

1 AGREEMENT

2
3
4 On this 14th day of October, 2009, **NOW COMES**, Merrimack Premium
5 Outlets, LLC (“Chelsea”), a Delaware limited partnership, having a mailing address of 105
6 Eisenhower Parkway, Roseland, New Jersey 07068, and its assigns, and Merrimack Village
7 District (“MVD”), a New Hampshire village district, with an address of 2 Greens Pond Road,
8 Merrimack, New Hampshire 03054, and hereby say as follows:
9

10
11 **WITNESSETH:**
12

13
14 **WHEREAS**, on September 16, 2008, Chelsea received conditional approval from the
15 Town of Merrimack Planning Board for a proposed site plan for certain property identified as
16 Tax Map 3C/Lots 191-196 and Tax Map 3D/Lots 28 and 34 (hereinafter collectively the
17 “Property”) to develop a portion of the Property for a regional retail outlet center and further
18 intends to develop and construct additional restaurant and hotel uses on other parts of the
19 Property in the future (hereinafter all such development collectively referred to as the “Project”);
20

21 **WHEREAS**, Chelsea has purchased the Property and intends to develop the Property and
22 requires water supply to the Property for the Project;
23

24 **WHEREAS**, MVD holds franchise rights for the delivery of water supply from its water
25 supply systems through its delivery systems to the Property, but requires certain improvements to
26 its water delivery system (hereinafter the “System”) in order to supply the domestic water supply
27 and fire flow needs of the Project without an adverse impact upon its ability to supply domestic
28 water and fire flow to its current and future users;
29

30 **WHEREAS**, MVD has determined the type and nature of improvements to the System
31 which may be required in order to be able to provide Chelsea with the domestic and fire flow
32 water supply specified by Chelsea without adversely impacting existing and future users (the
33 “Necessary Improvements”), and Chelsea has agreed to provide for the construction and
34 installation of certain of the Necessary Improvements at Chelsea’s sole cost and expense and to
35 pay certain agreed upon sums of money (hereinafter referred to as a “System Development
36 Charge” or “SDC”) as its fair share of the System equity as defined by the MVD’s SDC rate
37 structure;
38

39 **WHEREAS**, upon completion of Chelsea’s obligations to provide for the construction
40 and installation of certain of the Necessary Improvements and to pay the System Development
41 Charge, MVD shall provide water supply at a specified level to the Property for the Project,
42 without the imposition of additional impact fees or special assessments, other than as may be
43 assessed to all users of the System under the MVD schedule of rates and MVD by-laws, pro rata;
44 and
45

46 **WHEREAS**, Chelsea has agreed to waive any right to ask for or claim reimbursement
47 for the cost of the construction of any of the Necessary Improvements to the System to be made
48 by Chelsea or the payment of the costs and fees to be paid by Chelsea to MVD hereunder.
49

50 **NOW, THEREFORE**, for the mutual promises and covenants contained herein, all of
51 which are deemed good and valuable consideration, the receipt and sufficiency of which are
52 hereby acknowledged by both parties, the parties agree as follows:
53

54 1. Chelsea, at its sole cost and expense, shall design and engineer a sixteen inch
55 (16”) water main loop (hereinafter the “Loop”), beginning at the existing MVD twelve (12) inch
56 water main which is located within Continental Boulevard south of its intersection with
57 Industrial Drive in the Town of Merrimack, New Hampshire, to be located within the public
58 right-of-way of Continental Boulevard and Industrial Drive as necessary, through the Property,
59 under the F.E. Everett Turnpike, and easterly through private property owned now or formerly
60 by Kollsmann Instruments, to the current twelve inch (12”) water main owned by MVD which is
61 located within the right-of-way of New Hampshire Route 3. All design and engineering of the
62 Loop shall be submitted to MVD’s consulting engineers at the preliminary design stage (sixty
63 percent (60%) of completed drawings) and at the final design stage (ninety percent (90%) of
64 completed drawings) and final design shall be subject to the satisfaction and approval of MVD
65 and its consulting engineers not to be unreasonably withheld. During such design, Chelsea shall
66 attempt to avoid the use of a domestic booster pump, provided, however, if such booster pump is
67 utilized, a specific request for a waiver of MVD’s regulations shall be submitted by Chelsea to
68 MVD, and MVD’s review and approval thereof shall not be unreasonably withheld. Also,
69 during such design, Chelsea shall present, and MVD shall in good faith review, the feasibility of
70 having MVD supply fire flow water to the Property for the Project in order to allow Chelsea to
71 avoid the construction of a water tower on the Property. Any other improvements to the System
72 which are not required in order for MVD to provide water to the Chelsea Project shall be at the
73 sole cost and expense of the MVD, except as it impacts the rate structure of all MVD users,
74 including Chelsea. The parties acknowledge payment by Chelsea of a System Development
75 Charge as provided in #6 herein.
76

77 2. Chelsea, at its sole cost and expense, shall perform all survey work and
78 engineering design work as may be necessary to allow for the installation and construction of the
79 Loop, including creation of recordable plans (the “Plans”) thereof, which Plans shall include the
80 location of the installed mains and appurtenances. In addition, these Plans shall include the ties
81 provided to all valves, services, fittings, and bends, said Plans to be furnished to the MVD within
82 ninety (90) days of completion in accordance with the MVD main line specifications. Chelsea
83 shall, in coordination with MVD, attempt to obtain all necessary permits and approvals from the
84 State of New Hampshire and the Town of Merrimack, for the installation and construction of the
85 Loop, including obtaining any licenses or easements necessary for the installation of the Loop on
86 Town of Merrimack or State of New Hampshire property. MVD shall provide assistance to
87 Chelsea during its efforts to obtain such permits and approvals, licenses and easements,
88 including executing any application documents, supporting and promoting such application and,
89 where deemed appropriate by both Chelsea and MVD, pursuing such permits and approvals at

90 the cost and expense of Chelsea. In the event Chelsea, after good faith efforts, shall be unable to
91 obtain any public license, permits, approvals or easements as may be necessary to allow the
92 construction and installation of the Loop, MVD shall pursue the same to whatever extent may be
93 reasonably necessary to allow said construction and installation of the Loop, including the use of
94 the power of eminent domain, the cost of which shall be borne by Chelsea.
95

96 3. Chelsea, at its sole cost and expense, shall design and plat the area of all
97 easements (the "Easements") for the benefit of MVD which may be required for the construction
98 and installation of the Loop including those easement areas located upon private properties,
99 performing all engineering and soil testing, as well as such survey work, as may be necessary,
100 and obtaining permission (the "Permission") from the private property owner for such
101 investigations of and access upon the private property as may be necessary for such work.
102 Chelsea shall negotiate with any owner of private property over which the Loop shall travel for a
103 permanent easement to allow the construction and installation and maintenance of the Loop, such
104 easement to be to the benefit of MVD, and Chelsea shall acquire such easement in a form
105 reasonably acceptable to MVD's legal counsel, at Chelsea's cost and expense. In the event
106 Chelsea, despite good faith efforts, shall be unable to acquire the necessary easements from
107 private property owners hereunder within six (6) months after the date hereof (or sooner if
108 Chelsea receives a letter of refusal from the private property owner), MVD shall undertake to
109 obtain such easements through negotiation, and if unsuccessful, through the power of eminent
110 domain, the cost of which shall be borne by Chelsea. In determining "good faith efforts",
111 Chelsea agrees to keep a written log of its contacts with private property owners in order to
112 insure its diligence in attempting to acquire the necessary easements to complete the Loop.
113

114 4. Chelsea shall coordinate with MVD for the installation and construction of the
115 Loop in accordance with the MVD Specifications for Water Main Installation, Extensions,
116 Service, and Distribution System dated March 10, 2008, and the parties shall negotiate in good
117 faith as to which party is best suited to construct the various sections of the Loop not located on
118 the Property. Chelsea shall construct and install the portion of the Loop located on the Property
119 and any where else the parties mutually agree upon or, if there is no mutual agreement, the
120 entirety of the Loop. Installation and construction of the Loop shall be at the sole cost and
121 expense of Chelsea, including, but not limited to, all related expenses such as traffic control fees,
122 permit fees, and relocation of any utilities necessary for the proper installation of the Loop. Also
123 during installation and construction, the Loop as designed, engineered and approved as set forth
124 above, shall be subject to daily MVD construction observations. MVD shall advise Chelsea and
125 its contractors in writing of any observed defects or deficiencies in the construction of the Loop
126 immediately upon observation, but in any event no later than the day following any observation
127 of such defects or deficiencies. These shall be coordinated by Chelsea and the MVD shall have
128 the final discretionary say as to the acceptance of construction of the Loop. Such discretionary
129 say shall not be unreasonably withheld and shall be conditioned upon performance of
130 construction in accordance with generally accepted construction techniques for waterlines.
131 Discretionary say as to any portion of the Loop as constructed shall be made within two (2) days
132 of completion of the portion of the Loop for which acceptance is sought and fifteen (15) days of
133 completion of all construction. At the conclusion of construction, the MVD shall accept the

134 Loop as constructed and installed, provided all construction observations have been completed
135 during the course of construction and installation of the Loop subject to the provisions of
136 paragraph 5 herein. Finally, all contractors engaged by Chelsea shall be previously approved by
137 the MVD. Such approval shall not be unreasonably withheld and shall be granted or denied
138 within seven (7) business days of submission of the name, address, telephone number and
139 summary of qualifying experience to MVD. In addition, all contractors shall provide appropriate
140 performance bonds and liability insurance with a minimum coverage of \$5,000,000.00 naming
141 the MVD as an additional insured as its interest may appear. Prior to and during construction,
142 MVD shall have the right to review all field tests, reports, shop drawings, and soil and water
143 samples associated with the construction to insure compliance with the approved plans and
144 specifications.

145
146 5. Upon substantial completion of the construction and installation of the Loop as
147 hereinbefore provided, Chelsea shall provide a complete set of record drawings (stamped by a
148 P.E. or LLS) and tie sheets at the completion of the water line work. After one (1) year
149 following substantial completion to insure that there are no defects in the installation and
150 construction, Chelsea shall convey to MVD all right, title and ownership interest in the Loop.

151
152 6. Chelsea shall pay to MVD a System Development Charge of Two Hundred Fifty
153 Thousand and 00/100 Dollars (\$250,000.00) in two installments as follows: One Hundred
154 Twenty Five Thousand and 00/100 Dollars (\$125,000.00) to be payable at commencement of
155 construction and One Hundred Twenty Five Thousand and 00/100 Dollars (\$125,000.00) to be
156 payable prior to the delivery by MVD of water to the Property for the Project.

157
158 7. Chelsea shall execute a waiver of its rights under Bylaw #7.I of MVD Bylaws,
159 which Bylaw requires reimbursement of connection fees from MVD or any other third party
160 connecting to the System improvements installed by Chelsea, and Chelsea hereby releases MVD,
161 its current users and all other users which might in the future connect to the System from any
162 claim for reimbursement of costs or expenses relating to the design, engineering, construction or
163 installation of the Loop, the obtaining of permits and approvals related thereto or the obtaining of
164 licenses or easements to permit the construction and installation of the Loop.

165
166 8. Chelsea, at its sole cost and expense, shall survey and plat on a recordable plan
167 (the "Easement Plan") all easement areas located on the Property and all easement areas located
168 off of the Property containing the Loop and related infrastructure. Said easements shall have a
169 width of twenty feet (20'), the centerline of which shall be the location of the Loop as
170 constructed. Also Chelsea shall convey or cause to be conveyed to the MVD permanent non-
171 exclusive easement deeds (the "Easement Deeds") for the Easements, reasonably acceptable to
172 the MVD, to allow MVD the continued right to use the Easements for the Loop and to maintain
173 and repair any pipe, conduit, wire, cable or the like which may be associated with the Loop, as
174 may be necessary from time to time, the form of the Easement Deeds to be reasonably approved
175 by MVD's legal counsel. However, the Easement Deeds shall not prevent Chelsea from
176 constructing parking, driveways and curbing within the area of the Easement or otherwise using
177 the surface of the Easement or constructing and installing other utilities within the Easement,

178 subject to the rules and regulations of MVD, and the Easement Deeds shall require that upon
179 MVD's use of the Easement for repairs and maintenance to the Loop, MVD shall restore the
180 property to the condition existing prior to such use. Additionally, the Easement Deeds shall
181 provide that in the event that Chelsea desires to construct other improvements on the Property,
182 Chelsea shall have the right to relocate the Easement and the facilities contained therein within
183 the Property at Chelsea's cost, and in such event, MVD shall join in any necessary modifications
184 to the Easement Deeds so long as MVD's engineers approve of such relocation, said approval
185 not to be unreasonably withheld. The Easement Deeds shall contain appropriate indemnification
186 provisions and provisions relating to notice of entry and coordination of work times so as to
187 minimize the interruption of the Project's operation except in emergencies.
188

189 9. Chelsea, at its sole cost and expense, shall survey and plat on a recordable plan
190 (the "Water Tower Easement Plan") an easement area on the Property for a water tank (the
191 "Water Tank Easement"), including access and utility connection easements to and from the tank
192 site, to be constructed, maintained, operated and owned by MVD in the future, in the
193 approximate area as shown on **Exhibit A** attached hereto, subject to modification by mutual
194 agreement of MVD and Chelsea, and shall convey to MVD the Water Tank Easement by deed
195 (the "Water Tank Easement Deed") in a form reasonably acceptable to MVD's and Chelsea's
196 legal counsel. The Water Tank Easement Deed shall contain appropriate indemnification
197 provisions and provisions relating to notice of entry and coordination of work times so as to
198 minimize the interruption of the Project's operation except in emergencies.
199

200 10. Chelsea shall provide to MVD a detailed plan and detailed specifications as to all
201 irrigation to be installed, constructed and operated upon the Property before construction of the
202 Project (the "Irrigation Plan").
203

204 11. Upon satisfaction of all of Chelsea's obligations as set forth in paragraphs 1
205 through 10 hereinabove, and further conditioned upon Chelsea furnishing and installing any
206 required backflow preventers and all water meters necessary for measuring the provision of
207 domestic and fire flow water to the Property for the Project, together with compliance of all
208 applicable NH DES regulations and MVD By-Laws, MVD shall supply domestic and/or fire
209 flow water to the Property for the Project to the following limits of use plus five percent (5%)
210 margin of error:
211

- 212 a. 137,000 gpd average daily flow;
- 213
- 214 b. 296,000 gpd maximum daily flow; and
- 215
- 216 c. 500 gpm peak hourly flow.
217

218 Upon completion of the construction of the Loop and testing of the Necessary
219 Improvements, MVD shall advise Chelsea of the existing capacity of the System and its impact
220 upon the supply limits of use set forth herein; provided, however, that the foregoing shall not

221 limit or negate MVD's obligation to supply water to the capacities and limits set forth
222 hereinabove.

223

224 12. Chelsea shall be responsible for the cost and expense of all of MVD's engineering
225 and consulting review, legal fees, and inspection of Chelsea's design, engineering and
226 construction obligations under this Agreement, which review and inspection services shall be
227 added to the scope of services for the escrow currently established by MVD and Chelsea by
228 correspondence of Morgan A. Hollis to Jill Taylor dated January 18, 2008, as modified by letter
229 of Morgan A. Hollis to Gregory E. Michael dated February 15, 2008, copies of both of which are
230 attached hereto as **Exhibit B** and are incorporated herein. Should there be any conflict with the
231 terms of this Agreement and the Exhibit B documents, this Agreement shall control.

232

233 13. Prior to Chelsea requesting MVD to review plans, observe work or provide any
234 service related to its obligations hereunder, but no later than the submittal of plans contemplated
235 under Section 1 hereinabove, Chelsea shall provide the sum of Eighty Thousand and 00/100
236 Dollars (\$80,000.00) to MVD to be placed in the escrow account established by an agreement as
237 set forth in **Exhibit B** for use by MVD in accordance therewith, and disbursement shall be made
238 to MVD under the terms thereof. The escrow may also be used for the matters incorporated by
239 reference in paragraph 15 herein. Any additional escrow amounts shall be at least Ten Thousand
240 and 00/100 Dollars (\$10,000.00) in accordance with **Exhibit B** or more if needed to cover
241 expenses accrued through the date of the request for additional escrow funds. Payment of
242 additional escrow funds shall be made by Chelsea and received by the MVD within thirty (30)
243 days of receipt of a written request by the MVD.

244

245 14. This Agreement and the obligations herein shall remain in full force and effect
246 until such time as it is terminated by mutual and written agreement of the parties.
247 Notwithstanding the foregoing, in the event that Chelsea no longer intends to develop the
248 Property such that the Necessary Improvements are no longer required, Chelsea shall have the
249 unilateral right to terminate this Agreement by providing written notice thereof to MVD at which
250 time any obligation of Chelsea hereunder then remaining shall terminate. Notwithstanding the
251 foregoing, should Chelsea commence construction of all or a portion of the Loop prior to the
252 commencement or completion of building construction on the Property, notwithstanding any
253 termination of this agreement by Chelsea, the MVD, at its option, may elect to have the
254 completed or partially completed Loop and any permits and approvals therefor, the Plans (as
255 they may then exist), the Easement Deeds, the Easement Plan, the Water Tank Easement Deed
256 and the Water Tank Easement Plan transferred to it at no cost or expense to the MVD.

257

258 15. The parties acknowledge a certain Development Agreement between the Town of
259 Merrimack and CPG Partners, L.P., which agreement discusses certain covenants and conditions
260 associated with the actual construction on the Property referenced herein. The parties
261 incorporate by reference herein the provisions of that agreement that are not inconsistent with the
262 terms and conditions of this Agreement. This includes, but is not limited to paragraph 2.1
263 "Developer Reimbursement of Legal and Consultant Expenses", paragraph 3.1 "Developer
264 Payment for Inspection Services", paragraph 3.4 "Construction Phase Traffic Control",

265 paragraph 3.5 "Control Blasting Plan Required", paragraph 3.7 "Construction Management
266 Plan", paragraph 5.1 "Request of Town to Enter Upon Site", paragraph 8.1 "Storm Water
267 Management Plan", paragraph 8.2 "Provisions for Parking Lot Maintenance"; paragraph 15
268 "Miscellaneous". It being the understanding that these provisions, together with the documents
269 referenced therein, shall be considered additional terms and conditions of this Agreement. To
270 the extent any of the terms and conditions referenced in the Town Development Agreement are
271 inconsistent with the terms and conditions contained herein, the terms and conditions contained
272 herein shall control. In addition, nothing contained herein shall be construed to relieve the
273 developer from any other obligation or responsibility set forth in this Agreement.
274

275 16. The Parties acknowledge that the Operations and Maintenance Plan prepared by
276 Vanasse Hangen Brustlin ("VHB") that specifically addresses issues associated with the
277 Operations and Maintenance of the proposed project shall bind Chelsea to carry out all on-site
278 activities described therein in accordance with that Plan.
279

280 17. The Parties acknowledge the agreement made between Chelsea and the MVD
281 with regard to on-site groundwater and surface water quality sampling and analyses program as
282 presented in Item #12 of the letter submitted by Gordon Leedy of VHB to Walter Warren of the
283 Town of Merrimack dated 1/9/08. The specific language of the letter that shall remain as part of
284 this agreement and is as follows: *During the period of time that includes background sampling
285 prior to when blasting begins until one year after blasting is completed, the applicant will
286 provide split samples to MVD's on-site consultant, which will be analyzed at a laboratory
287 selected by the MVD. During this limited time period, the applicant will pay for MVD's
288 consultant and the cost for the duplicate groundwater and surface sample analyses. This will
289 apply to only those surface and groundwater monitoring locations west of the Wellhead
290 Protection District boundary. During the extended time period (beyond when blasting is
291 complete and within the remaining construction and post construction sampling periods) when
292 all other groundwater and surface sampling is conducted, a consultant for the MVD will have
293 the right to be present with the applicant's consultant when the sampling event is taking place to
294 witness such an event. It will be the responsibility of the applicant to give MVD (or their
295 consultant) a minimum of two weeks' notice for scheduling each on-site sampling event and to
296 pay for the MVD's consultant's on-site inspections.*
297

298 18. In the event of a default under this Agreement, notice thereof shall be provided to
299 the defaulting party and the defaulting party shall be given a reasonable opportunity to cure such
300 default. Upon failure of such party to cure the default, the other shall have the right to enforce
301 specific performance in addition to all other available rights and remedies at law.
302

303 19. Any notice required to be given under this Agreement shall be effective when
304 actually delivered if by hand or electronic transmission, or when deposited with a nationally
305 recognized overnight courier, or, if mailed, when deposited in the United States mail as first class
306 mail. Any notice shall be delivered to the parties at the address first appearing on this
307 Agreement or at such other address(es) as the parties may specify.
308

309 20. MVD and Chelsea have the authority to enter into this agreement and no other
310 consent or further action is required and this Agreement does not conflict with or result in a
311 violation of any provision of MVD's or Chelsea's Articles of Organization, Partnership
312 Agreement, By-Laws or any other instrument or agreement binding upon MVD or Chelsea or
313 any law, governmental regulation, court decree, or order applicable to MVD, Chelsea, the
314 Property or the Project.
315

316 21. This Agreement shall not be amended or modified except by further written,
317 signed agreement of the parties.
318

319 22. This Agreement shall be a contract governed by, interpreted in accordance with
320 and enforceable under the laws of the State of New Hampshire. The parties agree to submit to
321 the exclusive jurisdiction and venue of the Hillsborough County Superior Court, Southern
322 District, State of New Hampshire for purposes of any litigation.
323

324 23. The parties agree that this Agreement represents and comprises the full and
325 complete agreement of the parties hereto as to the matter herein and supercedes and cancels all
326 prior communications, understandings or oral agreements between the parties either express or
327 implied.
328

329
330 **IN WITNESS WHEREOF**, the parties hereto have set their hands on the day and year
331 first above written.
332

333 MERRIMACK PREMIUM OUTLETS, LLC

334
335
336 W. Lakhan
337 Witness

338 By: [Signature]
339 Name: John R. Klein
340 Title: Chief Executive Officer

341 MERRIMACK VILLAGE DISTRICT

342
343
344 [Signature]
345 Witness

346 By: [Signature]
347 Name: James A. McSweeney
348 Title: Business Manager/Superintendent
349 Duly Authorized

**ASSISTANT SECRETARY'S CERTIFICATE
RELATING TO INCUMBENCY AND AUTHORITY**

The undersigned, Darryl E. Gugig, Assistant Secretary of Merrimack Premium Outlets, LLC (herein the "Company") hereby certifies:

1. I am the duly elected, qualified and acting Assistant Secretary of the Company.
2. The following person is a duly elected, qualified and acting officer of the Company and occupies the office set opposite his name.

Name

Title

John R. Klein

Chief Executive Officer

3. The Company is the owner of property located in Merrimack, Hillsborough County, New Hampshire (the "Property").
4. The officer listed above has corporate authority to sign, seal, deliver, negotiate and accept by and on behalf of the Company any and all documents (including agreements, easements, certificates, affidavits, instruments, and/or other documents) as may be necessary or appropriate in connection with water utility service to the Property, including the Agreement between the Company and Merrimack Village District.
5. I have caused this certificate to be executed this 7th day of October, 2009.

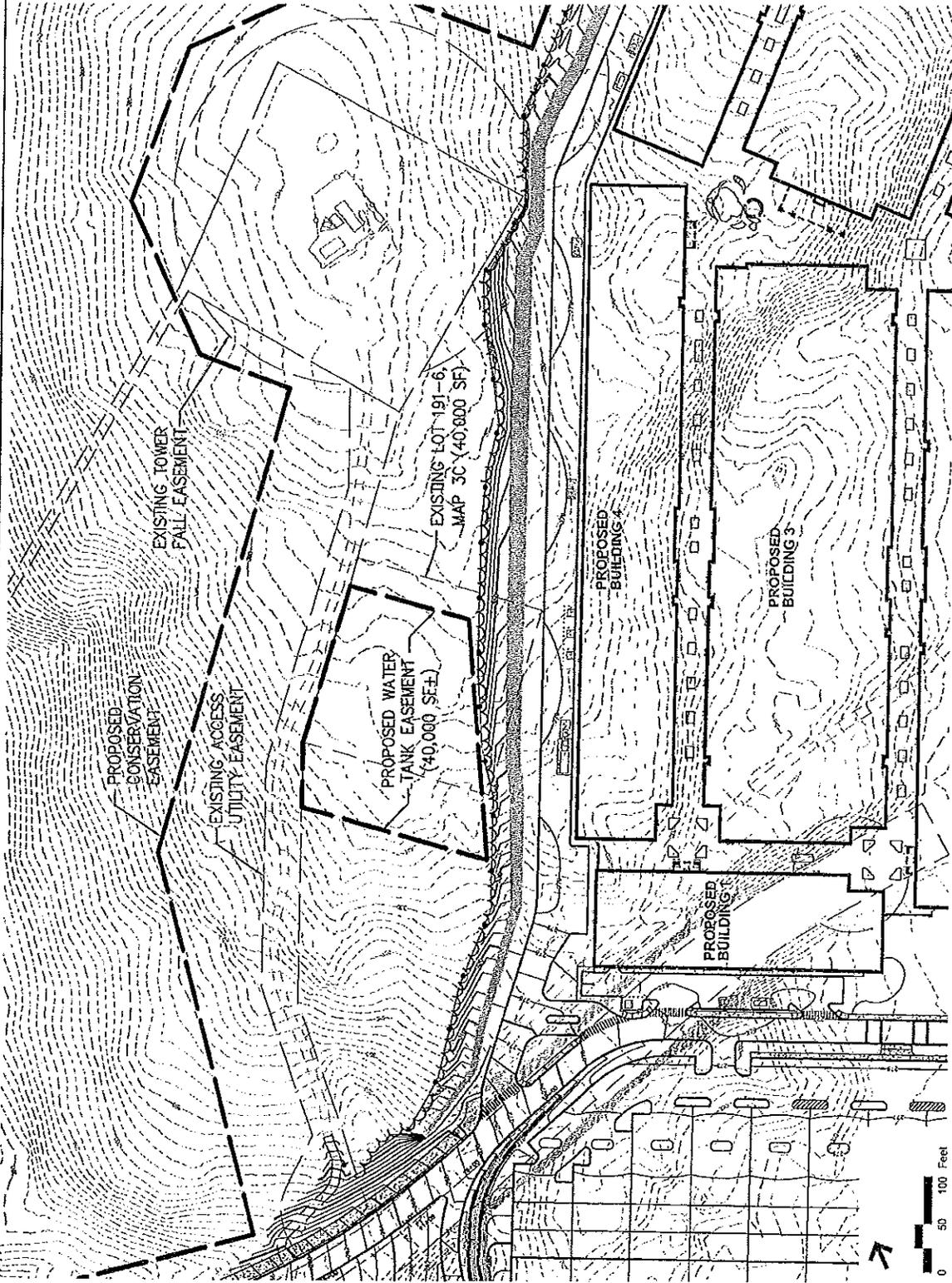


Darryl E. Gugig, Assistant Secretary

EXHIBIT A

Yanase Hagen Brustlin, Inc.
Exhibit April 9, 2009
Water Tank Easement
Merrimack Premium Outlets
Merrimack, New Hampshire

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cc: BOC
Enfo. PKT. 2/21/08

GOTTESMAN & HOLLIS

PROFESSIONAL ASSOCIATION

Attorneys at Law

39 East Pearl Street • Nashua, New Hampshire 03060-3407

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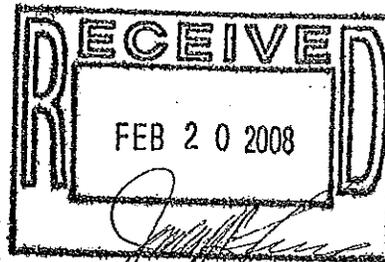
February 15, 2008

Via Facsimile

Gregory E. Michael, Esquire
Wiggin & Nourie, P.A.
670 North Commercial Street, Suite 305
P.O. Box 808
Manchester, New Hampshire 03105-0808

Re: Merrimack Village District/Premium Outlet Centers
Our File No.: 04-450

RECEIVED
FEB 19 2008



Dear Greg:

My client has reviewed your letter of January 30, 2008, with regard to the above-referenced matter. As a result, this letter is written as a modification of my letter addressed to Jill Taylor dated February 22, 2008. According to my January 22, 2008 letter, I forwarded a check in the amount of \$20,000.00 made payable to Merrimack Village District delivered under certain conditions of escrow. In accordance with the requests of your letter dated January 30, 2008, I hereby modify the conditions of escrow to be as follows:

1. The \$20,000.00 shall be placed in a segregated and independent non-interest bearing account established at an FDIC insured lending institution having offices in the State of New Hampshire as an escrow account under MVD's name subject to the terms of escrow of this Agreement with the name "CPG Partners, L.P." in some fashion incorporated in the title of the account, and having as its signatory the Business Manager/Superintendent or the Assistant Manager/Superintendent of MVD, with notice of such account location, its name and number being delivered to Chelsea upon creation of the account and deposit of the funds.

2. The funds in the escrow account shall only be used to pay invoices received by MVD from Underwood for services rendered by Underwood for review and analysis of the water being supplied to the Project as proposed, all as outlined in the letter of Robert Hudson of VHB to Keith Pratt of Underwood dated December 10, 2007, and for a determination of the availability of water supply to the Project, the necessity of any offsite improvements which

Gregory E. Michael, Esquire
February 15, 2008
Page 2

might be required in order to provide water supply to the Project, as well as attendance at meetings or conferences with the applicant's consultants concerning this proposal.

3. The funds shall not be used for engineering services performed by Underwood or otherwise performed by MVD or any other consultants for studying the existing water supply, storage and distribution system of MVD, including studies previously completed except as it may relate to the impacts caused by the Project.

4. Upon presentation of an invoice by Underwood to MVD for purposes of payment under the terms of this escrow agreement, and a confirmation by MVD that such services performed by Underwood fall within the scope of the conditions of escrow under paragraph number 2 above, portions of the escrow may be released in order to pay the invoices, with a copy of both the invoice and the payment being forwarded to my attention immediately upon payment.

5. CPG shall have a right of review and investigation of all invoices paid under the terms of this escrow, and, in the event CPG shall determine any invoices paid represent work not identified under paragraph number 2 hereinabove as qualifying for release of escrow, CPG shall notify MVD of its disagreement and the two parties shall agree to confer and attempt to reach a mutually agreeable resolution with regard to the payment of the invoices and release of escrow, failing which, CPG shall have a right to claim a breach of the term of this escrow.

6. In the event of a claim of breach of escrow, CPG shall have its full remedies at law and equity as to a breach of contract, including a claim for money damages, limited to the amount of the breach of escrow.

7. In the event the escrow funds established hereunder are paid in accordance with this letter, and additional work by Underwood qualifying for payment from escrow hereunder remains to be completed, or additional qualifying invoices remain to be paid, CPG shall, upon notification by MVD, replenish the escrow with a second conditional payment of \$20,000.00 under the same terms and conditions of this escrow agreement.

8. In the event upon completion of the review of the proposed Project funds remain in escrow, the funds shall be returned to CPG and the escrow closed unless the parties agree to amend the terms and conditions of this escrow in writing.

9. This letter shall be interpreted as a contract agreement for valuable consideration given and received under the laws of the State of New Hampshire and shall be binding upon the successors and assigns of the parties signatory to this letter.

Assuming that these terms are acceptable, would you kindly execute the enclosed letter on behalf of Merrimack Village District Water Works and forward the same back to me, at

Gregory E. Michael, Esquire
February 15, 2008
Page 3

which time the funds can be deposited and may be immediately released for payment on account as set forth in the escrow, including the \$5,000.00 invoice from Underwood Engineering referenced in your letter of January 30, 2008.

Thank you for your cooperation and assistance.

Yours truly,

GOTTESMAN & HOLLIS P.A.

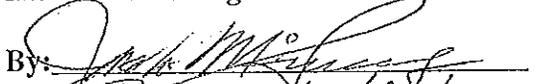


Morgan A. Hollis

MAH:jlh
Enclosures

TERMS OF ESCROW ACCEPTED:

Merrimack Village District Water Works

By: 
Title: Business Mgr./Supt.
Duly Authorized

GOTTESMAN & HOLLIS

PROFESSIONAL ASSOCIATION

Attorneys at Law

39 East Pearl Street • Nashua, New Hampshire 03060-3407

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January 18, 2008

Hand delivered

Jill Taylor
Assistant Business Manager/Superintendent
Merrimack Village District Water Works
2 Greens Pond Road
Merrimack, New Hampshire 03054

Re: Merrimack Village District Water Works/
Premium Outlet Centers
Merrimack, New Hampshire
Our File No.: 04-450

Dear Ms. Taylor:

I represent CPG Partners, L.P. of Roseland, New Jersey ("CPG"), regarding its application now pending before the Planning Board of the Town of Merrimack for a conditional use permit to allow development of a parcel of land located off of Industrial Drive in Merrimack, New Hampshire for a 550,000 square feet gross leasable area premium outlet shopping center (the "Project"). In this regard, CPG has been requested by the Planning Board to present evidence of the availability of adequate domestic and fire suppression water supply for the Project. Additionally, in the event a conditional use permit is granted by the Planning Board, my client will be making application to the Planning Board for a site plan and application to the Merrimack Village District Water Works ("MVD") for water supply to the Project.

As you are aware, CPG's consultants, Vanasse Hangen Brustlin ("VHB") and subconsultants have reviewed the water supply needs of the Project and presented their information to MVD and its consultant, Underwood Engineers, Inc. ("Underwood"). By your letter dated November 19, 2007, addressed to R. Gordon Leedy, Jr. of VHB, you have requested that an escrow account of \$20,000.00 be established, and in correspondence to the Planning Board, MVD has advised that no review of the applicant's study or request for evaluation of the availability of water supply will be undertaken until such escrow is established.

My client is agreeable to reimbursing MVD for costs and expenses incurred by it in having its consultant, Underwood, evaluate CPG's proposal regarding the water supply to the Project so that MVD can properly advise as to the availability of water supply for the project. In this regard, CPG is willing to place \$20,000.00 in escrow. Unfortunately, my review of the Bylaws of MVD has failed to uncover any authority for either a request for payment for such

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review or the establishment of an escrow to be used for reimbursement of costs incurred by MVD in its review of an application for water supply. Accordingly, this letter is delivered to you as a form of independent escrow agreement.

Enclosed with this letter please find a check in the amount of \$20,000.00 drawn on the account of CPG Partners, L.P. made payable to Merrimack Village District which is delivered to MVD in escrow in consideration of MVD's acceptance of the following conditions of escrow:

1. The \$20,000.00 shall be placed in a segregated and independent interest bearing account established at an FDIC insured lending institution having offices in the State of New Hampshire as an escrow account under the terms of escrow of this letter with the name "CPG Partners, L.P." in some fashion incorporated in the title of the account, and having as its signatory the Business Manager/Superintendent or the Assistant Manager/Superintendent of MVD, with notice of such account location, its name and number being delivered to me upon creation of the account and deposit of the funds.
2. The funds in the escrow account shall only be used to pay invoices received by MVD from Underwood for services rendered by Underwood for review and analysis of the water being supplied to the Project as proposed, all as outlined in the letter of Robert Hudson of VHB to Keith Pratt of Underwood dated December 10, 2007, and for a determination of the availability of water supply to the Project, the necessity of any offsite improvements which might be required in order to provide water supply to the Project, as well as attendance at meetings or conferences with the applicant's consultants concerning this proposal.
3. The funds shall not be used for engineering services performed by Underwood or otherwise performed by MVD or any other consultants for studying the existing water supply, storage and distribution system of MVD, including studies previously completed.
4. Upon presentation of an invoice by Underwood to MVD for purposes of payment under the terms of this escrow agreement, and a confirmation by MVD that such services performed by Underwood fall within the scope of the conditions of escrow under paragraph number 2 above, portions of the escrow may be released in order to pay the invoices, with a copy of both the invoice and the payment being forwarded to my attention immediately upon payment.
5. CPG shall have a right of review and investigation of all invoices paid under the terms of this escrow, and, in the event CPG shall determine any invoices paid represent work not identified under paragraph number 2 hereinabove as qualifying for release of escrow, CPG shall notify MVD of its disagreement and the two parties shall agree to confer and attempt to reach a mutually agreeable resolution with regard to the payment of the invoices and release of escrow, failing which, CPG shall have a right to claim a breach of the term of this escrow.

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6. In the event of a claim of breach of escrow, CPG shall have its full remedies at law and equity as to a breach of contract, including a claim for money damages, limited to the amount of the breach of escrow plus reasonable attorneys' fees.

7. In the event the escrow funds established hereunder are paid in accordance with this letter, and additional work by Underwood qualifying for payment from escrow hereunder remains to be completed, or additional qualifying invoices remain to be paid, CPG shall, upon notification by MVD, replenish the escrow with a second conditional payment of \$20,000.00 under the same terms and conditions of this escrow agreement.

8. In the event upon completion of the review of the proposed use of the existing 12" DI water main in Continental, there remain additional funds in escrow, the funds shall be returned to CPG and the escrow closed unless the parties agree to amend the terms and conditions of this escrow in writing.

9. This letter shall be interpreted as a contract agreement for valuable consideration given and received under the laws of the State of New Hampshire and shall be binding upon the successors and assigns of the parties signatory to this letter.

If the terms of escrow contained in this letter are acceptable, please execute the enclosed copy in the space provided and return the executed copy to me.

In the event upon your review of this letter you are unable to agree to the terms of escrow stated herein, please return the check and advise me accordingly.

Thank you for your cooperation and assistance.

Yours truly,

GOTTESMAN & HOLLIS P.A.



Morgan A. Hollis

MAH;jlh:Enc.

TERMS OF ESCROW ACCEPTED:

Merrimack Village District Water Works

By: _____

Title: _____