

## PURCHASE AND SALES / DEVELOPMENT AGREEMENT

This **PURCHASE AND SALES / DEVELOPMENT AGREEMENT** (“Agreement”) is made as of the \_\_\_\_ day of \_\_\_\_\_, 2017 (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 “Seller” or “the City”) and Dol-Soul Properties L.L.C., a New Hampshire limited liability company, with a principal place of business at c/o Dolben, 150 Presidential Way, Suite 220, Woburn, MA, 01801, its successors and assigns (referred to as the “Buyer”), and referred to collectively as the “Parties.”

### RECITALS

This Agreement relates to the sale and purchase of real estate known as the “Former New Hampshire Employment Security Property” located at 32-34 South Main Street and 33 South State, Concord, New Hampshire 03301, City Assessing Department Parcel 34-3-3 and 34-3-2 (the “Property”).

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

- I. The Seller owns the Property, consisting of 0.74+/- acres of land, as described on the attached plan titled “Tax Map of 32-34 South Main Street and Surrounding Properties”, undated, prepared by the City of Concord Community Development Department – Engineering Division, attached to this Agreement as Exhibit 1.
- II. The Seller, subject to the contingencies set forth within this Agreement, desires to demolish the existing 26,000SF building at the Property and then convey the Property to the Buyer for the purpose of constructing a 120,000SF +/- mixed use development featuring approximately 109 market rate apartments and 5,000SF +/- of space for “Active Retail Uses” on the South Main Street level of the new building, together with parking lots, landscaping, and related infrastructure (herein referred to as the “Buyer’s Project”) as conceptually shown on Exhibit 2 and in accordance with the Project Schedule set forth within Exhibit 4.
- III. The Buyer, subject to the contingencies set forth within this Agreement, desires to acquire the Property for the purpose of constructing the “Buyer’s Project”.
- IV. 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 PREMISES AND REAL ESTATE TRANSACTION:**

- 1.1. **General:** The Seller, hereby grants to the Buyer, in accordance with the terms of this Agreement, the rights to purchase the Property together with any improvements therein, except the existing 26,000SF +/- office building which shall be demolished by the Seller prior to Closing, as well as any and all easements, rights of way, plants, trees, shrubbery, assignable permits, approvals, licenses, and other appurtenances thereto. The Property is shown on the attached plan included in Exhibit 1.
- 1.2. **Purchase Price:** The purchase price for the Property shall be One Million Seventy Five Thousand Dollars (\$1,075,000.00).
- 1.3. **Deposit:** Upon execution of this Agreement, the Buyer shall provide a deposit in the amount of One Hundred Thousand Dollars (\$100,000.00). 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 90-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 ninety (90) 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. **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.
- 1.5. **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.

The Buyer 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 Buyers inspection of the 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 Buyer (or its contractors, agents or employees) in connection with this paragraph; provided, however, that nothing herein shall require the Buyer 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 Seller. 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 Buyer under this paragraph. During Buyer's inspection of the Property, the Buyer 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 \$1 million per incident or occurrence. Buyer 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 Seller as an additional insured by written endorsement without a waiver of subrogation, with respect to commercial general liability, as it pertains to this paragraph.

- 1.6. **Closing**: Closing may occur at any time once the following conditions and contingencies have been achieved. However, in no event shall the Closing occur later than **September 30, 2018**, as set forth within the Project Schedule included as Exhibit 4 within this Agreement. Notwithstanding the preceding sentence, 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 the purchase price shall not be exchanged between the Parties until all of the Buyer's and Seller's respective responsibilities and contingencies, as set forth below, as well as within Articles 2 and 3, respectively, have been achieved, satisfied, or otherwise waived in writing.

- a) Rezoning of the Property from Urban Commercial (CU) to Central Business Performance (CBP);
- b) Amendment of the City's Impact Fee Ordinance in order to limit impact fees for the Buyer's Project as further described in Section 3.1.3;

- c) Completion and recording of a Voluntary Merger Form at the Merrimack County Registry of Deeds so that 32-34 South Main and 33 South State Street are merged into a single parcel being the Premises;
- d) Completion of title search by the Buyer yielding results acceptable to the Buyer in accordance with Section 2.2.1.2;
- e) Receipt of any and all final, nonappealable federal, state, and/or local Governmental Approvals and permits by the Buyer for its Project in accordance with Section 2.2.2, including, but not limited to, final Planning Board Site Plan Approval and a City Building Permit;
- f) Execution of lease or occupancy agreements between the Buyer and its proposed tenants for the "Active Retail Use" space on the South Main Street level of the Buyer's Project in accordance with Section 3.8;
- g) The Buyer securing all required construction financing for the Buyer's Project from a lender of its choice;
- h) Demolition of the existing 26,000SF +/- former NH Employment Security Building by the Seller, and the Seller leaving the Property in a condition which is acceptable to the Buyer;
- i) The Buyer's written confirmation that it is satisfied with the environmental condition of the Premises in accordance with Section 2.2.1.3 of this Agreement;
- j) The Buyer entering into a contract with a general contractor or construction management of its choice for construction of the Buyer's Project in its entirety;
- k) Preparation of the Deed with reservations set forth herein by the Seller;
- l) The satisfaction of any other contingencies as set forth within Articles 2 or 3 of this Agreement related to the Closing.

In the event that any of (a), (b), (c), (e), (h), or (k) of the above closing conditions or contingencies have not been satisfied on or before September 30, 2018, then Buyer shall have the right to extend the Closing Date until such time as these items have been completed to the reasonable satisfaction of Buyer. If Buyer does not so extend term, 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.

- 1.7. **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 to serve the Buyer's Project (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 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 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 plus Other Reimbursements 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. In the event the Property is re-conveyed to the Seller pursuant to this provision, the Parking Agreement shall automatically transfer.

Force Majeure Delays shall mean occurrences whereby, the Buyer shall not be considered in breach of or default in its obligations with respect to Commencement of Construction 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, litigation, freight embargoes, delays stemming from unusually severe weather, unforeseen conditions or delays encountered during construction by the Buyer, 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 for Commencement of Construction and for performance of the obligations thereunder by the Buyer shall be extended for the period of the enforced delay, provided, that the Buyer, within thirty (30) days after the beginning of any such enforced delay, has notified the Seller 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 Buyer and the Seller shall consider not only actual work stoppages, but also any consequential delays resulting from such stoppage as well.

“Commencement of Construction” shall be defined as the Buyer completing the building foundation for the Buyer’s Project.

“Other Reimbursements” shall be defined as the actual cost of any on-site physical improvements made to the Property, or off-site improvements constructed by the Buyer as part of the Buyer’s Project which enhance the value of the Property, together with any development permits and approvals secured by the Buyer for the Property. Actual cost of permits and approvals shall exclude administrative, legal, architectural, engineering, and other similar services associated with securing development permits and approvals. Any legal, architectural, engineering and other reports not purchased by the Seller shall remain the property of the Buyer and may not be used or sold by Seller. Said re-conveyance to the Seller shall be free and clear of any encumbrances other than those set forth in the deed to the Buyer or as may be provided for within this Agreement. Upon re-conveyance to the Seller by the Buyer, the Seller shall have clear title to all development permits and approvals granted for the Buyer’s Project.

- e) A deed restriction on the Property to the benefit of the City establishing limitations on “Active Retail Uses” as set forth in Section 2.1.1. If, in the future, character of the neighborhood near the Property changes or

other circumstances arise so that the need for the limitation on “Active Retail Uses” is no longer relevant or appropriate, then the Parties reserve the right to modify or terminate the Restrictions and the City agrees to cooperate with the Buyer in doing so if requested by the Buyer.

- 1.8. **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.
- 1.9. **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 thirty (30) days of receipt of the draft deed from the Seller. The Seller shall address the comments and respond in a timely manner.
- 1.10. **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 in the customary fashion.
- 1.11. **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 1.7 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:

- 1.11.1. Afford the Seller any additional amount of time which the Buyer solely deems reasonable to cure said Liens; or,
  - 1.11.2. 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; or,
  - 1.11.3. The Parties may renegotiate the Purchase Price to appropriately account for said Liens and then proceed to Closing.
- 1.12. **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.
- 1.13. **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 it's "as is, where is" condition, free and clear of all tenants and third parties. In accordance with Section 3.1.1 of this Agreement, the Parties expressly agree that the Seller shall demolish the existing 26,000SF +/- former New Hampshire Employment Security Building prior to Closing.
- 1.14. **Title Insurance:** If applicable and in accordance with Section 1.8, the Seller shall execute all customary documents required by the Buyer's Title Insurance Company.
- 1.15. **Real Estate Broker's Fees & Commissions:** The Seller hereby confirms that it has engaged the NAI Norwood Group of Bedford, New Hampshire, to market the Property. The Seller shall be solely responsible for paying its broker any fees or commissions owed to the NAI Norwood Group resulting from this transaction.



- 1.16. **Seller's Disclosures:** The Seller makes no warranties or representations regarding environmental contamination or sub-surface environmental or geotechnical conditions at the Property beyond the information contained within Phase I Environmental Site Assessment and Phase II Environmental Site Assessments of the Property as further described in Section 2.2.1.3 of this Agreement.
- 1.17 **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 90-day due diligence period, and this Agreement shall thereupon be void and of no further force or effect.

## 2. **BUYER'S RESPONSIBILITIES AND CONTIGENCIES:**

### 2.1. **Buyer's Responsibilities and Covenants:**

- 2.1.1. **Development of the Buyer's Project:** Upon acquisition of the Property, and subject to the provisions of Section 3.2.5, the Buyer (its heirs, successors, or assigns) hereby covenants that it shall proceed with the development of a 120,000SF +/- mixed use development comprised of approximately 109 "Market Rate Apartments" consisting of a mix of studio, one-bedroom, and two-bedroom units, a 5,000SF +/- of space on ground level of the building along the South Main Street frontage of the Property for "Active Retail Uses", including a potential "Restaurant", and at least 54 on-site parking spaces to support said development as shown on preliminary plans included as Exhibit 2 of this Agreement. The City's preliminary estimated assessed value of the Buyer's Project is as proposed approximately \$12,490,000.

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 buyer, 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.

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

- Restaurants as defined within this Agreement;
- Apparel and accessories;
- Books, stationery, jewelry, leather goods and luggage, art, collectibles, gifts, jewelry, 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, 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 Buyer’s Project), check cashing services (but excluding banks and credit unions), 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 South Main Street:

- Businesses engaged in finance, banking, accounting, insurance, law, architecture, engineering, and real estate services;
- Mail box, packaging, and delivery services;
- Health care service (including mental health care and eye care) providers;
- Uses that are principally office uses.

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, the City shall have the right to approve fast food restaurants it believes are consistent with the intent of this provision if requested by the Buyer, such approval not to be unreasonably withheld or delayed.

The Buyer's Project shall be generally similar to size, mass, and configuration as the conceptual site plan and building elevations included within Exhibit 2 of this Agreement. However, the Parties expressly recognize that the conceptual site plan and building elevations included within Exhibit 2 are very preliminary and are subject to change once a boundary survey and other architectural and engineering details for the Buyer's Project become available as the design process moves forward. The Parties agree that the Buyer, subject to City Planning Board architectural review and site plan approvals, shall have creative control over the exterior appearance of the Buyer's Project and the flexibility to change the shape, materials, and fenestration of the proposed building from conceptual plans included within Exhibit 2. In exchange for control over the exterior of the Buyer's Project, the Buyer covenants that materials comprising the exterior of the Buyer's Project shall be appropriate for downtown urban architecture, complementary to downtown Concord's historic character, and be predominantly comprised of brick and stone masonry, decorative concrete block or similar synthetic masonry materials, decorative cement board panels, metal (including insulated metal panels), as well as glass. The Buyer hereby covenants that it shall not use any of the following materials to clad the exterior of the Buyer's Project located on Main Street and Fayette Street: vinyl siding, stucco,

wood or cement clapboards, and wood or cement board singles or shakes. Notwithstanding the preceding sentence, vinyl siding, stucco, wood or cement clapboards, and wood or cement board singles or shakes may be used on the exterior of Buyer's Project located on South State Street and Thompson Street provided such materials in the aggregate occupy no more than 40% of the building facades on those two streets.

The schedule for the Buyer's Project shall be substantially similar to the schedule set forth within Exhibit 4 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 Buyer covenants and agrees that it will use commercially reasonable efforts to complete the Buyer's Project in a timely manner consistent with industry practices for projects of the same type and kind as Buyer's Project.

- 2.1.2. **Lot Merger:** The Buyer hereby covenants, represents, and warranties that simultaneously with the development permitting and approval process for the Buyer's Project, the Buyer shall file appropriate applications with the City of Concord in order to merge #32-34 South Main Street with property located at #33 South State Street in accordance with RSA 674:39-a.
- 2.1.3. **Infrastructure Improvements:** The Buyer 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 Buyer's Project.
- 2.1.4. **Parking to Support Buyer's Project:** Simultaneously with Closing on the conveyance of the Property, the Buyer shall execute the Parking Agreement included within Exhibit 3 of this Agreement.
- 2.1.5. **Property Tax Payments for Buyer's Project:** The Buyer hereby warranties and covenants that, provided that the Buyer acquires the Property in accordance with this agreement, the Buyer shall make annual property tax payments to the City for the Buyer's Project in accordance with State Law for municipal government, county government, state government, as well as public school districts. Pursuant to NH RSA 162-K, the Parties acknowledge and agree that said property tax payments derived from the Buyer's Project shall be captured by the Sears Block Tax Increment Financing

District used in part to support the following infrastructure improvements and annual operating expenses associated therewith:

- a) The City's operating, maintenance, and debt service costs for the Storrs Street (Capital Commons) Municipal Parking Garage, a facility which may, in part, be used by tenants of the Buyer's Project in accordance with the Parking Agreement included within Exhibit 3;
- b) Debt service in the amount of approximately \$1.99 million to acquire, hold, and weatherize the former NH Employment Security Property. This property will be conveyed to the Buyer in accordance with the terms of this Agreement. The Parties hereby recognize that the \$1.075 million purchase price paid by the Buyer will result in residual debt service which the City shall be responsible for after Closing;
- c) Debt service in the amount of approximately \$300,000 for demolition of the former NH Employment Security Building by the City to facilitate development of the Buyer's Project in accordance with the terms of this Agreement;
- d) Debt service in the amount of approximately \$1.71 million which financed the previous installation of underground electrical and telecommunications utilities along the South Main Street frontage of the Property to benefit the Buyer's Project;
- e) Debt service in the amount of approximately \$2.5 million for the City's so-called "Complete Street Project" which previously renovated South Main Street, including the installation of pedestrian and landscape amenities along the South Main Street frontage of the Buyer's Project.

**2.2. Buyer's Contingencies:** The Buyer's obligation to close on acquisition of the Property shall be subject to the following contingencies, the failure to satisfy any one of which shall give the Buyer any of the options set forth below and, in addition, the right to withdraw from this Agreement, after which the Buyer shall have no further obligation to the Seller.

## 2.2.1. Due Diligence.

2.2.1.1. 90-Day Due Diligence Period: The Buyer shall have until the ninetieth (90<sup>th</sup>) day after the execution of this Agreement by the Parties (such period being referred to herein as the “90-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 Buyer deems necessary or appropriate, including, 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 Property. Should the Buyer 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 Property or the results of any of its due diligence or inspections, the Buyer shall have right to terminate this Agreement, and all parties shall thereafter be released from any further obligations hereunder and the Buyer’s deposit shall be refunded forthwith.

2.2.1.2. Title Due Diligence – Special Provisions: During the 90-Day Due Diligence Period, the Buyer shall perform a title examination of the Property, and must be reasonably satisfied that title to the Property is good, marketable and insurable, and not otherwise subject to any Liens, encumbrances, covenants or other restrictions which would prevent the Buyer from using the Property for the Buyer’s Project (“Title Defects”). In the event that the title to the Property is not good, marketable and insurable, or is otherwise subject to any Title Defects, the Seller 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 Seller is unable or otherwise unwilling to provide good, marketable and insurable title, or to remove the Title Defects within the ninety (90) day

period, the Buyer, at its sole option, may proceed with any of the following options:

- i. Afford the Seller additional time to cure said title defects; or,
- ii. Terminate this Agreement and receive a full refund of its Deposit, including interest earnings associated therewith; or,
- iii. The Parties may renegotiate the Purchase Price to appropriately account for the condition of title to the Property, and then proceed to Closing.

2.2.1.3. Environmental Due Diligence – Special Provisions:  
During the 90-Day Due Diligence Period, the Buyer shall have the right to conduct such studies and investigations it deems necessary with respect to the environmental condition of the Property and any environmental contamination or hazardous material related thereto.

The Seller shall provide the Buyer (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 Buyer. In order to complete such examinations or investigations, the Buyer may undertake soil borings, test pits, or installation of groundwater monitoring wells. The Buyer shall perform these tasks at its own risk and at its own expense. The Buyer accepts full responsibility for the use of the Property during its inspections and due diligence, and acknowledges that such access is subject to the indemnity provisions of Section 1.5.

The Seller shall, within ten (10) business days of the Effective Date, provide the Buyer, at no cost, with copies of the following environmental studies, assessments, or reports:

- Phase I Environmental Site Assessment of the former New Hampshire Employment Security

Building 32-34 South Main Street, Concord New Hampshire prepared by Nobis Engineering on August 29, 2014;

- Phase II Environmental Site Assessment and Hazardous Building Materials Assessment of the former New Hampshire Employment Security Building 32-34 South Main Street, Concord New Hampshire prepared by Nobis Engineering on August 29, 2014.

The Buyer hereby acknowledges and agrees that it may not rely upon the representations, certifications, and statements contained therein without the express written consent of the parties who authored such reports or generated said data. Further, the Buyer acknowledges that the provision of such materials by the Seller does not constitute any representation or warranty by the Seller related to environmental conditions or potential presence of hazardous materials at the Property. Per disclosures in Section 1.16, the Seller represents to Buyer that it is not aware of any environmental contamination at the Property except as disclosed in the two above-described reports.

If the Buyer determines that the Property is not acceptable because of the presence of environmental contamination, hazardous materials, or other buried materials at the Property, the Buyer shall have the following options, as follows:

- i. Terminate this Agreement and receive a full refund of its Deposit, including interest earnings associated therewith; or,
- ii. Accept the Property in its "as is condition" and proceed to Closing, subject to other contingencies as set forth within this Agreement. If the Buyer proceeds to Closing, the Buyer shall accept full responsibility for the Property in its "as is, where is" environmental condition with respect to the potential presence of hazardous waste or other buried materials regardless whether such waste or other



materials were identified by said due diligence, tests, studies, or investigations.

2.2.2. **Development Approvals and Permits:** This Agreement is contingent upon the Buyer, 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 Buyer in its reasonable discretion, for the Buyer's Project.

Buyer 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 Buyer shall provide the Seller with copies of proposed draft plans and applications for the Seller's review, approval, and, in the case of applications, the Seller's execution on behalf of the Buyer. The Seller's approval of proposed plans and applications shall not be unreasonably withheld, conditioned or delayed, nor does such review and approval by the Seller supersede required Municipal Approvals as described in Section 5.16. The Seller shall have ten (10) Business Days to review and consent to any proposed plans or applications. Business Days shall mean Monday – Friday, excluding any legal holidays whereby municipal offices in the City of Concord, New Hampshire, are closed to the public. If Seller does not respond to Buyer's request to approve any plans or applications within said ten (10) business day period, then said plan or application shall be deemed approved and the Buyer may file said application with the applicable governmental entity.

The Seller 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, the attendance by City Staff at all hearings, and the submission of oral and written testimony in support of the Buyer's Project to the applicable land use boards or agencies, to permit the Buyer to seek and obtain all development permits and approvals. All development permits and approvals, including any conditions affecting the same, must be satisfactory to the Buyer and Seller in their reasonable discretion. The Buyer must receive such development permits and approvals within the time frames established by the Project Schedule set forth in Exhibit 4 of this Agreement. In the event that the Buyer, despite good faith efforts, has not received all of its development permits and approvals, the Buyer may extend the closing date by up to six (6) months, provided that the Buyer 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 Buyer or another aggrieved party, the time periods in Exhibit 4 shall be extended as necessary in order to provide sufficient time to defend or complete said appeals. The Buyer shall, upon request of the Seller, provide the Seller with the status, and any updates or information concerning the prosecution of development permits and approvals.

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

- a) In the event the City denies any of the Buyer's applications for permits and approvals, then the Buyer may terminate this Agreement and shall receive a full refund of the Deposit, including interest earnings, 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 Buyer's applications for permits and approvals, then the Buyer may terminate this Agreement and shall receive a full refund of the Deposit, including all interest earnings, 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 Buyer's Project, and the aggrieved individual's appeal prevails, then the Buyer may terminate this Agreement and shall receive a full refund of the Deposit, including all interest earnings, 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 Buyer's Project and Buyer elects not to contest or defend such appeal, then the Buyer may terminate this Agreement and shall forfeit its Deposit, including all interest earnings, following which this Agreement shall be null and void, and of no further force or effect.
- e) In the event the Buyer 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 Buyer or Seller may terminate this Agreement and the Buyer shall forfeit its Deposit, including interest earnings, following which this Agreement shall be null and void, and of no further force or effect.

- 2.2.3. **Buyer's Financing:** This Agreement is specifically contingent upon the Buyer obtaining financing in sufficient amounts and at such prices, rates and terms that are satisfactory to the Buyer in its sole discretion for the development of the Buyer's Project. The Buyer shall provide proof, in writing, of a preliminary commitment for such financing arrangements as soon as is reasonably practicable. If the Buyer is not able to obtain an acceptable financing package for the development of the Buyer's Project prior to the Closing, the Buyer may elect to terminate this Agreement, in which case the Buyer shall forfeit its Deposit, including interest earnings.
- 2.2.4. **Tenant Leases / Occupancy Agreements:** This Agreement is specifically contingent upon the Buyer executing leases, occupancy agreements, or purchase and sales agreements with a sufficient quantity of tenants or occupants for the Buyer's Project, upon such terms and conditions acceptable to the Buyer in its sole discretion, prior to Closing. If the Buyer is not able to secure such agreements within the time prescribed by this Agreement, the Buyer may terminate this Agreement, in which case the Buyer shall forfeit its Deposit, including interest earnings.
- 2.2.5. **Financial Feasibility of Buyer's Project:** This Agreement and the Buyer's obligations hereunder are contingent upon the Buyer determining, in its sole discretion, that the Buyer's Project is financially viable. In the event the Buyer, after completing its due diligence, determines that proceeding with the Buyer's Project is not financially viable or prudent, the Buyer may terminate this Agreement, in which case the Buyer shall forfeit its Deposit, including interest earnings.
- 2.2.6. **Seller's Responsibilities:** This Agreement is specifically contingent upon the Seller completing its responsibilities as set forth within Section 3.1 of this Agreement without limitation in accordance with the Development Schedule as described within Exhibit 4 of this Agreement. If the Seller fails to fulfill any of its responsibilities after notice and opportunity to cure as provided herein, then the Seller shall be in default under this Agreement and the Buyer shall have the remedies set forth in Section 5.20 hereof.

2.2.7. **Rezoning of the Property:** This Agreement is contingent upon the Concord City Council approving, after a notice period and public hearing, the rezoning the Property from Urban Commercial (“CU”) to Central Business Performance (“CPB”) to facilitate development of the Buyer’s Project. The Parties hereby recognize that rezoning of the property is required to make the Buyer’s Project feasible, as the CPB zoning district provides more flexible development standards regarding maximum building height, building setbacks, density, and impervious surface coverage ratios. If the Concord City Council does not approve the rezoning of the Property from CU to CPB, within 120 days of executing this Agreement, the Buyer may terminate this Agreement and receive a refund of its deposit in full, including interest earnings associated therewith.

3. **SELLER’S RESPONSIBILITIES AND CONTINGENCIES:**

3.1. **Seller’s Responsibilities:**

3.1.1. **Demolition of the former New Hampshire Employment Security Building:** The Seller shall be responsible for demolition of the existing 26,000SF +/- existing building at the Property known as the former New Hampshire Employment Security Building. Demolition shall include, without limitation, proper and lawful handling and disposal of hazardous building materials, such as asbestos, present within structural or cosmetic components of the building. Demolition shall be done in good and workman like manner and in compliance with all applicable laws, rules, regulations and ordinances, leaving the Property in a safe condition.

Without limiting the foregoing paragraph, demolition shall include removal of all building materials including foundation footings, slabs, and walls, unless otherwise agreed by the Parties in writing. The Parties hereby recognize that it might be necessary to leave some foundation walls in place in order to temporarily support and safeguard abutting public or private infrastructure, streets, or structures until commencement of construction of the Buyer’s Project. In the event the Parties mutually agree to leave any portions of the existing building in place as temporary shoring, the Buyer shall, at its cost, be solely responsible for the removal of any residual portions of the structure after Closing.

The Parties hereby agree that the Seller shall not be obligated to back fill the foundation hole upon completion of demolition. However, the Seller shall grade exposed soils resulting from the demolition within and abutting the former building footprint in order

to safeguard the Property and reduce potential hazards to public health and safety.

The Seller shall not be obligated to remove any parking lots, utilities, walkways, or other infrastructure at the Property.

The Seller shall not be obligated to proceed with abatement and demolition of the existing building until such time the Buyer informs the Seller in writing that the Buyer has:

- Completed all due diligence for the Buyer's Project and determined that the results of such diligence are favorable for development of the Buyer's Project.
- Secured all development permits and approvals for the Buyer's Project;
- Secured a financing commitment for the Buyer's Project in amounts and at such rates and terms acceptable to the Buyer; and,
- Secured estimates from qualified Construction Managers or General Contractors for the Buyer's Project which are within the Buyer's budget for the Buyer's Project.

Upon receipt of said notification, the Seller hereby covenants that it shall complete abatement and demolition of the structure not later than ninety (90) calendar days after written notification from the Buyer is received by the Seller. The Parties hereby agree that the ninety (90) day time period for the abatement and demolition of the existing building shall be reasonably extended in the event of certain delays as set forth within Section 5.21 of this Agreement.

The Parties further agree that the Seller shall not be obligated to physically perform abatement or demolition activities at the Property during the "Winter Season" per Section 5.21.3 of this Agreement.

The Seller, at its sole option, may finance abatement and demolition of the existing building through the City of Concord's Sears Block Tax Increment Finance District.

The Seller agrees that it shall require its demolition contractor to indemnify, defend and hold harmless the Buyer from and against any and all claims, fines, penalties, actions, damages, losses, settlement or compromises and liabilities (including reasonable

attorneys' fees, court costs, and costs of investigation) relating to or arising out of the demolition undertaken by the Seller or its employees, agents, representatives or contractors on the Property.

3.1.2. **Parking to Support Buyer's Project:** This Agreement is contingent upon the City entering into the Parking Agreement set forth in Exhibit 3. The City's ability to carry out the terms of said Parking Agreement is contingent upon the Concord City Council approving an ordinance to establish a parking permit system for certain City of Concord parking facilities. If the Concord City Council does not approve the enactment of such ordinance within 120 days of executing this Agreement, the Buyer may terminate this Agreement and the Buyer shall be entitled to a refund of its deposit in full, including any accrued interest earnings related thereto. In the event that the Concord City Council enacts such ordinance, the Parties shall execute the Parking Agreement attached as Exhibit 3, simultaneously with Closing on this transaction.

3.1.3. **Impact Fees:** Seller covenants and agrees that in no event shall Buyer be required to pay more than One Hundred Fifty Thousand Dollars (\$150,000.00) in impact fees for the Buyer's Project. The Seller shall take any and all action necessary under the City's Impact Fee Ordinance with respect to such cap including, without limitation, amending the Impact Fee Ordinance and/or designating Buyer's Project as a "City Priority Redevelopment Project" under the Impact Fee Ordinance. The City shall have the ability to determine how to allocate impact fees collected among transportation, recreation, and school impact fee categories, as applicable. If the Concord City Council does not approve the enactment of such ordinance within 120 days of executing this Agreement, the Buyer may terminate this Agreement and the Buyer shall be entitled to a refund of its deposit in full, including any accrued interest earnings related thereto

3.2. **Seller's Contingencies:** In addition to the contingencies set forth in section 3.1 of this Agreement, the Seller's obligation to close on the sale of the Property shall be subject to the following additional contingencies, the failure to satisfy any one of which shall give the Seller any of the options set forth below and, in addition, the right to withdraw from this Agreement after which the Seller shall have no further obligation to the Buyer.

3.2.1. **Buyer's Financing:** This Agreement is specifically contingent upon the Buyer obtaining financing in sufficient amounts and at such rates and terms as are satisfactory to the Buyer in its sole discretion for the development of the Buyer's Project, as further

described in Section 2.2.4. If the Buyer is unable to obtain an acceptable financing package for the development of the Buyer's Project as set forth in this Section prior to the Closing, the Seller may elect to terminate this Agreement and the Buyer shall forfeit Deposit, including interest earnings associated therewith.

- 3.2.2. **Buyer's Development Permits and Approvals:** This Agreement is specifically contingent upon the Buyer, 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 Buyer in its reasonable discretion, for the Buyer's Project as further described in Section 2.2.2. If the Buyer delivers notice to the Seller that Buyer is unable to secure said approvals and permits prior to the Closing, the Seller may elect to terminate this Agreement, in which event the Buyer's Deposit shall be handled as set forth within Section 2.2.2 of this Agreement.
- 3.2.3. **Infrastructure Improvements:** This Agreement is specifically contingent upon the Buyer being solely responsible for any and all infrastructure improvements that might be required for the Buyer's Project (except for the demolition as set forth in Section 3.1 hereof being performed by the Seller). Further, the Parties hereby agree that the Seller shall have no obligation to design, construct, or finance any infrastructure improvements, or improvements to public or private property, to support the Buyer's efforts to develop the Buyer's Project.
- 3.2.4. **Buyer's Responsibilities:** This Agreement is specifically contingent upon the Buyer completing its responsibilities as set forth within Section 2.1 of this Agreement without limitation in accordance with the Development Schedule as described within Exhibit 4 of this Agreement. If the Buyer fails to fulfill any of its responsibilities after notice and opportunity to cure as provided herein, then the Buyer shall be in default under this Agreement and the Seller shall have the remedies set forth in Section 5.19 hereof.
- 3.2.5. **Buyer's Project - Minimum Development Program:** This Agreement is specifically contingent upon the Buyer's Project featuring not less than 70 "Market Rate Apartments" consisting of a mix of studio, one-bedroom, and two-bedroom units, a 5,000SF +/- of space on ground level of the building along the South Main Street frontage of the Property for "Active Retail Uses" , including a potential "Restaurant", all as further defined within Section 2.1.1 of this Agreement, and at least 54 on-site parking spaces to support said development. In the event the Buyer's Project does not

achieve this minimum Development Program, the Seller may terminate this Agreement, in which case the Buyer shall forfeit its Deposit, including interest earnings associated therewith.

#### 4. **REPRESENTATIONS AND WARRANTIES**

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

4.1.1. Seller holds good and marketable title to the Property, and the execution and delivery of this Agreement and the performance of the Seller'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 Seller, enforceable against the Seller 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 Seller of this Agreement, the performance by the Seller of its obligations in connection with the transactions contemplated hereby, nor the fulfillment by the Seller of the terms or conditions hereof conflicts with, violates or results in a breach of any constitution, law or governmental regulation applicable to the Seller, 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 Seller is a party or by which the Seller 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 \_\_\_\_\_, 2017, 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 Seller, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the Seller of its obligations hereunder or the performance by the Seller 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 Seller in connection with the transactions contemplated hereby.



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

- 4.2.1. The Buyer 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 Buyer, constitute valid, legal and binding obligations of the Buyer enforceable against the Buyer in accordance with the respective terms thereof.
- 4.2.2. Neither the execution or delivery by the Buyer of this Agreement, the performance by the Buyer of their obligations in connection with the transactions contemplated hereby, nor the fulfillment by the Buyer of the terms or conditions hereof conflicts with, violates or results in a breach of any constitution, law or governmental regulation applicable to the Buyer, 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 Buyer are a party or by which the Buyer or any of its properties or assets are bound, or constitutes a default there under.
- 4.2.3. 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 Buyer, except such as have been duly obtained or made.
- 4.2.4. 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 Buyer, 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 Buyer of their obligations hereunder or the performance by the Buyer 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 Buyer in connection with the transactions contemplated hereby.

## 5. **GENERAL PROVISIONS**

- 5.1. **Cooperation:** The Buyer and the Seller 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 Seller, the Buyer, 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 Buyer shall be permitted to assign this Agreement to an affiliate or subsidiary limited liability company or limited partnership formed for the purpose of undertaking Buyer'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 Dol-Soul Properties 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 Buyer and Seller 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 Buyer and Seller 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 Buyer and Seller 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 Buyer.**
- 5.19.1. **Default by Buyer before Closing.** If the Buyer shall fail to fulfill its obligations hereunder prior to the Closing and such failure continues for thirty (30) days after written notice from Seller (or such additional time as may be reasonably required if such failure cannot be cured within said thirty (30) day period provided that Buyer is diligently pursuing said cure), then the Seller'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 Seller shall have the right to terminate this Agreement and retain the Buyer's Deposit including interest earnings related thereto, which shall be Seller's sole and exclusive remedy at law or in equity.
- 5.19.2. **Default by Buyer after Closing.** If the Buyer shall fail to fulfill its obligations hereunder after the Closing, and such failure continues for thirty (30) days after written notice from Seller (or such additional time as may be reasonably required if such failure cannot be cured within said thirty (30) day period provided that Buyer is diligently pursuing said cure), then the Seller'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 Seller 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.

5.20. **Default by Seller.** If the Seller shall fail to fulfill its obligations hereunder, and such failure continues for thirty (30) days after written notice from Buyer (or such additional time as may be reasonable required if such failure cannot be cured within said thirty (30) day period provided that Seller is diligently pursuing said cure) then the Buyer'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 Buyer shall have the right option to (a) waive the default and proceed to Closing; or (b) give notice that it is terminating this Agreement, in which event the deposit and any interest shall be immediately refunded to Buyer, upon which neither party shall have any further rights against the other under this Agreement; and/or (c) pursue any and all rights it may have at law and in equity to address any such breach. The remedies stated herein shall be cumulative.

5.21. **Development Schedule:**

5.21.1. **General:** Attached to this Agreement is a Development Schedule (Exhibit 4) showing the anticipated date and sequence of various elements of the Project to be completed by the Buyer and the Seller. 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 Buyer and the Seller 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 4.

- 5.21.2. Force Majeure / Excusable Delays: For the purposes of any of the provisions of this Agreement, neither the Buyer nor the Seller, 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 (including, without limitation, any appeal of any approval needed either for amendments to the Sears Block TIF District appropriation votes by the City Council related thereto, the contemplated rezoning of the Property or any permit or approval needed for Buyer's Project), unexpected delays in the approval process, freight embargoes, delays stemming from unusually severe weather, unforeseen conditions or delays encountered during demolition by the Seller, unforeseen conditions or delays encountered during construction by the Seller, 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 Buyer and the Seller 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 demolition of the former New Hampshire Employment Security Building by the Seller or completion of construction or completion of various stages of construction of the Buyer's Project by the Buyer 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 demolition, 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 the Exhibit 4 Project Schedule and all Closing Contingencies set forth in Section 1.6 shall be extended for force majeure and excusable delays described in Section 5.21.2 and in 5.21.3.

#### **LIST OF EXHIBITS**

- Exhibit 1 Plan titled "*Tax Map of 32-34 South Main Street and Surrounding Properties*", undated, prepared by the City of Concord Community Development Department – Engineering Division.
- Exhibit 2 Conceptual Site Plan and Building Elevations for Buyer's Project
- Exhibit 3 Parking Agreement
- Exhibit 4 Project Schedule

**[The remainder of this page left blank intentionally]**

Executed as a sealed instrument this \_\_\_\_\_ day of \_\_\_\_\_ 2017.

**SELLER**

**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 \_\_\_\_\_, 2017, 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



**BUYER**

**DOL-SOUL PROPERTIES L.L.C.**

By: \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_  
Duly Authorized

STATE OF NEW HAMPSHIRE  
COUNTY OF MERRIMACK

In \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 2017, before me, personally appeared \_\_\_\_\_, of Dol-Soul Properties 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.

\_\_\_\_\_  
Justice of the Peace/Notary Public

**Exhibit 1**

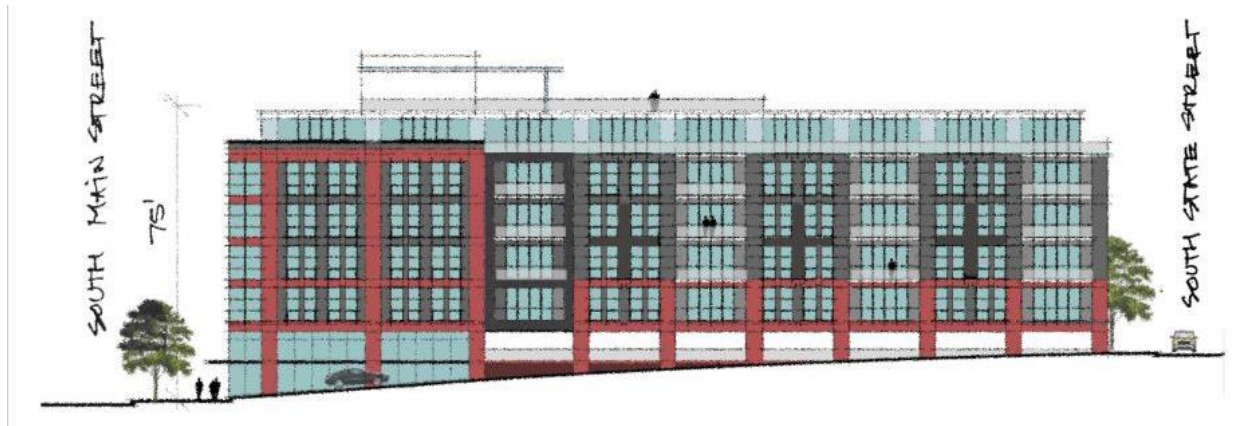
**Plan titled "*Tax Map of 32-34 South Main Street and Surrounding Properties*"**



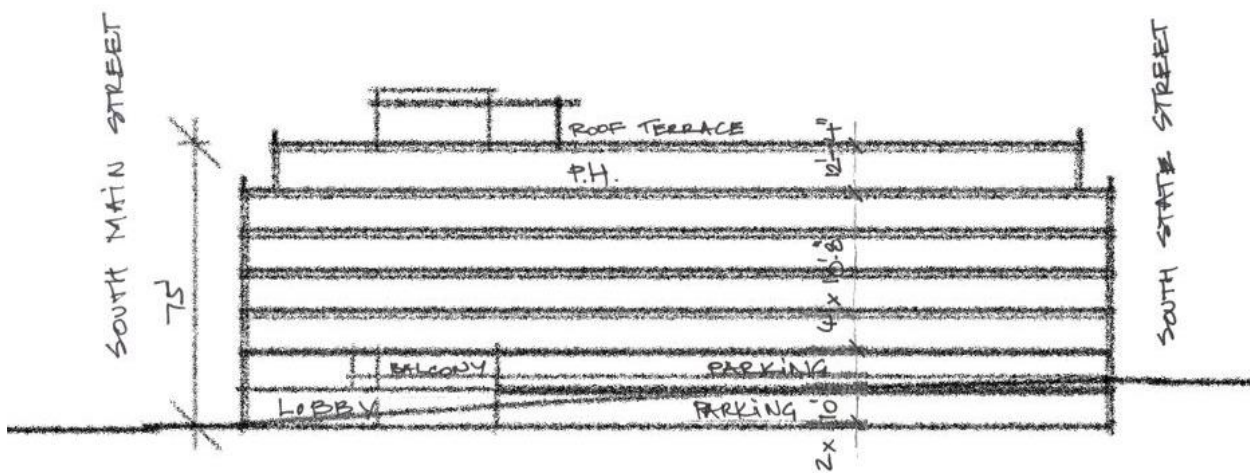
**Exhibit 2**  
**Conceptual Site Plan and Building Elevation Renderings for Buyer's Project**



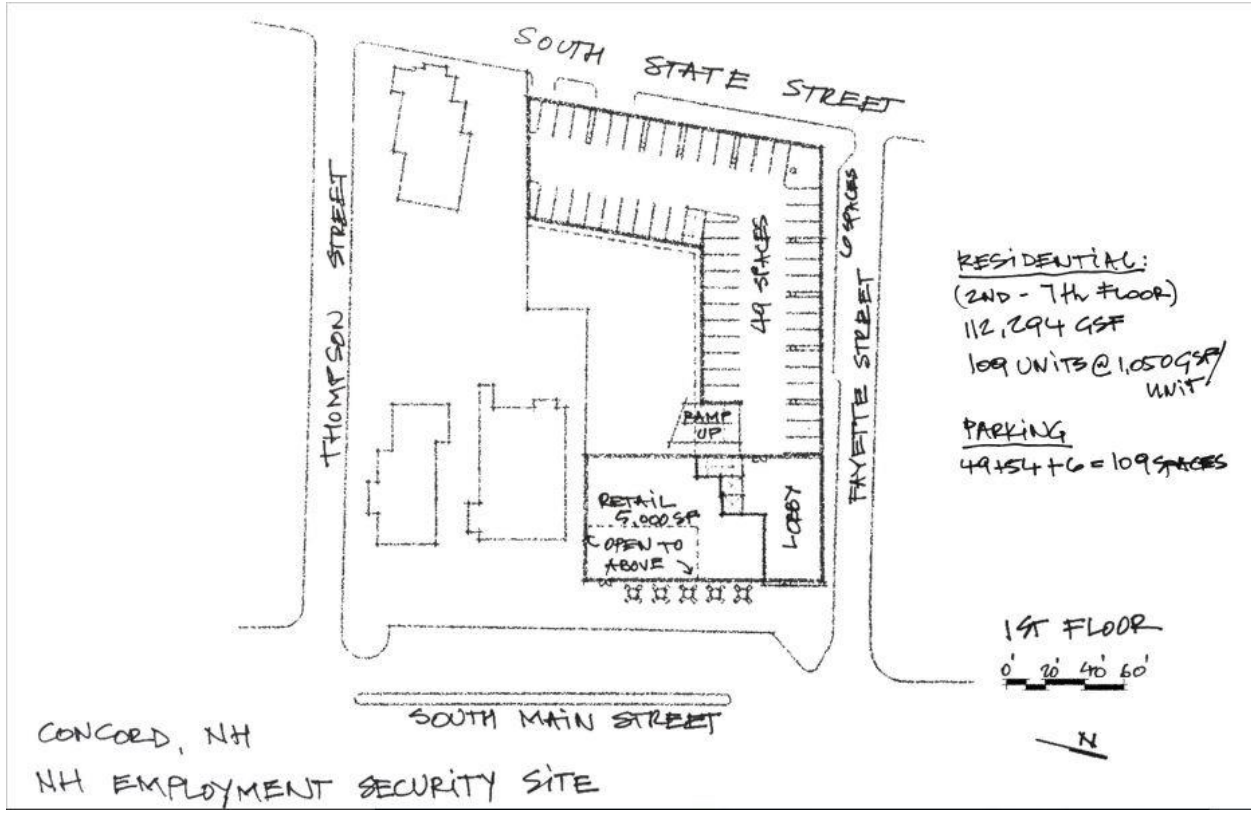
**South Main Street Elevation**



**Fayette Street Elevation**



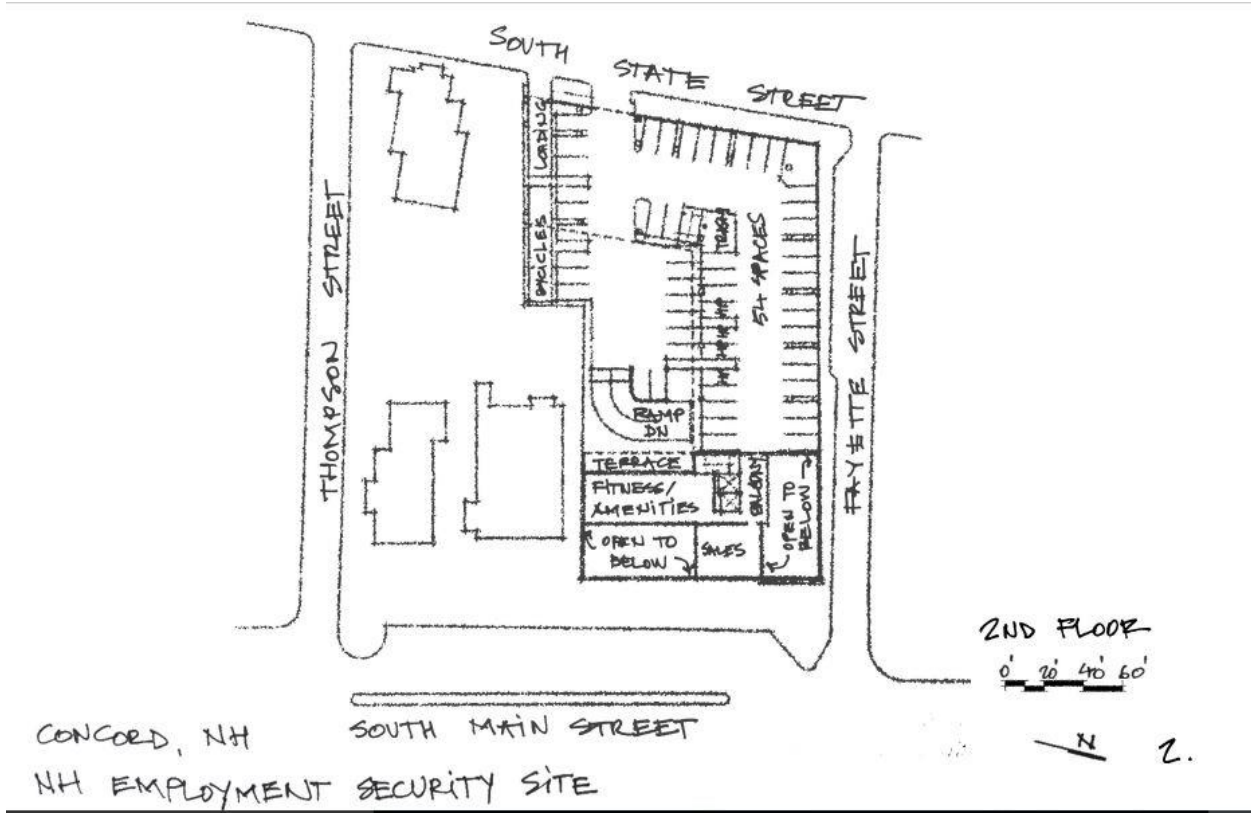
**Fayette Street Cross Section Plan**



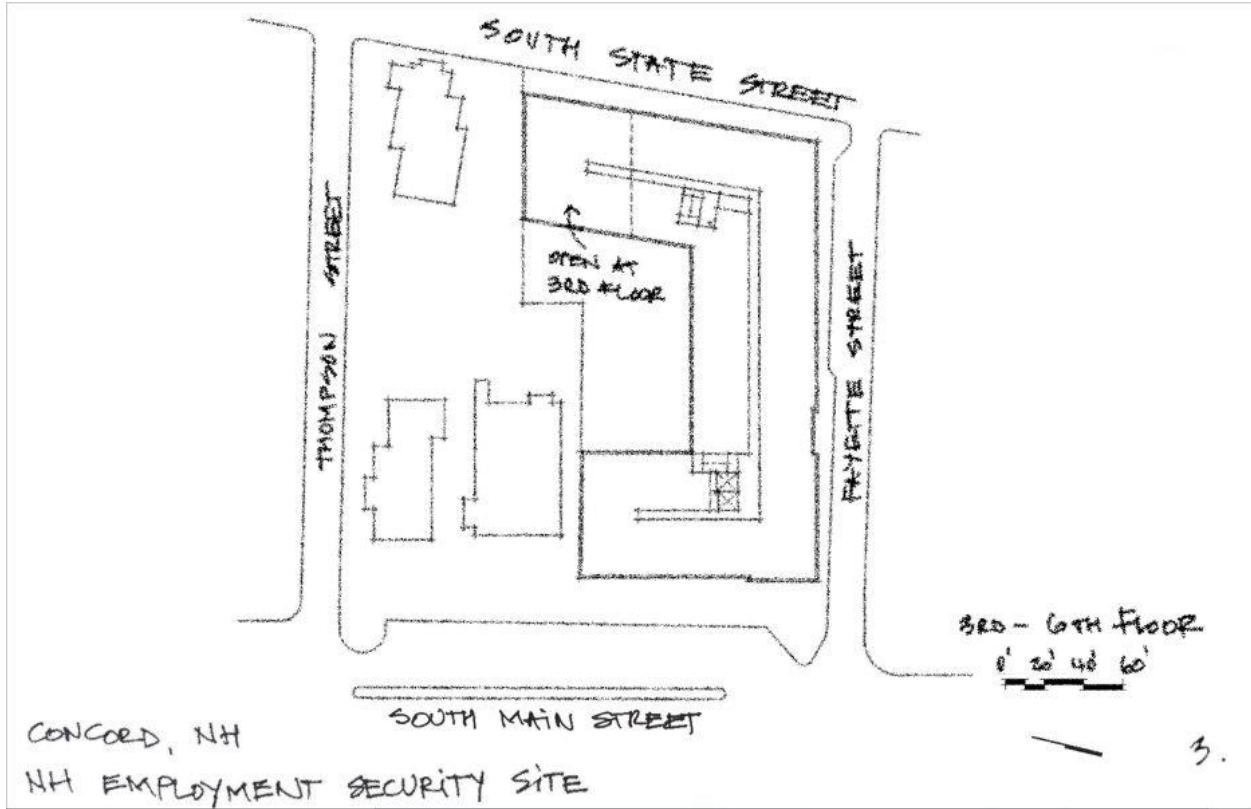
RESIDENTIAL:  
 (2ND - 7TH FLOOR)  
 112,294 GSF  
 109 UNITS @ 1,050 GSF/UNIT

PARKING  
 49+54+6 = 109 SPACES

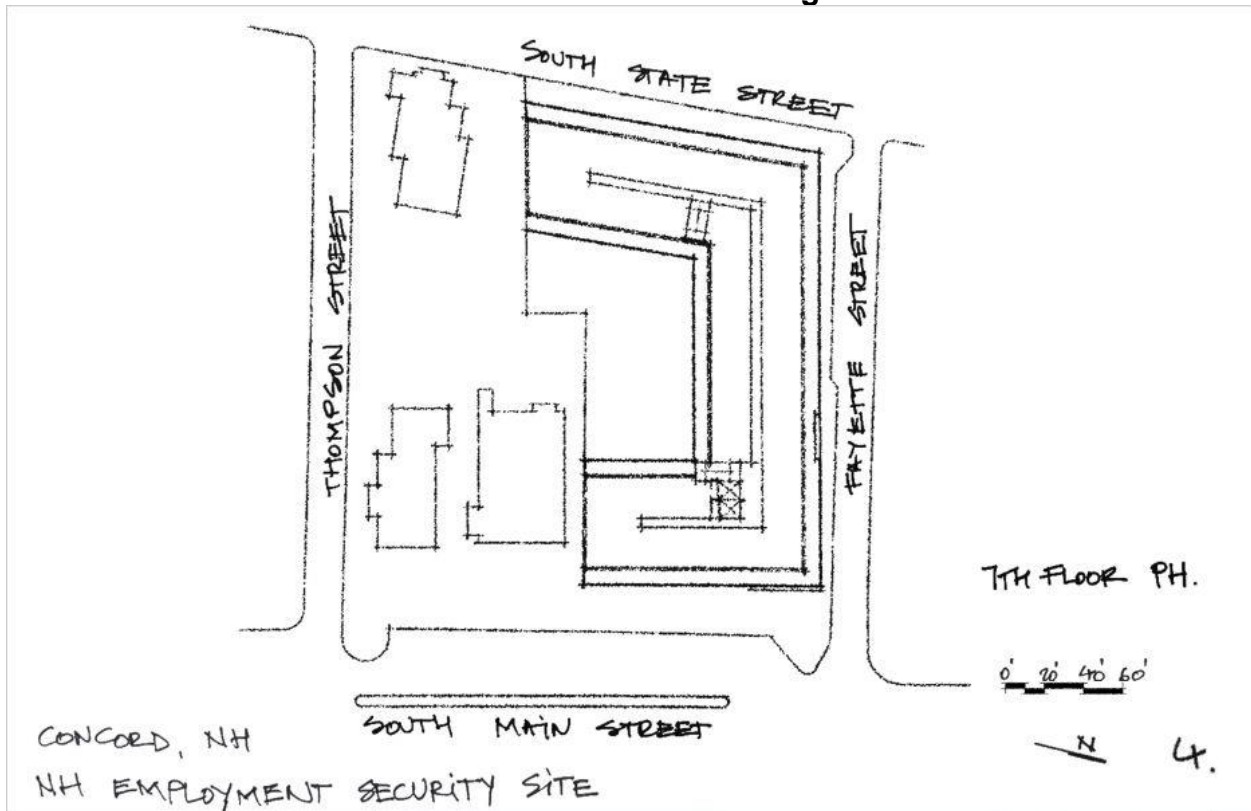
**Floor Plan - First Floor**



**Floor Plan - Second Floor**



Floor Plan - Floors 3 through 6



Floor Plan - 7<sup>th</sup> Floor

**Exhibit 3  
Parking Agreement**



## **PARKING AGREEMENT**

This **PARKING AGREEMENT** (“Agreement”) is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (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 “the City”) and Dol-Soul Properties L.L.C., a New Hampshire limited liability company, with a principal place of business at c/o Dolben, 150 Presidential Way, Suite 220, Woburn, MA, 01801, its successors and assigns (referred to as the “Developer”), and referred to collectively as the “Parties”.

### **RECITALS**

WHEREAS, On \_\_\_\_\_, 2017, the City and the Developer entered into a Purchase and Sales / Development Agreement concerning the sale and redevelopment of the former New Hampshire Employment Security property located at 32-34 South Main Street and 33 South State Street, Concord, New Hampshire 03301, City Assessing Department Parcel 34-3-3 and 34-3-2 (the “Property”),

WHEREAS The redevelopment of the Property involves the construction of a new 120,000SF +/- mixed use building featuring approximately 109 “Market Rate” apartments and a 5,000SF +/- of certain ground floor Active Retail Uses, as defined in the Purchase and Sales / Development Agreement, along the South Main Street frontage of the development as set forth within the Purchase and Sales / Development Agreement, including a potential restaurant, as well as related on-site parking, landscaping and other amenities (the “Developer’s Project”); and,

WHEREAS, In order for the Developer’s Project to secure financing and be viable in the local real estate market, a reasonable supply of parking must be available for residential tenants of the Developer’s Project; and,

WHEREAS, the Parties mutually agree that parking spaces in the quantity of 1.25 parking spaces per dwelling unit constructed as part of the Developer’s Project must be provided in order to make the Developer’s project viable; and,

WHEREAS, Based upon the Developer’s plans to construct 109 dwelling units as part of the Developer’s Project, the City and Developer have determined that a supply of up to 136 parking spaces is necessary in order to appropriately support the Developer’s Project based upon 1.25 parking spaces per dwelling unit; and,

WHEREAS, Of the 136 total spaces required for the Developer’s Project, the Developer shall, at its own cost, construct, own and operate at least fifty four (54) of said parking spaces which shall be built on-site as part of the

Developer's Project or otherwise secured by the Developer from third parties other than the City for the Developer's Project; and,

WHEREAS, Of the maximum 136 total spaces required for the Developer's Project, the City shall supply up to eighty two (82) parking permits for tenants of the Developer's Project pending 1) the total number of dwelling units constructed as part of the Developer's Project and 2) the total number of parking spaces otherwise provided by the Developer in accordance with the terms and conditions of this Agreement; and,

WHEREAS, The Parties signatory to this Agreement are willing to proceed upon the terms and conditions of this Agreement.

1) **Definitions:**

- a) City Provided Parking: Shall mean parking permits provided by the City to residential tenants of the Developer's Project either in the Primary Facility or Secondary Facilities, which shall be charged at the applicable Rate.
- b) Commencement Date: Subject to the provisions of Section 6(a) of this Agreement, shall mean October 1, 2019 and shall serve as the start date for the 20-year term of this Agreement.
- c) Effective Date: Shall be the date of this Agreement, set forth within preamble paragraph for this Agreement.
- d) Developer: Shall mean Dol-Soul Properties L.L.C., and its successors, nominees, and assigns as authorized in accordance with the Purchase and Sales / Development Agreement concerning the sale and redevelopment of the Property.
- e) Developer's Project or Developer's Building: Shall mean the new 120,000SF +/- mixed-use building constructed and owned by the Developer at the former New Hampshire Employment Security Property located at 32-34 South Main Street and 33 South State Street, Concord, New Hampshire, 03301.
- f) Developer Provided Parking: Shall mean parking either: 1) constructed, owned, operated, and managed by the Developer on-site as part of the Developer's Project 2) parking spaces otherwise owned by the Developer off-site from the Developer's Project; or 3) parking spaces otherwise secured by the Developer from third parties other than the City for the Developer's Project. "Developer Provided Parking" shall not mean or include parking permits furnished by the City and included in the definition of "City Provided Parking."

- g) Rate: Shall mean the cost of a parking pass as established by the City and to be paid by the Permit Holder to the City under this Agreement for each Parking Permit as described within this Agreement.
- h) Parking Permit: Shall mean one of up to 82 parking permits issued by the City to a tenant of the Developer's Project to access and park within the Primary Parking Facility or any Secondary Parking Facility pursuant to this Agreement.
- i) Permit Holder: Shall mean a tenant of a residential dwelling unit within the Developer's Project.
- j) Primary Parking Facility: Shall mean the City's Storrs Street Public Parking Garage located at #75 Storrs Street, Concord, New Hampshire, 03301.
- k) Secondary Parking Facility or Secondary Parking Facilities: Shall mean the City's Hills Avenue Municipal Parking Lot located adjacent to 11 Hills Avenue, Concord, New Hampshire, 03301, or any municipal parking facility where permit parking is permitted by City Ordinance. Secondary Parking Facilities shall also mean on-street parking spaces if permit parking is authorized by City Ordinance for such spaces.
- l) Tenant: Shall mean tenants of only the residential portions of the Developer's Project.

## **2) Developer's Responsibilities and Representations:**

### a) Developer's Responsibilities:

- i) Developer Provided Parking: The Developer shall construct, own and operate a minimum of 54 parking spaces on-site at the former New Hampshire Employment Security Property as part of the Developer's Project for use by residential and commercial tenants of the Developer's Project.

The Parties hereby acknowledge that the Developer's preliminary plans for the Developer's Project, included as Exhibit 1 to this Agreement, contemplate constructing up to 103 parking spaces on-site as part of the Developer's Project for use by tenants of the Developer's Project. Of this total, 54 spaces are intended to be surface lot parking spaces beneath sections of the building constructed using podium architecture as shown on "Floor Plan – Second Floor" and "Fayette Street Cross Section Plan" in Exhibit 1 of this Agreement. The remaining 49 spaces are intended to be located in an enclosed, subterranean parking garage beneath the Developer's Building to be erected at the Property, as shown on "Floor Plan – First Floor" and "Fayette Street Cross Section Plan" in Exhibit 1 of this Agreement. The Parties hereby agree

that the Developer may construct, own and operate an additional quantity of spaces beyond the minimum 54 spaces should the Developer determine that constructing, owning, and operating additional spaces as part of the Developer's Project is economically viable.

In lieu of constructing parking spaces as part of the Developer's Project, the Developer may acquire or lease other existing parking lots for the Developer's Project, or construct parking located elsewhere from the Developer's Project, in order to furnish the minimum quantity of 54 parking spaces required to be provided by the Developer under this Agreement.

- ii) Occupancy of the Developer Provided Parking Spaces: The Developer hereby agrees that Developer Provided Parking shall be used exclusively by Tenants of the Developer's Project during the City's hours of enforcement for the municipal public parking system as established by City Ordinance and periodically amended from time to time.

b) Developer's Representations:

- i) The Developer has the power and authority to construct, own, and operate a minimum of 54 parking spaces as part of the Developer's Project, or the ability to otherwise procure (by lease or purchase) other off-site parking spaces in order to achieve the minimum supply of 54 spaces of Developer Provided Parking
- ii) Subject to due diligence and determination of economic viability, the Developer has the power and authority to construct, own, and operate as many as 103 on-site parking spaces at the Developer's Project to be used by tenants of the Developer's Project, as shown on conceptual plans for the Developer's Project as attached to this Agreement as Exhibit 1.
- iii) The Developer has good and marketable title to the Developer's Project as of the Effective Date of this Agreement.
- iv) This Agreement will be the valid and binding obligations of Developer enforceable against Developer in accordance with their respective terms.

**3) City's Representations:** The City makes the following representations:

a) City's Responsibilities:

- i) Establishment of Permit System: This Agreement is contingent upon the Concord City Council enacting all necessary ordinances to establish a parking permit system within the Primary Parking Facility and Secondary Parking Facilities prior execution of this Agreement.

- ii) City Provided Parking Spaces: Subject to the Concord City Council's enactment of a parking permit system ordinance, the City shall provide up to 82 parking permits for residential Tenants of the Developer's Project.

In recognition of the City's concerns about over supplying the Developer's Project with parking, the exact quantity of spaces to be furnished by the City shall be dependent upon 1) the total number of dwelling units constructed as part of the Developer's Project and 2) the total amount of Developer Provided Parking supplied directly by the Developer for the Developer's Project.

Specifically, the maximum amount of parking spaces to be provided for the Developer's Project by the Developer and the City shall be 136 spaces, combined; presuming 109 dwelling units are constructed as part of the Developer's Project. The amount of City Provided Parking shall not exceed 82 parking permits. However, the amount of City Provided Parking shall be expressly based upon 1) the actual quantity of dwelling units constructed as part of the Developer's Project and 2) the actual quantity of parking spaces provided by the Developer as "Developer Provided Parking".

The formula for determining the total quantity of parking spaces to be supplied by the City as City Provided Parking shall be as follows:

Formula: Actual total number of Dwelling Units constructed as part of Developer's Project multiplied by 1.25; less the actual total number of parking spaces supplied by the Developer as Developer Provided Parking shall equal the total number of parking permits to be supplied by the City as "City Provided Parking".

However, regardless of the result of the formula above, in no case shall the City be required to provide more than 82 permits for Tenants of the Developer's Project.

Once the total number of parking spaces to be supplied by the City and the Developer have been determined based upon Developer's Project as actually constructed, the Parties shall enter into an amendment to this Agreement confirming said quantity of spaces.

- iii) Location of Permit Parking Spaces: Subject to the Concord City Council's enactment of a parking permit system ordinance, the Parties hereby agree that the preferred location for permit parking spaces shall be the Primary Parking Facility. However, the Parties also recognize that it may not be feasible or otherwise desirable for the City to supply any or all of the permit parking spaces within the Primary Facility. Therefore, the City may provide some or all of the permit parking spaces within Secondary Parking Facilities, as defined herein.

b) City's Representations:

- i) Subject to the enactment of required City Ordinances, the City has the power and authority to enter into the transactions contemplated by this Agreement, to create and deliver up to 82 parking permits to the Developer's Tenants, and to carry out its obligations hereunder.
- ii) Subject to certain lease agreements, the City has good and marketable title the Primary Parking Facility and Secondary Parking Facilities as of the Effective Date of this Agreement.
- iii) The City hereby discloses that the Storrs Street Parking Garage contains 516 parking spaces, of which 391 are long-term lease spaces subject to development agreements with third parties, 114 are metered and 11 are reserved for handicap parking. In accordance with recommendations of the City's Draft Strategic Parking Plan, the City shall make reasonable efforts to negotiate out of the long-term parking leases to a permit system. However, if the City is unable to negotiate out of said leases, it is intends to structure the parking permit system so as said permits could be used within all or a portion of the 114 metered spaces within the Storrs Street Parking Garage.
- iv) This Agreement will be the valid and binding obligations of City enforceable against City in accordance with their respective terms.

**4) General Conditions for Permit Parking**

- a) Administration of Parking Permits: The City shall administer parking permits issued to tenants of the Developer's Project.
- b) Application for Parking Permits: Tenants of the Developer's Project shall be required to execute an application form provided by the City prior to issuance of any parking permits under this Agreement. Tenants shall be required to provide reasonable proof that they are a resident within the Developer's Project. Permits shall only be renewed to Tenants who have complied with all applicable ordinances, rules, and regulations pertaining to permit parking, and who are not in default of payment for parking permits or any other City billings or invoices.
- c) Parking Permits for Residential Tenants of Developer's Project Only: The Parties agree that parking permits shall only be issued to residential tenants of the Developer's Project. Tenants of nonresidential portions of the Developer's Project shall not be eligible for parking permits under this Agreement. However, nothing in this Agreement shall prohibit the City from issuing parking permits to employees of nonresidential tenants within the Developer's Project separately from this Agreement in the event: 1) the Ordinance enacted to create permit parking affords for such opportunities; and 2) the City has a supply of permits which it has made available to the General Public within the Primary Parking

Facility, Secondary Parking Facilities, or any other parking facilities owned or otherwise controlled by the City.

- d) Rates: Rates charged to Tenants of the Developer's Project for parking permits shall be the market rate as established by the Concord City Council and periodically amended from time to time. The rate charged to Tenants of the Developer's project shall be identical to rates charged to the General Public for parking permits in the Primary Facility and Secondary Facilities.
- e) Non-exclusivity: Parking permits issued by the City to Tenants of the Developer's Project under this Agreement are a non-exclusive license to park only, and shall be used solely by permit holders for the parking of motor vehicles by Tenants of the Developer's Project in the Primary Parking Facility or Secondary Parking Facility under the terms, conditions, and obligations set forth within this Agreement or any City Ordinance established for the creation and administration of a Parking Permit Program.
- f) Days and Hours of Enforcement: Parking permits shall only be valid during days and hours of enforcement of the City's municipal parking system as established by City Ordinance and periodically amended from time to time.
- g) Parking Rules and Regulations: Permit holders shall at all times comply with any rules and regulations established by the City. The City may modify or amend such rules periodically and neither the Developer, nor the Developer's Tenants shall have any right to approve or otherwise consent to any change in the rules. City ordinances, rules, and regulations established by the City for permit parking shall take precedent and supersede any conflicting provisions which may exist within this Agreement concerning administration and management of said permit program.

## **5) Events of Default and Remedies**

- a) Events of Default Defined: The following shall be "events of default" under this Agreement and the terms "events of default" or "default" shall mean, whenever they are used in this Agreement, any one or more of the following events:
  - i) Default by the Developer:
    - (1) Failure by the Developer to observe and perform any covenant, condition, or agreement on its part in this Agreement to be observed or performed for a period of thirty (30) calendar days after notice specifying such failure and requesting that it be remedied has been given to the Developer by the City, unless the City shall agree in writing to an extension of such time prior to its expiration, or unless the Developer has, within said thirty (30) calendar days, commenced with all due diligence to cure said default, in which the time period allowed the Developer shall be extended for such

time period as may reasonably be required to use default, but in any event not beyond an additional thirty (30) calendar days.

- (2) Failure of the Developer to secure a Certificate of Occupancy for any portion of the Developer's Project.
- (3) Failure by the Developer to pay property taxes for the Developer's Project for a period of thirty (30) calendar days after said taxes are due. This provision shall not be construed to limit the Developer's ability to seek abatements for assessed value and property taxes as permitted by State Law.
- (4) Failure by the Developer to pay municipal water fees, sewer fees, Downtown Solid Waste District fees, or other lawful municipal assessments or fees.

ii) Default by the City:

- (1) Failure by the City to observe and perform any covenant, condition, or agreement on its part in this Agreement to be observed or performed for a period of thirty (30) calendar days after notice specifying such failure and requesting that it be remedied has been given to the City by the Developer, unless the Developer shall agree in writing to an extension of such time prior to its expiration, or unless the City has, within said thirty (30) calendar days, commenced with all due diligence to cure said default, in which the time period allowed the City shall be extended for such time period as may reasonably be required to use default, but in any event not beyond an additional thirty (30) calendar days.
- b) Notice of Default. Notice of default or event of default shall be provided in writing in accordance with Section 6b of this Agreement.
  - c) Remedies on Default. Whenever any event of default referred to herein shall have occurred and shall not have been cured prior to the expiration of any applicable grace or cure period set forth therein, the aggrieved party may terminate this Agreement and pursue whatever remedies it may have under State Law.
  - d) Remedies Exclusive. Remedies herein are not intended to be exclusive. The City and Developer shall retain any other legally available remedy or remedies. No delay or omission by the aggrieved party to exercise any right or power accruing upon default shall impair any such right of power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed by the aggrieved party to be expedient. In order to entitle the aggrieved party to exercise any remedy reserved to it in this



section, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

- e) No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Agreement should be breached and thereafter waived by the aggrieved party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other or further breaches by the party in violation hereunder.

## **6) Miscellaneous**

- a) Commencement Date and Term: The Commencement Date of this Agreement shall be October 1, 2019. The term of the Agreement shall be for 20 years. The term of the Agreement shall expire on September 30, 2039, unless otherwise terminated prior to said date due to default by either Party, or mutual agreement of the Parties. Tenants of the Developer's Project shall be eligible to apply for and receive parking passes from the City commencing on October 1, 2019. In the event Developer determines that it will receive a certificate of occupancy for its Project earlier than October 1, 2019, then Developer shall be permitted to accelerate the Commencement Date. If at the end of the term of this Agreement, the City's parking permit program (or any substitute or replacement parking system) is still in place, the Developer shall have the right to renew this Agreement for one additional ten-year term by giving the City written notice at least thirty (30) days prior to the expiration of the then current term. This right of renewal is contingent upon the following conditions:
  - i) That the Developer shall not then be in default of its obligations hereunder.
  - ii) That the Developer shall not be in default concerning any payment owed to City, without limitation.
  - iii) That the City is the owner of the Storrs Street (a.k.a. Capital Commons) Parking Garage;
  - iv) That the City has determined that operation of the Storrs Street (a.k.a. Capital Commons) Parking Garage remains financially viable, that the facility is structurally sound, and that the facility is in a safe and operable condition to be used for public parking.

In the event Developer renews this Agreement, then the City shall continue to sell monthly parking permits (or similar) to the Tenants of the Developer's Project in accordance with parking ordinances, rules, and regulations which may exist at the time of the expiration of this Agreement. However, nothing herein this Agreement shall require the City to keep the Storrs Street Parking Garage operational and available for public parking after the initial 20 year term. If at any time after the initial 20 year term, the City determines that it is no longer

economically viable for the City to own or operate the facility, or that the facility is no longer structurally sound, the City may at any time terminate this agreement upon 30 days written notice to the Developer.

The Parties hereby recognize that the Developer's project could be subject to delays due to causes beyond its control and without its fault or negligence, including but not restricted 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 (including, without limitation, appeals associated with permits or approval needed for Developer's Project, freight embargoes, delays stemming from unusually severe weather, winter seasonal delays, or delays of contractors and subcontractors due to any of these causes. As such, the Parties may mutually agree to modify the Commencement Date of this Agreement, and corresponding termination date at the end of the 20-year term. However, in no case shall the term of this Agreement extend beyond 20 years. In the event the Parties mutually agree to modify the Commencement and termination dates of this agreement, the modified dates shall be codified in an amendment to this Agreement.

However, in no case shall the initial term of this Agreement extend beyond twenty years.

- b) Notices: All notices, certificates, or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, postage prepaid, to the following addresses or to such other addresses as the parties shall, by like notice, notify one another:
  - i) If to the City: City of Concord  
41 Green Street  
Concord, NH 03301  
Attn.: City Manager  
Phone: (603) 225-8570
  - ii) If to Developer: Dol-Soul Properties, L.L.C.  
c/o Dolben  
150 Presidential Way, Suite 220  
Woburn, MA 01801
- c) Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the City, the Developer, and their legal representatives, successors, and assigns.
- d) Severability: In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction or by any future legislative action, such holding or such action shall not invalidate or render unenforceable any other provisions hereof.

- e) Amendments, Changes and Modifications: This Agreement may be amended, changed, modified, altered or terminated only with the written consent of the Parties hereto.
- f) Applicable Law: This Agreement shall be governed exclusively by the applicable laws of the State of New Hampshire. Any action to enforce the provisions of this lease shall be brought in Concord District Court, or if such court is without jurisdiction, the Merrimack County Superior Court.
- g) Exhibits: Each Exhibit attached to this Parking Agreement shall be incorporated into and be a part of this Agreement.

**[Remainder of this page left blank intentionally]**

Executed as a sealed instrument this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

**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 \_\_\_\_\_, 20\_\_, 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**

**DOL-SOUL PROPERTIES L.L.C.**

By: \_\_\_\_\_ Date: \_\_\_\_\_

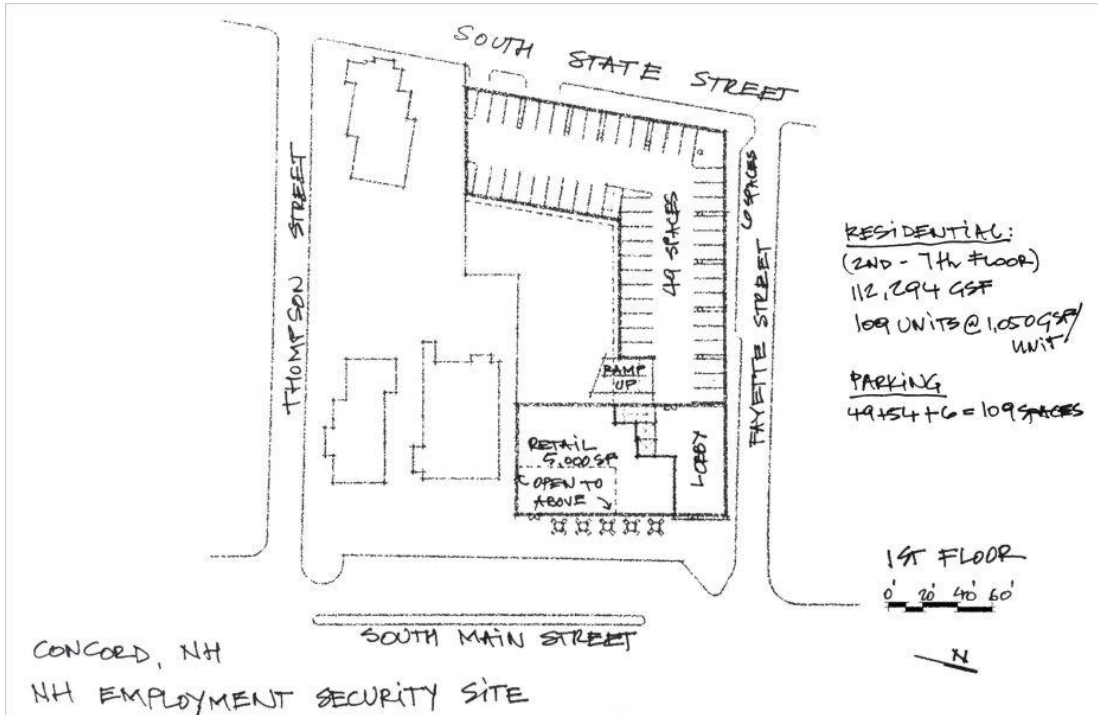
\_\_\_\_\_  
Duly Authorized

STATE OF NEW HAMPSHIRE  
COUNTY OF MERRIMACK

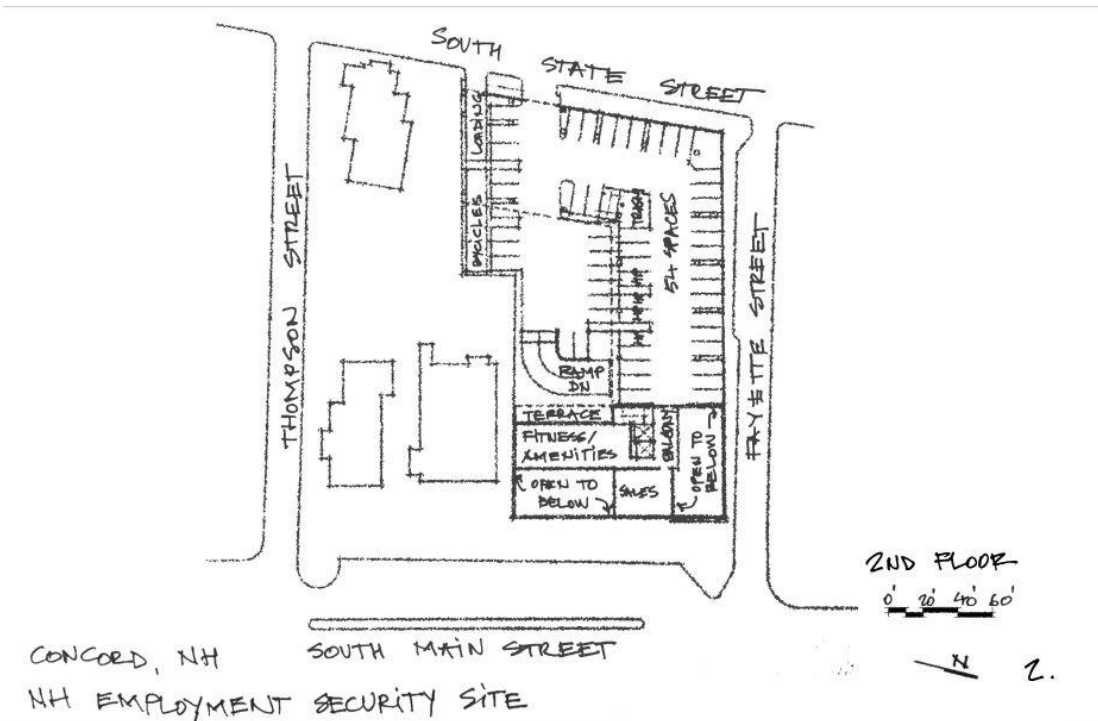
In \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, personally appeared \_\_\_\_\_, of Dol-Soul Properties L.L.C., known to me or proved to be the person named in and who executed the foregoing instrument, and being first duly sworn, such person acknowledged that she executed said instrument for the purposes therein contained as her free and voluntary act and deed.

\_\_\_\_\_  
Justice of the Peace/Notary Public

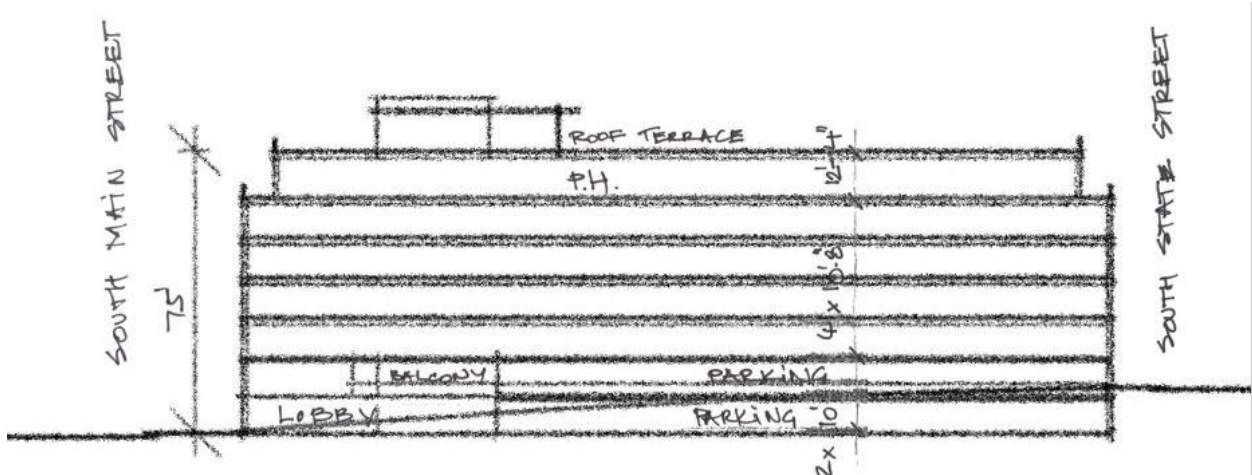
**PARKING AGREEMENT  
EXHIBIT 1**



**Floor Plan - First Floor**



**Floor Plan - Second Floor**



**Fayette Street Cross Section Plan**

## **Exhibit 4 Project Schedule**

- October 10, 2017: Public Hearing on Purchase and Sales Agreement (including Parking Agreement), Zoning amendment, Impact Fee Ordinance amendment, Sears Block Tax Increment Finance District amendment and related appropriation resolution. Anticipated City Council vote on Purchase and Sales / Development Agreement, Zoning amendment, and Impact Fee Ordinance amendment; however, votes might be delayed to November 13, 2017 to coincide with anticipated votes on Sears Block Tax Increment Finance District amendment and resolutions.
- October 17, 2017: Anticipated beginning of Buyer's 90-Day Due Diligence Period.
- November 13, 2017: City Council vote on Sears Block Tax Increment Finance District and related appropriation resolution.
- November 14, 2017: Buyer commences efforts to design project, secure development permits and approvals, tenant commitments, as well as financing for the Buyer's Project.
- January 15, 2018: Anticipated end date of Buyer's 90-Day Due Diligence Period.
- November 15, 2017 – April 15, 2018: "Winter Season" as defined by Section 5.21.3. City shall not be obligated to undertake physical abatement or demolition activities associated with the former New Hampshire Employment Security Building.
- April 1, 2018: Buyer formally notifies Seller of intention to Close on property. Notification commences 90-day period for Seller to abate and demolish the former NH Employment Security Building.
- June 30, 2018: End of 90-day period for Seller to abate and demolish the former NH Employment Security Building.
- July 9, 2018: Anticipated Closing date.
- August 6, 2018: Buyer commences construction of Buyer's Project.
- **September 30, 2018: Deadline for Closing per Section 1.6 of Purchase and Sales / Development Agreement.**
- October 1, 2019: Buyer completes construction of Buyer's Project. Commencement date for 20-year Parking Agreement.
- September 30, 2039: End date for 20-year Parking Agreement; subject to renewal as provided in Parking Agreement.