

**Land Disposition Agreement (“LDA”)
For Sale and Development of
Dover Landing**

Executed May 22 and 26, 2009

**Triplicate originals signed and kept (one each)
by Dover Housing Authority, City of Dover and
Dickinson Development Corp.**

**LAND DISPOSITION AGREEMENT (“LDA”)
FOR SALE AND DEVELOPMENT OF
DOVER LANDING**

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LIST OF EXHIBITS

Re: Section 2/Background:

- 2.1 Term Sheet
- 2.2 First Amendment to Term Sheet
- 2.3 Second Amendment to Term Sheet
- 2.4 Third Amendment to Term Sheet
- 2.5 Fourth Amendment to Term Sheet

Re: Section 3/Legal Authority:

- 3.1 DHA May 26, 2009 Meeting Minutes (authorizing DHA signing)
- 3.2 Dover City Council June 13, 2007 Resolution (authorizing City Manager signing)
- 3.3 Representation and Warranties of Dickinson Development Corp.
- 3.4 Term Sheet Conditions Precedent to LDA Execution Satisfied

Re: Section 4/The Premises:

- 4.1 Survey plan drawn by McEaney Survey Associates

Re: Section 5/Agreement to Buy/Sell/Develop

- 5.1 Proposed Warranty Deed (with Easements, Land Use Restrictions)

Re: Section 7/Limitation on Developer's Right to Assign:

- 7.1 Approval of Developer's Intent to Assign

Re: Section 8/Development Restrictions:

- 8.1 Dover Waterfront Design Guidelines
(adopted November 10, 2008 by CWDAC, December 16, 2008 by DHA)
- 8.2 Retained Access Easement Use Limitation Terms
- 8.3 Conditional Re-conveyance Rights (w/in 10 years deed transfer)
- 8.4 Limited Power of Attorney

Re: Section 9/Development Program:

- 9.1 Concept Plan (overall site development)
- 9.2 Concept Plan (Waterfront Park enlarged)
- 9.3 Concept Plan (Design Section for Waterfront Park)
- 9.4 Waterfront Park Program

Re: Section 10/Purchase Price:

- 10.1 LDA Deposit Escrow Account Terms and Conditions

Re: Section 12/Closing Date:

- 12.1 Conditions Precedent to Closing

Re: Section 17/As-Is/Where-Is Conveyance:

- 17.1 Title Insurance Commitment

TERMS

1. Parties

This Land Disposition Agreement (the “**LDA**”) is made by and between the **Dover Housing Authority**, a New Hampshire Housing Authority properly authorized and existing pursuant to N.H. RSA 203, having a business address of 62 Whittier Street, Dover, NH 03820 (the “**DHA**”), the **City of Dover**, by and through its duly authorized City Manager, having a business address of 288 Central Avenue, Dover, NH 03820 (the “**City of Dover**”), and **Dickinson Development Corp.**, a Massachusetts corporation having a principal place of business at 1266 Furnace Brook Parkway, Quincy, MA 02169 (the “**Developer**”).

2. Background/LDA Succeeds Term Sheet

This LDA has been negotiated and agreed to by and among the parties based on the parties’ “**Term Sheet for Sale and Development of Dover Landing**” signed by DHA and Developer on May 16, 2007, and by the City of Dover on June 13, 2007 (the “**Term Sheet**”). A copy of the Term Sheet, without referenced exhibits, is attached as Exhibit 2.1. The Term Sheet was four times amended by the parties. A copy of the First Amendment to Term Sheet is attached hereto as Exhibit 2.2. A copy of the Second Amendment to Term Sheet is attached hereto as Exhibit 2.3. A copy of the Third Amendment to Term Sheet is attached hereto as Exhibit 2.4. A copy of the Fourth Amendment is attached hereto as Exhibit 2.5.

The Term Sheet, as amended, is attached for historic context and occasional reference, herein, for clarification. This LDA was, and is intended to supersede the Term Sheet. This LDA is consistent with, and substantially conforms to the Term Sheet. The terms and conditions of this LDA shall control.

3. Legal Authority

This LDA states the scope and terms of a Redevelopment Project as defined by N.H. RSA Chapters 203 and 205, undertaken and overseen by the DHA. The City of Dover’s delegated development authority over this Redevelopment Project to the DHA is summarized by Sections 1 and 2 of the Term Sheet (Exhibit 2.1). The DHA’s Board of Commissioners reviewed and considered this LDA at a properly called and noticed meeting on May 26, 2009. The DHA has authorized its Executive Director to sign this LDA. When finished and approved, copies of the DHA’s Meeting Minutes authorizing its Executive Director to sign this LDA shall be appended hereto as Exhibit 3.1.

The City of Dover authorized its City Manager to negotiate and sign this LDA as stated by Sections 1 and 2 of the Term Sheet (Exhibit 2.1). A copy of the Dover City Council’s June 13, 2007 Resolution granting the City Manager the authority is appended hereto as Exhibit 3.2.

Pursuant to the representations and warranties more specifically set forth in Exhibit 3.3, attached, Developer is duly organized and in good standing, and its President, Mark C. Dickinson, has all requisite authority to enter into this LDA.

The parties agree that all “Conditions Precedent to LDA Execution,” as set forth in Section 10 of the Term Sheet, have been complied with or have otherwise been dealt with in the terms and conditions of this LDA, satisfactory to facilitate the parties signing this LDA. See Exhibit 3.4. This LDA is timely signed prior to termination of the “LDA Negotiation Period” as extended by the Fourth Amendment to Term Sheet (Exhibit 2.5).

Any reference to the “City of Dover” when requiring approval, disapproval, agreement or signature, including specifically but not limited to determinations regarding environmental remediation as herein defined, shall mean the City Manager as the chief administrative officer of the City of Dover, except with respect to Section 10 as it relates to the cash payment to the City of Dover which shall be under the control of the Dover City Council, and except with respect to the indemnity provisions of Sections 6, 8(b), 14, 16 and 17.

4. The Premises

The land subject to this LDA is that portion of the riverfront parcel shown on Dover’s City Tax Map as Lot 22-1, containing twenty-one acres, more or less, and shown on the survey plan entitled “Preliminary Plan of Land Prepared for City of Dover Tax Map 22, Lot No. 1, River Street, City of Dover, County of Strafford, State of New Hampshire” drawn by McEneaney Survey Associates, dated 2/19/09, a copy of which is attached as Exhibit 4.1 (the “Premises”). The Premises shall be conveyed together with an easement over other land owned by the City of Dover to facilitate development of future vehicular and pedestrian access to the so-called “bluff areas” of the Premises, in a manner as shall be first approved by DHA and the City of Dover. No portion of the area to be developed for the Public Waterfront Park shall be conveyed to Developer.

Between the Effective Date, defined by Section 11 below, and the Closing Date, defined by Section 12 below, the City of Dover shall make reasonable efforts to preserve the Premises in its currently configured form, and to specifically take reasonable steps to assure against the river bank’s substantial erosion (as determined by comparing conditions of the river bank contemporaneous with the Closing Date to its presently determined edge of water, as documented by survey and engineering plans completed by McEneaney Survey Associates and Vanasse, Hangen, Brustlin, Inc., by plans prepared and for this LDA’s execution). If river bank erosion occurs, causing a loss of land, the boundaries of the Premises shall be equitably adjusted to compensate for such loss.

To the extent needed to facilitate conveyance of the Premises by Warranty Deed, Developer shall submit a subdivision plan for approval by the Dover Planning Board of the Premises in its final agreed upon configuration. The parties acknowledge that said subdivision approval application may be submitted as a part of Site Plan Approval and/or other desired subdivision and other approvals of the Premises as Developer will seek from all those governmental agencies,

departments, boards, commissions and so forth having permitting/approval jurisdiction pursuant to applicable federal, state and local laws, rules and regulations governing development of the Premises, including, but not limited to, the U. S. Army Corps of Engineers (“Army Corps”), the New Hampshire Department of Environmental Services (“NHDES”), the City of Dover Conservation Commission and Planning Board, and DHA/CWDAC (pursuant to approval process outlined at page 4 and 5 of the Dover Waterfront Design Guidelines attached as Exhibit 8.1) and DHA/CWDAC and the City of Dover, pursuant to this LDA (the aforementioned boards and agencies hereinafter collectively or individually, the “Permitting Agency(ies)”).

5. Agreement to Buy/Sell/Develop

The City of Dover agrees to sell and convey by Warranty Deed to Developer, or a designated and approved assignee as allowed by Section 7 below, and the Developer, for itself or any authorized assignee, agrees to purchase and develop, the Premises for the Purchase Price set out in Section 10 below, pursuant to all the contingencies, terms and conditions of this LDA.

Subject to minor boundary modifications as the parties may agree to during the process of permitting the Redevelopment Project by and before the Permitting Agencies, the Premises shall be described and conveyed by Warranty Deed substantially in the form of Exhibit 5.1 attached.

6. Due Diligence Pending Conveyance

Developer acknowledges and agrees that it has been given, and will continue to have, the opportunity to perform inspections and investigations concerning the Premises prior to and after the signing of this LDA. Developer acknowledges that it has had, and will continue to have, full and complete access to the Premises to conduct feasibility studies, including a survey, environmental, geotechnical, soil, zoning and land use investigations and reviews. With respect to all such studies already conducted, and such future studies as Developer may undertake or cause to be undertaken by its agents, Developer shall indemnify and hold DHA and the City of Dover harmless from and against any and all costs, expenses, liabilities and claims arising from and in connection with its activities on the Premises relating to its past and continued due diligence. Developer’s indemnification promise, hereby reaffirmed, expressly excludes any liability resulting from its discovery of pre-existing conditions, or conditions caused by the City of Dover’s use of the Premises pending Closing, by itself or its authorized users, as contemplated in Section 16 below. Developer’s indemnity obligations hereunder shall survive execution of this LDA, conveyance of the Premises, and/or any termination of Developer’s obligations to proceed with development of the Premises.

Developer acknowledges and agrees that DHA and/or the City of Dover have not made any representations or warranties, express or implied, as to the Premises, including but not limited to title, survey, its physical condition, suitability or fitness for any particular purpose, building and zoning restrictions, value, financial prospects or condition, or the presence or absence of hazardous substances. Developer acknowledges it is relying solely on its own inspections and

investigations of the Premises to determine whether to proceed with its rights and obligations hereunder. More specifically:

- (a) Survey. The Developer has conducted a survey. The survey shall be available for review by DHA and shall become property of DHA should Developer at any time withdraw from the developing the Premises.
- (b) Environmental Assessment/Remediation. An environmental assessment has been conducted by qualified professionals. Developer, DHA and the city of Dover shall agree upon an appropriate approach to assessment, design and implementation of remediation plans relative to development of the Project with the goal of achieving an optimum balance of realization of Project objectives in terms of program and design and economic efficiency in conformance with federal, state and local regulations.

7. Limitation on Developer's Right to Assign

The Developer has explained, and the City of Dover and DHA have acknowledged, Developer's expectation to fund or finance its continued pre-closing due diligence, permitting and approvals seeking, its purchase acquisition and initial phases of development, through continued equity capitalization of principals involved and/or equity partners, and/or other development financing typical of a project of this scope and expense. As a condition of such equity investment, with or without partners, and/or other financing, the parties acknowledge Developer's intent to create a special/single purpose entity for the purpose of taking title to the Premises, together with permits and approvals obtained for its development, so that equity capitalization and/or lender agreements, and related security agreements, can be related solely to said entity and its development rights and obligations with reference to the Premises alone. Consequently, Developer intends to assign all its rights and obligations defined by this LDA to such a special/single purpose entity expected to be formed.

This expectation and reserved assignment right was acknowledged at Section 3 of the Term Sheet.

Where a special purpose entity is required, Developer or Mark C. Dickinson shall use reasonable efforts to maintain a fifty percent (50%) or more ownership interest thereof, and become its managing member. However, the lender or financing source may require the Developer to relinquish a greater interest in the special purpose entity in order to protect its interest therein. If that were to occur, the DHA and City of Dover shall authorize Developer's assignment of its rights hereunder to such a special purpose entity, so long as Developer shall remain fully obligated to all terms and conditions of this LDA prior to and through the Closing, and through completion of the Required Phase I Private Improvements, and Required Phase I Public Improvements, as same are defined below. Developer shall sign such additional documentation as DHA and City of Dover shall reasonably request to insure its performance of the special purpose entity through said Phase I requirements. The additional documentation shall be in the nature of a co-signing obligation in conjunction with the special purpose entity. Nothing in this

paragraph shall be interpreted to relieve Developer of responsibility of the obligations of this Agreement as it pertains to said Phase I requirements. The parties agree to cooperate to assist Developer in obtaining financing.

After completion of the Phase I Private and Public Improvements, or prior to completion but upon DHA's reasonable satisfaction of Developer's financial and practicable ability to complete same, Developer (or the special purpose entity to which development rights may be assigned) shall have the right to assign its rights hereunder to any other assignee approved by DHA pursuant to the assignment conditions enumerated in Exhibit 7.1 attached. DHA's approval of assignees shall be at its sole discretion, provided, however, that DHA shall consider prospective assignees whose development and/or management experience, capability, capitalization, and good business standing, are at a level to carry forward development of the Premises pursuant to this LDA at the same or higher quality of Developer. DHA shall consider as acceptable assignees meeting this standard. Any challenge of DHA's discretion in not approving a proposed assignee shall be to the Superior Court for Strafford County which shall review DHA's exercise of discretion under an abuse of discretion standard.

Any reference to Developer in this LDA shall include any authorized assignee, as contemplated above. It is the intent of the parties that assignees shall acquire all rights and obligations of this LDA.

Notwithstanding the above provisions, any institutional lender foreclosing on a mortgage to Developer secured by the Premises and related permits, approvals and improvements, and/or any equity investor/partner foreclosing on its investment rights, shall have the rights, but not the obligations, of Developer, as Developer is referred to in this LDA, for its period of ownership. The provisions of Exhibit 7.1 attached, however, shall not be construed as to preclude or in any way limit the foreclosure rights of any such lender, equity partner and/or investor.

8. Development Restrictions

The Premises, upon conveyance by warranty deed from the City of Dover to Developer, and upon any subsequent reconveyance, in whole or in part, shall be subject to the following restrictions:

- (a) Dover Waterfront Design Guidelines. The Premises shall be conveyed subject to the restriction that any development thereon be in accord with the Dover Waterfront Design Guidelines, adopted by CWDAC on November 10, 2008 and by DHA on December 16, 2008, copy attached as Exhibit 8.1. An official copy of the Dover Waterfront Design Guidelines shall be recorded at the Strafford County Registry of Deeds prior to/contemporaneous with conveyance of the Premises to Developer, to clarify that the Premises is specifically encumbered by said guidelines.
- (b) Public Waterfront Park. The development of the Premises includes the development of a public waterfront park on land owned by the City of Dover. The parties acknowledge

that the final design for said park is contingent upon permits and approvals needing to be obtained from the Permitting Agencies.

Should any subdivision boundaries need to be adjusted to accurately reflect as built conditions upon completion of the waterfront park, the parties shall cooperate to accomplish needed adjustments.

The Developer agrees to indemnify the DHA and City of Dover for losses occurring during and/or relating to its development of the public waterfront park by separate indemnification agreement; said indemnification agreement shall terminate upon the DHA's acceptance of the public waterfront park improvements, at which time Developer's temporary easement/license rights for waterfront park construction shall also extinguish.

The parties acknowledge Developer's required Phase I Private and Public Improvements, summarized by Section 9 and related Exhibits, allows for delayed completion of riverwalk improvements downstream from the pavilion area in the area of the current pile driven sheet metal stabilized bank (referred to in CWDAC meetings as "the knuckle").

- (c) Retained Access Easement. The Premises shall be conveyed subject to an access easement to facilitate pedestrian and vehicular access to the so-called "basin" area. The retained access easement rights may be limited, at Developer's option, to the seasonal use restrictions intended to protect abutting residential residences from unrestricted vehicular and boat moving traffic, with text substantially similar to Exhibit 8.2 attached. The current concept plan attached as Exhibit 8.1 shows a public street to be developed in the location of the basin area access easement.
- (d) City of Dover Reconveyance Rights. Subject to the notice, price determining and payment terms and conditions set forth in Exhibit 8.3 attached, the City of Dover shall have the option, but not the obligation, to repurchase and require reconveyance to the City of Dover of all or any portion of the Premises not yet developed by Developer or its designee, nor substantially commenced with satisfactory assurance to DHA of the ability of Developer to complete the development commenced, after that date which is ten (10) years from the date of recording the deed transferring the Premises.

The parties acknowledge the possibility of delay in the Closing and transfer of the Premises to the Developer, due to the severe statewide, regional and the national recession and other adverse economic conditions affecting housing. The parties believe a ten (10) year window of development time following the Closing Date is reasonable for Developer to phase development with restored economic demand, and to allow for other unknown adverse market conditions.

The parties specifically acknowledge the design of the Project has changed since the execution of the Term Sheet after public input and consideration during the course of establishing the Dover Waterfront Design Guidelines. The essential elements of the design remain, specifically, the waterfront park and the mixed use nature of the Project.

Changes have occurred in the locations of buildings and amenities in consultation with CWDAC, its consultant and the DHA. The changes are consistent with the intent of the Term Sheet and are permitted according to the provisions of the Term Sheet.

- (e) Power of Attorney Designation. Developer hereby makes, constitutes and appoints DHA, 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, for the sole purpose of confirming any City of Dover exercised repurchase/re-conveyance option according to repurchase terms determined upon exhaustion of the procedures, terms and conditions outlined in Exhibit 8.3 attached, if and only in the event of Developer's refusal to voluntarily execute such deed and other documents, and to accept such DHA payment. Although granted on the condition of said appointment being exercised by DHA only in the event of Developer's refusal to voluntarily execute such deeds or other documents of re-conveyance necessary to effectuate the City of Dover's right upon complete compliance with the terms of LDA Section 8 (d) above and Exhibit 8.3, said appointment is and shall be irrevocable, intending to expedite such repurchase and reconveyance upon completion of the procedure outlined by Exhibit 8.3, and to avoid City of Dover's need to resort to court proceedings to effectuate its reconveyance rights.

To confirm the appointment hereby intended, and to avoid the necessity of recording this LDA, together with any deed and associated re-conveyance documents at the Strafford County Registry of Deeds, Developer shall execute a Limited Power of Attorney in the form of Exhibit 8.4 attached, the original of which shall be retained by the City of Dover City Attorney, in escrow, subject to the terms and conditions of this LDA. The City of Dover City Attorney shall release said escrowed original Limited Power of Attorney only upon completion of the pricing and re-conveyance procedures, terms and conditions outlined by LDA Exhibit 8.3, and contemporaneous with the recording of a deed (and such other re-conveyance documents) as deemed reasonable and necessary to effectuate City of Dover's exercised re-conveyance rights.

In the event of any assignment of Developer's rights and obligations hereunder, permitted by Section 7 above, and Exhibit 7.1, any approved assignee shall execute an original Limited Power of Attorney to DHA, appointing DHA its attorney-in-fact consistent with the above intent, in form substantially similar to Exhibit 8.4 attached. Any such additionally executed original Limited Powers of Attorney shall be held by the City of Dover City Attorney consistent with the above escrow terms.

Developer, for itself and any approved/authorized assignee (by Section 7 and Exhibit 7.1), as signers of additional original Limited Powers of Attorney, reserves all rights at law and equity, including the right to seek injunctive relief, to prevent unauthorized use of the original Limited Powers of Attorney inconsistent with the above.

9. Development Program

The Development Program is comprised of certain public and private improvements intended to be constructed in phases. Phase I shall start within thirty (30) days of Closing; provided, however, that if that date which is sixty (60) days after Closing falls within the five (5) month period from November 1 through April 1, Developer shall not be required to commence construction until April 1. Phase I shall include construction of the public waterfront park up to and including "the knuckle," which Developer shall complete within one (1) year of the start of Phase I construction. Subsequent phases shall not commence until completion of Phase I, or as otherwise authorized by DHA, based on DHA's reasonable satisfaction of Developer's financial and practical ability to complete Phase I.

The Developer shall be responsible for the cost of public streets, infrastructure and utility improvements necessary to sustain the private improvements without Developer receiving credit on the Purchase Price, detailed in Section 10, except to the extent the parties may, if at all, agree upon Supplemental Public Improvements being funded by a portion of the Purchase Price's Additional Redevelopment Project Investment for such purpose. The Developer shall be solely responsible for the cost of private improvements.

The Developer shall reconvey by deed the public streets to the City of Dover upon the acceptance of the public streets by the Dover City Council. No portion of a parking lot shall be dedicated or accepted as a public street.

As the result of an extensive public process and public input, Developer's development concept plan for the Premises has been refined and improved since the parties signed the Term Sheet, as provided in Exhibit 3.4. The Development Program is defined by concept plans and accompanying text.

The following concept plans are attached to and made a part of this LDA:

- Exhibit 9.1 current concept plans for the Premises' possible overall site development, with boundaries not specifically conforming to the survey attached as Exhibit 4.1.
- Exhibit 9.2 a more detailed overhead conceptual plan of the intended Public Waterfront Park development, and extended riverfront walkway, extending downriver from said Park in front of conceptual riverfront townhouses.
- Exhibit 9.3 a representative section design for the Public Waterfront Park and eventual extended riverfront walkway.

This LDA defines the scope of the Development Program by Developer as the Phase I Private Improvements and Phase I Public Improvements (collectively, the Phase I Private and Public Improvements). Because final development plans are contingent upon approvals from all

Permitting Agencies, the parties acknowledge that actual development is intended to substantially conform to, but may be changed by, conditions of approval imposed by the Permitting Agencies or Developer proposed changes responsive to the permitting/approval process, and/or market conditions and market demand. Changes shall be approved by the DHA.

Developer shall have latitude to alter the relative composition of uses and magnitude of the below defined Private Improvements in response to permitting issues and/or market conditions, as long as the development conforms to the Dover Waterfront Design Guidelines and the changes are approved by the DHA.

Subject to the general conditions stated above, and subject to the parties' refined agreement, all to be confirmed by the approval of actual development and constructions plans by the Permitting Agencies, including, specifically, CWDAC/DHA pursuant to the approval Process outlined at pages 4 and 5 of the Dover Waterfront Design Guidelines, the parties agree said final approved plans for Phase I Private and Public Improvements shall substantially conform to the following:

(a) Required Phase I Private Improvements.

With reference to Exhibit 9.1, Developer shall build those buildings depicted as Buildings 2, 3, 4 and 5. Buildings 2 and 3 shall be commercial. Developer shall include at least one restaurant, to be sited in either building. Buildings 2 and 3 shall each have a minimum of two stories; both may have more. Building 2's footprint shall be sized to accommodate approximately 7,000 square feet of saleable/leaseable restaurant/retail/office/commercial space per floor. Building 3's footprint shall accommodate a minimum of 2,400 square feet per floor. Buildings 4 and 5 together shall contain a minimum of eight (8) residential units, each including, in addition to each unit's residential square footage, approximately 400 square feet of first floor, River Street access oriented for potential commercial use space, for which first floor space Developer shall use reasonable efforts to design, permit, construct, promote, advertise and market same as live/work space (to residential owners/users in the same building) or separately leased retail/office/commercial use space for at least one (1) year. Developer shall similarly design, permit, construct, promote, advertise and market first floor space intended for commercial use on the River Street side of buildings fronting River Street between Buildings 4 and 5 and the so-called "knuckle" for at least one (1) year.

That portion of the Premises making up the building site for Building 2 as shown on Exhibit 9.1, together with any appurtenant parking, which has not been developed by Developer nor substantially commenced with satisfactory assurance to DHA of Developer's ability to complete the development commenced within seven (7) years from the date of the recording of the deed transferring the Premises, shall be subject to the City of Dover's option and right to require reconveyance to the City of Dover or designee, without payment of any consideration. It is the intent of this condition for the City of Dover or designee to facilitate development of said riverfront parcel if Developer does not develop same within said seven (7) year period.

The Private Improvements shall also include that infrastructure, including public roads, sidewalks, lighting, and utilities, for the new public street areas highlighted on Exhibit 9.1. To assure convenient flow of private and public traffic, appropriate cul-de-sac or turn-around areas, or temporary public access through private parking area to the rear of Buildings 3, 4 and 5, shall also be constructed as permitted plans propose. Performance bond shall be required in appropriate amounts to secure the design and construction of said infrastructure, including public roads, sidewalks, lighting and utilities, as typically required by City of Dover regulations.

- (b) Required Phase I Public Improvements. The following shall be considered committed Public Improvements to be completed as Developer's Phase I commitment:
- (1) Master Plan Permits. All engineering required of the Permitting Agencies for approval of a master plan concept plan of the Exhibit 9.1 concept plan, sufficient to obtain approval of the specifically designed Required Phase I Private Improvements.
 - (2) Environmental Remediation. Such Remedial Action Plan(s) (RAP), as may be necessary to facilitate the above permitting, and such environmental remediation as is approved by the Permitting Agencies to assure the feasibility of developing all of the Premises and specifically completion of the required Phase I Private and Public Improvements. Developer and the City of Dover shall agree upon the nature of any environmental remediation techniques and processes and the cost of same prior to the initiation of any environmental remediation.
 - (3) Public Waterfront Park. The Public Waterfront Park shall include that area to either side of the new vehicular and pedestrian bridge crossing the Cochecho River as an extension of Washington Street, downriver to and including "the knuckle." Other sub-surface and surface amenities shall include landscaping, walkways, lighting and such other improvements as envisioned by the Dover Waterfront Design Guidelines, and as Purchase Price investment allows (see Section 10 (f) and (h)), but shall include, also at a minimum, those Waterfront Park Program items set forth in Exhibit 9.4. Waterfront Park Improvements shall also include all engineering and permitting required for river stabilization approved by the Permitting Agencies for all boundaries of the Premises adjacent to the Cochecho River to facilitate the above specified Waterfront Park construction, and future phased development of an extension of the riverfront walkway between the river and that riverfront townhouse development shown on the Exhibit 9.1 concept plan.
 - (4) Engineering and Preliminary Design of Future Road Systems, Sewers and Utilities and such other infrastructure as is necessary for the above referenced master plan concept plan approval required by the Permitting Agencies as is necessary to acquire approval of the required Phase I Private Improvements.

- (5) Supplemental Public Improvements. Such additional Supplemental Public Improvements, if any, as the parties agree should be included within Phase I, to which the parties approve, and for which approvals are obtained from the Permitting Agencies, as Purchase Price allocation may allow (see Section 10 (h)).
- (c) Phase I Changes: Any changes to the above defined Phase I Private and Public Improvements shall only be as authorized by written amendment to this LDA, signed by all parties hereto.
- (d) Review of Developer Investment: All expenditures by the Developer for Phase I Public Improvements and any approved Supplemental Public Improvements shall be subject to reasonable inspection and review by DHA and CWDAC or its designee.

10. Purchase Price

The Purchase Price for the Premises shall be Four Million Six Hundred Seventeen Thousand Dollars (\$4,617,000), payable by Developer and/or invested in the Redevelopment Project, as follows:

- (a) \$20,000 Initial Deposit
Developer's payment at time of "Preferred Developer Designation" is acknowledged
- (b) \$20,000 Additional Deposit
Developer's payment upon execution of Term Sheet is acknowledged
- (c) \$100,000 LDA Deposit
to be paid within seven (7) days of the signing of this LDA, to the order of DHA and City of Dover, to be deposited in an escrow account and held pursuant to the contingencies and escrow all as specifically set forth in Exhibit 10.1 attached. No interest shall accrue. Funds may be expended by the DHA for expenses associated with its overseeing development of the Premises.
- (d) \$60,000 Closing Payment
to be paid by Developer by wire transfer or bank check acceptable to DHA and City of Dover, to the order of DHA and City of Dover, upon closing and transfer of title
- (e) \$1,000,000 Closing Payment
to be paid by wire transfer or bank check acceptable to City of Dover, to the order of City of Dover, upon closing and transfer of title, which amount shall be under the exclusive control of the Dover City Council

- (f) \$2,117,000 Waterfront Park Improvements Investment
investment by Developer in the engineering and design, permitting, bank stabilization, sub-surface and surface improvements and infrastructure, all as itemized in Section 9 above and Exhibit 9.4 The Developer and DHA shall continue to refine and negotiate on the design elements of the public waterfront park in order to reach a mutual agreement on the final design of the public areas within existing budgetary constraints.
- (g) \$500,000 Environmental Remediation Investment
investment by Developer in the engineering, permitting and actual environmental remediation of the site, as permitted by NHDES and approved by City of Dover
- (h) \$800,000 Additional Redevelopment Project Investment
Minimum amount of Developer investment in the following improvements for the benefit of the public, in the following order of priority:
- (1) Environmental Remediation costs in excess of amount allocated to be spent in paragraph (g) above;
 - (2) Additional remediation/improvements to the River Street pump station sewer facility and processing equipment which Developer, DHA, and the City of Dover jointly approve as prudent and necessary to successfully market the Project without the risk of sewer facility odors. Investments contemplated under this heading shall be as the parties deem prudent and necessary in addition to the City of Dover's expected \$2.4 million investment in River Street pump station improvements and processing equipment (discussed at Section 11 below).
 - (3) "Supplemental Public Improvements" as originally contemplated by the Term Sheet as including any additional site related public infrastructure improvements and/or amenities and/or off-site public infrastructure improvements which DHA and Developer jointly agree to be constructed in the public interest. The parties agree that the cost of environmental insurance as provided for in Section 14 below, shall be paid for Developer as a Purchase Price credited Supplemental Public Improvement.

\$4,617,000

Total

Developer's Redevelopment Project investments stated in paragraphs (f), (g) and (h) above shall be documented sufficiently to allow DHA and/or City of Dover to insure development investments as intended by this LDA.

Because Developer's Redevelopment Project investments stated in paragraphs (f), (g) and (h) above are all post-closing development related, creating post-closing value for the City, but not consideration paid for Developer received value at closing, said amounts shall not be included in the measure of consideration paid at closing for the purposes of payment of New Hampshire transfer tax. The so-called "buyer's share" of the New Hampshire transfer tax to be paid upon recording of the City of Dover's Warranty Deed of the Premises to Developer (the City of Dover is exempt from the payment of so-called "seller's share" – see RSA 78-B:2) shall be paid by Developer based on the \$1,200,000 cash payments itemized by paragraphs (a) through (e) above.

The Purchase Price may be increased by the amount of any grant funding or the value of any other type of financing assistance obtained by DHA or the City of Dover or by Developer. The amount of any such increase to the Purchase Price would be lowered by a reasonable allocation (to be negotiated) for Developer's cost in applying for such grant and increased by the value of City staff (to be negotiated) in locating and obtaining the grant or financial assistance. If such grant funding is found or obtained primarily on account of efforts by DHA and/or the City of Dover, the total amount of grant funding or value received, less the cost associated with Developer's assistance in obtaining same, shall be added to the Purchase Price. If such grant funding is found or obtained primarily on account of efforts by the Developer, then half the amount of grant funding or value received (after first deducting the cost associated with Developer's assistance in obtaining same as negotiated and adding the value of the efforts of City staff) shall be added to the Purchase Price.

11. Effective Date

Notwithstanding the date the parties sign this LDA, there shall be one "Effective Date" from which periods of time will measure deadlines for Developer's right to close and take title to the Premises.

The LDA Effective Date shall be that date on which the Dover City Council approves a Resolution awarding a contract to a viable and responsible contractor capable of commencing and completing the contemplated improvements to the River Street pump station plant and its processing equipment, contemplated by the parties as a condition precedent to LDA execution. See Term Sheet Section 10 (i). See also Exhibit 3.4 (i). The City of Dover, Community Services Engineering Department currently projects that project as costing \$2.4 million, pursuant to designs completed as of the Engineering Department's update to CWDAC at its February 3, 2009 Meeting.

12. Closing Date

Closing shall not occur, and the City of Dover shall not convey the premises to Developer or its approved assignee, until all Conditions Precedent to Closing, itemized on Exhibit 12.1, have been or will be fulfilled contemporaneous with the parties' closing. Closing shall be contingent

upon the City of Dover not declaring this LDA void because of excessive environmental remediation costs as provided for in Section 14 below.

Acknowledging the condition of Dover's depressed housing market, and the extraordinary adverse economic conditions throughout the State, region and the nation, the parties declare a mutual interest to delay a closing until economic conditions improve. Acknowledging the difficulty of defining improvement by objective economic criteria not subject to challenge or interpretation, the parties agree to the following more certainly defined deadlines.

Developer shall have the right to close on or before that date which is three (3) years from the Effective Date, provided that if the City of Dover is unable to fulfill Exhibit 12.1 Conditions Precedent to Closing number one (vehicular bridge completion) or two (River Street pump station improvements completion), the Closing Date shall be further extended until that date which is thirty (30) days following the satisfaction of conditions one and two of Exhibit 12.1. Either of said dates, whichever is later, for purposes of defining Developer's right to extend (below) shall be referred to herein as the Initial Closing Deadline.

Notwithstanding the above, Developer may, at its option, extend the Initial Closing Deadline for up to twenty-four (24) additional months, in consideration of Developer's payment to DHA/City of Dover of extension payments equal to \$10,000.00 per month, and with notice from Developer to DHA/City of Dover, of Developer's desired extension for the month(s) paid/to be paid. Any date to which the Initial Closing Deadline is so extended, shall be referred to herein as the "Extended Closing Deadline."

The Closing Date shall be the latter of either the Initial Closing Deadline or the Extended Closing Deadline.

13. Permitting Period

The parties anticipate the time between the Effective Date and Closing Date is a reasonable period of time for the Developer to obtain all approvals and permits from the Permitting Agencies. Upon DHA and/or the City of Dover's request, Developer shall report its progress in obtaining approvals and permits, and/or accomplishing work required for same.

14. Environmental Conditions

The parties acknowledge that the Premises, considered a Brownfields site by NH DES, requires environmental remediation on account of existing conditions referenced in various reports authored by GZA GeoEnvironmental, Inc. Prior to the Closing Date, Developer will need to complete one or more Remedial Action Plan(s) ("RAP") to update the existing environmental conditions with respect to all of the Premises. On the basis of said RAP(s) and prior to or by the Closing Date, the City of Dover and Developer shall agree upon the nature of any environmental remediation techniques and processes and the cost of anticipated remediation for all of the Premises. If the costs of same exceed the \$1,300,000 of the Purchase Price allocatable to

Environmental Remediation Investment, the City of Dover shall have the right not to convey the Premises to Developer; **provided, however,** that if Developer is willing to pay the costs of any agreed upon anticipated environmental remediation in excess of the \$1,300,000 allocated for same under the Purchase Price, and can demonstrate its financial ability to assure payment of same to the reasonable satisfaction of the City of Dover, then upon posting such financial assurance, the City of Dover shall convey the Premises to the Developer in accord with the terms of this LDA, as modified to assure Developer's completion of said anticipated environmental remediation.

At or before the Closing Date, Developer shall purchase, or arrange for purchase of, environmental insurance to indemnify Developer and the City of Dover against environmental remediation costs which exceed those contemplated to be paid for with those components of the Purchase Price expressly allocated to be used for environmental remediation.

Such environmental insurance shall provide for a "deductible" not to exceed \$50,000.00. The costs of environmental insurance shall be paid for by Developer, with the cost being considered as a Purchase Price credited approved Supplemental Public Improvement.

If, in the course of developing the Premises, after the Closing Date, unforeseen environmental conditions are discovered requiring remediation to facilitate Developer's intended development, for which the anticipated costs of environmental remediation will exceed the Developer's Purchase Price Environmental Remediation Investment obligations, and for any reason will not be paid for by environmental insurance, the Developer agrees to consider and cooperate in a mutually acceptable potential redesign of its intended underground development work to minimize the cost of any governmental required environmental remediation.

15. 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 Agreement, then performance of any such act shall be extended for a period equivalent to the period of such delay.

If, in the course of acquiring any of the permits and approvals required of the Permitting Agencies contemplated by this LDA, a person(s) or entity other than a party to this LDA, appeals any permit or approval obtained by Developer, the three (3) year window of time running from the Effective Date to establish the Initial Closing Deadline, and/or the twenty-four (24) month window by which the Developer may extend the Initial Closing Deadline by \$10,000 per month payments, shall be tolled for the period of time it takes for said appeal(s) to be adjudicated with finality. Upon any such final adjudication of any appeal, resulting in no opportunity for further appeal, the tolled three year and/or twenty four month period, or the remaining part thereof, shall resume. If any such appeal tolls any portion of the twenty four month window allowing Developer to establish an Extended Closing Deadline, Developer shall have no obligation to

make monthly payments during the time tolled, and the parties shall equitably prorate both as to time and payments made, any extension right exercised/paid for, so as to allow Developer's full exercise of its twenty four month extension right.

16. Use of the Premises Pending Closing

Pending the parties' closing, and the City of Dover's transfer of the Premises to Developer, use of the Premises shall be restricted in accordance with the following:

(a) By the City

The City shall not further stockpile or deposit snow, street sweepings, soils or any other debris and/or materials of any other kind on the Premises. The parties acknowledge:

- (1) the City's ongoing, and future, river stabilization efforts responsive to former municipal landfill site waste breakout and riverbank erosion on a portion of the Premises' riverfront, and riverfront down river from the Premises;
- (2) the potential completion of the Cochecho River dredging project; and
- (3) the City's need to facilitate partial and then complete closure of its river dredging spoils/deposits cell located on a portion of Maglaras Park land, so-called; and
- (4) Parking by current users.

If the Premises' existing environmental conditions are worsened by any of the above acknowledged activities, the City of Dover agrees that it shall be responsible for any hazardous material removal and/or environmental remediation caused by or resulting from such acknowledged uses of the Premises, including the obtainment of necessary permits or approvals to facilitate such removal or remediation.

(b) By the Developer

Until closing and transfer of title of the Premises, the Developer, its agents and retained contractors, shall continue to have reasonable full access to the Premises for the continuation of its inspections and feasibility studies, which may include but not be limited to, additional survey, environmental, geotechnical, soil and other land use investigations necessary for it to exercise its rights and obligations hereunder. All inspections and investigations done shall be in a manner designed to minimize impact to the Premises. Developer shall repair, at its expense, any damages caused to the Premises not intended to be accommodated by its permitted development of the Premises post-closing. Developer shall indemnify and hold DHA and the City of Dover harmless from and against any and all costs, expenses, liabilities and claims arising from and in connection with such due diligence activities, but expressly excluding any liability resulting from the preexisting conditions of the Premises as documented by GZA GeoEnvironmental, Inc., environmental and geotechnical engineering reports previously

delivered to Developer and/or the City of Dover, and excluding any liability resulting from City authorized uses resulting in harms to be remediated at City of Dover, or its authorized agents' cost, as contemplated by paragraph (a) above.

(c) By Others

Except as expressly provided above, none of the parties shall authorize any other use of the Premises without the express written consent of all parties, defining the scope of use, and users, and conditions of use (including indemnity provisions consistent with the provisions above).

17. AS-IS/WHERE-IS Conveyance

Developer agrees to accept conveyance of the Premises, by Warranty Deed in substantially the form of Exhibit 5.1, in its AS-IS, WHERE-IS condition, without fault, and without representations and warranties of any kind, express or implied, arising by operation of law, except as provided as follows:

- (a) Notwithstanding the above, nothing about the intended AS-IS and WHERE-IS conveyance shall be meant or construed to absolve or indemnify the City of Dover, or any prior owners of the Premises, from owner liability relating to the environmental condition of the Premises, resulting on account of current or past owners' ownership, control, use, or otherwise, as documented in reports authored by, or referenced in reports authored by GZA GeoEnvironmental, Inc., and predating March 31, 2009, relating to conditions identified at or near the Premises, or relating to conditions remedied at or near the Premises
- (b) Notwithstanding the above, nothing about the intended AS-IS and WHERE-IS conveyance shall be meant or construed to absolve or indemnify the City of Dover, or any of its authorized users, of the obligation to remedy, at its/their cost, materials or hazardous release removals and remediation, and the costs of permitting of same, as contemplated by Section 16 (a) above.
- (c) Notwithstanding the above, nothing about the intended AS-IS and WHERE-IS conveyance shall be meant or construed to obligate the Developer from accepting title to the Premises with encumbrances or conditions other than those disclosed on draft Title Insurance Commitment attached as Exhibit 17.1.

18. Default

If either party defaults in the performance of its obligations hereunder, the party harmed may avail itself of all remedies at law and in equity, including, but not limited to, specific performance where applicable.