

DEVELOPMENT AGREEMENT

This AGREEMENT ("AGREEMENT") is made and entered into as of this 27TH day of December, 2022, by and between the TOWN OF MILLBURY, MASSACHUSETTS, (the "TOWN"), a Massachusetts municipal corporation with its usual place of business at 127 Elm Street, Millbury, Massachusetts 01527, acting by and through its Board of Selectmen, and Rice Pond Village, LLC (the "DEVELOPER" or "OWNER"), a Massachusetts limited liability company with an address of c/o Steven Venincasa, 118 Turnpike Road, Suite 200, Southborough, Massachusetts 01772.

WHEREAS the DEVELOPER is the owner-of-record of a certain parcel of land in Millbury (the "LOCUS") known as 17 Rice Road, as further identified in the TOWN Assessor's records as Map 63, Lots 75, 75B, and 144; and

WHEREAS the DEVELOPER wishes to develop a portion of the LOCUS comprised of +/- 15.6 acres, more or less, with 192 units 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 Board of Appeals, so as to allow the TOWN until February 14, 2023 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 February 14, 2023.

(c) 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, § 11.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.

(d) The DEVELOPER agrees to install stop signs and stop lines that conform with current MUTCD standards at the northbound approach of Thomas Hill Road at its intersection with Rice Road, at the southbound approach of Hillcrest Circle at its intersection with Rice Road, at the Rice Road approach to its intersection with Providence Street, and at the Aldrich Avenue approach to its intersection with Rice Road.

(e) The DEVELOPER agrees to submit an intersection improvement plan, prepared in consultation with a traffic engineer, of the intersection of Rice Road and Providence Street to address the geometry of the intersection. Such traffic survey and intersection improvement plan shall address the following:

- i. Survey of existing conditions including location, width, curbing, paving, right-of-way, topography, utilities, etc.;
- ii. Widening of Providence Street travelled way and shifting the centerline to the east to address the geometry of the right turn onto Rice Road from Providence Street;
- iii. Shifting Rice Road's travelled way centerline to the south;
- iv. Flattening the horizontal curve on Providence Street, extending it past the Rice Road intersection to reduce the angle of the right turn.

(f) The DEVELOPER shall be responsible for installing a sidewalk and appropriate berm on the north side of Rice Road extending from the driveway of the PROJECT location to and connecting with the existing sidewalk on South Main Street. Said sidewalk shall be constructed in accordance with Massachusetts DOT and Town of Millbury standards and/or regulations and in such a way as to maintain existing road width. The TOWN agrees to assist in securing any temporary construction easements to enable work on private property that may be required to ensure a reasonable transition between residents' driveways and Rice Road; such driveway work shall adhere to Town of Millbury standards.

(g) The DEVELOPER shall coordinate with the Director of the Millbury Department of Public Works to ensure that the post-PROJECT-construction condition of Rice Road is substantially similar to its pre-construction condition.

(h) The DEVELOPER promises to provide a monetary gift or donation to the TOWN in the amount of \$100,000.00 (the "DONATION"). Said DONATION be due and payable in installments

corresponding to the issuance of a certificate of occupancy for each of the buildings associated with 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 agrees to use a portion of the DONATION for improvements to Windle Field, a municipally-owned open space parcel located on Canal Street, Map 46, Lot 142. Expenditure(s) of the DONATION shall be by the TOWN, 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 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 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 and/or 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 M.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 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. The TOWN and the DEVELOPER agree to revisit the AGREEMENT in the event that the TOWN'S Board of Appeals, as a condition of issuance of a comprehensive permit for the PROJECT, reduces the size of the PROJECT to less than 185 units.

17. 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 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 Board of Appeals which increases the cost of the PROJECT by more than \$100,000.00 is thereafter appealed to the Housing Appeals Committee and overturned or eliminated by the Housing Appeals Committee.

18. 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 email 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:
Rice Pond Village, LLC
Attn: Steven Venincasa
118 Turnpike Road, Suite 200, Southborough, Massachusetts 01772
E-mail: sv@svcasa.com

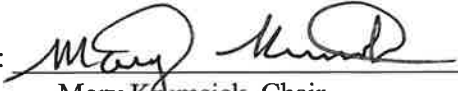
TOWN:
Town of Millbury
Attention: Sean Hendricks, Town Manager
127 Elm Street
Millbury, Massachusetts 01527
E-mail: shendricks@millburyma.gov

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 Millbury,
Acting by and through its Board of Selectmen

Date: December 21, 2022

By: 
Mary Krumsiek, Chair
Millbury Board of Selectmen
Duly authorized by a vote of the Board of
Selectmen on October 25, 2022

Date: December 27, 2022

By: 
Steven Venincasa, Manager
SJV Investments, LLC