

THIRD AMENDMENT
to
Land Disposition and Development Agreement (LDA)

This Third Amendment to Land Disposition and Development Agreement (“Third Amendment”) amends and is intended to be made an integral part of the Land Disposition and Development Agreement (the “LDA”) executed September 30, 2019, and as amended by that certain First Amendment to Land Disposition and Development Agreement dated January 15, 2020, and that certain Second Amendment to Land Disposition and Development Agreement dated July 18, 2020, by and between the *City of Dover, New Hampshire* (through and including the Dover Housing Authority (the “DHA”)), by and through the City’s duly authorized City Manager, having a business address of 288 Central Avenue, Dover, New Hampshire 03820 (the “City of Dover” or the “City”), and *CPI Management, LLC*, a Massachusetts limited liability company with an address of c/o Cathartes, 6 Liberty Square, PMB 90767, Boston, Massachusetts 02109 (together with its successors and assigns, the “Developer” and together with the City, the “Parties”).

1. Recitals

The Parties have agreed to amend certain set forth in the LDA and hereby memorialize same within this Third Amendment.

2. Legal Authority

This Third Amendment was proposed on or about May 4, 2022 and subsequently discussed and drafted between the parties. Thereafter, the CWDAC voted unanimously on [_____] to approve the proposed amendment to the LDA; see Minutes attached as Exhibit [1]. At its [_____] meeting, the DHA adopted Resolution [_____] , attached as Exhibit [2].

Amendments to the LDA are specifically authorized by Section 10.09 of the LDA.

The Parties have executed a Term Sheet dated January 29, 2019 (the “Term Sheet”) which has been executed by the parties and has been approved by CWDAC, the Board of Directors of the DHA, and the Dover City Council as evidenced by City of Dover City Council Resolution No. R—2019.02.27—028.

The Authorizing Resolution authorized the City Manager of the City of Dover to negotiate, finalize, and execute the Development Agreement on behalf of the City on terms and conditions consistent with the terms and conditions set forth in the Term Sheet and to sign all necessary documents to effectuate the purposes of the Term Sheet and the Development Agreement.

By vote on May 10, 2023, the Dover City Council authorized the City Manager to sign this Third Amendment, attached hereto as Exhibit [3] (the “Authorizing Resolution”).

The Dover City Manager is authorized to sign this amendment as specified above.

3. Site Plan Application and Subdivision Plans. The Parties acknowledge that Developer has filed its Site Plan Application for the construction of all Phases of the Project as shown on the Concept Plan attached as Exhibit [8] to this Amendment, which was conditionally approved by the Dover Planning Board on June 14, 2022. The Parties further acknowledge that the City has prepared and the Dover Planning Board has approved two subdivision plans attached hereto as Exhibit 7: (1) a plan dated January 28, 2020, which has been recorded with the Strafford County Registry of Deeds (“SCRD”) as Plan # 12247 and Plan # 12248 (the “2020 Subdivision Plan”); and (2) a plan dated May 19, 2022, which has been recorded with the SCR D as Plan # 12706 and Plan # 12707 (the “2022 Subdivision Plan”). Each the defined terms “2020 Subdivision Plan” and “2022 Subdivision Plan”, as defined herein, are hereby incorporated into the LDA by reference and are made a part thereof.

4. Amendments

4.1 Developer’s Construction of Public Improvements. Section 5.01 of the LDA is hereby amended as follows:

Section 5.01 Public Improvements.

The City shall be responsible for the construction and delivery of certain public infrastructure improvements on the Premises as defined on Exhibit D hereto, which include the “Site-Related Public Infrastructure Improvements,” the “Waterfront Park Improvements,” the “Public Street, Streetscape and Utilities Improvements,” the “Supplemental Site Improvements,” and the “Environmental Remediation”, all as defined on Exhibit D hereto (the “Public Improvements”). The Parties agree that the cost of the Public Improvements (exclusive of improvements to the River Street Pump Station described in Exhibit D, paragraph iv, the costs of which shall not be funded by the proceeds of the TIF) shall not exceed Twenty ~~Fifteen~~ Million and 00/100 Dollars (\$20,000,000 ~~\$15,000,000~~) and any Public Improvements costs (exclusive of improvements to the River Street Pump Station described in Exhibit D, paragraph iv, the costs of which shall not be funded by the proceeds of the TIF) in excess thereof shall be subject to the prior written approval of both Parties. Developer shall be given reasonable prior written notice of the material terms of any bond issuances or other financings entered into by the City to fund the Public Improvements. The City of Dover shall pay for the design, engineering, and construction of the Public Improvements; provided however, that Developer may, at its election and with the written approval of the City of Dover, complete some or all of the Public Improvements and receive an agreed upon credit against the Purchase Price for such work and the amount of any credit shall be set forth in a written agreement between the Developer and the City of Dover and shall in no event in total exceed \$500,000. For the avoidance of doubt, if Developer elects to close on a Parcel and such Parcel is not “Pad Ready”, as such term is defined in Exhibit D, Section (iv) hereto, then (i) the City’s obligation to deliver such Parcel in Pad Ready condition shall survive the Closing on such Parcel until all of the Pad Ready improvements have been completed as verified by Developer’s engineer, regardless of whether the City or Developer constructs the Pad Ready improvements, and (ii) the City shall continue to construct all of the Pad Ready improvements following the Closing, unless the Developer elects to complete the Pad Ready improvements and receive a credit against the Purchase Price for the cost of such Pad Ready improvements in

accordance with the terms and conditions of this Section 5.01. ~~The construction of the Public Improvements shall be phased so as to be completed consistent with the phasing of the Project according to the phasing schedule set forth on Exhibit F. The Parties agree to reasonably cooperate to use any cost savings for the Public Improvements and/or any additional sources of funding for the Public Improvements obtained by the City, in its sole discretion, to reduce the principal amount of the TIF and/or reduce the Guaranteed Tax Assessed Values of each Parcel.~~

4.2 Private Improvements. Section 5.02 of the LDA is hereby amended as follows:

Section 5.02 Private Improvements.

The private improvements shall be a mixed use development, which shall consist of at least approximately 475 multifamily residential and/or hotel units and shall include a minimum of approximately 25,000 leasable square feet (or 20,000 leasable square feet if the Parcel shown as “Parcel E” on the Concept Plan is retained by the City as a part of the Waterfront Park Improvements) of non-residential uses, which may include office, commercial, retail, and restaurant uses, together with dedicated private parking serving the mixed use development, which parking may, if approved by the Dover Planning Board, be shared among the Parcels and be used to satisfy parking requirements in the City of Dover’s zoning ordinance and land use regulations as applicable to each Phase (the “Private Improvements”).

4.3 Conveyance and Development Phasing. Section 2.02(a) and (b) of the LDA are hereby amended as follows:

(a) **Conveyed Land.** The Conveyed Land shall comprise the Parcel shown on the 2020 Subdivision Plan as 22-1-2, and the Parcels shown the 2022 Subdivision Plan as Proposed Development Lot Parcel 1-4, Proposed Development Lot Parcel 1-5, Proposed Development Lot Parcel 1-6, Proposed Development Lot Parcel 1-7, as the same may be adjusted from time to time in accordance with Section 2.03, each a “Parcel. ~~The Conveyed Land shall be subdivided into parcels reasonably approved by Developer as set forth in Section 2.03(a) herein, the exact boundaries of which shall be set by a subdivision plan on or prior to the sale of each Parcel to Developer (each, a “Parcel”).~~

(b) **Retained Land.** The Retained Land shall comprise all of the Premises except for the Conveyed Land, including (i) the waterfront park land in the approximate location designated on the Concept Plan, intended to be improved with the Waterfront Park Improvements; (ii) fee simple title to all roadways and public rights of way thereon, whether now existing or to be constructed as part of the Public Improvements (defined below), including the Revised City R.O.W. as shown on the 2022 Subdivision Plan, (iii) the River Street Pump Station, shown as Lot 22-1 on the 2020 Subdivision Plan, and (iv) Lot 22-1-1 and Lot 22-1-3 all as shown on the 2020 Subdivision Plan.

4.4 Outside Construction Commencement Date. The outside construction commencement date set forth in Section 5.03(a) is hereby extended from April 5, 2021 to June 8, 2024.

4.5 Outside Site Closure Date. The outside Site Closure date set forth in Section 5.03(b) is hereby extended from April 5, 2021 to June 8, 2024.

4.6 Developer's Notice Information. Developer's notice information as set forth in Section 10.03 is hereby updated as follows:

Developer: CPI Management, LLC
c/o Cathartes
6 Liberty Square
PMB 90767
Boston, MA 02109
Attn: Jeffrey Johnston

With a copy to: Robert Previti, Esq.
Stebbins, Lazos & Van Der Beken PLLC
889 Elm Street, 6th Floor
Manchester, New Hampshire 03101

4.7 Concept Plan. The Concept Plan attached to Exhibit C to the LDA is hereby deleted in its entirety and replaced with Exhibit [8] hereto, which has been approved by CWDAC and the City of Dover Planning Board. The Parties agree that the Phases shown on Exhibit [8] may be modified or resequenced by Developer upon sixty days prior written notice to the City and provided such modification or resequencing does not adversely impact any existing construction or other contract of the City.

4.8 Easement Plan. In addition to any other access, drainage, and utility easements over the Retained Land and other City-owned property that Developer reasonably requires to develop the Private Improvements pursuant to Section 3.01 of the LDA, the City shall grant to Developer the easements shown on Exhibit [4] on terms mutually acceptable to the Parties on or prior to the Closing of Phase I, which easements shall be subject to and recite the applicable tax-shifting language within N.H.R.S.A Section 72:23(I). In addition to any other easements over the Conveyed Land that the City reasonably requires, the City shall be permitted to retain (or the Developer shall grant) easements as shown on Exhibit 4 to this Third Amendment, including but not limited to a drainage easement on Proposed Development Lot Parcel 1-2, a maintenance and access easement area on Proposed Development Lot Parcel 1-2, a maintenance easement area on Proposed Development Lot Parcel 1-2, two maintenance and access easement areas on Proposed Development Lot Parcel 1-4, an access easement area on Proposed Development Lot Parcel 1-5, an easement to install and maintain groundwater monitoring wells in locations reasonably approved by the Developer, and a blanket easement for any minor sidewalk encroachments and/or minor right-of-way encroachments that do not unreasonably interfere with the Private Improvements on, in, under, or over any Conveyed Land, the scope of which shall be reasonably acceptable to both the City and Developer; provided, however, that the City shall have the obligation to reasonably restore any areas of the Conveyed Land disturbed by the City in connection with its exercise of the foregoing easement rights to substantially the condition called for in the approved site plan conditionally approved by the Dover Planning Board on June 14, 2022.

4.9 Public Improvements. Exhibit D to the LDA, which sets forth the scope of the Public Improvements, is hereby deleted in its entirety and replaced with Exhibit [5] attached hereto.

4.10 Construction Schedule/Benchmarks. Exhibit E to the LDA, which sets forth the schedule for the RAP Closure Report, outside closing dates for each Parcel, and the Private Improvements, is hereby deleted in its entirety and replaced with Exhibit [6] attached hereto.

4.11 Conditions Precedent to Closing. The Developer's Conditions Precedent set forth in Exhibit F to the LDA, Section 2, Subsections (c), (d), and (e) are hereby amended as follows:

- (c) Prior to closing on the Phase I Parcel(s), the City shall have (i) completed the Site-Related Public Infrastructure Improvements applicable to the Parcel to Developer's reasonable satisfaction, and (ii) shall have commenced construction of the River Street Pump Station improvements in accordance with the Wright Pierce Plans, as is more specifically described on Exhibit D hereto.
- (d) Prior to closing on the Phase I Parcel(s), the City shall have commenced work and shall be diligently pursuing construction of ~~completed the final design for~~ the Waterfront Park Improvements mutually agreed upon by the City and Developer. The City shall be deemed to have "commenced work" for purposes of this Section when it has (a) entered into a construction contract for the Waterfront Park Improvements; (b) obtained all approvals and permits for the Waterfront Park Improvements in accordance with the approved plans set shown on Exhibit D; and (c) excavated or started excavation for the Waterfront Park Improvements.
- (e) Prior to ~~completion~~ closing on the Phase II Parcel(s), the City shall have completed construction of the Waterfront Park Improvements.

4.12 Deed Restrictions. Section 6.04 of the LDA is hereby amended by adding subparagraph (c) as follows:

c. AUR: The Parcels shall be conveyed subject to the Notice of Administrative Use Restrictions approved and required by the New Hampshire Department of Environmental Services as part of the RAP.

4.13 Minimum Assessed Values. Section 7.01 shall be amended as follows:

Developer acknowledges that the Public Improvements (exclusive of improvements to the River Street Pump Station described in Exhibit D, paragraph iv, the costs of which shall not be funded by the proceeds of the TIF) to be undertaken by the City of Dover are being financed using tax increment financing (currently authorized at \$6,600,000 ~~24,073,204.00~~), which financing is to be repaid by the City of Dover through the property taxes generated by incremental real property valuation increases in the Dover Waterfront TIF District, which financing includes the City's incurrence of multiple bond obligations to finance the Public Improvements (exclusive of improvements to the River Street Pump Station described in Exhibit D, paragraph iv) in an amount not to exceed \$20,000,000 and benefit the Private Improvements on the Conveyed Land (such bond obligations of the City collectively referred to as the "TIF"). On the closing date for each

Parcel (for each Parcel, the “Valuation Date”), such Parcel shall be assigned a minimum guaranteed assessment value, for *ad valorem* purposes, such that the Parcel (or Parcels, if multiple Parcels comprise a phase) equal the aggregate amount shown in the “Min Assessed” column for the phase shown on Exhibit G attached hereto, which guaranteed minimum assessment value will take effect for each phase in the sequence shown in Exhibit G (irrespective of which Parcel or Parcels comprise the phase) upon the issuance of a final certificate of occupancy for all improvements on the Parcel(s) comprising the phase and, after calendar year 2025 for Phase I, calendar year 2028 for Phase II, and calendar year 2031 for Phase III, irrespective of whether the final certificate of occupancy issues before, on, or after April 1st of any calendar year, Developer hereby irrevocably covenants and agrees that the City of Dover may impose the minimum guaranteed assessment value on the Parcel(s) and commence assessing and invoicing Developer based on the guaranteed minimum assessment as of April 1st in the same calendar year as the final certificate of occupancy equal to an amount not less than the amount necessary to generate an annual tax payment, given the then-existing City’s published overall tax rate, equal to the following: the sum of the actual expense to the City to retire, over a twenty (20) year period beginning on the date that is eighteen (18) months following the issuance of a Certificate of Occupancy for the first building constructed as part of the Private Improvements constructed on such Parcel (the “Tax Guarantee Period”), the portion of the TIF issued by the City to provide funding for the Public Improvements implemented by the City to support for the development of the Private Improvements on such Parcel (allocated on a per-unit basis proportionally to the total number of units to be developed in the Private Improvements), including interest at rates then applicable to the issued TIF, plus its reasonable out of pocket costs, expenses and fees related to the issuance and servicing of the TIF (for each Parcel, the “Guaranteed Tax Assessed Value”). Each Parcel shall be subject to its Guaranteed Tax Assessed Value for a period of twenty (20) years the Tax Guarantee Period beginning on the date that is eighteen (18) months following Developer’s receipt of the final Certificate of Occupancy for the first building in each phase constructed as part of the Private Improvements constructed on such Parcel (the “Tax Guarantee Period”). The Parties shall execute an amendment to this Development Agreement updating Exhibit G with the Guaranteed Tax Assessed Value for each Parcel on the Valuation Date for each Parcel.

Except (i) as permitted by the following sentence and by Section 7.05, and/or (ii) in the event of a misapplication, miscalculation, or other mistake, in the calculation of the Guaranteed Tax Assessed Value, Developer hereby waives any right it may otherwise possess to challenge the Guaranteed Tax Assessed Value for each Parcel. Notwithstanding the foregoing, if the actual assessed value of any Parcel then subject to a Guaranteed Tax Assessed Value decreases by more than twenty-five percent (25%) from the most recent establishment of the actual assessed value of such Parcel in any five year period, and provided that the resulting actual assessed value is less than the then-applicable Guaranteed Tax Assessed Value for the Parcel, then the Parties agree to discuss whether and how to continue the Developer’s obligation to pay taxes based on the Guaranteed Tax Assessed Value for such Parcel, but the City is not required to grant any such relief.

Developer shall have the right to reasonably reallocate the total Guaranteed Tax Assessed Value among each Parcels provided that (i) the Aggregate Min Assessed values (as shown on Exhibit G hereto) for the Phases that are complete as of the reallocation date are satisfied, (ii)

Developer records an amendment to the Performance Mortgage for each Parcel then of record, and (iii) Developer obtains any necessary subordinations to maintain the existing priority of the Performance Mortgage prior to the amendment thereof.

For the avoidance of doubt, the Guaranteed Tax Assessed Values shown on Exhibit G shall be treated as equalized values. In addition, for clarification nothing in this Agreement is intended to preclude any Parcel from being assessed at a fair market value higher than the Guaranteed Tax Assessed Value, as would be required by RSA chapter 75.

4.13 **Tax Shortfalls.** Section 7.02 of the LDA is amended as follows:

To the extent that in any tax year during the Tax Guarantee Period, the *ad valorem* real property taxes assessed for a Parcel are less than the *ad valorem* real property taxes that would be assessed using the Guaranteed Tax Assessed Value for the Parcels comprising each phase shown on Exhibit G as if ~~it~~ the Guaranteed Tax Assessed Value was the assessment value for each such Parcel for that year (as provided above), then the Developer shall be responsible for the payment of the difference to the City as if the Parcel was assessed (after calendar year 2025 for Phase I, calendar year 2028 for Phase II, and calendar year 2031 for Phase III of the Tax Guarantee Period, as of April 1st of the calendar year in which the Guaranteed Tax Assessed Value takes effect) at the Guaranteed Tax Assessed Value (for each Parcel, the “Ad Valorem Tax Payment Obligation”). Any Ad Valorem Tax Payment Obligation shall be due and owing at the same time that taxes are generally due for City property owners, and shall be treated as an obligation for the payment of taxes for all purposes related to enforcement and collection of the obligation.

4.14 **Guaranteed Tax Assessed Value Exhibit.** Exhibit G to the LDA is deleted and replaced with Exhibit [9] attached hereto.

4.15 **Phase of Guaranteed Tax Assessed Value, Phase I.** Section 7.03 of the LDA is deleted in full and not used, and all cross-references to Section 7.03 in the LDA are hereby removed.

4.16 **Exhibit H--Performance Mortgage.** Exhibit H to the LDA is amended and replaced with the version attached hereto as Exhibit [10].

4.17 **Purchase Price.** Section 6.02 is amended to strike the following sentence from the first paragraph:

“As Phase I consists of approximately 200 units, the Purchase Price for Phase I will be approximately \$1,420,000 subject to the Deposit credits set forth in Section 3.02 and subject to a credit for any portion of the work undertaken by the Developer for the Public Improvements as may be agreed upon in writing by the City of Dover and the Developer (“the Phase I Purchase Price”).

4.18 Events of Default. A technical correction is hereby made to Section 9.01 of the LDA, subsection (g), which is modified to strike “VII” and replace same with “VIII.”

4.19 Section 3.01 Sale. Section 3.01 of the LDA is amended to add the following at the end of Section 3.01:

Notwithstanding the foregoing, after the closing on the first Parcel, the Developer may in its sole discretion elect not to purchase and develop any other Parcels but only if Developer (i) is actively constructing (or has completed) the Private Improvements on the first Parcel, and (ii) Developer provides written notice to the City of Dover of any such election at least 365 calendar days prior to the outside closing date for that Parcel shown on Exhibit E; The Developer’s election, if in compliance with the provisions of this paragraph, shall apply to all unconveyed Parcels, shall be irrevocable, shall release the City from any and all obligation to sell the unconveyed Parcels to Developer, shall terminate any and all of Developer’s rights to the unconveyed Parcels, and shall be without recourse by the City of Dover against the Developer.

4.20 Section 3.02 Deposit. Section 3.02 of the LDA is amended as follows:

Simultaneously with the execution of this Development Agreement, the Developer shall pay to the City of Dover a nonrefundable deposit in the amount of \$60,000, which deposit is in addition to the \$20,000 deposit paid by the Developer at the time of Developer’s designation as the “Preferred Developer” and an additional \$20,000 paid by Developer upon the execution of the Term Sheet (collectively, the “\$100,000 Initial Deposit”). The \$100,000 Initial Deposit of nonrefundable payments may be used by the City of Dover for expenditures incurred by the City of Dover for expenses in connection with this transaction including but not limited to surveyors, engineers, site inspectors, and economic, legal, and site design consultants. The City shall be under no requirement to account to the Developer for such expenditures, provided that such expenditures are used in connection with this transaction. One-half of the \$100,000 Initial Deposit ~~deposit~~ shall be credited against the purchase price of Phase I with the balance to be credited against the purchase prices of the remaining Phases shown on the Concept Plan on a pro rata basis.

In addition, if Developer does not exercise its termination rights under Section 3.01, then at least 360 days prior to each Outside Closing Date shown on Exhibit E for each Parcel, Developer shall pay to the City of Dover a nonrefundable deposit of \$100,000 for each phase after Phase I (“Phase Deposit”). The Phase Deposit shall be credited against the purchase price of the applicable Parcel(s) at closing.

4.21 Section 6.01 Closing Date. Section 6.01 of the LDA is amended to restate subsection (c) as shown below:

c. *Extension Rights—Developer.* ~~Notwithstanding the foregoing and any other provision of this Agreement, Developer may, at its option, extend the closing date as shown on Exhibit E for any Phase for up to twenty-four (24) additional months on a monthly basis so long as it either (i) demonstrates reasonable progress to that time in the pre-development of the Private Improvements for such Phase or (ii) is constructing and/or stabilizing the most recently acquired Phase(s). The first twelve months of extensions shall be at no cost to Developer. Thereafter, Developer shall pay~~

~~an additional applicable and to be credited against the Purchase Price, but nonrefundable, Deposit of \$5,000 per month for each monthly extension. If there is a delay in the completion of the Public Improvements applicable to any Parcel, which delay extends for more than five calendar days, then the Parties shall negotiate in good faith to reasonably extend all deadlines shown on Exhibit E that are applicable to the Developer, provided, that the Developer shall have the right to unilaterally extend the Outside Closing Date for any Parcel or Phase by up to ninety (90) days.~~

4.22 Section 5.03 Permitting. Section 5.03, subsection (e) is amended as follows:

e. *Time Extensions.* The parties agree that one or more of the benchmarks or time periods set forth in Exhibit E of this Agreement may be extended with the written consent of the other party ~~which consent shall not be unreasonably withheld, conditioned, or delayed; provided that any requested extension for a period of more than six months shall be at the sole discretion of the party granting such extension,~~ provided further, that the City of Dover shall be required to extend any time period affecting the Developer on a day-for-day basis corresponding to City of Dover's delay in the performance of its obligations under this Agreement, including any delay in delivering the Public Improvements.

5. Effective Date

The undersigned acknowledge and agree that the amendments set forth herein shall be effective as of the date this amendment is signed by all parties.

6. No Time-Based Fault

The parties agree that, as of the effective date of this amendment, no party to the LDA is in default of the LDA currently with respect to any time periods or benchmarks, unmet or unsatisfied condition precedent, and related unmet or unsatisfied time periods and benchmarks.

7. Jointly Drafted

This amendment shall be deemed to have been jointly drafted by the parties.

8. Remaining LDA Terms

The undersigned acknowledge that all terms and conditions of the LDA not inconsistent with the above amendment remain in full force and effect.

IN WITNESS WHEREOF, the undersigned execute this Third Amendment this _____ day of _____, 2023.

CPI Management LLC

Witness

By: _____
Jeffrey Johnston, Its President
Duly Authorized
Dated: _____, 2023

Dover Housing Authority

Witness

By: _____
Ryan Crosby, Its Executive Director
Duly Authorized
Dated: _____, 2023

City of Dover, New Hampshire

Witness

By: _____
J. Michael Joyal, Jr., Its City Manager
Duly Authorized
Dated: _____, 2023

LIST OF EXHIBITS

- Exhibit 1 [CWDAC RESOLUTION]
- Exhibit 2 [DHA RESOLUTION]
- Exhibit 3 [CITY COUNCIL RESOLUTION]
- Exhibit 4 [EASEMENT PLAN]
- Exhibit 5 [PUBLIC IMPROVEMENTS]
- Exhibit 6 [CONSTRUCTION SCHEDULE BENCHMARKS]
- Exhibit 7 [SUBDIVISION PLANS]
- Exhibit 8 [SITE PLAN]
- Exhibit 9 [GUARANTEED TAX ASSESSED VALUES]
- Exhibit 10 [PERFORMANCE MORTGAGE]

Exhibit [1] to Third Amendment - [CWDAC Resolution]

DRAFT

Exhibit [2] to Third Amendment - [DHA Resolution]

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Exhibit [3] to Third Amendment - [Easement Plan]

[TO BE ATTACHED]

DRAFT

Exhibit [4] to Third Amendment - Public Improvements

EXHIBIT D__PUBLIC IMPROVEMENTS (Amended)

The Public Improvements shall comprise the “Site-Related Public Infrastructure Improvements,” the “Waterfront Park Improvements,” the “Public Street, Streetscape and Utilities Improvements,” the “Supplemental Site Improvements,” and the “Environmental Remediation” all as more specifically defined as follows:

- i. The **Site-Related Public Infrastructure Improvements** shall comprise the following, as more fully described in the Site Preparation Plan Cochecho Waterfront Bid Drawings, Dover, New Hampshire, inclusive of Sheets C-1 to C-43, L-1.0 to L.5.12, S-1 to S-10, and E-1.0 to E.2.2 prepared by Horsley Witten Group, Inc. dated January 20, 2023 February 2019 as revised through September 2019 and associated Project Manual prepared by Horsley Witten Group, Inc. entitled Cochecho Waterfront, Dover, New Hampshire Bid No. B23006 and dated January 19, 2023, each attached hereto (the “Horsley Witten Plan”):
 1. Site Preparation of the Premises pursuant to a methodology jointly approved by Developer and the City of Dover; provided that each Parcel of the Conveyed Land shall be delivered “Pad Ready” (as defined below) to Developer by the City.
 2. Excavation of the “Quarry” area located on the South Phase;
 3. Site Grading of the Project Area to raise the elevation in anticipation of sea level rise of approximately 2’ to 6’ of structural fill as approved by Developer;
 4. Shoreline stabilization.
- ii. The **Waterfront Park Improvements** shall comprise the landscape, hardscape, pier improvements and parking areas, which, at a minimum, shall conform to the specifications shown on the Horsley & Witten Plan. The Developer and the City shall continue to refine and negotiate on the design elements of the Waterfront Park Improvements in order to reach a mutual agreement on the final design of the public areas within the existing budgetary constraints.
- iii. The **Public Street, Streetscape and Utilities Improvements** shall comprise the streets, sidewalks, utility services, parking areas open to the general public, and other infrastructure improvements as shown on [the Horsley Witten Plan] to be constructed to serve the Waterfront Park Improvements and the Private Improvements and shall conform to the “Pad Ready” specifications summarized herein. The City shall provide the utility mains (i.e., water, sewer, electric, gas, cable) for the development stubbed to each Parcel on a Phase-by-Phase basis and with sufficient capacities for the planned use of each Parcel as evidenced by will-serve letters or similar assurances from utility providers, and the rough roadway locations, at its sole cost. The City shall reasonably support the Developer’s efforts to obtain a waiver from the Dover Utilities Commission of the investment fees for the initial provision of public utilities serving the Parcels and the parties shall discuss the allocation between the Parties of any fees charged by private utility companies for the initial provision of private utilities to the Parcels.

iv. The **Supplemental Site Improvements** shall comprise any additional site-related public infrastructure improvements and/or amenities and/or off-site public infrastructure improvements which result of the Planning Board Site Plan Review process and that have not already been addressed in this Exhibit. The supplemental site improvements shall expressly include upgrades and improvements to the River Street Pump Station on the Retained Land in the form of odor mitigation measures as described in the City of Dover, New Hampshire Contract Drawings for River Street Pump Station Upgrade, CWSRF Project #CS-330200-21 90% Design Review, Sheets G-1, C-1 to C-6, A-1 to A-7, S-1 to S-8, PR-1 to PR-11, M-1 to M-9, P-1 to P-3, I-1 to I-7, and E-1 to E-24 dated November 2022 prepared by Wright-Pierce and associated project manual prepared by Wright-Pierce entitled River Street Pump Station Upgrade City of Dover, Dover, New Hampshire, Bidding/Contract Documents and Technical Specifications 20494B dated November 2022 attached hereto (the “Wright Pierce Plans”), provided, however, that any modifications to the odor mitigation measures from those described in the latest iteration of the Wright-Pierce Plans reviewed by Developer as of April 4, 2023 that would adversely affect the Private Improvements shall be subject to Developer’s review and reasonable approval, and the City’s commencement of work on such improvements and upgrades shall be a condition precedent to the closing on the Phase I Parcel(s), with said work to be substantially completed by January 1, 2025.¹ Subject to and contingent upon the sufficiency of existing appropriations (and not requiring that the City transfer or re-appropriate any funds), the City shall work in good faith to incorporate “Bid Alternate A” as set forth in the Wright Pierce Plans, and the City shall adopt and comply with an Operation and Maintenance Manual for ongoing maintenance of the River Street Pump Station which will address the standard operating procedures for maintaining the River Street Pump Station, including but not limited to maintenance and regular replacement of the continuous-bagger and carbon filter.

v. **Environmental Remediation.** The City shall remediate all environmental conditions existing on each Parcel in accordance with applicable law and the RAP at its sole cost and expense such that the Premises conform with applicable law and the NHDES has issued a Certificate of Completion, Certificate of No Further Action, or other similar evidence of completion of the RAP on or prior to Developer’s acquisition of such Parcel. Developer shall have no obligation to acquire any Parcel until such environmental remediation has been completed for such Parcel as evidenced by a Certificate of Completion, Certificate of No Further Action, or other similar evidence of completion of the RAP from the NHDES.

vi. The Defined Term “Pad Ready” shall mean:

Pad Ready shall be pertinent to (exclusive of improvements to the River Street Pump Station described in Exhibit D, paragraph iv

Pad Ready, ~~subject to the funding limitation of Section 5.01,~~ shall include the following:

1. Subsurface conditions shall be delivered per the Developer’s geotechnical reports and recommendations, subject to the reasonable review by the City, particular to each building and such that all structures may be built with no further environmental and geotechnical

¹ Note: City to confirm status of sewer pump work. Language may be modified or deleted based on status of work.

remediation required by the Developer. If the Developer elects to relocate the buildings from the locations shown on Exhibit C, then any additional excavation necessitated by such relocation shall be done in accordance with the RAP and at the Developer's expense.

2. Utilities (water, sewer, stormwater, gas, electric, communications, etc.) shall be constructed by the City to the limit of the public right-of-way adjacent to the development areas and stubbed for each development area of adequate size, pressure and volume to service Developer's proposed project as approved by the City. Utilities elevations shall be such that gravity connections are available for sewer and drainage connections at the public right-of-way line.
3. Pad ready site shall be ~~constructed~~ graded in accordance with the Horsley Witten Plan Sheets C-4, and C-16 to C-23 ~~such that slopes are maximum 2% through the building area.~~ In areas within proposed building footprints requiring cuts, all existing buildings, foundations, structures, utilities, debris, and manmade features are removed and replaced per the Developer's geotechnical reports and recommendations, subject to the reasonable review by the City.
4. All materials used to construct Pad Ready site shall be installed in a controlled manner, properly tested per the Developer's geotechnical reports and recommendations particular to each building.
5. City shall provide the Developer with reports of the material placed in the development area, including material specifications and compaction results per the Developer's geotechnical reports and recommendations, subject to the reasonable review by the City.

Exhibit [5] to Third Amendment - Construction Schedule Benchmarks

[TO BE ATTACHED]

DRAFT

Exhibit [6] to Third Amendment - Subdivision Plans

[TO BE ATTACHED]

DRAFT

Exhibit [7] to Third Amendments - Site Plan

[TO BE ATTACHED]

DRAFT

Exhibit [8] to Third Amendments - Guaranteed Tax Assessed Values

EXHIBIT G GUARANTEED TAX ASSESSED VALUES

Phase	Anticipated Parcel(s)	Aggregate Min Assessed
First	1-4; 1-5	\$35,000,000 aggregate, which Developer may reasonably allocate by Parcel if multiple Parcels comprise this phase, with any such allocation to become fixed once selected.
Second	1-2	\$65,000,000 aggregate, which Developer may reasonably allocate by Parcel if multiple Parcels comprise this phase, with any such allocation to become fixed once selected.
Third	1-6; 1-7	\$75,500,000 aggregate for first year, increasing annually by 1%, compounded, each year of the Tax Guarantee Period following the first year. Developer may reasonably allocate the aggregate value by Parcel if multiple Parcels comprise this phase, with any such allocation to become fixed once selected.

Exhibit [9] to Third Amendments – Form of Performance Mortgage

Return to:

PERFORMANCE MORTGAGE DEED

[NAME OF PARCEL OWNER], a [~~New Hampshire~~ insert state] [~~limited liability company~~ insert entity type], having an address of [~~e/o Cathartes, 100 Summer Street, Suite 1600, Boston, MA 02108~~ insert entity address], and its successors and assigns (hereinafter the “Mortgagor”), for valuable consideration, grants the **CITY OF DOVER**, a New Hampshire corporate and body politic, and political subdivision of the State of New Hampshire, having an address of 288 Central Avenue, Dover, New Hampshire 03820, and its successors and assigns (hereinafter the "Mortgagee"), WITH MORTGAGE COVENANTS, to secure the:

A. The timely and proper performance and satisfaction of all obligations of the Mortgagor as provided in Sections 7.01 and 7.02 of a certain Land Disposition and Development Agreement by and between the Mortgagor [if not Developer, then update reference] and Mortgagee dated as of [____], and any modifications or amendments thereto (hereinafter referred to as the “Agreement”), all as more fully described in the Agreement;

B. Payment of all sums now or hereafter advanced by the Mortgagee in accordance herewith to protect the security of this Mortgage;

C. Payment, performance and satisfaction of Mortgagor's liabilities and other obligations under the terms, conditions, representations, warranties and covenants contained in Section [7.01/7.02] of the Agreement and any and all amendments, deferrals, extensions, renewals and substitutions thereto and therefor, which sections provide:

Section 7.01 Minimum Assessed Values.

Developer [update all references to Developer as necessary for any successor or assignee] acknowledges that the Public Improvements (exclusive of improvements to the River Street Pump Station described in Exhibit D, paragraph iv, the costs of which shall not be funded by the proceeds of the TIF) to be undertaken by the City of Dover are being financed using tax increment financing

(currently authorized at ~~\$6,600,000~~ 24,073,204.00), which financing is to be repaid by the City of Dover through the property taxes generated by incremental real property valuation increases in the Dover Waterfront TIF District, which financing includes the City's incurrence of multiple bond obligations to finance the Public Improvements (exclusive of improvements to the River Street Pump Station described in Exhibit D, paragraph iv) in an amount not to exceed \$20,000,000 and benefit the Private Improvements on the Conveyed Land (such bond obligations of the City collectively referred to as the "TIF"). On the closing date for each Parcel (for each Parcel, the "Valuation Date"), such Parcel shall be assigned a minimum guaranteed assessment value, for *ad valorem* purposes, such that the Parcel (or Parcels, if multiple Parcels comprise a phase) equal the aggregate amount shown in the "Min Assessed" column for the phase shown on Exhibit G attached hereto, which guaranteed minimum assessment value will take effect for each phase in the sequence shown in Exhibit G (irrespective of which Parcel or Parcels comprise the phase) upon the issuance of a final certificate of occupancy for all improvements on the Parcel(s) comprising the phase and, after calendar year 2025 for Phase I, calendar year 2028 for Phase II, and calendar year 2031 for Phase III, irrespective of whether the final certificate of occupancy issues before, on, or after April 1st of any calendar year, Developer hereby irrevocably covenants and agrees that the City of Dover may impose the minimum guaranteed assessment value on the Parcel(s) and commence assessing and invoicing Developer based on the guaranteed minimum assessment as of April 1st in the same calendar year as the final certificate of occupancy equal to an amount not less than the amount necessary to generate an annual tax payment, given the then existing City's published overall tax rate, equal to the following: the sum of the actual expense to the City to retire, over a twenty (20) year period beginning on the date that is eighteen (18) months following the issuance of a Certificate of Occupancy for the first building constructed as part of the Private Improvements constructed on such Parcel (the "Tax Guarantee Period"), the portion of the TIF issued by the City to provide funding for the Public Improvements implemented by the City to support for the development of the Private Improvements on such Parcel (allocated on a per unit basis proportionally to the total number of units to be developed in the Private Improvements), including interest at rates then applicable to the issued TIF, plus its reasonable out of pocket costs, expenses and fees related to the issuance and servicing of the TIF (for each Parcel, the "Guaranteed Tax Assessed Value"). Each Parcel shall be subject to its Guaranteed Tax Assessed Value for a period of twenty (20) years the Tax Guarantee Period beginning on the date that is eighteen (18) months following Developer's receipt of the final Certificate of Occupancy for the first building in each phase constructed as part of the Private Improvements constructed on such Parcel (the "Tax Guarantee Period"). ~~The Parties shall execute an amendment to this Development Agreement updating Exhibit G with the Guaranteed Tax Assessed Value for each Parcel on the Valuation Date for each Parcel.~~

Except (i) as permitted by the following sentence and by Section 7.05, and/or (ii) in the event of a misapplication, miscalculation, or other mistake, in the calculation of the Guaranteed Tax Assessed Value, Developer hereby waives any right it may otherwise possess to challenge the Guaranteed Tax Assessed Value for each Parcel. Notwithstanding the foregoing, if the actual assessed value of any Parcel then subject to a Guaranteed Tax Assessed Value decreases by more than twenty-five percent (25%) from the most recent establishment of the actual assessed value of such Parcel in any five year period, and provided that the resulting actual assessed value is less than the then-applicable Guaranteed Tax Assessed Value for the Parcel, then the Parties agree to discuss whether and how to continue the Developer's obligation to pay taxes based on the

Guaranteed Tax Assessed Value for such Parcel, but the City is not required to grant any such relief.

Developer shall have the right to reasonably reallocate the total Guaranteed Tax Assessed Value among each Parcels provided that (i) the Aggregate Min Assessed values (as shown on Exhibit G hereto) for the Phases that are complete as of the reallocation date are satisfied, (ii) Developer records an amendment to the Performance Mortgage for each Parcel then of record, and (iii) Developer obtains any necessary subordinations to maintain the existing priority of the Performance Mortgage prior to the amendment thereof.

For the avoidance of doubt, the Guaranteed Tax Assessed Values shown on Exhibit G shall be treated as equalized values. In addition, for clarification nothing in this Agreement is intended to preclude any Parcel from being assessed at a fair market value higher than the Guaranteed Tax Assessed Value, as would be required by RSA chapter 75.

Section 7.02 Tax Shortfalls.

To the extent that in any tax year during the Tax Guarantee Period, the *ad valorem* real property taxes assessed for a Parcel are less than the *ad valorem* real property taxes that would be assessed using the Guaranteed Tax Assessed Value for the Parcels comprising each phase shown on Exhibit G as if ~~it~~ the Guaranteed Tax Assessed Value was the assessment value for each such Parcel for that year (as provided above), then the Developer shall be responsible for the payment of the difference to the City as if the Parcel was assessed (after calendar year 2025 for Phase I, calendar year 2028 for Phase II, and calendar year 2031 for Phase III of the Tax Guarantee Period, as of April 1st of the calendar year in which the Guaranteed Tax Assessed Value takes effect) at the Guaranteed Tax Assessed Value (for each Parcel, the “Ad Valorem Tax Payment Obligation”). Any Ad Valorem Tax Payment Obligation shall be due and owing at the same time that taxes are generally due for City property owners, and shall be treated as an obligation for the payment of taxes for all purposes related to enforcement and collection of the obligation.

~~[FOR PHASE I ONLY: Section 7.03 — Phasing of Guaranteed Tax Assessed Value, Phase I.~~

~~— The Parties acknowledge that Developer currently expects Phase I to consist of one Parcel improved with two buildings (the “Phase I Buildings”) and a parking lot, and that the Phase I Buildings will be constructed sequentially. Notwithstanding the valuation mechanism set forth in Section 7.01, then the Parties agree that (i) should the building identified as Building 1 on the Concept Plan be the only building constructed, the Phase I Parcel shall have a Guaranteed Tax Assessed Value of \$10,000,000, (ii) upon completion of the buildings identified on the Concept Plan be constructed, the Guaranteed Tax Assessed Value shall be \$15,000,000, and, (iii) should only Building 1 be completed and the Developer elects not build any other Private Improvements, the City is authorized to limit its required Public Improvements expenditure to a value equal to the debt service covered by a Guaranteed Tax Assessed Value of \$10,000,000.]~~

The following premises:

- I. LAND: Certain real properties in the City of Dover, New Hampshire, including buildings thereon, identified as [_____] and more particularly described in Exhibit 1 annexed hereto and hereby made a part hereof (the "Mortgaged Premises").

II. IMPROVEMENTS AND FIXTURES: All buildings and improvements now situated upon the Mortgaged Premises or which may hereafter be constructed on the Mortgaged Premises or added thereto, together with all fixtures now or hereafter owned by Mortgagor or in which Mortgagor has an interest (but only to the extent of such interest) and placed in or upon the Mortgaged Premises or the buildings or improvements thereon (the "Improvements").

TOGETHER WITH all privileges, and appurtenances thereto or in any way appertaining or belonging thereto, any and all rights of access serving the Mortgaged Property.

All of which land, Improvements and other property and rights hereby granted, sold and conveyed, or intended so to be, hereinafter generally referred to as the "Mortgaged Property".

The Mortgagor for itself and its successors and assigns covenants and agrees as follows:

1. The Guaranteed Tax Assessed Value, as such term is defined in the Agreement, of the Mortgaged Property is \$[_____].
2. Mortgagor will pay any indebtedness secured by this Mortgage at the time and in the manner as provided in Sections 7.01 and 7.02 of the Agreement.
3. Mortgagor will faithfully perform all covenants, duties and obligations as set forth in Sections 7.01 and 7.02 of the Agreement and this Mortgage.
4. Mortgagor will keep the Mortgaged Property in good order and condition and will not permit any waste thereof, reasonable wear and tear excepted.
5. Mortgagor will keep the structures, fixtures and improvements now existing or hereafter erected or situated on the Mortgaged Property insured against loss by fire and other hazards, casualties and contingencies, said insurance to be placed with such companies and be for such periods as may be required by the Mortgagee. Such policies shall be endorsed with a standard mortgagee clause, with loss payable to the Mortgagee and the Mortgagor as their interest may appear, and shall be deposited with the Mortgagee.
6. Mortgagor will pay, before the same become delinquent or any penalty attaches thereto for nonpayment, all taxes, assessments and charges of every nature that may now or hereafter be levied or assessed, upon the Mortgaged Property or any part thereof, and will pay, before the same become delinquent or any penalty attached thereto for the nonpayment, all taxes which by reason of nonpayment create a lien prior to the lien of the Mortgage and will thereupon submit to the Mortgagee such evidence of the due and punctual payment of such taxes, etc. as the Mortgagee may require.
7. Mortgagor will maintain the Mortgaged Property in compliance with all federal, state and local governmental rules, regulations, laws, permits and approvals, the violation of which would reasonably impair the value of the Mortgaged Premises.

The Mortgagor further agrees that if there shall be any default of any of the terms, conditions, or covenants of Sections 7.01 and 7.02 of the Agreement or Section B. of this Mortgage, all sums due the Mortgagee by the Mortgagor shall at the option of the Mortgagee become immediately due and payable, and the Mortgagee or its heirs, successors and assigns shall have the STATUTORY POWER OF SALE.

This is not homestead property of either person identified as the Mortgagor herein.

This Mortgage will endure and be discharged by the Mortgagee at the termination of the Tax Guarantee Period, as that term is defined in the Agreement, provided no default then exists.

DRAFT

DATED this ____ day of _____, 2012__.

[Mortgagor]

Witness By: _____
_____(Name)
_____(Title)

Duly Authorized
CITY OF DOVER, NEW HAMPSHIRE

Witness By: _____
[_____] , City Manager
Duly Authorized

STATE OF _____
COUNTY OF _____, 2012__

Personally appeared the above named _____, duly authorized
_____ of [Mortgagor], known to me or satisfactorily proven to be the person whose
name is subscribed to the within instrument and acknowledged to me that he/she executed the same
in his/her authorized capacity for the purposes therein contained.

Notary Public
My Commission Expires:

STATE OF NEW HAMPSHIRE
COUNTY OF STRAFFORD _____, 2012__

Personally appeared the above named [_____] , duly authorized City Manager of the
City of Dover, New Hampshire , known to me or satisfactorily proven to be the person whose
name is subscribed to the within instrument and acknowledged to me that he executed the same in
his authorized capacity for the purposes therein contained.

Notary Public
My Commission Expires:

EXHIBIT 1

Mortgage - Property Description

[LEGAL DESCRIPTION OF MORTGAGED PROPERTY]