

PURCHASE AND SALES / DEVELOPMENT AGREEMENT

This **PURCHASE AND SALES / DEVELOPMENT AGREEMENT** (“Agreement”) is made as of the ____ day of **July 2018** (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 “Licensor”, “the City”, or “Seller”) and Granite Center L.L.C. a New Hampshire limited liability company, with a principal place of business c/o Foxfire Property Management, PO Box 1438, Concord, NH 03302-1438 its successors and assigns (referred to as the “Licensee”, “Developer”, or “Buyer”), and referred to collectively as the “Parties.”

RECITALS

This Agreement relates to the redevelopment of the former New Hampshire Community Development Finance Authority properties located at 4-6 Dixon Avenue and 8-14 Dixon Avenue, together with associated surface parking lots owned by the New Hampshire Community Development Finance Authority located at Dixon Avenue and Storrs Street, City Assessing Department Parcels 45/6/15, 45/6/16, 45/6/17, and 35/B1/2; as well as the Eagle Hotel located at 1 Eagle Square, City Assessing Department Parcels 45/6/25.

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

- I. The Developer has secured Purchase and Sales Agreements for the above mentioned properties, and desires to redevelop them as described herein.
- II. The Developer wishes to acquire fee ownership of certain City owned real estate, as well as enter into license agreements for use of other City owed property, in order to support the Developer’s Project.
- III. The Developer also wishes to construct certain public improvements on City owned property in order to support redevelopment of the above mentioned properties.
- IV. The City owns certain real estate and controls certain other public rights-of-way, as further described within this Agreement, which the City desires to grant the Developer certain permissions to use or improve said real estate through this Agreement, or subsequent license agreements, in order to support the Developer’s Project.
- V. The Parties signatory to this Agreement are willing to proceed upon the terms and conditions of this Agreement.

NOW, THEREFORE, the Parties hereby agree as follows:

1. DESCRIPTION OF DEVELOPER'S PROJECT, PUBLIC IMPROVEMENTS, CITY AGREEMENTS, PERMISSIONS, AND FINANCIAL SUPPORT:

1.1. **Description of Developer's Properties and Developer's Project:** The Developer desires to acquire and renovate the following properties, as described below.

1.1.1. **4-6 Dixon Avenue (City Assessor's Parcel 45/6/15):** This is a 0.36+/- acre property featuring a 13,164+/- square foot building and 17+/- parking spaces, which is currently owned by 14 Dixon Avenue Co. L.L.C, as shown on a survey plan titled "Existing Conditions Plat of land 141 Dixon Avenue Development Co. LLC," prepared by Richard D. Bartlett and Associates, LLC dated April 23, 2018 and included as Exhibit 1 of this Agreement.

The Developer shall, subject to contingencies in this Agreement, acquire and renovate this property into a mixed use development featuring commercial uses including, but not limited to, office, Restaurant (as defined in this Agreement), and Active Retail Uses, on the first two floors of the building. The third and fourth floors of the building will be Market Rate Housing, featuring approximately seven apartments, also as defined in this Agreement.

1.1.2. **8-14 Dixon Avenue (City Assessor's Parcel 45/6/17):** This is a 0.22+/- acre property featuring a 23,980+/- square foot building and zero parking spaces, which is currently owned by 14 Dixon Avenue Co. L.L.C, as shown on a survey plan titled "Existing Conditions Plat of land 141 Dixon Avenue Development Co. LLC," prepared by Richard D. Bartlett and Associates, LLC dated April 23, 2018 and included as Exhibit 1 of this Agreement.

The Developer shall, subject to contingencies in this Agreement, acquire and renovate this property into a mixed use development featuring commercial uses including, but not limited to, office, Restaurant (as defined in this Agreement), and Active Retail Uses.

1.1.3. **NHCDFA Storrs Street Parking Lot (City Assessor's Parcel 35B/1/2):** This is a 0.49+/- acre property featuring 54+/- parking spaces which is currently owned by 14 Dixon Avenue Co. L.L.C., as shown on a survey plan titled "Existing Conditions Plat of land 141 Dixon Avenue Development Co. LLC," prepared by Richard D. Bartlett and Associates, LLC dated April 23, 2018 and included as Exhibit 1 of this Agreement.

The Developer shall, subject to contingencies in this Agreement, acquire this property and may renovate it in order to expand the supply of parking from 54+/- to 67+/- spaces. To accomplish this, the Developer shall license a portion of the City's Storrs Street Parking Lot in order to facilitate redesign and expansion of the NHCDFA Storrs Street Parking Lot.

- 1.1.4. NHCDFA Dixon Avenue Parking Lot (City Assessor's Parcel 45/6/16): This is a 0.30+/- acre property featuring 38 parking spaces which is currently owned by 14 Dixon Avenue Co. L.L.C., as shown on a survey plan titled "Existing Conditions Plat of land 141 Dixon Avenue Development Co. LLC," prepared by Richard D. Bartlett and Associates, LLC dated April 23, 2018 and included as Exhibit 1 of this Agreement.

The Developer shall, subject to contingencies in this Agreement, acquire this property, may merge it with 4-6 Dixon Avenue, and may renovate it in order to expand the supply of parking from 55 parking spaces (including 17 spaces existing at 4-6 Dixon Avenue) to 79+/- parking spaces.

- 1.1.5. 1 Eagle Square (City Assessor's Parcel 45/6/25): This is a 0.36+/- acre property featuring a 65,423+/- square foot building and no parking spaces, and is currently owned by Maple Valley Manchester Partners L.L.C..

The Developer shall, subject to contingencies in this Agreement, acquire and renovate this building into a mixed use property featuring commercial uses including, but not limited to, office, Restaurant (as defined in this Agreement), and Active Retail Uses.

- 1.2. **Description of Improvements to Public Property and Agreements for Use of City Property:** To support the Developer's Project, the Developer desires to make certain improvements to the following City owned properties and rights-of-way, as described below:

- 1.2.1. Bridge Street / Dixon Avenue Right-of-Way Improvements: In order to support redevelopment of 4-6 Dixon Avenue and 8-14 Dixon Avenue, the Developer desires to construct certain pavement and landscaping improvements to the City's Bridge Street rights-of-way as further described in Section 2.1.2.1 of this Agreement.

- 1.2.2. North Main Street Sidewalk Improvements: In order to support redevelopment of 1 Eagle Square, the Developer desires to construct certain improvements to the City's sidewalk within the City's North Main Street rights-of-way in order to provide handicap

accessibility to certain building entries at said property, as further described in Section 2.1.2.2 of this Agreement.

- 1.2.3. Conversion of City's Dixon Avenue Public Parking Lot to Plaza: In order to support redevelopment of 8-14 Dixon Avenue, the Developer shall, subject to the terms of this Agreement, acquire the City's Dixon Avenue Parking (City Assessor's Parcel 45/6/18): lot and construct a private plaza and related landscaping improvements.
- 1.2.4. City Storrs Street Public Parking Lot Improvements: In order to support redevelopment of 8-14 Dixon Avenue, the Developer desires to secure a license over a 1,000+/- square foot area of the City's Storrs Street Parking Lot in order to facilitate redesign and expansion of the Developer's parking lot also located on Storrs Street, as further described in Section 3.1.4 of this Agreement.
- 1.2.5. Downtown Solid Waste District Improvements: The Developer shall design, permit, and construct two dumpster pads and associated enclosures on the Developer's property to accommodate four Downtown Solid Waste District rubbish containers ("dumpsters"), as further described in Section 2.1.2.4 of this Agreement.

1.3. **Description of City Financial Incentives to Support Developer's Project**: The City, subject to receipt and review of required applications and financial pro formas, as well as statutorily required public hearings and subject to City Council approval, shall grant to the Developer RSA 79-E Community Revitalization Tax Relief Incentives for real estate located at 4-6 Dixon Avenue, 8-14 Dixon Avenue, and 1 Eagle Square, as further described in Section 3.1.6 of this Agreement.

1.4. **Description of Real Estate Transaction**:

1.4.1. **General**: The Seller hereby grants to the Buyer, in accordance with the terms of this Agreement, the rights to purchase City property known as the "Dixon Avenue Public Parking Lot", City Assessor's Parcel Identification Number 45-6-18, which consists of 0.05 acres of land and features a seven space public parking lot (the "Property"). The Property is shown on the attached plan included in Exhibit 4.

Upon acquisition, the Developer shall design, permit, and construct a private plaza which shall be substantially similar to the conceptual design titled "Dixon Plaza Concept Plan" prepared by Terrain Planning and Design L.L.C. dated April 26, 2018, and included in this Agreement as Exhibit 4.

Construction of said improvements shall be in a quality, professional, workman like manner by skilled tradesmen. The Developer, its heirs, successors, and assigns shall be the owner of said improvements and solely responsible for maintenance, repair, and reconstruction of said improvements at the Developer's sole expense, in perpetuity.

As part of the Developer's improvements, the Developer shall install underground conduit in order to accommodate potential future installation of underground utilities in the Storrs Street Corridor.

- 1.4.2. **Purchase Price**: The purchase price for the Property shall be one hundred thirty five thousand dollars (\$145,000.00).
- 1.4.3. **Deposit**: Upon execution of this Agreement, the Buyer shall provide the Seller with a deposit in the amount of Thirteen Thousand Five Hundred Dollars (\$14,500.00). The deposit shall be held by the Seller or an escrow agent mutually acceptable to the Parties, in an interest-bearing account. If the Buyer terminates this Agreement prior to the conclusion of the sixty (60) day due diligence period, the deposit, together with all interest earnings, shall be refundable to the Buyer within 30 days of the termination notice. However, if the Buyer elects to terminate this Agreement after the expiration of the sixty (60) day due diligence period, the Deposit shall be handled as provided herein. In the event the Buyer elects to proceed to Closing, the deposit, together with interest earnings, shall be credited against the final sale price of the Premises.
- 1.4.4. **Payment of Purchase Price**: The Purchase Price, less the deposit and related interest earnings, shall be paid in full by the Buyer to the Seller at Closing in the form of bank treasurer's check, wire funds transfer, or other immediately available funds satisfactory to the Seller.
- 1.4.5. **Access to Property**: The Seller hereby grants authorization to the Buyer, its employees, representatives, consultants, and agents to enter the Property during the term of this Agreement for the purpose of completing due diligence and for all other purposes necessary to carry out the terms of this Agreement.

The Buyer and the Seller shall coordinate all access to the Property by third parties working on behalf of the Buyer as part of the Buyer's due diligence.

- 1.4.6. **Closing:** The Closing shall occur at any time on or before **October 31, 2018**. The Closing date shall be extended in the event of certain delays as set forth within Section 5.21 of this Agreement.

The Parties agree that all Closing documents, including the Quitclaim Deed for conveyance of the Property, easement deeds (if applicable) and other Closing documents, shall not be recorded at the Merrimack County Registry of Deeds and that money shall not be exchanged between the Parties until all of the Buyer's and Seller's respective responsibilities, conditions and contingencies, as set forth in Articles 2 and 3, respectively, have been achieved, satisfied, or otherwise waived in writing.

In the event the Closing conditions or contingencies have not been satisfied on or before October 31, 2018, then Parties shall have the right to extend the Closing Date until such time as these items have been completed to the reasonable satisfaction of Parties. If Parties do not so extend the Closing date, either party may terminate this Agreement, in which event the Deposit and all interest earned thereon shall be forthwith returned to Buyer, this Agreement shall be null and void and the parties shall have no further rights or obligations herein.

- 1.4.7. **Title and Deed Restrictions:** The Seller shall convey the Property to Buyer or its nominee by Quitclaim Deed. In addition to the terms and conditions set forth within this Agreement, the conveyance shall provide Buyer with good, marketable and insurable title. The Buyer may conduct a title search to determine whether title to the Property is good, marketable and insurable, so that the Buyer may acquire, for the benefit of the Buyer by a title insurer licensed in the State of New Hampshire and acceptable to the Buyer, an American Land Title Association ALTA standard form title insurance policy in an amount equal to the Purchase Price, insuring that the Buyer holds marketable fee simple title to the Property, at Buyer's expense and subject to the following:

- a) Existing matters of record accepted and approved by the Buyer.
- b) A reservation to the City of all easements necessary or desirable for the construction, maintenance, and operation of public improvements (if any).
- c) A deed restriction on the Property to the benefit of the City which shall require that, in the event any portion of the

Buyer's Project or Property is sold to an entity that would cause the Property to be exempt from the payment of real estate taxes ("Exempt Owner"), said Exempt Owner(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 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 by any other taxable property with respect to the respective property interest. Each deed or other transfer document from the Buyer to any future transferee of any interests in the Buyer's Project shall incorporate this covenant, which shall run with the land.

- d) A reservation or other mechanism which shall compel the Buyer to convey the Property to the Seller, at the Seller's sole option, at a price equal to the Purchase Price originally paid by the Buyer to the Seller in the event Commencement of Construction for the Buyer's Project has not occurred within twelve (12) months after the date of recording of the quitclaim deed conveying the Property from the City to the Buyer, subject to Force Majeure Delays, as defined in 5.21.2 herein.

"Commencement of Construction" shall be defined as the Buyer: 1) entering into a contract with a Construction Manager / General Contractor for the Developer's Project, 2) the Developer, or its Construction Manager / General Contractor securing a building permit from the City for the Developer's Project, and 3) the Construction Manager / General Contractor completing at least twenty percent of work, based upon the total value of the construction contract.

- 1.4.8. **Seller's Affidavits and Certificates:** To the extent applicable and if requested to do so by the Buyer, the Seller, at the Closing, shall deliver such affidavits (in customary form) as may be required by the Buyer or Buyer's title insurance company with respect to: (1) parties in possession of the Property, (2) rights of third parties and title claims in or to the Property, and (3) mechanic's and materialmen's liens affecting the Property. All such requested affidavits and certificates shall be provided to the Seller at least five (5) business days in advance of the Closing.

- 1.4.9. **Deed Preparation; Recording Fees:** The Seller shall convey the Property by Quitclaim Deed. The Seller shall prepare all deeds at its expense. The form and content of the deed shall be reasonably satisfactory to the Buyer. The Seller shall deliver the draft deed to the Buyer as soon as practical upon the Seller's receipt of written notice from the Buyer declaring the Buyer's intent to proceed to Closing for this transaction. The Buyer shall review the deed(s) and provide comments to the Seller (if any) no later than within fourteen (14) days of receipt of the draft deed from the Seller. The Seller shall address the comments and respond in a timely manner.
- 1.4.10. **Transfer Taxes and Recording Fees:** The Parties shall pay their respective shares of normal and customary recording fees and transfer taxes customarily associated with real estate transactions. The Parties acknowledge that the Seller is exempt from the Real Estate Transfer Tax pursuant to RSA 78-B:2, I. To the extent the Buyer is not exempt from the real estate transfer tax; the Buyer hereby agrees to pay its respective portion of the transfer tax and customary recording fees.
- 1.4.11. **Discharge of Liens:** The Seller shall, at its expense, pay or discharge all liens, mechanics liens, encumbrances, and attachments, if any (the "Liens"), which may exist on the Property through the date of Closing or filed after recording of the deed transferring the Property to the Buyer due to an action by the Seller prior to recording of the deed, except those which the Parties agree will not be discharged in accordance with Section 1.4.7 above. To enable the Seller to make conveyance as herein provided, the Seller may, at the time of delivery of the deed, use the Purchase Price or any portion thereof to clear the title or any or all encumbrances or interests, provided that all instruments so procured are recorded simultaneously with the delivery of said deed. The Seller shall also be entitled to use the proceeds to pay off any mortgagee, pursuant to standard customary practices for real estate transactions and conveyances, and receive therefrom a discharge(s) to be recorded in the ordinary course of business.

In the event that the Seller is unable or otherwise unwilling to pay or discharge all liens, mechanics liens, encumbrance and attachments which exist before the date of Closing, the Buyer, at its sole option, may proceed with any of the following options:

- a) Afford the Seller any additional amount of time which the Buyer solely deems reasonable to cure said Liens; or,

- b) Terminate this Agreement, in which case the Buyer shall be entitled to the return of the Deposit, following which this Agreement shall be null and void, and of no further force or effect.
- 1.4.12. **Prorating of Property Taxes and Utility Costs:** All property taxes and utilities (as applicable) for the Property accruing on and before the Closing shall be the obligation of the Seller and all such taxes and utilities accruing after the Closing shall be the obligation of the Buyer and shall be accordingly prorated between the parties at Closing.
- 1.4.13. **Delivery of Premises, Removal of Tenants, and Property to be Retained by Seller:** The Seller shall deliver possession of the Property to the Buyer in its "as is, where is" condition, free and clear of all tenants and third parties.
- 1.4.14. **Title Insurance:** If applicable and in accordance with Section 1.4.8, the Seller shall execute all customary documents required by the Buyer's Title Insurance Company.
- 1.4.15. **Real Estate Broker's Fees & Commissions:** The Parties hereby confirm that no real estate brokers are representing either party for this transaction.
- 1.4.16. **Seller's Disclosures:** The Seller makes no warranties or representations regarding environmental contamination or sub-surface environmental or geotechnical conditions at the Property.
- 1.4.17. **Casualty:** In the event that the Property, prior to Closing, are damaged by fire, flood, collapse, or other casualty, the Buyer may within thirty days after the occurrence of such damage or casualty may elect to terminate this Agreement, in which event all other obligations of the Parties hereunder shall cease, any the Buyer's Deposit shall be returned to the Buyer in full, including interest earnings therewith, even if said termination occurs after the 60-day due diligence period, and this Agreement shall thereupon be void and of no further force or effect.

2. DEVELOPER'S RESPONSIBILITIES AND CONTIGENCIES:

2.1. Developer's Responsibilities and Covenants:

2.1.1. Development of the Developer's Project: Upon acquisition of the subject privately owned properties and the City owned property discussed above, as well as procurement of City permissions and approvals further described herein, the Developer (its heirs, successors, or assigns) hereby covenants that it shall proceed with the development of the Developer's Project as described in Section 1.1 of this Agreement.

The term "Market Rate Apartments" shall mean residential dwelling units which command sales, prices, or rents that are equivalent to that which is paid for comparable properties in arms-length transactions on the open market without governmental, nonprofit, or other subsidies or assistance to the builder, renter, or Developer, which (a) have the effect of reducing the price or rents of such properties, or which (b) subsidize the costs of the properties or (c) require the owner or developer to give preference to low or moderate income families/households as defined by New Hampshire Housing Finance Authority, United States Department of Housing and Urban Development, or other Federal or State Agency when renting or selling properties. This restriction shall endure in perpetuity to the extent that residential land uses are established at any of the properties listed in Section 1.1 of this Agreement, as well as the City's Dixon Avenue Parking Lot parcel which shall be acquired by the Developer as set forth in Section 1.4 of this Agreement.

The term "Active Retail Uses" shall mean businesses selling retail goods and services including, but not limited to the following:

- Restaurants as defined within this Agreement;
- Apparel and accessories;
- Books, stationery, jewelry, leather goods and luggage, art, collectibles, gifts, furniture, and sporting goods;
- Entertainment uses involving the visual and/or performing arts; and
- Other establishments which, in the City's reasonable judgment, are likely to positively contribute to economic vitality or leisure activity in downtown Concord.

“Active Retail Establishments” shall exclude:

- Any uses prohibited by any applicable land use regulations;
- Establishments providing the following goods and services including without limitation: Pawn shops, consignment shops (except in the basement level of 8-14 Dixon Avenue where a consignment / antique shop shall be permitted under this Agreement), adult book / video / novelty stores, adult entertainment facilities, laundry services (including laundry mats, but excluding dry cleaners or laundry services for residential tenants of dwelling units constructed as part of the Developer’s Project), check cashing services (but excluding banks, credit unions, and Automated Teller Machines), purveyors of so-called payday loans or other similar personal loan products (again, other than traditional banks and credit unions), tobacco / smoke / vape shops, as well as tattoo and body piercing parlors.

Notwithstanding the foregoing, “Active Retail Establishments” shall include the following uses, subject to the limitation that such uses in the aggregate shall not occupy more than 25 feet of frontage along North Main Street:

- Businesses engaged in finance, banking, accounting, insurance, law, architecture, engineering, and real estate services;
- Mail box, packaging, and delivery services; however, Capitol Copy, an existing tenant located at 1 Eagle Square, shall not be subject to this restriction;
- Health care service (including mental health care and eye care) providers;
- Uses that are principally office uses.

These deed restrictions related to “Active Retail Establishments” shall expire on the tenth anniversary of the execution date of this Agreement.

The term “Restaurant” shall mean eating and drinking establishments, but shall exclude “Fast Food Restaurants”. “Fast Food Restaurants” shall be defined as restaurants which:

- Have more than 250 locations nationally within the United States of America;
- Customers commonly, but not always, order, pay for, and receive delivery of food and beverages at a counter, and, upon receipt of their order, customers then carry their meals to their tables themselves for consumption;

- Feature trash receptacles located in the dining area for self-bussing of tables, seating for customers, and food served on disposable tableware; and
- Commonly, but not always, feature one or more drive through service windows whereby patrons may order and receive delivery of food while inside a motor vehicle.

It is the intent of the foregoing definition of fast food restaurants to prohibit national fast food chain restaurants such as McDonald's, Burger King, Dunkin' Donuts, Wendy's, etc.; but not fast-casual or full service restaurants.

Furthermore, notwithstanding the foregoing, if requested by the Developer, the City shall have the right to approve fast food restaurants if it believes such restaurants are consistent with the intent of this provision

These deed restrictions related to "Restaurants" shall expire on the tenth anniversary of the execution date of this Agreement.

The schedule for the Developer's Project shall be substantially similar to the schedule set forth within Exhibit 7 of this Agreement, which shall be subject to reasonable adjustment as mutually agreed by the Parties in the event of certain delays as set forth within Section 5.21 of this Agreement.

The Developer covenants and agrees that it will 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.

2.1.2. Improvements to Public Property

2.1.2.1. Gateway Plaza Improvements within Bridge Street / Dixon Avenue / Loudon Road Right-of-Way:

- a) Design, Permitting, & Construction: The Developer shall design, permit, and construct proposed landscaping and pavement improvements known as the "Gateway Plaza" within the City's Bridge Street / Dixon Avenue / Loudon Road rights-of-way at the Developer's sole expense.

Said improvements shall be substantially similar to those depicted on the conceptual site plan

rendering titled "Gateway Plaza Concept Plan" prepared by Terrain Planning and Design L.L.C. dated April 26, 2018, and included in this Agreement as Exhibit 2.

The Developer shall commission detailed plans and specifications for the proposed improvements, which shall be prepared by a licensed civil engineer or landscape architect on a base plan prepared by a licensed land surveyor in accordance with the City's Site Plan Review Regulations and Construction Standards. Plan shall detail proposed grading, utility, landscaping, and pavement improvements to be constructed by the Developer without limitation. Said plans shall be acceptable to the City Engineer or his designee.

As part of the Developer's improvements, the Developer shall install underground conduit in order to accommodate potential future installation of underground utilities in the area.

In accordance with Section 2.2.2 of this Agreement, the Developer shall secure the City Manager's written approval of proposed plans and specifications for said improvements prior to construction. Further, no changes to the design or materials shall be permitted during construction without the City Manager's written consent.

- b) Ownership and Maintenance of Improvements:
Upon the Developer's satisfactory completion of the Gateway Plaza Improvements, as determined by the City as its sole discretion, the City shall accept ownership of said improvements. The City shall be responsible for repair and replacement of these improvements in the City's right-of-way.

- c) Parking Spaces: Any parking spaces located in the right-of-way shall be public parking spaces. The City shall have the sole authority to manage said parking spaces however the City deems appropriate to further the public interest.

- d) Viatic Use of the Right of Way: The City reserves the right to remove said improvements and restore the area to its original condition at any time should the City, or a court of appropriate jurisdiction, determine that the Developer's improvements conflict with the viatic use of the City's rights-of-way.
- e) Removal of Improvements for Convenience of City: The City shall have the ability to remove said improvements at any time for any public purpose, including convenience of the City. Should the City elect to remove said improvements, the cost of removal and restoration of the area shall be the sole responsibility of the City

2.1.2.2. North Main Street Sidewalk Improvements:

- a) Design, Permitting, & Construction: The Developer, in consultation with the City, shall design, permit, and construct a handicap accessible ramp, plaza, and stairway improvements to the sidewalk along the frontage of 1 Eagle Square within the City's North Main Street rights-of-way at the Developer's sole expense.

The design and materials used to construct said improvements shall be reasonably similar to the accessible ramp and plaza systems constructed by the City as part of the City's Capital Improvement Project #460 "Complete Street Project" (a.k.a. "Main Street Project") during 2016/2017 located at 58-68 North Main Street ("Phenix Hall"). Said improvements shall be constructed in a quality, workmanlike manner, and shall also be substantially similar to those depicted on the conceptual rendering titled "Eagle Plaza Concept Plan" prepared by Terrain Planning and Design L.L.C. dated April 26, 2018, included in this Agreement as Exhibit 3.

The Developer shall commission detailed plans and specifications for the proposed improvements, which shall be prepared by a licensed civil engineer on a base plan prepared by a licensed

land surveyor in accordance with the City's Site Plan Review Regulations and Construction Standards. Plan shall detail proposed grading, utility, landscaping, and pavement improvements to be constructed by the Developer without limitation. Said plans shall be acceptable to the City Engineer or his designee.

Said design shall also depict all existing sidewalk conditions, as well as on-street parking bays, along the North Main Street frontage of 1 Eagle Square, as well as abutting properties at 114-120 North Main Street and 2 Eagle Square to ensure the Developer's Project will not adversely impact pedestrian traffic or other public use of the City's sidewalk, including maintenance operations of said sidewalk by the City. Nor shall the Developer's improvements adversely impact pedestrian access to other private properties abutting 1 Eagle Square.

The Developer hereby covenants that the design and construction of the accessible ramp within the City's rights-of-way shall not result in a walk way width of less than five feet between said accessible ramp and the brick paver furniture zone.

Sidewalk improvements shall comply with Public Right-of-Way Accessibility Guidelines as published by the United States Access Board.

To facilitate design efforts, the City shall provide the Developer with electronic Auto CAD files of the designs for the City's Complete Street Project (Capital Improvement Project #460). As-built plans for CIP 460 are not available.

In accordance with Section 2.2.2 of this Agreement, the Developer shall secure the City Manager's written approval of proposed plans and specifications for said improvements prior to construction. Further, no changes to the design or materials shall be permitted during construction without the City Manager's written consent.

- b) Ownership and Maintenance of Improvements:
Upon satisfactory completion of said improvements, as determined by the City at its sole discretion, the City shall accept ownership of constructed improvements which are expressly located within the City's North Main Street rights-of-way. Upon acceptance of the improvements by the City, the City shall be responsible for the maintenance, repair, and replacement of all improvements for as long as said improvements remain in place.
- c) Viatic Use of the Right of Way: The City reserves the right to remove said improvements and restore the area to its original condition at any time should the City, or a court of appropriate jurisdiction, determine that the Developer's improvements conflict with the viatic use of the City's Rights-of-Way.
- d) Removal of Improvements for convenience of the City: The City shall have the authority to remove said improvements at any time for any public purpose, including convenience of the City. Should the City elect to remove said improvements, the cost of removal and restoration of the sidewalk and affected building entrances shall be the sole responsibility of the City.

2.1.2.3. Deleted.

2.1.2.4. Downtown Solid Waste Dumpster Easement and Improvements:

- a) General: The Developer hereby acknowledges that the Developer's proposed improvements within the Bridge Street / Dixon Avenue Rights-of-Way, described in Section 2.1.2.1 shall displace three Downtown Solid Waste District dumpsters located in said location. Said dumpsters are provided by the City for public use by those properties located in the City's Downtown Solid Waste District.

- b) Granting of Easement by Developer to City: Recognizing the dumpsters shall be displaced in order to accommodate the Developer's proposed improvements to the Bridge Street / Dixon Avenue rights-of-way, as further described in Section 2.1.2.1, the Developer shall grant to the City an easement over portions of real estate located at 4-6 Dixon Avenue, as well as the adjacent parking lot known as City Assessor's Parcel 45-6-16, to allow for the placement of three dumpster containers, combined, at either of the locations depicted on the attached conceptual site plan rendering titled "Parking Lot Concept Plan" prepared by Terrain Planning and Design L.L.C. dated April 26, 2018, and included in this Agreement as Exhibit 5, or at another location at the Developer's property which is mutually acceptable to the Parties.

Said easement shall provide for a single dumpster pad which shall measure ten feet in width by a minimum of twenty four feet in length, and shall grant the City perpetual rights to install, access, repair, maintain, and replace dumpsters and all associated infrastructure. The easement shall also permit the public perpetual rights to access said dumpsters over the Developer's property.

The Developer hereby covenants and warranties that the location of the proposed Solid Waste District dumpster placement and associated easement does not interfere with, or otherwise impede, rights of abutting properties to pass ways shown on existing conditions boundary survey titled "Existing Conditions Plat of land 141 Dixon Avenue Development Co. LLC, prepared by Richard D. Bartlett and Associates, LLC dated April 23, 2018, and included in this Agreement as Exhibit 1.

- c) Design, Permitting, & Construction: The Developer shall design, permit, and construct said dumpster improvements at location shown on Exhibit 5 at the Developer's sole expense.

Said plans and specifications for the proposed improvements, shall be prepared by a licensed civil engineer on a base plan prepared by a licensed land surveyor in accordance with the City's Site Plan Review Regulations and Construction Standards.

Plans shall detail proposed grading, utility, landscaping, and pavement improvements to be constructed by the Developer without limitation. Said plans shall be acceptable to the City Engineer or his designee.

In accordance with Section 2.2.2 of this Agreement, the Developer shall secure the City Manager's written approval of proposed plans and specifications for said improvements prior to construction. Further, no changes to the design or materials shall be permitted during construction without the City Manager's written consent.

Said improvements shall be constructed in a quality, workmanlike manner, and shall comply with pertinent City ordinances, rules, regulations, and construction standards.

- d) Ownership and Maintenance of Improvements: Upon completion and acceptance of the improvements by the City, the City shall be the owner of said improvements and solely responsible for the maintenance, repair, and reconstruction of said improvements at the City's sole expense.

2.1.2.5. Deleted.

2.1.2.6. Storrs Street Public Parking Lot:

- a) Description of Property: The Parties hereby acknowledge that the Storrs Street Parking Lot is comprised of two separate parcels, as follows:
- Lot 1: City Assessor's Parcel 35/B1/6, consisting of 0.33 +/- acres and features 23+/- public parking spaces, generally

located beneath the Loudon Road Overpass.

- Lot 2: City Assessor's Parcel 46/5/3, consisting of 4.04 +/- acres, a portion of which (approximately 0.4 acres) is used for public parking and features a 16+/- space public parking lot.
- b) General: Subject to the City being the fee owner of the Lot 1 and Lot 2 described above, the Developer shall enter into a License Agreement with the City concerning the Developer's occupancy and use of approximately 1,000+/- square foot area located along the common boundary between Lot 1 and the Developer's property known as Assessor's Parcel #35B-1-2. Specifically, the Developer desires to reconfigure and expand parking at Parcel 35B-1-2 so that said expansion shall occur, in part, on the City's property, as generally shown on plan included as Exhibit 6 of this Agreement.
- c) Design, Permitting, and Construction of Improvements: The Developer, in consultation with the City, shall design, permit, and construct the expansion of the Developer's parking lot onto the City's property, together with any ancillary improvements to the City's parking lot and related infrastructure at the Developer's sole expense.

Specifically, the Developer shall commission detailed plans and specifications for the proposed improvements, which shall be prepared by a licensed civil engineer on a base plan prepared by a licensed land surveyor in accordance with the City's Site Plan Review Regulations and Construction Standards. Plan shall detail proposed grading, utility, landscaping, and pavement improvements to be constructed by the Developer without limitation. Said plans shall be acceptable to the City Engineer or his designee.

In accordance with Section 2.2.2 of this Agreement, the Developer shall secure the City Manager's written approval of proposed plans and

specifications for said improvements prior to construction. Further, no changes to the design or materials shall be permitted during construction without the City Manager's written consent.

Said improvements shall be constructed in a quality, workmanlike manner by skilled tradesmen, and shall comply with pertinent City ordinances, rules, regulations, and construction standards.

- e) Ownership and Maintenance of Improvements: The Developer shall be solely responsible for the maintenance, repair, and reconstruction of those private parking spaces controlled by the Developer constructed on the licensed portion the City's Property as shown in Exhibit 6. The City shall be solely responsible for maintenance, repair, and reconstruction of those public parking spaces located at the City's property outside of the licensed area.

- 2.1.3. RSA 79-E Community Tax Relief Incentive; Deed Restrictions Regarding Taxability of Developer's Project: The Developer shall complete and file separate RSA 79-E applications and associated ten year detailed comprehensive financial pro formas for the real estate located at 4-6 Dixon Avenue, 8-14 Dixon Avenue, and 1 Eagle Square, as further described in Section 3.1.6 of this Agreement prior to start of construction of the Developer's Project (including interior demolition) which shall be subject to the City Council's review and approval.

Financial pro formas shall have a 10 year planning horizon and include detailed revenue and expense information for each property. Said pro formas shall also model alternative scenarios for each property with, and without, RSA 79-E Tax Relief Incentives.

To the extent that the City Council approves the Developer's RSA 79-A application, then, in exchange for the City granting a RSA 79-E tax abatement for each of the properties listed above, the Developer shall agree to have a deed restriction recorded on each of the Developer's properties listed in Section 1.1 of this Agreement for the benefit of the City which shall require that, in the event any portion of said properties are sold to an entity that would cause the property to be exempt from the payment of real estate taxes ("Exempt Owner"), said Exempt Owner(s) shall be obligated to enter into an agreement for Payments In Lieu of Taxes ("PILOT")

with the City of Concord. Pursuant to the PILOT, the Exempt Owner(s) 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 by any other taxable property 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 Property shall incorporate this covenant.

2.1.4. Lot Mergers:

- a) 4-6 Dixon Avenue and former NH Community Development Finance Authority Dixon Avenue Parking Lot: The Developer has indicated that it may wish to merge #4-6 Dixon Avenue with the Dixon Avenue surface parking lot, City Assessor's Parcel 45/6/16 in accordance with RSA 674:39-a. Should the Developer decided to merge these parcels, the Developer hereby covenants, represents, and warranties that said merger shall occur prior to the Developer granting to the City the so-called "Covenant to Protect the Public Benefit" in accordance with RSA 79-E:8 for real estate located at 4-6 Dixon Avenue. If the Developer is unable to record said lot merger at the Merrimack County Registry of Deeds prior to recording said Covenant, then the Developer hereby covenants, represents, and warranties that the Developer shall not seek to merge said parcels until such time that the RSA 79-E Tax Relief Period for 4-6 Dixon Avenue has expired.
- b) 8-14 Dixon Avenue and City's Dixon Avenue Parking Lot: In order to avoid undue confusion concerning the unimproved base value calculation for 8-14 Dixon Avenue, the Developer hereby covenants, represents, and warranties that the Developer shall not seek to merge #8-14 Dixon Avenue with the City's Dixon Avenue Parking Lot (City Assessor's Parcel 45/6/18), which the Developer shall acquire in accordance with this Agreement, until such time that the RSA 79-E Tax Relief Period for 8-14 Dixon Avenue has expired.

2.1.5. Infrastructure Improvements: The Developer hereby covenants, represents, and warranties that it shall be solely responsible for the cost of designing, permitting, and constructing any and all improvements to utilities, roadways, sidewalks and other public and private infrastructure, without limitation, which might be required by Developer's Project, including Improvements to Public Property as described in Section 2.1 of this Agreement.

2.1.6. Property Tax Payments for Developer's Project: The Developer hereby warrants and covenants that, provided that the Developer acquires ownership of the properties listed in Section 1.1 of this agreement, the Developer shall make annual property tax payments to the City in accordance with New Hampshire law.

2.2. **Developer's Contingencies**: The Developer's obligation to proceed with the Developer's Project, as well as fulfill its obligations set forth within this Agreement, 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.

2.2.1. Due Diligence. This Agreement is contingent upon the Developer, at its sole cost and expense, completing the following due diligence:

2.2.1.1. 60-Day Due Diligence Period: The Developer shall have until the sixtieth (60th) calendar day after the execution of this Agreement by the Parties (such period being referred to herein as the "60-Day Due Diligence Period" or "Due Diligence Period") to complete any and all assessments, tests, studies, surveys, and research, at its sole cost and expense, as the Developer deems necessary or appropriate, for the City's real estate, or real estate that the Developer shall acquire from other private parties as listed in Sections 1.1 and 1.4 of this Agreement.

Assessments, tests, studies, research, and surveys may include, but not limited to, environmental site assessments (including soil and groundwater testing and sub-surface explorations), real estate title reviews, boundary surveys, building and property inspections, flood zone reviews and certifications, reviews of all applicable governmental regulations and ordinances, economic and financial feasibility studies, market studies, engineering studies, geotechnical studies, parking and traffic studies, as well as reviews to determine the adequacy and availability of public and private utilities serving the Developer's Project.

Should the Developer discover or determine prior to the expiration of the Due Diligence Period that it is not satisfied in any way with the status of the City's real estate, or the private properties listed in Section 1.1, or the results of any of its due diligence or inspections, the Developer shall have the right to terminate this Agreement, and all parties shall thereafter be released from any further obligations hereunder.

2.2.1.2. *Title Due Diligence – Special Provisions:* During the 60-Day Due Diligence Period, the Developer may perform a title examination of the City's real estate, and must be reasonably satisfied that title to the Property is not subject to any Liens, encumbrances, covenants or other restrictions, which would prevent the Developer from using the City's Property for purposes desired to support the Developer's Project ("Title Defects").

In the event that the title to the Property is subject to any Title Defects, the City shall be provided a reasonable period of time, no less than ninety (90) days, within which to resolve such title defects. In the event that the City is unable or otherwise unwilling to remove the Title Defects within the ninety (90) day period, the Developer, at its sole option, may proceed with any of the following options:

- i. Afford the City additional time, as mutually agreed by the City and the Developer, to cure said title defects;
- ii. Accept title defects present and work within the confines of such defects, as might be possible; or,
- ii. Terminate this Agreement.

2.2.1.3. *Environmental Due Diligence – Special Provisions:* During the 60-Day Due Diligence Period, the Developer shall have the right to conduct such studies and investigations it deems necessary with respect to the environmental condition of the City's Property and any environmental contamination or hazardous material related thereto.

The City shall provide the Developer (or its agents, employees, consultants, contractors, and representatives) reasonable access to the Property for the purpose of carrying out any environmental investigations or other due diligence required by the Developer. In order to complete such examinations or investigations, the Developer may undertake soil borings, test pits, or installation of groundwater monitoring wells. The Developer shall perform these tasks at its own risk and at its own expense. The Developer accepts full responsibility for the use of the Property during its inspections and due diligence, subject to the provisions of Section 5.22.

Further, the City makes no warranties or representations regarding environmental contamination or sub-surface environmental or geotechnical conditions at any City properties or Rights-of-Way which are subject to this Agreement.

If, at any time during the 60-Day Due Diligence Period, the Developer determines that:

- a) Acquiring the City's Dixon Avenue Public Parking Lot, or Licensing portions of the City's Storrs Street Public Parking Lot for Developer's use is not acceptable due to the presence of environmental contamination, because of the presence of environmental contamination, hazardous materials, or other buried materials at the Property; or
- b) Construction of public improvements by the Developer upon any City real estate included in this Agreement is not economically viable because of the presence of environmental contamination, hazardous materials, or other buried materials at the City Properties where Public Improvements are to be constructed,

then the Developer shall have the following options, as follows:

- i. Terminate this Agreement; or

- ii. Accept sole responsibility for addressing any environmental issues discovered during or after the Due Diligence Period, to the extent said issues must be encapsulated, abated, or removed in order to accommodate the Developer's Project and Improvements to Public Property as contemplated within this Agreement, and proceed with the Developer's Project.

2.2.2. Development Approvals and Permits: This Agreement is contingent upon the Developer, at its sole cost and expense, obtaining any and all required development permits and approvals from applicable governmental agencies, upon such terms and conditions as are satisfactory to the Developer in its reasonable discretion, for the Developer's Project and Improvements to Public Property as described in Section 2.1.2 of this Agreement.

The Developer agrees to use good faith, diligent efforts to apply for and obtain all required development permits and approvals. Prior to applying for any development permits and approvals, the Developer shall provide the City with copies of proposed draft plans and applications for improvements to the City's Property for the City's review, approval, and, in the case of applications, the City's execution on behalf of the Developer. The City's approval of proposed plans and applications shall not be unreasonably withheld, conditioned or delayed, nor does such review and approval by the City supersede required Municipal Approvals as described in Section 5.16. The City shall have the right to review and consent to any proposed plans or applications.

If the City does not respond within ten calendar days to Developer's written request to approve any plans or applications, then said plan or application shall be deemed approved and the Developer may file said application with the applicable governmental entity. This provision shall not be construed to limit or otherwise waive the City Manager's rights to subsequently review and approve plans for proposed improvements after the Developer has secured development permits and approvals from applicable land use boards and permitting authorities for construction of the Developer's Improvements to City Property as further described in Section 2.1.2 of this Agreement.

For those improvements located on City property, the City shall join as a co-applicant, and cooperate in the prosecution of such development permits and approvals, including the execution of any

and all letters, consents and permit applications. All development permits and approvals, including any conditions affecting the same, must be satisfactory to the Developer and City in their reasonable discretion. The Developer must receive such development permits and approvals within the time frames established by the Project Schedule set forth in Exhibit 7 of this Agreement. In the event that the Developer, despite good faith efforts, has not received all of its development permits and approvals, the Developer may extend the date to secure such permits and approvals by up to six (6) months, provided that the Developer continues to actively prosecute such approvals.

In accordance with Section 5.21 of this Agreement, in the event of an appeal of any development permit or approval, whether initiated by either the Developer or another aggrieved party, the time periods in Exhibit 7 shall be extended as necessary in order to provide sufficient time to defend or complete said appeals. The Developer shall, upon request of the City, provide the City with the status, and any updates or information concerning the prosecution of development permits and approvals.

The following terms and conditions shall govern the Developer's rights in relation to securing permits and approvals for the Developer's Project:

- a) In the event the City denies any of the Developer's applications for permits and approvals, then the Developer may terminate this Agreement following which this Agreement shall be null and void, and of no further force or effect.
- b) In the event any other governmental entity, other than the City of Concord, denies any of the Developer's applications for permits and approvals, then the Developer may terminate this Agreement following which this Agreement shall be null and void, and of no further force or effect.
- c) In the event an aggrieved individual appeals any permits or approvals issued for the Developer's Project, and the aggrieved individual's appeal prevails, then the Developer may terminate this Agreement following which this Agreement shall be null and void, and of no further force or effect.
- d) In the event an aggrieved individual appeals any permits or approvals issued for Developer's Project and Developer

elects not to contest or defend such appeal, then the Developer may terminate this Agreement following which this Agreement shall be null and void, and of no further force or effect.

- e) In the event the Developer fails to apply for permits and approvals within the schedule set forth within this Agreement, or otherwise withdraws its applications for permits and approvals, then the Developer or City may terminate this Agreement following which this Agreement shall be null and void, and of no further force or effect.

2.2.3. Developer's Financing: This Agreement is specifically contingent upon the Developer obtaining financing, including New Markets Tax Credits, in sufficient amounts and at such prices, rates and terms that are satisfactory to support the Developer's Project. If the Developer is not able to obtain an acceptable financing package for the development of the Developer's Project by the end of the 60-Day Due Diligence Period then the Developer or the City may elect to terminate this Agreement.

2.2.4. Tenant Leases / Occupancy Agreements: This Agreement is specifically contingent upon the Developer executing leases, occupancy agreements, or purchase and sales agreements with a sufficient quantity of tenants or occupants for the Developer's Project, upon such terms and conditions acceptable to the City as set forth in this Agreement. If the Developer is not able to secure such agreements by the end of the 60-Day Due Diligence Period then the Developer or the City may terminate this Agreement.

2.2.5. Economic Feasibility of Developer's Project: This Agreement and the Developer's obligations hereunder are contingent upon the Developer determining, in its sole discretion, that the Developer's Project is economically viable. In the event the Developer, after completing its due diligence, determines that proceeding with the Developer's Project is not economically viable or prudent by the end of the 60-Day Due Diligence Period, the Developer may terminate this Agreement.

2.2.6. City's Responsibilities: This Agreement is specifically contingent upon the City completing its responsibilities as set forth within Section 3.1 of this Agreement without limitation. 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 shall have the remedies set forth in Section 5.20 hereof.

3. CITY'S RESPONSIBILITIES AND CONTINGENCIES:

3.1. City's Responsibilities:

3.1.1. Gateway Plaza Improvements within City's Bridge Street / Dixon Avenue / Loudon Road Right-of-Way Improvements: The City hereby covenants that it shall actively participate in the design and permitting process for said improvements as conceptually depicted in Exhibit 2. Further, the City covenants that upon satisfactory completion of said improvements by the Developer, as determined by the City in its sole discretion, the City shall accept ownership of said improvements, as well as responsibilities for the maintenance, repair, and reconstruction of said improvements located within the City's rights-of-way.

3.1.2. North Main Street Sidewalk Improvements: The City hereby covenants that it shall actively participate in the design and permitting process for said improvements as conceptually depicted in Exhibit 3. Further, the City covenants that upon satisfactory completion of said improvements by the Developer, as determined by the City in its sole discretion, the City shall accept ownership of those portions said improvements located within the City's North Main Street rights-of-way, as well as responsibilities for the maintenance, repair, and reconstruction of said improvements located within the City's rights-of-way.

3.1.3. Conversion of City Dixon Avenue Parking Lot to Plaza: Subject to the terms of this Agreement, the City shall convey said property to the Developer for the construction of a private plaza as conceptually depicted in Exhibit 4.

3.1.4. City Storrs Street Public Parking Lot Improvements:

a) License Agreement:

- i. General: Subject to the City being the fee owner of the Lot 1 and Lot 2 described above, The City shall enter into a License Agreement with the Developer concerning the Developer's occupancy and use of an approximately 1,000+/- square foot area of Lot 1 of the City's Storrs Street Public Parking Lot in order to accommodate the reconfiguration and expansion of the Developer's parking lot located immediately to the south thereof, described in Section 1.1.3 of this Agreement, as well as Exhibit 6.

Said License Agreement shall be acceptable to the City Solicitor, and incorporate the City's standard terms and conditions for all License Agreements, including, but not limited to, liability insurance and payment of property taxes by the Developer in accordance with RSA 72:23.

ii. Term: The term of the License Agreement shall be ten (10) years. The Parties may, if mutually desired, negotiate an extension to the term of the License Agreement prior to its expiration.

iii. Annual Fee: In consideration for use of the City's property, the Developer shall pay the City an annual fee of one dollar (\$1.00) plus applicable property taxes in accordance with RSA 72:23.

b) Management of Public Parking Spaces: The Parties hereby agree that the City shall have the ability to administer and operate public parking spaces at the Storrs Street Public Parking Lot in any manner it deems appropriate in order to further the City's financial and economic development interests.

3.1.5. Downtown Solid Waste District Improvements: The City hereby covenants that, upon satisfactory completion of said improvements by the Developer as described in Section 2.1.2.4 of this Agreement, as well as Exhibit 5, the City shall accept ownership of said improvements, as well as maintain said improvements so as they are reasonably safe, sanitary, and aesthetically attractive. The City's decision to accept ownership of said improvements shall be in the City's sole discretion.

3.1.6. RSA 79-E Community Tax Relief Incentive:

a) General: In accordance with Section 2.1.3, the Developer shall apply for RSA 79-E for the following properties for the following terms of tax relief:

- 4-6 Dixon Avenue: Seven (7) years commencing on April 1, 2019.
- 8-14 Dixon Avenue: Five (5) years commencing on April 1, 2019.
- 1 Eagle Square: Five (5) years commencing on April 1, 2019.

Said RSA 79-E applications for each of the properties shall be separate and independent applications. Nothing contained within this paragraph shall require that RSA 79-E applications be filed simultaneously.

- b) Review and Approval Process: Subject to the Developer filing a completed RSA 79-E application package for each property, including a detailed ten (10) year financial pro formas for each, and a determination by the City that said applications comply with the terms of said statute, including, but not limited to RSA 79-E:14 and other applicable State Laws governing such tax relief, and subject to City Council approval, the City shall grant a Community Revitalization Tax Relief Incentive benefit for the above listed properties.

The City and the Developer hereby acknowledge and accept that granting of said relief under RSA 79-E is subject to a public hearing process and City Council approval prior to granting such relief by the City.

- c) Covenant to Protect Public Benefit. To the extent that the City Council approves the Developer's RSA 79-E application, in accordance with RSA 79-E:8, the Developer shall enter into a covenant with the City which shall ensure the buildings and improvements erected at the Developer's Property shall be maintained and used in a manner that furthers the public benefits, as defined by RSA 79-E, for which the tax relief was granted. In accordance with RSA 79-E:8, II, The term of this covenant shall be for a period double the term of tax relief provided by the City.
- d) Applicability of RSA 79-E Benefit to Parking Lot Properties: The parties agree that all parcels which only feature parking lot or landscaped plazas without habitable buildings are ineligible for a tax relief under RSA 79-E as there are no "qualifying structures" as defined by RSA 79-E:2,I located at such properties.

- 3.1.7. 1 Eagle Square Canopy License: The City shall enter into a license agreement with the Developer concerning the construction of a new fixed canopy to replace existing canvas awnings along the North Main Street frontage of 1 Eagle Square.

Said canopy shall secure all necessary permits and approvals from the City, including, but not limited to, Planning Board Architectural Design Review approvals.

Said canopy shall comply with RSA 236:15 regarding the height of building penetrations located rights-of-way.

Said license agreement shall be acceptable to the City Solicitor, and incorporate the City's standard terms and conditions for all License Agreements, including, but not limited to, liability insurance.

- 3.2. **City's Contingencies:** In addition to the contingencies set forth in section 3.1 of this Agreement, the City's obligation to perform under this Agreement shall be conditioned upon the following additional 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.
- 3.2.1. **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 the Developer's Project, as further described in Section 2.2.3. If the Developer is unable to obtain an acceptable financing package for the development of the Developer's Project within the timeframes set forth in this Agreement, the City may elect to terminate this Agreement.
- 3.2.2. **Developer's Development Permits and Approvals:** This Agreement is specifically contingent upon the Developer, at its sole cost and expense, obtaining any and all required development approvals and permits from applicable governmental agencies, upon such terms and conditions as are satisfactory to the Developer in its reasonable discretion, for the Developer's Project and related public improvements as further described in Section 2.2.2. If the Developer delivers notice to the City that Developer is unable to secure said approvals and permits within the timeframes set forth in this Agreement, the City may elect to terminate this Agreement.
- 3.2.3. **Infrastructure Improvements:** This Agreement is specifically contingent upon the Developer being solely responsible for any and all infrastructure improvements that might be required for the Developer's Project. Further, the Parties hereby agree that the City shall have no obligation to design, construct, or finance any infrastructure improvements, or improvements to public or private property, to support the Developer's efforts to develop the Developer's Project, or Improvements to Public Property as described in Section 2.1.2.

3.2.4. Developer's Responsibilities: This Agreement is specifically contingent upon the Developer completing its responsibilities as set forth within this Agreement without limitation in accordance with the Development Schedule as described within Exhibit 7 of this Agreement. If the Developer fails to fulfill any of its responsibilities after notice and opportunity to cure as provided herein, then the Developer shall be in default under this Agreement and the City shall have the remedies set forth in Section 5.19 hereof.

4. REPRESENTATIONS AND WARRANTIES

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

4.1.1. 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.

4.1.2. 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 in connection with the transactions contemplated hereby, 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.

4.1.3. The Concord City Council, by its approval of Resolution # _____ on July 9, 2018 authorized the City Manager to execute this Agreement.

4.1.4. 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 the performance by the City 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 City in connection with the transactions contemplated hereby.

- 4.2. **Representations and Warranties of the Developer.** The Developer hereby represents and warrants to the best of its knowledge and belief that:
- 4.2.1. On _____ the Developer entered into valid Purchase and Sales Agreements to acquire the non-City owned properties described in Section 1.1 of this Agreement.
 - 4.2.2. 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 enforceable against the Developer in accordance with the respective terms thereof.
 - 4.2.3. Neither the execution or delivery by the Developer of this Agreement, the performance by the Developer of their 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 are a party or by which the Developer or any of its properties or assets are bound, or constitutes a default there under.
 - 4.2.4. 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.
 - 4.2.5. 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, 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 their 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.

5. **GENERAL PROVISIONS**

- 5.1. **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.
- 5.2. **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.
- 5.3. **Binding Effect; Successors and Assignors**. The terms and provisions of this Agreement and the respective rights and obligations of the Parties hereunder shall be binding upon, and inure to the benefit of, their respective heirs, successors, assigns, and nominees. The Developer shall be permitted to assign this Agreement to an affiliate or subsidiary limited liability company or limited partnership formed for the purpose of undertaking Developer's Project; however, that the general partner of a limited partnership assignee or the managing member of a limited liability company assignee, as appropriate, is a wholly owned subsidiary of Granite Center L.L.C..
- 5.4. **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.
- 5.5. **Exhibits**. All exhibits referred to in this Agreement are hereby incorporated by reference and expressly made a part hereof.
- 5.6. **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.

- 5.7. **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.
- 5.8. **Consent to Jurisdiction and Venue.** The Developer and City 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. Both Parties hereby waive their right to a jury trial.
- 5.9. **Independent Parties.** The Developer and City 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.
- 5.10. **Survival of Agreement.** The agreements, covenants, indemnities, representations and warranties contained herein shall survive the execution and delivery of this Agreement and Closing.
- 5.11. **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.
- 5.12. **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, their successors and permitted assigns, any right, remedy or claim under or in respect of this Agreement or any provision hereof.
- 5.13. **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.

- 5.14. **Time of the Essence.** The Parties agree that time is of the essence in performance of their respective obligations under this Agreement.
- 5.15. **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.
- 5.16. **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.
- 5.17. **Warranties and Representations:** The Developer and City 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.
- 5.18. **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 effected thereby shall remain in full force and effect.
- 5.19. **Default by Developer.** If the Developer shall fail to fulfill its obligations hereunder after the Closing, 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: 1) give notice that it is terminating this Agreement upon which neither Party shall have any further rights against the other under this Agreement, or 2) 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.

- 5.20. **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 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 option to: 1) waive the default and proceed with the Developer's Project, 2) give notice that it is terminating this Agreement upon which neither party shall have any further rights against the other under this Agreement, and/or 3) 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.

5.21. **Development Schedule:**

- 5.21.1. **General:** Attached to this Agreement is a Development Schedule (Exhibit 7) showing 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. The City Council hereby gives the City Manager the sole authority to negotiate the final elements, terms, conditions, milestones, and timeframes for Exhibit 7.
- 5.21.2. **Force Majeure / Excusable Delays:** 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, quarantine restrictions, labor disputes, litigations, unexpected delays in the development permitting and approval processes, freight embargoes, delays stemming from unusually severe weather, unforeseen conditions or delays encountered during demolition by the City, unforeseen conditions or delays encountered during construction by the Developer, or delays of 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.

- 5.21.3. Weather Delays: Provisions in this Agreement relating to the time period for completion of the construction of the Developer's Project and Improvements to Public Property by the Developer shall be deemed to be reasonably extended when seasonal weather conditions prevent the Developer from proceeding under normal construction conditions. It is expressly agreed that the Developer will not be obligated to undertake site work or other 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.)
- 5.21.4. Milestones: The Milestones in Exhibit 7 shall be extended for force majeure and excusable delays described in Section 5.21.2 and in 5.21.3.

- 5.22. **Access to City Property for Due Diligence, Permitting, and Construction of Public Improvements:** The City hereby grants authorization to the Developer, its employees, representatives, consultants, and agents to enter applicable City property during the term of this Agreement for the purpose of completing due diligence and for all other purposes necessary to carry out the terms of this Agreement.

The Developer and the City shall coordinate all access to the City's property by third parties working on behalf of the Developer as part of the Developer's due diligence.

The Developer shall defend, indemnify and hold harmless the City and its officials, agents and employees (collectively, the "*Indemnified Parties*"), from and against all loss, damage, expense, liability and other claims, including court costs and reasonable attorneys' fees (collectively, "*Liabilities*") resulting from any third party action relating to this paragraph regarding Developer's inspection of the City's property and from injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Developer (or its contractors, agents or employees) in connection with this paragraph; provided, however, that nothing herein shall require the Developer to indemnify the Indemnified Parties for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of the City. Additionally, to the fullest extent permitted by law, no official, employee, agent or representative of the City shall be individually or personally liable for any obligation or liability of Developer under this paragraph. During Developer's inspection of the City's property, the Developer shall have in force, general liability insurance, naming the City as an additional insured, by written endorsement without a waiver of subrogation, with respect to commercial general liability, as it pertains to this paragraph, in an amount not less than the amount of \$2 million in the aggregate and \$1million per incident or occurrence. Developer shall also require that any and all contractors who it retains for the purpose of completing due diligence or for any other purpose necessary to carry out the terms of this paragraph, and who access the Property, to obtain a certificate of insurance in the amount of \$2 million in the aggregate, \$1 million per occurrence naming the City as an additional insured by written endorsement without a waiver of subrogation, with respect to commercial general liability, as it pertains to this paragraph.

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LIST OF EXHIBITS

- Exhibit 1 Boundary survey plan titled “Existing Conditions Plat of land 141 Dixon Avenue Development Co. LLC,” prepared by Richard D. Bartlett and Associates, LLC dated April 23, 2018.
- Exhibit 2 “Gateway Plaza Concept Plan” prepared by Terrain Planning and Design L.L.C. dated April 26, 2018.
- Exhibit 3 “Eagle Plaza Concept Plan” prepared by Terrain Planning and Design L.L.C. dated April 26, 2018.
- Exhibit 4 “Dixon Plaza Concept Plan” prepared by Terrain Planning and Design L.L.C. dated April 26, 2018.
- Exhibit 5 “Parking Lot Concept Plan” prepared by Terrain Planning and Design L.L.C. dated April 26, 2018.
- Exhibit 6: “Storrs Street Public Parking Lot License Area” prepared by the City of Concord, June 26, 2018
- Exhibit 7: Project Schedule

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Executed as a sealed instrument this _____ day of July 2018.

CITY

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 _____, 2018, 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

DEVELOPER

GRANITE CENTER L.L.C.

By: _____ Date: _____
Jonathan Chorlian
Manager
Duly Authorized

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

In _____, on the _____ day of _____, 2018, before me, personally appeared _____, of Granite Place 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 he executed said instrument for the purposes therein contained as her free and voluntary act and deed.

Justice of the Peace/Notary Public

Exhibit 1
Boundary survey plan titled "Existing Conditions Plat of land 141 Dixon Avenue Development Co. LLC, prepared by Richard D. Bartlett and Associates, LLC dated April 23, 2018 and included as Exhibit 1 of this Agreement

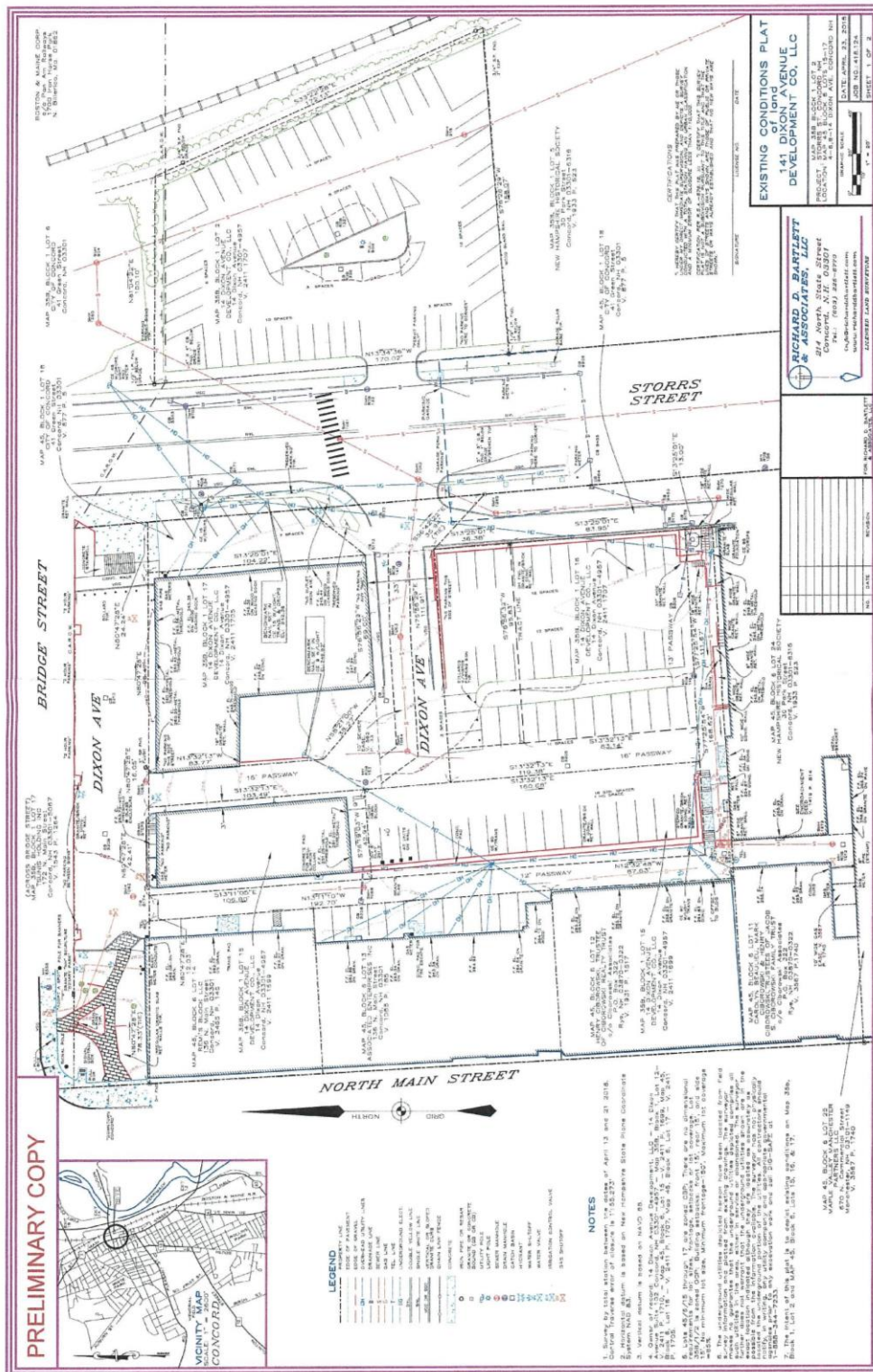
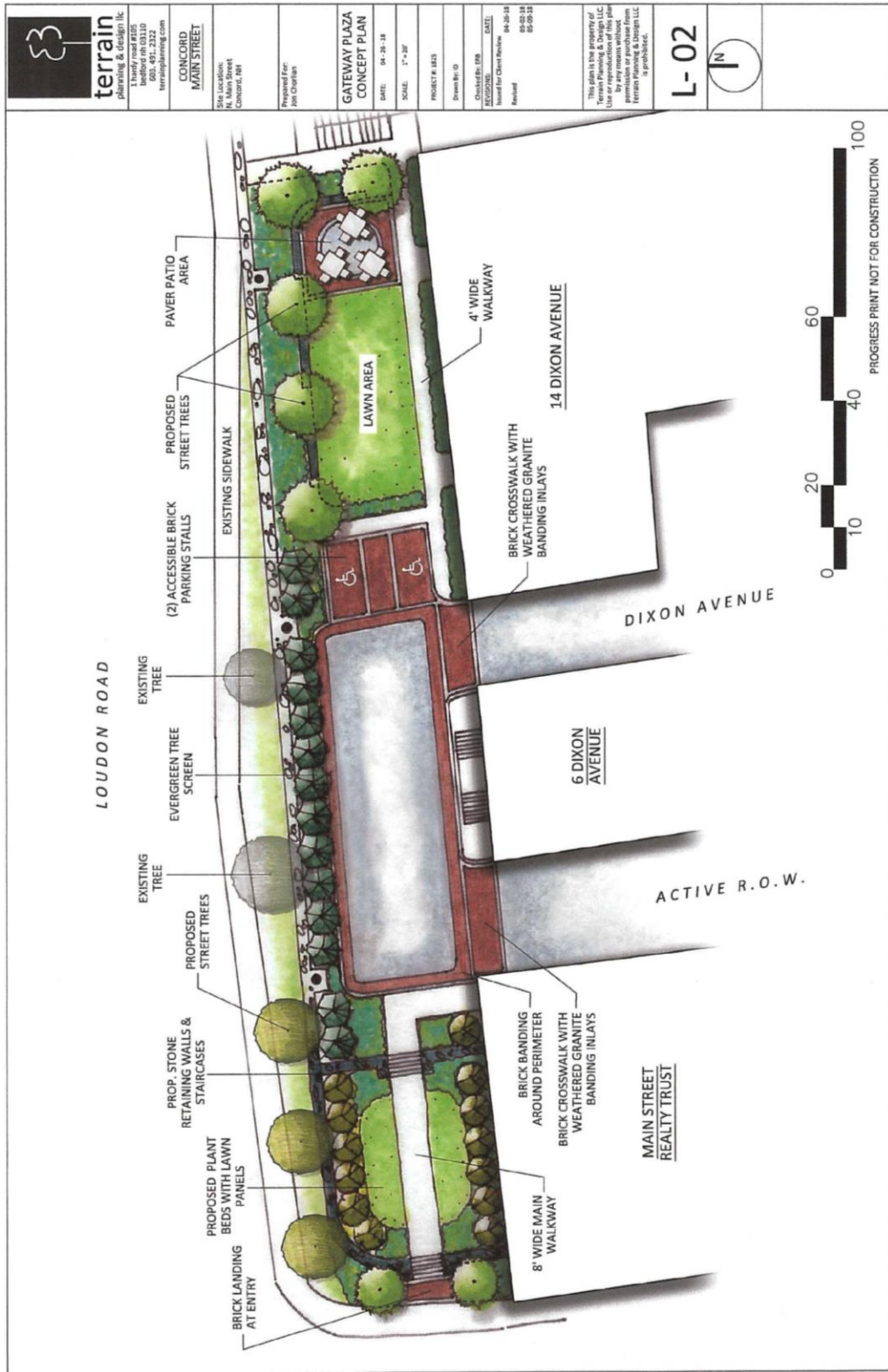


Exhibit 2
“Gateway Plaza Concept Plan” prepared by Terrain Planning and Design L.L.C.
dated April 26, 2018



<p>terrain planning & design llc</p> <p>1000 W. 10TH ST SUITE 100 CONCORD, NH 03301 603-474-2322 terrainplanning.com</p>	<p>CONCORD MAIN STREET</p>
	<p>Site Location: 14 Dixon Avenue Concord, NH</p>
<p>Prepared For: JAY CHESTER</p>	<p>GATEWAY PLAZA CONCEPT PLAN</p>
<p>DATE: 04-26-18</p>	<p>SCALE: 1" = 20'</p>
<p>PROJECT #: 1823</p>	<p>Drawn By: JD</p>
<p>Checked By: JTB</p>	<p>DATE: 04-26-18</p>
<p>Approved: JTB</p>	<p>DATE: 05-02-18</p>
<p>This plan is the property of Terrain Planning & Design L.L.C. Use or reproduction of this plan without the written consent of Terrain Planning & Design L.L.C. is prohibited.</p>	
<p>L-02</p>	

Exhibit 3
“Eagle Plaza Concept Plan” prepared by Terrain Planning and Design L.L.C.
dated April 26, 2018

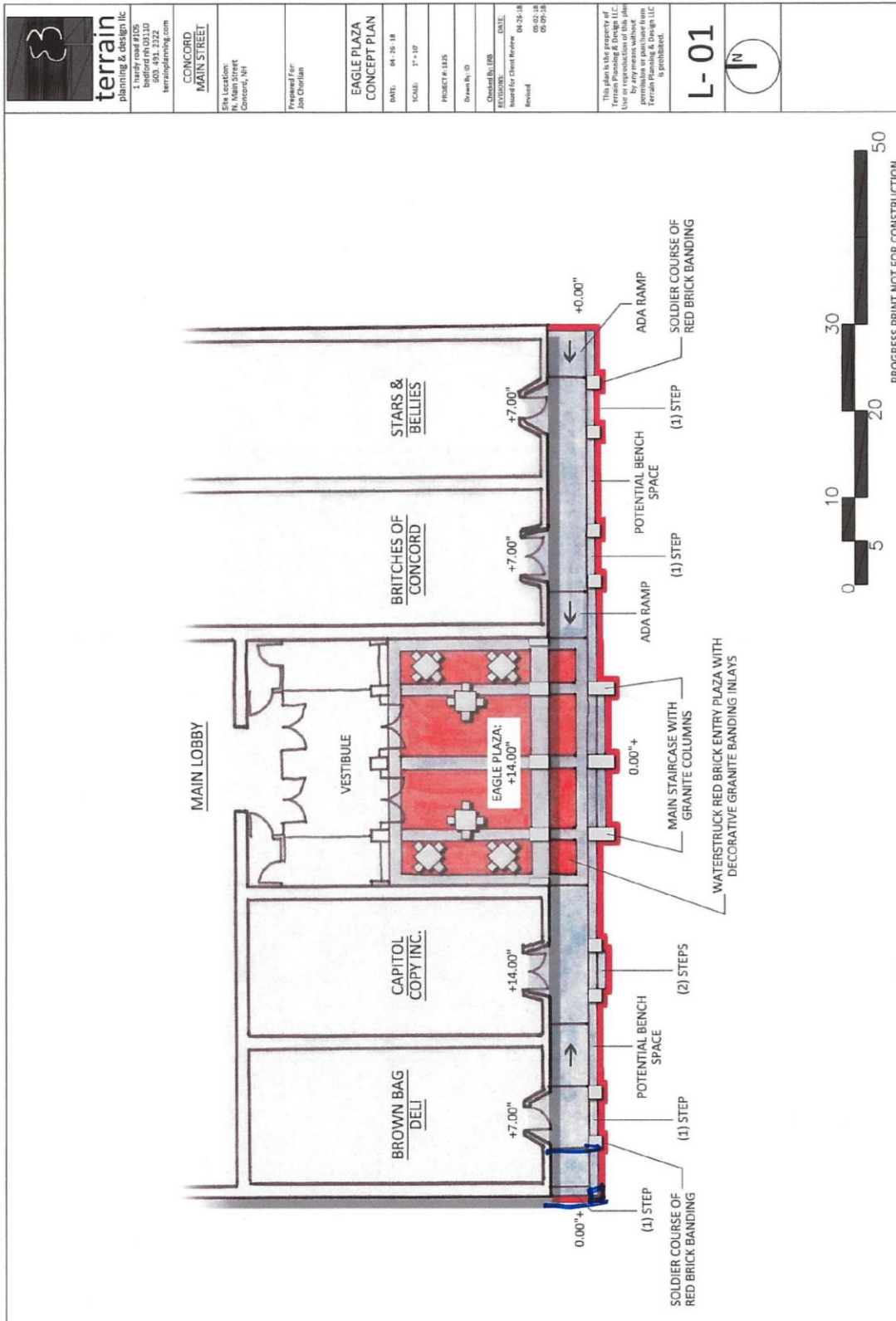


Exhibit 4
“Dixon Plaza Concept Plan” prepared by Terrain Planning and Design L.L.C.
dated April 26, 2018

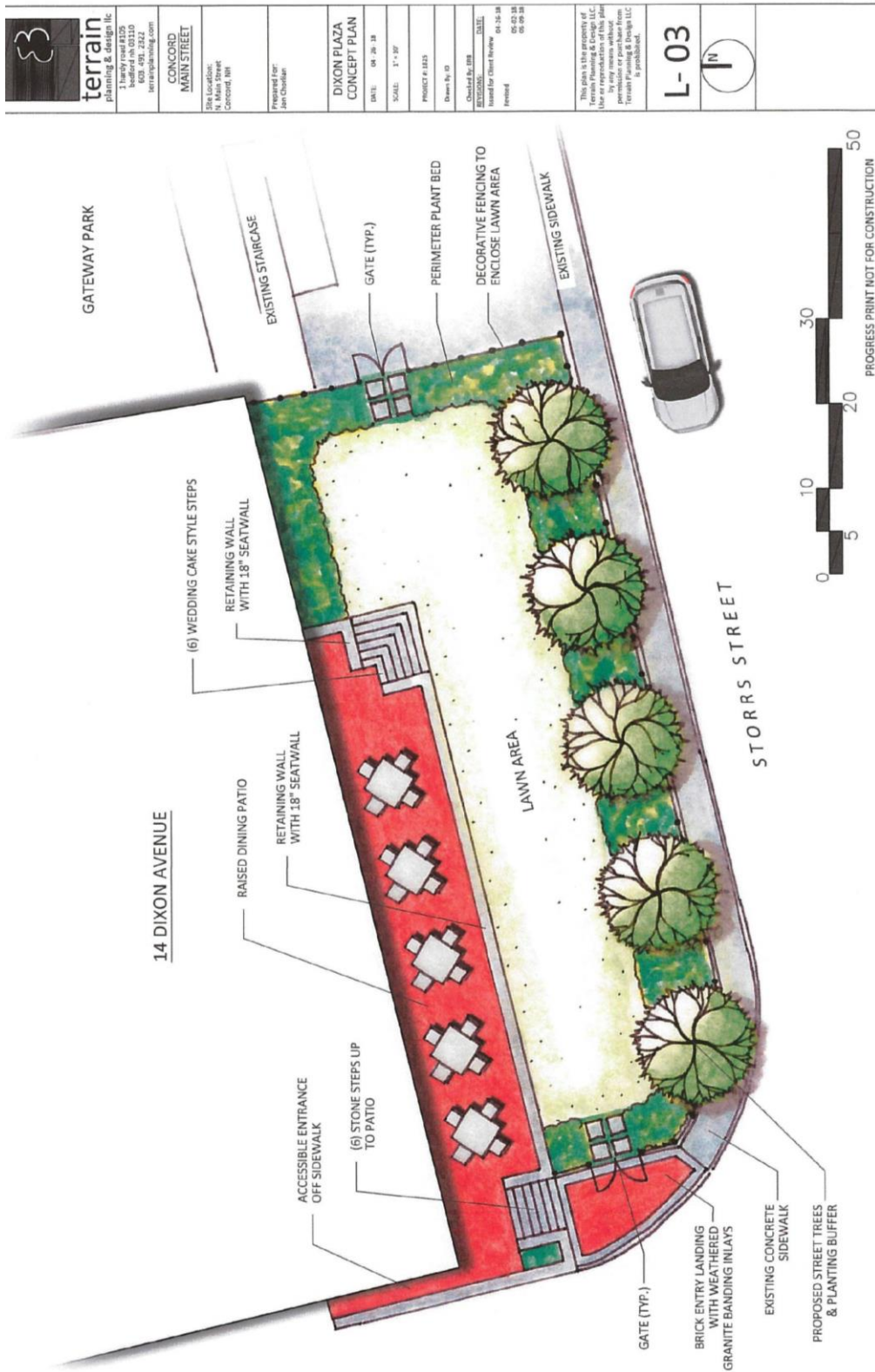


Exhibit 5
“Parking Lot Concept Plan” prepared by Terrain Planning and Design L.L.C.
dated April 26, 2018 Depicting Location of New Dumpster Pad



● Approximate Location of Dumpster Pads

Exhibit 6
“Storrs Street Public Parking Lot License Area” prepared by the City of Concord
 June 26, 2018

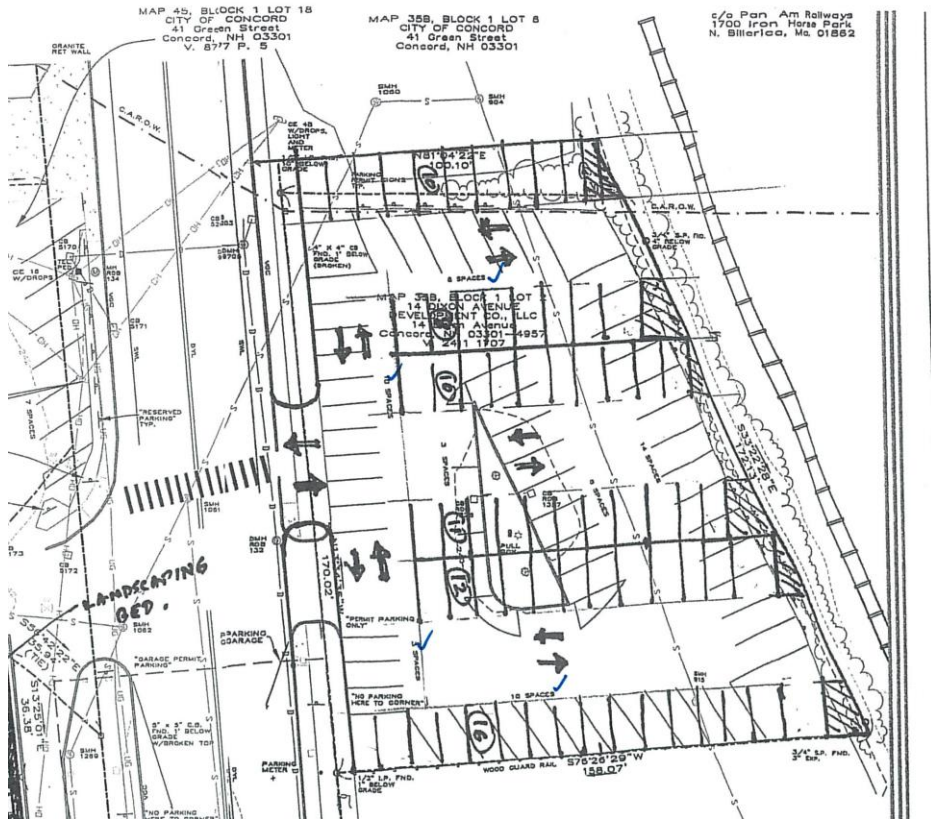
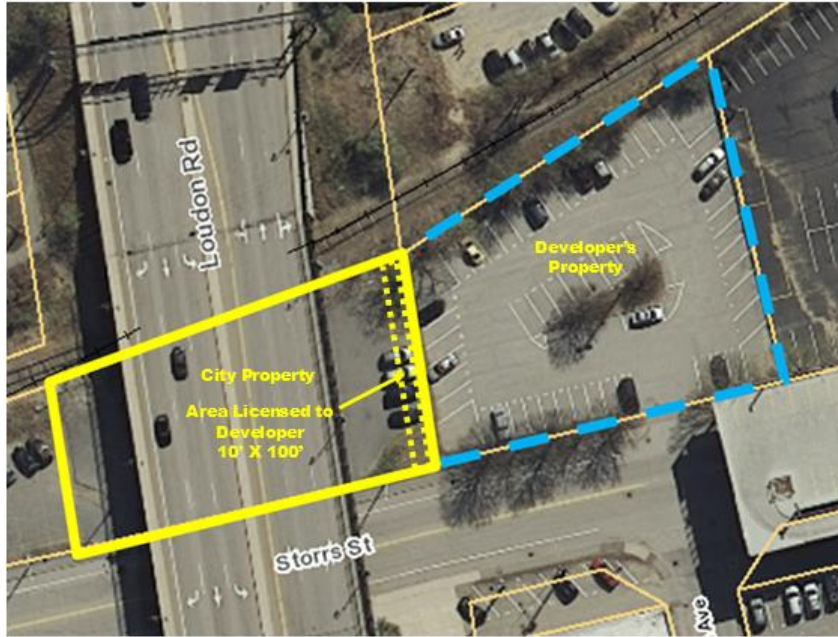


Exhibit 7 Project Schedule

- July 9, 2018: City Council public hearing on Purchase and Sales / Development Agreement, as well as and RSA 79-E applications.
- July 16, 2018: Development Agreement Executed; anticipated beginning of Developer's 60-Day Due Diligence Period.
- July 20, 2018: Anticipated date Developer secures Planning Board approvals for Developer's Project and related public improvements, as well as lot merger for 4-6 Dixon Avenue and Dixon Avenue NHCDFA Parking Lot.
- September 14, 2018: Anticipated end date of Developer's 60-Day Due Diligence Period.
- September 31, 2018: Developer's final day to close on New Markets Tax Credits and related financing.
- October 31, 2018: Final day for Developer to Close on acquisition of City's Dixon Avenue Parking Lot property.
- February 1, 2019: Developer achieves substantial completion of Developer's Project and related public improvements.