

**LAND USE COMPLIANCE AGREEMENT
PROPERTY LOCATED AT 35 SHERBURNE ROAD
PORTSMOUTH NEW HAMPSHIRE**

This Land Use Compliance Agreement for property located at 35 Sherburne Road, Portsmouth New Hampshire (“**Agreement**”) is made this 1st day of April, 2025, by and between the City of Portsmouth, New Hampshire, a municipal corporation having its principal place of business at One Junkins Avenue, Portsmouth, NH 03801 (the “**City**”) and Portsmouth Housing Authority, a New Hampshire public housing authority, with a principal place of business at 245 Middle Street, Portsmouth, NH 03833 (“**PHA**”), and its affiliated New Hampshire non-profit corporation, PHA Housing Development LTD, with a principal place of business at 245 Middle Street, Portsmouth, NH 03833 (“**PHAD**” and together with PHA, “**Portsmouth Housing**” and collectively with the City, the “**Parties**”).

WHEREAS, the City owns certain real property located at 35 Sherburne Road in Portsmouth, a site comprised of an approximately 5.3-acre parcel known as City of Portsmouth Tax Assessor Map 259 Lot 10 that is serviced by public water and sewer, and includes, among other attributes, an existing structure, the vacant Sherburne School (the “**Property**”);

WHEREAS, the City initiated a process beginning with seeking Letters of Interest and Statements of Qualifications on May 15, 2024, and subsequently, a Request for Proposal (RFP) from pre-qualified housing development teams for the development of the Property on October 9, 2024;

WHEREAS, Portsmouth Housing submitted a response to the RFP, and subsequently submitted responses to additional questions posed by the City (PHA’s response and answers to questions collectively the “**PHA Response**”);

WHEREAS, on December 16, 2024, the City Council voted to authorize the City Manager to contract with Portsmouth Housing for the development of below market rate housing at 35 Sherburne Road (the **PHA Project**”);

WHEREAS, the Property is zoned “Municipal” pursuant to the City’s Zoning Ordinance;

WHEREAS, the following provision of the Zoning Ordinance is applicable to Municipal property, including but not limited to the Property: “Buildings, structures and land owned or leased by the City of Portsmouth shall be exempt from all provisions of this Ordinance except Article 10, Environmental Protection Standards. Nevertheless, the City is urged to comply with all relevant land use controls whenever possible and feasible”;

WHEREAS, the provisions of Article 10 are inapplicable to the Property because no wetlands exist on or within 100 feet of the Property; and,

WHEREAS, the Portsmouth City Council voted on February 18, 2025 to establish a land use review process, as further defined below.

NOW THEREFORE, the Parties agree that the PHA Project shall be subject to the following land use approval process.

- . **Review Criteria:** Pursuant to the City Council vote of February 18, 2025, Portsmouth Housing's development of the Property shall be subject to the following criteria:

- i. Consistency with Portsmouth's Site Plan Review Regulations
- ii. Consistency with the City's Highway Noise Overlay District, Portsmouth Zoning Ordinance Section 10.670.
- iii. Consistency with the RFP and all addenda thereto.
- iv. Consistency with the PHA Response.
- v. Consistency with the best interests of the City. (i – v collectively the "Review Criteria")

- . **Review Process:**

A. Portsmouth Housing Authority shall submit a Site Plan application to the City in accordance with the City's published Site Plan Review Regulations. Within thirty (30) days of receipt of the Site Plan Documentation, the City's Technical Advisory Committee shall review the Site Plan Review Documentation at a public meeting. PHA representative(s) shall be present at the TAC meeting and shall present the proposed Site Plan Review documentation, specifications, construction schedule, and provide any explanation. TAC shall then provide nonbinding comments based on the Review Criteria to the Planning Board for the Planning Board's consideration. Within thirty (30) days of receipt of a recommendation by TAC, the Planning Board shall hold a public hearing to consider the Site Plan Review Documentation submitted by PHA. PHA representative(s) shall be present at the Planning Board meeting and shall present the proposed Site Plan Review documentation, specifications, construction schedule, and provide any explanation. The Planning Board shall then provide nonbinding comments based upon the Review Criteria to the City Manager for final approval.

- . **City Manager Approval Process:** The City Manager shall accept or reject PHA's proposal, or request modification to PHA's proposal, within five (5) days receipt of comments from the Planning Board. The City Manager's review shall be in accordance with the Review Criteria.

- . The above process shall be collectively referred to as the "Project Approval Process". Acknowledging the short time period the City Manager has to render a final decision regarding the applications for the PHA Project, starting on April 15, 2025 PHA shall provide written updates to the City Manager at least every thirty (30) days, including but not limited to submission of any and all project site plans, design plans, and architectural plans which are available at the time of submission.

If the City Manager approves the project, any material changes to those items subject to review pursuant to the City's Site Plan Review Regulations to the form or substance of the approved project shall only be made following a written request from Portsmouth Housing. The City Manager, at her discretion, may request additional information from Portsmouth Housing in order to process the request. The City Manager may, in her discretion, request additional feedback regarding any proposed amendments from TAC, the Planning Board, or the Public Art Review Committee as the City Manager deems appropriate. If the City Manager reasonably determines that any requested amendment is inconsistent with the Review Criteria, Portsmouth Housing may within thirty (30) days withdraw the request or amend the request to be consistent with the Review Criteria. If, following the thirty-day period, Portsmouth Housing has not withdrawn the request or amended the request in an effort to be consistent with the Review Criteria, the City may terminate this Option Agreement without any further recourse on the part of Portsmouth Housing or PHA, unless the City grants an extension in its reasonable discretion.

Acknowledging that the TAC and Planning Board meeting schedules are publicly posted for the 2025 calendar year, it shall be the responsibility of PHA to ensure that the Project Approval Process results in Planning Board consideration no later than August 21, 2025, unless extended by the City in its reasonable discretion. The City shall work in good faith to provide flexible deadlines for submission of documents and scheduling of special meetings to accommodate the Project Approval Process while respecting statutory deadlines for public hearing notices.

[Signature Pages follow]

The Parties have executed this Agreement on the Effective Date set forth above.

CITY OF PORTSMOUTH

By: 

Name: Karen Conard

Title: City Manager

PHA HOUSING DEVELOPMENT LTD.

By: 

Name: Craig Welch

Title: Executive Director

PORTSMOUTH HOUSING AUTHORITY

By: 

Name: Craig Welch

Title: Executive Director