, Developer may terminate

this Agreement, in which case its obligations under this Agreement shall be and become null and void. In the event Developer proceeds with the development of the Project by commencing site work or other construction, it shall observe the remaining terms and conditions of this Agreement.

Section 2. Payment of Water and Sewer Connection Fees. Developer shall pay a water connection fee of \$300 per unit and a sewer connection fee of \$400 per unit for each of the housing units on Lots 5, 7, 8, 9, 10, 11, 13, 14, 15, and 18 and for each dwelling unit in the multifamily portion of the Project on Lots 12, 19 at the time it applies for a Certificate of Occupancy (CO) for each respective unit or group of units. No CO will be issued for a unit until all connection fees for that unit have been paid. Water meter fees and zoning permit fees will be paid at the time of application for the zoning permit.

Section 3. Valley View Sidewalk Payment. Developer 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. The Town will submit a request for payment to Developer on or about the date the Town will require the use of such funds for the construction of the sidewalk. Developer's payment shall be due upon the later of (i) 10 days after receipt of the Town's request for payment, or (ii) the issuance of a Zoning Permit for the first parcel in the Project. The Town agrees to complete this sidewalk or an alternate safe pedestrian connection complying with ADA standards prior to the start of the 2026 school year.

Section 4. Sewer Line Improvement Payment. Developer 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. The Town will submit a request for payment to Developer on or about the date the Town will require the use of such funds for the construction of its sewer line improvements. Developer's payment shall be due upon the later of (i) 10 days after receipt of the Town's request for payment, or (ii) this issuance of 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"), the related sidewalks, street lighting, and plantings located within the ROW (the "Secondary Infrastructure") are constructed in accordance with the Plans, and the other requirements of this Section are met, it will accept such improvements as public improvements, the future maintenance and repair of which will be the responsibility of the Town. See public infrastructure plan Sheet EX2.

The Roads, Primary Infrastructure, and Secondary Infrastructure shall be completed in the following phasing, which are depicted on the Phasing Plan, Sheet C-2.2. 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 public infrastructure may not be the only improvements (ex. private driveways needed for fire access) required to receive a CO. This phasing is subject to change based on mutually agreeable amendments to this Development Agreement.

Phase A – Developer shall complete the first course of paving on Phase A Roads, the Primary Infrastructure improvements, temporary hammerhead turnaround and Gravel Wetland 1 in accordance with the Plans on or before the date that Developer obtains its first CO for dwelling units on Lots 5 or 12. Developer 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. Developer shall complete the multi-

modal path terminating at the ADA ramp access to the building on Lot 12 on or before the date that Developer obtains its last CO for dwelling units on Lots 5 and 12.

Phase B-1 – Developer 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 Developer obtains its first CO for dwelling units on Lots 7, 8, or 9. Developer 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. Developer shall complete the sidewalks and bike rack on Lot 6, the Community Green on or before the date that Developer obtains its last CO for dwelling units on Lots 7, 8, and 9.

Phase B-2 – Developer shall complete the first course of paving on Phase B-2 Roads, temporary hammerhead turnaround and the Primary Infrastructure improvements in accordance with the Plans on or before the date that Developer obtains the first CO for dwelling units on Lots 11, 13, or 14. Developer 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. Developer shall complete the remaining amenities on Lot 6, the Community Green, on or before the date that Developer obtains its last CO for dwelling units on Lots 11, 13, or 14. In addition, Developer 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 – Developer shall construct Gravel Wetland 3 on or before the date that Developer 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. Developer 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. Developer 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 – Developer shall complete the first course of paving on Phase D Roads, the temporary hammerhead turnaround, 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 Developer obtains its first CO for dwelling units on Lots 18 or 19. Developer 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. Developer shall complete the remaining amenities on Lot 17, the Village Green, on or before the date that Developer obtains its last CO for dwelling units on Lots 18 and 19.

After the completion of the construction of each phase of public infrastructure (hereinafter “Public Improvements”), including final course of paving, Developer shall notify the Town and provide as-built plans and a certification by Developer’s engineer that the Public Improvements have been constructed in accordance with the Plans and all applicable permit requirements. The Town shall, within twenty (20) days of receipt of such notice, inspect the Public Improvements and in turn advise Developer in writing whether the Public Improvements are completed to its satisfaction or whether there remains work to be completed. If the Town does not notify Developer of its inspection results within twenty-five (25) days of its receipt of Developer’s notice of completion, the Public Improvements shall be deemed completed to the satisfaction

of the Town. Simultaneously with its notice of completion, Developer shall also deliver legal documents to the Town for the conveyance of the Public Improvements for that specific infrastructure phase. 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. The legal documents provided by Developer shall consist of an irrevocable offer of dedication, executed warranty deeds and other appropriate documents of conveyance for the Public Improvements, and a certificate of title from Developer's attorney certifying that Developer has valid and marketable title to the Public Improvements being conveyed, free from all liens and encumbrances. The Town will accept the conveyance within 30 days after confirmation by Town counsel that the documents are acceptable and in accordance with this Agreement.

Developer shall repair or replace any faulty or defective work or material which may appear in any Public Improvements conveyed under this Agreement within ~~one (1) year~~ two (2) years of the Town's acceptance of such Public Improvements.

Section 6. Escrow Agreement. Simultaneously with this Agreement, Developer, the Town, and National Bank of Middlebury are executing an Escrow Agreement (the "Escrow Agreement") to secure performance of Developer's obligations under this Agreement.

Section 7. Stormwater Maintenance. After completion of the Stormwater Gravel Wetlands (numbered #1 through #3 on the Plans) (the "Stormwater Ponds"), Developer shall notify the Town and provide as-built plans and a certification by Developer's engineer that the Stormwater Ponds have been constructed in accordance with the Plans and with the applicable stormwater discharge permit(s). The Town shall, within twenty (20) days of receipt of such notice, inspect the Stormwater Ponds and in turn advise Developer in writing whether the Stormwater Ponds are completed to its satisfaction or whether there remains work to be completed. If the Town does not notify Developer of its inspection results within twenty-five (25) days of its receipt of Developer's notice of completion, the Stormwater Ponds shall be deemed completed to the satisfaction of the Town. Once the Stormwater Ponds have been completed to the satisfaction (or deemed satisfaction) of the Town, 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 Developer (or its successor in interest); provided, however, that the Town's acceptance of maintenance responsibility will not be effective 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 to be 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 and the Escrow Agreement together embody 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 is intended to fulfill a condition of the PUD Approval by establishing obligations which are supplemental to, but do not replace, the terms of the PUD Approval. All of the terms and conditions of the 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