

LAND DISPOSITION AND DEVELOPMENT AGREEMENT

This Land Disposition and Development Agreement (the “Development Agreement” or the “Agreement”) is made by and between the *City of Dover, New Hampshire* (through and including the Dover Housing Authority (the “DHA”)), by and through the City’s duly authorized City Manager, having a business address of 288 Central Avenue, Dover, New Hampshire 03820 (the “City of Dover” or the “City”), and *CPI Management, LLC*, a Massachusetts limited liability company with an address of c/o Cathartes, 100 Summer Street, 16th Floor, Boston, Massachusetts 02108 (together with its successors and assigns, the “Developer” and together with the City, the “Parties”).

RECITALS

WHEREAS, the Developer and the City seek to develop the property known as Map 22, Lot 1, consisting of 23.39 acres, more or less, along the Cochecho River, as depicted as “Proposed Tax Map 22 Lot 1” on the Lot Line Revision Plan for the City of Dover of Tax Map 22 Lots 1 & 42 River Street and Washington Street Dover, New Hampshire prepared by Doucet Survey LLC and dated as of March 18, 2019, a copy of which is attached as Exhibit A (the “Lot Line Revision Plan”), in Dover, New Hampshire (the “Premises”) with the Public Improvements (as defined in Section 5.01 hereof) and the Private Improvements (as defined in Section 5.02 hereof) (collectively, the “Project”), which Project shall be developed in such a manner that upon completion it is more likely than not that the assessed value of the Parcels as improved by the Private Improvements (hereinafter defined) will meet or exceed the Guaranteed Tax Assessment Value (hereinafter defined); and,

WHEREAS, pursuant to that certain City of Dover City Council Resolution dated February 9, 2005 (the “2005 Resolution”), DHA has been delegated development authority by the Dover City Council to develop the Premises as a mixed-use project with public improvements; and,

WHEREAS, the 2005 Resolution also designated an advisory board to DHA known as the Cochecho Waterfront Development Advisory Committee (“CWDAC”) to assist with development of the Premises; and,

WHEREAS, on September 19, 2017, CWDAC adopted updated Design Guidelines to establish standards for the visual quality of the design and subsequent development of the Dover Waterfront along the Cochecho River; and,

WHEREAS, pursuant to the 2005 Resolution, CWDAC issued a Request For Qualifications in September of 2017 soliciting parties interested in submitting redevelopment plans for the Premises; and,

WHEREAS, Developer was among six RFQ responders interviewed by CWDAC; and,

WHEREAS, Developer was one of three RFQ Responders to whom a Request For Proposal dated March 28, 2018 was sent, requesting responses in May, 2018; and,

WHEREAS, Developer submitted an RFP response to CWDAC and participated in an interview with CWDAC; and,

WHEREAS, Developer was officially designated “Preferred Developer” as contemplated by the RFP in June 2018, and by its “Preferred Developer” designation, CWDAC endorsed Developer’s proposal; and,

WHEREAS, the Parties have executed a Term Sheet dated January 29, 2019 (the “Term Sheet”) which has been executed by the Parties and has been approved by CWDAC, the Board of Directors of the DHA, and the Dover City Council as evidenced by City of Dover City Council Resolution No. R—2019.02.27—028 attached hereto as Exhibit B (the “Authorizing Resolutions”); and,

WHEREAS, the Authorizing Resolutions authorize the City Manager of the City of Dover to negotiate, finalize, and execute this Development Agreement with Developer on behalf of the City on terms and conditions consistent with the terms and conditions set forth in the Term Sheet and to sign all necessary documents to effectuate the purposes of the Term Sheet and the Development Agreement; and,

WHEREAS, the City Manager of the City of Dover has reviewed and approved the terms and conditions of this Development Agreement and has found them to be consistent with the terms and conditions of the Term Sheet; and,

WHEREAS, CWDAC has reviewed and approved this Development Agreement and the terms and conditions set forth herein; and,

WHEREAS, it is the intent of all Parties that this Development Agreement supersede the Term Sheet and control in all respects the future relationship between the Parties.

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

**ARTICLE I
REPRESENTATIONS, WARRANTIES AND COVENANTS**

Section 1.01 Representations, Covenants and Warranties of the Developer.

The Developer represents, warrants and covenants for the benefit of the City of Dover as follows:

(a) *Organization.* The Developer has the power and authority to own its properties and assets, and to carry on its business in the State as now being conducted and as hereby contemplated.

(b) *Authority.* The Developer has the power and authority to enter into and to perform its obligations under this Development Agreement and has taken all actions necessary to cause this Development Agreement to be executed and delivered, and this Development Agreement has been duly and validly executed and delivered by the Developer.

(c) *Binding Obligation.* This Development Agreement is a legal, valid and binding obligation of the Developer, enforceable against the Developer in accordance with its terms, subject to bankruptcy and other equitable principles.

(d) *No Conflict.* The execution and delivery by the Developer of this Development Agreement and compliance with the provisions hereof, do not and will not in any material respect conflict with or constitute on the part of the Developer, a breach or default under any agreement or instrument to which it is a party or by which it is bound.

(e) *Litigation.* As of the date of this Development Agreement, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, public board or body, pending or, to the best of its knowledge, threatened by or against the Developer: (i) in any way questioning its due formation and valid existence; (ii) in any way contesting or affecting the validity of this Development Agreement or the consummation of the transactions contemplated hereby; or (iii) which would have a material adverse effect upon the Developer's its ability to perform its obligations under this Development Agreement.

Section 1.02 Representations of the City of Dover.

The City of Dover represents and warrants to the Developer as follows:

(a) *Organization.* The City of Dover is a body corporate and politic and a political subdivision of the State of New Hampshire and has the full legal right, power and authority to enter into this Development Agreement, and to carry out and consummate the transactions on its part.

(b) *Authority.* Upon execution of this Development Agreement by the City Manager, the City of Dover, by all necessary official action of the City of Dover and the DHA, shall have duly authorized and approved the adoption, execution and delivery by the City of Dover of, and the performance by the City of Dover of the obligations on their part contained in this Development Agreement. Such authorizations and approvals shall be in full force and effect and shall not have been amended, modified or rescinded, and this Development Agreement shall have been duly executed and delivered and is enforceable against the City of Dover, subject to bankruptcy and other equitable principles.

(c) *Litigation.* There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, public board or body, pending or, to the best of its knowledge, threatened by or against the City of Dover: (i) in any way contesting or affecting the validity of this Development Agreement or the consummation of the transactions contemplated hereby; or (ii) in any way affecting the timely construction of the Project, each as defined herein.

(d) *Due Diligence Materials*. The City has not intentionally withheld any Due Diligence Materials in its possession.

Section 1.03 No Implied Approvals by City of Dover.

Nothing contained in this Development Agreement shall constitute, be deemed to constitute or imply that the City Council and the DHA, or any City of Dover board, department, office, or agency, officer, or employee of the City of Dover shall approve, authorize, or consent to any action or activity within or required for the development of the Project or the Premises, including any land use approval, requirements for the provision of public utilities or services, or any administrative, judicial, quasi-judicial, or legislative action, unless and until such respective authorizations, approvals or consents are duly and properly issued by the City Council, and/or the City of Dover's respective board, department, office, agency, officer or employee, unless expressly set forth herein.

Section 1.04 No Waiver of Ordinances, Rules or Regulations.

Nothing herein shall be construed as affecting any party's rights or duties to perform their respective obligations and fulfill their respective responsibilities under any zoning ordinances, use regulations, building codes, or subdivision requirements, or any other laws, regulations, rules, codes or statutes relating to the development of the improvements anticipated as part of the Project or the Premises.

**ARTICLE II
THE PREMISES**

Section 2.01 Premises.

The land subject to this Development Agreement is the Premises. The Premises shall be subdivided into Parcels (as defined in Section 2.02 hereof) and will be conveyed to the Developer in phases consisting of one or more Parcels as hereinafter more particularly described (each conveyance, a "Phase"). Phase I and the currently proposed development Parcels for subsequent Phases are identified on the Concept Plan attached as Exhibit C hereto (the "Concept Plan"). No portion of the area to be developed for the Proposed Public Waterfront Park Area, as shown on the Concept Plan shall be conveyed to Developer.

Section 2.02 Conveyance and Development Phasing

Upon satisfaction of the "Conditions Precedent to Closing" for each Phase set forth on Exhibit F hereto, the "Conveyed Land," being all of the Premises, except for the "Retained Land" defined below, shall be conveyed in Phases of one or more Parcels (as defined below) in fee simple absolute by Quitclaim Deed, subject to the terms and conditions set forth in Articles VI and VII hereof, to one or more special purpose entities designated and controlled by Developer or its principals, Jeffrey Johnston and James Goldenberg, and created for the purpose of developing the Conveyed Land in accordance with Article VIII hereof.

For purposes of this Agreement, the defined terms Conveyed Land and Retained Land shall have the following meanings:

(a) **Conveyed Land.** The Conveyed Land shall comprise the Parcels shown on the Concept Plan as the same may be adjusted from time to time in accordance with Section 2.03. The Conveyed Land shall be subdivided into parcels reasonably approved by Developer as set forth in Section 2.03(a) herein, the exact boundaries of which shall be set by a subdivision plan on or prior to the sale of each Parcel to Developer (each, a “Parcel”).

(b) **Retained Land.** The Retained Land shall comprise all of the Premises except for the Conveyed Land, including (i) the waterfront park land in the approximate location designated on the Concept Plan, intended to be improved with the Waterfront Park Improvements; (ii) fee simple title to all roadways and public rights of way thereon, whether now existing or to be constructed as part of the Public Improvements (defined below), and (iii) the River Street Pump Station.

Section 2.03 Subdivision and Approvals.

a. *Subdivision Approvals.* The Parties acknowledge that the Premises has not been subdivided into the Parcels as of the date hereof. The subdivision plan for each Parcel shall be included in the site plan application for such Parcel. Developer shall have the right to (i) review and approve the proposed boundaries of the Parcels, the legal descriptions for each Parcel, and the subdivision plan creating each Parcel prior to the submission of the subdivision plan for such Parcel to the City of Dover Planning Board for review and approval, and (ii) further subdivide Parcels and/or adjust boundary lines between Parcels, in each case in accordance with applicable laws and ordinances, following the closing on each Parcel. The Parties agree to amend Exhibit C with an updated Concept Plan reflecting the creation of each subdivided Parcel upon receipt of all necessary approvals for the creation of such Parcel from the Permitting Agencies (as defined herein) on a Parcel-by-Parcel basis.

b. *Other Approvals—Public Improvements.* The City shall obtain, at its sole cost, all necessary permits and approvals for the development of the Public Improvements, as defined in Section 5.01 hereof from all those governmental agencies, departments, boards, and commissions having permitting/approval jurisdiction pursuant to applicable federal, state, and local laws, rules, and regulations governing development of the Premises, including, but not limited to, the U.S. Army Corps of Engineers, the New Hampshire Department of Environmental Services (“NHDES”), the City of Dover Conservation Commission and Planning Board, and DHA/CWDAC, and the City of Dover, pursuant to this Development Agreement (the aforementioned boards and agencies hereinafter collectively or individually, the “Permitting Agency(ies)”) (the “Public Improvement Approvals”).

c. *Other Approvals—Private Improvements.* Developer shall obtain, at its sole cost, all necessary permits and approvals for the development of the Private Improvements, as defined in Section 5.03 hereof, from the Permitting Agencies (the “Private Improvement Approvals”). Developer shall have the right to obtain permits and approvals for each Parcel on a Phase-by-Phase basis. The City hereby agrees that it will make best efforts to consolidate and streamline the review, permitting,

and approvals process of the City's Permitting Agencies for the Private Improvements and work in good faith with Developer to obtain the Private Improvement Approvals. The Parties hereby agree that the development of the Private Improvements shall be reasonably consistent with CWDAC's Dover Waterfront Design Guidelines in effect as of the date hereof (the "Design Guidelines") and CWDAC's approval of the site plan for each Parcel shall be conclusive evidence of such site plan's compliance with the Design Guidelines.

ARTICLE III AGREEMENT TO BUY/SELL/DEPOSIT

Section 3.01 Sale.

The City of Dover agrees to sell and convey by one or more Quitclaim Deeds to Developer, or a designated and approved assignee as allowed by Article VIII below, and the Developer, for itself or any authorized assignee, agrees to purchase the Conveyed Land (together with any access, drainage, and utility easements over the Retained Land and other City-owned property that Developer reasonably requires to develop the Private Improvements, as defined herein), provided that any land rights provided to utility companies shall be on terms and conditions consistent with the City's customary practice for utility easements and licenses, on a Phase-by-Phase basis consisting of one or more Parcels to be designated by the Developer, for the Purchase Price set out in Article VI below, subject to all the contingencies, terms, and conditions of this Agreement.

Section 3.02 Deposit.

Simultaneously with the execution of this Development Agreement, the Developer shall pay to the City of Dover a nonrefundable deposit in the amount of \$60,000, which deposit is in addition to the \$20,000 deposit paid by the Developer at the time of Developer's designation as the "Preferred Developer" and an additional \$20,000 paid by Developer upon the execution of the Term Sheet. The \$100,000 of nonrefundable payments may be used by the City of Dover for expenditures incurred by the City of Dover for expenses in connection with this transaction including but not limited to surveyors, engineers, site inspectors, and economic, legal, and site design consultants. The City shall be under no requirement to account to the Developer for such expenditures, provided that such expenditures are used in connection with this transaction. One-half of the deposit shall be credited against the purchase price of Phase I with the balance to be credited against the purchase prices of the remaining Phases shown on the Concept Plan on a pro rata basis.

ARTICLE IV DUE DILIGENCE

Section 4.01 Feasibility Studies.

Developer shall have access to the Premises to conduct feasibility studies, including title, survey, environmental, geotechnical, soil, zoning, design, and land use investigations and reviews (the "Studies"). Prior to accessing the Premises, the Developer shall give the City of Dover at least 24-hours prior notice of its intent to access the Premises. In the event Developer's due diligence

reveals a condition of the Premises which is unacceptable to Developer, Developer may terminate this Agreement by written notice given to the City of Dover on or before October 15, 2019 in which event Developer's obligations to proceed with the acquisition and development of the Conveyed Land shall terminate. Notwithstanding the foregoing, the Developer, at its sole cost and expense, and with the City's reasonable cooperation at no cost to the City, shall have the right to conduct additional environmental due diligence thirty days prior to the closing date for the purchase of each Parcel to obtain an updated Phase I and/or Phase II Report, a so-called "reliance letter" for an existing Phase I or Phase II Report, or other similar assurances that no un-remediated environmental conditions exist on the Parcel, including any reports or similar documentation required by an institutional third-party lender. Developer shall have the right to terminate this Agreement without penalty or fee with regard to the subject Parcel if such environmental studies reveal un-remediated environmental conditions thereon, in which case the Purchase Price of the Conveyed Land shall be reduced by \$7,100 per unit anticipated to be developed on such Parcel, unless such units are re-allocated to another Parcel. The City has provided or shall provide within three (3) days of the date hereof all materials, to the best of its knowledge, relating to the Premises to Developer in its possession, including all existing surveys of the Premises and all other plans, site plans, topographical surveys, environmental tests, studies, and reports, test pit data, wetlands permits, permits, title abstracts, title reports, title policies, test borings, soil tests and reports which have been prepared from time to time in connection with the Premises in any way, and communications with Permitting Agencies (the "Due Diligence Materials").

Section 4.02 Indemnification.

With respect to all such Studies already conducted, and such future Studies as the Developer may undertake or cause to be undertaken by its agents, Developer shall indemnify and hold the City of Dover harmless from and against any and all actual costs, expenses, liabilities, and claims to the extent caused by the Developer's performance of the Studies. Developer's indemnification obligation expressly excludes any liability resulting from its discovery of preexisting conditions, or conditions caused by the City of Dover's use of the Premises pending Closing, by itself or its authorized users. Notwithstanding any other provisions of this Agreement, Developer's indemnity obligations hereunder shall survive execution of this Development Agreement, conveyance of the Parcels, and/or any termination of Developer's obligations to proceed with development of the Private Improvements. Nothing in this Section 4.02 shall be deemed or construed to absolve or indemnify the City, or any prior owners of the Premises or any property or property rights conveyed or temporarily controlled by Developer, from owner liability relating to the condition of said property or property rights, including, specifically, any and all environmental liabilities currently existing on the Premises and/or arising from the current and past owners' ownership and/or control of the Premises.

Section 4.03 No Representations.

Developer acknowledges and agrees that the City of Dover has not made any representations or warranties, express or implied, as to the Premises, including but not limited to title, survey, its physical condition, suitability or fitness for any particular purpose, building and zoning restrictions, value, financial prospects or condition, or the presence or absence of hazardous substances, except as expressly set forth in this Development Agreement. Except as expressly set

forth herein, Developer acknowledges it is relying solely on its own inspections and investigations of the Premises to determine whether to proceed with its rights and obligations hereunder. Notwithstanding the foregoing, nothing in this Section 4.03 shall be deemed or construed to absolve or indemnify the City, or any prior Owners of the Premises or any property or property rights conveyed or temporarily controlled by Developer, from owner liability relating to the condition of said property or property rights, including, specifically, any and all environmental liabilities currently existing on the Premises and/or arising from the current and past owners' ownership and/or control of the Premises.

ARTICLE V DEVELOPMENT PLAN

Section 5.01 Public Improvements.

The City shall be responsible for the construction and delivery of certain public infrastructure improvements on the Premises as defined on Exhibit D hereto, which include the "Site-Related Public Infrastructure Improvements," the "Waterfront Park Improvements," the "Public Street, Streetscape and Utilities Improvements," the "Supplemental Site Improvements," and the "Environmental Remediation", all as defined on Exhibit D hereto (the "Public Improvements"). The Parties agree that the cost of the Public Improvements shall not exceed Fifteen Million and 00/100 Dollars (\$15,000,000) and any Public Improvements costs in excess thereof shall be subject to the prior written approval of both Parties. Developer shall be given reasonable prior written notice of the material terms of any bond issuances or other financings entered into by the City to fund the Public Improvements. The City of Dover shall pay for the design, engineering, and construction of the Public Improvements; provided however, that Developer may, at its election and with the written approval of the City of Dover, complete some or all of the Public Improvements and receive an agreed upon credit against the purchase price for such work and the amount of any credit shall be set forth in a written agreement between the Developer and the City of Dover. The construction of the Public Improvements shall be phased so as to be completed consistent with the phasing of the Project according to the phasing schedule set forth on Exhibit F.

Section 5.02 Private Improvements.

The private improvements shall be a mixed use development, which shall consist of at least 475 multifamily residential and/or hotel units and shall include a minimum of 25,000 leasable square feet (or 20,000 leasable square feet if the Parcel shown as "Parcel E" on the Concept Plan is retained by the City as a part of the Waterfront Park Improvements) of non-residential uses, which may include office, commercial, retail, and restaurant uses, together with dedicated private parking serving the mixed use development, which parking may, if approved by the Dover Planning Board, be shared among the Parcels and be used to satisfy parking requirements in the City of Dover's zoning ordinance and land use regulations as applicable to each Phase (the "Private Improvements").

Section 5.03 Permitting.

a. *Phase I Site Plan.* The Developer shall file a Site Plan Application with the Dover Planning Board for the construction of Phase I of the Project as shown on the Concept Plan on or before December 31, 2019. The Developer shall commence construction of Phase I no later than April 5, 2021 subject to the conditions precedent set forth in Exhibit F hereto.

b. *RAP.* The Parties acknowledge that the City of Dover shall have certain obligations with respect to a remedial action plan (“RAP”) with respect to certain hazardous waste on the Premises as is hereinafter provided for. As soon as reasonably practical following the execution of this Agreement, and prior to submission to the NHDES, the City of Dover shall consult with Developer and Developer’s environmental engineers in the preparation and submission of the RAP and the Developer shall have the right to approve the RAP prior to its submission to NHDES, such approval shall not be unreasonably withheld. The City of Dover shall commence construction of the Environmental Remediation no later than one year following NHDES approval of the RAP, which Environmental Remediation shall include the work set forth in the RAP. The City of Dover shall notify the Developer when it has received a Certificate of Completion, Certificate of No Further Action, or other similar evidence of completion of the RAP from the NHDES, (“Site Closure”). The City shall be solely responsible for any ongoing monitoring or other mitigation costs or requirements as set forth in the RAP and/or required by the NHDES. Notwithstanding any other provision of this Agreement, the Developer shall have no obligation to purchase the Phase I Parcel or any other Parcel until such evidence of Site Closure has been obtained. In the event of any delay in obtaining Site Closure, which the Parties agree shall occur no later than April 5, 2021, then all time periods and benchmarks as set forth in Exhibit E shall be extended on a day-for-day basis corresponding to each day that receipt of evidence of Site Closure is delayed.

c. *Updated Concept Plan.* The Developer shall submit an updated Concept Plan for CWDAC’s approval no later than June 1, 2020.

d. *Additional Site Planning.* The Developer shall apply for final site plan approval for the second Phase Parcel or Parcels no later than six months following the NHDES approval of the RAP.

e. *Time Extensions.* The parties agree that one or more of the benchmarks or time periods set forth in Exhibit E of this Agreement may be extended with the written consent of the other party which consent shall not be unreasonably withheld, conditioned, or delayed; provided that any requested extension for a period of more than six months shall be at the sole discretion of the party granting such extension, provided further, that the City of Dover shall be required to extend any time period affecting the Developer on a day-for-day basis corresponding to City of Dover’s delay in the performance of its obligations under this Agreement, including any delay in delivering the Public Improvements.

Section 5.04 Temporary Construction Easement.

The City shall, on or before the Phase I Closing Date, execute and deliver a temporary construction easement or license to Developer for the benefit of Developer, its contractors, subcontractors, agents, representatives and assignees, to provide them with rights of access and egress on and the right to use the Retained Land for storage of supplies and materials, laydown

areas, and to facilitate completion of the Private Improvements on terms reasonably acceptable to the Parties (the “Construction Easement”); provided, however, that the Construction Easement shall not unreasonably interfere with City’s construction of the Public Improvements.

ARTICLE VI CLOSING / PURCHASE PRICE

Section 6.01 Closing Date.

a. *Phase I.* The closing on the Phase I Parcel(s) shall take place thirty days (or the next business day if the thirtieth day is not a business day) following the satisfaction of all conditions precedent set forth in Exhibit F attached hereto with regard to the Phase I Parcel(s) (the “Phase I Closing Date”). The closing shall occur at the Dover City Hall at 10:00 a.m. unless another time and place is mutually agreed to by the Parties. At the closing, the Seller shall deliver a Quitclaim Deed for each Phase I Parcel together with the normal and customary conveying affidavits and certificates relating to the sale of real property and any other documents as may be reasonably necessary to convey insurable and marketable title to the Phase I Parcel(s). At closing, the Buyer shall deliver (i) the Purchase Price then due to the City for the Phase I Parcel(s), (ii) normal and customary conveyancing affidavits and certificates, and (iii) a performance mortgage for the Phase I Parcel(s) in the form attached hereto on Exhibit H.

b. *Phase II and Future Phases.* The closing on the Phase II Parcel(s) and each subsequent Parcel shall take place on or before the closing date for each Phase set forth on Exhibit E and following the satisfaction of all conditions precedent set forth in Exhibit F attached hereto with regard to each Parcel, unless the Developer, in its sole discretion, elects not to purchase a Parcel. The closing for such Parcel(s) being purchased shall occur at the Dover City Hall at 10:00 a.m. unless another time and place is mutually agreed to by the parties. At the closing, the Seller shall deliver (i) a Quitclaim Deed for each Parcel being purchased and (ii) customary affidavits and certificates relating to the sale of real property and any other documents as may be reasonably necessary to convey insurable and marketable title to each Parcel being purchased at the closing. At closing, the Buyer shall deliver (i) the Purchase Price then due to the City for each Parcel(s) being purchased, (ii) customary conveyancing affidavits and certificates, and (iii) a performance mortgage for each Parcel being purchased in the form attached hereto on Exhibit H.

c. *Extension Rights—Developer.* Notwithstanding the foregoing and any other provision of this Agreement, Developer may, at its option, extend the closing date as shown on Exhibit E for any Phase for up to twenty-four (24) additional months on a monthly basis so long as it either (i) demonstrates reasonable progress to that time in the pre-development of the Private Improvements for such Phase or (ii) is constructing and/or stabilizing the most recently acquired Phase(s). The first twelve months of extensions shall be at no cost to Developer. Thereafter, Developer shall pay an additional applicable and to be credited against the Purchase Price, but nonrefundable, Deposit of \$5,000 per month for each monthly extension.

Section 6.02 Purchase Price.

The purchase price for the Conveyed Land shall be Three Million Three Hundred Seventy-Two Thousand Five Hundred Dollars (\$3,372,500) (the "Purchase Price"). The Purchase Price shall be allocated among each of the Phases based upon the number of residential and/or hotel units approved for that Phase. The Private Improvements are currently anticipated to include 475 residential and/or hotel units and, accordingly, the Purchase Price is \$7,100 per unit. If the Private Improvements include more than 475 residential and/or hotel units, then the Purchase Price shall be increased by \$7,100 per additional residential/hotel unit in excess of 475 units, provided however that nothing in this sentence shall be deemed to be an approval by the City, DHA or CWDAC of such additional units. As Phase I consists of approximately 200 units, the Purchase Price for Phase I will be approximately \$1,420,000 subject to the Deposit credits set forth in Section 3.02 and subject to a credit for any portion of the work undertaken by the Developer for the Public Improvements as may be agreed upon in writing by the City of Dover and the Developer (the "Phase I Purchase Price"). The Purchase Price shall be paid to the City of Dover by wire transfer.

In the event that subsequent to the Phase I closing, the number of units in Phase II or any subsequent Phase changes, such that the total number of units is less than the number of units anticipated to be constructed at the time of the Phase I closing, then the Purchase Price allocable to any subsequent Phase shall be appropriately adjusted such that the total purchase price shall be Three Million Three Hundred Seventy Two Thousand Five Hundred Dollars (\$3,372,500).

Section 6.03 Impact Fees.

The Developer shall be responsible for paying all applicable impact fees for police, fire, recreation, and schools. The Developer may, with the consent of the City of Dover, provide certain improvements to enhance the Premises and the public land immediately surrounding it as an offset to the impact fees. Such improvements and any offset shall be subject to the approval of the City of Dover Planning Board in its sole discretion in keeping with Chapter 170-23 (F) of the City of Dover. Any such offset or agreement with respect to impact fees shall not affect the Purchase Price. In the event that the Planning Board grants a petition to waive all or some portion of the impact fees set forth above, City Council approval of such waiver must be obtained.

Section 6.04 Deed Restrictions.

The Quitclaim Deed for each Parcel from the City of Dover to the Developer shall be subject to the following easements, restrictions, and rights:

a. *Easements.* The Parcels may be conveyed subject to customary easements and licenses, including for access, utilities, and drainage, in forms reasonably acceptable to the Parties, provided that such easements would not unreasonably interfere with Developer's intended use of the Parcels.

b. *Deed, Right of Reverter.* Each deed shall contain a right of reverter with respect to the Parcel being conveyed providing that the Parcel shall revert to the City of Dover in the event that the Developer has not substantially commenced construction and is diligently pursuing construction of the Private Improvements on such Parcel within two (2) years of the closing date

for such Parcel, after giving effect to all of Developer's extension rights pursuant to this Development Agreement. The deed shall contain a limited power of attorney whereby the Developer makes, constitutes, and irrevocably appoints the City of Dover as its attorney in fact for the limited purpose of executing a deed of reconveyance, and such other related reconveyance and closing documents, such power to be exercised if and only in the event of the Developer's refusal to voluntarily execute such a reconveyance deed and other documents. The reconveyance shall be without consideration to the Developer.

**ARTICLE VII
GUARANTEED TAX ASSESSMENT VALUATION**

Section 7.01 Minimum Assessed Values.

Developer acknowledges that the Public Improvements to be undertaken by the City of Dover are being financed using tax increment financing (currently authorized at \$6,600,000), which financing is to be repaid by the City of Dover through the property taxes generated by the Private Improvements on the Conveyed Land (the "TIF"). On the closing date for each Parcel (for each Parcel, the "Valuation Date"), such Parcel shall be assigned a minimum guaranteed assessment value, for *ad valorem* purposes, equal to an amount not less than the amount necessary to generate an annual tax payment, given the then-existing City's published overall tax rate, equal to the following: the sum of the actual expense to the City to retire, over a twenty (20) year period beginning on the date that is eighteen (18) months following the issuance of a Certificate of Occupancy for the first building constructed as part of the Private Improvements constructed on such Parcel (the "Tax Guarantee Period"), the portion of the TIF issued by the City to provide funding for the Public Improvements implemented by the City to support the development of the Private Improvements on such Parcel (allocated on a per-unit basis proportionally to the total number of units to be developed in the Private Improvements), including interest at rates then applicable to the issued TIF, plus its reasonable out of pocket costs, expenses and fees related to the issuance and servicing of the TIF (for each Parcel, the "Guaranteed Tax Assessed Value"). Each Parcel shall be subject to its Guaranteed Tax Assessed Value for the Tax Guarantee Period beginning on the date that is eighteen (18) months following Developer's receipt of the final Certificate of Occupancy for the first building constructed as part of the Private Improvements constructed on such Parcel. The Parties shall execute an amendment to this Development Agreement updating Exhibit G with the Guaranteed Tax Assessed Value for each Parcel on the Valuation Date for each Parcel.

Except (i) as permitted by the following sentence and by Section 7.05, and/or (ii) in the event of a misapplication, miscalculation, or other mistake, in the calculation of the Guaranteed Tax Assessed Value, Developer hereby waives any right it may otherwise possess to challenge the Guaranteed Tax Assessed Value for each Parcel. Notwithstanding the foregoing, if the actual assessed value of any Parcel then subject to a Guaranteed Tax Assessed Value decreases by more than twenty-five percent (25%) from the most recent establishment of the actual assessed value of such Parcel in any five year period, and provided that the resulting actual assessed value is less than the then-applicable Guaranteed Tax Assessed Value for the Parcel, then the Parties agree to discuss whether and how to continue the Developer's obligation to pay taxes based on the Guaranteed Tax Assessed Value for such Parcel, but the City is not required to grant any such relief.

Section 7.02 Tax Shortfalls.

To the extent that in any tax year during the Tax Guarantee Period, the *ad valorem* real property taxes assessed for a Parcel are less than the *ad valorem* real property taxes that would be assessed using the Guaranteed Tax Assessed Value for the Parcel as if it was the assessment value for such Parcel for that year (as provided above), then the Developer shall be responsible for the payment of the difference to the City as if the Parcel was assessed at the Guaranteed Tax Assessed Value (for each Parcel, the “Ad Valorem Tax Payment Obligation”). Any Ad Valorem Tax Payment Obligation shall be due and owing at the same time that taxes are generally due for City property owners, and shall be treated as an obligation for the payment of taxes for all purposes related to enforcement and collection of the obligation.

Section 7.03 Phasing of Guaranteed Tax Assessed Value, Phase I.

The Parties acknowledge that Developer currently expects Phase I to consist of one Parcel improved with two buildings (the “Phase I Buildings”) and a parking lot, and that the Phase I Buildings will be constructed sequentially. Notwithstanding the valuation mechanism set forth in Section 7.01, the Parties agree that (i) should the building identified as Building 1 on the Concept Plan be the only building constructed, the Phase I Parcel shall have a Guaranteed Tax Assessed Value of \$10,000,000, (ii) upon completion of the buildings identified on the Concept Plan to be constructed, the Guaranteed Tax Assessed Value shall be \$15,000,000, and (iii) should only Building 1 be completed and the Developer elects to not build any other Private Improvements, the City is authorized to limit its required Public Improvements expenditure to a value equal to the debt service covered by a Guaranteed Tax Assessed Value of \$10,000,000.

Section 7.04 Performance Mortgage.

On the Valuation Date for each Parcel, the Developer shall grant and convey to the City of Dover a performance mortgage to be recorded at the Registry and be a lien upon the Parcel being conveyed to secure the Developer’s obligations pursuant to Section 7.01, 7.02, and, for the Phase I Parcel(s) only, 7.03 above (for each Parcel, the “Performance Mortgage”). The form of Performance Mortgage is attached as Exhibit H. The Performance Mortgage shall be subordinate to any third-party lender's mortgage on such Parcel except with regard to the tax related covenants within the Performance Mortgage as contained within Sections 7.01, 7.02, and, for the Phase I Parcel(s) only, 7.03. The City shall reasonably cooperate with any lender(s) regarding the subordination of its Performance Mortgage by entering into a written subordination agreement in recordable form, provided that such subordination agreement excludes the Developer’s covenants to the City contained in Section 7.01, 7.02 and, for the Phase I Parcel(s) only, 7.03 of the Development Agreement, which covenants shall remain superior to the lender's mortgage and other security instruments following the recording of such subordination. Upon the expiration of the Tax Guarantee Period for any Parcel, the City shall discharge, in a writing in recordable form, the Performance Mortgage applicable to such Parcel.

Section 7.05 Amendment of Guaranteed Tax Assessed Value.

If prior to the commencement of the Tax Guarantee Period, the City discovers in good faith any other costs, expenses and fees related to the Public Improvements which were not included in the calculation of the original Guaranteed Assessed Value of a Parcel by mistake, the City, following written notice to the Developer and an opportunity not to exceed thirty (30) days for Developer to raise issues regarding the validity or applicability of such interest, costs, fees and expenses, may modify the Guaranteed Tax Assessed Value unless such interest, costs, fees and expenses were known and should have been included in the setting of the Guaranteed Assessed Value, but were omitted due to the reckless, willful or wanton (but not negligent) conduct of the City.

ARTICLE VIII ASSIGNMENT

At or immediately prior to the conveyance of any Phase, Developer shall have the right to transfer the right to acquire the Parcel for such Phase together with and subject to the rights relating to such Phase under this Development Agreement and any relevant permits, authorizations, approvals, resolutions, or other similar documents relating to such Phase to a special/single purpose entity (an "SPE") formed for the sole purpose of acquiring such Phase and developing the Private Improvements relating to such Phase, provided that (i) in all cases, either Jeffrey Johnston or James Goldenberg, the principals of the Developer, must retain control of each such SPE until the completion of the construction of the Private Improvements for such Phase, the issuance of the Certificate of Occupancy, and such Phase attaining "stabilization" and (ii) Developer shall not assign its obligations under this Agreement to such SPE unless such obligations directly relate to the Parcel in question. For purposes of this Agreement, "control" shall mean the ability, directly or indirectly, to direct or cause the direction of the management or policies of the SPE or the power to veto major policy decisions of the SPE. Any such assignment of this Development Agreement shall be in writing, and shall clearly identify the scope of the rights and obligations assigned. Additionally, no consent from the City shall be required for a collateral assignment of this Development Agreement by Developer to an institutional commercial lender for the express purpose of obtaining a loan for the acquisition of a Parcel and/or the construction of the Private Improvements thereon or any refinancing thereof; provided, however, that the City shall execute and deliver such documents as are reasonably requested by such institutional commercial lender in connection with the making of such loans on forms reasonably acceptable to the City.

ARTICLE IX DEFAULT

Section 9.01 Events of Default.

The following shall constitute events of default under this Development Agreement:

(a) *Material Breach of Agreement.* The material breach by the Developer of its duties and obligations under this Agreement or any related agreement or document, including the failure to pay any sums pursuant to this Agreement, when due, followed by the failure by the Developer to cure such breach within fifteen (15) days of written notice of such breach by the City;

or such additional time as is reasonably needed to cure such default, provided the Developer is diligently pursuing a cure of the default.

(b) *Failure to Adhere to Agreement.* The failure of the Developer to fulfill those duties and obligations in a timely manner, as set forth in this Development Agreement.

(c) *False Statements.* Any statement, representation or warranty made by the Developer in this Development Agreement or in connection herewith, or any statement, report, schedule, certificate, or other instrument furnished by the Developer proves to be false, incorrect or misleading in any material respect;

(d) *Invalid Agreement.* Any material provision of this Development Agreement or any related agreement or document which, at any time for any reason, ceases to be valid and binding on or declared to be null and void, or the validity or enforceability thereof shall be contested by the Developer, or the Developer denies that it has any or further liability or obligation under this Agreement or any other related agreement or document.

(e) *Failure of Security.* If the security interests and liens created by the Performance Mortgage shall cease to be valid and perfected security interests or liens, as the case may be, in favor of the City with the priorities stated therein.

(f) *[Intentionally Omitted]*

(g) *Attempted Assignment.* Except as provided in Article VII, the Developer assigns or attempts to assign its rights under this Development Agreement or any interest therein, without the consent of the City of Dover which shall not unreasonably be withheld, conditioned, or delayed.

(h) *Construction Breach.* The Developer does not complete construction of the Project in accordance with approved plans and specifications or this Development Agreement, or the Developer makes any material change to such plans and specifications without receiving the prior written consent of the City of Dover, which shall not be unreasonably conditioned, withheld or delayed.

(i) *Liens.* Any mechanics', laborers', materialmen's or similar statutory liens, or any notice thereof, are filed against all or any portion of the Private Improvements which are not be discharged or bonded within thirty (30) days of such filing or such greater period of time as shall be permitted by the terms of this Development Agreement.

(j) *Cessation of Work.* Any cessation occurs at any time in construction of the Private Improvements for any Phase, once building permits are issued, for more than thirty (30) days except for strikes, riots, or other causes beyond the Developer's control, without the written consent of the City of Dover.

(k) *Tax Liens.* A filing against or relating to the Developer or its principals of (i) a federal tax lien in favor of the United States of America or any political subdivision of the

United States of America, or (ii) a state tax lien in favor of any state of the United States of America or any political subdivision of any such state, which is not dismissed within sixty (60) days of the filing date thereof or which the Developer is not contesting in good faith.

(l) *Assignment for Benefit of Creditors; Insolvency.* If the Developer makes an assignment for the benefit of creditors, or institutes any proceeding seeking relief on its behalf as debtor or to adjudicate it as insolvent, or seeking reorganization, arrangement, adjustment or composition of it or its debts under any law of the United States, or any state, relating to insolvency or reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its property, or consents by answer or otherwise to the institution of any such proceeding against it.

(m) *Bankruptcy.* If any proceeding is instituted against the Developer seeking to have an order for relief entered against it as debtor or to adjudicate it as bankrupt, or seeking reorganization, arrangement, adjustment or composition of it or its debts under any law of the United States, or any state, relating to bankruptcy or reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its property, which either (i) results, without the consent or acquiescence of the Borrower in any such entry of an order for relief, adjudication of bankruptcy or issuance or entry of any other order having a similar effect, or (ii) is not dismissed within forty-five (45) days of the date any such order or adjudication is entered.

(n) *Injunctive Relief.* The entry of any court order which enjoins, restrains or in any way prevents the Developer from fulfilling all or any part of its obligations under this Development Agreement, which is not dismissed within thirty (30) days of the filing date thereof or which the Developer is not contesting in good faith.

(o) *Sale; Transfer of Parcels.* The sale, transfer, encumbrance, conveyance or other disposition of any Parcel (except the leasing of portions of the Conveyed Land in the ordinary course of business) without the prior written consent of the City until such time as the completion of the construction of the Private Improvements on such Parcel, the issuance of the Certificate of Occupancy, and such Phase attaining "stabilization"; provided, however, that Developer may at any time and without the consent of the City freely grant (i) one or more mortgages in the Conveyed Land to institutional lenders and (ii) easements and other encumbrances necessary to develop the Private Improvements, including utility easements to utility providers.

(p) *Merger, Dissolution, Consolidation.* The dissociation, dissolution, termination, liquidation, consolidation or merger of the Developer, or any change in the identity, authority or responsibilities of any person having management or policy authority with respect to the Developer from that existing at the execution of this Agreement, without prior written consent from the City of Dover or as expressly permitted by this Agreement pursuant to Article VIII.

Section 9.02 Non-Exclusive Rights and Remedies.

In the event of a default of the Developer's obligations under this Development Agreement or any collateral document related to this Development Agreement, the City of Dover shall have any and all rights and remedies as set forth in this Development Agreement. Such rights and remedies are non-exclusive, and the City of Dover shall have any and all other rights at law or in equity. In the event that the City of Dover must engage counsel or expend any other sums for the purpose of enforcing its rights under this Development Agreement or the Performance Mortgage, the Developer shall be responsible for the payment of the City of Dover's reasonable fees, costs and expenses, including attorney's fees if the City is the prevailing party in a such enforcement action.

ARTICLE X MISCELLANEOUS

Section 10.01 Agreement Termination.

In the event that this Development Agreement or any aspect thereof is terminated, and unless otherwise stated in this Development Agreement, termination must be accomplished by a writing provided by the terminating party(ies) to the other party(ies). Except as provided in this Development Agreement, upon any such termination, a party shall have no further rights or obligations hereunder except the indemnification obligations set forth herein and those other obligations that expressly survive such termination.

Section 10.02 Indemnification.

(a) The Developer releases the City, the members of the City Council, the DHA and its directors, and the City of Dover's and the DHA's respective officers, attorneys, agents and employees, from, and agrees that the City, the members of the City Council, the DHA and its directors, and the City of Dover's and the DHA's respective officers, attorneys, agents and employees, shall not be liable for and indemnifies and defends (with counsel reasonably acceptable to the City) the City of Dover, the members of the City Council, the DHA and its directors, and the City of Dover's and the DHA's respective officers, attorneys, board members, agents and employees against, all liabilities, claims, costs and expenses, including out-of-pocket and incidental expenses and legal fees, imposed upon, incurred or asserted against the City of Dover, the members of the City Council and the City of Dover's respective officers, attorneys, agents and employees, to the extent arising out of the negligence or willful act or omission of the Developer, its agents or anyone who is directly employed in connection with (i) this Development Agreement or (ii) the construction of the Private Improvements, including the construction, maintenance, repair and replacement of any improvements which the Developer is required to undertake pursuant to this Development Agreement or any permit or approval, provided that, such release or indemnification shall not apply to any actions or claims brought as a result of any material breach of this Development Agreement, willful misconduct or fraudulent action of the City of Dover, the members of the City Council, the DHA and its directors, and the City of Dover's and the DHA's respective officers, attorneys, agents and employees or claims arising from the Public Improvements or any existing conditions on the Premises.

(b) In case any claim or demand is at any time made, or action or proceeding is brought, against or otherwise involving the City of Dover, any member of the City Council, the DHA and its directors, or any officer, attorney, board member, agent or employee of the City of Dover or the DHA, in respect of which indemnity may be sought hereunder, the person seeking indemnity promptly shall give notice of that action or proceeding to the Developer, as applicable, and the Developer, respectively, upon receipt of that notice shall have the obligation and the right to assume the defense of the action or proceedings. An indemnified party may employ separate counsel and participate in the defense, but the fees and expenses of such counsel shall not be paid by the indemnified party unless: (i) the employment of such counsel has been specifically authorized by the Developer, as applicable, in writing; or (ii) the Developer, as applicable, has failed to assume the defense and to employ counsel; or (iii) the named parties to any such action (including any impleaded parties) include both an indemnified party, the Developer, and such indemnified party may have one or more legal defenses available to it which are different from or additional to those available to the Developer, in which case, if the indemnified party notified the Developer in writing that it elects to employ separate counsel at the expense of the Developer, the Developer shall not have the obligation to assume the defense of such action on behalf of such indemnified party and the Developer shall not be responsible for payment of the fees and expense of such separate counsel.

(c) The indemnifications set forth above are intended to and shall include the indemnification of all affected officials, attorneys, agents, board members, officers and employees of the City of Dover, respectively, and each and all of their successors and assigns. Those indemnifications and any other indemnifications provided for herein are intended to and shall be enforceable by each and every indemnified party to the full extent permitted by law and shall survive the termination of this Development Agreement.

(d) In the event that Developer performs construction work on the Retained Land, the Developer shall obtain the following insurance:

- i. The Developer shall secure and maintain for the duration of this agreement a General Liability Insurance policy or policies at no cost to the City of Dover. The coverage of said insurance policy shall be in an amount of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate. An insurance certificate shall be supplied to the City of Dover by the Developer. The City of Dover shall be named as an additional insured on the Developer's general liability insurance policy, which coverage shall apply on a primary and noncontributory basis, and, subject to the dollar amounts specified above, cover the City of Dover with the same scope of coverage provided to the Developer under the general liability policy without subjecting the City of Dover to any different or additional terms, conditions, limitations or exclusions. A condition of the insurance coverage shall be thirty (30) days' notice to the City of Dover upon cancellation of the policy. The Developer shall also provide the City of Dover certificates of renewal for any applicable insurance policy no later than ten (10) business days prior to the expiration of said policy.

- ii. The Developer shall secure and maintain for the duration of this Agreement Automobile Liability Insurance covering the operation of all motor vehicles, including those hired and borrowed, used by the Developer in connection with this Agreement at no cost to the City of Dover. The coverage of said insurance policy shall be in the amount of not less than Five Hundred Thousand Dollars (\$500,000) for all damages arising out of bodily injuries to or death of one person and subject to that limit for each person, a total limit of at least One Million Dollars (\$1,000,000) for all damages arising out of bodily injuries to or death of two or more persons in any one accident or occurrence. An insurance certificate shall be supplied to the City of Dover by the Developer. The Developer shall also provide the City of Dover certificates of renewal for any applicable insurance policy no later than ten (10) business days prior to the expiration of said policy.
- iii. By signing this Agreement, the Developer agrees, certifies, and warrants that the Developer is in compliance with, or exempt from, the requirements of New Hampshire RSA Chapter 281-A, regarding workers' compensation insurance. The Developer shall maintain statutory workers' compensation insurance coverage for all of its employees as required by said law.

Section 10.03 Notices.

Any notice, payment or instrument required or permitted by this Development Agreement to be given or delivered to either party shall be deemed to have been received when personally delivered or transmitted by telecopy or facsimile transmission (which shall be immediately confirmed by telephone and shall be followed by mailing an original of the same within 24 hours after such transmission) or 72 hours following deposit of the same in any United States Post Office, registered or certified mail, postage prepaid, addressed as follows:

City of Dover: City Manager
 City of Dover, New Hampshire
 City Hall
 288 Central Avenue
 Dover, New Hampshire 03820-4169

With a copy to: City Attorney
 City of Dover, New Hampshire
 City Hall
 288 Central Avenue
 Dover, New Hampshire 03820-4169

Developer: CPI Management, LLC
 c/o Cathartes
 101 Summer Street, 16th Floor
 Boston, Massachusetts 02108

Attn: Jeffrey Johnston

With a copy to: Robert Previti, Esq.
Stebbins, Lazos & Van Der Beken PLLC
889 Elm Street, 6th Floor
Manchester, New Hampshire 03101

Each party may change its address or addresses for delivery of notice by delivering written notice of such change of address to the other party.

Section 10.04 Severability.

If any part of this Development Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Development Agreement shall be given effect to the fullest extent possible.

Section 10.05 Successors and Assigns.

Subject to the provisions of Article VIII, this Development Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

Section 10.06 Waiver.

Failure by a party to insist upon the strict performance of any of the provisions of this Development Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Development Agreement thereafter.

Section 10.07 Merger.

No other agreement, statement or promise made by any party or any employee, officer or agent of any party with respect to any matters covered hereby that is not in writing and signed by all the parties to this Development Agreement shall be binding.

Section 10.08 Parties in Interest.

Nothing in this Development Agreement, expressed or implied, is intended to or shall be construed to confer upon or to give to any person or entity other than the City of Dover and the Developer any rights, remedies or claims under or by reason of this Development Agreement or any covenants, conditions or stipulations hereof. All covenants, conditions, promises and agreements in this Development Agreement by or on behalf of the City of Dover or the Developer shall be for the sole and exclusive benefit of the City of Dover or the Developer, respectively.

Section 10.09 Amendment.

This Development Agreement may be amended, from time to time, by written supplement hereto and executed by both the City of Dover and the Developer. In the event that any amendment to this Development Agreement is, in the sole judgment of the City Manager, materially different from the authority granted to the City Manager to execute and deliver this Development Agreement, such amendment shall require approval of the City Council.

Section 10.10 Governing Law; Venue; Waiver of Jury Trial.

This Agreement shall be governed by, interpreted, and enforced in accordance with the laws of the State of New Hampshire. Any suit, proceeding, or dispute arising out of or in connection with this Agreement or the transactions contemplated by this Agreement, shall be venued exclusively in the New Hampshire State Courts located in Strafford County, New Hampshire and the parties hereto consent to such venue and the personal jurisdiction of such Courts. The City and the Developer hereby waive trial by jury in any judicial proceedings involving, directly or indirectly, any matter (sounding in tort, contract, or otherwise) in any way arising out of, related to, or in connection with this Agreement or the transactions contemplated by this Agreement.

Section 10.11 Time is of the Essence.

The parties acknowledge that TIME IS OF THE ESSENCE in the timely performance of such duties and obligations under this Development Agreement.

Section 10.12 Counterparts.

This Development Agreement may be executed in counterparts, each of which shall be deemed an original.

Section 10.13 Effective Date.

This Development Agreement shall be effective as of the date the last party signs this Development Agreement.

Section 10.14 No Recording.


This Development Agreement shall not be recorded.

Section 10.15 Exhibits.

The Exhibits hereto are hereby incorporated by reference and made a part hereof.




Witness

CPI Management LLC
By: 

Jeffrey Johnston, Its President
Duly Authorized
Dated: September 30, 2019



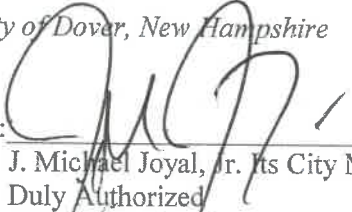
Witness

Dover Housing Authority
By: 

Allan Krans, Its Executive Director
Duly Authorized
Dated: September 30, 2019



Witness

City of Dover, New Hampshire
By: 

J. Michael Joyal, Jr. Its City Manager
Duly Authorized
Dated: September 30, 2019

LIST OF EXHIBITS

| | |
|-----------|---|
| Exhibit A | Lot Line Adjustment Plan |
| Exhibit B | City of Dover Resolution No. R—2019.02.27—028 |
| Exhibit C | Concept Plan |
| Exhibit D | Public Improvements |
| Exhibit E | Construction Schedule/Benchmarks |
| Exhibit F | Condition Precedent to Closing |
| Exhibit G | Guaranteed Tax Assessed Values |
| Exhibit H | Form of Performance Mortgage |

Execution Version September 30, 2019

Exhibit A Lot Line Revision Plan

[attached]



3/18/19

U.S.S. #937

ONE

THE CITY OF DOVER

RIVER STREET & WASHINGTON STREET

DOVER, NEW HAMPSHIRE

DOVER CITY PLANNING FILE NUMBER P19-18

ONLY SHEETS 1-3 FOR RECORDING

EXISTING TAX MAP 21 LOT 42

PROPOSED TAX MAP 21 LOT 42

34.85 Acres

(23.97 ACRES)

EXISTING TAX MAP 21 LOT 1

PROPOSED TAX MAP 21 LOT 1

23.97 Acres

(23.97 ACRES)

5/8" REAR UP 4"

W/O CIP 937

5/8" REAR UP 4"

W/O CIP 937

5/8" REAR UP 4"

W/O CIP 937

5/8" REAR UP 4"

W/O CIP 937

5/8" REAR UP 4"

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5/8" REAR UP 4"

W/O CIP 937

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COOKED ST.

COOKED RIVER

5/8" REAR UP 4"

W/O CIP 937

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LEGEND

NOT A PART OF THIS PLAN

PROPOSED LOT LINE

APPROXIMATE LOT LINE

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APPROXIMATE LOT LINE

SCALE: 1 INCH = 40 FT.

DATE: FEBRUARY 18, 2019

PROJECT NO. 19-001

PROJECT NAME: LOT LINE REVISION

PROJECT LOCATION: DOVER, NH

PROJECT OWNER: [REDACTED]

PROJECT ENGINEER: [REDACTED]

PROJECT SURVEYOR: [REDACTED]

PROJECT DATE: 2/18/19

PROJECT SHEET: 2 OF 4

PROJECT STATUS: [REDACTED]

PROJECT NOTES: [REDACTED]

PROJECT CONTACT: [REDACTED]

PROJECT PHONE: [REDACTED]

PROJECT FAX: [REDACTED]

PROJECT EMAIL: [REDACTED]

PROJECT WEBSITE: [REDACTED]

PROJECT ADDRESS: [REDACTED]

PROJECT CITY: [REDACTED]

PROJECT STATE: [REDACTED]

PROJECT ZIP: [REDACTED]

PROJECT COUNTY: [REDACTED]

PROJECT TOWN: [REDACTED]

PROJECT DISTRICT: [REDACTED]

PROJECT WARD: [REDACTED]

PROJECT NEIGHBORHOOD: [REDACTED]

PROJECT ZONING: [REDACTED]

PROJECT SUBDIVISION: [REDACTED]

PROJECT TRACT: [REDACTED]

PROJECT BLOCK: [REDACTED]

PROJECT LOT: [REDACTED]

PROJECT UNIT: [REDACTED]

PROJECT PHASE: [REDACTED]

PROJECT PERMIT: [REDACTED]

PROJECT LICENSE: [REDACTED]

PROJECT CERTIFICATE: [REDACTED]

PROJECT PLAN: [REDACTED]

PROJECT SHEET: [REDACTED]

PROJECT DATE: [REDACTED]

PROJECT TIME: [REDACTED]

DOUGEL SURVEYS

100 Dover Place, Portsmouth, NH 03801

200 State Street, Dover, NH 03820

100 State Street, Dover, NH 03820

100 State Street, Dover, NH 03820

100 State Street, Dover, NH 03820

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3/18/19

U.S.S. #937

ONE

THE CITY OF DOVER

RIVER STREET & WASHINGTON STREET

DOVER, NEW HAMPSHIRE

DOVER CITY PLANNING FILE NUMBER P19-18

ONLY SHEETS 1-3 FOR RECORDING

EXISTING TAX MAP 21 LOT 42

PROPOSED TAX MAP 21 LOT 42

34.85 Acres

(23.97 ACRES)

EXISTING TAX MAP 21 LOT 1

PROPOSED TAX MAP 21 LOT 1

23.97 Acres

(23.97 ACRES)

5/8" REAR UP 4"

W/O CIP 937

5/8" REAR UP 4"

W/O CIP 937

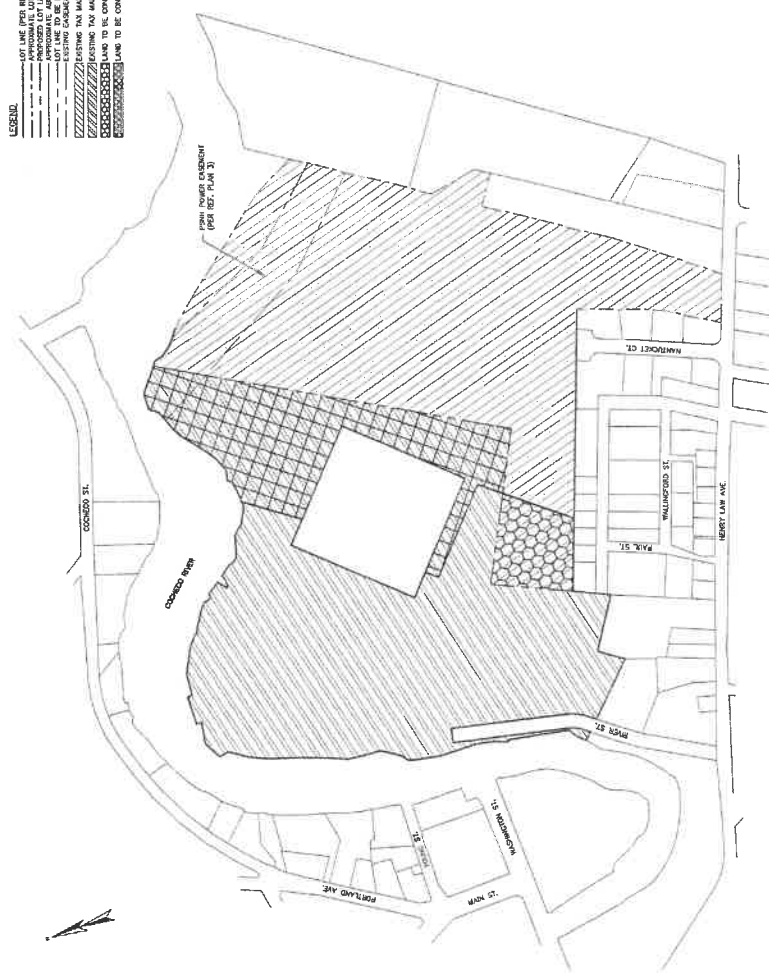
5/8" REAR UP 4"

W/O CIP 937

5/8" REAR UP 4"

LEGEND

- LOT LINE FROM PREVIOUS RECORD
- PROPOSED LOT LINE (SEE WHITE TO)
- PROPOSED LOT LINE (SEE WHITE TO)
- LOT LINE TO BE REMOVED
- EXISTING TAX MAP 23 LOT 42
- EXISTING TAX MAP 23 LOT 1
- LAND TO BE CONVERTED TO TAX MAP 23 LOT 1



PROPOSED LOT DETAIL

200 0 200 400
SCALE: 1"=50'-0"

LOT LINE REVISION PLAN
FOR
THE CITY OF DOVER
TAX MAP 23 LOTS 1 & 42
RIVER STREET & WASHINGTON STREET
DOVER, NEW HAMPSHIRE
DOVER CITY PLANNING FILE NUMBER P19-18
THIS SHEET NOT FOR RECORDING

| NO. | DATE | DESCRIPTION |
|-----|--------|--|
| 1 | 3/7/19 | 100% SUBMITTALS & CITY FILE NO. J.F.A. |
| 2 | | |
| 3 | | |
| 4 | | |

DATE: FEBRUARY 15, 2019
DRAWING NO.: 6988
SHEET 4 OF 4

DOUCET SURVEYS
Surveying Your Professional Surveying & Mapping Needs
1000 North Main Street, Suite 202, Dover, NH 03820
10 Dover Street (Dover Greenway) Dover, NH 03820
TEL: 603.333.2222

THIS SHEET NOT FOR RECORDING



I CERTIFY THAT THIS SURVEY AND PLAN WERE PREPARED BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND THAT I AM A LICENSED SURVEYOR IN THE STATE OF NEW HAMPSHIRE. I HAVE BEEN ADVISED BY THE CLIENT THAT THE SURVEY WAS MADE ON THE BASIS OF THE INFORMATION PROVIDED AND THAT THE CLIENT HAS BEEN ADVISED OF THE LIMITATIONS OF THE SURVEY AND HAS ACCEPTED THE RESULTS THEREOF. I HAVE BEEN ADVISED BY THE CLIENT THAT THE SURVEY WAS MADE ON THE BASIS OF THE INFORMATION PROVIDED AND THAT THE CLIENT HAS BEEN ADVISED OF THE LIMITATIONS OF THE SURVEY AND HAS ACCEPTED THE RESULTS THEREOF.

JAMES W. DOUCET
REGISTERED PROFESSIONAL SURVEYOR
U.S. #337
DATE: 2/15/19

THE CONTAINERS SHOWN HEREON ARE INTENDED TO MEET ANTI-CORROSION REQUIREMENTS OF FEDERAL, STATE, AND LOCAL AGENCIES AND ARE SUBJECT TO CHANGE WITHOUT NOTICE.

Execution Version September 30, 2019

Exhibit B City of Dover Resolution No. R—2019.02.27—028

[attached]



CITY OF DOVER

CITY OF DOVER - RESOLUTION

Agenda Item#: 12.C.1.

Resolution Number: R – 2019.02.27 – 028
Resolution Re: Acceptance of Term Sheet between the City of Dover through the Dover Housing Authority and CPI Management, LLC

WHEREAS: The City of Dover is committed to development as part of its economic development goals and objectives in order to create a vibrant city; and

WHEREAS: The City is the owner of property located at 31 River Street, known as Tax Map 22, Lot 1, consisting of 29.19 acres along the Cocheco River and is interested in redeveloping the property to the highest and best use; and

WHEREAS: Via Resolutions R-2007.05.23-064 and R-2015.03.25-28, both attached hereto and incorporated herein, the City Council has reaffirmed its commitment to working with the Dover Housing Authority (“DHA”) and the Cocheco Waterfront Development Advisory Committee (“CWDAC”) toward the redevelopment of the property; and

WHEREAS: Following a lengthy planning and request for qualification process, CWDAC selected CPI Management, LLC as the developer most qualified to develop the property in accordance with CWDAC’s vision and guidelines; and

WHEREAS: The City and Developer have drafted a Term Sheet, attached hereto and incorporate herein, containing the key elements of a Development Agreement including, but not limited to, transfer of the property, project phasing, and public improvements.

NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND DOVER CITY COUNCIL THAT:

The City Council approves the Term Sheet between the City and the Developer and authorizes the City Manager to sign the Term Sheet.

AND BE IT FURTHER RESOLVED THAT:

The City Manager, working in conjunction with the DHA and CWDAC, is authorized to negotiate and finalize a Development Agreement with CPI Management, LLC consistent with the terms and conditions of the Term Sheet regarding the redevelopment of the property at 31 River Street, Tax Map 22, Lot 1, and to sign all necessary documents to effectuate the purposes of the Term Sheet and the Development Agreement, including but not limited to documents to be recorded with the Registry of Deeds, such as deed(s) and/or easement(s).

AND BE IT FURTHER RESOLVED THAT:

The City Manager is authorized to pursue subdivision of the property as necessary and appropriate and may transfer the property, or subdivided portions thereof, consistent with the provisions of the Term Sheet and the Development Agreement.

REFER TO A PUBLIC HEARING



CITY OF DOVER

CITY OF DOVER - RESOLUTION

Agenda Item#: 12.C.1.

Resolution Number: **R – 2019.02.27 – 028**
Resolution Re: **Acceptance of Term Sheet between the City of Dover through the Dover Housing Authority and CPI Management, LLC**

AUTHORIZATION

Approved as to Funding: Daniel R. Lynch
Finance Director

Sponsored by: Mayor Karen Weston
By Request

Approved as to Legal Form and Compliance: Anthony Blenkinsop
City Attorney

Recorded by: Sue Mistretta
City Clerk

DOCUMENT HISTORY:

| | |
|--------------------------------|---------------------------------|
| First Reading Date: 02/27/2019 | Public Hearing Date: 03/13/2019 |
| Approved Date: 03/13/2019 | Effective Date: 03/13/2019 |

DOCUMENT ACTIONS:

Deputy Mayor Carrier moved for its adoption; seconded by Councilor Shanahan.
City Planner Bird gave an overview of the Resolution and Term Sheet to the Council.
Roll Call Vote: 8/0.

| VOTING RECORD | | |
|---|--------|----|
| Date of Vote: 03/13/2019 | YES | NO |
| Mayor Karen Weston | X | |
| Deputy Mayor Robert Carrier, At Large | X | |
| Councilor Michelle Muffett-Lipinski, Ward 1 | X | |
| Councilor Dennis Ciotti, Ward 2 | X | |
| Councilor Deborah Thibodeaux, Ward 3 | X | |
| Councilor Marcia Gasses, Ward 4 | X | |
| Councilor Dennis Shanahan, Ward 5 | X | |
| Councilor Matthew Keane, Ward 6 | Absent | |
| Councilor Lindsey Williams, At Large | X | |
| Total Votes: | 8 | 0 |
| Resolution does pass. | | |



CITY OF DOVER

CITY OF DOVER - RESOLUTION

Agenda Item#: 12.C.1.

Resolution Number: **R – 2019.02.27 – 028**
Resolution Re: **Acceptance of Term Sheet between the City of Dover through the Dover Housing Authority and CPI Management, LLC**

RESOLUTION BACKGROUND MATERIAL:

The City of Dover through and including the DHA is negotiating a Development Agreement with CPI Management, LLC for the redevelopment of the waterfront property. The City intends to finance all or a portion of the Public Improvement using tax increment financing (currently authorized up to \$6,600,000.00). The property will be redeveloped in a manner consistent with the City's Master Plan, and consistent with a pro-diverse economic development policy endorsed by the Dover Business and Industrial Development Authority and Planning Board.

The Term Sheet was approved by CWDAC on January 29, 2019 and the DHA on February 19, 2019.

See City Council Resolutions R-2007.05.23-064 and R-2015.03.25-28 attached.

See attached draft Term Sheet.

TERM SHEET

The City of Dover, New Hampshire through and including the Dover Housing Authority (“City”) and CPI Management LLC (the “Developer”) (collectively the “Parties”) intend to enter into a Development Agreement concerning the development of a certain property in Dover, New Hampshire that the City owns.

1. The Developer seeks to develop a portion of the property known as Map 22 Lot 1 consisting of approximately 21 acres, more or less, along the Cochecho River, as depicted on a survey entitled “Lot Line Adjustment Plan, City of Dover” (add plan details when available) (the “Project Site”) in Dover, New Hampshire. The Developer intends to develop the Project Site consistent with the applicable design guidelines and in such a way that it is more likely than not that upon completion, the assessed value of the Project Site will meet or exceed the Guaranteed Tax Assessment Value described in section 8. A more detailed agreement will be signed by the Parties with the terms set forth herein and additional terms as may be necessary and/or customary (the “Development Agreement”).
2. The Parties agree that this Term Sheet will be reviewed and approved by the Cochecho Waterfront Development Advisory Committee (CWDAC) and the Board of Directors for the Dover Housing Authority, prior to review and consideration by the Dover City Council.
3. Developer’s rights pertain to purchase and development of the Project Site, less portions to be retained by the City. The City shall subdivide the Project Site into parcels as shown on a Concept Site Plan that will depict the parcel(s) to be retained by the City and the parcels that are intended to be conveyed to the Developer. Development and the transfer of parcels shall be completed in phases, as depicted upon a Concept Site Plan and agreed to by both Parties. Pursuant to said plan, both Parties shall agree to benchmarks for each phase of development based on reasonable and customary time periods for design, permitting, construction and marketing of each phase of the development. The fulfillment of those benchmarks shall provide security for the opportunity to complete the next phase of development.

In concert with the development of benchmarks, there shall also be a deadline for completion of said benchmarks. With each deadline shall also be a mechanism for reasonable extensions should they be required to be mutually agreed upon by the Parties. Should there be a cost for an extension, the Developer shall not have to pay a cost, if the delay causing the extension is the City’s responsibility.

4. The Developer shall file for site plan application with the Dover Planning Board for the full build-out of the Phase I (South side of Washington Street) of the project, as depicted on a Concept Site Plan described in section 5 below, no later than December 31, 2019, unless extended with the written consent of the City, which shall not be unreasonably withheld. The Developer shall commence construction of Phase I by March 31, 2021.

The Developer shall obtain approval from CWDAC by June 1, 2020 of an updated Concept Site Plan, and final site plan approval for Phase II (North side of Washington Street) within six months of approval of the Remedial Action Plan (“RAP”) as described in section 5, as depicted on a Concept Site Plan described in section 5 below, unless (i) extended with the written consent of the City, which shall not be unreasonably withheld or (ii) as extended by the City’s delay in performance of a condition precedent that it owes to Developer.

5. The Project shall include certain “Public Improvements” and certain “Private Improvements”

as more specifically described within the Development Agreement and depicted upon a Concept Site Plan developed as an exhibit to the Development Agreement. The Public Improvements shall be completed at the sole cost and expense of the City unless otherwise specified herein or in the Development Agreement. The Private Improvements shall be completed by the Developer at its sole cost and expense unless otherwise specified herein or in the Development Agreement.

The City contemplates the construction of public infrastructure and public amenities within the Project Site, including excavation of the "Bluff" area, grading of the Project Site to raise the elevation in anticipation of sea level rise, shoreline stabilization, the development of a public park along the waterfront, and completion of legally required environmental remediation in accordance with a Remedial Action Plan (RAP) approved by both Parties, in writing prior to submission to the State, and subsequently approved by the State. Prior to the Developer's commencement of construction of Phase I of the project, the City shall have completed Public Improvements in the Southern portion of the Project Site necessary for Developer to commence construction on the Phase I parcel, the scope of which shall be more particularly specified in the Development Agreement.

The Public Improvements shall also include Street, Streetscape and Utilities Improvements (specifics of utilities improvements will be negotiated as part of Development Agreement) including the public streets, sidewalks, utility services stubbed to the development parcels, parking areas open to the general public, sitework to bring the development parcels to "pad ready" condition, and other infrastructure improvements to be constructed to serve the Waterfront Park and the Private Improvements. The City shall cause for the design, engineering and completion of Public Street, Streetscape and Utility Improvements at its costs, with reasonable opportunity for input by the Developer. The City intends to finance all or a portion of the Public Improvement using tax increment financing (currently, authorized up to six million six hundred thousand dollars (\$6,600,000)). The Developer, with the written approval of the City, may complete some or all of the Public Improvements with an associated credit against the purchase price. The Public Improvements may be phased so as to be completed consistent with the Developer's phasing of the Project according to a schedule and standards to be mutually agreed upon by the Parties.

The Private Improvements shall comprise mixed use development which shall include multi-family residential, office, retail, restaurant, and, possibly, hotel and/or banquet facilities, along with dedicated private parking serving those uses, which may be shared by among the Parcels. The following elements comprising the development program shall be depicted on a Concept Site Plan to accompany the Development Agreement:

- Approximately four hundred and seventy-five (475) multi-family residential units and hotel rooms.
 - Approximately 25,000 gross square feet of street level commercial space, including restaurant space.
 - Approximately 500,000 gross square feet total.
 - The conceptual development program is predicated upon the assumption that the Developer shall receive a conditional use permit to erect five story buildings.
 - The Concept Site Plan will document what percentage each building will be leasable ground floor space for commercial uses as mutually agreed upon by the Parties
6. In the event that the development of the Project Site is approved by the Dover Planning Board, all conditions precedent related to such approval have been satisfied, and all applicable

appeal periods have expired, the City shall convey, by quitclaim deeds, the parcel known as Map 22 lot 1, in parts consistent with an approved subdivision plan to the Developer for a total cost \$3,372,500, as paid in pro-rata installments per parcel, and pursuant to the subdivision plan. The pro-rata costs shall be based upon the residential and/or hotel unit count in that phase at a cost outlined below.

A \$100,000 payment to the City (“the deposit”) from the Developer shall be used for expenditures by the City, including expenditures incurred by the City to hire experts and other consultants (economic, legal and site design).

Developer has and shall pay the Deposit as follows: Developer shall be credited for its \$20,000 initial deposit, which was paid by Developer at the time of its designation as the “Preferred Developer”, an additional \$20,000 Developer deposit to be paid upon the execution of this Term Sheet, and an additional \$60,000 deposit to be paid upon execution of Development Agreement. Half of the Deposit shall be credited against the purchase price of Phase I purchased by Developer at the time of conveyance of such parcel, with the balance to be credited against the purchase prices of the remaining parcels on a pro rata basis.

The purchase price for each parcel shall be based upon a rate of \$7,100 per unit proposed for that parcel, up to 475 units of residential or hotel (or a mixture thereof).

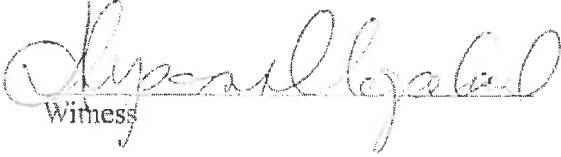
The Developer shall have the right, on a phase by phase/parcel by parcel, basis to provide for the construction of Public Improvements, as noted in section 5 the cost of which would be credited towards the purchase price. In addition, the Developer shall have the right to provide improvements which offset the Public Safety and Recreation Impact Fees, subject to the written consent of the City. The City shall retain a right of reverter on any parcel transferred should the project not be completed on the parcel in question within the time frames mutually agreed upon by the Parties.

7. Once the State of New Hampshire has approved the required RAP for the Project Site, the City shall cause the commencement of construction of the Public Improvements by no later than one (1) year following the RAP approval. The City shall notify Developer when it has received a Certificate of Completion, Certificate of No Further Action or similar evidence of completion of the RAP from the State of New Hampshire and Developer shall have no obligation to take possession of any parcel of the Project Site until the City has provided such evidence and all project benchmarks shall be extended accordingly. Cost-sharing for any ongoing monitoring and mitigation costs related to the environmental remediation shall be mutually agreed upon by the Parties.
8. No later than 18 months following issuance of the Certificate of Occupancy for the Private Improvements on Phase I developed, the Project Site shall have a minimum Guaranteed Tax Assessment Value of approximately \$7,500,000 per building (estimated \$15,000,000 total for the South Side development). In each relevant tax year thereafter if the actual tax assessment is less than the Guaranteed Tax Assessment Value, the project owner shall owe and pay the tax shortfall to the City as if the Project Site was assessed at the Guaranteed Tax Assessment Value.
9. The Developer shall convey to the City a Performance Mortgage to secure the Developer's Guaranteed Tax Assessment obligations.
10. Developer shall have the right to transfer the Parcels (as shown on the subdivision plan), the

Development Agreement, and all or a portion of its rights in the Project Site (pursuant to this Term Sheet, Developer's status as Preferred Developer, the Development Agreement and any relevant permits, authorizations, approvals, resolutions or similar documents) to one or more special purpose entities ("SPE") formed for the sole purpose of developing the Private Improvements (each, an SPE), provided that either Jeffrey Johnston or James Goldenberg, the principals of Developer, retain Control of each such SPE. For purposes of this Term Sheet, "Control" means the ability, directly or indirectly, to direct or cause the direction of the management or policies of an SPE, or the power to veto major policy decisions of an SPE.

11. The City Manager shall obtain approval from the Dover City Council to execute a Development Agreement consistent with the terms and conditions in this Term Sheet. Any terms or conditions in the Development Agreement that represent changes or additions to the terms and conditions in this Term Sheet shall be subject to the consent and approval of the City, acting by and through its City Manager. Changes or additions considered material by the City Manager, in the City Manager's sole discretion, shall require approval by the City Council.
12. Developer shall have that period which begins with the date of full execution of this Term Sheet and ends on September 30, 2019, within which to inspect the Project Site and make any and all investigations and/or market studies which it deems necessary or relevant to make a determination as to whether the Project Site is suitable for Developer's purposes. Such investigations shall include, but not be limited to, title, survey, environmental, geotechnical, soil, zoning and use investigations and reviews. Developer and its representatives shall have full and complete access to the Project Site from and after the date hereof during business hours and upon at least twenty four (24) hours prior notice for the purpose of conducting its inspections and feasibility studies, which may include, but shall not be limited to, survey, environmental, geotechnical, soil, zoning and land use investigations and reviews.
13. In consideration of the time, effort and cost which Developer will be committing to this undertaking and in recognition of the time necessary to develop the Project Site, the City agrees that upon execution of this Term Sheet, City shall not, and shall not permit any of its agencies, departments, officers, employees or agents, to solicit, entertain, negotiate, accept or otherwise enter into or continue discussions involving the sale or redevelopment of all or a portion of the Project Site or any interest therein while this Term Sheet is in effect (other than with Developer). In the event that this Term Sheet is not replaced by a Development Agreement signed by all parties by September 30, 2019, then the provisions of this section shall expire.
14. This Term Sheet is an expression of intent of the Parties and an agreement to negotiate a final agreement in good faith and accordingly neither Party shall be legally bound until execution of the final Development Agreement, except for Section 12 and 13, which shall be binding on the Parties.


In witness whereof, the parties have signed this instrument this 25 day of March, 2019.


Witness



Witness


Witness

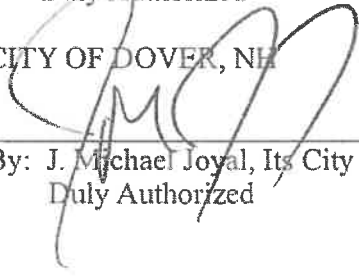
CPI MANAGEMENT LLC


By: Jeff Johnston, Its Manager
Duly Authorized

DOVER HOUSING AUTHORITY


By: Allan B. Krens Sr., Its Executive Director
Duly Authorized

CITY OF DOVER, NH


By: J. Michael Joyal, Its City Manager
Duly Authorized



CITY OF DOVER

CITY OF DOVER - RESOLUTION

Agenda Item#11C-1:

Resolution Number: R - 2007.05.23-064

Resolution Re: Waterfront Development Oversight Reaffirmation

- WHEREAS: The signing of the Term Sheet will be a significant step in the development of the Waterfront parcel owned by the City of Dover, a process spanning three decades of community planning and preparation; and
- WHEREAS: The present Concept Plan presented by Dickinson Development Corp. reflects the community vision for the waterfront area. Development of the waterfront represents an economic investment which will produce property tax revenues. It will also be an incentive for future economic development;
- NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND DOVER CITY COUNCIL THAT:
1. The waterfront redevelopment authority previously delegated to the DHA in accordance with the provisions of N.H. RSA 205 and pursuant to Dover City Council Resolution adopted February 9, 2005, is hereby reaffirmed. The work of the DHA and its advisory board, the Cochecho Waterfront Development Advisory Committee ("CWDAC"), resulting in the attached Term Sheet, is hereby found to be consistent with the intent of the February 9, 2005 Resolution. This reaffirmation acknowledges that the DHA, with the advice and input of the CWDAC, will be fully authorized to negotiate and approve reasonable modifications to the Redevelopment Project as contemplated by the Term Sheet without need for further action by the Dover City Council.
 2. The City Manager is authorized to sign the Term Sheet (presented with and made a part of this Resolution) to make it a legally binding document for the purposes stated therein, by and between the City of Dover, the Dover Housing Authority ("DHA") and Dickinson Development Corp.
 3. The City Manager is authorized to sign any and all associated documents contemplated by, and in order to comply with, the terms of the Term Sheet, including, but not limited to, a legally binding Land Disposition Agreement with Dickinson Development Corp., any amendments thereto contemplated by the terms and negotiating discretions outlined in the Term Sheet, and any agreements, either before or after the City of Dover's delivery of a deed (authorized below) to approve and confirm reasonable modifications to the Term Sheet Project as it moves forward, all without further action by this Council.
 4. The City Manager is authorized to sign a deed(s) to Dickinson Development Corp., or its affiliate as contemplated by the Term Sheet, together with other closing or transaction documents appropriate to facilitate conveyance of that portion of the City owned Waterfront parcel described as Lot 22-1 on Dover's City Tax Maps, containing 21 acres, more or less, to convey all land necessary for the development contemplated by the Term Sheet, as shown on Dickinson Development Corp.'s January 22, 2007 Concept Plan, as it may be possibly modified by future surveys and engineering of the site.



CITY OF DOVER

CITY OF DOVER - RESOLUTION

Agenda Item#11C-1:

Resolution Number: R - 2007.05.23-064
Resolution Re: Waterfront Development Oversight Reaffirmation

Financing

| Account | Description | Appropriation | Balance | Charge | Total |
|-------------|-------------|---------------|---------|--------|-------|
| XXXX-XXXXXX | | | | | |

AUTHORIZATION

Approved as to Funding: Carol Coppola Interim Finance Director
Sponsored by: Mayor Scott Myers

Approved as to Legal Form: Allan B. Krans, Sr. City Attorney

Recorded by: Judy Gaouette City Clerk

DOCUMENT HISTORY:

| | |
|----------------------------------|-----------------------------------|
| First Reading Date: May 23, 2007 | Public Hearing Date: May 23, 2007 |
| Approved Date: June 13, 2007 | Effective Date: June 13, 2007 |

DOCUMENT ACTIONS:

Regular Meeting held May 23, 2007.
Public hearing held May 23, 2007.
DeDe moved to refer to the regular meeting of 06/13/07,
Seconded by Ciotti. Motion passed on an 8-0 vote.

Regular Meeting held June 13, 2007.
Hindle moved to adopt, seconded by Ciotti.

| VOTING RECORD | | |
|--|-----|-----|
| Date of Vote: June 13, 2007 | YAY | NAY |
| Mayor Scott Myers | X | |
| Deputy Mayor Jason Thomas Hindle, At Large | X | |
| Councilor Robert Keays, Ward 1 | | X |
| Councilor Douglas DeDe, Ward 2 | X | |
| Councilor David Scott, Ward 3 | | X |
| Councilor Dean Trefethen, Ward 4 | X | |
| Councilor Catherine Cheney, Ward 5 | | X |
| Councilor Harvey Turner, Ward 6 | | X |
| Councilor Dennis Ciotti, At Large | X | |
| Total Votes: | 5 | 4 |

RESOLUTION PASSES.

Document Created by: Legal
Document Posted on: June 15, 2007

Waterfront Oversight Reaffirmation Resolution
Page 2 of 4



CITY OF DOVER

CITY OF DOVER - RESOLUTION

Agenda Item#11C-1:

Resolution Number: R - 2007.05.23-064

Resolution Re: Waterfront Development Oversight Reaffirmation

RESOLUTION BACKGROUND MATERIAL:

The development parcel is located on the Dover Waterfront on a 30-acre site owned by the City of Dover along the Cochecho River. Once a lively trading center in the 1800's with wharfs, docks, warehouses and trading ships from many parts of the world, the waterfront area declined with the advent of the railroad and the decline of waterborne commercial activity. In the 20th century, the area included the wastewater treatment center and the public works facility of the City of Dover.

During the past two decades, the City of Dover has embarked on an aggressive campaign to redevelop and revitalize its central business district and the waterfront area. The 750,000 square foot Pacific Mills and One Washington Street complexes, vacant for many years, are filled with commercial and retail activity. The area will soon include the Children's Museum of New Hampshire (formerly the Portsmouth Children's Museum) expected to attract 70,000 visitors per year.

Starting in 1984 with the Pacific Mills Master Plan, the area has been studied for development in nine major reported studies culminating in the 2005 Cochecho Waterfront Charrette. The 2005 Charrette provides the vision of Dover citizens for the mixed-use composition of the development of the parcel including an opportunity for Dover residents to access the river. The January 22, 2007 concept plan presented by the developer has been endorsed by the Dover Housing Authority and its advisory committee.

Significant public monies have been expended in preparation for the current proposed development including the relocation of the secondary wastewater treatment plant (\$34 million) and the relocation of the public works facility in 2000 to Mast Road.

Significant investments in the waterfront area have come from the private sector including the Pacific Mills, One Washington Center, the Picker House at 42 Main Street and the Rotary Club pavilion and garden adjacent to the Butterfield gymnasium. River walk improvements and the installation of a pedestrian bridge spanning the river were accomplished in the 1990's.

Development of the waterfront area represents an opportunity for increasing the tax base and spurring further economic development in the private sector. In February 2005, the Dover City Council responded to these opportunities and delegated development responsibilities to citizen volunteers at the Dover Housing Authority (DHA) and its advisory committee known as the Cochecho Waterfront Development Advisory Committee (CWDAC).

An extensive series of meetings involving members of the public and a Request for Proposals (RFP), have resulted in the selection of a preferred developer by these citizen volunteers. Dickinson Development Corp. of Quincy, Massachusetts has been selected to create a residential/retail/office mixed-use development of residential and retail, as well as a public park along the river, to conform with the vision of the community. A Term Sheet has been negotiated and is attached as part of the Resolution. A Land Disposition Agreement including design standards will be negotiated with December 31, 2007 as the target date for execution of this agreement.



CITY OF DOVER

CITY OF DOVER - RESOLUTION

Agenda Item#11C-1:

Resolution Number: R - 2007.05.23-064

Resolution Re: Waterfront Development Oversight Reaffirmation

The Dover Housing Authority hired American Property Appraisers, a well known real estate appraiser from New York State in November 2006 to provide an analysis and information regarding value of the unique site owned by the City. The Dover City Council hired Brian White, MAI of Dover New Hampshire to provide a second appraisal of the property. Both appraisers have provided written reports and opinions consistent with the purchase price contained in the Term Sheet.

A public-private partnership is required to achieve the long held vision for the Waterfront development. Development of the Waterfront will have far reaching positive impacts on Dover's economy, Dover's tax base, and Dover's downtown area. These benefits to the community are beyond the scope of the property appraisals.



CITY OF DOVER

CITY OF DOVER - RESOLUTION

Agenda Item#: 13.B.1.

Resolution Number: **R – 2015.03.25 – 28**

Resolution Re: **Waterfront Development Oversight Reaffirmation**

- WHEREAS: The City Council established the Cochecho Waterfront Development Advisory Committee (“CWDAC”) in April 2004 in order to present a redevelopment plan of the City’s property along the Cochecho River in downtown Dover (“the Property”) to the City Council; and
- WHEREAS: CWDAC presented a redevelopment plan of the Property; and
- WHEREAS: In February 2005, pursuant to RSA 205, the City Council delegated certain responsibilities regarding potential redevelopment of the Property to the Dover Housing Authority (“DHA”), which was legally empowered to oversee the redevelopment project; and
- WHEREAS: In conjunction with delegation to the DHA, the City Council designated CWDAC as an advisory board to the DHA regarding potential redevelopment of the Property – a move that was recognized and approved by the DHA pursuant to RSA 205:9; and
- WHEREAS: In June 2007 the City Council reaffirmed the work of the DHA and CWDAC regarding redevelopment of the Property, and a Term Sheet and subsequent Land Disposition Agreement regarding redevelopment of the Property was entered into with Dickinson Development Corporation; and
- WHEREAS: The Land Disposition Agreement expired in August 2014 without redevelopment of the Property; and
- WHEREAS: The City Council continues to seek redevelopment of the Property with the assistance of the DHA and CWDAC in accordance with the provisions of RSA 205. Consistent with prior authorizations and practices, no City funds will be obligated for this redevelopment project unless approved by the City Council, excepting the City Manager may make City staff, services, and vendors available to the CWDAC on an as needed basis, all under the direction of the City Manager; and
- WHEREAS: Consistent with prior authorizations, it is expected the Property shall ultimately be conveyed in such a way that the City realizes a return in public improvements and infrastructure comparable to the Property’s assessed value.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND DOVER CITY COUNCIL:

That the ongoing collaboration between the City of Dover, the DHA, and CWDAC regarding redevelopment of the Property in accordance with the provisions of RSA 205:4, and pursuant to the City Council resolution of February 9, 2005, is hereby reaffirmed. This reaffirmation acknowledges that the DHA, with the advice and input of the CWDAC, and with reasonable public input, will assist the City of Dover to redevelop the Property in a manner that is in the best interests of the City; and

That CWDAC shall periodically, or when requested, provide updates to the City Council regarding redevelopment efforts; and



CITY OF DOVER

CITY OF DOVER - RESOLUTION

Agenda Item#: 13.B.1.

Resolution Number: R – 2015.03.25 – 28
Resolution Re: Waterfront Development Oversight Reaffirmation

That, consistent with the action taken in 2007, any Term Sheet(s) regarding redevelopment of the Property, or a portion thereof, shall be brought to the City Council for approval; thereafter, the DHA, with the advice and input of CWDAC, will be fully authorized to negotiate and approve the redevelopment of the Property with the consent of the City Manager.

AUTHORIZATION

Approved as to Funding: Daniel R. Lynch Finance Director Sponsored by: Mayor Karen Weston By request

Approved as to Legal Form and Compliance: Anthony I. Blenkinsop General Legal Counsel

Recorded by: Karen Laverru City Clerk

DOCUMENT HISTORY:

| | | | |
|---------------------|------------|----------------------|------------|
| First Reading Date: | 03/25/2015 | Public Hearing Date: | N/A |
| Approved Date: | 03/25/2015 | Effective Date: | 03/25/2015 |

DOCUMENT ACTIONS:

Deputy Mayor Carrier moved for its adoption; seconded by Councilor O'Connor.
Councilor Cheney moved to amend the resolution to add a public hearing.
There was no second.
Roll Call Vote: 8/1; Passed. Councilor Cheney was opposed.

| VOTING RECORD | | |
|---|-----|----|
| Date of Vote: 03/25/2015 | YES | NO |
| Mayor, Karen Weston | X | |
| Deputy Mayor, Robert Carrier, At Large | X | |
| Councilor John O'Connor, Ward 1 | X | |
| Councilor William Garrison, III, Ward 2 | X | |
| Councilor Deborah Thibodeaux, Ward 3 | X | |
| Councilor Dorothea Hooper, Ward 4 | X | |
| Councilor Catherine Cheney, Ward 5 | | X |
| Councilor Jason Gagnon, Ward 6 | X | |
| Councilor, Anthony McManus, At Large | X | |
| Total Votes: | 8 | 1 |
| Resolution does pass. | | |



CITY OF DOVER

CITY OF DOVER - RESOLUTION

Agenda Item#: 13.B.1.

Resolution Number: R – 2015.03.25 – 28

Resolution Re: Waterfront Development Oversight Reaffirmation

RESOLUTION BACKGROUND MATERIAL:

The Property is located on the Dover waterfront on a 29-acre site owned by the City of Dover along the Cochecho River. Once a lively trading center in the 1800's with wharfs, docks, warehouses and trading ships from many parts of the world, the waterfront area declined with the advent of the railroad and the decline of waterborne commercial activity. In the 20th century, the area included the wastewater treatment center and the public works facility of the City of Dover. For most of the past decade, the area has been largely vacant and underutilized.

During the past almost three decades, the City of Dover has embarked on an active campaign to redevelop and revitalize its central business district and the waterfront area. The 750,000 square foot Pacific Mills and One Washington Street Complexes, vacant for many years, are filled with commercial and retail activity. Additionally, construction activities are underway on a new downtown Police Station and public parking garage. Furthermore, a significant downtown development project is underway on First Street on a parcel of land formerly owned by the City.

Development of the waterfront area represents an opportunity to increase the tax base and spur further economic development. In February 2005, consistent with RSA 205, the Dover City Council responded to these opportunities and delegated certain development responsibilities to citizen volunteers at the DHA and its advisory committee known as the Cochecho Waterfront Development Advisory Committee (CWDAC). While CWDAC's efforts resulted in a redevelopment agreement entered into in 2007, redevelopment ultimately failed to materialize due to a downturn in the global economy commencing in 2007/2008. In early 2015 the City Council established the Waterfront Tax Increment Finance District that includes the City's waterfront property and may result in the development of public infrastructure improvements on or around the Property.

A continued public-private partnership is required to achieve the long held vision for the Waterfront redevelopment. Redevelopment of the waterfront property will have long-term positive impacts on Dover's economy, Dover's tax base, and Dover's downtown area. The work of the DHA and CWDAC over the past decade has been of great value to the City. While redevelopment of the Property has yet to occur, the knowledge and experience of DHA and CWDAC is invaluable to the redevelopment process.

Exhibit C Concept Plan

[attached]

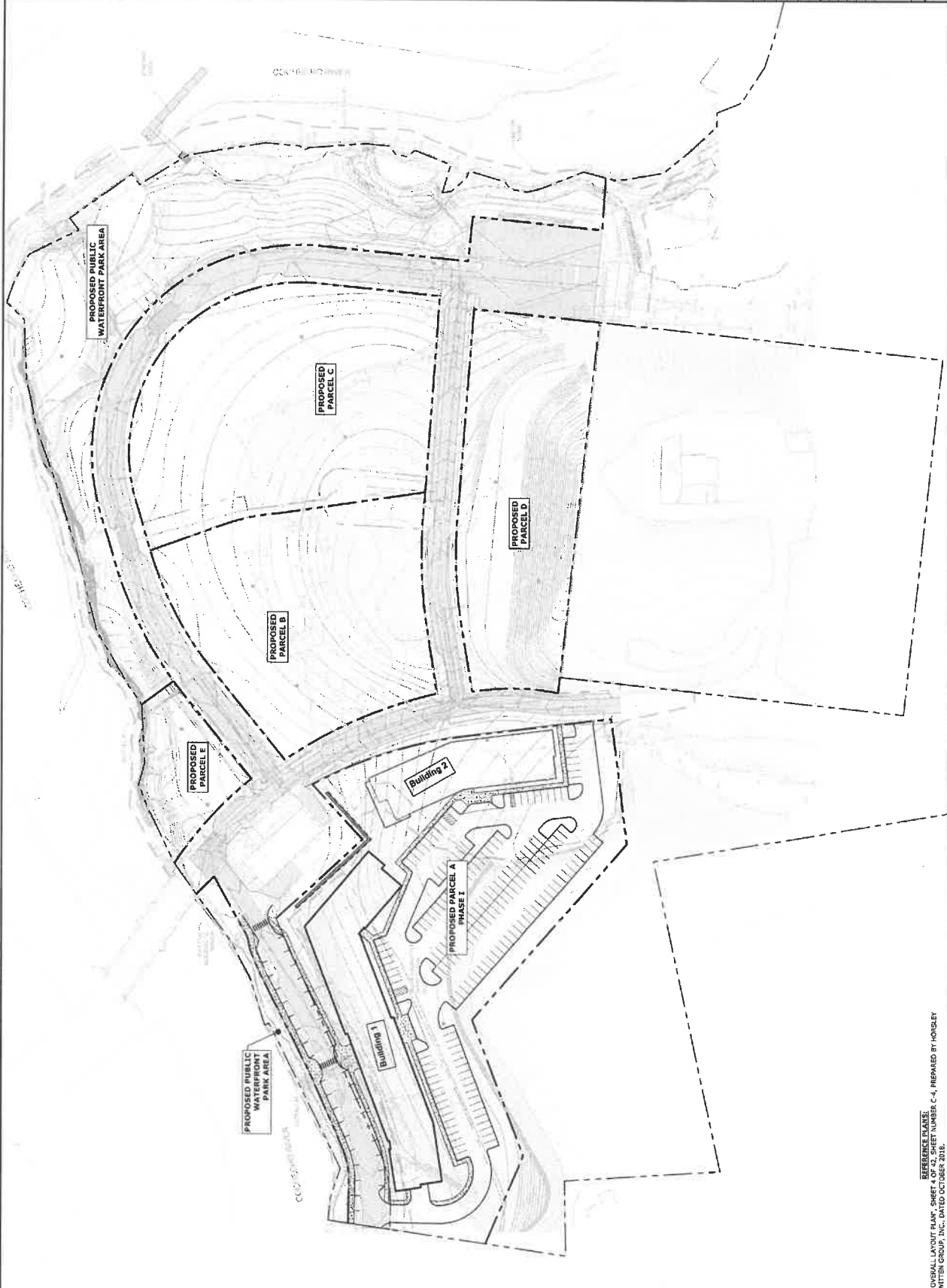
DRAFT

SCALE: 1" = 40' HORIZONTAL
 1" = 20' VERTICAL

Cochecho Waterfront

Cathartes

Dover, New Hampshire



| NO. | DATE | DESCRIPTION |
|-----|----------|-------------|
| 1 | 08/20/13 | CONCEPT |
| 2 | 09/10/13 | REVISED |
| 3 | 09/10/13 | REVISED |
| 4 | 09/10/13 | REVISED |
| 5 | 09/10/13 | REVISED |
| 6 | 09/10/13 | REVISED |
| 7 | 09/10/13 | REVISED |
| 8 | 09/10/13 | REVISED |
| 9 | 09/10/13 | REVISED |
| 10 | 09/10/13 | REVISED |

EXHIBIT C - CONCEPT PLAN
 SCALE: AS SHOWN
 1 OF 1

1. "DISK LAYOUT PLAN", SHEET 4 OF 42, SHEET NUMBER C-4, PREPARED BY HORSLEY WITTEN GROUP, INC., DATED OCTOBER 2016.

Exhibit D Public Improvements

The Public Improvements shall comprise the “Site-Related Public Infrastructure Improvements,” the “Waterfront Park Improvements,” the “Public Street, Streetscape and Utilities Improvements,” the “Supplemental Site Improvements,” and the “Environmental Remediation” all as more specifically defined as follows:

i. The **Site-Related Public Infrastructure Improvements** shall comprise the following, as more fully described in the Site Preparation Plan prepared by Horsley Witten Group, Inc. dated February 2019 as revised through September 2019 and attached hereto (the “Horsley Witten Plan”):

1. Site Preparation of the Premises pursuant to a methodology jointly approved by Developer and the City of Dover; provided that each Parcel of the Conveyed Land shall be delivered “Pad Ready” (as defined below) to Developer by the City.
2. Excavation of the “Quarry” area located on the South Phase;
3. Site Grading of the Project Area to raise the elevation in anticipation of sea level rise or approximately 2’ to 6’ of structural fill as approved by Developer;
4. Shoreline stabilization.

ii. The **Waterfront Park Improvements** shall comprise the landscape, hardscape, pier improvements and parking areas, which, at a minimum, shall conform to the preliminary specifications shown on the Horsley & Witten Plan. The Developer and the City shall continue to refine and negotiate on the design elements of the Waterfront Park Improvements in order to reach a mutual agreement on the final design of the public areas within the existing budgetary constraints.

iii. The **Public Street, Streetscape and Utilities Improvements** shall comprise the streets, sidewalks, utility services, parking areas open to the general public, and other infrastructure improvements to be constructed to serve the Waterfront Park Improvements and the Private Improvements and shall conform to the “Pad Ready” specifications summarized herein. The City shall provide the utility mains (i.e., water, sewer, electric, gas, cable) for the development stubbed to each Parcel on a Phase-by-Phase basis and with sufficient capacities for the planned use of each Parcel as evidenced by will-serve letters or similar assurances from utility providers, and the rough roadway locations, at its sole cost. The City shall reasonably support the Developer’s efforts to obtain a waiver from the Dover Utilities Commission of the investment fees for the initial provision of public utilities serving the Parcels and the parties shall discuss the allocation between the Parties of any fees charged by private utility companies for the initial provision of private utilities to the Parcels.

iv. The **Supplemental Site Improvements** shall comprise any additional site-related public infrastructure improvements and/or amenities and/or off-site public infrastructure improvements

which result of the Planning Board Site Plan Review process and that have not already been addressed in this Exhibit.

- v. **Environmental Remediation.** The City shall remediate all environmental conditions existing on each Parcel in accordance with applicable law and the RAP at its sole cost and expense such that the Premises conform with applicable law and the NHDES has issued a Certificate of Completion, Certificate of No Further Action, or other similar evidence of completion of the RAP on or prior to Developer's acquisition of such Parcel. Developer shall have no obligation to acquire any Parcel until such environmental remediation has been completed for such Parcel as evidenced by a Certificate of Completion, Certificate of No Further Action, or other similar evidence of completion of the RAP from the NHDES.

vi. The Defined Term "Pad Ready" shall mean:

Pad Ready shall be pertinent to development areas A, B, C, and E, as shown in Exhibit C, designated for development by the Developer.

Pad Ready, subject to the funding limitation of Section 5.01, shall include the following:

1. Subsurface conditions shall be delivered per the Developer's geotechnical reports and recommendations, subject to the reasonable review by the City, particular to each building and such that all structures may be built with no further environmental and geotechnical remediation required by the Developer.
2. Utilities (water, sewer, stormwater, gas, electric, communications, etc.) shall be constructed by the City to the limit of the public right-of-way adjacent to the development areas and stubbed for each development area of adequate size, pressure and volume to service Developer's proposed project as approved by the City. Utilities elevations shall be such that gravity connections are available for sewer and drainage connections at the public right-of-way line.
3. Pad ready site shall be constructed such that slopes are maximum 2% through the building area. In areas within proposed building footprints requiring cuts, all existing buildings, foundations, structures, utilities, debris, and manmade features are removed and replaced per the Developer's geotechnical reports and recommendations, subject to the reasonable review by the City.
4. All materials used to construct Pad Ready site shall be installed in a controlled manner, properly tested per the Developer's geotechnical reports and recommendations particular to each building.
5. City shall provide the Developer with reports of the material placed in the development area, including material specifications and compaction results per the Developer's geotechnical reports and recommendations, subject to the reasonable review by the City.

Exhibit E Construction Schedule/Benchmarks

[To be provided]

Exhibit E - Cochecho Phased Construction Schedule

| Task Name | Start | Finish | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 | 2026 | 2027 | 2028 |
|----------------------------|----------|----------|------|------|------|------|------|------|------|------|------|------|
| 1 COCHECHO MASTER SCHEDULE | 09/30/19 | 12/22/28 | | | | | | | | | | |
| 2 PARCEL A - BUILDING 1 | 09/30/19 | 08/22/23 | | | | | | | | | | |
| 3 Design | 09/30/19 | 12/27/19 | | | | | | | | | | |
| 4 Permitting | 12/30/19 | 03/20/20 | | | | | | | | | | |
| 5 RAP Approval | 06/01/20 | 06/01/20 | | | | | | | | | | |
| 6 Outside Closing Date | 04/05/21 | 04/05/21 | | | | | | | | | | |
| 7 Construction | 04/05/21 | 08/19/22 | | | | | | | | | | |
| 8 Lease-Up | 08/22/22 | 08/22/23 | | | | | | | | | | |
| 9 PARCEL A - BUILDING 2 | 12/06/21 | 04/23/24 | | | | | | | | | | |
| 10 Construction | 12/06/21 | 04/21/23 | | | | | | | | | | |
| 11 Lease-Up | 04/24/23 | 04/23/24 | | | | | | | | | | |
| 12 Updated Concept Plan | 06/01/20 | 06/01/20 | | | | | | | | | | |
| 13 PARCEL B | 04/24/23 | 05/19/28 | | | | | | | | | | |
| 14 Design | 04/24/23 | 10/06/23 | | | | | | | | | | |
| 15 Permitting | 10/09/23 | 12/26/23 | | | | | | | | | | |
| 16 Outside Closing Date | 12/29/23 | 12/28/23 | | | | | | | | | | |
| 17 Construction | 01/01/24 | 05/16/25 | | | | | | | | | | |
| 18 Lease-Up/Sale | 05/18/25 | 05/19/26 | | | | | | | | | | |
| 19 PARCEL C | 05/19/25 | 05/16/28 | | | | | | | | | | |
| 20 Design | 05/19/25 | 10/03/25 | | | | | | | | | | |
| 21 Permitting | 10/06/25 | 12/26/25 | | | | | | | | | | |
| 22 Outside Closing Date | 12/26/25 | 12/26/25 | | | | | | | | | | |
| 23 Construction | 12/29/25 | 05/14/27 | | | | | | | | | | |
| 24 Lease-Up/Sale | 05/17/27 | 05/16/28 | | | | | | | | | | |
| 25 PARCEL D & E | 05/17/27 | 12/22/28 | | | | | | | | | | |
| 26 Design | 05/17/27 | 08/06/27 | | | | | | | | | | |
| 27 Permitting | 08/09/27 | 10/29/27 | | | | | | | | | | |
| 28 Outside Closing Date | 10/29/27 | 10/29/27 | | | | | | | | | | |
| 29 Construction | 11/01/27 | 09/29/28 | | | | | | | | | | |
| 30 Lease-Up/Sale | 10/02/28 | 12/22/28 | | | | | | | | | | |

Exhibit F Condition Precedent to Closing

1. The City's Conditions Precedent to Delivery of Possession

The following conditions must be satisfied for the Developer to be delivered possession of each Parcel.

- (a) Developer shall have received an approved loan commitment or commitments for the construction financing of the Private Improvements to be constructed on such Parcel or such other evidence as may be reasonably satisfactory to City that such financing has been committed or is available, which approval shall not be unreasonably withheld, conditioned or delayed. Developer may, at its option, self-finance all or any of the Private Improvements provided that Developer provides the City with evidence, to the City's reasonable satisfaction, that Developer has the financial resources to self-finance such portion of the Project;
- (b) Developer shall have provided the City with evidence of its having entered into general contract(s) for construction of the applicable Phase of the Project;
- (c) Developer shall have received the required Approvals and permits (issued without qualifications other than those customarily included in permits of this nature) for the applicable Phase and Developer must have received those approvals that may reasonably be obtained for the Conveyed Land, as reasonably satisfactory to the City;
- (d) The Development Agreement must be in full force and effect and free of any defaults; and
- (e) The Developer shall have executed the Performance Mortgage applicable to the Parcel in recordable form.

2. Developer's Conditions Precedent to Delivery of Possession

The following conditions must be satisfied to Developer's satisfaction prior to Developer's purchase of each Parcel:

- (a) Prior to closing on any Parcel which is subject to the RAP and the Environmental Remediation, the City shall have completed the Environmental Remediation in full compliance with applicable law and the RAP as evidenced by the NHDES's issuance of a Certificate of Completion, Certificate of No Further Action, or other similar evidence of completion of the RAP.
- (b) The Parcel shall have been legally subdivided from the Premises.

- (c) The City shall have completed the Site-Related Public Infrastructure Improvements applicable to the Parcel to Developer's reasonable satisfaction.
- (d) Prior to closing on the Phase I Parcel(s), the City shall have completed the final design for the Waterfront Park Improvements mutually agreed upon by the City and Developer.
- (e) Prior to completion on the Phase II Parcel(s), the City shall have completed construction of the Waterfront Park Improvements.
- (f) Developer shall have obtained all Private Improvement Approvals necessary for the development of the Private Improvements on such Parcel in final, unappealable form on terms and conditions reasonably acceptable to Developer for the development of the Private Improvements on said Parcel, including, in all cases, approval to construct buildings with heights of at least 60' or five stories.
- (g) The City shall have installed all utility services, including communications, electric, water, gas and sewer utilities services in sufficient size and capacity to meet the needs of the proposed use of said Parcel stubbed as set forth on Exhibit D.
- (h) The City shall have prepared a "Pad Ready" footprint on the Parcel in strict compliance with the standards set forth on Exhibit D attached hereto.
- (i) The City shall have provided staging and storage areas for Developer's use in connection with Developer's construction of the Private Improvements of said Parcel and shall have granted any construction easements or licenses to Developer as reasonably requested by Developer.
- (j) There shall have been no exceptions or encumbrances added to the title of the Conveyed Land following the date of the Development Agreement unless Developer has given its prior written approval to such exception such approval not to be unreasonably withheld.
- (k) The City shall have completed stable access roads to such Parcel that are capable of handling heavy construction equipment.

The foregoing conditions shall be for Developer's benefit only. Notwithstanding any other provision herein, if any of the foregoing conditions are not satisfied by the City as of the closing date for a Phase, then the closing date shall be extended on a day-for-day basis until the City has satisfied such condition.

Exhibit G Guaranteed Assessment Values

[TO BE ATTACHED AND UPDATED ON EACH VALUATION DATE]

Exhibit H Form of Performance Mortgage

Return to:

PERFORMANCE MORTGAGE DEED

[NAME OF PARCEL OWNER], a [New Hampshire] limited liability company, having an address of [c/o Cathartes, 100 Summer Street, Suite 1600, Boston, MA 02108] (hereinafter the "Mortgagor"), for valuable consideration, grants the **CITY OF DOVER**, a New Hampshire corporate and body politic, and political subdivision of the State of New Hampshire, having an address of 288 Central Avenue, Dover, New Hampshire 03820 (hereinafter the "Mortgagee"), WITH MORTGAGE COVENANTS, to secure the:

A. The timely and proper performance and satisfaction of all obligations of the Mortgagor as provided in Sections 7.01 and 7.02 of a certain Land Disposition and Development Agreement by and between the Mortgagor and Mortgagee dated as of [____], and any modifications or amendments thereto (hereinafter referred to as the "Agreement"), all as more fully described in the Agreement;

B. Payment of all sums now or hereafter advanced by the Mortgagee in accordance herewith to protect the security of this Mortgage;

C. Payment, performance and satisfaction of Mortgagor's liabilities and other obligations under the terms, conditions, representations, warranties and covenants contained in Section [7.01/7.02] of the Agreement and any and all amendments, deferrals, extensions, renewals and substitutions thereto and therefor, which sections provide:

Section 7.01 Minimum Assessed Values.

Developer acknowledges that the Public Improvements to be undertaken by the City of Dover are being financed using tax increment financing (currently authorized at \$6,600,000),

which financing is to be repaid by the City of Dover through the property taxes generated by the Private Improvements on the Conveyed Land (the "TIF"). On the closing date for each Parcel (for each Parcel, the "Valuation Date"), such Parcel shall be assigned a minimum guaranteed assessment value, for *ad valorem* purposes, equal to an amount not less than the amount necessary to generate an annual tax payment, given the then-existing City's published overall tax rate, equal to the following: the sum of the actual expense to the City to retire, over a twenty (20) year period beginning on the date that is eighteen (18) months following the issuance of a Certificate of Occupancy for the Private Improvements constructed on such Parcel (the "Tax Guarantee Period"), the portion of the TIF issued by the City to provide funding for the Public Improvements implemented by the City to support the development of the Private Improvements on such Parcel (allocated on a per-unit basis proportionally to the total number of units to be developed in the Private Improvements), including interest at rates then applicable to the issued TIF, plus its reasonable out of pocket costs, expenses and fees related to the issuance and servicing of the TIF (for each Parcel, the "Guaranteed Tax Assessed Value"). Each Parcel shall be subject to its Guaranteed Tax Assessed Value for the Tax Guarantee Period beginning on the date that is eighteen (18) months following Developer's receipt of the final Certificate of Occupancy for the Private Improvements constructed on such Parcel. The Parties shall execute an amendment to this Development Agreement updating Exhibit H with the Guaranteed Tax Assessed Value for each Parcel on the Valuation Date for each Parcel.

Except (i) as permitted by the following sentence and by Section 7.05, and/or (ii) in the event of a misapplication, miscalculation, or other mistake, in the calculation of the Guaranteed Tax Assessed Value, Developer hereby waives any right it may otherwise possess to challenge the Guaranteed Tax Assessed Value for each Parcel. Notwithstanding the foregoing, if the actual assessed value of any Parcel then subject to a Guaranteed Tax Assessed Value decreases by more than twenty-five percent (25%) from the most recent establishment of the actual assessed value of such Parcel in any five year period, and provided that the resulting actual assessed value is less than the then-applicable Guaranteed Tax Assessed Value for the Parcel, then the Parties agree to discuss whether and how to continue the Developer's obligation to pay taxes based on the Guaranteed Tax Assessed Value for such Parcel, but the City is not required to grant any such relief.

Section 7.02 Tax Shortfalls.

To the extent that in any tax year during the Tax Guarantee Period, the *ad valorem* real property taxes assessed for a Parcel are less than the *ad valorem* real property taxes that would be assessed using the Guaranteed Tax Assessed Value for the Parcel as if it was the assessment value for such Parcel for that year (as provided above), then the Developer shall be responsible for the payment of the difference to the City as if the Parcel was assessed at the Guaranteed Tax Assessed Value (for each Parcel, the "Ad Valorem Tax Payment Obligation"). Any Ad Valorem Tax Payment Obligation shall be due and owing at the same time that taxes are generally due for City property owners, and shall be treated as an obligation for the payment of taxes for all purposes related to enforcement and collection of the obligation.

[FOR PHASE I ONLY: Section 7.03 Phasing of Guaranteed Tax Assessed Value, Phase I.

The Parties acknowledge that Developer currently expects Phase I to consist of one Parcel improved with two buildings (the "Phase I Buildings") and a parking lot, and that the Phase I Buildings will be constructed sequentially. Notwithstanding the valuation mechanism set forth in Section 7.01, then the Parties agree that (i) should the building identified as Building 1 on the Concept Plan be the only building constructed, the Phase I Parcel shall have a Guaranteed Tax Assessed Value of \$10,000,000, (ii) upon completion of the buildings identified on the Concept Plan be constructed, the Guaranteed Tax Assessed Value shall be \$15,000,000, and, (iii) should only Building 1 be completed and the Developer elects not build any other Private Improvements, the City is authorized to limit its required Public Improvements expenditure to a value equal to the debt service covered by a Guaranteed Tax Assessed Value of \$10,000,000.]

The following premises:

I. LAND: Certain real properties in the City of Dover, New Hampshire, including buildings thereon, identified as [] and more particularly described in Exhibit 1 annexed hereto and hereby made a part hereof (the "Mortgaged Premises").

II. IMPROVEMENTS AND FIXTURES: All buildings and improvements now situated upon the Mortgaged Premises or which may hereafter be constructed on the Mortgaged Premises or added thereto, together with all fixtures now or hereafter owned by Mortgagor or in which Mortgagor has an interest (but only to the extent of such interest) and placed in or upon the Mortgaged Premises or the buildings or improvements thereon (the "Improvements").

TOGETHER WITH all privileges, and appurtenances thereto or in any way appertaining or belonging thereto, any and all rights of access serving the Mortgaged Property.

All of which land, Improvements and other property and rights hereby granted, sold and conveyed, or intended so to be, hereinafter generally referred to as the "Mortgaged Property".

The Mortgagor for itself and its successors and assigns covenants and agrees as follows:

1. The Guaranteed Tax Assessed Value, as such term is defined in the Agreement, of the Mortgaged Property is \$[].
2. Mortgagor will pay any indebtedness secured by this Mortgage at the time and in the manner as provided in Sections 7.01 and 7.02 of the Agreement.
3. Mortgagor will faithfully perform all covenants, duties and obligations as set forth in Sections 7.01 and 7.02 of the Agreement and this Mortgage.
4. Mortgagor will keep the Mortgaged Property in good order and condition and will not permit any waste thereof, reasonable wear and tear excepted.

5. Mortgagor will keep the structures, fixtures and improvements now existing or hereafter erected or situated on the Mortgaged Property insured against loss by fire and other hazards, casualties and contingencies, said insurance to be placed with such companies and be for such periods as may be required by the Mortgagee. Such policies shall be endorsed with a standard mortgagee clause, with loss payable to the Mortgagee and the Mortgagor as their interest may appear, and shall be deposited with the Mortgagee.
6. Mortgagor will pay, before the same become delinquent or any penalty attaches thereto for nonpayment, all taxes, assessments and charges of every nature that may now or hereafter be levied or assessed, upon the Mortgaged Property or any part thereof, and will pay, before the same become delinquent or any penalty attached thereto for the nonpayment, all taxes which by reason of nonpayment create a lien prior to the lien of the Mortgage and will thereupon submit to the Mortgagee such evidence of the due and punctual payment of such taxes, etc. as the Mortgagee may require.
7. Mortgagor will maintain the Mortgaged Property in compliance with all federal, state and local governmental rules, regulations, laws, permits and approvals, the violation of which would reasonably impair the value of the Mortgaged Premises.

The Mortgagor further agrees that if there shall be any default of any of the terms, conditions, or covenants of Sections 7.01 and 7.02 of the Agreement or Section B. of this Mortgage, all sums due the Mortgagee by the Mortgagor shall at the option of the Mortgagee become immediately due and payable, and the Mortgagee or its heirs, successors and assigns shall have the STATUTORY POWER OF SALE.

This is not homestead property of either person identified as the Mortgagor herein.

This Mortgage will be discharged by the Mortgagee at the termination of the Tax Guarantee Period, as that term is defined in the Agreement, provided no default then exists.

DATED this ____ day of _____, 201__.

[Mortgagor]

Witness By: _____

(Name)

(Title)
Duly Authorized

CITY OF DOVER, NEW HAMPSHIRE

Witness By: _____

[_____] , City Manager
Duly Authorized

STATE OF _____
COUNTY OF _____, 201__

Personally appeared the above named _____, duly authorized _____ of [Mortgagor], known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity for the purposes therein contained.

Notary Public
My Commission Expires:

STATE OF NEW HAMPSHIRE
COUNTY OF STRAFFORD _____, 201__

Personally appeared the above named [_____] , duly authorized City Manager of the City of Dover, New Hampshire , known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity for the purposes therein contained.

Notary Public
My Commission Expires:

EXHIBIT 1

Mortgage - Property Description

[LEGAL DESCRIPTION OF MORTGAGED PROPERTY]