

## EIGHTH AMENDMENT TO PURCHASE AND SALES AGREEMENT

This EIGHTH AMENDMENT TO PURCHASE AND SALES AGREEMENT (this "**Amendment**") is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2019 (the "**Effective Date**") by and between the City of Concord, a New Hampshire municipal corporation (the "**Seller**") and Dol-Soul Properties L.L.C., a New Hampshire limited liability company (the "**Buyer**").

### RECITALS

WHEREAS, the Seller and the Buyer entered into that certain Purchase and Sales Agreement dated as of January 2, 2018, as amended by seven prior amendments thereto (the "**Purchase Agreement**"), whereby the Seller is to sell, and the Buyer is to purchase, certain real property located at 32-34 South Main Street, Concord, New Hampshire and 33 South State Street, Concord, New Hampshire, as more particularly described in the Purchase Agreement (the "**Property**");

WHEREAS, the Seller and the Buyer desire to enter into this Amendment to amend and modify certain terms and conditions of the Purchase Agreement, as further set forth herein.

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

**1. Buyer's Project:** The first paragraph of Section 2.1.1 of the Purchase Agreement is hereby deleted in its entirety and replaced with the following:

"**2.1.1. Development of the Buyer's Project:** Upon acquisition of the Property, and subject to the provisions of Section 3.2.5, the Buyer (its heirs, successors, or assigns) hereby covenants that it shall proceed with the development of a 180,000 SF +/- mixed use development comprised of approximately 125 "Market Rate Apartments" consisting of a mix of studio, one-bedroom, and two-bedroom units, a 5,000 SF +/- of space on ground level of the building along the South Main Street frontage of the Property for "Active Retail Uses", including a potential "Restaurant", and at least 125 on-site parking spaces to support said development."

**2. Deposit:** As of the Effective Date, the Buyer has paid a \$100,000.00 deposit pursuant to the Purchase Agreement. Simultaneously with the execution of this Amendment, Buyer shall pay an additional deposit in the amount of \$200,000.00, bringing the total Deposit to \$300,000.00. Accordingly, Section 1.3 of the Purchase Agreement is hereby deleted in its entirety and replaced with the following:

"The Buyer shall provide a deposit in the amount of Three Hundred Thousand Dollars (\$300,000.00) (with any interest thereon, the

**“Deposit”**). The Deposit shall be held in an interest bearing account by Cleveland, Waters and Bass, P.A. (the **“Escrow Agent”**) subject to Section 6 of this Agreement. The Deposit shall become nonrefundable as set forth in the following schedule:

<b>Date</b>	<b>Amount of Deposit Which Becomes Nonrefundable</b>	<b>Cumulative Amount of Deposit Which Is Non-Refundable</b>
November 8, 2019	\$75,000.00	\$75,000.00
February 6, 2020	\$75,000.00	\$150,000.00
May 6, 2020	\$75,000.00	\$225,000.00
August 4, 2020	\$75,000.00	\$300,000.00

If the Buyer elects to terminate this Agreement as provided herein, then, except as expressly provided in this Agreement, those portions of the Deposit that have become nonrefundable shall be retained by the Seller, and the refundable portion of the Deposit (if any) shall be returned to the Buyer. However, in the event the Buyer elects to proceed to Closing, the Deposit shall be credited again the final sale price of the Property.”

**3. Supplement Seller Development Incentives:** The Parties acknowledge and agree that: (a) based on the Buyer’s preliminary design development of the Buyer’s Project, as well as construction estimates from multiple contractors related thereto, the estimated total cost for the Buyer’s Project is \$30,400,000; (b) based on the Buyer’s market studies and financial pro formas, which estimated likely rental rates and gross revenues for the Buyer’s Project, projected revenues from the Buyer’s Project will support a total development cost for the Buyer’s Project of \$23,400,000; and (c) despite the approximately \$7,000,000 gap, the Parties mutually desire to proceed with development of the Buyer Project and resolve the financial gap in accordance with this Section 3. Specifically, the Parties mutually desire to resolve the gap using a strategy whereby the Buyer and the Seller each contribute \$3,500,000 of additional financial support for the project, which shall be contributed equally on a fifty percent (50%) basis, to resolve the \$7,000,000 gap. Accordingly, the Purchase Agreement is hereby amended by inserting the following Section 3A after Section 3:

**“3A. SUPPLEMENTAL SELLER DEVELOPMENT INCENTIVES.**

**3A.1. Supplement Seller Development Incentives:** In addition to the Seller’s responsibilities and obligations under this Purchase Agreement, the Seller shall provide the following supplemental support to the Buyer’s Project (collectively, the **“Supplemental Seller Development Incentives”**):

**3A.1.1. Maximum Amount of Supplemental Seller Development Incentives:** The Seller shall provide additional development incentives to support the Buyer's Project in an amount of Three Million Five Hundred Thousand Dollars (\$3,500,000.00),

The Buyer shall be solely responsible for resolving the remaining \$3,500,000 of the projected \$7 million gap for the Buyer's Project. Specifically, the Buyer intends to provide its \$3,500,000 share of supplemental support in the form of any combination of the following:

- (a) Reduced borrowing costs by securing lower interest rates for debt financing for the Buyer's Project as compared to those carried in the Buyer's preliminary pro forma, thereby increasing net operating incomes and supportable project cost for the Buyer's Project.
- (b) Expanded revenues for the project in the form of rental income greater than those carried in the Buyer's preliminary pro forma, thereby increasing net operating income and supportable project cost for the Buyer's project.
- (c) Value engineering which will have the effect of reducing the total project cost of the Buyer's Project, while not diminishing the quality of the Buyer's Project, or reducing the quantity of residential units, commercial square footage available for lease, or on-site parking spaces provided as part of the Buyer's Project.
- (d) Investment of additional equity in the project by the Buyer at a level greater than Buyer showed in its preliminary pro forma.

**3A.1.2. Form of Supplemental Seller Development Incentives:** The Supplemental Seller Development Incentives may be provided in any combination of the following:

- (a) Additional on-site improvements completed by the Seller, completed prior to the transfer of the Property, such as, but not limited to, demolition of additional structures, excavations, earth

support/shoring, installation of structures, utility improvements, and other similar improvements, in accordance with New Hampshire statute N.H. RSA ch. 162-K. Said improvements (if any) shall be completed by the Seller prior to recording of the Deed conveying the Property from the Seller to the Buyer.

- (b) Off-site improvements completed by the Seller as required to support the Buyer's Project's design and only where adjacent to the Property (in the case of streetscape improvements) or where directly connecting to the Buyer's Project (in the case of utilities), such as, but not limited to, improvements to public and private utilities, roadways, sidewalks, streetscape improvements, public plazas, and similar infrastructure not located on the Property, in accordance with N.H. RSA ch. 162-K.
- (c) Reduction of the Purchase Price for the Property.
- (d) Improvements to abutting properties, acquisition of easements on abutting properties, and other similar items, which might be required to facilitate development of the Buyer's Project.
- (e) Payment of fees associated with the City of Concord's Development Permits and Approvals such as Building Permits, Impact Fees, Water Connection Fees, Sewer Connection Fees, or Parking Encumbrance Fees, and other similar fees. However, the Supplemental Seller Development Incentives shall not be used to cover the cost of any applications or any Planning Board, Zoning Board of Adjustment, or other State or Federal Permits and Approvals which would be paid prior to the Closing, subject to reimbursement by the Seller as provided in Section 3B.1.
- (f) Any other lawful purpose.

Upon receipt of competitive bid pricing for the Buyer's Project, including on-site and off-site

improvements to be potentially undertaken by the Seller, as well as a revised comprehensive budget for the Buyer's Project, the Parties shall develop a detailed, itemized plan identifying which specific Supplemental Seller Development Incentives shall be used, and in what amounts, in order to assist the Buyer's Project. Said plan shall be mutually acceptable to the Parties.

In the event the Parties cannot mutually agree upon a detailed, itemized plan for the usage of Supplemental Seller Development Incentives not later than February 5, 2020, then either Party may terminate this Agreement, following which that portion of the Deposit which remains refundable, as set forth in Section 2 above, shall be returned to the Buyer.

**3A.1.3. Timing of Seller's Obligation to Expend Supplemental Seller's Development Incentives:**

No portion of the Supplemental Seller's Development Incentives shall be used or expended until the Closing, unless otherwise mutually agreed to by the Parties.

**3A.1.4. Design, Permitting, and Construction of On-site and Off-site Improvements Completed as Part of Supplemental Seller Development Incentives:**

(a) General: The Buyer shall be solely responsible for the design of any on-site or off-site improvements undertaken as part of the Supplemental Seller Development Incentives.

(b) Determination of Scope of Work for On-Site and Off-Site Improvements to be Completed by Seller as part of Supplemental Seller Development Incentives: The Buyer, working with its consulting design team and the Seller, shall develop an itemized, detailed scope of work for on-site and off-site improvements to be accomplished as part of Supplemental Seller Development Incentives (the "**Scope of Work**"). The Scope of Work shall be consistent with all applicable law, including but not limited to N.H. RSA ch. 162-K. The Scope of Work shall be

approved by the Seller, which approval shall not be unreasonably withheld, conditioned or delayed.

(c) Design, Permitting, and Bidding of On-Site and Off-Site Improvements to be Completed by Seller as part of Supplemental Seller Development Incentives:

(i) Plans and Specifications: The Buyer, at its sole cost and expense, shall prepare plans, technical studies, permit applications, specifications, and bid sheets for the Scope of Work using a design team of its choice at its sole expense. Said plans and specifications shall be consistent with City of Concord Construction Standards, as well as other Federal and State laws, rules, regulations, and ordinances, as applicable.

(ii) Bid Support: The Buyer, at its sole cost and expense, shall prepare all necessary and required plans and specifications, attend pre-bid meetings and bid walks, prepare bid addendums as needed during the bid process, as well as review all bids and make recommendations regarding the award of bids.

In the event any portion of the work is to be bid directly by the Seller, then the Buyer shall coordinate with the City of Concord's Purchasing Department and provide reasonable support related thereto to the extent necessary and appropriate.

(d) Construction of On-Site and Off-Site Improvements: The Parties may, upon mutual agreement, elect to use the same General Contractor/Construction Manager (the "**Contractor**") for construction of the Buyer's Project and Seller's on-site and off-site improvements. In the event the Parties mutually decide to use the same Contractor for their respective projects, each Party shall execute

separate contracts with the Contractor for their respective projects.

- (e) Construction Oversight Services and Project Management Services: The Buyer shall engage the services of a consulting civil engineer, as well as a project manager to oversee on-site and off-site improvements constructed by the Seller as part of the Supplemental Seller Development Incentives.

The Buyer shall provide all normal and customary services associated with oversight and administration of on-site and off-site improvements, including, but not limited to, providing responses to Contractor "requests for information", providing supplemental instructions to the Contractor, preparation of supplemental sketches, review of proposed change orders, as well as review of Contractor invoices.

The project manager, subject to consultation with the Seller and the Seller's subsequent written consent, shall be an employee of the Buyer. The project manager shall provide all normal and customary services associated therewith, including, but not limited to, prequalification and selection of contractors and consultants, fee negotiations with contractors and consultants, contract negotiation and preparation, review of designs and specifications, value engineering assistance, bid and contract dispute, clerks of the works services, change order review, scheduling and schedule management, financial controls and oversight, testing agent procurement/management/oversight, periodic construction oversight and management.

- (f) Reimbursement of Buyer's Costs Upon Recording of the Deed Conveying the Property from the Seller to the Buyer: Upon recording of the Deed conveying the Property from the Seller to the Buyer, or at any time thereafter, the Seller may, upon mutual agreement of the Parties, reimburse the Buyer for its actual costs associated with the design, permitting, bidding or

oversight of any on-site or off-site improvements constructed or implemented by the Seller in conjunction with the Supplemental Seller Development Incentives.

**3A.1.5. Sharing of Documents; Transparency:** Each Party shall, upon written request of the other Party, provide copies of all contracts, change orders, invoices, accounting records, as well as any other documents to verify the Parties' respective compliance with their respective obligations under this Agreement, as well as costs incurred therewith. The Parties shall have thirty (30) calendar days to produce said records from the date of receipt of the written request, unless otherwise extended in writing by the Party requesting said documents.

**3A.1.6. Cost Savings Sharing Provision & Reimbursement to the Seller:**

(a) Reimbursement to the Seller by the Buyer: In recognition of Supplemental Seller Development Incentives for the Buyer's Project, the Buyer covenants and agrees that if the Actual Total Final Project Cost of the Buyer's Project is less than Thirty Million Four Hundred Thousand Dollars (\$30,400,000.00), then the Buyer, upon demand, shall make payment to the Seller in an amount equal to fifty percent (50%) of difference between the Actual Total Final Project Cost of the Buyer's Project and \$30,400,000.00.

Not later than Three Hundred Sixty Five (365) calendar days following the issuance of the initial Certificate of Occupancy for the Buyer's Project by the Seller, the Buyer shall provide to Seller a complete and accurate summary of Actual Total Final Project Cost for the Buyer's Project, as well as supporting documentation associated therewith. Supporting documentation shall include, but not be limited to, copies of accounting records, contracts, change orders, invoices, any payroll records for the Buyer's project management personnel who worked directly on the Buyer's Project, as well as any other pertinent records or documentation that



verify the Actual Total Final Cost of the Buyer Project.

(b) Actual Total Final Project Cost of the Buyer's Project shall mean all actual costs paid or incurred by the Buyer and the Seller in connection with, or incidental to, the acquisition, design, construction, fit-up and equipping of the Buyer's Project, including, without limitation unless specifically stated otherwise herein, the following:

i. Soft Costs

- Purchase price of the real estate;
- Design Costs, including Architectural and Engineering Fees;
- Property surveys and title searches;
- Development Permitting Fees;
- Project Management Fees;
- Buyer's Developer Fee;
- Insurances;
- Legal Fees;
- Market Studies;
- Environmental Assessments and Studies;
- Carrying costs incurred during construction, including property taxes and capitalized interest;
- Special Inspections for soil compaction, concrete, steel, etc.;
- Site security; and,
- Fixtures, Furnishings, and Equipment for the Buyer's Project.

ii. Hard Costs:

- General Conditions;
- Site work, including utilities, roadways, sidewalks, plazas, and landscaping;
- Demolition;
- Concrete;
- Masonry;
- Metals;
- Rough and finish carpentry;
- Moisture protection;
- Doors and windows;

- Finishes;
- Conveying systems;
- Electrical;
- Plumbing; and,
- Heating, Ventilation, Air Conditioning.

- iii. Supplemental Development Incentives provided by the Seller in accordance with Section 3A.1.2, including, but not limited to:
  - On-site improvements, made prior to the transfer of the Property;
  - Off-site improvements;
  - Improvements to abutting properties, acquisition of easements on abutting properties, and other similar items, which might be required to facilitate development of the Buyer's Project;
  - Fees paid by the Seller, or otherwise waived by the Seller, for the Buyer's Project, but excluding value of Development Impact Fees, waived by the Seller over and above the amount of \$150,000.00;
  - The value of further reductions to the sale price of the property, as calculated as the difference between \$1,075,000 and the actual sale price paid by the Buyer to the Seller at time of Closing; and,
  - Relocation of aerial utilities (if any) in order to facilitate said demolition shall be considered part of the Supplement Development Incentives and, thus, included in the calculation of Total Actual Project Cost of the Buyer's Project.
  
- iv. Actual Total Final Project Cost of the Buyer's Project shall exclude demolition of the former NH Employment Security Building.

(c) Seller's Audit Rights: The Seller shall have the right to audit the Buyer's actual final costs of the Buyer's Project for a period of Seven Hundred Thirty (730) calendar days following the issuance of the initial Certificate of Occupancy for the Buyer's Project by the Seller."

4. **Property Tax and Supplemental Payments for Buyer's Project**: Section 2.1.5 of the Purchase Agreement is hereby deleted in its entirety and replaced with the following Section 3B to be inserted after Section 3A:

**"3B. PROPERTY TAX AND SUPPLEMENT PAYMENTS FOR BUYER'S PROJECT.**

**3B.1. General:** In recognition of the Supplemental Seller Development Incentives, as well as past investments to acquire and prepare the Property for redevelopment, the Buyer hereby agrees, warrants and covenants that, provided the Buyer acquires the Property in accordance with this Agreement, the Buyer shall make annual minimum payments (the "**Minimum Payments**") to the Seller, which payments shall be comprised of the annual property tax payments to the Seller for the Buyer's Project in accordance with State law for municipal government, county government, state government, as well as the public school districts (the "**Property Tax Payments**"), plus any supplemental payments (the "**Supplemental Payments**") to the Seller for the Buyer's Project, in the amounts as set forth herein. The Seller's preliminary estimated assessed value of the Buyer's Project as proposed is approximately Twenty Million Seven Hundred Ninety Seven Thousand Dollars (\$20,797,000.00).

Pursuant to N.H. RSA ch. 162-K, the Parties acknowledge and agree that a portion of the Property Tax Payments derived from the Buyer's Project shall be captured by the Sears Block Tax Increment Financing District and used, in part, to support:

- (a) Debt service in the amount of approximately \$1,990,000 to acquire, hold, and weatherize the Property;
- (b) Debt service in the amount of approximately \$300,000 for demolition of the former N.H. Employment Security Building by the Seller to facilitate development of the Buyer's Project in accordance with the terms of this Agreement;

- (d) Debt service in the amount of up to \$3,500,000 for Supplemental Seller Development Incentives to assist with the Buyer's Project;
- (e) Debt service in the amount of approximately \$1,520,000, which financed the previous installation of underground electrical and telecommunications utilities on portions of South Main Street, including, but not limited to, the frontage of the Property to benefit the Buyer's Project;
- (f) Debt service in the amount of approximately \$2,500,000 for the Seller's so-called "Complete Street Project", which previously renovated South Main Street, including the installation of pedestrian and landscape amenities along the South Main Street frontage of the Buyer's Project; and
- (g) The Seller's operating, maintenance, and debt service costs for infrastructure improvements within the Sears Block Tax Increment Finance District which benefit the Buyer's Project.

**3B.2. Minimum Payments:** The Buyer shall make Minimum Payments to the Seller on July 1, October 1, January 2, and March 31 of each calendar year starting on July 1, 2021 and ending on March 31, 2043. The Parties agree that if the Property Tax Payments for the Property in any tax year are, for any reason, less than the Minimum Payments set forth in this Section the Buyer shall make a Supplemental Payment to the Seller as set forth herein Agreement so as the amount of the Property Tax Payments received by the Seller, when combined with the Supplemental Payments, equal the Minimum Payments set forth herein. The Parties agree that the Minimum Payments set forth below do not represent that actual tax bill on the Property in any tax year and that the actual tax bill in any year may be more or less than the Minimum Payments due.

The Buyer shall make the following Minimum Payments to the Seller as follows:

- (a) For Tax Years commencing after recording of the Deed conveying the property from the Seller to the Buyer through the March 31<sup>st</sup> following the completion of

construction (certificate of occupancy): An amount equal to the property taxes owed to the Seller based on the assessed value of the Property in accordance with applicable law.

(b) For Tax Years commencing on the April 1<sup>st</sup> following the completion of construction (certificate of occupancy) through March 31, 2043: Four Hundred Ninety Thousand Dollars (\$490,000.00).

The Buyer's obligation to make a Minimum Payment to the Seller pursuant to this Section 3B shall expire on March 31, 2043. This provision shall not be construed to waive or otherwise release the Buyer from its responsibility to pay property taxes to the Seller in accordance with applicable law or as otherwise set forth in this Agreement.

**3B.3. “Over Payment” and No Refunds**: In the event the Property Tax Payments paid with respect to the Property exceed the minimum amounts set forth above due to market changes in value or tax rate increases, the Buyer shall not be eligible for, nor entitled to, a refund of any portion of said payments in excess of the Minimum Payment amounts set forth above. This provision shall not be construed to apply to any accidental overpayments by the Buyer or inadvertent overcharges by the Seller. This provision shall not be construed to limit the buyer's right to petition for an abatement of taxes in accordance with applicable law. However, no abatement of taxes shall impair or limit the Buyer's obligation to make the Minimum Payments set forth in Section 3B.2.

**3B.4. Process for Determining Supplemental Payment Amount and Late Payment Penalty**: The Seller shall conduct an annual review of the total gross Minimum Payments due for the Buyer's Project. If the Seller determines that a Supplemental Payment is due, the Seller shall provide written notice to the Buyer. Said Supplemental Payment shall be paid in full by the Buyer to the Seller no later than thirty (30) calendar days after the date of Seller's written notice. If the Buyer fails to make payment in full by said date, a penalty fee shall be assessed after the fifteenth (15th) calendar day after the payment is due at the rate of 1% per month (12% per annum) at the beginning of each month thereafter. In addition, should the Buyer fail to make said Supplemental Payment in full, the Buyer shall

automatically be deemed in default of this Agreement, and the Seller may pursue its rights and remedies as set forth in this Agreement.

**3B.5. Supplemental Payment Not to be Construed as a Payment of Property Taxes:** No Supplemental Payment shall be construed as the payment of property taxes for the Buyer's Project. Rather, the Supplemental Payment shall be a sum due to the Seller from the Buyer under the contractual arrangement as established by this Agreement.

**3B.6. Obligation for Supplemental Payments Runs with the Land:** The Buyer's obligation to make said Supplemental Payments under this Section 3B shall run with the land by deed covenant, executed and delivered at Closing, and shall be binding upon the Buyer, its heirs, successors, and assigns until March 31, 2043.

**5. Infrastructure Improvements:** Section 2.1.3 of the Purchase Agreement is hereby deleted in its entirety and replaced with the following:

"The Buyer hereby covenants, represents, and warrants that it shall be solely responsible for the cost of designing, permitting, and constructing any and all improvements to utilities, roadways, sidewalks and other public and private infrastructure, without limitation, which might be required by Buyer's Project, unless otherwise mutually agreed by the Parties in conjunction with off-site improvements which might be undertaken as part of the Supplemental Seller Development Incentives as described in Section 3A of this Agreement."

**6. Performance Mortgage:** The Purchase Agreement is amended by inserting the following Section 3C after Section 3B:

**"3C. PERFORMANCE MORTGAGE:**

**3C.1. General:** At time of Closing, the Buyer shall provide a Performance Mortgage to the Seller to guarantee that the Buyer's Project shall be completed in accordance with the terms and conditions of this Agreement. The Performance Mortgage shall terminate upon issuance of a final Certificate of Occupancy by the Seller for the Buyer's Project.

**3C.2. Required Terms:** The Performance Mortgage required pursuant to Section 3C.1 shall, in addition to customary terms and conditions, include the following provisions:

3C.2.1. Subordinate to Buyer's Lender's Construction Financing Mortgage: The Performance Mortgage shall be subordinate to the Buyer's lender's mortgage for construction financing for the Buyer's Project.

3C.2.2. No Cross Collateralization: The Buyer shall, as part of the Performance Mortgage, covenant that all mortgages on the Property shall secure indebtedness related to the development, construction, repair, or reconstruction of the Buyer's Project at the Property only, and shall not secure or cross collateralize the indebtedness or obligations arising in connection with other properties unrelated to the acquisition, development, construction, repair or reconstruction of the Property. Further, each lender providing funds for the Buyer's Project shall agree that the proceeds of such indebtedness shall exclusively be used for the acquisition, development, repair, or reconstruction of the Buyer's Project at the Property.

3C.2.3. Lender Covenants in the event of Foreclosure During Construction: In the event any lender or mortgagee, through the operations of their contracts to finance the Buyer's Project, acquires fee simple title to the Property, and related improvements associated therewith, prior to the issuance of a final Certificate of Occupancy for the Buyer's Project, said mortgagee shall have the following options:

- (a) Complete construction of the Buyer's Project in accordance with final plans, specifications, approved change orders, as well as development permits and approvals; or,
- (b) Sell, assign, or transfer fee simple title to the Property in its entirety, to a purchaser, assignee, or transferee, who shall expressly assume all of the covenants, agreements, and obligations of the Mortgagor, including completion of the Buyer's Project, by written instrument satisfactory to the Seller. The Seller shall not unreasonably withhold the approval of said transfer.

In the event the mortgagee elects to complete construction of the Buyer's Project, or the mortgagee sells, assigns, or transfers the Property, the Seller shall extend the time limits set forth in this Agreement for commencement and completion of construction as shall be reasonably necessary to allow said mortgagee to complete foreclosure proceedings or otherwise acquire the Property from the Buyer and thereafter commence construction. However, in no event shall such extensions of time to commence construction exceed three hundred sixty five (365) calendar days after the sale of the Property by the mortgagee to a third-party developer.

3C.2.4. Insurance Requirements for Buyer's General Contractor/Construction Manager: As part of any Performance Mortgage, the Buyer shall carry Builder's Risk Insurance in sufficient amounts to that guarantee repair or reconstruction of the Buyer Project in the event it suffers a casualty prior to the issuance of a final Certificate of Occupancy."

**7. Closing:** Section 1.6 of the Purchase Agreement is hereby deleted in its entirety and replaced with the following:

**"1.6. Closing:**

1.6.1. General:

- (a) The Parties anticipate that a portion of the Supplemental Seller Development Incentives set forth in Section 3A shall be used to construct certain on-site improvements to the Property, funded by the Sears Block Tax Increment Finance District.
- (b) In accordance with N.H. RSA ch. 162-K, on-site investments at the Property financed by the Sears Block Tax Increment Finance District must be completed while the Property is owned by the Seller.
- (c) The Seller does not desire to expend any portion of its Supplemental Seller Development Incentives until the Seller has certainty that the Buyer's Project will proceed to construction.



- (d) As such, upon satisfaction of all conditions for closing set forth within this Section 1.6, the Parties agree to close this transaction in escrow prior to the Seller proceeding with any on-site improvements, excluding demolition of the former NH Employment Security Building and related improvements.

1.6.2. Closing in Escrow: The Parties shall close the transaction contemplated by this Agreement in escrow (the “**Closing**”) upon satisfaction, completion or waiver (in writing) of the pre-closing conditions set forth in Section 1.6.3 below, delivery of the documents set forth in Section 1.6.4 below to the Escrow Agent, and payment of the Purchase Price pursuant to Section 1.4 (net of any closing prorations and adjustments made pursuant to this Agreement, the “**Closing Proceeds**”) to the Escrow Agent. The Closing shall occur on or before July 3, 2020 (the “**Closing Date**”), unless extended pursuant to Section 1.6.3.

1.6.3. Pre-Closing Conditions: The following conditions for closing in escrow shall be satisfied or completed, unless otherwise waived in writing:

- (a) Completion of a title search by the Buyer yielding results acceptable to the Buyer in accordance with Section 2.2.1.2, as well as resolution of any title defects to the satisfaction of the Buyer;
- (b) Receipt of any and all final, nonappealable federal, state, and/or local approvals and permits by the Buyer for its Project in accordance with Section 2.2.2, including, but not limited to, final Planning Board Site Plan Approval and a City Building Permit. The Seller agrees to defer payment of application fees for the City Building Permit until the ten (10) days following release of the Closing Proceeds under Section 1.6.5.
- (c) The Buyer securing all required construction financing for the Buyer’s Project from a lender of its choice;
- (d) The Buyer’s written confirmation that it is satisfied with the environmental condition of the Property in accordance with Section 2.2.1.3 of this Agreement;

- (e) The Buyer entering into a contract with a General Contractor or Construction Manager of its choice for construction of the Buyer's Project in its entirety;
- (f) Execution of abutter agreements and receipt of related documents (if any) required to facilitate the Buyer's Project;
- (g) Completion and recording of a Voluntary Merger Form at the Merrimack County Registry of Deeds so that 32-34 South Main and 33 South State Street are merged into a single parcel being the Property;
- (h) Amendment of the Sears Block Tax Increment Finance District Development Program and Financing Plan by the Seller, and appropriation of the portion of the Supplemental Seller Development Incentives funded by Tax Increment Financing, in accordance with N.H. RSA ch. 162-K;
- (i) Demolition of the existing 26,000 SF +/- former NH Employment Security Building by the Seller, and the Seller leaving the Property in a condition which is acceptable to the Buyer;
- (j) The Parties mutual agreement on a specific plan regarding how the Supplemental Seller Development Incentives shall be used to assist the Buyer's Project pursuant to Section 3A;
- (k) The Seller entering into a contract with a General Contractor or Construction Manager of its choice for construction of any improvements funded by the Seller's \$3.5M Supplemental Seller Development Incentives;
- (l) Preparation of the Deed with reservations set forth herein by the Seller;
- (m) The satisfaction of any other contingency as set forth in Sections 2 and 3 of this Agreement related to the Closing.

If any of the closing conditions listed as (g) through (l) above have not been satisfied on or before the Closing Date, then the Buyer shall have the right to extend the Closing Date

until such time as these items have been completed to the reasonable satisfaction of Buyer. However, if the Buyer does not so extend term, either party may terminate this Agreement, in which event those remaining non-refundable portions of the Deposit shall be forthwith returned to Buyer, this Agreement shall be null and void and the parties shall have no further rights or obligations herein.

1.6.4. Closing Documents: The Parties shall deliver the following documents to the Escrow Agent (the “**Closing Documents**”):

(a) Documents to be provided by the Seller:

- (i) Executed Quitclaim Deed conveying property to Buyer, prepared by the Seller, together with all applicable Deed Restrictions set forth within this Agreement;
- (ii) Executed Parking Agreement in accordance with Exhibit 3 of this Agreement; and
- (iii) Any other customary closing documents required by the Buyer’s Title Insurance Company or this Agreement, including, without limitation, a closing settlement statement (the “**Closing Statement**”).

(b) Documents to be provided by the Buyer:

- (i) Executed Performance Mortgage from the Buyer to the Seller pursuant to Section 3C;
- (ii) Executed copies of agreements with abutters to facilitate the Buyer’s Project (if any);
- (iii) Executed Financing Documents, including the Lender’s Mortgage, Promissory Notes, as well as all other normal and customary documents associated with commercial real estate transactions;
- (iv) Executed Parking Agreement in accordance with Exhibit 3 of this Agreement; and

- (v) Any other customary closing documents required by the Buyer's Title Insurance Company or this Agreement, including, without limitation, the Closing Statement.

1.6.5. Closing of Escrow.

- (a) The Escrow Agent shall hold the Closing Documents and Closing Proceeds in escrow subject to the terms of this subsection.
- (b) The Closing Proceeds shall be held in an interest bearing account.
- (c) Upon the completion of all on-site improvements required to be completed by the Seller pursuant to this Agreement, the Seller shall give written notice thereof to the Buyer and the Escrow Agent (the "**Completion Notice**").
- (d) So long as the Escrow Agent has not received an objection or conflicting demand from the Buyer within twenty (20) days following the date of the Completion Notice, the Escrow Agent shall:
  - (i) Release the Closing Proceeds pursuant to the Closing Statement;
  - (ii) Record the following documents in the Merrimack County Registry of Deeds:
    1. Quitclaim Deed conveying the Property from the Seller to the Buyer;
    2. Mortgages and related documents associated with financing for the Buyer's Project; and
    3. The Performance Mortgage from the Buyer to the Seller;
  - (iii) Release all other Closing Documents to the appropriate party.

- 1.6.6. Ability to Terminate Agreement after Closing in Escrow:  
Upon closing in escrow, the Parties forfeit all rights to terminate this Agreement, except for failure to perform

those specific duties and responsibilities, which are to occur after Closing.”

**8. Proration of Property Taxes and Utility Costs:** Section 1.12 of the Purchase Agreement is hereby deleted in its entirety and replaced with the following:

**“1.12. Prorating of Property Taxes and Utility Costs:** All property taxes and utilities (as applicable) for the Property accruing on and before recording of the Deed conveying the property to the Buyer shall be the obligation of the Seller and all such taxes and utilities accruing after recording of the Deed shall be the obligation of the Buyer and shall be accordingly prorated between the parties prior to recording of the Deed.”

**9. Project Schedule:** Exhibit 4, Project Schedule, to the Purchase Agreement is hereby deleted in its entirety and replaced with the following:

- June 10, 2019: Eighth Amendment to Purchase and Sale Agreement, Sears Block Tax Increment Finance District Amendments, and associated appropriation resolution for Supplemental Seller Development Incentives filed with the City Council.
- July 8, 2019: Concord City Council public hearing on Eighth Amendment to Purchase and Sale Agreement, Sears Block Tax Increment Finance District Amendments, and associated appropriation resolution for Supplemental Seller Development Incentives.
- August 12, 2019: Concord City Council vote on Eighth Amendment to Purchase and Sale Agreement, Sears Block Tax Increment Finance District Amendments, and associated appropriation resolution for Supplemental Seller Development Incentives.
- October 15, 2019: Execution of abutter agreements concerning improvements to abutting properties to facilitate Buyer’s Project.
- October 16, 2019: Buyer files Site Plan application with City Planning Board for Buyer’s Project.
- November 8, 2019: \$75,000 of Deposit becomes nonrefundable.
- November 20, 2019: Buyer’s site plan application determined complete by Planning Board, set for public hearing.
- December 18, 2019: Planning Board public hearing for Buyer’s Site Plan Application. Buyer secures conditional Site Plan Review approval from City of Concord Planning Board for Buyer’s Project.

- January 3, 2020: Seller bids demolition of former NH Employment Security Building.
- January 31, 2020: Seller receives bids for demolition of former NH Employment Security Building.
- February 5, 2020: Deadline for Buyer and Seller to finalize strategy for use of Supplemental Seller Development Incentives.
- February 6, 2020: \$75,000 of Deposit becomes nonrefundable.
- March 15, 2020: Buyer satisfies conditions for Demolition of former NH Employment Security Building by Seller as set forth in Section 3.1.1..
- April 1, 2020: Seller commences demolition of former NH Employment Security Building, subject to the Buyer satisfying conditions for demolition as set for in Section 3.1.1., unless otherwise waived by the Seller.
- May 6, 2020: \$75,000 of Deposit becomes nonrefundable.
- June 15, 2020: Seller completes demolition of former NH Employment Security Building.
- June 30, 2020: Anticipated date to close in escrow.
- July 13, 2020: Commencement of Seller supported on-site and offsite improvements, subject to closing in escrow.
- August 4, 2020: \$75,000 of Deposit becomes nonrefundable. Final date to close in escrow.
- September 2022: Completion of Buyer's Project.

**10. Escrow Agent Provisions:** The Purchase Agreement is hereby amended by inserting the following Section 6 after Section 5.21.4:

**“6. ESCROW AGENT PROVISIONS:**

6.1. **Objections/Conflicting Demands:** If the Escrow Agent receives an objection or conflicting demand as to the disposition of any documents or funds held by it pursuant to this Agreement, then the Escrow Agent shall have the right to do any of the following: (a) interplead the documents or funds into a court of competent jurisdiction in Merrimack County, New Hampshire (the cost of doing so to be borne by

the party or parties against which the dispute is settled) and the parties shall thereafter be free to pursue their rights at law or in equity with respect to documents or funds, and the Escrow Agent shall be fully released and discharged from its duties and obligations under this Agreement; (b) wait until the conflict is resolved by mutual agreement of the parties concerned (evidenced by written instructions to the Escrow Agent, signed by all of the parties) and proceed in accordance with such written instructions; or (c) wait until the conflict is resolved by a court of competent jurisdiction (the time for appeal having expired and no appeal having been perfected) and proceed in accordance with such decision, decree, order or judgment. All costs and expenses of any such litigation (including reasonable attorneys' fees) shall be borne by the party against which the dispute is settled. The Escrow Agent shall be under no duty whatsoever to institute or defend any such proceedings. Prior to the settlement of any such dispute, the Escrow Agent shall hold the documents or fund in their possession, without liability to anyone.

- 6.2. **Liability Following Close of Escrow:** Following distribution of all of the documents and funds held in escrow in accordance with this Agreement, the Escrow Agent shall have no further rights or obligations hereunder.
- 6.3. **Resignation:** The Escrow Agent may resign from its duties hereunder at any time by giving notice of such resignation to the other parties hereto specifying the date when such resignation shall take effect. In the event of any such resignation, the Parties shall by mutual agreement appoint a successor Escrow Agent and such successor Escrow Agent shall become the Escrow Agent hereunder upon the resignation date specified in such notice.
- 6.4. **Limitations:** The Escrow Agent undertakes to perform such duties as are specifically set forth in this Agreement and may conclusively rely, and shall be protected in acting or refraining from acting, on any written notice, instrument, or signature believed by it to be genuine and to have been signed or presented by the proper party or parties duly authorized to do so. The Escrow Agent shall have no responsibility for the contents of any writing contemplated herein and may rely without any liability upon the contents thereof. The Escrow Agent shall not be liable for any action taken or omitted by it in good faith and believed by it to be

authorized hereby or within the rights or powers conferred upon him hereunder, nor for action taken or omitted by him in good faith, and in accordance with advice of counsel (which counsel may be of the Escrow Agent's own choosing), and shall not be liable for any mistake of fact or error of judgment or for any acts or omissions of any kind unless caused by its willful misconduct or gross negligence.

- 6.5. **Indemnification:** Each party hereto agrees to indemnify the Escrow Agent and hold it harmless against any and all liabilities incurred by him hereunder except for liabilities incurred by the Escrow Agent as a result of its own willful misconduct or gross negligence.
- 6.6. **Conflict of Interest Waived:** The Buyer acknowledges and understands that the Escrow Agent is the Seller's attorney in this transaction. In the event of any dispute between the Buyer and the Seller arising out of this Agreement, the Buyer agrees that Escrow Agent may represent the Seller in connection with that dispute provided that the Escrow Agent also proceeds in accordance with Section 6.1. The Buyer agrees that in the event of any such dispute and provided that the Escrow Agent proceeds in accordance with Section 6.1, it will not object to Escrow Agent's representation of the Seller in such dispute because of any potential or actual conflict of interest arising due to the Escrow Agent's role as Escrow Agent under the terms of this Agreement.

## 11. **Miscellaneous:**

- a. **Capitalized Terms:** Capitalized terms used in this Amendment but not otherwise defined or modified herein shall have the meaning ascribed to such terms in the Purchase Agreement.
- b. **Remaining Terms of the Agreement:** Except to the extent modified by this Amendment, the Purchase Agreement remains in full force and effect. To the extent of any inconsistency between this Amendment and the Purchase Agreement, the terms and conditions of this Amendment shall control.
- c. **Counterpart Signatures:** This Amendment may be executed in two (2) or more counterparts, each of which shall be an original but such counterparts together shall constitute one and the same instrument notwithstanding that all parties are not signatories to the same counterpart. Delivery of an executed counterpart of this Amendment by telefacsimile or electronic mail shall be equally as



effective as delivery of any original executed counterpart. Signature pages may be detached from the counterparts and attached to a single copy of this instrument to physically form one (1) document.

- d. Incorporation. This Amendment shall be incorporated into and made a part of the Purchase Agreement, and all provisions of the Purchase Agreement not expressly modified or amended hereby shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the Effective Date set forth above.

**[The remainder of this page left blank intentionally]**

**SELLER**

**CITY OF CONCORD**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Thomas J. Aspell, Jr., City Manager  
Duly Authorized

**BUYER**

**DOL-SOUL PROPERTIES L.L.C.**

By: \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_  
Duly Authorized