

## **LICENSE AGREEMENT**

### **I. PARTIES**

- A. CITY OF CONCORD, a municipal corporation duly existing under the laws of the State of New Hampshire and having a usual place of business at 41 Green Street, Concord, New Hampshire 03301 (“City”).
- B. 32 SOUTH MAIN CONCORD LLC, a New Hampshire limited liability company having a principal place of business at 45 Dan Road, Suite 320 Canton MA 02021 (the “Licensee”) as the owner of the land located at 32-34 South Main Street, Concord, NH, which land Licensee purchased from the City (“Licensee’s Property”).
- C. The City and the Licensee are collectively referred to as the “Parties.”

### **II. PURPOSE**

The purpose of this License Agreement is for the City to authorize the Licensee to construct and maintain the following improvements (the “Licensee’s Improvements”) within designated areas of the City’s South Main Street rights-of-way. Said improvements specifically support the Licensee’s Building.

- A. Entry steps associated with the South Main Street pedestrian entrance into the Licensee’s Building as depicted on a plan titled “Site Plan Tax Map 7412Z Lots 25 and 26 (32-34 S. Main Street & 33 S. State Street) Concord, New Hampshire prepared for John Flatley Company 45 Dan Road, Suite 320 Canton MA 02021” prepared by Field Stone Land Consultants PLLC dated February 16, 2022, with revision date of April 13, 2022.
- B. Handicap accessible ramp associated with the South Main Street pedestrian entrance into the Licensee’s Building as depicted on plan titled “Site Plan Tax Map 7412Z Lots 25 and 26 (32-34 S. Main Street & 33 S. State Street) Concord, New Hampshire prepared for John Flatley Company 45 Dan Road, Suite 320 Canton MA 02021”

prepared by Field Stone Land Consultants PLLC dated February 16, 2022, with revision date of April 13, 2022.

- C. Landscaped planter located directly adjacent to handicap accessible ramp as depicted on plan a titled "Site Plan Tax Map 7412Z Lots 25 and 26 (32-34 S. Main Street & 33 S. State Street) Concord, New Hampshire prepared for John Flatley Company 45 Dan Road, Suite 320 Canton MA 02021" prepared by Field Stone Land Consultants PLLC dated February 16, 2022, with revision date of April 13, 2022.

Landscaping materials installed in said planter shall be consistent with a plan titled "Landscape Plan Tax Map 7412Z Lots 25 and 26 (32-34 S. Main Street & 33 S. State Street) Concord, New Hampshire prepared for John Flatley Company 45 Dan Road, Suite 320 Canton MA 02021" prepared by Field Stone Land Consultants PLLC dated February 16, 2022, with revision date of April 13, 2022 (the Landscaping Plan).

- D. Building awning located above the South Main Street pedestrian entrance to the Licensee's Building as depicted on Architectural Elevation Plan titled "Flatley Apartments" 32 South Main Street, Concord, NH, Sheet A2.1 prepared by Denis Mires P.A. "The Architects", issued March 28, 2022.

Referenced plans are incorporated by reference into this License Agreement and attached hereto.

### **III. DESCRIPTION OF LICENSED AREA**

Licensed area shall be limited to those portions of the South Main Street right-of-way commencing at the intersection of South Main Street and Fayette Street and running southerly along the frontage of Licensee's Property for a distance of approximately 123.99' to property line of adjacent property located at #36 South Main Street, presently owned by the Fraternal Order of the Eagles Trustees of Concord Aerie #613.

The Licensed Area shall be expressly limited to areas of the City's rights-of-way directly encumbered by the Licensee's Improvements, and such adjacent areas of the City's rights-of-way as are reasonably necessary to maintain the Licensee's Improvements.

### **IV. USE OF LICENSED AREA**

If the Licensee ceases to use the Licensed Area for the Licensee's Improvements, the Licensee shall immediately, at its own expense, remove the Licensee's Improvements and restore the Licensed Area to a condition reasonably satisfactory to the City. If Licensee fails to remove the Licensee's Improvements from the Licensed Area and restore the Licensed Area within thirty (30) days of ceasing to use the Licensed Area the City may remove the Licensee's Improvements and restore the Licensed Area. Licensee shall pay the City for any and all work performed by the City in the restoration of the Licensed Area.

## **V. EFFECTIVE DATE AND TERM**

- A. Effective Date: The effective date of this Agreement shall be the date of recording of a Deed from Licensor to Licensee of Licensee's Property with the Merrimack County Registry of Deeds. The Licensee's responsibilities shall commence upon substantial completion of the Licensee's Improvements.
- B. Term: This Agreement shall run until such time as the Licensee's proposed 80,000SF+/- apartment building (the "Licensee's Building") ceases to exist at the Licensee's Property located at 32 South Main Street, Concord, New Hampshire as depicted in Site Plan Tax Map 7412Z Lots 25 and 26 (32-34 S. Main Street & 33 S. State Street) Concord, New Hampshire prepared for John Flatley Company 45 Dan Road, Suite 320 Canton MA 02021" prepared by Field Stone Land Consultants PLLC dated February 16, 2022, with revision date of April 13, 2022. This Agreement may not be terminated by the City absent a material breach of the obligations of the Licensee and a failure to cure any such breach following thirty (30) days' advance notice in writing, unless Licensee has commenced a cure within such thirty (30) day period and thereafter promptly and continuously effects the cure.

## **VI. MAINTENANCE**

- A. General: The Licensee shall be solely responsible for maintaining the Licensee's Improvements so that said improvements are aesthetically attractive, clean, structurally sound, functional, and safe to use.
- B. Steps and Ramp: In addition to the general maintenance requirements, the Licensee shall be solely responsible for snow and ice removal for the Licensee's steps and handicap accessible ramp. The Licensee is prohibited from depositing snow and ice onto the City's sidewalk.
- C. Landscape Planter: In addition to the general maintenance requirements, Licensee shall be solely responsible for maintenance of landscape beds and vegetation located within the Landscape Planter. Maintenance shall include, but not be limited to:
  - 1. Annual Spring Cleanup: Entails the collection, removal, and lawful disposal of all trash and debris, including but not limited to: leaves, twigs, and branches. Spring cleanup must be completed every year by May 1st.
  - 2. Installation of Bark Mulch in Planting Beds: Bark mulch identical to that used at the Licensee's Property shall be installed after the annual spring clean-up is completed, and no later than May 1st.
  - 3. Bi-weekly Weeding of Landscaped Planting Beds: Weeding must occur once every two weeks during the period of May 1st and October 15th annually to ensure landscape beds remain attractive and well-manicured.

4. Annual Trimming of Trees and Pruning of Shrubs: Trees and shrubs located within landscape beds (if any) must be trimmed or pruned annually to keep plants in a healthy, attractive condition, as well as to ensure that the plantings do not interfere with pedestrian or vehicular traffic.
5. Fertilization of All Vegetation: Fertilization should include treatment for pests on an annual basis each spring, summer, and fall.
6. Bi-Weekly Clean-up: Any trash, debris, dead vegetation, or other similar items must be removed on a bi-weekly basis.
7. Replacement of Dead or Dying Vegetation: The replacement of any vegetation will be completed annually. Additionally, any replacement vegetation must be consistent with materials shown on a plan titled "Landscape Plan Tax Map 7412Z Lots 25 and 26 (32-34 S. Main Street & 33 S. State Street) Concord, New Hampshire prepared for John Flatley Company 45 Dan Road, Suite 320 Canton MA 02021" prepared by Field Stone Land Consultants PLLC dated February 16, 2022, with revision date of April 13, 2022, unless otherwise approved by the City in writing.
8. Annual Fall Cleanup: Entails the collection, removal, and lawful disposal of all trash and debris, including but not limited to: leaves, twigs, and branches. Fall cleanup must be completed each year by November 15th.
9. If the Licensee should fail to complete the general maintenance as described above within fifteen (15) days of written notice, or sooner in the event of an emergency or dangerous condition, the City may complete such general maintenance. Licensee shall fully compensate the City for all costs incurred in connection with the completion of said maintenance.

## **VII. RELOCATION/MODIFICATION**

Upon 90 day written notice to the Licensee, the City may, at the City's sole expense, temporarily relocate or otherwise modify the Licensee's Improvements within the Licensed Area as may be necessary for the City to develop, reconstruct, repair, or maintain City owned infrastructure in or around the Licensed Area. The Parties hereby agree that the City's activities related to the Licensee's Improvements may cause temporary loss of use of the Licensee's South Main Street pedestrian entrance into the Licensee's building. As such, Licensee shall be solely responsible for providing alternate pedestrian access to Licensee's building during periods of temporary loss of use of the Licensee's South Main Street pedestrian access during the City's aforementioned activities. The City agrees that, once commenced, the City will promptly and continuously (during normal construction hours) complete the City's activities and upon completion shall restore the surface of the Licensed Area to substantially the same grade and condition as prior to commencement. In any event following such activities the City shall restore the Entry steps associated with the South Main Street pedestrian entrance and the Handicap accessible ramp associated with the South Main

Street pedestrian entrance so that they provide the same level of access to the building and utility as prior to such activities and return the planter to substantially its prior location.

VIII. INSURANCE

During the Term of this License Agreement, Licensee shall furnish to the City a certificate that the Licensee has in force general liability insurance, naming the City as an additional insured, by written endorsement without a waiver of subrogation, with respect to commercial general liability, as it pertains to this license, in an amount not less than \$1,000,000 per incident or occurrence. Upon issuance of a Certificate of Occupancy, the Licensee shall maintain, during the Term of this License Agreement and for so long as Licensee continues Licensee’s use within the Licensed Area, the following insurance:

- A. Commercial General Liability

General Aggregate	\$2,000,000
Products-Completed Operations Aggregate	\$2,000,000
Personal and Advertising	\$1,000,000
Each Occurrence Injury	\$1,000,000
Fire Damage (Any One Fire)	\$ 50,000
Medical Expense (Any One Person)	\$ 5,000
- B. Workers Compensation

NH Statutory including Employers Liability

Each Accident/Disease-Policy Limit/Disease-Each Employee

\$100,000/\$500,000/\$100,000
- C. Commercial Umbrella

May be substituted for higher limits required above

\$5,000,000
- D. General Requirements.

In addition to the above requirement, the following conditions shall apply to the insurance policies required herein:

1. Licensee shall submit certificates of insurance for all coverage required hereunder on the effective date and on each anniversary thereof, or at the City’s reasonable request, together with such other relevant insurance documentation as the City may reasonably request.

2. All insurance of Licensee shall be primary with respect to any insurance maintained by the City and shall not call on the City’s insurance for contributions.

3. All insurance shall be issued through valid and enforceable policies issued by insurers authorized to transact insurance business in the State of New Hampshire and having an A+ or better financial rating from a recognized insurance accreditation institution (such as A.M. Best Company).

4. The coverage amounts set forth above may be met by a combination of underlying and umbrella policies so long as the limits in combination equal or exceed those required herein.
5. Licensee's failure to obtain, procure, or maintain the required insurance shall constitute a material breach of this License Agreement.
6. Licensee's obligation to hold harmless and indemnify the City shall not be limited by the requirement for, or existence of, insurance coverage.
7. The City shall have the right to require Licensee to increase such limits when, during the term of this License Agreement, minimum limits of liability insurance commonly and customarily carried on properties comparable to the Licensed Area by responsible owners or Licensees are more or less generally increased, it being the intention of this sentence to require Licensee to take account of inflation in establishing minimum limits of liability insurance maintained from time to time, but not without sixty (60) days advanced written notice to Licensee.

#### **IX. INDEMNIFICATION**

Licensee shall defend, indemnify and hold harmless City and its officials, agents and employees (collectively, the "Indemnified Parties"), from and against all loss, damage, expense, liability, and other claims, including court costs and reasonable attorneys' fees (collectively, "Liabilities") resulting from any third party actions relating to the breach of any representation set forth in this License Agreement and from injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Licensee (or its contractors, agents or employees) in connection with this License Agreement; provided, however, that nothing herein shall require the Licensee to indemnify the Indemnified Party for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the City. Additionally, to the fullest extent permitted by law, no official, employee, agent, or representative of the City shall be individually or personally liable for any obligation or liability of Licensee under this License Agreement.

Further, Licensee agrees that the City, its agencies and their employees, agents, and representatives shall not incur any legal liability whatsoever to Licensee for any damage to any property or employee of Licensee or to any other person or entity hired by or affiliated with Licensee resulting from or arising out of any ownership and use of and operations within the Licensed Area, including but not limited to inspection, maintenance, cleaning, snow removal, construction, reconstruction, rehabilitation, and repair.

The indemnification obligations set forth herein shall survive the term of this License Agreement. Licensee must choose defense counsel acceptable to the City and obtain the City's

consent to any proposed settlement, which consent as to counsel and any proposed settlement shall not be unreasonably withheld, delayed or conditioned.

#### **X. DAMAGE TO THE LICENSED AREA**

Any damage to the Licensed Area or other municipal property, which is caused by, results from, or arises out of Licensee's use of the Licensed Area shall be repaired by the Licensee. If Licensee fails to repair any such damage within thirty (30) days of written notice, or sooner in the event of an emergency or dangerous condition, the City may repair such damage. Licensee shall fully compensate the City for all costs associated with the repair of any such damage.

#### **XI. IMMUNITY**

Notwithstanding any provision of this License Agreement, nothing herein contained shall be deemed to constitute a waiver of the immunity of the City, which immunity is hereby reserved to the City, subject however to any statutory provisions that allow for claims to be made against the City, notwithstanding such immunity. This covenant shall survive the termination of this License Agreement.

#### **XII. COMPLIANCE WITH LAW**

The Licensee shall use, possess, maintain, repair, and replace the Licensed Area in compliance with all applicable federal, state, and local laws, codes, ordinances, statutes, rules, and regulations, and in accordance with any and all federal, state, and local permits and approvals.

#### **XIII. NOTICES**

Any notice or other communication required by this License Agreement will be deemed to have been duly given, if delivered by hand or overnight delivery service or three (3) business days following the date deposited in the U.S. Mail, postage prepaid, and addressed to the other party at the address set forth in the identification of the Parties in this License Agreement.

#### **XIV. DISPUTES**

Any disputes between the Parties may be resolved using mediation or arbitration. The results of such mediation or arbitration shall be nonbinding unless otherwise agreed to in writing by both Parties. With respect to nonbinding mediation or arbitration, either party shall have the ability to set aside the results of such activities and to proceed with resolving any dispute via court.

The Parties hereby submit to the jurisdiction of the courts of the State of New Hampshire and the courts from which an appeal from such trial venue may be taken or other relief may be sought for purposes of any action or proceeding arising out of this License Agreement or any

related agreement, and further waive any and all objections they may have as to venue in such courts and waive all rights to bring any such action or proceeding before any other court or tribunal. All legal actions taken by the Parties shall be commenced in Merrimack County New Hampshire Superior Court.

**XV. AMENDMENTS**

This License Agreement may be amended only in writing signed by the Parties.

**XVI. NO ORAL WAIVER, MODIFICATION, OR TERMINATION**

This License Agreement may not be changed, modified, waived, discharged, or terminated orally, but only by an instrument in writing signed by each of the Parties hereto or by the party against which enforcement is sought. Any change, modification or amendment, which requires the consent or approval of a Governmental Authority other than the City, shall be effective only upon receipt of such approval.

**XVII. BINDING EFFECT; SUCCESSORS AND ASSIGNORS AND MORTGAGEES**

The Licensee may not assign this License Agreement to any party that is not the owner of the Licensee's Property without the express written consent of the City. The terms and provisions of this License Agreement and the respective rights and obligations of the Parties hereunder shall be binding upon, and inure to the benefit of, their respective successors, assigns, mortgagees and nominees as the owners of the Licensee's Property and the City's South Main Street rights-of-way, respectively.

**XVIII. EXHIBITS**

All exhibits referred to in this License Agreement are hereby incorporated by reference and expressly made a part hereof.

**XIX. GOVERNING LAW**

This License Agreement shall in all respects be governed by, and construed and enforced in accordance with, the laws of the State of New Hampshire.

**XX. WAIVER**

Any provision of this License Agreement may be waived or modified only by instruments in writing executed by each of the Parties hereto. No waiver, express or implied, of any breach of any provision of this License, shall be deemed a waiver of a breach of any other provision of this License Agreement or consent to any subsequent breach of the same or any other provision.



**XXI. SEVERABILITY**

If any term or provision of this License Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this License Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this License Agreement shall be valid and be enforced to the fullest extent permitted by law.

**XXII. NO THIRD PARTY BENEFICIARIES**

This License Agreement is solely for the benefit of the Parties hereto and no right or cause of action shall accrue by reason hereof for the benefit of any third party not a party hereto.

**XXIII. COUNTERPARTS**

This License Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire License Agreement and understanding between the Parties, and supersedes all prior agreements and understandings relating hereto.

**XXIV. CAPTIONS**

The captions and headings throughout this License Agreement are for convenience of reference only and the words contained therein shall in no way be held or deemed to define, limit, explain, modify, amplify, or add to the interpretation, construction or meaning of any provisions of, or the scope or intent of this License Agreement, nor in any way affect this License Agreement, and shall have no legal effect.

**XXV. AUTHORITY OF CITY**

Authority for the City Manager to enter in this License Agreement on behalf of the City was granted by the City Council by passage of Resolution #9848 on April 11, 2022 and is hereby incorporated into this Agreement by reference.

**XXVI. ENTIRE AGREEMENT**

This License Agreement embodies the entire agreement and understanding between the Parties hereto relating to the subject matter hereof and thereof, and supersedes all prior agreements and understandings between the Parties.

*REMAINDER OF PAGE INTENTIONALLY LEFT BLANK –  
SIGNATURE PAGE TO FOLLOW*

XXVII. EXECUTION

CITY OF CONCORD

Jun 8, 2022  
Date

By: [Signature]  
Thomas J. Aspell, Jr.  
Its City Manager  
Duly Authorized

32 SOUTH MAIN CONCORD LLC

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
John J. Flatley  
Its Manager  
Duly Authorized

XXVII. EXECUTION

CITY OF CONCORD

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Thomas J. Aspell, Jr.  
Its City Manager  
Duly Authorized

32 SOUTH MAIN CONCORD LLC

6.7.22  
Date

By:   
John J. Flatley  
Its Manager  
Duly Authorized

## Resolution No. 9448

### CITY OF CONCORD

*In the year of our Lord two thousand and twenty two*

**RESOLUTION** AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND ENTER INTO LICENSE AGREEMENTS WITH THE JOHN J. FLATLEY COMPANY CONCERNING PRIVATE IMPROVEMENTS TO BE CONSTRUCTED ON CITY PROPERTY IN CONJUNCTION WITH REDEVELOPMENT OF PROERTY LOCATED AT 32-34 SOUTH MAIN STREET AND 33 SOUTH STATE STREET

*The City of Concord resolves as follows:*

**WHEREAS,** on May 10, 2021, the City Council approved Resolution #9375, which authorized the City Manager to enter into a Purchase and Sale Agreement with the John J. Flatley Company (the Developer) concerning the sale and redevelopment of the former NH Employment Security Property (the Property) located at 32-34 South Main Street and 33 South State Street; and,

**WHEREAS,** The Purchase and Sale Agreement was executed on May 17, 2021, and was subsequently modified by Amendment #1 and Amendment #2 in accordance with Resolutions #9402 and #9431; and,

**WHEREAS,** the Developer plans to redevelop the Property by constructing an 80,000SF building featuring 64 dwelling units; and,

**WHEREAS,** the Developer's proposed project contemplates construction of certain private improvements including, but not limited to, handicap accessible walkways, stairs, landscaping, awnings, and other improvements which will be located within certain City rights-of-way; and,

**WHEREAS,** the City desires to negotiate and enter into License Agreements for all private improvements to be located on City property in order to facilitate the Developer's project.


**NOW THEREFORE BE IT RESOLVED,**

1. The City Manager is hereby authorized to negotiate and execute License Agreement(s) with the John J. Flatley Company for the purposes of supporting redevelopment of #32-34 South Main Street and #33 South State Street.
2. This resolution shall take effect upon its passage.

In City Council

April 11, 2022

Passed

  
City Clerk

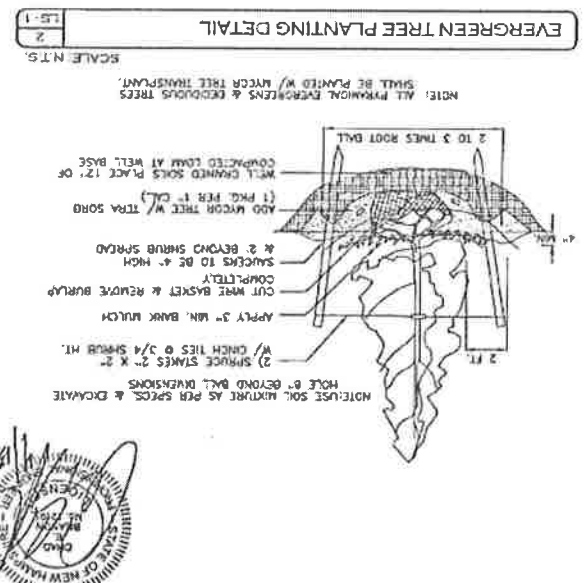
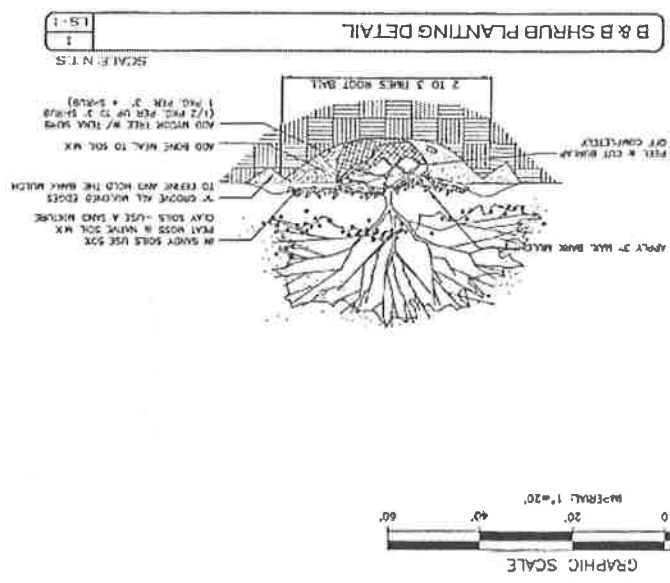




PLANT SYMBOLS	
	CRA
	KF
	PV
	CR
PLANT LIST & NAME	
CORNUS RUGOSA (GREY DOGWOOD)	(6) 3 GAL
PANICUM VIRGATUM (SWITCH GRASS)	(6) 3 GAL
KALMIA LATIFOLIA (COASTAL RHODODENDRON)	(20) 1 GAL
ACER RUBRA (RED MAPLE TREE)	(5) 2.5-3" CAL, 12' TALL, 6" DRIP LINE
FLOWER MAPLE (F. MAH. ST. PLUMMER)	
CRATAEGUS SACCALINATA (HAWKWOOD, FLESHY)	(3) 1.5-2" CAL, 10' TALL, 3" DRIP LINE

THESE EXISTING PARKING ALONG STREET	REMOVED	1/2000 (4)	N/A	3 INCHES	REMOVED
STREET	REMOVED	8	N/A	36	REMOVED
SHRUBS	REMOVED	8	N/A	36	REMOVED
EXISTING LOT LANDSCAPING	REMOVED	100/181 SF	5% (202 SF)	100/181 SF	REMOVED
EXISTING PARKING LOT 70434	REMOVED	120	5% (202 SF)	120	REMOVED
DISTANCE TO LANDSCAPING	REMOVED	120	5% (202 SF)	120	REMOVED

1. LANDSCAPING DESIGN REQUIREMENTS (SPR. SECT 27.07 & ZONING ARTICLE 20-7-8(b))



**LANDSCAPING PLAN**

TAX MAP 74122 LOTS 25 & 26  
(32-34 S. MAIN STREET & 33 S. STATE STREET)  
CONCORD, NEW HAMPSHIRE

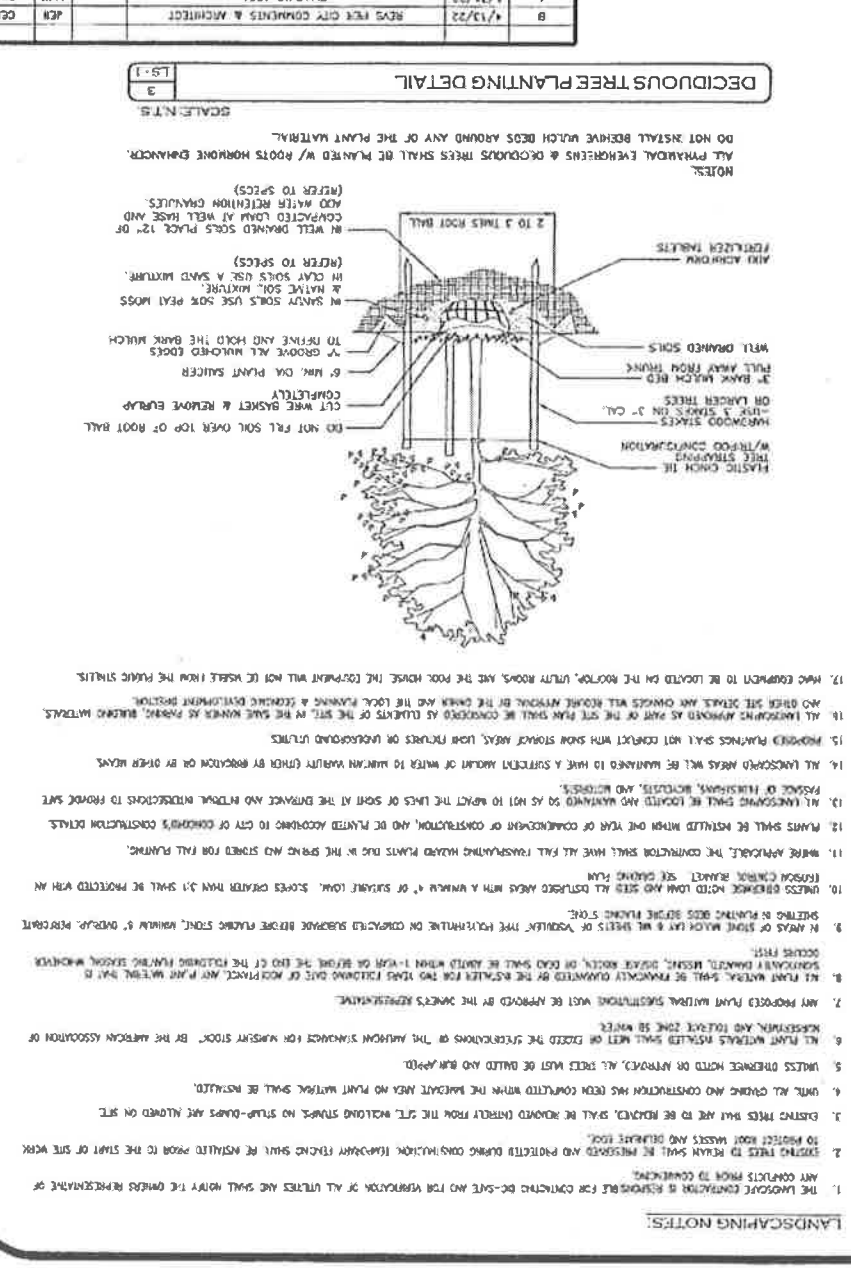
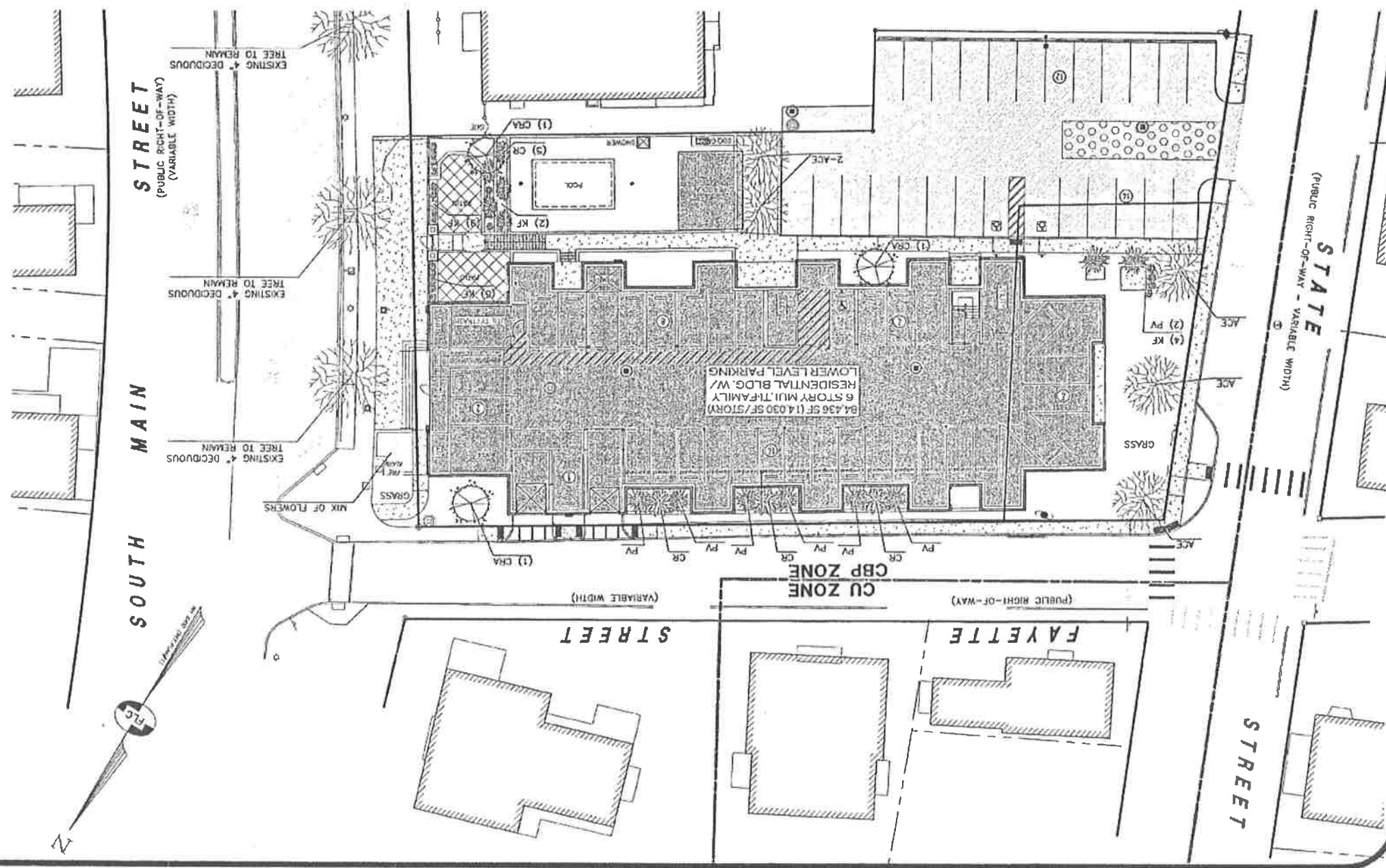
PREPARED FOR:  
**JOHN FLATLEY COMPANY**  
45 DAN ROAD, SUITE 320, CANTON, MA 02021  
CITY OF CONCORD  
41 GREEN STREET, CONCORD, NH 03301

SCALE: 1"=20'

FEBRUARY 16, 2022

Surveying & Engineering & Land Planning & Permitting & Septic Designs  
**FIELDSTONE LAND CONSULTANTS, PLLC**  
206 Elm Street, Milford, NH 03055  
Phone: (603) 672-5456 Fax: (603) 413-5456  
www.FieldstoneLandConsultants.com

PROJECT NO. 265500 SHEET NO. 15-1 PAGE NO. 9 OF 11





North | Fayette St Elevation  
SCALE: 1" = 10'



East | S Main St Elevation  
SCALE: 1" = 10'

FOR PRELIMINARY ARCHITECTURAL DESIGN REVIEW

FLATLEY APARTMENTS							
32 S Main St							
32 South Main Street • Concord • NH							
CONSULTANTS							
DENNIS MIRES, P.A. THE ARCHITECTS 887 Union Street, Manchester, NH 603-655-0908 FAX 603-655-1307							
NOT FOR CONSTRUCTION CONSTRUCTION							
PROJECT NO:	2022.002						
FILE:	FlatleyConcord_2022.dwg						
DESIGNED BY:	Line						
ISSUED:	2022.03.28						
<table><tr><td>NO.</td><td>DATE</td><td>DESCRIPTION</td></tr><tr><td>1</td><td>03/28/22</td><td>Issue 1</td></tr></table>		NO.	DATE	DESCRIPTION	1	03/28/22	Issue 1
NO.	DATE	DESCRIPTION					
1	03/28/22	Issue 1					
Elevations							
A2.1							

FOR ARCHITECTURAL DESIGN REVIEW