

Development Agreement

This Development Agreement is entered into this the ____ day of March, 2020 by and between the Town of Tyngsborough, 25 Bryant Lane, Tyngsborough MA 01879 by and through its Board of Selectmen (“Town”) and Toll Bros., Inc. a Pennsylvania corporation, with an address of 134 Flanders Road, Suite 275, Westborough, MA 01580, its successors and assigns (“Developer”) and The Tyngsboro Limited Partnership, Tamson Barbara Garau and Robert F. Spindell, General Partners, P.O. Box 1185, Rural Route 3, Madison, FL 32340 and 48 Sherburne Ave, Tyngsboro, MA 01879 (local office) (“Owners”), hereinafter, collectively the “Parties”.

WHEREAS, the Developer seeks to develop certain parcels of land in Tyngsborough located off Sherburne Avenue and shown on the Tyngsboro Assessors Maps as:

Parcel A - 46 Sherburne Ave, Tyngsborough, MA shown on Tyngsborough Assessor’s Map 26, Parcel 2, Lot 0, land area of 56.70 +/- acres,

Parcel B – 80 Pawtucket Blvd, Tyngsborough, MA shown on Tyngsborough Assessor’s Map 27, Parcel 73, Lot 0, land area of 18.81 +/- acres,

Parcel C – 45 Sherburne Ave, Tyngsborough, MA shown on Tyngsborough Assessor’s Map 20, Parcel 74, Lot 0, land area of 9.45 +/- acres,

Parcel D – 55 Pawtucket Blvd, Tyngsborough, MA shown on Tyngsborough Assessor’s Map 21, Parcel 41, Lot 0, land area of 1.10 +/- acres,

Parcel E – Pawtucket Blvd, Tyngsborough, MA shown on Tyngsborough Assessor’s Map 27, Parcel 74, Lot 0, land area of 2.60 +/- acres,

Said parcels set forth on the plan attached hereto as Exhibit A, hereinafter cumulatively the “Property”.

WHEREAS, the Developer controls the Property pursuant to that certain Agreement of Sale, dated November 21, 2019 between The Tyngsboro Limited Partnership, Tamson Barbara Garau and Robert F. Spindell, General Partners, and Toll Bros., Inc. (the “AOS”);

WHEREAS the Developer is seeking to develop the Property as an Age-Restricted, Senior Residential Development (hereinafter the Project”), consisting of 100 residential, detached condominium units in accordance with the plan entitled “SKETCH 18: Senior Residential Community, 100 Homes = Town Open Space, TYNGSBORO COUNTRY CLUB, Town of Tyngsborough, Middlesex County, MA”, dated December 9, 2019, attached as **Exhibit B**, (hereinafter the “Concept Plan”), which Concept Plan may be modified throughout the Permitting Process provided the unit count and overall concept of the Project remains consistent with the Concept Plan;

WHEREAS, the Property is currently taxed pursuant to M.G.L. Chapter 61B and the Owners have provided the Town with a Notice of Intent to Convert Use dated February 6, 2020, and received by the Town on February 10, 2020, thereby triggering the Town's statutory right to purchase the Property, under Section 9 of said statute;

WHEREAS, the Owners have further requested that the Town waive its right to purchase the Property pursuant to the Town, Owners and Developer entering into a Development Agreement setting forth the terms and conditions under which Developer would develop the Property, including, but not limited to, limiting the size and type of the Project, donating open space and other land for use in developing affordable housing to the Town.

NOW THEREFORE for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and for the mutual promises set forth below and subject to the Developer proceeding in accordance with the terms of the AOS, the Parties agree as follows:

1. The Developer will seek the required permits and approvals from the applicable Town of Tyngsborough Boards, Commissions, and Departments (hereinafter the "Permitting Process").
2. Developer will develop the Property by constructing no more than one hundred (100) age-restricted, residential, detached condominium units (see Concept Plan), including a deed restriction prohibiting residency by individuals under the age of 18 within the Project for a period exceeding ninety (90) days in any one calendar year. The units will be age-restricted in accordance with the provisions of the Housing for Older Persons Act (HOPA), requiring that a minimum of 80% of the units be occupied by at least one resident 55 years of age or older.
3. Developer will donate, at no cost to the Town of Tyngsborough, Thirty-two (32) +/- acres of land shown on the Concept Plan as "Town Open Space", provided however, if necessary, Developer shall retain an easement, mutually agreeable to the Parties, over a portion of the open space for the location and maintenance of a well to service the Project.
4. Developer will achieve the affordable housing goals of this Development Agreement by donating, at no cost to the Town of Tyngsborough Two (2) +/- acres of land shown on the Concept Plan as "Potential Affordable Housing Track", including the provision by Developer of sewer and water services, proposed to service the Project, to the Track, at no cost to the Town.
5. All roadways within the Project shall be and always remain private. All snow plowing, trash pick-up, recycling, lighting and electricity, water and sewer from the point at which the Project shares a property line with the public way inward to the Project shall at all times remain private and the Town shall have no responsibility for same.

6. Upon execution of this Development Agreement, and the recording of notice thereof as provided herein, the Town, through its Board of Selectmen, hereby waives its rights to purchase the Property, and shall record documentation of such waiver in accordance with Chapter 61B, Section 9, to the reasonable satisfaction of Developer.
7. The Town will support the Project through the Permitting Process in accordance with this Agreement, but the Parties hereto acknowledge that the permit granting authorities are independent, and the Board of Selectmen cannot guarantee the outcome or unduly influence any permit granting authority.
8. The obligations provided for herein shall run with the Property and shall be binding upon Owners, Developer, their heirs, successors, and assigns. A notice thereof in the form attached hereto as **Exhibit C** shall be executed by Developer and the Owners and recorded with the Registry of Deeds upon execution hereof.
9. The parties agree to file a release of this Development Agreement in the event the Project does not proceed in accordance with the Concept Plan for any reason (the "Termination Event"). In the event that the Town fails to file the release of this Agreement within 21 days following the occurrence of a Termination Event, either party may record a release with the Registry of Deeds, together with an affidavit certifying that a Termination Event has occurred.
10. If a Termination Event occurs and either i) the Owners have expressed an intent to convert the Property to a use other than a use permissible under M.G.L. c.61B; or ii) the Owners have accepted a bona fide offer to sell the Property, in both instances prior to June 30, 2021, the Town shall have a private, contractual option right to purchase the Property. The Owners shall provide supporting documentation to the Town, and the Town shall have the right and shall be subject to the timeframe and processes set out in M.G.L. c.61B, Section 9, depending upon the nature of whether the Property is subject to conversion or sale. The Town shall record with the Registry of Deeds a notice of exercise, should the Town decide to purchase the Property under this option right. Said notice shall be recorded within the timeframe set forth in said Section 9. A notice of nonexercise executed by the Town and recorded with the Registry of Deeds or the failure of the Town to record a notice of exercise within the time parameters set forth in said Section 9, shall be conclusive evidence of the Town's waiver and extinguishment of the option rights set forth herein.
11. Any notice hereunder shall be in writing and shall be deemed duly given if mailed by certified or registered mail, postage and registration charges paid, by overnight delivery service with receipt, or by hand delivery to the Town of Tyngsborough, the Owners and the Developer at the addresses set forth below:

Town:

Matt Hansen
Tyngsborough Town Administrator
25 Bryant Lane

Tyngsborough MA 01879
Office: [REDACTED]

Developer:

David G. Bauer
Division President
Toll Bros., Inc.
116 Flanders Rd., Suite 1200
Westborough, MA 01581
Office: [REDACTED]

With a copy to:

Attorney Douglas C. Deschenes
Deschenes & Farrell, P.C.
515 Groton Road, Suite 204
Westford, MA 01886
Office: [REDACTED]

Owners:

The Tyngsboro Limited Partnership,
Tamson Barbara Garau and Robert F. Spindell, General Partners,
P.O. Box 1185, Rural Route 3, Madison, FL 32340
48 Sherburne Ave, Tyngsboro, MA 01879 (local office)
Phone: [REDACTED],

12. It is the expressed intention of the Developer, Owners and the Town that each and every term, condition and provision hereof be fully enforceable and binding on the Property
13. This Agreement shall be governed and constructed in accordance with the laws of the Commonwealth of Massachusetts. Nothing in this Agreement shall affect the rights of the Town of Tyngsborough, in the exercise of any of its powers under applicable law with respect to the proposed development of the Property, including, but not limited, to the powers of the Tyngsborough Planning Board and the Tyngsborough Zoning Board of Appeals pursuant to the Town of Tyngsborough Zoning and non-Zoning Bylaws and said Boards' Rules and Regulations, as amended. Nothing in this Agreement shall release the Developer from the obligation to satisfy all applicable provisions of law in the proposed development of the Property.
14. This Agreement can only be modified if such modification is in writing signed by the Developer, Owners and the Board of Selectmen.

15. If any party shall default in the performance of any term, covenant or condition of this Development Agreement, which default shall continue for more than thirty (30) days after written notice to the defaulting party (or if such default shall be reasonably expected to take more than thirty (30) days to cure, said longer period of time), such default shall be considered a Termination Event, and the provisions set forth above relative to a Termination Event shall apply.
16. This Development Agreement shall be effective as of the date it shall be executed by the Developer, Owners, and the Town.
17. The Developer shall be responsible for all permitting fees and any sewer and water connection fees as regularly assessed by the Town.
18. Prior to the initiation of any court proceeding regarding the terms of this Agreement or performance thereunder, the Town and the Developer and Owners agree that such disputes shall be first subject to nonbinding mediation, for a period not longer than sixty (60) days.
19. This Development Agreement is the entire agreement involving all of the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions. This Development Agreement shall otherwise not affect the terms and conditions of the AOS.

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IN WITNESS WHEREOF, this instrument is sealed and delivered as of this ____ day of March, 2020.

Town of Tyngsborough
Board of Selectmen

Developer

Its

Owners

The Tyngsboro Limited Partnership

Tamson Barbara Garau, General Partner

The Tyngsboro Limited Partnership

Robert F. Spindell, General Partner