

DEVELOPMENT AGREEMENT

by and between

CITY OF DOVER, NEW HAMPSHIRE

and

FIRST STREET AT GARRISON, LLC

Dated as of July 16, 2013

First Street Development Project

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Development Agreement") is dated as of July __, 2013 and is made by and between **CITY OF DOVER, NEW HAMPSHIRE**, a body corporate and politic, and a political subdivision of the State of New Hampshire with an address of 288 Central Avenue, Dover, New Hampshire 03820 (the "City") and **FIRST STREET AT GARRISON, LLC**, a New Hampshire limited liability company with an address of 466 Central Avenue, Suite 12, City of Dover, County of Strafford and State of New Hampshire 03820, (collectively the "Developer").

RECITALS

The City is the owner of certain property identified as Map 6, Lot 3, said property consisting of 1.4 acres, more or less, which fronts along the Cochecho River and is situated between Central Avenue and Chestnut Street. Further, the City is the owner of certain property identified as "Proposed Easement", which property rights run along the northerly sideline of the aforementioned 1.4 acre property identified as Map 6, Lot 3 and which site is described more fully on a plan attached hereto as Exhibit A (the "Project Site"), and made part of this Development Agreement.

The City issued a request for proposals for the redevelopment and revitalization of the Project Site in 2012, and following due consideration, determined that the proposal by the Developer was the most appropriate proposal in light of the City's master plan, and its intentions

for the redevelopment of the Project Site and the City's Central Business District, and therefore is in the public interest.

The Developer has proposed those improvements for the Project Site and adjacent public property, as set forth at Exhibit B of this Agreement (the "Project"), the total cost of which has been estimated at Twelve Million Two Hundred Fifty Thousand Dollars (\$12,250,000.00), all as generally set forth in conceptual site plans and building elevation plans, attached to this Agreement as Exhibit C (the "Project Conceptual Plans") and made part of this Agreement.

The Developer and the City wish to enter into an agreement pursuant to which the City shall convey the Project Site to the Developer and the Developer shall covenant and agree to construct the Project pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, the receipt and adequacy of which is hereby acknowledged by both parties hereto, the City and the Developer agree, as follows:

ARTICLE I

DEFINITIONS

The following terms shall have the meanings ascribed to them in this Article I for purposes of this Development Agreement. Unless otherwise defined below, capitalized terms used herein shall have the meaning as set forth in this Agreement.

"Ad Valorem Tax Payment Obligation" shall have the meaning set forth in Section 7.02 of this Agreement.

"City" means the City of Dover, New Hampshire having an address of 288 Central Avenue, Dover, New Hampshire 03820.

"City Council" means the City Council for the City of Dover.

"City Manager" means the City Manager for the City of Dover.

"Completion Date" means the date on which improvements, as identified in this Agreement, are to be completed after receipt of a certificate of occupancy from the applicable City agency.

"Deposit" means the Twenty Thousand Dollar (\$20,000.00) sum required from the Developer, as set forth in Section 4.03 of this Development Agreement.

"Designated Land" shall have the meaning set forth in Section 8.03(a) of this Development Agreement.

"Developer" means First Street at Garrison, LLC, its managers and members, and their respective heirs, successors and assigns, where the context of this Development Agreement permits.

"Developer's RFP Response" means a submission entitled "RFP #B13019 Mixed Use Development & Revitalization, First Street Parking Lot, Dover, NH," dated October 18, 2012, submitted by the Developer to the City.

"Developer's Outstanding Secured Indebtedness" shall have the meaning set forth in Section 8.03(b) of this Development Agreement.

"Development Agreement" or *"Agreement"* means this Development Agreement, by and between the City and the Developer, as amended or supplemented from time to time.

"Hazardous Materials" shall mean any flammables, explosives, radioactive materials, hazardous materials, hazardous waste, hazardous matter, hazardous or toxic substances, oil or other petroleum products, asbestos, chemical pollutants or related materials, including as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §9601, *et seq.*), the Hazardous Materials Transportation Act, as amended (49 U.S.C. §1801, *et seq.*), the Resource Conservation and Recovery Act, as amended (42 U.S.C. §6901, *et seq.*), applicable state statutes and in the regulations adopted and publications promulgated pursuant thereto or any other substances or materials constituting a hazard, peril or threat to the health of persons, animals or plant life, and the term "Hazardous Materials" shall include any underground storage tanks used or capable of being used for Hazardous Materials.

"Initial Permitting Term" means that period of time for the Developer to obtain its Permits and Approvals, as described in Section 4.04(b) of this Development Agreement.

"Inspection Period" means that period of time for the Developer to conduct its due diligence with respect to the Project and the Project Site, as described in Section 4.04(a) of this Development Agreement.

"Minimum Public Improvement Expenditure" means the sum of One Hundred Twenty Thousand Dollars (\$120,000.00) to be expended by the Developer on public improvements related to the Project. No portion of the Minimum Public Improvement Expenditure shall be used to seek a waiver or credit against Project impact fees.

"Monthly Business Rate" means the parking rate for renting parking spaces from the City on a monthly basis adjusted periodically based on market conditions.

"Performance Mortgage" means the mortgages granted to the City by the Developer to secure the performance of its obligations to construct the Project. The form of the Performance Mortgages is set forth at Exhibit F.

"Permits and Approvals" means any permit, approval or zoning relief to be issued by the City, including any City-approved Plans and Specifications which will govern the construction

of all or any part of the Project. A list of Project Permits and Approvals is set forth at Exhibit E of this Development Agreement.

"Person" means an individual, a corporation, a limited liability company, a partnership, a limited liability partnership, an association, a joint stock company, a joint venture, a trust, an unincorporated organization or a government or any agency or political subdivision thereof.

"Phase 1-Dev" means the first phase of redevelopment of the Project Site as more fully described at Exhibit B.

"Phase 2-Dev" means the second phase of redevelopment of the Project Site as more fully described at Exhibit B.

"Phase 1-Dev Guaranteed Assessed Value" and *"Phase 1-Dev and Phase 2-Dev Guaranteed Assessed Value"* shall have the meanings set forth in Section 7.01 of this Development Agreement.

"Phase 1-Dev Tax Guarantee" and *"Phase 1-Dev and Phase 2-Dev Tax Guarantee"* shall have the meanings set forth in Section 7.01 of this Development Agreement.

"Planning Board" means the City of Dover Planning Board.

"Project" means the redevelopment of the Project Site, together with any adjacent improvements, whether public or private, set forth in the Project description at Exhibit B and the Conceptual Plans at Exhibit C of this Development Agreement, and as otherwise described in this Development Agreement.

"Project Conceptual Plans" means the plans attached to the Development Agreement as Exhibit C.

"Project Schedule" means the schedule attached to the Development Agreement as Exhibit D.

"Project Site" means property identified as Map 6, Lot 3, said property consisting of 1.4 acres, more or less, which fronts along the Cochecho River and is situated between Central Avenue and Chestnut Street, together with the Proposed Easement, which site is described more fully in Exhibit A (the "Project Site"). The City shall retain the Proposed Sewer Easement on the Project Site, which is reflected on the Plan of Land drawn by McEaney Survey Associates Inc. dated May 24th, 2013 at Exhibit A. The City shall convey the Project Site, including the Proposed Easement, and subject to the Proposed Sewer Easement in two separate warranty deeds, one for Phase 1-Dev and one for Phase 2-Dev. There shall be a common boundary dividing the conveyed property in Phase 1-Dev (deed 1) and Phase 2-Dev (deed 2).

"Proposed Easement" means a perpetual, exclusive easement to be granted by the City to the Developer measuring Thirty Six Hundred Fifty Four (3,654±) square feet, more or less, which location is identified in Exhibit A. For legal description of the Proposed Easement, see

Exhibit I, attached hereto and made part of this Development Agreement. The Proposed Easement shall be a perpetual exclusive easement which the City shall grant in favor of and to the Developer, together with use by the Developer's heirs, successors, assigns, tenants, licensees, business invitees and agents as directed by the Developer and who shall have the right to use the Proposed Easement for purposes of parking upon, walking across, driving across, standing, planting of vegetation, placement of signage, curbing, brick, cobble, and/or introduction of asphalt or other paving surfaces. The servient tenement may make no use of the land which in any way materially conflict with the purpose of the Proposed Easement and the City shall be prevented from making use of the land on which the Proposed Easement is located, except as otherwise described in this Development Agreement or in the easement instrument. The City shall also be restricted from further conveying any use or rights to the land on which the Proposed Easement is located, which are materially inconsistent with the Developer's rights in the Proposed Easement. The Proposed Easement shall be conveyed at the closing from the City to the Developer of the Project Site, as that term is defined in this Development Agreement.

"Proposed Sewer Easement" means those easements to be retained by the City, which direction, metes and bounds are yet to be determined but which are generally located as shown on Exhibit A. The Proposed Sewer Easement running north and south shall be 20 feet in width centered over the sewer pipes as shown on Exhibit A. The Proposed Sewer Easement running easterly and westerly shall be 20 feet in width beginning 2 feet north of the northerly edge of the sewer pipe and running southerly 20 feet along said sewer line. Developer retains the right to build, decking, walkways, and non-permanent structures over the Sewer Easement area. The final direction metes and bounds shall be determined by the time this Development Agreement goes to the City Council for its review.

"Purchase Price" shall have the meaning set forth in Section 4.01 of this Development Agreement.

"Review Materials" means all engineering reports, building plans, title insurance policies, environmental assessments and other relevant materials regarding the Project Site to the extent that any of the foregoing is within the City's possession or control.

"Tax Guarantee Period" shall have the meaning set forth in Section 7.01 of this Development Agreement.

ARTICLE II

CONDITION PRECEDENT

Section 2.01 City Council Approval Required.

The parties acknowledge that unless and until the City Council approves this Development Agreement, pursuant to a duly noticed and authorized vote of the Council, this Development Agreement is not binding on the City. The failure or refusal of the Council to

approve this Development Agreement shall mean that such Agreement is null and void and of no force or effect.

ARTICLE III

REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 3.01 Representations, Covenants and Warranties of the Developer.

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

(a) *Organization.* The Developer, as that term is defined in this Agreement, 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 action 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 the due formation and valid existence of the Developer; (ii) in any way contesting or affecting the validity of this Development Agreement or the consummation of the transactions contemplated hereby; (iii) which would have a material adverse effect upon the financial condition of the Developer or any of its principals, or its ability to perform its obligations under this Development Agreement.

(f) *Legal Impediments.* The Developer, to the best of its knowledge, represents and warrants that it expects to receive, in a timely manner, all requisite Permits and Approvals. It is understood that the timeliness of the receipt of such Permits and Approvals may not be entirely in the Developer's control. The schedule for receipt of such Permits and Approvals is set forth in the Project Schedule at Exhibit D.

(g) *Compliance with Laws.* The Developer shall not, with knowledge, commit, suffer or permit any act to be done in, upon or to the lands in the Project Site or with respect to the Project in violation of any law, ordinance, rule, regulation or order of any governmental authority or any covenant, condition or restriction now or hereafter affecting the lands in the Project Site or with respect to the construction of the Project.

Section 3.02 Representations of the City.

The City represents and warrants to the Developer as follows:

(a) *Organization.* The City 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, by all necessary official action of the City, shall have duly authorized and approved the adoption, execution and delivery by the City of, and the performance by the City of the obligations on its 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, 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: (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.

Section 3.03 No Implied Approvals by City.

Nothing contained in this Development Agreement shall constitute, be deemed to constitute or imply that the City Council, or any City board, department, office, or agency, officer, or employee of the City approves, authorizes, or consents to any action or activity within or required for the development of the Project, 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's respective board, department, office, agency, officer or employee.

Section 3.04 No Waiver of Ordinances, Rules or Regulations.

Nothing herein shall be construed as affecting the City's or the Developer'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.

ARTICLE IV

DEVELOPER'S ACQUISITION OF PROJECT SITE; PHASE ONE IMPROVEMENTS

Section 4.01 Acquisition Terms; Purchase Price

Upon satisfaction of the conditions set forth in this Article IV, the Developer shall purchase and the City shall sell the Project Site. The purchase price for the Project Site is Two Hundred Two Thousand Dollars (\$202,000.00) (the "Purchase Price"). The City shall convey the Project Site, including the Proposed Easement by two warranty deeds. The City shall convey the property to the Developer in the two deeds with a common boundary dividing the area to be developed first in Phase 1-Dev (deed 1) and the second in Phase 2-Dev (deed 2). The two tracts are generally depicted on Exhibit A. The parties acknowledge that the final configuration of the two tracts shall be determined when the Developer obtains subdivision approval of the Project Site. Except as otherwise stated in this Development Agreement or the deed, the Project Site and the Proposed Easement shall be conveyed "as is", "where is", and "with all faults", as to their physical condition. The deed shall include a covenant prohibiting the Developer, its successors and assigns from conveying, transferring or assigning all or any portion of the fee ownership of the Project Site, including units or lots created pursuant to any subdivision or condominiumization of the Project Site, to a party exempt from ad valorem property taxation without the consent of and upon such terms and conditions as are acceptable to the City, in its sole discretion. Except as set forth in this Development Agreement, including those provisions set forth in Section 4.07 of this Development Agreement, the Developer acknowledges that the City has made no representations or warranties, expressed or implied, as to the Project Site concerning physical condition, suitability or fitness for any particular purpose, building restrictions, zoning restrictions, or value but for provisions regarding the subject of the presence of Hazardous Materials as are contained in Section 4.07.

Section 4.02 Closing Date.

The closing date for the conveyance of the Project Site shall occur within thirty (30) days following the satisfaction of all contingencies in Article IV, but in any event, no later than March 20, 2014, TIME BEING OF THE ESSENCE (the "Closing Date"). If the Developer is not in default of its obligations under this Agreement and is diligently performing all of its duties and obligations hereunder, the Closing Date may be extended in 30-day segments to a date mutually agreeable to the parties, not to exceed ninety (90) days. The Developer shall pay the City the sum of Ten Thousand Dollars (\$10,000.00) for each 30-day extension, which payments shall be non-refundable and not applicable to the Purchase Price or to any other obligations of the Developer pursuant to this Development Agreement.

Section 4.03 Deposit.

The Developer shall provide a deposit to the City in the amount of Twenty Thousand Dollars (\$20,000.00) (the "Deposit") upon execution of this Development Agreement. The Deposit shall be held by the City in an account bearing no interest for either party and shall be returned to the Developer at the closing in the event of a purchase of the Project Site.

Section 4.04 Developer's Contingencies – Phase 1-Dev.

The following contingencies of the Developer must be satisfied to the reasonable judgment of the Developer, failing which the Developer shall not be bound to acquire the Project Site:

(a) *Due Diligence.* The Developer shall have the right until December 1, 2013, at Developer's sole cost and expense, to: (i) perform all engineering studies and inspections with respect to the Project Site to determine its physical condition, (ii) perform all environmental auditing, engineering and testing on the Project Site as the Developer shall reasonably require to satisfy Developer that no unacceptable environmental condition exists on the Project Site, (iii) satisfy itself as to the location of utilities and utility connection fees which may be necessary for the Developer's intended use of the Project Site, and (iv) conduct all other reviews and inspections, including any review of title to the Project Site, which the Developer deems reasonably necessary to determine the Project Site's suitability for the Developer's proposed use(s) (the "Inspection Period"). To facilitate the Developer's investigation, the City shall, within five (5) days of the execution of this Development Agreement, deliver to the Developer all engineering reports, building plans, title insurance policies, environmental assessments and other relevant materials to the extent that any of the foregoing are within the City's possession or control (collectively, the "Review Materials"), without any warranty as to their accuracy, completeness, assumptions or conclusions. Copies of any such reports, plans, investigations, studies and inspections undertaken by or at the direction of the Developer shall be provided to the City at no cost or expense to the City.

(b) *Permits and Approvals.* The Developer shall submit such appropriate applications and shall have received all necessary non-appealable Permits and Approvals required to complete the improvements in Phase 1-Dev of the Project, based on the Project Schedule at Exhibit D (the "Initial Permitting Term"). The Developer shall pay the sum of One Hundred Dollars (\$100.00) per day for each day beyond the deadline set forth in the Project Schedule that the Developer fails to submit its site plan application for Phase 1-Dev to the Planning Board, provided that if such failure exceeds Sixty (60) days from the deadline set forth in the Project Schedule for submission of a site plan application, this Development Agreement shall be null and void. Such payments shall be non-refundable and non-applicable to the Purchase Price or any other obligations of the Developer pursuant to this Development Agreement. The City agrees to cooperate with the Developer in completing applications and making submissions in connection with obtaining the Permits and Approvals. The Permits and Approvals for the Project shall be in compliance with any and all applicable ordinances, codes, rules and regulations of the City of Dover and/or the State of New Hampshire. The Developer shall provide written notice, prior to the filing of any respective application, of any Permit or Approval requiring zoning relief or waivers of any land use ordinances, rules or regulations,

which relief or waivers shall be reasonably acceptable to the City and consistent with the spirit and intent of the Project, as envisioned by this Development Agreement. In the event that the Developer has not received the Permits and Approvals within the respective deadlines set forth in the Project Schedule, but is diligently pursuing same, then the Developer may extend such deadlines for up to and including three (3) additional thirty (30) day periods by giving written notice to the City prior to the expiration of the then current term, and tendering the sum of Twenty Five Hundred Dollars (\$2,500.00) for each 30-day extension. Payments for the extension of the Initial Permitting Term shall be non-refundable and not applicable to the Purchase Price or to any other obligations of the Developer pursuant to this Development Agreement. At any time prior to the expiration of the 30 day appeal period of conditional final approval, by the Planning Board, for Phase 1-Dev of the Project, or March 11, 2014, whichever is sooner, the Developer may elect to terminate this Agreement and the City shall return the Deposit, but shall retain any payments for (i) the failure to timely submit the Phase 1-Dev site plan application, and (ii) the extension of deadlines to obtain its Permits and Approvals.

(c) *License for Entry.* Subject to the provisions of this Article 4, the City hereby gives to the Developer and its duly authorized agents, contractors and/or representatives the right of access to the Project Site during the Inspection Period for the purpose of conducting such inspections, tests, studies and other investigations. Any such entry shall only be allowed following reasonable prior notice to the City. The Developer shall promptly repair all damage resulting from any inspections, tests, studies and other investigations at its sole expense and to the City's reasonable satisfaction, reasonable wear and tear excepted. The Developer shall also indemnify and hold the City harmless from and against any and all costs, expenses, liabilities and claims arising from or in connection with its activities on the Project Site. The obligations in this section shall survive termination of this Development Agreement. The Developer shall use reasonable efforts to not interfere with the use or occupancy of the parking spaces on the Project Site from 8:30 am to 5:30 pm on weekdays.

(d) *Phase 1-Dev Financing.* Pursuant to the Project Schedule, the Developer shall have obtained a preliminary letter of commitment from a banking institution or lender acceptable to the Developer for the development of Phase 1-Dev of the Project, in an amount of not less than Three Million One Hundred Thousand Dollars (\$3,100,000.00), at prevailing rates and upon such terms and conditions as are reasonably acceptable to the Developer, and shall have provided a copy of the financing commitment to the City, which includes those terms as set forth in a sample Commitment Letter which is attached hereto and marked as Exhibit H. In the event that the City reasonably deems any condition of financing to be unacceptable to the City, the City shall notify the Developer in writing. The Developer shall have a reasonable period of time, not to exceed sixty (60) days, to resolve such matters to the reasonable satisfaction of the City. If the Developer elects not to undertake such resolution or fails to effect a resolution within such time period, then this Development Agreement shall terminate and the City shall return the Deposit to the Developer. Pursuant to the Project Schedule, the Developer shall deliver a copy of the final financing commitment to the City. The Project is not dependent on the securing of any public financing or other financial assistance from the City for the development of Phase 1-Dev.

Section 4.05 Other Closing Terms and Conditions.

(a) *Transfer Tax.* The Developer shall be responsible for the payment of any transfer tax in connection with the conveyance of the Project Site to the Developer.

(b) *Title.* If the Developer determines that there are any matters of title affecting the Project Site, including the Proposed Easement, which shall prevent or impede the Developer from developing the Project, the Developer shall provide written notice to the City prior to the expiration of the Inspection Period of the title matter and the proposed resolution of the matter. Thereafter, the City shall have a reasonable period of time, not to exceed sixty (60) days, to cure such matters. This period of cure of the title matters described above, shall extend and toll all other dates as reflected in the Project Schedule. If the City elects not to undertake such cure or fails to effect a cure within such time period, then this Development Agreement shall terminate. The City shall convey the Project Site subject to all matters of title as of the expiration on the Inspection Period, subject to any matters which the City satisfactorily cures.

(c) *Certificates, Opinions and Due Authority.* At the Closing, each party agrees to deliver such other opinions, affidavits, disclosures, certificates and documents reasonably requested by the other respective party related to the Closing.

(d) *Performance Mortgage.* At the Closing, the Developer shall grant the City the Performance Mortgages, copies of which is attached hereto as Exhibit F, and the Limited Power of Attorney, a copy of which is attached hereto as Exhibit G, all as more fully described at Article VIII of this Agreement.

Section 4.06 Remedies Upon Termination of Phase 1-Dev.

In the event that the Project Site has been conveyed to the Developer, and this Development Agreement is terminated prior to the commencement of construction of the improvements in Phase 1-Dev, then the City shall have the option, but not the obligation to require the Developer to convey the Project Site to the City or its designee. The remedy set forth in this Section is not the sole or exclusive remedy of the City in the event of the termination of Phase 1-Dev, and the City reserves any and all other rights and remedies under this Agreement, the Phase 1-Dev Performance Mortgage, at law or in equity. The obligation of the Developer in this section shall be secured by the Performance Mortgage on Phase 1-Dev. Once the obligations of the Developer for Phase 1-Dev have been completed, then the Performance Mortgage for Phase 1-Dev shall be discharged by the City within 60 days.

Section 4.07 Environmental Remediation

The City has conducted a Phase 1 environmental site assessment of the Project Site (the "Phase 1-Env") which indicated the presence of Hazardous Materials due to the existence of a gasoline station formerly located at the northeast corner of the Project Site. In addition, the City shall provide at its expense a Phase 2 environmental site assessment of the Project Site (the "Phase 2-Env") and an estimate of the cost of any remediation. The remediation shall occur at the expense of the City during the construction by the Developer in order to accomplish the remediation in an efficient manner. The parties shall cooperate during the construction phase to

accomplish the remediation. In the event that the cost of remediation is greater than One Hundred Thousand Dollars (\$100,000.00), then the City in its sole discretion, may terminate this Development Agreement, return any deposits to the Developer, and this Development Agreement shall be null and void. Should the City not exercise this right by September 10, 2013, then this right shall lapse.

Should the Developer, its heirs, successors or assigns become liable or realize expense as a result of such Hazardous Materials not having been fully remediated, then the City shall indemnify the Developer, its heirs, successors and assigns such that they are held harmless to include but not be limited to their reasonable attorney's fees, as well as a defense by an attorney selected by the City and by the Developer together with the fees, expenses, judgments or agreements made prior to, during or subsequent to litigation. The indemnification by the City shall be limited to said fees, expenses, costs, judgments and agreements associated with remediation of the Hazardous Materials which are determined to have originated on the Project Site. The City shall control the defense of any such claims to which this indemnity applies. This covenant shall survive the Closing.

The City shall provide to Developer copies of all reports, letters or other written materials it obtains, contracts for, or is otherwise provided as received and which is/are associated with or impact upon the presence or absence of Hazardous Materials in or upon the Project Site. Likewise, the Developer shall cooperate with the City in the conduct of the Phase 2-Env site assessment and in any remediation activities required as a result of such assessment, including access to any adjacent or abutting properties under the ownership, control or management of the Developer. Upon execution of this Development Agreement, the Developer shall provide copies of any and all site assessments, investigations, reports or analyses of any kind relating to the presence of Hazardous Materials on or within properties under the ownership, management or control of the Developer which abut or are adjacent to the Project Site.

The City hereby agrees to use best efforts to obtain and to provide a copy of the Phase 2-Env environmental site assessment and report to be conducted by a licensed geotechnical engineering company by August 31, 2013 then this right shall lapse.

Section 4.08 Parking Spaces

The Developer shall have the right to use the Proposed Easement to travel to and from First Street through the Proposed Easement to and from the remainder of the Project Site, as Developer may desire. The Developer shall clear the Proposed Easement area of ice and snow and shall be responsible for the maintenance of all improvements in the Proposed Easement in a manner consistent with the City's maintenance of other similarly-situated streets and parking spaces. The City shall be responsible for the clearing of snow and ice on First Street up to and along the Proposed Easement area.

Subsequent to completion of Phase 2-Dev, the Developer shall have the opportunity to purchase thirty (30) monthly parking permits from the City. The Developer shall have the right to choose the parking locations that are the closest locations to the Project Site which are owned

or controlled by the City. In addition thereto, should the City acquire rights to park in any parking facility not now owned or managed by the City, which is intended to provide parking in the downtown, then the Developer shall have the right to gain monthly parking permits on the 30 spaces closest to the Project Site; provided, however, that the Developer shall not have the right to choose parking spaces located on the north side of First Street nor parking locations east of the Project Site on First Street without the consent of the City. The monthly parking permits are subject to the parking rules of the parking system of the City. The Monthly Business Rate for parking permits may change over time; however, such rate for parking permits for the aforementioned 30 spaces shall equal the average for monthly surface parking permits charged by the City in the downtown.

ARTICLE V

PHASE TWO IMPROVEMENTS

Section 5.01 Developer's Contingencies – Phase 2-Dev.

The following contingencies of the Developer must be satisfied to the reasonable judgment of the Developer, failing which the Developer may elect to not proceed with Phase 2-Dev of the Project and the City shall have those rights and remedies as described in this Development Agreement.

(a) *Permits and Approvals.* The Developer shall submit such appropriate applications and shall have received all necessary non-appealable Permits and Approvals required to complete the improvements in Phase 2-Dev of the Project, based on the Project Schedule at Exhibit D. The Developer shall pay the sum of One Hundred Dollars (\$100.00) per day for each day beyond the deadline set forth in the Project Schedule that the Developer fails to submit its site plan application for Phase 2-Dev to the Planning Board, provided that if such failure exceeds Sixty (60) days from the deadline set forth in the Project Schedule for submission of a site plan application for Phase 2-Dev, this Development Agreement shall be null and void. Such payments shall be non-refundable and non-applicable to any other obligations of the Developer pursuant to this Development Agreement. The City agrees to cooperate with the Developer in completing applications and making submissions in connection with obtaining the Permits and Approvals. The Permits and Approvals for the Phase 2-Dev of the Project shall be in compliance with any and all applicable ordinances, codes, rules and regulations of the City of Dover and/or the State of New Hampshire. The Developer shall provide written notice, prior to the filing of any respective application, of any Permit or Approval requiring zoning relief or waivers of any land use ordinances, rules or regulations, which relief or waivers shall be reasonably acceptable to the City and consistent with the spirit and intent of the Project, as envisioned by this Development Agreement. In the event that the Developer has not received the Permits and Approvals within the respective deadlines set forth in the Project Schedule, but is diligently pursuing same, then the Developer may extend such deadlines for up to and including three (3) additional thirty (30) day periods by giving written notice to the City prior to the expiration of the then current term, and tendering the sum of Twenty Five Hundred Dollars (\$2,500.00) for each 30-day extension. Payments for the extension of the deadline for Permits

and Approvals for Phase 2-Dev shall be non-refundable and not applicable to any of the Developer's obligations under this Agreement.

(b) *Phase 2-Dev Financing.* Prior to the applicable deadline in the Project Schedule, the Developer shall have obtained a preliminary letter of commitment from a banking institution or lender acceptable to the Developer for the development of Phase 2-Dev of the Project, in an amount of not less than Five Million Dollars (\$5,000,000.00), at prevailing rates and upon such terms and conditions as are reasonably acceptable to the Developer. The Developer shall provide a copy of the financing commitment to the City. In the event that the City reasonably deems any condition of financing to be unacceptable, the City shall notify the Developer in writing. The Developer shall have a reasonable period of time, not to exceed sixty (60) days, to resolve such matters to the reasonable satisfaction of the City. If the Developer elects not to undertake such resolution or fails to effect a resolution within such time period, then this Development Agreement shall terminate. Pursuant to the Project Schedule, the Developer shall provide a copy of the final financing commitment to the City. The Project is not dependent on the securing of any public financing or other financial assistance from the City for the development of Phase 2-Dev.

Section 5.02 Remedies Upon Termination of Phase 2-Dev.

In the event that this Development Agreement is terminated prior to the commencement of construction of the improvements in Phase 2-Dev, then the City shall have the option, but not the obligation to require the Developer to convey the lot on which the Phase 2-Dev improvements were intended to the City or its designee. To the extent that the lot on which the Phase 2-Dev improvements is not a separate lot of record, the City may, in the name of the Developer and as part of its authority under the Limited Power of Attorney, subdivide such lot from the Project Site. The remedy set forth in this Section is not the sole or exclusive remedy of the City in the event of the termination of Phase 2-Dev, and the City reserves any and all other rights and remedies under this Development Agreement, the Phase 2-Dev Performance Mortgage, at law or in equity. The obligation of the Developer in this section shall be secured by the Performance Mortgage.

ARTICLE VI

CONSTRUCTION AND MAINTENANCE OF PROJECT IMPROVEMENTS; PUBLIC IMPROVEMENTS;

Section 6.01 Duty of Developer to Construct.

The Developer acknowledges and agrees that the Project shall be constructed in accordance with this Agreement, including those improvements identified in Exhibit B, and the Permits and Approvals. The construction of the Project shall also be in compliance with the applicable codes, ordinances, rules and regulations of the City and the State of New Hampshire.

Section 6.02 Changes to Project Conceptual Plans, Design, Construction.

During the Developer's prosecution of the Permits and Approvals, the Developer may alter the design or construction of the Project, as described in this Development Agreement, including the Project description at Exhibit B and the Project Plans at Exhibit C, subject to the consent and approval of the City, acting by and through its City Manager, which approval shall not be unreasonably withheld. Any changes to the design or construction of the Project considered material by the City Manager, in the City Manager's sole discretion, shall require approval by the City Council. Following the issuance of Permits and Approvals, any material changes to the design or construction of the Project which vary from the Permits and Approvals, shall require the approval of the appropriate board, department, office, agency, officer or employee, in addition to the approval of the City, as set forth above.

Section 6.03 Project Status

During the term of this Development Agreement, the Developer shall, upon request, supply the City with any relevant information regarding the Project, including the status of efforts by the Developer to obtain financing or occupants for the Project. The City agrees to maintain the confidentiality of such information, as may be requested from time to time by the Developer.

Section 6.04 Surety for Project Development

To ensure the timely and proper completion of the improvements for each phase, the City shall require the posting of a letter of credit or other financial surety in a form and upon such conditions as are acceptable to the City, in its reasonable discretion, in an amount equal to all sources of the development financing provided by Developer's lenders for the construction of the improvements for that respective phase. The Developer shall cooperate in identifying all sources of development financing for each phase of the Project, as well as providing plans, cost estimates and information to the City to establish the estimated costs of such phase. The surety shall be posted prior to the issuance of building permits for each respective phase, and shall be maintained through the issuance of certificates of occupancy for such phase. The City shall cooperate with the Developer to reduce the amount of the surety from time to time, but no more often than once per month, as portions of the improvements in each phase are satisfactorily completed.

Section 6.05 Development of Public Improvements – Phase 1-Dev

The Developer shall be required to expend a minimum of One Hundred Twenty Thousand Dollars (\$120,000.00) for public improvements (the "Minimum Public Improvement Expenditure") during Phases 1-Dev and 2-Dev; at least Ninety Thousand Dollars (\$90,000.00) shall be expended during Phase 1-Dev and the remainder shall be expended during Phase 2-Dev; The Developer is not obligated to spend more than the Minimum Public Improvement Expenditure toward public improvements. These costs shall be defined actual costs paid by the Developer. The Developer may use the Minimum Public Improvement Expenditure toward any of the improvements listed in this paragraph. The Developer may provide, at its expense, other public improvements aside from those covered by the Minimum Public Improvement

Expenditure. Any public improvement that the Developer decides to complete at its expense in Phases 1-Dev and 2-Dev, separate from those covered by the aforesaid Minimum Public Improvement Expenditure, must be approved by the Planning Board in order to gain offset of impact fees.

The public improvements may include, but are not limited to (i) lighted walkways in, about, through and adjacent to the Project Site for use by the public, lighting and under-lighting along the Central Avenue Bridge, the Chestnut Street Bridge, and the Community Trail Trestle Bridge (ii) landscaping along the Cochecho River, (iii) "water art", as that term is described in the Developer's RFP Response, (iv) a public canoe/kayak launch on the Cochecho River, (v) a public fountain to be placed within the Cochecho River, (vi) a public fountain to be placed in the courtyard in building to be constructed during Phase 2-Dev, (vii) a public water bubbler drinking and refilling station, (viii) interactive stations, historical marking and mapping of the site and surrounding locale, and (ix) piping and water for irrigation together with loam and vegetation to traffic peninsulas (but not the construction of the peninsula and certain related improvements, as described in the paragraph below.)

In addition to those public improvements described above, the Developer may complete other public improvements at its expense. Any public improvements to be completed as part of the development of either phase shall be determined by the Developer in concert with and upon the approval of the Planning Board. The Developer is not obligated to undertake any public improvements, the cost of which would be in excess of the Minimum Public Improvement Expenditure. Upon request from time to time by the City, the Developer shall provide written cost estimates or certifications for the aforementioned and any other public improvements developed or to be developed as part of the Project.

In the event that the Developer and the Planning Board agree on public improvements the costs of which are in excess of the Minimum Public Improvement Expenditure, such costs may be considered upon petition by the Developer to the Planning Board as a basis for a waiver of impact fees for one or both phases. The decision to grant any waiver of impact fees is at the sole discretion of the Planning Board, and in keeping with Article 170-23(F) of the City of Dover Impact Fee Ordinance. In the event this waiver requires City Council approval, the applicable provisions of this Development Agreement pertaining to the waiver of impact fees shall be binding upon the City Council.

Landscaping and walkway materials installed by the Developer may be brick or cobblestone to reflect the surrounding historic character of the area. Bituminous Asphalt may only be used by the Developer for walkways with the prior approval of the City.

The Developer shall pay to construct the traffic peninsulas necessary to route traffic along First Street at such locations and in the general design specified in Exhibit A. In addition thereto, the Developer shall bear the cost of striping the new parking areas along the Northerly sideline of First Street, relocating the two existing parking meters where the Proposed Easement exists together with related infrastructure. Furthermore, the Developer shall bear the cost of excavating, paving and striping the Proposed Easement area. The cost of these improvements shall not count toward the Minimum Public Improvement Expenditure..

Section 6.06 Completion of Public Improvements; Sureties.

In the event that Ninety Thousand Dollars (\$90,000.00) worth of the public improvements referenced in Section 6.05 are not completed during Phase 1-Dev, but the Developer desires certificates of occupancy for Phase 1-Dev, then the Developer must post a letter of credit or other financial surety in a form and upon such conditions which are acceptable to the City, in its reasonable discretion, in an amount equal to 115% of the cost of the development of the improvements to reach the Ninety Thousand Dollar (\$90,000.00) agreed level. The Developer shall not obtain any certificate of occupancy for Phase 1-Dev until such time as the provisions of this paragraph are satisfied. For instance, should the Developer have expended only Seventy Thousand Dollars (\$70,000.00) in public improvements during Phase 1-Dev, then the Developer must provide to the City a letter of credit or other financial surety in the amount of Twenty Three Thousand Dollars (\$23,000.00). All public improvements required to be completed pursuant to the Developer's Minimum Public Improvement Expenditure obligation shall be completed by the time that certificates of occupancy for Phase 2-Dev are sought.

Section 6.07 Maintenance of Public Improvements and Off-Site Improvements on Public Property.

Except for the maintenance, repair and replacement, including snow plowing and snow removal, of the sidewalks that the public will be granted the right to use on the Project Site, following acceptance of such sidewalks by the City, the Developer shall be required to light, maintain, repair and replace, at its sole cost and expense, any and all public improvements required for the Project, including any and all off-site improvements on public property, related to the Project, and including but not limited to those in the Proposed Easement, as well as any lighting, landscaping, water art, or the canoe/kayak launch. The City shall grant the Developer appropriate easements or licenses for the lighting, maintenance, repair and replacement of such improvements. In the event that the Developer fails to light, maintain, repair and replace such improvements in the same or better state of repair as other similarly-situated improvements in the City, the City shall provide written notice to the Developer. If the Developer has not undertaken work to properly maintain, repair or replace such improvements within thirty (30) days of written notice; or such additional time as the City and the Developer mutually agree is reasonably needed to cure such default, then the City may, at its option, undertake such work and the Developer shall be required to compensate the City for its fees, costs and expenses, including the reasonable value of staff time, equipment use, and reasonable attorney's fees and costs. The City shall undertake such sidewalk maintenance, repair, replacement, plowing and snow removal in accordance with its general city-wide policies and practices for such work. The Developer shall determine the lighting design, direction and fountain schedule depending upon season of the year and day light hours.

The Developer shall be responsible for all repair and maintenance of the Proposed Easement, as outlined in section 4.08.

ARTICLE VII

TAXES; TAX GUARANTEES

Section 7.01 Targeted Taxes.

A critical element in the decision of the City to enter into this Development Agreement and to undertake any financing and construction of certain improvements in the downtown area in the future which shall inure, in part, to the benefit of the Developer, is the generation of *ad valorem* real property taxes for the productive redevelopment of the Project Site. To that end, the Developer warrants that:

(a) *Phase 1-Dev Tax Guarantee.* Commencing upon the earlier of the tax year immediately following the date on which the Developer is issued a certificate of occupancy for the improvements in Phase 1-Dev, or the tax year commencing in 2016 (the first payment of which is due in December 2015), the Developer shall guarantee that the *ad valorem* taxes attributable to the land, buildings and improvements for Phase 1-Dev shall be equal to those *ad valorem* taxes due as if the equalized assessed value of the land, buildings and improvements in Phase 1-Dev is no less than Four Million Five Hundred Thousand Dollars (\$4,500,000.00) (the "Phase 1-Dev Guaranteed Assessed Value"). Thereafter, and prior to the commencement of each of the succeeding twenty four (24) tax years (the "Tax Guarantee Period"), the Phase 1-Dev Guaranteed Assessed Value is likely to increase based on revaluation of the land, buildings and improvements in Phase 1-Dev. At no time during the Tax Guarantee Period shall the assessed value for the land, buildings and improvements in Phase 1-Dev decrease below the Phase 1-Dev Guaranteed Assessed Value. At any time during the Tax Guarantee Period, the City may conduct a revaluation of the land, buildings and improvements in Phase 1-Dev. The Phase 1-Dev Tax Guarantee shall terminate at the end of the Tax Guarantee Period.

(b) *Phase 1-Dev and 2-Dev Tax Guarantee.* Commencing upon the earlier of the tax year immediately following the date on which the Developer is issued a certificate of occupancy for the improvements in Phase 2-Dev, or the tax year commencing in 2020 (the first payment of which is due in December 2019), the Developer shall guarantee that the *ad valorem* taxes attributable to the land, buildings and improvements for Phase 1-Dev and Phase 2-Dev shall be equal to those *ad valorem* taxes due as if the equalized assessed value of the land, buildings and improvements in Phase 1-Dev and Phase 2-Dev (the "Phase 1-Dev and Phase 2-Dev Guaranteed Assessed Value") totals no less than Twelve Million Two Hundred Fifty Thousand Dollars (\$12,250,000.00). Thereafter, prior to the commencement of each succeeding tax year during the Tax Guarantee Period, the Phase 1-Dev and Phase 2-Dev Guaranteed Assessed Value is likely to increase based on revaluation of the land, buildings and improvements in Phases 1-Dev and 2-Dev. At no time during the Tax Guarantee Period shall the assessed value for the land, buildings and improvements for Phase 1-Dev and Phase 2-Dev decrease to less than the Phase 1-Dev and Phase 2-Dev Guaranteed Assessed Value. At any time during the Tax Guarantee Period, the City may conduct a revaluation of the land, buildings and improvements in Phases 1-Dev and 2-Dev. The Phase 1-Dev and Phase 2-Dev Tax Guarantee shall terminate at the end of the Tax Guarantee Period.

The Developer shall cooperate with the City to provide information, including cost certifications, leases, and other documents in connection with each phase of the Project to permit an accurate assessed valuation for each phase of the Project.

Section 7.02 Tax Shortfalls; Security for Tax Shortfalls.

To the extent that in any tax year during the Tax Guarantee Period, the *ad valorem* real property taxes assessed for Phase 1-Dev are less than the Phase 1-Dev Tax Guarantee (the first payment of which is due in December 2015), then the Developer shall be responsible for the payment of the difference (the “Ad Valorem Tax Payment Obligation”).

To the extent that in any tax year during the Tax Guarantee Period, the *ad valorem* real property taxes assessed for Phases 1-Dev and 2-Dev are less than the Phase 1-Dev and Phase 2-Dev Tax Guarantee (the first payment of which is due in December 2019), then the Developer shall be responsible for the payment of the difference (also an “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 of the obligation. The Ad Valorem Tax Payment Obligations shall be secured by the Performance Mortgages. Additionally, the first year of the Phase 1-Dev Tax Guarantee sum and the first year of the Phase 1-Dev and Phase 2-Dev Tax Guarantee sum shall be secured by a letter of credit or other form of surety reasonably acceptable to the City. Such surety for the Phase 1-Dev Tax Guarantee shall be posted with the City on or before the earlier of the issuance of the first certificate of occupancy for Phase 1-Dev or November 15, 2015. Such surety for the Phase 1-Dev and Phase 2-Dev Tax Guarantee shall be posted with the City on or before the issuance of the first certificate of occupancy for Phase 2-Dev.

Section 7.03 Sewer Investments.

The Developer shall be required to pay water and sewer investment fees for Phase 1-Dev in three equal installments with the first installment being due January 1, 2015, the second installment being due January 1, 2016 and the final installment being due January 1, 2017.

The Developer shall be required to pay water and sewer investment fees for Phase 2-Dev in three equal installments with the first installment being due January 1, 2020, the second installment being due January 1, 2021 and the final installment being due January 1, 2022.

The Developer may wish to upgrade of the sewer line now running easterly and westerly across said Project Site such that the sewer line is encased in cement. See Site Design attached hereto and marked within Exhibit A. If the upgrade is to occur, the Developer shall be required to engineer the upgrade project and encase the piping in cement, all to the reasonable satisfaction of the City.

In the event the Developer upgrades the sewer line now running easterly and westerly across the Project Site, then the Developer shall be credited the sewer investment fees for Phase 1-Dev at the time that the sewer line is upgraded, based on the cost of the upgrade. In the event that the cost to upgrade the sewer line is less than the total sewer investment fees for Phase 1-Dev, then the Developer shall be required to pay the remaining sewer investment fees sum for Phase 1-Dev on January 1, 2017. In the event the cost to upgrade the sewer line is greater than the amount that the Developer shall be required to pay for sewer investment fees for Phase 1-Dev, then the City shall credit the remainder against the investment fees to be paid for Phase 2-Dev at the time sewer investment fees are due for Phase 2-Dev, as stated above. In the event that the cost to upgrade the sewer line exceeds the aggregate of all sewer investment fees for the Project, all such excess costs shall be borne by the Developer.

Section 7.04 Impact Fees

All impact fees for Phase 1-Dev shall be paid on or before the Certificate of Occupancy is granted to the Developer for Phase 1-Dev. All impact fees for Phase 2-Dev shall be paid on or before the Certificate of Occupancy is granted to the Developer for Phase 2-Dev.

ARTICLE VIII

PERFORMANCE MORTGAGES; EVENTS OF DEFAULT; PROJECT SITE RECONVEYANCE

Section 8.01 Project Subject to Performance Mortgages.

The Developer's obligations under this Agreement shall be secured by two performance mortgages granted by the Developer to the City on the Project Site, one performance mortgage for Phase 1-Dev and one performance mortgage for Phase 2-Dev. The form of these performance mortgages is attached hereto as Exhibit F. The exact definition of metes and bounds shall be defined by the parties prior to the closing but shall constitute the conveyance of the "Project Site" in its total which "Project Site" is defined in the Recitals of this Land Development Agreement. The common boundary line between Phase 1-Dev parcel and Phase 2-Dev parcel shall be determined by the Developer prior to the date of closing. In essence, the deed defining the Phase 1-Dev parcel shall reflect the area to be developed during Phase 1-Dev and the deed defining the Phase 2-Dev parcel shall reflect the areas to be developed during Phase 2-Dev. The westerly boundary line of Phase 1-Dev deed shall be the easterly boundary line of Phase 2-Dev deed. The Performance Mortgages shall be granted by the Developer to the City at the Closing. The Performance Mortgages shall be in addition to any financial sureties customarily required by the City for the construction and development of property or as required by this Development Agreement. The Performance Mortgages shall be a first mortgage on the lot designated for the Phase 2-Dev improvements, and shall be a subordinate mortgage on the lot designated for the Phase 1-Dev improvements. The City shall reasonably cooperate with any lender(s) of the Developer regarding (i) the partial release of the Performance Mortgages upon the satisfactory completion of those obligations in each phase secured by such Mortgage, and (ii) the exercise of rights by the City to enforce the covenants within that mortgage, provided that the Performance

Mortgages are not subject to discharge or termination without the written consent of the City in the event of a foreclosure of those lenders' mortgages.

Section 8.02 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 Project Schedule.* The failure of the Developer to fulfill those duties and obligations in a timely manner, TIME BEING OF THE ESSENCE, as set forth in this Development Agreement, including the Project Schedule.

(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) *Failure to Obtain or Lapsing of Permits and Approvals.* The failure of the Developer to obtain and/or maintain in a timely manner all Permits and Approvals, including any certificates, permits, variances, special exceptions and/or other approvals from all federal, state and municipal authorities, including without limitation all approvals and permits relating to subdivision and site plan review, architectural design review, zoning, building codes, water supply and sewage, and environmental laws relating to the Project.

(g) *Attempted Assignment.* The Developer assigns or attempts to assign its rights under this Development Agreement or any interest therein.

(h) *Construction Breach.* The Developer does not construct the Project, including any public improvements, 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.

(i) *Liens.* Any mechanics', laborers', materialmen's or similar statutory liens, or any notice thereof, are filed against the Project Site and/or the related 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 either of the phases, once building permits are issued, for more than thirty (30) days except for strikes, riots, or other causes beyond the Developer's control, or if any substantial change is made in the Project Schedule for the construction of the Project without the written consent of the City.

(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 Project Site.* The sale (except in the ordinary course of business), transfer, encumbrance, conveyance or other disposition of all or any portion of the Project Site until such time as the respective Performance Mortgage has been released or discharged as to such portion of the Project Site.

(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.

Section 8.03 Re-Conveyance of Project Site as Remedy.

In the event that the Project Site is conveyed to the Developer, and the Developer is in default of its obligations under this Development Agreement, the City shall have the option, but not the obligation, to repurchase and require the reconveyance of all or any portion of the Project Site not yet issued a certificate of occupancy, subject to the terms and conditions in this Development Agreement. Additionally, the City may, at its option, elect not to repurchase or require reconveyance of any portion of the Project Site which has been substantially commenced, provided that the City is assured, to its reasonable satisfaction, of the Developer's ability to complete the development commenced. The obligation to re-convey the Project Site or any portion thereof to the City shall be secured by the Performance Mortgages. Once the obligations of the Developer covered by each respective Performance Mortgage are completed, then that respective Performance Mortgage shall be discharged by the City within 60 days.

If the City exercises its option to require reconveyance of all a portion of the Project Site to the City, the following notice and pricing procedures shall be followed by the parties:

(a) *Notice.* The City shall deliver to the Developer written notice of its intent to repurchase all or a portion of the Project Site to which it may have reconveyance rights, including in said notice a specific description of the portion(s) of the Project Site intended to be repurchased together with a delineation/explanation of all public improvements relating to said portion of the Project Site (the "Designated Land").

(b) *Debt Information.* As soon as practicable, but within thirty (30) days of the Developer's receipt of the notice, the Developer shall inform the City of its outstanding debt owed to institutional lenders and/or equity investors pursuant to securitized agreements (including, but not limited to, mortgage deeds encumbering the Designated Land) constituting secured debt/investment in those portions of the Project Site which the City designates for repurchase (the "Developer's Outstanding Secured Indebtedness").

(c) *Price Negotiation.* Upon receipt, the City shall negotiate in good faith with the Developer to agree upon a repurchase price for the lien-free reconveyance of the Designated Land.

(d) *Resolving Repurchase Price.* In the event that the parties fail to reach an agreement on a repurchase price within forty five (45) days of the City's notice of intent to repurchase, the City and the Developer shall each retain, at their respective costs, an appraiser to appraise the fair market value of the Designated Land and both appraisers shall designate a third appraiser to either mediate a concurring opinion of value or, with or without said third appraiser completing a third appraisal at a cost to be shared by the parties, said third appraiser shall

determine the fair market value of the Designated Land. That fair market value shall, if greater than the Developer's Outstanding Secured Indebtedness, be the price to be paid by the City or its designee, for the Designated Land.

(e) *Impact of Debt on Price.* If the Developer's Outstanding Secured Indebtedness is greater than the fair market value of the Designated Land, then the City's purchase price for the Designated Land shall be equal to Developer's Outstanding Secured Indebtedness.

(f) *Subdivision.* If subdivision approval is necessary to enable reconveyance of the Designated Land, the cost for same, including necessary surveying and/or engineering, shall be paid by the City.

(g) *Transfer Tax.* Upon reconveyance, the parties acknowledge the recording of any deed(s) may be exempt from New Hampshire transfer tax, pursuant to RSA 78-B:2. If the City intends to exercise its reconveyance right for the purpose of having the Designated Land conveyed in the name of a private third party designated by the City, the parties (including the City's designee) agree to cooperate in structuring the reconveyance to minimize the payment of New Hampshire transfer tax. In no instance shall the Developer be obliged to pay more than its customary "seller" share of any New Hampshire transfer tax.

Section 8.04 Power of Attorney to Accomplish Re-Conveyance

The Developer hereby makes, constitutes and appoints the City as its attorney-in-fact for the limited purpose of executing a deed of re-conveyance, and such other related re-conveyance and closing documents, and to accept the repurchase consideration, all at the City's option, according to repurchase terms determined upon exhaustion of the procedures, terms and conditions outlined in this Development Agreement. The power-of-attorney shall be exercised if and only if the Developer refuses to voluntarily execute such deed and other documents, or to accept a repurchase payment. The appointment is and shall be irrevocable, intending to expedite such repurchase and reconveyance upon completion of the procedure outlined by in this Development Agreement, to avoid the City's need to resort to court proceedings or foreclosure to effectuate its reconveyance rights.

The form of the limited power of attorney is attached hereto as Exhibit G. The original shall be retained by the City Manager, in escrow, subject to the terms and conditions of this Development Agreement. The Developer reserves all rights at law and equity, including the right to seek injunctive relief, to prevent unauthorized or improper use of the original Limited Power of Attorney inconsistent with this Development Agreement.

Section 8.05 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 shall have any and all rights and remedies as set forth in this Development Agreement, in any sureties required by this Development Agreement, and in the Performance Mortgages. Such rights and

remedies are non-exclusive, and the City shall have any and all other rights at law or in equity. In the event that the City must engage counsel or expend any other sums for the purpose of enforcing its rights under this Development Agreement or the Performance Mortgages, the Developer shall be responsible for the payment of the City's reasonable fees, costs and expenses, including attorney's fees.

ARTICLE IX

MISCELLANEOUS

Section 9.01 Agreement Termination.

In instances throughout this Development Agreement where termination of this Agreement occurs, and unless otherwise stated in this Development Agreement, termination must be accomplished by a writing provided by the Developer to the City within the deadlines set forth in the Project Schedule. Upon any such termination, neither party shall have any further rights or obligations hereunder except those obligations that expressly survive such termination, and except where otherwise stated, the Deposit shall be returned to the Developer.

Section 9.02 Indemnification.

The Developer releases the City, the members of the City Council and the City's respective officers, attorneys, agents and employees, from, agrees that the City, the members of the City Council and the City's respective officers, attorneys, agents and employees, shall not be liable for and indemnifies the City, the members of the City Council and the City'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, the members of the City Council and the City's respective officers, attorneys, agents and employees, arising, directly or indirectly, in whole or in part, 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 Project, including the construction of the Project and the 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, the members of the City Council and the City's respective officers, attorneys, agents and employees.

In case any claim or demand is at any time made, or action or proceeding is brought, against or otherwise involving the City, any member of the City Council or any officer, attorney, board member, agent or employee of the City, 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, and the Developer 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

be paid by the indemnified party unless (i) the employment of such counsel has been specifically authorized by the Developer in writing, or (ii) the Developer 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 and 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 Developer's expense, the Developer shall not have the right to assume the defense of such action on behalf of such indemnified party and the Developer shall be responsible for payment of the fees and expense of such separate counsel.

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, 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.

Section 9.03 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: City Manager
City of Dover, New Hampshire
City Hall
288 Central Avenue
Dover, New Hampshire 03820-4169

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

Developer: First Street at Garrison, LLC
466 Central Avenue, Suite 12
Dover, New Hampshire 03820

With a copy to: _____

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 9.04 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 9.05 Successors and Assigns.

This Development Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. Assignment of this Development Agreement by the Developer shall not be permitted without the prior written consent of the City. In connection with any such consent of the City, the City may condition its consent upon the acceptability of the financial condition of the proposed assignee, upon the assignee's express assumption of all obligations of the Developer hereunder or upon any other reasonable factor which the City deems relevant in the circumstances. In any event, any such assignment of this Development Agreement shall be in writing, shall clearly identify the scope of the rights and obligations assigned and shall not be effective until approved by the City. Notwithstanding the foregoing, the prior written consent of the City shall not 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 construction of the Project or a portion thereof.

Section 9.06 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 9.07 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 9.08 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 and the Developer any rights, remedies or claims under or by reason of this Development Agreement or any covenants, conditions or stipulations hereof, and all covenants, conditions, promises

and agreements in this Development Agreement contained by or on behalf of the City or the Developer shall be for the sole and exclusive benefit of the City and the Developer.

Section 9.09 Amendment.

This Development Agreement may be amended, from time to time, by written supplement hereto and executed by both the City and the Developer.

Section 9.10 Time is Of the Essence.

The City and the Developer have agreed on the Project Schedule for the redevelopment of the Project Site, as set forth at Exhibit D of this Development Agreement. It includes specific deadlines, including deadlines for the performance of certain duties and obligations by the Developer. The parties acknowledge that TIME IS OF THE ESSENCE in the timely performance of such duties and obligations.

Section 9.11 Force Majeure

In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reasons of strikes, lockouts, inability to procure materials, loss of utility services, restrictive governmental laws or regulations, riots insurrection, war, acts of God, or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Development Agreement, then performance of any such act shall be extended for a period equivalent to the period of such delay.

Section 9.12 Counterparts.

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

Section 9.13 Effective Date.

This Development Agreement shall be effective as of the dated date of this Development Agreement.

Section 9.14 Survival of Covenants

The covenants and agreements contained within this Development Agreement shall survive the closing.

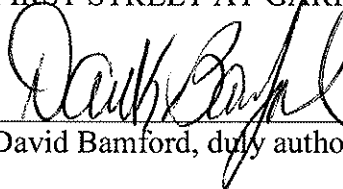
[Signature Page follows]

IN WITNESS WHEREOF, the parties have executed this Development Agreement as of the day and year first above written.

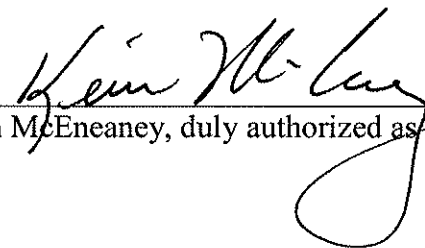
CITY OF DOVER, NEW HAMPSHIRE

By: _____
Name: J. Michael Joyal
Title: City Manager

FIRST STREET AT GARRISON, LLC



David Bamford, duly authorized as Manager



Kevin McEneaney, duly authorized as Manager

Exhibit A

Property Description

(See attached)

[Faint, illegible handwritten text]

Exhibit B

Project Improvements and Phasing

BUILDING DESIGN

Architecture for the Project buildings shall be of a traditional design in keeping with the historic nature of the City's downtown area and the Dover Waterfront Design Guidelines (adopted November 10, 2008). The upper stories of the buildings shall have balconies that surround the building, with the southerly, easterly and westerly sides of the building having balconies with a view of the river. The southerly side of each building shall have ground decking or bricking running in a pattern so as to follow the contours of the river.

Each building will be compatible with nineteenth century New England traditional architecture. Fenestration, headers, lintels, corner boards, fascia, returns, and doors shall consider the nineteenth century architectural period.

The carbon footprint will be minimized as much as possible incorporating LEED standards into the architecture and construction.

RESIDENTIAL UNITS

It is anticipated that each rental unit shall have two bedrooms and 1 ¾ baths. However, the Developer may design some units to be three bedroom and some units to be one bedroom or studios. Each rental unit shall have solid surface counters, open concept kitchens, dining and living areas. Each living room shall have fireplaces. Each unit shall have an outside balcony.

PROJECT SITE GROUNDS, PUBLIC SPACES & WALKWAYS

The Project Site shall be developed in concert with the Dover Waterfront Design Guidelines (adopted November 10, 2008). The Project streetscape will be a continuation of the brick and cobble "feel". The architecture of the buildings requires the employment of real stone walkways and retaining walls. Imbedded lighting is likely to be employed. Period lighting on the buildings will accompany ground lighting and sidewalk lighting. An aesthetic lighting plan will provide ample visibility for safety while minimizing "light pollution".

The second phase of construction (Phase 2-Dev) will feature a curved arch portal running from First Street through the building and the grounds within an interior courtyard, then again through a second curved arch portal to the Cocheco River. At the river's edge, there will be a public boat launch for smaller non-motorized watercraft, and landscaping designed to enhance and not obstruct the view of the river for the enjoyment of the general public.

PHASING

PHASE 1-Dev: Phase 1-Dev shall consist of a gross building size of 48,500± square feet. The building shall consist of an underground garage level encompassing 7,000± and six stories above ground encompassing 41,500± square feet.

The first floor shall have retail and restaurant space in a figuration to be determined, together with an apron of bricking and decking to go down to and follow the contours of the river.

The second floor shall be dedicated to office space in a configuration yet to be determined.

The third, fourth and fifth floor shall have residential units with a gross area of 7,000± square feet

The sixth floor shall have residential units with a gross floor area of 6,500± square feet.

During both Phase 1-Dev and Phase 2-Dev, the city shall allow developer to disrupt and fence in the area defined as the "Proposed Easement". Public improvements at a cost of not less than One Hundred Twenty Thousand Dollars (\$120,000.00) to the Developer and several of which are described in Section 6.05 shall be completed by the Developer during Phase 1-Dev. Once the public improvements costing One Hundred Twenty Thousand Dollars (\$120,000.00) have been concluded, then all improvements that the Developer desires to complete in Phases 1-Dev and 2-Dev and which are deemed to be "Public Improvements", shall have to be approved by the Planning Board to gain impact fee offsets. These "Public Improvements" would include the interior courtyard in the Phase 2-Dev building as well as a water art component in the October 18th, 2012 RFP response.

The public improvements required for Phase 2-Dev construction such as the interior courtyard in the Phase 2-Dev building as well as a water art component proposed in the October 18, 2012 RFP response, will be completed during Phase 2-Dev.

PHASE 2-Dev: Consists of a gross building size of 84,000± square feet, together with an underground garage measuring 14,000± square feet. The Developer intends to build a single unit building near the water on the southwesterly corner to appear as a small Carriage house. Construction of this building may interfere with the "view " of the Chestnut Street Bridge from the outdoor brick aprons sited to the south of the buildings where Developer anticipates outdoor dining. If so the Carriage House would be eliminated.

Exhibit C

Project Conceptual Plans

(See attached)

Exhibit D

Project Schedule

(Shall be agreed to once body of document has been defined.)

Phase 1-Dev

6/20/13-8/31/13	City to perform and complete Phase 2-Dev Environmental Study of property
7/24/13	City Council Approval of Development Agreement with Contingency as to Hazardous Waste
9/10/13	City's Right to Withdraw from Development Agreement expires
9/1/13-1/1/14	Prepare Design Plans for Phase 1-Dev improvements (architectural and engineering)
9/1/13-2/1/14	Financing Process
1/2/14	File Site Review Applications with Planning Board and NHDES
2/11/14	Expiration of Inspection Period
2/11/14	Delivery of Preliminary Financing Commitment Letter – Phase 1-Dev
2/11/14	Planning Board Approval/State and federal permitting process
3/11/14	Expiration of 30-Day Appeal Period
3/20/14	Closing
4/30/14	Begin construction on Phase 1-Dev/Issuance of building permits
12/15/15	Completion of Phase 1-Dev, delivery of certificates of occupancy for buildings in Phase 1-Dev

Phase 2-Dev

6/1/17-9/1/17	Prepare Design Plans for Phase 2-Dev improvements
10/1/17	File Planning Board Application
12/1/17	Delivery of Preliminary Financing Commitment Letter – Phase 2-Dev
10/1/17 – 2/1/18	Planning Board Approval/State and federal permitting process
3/1/18-4/1/18	Financing Process
3/1/18	Expiration of 30-Day Appeal Period
7/1/18	Begin Construction on Phase 2-Dev/ Issuance of building permits
11/1/20	Delivery of certificates of occupancy for buildings in Phase 2-Dev

Exhibit E

Permits and Approvals

1. Subdivision of Project Site into two lots.
2. Conditional Use Permit – Conservation District improvements.
3. Site Plan Approval of Project
 - a. Site Plan Approval for Phase 1-Dev.
 - b. Site Plan Approval for Phase 2-Dev.
4. NHDES Alteration of Terrain Permit
5. NHDES Shoreland Permit
6. NHDES Dredge & Fill Permit (?)
7. NHDES Wetlands Permit (?)
8. New Hampshire Department of Justice Condominium Registration (?)
9. Building Permit(s)
10. Certificate(s) of Occupancy

Insert any other approvals, permits, zoning relief, etc.

Exhibit F

Performance Mortgage

(See attached)

MORTGAGE DEED PHASE 1-DEV

FIRST STREET AT GARRISON, LLC, a New Hampshire business having an address of 466 Central Avenue, Suite 12, City of Dover, County of Strafford and State of New Hampshire , (hereinafter collectively 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 a certain Development Agreement by and between the Mortgagor and Mortgagee of even date, 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 as provided for hereinafter;

C. Payment, performance and satisfaction of Mortgagor's liabilities and other obligations under the terms, conditions, representations, warranties and covenants contained in this Mortgage and the Agreement and any and all amendments, deferrals, extensions, renewals and substitutions thereto and therefor.

The following premises:

I. **LAND:** A certain parcel of land located off First Street in Dover, Strafford County, New Hampshire, containing ____ acres (____ square feet), more or less, known as a portion of Tax Map 6, Lot 3, said land having been conveyed to the Mortgagor by deed dated _____, 2013, and recorded in the Strafford County Registry of Deeds at Book _____, Page _____, and more particularly described in Exhibit A 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. Mortgagor will pay any indebtedness secured by this Mortgage at the time and in the manner as provided in the Agreement.
2. Mortgage will faithfully perform all covenants, duties and obligations as set forth in the Agreement and this Mortgage.
3. Mortgagor will keep the Mortgaged Property in good order and condition and will not permit any waste thereof, reasonable wear and tear excepted.
4. 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.
5. 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.
6. Mortgagor will maintain the Mortgaged Property in compliance with all federal, state and local governmental rules, regulations, laws, permits and approvals.

The Mortgagor further agrees that if there shall be any default of any of the terms, conditions, or covenants of the Agreement or 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 in this deed.

DATED this _____ day of _____, 201__.

FIRST STREET AT GARRISON, LLC

Witness

David Bamford, duly authorized as Manager

Witness

Kevin McEneaney, duly authorized as
Manager

STATE OF NEW HAMPSHIRE
COUNTY OF STRAFFORD

_____, 201__

Personally appeared the above named David Bamford, duly authorized manager of First Street at Garrison, LLC, 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:

STATE OF NEW HAMPSHIRE
COUNTY OF STRAFFORD

_____, 201__

Personally appeared the above named Kevin McEneaney, duly authorized manager of First Street at Garrison, LLC, 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:

MORTGAGE DEED PHASE 2-DEV

FIRST STREET AT GARRISON, LLC, a New Hampshire business having an address of 466 Central Avenue, Suite 12, City of Dover, County of Strafford and State of New Hampshire, (hereinafter collectively 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 a certain Development Agreement by and between the Mortgagor and Mortgagee of even date, 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 as provided for hereinafter;

C. Payment, performance and satisfaction of Mortgagor's liabilities and other obligations under the terms, conditions, representations, warranties and covenants contained in this Mortgage and the Agreement and any and all amendments, deferrals, extensions, renewals and substitutions thereto and therefor.

The following premises:

LAND: A certain parcel of land located off First Street in Dover, Strafford County, New Hampshire, containing _____ acres (____ square feet), more or less, known as a portion of Tax Map 6, Lot 3, said land having been conveyed to the Mortgagor by deed dated _____, 2013, and recorded in the Strafford County Registry of Deeds at Book _____, Page _____, and more particularly described in Exhibit A 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. Mortgagor will pay any indebtedness secured by this Mortgage at the time and in the manner as provided in the Agreement.
2. Mortgage will faithfully perform all covenants, duties and obligations as set forth in the Agreement and this Mortgage.
3. Mortgagor will keep the Mortgaged Property in good order and condition and will not permit any waste thereof, reasonable wear and tear excepted.
4. 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.
5. 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.
6. Mortgagor will maintain the Mortgaged Property in compliance with all federal, state and local governmental rules, regulations, laws, permits and approvals.

The Mortgagor further agrees that if there shall be any default of any of the terms, conditions, or covenants of the Agreement or 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 in this deed.

7/16/2013 2:16 PM

DATED this ____ day of _____, 201__.

FIRST STREET AT GARRISON, LLC

Witness

David Bamford, duly authorized as Manager

Witness

Kevin McEneaney, duly authorized as
Manager

STATE OF NEW HAMPSHIRE
COUNTY OF STRAFFORD

_____, 201__

Personally appeared the above named David Bamford, duly authorized manager of First Street at Garrison, LLC, 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:

STATE OF NEW HAMPSHIRE
COUNTY OF STRAFFORD

_____, 201__

Personally appeared the above named Kevin McEneaney, duly authorized manager of First Street at Garrison, LLC, 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 G

Limited Power of Attorney

(see attached)

LIMITED POWER OF ATTORNEY

First Street at Garrison, LLC, appoints the **City of Dover, New Hampshire**, a body corporate and politic, and a political subdivision of the State of New Hampshire, having a business address of 288 Central Avenue, Dover, New Hampshire 03820, as its true and lawful attorney, with the following limited powers and subject to the following conditions:

To act for First Street at Garrison, LLC, for the limited purpose of executing a deed of reconveyance to the City of Dover, New Hampshire and such other related reconveyance and closing documents, and to accept repurchase consideration, for the sole purpose of affirming any exercised repurchase/reconveyance option according to the procedures, terms and conditions outlined in a certain Development Agreement between the parties dated _____, 2013, if and only in the event of First Street at Garrison, LLC's, refusal to voluntarily execute such deed and other documents, and to accept such payment.

This Limited Power of Attorney is irrevocable, and shall not be affected by the subsequent disability or incompetence of the principals of either party.

Statutory Notices. The following notices are given pursuant to New Hampshire RSA 506:6, VI & VII:

Notice to the Principal: As the "Principal", you are using this Durable General Power of Attorney to grant power to another person (called the 'Agent' or 'Attorney in Fact') to make decisions, including, but not limited to, decisions concerning your money, property, or both and to use your money, property, or both on your behalf. If this written Durable General Power of Attorney does not limit the powers that you give to your Agent, your Agent will have broad and sweeping powers to sell or otherwise dispose of your property, and to spend your money without advance notice to you or approval by you. Under this document, your Agent will continue to have these powers after you become incapacitated, and unless otherwise indicated, your Agent will have these powers before you become incapacitated. You have the right to revoke or take back this Durable General Power of Attorney at any time, so long as you are of sound mind. If there is anything about this Durable General Power of Attorney that you do not understand, you should seek professional advice.

Notice to the Agent: As the 'Agent' or 'Attorney in Fact', you are given power under this Durable General Power of Attorney to make decisions about money, property, or both belonging to the Principal, and to spend the Principal's money, property, or both on the Principal's behalf, in accordance with the terms of this Durable General Power of Attorney. This Durable General Power of Attorney is valid only if the Principal is of sound mind when the Principal signs it. When acting in the capacity of Agent, you are under a duty (called a 'fiduciary duty') to observe the standards observed by a prudent person, which means the use of those powers that is reasonable in view of the interests of the Principal and in view of the way in which a person of ordinary judgment would act in carrying out that person's own affairs. If the exercise of your acts is called into question, the burden will be upon you to prove that you acted under the standards of a fiduciary. As the Agent, you are not entitled to use the money or property for your own benefit or to make gifts to yourself or others unless the Durable General Power of Attorney specifically gives you the authority to do so. As the Agent, your authority under this Durable General Power of Attorney will end when the Principal dies and you will not have authority to manage or dispose of any property or administer the estate unless you are authorized to do so by a New Hampshire Probate Court. If you violate your fiduciary duty under this Durable General Power of Attorney, you may be liable for damages and may be subject to criminal prosecution. If there is anything about this Durable General Power of Attorney, or your duties under it, that you do not understand, you should seek professional advice.

My attorney-in-fact hereby acknowledges the above Notice by setting forth below the form of signature my attorney-in-fact may use:

First Street at Garrison, LLC

By: City of Dover, New Hampshire, Its Attorney-in-Fact

By: _____

**Its City Manager
Duly Authorized**

INTENDING TO BE LEGALLY BOUND, I have executed this Limited Power of Attorney on _____, 201__.

FIRST STREET AT GARRISON, LLC,

Witness

David Bamford, duly authorized as Manager

Witness

Kevin McEneaney, duly authorized as Manager

STATE OF NEW HAMPSHIRE
COUNTY OF STRAFFORD

_____, 201__

Personally appeared the above named David Bamford, duly authorized manager of First Street at Garrison, LLC, 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:

STATE OF NEW HAMPSHIRE
COUNTY OF STRAFFORD

_____, 201__

Personally appeared the above named Kevin McEneaney, duly authorized manager of First Street at Garrison, LLC, 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:51163081_1

Exhibit H

Commitment Letter

Preliminary Term Sheet
For Discussion Purposes Only

This letter serves to outline the salient terms and conditions as to the bank's willingness to continue to review the proposed lending opportunity. We will move forward with the approval process for the following credit facilities. This is not a commitment to lend, but rather a guideline.

Request #1

BORROWER:

TYPE:

PURPOSE:

AMOUNT:

TERM:

AMORTIZATION:

RATE:

BANK FEES:

COLLATERAL:

GUARANTORS:

ENVIRONMENTAL:

APPRAISAL:

Borrower(s) shall furnish the following financial reports:

- Reviewed financial Statements and Federal Income Tax Returns
- Personal tax returns and personal financial statements within 150 days of year end
- Company prepared statements upon request

Financial Covenants:

Borrower:

FINAL APPROVAL: The terms and conditions stated herein are preliminary and are subject to the final approval.

Exhibit I

Legal Description

A certain tract or parcel of land situate on First Street in Dover, County of Strafford, State of New Hampshire and shown as "Proposed Use Easement" on a plan by McEaney Survey Associates, Inc., entitled "Plan of Land prepared for the City of Dover, NH, property known as First Street Parking Lot, Tax Map 6, Lot No. 3, First Street & Chestnut Street, City of Dover, County of Strafford, State of New Hampshire", dated May 24, 2013.

Said tract or parcel of land being more particularly described as follows:

Beginning at a point N 81°50'25" W, 45.20 feet from the most easterly corner of said First Street Parking Lot property; thence continuing N 81°50'25" W, 406.00 feet to a point; thence turning and running N 08°09'35" E, 9.00 feet to a point; thence turning and running S 81°50'25" E, 406.00 feet to a point; thence turning and running S 08°09'35" W, 9.00 feet to the point of beginning.

Said tract containing 3,654 square feet, more or less.

