

FIRST AMENDMENT TO MASTER DEVELOPMENT AGREEMENT
(Uses and Street Reimbursement)

This First Amendment to Master Development Agreement (this “Agreement”) is dated effective as of June 18, 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 (as amended, 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 discussed the possibility of adding to Seaholm’s public infrastructure component and adding more flexibility to the development plan for the Property.

C. On June 7, 2012, the City Council of the City passed Ordinance No. 20120607-009 (the “Ordinance”) which authorized the negotiation and execution of an amendment to the MDA.

D. The parties desire to amend the MDA as authorized by the Ordinance.

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 currently provided in the MDA or a 305 unit (or greater) “Class A” multifamily for rent 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 (i) for the Residential Building and the Residential Property, if utilized as a 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, (ii) the phrase “but excludes any management fees paid by the City to Seaholm for the management and operation of the Offsite Parking Garage” is replaced with the phrase “but excludes any management fees paid by the City to Seaholm for the management and operation of any portion of the underground parking garage not ground leased to or owned by Seaholm”.

(d) With respect to the development flexibility in Section 3.1(e)(ii) of the MDA and Section 2(a) of the Declaration, if the Residential Building is developed as “for-rent” multi-family residential units, Seaholm may not decrease the number of multifamily units in the Residential Building below 280 without the City’s consent, upon the parameters otherwise set forth within such paragraphs.

(e) With respect to the reimbursements in Section 6.1 of the MDA, if the Residential Property is utilized as multifamily for rent units, the 4th Disbursement Threshold for the Transfer Price Incentive will be the issuance of a Certificate of Occupancy for the Residential Building and the move-in of the first resident of the Residential Building.

(f) With respect to the reimbursements in Section 6.1 of the MDA, if the Residential Property is utilized as multifamily for rent units, the 3rd Disbursement Threshold for the Reimbursable Fees Incentive 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 publicly dedicated street built to City standards and certain other public infrastructure items should be included in the scope of the street improvement work and the cost thereof should be reimbursed to Seaholm 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 together with streetscape work and parking along 3rd Street, a retaining wall on the west side of the Property, thickened roadway sections to protect utilities, an additional water line, and festival street amenities for West Avenue.

(c) The “not to exceed” amount of the Street Incentive 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 ground level of 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 ground level of the Power Plant Building, the “retail only” restriction in the Declaration concerning the ground level of the Power Plant Building will be modified in the execution version of the Declaration to permit more flexibility with respect to non-retail uses of the ground level of the Power Plant Building.

5. Mortgagee Protection. Seaholm has indicated that it may engage separate lenders to finance different aspects of the acquisition and development of the Property. Accordingly, the term Mortgage shall include a mortgage, deed of trust, security agreement, indenture or similar security agreement that encumbers the Property or any portion thereof and secures any Financing of Seaholm, and the term Mortgagee shall include a Mortgage lender of all or a portion of the Property (i.e., includes a Mortgagee on the Office Property as well as a Mortgagee on the Residential Property and a Mortgagee on the Power Plant Property, to the extent each Mortgagee has a Mortgage) and each such first lien Mortgage lender will have the rights afforded a Mortgagee under the MDA. City will not be responsible for the resolution of any conflicts arising as a result of multiple Mortgagees.

6. Leasing. Section 3.1(l) is modified to allow Seaholm to enter into leases of the Property if (a) such leases comply with the restrictions set forth or contemplated in the MDA, and (b) the validity and effectiveness of such leases are expressly conditioned upon Seaholm’s acquisition of a fee or leasehold interest in the applicable portion of the Property covered by such lease.

7. Notices. Section 12.1 of the MDA is modified to delete the requirement to send copies of notices to K&L Gates. Additionally, Section 4.2(a)(i) of the MDA is modified to only require 30 calendar days notice (together with execution versions of applicable closing documents) to the City for the Takedown of the Property or any portion thereof.

8. Execution Versions of Exhibits to the MDA. Modifications to the agreements attached as exhibits to the MDA to effectuate the modifications evidenced herein will be made in the execution versions of such agreements.

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

10. 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.

11. Waiver. The execution hereof is not an actual or implied waiver of any condition or obligation imposed under the MDA, but does amend the MDA as expressly provided herein.

12. 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. 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 (to the extent an assignment is permitted under the MDA).

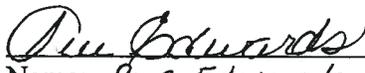
13. Applicable Law. This Agreement and the rights and duties of the parties hereunder shall be governed for all purposes by the law of the State of Texas and the law of the United States applicable to transactions within said State.

[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: Sue Edwards
Title: Asst. City Manager

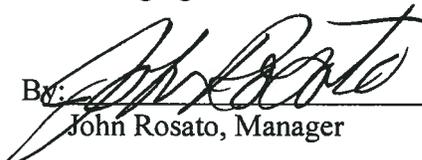
Approved as to form and content for the City by the City's external legal counsel:

THOMPSON & KNIGHT L.L.P.

SEAHOLM:

SEAHOLM POWER DEVELOPMENT, LLC, a Delaware limited liability company

By: Seaholm Power, LLC,
a Texas limited liability company
Its: Managing Member

By: 
John Rosato, Manager

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: Seaholm Power, LLC,
a Texas limited liability company
Its: Managing Member

By: _____
John Rosato, Manager

CONSENT OF GUARANTOR

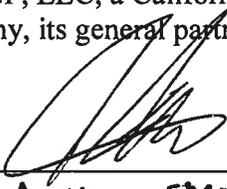
CIM FUND III, L.P., a Delaware limited partnership, as guarantor of certain obligations of Seaholm under the MDA pursuant to that certain Guaranty dated June 17, 2008 (the "Guaranty"), consents to the terms and conditions of the Agreement and agrees that the Guaranty is in full force and effect and is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

Executed 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: Avraham Shemesh
Title: President