

DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement") is entered this _____ of March, 2017 ("Effective Date") by and between the Town of Barrington through its Board of Selectmen being a municipal corporation having the powers set forth in RSA 31:3, and having an address of PO Box 660, Barrington, New Hampshire 03825 ("Town") and Hard Rock Development, L.L.C., a limited liability company organized under the laws of the State of New Hampshire and having a principle address of PO Box 23750, Seabrook, NH 03874 ("Hard Rock").

1. Background and Purpose.

Town is the owner of an undeveloped parcel of real property consisting of approximately 127 +/- acres and identified as Lot 13.1 on Barrington Tax Map 263 located at 53 Calef Highway Route 125 ("Lot 13.1") and Lot 19 on Tax Map 263 located at Pierce Road ("Lot 19") (hereinafter, collectively, the "Premises"). The Town and Hard Rock agree to develop the Premises upon the terms and conditions set forth in this Agreement.

2. Development Obligations.

A. The Town and Hard Rock wish to develop a commercial/industrial park on the Premises, which development shall include the removal of ledge, construction of roads, subdivision and sale of lots and provision of infrastructure as set forth in Section 3 below (the "Project"). The Town intends to enlarge the commercial tax base of the town and provide additional opportunities for employment. Hard Rock wishes to complete the development in return for and receive a portion of the profits from the sale of the developed lots as compensation for the Project. The Town and Hard Rock enter into this Agreement for that purpose, setting forth the rights and obligations of the parties to develop the Premises as more fully described herein.

B. More specifically, the Town and Hard Rock acknowledge and agree to develop the Premises as follows:

- i. Hard Rock will complete at its sole cost and expense all engineering and permits (the "Excavation Approvals") associated with the excavation of earth and crushed stone as necessary to complete the Project (the "Excavation") and will pay all the State of New Hampshire fees associated with said excavation for the project, including but not limited to fees and/or taxes as required by RSA 72-B;
- ii. Hard Rock will operate under a license agreement to develop the Premises and excavate earth and crushed stone in substantially the same form as set forth in Exhibit A hereto;
- iii. Hard Rock will obtain all necessary approvals needed to carry out this Agreement and complete the Project, including any needed local, state, or federal permits (the "Subdivision Approvals" and collectively with the Excavation Approvals, the "Approvals"). The Town agrees to waive all

municipal application fees required for the Approvals. Design and development plans for the Approvals shall be developed by Hard Rock in its sole discretion, provided, however, that all such plans will be made in a commercially reasonable manner and provided to the Town prior to submission to any reviewing board or agency;

- iv. The Town agrees to cooperate with Hard Rock in its effort to obtain the Approvals and shall provide any authorization as owner of the Premises necessary for Hard Rock to obtain the Approvals. Hard Rock acknowledges that the Town is a municipality whose land use boards may have jurisdiction over certain of the Approvals and that Hard Rock shall not receive any preferential or detrimental treatment during any municipal review due to the existence of this Agreement;
- v. The Town shall have an engineer survey cross sectioning of the topography, conducted annually at Hard Rock's expense, to determine the volume of material removed from the Premises, realizing volume removed will be greater than the undisturbed cubic yardage of material. Hard Rock pay to the Town Twenty-Five Cents (\$0.25) per cubic yard for all material removed from the Premises.
- vi. Once excavation of the Premises as necessary to complete the Project is determined, by a mutually selected engineer, to be 80 percent complete and Hard Rock has received the Excavation Approvals, Hard Rock will market the developed land. The Town and Hard Rock will split equally (50-50) the net proceeds from sale of developed lots, after deducting the pro-rata share of any associated road and utility costs and closing costs for the sale of each lot. By way of example only, if a 10 acre lot sells for \$35k per acre and the infrastructure cost is \$15000 per acre each party would receive half of the balance of \$20,000 per acre, minus any closing costs.
- vii. The development of Lot 19 is contingent on the approval from Town Meeting. The article was approved March 2017.

3. Project Specifications.

- i. Commercial/Industrial Park Concept. The intent of this Agreement by the Town, acknowledged and agreed upon by Hard Rock, is to create an industrial/commercial business park development to create jobs and enhance the real property tax base for the Town of Barrington. No residential uses shall be sought or permitted. No portion of the premises shall be conveyed by Hard Rock to any entity that is tax-exempt without the express approval of the Town of Barrington Selectmen in their discretion. While planning for the business park presently remains conceptual, the parties propose the following development structure, which the parties agree to reasonably amend as may be necessary to address site and economic conditions and conditions of any of the Approvals.

- ii. The Premises may be subdivided into between eight (8) and twelve (12) separate lots subject to market for development.
- iii. Each lot may consist of approximately five (5) acres, plus or minus.
- v. Further subdivision of the divided business park lots beyond that permitted by the Subdivision Approvals shall be prohibited by restrictive covenant.
- vi. Construction of internal business park roadways to the specification for public roadways with the intention that roads will be dedicated and accepted as public by the Town of Barrington; provided, however, that Hard Rock shall only be required to complete any internal roadways to the subgrade, which shall include grubbing, clearing grading to the approved road profiles, and to excavate as necessary to complete any drainage areas, detention ponds and utility trenches as required by the Subdivision Approvals.
- vii. Divided lots to be developed to permit end users to utilize private wells and septic systems with 3-phase power provided through buried service lines and transformers screened with landscaped vegetation. Hard Rock's responsibilities shall be limited to infrastructure only (pursuant to subparagraph vi above) and it shall not be required to install any water wells, septic systems or utility lines or transformers as part of the Project which shall be completed by the end user of each lot sold within the development.
- viii. The improvement of each lot shall be subject to all Federal, State and local land use and environmental restrictions in effect and applicable to the park at the time of development.
- ix. Except as otherwise set forth in this Agreement or incidental to construction or alteration of buildings, structures, roads, utilities and related infrastructure, no mining or excavation of gravel and/or other materials shall be permitted or undertaken unless otherwise agreed to by the parties in writing.
- x. Term. It is acknowledged that the Town and Hard Rock have entered into this Agreement for no initial consideration in return for Hard Rock's commitment to develop the Premises, thus creating, without limitation, property tax revenues for Town, and thereafter for the Hard Rock to market the developed lots and to share in the profits from any such sale. Accordingly, development of the Project via subdivision and sale of lots is a material inducement to Town's entry into this Agreement. Hard Rock therefore agrees to proceed with reasonable diligence to apply for and pursue the completion of the Project as follows:
 - a. Hard Rock shall apply for the Excavation Approvals within ninety (90) days of the Effective Date for Lot 13.1 and within forty-five

(45) days of the date of Town authorization pursuant to Section 2.B.vii for Lot 19;

- b. Hard Rock shall begin marketing the lots for sale to third parties within one hundred twenty (120) days of completion of the Excavation.
- c. Hard Rock shall complete the Project within ten (10) years of the Effective Date (the "Project Completion Date").
- d. In the event Hard Rock fails to meet the deadlines set forth herein, then upon Town's written demand in its sole discretion, Hard Rock shall, for no consideration, transfer to Town any and all improvements to the Premises made to date, excluding any earth material or gravel previously excavated or sold to a third party. Notwithstanding the foregoing, in the event that Hard Rock is "then diligently pursuing all required approvals, engineering, inspections, tests and other due diligence" ("pursuing due diligence") or development activities, Hard Rock may, prior to expiration of any of the terms of this Paragraph 3.x., request up to three (3) additional four (4) month extensions with respect to each additional deadline set forth in Paragraph 3.x.a-c and for one (1) additional ten (10) year extension of the Project Completion Date set forth in Paragraph 3.x.d., for which Hard Rock is pursuing, for which the Barrington Board of Selectmen shall not unreasonably withhold.

4. Town's Representations and Warranties.

Town represents, warrants and covenants to Hard Rock, as of the Effective Date, as follows, acknowledging that Hard Rock shall be relying upon such representations and warranties:

A. Contractual Obligations. Town represents and warrants that the transaction contemplated by this Agreement is neither in violation of, nor prohibited by, the terms of any agreement, license or other commitment, oral or written of the Town. Town represents and warrants that there are no contracts with or commitments to third parties, either oral or written, respecting the Premises pursuant to which Hard Rock would become a party after completed.

B. Litigation and Claims. Town represents and warrants that there are no litigations or proceedings pending or threatened which affect the Premises or Town's right or power to license the Premises to Hard Rock.

C. Title. Town represents and warrants that it holds full and exclusive title to the Premises, which the Premises are, and shall remain during the pendency of this Agreement, free and clear of all encumbrances of any nature whatsoever, including without limitation, all liens, mechanics liens, leases, restrictions, conditions and

easements, which would materially interfere with the use of the Premises and completion of the Project.

D. No Other Representations. Town makes no representations or warranties concerning itself or the Premises except as set forth herein.

5. Hard Rock's Representations and Warranties.

Hard Rock represents, warrants and covenants to Town, as of the Effective Date, as follows, acknowledging that Town shall be relying upon such representations and warranties:

A. Contractual Obligations. Hard Rock represents and warrants that the transactions contemplated by this Agreement are not in violation of, nor prohibited by, the terms of any agreement, license or other commitment, oral or written of the Hard Rock.

B. Independent Investigation. Hard Rock acknowledges that in making the decision to enter into this Agreement and consummate the transactions contemplated hereby, Hard Rock has and will rely solely on its independent investigation and upon the express representations, warranties, covenants and agreements set forth in this Agreement.

C. Hard Rock shall diligently pursue, at its sole expense, the Governmental Approvals. Without limiting the foregoing, the entire Project shall be completed for marketing to third parties within ten (10) years of the Effective Date, as such deadline may be amended pursuant to Paragraph 3.x.e. hereof.

D. Hard Rock and any person or entity operating on Hard Rock's behalf, shall obtain and provide to Town adequate proof of property casualty, liability, workers compensation, and any other required insurances, at limits as may be specified by the Town, and naming Town as an additional insured on a primary and noncontributory basis on all liability insurance policies. Hard Rock shall provide Town with proof of such insurance as and when obtained, and at any time when requested by Town. Hard Rock and Town agree and acknowledge that the Premises are undeveloped land, the condition of which is unknown to Town. Hard Rock, for itself, any person or entity acting for or through Hard Rock, assumes all liability for, and shall defend, indemnify and hold Town harmless against, all claims, actions, suits, demands and proceedings for damages, equitable relief, penalties, costs, fees and expenses on account of injury, death, violations of law, breaches of this Agreement, property damage and economic loss arising from or related to this Agreement or Hard Rock's actions or activities on or about the Premises. Hard Rock shall carry adequate contractual liability insurance coverage to support this indemnification obligation.

E. Hard Rock shall meet with the Town Board of Selectmen not less than twice annually and shall submit annual activity reports summarizing the status of the Project.

6. Survey and Environmental Reports.

A. Surveys. Upon the execution of this Agreement, Town shall deliver to Hard Rock copies of any and all surveys, construction plans and related information in the

possession of Town or its agents as to the boundaries, buildings and improvements which may be located on the Premises,

B. Environmental Reports Upon the execution of this Agreement, Town shall deliver to Hard Rock copies of any and all environmental tests, investigations, reports or assessments in the possession of Town or its agents relating to the Premises.

8. Time

A. Time is of the essence of this Agreement.

9. Town's Maintenance of the Premises Prior to Closing.

For the interim period between the Effective Date and Hard Rock's commencement of site preparation for excavation, Town agrees not to commit waste upon, or otherwise materially alter, the Premises.

10. Hard Rock's Rights of Cancellation.

Upon written notice to Town, Hard Rock may cancel this Agreement, and all obligations hereunder, upon the occurrence of any of the following:

A Environmental and Geotechnical Assessment. Failure of Hard Rock to obtain a satisfactory environmental assessment of the Premises. Beginning as of the Effective Date, Hard Rock and its agents shall have access to the Premises to complete, at its option, any environmental or geotechnical evaluation deemed necessary by Hard Rock in its sole discretion. Hard Rock shall be solely responsible for commissioning and paying all costs of such environmental or geotechnical assessment by a qualified engineer. In the event Hard Rock is not reasonably satisfied with the environmental condition of the Premises, as determined by Hard Rock in its sole discretion, Hard Rock may notify Town of its intent to cancel this Agreement within ninety (90) days of the Effective Date, in which event neither party shall have any further rights or obligations hereunder. Failure of the Hard Rock to so notify Town shall constitute Hard Rock's waiver of this right of cancellation.

B Excavation Approvals. Failure of the Hard Rock to obtain, while exercising good faith and within six (6) months of the Effective Date, the Excavation Approvals required to permit Hard Rock to establish and construct an economically feasible and otherwise functional industrial park upon the Premises; provided, however, that the approval period may be extended Hard Rock's option for the later of (i) an additional six (6) month period or (ii) the issuance of a final unappealable order adjudicating the appeal of any of the Excavation Approvals. In the event Hard Rock is not able to obtain the Excavation Approvals within the time periods set forth in this paragraph, Hard Rock may notify Town in writing that it cancels this Agreement, in which event neither party shall have any further rights or obligations hereunder.

C Subdivision Approvals. Failure of the Hard Rock to obtain, while exercising good faith and within six (6) months its receipt of the Excavation Approvals, the Subdivision Approvals required to permit Hard Rock to establish and construct an economically feasible and otherwise functional industrial park upon the Premises; provided, however, that the approval period may be extended Hard Rock's option for the later of (i) an additional six (6) month period or (ii) the issuance of a final unappealable order adjudicating the appeal of any of the Subdivision Approvals. In the event Hard Rock is not able to obtain the Subdivision Approvals within the time periods set forth in this paragraph, Hard Rock may notify Town in writing that it cancels this Agreement, in which event neither party shall have any further rights or obligations hereunder.

D ROW Acquisition. The parties acknowledge that the feasibility of developing the industrial park is enhanced by the acquisition of a right-of way easement connecting the Premises to Route 125. Said easement would likely be acquired over the land between Route 125 and Pierce Road identified as Lots 29 and/or 30 on Barrington Tax Map 263. Said easement would provide a direct connection between Route 125, a public way, and Pierce Road, a public way. Hard Rock agrees to negotiate in good faith with the owners to secure an assignable right to purchase said easement. Acquisition of the easement would be at Hard Rock's upfront expense, but shall be subject to a pro-rata deduction pursuant to Paragraph 2.B.vi hereof. Title to the easement may be taken in the name of Town. This expense would be a part of those used to calculate cost in Section 2 B vi. Once obtained this easement must permanently run with and for the benefit of the Premises.

11. Default.

A Default by Town. Upon default by Town, Hard Rock shall have the right to specific performance, or, in the alternative and at the election of Hard Rock, all other legal and equitable remedies available to Hard Rock.

B. Default by Hard Rock. Upon default by Hard Rock Town shall be entitled to and Hard Rock shall forthwith assign any and all right of Hard Rock to all plans, permits and approvals related to the Project for subsequent use as Town sees fit in its sole discretion.

12. Notices.

Any notice given under this Agreement must be in written form and must be dated and properly signed by the noticing party. All notices shall be hand delivered, sent by certified mail, return receipt requested, or by overnight carrier. All notices shall be sent to the following addresses (unless notice is given of a change in such address):

A To Town. If to Town, to the Town of Barrington, ATTN: Board of Selectmen, PO Box 660, Barrington, NH 03825; with a copy to Steven Whitley, Esq., Mitchell Municipal Group, PA, 25 Beacon Street East, Laconia, NH 03246.

B To Hard Rock. If to Hard Rock, to Arleigh Greene and James Watkins, Members, PO Box 2750, Seabrook, NH 03874; with a copy to Stephen H. Roberts, Esq., Hoefle, Phoenix, Gormley & Roberts, PA, 127 Parrott Avenue, Portsmouth, NH 03801.

13. Miscellaneous.

A. Liabilities Not Assumed. Except as set forth herein, each of Hard Rock and Town does not assume and shall not otherwise be liable or responsible for any liability or obligation of the other, whether known or unknown, now existing or hereafter occurring, except for such liabilities and obligations that such party has expressly assumed hereunder.

B. Right of Inspection. Town agrees that Hard Rock, and its authorized agents, consultants, surveyors, engineers, attorneys and contractors may access the Premises for the purposes of inspection, investigation and site development related activities prior to the execution of this Agreement, Hard Rock assumes all risk of any such actions or activities, and agrees to indemnify, defend and hold harmless Town, its officials, employees, agents, attorneys, heirs and assigns, from and against any and all damage, claim, liability, or loss to person or property, including reasonable attorney's and other fees, arising from any activities, actions or omissions of Hard Rock, its agents (including any person or entity acting by, for, through or on behalf of Hard Rock) or its employees in undertaking the Investigation on the Premises.

C. Acceptance of Off-Site Materials. The Town agrees that during the Term Hard Rock may accept and maintain on the Premises asphalt and concrete materials for recycling. Such materials shall be accepted only from third-party purchasers of excavated materials. All such asphalt and concrete material shall be stockpiled and maintained pursuant to state regulatory standards and industry accepted best management practices. Asphalt and concrete material stockpiles shall be limited to one pile, not to exceed 5,000 square yards, for each such material.

D. Applicable Law. This Agreement shall be deemed a contract and construed according to the laws of the State of New Hampshire. .

E. Beneficial Rights. It is acknowledged and agreed that the Premises shall also include, without limitation, any rights which Town has which benefit the Premises, whether for purposes of access and egress, drainage easements, easements for the obtaining of utilities, or otherwise and that any Deed to a third party shall include a specific conveyance of said rights.

F. Modification. This document together with those documents incorporated by reference contains the entire agreement of the parties. All amendments, modifications, changes, deletions or additions to this Agreement must be in writing and, to be valid, must be either signed or initialed by both parties or their authorized representatives.

G. Assignment. Hard Rock may not assign its interest under this Agreement without the express written permission of the town.

H. Interpretation of This Agreement. Wherever applicable in this Agreement, the singular shall include the plural, and the plural shall include the singular. The captions are for convenience in identification only and shall not be deemed to be determinative as to the contents of a section, should such captions be inconsistent with the body of the respective sections, The terms of this Agreement are to be binding on the heirs, executors, administrators, assigns or other successors in interest to the parties to this Agreement. This Agreement supersedes any and all oral understandings or writings concerning this sale and purchase the parties might have entered into previously. This Agreement sets forth all the promises, covenants, agreements, conditions and understandings between the parties to this Agreement and supersedes all prior and contemporaneous agreements and understandings, inducements or conditions, expressed or implied, oral or except as contained in this Agreement.

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Witnesseth, this Development Agreement has been executed by the undersigned as of the Effective Date.

Date: _____

Date: _____

By: _____

Board of Selectmen

Witness

Date: _____

By: _____

Board of Selectmen

Witness

Date: _____

By: _____

Board of Selectmen

Witness

Date: _____

By: _____

Board of Selectmen

Witness

Date: _____

By: _____

Board of Selectmen

Witness

HARD ROCK DEVELOPMENT, LLC

Date: _____

By: duly authorized

Witness

By: duly authorized

Witness