

**PROJECT RESTART AGREEMENT**

This Project Restart Agreement (this “Agreement”) is made as of the \_\_\_ day of September, 2021, by and between the City of Portsmouth, a New Hampshire municipal corporation (the “City”), and SoBow Square, LLC, a Delaware limited liability company (“Developer”).

**Recitals**

A. The City and Developer are parties to that certain Development Agreement and Agreement to Lease dated August 29, 2019 (the “Development Agreement”). Capitalized terms used but not defined in this Agreement shall have the meaning set forth in the Development Agreement.

B. Pursuant to the Development Agreement, the City and Developer agreed to pursue together the acquisition of the McIntyre Property located at 80 Daniel Street, Portsmouth, New Hampshire (the “Property”) from the General Services Administration (“GSA”) by submitting an Application to the National Park Service (“NPS”) pursuant to the Historic Surplus Property Program.

C. The City and Developer agreed to develop a mixed-use project (the “Project”) at the Property with office, retail, and residential uses, and related parking, amenities, infrastructure and public spaces, as more particularly detailed in the plans attached as Exhibit A to the Development Agreement (the “Approved Plans”).

D. In January 2020, in response to certain actions taken by the newly elected City Council, Developer declared the City in default of the Development Agreement. In March 2020, Developer commenced litigation against the City seeking redress for such alleged default (the “Pending Litigation”). The City denies that it defaulted under the Development Agreement.

E. In April 2020, the City asked to the Developer to stay the Pending Litigation and to consider modifications to the Approved Plans to be proposed by the City. In the spirit of cooperation, Developer agreed to stay the Pending Litigation while exploring possible resolution of this dispute with the City.

F. Subsequently, the City elected to pursue a community redesign process that resulted in an alternative plan for the Project produced without the involvement of Developer. That alternative, still in conceptual design, is more particularly set forth in the plans attached as Attachment 1 to this Agreement (the “Proposed Alternative Plans”). The Proposed Alternative Plans call for less rentable building square footage, and larger and more expensive to construct public spaces, than the initial Approved Plans.

G. The Parties agree that proceeding with the Proposed Alternative Plans will require public financial support from the City in order to maintain the Project’s economic feasibility. Accordingly, the City has agreed to provide public financial support for the Project as more particularly set forth in this Agreement.

H. The Parties further agree that there remain outstanding issues regarding, among other things, the constructability of the Proposed Alternative Plans and the ability to obtain needed permits under federal, state and local law. Accordingly, the Parties have agreed to cooperate to address these matters.

I. The City and Developer desire to advance the development of the Project and to dismiss the Pending Litigation, in accordance with the terms set forth in this Agreement.

### Agreement

Now, therefore, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties hereby agree as follows.

1. Dismissal of Pending Litigation. Promptly following the execution of this Agreement, the City and Developer shall jointly file with the Rockingham County Superior Court a stipulation of dismissal of the Pending Litigation with prejudice.

2. Advancement of the Proposed Alternative Plans. The City and Developer shall work together cooperatively, each acting reasonably and in good faith, to advance the development of the Project consistent with the Proposed Alternative Plans. The Parties acknowledge that the Project requires review and approval by NPS and by certain governmental agencies issuing the Development Permits and Approvals. Such review and approval may require modifications to the Proposed Alternative Plans. Furthermore, review of the Project's design, engineering, programming, marketability, construction methods, and infrastructure requirements may require further reasonable modifications to Proposed Alternative Plans. The City and Developer agree to undertake a collaborative approach, each acting reasonably and in good faith, to implement revisions to the Proposed Alternative Plans that may be reasonably necessary or appropriate to obtain all necessary approvals and to ensure the development of an economically feasible, financeable and marketable Project.

3. Gap Contribution by the City. The Parties agree that Developer's agreement to pursue the Proposed Alternative Plans in lieu of the Approved Plans will require public financial support from the City in order to maintain the Project's economic feasibility. Accordingly, the City hereby agrees to provide such financial support toward the development of the Project that may be reasonably necessary to ensure that the Project will provide an internal rate of return on equity investment of no less than [\_\_\_\_\_] percent (\_\_\_%) per annum (the "Agreed Return"), consistent with the Parties' expectations at the time of the signing of the Development Agreement. Developer shall provide to the City the final budget for all hard and soft costs required to develop the Project in accordance with the Proposed Alternative Plans (as they may be further revised in accordance with this Agreement) and an updated financial pro forma for the Project, each of which shall be subject to the City's review and approval, not to be unreasonably withheld, conditioned or delayed (such approved financial pro forma being referred to as the "Approved Financial Pro Forma"). The Approved Financial Pro Forma shall include the amount of a financial contribution to Developer (in the form of a monetary payment, infrastructure improvements, or a combination of both) sufficient to support the Agreed Return (the "Gap Contribution"). The City shall make the Gap Contribution at or before the commencement of Project construction. The Gap Contribution shall be used to pay Project

development costs. To the extent that additional capital is necessary to achieve completion of the Project, the City shall be responsible for funding such additional capital. Following completion of the Project, to the extent that the equity invested in the Project does not achieve the Agreed Return on an annual basis, then any real estate taxes, rent or other financial obligations of Developer to the City shall be abated to the extent necessary to achieve the Agreed Return.

4. Reimbursement of Developer Expenses. The City acknowledges that Developer has previously incurred \$[*to be provided*] in expenses in connection with the preparation of the Approved Plans and the pursuit of the Project (the "Prior Project Expenses"). In consideration of Developer's agreement to forego the Approved Plans, cooperate with the advancement the Proposed Alternative Plans, and reconstitute the Project as set forth herein, the City shall within thirty (30) days of the date hereof reimburse Developer the amount of the Prior Project Expenses. The Parties further agree that promptly following execution of this Agreement, the Escrow Agent shall return the Deposit to Developer (with this letter serving as the mutual instruction of the Parties to the Escrow Agent to do so). In addition, recognizing the uncertain prospects with respect to advancement of the Proposed Alternative Plans, the City agrees that until NPS approves the Proposed Alternative Plans, as they may be modified as provided herein, the City shall reimburse Developer for all costs incurred by Developer after the date hereof in connection with the Project. Developer shall be responsible for all such costs incurred by Developer after NPS approves the Project. If the Closing does not occur for any reason other than a default by Developer, then the City shall be obligated to reimburse all such costs incurred by Developer.

5. Amendments to Development Agreement; Approval of Ground Lease. Promptly following execution of this Agreement, the City and Developer shall, each acting reasonably and in good faith, implement amendments to the Development Agreement necessary or appropriate to reflect the changes contemplated by this Agreement. Furthermore, the City acknowledges that the draft form of Ground Lease previously negotiated by Developer and the City (having draft date December 7, 2019) is substantially acceptable, subject to revisions necessary or appropriate to reflect the changes contemplated by this Agreement, such revisions to be negotiated reasonably and in good faith by the Parties.

6. Miscellaneous. The following provisions within the Development Agreement shall apply to this Agreement as if restated herein: Section 6.1 (Representations and Warranties of the City); Section 6.2 (Representations and Warranties of Developer); Section 8.1 (Cooperation); Section 8.2 (Entire Agreement; Amendments), provided that this Agreement shall not supersede the Development Agreement; Section 8.3 (Binding Effect; Successors and Assignors); Section 8.4 (Headings); Section 8.5 (Exhibits); Section 8.6 (Governing Law); Section 8.8 (Consent to Jurisdiction and Venue); Section 8.9 (Independent Parties); Section 8.11 (Waivers); Section 8.12 (No Rights Conferred Upon Others); Section 8.14 (Time of the Essence); Section 8.15 (Good Faith and Fair Dealing); and Section 8.17 (Warranties and Representations).

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This Agreement has been executed by the City and by Developer as a sealed instrument effective as of the date first set forth above.

CITY OF PORTSMOUTH

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

Name:

Duly Authorized

SOBOW SQUARE, LLC

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

Michael Kane

Duly Authorized

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

Ralph Cox

Duly Authorized