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Engineering Services Division
City of Concord, NH
City Hall
41 Green Street
Concord, NH 03301

FIRST AMENDMENT TO EASEMENT

THIS FIRST AMENDMENT TO WATER LINE AND POLES AND WIRES EASEMENT AGREEMENT (the “Agreement”) is entered into as of this _____ day of _____, _____, by and between **BROOKLINE OPPORTUNITIES, LLC**, a New Hampshire limited liability company having a principal office address of 600 W Ted Williams Ct., Hernando, Florida 34442, and a principal mailing address of P.O. Box 847, Hollis, NH 03049 (together with its successors, heirs, or assigns, hereinafter “Brookline”), and **THE CITY OF CONCORD**, a municipal corporation having an address of 41 Green Street, Concord, New Hampshire 03301 (hereinafter “the City”).

RECITALS

WHEREAS, on March 16, 1931, the City and its successors, heirs and assigns acquired an easement to build, maintain, repair, and operate a line of water pipe and a line of poles and wires (the “Easement Deed”) across a certain portion of the property currently known on the City of Concord Assessors Maps as Map 622Z, Lot 1 (the “Property”) as evidenced by a certain deed recorded at the Merrimack County Registry of Deeds (the “MCRD”) on March 18, 1931, at Book 514, Page 605; and

WHEREAS, the Easement Deed gives the City the right to build, maintain, repair, and operate a line of water pipe and a line of poles and wires with the necessary supporting and strengthening fixtures, over, through, and along a certain portion of the Property, together with the right to pass and repossess over and along said forty (40’) foot wide strip for all necessary purposes in connection with the building, rebuilding, repairing, control, and operation of the said pipe line and of the said pole and wire line (the “Easement Area”); and

WHEREAS, the City currently has a water main located in the Easement Area, and there is also currently a line of poles owned by Consolidated Communications in the Easement Area as evidenced by a certain license issued to the Concord Electric Company and recorded at the City on December 24, 1930, in Electric Wires Volume 2, Page 351; and

WHEREAS, Brookline on or about October 20, 2021, applied to the Concord Planning Board for approval to construct a three (3) building multi-family development with associated site improvements (the “Development”) to be located on the Property; and

WHEREAS, the Development contemplates private site improvements within the Easement Area, which include, but are not necessarily limited to, the entrance driveway, pavement, landscaping, a sanitary sewer service, a water service, and storm water facilities, etc. (the “Private Improvements”); and

WHEREAS, the Development is shown on a certain plan set entitled “Brookline Opportunities Workforce Housing, 195 Pembroke Road, Concord, NH 03301, Owned by William Perry Family Trust & Barbara Perry Trust, Prepared for Brookline Opportunities, LLC,” prepared by TFMoran, dated October 20, 2021, and revised through _____, 2021, with final approval granted by the Planning Board on _____, 2021, and any amendments thereof (the “Site Plan”), and this Agreement shall apply to all of the Private Improvements identified on the approved Site Plan; and

WHEREAS, the City and Brookline now seek to amend the Easement Deed to ensure that the Private Improvements constructed within the Easement Area will not constitute an unreasonable interference to the City’s easement rights, including but not limited to the ability to maintain, repair, and operate its water line and other utility infrastructure owned and operated by third parties.

NOW, THEREFORE the City and Brookline now seek to amend the Easement Deed to expressly allow the construction of Private Improvements within the Easement Area subject to the following terms and conditions:

1. The City consents to the construction and maintenance of the Private Improvements as described above and shown on the Site Plan; such consent is not deemed to be a waiver of any of the City’s rights under the Easement Deed.
2. With the exception of work that does not interfere with the City’s use of the Easement Area and with work associated with the Site Plan construction and maintenance, and the Private Improvements described in this Agreement, no other buildings, structures, or encumbrances shall be constructed within the Easement Area.
3. All work performed within the Easement Area by Brookline shall be constructed and maintained in a workmanlike manner and in accordance with all local, state, and federal rules, laws, and regulations and shall be completed in accordance with the Site Plan.
4. Brookline shall provide notice to the City prior to performing excavation and other construction work in the Easement Area. Notification to the City shall be addressed to Earle Chesley, PE, Director of General Services, City of Concord, 311 North State Street, Concord, NH 03301, with a courtesy copy sent to David Cedarholm, PE, City Engineer, City of Concord, 41 Green Street, Concord, NH 03301. Brookline shall name the City of Concord as an additional insured in accordance with the City’s insurance requirements at the time of the work and for the duration of work.

5. Brookline shall use its best efforts to construct and maintain the Private Improvements in a reasonable manner so that they do not interfere with current or future infrastructure in the Easement Area or damage existing infrastructure in the Easement Area, or prevent the City or other third parties from replacing, repairing, rebuilding, operating, or removing the water main and other poles and wires in the Easement Area. In the event that Brookline, its successors, heirs, or assigns damages existing infrastructure during the construction or maintenance of the Private Improvements, Brookline agrees to: (a) reasonably repair such damage, or (b) reimburse the City or other third parties for the full, reasonable, and documented and actual cost of such repairs.
6. Except in accordance with and as shown on the Site Plan, Brookline agrees not to pile any snow or construction materials or store any equipment within the Easement Area.
7. Brookline agrees to indemnify, defend and hold harmless the City (including its officials, agents, volunteers, and employees) from and against any and all loss, cost, damages, expense, and claims made by third parties against the City and which the City may become obligated or incur by reason of any bodily injury, personal injury, death of person, or loss of access or damage to property arising out of or resulting from Brookline's use of the Easement Area and/or the failure of Brookline to perform obligations set out in this Agreement, except in the event that any such loss, cost, damages, expenses, or claims are a result of the City's sole negligence or failure to perform obligations set out in this Agreement.
8. In the event that it becomes necessary for the City or other third parties who have utility infrastructure within the Easement Area to excavate, repair, replace, maintain, or enlarge the water line or other poles and wires within the Easement Area, such parties may remove any earth and any Private Improvements within the Easement Area, provided that the City or other third parties shall use reasonable best efforts to minimize damage to any Private Improvements caused by such work. Brookline shall be responsible for repairing or replacing any Private Improvements at its sole expense to conform to the Site Plan. Except in the event of emergency work, the City or other third parties shall provide a 72-hour written notice to Brookline prior to work and, to the extent possible, coordinate with Brookline to minimize damages to any Private Improvements caused by such work.
9. Brookline acknowledges and understands that in the event the City or other third parties who have utility infrastructure within the Easement Area need to repair, replace, maintain, or enlarge the water line or other poles and wires within the Easement Area, the Private Improvements including parking and the driveway leading to Pembroke Road, which is the sole ingress and egress to the property, could be obstructed for an unknown period of time. Brookline agrees to accommodate such repair work; provided, however, that the City shall use reasonable best efforts to maintain access and use of the driveway during such work. In case the City or other third parties are unable to maintain access and use of the driveway during such work, Brookline agrees to design the driveway and Private Improvements in a manner that provides adequate access to the Property, including access necessary for emergency vehicles, at all times and notwithstanding work by the City or third parties, which shall be shown on the approved Site Plan. Brookline agrees that the access shall be maintained in a suitable condition to provide year-round access.

10. This agreement shall be binding upon and inure to the benefit of the parties and their heirs, administrators, successors and assigns.

11. This Agreement shall run with the land for use as a three (3) building multi-family development. The City reserves the right for the Planning Division and the Engineering Services Division to review any future alterations to the Development for any change in use to determine compliance with this agreement.

12. Except as specifically amended herein, all terms and conditions of the Easement shall remain in full force and effect.

13. This Agreement shall be interpreted in accordance with the laws of New Hampshire, and shall be enforceable in the Courts of Merrimack County, New Hampshire, to which both Parties submit for jurisdiction.

Executed as of the day and year first above written.

BROOKLINE OPPORTUNITIES, LLC

By: _____
Joseph A. Tamposi
its Manager

State of _____
County of _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by **Joseph A. Tamposi**, Manager of **Brookline Opportunities, LLC**, for the purposes herein intended.

Notary Public / Justice of the Peace
Print Name:

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Concord City Council approval for the authority of the City Manager to execute this Agreement was granted at its regular meeting on _____, 202__.

Executed as of the day and year first above written.

CITY OF CONCORD

By: _____
Thomas J. Aspell, Jr., City Manager

State of New Hampshire
County of Merrimack

The foregoing instrument was acknowledged before me this ____ day of _____, _____, by **Thomas J. Aspell, Jr.**, City of Concord City Manager, on behalf of said City of Concord for the purposes herein intended.

Notary Public / Justice of the Peace
Print Name: