



2018 00002466

Bk: 58297 Pg: 331
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SECOND MODIFICATION OF DEVELOPMENT AGREEMENT

Whereas: The Town of Berlin and Riverbridge North, LLC (the "Parties", separately "Party") entered into a certain Development Agreement ("Development Agreement") dated December 2, 2009, which agreement is recorded at the Worcester County Registry of Deeds ("Registry") at Book 45188, Page 343, and

Whereas: The Parties entered into a First Modification of Development Agreement ("First Modification") dated November 25, 2013, recorded at the Registry at Book 51802, Page 22, and

Whereas: The Parties have agreed to a series of amendments of the Development Agreement and the First Modification, and wish to execute and record this Second Modification of Development Agreement ("Second Modification") expressing those amendments, and

Whereas: at a Special Town Meeting held on December 11, 2017 the voters approved a warrant article authorizing the Berlin Board of Selectmen to enter into this Second 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. The time frame for the completion of Phases 1, 4 and 5 of certain road work mitigation projects set forth in Exhibit B of the Development Agreement is changed to the earlier of: prior to the issuance of the certificate of occupancy for the 380,000th square foot of construction at Riverbridge, and four (4) years from the effective date of this Second Modification.
2. The First Modification (in the paragraph enumerated as number 6 therein) added a set of new sentences at the end of the second full paragraph of section 14.2 of the Development Agreement. These sentences allowed Riverbridge to avoid liability for an extra tax of \$51,200 per year, due if Riverbridge does not develop the planned Continuing Care Retirement Community ("CCRC"), by developing instead, at Riverbridge or elsewhere in Berlin, a State-licensed Memory Care facility, or Nursing facility, with at least 50 beds. An additional type of development at Riverbridge or elsewhere in Berlin by the principals of Riverbridge shall allow Riverbridge to avoid such extra tax: A Senior Residence Development containing at least 50 bedrooms, as allowed by Section 720 of the Berlin Zoning By-laws.


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3. The date on which Riverbridge must begin to make such extra tax payments to the Town is hereby extended to the November 1st following the 4th anniversary of the effective date of this Second Modification.
4. The Parties recognize that the property known as River Run ("River Run"), described in section 14 of the Development Agreement, has now been subdivided into Lots 6A and 6B, as anticipated in such section 14. The approved subdivision plan was filed October 30, 2017 at the Worcester South District Registry of Deeds in Plan Book 930, Page 123. See also Covenant recorded the same date in Book 57963, Page 161.
5. As part consideration for this Second Modification, the Parties are cooperating in the leasing of land at River Run to an entity known as Boundless Adventures of Berlin, LLC, which will operate thereon an aerial adventure park. While River Run is owned by Riverbridge Glen, LLC, a subsidiary of Riverbridge North, LLC, it is agreed by the Parties that, in recognition of the Town's option to purchase Lot 6B at River Run for \$1.00, as per section 14.7 of the Development Agreement (the "Option"), one half of the net leasehold revenues paid to Riverbridge Glen, LLC shall be paid over to the Town (the "50/50 split") as additional Riverbridge project mitigation. Such payments will not reduce the Riverbridge obligations to pay a total of \$500,000 in mitigation funds to the Town pursuant to section 14.4 of the Development Agreement (this revenue is in addition). Net leasehold revenues are net of real estate taxes, property and liability insurance, and reasonable costs of management and maintenance of River Run by Riverbridge Glen, LLC (if any). In addition, the costs incurred by Riverbridge related to securing this tenant for the benefit of both parties, and the costs of readying the site for this use, including permitting and physical improvements to the site incurred by Riverbridge, up to a maximum of \$50,000, shall be reimbursed from initial rental payments before the 50/50 split of net rental revenues is commenced. Should the Town exercise the Option to purchase said Lot 6B, such revenues shall continue to be split on a 50/50 basis, since the Town and Riverbridge Glen, LLC will each own part of River Run.
6. The time period within which the Town may exercise the Option, as presently controlled by paragraph 6 of the First Modification, is hereby further extended to: four (4) years from the effective date of this Second Modification.

All terms and conditions of the Development Agreement and the First Modification of Development Agreement not altered by this Second Modification of Development Agreement remain in full force and effect. In the event of any conflict between this Second Modification and the Development Agreement or the First Modification of Development, the terms and conditions of this Second Modification of Development Agreement shall control.

EXECUTED under seal on and effective as of the Town Meeting held on December 11, 2017.

RIVERBRIDGE NORTH, LLC


By: 

Name: Christopher G. Senie
Its: President and Member
Hereunto Duly Authorized

By: W. Matthew Senie

Name: W. Matthew Senie
Its: General Manager and Member
Hereunto Duly Authorized

TOWN OF BERLIN
BOARD OF SELECTMEN

By: 

Name: Thomas Andrew, Selectman
Hereunto Duly Authorized

By: Christine Keefe

Name: Christine Keefe, Selectman
Hereunto Duly Authorized

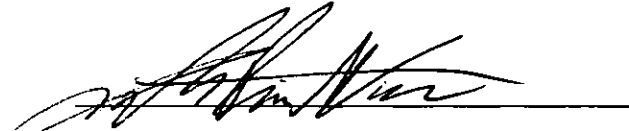
By: Lisa J Wysocki

Name: Lisa Wysocki, Selectman
Hereunto Duly Authorized

COMMONWEALTH OF MASSACHUSETTS

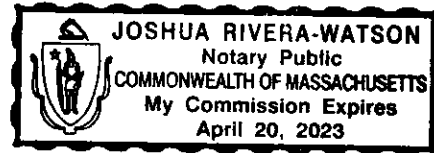
Worcester, ss.

On this 27 day of December, 2017 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

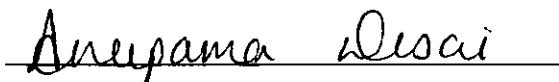
My Commission expires: April 20, 2023



COMMONWEALTH OF MASSACHUSETTS

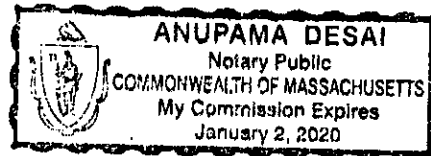
Worcester, ss.

On this 20 day of December, 2017 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: 11/2/2020



COMMONWEALTH OF MASSACHUSETTS

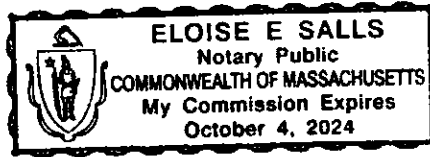
Worcester, ss.

On this 2nd day of JANUARY, 2018 before me, the undersigned notary public, personally appeared Thomas Andrew, proved to me through satisfactory evidence of voter and 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.

Eloise E. Salls

Notary Public

My Commission expires:



COMMONWEALTH OF MASSACHUSETTS

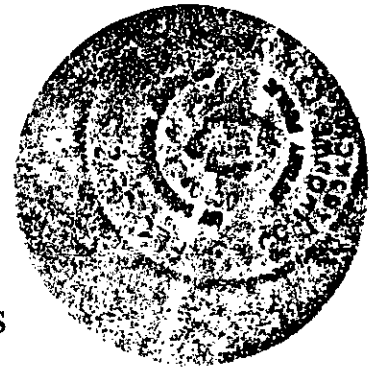
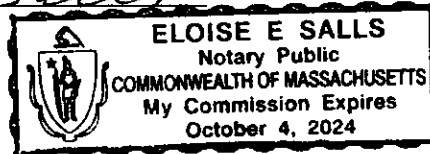
Worcester, ss.

On this 2nd day of JANUARY, 2018 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.

Eloise E. Salls

Notary Public

My Commission expires:



COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

On this 2nd day of JANUARY, 2018 before me, the undersigned notary public, personally appeared Lisa Wysocki, 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.

Eloise E. Salls

Notary Public

My Commission expires:

