

Resolution No. 9360
CITY OF CONCORD

In the year of our Lord two thousand and twenty-one

RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A DEVELOPMENT AGREEMENT WITH INTERCHANGE DEVELOPMENT L.L.C. CONCERNING CIP #30 HOIT ROAD/ WHITNEY ROAD INTERSECTION IMPROVEMENT PROJECT

The City of Concord resolves as follows:

- WHEREAS,** Interchange Development L.L.C. owns a certain parcel of land located at 1 Whitney Road, identified by the City's Assessing Department as Tax Map 06P Lot 5, which features a 3,715SF gas station and convenience store set on 19.57+/- acres of land; and,
- WHEREAS,** Interchange Development L.L.C. has also secured a Purchase Option Agreement to acquire an undeveloped 23.47+/- acre parcel of land identified by the Assessing Department as Tax Map 06P Lot 6, which directly abuts 1 Whitney Road; and,
- WHEREAS,** Interchange Development L.L.C. plans to merge these two parcels to establish a 43+/- acre parcel for the purpose developing a multi-phase real estate project featuring approximately 210,000SF+/- of new commercial and industrial buildings (the "Developer's Project"); and,
- WHEREAS,** Phase I of the Developer's Project shall feature an 80,000SF+/- grocery store ("supermarket") with potential 20,000SF+/- retail tenant attached thereto, as well as a 13,500SF+/- State of New Hampshire Liquor and Wine Outlet ("liquor store"); and,
- WHEREAS,** The Developer's Project shall require extensive improvements to public infrastructure, including, but not limited to, reconfiguration and reconstruction of the Hoit Road / Whitney Road / Old Boyce Road intersection, reconfiguration of southbound ramps at Interstate 93 Exit 17, improvement to the Hoit Road / Hannah Dustin Drive intersection, as well as intersection improvements at the intersection of Whitney Road and the primary entrance into the Developer's Project to be known as Merchants Way, which, collectively, are known as the "Public Improvements", as included within the City's Capital Improvement Program ("CIP") as Project #30 Hoit Road / Whitney Road Intersection Improvements; and,
- WHEREAS,** Some of the Public Improvements are located within the Town of Canterbury (the "Canterbury Improvements"); and,
- WHEREAS,** Interchange Development L.L.C. has represented to the City that the cost to design and construct the Public Improvements necessitated by their proposed development is not financially feasible for the Developer; and,
- WHEREAS,** In recognition of the financial challenges associated with design and construction of the Public Improvements required to support the Developer's Project, as well as the economic development and financial benefits associated with the Developer's Project that shall accrue to the City, the City desires to support the Developer's Project by designing and constructing certain Public Improvements associated with CIP #30 Hoit Road / Whitney Road Intersection Improvements.

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Concord that:

1. The City Manager is hereby authorized to enter into an Agreement, Interchange Development L.L.C.
2. In accordance with the attached Development Agreement, Interchange Development L.L.C. shall be solely responsible for the cost of those portions of the Public Improvements located within the Town of Canterbury.
3. This Resolution shall take effect immediately upon its passage.

In City Council
April 12, 2021

Passed

City Clerk

DEVELOPMENT AGREEMENT

This **DEVELOPMENT AGREEMENT** ("Agreement") is made as of the 11th day of May, 2021 (the "Effective Date") by and between the City of Concord, a New Hampshire municipal corporation, with a principal place of business at 41 Green Street, Concord, New Hampshire 03301 (referred to as the "City") and Interchange Development L.L.C., a New Hampshire limited liability company, with a principal place of business at 152 Morrill Road, Canterbury, New Hampshire 03224 (referred to as the "Developer"), and may be referred to individually as "Party" and collectively as the "Parties."

RECITALS

This Agreement relates to improvements to public infrastructure associated with certain parcels identified by the Assessing Department as Tax Map 06P Lot 5 and Tax Map 06P Lot 6, consisting of approximately 43.04, combined (the "Property") where the Developer shall construct approximately 210,000+/-SF of new retail space, as well as a restaurant, medical services, financial services, and an industrial warehouse, as depicted on a plan titled "Comprehensive Development Plan Mixed Use Development Whitney Road, Concord NH" prepared by TF Moran dated June 17, 2019, which is included as Exhibit 2 of this Agreement and herein referred to as the Developer's Master Plan for the Property ("Developer's Project"). This estimated square footage excludes a 3,715+/-SF convenient store / gas station known as the "Xtra Mart" currently existing at the Property.

This Agreement is entered into upon the basis of the following facts and intentions of the Parties:

- I. The Developer owns a certain parcel identified by the City's Assessing Department as Tax Map 06P Lot 5, which features a 3,715SF gas station and convenience store on 19.57+/- acres of land.
- II. The Developer has also secured a Purchase Option Agreement to acquire parcel identified by the Assessing Department as Tax Map 06P Lot 6. The Tax Map 06P Lot 6 parcel is an undeveloped 23.47+/- acre parcel.
- III. Upon acquisition of the parcel Tax Map 06P Lot 6, the Developer shall merge it with parcel Tax Map 06P Lot 5 to establish the Property for the Developer's Project, as depicted on a plan titled "Existing Conditions Plat Lands of Bradley Whitney and Jennifer Habel, Interchange Development LLC location Whitney Road, Concord NH, Merrimack County Tax Map 06P Lots 5 & 6" prepared by FWS Land Surveying P.L.L.C. dated October 19, 2020" and included as Exhibit 1 of this Agreement. Upon creation of the Property, the Developer shall record this Agreement simultaneously with the recording of the Property at the Merrimack County Registry of Deeds.

- IV. The Developer shall subdivide the Property into five (5) land condominium units with associated common area for the purposes of developing the Developer's Project. Upon creation of the 5 condominium units, the Developer shall record this Agreement with the creation of each condominium unit.
- V. The Developer shall develop the Developer's Project in multiple phases as set forth in this Agreement.

Phase 1 of the Developer's Project shall feature the following developments which shall be known as the "Minimum Development Program":

- a. An 80,755+/- SF grocery store (Grocery Store), with the possibility of additional commercial development to potentially include a 22,483+/-SF attached retail unit, which building sizes may be adjusted upward or downward based upon permitting requirements, market conditions, actual tenancies, and other factors, set on an 10.0+/- acre land condominium unit, shown as Unit 3 on plan titled "Condominium Site Plan" prepared by FWS Land Surveying P.L.L.C. dated November 20, 2020, as well as conceptual elevation renderings of said building shown on drawings titled "Concord NH – Whitney Road Market Basket and Adjacent Tenant" prepared by PCA for DSM Realty dated July 15, 2020; both of which are included as part of Exhibit 3 of this Agreement.

The Developer and DEMOULAS SUPER MARKETS, INC., a Massachusetts corporation with an address of 875 East Street, Tewksbury, Massachusetts 01876 ("DSM"), entered into a Letter of Intent dated January 28, 2021 regarding the sale of Condominium Unit #3 to DSM for development of an 80,755+/- SF grocery store, with the possibility of additional commercial development to potentially include a 22,483+/-SF attached retail unit, which building sizes may be adjusted upward or downward based upon permitting requirements, market conditions, actual tenancies, and other factors.

- b. A 13,534+/- SF building featuring New Hampshire State Liquor and Wine Outlet ("Liquor Store") set on a 2.78+/- acre land condominium unit, shown as Unit 4 on plan titled "Condominium Site Plan" prepared by FWS Land Surveying P.L.L.C. dated November 20, 2020, as well as elevation renderings titled "Liquor and Wine Outlet City of Concord Concept Design TCD Construction" prepared by PCA October 21, 2020; both of which are included as part of Exhibit 3 of this Agreement.

The Developer and the State of New Hampshire Liquor Commission entered into a Lease Agreement concerning development of the Liquor Store on April 29, 2020 which may be amended to reflect the new square footage of the size of the final store.

- VI. Development of the Developer's Project necessitates extensive improvements to public infrastructure, including, but not limited to, reconfiguration and reconstruction of the Hoit Road (US Route 4) / Whitney Road / Old Boyce Road intersection, reconfiguration of southbound ramps at Interstate 93 Exit 17, improvement to the Hoit Road (US Route 4) / Hannah Dustin Drive intersection, as well as intersection improvements at the intersection of Whitney Road and the primary entrance into the Developer's Project to be known as Merchants Way, as described herein. Collectively, these improvements shall be known as the "Public Improvements." Some of the Public Improvements are located within the Town of Canterbury (the "Canterbury Improvements"). The Developer represents to the City that the cost to design and construct the Public Improvements required to support the Developer's Project is not financially feasible for the Developer's Project.
- VII. In recognition of the financial challenges associated with design and construction of improvements to public infrastructure required to support the Developer's Project, as well as the economic development and financial benefits associated with the Developer's Project that shall accrue to the City, the City, subject to the contingencies set forth within this Agreement, desires to support the Developer's Project by designing and constructing certain Public Improvements as set forth within this Agreement, and as depicted on a plan titled "Hoit Road – Whitney Road Intersection Improvements General Plan" prepared by VHB dated January 14, 2021, herein referred to as the "Public Improvements" and included as Exhibit 4 of this Agreement.
- VIII. The Developer, subject to the contingencies set forth within this Agreement, desires to proceed with development of the "Developer's Project", as well as provide financial assistance to the City to support the Canterbury Improvements, as shown on Exhibit 5 of this Agreement.
- IX. The Parties signatory to this Agreement are willing to proceed with their respective responsibilities set forth within this Agreement, upon the terms and conditions set forth herein, and in accordance with the Development Schedule set forth in Exhibit 6 of this Agreement.

NOW, THEREFORE, the Parties hereby agree as follows:

1. **DEVELOPER'S RESPONSIBILITIES AND CONTINGENCIES:**

1.1. **The Developer's Project.**

- 1.1.1. **General:** The Developer subject to the provisions of Section 1.6 of this Agreement, hereby covenants that the current proposal for Developer's Project is described in Table 1 below, as well as the "Comprehensive Development Plan" included as Exhibit 2 of this

Agreement, and that the Developer shall construct the Developer's Project in accordance this Agreement.

Table 1: Preliminary Summary of Developer's Project by Condominium Land Unit

Developer's Project Phase	Land Condominium Unit Number	Land Use	Building Size (Square Feet)
1	3	Market Basket Grocery Store	80,775
1	3	Market Basket Attached Retail Tenant	22,483
1	4	NH Liquor & Wine Outlet	13,554
		<i>Phase 1 Subtotal</i>	<i>116,812</i>
2	4	Retail	14,480
2	1	Fast Food Restaurant	2,400
2	1	Retail	4,500
2	1	Restaurant	6,052
2	1	Urgent Care Medical Offices	7,000
2	1	Dental Offices or Eye Care	4,000
2	1	Retail	10,100
		<i>Phase 2 Subtotal</i>	<i>48,532</i>
3	2	Distribution / Warehouse	45,000
		Cellular Communications Tower	N/A
		<i>Phase 3 Subtotal</i>	<i>45,000</i>
		Total - All Phases	210,344

The Developer hereby agrees that it shall subdivide the Property into no less than five (5) land condominium units, as described in Table 1, for the Developer's Project, in accordance with the condominium plan titled "Condominium Site Plan" prepared by FWS Land Surveying P.L.L.C. dated November 20, 2020, and included in Exhibit 3 of this Agreement.

1.1.2. **Phase 1 of the Developer's Project:** The Developer shall develop the Developer's Project in multiple phases. An application for site plan approval for Phase 1 of the Developer's Project ("Site Plan Application") was approved by the City of Concord Planning Board on December 16, 2020 ("Site Plan Approval")

Phase 1 of the Developer's Project as shown on the Site Plan Application contains the following components, referred to herein as the "Minimum Development Program":

1. An 80,755+/- SF grocery store (Grocery Store), with the possibility of additional commercial development to potentially include a 22,483+/-SF attached retail unit, which building sizes may be adjusted upward or downward based upon permitting requirements, market conditions, actual tenancies, and other factors, to be located at Condominium Unit #3, which shall include approximately 10.0+/- acres land. The Developer hereby discloses that, upon satisfaction of all closing conditions and requirements anticipated to be set forth in a Purchase and Sale Agreement between the Developer and DSM, the Developer shall convey Condominium Unit #3 to DSM for development of said Grocery Store for which, in accordance with the Corporate Guaranty attached as Exhibit 7, DSM shall secure a certificate of occupancy no later than two years following the issuance of a building permit as identified in this Agreement, as such time period may be extended pursuant to the terms of the Corporate Guaranty, attached hereto as Exhibit 7, and such time period shall be known as the Grocery Store Completion Date.
2. A 13,534+/- SF building featuring a State of New Hampshire State Liquor and Wine Outlet (the "Liquor Store") to be located at Condominium Unit #4, which shall include approximately 2.78+/- acres land and shall secure a certificate of occupancy within fourteen (14) months following the issuance of a building permit for such building, and such time period shall be known as the Liquor Store Completion Date. The Developer hereby discloses that it shall retain ownership of Condominium Unit 4 for the purposes of developing said Liquor Store, which the Developer shall, in turn, lease to the New Hampshire Liquor Commission.

The schedule for Phase 1 of the Developer's Project shall be consistent with the schedule set forth within Exhibit 6 of this Agreement, and shall be subject to reasonable adjustment as mutually agreed by the Parties and may otherwise be extended in the event of certain delays as set forth within Section 6 of this Agreement. However, deadlines set forth in Section 5.1.2 shall not be adjusted due to potential delays set forth in Section 6.

The Developer agrees that it shall use commercially reasonable efforts to complete the Developer's Project in a timely manner consistent with industry practices for projects of the same type and kind as Developer's Project. The Developer also agrees to use commercially reasonable efforts to complete Phases 2 and 3 as soon as reasonably possible following the completion of Phase 1. However, this Agreement is not contingent upon the completion of Phases 2 and 3 as set forth in Section 1.6.7 of this Agreement.

1.2. **Developer's Obligations for Public Improvements for Developer's Project.**

1.2.1. **General:** Traffic generated by the Developer's Project shall necessitate extensive improvements to public infrastructure, identified above as the Public Improvements, and include the following:

- a) Reconfiguration and reconstruction of the Hoit Road / Whitney Road / Old Boyce Road intersection into a two-lane roundabout;
- b) Reconfiguration and reconstruction of the south bound on-ramps from Hoit Road onto Interstate 93 at Exit 17;
- c) Reconfiguration of the Hoit Road / Hannah Dustin Drive intersection; and,
- d) Construction of a roundabout at the intersection of the Whitney Road, a property known as Concord Crossing located at 2 Whitney Road, and the primary driveway into the Developer's Project.

The Public Improvements are depicted on a plan titled "Hoit Road – Whitney Road Intersection Improvements General Plan" prepared by VHB dated January 14, 2021, which is incorporated into this Agreement as Exhibit 4.

1.2.2. **Developer's Responsibilities for Public Improvements.**

1.2.2.1. **Property Rights for Public Improvements:** The Developer shall grant the City, New Hampshire Department of Transportation, as well as all public and private utility companies, all property rights required to the construct the Public Improvements, without limitation, at no cost and on commercially reasonable terms and conditions and in the form of easements rather than outright conveyances of real estate to the extent possible.

1.2.2.2. Developer's Cost Share for Public Improvements Located in the Town of Canterbury (the "Canterbury Improvements"): The Developer shall be solely responsible for the cost of designing, permitting, and constructing of those portions of the Public Improvements located within the Town of Canterbury (the "Canterbury Improvements") as shown on plans in Exhibit 5 of this Agreement.

Specifically, the Canterbury Improvements include, but are not limited to, improvements to the Hannah Dustin Drive / Route 4 Intersection, other roadway and pedestrian improvements, as well as various drainage and utility improvements.

While the Developer shall be responsible for all of the total cost of designing, permitting, and constructing the Canterbury Improvements, the Parties agree that the City shall be responsible for completing design, permitting and construction of the Canterbury Improvements with contractors and vendors engaged by the City for its Public Improvements. The City shall keep the Developer reasonably apprised of the status of the design, cost and construction of the Canterbury Improvements. The Developer shall have the right to provide input on decisions impacting the total cost of implementing the Canterbury Improvements. However, the City shall retain sole decision-making authority concerning design, permitting, and construction of the Canterbury Improvements.

The Parties hereby agree that the City's contractor shall be the lowest qualified bidder for the cost of the Public Improvements and Canterbury Improvements, combined, as determined by the City's normal and customary bid processes (the "Public Improvements Bid"). The City nevertheless retains the right, at its sole discretion, to reject any bid submitted for any reason. All bids shall separately itemize the cost of the Public Improvements and the Canterbury Improvements.

Prior to the City entering into a construction contract for the Public Improvements in accordance with the Development Schedule set forth in Exhibit 6, the Developer shall provide the City with a payment equal to

the following (the "Developer's Payment for the Canterbury Improvements"):

- a) The bid price for construction of the Canterbury Improvements in accordance with the Public Improvements Bid;
- b) A contingency in the amount of ten percent (10%) of the bid price for construction of the Canterbury Improvements;
- c) \$43,250 for design and permitting costs for the Canterbury Improvements; and,
- d) \$17,000 for construction oversight, testing, and special inspections for Canterbury Improvements.

Upon receipt of the of the Public Improvements bid, the City shall submit an invoice to the Developer for the total estimated cost of the Canterbury Improvements, as calculated above. In the event the total estimated cost of the Canterbury Improvements is greater than FOUR HUNDRED FIFTY THOUSAND DOLLARS (\$450,000), the Developer may elect to:

- 1) Make payment to the City for the full amount invoiced, following which the City, subject to the terms and conditions set forth within this Agreement, shall execute contracts for the Public Improvements, including the Canterbury Improvements, and proceed with construction thereof; or,
- 2) Terminate this Agreement, in which event this Agreement shall be null and void and the Parties shall have no further rights or obligations herein.

In the event the total cost of the Canterbury Improvements increases after the start of construction due to change orders or unforeseen conditions which cause the total cost of construction of the Canterbury Improvements to exceed the Developer's Payment for the Canterbury Improvements, then the Developer shall, following a reasonable amount of time to review the need and the amount of such excess costs, make additional payments in said amounts to the City. Said payments shall be paid in full by the Developer to the City no later

than thirty (30) calendar days after the date of City's written notice. If the Developer fails to make payment in full by said date, a penalty fee shall be assessed after the fifteenth (15th) calendar day after the payment is due at the rate of 1% per month (12% per annum) at the beginning of each month thereafter. In addition, should the Developer fail to make said payments in full, the Developer shall automatically be deemed in default of this Agreement, and the City may pursue its rights and remedies as set forth within this Agreement.

In the event the total cost of the Canterbury Improvements decreases after the start of construction due to change orders or unforeseen conditions which cause the total cost of the Canterbury Improvements to be less than the Developer's Payment for the Canterbury Improvements, then the City shall be obligated to refund the amount of the difference between the Developer's Payment for the Canterbury Improvements and the actual cost of the Canterbury Improvements. The City shall provide the Developer will an accounting of the Canterbury Improvements and any potential refund not later than 90 calendar days of Date of Completion, as certified by the City Engineer, which shall be defined as the City's final payment to the contractor selected for the Canterbury Improvements (excluding release of retainage held by the City in accordance with contract documents for construction of the Public Improvements).

1.2.3. **Maintenance Agreement for Certain Public Improvements:**

Prior to the City executing construction contracts for the Public Improvements, the Developer shall enter into an agreement with the City concerning the following Public Improvements (the "Public Improvements Maintenance Agreement"). The Developer shall have the right to assign the Public Improvements Maintenance Agreement to the condominium association which shall be established for the Developer's Project.

- a) The operation, maintenance, repair, and replacement of vegetation, mulch, irrigation systems, and other similar improvements to be located within the City's Whitney Road rights-of-way associated with the roundabout to be constructed at the intersection of Whitney Road, the Concord Crossing development located at 2 Whitney Road, and the primary entrance into the Developer's Project known as Merchants Way (the "Landscaping Improvements"). The

operation, maintenance, repair, and replacement of the Landscaping Improvements shall be at the sole expense of the Developer in perpetuity.

Notwithstanding the preceding, the Parties agree that the City shall be solely responsible for operation, repair, and maintenance of any street lights located at said roundabout within the Whitney Road rights-of-way.

- b) The Developer shall be responsible for snow removal in perpetuity for pedestrian infrastructure improvements to be constructed by the City as part of the Public Improvements located on the east side of Whitney Road along the frontage of the Property as shown on Exhibit 4 of this Agreement, as well as any sidewalks which may also constructed between Merchants Way and Interchange Drive, whether constructed during Phase 1 of the Developer's Project, or subsequent future phases. Although the Developer shall be responsible for snow removal in perpetuity, the Developer shall not be responsible for the any other maintenance activities, repair, or replacement of pedestrian improvements, except for damage caused by the Developer or its agents in conjunction with its snow removal responsibilities.

1.2.4. **Private Improvements to be Constructed by the Developer.**

The Developer hereby agrees that it shall be solely responsible for the cost of designing, permitting, bidding, and constructing any other improvements to utilities, roadways, sidewalks and other public and private infrastructure, without limitation, which otherwise might be desired or required for the Developer's Project, but are specifically excluded from the City's scope of work for the Public Improvements, herein referred to as the "Developer's Private Improvements."

Developer's Private Improvements which shall specifically be the sole responsibility of the Developer as part of the Developer's Project shall include, but not be limited to:

- a) Roadways, sidewalks, turning lanes, traffic signals, multimodal paths, bicycle lanes, landscaping, potable water mains and service connections, sanitary sewer mains and service connections, natural gas lines and service connections, storm water drainage infrastructure, electrical utilities, telephone utilities, cable television utilities, fire alarm cabling, and other similar improvements located on the Property.

- b) Service connections to potable water, sanitary sewer, storm water drainage (if permitted by the City), electric, telephone, cable television, and fire alarm which must be extended within or from adjacent public highways to support the Developer's Project.
- c) Sidewalks located between Merchants Way and Interchange Drive located within the Whitney Road rights-of-way, except those sidewalks which are expressly shown on the City's plans for the Public Improvements as included in Exhibit 4 of this Agreement.

Collectively, (a), (b) and (c) constitute the "Developer's Private Improvements." The Developer shall provide the City with copies of construction contracts (including costs), plans, drawings and specifications for the Private Improvements to be completed as part of the Developer's Project without limitation, in accordance with the Development Schedule set forth in Exhibit 6.

- 1.3. **Financial Sureties.** In recognition of the City's investment to construct the Public Improvements required to support the Developer's Project, the Developer, hereby agrees to provide the following short-term and long-term financial sureties to the City, as set forth herein.

- 1.3.1. **Short-Term Financial Sureties.**

- (a) **Short-term Performance Mortgage for Liquor Store Located at Land Condominium Unit #4:**

- 1. **Performance Mortgage:** The Developer shall execute and record a Performance Mortgage on Condominium #4, acceptable to the City, to secure the performance of the Developer's obligations relative to the development of the NH Liquor and Wine Outlet (the Liquor Store) at Land Condominium Unit #4, to be completed as part of Phase 1 of the Developer's Project for which the Developer shall secure a certificate of occupancy within fourteen (14) months following the issuance of a building permit for such building (the Liquor Store Completion Date).

The Performance Mortgage to the City shall be recorded upon the execution of this Agreement and shall only be subordinate to a First Mortgage recorded on Unit #4 which shall, upon the City's

written consent, only secure indebtedness related to the development and construction of the Liquor Store and Unit #4 and shall not secure or cross collateralize indebtedness or obligations arising in connection with any other property, related or unrelated to the development, construction of the Liquor Store and Unit #4.

Such Mortgagee shall agree that the proceeds of such First Mortgage shall be used only in such development, construction, repair or reconstruction of the Liquor Store and Unit #4 provided, however, that the Developer shall provide to the City the name(s) and address(es) of the holder of such First Mortgage (a "Mortgagee") and any other information regarding the Mortgagee and First Mortgage documents which the City may reasonably request only until such time as the Developer has received a duly issued Certificate of Occupancy for the Liquor Store.

Mortgagee shall agree that the proceeds of such First Mortgage shall be used only in such development and construction of the Liquor Store and Unit #4.

The Developer shall provide the City, on request, with sufficient information and records to allow the City to verify the Developer's compliance with this Agreement. Notwithstanding the preceding sentences, this right to the City to examine Developer's records shall terminate upon the Developer's receipt of a duly issued Certificate of Occupancy for the Liquor Store.

The Performance Mortgage shall be discharged upon the Developer securing a Certificate of Occupancy from the City of Concord for the Liquor Store.

Notwithstanding any other provisions of this Agreement, the Developer shall at all times have the right in addition to the First Mortgage to further encumber, pledge, or convey its rights, title and interest in and to the Liquor Store and Condominium Unit #4, as well as its rights and

responsibilities under this Agreement, by way of a bona fide mortgage to a bank or other financial institution acceptable to the City to secure the payment of any loans obtained by the Developer to finance the development, construction, repair or reconstruction of the Liquor Store, and other Phase 1 improvements, or to refinance any outstanding loan or loans therefore obtained by the Developer for any such purpose (“Second or later Mortgage”) which shall at all times be subordinate to the City’s Performance Mortgage.

2. Rights and Duties of Mortgagee upon Acquisition

Prior to Completion: If a Mortgagee, by foreclosure or through the operation of its contract to finance the construction and development of the Liquor Store, acquires fee simple title to the Liquor Store and/or Condominium Unit 4, as well as the improvements associated therewith, prior to the Liquor Store securing a Certificate of Occupancy, the Mortgagee shall have the following options:

- i. Complete construction of the Liquor Store in accordance with development permits and approvals associated therewith; or,
- ii. Sell, assign, or transfer, fee simple title to the Liquor Store or the Liquor Store and Unit #4 to a purchaser, assignee or transferee (a “Mortgagee Transferee”), who shall expressly assume all of the covenants, agreements and obligations of the Developer under this Agreement by written instrument satisfactory to the City, or,
- iii. In the event that a Mortgagee elects to complete construction pursuant to subsection 1.3.1.a.2.i above, or sells, assigns or transfers pursuant to a Mortgagee Transferee per subsection 1.3.1.a.2.ii above, the City shall extend the time limits set forth in this Agreement for completion of construction as shall be reasonably necessary to allow Mortgagee to complete foreclosure proceedings or otherwise to acquire possession of the Liquor Store and/or Unit #4

and to allow the Mortgagee or Mortgagee Transferee complete construction thereof in accordance with this Agreement, provided that Minimum Payments and Supplemental Payments shall be paid to the City in accordance with Section 1.3.2 of this Agreement and that no such extensions of time by the City as provided above shall exceed twelve (12) months from the date of completion of the foreclosure sale or such other acquisition of the Liquor Store and/or Unit #4 in lieu of foreclosure.

3. Limits on Liability: In no event shall any Mortgagee or Mortgagee Transferee thereafter be personally liable for breaches of this Agreement occurring prior to the time it acquires title or takes possession of the Liquor Store and/or Unit #4 (or portion thereof) or after it shall convey title or possession, provided that any such conveyance shall be subject to compliance with this Agreement, including the obligation to cure any breach, regardless of when it occurred.
4. Notices of Breaches to Mortgagees: The Developer shall at all times keep the City provided with the name and address of the Mortgagee from whom the Developer has obtained loans as permitted under this Agreement for the Developer's Project, including, but not limited to, the Liquor Store. If the City gives written notice to the Developer of a default under this Agreement, the City shall concurrently therewith furnish a copy of the notice to each of the Mortgagees of the Developer's Project permitted under this Agreement of whom the City has received notice from the Developer. Any Mortgagee or holder may notify the City in writing of a preferred address for notices pursuant to this section. The City agrees to comply with any such request.
5. Mortgagee May Cure Breach of Developer: If the Developer has received notice from the City of a default under this Agreement and such breach is not cured by the Developer before the expiration of the period provided therefore the City shall give

each Mortgagee notice in writing of such failure. Any such Mortgagee may cure any breach upon giving written notice of its intention to do so to the City within thirty (30) days of the City's notice of the notice to Mortgagee of the failure to cure, and shall thereupon proceed with due diligence to cure such breach, subject to the terms of this Agreement.

If any Mortgagee elects so to cure any breach, a reasonable extension of time for performance will be granted by the City to enable the Mortgagee, to foreclose its Mortgage or otherwise to acquire possession of the Liquor Store and/or Unit #4 (or any portion thereof), and thereafter to allow the Mortgagee or Mortgagee Transferee to correct such breach and complete construction of the Developer's Project, provided that Minimum Payments and Supplemental Payments shall be paid to the City in accordance with Section 1.3.2 of this Agreement and that in no event shall such extensions of time exceed twelve (12) months from the date of completion of the foreclosure sale or such other acquisition of the Liquor Store and/or Unit #4 in lieu of foreclosure.

6. Further Assurances: If requested by a Mortgagee, the City will execute a separate letter or other agreements with the Mortgagee, further evidencing its consent to the assignment of this Agreement by Developer to any such (Mortgagee) and acknowledging and confirming the City's commitment to continue performance of all City responsibilities under this Agreement if requested by a Mortgagee or Mortgagee Transferee, the City shall provide the requesting party with a letter or estoppel certificate stating whether or not the Developer is not in compliance with any material provisions of this Agreement.
7. City Cure: Each Mortgagee shall provide the City with copies of any notices of a breach of or default under a Mortgage when and as provided to the Developer. If the Developer has received notice from a Mortgagee of a default under this Agreement and such breach is not cured by the

Developer before the expiration of the period provided therefore, the City may cure any breach upon giving written notice of its intention to do so to the Mortgagee within forty-five (45) days of the Mortgagee's notice of default to the Developer, and shall thereupon proceed with due diligence to cure such breach, subject to the terms of this Agreement.

If the City elects to so cure any breach, a reasonable extension of time for performance will be granted to the City to enable the City to cure the default or correct the breach, but in no event shall such extension of time exceed twelve (12) months.

1.3.2. **Long-Term Financial Surety (Minimum Payments).**

1.3.2.1. **General.** The Developer hereby agrees that it shall make annual minimum payments (the "**Minimum Payments**") to the City, which shall be comprised of the annual property tax payments to the City for the Phase 1 of the Developer's Project in accordance with State law for municipal government, county government, state government, as well as the public school districts (the "**Property Tax Payments**"), plus any supplemental payments that may be required to ensure that the full Minimum Payments amount is paid (the "**Supplemental Payments**") to the City for the Developer's Project, in the amounts as set forth herein.

1.3.2.2. **Penacook Village Tax Increment Finance District.** The Parties hereby acknowledge that the City expects to amend and expand the Penacook Village Tax Increment Finance District to include by the Developer's Project.

Pursuant to N.H. RSA Ch. 162-K, the Parties acknowledge and agree that a portion of the Property Tax Payments derived from the Developer's Project shall be captured by the Penacook Village Tax Increment Financing District and used, in part, to finance the operating, maintenance, and debt service costs incurred by the City for the Public Improvements constructed by the City to specifically support and benefit the Developer's Project.

1.3.2.3. **Minimum Payments.** The Developer, shall make Minimum Payments to the City on July 1, October 1, January 2, and March 31 of each Property Tax Year starting on April 1, 2022 and ending on March 31, 2042.

The Parties agree that if the Property Tax Payments for the Property in any Property Tax Year are, for any reason, less than the Minimum Payments set forth in this Section the Developer, shall make a Supplemental Payment to the City as set forth herein so as the amount of the Property Tax Payments received by the City, when combined with the Supplemental Payments, equal the Minimum Payments set forth herein.

The Parties agree that the Minimum Payments set forth below do not represent that actual tax bill on the Property in any tax year and that the actual tax bill in any year may be more or less than the Minimum Payments due.

For the Property Tax Years commencing on April 1, 2022 and ending on March 31, 2023, the Developer shall make the following Minimum Payments to the City for land condominium units #3 and #4 on plan titled "Condominium Site Plan" prepared by FWS Land Surveying P.L.L.C. dated November 20, 2020 and conditionally approved by the City of Concord Planning Board on December 16, 2020 and included in Exhibit 3 of this Agreement as follows, with the first such payment being due on July 1, 2022:

Table 2: Minimum Payment for Property Tax Year 2022

Land Condominium Unit	Description	Annual Minimum Payment
3	Grocery Store & other potential commercial uses	\$218,250
4	Liquor Store & adjacent land	\$45,000
Total		\$263,250

For the Property Tax Years commencing on April 1, 2023 and ending on March 31, 2042, the Developer shall make the following Minimum Payments to the City as follows:

Table 3: Minimum Payments for Property Tax Years Commencing on April 1 2023 and Ending on March 31, 2042

Land Condominium Unit	Description	Annual Minimum Payment
3	Grocery Store & other potential commercial uses	\$332,250
4	Liquor Store & adjacent land	\$45,900
Total		\$378,150

The obligation of the Developer to make a Minimum Payment to the City pursuant to this Section 1.3.2 shall expire on March 31, 2042. This provision shall not be construed to waive or otherwise release the Developer, from its responsibility to pay property taxes to the City in accordance with applicable law or as otherwise set forth in this Agreement.

The obligation to make Minimum Payments shall be set forth in a protective covenant, which shall be recorded on the Property and run with the land, as further described in Section 1.3.2.7 of this Agreement.

The Parties agree that in the event: 1) the City does not commence construction of the Public Improvements, including the Canterbury Improvements, by September 1, 2021; and 2) the City does not issue general obligation bonds for the Public Improvements in January 2022, then the start date and expiration date of the Minimum Payment obligation shall be delayed by one year (or such longer period of time as may be appropriate in the event of additional delays), and the Parties shall record an updated and amended Minimum Payment covenant for Land Condominium Units #3 and #4 which accounts for these changes to the Minimum Payment schedule.

- 1.3.2.4. **“Over Payment” and No Refunds.** In the event the Property Tax Payments paid with respect to the Property exceed the minimum amounts set forth above due to market changes in value or tax rate increases, the Developer, shall not be eligible for, nor entitled to, a refund of any portion of said payments in excess of the Minimum Payment amounts set forth above. This provision shall not be construed to apply to any accidental overpayments by the Developer, or inadvertent overcharges by the City. This provision shall not be construed to limit the Developer’s right to petition for an abatement of property taxes in accordance with applicable law. However, no abatement of property taxes shall impair or limit the Developer’s obligations to make the Minimum Payments set forth in Section 1.3.2.3.
- 1.3.2.5. **Process for Determining Supplemental Payment Amount and Late Payment Penalty.** Following the end of each Property Tax Year during the term of this Agreement, the City shall conduct an annual review of the total gross Minimum Payments due for Phase 1 of the Developer’s Project. If the City determines that a Supplemental Payment is due, the City shall provide written notice to the Developer and any Mortgagee. Said Supplemental Payment shall be paid in full by the Developer, to the City no later than thirty (30) calendar days after the date of City’s written notice. If the Developer, fails to make payment in full by said date, a penalty fee shall be assessed after the fifteenth (15th) calendar day after the payment is due at the rate of 1% per month (12% per annum) at the beginning of each month thereafter. In addition, should the Developer fail to make said Supplemental Payment in full, the Developer shall automatically be deemed in default of this Agreement, and the City may pursue its rights and remedies as set forth within this Agreement, which shall include all notices to any Mortgagee required herein.
- 1.3.2.6. **Supplemental Payment Not to be construed as a Payment of Property Taxes.** No Supplemental Payment shall be construed as the payment of property taxes for the Developer’s Project. Rather, the Supplemental Payment shall be a sum due to the City from the Developer, under the contractual arrangement as established by this Agreement.

1.3.2.7. **Obligation for Minimum Payments and Supplemental Payments Runs with the Land.** The Developer's obligations to make said Minimum Payments and Supplemental Payments (the Payment Obligations) under this Section 1.3.2 shall be binding on Developer and any subsequent owner of the Property until March 31, 2042 in accordance with this Agreement. Said Payment Obligations shall run with the land by deed covenant, executed and delivered by the Developer to the City prior to the start of construction of the Public Improvement. All Deeds conveying the Property shall incorporate these Payment Obligations as a restrictive covenant running with the land in accordance with this Agreement. Upon the conveyance of either Condominium Unit #3 or Condominium Unit #4, the Developer's obligation to make Minimum Payments and Supplemental Payments attributable to such Unit(s) shall become the obligation of the new owner of such Unit(s).

1.4. **Deed Restrictions and Covenants.** In consideration of the City's Public Improvements to support the Developer's Project, the Developer shall grant the City for no monetary consideration and in lieu of condemnation the following Easements, Deed Restrictions, and Covenants at the Property, which shall run with the land and be incorporated into each deed for all condominium units or parcels subdivided at the Property. Said easements and, covenants, and deed restrictions shall be recorded at the Merrimack County Registry of Deeds prior to recording of the Condominium Subdivision Plan for the Property.

1.4.1. Any and all easements required by the City, New Hampshire Department of Transportation, or applicable utility companies necessary or desirable for the construction, maintenance, and operation of Public Improvements to serve the Developer's Project (if any). Said easements shall be attached to all five Units, and associated common areas related thereto, which comprise the Property, and shall run with the land in perpetuity.

1.4.2. A Covenant on all five Units, and associated common areas related thereto, which comprise the Property to the benefit of the City which shall require that, in the event any portion of the Developer's Project or Property is leased or sold to an entity that would cause the Property to be exempt from the payment of real estate taxes ("Exempt Owner" or "Exempt Lessee"), said Exempt Owner(s) or Lessee(s) shall be obligated to enter into an agreement for Payments In Lieu of Taxes ("PILOT") with the City. Pursuant to the PILOT, the Exempt Owner or Lessee shall agree to make

payments to the City in an amount equal to all State, County, Municipal and School District property taxes that would otherwise be payable with respect to the respective property interest. Each deed or other transfer document from the Developer to any future transferee of any interests in the Developer's Project shall incorporate this covenant, which shall run with the land in perpetuity.

1.4.3. A Covenant on land condominium Units #3 and #4 to the benefit of the City requiring Minimum Payments and Supplemental Payments as set forth in Section 1.3.2 of this Agreement, which shall run with the land until March 31, 2042. Each deed or other transfer document from the Developer to any future transferee of any interests in the Developer's Project shall incorporate this covenant.

1.4.4. An easement to the benefit of Concord Area Transit (its assigns, successors, and nominees) for the establishment of a public transit bus stop at the Property. The location and dimensions of said easement shall be as mutually agreed by Concord Area Transit, the City of Concord, and the Developer.

1.5. **Access to Property.** The Developer hereby grants authorization to the City, its employees, representatives, consultants, contractors, and agents, as well as all utility companies associated with the Public Improvements, to enter the Property during the term of this Agreement for all purposes necessary to carry out the terms of this Agreement. The Developer and the City shall coordinate all access to the Property by third parties working on behalf of the City.

1.6. **Developer's Contingencies.** The Developer's obligation to proceed with development of the Developer's Project shall be subject to the following contingencies, the failure to satisfy any one of which shall give the Developer any of the options set forth below and, in addition, the right to withdraw from this Agreement, after which the Developer shall have no further obligation to the City.

1.6.1. **Purchase and Sales Agreements, Property Closings, Tenant Leases / Occupancy Agreements.** This Agreement is specifically contingent upon the Developer executing the following agreements upon such terms and conditions acceptable to the Developer in its sole discretion, and completing the closing of the applicable real estate transaction with DSM, prior to the deadlines set forth in Exhibit 6, for Phase 1 of the Developer's Project. If the Developer is not able to secure such agreements on terms acceptable to the Developer, or is unable to successfully close the applicable real estate transaction with DSM, within the timeframe prescribed by

this Agreement, the Developer may terminate this Agreement. Upon termination this Agreement shall become null and void and the Parties shall have no further rights or obligations herein.

- a) A Purchase and Sales Agreement with DSM for the sale of Unit #3 to DSM for development of an 80,755+/- SF grocery store, with the possibility of additional commercial development to potentially include a 22,483+/-SF attached retail unit, which building sizes may be adjusted upward or downward based upon permitting requirements, market conditions, actual tenancies, and other factors.

1.6.2. **Development Permits and Approvals.**

- 1.6.2.1. **General:** This Agreement is contingent upon the Developer obtaining any and all required development permits and approvals from applicable governmental agencies (Governmental Approvals), upon such terms and conditions as are satisfactory to the Developer in their reasonable discretion, for Phase 1 of the Developer's Project, at their sole cost and expense.

Such permits and approvals include, but are not limited to, variances and special exceptions from the Concord Zoning Board of Adjustment, Lot Merger and Condominium Subdivision, Architectural Design Review and Site Plan Review approvals from the Planning Board, demolition permits, building permits, and utility connection permits from applicable municipal departments, as well as permits from the State of New Hampshire including Alteration of Terrain Permits, Wetlands Dredge and Fill Permits, and any other permit required for Phase 1 of the Developer's Project.

The Parties acknowledge and agree that the process of obtaining Governmental Approvals is a dynamic and fluid process requiring flexibility on the part of multiple persons. Therefore, the Developer shall be allowed reasonable latitude and discretion during the permitting process including the right to make changes and revisions to the Phase 1 plans provided that: 1) Phase 1 of the Developer's Project consists of the Minimum Development Program as set forth in 1.1.2 of this Agreement; and 2) there is no material reduction in the expected property tax increment from Phase 1 and

provided further that required Minimum Payments hereunder shall not be reduced.

In the event of an appeal of any Governmental Approval, whether initiated by either by the Developer or another aggrieved party with standing to bring such an appeal, the time periods in Exhibit 6 shall be extended as necessary in order to provide sufficient time to defend or complete said appeals, subject to the provisions of Section 5.1.2 of this Agreement. The Developer shall, upon request of the City, provide the City with the status, and any updates or information concerning the development permits and approvals.

If the Developer is not able to obtain Governmental Approvals on terms acceptable to the Developer for the development of Phase 1 of the Developer's Project in accordance with the schedule set forth in Exhibit 6, the Developer may terminate this Agreement. Upon termination this Agreement shall become null and void and the Parties shall have no further rights or obligations herein.

1.6.2.2. Special Provisions Related to Building Permits for Phase 1 of Developer's Project: The Developer hereby agrees that it shall apply for a building permit from the City of Concord no later than March 31, 2021. The City agrees that it shall use all appropriate efforts to process the Developer's Building Permit application, however, in order to safe guard the City's interests concerning incremental assessed value associated with the Developer's Project relative to the Penacook Village Tax Increment Finance District the building permit shall not be issued by the City until after: 1) the Penacook Village Tax Increment Finance District has been amended for the Public Improvements; and 2) April 1, 2021 has elapsed, in accordance with Section 2.3.7 of this Agreement.

Should the Developer experience delay, outside of its control, in the issuance of a building permit for the Liquor Store, the Developer may request that the City extend the Liquor Store Completion Date, which the City shall not unreasonably deny. However, extension of the Liquor Store Completion Date shall not release the Developer from its obligations to make certain payments as set forth in Section 1.3.2 of this Agreement.

The Developer also acknowledges that the City, in accordance with Section 2.3.8 of this Agreement, shall not proceed with construction of the Public Improvements until the Developer has secured a building permit for the Liquor Store, and satisfied all other precedent conditions associated with the City's Public Improvements as set forth in this Agreement.

- 1.6.3. **Developer's Financing.** This Agreement is specifically contingent upon the Developer obtaining financing in sufficient amounts and at such prices, rates and terms that are satisfactory to the Developer in its sole discretion for the development of Phase 1 of the Developer's Project.

The Developer shall provide proof, in writing, of a preliminary commitment for such financing arrangements upon execution of this Agreement or as soon as it is able, upon receipt of such from any Lender.

If Developer is not able to obtain an acceptable financing package for the development of Phase 1 of the Developer's Project prior to the schedule set forth in Exhibit 6, the Developer may terminate this Agreement. Upon termination this Agreement shall become null and void and the Parties shall have no further rights or obligations herein.

- 1.6.4. **Financial Feasibility of Developer's Project.** This Agreement is specifically contingent upon the Developer determining, in its sole discretion, that the Developer's Project is financially feasible.

In the event the Developer, after completing its respective due diligence, determines that proceeding with Phase 1 of the Developer's Project is not financially feasible or prudent, the Developer may terminate this Agreement. Upon termination this Agreement shall become null and void and the Parties shall have no further rights or obligations herein.

- 1.6.5. **City's Responsibilities.** This Agreement is specifically contingent upon the City completing its responsibilities as set forth within Article 2 of this Agreement without limitation in accordance with the Development Schedule as described within Exhibit 6 of this Agreement. If the City fails to fulfill any of its responsibilities after notice and opportunity to cure as provided herein, then the City shall be in default under this Agreement, and the Developer may terminate this Agreement and pursue its rights, if any, as set forth in Section 4.2 of this Agreement.

- 1.6.6. **Contracts for Developer's Project.** This Agreement is specifically contingent upon Developer entering into construction contracts with a construction manager or general contractor of their respective choice for the construction of the applicable portion of Phase 1 of the Developer's Project, upon such terms and conditions, including fee, acceptable to the Developer in its sole discretion. In the event the Developer is unable to enter into an acceptable contract, then the Developer may terminate this Agreement. Upon termination this Agreement shall become null and void and the Parties shall have no further rights or obligations herein.
- 1.6.7. **Supplemental Phases of the Developer's Project:** The Developer agrees to use commercially reasonable efforts to complete Phases 2 and 3 of the Developer's Project as soon as reasonably possible following the completion of Phase 1. However, this Agreement is not contingent upon the completion of Phases 2 and 3 in any specific order, manner or within any specific timeframe. Further, the Parties hereby acknowledge that development of Phase 2 and 3 of the Developer's Project shall be subject to a variety of factors including, but not limited to, local and national economic conditions, demand within the marketplace for retail, restaurant, and services, construction costs, availability of capital and financing, and other similar factors.

2. **CITY'S RESPONSIBILITIES AND CONTINGENCIES:**

2.1. **Public Improvements.**

- 2.1.1. **General.** Upon receipt of completed plans, drawings, permits and bid specifications for the Public Improvements, including the Canterbury Improvements, from the City's civil engineering consultant, the City shall proceed with securing the Public Improvements Bid for said improvements from qualified site work contractors, as well as secure final pricing from applicable utility companies for relocation of utilities as required to accommodate the Public Improvements.

Pending acceptance of a Public Improvements Bid, and subject to the conditions set forth in this Agreement, including but not limited to the City accepting a Public Improvements Bid at its sole discretion, the City shall proceed with construction of said Public Improvements in accordance with the Development Schedule set forth in Exhibit 6 of this Agreement.

2.1.2. **Scope of Work for City's Public Improvements.** The City shall be solely responsible for the design, permitting, and construction of the Public Improvements, as depicted on "90%" complete plans for the Public Improvements titled "Hoit Road – Whitney Road Intersection Improvements General Plan" prepared by VHB dated January 14, 2021, and included as Exhibit 4 of this Agreement, which are:

- a) Reconfiguration and reconstruction of the Hoit Road / Whitney Road / Old Boyce Road intersection into a two-lane roundabout, together with pedestrian amenities, landscaping, street lighting, and utility improvements associated therewith;
- b) Reconfiguration and reconstruction of the south bound on-ramps from Hoit Road onto Interstate 93 at Exit 17 together with pedestrian amenities, landscaping, street lighting, and utility improvements associated therewith;
- c) Reconfiguration of the Hoit Road / Hannah Dustin Drive intersection together with pedestrian amenities, landscaping, street lighting, and utility improvements associated therewith; and,
- d) Construction of a roundabout at the intersection of Whitney Road, a driveway entrance into a development known as Concord Crossing located at 2 Whitney Road, and the primary entrance into the Developer's Project known as Merchants Way; together with pedestrian amenities, landscaping, street lighting, and utility improvements associated therewith.

2.1.3. **Exclusions.** The Developer's Private Improvements identified in Sections 1.2.4 are specifically excluded from the City's scope of work for Public Improvements, and are the sole responsibility of the Developer:

2.1.4. **City's Budget and Expenditure Cap for Public Improvements.**

The City's Budget and Expenditure Cap for the Public Improvements, IS FOUR MILLION THREE HUNDRED THIRTY THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$4,330,750), as detailed in the table below. This Cap specifically excludes the cost of design, permitting, and construction of the Canterbury Improvements, which shall be

the sole responsibility of the Developer in accordance with Section 1.2.2.2 of this Agreement.

Table 4: City's Budget and Expenditure Cap for Public Improvements (Excluding the Canterbury Improvements)

Item	Budget
Design and Permitting	\$412,750
Construction	\$3,067,000
Construction Oversight, Testing, Special Inspections	\$194,000
Debt Issuance Costs	\$43,000
Contingency	\$614,000
Total	\$4,330,750

The City's Budget for Public Improvements shall serve as the City's Expenditure Cap for this Agreement. The City shall have no responsibility to provide any additional funds beyond the City Expenditure Cap for the Public Improvements. However, the City may (but is not obligated to) reallocate unused funds in any category detailed in Table 4 to any other category of expenses if the cost of which exceeds the amount budgeted in Table 4 provided that the total amount of all expenses, combined, does not exceed the City's Expenditure Cap for Public Improvements.

Upon receipt of the of the Public Improvements Bid, the City shall determine whether the estimated total cost of the Public Improvements as calculated above and excluding the Canterbury Improvements, is within the City's Expenditure Cap. In the event the City determines that the estimated total cost of the Public Improvements is within the City's Expenditure Cap, the City, subject to the terms and conditions set forth within this Agreement, shall accept the Public Improvements Bid and enter into contracts with the contractor of its choice related thereto.

If, however, upon receipt of the Public Improvements Bid, the City determines that the estimated total cost of the Public Improvements will exceed the City's Expenditure Cap, the City may elect to:

- 1) Appropriate additional funds in order increase the City's Expenditure Cap and proceed with construction of the Public Improvements, subject to the contingencies, terms, and conditions set forth within this Agreement; or,

- 2) Terminate this Agreement, in which event this Agreement shall be null and void and the Parties shall have no further rights or obligations herein.

2.2. **Funding for Public Improvements; Amendment of Penacook Village Tax Increment Finance District.** Subject to this Agreement, the City expects to finance all or a portion of the cost of the Public Improvements with General Obligation Bonds supported by the City's Penacook Village Tax Increment Finance District (PVTIF).

The City may amend the Development Program and Financing Plan for the PVTIF, as well as appropriate PVTIF supported General Obligation Bonds, in accordance with New Hampshire RSA Ch. 162-K, within the timeframes set forth within the Development Schedule set forth in Exhibit 6 of this Agreement.

The City may also finance a portion of the Public Improvements with Transportation Impact Fees in accordance with the City Code of Ordinances Chapter 29.2, as might be available. Notwithstanding the preceding, the Parties hereby acknowledge that, in accordance with City Code of Ordinances Title IV Zoning Code Chapter 29.2 Public Capital Facilities Impact Fee Ordinance Section 29.2-1-2, e, 4 "Waivers for Nonresidential Uses", no impact fees shall be assessed for Phase 1 of the Developer's Project.

In addition, the City may structure the Penacook Village Tax Increment Finance District Development Program and Financing Plan to pay debt service costs associated with the design and permitting of the Public Improvements, which are not located in the Town of Canterbury, as previously appropriated by Resolution #9302 on July 13, 2020.

The Penacook Village Tax Increment Finance District Development Program and Financing Plan may include provisions for operating and maintenance costs for the Public Improvements, which are not specifically subject to the Developer's Public Improvements Maintenance Agreement as set forth in Section 1.2.3 of this Agreement. In addition, the Development Program and Financing Plan may be structured to support costs of public services to serve the Developer's Project.

2.3. **City's Contingencies.** This Agreement, and the City's obligation to proceed with the construction of the Public Improvements, shall be subject to the following contingencies, the failure to satisfy any one of which shall give the City any of the options set forth below and, in addition, the right to withdraw from this Agreement, after which the City shall have no further obligation to the Developer.

2.3.1. **Purchase and Sales Agreements, Property Closings, Tenant Leases / Occupancy Agreements.** This Agreement is specifically contingent upon the Developer executing the following agreements upon such terms and conditions acceptable to the Developer in its sole discretion, and completing the closing of the applicable real estate transaction, prior to the deadline set forth in Exhibit 6, for Phase 1 of the Developer's Project. If the Developer is not able to secure such agreements on terms acceptable to the Developer, or is unable to successfully close the applicable transaction, within the timeframe prescribed by this Agreement, the City may terminate this Agreement. Upon termination this Agreement shall become null and void and the Parties shall have no further rights or obligations herein.

- a) A Purchase and Sales Agreement with DSM for the sale of Condominium Unit #3 to DSM for development of an 80,755+/- SF grocery store, with the possibility of additional commercial development to potentially include a 22,483+/- SF attached retail unit, which building sizes may be adjusted upward or downward based upon permitting requirements, market conditions, actual tenancies, and other factors.

2.3.2. **Developer's Development Permits and Approvals.** This Agreement is specifically contingent upon the Developer obtaining any and all required development approvals and permits from applicable governmental agencies ("Governmental Approvals"), upon such terms and conditions as are satisfactory the Developer in its reasonable discretion, for Phase 1 of the Developer's Project as further described in Sections 1.6.2.1 and 1.6.2.2.

If the Developer delivers notice to the City that the Developer is unable to secure said Governmental Approvals within the timeframes set forth in Exhibit 6, the City may terminate this Agreement. Upon termination this Agreement shall become null and void and the Parties shall have no further rights or obligations herein.

2.3.3. **Developer's Financing.** This Agreement is specifically contingent upon the Developer obtaining financing in sufficient amounts and at such rates and terms as are satisfactory to the Developer in its sole discretion for the development of Phase 1 of the Developer's Project, as further described in Section 1.6.3.

If the Developer is unable to obtain an acceptable financing package for the development of Phase 1 of the Developer's Project prior to the deadline set forth in the Development Schedule in Exhibit 6, the City may terminate this Agreement. Upon termination this Agreement shall become null and void and the Parties shall have no further rights or obligations herein.

2.3.4. **Developer Project - Minimum Development Program.** This Agreement is specifically contingent upon the Developer's Project being consistent with the Minimum Development Program for Phase 1 of the Developer's Project as further defined within Section 1.1.2 of this Agreement. In the event Phase 1 of the Developer's Project fails to achieve the Minimum Development Program; the City may terminate this Agreement. Upon termination this Agreement shall become null and void and the Parties shall have no further rights or obligations herein.

2.3.5. **Developer's Responsibilities.** This Agreement is specifically contingent upon the Developer completing its responsibilities as set forth within Article 1 of this Agreement without limitation in accordance with the Development Schedule as described within Exhibit 6 of this Agreement.

If the Developer, fails to fulfill any of its responsibilities after notice and opportunity to cure as provided herein, the Developer shall then be in default under this Agreement and the City shall have the remedies set forth in Section 4.1 hereof.

2.3.6. **No Extension of Utilities.** This Agreement is specifically contingent upon the Developer acknowledging that certain utility mains, including but not limited to potable water, sanitary sewer, and storm water drainage-are located adjacent to the Developer's Property. In the event the Developer determines that extension or capacity expansions of such utilities are required for the Developer's Project, then the Developer shall be solely responsible for the design, permitting, and construction of said extensions or capacity increases at its sole expense. Otherwise, this Agreement may be terminated by the City or the Developer. Upon termination this Agreement shall become null and void and the Parties shall have no further rights or obligations herein.

2.3.7. **Developer's Delay of Improvements to the Property and Perfection of Development Permits and Approvals to Support Viability of Penacook Village Tax Increment Finance District:**

Unless otherwise expressly authorized by the City Manager in writing, the Developer shall not proceed with any of the following until such time as the City has amended the Penacook Village Tax Increment Finance District Development Program and Financing Plan for the Public Improvements, and the date of April 1, 2021 has elapsed.

- a) Undertake construction of improvements at the Property, including, but not limited to, clearing, stumping, grading, buildings, utility improvements, roadways, parking lots, or other similar structures and improvements. However, the Developer shall be permitted to install normal and customary temporary erosion control measures commonly associated with construction projects, such as, but not limited to silt fence, inlet protections at existing catch basins, and other similar items;
- b) Record the Condominium Subdivision Declaration or Plat for the Developer's Project, as approved by the City of Concord Planning Board;
- c) Record, or otherwise perfect, Site Plan applications as conditionally approved by the City of Concord Planning Board for the Developer's Project; and,
- d) Secure building permits for Phase 1 of the Developer's Project.

In the event the Developer proceeds with any of these activities prior to the dates set forth herein, the City may terminate this Agreement subject to any rights herein giving a Mortgagee the right to notice, or to cure. Upon termination this Agreement shall become null and void and the Parties shall have no further rights or obligations herein.

2.3.8. **City's Obligation to Execute Construction Contracts for the Public Improvements and to Proceed with Construction Thereof:**

The City's obligation to execute contracts for construction of the Public Improvements and expend City funds associated therewith, is expressly subject to the following conditions:

- a) Verification by the City that the Developer's Project is consistent with the Minimum Development Program for Phase 1 of the Developer's Project as further described in Sections 1.1.2 of this Agreement.
- b) The Developer entering into purchase and sales agreements, as well as leases or tenant occupancy agreements, for Phase 1 of the Developer's Project in accordance with Section 1.6.1 of this Agreement, as well as the Developer closing on the proposed real estate transaction for land condominium unit #3 with Demoulas Super Markets, Inc. as also set forth in Section 1.6.1.
- c) The Developer securing all Governmental Approvals for the Phase 1 of the Developer's Project in accordance with Sections 1.6.2.1 and 1.6.2.2 of this Agreement, including a City Building Permit for their respective portions of the Developer's Project. The Developer shall not record permits and approvals at the Merrimack County Registry of Deeds, nor shall he secure a building permit, until after 1) the City has adopted the amended and restated Penacook Village Tax Increment District Development Program and Financing Plan and 2) the date of April 1, 2021 has elapsed.
- d) The Developer securing construction financing for the Developer's Project in accordance with Section 1.6.3 of this Agreement, and the Developer providing proof of financing to the City.
- e) The Developer entering into contract(s) with a Construction Manager(s) or General Contractor(s) of its choice for construction of their applicable portions of Phase 1 of the Developer's Project, and the Developer providing proof of said contract to the City in accordance with Section 1.6.6 of this Agreement.
- f) The Developer providing the City with a Performance Mortgage for Unit #4 in accordance with Section 1.3.1 of this Agreement.
- g) The Developer providing the City with Deed Restrictions, Covenants, and Easements for the Developer's Project and Property, as set forth in Section 1.4 of this Agreement. Said items shall be provided to the City and recorded at the Merrimack Registry of Deeds prior to the Developer

recorded the condominium subdivision plan and closing with DSM on sale of Unit #3.

- h) The Developer recording the condominium plat for the Property at the Merrimack Registry of Deeds in accordance with Section 1.1.1 of this Agreement. The Condominium Plan shall not be recorded at the Merrimack County Registry of Deeds until after 1) the City has adopted the amended and restated Penacook Village Tax Increment District Development Program and Financing Plan and 2) the date of April 1, 2021 has elapsed.
- i) Receipt of easements, or dedication of rights-of-way for construction of the Public Improvements from the Developer in accordance with Section 1.2.2.1, if applicable. Said items shall be provided to the City and recorded at the Merrimack Registry of Deeds prior to the Developer recorded the condominium subdivision plan and closing with DSM on sale of land condominium unit #3.
- j) Receipt of the Developer's Payment for the Canterbury Improvements in accordance with Section 1.2.2.2 of this Agreement.
- k) The Developer executing a Public Improvements Maintenance Agreement with the City as set forth in Section 1.2.3.
- l) The City's acceptance of a Public Improvement Bid, which acceptance is at the City's sole discretion.
- m) The City's appropriation of funds to construct the Public Improvements.
- n) The City's receipt of all governmental permits and approvals required for the construction of the Public Improvements, with terms and conditions which shall be acceptable to the City in its sole discretion.
- o) The City's acknowledged receipt and acceptance of DSM's Corporate Guaranty, attached hereto as Exhibit 7, which Corporate Guaranty may be delivered to be held by the City in escrow pending completion of DSM's purchase of Unit 3.

Subject to any right to notice or to cure in any Mortgagee, the failure to satisfy any of the conditions above shall give the City the

right to terminate this Agreement. Upon termination this Agreement shall become null and void and the Parties shall have no further rights or obligations herein.

3. **REPRESENTATIONS AND WARRANTIES**

3.1. **Representations and Warranties of the City.** The City hereby represents and warrants to the best of its knowledge and belief that:

3.1.1. The execution and delivery of this Agreement and the performance of the City's obligations hereunder have been duly authorized by such municipal action as necessary, and this Agreement constitutes the legal, valid and binding agreement of the City, enforceable against the City in accordance with its terms subject only to the conditions set out in this Agreement.

3.1.2. Subject to the conditions set out in this Agreement, neither the execution or delivery by the City of this Agreement, the performance by the City of its obligations herein, nor the fulfillment by the City of the terms or conditions hereof conflicts with, violates or results in a breach of any constitution, law or governmental regulation applicable to the City, or conflicts with, violates or results in a breach of any term or condition of any judgment or decree, or any agreement or instrument, to which the City is a party or by which the City or any of its properties or assets are bound, or constitutes a default there under.

3.1.3. The Concord City Council, by its approval of Resolution # 9360 on April 12, 2021 authorized the City Manager to execute this Agreement.

3.1.4. There is no action, suit or proceeding, at law or in equity, or official investigation before or by any court or Governmental Authority, pending or threatened against the City, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the City of its obligations hereunder, or which, in any way, may adversely materially affect the validity or enforceability of this Agreement.

3.1.5. The City agrees that this Agreement may not be assigned to any other party.

3.2. **Representations and Warranties of the Developer.** The Developer hereby represents and warrants to the best of its knowledge and belief that:

- 3.2.1. The Developer has the power and authority to execute, deliver and carry out the terms and provisions of this Agreement and all necessary action has been taken to authorize the execution, delivery and performance by it of this Agreement. This Agreement will, upon execution and delivery thereof by the Developer, constitute valid, legal and binding obligations of the Developer and shall be enforceable against the Developer in accordance with the respective terms thereof.
- 3.2.2. Neither the execution or delivery by the Developer of this Agreement, the performance by the Developer of its obligations in connection with the transactions contemplated hereby, nor the fulfillment by the Developer of the terms or conditions hereof conflicts with, violates or results in a breach of any constitution, law or governmental regulation applicable to the Developer, or conflicts with, violates or result in a breach of any term or condition of any judgment or decree, or any agreement or instrument, to which the Developer is a party or by which the Developer or any of its properties or assets are bound, or constitutes a default there under.
- 3.2.3. No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Authority is required for the valid execution and delivery of this Agreement by the Developer, except such as have been duly obtained or made.
- 3.2.4. There is no action, suit or proceeding, at law or in equity, or official investigation before or by any court or Governmental Authority, pending or threatened against the Developer or its principal(s), affiliate(s), or entities controlled by its principal(s), wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the Developer of its obligations hereunder or the performance by the Developer of its obligations under the transactions contemplated hereby, or which, in any way, questions or may adversely materially affect the validity or enforceability of this Agreement or any other agreement or instrument entered into by the Developer in connection with the transactions contemplated hereby.
- 3.2.5. As of the effective date of this Agreement, the Developer has executed a Letter of Intent with DSM concerning the proposed sale of Condominium Unit #3 to DSM for development of an 80,755+/- SF grocery store ("Grocery Store"), with the possibility of additional commercial development to potentially include a 22,483+/-SF attached retail unit, which building sizes

may be adjusted upward or downward based upon permitting requirements, market conditions, actual tenancies, and other factors.

3.2.6. On April 29, 2020 the Developer executed a Lease Agreement with the State of New Hampshire Liquor Commission concerning the development of a 13,534SF +/- Liquor Store at the Property.

4. **DEFAULT**

4.1. ***Default by Developer.*** In the event the Developer shall fail to fulfill any other of its obligations hereunder and such failure continues for thirty (30) days after written notice from City (or such additional time as may be reasonably required if such failure cannot be cured within said thirty (30) day period provided that Developer is diligently pursuing said cure), then the City's remedy shall be limited to its rights and remedies as set forth within the specific Article, Section, or Sub-Section of this Agreement for which default has occurred. However, if no rights or remedies are expressly defined within the specific Article, Section, or Sub-Section in which the default occurred, then the City shall have the right to pursue any and all rights it may have at law and in equity to address any such breach including, without limitation, a suit for specific performance. The remedies stated herein shall be cumulative. The provisions of this Sub-Section are subject to the rights in any Mortgagee to notice, to cure, or as otherwise provided for any Mortgagee under this Agreement.

4.2. ***Default by City.*** If the City shall fail to fulfill its obligations hereunder, and such failure continues for thirty (30) days after written notice from the Developer (or such additional time as may be reasonable required if such failure cannot be cured within said thirty (30) day period provided that City is diligently pursuing said cure) then the Developer's remedy shall be limited to its rights and remedies as set forth within the specific Article, Section, or Sub-Section of this Agreement for which default has occurred. However, if no rights or remedies are expressly defined within the specific Article, Section, or Sub-Section in which default occurred, then the Developer shall have the right to terminate this Agreement, upon which neither party shall have any further rights against the other under this Agreement; and/or pursue any and all rights it may have at law and in equity to address any such breach including, without limitation, suit for specific performance. The remedies stated herein shall be cumulative.

5. **DEVELOPMENT SCHEDULE**

- 5.1. **General:** Attached to this Agreement is a Development Schedule (Exhibit 6) which details the anticipated date and sequence of various elements of the Project to be completed by the Developer, and the City.

The Parties acknowledge that the Development Schedule is a complex schedule requiring the coordinated efforts of multiple parties and dependent in many instances on the actions or approvals of third parties.

The Parties agree to use diligent efforts and to cooperate with each other in undertaking their respective responsibilities under this Agreement, including, but not limited to, those events listed.

The Parties agree that time is of the essence in performance of their respective obligations under this Agreement. The Developer and the City acknowledge that the completion of the Development Schedule is dependent on events to be determined following the approval of this Agreement by the City Council.

- 5.2. **Milestones and Deadlines.** The Milestones in the Exhibit 6 Project Schedule, and all contingencies for the City to proceed with construction of the Public Improvements set forth in Section 2.3.8, shall be automatically extended for Force Majeure or Excusable Delays described in Section 6.1 and 6.2 of this Agreement, except as follows:

5.2.1. All dates associated with the Minimum Payments and Supplemental Payments set forth in Section 1.3.2 of this Agreement, except as expressly provided therein.

6. **FORCE MAJEURE OR EXCUSABLE DELAYS**

- 6.1. **General:** For the purposes of any of the provisions of this Agreement, neither the Developer nor the City, as the case may be, shall be considered in breach of or default in its obligations hereunder in the event of unavoidable delay in the performance of such obligations due to causes beyond its control and without its fault or negligence, including but not limited to, acts of God, or of the public enemy, acts of the other party, fires, floods, or other casualties, epidemics, pandemics, quarantine restrictions, labor disputes, litigations (including, without limitation, any appeal of any approval needed either for amendments to the Penacook Village Tax Increment Finance District appropriation votes by the City Council related thereto, any permit or approval needed for Phase 1 of the Developer's Project, unexpected delays in the approval process, freight embargoes, delays stemming from unusually severe weather, unforeseen conditions or delays encountered during construction of Phase 1 of the Developer's Project or Public Improvements, or delays of utility companies, contractors and subcontractors due to such causes; it being

the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of such Party shall be extended for the period of the enforced delay, provided, that the Party seeking the benefit of the provisions of this Section shall, within thirty (30) days after the beginning of any such enforced delay, have first notified the other Party thereof in writing stating the cause or causes thereof and requesting an extension for the period of the enforced delay. In calculating the length of the delay, the Developer and the City shall consider not only actual work stoppages, but also any consequential delays resulting from such stoppage as well.

- 6.2. **Winter Conditions:** Provisions in this Agreement relating to the time period for completion of Phase 1 of the Developer's Project by the Developer, or Public Improvements by the City shall be deemed to be reasonably extended when seasonal weather conditions prevent a Party from proceeding under normal construction conditions. It is expressly agreed that neither Party will be obligated to undertake site work or exterior construction activities during the Winter Season, which typically commences on or about November 15th and continues to approximately April 15th, subject to weather conditions (freezing temperatures, frozen precipitation, frost, and similar matters. All time periods and deadlines set forth in this Agreement and in Exhibit 6 shall be reasonably extended to accommodate Winter Conditions, except those deadlines known as the Grocery Store Completion Date and Liquor Store Completion Date.

7. **GENERAL PROVISIONS**

- 7.1. **Cooperation.** The Developer and the City agree to cooperate with each other in order to achieve the purposes of this Agreement and, in connection therewith, to take such further actions and to execute such further documents as may reasonably be requested by the City, the Developer, or their representatives, agents, and consultants, whether or not explicitly set forth herein as may be necessary in connection with Developer's Project and/or the implementation of the goals and objectives of this Agreement. Furthermore, no party shall be considered in default under this Agreement and neither party shall exercise any rights and remedies granted to it hereunder until the other party has received written notice of the alleged default and has had a reasonable time (as is appropriate under the conditions existing at that time).
- 7.2. **Entire Agreement; Amendments.** This Agreement embodies the entire agreement and understanding between the Parties hereto relating to the subject matter herein and supersedes all prior agreements and understandings between the Parties. This 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, shall be effective only upon receipt of such approval.

- 7.3. **Headings.** The headings to the sections and subsections of this Agreement have been inserted for convenience of reference only and shall not modify, define, limit or expand the express provisions of this Agreement.
- 7.4. **Exhibits.** All exhibits referred to in this Agreement are hereby incorporated by reference and expressly made a part hereof.
- 7.5. **Governing Law.** This Agreement shall in all respects be governed by, and construed and enforced in accordance with, the laws of the State of New Hampshire.
- 7.6. **Enforceability and Severability.** Any provision of this Agreement that is determined to be illegal or unenforceable by a court of competent jurisdiction, shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.
- 7.7. **Consent to Jurisdiction and Venue.** The City and the Developer 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 Agreement or any related agreement. All legal actions taken by the Parties shall be commenced in Merrimack County New Hampshire Superior Court. The Parties hereby waive their right to a jury trial.
- 7.8. **Independent Parties.** The City and the Developer are independent Parties under this Agreement, and nothing in this Agreement shall be deemed or construed for any purpose to establish between any of them or among them a relationship of principal and agent, employment, partnership, joint venture, or any other relationship other than independent parties.
- 7.9. **Assignment; Binding Effect.** The Developer shall not, without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed, assign, pledge or transfer (collectively "Assignment or Assign") all or any part of, or any right or obligation under, this Agreement, whether voluntarily or by operation of law, and any such assignment without such consent will be null and void. Provided, however that, any such assignee shall be registered as "Active" and in "Good Standing" with the Corporate Division of the New Hampshire Secretary of State, and such Assignee, shall agree in writing to assume all of Developer's obligations assigned under this Agreement, and Developer

shall represent and warrant in writing that, to the best of Developer's knowledge and belief based upon Developer's reasonable investigation, the assignee has or has access to the financial and technical ability to fulfill all of the then remaining obligations of the Developer under the Agreement. The provisions of this Sub-Section do not limit the rights of the Developer to determine its financing and mortgage the Property, or parts of it.

- 7.10. **Authorized Assignment.** Notwithstanding the Assignment provision of this Agreement in Section 7.9, the Developer shall be authorized to convey Unit #3 to DSM for the purposes of developing an 80,755+/- SF grocery store, with the possibility of additional commercial development to potentially include a 22,483+/-SF attached retail unit, which building sizes may be adjusted upward or downward based upon permitting requirements, market conditions, actual tenancies, and other factors, as described in Section 1.1.2 of this Agreement. Notwithstanding anything to the contrary in this Agreement, following DSM's purchase of Unit #3, the only ongoing obligations and liabilities of DSM pursuant to this Agreement shall be: (1) its obligation to make the Minimum Payments and Supplemental Payments, if any, due with respect to Unit #3, and (2) its obligation to complete the improvements within Unit #3 as set forth in the DSM Corporate Guaranty.
- 7.11. **Survival of Agreement.** The agreements, covenants, indemnities, representations and warranties contained herein shall survive the execution and delivery of this Agreement.
- 7.12. **Waivers.** Failure on the part of any Party to complain of any action or non-action on the part of the other Party, no matter how long the same may continue, shall not be deemed to be a waiver of any such Party's rights hereunder. No waiver at any time of any provision hereof by any Party shall be construed as a waiver of any other provision hereof or a waiver at any subsequent time of the same provision.
- 7.13. **No Rights Conferred Upon Others.** Except as expressly set out herein, nothing in this Agreement shall be construed as giving any individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government, other than the Parties hereto, any right, remedy or claim under or in respect of this Agreement or any provision hereof.
- 7.14. **Preservation of Rights.** Nothing herein or in any related agreement shall limit or be construed to limit in any way rights or remedies the City may have for the collection of real property taxes under law, unless expressly set forth herein.

- 7.15. **Time of the Essence.** The Parties agree that time is of the essence in performance of their respective obligations under this Agreement.
- 7.16. **Good Faith and Fair Dealing.** Unless expressly stated otherwise in this Agreement, whenever a Party's consent or approval is required under this Agreement, or whenever a Party shall have the right to give an instruction or request another party to act or to refrain from acting under this Agreement, or whenever a Party must act or perform before another Party may act or perform under this Agreement, such consent, approval, or instruction, request, act or performance shall be reasonably made or done, or shall not be unreasonably withheld, delayed, or conditioned, as the case may be.
- 7.17. **Municipal Approvals.** The execution of this Agreement does not preempt or supersede the review process or powers of any city or other governmental board, committee, commission, or department, or excuse the Parties from the requirement to apply for and receive all necessary permits and approvals from all applicable governmental boards, committees, commissions or departments.
- 7.18. **Warranties and Representations:** The City and the Developer each acknowledge that they have not been influenced to enter into this transaction or relied upon any warranties or representations not specifically set forth or incorporated into this Agreement.
- 7.19. **Saving Clause.** In the event that any of the terms or provisions of this Agreement are declared invalid or unenforceable by any court of competent jurisdiction or any Federal or State Government Agency having jurisdiction over the subject matter of this Agreement, the remaining terms and provisions that are not affected thereby shall remain in full force and effect.

[The remainder of this page left blank intentionally]

LIST OF EXHIBITS

- Exhibit 1 Existing conditions plan titled “Existing Conditions Plat Lands of Bradley Whitney and Jennifer Habel, Interchange Development LLC location Whitney Road, Concord NH, Merrimack County Tax Map 06P Lots 5 & 6” prepared by FWS Land Surveying P.L.L.C. dated October 19, 2020, known as the “Developer’s Property”.
- Exhibit 2 Conceptual master plan for Developer’s Property titled “Comprehensive Development Plan Mixed Use Development Whitney Road, Concord NH” prepared by TF Moran dated June 17, 2019, known as the “Developer’s Master Plan for the Developer’s Project”
- Exhibit 3 Condominium subdivision plan titled “Condominium Site Plan – Lands of Bradley Whitney and Jennifer Habel and Interchange Development L.L.C.” prepared by FWS Land Surveying P.L.L.C. dated October November 20, 2020;
- Site plan titled “Overall Site Layout Plan – Mixed Use Development – Whitney Road Concord NH” prepared by TFM dated June 17, 2019;
- Conceptual elevation renderings titled “Liquor and Wine Outlet City of Concord Concept Design TCD Construction” prepared by PCA November 10, 2020; and,
- Conceptual elevation renderings titled “Concord NH – Whitney Road Market Basket and Adjacent Tenant” prepared by PCA for DSM Realty dated July 15, 2020.
- Exhibit 4 “90%” plan for the Public Improvements titled “Hoit Road – Whitney Road Intersection Improvements General Plan” prepared by VHB dated January 14, 2021.
- Exhibit 5 “90%” plan for the Canterbury Improvements titled “Hoit Road – Whitney Road Intersection Improvements General Plan” prepared by VHB dated January 14, 2021.
- Exhibit 6 Development Schedule
- Exhibit 7 Demoulas Super Markets, Inc. Corporate Guarantee

[The remainder of this page left blank intentionally]

Executed as a sealed instrument this 11th day of May 2021.


CITY OF CONCORD

By:  Date: 5.11.2021
Thomas J. Aspell, Jr., City Manager
Duly Authorized

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

In Concord, on the 11th day of May, 2021, before me, personally appeared **THOMAS J. ASPELL, JR.**, known to me or proved to be the person named in and who executed the foregoing instrument, and being first duly sworn, such person acknowledged that he executed said instrument for the purposes therein contained as his free and voluntary act and deed.

ASHLEY M. HAMILTON, Notary Public
State of New Hampshire
My Commission Expires December 19, 2023


Justice of the Peace/Notary Public

DEVELOPER

INTERCHANGE DEVELOPMENT L.L.C.

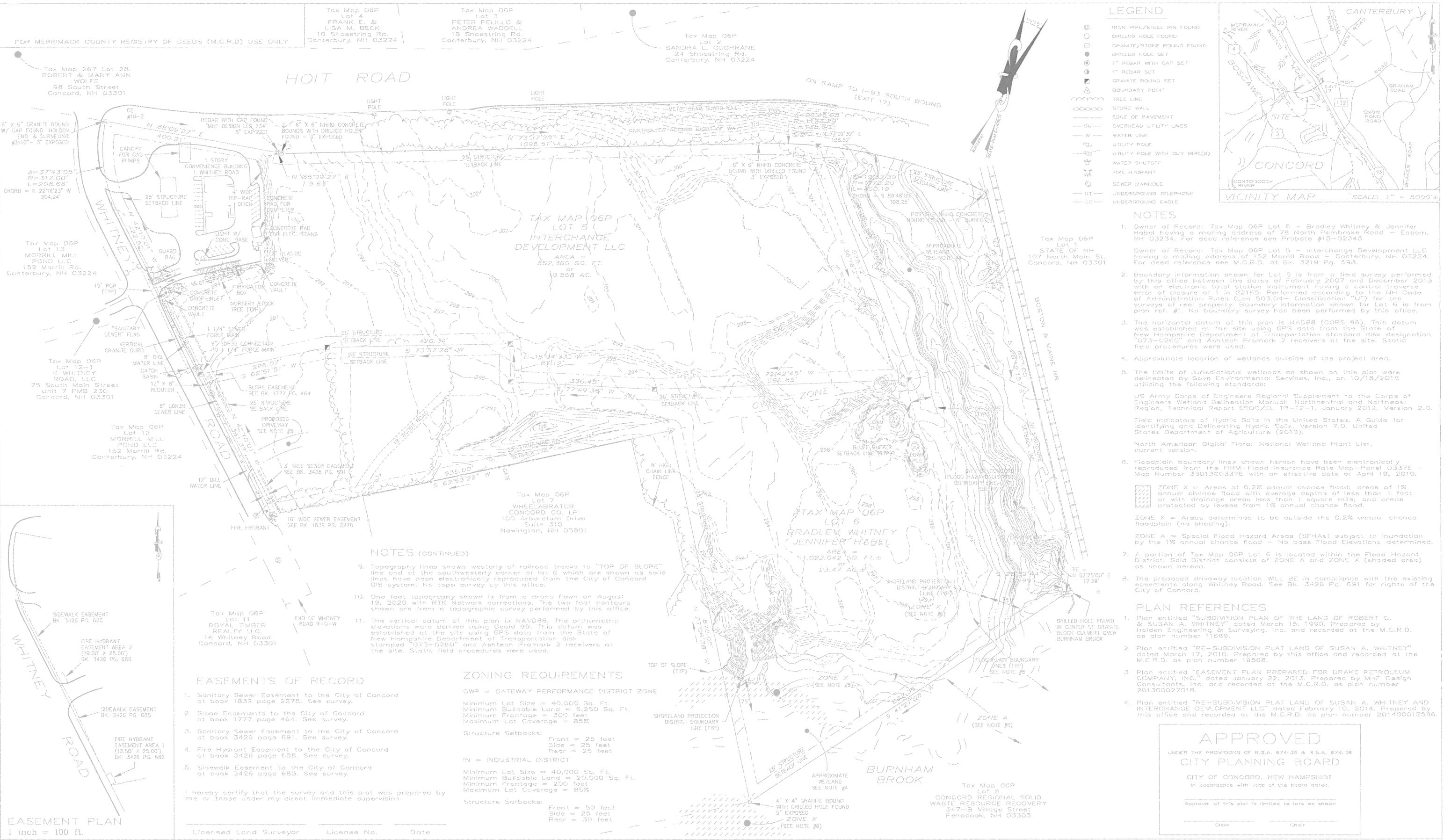
By: Laurie M. Rausco Date: 5/11/2021
Member
Duly Authorized

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

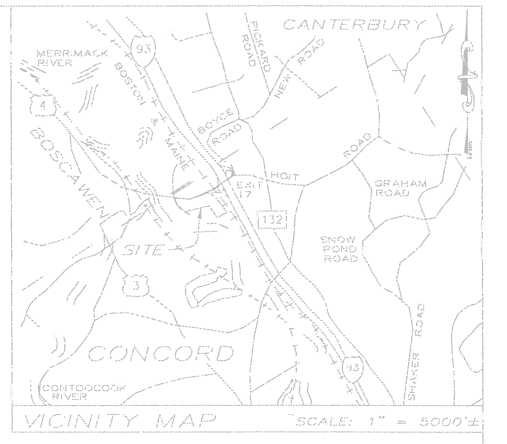
In Concord, on the 11th day of May, 2021, before me, personally appeared Laurie Rausco, of Interchange Development, L.L.C., known to me or proved to be the person named in and who executed the foregoing instrument, and being first duly sworn, such person acknowledged that she executed said instrument for the purposes therein contained as her free and voluntary act and deed.

ASHLEY M. HAMILTON, Notary Public
State of New Hampshire
My Commission Expires December 19, 2023

Ashley M. Hamilton
Justice of the Peace/Notary Public



- ### LEGEND
- ⊙ IRON PIPE/STEEL PIN FOUND
 - DRILLED HOLE FOUND
 - GRANITE/STONE BOUND FOUND
 - ⊙ DRILLED HOLE SET
 - ⊙ 1" REBAR WITH CAP SET
 - ⊙ 1" REBAR SET
 - ⊙ GRANITE BOUND SET
 - ⊙ BOUNDARY POINT
 - △ TREE LINE
 - ⊖ STONE WALL
 - ⊖ EDGE OF PAVEMENT
 - OVERHEAD UTILITY LINES
 - WATER LINE
 - UTILITY POLE
 - UTILITY POLE WITH GUY WIRE(S)
 - WATER SHUTOFF
 - PIPE HYDRANT
 - SEWER MANHOLE
 - UNDERGROUND TELEPHONE
 - UNDERGROUND CABLE

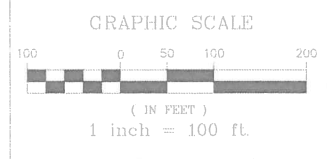


- ### NOTES
1. Owner of Record: Tax Map 06P Lot 5 - Bradley Whitney & Jennifer Habel having a mailing address of 77 North Elmshire Road - Epsom, NH 03224. For deed reference see Probate #15-02345.
 2. Owner of Record: Tax Map 06P Lot 6 - Interchange Development LLC having a mailing address of 152 Morrill Road - Canterbury, NH 03224. For deed reference see M.C.R.D. at Bk. 3219 Pg. 598.
 3. Boundary information shown for Lot 5 from a field survey performed by this office between the dates of February 2007 and December 2013 with an electronic total station instrument having a control traverse error of closure of 1 in 22185. Performed according to the NH Code of Administration Rules (Lan 503.04 - Classification "U") for the surveys of real property. Boundary information shown for Lot 6 is from plan ref. #1. No boundary survey has been performed by this office.
 4. The horizontal datum of this plan is NAD83 (CORS 96). This datum was established at the site using GPS data from the State of New Hampshire Department of Transportation standard disk designation "073-0260" and Ashtech Promark 2 receivers at the site. Static field procedures were used.
 5. Approximate location of wetlands outside of the project area.
 6. The limits of Jurisdictional wetlands as shown on this plat were delineated by Cove Environmental Services, Inc., on 10/18/2018 utilizing the following standards:
US Army Corps of Engineers Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northeast and Northcentral Region, Technical Report ERDC/EL TR-12-1, January 2012, Version 2.0.
Field Indicators of Hydric Soils in the United States, A Guide for Identifying and Delineating Hydric Soils, Version 7.0, United States Department of Agriculture (2010).
North American Digital Flora: National Wetland Plant List, current version.
 7. Floodplain boundary lines shown hereon have been electronically reproduced from the FIRM-Flood Insurance Rate Map-Panel 0337E - Map Number 3301300337E with an effective date of April 19, 2010.
ZONE X = Areas of 0.2% annual chance flood; areas of 1% annual chance flood with average depths of less than 1 foot or with drainage areas less than 1 square mile; and areas protected by levees from 1% annual chance flood.
ZONE A = Areas determined to be outside the 0.2% annual chance floodplain (no shading).
ZONE A = Special Flood Hazard Areas (SFHAs) subject to inundation by the 1% annual chance flood - No base Flood Elevation determined.

- ### PLAN REFERENCES
1. Plan entitled "SUBDIVISION PLAN OF THE LAND OF ROBERT C. & SUSAN A. WHITNEY" dated March 15, 1990. Prepared by Holden Engineering & Surveying, Inc. and recorded at the M.C.R.D. as plan number 11669.
 2. Plan entitled "RE-SUBDIVISION PLAT LAND OF SUSAN A. WHITNEY" dated March 17, 2010. Prepared by this office and recorded at the M.C.R.D. as plan number 19568.
 3. Plan entitled "EASEMENT PLAN PREPARED FOR DRAKE PETROLEUM COMPANY, INC." dated January 22, 2013. Prepared by MHF Design Consultants, Inc. and recorded at the M.C.R.D. as plan number 201300027018.
 4. Plan entitled "RE-SUBDIVISION PLAT LAND OF SUSAN A. WHITNEY AND INTERCHANGE DEVELOPMENT LLC" dated February 10, 2014. Prepared by this office and recorded at the M.C.R.D. as plan number 201400012586.

APPROVED
 UNDER THE PROVISIONS OF R.S.A. 674:35 & R.S.A. 674:36
CITY PLANNING BOARD
 CITY OF CONCORD, NEW HAMPSHIRE
 In accordance with vote of the board dated:
 Approval of this plat is limited to lots as shown
 _____ Clerk _____ Chair

FWS LAND SURVEYING P.L.L.C.
 56 BOYCE ROAD CANTEBURY, NH 03224
 (603) 783 - 9924



DATE: OCTOBER 19, 2020
 PROJECT NO. 18-032 EXSDRONE
 SHEET 1 OF 1

EXISTING CONDITIONS PLAT
 LANDS OF
BRADLEY WHITNEY AND JENNIFER HABEL
 INTERCHANGE DEVELOPMENT LLC
 LOCATION
 WHITNEY ROAD - CONCORD, NH - MERRIMACK COUNTY
 TAX MAP 06P LOTS 5 & 6

EASEMENTS OF RECORD

1. Sanitary Sewer Easement to the City of Concord at book 1839 page 2278. See survey.
2. Slope Easements to the City of Concord at book 1777 page 464. See survey.
3. Sanitary Sewer Easement to the City of Concord at book 3426 page 691. See survey.
4. Fire Hydrant Easement to the City of Concord at book 3426 page 688. See survey.
5. Sidewalk Easement to the City of Concord at book 3426 page 685. See survey.

I hereby certify that the survey and this plat was prepared by me or those under my direct immediate supervision.

Licensed Land Surveyor License No. Date

ZONING REQUIREMENTS

GWP = GATEWAY PERFORMANCE DISTRICT ZONE
 Minimum Lot Size = 40,000 Sq. Ft.
 Minimum Buildable Land = 6,250 Sq. Ft.
 Minimum Frontage = 300 feet
 Maximum Lot Coverage = 85%

Structure Setbacks:
 Front = 25 feet
 Side = 25 feet
 Rear = 25 feet

IN = INDUSTRIAL DISTRICT
 Minimum Lot Size = 40,000 Sq. Ft.
 Minimum Buildable Land = 20,000 Sq. Ft.
 Minimum Frontage = 200 feet
 Maximum Lot Coverage = 85%

Structure Setbacks:
 Front = 50 feet
 Side = 25 feet
 Rear = 30 feet

NOTES (CONTINUED)

9. Topography lines shown westerly of railroad tracks to "TOP OF SLOPE" line and at the southwesterly corner of lot 6 which are shown as solid lines have been electronically reproduced from the City of Concord GIS system. No topo survey by this office.
10. One foot topography shown is from a drone flown on August 19, 2020 with RTK Network corrections. The two foot contours shown are from a topographic survey performed by this office.
11. The vertical datum of this plan is NAVD83. The orthometric elevations were derived using Geoid 99. This datum was established at the site using GPS data from the State of New Hampshire Department of Transportation disk stamped "073-0260" and Ashtech Promark 2 receivers at the site. Static field procedures were used.



REFERENCE PLANS
 1. RE-SUBDIVISION PLAT LANDS OF SUSAN A. WHITNEY AND INTERCHANGE DEVELOPMENT LLC. LOCATION: WHITNEY ROAD - CONCORD, NH - MERRIMACK COUNTY, TAX MAPS 06P, LOTS 5 & 6. PREPARED BY FWS LAND SURVEYING P.L.L.C., DATED FEB. 10, 2014 LAST REVISED MAY 01, 2014.

NOTES
 1. THE PURPOSE OF THIS PLAN IS TO SHOW A MIXED USE DEVELOPMENT WHICH INCLUDES A LOT LINE ADJUSTMENT, COMMON ACCESS/PARKING AREAS AND COMMON UTILITIES.
 2. CURRENT ZONING IS GATEWAY PERFORMANCE DISTRICT (GWP) & INDUSTRIAL (IN) ZONING DISTRICT.

	REQUIRED DWP/IN	PROPOSED DWP/IN
MIN. LOT SIZE:	—/40,000 SF	1/1
MIN. BUILDABLE LAND:	—/20,000 SF	1/1
MIN. LOT FRONTAGE:	300'/200'	1/1
MIN. BUILDING SETBACKS:		
FRONT	25'/30'	>25'/NA
SIDE	25'/25'	>25'/>25'
REAR	25'/30'	>25'/>35'
MAX. LOT COVERAGE:	85%/85%	85%/85%

* SEE LOT LINE ADJUSTMENT PLAN BY FWS LAND SURVEY.

3. PARKING CALCULATIONS:
 REQUIRED:
 *SUPERMARKET: 1 SP/250 SF (80,775 SF) = 323 SP
 *SUPERMARKET (CLIENT REQUIREMENT): 5 SP/1,000 SF (80,775 SF) = 404 SP
 *ATTACHED RETAIL (ATTACHED TO SUPERMARKET): 1 SP/250 SF (22,483 SF) = 90 SP
 *ATTACHED RETAIL (ATTACHED TO SUPERMARKET): 5 SP/1,000 SF = 112 SP
 RETAIL: 1 SP/250 SF (41,720 SF) = 169 SP
 RESTAURANT: 1 SP/75 SF (6,052 SF + 1,120 SF PATIO) = 98 SP
 FASTFOOD: 1 SP/75 SF (2,400 SF) = 32 SP
 BANK: 1 SP/200 SF (2,400 SF) = 12 SP
 DENTAL OFFICE/EYE CARE CENTER: 1 SP/225 SF (4,000 SF) = 18 SP
 MEDICAL OFFICE: 1 SP/225 SF (7,000 SF) = 31 SP
 WAREHOUSE-DISTRIBUTION: 1 SP/1,500 SF (45,000 SF) = 30 SP
 TOTAL REQUIRED = 801 SPACES
 *TOTAL REQUIRED (CLIENT REQUIREMENT) = 904 SPACES
 PROPOSED: 927 SPACES

4. THE PROPERTY WILL BE SERVICED BY THE FOLLOWING SERVICES:
 DRAINAGE: PRIVATE
 SEWER: MUNICIPAL
 WATER: MUNICIPAL
 ELECTRIC: UNTIL

5. BOUNDARY INFORMATION SHOWN HEREON IS BASED ON REFERENCE PLAN INFORMATION.
 6. TOPOGRAPHY WAS GENERATED FROM REFERENCE PLAN INFORMATION.
 7. WETLANDS INFORMATION DEPICTED ON THIS PLAN IS FROM REFERENCE PLAN INFORMATION.
 8. EXAMINATION OF THE FLOOD INSURANCE RATE MAP FOR THE CITY OF CONCORD, NEW HAMPSHIRE, COMMUNITY PANEL NUMBER 33013003357E, EFFECTIVE DATE: APRIL 18, 2010, INDICATES THAT THE SUBJECT PARCEL IS PARTIALLY LOCATED WITHIN A FLOOD HAZARD AREA.
 9. WETLAND IMPACTS WILL REQUIRE AN APPLICATION TO NHDES WETLANDS BUREAU AND A VARIANCE FROM THE CITY ZONING BOARD OF ADJUSTMENTS. OBTAINING THESE PERMITS WILL DEPEND ON THE WETLAND FUNCTION AND VALUES, AND SENSITIVITY OF THE PROJECT.
 10. SITE DEVELOPMENT MAY REQUIRE RETAINING WALLS FOR GRADE CHANGES.
 11. RETAINING WALLS SHOWN ON THE PLAN ARE FOR CONCEPTUAL PURPOSES. FINAL LOCATION, TYPE, LENGTH, AND HEIGHT WILL BE DETERMINED UPON FINAL GRADING PLANS.
 12. EASEMENTS, RIGHTS, AND RESTRICTIONS SHOWN ARE THOSE WHICH IDENTIFIED BASED ON DATA USED IN CONCEPTUAL DESIGN. OTHER RIGHTS, EASEMENTS, OR RESTRICTIONS MAY EXIST WHICH DEED RESEARCH AND A TITLE EXAMINATION OF SUBJECT PARCEL(S) WOULD DETERMINE.
 13. THE LOCATION OF ANY UTILITY INFORMATION SHOWN ON THIS PLAN IS APPROXIMATE. TFMORAN INC. MAKES NO CLAIM TO THE ACCURACY OR COMPLETENESS OF UTILITIES SHOWN. PRIOR TO ANY EXCAVATION ON SITE THE CONTRACTOR SHALL CONTACT DIG SAFE AT 811.

TAX MAP 06P LOTS 5 & 6
COMPREHENSIVE DEVELOPMENT PLAN
MIXED USE DEVELOPMENT
WHITNEY ROAD, CONCORD, NH
 OWNED BY
BRADLEY WHITNEY & JENNIFER HABEL & INTERCHANGE DEVELOPMENT L.L.C.
 PREPARED FOR
INTERCHANGE DEVELOPMENT L.L.C.
 SCALE: 1"=80'
 JUNE 17, 2019

APPROVED BY THE CONCORD PLANNING BOARD
 ON _____ AND _____
 CHAIRMAN: _____
 SECRETARY: _____



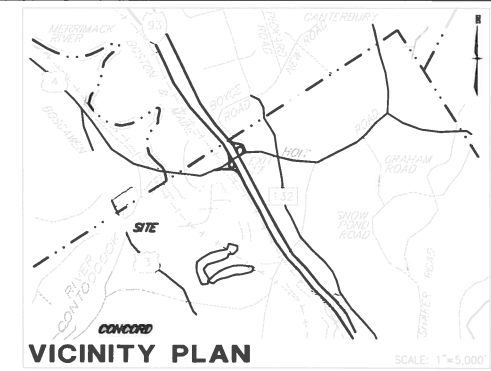
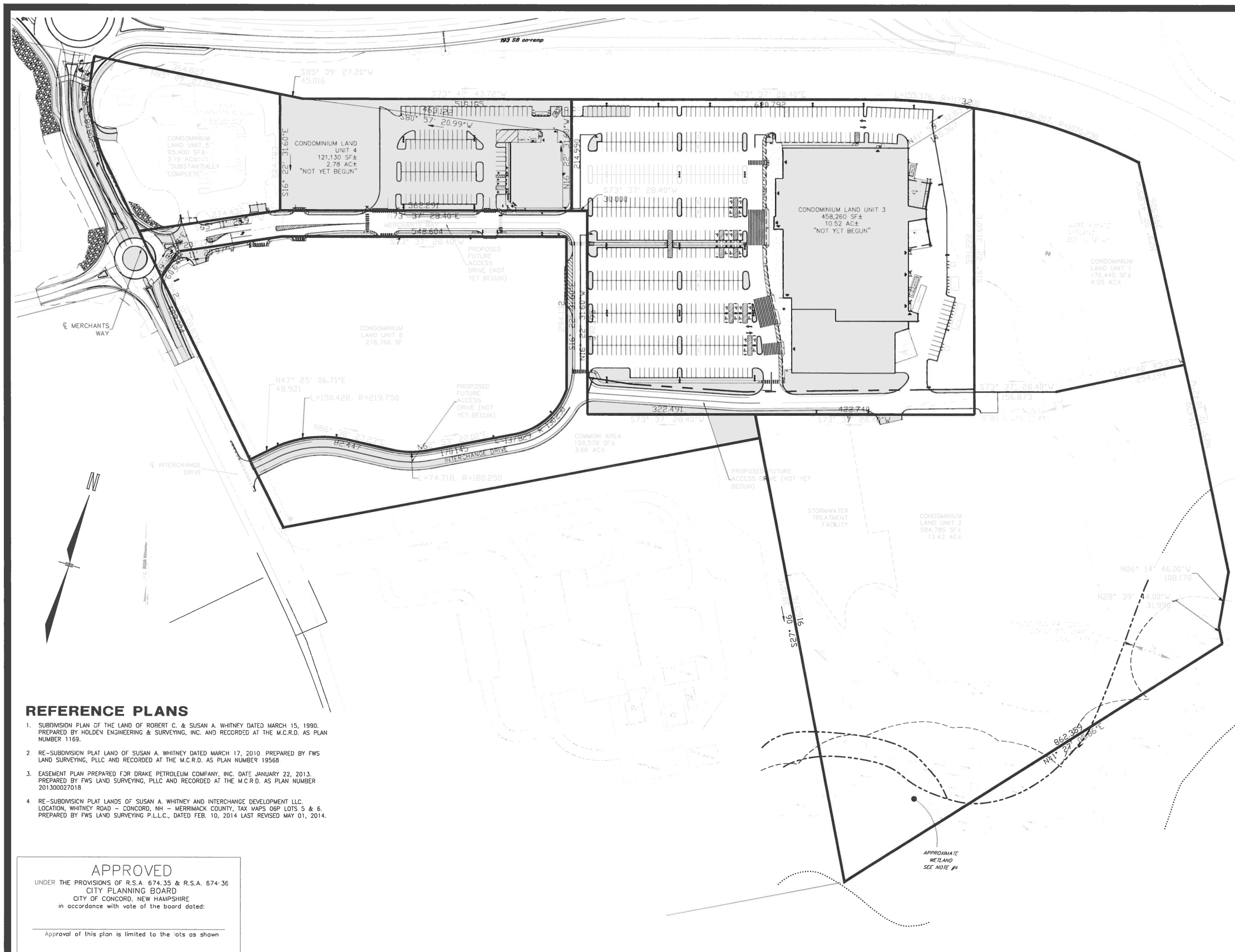
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REV.	DATE	DESCRIPTION	DESIGNER	CHECKER
1	10/20/18	FINAL SUBMITTAL	JSH	RED
2	5/9/20	REVISED PER A&T COMMENTS	JSH	RED
3	4/15/20	REVISED PER A&T COMMENTS	JSH	RED
4	5/7/20	REVISED PER A&T COMMENTS	JSH	RED
5	4/22/20	REVISED PER A&T COMMENTS	JSH	RED
6	3/10/20	REVISED PER A&T COMMENTS	PWH	JSH
7	1/22/19	ISSUE FOR PERMITTING	JSH	JSH
8	7/19/19	ISSUE FOR PERMITTING	JSH	JSH

TFM Civil Engineers 48 Constitution Drive
 Structural Engineers Bedford, NH 03110
 Traffic Engineers Phone (603) 472-4488
 Land Surveyors Phone (603) 472-9747
 Landscape Architects
 Scientists www.tfmoran.com

95830.00 OR JSH FB 48
 CK RED CADFILE 95830-00 Site R18 SHEET 1



NOTES

- THE PURPOSE OF THIS PLAN IS TO SHOW A PROPOSED CONDOMINIUM ON PARCELS 6P-3 AND 6P-6.
 - PARCELS 6P-5 AND 6P-6 SHALL BE VOLUNTARILY MERGED PRIOR TO THE ESTABLISHMENT OF THE PROPOSED CONDOMINIUM.
 - CURRENT ZONING IS GATEWAY PERFORMANCE DISTRICT (GWP) & INDUSTRIAL (W) ZONING DISTRICT.
- | | REQUIRED GWP/W | PROPOSED GWP/W |
|-------------------------|----------------|----------------|
| MIN. LOT SIZE: | NONE/40,000 SF | */* |
| MIN. BUILDABLE LAND: | NONE/20,000 SF | */* |
| MIN. LOT FRONTAGE: | 300'/200' | */* |
| MIN. BUILDING SETBACKS: | | |
| FRONT: | 25'/30' | >25'/NA |
| SIDE: | 25'/25' | >25'/>25' |
| REAR: | 25'/30' | >25'/>35' |
| MAX. LOT COVERAGE: | 85%/85% | <85%/<85% |
- THE PROPERTY WILL BE SERVICED BY THE FOLLOWING SERVICES:
DRAINAGE: PRIVATE
SEWER: MUNICIPAL
WATER: MUNICIPAL
ELECTRIC: UNITIL
 - BOUNDARY INFORMATION SHOWN HEREON IS BASED ON REFERENCE PLAN INFORMATION.
 - TOPOGRAPHY WAS GENERATED FROM REFERENCE PLAN INFORMATION.
 - WETLANDS INFORMATION DEPICTED ON THIS PLAN IS FROM REFERENCE PLAN INFORMATION.
 - EXAMINATION OF THE FLOOD INSURANCE RATE MAP FOR THE CITY OF CONCORD, NEW HAMPSHIRE, COMMUNITY PANEL NUMBER 3301300337E, EFFECTIVE DATE: APRIL 18, 2016, INDICATES THAT THE SUBJECT PARCEL IS PARTIALLY LOCATED WITHIN A FLOOD HAZARD AREA.
 - WETLAND IMPACTS WILL REQUIRE AN APPLICATION TO NHDES WETLANDS BUREAU AND A VARIANCE FROM THE CITY ZONING BOARD OF ADJUSTMENTS. OBTAINING THESE PERMITS WILL DEPEND ON THE WETLAND FUNCTION AND VALUES, AND SENSITIVITY OF THE PROJECT.

REFERENCE PLANS

- SUBDIVISION PLAN OF THE LAND OF ROBERT C. & SUSAN A. WHITNEY DATED MARCH 15, 1990. PREPARED BY HOLDEN ENGINEERING & SURVEYING, INC. AND RECORDED AT THE M.C.R.D. AS PLAN NUMBER 1169.
- RE-SUBDIVISION PLAT LAND OF SUSAN A. WHITNEY DATED MARCH 17, 2010. PREPARED BY FWS LAND SURVEYING, PLLC AND RECORDED AT THE M.C.R.D. AS PLAN NUMBER 19568.
- EASEMENT PLAN PREPARED FOR DRAKE PETROLEUM COMPANY, INC. DATE JANUARY 22, 2013. PREPARED BY FWS LAND SURVEYING, PLLC AND RECORDED AT THE M.C.R.D. AS PLAN NUMBER 201300027018.
- RE-SUBDIVISION PLAT LANDS OF SUSAN A. WHITNEY AND INTERCHANGE DEVELOPMENT LLC. LOCATION, WHITNEY ROAD - CONCORD, NH - MERRIMACK COUNTY, TAX MAPS 06P LOTS 5 & 6. PREPARED BY FWS LAND SURVEYING P.L.L.C., DATED FEB. 10, 2014 LAST REVISED MAY 01, 2014.

APPROVED
 UNDER THE PROVISIONS OF R.S.A. 674:35 & R.S.A. 674:36
 CITY PLANNING BOARD
 CITY OF CONCORD, NEW HAMPSHIRE
 in accordance with vote of the board dated:

 Approval of this plan is limited to the lots as shown

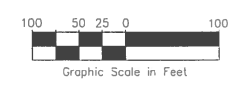
Chair _____ Clerk _____

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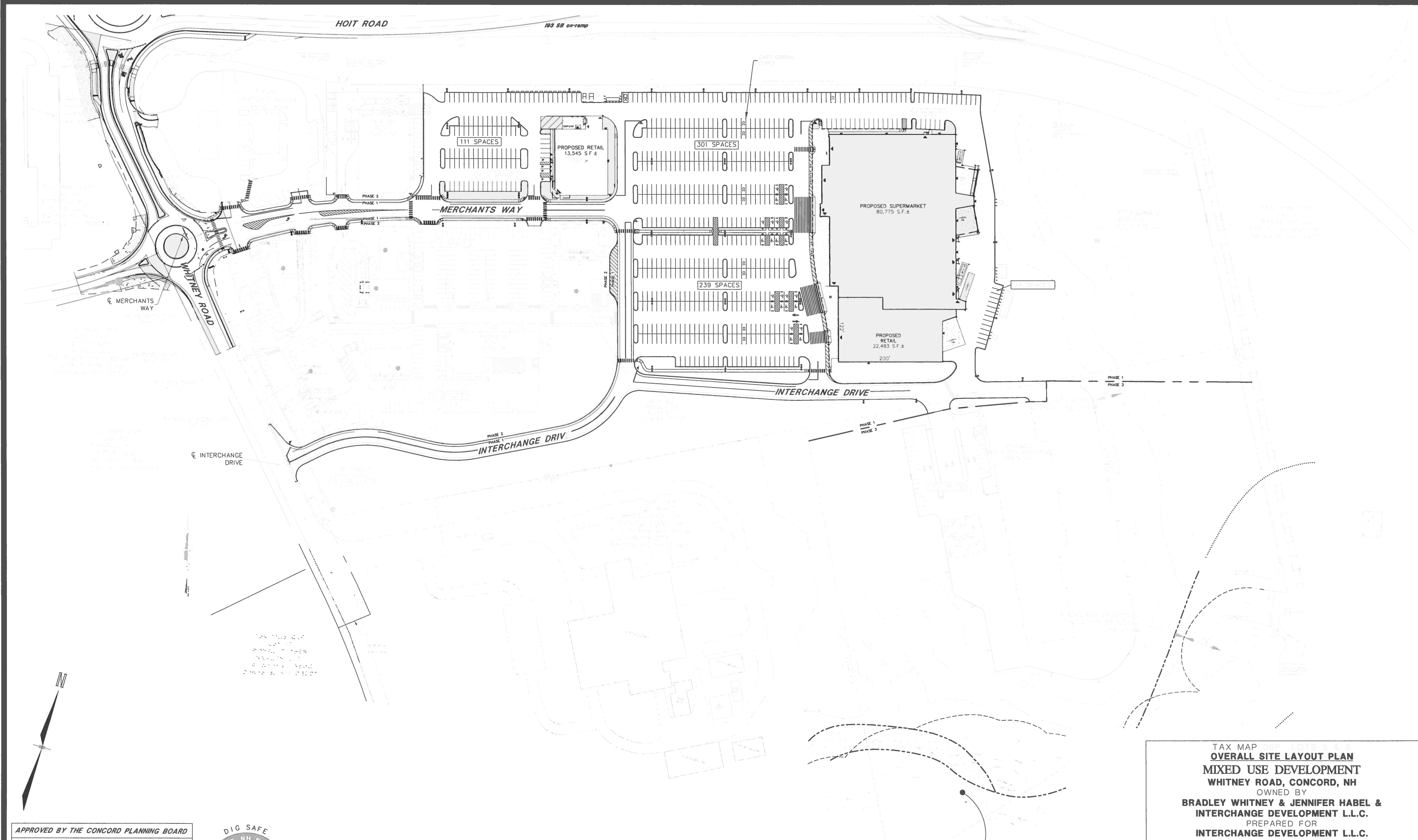
TAX MAP 06P LOTS 5 & 6
CONDOMINIUM SUBDIVISION PLAN
CONCORD CROSSING
 WHITNEY ROAD, CONCORD, NH
 OWNED BY
BRADLEY WHITNEY & JENNIFER HABEL & INTERCHANGE DEVELOPMENT L.L.C.
 PREPARED FOR
INTERCHANGE DEVELOPMENT L.L.C.
 SCALE: 1"=100' OCTOBER 20, 2020

TFM Civil Engineers
 Structural Engineers
 Traffic Engineers
 Land Surveyors
 Landscape Architects
 Scientists

48 Constitution Drive
 Bedford, NH 03110
 Phone (603) 472-4488
 Fax (603) 472-9747
 www.tfmoran.com

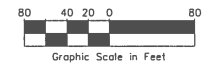


REV.	DATE	DESCRIPTION	DR	CK



APPROVED BY THE CONCORD PLANNING BOARD
 ON _____ AND
 CHAIRMAN: _____ AND
 SECRETARY: _____

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REV.	DATE	DESCRIPTION	DR	CK
10	11/20/20	MUNICIPAL PERMITTING	JSH	RED
9	10/20/20	MUNICIPAL PERMITTING	JSH	RED
8	6/8/20	REVISED PER AOT COMMENTS	JSH	RED
7	6/15/20	REVISED PER AOT COMMENTS	JSH	RED
6	5/4/20	REVISED PER AOT COMMENTS	JSH	RED
5	4/3/20	REVISED PER AOT COMMENTS	JSH	RED
4	3/10/20	REVISED PER AOT COMMENTS	PWH	JSH
3	11/22/19	ISSUE FOR PERMITTING	JSH	JSH
2	7/19/19	ISSUE FOR PERMITTING	JSH	JSH
REV.	DATE	DESCRIPTION	DR	CK

TAX MAP REFERENCE SHEET
OVERALL SITE LAYOUT PLAN
MIXED USE DEVELOPMENT
 WHITNEY ROAD, CONCORD, NH
 OWNED BY
BRADLEY WHITNEY & JENNIFER HABEL & INTERCHANGE DEVELOPMENT L.L.C.
 PREPARED FOR
INTERCHANGE DEVELOPMENT L.L.C.
 SCALE: 1"=80' JUNE 17, 2019

TFM	Civil Engineers	48 Constitution Drive
	Structural Engineers	Bedford, NH 03110
	Traffic Engineers	Phone (603) 472-4488
	Land Surveyors	Fax (603) 472-9747
	Landscape Architects	www.tfmoran.com
	Scientists	

95830.00	DR JSH	FB	48 Constitution Drive
	CK RED	CADFILE	Bedford, NH 03110
			Phone (603) 472-4488
			Fax (603) 472-9747
			www.tfmoran.com

SHEET C.2.0

Exhibit #3

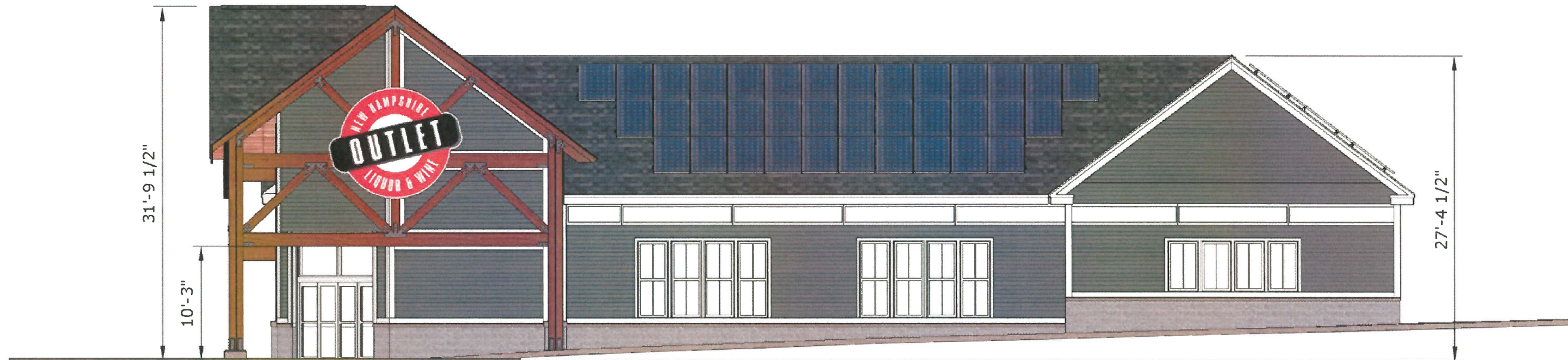
PCA

LIQUOR & WINE OUTLET
CITY OF CONCORD, NH

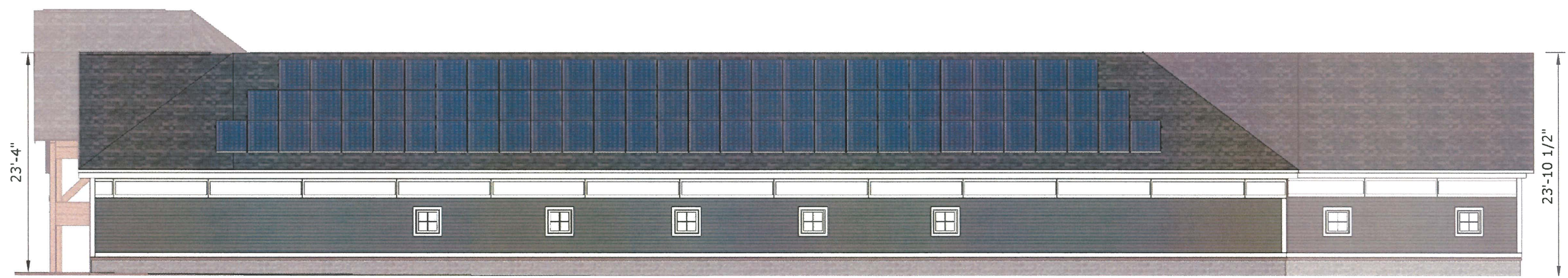
CONCEPT DESIGN

TCD CONSTRUCTION

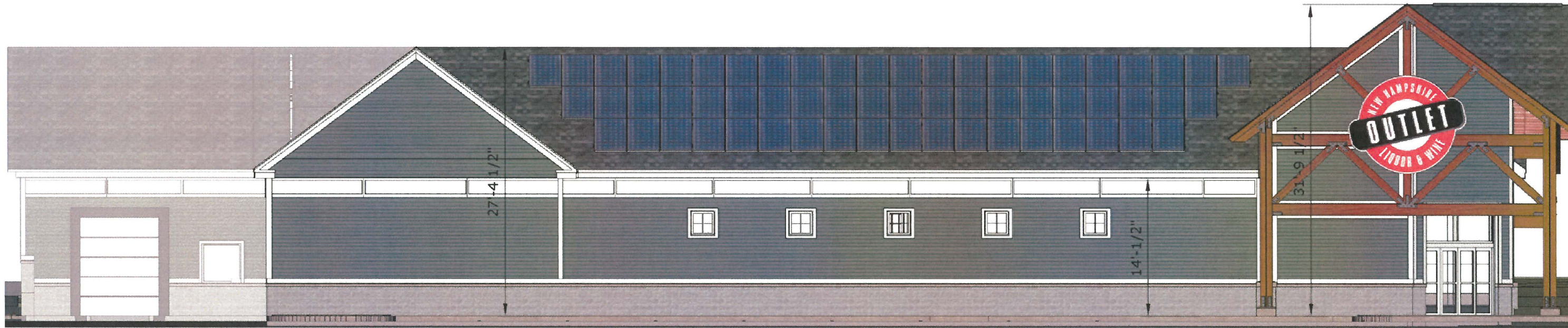
10|21|20



SOUTH ELEVATION
scale: 1" = 10'



EAST ELEVATION
scale: 1" = 10'



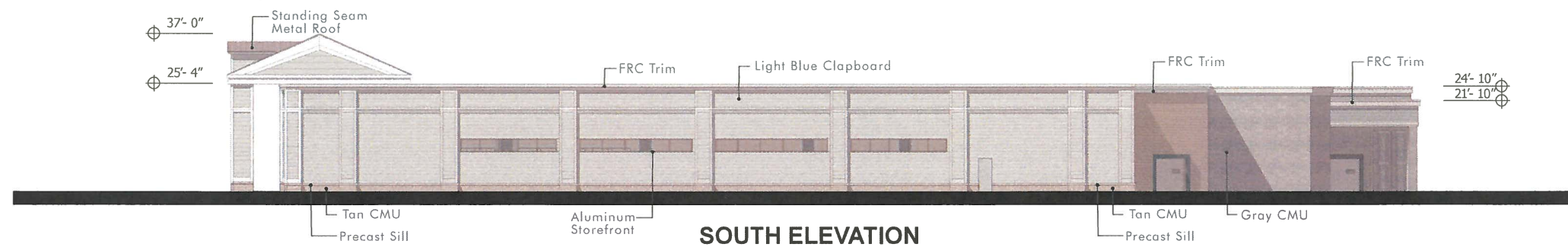
WEST ELEVATION
scale: 1" = 10'



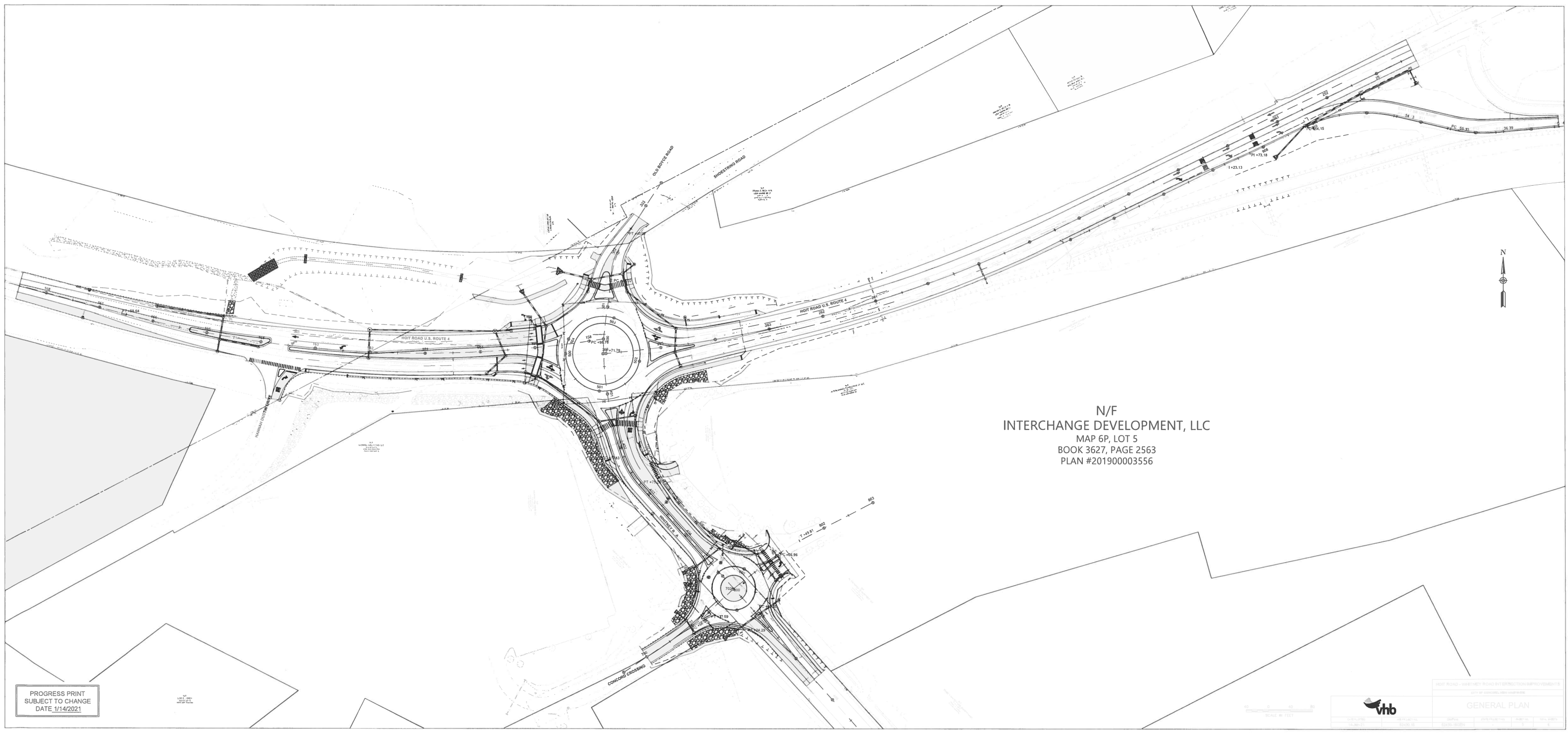
NORTH ELEVATION
scale: 1" = 10'



PERSPECTIVE VIEW







N/F
INTERCHANGE DEVELOPMENT, LLC
MAP 6P, LOT 5
BOOK 3627, PAGE 2563
PLAN #201900003556

PROGRESS PRINT
SUBJECT TO CHANGE
DATE 1/14/2021

SCALE IN FEET



HOT ROAD - WESTLEY ROAD INTERSECTION IMPROVEMENTS				
2021				
GENERAL PLAN				
DATE	1/14/2021	SCALE	AS SHOWN	BY
DESIGNED BY		CHECKED BY		
DRAWN BY		APPROVED BY		

Exhibit 5: "90%" Plan for the Canterbury Improvements titled "Hoit Road – Whitney Road Intersection Improvements General Plan" prepared by VHB dated January 14, 2021

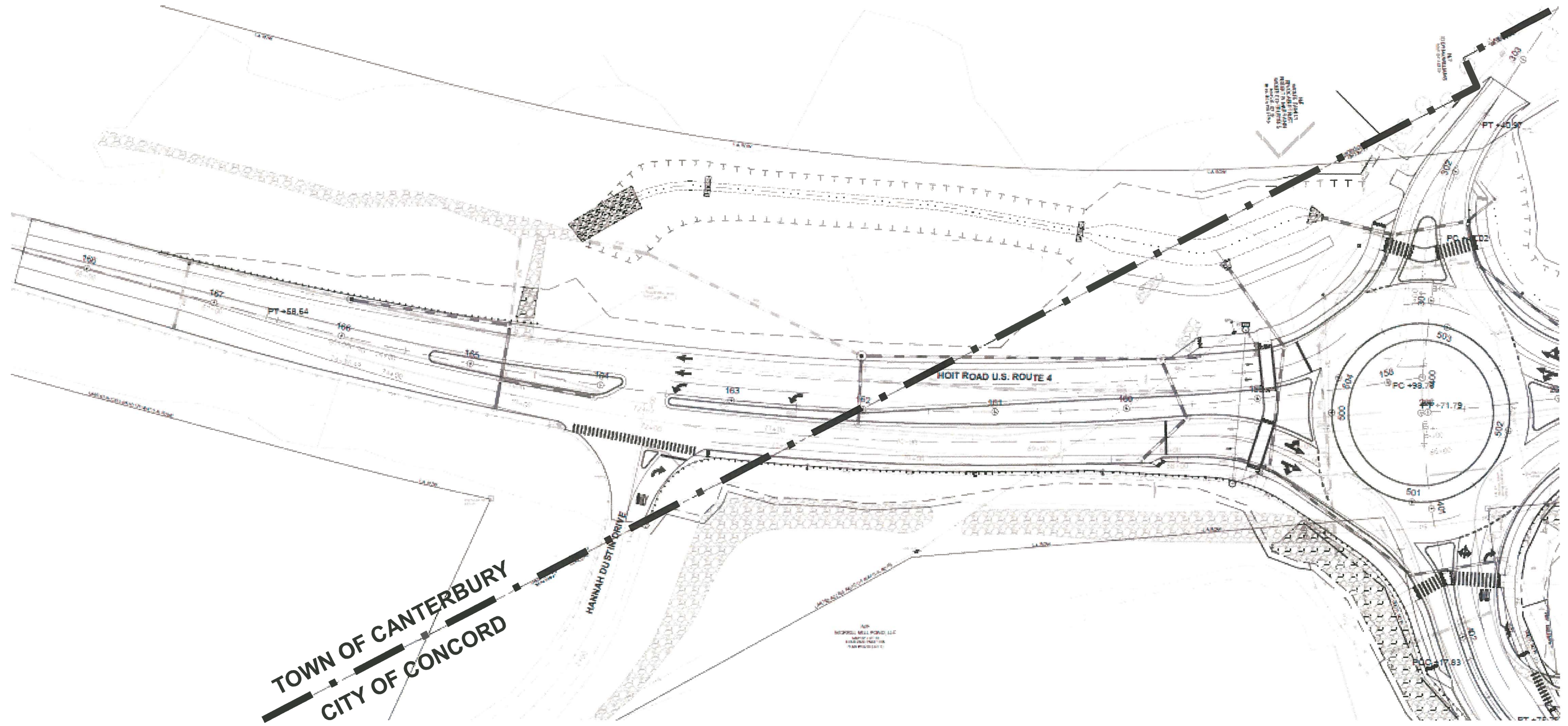


Exhibit 6
Development Schedule
Revised May 6, 2021

- I. 2021:
 - i. February 8, 2021:
 - 1. Development Agreement, Penacook Village Tax Increment Finance (PVTIF) District amendments, and associated resolutions for the Public Improvements are presented to the City Council and set for public hearing on March 8, 2021.
 - ii. March 8, 2021: City Council public hearing on Development Agreement, PVTIF District Amendment, and related items. Final vote is scheduled for April 12, 2021 per RSA 162-K:4.
 - iii. April 1, 2021: Start of 2021 Property Tax Year.
 - iv. April 12, 2021:
 - 1. City Council vote on Development Agreement, Penacook Village Tax Increment Finance District amendments, and related items.
 - 2. City Purchasing Division issues bid package for the Public Improvements and the Canterbury Improvements (i.e. the CIP #30 Hoit Road (U.S. Route 4 / Whitney Road Intersection Improvement Project).
 - v. May 11, 2021: City Purchasing Division receives bids for the Public Improvements and the Canterbury Improvements (i.e. the CIP #30 Hoit Road (U.S. Route 4 / Whitney Road Intersection Improvement Project).
 - vi. May / June 2021: Pending determination that bids for the Public Improvements and Canterbury Improvements are within the City's Budget and Maximum Expenditure Cap, as set forth in 2.1.4 of the Development Agreement, the Parties shall:
 - 1. Interchange Development LLC / DSM:
 - a. Provides Easements / Deed Restrictions / Covenants to the City, to be recorded at the Merrimack County Registry of Deeds (MCRD). Recording of these documents shall be coordinated with the City of Concord Planning Division regarding lot merger and condominium subdivision declaration for the Property.
 - i. Easements / R-O-W for Public Improvements;
 - ii. CAT Bus Stop;
 - iii. Exempt Owner / Lessee Taxability Covenant for all 43 acres of the property); and,
 - iv. Covenants for Minimum Payments / Supplemental Payments for Condominium Units 3 and 4.

- b. Maintenance Agreement for Public Improvements between City and Developer is executed and recorded at MCRD (to be recorded after the lot merger, but prior to the condominium subdivision).
- c. Developer and DSM perfect Development Permits and Approvals for Phase I of Developer's Project.
 - i. Condominium subdivision recorded at Merrimack County Registry of Deeds.
- d. Developer closes on transfer of Condominium Unit #3 to DSM for the grocery store.
- e. Developer and DSM secures Building Permits for their respective projects.
- f. Developer provides payment to City for the Canterbury Improvements.
- g. Developer provides Performance Mortgage to City for the Liquor Store.
- h. DSM provides the City with executed Corporate Guarantee for the Grocery Store.

2. City:

- a. Executes contract with the lowest qualified bidder for construction of the Public Improvements and the Canterbury Improvements. However, the City shall not issue a Notice to Proceed to said contractor until the following have been achieved:
 - i. Receipt of all permits and approvals for the Public Improvements and Canterbury Improvements, including, but not limited to, NH Department of Environmental Services (NHDES) Alteration of Terrain Permit, NHDES Wetland Permit, and NH Department of Transportation (NHDOT) Driveway Permit.
 - ii. The Developer / DSM satisfying all applicable responsibilities and contingencies set forth within the Development Agreement.
- b. Subject to receipt of NHDOT Driveway Permit, City executes Maintenance Agreement with NHDOT for landscaping and pedestrian improvements within US Route 4 rights-of-way.

vii. June / July 2021:

- 1. City Commences construction of Public Improvements (including the Canterbury Improvements).
- 2. Developer and DSM commence construction of the following:
 - a. Grocery store with potential attached retail tenant space; and,
 - b. Liquor store.

viii. December 2021:

1. Primary roundabout at the intersection of Hoit Road (U.S. Route 4) / Whitney Road / Old Boyce Road is substantially complete and operational.
2. Winter shut down period for Public Improvements and Canterbury Improvements begins.

II. 2022:

- i. January 2022: City issues / sells Penacook Village Tax Increment Finance District supported bonds and notes for the Public Improvements.

ii. April 1, 2022:

1. Start of 2022 Property Tax Year.
2. Liquor Store is substantially complete.
3. Penacook Village TIF District captures incremental assessed value created by substantially complete liquor store and partially completed grocery store with attached retail and liquor store.
4. Start of "Minimum Payments" and "Supplemental Payments" guarantees for grocery store / attached retail and liquor store condominium units.

iii. April 15, 2022:

1. Approximate projected end date for winter shut down period for Public Improvements.
2. City resumes construction of the Public Improvements and Canterbury Improvements.

- iv. May 2022: Liquor Store secures Certificate of Occupancy.

v. August, 2022:

1. The Public Improvements and Canterbury Improvements are completed.

vi. November, 2022:

1. City and Developer finalize accounting for actual cost of the Canterbury Improvements.

III. 2023:

- i. First Quarter 2023: DSM secures Certificate of Occupancy for grocery store.

ii. April 1, 2023:

1. Start of 2023 Property Tax Year.
2. Penacook Village TIF District captures incremental assessed value of fully completed grocery store.

**GUARANTY OF
COMPLETION OF IMPROVEMENTS**

THIS GUARANTY OF COMPLETION OF IMPROVEMENTS (this "**Guaranty**") is made as of the _____ day of _____, 2021, by DEMOULAS SUPER MARKETS, INC., a Massachusetts corporation with an address of 875 East Street, Tewksbury, Massachusetts 01876 ("**DSM**"), for the benefit of the CITY OF CONCORD, a New Hampshire municipal corporation (the "**City**"), with an address of 41 Green Street, Concord, New Hampshire 03301, with respect to certain obligations of DSM that are related to the Development Agreement, dated as of _____, 2021 (the "**Development Agreement**") and executed by and between the City and Interchange Development L.L.C. as Developer ("**Interchange**").

WITNESSETH:

WHEREAS, as of the date hereof, DSM has purchased Unit 3 from Interchange ("**Unit 3**"), which Unit 3 is shown on the plan of land titled "*Condominium Site Plan*" prepared by FWS Land Surveying P.L.L.C. dated November 20, 2020 (the "**DSM Property**");

WHEREAS, DSM, as owner of Unit 3 and successor to Interchange's obligations, as set forth in the Development Agreement, to construct the Grocery Store (as defined below) within Unit 3, agrees that it shall use commercially reasonable efforts to complete construction of an 80,750+/- square foot grocery store (which building size may be adjusted upward or downward based upon permitting requirements, market conditions, operational requirements, and other factors) (the "**Grocery Store**"), in accordance with all applicable plans and approvals, within a defined period of time as set forth herein;

WHEREAS, in accordance with the Development Agreement, the City is obligated to fund the design and construction of the public improvements required for the Project in accordance with the plans and schedule approved by Interchange and DSM (the "**Public Improvements**"); and

WHEREAS, DSM, in exchange for the City's commitment to fund the Public Improvements required for the Project, has agreed to execute and deliver this Guaranty for the benefit of the City.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and further acknowledging that the City intends to rely on this Guaranty, DSM hereby agrees as follows:

1. Obligation Guaranteed. DSM hereby irrevocably and absolutely warrants and guarantees to the City the following:
 - a. DSM will use commercially reasonable efforts to complete of construction of the Grocery Store and obtain either a temporary or final certificate of occupancy for the Grocery Store within two (2) years of the date of issuance

of a building permit (the “**Target Completion Date**”). DSM shall use commercially reasonable efforts to apply for the building permit on or before March 31, 2021 (the “**Permit Application Date**”), which Permit Application Date shall be extended to the mutual satisfaction of the parties in the event of any delays in the Project or the on-site and Public Improvements development schedule and milestones as set forth in Exhibit 6 to the Development Agreement. The Target Completion Date shall be deemed extended for the period of any delays with respect to: (a) the construction of the Grocery Store building; (b) Interchange’s construction of those portions of the Project that DSM requires for the Grocery Store to open and operate (including, for example, all access roads and parking areas); or (c) the City’s design and construction of the Public Improvements. Provided, however, that any extension of the Target Completion Date due to delays with respect to construction of the Grocery Store building shall be limited to no more than an additional twelve (12) months, and shall be conditioned on DSM continuing to use commercially reasonable efforts to complete the Grocery Store building. For clarity and avoidance of doubt, extensions of the Target Completion Date due to delays in the Project and Public Improvements shall be unlimited as to time. The foregoing construction completion obligation as set forth in this Section 1(a) shall be referred to the “**Guaranteed Obligation.**”

Notwithstanding anything to the contrary in this Guaranty, DSM does not waive, and reserves and may assert, any claim or defense Interchange could validly assert against the City under Interchange’s agreements with the City.

2. Obligations of DSM Upon Default. If DSM shall fail to perform the Guaranteed Obligation, DSM shall, within thirty (30) days after receipt of written notice from the City (or such additional time as may be reasonably required if such failure cannot be cured within said thirty (30) day period provided that DSM is diligently pursuing such cure), cure such failure to perform the Guaranteed Obligation at DSM’s sole cost and expense. If such failure is not cured, DSM shall in all events remain liable to the City for performance of the Guaranteed Obligation, and the City may pursue any action in law or equity to enforce the performance of the Guaranteed Obligation, including specific performance.

3. Termination. Notwithstanding anything herein to the contrary, this Guaranty shall automatically terminate in full and be of no further force and effect upon the completion by DSM of the Guaranteed Obligation.

4. Continuing Guaranty. This is a continuing Guaranty, and shall apply to and cover the Guaranteed Obligation until the termination date as established pursuant to Section 3 hereof.

5. Independent Obligation. The obligations of DSM hereunder are independent of the obligations of Interchange, or any other party; and the City may enforce any of the City’s rights hereunder independently of any other right or remedy that the City may at any time hold with respect to the Guaranteed Obligation or any security or other guaranty therefor. The City’s rights

Final

hereunder shall not be exhausted by any action taken by the City until the Guaranteed Obligation has been fully performed or until the obligations of DSM hereunder terminate pursuant to Section 3 hereof.

6. Waiver. DSM hereby expressly waives, to the extent permitted by applicable law:
 - a. Notice of the acceptance of this Guaranty by the City;
 - b. All suretyship defenses and defenses in the nature thereof;
 - c. Except as otherwise specifically provided herein, notice of the failure of DSM to perform the Guaranteed Obligation when due; and
 - d. The right to exercise any right of subrogation or any right to enforce any remedy that the City may have against Interchange, prior to the time that the Guaranteed Obligation is performed in full or the earlier termination of this Guaranty pursuant to Section 3..

7. Guaranty Unimpaired by Subsequent Events. Except as otherwise provided herein, DSM hereby agrees that its obligations under this Guaranty shall not be released, diminished, impaired, reduced, or otherwise affected by the occurrence of any of the following events (or the fact that any of such events have occurred):

- a. The release of Interchange or any other party from liability for the Guaranteed Obligation; it being acknowledged and agreed by DSM that DSM may be required to perform the Guaranteed Obligation in full without the assistance or support of any other party, and DSM has not been induced to enter into this Guaranty on the basis of any contemplation, belief, understanding, or agreement that any other party shall be liable to perform the Guaranteed Obligation or that the City shall look to other parties to perform the Guaranteed Obligation, provided that nothing herein shall affect the rights of DSM to pursue claims against Interchange or any other relevant party;
- b. The addition of any new or additional collateral as security for, or the addition of any new or additional person or entity as a party with liability for, the performance of the Guaranteed Obligation;
- c. Any action with respect to the Guaranteed Obligation or any documents evidencing, securing, or pertaining thereto, including but not limited to, any settlement or compromise of any amount due thereunder, the pursuit of any particular remedy before any other remedy or the exercise of, or waiver or failure to timely exercise, any right conferred thereunder, the exercise of such rights being wholly discretionary with the City; or
- d. Any neglect, delay, omission, failure, or refusal of the City to sue or take any

other action to enforce the performance of the Guaranteed Obligation or any right contained in any document evidencing, securing, or pertaining thereto.

8. Warranties and Representations. DSM warrants and represents to the City for the express purpose of inducing the City to accept this Guaranty that, as of the date of this Guaranty:

- a. Authority. DSM has full power and authority to enter into and perform this Guaranty. This Guaranty: (i) has been duly authorized, executed and delivered; and (ii) is legally binding on, and enforceable against, DSM in accordance with its terms except as the same may be limited by applicable bankruptcy, insolvency, reorganization, receivership and other similar laws affecting the rights and remedies of creditors generally and by general principles of equity (whether applied by a court of law or equity). Neither the execution and delivery of this Guaranty, nor the consummation of the DSM's obligations hereunder, are subject to any requirement that DSM obtain any consent, license, approval or authorization of, or make any declaration or filing with, any governmental authority or third party;
- b. No Violation. The performance by DSM of the Guaranteed Obligation does not and shall not constitute a violation of any law, order, regulation, contract or agreement to which DSM is a party or by which DSM or the DSM Property may be bound;
- c. No Litigation. There is no material litigation now pending or, to DSM's knowledge threatened in writing, against DSM which, if adversely decided would materially impair the ability of DSM to perform the Guaranteed Obligation; and
- d. Solvency. DSM hereby represents and warrants that it is solvent and is not rendered insolvent by the obligations undertaken in this Guaranty. DSM is not contemplating either the filing of a petition or proceeding under any state or federal bankruptcy or insolvency or reorganization laws or the liquidating of all or a major portion of DSM's property, and DSM does not have any knowledge of any such petition or proceeding being filed or threatened in writing against DSM.

9. Notices. All notices, demands, submissions, requests, consents, approvals and other instruments required or permitted to be given pursuant hereto shall be in writing and shall be deemed to have been duly given/received: (1) on the date delivered if delivered personally; (2) the next business day after deposit with a recognized overnight courier service when marked for delivery on the next business day; (3) three (3) days after mailing if sent by registered or certified United States mail, properly addressed and postage pre-paid; or (4) upon completion of transmission (which is confirmed by telephone or an electronic return receipt) if sent by electronic mail and addressed to the party for whom it is intended at the address hereinafter set forth:

Final

- (1) if directed to the City, addressed to:

City Manager
41 Green Street
Concord, New Hampshire 03301
Attn: Thomas J. Aspell, Jr., City Manager
Email: taspell@concordnh.gov
Telephone: (603) 225-8570

with a copy to:

City Solicitor
41 Green Street
Concord New Hampshire 03301
Attn: James W. Kennedy, III, City Solicitor
Email: jkennedy@concordnh.gov
Tel.: (603) 225-8505

City of Concord
41 Green Street
Concord New Hampshire 03301
Attn: Matthew R. Walsh, Director of Redevelopment
Email: mwalsh@concordnh.gov
Tel.: (603) 225-8570

- (2) if directed to DSM addressed to:

Demoulas Super Markets, Inc.
875 East Street
Tewksbury, Massachusetts 01876
Attn: Donald T. Mulligan, CFO
Email:
Tel.:

with a copy to:

LT Development LLC
One Stiles Road, Suite 106
Salem, NH 03079
Attn: Carmine D. Tomas, Esq.
Email:
Tel.:

or to such other party or address as may from time to time be specified in writing by any party hereto. Unless otherwise specified in writing, each party shall direct all sums payable to another party to said party's address for notice purposes.

10. Miscellaneous Provisions.

- a. Binding Effect. This Guaranty and all the terms, provisions, and conditions hereof shall be binding upon DSM and DSM's heirs, successors, assigns, and nominees, and this Guaranty shall inure to the benefit of the City.
- b. Entire Agreement. This Guaranty contains the entire agreement and understanding of the parties with respect to the subject matter hereof, and supersedes any and all prior written or oral agreements and understandings between the parties. The obligations set forth in this Guaranty may not be amended or modified except by an instrument in writing signed by all the parties hereto.
- c. Governing Law. This Guaranty, and the rights and obligations of the parties hereto, shall be governed by, and construed in accordance with, the internal laws of the State of New Hampshire.
- d. No Waiver. Any failure by the City to insist, or any election by the City not to insist, upon strict performance by DSM of any of the terms, provisions, or conditions of this Guaranty shall not be deemed to be a waiver of the same or of any other terms, provisions, or conditions thereof; and the City shall have the right at any time or times thereafter to insist upon strict performance by DSM of any and all of such terms, provisions, and conditions.

[signature on following page]

Final

Executed as an instrument under seal as of the date and year first written above.

DEMOULAS SUPER MARKETS, INC.,
a Massachusetts corporation

By: _____ Date: _____

Duly Authorized

COMMONWEALTH OF MASSACHUSETTS

In _____, on the _____ day of _____, 2021, before me,
personally appeared _____, of Demoulas Super Markets,
Inc. , known to me or proved to be the person named in and who executed the foregoing
instrument, and being first duly sworn, such person acknowledged that he executed said
instrument for the purposes therein contained as his free and voluntary act and deed.

Justice of the Peace/Notary Public

Final

CITY OF CONCORD

By: _____ Date: _____
Thomas J. Aspell, Jr., City Manager
Duly Authorized

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

In _____, on the _____ day of _____, 2021, before me,
personally appeared **THOMAS J. ASPELL, JR.**, known to me or proved to be the person
named in and who executed the foregoing instrument, and being first duly sworn, such person
acknowledged that he executed said instrument for the purposes therein contained as his free and
voluntary act and deed.

Justice of the Peace/Notary Public