

Return to:
Town of Merrimack
6 Baboosic Lake Rd
Merrimack, NH

Memorandum of Agreement Chestnut Hill Development

This Agreement is made and entered into by and between the Town of Merrimack, 6 Baboosic Lake Rd, Merrimack, N.H. (the “**Town**”) and Chestnut Hill Properties, LLC, with an address of 20 Parkhurst Rd., Merrimack, N.H. (“**Developer**”) (collectively, the “**Parties**”):

WHEREAS, Developer is the owner of a certain tract of land located at Tax Map 5B, Lots 1-1, 2, 3, 5, 6, 7, 8, 9, 3-1 & 231 located in Merrimack, N.H.;

WHEREAS, a plan for the development of the aforesaid tract has been approved and is recorded in the Hillsborough County Registry of Deeds as Plan # 39114 (the “**Plan**”), and the aforesaid tract is to be known as the Chestnut Hill Subdivision (the “**Subdivision**”);

WHEREAS, the Subdivision approval from the Merrimack Planning Board and the variances received from the Merrimack Zoning Board of Adjustment require the Developer to connect the Subdivision to the sewer infrastructure via Madeline Bennett Lane, which sewer line is presently owned and operated by the Merrimack School District, provided that the sewer line under Madeline Bennett Lane is replaced and functioning; and

WHEREAS, the Subdivision approval from the Planning Board requires the Developer to connect the Subdivision to Wilson Hill Road from the intersection of proposed Captain Bannon Circle, along Old Blood Road, and requires that Old Blood Road be upgraded to current town roadway standards;

WHEREAS, under the current approvals, the Developer is responsible for the cost for the sewer replacement and Old Blood Road upgrade;

WHEREAS, the Developer and the Town agree that the Town should manage and control the work for the sewer replacement and Old Blood Road upgrade;

NOW THEREFORE, in consideration of the herein promises and the covenants and conditions of this Agreement, the Parties hereto including their respective heirs, transferees, successors and assigns, intending to be legally bound hereby, agree as follows:

1. **Contingencies.** This Agreement is contingent upon the following:
 - a. **TOWN CONTINGENCIES.**
 - i. The Town obtaining an executed Agreement from the Merrimack School District granting the Town permission to replace the Madeline Bennett Lane sewer line;
 - ii. The Town obtaining an easement from the Merrimack School District to perform the replacement work on the Sewer;
 - b. **DEVELOPER CONTINGENCIES.** Developer agrees and understands that this Agreement does not, and the Town Manager and the Town Council have no authority to, guarantee or agree that the following contingencies will be met, as these contingencies are dependent upon the decisions of the Town's land use boards. Neither the Council nor this Agreement have any influence over the decisions of the land use boards, and the Town Council makes no recommendation whatsoever to the land use boards, regarding the contingencies below.
 - i. Developer obtaining final approval, after exhaustion of all appeal periods pursuant to RSA 677 from the Merrimack Zoning Board of Adjustment and the Merrimack Planning Board for six (6) additional subdivision lots above what is shown on the Plan, with said final approvals occurring no later than March 31, 2020.
 - ii. The last sentence of "Note 10" on the approved Cluster Subdivision Plan being removed by the Merrimack Planning Board; said sentence currently states: "The sewer repair for Baboosic Lake Road must be completed and accepted by Public Works prior to issuance of any building permits."
2. **Sewer.** Developer shall deposit with the Town one million two hundred thousand dollars (\$1,200,000) ("Sewer Deposit") for the design, construction and installation of a replacement sewer line and related infrastructure under Madeline Bennett Lane ("Sewer Replacement"). The full Sewer Deposit shall be delivered to the Town by the Developer not later than 14 calendar days after the satisfaction of all Contingencies in 1.a. and 1.b. and failure of the Developer to pay the Sewer Deposit, or to pay the Sewer Deposit by this deadline, automatically renders this Agreement, and all of the Town's obligations under it, null and void.
 - a. The Town may use this amount toward any costs, as it deems necessary, associated with the removal of the old sewer line and installation of the new sewer line.
 - b. The Sewer Deposit shall be held in the Town's Capital Project Fund escrow account held by the Town, and which the Town shall draw from to pay the hired contractor(s) for the costs of the Sewer Replacement, including outside testing services.
 - c. The Developer shall give to the Town any information or reports prepared for the Developer, or in the Developer's possession, regarding the Sewer, including but not limited to information from Dig Safe.

- d. This Agreement cannot be canceled or terminated, and the Developer shall not receive a refund of the Sewer Deposit, once the \$1,200,000 payment is received by the Town.
 - e. Notwithstanding subsection 2.b. and 2.d., should the Sewer Replacement costs be less than \$1,200,000, the Town shall reimburse Developer any excess amount.
 - f. Should the Sewer Replacement costs exceed \$1,200,000, Developer is not responsible for any additional cost for the Sewer Replacement.
3. **Old Blood Road Upgrade.** Developer shall deposit with the Town three hundred seventy-eight thousand dollars (\$378,000) (“Road Deposit”) for the design, construction and upgrade of Old Blood Road (“Road Upgrade”). The full Road Deposit shall be delivered to the Town by Developer not later than 14 calendar days after the satisfaction of all Contingencies in 1.a. and 1.b. and failure of the Developer to pay the Road Deposit, or to pay the Road Deposit by this deadline, automatically renders this Agreement, and all of the Town’s obligations under it, null and void.
- a. The Road Deposit shall be held in Town’s Capital Project Fund escrow account held by the Town and which the Town shall draw from to pay the costs of the Road Upgrade, which the Town may, at its option, perform itself or hire an outside contractor(s), material testing costs, survey and as-built plan costs, and other related services associated with road construction.
 - b. The Developer shall grant to the Town, at no extra cost, the right to utilize the Plan for the purposes of obtaining bids and constructing the road. The Developer shall give to the Town an electronic file containing all survey data required to set lines and grade for the work in the Plan.
 - c. This Agreement cannot be canceled or terminated, and the Developer shall not receive a refund of the Road Deposit, once the \$378,000 payment is received by the Town.
 - d. Notwithstanding subsection 3.a. and 3.c., should the Road Upgrade costs be less than \$378,000, the Town shall reimburse Developer any excess amount.
 - e. Should the Road Upgrade costs exceed \$378,000, Developer is not responsible for any additional cost for the Road Upgrade.
 - f. The Town shall work expeditiously to complete the Old Blood Road upgrade in good faith and as quickly as practicable. If the Subdivision reaches a stage where the lots qualify to receive Certificates of Occupancy but the Road Upgrade is not yet completed by the Town, Certificates of Occupancy will not be withheld solely on the basis of incompleteness of the Road provided that the first course of paving is complete. Notwithstanding the above, the Developer understands and agrees that in no case shall any Certificate of Occupancy be issued until the Sewer Replacement is completed and the Subdivision is connected to the Madeline Bennett Sewer.
4. **Timing of Sewer Replacement and Old Blood Road Upgrade.** Both Parties will proceed forthwith to fulfill the contingencies in Paragraph 1 herein. Upon satisfaction of the contingencies in Paragraph 1 and payment of the amount in Paragraph 2, the Town shall proceed with the Sewer Replacement Project as soon as practicable. Upon

satisfaction of the contingencies in Paragraph 1 and payment of the amount in Paragraph 3, the Town shall proceed with the Road Upgrade as soon as practicable.

5. **Effect on Approvals.** This Agreement does not waive or invalidate any requirements or conditions of the Merrimack Zoning Board of Adjustment or the Merrimack Planning Board for the Subdivision. Further, the Merrimack Zoning Board of Adjustment and the Merrimack Planning Board are independent bodies that exercise their own discretion completely independent and outside of this Agreement. This Agreement does not waive or abrogate any requirements for any extensions that may be required from the Planning Board or Zoning Board of Adjustment for the Subdivision.
6. **Default.** Failure of either Party to perform its respective obligations under this Agreement may, at the option of the non-defaulting Party, be deemed a Default. The Non-defaulting Party shall notify the defaulting Party in writing of said Default and may elect, at its option, to either: terminate this Agreement; waive the Default; or, work out an amendment to the terms of this Agreement with the defaulting Party. In no case shall a failure of either Party to obtain/achieve the Contingencies named in ¶1 be deemed a Default or breach of this Agreement.
7. **Waiver and Amendment.** Except as otherwise provided expressly herein, neither this Agreement nor any term herein may be changed, waived, or terminated except in writing signed by both Parties.
8. **Assignment.** Developer may not assign or transfer its rights hereunder without the prior written consent of the Town.
9. **Binding.** This Agreement shall bind the parties, their heirs, successors and assigns and may be recorded in the Hillsborough County Registry of Deeds.
10. **Public Document.** This Agreement is a public document subject to RSA 91-A.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed this ____ day of November, 2019.

DEVELOPER

Chestnut Hill Properties, LLC

By: _____
Duly Authorized

STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this ____ day of _____, 2019 by _____, duly authorized as _____ of Chestnut Hill Properties, LLC, known to me as, or satisfactorily proven to be, the person executing the same and swore under oath that he executed this Agreement of his free and voluntary act and deed and to so bind Chestnut Hill Properties, LLC.

Justice of the Peace/Notary Public
My commission expires:

TOWN OF MERRIMACK

Eileen Cabanel, Town Manager

STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this ____ day of _____, 2019 by Eileen Cabanel, duly authorized as Town Manager for the Town of Merrimack, known to me as, or satisfactorily proven to be, the person executing the same and swore under oath that she executed this Agreement of her free and voluntary act and deed and to so bind the Town of Merrimack.

Justice of the Peace/Notary Public
My commission expires: