

FIRST AMENDMENT TO MASTER DEVELOPMENT AGREEMENT

This First Amendment to Master Development Agreement (this "Agreement") is dated effective as of _____, 2012, between THE CITY OF AUSTIN, a Texas home rule city and municipal corporation ("City") and SEAHOLM POWER DEVELOPMENT, LLC, a Delaware limited liability company ("Seaholm").

R E C I T A L S:

A. City and Seaholm executed that certain Master Development Agreement dated June 17, 2008 (the "MDA") concerning the redevelopment of the Seaholm Power Plant in Austin, Texas (the "Property") as more particularly described therein.

B. Since the execution of the MDA, the parties have decided to add to Seaholm's public infrastructure component and add more flexibility to the development plan for the Property.

C. The parties desire to amend certain terms in the MDA.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Terms. Initially capitalized terms used herein but not defined will have the meaning assigned such terms in the MDA.

2. Residential Development Flexibility.

(a) Since the execution of the MDA, the real estate market conditions have significantly changed and for sale condominiums are no longer feasible on the Property. As the parties desire that the development of the Property happen in the near term (as opposed to waiting for the condominium market to return), the parties desire to amend the MDA to provide for residential development flexibility.

(b) The Hotel/Condo Building under the MDA, will now be called the "Residential Building" which will allow the construction of condos and a hotel as provided in the MDA or a 305 unit "Class A" for rent multifamily project. All references in the MDA to the "Hotel/Condo Building" and "Hotel/Condo Property" are now respectively the "Residential Building" and "Residential Property".

(c) With respect to the "Property Revenues" under the MDA for the Residential Building and the Residential Property, if utilized as multifamily for rent project, the Property Revenues will include the net sale proceeds (i.e., not less than 92% of the gross sale revenues) or re-financing net proceeds from the Residential Building and Residential Property.

(d) With respect to the development flexibility in Section 3.1(e)(ii) of the MDA and Section 2(a) of the Declaration, Developer may not decrease the number of

multifamily units in the Residential Building below 280 without the City's consent (which consent will not be unreasonably withheld).

(e) With respect to the reimbursements in Section 6.1 of the MDA, if utilized as multifamily for rent units, the 3rd Disbursement Threshold for the Reimbursable Fees Incentive concerning the Residential Property will be the lease of at least 50% of the units in the Residential Property.

3. Expansion of Public Streets and Reimbursement.

(a) At the original execution of the MDA, the extension of Third Street through the Property was anticipated to be a private street. Now, the parties have agreed that Third Street should be a publically dedicated street built to City standards and the cost of which should be reimbursed by the City.

(b) The definition of "Street Improvements" in the MDA is revised as follows:

"Street Improvements" means the construction to City standards of West Avenue, Third Street and Seaholm Drive with related sidewalks and streetscape.

(c) The amount of the Street Incentives in Section 6.1 of the MDA is increased from \$4,200,000 to \$7,000,000.

4. Retail Development Flexibility. Since the execution of the MDA, more detailed market studies and potential tenant interviews have led to the conclusion that, due to the lack of visibility and parking, the Power Plant Building is not an optimal location for retail uses. While Seaholm will continue to make reasonable efforts to include retail in the Power Plant Building, the retail only restriction in the Declaration will be modified in the execution version to delete Section 7(i) thereof and allow non-retail uses of the Power Plant Building.

5. Legal Descriptions. The platting of the Property has been completed and the following are added as the legal descriptions for the Property:

Exhibit A

Lots 1, 2 and 3 of the SEAHOLM SUBDIVISION, an addition to the City of Austin, Travis County, Texas, as recorded in Instrument No. 201100062, Official Public Records, Travis County, Texas.

Exhibit A-1 (Residential Property)

Lot 3 of the SEAHOLM SUBDIVISION, an addition to the City of Austin, Travis County, Texas, as recorded in Instrument No. 201100062, Official Public Records, Travis County, Texas.

Exhibit A-2 (Power Plant Property)

Lot 1 of the SEAHOLM SUBDIVISION, an addition to the City of Austin, Travis County, Texas, as recorded in Instrument No. 201100062, Official Public Records, Travis County, Texas.

Exhibit A-3 (Office Property)

Lot 2 of the SEAHOLM SUBDIVISION, an addition to the City of Austin, Travis County, Texas, as recorded in Instrument No. 201100062, Official Public Records, Travis County, Texas.

6. Ratification. Except as specifically modified herein, the MDA remain unchanged, is in full force and effect and is ratified and confirmed in all respects.

7. No Modification. This Agreement supersedes and merges all prior and contemporaneous promises and agreements. No modification of this Agreement or any other Loan Document, or any waiver of rights under any of the foregoing, shall be effective unless made by supplemental agreement, in writing, executed by City and Seaholm. City and Seaholm further agree that this Agreement may not in any way be explained or supplemented by a prior, existing or future course of dealings between the parties or by any prior, existing, or future performance between the parties pursuant to this Agreement or otherwise.

8. Waiver. The execution hereof is not an actual or implied waiver of any condition or obligation imposed under the MDA.

9. Miscellaneous. This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one instrument, but in making proof hereof it shall only be necessary to produce one such counterpart. If any covenant, condition, or provision herein contained is held to be invalid by final judgment of any court of competent jurisdiction, the invalidity of such covenant, condition, or provision shall not in any way affect any other covenant, condition or provision herein contained. It is expressly agreed by the parties hereto that time is of the essence with respect to this Agreement. The parties acknowledge and confirm that each of their respective attorneys have participated jointly in the review and revision of this Agreement and that it has not been written solely by counsel for one party. The parties hereto therefore stipulate and agree that the rule of construction to the effect that any ambiguities are to or may be resolved against the drafting party shall not be employed in the interpretation of this Agreement to favor either party against the other. The terms and provisions hereof shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

10. Applicable Law. This Agreement and the rights and duties of the parties hereunder shall be governed for all purposes by the law of the State of Texas and the law of the United States applicable to transactions within said State.

[END OF TEXT - SIGNATURE BLOCKS ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned have executed this Agreement to be effective as of the date first set forth above.

CITY:

THE CITY OF AUSTIN, a Texas home rule city
and municipal corporation

By: _____
Name: _____
Title: _____

Approved as to form and content for the City
by the City's external legal counsel:

THOMPSON & KNIGHT L.L.P.

SEAHOLM:

SEAHOLM POWER DEVELOPMENT, LLC, a
Delaware limited liability company

By: _____
Name: _____
Title: _____

CONSENT OF GUARANTOR

CIM FUND III, L.P., a Delaware limited partnership, as guarantor of certain obligations of Seaholm under the MDA pursuant to that certain Guaranty dated June 17, 2008 (the “Guaranty”), consents to the terms and conditions of the Agreement and agrees that the Guaranty is in full force and effect and is ratified and confirmed in all respects.

Executed on the date of acknowledgment below to be effective as of the effective date of the above Agreement.

CIM FUND III, L.P., a Delaware limited
partnership

By: CIM Fund III GP, LLC, a California limited
liability company, its general partner

By: _____
Name: _____
Title: _____