

DEVELOPMENT AGREEMENT

THIS AGREEMENT (the “Development Agreement” or “Agreement”) is dated as of September 27, 2022 (the “Effective Date”), and is made by and between **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 **Terra Nova, LLC**, and **Westfield, LLC** New Hampshire limited liability companies with an address of 340 Central Avenue Suite 202 Dover, NH 03820 (collectively the “Developer”).

R E C I T A L S :

- A. WHEREAS, the Developer intends to develop certain properties, including five derived from the lot formerly known as Map G, Lot 2, collectively consisting of 85 acres more or less, which fronts Littleworth Road, between Industrial Park Drive and Crosby Road, and the second being Map G, Lot 29 consisting of 75 acres +/- (also fronting on Littleworth Road) (collectively, the “Project Site”); and
- B. WHEREAS, the City owns an approximately 14 acre parcel, known as Map G Lot 19-B (the “City Parcel”), which the City intends to minimally develop along with utilize to provide buffers to existing abutting residential lots; and
- C. WHEREAS, the Developer’s 2 parcels and the City’s parcel are proximate to each other and have the same zoning. Development of the Project Site will bring significant tax revenues and jobs to the City of Dover. The Development will be a planned mixed use development with residential, commercial and industrial/manufacturing components; and
- D. WHEREAS, the Developer has proposed improvements for this area, as set forth at Exhibit A of this Agreement (the “Project Conceptual Plans”) and made part of this Agreement. The expected value of the Project, upon completion, is estimated at 150 Million Dollars (\$150,000,000.00); and
- E. WHEREAS, the Developer and the City wish to document their Agreement pursuant to which the City will reimburse Developer when, and if, Developer completes certain public improvements and receives a certificate of occupancy, in phases, for commercial/manufacturing buildings valued at a level which will generate property tax revenue to the City at a rate of 100% of the value the City reimbursed the Developer for infrastructure work; and
- F. WHEREAS, the City is interested in expanding diversity of commercial and residential development throughout the city; and

- G. WHEREAS, the Developer is interested in redeveloping the Project Site, and is seeking the highest and best use of the Project Site through the development of the Project (as that term is defined herein below) on the Project Site; and
- H. WHEREAS, the City desires to provide attainable housing to residents within the community, and ensure that existing residential abutters to the Project Site have reasonable screening to the Project; and
- I. WHEREAS, the City desires to provide incentives to the Developer to facilitate the redevelopment of the Project Site; and
- J. WHEREAS, the City desires a roadway connecting Crosby Road and Industrial Park Road which will cross Tax Map G, Lot 2, commonly known as the “Riley or Westfield Lot”. This roadway will have utilities underneath it which will enhance connectivity and efficiency of the utility networks. This roadway and utilities may be constructed in phases, as per an approved site plan; and
- K. WHEREAS, the Parties have executed a Term Sheet dated February 28, 2022 (the “Term Sheet”), which was revised and signed on September 13, 2022, which is attached hereto as Exhibit E.

NOW THEREFORE, in consideration of the mutual covenants herein set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01 Definitions.

The following terms shall have the meanings ascribed to them in this Article I for purposes of this Development Agreement. Unless otherwise defined below, capitalized terms used herein shall have the meaning as set forth in this Agreement.

“*Ad Valorem Tax Payment Obligation*” shall have the meaning set forth in Section 5.02 of this Agreement.

“*Agreement*” or “*Development Agreement*” shall mean this Agreement, as amended or supplemented from time to time.

“*Attainable Unit*” shall have the meaning of a residential unit which if rented, shall have a rental rate which shall not exceed the HUD 80% Rent Limit for the Portsmouth/Dover/Rochester MSA, and shall be rented to tenants earning no more than 80% of the median income for the Portsmouth/Dover/Rochester MSA, or shall be a unit accepting a housing choice voucher.

Furthermore, per Section 4, units may be sold to end users and not rented, so long as the sales price for a unit follows a commensurate pricing methodology to the HUD 80% Rent Limit for the Portsmouth/Dover/Rochester MSA, and such HUD-restricted sales price limitation is permanent and applies to all future sales of the subject property.

“*City*” means the City of Dover, New Hampshire having an address of 288 Central Avenue, Dover, New Hampshire 03820.

“*City Council*” means the City Council for the City of Dover.

“*City Manager*” means the City Manager for the City of Dover.

“*Developer*” recognizing that Terra Nova, LLC and Westfield, LLC are under common control and intend to engage in this project in a joint and concerted fashion, the term “Developer” herein shall collectively mean Terra Nova, LLC and Westfield, LLC, and its/their agent Summit Land Development, LLC or assigns as permitted in Section 7.05. Where the term “Developer” is used on the context of a specific parcel of land, the term shall be deemed to refer to the current owner of said parcel.

“*Development Agreement*” or “*Agreement*” means this Development Agreement, by and between the City and the Developer, as amended or supplemented from time to time.

“Guaranteed Assessed Value” shall have the meaning ascribed to it in Section 5.01 of this Agreement.

“*Person*” means an individual, a corporation, a limited liability company, a partnership, a limited liability partnership, an association, a joint stock company, a joint venture, a trust, an unincorporated organization or a government or any agency or political subdivision thereof.

“*Planning Board*” means the City of Dover Planning Board.

“*Project*” shall mean the development of the Project Site as a multi-use project containing three or more commercial/industrial buildings on the land formerly known as Map G Lot 2, and 2 or more 2-story or taller buildings with commercial or commercial/residential uses located anywhere in the buildings and a variety of residential housing located on Map G, Lot 29. These private improvements are envisioned together with the Public Improvements, all subject to the approval of the City. Development of the Project may be phased, up to ten years, subject to approval of the Planning Board. The Project, as envisioned and defined by this Agreement, is more fully depicted at Exhibit A and C and described in Exhibit B.

“*Project Approvals*” means all final, unappealed and unappealable federal, state and local permits required for the construction and use of the Project, including, but not limited to, site plan and subdivision approval from the Dover Planning Board, one or more conditional use permits from Dover Planning Board, and an Alteration of Terrain Permit from the New Hampshire Department of Environmental Services (if necessary), all in form and content, and with conditions, satisfactory to the Developer.

“*Project Site*” shall have the meaning ascribed to it in the Recitals of this Development Agreement.

“*Public Improvements*” shall have the meaning ascribed to it in Section 4.06 of this Agreement.

“*Soft Costs*” shall have the meaning of expenses that are not directly related to labor nor the physical building materials needed for the project, such as permit fees, engineer or architect fees, finance related fees, legal fees or project management fees.

“*Tax Guarantee Period*” shall have the meaning ascribed to it in Section 5.01 of this Agreement.

ARTICLE II

CONDITIONS PRECEDENT

This Agreement shall be fully conditioned and contingent upon the satisfactory resolution of the conditions precedent listed below in this Article II.

Section 2.01 Underlying Zoning

The Project is and at time of the Project Approvals, timely sought in accordance with the Approval Expiration Date stated in Section 4.01 below, remains upon land zoned “Commercial/Manufacturing” (CM). Per Chapter 170 of the Zoning Code, the purpose of which is “to provide appropriate locations for manufacturing, assembly, fabrication, packaging, distribution, storage, warehousing, wholesaling and shipping activities that expand the economic base of the City and provide employment opportunities.” Should the Project be re-zoned prior to the Developer having adequate opportunity to timely seek the Project Approvals and in such a way as to adversely affect the Developer’s ability to obtain the Project Approvals, then the Developer may terminate this Agreement without further obligation and without recourse against Developer.

Section 2.02 Overlay Zoning District

The parties hereby recognize that this Agreement is conditioned upon the Developer successfully obtaining a Conditional Use Permit enabling the Project to utilize the City’s “Residential/Commercial Mixed Use Overlay District” (RCM). Satisfactory issuance of the aforesaid Conditional Use Permit shall be a condition precedent to the parties’ other obligations in this Agreement. If the Developer cannot obtain approval of the aforesaid Conditional Use Permit by the Approval Expiration Date stated in Section 4.01 below, then Developer may terminate this Agreement without further obligation and without recourse against Developer.

Section 2.03 Roadways/Encumbrances

The parties recognize that the roadways discussed in Section 4.06 below and their locations are conceptual and have not yet been finally determined. Accordingly, all obligations of the City in this Agreement shall be conditioned upon, and contingent upon, the parties mutually agreeing in the future on placement of the roadways and utilities, with the goal of eliminating entirely (or minimizing, at the City's sole election) easements or any other encumbrances in the roadways. If the parties cannot agree on the location of roadways and/or eliminate easements or any other encumbrances on the roadways discussed in Section 4.06 below, then the City may terminate this Agreement without further obligation and without recourse by Developer (and/or any success or assign of Developer) against the City.

Section 2.04 Developer's Tax Payments/Ongoing Financial Obligations

If for any reason *ad valorem* taxes and/or any Supplementary Payment Obligation as defined in Article 5.02 below are not timely paid to the City by the Developer, then at the City's election, the City may terminate this Agreement and any further payment or obligation of the City pursuant to this Agreement without recourse by the Developer (or its/their successor or assigns), after compliance with the notice and cure provisions of Section 6.01A.

ARTICLE III

REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 3.01 Representations, Covenants and Warranties of the Developer.

The Developer represents, warrants and covenants for the benefit of the City as follows:

- A. *Organization.* The Developer has the power and authority to own its properties and assets, and to carry on its business in the State as now being conducted and as hereby contemplated.
- B. *Authority.* The Developer has the power and authority to enter into and to perform its obligations under this Development Agreement, and has taken all actions necessary to cause this Development Agreement to be executed and delivered, and this Development Agreement has been duly and validly executed and delivered by the Developer.
- C. *Binding Obligation.* This Development Agreement is a legal, valid and binding obligation of the Developer, enforceable against the Developer in accordance with its terms, subject to bankruptcy and other equitable principles.
- D. *No Conflict.* The execution and delivery by the Developer of this Development Agreement and compliance with the provisions hereof, do not and will not in any material respect conflict with or constitute on the part of the Developer, a breach or default under any agreement or instrument to which it is a party or by which it is bound.

- E. *Litigation.* As of the date of this Development Agreement, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, public board or body, pending or, to the best of its knowledge, threatened by or against the Developer: (i) in any way questioning its due formation and valid existence; (ii) in any way contesting or affecting the validity of this Development Agreement or the consummation of the transactions contemplated hereby; (iii) which would have a material adverse effect upon the financial condition of the Developer, or any of its principals, or its ability to perform its obligations under this Development Agreement.

Section 3.02 Representations of the City.

The City represents and warrants to the Developer as follows:

- A. *Organization.* The City is a body corporate and politic and a political subdivision of the State of New Hampshire and has the full legal right, power and authority to enter into this Development Agreement, and to carry out and consummate the transactions on its part.
- B. *Authority.* Upon execution of this Development Agreement by the City Manager, the City, by all necessary official action of the City, shall have duly authorized and approved the adoption, execution and delivery by the City of, and the performance by the City of the obligations on its part contained in this Development Agreement. Such authorizations and approvals shall be in full force and effect and shall not have been amended, modified or rescinded, and this Development Agreement shall have been duly executed and delivered and is enforceable against the City, subject to bankruptcy and other equitable principles.
- C. *Litigation.* There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, public board or body, pending or, to the best of its knowledge, threatened by or against the City: (i) in any way contesting or affecting the validity of this Development Agreement or the consummation of the transactions contemplated hereby; or (ii) in any way affecting the timely construction of the Project.

Section 3.03 No Implied Approvals by City.

Nothing contained in this Development Agreement shall constitute, be deemed to constitute or imply that the City Council, or any City board, department, office, or agency, officer, or employee of the City shall approve, authorize, or consent to any action or activity within or required for the development of the Project or the Project Site, including any land use approval, requirements for the provision of public utilities or services, or any administrative, judicial, quasi-judicial, or legislative action, unless and until such respective authorizations, approvals or consents are duly and properly issued by the City Council, and/or the City's respective board, department, office, agency, officer or employee.

Section 3.04 No Waiver of Ordinances, Rules or Regulations.

Nothing herein shall be construed as affecting any party's rights or duties to perform their respective obligations and fulfill their respective responsibilities under any zoning ordinances, use regulations, building codes, or subdivision requirements, or any other laws, regulations, rules, codes or statutes relating to the development of the improvements anticipated as part of the Project or the Project Site.

ARTICLE FOUR

PROJECT APPROVALS, CITY INCENTIVES AND ACKNOWLEDGMENTS

Section 4.01 Site Plan Approval; Construction.

It shall be the duty of the Developer, no later than March 31, 2023 (the "Approval Expiration Date") to: (i) ascertain and obtain any and all Project Approvals including final, unappealable site plan approval for the build-out of the first phase of the Project components upon Map G lot 2, and its subsequent child lots, and shall satisfy all conditions precedent pertaining to such approval, including receipt of all applicable federal, state and local permits and approvals, and (ii) develop and submit a concept for the full build-out for the City Manager's approval pursuant to this Agreement. The Approval Expiration Date may be extended, by mutual agreement in writing, upon the reasonable request of Developer. The permits and approvals for the Project shall be in compliance with any and all applicable ordinances, codes, rules and regulations of the City of Dover and/or the State of New Hampshire. If the site plan is not approved by the Approval Expiration Date, or if, once received, any permits and approvals related thereto lapse due to passage of time and/or Developer's failure to act, (either event being an "Approval Default"), the City or Developer may terminate this Agreement by written notice to the other party. Notwithstanding the foregoing, in the event of an Approval Default, either party may elect, in its reasonable discretion, to provide the defaulting party with additional time, in writing, to cure the Approval Default.

The full build out design and permitting of the Project shall commence by July 1, 2025, and shall be completed, subject to amendments per the Site Plan regulations, by July 1, 2027. Recognizing that the size and scope of the project will take time to build-out, the Developer may work with the Planning Board to indicate Phase lines for the full build-out of the Project. Furthermore, the parties agree that from time to time, the Developer may need to revisit and revise the site plan, through the prescribed amendment process within the Site Plan Review Regulations. Prior to submission, the Developer shall review the proposed changes with the City to ensure the changes comply with this Agreement.

Section 4.02 Project Status

During the term of this Development Agreement, the Developer shall, upon request, supply the City with any relevant information regarding the Project.

The parties agree that on or about ten years after the signing of this Agreement, the parties shall convene to discuss remaining development opportunities within the Project and develop a concept timeline for completion.

Section 4.03 Abutter Meetings.

Following the date this agreement is signed, the Developer shall hold meetings with the abutters to the Project Site prior to: (a) Planning Board approval of the site plan application for the Project; and (b) commencement of any construction on the Project Site. At Developer's sole cost, these meetings shall be noticed to the City, and shall employ the same abutter list generated for the site plan submission to the Planning Board. The Developer shall invite the City and provide a copy of the attendance list to the City upon completion of the meeting.

Section 4.04 Design and Architecture.

The Developer acknowledges and agrees that, if and when constructed, the Project shall be constructed in accordance with this Agreement, including those improvements identified below, and the Permits and Approvals. The construction of the Project shall also comply with the applicable codes, ordinances, rules and regulations of the City and the State of New Hampshire.

While the full build-out is envisioned as one larger project, the overall design shall be cohesive and give the feeling that the development was coordinated within the two parent parcels. The Residential Commercial Mixed Use overlay district describes the relationship between residential and commercial development and timing of the two areas. This timing shall be documented in a phase plan approved with the site plan. The final design shall be consistent and similar to the renderings and images included in Exhibit A, which will be replaced with the site plan renderings.

While it is understood that the commercial/manufacturing buildings located on Map G lot 2 will not be integrated physically with the commercial/residential buildings located on Map G lot 29, both elements of the Project shall use durable materials whenever possible, with the following considerations given to the design of the commercial/manufacturing buildings:

- A. Consider the context of the buildings location
 - i. Where visible from Littleworth Road, the buildings should include more architectural details, then those accessed/visible primarily from Crosby Road
 - ii. Where visible from Littleworth Road, parking should be to the side and rear of the building, so that it does not dominate the streetscape
 - iii. If fronting on Littleworth Road, street trees should be provided between the roadway and buildings.
 - iv. Buildings should be of a compatible scale, massing and style with each other and create a transition from the existing built environment
- B. Employ quality architecture which defines the character of the park
 - i. Use architectural details to define entranceways and provide transitions between office, warehouse and manufacturing sections.
 - ii. Incorporate windows in non-industrial portions of the building to break up the massing
 - iii. Incorporate landscaping into the overall design as a tool to provide variety of massing and add texture
 - iv. Where possible break up roof lines

- C. The carbon footprint will be minimized as much as possible incorporating energy-saving provisions into the architecture and construction.
- D. Landscaping should be designed to provide aesthetic, stormwater management and passive recreational uses, where possible.
- E. Signage shall be located and installed to prevent visual clutter
 - i. On buildings, place signs so they do not dominate or obscure the architectural elements of the building design.
 - ii. Park identification signs should provide the name and directional information, as needed for all tenancies.

Section 4.05 Changes to Project Conceptual Plans, Design, Construction.

During the Developer’s prosecution of the Permits and Approvals, the Developer may alter the design of the Project, as described in this Development Agreement, including the Project plans at Exhibit A and the Project description at Exhibit B, subject to the consent and written approval of the City, acting by and through its City Manager (or designee), which approval shall not be unreasonably withheld. Any changes to the design or construction of the Project considered material by the City Manager, in the City Manager’s sole discretion, shall require approval by the City Council. Following the issuance of Permits and Approvals, any material changes to the design or construction of the Project which vary from the Permits and Approvals, shall require the approval of the appropriate board, department, office, agency, officer or employee, in addition to the approval of the City, as set forth above.

Furthermore, it is understood by the parties that should the Developer purchase directly adjacent parcels of land, they can approach the City about including them within the overall Project plan subject to the City Manager agreeing to expand the scope of this Agreement as memorialized in an amendment to this Development Agreement, the terms of which shall require prior approval of City Council.

Section 4.06 Development of Public Improvements; Reimbursement by City

As part of the Project, the Developer shall design, engineer and install or cause the design, engineering and installation of, with consultation from and the written approval of the City, the following two roadways systems and related utility connections (“Public Improvements”), as shown in the plans at Exhibit C and as stated below:

- A) Roadway - Westfield.
 - i) Completion of the connector roadway and utilities through the lots created from the former Map G lot 2 to include:
 - a) Roadway surface sufficient for industrial traffic, which shall provide for basic pedestrian use as needed
 - (1) No on street parking shall be provided
 - (2) Said connection road shall be designed to be phased in with development as it occurs on the parcel, and may include a full connection or partial

“Emergency” connection depending on the traffic impacts of the proposed development.

- b) Street lighting consistent with the City’s standards for industrial development
 - c) Utilities shall connect Crosby Road and Industrial Park Road and enhance service in the area.
- ii) Construction and installation of a traffic control device at the westerly intersection of Industrial Park Road, Littleworth Road and the main access way to Map G lot 29, as deemed necessary by the City and the New Hampshire Department of Transportation.

B) Roadway – Terra Nova.

- i) Construction and installation of a new multi legged roadway and utility network designed to promote development within Map G lot 29.
 - a) Roadway construction may vary depending on the type of traffic envisioned for the various phases/section of the roadway.
 - b) Where mixed use buildings or residential uses occur, sidewalks shall be constructed
 - c) Where commercial and/or mixed use buildings occur, on street parking shall be designed and implemented.
 - (1) Said roadway shall be designed to be phased in with development as it occurs on the parcel, and may include a full connection or partial “Emergency” connection depending on the traffic impacts of the proposed development.
 - d) Street lighting consistent with the City’s standards for downtown development
 - e) Where possible, utilities shall connect with existing utilities on Littleworth Road, Columbus Avenue, Wallace Drive, Luck Lane/Court and Sandra’s Run.
 - (1) It is expected that sanitary sewer will connect to the City’s sanitary sewer line located on Map G lot 19B.

C) The Developer and its professional agents shall work through and with the approval of the City Manager, or designee, to design the roadway and utility connections. This work shall be completed as part of the Site Plan approval process and shall be contained within the approved site plans.

D) The parties expect that the foregoing roadways will be ultimately dedicated as public roads to the City by the Developer and, if accepted by City Council, conveyed to the City. The City Council has sole discretion whether to publicly accept any new public road. To facilitate the Developer’s request for public acceptance of the foregoing roadways, both parties expect that any such roadways created will be designed, and constructed, to public/City standards and will not have encumbrances or encroachments which may inhibit public acceptance by the City, and, if said roadways are intended to be conveyed and dedicated to the public, that the Developer shall ensure said roadways meet the public/City roadway acceptance criteria currently developed by City staff and in effect as of the date this Term Sheet is executed by all parties. The Parties agree that the City Manager is under no obligation to bring the request to convey a roadway to the City

Council for acceptance, until the checklist, contained in Exhibit F, has been completed and submitted by the Developer.

The City agrees to reimburse Developer, as phases are completed, for the cost to complete the above Public Improvements, as portions of the private development are completed and generate the payment of real estate taxes to the City. Developer will incur all costs necessary to build approved infrastructure. The City intends to utilize bond financing for reimbursement costs. The annual cost of bonding will be paid for from the property taxes generated by the new development on the Project Site, per section 5.01.

Forty-five (45) days after the issuance of the certificate of occupancy for a private improvement of real property, the City shall begin to reimburse the Developer, in a lump sum payment per phase, for commercially reasonable costs expended by the Developer on the Public Improvements for that phase. Reimbursement requests shall be made in writing with supporting invoices and other documentation reasonably satisfactory to the City, demonstrating the costs of the Public Improvements incurred by the Developer. While project management and finance fees may be included, profit, or markups shall not be reimbursed by the City.

- A. The City shall have the right to request pre-construction cost estimates before construction commences. Approval of said cost estimates shall not be unreasonably withheld and any comments shall be provided, in writing, within ten business days.
- B. The City shall be under no obligation to reimburse Developer until there are private improvements on the Project Site generating tax revenue in accordance with the provisions of Article V below.
- C. This reimbursement will continue over time, as phases are completed, and certificates of occupancy are received for the private development that accompanies the Public Improvements, until such time as the Developer has been reimbursed for all actual costs incurred at the time of the project construction, of the Public Improvements (including reasonable Soft Costs).
 - (i) If a scenario arises where the improvement made to a parcel does not include a building, but public economic benefit (tax assessment, job creation etc) can be documented, a certificate of completion shall be issued and shall equal a certificate of occupancy as outlined above.
 - (ii) It is expected that during the 45 day window after a certificate of occupancy, the Developer shall petition the City to publicly accept the fee interest in any right of way planned to be public, by warranty deed along with any related easements or other property rights necessary. Failure to do so, without a mutually agreed-upon extension, may, at the City Manager's discretion should Developer not reasonably and diligently act to further the public acceptance request, delay the City's reimbursement payment(s).
 - i. The parties acknowledge that the dedication process may exceed the 45 day window due to no fault or inaction by Developer, and that

reimbursement shall not be withheld pending the City Council review of the dedication request unless reasonably warranted.

Section 4.07 Conservation Easements

In accordance with the following requirements, the Developer shall place conservation easements within certain areas of the Project:

- A. A conservation easement shall be placed by Developer over any undeveloped greenspace areas left after the development of Map G lots 29 and 24B, is completed, as identified on the Concept Plan referenced in Exhibit A:
 - i) If there are areas suitable for public access, whether trails or other form of passive or active recreation, the Developer shall either convey the land to the City, or include this within the conservation easement with a grant of public access to this area. Any trails or improvements created may, if allowed by applicable law, count towards the required active and passive recreation components described in 170-15 of the City Code.
 - ii) The Developer may, at its option, utilize the City's recreation easement upon Map G lot 24J to create active or passive recreation features to be used by the public, including any residents the Project generates. If the Developer elects to pursue this option, it may request that the cost to develop the feature be credited to its Recreation Impact Fees, assuming an impact fee waiver is ultimately approved in accordance with applicable law.
 - iii) If sufficient active or passive recreation value is present, per section 5.04, the improvements upon Map G lot 24J for active or passive recreation may support a waiver of recreation impact fees, subject to prior public approvals pursuant to applicable law.
- B) The parties also intend that the City shall eventually convey the City Parcel to the Developer as part of the Project, in order for the acreage of the City Parcel to be used within the Project to enable several conservation easement areas as follows.
 - i) The City shall join in any necessary Project Approvals to include and show the City Parcel as being an intended part of the Project, including abandonment of any lot lines for the City Parcel. The City shall, upon the Developer successfully obtaining at least conditional approval of the Project Approvals, convey the City Parcel to either Terra Nova, LLC, Westfield, LLC, or their designee, subject to the conditions and limitations of this paragraph and set forth below.
 - ii) Within the Project, the Developer shall place a conservation easement over the same or substantially similar acreage as the City Parcel, which conservation area

shall remain in a natural state, subject to maintenance/removal of dead/diseased or hazardous conditions, with no structural improvements, as follows. First, this encumbered conservation easement area shall include an area between the common boundary with the Wyndbrook Subdivision and a line parallel to that boundary 150 foot deep. Second, the encumbered conservation easement area shall also include an area of Map G lot 29, which shall provide buffer to adjacent existing residential developments of Lucy Lane and Wallace Drive. Third, the remaining acreage to be placed by Developer in encumbered conservation easement shall be located to provide buffer to residential homes along Columbus Avenue.

- iii) Transfer of the City Parcel to the Developer shall be by quitclaim deed subject to all existing easements/interests/encumbrances and with the City's ability to reserve any necessary utility/sewer or other public easements. Prior to conveying the City Parcel, the Developer shall have created and conveyed to the City, a conservation easement, or easements, in equal land area to the City Parcel. The City shall have no obligation to convey the parcel, unless and until the conservation conveyance has occurred. With respect to any transfer of the City Parcel to the Developer, Developer shall be responsible for payment of any, and all real estate transfer taxes due.

Prior to the conveyance of the City Parcel to the Developer, the City Manager is authorized to act as a co-applicant, as necessary on any site plan or subdivision of land applications required by the Planning Board for review.

Section 4.08 Attainable Residential Units

The parties agree that diversity of housing is important, and that diversity includes architectural design and economic attainability. Developer agrees to create at least 80 Attainable residential units in the Project Site for buyers or renters. For rental units, the restriction will be in place for a twenty (20) year period, which shall begin with the issuance of the Certificate of Occupancy for the first residential unit. To ensure this provision is adequately accomplished, the City and Developer agree that:

- A. The rental units are permitted to float within the Project; the designated units may change over time so long as the total number of restricted units remains constant.
- B. At each lease-up of a rental unit, the tenant and property manager shall fill out a tenant income certification form and keep on file at the property manager's office. The City shall have access to the form and should any violation be found, the owner and/or property manager shall have sixty (60) days to cure the violation. For any violation that is found or discovered by the City and that is not timely cured, the City may impose as a remedy a mandatory additional Restricted Unit for a period of up to 12 months (to be added to the original twenty-year period) by issue written notice of same.

- C. The tenant income certification forms shall be updated every twelve (12) months. Should any tenant no longer meet the income eligibility requirements of the Restricted Units, the unit will continue to count towards the total for up to twelve (12) months while the property manager identifies and leases a different unit to a tenant who complies with the income requirements? The Attainable Unit designation will transfer to the newly leased unit.
- D. The obligations set forth in this section shall be administered through either option listed below:
- i. For every 20 units occupied, 3 unit Attainable Units shall be provided.
 - ii. The obligation may also be met through the acceptance of HUD Housing Choice Vouchers. If elected, for every 20 units occupied, 2 unit Attainable Units shall be provided.
- E. Any units for-sale shall be encumbered by all restrictions (and resulting deed restrictions) set forth or provided for in this Section 4.08 applicable to the Project Site shall run with title to the Project Site and bind any subsequent owner, successor or assign of the Project Site (or any portion thereof), including any unit owner to whom any unit is sold, by way of mutually agreed-upon deed restrictions, covenants running with the land, or other similar mechanisms, any and all of which shall be filed with the Strafford County Registry of Deeds in first priority and must be superior in title to any other mortgage, encumbrance, or other interest of record encumbering or affecting the Project Site. Such deed restriction(s) shall be drafted by Developer in a form satisfactory to the City.
- F. The parties furthermore agree that Attainable Units may be sold as opposed to rented, and if such Attainable Units are sold as opposed to rented, then at Developer's election the calculation of Attainable Units may be modified, as outlined in section D above, in the following manner:
- i. For-sale units shall be deed restricted with the Attainable Unit restrictions as defined in this Agreement for the life of the unit. Such deed restriction(s) shall be drafted by Developer in a form satisfactory to the City.
 - ii. Each for-sale unit shall equate to 2 rental units.
 - iii. Should the development of for sale units exceed 40 units, the Developer may elect to remove the rental restriction on any previously constructed and occupied Attainable unit rented within the project, as lease terms allow.
- G. The Developer shall have the right to create the Attainable Units within the Project or, should Developer elect, within the Pointe Place development upon Map K lot 19 but only provided the conditions and limitations in this subparagraph are met. Attainable Units constructed upon the Pointe Place development upon Map K lot 19 may only be used to satisfy the Developer's obligations in this Agreement provided: (1) Developer shall prepare necessary covenants or restrictions imposing the Attainable Unit requirements and limitation stated herein on Map K lot 19 in favor of and enforceable

by the City, said covenants or restrictions to be satisfactory to the City and approved by the City in advance in writing; (2) the aforesaid covenants or restrictions must be recorded in the Strafford County Registry of Deeds in first priority on Map K lot 19, superior in title to any other mortgage, encumbrance, or other interest of record encumbering or affecting Map K lot 19; and (3) the aforesaid covenants or restrictions must be in effect for a 20-year period in the case of rental units, and in perpetuity for any for-sale unit, and must run with the land and bind any subsequent owner, successor or assign owning Map K lot 19 or any portion thereof (including any owner to whom any unit is sold).

- H. The parties furthermore agree that if the Developer provides more than 80 Attainable Units, the Developer may choose one following terms for the rental restrictions to apply:
- i. For every 4 for-sale Attainable Units provided above the 80-unit requirement set forth in Section 4.08 above up to a maximum of 100 additional Attainable Units above the 80-unit requirement, the term for rental restriction shall be reduced by a year, though at no point, shall the term be less than 15 years, and/or
 - ii. For rental Attainable Units (HUD or Housing Choice), units provided above the 80-unit requirement set forth in Section 4.08 above up to a maximum of 105 additional Attainable Units above the 80-unit requirement, at the Developer's election, the following options may be exercised:
 - a. For every 5 units provided above the 80-unit requirement set forth in Section 4.08 above, the term for rental restriction, for all units, shall be reduced by a year, though at no point, shall the term be less than 15 years; or
 - b. The term for rental restriction for the excess unit shall be for five years
 - iii. Should the Developer utilize ii. a. above and seek to permit and construct more than 105 Attainable Units, then ii. b. shall be applicable to those excess units, but such excess Attainable Units shall not otherwise modify or reduce the requirements of the Attainable Units set forth in this Agreement.
- I. Finally, the parties agree that regardless of the formula utilized by the Developer's to satisfy the requirements of the Attainable Units, the Developer shall be accountable for the creation of the units so that no more than 50% of the total units created can be occupied (nor shall Developer request or seek a Certificate of Occupancy in excess of this amount) until 75% of the Attainable Units have been created and have Certificates of Occupancy.

Section 4.09 Issuance of Building Permits for Project.

Notwithstanding the foregoing, no construction may commence for the Project until any roadway deeds necessary to convey the proposed right of way to the City have been drafted and submitted to the City staff for review and preliminary staff approval. This submission does not constitute the petition for dedication outlined in Section 4.06. Said deed shall not be executed or

recorded until the Developer has constructed the roads to City standards, completed all items on the City's road acceptance checklist, and requested the City accept the roadway, and the City Council has approved said acceptance.

Section 4.10 InvestNH

The State of New Hampshire has developed a multi-pronged program known as InvestNH for incentivizing affordable housing in the State through the use of ARPA funds. There are 4 areas of the program:

- Capital Grant: (\$60M) targeting developers who create affordable housing. The money can offset construction costs.
- Municipal Per Unit Grant (\$30M) targeting municipalities which issue permits for approved projects. Funds are for infrastructure.
- Municipal Zoning Grant (\$5M) targeting municipalities which want to add density to zoning regulations.
- Municipal Demolition Grant (\$5M) targeting municipalities which want to demolish vacant or derelict buildings.

The parties agree that to the full extent possible they will, at all times throughout the period this Agreement is in effect, upon reasonable request of the other party, cooperate and if necessary or requested jointly apply for and secure funding through the program, particularly through the Capital Grant and Municipal per Unit Grant for this project. Details for the program, and the application process, should be available in the summer/fall 2022.

ARTICLE FIVE

TAX GUARANTY

Section 5.01 Taxes.

A critical element in the decision of the City to enter into this Development Agreement and to undertake reimbursement of some of the costs for the Public Improvements, which shall inure, in part, to the benefit of the Developer, is the generation of *ad valorem* real property taxes for the productive redevelopment of the Project Site. To that end, the Developer warrants that:

- A. *Property Value Guarantee.* Beginning on April 1 of the year immediately following the date on which the Developer is issued a certificate of occupancy for the proposed phase for which reimbursement is sought ("Start Date") and adjusted year to year as needed thereafter in accordance with the City's real estate tax assessment process, the City and the Developer agree that the overall assessment value of the Project, including the Project Site, for *ad valorem* tax purposes, shall be 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, which is one times the sum of the actual expense to the City to retire, over a ten (10) year period, the bond, or portion thereof, issued by the City to provide funding for the public infrastructure Reimbursement, including interest at rates then applicable to the

issued bond, plus its reasonable costs, expenses and fees related to the issuance and servicing of the bond, (the “Guaranteed Assessed Value”). Example: If the public infrastructure annual debt payment is \$100,000, the new development will need to generate \$100,000/year in property tax revenue. In the event that following the setting of the Guaranteed Assessed Value, the City discovers any other costs, expenses and fees related to the issued bond which were not included in the calculation of the original Guaranteed Assessed Value figure or if the Guaranteed Assessed Value was set based on estimates of such interest, costs, fees and expenses that do not reflect the actual interest, costs, fees and expenses, the City, following written notice to the Developer and an opportunity not to exceed thirty (30) days for Developer to raise issues regarding the validity or applicability of such interest, costs, fees and expenses, may modify the Guaranteed Assessed Value unless such interest, costs, fees and expenses were known and should have been included in the setting of the Guaranteed Assessed Value, but were omitted due to the reckless, willful or wanton (but not negligent) conduct of the City.

- B. *Tax Guarantee Period.* For a period of twenty (20) years commencing on the date on which the City first establishes the Guaranteed Assessed Value (“Tax Guarantee Period”), the City and the Developer agree that the value of the Project, including the Project Site, for *ad valorem* tax purposes shall be the greater of the Guaranteed Assessed Value and the actual assessed value of the Project, including the Project Site, determined by the City as a result of any valuation or revaluation the City may conduct during the Tax Guarantee Period. The Developer, for itself, its successors and assigns, and for any tenants or occupants who come to occupy the Project Site during the Tax Guarantee Period, expressly waives any and all suits, claims, and petitions related to the Guaranteed Assessed Value during the Tax Guarantee Period, only, but not as to the right to file for an abatement of taxes relative to any assessment of the value of the Project to the extent such value exceeds the Guaranteed Assessed Value. At no time during the Tax Guarantee Period shall the assessed value of the Project, including the Project Site, decrease below the Guaranteed Assessed Value for *ad valorem* tax purposes. At any time during the Tax Guarantee Period, the City may conduct a revaluation of the Project, including the Project Site. The provisions of this section shall terminate at the end of the Tax Guarantee Period. The parties shall record a notice of this Development Agreement in the Strafford County Registry of Deeds in the form of the notice attached as Exhibit F, which notice shall be discharged 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 the Project to permit an accurate assessed valuation for the Project, including the Project Site.

Section 5.02 Tax Shortfalls.

To the extent that in any tax year during the Tax Guarantee Period, the *ad valorem* real property taxes assessed for Project Site are less than the Guaranteed Tax Assessment Value for that year (as provided above), then the Developer shall be responsible for the payment of the difference to the City as if the Project Site was assessed at the Guaranteed Tax Assessment Value

(the “Supplementary Payment Obligation”), said payment to occur within 30 days of an invoice issued to Developer. Any Supplementary Payment Obligation shall be due and owing at the same time that taxes are generally due for City property owners, and shall be invoiced by the City’s Finance Department separate from the Developer’s ad valorem taxes. If for any reason *ad valorem* taxes and/or any Supplementary Payment Obligation are not timely paid to the City by the Developer, then at the City’s election, the City may terminate this Agreement and any further payment or obligation of the City pursuant to this Agreement without recourse by the Developer (or its/their successor or assigns).

Section 5.03 Impact Fees

All impact fees for the Project shall be paid on or before the Certificate of Occupancy is issued to the Developer for the completed phase of the project, in accordance with applicable law. The Planning Board may agree to waive an Impact Fees in exchange for infrastructure in keeping with Article 170-23(F) of the City of Dover Impact Fee Ordinance. In the event this waiver requires City Council approval, the applicable provisions of this Development Agreement pertaining to the waiver of impact fees shall be binding upon the City Council given its prior authorization of this Development Agreement.

ARTICLE VI DEFAULT

Section 6.01 Events of Default.

The following shall constitute events of default under this Development Agreement:

- A. *Material Breach of Agreement.* The material breach by the Developer of its duties and obligations under this Agreement or any related agreement or document, including the failure to pay any sums pursuant to this Agreement, when due, followed by the failure by the Developer to cure such breach within twenty-one (21) days of written notice of such breach by the City; or such additional time as is reasonably needed to cure such default, provided the Developer is diligently pursuing a cure of the default.
- B. *Failure to Adhere to Agreement.* The failure of the Developer to fulfill those duties and obligations in a timely manner, as set forth in this Development Agreement.
- C. *False Statements.* Any statement, representation or warranty made by the Developer in this Development Agreement or in connection herewith, or any statement, report, schedule, certificate, or other instrument furnished by the Developer proves to be false, incorrect or misleading in any material respect;
- D. *Invalid Agreement.* Any material provision of this Development Agreement or any related agreement or document which, at any time for any reason, ceases to be valid and binding on or declared to be null and void, or the validity or enforceability thereof shall be contested

by the Developer, or the Developer denies that it has any or further liability or obligation under this Agreement or any other related agreement or document.

- E. *Failure of Security.* If the security interests and liens created by the Performance Mortgage shall cease to be valid and perfected security interests or liens, as the case may be, in favor of the City with the priorities stated therein.
- F. *Failure to Obtain or Lapsing of Permits and Approvals.* The occurrence of any Approval Default, including the failure of the Developer to obtain and/or maintain in a timely manner all permits and approvals, including any certificates, permits, variances, special exceptions and/or other approvals from all federal, state and municipal authorities, including without limitation all approvals and permits relating to subdivision and site plan review, architectural design review, zoning, building codes, water supply and sewage, and environmental laws relating to the development of the Project and the Project Site.
- G. *Attempted Assignment.* The Developer assigns or attempts to assign its rights under this Development Agreement or any interest therein, without the consent of the City which shall not unreasonably be withheld.
- H. *Construction Breach.* The Developer does not complete construction of the Project or the Project Site in accordance with approved plans and specifications or this Development Agreement, or the Developer makes any material change to such plans and specifications without receiving the prior written consent of the City.
- I. *Liens.* Any mechanics', laborers', materialmen's or similar statutory liens, or any notice thereof, are filed against all or any portion of the Project Site and/or the related improvements which are not be discharged or bonded within thirty (30) days of such filing or such greater period of time as shall be permitted by the terms of this Development Agreement.
- J. *Cessation of Work.* Any cessation occurs at any time in construction of the Project, once building permits are issued, for more than thirty (30) days except for strikes, riots, or other causes beyond the Developer's control, without the written consent of the City.
- K. *Tax Liens.* A filing against or relating to the Developer or its principals of (i) a federal tax lien in favor of the United States of America or any political subdivision of the United States of America, or (ii) a state tax lien in favor of any state of the United States of America or any political subdivision of any such state, which is not dismissed within sixty (60) days of the filing date thereof or which the Developer is not contesting in good faith.
- L. *Assignment for Benefit of Creditors; Insolvency.* If the Developer makes an assignment for the benefit of creditors, or institutes any proceeding seeking relief on its behalf as debtor or to adjudicate it as insolvent, or seeking reorganization, arrangement, adjustment or composition of it or its debts under any law of the United States, or any state, relating to insolvency or reorganization or relief of debtors, or seeking appointment of a receiver,

trustee, custodian or other similar official for it or for any substantial part of its property, or consents by answer or otherwise to the institution of any such proceeding against it.

- M. *Bankruptcy*. If any proceeding is instituted against the Developer seeking to have an order for relief entered against it as debtor or to adjudicate it as bankrupt, or seeking reorganization, arrangement, adjustment or composition of it or its debts under any law of the United States, or any state, relating to bankruptcy or reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its property, which either (i) results, without the consent or acquiescence of the Borrower in any such entry of an order for relief, adjudication of bankruptcy or issuance or entry of any other order having a similar effect, or (ii) is not dismissed within forty-five (45) days of the date any such order or adjudication is entered.
- N. *Injunctive Relief*. The entry of any court order which enjoins, restrains or in any way prevents the Developer from fulfilling all or any part of its obligations under this Development Agreement, which is not dismissed within thirty (30) days of the filing date thereof or which the Developer is not contesting in good faith.
- O. *Sale; Transfer of Project Site*. The sale, transfer, encumbrance, conveyance or other disposition of all or any portion of the Project Site (except the leasing of portions of the Project Site in the ordinary course of business) until such time as the Performance Mortgage has been released or discharged as to such portion of the Project Site.
- P. *Merger, Dissolution, Consolidation*. The dissociation, dissolution, termination, liquidation, consolidation or merger of the Developer, or any change in the identity, authority or responsibilities of any person having management or policy authority with respect to the Developer from that existing at the execution of this Agreement, without prior written consent from the City.

Section 6.02 Non-Exclusive Rights and Remedies.

In the event of a default of the Developer's obligations under this Development Agreement or any collateral document related to this Development Agreement, the City shall have any and all rights and remedies as set forth in this Development Agreement, in any sureties required by this Development Agreement, and in the Performance Mortgage. Such rights and remedies are non-exclusive, and the City shall have any and all other rights at law or in equity. In the event that the City must engage counsel or expend any other sums for the purpose of enforcing its rights under this Development Agreement or the Performance Mortgage, the Developer shall be responsible for the payment of the City's reasonable fees, costs and expenses, including attorney's fees.

ARTICLE VII MISCELLANEOUS

Section 7.01 Agreement Termination.

In the event that this Development Agreement or any aspect thereof is terminated, and unless otherwise stated in this Development Agreement, termination must be accomplished in writing provided by the terminating party(ies) to the other party(ies). Except as provided in this Development Agreement, upon any such termination, a party shall have no further rights or obligations hereunder except those obligations that expressly survive such termination.

Section 7.02 Indemnification.

- A. The Developer releases the City, the members of the City Council and the City's respective officers, attorneys, agents and employees, from, and agrees that the City, the members of the City Council and the City's respective officers, attorneys, agents and employees, shall not be liable for and indemnifies the City, the members of the City Council and the City's respective officers, attorneys, board members, agents and employees against, all liabilities, claims, costs and expenses, including out-of-pocket and incidental expenses and legal fees, imposed upon, incurred or asserted against the City, the members of the City Council and the City's respective officers, attorneys, agents and employees, arising, directly or indirectly, in whole or in part, out of the negligence or willful act or omission of the Developer, its agents or anyone who is directly employed in connection with (i) this Development Agreement or (ii) the development of the Project Site, including the construction, maintenance, repair and replacement of any improvements which the Developer is required to undertake pursuant to this Development Agreement or any permit or approval, provided that, such release or indemnification shall not apply to any actions or claims brought as a result of any material breach of this Development Agreement, willful misconduct or fraudulent action of the City, the members of the City Council and the City's respective officers, attorneys, agents and employees.

- B. In case any claim or demand is at any time made, or action or proceeding is brought, against or otherwise involving the City, any member of the City Council or any officer, attorney, board member, agent or employee of the City, in respect of which indemnity may be sought hereunder, the person seeking indemnity promptly shall give notice of that action or proceeding to the Developer, as applicable, and the Developer, respectively, upon receipt of that notice shall have the obligation and the right to assume the defense of the action or proceedings. An indemnified party may employ separate counsel and participate in the defense, but the fees and expenses of such counsel shall not be paid by the indemnified party unless: (i) the employment of such counsel has been specifically authorized by the Developer, as applicable, in writing; or (ii) the Developer, as applicable, has failed to assume the defense and to employ counsel; or (iii) the named parties to any such action (including any impleaded parties) include both an indemnified party, the Developer, and such indemnified party may have one or more legal defenses available to it which are different from or additional to those available to the Developer, in which case, if the indemnified party notified the Developer in writing that it elects to employ separate counsel at the expense of the Developer, the Developer shall not have the obligation to assume the defense of such action on behalf of such indemnified party and the Developer shall not be responsible for payment of the fees and expense of such separate counsel.

C. The indemnifications set forth above are intended to and shall include the indemnification of all affected officials, attorneys, agents, board members, officers and employees of the City, respectively, and each and all of their successors and assigns. Those indemnifications and any other indemnifications provided for herein are intended to and shall be enforceable by each and every indemnified party to the full extent permitted by law and shall survive the termination of this Development Agreement.

Section 7.03 Notices.

Any notice, payment or instrument required or permitted by this Development Agreement to be given or delivered to either party shall be deemed to have been received when personally delivered or transmitted by electronic mail or facsimile transmission (which shall be immediately confirmed by telephone and shall be followed by mailing an original of the same within 24 hours after such transmission) or 72 hours following deposit of the same in any United States Post Office, registered or certified mail, postage prepaid, addressed as follows:

City: City Manager
City of Dover, New Hampshire
City Hall
288 Central Avenue
Dover, New Hampshire 03820-4169

With a copy to: City Attorney
City of Dover, New Hampshire
City Hall
288 Central Avenue
Dover, New Hampshire 03820-4169

Developer: Terra Nova, LLC
Westfield, LLC
Summit Land Development, LLC
340 Central Avenue, Suite 202
Dover, NH 03820
Attention: Chad Kageleiry
Email: chad@summitland.com

With a copy to: Susan A. Manchester, Esq.
Sheehan Phinney Bass + Green, PA
1000 Elm Street
Manchester, New Hampshire 03101

Each party may change its address or addresses for delivery of notice by delivering written notice of such change of address to the other party.

Section 7.04 Severability.

If any part of this Development Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Development Agreement shall be given effect to the fullest extent possible.

Section 7.05 Successors and Assigns.

This Development Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. The Developer may only assign this Agreement with prior written consent of the City. No third-party nor any bankruptcy trustee may assume this Agreement without prior written consent of the City. In the event the Developer assigns this Agreement with prior written consent of the City, a suitable party approved in advance by the City must agree to discharge and be responsible for the obligations of the Developer as set forth in Article V of this Agreement, as well as all other existing obligations of the Developer, to be memorialized in a binding and written "Assignment" of this Agreement signed by the City, the Developer, and the proposed assignee. As part of any such Assignment, the City may require a personal guaranty of one or more individuals and/or entities to ensure financial ability to perform.

Section 7.06 Waiver.

Failure by a party to insist upon the strict performance of any of the provisions of this Development Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Development Agreement thereafter.

Section 7.07 Merger.

No other agreement, statement or promise made by any party or any employee, officer or agent of any party with respect to any matters covered hereby that is not in writing and signed by all the parties to this Development Agreement shall be binding.

Section 7.08 Parties in Interest.

Nothing in this Development Agreement, expressed or implied, is intended to or shall be construed to confer upon or to give to any person or entity other than the City and the Developer any rights, remedies or claims under or by reason of this Development Agreement or any covenants, conditions or stipulations hereof. All covenants, conditions, promises and agreements in this Development Agreement by or on behalf of the City or the Developer shall be for the sole and exclusive benefit of the City or the Developer, respectively.

Section 7.09 Amendment.

This Development Agreement may be amended, from time to time, by written supplement hereto and executed by both the City and the Developer. In the event that any amendment to this Development Agreement is, in the sole judgment of the City Manager,

materially different from the authority granted to the City Manager to execute and deliver this Development Agreement, such amendment shall require approval of the City Council.

Section 7.10 Completion of the Project.

The City and the Developer have agreed on the Project Schedule for the redevelopment of the Project Site, as set forth at Exhibit B of this Development Agreement. It includes conceptual deadlines, which will be further refined once site plan approval has been completed and anticipates phasing over ten years of the project. These deadlines for the performance of certain duties and obligations by the Developer represent Developer's best estimate at the time this Agreement is executed. Notwithstanding any other provision herein to the contrary, Developer shall be under no obligation to commence the Project at the times contained herein, or ever. If, however, Developer does not complete the Project and the Public Improvements and other conditions stated herein, the City shall have no obligation to reimburse Developer for any sums expended by Developer. If the Developer has not commenced construction on the Project within three (3) years of the execution of this Agreement, both parties shall review and determine, in their sole discretion, if they wish to reaffirm their commitments. For purposes of this Section 7.10, commencement of construction shall mean the issuance of a building permit for the Project. Any reaffirmation of commitments shall be executed in writing by both parties.

Section 7.11 Force Majeure

In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reasons of strikes, lockouts, inability to procure materials, loss of utility services, restrictive governmental laws or regulations, riots insurrection, war, acts of God, or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Development Agreement, then performance of any such act shall be extended for a period equivalent to the period of such delay.

Section 7.12 Counterparts.

This Development Agreement may be executed in counterparts, each of which shall be deemed an original.

Section 7.13 Effective Date.

This Development Agreement shall be effective as of the dated date of this Development Agreement.

Section 7.14 Choice of Law

This Development Agreement has been entered into in the State of New Hampshire, and shall be interpreted under New Hampshire law.

Section 7.15 Notice of Agreement.

This Development Agreement shall be recorded at the Strafford County Registry of Deeds.

[Signature Page follows]

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

CITY OF DOVER, NEW HAMPSHIRE

By: [Signature]
Name: J. Michael Joyal
Title: City Manager
Duly authorized

Terra Nova, LLC and Westfield, LLC

By: [Signature]
Name: Chad Kageleiry
Title: Managing Member
Duly Authorized

STATE OF NEW HAMPSHIRE
COUNTY OF Strafford

The foregoing instrument was acknowledged before me this 27 day of September 2022, by J. Michael Joyal, the City Manager of the City of Dover, New Hampshire, a body politic, under the laws of the State of New Hampshire, on behalf of said City.

[Signature]
Justice of the Peace/Notary Public
My Commission Expires: _____
Notary Seal or Stamp:



STATE OF NEW HAMPSHIRE
COUNTY OF Stratford

The foregoing instrument was acknowledged before me this 21 day of September, 2022, by Chad Kageleiry, the Managing Member, of Terra Nova, LLC and Westfield, LLC limited liability companies organized under the laws of the State of New Hampshire on behalf of said limited liability company.

Colleen E. Besette

Justice of the Peace/Notary Public

My Commission Expires: _____

Notary Seal or Stamp:

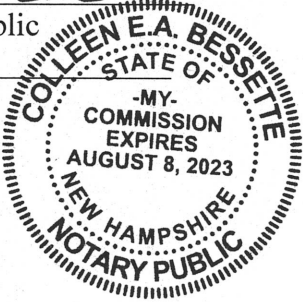


EXHIBIT A

CONCEPTUAL PROJECT SITE PLAN

[attached]

EXHIBIT B
Project Improvements and Phasing

PROJECT SITE GROUNDS, PUBLIC IMPROVEMENTS & STORM WATER

The Project Site shall be developed to act as new gateway to Dover, along Littleworth Road. The industrial build out shall embrace the opportunity to set a new standard for the look and impact of industrial/manufacturing and commercial buildings. The residential build out shall embrace the successful flow and design elements found on Pointe Place and in the Central Business District. The Project should reflect the values and professional character of the Developer's team. In keeping with that design, it should reflect modern efficiencies and be a welcoming design. Parking shall be screened and accessible to customers and tenants of the buildings, where practical.

The Project shall be deemed to include all land and improvements upon the Project Site. It is expected that it will include approximately 800,000 square feet of industrial manufacturing, warehousing and assembly-based uses interconnected between Industrial Park Road and Crosby Road. In addition, the site may include utility generation in addition to the above. These elements may have direct access to Littleworth Road, be accessed from Crosby Road, or Industrial Park Road from a newly designed and constructed connector roadway, a name shall be mutually agreed upon by both parties.

The Project shall also include a mixture of residential and residential/non-residential uses and improvements upon the Project Site. It is expected that the project will utilize both the Transfer of Development Rights and Residential Commercial Mixed Use Overlay District ordinances to determine the residential density, which is expected at approximately 800 residential units. The residential components shall be incorporated into the overall design to be context sensitive to existing residential uses and shall be laid out to provide a variety of styles and designs of the units, which may include, but not be limited to:

- Multi-family apartments
- Mixed Use buildings with non-residential and residential components
- Single family detached units
- Single family attached units
- Two Family units
- Three Family units

The non-residential, non-industrial based components, may be integrated with residential uses or stand alone. If stand alone, efforts should be taken to reflect the same character noted above, and the use shall provide purpose and benefit to the Project and the larger community. Non-residential uses shall be located closer to Littleworth Road and if possible placed to minimize residential impacts.

This exhibit shall be revised and restated upon approval of the site plan, and any amendments to said site plan to be updated to include any phase plans noted in the site plan, and unit counts, square footage of commercial space, square footage of industrial space and general compliance with local ordinances.

EXHIBIT C

Public Improvement Plan

EXHIBIT D

Term Sheet

Exhibit E

Notice of Development Agreement

NOTICE is hereby given of a certain Development Agreement, described below, between the City of Dover, New Hampshire and Terra Nova, LLC and Westfield, LLC which agreement affects and runs with the property identified below.

Date of this Notice: _____, 202__

Parties to the Agreement: City of Dover, New Hampshire and Terra Nova, LLC and Westfield, LLC

Premises Subject to Development Agreement:

Map G, Lot 2 – Property of Westfield, LLC, located on Littleworth Road and situated between Industrial Park Road and Crosby Road. Said property was conveyed to Westfield, LLC by deed dated February 12, 2020, and recorded in the Strafford County Registry of Deeds at Book 4733, Page 471.

And

Map G, Lot 29 – Property of Terra Nova, LLC, located on Littleworth Road and situated between Industrial Park Road and Columbus Avenue. Said property was conveyed to Terra Nova, LLC by deed dated April 12, 2021, and recorded in the Strafford County Registry of Deeds at Book 4893, Page 426.

Date of Agreement: _____, 2022.

IN WITNESS WHEREOF, the parties have executed this Notice as of the date set forth above.

[signatures appear on the following page]

Terra Nova, LLC

Print Name:
Title:
Date: _____, 202__
Hereunto duly authorized

Westfield, LLC

Print Name:
Title:
Date: _____, 202__
Hereunto duly authorized

STATE OF NEW HAMPSHIRE
COUNTY OF STRAFFORD

_____, 2022

Personally appeared the above named _____, duly authorized _____ of _____, 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:

STATE OF NEW HAMPSHIRE
COUNTY OF STRAFFORD

_____, 2022

Personally appeared the above named _____, duly authorized _____ of _____, 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:

City of Dover, New Hampshire

Print Name:
Title:
Date: _____, 2022

Hereunto duly authorized
STATE OF NEW HAMPSHIRE
COUNTY OF STRAFFORD

_____, 202__

Personally appeared the above named J. Michael Joyal, 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 F

Road Acceptance Checklist