

**FIRST AMENDMENT TO  
REVISED & RESTATED DEVELOPMENT AGREEMENT**

THIS FIRST AMENDMENT TO REVISED & RESTATED DEVELOPMENT AGREEMENT is dated JULY 8, 2014 by and between the **CITY OF DOVER, NEW HAMPSHIRE**, a body corporate and politic, and a political subdivision of the State of New Hampshire with an address of 288 Central Avenue, Dover, New Hampshire 03820 (the "City") and **FIRST STREET AT GARRISON, LLC**, a New Hampshire limited liability company with an address of 466 Central Avenue, Suite 12, Dover, New Hampshire 03820 ("First Street") and **RIPARIA – ONE HUNDRED FIRST STREET, LLC**, a limited liability company organized under the laws of the State of New Hampshire, having an address of 466 Central Avenue, Suite 12, Dover, New Hampshire 03820 ("Riparia").

**RECITALS**

WHEREAS, the City and First Street entered into a Revised & Restated Development Agreement dated as of January 22, 2014 in connection with certain property identified as Map 6, Lot 3 situated between Central Avenue and Chestnut Street in Dover, New Hampshire (the "Development Agreement"); and

WHEREAS, First Street has notified the City that title to Phase 1-Dev of the Project, as those terms are defined in the Development Agreement, will be acquired by Riparia, subject to the terms and conditions of the Development Agreement; and

WHEREAS, the parties have agreed that the Development Agreement should be amended to include Riparia as an additional party to the Development Agreement, and as an additional Developer; and

WHEREAS, in addition to and as a condition of the Phase 1-Dev Financing, as provided in Section 4.04(d) of the Development Agreement, Riparia must obtain private financing from David K. Bamford in the amount of Four Hundred Fifty Thousand Dollars (\$450,000.00) in connection with the development of Phase 1-Dev of the Project (the "Bamford Loan"); and

WHEREAS, Riparia would not have required the Bamford Loan, but for the security that the City requires in order to ensure that the obligations of the Developer pursuant to the Development Agreement are satisfied; and

WHEREAS, Riparia has requested that the City subordinate its Performance Mortgage for Phase 1-Dev, only, to a mortgage to be granted to David K. Bamford as security for the Bamford Loan (the "Bamford Mortgage"); and

WHEREAS, the City has agreed to allow the Bamford Mortgage to have priority over the City's Performance Mortgage for Phase 1-Dev, only, subject to certain concessions by Mr. Bamford related to the satisfaction of his mortgage if the City must exercise its remedies under the Development Agreement; and

WHEREAS, the parties desire to amend the Development Agreement to memorialize the concessions by Mr. Bamford related to the repayment of the Bamford Loan and the release of the Bamford Mortgage; and

WHEREAS, First Street and Riparia have requested that the City extend certain Project Deadlines by six (6) months; and

WHEREAS, the City has agreed to amend the Development Agreement to modify certain Project Deadlines in Exhibit D of the Development Agreement; and

WHEREAS, Section 9.09 of the Development Agreement provides that the Development Agreement may be amended by written supplement executed by the City and the Developer.

NOW THEREFORE, in accordance with Section 9.09 of the Development Agreement, the parties hereby agree to amend the Development Agreement as follows:

1. Riparia as Additional Party and Developer. The parties acknowledge Riparia as the Developer of Phase 1-Dev of the Project. First Street shall continue to be the Developer of Phase 2-Dev of the Project. The term "Developer", as defined in Article I of the Development Agreement, is hereby expanded to include and recognize Riparia as the Developer of Phase 1-Dev of the Project. Riparia, as the Developer of Phase 1-Dev of the Project, hereby joins in this Amendment and agrees to be bound to the terms and conditions of the Development Agreement. The term "Developer" shall mean First Street and Riparia. Except where the context in the Development Agreement requires otherwise, Riparia and First Street are jointly and severally liable for any and all duties, covenants and obligations of the Developer in the Development Agreement.
2. Bamford Loan and Mortgage. The City agrees to allow the Bamford Mortgage to have priority over the City's Performance Mortgage for Phase 1-Dev of the Project under the following circumstances:
  - (i) Subject to the exception in subsection (ii), below, the term "Developer's Outstanding Secured Indebtedness", as that term is used in Section 8.03 of the Development Agreement, shall include only that secured debt having priority over the City's performance mortgages.
  - (ii) In the event that the City elects to exercise its rights to re-purchase Phase 1-Dev of the Project, as provided in Section 8.03 of the Development Agreement, the total outstanding indebtedness under Bamford Loan shall be excluded from the Developer's Outstanding Secured Indebtedness, as defined in Section 8.03(b) of the Development Agreement, in connection with determining the purchase price, and the City shall not be obligated to repay any amounts due under the Bamford Loan. Likewise, in the event that the City forecloses on its Phase 1-Dev performance mortgage, the City shall be entitled to recover its fees, costs and expenses arising out of or in connection with any default by the Developer under

the performance mortgage, including those fees, costs and expenses related to the foreclosure, prior to any distribution of proceeds pursuant to the Bamford Loan. Upon the exercise of such re-purchase or foreclosure rights by the City, the Bamford Mortgage will be discharged for no consideration or payment by the City.

- (iii) Until such time as a certificate of occupancy has been issued for the principal building approved for Phase 1-Dev of the Project, and provided Riparia is not otherwise in default of its obligations under the Development Agreement, no payments of principal or interest shall be made by Riparia under the Bamford Loan.

3. Joinder of David K. Bamford. David K. Bamford, individually, joins in this First Amendment for the purposes of acknowledging and agreeing to the preceding conditions as to the discharge of the Bamford Mortgage and the repayment of the Bamford Loan.

4. Revised Project Schedule. The deadlines in the Project Schedule attached to the Development Agreement are hereby amended as follows:

**Phase 1-Dev**

12/20/14	Closing
01/30/15	Begin construction on Phase 1-Dev/Issuance of building permits
6/15/16	Completion of Phase 1-Dev, delivery of certificates of occupancy for buildings in Phase 1-Dev

**Phase 2-Dev**

12/1/18-3/1/19	Prepare Design Plans for Phase 2-Dev improvements
4/1/19	File Planning Board Application
4/1/19-8/1/19	Planning Board Approval/State and federal permitting process
9/1/19-10/1/19	Financing Process
6/1/19	Expiration of 30-Day Appeal Period
1/1/20	Begin Construction on Phase 2-Dev/Issuance of building permits
5/1/21	Delivery of certificates of occupancy for buildings in Phase 2-Dev

5. Sections 7.01(a) and (b) and 7.02 of Development Agreement. Sections 7.01(a) and (b), and 7.02 of the Development Agreement are hereby amended as follows:

“(a) *Phase 1-Dev Tax Guarantee.* Commencing upon the earlier of the tax year immediately following the date on which the Developer is issued a certificate of occupancy for the improvements in Phase 1-Dev, or the second payment of taxes for the 2016 tax year (which payment of which is due in June, 2016), the Developer shall guarantee that the *ad valorem* taxes attributable to the land, buildings and improvements for Phase 1-Dev shall be equal to those *ad valorem* taxes due as if the equalized assessed value of the land, buildings and improvements in Phase 1-Dev is no less than Five Million One Hundred Thousand Dollars (\$5,100,000.00)

(the "Phase 1-Dev Guaranteed Assessed Value"). Thereafter, and prior to the commencement of each of the succeeding twenty four (24) tax years (the "Tax Guarantee Period"), the Phase 1-Dev Guaranteed Assessed Value is likely to increase based on revaluation of the land, buildings and improvements in Phase 1-Dev. At no time during the Tax Guarantee Period shall the assessed value for the land, buildings and improvements in Phase 1-Dev decrease below the Phase 1-Dev Guaranteed Assessed Value. At any time during the Tax Guarantee Period, the City may conduct a revaluation of the land, buildings and improvements in Phase 1-Dev. The Phase 1-Dev Tax Guarantee shall terminate at the end of the Tax Guarantee Period.

(b) *Phase 1-Dev and 2-Dev Tax Guarantee.* Commencing upon the earlier of the tax year immediately following the date on which the Developer is issued a certificate of occupancy for the improvements in Phase 2-Dev, or the second payment of taxes for the 2021 tax year (which payment is due in June, 2021), the Developer shall guarantee that the *ad valorem* taxes attributable to the land, buildings and improvements for Phase 1-Dev and Phase 2-Dev shall be equal to those *ad valorem* taxes due as if the equalized assessed value of the land, buildings and improvements in Phase 1-Dev and Phase 2-Dev (the "Phase 1-Dev and Phase 2-Dev Guaranteed Assessed Value") totals no less than Ten Million One Hundred Thousand Dollars (\$10,100,000.00). Thereafter, prior to the commencement of each succeeding tax year during the Tax Guarantee Period, the Phase 1-Dev and Phase 2-Dev Guaranteed Assessed Value is likely to increase based on revaluation of the land, buildings and improvements in Phases 1-Dev and 2-Dev. At no time during the Tax Guarantee Period shall the assessed value for the land, buildings and improvements for Phase 1-Dev and Phase 2-Dev decrease to less than the Phase 1-Dev and Phase 2-Dev Guaranteed Assessed Value. At any time during the Tax Guarantee Period, the City may conduct a revaluation of the land, buildings and improvements in Phases 1-Dev and 2-Dev. The Phase 1-Dev and Phase 2-Dev Tax Guarantee shall terminate at the end of the Tax Guarantee Period.

The Developer shall cooperate with the City to provide information, including cost certifications, leases, and other documents in connection with each phase of the Project to permit an accurate assessed valuation for each phase of the Project.

#### **Section 7.02 Tax Shortfalls; Security for Tax Shortfalls.**

To the extent that in any tax year during the Tax Guarantee Period, the *ad valorem* real property taxes assessed for Phase 1-Dev are less than the Phase 1-Dev Tax Guarantee (the first payment of which is due as set forth in Section 7.01(a)), then the Developer shall be responsible for the payment of the difference (the "Ad Valorem Tax Payment Obligation").

To the extent that in any tax year during the Tax Guarantee Period, the *ad valorem* real property taxes assessed for Phases 1-Dev and 2-Dev are less than the Phase 1-Dev and Phase 2-Dev Tax Guarantee (the first payment of which is as set forth in Section 7.01(b), above), then the Developer shall be responsible for the payment of the difference (also an "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 of the obligation. The Ad Valorem Tax Payment Obligations shall be secured by the Performance Mortgages. Additionally, the first year of the Phase 1-Dev Tax Guarantee sum and the first year of the Phase 1-Dev and Phase 2-Dev Tax Guarantee sum shall be secured by a letter of credit or other form of surety reasonably acceptable to the City. Such surety for the Phase 1-Dev Tax Guarantee shall be posted with the City on or before the earlier of the issuance of the first certificate of occupancy for Phase 1-Dev or May 15, 2016. Such surety for the Phase 1-Dev and Phase 2-Dev Tax Guarantee shall be posted with the City on or before the issuance of the first certificate of occupancy for Phase 2-Dev.”

6. Defined Terms. Any capitalized terms not defined in this Amendment shall have the same meaning ascribed in the Development Agreement.

7. No Further Amendment. Except as amended hereby, the Development Agreement shall remain in full force and effect in accordance with its terms.

8. Governing Law. This Amendment shall be governed and construed in accordance with laws of the State of New Hampshire, without reference to the conflict of laws principles thereof.

9. Headings. The headings in this Amendment are for convenience only and shall not constitute a part hereof.

10. Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

*[The signature pages follow.]*

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the day and year first above written.

*Oliver E. Bessette*  
Witness

By:

**CITY OF DOVER, NEW HAMPSHIRE**  
*J. Michael Joyal, Jr.*  
J. Michael Joyal, Jr., City Manager

*Cheryl Anderson*  
Witness

By:

**FIRST STREET AT GARRISON, LLC**  
*David K. Bamford*  
David K. Bamford, Manager  
Duly Authorized

*Cheryl Anderson*  
Witness

By:

*Kevin McEaney*  
Kevin McEaney, Manager  
Duly Authorized

*Cheryl Anderson*  
Witness

By:

**RIPARIA-ONE HUNDRED FIRST STREET, LLC**  
*David K. Bamford*  
David K. Bamford, Manager  
Duly Authorized

*Cheryl Anderson*  
Witness

By:

*Kevin McEaney*  
Kevin McEaney, Manager  
Duly Authorized

*Cheryl Anderson*  
Witness

**DAVID K. BAMFORD**  
*David K. Bamford*  
David K. Bamford, individually, for purposes of joining Section 3 of this First Amendment