

FOURTH MODIFICATION OF DEVELOPMENT AGREEMENT

Whereas: The Town of Berlin, Massachusetts (“the Town”) and Riverbridge North, LLC (“Riverbridge North”) of 65 River Road West in Berlin (collectively the “Parties”, separately “Party”) entered into a certain Development Agreement (“Development Agreement”) dated December 2, 2009, which agreement is recorded in the Worcester County Registry of Deeds (“Registry”) at Book 45188, Page 343, a First Modification of Development Agreement (“First Modification”) dated November 25, 2013, recorded in the Registry at Book 51802, Page 22, a Second Modification of Development Agreement (“Second Modification”) dated December 11, 2017, recorded in the Registry at Book 58297, Page 331, and a Third Modification of Development Agreement (“Third Modification”) dated November 8, 2021, recorded in the Registry at Book 66801, Page 278, and

Whereas: The Parties have agreed to further modify the Development Agreement as so amended, and wish to execute and record this Fourth Modification of Development Agreement (“Fourth Modification”) setting forth such further modification; and

Whereas: at the Annual Town Meeting held on May 6, 2024 a warrant article was approved authorizing the Town Select Board to enter into this Fourth Modification.

Now therefore, the undersigned, for themselves, their heirs, successors and permitted assigns, for good and valuable consideration in the form of the promises, provisos and covenants each Party makes herein to the other, and for no payment of funds, hereby agree as follows:

1. As reflected in the Development Agreement, paragraph 14.7(b), and the Third Modification, the Town has an option to purchase Lot 6B at the property known as “River Run” for \$1.00. This lot is shown on a subdivision plan recorded at the Worcester County Registry of Deeds in Plan Book 930, Plan 123). This option to purchase for \$1.00 is extended to include all of the “River Run” property including Lot 6A, Lot 6B and Road A as shown on such subdivision plan, which are identified on the Town Assessors’ Map 7 as Lots 28, 28-7 and Road A (collectively “Lot 6”). The option also includes the two existing wells on Lot 6 that have in the past been approved as a public water supply.

2. The Town's option to purchase Lot 6 for \$1.00 shall be exercised such that the conveyance shall occur no later than December 31, 2024.
3. With regard to the road serving Lot 6, including the "Common Driveway" and "Road A", upon the conveyance of Lot 6 to the Town or to its designated assignee, the Town or assignee will take title to the road subject to an easement to allow Boundless Adventures to reach and use the aerial park it operates on Lot 6 (the relevant provisions related to the Boundless Adventures lease are found in paragraph 5 of the Second Modification). The Town or assignee will be responsible for upgrading the road when "River Run" is further developed, to the extent that such is required by the terms of the subdivision approval, and will assume the obligations of and rights under a certain restrictive covenant related to road maintenance recorded at Book 36474, Page 315.
4. Rents from Boundless Adventures, as described in the Second Modification, paragraph 5, shall be allocated as follows:
 - a. The Town shall forgive Riverbridge North its payment to the Town of half the Boundless Adventures rent for the period December 31, 2020 through December 31, 2024.
 - b. All rents after the conveyance of Lot 6 shall belong exclusively to the Town.
5. Riverbridge North agrees to pay interest of 5% annually, compounded monthly, on late payments for all sums due to the Town under the Development Agreement, as modified.
6. The Town's purchase of Lot 6 for \$1.00 from Riverbridge North shall be subject to all easements, restrictions and rights of record. Notwithstanding the foregoing sentence, the conveyance of Lot 6 by Riverbridge North to the Town shall be free of any and all encumbrances and liens of any kind that are attributable to the actions of Riverbridge North, including but not limited to its actions and those of any persons or entities it is affiliated with that involve lenders and banks.
7. The provisions of paragraph 3.1(a) of the Development Agreement shall be modified as follows. Riverbridge North shall be obligated to pay \$550,000 to the Town for the project/work set forth in such paragraph. The Town shall seek a matching grant from the

Commonwealth of Massachusetts in the same amount. Any costs for such project/work that exceed the sum of Riverbridge North's obligation and the matching grant shall be funded from the Town's revenues. Riverbridge North shall transfer the sum of \$550,000 to the Town at the time of the conveyance of Lot 6 to the Town. Riverbridge North shall provide written confirmation to the Town that it is in possession of the \$550,000 by October 15, 2024 and shall hold such funds in an escrow account until the transfer to the Town is made. The provisions of paragraph 14.6(c) that relate to the Town's actions regarding Lot 6 or any portion thereof following conveyance of Lot 6 to it shall no longer be included in the Development Agreement between the Parties. To the extent that prior modifications specified a deadline for completing the project/work set forth in paragraph 3.1(a) of the Development Agreement, they are superseded and waived by this Fourth Modification.

8. In consideration of Riverbridge North's performance of its obligations set forth in the Development Agreement, as expressly amended by the First, Second, and Third Modifications, and as expressly set forth in this Fourth Modification, the Town agrees to nullify the following provisions of the Development Agreement:

- (a) those provisions in paragraph 14.2 which require Riverbridge North to make an annual payment in the amount of \$51,200 to the Town for not constructing a Continuing Care Retirement Community (CCRC) as the hotel that was not anticipated in the Development Agreement generates significant tax revenues for the Town;

- (b) those provisions of paragraph 4.4 which require Riverbridge North to provide or procure ambulance coverage.

All other terms and conditions in the Development Agreement shall remain in effect, with the sole exception of those provisions in the Development Agreement that are expressly modified by the First Modification, the Second Modification, the Third Modification, and this Fourth Modification. In the event of any inconsistency between the provisions of any prior modifications and the provisions of this Fourth Modification, the provisions of this Fourth Modification shall control.

EXECUTED under seal on and effective as of the Town Meeting held on _____
2024.

RIVERBRIDGE NORTH, LLC

By: _____

Name: Christopher G. Senie

Its: President and Member

Hereunto Duly Authorized

By: _____

Name: W. Matthew Senie

Its: General Manager and Member

Hereunto Duly Authorized

TOWN OF BERLIN
SELECT BOARD

By: _____

Name: Chris Keefe, Chair

Hereunto Duly Authorized

By: _____

Name: R. Scott Hawkins, Vice Chair

Hereunto Duly Authorized

By: _____

Name: Margaret Stone, Clerk

Hereunto Duly Authorized

DRAFT

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

On this _____ day of _____, _____ before me, the undersigned notary public, personally appeared Christopher G. Senie, proved to me through satisfactory evidence of identification, which was a Massachusetts Driver's License, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Notary Public

My Commission expires:

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

On this _____ day of _____, _____ before me, the undersigned notary public, personally appeared W. Matthew Senie, proved to me through satisfactory evidence of identification, which was a Massachusetts Driver's License, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Notary Public

My Commission expires:

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

On this _____ day of _____, _____ before me, the undersigned notary public, personally appeared Margaret Stone, proved to me through satisfactory evidence of identification, which was a Massachusetts Driver's License, to be the person whose name is

signed on the preceding document, and acknowledged to me that she signed it voluntarily for its stated purpose.

Notary Public

My Commission expires:

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

On this _____ day of _____, _____ before me, the undersigned notary public, personally appeared R. Scott Hawkins, proved to me through satisfactory evidence of identification, which was a Massachusetts Driver's License, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Notary Public

My Commission expires:

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

On this _____ day of _____, _____ before me, the undersigned notary public, personally appeared Christine Keefe, proved to me through satisfactory evidence of identification, which was a Massachusetts Driver's License, to be the person whose name is signed on the preceding document, and acknowledged to me that she signed it voluntarily for its stated purpose.

Notary Public

My Commission expires: