

CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH
DATE: MONDAY, JULY 15, 2019 TIME: 6:15PM

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- 5:45PM – AN ANTICIPATED NON-PUBLIC SESSION RE: COLLECTIVE BARGAINING AGREEMENTS IN ACCORDANCE WITH RSA 91-A:II (a)
 - 6:15PM – PUBLIC DIALOGUE SESSION
- I. WORK SESSION (*There is no Work Session this evening*)
 - II. CALL TO ORDER [7:00 p.m. or thereafter]
 - III. ROLL CALL
 - IV. INVOCATION
 - V. PLEDGE OF ALLEGIANCE
 - VI. ACCEPTANCE OF MINUTES – JUNE 17, 2019
 - VII. RECOGNITIONS AND VOLUNTEER COMMITTEE REPORTS
 - VIII. PUBLIC DIALOGUE SUMMARY
 - IX. PUBLIC HEARINGS AND VOTES ON ORDINANCES AND/OR RESOLUTIONS

Public Hearings

A. Public Hearing on City Street, Sidewalk, Bridges and Facility Improvements

RESOLUTION AUTHORIZING A BOND ISSUES AND/OR NOTES OF UP TO TEN MILLION FIVE HUNDRED FIFTY THOUSAND DOLLARS (\$10,550,000.00) FOR COSTS RELATED TO CITY STREET, SIDEWALK, BRIDGES AND FACILITY IMPROVEMENTS

- PRESENTATION
- CITY COUNCIL QUESTIONS
- PUBLIC HEARING SPEAKERS
- ADDITIONAL COUNCIL QUESTIONS AND DELIBERATIONS

(Sample motion – move to adopt the Resolution, as presented)

B. Public Hearing on Annual Sewer Line Replacements, Consent Decree Mitigation, Pleasant Street Sewers, and Maplewood Avenue Area Reconstruction

RESOLUTION AUTHORIZING A BOND ISSUE AND/OR NOTES OF THE CITY UNDER THE MUNICIPAL FINANCE ACT AND/OR PARTICIPATION IN THE STATE REVOLVING FUND (SRF) LOAN OF UP TO SEVEN MILLION ONE HUNDRED FORTY-FIVE THOUSAND DOLLARS (\$7,145,000.00) FOR COSTS RELATED TO ANNUAL SEWER LINE REPLACEMENTS, CONSENT DECREE MITIGATION, PLEASANT STREET SEWERS, AND MAPLEWOOD AVENUE AREA RECONSTRUCTION

- **PRESENTATION**
- **CITY COUNCIL QUESTIONS**
- **PUBLIC HEARING SPEAKERS**
- **ADDITIONAL COUNCIL QUESTIONS AND DELIBERATIONS**

(Sample motion – move to adopt the Resolution, as presented)

- C. Public Hearing on Water Line Replacements, Reservoir Management, Madbury Wells, Water Transmission Main Replacement, Pleasant Street Water Mains, and Maplewood Avenue Area Construction

RESOLUTION AUTHORIZING A BOND ISSUE AND/OR NOTES OF THE CITY UNDER THE MUNICIPAL FINANCE ACT AND/OR PARTICIPATIONS IN THE STATE REVOLVING FUND (SRF) LOAN OF UP TO FOUR MILLION SIX HUNDRED TWENTY-THREE THOUSAND DOLLARS (\$4,623,000.00) RELATED TO WATER LINE REPLACEMENTS, RESERVOIR MANAGEMENT, MADBURY WELLS, WATER TRANSMISSION MAIN REPLACEMENTS, PLEASANT STREET WATER MAINS, AND MAPLEWOOD AVENUE AREA CONSTRUCTION

- **PRESENTATION**
- **CITY COUNCIL QUESTIONS**
- **PUBLIC HEARING SPEAKERS**
- **ADDITIONAL COUNCIL QUESTIONS AND DELIBERATIONS**

(Sample motion – move to adopt the Resolution, as presented)

- D. Public Hearing on Proposed Parking & Traffic Safety Omnibus

PROPOSED PARKING & TRAFFIC SAFETY OMNIBUS ORDINANCE

ORDINANCE AMENDING CHAPTER 7, ARTICLE III, TRAFFIC ORDINANCE, SECTION 7.330: NO PARKING

ORDINANCE AMENDING CHAPTER 7, ARTICLE III, TRAFFIC ORDINANCE, SECTION 7.336: ONE-WAY STREETS

ORDINANCE AMENDING CHAPTER 7, ARTICLE V – BICYCLE REGULATIONS, SECTION 7.510: UNATTENDED BICYCLES

ORDINANCE AMENDING CHAPTER 7, ARTICLE VI – TRUCK LOADING/UNLOADING ZONES ESTABLISHED, SECTION 7.601: LIMITED HOURS

ORDINANCE AMENDING CHAPTER 7, ARTICLE VI – TRUCK LOADING/UNLOADING ZONES ESTABLISHED, SECTION 7.602: 24-HOUR

ORDINANCE AMENDING CHAPTER 7, ARTICLE VI – TRUCK LOADING/UNLOADING ZONES ESTABLISHED, SECTION 7.603: LOADING AND UNLOADING OF LIVE PARKED VEHICLES

ORDINANCE AMENDING CHAPTER 7, ARTICLE VI – TRUCK LOADING/UNLOADING ZONES ESTABLISHED, SECTION 7.604: LOADING ZONE PERMITS

ORDINANCE AMENDING CHAPTER 7, ARTICLE XI – SPEED LIMITS, SECTION 7.1100: SPEED LIMITS - 25 MPH – DODGE AVENUE

ORDINANCE AMENDING CHAPTER 7, ARTICLE XVII – MOPED REGULATIONS, SECTION 7.1702: PARKING

- **PRESENTATION**
- **CITY COUNCIL QUESTIONS**
- **PUBLIC HEARING SPEAKERS**
- **ADDITIONAL COUNCIL QUESTIONS AND DELIBERATIONS**

(Sample motion – move to pass second reading and hold third and final reading at the August 12, 2019 City Council meeting)

D. First Reading – Limited Parking – Three Hours

First Reading of Ordinance Amending Chapter 7, Article III, Section 7.328 – Limited Parking – Three Hours sub-section A – Raynes Avenue: entire street, both sides and Vaughan Street: entire street, both sides ***(Sample motion – move to pass first reading and schedule a public hearing and second reading at the August 12, 2019 City Council meeting)***

X. MAYOR BLALOCK

1. *Appointment to be Voted:
 - Appointment of Stephen Pesci as a regular member to the Parking & Traffic Safety Committee
 - Appointment of Jonathan Sandberg as an Alternate to the Parking & Traffic Safety Committee
2. Acceptance of Resignation of Joan Walker from the Trees and Greenery Committee
3. Placement of Bench downtown in memory of Charles Howard
4. Resolution Re: Energy Innovation and Carbon Dividend Act of 2019
5. City Manager Search Subcommittee (Mayor Blalock, Assistant Mayor Lazenby, Councilor Pearson and Councilor Dwyer)
 - Approval of City Manager Recruitment Materials

XI. CITY COUNCIL MEMBERS

A. COUNCILOR ROBERTS

1. Parking and Traffic Safety Committee Action Sheet and Minutes of the June 6, 2019 meeting

MCINTYRE SUBCOMMITTEE

B. COUNCILOR ROBERTS & COUNCILOR DWYER & COUNCILOR PERKINS

1. Resolution/Certificate of Authority to Apply to Acquire the Thomas J. McIntyre property for Historic Monument Purposes (*see attached for inclusion in the packet*)
2. Vote to Authorize the City Manager to Enter into a Development Agreement with SoBow Square, LLC

C. COUNCILOR PEARSON & COUNCILOR RAYNOLDS

1. Downtown Streets Proposal – Share the Square

D. COUNCILOR DENTON

1. Request that Bridge Street Lot be made available on Sunday, September 15th, for this year's Drive Electric Week's Second Annual Portsmouth Electric Vehicle Show AND that one of the Electric Vehicle chargers at the Foundry Place Garage be reserved for several hours in the late afternoon of Monday, September 16th, for the Drive Electric NH's Electric Vehicle Charge Forward Relay finale

XII. APPROVAL OF GRANTS/DONATIONS

(There are no Grants or Donations this evening)

XIII. CITY MANAGER'S ITEMS WHICH REQUIRE ACTION

A. CITY MANAGER

City Manager's Items Which Require Action:

1. Request for Approval of Employment Agreement for Fire Chief, Todd Germain
2. Request for Approval of Agreement between the Portsmouth School Board and the Portsmouth Association of Clericals in Education
3. Request for Approval of Agreement between the Portsmouth School Board and the American Federation of State, County and Municipal (AFSCME) Council 93, AFL-CIO School Custodial Supervisors
4. Request for Approval of Portsmouth Supervisory Management Alliance
5. Proposed Funding from Contingency FY20 for Indoor Pool
6. Cate Street Land Swap

7. Request for License for Bluestone Properties of Rye, LLC for Property Located at 135 Congress Street
8. Neighborhood Parking Program Request for Waiver to Proceed with Pilot Program
9. Request for Public Hearing Re: McIntyre Petition

XIV. CONSENT AGENDA

(ANTICIPATED ACTION - MOVE TO ADOPT CONSENT AGENDA)

- A. Request for License to Install Projecting Sign for owner Matthew Parker of Danforth Pewter for property located at 65 Congress Street Unit 107 ***(Anticipated action - move to approve the aforementioned Projecting Sign License as recommended by the Planning Director, and further, authorize the City Manager to execute the License Agreement for this request)***

Planning Director's Stipulations

- ***The license shall be approved by the Legal Department as to content and form;***
- ***Any removal or relocation of projecting sign, for any reason, shall be done at no cost to the City; and***
- ***Any disturbance of a sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the projecting sign, for any reason shall be restored at no cost to the City and shall be subject to review and acceptance by the Department of Public Works***

- B. Request for License to Install Projecting Sign for Partners Bank owner of Partners Bank for property located at 501 Islington Street ***(Anticipated action - move to approve the aforementioned Projecting Sign License as recommended by the Planning Director, and further, authorize the City Manager to execute the License Agreement for this request)***

Planning Director's Stipulations

- ***The license shall be approved by the Legal Department as to content and form;***
- ***Any removal or relocation of projecting sign, for any reason, shall be done at no cost to the City; and***
- ***Any disturbance of a sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the projecting sign, for any reason shall be restored at no cost to the City and shall be subject to review and acceptance by the Department of Public Works***

XV. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Email Correspondence (***Sample motion – move to accept and place on file***)
- B. *Presentation – CALEA Team Leader Re: Critical On-Site Review of Portsmouth Police Department Accreditation Process – Chief Sam Farina, Fairport, New York*
- C. Report on Pontine Theatre (***Sample motion – move to accept report and place on file***)
- D. Letter from Eleanor Bird regarding the McIntyre Site
- E. Letter from Peter Somssich and Kathleen Pohlman-Somssich regarding the McIntyre Project
- F. Letter from Jim Splaine regarding Revisit McIntyre

XVI. CITY MANAGER’S INFORMATIONAL ITEMS

- 1. Report Back Re: Planters & Flower Boxes on City Property
- 2. Report Back Re: Distribution of Single-Use Disposables Ordinance
- 3. Letter from NH Department of Transportation Re: Type II Noise Abatement Program

XVII. MISCELLANEOUS BUSINESS INCLUDING BUSINESS REMAINING UNFINISHED AT PREVIOUS MEETING

XVIII. ADJOURNMENT [at 10:00 p.m. or earlier]

**KELLI L. BARNABY, MMC, CNHMC
CITY CLERK**

** Indicates verbal report*

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: MONDAY, JUNE 17, 2019

PORTSMOUTH, NH
TIME: 7:00PM

At 5:30 p.m., An Anticipated Non-Public Session was held regarding the City Manager Search in accordance with RSA 91-A:3 II (b).

At 6:00 p.m., An Anticipated Non-Public Session was held regarding Collective Bargaining Agreements in accordance with RSA 91-A:II (a).

At 6:30 p.m., An Anticipated Non-Public Session was held regarding Department of Home Land Security (PDA) Law Enforcement Security Agreement in accordance with RSA 91-A:II (i).

I. WORK SESSION

There was no Work Session this evening.

II. CALL TO ORDER [7:00 p.m. or thereafter]

Mayor Blalock called the meeting to order at 7:00 p.m.

III. ROLL CALL

PRESENT: Mayor Blalock, Assistant Mayor Lazenby, Councilors Roberts, Pearson, Dwyer, Denton, Perkins, Reynolds and Becksted

IV. INVOCATION

Mayor Blalock asked everyone to join in a moment of silent prayer.

IV. PLEDGE OF ALLEGIANCE

Mayor Blalock led the Pledge of Allegiance.

Councilor Denton moved to seal the minutes of the Non-Public Sessions regarding two Collective Bargaining Agreements and the Department of Home Land Security (PDA) Law Enforcement Security Agreement. Seconded by Councilor Roberts.

On a unanimous roll call 9-0, motion passed.

VI. ACCEPTANCE OF MINUTES – MAY 20, 2019 AND JUNE 3, 2019

Councilor Pearson moved to accept and approve the minutes of the May 20, 2019 and June 3, 2019 City Council meetings. Seconded by Assistant Mayor Lazenby.

Councilor Pearson moved to amend the June 3, 2019 minutes on page 14 under Miscellaneous/Unfinished Business where Councilor Pearson spoke regarding a piece of propaganda that was made by changing the “GSA” to “Revisit McIntyre”. Seconded by Assistant Mayor Lazenby and voted.

Main motion passed as amended.

Assistant Mayor Lazenby moved to suspend the rules in order to take up Item XI. A. – Portsmouth Community Coordinated Response to Substance Misuse – Request for City Council to endorse establishment of Steering Committee – Request to appropriate \$4,000.00 towards facilitation costs of initial process and – Letter Re: Matching Funds from Portsmouth Rotary. Seconded by Councilor Pearson and voted.

XI. A. – Portsmouth Community Coordinated Response to Substance Misuse:

- **Request for City Council to endorse establishment of Steering Committee**

Assistant Mayor Lazenby spoke on the history of the opioid crisis and the need to better meet the challenges and coordinate who would do that. He introduced Dr. McCullough and Mr. Gold who are also working on this matter.

Dr. McCullough of Pinetree Institute spoke about serving the Seacoast region and their approaches to the challenge we are facing. He said there is a need for a coordinated response and that no single institution in the community, can by itself, effectively address the causes and effects of childhood adversity. He stated together the many different institutions in the community – the schools, law enforcement, health and mental health, businesses, the courts, and others would need to develop and implement comprehensive community-wide trauma-informed initiatives. Dr. McCullough said the planning process would look at the requirements for coordination across the various agencies and sectors that provide services and are impacted by the substance misuse crisis. He went on to discuss the objectives of the planning process. He requested that the City Council appropriate \$4,000.00 towards facilitation costs of the initial process.

Maureen Sullivan, Portsmouth Rotary, said that the Rotary has been involved in the opioid recovery for a number of years. She said they would like to match the \$4,000.00 as a donation.

Senator Martha Fuller Clark said she is pleased that the issue is moving forward. She stated there are still issues in the opioid crisis that need attention. She indicated there needs to be a place for people to go during transition and we need to do more to help with the recovery issues.

Assistant Mayor Lazenby moved that the City Council endorses the establishment of the creation of a Steering Committee towards a Portsmouth Community coordinated response to substance misuse. Seconded by Councilor Roberts.

Councilor Dwyer said that the Health Department should be part of the Steering Committee.

Councilor Reynolds commended Assistant Mayor Lazenby and those that are working on this issue. He said he feels that Seacoast Mental Health should also be a part of the Steering Committee.

Mayor Blalock passed the gavel to Assistant Mayor Lazenby.

Mayor Blalock said it looks like this will be a Steering Committee and that help will be provided.

Motion passed.

Assistant Mayor Lazenby moved to appropriate \$4,000.00 towards facilitation costs for the Steering Committee process with funds to come from the FY19 Contingency Fund. Seconded by Councilor Roberts and voted.

Assistant Mayor Lazenby moved to accept with gratitude the letter from Portsmouth Rotary and place it on file. Seconded by Councilor Roberts and voted.

VII. RECOGNITIONS AND VOLUNTEER COMMITTEE REPORTS

There were no Recognitions or Volunteer Committee Reports this evening.

VIII. PUBLIC COMMENT SESSION

Paul McEachern requested his complete remarks provided be included in this section of the minutes. "The potential reuse of the McIntyre parcel represent the most significant policy decision to be made by a City Council since the decision of the Council in the early 1960s to locate the sewage treatment plant on Peirce Island. The purpose of my speaking tonight is to point out, number one, that the City Council has been derelict in its duty of not fully considering its options. Significantly, you have not been given the opportunity to weigh in on a negotiated transfer of the property directly to the City of Portsmouth. I submit a PowerPoint from your meeting of August 15, 2016 where you were given, by the administration, three potential choices, none of which was a negotiated transfer. It's unbelievable to me that there hasn't been a thorough examination of this option and the potential benefits to the citizens of the City. Secondly, consistent with a negotiated transfer, Revisit McIntyre has submitted a request to rezone the McIntyre parcel to Municipal Use which is on the agenda for this evening. This becomes very important should the City evaluate a negotiated transfer since, by zoning it Municipal, the City becomes the only potential purchaser of this parcel. You have been told by the Planning Board that this cannot happen because the parcel is not presently owned by the City. In this respect I have submitted the zoning map from 2005 which includes the Army Reserve Center on Cottage Street. This parcel since at least 2005, when it was owned by the federal government, has been zoned Municipal. I'm sure that played a role in the city's acquisition of this parcel. If it didn't, it should have. The McIntyre parcel has never been appraised by the federal government and before that happens, the rezoning of the parcel to Municipal Use would have a dramatic downward effect on its market value. Zoning is a legislative process not tied to ownership. The City is simply condescending when it says it can't be zoned Municipal since it is not presently owned by the City. I ask that instead of voting the zoning change down as you are being told, refer this to the City Attorney for drafting an appropriate ordinance and consider your option of acquiring the property through a negotiated transfer. If you are being told that this is almost a done deal you should get another opinion. This parcel rests within the historic downtown district and its compatibility with the district will be the subject of scrutiny."

Danielle Leigh respectfully asked to rezone the McIntyre Building to Municipal.

Sampo Kasila spoke to the Islington Parking Plan (IPP) which is to allow all residents to park near their homes. He said today they can park anywhere but when the program goes into effect he can't park near his building and this does not make sense. He asked to amend the program to include other households.

Ari Nathans respectfully asked to rezone the McIntyre as Municipal to lower the taxes on the property. She said we need to make sure that this stays a recognizable place.

Michael Simchik, Rye, NH spoke regarding the McIntyre Building and supports the request to rezone the property to Municipal. He said that City staff should conduct a full economic and value review of the property.

Ken Goldman indicated he is not part of the Neighborhood Parking Program but lives on Islington Street. He said it is his neighborhood that lives in the condominiums which were excluded from the Neighborhood Parking Program.

Arthur Bruinooge asked that the City Manager amend the Neighborhood Parking Program to include properties which were excluded. He said that living in a condominium excluded him from the program. He feels that the process was flawed and a new vote should be done.

Charlie Armenti said the Islington Street Green Condominium Association was excluded from the Neighborhood Parking Program. He said the condominiums should be included in the program and counted.

Bill Hamilton spoke to the McIntyre building. He said it should not be zoned CD-4 it should be Municipal. He said the valuation will be reduced if the zoning is changed. He addressed changing the standards to prevent a developer from coming in and putting in a large hotel.

Joanna Soris respectfully asked that the McIntyre be rezoned Municipal which will lower the valuation of the parcel.

Sara Keller respectfully asked the City Council to rezone the McIntyre parcel to Municipal zone so the City can retain the building for years to come and it would lower the valuation of the parcel.

Deb Watson said that she lives at the Islington Green Condominium units and her home should have been part of the parking program.

Martha Fuller Clark said she would like the historic nature of the City protected. She would like the McIntyre rezoned to Municipal and that the City needs to consider how best to use the building. She recommended the City lease out the building until a decision is made on how the building should be used.

Wes Tator invited the City Council to pass a Resolution regarding the Energy Innovation Carbon Act. He said pricing carbon is important and there is a brief window of time to make changes to the climate issues. He advised the City Council that he has a draft Resolution for their review and asked that it be acted upon at the July 15, 2019 City Council meeting.

Duncan McCallum said he supports the rezoning of the McIntyre parcel.

Blair McCracken said he supports the rezoning of the McIntyre and the City Council needs to listen to the citizens.

Gretchen Porter respectfully asked that the McIntyre be rezoned to Municipal so the citizens can control the building for years to come.

Bill Downey said the Demolition Committee did a great job and effort regarding Carey Cottage. He said the McIntyre rezoning to Municipal will lower the valuation of the parcel and land. He recommended the City Attorney to draft an Ordinance to acquire the property through a transfer process.

Councilor Perkins spoke to the number of people the Council has heard from regarding the Neighborhood Parking Plan. She said residents that signed to be part of the program have been excluded. She asked for an additional meeting with the public and said it should be a truly resident process. She stated a meeting should be held and an amendment should be made to the program.

Mayor Blalock said he originally cautioned the Council on proceeding with this program and he does not feel it will work.

Assistant Mayor Lazenby moved to suspend the rules in order to take up Item XV. A. – Presentation – Preliminary Results of 2019 Statistical Revaluation. Seconded by Councilor Pearson and voted.

City Assessor Lentz spoke to the definitions of a full statistical revaluation and partial update.

Full Statistical Revaluation:

means the process of a revaluation of all taxable and nontaxable properties in a municipality, using existing property data, to arrive at full and true value as of April 1.

Partial Update:

means the process of analyzing market sales throughout the entire municipality to identify and implement needed value changes to the affected areas, or classes of property, to bring those properties to the municipality's **general level of assessment** utilizing the existing base tax year and providing an addendum to the existing USPAP compliant report.

Michael Tarello, Vision Government Solutions, said they are doing an evaluation of values and looking at all neighborhoods and condominiums to make sure they are valued correctly. He stated the date of the valuation is April 1, 2019 and that they are reviewing 2 years of sales for commercial properties. He stated 2018 State equalization study overall assessment median ratio was at 91.3% of the sale prices. He advised the Council that 2019 overall assessment to sales ratio after adjustments is approximately – 95% median ratio as of April 1, 2019. He indicated that all types of properties are being reviewed and they are reviewing land values and sales. Mr. Tarello reported that the average increase for land values is an 8% increase and downtown is higher than the rest of the City. He stated that compared building costs adjustments range from 0-7% upward depending on type of property. He said based on local and regional data increases vary from 4-10%. Discussion followed on specialty properties – hotels, nursing homes, assisted living which were analyzed for specific income stream, in regards to expenses a review of distributed, undistributed, fixed and reserves and regarding Non-RE expenses a review of business component and personal property.

Median Commercial Sales Price & Assessment Ratios:

- Comparison of 2018 sales to initial review of 2019 sales
- Qualified Commercial, Industrial, Mixed Use, Apartments
 - 4/1/2017 – 3/31/2019 40 Sales Ratio @ 91%
 - 4/1/2018 – 3/31/2019 23 Sales Ratio @ 89%
- Adjusting Sales Ratio to 95%
- Single Family
 - 2018 – 155 Sales – Median Ratio 94%
 - 2019 Prior to Analysis – 146 Sales, Median Sale \$475,000.00 Median Ratio 85%
 - 2019 – 146 Sales – Values adjusted to Median Ratio 95%
 - Stratifications needs to be within 5% of Overall Median
- Condominiums
 - 2018 – 142 Sales – Median Ratio 93%
 - 2019 Prior to Analysis – 174 Sales – Median Sales \$465,750.00 Median Ratio 91%
 - 2019 – 174 Sales – Values adjusted to 95%
 - Stratifications needs to be within 5% of Overall Median

Residential Results from Full Update NBHD/Market Area Analysis

- Portsmouth has 31 Residential Neighborhoods
- The base land curve increased 10%
- Further adjustments were applied to the neighborhoods beyond the 10% increase
- Starting Median Ratio for Single Families at 85%
- 20 neighborhoods – stable (no change to factor)
- 4 neighborhoods went down 4-10%
- 1 neighborhood went down 15%
- 5 neighborhoods went up 3-8%
- 1 neighborhood went up 16%
- Median increase in value to all neighborhoods 10%

Condominiums:

- 336 Condo Complexes including 101 mix use/commercial complexes
- Condominiums – Individual complexes reviewed and analyzed
- Complexes that have no sales are reviewed for comparability to complexes with sales
- Waterfront, water view, downtown locations reviewed
- Preliminary sales indicates a 4% increase in Condo class
- Individual complexes may go up or down depending on the findings of the analysis

Assessor Lentz reported detailed sales reports for residential, commercial and condominiums by various stratifications will be available, at the hearings as well as on the City's website once finalized and approved. She advised that all new proposed values will be available on the City's web site which links to Vision's website.

Tentative Timeline:

- Start Up Meeting – March 2019
- Sales Review and Analysis – April 2019 through June 2019
- Assessor Review of Values – June 2019 through August 2019
- Presentation to the City Council on Preliminary Analysis – June 17, 2019
- Taxpayer Notice of Preliminary Assessments – Week of July 8, 2019
- Taxpayer Forum – Tentatively July 18, 2019 – Library Levenson Room 6PM
- Taxpayer Hearings – Beginning July 22, 2019 thru August 2, 2019
- Presentation to City Council of Final Analysis and Results – August 12, 2019
- Final Notices if Changes to Preliminary Values – Week of August 19, 2019
- MS-1 – City Valuation – September – October 2019
- Tax Rate Set – October 2019

Councilor Pearson asked about the commercial side for market rates and is there a sense that businesses still afford the rents. Mr. Tarello said that the demand is still strong.

Councilor Dwyer said that commercial has begun to catch up but is not rising as fast as residential what can you say about the relations between residential and commercial. Mr. Tarello said there are differences between residential and commercial properties. He said that the downtown is still thriving and prices may go up 4% or 12%.

Councilor Roberts said is it possible to see whether commercial development is supporting residential taxes. Assessor Lentz said commercial is increasing and you will see that some years with the tax rate. She reported on the substantial income data that has been received on commercial properties which make the updates stronger.

Councilor Becksted asked if the July 18th meeting will be videotaped for the public to review. He also asked if the State mandated a complete revaluation. Assessor Lentz said she must look at values annually. Councilor Becksted asked how many abatements were filed after the revaluation last year. Assessor Lentz said about 35.

City Manager Bohenko said if values go below 95% and people challenge their assessment and they would have a better chance of getting an abatement. Assessor Lentz said if she does not adjust residential there would be an influx of abatements and we also refund interest as well when an abatement is achieved by a property owner.

Councilor Reynolds moved to suspend the rules in order to take up Item XV. B. – Presentation Re: 2019 Street.life! Annual Dinner. Seconded by Councilor Perkins and voted.

Councilor Denton spoke to the need to follow the agenda format at the July 15, 2019 City Council meeting.

B. Presentation Re: 2019 Street.life! Annual Dinner

Valerie Rochon, President of the Chamber of Commerce, thanked the City Council for considering the Street.life! Annual Dinner. She informed the Council that the dinner will take place on Chestnut Street in conjunction with The Music Hall.

Councilor Reynolds moved to refer to the City Manager with power. Seconded by Councilor Denton.

Councilor Denton asked if a full alcohol bar would be permitted. Ms. Rochon said there is not a need but a desire to have a full bar. City Manager Bohenko said he would not have a problem as long as everyone has a bracelet because there is a full bar inside of The Music Hall and we don't want to compromise their liquor license.

Councilor Pearson said she supports the event. She asked if the area will be covered. Ms. Rochon said it would not be covered but they would move inside The Music Hall if it is raining.

Councilor Becksted said he has concerns having alcohol outside on our streets. He said he would not support the request.

City Manager Bohenko said there will be an area they need to stay in and that everyone would have to wear a bracelet.

Councilor Becksted asked if there is a limit on the number of drinks served. City Manager Bohenko said bartender's address that issue and The Music Hall would not want to over serve anyone.

Motion passed. Councilor Becksted voted opposed.

IX. PUBLIC HEARINGS ON VOTES ON ORDINANCES AND/OR RESOLUTIONS

Public Hearings on 2019 Proposed Charter Amendments #1 and #2

A. Public Hearing on 2019 Proposed Charter Amendment #1

The Municipal Charter of the City of Portsmouth, Section 4.6 – Compensation of City Councilors is hereby amended as follows (deletions from existing language ~~stricken in red~~; additions to existing language **bolded in red**; remaining language unchanged from existing):

SECTION 4.6 – COMPENSATION OF CITY COUNCILORS

Each City Councilor shall be compensated at a rate of Seventy-Five (\$75.00) Dollars for each **regular** Council meeting in which that person is in actual attendance. However, no City Councilor except the Mayor shall receive more than ~~Fifteen Hundred (\$1,500.00)~~ **One Thousand Six Hundred Fifty (\$1,650.00)** Dollars during any calendar year.

If authorized by referendum vote at the municipal election scheduled for November 5, 2019, this amendment to become effective on January 1, 2020.

- **PRESENTATION**

Mayor Blalock read the legal notice and there was no Presentation.

- **CITY COUNCIL QUESTIONS**

No City Council questions were asked.

- **PUBLIC HEARING SPEAKERS**

Esther Kennedy said she supports the Charter amendment.

With no further speakers, Mayor Blalock closed the public hearing.

- **ADDITIONAL COUNCIL QUESTIONS AND DELIBERATIONS**

Assistant Mayor Lazenby said he is concerned although the concept is good it appears more like a 10% raise for the Council.

Assistant Mayor Lazenby moved to amend the proposed Charter Amendment #1 in accordance with the written amendment that is dated June 17, 2019 which has been distributed this evening. Seconded by Councilor Dwyer.

New proposed Language: Each City Councilor shall be compensated at a rate of Seventy-Five (\$75.00) Dollars for each regular Council meeting in which that person is in actual attendance. However, no City Councilor including the Mayor shall be compensated for more than Twenty-two (22) meetings during any calendar year.

Councilor Dwyer said that this is clearer language and she supports the amendment.

Motion passed.

Assistant Mayor Lazenby moved to place the proposed Charter Amendment #1 Compensation of City Councilors on the November 5, 2019 ballot. Seconded by Councilor Roberts and voted.

B. Public Hearing on 2019 Proposed Charter Amendment #2

The Municipal Charter of the City of Portsmouth, AMENDMENT E – POLICE DEPARTMENT (POLICE COMMISSION) is hereby amended as follows (deletions from existing language ~~stricken in red~~; additions to existing language **bolded in red**; remaining language unchanged from existing):

AMENDMENT E – POLICE DEPARTMENT (POLICE COMMISSION)

APPOINTMENT/ELECTION TERMS

Should an elected Police Commission be approved on November 5, 1991, the Mayor of the City of Portsmouth shall appoint the first board of three Commissioners who shall assume office commencing on January 1, 1992 through January 1, 1994. In order to establish legal and proper cycle of election in accordance with New Hampshire law, hereinafter, the first elected Board of Police Commissioners shall be elected in November 1, 1993 as follows:

Two candidates receiving the highest and second highest number of votes shall assume terms of four years. The candidate receiving the third highest number of votes shall assume a term of two years.

Thereinafter, each Commissioner shall be elected for a term of four years. All Police Commissioners elected from 1993 and onwards shall be elected at large and without party affiliation and may be elected for more than one term of office. In the event a vacancy should occur on the Board, ~~then the next runner up candidate established out of the last, most recent Board election, shall assume the balance of the vacated term. In the event that the list of candidates from the last election available to fill vacancies becomes depleted, then the Mayor shall appoint any necessary Commissioners~~ **the vacancy shall be filled by appointment of the City Council until the next regular municipal election.**

If authorized by referendum vote at the municipal election scheduled for November 5, 2019, this amendment to become effective on January 1, 2020.

- **PRESENTATION**

Mayor Blalock read the legal notice and indicated there is no presentation on this Charter Amendment.

- **CITY COUNCIL QUESTIONS**

There were no questions by the City Council.

- **PUBLIC HEARING SPEAKERS**

Mayor Blalock declared the public hearing open and called for speakers.

Esther Kennedy said she is appalled we have had people that are runners up that were not put in place. She said we have let the residents down and you are taking this decision out of the citizen's hands and giving it to the City Council to appoint. She stated if someone leaves the Commission the next person should be put on the Commission.

Mayor Blalock said our Charter is in violation of State law as indicated by the Secretary of State and Attorney General. He stated we are lining up our Charter to be in line with the State Statute.

Blair McCracken said you should put the person the City Council is appointing to be the runner up of the election.

With no further speakers, Mayor Blalock declared the public hearing closed.

- **ADDITIONAL COUNCIL QUESTIONS AND DELIBERATIONS**

Councilor Becksted said he experienced the filling of a vacancy and the names of people were brought forward for the City Council to appoint. He said each replacement has been different and it is confusing. He said the City Council's concern was that a three member body not being able to function with just two members.

Councilor Dwyer said Mr. McCracken makes a good point put in place a new City Council rule that the City Council would appoint the person that is the runner up. She said we would pick the person with the next number of votes.

Assistant Mayor Lazenby said he feels that what Councilor Dwyer is saying is similar to Councilor Becksted's point.

Councilor Roberts said he disagrees, the City Council should use the best person for the job and be qualified to do the job.

Councilor Pearson said should we add under the brief explanation that the amendment is due to State Statute.

City Attorney Sullivan said it is clear for the record and there is a footnote.

Councilor Dwyer moved to place the proposed Charter Amendment #2 Police Commission Vacancies on the November 5, 2019 ballot. Seconded by Assistant Mayor Lazenby.

City Attorney Sullivan stated that the law requires a brief explanation and that will appear on the ballot.

Motion passed.

At 9:15 p.m., Mayor Blalock declared a brief recess. At 9:25 p.m., Mayor Blalock called the meeting back to order.

C. First Reading – Annual Omnibus Ordinance

First Reading of Ordinance Amending Chapter 7 – Parking Omnibus

Councilor Perkins moved to pass first reading of the annual omnibus set of ordinances recommended by the Parking and Traffic Safety Committee, and schedule second reading and public hearing for the July 15, 2019 City Council meeting. Seconded by Councilor Roberts.

Councilor Denton said later in the agenda there is a request for parking would it make sense to have it part of this ordinance. City Manager Bohenko said it is for a meter so you can't add it to the omnibus.

Councilor Becksted said some of the parking spaces that are being eliminated by the Neighborhood Parking Plan have been created into loading/unloading zones. City Manager Bohenko said we will go through all parking spaces during the public hearing.

Motion passed.

X. MAYOR BLALOCK

1. Appointment to be Considered:
 - Appointment of Stephen Pesci as a regular member to the Parking & Traffic Safety Committee
 - Appointment of Jonathan Sandberg as an Alternate to the Parking & Traffic Safety Committee

The City Council considered the appointments of Stephen Pesci and Jonathan Sandberg to the Parking & Traffic Safety Committee to be voted on at the July 15, 2019 City Council meeting.

2. City Manager Search Subcommittee Update

Mayor Blalock said the Subcommittee had a meeting last week and discussed the timeline and having the search firm put together a profile for a new City Manager.

Deputy City Manager Colbert Puff reported on the conference call last week and that the search firm will be sending Joellen Cademartori here next week. She reported that invitations were sent out to a number of business leaders, board and commission members and that a community forum will be conducted in Conference Room A. If you are unable to participate emails will be accepted to Joellen directly in order to provide input or you may call her and speak with her to discuss your thoughts for a new manager.

Councilor Pearson asked if there will be an on-line version for people to complete. Deputy City Manager Colbert Puff said yes. Deputy City Manager Colbert Puff announced that there is a City Manager Search Web Site and it has the questionnaire for people to complete.

Assistant Mayor Lazenby said the time line does not reflect some of the changes. Mayor Blalock said the time line is in our packet. Assistant Mayor Lazenby said we had a discussion and did not have a target date for the new person to start after the City Manager leaves. Mayor Blalock said the new City Manager would start in the beginning of January.

Deputy City Manager Colbert Puff said a sample survey that will be passed out to the City employees and the City Council can make any changes requested.

XI. CITY COUNCIL MEMBERS

B. COUNCILOR DENTON

1. Distribution of Single-Use Disposables Ordinance

Councilor Denton moved to have the City Attorney review and provide a report back on the amended Distribution of Single-Use Disposables Ordinance. Seconded by Councilor Roberts.

Councilor Denton said he provided two copies of the same ordinance with the second copy being the clean version. He has taken some feedback and is aware that the State Legislature will not be acting this year. He said he made some changes to the Ordinance with the majority only applying to City events, City sponsored events and City property. He stated he would like to keep the ordinance going forward until second reading. Councilor Denton said this is asking for City Attorney Sullivan's opinion. He indicated moving forward he would like to reduce Styrofoam in the City.

Councilor Becksted asked how we could control the schools use of plastics and Styrofoam. Councilor Denton said it is about the distribution of products.

Councilor Dwyer said the group effected by this would be the Farmer's Market. Councilor Denton said it would apply to the Farmer's Market. Assistant Mayor Lazenby asked if Prescott Park Arts Festival would apply. Councilor Roberts asked about the recent concert held in the Worth Lot. Councilor Denton said yes.

Mayor Blalock passed the gavel to Assistant Mayor Lazenby.

Mayor Blalock said we need to get everyone educated and people will be much more conscientious.

Assistant Mayor Lazenby returned the gavel to Mayor Blalock.

Councilor Dwyer said she would support the ordinance.

Councilor Denton said he does not usually negotiate with himself but either way he wants to pass something and in the next year let's see if it is challenged. He stated the next City Council could amend five words to keep it just to City property.

Councilor Pearson supports the ordinance and challenges private businesses to join the City.

Motion passed.

XII. APPROVAL OF GRANTS/DONATIONS

- A. Acceptance of Donation by West End Studio to the Police Explorers Post - \$55.00

Assistant Mayor Lazenby moved to accept and approve the donation to the Police Explorers Post in the amount of \$55.00 from West End Studio. Seconded by Councilor Perkins and voted.

XIII. CITY MANAGER'S ITEMS WHICH REQUIRE ACTION

A. CITY MANAGER

- 1. Request for Public Hearing Re: Various Bonding Resolutions for projects identified in the FY 20-25 Capital Improvement Plan

City Manager Bohenko said he is requesting a public hearing on various Resolutions for the July 15, 2019 City Council meeting. The first Resolution deals with the General Fund, the second is the Sewer Fund and the third is the Water Fund. He stated a full presentation will be held at the July 15, 2019 City Council meeting.

Assistant Mayor Lazenby moved to authorize the City Manager to bring back for public hearing and adoption the various proposed CIP projects to be bonded, as presented, for the July 15, 2019 City Council meeting. Seconded by Councilor Raynolds and voted.

2. 162 Daniel Street (McIntyre Federal Building) Re-Zoning Request

Planning Director Walker said the request was referred to the Planning Board for a recommendation. She indicated that the Planning Board reviewed the request and the report back states the McIntyre is not in Municipal use and does not feel the rezoning request is appropriate for the building. She reported that the Planning Board held a public hearing on the request and the Planning Board voted unanimously to not support the request to rezone and recommended to accept and place the request on file.

Councilor Becksted said in 2005 the Doble Center was changed to Municipal zone and we did not have ownership and asked how's that different. Planning Director Walker said the current ordinance is amended in 2010, and it is very clear in the definition.

Councilor Raynolds asked if the current zoning designation for property owned by governmental entities could the Municipal zone be applied to the Federal Government. Planning Director Walker said State and Federal Government are exempt from zoning. She said it is important to be aware that zoning the parcel Municipal removes all dimensional controls.

Assistant Mayor Lazenby asked if the zoning was changed what would the impact be to the current process. Planning Director Walker said zoning it Municipal you are giving a different message to the developer. She said no off-street parking, no height control, etc.

Councilor Pearson said if the City purchased the building, the City develops the building do we have architects on staff. She said there are a whole group of people we would need to hire that we do not currently have performing such tasks.

Councilor Dwyer said if it was Municipal the value would be lowered. If you take away the dimensional controls it would increase the value.

Councilor Roberts asked why this would be requested and the City would maintain control. He said uses would be controlled by the City in perpetuity.

Councilor Pearson asked who pays for the abatement, design work and the construction.

City Manager Bohenko said if we did a negotiated sale, the owners of the building, we would clean up the building and make it an empty shell to market the building. We would need to get rid of the asbestos and we would need to bond the project and a team would need to be hired. He stated you would need to appropriate the money for the use of the building. He said in 2017 we did look at a negotiated sale and we did not want to expend the money and people felt that the GSA handled the process wrong with us.

Councilor Becksted said the intent is if we buy it and change it to Municipal it would drop the value and we could purchase the building. We could earn \$350,000.00 in rent for the Post office.

Councilor Becksted moved to rezone the property to Municipal. Seconded by Councilor Denton.

Councilor Becksted said we have not looked at everything. He said there is no time limit on this project and let's see if there is one more option.

Councilor Perkins said we have explored every option and it is very complex. She feels the City has done a fabulous job to explore the project and there is no way to move forward without a revenue stream. She said the use will be brought for a vote by the City Council soon.

Councilor Pearson said that there is an assumption on the value of the property and what the value would be if zoned Municipal.

Councilor Dwyer said the next item on agenda will talk about the sessions coming forward on the financing of the building. She said we cannot take down the building on any deed transfer.

Councilor Roberts said the price may come down, the question is what you get for \$4,000,000.00. He said there is no room to pay that for the building and you can't take the building down that is part of the restriction.

Assistant Mayor Lazenby said he would not support the motion. He said it seems dangerous and perhaps it would not be able to proceed and it feels like the cart before the horse.

Councilor Denton said in 2017 he remembers discussing this and he favored the City owning the building. He spoke to the selection of a developer Redgate/Kane and said he wanted to take a chance and try to get what we can and this would go to the private developer who would build what they want. He said it is irresponsible for an elected official to say the Post Office might stay, it will not. He said the GSA said it would move out of the building.

Councilor Raynolds said all tenants would need to move, and the Post Office would be temporarily relocated. He did indicated that Redgate/Kane has a spot marked for the Post Office to return to.

Councilor Becksted said we have no partnership, there is no obligation to any of it.

On a roll call vote 1-8, motion failed. Councilor Becksted voted in favor. Assistant Mayor Lazenby, Councilors Roberts, Pearson, Dwyer, Denton, Perkins, Raynolds and Mayor Blalock voted opposed.

Councilor Perkins moved to accept and place on file the request from Revisit McIntyre to rezone the property located at 162 Daniel Street (McIntyre Federal Building) to Natural Resource Protection District or Municipal or a combination of both. Seconded by Councilor Raynolds and voted.

3. Proposed Work Session on June 24, 2019 at 6:30 p.m. Re: McIntyre Project and Special Meeting on July 1, 2019 Re: Action on this Matter

City Manager Bohenko said on June 24th at 6:30 p.m. we will be meeting regarding negotiations with Attorney John Sokul present, July 1st will be a Work Session on the Financial Picture with David Eaton, July 8th will be a Question and Answer session with David Eaton and July 15th a vote would take place regarding the McIntyre at our regular meeting.

Councilor Dwyer moved to establish a Non-Public Session on Monday, June 24th in Conference Room A at 6:30 p.m.; a Work Session on Monday July 1st, in the Eileen Dondero Foley Council Chambers at 6:30 p.m. and a Dialogue Session on Monday, July 8th in the Eileen Dondero Foley Council Chambers at 6:30 p.m. regarding the McIntyre Project. Seconded by Councilor Perkins.

Mayor Blalock passed the gavel to Assistant Mayor Lazenby.

Mayor Blalock said everyone thinks that we don't do anything in the summer but we do and we need to meet on these items. He said he understands the concerns of Councilor Becksted to not have a vote in the summer when people are on vacation. He said the Federal Government in 2016 gave the Post Office an eviction notice and the Post Office was to be out of the building in 2017. He stated never did they withdraw their notice of having to move out of the building. He said he is excited about the public input that will take place on July 8th.

Assistant Mayor Lazenby returned the gavel to Mayor Blalock.

Councilor Perkins said she apologizes on scheduling this for the summer.

Motion passed.

4. Sale of Surplus Water Meters

City Manager Bohenko said the City currently has old water meters with a total weight of 9,200 lbs. to dispose of. He stated the meters are outdated, and it is the option of the water department that its greatest value is as scrap meter. He further stated the bundled value is believed to far exceed \$500.00.

Councilor Perkins moved to authorize the City Manager to dispose of the surplus water meters through GovDeals. Seconded by Assistant Mayor Lazenby and voted.

5. Request for First Reading Re: Ordinance Amendment to Chapter 7, Article III, Section 7.328 – Limited Parking – Three Hours – Raynes Avenue and Vaughan Street

City Manager said this will add meters to Raynes Avenue and Vaughan Street. He said we need this in place before the AC Hotel comes on line.

Councilor Perkins moved to schedule first reading for the July 15, 2019 City Council meeting to amend Chapter 7, Article III, Section 7.328 Limited Parking – Three Hours – Raynes Avenue and Vaughan Street. Seconded by Councilor Roberts and voted.

XV. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

C. Email Correspondence

Assistant Mayor Lazenby moved to accept and place on file. Seconded by Councilor Perkins and voted.

XVII. MISCELLANEOUS BUSINESS INCLUDING BUSINESS REMAINING UNFINISHED AT PREVIOUS MEETING

Councilor Pearson reported that the City Council was the highest fundraiser and best dressed at the Stiletto Race held on Saturday downtown.

XVIII. ADJOURNMENT [at 10:00 p.m. or earlier]

At 10:35 p.m., Councilor Becksted moved to adjourn. Seconded by Councilor Perkins and voted.

A handwritten signature in black ink that reads "Kelli L. Barnaby". The signature is written in a cursive, flowing style.

KELLI L. BARNABY, MMC/CNHMC
CITY CLERK

LEGAL NOTICE

NOTICE IS HEREBY GIVEN that a Public Hearing will be held by the Portsmouth City Council on Monday, July 15, 2019 at 7:00 p.m., Eileen Dondero Foley Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, NH on a Resolution Authorizing a Bond Issue and/or Notes of up to Ten Million Five Hundred Fifty Thousand Dollars (\$10,550,000.00) for costs related to City Street, Sidewalk, Bridges and Facility Improvements. The complete Resolution is available for review in the Office of the City Clerk and Portsmouth Public Library, during regular business hours.

Kelli L. Barnaby, MMC/CNHMC
City Clerk

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Kelli L. Barnaby, MMC/CNHMC
City Clerk

PA00432460

**CITY OF PORTSMOUTH
TWO THOUSAND NINETEEN
PORTSMOUTH, NEW HAMPSHIRE**

RESOLUTION # – 2019

**A RESOLUTION AUTHORIZING A BOND ISSUE AND/OR
NOTES OF UP TO TEN MILLION FIVE HUNDRED FIFTY
THOUSAND DOLLARS (\$10,550,000) FOR COSTS RELATED TO
CITY STREET, SIDEWALK, BRIDGES AND FACILITY
IMPROVEMENTS.**

RESOLVED:

THAT, the sum of up to **Ten Million Five Hundred Fifty Thousand Dollars (\$10,550,000)** is appropriated for City Street, Sidewalk, Bridges and Facility Improvements, including the payment of costs incidental or related thereto;

THAT, to meet this appropriation, the City Treasurer, with the approval of the City Manager, is authorized to borrow, on a competitive or negotiated basis, up to **Ten Million Five Hundred Fifty Thousand Dollars (\$10,550,000)** through the issuance of bonds and/or notes of the City under the Municipal Finance Act;

THAT, the expected useful life of the projects is determined to be at least twenty (20) years, and;

THAT, this Resolution shall take effect upon its passage.

APPROVED:

JACK BLALOCK, MAYOR

ADOPTED BY CITY COUNCIL

**KELLI BARNABY, MMC/CNHMC
CITY CLERK**

BI-01-PW-34: CITYWIDE FACILITIES CAPITAL IMPROVEMENTS

Department	Public Works
Project Location	Citywide
Project Type	Rehabilitation of a Facility
Commence FY	Ongoing
Priority	O (ongoing or programmatic)
Impact on Operating Budget	Negligible (<\$5,001)



Evaluation Criteria	Satisfy
Identified in Planning Document or Study: Facility Condition Assessment 2015	Y
Improves Quality of Existing Services	Y
Provides Added Capacity to Existing Services	
Addresses Public Health or Safety Need	
Reduces Long-Term Operating Costs	
Alleviates Substandard Conditions or Deficiencies	
Provides Incentive to Economic Development	
Responds to Federal or State Requirement	
Eligible for Matching Funds with Limited Availability	

Description: The Public Works Department is responsible for the maintenance of all municipal facilities. These facilities are wide ranging and serve multiple uses. Due to age and usage, many facilities need to be updated.

Useful Website Links:

- [Public Works Homepage](#)
- [FY19-24 CIP page](#)

	FY20	FY21	FY22	FY23	FY24	FY25	Totals 20-25	6 PY's Funding	Totals
GF	1%						\$0	\$50,000	\$50,000
Fed/ State	0%						\$0	\$0	\$0
Bond/ Lease	98%	\$1,000,000		\$1,000,000			\$2,000,000	\$2,000,000	\$4,000,000
Other	0%						\$0	\$0	\$0
Revenues	1%						\$0	\$30,000	\$30,000
PPP	0%						\$0	\$0	\$0
Totals		\$1,000,000	\$0	\$0	\$0	\$0	\$2,000,000	\$2,080,000	\$4,080,000

TSM-95-PW-59: CITYWIDE SIDEWALK RECONSTRUCTION PROGRAM

Department	Public Works
Project Location	Citywide
Project Type	Construction or Expansion of a Public Facility, Street or Utility
Commence FY	Ongoing
Priority	O (ongoing or programmatic)
Impact on Operating Budget	Negligible (<\$5,001)



Description: The Public Works Department created and conducted a conditional sidewalk assessment of City maintained sidewalks. The assessment contains detailed information on 77 miles of sidewalk, not including those within parks, fields and other City maintained facilities. The results give City staff a clear depiction of the overall conditions. This project consists of sidewalks identified as being in poor to fair condition. Reconstruction work is based on need and coordinated with other street improvements.

Useful Website Links:

- [Public Works Homepage](#)
- [FY19-24 CIP page](#)

Evaluation Criteria	Satisfy
Identified in Planning Document or Study: Sidewalk Condition Index 2018 (in development)	Y
Improves Quality of Existing Services	Y
Provides Added Capacity to Existing Services	
Addresses Public Health or Safety Need	Y
Reduces Long-Term Operating Costs	
Alleviates Substandard Conditions or Deficiencies	
Provides Incentive to Economic Development	
Responds to Federal or State Requirement	
Eligible for Matching Funds with Limited Availability	

	FY20	FY21	FY22	FY23	FY24	FY25	Totals 20-25	6 PY's Funding	Totals
GF	0%						\$0	\$0	\$0
Fed/ State	0%						\$0	\$0	\$0
Bond/ Lease	100%	\$800,000	\$800,000		\$800,000		\$2,400,000	\$2,400,000	\$4,800,000
Other	0%						\$0	\$0	\$0
Revenues	0%						\$0	\$0	\$0
PPP	0%						\$0	\$0	\$0
Totals		\$800,000	\$0	\$800,000	\$0	\$0	\$2,400,000	\$2,400,000	\$4,800,000

TSM-95-PW-59 : Citywide Sidewalk Reconstruction Program

PROPOSED CAPITAL IMPROVEMENTS -- SIDEWALKS

Fiscal Years 2020 and 2021

PROPOSED CAPITAL IMPROVEMENTS ON EXISTING SIDEWALKS:

- Bartlett St.
- Creek Area
- Kensington Rd.
- Lawrence St.
- Maple Haven Area
- Pannaway Area
- State St.
- Summit Ave
- Willard Ave
- Miscellaneous

The list above represents a backlog of high priority sidewalk projects as identified by the Conditional Sidewalk Assessment and other capital projects. The amount of work completed depends on available funds and construction bid prices.

TSM-18-PW-64: CITYWIDE BRIDGE IMPROVEMENTS

Department	Public Works
Project Location	Citywide
Project Type	Rehabilitation of a Facility
Commence FY	Ongoing
Priority	O (ongoing or programmatic)
Impact on Operating Budget	Negligible (<\$5,001)

Evaluation Criteria	Satisfy
Identified in Planning Document or Study: Citywide Bridge Master Plan (in development)	Y
Improves Quality of Existing Services	
Provides Added Capacity to Existing Services	
Addresses Public Health or Safety Need	Y
Reduces Long-Term Operating Costs	Y
Alleviates Substandard Conditions or Deficiencies	Y
Provides Incentive to Economic Development	
Responds to Federal or State Requirement	
Eligible for Matching Funds with Limited Availability	



Description: This project provides for the maintenance of City bridges. Typical bridge maintenance activities include sealing the concrete surfaces, replacing the pavement surfaces, replacing the bridge membranes and replacing, maintaining or upgrading trailing systems and fences. The FY20 funds are based on the Bridge Master Plan recommendations for the highest priority repairs including Kearsarge Way Bridge and Market Street Bridges over North Mill Pond.

Useful Website Links:

- [Public Works Homepage](#)
- [FY19-24 CIP Page](#)

	FY20	FY21	FY22	FY23	FY24	FY25	Totals 20-25	6 PY's Funding	Totals
GF	18%	\$150,000	\$50,000	\$50,000	\$50,000	\$50,000	\$400,000	\$100,000	\$500,000
Fed/ State	0%						\$0	\$0	\$0
Bond/ Lease	82%	\$2,000,000					\$2,000,000	\$350,000	\$2,350,000
Other	0%						\$0	\$0	\$0
Revenues	0%						\$0	\$0	\$0
PPP	0%						\$0	\$0	\$0
Totals		\$2,150,000	\$50,000	\$50,000	\$50,000	\$50,000	\$2,400,000	\$450,000	\$2,850,000

TSM-10-PW-65: MAPLEWOOD AVENUE BRIDGE REPLACEMENT

Department	Public Works
Project Location	Maplewood Avenue
Project Type	Rehabilitation of a Facility
Commence FY	2020
Priority	A (needed within 0 to 3 years)
Impact on Operating Budget	Negligible (<\$5,001)

Evaluation Criteria	Satisfy
Identified in Planning Document or Study: Citywide Bridge Master Plan (in development)	Y
Improves Quality of Existing Services	
Provides Added Capacity to Existing Services	
Addresses Public Health or Safety Need	Y
Reduces Long-Term Operating Costs	
Alleviates Substandard Conditions or Deficiencies	Y
Provides Incentive to Economic Development	
Responds to Federal or State Requirement	
Eligible for Matching Funds with Limited Availability	



Description: This project is the replacement of the Maplewood Avenue Bridge at the North Mill Pond. Previous planning for this project as an out-year has been expedited due to the critical need for replacement identified in the Bridge Master Plan. The City is working to obtain the 80% DOT state bridge aid funds for this project. If state bridge aid funds are not available, general obligation bonding will be needed to complete this project. It will include new sea walls and replacement of water and sewer utilities, which are covered in other element sheets.

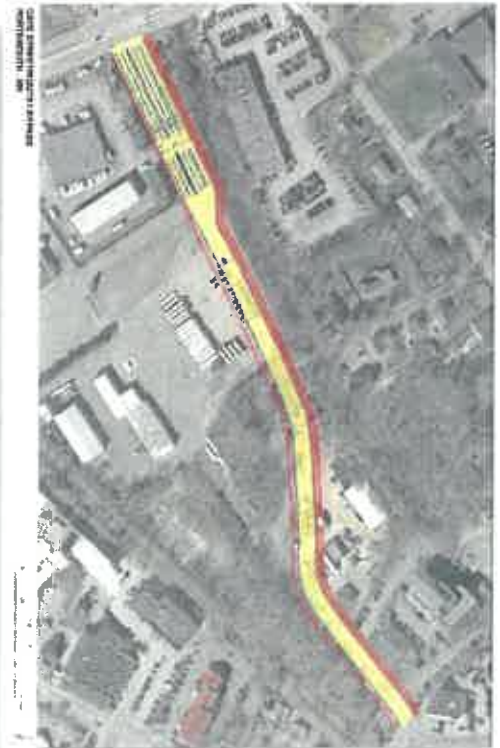
- Useful Website Links:
- [Public Works Homepage](#)
 - [FY19-24 CIP page](#)

	FY20	FY21	FY22	FY23	FY24	FY25	Totals 20-25	6 Yr's Funding	Totals
GF	0%						\$0	\$0	\$0
Fed/ State	75%			\$6,400,000			\$6,400,000	\$0	\$6,400,000
Bond/ Lease	25%			\$1,600,000			\$2,100,000	\$0	\$2,100,000
Other	0%						\$0	\$0	\$0
Revenues	0%						\$0	\$0	\$0
PPP	0%						\$0	\$0	\$0
Totals				\$8,000,000	\$0	\$0	\$8,500,000	\$0	\$8,500,000

TSM-19-PL-67: CATE STREET CONNECTOR

Department	Planning Department & Public Works
Project Location	Cate Street
Project Type	Other (Explained Below)
Commence FY	2020
Priority	A (needed within 0 to 3 years)
Impact on Operating Budget	Moderate (\$50,001 to \$100,000)

Evaluation Criteria	Satisfy
Identified in Planning Document or Study	
Improves Quality of Existing Services	
Provides Added Capacity to Existing Services	
Addresses Public Health or Safety Need	Y
Reduces Long-Term Operating Costs	
Alleviates Substandard Conditions or Deficiencies	
Provides Incentive to Economic Development	
Responds to Federal or State Requirement	
Eligible for Matching Funds with Limited Availability	



Description: This project will provide direct access from Bartlett Street at the Railroad Bridge to Route 1 Bypass at Borthwick Avenue traffic signal. Providing this connector will eliminate an existing truck route and reduce through traffic in the Creek Neighborhood.

- Useful Website Links:
- [Public Works Homepage](#)
 - [FY19-24 CIP page](#)

GF	FY20	FY21	FY22	FY23	FY24	FY25	Totals 20-25	6 PY's Funding	Totals
Fed/State	0%						\$0	\$0	\$0
Bond/Lease	50%	\$1,500,000					\$1,500,000	\$0	\$1,500,000
Other	0%						\$0	\$0	\$0
Revenues	0%						\$0	\$0	\$0
PPP	50%	\$1,500,000					\$1,500,000	\$0	\$1,500,000
Totals		\$3,000,000	\$0	\$0	\$0	\$0	\$3,000,000	\$0	\$3,000,000

TSM-94-PW-73: STREET PAVING, MANAGEMENT AND REHABILITATION

Department	Public Works
Project Location	Citywide
Project Type	Rehabilitation of a Facility
Commence FY	Ongoing
Priority	O (ongoing or programmatic)
Impact on Operating Budget	Negligible (<\$5,001)

Evaluation Criteria	Satisfy
Identified in Planning Document or Study: Pavement Management Index 2018 (in development)	Y
Improves Quality of Existing Services	Y
Provides Added Capacity to Existing Services	
Addresses Public Health or Safety Need	
Reduces Long-Term Operating Costs	
Alleviates Substandard Conditions or Deficiencies	Y
Provides Incentive to Economic Development	
Responds to Federal or State Requirement	
Eligible for Matching Funds with Limited Availability	



Description: The City began a Pavement Condition Management Program in 1993. An annual report updating the City's pavement management system is completed as part of this program. City road conditions are evaluated, the road network conditions and budget requirements are analyzed, and road-paving programs are developed. The report provides recommended funding to maintain street conditions at the current level. These are capital costs. They are implemented over a two-year period with an expected life of 20 years. The Public Works operational budget includes maintenance work costs with an expected life of 10 years.

Useful Website Links:

- [Public Works Homepage](#)
- [FY19-24 CIP page](#)

	FY20	FY21	FY22	FY23	FY24	FY25	Totals 20-25	6 PV's Funding	Totals
GF	0%						\$0	\$0	\$0
Fed/ State	0%						\$0	\$0	\$0
Bond/ Lease	100%	\$4,000,000	\$4,000,000				\$4,000,000	\$8,500,000	\$20,500,000
Other	0%						\$0	\$0	\$0
Revenues	0%						\$0	\$0	\$0
PPP	0%						\$0	\$0	\$0
Totals		\$4,000,000	\$0	\$4,000,000	\$0	\$0	\$12,000,000	\$8,500,000	\$20,500,000

TSM-94-PW-73 : ROADWAY: Street Paving, Management and Rehabilitation

PROPOSED CAPITAL IMPROVEMENTS -- STREETS

Fiscal Years 2020 and 2021

STREETS LISTING:

- Banfield Rd.
- Bartlett St (Islington St. to Dennett St.)
- Chapel St. (Daniel St. to Bow St.)
- Clough Dr.
- Creek Area
- Dennett St. (Woodbury Ave to Maplewood Ave)
- Edmond Ave
- Gosling Rd (Rte 16 to Woodbury Ave)
- High St.
- Ladd St.
- Little Harbor Rd.
- Market St. (Railroad to Submarine Way)
- Michael Succi Dr.
- Morning St.
- New Castle Ave.
- South St. (Junkins Ave to Marcy St.)
- Union St. (Middle St. to Islington St.)
- Miscellaneous

The list above represents a backlog of high priority pavement projects as identified by the Pavement Management Index and other capital projects. The amount of work completed depends on available funds and construction bid prices.

TSM-11-PW-74: PEASE INTERNATIONAL TRADEPORT ROADWAY REHABILITATION

Department	Public Works
Project Location	Pease International Tradeport
Project Type	Rehabilitation of a Facility
Commence FY	Ongoing
Priority	O (ongoing or programmatic)
Impact on Operating Budget	Negligible (<\$5,001)

Evaluation Criteria	Satisfy
Identified in Planning Document or Study	
Improves Quality of Existing Services	Y
Provides Added Capacity to Existing Services	
Addresses Public Health or Safety Need	
Reduces Long-Term Operating Costs	Y
Alleviates Substandard Conditions or Deficiencies	
Provides Incentive to Economic Development	
Responds to Federal or State Requirement	
Eligible for Matching Funds with Limited Availability	



Description: Per the Municipal Service Agreement between the City of Portsmouth and Pease Development Authority, the City will provide public work services in the non-airfield area of the Pease International Tradeport. Services include maintaining and repairing roads, streets, bridges and sidewalks. On the following page are the streets and roads that need improvements.

- Useful Website Links:
- [Public Works Homepage](#)
 - [FY19-24 CIP page](#)

	FY20	FY21	FY22	FY23	FY24	FY25	Totals 20-25	6 PY's Funding	Totals
GF	0%						\$0	\$0	\$0
Fed/ State	0%						\$0	\$0	\$0
Bond/ Lease	100%	\$750,000	\$750,000		\$750,000		\$2,250,000	\$3,500,000	\$5,750,000
Other	0%						\$0	\$0	\$0
Revenues	0%						\$0	\$0	\$0
PPP	0%						\$0	\$0	\$0
Totals		\$750,000	\$0	\$750,000	\$0	\$0	\$2,250,000	\$3,500,000	\$5,750,000

TSM-11-PW-74 : ROADWAY: Pease International Tradeport Roadway Rehabilitation

PEASE INTERNATIONAL TRADEPORT

Fiscal Years 2020 and 2021

- STREETS LISTING:**
- Arboretum Dr.
 - Airline Ave.
 - Durham St.
 - International Dr.
 - Manchester Square
 - New Hampshire Ave.
 - Newfields St.
 - Pease Blvd.
 - Rochester Ave.
 - Rye St.
 - Miscellaneous

The list above represents a backlog of high priority pavement projects in the Pease International Tradeport as identified by the Pavement Management Index and other capital projects. The amount of work completed depends on available funds and construction bid prices.

LEGAL NOTICE

NOTICE IS HEREBY GIVEN that a Public Hearing will be held by the Portsmouth City Council on Monday, July 15, 2019 at 7:00 p.m., Eileen Dondero Foley Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, NH on a Resolution Authorizing a Bond Issue and/or Notes of the City under the Municipal Finance Act and/or Participation in the State Revolving Fund (SRF) Loan of up to Seven Million One Hundred Forty-Five Thousand Dollars (\$7,145,000.00) for costs related to annual Sewer Line Replacements, Consent Decree Mitigation, Pleasant Street Sewers, and Maplewood Avenue Area Reconstruction. The complete Resolution is available for review in the Office of the City Clerk and Portsmouth Public Library, during regular business hours.

Kelli L. Barnaby, MMC/CNHMC
City Clerk

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Kelli L. Barnaby, MMC/CNHMC
City Clerk

11-00439462

**CITY OF PORTSMOUTH
TWO THOUSAND NINETEEN
PORTSMOUTH, NEW HAMPSHIRE**

RESOLUTION # – 2019

A RESOLUTION AUTHORIZING A BOND ISSUE AND/OR NOTES OF THE CITY UNDER THE MUNICIPAL FINANCE ACT AND/OR PARTICIPATION IN THE STATE REVOLVING FUND (SRF) LOAN OF UP TO SEVEN MILLION ONE HUNDRED FORTY-FIVE THOUSAND DOLLARS (\$7,145,000) FOR COSTS RELATED TO ANNUAL SEWER LINE REPLACEMENTS, CONSENT DECREE MITIGATION, PLEASANT STREET SEWERS, AND MAPLEWOOD AVENUE AREA RECONSTRUCTION.

RESOLVED:

THAT the sum of up to **Seven Million One Hundred Forty-Five Thousand Dollars (\$7,145,000)** is appropriated for Annual Sewer Line Replacements, Consent Decree Mitigation, Pleasant Street Sewers, and Maplewood Avenue Area Reconstruction, including the payment of costs incidental or related thereto;

To meet this appropriation, the City Treasurer, with the approval of the City Manager is authorized to borrow, on a competitive or negotiated basis, up to **Seven Million One Hundred Forty-Five Thousand Dollars (\$7,145,000)** through the issuance of bonds and/or notes of the City under the Municipal Finance Act and/or a loan program offered through the State of New Hampshire Department of Environmental Services, identified as the State Revolving Fund Loan.

THAT the expected useful life of the project is determined to be at least twenty (20) years, and;

THAT this Resolution shall take effect upon its passage.

APPROVED:

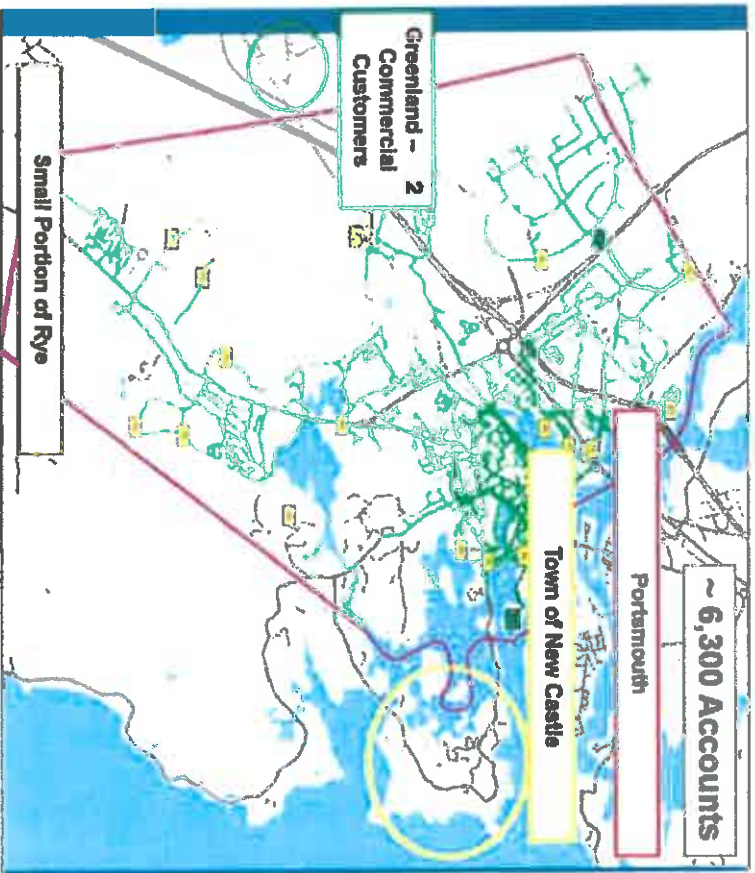
JACK BLALOCK, MAYOR

ADOPTED BY CITY COUNCIL

**KELLI BARNABY,MMC/CNHMC
CITY CLERK**

V. ENTERPRISE FUNDS

SEWER



EF-12-SD-92: ANNUAL SEWER LINE REPLACEMENT

Department	Public Works
Project Location	Citywide
Project Type	Upgrade of Existing Facilities
Commence FY	Ongoing
Priority	O (Ongoing or Programmatic)
Impact on Operating Budget	Negligible (<\$5,001)

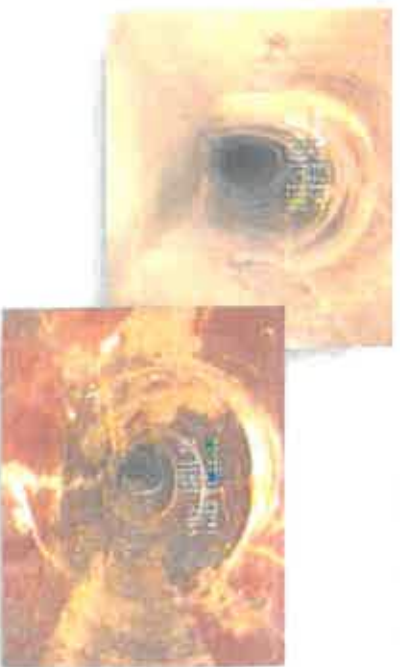
Evaluation Criteria	Satisfy
Identified in Planning Document or Study	
Improves Quality of Existing Services	Y
Provides Added Capacity to Existing Services	Y
Addresses Public Health or Safety Need	
Reduces Long-Term Operating Costs	Y
Alleviates Substandard Conditions or Deficiencies	
Provides Incentive to Economic Development	
Responds to Federal or State Requirement	
Eligible for Matching Funds with Limited Availability	

	FY20	FY21	FY22	FY23	FY24	FY25	Totals 20-25	6 PY's Funding	Totals
GF	0%						\$0	\$0	\$0
Fed/ State	0%						\$0	\$0	\$0
Bond/ Lease	65%	\$1,000,000	\$1,000,000		\$1,000,000		\$3,000,000	\$6,000,000	\$9,000,000
Other	0%						\$0	\$0	\$0
Revenues	35%						\$0	\$4,750,000	\$4,750,000
PPP	0%						\$0	\$0	\$0
Totals		\$1,000,000	\$0	\$1,000,000	\$0	\$0	\$3,000,000	\$10,750,000	\$13,750,000

Description: The wastewater collection system consists of more than one-hundred fifteen (115) miles of pipe. Many of the older pipes are fifty (50) to one-hundred (100) years old, undersized and at the end of their design life. Pipes are replaced programmatically as part of sewer specific capital projects, roadway reconstruction and prior to annual paving. This item will fund the purchase of pipes and associated materials used to replace those pipes.

Useful Website Links:

- [Public Works Department](#)
- [Sewer Department](#)
- [FY19-24 CIP page](#)



EF-18-SD-93: CONSENT DECREE MITIGATION

Department	Public Works
Project Location	Various
Project Type	Other (Explained Below)
Commence FY	2018
Priority	A (needed within 0 to 3 years)
Impact on Operating Budget	Negligible (<\$5,001)

Evaluation Criteria	Satisfy
Identified in Planning Document or Study: Consent Decree Second Modification 2016 & Sagamore Ave Sewer Extension Preliminary Design Report 2018 (in development)	Y
Improves Quality of Existing Services	
Provides Added Capacity to Existing Services	Y
Addresses Public Health or Safety Need	Y
Reduces Long-Term Operating Costs	
Alleviates Substandard Conditions or Deficiencies	
Provides Incentive to Economic Development	
Responds to Federal or State Requirement	Y
Eligible for Matching Funds with Limited Availability	



Description: The City of Portsmouth entered into a Consent Decree with the Environmental Protection Agency in 2009. The City moved forward with the requirements of the Consent Decree and had to modify the final schedule for the required expansion of the Peirce Island Wastewater Treatment Facility. As a result of this modification, the City committed to certain projects. Capital projects include implementing a \$500,000 green infrastructure stormwater project (previously funded) and construction of a low-pressure sewer system on Sagamore Avenue north and south of Sagamore Creek.

Useful Website Links:

- [Public Works Department](#)
- [Sewer Department](#)
- [FY19-24 CIP page](#)

	FY20	FY21	FY22	FY23	FY24	FY25	Totals 20-25	6 PY's Funding	Totals
GF	0%						\$0	\$0	\$0
Fed/ State	0%						\$0	\$0	\$0
Bond/ Lease	98%	\$4,400,000					\$4,400,000	\$800,000	\$5,200,000
Other	0%						\$0	\$0	\$0
Revenues	2%						\$0	\$100,000	\$100,000
PPP	0%						\$0	\$0	\$0
Totals		\$4,400,000	\$0	\$0	\$0	\$0	\$4,400,000	\$900,000	\$5,300,000

EF-18-SD-102: PLEASANT STREET SEWERS

Department	Public Works
Project Location	Pleasant Street (from Court Street to Marcy Street)
Project Type	Rehabilitation of a Facility
Commence FY	2018
Priority	A (needed within 0 to 3 years)
Impact on Operating Budget	Negligible (<\$5,001)



Evaluation Criteria	Satisfy
Identified in Planning Document or Study	
Improves Quality of Existing Services	
Provides Added Capacity to Existing Services	
Addresses Public Health or Safety Need	
Reduces Long-Term Operating Costs	
Alleviates Substandard Conditions or Deficiencies	Y
Provides Incentive to Economic Development	
Responds to Federal or State Requirement	Y
Eligible for Matching Funds with Limited Availability	

Description: The City bid the Pleasant Street reconstruction project in the spring of 2018. The project includes a number of side streets (Livermore, Wentworth, Melcher, Franklin, Whidden and Richmond), which also require utility replacement. This project builds off of the recently completed roadway project. The available budget from previous years' capital funds only covered the costs to build Pleasant Street. These funds will be used to complete construction of the side streets and will be shared with the water enterprise fund.

Useful Website Links:

- [Public Works Department](#)
- [Sewer Department](#)

	FY20	FY21	FY22	FY23	FY24	FY25	Totals 20-25	6 PY's Funding	Totals
GF	0%						\$0	\$0	\$0
Fed/ State	0%						\$0	\$0	\$0
Bond/ Lease	77%	\$770,000					\$770,000	\$150,000	\$920,000
Other	0%						\$0	\$0	\$0
Revenues	23%						\$0	\$275,000	\$275,000
PPP	0%						\$0	\$0	\$0
Totals		\$770,000	\$0	\$0	\$0	\$0	\$770,000	\$425,000	\$1,195,000

EF-20-SD-103: MAPLEWOOD AVENUE AREA RECONSTRUCTION

Department	Public Works
Project Location	Maplewood Avenue Side Streets (Cutts, Central, Leslie, Beechwood, Ashland)
Project Type	Rehabilitation of a Facility
Commence FY	2018
Priority	A (needed within 0 to 3 years)
Impact on Operating Budget	Negligible (<\$5,000)

Evaluation Criteria	Satisfy
Identified in Planning Document or Study:	
Improves Quality of Existing Services	
Provides Added Capacity to Existing Services	Y
Addresses Public Health or Safety Need	
Reduces Long-Term Operating Costs	Y
Alleviates Substandard Conditions or Deficiencies	Y
Provides Incentive to Economic Development	
Responds to Federal or State Requirement	Y
Eligible for Matching Funds with Limited Availability	



Description: The City bid the Maplewood Avenue Reconstruction Project in the spring of 2018. The project originally included a number of side streets (Cutts, Central, Leslie, Beechwood, Ashland) which also require reconstruction. The available budget from previous years' capital funds only covered the costs to build Maplewood Avenue. These funds will be used to complete construction of the side streets and will be shared with the water enterprise fund.

- Useful Website Links:
- [Public Works Homepage](#)
 - [Sewer Department](#)

	FY20	FY21	FY22	FY23	FY24	FY25	Totals 20-25	6 PY's Funding	Totals
GF	0%						\$0	\$0	\$0
Fed/ State	0%						\$0	\$0	\$0
Bond/ Lease	100%	\$975,000					\$975,000	\$0	\$975,000
Other	0%						\$0	\$0	\$0
Revenues	0%						\$0	\$0	\$0
PPP	0%						\$0	\$0	\$0
Totals		\$975,000	\$0	\$0	\$0	\$0	\$975,000	\$0	\$975,000

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Kelli L. Barnaby, MMC/CNHMC
City Clerk

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Kelli L. Barnaby, MMC/CNHMC
City Clerk

PM00439463

**CITY OF PORTSMOUTH
TWO THOUSAND NINETEEN
PORTSMOUTH, NEW HAMPSHIRE**

RESOLUTION # -2019

A RESOLUTION AUTHORIZING A BOND ISSUE AND/OR NOTES OF THE CITY UNDER THE MUNICIPAL FINANCE ACT AND/OR PARTICIPATION IN THE STATE REVOLVING FUND (SRF) LOAN OF UP TO FOUR MILLION SIX HUNDRED TWENTY-THREE THOUSAND DOLLARS (\$4,623,000) RELATED TO WATER LINE REPLACEMENTS, RESERVOIR MANAGEMENT, MADBURY WELLS, WATER TRANSMISSION MAIN REPLACEMENT, PLEASANT STREET WATER MAINS, AND MAPLEWOOD AVENUE AREA CONSTRUCTION.

RESOLVED:

THAT, the sum of up to **Four Million Six Hundred Twenty-Three Thousand Dollars (\$4,623,000)** is appropriated for Water Line Replacements, Reservoir Management, Madbury Wells, Water Transmission Main Replacement, Pleasant Street Water Mains, and Maplewood Avenue Area Construction, including the payment of costs incidental or related thereto;

To meet this appropriation, the City Treasurer, with the approval of the City Manager is authorized to borrow, on a competitive or negotiated basis, up to **Four Million Six Hundred Twenty-Three Thousand Dollars (\$4,623,000)** through the issuance of bonds and/or notes of the City under the Municipal Finance Act and/or a loan program offered through the State of New Hampshire Department of Environmental Services, identified as the State Revolving Fund Loan.

THAT the expected useful life of this project is determined to be at least twenty (20) years, and;

THAT this Resolution shall take effect upon its passage.

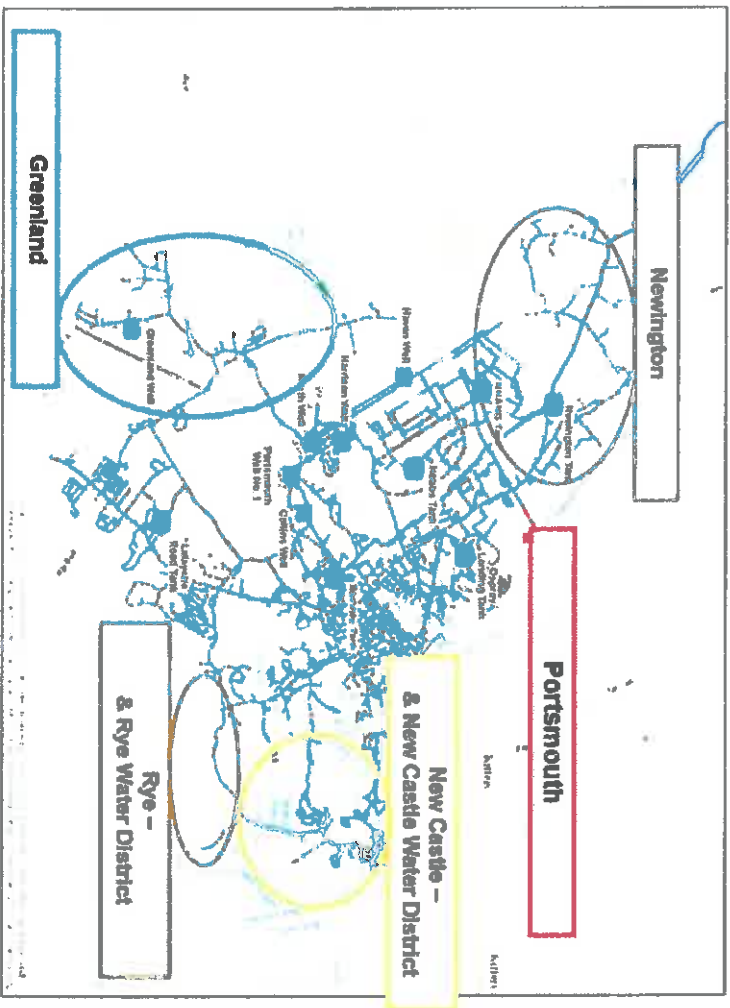
APPROVED:

JACK BLALOCK, MAYOR

ADOPTED BY CITY COUNCIL

**KELLI BARNABY, MMC/CNHMC
CITY CLERK**

V. ENTERPRISE FUNDS WATER



EF-02-WD-78: ANNUAL WATER LINE REPLACEMENT

Department	Public Works
Project Location	Citywide
Project Type	Rehabilitation of a Facility
Commence FY	Ongoing
Priority	O (Ongoing)
Impact on Operating Budget	Negligible (<\$5,001)

Evaluation Criteria	Satisfy
Identified in Planning Document or Study – Water System Master Plan 2013	Y
Improves Quality of Existing Services	
Provides Added Capacity to Existing Services	
Addresses Public Health or Safety Need	
Reduces Long-Term Operating Costs	
Alleviates Substandard Conditions or Deficiencies	Y
Provides Incentive to Economic Development	
Responds to Federal or State Requirement	
Eligible for Matching Funds with Limited Availability	

Description: The water distribution system consists of more than 150 miles of pipe. Many of the older pipes are 50 to 100 years old, undersized and at the end of their design life. Pipes are replaced programmatically as part of water specific capital projects, roadway reconstruction and prior to annual paving. This item will fund the purchase of pipe, valves and associated materials used to replace those pipes. Bond funds for large full road reconstruction projects.

Useful Website Links:

- [Public Works Homepage](#)
- [Water Department](#)
- [FY19-24 CIP page](#)

	FY20	FY21	FY22	FY23	FY24	FY25	Totals 20-25	6 PY's Funding	Totals
GF	0%						\$0	\$0	\$0
Fed/State	0%						\$0	\$0	\$0
Bond/Lease	42%	\$1,000,000	\$1,000,000		\$1,000,000		\$3,000,000	\$4,650,000	\$7,650,000
Other	0%						\$0	\$0	\$0
Revenues	58%						\$0	\$10,590,000	\$10,590,000
PPP	0%						\$0	\$0	\$0
Totals		\$1,000,000	\$0	\$1,000,000	\$0	\$0	\$3,000,000	\$15,240,000	\$18,240,000

EF-15-WD-80: RESERVOIR MANAGEMENT

Department	Public Works
Project Location	Citywide
Project Type	Rehabilitation of a Facility
Commence FY	Ongoing
Priority	O (ongoing or programmatic)
Impact on Operating Budget	Negligible (<\$5,001)



Evaluation Criteria	Satisfy
Identified in Planning Document or Study – Water System Master Plan 2013	Y
Improves Quality of Existing Services	Y
Provides Added Capacity to Existing Services	
Addresses Public Health or Safety Need	
Reduces Long-Term Operating Costs	
Alleviates Substandard Conditions or Deficiencies	
Provides Incentive to Economic Development	
Responds to Federal or State Requirement	Y
Eligible for Matching Funds with Limited Availability	

Description: This project consists of the study, design and implementation of measures to ensure the sustainability of the dam and the Bellamy Reservoir, which is the surface water supply for the Portsmouth Water Treatment Facility in Madbury. This includes an engineering assessment of the condition of the Bellamy Reservoir Dam and the design and implementation of measures to improve the dam structure, the design and construction of an improved outlet flow structure, water quality improvements and the purchase of land or conservation easements for the protection of the Bellamy Reservoir.

Useful Website Links:

- [Public Works Homepage](#)
- [Water Department](#)
- [FY19-24 CIP page](#)

	FY20	FY21	FY22	FY23	FY24	FY25	Totals 20-25	6 PY's Funding	Totals
GF	0%						\$0	\$0	\$0
Fed/ State	0%						\$0	\$0	\$0
Bond/ Lease	74%	\$600,000					\$1,700,000	\$0	\$1,700,000
Other	0%						\$0	\$0	\$0
Revenues	26%	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$400,000	\$200,000	\$600,000
PPP	0%						\$0	\$0	\$0
Totals		\$600,000	\$100,000	\$100,000	\$1,100,000	\$100,000	\$2,100,000	\$200,000	\$2,300,000

EF-18-WD-81: MADBURY WELLS

Department	Public Works
Project Location	Citywide
Project Type	Construction or Expansion of a Public Facility, Street or Utility
Commence FY	2019
Priority	A (needed within 0 to 3 years)
Impact on Operating Budget	Negligible (<\$5,001)

Evaluation Criteria	Satisfy
Identified in Planning Document or Study – Water System Master Plan 2013	Y
Improves Quality of Existing Services	Y
Provides Added Capacity to Existing Services	Y
Addresses Public Health or Safety Need	
Reduces Long-Term Operating Costs	
Alleviates Substandard Conditions or Deficiencies	
Provides Incentive to Economic Development	Y
Responds to Federal or State Requirement	
Eligible for Matching Funds with Limited Availability	



Description: The project consists of well improvements at the Madbury Water Treatment Plant. This includes a new well #5 building to house meters, controls, valving and chemical feed equipment and improvements to existing wells and buildings for well #3 & #4.

Useful Website Links:

- [Public Works Homepage](#)
- [Water Department](#)
- [FY19-24 CIP page](#)

	FY20	FY21	FY22	FY23	FY24	FY25	Totals 20-25	6 PY's Funding	Totals
GF	0%						\$0	\$0	\$0
Fed/ State	0%						\$0	\$0	\$0
Bond/ Lease	100%	\$750,000					\$750,000	\$0	\$750,000
Other	0%						\$0	\$0	\$0
Revenues	0%						\$0	\$0	\$0
PPP	0%						\$0	\$0	\$0
Totals		\$750,000	\$0	\$0	\$0	\$0	\$750,000	\$0	\$750,000

EF-18-WD-83: WATER TRANSMISSION MAIN REPLACEMENT

Department	Public Works
Project Location	Citywide
Project Type	Rehabilitation of a Facility
Commence FY	2018
Priority	A (needed within 0 to 3 years)
Impact on Operating Budget	Negligible (<\$5,001)

Evaluation Criteria	Satisfy
Identified in Planning Document or Study – Newington Transmission Main Alternative Draft Report 2017	Y
Improves Quality of Existing Services	Y
Provides Added Capacity to Existing Services	
Addresses Public Health or Safety Need	
Reduces Long-Term Operating Costs	
Alleviates Substandard Conditions or Deficiencies	
Provides Incentive to Economic Development	
Responds to Federal or State Requirement	Y
Eligible for Matching Funds with Limited Availability	



Description: This project consists of design and construction of water transmission mains beneath Little Bay to replace existing mains, which are over 60 years old. Preliminary investigations of the existing water mains and valves have identified degraded conditions. Due to the importance of this water main, this project is necessary to ensure water is continuously supplied from Madbury to Portsmouth and service is not disrupted.

Useful Website Links:

- [Public Works Homepage](#)
- [Water Department](#)
- [FY19-24 CIP page](#)

	FY20	FY21	FY22	FY23	FY24	FY25	Totals 20-25	6 PY's Funding	Totals
GF	0%						\$0	\$0	\$0
Fed/ State	0%						\$0	\$0	\$0
Bond/ Lease	96%	\$250,000	\$6,000,000				\$6,250,000	\$0	\$6,250,000
Other	0%						\$0	\$0	\$0
Revenues	4%						\$0	\$250,000	\$250,000
PPP	0%						\$0	\$0	\$0
Totals		\$250,000	\$6,000,000	\$0	\$0	\$0	\$6,250,000	\$250,000	\$6,500,000

EF-18-WD-87: PLEASANT STREET WATER MAINS

Department	Public Works
Project Location	Pleasant Street (from Court Street to Marcy Street)
Project Type	Rehabilitation of a Facility
Commence FY	2018
Priority	A (needed within 0 to 3 years)
Impact on Operating Budget	Negligible (<\$5,001)

Evaluation Criteria	Satisfy
Identified in Planning Document or Study	
Improves Quality of Existing Services	
Provides Added Capacity to Existing Services	
Addresses Public Health or Safety Need	
Reduces Long-Term Operating Costs	
Alleviates Substandard Conditions or Deficiencies	Y
Provides Incentive to Economic Development	
Responds to Federal or State Requirement	Y
Eligible for Matching Funds with Limited Availability	



Description: The City bid the Pleasant Street reconstruction project in the spring of 2018. The project includes a number of side streets (Livermore, Wentworth, Melcher, Franklin, Whidden and Richmond), which also require utility replacement. This project builds off of the recently completed roadway project. The available budget from previous years' capital funds only covered the costs to build Pleasant Street. These funds will be used to complete construction of the side streets and will be shared with the sewer enterprise fund.

Useful Website Links:

- [Public Works Homepage](#)
- [Water Department](#)

	FY20	FY21	FY22	FY23	FY24	FY25	Totals 20-25	6 PY's Funding	Totals
GF	0%						\$0	\$0	\$0
Fed/ State	0%						\$0	\$0	\$0
Bond/ Lease	100%	\$823,000					\$823,000	\$600,000	\$1,423,000
Other	0%						\$0	\$0	\$0
Revenues	0%						\$0	\$0	\$0
PPP	0%						\$0	\$0	\$0
Totals		\$823,000	\$0	\$0	\$0	\$0	\$823,000	\$600,000	\$1,423,000

EF-20-WD-88: MAPLEWOOD AVENUE AREA RECONSTRUCTION

Department	Public Works
Project Location	Maplewood Avenue Side Street (Cutts, Central, Leslie, Beechwood, Ashland)
Project Type	Rehabilitation of a Facility
Commence FY	2018
Priority	A (needed within 0 to 3 years)
Impact on Operating Budget	Negligible (<\$5,001)
Evaluation Criteria	Satisfy
Identified in Planning Document or Study:	
Improves Quality of Existing Services	
Provides Added Capacity to Existing Services	Y
Addresses Public Health or Safety Need	
Reduces Long-Term Operating Costs	Y
Alleviates Substandard Conditions or Deficiencies	Y
Provides Incentive to Economic Development	
Responds to Federal or State Requirement	Y
Eligible for Matching Funds with Limited Availability	



Description: The City bid the Maplewood Avenue Reconstruction Project in the spring of 2018. The project originally included a number of side streets (Cutts, Central, Leslie, Beechwood, Ashland) which also require utility reconstruction. The available budget from previous years' capital funds only covered the costs to build Maplewood Avenue. These funds will be used to complete construction of the side streets and will be shared with the sewer enterprise fund.

Useful Website Links:

- [Public Works Homepage](#)
- [Water Department](#)

	FY20	FY21	FY22	FY23	FY24	FY25	Totals 20-25	6 Yr's Funding	Totals
GF	0%						\$0	\$0	\$0
Fed/State	0%						\$0	\$0	\$0
Bond/Lease	100%	\$1,200,000					\$1,200,000	\$0	\$1,200,000
Other	0%						\$0	\$0	\$0
Revenues	0%						\$0	\$0	\$0
PPP	0%						\$0	\$0	\$0
Totals		\$1,200,000	\$0	\$0	\$0	\$0	\$1,200,000	\$0	\$1,200,000

LEGAL NOTICE

NOTICE IS HEREBY GIVEN that a Public Hearing will be held by the Portsmouth City Council on Monday, July 15, 2019 at 7:00 p.m., Eileen Dondero Foley Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, NH, on a proposed Parking & Traffic Safety Omnibus Ordinance.

Amending Chapter 7, Article III, Traffic Ordinance, Section 7.330: No Parking

Amending Chapter 7, Article III, Traffic Ordinance, Section 7.336: One-Way Streets

Amending Chapter 7, Article V – Bicycle Regulations, Section 7.510: Unattended Bicycles

Amending Chapter 7, Article VI – Truck Loading/Unloading Zones Established, Section 7.601: Limited Hours

Amending Chapter 7, Article VI – Truck Loading/Unloading Zones Established, Section 7.602: 24-Hour

Amending Chapter 7, Article VI - Truck Loading/Unloading Zones Established, Section 7.603: Loading and Unloading of Live Parked Vehicles

Amending Chapter 7, Article VI - Truck Loading/Unloading Zones Established, Section 7.604: Loading Zone Permits

Amending Chapter 7, Article XI – Speed Limits, Section 7.1100: Speed Limits (E) 25 MPH – Dodge Avenue

Amending Chapter 7, Article XVII – Moped Regulations, Section 7.1702: Parking

The complete Ordinance is available for review in the Office of the City Clerk and Portsmouth Public Library, during regular business hours.

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Amending Chapter 7, Article VI – Truck Loading/Unloading Zones Established, Section 7.602: 24-Hour

Amending Chapter 7, Article VI - Truck Loading/Unloading Zones Established, Section 7.603: Loading and Unloading of Live Parked Vehicles

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The complete Ordinance is available for review in the Office of the City Clerk and Portsmouth Public Library, during regular business hours.

KELLI L. BARNABY, MMC/CNHMC
CITY CLERK

KELLI L. BARNABY, MMC/CNHMC
CITY CLERK

ORDINANCE #

THE CITY OF PORTSMOUTH ORDAINS

That Chapter 7, VEHICLES, TRAFFIC and PARKING of the ordinances of the City of Portsmouth be amended as follows by deletions from existing language stricken and highlighted in **red**; additions to existing language bolded and highlighted in **red**, remaining language unchanged from existing:

[Explanatory note not part of ordinance. The following amendments to the parking ordinance were either implemented by the Parking and Traffic Safety Committee on a trial basis last year or are part of ongoing improvements to the parking ordinance and are forwarded to the City Council for approval. Each ordinance change is shown on diagrams attached hereto.]

A. Amend: Chapter 7, Article III – TRAFFIC ORDINANCE, Section 7.330: No Parking

Section 7.330: NO PARKING

A. Unless otherwise designated by ordinance, parking shall be prohibited at all times in the following described streets and locations:

11. Brewster Street:
 - a. westerly side from Islington Street to McDonough Street.
 - a b. ~~easterly side, one parking space southerly from the corner at the intersection of Brewster and Hanover Street.~~ **entire easterly side, north of Sudbury Street.**
 - c. **easterly side, no parking in front of Map 138, Lot 11, except from a point beginning 108 feet from the northerly curblin of Islington Street, and running 20 feet in a northerly direction.**

58. **Highland Street: westerly side, beginning at the southerly curblin of Middle Street and running southerly for a distance of 90 feet.**

59. **Hill Street: Both sides, entire length between Bridge Street and Autumn Street.**

67. Langdon Street:
 - a. **entire** easterly side ~~from McDonough Street to~~ **north of** Islington Street.
 - b. entire westerly side, north of McDonough Street.

133. **Wentworth Street:**
 - a. **easterly side, entire length.**
 - b. **westerly side, beginning at the southerly curblin of Pleasant Street**

and running southerly for a distance of 215 feet.

B. Amend: Chapter 7, Article III – TRAFFIC ORDINANCE, Section 7.336: One-Way Streets.

Section 7.336: ONE-WAY STREETS

2. Brewster Street: northerly from Islington Street to McDonough Street.

C. Amend: Chapter 7, Article V – BICYCLE REGULATIONS, Section 7.510: Unattended Bicycles

Section 7.510: UNATTENDED BICYCLES

No person shall park a bicycle in a manner that:

- G. At no time shall bicycles be secured to or parked against a fire hydrant **or monuments.**
-

D. Amend: Chapter 7, Article VI – TRUCK LOADING/UNLOADING ZONES ESTABLISHED

ARTICLE VI: ~~TRUCK LOADING/UN~~ LOADING ZONES

Section 7.601: LIMITED HOURS ~~TRUCK LOADING/UNLOADING~~ ZONES ESTABLISHED

The following locations are established as ~~exclusive~~ **“Truck Limited Hours Loading Zones”** during **“Loading Zone Hours”** which are defined as ~~on~~ Mondays through Saturdays between the hours of 6:00 a.m. and 7:00 p.m. or as otherwise described below. ~~with regard to any particular location.~~ During **Loading Zone Hours** ~~these times~~ only ~~trucks, vans and other licensed commercial delivery~~ vehicles, **vehicles marked for commercial purposes and unmarked noncommercial vehicles with Loading Zone Permits** may utilize **Limited Hours Loading Zones for up to 30 consecutive minutes** if actively engaged in loading or unloading of product, merchandise or equipment. ~~(meaning that no more than 10 consecutive minutes pass without loading or unloading activity)~~ **may park.** ~~Such vehicles may park at the designated locations for a period not to exceed 30 minutes. Unless otherwise determined by ordinance,~~ **At** all other times these **Loading Zones** shall be open parking for all vehicles.

1. Bow Street: northerly side, ~~beginning starting~~ 40 feet west from Chapel Street and ~~continuing extending~~ west for a distance of 70 feet. In addition to Monday through Saturday, this location shall also be a ~~truck~~ loading zone from 6:00 a.m. to 12:00 p.m. on Sunday.
2. **Brewster Street: easterly side, beginning 40 feet north of the northerly curbline of Islington Street and running 40 feet in the northerly direction, between the hours of 7 AM and 3 PM, Monday through Friday.**
2. Bridge Street: westerly side, ~~beginning 50+00~~ feet north from the intersection of Bridge Street and Islington Street for a distance of ~~409~~ feet.
3. **Congress Street:**
 - a. **northerly side, beginning 9 feet west from the intersection of Fleet Street and Congress Street running for a distance of 136 feet.**
 - ~~3-~~ b. **southerly side, beginning 130 feet east from the intersection of Fleet Street and Congress Street running for a distance of 49 feet.** ~~Chestnut Street: westerly side, south from Congress Street for a distance of 100 feet.~~
4. Daniel Street:
 - ~~a.~~ ~~northerly side, 123 feet east from Bow Street for a distance of 45 feet~~
southerly side, ~~55-~~**beginning 3737** feet west from Penhallow Street for a distance of ~~80~~ 65 feet.
 - ~~b.~~
5. Deer Street: southerly side, west from Market Street a distance of 60 feet.
6. Hanover Street:
 - a. northerly side, ~~east beginning~~ at a distance of ~~10640~~ feet from the western most point of the **southwesterly curbline of Market Street for a distance of 45 feet.** ~~100 Market Street Building.~~
 - b. southerly side, **beginning at the westerly curbline of Fleet Street and running westerly for 90 feet** ~~first two spaces west from Fleet Street~~, from 6:00 a.m. to 11:00 a.m.
 - ~~b-c.~~ **all parking spaces on the northerly side between Portwalk Place and Maplewood Avenue from 6:00 a.m. to 9:00 a.m.**
7. High Street: easterly side, in a southerly direction from Ladd Street a distance of 50 feet.
8. Market Street:
 - a. easterly side, south for a distance of 50 feet, beginning at Commercial Alley
 - ~~b.~~ easterly side, south for a distance of 40 feet, beginning at Bow Street from 6:00

- b.** a.m. to 7:00 p.m. In addition, from 7:00 p.m. to 6:00 a.m., Monday through Sunday, this area shall be designated as a taxi ~~s~~Stand per Section 7A.408
 - c.** westerly side between Russell Street and Deer Street, from November 1st through March 30th, 2:00 a.m. to 5:00 p.m. Monday-Friday, 2:00 a.m. to 1:00 p.m. Saturday.
9. Pearl Street: easterly side from a point thirty feet (30') north of Islington Street to a point seventy feet (70') north of Islington Street.
 10. Penhallow Street: westerly side, **beginning at north from Commercial Alley and running northerly** for a distance of 45 feet. In addition to Monday through Saturday, this location shall also be a ~~truck~~ loading zone from 6:00 a.m. to 12:00 p.m. on Sunday.
 11. **a.**—State Street:
 - a.** northerly side, **beginning** 40 feet east from Pleasant Street for a distance of ~~420~~ feet. In addition, from 7:00 p.m. to 6:00 a.m., Monday through Sunday, this area shall be designated as a taxi stand per Section 7A.408.
 - ~~11. b.~~ **southerly side, beginning 20 feet west from Atkinson Street for a distance of 57 feet.**

Section 7.602: ~~24-HOUR TRUCK~~ LOADING ~~UNLOADING~~ ZONES (~~24 HOURS~~)

The following locations are established as ~~exclusive~~ “~~24-Hour Truck~~ Loading Zones” at all times, 24 hours a day, seven days a week. Only **licensed commercial vehicles, vehicles marked for commercial purposes and unmarked non-commercial vehicles with Loading Zone Permits may utilize the 24-Hour Loading Zones for 30 consecutive minutes if actively trucks, vans and other commercial delivery vehicles actually engaged in loading or unloading of product, merchandise or equipment. may park in the designated locations. Such vehicles may park at the designated locations for a period not to exceed 30 consecutive minutes. No other vehicles may utilize the 24-Hour Loading Zones.**

1. Ceres Street
 - a. westerly side, **beginning** 27 feet from Bow Street for a distance of 25 feet.
 - b. easterly side, **beginning** 95 feet from Bow Street for a distance of 40 feet ~~Pleasant Street: westerly side, south from State Street a distance of 50 feet.~~
- ~~b.~~ 2. **Chestnut Street: westerly side, south from Congress Street for a distance of 100 feet.**
3. ~~3.~~—**Daniel Street: northerly side, beginning 123 feet east from Bow Street for a distance of 35 feet.**
- 4.

~~2.~~ Haven Court:

~~a.~~ both sides, entire length

5. Maplewood Avenue: easterly side, beginning 35 feet north from the intersection of Congress Street and Maplewood Avenue running for a distance of 70 feet.

~~6. Penhallow Street: easterly side, 100 feet north from the intersection of State Street and Penhallow Street running for a distance of 28 feet.~~

76. Pleasant Street: westerly side, beginning 21 feet south from the intersection of Pleasant Street and State Street running southerly for a distance of 30 feet.

87.

~~3.~~ Porter Street

~~a.~~ northerly side, **beginning** 15 feet west from Fleet Street for a distance of 40 feet.

~~b.~~ southerly side, **beginning** 145 feet east from Middle Street for a distance of 45 feet.

~~a.~~

~~4.~~ State Street

~~a.~~ southerly side, 20 feet west from Atkinson Street for a distance of 29 feet.

Section 7.603: LOADING AND UNLOADING OF LIVE PARKED VEHICLES:

1. Middle Street: easterly side, beginning 188 feet southwesterly from intersection with Miller Avenue, for a distance of 20 feet (in front of 375 Middle Street). ~~Court Street: southerly side directly opposite the easterly line of Chestnut Street extending easterly along said southerly side of Court Street for a distance of fifty~~
~~1.~~ (50) feet.

~~2.~~ Middle Street: easterly side, beginning 188 feet southwesterly from intersection with Miller Avenue, for a distance of 20 feet (in front of 375 Middle Street).

Section 7.604: ~~COMMERCIAL~~ LOADING ZONE PERMITS

The Director of Public Works may issue a **Loading Zone P**ermit to allow **unmarked** noncommercially ~~marked~~ vehicles to utilize **Limited Hours Loading Zones and 24-Hour Loading Zones** ~~commercial loading zones~~ for **30 consecutive minutes** ~~the purpose of active~~ **actively engaged** ~~loading~~ in loading or unloading of product, merchandise or equipment. The issuance and use of such permits shall be in accordance with Article VI and the following terms and conditions:

- a. The permittee shall be issued a ~~commercial Loading Zone~~ **Permit** from the Parking Clerk's Office for a fee to be determined in accordance with Chapter 1, Article XVI.
- b. Each ~~Loading Zone~~ **Permit** would be valid for one calendar year, January 1st through December 31st; ~~and will require annual renewal.~~
- c. Each Loading Zone Permit is non-transferable and is valid for only one vehicle per application.**
- d. ~~e.~~The vehicle must prominently display the ~~commercial Loading Zone~~ **Permit** on the vehicle's dashboard.
- ~~e.~~~~d.~~In the event that the permittee secures the use of the ~~commercial Loading Zone~~ **Permit** through misrepresentation, the permittee shall be subject to a fine of one hundred dollars (\$100.00).
- ~~ef.~~ Any person using a ~~commercial Loading Zone~~ **Permit** other than at the times or manner specifically authorized by the Department of Public Works shall be subject to a fine of two hundred dollars (\$200.00) per use, per permit, of such unauthorized use.

E. Amend: Chapter 7, Article XI – SPEED LIMITS, Section 7.1100: Speed Limits

Section 7.1100: SPEED LIMITS:

E. Speed Limit: 25 MPH

3. Dodge Avenue

F. Amend: Chapter 7, Article XVII – MOPED REGULATIONS, Section 7.1702: Parking

Section 7.1702: PARKING:

F. At no time shall a moped be secured or parked against a fire hydrant **or monuments.**

Section 7.330: NO PARKING

11. Brewster Street:

b. easterly side, one parking space southerly from the corner at the intersection of Brewster and Hanover Street. entire easterly side north of Sudbury Street.

Section 7.330: NO PARKING

67. Langdon Street:

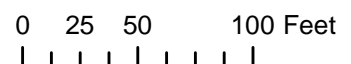
a. entire easterly side from McDonough Street to north of Islington Street.

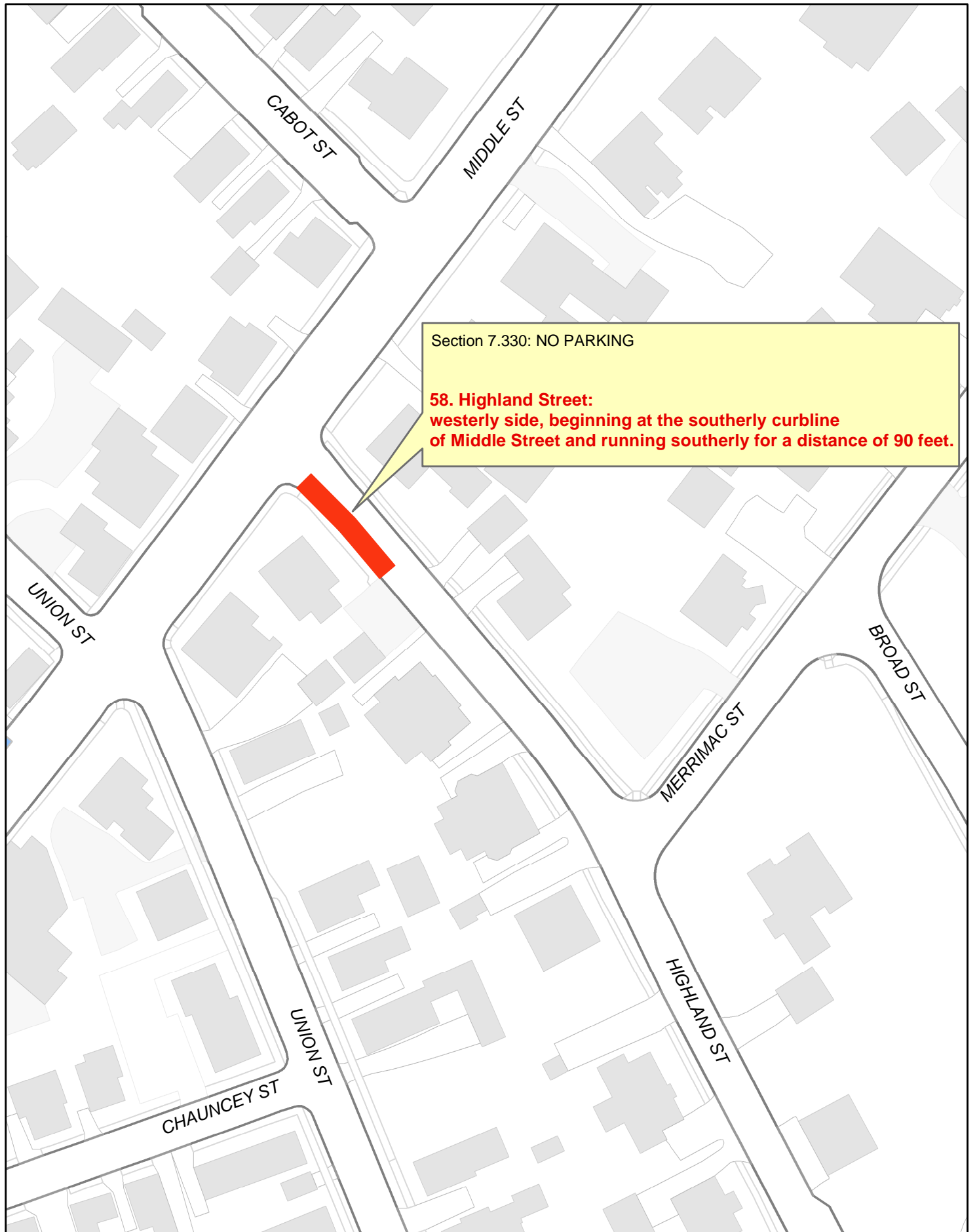
Section 7.330: NO PARKING

11. Brewster Street:

c. easterly side, no parking in front of Map 138 Lot 11, except from a point beginning 108 feet from the northerly curbline of Islington Street, running 20 feet in a northerly direction.

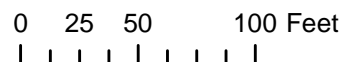
No Parking
Portsmouth, New Hampshire

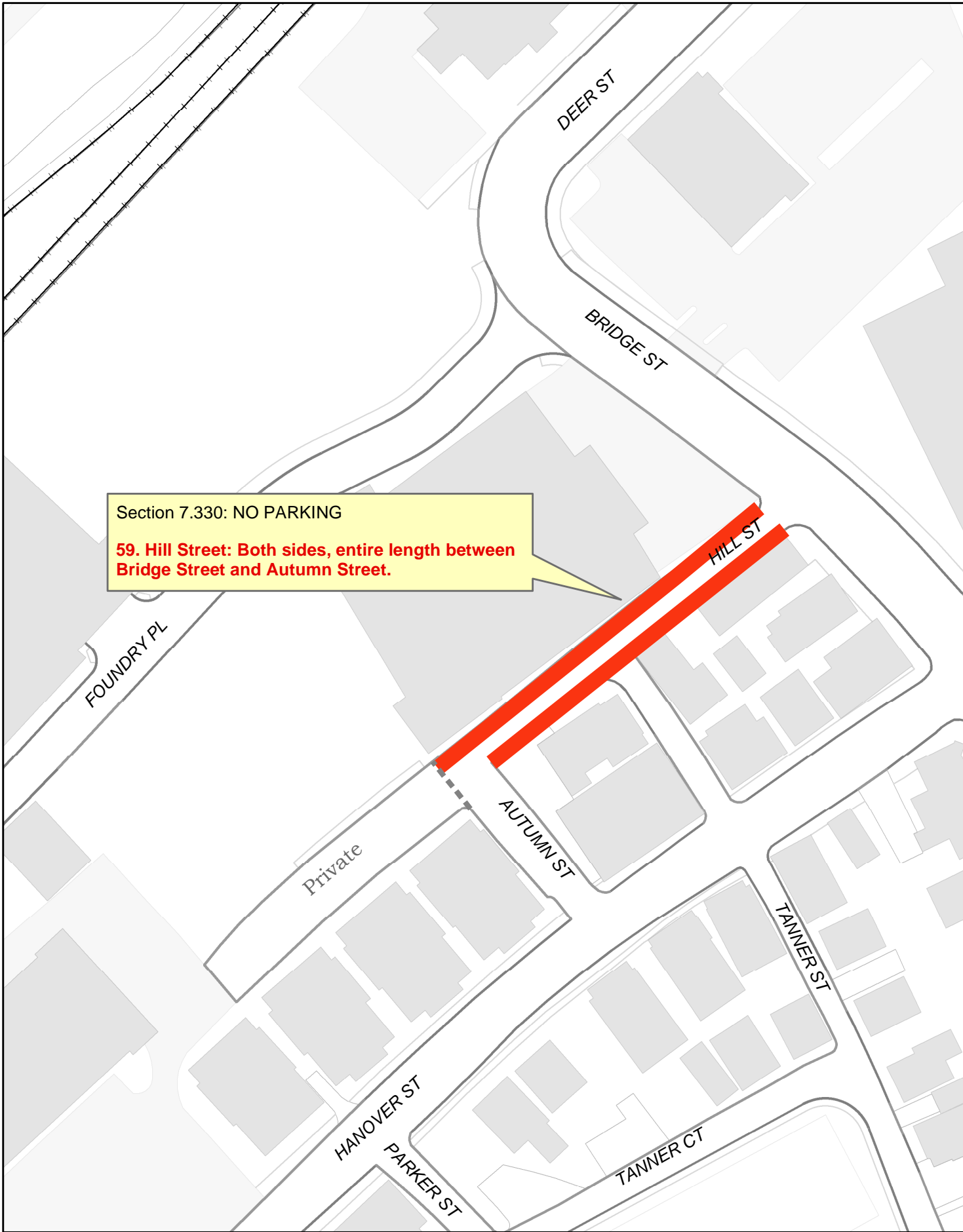




**No Parking
Portsmouth, New Hampshire**

Map prepared by Portsmouth Department of Public Works, 07 May 2019
Map document: U:\Projects\0263 Parking Traffic & Safety\Traffic and Parking Ordinance Changes\2019

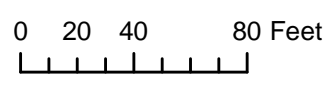


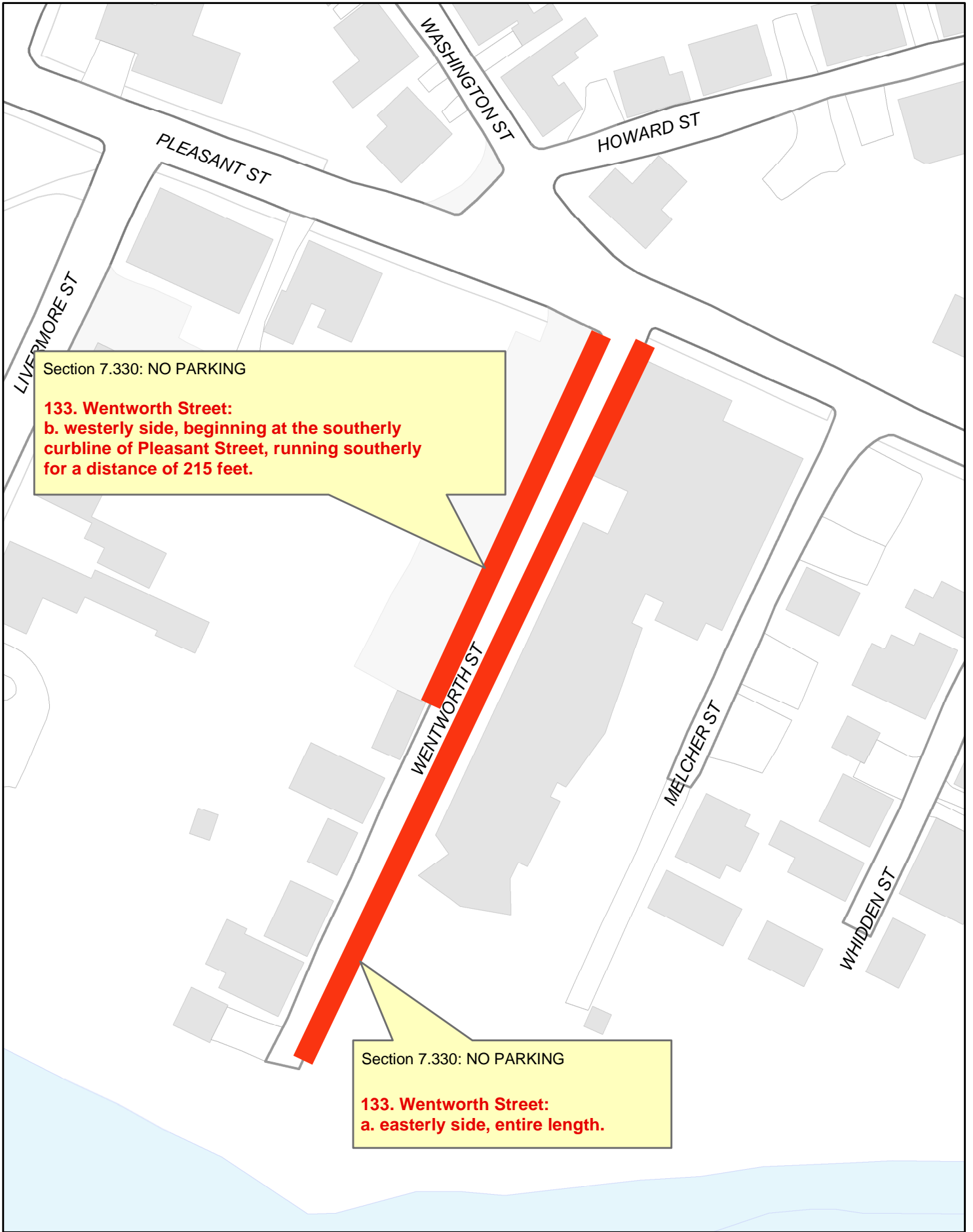


Section 7.330: NO PARKING
59. Hill Street: Both sides, entire length between Bridge Street and Autumn Street.

**No Parking
Portsmouth, New Hampshire**

Map prepared by Portsmouth Department of Public Works, 07 May 2019
Map document: U:\Projects\0263 Parking Traffic & Safety\Traffic and Parking Ordinance Changes\2019





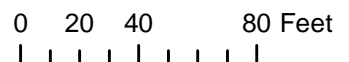
Section 7.330: NO PARKING

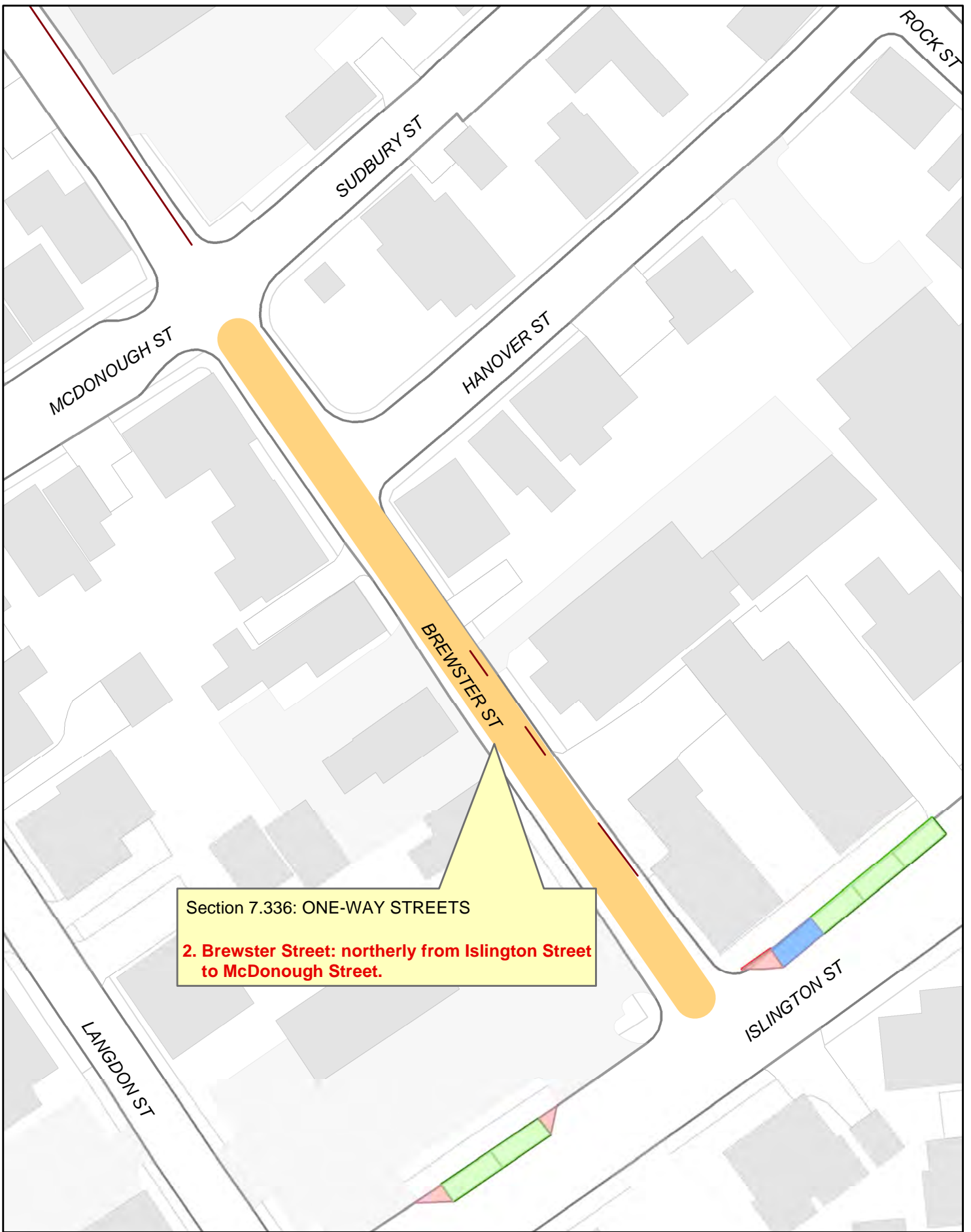
133. Wentworth Street:
b. westerly side, beginning at the southerly curbline of Pleasant Street, running southerly for a distance of 215 feet.

Section 7.330: NO PARKING

133. Wentworth Street:
a. easterly side, entire length.

No Parking Portsmouth, New Hampshire



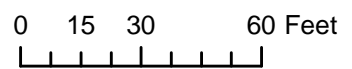


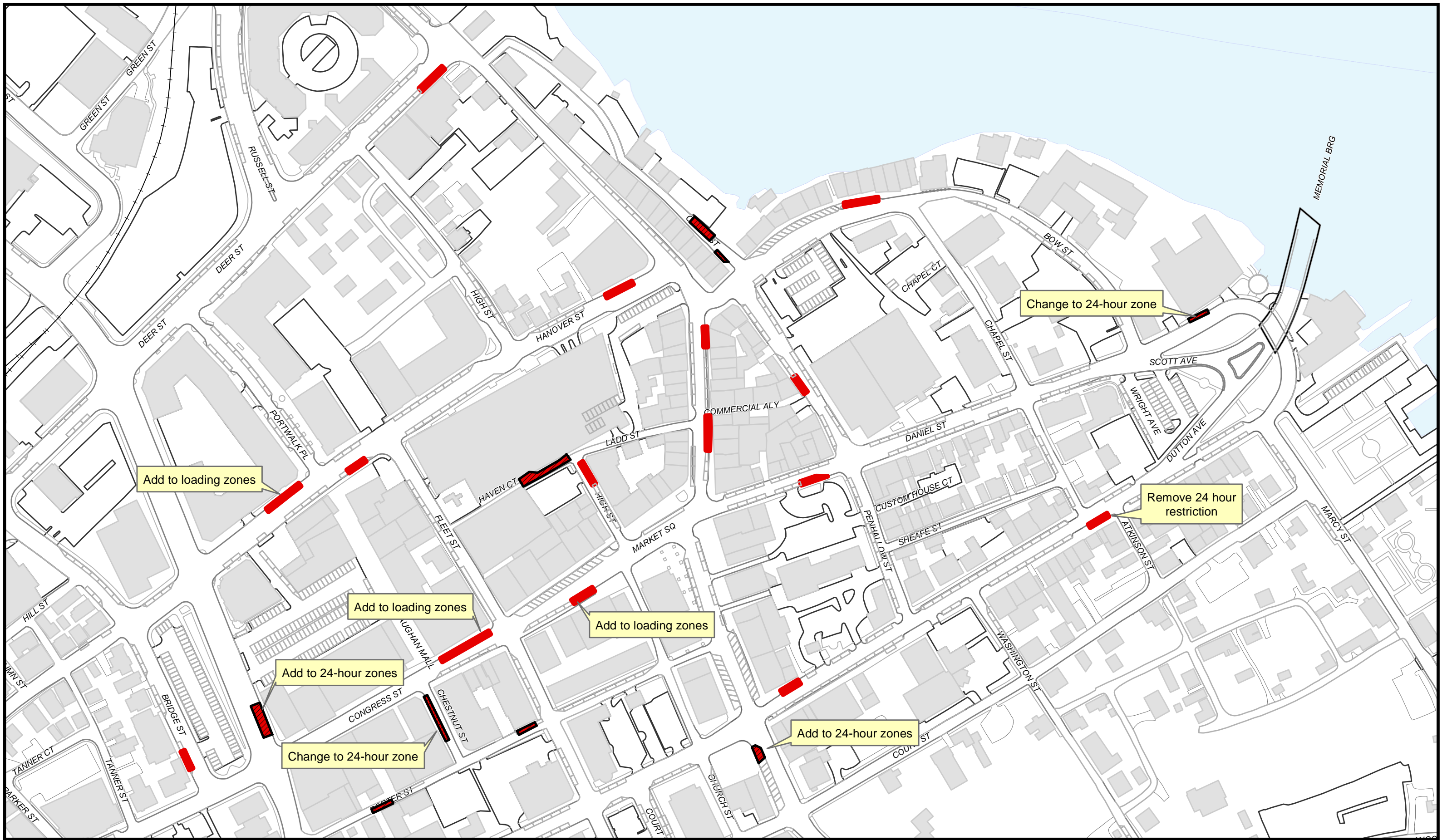
Section 7.336: ONE-WAY STREETS

2. Brewster Street: northerly from Islington Street to McDonough Street.

**One Way Street
Portsmouth, New Hampshire**

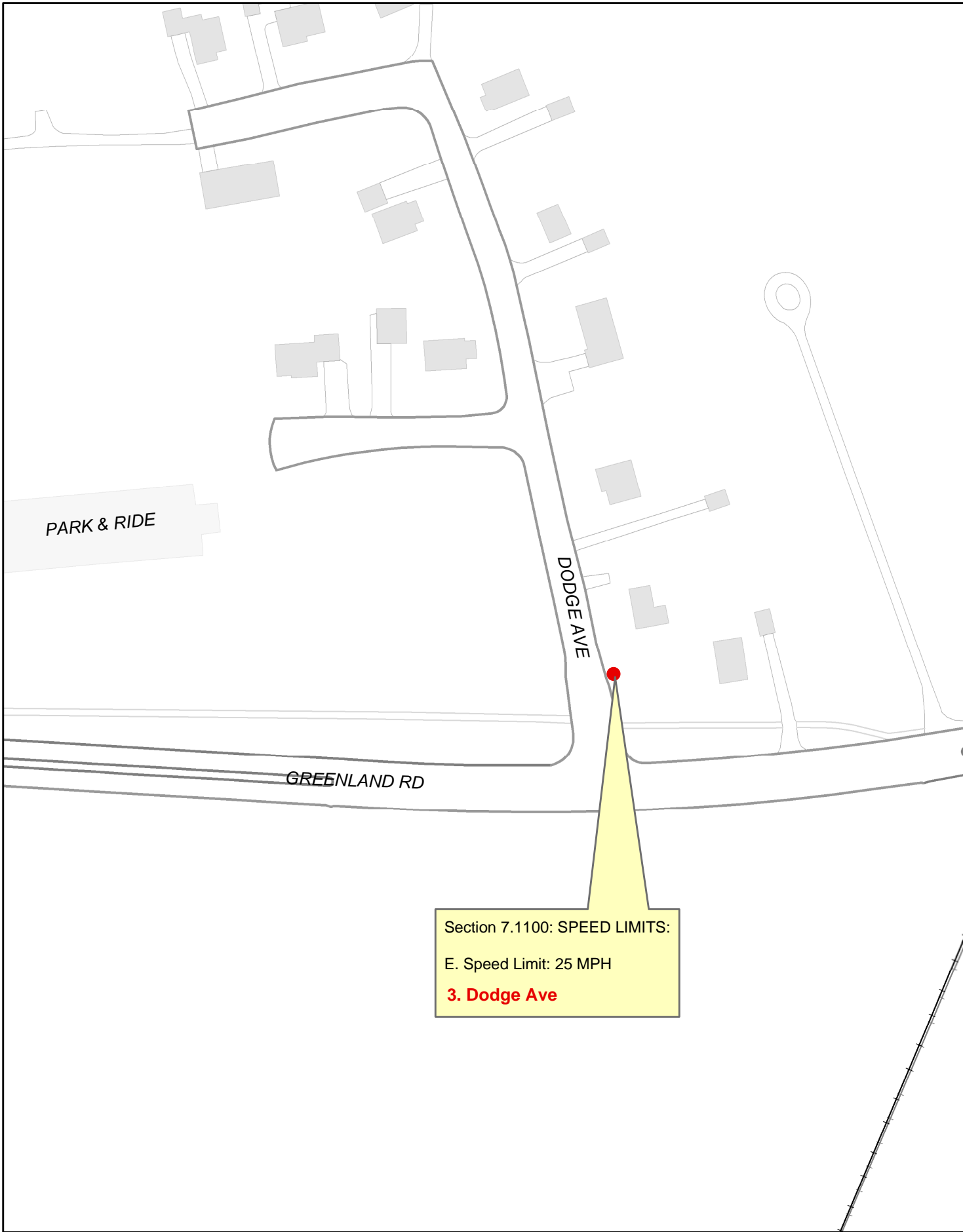
Map prepared by Portsmouth Department of Public Works, 07 May 2019
 Map document: U:\Projects\0263 Parking Traffic & Safety\Traffic and Parking Ordinance Changes\2019





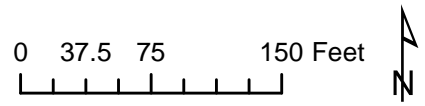
PROPOSED LOADING ZONE CHANGES
 CITY OF PORTSMOUTH, NEW HAMPSHIRE

Loading Zones
(open to all traffic after 7 PM)
 24-Hour Loading Zones



**Speed Limits
Portsmouth, New Hampshire**

Map prepared by Portsmouth Department of Public Works, 07 May 2019
Map document: U:\Projects\0263 Parking Traffic & Safety\Traffic and Parking Ordinance Changes\2019



ORDINANCE #

THE CITY OF PORTSMOUTH ORDAINS

That Chapter 7, Article III, Section 7.328 – **LIMITED PARKING - THREE HOURS** sub-section A of the Ordinances of the City of Portsmouth which shall read as follows (deletions from existing language **stricken**; additions to existing language **bolded**; remaining language unchanged from existing):

Section 7.328: LIMITED PARKING - THREE HOURS

- A. No person having control or custody of any vehicle shall stop or cause the same to stop or park for longer than three hours at any time between the hours of 9:00 a.m. and 8:00 p.m. Monday through Saturday, and between 12:00 p.m. and 8:00 p.m. Sunday, Holidays excluded, on the following streets and locations:

Raynes Avenue: entire street, both sides
Vaughan Street: entire street, both sides

The City Clerk shall properly alphabetize and/or re-number the ordinance as necessary in accordance with this amendment.

All ordinances or parts of ordinances inconsistent herewith are hereby deleted.

This ordinance shall take effect upon its passage.

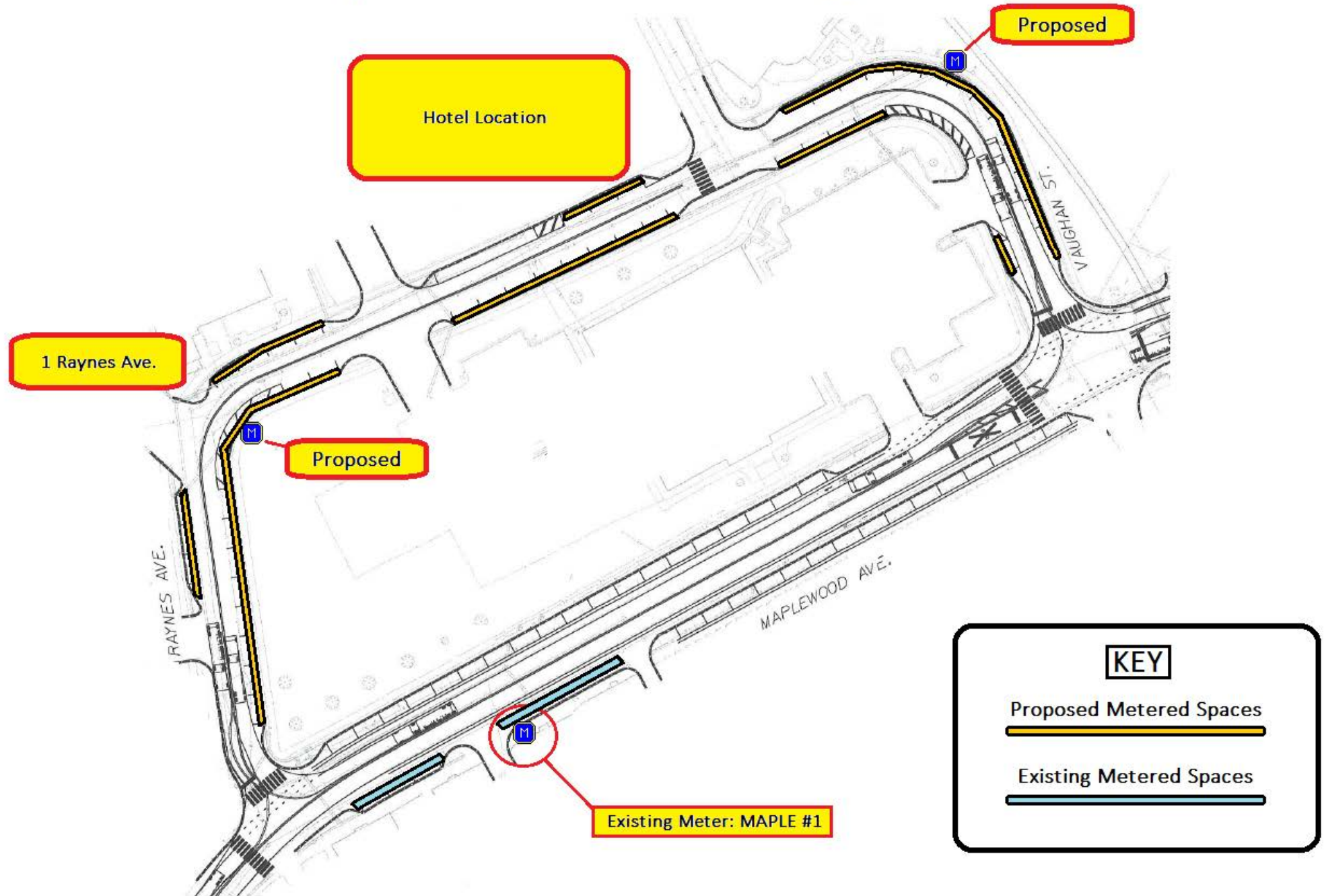
APPROVED:

Jack Blalock, Mayor

ADOPTED BY COUNCIL:

Kelli L. Barnaby, City Clerk

Raynes Ave. and Vaughan St.



received
6/27/19

Mayor Jack Blalock
Portsmouth City Hall
1 Junkins Avenue
Portsmouth, NH 03801

June 25, 2019

Dear Mayor Blalock,

With much regret I am submitting my resignation from the Trees and Greenery Committee. Thank you for appointing me to serve the City of Portsmouth as a member of this committee. It has been a great learning experience for me thanks to Corin's exceptional knowledge of trees and their requirements for thriving in a city environment and Peter's unerring leadership running meetings efficiently and sensitively handling difficult situations.

I will be moving from Portsmouth to Peterborough, NH in mid-August and wish to resign at the end of the committee's meeting in July. I very much have enjoyed my years in Portsmouth, and look forward to returning and seeing its continued growth and improvement.

Sincerely yours,



Joan Walker

Cc: Peter J. Loughlin



CITY OF PORTSMOUTH

Municipal Complex
1 Junkins Avenue
Portsmouth, New Hampshire 03801
(603) 610-7200
Fax (603) 427-1526

Jack Blalock
Mayor

June 20, 2019

Members of the Portsmouth City Council
One Junkins Avenue
Portsmouth, NH 03801

Dear City Council Members:

We would like to request permission to place a permanent bench downtown in memory of Charles Howard. "Charlie" was a resident of Portsmouth and attended the Portsmouth Schools graduating from Portsmouth High School in 1980. He was well known by many including former Mayor Eileen Foley and because he has no family in the area and because he himself is deceased since 1984, we, at the request of individuals in the community make application to the City Council for a remembrance bench.

We would be glad to provide any additional information you may require.

Thank you.

Jack Blalock
Mayor




Robert J. Lister
Former Mayor

**Resolution urging the United States Congress to enact the
Energy Innovation and Carbon Dividend Act of 2019**

WHEREAS, The Intergovernmental Panel on Climate Change(IPCC), the United Nations climate science body, issued a special report on the impacts of global warming of 1.5 °C above pre-industrial levels in October 2018 warning that global warming is likely to reach 1.5°C between 2030 and 2052 if it continues to increase at the current rate; and

WHEREAS, the IPCC report states that we have only 12 years left to make massive and unprecedented changes to global energy infrastructure to limit global warming to moderate levels; and

WHEREAS, the IPCC report states that countries must begin to price carbon as a critical first step to controlling CO2 emissions generating the warming of the planet; and

WHEREAS, the United States government released its Fourth Annual Climate Assessment in November 2018 reporting that the impacts of climate change are already being felt in communities across the country, and that more frequent and intense extreme weather and climate-related events, as well as changes in average climate conditions, are expected to continue to damage infrastructure, ecosystems, and social systems that provide essential benefits to communities; and

WHEREAS, conservative estimates by the world's climate scientists state that to achieve climate stabilization and avoid cataclysmic climate change, emissions of greenhouse gases (GHGs) must be brought to 80-95% below 1990 levels by 2050; and

WHEREAS, presently the environmental, health, and social costs of carbon emissions are not included in prices paid for fossil fuels, but rather these externalized costs are borne directly and indirectly by all Americans and global citizens; and

WHEREAS, to begin to correct this market failure, Congress can enact **the Energy Innovation and Carbon Dividend Act, H.R. 763** to assess a national carbon fee on fossil fuels based on the amount of CO₂ the fuel will emit when burned and allocate the collected proceeds to all U.S. Households in equal shares in the form of a monthly dividend; and

WHEREAS, for efficient administration, the fossil fuels fee can be applied once, as far upstream in the economy as practical, or at the port of entry into the United States; and

WHEREAS, as stated in the **Energy Innovation and Carbon Dividend Act of 2019, H.R. 763**, a national, revenue-neutral carbon fee starting at a relatively low rate of \$15 per ton of CO₂ equivalent emissions and resulting in equal charges per ton of CO₂ equivalent emissions potential in each type of fuel or greenhouse gas should be assessed to begin to lower what are now dangerously high CO₂ emissions. The yearly increase in carbon fees including other greenhouse gases, shall be at least \$10 per ton of CO₂ equivalent each year, with the Department of Energy determining whether an increase larger than \$10 per ton per year is needed to achieve program goals; and

WHEREAS, the **Energy Innovation and Carbon Dividend Act of 2019, H.R. 763**, specifies that, in order to protect low and middle income citizens from the economic impact of rising prices due to the carbon fee, equal monthly per-person dividend payments shall be made to all American households (½ payment per child under 19 years old) each month from the fossil fuel fees collected. The total value of all monthly dividend payments shall represent 100% of the net carbon fees collected per month; and

WHEREAS, the **Energy Innovation and Carbon Dividend Act of 2019, H.R. 763**, encourages market-driven innovation of clean energy technologies and market efficiencies which will reduce harmful pollution and leave a healthier, more stable, and more prosperous nation for future generations; and

WHEREAS, the **Energy Innovation and Carbon Dividend Act of 2019, H.R. 763**, will, after 12 years, lead to a decrease in America's CO2 emissions of 40 percent and an increase in national employment of 2.1 million jobs; and

WHEREAS, border adjustments - carbon content-based tariffs on products imported from countries without comparable carbon pricing, and refunds to our exporters of carbon fees paid - can maintain the competitiveness of U.S. businesses in global markets; and

WHEREAS, a national carbon fee can be implemented quickly and efficiently, and will respond to the urgency of the climate crisis because the federal government already has in place mechanisms, such as the Internal Revenue Service, needed to implement and enforce the fee, and already collects fees from fossil fuel producers and importers; and

WHEREAS, A national revenue-neutral carbon fee would make the United States a leader in mitigating climate change and in the clean energy technologies of the 21st century and would provide incentive to other countries to enact similar carbon fees, reducing global CO2 emissions without the need for complex international agreements, and

WHEREAS, The Mayor's Blue Ribbon Committee on Sustainable Practices has reviewed and endorses the **Energy Innovation and Carbon Dividend Act of 2019, H.R. 763** because of the risk of sea level rise, storm surge and increasingly volatile weather patterns that directly threaten the citizens, businesses and historic properties of the City of Portsmouth,

NOW, THEREFORE, BE IT RESOLVED, that the City Council of Portsmouth urges the United States Congress to enact without delay the **Energy Innovation and Carbon Dividend Act of 2019, H.R. 763**, and

BE IT FURTHER RESOLVED, that the Mayor, no later than 30 days after passage of this Resolution, shall transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to the Majority Leader of the Senate, to each U.S. Senator and Representative from the State of New Hampshire in the Congress of the United States, and to nearby city and county governments urging that they pass similar resolutions.

This Resolution shall take effect upon passage.

The Portsmouth City Council:

Mayor Jack Blalock

Assistant Mayor Cliff Lazenby
Councilor Doug Roberts
Councilor Nancy Pearson
Councilor Chris Dwyer
Councilor Josh Denton
Councilor Rebecca Perkins
Councilor Ned Raynolds
Councilor Rick Becksted

Adopted on This 15th Day of July, 2019

Kelli L. Barnaby, City Clerk



CITY MANAGER



PORTSMOUTH, NEW HAMPSHIRE



EXECUTIVE RECRUITMENT

CITY MANAGER

CITY OF PORTSMOUTH, NEW HAMPSHIRE

The City

Portsmouth, New Hampshire (population 21,500) is a beautiful New England seaside community located near the coast of New Hampshire and situated between the cities of Boston and Portland. Portsmouth is a historic seaport and popular year-round tourist destination on the Piscataqua River. Portsmouth was formerly the home of the Strategic Air Command's Pease Air Force Base, since converted to Pease International Tradeport (including an airport) at Pease, which is a major economic driver for the greater Portsmouth area. Approximately 40,000 to 50,000 individuals work in the City on a daily basis and slightly less visit the City in the evenings. The City is inviting applications for the position of City Manager to replace its long serving retiring incumbent.

The City is known for its rich history. The National Trust for Historic Preservation named Portsmouth to its list of America's Dozen Distinctive Destinations, calling the city "one of the most culturally rich destinations in the country" with a "stimulating mix of historic buildings, sidewalk cafes, great restaurants, art galleries, jazz clubs and distinctive artisans' boutiques." "Originally a working seaport where merchant ships traveled up and down the Piscataqua River, it is still a working port, where tugboats can be seen escorting ships through the treacherous

currents of this tidal river." – *Portsmouth Historical Society*

Portsmouth is a full-service community. Services include Administration and Finance, Public Safety, Schools, Community, Economic Development and Regulatory Services, Library, Recreation and Senior Services, and Public Works. The City operates under the Council/Manager form of government with nine at-large elected officials serving concurrent two-year terms. The top receivers of votes serve as the Mayor and Assistant Mayor respectively. The City Manager is appointed by a two-thirds majority of the City Council to function as the Chief Executive and Administrative Officer of the City, responsible for the proper administration of all the departments of City government. The City Manager serves at the pleasure of the City Council.

The City has a professional staff of 800 full time employees, a budget of \$113M and enjoys a AAA bond rating. There are 16 collective bargaining units. View the City budget and related financial documents:

<https://www.cityofportsmouth.com/finance/proposedadopted-budgets-and-cafr-reports>



The City Manager:

Duties:

- The City Manager carries out policy decisions of the City Council, and oversees all property, real and personal, owned by the City.
- The Manager keeps the Council informed of the City's needs and ongoing conditions, and make reports as may be required by law, or requested by the Council, or judged necessary by the Manager.
- The City Manager takes part in all discussions which come before the City Council but acts in a non-voting advisory capacity.
- As Chief Executive for the City, the City Manager is the responsible supervisor for all department heads, and acts to appoint, suspend, remove, or discipline all municipal employees in the administrative service of the City; that is, all but those employees supervised by the Fire Commission, Police Commission, or the School Board.
- On an annual basis, the City Manager provides to the City Council an Operating Budget, a Budget Statement, and a long-range Capital Plan.

Opportunities & Challenges:

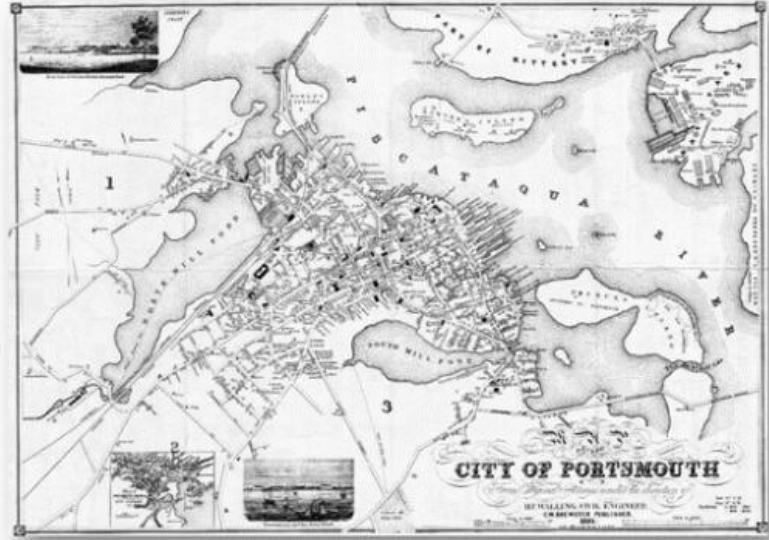
- While the community is well positioned financially, the main source of revenue to fund municipal operations is the property tax as there is no sales or income tax in New Hampshire. The State is non home-rule, so the City is unable to raise revenue without the consent of the State Legislature and Governor. The new City Manager will be challenged to develop new revenue streams in light of working in this complex environment.
- The City has invested significantly in its infrastructure over the past 20 years, which has benefited the City greatly. There were several capital projects that have been completed, including the Peirce Island Wastewater Treatment Facility upgrade and more are ongoing, such as the Prescott Park Master Plan implementation and the anticipated construction of a new Police Station. An understanding of the capital needs of the City as well as the mechanisms to fund those projects will be necessary for the new City Manager.
- Portsmouth has enjoyed robust Economic Development; however, the community is divided on the extent of the development and the balance of the growth with the City's ability to maintain its historic charm and quality of life. The new City Manager must be proficient in engaging and actively listening to a wide variety of stakeholders who are significantly interested in the balance of growth and development of the City.
- The Arts Community in Portsmouth contributes about \$58M per year into the local economy, see www.art-speak.org. The new City Manager should have the desire and ability to work with the Arts and Non-Profit communities and an understanding of how those communities benefit the City at large.
- The city is working on a unique private/public partnership to manage the transfer and redevelopment of a



PORTSMOUTH400

two-acre parcel and federal building in the downtown core. While this project poses no financial obligation to the city, it opens up 21st Century economic development opportunities not currently seen in the downtown area.

- The City's success has resulted in a housing shortage and as a result the prices of homes in Portsmouth have increased significantly and in some cases are pushing longtime residents from their homes. Addressing the affordable housing issue is a key priority for the City.
- The City has excellent and dedicated staff who are available to assist the City Manager. A review of the organizational structure and a possible realignment of staff duties and responsibilities may be a mechanism to help to address the challenges the City faces today.
- Portsmouth will be celebrating its 400th Anniversary in 2023. The new City Manager can look forward to this historic milestone event.



Experience, Characteristics and Traits

- A Bachelor's Degree from an accredited college or university with a major in political science, business administration or related field. A Master's Degree in Public Administration is preferred.
- A minimum of five (5) years progressively responsible municipal experience in a community of similar size and complexity, or any equivalent combination of education and experience that would demonstrate the skills and abilities to perform the work.
- Extensive knowledge of municipal operations and general practices, including current developments and innovations relevant to local government.
- Candidates must have strong leadership skills, open and honest communication skills and an approachable style and the proven ability to establish and maintain strong working relationships.
- Strong financial, budget, human resources and labor relations experience.
- Strong knowledge and skill related to Community Engagement, Sustainability and Smart Cities, the Arts, and Capital Improvements Planning.
- A strong customer service orientation and significant career success in building collaborative, effective relationships across departments.
- Experience in strategic planning, project management and complex problem solving with the ability to work effectively in a wide variety of governmental disciplines.
- Excellent communication skills, both orally and in writing, public relations skills, and an understanding of the importance of engaging the community through social media platforms.
- A collaborative leader who values the input of the City Council, members of the staff, stakeholders and the general public.



How to Apply

The expected starting salary range is \$160,000 to \$185,000 +/- DOQ, with excellent benefits. Submit résumé, cover letter, and contact information for five professional references by August 16, 2019 online to Joellen J. Cademartori, CEO, GovHR USA, LLC – www.GovHRjobs.com. Questions regarding the recruitment may be directed to:

Joellen J. Cademartori, Chief Executive Officer, GovHR USA

630 Dundee Road, #130, Northbrook, IL 60062.

Tel: 847-380-3238.

Email: jcademartori@govhrusa.com

The City of Portsmouth is an Equal Opportunity Employer.

GOVHRJOBS.COM

Portsmouth, NH – Advertising Sources and Costs

Budget \$2,500.00

Organization	Cost of Advertisement
International City/County Management Association (ICMA)	\$450.00
National Forum for Black Public Administrators (NFBPA)	\$350.00
International Hispanic Network (IHN)	\$75.00
League of Women in Government	\$50.00
New Hampshire Municipal Association	free
Massachusetts Municipal Association	\$75.00
Maine Municipal Association	\$75.00
New York City Management Association	\$0.00
Connecticut Conference of Municipalities	\$300.00
Pennsylvania Municipal Management Association	\$200.00
LinkedIn.com	\$399.00
Strategic Government Resources	\$50.00
Careers in Government	\$185.00
Total	\$2,209.00



City of Portsmouth – City Manager – Proposed Recruitment Timeline

June 10	Consultant meets via teleconference with City Manager Search Committee to discuss search process.
June 25 th to June 27 th	Consultant on site to meet with City Council, Department Heads and attends Public Forum to discuss recruitment profile.
July 3 rd	Consultant submits draft Position Announcement and Recruitment Profile for review. Position Announcement and Recruitment Profile are approved by City.
Week of July 15 th	Consultant places ads for position and starts outreach process. Recruitment profile is sent to potential candidates and posted on GovHR website and also provided to City.
August 16 th	Deadline for resumes.
August 16 th to September 3 rd	Consultant reviews resumes, interviews candidates via Zoom, conducts background reviews, due diligence, etc. Consultant narrows field to 8-12 candidates for further consideration.
September 12 th	Consultant submits Recruitment Report to City.
September 16 th at 5:30 p.m.	Consultant meets with City to review candidates and select candidates for the interview process.
Weeks of September 30 th and October 7 th	City conducts final interview process (10/1, 10/2) and makes selection. Contract negotiation.
January 2020	Candidate starts employment.

ACTIONS

PARKING and TRAFFIC SAFETY COMMITTEE

8:00 A.M. – June 6, 2019
City Hall – Conference Room A

MEMBERS PRESENT: Chairman, Doug Roberts
Public Works Director, Peter Rice
Police Captain, Mark Newport
Fire Chief, Todd Germain
Harold Whitehouse
Shari Donnermeyer
Mary Lou McElwain
Ralph DiBernardo
Steve Pesci

MEMBER ABSENT: Deputy City Manager, Nancy Colbert Puff

CITY STAFF PRESENT: Parking and Transportation Engineer, Eric Eby
Parking Director, Ben Fletcher
Planning Director, Juliet Walker

Action Items requiring an immediate ordinance during the next Council meeting:
None

Temporary Action Item requiring an ordinance during the annual omnibus:

- Two 15-minute parking spaces on Hanover Street in front of 25 Maplewood Avenue beginning September 1, 2019. (VII.C.)
- Three-hour time limit for parking meters on Raynes Avenue and Vaughan Street. (VII.D.)
- Install metered parking on Maplewood Avenue between Raynes Avenue and Vaughan Street. (VII.E.)
- Remove the 15-minute time limit on the two spaces on the easterly side of Maplewood Avenue, commencing 140 feet northerly from Vaughan Street. (VII.E.)
- Three-hour time limit for new metered spaces on Maplewood Avenue between Raynes Avenue and Vaughan Street. (VII.E.)
- Prohibit parking for a distance of 50 feet on west side of Middle Street beginning at the intersection with Aldrich Road, and running northerly. (VII.G.)
- Establish a fee of \$1.50 per hour when using the ParkMobile App or \$2.00 per hour at the display meter, maximum three hours for the motorcycle-specific spaces in the designated motorcycle parking area. (VII.H.)

1. Accepted and placed on file meeting minutes from May 2, 2019.
2. Accepted and placed on file financial report dated April 30, 2019.
3. Public Comment Session: Dave Mansfield spoke in support of item VII.C.

4. Request for handicap parking space in front of 179 Concord Way, by Joe Wenhold. – **Voted** to approve handicap parking space in front of 179 Concord Way.
5. Request for loading zone on Vaughan Street for 111 Maplewood Avenue building, by the project applicant. – **Voted** to table action item and refer to staff to report back at the next meeting.
6. Request for 15-minute parking spaces on Hanover Street and the Vaughan Mall lot, by Provident Bank. – **Voted** to approve two 15-minute parking spaces on Hanover Street in front of 25 Maplewood Avenue beginning September 1, 2019. **Voted** to table action on the three 15-minute spaces in Vaughan Mall parking lot behind 25 Maplewood Avenue and review the City's policy on designating 15-minute parking spaces.
7. Time limit for previously approved parking meters on Raynes Avenue and Vaughan Street. – **Voted** to approve 3-hour time limit for parking meters on Raynes Avenue and Vaughan Street.
8. Install parking meters for all unmetered parking spaces on Maplewood Avenue between Raynes Avenue and Vaughan Street. – **Voted** to approve metering of all parking spaces on Maplewood Avenue between Raynes Avenue and Vaughan Street. **Voted** to remove the 15-minute time limit on the two spaces on the easterly side of Maplewood Avenue, commencing 140 feet northerly from Vaughan Street. **Voted** to approve 3-hour time limit for new metered spaces on Maplewood Avenue between Raynes Avenue and Vaughan Street.
9. Request for pedestrian activated Rectangular Rapid Flashing Beacon (RRFB) on Dutton Avenue near Memorial Bridge parking lot, by Brian Birner. – **Voted** to approve installation of RRFB on Dutton Avenue at Memorial Bridge parking lot contingent on available funding and staff will report back on funding source.
10. Prohibit parking for 50 feet on west side of Middle Street north of Aldrich Road. **Voted** to prohibit parking for a distance of 50 feet on west side of Middle Street beginning at the intersection with Aldrich Road, and running northerly.
11. Motorcycle Parking in Market Square. – **Voted** to establish a fee of \$1.50 per hour when using the ParkMobile App or \$2.00 per hour at the display meter, maximum three hours for the motorcycle-specific spaces in the designated motorcycle parking area.
12. Report back, proposed lane use changes at Congress Street and Fleet Street, and Pleasant Street at Market Square. – **Voted** to refer to staff to report back at the next meeting.
13. Middle School traffic pattern update. No action required by Committee.
14. High School traffic study update. No action required by Committee.
15. Parking and Traffic Safety Committee authority and jurisdiction, per City Ordinances. No action required by Committee.

16. PTS Open Action Items. No action required by Committee.

17. July Meeting. July meeting has been cancelled. Next meeting is August 1, 2019.

Adjournment – At 9:07 a.m., **voted** to adjourn.

Respectfully submitted by:

Amy Chastain
Secretary to the Committee

MEETING MINUTES

PARKING and TRAFFIC SAFETY COMMITTEE

8:00 A.M. – June 6, 2019
City Hall – Conference Room A

I. CALL TO ORDER:

At 8:00 a.m., Chairman Doug Roberts called the meeting to order.

II. ROLL CALL:

Members Present:

Chairman, Doug Roberts
Public Works Director, Peter Rice
Police Captain, Mark Newport
Interim Fire Chief, Todd Germain
Member, Ralph DiBernardo
Member, Mary Lou McElwain
Member, Harold Whitehouse
Alternate Member, Steve Pesci
Member, Shari Donnermeyer
Shari Donnermeyer arrived at 9:00 a.m.

Absent:

Deputy City Manager, Nancy Colbert Puff

Staff Advisors Present:

Parking and Transportation Engineer, Eric Eby
Parking Director, Ben Fletcher
Planning Director, Juliet Walker

III. ACCEPTANCE OF THE MINUTES:

Chairman Doug Roberts noted that the name Emily Corbett should be corrected to Emily Corbett Chadwick.

Ralph DiBernardo moved to accept the meeting minutes of the May 2, 2019 meeting, seconded by Harold Whitehouse. **Motion passed 8-0.**

IV. FINANCIAL REPORT:

Chairman Doug Roberts questioned how full the Foundry Place Garage was. Parking Director Ben Fletcher responded that it was about 25%-30%. There has been a small increase due to the nice weather. A significant increase is expected on Market Square Day and other events throughout the summer when the garage rate is fixed.

Harold Whitehouse reiterated Mary Lou McElwain's idea from the May meeting about adding \$1.00 to the digital message board sign at the intersection at Market Street and Russell Street to attract more customers.

Harold Whitehouse moved to accept the financial report dated April 30, 2019, seconded by Public Works Director Peter Rice. **Motion passed 8-0.**

V. PUBLIC COMMENT:

David Mansfield of 113 Bow Street and CEO of Provident Bank spoke to agenda item VII.C. The bank opened its Portsmouth location after the Ordinance banning drive-thrus was passed. The bank is a big supporter of the community and has contributed to many organizations and programs in Portsmouth. The executive headquarters is moving to 25 Maplewood Avenue. The current branch will be moving to the first floor and 15-minute parking will be critical for customers. Mr. Mansfield requested the Committee's support in creating 15-minute parking. Chairman Doug Roberts questioned how many 15-minute parking spots they had at the current branch. Mr. Mansfield responded they had three that were shared by other local businesses.

VI. PRESENTATION:

No presentation.

VII. NEW BUSINESS:

A. Request for handicap parking space in front of 179 Concord Way, by Joe Wenhold. Ralph DiBernardo moved to approve a handicap parking space in front of 179 Concord Way, seconded by Harold Whitehouse. **Motion passed 8-0.**

Ralph DiBernardo clarified that this would be a public handicap parking spot, so anyone with a handicap-parking placard would be allowed to park there.

B. Request for loading zone on Vaughan Street for 111 Maplewood Avenue building, by the project applicant. Public Works Director Peter Rice moved to approve a loading zone on the south side of Vaughan Street at the corner of Raynes Avenue, with the hours of 6 a.m. to 9 a.m., seconded by Harold Whitehouse.

Harold Whitehouse questioned if this would include holidays and Sundays. Eric Eby responded that it would not. Public Works Director Peter Rice added that they would ensure that language was on the signage.

Steve Pesci noted that at the site visit they expressed concern about the location of an existing fire hydrant being blocked by certain trucks in the loading zone. It was discussed that the hydrant may be relocated as part of the construction project. Eric Eby stated he discussed it with City staff and it could be relocated to the corner on the other side of an underground electrical duct bank, however, there would be a cost involved to move it. Interim Fire Chief Todd Germain commented that he could support the loading zone if the fire hydrant could be moved.

Mary Lou McElwain questioned how many parking spots the loading zone would occupy, and questioned how it compared to the loading zone request by the restaurant across the street that was tabled. Eric Eby responded it would take up two spaces from the hours of 6 a.m. to 9 a.m. The request that was tabled was for a permanent loading zone from 9 a.m. to 7 p.m. everyday. Public Works Director Peter Rice clarified that this loading zone was not going to be reserved. It would be available for anyone who needs it, including the restaurant across the street. Steve Pesci noted that this request would hopefully resolve all the loading needs for everyone on the street.

Interim Fire Chief Todd Germain moved to table and refer to staff to report back on the fire hydrant relocation at the next meeting. Seconded by Harold Whitehouse. **Motion passed 8-0.**

C. Request for 15-minute parking spaces on Hanover Street and the Vaughan Mall lot, by Provident Bank. Chairman Doug Roberts commented that five spaces may be excessive. Ralph DiBernardo commented that they should refer this item to staff for a recommendation on how to accommodate the bank without making five spaces limited to 15-minute parking. Eric Eby noted that one suggestion was to add three parking spaces in the alleyway of the lot. It is currently two-way traffic, so it would have to become a one-way entrance and exit.

Steve Pesci thought that five 15-minute parking spaces was excessive. It would be appropriate to add the two 15-minute parking spaces on the street, and it would be good to explore if more could be added in the City right-of-way. Steve Pesci did not support the three 15-minute spaces proposed in the Worth Lot. Ralph DiBernardo noted that the existing 15-minute spaces were hard to access, and suggested moving them.

Mary Lou McElwain questioned if the Committee should start talking about establishing a policy on 15-minute parking before creating more spots. This was not the first time a request like this has been made. Chairman Doug Roberts responded that they could do both at the same time.

Public Works Director Peter Rice recommended that the motion should be to approve the two 15-minute parking spaces on the street and consider additional spots in the future after an evaluation. Historically, the Committee has granted requests for 15-minute parking spaces because they want to support local businesses, however, there is generally a 90% loss of the revenue for the spaces. The Worth Lot is used heavily, and should be evaluated before adding more 15-minute parking spaces.

Parking Director Ben Fletcher commented that spaces in the Worth Lot generate about \$4,500 a year. The 15-minute parking spaces are hard to enforce because of the high turnover. Parking is designed to support the businesses whether it's a three-hour limit or 15-minute limit.

Public Works Director Peter Rice moved to approve two 15-minute parking spaces on Hanover Street in front of 25 Maplewood Avenue beginning September 1, 2019. Seconded by Steve Pesci. **Motion passed 8-0.**

Public Works Director Peter Rice moved to table action on the three 15-minute spaces in Vaughan Mall parking lot behind 25 Maplewood Avenue and review the City's policy on designating 15-minute parking spaces, seconded by Steve Pesci. **Motion passed 8-0.**

Mr. Mansfield supported the discussion and motion, but clarified that they would not need the spots until September 1, 2019. They could remain three-hour spaces until then.

D. Time limit for previously approved parking meters on Raynes Avenue and Vaughan Street. Public Works Director Peter Rice moved to approve 3-hour time limit for parking meters on Raynes Avenue and Vaughan Street, seconded by Mary Lou McElwain. **Motion passed 8-0.**

E. Install parking meters for all unmeted parking spaces on Maplewood Avenue between Raynes Avenue and Vaughan Street. Steve Pesci moved to remove the 15-minute time limit on the two spaces on the easterly side of Maplewood Avenue, commencing 140 feet northerly from Vaughan Street, seconded by Mary Lou McElwain. **Motion passed 8-0.**

Steve Pesci moved to approve metering of all parking spaces on Maplewood Avenue between Raynes Avenue and Vaughan Street, seconded by Public Works Director Peter Rice. **Motion passed 8-0.**

Ralph DiBernardo moved to approve 3-hour time limit for new metered spaces on Maplewood Avenue between Raynes Avenue and Vaughan Street, seconded by Mary Lou McElwain.

Public Works Director Peter Rice questioned if there was data that supported the 3-hour time limit designation for those spaces. Parking Director Ben Fletcher responded that the closest meters on Russell Street had a 3-hour time limit. The 3-hour limit is based on giving patrons enough time at restaurants. It is appropriate and consistent with the area.

Motion passed 8-0.

F. Request for pedestrian activated Rectangular Rapid Flashing Beacon (RRFB) on Dutton Avenue near Memorial Bridge parking lot, by Brian Birner. Harold Whitehouse asked about the cost of a RRFB. Eric Eby responded that it would be about \$15,000.

Public Works Director Peter Rice commented that he could bring this to the City Manager for consideration as a Capital Improvement Project (CIP).

Eric Eby clarified that there would be two flashing lights and a button to activate them.

Harold Whitehouse moved to approve installation of a RRFB on Dutton Avenue at Memorial Bridge parking lot contingent on available funding and staff will report back on funding source. Seconded by Steve Pesci. **Motion passed 8-0.**

G. Prohibit parking for 50 feet on west side of Middle Street north of Aldrich Road. Mary Lou McElwain commented that when cars are parked there it is safer for bicyclists, but it is dangerous for cars. This is a safety issue and there needs to be better visibility.

Planning Director Juliet Walker supported removing the one space. Eric Eby added that it was 50 feet because there was already a 30 foot no parking area there. This change would add 20 feet to it, which would be taking away one parking space.

Public Works Director Peter Rice moved to prohibit parking for a distance of 50 feet on west side of Middle Street beginning at the intersection with Aldrich Road, and running northerly, seconded by Harold Whitehouse. **Motion passed 8-0.**

Chairman Doug Roberts noted that people have passed along the same concerns about Cass Street and suggested that staff report back on that area.

H. Motorcycle parking in Market Square. Parking Director Ben Fletcher commented that there is motorcycle parking in front of 14 Market Square. The parking is suppose to be available at a reduced rate, but the rate was never established. Because the rate was never established, some motorcyclists do not feel obligated to pay full price, and ticketing them leads to appeals lost due to the lack of a designated reduced parking meter fee. He recommended establishing an hourly rate of \$1.50 when a patron uses the ParkMobile App. Residents that use the app can enjoy an additional \$.50/hour discount. Patrons that do not use the app must use the pay and display meter at the \$2.00/hour rate.

Harold Whitehouse wanted to ensure that this would not be a burden to motorcyclists because they are an important part of Market Square. Parking Director Ben Fletcher agreed.

Chairman Doug Roberts questioned how many motorcycle-specific spaces are at the location. Parking Director Ben Fletcher responded that it was one regular space divided into five motorcycle spaces. Chairman Doug Roberts commented that \$1.50 sounded a little high. Parking Director Ben Fletcher responded that it is a 25% reduction in cost for everyone, and 50% for residents. It is very fair. Steve Pesci agreed.

Public Works Director Peter Rice moved to establish a fee of \$1.50 per hour when using the ParkMobile App or \$2.00 per hour at the display meter, maximum three hours for the motorcycle-specific spaces in the designated motorcycle parking area, seconded by Harold Whitehouse. **Motion passed 8-0.**

VIII. OLD BUSINESS:

A. Report back, proposed lane use changes at Congress Street and Fleet Street, and Pleasant Street at Market Square. Eric Eby noted that the last time this came to the Committee they asked that he look at the Pleasant Street and Market Square intersection at the same time. Eric Eby reviewed traffic volume data and queuing for the intersections with the existing conditions. It showed the average queue, 95th percentile queue, and the maximum queue lengths. This was compared to the proposed lane change queuing. The Congress Street and Fleet Street intersection would have one through lane, a right-turn-only lane and a left-turn-only lane on Congress Street. The maximum queue line went back further because there was only one through lane. The volumes were based on peak-hour and peak-month activity. The only thing missing was pedestrian activity. The maximum queues do not block any intersections. The lane changes would reduce confusion. This configuration will flow better with the other intersections and it would create a consistent one through lane. The lane lines and signage would need to be extended further back, so people would know which lane they needed to be in.

Steve Pesci commented that this model showed the intersections could handle the change and it would have a lot of benefits for pedestrian safety. The change only requires paint, so if it did not work it could easily be changed back. Steve Pesci questioned if the signal could be adjusted at Fleet Street to help reduce queuing.

Harold Whitehouse requested Interim Fire Chief Todd Germain comment on the safety of this change. Interim Fire Chief Todd Germain commented that the road would still be the same width because parking would not be reoriented. As long as there was room to get a fire truck or ambulance past parked vehicles, then it will work.

Chairman Doug Roberts clarified that the Fire Department would not be in favor of changing the parking to diagonal parking on Pleasant Street. Interim Fire Chief Todd Germain responded that was correct. It would pinch the intersection too much.

Mary Lou McElwain commented that this would be safer for the busses operating in the downtown as well. Mary Lou McElwain supported the change.

Chairman Doug Roberts requested that they use latex paint. Public Works Director Peter Rice confirmed that could be used.

Police Captain Mark Newport questioned when this would happen. Public Works Director Peter Rice responded that it would probably happen in September 2019. Eric Eby stated he would report back at the next meeting with a plan to clearly show the changes to the Committee.

Public Works Director Peter Rice moved to refer to staff to report back at the next meeting, seconded by Harold Whitehouse. **Motion passed 8-0.**

B. Middle School traffic pattern update. Eric Eby noted that everything has been going very well; there has been a big improvement. The recommendation is to leave this in place as it is because it is working so well.

IX. INFORMATIONAL:

A. High School traffic study update. No Committee discussion.

B. Parking and Traffic Safety Committee authority and jurisdiction, per City Ordinances. No Committee discussion.

C. PTS Open Action Items. No Committee discussion.

X. MISCELLANEOUS:

A. July Meeting. Chairman Doug Roberts stated there would be no meeting in July. The next meeting is August 1, 2019.

Ralph DiBernardo noted that the DPW sidewalk project on Spinney Road was great, but it was too bad it did not go all the way to Islington Street. Public Works Director Peter Rice responded that was the long-term plan, but they didn't have all the easements.

Steve Pesci noted that at the site visit they talked about the speed on State Street. This brought up the broader issue that there are some hot spots in town, and speeds should be reviewed. There could be an opportunity to conduct engineering studies and adjust some of the speed limits accordingly. He stated it could be an item on a future agenda.

Mary Lou McElwain requested an update on the High School traffic study. Eric Eby responded that the traffic study has been completed by the consultant. The High School is in the process of implementing some of the recommendations. Some of it is dependent on the School Department Budget.

Shari Donnermeyer arrived at 9:00 a.m. and did not vote on any agenda items. She was recognized and thanked for her service on the Committee. This was her last meeting.

XI. ADJOURNMENT – Shari Donnermeyer moved to adjourn the meeting at 9:07 a.m., seconded by Public Works Director Peter Rice. **Motion passed 8-0.**

Respectfully submitted by:

Becky Frey
PTS Recording Secretary



CITY OF PORTSMOUTH

City Hall, One Junkins Avenue
Portsmouth, New Hampshire 03801

INTEROFFICE MEMORANDUM

TO: JOHN P. BOHENKO, CITY MANAGER
FROM: NANCY COLBERT PUFF, DEPUTY CITY MANAGER
SUBJECT: HISTORIC MONUMENT PROGRAM APPLICATION
DATE: 7/10/19

An application to the Historic Monument Program to effect the transfer of the McIntyre property to the City is ready to be submitted for National Park Service review. Prior to submittal, the City Council must take the following actions:

Resolution Re: City Application to Obtain the McIntyre Property for Historic Monument Purposes

As part of the application, the City Council must resolve to utilize the property in conformance with all the rules and regulations of the program and authorize the City Manager to carry out the resolution (including “the preparation, making, and filing of plans, Applications, reports, and other documents, the execution, acceptance, delivery, and recordation of agreements, deeds, and other instruments pertaining to the transfer of said property, etc.”). A copy of the complete resolution is attached on page 16 of the attached application. Note: one exhibit to the application is a draft ground lease between the City and its partner, SoBow Square, LLC. This document should be considered DRAFT; while comprehensive, it remains subject to edit. The final version will appear before the Council at a future date.

Sample motion: Move the Council adopt the resolution as presented, and authorize the City Manager to act to carry out the resolution.

Development Agreement with SoBow Square, LLC

In order for the Application to be successful, the City must demonstrate its capacity to finance, operate, and maintain the property. The application proposes to enter into a public-private partnership to redevelop the property. The Development Agreement defines the mutual obligations of the partnership in advance of the ground lease execution.

Sample motion: Move to authorize the City Manager to enter into a Development Agreement with SoBow Square, LLC as presented.



OBTAINING REAL PROPERTY FOR HISTORIC MONUMENT PURPOSES

APPLICATION & INSTRUCTIONS

Title 40 U.S.C. 550(h)

National Park Service
U.S. Department of the Interior





INTRODUCTION

The following information is designed to assist your completion of the *Application for Obtaining Real Property for Historic Monument Purposes*, under Title 40 U.S.C. 550(h).

The Historic Monument or Historic Surplus Property Program is administered by the National Park Service (NPS), on behalf of the Secretary of the Interior, and the General Services Administration (GSA), the agency that identifies Federal historic properties to be transferred under this program. The program allows state, county, and local governments to obtain Federal historic properties at no cost. To apply for such a property, an eligible governmental entity must complete the *Application for Obtaining Real Property for Historic Monument Purposes* (Application). The Application is reviewed and approved by the NPS, and sets forth terms and conditions that will be made a part of the deed conveying title to the property. As part of the approval, the NPS formally recommends to the GSA that the subject property be transferred. If it agrees with the recommendation, the GSA executes the transfer. A property conveyed under this program must be used in accordance with the terms of the transfer in perpetuity, and the NPS is responsible for monitoring the property to ensure that it is maintained and protected.

Application Highlights

Section I—Request for Property:

- Person having legal responsibility and/or authority to submit the Application and carry out the conditions of a deed must sign in the space following the conditions.
- “Approved by the Secretary of the Interior” statement will be completed by the NPS once it has reviewed and approved the Application; “Accepted by the Administrator of General Services” statement will be completed by the GSA, signifying concurrence with the NPS’s approval and recommendation for historic monument conveyance.
- Includes terms and conditions for conveyance of the property.

Section II—Program of Preservation and Utilization:

- Includes three sections: “Preservation Plan” (Item #8), “Use Plan” (Item #9), and “Financial Plan” (Item #10).
- All proposed changes to properties being transferred under this program must be described in the “Preservation Plan” and must be in conformance with the *Secretary of the Interior’s Standards for the Treatment of Historic Properties* (typically, the *Standards for Rehabilitation* would be the most applicable).
- Included at the end is the format for a resolution or certificate of authority identifying and certifying that the officials and Applicant are legally authorized to make an Application for the property.

General tips on preparing and submitting the Application:

- Consult with the appropriate regional office of the NPS early in the process. Contact information for the NPS regional offices is available online at: <https://www.nps.gov/tps/historic-surplus.htm>
- The Application should not be bound, put in a binder, or otherwise elaborately packaged.
- Use of the electronic form requires software compatible with AdobeReader. Attach additional sheets if necessary.
- Photographs must be high quality digital or 35mm prints and adequately labeled
- Submit **one (1) original and three (3) copies** of this completed Application to the appropriate NPS regional office as noted on page three - do NOT submit any application materials directly to GSA (NPS will retain the one original Application and a copy of the deed in its files, and forward the three copies of the Application to GSA.)



SECTION I – REQUEST FOR PROPERTY

To: General Services Administration
Address: Thomas P. O'Neill Federal Building
10 Causeway Street
City: Boston
State: MA Zip: 02222

Through: National Park Service
Name: Bonnie J. Halda
Address: Program Manager, Preservation Assistance
1234 Market Street
City: Philadelphia
State: PA Zip: 19106

GSA Control Number: NH0036ZZ

The undersigned, City of Portsmouth, hereinafter referred to as the Applicant or Grantee, acting by and through John P. Bohenko at 1 Junkins Avenue, Portsmouth, NH 03801 of the City of Portsmouth, hereby applies for the conveyance, without monetary consideration, for use for historic monument purposes, from the United States of America pursuant to 40 U.S.C. 550(h), and in accordance with the rules and regulations of the General Services Administration, the following described property:

Thomas J. McIntyre Federal Property, a 2.1 acre parcel located at 80 Daniel Street

This property is more fully described in the "Program of Preservation and Utilization," attached hereto and made a part hereof. Enclosed herewith is a resolution or certification as to the authority of the undersigned to execute this Application and to do all other acts necessary to consummate the transaction.

The undersigned agrees that this Application is made subject to the following terms and conditions:

1. This Application, as approved by the Secretary of the Interior (Secretary) and as accepted by the Administrator of the General Services (Administrator), shall constitute the entire agreement among the Applicant, the Secretary, and the Administrator, unless modified in writing by the three parties.
2. The descriptions of the property set forth above are believed to be correct, but any error or omission shall not constitute ground or reason for nonperformance of the agreement resulting from the acceptance of this Application.
3. It is understood that the property is to be conveyed "As Is" and "Where Is" without representation, warranty, or guaranty as to quantity, quality, character, condition, size or kind, or that the same is in condition or fit to be used for the purpose intended, and no claim for any adjustments upon such grounds will be considered after this Application has been accepted.
4. The Applicant agrees to assume possession of the property within 15 days of any written request given by the Administrator after acceptance of this Application. Should the Applicant fail to take actual possession within such period, it shall nonetheless be charged with constructive possession commencing at 12:01 a.m., local time, of the 16th day after such request by the Administrator. The word "possession" shall mean either actual physical possession or constructive possession.
5. As of the date of assumption of possession of the property, or the date of conveyance, whichever occurs first, the Applicant shall assume responsibility for any general and special real and personal property taxes which may have been or may be assessed on the property, and shall pay its part of the pro-ration of any sums paid, or due to be paid by the Federal Government in lieu of taxes.



6. As of the date of assumption of possession of the property, or the date of conveyance, whichever occurs first, the Applicant shall assume responsibility for care and handling and all risks of loss or damage to the property and have all obligations and liabilities of ownership.
7. In support of eligibility to acquire the property for historic monument purposes, the undersigned submits a proposal entitled "Program of Preservation and Utilization" attached hereto. All proposed changes to the property must be described in the "Program of Preservation and Utilization" and must be in conformance with the *Secretary of the Interior's Standards for the Treatment of Historic Properties* (typically, the *Standards for Rehabilitation*). The "Program of Preservation and Utilization" may be amended from time to time at the request of either the Applicant or the Secretary, with the written concurrence of the other party. Such amendments will be added to, and become a part of, the original "Program of Preservation and Utilization." The National Park Service, as part of reviewing any amendments on behalf of the Secretary, is required to comply with Section 106 of the National Historic Preservation Act and the National Environmental Policy Act. The Applicant agrees that it will furnish such data, maps, reports, and information as may be requested by the Secretary to comply with these laws, and any other laws, as required.
8. Conveyance of the Property shall be accomplished by an instrument, or instruments, in form satisfactory to the Administrator, without warranty, express or implied, and shall contain covenants, reservations, restrictions, and conditions substantially as follows:
 - a. That the Grantee shall forever use the property in accordance with its Application and the approved program attached thereto entitled "Program of Preservation and Utilization."
 - b. Other than as provided for in the approved "Program of Preservation and Utilization" (a) above, the property shall not be sold, leased, assigned, or otherwise disposed of, except to another eligible government agency that the Secretary is satisfied can assure the continued use and maintenance of the property for historic monument purposes. The Grantee may, however, enter into lease agreements with any individual or entity if the lease agreement is compatible with the approved program (a) above, and provided the prior concurrence of the Secretary, or his/her designee, is obtained in writing prior to the execution of such agreements. Any lessee who develops or rehabilitates the property on behalf of the Grantee shall also be required to provide the same information for the Biennial Reports as the Grantee (see 8.c below).
 - c. The Grantee shall prepare Biennial Reports setting forth the use made of the property during the preceding two-year period, and submit them to the Secretary at:

Historic Surplus Property Program, National Park Service, Northeast Regional Office, 200 Chestnut Street, Philadelphia, PA 19106

(Guidelines for Biennial Reports are available from the National Park Service regional office)

- 1) If the Administrator has authorized revenue-producing activities, based on the recommendation of the Secretary, then the Grantee shall file with the Secretary at the same address every two years a Financial Report, which shall include the following:
 - a) Statement of income from all sources during the reporting period.
 - b) Statement of expenses classified according to the following categories:
 - i. repair, rehabilitation, and restoration costs;
 - ii. recurring maintenance requirements costs; and
 - iii. administration and operations costs.
 - c) Statement of disposition of excess income.

The Financial Report will cover two accounting years, whether fiscal or calendar, as mutually agreed by the Grantee and the Secretary and will be submitted within 90 days after the close of the accounting year.



- 2) Audit Report. The Audit Report will consist of a report produced by an independent audit firm summarizing the results of the biennial audit. The Secretary shall have the right, at his/her discretion, to audit such financial records, to examine such other records, and to inspect such portions of the granted property as may, in his/her judgment, be necessary to safeguard the interests of the U.S.
- d. Title to the property transferred shall revert to the United States at its option in the event of noncompliance with any of the terms and conditions of disposal.
9. Any title evidence which may be desired by the Applicant shall be procured by the Applicant at its sole cost and expense. The Federal Government shall, however, cooperate with the Applicant or its authorized agent in this connection, and shall permit examination and inspection of such deeds, abstracts, affidavits of title, judgments in condemnation proceedings, or other documents relating to the title of the premises and property involved, as it may have available. It is understood that the Federal Government shall not be obligated to pay for any expense incurred in connection with title matters or survey of the property.
10. The Applicant shall pay all taxes imposed on this transaction and shall obtain at its own expense and affix to all instruments of conveyance and security documents such revenue and documentary stamps as may be required by Federal and local law. All instruments of conveyance and security documents shall be placed on record in the manner prescribed by local recording statutes at the Applicant's expense.
11. The approved Applicant covenants and agrees for itself, its successors and assigns, to be subject in all respects to all Federal laws and regulations relating to nondiscrimination in connection with any use, operation, program, or activity on or related to the property requested in this Application.
12. The Grantee shall, within a period of six months from the date of the signing of the Deed of Conveyance, erect, and maintain a sign of compatible scale and materials near the principal access to the property stating that: "The(name of building/property) was acquired by (local government entity) from the Federal Government through the General Services Administration as Historic Surplus Property on (date). This public benefit program is administered by the National Park Service, U.S. Department of the Interior." Additional information may also be included, such as names of local officials, etc. This sign shall be maintained in perpetuity. A temporary sign may be erected during any rehabilitation work. The final design and text of the sign must be included in the "Program of Preservation and Utilization."



SIGNED BY APPLICANT

Signed in acceptance of the foregoing conditions this _____ day of _____, 2019.

By:

Authorized Official's Signature

John P. Bohenko

Name – printed

City Manager

Title

1 Junkins Avenue

Address of Applicant

Portsmouth, NH 03801

City, State, Zip



This page is for official Government use only.

APPROVED BY THE SECRETARY OF THE INTERIOR

Application approved and property recommended for historic monument conveyance by and on behalf of the Secretary of the Interior this ____ day of _____, 20____.

NATIONAL PARK SERVICE

By: _____
Signature

Name – printed

Title

ACCEPTED BY THE ADMINISTRATOR OF GENERAL SERVICES

Recommendation of the Secretary of the Interior accepted by and on behalf of the Administrator of General Services this ____ day of _____, 20____.

GENERAL SERVICES ADMINISTRATION

By: _____
Signature

Name – printed

Title

This page is for official Government use only.



SECTION II - PROGRAM OF PRESERVATION & UTILIZATION

1) APPLICANT:

1a. Name of Agency: City of Portsmouth

1b. Agency Representative: John P. Bohenko

1c. Agency Street Address: 1 Junkins Avenue

1d. City: Portsmouth 1e. State: NH 1f. Zip Code: 03801 1g. Day telephone: (603) 610-4500

2) PROPERTY:

2a. Name of Property: Thomas J. McIntyre Federal Property

2b. Street address: 80 Daniel Street

2c. City: Portsmouth 2d. County: Rockingham 2e. State: NH 2f. Zip Code: 03801

2g. Name of historic district, if applicable: Portsmouth Downtown Historic District

2h. Include as part of the Application a copy of the National Register nomination form or Determination of Eligibility, obtainable from the State Historic Preservation Officer or at www.nps.gov/nr

Check all applicable designations:

Local listing Certified Local Government State listing

National Register Listed National Register Eligible

Project Seeking the Federal Historic Rehabilitation Tax Credit
(Note: Checking this box directs the NPS Regional Office reviewing this Historic Monument Application to coordinate the review with that of the NPS Washington, D.C. office which administers the Federal Historic Rehabilitation Tax Credit Program.)

Number of Resources within Property
(in accordance with the National Register classification system)

	Contributing	Non-contributing
Buildings	1	
Sites		
Structures		
Objects		
TOTAL	1	0

(Note: Although the applicable National Register Nomination or Determination of Eligibility may provide this kind of information, always consult with NPS to ensure that the classifications and the counts are current.)



3) DESCRIPTION OF PROPERTY:

3a. Acreage:

2.14 acres

3b. Legal Description:

This can be in metes and bounds, rectangular, or cadastral survey. If the information is not available from the granting Federal agency, you must survey the property when the National Park Service is assured that you will be the recipient. In such event, the legal description and plot may be submitted subsequent to the Application.

Please see attached Appendix A.

3c. Map:

Attach a plot map showing the property boundary, contributing and noncontributing resources (buildings, sites, structures, objects—refer to 2h above), street plan, and other features (topographic features, vegetation, landscaping, water features, etc.) important in understanding the property.

4) NARRATIVE DESCRIPTION:

Provide a written description of all important historic resources and natural features identified in the plot map, above. This includes contributing resources (buildings, sites, structures, objects—refer to 2h above) vegetation, landscape features, etc. Include building number, designations such as "Barracks," "Water tower," etc, and give dimensions and floor area.

Please see attached Appendix B.



5) UTILITIES:

The Federal building is serviced by municipal water and sewer systems, and by electrical (Eversource), natural gas, telephone and internet services.

6) RELATED PERSONAL PROPERTY:

7) SIGNIFICANCE

Describe the significance of the property in American history, archeology, architecture, or culture, referencing the National Register nomination, or the Determination of Eligibility.

Please see attached Appendix B.



8) PRESERVATION PLAN:

All work must be done in accordance with the Secretary of the Interior's *Standards for the Treatment of Historic Properties* (typically, the *Standards for Rehabilitation* would be the most applicable set of treatment standards).

Using the outline format below, describe the proposed work on a feature-by-feature or work-item basis (examples of architectural/landscape features or work items include: formal garden, new landscaping, new parking area, roof, windows, porch, exterior siding, foundation, interior trim, interior plaster, floor plan/interior partitions, HVAC system, etc.). Begin by describing site work, including new construction and parking, followed by work on the exterior and finally work on the interior. A separate outline description should be used to detail each work item and its effect on architectural/landscape features or interior spaces. Under item "8D," explain in detail the work to be undertaken and describe the effect (visual, structural, or other) on the existing feature. This should include the impact of any modern modifications or utilities on the existing feature. For archeological areas, describe necessary security and maintenance to stabilize the site, control vegetal growth, or avoid damage.

Numbered photographs and drawings are essential components of the Preservation Plan. Applicable photograph and drawing numbers should be referenced under "8E" and "8F" of each outline description or work item. The submitted photographs must be high quality digital or 35 mm prints and they must document the existing/ pre-project condition of the site, the exterior elevations of the building(s), and the interior. Interior elements to be documented include major spaces and detailing, such as decorative plasterwork and wainscoting.

Existing conditions may be shown by original construction drawings that include subsequent modifications, by current record drawings, or by newly prepared measured drawings. Major planned alterations or new construction must be shown on appropriate drawings (e.g., site plans, elevations, floor plans, sections). While detailed plans and specifications may not be necessary if the project is simple in scope, it must be clear from the submitted documentation that the Applicant has fully recognized areas of historic significance and will plan proposed work to minimize the impact on these significant areas.

ARCHITECTURAL/LANDSCAPE FEATURES

For each architectural or landscape feature where work is proposed, use the following format to describe the existing condition and the proposed work. Attach additional sheets/pages as necessary continuing the alphabetical format until every feature slated for work is described.

Feature A: Please see attached Appendix C.

8a. Approximate date of construction:

8b. Approximate date(s) of alterations:

8c. Description and condition:

8d. Proposed work and impact on the feature:

8e. Photo number(s):

8f. Drawing number(s):



Feature B: **Please see attached Appendix C.**

8a. Approximate date of construction:

8b. Approximate date(s) of alterations:

8c. Description and condition of Feature B:

8d. Proposed work and impact on the feature:

8e. Photo number(s):

8f. Drawing number(s):

Feature C: **Please see attached Appendix C.**

8a. Approximate date of construction:

8b. Approximate date(s) of alterations:

8c. Description and condition of Feature C:

8d. Proposed work and impact on the feature:

8e. Photo number(s):

8f. Drawing number(s):



9) USE PLAN:

Describe in detail the planned utilization and exhibition of the historic site. Differentiate between public-use activities and revenue-producing activities. Identify any portions of the property to which public access will be denied or restricted. Establish the suitability of the property for the proposed uses and the compatibility of the proposed revenue producing activities with the historical and/or architectural character of the property.

Please see attached Appendix D.

10) FINANCIAL PLAN:

10a. Analysis of projected income from all sources:

Please see attached Appendix E.

10b. Analysis of projected expenses for:

i) Repair, rehabilitation and restoration (if work will be phased, briefly describe each phase, indicate the corresponding time schedule, and group projected expenses by phase):

Please see attached Appendix E.

ii) Recurring maintenance requirements:

Please see attached Appendix E.

iii) Administration and operation:

Please see attached Appendix E.



10c. Provisions for disposition of excess income:

The law requires that all income in excess of costs for repair, rehabilitation, restoration, and maintenance shall be used by the Grantee only for public historic preservation, or park or recreational purposes (when all preservation needs have been adequately addressed). A reasonable amount of any excess proceeds may be carried forward from year to year to meet such costs. Any lessee who develops or rehabilitates the property on behalf of the Grantee shall be held to the same requirements for excess income.

Please see attached Appendix E.

10d. Description of accounting and financial procedures:

These must include provision for an independent audit every two years, the cost to be borne by the Grantee, and for an Audit Report based thereon to be submitted every two years, together with a Financial Report, to the Secretary of the Interior.

Please see attached Appendix E.

11) CAPABILITY:

Give a full statement of legal authority and ability to finance, operate, and maintain the property. Furnish complete information about the adequacy of staff to be made available to develop and operate the project and the Applicant's qualifications for the development and operation of historic property.

Incorporated in 1849, the City of Portsmouth is a municipality operating under a Council-Manager form of government. At the close of fiscal 2017, the City's independent auditor, Melanson Health, reported the City's total net position at over \$485 million. Its fiscal 2019 general fund budget is just over \$113 million, and its taxable valuation with utilities is roughly \$5.468 billion. The City enjoys a AAA bond rating. As a municipal corporation, the City is eligible to receive surplus property.

The City will enter into a partnership with SoBow Square LLC (formed by principals of Redgate Holdings LLC and the Kane Company) to redevelop and operate the property. SoBow Square-related personnel have significant real estate development and management experience, and have provided evidence of adequate financial capacity to successfully carry forth this project. The City will enter into a ground lease with SoBow Square to redevelop, operate, and maintain the property. SoBow is advised by MacRostie Historic Advisors and Bruner Cott Associates regarding compliance with the Secretary of the Interior Standards for the Treatment of Historic Properties.



12) RESOLUTION:

*The resolution form on the following page has been provided for your use.
If you do not use this form, you must ensure that, at a minimum, the resolution contains the following:*

- 12a. Identification of the name, location, GSA control number and acreage of the property for which you are applying;
- 12b. An authorization of the Application for and acquisition of the specified property for historic monument purposes;
- 12c. A designation by title of a specific official to act as the authorized representative in all matters pertaining to the transfer of the property;
- 12d. A statement that the Application is being made for acquisition of the property under the provisions of 40 U.S.C. 550(h), and regulations and procedures promulgated thereunder;
- 12e. Where applicable, certification that the Applicant is authorized, willing, and able to conduct compatible revenue-producing activities, and that regardless of any revenues derived from such activities, the Applicant is financially able to utilize said property for historic monument purposes as set forth in its "Program of Preservation and Utilization" and in accordance with the requirements of 40 U.S.C. 550(h) and regulations and procedures promulgated thereunder;
- 12f. Where applicable, certification that any income in excess of costs of repair, rehabilitation, restoration, and maintenance shall be used by the Applicant only for public historic preservation, park, or recreational purposes as enunciated in the "Program of Preservation and Utilization";
- 12g. Certification that the Applicant is willing and authorized to pay the administrative expenses incident to the transfer; and
- 12h. Certification that the Applicant is authorized, willing, and in a position to assume immediate care and maintenance of the property.



RESOLUTION/CERTIFICATE OF AUTHORITY (SAMPLE FORMAT)

Whereas, certain real property owned by the United States, located in the County of Rockingham, State of NH has been declared surplus and at the discretion of the Administrator of General Services (Administrator), may be conveyed for historic monument purposes to a State, political subdivision, instrumentalities thereof, or municipality, under the provisions of 40 U.S.C. 550(h), and rules and regulations promulgated pursuant thereto, more particularly described as follows:
Thomas J. McIntyre Federal Property

80 Daniel Street Portsmouth, 2.1 acres,
GSA control number NH0036ZZ.

Whereas, City of Portsmouth needs and will utilize said property in perpetuity for historic monument purposes as set forth in its Application and in accordance with the requirements of 40 U.S.C. 550(h) and the rules and regulations promulgated thereunder; and

Whereas, the Applicant is authorized, willing, and able to conduct compatible revenue-producing activities, and that regardless of any revenues derived from such activities, Applicant is financially able to utilize said property for historic monument purposes as set forth in its "Program of Preservation and Utilization" and in accordance with the requirements of 40 U.S.C. 550(h) and regulations and procedures promulgated thereunder; and

Whereas, the Applicant agrees that any income in excess of costs of repair, rehabilitation, restoration, and maintenance shall be used by the Applicant only for public historic preservation, park, or recreational purposes as enunciated in its "Program of Preservation and Utilization";

Now, Therefore, Be It Resolved, that City of Portsmouth shall make Application to the Administrator for and secure the transfer to it of the above-mentioned property for said use upon and subject to such exceptions, reservation, terms, covenants, agreements, conditions, and restrictions as the Secretary of the Interior, and the Administrator, or their authorized representatives, may require in connection with the disposal of said property under 40 U.S.C. 550(h) and the rules and regulations issued pursuant thereto; and Be It Further Resolved that City of Portsmouth has legal authority, is willing, and is in a position to assume immediate care and maintenance of the property, and that

John P. Bohenko, City Manager be and he/she is hereby authorized, for and on behalf of the City of Portsmouth to do and perform any and all acts and things which may be necessary to carry out the foregoing resolution, including the preparing, making, and filing of plans, Applications, reports, and other documents; the execution, acceptance, delivery, and recordation of reports, and other documents; the execution, acceptance, delivery, and recordation of agreements, deeds, and other instruments pertaining to the transfer of said property, including the filing of copies of the Application and the conveyance documents in the records of the governing body, and the payment of any and all sums necessary on account of the purchase price thereof or fees or costs incurred in connection with the transfer of said property for survey, title searches, recordation of instruments, or other costs identified with the Federal surplus property acquisition.

City of Portsmouth
legal title of governing body of Applicant
1 Junkins Avenue, Portsmouth, NH 03801
address

I, John P. Bohenko, hereby certify that I am the City Manager of the City of Portsmouth and that the foregoing resolution is a true and correct copy of the resolution adopted by the vote of a majority of the members of said City of Portsmouth present at a meeting of said body on the ___ day of _____, 20 19, at which a quorum was present.

John P. Bohenko

Application: Obtaining Real Property for Historic Monument Purposes

Thomas J. McIntyre Federal Building

80 Daniel Street, Portsmouth, NH

July 15, 2019

APPENDIX A

Legal Description and Map

Application: Obtaining Real Property for Historic Monument Purposes

Thomas J. McIntyre Federal Building

80 Daniel Street, Portsmouth, NH

July 15, 2019

3b. Legal Description

Per the deed dated May 12, 1965 and recorded with the Rockingham County Register of Deeds in Book 1767, Page 127, the parcel is legally bound and described as follows:

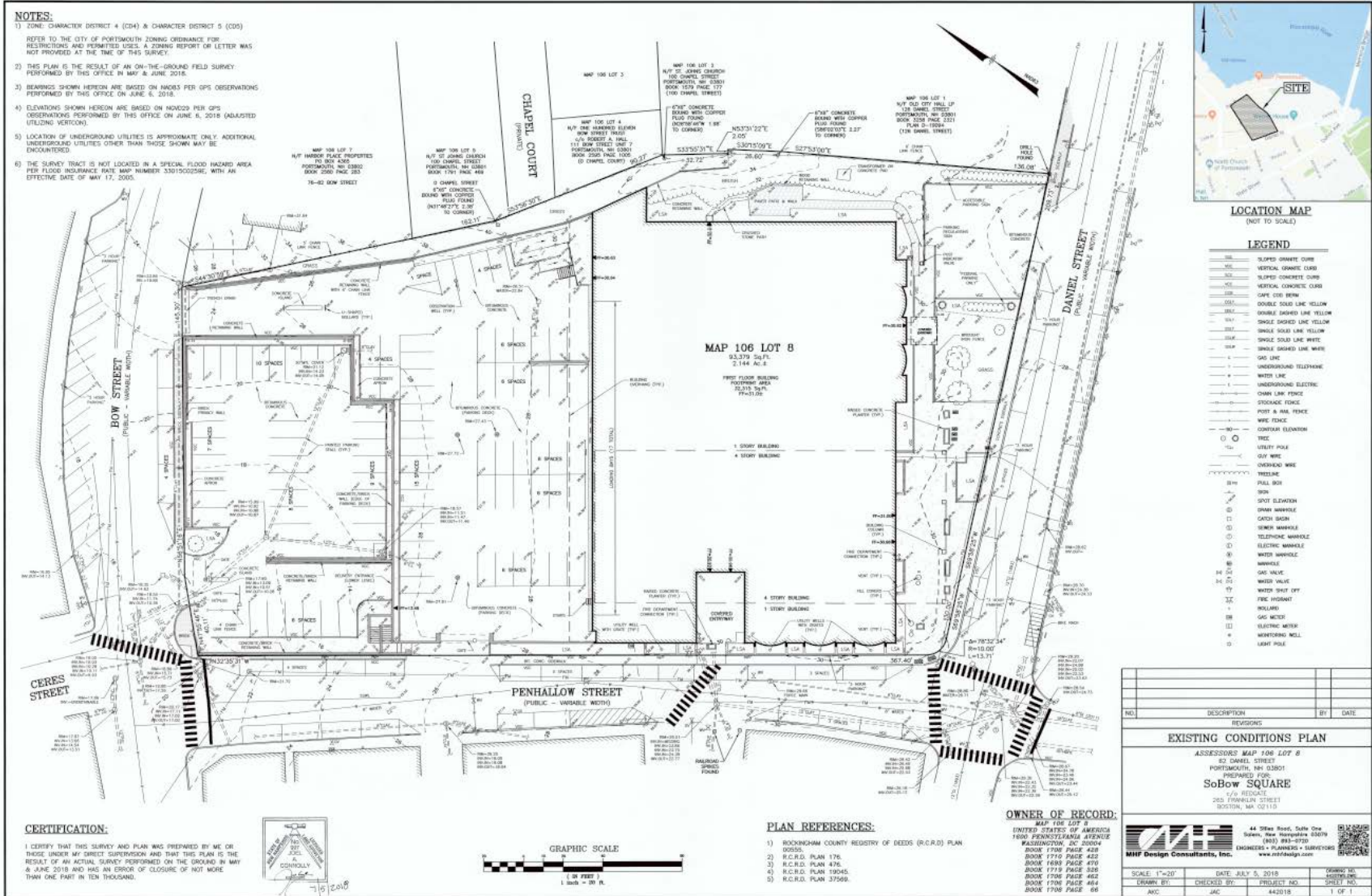
Beginning at a point on the Northerly line of Daniels Street; said point being the southerly corner of land now or formerly owned by the City of Portsmouth thence North thirteen degrees thirty-eight minutes twenty-five seconds West ($N 13^{\circ} 38' 25'' W$) along the land of said City of Portsmouth five and five hundredths (5.05) feet to a point, said point establishes by this deed the new Northerly line of Daniels Street; thence South eighty-four degrees thirteen minutes and no seconds West ($S 84^{\circ} 13' 00'' W$) along the new Northerly line of Daniels Street two hundred thirty-nine and seventy-three hundredths (239.73) feet to the point of tangency of a circle whose radius is ten and no hundredths (10.00) feet; thence along the arc of the circle whose radius is ten and no hundredths (10.00) feet a distance of thirteen and fifty-two hundredths (13.52) feet to the point of tangency with the new Easterly line of Penhallow Street; thence North eighteen degrees twenty minutes and fifty-six seconds west ($N 18^{\circ} 20' 56'' W$) along the new Easterly line of Penhallow Street three hundred sixty-seven and forty hundredths (367.40) feet to the intersection of the Southerly line of Bow Street and Easterly line of Penhallow Street as established by this deed; thence South sixty-two degrees ten minutes and twenty-one seconds West ($S 62^{\circ} 10' 21'' W$) a distance of five and seven hundredths (5.07) feet to the former Northerly line of Penhallow Street; thence South eighteen degrees twenty minutes fifty-six seconds East ($S 18^{\circ} 20' 56'' E$) along the former line of Penhallow Street two hundred eighty-two and seventy-eight hundredths (282.78) feet to a point; thence south nine degrees fourteen minutes sixteen seconds East ($S 9^{\circ} 14' 16'' E$) along the former line of Penhallow Street ninety-three and sixty-eight hundredths (93.68) feet to the formerly Northerly line of Daniels Street; thence North eighty-four degrees forty-two minutes fifty-eight seconds East ($N 84^{\circ} 42' 58'' E$) along the former line of Daniels Street fifty-seven and twenty-one hundredths (57.21) feet to a point; thence South thirty-six degrees twenty-five minutes twenty-eight seconds East ($S 36^{\circ} 25' 28'' E$) along the former line of Daniels Street ten and twenty-five hundredths (10.25) feet to a point; thence North eighty-two degrees twenty-two minutes fifty seconds East ($N 82^{\circ} 22' 50'' E$) along the former line of Daniels Street fifty-two and forty-nine hundredths (52.49) feet to a point; thence North eight degrees thirty-seven minutes forty seconds West ($N 8^{\circ} 37' 40'' W$) along the former line of Daniels Street two and forty-three hundredths (2.43) feet to a point; thence North eighty-two degrees sixteen minutes thirty-three seconds East ($N 82^{\circ} 16' 33'' E$) along the former line of Daniels Street one hundred fifty-two and ninety-five hundredths (152.95) feet to the point of beginning. Said parcel contains four thousand seven hundred forty and seventy-six hundredths (4,740.76) square feet.

3c. Map

Attached hereto on following page.

Application: Obtaining Real Property for Historic Monument Purposes
Thomas J. McIntyre Federal Building
80 Daniel Street, Portsmouth, NH
July 15, 2019

MAP



Application: Obtaining Real Property for Historic Monument Purposes

Thomas J. McIntyre Federal Building

80 Daniel Street, Portsmouth, NH

July 15, 2019

APPENDIX B

Narrative Description & Significance

Application: Obtaining Real Property for Historic Monument Purposes

Thomas J. McIntyre Federal Building

80 Daniel Street, Portsmouth, NH

July 15, 2019

4. Narrative Description

Site & Setting

The Thomas J. McIntyre Federal Building and Post Office, henceforth referred to as the McIntyre Building, at 80 Daniel Street comprises approximately 2.1 acres of land, with 245 feet of frontage on the northwest side of Daniel Street, 378 feet on the northeast side of Penhallow Street, and 186 feet on the southeast side of Bow Street. The property includes the McIntyre Building - a four-story (plus basement level) steel-frame masonry building containing approximately 107,000 square feet (sf) of gross building area with forty-four (44) indoor parking spaces, and a two-tier outdoor parking lot with ninety-one (91) spaces. The property is bounded on the south by Daniel Street, on the west by Penhallow Street, on the north by Bow Street, and by the three-story Old City Hall and Chapel Street on the east. The property drops in elevation thirteen feet from Daniel Street to Bow Street, a grade change of 4%. The area surrounding the McIntyre Building is Portsmouth's historic harbor and waterfront commercial areas and is made up of densely developed blocks of one-to-three story commercial buildings.

Exterior

The McIntyre Building is a four-story, masonry, New Formalist-style building with an asymmetrical southeast (facade) elevation. The building is made up of three distinguishable design components: the main four-story building, the one-story section on Penhallow Street, and the one-story wing on Daniel Street (the location of the current Post Office). It has a ballasted membrane on flat-roof with a deep concrete overhang supported by concrete brackets. Walls are brick and rest on concrete foundations. The primary Daniel Street facade has a recessed first story with a groin vaulted ceiling supported by paneled, concrete columns and segmental arches with paired, off-center fully glazed, aluminum-framed entrance doors. One-story wings at the southwest and northeast sides have secondary entrances and house additional office space and a post office. Most street-level windows are full-height, multi-light, fixed, aluminum sash and upper stories have recessed window openings with wide concrete surrounds. The first floor of the north elevation contains eighteen loading dock bays, one of which has been infilled and contains a single personnel door, that are protected by a cantilevered concrete roof.

On Penhallow and Bow Streets, brick walls capped with concrete (approximately five feet in height) surround and shield the view of the parking; these walls are original to the construction of the building. There are free-standing planters presumed to be placed after September 11, 2001 – six at the Daniel Street entrance and one at the entrance on Penhallow Street. The property has two flag poles: one at the corner of Daniel and Penhallow Streets (original) and a second pole erected in 1997 in front of the current Post Office entrance.

Main Building

The Main Building is a rectangular four-story plus basement, steel framed, red brick and concrete building with a flat roof. It has two primary elevations on Daniel and Penhallow Streets, a secondary elevation on Bow Street, and a tertiary elevation facing Chapel Street.

Above the first floor the building is red brick with a flat concrete fascia and cast concrete brackets with attached precast decorative panels that create parallel raised edges. The brackets on the south and east elevations have been encased in a wire mesh netting since 2008 to capture any falling pieces of failed concrete (first in a temporary black netting and currently in a heavy-duty beige netting). The single-pane, aluminum frame pivoting windows are equally spaced and are aligned both vertically and horizontally within each elevation; they are recessed one foot from the

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exterior plane of the building and are set within exposed-aggregate, unadorned white cast concrete window surrounds.

The main entrance to the building on Daniel Street is recessed two bays behind three flat segmental arches supported by four concrete columns currently encased in stainless steel (to protect against spalling sometime after September 2015); each column is surmounted by a single concrete bracket in the same design as those at the roof line. This covered entryway has a cast concrete groin vaulted ceiling the springing of which rests on single fluted concrete pilasters opposite the columns. There are three full-height glass walls aligned with each arch and vault of the entry surmounted by opaque demi-lune transoms above a concrete lintel; the center glass wall contains the main entry doors. These full-height glass walls are divided into three vertical components which is the common pattern found in all of the full-height glass elements in the McIntyre Building: squares at the top and base with a single pane of glass in between that rises approximately three times the height of the squares; they are either five or six bays wide. At the entry on Daniel Street, a pair of glass and aluminum doors have been inserted to the right and a single glass door (access to a stairwell) is to the left; the original configuration was a pair of doors in both of these openings. In front of the windows to either side of the entrance are balustrades, originally aluminum panels with oval openings, now replaced with simple square wrought iron balusters and railing.

The first floor of the north elevation of the building contains nine of eighteen loading dock bays, which are protected by a cantilevered concrete roof. There are solar panels on top of the mechanical room on the roof.

One-story section along Penhallow Street

This one-story section of the building is set back one bay from the Daniel Street façade and extends northward the entire length of the Main Building. It is red brick with a flat concrete parapet. On the small portion of this section facing Daniel Street is mounted both sides of the Great Seal of the United States, the name of the building (1981), and the corner stone. Nearly centered in the west elevation is a second entrance to the Main Building, originally the 24-hour entrance to the Box Lobby. To the north of this entrance is a flat brick wall, and to the south are three bays of full-height windows alternating with recessed brick wall panels. These full-height windows have the standard pane configuration, although some have been modified to provide for operable casements for natural ventilation.

There is a recessed entrance on the Penhallow Street elevation that is topped with a skylight covered pergola. The standard full-height window wall has been modified to accept a pair of glass and aluminum entry doors to the right and a single glass and aluminum entry door to the left (access to a stairwell). North and south brick walls each has a single-width full-height window. The inclined concrete pavement linking sidewalk to doors is without a level landing at the doors.

One-story wing east of the Main Building, current Post Office

Constructed of red brick with concrete details, this one-story wing is recessed one bay deep from the facade of the Main Building after its three-bay arcade and extends northward its entire length. As originally constructed, the Daniel Street elevation consists of three sections:

The western-most section abutting the Main Building, which was the location of the Service Lobby. This section contains a full-height window of the standard design.

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The center section projecting from the two side sections. This section was originally punctuated by three single-pane, pivoting, deeply recessed windows with concrete window frames alternating with two slightly bowed, full-height windows of the standard design. The center single-paned window was removed, and a new entryway installed in 1997.

The eastern-most section was a flat blank brick wall. A new full-height window replicating the original first floor full-height windows was installed in this wall in 1997.

There are currently four full height windows on the east elevation of this wing. The two center windows are original and helped to provide light to the large Workroom. The two flanking windows are new openings from the 1997 renovation, replacing narrow slit windows providing light into the locker rooms.

There is a flat concrete cornice atop this wing with the exception of the section abutting the Main Building; this section is capped by a taller parapet. The first floor of the north elevation of the building contains nine of eighteen loading dock bays, one of which has been infilled and currently contains a single door, which are protected by a cantilevered concrete roof.

Interior

Main Building

Half of the basement floor area is dedicated to underground parking; the remainder contains spaces and uses typical of a basement: boiler room, trash collection, and storage areas. The parking garage is concrete with concrete encased steel columns. The finishes in the interior spaces are composition floor tile, dropped ceilings, boxed fluorescent light fixtures, and a mixture of fiberboard and concrete block walls.

The entrance vestibule on the ground floor from Daniel Street is accessed through a pair of glass and aluminum doors. The east wall of the vestibule is a full-height, opaque-glass wall with a pair of doors in the center which once led to the Service Lobby in the one-story wing that currently houses the Post Office. The west wall is covered with a veneer of polished white marble panels; a building directory (aluminum case with two locking glass doors, not original) is attached to the wall and a single solid metal door to the left (south) of the directory leads to a full-height stairwell. The north wall of the vestibule is a full-height glass partition wall. Immediately beyond this partition is the Elevator Lobby: to the west is the hallway to the offices in the one-story section on Penhallow Street and two elevators.

On the wall to the left of the elevators is a bronze plaque commemorating the rededication and naming of the building in 1981 (this is likely the location of the original Building Directory). On the west wall opposite the elevators is an original built-in, tripartite aluminum and glass document case. In the early 1960s, document cases began to be added to public lobbies of federal buildings. These cases were designed to hold replicas of the Constitution, the Declaration of Independence, and the Bill of Rights. In the upper corners of the center section of the case are both sides of the Great Seal of the United States in brass, surmounted by a brass American eagle with its wings unfurled. All of the non-box walls are covered with a veneer of polished white marble panels in a pattern that replicates those of the full-height windows: squares at the top and base with a single piece of marble in between approximately three times the height of the squares.

Beyond the Elevator Lobby area is the former Box Lobby; the boxes were located on the east wall and two bulletin boards and Lobby Desks were located on the west wall; there are no extant original fixtures to indicate the use of this space. [The boxes measured 5'6" above the baseboard with plaster wall above to the ceiling.] All of the walls are covered with a veneer of polished white marble panels, as are the walls to the vestibule to the Penhallow Street

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entrance; the marble on the east wall dates from the 1997 renovation. Inside the Penhallow Street entrance, on the north wall, is a bronze plaque commemorating the construction of the building in 1967. On the east wall are doors to the loading dock area, former storage areas for envelopes and mail bags, and modern office spaces (inserted into the former Workroom). All visible floors in the vestibule, lobbies and hallway area are terrazzo; the cornice and ceilings are plaster.

The upper floors of the Main Building were dedicated as office space. Each of these floors contains a north-south hallway immediately adjacent to the elevators. The fiberboard walls are punctuated by doors; there are no windows or transoms in the hallways. On the second floor, directly opposite the elevators is a pair of wood and glass doors providing public access to the Social Security Offices. Restrooms and service closets are clustered near the elevator core and stairwells. Full-height stairwells are located in the northwest and southwest corners of the Main Building; the northwest stairwell provides access to the roof. The floors throughout are carpeted. Each window has a deep window sill; there is no trim.

One-story section along Penhallow Street

Offices and a conference room line the exterior walls of this section. There is a dedicated hallway accessed from near the main entrance on Daniel Street as well as near the entrance on Penhallow Street. The hallway to these spaces is behind the elevators. On the opposite side of the hallway, directly behind the elevators are restrooms and storage rooms; originally an office for a secretary was located here, the only dedicated office in this area on the original drawings. The conference room is paneled in wood and the offices have dropped ceilings with boxed fluorescent lighting features and modern partition walls. There is no conference room identified on the original drawings, so it is presumed that the wood paneling is from a later date. The hallway floor is terrazzo.

One-story wing east of the Main Building, current Post Office

The Service Lobby was located in this wing with six service windows. Past the Service Lobby, along Daniel Street from west to east, there was a reception area; the Post Master's Office; an area with a hall, storage and a toilet; the Assistant Post Master's Office; an office for the Superintendent of Mail; and, behind the blank brick wall, the Women's Swing and Locker Room and Toilet. At the north end of the wing were the Men's Swing Room, Locker Room and Toilets. The center of this wing, and the majority of the floor space, was given over to a Workroom. There were two vaults near the Service Lobby.

In 1997, the public Post Office functions moved to this wing and a separate entrance directly from Daniel Street into this space was created by converting a window opening to a doorway. As far as is visible, all historic finishes were removed with the exception of some of the polished marble wall veneer at the area that was the entrance to the Service Lobby from the vestibule.

7. Significance

The McIntyre property is listed on the National Register of Historic Places as a contributing resource to the Portsmouth Downtown Historic District. The following is taken from the narrative listed under Criterion C – Architecture (1910-1966) of the nomination form:

“The Thomas J. McIntyre Federal Building and Post Office, 62 Daniel Street (1967) was designed in the New Formalist style by architects Koehler & Isaak of Manchester, New Hampshire, who served as agents for the General Services Administration (GSA). The New Hampshire Employment Security published *Mid-20th Century Architecture in NH: 1945–1975* in 2012 in which they use the McIntyre Federal Building as an

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example of Federal Construction and define New Formalism as “classical architecture updated with new technologies and design elements” (Mausolf 2012:76). In particular, elements such as repetitive arches or rounded openings, column supports, and smooth walls, often topped with large, slab-like roofs, were called out as characteristic features of this style. The design for the McIntyre Federal Building integrates the smooth brick wall surfaces of the upper story, with a concrete colonnaded arcade along the first story. The roof is a heavy concrete slab emphasized by large modern brackets (Mausolf 2012:76).

Koehler & Isaak (1946–1970) Koehler & Isaak were a Manchester-based architectural firm of Richard Koehler (1912–1974) and Nicholas Isaak (1913–1975) who practiced from 1946 to 1970. Isaak earned a Bachelor of Architecture from the University of New Hampshire (UNH) in 1936. Koehler received his architecture degree from UNH in 1934. The two served as architects and agents for the GSA and are noted for buildings throughout New Hampshire, including federal buildings in Portsmouth, Concord, Manchester, and Keene; the State of New Hampshire Department of Employment Security building, Concord (1959); the campus plan and 10 buildings at St. Anselm College, Manchester (1962–1969); Liquor Commission building, Concord (1965); and the Roman Catholic Chancery Building, Manchester (1966) (Mausolf 2012:135).

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APPENDIX C

Preservation Plan

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8. Preservation Plan

Feature A: Overall Rehabilitation

8a. Approximate Date of Construction: 1967

8b. Approximate date(s) of Alterations: 1997

8c. Description and Condition:

The Thomas J. McIntyre Federal Building, henceforth referred to as the McIntyre Building, is a four-story (plus basement) New Formalist style steel frame building clad in red brick and concrete located at 80 Daniel Street in Portsmouth, NH. It was constructed in 1967. The McIntyre Building was designed by the architectural firm of Koehler and Isaak for the U.S. government. In 1981, the building was rededicated and named for New Hampshire's U.S. Senator from 1962 to 1979, Thomas J. McIntyre.

The first-floor level of the McIntyre Building extends beyond the rectangular footprint of the upper floors (the Main Building), with one-story wings along Daniel Street (henceforth referred to as the east wing) and Penhallow Street (henceforth referred to as the west wing). The building features an asymmetrical south (main) elevation. Walls are brick and rest on a concrete foundation. The south elevation of the Main Building has a recessed first story (recessed one bay) with a cast-concrete groin-vaulted ceiling supported by paneled, concrete columns and segmental arches with paired off-center fully glazed, aluminum entrance doors. The entrance doors are set within full-height glass walls divided into three vertical components all surmounted by demi-lune transoms. The east and west one-story wings have secondary entrances and house additional office space (west) and a post office (east). Most of the first-floor level windows are full-height, multi-light, fixed, aluminum sash, while upper stories have recessed window openings with protruding concrete surrounds containing single pane pivoting windows. The building is topped with a ballasted membrane flat-roof, with a deep concrete overhang supported by concrete brackets.

The building occupies approximately 107,000 square feet of gross building area, with forty-four indoor parking spaces and a two-tier outdoor parking lot with an additional ninety-one spaces. The interior of the Main Building is subdivided for use as office space and has remained in continuous use by the Federal government since the building's completion in 1967. The interior of the building is laid out around a central core of elevators, stairs and bathrooms. When constructed, all of the upper floors were open space and noted on the drawings as "General Office Space." These floors have been altered over time to suit the changing needs of the organizations using the space. The finishes on the interior of the first floor are different from those of the upper floors, with most of the significant features concentrated on the first floor.

8d. Proposed work and impact on the feature:

The McIntyre Building will be rehabilitated for a mix of uses. The upper three floors of the Main Building will remain in office use, with commercial and retail uses on the ground level including in the one-story east wing and the loading dock area.

The parking area to the rear (north) of the site will receive a mix of open space and new construction that will be compatible in scale, massing and materials with the McIntyre Building and the adjacent neighborhood which is a National Register-listed Historic District. A new road between the existing building and the new construction will provide separation between the two, will preserve the view of the Main Building from Penhallow and Daniels Streets, and the view of St. John's Episcopal Church designed by Alexander Parris and an important visual landmark in the City.

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The project has undergone an extensive public process review involving several public hearings and two formal meetings with the Historic District Commission. The original drawings were made available to the City and the architect but cannot yet be released by the GSA for inclusion in the application due to security concerns of the tenants. Copies of these drawings will be added to the application after the tenants vacate the building. It is because of these same security concerns that very few photos are included of the interior upper floors. More photos will be taken to document these spaces upon the tenants vacating the building and, these too, will be added to the application.

8e. Photo number(s): All

8f. Drawing number(s): All

Feature B: Site (including parking and new construction)

8a. Approximate Date of Construction: 1967

8b. Approximate date(s) of Alterations: 1997

8c. Description and Condition:

The McIntyre Building occupies the southern half of a 2.1-acre parcel in downtown Portsmouth. The site is bounded by Daniel Street to the south, Penhallow Street to the west, Bow Street to north, and the rears of structures on the west side of Chapel Street to the east. With the construction of the McIntyre Building and clearance of land for its associated parking, the site has been significantly altered over time, specifically with regards to the overall reduction of public outdoor space. The site is bounded on three sides by city-owned, concrete sidewalks. The grade of the site drops thirteen feet in elevation from Daniel Street to Bow Street, a change of 4%.

A new brick portico was constructed in 1997 when the Post Office moved to the one-story wing and created a new entrance by enlarging a former window. It is four red brick piers supporting a pyramidal Plexiglas skylight.

There is a small outdoor area with shrubs, grass, a brick path, and a picnic table along the east elevation of the east wing. The path ends at the wall of the loading docks.

Concrete planters are located along the perimeter of the building and the site. The original architectural planters were cast-concrete and crudely integrated into McIntyre's expressed foundation wall design at street level. Two other locations were surrounded by granite curbs that were not integrated with the foundation walls architecturally but were laid to follow the slope of the adjacent pavements. Half of the raised concrete beds in the Box Lobby entrance have been removed- presumably as obstructions to public access.

The north half of the property is occupied by parking, with a two-tiered indoor parking facility as well as surface parking. Five-foot tall brick walls capped with concrete along Penhallow and Bow Streets surround and shield the view of the parking area. There are three points of egress to/from the parking: one on Penhallow Street and two on Bow Street.

The city blocks immediately surrounding the McIntyre Building are densely developed, with most buildings built to the property lines and generally three stories tall.

The site is in good condition.

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8d. Proposed work and impact on the feature:

The existing plaza in front of the building will remain, be regraded to be made code compliant and, where necessary, repaved to match existing.

The informal, granite-curbed planting bed (1967) on Daniel Street will be retained if it can be integrated into the revised ADA-compliant plaza.

The concrete mechanical areaway surrounds and sidewalk planters along Penhallow Street will be retained, while the granite-curbed planting bed flanking the original mailing platform, and the remnants of the original concrete planters at the recessed entrance to the former Box Lobby, will be removed to allow for access.

The flag pole located at the corner of Daniel & Penhallow streets will be retained, while the ca.1997 flag pole located at the East Wing will be removed.

The 1997 freestanding entry portico at the entrance to the east wing will be demolished.

A new limited access, vehicular road will be constructed immediately north of the McIntyre Building's loading docks and will separate the new construction from the historic structure.

In order to construct the new road, and to allow a proper parking grid in the garage, the existing parking deck and supporting columns below will be demolished and a new slab structure will be built. Due to the amount of ground disturbance at this location, it is unlikely that any archeological resources will be identified, but a 36CFR61 Qualified Archaeologist will be on site during any excavation to address any potential resource identification.

The site north of the McIntyre Building, currently the parking lot, will be redeveloped to hold two new buildings, with several plazas and market areas. These buildings will be mixed use, with some ground floor retail/commercial spaces and residences above, with wide plazas and walkways separating the buildings.

The new buildings will be compatible with both the McIntyre Building and with the existing building fabric in downtown Portsmouth in general, especially in terms of scale, massing, material, and features, such as fenestration grids. The buildings along the streets will be three stories plus an occupied fourth floor with roof dormers are generally found on historic buildings in the district. Roofs will be a combination of pitched and hipped and be covered in standing seam metal. The base of the buildings will be cast stone and wood panels at the first-floor storefronts to reflect the historic character of the surrounding building and red brick above with brick sills and lintels.

The new construction will be set at the sidewalk along Penhallow and the northeast corner of the site on Bow Street. The northwest corner of the site at Bow and Penhallow Streets will be a hardscaped open plaza with some plantings that will be connected to the new road by a passage that runs north to south through the center of the site. At the intersection is a plaza that will provided a physical and visual connection between the historic buildings and new construction while clearly separating new from old.

In order to provide firetruck access to the site, the north east corner of the one-story east wing will be demolished to allow circulation from the new road to Daniel Street. The outdoor area to the east of the east wing will also be converted to an egress lane for emergency vehicles and will connect to Linden Way. The original Post Office parking

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lot on the southeast corner of the site will be removed to support the new fire lane and new walkways will be established for building access.

8e. Photo number(s): 1, 3-5, 7-11, 13-17, 19-23, 26-27

8f. Drawing number(s): Bruner/Cott & Associates, Inc., *McIntyre Project*, 9/13/18, Sheets: D-100

Feature C: Exterior Elevations

8a. Approximate Date of Construction: 1967

8b. Approximate date(s) of Alterations: 1997

8c. Description and Condition:

The McIntyre Building is a four-story, New Formalist-style building. The asymmetrical main elevation faces south onto Daniel Street, with secondary elevations facing west onto Penhallow Street and north onto Bow Street. The tertiary elevation faces east. The building is made up of three distinguishable design components: the main four-story building, the one-story section on Penhallow Street (the “west wing”), and the one-story wing on Daniel Street (the “east wing”). The steel-framed building is clad in red brick set in running bond, and sits upon concrete foundations. The primary elevation of the Main Building, which faces south onto Daniel Street, has a recessed first story (recessed two bays) with a cast concrete groin vaulted ceiling supported by paneled, concrete columns and segmental arches with paired, off-center fully glazed, aluminum-framed entrance doors. One-story wings on the west and east sides have secondary entrances and house additional office space (west wing) and a post office (east wing). On the small portion of this section facing Daniel Street is mounted both sides of the Great Seal of the United States, the name of the building (1981), and the corner stone. Note: when the building is transferred out of federal ownership, these signs must be removed. Eighteen loading dock bays are located on the north elevation, extending across the Main Building and the east wing. All are protected by a cantilevered roof. One of the bays has been infilled and now contains a single personnel door.

Above the first floor, the Main Building is red brick with a flat concrete fascia and cast concrete brackets with attached precast decorative panels that form two parallel raised edges. The brackets on the south and east elevations have been encased in a wire mesh netting since 2008 to capture any falling pieces of failed concrete (first in a temporary black netting and currently in a heavy-duty beige netting).

The exterior elevations are in good condition.

8d. Proposed work and impact on the feature:

Any damaged or deteriorating brick and stone masonry will be repointed to match the original mortar in strength, composition, color, texture, joint width and joint profile. Masonry repairs will be undertaken per guidance in *Preservation Brief 2: Repointing Mortar Joints in Historic Masonry Buildings*. Any cleaning will use the gentlest means possible utilizing PROSOCO Sure Klean or equivalent in accordance with *Preservation Brief 1: Assessing Cleaning and Water-repellent Treatments for Historic Masonry Buildings*. Specifications, cleaning samples and repointing samples will be reviewed and approved by the National Park Service before proceeding with this work. Approved samples will be maintained on site until this work is completed.

Any broken or cracked bricks will be replaced in-kind or repaired to match the original in size, color, finish, strength, and texture.

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Concrete ornamentation and detail will be retained, or replaced in-kind as needed, utilizing guidance in *Preservation Brief 15: Preservation of Historic Concrete*. Additionally, the non-historic stainless-steel wraps around the main columns on the south façade will be removed and the columns repaired in the same manner as the other concrete elements.

Bruner/Cott proposes removal of attached metal lettering and embedded Great Seal faces with repair of red brick facade to match adjacent areas of masonry. The cornerstone is to remain in place. The GSA can direct the City about retrieval and return of removed items.

Cut out and replace to match bricks at vertical fracture on northwest corner of west elevation and remove all wall mounted conduits, brackets and extraneous material.

Where a new opening is cut in the brickwork, the opening will be finished utilizing salvaged brick toothed-in to create a return.

The plastic skylights will be removed from the beams over the entryway on the one-story portion along Penhallow Street to be replaced by shallow-pitched glass panels.

In order to provide required adequate turning radius for passage of emergency vehicles along the new roadway along the east elevation of the East Wing, approximately 1,300 square feet of the northeast corner must be removed (approx. 50'-0" on the north elevation and 26'-0" on the east elevation). This corner of the building is virtually not visible from any public right of way with the exception of from the rear of a parking lot on Chapel Street. Originally this area was the Men's Swing Room, Locker Room and Toilets. All of these original areas and features were removed in the 1997 renovation.

8e. Photo number(s): 1-24, 26-28

8f. Drawing number(s): Bruner/Cott & Associates, Inc., *McIntyre Project*, June 6, 2018, Sheets: A-300, A-301, A-302
Bruner/Cott & Associates, Inc., *McIntyre Project*, 9/13/18, Sheets: D-300, D-301, D-302, D-303

Feature D: Roof

8a. Approximate Date of Construction: 1967

8b. Approximate date(s) of Alterations: 1997

8c. Description and Condition:

The Main Building is topped with a recent ballasted membrane flat-roof. There is a large mechanical room centered on the roof, which is topped with solar panels.

The roof of the one-story east wing is an EPDM roof; the roof on the West Wing is a ballasted membrane roof. The cantilevered roof over the loading docks is also an EPDM roof.

The roofs are in good condition.

8d. Proposed work and impact on the feature:

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Removing the solar panels on top of the mechanical room. Install a small roof deck for tenants of the third floor. Any rails or items on the roof will not be permanent and will be set back as not to be visible from a public way. This work would be an amendment to the City's original Application and, as such, will be reviewed and approved by the National Park Service prior to any construction.

In the future as roofs fail and need to be repaired or replaced, the work will be in kind to the existing.

The majority of the roofs on the east and west wings as well as the roof over the loading dock will remain and be repaired in kind. A narrow skylight, 6'8" wide by 60' long, will be installed in the East Wing, near the north elevation at the center of the loading dock. The skylight will be low profile and not visible from a public way

8e. Photo number(s): 13-15, 66

8f. Drawing number(s): Bruner/Cott & Associates, Inc., *McIntyre Project*, June 6, 2018, Sheets: A-106
Bruner/Cott & Associates, Inc., *McIntyre Project*, 9/13/18, Sheets: D-105

Feature E:

Entrances and Windows

8a. Approximate Date of Construction: 1967

8b. Approximate date(s) of Alterations: 1997

8c. Description and Condition:

West Wing

There are street-level windows in the West Wing along Daniel Street (6, 7 & 8 from north to south) that are full-height, multi-light, fixed, aluminum sash storefront systems that are slightly bowed, with later operators added to each and multi-light transoms. To the north of window 6 is a deeply recessed entryway (3) set with paired aluminum and glass doors.

Main Building

The main entrance (11), located on the south elevation of the Main Building, features a set of paired, fully glazed aluminum-framed doors. A single leaf, fully glazed, aluminum-framed door (6) is located to the west of the main entrance. The main entrance and single entrance are set within a full-height, multi-light, fixed, aluminum storefront system. The main entrance (11) is flanked by full-height, multi-light, fixed, aluminum storefront systems to the east (9) and west (12).

The upper floors of the Main Building are characterized by a regular fenestration grid, providing visual interest along the otherwise simple exterior. Upper stories have recessed window openings with wide concrete surrounds; the windows are single panes of glass.

East Wing

The south elevation of the east wing has a central entrance (17) with a free-standing brick portico that was added in 1997. The entrance is flanked by two full-height, multi-light, fixed, aluminum sash storefront systems that are slightly bowed (windows 16 and 18) to the east and west. To the west of window 16 is an original narrow slit window

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with a concrete surround (15) and to the east of window 14 is an original narrow slit window with a concrete surround (19). The last bays to the east and west also feature full-height, multi-light, fixed, aluminum sash storefronts systems, one in each bay (windows 13 and 21). The center portion of the elevation projects out one-bay and on each side of the projecting section, one east and one west, there is a single full height window with a bottom panel of black plastic and a transom of the same (windows 10 and 16).

There are currently four full height windows on the east elevation of this wing. The two center windows (18 and 19) are original. The two flanking windows (21 and 24) are new openings from the 1997 renovation, replacing narrow slit windows. The north end of the east wing projects one bay and has a full height window that was added in 1997 (window 25).

Loading Dock

The first floor of the north elevation contains eighteen loading dock bays, one of which has been infilled and contains a single personnel door. The docks span from east to west across the north elevation of the main building and east and west wings.

Entrances and windows are in good to fair condition.

8d. Proposed work and impact on the feature:

West Wing

The existing recessed entryway along Penhallow Street will be retained and the full-height aluminum window wall will be repaired and receive new code compliant doors to match the appearance of the historic doors at this location. New aluminum windows replacing existing windows along the existing brick walls that face north and south on both sides of the recessed entryway.

Windows 6, 7 and 8 will be retained. Clear safety film will be added to the glass.

Main Building

The main entrance (11) will be retained and the full-height aluminum window wall will be repaired and receive new code compliant doors to match existing. Windows 9 and 12 will be retained. Clear safety film will be added to the glass.

East Wing

The south elevation will remain to the depth of its first structural bay, with removal of the 1997 Post Office's brick entrance vestibule and introduction of accessible entrance doors. Window 13 will be removed to provide a new entry to the public spaces in this wing. The new opening will be full-height, aluminum-frame, with a pair of double doors and a two-pane transom above each door.

The remaining windows, 14-16, 18-21 and 22-24 will be retained and repaired. Window 25 will be demolished as this wing will be removed for firetruck access.

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Loading Docks

The first five existing loading dock doors, bays 1-5, from the west of the main building will be removed and receive a combination of new storefront system to simulate the historic loading dock doors and a new retail entrance.

The remainder of the loading dock wall to the east of the brick pier next to loading bay door 5 will be removed and a new glass storefront system from loading dock door 16 towards the east will be installed in the same plane as the removed wall. The 1967 cantilevered canopy will be retained from Penhallow Street to the western edge of the East Wing.

A new opening will be cut in the west elevation of enclosed loading docks. The opening will be infilled with a new storefront system that includes entry doors and sidelights.

Aluminum storefront will be used throughout the loading dock area, from infilling the garage door opening to the new enclosed area at the northeast area of the loading bay, as well as new opening.

Upper-Story Windows

Existing upper-story aluminum pivot windows will be abated, retained and repaired where necessary, though they will not be operable. New aluminum single pane low-e glass storm windows will be installed on the interior. Windows fit the opening and be removable and reversible

8e. Photo number(s): 1, 3-24, 26-27

8f. Drawing number(s): Bruner/Cott & Associates, Inc., *McIntyre Project*, June 6, 2018, Sheets: A-300, A-301, A-302
Bruner/Cott & Associates, Inc., *McIntyre Project*, 9/13/18, Sheets: D-300, D-301, D-302, D-303

Feature F: Stairs and Elevators

8a. Approximate Date of Construction: 1967

8b. Approximate date(s) of Alterations:

8c. Description and Condition:

Full-height stairwells are located in the northwest and southwest corners of the Main Building; the northwest stairwell provides access to the roof.

The elevator lobby is located at the interior of the main entry vestibule along the Daniel Street entrance, in the Main Building. The elevators provide access to all floor levels.

The stairs and elevators are in good condition.

8d. Proposed work and impact on the feature:

All existing stairs and elevators will be retained and will remain in use. Elevator cabs will be refurbished. Guard rails and stair nosing will be modified to comply with city's building codes.

8e. Photo number(s): 55, 65

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July 15, 2019

8f. Drawing number(s): Bruner/Cott & Associates, Inc., *McIntyre Project*, June 6, 2018, Sheets: A-100, A-101, A-102, A-103, A-104, A-105

Bruner/Cott & Associates, Inc., *McIntyre Project*, 9/13/18, Sheets: D-101, D-102, D-103, D-104, D-105

Feature G: First Floor

8a. Approximate Date of Construction: 1967

8b. Approximate date(s) of Alterations: 1997

8c. Description and Condition:

The first floor of the McIntyre Building holds the primary publicly accessible spaces of the building, as well as the most significant remaining historic finishes.

Main Building

The main entrance to the building is at the southern end of the first floor of the Main Building, at the interior of the Daniel Street entrance. The entrance is set within a vestibule, enclosed by a pair of glass and aluminum doors. The east wall of the vestibule is a full-height glass wall with a pair of doors in the center, which lead to the Post Office located in the East Wing. The doors are blocked by a publication rack as a new separate public entrance to the Post Office was created in 1997. The west wall is covered with a veneer of polished white marble panels; a non-original aluminum case holding a building directory is attached to the wall. A single solid metal door to the left (south) of the directory leads to a full-height stairwell. The north wall of the vestibule is a full-height glass partition wall.

Immediately beyond the full-height glass partition wall is the Elevator Lobby: to the west is the hallway to the offices in the West Wing and the two elevators. On the wall to the left of the elevators is a bronze plaque commemorating the rededication and naming of the building in 1981. On the west wall opposite the elevators is an original built-in, tripartite aluminum and glass document case. In the upper corners of the center section of the case are both sides of the Great Seal of the United States in brass, surmounted by a brass American eagle with its wings unfurled. All of the walls are covered with a veneer of polished white marble panels in a pattern that replicates those of the full-height windows, with squares at the top and base with a single piece of marble in between approximately three times the height of the squares.

Beyond the Elevator Lobby area is the former Box Lobby. All of the original walls, along the west side lobby are original and are covered with a veneer of polished white marble panels, as are the walls to the vestibule to the Penhallow Street entrance. The marble on the southeast corner of the lobby dates from the 1997 renovation. The remaining walls in the northeast corner of the lobby are later GWB from 1997 when the mailboxes were moved into the east wing. On the east wall are doors to the loading dock area, former storage areas for envelopes and mail bags, and modern office spaces, which were inserted into the former Workroom.

All visible floors in the vestibule, lobbies and hallway area are of terrazzo. The cornice and ceilings are plaster.

West Wing

Offices and a conference room are located along the perimeter of the West Wing. There is a dedicated hallway to these offices accessed from near the main entrance on Daniel Street as well as near the entrance on Penhallow

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Street. The hallway to these spaces is behind the elevators. On the opposite side of this hallway, directly behind the elevators, are restrooms and storage rooms. The walls of the conference room are covered with later wood panels, and the offices have dropped ceilings with boxed fluorescent lighting features and modern partition walls. The hallway floor is terrazzo.

East Wing

The East Wing serves as the current location of the Post Office. The original Service Lobby was located in this wing with six service windows. Past the Service Lobby, along Daniel Street from west to east, there was a reception area; the Post Master's Office; an area with a hall, storage and a toilet; the Assistant Post Master's Office; an office for the Superintendent of Mail; and, behind the blank brick wall, the Women's Swing and Locker Room and Toilet. At the north end of the wing were the Men's Swing Room, Locker Room and Toilets. The center of this wing, and the majority of the floor space, was given over to a Workroom. There were two vaults near the Service Lobby. (see copies of original drawings)

In 1997, the public Post Office functions moved to this wing and a separate entrance from the exterior directly into this space was created by converting a window opening to a doorway. All historic finishes were removed at that time, with the exception of some of the polished marble wall veneer at the area that was the entrance to the Service Lobby from the vestibule.

The first floor is in good condition.

8d. Proposed work and impact on the feature:

The first floor of the McIntyre Building will be rehabilitated as the lobby for the upper floor office space and new retail uses along Penhallow Street. The vestibule will be retained in its entirety. The GSA will direct the City about removal and return of brass faces of the Great Seal and brass American eagle. All interior walls, except those that bound the main entrance lobby and elevator core, will be demolished. All new partitions will be of metals studs and GWB. Ceilings in historically finished spaces will remain finished at original heights while ceilings in former industrial spaces will remain exposed. Restrooms will remain and be updated to meet current building codes. The retail spaces will not be fully defined until tenants are identified. Tenants will be required to adhere to tenant fit out guidelines that meet the Secretary of the Interior's *Standards for Rehabilitation*.

West Wing

All terrazzo floors in the main entrance lobbies will be retained and repaired in kind where necessary.

The bronze plaque on the north wall at the Penhallow Street entrance commemorating the construction of the building in 1967 shall remain visible although remounted in the same general area to accommodate alterations to interior layout.

Interior plaques related to 1981 re-dedication are to be relocated to wall areas adjacent to the elevator lobby.

Main Building

All existing marble in the main lobby will be retained and repaired in kind where necessary.

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A new 8'x9'-4" opening is created in the northern marble wall.

All terrazzo floors in the main entrance lobbies will be retained and repaired in kind where necessary.

The plaster vaulted ceiling and soffit in the main lobby will be retained and repaired in kind where necessary.

A large opening will be cut in the east wall of the main lobby, constructed in 1997, to allow for access from the West Wing/Penhallow Street lobby to the East Wing.

The original aluminum and glass documents case (1967) on the east wall of the elevator lobby is to be retained.

Interior plaques related to 1981 re-dedication are to be relocated to wall areas adjacent to the elevator lobby.

East Wing

All mechanicals will be in the walls or above ceilings except in the former mail sorting areas, which are more industrial in character, where mechanicals will be exposed.

8e. Photo number(s): 33-54

8f. Drawing number(s): Bruner/Cott & Associates, Inc., *McIntyre Project*, June 6, 2018, Sheets: A-101

Bruner/Cott & Associates, Inc., *McIntyre Project*, 9/13/18, Sheets: D-102

Feature H: Second through Fourth Floors

8a. Approximate Date of Construction: 1967

8b. Approximate date(s) of Alterations: 1997

8c. Description and Condition:

The second through fourth floors are subdivided for use as office space.

As was typical of most mid-century federal office buildings, the upper floors are simple in design, with few architectural flourishes. Each floor is bisected by a hallway running north-to-south immediately adjacent to the center core which includes the elevators, stairs and bathrooms. Simple doors are located off the hallway and provide access to the offices. On the second floor, a pair of wood and glass doors located directly across from the elevators provides public access to the Social Security Offices. Restrooms and service closets are clustered near the elevator core and stairwells on each floor. The floors throughout the second through fourth floors are covered with later carpeting. Along the perimeter walls, each window has a deep window sill, with no trim. The upper floors have been remodeled several times over the course of the twentieth century, with updates to both the floor plans and the finishes. Ceilings are dropped. Walls are constructed of a wall system that is not permanent.

The second through fourth floors are in good condition.

8d. Proposed work and impact on the feature:

The second through fourth floors will be rehabilitated for continued use as office spaces. The center core will remain. The tenant spaces will not be fully defined until tenants are identified. Tenants will be required to adhere to tenant

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80 Daniel Street, Portsmouth, NH

July 15, 2019

fit out guidelines that meet the Secretary of the Interior's *Standards for Rehabilitation*. Tenant guidelines will be developed for inclusion in all leases. These guidelines will be reviewed and approved by the National Park Service prior to the execution of any lease. At a minimum, they will include the requirements (as applicable to each tenant) that all perimeter walls remain covered, that any new ceilings must remain above the window heads, all mechanical systems will be in the walls or above the ceilings, all new partitions will be of metal studs and GWB, and all floors will be covered in carpet; windows will not allowed to be blocked in any manner.

All existing partitions will be removed to create an open and flexible floor plan around the center core.

All mechanicals will be in the walls or above ceilings.

All new partitions will be of metals studs and GWB.

Floors will be covered in carpet

8e. Photo number(s): 55-65

8f. Drawing number(s): Bruner/Cott & Associates, Inc., *McIntyre Project*, June 6, 2018, Sheets: A-102, A-103, A-104
Bruner/Cott & Associates, Inc., *McIntyre Project*, 9/13/18, Sheets: D-103, D-104



1. West and south elevations, facing northeast



2. South elevation, facing north



3. South elevation, facing north



4. South elevation, facing east



5. South elevation, facing northeast



6. East elevation, facing west



7. East and south elevations, facing west



8. East and south elevations, facing northwest



9. South and east elevations, facing northwest



10. Site and south elevation, facing northwest



11. East and south elevations, facing north



12. East and north elevations, facing southwest



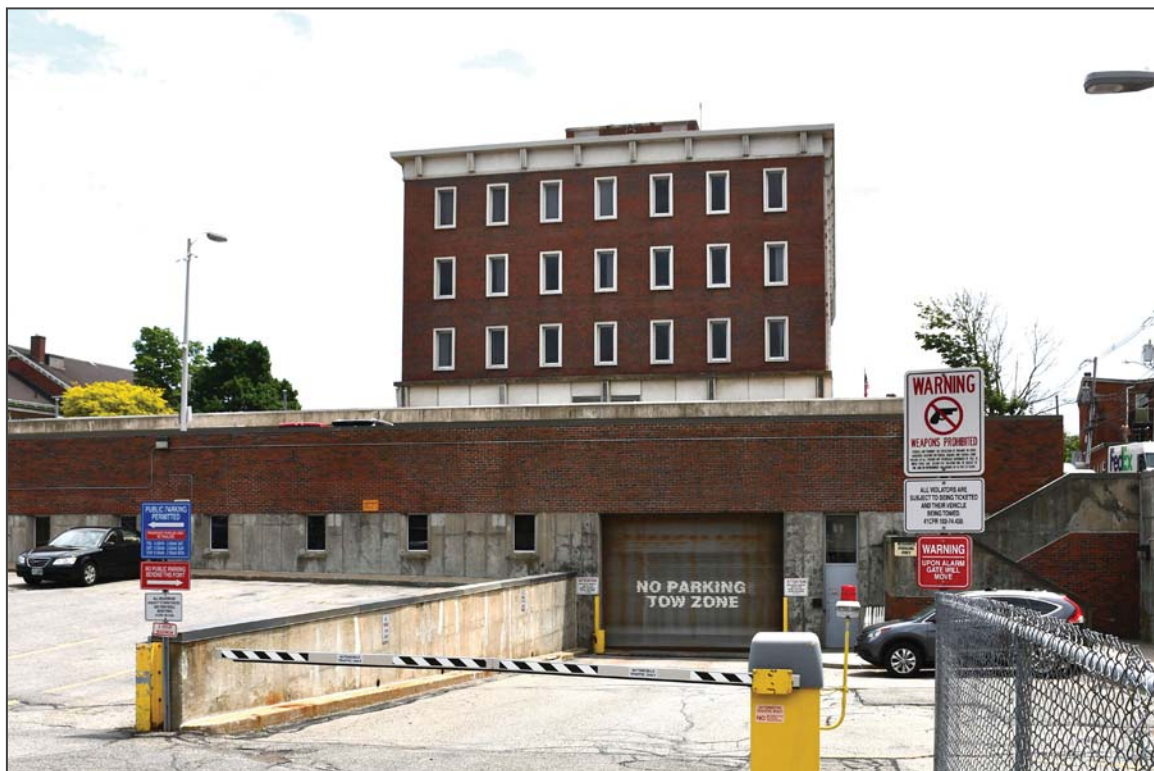
13. East and north elevations, facing southwest



14. East elevation, facing southwest



15. East and north elevations, facing southwest



16. North elevation, facing south



17. North elevation, facing southeast



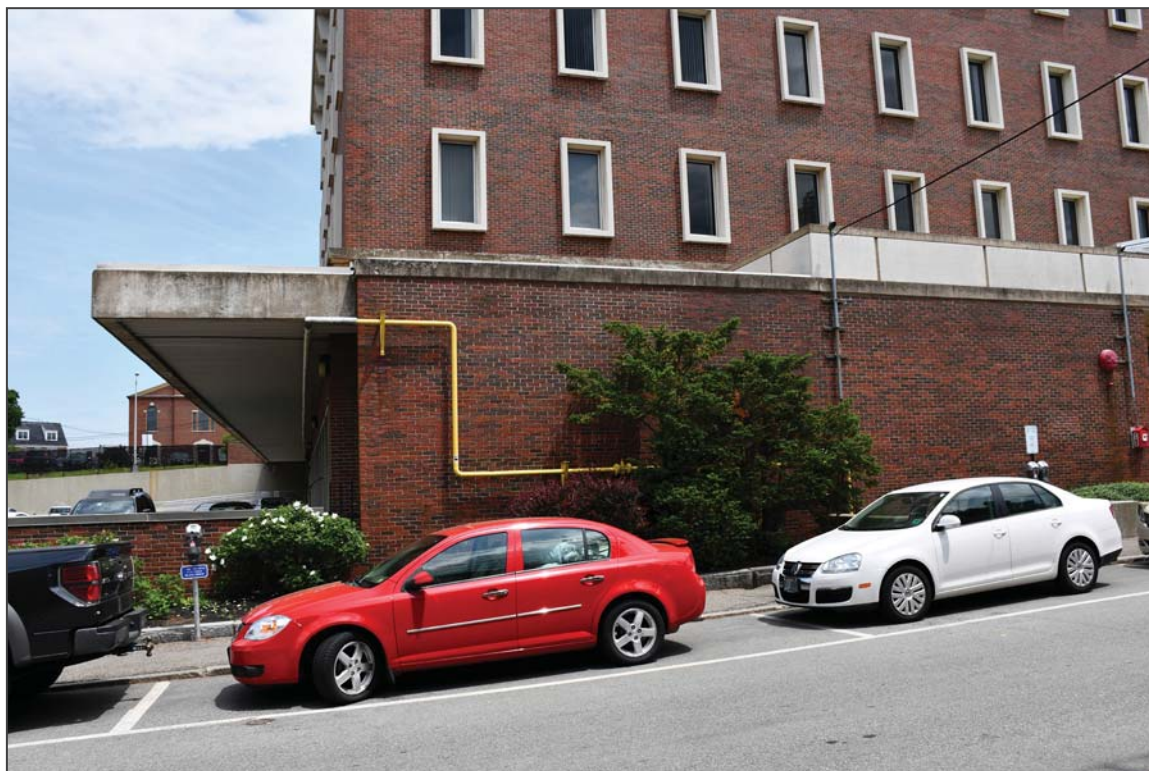
18. North elevation, facing southeast



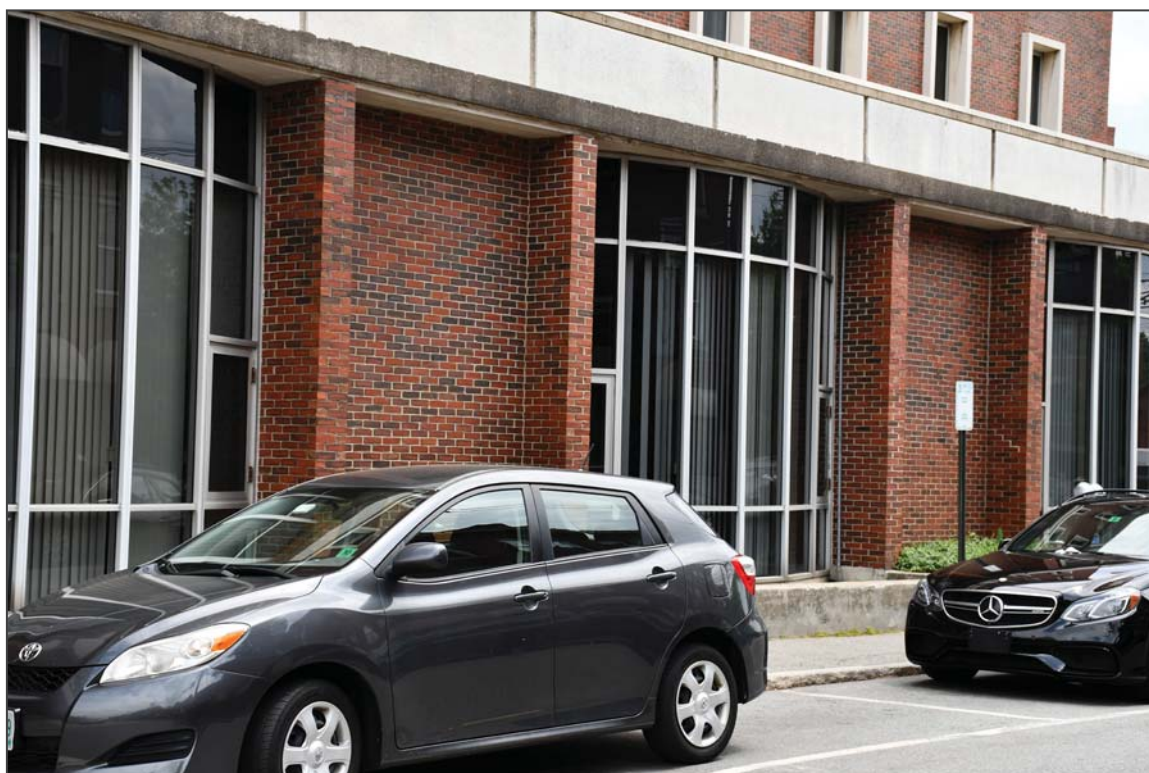
19. North elevation, facing southeast



20. North and west elevations, facing southeast



21. West elevation, facing southeast



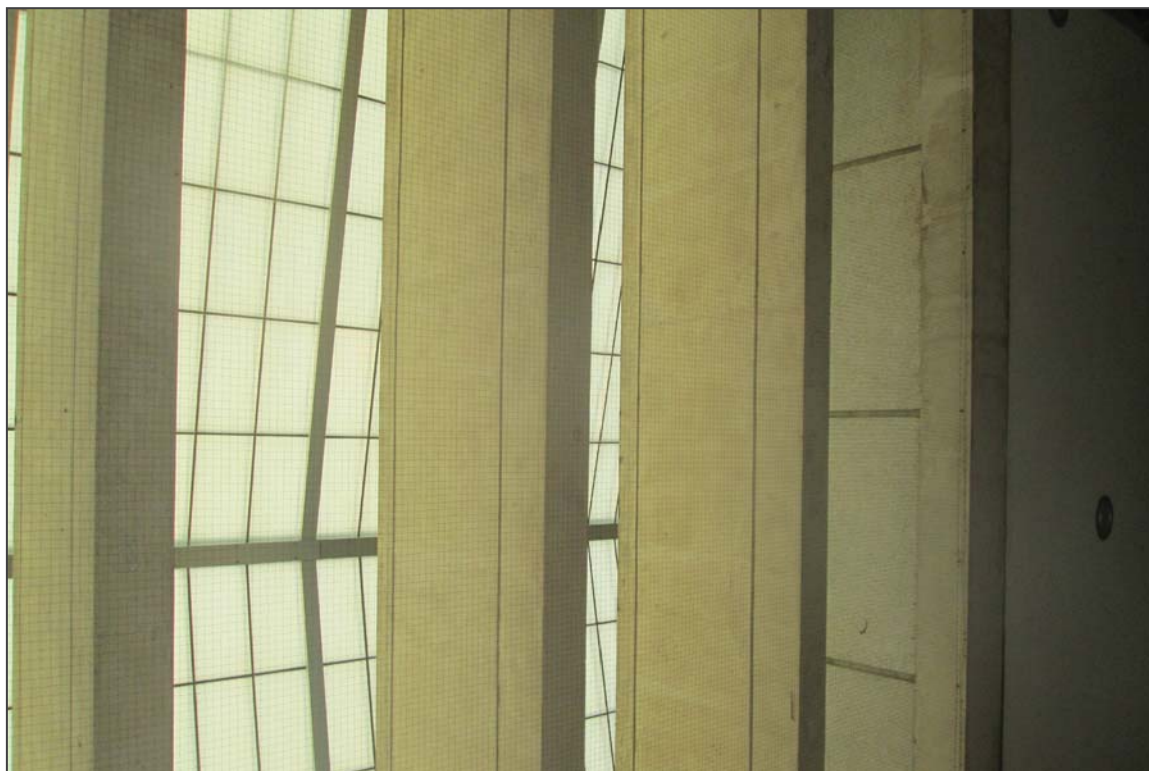
22. West elevation, facing southeast



23. West elevation, facing east



24. West elevation, facing east



25. West elevation entrance covering



26. West elevation, facing northeast



27. West elevation, facing east



28. South elevation column detail



INTERIOR PHOTOS – NOT FOR PUBLIC VIEW



30. Basement, facing north



INTERIOR PHOTOS – NOT FOR PUBLIC VIEW



32. Basement, facing northeast



INTERIOR PHOTOS – NOT FOR PUBLIC VIEW



34. Ground floor, facing northwest



INTERIOR PHOTOS – NOT FOR PUBLIC VIEW



36. Ground floor, facing southeast



INTERIOR PHOTOS – NOT FOR PUBLIC VIEW



38. Ground floor, facing west



INTERIOR PHOTOS – NOT FOR PUBLIC VIEW



40. Ground floor, facing northwest



INTERIOR PHOTOS – NOT FOR PUBLIC VIEW



42. Ground floor, facing northeast



INTERIOR PHOTOS – NOT FOR PUBLIC VIEW



44. Ground floor, facing southwest

INTERIOR PHOTOS – NOT FOR PUBLIC VIEW



46. Ground floor, facing northwest



INTERIOR PHOTOS – NOT FOR PUBLIC VIEW



48. Ground floor, facing north



INTERIOR PHOTOS – NOT FOR PUBLIC VIEW



50. Ground floor, facing northeast



INTERIOR PHOTOS – NOT FOR PUBLIC VIEW



52. Ground floor, facing northwest



INTERIOR PHOTOS – NOT FOR PUBLIC VIEW



54. Ground floor, facing north



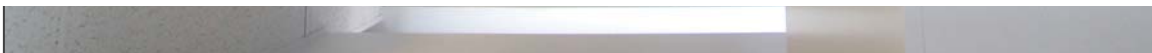
INTERIOR PHOTOS – NOT FOR PUBLIC VIEW



56. Third floor, facing north



INTERIOR PHOTOS – NOT FOR PUBLIC VIEW



58. Third floor, facing north



INTERIOR PHOTOS – NOT FOR PUBLIC VIEW



60. Fourth floor, facing north



INTERIOR PHOTOS – NOT FOR PUBLIC VIEW



62. Fourth floor, facing west



INTERIOR PHOTOS – NOT FOR PUBLIC VIEW



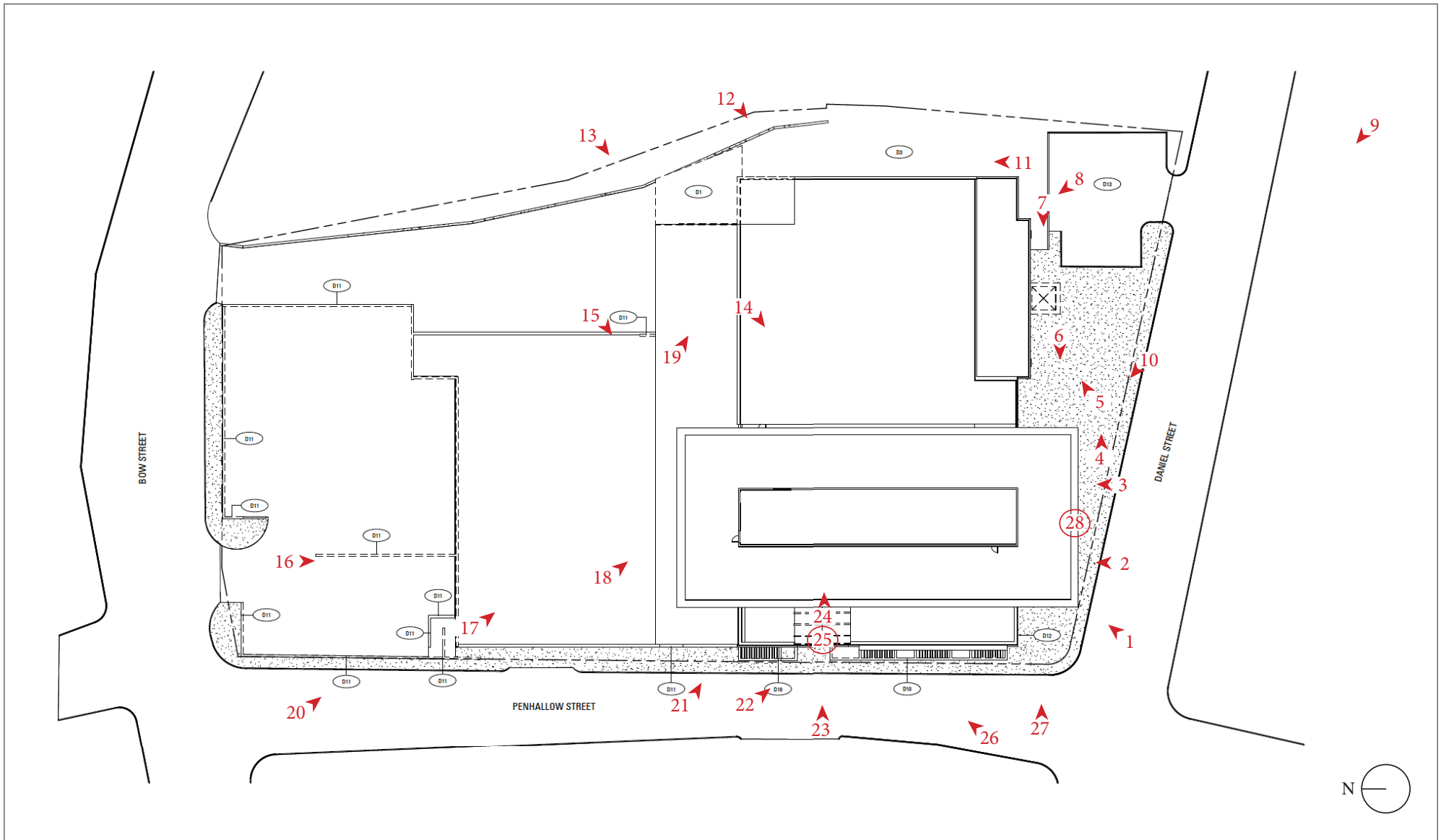
64. Fourth floor window detail



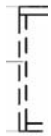
INTERIOR PHOTOS – NOT FOR PUBLIC VIEW



66. Roof, facing south



McIntyre Floor Plans – Not for Public View



McIntyre Floor Plans – Not for Public View



Portsmouth, NH 03801



Monument Program
on Plan Photo Key
Ground Floor Plan

McIntyre Floor Plans – Not for Public View



Portsmouth, NH 03801

Monument Program
on Plan Photo Key
Third Floor Plan

McIntyre Floor Plans – Not for Public View



McIntyre Floor Plans – Not for Public View



Portsmouth, NH 03801



Monument Program
on Plan Photo Key
Roof Plan

McIntyre Floor Plans – Not for Public View



Portsmouth, NH 03801



Monument Program
Window Photo Key
Ground Floor Plan

McIntyre Floor Plans – Not for Public View

LG

LF

LE

80 DANIEL ST
ED

LC

LB
LA

B.D
B.C

B.B
B.A

1 OVERALL G
SCALE: 1/8" = 1'-0"

No.	Date	Revised

Date June 6, 2018
Scale 1/8" = 1'-0"
Project Number 17.021
Drawn By KWVRLK

MCINTYRE PROJECT

80 Daniel Street
Portsmouth, NH



NOT FOR CONSTRUCTION

OVERALL FLOOR PLAN -
GROUND FLOOR

A-100

McIntyre Floor Plans – Not for Public View

Rev.	Date	Notes

Date June 6, 2018
Scale 1/8" = 1'-0"
Project Number 17.021
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MCINTYRE PROJECT

80 Daniel Street
Portsmouth, NH



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OVERALL FLOOR PLAN - 1ST FLOOR

A-101

11/02/18 8:42:37 AM

IF THIS SHEET IS NOT 36" x 42" IT HAS BEEN REDUCED OR ENLARGED.

1 OVERALL F1R
SCALE: 1/8" = 1'-0"

McIntyre Floor Plans – Not for Public View

Bruner/Cott

Bruner/Cott & Associates, Inc.
130 Prospect Street
Cambridge, Massachusetts 02139
617 492 8400
www.brunercott.com

Architecture/Urban Design
Preservation/Landscape Architecture
Space Planning/Interior Design

Rev	Date	Notes

Date: June 6, 2018
Scale: 1/8" = 1'-0"
Project Number: 17-021
Drawn By: KW/VR/LK

MCINTYRE PROJECT

PERMIT SET
80 Daniel Street
Portsmouth, NH



NOT FOR CONSTRUCTION

OVERALL FLOOR PLAN - 2ND FLOOR

A-102

McIntyre Floor Plans – Not for Public View

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Rev.	Date	Notes

Date June 6, 2018
Scale 1/8" = 1'-0"
Project Number 17.021
Drawn By KWVRLK

MCINTYRE PROJECT

PERMIT SET
80 Daniel Street
Portsmouth, NH



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OVERALL FLOOR PLAN - 3RD FLOOR

A-103

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McIntyre Floor Plans – Not for Public View

Rev.	Date	Notes

Date June 6, 2018
Scale 1/8" = 1'-0"
Project Number 17.021
Drawn By KWVRLK

MCINTYRE PROJECT

PERMIT SET
80 Daniel Street
Portsmouth, NH



OVERALL FLOOR PLAN - 4TH FLOOR

A-104

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11/2017/15/2017/16



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 130 Prospect Street
 Cambridge, Massachusetts 02139
 617 492 8400
 www.brunercott.com

Architectural/Urban Design
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Rev.	Date	Remarks

Date	June 6, 2018
Scale	1/8" = 1'-0"
Project Number	17.021
Drawn By	KWVRLK

MCINTYRE PROJECT

PERMIT SET
 80 Daniel Street
 Portsmouth, NH



NOT FOR CONSTRUCTION

OVERALL FLOOR PLAN - 5TH & 6TH FLOOR

A-105

2 OVERALL 6TH FLOOR PLAN
 SCALE: 1/8" = 1'-0"

McIntyre Floor Plans – Not for Public View



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Space Planning/Interior Design

Rev.	Date	Notes

Date June 6, 2018
Scale 1/4" = 1'-0"
Project Number 17.021
Drawn By KW/VR/LK

MCINTYRE PROJECT

PERMIT SET
80 Daniel Street
Portsmouth, NH



NOT FOR CONSTRUCTION

OVERALL FLOOR PLAN - ROOF
FLOOR

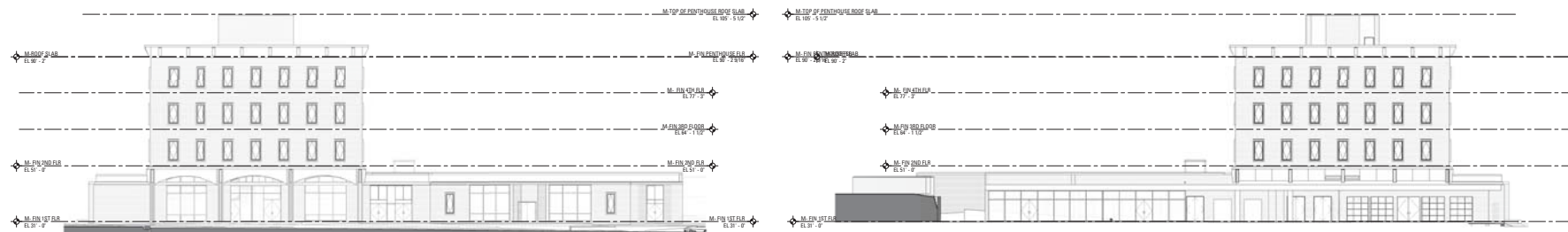
A-106



4 NORTH ELEVATION ABOVE MCINTYRE
 SCALE: 1/8" = 1'-0"



3 WEST (PENHALLOW STREET) ELEVATION
 SCALE: 1/8" = 1'-0"



1 SOUTH (DANIEL STREET) ELEVATION
 SCALE: 1/8" = 1'-0"

2 NORTH (LINDEN WAY) ELEVATION
 SCALE: 1/8" = 1'-0"

Rev.	Date	Revised

Date: June 6, 2018
 Scale: 1/8" = 1'-0"
 Project Number: 17-021
 Drawn By: KWW/RLX

MCINTYRE PROJECT

80 Daniel Street
 Portsmouth, NH

NOT FOR CONSTRUCTION

EXTERIOR ELEVATIONS

11-2017 (3) 24 (A) 1/4" IF THIS SHEET IS NOT 36" x 42" IT HAS BEEN REDUCED OR ENLARGED.

Rev.	Date	Notes

Date: June 6, 2018
Scale: 1/8" = 1'-0"
Project Number: 17.021
Drawn By: KW/VR/LK

MCINTYRE PROJECT

80 Daniel Street
Portsmouth, NH

PRELIMINARY PRICING SET

EXTERIOR ELEVATIONS

A-301



3 EAST ALLEYWAY ELEVATION
SCALE: 1/8" = 1'-0"



4 "LINDEN WAY" RESIDENCE - NORTH ELEVATION (INTERIOR)
SCALE: 1/8" = 1'-0"



1 NORTH (BOW STREET) ELEVATION
SCALE: 1/8" = 1'-0"



2 SOUTH (LINDEN WAY) ELEVATION
SCALE: 1/8" = 1'-0"

Rev.	Date	Notes

Date June 6, 2018
 Scale 1/16" = 1'-0"
 Project Number 17.021
 Drawn By KW/VR/LK

MCINTYRE PROJECT

80 Daniel Street
Portsmouth, NH



4 WEST (ALLEYWAY) ELEVATION
SCALE: 1/16" = 1'-0"

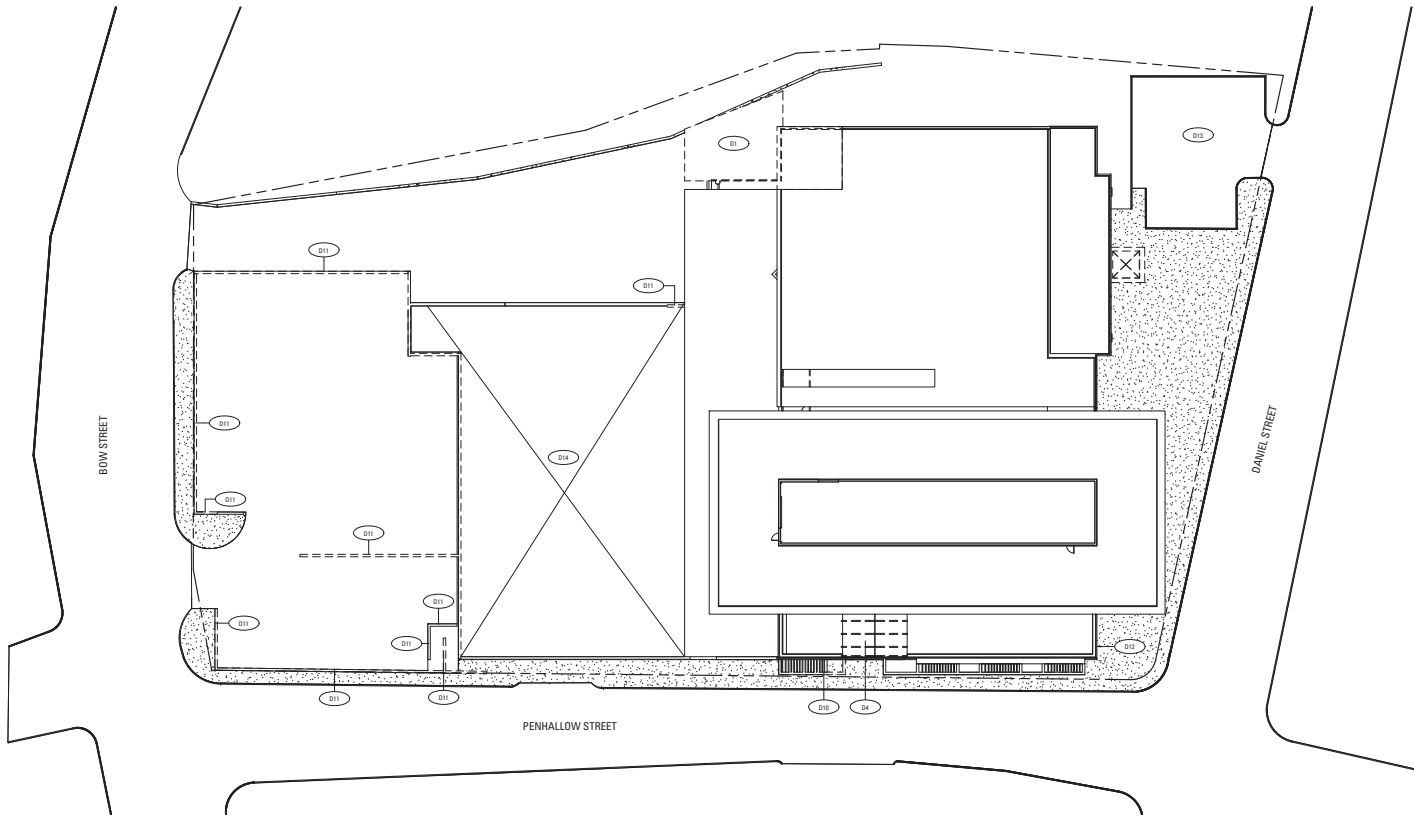


1 EAST MCINTYRE ELEVATION
SCALE: 1/16" = 1'-0"



2 EAST ELEVATION
SCALE: 1/16" = 1'-0"

EXTERIOR ELEVATIONS



1 DEMOLITION SITE PLAN - MCINTYRE BUILDING
SCALE: 1" = 30'-0"

RESTORATION KEY	
ID CODE	RESTORATION ITEM
BR-01	BRICK REPOINTING - ALLOW FOR CUTTING OUT AND REPOINTING CONTINUOUSLY AT 3RD FLOOR RELIEVING ANGLE, AT BASE OF CONCRETE CORNICE, AND ABOVE AND BELOW PROJECTING SLAB BELOW 2ND FLOOR WINDOWS (2000 LF TOTAL). ASSUME REPOINTING FOR 20% OF PRECAST WINDOW SURROUNDS (500 LF).
BR-02	BRICK REPAIR - CUT OUT AND REPLACE-TO-MATCH 100 EA. BRICKS AT VERTICAL FRACTURE AND REMOVAL OF WALL-MOUNTED ELECTRIC CONDUIT BRACKETS IN WEST WING EXTERIOR WALL, AT REMOVAL OF METAL PLAQUES AND LETTERING ON SOUTH. REPAIR ADJACENT BRICK WALL AREAS WHERE NEW OPENINGS ARE CREATED IN PENHALLOW STREET FRONTAGE AT RECESSED ENTRANCE, SOUTHWEST CORNER, AND MAILING PLATFORM AND DANIEL STREET WHERE POST OFFICE ENTRANCES ARE ALTERED, AND AT DEMOLITION MARGIN ON EAST FACADE. ASSUME 120 SF.
CONC-01	CONCRETE CLEANING - CLEAN ALL EXPOSED CONCRETE AT THE ARCADE, ABOVE SINGLE-STORY WINGS, AT FACES OF MAILING PLATFORM ROOF SLAB, AT SLAB PROJECTING BELOW 2ND FLOOR WINDOWS, CLEAN EXPOSED CAST-IN-PLACE CONCRETE CORE SUPPORTS FOR ALL CORNICE BRACKETS. CLEAN PRECAST WINDOW SURROUNDS AT SINGLE STORY EAST WING.
CONC-03	CONCRETE BRACKET REPAIR - DETACH AND REINSTALL FACE-MOUNTED "CAST STONE" CORNICE BRACKET PANELS. ALLOW FOR 5 LOCATIONS.
CONC-04	CONCRETE SURFACE REPAIR - REPAIR SPALLED AND CRACKED PRECAST SURFACES TO MATCH EXISTING. REPAIR ANCHORAGE LOCATIONS AT STAINLESS STEEL COLUMN ENCASEMENT LOCATIONS ON FOUR ARCADE COLUMNS AND RESTORE CONCRETE COLUMN FACES.
IR-01	CLEAN AND PROTECT POLISHED MARBLE WALL PANELS.
IR-02	CLEAN AND PROTECT TERRAZZO FLOOR AND ZINC DIVIDERS.
IR-04	PROTECT AND RETAIN PLASTER CEILING SOFFIT AND VAULT IN ELEVATOR LOBBY AND VESTIBULE.
IR-05	CLEAN AND PROTECT STAINLESS STEEL ELEVATOR DOORS AND FRAME.
IR-06	PROTECT AND RETAIN EXISTING GLAZED PARTITION IN ORIGINAL OPENING.
IR-07	RETAIN AND RELOCATE BRONZE DEDICATION/RE-DEDICATION PLAQUE.
STOR-01	STOREFRONT - RETAIN ALUMINUM 'STOREFRONT', FIXED GLAZING AT 6-PANEL BOWED AND FLAT WINDOWS TO REMAIN AT GROUND FLOOR (8 EA.) INSTALL CLEAR SAFETY FILM ON ALL PANES (2'-6" X 13'-0" HIGH) INCLUDING SPANDREL GLASS.
WIND-01	WINDOW - ALUMINUM PIVOT WINDOWS IN OFFICES (144 EA.) AND POST OFFICE (2 EA.) INSTALL NEW ALUMINUM INTERIOR STORM SASHES TO MATCH EXISTING CLEAR FINISH WITH ALUMINUM FRAME. DEMOUNTABLE. APPROXIMATE PANEL SIZE 1/2" THICK X 2'-10" WIDE X 7'-8" HIGH. NEW LOW-E MISSIVITY GLASS WILL DIFFER BETWEEN TWO SETS OF ELEVATIONS. ASSUME ABATEMENT OF EXISTING GLAZING SEALANT. REPLACE NEOPRENE DRAFT STOPS AROUND EACH SASH.

DEMOLITION KEY

- D1 REMOVE ALL CONSTRUCTED ASSEMBLIES INCLUDING STRUCTURE, BUILDING ENVELOPE, SLAB AND ALL BUILDING SYSTEMS. SUPPORT AND PROTECT ADJACENT STRUCTURES TO REMAIN.
- D2 CAREFULLY REMOVE EXISTING ALUMINUM CURTAIN WALL AND PROTECT OPENING FOR NEW CURTAIN WALL INSTALLATION.
- D3 CUT OPENING AND REMOVE BRICK WALL CLADDING TO ALLOW FOR CONSTRUCTION OF NEW BRICK OPENING.
- D4 REMOVE EXISTING PLASTIC SKYLIGHT AND PROTECT EXPOSED CONCRETE BEAMS.
- D5 CAREFULLY REMOVE EXISTING STAINLESS STEEL CASING AT CONCRETE COLUMNS.
- D6 REMOVE AND SALVAGE PHOTOVOLTAIC PANELS.
- D7 REMOVE BRICK OUTDOOR VESTIBULE INCLUDING FOUNDATIONS.
- D8 REMOVE LOADING DOCK BRICK WALL AND OVERHEAD DOORS. PROTECT COLUMNS AND CANOPY ROOF.
- D9 REMOVE EXISTING PARTITIONS, FLOOR COVERINGS, WALL TILE, CEILINGS, TOILET FIXTURES, AND BUILDING SYSTEMS.
- D10 REMOVE CONCRETE PLANTER. REMOVE RAISED CONCRETE MECHANICAL AREAWAY SURROUND.
- D11 REMOVE BRICK SITE WALL.
- D12 CAREFULLY REMOVE SIGNAGE, SALVAGE FOR GSA.
- D13 REMOVE PARKING LOT AND REGRADE FOR ACCESS PASSAGE.
- D14 REMOVE EXISTING DECK AND SUPPORTING COLUMNS BELOW.
- D15 REMOVE MEZZANINE CATWALK AND ASSOCIATED STRUCTURAL SUPPORT.
- D16 REMOVE ROOF STRUCTURE FOR NEW SKYLIGHT

Rev.	Date	Revised

Date: 09/13/18
Scale: 1" = 20'-0"
Project Number:
Drawn By: Author

MCINTYRE PROJECT

DEMOLITION & RESTORATION SITE PLAN

IF THIS SHEET IS NOT 36" X 48" IT HAS BEEN REDUCED OR ENLARGED.

13/07/18 BR/DTA



McIntyre Floor Plans – Not for Public View

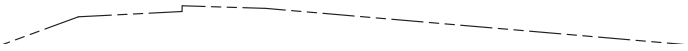
No.	Date	Revised

Date: 09/13/18
 Scale: 1/16" = 1'-0"
 Project Number: _____
 Drawn By: _____ Author: _____

MCINTYRE PROJECT

DEMOLITION & RESTORATION
 BASEMENT PLAN

ID CODE	
BR 01	Bf At SI
BR 02	Bf NI SI
CONC 01	Cc Sl Pf
CONC 03	Cc
CONC 04	Cc SI
IR-01	Cl
IR-02	Cl
IR-04	Pf
IR-05	Cl
IR-06	Pf
IR-07	RE
STOR 01	SI
INSTALL CLEAR SAFETY FILM ON ALL PANES (2'-6" X 13'-0" HIGH) INCLUDING SPANDREL GLASS.	
WIND 01	WINDOW - ALUMINUM PIVOT WINDOWS IN OFFICES (144 EA.) AND POST OFFICE (2 EA.) INSTALL NEW ALUMINUM INTERIOR STORM SASHES TO MATCH EXISTING CLEAR FINISH WITH ALUMINUM FRAME. DEMOUNTABLE. APPROXIMATE PANEL SIZE 1/2" THICK X 2'-10" WIDE X 7'-8" HIGH. NEW LOW-EMISSIVITY GLASS WILL DIFFER BETWEEN TWO SETS OF ELEVATIONS. ASSUME ABATEMENT OF EXISTING GLAZING SEALANT. REPLACE NEOPRENE DRAFT STOPS AROUND EACH SASH.



McIntyre Floor Plans – Not for Public View

No.	Date	Revised

Date: 09/13/18
 Scale: 1/8" = 1'-0"
 Project Number:
 Drawn By: Author

MCINTYRE PROJECT

DEMOLITION & RESTORATION
 GROUND FLOOR PLAN

D-102

ID CODE
BR 01
BR 02
CONC 0
CONC 0
CONC 0
IR-01
IR-02
IR-04
IR-05
IR-06
IR-07
STOR 01
WIND 01

WIND 01: (1) INSTALL CLEAR SAFETY FILM ON ALL FINISHED 1/2" TO 1/4" THICK (EXCEPT) INCLUDING SPANNING GLASS.
 WINDOW - ALUMINUM PIVOT WINDOWS IN OFFICES (144 EA) AND POST OFFICE (2 EA) INSTALL NEW ALUMINUM INTERIOR STORM SASHES TO MATCH EXISTING CLEAR FINISH WITH ALUMINUM FRAME. DEMOUNTABLE. APPROXIMATE PANEL SIZE 1/2" THICK X 2'-10" WIDE X 7'-9" HIGH. NEW LOW-EMISSIVITY GLASS WILL DIFFER BETWEEN TWO SETS OF ELEVATIONS. ASSUME ABATEMENT OF EXISTING GLAZING SEALANT. REPLACE NEOPRENE DRAFT STOPS AROUND EACH SASH.



McIntyre Floor Plans – Not for Public View

Rev.	Date	Remarks

Date	09/13/18
Scale	1/8" = 1'-0"
Project Number	
Drawn By	
Author	

MCINTYRE PROJECT

DEMOLITION & RESTORATION- FLOOR 02

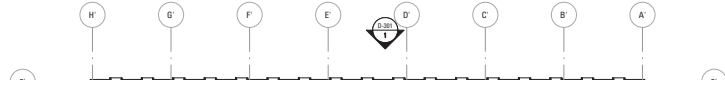
D-103

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ID
B
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LOW-EMISSIVITY GLASS WILL DIFFER BETWEEN TWO SETS OF ELEVATIONS. ASSUME ABATEMENT OF EXISTING GLAZING SEALANT. REPLACE NEOPRENE DRAFT STOPS AROUND EACH SASH.

- D10 REMOVE CONCRETE PLANTER. REMOVE RAISED CONCRETE MECHANICAL AREAWAY SURROUND.
- D11 REMOVE BRICK SITE WALL.
- D12 CAREFULLY REMOVE SIGNAGE, SALVAGE FOR GSA.
- D13 REMOVE PARKING LOT AND REGRADE FOR ACCESS PASSAGE.
- D14 REMOVE EXISTING DECK AND SUPPORTING COLUMNS BELOW.
- D15 REMOVE MEZZANINE CATWALK AND ASSOCIATED STRUCTURAL SUPPORT.
- D16 REMOVE ROOF STRUCTURE FOR NEW SKYLIGHT



McIntyre Floor Plans – Not for Public View

Rev	Date	Notes

Date 09/13/18
 Scale 1/8" = 1'-0"
 Project Number
 Drawn By Author

MCINTYRE PROJECT

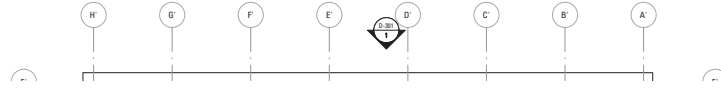
DEMOLITION & RESTORATION-
FLOOR 03 & 04

ID
B
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CO
CO
CO
ST

INSTALL CLEAR SAFETY FILM ON ALL PANES (2'-6" X 13'-0" HIGH) INCLUDING SPANDREL GLASS.

WIND 01	WINDOW - ALUMINUM PIVOT WINDOWS IN OFFICES (144 EA.) AND POST OFFICE (2 EA.) INSTALL NEW ALUMINUM INTERIOR STORM SASHES TO MATCH EXISTING CLEAR FINISH WITH ALUMINUM FRAME. DEMOUNTABLE, APPROXIMATE PANEL SIZE 1/2" THICK X 2'-10" WIDE X 7'-9" HIGH. NEW LOW-EMISSIVITY GLASS WILL DIFFER BETWEEN TWO SETS OF ELEVATIONS. ASSUME ABATEMENT OF EXISTING GLAZING SEALANT. REPLACE NEOPRENE DRAFT STOPS AROUND EACH SASH.
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No.	Date	Revised

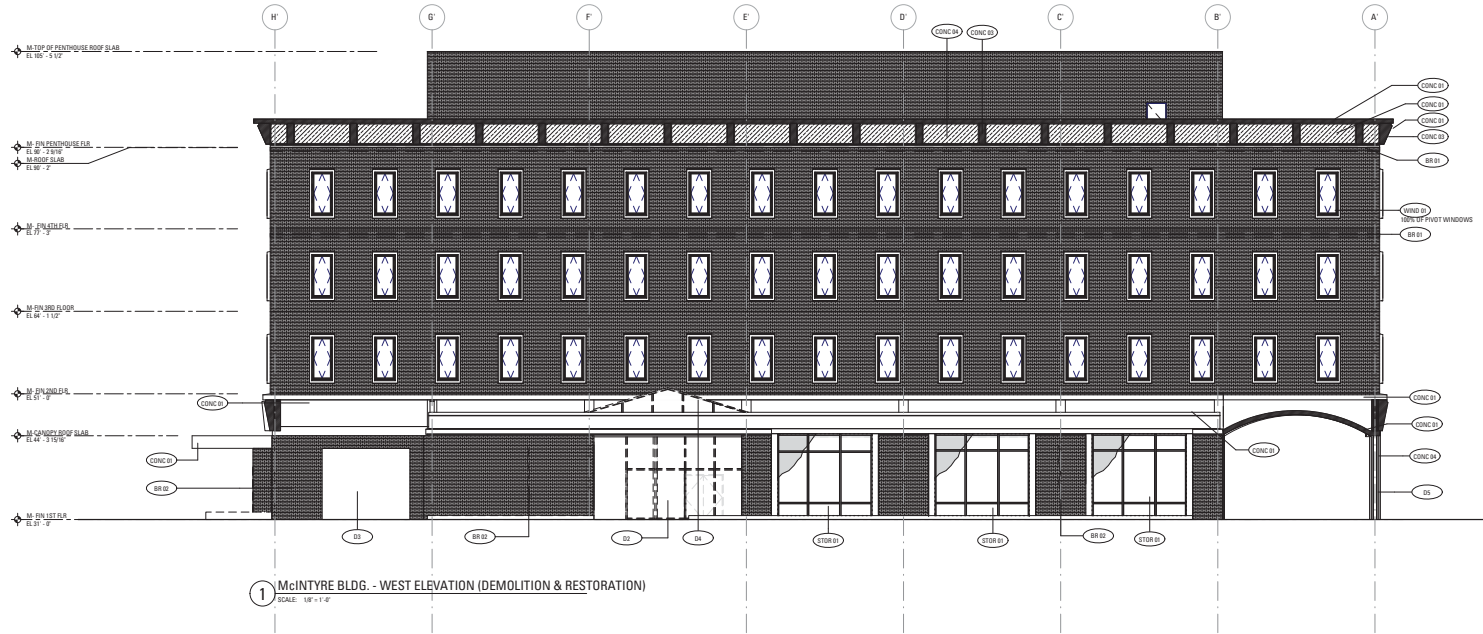
Date: 09/13/18
 Scale: 1/8" = 1'-0"
 Project Number: _____
 Drawn By: _____ Author: _____

MCINTYRE PROJECT

DEMOLITION & RESTORATION-
 ROOF & PENTHOUSE ROOF

ID CODE	
BR 01	B A S
BR 02	B B N S
CONC 01	C S P
CONC 03	C
CONC 04	C S
IR-01	C
IR-02	C
IR-04	P
IR-05	C
IR-06	P
IR-07	R
STOR 01	STOREFRONT - RETAIN ALUMINUM 'STOREFRONT', FIXED GLAZING AT 6-PANEL BOWED AND FLAT WINDOWS TO REMAIN AT GROUND FLOOR (8 EA.) INSTALL CLEAR SAFETY FILM ON ALL PANES (2'-6" X 13'-0" HIGH) INCLUDING SPANDREL GLASS.
WIND 01	WINDOW - ALUMINUM PIVOT WINDOWS IN OFFICES (144 EA.) AND POST OFFICE (2 EA.) INSTALL NEW ALUMINUM INTERIOR STORM SASHES TO MATCH EXISTING CLEAR FINISH WITH ALUMINUM FRAME. DEMOUNTABLE. APPROXIMATE PANEL SIZE 1/2" THICK X 2'-10" WIDE X 7'-9" HIGH. NEW LOW-EMISSIVITY GLASS WILL DIFFER BETWEEN TWO SETS OF ELEVATIONS. ASSUME ABATEMENT OF EXISTING GLAZING SEALANT. REPLACE NEOPRENE DRAFT STOPS AROUND EACH SASH.

IF THIS SHEET IS NOT BY A/C, IT HAS BEEN REDUCED OR ENLARGED. 11/01/2018 2:30 PM



1 McIntyre Bldg. - West Elevation (Demolition & Restoration)
 Scale: 1/8" = 1'-0"

RESTORATION KEY

ID CODE	RESTORATION ITEM
BR 01	BRICK REPOINTING - ALLOW FOR CUTTING OUT AND REPOINTING CONTINUOUSLY AT 3RD FLOOR RELIEVING ANGLE, AT BASE OF CONCRETE CORNICE, AND ABOVE AND BELOW PROJECTING SLAB BELOW 2ND FLOOR WINDOWS (2000 LF TOTAL). ASSUME REPOINTING FOR 20% OF PRECAST WINDOW SURROUNDS (500 LF).
BR 02	BRICK REPAIR - CUT OUT AND REPLACE TO-MATCH 100 EA. BRICKS AT VERTICAL FRACTURE AND REMOVAL OF WALL-MOUNTED ELECTRIC CONDUIT BRACKETS IN WEST WING EXTERIOR WALL. AT REMOVAL OF METAL PLAQUES AND LETTERING ON SOUTH. REPAIR ADJACENT BRICK WALL AREAS WHERE NEW OPENINGS ARE CREATED IN PENHALL STREET FRONTAGE AT RECESSED ENTRANCE, SOUTHWEST CORNER, AND MAILING PLATFORM AND DANIEL STREET WHERE POST OFFICE ENTRANCES ARE ALTERED, AND AT DEMOLITION MARGIN ON EAST FACADE. ASSUME 120 SF.
CONC 01	CONCRETE CLEANING - CLEAN ALL EXPOSED CONCRETE AT THE ARCADE, ABOVE SINGLE-STORY WINGS, AT FACES OF MAILING PLATFORM ROOF SLAB, AT SLAB PROJECTING BELOW 2ND FLOOR WINDOWS. CLEAN EXPOSED CAST-IN-PLACE CONCRETE CORE SUPPORTS FOR ALL CORNICE BRACKETS. CLEAN PRECAST WINDOW SURROUNDS AT SINGLE STORY EAST WING.
CONC 03	CONCRETE BRACKET REPAIR - DETACH AND REINSTALL FACE-MOUNTED "CAST STONE" CORNICE BRACKET PANELS. ALLOW FOR 5 LOCATIONS.
CONC 04	CONCRETE SURFACE REPAIR - REPAIR SPALLED AND CRACKED PRECAST SURFACES TO MATCH EXISTING. REPAIR ANCHORAGE LOCATIONS AT STAINLESS STEEL COLUMN ENCASUREMENT LOCATIONS ON FOUR ARCADE COLUMNS AND RESTORE CONCRETE COLUMN FACES.
IR-01	CLEAN AND PROTECT POLISHED MARBLE WALL PANELS.
IR-02	CLEAN AND PROTECT TERRAZZO FLOOR AND ZINC DIVIDERS.
IR-04	PROTECT AND RETAIN PLASTER CEILING SOFFIT AND VAULT IN ELEVATOR LOBBY AND VESTIBULE.
IR-05	CLEAN AND PROTECT STAINLESS STEEL ELEVATOR DOORS AND FRAME.
IR-06	PROTECT AND RETAIN EXISTING GLAZED PARTITION IN ORIGINAL OPENING.
IR-07	RETAIN AND RELOCATE BRONZE DEDICATION/RE-DEDICATION PLAQUE.
STOR 01	STOREFRONT - RETAIN ALUMINUM STOREFRONT, FIXED GLAZING AT 8-PANEL BOWED AND FLAT PANEL WINDOWS TO REMAIN AT GROUND FLOOR (8 EA.) INSTALL CLEAR SAFETY FILM ON ALL PANEES 12'-0" X 13'-0" HIGH INCLUDING SPANDREL GLASS.
WIND 01	WINDOW - ALUMINUM PIVOT WINDOWS IN OFFICES (144 EA.) AND POST OFFICE (2 EA.) INSTALL NEW ALUMINUM INTERIOR STORM SASHES TO MATCH EXISTING CLEAR FINISH WITH ALUMINUM FRAME. DEMOUNTABLE. APPROXIMATE PANEL SIZE 1/2" THICK X 2'-10" WIDE X 7'-9" HIGH. NEW LOW-EMISSIVITY GLASS WILL DIFFER BETWEEN TWO SETS OF ELEVATIONS. ASSUME ABATEMENT OF EXISTING GLAZING SEALANT. REPLACE NEOPRENE DRAFT STOPS AROUND EACH SASH.

DEMOLITION KEY

- D01 REMOVE ALL CONSTRUCTED ASSEMBLIES INCLUDING STRUCTURE, BUILDING ENVELOPE, SLAB AND ALL BUILDING SYSTEMS. SUPPORT AND PROTECT ADJACENT STRUCTURES TO REMAIN.
- D02 CAREFULLY REMOVE EXISTING ALUMINUM CURTAIN WALL AND PROTECT OPENING FOR NEW CURTAIN WALL INSTALLATION.
- D03 CUT OPENING AND REMOVE BRICK WALL CLADDING TO ALLOW FOR CONSTRUCTION OF NEW BRICK OPENING.
- D04 REMOVE EXISTING PLASTIC SKYLIGHT AND PROTECT EXPOSED CONCRETE BEAMS.
- D05 CAREFULLY REMOVE EXISTING STAINLESS STEEL CASING AT CONCRETE COLUMNS.
- D06 REMOVE AND SALVAGE PHOTOVOLTAIC PANELS.
- D07 REMOVE BRICK OUTDOOR VESTIBULE INCLUDING FOUNDATIONS.
- D08 REMOVE LOADING DOCK BRICK WALL AND OVERHEAD DOORS. PROTECT COLUMNS AND CANOPY ROOF.
- D09 REMOVE EXISTING PARTITIONS, FLOOR COVERINGS, WALL TILE, CEILINGS, TOILET FIXTURES, AND BUILDING SYSTEMS.
- D10 REMOVE CONCRETE PLANTER. REMOVE RAISED CONCRETE MECHANICAL AREAWAY SURROUND.
- D11 REMOVE BRICK SITE WALL.
- D12 CAREFULLY REMOVE SIGNAGE, SALVAGE FOR GSA.
- D13 REMOVE PARKING LOT AND REGRADE FOR ACCESS PASSAGE.
- D14 REMOVE EXISTING DECK AND SUPPORTING COLUMNS BELOW.
- D15 REMOVE MEZZANINE CATWALK AND ASSOCIATED STRUCTURAL SUPPORT.
- D16 REMOVE ROOF STRUCTURE FOR NEW SKYLIGHT

Rev.	Date	Revised

Date: 09/13/18
 Scale: 1/8" = 1'-0"
 Project Number:
 Drawn By: Author

MCINTYRE PROJECT

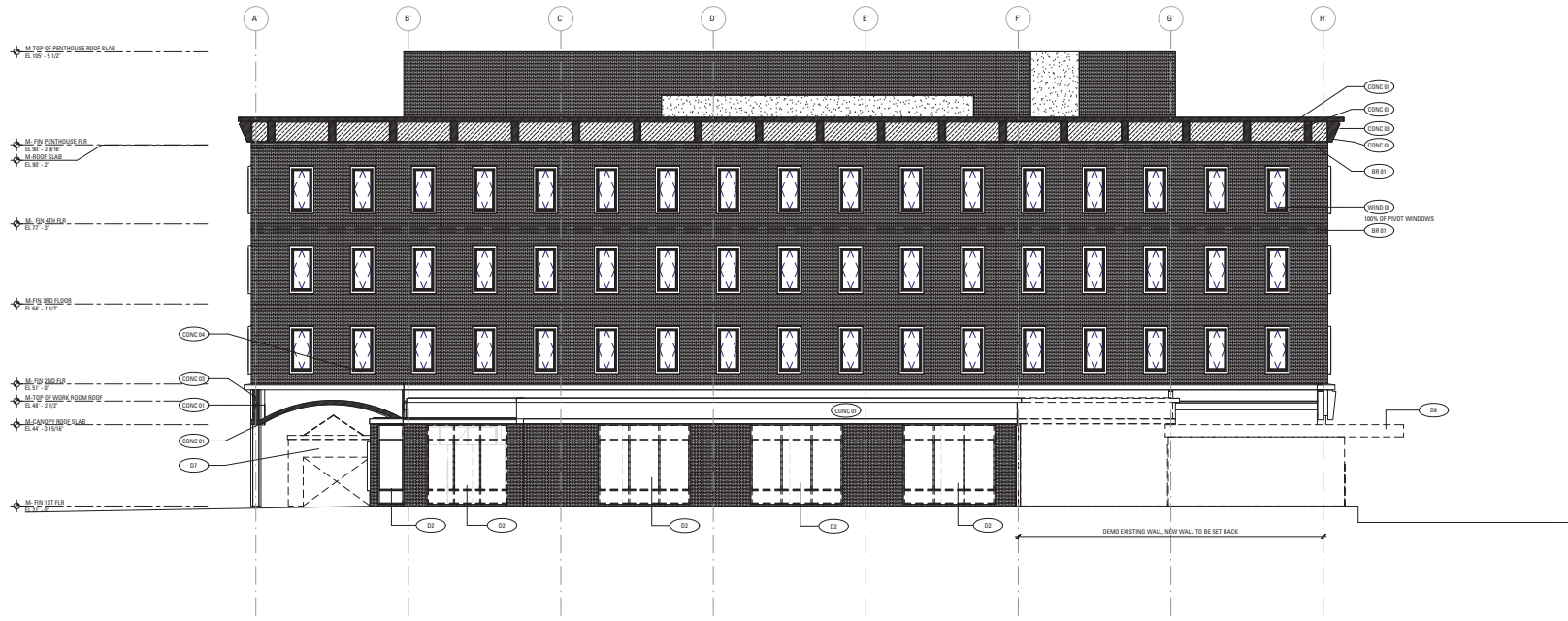
DEMOLITION & RESTORATION - WEST ELEVATION

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Rev.	Date	Revised

Date: 09/13/18
 Scale: 1/8" = 1'-0"
 Project Number:
 Drawn By: Author

MCINTYRE PROJECT



1 McIntyre Bldg. - East Elevation (Demolition & Restoration)
 SCALE: 1/8" = 1'-0"

RESTORATION KEY	
ID CODE	RESTORATION ITEM
BR 01	BRICK REPOINTING - ALLOW FOR CUTTING OUT AND REPOINTING CONTINUOUSLY AT 3RD FLOOR RELIEVING ANGLE, AT BASE OF CONCRETE CORNICE, AND ABOVE AND BELOW PROJECTING SLAB BELOW 2ND FLOOR WINDOWS (2000 LF TOTAL). ASSUME REPOINTING FOR 20% OF PRECAST WINDOW SURROUNDS (500 LF).
BR 02	BRICK REPAIR - CUT OUT AND REPLACE-TO-MATCH 100 EA. BRICKS AT VERTICAL FRACTURE AND REMOVAL OF WALL-MOUNTED ELECTRIC CONDUIT BRACKETS IN WEST WING EXTERIOR WALL, AT REMOVAL OF METAL PLAQUES AND LETTERING ON SOUTH. REPAIR ADJACENT BRICK WALL AREAS WHERE NEW OPENINGS ARE CREATED IN PENHALLOW STREET FRONTAGE AT RECESSED ENTRANCE, SOUTHWEST CORNER, AND MAILING PLATFORM AND DANIEL STREET WHERE POST OFFICE ENTRANCES ARE ALTERED, AND AT DEMOLITION MARGIN ON EAST FACADE. ASSUME 120 SF.
CONC 01	CONCRETE CLEANING - CLEAN ALL EXPOSED CONCRETE AT THE ARCADE, ABOVE SINGLE-STORY WINGS, AT FACES OF MAILING PLATFORM ROOF SLAB, AT SLAB PROJECTING BELOW 2ND FLOOR WINDOWS. CLEAN EXPOSED CAST-IN-PLACE CONCRETE CORE SUPPORTS FOR ALL CORNICE BRACKETS. CLEAN PRECAST WINDOW SURROUNDS AT SINGLE STORY EAST WING.
CONC 03	CONCRETE BRACKET REPAIR - DETACH AND REINSTALL FACE-MOUNTED "CAST STONE" CORNICE BRACKET PANELS. ALLOW FOR 5 LOCATIONS.
CONC 04	CONCRETE SURFACE REPAIR - REPAIR SPALLED AND CRACKED PRECAST SURFACES TO MATCH EXISTING. REPAIR ANCHORAGE LOCATIONS AT STAINLESS STEEL COLUMN ENCASEMENT LOCATIONS ON FOUR ARCADE COLUMNS AND RESTORE CONCRETE COLUMN FACES.
IR-01	CLEAN AND PROTECT POLISHED MARBLE WALL PANELS.
IR-02	CLEAN AND PROTECT TERRAZZO FLOOR AND ZINC DIVIDERS.
IR-04	PROTECT AND RETAIN PLASTER CEILING SOFFIT AND VAULT IN ELEVATOR LOBBY AND VESTIBULE.
IR-05	CLEAN AND PROTECT STAINLESS STEEL ELEVATOR DOORS AND FRAME.
IR-06	PROTECT AND RETAIN EXISTING GLAZED PARTITION IN ORIGINAL OPENING.
IR-07	RETAIN AND RELOCATE BRONZE DEDICATION/RE-DEDICATION PLAQUE.
STOR 01	STOREFRONT - RETAIN ALUMINUM STOREFRONT, FIXED GLAZING AT 6-PANEL BOWED AND FLAT WINDOWS TO REMAIN AT GROUND FLOOR (8 EA.) INSTALL CLEAR SAFETY FILM ON ALL PANES (2'-6" X 13'-0" HIGH) INCLUDING SPANDREL GLASS.
WIND 01	WINDOW - ALUMINUM PIVOT WINDOWS IN OFFICES (144 EA) AND POST OFFICE (2 EA) INSTALL NEW ALUMINUM INTERIOR STORM SASHES TO MATCH EXISTING CLEAR FINISH WITH ALUMINUM FRAME. DEMOUNTABLE. APPROXIMATE PANEL SIZE 1/2" THICK X 2'-10" WIDE X 7'-9" HIGH. NEW LOW-EMISSIVITY GLASS WILL DIFFER BETWEEN TWO SETS OF ELEVATIONS. ASSUME ABATEMENT OF EXISTING GLAZING SEALANT. REPLACE NEOPRENE DRAFT STOPS AROUND EACH SASH.

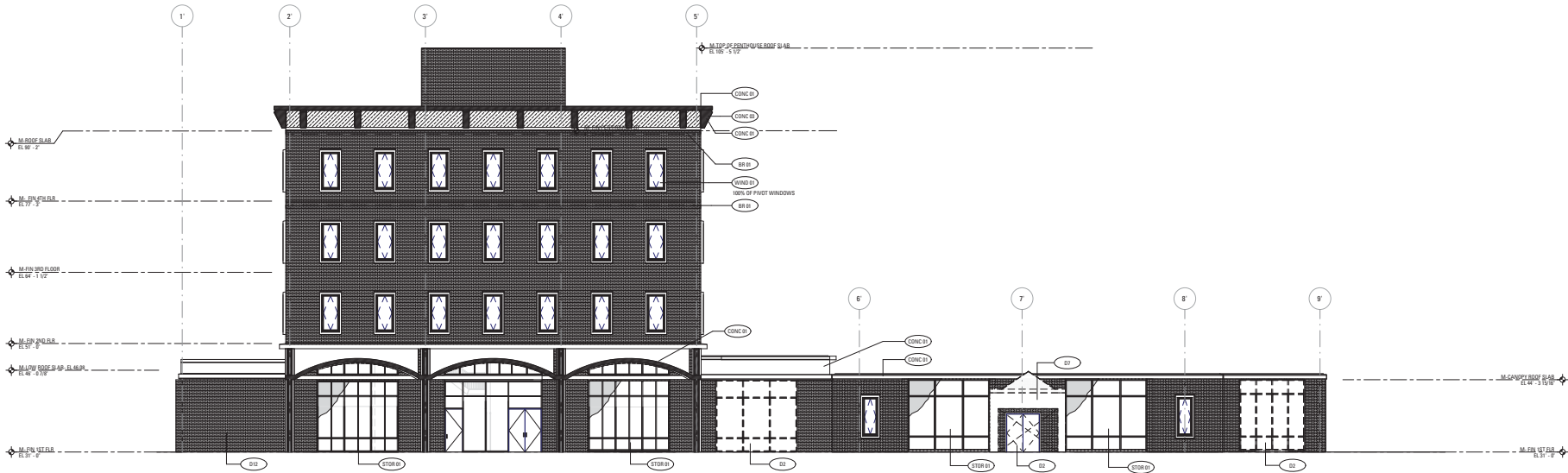
DEMOLITION KEY

- D1 REMOVE ALL CONSTRUCTED ASSEMBLIES INCLUDING STRUCTURE, BUILDING ENVELOPE, SLAB AND ALL BUILDING SYSTEMS. SUPPORT AND PROTECT ADJACENT STRUCTURES TO REMAIN.
- D2 CAREFULLY REMOVE EXISTING ALUMINUM CURTAIN WALL AND PROTECT OPENING FOR NEW CURTAIN WALL INSTALLATION.
- D3 CUT OPENING AND REMOVE BRICK WALL CLADDING TO ALLOW FOR CONSTRUCTION OF NEW BRICK OPENING.
- D4 REMOVE EXISTING PLASTIC SKYLIGHT AND PROTECT EXPOSED CONCRETE BEAMS.
- D5 CAREFULLY REMOVE EXISTING STAINLESS STEEL CASING AT CONCRETE COLUMNS.
- D6 REMOVE AND SALVAGE PHOTOVOLTAIC PANELS.
- D7 REMOVE BRICK OUTDOOR VESTIBULE INCLUDING FOUNDATIONS.
- D8 REMOVE LOADING DOCK BRICK WALL AND OVERHEAD DOORS. PROTECT COLUMNS AND CANOPY ROOF.
- D9 REMOVE EXISTING PARTITIONS, FLOOR COVERINGS, WALL TILE, CEILINGS, TOILET FIXTURES, AND BUILDING SYSTEMS.
- D10 REMOVE CONCRETE PLANTER. REMOVE RAISED CONCRETE MECHANICAL AREAWAY SURROUND.
- D11 REMOVE BRICK SITE WALL.
- D12 CAREFULLY REMOVE SIGNAGE. SALVAGE FOR GSA.
- D13 REMOVE PARKING LOT AND REGRADE FOR ACCESS PASSAGE.
- D14 REMOVE EXISTING DECK AND SUPPORTING COLUMNS BELOW.
- D15 REMOVE MEZZANINE CATWALK AND ASSOCIATED STRUCTURAL SUPPORT.
- D16 REMOVE ROOF STRUCTURE FOR NEW SKYLIGHT

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DEMOLITION & RESTORATION-
 EAST ELEVATION

D-301



1 McIntyre Bldg. - South Elevation (Demolition & Restoration)
 SCALE: 1/8" = 1'-0"

Rev.	Date	Remarks

Date: 09/13/18
 Scale: 1/8" = 1'-0"
 Project Number:
 Drawn By: Author

MCINTYRE PROJECT

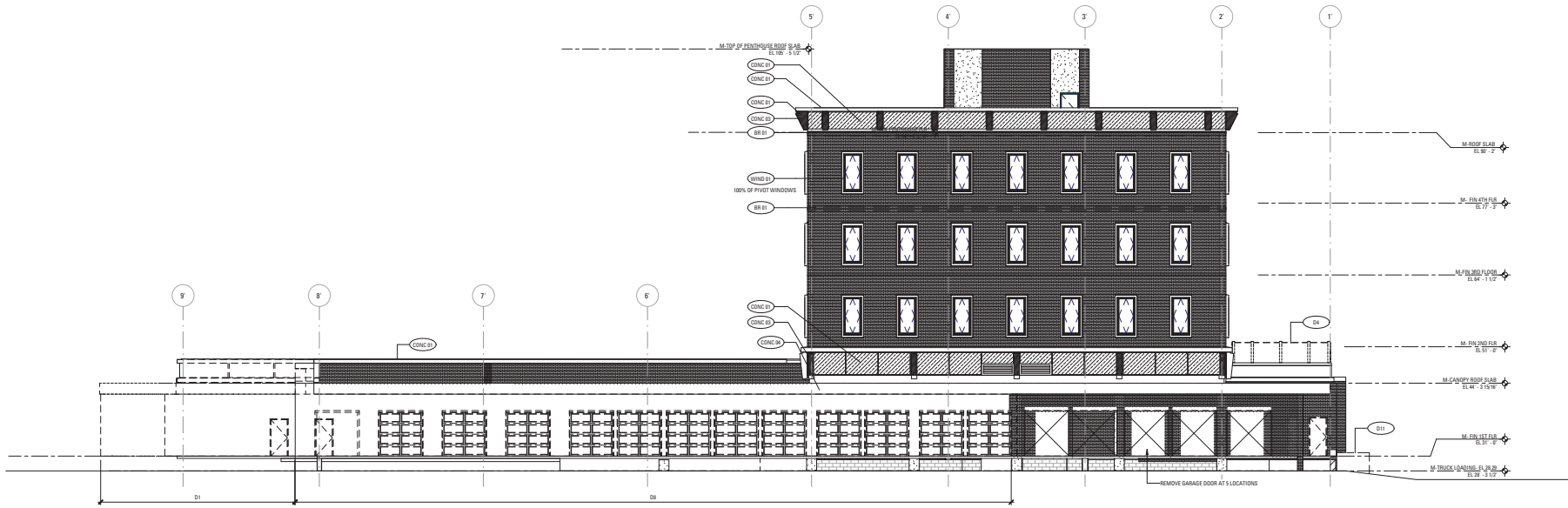
RESTORATION KEY	
ID CODE	RESTORATION ITEM
BR 01	BRICK REPOINTING - ALLOW FOR CUTTING OUT AND REPOINTING CONTINUOUSLY AT 3RD FLOOR RELIEVING ANGLE, AT BASE OF CONCRETE CORNICE, AND ABOVE AND BELOW PROJECTING SLAB BELOW 2ND FLOOR WINDOWS (2000 LF TOTAL). ASSUME REPOINTING FOR 20% OF PRECAST WINDOW SURROUNDS (500 LF).
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CONC 01	CONCRETE CLEANING - CLEAN ALL EXPOSED CONCRETE AT THE ARCADE, ABOVE SINGLE-STORY WINGS, AT FACES OF MAILING PLATFORM ROOF SLAB, AT SLAB PROJECTING BELOW 2ND FLOOR WINDOWS. CLEAN EXPOSED CAST-IN-PLACE CONCRETE CORE SUPPORTS FOR ALL CORNICE BRACKETS. CLEAN PRECAST WINDOW SURROUNDS AT SINGLE STORY EAST WING.
CONC 03	CONCRETE BRACKET REPAIR - DETACH AND REINSTALL FACE-MOUNTED "CAST STONE" CORNICE BRACKET PANELS. ALLOW FOR 5 LOCATIONS.
CONC 04	CONCRETE SURFACE REPAIR - REPAIR SPALLED AND CRACKED PRECAST SURFACES TO MATCH EXISTING. REPAIR ANCHORAGE LOCATIONS AT STAINLESS STEEL COLUMN ENCASUREMENT LOCATIONS ON FOUR ARCADE COLUMNS AND RESTORE CONCRETE COLUMN FACES.
IR-01	CLEAN AND PROTECT POLISHED MARBLE WALL PANELS.
IR-02	CLEAN AND PROTECT TERRAZZO FLOOR AND ZINC DIVIDERS.
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STOR 01	STOREFRONT - RETAIN ALUMINUM 'STOREFRONT', FIXED GLAZING AT 6-PANEL BOWED AND FLAT WINDOWS TO REMAIN AT GROUND FLOOR (8 EA.) INSTALL CLEAR SAFETY FILM ON ALL PANE (2'-6" X 13'-0" HIGH) INCLUDING SPANDREL GLASS.
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DEMOLITION KEY

- D1 REMOVE ALL CONSTRUCTED ASSEMBLIES INCLUDING STRUCTURE, BUILDING ENVELOPE, SLAB AND ALL BUILDING SYSTEMS. SUPPORT AND PROTECT ADJACENT STRUCTURES TO REMAIN.
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- D3 CUT OPENING AND REMOVE BRICK WALL CLADDING TO ALLOW FOR CONSTRUCTION OF NEW BRICK OPENING.
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- D13 REMOVE PARKING LOT AND REGRADE FOR ACCESS PASSAGE.
- D14 REMOVE EXISTING DECK AND SUPPORTING COLUMNS BELOW.
- D15 REMOVE MEZZANINE CATWALK AND ASSOCIATED STRUCTURAL SUPPORT.
- D16 REMOVE ROOF STRUCTURE FOR NEW SKYLIGHT

DEMOLITION & RESTORATION- SOUTH ELEVATION

IF THIS SHEET IS NOT 36" x 48" IT HAS BEEN REDUCED OR ENLARGED. 11/20/18 2:34 PM



1 McIntyre BLDG. - NORTH ELEVATION (DEMOLITION & RESTORATION)
 SCALE: 1/8" = 1'-0"

Rev.	Date	Revised

Date: 09/13/18
 Scale: 1/8" = 1'-0"
 Project Number:
 Drawn By: Author

MCINTYRE PROJECT

RESTORATION KEY	
ID CODE	RESTORATION ITEM
BR 01	BRICK REPOINTING - ALLOW FOR CUTTING OUT AND REPOINTING CONTINUOUSLY AT 3RD FLOOR RELIEVING ANGLE, AT BASE OF CONCRETE CORNICE, AND ABOVE AND BELOW PROJECTING SLAB BELOW 2ND FLOOR WINDOWS (2000 LF TOTAL). ASSUME REPOINTING FOR 20% OF PRECAST WINDOW SURROUNDS (500 LF).
BR 02	BRICK REPAIR - CUT OUT AND REPLACE-TO-MATCH 100 EA. BRICKS AT VERTICAL FRACTURE AND REMOVAL OF WALL-MOUNTED ELECTRIC CONDUIT BRACKETS IN WEST WING EXTERIOR WALL, AT REMOVAL OF METAL PLAQUES AND LETTERING ON SOUTH. REPAIR ADJACENT BRICK WALL AREAS WHERE NEW OPENINGS ARE CREATED IN PENHOLLOW STREET FRONTAGE AT RECESSED ENTRANCE, SOUTHWEST CORNER, AND MAILING PLATFORM AND DANIEL STREET WHERE POST OFFICE ENTRANCES ARE ALTERED, AND AT DEMOLITION MARGIN ON EAST FACADE. ASSUME 120 SF.
CONC 01	CONCRETE CLEANING - CLEAN ALL EXPOSED CONCRETE AT THE ARCADE, ABOVE SINGLE-STORY WINGS, AT FACES OF MAILING PLATFORM ROOF SLAB, AT SLAB PROJECTING BELOW 2ND FLOOR WINDOWS. CLEAN EXPOSED CAST-IN-PLACE CONCRETE CORE SUPPORTS FOR ALL CORNICE BRACKETS. CLEAN PRECAST WINDOW SURROUNDS AT SINGLE STORY EAST WING.
CONC 03	CONCRETE BRACKET REPAIR - DETACH AND REINSTALL FACE-MOUNTED "CAST STONE" CORNICE BRACKET PANELS. ALLOW FOR 5 LOCATIONS.
CONC 04	CONCRETE SURFACE REPAIR - REPAIR SPALLED AND CRACKED PRECAST SURFACES TO MATCH EXISTING. REPAIR ANCHORAGE LOCATIONS AT STAINLESS STEEL COLUMN ENCASUREMENT LOCATIONS ON FOUR ARCADE COLUMNS AND RESTORE CONCRETE COLUMN FACES.
IR-01	CLEAN AND PROTECT POLISHED MARBLE WALL PANELS.
IR-02	CLEAN AND PROTECT TERRAZZO FLOOR AND ZINC DIVIDERS.
IR-04	PROTECT AND RETAIN PLASTER CEILING SOFFIT AND VAULT IN ELEVATOR LOBBY AND VESTIBULE.
IR-05	CLEAN AND PROTECT STAINLESS STEEL ELEVATOR DOORS AND FRAME.
IR-06	PROTECT AND RETAIN EXISTING GLAZED PARTITION IN ORIGINAL OPENING.
IR-07	RETAIN AND RELOCATE BRONZE DEDICATION/RE-DEDICATION PLAQUE.
STOR 01	STOREFRONT - RETAIN ALUMINUM 'STOREFRONT', FIXED GLAZING AT 6-PANEL BOWED AND FLAT WINDOWS TO REMAIN AT GROUND FLOOR (8 EA.) INSTALL CLEAR SAFETY FILM ON ALL PANES (2'-6" X 13'-0" HIGH) INCLUDING SPANDREL GLASS.
WIND 01	WINDOW - ALUMINUM PIVOT WINDOWS IN OFFICES (144 EA.) AND POST OFFICE (2 EA.) INSTALL NEW ALUMINUM INTERIOR STORM SASHES TO MATCH EXISTING CLEAR FINISH WITH ALUMINUM FRAME. DEMOUNTABLE. APPROXIMATE PANEL SIZE 1/2" THICK X 2'-10" WIDE X 7'-9" HIGH. NEW LOW-EMISSIVITY GLASS WILL DIFFER BETWEEN TWO SETS OF ELEVATIONS. ASSUME ABATEMENT OF EXISTING GLAZING SEALANT. REPLACE NEOPRENE DRAFT STOPS AROUND EACH SASH.

DEMOLITION KEY

- D1 REMOVE ALL CONSTRUCTED ASSEMBLIES INCLUDING STRUCTURE, BUILDING ENVELOPE, SLAB AND ALL BUILDING SYSTEMS. SUPPORT AND PROTECT ADJACENT STRUCTURES TO REMAIN.
- D2 CAREFULLY REMOVE EXISTING ALUMINUM CURTAIN WALL AND PROTECT OPENING FOR NEW CURTAIN WALL INSTALLATION.
- D3 CUT OPENING AND REMOVE BRICK WALL CLADDING TO ALLOW FOR CONSTRUCTION OF NEW BRICK OPENING.
- D4 REMOVE EXISTING PLASTIC SKYLIGHT AND PROTECT EXPOSED CONCRETE BEAMS.
- D5 CAREFULLY REMOVE EXISTING STAINLESS STEEL CASING AT CONCRETE COLUMNS.
- D6 REMOVE AND SALVAGE PHOTOVOLTAIC PANELS.
- D7 REMOVE BRICK OUTDOOR VESTIBULE INCLUDING FOUNDATIONS.
- D8 REMOVE LOADING DOCK BRICK WALL AND OVERHEAD DOORS. PROTECT COLUMNS AND CANOPY ROOF.
- D9 REMOVE EXISTING PARTITIONS, FLOOR COVERINGS, WALL TILE, CEILINGS, TOILET FIXTURES, AND BUILDING SYSTEMS.
- D10 REMOVE CONCRETE PLANTER. REMOVE RAISED CONCRETE MECHANICAL AREAWAY SURROUND.
- D11 REMOVE BRICK SITE WALL.
- D12 CAREFULLY REMOVE SIGNAGE, SALVAGE FOR GSA.
- D13 REMOVE PARKING LOT AND REGRADE FOR ACCESS PASSAGE.
- D14 REMOVE EXISTING DECK AND SUPPORTING COLUMNS BELOW.
- D15 REMOVE MEZZANINE CATWALK AND ASSOCIATED STRUCTURAL SUPPORT.
- D16 REMOVE ROOF STRUCTURE FOR NEW SKYLIGHT

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DEMOLITION & RESTORATION-
 NORTH ELEVATION

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APPENDIX D

Use Plan

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Use Plan

The City, led by a Mayor-appointed Blue Ribbon Committee, conducted an extensive outreach process to solicit the community’s desires for the future use of the site; this occurred over the course of five months, from January to May of 2018. Seven public input sessions, scheduled during evenings and weekends, resulted in the production of a Framework (see attached) that guided the development of the use plan. Following input from the Park Service that modified the plan, the Blue Ribbon Committee met twice in the fall to assess and confirm that the changes continued to meet the Framework’s guidance.

This mixed use project is comprised of office, retail, and residential space. Public amenities include 3 new outdoor public gathering spaces, and approximately 3,300 s.f. of indoor gathering space which is available for community programming. Approximately 44% of the site is open space. Following is a summary of uses:

McIntyre Building Uses	
Ground floor commercial	22,700 Rentable SF
Ground floor indoor community space	3,300 Rentable SF
Upper floor office	40,400 Rentable SF
TOTAL	66,400 Rentable SF
New Buildings Uses	
Ground floor commercial	12,250 Rentable SF
76 residential units	55,100 Rentable SF
TOTAL	67,350 Rentable SF
92 covered parking spaces	

A conceptual site plan and project renderings follow.

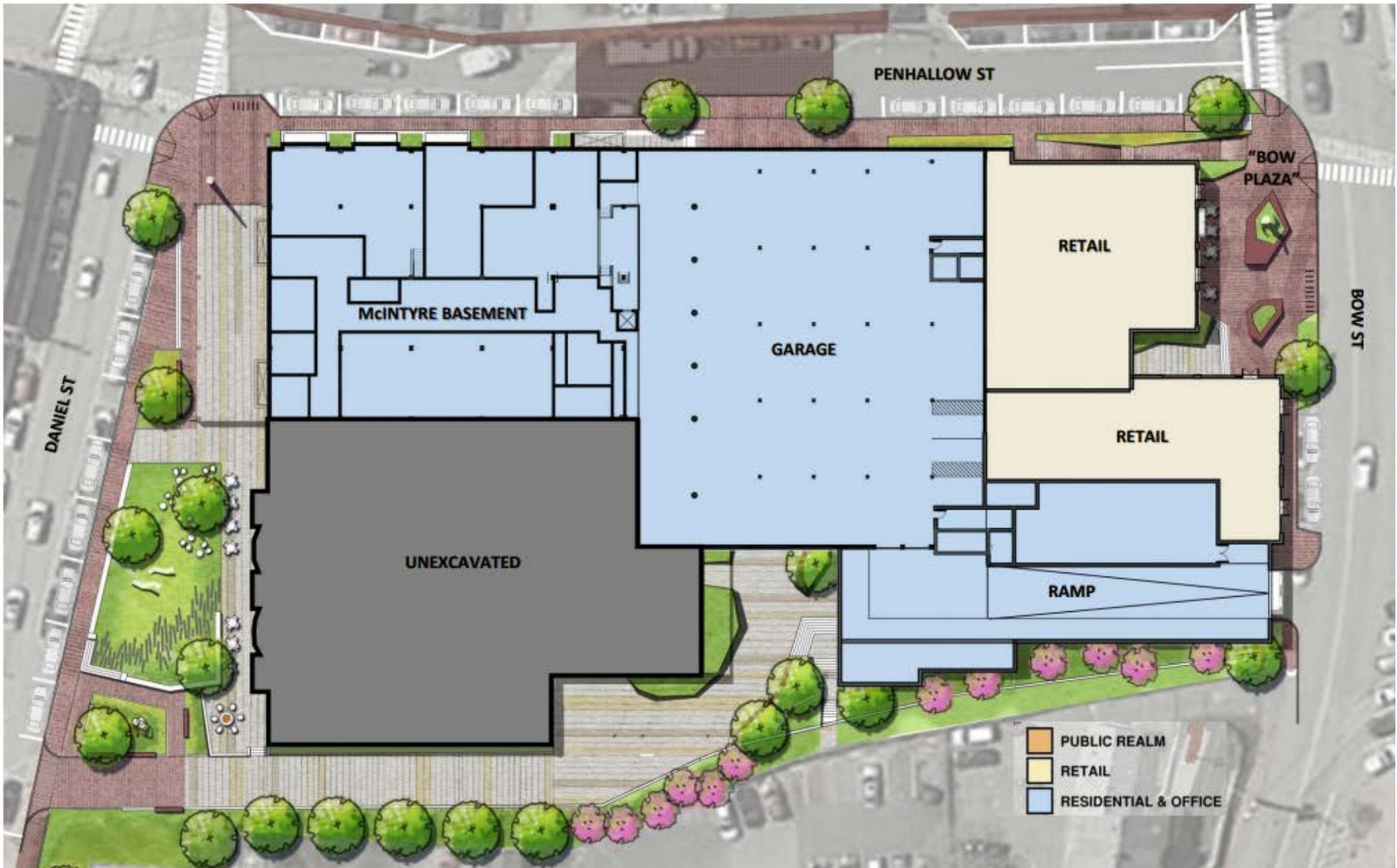
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Site Plan – Elevation 20 (Bow Street)



Site Plan Elevation 31 (Daniel Street)



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Site Plan – Proposed Ground Floor Uses



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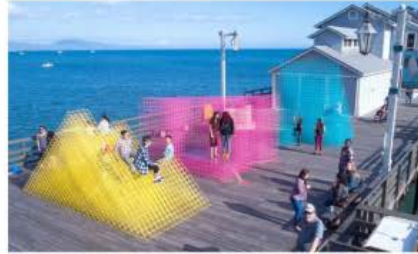
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Daniel Plaza Perspective



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DANIEL PLAZA



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Bow Plaza Perspective



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BOW PLAZA



plaza condition sidewalk condition



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Bow Plaza



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Plaza Perspective:



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THE PLAZA



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COMMUNITY SPACE



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The Plaza & Indoor Community Space:



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The Plaza



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APPENDIX E

Financial Plan

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Introduction

The financial plan is the result of extensive analysis, planning and financial modeling. It is based on several key factors:

Nature of the proposal

The Redgate-Kane design – which was finalized after receiving extensive feedback from our Portsmouth elected officials, business and community leaders and the public - is the driving factor in the financial plan. The Project features a small multi-unit residential community, a large amount of public space and is dependent on attracting retail and commercial partners at a competitive rental rate.

No Hotel on Site

Of the three plans selected as finalists for redevelopment of the McIntyre site, two proposed large hotels as part of the Project. From a purely financial standpoint, hotels were among the safest and most lucrative options available to developers and the City. The revenue streams created by placing a hotel on the site were much higher for both the developer and the City than any plan without a hotel. These plans called for a much more heavily developed and densely populated site than the plan put forth by Redgate-Kane. City consultants advised our elected leaders of Portsmouth that both hotel plans would generate a significantly higher annual revenue stream, yet our City leaders nonetheless chose the plan presented by Redgate-Kane, because public space and lower density remained a more desirable alternative. The City of Portsmouth chose the proposed Redgate-Kane plan because we perceived it to be the highest and best use of the site, regardless of the revenue it generated. The final plan makes much of the McIntyre site an inviting public property at the expense of increased revenue—something we, the City of Portsmouth, knowingly chose by approving the Redgate-Kane proposal.

Lower Site Density

When the City of Portsmouth originally received the Redgate-Kane proposal, it already included a much lower site density than competing proposals. This lower density was a mitigating determining factor in the City's choice to approve this plan. Incorporating input from the public, the City, the developer and the National Park Service, State Historic Preservation Office and the Historic District Commission, the site density was further limited to create more public space and retain the integrity of the original McIntyre building. While these adjustments created a stronger proposal and a more beautiful site for the City of Portsmouth, we acknowledge that they further inhibited the amount of revenue the site would be able to generate on a yearly basis. City officials indicated that they valued public space and low density over revenue generation, and the Project as it stands now is robust and viable while meeting the City's desires. The consequence of this lowered density, however, is that the Project is riskier and less profitable overall.

Indoor and Outdoor Public Space

Much like the lower site density, the amount of indoor and outdoor public space created by the proposed plan is substantial. The City is excited to welcome generations of Portsmouth residents to use this well-designed and well-maintained public space for decades to come, though we acknowledge this public space also adds significant one-time and annual costs to the Project. Space outdoors and open to the public is not revenue generating, and the indoor public space limits the amount of rentable space within the structure. Additionally, the public space will need regular maintenance and upkeep, adding to the site's yearly expense burden. The maintenance costs associated with the site will continue as long as the space is in use, representing a long-term cost to the Project with no income from the use of these spaces to offset the cost of maintenance. The financial plan put forward here recognizes the additional perpetual operating expenses brought about by the extensive public space, and the ongoing upkeep costs associated with it.

Entirely Speculative Development

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Unlike many projects built in today's real estate market, the McIntyre plan does not yet have any contractually signed retail or commercial partners, making the entire venture speculative. Considering the developer has received one non-binding LOI executed for approximately two thirds of the office square footage, such a commitment gives us some validation that the Project is desirable to commercial tenants. There is no guarantee that the units, both residential and commercial, created within the current redevelopment plan will be filled when the Project opens its doors. Additionally, many of the units will need to achieve market setting rents for the project to be financially feasible, introducing a further measure of risk into the Project. The financial plan put forward below accounts for this risk and recognizes that as the Project matures this risk will decline, spelling out increased revenue for the Project and the City in the future.

Need to Attract Investors

Like all large-scale real estate developments, the Project cannot break ground until the necessary capital has been secured from both debt and equity capital investors. The City strongly believes in the viability of this Project, and the benefits of a redeveloped McIntyre site for the community of Portsmouth. In order to deliver on this Project, a significant amount of debt and equity capital still needs to be secured. Because of the risks outlined in this introduction, as well as the unique features of this Project from an investment perspective including but not limited to its location in a secondary/tertiary market like Portsmouth, New Hampshire, and the extensive profit sharing and excess income provisions, it is necessary for the financial plan to reassure investors that the McIntyre Project will provide a large enough reward for their risk-taking. We are confident that potential investors will look at this financial plan and decide the McIntyre site is an attractive investment in today's competitive capital markets. We have worked with the Developer to structure the profit sharing and excess income provisions in order to make the Project appealing to both debt and equity capital investors and the City of Portsmouth, creating an equitable structure that will allow the Project to be profitable while at the same time providing Portsmouth with the annual revenue it expects. We are confident in the future of the McIntyre and believe that this Project will be a vital asset to the community of Portsmouth for generations to come. Part of our confidence in its success is a result of the financial plan we have created, which we believe is reasonable, sustainable and necessary to attract and secure both debt and equity capital.

History and Background

The following includes background information and details that provide important context for the current financial plan presented for the Thomas J. McIntyre site. As you will see, the Project desired by the City of Portsmouth and the general public has in large part dictated the current financial plan.

The City of Portsmouth in 2017 issued a Request for Qualifications (RFQ) to real estate developers and joint ventures to redevelop the Thomas J. McIntyre Federal site. A variety of interested parties responded and three finalists were ultimately selected – Leggat McCall, Two International Group of Portsmouth and Ocean Properties Hotels & Resorts, and Redgate Holdings LLC and the Kane Company.

Leggat McCall proposed a 98-room hotel, with a public access rooftop bar and restaurant. It also proposed 122 apartments in a new building on the site. Two International Group of Portsmouth and Ocean Properties Hotels & Resorts proposed a 120-room hotel, along with a new mixed-use building that included commercial on the first floor and multi-family rental property on the second, third and fourth floors. Redgate/Kane proposed a mix of office, retail and residential uses including approx. 45,000 SF of retail at the ground floor of the McIntyre Building, plaza level of the condo building and in a free-standing two-story structure along Penhallow Street. The upper floors of the McIntyre building were proposed to be reused as approx. 43,000 SF of renovated office space. The design also included a 42-unit luxury condominium building and two townhouse buildings with 8 units for a total of 50 residential condominiums.

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The City of Portsmouth hired Barry Abramson of Abramson & Associates, Inc. to provide a financial analysis of the three finalists with proposed projects for the McIntyre site. The Redgate-Kane plan was determined by Abramson to be the least financially profitable and the riskiest of the three finalists. This is because the proposed Project was less dense, featured more public space that is costly and burdensome to maintain, and required the ability of the developer to attract potential commercial and retail tenants at high rents. It would also represent the least amount of yearly real estate taxes amongst the group of proposals received by the City.

Despite this, the Redgate-Kane team's plan was selected by the City of Portsmouth in January 2018 because it achieved two important goals. First, it did not feature a hotel on site – which was *strongly* opposed by the public. Second, the Redgate-Kane plan offered significantly less density and included more public space than the other two finalists – important priorities repeatedly emphasized by residents and city officials.

Portsmouth prioritized less development, no hotel and more public space rather than generating the most return for the site. During the next year, the Redgate-Kane team participated in dozens of public hearings and input sessions, and further refined the proposed Project based on feedback from residents, business leaders, elected officials, State Historic Preservation Office and the Historic District Commission. This included the addition of more public space, including an indoor community gathering space that can be utilized year-round.

In September 2018, following feedback from the National Park Service, the Redgate-Kane team further reduced the size and density of the Project – eliminating plans for a five-and-a-half story mixed-used building next to the existing McIntyre building, and reducing the size of the other structure from five-and-a-half to four-and-a-half stories. In addition, the developer again increased the amount of public space on site. The financial plan below outlines the most viable way to ensure the Project's fiscal success while maximizing the benefits provided to the City of Portsmouth.

Financial Plan

The City intends that the rehabilitation and reuse of the McIntyre property will be carried out via a public-private partnership with SoBow Square, LLC (formed by principals of Redgate Holdings LLC and the Kane Company, hereinafter "the Developer"). The City will enter into a 75-year ground lease with SoBow Square to redevelop, operate, and maintain the property. SoBow is advised by MacRostie Historic Advisors and Bruner Cott Associates regarding compliance with the Secretary of the Interior "Standards for Rehabilitation."

In advance of submission of this application, the City and the Developer will execute a Development Agreement that will form the basis of the partnership arrangement. The City engaged the law firm of Hinckley Allen to develop the terms of this agreement, which includes:

- Assurance of compliance with all regulations pursuant to the Historic Surplus Property Program as well as conformance with the City's Application for the property, a copy of which will be attached to the lease.
- Assignment of all costs associated with the redevelopment and reuse of the property
- Environmental due diligence and remediation responsibility
- Insurance requirements
- Restrictions on use
- Real estate taxes
- Permits and approvals
- Performance guaranty and completion bonds
- Evidence of Project financing commitments
- Project schedule
- Indemnification and release of liability
- City and developer contingencies
- Default and Remedies

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Upon acceptance of the transfer from the GSA, the City expects to simultaneously execute a ground lease with the Developer. A draft of the Development Agreement is provided in Attachment A. The ground lease, also being drafted by Hinckley Allen, will address typical items seen in a commercial ground lease, adds all conditions (including deed restrictions) pertaining to the Historic Surplus Property Program (HSPP), and is written with the perspective of a municipal landlord. A draft of the ground lease in its current, not-yet-final form is provided in Attachment B.

10a. Analysis of projected income from all sources

The City will receive income from the Developer in the form of ground rent. Per the ground lease agreement, the Developer will pay the City of Portsmouth a ground rent payment of \$100,000 per year, beginning at 18 months from building permit issuance.

The ground rent will escalate by 2.5% annually. The Developer determined the proposed ground rent amount using residual land value methodology: target return thresholds required for debt and equity financing were established; holding this target return constant, after income, costs and operating expenses were factored into the underwriting, it was calculated that the Project can sustain a base \$100,000 annual ground rent payment.

Revenue sharing of 1% of gross revenues with the City will begin at year 11.

The City will share in the proceeds from refinancing events: 7.5% of net proceeds for the first refinancing, and 10% of net proceeds for all subsequent refinancing events.

The City will receive 20% of net sales proceeds for all sales events in excess of a calculated internal rate of return at 18%.

Other, non-cash benefits the City will accrue through this Project include a brand-new gathering destination for downtown Portsmouth that includes:

- Fully designed and constructed outdoor public realm space that includes three distinct gathering spaces;
- Approx. 3,311 square feet of indoor public gathering space, which is open to community-based programming and maintained by SoBow Square;
- Off-site utility upgrades (a new 8" water main loop on Chapel Road between Daniel St and Bow Street as well as a new 8" sewer main on Bow Street and Penhallow Street)

The estimated value of these items is summarized below:

Community Benefits	Amount	Calculation
Open Space (incl. Public Realm)	\$ 8,526,934	(40,789 s.f. x \$209/s.f.)
Community Space	\$ 785,399	(3,311 x \$237/r.s.f.)
Offsite Utility Upgrades	\$ 590,958	
TOTAL	\$ 9,903,291	

Ongoing Benefits (annual)	Amount	
Initial Ground Lease Payment	\$ 100,000	
Community Space Free Rent	\$ 110,900	(3,311 x \$ 33.50/r.s.f.)
Community Space Operations	\$ 36,300	(3,311 x \$10.97/r.s.f.)
1% Gross Annual Revenues, Years 11-75	\$ 75,000	(est. at \$75,000 in Year 11)

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The mixed-use redevelopment is expected to generate income from office, retail and residential tenants. Following is a description of each market, with anticipated income from each tenant type.

Office Market:

The outlook on the Portsmouth office market remains very positive, as growing demand for office space in the supply constrained urban setting of Downtown Portsmouth continues to drive rents.

The New Hampshire Seacoast submarket continues to be one of the highest performing office markets in the region. It contains a total supply of 8.4 million square feet, with only 7.7% vacancy in 2017. This is the lowest vacancy rate experienced in the last seven years and the 7th consecutive year of decreasing vacancy. Of the market's 8.4 million square feet, 2.1 and 2.0 million square feet are in Portsmouth and Pease respectively, of which just 2.8% and 4.6% of the respective submarket supply is currently vacant, according to C.B. Richard Ellis. The developer's research pulled from local brokers identified an even lower 1.7% vacancy rate in the downtown Portsmouth office market. This supply-stricken market has caused significant pent up demand for office space in the region, and with limited new construction available to lease, it appears that this shortage in available space will remain well beyond the short term.

This high demand and limited availability are especially evident in downtown Portsmouth, where companies are realizing the benefits associated with locating in an urban setting, yet the 2.8% vacancy has left many tenants no option but to unwillingly relocate to areas like Pease and beyond. Quality Class A office space (defined as buildings greater than 10,000 SF built after 1995) is even scarcer in downtown Portsmouth, with the only three Class A buildings being fully leased (Portwalk Place, 100 Market Street, and 99 Bow Street). Due to the lack of supply available to accommodate tenants, there have been very limited transactions in the past 24 months. However, as new supply is coming to market, asking rates are beginning in the low \$30's range per square foot for Downtown space, which is comparable to what many tenants in Class A buildings are currently paying in their current in-place leases.

Residential Market:

The Seacoast Multifamily Rental submarket continues to show strong fundamentals as households continue to choose to rent out of preference and necessity both locally and nationally. The submarket, which contains approximately 3,000 units among 21 properties, is 98.3% occupied, a full 130 basis points above its 5-year average of 97%. Average asking rents have also been growing at a notable rate, averaging a 4.7% increase per year since 2010. Of the approximate 300 units that were built after 2005 (Portwalk Place, Veridian Residences, Longview Place and Frank Jones Brewery), occupancy is 99.3%.

The outlook on the Portsmouth multifamily market remains positive, as the demand for lifestyle rental units in an urban setting remains high and limited new product in the urban setting is planned or proposed in the near term.

Retail Market:

Office and Residential demand indicators are strong and clear. Retail demand is more variable and unpredictable, particularly given recent trends in rapidly changing consumer behavior. To assess this risk, the Developer worked with Graffito SP (GSP), one of the region's preeminent retail brokers and advisors to study the proposed retail program in context with the market and existing urban fabric and in relation to proposed public realm spaces (plazas and community space). As is the case for all urban retail projects, rental rates vary significantly based on premises (i) location within the asset (corner, in-line, visibility, etc.), (ii) size, (iii) use, and (iv) landlord delivery conditions. This research has resulted in a merchandizing and public realm / plaza strategy which recommends specific uses in specific locations to optimize exposure and vibrancy in different zones throughout the Project. Based on local market research, GSP asserts that Project rents will be in the \$30s and \$40s per square foot.

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GSP believes there are certain other factors that have the potential to increase rents at the Project more than the anticipated ranges noted above, which are as follows:

1. Additional residential and office density added to the downtown area over the next 2 – 4 years;
2. Additional best-in-class restaurateurs locating in (and being recruited to) Downtown, further validating revenue projections that support higher rents;
3. World-class public realm design and programming that differentiates the Project from other near-by developments (current or planned), promote a unique brand for the Project, and generally aid in leasing efforts.
4. Targeted recruitment of best-in-class regional and national soft goods operators;
5. Willingness of Developer to execute percentage rent leases for food & beverage operators that may result in significant additional rent income once retail sales exceed an agreed upon breakpoint.

However, the large amount of retail space in the Project is on the higher end of the spectrum of what the Developer believes is feasible to lease up within 12 months of Project delivery.

Proposed Rents by Use:

Proposed Uses	Office	Retail	Residential	Community Space
Rent Range PSF/Year	\$32.50 NNN	\$25-\$45 NNN	\$2,975/mo/unit avg	\$0

Based on our comparable market rent research, we believe the residential and office markets are clearly strong and the Project’s residential and office space will be in high demand. We also believe that the retail market has the potential to be strong, but retail is the least stable of the three product types this Project will be delivering, and we will be creating a new destination for downtown Portsmouth; this involves a higher level of risk. The rental rates noted above we believe are achievable, though they are at the high end of the market’s acceptance range and will require strong execution to be achieved.

10b. Analysis of projected expenses for:

i. Repair, rehabilitation and restoration:

The Developer has worked extensively with several of the region’s top construction management firms and consultants to estimate the hard and soft costs for the Project. Currently, the development costs are estimated at \$61,085,869 per Attachment C.

The renovation portion of the McIntyre building is estimated at \$8,264,683. A summary renovation construction budget is included per Attachment D.

The Project will address deferred maintenance issues on the McIntyre exterior that have resulted in deteriorated facades that have a negative visual impact and threaten the historic resource. The estimated cost of this repair is \$333,981. This cost is contained within the McIntyre renovation cost of \$8,264,683 noted above.

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The construction is planned to occur in a single phase over an 18-month duration.

ii. *Recurring maintenance requirements:*

The construction Project will result in high-quality, fully restored space in the McIntyre building, and new space for the additional commercial and residential structures on the site. A maintenance reserve will be established over the course of the first ten years to plan for future capital maintenance items. Beginning in month 30, the developer will contribute \$25,000/year for the first five years and \$75,000/year for the second five years into a capital reserve account until it contains a total balance of \$500,000.

iii. *Administration and operation:*

Operating costs are estimated to be approximately \$10.97 per rentable square foot for commercial space, including real estate taxes. The operating expenses for the multifamily component will be roughly \$8,821 per unit, including real estate taxes (excluding retail operating expenses within the multifamily component). The Developer will retain a best-in-class third party leasing and property management firm to manage the residential and commercial assets. Residential leasing will be handled through the property manager. A third-party brokerage company will be engaged for commercial leasing. See the below summary of all operational costs for both components of the Project:

Operating Expenses-Multifamily	<u>Total</u>
Personnel	\$ 134,748
Contract Services	\$ 76,000
Utilities	\$ 38,000
Make-Ready	\$ 22,800
Maintenance & Repairs	\$ 19,000
Marketing	\$ 30,400
Administrative	\$ 19,000
Management Fee (% of Gross Potential Revenue)-Resi	\$ 98,926
Insurance	\$ 26,600
Real Estate Taxes (residential)	\$ 204,912
Retail Mgmt Fee Expense	\$ 21,814
Real Estate Taxes (retail)	\$ 45,592
TOTAL	\$ 737,793

Operating Expenses-McIntyre	<u>Total</u>
Utilities	\$149,429
R&M	\$59,772
Janitorial	\$83,016
Security	\$19,924
G&A	\$33,207
Insurance	\$33,207
Management Fee	\$103,172
RE Taxes	\$247,056
Opex	\$0
District Service Fee	\$0
Total Operating Expenses	\$728,782

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The Developer will be responsible for managing the pre-construction, construction, marketing, leasing, stabilization and operation of the property. The budget includes industry standard development fees and Project supervision fees totaling 4.0% of hard and soft costs (excluding land costs). These fees pay for a staff of 4-8 development professionals for 4+ years of work, managing the development process from local permitting to stabilization of the property. Once stabilized, the Developer will also provide asset management services for a customary asset management fee of 1.0% of revenues, which will be covered by operational cash flows.

The City will establish a Steering Committee to oversee progress on the construction of the development, and to ensure all commitments are being met, with City Council receiving regular updates. Once a certificate of occupancy is issued, the City will receive and review regular reports on the Project's performance as required by the ground lease. A post-occupancy Committee will be established to oversee annual reporting, and to coordinate efforts with the Developer to schedule special events, programs, and use of the public space.

10c. Provisions for disposition of excess income:

The City and Developer have negotiated ground lease financial terms that are fair and equitable to both parties and representative of the economics of this redevelopment Project. It is important to reiterate that the Project encompasses very high levels of risk with lowered profitability as a specific result of meeting the City of Portsmouth's requests and desires, including (but not limited to) low density, lack of desire for a hotel, large public realm and interior community space. As a result, the level of return and potential upside for an investor must be great enough to compensate for the large level of risk and perpetual public realm cost burden; this is the fundamental basis behind the excess income structure outlined at the bottom of this section. The equitable amount of profit sharing between the developer and the City of Portsmouth, which include guaranteed and conditional payments along with an excess income concept, are summarized below:

- 75 Year Ground Lease Term
- Base lease payments to the City of \$100,000 per year escalating at 2.5% per year
- Lease payments commencing in Month 18
- Revenue sharing with the City at 1% of gross revenues beginning in Year 11

Additionally, in order to specifically meet the goal of the National Park Service Monument Program for the reinvestment of excess income towards historic preservation above a reasonable profit, the following has been negotiated:

The City of Portsmouth shall receive 100% of all operational cash available for distribution in any year where the same exceeds 21% of owner's equity in the property in Years 1-13 (Risk Period Return Hurdle), and 15% of owner's equity thereafter (Stabilized Period Return Hurdle). Operational cash available for distribution means revenue from operations, less operating expenses, ground rent payments (base and percentage ground rent), debt service, appropriate additions to reserves and payment of any prior distribution deficiencies (as defined in the next sentence).

A distribution deficiency is the amount by which the actual cash available for distribution, in any calendar year after Year 13, is less than the applicable Return Hurdle. Distribution deficiencies shall reset to a zero starting balance upon any Owner's equity adjustment (as defined in the next sentence). Owner's equity shall be established initially as the original equity contributed into the initial total Project cost, and thereafter Owner's equity shall be adjusted to reflect (a) the purchase price or lender determined value at the time of a sale or refinancing, respectively, minus (b) the resulting outstanding loan amount. The Risk Period Return Hurdle of 21% return on equity limitation is a result of an extensive evaluation of the risk profile of this Project, and conversations with capital markets experts in identifying the

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return expectations that investors will require to finance said Project. Ultimately, this and any Project's financial feasibility hinges on its ability to attract capital investors. We've identified the below extraordinary risks associated with this Project that investors will be facing:

1. As a ground-up development, this falls in the riskier, opportunistic spectrum of investment given the many risks associated with the speculative nature of construction, lease-up, etc.
2. Portsmouth, New Hampshire is a relatively 'risky' geographic location for an investment opportunity. It is not a widely-recognized primary market like Boston or Los Angeles or New York. Historically, so-called secondary or tertiary markets have been subject to greater variations in value over time and equity investor interest reflects this.
3. The proposed amount of equity is quite large for a single Project in this market.
4. The Project is a balance of commercial and residential spaces. Many investors are targeting either commercial or residential projects.
5. The Project does not involve fee ownership of the land. Where ground leases are involved, investors often expect to see a term of 99 years (the proposed term here is 75 years).
6. This Project includes the uncommon concept of the developer being required to construct, maintain and program interior and exterior public spaces in perpetuity without revenue and at the developer's expense.
7. The ground lease will include provisions for revenue and profit sharing with the City of Portsmouth that are also not common. They will require explanation to potential investors, require ongoing administrative burden to implement and have financial implications that will reduce potential investor returns.
8. Additionally, the concept of all financial returns above a certain threshold being returned to the City of Portsmouth presents a further challenge as equity investors look to have at least the possibility of a significant upside return on their investment given their inherent exposure to downside risk (of which they bear 100%).

Based on these risks, we have identified that the projected returns for this project are at the low end of what institutional equity would traditionally require for such a risky project in today's capital markets. In order to attract equity capital, the project must be able to demonstrate the possibility that returns could exceed projections and that equity capital would be allowed to receive those higher returns if achieved. For those reasons, we have identified that a proposed overall limitation of 21% return on equity will be challenging, and any limitation lower than that would not be adequate to attract institutional equity interest in a project with these development risks and constraints. Finally, the Stabilized Period Return Hurdle of 15% eliminates the 1% risk premium, given the riskiest development phase of the project has been overcome during the applicable time period, and reduces the return threshold further by another 5% to account for the lower level of risk and investor return expectations during this ongoing operational phase of the project.

Additionally, the City of Portsmouth shall receive all of the below outlined capital event proceeds:

- Refinancings: 7.5% of net refinancing proceeds for 1st refinancing event and 10% of net refinancing proceeds for all subsequent refinancing events
- Sales: 20% of net sales proceeds for all sales events in excess of a calculated internal rate of return at 18%

The City will create a special revenue account and deposit all income from the ground lease, profit sharing, and excess profits into this account, to be used only for public historic preservation or park, or recreational purposes. Any portion of moneys used to manage the fund and the lease will be appropriately authorized, documented, and reported to NPS. This fund will be part of the City's annual audit. Any expenditures from this account requires City Council appropriation.

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10d. Description of accounting and financial procedures

Through its ground lease, the City will require its private partner to provide annual unaudited financial statements in accordance with GAAP and with generally accepted auditing standards. All income and expenses, including calculation of excess income, shall be provided. An interest-bearing Capital Expenditures Maintenance Reserve Fund will be held in escrow by the City, to which the private partner will contribute \$25,000/year for the first 5 years (starting in month 30) and \$75,000/year for years 6-10, until a \$500,000 cap has been accrued. This amount shall be maintained, until a capital improvement/repair requires the fund be drawn upon - this fund shall be replenished at \$50,000 per year and maintained at the original cap level of \$500,000.

At the close of each fiscal year, the City commissions an audit of its financial accounts (which would include the Special Revenue account that accepts any excess income). The City will receive audited financial statements from its private partner every 2 years which will be submitted to NPS. These audits, with a financial report, will be submitted every two years to NPS.

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Attachment A – Development Agreement

1 [JULY 10, 2019 CITY OF PORTSMOUTH – FINAL DRAFT]

2
3 **DEVELOPMENT AGREEMENT AND AGREEMENT TO LEASE**

4
5
6 This **DEVELOPMENT AGREEMENT AND AGREEMENT TO LEASE** (“Agreement”) is
7 made as of the ____ day of _____, 2019 (the “Effective Date”), by and
8 between the City of Portsmouth, a New Hampshire municipal corporation, with a principal
9 place of business at c/o Nancy Colbert Puff, 1 Junkins Avenue, Portsmouth, New
10 Hampshire (referred to as “the City”) and SoBow Square, LLC, a _____
11 limited liability company, with a principal place of business at
12 _____, its successors and assigns (referred to as
13 “Developer”), and referred to collectively as the “Parties”.

14
15
16 **PRELIMINARY STATEMENTS**

17
18 This Agreement relates to the possible redevelopment of certain real estate known as the
19 “McIntyre Property” located at 80 Daniel Street, Portsmouth, New Hampshire (the
20 “Property”).

21
22 Reference is made to the following facts.

- 23
24 **I.** The Property is presently owned by the United States of America. The City has
25 been invited to submit an “Application for Obtaining Real Property for Historic
26 Monument Purposes” (the “Application”) to the National Parks Service to
27 acquire the Property from the General Services Administration (“GSA”) under
28 the Federal Historic Surplus Property Program. Under the Historic Surplus
29 Property Program, the Property would be conveyed to the City for no cash
30 consideration but with a deed restriction or preservation covenant requiring that
31 the Property be preserved and used as a Historic Monument.
32
33 **II.** In August of 2017, the City issued a Request for Proposals (the “RFP”) seeking
34 a private real estate developer to enter into a public private partnership with the
35 City whereby the City would acquire the Property from the GSA under the
36 Historic Surplus Property Program and then lease the Property to a private
37 developer pursuant to a long-term ground lease. Under the ground lease the
38 developer shall be obligated to redevelop, reuse and operate the Property as
39 a Historic Monument as generally described and detailed in the RFP.
40
41 **III.** On or about November 6, 2017, in response to the RFP, several real estate
42 developers, including Developer, submitted proposals to ground lease and
43 redevelop the Property. In its response to the RFP, Developer proposed to
44 redevelop the Property as a mixed-use project with office, retail, and residential
45 uses and related parking, amenities, infrastructure and public spaces
46 (collectively, the “Project”).

- 1
2 **IV.** On January 16, 2018, the Portsmouth City Council voted to select Developer
3 as its potential development partner and authorized City Staff to negotiate and
4 enter into a nonbinding memorandum of agreement with Developer with
5 respect to the Project to allow time for public input and comment on the
6 proposed Project, to allow Developer time to conduct additional due diligence,
7 and to allow the City and Developer time to work together on the National Parks
8 Service Application, and to negotiate the terms of a development agreement.
9
- 10 **V.** On May 16, 2018, the Parties entered into a nonbinding memorandum of
11 agreement with respect to the Project entitled “McIntyre Project Negotiating
12 Principles”. This Agreement supersedes and replaces that Memorandum of
13 Agreement in all respects.
14
- 15 **VI.** The Parties to this Development Agreement are willing to continue to work
16 together and proceed with the Project upon the terms and conditions of this
17 Agreement.
18
19

20 **DEFINITIONS**

21
22 “Agreement” shall mean this Development Agreement, including all Exhibits hereto, as
23 the same may from time to time be amended, modified, or supplemented in accordance
24 with the terms hereof.
25

26 “City” shall mean the City of Portsmouth, New Hampshire.
27

28 “Developer” shall mean SoBow Square, LLC.
29

30 “Development Permits and Approvals” shall mean all final, unappealed and unappealable
31 federal, state, and local permits and approvals required for the Project (including, without
32 limitation, any approvals or authorizations required from the New Hampshire Historic
33 Preservation Office).
34

35 “Project” shall mean the redevelopment, re-use, operation and management of the
36 Property as described in this Agreement to be undertaken by Developer in accordance
37 with the terms of this Agreement.
38

39 “Application” shall mean the “Application for Obtaining Real Property for Historic
40 Monument Purposes” to be submitted by Developer and the City to the National Park
41 Service in connection with the proposed acquisition and redevelopment of the Property
42 in accordance with the terms and provisions of this Agreement.
43

44 “Ground Lease” shall mean the long-term ground lease of the Property between the City
45 as landlord and Developer as tenant, pursuant to which Developer shall construct,

1 manage and operate the Project in accordance with the terms of this Agreement. The
2 terms of the Ground Lease shall be negotiated during the Application Period.

3
4 “Guarantors” shall mean, collectively and as applicable, the Completion Guarantor and
5 the Limited Guarantor (each as defined below), and substitutes therefor approved by the
6 City in its reasonable discretion or as set forth in the Ground Lease. Subject to the City’s
7 reasonable prior approval, the “Completion Guarantor” shall be the completion guarantor
8 required by Developer’s construction lender and the “Limited Guarantor” shall be the party
9 required by Developer’s first mortgage lender from time to time to provide any non-
10 recourse carve-out guaranty and/or environmental indemnity; provided, however, that if
11 Developer’s lender is not an institutional lender, then such guarantor(s) shall be subject
12 to the City’s prior approval, such approval not to be unreasonably withheld, conditioned
13 or delayed, as more particularly set forth in the Ground Lease. The Completion Guarantor
14 and the Limited Guarantor may be different parties.

15
16
17 NOW, THEREFORE, the Parties hereby agree as follows:

18
19 **1. DESCRIPTION OF PROJECT / BACKGROUND**

20
21 **This Development Agreement is related to the acquisition and redevelopment of**
22 **the Property under the Federal Historic Monument Program and sets forth the**
23 **City’s and the Developer’s respective rights, responsibilities and duties with**
24 **respect to such proposed redevelopment.**

25
26 1.1. The Parties are entering into this development agreement: (i) to work
27 cooperatively to prepare and submit a joint Application to the National Parks
28 Service for acquisition of the Property by the City and the redevelopment,
29 operation and management of the Property by the Developer under the terms
30 of a long-term Ground Lease (ii) to allow time for additional public input and
31 comment on the Project, (iii) to allow time for the Developer to conduct
32 additional due diligence with respect to the Property and the feasibility of the
33 Project; (iv) to finalize details about the Project, and (iv) to negotiate the terms
34 of a long-term ground lease (the “Ground Lease”) between the City as
35 landlord and Developer as tenant pursuant to which the Property will be
36 redeveloped, operated and managed by Developer, at Developer’s sole cost
37 and expense, in accordance with the Historic Surplus Property Program, the
38 Application, the terms and conditions of the this Development Agreement,
39 and the terms and conditions of the Ground Lease.

40
41 1.2. The Developer’s preliminary proposal for the redevelopment of the Property
42 has undergone a City-managed public input process to provide residents and
43 other stakeholders the opportunity to review and comment on the Developer’s
44 proposal and on how the Property should be redeveloped and reused.
45 Developer’s proposal for the Project was refined and modified as part of the
46 public input process and as the result of additional City review. Preliminary

1 plans for the Project will be finalized by Developer and the City prior to
2 submitting the Application to the National Parks Service.
3

4 1.3. It is also anticipated by both Parties that the City will acquire the Property
5 subject to a restrictive covenant, as well as all applicable requirements of the
6 Historic Surplus Property Program and the Secretary of the Interior Standards
7 for Rehabilitation and the New Hampshire Historic Preservation Office, that
8 will contain specific requirements for how the Property will be preserved,
9 maintained and protected in the future (collectively, the “Preservation
10 Restrictions”). The Developer will, under the Ground Lease, assume full
11 responsibility for complying with such requirements as well as the
12 Preservation Restrictions and the approved Application. In no event shall the
13 existing Building be demolished (except to the extent of renovations and
14 modifications contemplated by the Application and permitted by the
15 Preservation Restrictions).
16

17 **2. DEVELOPER’S RESPONSIBILITIES, AGREEMENTS, COVENANTS AND**
18 **CONTINGENCIES**
19

20 2.1. **Developer’s Responsibilities and Covenants.**
21

22 2.1.1. **Development/Project.** Developer’s Project shall be generally
23 similar to size, mass, and configuration as the Conceptual Site Plan
24 and building elevations included within Exhibit A of this Agreement.
25 However, the Parties expressly recognize that the conceptual site
26 plan and building elevations included within Exhibit A are subject to
27 change as the state and local permitting process and the design and
28 regulatory processes move forward.
29

30 The materials comprising the exterior of Developer’s Project shall be
31 appropriate for downtown urban architecture, complementary to
32 downtown Portsmouth’s historic character.
33

34 Upon acquisition of the Property by the City and the full execution of
35 the Ground Lease, Developer shall proceed with the redevelopment
36 of the Property in accordance with the final, approved plans therefore
37 and substantially in accordance with the Development Schedule (as
38 it may be updated by the Developer and the City from time to time)
39 at Developer’s sole cost and expense. Preliminary concept plans for
40 the Project are included as Exhibit A of this Agreement. A
41 preliminary Project budget, which shall be updated by the parties
42 prior to filing the Application and shall be further updated prior the
43 entering the Ground Lease and as set forth in the Ground Lease, is
44 attached hereto as Exhibit B (the ‘Project Budget’). A preliminary
45 Development Schedule, which shall be updated by the parties prior
46 to filing the Application and shall be further updated prior the entering

1 the Ground Lease and as set forth in the Ground Lease, is attached
2 hereto as Exhibit C (the "Development Schedule").
3

4 The Property shall be leased by the Developer "as is" with the City
5 making no warranties either express or implied as to the condition
6 of the Property.
7

8 2.1.2. **Infrastructure Improvements.** Developer shall be solely
9 responsible for the cost of designing, permitting, and constructing
10 any and all improvements to utilities, roadways, sidewalks and other
11 public and private infrastructure and public amenities necessary or
12 desirable for Developer's Project. The parties do not anticipate
13 material off-site infrastructure improvements to be required for the
14 Project, except for the infrastructure improvements contemplated in
15 the Project Budget and shown within Exhibit A attached hereto (the
16 "Infrastructure Improvements"). To the extent any off-site
17 infrastructure improvements other than the Infrastructure
18 Improvements are identified during the Permitting and Approval
19 process as necessary to mitigate the Project-related impacts, the
20 parties shall cooperate in good faith to limit the scope and expense
21 of such improvements such that the scope of the required
22 improvements is not more than necessary to fully mitigate Project-
23 related impacts.
24

25 2.1.3. **Intentionally Omitted.**
26

27 2.1.4. **Project Costs and Expenses.** Developer shall be responsible for all
28 costs and expenses associated with this Agreement and the Project
29 including, without limitation, costs of its due diligence, costs of
30 participating in the public input and review process, all costs related
31 to the preparation and submission of the Application, and all design,
32 permitting and construction costs associated with the Project.
33 Developer and the City may agree in their discretion that Developer
34 shall pay or reimburse the City for certain costs incurred by the City.
35 Developer shall have no obligation to pay or reimburse any expenses
36 incurred by the City in connection with the Project or this Agreement,
37 except to the extent of any specified expenses that the Developer
38 and the City have agreed in writing that Developer shall be
39 responsible for paying or reimbursing.
40

41 2.1.5. **Environmental.** Developer shall be responsible for the cost of any
42 environmental remediation required for the Project, shall expressly
43 release the City from any and all such responsibility and shall
44 indemnify, defend and hold harmless the City from and all lost, cost,
45 expense, claims and damages associated with environmental
46 conditions at the Property. The Parties acknowledge that the

1 Property contains asbestos and the City will assume no responsibility
2 for, or any liability or responsibility with respect thereto. Developer
3 shall assume all responsibility for compliance with all applicable laws
4 relating to asbestos and asbestos removal and disposal. In
5 connection with its due diligence, Developer agrees to perform
6 commercially reasonable environmental due diligence. All
7 environmental due diligence shall comply with the EPA's All
8 Appropriate Inquiry Rule and ASTM E1527-13 Standard. The City
9 shall receive from Developer the results of all environmental due
10 diligence (with reliance rights) which are obtained by Developer with
11 respect to the Property.
12

13 2.1.6. **National Parks Service Application.** Developer shall cooperate
14 with the City in preparing the National Parks Service "Application to
15 Obtain Real Property for Historical Monument Purposes." It is
16 expected that such Application will be submitted to the National
17 Parks Service on or about July 2019, but no later than September
18 30, 2019 (the period ending on such later date, as it may be extended
19 by mutual agreement of the parties, is hereby referred to as the
20 "Application Period"). Subject to further refinement as provided in this
21 Agreement and comments received from the National Parks Service,
22 it is expected that the Application will be generally consistent with the
23 City's August 22, 2017 RFP and the Developer's November 6, 2017
24 Response thereto. The parties also expect to submit the proposed
25 form of Ground Lease as part of the Application. The Ground Lease
26 must be approved by the National Parks Service. The Application
27 shall, at a minimum, include a detailed description of the Project, and
28 a "Program of Preservation and Utilization" which includes a
29 preservation plan, a use plan and a financial plan all as required
30 under the Federal Historic Surplus Property Program. If the
31 Application is initially rejected by the Parks Service for technical
32 reasons or correctible issues then the City agrees that it will work
33 with the Developer to submit a corrected application. If the parties,
34 after good faith negotiations, fail to reach agreement on a mutually
35 acceptable form of Application during the Application Period then
36 either party may terminate this agreement in which event the Deposit
37 (and all interest earned thereon) shall be promptly returned to the
38 Developer and neither party shall have any further rights or
39 obligations hereunder except those expressly stated to survive.
40

41 If the City submits the Application, the Developer shall
42 automatically and immediately become fully responsible for all
43 requirements, obligations, duties, and commitments related to the
44 Application and the acceptance and approval of the Application
45 including, without limitation, all "constructive possession"
46 responsibilities (if any) described in the general terms and conditions

1 of the Application even if constructive possession were to occur prior
2 to satisfaction of the conditions precedent to Developer's obligation
3 to consummate the Closing and to execute the Ground Lease (the
4 "Closing Contingencies"). The parties shall work cooperatively to
5 ensure that neither possession nor constructive possession of the
6 Property occurs until satisfaction of the Closing Contingencies and
7 the execution of the Ground Lease. In the event that the National
8 Parks Service sends a notice requesting or demanding that the City
9 take possession of the Property within fifteen (15) days before all
10 Closing Contingencies have been fully satisfied, then the City will
11 accept the deed to the Property and the City and the Developer will
12 execute the Ground Lease with an Addendum to be negotiated
13 reasonably by the City and the Developer, which Addendum will
14 cover the interim period between execution of the Ground Lease and
15 the date on which all Closing Contingencies have been satisfied.
16 During that interim period: (i) the Developer will be responsible for all
17 obligations owed to the National Parks Service pursuant to the
18 Application or the Deed and for securing, maintaining and insuring
19 the Property, (ii) subject to the terms of the Ground Lease, the
20 Developer will be allowed to enter leases, including, without
21 limitation, any space in the existing building on the Property in
22 compliance with any required environmental remediation and/or
23 asbestos removal, and to operate or lease the parking areas on the
24 Property, all in accordance with all applicable laws, regulations, and
25 building and health and life safety codes, (iii) except as may be
26 required by the National Parks Service, no improvements to the
27 Property shall be made other than improvements to the existing
28 building and other appropriate repairs and maintenance,
29 environmental remediation and/or asbestos removal, and (iv) the
30 Developer will be required to pay real estate taxes on Property, but
31 not base rent. Once all Closing Contingencies have been satisfied,
32 the Addendum will terminate and the Ground Lease will commence
33 within a 75 year term, etc. If the interim period lasts for more than
34 12 months then Developer shall provide an accounting of operating
35 expenses and income and twenty-five percent (25%) of Developer's
36 actual income in excess of operating expenses incurred will be paid
37 by Developer to the City.

38
39 2.1.7. **Federal Historic Surplus Property Program.** In connection with
40 its proposed redevelopment of the Property, Developer shall comply,
41 at its sole cost and expense, with all terms, conditions and
42 requirements of the Federal Historic Surplus Property program
43 including, without limitation the Preservation Restrictions, the deed
44 of the Property to the City, and all commitments made in the
45 Application. The Property shall be rehabilitated and the Property
46 continuously maintained, repaired and administered by Developer in

1 accordance with the Ground Lease, the Preservation Restrictions,
2 and to the extent applicable The Secretary of the Interior's Standards
3 for Rehabilitation, as amended from time to time.
4

5 2.1.8. **Ground Lease.** During the Application Period, the Developer shall
6 negotiate in good faith with the City the terms and conditions of the
7 Ground Lease. The basic terms of the Ground Lease are set forth in
8 Exhibit F attached hereto. The Ground Lease will contain the
9 following terms and provisions as well as others: (i) the scope of the
10 Developer's initial construction and rehabilitation obligations; (ii)
11 Developer's responsibility for all environmental matters at the
12 Property including a release and indemnity to the City with respect
13 thereto; (iii) final construction schedule; (iv) Developer financing
14 rights and obligations; (v) form of security and guarantees for
15 completion of Developer's construction work; (vi) the approved plan
16 for Developer's operation and maintenance of the Property; (vii)
17 events of default and remedies; (viii) definition of the Developer's
18 "reasonable profit" under applicable federal law; (ix) the term of the
19 Ground Lease; (x) base rent and other required payments; (xi) real
20 estate taxes; (xii) maintenance and operation requirements; (xiii)
21 insurance requirements; (xiv) events of default and remedies; (xv)
22 use restrictions and covenants; (xvi) end of term rights and
23 responsibilities; (xvii) transfer rights and limitations; (xviii) restrictions
24 on changes to the Project; and (xix) the express assumption by
25 Developer of all obligations under the Federal Historic Monument
26 Program with respect to the Property including the rehabilitation,
27 operation, management and maintenance of the Property. If the
28 Parties are unable to reach agreement on the Ground Lease prior to
29 end of the Application Period, then either party may terminate this
30 Agreement, in which event the Deposit (and all interest earned
31 thereon) shall be promptly returned to the Developer and neither
32 party shall have any further rights or obligations hereunder except
33 those expressly stated to survive. The Ground Lease shall contain
34 the agreed-upon methodology for calculating the various
35 components of all income to be paid to the City together with
36 examples of such calculations.
37

38 2.1.9. **Preliminary Design and Cost Analysis of Project.** Developer has,
39 as of the date of this Agreement, completed a preliminary analysis of
40 the financial feasibility of the construction of the Project and has
41 determined that the Project is financially feasible.
42

43 2.1.10. **Budget.** Developer has, as of the date of this Agreement, prepared
44 preliminary estimates of the cost to design, construct and implement
45 the Project as set forth in the Project Budget attached as Exhibit B.
46 The parties shall agree on a final Project Budget which shall be

1 submitted with the Application and incorporated into the Ground
2 Lease.

3
4 2.1.11. **Financing.** Developer shall diligently seek and obtain all financing
5 (debt and equity) in sufficient amounts and at such prices, rates, and
6 terms and from sources adequate to complete the Project in
7 accordance with this Agreement. As soon as reasonably practical
8 following the completion of permitting, design, construction plans and
9 construction pricing for the Project and in all events no later than sixty
10 (60) days prior to the anticipated date of Closing, Developer shall
11 provide the City with commitments for such financing for review and
12 approval by the City, not to be unreasonably withheld, conditioned or
13 delayed. The City's review and approval of such proposed financing
14 shall primarily focus on verifying that (i) the proposed financing
15 contains sufficient amounts of debt and equity to fund the total costs
16 of development and construction of the Project as set forth in the
17 Project Budget, and (ii) any equity investors are Eligible Investors (as
18 defined below). Prior to the submission of the Application to the
19 National Parks Service, the Developer shall provide the City with
20 written expressions of interest from at least one prospective lender
21 and at least one prospective equity investor as evidence of their
22 interest in providing debt and equity to fund the development of the
23 Project subject to the City's review and approval, not to be
24 unreasonably withheld, conditioned or delayed.

25
26 2.1.12. **Development Schedule and Construction of Project.** A
27 preliminary Development Schedule is attached hereto as Exhibit C.
28 The Developer shall diligently prosecute to completion the design
29 and construction of the Project in accordance with the Development
30 Schedule and shall substantially complete such construction within
31 thirty (30) months after the execution of the Ground Lease, but
32 subject to excusable delays (force majeure) and such other terms
33 and conditions as may be more particularly set forth in the Ground
34 Lease. The parties shall agree on a final Development Schedule prior
35 to execution of the Ground Lease and such the Development
36 Schedule shall be incorporated into the Ground Lease.

37
38 2.1.13. **Performance and Completion Bonds; Security.** Prior to
39 commencing construction of the Project, Developer shall furnish the
40 City with payment and performance bonds assuring completion of
41 the Project from a recognized surety company having an AM Best
42 rating of A or as otherwise required under the Ground Lease, or such
43 other form of subcontractor insurance or security, as may be
44 acceptable to the City in its sole but reasonable determination, and
45 as shall be more particularly set forth in the Ground Lease.
46

1 2.1.14. **Guaranties.** Prior to commencing construction of the Project,
2 Developer shall furnish the City with a completion guaranty of the
3 Project from the Completion Guarantor for a period expiring upon the
4 issuance by the City of the final certificate of occupancy for the full
5 Project buildout (the “Completion Guaranty”) and a guaranty from the
6 Limited Guarantor of the Ground Lease, limited to (1) all Preservation
7 Restrictions, Historic Surplus Property Program Requirements, and
8 all other such historic and preservation terms and conditions for the
9 benefit of the National Park Service in the approved Application (but
10 not other terms and conditions as between Developer and the City),
11 and (2) any environmental indemnities and obligations contained
12 therein (the “Limited Guaranty”). These guaranties shall be provided
13 by the Guarantors upon terms and conditions to be set forth in the
14 Ground Lease.
15

16 2.1.15. **Reasonable Profit.** Developer understands, recognizes and
17 agrees that the Application will not be approved by the National
18 Parks Service unless it expressly provides that all income received
19 by the Developer in excess of costs of repair, rehabilitation,
20 restoration, maintenance, and a specified reasonable profit or
21 payment that may accrue to a lessor, sublessor, or developer in
22 connection with the management, operation, or development of the
23 Property for revenue producing activities, must be used only for
24 public historic preservation, park, or recreational purposes. Specific
25 details of the financial plan, Developer’s reasonable profit, and how
26 any “excess” funds will be spent will be negotiated and agreed to by
27 Developer and the City prior to submitting the Application. Such
28 terms and conditions will be incorporated into the Ground Lease. If
29 the National Park Service does not approve the proposal for the
30 calculation of Developer’s reasonable profit as set forth in the
31 Application, Developer shall have right to terminate this Agreement,
32 in which event the Deposit (and all interest earned thereon) shall be
33 promptly refunded and the parties shall have no further rights or
34 responsibilities hereunder except those expressly stated to survive
35

36 2.1.16. **Public Review and Input.** Developer understands that the Project
37 will be subject to public review and comment as the state and local
38 permitting process and the design and regulatory processes move
39 forward. If, after receiving additional public input and comments from
40 regulatory authorities and agencies, Developer proposes making
41 material changes to the Project and the City does not approve such
42 proposed changes (which approval by the City shall not be
43 unreasonably withheld, conditioned or delayed), then unless
44 Developer withdraws such proposed changes, either party may
45 terminate this Agreement and the Developer shall receive a refund
46 of its Deposit, (and all interest earned thereon) and the Parties shall

1 have no further rights or obligations hereunder except those
2 expressly stated to survive.

3
4 2.1.17. **Restrictions on Use.** The allowed uses of the Project shall be
5 specified in the Ground Lease but shall be consistent with the intent
6 of the RFP and Developer's response thereto. All uses and
7 associated with rehabilitation of the Property must also comply with
8 Secretary of the Interior's Standards for Rehabilitation and any
9 specific provisions in the Preservation Restrictions and/or the deed
10 to the City of the Property.

11
12 2.1.18. **Permits and Approvals.** Developer agrees to use good faith,
13 diligent efforts to apply for and obtain all required Development
14 Permits and Approvals at its sole cost and expense. Prior to applying
15 for any Development Permits and Approvals, Developer shall
16 provide the City with copies of proposed draft plans and applications
17 for the City's review, comment and approval (such approval not to be
18 unreasonably withheld, conditioned or delayed), and, in the case of
19 applications, the City's execution as a co-applicant to the extent
20 required, or if the City so elects. A preliminary list of anticipated
21 Permits and Approvals is attached hereto as Exhibit D. The City
22 agrees to review all such draft plans and applications with
23 reasonable promptness. Developer agrees that the first meeting in
24 connection with seeking Permits and Approvals for the Project shall
25 be with the Portsmouth Historic District Commission. The Parties
26 recognize that as of the date of this Agreement, the first meeting with
27 the Portsmouth Historic District Commission has already occurred
28 but that review process remains to be completed.

29
30 2.1.19. **Project Name.** The City shall have the right to review and comment
31 on, but not approve, the Project name, which Developer shall
32 determine following consultation with the City.

33
34 2.1.20. **Public Spaces and Amenities.** Developer shall cooperate with the
35 City to implement public and City sponsored arts, functions, concerts,
36 events and other community and cultural programming, within the
37 public realm spaces and amenities which are part of the Project.
38 Specific details shall be included in the Ground Lease.

39
40 2.1.21. **Project Changes.** After Closing and prior to completion of
41 construction of the Project, Developer shall make no material
42 changes to the exterior design of or allowed uses within Project
43 without the prior written approval of the City and, if and to the extent
44 necessary, the GSA and/or the National Parks Service, as shall be
45 more particularly set forth in the Ground Lease. The Ground Lease

1 shall specify what changes may be made to the Project by the
2 Developer following completion of construction.

3
4 2.1.22. **Transfers.** After delivery of the deed and prior to the completion of
5 the construction of the Project, no legal or beneficial interest (which
6 term shall be deemed to include successors in interest of such
7 interest) shall be transferred except in accordance with the
8 requirements and limitations to be set forth in the Ground Lease.
9 Notwithstanding the foregoing, the Developer shall have the right to
10 mortgage its leasehold interest in the Ground Lease to secure the
11 payment of any loan obtained by the Developer to finance the
12 development, construction, and operation of the Project. The
13 Ground Lease shall contain customary provisions with respect to the
14 rights of any such mortgage lenders and such lenders' obligations
15 with respect to the Project in the event of a foreclosure of their
16 mortgage. Following completion of construction of the Project, the
17 restriction on transfers shall be relaxed as more particularly
18 described in the Ground Lease. Prior to Closing, Developer may
19 admit one or more additional investors, provided that (i) The Kane
20 Company and Redgate Holdings, LLC continue to control Developer
21 (subject to customary major decision rights in favor of such
22 investors), and (ii) such investors are Eligible Investors. The term
23 "Eligible Investors" shall mean investors that are either (a)
24 institutional investors, or (b) investors who have not in the prior ten
25 (10) years been involved in litigation with the City, defaulted under
26 any agreements with the City, or failed to pay any taxes to the City
27 when due.

28
29 2.1.23. **Real Estate Taxes.** During the term of the Ground Lease, Developer
30 shall pay real estate taxes for the Property (including all structures
31 and improvements added by the Developer) to the extent required
32 under applicable law (including RSA Chapter 72:23, I (b)) as if the
33 Developer were the owner of fee simple title to the Property (subject
34 to adjustment during any interim period contemplated in Section
35 2.1.6 above).

36
37 2.2. **Developer's Contingencies.** Developer's obligation to execute the Ground
38 Lease and undertake the Project shall be subject to the following
39 contingencies, the failure to satisfy any one of which shall give Developer any
40 of the options set forth below and, in addition, the right to withdraw from this
41 Agreement, after which Developer shall have no further obligation to the City.

42
43 2.2.1. **Due Diligence.**

44
45 **Due Diligence Period.** Developer has completed any and all
46 assessments, tests, studies, surveys, and research, at its sole cost

1 and expense, as Developer deemed necessary or appropriate,
2 including, but not limited to, environmental site assessments
3 (including soil and groundwater testing and sub-surface
4 explorations), real estate title reviews, boundary surveys, building
5 and property inspections, flood zone reviews and certifications,
6 reviews of all applicable governmental regulations and ordinances,
7 economic and financial feasibility studies, market studies,
8 engineering studies, geotechnical studies, parking and traffic
9 studies, as well as reviews to determine the adequacy and
10 availability of public and private utilities serving the Property.
11 Notwithstanding the foregoing, Developer has not been afforded an
12 opportunity to inspect the portion of the Property occupied by the
13 Federal Bureau of Investigation (the "FBI Space"). At Closing, the
14 Property shall be in substantially the same condition that it is in now,
15 excepting reasonable wear and tear and other damage or
16 deterioration that would not materially increase the Project Budget or
17 substantially delay the Development Schedule, and free from tenants
18 and occupants (the "Delivery Condition"). Developer shall have the
19 opportunity to visually inspect the entirety of the Property (including
20 the FBI Space) prior to Closing to confirm that the Property is in the
21 Delivery Condition. If either (i) the Property is not in the Delivery
22 Condition at Closing, or (ii) Developer's inspection reveals that the
23 scope of asbestos remediation within the FBI Space is materially
24 greater than other portions of the building inspected by Developer
25 and the cost to abate such asbestos or other unanticipated
26 conditions within the FBI Space is materially greater than
27 contemplated in the Project Budget, Developer shall have right to
28 terminate this Agreement, in which event the Deposit (and all interest
29 earned thereon) shall be promptly refunded and the parties shall
30 have no further rights or responsibilities hereunder except those
31 expressly stated to survive. In such event, the City shall receive from
32 Developer any and all third party due diligence materials (with
33 reliance rights) which are undertaken by Developer with respect to
34 the Property or the Project, in electronic format (AutoCADD if
35 applicable) or other format requested by the City.

36
37 ***Title Due Diligence – Special Provisions.*** Developer performed a
38 title examination of the Property, and is reasonably satisfied that title
39 to the Property is good, marketable and insurable, and not otherwise
40 subject to any Liens, encumbrances, covenants or other restrictions
41 which would prevent Developer from using the Property for
42 Developer's Project ("Title Defects"). At the Closing, good and clear,
43 record and marketable leasehold title to the Property shall be
44 conveyed to Developer subject only to the deed granted by the
45 National Park Service, the Preservation Restrictions, the Ground
46 Lease, and such encumbrances, covenants or other restrictions that

1 existed of record prior to [insert effective date of Developer's title
2 insurance commitment prior to execution], 2019 ("Permitted
3 Encumbrances"). It shall be a condition to Closing that Developer be
4 able to obtain a customary leasehold title insurance policy with
5 appropriate coverage insuring leasehold title to the Property in
6 Developer, subject only to the Permitted Encumbrances and with the
7 standard exceptions (including the exceptions for mechanic's liens
8 and parties in possession) deleted (the "Title Insurance Policy"). In
9 the event that the City is unable or otherwise unwilling to provide
10 good, marketable and insurable title, or Developer is unable to obtain
11 the Title Insurance Policy, then Developer, at its sole option, may
12 proceed with any of the following options:

- 13
- 14 i. Afford the City additional time to cure said title defects;
- 15
- 16 ii. Terminate this Agreement and receive a full refund of its
17 Deposit (and all interest earned thereon); or,
- 18
- 19 iii. The Parties may renegotiate the Ground Rent to
20 appropriately account for the condition of title to the
21 Property, and then proceed to Closing.
- 22

23 **Environmental Due Diligence – Special Provisions.**

24 Developer conducted such studies and investigations as it
25 deemed necessary with respect to the environmental condition of
26 the Property and any environmental contamination or hazardous
27 material related thereto. In connection therewith, Developer
28 obtained for the following environment reports, studies and
29 assessments with respect to the Property (the "Environmental
30 Reports"): [Phase I Environmental Site Assessment – Sanborn
31 Head; Geotechnical Due Diligence Summary Memorandum –
32 Sanborn Head; Hazardous Buildings Materials Survey – AXIOM
33 Partners; Property Condition Assessment – Simpson Gumpertz
34 & Heger, Inc.; and Land Survey – Tighe & Bond]. All
35 environmental due diligence shall comply with the EPA's All
36 Appropriate Inquiry Rule and ASTM E1527-13 Standard.

37
38 Developer performed these tasks at its own risk and at its own
39 expense. Developer accepts full responsibility for the use of the
40 Property during its inspections and due diligence, and
41 acknowledges that such access is subject to the indemnity
42 provisions of Section 1.5.

43
44 If prior to Closing Developer discovers environmental
45 contamination or hazardous materials on or impacting the
46 Property or the development thereof that were not identified in the

1 Environmental Reports (whether such matters be pre-existing
2 conditions or caused by a new spill), and the remediation of such
3 environmental contamination or hazardous materials would
4 materially increase the Project Budget, substantially delay the
5 Development Schedule or materially limit the permitted uses of
6 the Property, Developer shall have the following options, as
7 follows:
8

- 9 i. Terminate this Agreement and receive a full refund of its
10 Deposit (and all interest earned thereon); or,
11
12 ii. Accept the Property in its “as is condition” and proceed to
13 Closing, subject to other contingencies as set forth within
14 this Agreement. If Developer proceeds to Closing,
15 Developer shall accept full responsibility for the Property in
16 its “as is, where is” environmental condition with respect to
17 the potential presence of hazardous waste or other buried
18 materials regardless whether such waste or other materials
19 were identified by said due diligence, tests, studies, or
20 investigations.
21

22 2.2.2. **Development Approvals and Permits.** This Agreement is
23 contingent upon Developer, at its sole cost and expense, obtaining
24 any and all required Development Permits and Approvals from
25 applicable governmental agencies (including without limitation the
26 full building permit necessary for construction of the Project), upon
27 such terms and conditions as are satisfactory to Developer in its
28 reasonable discretion, for the Project. A preliminary list of anticipated
29 permits and approvals is attached hereto as Exhibit D.
30

31 Developer agrees to use good faith, diligent efforts to apply for and
32 obtain all required development permits and approvals. Prior to
33 applying for any development permits and approvals, Developer
34 shall provide the City with copies of proposed draft plans and
35 applications for the City’s review and approval (such approval not to
36 be unreasonably withheld, conditioned or delayed) pursuant to
37 Section 2.1.18, and, in the case of applications, the City’s execution
38 as a co-applicant to the extent required or if the City so elects.
39

40 The City shall cooperate in the prosecution of such Development
41 Permits and Approvals, including the execution of any and all letters,
42 consents and permit applications, the attendance by City Staff at all
43 hearings, and the submission of oral and written testimony in support
44 of Developer’s Project to the applicable land use boards or agencies,
45 to permit Developer to seek and obtain all development permits and
46 approvals. All Development Permits and Approvals, including any

1 conditions affecting the same, must be satisfactory to Developer and
2 the City in their reasonable discretion (provided that the City shall not
3 object to any such approvals that do not materially differ from the
4 RFP or the Application). Developer shall diligently endeavor to
5 receive such development permits and approvals within the time
6 frames established by the Development Schedule set forth in Exhibit
7 C of this Agreement. In the event that Developer, despite good faith
8 efforts, has not received all required Development Permits and
9 Approvals by the Outside Closing Date (as defined below),
10 Developer may extend the Outside Closing Date by up to six (6)
11 months, provided that Developer continues to actively prosecute
12 such Development Permits and Approvals.

13
14 Developer shall provide the City with regular status updates about
15 information concerning the prosecution of Development Permits and
16 Approvals.

17
18 The following terms and conditions shall govern Developer's Deposit
19 in relation to securing permits and approvals for Developer's Project:
20

21 a) In the event the City denies any of Developer's applications
22 for permits and approvals, then Developer may terminate this
23 Agreement and shall receive a full refund of the Deposit, including
24 interest earnings, following which this Agreement shall be null and
25 void, and of no further force or effect.

26
27 b) In the event any other governmental entity, other than the City
28 of Portsmouth, denies any of Developer's applications for permits
29 and approvals, then Developer may terminate this Agreement and
30 shall receive a full refund of the Deposit, including all interest
31 earnings, following which this Agreement shall be null and void, and
32 of no further force or effect.

33
34 c) In the event an aggrieved individual appeals any permits or
35 approvals issued for Developer's Project, and the aggrieved
36 individual's appeal prevails, then Developer may terminate this
37 Agreement and shall receive a full refund of the Deposit, including all
38 interest earnings, following which this Agreement shall be null and
39 void, and of no further force or effect.

40
41 d) In the event an aggrieved individual appeals any permits or
42 approvals issued for Developer's Project and Developer elects not to
43 contest or defend such appeal, then Developer may terminate this
44 Agreement and shall receive a full refund of the Deposit, including all
45 interest earnings, following which this Agreement shall be null and
46 void, and of no further force or effect.

1
2 e) During the period after the National Parks Service approves
3 the Application, but prior to satisfying the Closing Contingencies, to
4 expedite progress on development of the Project, if Developer
5 requests that the Closing be advanced prior to satisfaction of the
6 Closing Contingencies, then the City shall take steps to acquire the
7 Property and if the City does in fact acquire the Property, then the
8 City and the Developer will execute the Ground Lease with an
9 Addendum which will cover the interim period between execution of
10 the Ground Lease and the date all Closing Contingencies have been
11 satisfied. During that interim period: (i) the Developer will be
12 responsible for all obligations owed to the National Parks Service
13 pursuant to the Application or the Deed and for securing, maintaining
14 and insuring the Property, (ii) subject to the terms of the Ground
15 Lease, the Developer will be allowed to enter leases, including,
16 without limitation, any space in the existing building on the Property
17 in compliance with any required environmental remediation and/or
18 asbestos removal, and to operate or lease the parking areas on the
19 Property, all in accordance with all applicable laws, regulations, and
20 building and health and life safety codes, (iii) except as may be
21 required by the National Parks Service, no improvements to the
22 Property shall be made other than improvements to the existing
23 building and other appropriate repairs and maintenance,
24 environmental remediation and/or asbestos removal, and (iv) the
25 Developer will be required to pay real estate taxes on the Property,
26 but not base rent. Once all Closing Contingencies have been
27 satisfied, the Addendum will terminate and the Ground Lease will
28 commence within a 75 year term, etc. If the interim period lasts for
29 more than 12 months then Developer shall provide an accounting of
30 operating expenses and income and twenty-five percent (25%) of
31 Developer's actual income in excess of operating expenses incurred
32 will be paid by Developer to the City.
33

34 f) In the event Developer fails to apply for permits and approvals
35 following the foregoing review and comment process with the City,
36 or otherwise fails to diligently pursue such permits and approvals,
37 and does not cure such failure within thirty (30) days of Developer's
38 receipt of notice from the City of default under this paragraph, then
39 the City may terminate this Agreement and Developer shall forfeit its
40 Deposit, including interest earnings, following which this Agreement
41 shall be null and void, and of no further force or effect.
42

43 2.2.3. **Financing.** This Agreement is specifically contingent upon
44 Developer obtaining financing (debt and equity) in sufficient amounts
45 and from sources that are satisfactory to Developer and the City to
46 fund the total costs of development and construction of the Project

1 (the “Approved Financing”). The City’s review and approval of such
2 proposed financing shall primarily focus on verifying that (i) the
3 proposed financing contains sufficient amounts of debt and equity to
4 fund the total costs of development and construction of the Project
5 as set forth in the Project Budget, and (ii) any equity investors are
6 Eligible Investors. Prior to the submission of the Application to the
7 National Parks Service, the Developer shall provide the City with
8 written expressions of interest from at least one prospective lender
9 and at least one prospective equity investor as evidence of their
10 interest in providing debt and equity to fund the development of the
11 Project subject to the City’s review and approval, not to be
12 unreasonably withheld, conditioned or delayed. If Developer is not
13 able to obtain the Approved Financing on or before the Outside
14 Closing Date, then either party may elect to terminate this
15 Agreement, in which case Developer shall forfeit its Deposit,
16 including interest earnings.

17
18 2.2.4. **Approval of Application by National Parks Service.** This
19 Agreement is specifically contingent upon approval of the Application
20 by the National Parks Service, such approval not to contain any
21 unanticipated material conditions, limitations, obligations or
22 restrictions (including the terms of the required Preservation
23 Restrictions) not set forth in the Application that would materially
24 increase the Development Budget, substantially delay the Project
25 Schedule, substantially increase the cost to operate the Project, or
26 materially limit the uses allowed on the Property and the revenue
27 producing activities contemplated by Developer. If the Application is
28 not approved, or if the approval or the Preservation Restrictions
29 contain such material conditions, limitations, obligations or
30 restrictions not set forth in the Application, then Developer may
31 terminate this Agreement and shall receive a full refund of the
32 Deposit, including all interest earnings, following which this
33 Agreement shall be null and void, and of no further force or effect
34

35 2.2.5. **City’s Responsibilities.** This Agreement is specifically contingent
36 upon the City completing its responsibilities as set forth within
37 Section 3.1 and otherwise pursuant to this Agreement. If the City fails
38 to fulfill any of its material responsibilities or otherwise is in material
39 breach of this Agreement after notice and opportunity to cure as
40 provided herein, then the City shall be in default under this
41 Agreement and Developer shall have the remedies set forth in
42 Section 7.2 hereof.
43

44 3. **CITY’S RESPONSIBILITIES, AGREEMENTS, COVENANTS AND**
45 **CONTINGENCIES**
46

1 3.1. **City's Responsibilities.**
2

3 3.1.1. **Public Input.** The City has coordinated a process for additional
4 public review and input on the Project. The Developer and the City
5 shall give due consideration to all such public input when preparing
6 the Application. Notwithstanding the foregoing, such understanding
7 shall not limit each party's right to review and approve the final form
8 and contents of the Application.
9

10 3.1.2. **City Council Approval.** Developer recognizes that this Agreement,
11 the Application and the form of Ground Lease, is subject to review
12 and approval by the City Council.
13

14 3.1.3. **National Parks Service Application.** The City shall cooperate with
15 the Developer in preparing the National Parks Service "Application
16 to Obtain Real Property for Historical Monument Purposes" to be
17 submitted by the City to the NPS and as further described in Section
18 2.1.6.
19

20 3.1.4. **Acquisition of Property from GSA.** The City shall use good faith
21 diligent efforts, in consultation and cooperation with Developer, to
22 acquire the Property from the GSA in accordance with the terms and
23 conditions of the Application and/or such other terms and conditions
24 as may be acceptable to the City.
25

26 3.1.5. **Ground Lease.** During the Application Period, the City shall
27 negotiate in good faith with the Developer the terms and conditions
28 of the Ground Lease. The Ground Lease will contain the terms and
29 conditions described in Section 2.1.8 and Exhibit F, as well as other
30 applicable terms and provisions. If the Parties are unable to reach
31 agreement on the Ground Lease prior to end of the Application
32 Period, then either party may terminate this Agreement in which
33 event the Deposit shall be promptly refunded and the parties shall
34 have no further rights or responsibilities hereunder except those
35 expressly stated to survive.
36

37
38 3.2. **City's Contingencies.** In addition to the contingencies set forth in Section
39 3.1 of this Agreement, the City's obligation to execute the Ground Lease of
40 the Property shall be subject to the following additional contingencies, the
41 failure to satisfy any one of which shall give the City any of the options set
42 forth below and, in addition, the right to withdraw from this Agreement after
43 which the City shall have no further obligation to Developer.
44

1 3.2.1. **Developer's Financing.** This Agreement is specifically contingent
2 upon Developer obtaining the Approved Financing, as more
3 particularly set forth in Section 2.2.3 above.
4

5 3.2.2. **Developer's Development Permits and Approvals.** This
6 Agreement is specifically contingent upon Developer, at its sole cost
7 and expense, obtaining any and all required Development Approvals
8 and Permits (but with cooperation from the City as provided herein)
9 from applicable governmental agencies (including without limitation
10 the full building permit for the Project). Developer's application for
11 Development Approvals and Permits shall be subject to the City's
12 review and, if applicable, approval pursuant to Section 2.1.18 hereof.
13 If Developer delivers notice to the City that Developer is unable to
14 secure said approvals and permits prior to the Closing, the City may
15 elect to terminate this Agreement, in which event Developer's
16 Deposit shall be handled as set forth within Section 2.2.2 of this
17 Agreement.
18

19 3.2.3. **Infrastructure Improvements.** This Agreement is specifically
20 contingent upon Developer being solely responsible for any and all
21 infrastructure improvements that might be required for Developer's
22 Project, as more particularly set forth in and limited by Section 2.1.2
23 above.
24

25 3.2.4. **No Adverse Change.** This Agreement is specifically contingent on
26 there being no material adverse change between now and the time
27 for Closing in the Developer or its ability to construct and manage the
28 Project that is not reasonably addressed by Developer within thirty
29 (30) days of receipt of written notice from the City of change (or such
30 longer period as may be reasonable under the circumstances).
31

32 3.2.5. **Developer's Responsibilities.** This Agreement is specifically
33 contingent upon Developer completing its responsibilities as set forth
34 within Section 2.1 and otherwise pursuant to this Agreement. If
35 Developer fails to fulfill any of its responsibilities or otherwise is in
36 breach of this Agreement after notice and opportunity to cure as
37 provided herein, then Developer shall be in default under this
38 Agreement and the City shall have the remedies set forth in Section
39 7.1 hereof.
40

41 **4. DESCRIPTION OF PROPERTY AND GROUND LEASE TRANSACTION**

42

43 4.1. **Deposit.** Upon execution of this Agreement, Developer shall provide a
44 deposit in the amount of Four Hundred Thousand Dollars (\$400,000.00). The
45 deposit shall be held by Hinckley Allen as Escrow Agent, in an interest-
46 bearing account in accordance with Section 8.19. If either party elects to

1 terminate this Agreement in accordance with its terms, the Deposit shall be
2 handled as provided herein. In the event Developer elects to proceed to
3 Closing, the Deposit, together with interest earnings, shall be applied as set
4 forth in the Ground Lease. If Developer terminates this Agreement (other than
5 pursuant to a default by the City) or defaults under this Agreement, then
6 Developer shall in all instances assign to the City (i) any and all third party
7 due diligence materials (with reliance rights) which are undertaken by
8 Developer with respect to the Property or the Project, in electronic format or
9 other format requested by the City, (ii) Developer's rights under the
10 Development Permits and Approvals, and (iii) Developer's rights to any and
11 all plans and specifications prepared for the Project.
12

13 4.2. **Access to Property.** The City, to the fullest extent practical, shall assist
14 Developer, its employees, representatives, consultants, and agents in
15 obtaining access to enter the Property during the term of this Agreement for
16 the purpose of completing due diligence and for all other purposes necessary
17 to carry out the terms of this Agreement. The Developer understands and
18 recognizes that the City does not own the Property and that access will need
19 to be coordinated with the GSA. Notwithstanding the foregoing, the Developer
20 shall be afforded an opportunity prior to Closing to visually inspect the entirety
21 of the Property (including the FBI Space) after all tenants and occupants have
22 vacated.
23

24 Developer shall defend, indemnify and hold harmless the City and its officials,
25 agents and employees (collectively, the "*Indemnified Parties*"), from and
26 against all loss, damage, expense, liability and other claims, including court
27 costs and reasonable attorneys' fees (collectively, "*Liabilities*") resulting from
28 any third party action relating to this paragraph regarding Developer's
29 inspection of the Property and from injury to or death of persons, and damage
30 to or loss of property to the extent caused by or arising out of the negligent
31 acts or omissions of, or the willful misconduct of, Developer (or its contractors,
32 agents or employees) in connection with this paragraph; provided, however,
33 that nothing herein shall require Developer to indemnify the Indemnified
34 Parties for any Liabilities to the extent caused by or arising out of the negligent
35 acts or omissions of, or the willful misconduct of the City. Additionally, to the
36 fullest extent permitted by law, no official, employee, agent, direct or indirect
37 owner, member, manager, officer, beneficiary or representative of the City or
38 Developer shall be individually or personally liable for any obligation or liability
39 of Developer under this paragraph. This paragraph shall survive any
40 termination of this Agreement. During Developer's inspection of the Property,
41 Developer shall have in force, general liability insurance, naming the City as
42 an additional insured, by written endorsement without a waiver of
43 subrogation, with respect to commercial general liability, as it pertains to this
44 paragraph, in an amount not less than the amount of \$2 million in the
45 aggregate and \$1 million per incident or occurrence. Developer shall also
46 require that any and all contractors who it retains for the purpose of

1 completing due diligence or for any other purpose necessary to carry out the
2 terms of this paragraph, and who access the Property, to obtain a certificate
3 of insurance in the amount of \$1 million in the aggregate, \$1 million per
4 occurrence naming the City as an additional insured by written endorsement
5 without a waiver of subrogation, with respect to commercial general liability,
6 as it pertains to this paragraph.
7

8 4.3. **Closing.** For purposes of this Development Agreement, the “Closing” shall
9 mean the execution and delivery by both Parties of the Ground Lease.
10 Closing may occur at any time once the foregoing conditions and
11 contingencies have been achieved and all occupants have completely
12 vacated the Property. The parties have established February 25, 2020 as the
13 target date for the Closing, as set forth within the Development Schedule
14 included as Exhibit C within this Agreement. However, in no event shall the
15 Closing occur later than the date that is twelve (12) months after the date
16 Developer has obtained the Development Permits and Approvals (the
17 “Outside Closing Date”). Notwithstanding the preceding sentence, the
18 Closing shall be extended in the event of certain delays as set forth within
19 Section 2.2.2 and Section 5.2 of this Agreement.
20

21 The Parties agree that all Closing documents, including the Ground Lease
22 and other Closing documents, shall not become effective unless and until
23 they are executed and delivered by the parties, which shall not occur until all
24 of Developer’s and the City’s respective responsibilities and contingencies
25 within Articles 2 and 3, respectively, and elsewhere in this Agreement have
26 been achieved, satisfied, or otherwise waived in writing.
27

28 In the event that any Closing conditions or contingencies have not been
29 satisfied on or before the Outside Closing Date, then, except as may
30 otherwise be provided in this Agreement, either party may terminate this
31 Agreement, in which event the Deposit and all interest earned thereon shall
32 be forthwith returned to Developer, this Agreement shall be null and void and
33 the Parties shall have no further rights or obligations herein.
34

35 4.4. **Title and Deed Restrictions.** The City shall lease the Property to Developer
36 pursuant to the Ground Lease. In addition to the terms and conditions set
37 forth within this Agreement, the Ground Lease shall provide Developer with
38 good, marketable and insurable leasehold title to the Property as referenced
39 in Section 2.2 of this Agreement subject to the Preservation Restrictions and
40 provisions in the deed of the Property to the City.
41

42 4.5. **City’s Affidavits and Certificates.** To the extent applicable and if requested
43 to do so by Developer, the City, at the Closing, shall deliver such affidavits (in
44 customary form) as may be required by Developer or Developer’s title
45 insurance company with respect to: (1) Parties in possession of the Property,
46 (2) rights of third Parties and title claims in or to the Property, (3) mechanic’s

1 and materialmen's liens affecting the Property, (4) authority of the City, and
2 all signatories for the City, to enter the Ground Lease and otherwise
3 consummate this transaction, and (5) such other matters as are customarily
4 required by the grantor of the real property interest being insured. All such
5 requested affidavits and certificates shall be provided to the City at least five
6 (5) business days in advance of the closing.

7
8 4.6. **Ground Lease.** The Ground Lease shall be negotiated and finalized by the
9 Parties during the Application Period. The Parties shall enter into a long-term
10 ground lease of the Property at Closing. The basic terms of the Ground Lease
11 are set forth in Exhibit F attached hereto. The Ground Lease shall contain
12 without limitation, the following terms and provisions: (i) the scope of the
13 Developer's initial construction and rehab obligations; (ii) environmental; (iii)
14 construction schedule; (iv) Developer financing rights and obligations; (v)
15 form of security and guarantees for completion of Developer's construction
16 work; (vi) the approved plan for Developer's rehabilitation, restoration,
17 maintenance and operation of the Property; (vii) events of default and
18 remedies; (viii) definition of the Developer's "reasonable profit" under
19 applicable federal law; etc.; (ix) term; (x) base rent; (xi) additional rent; (xii)
20 maintenance and operation requirements; (xiii) insurance requirements; (xiv)
21 events of default and remedies; (xv) use restrictions and covenants; (xvi) end
22 of term rights and responsibilities; (xvii) transfer restrictions; (xviii) assumption
23 by tenant of all obligations under the Federal Historic Monument Program
24 with respect to the Property including the rehabilitation, operation,
25 management and maintenance of the Property. The Ground Lease shall
26 contain the agreed-upon methodology for calculating the various components
27 of all income to be paid to the City together with examples of such
28 calculations. If the Parties in the Ground Lease are unable to reach
29 agreement, then either party may terminate this Agreement, in which event
30 the Deposit shall be promptly refunded to Developer and the Parties shall
31 have no further rights or obligations hereunder except those expressly stated
32 to survive.

33
34 Upon acquisition of the Property from the GSA, the City shall ground lease
35 the Property to Developer subject of the terms and conditions of the Ground
36 Lease. The Ground Lease must be approved by the National Parks Service
37 under the Historic Surplus Property Program. Neither the City nor Developer
38 shall be obligated to execute the Ground Lease until such time as all Closing
39 conditions and contingencies have been satisfied and Developer informs the
40 City in writing that Developer has:

- 41
42 • Completed all due diligence for Developer's Project and
43 determined that the results of such diligence are favorable for
44 development of Developer's Project;

- 1 • Secured all Development Permits and Approvals for Developer's
2 Project;
- 3
- 4 • Secured the Approved Financing; and
- 5
- 6 • Secured estimates from qualified Construction Managers or
7 General Contractors for Developer's Project which are within
8 Developer's budget for Developer's Project.
- 9

10
11 During the term of the Ground Lease, Developer will be responsible for all
12 financial aspects of renovating the Property, including such repairs and
13 other work as necessary to effect restoration thereof in accordance with the
14 Secretary of the Interior's Standards, this Agreement, and the Ground
15 Lease, and shall be responsible for any other repairs, maintenance or
16 improvements.

17
18 During the term of the Ground Lease, and except as provided in the Ground
19 Lease, Developer shall be responsible for all aspects of operation of the
20 Property, including, without limitation, leasing, marketing, maintenance,
21 utilities and upkeep.

22
23 The Preservation Restrictions and the Deed to the City will contain a
24 requirement that, if the Property is used for income-producing activities,
25 certain auditing and reporting requirements apply with respect to the activity.
26 The Parties acknowledge that these auditing and reporting requirements are
27 binding on the City, and that Developer, its successors and assigns, will
28 likewise be bound under the Ground Lease. Developer shall fulfill these
29 auditing and reporting requirements, as required by all applicable laws and
30 regulations. Where applicable laws and regulations require the City to fulfill
31 said auditing and reporting requirements, Developer agrees to assist the
32 City in so doing. Developer agrees to make its financial books and records
33 available for inspection by the City from time to time as may be necessary to
34 ensure compliance with the financial aspects of the Preservation
35 Restrictions, as shall be more specifically set forth in the Ground Lease.

36
37 4.7. **Delivery of Property.** The City shall deliver possession of the Property to
38 Developer at the commencement of the Ground Lease in its "as is, where is"
39 condition, in accordance with the terms of this Agreement.

40
41 4.8. **Real Estate Broker's Fees & Commissions.** The City represents to
42 Developer, and Developer represents to the City, that it has not engaged a
43 broker, and no commission or other such fee is due to any party, in connection
44 with the Closing of this transaction.

1 4.9. **City's Disclosures.** The City makes no warranties or representations
2 regarding environmental contamination or sub-surface environmental or
3 geotechnical conditions at the Property. The Developer agrees that leasehold
4 title to the Property will be conveyed in "as is" condition.
5

6 4.10. **Casualty.** In the event that the Property, prior to Closing, is damaged by fire,
7 flood, collapse, or other casualty, Developer may, within thirty days after
8 receiving written notice of the occurrence of such damage or casualty, elect
9 to terminate this Agreement, in which event all other obligations of the Parties
10 hereunder shall cease, the Developer's Deposit shall be returned to
11 Developer in full, including interest earnings therewith, and the Parties shall
12 have no further rights or obligations hereunder except those expressly stated
13 to survive.
14

15 5. **DEVELOPMENT SCHEDULE**

16
17 5.1. **General.** Attached to this Agreement is a Development Schedule (Exhibit C)
18 showing the anticipated date and sequence of various elements of the Project
19 to be completed by Developer and the City. The Parties acknowledge that the
20 Development Schedule is a complex schedule requiring the coordinated
21 efforts of multiple Parties and dependent in many instances on the actions or
22 approvals of third Parties, and accordingly is expected to evolve during the
23 parties' pursuit of the Project. The parties shall update the Development
24 Schedule from time to time, each acting reasonably and in good faith. The
25 Parties agree to use diligent efforts and to cooperate with each other in
26 undertaking their respective responsibilities under this Agreement, including,
27 but not limited to, those events listed in Exhibit C. The Parties agree that time
28 is of the essence in performance of their respective obligations under this
29 Agreement. Developer and the City acknowledge that the completion of the
30 Development Schedule is dependent on events to be determined following
31 the approval of this Agreement by the City Council. The City Council hereby
32 gives the Deputy City Manager the sole authority to negotiate the final
33 elements, terms, conditions, milestones, and timeframes for Exhibit C.
34

35 5.2. **Force Majeure / Excusable Delays.** For purposes of this Agreement, Force
36 Majeure Delays shall mean occurrences whereby Developer shall not be
37 considered in breach of or default in its obligations under this Agreement in
38 the event of unavoidable delay in the performance of such obligations due to
39 causes beyond its control and without its fault or negligence, including but not
40 limited to, acts of God, or of the public enemy, acts of the other party, fires,
41 floods, or other casualties, epidemics, quarantine restrictions, litigation,
42 delays stemming from unusually severe weather, or delays in obtaining any
43 Development Permits and Approvals; it being the purpose and intent of this
44 provision that in the event of the occurrence of any such enforced delay, the
45 time for commencement of construction and for performance of the
46 obligations thereunder by Developer shall be extended for the period of the

1 enforced delay, provided, that Developer, within thirty (30) days after the
2 beginning of any such enforced delay, has notified the City in writing stating
3 the cause or causes thereof and requesting an extension for the period of the
4 enforced delay.
5
6

7 **6. REPRESENTATIONS AND WARRANTIES**
8

9 6.1. **Representations and Warranties of the City.** The City hereby represents
10 and warrants to the best of its knowledge and belief that:

11
12 6.1.1. The execution and delivery of this Agreement and the performance
13 of the City's obligations hereunder have been duly authorized by
14 such municipal action as necessary, and this Agreement constitutes
15 the legal, valid and binding agreement of the City, enforceable
16 against the City in accordance with its terms subject only to the
17 conditions set out in this Agreement.
18

19 6.1.2. Subject to the conditions set out in this Agreement, neither the
20 execution or delivery by the City of this Agreement, the performance
21 by the City of its obligations in connection with the transactions
22 contemplated hereby, nor the fulfillment by the City of the terms or
23 conditions hereof conflicts with, violates or results in a breach of any
24 constitution, law or governmental regulation applicable to the City, or
25 conflicts with, violates or results in a breach of any term or condition
26 of any judgment or decree, or any agreement or instrument, to which
27 the City is a party or by which the City or any of its properties or
28 assets are bound, or constitutes a default thereunder.
29

30 6.1.3. There is no action, suit or proceeding, at law or in equity, or official
31 investigation before or by any court or Governmental Authority,
32 pending or threatened against the City, or to the City's knowledge
33 with respect to the Property, wherein an unfavorable decision, ruling
34 or finding would materially adversely affect the performance by the
35 City of its obligations hereunder or the performance by the City of its
36 obligations under the transactions contemplated hereby, or which, in
37 any way, questions or may adversely materially affect the validity or
38 enforceability of this Agreement, or any other agreement or
39 instrument entered into by the City in connection with the
40 transactions contemplated hereby.
41

42 6.2. **Representations and Warranties of Developer.** Developer hereby
43 represents and warrants to the best of its knowledge and belief that:

44
45 6.2.1. Developer has the power and authority to execute, deliver and carry
46 out the terms and provisions of this Agreement and all necessary

1 action has been taken to authorize the execution, delivery and
2 performance by it of this Agreement. This Agreement will, upon
3 execution and delivery thereof by Developer, constitute valid, legal
4 and binding obligations of Developer enforceable against Developer
5 in accordance with the respective terms thereof.
6

7 6.2.2. Neither the execution or delivery by Developer of this Agreement, the
8 performance by Developer of its obligations in connection with the
9 transactions contemplated hereby, nor the fulfillment by Developer
10 of the terms or conditions hereof conflicts with, violates or results in
11 a breach of any constitution, law or governmental regulation
12 applicable to Developer, or conflicts with, violates or results in a
13 breach of any term or condition of any judgment or decree, or any
14 agreement or instrument, to which Developer is a party or by which
15 Developer or any of its properties or assets are bound, or constitutes
16 a default there under.
17

18 6.2.3. [Intentionally Omitted].
19

20 6.2.4. There is no action, suit or proceeding, at law or in equity, or official
21 investigation before or by any court or Governmental Authority,
22 pending or threatened against Developer, its principal(s), affiliate(s),
23 or entities controlled by its principal(s), wherein an unfavorable
24 decision, ruling or finding would materially adversely affect the
25 performance by Developer of its obligations hereunder or the
26 performance by Developer of its obligations under the transactions
27 contemplated hereby, or which, in any way, questions or may
28 adversely materially affect the validity or enforceability of this
29 Agreement or any other agreement or instrument entered into by
30 Developer in connection with the transactions contemplated hereby.
31

32 **7. DEFAULT AND REMEDIES**

33 **7.1. Default by Developer.**

34 **7.1.1. Default by Developer before Closing.** If Developer shall fail to fulfill its
35 obligations hereunder prior to the Closing and such failure continues for thirty
36 (30) days after written notice from City (or such additional time as may be
37 reasonably required if such failure cannot be cured within said thirty (30) day
38 period provided that Developer is diligently pursuing said cure), then the
39 City's remedy shall be limited to its rights and remedies as set forth within the
40 specific Article, Section, or Sub-Section of this Agreement for which default
41 has occurred. However, if no rights or remedies are expressly defined within
42 the specific Article, Section, or Sub-Section in which the default occurred,
43 then the City shall have the right to terminate this Agreement and retain
44 Developer's Deposit including interest earnings related thereto which shall be
45
46

1 City's sole and exclusive remedy at law or in equity. In all instances involving
2 a default by the Developer, the Developer shall assign to the City (i) any and
3 all third party due diligence materials (with reliance rights) which are
4 undertaken by Developer with respect to the Property or the Project, in
5 electronic format (AutoCADD if applicable) or other format requested by the
6 City, (ii) Developer's rights under the Development Permits and Approvals,
7 and (iii) Developer's rights to any and all plans and specifications prepared
8 for the Project. The parties agree that the damages that will be suffered by
9 the City from a default by Developer hereunder will be difficult or impossible
10 to ascertain and that the Deposit together with receipt by the City of the above
11 described due diligence materials, permits and approvals and plans and
12 specifications is a reasonable estimate of the amount of such damages and
13 shall constitute the full, agreed and liquidated damages of the City for such
14 default.

15
16 7.1.2. **Default by Developer after Closing.** If Developer shall fail to fulfill
17 its obligations hereunder after the Closing, then the City's remedies
18 shall be as set forth in the Ground Lease.

19
20 7.2. **Default by City.** If the City shall fail to fulfill its obligations hereunder, and
21 such failure continues for thirty (30) days after written notice from Developer
22 (or such additional time as may be reasonable required if such failure cannot
23 be cured within said thirty (30) day period provided that City is diligently
24 pursuing said cure) then Developer's remedy shall be limited to its rights and
25 remedies as set forth within the specific Article, Section, or Sub-Section of
26 this Agreement for which default has occurred. However, if no rights or
27 remedies are expressly defined within the specific Article, Section, or Sub-
28 Section in which default occurred, then Developer shall have the right option
29 to (a) waive the default and proceed to Closing; or (b) give notice that it is
30 terminating this Agreement, in which event the Deposit and any interest shall
31 be immediately refunded to Developer, upon which neither party shall have
32 any further rights against the other under this Agreement; and/or (c) pursue
33 any and all rights it may have at law and in equity to address any such breach.
34 The remedies stated herein shall be cumulative.

35 36 8. **GENERAL PROVISIONS**

37
38 8.1. **Cooperation.** Developer and the City agree to cooperate with each other,
39 and to act reasonably and in good faith, in order to achieve the purposes of
40 this Agreement and, in connection therewith, to take such further actions and
41 to execute such further documents as may reasonably be requested by the
42 City, Developer, or their representatives, agents, consultants and any
43 prospective or actual lenders, investors or tenants.

44
45 8.2. **Entire Agreement; Amendments.** This Agreement embodies the entire
46 agreement and understanding between the Parties hereto relating to the

1 subject matter herein and supersedes all prior agreements and
2 understandings between the Parties (including without limitation the RFP and
3 the McIntyre Project Negotiating Principles). This Agreement may not be
4 changed, modified, waived, discharged or terminated orally, but only by an
5 instrument in writing signed by each of the Parties hereto or by the party
6 against which enforcement is sought. Any change, modification or
7 amendment, which requires the consent or approval of a Governmental
8 Authority, shall be effective only upon receipt of such approval.
9

- 10 8.3. **Binding Effect; Successors and Assignors.** The terms and provisions of
11 this Agreement and the respective rights and obligations of the Parties
12 hereunder shall be binding upon, and inure to the benefit of, their respective
13 heirs, successors, assigns, and nominees. The Developer shall not have the
14 right to assign this Agreement without the prior written consent of the City
15 which may be withheld in the City's sole discretion.
16
- 17 8.4. **Headings.** The headings to the sections and subsections of this Agreement
18 have been inserted for convenience of reference only and shall not modify,
19 define, limit or expand the express provisions of this Agreement.
20
- 21 8.5. **Exhibits.** All exhibits referred to in this Agreement are hereby incorporated
22 by reference and expressly made a part hereof.
23
- 24 8.6. **Governing Law.** This Agreement shall in all respects be governed by, and
25 construed and enforced in accordance with, the laws of the State of New
26 Hampshire.
27
- 28 8.7. **Enforceability and Severability.** Any provision of this Agreement that is
29 determined to be illegal or unenforceable by a court of competent jurisdiction,
30 shall be ineffective to the extent of such prohibition or unenforceability without
31 invalidating the remaining provisions hereof.
32
- 33 8.8. **Consent to Jurisdiction and Venue.** Developer and City submit to the
34 jurisdiction of the courts of the State of New Hampshire and the courts from
35 which an appeal from such trial venue may be taken or other relief may be
36 sought for purposes of any action or proceeding arising out of this Agreement
37 or any related agreement. All legal actions taken by the Parties shall be
38 commenced in Rockingham County New Hampshire Superior Court. Both
39 Parties hereby waive their right to a jury trial.
40
- 41 8.9. **Independent Parties.** Developer and City are independent Parties under
42 this Agreement, and nothing in this Agreement shall be deemed or construed
43 for any purpose to establish between any of them or among them a
44 relationship of principal and agent, employment, partnership, joint venture, or
45 any other relationship other than independent Parties.
46

- 1 8.10. **Survival of Agreement.** The agreements, covenants, indemnities,
2 representations and warranties contained herein shall survive the execution
3 and delivery of this Agreement, but not the Closing. Upon entering the Ground
4 Lease at Closing, this Agreement shall be superseded in all respects by the
5 Ground Lease and thereafter this Agreement shall have no further force or
6 effect and the Parties shall have no further rights or obligations hereunder.
7
- 8 8.11. **Waivers.** Failure on the part of any party to complain of any action or non-
9 action on the part of the other party, no matter how long the same may
10 continue, shall not be deemed to be a waiver of any such party's rights
11 hereunder. No waiver at any time of any provision hereof by any party shall
12 be construed as a waiver of any other provision hereof or a waiver at any
13 subsequent time of the same provision.
14
- 15 8.12. **No Rights Conferred Upon Others.** Except as expressly set out herein,
16 nothing in this Agreement shall be construed as giving any individual,
17 corporation, limited liability company, partnership, joint venture, association,
18 joint stock company, trust, unincorporated organization or government, other
19 than the Parties hereto, their successors and permitted assigns, any right,
20 remedy or claim under or in respect of this Agreement or any provision hereof.
21
- 22 8.13. **Preservation of Rights.** Nothing herein or in any related agreement shall
23 limit or be construed to limit in any way rights or remedies the City may have
24 for the collection of real property taxes under law, unless expressly set forth
25 herein.
26
- 27 8.14. **Time of the Essence.** The Parties agree that time is of the essence in
28 performance of their respective obligations under this Agreement.
29
- 30 8.15. **Good Faith and Fair Dealing.** Unless expressly stated otherwise in this
31 Agreement, whenever a party's consent or approval is required under this
32 Agreement, or whenever a party shall have the right to give an instruction or
33 request another party to act or to refrain from acting under this Agreement, or
34 whenever a party must act or perform before another party may act or perform
35 under this Agreement, such consent, approval, or instruction, request, act or
36 performance shall be reasonably made or done, or shall not be unreasonably
37 withheld, delayed, or conditioned, as the case may be.
38
- 39 8.16. **Municipal Approvals.** The execution of this Agreement does not preempt
40 or supersede the legally required review process or powers of any city or
41 other governmental board, committee, commission, or department, or excuse
42 the Parties from the requirement to apply for and receive all necessary
43 permits and approvals from all applicable governmental boards, committees,
44 commissions or departments.
45

1 8.17. **Warranties and Representations.** Developer and City each acknowledge
2 that they have not been influenced to enter into this transaction or relied upon
3 any warranties or representations not specifically set forth or incorporated into
4 this Agreement.
5

6 8.18. **Saving Clause.** In the event that any of the terms or provisions of this
7 Agreement are declared invalid or unenforceable by any court of competent
8 jurisdiction or any Federal or State Government Agency having jurisdiction
9 over the subject matter of this Agreement, the remaining terms and provisions
10 that are not effected thereby shall remain in full force and effect.
11

12 8.19. **Escrow.**
13

14 a. The Deposit shall be held by Hinckley Allen as Escrow Agent in a
15 federally insured, interest-bearing money market account and shall be duly accounted for
16 at the Closing. In the event that City or Developer sends notice to Escrow Agent certifying
17 to Escrow Agent that it is entitled to receive the Deposit pursuant to the terms of this
18 Agreement (other than at the Closing), Escrow Agent shall forward a copy of such
19 certification to the other party. If Escrow Agent does not receive an objection from such
20 party to such certification within fifteen (15) days after the date of such notice, Escrow
21 Agent may disburse all such amounts to the certifying party. If Escrow Agent receives an
22 objection or receives conflicting demands, Escrow Agent shall have the right to do either
23 of the following: (i) interplead the funds into a court of competent jurisdiction in
24 Rockingham County, New Hampshire (the cost of doing so to be deducted from the funds
25 but shared equally between the parties) and the parties shall thereafter be free to pursue
26 their rights at law or in equity with respect to the disbursement of the funds and the Escrow
27 Agent shall be fully released and discharged from its duties and obligations under this
28 Agreement; or (ii) resign and transfer the funds to a replacement escrow agent reasonably
29 satisfactory to City and Developer. Upon the transfer of funds to such replacement
30 escrow agent, the Escrow Agent shall thereupon be fully released and discharged from
31 all obligations to further perform any and all duties or obligations imposed upon it by this
32 Agreement.
33

34 b. The Escrow Agent shall incur no liability hereunder whatsoever
35 except in the event of its willful misconduct or negligence. The other parties hereto, jointly
36 and severally, agree to defend and indemnify the Escrow Agent against all reasonable
37 costs, obligations and liabilities suffered by it for which it may be claimed to be liable
38 hereunder, except for that occasioned by its willful misconduct or negligence. The
39 indemnity provided in the preceding sentence shall survive any termination of this
40 Agreement. The fees of the Escrow Agent and costs incurred by it in performing its duties
41 hereunder shall be shared equally by the parties, except that Developer shall not be liable
42 for any costs or expenses of the Escrow Agent incurred in connection with its
43 representation of City.
44

45 c. The Developer acknowledges and understands that the Escrow
46 Agent is City's attorney in this transaction. In the event of any dispute between the City

1 or the Developer arising out of this Agreement, the Developer agrees that the Escrow
2 Agent may represent the City in connection with that dispute provided that Escrow Agent
3 also proceeds in accordance with (i) or (ii) of Paragraph (a), above. The Developer
4 agrees that in the event of any such dispute and provided that the Escrow Agent proceeds
5 in accordance with (i) or (ii) of Paragraph (a) above, it will not object to the Escrow Agent's
6 representation of the City in such dispute because of any potential or actual conflict of
7 interest arising due to the Escrow Agent's role as Escrow Agent under the terms of this
8 Agreement.

9
10

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LIST OF EXHIBITS

- Exhibit A Preliminary Conceptual Building Elevations and Site Plans for Project**
- Exhibit B Project Budget**
- Exhibit C Development Schedule**
- Exhibit D List of Anticipated Permits and Approvals**
- Exhibit E Basic Terms of Ground Lease**

[The remainder of this page left blank intentionally]

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Executed as a sealed instrument this _____ day of _____, 2019.

CITY OF PORTSMOUTH

By: _____ Date: _____
John P. Bohenko, City Manager
Duly Authorized

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

In _____, on the _____ day of _____, 2019, before me, personally appeared **John P. Bohenko**, City Manager of the City of Portsmouth, 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

SOBOW SQUARE, LLC

By: _____ Date: _____

Duly Authorized

By: _____ Date: _____

Duly Authorized

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

In _____, on the _____ day of _____, 2019, before me, personally appeared **Michael Kane and Steve Perdue** of Sobow Square, LLC, known to me or proved to be the persons named in and who executed the foregoing instrument, and being first duly sworn, such persons acknowledged that they executed said instrument for the purposes therein contained as their free and voluntary act and deed.

Justice of the Peace/Notary Public

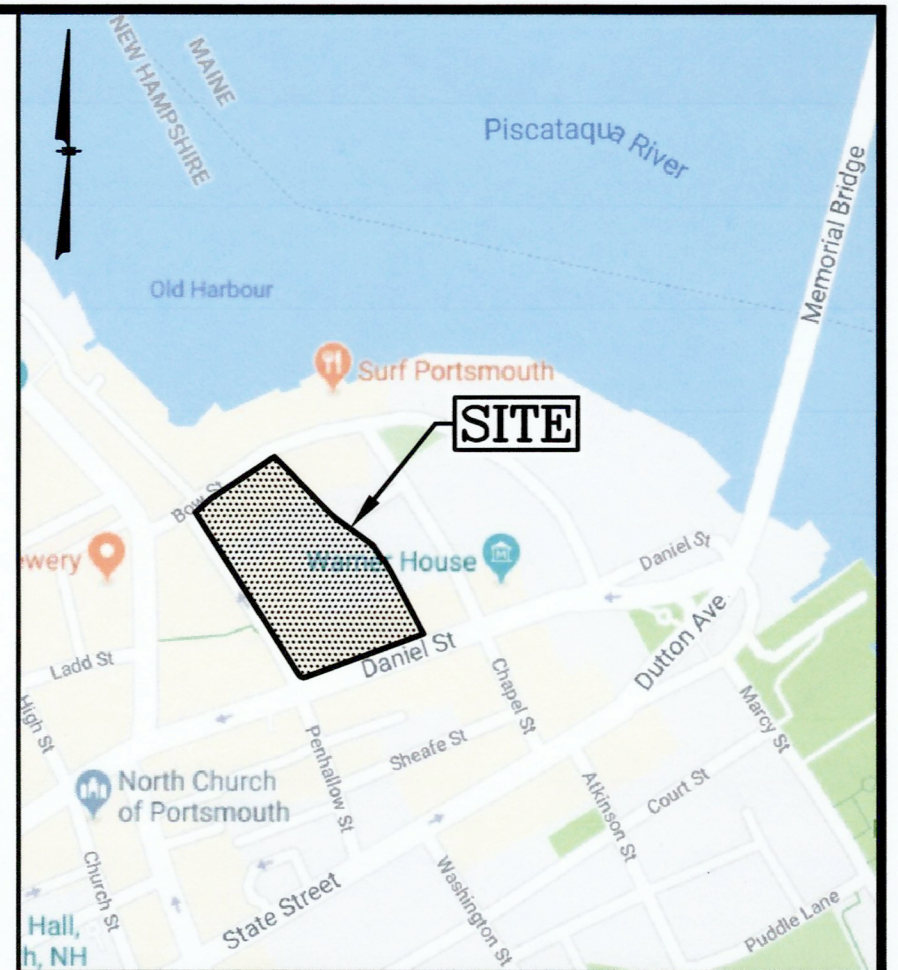
Exhibit A

Preliminary Conceptual Building Elevations and Site Plans for Project

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NOTES:

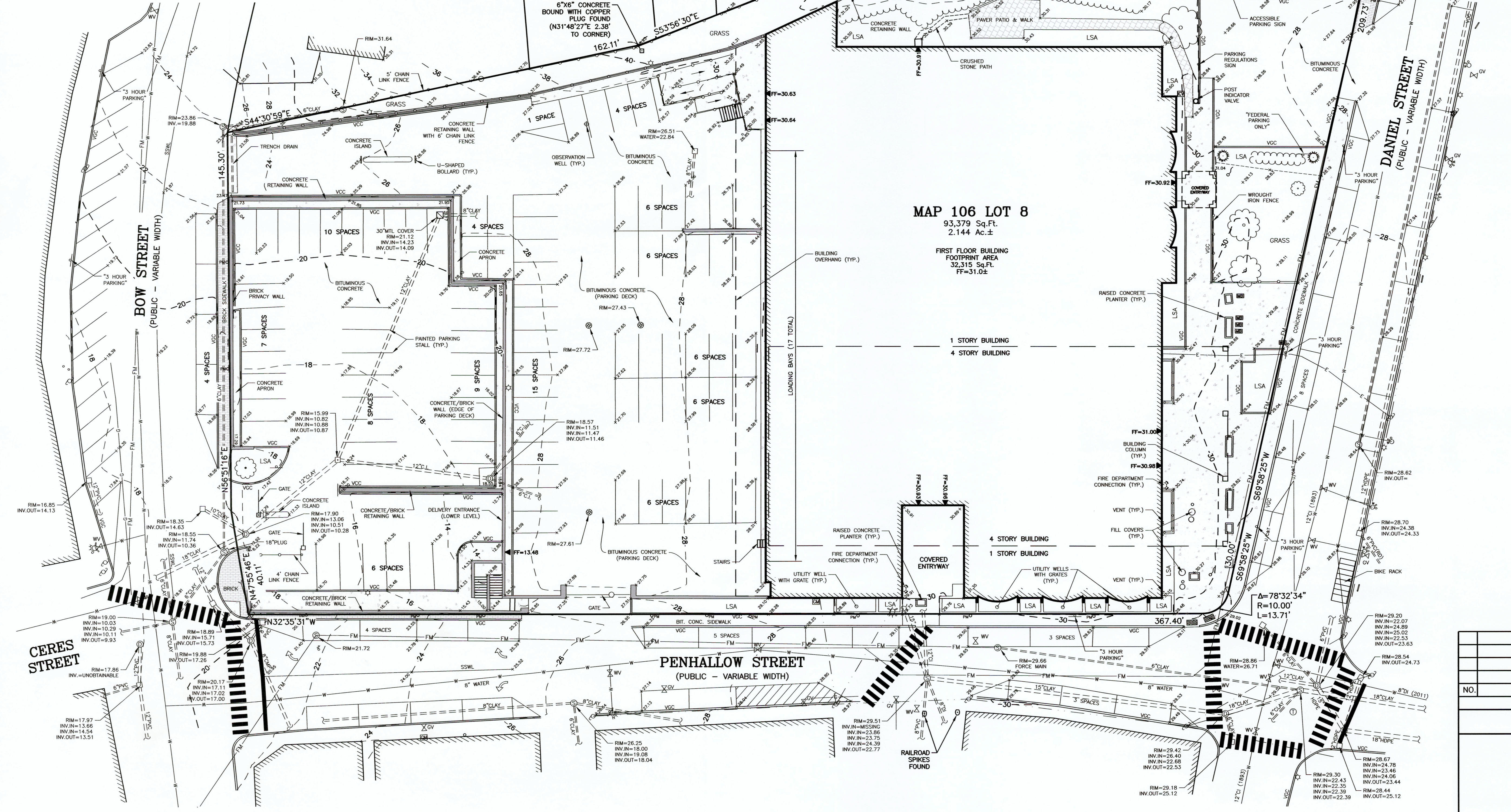
- 1) ZONE: CHARACTER DISTRICT 4 (CD4) & CHARACTER DISTRICT 5 (CD5)
REFER TO THE CITY OF PORTSMOUTH ZONING ORDINANCE FOR RESTRICTIONS AND PERMITTED USES. A ZONING REPORT OR LETTER WAS NOT PROVIDED AT THE TIME OF THIS SURVEY.
- 2) THIS PLAN IS THE RESULT OF AN ON-THE-GROUND FIELD SURVEY PERFORMED BY THIS OFFICE IN MAY & JUNE 2018.
- 3) BEARINGS SHOWN HEREON ARE BASED ON NAD83 PER GPS OBSERVATIONS PERFORMED BY THIS OFFICE ON JUNE 6, 2018.
- 4) ELEVATIONS SHOWN HEREON ARE BASED ON NGVD29 PER GPS OBSERVATIONS PERFORMED BY THIS OFFICE ON JUNE 6, 2018 (ADJUSTED UTILIZING VERTCON).
- 5) LOCATION OF UNDERGROUND UTILITIES IS APPROXIMATE ONLY. ADDITIONAL UNDERGROUND UTILITIES OTHER THAN THOSE SHOWN MAY BE ENCOUNTERED.
- 6) THE SURVEY TRACT IS NOT LOCATED IN A SPECIAL FLOOD HAZARD AREA PER FLOOD INSURANCE RATE MAP NUMBER 33015C0259E, WITH AN EFFECTIVE DATE OF MAY 17, 2005.



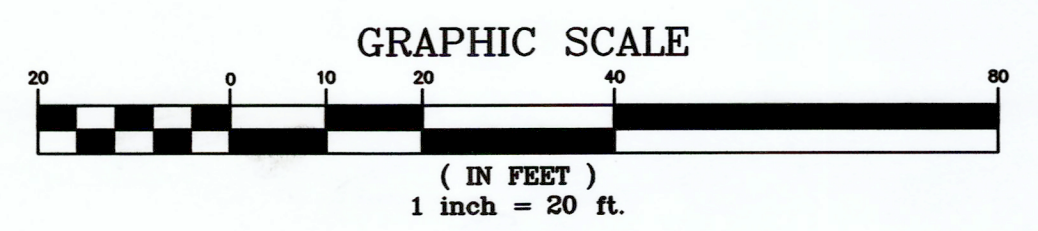
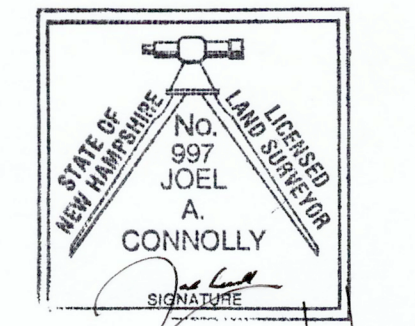
LOCATION MAP
(NOT TO SCALE)

LEGEND

- SSC SLOPED GRANITE CURB
- VSC VERTICAL GRANITE CURB
- SCC SLOPED CONCRETE CURB
- VCC VERTICAL CONCRETE CURB
- CCB CAPE COD BERM
- DSLY DOUBLE SOLID LINE YELLOW
- DDLY DOUBLE DASHED LINE YELLOW
- SDLY SINGLE DASHED LINE YELLOW
- SSLY SINGLE SOLID LINE YELLOW
- SSLW SINGLE SOLID LINE WHITE
- SDLW SINGLE DASHED LINE WHITE
- G LINE GAS LINE
- T UNDERGROUND TELEPHONE
- W WATER LINE
- E UNDERGROUND ELECTRIC
- CLF CHAIN LINK FENCE
- STF STOCKADE FENCE
- PRF POST & RAIL FENCE
- WF WIRE FENCE
- 90 CONTOUR ELEVATION
- TREE TREE
- UP UTILITY POLE
- GW GUY WIRE
- OW OVERHEAD WIRE
- TR TREELINE
- PB PULL BOX
- SN SIGN
- SE SPOT ELEVATION
- DM DRAIN MANHOLE
- CB CATCH BASIN
- SM SEWER MANHOLE
- TM TELEPHONE MANHOLE
- EM ELECTRIC MANHOLE
- WM WATER MANHOLE
- MH MANHOLE
- GV GAS VALVE
- WV WATER VALVE
- WS WATER SHUT OFF
- FH FIRE HYDRANT
- BL BOLLARD
- GM GAS METER
- EMR ELECTRIC METER
- MW MONITORING WELL
- LP LIGHT POLE



CERTIFICATION:
I CERTIFY THAT THIS SURVEY AND PLAN WAS PREPARED BY ME OR THOSE UNDER MY DIRECT SUPERVISION AND THAT THIS PLAN IS THE RESULT OF AN ACTUAL SURVEY PERFORMED ON THE GROUND IN MAY & JUNE 2018 AND HAS AN ERROR OF CLOSURE OF NOT MORE THAN ONE PART IN TEN THOUSAND.



PLAN REFERENCES:

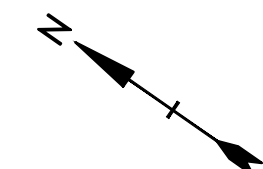
- 1) ROCKINGHAM COUNTY REGISTRY OF DEEDS (R.C.R.D) PLAN 00555.
- 2) R.C.R.D. PLAN 176.
- 3) R.C.R.D. PLAN 476.
- 4) R.C.R.D. PLAN 19045.
- 5) R.C.R.D. PLAN 37569.

OWNER OF RECORD:

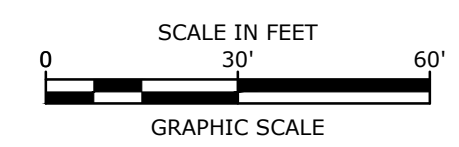
MAP 106 LOT 8
UNITED STATES OF AMERICA
1600 PENNSYLVANIA AVENUE
WASHINGTON, DC 20004
BOOK 1708 PAGE 428
BOOK 1710 PAGE 422
BOOK 1693 PAGE 470
BOOK 1719 PAGE 326
BOOK 1706 PAGE 462
BOOK 1706 PAGE 464
BOOK 1708 PAGE 66

NO.	DESCRIPTION	BY	DATE
REVISIONS			
EXISTING CONDITIONS PLAN			
ASSESSORS MAP 106 LOT 8 62 DANIEL STREET PORTSMOUTH, NH 03801 PREPARED FOR: SoBow SQUARE c/o REDGATE 265 FRANKLIN STREET BOSTON, MA 02110			
MAE MHF Design Consultants, Inc.		44 Siles Road, Suite One Salem, New Hampshire 03079 (603) 893-0720 ENGINEERS • PLANNERS • SURVEYORS www.mhfdesign.com	
SCALE: 1"=20'	DATE: JULY 5, 2018	DRAWING NO. 4420TWS.DWG	
DRAWN BY: AKC	CHECKED BY: JAC	PROJECT NO. 442018	SHEET NO. 1 OF 1

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PRELIMINARY



**McIntyre
Building
Federal
Property**

SoBow Square,
LLC

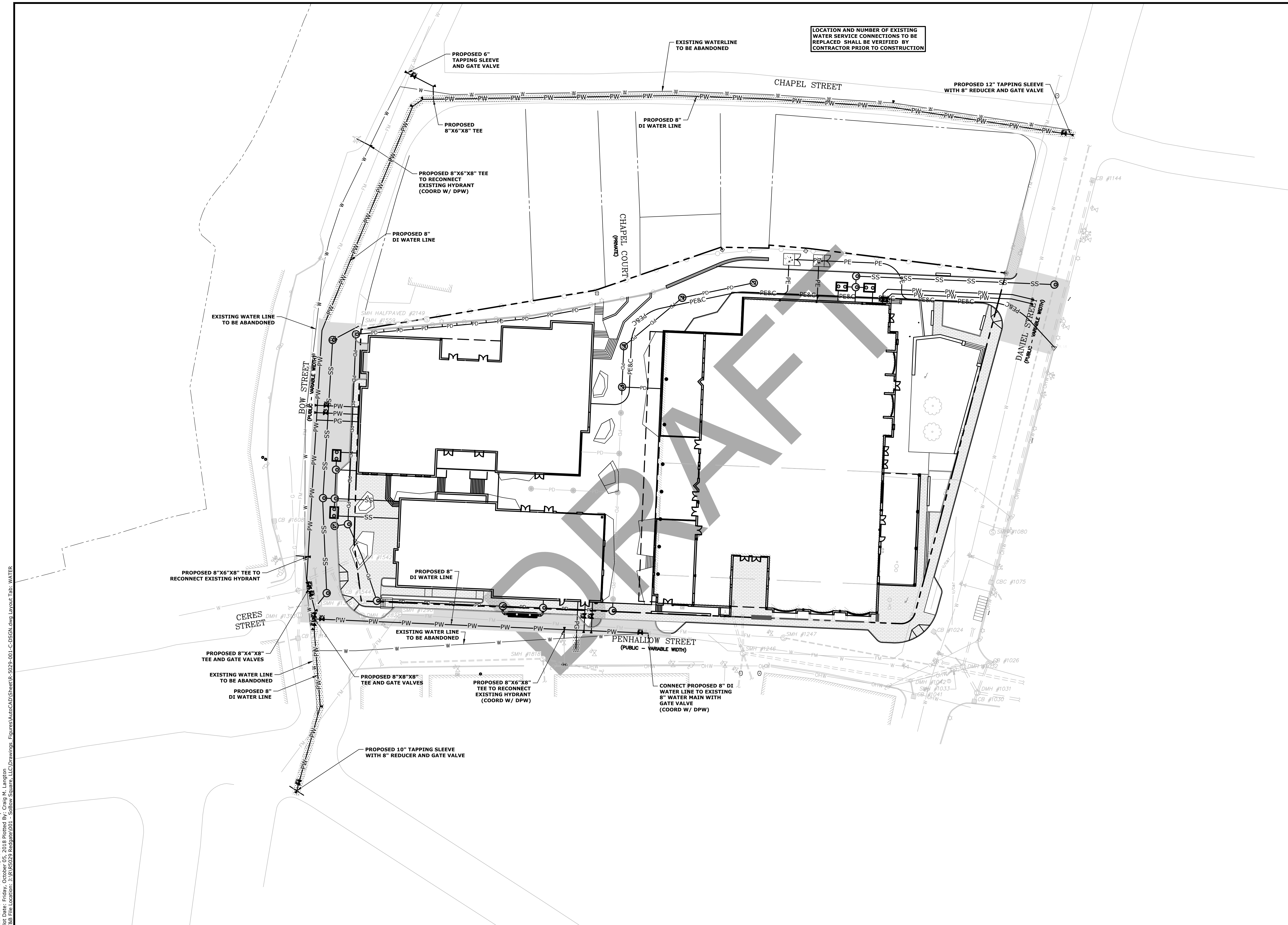
80 Daniel Street
Portsmouth, NH

MARK	DATE	DESCRIPTION
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PROJECT NO: R5029-001		
DATE: 10/5/2018		
FILE: R-5029-001-C-DSGN.DWG		
DRAWN BY: CML		
CHECKED: PMC		
APPROVED: BLM		

**WATER MAIN REPLACEMENT
PLAN**

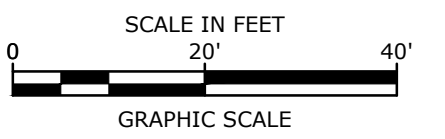
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C-104.1



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PRELIMINARY



**McIntyre Building
Federal
Property**

SoBow Square,
LLC

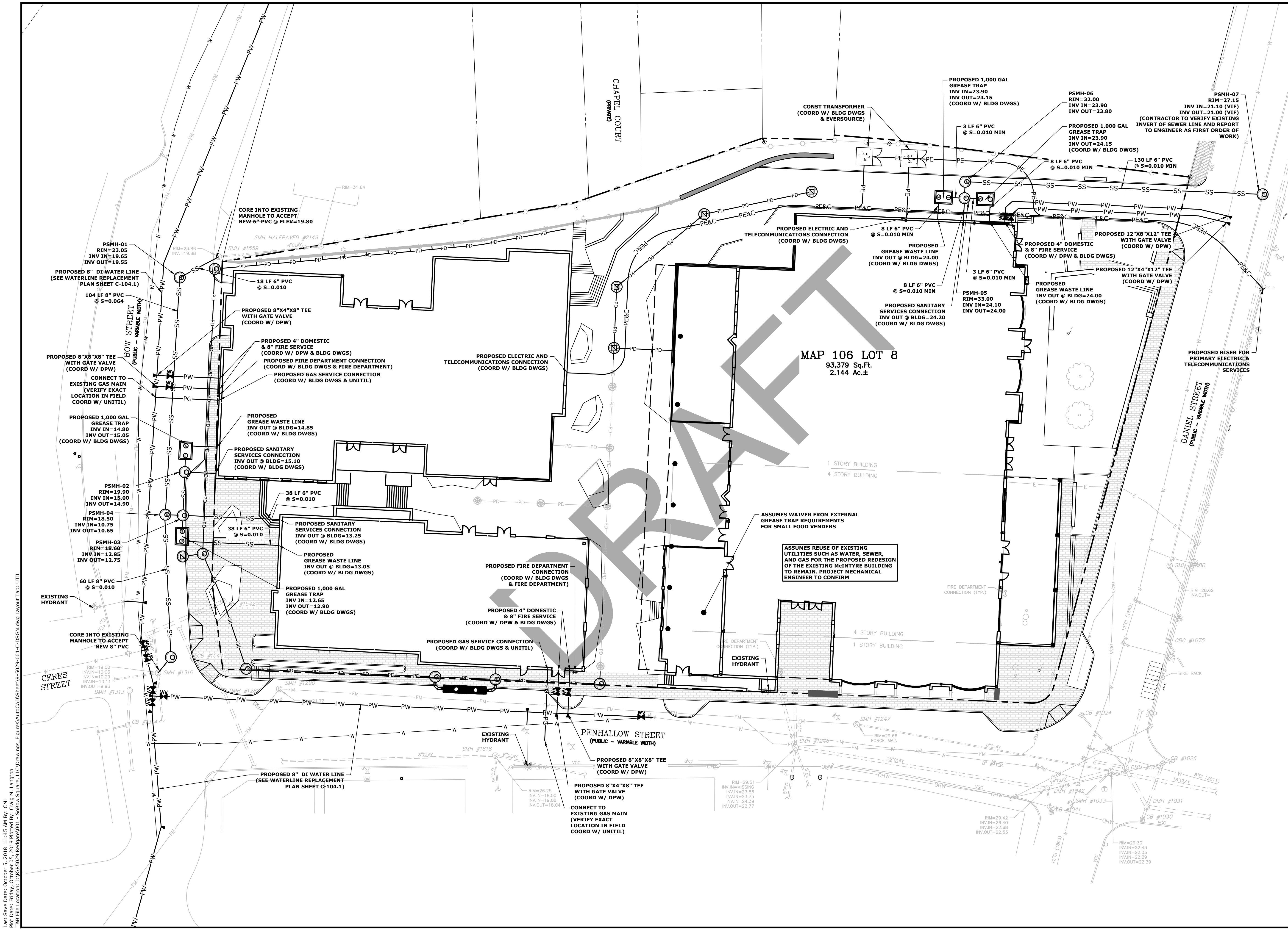
80 Daniel Street
Portsmouth, NH

MARK	DATE	DESCRIPTION
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CHECKED:		PMC
APPROVED:		BLM

UTILITIES PLAN

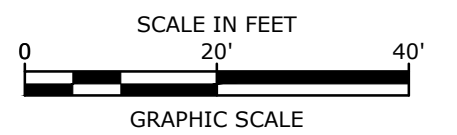
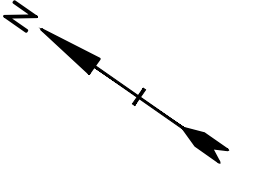
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CITY OF PORTSMOUTH RECORDING NOTES:
 1. THIS SITE PLAN SHALL BE RECORDED IN THE ROCKINGHAM COUNTY REGISTRY OF DEEDS.
 2. ALL IMPROVEMENTS SHOWN ON THIS SITE PLAN SHALL BE CONSTRUCTED AND MAINTAINED IN ACCORDANCE WITH THE PLAN BY THE PROPERTY OWNER AND ALL FUTURE PROPERTY OWNERS. NO CHANGES SHALL BE MADE TO THIS SITE PLAN WITHOUT THE EXPRESS APPROVAL OF THE PORTSMOUTH PLANNING DIRECTOR.



**McIntyre Building
 Federal Property
 Redevelopment**

SoBow Square, LLC

62 Daniel Street
 Portsmouth, NH

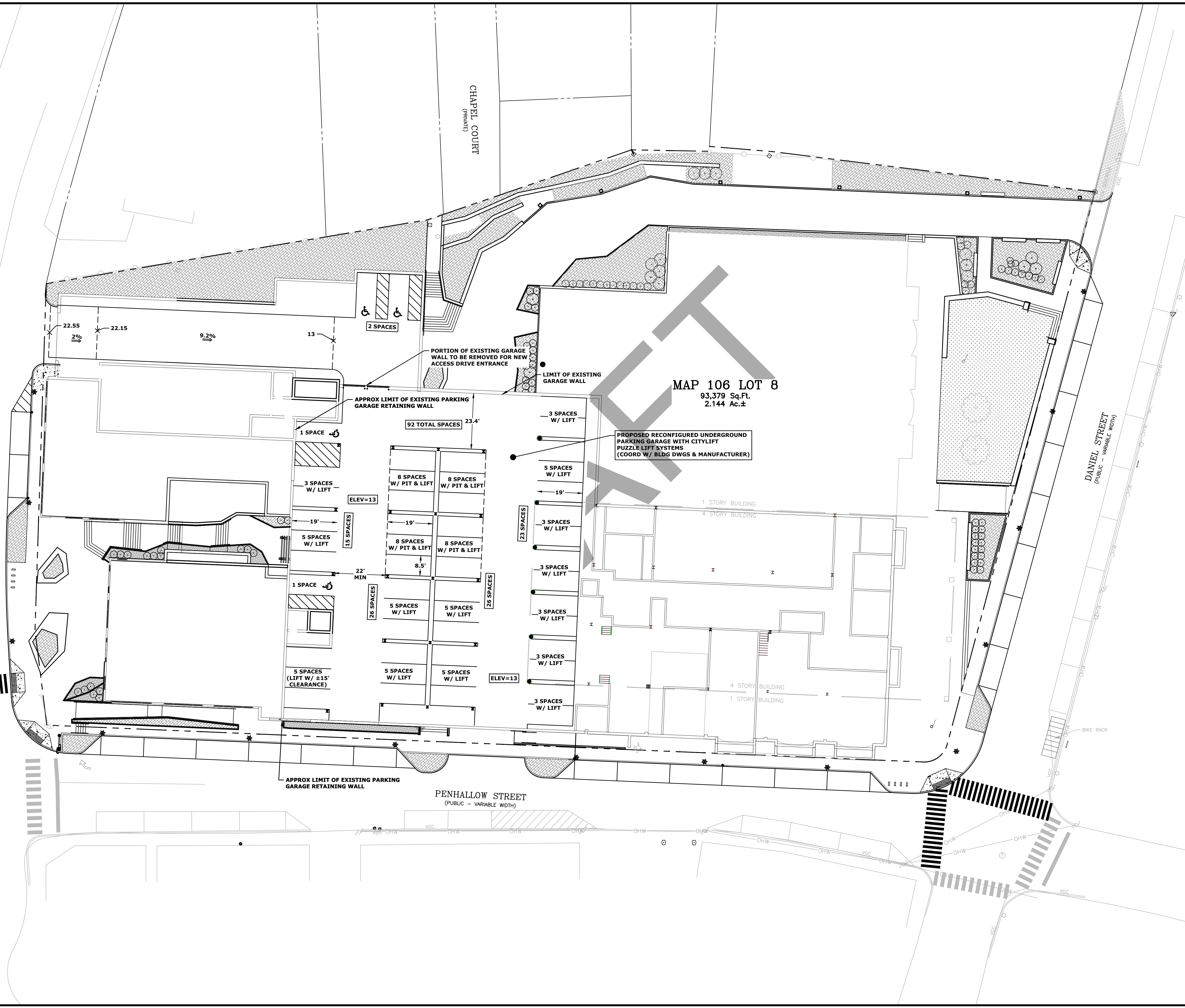
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PROJECT NO:	R5029-001	
DATE:		
FILE:	R-5029-001-C-DSGN.DWG	
DRAWN BY:	CML	
CHECKED:	PMC	
APPROVED:	BLM	

**BASEMENT LEVEL PARKING
 PLAN OPTION 1**

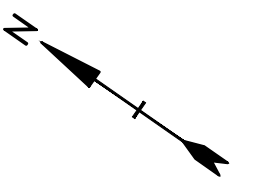
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C-102.1

CITY OF PORTSMOUTH NOTES:
 1. ALL CONDITIONS ON THIS PLAN SHALL REMAIN IN EFFECT IN PERPETUITY PURSUANT TO THE REQUIREMENTS OF THE SITE PLAN REVIEW REGULATIONS.



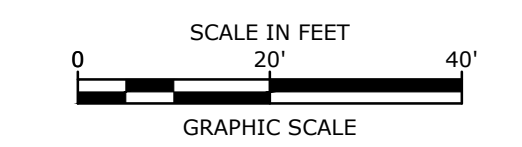
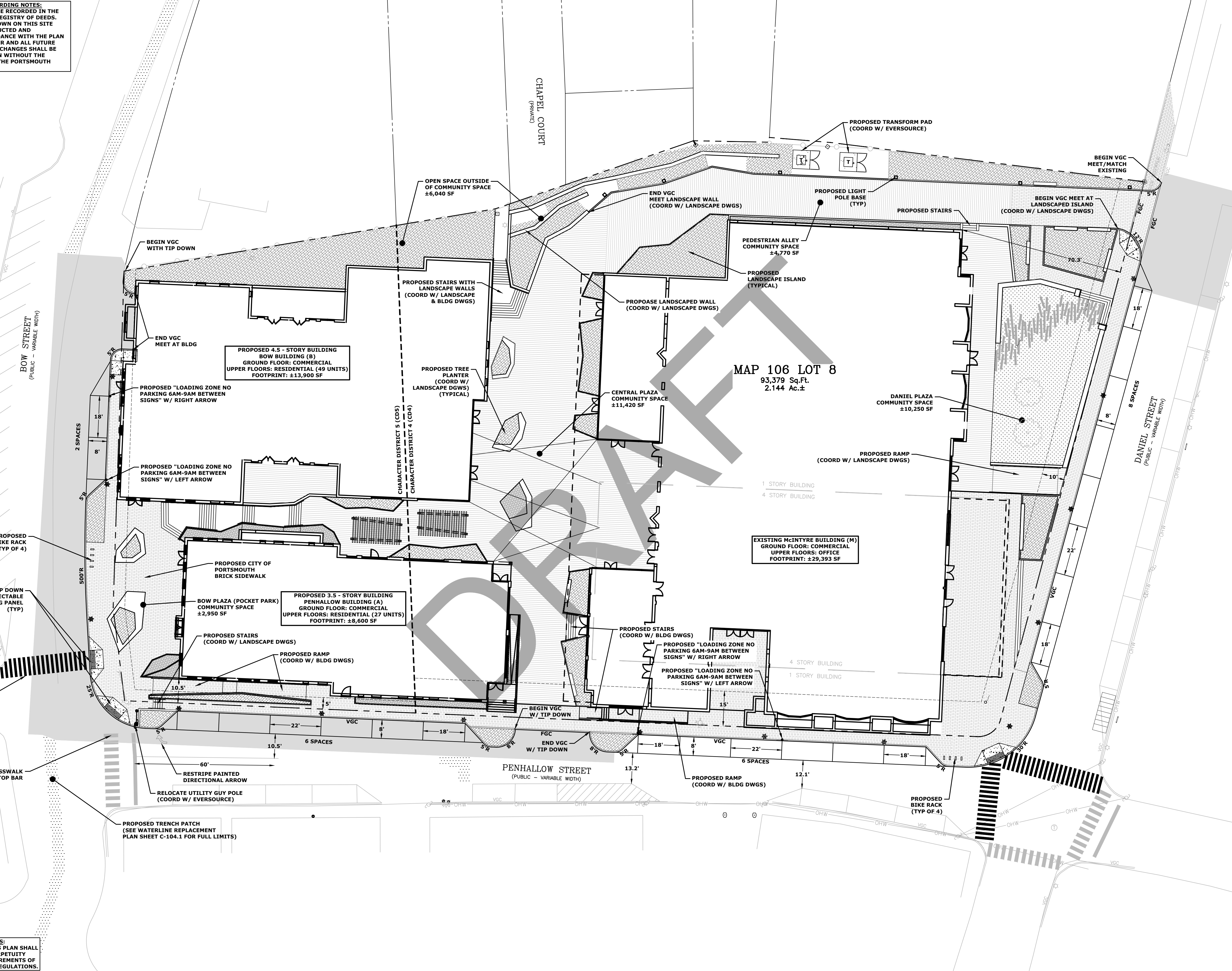
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 Plot File Location: J:\R5029\res\plans\001 - SoBow Square, LLC Drawings - Figures\AutoCAD\Sheet\R-5029-001-C-DSGN.dwg Layout Tab: SITE-UG



CITY OF PORTSMOUTH RECORDING NOTES:
1. THIS SITE PLAN SHALL BE RECORDED IN THE ROCKINGHAM COUNTY REGISTRY OF DEEDS.
2. ALL IMPROVEMENTS SHOWN ON THIS SITE PLAN SHALL BE CONSTRUCTED AND MAINTAINED IN ACCORDANCE WITH THE PLAN BY THE PROPERTY OWNER AND ALL FUTURE PROPERTY OWNERS. NO CHANGES SHALL BE MADE TO THIS SITE PLAN WITHOUT THE EXPRESS APPROVAL OF THE PORTSMOUTH PLANNING DIRECTOR.

CITY OF PORTSMOUTH NOTES:
1. ALL CONDITIONS ON THIS PLAN SHALL REMAIN IN EFFECT IN PERPETUITY PURSUANT TO THE REQUIREMENTS OF THE SITE PLAN REVIEW REGULATIONS.

Last Save Date: June 13, 2019 10:13 AM By: CML
 Plot Date: Thursday, June 13, 2019 Plotted By: Craig M. Langton
 Plot File Location: J:\Projects\2019\Restripe\001 - SoBow Square, LLC Drawings - Figures\AutoCAD\Sheet\R-5029-001-C-DSGN.dwg Layout Tab: SITE



**McIntyre Building
Federal Property
Redevelopment**

SoBow Square, LLC

62 Daniel Street
Portsmouth, NH

MARK	DATE	DESCRIPTION
		TAC Submission
PROJECT NO:		R5029-001
DATE:		
FILE:		R-5029-001-C-DSGN.DWG
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APPROVED:		BLM

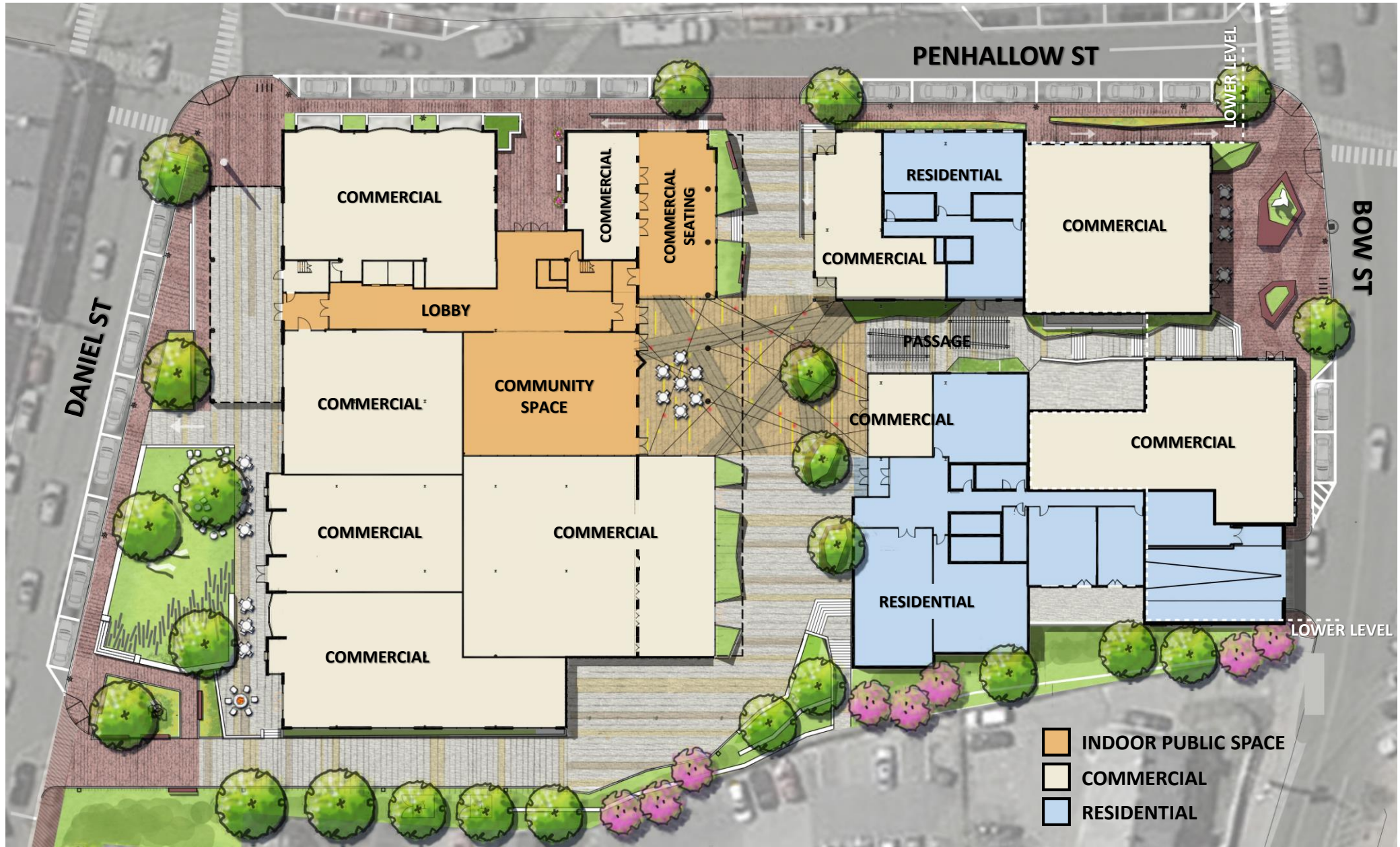
SITE PLAN

SCALE: AS SHOWN

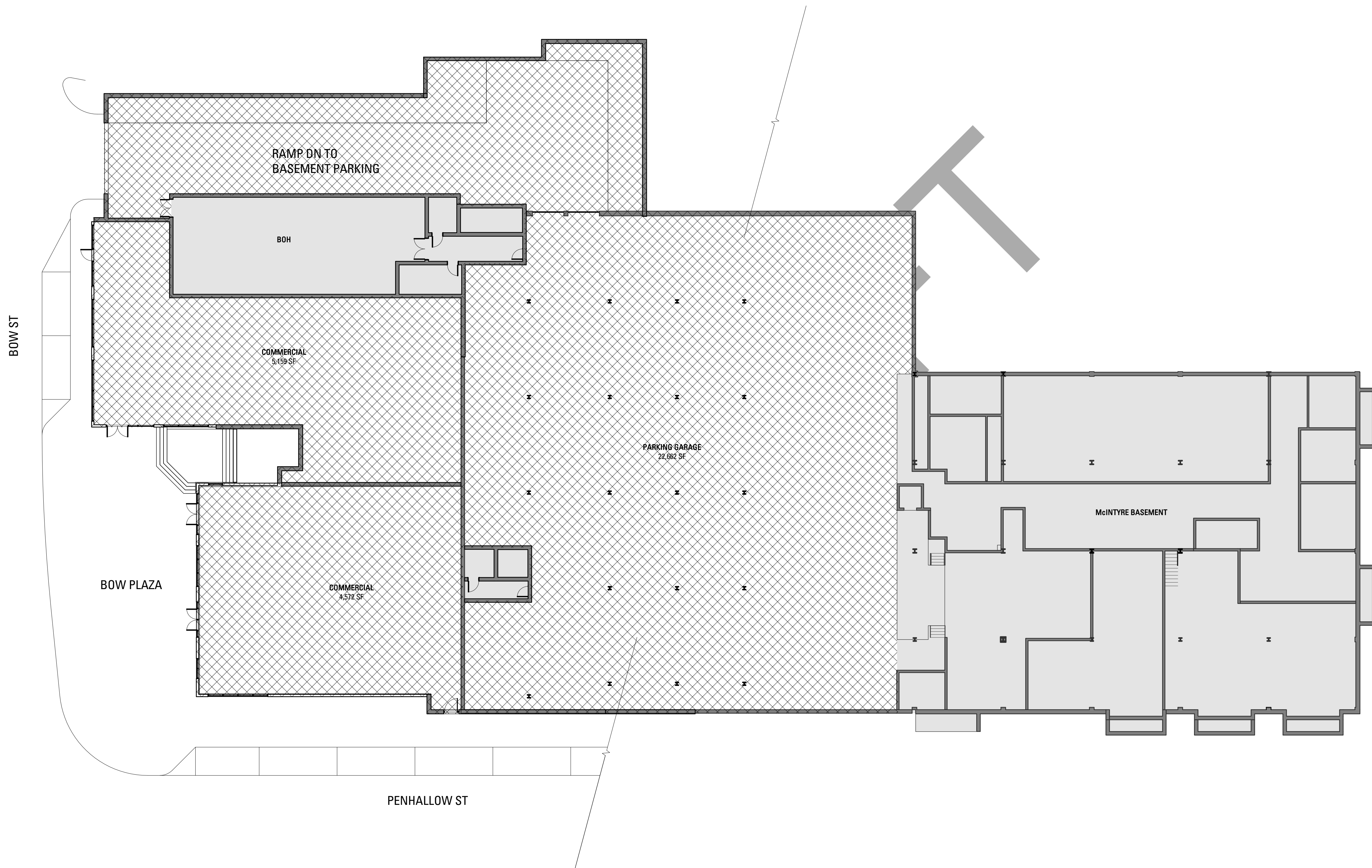
C-102

McIntyre Project

PROPOSED PEDESTRIAN LEVEL

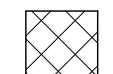




IF THIS SHEET IS NOT 22" x 34", IT HAS BEEN REDUCED OR ENLARGED.



1 OVERALL GROUND FLOOR PLAN
 SCALE: 1/16" = 1'-0"

USE PLAN LEGEND

-  REVENUE PRODUCING
-  NON REVENUE PRODUCING
-  NO PUBLIC ACCESS

USE PLAN - GROUND FLOOR

IF THIS SHEET IS NOT 22" x 34", IT HAS BEEN REDUCED OR ENLARGED.

BOW ST

DANIEL ST

BUILDING B

BUILDING A




MCINTYRE BUILDING



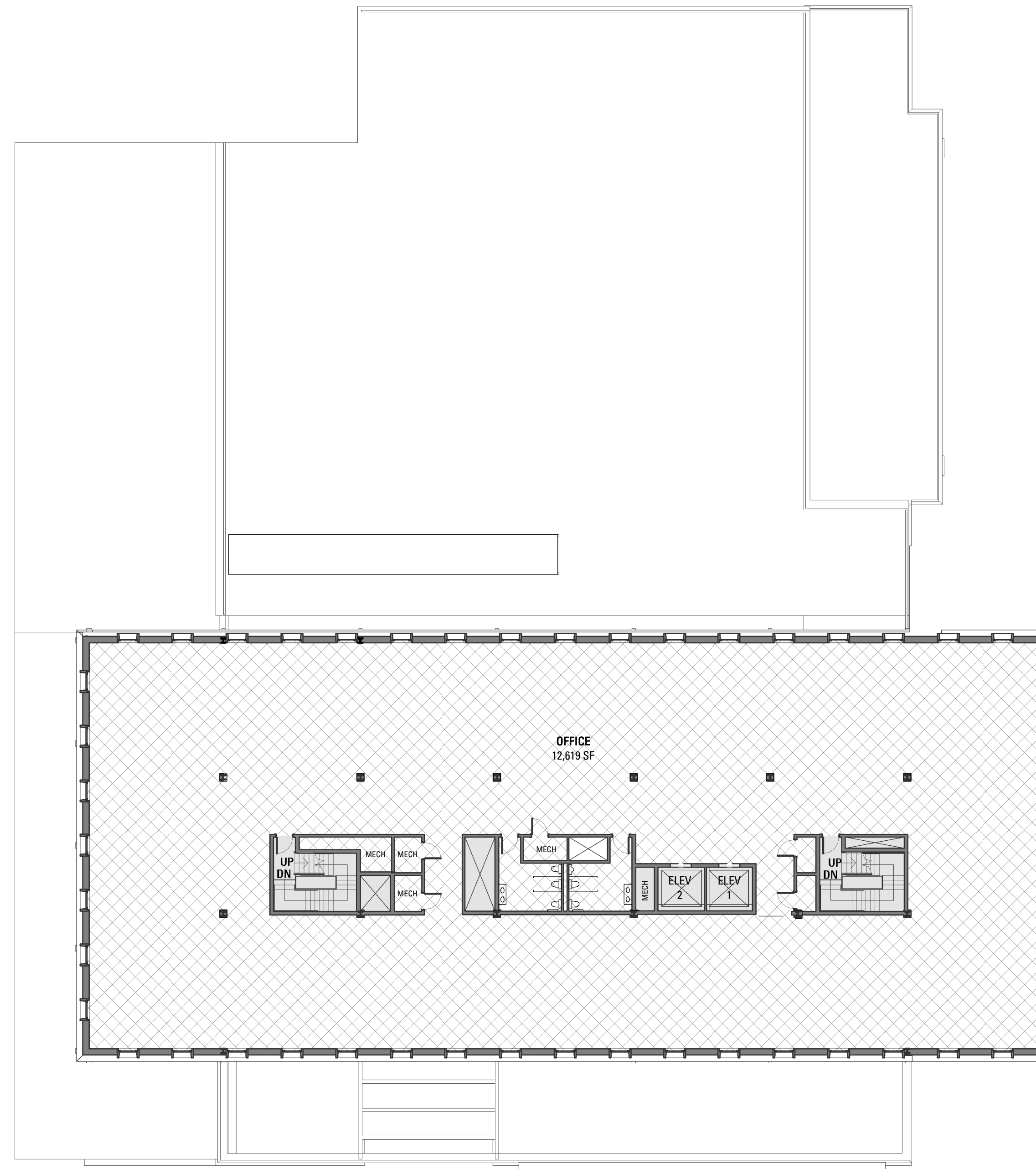
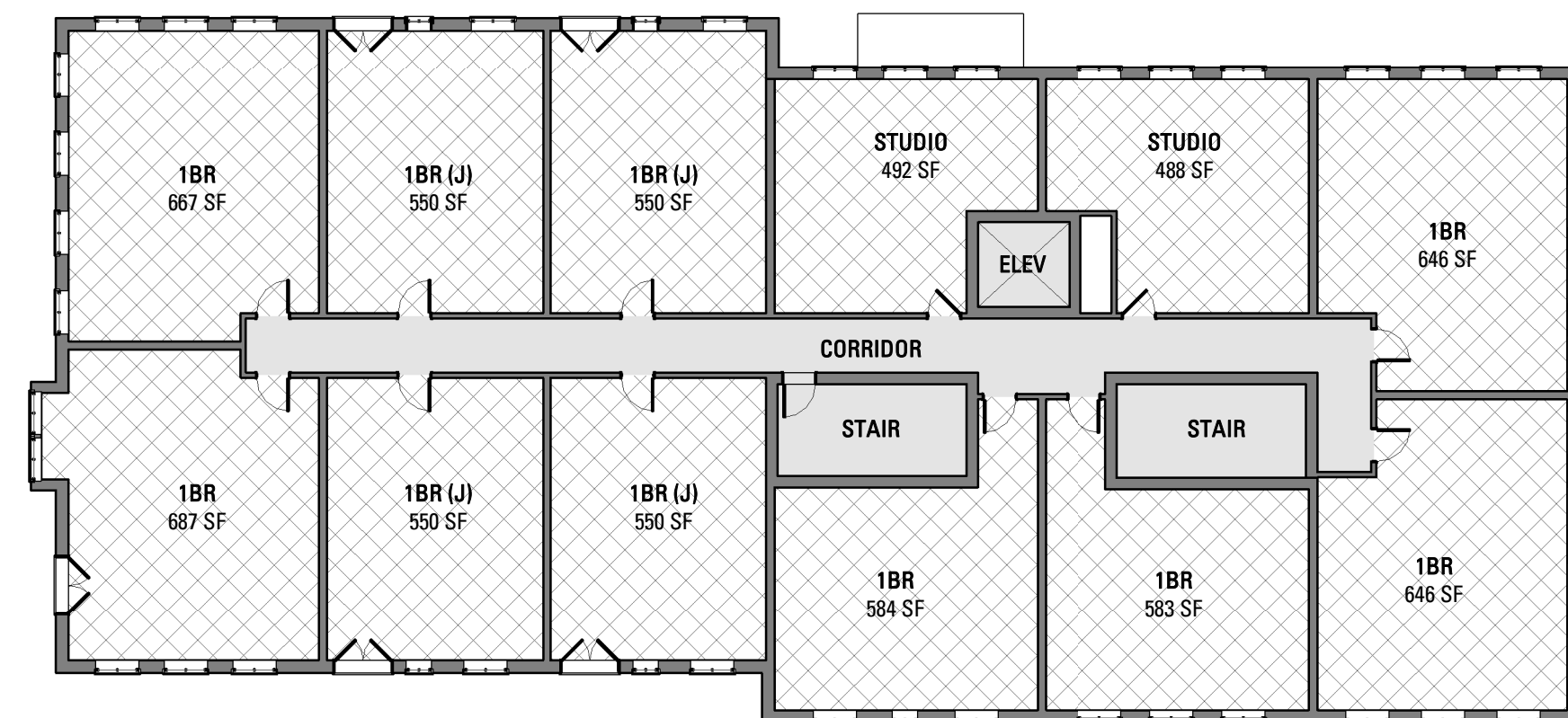
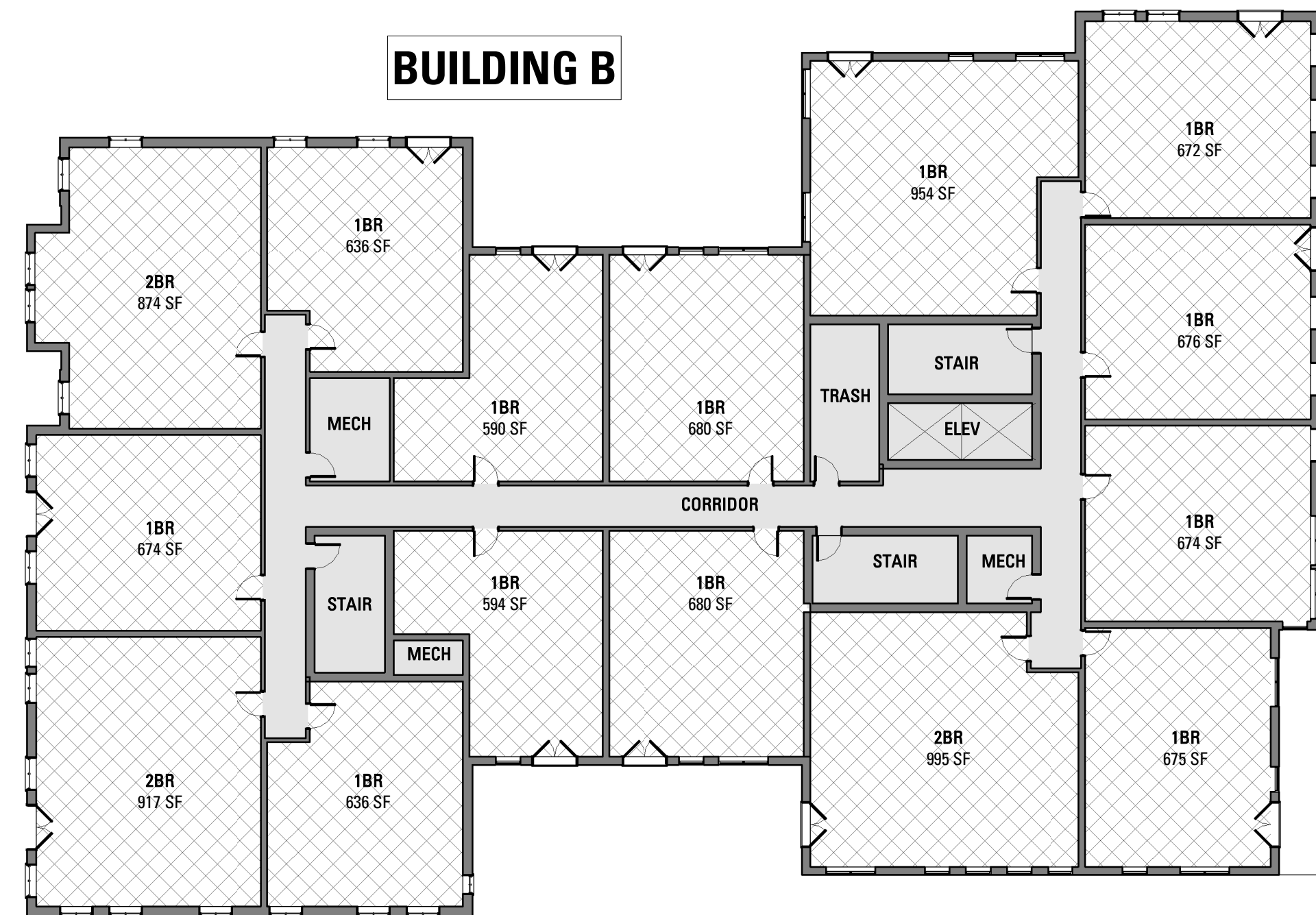
1 OVERALL 1ST FLOOR PLAN

SCALE: 1/16" = 1'-0"

USE PLAN LEGEND

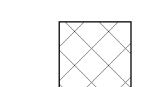
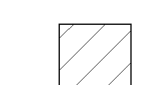

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-  NON REVENUE PRODUCING
-  NO PUBLIC ACCESS

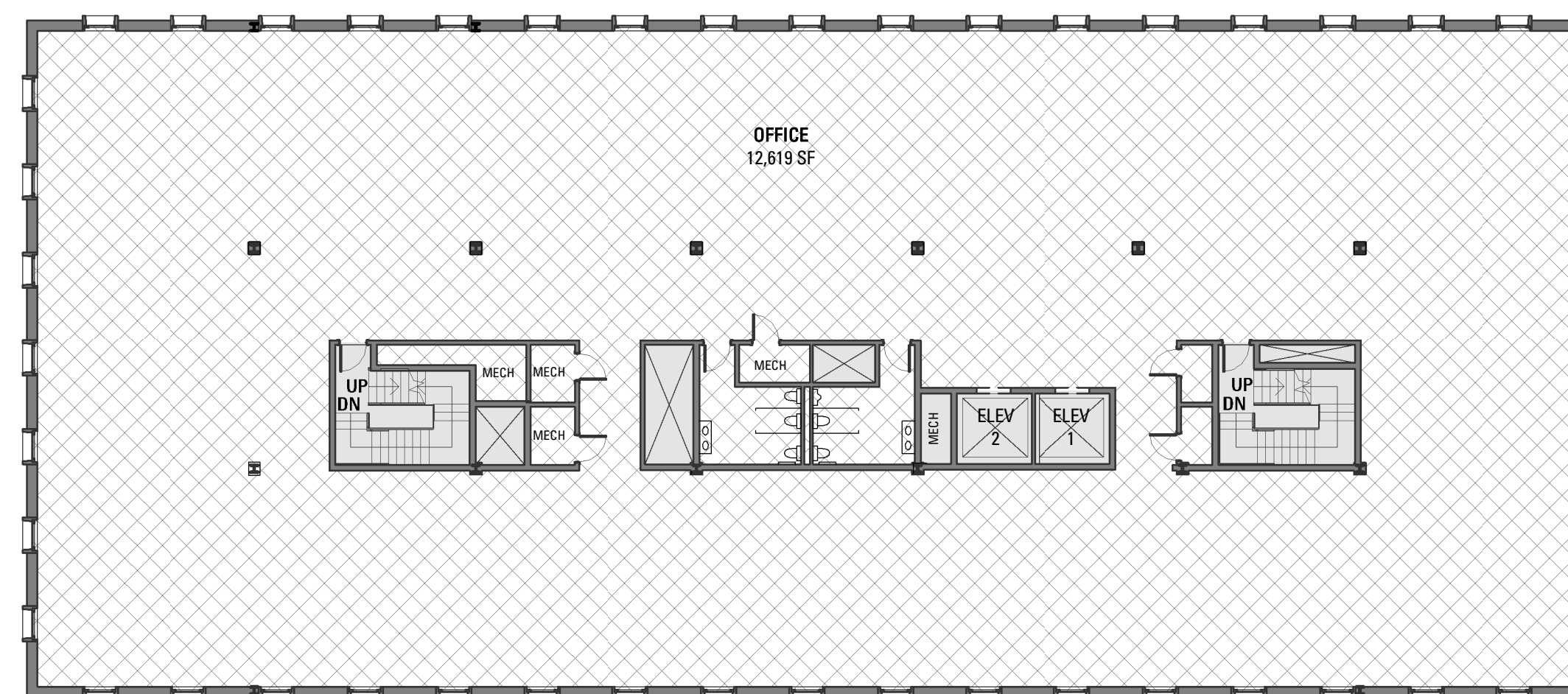
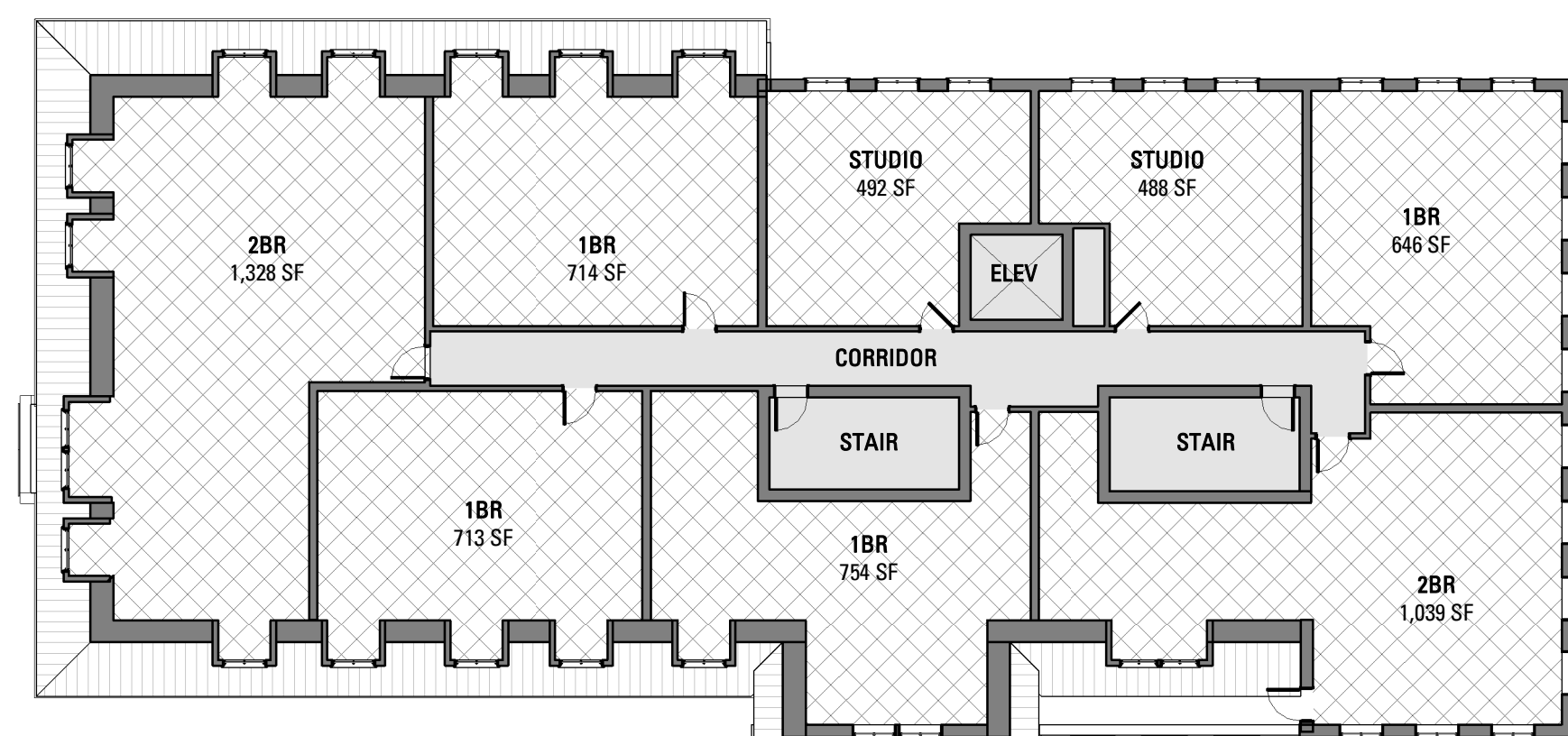
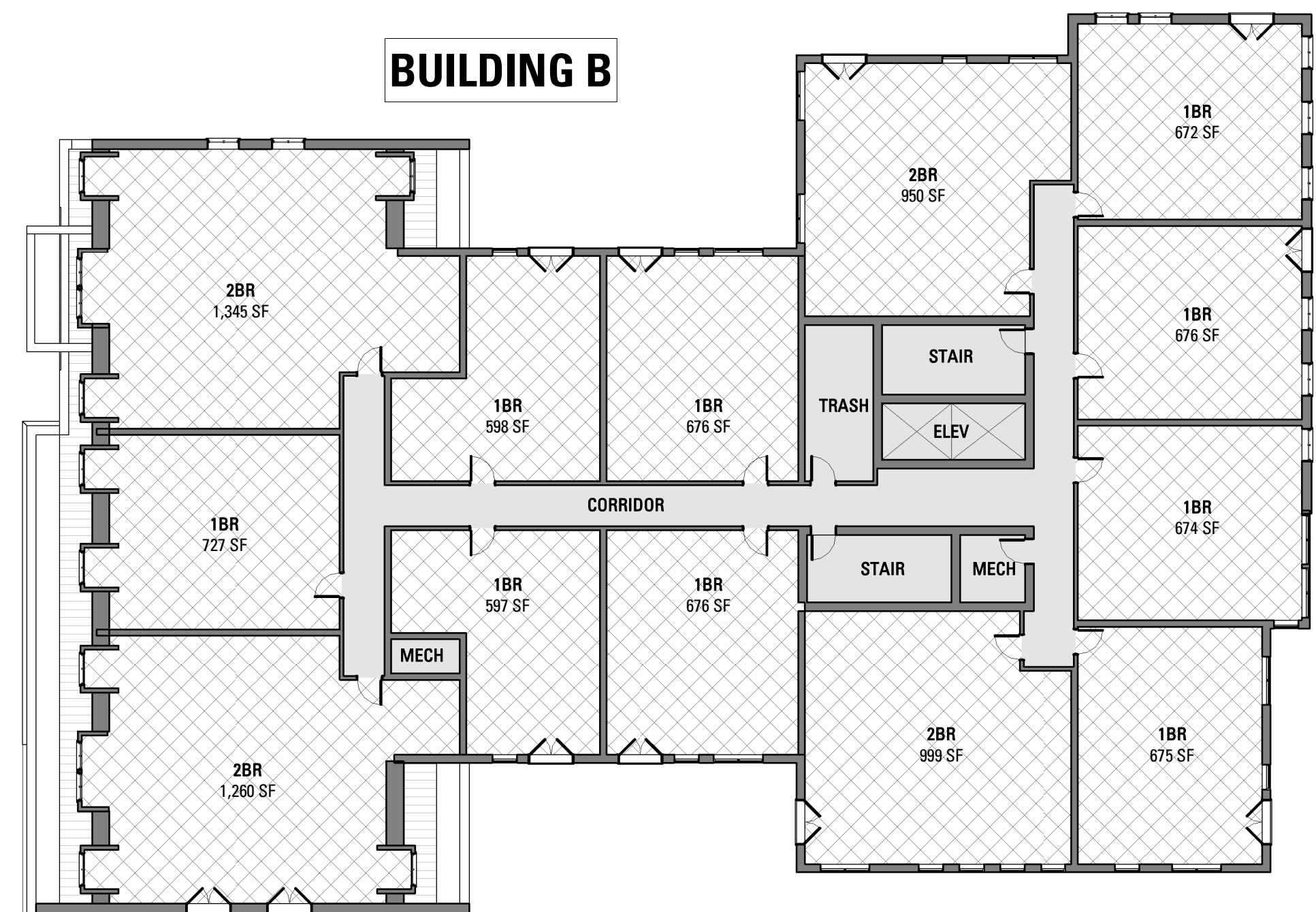
OVERALL USE PLAN - 1ST FLOOR



1 OVERALL 2ND FLOOR PLAN
SCALE: 1/16" = 1'-0"

USE PLAN LEGEND

-  REVENUE PRODUCING
-  NON REVENUE PRODUCING
-  NO PUBLIC ACCESS






BUILDING B

BUILDING A

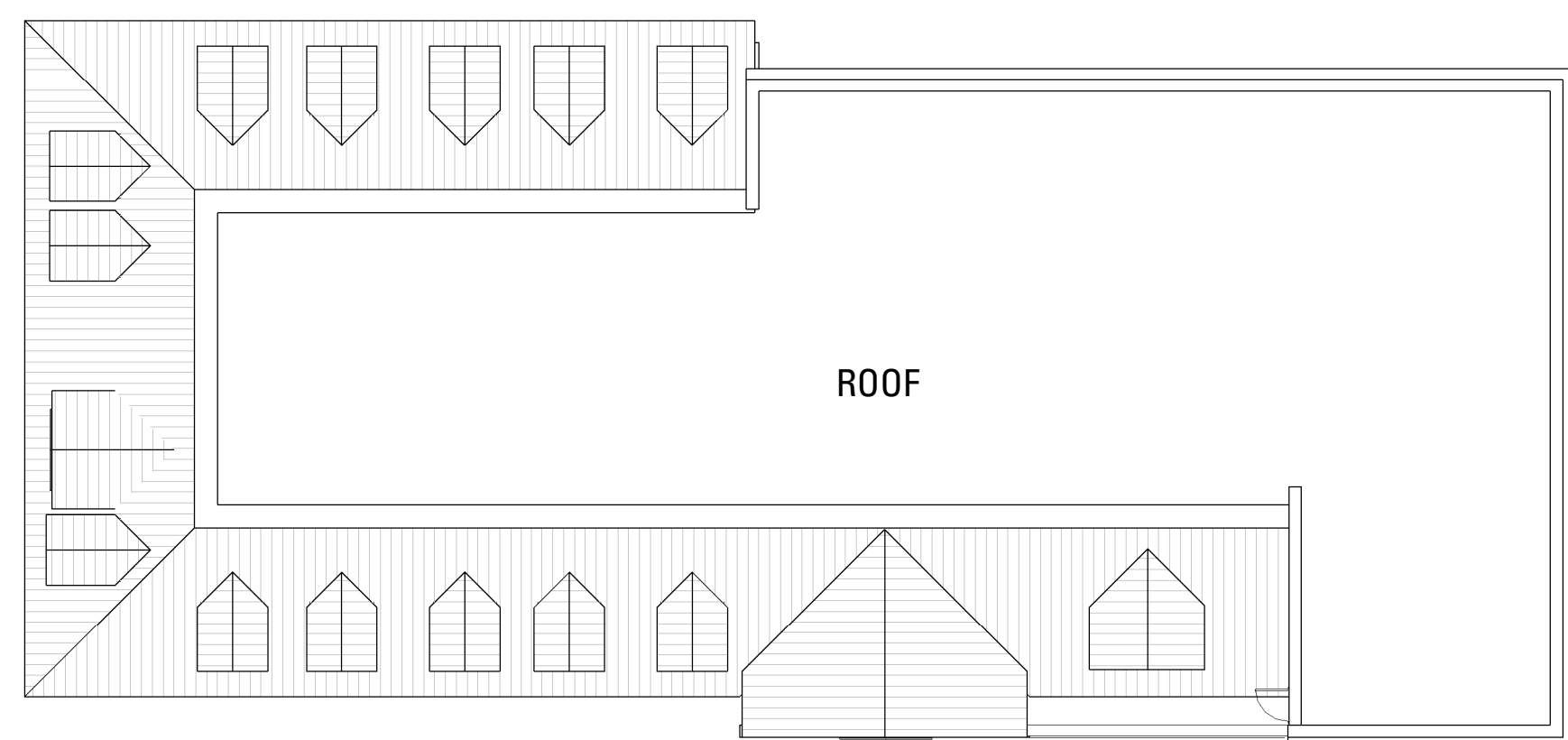
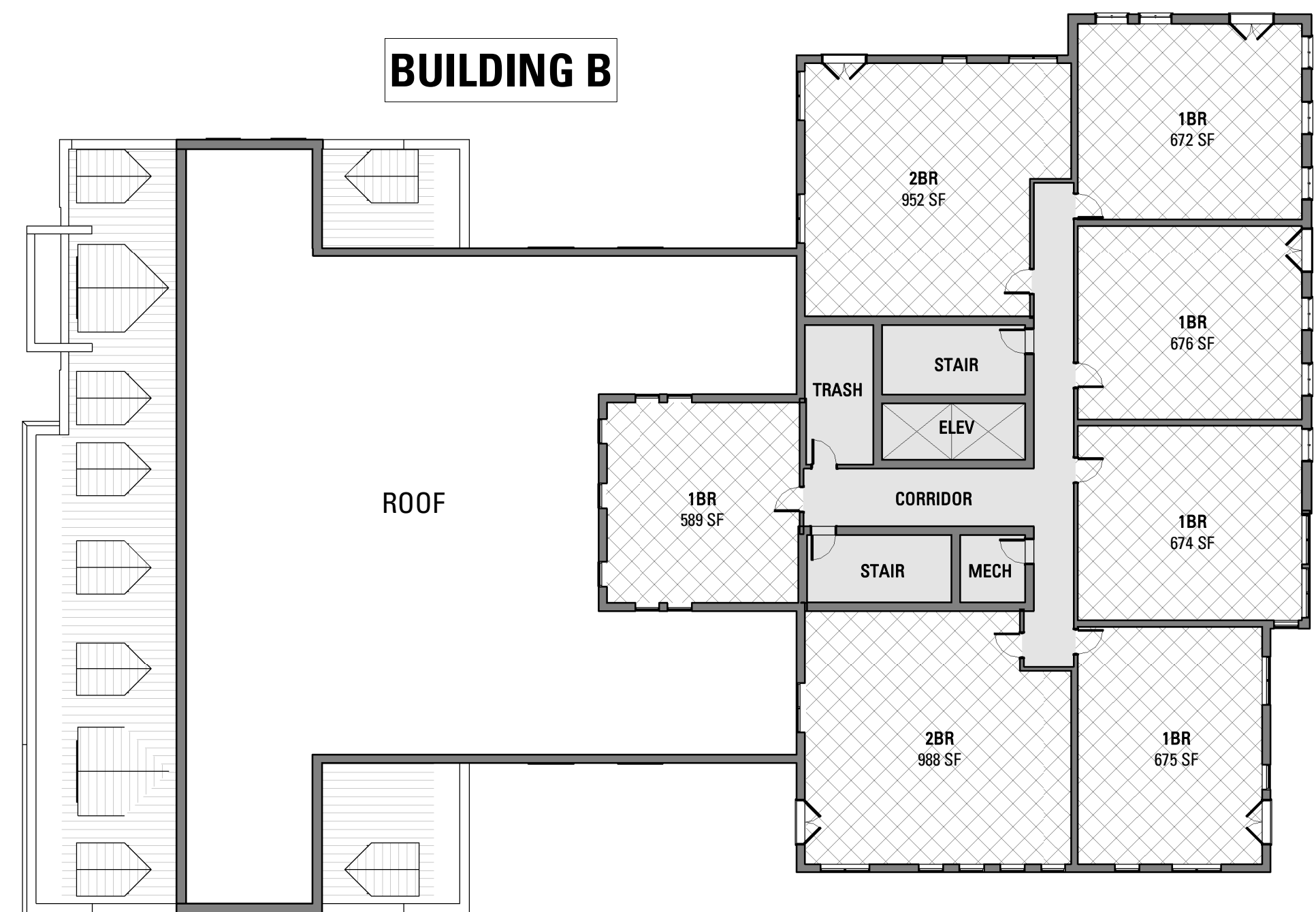
MCINTYRE BUILDING

1 OVERALL 3RD FLOOR PLAN
SCALE: 1/16" = 1'-0"

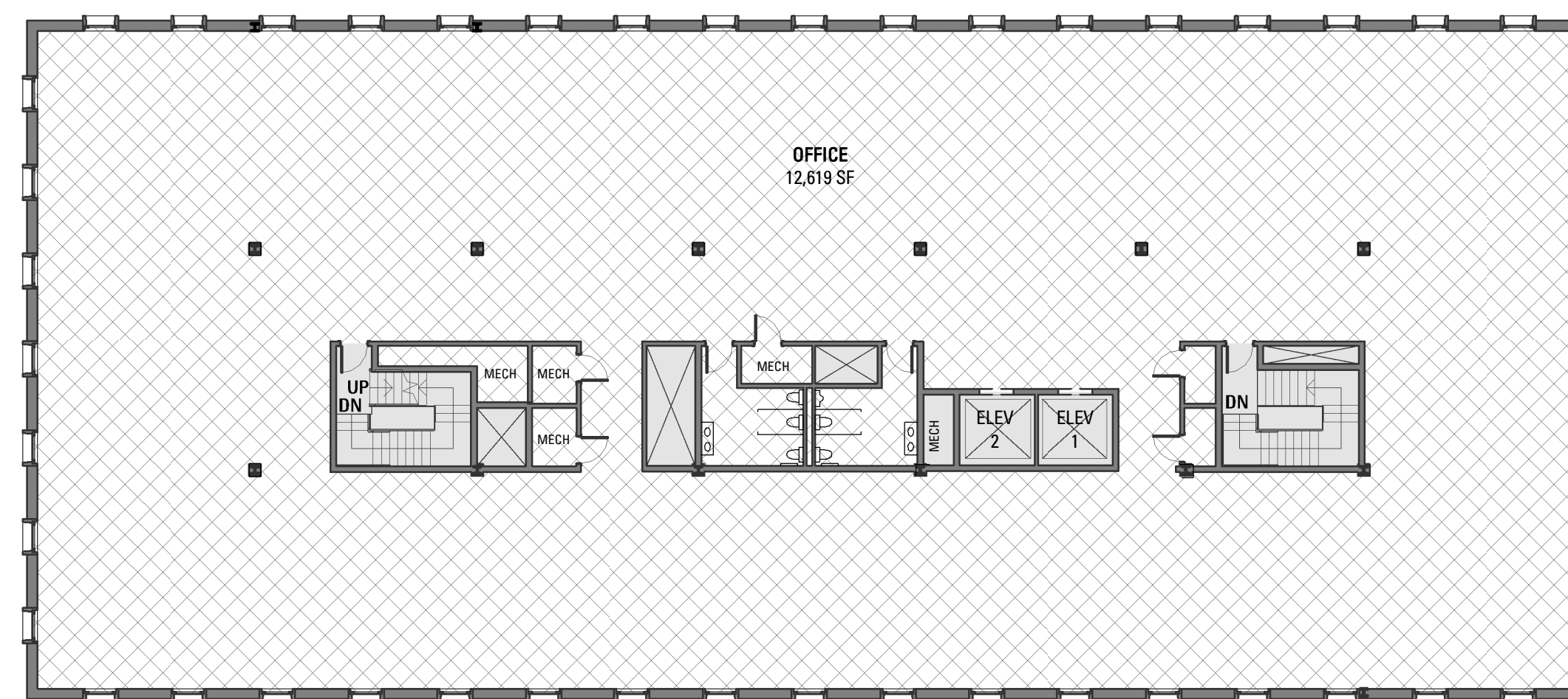
USE PLAN LEGEND

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-  NO PUBLIC ACCESS

OVERALL USE PLAN - 3RD FLOOR



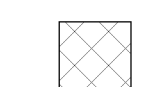


BUILDING A



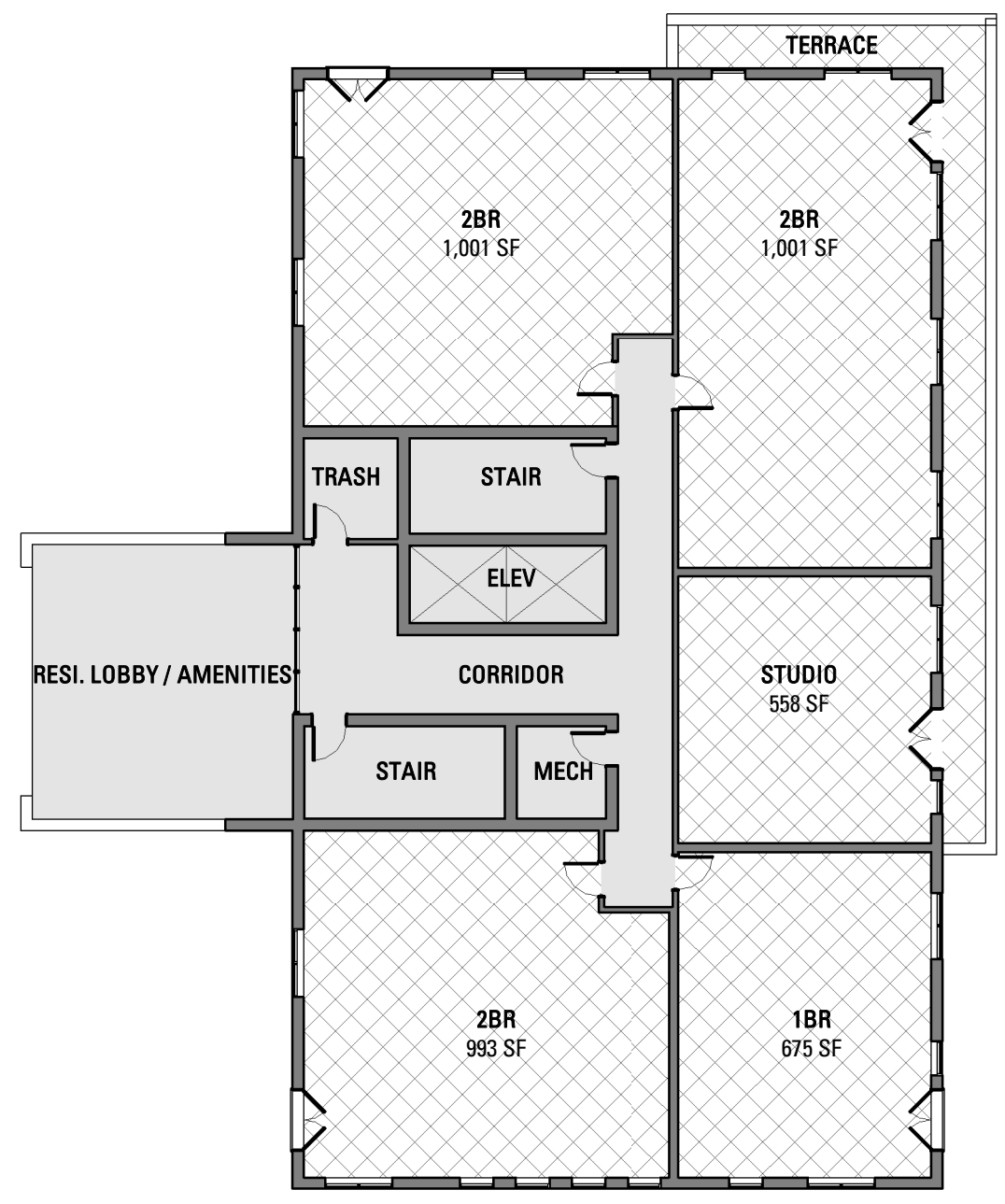
MCINTYRE BUILDING

1 OVERALL 4TH FLOOR PLAN
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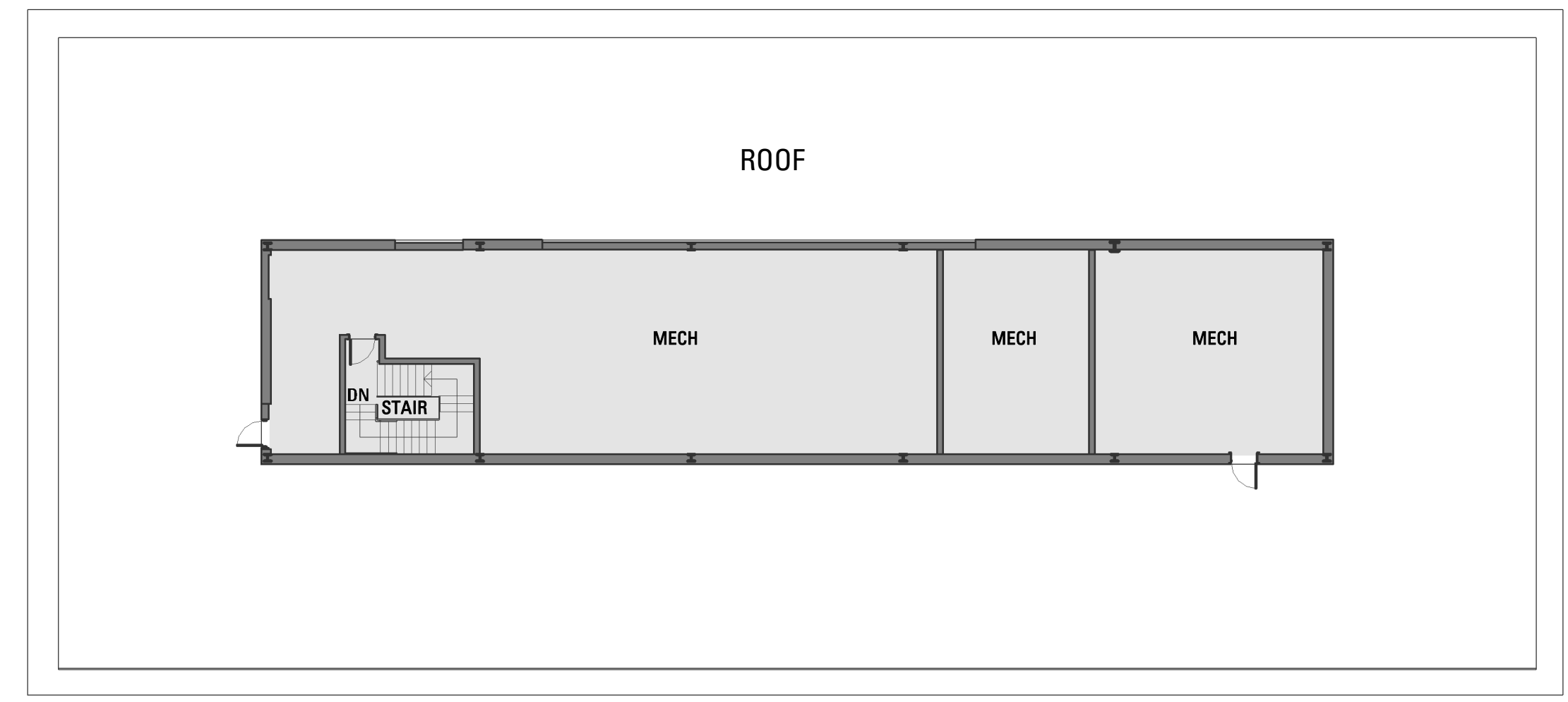
USE PLAN LEGEND

-  REVENUE PRODUCING
-  NON REVENUE PRODUCING
-  NO PUBLIC ACCESS

OVERALL USE PLAN - 4TH FLOOR






BUILDING B



MCINTYRE BUILDING

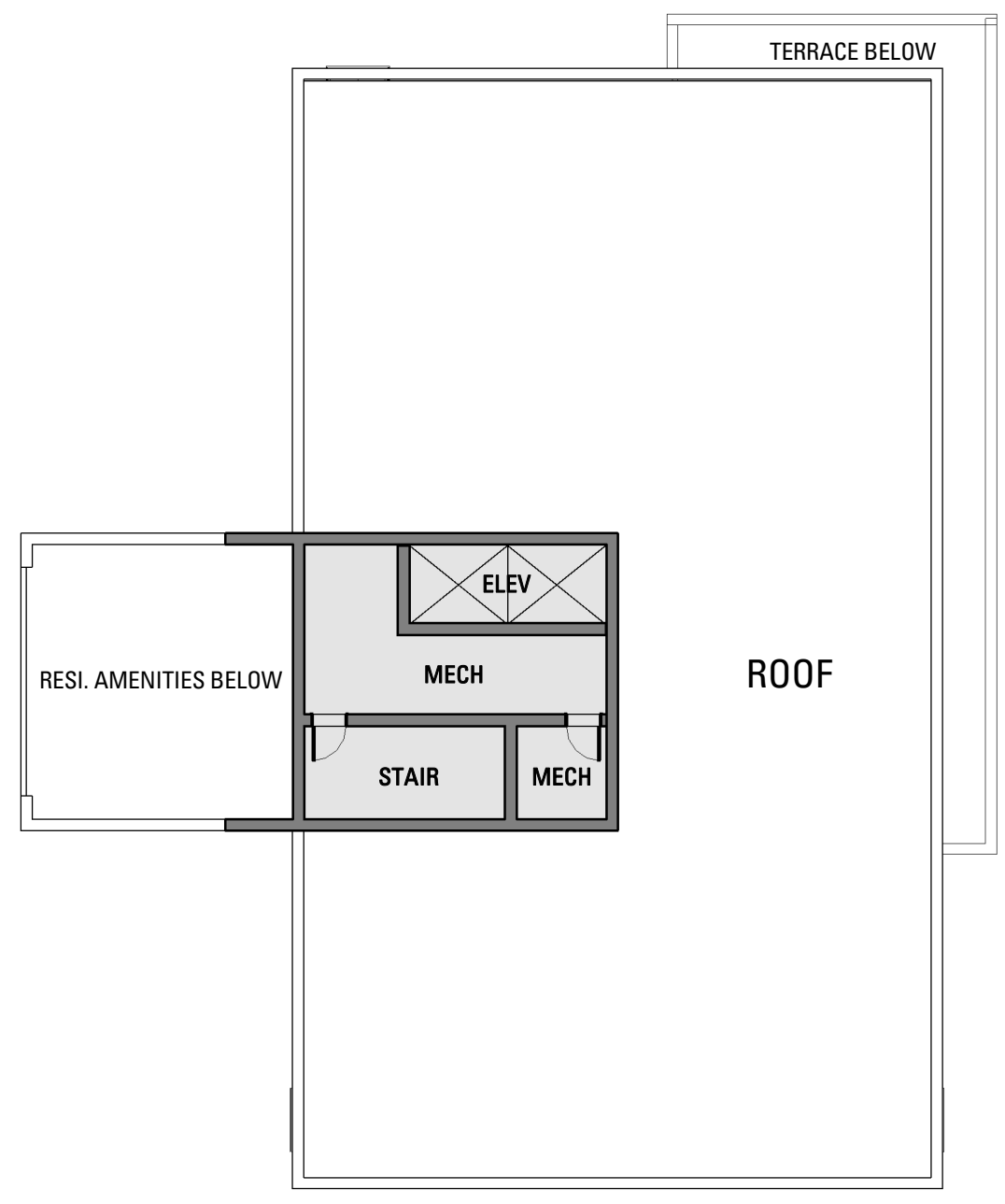
1 OVERALL 5TH FLOOR PLAN
SCALE: 1/16" = 1'-0"

USE PLAN LEGEND

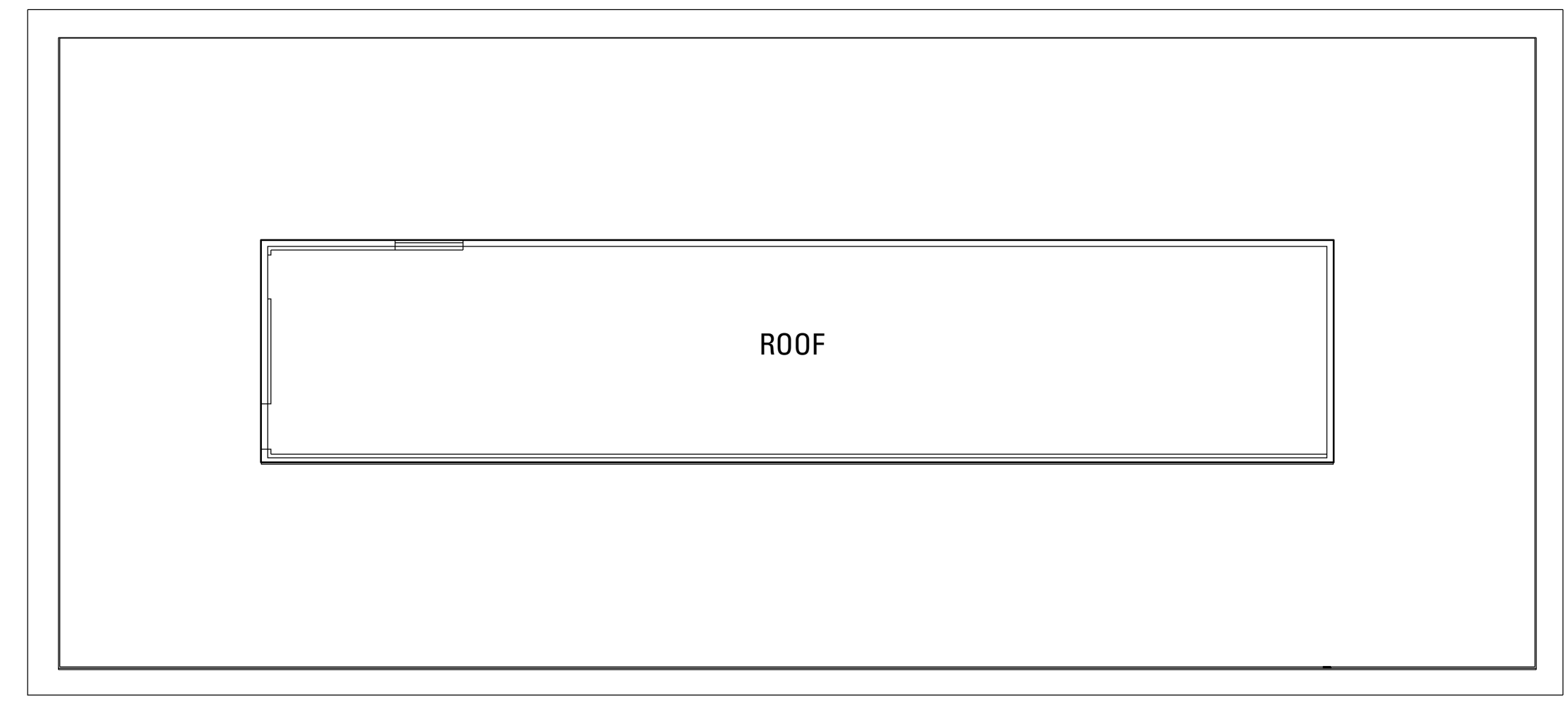
-  REVENUE PRODUCING
-  NON REVENUE PRODUCING
-  NO PUBLIC ACCESS

OVERALL USE PLAN - 5TH FLOOR

IF THIS SHEET IS NOT 22" x 34", IT HAS BEEN REDUCED OR ENLARGED.






BUILDING B



MCINTYRE BUILDING

1 OVERALL 6TH FLOOR PLAN
SCALE: 1/16" = 1'-0"

USE PLAN LEGEND

-  REVENUE PRODUCING
-  NON REVENUE PRODUCING
-  NO PUBLIC ACCESS

OVERALL USE PLAN - 6TH FLOOR

IF THIS SHEET IS NOT 22" x 34", IT HAS BEEN REDUCED OR ENLARGED.



4 BUILDING B - EAST ELEVATION
 SCALE: 1/16" = 1'-0"



1 NORTH (BOW STREET) ELEVATION
 SCALE: 1/16" = 1'-0"



5 BUILDING B - EAST ELEVATION
 SCALE: 1/16" = 1'-0"



2 SOUTH (LINDEN WAY) ELEVATION
 SCALE: 1/16" = 1'-0"



6 BUILDING B - WEST ELEVATION
 SCALE: 1/16" = 1'-0"



3 BUILDING A - WEST (PENHALLOW STREET) ELEVATION
 SCALE: 1/16" = 1'-0"

Rev.	Date	Remarks

Date	May 5, 2019
Scale	1/16" = 1'-0"
Project Number	17.021
Drawn By	KW/VR/LK

MCINTYRE PROJECT

80 DANIEL ST
 PORTSMOUTH, NH

NOT FOR CONSTRUCTION

EXTERIOR ELEVATIONS

Exhibit B
Project Budget

DRAFT

Exhibit B - Budget

Portsmouth McIntyre

Portsmouth, NH

June 28, 2019

CAPITAL BUDGET

Gross Square Feet:	88,657 GSF	69,758 GSF
Net Square Feet (Res):	67,340 NSF	66,413 NSF
Unit Count:	76 Units	0 Units

	TOTAL BUDGET	New Construction	McIntyre Building
Total Land Costs	\$ 248,781	\$ 125,252	\$ 123,528
Subtotal Legal	\$ 475,000	\$ 265,834	\$ 209,166
Subtotal Design Costs	\$ 2,817,390	\$ 1,576,753	\$ 1,240,637
Subtotal Marketing Costs	\$ 1,679,895	\$ 582,325	\$ 1,097,570
Subtotal Permits & Fees	\$ 693,376	\$ 388,048	\$ 305,328
Subtotal Financing, Fees & Operations	\$ 4,860,653	\$ 3,105,537	\$ 1,755,116
Total Soft Costs	\$ 10,526,314	\$ 5,918,497	\$ 4,607,817
Total Hard Costs	\$ 50,310,775	\$ 32,721,546	\$ 17,589,230
Total Project Cost	\$ 61,085,869	\$ 38,765,295	\$ 22,320,575

Exhibit C
Development Schedule

DRAFT

Exhibit C - Schedule

McIntyre Schedule

4/12/2019

Milestone	Date	Comments
NPS Approval	Jul '19	
Predevelopment		
Land Use Boards	Jul '19 - Aug '19	Assumes Design Development is concurrent with Land Use Boards
Design and Contracts	Jul '19 - Dec '19	
Ground Lease Closing	Jan '20	
Construction		
Groundbreaking	Jan '20	
Phase I: McIntyre Office/Retail Core & Shell Delivery	Dec '20	12 Months
Phase II: Residential and Retail	Jul '21	18 Months

Exhibit D

List of Anticipated Permits and Approvals

1

DRAFT

Exhibit D - Anticipated Permits

<u>Federal Permits:</u>	Description
EPA NPDES permit	The project will exceed one (1) acre of disturbance. We will file the Notice of Intent (NOI) with EPA for coverage under the Construction General Permit (CGP) in order to discharge stormwater during construction activities. The NOI requires that a Stormwater Pollution Prevention Plan (SWPPP) be prepared and implemented
EPA Dewatering General Permit	The EPA has promulgated a general permit for the qualifying discharges of non-processed dewatering and dewatering-related activities into "waters of the United States." Will be required for utility corridors as well.
NPS Approval of the Application for Obtaining Real Property for Historic Monument Purposes	National Park Service to review and approve City's application in concert with the General Services Administration: Application and exhibits, development agreement and ground lease document.
<u>State Permits:</u>	Description
NHDES Sewer Connection Permit	The project is anticipated to exceed an additional 5,000 GPD of average daily sewer flow. Requires Sign Off from City prior
NHDES Shoreland Protection Permit	The project is located within 250 feet of the Piscataqua River.
NHDES Alteration of Terrain Permit	Tighe & Bond created an exhibit and performed consultations with NHDES to work around having to submit for this project. Need NHDES letter confirming the aforementioned.
<u>Local Permits:</u>	Description
Historic District Commission	Certificate of Approval
Planning Board	Technical Advisory Committee Recommendation + Planning Board Site Plan Approval
Building Permit	Project document approval by Inspectional Services Department
Driveway Permit	Department of Public Works
Flammable Storage License (Garage Permit)	Fire Department
City Roads & Public Street Permits	Street Encumbrance Permit Approval from City Manager's Office
Food Service Permit	Approval from Health Department for Restaurant Core/Shell

Exhibit E

Basic Terms of Ground Lease

McIntyre Project Ground Lease Summary

Property Name:	McIntyre Redevelopment Project
Address:	80 Daniel Street Portsmouth, NH
Owner / Landlord	City of Portsmouth, New Hampshire
Tenant	Sobow Square, LLC
Guarantors	Redgate and Kane Companies
Subordination	Ground Lease not Subordinate to Project Financing
Leased Premises	Approximately 2.1 Acres of Land and Improvements Thereon
Lease Term	75 Years
Lease Commencement Date	To Be Determined
Rent Commencement Date	On the 18th Month After Issuance of a Building Permit
Additional Option Period and Terms	None
Base Rent	100,000 Annually Payable Monthly at 8,333.33
Base Rent Escalators	2.5% Annually Beginning 12 Months After Rent Commencement
Percentage Rent	In Addition to Base Rent, Tenant Will Pay to Landlord 1% of Annual Revenues Beginning in Year 11
Capital Expense Reserve	\$25,000 Annually First 5 Years after Capital Reserve Commencement Date , \$75,000 Annually Years 6-10
Capital Reserve Payment Commencement Date	30th Month After Rent Commencement
Security Deposit	None Initial \$400,000 Deposit to be Released at Ground Lease Closing
Option to Purchase	None
Landlord Expense Responsibility	None
Tenant Expense Responsibility	All Operating Expenses of Every Kind
Public Spaces	Tenant to Construct and Maintain at its Sole Expense All Indoor and Outdoor Public Spaces as Illustrated on Approved Site Plan
Historic Tax Credit Sharing	50/50 Sharing of Net Proceeds After Costs of Application and Administration
Refinance Proceeds Sharing	7.5% of Net Financing Proceeds for 1st Refinancing Event and 10% of Net Financing Proceeds for all Subsequent Refinancing Events will be Paid to Landlord as Additional Rent
Revenue Sharing	Upon Sale Landlord Will Share in 20% of Project Profit In Excess of an 18% Internal Rate of Return

5/1/2019

Application: Obtaining Real Property for Historic Monument Purposes

Thomas J. McIntyre Federal Building

80 Daniel Street, Portsmouth, NH

July 15, 2019

Attachment B – Draft Ground Lease

GROUND LEASE

for

APPROXIMATELY 2.1 ACRE PARCEL OF LAND AND IMPROVEMENTS
THEREON

80 DANIEL STREET, PORTSMOUTH, NEW HAMPSHIRE

between

CITY OF PORTSMOUTH, NEW HAMPSHIRE

as Landlord

and

SOBOW SQUARE, LLC

as Tenant

Dated as of _____, 2019

GROUND LEASE
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GROUND LEASE

This **GROUND LEASE** (this "**Lease**") is entered into as of this _____ day of _____, 2019 (the "**Effective Date**"), by and between the **CITY OF PORTSMOUTH**, a public body corporate and politic, organized and existing under _____, with a principal place of business at 1 Junkins Avenue, Portsmouth, New Hampshire 03801 (hereinafter, with its successors and assigns, the "**City**" or the "**Landlord**") and **SOBOW SQUARE, LLC**, a _____ limited liability company with a principal place of business at _____ (the "**Tenant**"). The City and Tenant shall hereinafter be referred to individually as a "**Party**" or collectively as the "**Parties**".

INTRODUCTION

This Agreement relates to the redevelopment and leasing of certain real estate known as the "McIntyre Property" located at 80 Daniel Street, Portsmouth, New Hampshire (the "Property").

Reference is made to the following facts.

- I. The Property was formerly owned by the United States of America.
- II. The City was invited to submit an "Application for Obtaining Real Property for Historic Monument Purposes" (the "Application") to the National Parks Service of the Department of the Interior ("NPS") to acquire the Property from the General Services Administration ("GSA") under the Federal Historic Monument Program (Title 40 U.S.C. 550 (h)) pursuant to which the Property would be conveyed to the City for no cash consideration but with a deed restriction/preservation covenant requiring that the Property be preserved and used as a Historic Monument.
- III. In August of 2017, the City issued a Request for Proposals (the "RFP") seeking a private real estate developer to enter into a public private partnership with the City pursuant to which the City would acquire the Property from the GSA under the Federal Historic Monument Program and then lease the Property to a private developer pursuant to a long-term ground lease. Under the ground lease the developer would be obligated to redevelop, reuse and operate the Property as a Historic Monument as generally described and detailed in the RFP.
- IV. On or about November 6, 2017, in response to the RFP, several real estate developers, including Tenant, submitted proposals to ground lease and redevelop the Property. In its response to the RFP, Tenant proposed to redevelop the Property as a mixed-use project with office, retail, and residential uses and related parking, amenities, infrastructure and public

spaces (collectively, the "Project").

- V. On January 16, 2018, the Portsmouth City Council voted to select Tenant as its potential development partner.
- VI. On _____, 2019, City and Tenant entered into a Development Agreement and Agreement to Lease with respect to the Project.
- VII. On _____, 2019, the City and Tenant submitted an "Application for Obtaining Real Property for Historic Monument Services" (the Application") to the NPS for the acquisition of the Property at no cost pursuant to the Federal Historic Monument Program. The Application, among other things, included a proposed "Preservation Plan, a proposed "Use Plan" and a proposed "Financial Plan."
- VIII. On _____, 2019, the NPS recommended approval of the Application [subject to certain modifications thereto].
- IX. On _____, 2019, the GSA accepted and concurred with the recommendation of the NPS.
- X. By deed dated _____, 20__ and recorded in the Rockingham County Registry of Deeds at Book __, Page __ (the "Deed"), the GSA conveyed the Property to the City for no cost.
- XI. The Deed contains certain restrictions and covenants requiring the Property to be rehabilitated, preserved and operated as a Historic Monument ("Preservation Covenants") under the Federal Historic Monument Program.
- XII. In furtherance of the above, the City will ground lease the Property to Tenant and the Tenant will rehabilitate, use, operate, and maintain the Property in accordance with the Deed, the Preservation Covenants, the approved Application (including, without limitation, the approved Preservation Plan, Use Plan and Financial Plan) and all other applicable requirements under the Federal Historic Monument Program (all of the above requirements and obligations are collectively referred to as the "Historic Monument Program Requirements").

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained herein, the City and Tenant agree as follows:

ARTICLE 1

DEFINITIONS

1.1 **Definitions.** In addition to other capitalized terms defined elsewhere in this Lease, the following capitalized terms used in this Lease shall have the meaning set forth or referenced in this Section:

"Additional Rent" shall have the meaning set forth therefor in **Section 5.3**.

"Affiliate" shall mean, with respect to any Person, (i) in the case of any such Person which is an Entity, any partner, shareholder, member or other owner of such Entity, provided that such partner, shareholder, member or other owner owns more than fifty percent (50%) of the Equity Interests of such Entity, and (ii) any other Person which is a Parent, a Subsidiary, or a Subsidiary of a Parent with respect to such Person or with respect to one or more of the Persons referred to in the preceding clause (i).

"Alterations" shall have the meaning set forth therefor in **Section 7.4**.

"Application Approval" shall mean the approval of the Application by the National Parks Service and the GSA.

"Approved Application" shall mean the application for obtaining real property for Historic Monument purposes submitted by the City and Tenant to the National Parks Service with respect to the Project and approved by the National Parks Service and the GSA.

"Approvals" shall mean, collectively, all environmental, land use, building, construction, curb cut, parking, occupancy and related permits, and any other permits, licenses and approvals necessary to enable Tenant to construct and use Tenant's Improvements or any portion thereof or to perform any Alterations. A list of all required approvals is attached hereto as **Exhibit E**.

"Approved Debt" shall mean, at any time, either (i) the initial construction financing for the construction of Tenant's Improvements, which amount shall not be more than eighty-five percent (85%) of the Approved Development Costs, or (ii) the amount of any other debt secured by Permitted Leasehold Mortgage(s), the original principal amount of which other financing(s), in the aggregate, shall total no more than eighty five percent (85%) of the fair market value of Tenant's Leasehold Interest at the time of such financing(s) as determined by the Landlord.

"Approved Development Plan" shall mean, collectively, the development plan and related plans and descriptive materials for the construction of Tenant's Improvements, including such information as to the size, location and use of all such proposed Tenant's Improvements, and all modifications thereto or substitutions therefor, initially as approved by the City and attached hereto as **Exhibit C**, and thereafter as modified from time to time subject to approval by: (a) the City, which approval shall not be unreasonably withheld, conditioned or delayed pursuant to **Section 4.24**, and (b) the National Parks Service to the extent required under the Federal Historic Monument Program.

"Approved Development Costs" shall mean the total cost of the development of Tenant's Improvements as reasonably estimated by Tenant, including, without limitation, construction costs, permitting and development costs, architectural and engineering fees, legal fees, Rent and other payments due or expenses to be incurred pursuant to this Lease, the Approvals or the Historic Monument Program Requirements, or financing fees, and interest expenses, all as evidenced by a certificate of Tenant supported by appropriate documentation (including, without limitation, Tenant's final itemized budget for Tenant's Improvements and the Construction Contract entered into by Tenant and its Contractor for Tenant's Improvements), and as set forth in the Project Budget, as the same may be updated by Tenant and approved by the City from time to time.

"Appurtenant Rights" shall have the meaning set forth therefor in **Section 2.1**.

"Architect/Engineer" shall mean each architect or engineer engaged by or on behalf of Tenant to design any portion of Tenant's Improvements or a Major Alteration. Tenant's initial Architect/Engineer is _____.

"Architect/Engineer's Contracts" shall mean all agreements between Tenant and an Architect/Engineer with respect to Tenant's Improvements or a Major Alteration or any portion thereof.

"Assignment of Development Documents" shall have the meaning set forth therefor in **Section 4.3(h)**.

"Award" shall have the meaning set forth therefor in **Section 12.1**.

"Base Rent" shall have the meaning set forth therefor in **Section 5.1**.

"Books and Records" shall have the meaning set forth therefor in **Section 5.6.1(a)**.

"Building" shall have the meaning set forth therefor in **Section 4.1(b)**.

"Business Day" shall mean any Monday through Friday, inclusive, other than a day on which the offices of The State of New Hampshire are closed for the conduct of normal business.

"Calendar Year" shall mean the period from January 1st to December 31st during each year of the Term of this Lease.

"Casualty" shall mean any damage to or destruction of Tenant's Improvements or any part thereof or other property installed or used in, on, or about Tenant's Improvements or any part thereof or any other improvements or any portion thereof on the Premises by fire or otherwise.

"City" shall have the meaning set forth therefor in the Preamble to this Lease.

"City's Construction Representative" shall have the meaning set forth therefor in **Section 4.10**.

"Commercial Subtenant" shall have the meaning set forth therefor in **Section 8.5**.

"Completion Guaranty" shall have the meaning set forth therefor in **Section 4.13(b)**.

"Construction Commencement Date" shall have the meaning set forth therefor in **Section 4.1**.

"Construction Contract" shall mean all agreements between Tenant and a Contractor with respect to construction of Tenant's Improvements or any Major Alteration or any portion thereof.

"Construction Financing" shall mean that certain financing for the construction of Tenant's Improvements comprised of a first priority leasehold construction loan, Tenant's equity investment, and, if applicable, historic tax credits.

"Construction Management Plan" shall mean the plan developed by Tenant and approved by

the City of Portsmouth concerning the delivery of materials, staging and laydown areas, parking, proposed flow of vehicular traffic to and from the Premises during the construction of any portion of Tenant's Improvements or any Major Alteration, and measures to be taken to mitigate the effects of construction on land, buildings, businesses and roadways in the vicinity of the Premises.

"Contractor" shall mean Tenant's general contractor or construction manager for the construction of Tenant's Improvements or any Major Alteration or any portion thereof. Tenant's initial Contractor is _____.

"Deed" shall mean the deed of the Property from the GSA to the City dated _____ and recorded in the Rockingham County Registry of Deeds at Book _____, Page _____.

"Default Rate" shall mean a rate of interest equal to eighteen percent (18%) per annum (but in no event higher than the maximum rate of interest permitted by applicable law) payable by Tenant in the event of Tenant's default in the due and punctual payment of Rent or other sums due and payable under this Lease.

"Development Documents" shall mean, collectively, all Construction Contracts, Architect/Engineer's Contracts, and other agreements related to the design, development or construction of Tenant's Improvements or any Major Alteration, which have been executed by Tenant, including all amendments and modifications thereto.

"Development Schedule" shall have the meaning set forth therefor in **Section 4.5**.

"Effective Date" shall have the meaning set forth therefor in the Preamble to this Lease.

"Entity" shall mean any general partnership, limited partnership, limited liability company, limited liability partnership, corporation, joint venture, trust, business trust, cooperative or association.

"Environmental Indemnification Agreement" shall mean a written agreement by and between the Indemnitor and the City pursuant to which the Indemnitor indemnifies the City with respect to the matters set forth in **Section 10.5** below, the form of which is attached hereto as **Exhibit K**.

"Environmental Laws" shall mean, collectively, all applicable federal, state or local statutes, laws, rules, regulations, codes, ordinances, directives, orders or decrees (whether now existing or hereafter enacted, promulgated or issued), respecting the existence, assessment, remediation, removal or disposal of Hazardous Materials including, without limitation, those identified in the definition of "Hazardous Materials," and the regulations promulgated under each of such statutes or laws, all as amended from time to time.

"Equity Interest" shall mean with respect to any Entity, (i) the legal (other than as a nominee) or beneficial ownership of outstanding voting or non-voting stock of such Entity if such Entity is a business corporation, a real estate investment trust or a similar entity, (ii) the legal (other than as a nominee) or beneficial ownership of any partnership, membership or other voting or non-voting ownership interest in a partnership, joint venture, limited liability company or similar entity, (iii) a legal (other than as a nominee) or beneficial voting or non-voting interest in a trust if such Entity is a

trust and (iv) any other voting or nonvoting interest that is the functional equivalent of any of the foregoing.

"Events of Default" shall have the meaning set forth therefor in **Section 15.2**.

"Excess Income" shall mean all cash Income otherwise actually available for distribution to owners and investors by the Tenant exceeding Tenant's actual costs to lease, occupy, repair, rehabilitate, restore, manage and maintain the Premises including without limitation contributions to reserves, debt service and other debt and equity financing costs and a "reasonable profit" as defined and calculated in the final Approved Application. By way of more specific example of Excess Income and the "reasonable profit" approved pursuant to the final Approved Application, see Schedule 1 attached hereto. [NOTE: TO BE MADE CONSISTENT WITH APPLICATION]

"FAA" shall mean the Federal Aviation Administration, or any agency, City, board, or other governmental authority that hereafter succeeds to the jurisdiction of the FAA with respect to regulating heights of buildings or structures in the vicinity of an airport.

"Field Changes" shall mean changes in the following categories: (a) up to \$100,000 for any individual change necessary to correct minor or technical mistakes or inconsistencies in the Final Plans and Specifications; (b) to the extent necessary to respond to an emergency or to correct building code violations; or (c) to the extent necessary to respond to other governmental orders or directives concerning the Project which unless otherwise promptly addressed would result in a default under the Lease or Approvals.

"Final Completion" shall have the meaning set forth therefor in **Section 4.1**.

"Final Completion Date" shall mean the date upon which Final Completion of Tenant's Improvements occurs.

"Final Plans and Specifications" shall mean the final plans and specifications for the construction of Tenant's Improvements which have been reviewed and approved by the City, a description of which are attached hereto as **Exhibit C**.

"Final Restoration Plans" shall mean the final construction plans and specifications for the restoration of Tenant's Improvements in the event of a Casualty, as approved by the City.

"Financial Plan" shall mean the Tenant's plan for financing the repair, rehabilitation, restoration and maintenance of the Premises as approved by the NPS, the GSA and the City.

"First Permitted Leasehold Mortgage" shall mean a Permitted Leasehold Mortgage which, at the time in question, is a first lien on Tenant's Leasehold Interest.

"First Permitted Leasehold Mortgagee" shall mean a Permitted Leasehold Mortgagee holding a First Permitted Leasehold Mortgage.

"Force Majeure Event" shall have the meaning set forth therefor in **Section 4.16**.

"GAAP" shall mean generally accepted accounting principles.

"Governmental Agency" shall mean each board, bureau, commission, department, or other branch or office of any municipal, county, state, federal or other governmental body now or hereafter having or acquiring jurisdiction over the Land or any improvements thereon, Tenant's Improvements, the Premises and/or the development, construction, or use thereof.

"Guarantors" shall mean the Kane Company and Redgate Holdings, LLC, the Investor Member and substitutes therefore as approved by the City in accordance with the provisions of **Section 4.13(b)**.

"Guaranties" shall mean the guaranty of this Lease, the Environmental Indemnification Agreement and the Completion Guaranty given by the Guarantors.

"Hazardous Materials" shall mean, collectively, all substances defined or classified as a "hazardous substance," "hazardous material," "hazardous waste," "pollutant," or otherwise denominated as a regulated or hazardous substance, waste or material, toxic or pollutant in any of the following: (i) the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980; (ii) the federal Hazardous Materials Transportation Uniform Safety Act of 1990; (iii) the federal Toxic Substances Control Act; (iv) the federal Resource Conservation and Recovery Act; (v) New Hampshire General Laws, Chapter 21D; (vi) New Hampshire General Laws, Chapter 21E; (vii) New Hampshire General Laws, Chapter 21C; (viii) New Hampshire General Laws, Chapter 21I; (ix) any other federal, state or local law addressing itself to environmental contamination, waste or health and safety; or (x) any regulations promulgated under any of the foregoing, including, without limitation, the MCP; as any of the foregoing may be promulgated or amended from time to time. "Hazardous Materials" shall specifically include, but not be limited to, oil, asbestos, explosives, polychlorinated biphenyls, petroleum and petroleum-based derivatives, and urea formaldehyde.

"Impositions" shall have the meaning set forth therefor in **Section 6.1**.

"Income" shall mean, with respect to any Rent Year, without duplication, an amount equal to all gross income and revenue in cash actually received by Tenant from or with respect to the Premises and all facilities operated in connection therewith, all determined on a cash basis in accordance with generally accepted accounting principles, including, without limitation, any rental, lease or other income received by Tenant with respect to Subleases, sub-subleases, concessions, licenses or any other occupancy agreements, as well as any receipts paid with respect to such items on account of business or rental interruption insurance maintained by Tenant. Income shall not include brokerage and management fees and commissions, or other compensation derived by Tenant or an Affiliate of Tenant under any leasing agreement, brokerage agreement, or similar agreement regarding the leasing or management of the residential units located on the Premises. Income shall not include (a) security deposits or last month's rent paid in advance to Tenant by Subtenants, or other amounts subject to refund, unless and until they are applied to rental or other charges owed to Tenant; (b) amounts paid by Subtenants to Tenant on account of pass-throughs to Subtenants of costs incurred and paid by Tenant, such as Impositions, operating expenses or common area maintenance charges; (c) proceeds of casualty insurance (other than business or rental interruption insurance) or eminent domain awards; (d) free, abated or discounted rent, (e) withdrawals from the Reserve Fund or any other reserve accounts, and (f) Sale Proceeds or Refinancing Proceeds.

"Incurable Lease Defaults" shall have the meaning set forth therefor in **Section 14.2(c)**.

"Indemnitor" shall mean, as of the Effective Date, _____, and, thereafter, any Person executing and delivering the Environmental Indemnification Agreement to the City in accordance with the provisions of **Section 10.5**, the identity and financial condition of which Person shall be subject to the approval of the City.

"Index" shall mean the Consumer Price Index for all Urban Consumers, U.S. City Average (CPI-U), All Items (1982 - 1984 = 100), published by the Bureau of Labor Statistics, U.S. Department of Labor. If the Bureau of Labor Statistics should cease to publish the Index in its present form and calculated on the present basis, a comparable index or an index reflecting changes in prices determined in a similar manner shall reasonably be designated by the City in substitution therefor. The Index for any month relevant to the application of this definition shall be that published by the Bureau of Labor Statistics for such month if computed for such month, or otherwise for the most recent month immediately preceding the month as of which the application is to be made. Since an Index relevant to the application of this definition may not be available as of the date on which a determination of the applicability is to be made, necessary adjustments between the City and Tenant shall be made retroactively, within a reasonable time after required computations can readily be completed.

"Institutional Lender" shall have the meaning set forth therefor in the definition of Permitted Leasehold Mortgagee.

"Insurance Trustee" shall have the meaning set forth therefor in **Section 8.10(a)**.

"Investor Member" shall mean _____, LLC, a Delaware limited liability company, and its successors and assigns, upon the admittance of such member to Borrower.

"IRC" shall have the meaning set forth therefor in **Section 2.1**.

"Lease Year" shall mean a twelve (12) month period during the Term of this Lease except that the first "Lease Year" shall commence on the Effective Date and shall include the first twelve (12) full calendar months after the Effective Date, and each successive Lease Year shall be comprised of succeeding periods of twelve (12) calendar months.

"Legal Requirements" shall have the meaning set forth therefor in **Section 9.4**.

"Major Alteration" shall mean any Alteration which either (i) results in the creation of a new building or structure on the Premises with a footprint greater than 1,000 square feet, or (ii) involves the addition to a building or structure on the Land of more than 5,000 square feet of gross floor area, or (iii) includes the renovation or rehabilitation of more than ten percent (10%) of the gross floor area of any building or structure on the Land, or (iv) is reasonably anticipated to cost more than \$500,000.00 to design and construct (either as an individual Alteration or a series of related Alterations).

"Material Change Order" shall have the meaning set forth therefor in **Section 14.4**.

"National Historic Monument Program" (a/k/a the Historic Surplus Property Program) shall mean 40 U.S.C. 550 (h) and all applicable regulations issued thereunder including, without limitation, the Secretary of the Interior's Standards for Rehabilitation.

"Net Award" shall have the meaning set forth therefor in **Section 12.1**.

"Non-Disturbance Agreement" shall have the meaning set forth therefor in **Section 13.4**.

"Off-Site Improvements" shall have the meaning set forth therefor in **Section 4.1(b)**.

"Operating Agreement" shall mean that certain Amended and Restated Operating Agreement of Tenant dated on or about the Effective Date, as the same may be amended or modified from time to time.

"Outside Completion Date" shall have the meaning set forth therefor in **Section 4.1**.

"Parent" shall mean, with respect to any Subsidiary, any Person which owns directly or indirectly through one or more Subsidiaries the entire Equity Interest in such Subsidiary.

"Party" shall have the meaning set forth therefor in the Preamble to this Lease.

"Payment and Performance Bonds" shall have the meaning set forth therefor in **Section 4.13(a)**.

"Permitted Leasehold Mortgage" shall mean, collectively, a mortgage (or conditional assignment or other security interest) on Tenant's Leasehold Interest now or hereafter securing Approved Debt and, where the context permits, the obligations secured thereby, and meeting all of the following requirements:

- (i) A copy of such mortgage has been delivered to the City, accompanied by appropriate recording data and the name and address of the holder thereof (a "**Permitted Leasehold Mortgage**" and, together with all other Permitted Leasehold Mortgages, collectively referred to as the "**Permitted Leasehold Mortgages**"), which holder shall be a bank, trust company, savings and loan association, real estate investment trust, lender acting as an originator with respect to a conduit type securitized loan (including a real estate mortgage investment conduit or a financial asset securitization investment trust), an employee benefit pension or retirement plan or fund endowment or insurance company or a governmental authority empowered to make loans or issue bonds, a commercial credit corporation, investment bank or any other institutional lender engaged in the making of loans or equity investments, or any combination of the foregoing acting as a trustee in connection with the issuance of any bonds or other debt instrument financing, provided that in any case such entity (A) is not an Affiliate of Tenant and which has, together with its Affiliates in the aggregate, not less than One Hundred Million Dollars (\$100,000,000) in assets, or (B) has been otherwise approved by the City in writing in advance, which approval shall not be unreasonably withheld, conditioned or delayed (an "**Institutional Lender**"). Any assignee of the Permitted Leasehold Mortgage must be an Institutional Lender. For purposes hereof, the word "assignee" shall be deemed to include any person or entity which succeeds to the rights of a Permitted Leasehold Mortgagee in the Permitted Leasehold Mortgage, whether by voluntary assignment involuntary assignment, merger, consolidation, or otherwise;

(ii) Unless the City shall otherwise have consented, such mortgage, at the time in question, is a first lien on Tenant's Leasehold Interest;

(iii) Such mortgage secures an original principal amount of debt which, when added to the then principal balance of all other debts secured by mortgages on Tenant's Leasehold Interest or any portion thereof does not exceed (a) with respect to the initial construction financing for the construction of Tenant's Improvements, eighty-five percent of the Approved Development Costs, and (b) with respect to any other debt secured by a Permitted Leasehold Mortgage(s), eighty-five percent (85%) of the fair market value of Tenant's Leasehold Interest as of the date of the financing;

(iv) Such mortgage is held by a holder who has delivered to the City a recordable written undertaking to be bound by and comply with the provisions of Section 14.3, and has not failed to comply with such undertaking;

(v) Such mortgage becomes due prior to the expiration of the Term, and does not contain or secure obligations unrelated to the Premises;

(vi) Such mortgage does not require any so-called "equity participation" or "kicker" payment, unless approved by the City;

(vii) Such mortgage is not a so-called "blanket mortgage" ("blanket mortgage" meaning a mortgage which covers more than Tenant's Leasehold Interest or debt which is not Approved Debt);

(viii) Such mortgage permits the disbursement of casualty insurance proceeds and payments made in connection with partial eminent domain takings, or conveyances under threat thereof, on the terms and conditions set forth in this Lease or any Recognition Agreement entered into between the City and such Permitted Leasehold Mortgagee; and

(ix) Documentation for such mortgage has been approved in advance by the City as complying with this definition of a Permitted Leasehold Mortgage, which approval shall not be unreasonably withheld, conditioned or delayed. The City agrees to provide Tenant within thirty (30) days of Tenant's request a written confirmation that a leasehold mortgagee or prospective leasehold mortgage qualifies as a Permitted Leasehold Mortgagee hereunder.

"Permitted Leasehold Mortgagee" shall have the meaning set forth therefor in the definition of Permitted Leasehold Mortgage.

"Permitted Property Manager" shall have the meaning set forth therefor in **Section 9.2(c)**.

"Permitted Uses" shall have the meaning set forth therefor in **Section 9.1(a)**.

"Person" shall mean any individual or Entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so admits.

"Program of Preservation and Utilization" shall mean the Program of Preservation and

Utilization included in the Application and approved by the NPS and the GSA including, without limitation, the preservation plan, the use plan and the financial plan.

" Prohibited Uses" shall have the meaning set forth therefor in **Section 9.1(b)(i)**.

"Project Budget" shall mean the budget for the Project, initially as approved by the City and attached hereto as **Exhibit D**.

"Personal Property" shall have the meaning set forth therefor in **Section 2.1**.

"Premises" shall have the meaning set forth therefor in **Section 2.1**. The Premises shall be deemed to include all Tenant's Improvements for all purposes of this Lease unless otherwise expressly provided herein.

"Preservation Covenants" shall mean the covenants and restrictions contained in the Deed.

"Property Management Agreement" shall have the meaning set forth therefor in **Section 9.2(c)**.

"Reasonable Profit" shall mean the phrase "reasonable profit" as used in the National Historic Monument Program and as further described for purposes of this Lease in Schedule 1 attached hereto.

"Refinancing Proceeds" shall mean the gross proceeds of a Refinancing Transaction, regardless of the time at which the same are disbursed to or on behalf of Tenant.

"Refinancing Transaction" shall mean any direct or indirect debt or equity, financing, refinancing or recapitalization of Tenant's Leasehold Interest or other interest in the Premises, or any portion thereof (including, without limitation, any mortgage financing or refinancing, sale- leaseback, or other transaction of a similar nature), with the exception of the initial financing for construction of Tenant's Improvements entered into on or about the Effective Date. Notwithstanding the foregoing, the transfer of any membership interests within Tenant or Investor Member (following Investor Member's admittance to Tenant as Tenant's investor member) that are permitted under the Operating Agreement shall not be considered a "Refinancing Transaction" for the purposes of this Lease. In addition, notwithstanding the foregoing, any exercise of rights by a Permitted Leasehold Mortgagee, including without limitation, foreclosure or deed or assignment in lieu thereof, including without limitation a purchase of Tenant's interest in a foreclosure sale or the first sale or refinancing to occur after a Permitted Leasehold Mortgagee exercises any such rights, shall not be considered a "Refinancing Transaction" for the purposes of this Lease.

"Remedial Work" shall mean investigations, assessments, containment monitoring, response actions, removal actions, remedial actions or interim cleanup actions relating to known or suspected Hazardous Materials and any ongoing operations as required by applicable Environmental Laws.

"Rent" shall mean, collectively, Base Rent, Additional Rent and all other amounts due and payable under this Lease to the City or otherwise designated as Additional Rent.

"Rent Year" shall mean the twelve (12) month period commencing on January 1st of each year and each succeeding 12-month period (or portion thereof) commencing on an anniversary of such date

and included within the Term; provided, however, that the initial Rent Year shall commence on the Base Rent Commencement Date and expire on December 31st of such year.

"Reserved Rights" shall have the meaning set forth therefor in **Section 2.1**.

"Reserve Fund" shall mean the Capital Expenditures and Maintenance Reserve Fund required by and described under **Section 7.9.7**.

"Revenue Producing Activities" shall mean "revenue producing activities" as used in the Federal Historic Monument Program including all actions, uses, services, amenities, and contracts with respect to the Property which produce income for the benefit of the Tenant or all Affiliates.

"Sale Proceeds" shall mean the gross proceeds of any sale or assignment of Tenant's Leasehold Interest or other interest in the Premises, or any portion thereof.

"Sign" shall have the meaning set forth therefor in **Section 7.6**.

"Standards for Rehabilitation" shall mean the Secretary of the Interior's Standards for the Treatment of Historic Property, as the same may be amended from time to time.

"Sublease" shall mean, collectively, all subleases, tenancies at will, concessions, licenses, operating agreements, or other occupancy arrangements of any nature whatsoever (whether written or oral) between Tenant and a Subtenant providing for the use, occupancy or operation of any portion of the Premises.

"Subsidiary" shall mean, with respect to any Parent, any Entity in which a Person owns, directly or indirectly through one or more Subsidiaries, the entire Equity Interest in such Subsidiary.

"Substantial Completion" shall mean substantial completion of the Project (excluding subtenant improvements), in accordance with the Final Plans and Specifications and the provisions of this Lease, as evidenced by delivery of a certificate by the architect of record for the Project.

"Subtenant" shall mean each party to a Sublease with Tenant.

"Taking" shall have the meaning set forth therefor in **Section 12.1**.

"Tenant's Construction Representative" shall have the meaning set forth therefor in **Section 4.10**.

"Tenant's Improvements" shall have the meaning set forth therefor in **Section 4.1**.

"Tenant's Leasehold Interest" shall mean Tenant's interest under this Lease for the Term in (i) Tenant's Improvements and the rents, issues and profits therefrom and (ii) the Premises.

"Term" shall have the meaning set forth therefor in **Section 3.1**.

"Threshold Amount" shall have the meaning set forth therefor in **Section 8.8**.

"Unaffiliated Person" shall mean, with respect to any Person, a Person who is not an Affiliate as to such Person.

ARTICLE 2

PREMISES

2.1. Lease of Premises. The City, for and in consideration of the covenants and agreements hereinafter contained on the part of Tenant to be paid, kept and performed, hereby leases to Tenant, and Tenant hereby leases from the City, for the Term, upon the terms and conditions set forth herein, the following described premises (hereinafter called the "Premises"):

The Premises shall consist of the Land in Portsmouth, NH, as more particularly described and shown in **Exhibit A** attached hereto, together with the improvements located thereon and thereunder as of the Effective Date and certain improvements to be constructed on and under the Premises by Tenant (as described in **Article 4**). The Premises are leased together with the benefits of the appurtenant rights and easements (sometimes referred to herein as the "**Appurtenant Rights**") set forth in **Exhibit A** and all matters of record to the extent in force and applicable. The Premises are leased subject to: (a) any facts that an accurate survey or personal inspection of the Premises would show; (b) easements, covenants and restrictions of record including without limitation those set forth in the Deed and in **Exhibit B** hereto; (c) the exclusions, encumbrances and rights reserved by the City as set forth in **Exhibit B** (the "**Reserved Rights**") and non-record matters identified in **Exhibit B**; (d) any applicable Legal Requirements; (e) violations of Legal Requirements, whether or not recorded or noted, against or affecting the Premises as the same may exist on the Effective Date; (f) all taxes, duties, assessments, special assessments, water charges and sewer rents and any other impositions by a Governmental Agency, fixed or not fixed, accruing from and after the Effective Date; and (g) the condition and state of repair of the Premises as the same may be on the Effective Date.

Notwithstanding anything to the contrary set forth in this Lease, during the Term of this Lease, (A) Tenant is and shall be deemed to be the sole owner of (i) Tenant's Improvements; and (ii) all attachments, appliances, equipment, machinery and other articles used in connection with the Premises or Tenant's Improvements (the "**Personal Property**"); and (B) Tenant shall be the sole party entitled to all of the tax attributes of ownership of Tenant's Improvements and Personal Property including, without limitation, the right to claim deductions for depreciation or cost of recovery thereof and the right to claim any federal historic tax credits described in Section 47 of the U.S. Internal Revenue Code, as amended (the "**IRC**"), and the right to claim any state historic tax credits under New Hampshire General Laws c. 62, § 6J and c. 63, § 38R, and the right to amortize capital costs and to claim any other federal and state tax benefits attributed to Tenant's Improvements and the Premises.

For the avoidance of doubt, this Lease is intended to convey to Tenant all the benefits and burdens of ownership of the Premises and to cause Tenant to be treated as the owner of the Premises for federal income tax purposes. The parties agree to treat this Lease in a manner consistent with this intention, including filing all federal income tax returns and other reports consistently with such treatment. Landlord will not claim tax credits, depreciation or any other federal or state income tax benefits with respect to the Premises, or take any action which is inconsistent with this provision. Any and all depreciation, amortization and tax credits for federal, state or local tax purposes relating to the

Premises and any and all additions thereto, substitutions therefor, fixtures therein and other property relating thereto shall be deducted or credited exclusively by Tenant during the Term and for the tax years during the Term. Any building and improvements that are on or part of the Premises and all alterations, additions, equipment and fixtures built, made or installed by the Tenant in, on, under or to the Premises shall be the sole property of the Tenant until the expiration of the Term or other termination of this Lease.

2.2 Condition of the Premises. Tenant acknowledges that Tenant has leased the Premises and has agreed to construct Tenant's Improvements, after a full and complete examination of the Premises, in their present "AS IS" "WHERE IS" condition, including, without limitation, subsurface conditions, existing improvements thereon, the presence of any Hazardous Materials located on the Premises or within such improvements, legal title, their present uses and non-uses, and Legal Requirements affecting the same, and accepts the Premises in the same condition in which they or any part thereof now are, and to have assumed all risks in connection therewith, without any representation or warranty, express or implied, in fact or by law, on the part of the City, and without recourse to the City. Tenant acknowledges and accepts the Premises subject to the Historic Monument Requirements. Tenant agrees to assume full responsibility for the Historic Monument Requirements during the term of this Lease.

2.3 Title. Tenant acknowledges that it has obtained a commitment for a leasehold owner's title insurance policy with respect to the Premises and that Tenant is solely responsible for curing any title defects identified by such title insurance commitment which may be necessary for the financing, development, completion, use or occupancy of the Premises by Tenant.

ARTICLE 3

TERM

3.1 Term. The term of this Lease (the "Term") shall begin on the Effective Date and end at 11:59 p.m. on the day before the seventy-fifth (75th) anniversary of the Effective Date, subject to all of the terms and conditions of this Lease, unless earlier terminated as provided herein.

3.2 Construction as a Lease. The City and Tenant do not intend this Lease or any related agreements to be construed as a sale. In the event that it should be determined by a final adjudication of a court of competent jurisdiction, or otherwise, in a binding manner on the Parties hereto, that this Lease is to be construed as a sale, the Parties agree that the provisions of **Section 3.1** shall be null and void and of no further effect without affecting the validity and enforceability of any other provisions in this Lease; *provided, however*, that a substitute Term shall be deemed, without further action by the City and Tenant, to have been immediately substituted by amendment to this **Article 3**, providing Tenant with the maximum Term consistent with any such judicial determination, up to the maximum Term contemplated by this **Article 3**. The length of such a substitute Term shall be determined by the City and, subject to the rights of any First Permitted Leasehold Mortgagee, Tenant in their reasonable judgment exercised in the light of such judicial determination.

ARTICLE 4
TENANT'S IMPROVEMENTS

4.1 Tenant's Improvements. Tenant shall, at its sole cost and expense, perform the following:

(a) the construction of any related improvements and site work on the Premises described in the Final Plans and Specifications, including, without limitation, utility lines; access ways and driveways; sidewalks; stormwater management systems; loading facilities and site lighting.

(b) the construction of related improvements located wholly or partially outside of the Premises, if any, including, without limitation, a stormwater management system; roadway connections; utility lines and utility connections; and all other infrastructure improvements, repairs, relocations and upgrades as necessary to develop the Premises for the Permitted Uses to the extent shown on the Final Plans and Specifications (collectively, the "**Off-Site Improvements**"); and

(c) the performance of all mitigation measures, including without limitation any off-site mitigation measures required by any Governmental Agency issuing any Approvals or any other permits or approvals required in conjunction with the construction of Tenant's Improvements.

For the purposes of this Lease, the term "**Tenant's Improvements**" shall mean and include (i) the buildings and improvements described in clauses (a) - (c) of this **Section 4.1**, (ii) all buildings or structures hereafter erected on the Premises from time to time, and (iii) all expansions, alterations, additions, improvements and other modifications to any Tenant's Improvements.

Subject to delays due to Force Majeure Events to the extent provided in **Section 4.20** below, Tenant shall commence construction of Tenant's Improvements on or before the date that is ninety (90) days from and after the Effective Date, and shall diligently and continuously prosecute such improvements to Final Completion. Tenant shall achieve Substantial Completion of Tenant's Improvements substantially in accordance with the Final Plans and Specifications in no event occur later than _____ (____) months after the estimated date of Substantial Completion set forth in the Construction Schedule, which date shall be extend for delays due to Force Majeure and/or caused by the City, its employees or agents (the "**Outside Completion Date**").

For the purposes of this Lease, construction of Tenant's Improvements shall be deemed to have "commenced" upon the commencement of actual physical work (including, without limitation, demolition or site work) on the Premises or any portion thereof pursuant to a building permit (which may be a demolition, foundation or partial building permit) for the construction of Tenant's Improvements, and the date on which such commencement occurs shall be referred to herein as the "**Construction Commencement Date.**" For the purposes of this Lease, "**Final Completion**" of all Tenant's Improvements will be deemed to have occurred upon the date of final completion, as determined by the City in its reasonable discretion, of Tenant's Improvements in accordance with the Final Plans and Specifications, and shall require the issuance of a Certificate(s) of Occupancy (either temporary or permanent) for _____.

Tenant's Improvements (except for the Off-Site Improvements) shall be constructed wholly

within the lot lines of the Premises or within appurtenant easements. Tenant's Improvements shall be constructed in accordance with this **Article 4**, the Approved Development Plan, and the Final Plans and Specifications (it being agreed by Tenant that any Material Change Orders to the Final Plans and Specifications other than Field Changes and changes required by applicable Legal Requirements must be approved by the City to the extent provided under this Article 4 and, to the extent required by Historic Monument Requirements, NPS in advance), in a good, first class and workmanlike manner and in compliance with all Legal Requirements, all Historic Monument Requirements. Tenant shall comply with, and shall use commercially reasonable efforts to cause all of its contractors and suppliers of every tier to comply with, the provisions of the Construction Management Plan at all times.

All provisions of this **Article 4** shall apply to the permitting, financing, design and construction of all Tenant's Improvements (including, without limitation, Major Alterations) unless otherwise expressly provided in this **Article 4**.

4.2 **LEED Certifiability.** It is the mutual intention of the City and Tenant that any and all building(s) on the Premises initially constructed pursuant to the Final Plans and Specifications shall, to the extent practicable (including under Legal Requirements including such requirements relating to historic rehabilitation), be certifiable in the appropriate building category under the Leadership in Energy and Environmental Design (LEED) program in accordance with the land use regulations of the City of Portsmouth as applicable and as the same may be amended from time to time. [***Under Review by Tenant.***]

4.3 **Conditions Precedent to Commencement of Construction.** Tenant shall not commence construction of any of Tenant's Improvements, until each of the following conditions precedent has been satisfied:

(a) **Approved Development Plan and Final Plans and Specifications.** The City has approved Tenant's Development Plan and the Final Plans and Specifications with respect to Tenant's Improvements, which are attached hereto as **Exhibit C**;

(b) **Approved Construction Schedule.** The City has approved a final Construction Schedule prepared and submitted by Tenant, which is attached hereto as **Exhibit E**;

(c) **Status of Tenant.** As of the Effective Date, Tenant has provided to the City evidence reasonably satisfactory to the City to demonstrate that Tenant is a single purpose, single-asset entity. Tenant's provision of copies of the Certificate of Formation filed with the New Hampshire Secretary of State and its Operating Agreement evidencing the same shall be deemed reasonable evidence thereof;

(d) **Financing and Equity Contributions.** As of the Effective Date, Tenant has delivered to the City evidence acceptable to the City, in the City's sole but reasonable discretion, that Tenant has sufficient funds, in financing commitments and/or commitments for equity investment, to complete construction of Tenant's improvements, in accordance with the Final Plans and Specifications therefor, and to cover all other project costs (including, without limitation, Approved Development Costs) relating thereto;

(e) **Approvals.** Tenant has obtained and submitted to the City copies of all

Approvals required by applicable Legal Requirements for the construction of Tenant's Improvements (including, without limitation, a building permit), in each case with all appeal periods with respect to such Approvals having expired without an appeal being entered (or, if any appeal has been entered, such appeal having been dismissed with prejudice or denied by a final and non-appealable judgment);

(f) Construction Security. Tenant has delivered to the City (i) (A) the Payment and Performance Bonds, subcontractor default insurance [TO BE REVIEWED] and/or such other security in accordance with the provisions of **Section 4.14** below, and (B) the Completion Guaranty in accordance with the provisions of **Section 4.14(b)**, together with (1) evidence reasonably acceptable to the City of (x) the legal existence and good standing of the Guarantor issued by the Guarantor's jurisdiction of formation and, if Guarantor is not formed in New Hampshire, a certificate of foreign registration and good standing from the Secretary of the State of New Hampshire, and (y) the authorization, due execution and enforceability of the Completion Guaranty with respect to the Guarantor, and (2) copies of current audited financial statements of the Guarantor, reasonably acceptable to the City, which show a net worth of the Guarantor reasonably acceptable to the City; or (ii) other security for the full and timely payment and performance by Tenant of all obligations with respect to the construction of such Tenant's Improvements in form, amount and substance reasonably satisfactory to the City;

(g) Construction Contracts; Architect/Engineer's Contracts. Tenant has delivered to the City the fully-executed Construction Contracts and Architect/Engineer's Contracts, in form and content approved by the City, which approval shall not be unreasonably withheld, conditioned or delayed;

(h) Assignment of Development Documents. Tenant has delivered to the City a fully executed conditional assignment of the Development Documents (the "**Assignment of Development Documents**"), in form and substance reasonably satisfactory to the City, executed by Tenant and consented to in writing by the other signatory to each such Development Document. Such Assignment of Development Documents shall, at the option of the City, be effective upon Tenant's Event of Default hereunder beyond applicable notice and cure period(s), *provided that* Tenant shall remain liable for the reasonable costs of all services performed (as well as the cost of all services requested but not yet performed) under the Development Documents prior to the date on which the City notifies the other party to such Development Document that such Assignment of Development Documents is now effective. The City agrees that its rights under the Assignment of Development Documents shall be subject and subordinate to the rights of the First Permitted Leasehold Mortgagee(s) under any collateral assignments of the Development Documents;

(i) Agreement Regarding Use of Plans. Tenant has delivered to the City an agreement or agreements from Tenant's Architect/Engineer concerning the use by the City of all Final Plans and Specifications by the City in compliance with **Section 4.9** below;

(j) Construction Management Plan. The City has approved Tenant's Construction Management Plan, which is attached hereto as **Exhibit ___**;

(k) Certificate of Approved Development Costs. As of the Effective Date, Tenant shall have delivered an updated certificate of the amount of Approved Development Costs, together with appropriate supporting documentation, and the City shall have approved the same, which approval

shall not be unreasonably withheld, conditioned or delayed; and

(l) No Material Adverse Change. The City shall have received a certificate, dated within ten (10) days of the Construction Commencement Date and signed by a duly authorized officer of each of Tenant and the Guarantor (if any), confirming that no material adverse change has occurred with respect to (i) the financial condition of Tenant or the Guarantor as of the date of such certificate, or (ii) any of the reports, documents, plans or instruments delivered by Tenant or the Guarantor in accordance with the provisions of this Lease.

All submissions to be made by Tenant to the City pursuant to this **Section 4.3** shall be made sufficiently in advance of the scheduled Construction Commencement Date so as to allow the City a reasonable period to review and approve, disapprove or comment thereon prior to the scheduled commencement of construction. In no event shall any such material submission first be submitted less than thirty (30) days in advance of the scheduled Construction Commencement Date.

Notwithstanding the preceding provisions of this **Section 4.3**, in the event that any condition set forth in this **Section 4.3** has not been fulfilled on or before the Construction Commencement Date, the City, in its sole discretion, may elect to waive such condition. The City shall have no obligation to waive any such condition, it being understood that the preceding sentence is solely for the benefit of the City.

4.4 Approved Construction Schedule. Tenant's Approved Construction Schedule is attached hereto as Exhibit C. **[Please insert a mechanism to amend the Construction Schedule]**

4.5 Development Schedule; Diligent Efforts. The anticipated schedule (the "**Construction Schedule**") for the development of Tenant's Improvements, including, without limitation, the projected Construction Commencement Date and the Final Completion Date, is attached hereto as Exhibit E. Both Tenant and the City acknowledge that the Construction Schedule is of critical importance and agree to use reasonable efforts to cooperate with each other in order to maintain this schedule to the greatest extent possible.

Tenant shall keep the City's Construction Representative informed on a periodic (but not less than once per month) basis, unless circumstances dictate the need to do so more frequently, as to actual progress made on the construction of Tenant's Improvements. Tenant shall inform the City's Construction Representative of any deviation from the Construction Schedule which, in Tenant's good faith determination, is likely to cause a material delay in the Final Completion (as shown on the current Construction Schedule), reasonably promptly after such deviation becomes apparent.

4.6 City's Right to Review. The City shall have the right to review all aspects of any work being performed on the Premises by Tenant or its employees, agents and contractors to the extent reasonably required by the City to ensure that such work is being performed in a manner consistent with the rights and obligations of Tenant hereunder; provided, however, that, in connection with such review, the City shall not unreasonably interfere with the contractors and employees hired by Tenant to complete Tenant's Improvements.

4.7 No Obligation of the City. The City shall in no event be required to complete construction of all or any part of Tenant's Improvements or any other improvements on the Premises

or elsewhere, if Tenant should fail to complete the same for any reason. The City shall in no event be required to maintain or repair or to make any alterations, rebuildings, replacements, changes, additions or improvements on or off the Premises during the Term of this Lease. Without limitation of the foregoing, the City shall not be liable for any loss, damage or injury of whatever kind caused by, resulting from, or in connection with (i) the supply or interruption of water, gas, electric current, oil, telephone service or any other utilities to the Premises, (ii) water, rain or snow which may leak or flow from any street, utility line or surface or subsurface area or from any part of the Premises, (iii) other leakage from pipes, appliances, sewer or plumbing works therein or from any other place, or (iv) for interference with air, light or other similar interests by anybody or caused by any public or quasi-public work, except to the extent that any of the foregoing is caused by the negligence or willful misconduct of the City, its employees or agents.

4.8 Final Plans and Specifications. Tenant acknowledges and agrees that all plans and specifications prepared or developed by or on behalf of Tenant in connection with Tenant's design, development, permitting and construction of all or any portion of Tenant's Improvements shall be subject to the review and approval of the City, not to be unreasonably withheld, conditioned or delayed. Tenant shall reimburse the City for all reasonable third party fees in connection with such review, which amount shall be payable as Additional Rent within ten (10) days after written demand therefor accompanied by reasonable supporting documentation. The final construction plans and specifications for Tenant's Improvements shall be developed by Tenant in accordance with the City's design review process shall, upon the approval thereof by the City, constitute the "**Final Plans and Specifications.**" If Tenant desires thereafter to modify any portion of the Final Plans and Specifications in any material respect, Tenant shall submit any such proposed modifications to the City for the City's approval. Within thirty (30) days of its receipt of the proposed modifications, the City shall notify Tenant in writing with reasonable specificity of any material inconsistencies to which the City reasonably objects between such modification and the Final Plans and Specifications previously approved by the City. Any written request to approve proposed modifications to the Final Plans and Specifications shall not be deemed to have been received by the City unless it is sent to the attention of the City's Construction Representative in addition to those employees of the City identified in **Section 18.3** below. If the City has objected in writing to Tenant's requested modifications, Tenant shall submit to the City revised modifications to the Final Plans and Specifications to meet the City's reasonable objections (which revised modifications to the Final Plans and Specifications shall be reviewed as hereinabove provided, except that the City agrees to respond to Tenant approving or objecting with reasonable specificity within ten (10) days of Tenant's submission). Review and approval of any changes to Final Plans and Specifications shall also be subject to the review and approval of the NPS to the extent required by the Historic Monument Requirements.

4.9 The City's Right to Use Final Plans and Specifications. Prior to the Construction Commencement Date, Tenant shall deliver to the City an agreement or agreements in form and substance reasonably satisfactory to the City, executed by the Architect/Engineer(s) of record for Final Plans and Specifications, permitting the City or any party designated by the City, without additional payment (beyond that specified to be paid by Tenant in the applicable contract between Tenant and each such Architect/Engineer) to use the Final Plans and Specifications and any other plans and specifications delivered to Tenant to complete Tenant's Improvements if Tenant should fail to do so, and such failure constitutes an Event of Default beyond all applicable grace, notice and cure periods resulting in the City's termination of this Lease in accordance with **Section 15.2**. If, at any other time during the Term, Tenant engages any additional or replacement Architect/Engineer in connection with

Tenant's Improvements, Tenant shall notify the City and, if the City so requests, Tenant shall furnish a similar agreement to the City prior to commencement of work by such Architect/Engineer. The City hereby agrees, for the benefit of such Architect/Engineer, by accepting such plans, that the City will use them only for completion of Tenant's Improvements. All agreements delivered by Tenant pursuant to this **Section 4.9** shall be expressly subject and subordinate to any assignments of such plans to the First Permitted Leasehold Mortgagee.

4.10 **Construction Representatives.** The City and Tenant shall each designate, by written notice from time to time to the other, a construction representative or representatives for the construction of Tenant's Improvements and, after notice thereof to the other and until such designation is changed or withdrawn, such construction representative shall deliver and receive all notices, approvals, communications, plans, specifications or other materials required or permitted to be delivered or received under this **Article 4**. As of the Effective Date, the construction representative designated by the City is _____, of _____ (the "**City's Construction Representative**"), and the construction representative designated by Tenant is _____, of _____ (the "**Tenant's Construction Representative**").

4.11 **Required Approvals.** The City and Tenant acknowledge and agree that as of the date of this Lease, all Required Approvals [except _____] have been obtained. A list of the Required Approvals is attached hereto as **Exhibit E**.

4.12 **Reserved.**

4.13 **Construction Period Security.** Tenant shall provide to the City, in form and substance satisfactory to the City, the following:

(a) Payment and performance bond(s), including, without limitation, a blanket lien bond ("**Payment and Performance Bonds**") of a surety company licensed to do business in New Hampshire and reasonably acceptable to the City, naming the City, Tenant, any First Permitted Leasehold Mortgagee, as obligees, as their respective interests may appear, in the aggregate amount of the stipulated sum(s) set forth in the applicable Construction Contract(s); provided that Tenant shall have the right to provide subcontractor default insurance for subcontractors in lieu of Payment and Performance Bonds[SUBJECT TO REVIEW];

(b) A completion guaranty substantially in the form attached hereto as **Exhibit G** (the "**Completion Guaranty**"), executed by the Guarantors, guaranteeing that Tenant's Improvements shall be completed in accordance with the terms of this Lease. If there is any change thereafter in the financial condition of any Guarantor, in the opinion of the City, Tenant shall furnish additional security to the City ensuring completion of Tenant's Improvements as may be reasonably satisfactory to the City; or

(c) Such other security or credit facility reasonably acceptable to the City to ensure the timely completion of the Improvements.

4.14 **Tenant's Contractor and Architect/Engineer.** Tenant's Contractor and Architect/Engineer for the design and construction of Tenant's Improvements, as well as the Construction Contract and the Architect/Engineer's Contract, shall be subject to review and reasonable

approval by the City prior to the Construction Commencement Date, such review and approval with respect to the contracts to be solely for assuring that the Architect/Engineer's Contract and Construction Contract are consistent with the requirements of, and Tenant's obligations under, this Lease (including, without limitation, Tenant's obligation to build Tenant's Improvements in accordance with such approved Final Plans and Specifications). The Construction Contract shall include a stipulated guaranteed, maximum sum. The Construction Contract and any contracts with subcontractors shall also include provisions with respect to insurance and suretyship reasonably satisfactory to the City for the protection of the City, laborers, suppliers, subcontractors and the public, consistent with the terms and conditions of this Lease. The City shall have the right to review and approve any proposed amendments or change orders in excess of \$750,000 individually or \$4,000,000 in the aggregate that would reasonably be expected to result in a substantial downgrade in the quality of Tenant's Improvements (as designed in the applicable Final Plans and Specifications reasonably approved by the City) (a "**Material Change Order**"), unless either (a) the First Permitted Leasehold Mortgagee has approved such Material Change Order, or such (b) the scope of work under such Material Change Order would not require any modification to the Approvals and the Project continue to comply with the Historic Monument Program Requirements. The City acknowledges that change orders are customarily proposed in the middle of an active construction project, and that Tenant shall be permitted to make change orders without the City's consent (and such change order shall not be considered Material Change Orders) to comply with applicable Legal Requirements or the requirements of any Governmental Authority (including without limitation the Historic Monument Program Requirements) and to make Field Changes so long as such modifications are consistent with all applicable Legal Requirements and the requirements of any applicable Governmental Authority and do not involve both a substantial downgrade in the Tenant's Improvements and modifications to any Approvals, and the City agrees to use all reasonable efforts to review any proposed Material Change Orders promptly to enable Tenant to proceed with construction in a continuous manner. The City shall be given an opportunity to review and reasonably approve any proposed material amendment to, or any new or substituted agreement of, the Construction Contract or the Architect/Engineer's Contract. Any such review and approval by the City shall be solely for assuring that any such amendment to or new or substituted form of Construction Contract or Architect/Engineer's Contract are consistent with the requirements of, and Tenant's obligations under this Lease. Any written request to approve an amendment to or a new or substituted Construction Contract or Architect/Engineer's Contract shall not be deemed to have been received by the City unless it is sent to the attention of the City's Construction Representative in addition to those employees of the City identified in **Section 18.3** below. The City shall respond to Tenant's request for approval to such material amendment or substituted form of Construction Contract or Architect/Engineer's Contract within ten (10) business days of Tenant's submission. If Tenant desires to engage another Contractor or Architect/Engineer for Tenant's Improvements, the same shall be subject to the City's prior written reasonable approval in accordance with the terms of this **Section 4.14**.

4.15 **Ownership.** During the Term, title to Tenant's Improvements shall be vested in Tenant, and Tenant shall be entitled to any depreciation deductions and investment tax credits thereon for federal and state income tax purposes. Subject to **Section 14.2(e)**, in the event of the expiration or earlier termination of this Lease, title to Tenant's Improvements shall immediately vest in the City and shall be surrendered at that time in accordance with **Section 15.1**.

4.16 **Force Majeure.** A delay in or a failure of performance by the City or Tenant in the performance of their respective obligations under this **Article 4** or under any other provision of this

Lease which specifically refers to a Force Majeure Event, shall not constitute a default under this Lease to the extent that such delay or failure of performance (i) could not be prevented by such Party's exercise of reasonable diligence and (ii) results from either (a) the other Party's failure to perform its obligations under this Lease, or the gross negligence or willful misconduct of the other Party or of its employees, agents, or others for whom such other Party is legally responsible; or (b) acts of God, or of the public enemy, fire, flood or other casualty, epidemic, quarantine restrictions, war, unexpected market conditions, public disturbance and/or strikes or other labor disturbances, litigation, freight embargoes, delays stemming from unusually severe weather, unforeseen conditions or delays encountered during construction by Tenant (such as shortage of materials, fuel or labor; the bankruptcy or financial failure of a contractor, subcontractor or supplier), or delays of contractors or subcontractors due to such causes, or delays in obtaining any Approvals; or (c) other causes beyond such Party's reasonable control (a "**Force Majeure Event**"). The following shall, in no event, be deemed to be Force Majeure Events: inability to obtain financing; Tenant's financial condition; delays due to soil conditions which are known or foreseeable with the exercise of reasonable diligence; or delays of, or changes in, or cancellation of construction of roadways, transportation infrastructure and related improvements. Tenant agrees to use commercially reasonable efforts to minimize the delay and other adverse effects of any Force Majeure Event.

4.17 Notice of Force Majeure Event. Tenant and the City shall each provide the other with written notice in accordance with the provisions of **Section 18.3 as soon as reasonably practicable** of any Force Majeure Event excusing its delay or non-performance. Each Party shall keep the other Party reasonably informed of any development pertaining to such Force Majeure Event.

4.18 Extension of Outside Completion Date. Tenant shall be entitled to an extension of the Outside Completion Date to the extent that a Force Majeure Event causes a delay in the performance of Tenant's obligations under this **Article 4**; provided, however, except as set forth in the remainder of this **Section 4.18**, in no event shall the Outside Completion Date be extended more than one hundred eighty (180) days in the aggregate unless Tenant is using diligent good faith efforts to overcome the Force Majeure Event. If at the end of said 180-day period Tenant has not overcome the Force Majeure Event despite using diligent good faith efforts, Tenant may extend the Outside Completion Date by up to an additional [one hundred eighty (180) days] [*To be discussed*].

4.19 Electronic Drawings. After the Final Completion of any Tenant Improvements, within ninety (90) days after the City's written request therefor, Tenant shall prepare (or cause to be prepared) at its expense and deliver to the City two (2) half-size paper sets and one (1) set in digital format of each of the following: (i) as-built plans showing such Tenant Improvements, and (ii) an ALTA/ACSM Survey by a State of New Hampshire registered land surveyor showing the location of such Tenant Improvements on the Premises, all in accordance with the reasonable requirements of the City for such materials as in effect from time to time.

4.20 Tenant's Responsibility to Discharge Liens. If any mechanic's, laborer's or materialman's lien shall at any time be filed against the Premises or any Tenant's Improvements, the underlying fee, or any part thereof with respect to the performance of any labor or the furnishing of any materials to, by or for Tenant or anyone claiming by, for or under Tenant, Tenant, within thirty (30) days after notice of the filing thereof, shall cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If Tenant shall fail to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy the City

may have, if such lien shall continue for fifteen (15) days after notice from the City to Tenant, the City may (subject to the rights of Permitted Leasehold Mortgagees), but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding or otherwise, and in any such event the City shall be entitled, if the City so elects upon another fifteen (15) days' notice from the City to Tenant, to compel the prosecution of an action for the foreclosure of such lien by the lienor and to pay the amount of the judgment in favor of the lienor with interest, costs and allowances. Any amount so paid by the City and all reasonable third party costs and expenses incurred by the City in connection therewith, together with interest at the Default Rate from the respective dates of the City's making of the payment or incurring of the cost and expense, shall constitute Additional Rent payable by Tenant under this Lease and shall be paid by Tenant to the City within thirty (30) days following the City's written demand therefor accompanied by reasonable supporting documentation.

Notwithstanding the foregoing, Tenant may contest, in good faith by appropriate proceedings, at Tenant's sole expense, the amount or validity in whole or in part of any mechanic's, laborer's or materialman's lien, and may defer the discharge of record thereof, provided that:

(a) Tenant shall provide the City with security reasonably satisfactory to the City to assure payment of contested items;

(b) Tenant shall immediately pay such contested item or items if the protection of the Premises or the City's interest therein, from any lien or claim shall, in the reasonable judgment of the City, require such payment;

(c) The City shall not be required to join in any proceedings referred to herein unless the provisions of any law, rule or regulation at the time in effect shall require that such proceedings be brought by or in the name of the City. The City shall not be subjected to any liability for the payment of any costs or expenses in connection with any such proceedings, and Tenant shall indemnify and save harmless the City from any such costs and expenses; and

(d) Notwithstanding the provisions of subparagraph (c) above, the City shall not be required to join in or become a party, nominal or otherwise, to any proceeding in which it will oppose the City of Portsmouth or the State of New Hampshire, or the United States of America, or any agency, City, branch, commission, division, office or subdivision of or for the City of Portsmouth or the State of New Hampshire, or the United States of America, nor shall the City be required in connection with any such proceeding or otherwise to oppose in any way any policy established by the City nor to take any position inconsistent with a position taken and made public by the City.

Subject to the foregoing, and without cost to it, the City shall execute and deliver any appropriate papers which may be necessary to permit Tenant so to contest any such lien and shall further cooperate with Tenant in such contest, as Tenant may from time to time reasonably request.

4.21 No Consent. Nothing in this Lease shall be deemed or construed in any way as constituting the consent or request of the City, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration to, or repair of the Premises or any part thereof.

4.22 City's Right to Notice, Access and Review. Tenant agrees that the City, and its authorized representatives, shall have such rights of notice, access and review with respect to the Premises, Tenant's Improvements and the Construction Contract as is reasonably necessary to ensure compliance with the provisions of this **Section 4.22**, including, without limitation, the following (provided, however, that, in connection with the exercise by the City of its rights hereunder, the City shall not unreasonably interfere with Tenant and the contractors and subcontractors constructing Tenant's Improvements or with any Subtenant):

(a) the opportunity to observe the construction of Tenant's Improvements on the Premises upon reasonable prior notice to Tenant provided that the City's representatives shall not interfere with any work being performed at the Premises and shall comply with all safety standards and other job-site rules and regulations of Tenant and Tenant's contractors;

(b) the delivery by Tenant to the City's Construction Representative of one (1) copy of the items in clauses (ii), (iv), (vi) and (ix) below; *provided, however*, that, if an uncured Event of Default by Tenant is continuing, the City may request and Tenant shall deliver to the City copies of all other items:

(i) all agreements with contractors, subcontractors, suppliers, vendors and other persons supplying materials or services in connection with the construction of Tenant's Improvements;

(ii) all insurance certificates required by **Article 8** of this Lease (including those of Tenant, Contractor, Architect/Engineer and all contractors and subcontractors);

(iii) all contractors' and subcontractors' requisitions for payment and the Contractor's schedule of values;

(iv) monthly updates to the applicable Construction Schedule (as defined below), which updates shall show all material variances;

(v) all minutes of weekly on-site construction meetings;

(vi) any claims of any sort or nature whatsoever with respect to the applicable Construction Contract;

(vii) any claims of any sort or nature whatsoever related to Tenant's Improvements (other than those claims set forth in clause (vi) above);

(viii) any accident reports or reports related to safety incidents at the Premises during the construction of Tenant's Improvements; and

(ix) updates on the status of any ground/building settlement monitoring required by the City or others.

4.23 Construction Management Plan. Tenant has provided to the City, and the City has

approved as of the Effective Date, a Construction Management Plan for the construction of Tenant's improvements. A copy of the approved Construction Management Plan is attached hereto as **Exhibit J**. Tenant shall comply with, and shall use commercially reasonable efforts to cause all of its contractors and suppliers of every tier to comply with, the provisions of the approved Construction Management Plan at all times.

4.24 [NEED TO DISCUSS CONSENT/APPROVAL PROCESS]

ARTICLE 5

RENT

5.1 Base Rent.

Commencing on the date that is forty-five (45) days after the date of issuance of the final certificate of occupancy for the Project (the "**Base Rent Commencement Date**"), and continuing on the first day of each and every month thereafter during the Term, Tenant shall pay the City base rent of \$100,000 annually (the "**Base Rent**"), paid in equal monthly installments in advance without notice, demand, setoff, reduction or recoupment.

5.2 Distribution of Refinancing Proceeds. Refinancing Proceeds shall be distributed in the following amounts and in the following priority, any such amounts to be paid simultaneously with the payment to Tenant of the applicable Refinancing Transaction:

(a) First, to Tenant up to an amount equal to all of the reasonable and actual third-party costs paid by Tenant with respect to such Refinancing Transaction.

(b) Second, to the First Permitted Leasehold Mortgagee until all amounts of Approved Debt, if any, due and owing the First Permitted Leasehold Mortgagee under the First Permitted Leasehold Mortgage is paid to the First Permitted Leasehold Mortgagee;

(c) Third, to any other Permitted Leasehold Mortgagee until the balance of Approved Debt secured by such Permitted Leasehold Mortgage, including accrued and unpaid interest thereon, and all other amounts, if any, then due and owing such Permitted Leasehold Mortgagee under its Permitted Leasehold Mortgage at the time of such Refinancing, is paid to such Permitted Leasehold Mortgagee;

(d) Fourth, to the City until all accrued and unpaid Participating Rent due (if any) and all other accrued and unpaid Rent, if any, is paid to the City; and

(e) Fifth, to the Tenant the remaining balance.

5.3 Additional Rent. From and after the Effective Date, Tenant shall also pay, as additional rent, all sums, Impositions, costs, expenses, late charges, and payments of every kind and nature (including, without limitation, Participating Rent) which Tenant in any of the provisions of this Lease assumes or agrees to pay, whether payable initially to the City or a third party pursuant to the terms of

this Lease (collectively, "**Additional Rent**"), and, in the event of any non-payment thereof, the City shall have (in addition to all other rights and remedies) all of the rights and remedies provided for herein or by law in the case of non-payment of all other types of Rent.

5.4 Occupancy By Tenant or Affiliates. For purposes of computing Income for the determination of Excess Income from time to time due and payable by Tenant hereunder, any space in the Tenant's Improvements which is occupied by Tenant or any Affiliate of Tenant shall be deemed to generate rent received by Tenant on account thereof at a rate equal to the Fair Market Rent thereof, as reasonably determined by the City. Tenant shall specifically identify with each payment of Excess Income made to the City pursuant to **Section 5.5** the floor area and location of all space occupied by Tenant or any Affiliate of Tenant during the period with respect to which such Excess Income was calculated.

5.5 Income Received in Excess of Rehabilitation, Operational and Maintenance Costs/ Reasonable Profit. Excess Income, if any, shall be paid to the City by Tenant annually within 120 days after the end of every Rent Year in accordance with Schedule 1 attached hereto. Such amounts are sometimes referred to herein as "Participating Rent." All Excess Income received by the City shall be used by the City for purposes authorized under the Federal Historic Monument Program. *[Parties to discuss appropriate mechanism for credit to Tenant against future Participating Rent following years in which Tenant does not earn its "reasonable profit".]*

5.6 Books and Records; Audit Rights; Statements. *[Under Tenant Review]*

5.6.1 Books and Records; Audit Rights.

(a) At all times during the Term of this Lease, Tenant shall keep and maintain accurate and complete books and records pertaining to the Premises and to the calculation of Rent, Income and Excess Income and any other amounts coming due under this Lease (such books and records being herein the "**Books and Records**").

(b) The Books and Records and each budget, report, financial statement or other item of financial information delivered to the City shall be maintained and presented in accordance with GAAP and with generally accepted auditing standards. Tenant (and any Permitted Property Manager) shall make such Books and Records available on the Premises, at another location within the City of Portsmouth selected by Tenant, or at another mutually agreed upon location at reasonable times during Tenant's regular business hours upon reasonable notice to Tenant; provided, however, that the City shall not examine such Books and Records more than once in any 12 month period except during the continuation of a monetary Event of Default by Tenant under this Lease. Such Books and Records shall be segregated from other records of Tenant and the Permitted Property Manager relating to matters outside the scope of this Lease. In the event of a conflict between the defined terms in this Lease and GAAP, the Lease definitions shall control.

(c) For purposes of this Lease, the Books and Records shall include, without limitation, the gross income, with respect to each Rent Year and all pertinent records that would normally be examined by an independent accountant pursuant to accepted auditing standards in performing an audit of Income and Excess Income.

(d) The City, its agents and accountants, shall have the right, upon reasonable prior notice, to make any examination or audit of the Books and Records that the City may desire at any time during Tenant's regular business hours at the City's cost except as set forth below in this paragraph provided, however, that the City shall not examine such Books and Records more than once in any 12 month period except during the continuation of a monetary Event of Default by Tenant under this Lease. Such right of inspection and audit may be exercised at any time within three (3) years after receipt by the City of the Tenant's financial statements for the Rent Year to which such Books and Records relate, and Tenant and any Permitted Property Manager shall maintain all such Books and Records for at least such period of time and, if any dispute between the Parties has arisen and remains unresolved at the expiration of such period of time, for such further period of time until resolution of such dispute. Tenant will make such Books and Records available to the City within ten (10) Business Days of the City's request. If such audit discloses an underpayment by Tenant of Base Rent in any Rent Year, or any underpayment by Tenant of any Participating Rent, Tenant shall promptly pay such liability, together with interest thereon at the Default Rate from the time such payment should have been made. If such audit shows Tenant overpaid any Base Rent or any Participating Rent, the City shall promptly pay such liability, together with interest thereon at the Default Rate from the time such overpayment was made. In the case of any underpayment of Participating Rent and Base Rent by more than five percent (5%) for such Rent Year, Tenant shall, in addition, promptly pay the reasonable third party cost of the City's audit not to exceed \$15,000.

5.6.2 Omitted.

5.6.3 Annual Statements. For each Rent Year (or portion thereof) included in the Term, Tenant shall deliver to the City without notice or demand and within 120 days after the end of each Rent Year a statement confirming all items necessary to calculate all categories of Rent due from Tenant to the City with respect to the preceding Rent Year, and setting forth the calculations of the total amount of Rent to be paid for such Rent Year in accordance with this Lease, with such annual statement to be prepared consistent with Tenant's record keeping practices and certified by an officer of tenant as correct ("**Annual Audit**"). Each Annual Audit shall include an itemization of the following:

5.6.2.1 5.6.3.1 all Income from the Premises broken down by each other source of Income, together with an itemization of amounts deducted by Tenant from gross revenue in calculating Excess Income as shown on such statement;

5.6.2.2 5.6.3.2 Rent paid or due from Tenant to the City, including separate statements of Base Rent, Participating Rent and Additional Rent;

5.6.2.3 5.6.3.3 The amount of Refinancing Proceeds generated during such Lease Year;

5.6.2.4 5.6.3.4 The then-current outstanding principal balance of Approved Debt;

5.6.2.5 5.6.3.5 The then-current amount of capital or equity invested in Tenant or in the Premises; and

5.6.2.6 5.6.3.6 The amount then on account in the Reserve Fund.

5.6.3 5.6.4 Year End Adjustments. Any adjustments with respect to the amount of Rent actually paid or due and owing during such prior Rent Year shall be made with respect to each Rent Year (or portion thereof) thereafter included in the Term, at the time Tenant delivers the Annual Audit to the City. Any Rent due and owing from Tenant to the City on account of such prior Rent Year as disclosed by such Annual Audit shall be delivered to the City with such Annual Audit. Any overpayment of Rent made by Tenant to the City which is disclosed by such Annual Audit shall be credited against Base Rent payable in succeeding Rent Years, commencing with the first monthly payment of Base Rent due thereafter, or if a credit against Base Rent would not fully reimburse the Tenant then the City shall refund such overpayment to Tenant within thirty (30) days of the delivery of such Annual Audit.

5.6.5 Omitted.

5.6.6 Financial Statements of Tenant [TO BE DISCUSSED]

5.6.7 Special Requirements for Revenue-Producing Activities. In addition to and not in substitute of the foregoing financial reporting requirements, the parties recognize that the Preservation Restriction and the Deed to the City contain a requirement that, if the Property is used for income-producing or revenue-producing activities, certain auditing and reporting requirements apply with respect to the Tenant's use of the Property. The Parties acknowledge that these auditing and reporting requirements are binding on the City, and that Tenant, its successors and assigns, during the Term of this Lease will comply with such requirements to the extent applicable to Tenant. Where applicable laws and regulations require the City to fulfill said auditing and reporting requirements, Tenant agrees to use commercially reasonable efforts to assist the City in so doing. Tenant agrees to make the Books and Records available for inspection by the City from time to time pursuant to **Section 5.6.1** as may be necessary to ensure compliance with the financial aspects of the Preservation Restriction. [*Under Review by Tenant*]

5.6.8 Warranty of Information. Each delivery of monthly or annual reports or statements under this Section or financial information in regard to the Premises under this Lease shall constitute a representation and warranty by Tenant to its knowledge that such report, statement or other information is presented in compliance with this Section in all material respects.

5.7 The City's Right To Perform Tenant's Covenants.

(a) Performance by the City. If Tenant shall, at any time beyond the expiration of any applicable notice and grace period provided in this Lease, fail to pay any Imposition in accordance with the provisions of **Article 6** hereof, or to take out, pay for, maintain or deliver any of the insurance policies or certificates provided for in **Article 8** hereof, or shall fail to make any other payment or perform any other act on its part to be made or performed, then the City may, but shall be under no obligation to:

- (i) pay any Imposition payable by Tenant pursuant to the provisions of **Article 6** hereof, or
- (ii) take out, pay for and maintain any of the insurance policies provided for in **Article 8** hereof, or
- (iii) make any other payment or perform any other act on Tenant's part to be made or performed as provided herein.

In addition, the City may, subject to the terms of the Subleases and rights of Subtenants, after reasonable prior written notice to Tenant, enter upon the Premises during the continuation of an Event of Default of Tenant under this Lease and take all such actions thereon, as may be necessary to perform any such other act on Tenant's part to be performed that is the reason for the Event of Default.

(b) **Reimbursement.** All sums properly paid by the City under **Section 5.7(a)(i) through (iii)** and all reasonable third party costs and expenses incurred by the City, including reasonable attorneys' fees and expenses, in connection with the performance pursuant to the last sentence of **Section 5.7(a)** of any such other act together with interest at the Default Rate from the date of demand for payment by the City of such cost and expense, shall constitute Additional Rent payable by Tenant under this Lease and shall be paid by Tenant to the City within thirty (30) days after written demand by the City accompanied by reasonable supporting documentation. If the City shall exercise its rights under **Section 5.7(a)** to cure a default of Tenant, Tenant shall not be relieved from the obligation to make such payment or perform such act in the future, and the City shall be entitled to exercise any remedy it may have, contained in this Lease or otherwise, if Tenant shall fail to pay such Additional Rent to the City within five (5) days after written notice from the City that Tenant has failed to pay such amounts when due. All costs incurred by the City hereunder shall be presumed to be reasonable in the absence of a showing of bad faith, clear error, or fraud.

(c) **Entry.** During the progress of any work on the Premises which may, under the provisions of this **Section 5.7**, be performed by the City, the City may keep and store in the areas in which such work is being conducted all necessary materials, tools, supplies and equipment. The City shall not be liable for inconvenience, annoyance, disturbance, loss of business or other damage to Tenant or any contractor, subcontractor, Subtenant, guest, licensee or operator by reason of making such repairs or the performance of any such work, or on account of bringing materials, tools, supplies and equipment onto the Premises during the course thereof, except to the extent caused by the negligence or willful misconduct of the City, its employees or agents, and the obligations of Tenant under this Lease shall not be affected thereby.

5.8 **Net Lease.** It is the purpose and intent of the City and Tenant that this is a net lease and that all Rent shall, except as herein otherwise explicitly provided, be absolutely net to the City. Tenant agrees that, except as herein otherwise expressly provided, Tenant shall pay all costs, charges and expenses of every kind and nature whatsoever against or in connection with the construction, development, use and operation of the Premises as if Tenant were the owner of the Premises which may arise or become due during the Term.

5.9 **Payments: Late Charges.** Until Tenant shall have been given notice otherwise by the

City, Tenant shall pay all Rent to the City at the following address:

City of Portsmouth
1 Junkins Avenue
Portsmouth, NH 03801
Attention: Nancy Colbert Puff

Except as otherwise expressly provided in this Lease, all Rent shall be paid by Tenant to the City without notice, demand, abatement, deduction or offset under any circumstances, or for any cause or reason. Tenant's default in the due and punctual payment of Rent or other sums due and payable under this Lease, when and as the same shall become due and payable, shall obligate Tenant, upon the City's demand, to pay interest on such amounts at the Default Rate from the date such payment was due and payable.

5.10 No Partnership or Joint Venture. Nothing contained in this Lease shall be construed to create a partnership or joint venture between the City and Tenant or to make the City an associate in any way of Tenant in the conduct of Tenant's business, nor shall the City be liable for any debts incurred by Tenant in the conduct of Tenant's business, and it is understood by the Parties hereto that this relationship is and at all times shall remain that of landlord and tenant.

ARTICLE 6 IMPOSITIONS AND UTILITIES

6.1 Impositions. Tenant shall pay or cause to be paid as Additional Rent, before any fine, penalty, interest or cost may be added thereto for the non-payment thereof, all taxes, payments in lieu of taxes, assessments, water and sewer rents, rates and charges, levies, license and permit fees and other governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever which at any time during the Term of this Lease may be assessed, levied, confirmed, imposed upon, or grow or become due and payable out of or in respect of, or become a lien upon, the Premises, Tenant's Improvements, or the leasehold, or any part thereof or any appurtenance thereto, whether such charges are made directly to Tenant or through or in the name of the City (all such taxes, payments in lieu of taxes, assessments, water and sewer rents, rates and charges, levies, license and permit fees and other governmental charges being hereafter referred to as "**Impositions**"). Tenant shall pay real estate taxes for the Premises, Tenant's Improvements, the leasehold and any appurtenance thereto to the extent required by applicable law (including RSA Chapter 72:23, I) as if the Tenant were the owner of fee simple title to the Premises. Pursuant to RSA 72:23, I (b) [*Under Review*], failure of Tenant to pay the duly assessed personal and real estate taxes when due shall be cause to terminate said lease or agreement by Landlord. In no event shall any such real estate taxes or payments be deducted from Base Rent payable to Landlord; *provided, however,* that

(a) If, by law, any Imposition may at the option of the taxpayer be paid in installments, Tenant may pay the same in such installments over such period as the law allows; and

(b) All Impositions for the fiscal years in which the Term of this Lease shall begin

and end shall be apportioned so that Tenant shall pay only those portions thereof which correspond with the portion of said year as is within the Term hereby demised.

If, and to the extent to which, the Premises or any portion thereof constitute a separate tax parcel as to which the City, acting in its capacity as the taxing authority, is permitted to bill Tenant directly for the payment of any Impositions, Tenant shall make arrangements with the City, acting in its capacity as taxing authority, to receive such bill and shall pay all amounts due thereunder directly to City, acting in its capacity as taxing authority, before any fine, penalty, interest or cost may be added thereto for nonpayment. For purposes of this Lease the term "Additional Rent" shall include all such Impositions.

6.2 Receipts. Tenant, upon request of the City, shall furnish to the City within twenty (20) days prior to the date when any Imposition would become delinquent, official receipts of the appropriate taxing City, or other evidence reasonably satisfactory to the City, evidencing the payment thereof.

Tenant may seek a reduction in the valuation of the Premises or Tenant's Leasehold Interest assessed for tax purposes, and may contest in good faith by appropriate proceedings, at Tenant's expense, the amount or validity in whole or in part of any Imposition, and may defer payment thereof if allowed by law, provided that:

(a) Tenant shall provide the City with security reasonably satisfactory to the City to assure payment of contested items;

(b) Tenant shall immediately pay such contested item or items if the protection of the Premises or of the City's interest therein from any lien or claim shall, in the reasonable judgment of the City, require such payment; and

(c) The City shall not be required to join in any proceedings referred to herein unless the provisions of any law, rule or regulation at the time in effect shall require that such proceedings be brought by or in the name of the City. The City shall not be subjected to any liability for the payment of any costs or expenses in connection with any such proceedings, and Tenant shall indemnify and save harmless the City from any such costs and expenses; and

(d) Notwithstanding the provisions of subparagraph (c) above, the City shall not be required to join in or become a party, nominal or otherwise, to any proceeding (although it may elect to do so in its sole and absolute discretion) in which it will oppose the City of Portsmouth or the State of New Hampshire, or the United States of America, or any agency, authority, branch, commission, division, office or subdivision of or for the City of Portsmouth or the State of New Hampshire, or the United States of America, nor shall the City be required in connection with any such proceeding or otherwise to oppose in any way any policy established by the City nor to take any position inconsistent with a position taken and made public by the City.

Subject to the foregoing, and without cost to it, the City shall execute and deliver any appropriate papers which may be necessary to permit Tenant so to contest any valuation or Imposition and shall further cooperate with Tenant in such contest, as Tenant may from time to time reasonably request.

6.3 Utilities.

(a) Tenant shall pay (or cause its subtenants to pay), as Additional Rent, directly to the utility provider, all charges by any public authority (including the City, as the case may be) or public utility for water, electricity, telephone, gas, sewer and other services supplied or rendered to the Premises, and service inspections made therefor, whether called charge, rate, tax, betterment, assessment, fee or otherwise and whether such charges are made directly to Tenant or through or in the name of the public authority.

(b) Tenant, at its sole cost and expense, shall install and maintain all utility infrastructure constructed by Tenant on the Premises, including, without limitation, connections and services as may be required for the operation of the Tenant's Improvements.

6.4 No Liability of the City. The City in its capacity as Landlord under this Lease shall not be required to furnish to Tenant any facilities or services of any kind whatsoever during the Term, such as, but not limited to, water, steam, heat, gas, hot water, electricity, light and power. Pursuant to this Lease, the City is granting Tenant the right and easement to tie into the existing sources of such facilities and services in their existing locations to the extent located in adjacent streets and ways owned or controlled by the City and to the extent necessary to operate Tenant's Improvements, it being understood, however, that the City makes no representation or warranty that existing sources of supply, distribution points or utilities are adequate or sufficient to supply Tenant's Improvements.

In the event that Tenant determines that the enlargement, improvement or expansion of existing sources of supply, distribution points or utilities is necessary to supply Tenant's Improvements, such enlargement, improvement or expansion shall be the obligation, and the expense, of Tenant and shall be undertaken in accordance with plans and specifications approved by the City, which approval shall not be unreasonably withheld, conditioned or delayed, it being understood that (x) the City shall cooperate with Tenant in obtaining such utilities for Tenant's Improvements as Tenant may from time to time reasonably request (which cooperation shall include, without limitation, the granting, without further expense, of easements over the City's adjoining streets in locations reasonably approved by the City, to the extent of, and as limited by, the City's interest (if any) in such streets or ways), and (y) the City shall not unreasonably withhold, delay or condition its approval of the plans and specifications for any such utilities or, provided that the location of the same will not materially and adversely impact the planned development of the Premises or any of the City's adjacent property, any easement over the City's streets required in connection therewith. The City agrees to respond to Tenant's requests for approval under this Section 6.4 within ten (10) Business Days after Tenant's request.

ARTICLE 7

MAINTENANCE AND ALTERATIONS

7.1 Repair and Maintenance. Throughout the Term of this Lease, Tenant, at its sole cost and expense, shall take good care of the Premises, including, without limitation, all improvements now or hereafter erected thereon, (including, without limitation, all Tenant's Improvements, sidewalks, paved areas, exterior lighting, street fixtures, utility lines and facilities, drainage lines and facilities, and all other equipment and appurtenances used in the functioning of the Premises or any portion thereof) and all sidewalks, street fixtures, lights and furniture, curbs and entrance ways adjoining the

same, and shall keep the same in good order, condition and repair, except for (i) reasonable wear and tear, (ii) damage from a Taking or a Casualty after the last repair, replacement, restoration or renewal required to be made by Tenant pursuant to its obligations hereunder, and (iii) damage caused by the City or its employees or contractors, and Tenant shall make all necessary repairs thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, and foreseen and unforeseen. All repairs made by Tenant shall be performed in accordance with the construction standards and requirements set forth in **Article 4**, including, without limitation, delays due to Force Majeure Events as provided in **Section 4.16**, and shall be substantially equal or better in quality and class to the then-existing quality of Tenant's Improvements being repaired and shall be made in compliance with applicable Legal Requirements.

Tenant shall cause Tenant's Improvements to be inspected no less frequently than once every five (5) years during the Term by a qualified professional engineer registered in the State of New Hampshire and approved by the City in its reasonable discretion, who shall deliver a detailed report to both Tenant and the City not later than each fifth (5th) anniversary of the Effective Date, which report shall describe in reasonable detail the condition of Tenant's Improvements and any maintenance, repairs or replacements recommended to be made thereto or performed thereon in order to maintain the same in good order, condition and repair (the "**Physical Conditions Report**"). Such report shall ensure that sufficient funds are being escrowed in the Reserve Fund. The Physical Conditions Report shall be signed and certified by the engineer performing the inspection. Tenant shall, at its sole cost and expense, perform all maintenance, repairs and replacements recommended in each such report within the relevant timeframe set therefor in such report. If Tenant fails to obtain an inspection report when required to do so by this Section, the City may obtain such a report, at Tenant's cost, and such report shall have the same effect as a report obtained by Tenant pursuant to this Section. Tenant shall not commit, and shall use all reasonable efforts to prevent, waste, damage or injury to the Premises. [TO BE DISCUSSED]

7.2 Cleaning; Landscaping; Snow Removal. Tenant shall put, keep and maintain all portions of the Premises, including interior parking and driving surfaces and entrance and exit ramps, and the sidewalks and curbs and landscaped areas (including, without limitation, the irrigation system therefor) adjoining the same in a clean, well-maintained, and orderly condition, reasonably free of dirt, mud, standing water, rubbish, snow, ice, obstructions and physical encumbrances, and shall properly dispose of all such dirt, rubbish, snow and ice.

7.3 Excavation and Shoring. If any excavation shall be made or contemplated to be made by any third party upon property or streets adjacent to or near the Premises, Tenant shall either (a) afford the Person causing or authorized to cause such excavation the right to enter upon the Premises for the purpose of doing such work to preserve any of the walls or structures of Tenant's Improvements from injury or damage and to support the same by proper foundations, provided that such work shall be carried out at such Person's sole cost and expense and shall be completed in accordance with plans and specifications approved by Tenant, such approval not to be unreasonably withheld, conditioned or delayed, or (b) at such third party's sole cost and expense, do or cause to be done all such work as may be necessary to preserve any of the walls or structures of the improvements on the Premises from injury or damage and to support the same by proper foundations, provided, however, that such party (i) provides plans and specifications to Tenant for approval in connection with such excavation, which approval shall not be unreasonably withheld, conditioned or delayed, (ii) agrees to indemnify Tenant from any loss, cost, or expense suffered by Tenant in connection with such excavation (but excluding

therefrom any such loss, cost or expense arising from Tenant's own gross negligence or willful misconduct), and (iii) obtains commercially reasonable liability insurance naming Tenant as an additional insured thereon. Tenant shall not, by reason of any such excavation or work, have any claim against the City for damages or indemnity or for suspension, diminution, abatement or reduction of Rent under this Lease. For purposes of this Section 7.3, Tenant shall be reasonable in withholding its approval of any plans and specifications in connection with any such excavation and shoring if Tenant reasonably determines that such plans and specifications materially and negatively impact the state or federal historic tax credits allocated to Tenant.

7.4 Alterations.

(a) Following approval by the City of the Final Plans and Specifications for Tenant's Improvements, Tenant may not undertake any interior street-level work (to the extent visible from the exterior) and/or any exterior work, without the City's prior written approval ("**Alterations**"), provided that the City's prior written approval shall not be required for any Alteration that (i) does not affect the appearance of the exterior of the Tenant's Improvements in any material respects, (ii) is not located on the street level and visible from the exterior of the Tenant's Improvements, (iii) for which the total design and construction costs are less than \$1,000,000, adjusted for inflation by any increase in the Index, in the aggregate, or (iv) does not require any material modification to the Approvals and complies with the Historic Monument Program Requirements, provided further that all other requirements with respect to any such Alteration set forth in this Lease, including, without limitation, this **Section 7.4**, shall apply thereto. Tenant acknowledges and agrees any Alterations that require the City's prior written approval shall be given under the City's "Tenant Alteration Application" process (as in effect from time to time) and/or the City's Land Use Ordinances and Regulations (as in effect from time to time), as applicable. To the extent that any Alteration requires the City's prior written approval, any such Alteration shall (i) not adversely affect the roof, structural elements, or building systems of the Tenant's Improvements; (ii) not involve the construction of any new buildings; (iii) not lessen the fair market value of the Tenant's Improvements or the Premises; (iii) not materially adversely impair the use of the Tenant's Improvements for the Permitted Uses, as set forth in **Section 9.1**; (iv) not affect in any material adverse way the exterior appearance of the Tenant's Improvements, including changes in massing, materials, locations and size of windows, exterior lighting, canopies and other architectural features; (v) not materially change the locations or functionality of public entrances and exits and access to and from the Tenant's Improvements; (vi) not materially adversely change the appearance, function or quality of any exterior site improvements or any exterior public or common area space, including lighting, paving, landscaping, seating, fencing or works of art; (vii) not change the number of residential units or parking spaces located on the Premises; and (xi) be constructed in a first class and good and workmanlike manner.

(b) Tenant shall submit detailed plans and specifications showing any proposed Alterations requiring City approval under Section 7.4(a) to the City prior to commencing such Alterations. Any written request to approve proposed Alterations shall not be deemed to have been received by the City unless it is sent to the attention of the City's Construction Representative in addition to those employees of the City identified in **Section 18.3** below. The City shall approve or object to such plans and specifications within such fifteen (15) day period, and if it objects, the City shall specify its objections to the same and Tenant shall revise such plans and specifications to address the City's objections and shall resubmit the same to the City for approval. The City shall have an additional ten (10) days to review and approve, or object to, such revised plans and specifications. If

the City objects to such revised plans and specifications within such ten (10) day period, the City shall specify its objections to the same and Tenant shall revise such plans and specifications to address the City's objections and shall resubmit such the same to the City for approval, and the Parties shall continue in this fashion until the City approves such plans and specifications in accordance with this **Section 7.4**. The City's approval of the initial or revised plans and specifications for any Alterations shall be deemed granted as requested by Tenant if (i) Tenant's request for such approval specifically references this Section and contains in a conspicuous type both on the top of the first page of such request, the following language in bold and prominent print: "**YOU SHALL BE DEEMED TO HAVE GRANTED TO TENANT THE APPROVAL REQUESTED IN THIS LETTER IF YOU FAIL TO RESPOND TO THIS REQUEST FOR APPROVAL WITHIN FIFTEEN (15) DAYS [TEN (10) DAYS FOR REVISED PLANS AND SPECIFICATIONS] AFTER YOUR RECEIPT OF THIS LETTER**", and (ii) Landlord fails to respond within such 15-day (for initial plans and specifications) or 10-day (for revised plans and specifications) period.

(c) Upon completion of any Alterations under **Section 7.4**, Tenant shall provide the City with as-built information for such Alterations in accordance with the provisions of **Section 4.20** above.

(d) Tenant shall reimburse the City for all reasonable actual out-of-pocket architectural and engineering expenses for architectural and engineering review reasonably incurred by the City in connection with its review of a proposed Alteration within thirty (30) days after receipt of the City's written demand therefor accompanied by reasonable supporting documentation. Any such Alteration which the City has approved shall be performed substantially in accordance with the approved plans and specifications, and no material amendments or material additions to such plans and specifications shall be made without the prior reasonable consent of the City in accordance with the terms hereof. Such reimbursement as is required pursuant to this **Section 7.4(d)** shall be considered Additional Rent for purposes of this Lease.

(e) Tenant, at its expense, shall obtain all necessary Approvals from Governmental Authorities for the commencement and prosecution of any Alterations and, if required, Tenant shall obtain final approval from Governmental Authorities upon completion of such Alterations. Tenant shall promptly deliver copies of all Approvals for Alterations requiring City approval under this **Section 7.4** to the City.

(f) All costs associated with all Alterations shall be borne by Tenant.

(g) With respect to any Alterations, Tenant shall comply with all applicable requirements of this Lease, including, without limitation, the provisions of **Article 4**, this **Article 7**, and to the extent applicable, **Article 8** and **Article 9**. In addition, Tenant shall cause the Alterations to be performed in compliance with all applicable Legal Requirements, the requirements of any Permitted Leasehold Mortgage and the requirements of any insurers of the Premises, or any Board of Fire Underwriters, Fire Insurance Rating Organization, or other body having similar functions. All such Alterations shall be performed in a good and workmanlike manner, using materials and equipment at least equal in quality and class to the original quality of the installations at the Premises.

7.5 Waste Disposal. Tenant shall dispose of waste from all areas of the Premises in accordance with all applicable Legal Requirements and in a prompt and sanitary manner.

7.6 Signs. Tenant may erect any sign, decoration, lettering, advertising matter or any other similar display (collectively referred to herein as a "**Sign**") in the interior of the Building without obtaining the City's approval, except that any interior Sign that would be visible from the exterior of the Building shall require the City's prior written approval in each instance, which approval shall not be unreasonably withheld, conditioned or delayed. Tenant may erect any Sign on the exterior of the Building or elsewhere on the Premises or any interior Sign that is visible from the exterior of the Building or elsewhere on the Premises, only if the City shall have first approved in writing in each instance the location, dimensions, materials and design (including any proposed lighting) of any such Sign, which approval shall not be unreasonably withheld, conditioned or delayed. Accordingly, Tenant shall submit to the City, for the City's reasonable approval, an initial Sign plan showing the locations, maximum dimensions, lighting and design materials of all proposed exterior Signs and interior Signs that would be visible from the exterior of the Building. Thereafter, Tenant may replace or modify any Sign which has been approved by the City on the initial sign plan, provided that such Sign is related to the operation of the Building or one or more of the Subtenants, and consists of any lighting and design materials and is within the maximum dimensions and location as was previously approved by the City. Any other proposed additional or replacement Signs, or modifications to Signs, shall require the City's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed, and Tenant shall submit an updated Sign plan to the City. Any disapproval by the City shall specify the City's objections thereto. Any written request by Tenant to the City to approve proposed Signs shall not be deemed to have been received by the City unless it is sent to the attention of the City's Construction Representative in addition to those employees of the City identified in **Section 18.3** below. Notwithstanding the foregoing, the City agrees that no approval by the City under this Section 7.6 is required for (i) temporary interior and exterior advertising signs and banners customary for the uses of the Premises provided that such signs or banners comply with applicable law or (ii) any other signs approved in accordance with the zoning ordinance of the City of Portsmouth.

To the extent that the City's approval of any Signs is required, the City shall approve or object to such proposed Signs within fifteen (15) days of Tenant's request, and if it objects, the City shall specify its objections to the same and Tenant shall revise such proposed Signs to address the City's objections and shall resubmit the same to the City for approval. The City shall have an additional ten (10) days to review and approve, or object to, such revised Signs. If the City objects to such revised Signs within such ten (10) day period, the City shall specify its objections to the same and Tenant shall revise such proposed Signs to address the City's objections and shall resubmit the same to the City for approval, and the Parties shall continue in this fashion until the City approves such proposed Signs in accordance with this **Section 7.6**. The City's approval of the initial or revised proposed Signs shall be deemed granted as requested by Tenant if (i) Tenant's request for such approval specifically references this Section and contains in a conspicuous type both on the top of the first page of such request, the following language in bold and prominent print: "**YOU SHALL BE DEEMED TO HAVE GRANTED TO TENANT THE APPROVAL REQUESTED IN THIS LETTER IF YOU FAIL TO RESPOND TO THIS REQUEST FOR APPROVAL WITHIN FIFTEEN (15) DAYS [TEN (10) DAYS FOR REVISED SIGNS] AFTER YOUR RECEIPT OF THIS LETTER**", and (ii) Landlord fails to respond within such 15-day (for initial proposed Signs) or 10-day (for revised proposed Signs) period.

7.7 Lighting and Other Fixtures. Tenant shall provide and maintain adequate lighting within and around the Premises as shown on the Final Plans and Specifications. Tenant shall take all

commercially reasonable measures to ensure that lighting shall operate within all common areas and corridors of the Building as are consistent with generally accepted safety practices for the applicable use of each common area and corridor. Tenant shall install and maintain security lighting within and around the Premises as shown on the Final Plans and Specifications. Tenant shall also install any fire hydrants required from time to time by Governmental Authorities having jurisdiction over the Premises, but shall turn over the same upon completion to the City of Portsmouth for ongoing maintenance, repairs and replacements.

7.8 Noise Mitigation. Tenant shall not make, or permit to be made, any unseemly or disturbing noises that unreasonably disturb or interfere with operation of neighboring buildings or premises or those having business with them to the extent such noises exceed limits imposed by applicable Legal Requirements. Also, Tenant will not commit or suffer to be committed any noise which constitutes a public or private nuisance which may be reasonably expected to disturb the quiet enjoyment of neighboring buildings or premises or those having business with them.

7.9 Capital Expenditures and Maintenance Reserve Fund. Tenant shall pay \$15,000 per year during each of the first five (5) years of the Term and \$85,000 per year during the second five (5) years of the Term into a Capital Expenditures Maintenance Reserve Fund (the "**Reserve Fund**"), which shall be held by the Developer (except following and during the continuance of any default by Tenant under this Lease, in which case the Reserve Fund shall be held by the City until such default is cured by Tenant), or with the First Permitted Leasehold Mortgagee if it so requests, in an interest bearing escrow account in Tenant's name, until \$500,000 has been contributed (the "**Reserve Cap**"). Tenant will maintain the Reserve Cap in the Reserve Fund until a capital event related to the improvements to be located on the Premises including, without limitation, any major infrastructure repairs or capital improvements necessitated by maintenance, change of law and/or change of policy, takes place that requires the fund to be drawn down. Tenant may withdraw funds from the Reserve Fund at its discretion to pay for any such matters. In the event the Reserve Fund falls below the Reserve Cap due to work being performed on the property, Tenant shall deposit sufficient funds up to \$50,000 per year in order to reach the Reserve Cap. Any accrued interest or other income, which causes the balance of the Reserve Fund to exceed the Reserve Cap, shall be the sole property of the Tenant to be used in its sole discretion.

ARTICLE 8

INSURANCE AND INDEMNITY

8.1 Casualty Insurance.

(a) All Risk. Tenant, at its sole cost and expense, shall keep in full force and effect property insurance on the Premises and all Tenant's Improvements, including, but not limited to, machinery and boilers and other equipment and property installed or used in, on or about the Premises, naming the City and Tenant as their respective interests may appear, in amounts sufficient at all times to prevent the City or Tenant from becoming a co-insurer under the provisions of applicable policies of insurance but, in any event, at least equal to the full replacement cost thereof, without deduction for depreciation, against all risks of direct physical loss or damage as may from time to time be included within the definition of an "All Risk" or "Broad Form" property insurance policy and extended to include coverage against earthquake, earth movement, flood (including back-up of sewers and drains),

sprinkler leakage, breakdown of boilers, machinery and electrical equipment, war risk, nuclear reaction, lightning, wind storm, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, demolition and such other risks as the City may reasonably designate. The insurance also shall cover increased cost of construction, demolition and debris removal coverage, and contingent liability arising out of the enforcement of building laws and ordinances governing repair and reconstruction and shall include an agreed amount provision. The replacement cost of all Tenant's Improvements, and of any other property installed or used in, on or about the Premises, shall be determined at least once every thirty-six (36) months by the City.

(b) Loss of Income. Tenant, at its sole cost and expense, shall keep in full force and effect loss of rent insurance, with loss payable to the City, for an amount equal to the then current amount of Base Rent and Additional Rent to be paid by Tenant under this Lease for a period of eighteen (18) months.

(c) Flood Insurance. Flood insurance (i) if any portion of Tenant's Improvements is currently or at any time in the future located in an area identified by the Secretary of Housing and Urban Development, or any successor, as an area having special flood, mudslide or flood-related erosion hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968 or the Flood Disaster Protection Act of 1973, as amended from time to time, and (ii) if the broad form flood coverage required by subsection (a) above is not available, for the lesser of the replacement value of Tenant's Improvements or the maximum amount available under the National Flood Insurance Program.

(d) Construction Insurance. Prior to the commencement of construction of Tenant's Improvements or any other construction work permitted under this Lease, including without limitation, any Alterations, Tenant shall procure or cause to be procured, and after such dates shall carry or cause to be carried, until final completion of such work, in addition to and not in lieu of the insurance required by the foregoing subsections (a), (b) and (c), the insurance described in **Section 8.3.**

8.2 Liability Insurance. Tenant shall maintain or, in the case of clause (c) below, cause the Contractor to maintain:

(a) for the mutual benefit of the City and Tenant, and, if and to the extent required under any Permitted Leasehold Mortgage, the Permitted Leasehold Mortgagee under such mortgage, and identifying the City as an additional insured, commercial general liability insurance (including garage liability with auto liability, pollution liability, and premises liability (with coverage for property in the care, custody or control of the insured), if not covered elsewhere) against claims for personal injury, death, and property damage occurring upon, in or about the Premises, any off-site Tenant's Improvements, and on, in or about the adjoining sidewalks and passageways (including, without limitation, personal injury, death, and property damage resulting directly or indirectly from any change, alteration, improvement or repair thereof), including claims arising from the use of all equipment at the Premises or in connection with hauling of materials or debris therefrom, with limits deemed reasonably adequate by the City to protect against judgments being awarded in New Hampshire for injury, death and property damage. As of the date hereof, a combined single limit policy in the amount of Three Million Dollars (\$3,000,000) for bodily injury and death and for property damage shall be deemed adequate. This insurance shall be primary over any other policy of insurance owned by the City;

(b) boiler insurance, including pressure vessels and pipes, if there be any such vessel or pipes on the Premises, in a reasonable amount, elevator insurance and such other insurance against other hazards as may, from time to time, be reasonably required by the City;

(c) a pollution legal liability insurance policy covering first and third party claims for clean-up costs, personal injury and property damage on an on-site and off-site basis, with a single claim and aggregate claim amount up to the statutory limit;

(d) worker's compensation insurance as required by law, and employers' liability insurance with a limit up to the statutory limit; and

(e) umbrella and excess liability insurance with a minimum limit of Seven Million Dollars (\$7,000,000).

The minimum coverages stated herein shall be reviewed every fifth (5th) year of the Term by the City and Tenant and shall be increased at such intervals if such increases are reasonably necessary to reflect inflation or changes in the nature or degree of risks insured or to protect against judgments from time to time being awarded in New Hampshire for injury, death and property damage, in all cases consistent with such limits as are from time to time customarily carried with respect to similar office properties in the City of Portsmouth. The City reserves the right, at its sole discretion, to amend the insurance requirements prior to Lease execution. The City shall be named as additionally insured party in all insurance coverage.

8.3 Construction Insurance Requirements. The insurance required by **Section 8.1(d)** shall consist at least of the following:

(a) Builder's Risk Insurance (standard "All Risk" or equivalent coverage, including collapse) in an amount not less than one hundred percent (100%) of the projected completed value of Tenant's Improvements with "increased cost of construction" endorsement, and insuring against the perils of fire and extended coverage and physical loss or damage, including without duplication, coverages with respect to casualties arising due to subsurface work, shoring, blasting, pile driving, caisson work and the like, loss or damage to the equipment, supplies and materials furnished and stored, and owned and non-owned vehicle liability insurance with respect to all vehicles and registered mobile equipment and with respect to any unlicensed mobile equipment, written on a completed value, non-reporting form, with a deductible determined by Tenant of not more than One Hundred Thousand Dollars (\$100,000.00) subject to adjustment for inflation (except as to flood and windstorm), to include rental payment coverage from the date of projected completion and extending for at least eighteen (18) months following such date of projected completion;

(b) Comprehensive automobile liability insurance covering all owned, hired and non-owned automobiles or other motor vehicle used in connection with work being performed on or for the Premises, and naming the City as an additional insured, for bodily injury and property damage in a combined single limit which shall not be less than One Million Dollars (\$1,000,000.00) per occurrence, with a deductible determined by Tenant of not more than Twenty-five Thousand Dollars (\$25,000.00), subject to adjustment for inflation; and

(c) The insurance required pursuant to **Section 8.2**.

8.4 **Supplemental Insurance.** Tenant shall also maintain such other insurance, including without limitation, terrorism insurance (but only if customarily carried by owners of similar properties and available at commercially reasonable rates), in such amounts as may from time to time be reasonably required by the City, against other insurable hazards which at the time are customarily insured against in the case of comparable properties in the City of Portsmouth. Without limiting the foregoing, the City may require Tenant to maintain terrorism insurance coverage for the Premises if such insurance is available at commercially reasonable rates. To the extent that Tenant elects to maintain any policy of terrorism insurance for the Premises, whether or not such policy is required by the City, Tenant agrees to name the City as an additional insured and to provide evidence thereof to the City in accordance with the requirements of **Section 8.6**.

8.5 **Commercial Subtenant Insurance.** If at any time there are Subtenants occupying all or any portion of the Premises for commercial uses (each a "**Commercial Subtenant**"), then Tenant shall require each such Commercial Subtenant to maintain and provide evidence of insurance coverages in types and amounts required from time to time by reasonably prudent owners of properties similar to the Premises in the Portsmouth metropolitan area, with coverages to be in full force and effect for the term of the respective Subtenants' occupancy. Further, it will be the responsibility of Tenant to maintain a file of the Commercial Subtenants' certificates of insurance and ascertain that it is current. The City reserves the right to review Tenant's Commercial Subtenant insurance file at any time during Tenant's normal business hours upon reasonable prior notice to Tenant; provided that the City shall not review such file more than once in any 12 month period except during the continuation of an Event of Default.

8.6 **Insurance Carriers, Policies.** All insurance required to be carried by Tenant in this Article 8 shall be effected under valid and enforceable policies, issued by insurers of recognized responsibility licensed and doing business in New Hampshire and having a so-called Best's Rating of "A:VIII" or better, or, if such rating is no longer issued, an equal or better rating by a successor insurance carrier rating service reasonably acceptable to the City and shall name the City as an Additional Insured. To the extent commercially available in accordance with industry standards, the commercial general liability policy shall be endorsed specifically to recognize and insure the indemnification provision appearing in **Section 8.12** of this Lease. Such policies shall be primary over and above any policies held by the City. Upon the execution of this Lease, and thereafter at least annually and not less than thirty (30) days prior to the expiration dates from time to time of the policies required pursuant to this **Article 8**, certificates of such insurance or, upon request of the City, duplicate originals of the policies, in either case bearing notations evidencing the payment of premiums or accompanied by other evidence reasonably satisfactory to the City of such payment shall be delivered by Tenant to the City.

Nothing in this **Article 8** shall prevent Tenant from taking out insurance of the kind and in the amounts provided for under this Article under a blanket insurance policy or policies covering other properties as well as the Premises; *provided, however*, that any such policy or policies of blanket insurance (i) shall specify therein, or in a written statement from the insurers under such policy or policies specifying, the amount of the total insurance allocated to the Premises, which amounts shall not be less than the amounts required by **Sections 8.1, 8.2, 8.3** and **8.4** hereof, and (ii) such amounts so specified shall be sufficient to prevent any of the insureds from becoming a co-insurer within the

terms of the applicable policy or policies; *and provided further*, that any such policy or policies of blanket insurance shall, as to the Premises, otherwise comply as to endorsements and coverage with the provisions of this **Article 8**.

8.7 **No Separate Insurance.** Neither the City nor Tenant shall take out separate insurance concurrent in form or contributing in the event of loss with that required in this **Article 8.7** to be furnished by, or which may reasonably be required to be furnished by, Tenant unless the City, Tenant and, if and to the extent required by any Permitted Leasehold Mortgage, the Permitted Leasehold Mortgagee under such mortgage, are included therein as the insureds, with loss payable as in this Lease provided. Each Party shall immediately notify the other of the placing of any such separate insurance and shall cause the same to be delivered as required in **Section 8.6**.

8.8 **Adjustment.** All policies of insurance provided for in **Section 8.1** hereof shall name the City, Tenant and any applicable Permitted Leasehold Mortgagee as the insureds as their respective interests may appear and shall further provide that any loss payable to a Permitted Leasehold Mortgagee or the City shall be payable notwithstanding any act or omission of Tenant which might otherwise invalidate such policy. The loss, if any, under such policies shall be adjusted as follows: In case of any particular casualty resulting in damage or destruction not exceeding \$500,000.00 in the aggregate, adjusted for inflation by any increase in the Index, the loss under such policies shall be adjusted with the insurance companies by Tenant and any applicable Permitted Leasehold Mortgagee, and shall be payable to Tenant and such Permitted Leasehold Mortgagee. In the case of such damage or destruction in excess of \$2,000,000.00 in the aggregate, adjusted for inflation by any increase in the Index (the "**Threshold Amount**"), the loss shall be adjusted with the insurance companies by the City and Tenant and any applicable Permitted Leasehold Mortgagee, and the proceeds of any such insurance, as so adjusted, shall be payable to the Insurance Trustee acting hereunder pursuant to the provisions of **Section 11.2** hereof.

All such policies shall provide that the loss; if any, thereunder shall be adjusted and paid as hereinabove provided. Each such policy shall, to the extent obtainable, contain a provision that no act or omission of Tenant or any sublessee, guest, licensee, operator, or other occupant shall affect or limit the obligation of the insurance company so to pay the amount of any loss sustained.

8.9 **Non-cancellation.** Each policy or certificate issued by an insurer shall, to the extent obtainable and consistent with applicable law, contain an agreement by the insurer that such policy shall not be canceled, non-renewed or substantially modified without at least thirty (30) days' prior written notice to the City and to any mortgagee named therein, except in the case of any non-payment of premium, in which event the insurer shall give at least ten (10) days' prior written notice.

8.10 **Insurance Trustee.** The following provisions shall apply from and after the time that there shall be (i) any insured damage in excess of \$2,000,000.00 to the Premises, adjusted for inflation by any increase in the Index, or (ii) a Taking (other than either a Taking in response to which this Lease is terminated in accordance with **Article 12** or a deemed temporary Taking in the event of a reduction of the Term as set forth in **Section 3.2**) of all or a portion thereof:

(a) A bank or trust company which is among the three largest in terms of its net assets among those bank and trust companies with an office in the City of Portsmouth, and having net assets in excess of One Hundred Million Dollars (\$100,000,000.00), designated by Tenant (subject to

the City's reasonable approval), shall act as trustee (the "**Insurance Trustee**") to receive and disburse insurance proceeds and taking awards in accordance with **Article 11** and **Article 12** hereof, and the City and Tenant shall enter into an agreement with said bank or trust company appropriately covering assumption of the duties of the Insurance Trustee hereunder and containing such provisions as may be reasonably required by said bank or trust company, provided that the City shall not be required thereby to assume any obligations or liabilities other than as provided in this Lease. The foregoing notwithstanding, the First Permitted Leasehold Mortgagee may at its written request be designated Insurance Trustee provided that such First Permitted Leasehold Mortgagee (i) shall have consented, for the purpose of performing its duties as Insurance Trustee, to the jurisdiction of the courts of the State of New Hampshire; and (iii) shall have otherwise agreed to be subject to and to comply with the terms and conditions of this **Section 8.10**.

(b) In the event of the refusal to act or the resignation of said bank, trust company, or First Permitted Leasehold Mortgagee, or of any successor or substituted bank, trust company, or First Permitted Leasehold Mortgagee designated to act or acting as Insurance Trustee hereunder, then, in lieu of such bank, trust company, or First Permitted Leasehold Mortgagee, Tenant shall have the right (subject to the City's reasonable approval) to designate any other bank or trust company which satisfies the requirements of subparagraph (a) above to act as Insurance Trustee.

(c) Each such designation or substitution of any such entity to act as Insurance Trustee hereunder shall be effected by Tenant and any applicable Permitted Leasehold Mortgagee giving to the City written notice of such designation or substitution, as the case may be, and as soon thereafter as may be practicable after the giving of such notice (i) the City and Tenant shall enter into an agreement with the entity so designated or so being substituted appropriately covering the assumption by it of the duties of the Insurance Trustee hereunder and containing such provisions as may reasonably be required by such entity, provided that the City is not required thereby to assume any obligations or liabilities other than as provided in this Lease, and (ii) the entity which shall have resigned as Insurance Trustee or for which another entity shall have been so substituted as Insurance Trustee shall turn over to the new Insurance Trustee all insurance proceeds or taking awards remaining on hand with it.

(d) The fees and charges of every entity acting as Insurance Trustee hereunder shall constitute an expense of maintenance and disposition of the proceeds deposited with such Insurance Trustee and shall be paid periodically from such proceeds in such manner as may be agreed upon by the City, Tenant, any applicable Permitted Leasehold Mortgagee and such Insurance Trustee.

(e) Anything contained in this Section to the contrary notwithstanding, any agreement which the City and Tenant shall enter into with any entity acting as Insurance Trustee hereunder shall include as a party thereto any applicable Permitted Leasehold Mortgagee, in its capacity as such, when requested by either party or such Permitted Leasehold Mortgagee, provided that the applicable mortgage shall provide, or the holder thereof shall agree in writing, that all proceeds are to be applied in the same manner as provided in this Lease as affected by any Recognition Agreement entered into between the City and First Permitted Leasehold Mortgagee.

8.11 Waiver of Subrogation. If, and only if, permitted by the policies of insurance relating to the Premises maintained by the City and Tenant, the City and Tenant hereby each waive all rights of recovery against the other or against the officers, employees, agents and representatives of the other,

on account of loss or damage occasioned to such waiving Party or its property or the property of others under its control to the extent that such loss or damage is insured against under any insurance policies which either may have in force at the time of such loss or damage. Each Party shall, upon obtaining policies of insurance relating to the Premises, or portions thereof, which permit the aforesaid waiver, give notice to the insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Lease, and each Party shall endeavor to cause each such insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against either the City or Tenant in connection with any damage covered by any such policy, at the sole cost of the Party for whose benefit such waiver is sought.

8.12 Indemnification. Tenant shall indemnify and save the City harmless against and from all liabilities, obligations, damages, penalties, claims, costs, charges and expenses, including reasonable architects', attorneys' and other consultants' fees, which may be imposed upon or incurred by or asserted against the City by reason of any of the following occurrences during the Term of this Lease:

(a) any work done in or on the Premises or any part thereof, any use, non-use, possession, occupation, condition, operation, maintenance or management of the Premises or any part thereof, any accident, injury or damage to any person or property occurring in, on or about the Premises or any part thereof, including any sidewalk or curb appurtenant to the Premises, except to the extent resulting from the (i) negligence or (ii) wrongful act or omission, of the City, its employees, contractors, agents, servants, or licensees;

(b) any negligence on the part of Tenant or any party for whom Tenant is legally liable or on the part of any Subtenant; and

(c) any failure on the part of Tenant to perform or comply with any of the covenants, agreements, terms, provisions, conditions or limitations contained in this Lease on its part to be performed or complied with.

In case any action or proceeding is brought against the City by reason of any claim arising out of any of the occurrences which Tenant is required, pursuant to the preceding paragraph, to indemnify and save the City harmless against and from, the City shall give prompt notice thereof to Tenant and shall cooperate with Tenant in the defense thereof; and Tenant upon written notice from the City shall at Tenant's expense defend such action or proceeding using legal counsel selected by Tenant in its reasonable business judgment.

The foregoing express obligation of indemnification shall not be construed to negate or abridge any other obligation of indemnification running to the City which would exist at common law or under any other provision of this Lease, and the extent of the obligation of indemnification shall not be limited (subject to **Section 8.11**) by any provision of insurance undertaken in accordance with this **Article 8**. The provisions of this **Section 8.12** shall survive termination or expiration of this Lease.

8.13 The City's Insurance. Tenant acknowledges that the City is not required to procure or maintain insurance of any kind on or with respect to the Premises or the Tenant Improvements under this Lease.

ARTICLE 9
USE OF PREMISES

9.1 Use.

(a) Permitted Use. Subject to the restrictions and conditions stated in this Lease, Tenant shall develop the Premises into [DESCRIBE CONTEMPLATED USES]. The uses of the Premises allowed by the City shall include all uses permitted under applicable zoning laws and regulations that are consistent with the Approvals and the Historic Monument Program requirements (the "**Permitted Uses**"), and Tenant shall not use all or any portion of the Premises for any other use or uses without the City's prior written approval, not to be unreasonably withheld, conditioned or delayed.

(b) *Prohibited Uses.*

(i) Prohibited Uses. Tenant shall not use the Premises for any use other than the Permitted Uses without the prior written approval of the City. Without limiting the provisions of **Section 9.1**, in no event shall any portion of the Premises be used for the following (collectively, the "**Prohibited Uses**"):

- Any junkyard, open-air material processing/ recycling (except snow collected on-site) and open-air materials storage.
- any casino, sports or game betting facility or off-track betting club or other establishment which is primarily devoted to gambling activities;
- any adult entertainment purposes or for the sale, rental or display of so-called "adult" or pornographic materials;
- the sale or display of any firearm;
- any services involving potential fire hazards or the use of Hazardous Materials (other than ordinary cleaning supplies, ordinary office supplies and the like);
- any illegal use or purpose;
- any use which is a public nuisance; or
- any use that would make void or voidable any insurance then in force with respect to the Premises.

(ii) Standard of Use. Tenant's use of the Premises shall be consistent with the operation of a high quality mixed use residential, office and/or retail project in accordance with this Lease, including without limitation **Section 9.2** and

Tenant shall be bound by and comply with this Lease with respect to the entire Premises.

(iii) **Curative Actions.** Promptly following its discovery of any Prohibited Use, Tenant shall take all necessary steps, legal and equitable, to cause or compel discontinuance of such business or use, including, if necessary and warranted under the circumstances, the termination of any Sublease and the eviction of any such Subtenant in accordance with applicable law, and the removal from the Premises of any such Subtenants, subtenants, licensees, invitees or concessionaires.

9.2 Operation of the Premises.

(a) Tenant agrees to operate the Premises in a safe, orderly and clean manner. Tenant shall not conduct operations on or about the Premises in a manner that hinders police, fire fighting or other emergency personnel in the discharge of their duties; or would reasonably be expected to constitute a hazardous condition at the Premises. Tenant shall insert appropriate provisions in the Subleases to require compliance of the Subtenants with the requirements of this **Section 9.2**, and shall use reasonable efforts to enforce such requirements.

(b) Tenant shall use commercially reasonable efforts to enforce the terms and conditions of the Subleases in a commercially reasonable manner with regard to collection of all rent and other amounts due from Subtenants and performance of all obligations of the Subtenants under their respective Subleases.

(c) Tenant may delegate the marketing and leasing of the Building and the management of the Building to a professional management company which (i) is routinely engaged in the operation, marketing, leasing and management of similar properties, and (ii) has had substantial experience, for at least five (5) years prior to the date of the initial delegation by Tenant, in the marketing, leasing and management of commercial properties similar to the Property (a "**Permitted Property Manager**"). The engagement of a Permitted Property Manager shall not require the approval of the City. The City further acknowledges that to the extent that Tenant causes the Permitted Property Manager to perform any of Tenant's obligations or covenants under this Lease, such obligations or covenants shall be deemed to have been performed by Tenant. A Permitted Property Manager may be engaged by Tenant only under a written form of management or delegation agreement, including any amendments thereto, subject to reasonable review by the City (the "**Property Management Agreement**"), such review to be limited in order to confirm that the Permitted Property Manager and the terms of such Property Management Agreement comply with the requirements of this Lease and such Property Management Agreement specifically recognizes the acceptance by the Permitted Property Manager of the provisions of this Lease. The Property Management Agreement shall (i) be expressly subject and subordinate to the rights of the City hereunder; (ii) be subject to termination by the City in the event of the termination of this Lease; (iii) be on an arms-length basis with fees and other terms established on a commercially reasonable basis; and (iv) include provisions requiring the Permitted Property Manager to comply with the City's non-discrimination requirements as set forth in this Lease. Any terms, agreements, modifications or waivers of agreements purported to exist in breach of this subsection shall be void and unenforceable against any Person. The provisions of this subsection shall not apply to the direct operation and management of the Premises by Tenant

(without the involvement of a Permitted Property Manager).

9.3 No Waste. Tenant shall not injure, overload, deface or strip, or intentionally cause waste or damage to, the Premises or Tenant's Improvements constructed thereon or the underlying fee or any part thereof, nor commit any nuisance or unlawful conduct; nor permit any fireworks displays; nor make any use of the Premises or Tenant's Improvements which is illegal; nor permit or suffer any Subtenant, guest, licensee, operator, occupant, contractor, subcontractor, invitee or others to do any of the foregoing.

9.4 Legal Requirements. Throughout the Term of this Lease Tenant, at its expense, shall promptly comply with, and shall use commercially reasonable efforts to cause the Permitted Property Manager and all Subtenants, and their respective agents, contractors, subcontractors, servants, employees, licensees, operators, and invitees to promptly comply with, all present and future laws, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments, departments, commissions, boards and officers, foreseen or unforeseen, ordinary as well as extraordinary, which may be applicable to the Premises, Tenant's Improvements, or the development, construction, operation or maintenance thereof, or to the use or manner of use of the same or the owners, tenants, licensees, operators, or occupants thereof, including without limitation, all applicable accessibility laws, ordinances and rules, and non-discrimination and equal opportunity laws, regulations and executive orders whether or not such law, ordinance, rule, regulation or requirement is specifically applicable or related to the conduct of the Permitted Uses, or shall necessitate structural changes or improvements, or shall interfere with the use and enjoyment of the Premises by Tenant or any Subtenant, provided any such interference with any Subtenant or occupant of any portion of the Premises is in accordance with applicable law (collectively, the "**Legal Requirements**"). In the event of any violation or any attempted violation of this Section by Tenant, the Permitted Property Manager or any Subtenant, or any of their respective agents, contractors, subcontractors, servants, employees, licensees, operators, or invitees, Tenant shall take commercially reasonable steps, reasonably promptly upon knowledge of such violation, as Tenant determines to be reasonably necessary to remedy or prevent the same as the case may be. It is intended that, as between Tenant and the City, Tenant shall bear the sole risk of all present and future Legal Requirements affecting the Premises, Tenant's Improvements and the Permitted Uses, and the City shall not be liable for (nor suffer any abatement or reduction in any Rent on account of) the enactment or enforcement of any Legal Requirement.

9.5 Revenue-Producing Activities. All revenue-producing activities at or related to the Premises shall be included in calculating Income, Excess Income, Participating Rent and reasonable profit under this Lease.

9.6 Liens. Tenant shall not directly or indirectly create or permit to be created or to remain, and shall discharge or bond over, any lien or encumbrance with respect to, Tenant's Leasehold Interest in the Premises, Tenant's Improvements, the underlying fee or any part thereof or the Rent or any payment thereof, other than (a) this Lease and liens and encumbrances expressly permitted under the terms of this Lease, (b) Permitted Leasehold Mortgage(s) as provided in [????] **Section 14.1**, (c) liens for Impositions not yet payable, or being contested as permitted by **Section 6.3**, (d) the title exceptions listed on **Exhibit B**, (e) liens of mechanics, materialmen, suppliers or vendors, or rights thereto, placed on Tenant's Leasehold Interest (and not, under any circumstances, the City's fee estate) in the ordinary course of business or in the ordinary course of construction, alteration, addition, improvement, or

restoration of Tenant's Improvements or any part thereof, for sums which are being contested in accordance with the provisions of **Section 4.21** or **Section 9.7**, and (f) liens and encumbrances approved by the City, not to be unreasonably withheld, conditioned or delayed.

9.7 **Contests.** Tenant shall have the right, after ten (10) days' prior written notice to the City, to contest by appropriate legal proceedings diligently conducted in good faith, in the name of Tenant, without cost or expense to the City, the validity or application of any Legal Requirement referred to in **Section 9.6** hereof, subject to the following:

(a) If, by the terms of any such Legal Requirement, compliance therewith pending the prosecution of any such proceeding may legally be delayed without the incurrance of any lien, charge or liability of any kind against the Premises or any part thereof and without subjecting Tenant or the City to any liability, civil or criminal, for failure so to comply therewith, Tenant may delay compliance therewith until the final determination of such proceeding; and

(b) If any lien, charge or civil liability would be incurred by reason of any such delay, Tenant nevertheless may contest as aforesaid and delay as aforesaid, provided that such delay would not subject the City to criminal liability or fine, and provided that Tenant (i) furnishes to the City security, reasonably satisfactory to the City, against any loss or injury by reason of such contest or delay (the City agreeing that any security approved by the First Permitted Leasehold Mortgagee shall be deemed approved by the City), and (ii) prosecutes the contest with due diligence; and

(c) The City, without cost to it, shall execute and deliver any appropriate papers which may be necessary to obtain or maintain any such proceeding and shall further cooperate with and support Tenant in any such contest (including without limitation in appearances before government bodies), as Tenant may from time to time reasonably request, provided that the City shall not be required to join in or become a party, nominal or otherwise, to any proceeding in which it will oppose the City of Portsmouth or the State of New Hampshire or the United States of America, any agency, City, branch, commission, division, office or subdivision of or for the City of Portsmouth or the State of New Hampshire or the United States of America, nor shall the City be required in connection with any such proceeding or otherwise to oppose in any way any policy previously established by the City nor to take a position inconsistent with a position previously taken and made public by the City.

9.8 **Compliance with Insurance Requirements.** Throughout the Term of this Lease, Tenant, at its sole expense, shall observe and comply with the requirements of all policies of public liability, casualty and all other policies of insurance required to be supplied by Tenant at any time in force with respect to the Premises, and Tenant shall, without limiting any other requirements of this Lease, in the event of any violation or any attempted violation of the provisions of this Section by any Subtenant, or by any contractor, subcontractor, agent, servant, employee, licensee, operator or guest of Tenant or any Subtenant, take all reasonable steps, reasonably promptly upon knowledge of such violation or attempted violation, to remedy or prevent the same as the case may be.

9.9 **Historic Monument Requirements.** Throughout the term of this Lease, Tenant, at its sole cost and expense, shall observe and comply with all applicable Historic Monument Requirements, the terms and conditions of the approved application and all Preservation Covenants.

9.10 **Public Use and Amenities.** [TO BE DISCUSSED]

ARTICLE 10
ENVIRONMENTAL MATTERS

10.1 Tenant's Initial Obligations. Prior to the Effective Date, Tenant shall perform an environmental inspection of the existing baseline environmental conditions at each building on the Premises, including at a minimum a Phase I Environmental Site Assessment, and shall submit a detailed report to the City setting forth the findings thereof.

10.2 Compliance with Environmental Laws.

(a) Hazardous Materials Remedial Work: Premises. Subject to Tenant's right to pursue claims against any and all potentially responsible parties, Tenant shall be solely responsible (at its cost and expense) for performing all Remedial Work required by applicable Environmental Laws with respect to any reportable concentrations of Hazardous Materials in violation of applicable Environmental Laws that are identified or discovered on the Premises at any time (including, without limitation, prior to or during demolition or construction of Tenant's Improvements or any Alteration), regardless of whether such Hazardous Materials were first released upon or otherwise first became present upon or beneath the surface of the Premises or in any of the existing improvements located thereon before or after the Effective Date, except to the extent caused by the acts or omissions of the City, its employees or agents.

(b) Manner of Remediation. All Remedial Work required to be performed by Tenant hereunder shall be performed in a manner which is approved in advance by the City, which approval shall not be unreasonably withheld, conditioned, or delayed, is consistent with the City's soils management plan and in accordance with all applicable Environmental Laws, and may include reuse of excavated soils on site and (subject to the prior written approval of the City, which approval shall not be unreasonably withheld, conditioned, or delayed) the placement of appropriate so-called activity and use limitations on the Premises.

(c) Compliance by Tenant. Tenant shall, and shall use commercially reasonable efforts to cause all Subtenants and their respective agents, contractors, subcontractors, servants, employees, guests, licensees, operators, and invitees to, comply with all applicable Environmental Laws with respect to any release of Hazardous Materials caused by them or relating to the Premises on or after the Effective Date of this Lease.

10.3 Environmental Covenants, Representations and Warranties. Tenant hereby covenants with, and represents and warrants to, the City as follows, from and after the Effective Date:

(a) Except to the extent it may be permitted by or arise out of a Permitted Use under **Section 9.1** of this Lease and as may be permitted by and only in compliance with all applicable Environmental Laws, Tenant and all Subtenants shall not allow any Hazardous Materials to exist or be stored, located, discharged, possessed, managed, processed, or otherwise handled on the Premises, and shall strictly comply with all Environmental Laws affecting the Premises, including without limitation those laws regarding the generation, storage, disposal, release and discharge of Hazardous Materials. Without limiting the generality of the foregoing, Tenant and Subtenants have not been and shall not

become involved in operations at the Premises involving Hazardous Materials, except for Remedial Work required or allowed by this Lease and as expressly permitted by and only in compliance with all applicable Environmental Laws. Tenant expressly warrants, represents and covenants that Tenant and all Subtenants shall strictly comply with the requirements of all Environmental Laws affecting the Premises and shall promptly notify the City after obtaining knowledge of any release or threat of release of Hazardous Materials at, upon, under or within the Premises.

(b) No activity on the Premises shall be undertaken by or allowed by Tenant which would cause (i) the Premises to be considered a hazardous waste treatment, storage or disposal facility as defined under any Environmental Laws, (ii) a release or threat of release of Hazardous Materials at, on, under or from the Premises in violation of applicable Environmental Laws, including without limitation into any watercourse, surface or subsurface water or wetlands, or (iii) the discharge into the environment of any Hazardous Materials in violation of applicable Environmental Laws.

(c) Tenant shall promptly notify the City in writing after obtaining knowledge of (i) any release or threat of release of Hazardous Materials in violation of Environmental Laws or the occurrence of any other environmental problem or liability with respect to the Premises which could subject Tenant or the Premises to a claim under any Environmental Laws or to any restriction in ownership, occupancy, transferability or use of the Premises under any Environmental Laws, (ii) any lien filed, action taken or notice given of the nature described below in this **Section 10.3 or Section 10.4**, below, (iii) any notice given to Tenant from any Subtenant or other occupant of the Premises or any notice from any Governmental Agency with respect to any release or threat of release of Hazardous Materials, or (iv) the commencement of any litigation or any threat of litigation relating to any alleged release or threat of release of any Hazardous Materials or other environmental contamination, liability or problem with respect to or arising out of or in connection with the Premises.

(d) Tenant shall, with all due diligence, and at its sole cost and expense (except as otherwise expressly set forth herein), take all actions and perform all Remedial Work (to the extent and at the time or from time to time) as shall be necessary or appropriate for the remediation of all releases of Hazardous Materials at or from the Premises in violation of applicable Environmental Laws, including the removal, containment and remedial actions in accordance with this **Article 10** and all applicable Environmental Laws (and in all events in a manner reasonably satisfactory to the City), and shall further pay or cause to be paid at no expense to the City all clean up, administrative and enforcement costs of applicable government agencies, or the parties protected by such Environmental Laws, which may be asserted against the Premises, except to the extent arising from the City's acts or omissions occurring after the Effective Date. All costs, including without limitation, those costs set forth above, damages, liabilities, losses, claims, expenses (including reasonable attorneys' fees and disbursements) which are incurred by the City in connection with any of Tenant's obligations or warranties and representations, without the requirement that the City wait for the ultimate outcome of any litigation, claim or proceeding, shall be paid as Additional Rent, by Tenant to the City, within thirty (30) days after notice to Tenant from the City itemizing the amounts incurred, with interest on the unpaid amount at the rate of one and one-half percent (1½%) per month or the highest rate permitted by law, whichever is less, from the thirty-first (31st) day after the effective date of such notice to the date of a payment to the City.

(e) Tenant shall observe, obey, and shall cause all Subtenants and the agents, contractors, subcontractors, servants, employees, guests, licensees, operators and invitees of Tenant or

any Subtenant, to observe and obey, all Environmental Laws.

(f) In the event that at any time Tenant becomes aware that notification to any Governmental Agency of a condition at, on or under the Premises is required by any applicable Environmental Law, Tenant shall promptly notify the City. All such notifications to a Governmental Agency shall be prepared by and given by Tenant's Licensed Site Professional and shall be subject to review and comment by the City prior to the giving of such notification to the Governmental Agency (except in situations in which any applicable Environmental Law requires such notification to be given within three (3) or fewer Business Days after the discovery of a condition or the occurrence of an event, in which case Tenant's Licensed Site Professional shall make such notification and shall provide a copy thereof to the City simultaneously with giving such notification to the Governmental Agency). If the City fails to respond to any such request for review and comment within ten (10) business days, that the City shall be deemed to have given its approval therefor.

10.4 Environmental Notices. Tenant shall provide the City with copies of any notices of releases of Hazardous Materials or other filings by or on behalf of Tenant or, to the knowledge of Tenant, any Subtenants to any federal, state or local agencies or authorities with respect to the Premises. Such copies shall be sent to the City concurrently with their being mailed or delivered to the governmental agencies or authorities. Tenant also shall provide the City with copies of any notices of responsibility or any other notices received by or on behalf of Tenant or, to the knowledge of Tenant, any Subtenants from any such agencies or authorities concerning any non-compliance with Environmental Laws on or about the Premises, including but not limited to notices regarding Hazardous Materials located on or about the Premises.

10.5 Environmental Indemnity. Tenant shall unconditionally, irrevocably and absolutely indemnify, defend with counsel reasonably acceptable to the City, and save harmless the City for, from and against any and all damages, losses, liabilities, obligations, claims, litigation, demands, defenses, judgments, suits proceedings, fines, penalties, costs, disbursements and expenses (including without limitation, penalties and fines within the meaning of any Environmental Law), of any kind or nature whatsoever, which may at any time be imposed upon, incurred by, or asserted or awarded against the City and arising from any violation or alleged violation of Environmental Laws, environmental problem or other environmental matter described in this **Article 10** at the Premises in violation of Tenant's obligations under this Lease, including, without limitation, matters arising out of any breach of Tenant's covenants, representations and warranties contained in this **Article 10**. The City shall not assume any liability or obligation for loss, damage, fines, penalties, claims or duty to clean up or dispose of Hazardous Materials, or other wastes or materials on or relating to the Premises regardless of any inspections or other actions made or taken by the City on the Premises or otherwise. Notwithstanding the foregoing, the indemnity obligation of Tenant shall not apply to any damages, obligations, liability, loss, claim, or expenses caused solely by the negligence or willful misconduct of the City, its employees or agents or any act or omission of the City, its employees or agents occurring after the Effective Date. All warranties, representations and obligations set forth in **Section 10.2** and **Section 10.3** herein shall be deemed to be continuing and shall survive the expiration or termination of this Lease, to the extent they relate to the period prior to such expiration or termination of this Lease, for a period of twenty-four (24) months. Tenant shall give the City prompt written notice of any claims threatened or made or suit instituted against it which could result in a claim of indemnification hereunder. In no event shall Tenant be liable under this Article 10 for loss of business, lost profits, or any indirect, incidental, special, consequential or exemplary damages. The indemnity obligations of

Tenant under this **Section 10.5** shall be separately indemnified by the Indemnitor, for the benefit of the City, pursuant to the Environmental Indemnification Agreement attached hereto as **Exhibit K**.

10.6 The City's Right to Inspect. To the extent required by any Governmental Agency or by any applicable Environmental Laws, or to the extent Tenant is not complying with the terms and conditions of this **Article 10**, after the applicable notice and opportunity to cure, or to the extent the City seeks for good cause to ensure that Tenant is in compliance with this **Article 10**, the City and its officers, employees, contractors or agents shall have the right, but not the duty or obligation, to enter upon the Premises from time to time upon the provision of reasonable prior advance notice to Tenant for the purposes of inspections, investigations, remediation if required by applicable Environmental Law and all other actions required in order to comply with applicable Environmental Laws and the terms and conditions of this **Article 10**, provided that the City shall use diligent efforts to avoid materially disturbing Tenants or Subtenants. The City shall not be liable to Tenant in any manner for any expense, loss or damage occurring by reason of the aforesaid entries, unless the same is caused by the City's negligence or willful misconduct, nor shall the exercise of any such right be deemed an eviction or disturbance of Tenant's use or possession. The provisions of this **Article 10** shall survive the termination or earlier expiration of this Lease.

ARTICLE 11

DAMAGE OR DESTRUCTION

11.1 Casualty: Restoration Required.

(a) In case of a Casualty that exceeds the Threshold Amount, Tenant shall promptly give written notice thereof to the City, and Tenant shall, at Tenant's sole cost and expense, promptly take all necessary action to secure the Premises against unauthorized entry and shall, subject to the availability to Tenant of insurance proceeds, continue such actions until the completion of restoration and rebuilding of Tenant's Improvements or the completion of the obligation to demolish and make safe as set forth below and the earlier termination of this Lease. Except as otherwise expressly provided in Section 11.1(b) below, Tenant shall, at its sole cost and expense, and without regard to the coverage, amount or availability of proceeds of any insurance, restore, repair, replace, rebuild or alter the same as nearly as possible to its condition immediately prior to such Casualty, all in conformity with and subject to the construction conditions of **Article 4** hereof and the requirements of the National Historic Monument Program. Such restorations, repairs, replacements, rebuildings or alterations shall be commenced as soon as practicable following the occurrence of such Casualty and shall thereafter be prosecuted continuously to completion with diligence.

(b) Notwithstanding the foregoing, in the case of a Casualty occurring during the last thirty (30) years of the Term which either (i) destroys twenty percent (20%) or more of the floor area of the Building then situated on the Premises, or (ii) if at the time of the occurrence of a Casualty, all of the Permitted Uses are prohibited by applicable law, rule, regulation, code or ordinance then in effect and cannot be continued at the Premises after the restoration or rebuilding thereof through either (A) the application of any so-called "grandfathering" or non-conformity provisions of such law, rule, regulation, code or ordinance (as demonstrated by an opinion of counsel reasonably acceptable to the Authority), or (B) by means of a variance or waiver of such law, rule, regulation, code or ordinance obtained by Tenant, then Tenant may terminate this Lease by written notice given to the City within

one hundred and eight (180) days after the Casualty. No such notice of termination shall be effective to terminate this Lease until Tenant, as directed by the City, either (x) secures the remaining portion of the Improvements and the Premises against damage by the elements and unauthorized entry, or (y) demolishes all remaining portions of the Improvements, removes and properly disposes of all debris associated therewith, and restores the surface of the Land to a safe condition free of debris (“**Demolish And/Or Make Safe**”). No such termination shall release Tenant from any obligation hereunder for the Rent and Additional Rent accrued or payable during any period prior to the effective date of such termination. All insurance proceeds payable in connection with a Casualty with respect to which Tenant has terminated this Lease in accordance with the provisions of this Section 12.1 shall be the sole property of Tenant.

11.2 Restoration Procedures. In the event of a Casualty, the Parties shall cooperate to recover the proceeds of insurance in accordance with the provisions of **Section 8.8** above. All insurance money paid on account of a Casualty, whether paid to Tenant or to a Permitted Leasehold Mortgagee or to the Insurance Trustee in accordance with the provisions of **Section 8.8** above, less the reasonable cost, if any, incurred in connection with adjustment of the loss and the collection thereof, shall be applied to (x) if and to the extent directed by the Permitted Leasehold Mortgagees to the repayment of their respective Approved Debt pursuant to the terms of their loan documents, or, to the extent not so applied, (y) to the payment of the cost of the aforesaid restoration, repairs, replacement, rebuilding or alterations, including the cost of temporary repairs for the protection of property pending the completion of permanent restoration, repairs, replacements, rebuilding or alterations (all of which temporary repairs, protection of property and permanent restoration, repairs, replacement, rebuilding or alterations are hereinafter collectively referred to as the "restoration"). With respect to insurance proceeds payable to the Insurance Trustee pursuant to **Section 8.10** above, the Insurance Trustee shall, subject to the terms and conditions of the Permitted Leasehold Mortgage loan documents (including without limitation the right of the Permitted Leasehold Mortgagee to receive and apply such proceeds in reduction of the outstanding principal balance of the Approved Debt), pay the same to Tenant, or at the direction of Tenant, from time to time, as such restoration progresses, upon compliance by Tenant with all conditions precedent to disbursement which are usual in construction loan agreements of major national banks for construction of the size and complexity of the restoration. If the Insurance Trustee is customarily engaged in the business of construction lending, its regular conditions precedent to disbursement of the proceeds of such loans shall be presumed to be reasonable, absent a showing by the City or Tenant that such conditions are not generally consistent with the lending requirements then customarily employed by major Portsmouth banks in similar loans. There shall be withheld from payments on account of work completed and materials furnished such amounts as are then customarily being withheld by major Portsmouth banks in connection with construction of the size and complexity of the restoration. If the insurance proceeds with respect to such Casualty are not more than the Threshold Amount, such proceeds shall be paid to Tenant and shall be used by Tenant for restoration purposes. All payments shall be received by Tenant for the purposes of paying the cost of such restoration upon receipt by the Insurance Trustee of the written request of Tenant accompanied by suitable documentation including the following:

(a) Satisfactory evidence that the insurance proceeds remaining to be disbursed are sufficient to pay all anticipated costs of completing the restoration (which shall be determined by the First Permitted Leasehold Mortgagee, if any). (If at any time prior to or during the course of restoration the insurance proceeds remaining to be disbursed are not sufficient to pay the entire cost of completing the restoration, Tenant shall pay the deficiency to the Insurance Trustee before requesting the

disbursement of additional proceeds from the Insurance Trustee);

(b) Bills from contractors and subcontractors for work and materials in place, describing in reasonable detail such work and materials, and bills for the reasonable fees of any attorney, architect or engineer for services relating to the restoration;

(c) A certificate signed by Tenant stating that the amount of each such bill does not exceed the cost of such work, materials, or services described on such bill, and that no part of such cost has previously been made the basis of the withdrawal of insurance proceeds;

(d) A certificate of the architect or engineer in charge of the restoration, or of a third party not in the regular employ of any of the Parties hereto, which architect, engineer or third party is reasonably satisfactory to the City and the Insurance Trustee, stating that (i) the work, materials or services described in the bills were necessary or appropriate and are in place or have been performed, (ii) the amount specified in the bills does not exceed the reasonable cost of such work, materials, or services, (iii) the work or materials described in each bill, to the knowledge of such architect, engineer or third party, has been supplied by the contractor or subcontractor submitting such bill or by a person who has supplied materials to such contractor or subcontractor, and (iv) to the knowledge of such architect, engineer or third party, the additional amount, if any, required to complete the restoration;

(e) A title search by a title company or licensed abstractor or other evidence satisfactory to the Insurance Trustee that there has not been filed with respect to Tenant's Improvements or the Premises any mechanic's or other lien or instrument for the retention of title with respect to any part of the work performed which has not been discharged of record, except liens which will be discharged by payment of the amount then requested or liens with respect to which Tenant has furnished the City with a satisfactory bond, or such other security as may be provided for herein; and

(f) For any payment after the restoration has been substantially completed, a copy of any certificate required by law to render occupancy and use of Tenant's Improvements legal.

Prior to any disbursement of insurance proceeds or the Award, Tenant shall have delivered and the City (and, to the extent required by applicable regulations, the National Parks Service) shall have (x) approved the Final Restoration Plans (which plans shall be prepared, reviewed and approved in the manner provided in **Section 4.8** above with respect to the Final Plans and Specifications), and (y) received copies of all Approvals necessary for the entire restoration as set forth in the Final Restoration Plans.

If this Lease is terminated by the City by reason of Tenant's failure to repair or restore as provided in this Lease continuing beyond all applicable grace, notice and cure periods, any remaining insurance proceeds (together with all interest earned thereon) at the time held by such Insurance Trustee shall be paid to the City, subject, however, to the rights of a First Permitted Leasehold Mortgagee that elects to enter into a new lease in accordance with **Section 14.2(e)**. In the event Tenant completes the restoration pursuant to the terms and conditions of this **Article 11**, then provided that (1) Tenant has complied with the terms and provisions of **Article 8** hereof, (2) there is no current default under this Lease, and (3) Tenant has submitted to the Insurance Trustee satisfactory evidence that the restoration has been paid for in full and that there are no liens of the character referred to above, any remaining insurance proceeds held by such Insurance Trustee shall be disbursed to Tenant.

11.3 No Surrender or Abatement. No destruction of or damage to the Premises or Tenant's Improvements or any part thereof, nor any damage to any equipment or other property installed or used in, on or about Tenant's Improvements, by fire or any other Casualty, whether or not insured, shall permit Tenant to surrender this Lease or shall relieve Tenant from its liability to pay the full Rent and other charges payable under this Lease or from any of its other obligations under this Lease, and Tenant waives any rights now or hereafter conferred upon it by statute or otherwise to quit or surrender this Lease or the Premises, or any part thereof, or to any suspension, diminution, abatement or reduction of Base Rent, Participating Rent, Additional Rent, or other charges payable under this Lease on account of any such destruction or damage.

11.4 Insufficiency of Insurance Proceeds. If Tenant is required to restore Tenant's Improvements upon the occurrence of a Casualty as provided in this Lease and the insurance proceeds received on account of such Casualty are not sufficient to pay the entire cost of such restoration as reasonably estimated by the City, Tenant shall supply the amount of any such deficiency and shall first apply the same to the payment of the cost of such restoration before calling upon the Insurance Trustee for the disbursement of the insurance proceeds held by the Insurance Trustee.

11.5 Failure to Commence Repairs. If Tenant shall not have Demolished and/or Made Safe to the City's satisfaction within one hundred eighty (180) days of the date of such Casualty, or if Tenant is required to restore Tenant's Improvements under **Section 11.1** hereof and (a) has not commenced reasonably diligent efforts to obtain all necessary permits to restore Tenant's Improvements as provided herein, or (b) if after such permits have been obtained, Tenant has not commenced the performance of such restoration within eighteen (18) months of the date of such Casualty or such longer period as may be required for settlement of insurance claims and construction, or (c) if Tenant thereafter fails to prosecute the restoration of Tenant's Improvements in accordance with the Final Restoration Plans expeditiously and continuously, in each case subject to delays due to Force Majeure or the acts or omissions of the City, the City may, subject to the rights of Permitted Leasehold Mortgagees, terminate this Lease in accordance with Section ___ by written notice given to Tenant.

ARTICLE 12

TAKING

12.1 Award. With respect to any exercise of the power of eminent domain or any agreement in lieu of condemnation (hereinafter referred to in this **Article 12** as a "**Taking**") between the City, the Tenant and those authorized or purporting to be authorized to exercise the power of eminent domain, for a conveyance of the Premises to a condemning City (such conveyance being hereafter in this **Article 12** referred to as "**conveyed**" or as a "**conveyance**"), the Tenant and the Leasehold Mortgagee, in cooperation with the City, shall have the right to participate in negotiations or any Taking leading to an Award (as hereinafter defined) to protect their respective interests hereunder. The total Net Award made or the consideration paid or payable pursuant to such Taking (hereinafter collectively or separately referred to as the "**Award**"), shall be paid by whomever received to the Insurance Trustee, which shall apply the same as herein provided. The term "**Net Award**" shall mean the total Award, less all costs, expenses and attorneys' fees incurred in the collection thereof.

12.2 Termination. If, during the Term of this Lease, all or substantially all of the Premises shall be taken as a result of a Taking, this Lease and all right, title and interest of the Tenant hereunder

shall terminate and come to an end on the date title shall vest in the condemning authority pursuant to such Taking, but shall not terminate as to the Award. For purposes of this **Article 12, "substantially all of the Premises"** shall be deemed to have been taken if the untaken part of the Premises shall be insufficient for the restoration of the Premises so as to allow the economic and feasible operation thereof by Tenant as reasonably determined by the City. In that event, the Rent, Additional Rent, Impositions and all other charges herein provided to be paid by Tenant shall be apportioned to the date title shall vest in the condemning authority pursuant to such Taking and any amounts prepaid by Tenant in excess of its liability based on such apportionment shall be refunded by the City to Tenant. As to any such taking, the Net Award shall be distributed as follows:

(a) The following values shall be determined as of the date title is vested in the condemning Governmental Agency pursuant to such Taking by agreement of the parties or, failing such agreement, by appraisal in the manner set forth in **Section 12.2(c)** hereof:

(i) The value of the City's interest in the Premises. This shall be the then fair market value of the Premises as encumbered by this Lease plus the residual value of the Improvements, all determined as if no Taking had occurred (the **"City's Interest"**); and

(ii) The value of Tenant's interest in the Property. This shall be the then fair market value of the Improvements, recognizing that the residual value of the Improvements belongs to the City at the expiration of the Term of this Lease, plus the value of the Tenant's leasehold interest under this Lease, taking into account the amounts to be paid and other obligations to be performed by Tenant under this Lease, all determined as if no Taking had occurred (the **"Tenant's Interest"**).

(b) After making the determinations described in subparagraph (a), above, the Net Award shall be applied as follows:

(i) First, to the holders of the First Permitted Leasehold Mortgages for the account of Tenant, and as a charge against the Net Award, an amount equal to the outstanding indebtedness secured by the Permitted Leasehold Mortgages;

(ii) Second, to the City as a charge against the Net Award, an amount equal to the present value (determined by using a discount rate equal to the base rate (or its reasonable equivalent) determined by Bank of America, N.A., from time to time, but in no event more than the amount, if any, that would violate applicable usury prohibitions), as of the date title is vested in the condemning authority, of the Base Rent until the Lease Expiration Date.

(iii) Third, to the Tenant as charge against the Net Award, an amount equal to Tenant's Interest determined under Section 12.2(a)(ii) above.

(iv) Fourth, to the City as charge against the Net Award, an amount equal to City's Interest determined under Section 12.2(a)(i) above, provided that if the amount of the Net Award after payments under clause (i) and (ii) above are insufficient

to pay the amounts to be paid under clause (iii) above and this clause (iv), then to the City and the Tenant in the same proportion as the amount of Tenant's Interest and City's Interest each bear to the Net Award.

(v) The balance, if any, shall be paid to the City and Tenant in the same proportion the Landlord's Interest and the Tenant's Interest bear to the Net Award.

(vi) The City shall also receive any separate award made by the Taking authority for consequential damages to the City and diminution in value of the portion of the Land which is not taken, and Tenant shall receive any separate award made by the Taking authority for Tenant's relocation.

(c) If the City and the Tenant are unable to agree on the values to be determined under **Section 12.2(a)**, above, the values shall be set by an independent panel of three (3) appraisers, each of whom shall be a qualified, independent professional licensed as an appraiser in the State of New Hampshire having at least ten (10) years ownership, management or consulting experience in real estate transactions involving leasehold interests and comparable sales in similar multifamily residential and mixed use properties in the Greater Portsmouth metropolitan area, and shall be a "Member, Appraisal Institute" or "Society of Real Estate Appraisers" appraiser (or an appraiser certified by any successor entity to any such organization), of whom one is to be selected by the City, one is to be selected by the Tenant, and the third is to be selected by mutual agreement of the two first selected. Such appraisal shall be made at the request of either the City or Tenant, and shall be carried forward expeditiously once requested. In the event that the panel cannot agree upon a value, then the determination of the third appraiser shall be controlling. Each party shall pay its own appraiser's fees and costs and one-half (1/2) of the fees and costs of the third appraiser.

The provisions of **Sections 12.1 and 12.2** shall survive termination of this Lease under this **Section 12.2**.

12.3 Intentionally omitted.

12.4 Partial Taking.

(a) If, during the Term of this Lease, a portion of the Premises shall be taken or conveyed, this Lease shall terminate and come to an end as to the part of the Property which is taken, upon the date title is vested in the condemning authority as a result of such Taking, but shall not terminate as to the Award for the part of the Premises which is taken, and otherwise this Lease shall continue in full force and effect as to the remainder of the Premises, subject to the provisions of Section 12.4(b) hereof.

If there is a Taking of the type provided for in this **Section 12.4**, then, as to the part of the Premises not so taken, the Tenant covenants and agrees, for itself and its successors in interest, that the Tenant shall, at its sole cost and expense (subject to reimbursement to the extent hereinafter provided), promptly restore that portion of the Premises not so taken to a complete architectural unit for the use and occupancy of the Tenant (and those claiming under Tenant) as expressed in this Lease. The provisions and conditions in **Article 11** hereof applicable shall apply to the work required to be done under this **Section 12.4**. As to any such Taking, the Net Award shall be distributed as follows:

(i) First to the Tenant, to the extent of and as a first charge against the Net Award, an amount not exceeding the actual cost reasonably incurred by the Tenant of performing its obligations under this Lease imposed upon Tenant as the result of the Taking.

(ii) Second, to Permitted Leasehold Mortgagees to the extent required under their respective loan documents.

(ii) (iii) The balance of the Net Award, if any, shall be apportioned between the City and the Tenant in the same manner as the balance of a Net Award apportioned under **Subsection 12.2(b)(iv) and (v)**.

(b) In the event a Taking provided for in this Section 12.4 so diminishes or impairs the use of the Tenant's Improvements that, notwithstanding restoration, the Tenant would be unable to make economic use of the remainder thereof for the purposes permitted by this Lease, the Tenant, at its option exercisable by notice to the City given not later than one hundred and eighty (180) days after title is vested in the condemning authority pursuant to such Taking, may terminate this Lease as of such date. The Base Rent, Additional Rent, Impositions and/or other charges herein provided to be paid by the Tenant shall be apportioned to said date and any amounts prepaid by Tenant in excess of its liability based on such apportionment shall be refunded by the City to the Tenant. In the event Tenant elects to so terminate this Lease, the Net Award shall be allocated and distributed in the manner provided in Section 12.2, except that the value of the City's Interest in the Net Award determined under Subsection 12.2(a)(i) shall be reduced by the value of the portion of the Premises and the Tenant's Improvements not taken and the amount to be paid to the City under Subsection 12.2(b) shall be reduced by the discounted fair rental value of the portion of the Premises not taken for the unexpired portion of the Term of this Lease.

12.5 Temporary Taking.

(a) If the use of the Premises or the Tenant's Improvements, or any part thereof, shall be taken by pursuant to a Taking for a period of time, definite or indefinite, whether or not for the entire unexpired portion of the Term of this Lease or for a period greater than the same, this Lease shall, nevertheless, continue in full force and effect and the Tenant shall have the right (except as hereinafter provided) to receive the entire Award (which Award, in the case provided for by this Section 12.5, is called the "Use Award") which is allocable to that part of the unexpired portion of the Term of this Lease to which the Use Award relates. Notwithstanding the foregoing, the Tenant and the First Permitted Leasehold Mortgagee, in cooperation with the City, shall have the right to participate in negotiations relative to any such Taking or the Use Award in order to be certain that their respective interests thereunder are protected, with all cost and expense thereof to be a first charge against the Use Award.

The Use Award shall be paid, however, by to the Insurance Trustee for application as hereinafter set forth, after deduction therefrom of all cost and expense reasonably incurred incident to obtaining such Use Award.

The Use Award shall be held and disbursed as follows: (a) If the same is payable in monthly

or other periodic installments, such installments shall, as received by the Insurance Trustee, be applied on account of, and to the extent of, Tenant's restoration obligations and Tenant's obligations on account of Base Rent, Additional Rent, Impositions and other charges under this Lease payable by the Tenant on account of such period; and the dollar value of obligations to be performed by the Tenant shall, on a proportionate basis, also be satisfied from such periodic installments.

Any balance of such periodic installments remaining shall be applied to or for the account of the Tenant, except that, if such taking shall be for a period extending beyond the expiration of the Term of this Lease, the City shall be entitled to the entire Use Award attributable to the period after such expiration.

(b) Where the Use Award is in a lump sum or payable in installments less frequently than quarterly, the lump sum or other installments, together with investment earnings thereon, if any, shall be divided by the number of months included in the period for which such Award has been made and the quotient thereof shall be applied monthly, in accordance with subparagraph (a), above; and

(c) To the extent a Use Award is allocable to the cost of repairs and restoration following the termination of a temporary taking, the same shall be treated as insurance proceeds and applied consistent with the provisions of **Article 11**.

12.6 The City's Power of Eminent Domain. Nothing in this Lease shall limit the eminent domain power of the City; *provided, however*, that Tenant shall retain any and all of its rights to object to any eminent domain proceeding or taking (except that Tenant shall not object to such proceeding or taking on the grounds that the City has in any way contractually limited or waived its eminent domain powers in this Lease), and to pursue any and all remedies with respect thereto.

12.7 Certain Takings to Have No Effect on Tenant's Leasehold. If there shall be a Taking of any vault or other space not included within the Premises as defined in this Lease, or a Taking which shall result in the removal of projecting portions of any Tenant's Improvements upon any street for which the Tenant is not entitled to compensation as a matter of law, or a Taking of an underground right-of-way for a subway, conduit or other purpose not necessitating the demolition or substantial alteration of any portion of any of the Tenant's Improvements, and not affecting the operations of Tenant's Improvements or the quiet enjoyment of Subtenants, any such Taking shall not be treated as a Taking of any part of the Premises for the purposes of this **Article 12**, this Lease shall not be affected by any such Taking of the nature in this **Section 12.7** referred to, any alteration required because of such Taking of the nature in this **Section 12.7** provided, shall be done by the Tenant, and the provisions and conditions of **Article 11** shall apply to any alteration required to be done under this **Section 12.7**.

ARTICLE 13

TRANSFERS OF TENANT'S INTEREST

13.1 Transfers Generally.

(a) Except as otherwise expressly provided in this Lease, Tenant shall not, directly or indirectly, assign, mortgage, pledge, or otherwise transfer this Lease, or all or any portion of Tenant's

legal or beneficial interest in this Lease, or enter into a Sublease with respect to the whole or any part of the Premises (excluding Allowed Subleases) (collectively, a "**Transfer**"), prior to the date of Final Completion of Tenant's Improvements without the City's prior written approval, which may be withheld or granted in the City's sole discretion. From and after such date, except as otherwise expressly provided in this Lease, no Transfer shall be permitted without Landlord's prior written approval in each instance, which approval shall not be unreasonably withheld, conditioned or delayed. In furtherance but not in limitation of the foregoing, the City may withhold its consent to any Transfer for which the City's approval is required hereunder (and, where in this **Section 13.1** the City has agreed not to unreasonably withhold its consent to a Transfer, shall not be deemed unreasonable for doing so) because of the City's special concerns as a public entity regarding any proposed Transferee's character or reputation in the community, whether or not such concerns would be important to a commercial enterprise, or if there exists an uncured Event of Default under this Lease after the expiration of applicable grace, notice and cure periods. At the City's option, any attempted Transfer without said prior written approval or otherwise in violation of any provision of this **Article 13** shall be void, *ab initio*, shall be of no force and effect, and shall confer no rights on or in favor of third parties, provided that the City may, at its option, collect rent from any such Transferee and apply the net amount collected to the Rent due from Tenant hereunder, but no such collection shall be deemed a waiver of such violation, or the acceptance of such Transferee as a tenant, or a release of Tenant from the further performance by Tenant of covenants on the part of Tenant set forth in this Lease.

[Parties to discuss structuring to allow assignments of separate portions of the Project to distinct ownership entities following Final Completion.]

(b) If City approval is required under this Lease, Tenant shall request the City's consent to a Transfer in writing and shall provide the following information and documentation to the City at least thirty (30) days prior to the effective date of any such proposed Transfer:

(i) the name of the proposed Transferee and a copy of the proposed Sublease or assignment of lease Transfer (with a duly executed copy of such Sublease or assignment of lease to promptly follow upon execution thereof);

(ii) the nature of the proposed Transferee's business, their proposed use of the Premises, their business experience in the Permitted Uses thereof, and their financial qualifications and ability to perform all obligations under this Lease;

(iii) certificates of good standing (or certificates of qualification to do business in the State if such proposed Transferee is a foreign entity) of the proposed Transferee issued by the New Hampshire Secretary of State;

(iv) Omitted.

(v) a statement from Tenant certifying that, to the best of Tenant's knowledge, neither the proposed Transferee, nor its respective constituent partners, investors, beneficiaries or Affiliates, are in violation of any law, rule, regulation, order or decree relating to terrorism or money laundering, or is otherwise a Person described in **Section 13.6** below. Tenant shall, from time to time (but no more frequently than once in any 12 month period), within thirty

(30) days after request by the City, deliver to the City any certification or other reasonable evidence requested from time to time by the City in its reasonable discretion, confirming its compliance with these provisions;

(vi) in the case of a Sublease of the entire Premises, or assignment of this Lease, a written agreement executed by the Transferee in which the Transferee assumes and agrees, for the benefit of the City, to observe and perform all the covenants, conditions and agreements in this Lease on the part of Tenant to be observed or performed after the date of the Transfer with respect to the Premises (or, in the case of a Sublease, that portion of the Premises which is subject to such Sublease); and

(vii) any other information reasonably requested by the City.

(c) Tenant shall reimburse the City within 30 days of written demand, as Additional Rent, for all reasonable out-of-pocket fees, costs and expenses incurred by the City (including, without limitation, the City's reasonable attorneys' fees at usual rates and disbursements and the reasonable costs of making investigations as to the acceptability of the proposed Transferee) in connection with (x) any request by Tenant for the City's consent to a proposed Transfer, or (y) the review by the City of plans and specifications for any Alterations proposed to be made to the Premises in connection with a proposed Transfer (in each case without regard to whether or not the City issues such consent or approval). Such payment shall be due and payable to the City within thirty (30) days after it submits an invoice therefor to Tenant accompanied by reasonably detailed documentation relating to such costs and expenses.

(d) For the purposes of this Lease, the sale or other transfer (which term shall include, without limitation, the exchange, issuance and/or redemption) of fifty-one percent (51%) or more, or such smaller percentage as would result in a change in the voting control, of the immediate or remote beneficial interests of the members of Tenant, the voting stock of any immediate or remote corporate member or guarantor or indemnitor of Tenant, or the voting stock of any immediate or remote controlling corporation of Tenant (whether such sale or transfer occurs at one time or at intervals so that, in the aggregate, over the Term of this Lease, such transfer shall have occurred), or any other transaction(s) overall having the effect of a change in voting control or substantially the same effect if the entity in question is not a corporation (such as, without limitation, a change in the number or the identity of the members of a limited liability company, the partners of a partnership or of the beneficiaries of a trust), shall be treated as if such sale or transfer or transaction(s) were, for all purposes, an assignment of this Lease and shall be governed by the provisions of this **Article 13**. The foregoing provision shall apply to voluntary and involuntary assignments and transfers, and to assignments and transfers by operation of law, the sale of all or substantially all of Tenant's assets, and shall include transfer, merger or consolidation of the stock or partnership or member's or other beneficial interests of Tenant or any beneficiary or member of Tenant, except as otherwise permitted hereunder.

(e) Notwithstanding the provisions contained in the first paragraph of this **Section 13.1**, Tenant shall not be required to obtain the consent of the City to an assignment in connection with (i) entering into any loan documents with any Permitted Leasehold Mortgagee or any exercise of rights by a Permitted Leasehold Mortgagee under its loan documents, including, without limitation,

foreclosure by a Permitted Leasehold Mortgagee (or deed or assignment in lieu thereof), including, without limitation, a purchase of Tenant's interest in a foreclosure sale from a foreclosing Permitted Leasehold Mortgagee; (ii) a transfer by reason of death or incapacity of an individual holding an Equity Interest in Tenant; (iii) estate planning transfers to family members or trusts for the benefit of family members of an individual holding an Equity Interest in Tenant; (iv) transfers of the publicly traded stock in Tenant or in any entity holding an Equity Interest in Tenant; (v) the exercise by any holder of an Equity Interest in Tenant of its right to purchase the Equity Interest of any other holder of an Equity Interest in Tenant; (vi) the transfer, sale, conveyance, or pledge of Investor Member interests in Tenant, or transfers of membership interests within Investor Member that are permitted under the Operating Agreement; (vii) any Allowed Subleases; (viii) any grant of easements or licenses or the like under Section __; (ix) and liens being contested by Tenant in good faith; (x) a transfer of such interest among the individuals or entities comprising the members of the Tenant as of the date of this Lease, (xi) a transfer of such interests to the Completion Guarantor or to any direct or indirect owner of Completion Guarantor (collectively, "**Permitted Transfers**"). Tenant shall provide written notice to the City of any and all changes or transfers in the holders of Equity Interests in Tenant within thirty (30) days of such change or transfer, regardless of whether the City's consent is required under this **Section 13.1**.

(f) Upon the execution and delivery of an Assignment and Assumption Agreement transferring this Lease in accordance with and subject to the provisions of this **Section 13.1**, the assignor shall be relieved from all further liabilities and obligations hereunder, but until such time, and in respect of all liabilities arising prior to such time, the assignor shall remain fully and directly liable on all Tenant obligations hereunder.

(g) Tenant promptly shall provide the City with a copy of each executed Sublease or assignment of lease, and all material modifications or amendments thereof, upon written request of the City.

13.2 **Subleases.** Except for Subleases to individual residential Subtenants made in the ordinary course of business, and except for non-residential subleases made in the ordinary course of business [NEED LIMITS ON THESE AND NEED TO PROVIDE THAT ALL RETAIL AND RESTAURANT SUBTENANTS SHALL OPERATE BUSINESSES CONSISTENT WITH THE AUTHENTIC CHARACTER OF DOWNTOWN PORTSMOUTH] on a commercially reasonable standard form of lease approved in advance by the City (with commercially reasonable changes thereto), the approval of which form shall not be unreasonably withheld, conditioned, or delayed, and for which the term does not extend beyond the term of this Lease (collectively, the "**Allowed Subleases**"), all Subleases shall be subject to the prior written approval and consent of the City. Allowed Sublease and all other subleases approved by the City are referred to herein as "**Approved Subleases**". The following additional provisions shall apply to any Sublease other than the Allowed Subleases:

(a) Tenant, and Tenant's successors and assigns, shall not permit the use, occupancy or operation of the Premises or any portion thereof by any Person, unless:

(i) such use, occupancy or operation is under a written Sublease (the form of which has been approved by the City in writing), and for a term which does not extend beyond the Term of this Lease;

- (ii) such Sublease is with a credit-worthy Subtenant on commercially reasonable terms and without any offsets other than those which are commercially reasonable;
- (iii) such Sublease includes provisions acknowledging that said Sublease shall be subject and subordinate to this Lease;
- (iv) such Sublease requires the proposed Subtenant to use the Premises only for the Permitted Uses herein defined;
- (v) such Sublease contains provisions requiring all alterations, additions, changes or improvements to the Premises to be performed in accordance with the requirements of this Lease relating to alterations, additions, changes or improvements, including without limitation, Tenant's Improvements; and
- (vi) such Sublease shall be otherwise in compliance with this **Section 13.2**.

All Subleases shall comply with (i) through (vii) above and be in form and content otherwise acceptable to the City.

(b) It shall be a condition of the City's consent to any Sublease that (i) the Subtenant agree in writing with the City that the Subtenant will not breach, or cause Tenant to breach, any of the provisions of this Lease; (ii) any violation of any provision of this Lease, whether by act or omission by any Subtenant, shall be deemed a violation of such provision by Tenant, it being the intention and meaning of the Parties that Tenant shall assume and be liable to the City for any and all acts and omissions of any and all Subtenants with respect to this Lease, provided that this Lease shall not be terminated due to default of any Subtenant so long as such default does not constitute or result in an Event of Default under this Lease; (iii) each Sublease shall provide that in the event this Lease is terminated prior to the expiration of such Sublease, then, subject to the provisions of any non-disturbance and attornment agreement executed by the subtenant and the City pursuant to **Section 13.4**, at the City's option, the Subtenant thereunder will either attorn to the City and waive any right the Subtenant may have to terminate the Sublease, or surrender possession thereunder as a result of the termination of this Lease, and the Sublease shall terminate simultaneously with the termination or expiration of this Lease; and (iv) each Sublease shall provide that in the event the Subtenant receives a written notice from the City stating that an Event of Default has occurred under this Lease, the Subtenant shall thereafter be obligated to pay all rentals accruing under such Sublease directly to the City or as the City may direct.

(c) All Subleases and all of the terms, covenants and provisions thereof and all rights, remedies and options of the Subtenants thereunder are and shall at all times continue to be fully subject and subordinate in all respects to this Lease as the same may be renewed, amended, supplemented, extended or replaced. This provision shall be self-operative and no further instrument shall be required to confirm or perfect such subordination. However, at the request of the City, Tenant shall request Subtenants not parties to Allowed Residential Subleases to execute and deliver such other documents and take such other action as the City reasonably requests to perfect, confirm or effectuate such subordination. If, for any reason, this Lease is terminated by summary proceedings or for any

other reason whatsoever, the Subleases shall automatically terminate, except as may be provided in any Non-Disturbance Agreement between the City and a Subtenant.

(d) Notwithstanding anything to the contrary contained in this Lease, a Sublease of all or substantially all of the Premises (regardless of the term thereof) shall require the prior written consent of the City in accordance with the provisions of Section 13.1, in addition to compliance with this Section 13.2.

(e) Furthermore, to the extent required by applicable law, all subleases are subject to the review and approval of NPS.

13.3 No Advance Payments. Tenant shall not directly or indirectly collect or accept any payment of rent under any Sublease for any period in excess of thirty (30) days in advance (other than pursuant to individual residential Subleases), provided the foregoing shall not be interpreted in any way that limits Tenant's rights to collect or accept security deposits and other fees and deposits, and provided that Tenant shall not be prohibited from collecting first and last months' rent in advance from residential subtenants.

13.4 Non-Disturbance. If Tenant delivers a Sublease to the City and requests that the City enter into a non-disturbance and attornment agreement (a "**Non-Disturbance Agreement**") with the Subtenant thereunder, the City shall have no obligation to do so but may do so, in its sole and absolute discretion, and subject to such conditions and limitations as the City may require, in its sole and absolute discretion. In no event shall the foregoing be deemed to obligate the City to enter into a non-disturbance and attornment agreement with respect to any Subtenant. Notwithstanding the foregoing, the City shall, if so requested, enter into a Non-Disturbance Agreement with each non-residential subtenant for Subleases of at least _____ square feet of rentable floor area if such agreement is substantially in the form attached hereto as **Exhibit H**. If any Subtenant requires a Non-Disturbance Agreement in a form substantially different from the form attached hereto as **Exhibit H** and the City agrees to negotiate such a different form with such Subtenant and agrees not to unreasonably withhold, condition or delay its agreement to any other commercially reasonable form of Non-Disturbance Agreement and do so), then Tenant shall reimburse the City, as Additional Rent, for all attorneys' fees and expenses incurred by the City in connection with the preparation, review and negotiation of such a Non-Disturbance Agreement (up to a maximum amount of \$2,500.00 per Non-Disturbance Agreement), regardless of whether or not such a Non-Disturbance Agreement is finalized, which payment shall be due and payable to the City within thirty (30) days after it submits an invoice therefor to Tenant. The amount set forth in the preceding sentence shall be adjusted by the cumulative increase (but not decrease) in the Index every five (5) Lease Years.

13.5 Prohibited Transfers. Notwithstanding any other provision contained in this Lease to the contrary, Tenant shall not knowingly, after reasonable inquiry, transfer or permit the transfer of any legal or beneficial interest in Tenant to, or assign, Sublease or otherwise Transfer all or any portion of its interest under this Lease or in all or any portion of the Premises to, or enter into any Sublease to, any of the following:

(a) any Person (or any Person whose operations are directed or controlled by a Person) that is (or within the prior five years has been) in litigation with the City, or has been convicted

of or has pleaded guilty in a criminal proceeding to a felony, or that is an on-going target of a grand jury investigation convened pursuant to applicable statutes concerning organized crime;

(b) any Person organized in or controlled from a country, the activities with respect to which are regulated or controlled pursuant to the following United States laws and the regulations or executive orders promulgated thereunder: (1) the Trading with the Enemy Act of 1917, 50 U.S.C. App. §1, *et seq.*, as amended; (2) the International Emergency Economic Powers Act of 1976, 50 U.S.C. §1701, *et seq.*, as amended; or (3) the Anti-Terrorism and Arms Export Amendments Act of 1989, codified at Section 6(j) of the Export Administration Act of 1979, 50 U.S.C. App. §2405W, as amended; or

(c) any Person with whom the City is restricted from doing business under either (1) Executive Order No. 13224 on Terrorist Financing (effective September 24, 2001 (as amended or supplemented from time to time, the "**Executive Order**"), or (2) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 10756; as amended, from time to time, the "**Patriot Act**"), or (3) the regulations of the United States Department of the Treasury Office of Foreign Assets Control (including, without limitation, those Persons named on the list of "Specially Designated Nationals and Blocked Persons" as modified from time to time), or other governmental action; or

(d) any Affiliate of any of the Persons described in the preceding paragraphs (a), (b) or (c).

Tenant shall, simultaneously with its execution and delivery of this Lease, deliver to the City a certification stating that, to the best of Tenant's knowledge, neither Tenant nor any of its constituent partners, investors, beneficiaries or Affiliates, are in violation of any Laws relating to terrorism or money laundering, including the Executive Order and the Patriot Act and that neither Tenant, nor its constituent partners, investors, beneficiaries or Affiliates, are listed on the United States Department of the Treasury Office of Foreign Assets Control list of "Specially Designated Nationals and Blocked Persons" as modified from time to time, and that none of them is otherwise subject to the provisions of the Executive Order or the Patriot Act, or any rules or regulations promulgated thereunder. Thereafter, Tenant shall from time to time, but no more frequently than once in any 12 month period, within ten (10) business days after request by the City, deliver to the City a certification stating that, to the best of Tenant's knowledge, neither Tenant nor any Transferee, nor any of their respective constituent partners, investors, beneficiaries or Affiliates, are in violation of any Laws relating to terrorism or money laundering, including the Executive Order and the Patriot Act and that neither Tenant nor any Transferee, nor any of their respective constituent partners, investors, beneficiaries or Affiliates, are listed on the United States Department of the Treasury Office of Foreign Assets Control list of "Specially Designated Nationals and Blocked Persons" as modified from time to time, and that none of them is otherwise subject to the provisions of the Executive Order or the Patriot Act, or any rules or regulations promulgated thereunder.

13.6 Further Consent. Consent by the City to any type of Transfer shall not in any way be construed to relieve Tenant from obtaining further written consent for any subsequent Transfer, nor shall any consent by the City to any Transfer be deemed to be consent to a further Transfer by the initial Transferee thereof. Notwithstanding anything to the contrary contained in this Lease, any subsequent Transfer by such Transferee shall require the prior written consent of the City, which

consent may be withheld by the City to the extent required under this Article 13.

13.7 Deemed Approval. The City shall grant or withhold approval of any request by Tenant to a Transfer to the extent such consent is required hereunder, within ten (10) Business Days after Landlord's receipt of such request. Landlord's approval of any such request for consent to a Transfer shall be deemed granted as requested by Tenant if (i) Tenant's request for such consent specifically references this Section and contains in a conspicuous type on the top of the first page of such request the following language in bold and prominent print: "YOU SHALL BE DEEMED TO HAVE GRANTED TO TENANT THE APPROVAL REQUESTED HEREIN IF YOU FAIL TO RESPOND TO THIS REQUEST FOR APPROVAL WITHIN TEN (10) BUSINESS DAYS AFTER YOUR RECEIPT OF THIS REQUEST", and (ii) Landlord fails to respond within such 10-Business Day period. **NEED TO DISCUSS CONCEPT OF DEEMED APPROVALS WHICH APPEAR THROUGHOUT DEVELOPER MARK-UP OF THE DRAFT LEASE.**

ARTICLE 14

PERMITTED LEASEHOLD MORTGAGEES

14.1 Permitted Leasehold Mortgage. Notwithstanding anything in the Lease to the contrary, **Tenant**, and its successors and assigns, shall have the right to mortgage, pledge or conditionally assign this Lease (including, without limitation, Tenant's leasehold interest in the Premises, Tenant's Improvements, and all appurtenant rights and easements for the benefit of Tenant under this Lease) to a Permitted Leasehold Mortgagee subject to the provisions of this **Article 14**. Any leasehold mortgage other than a Permitted Leasehold Mortgage shall be subject to the City's prior written approval, which approval shall not be unreasonably withheld, delayed or conditioned. In no event shall the fee interest in the Premises, or the interest of the City in any Rent, be subordinate to any leasehold mortgage or other interest in the Premises. Tenant shall provide the City with written notice of any such proposed leasehold mortgage or any refinancing of the Premises at least thirty (30) days prior to the closing of any such transaction.

The making of a mortgage under the prior paragraph shall not be deemed to constitute an assignment or other Transfer, nor shall any mortgagee under such a mortgage not in possession of the Premises be deemed an assignee of the leasehold estate created hereby, so as to require such mortgagee to assume the obligations of Tenant hereunder, but a mortgagee in possession and the purchaser at any sale of the leasehold estate created hereby upon foreclosure of a mortgage given in accordance with the prior paragraph, or the assignee of Tenant's interest under this Lease pursuant to an assignment in lieu of such foreclosure, shall be deemed to be an assignee of Tenant (but no consent by the City to such assignment or transfer shall be required) and subject to the terms and conditions of **Article 14** hereof shall be deemed to have assumed the obligations of Tenant hereunder arising from and after the date of taking possession or of such purchase or assignment. Any such party shall have the right to assign or otherwise Transfer its interest in the leasehold estate created by this Lease, and no consent by the City for such assignment or Transfer shall be required. If a mortgagee who is deemed to have assumed the obligations of Tenant hereunder thereafter assigns its interests in this Lease to an assignee who assumes the obligations of Tenant hereunder, such mortgagee shall be relieved of the obligations of Tenant arising after such assignment and assumption. A conditional assignment of Tenant's interest in this Lease to a mortgagee as security for a mortgage granted in accordance with the prior paragraph shall not constitute an assumption of liability by the mortgagee of Tenant's obligations hereunder until

the date of such mortgagee's taking of possession pursuant to the exercise of its rights under such conditional assignment.

Tenant covenants to pay all amounts when due, and perform all obligations, under any mortgage made pursuant to this Section. Tenant shall reimburse the City within thirty (30) days following written demand, as Additional Rent, for all out-of-pocket costs, fees and expenses (including, without limitation, reasonable attorneys' fees) incurred by the City in connection with any mortgage, pledge, conditional assignment, or other security interest (or any refinancing thereof) proposed to be granted by Tenant with respect to all or any portion of its interest under this Lease, regardless of whether or not Tenant enters into such financing arrangement.

[City to provide right for Tenant to obtain mezzanine debt][to be discussed]

14.2 Rights of Permitted and First Permitted Leasehold Mortgagees.

(a) Notices. Provided that the City shall have previously been provided by Tenant in writing with the name and address of each Permitted Leasehold Mortgagee, then simultaneously with the giving to Tenant of any process in any action or proceeding brought to terminate or otherwise in any way affect this Lease, or any notice of (i) default, (ii) a matter on which a default may be predicated or claimed, (iii) a termination hereof, or (iv) a condition which if continued may lead to a termination hereof, the City will give duplicate copies thereof to each Permitted Leasehold Mortgagee in the manner provided in **Section 18.3**, and no such notice to Tenant or process shall be effective unless a copy of the notice or process is so sent to each such Permitted Leasehold Mortgagee. The City acknowledges, for the benefit of the First Permitted Leasehold Mortgagee only, that no event or circumstance will constitute an Event of Default for which this Lease may be terminated by the City, unless the First Permitted Leasehold Mortgagee shall have been given notice thereof and an opportunity to cure as provided herein.

(b) Right to Cure. A Permitted Leasehold Mortgagee may elect, in its sole discretion, to cure any default under this Lease by Tenant. Any Permitted Leasehold Mortgagee shall have the same period after the sending of a notice to it for remedying the default as is given Tenant after notice to it under this Lease plus an additional thirty (30) days for a default referred to in **Section 15.2(a)** or in **Section 15.2(1)** below, and the City agrees to accept performance on the part of any such Permitted Leasehold Mortgagee as though it had been done or performed by Tenant. No payment made to the City by any Permitted Leasehold Mortgagee shall constitute agreement that such payment was, in fact, due under the terms of this Lease.

(c) Time to Obtain Possession. The City agrees that, only in the event of a non-monetary default which cannot be cured by a First Permitted Leasehold Mortgagee without obtaining possession of the Premises, the City will not terminate this Lease pursuant to **Section 15.2** without first giving to the First Permitted Leasehold Mortgagee only a reasonable time within which to obtain possession of the Premises, including possession by a receiver, or to institute and complete foreclosure proceedings or otherwise acquire Tenant's Leasehold Interest with diligence and without unreasonable delay; *provided, however*, that throughout such time such First Permitted Leasehold Mortgagee causes to be fully and timely performed all monetary obligations of Tenant under this Lease and all non-monetary obligations of Tenant that can be performed by such First Permitted Leasehold Mortgagee

without first obtaining possession of the Premises. A reasonable time shall mean not in excess of three (3) months as to obtaining possession, whether or not foreclosure proceedings are commenced and prosecuted (or such longer period if and so long as such proceedings are enjoined or stayed). The City agrees that upon acquisition of Tenant's Leasehold Interest by a First Permitted Leasehold Mortgagee and performance by such First Permitted Leasehold Mortgagee of all covenants and agreements of Tenant, except those which by their nature cannot be performed or cured by any Person other than the then Tenant which has defaulted, including without limitation Tenant's initiation of a voluntary proceeding under any bankruptcy or insolvency law ("**Incurable Lease Defaults**"), the City's right to terminate this Lease shall be waived with respect to the matters which have been cured by the First Permitted Leasehold Mortgagee and with respect to the Incurable Lease Defaults. Nothing herein shall preclude the City from exercising any rights or remedies under this Lease (other than the right to terminate this Lease), with respect to any default by Tenant hereunder continuing beyond applicable grace, notice and cure periods, prior to or during the pendency of such foreclosure proceedings subject, however, to the City's compliance with the provisions of this **Section 14.2** with respect to each such default.

(d) Amendment. Except as may be expressly otherwise provided herein, this Lease shall not be modified or surrendered to the City or canceled by Tenant, nor, except as provided in **Section 14.2(e)** below, shall the City accept a surrender of this Lease, without the prior written consent of the First Permitted Leasehold Mortgagee. The City agrees to make reasonable modifications to this Lease to accommodate the requirements of a prospective Permitted Leasehold Mortgagee, provided that the City shall not be required to enter into any amendment to this Lease which would (A) subordinate the City's fee interest in the Premises; (B) reduce, defer or subordinate the payment of Rent; (C) require the City to assume or join in any obligation, monetary or otherwise, which is an obligation of Tenant under this Lease; (D) relieve Tenant of any material obligation, monetary or otherwise, under this Lease; (E) materially impair the value of the City's reversionary interest under this Lease; (F) extend the Term of this Lease; (G) permit Tenant to construct improvements on the Premises other than those permitted under this Lease; or (H) otherwise adversely affect the City's rights under this Lease.

(e) New Lease. If this Lease is terminated for any reason, including without limitation, as a result of a default on the part of Tenant continuing beyond applicable grace, notice and cure periods, or a rejection of this Lease in any bankruptcy proceeding, the City shall, subject to the satisfaction of the conditions provided below, on written request of a First Permitted Leasehold Mortgagee made at any time within sixty (60) days after the City has given notice of such termination to such First Permitted Leasehold Mortgagee, enter into a new lease of the Premises with such First Permitted Leasehold Mortgagee within ninety (90) days after receipt of such request. If the First Permitted Leasehold Mortgagee has made an election pursuant to the previous sentence to enter into a new lease, the City shall not execute, amend or terminate any Subleases of the Premises during such ninety (90) day period without the prior written consent of the First Permitted Leasehold Mortgagee. Any such new lease for a First Permitted Leasehold Mortgagee shall be effective as of the date of termination of this Lease, and, except as provided below, shall be upon all the same terms and conditions of this Lease which would have been in effect had such First Permitted Leasehold Mortgagee taken an assignment of the leasehold estate under this Lease from Tenant. The term of any such lease shall be the remainder of the Term of this Lease. The City shall not be obligated to enter into such a new lease with a First Permitted Leasehold Mortgagee unless (i) such First Permitted Leasehold Mortgagee shall, contemporaneously with the delivery of such request for a new lease, pay to the City all Rent and other charges owed by Tenant to the City which then remain unpaid and the

Rent and other charges for the period after termination of this Lease and until commencement of the new lease which would have become due under this Lease (less any Rent or other charges for such periods actually collected by the City from Subtenants of the Premises), together with all expenses, including reasonable attorney's fees, incurred by the City in connection with the termination of this Lease and the execution and delivery of such new lease, and (ii) such First Permitted Leasehold Mortgagee shall have performed all unfulfilled covenants and agreements required as of that date to be performed by Tenant under this Lease (other than Incurable Lease Defaults). The City shall have no obligation to deliver physical possession of the Premises to any First Permitted Leasehold Mortgagee at the time of entering into such new lease unless the City, at time of execution and delivery of such new lease, shall have obtained physical possession of the Premises. In no event shall any new lease with a First Permitted Leasehold Mortgagee be for a longer term than the Term of this Lease. The provisions of this **Section 14.2(e)** shall survive the termination of this Lease.

14.3 Undertakings of Permitted Leasehold Mortgagee.

(a) Notices. Simultaneously with the giving to Tenant of any process in any action or proceeding brought for foreclosure of a Permitted Leasehold Mortgage or any notice of (i) default or acceleration under a Permitted Leasehold Mortgage, (ii) a matter on which such a default or acceleration may be predicated or claimed, (iii) a foreclosure of a Permitted Leasehold Mortgage, or (iv) a condition which if continued may lead to such foreclosure, the applicable Permitted Leasehold Mortgagee will give duplicate copies thereof to the City in the manner provided in **Section 18.3**, and no such notice to Tenant or process shall be effective unless a copy of such notice or process is so sent to the City.

(b) Right to Cure. The City shall have the same period after the sending of a notice to it for remedying the default as is given Tenant after notice to it. The applicable Permitted Leasehold Mortgagee agrees to accept performance on the part of the City as though it had been done or performed by Tenant. No payment made to any such Permitted Leasehold Mortgagee by the City shall constitute agreement that such payment was, in fact, due under the terms of the Permitted Leasehold Mortgage.

(c) Amendment. A Permitted Leasehold Mortgage shall not be amended in any manner that would cause it to no longer qualify as a Permitted Leasehold Mortgage without the prior written consent of the City, not to be unreasonably withheld, conditioned or delayed.

(d) Certificates. A Permitted Leasehold Mortgagee will, upon request from the City, but no more frequently than once in any 12 month period, deliver to the City a certificate that to the best knowledge of such Permitted Leasehold Mortgagee, Tenant is not in default under the applicable Permitted Leasehold Mortgage (or, if any defaults exist, specifying said defaults).

ARTICLE 15

TERMINATION AND DEFAULT

15.1 Surrender. Tenant shall on the last day of the Term, or upon any earlier termination of this Lease, quit and peacefully surrender and deliver up the Premises, including Tenant's Improvements and all other improvements to the Premises, to the possession and use of the City without delay and in good order, condition and repair (excepting only reasonable wear and tear; damage from a Taking or

from a Casualty after the last repair, replacement, restoration or renewal required to be made by Tenant pursuant to this Lease; and damage caused by the City or its employees or contractors; and obsolescence).). The Premises shall at that time, unless otherwise approved or requested by the City in writing (such written approval or request to include, without limitation, any Non-Disturbance Agreements executed by the City) be free and clear of all leases and occupancies. The Premises shall be surrendered free and clear of all liens and encumbrances (other than those existing at the Effective Date of this Lease, created or approved by the City or permitted under this Lease), and shall be surrendered without any payment by the City on account of Tenant's Improvements or any other improvements which may be on the Premises. Upon or at any time after the expiration or earlier termination of this Lease, subject to the rights of any Subtenant under a Non-Disturbance Agreement executed by the City and such Subtenant in accordance with **Section 13.5** above and the rights of any Permitted Leasehold Mortgagee, the City may, without further notice, enter upon and re-enter the Premises and possess and repossess itself thereof, by force, summary proceedings, ejectment or otherwise, and may dispossess Tenant and remove Tenant and all other persons and property from the Premises, and may have, hold and enjoy the Premises and the right to receive all income from the same.

15.2 **Events of Default.** If any one or more of the following events (herein called "**Events of Default**") shall happen:

(a) If default shall be made in the due and punctual payment of any Rent or other sums payable under this Lease or any part thereof when and as the same shall become due and payable, and such default shall continue for a period of ten (10) days after written notice from the City to Tenant specifying the items in default; or *provided, however*, that the City shall not be required to give more than two (2) notices pursuant to this clause (a) within a 12-month period if Tenant fails to make any payment of Rent or other sum payable under this Lease within ten (10) days of the date the same is due under this Lease; or [CONSIDER SIGNIFICANT LATE FEE FOR REPEATED PAYMENT DEFAULTS]

(b) If Tenant fails to comply with the provisions of **Section 4.5** and as a result thereof an Event of Default is deemed to occur beyond applicable grace, notice and cure periods as provided in **Section 4.5**; or

(c) If Tenant shall fail to maintain insurance as required by **Article 8** and such default shall continue for a period of twenty (20) days after written notice from the City to Tenant; or

(d) If Substantial Completion of Tenant's Improvements shall not have occurred on or before the Outside Completion Date, subject to delays due to Force Majeure Events or attributable to the City as set forth in **Section 4.20**, or as otherwise may be extended pursuant to the terms of this Lease; or

(e) [Reserved]; or

(f) If Tenant abandons, voluntarily, all or substantially all of the Premises for a period of one hundred and eighty (180) days for any reason other than the process of restoration following a Casualty or Taking (which restoration requires more than thirty (30) days to complete) or due to Force Majeure; or

(g) If Tenant shall initiate the appointment of a receiver to take possession of all or any portion of the Premises or Tenant's Leasehold Interest for whatever reason, or Tenant shall make an assignment for the benefit of creditors or other conveyance or transfer of like nature, or Tenant shall initiate voluntary proceedings under any bankruptcy or insolvency law or law for the relief of debtors; or if there shall be initiated against Tenant any such proceedings which are not dismissed within ninety (90) days; or

(h) If the leasehold hereby created shall be taken on execution or by other process of law and shall not be revested in Tenant within sixty (60) days thereafter; or

(i) If a receiver, sequester, trustee or similar officer shall be appointed by a court of competent jurisdiction to take charge of all or a substantial part of Tenant's property and such appointment shall not be vacated, revoked, terminated or stayed within sixty (60) days thereafter; or

(j) If Tenant shall assign, mortgage, pledge, encumber or otherwise Transfer (whether voluntarily or by operation of law) this Lease or the Premises, or any material portion thereof, in Tenant in violation of **Article 13** hereof; or

(k) If Tenant fails to comply with the terms and provisions of **Sections 16.1 or 16.2** hereof beyond the applicable notice and cure period set forth therein; or

(l) If default shall be made by Tenant in the performance of or compliance with any of the agreements, terms, covenants or conditions in this Lease, other than those referred to in paragraphs (a) - (k) of this Section, for a period of thirty (30) days after written notice from the City to Tenant specifying the items in default, or in the case of a default or a contingency which cannot with due diligence be cured within the thirty (30) day period, Tenant fails to proceed within such thirty (30) day period to commence to cure the same and thereafter to prosecute the curing of such default with diligence to completion (it being intended in connection with a default not reasonably susceptible of being cured with due diligence within such thirty (30) day period that the time within which Tenant shall be required to cure the same shall be extended for such period as may be necessary to complete the same with due diligence); or

(m) With respect to the Completion Guaranty and any Guarantor thereunder, prior to Final Completion: (i) the termination of any Guarantor's liability thereunder other than through the Final Completion of construction of Tenant's Improvements by Tenant; or (ii) the occurrence with respect to any Guarantor of any of the events described in clauses (g), (h), or (i) above prior to the Final Completion of construction of Tenant's Improvements by Tenant; or (iii) any Guarantor's failure or refusal to honor the Completion Guaranty; or (iv) any Guarantor's breach of its Completion Guaranty, all beyond the applicable notice and cure period set forth therein, if any, provided that if any of the foregoing events of this **Section 15.2(m)** shall occur after the admittance of Investor Member as a member of Borrower, no Event of Default shall be deemed to have occurred if, within thirty (30) days following written notice from the City of the occurrence of such event, an Affiliate of Investor Member, or another replacement guarantor approved by the City (i) assumes the obligations of Guarantor under the Completion Guaranty and (ii) executes a new Completion Guaranty in substantially the same form as the Completion Guaranty; or

(n) With respect to the Environmental Indemnification Agreement, prior to Final

Completion and any Indemnitor thereunder: (i) the termination of Tenant's or any Indemnitor's liability thereunder; or (ii) the occurrence with respect to Tenant or any Indemnitor of any of the events described in clauses (g) or (i) above; or (iii) Tenant's or any Indemnitor's failure or refusal to honor the Environmental Indemnification Agreement; or (iv) Tenant's or any Indemnitor's breach of the Environmental Indemnification Agreement, all beyond the applicable notice and cure period set forth therein, if any, provided that if any of the foregoing events of this **Section 15.2(n)** shall occur after the admittance of Investor Member as a member of Borrower, no Event of Default shall be deemed to have occurred if, within thirty (30) days following written notice from the City of the occurrence of such event, an Affiliate of Investor Member, or another replacement indemnitor approved by the City (i) assumes the obligations of Tenant or any under the Environmental Indemnification Agreement and (ii) executes a new Environmental Indemnification Agreement in substantially the same form as the Environmental Indemnification Agreement;

(o) then, subject to the rights of any Permitted Leasehold Mortgagee under a Non-Disturbance Agreement, and in any such event, the City at any time thereafter may give written notice to Tenant specifying such Event or Events of Default and stating that this Lease and the Term hereby demised shall expire and terminate on the date specified in such notice, which shall be at least sixty (60) days after the giving of such notice, and upon the date specified in such notice this Lease and the Term thereby demised and all rights of Tenant under this Lease shall expire and terminate, unless prior to the date specified for termination the Event or Events of Default shall have been cured, and Tenant shall remain liable as hereinafter provided and Tenant's Improvements and all other improvements (including, without limitation, all buildings, structures, and Alterations) located on the Premises shall become the property of the City without the necessity of any deed or conveyance from Tenant to the City. Tenant agrees upon request of the City to immediately execute and deliver to the City any deeds, releases or other documents reasonably deemed necessary by the City to evidence the vesting in the City of all of Tenant's right, title and interest in and to all of Tenant's Improvements and all such other improvements.

15.3 Relet. At any time or from time to time after any such expiration or termination, the City may relet the Premises or any part thereof for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term of this Lease), on such conditions (which may include concessions or free rent and alterations of the Premises) and for such uses as the City, in its good faith discretion, may determine, and may collect and receive the rents therefor. The City shall in no way be responsible or liable for any failure to relet the Premises or any part thereof, or for any failure to collect any rent due upon any such reletting.

15.4 Remedies. No such expiration or termination of this Lease shall relieve Tenant of its liability and obligations under this Lease, and such liability and obligations shall survive any such expiration or termination. In the event of any such expiration or termination, whether or not the Premises or any part thereof shall have been relet, Tenant shall pay to the City the Rent and all other charges required to be paid by Tenant up to the time of such expiration or termination of this Lease, and thereafter Tenant, until the end of what would have been the Term of this Lease in the absence of such expiration or termination, shall be liable to the City for, and shall pay to the City, as and for liquidated and agreed current damages for Tenant's default, the equivalent of the amount of the Rent and charges which would be payable under this Lease by Tenant if this Lease were still in effect, less the net proceeds of any reletting after deducting all the City's expenses incurred in good faith in connection with such reletting, including, without limitation, all repossession costs, brokerage and

management commissions, operating expenses, legal expenses, reasonable attorney's fees, alteration costs, and expenses of preparation for such reletting.

Tenant shall pay such current damages (hereinafter called "deficiency") to the City on the date(s) on which the Rent would have been payable under this Lease if this Lease were still in effect, and the City shall be entitled to recover from Tenant each deficiency as the same shall arise.

At any time after any such expiration or termination, in lieu of collecting any further deficiencies as aforesaid, the City shall be entitled to recover from Tenant and Tenant shall pay to the City, on demand, as and for liquidated and agreed final damages for Tenant's default, an amount equal to the present value of the excess of the Rent reserved hereunder for the unexpired portion of the Term over the present value of the fair and reasonable rental value of the Premises for the same period, minus any such deficiencies for such period previously recovered from Tenant (for purposes of the foregoing lump sum calculation, the Federal Reserve discount rate, or a similar rate reasonably selected by the City, shall be used to calculate present values).

15.5 No Waiver. No failure by either the City or Tenant to insist upon the strict performance of any agreement, term, covenant or condition hereof or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial Rent during the continuance of any such breach, shall constitute a waiver of any such breach or of such agreement, term, covenant or condition. No agreement, term, covenant or condition hereof to be performed or complied with by either the City or Tenant, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by the other Party. No waiver by the City or Tenant of any breach shall affect or alter this Lease, but each and every agreement, term, covenant and condition hereof shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

15.6 Injunctive Relief. In the event of any breach or threatened breach by Tenant of any of the agreements, terms, covenants or conditions contained in this Lease, the City shall be entitled to enjoin such breach or threatened breach and shall have the right to invoke any right and remedy allowed at law or in equity or by statute or otherwise as though re-entry, summary proceedings, and other remedies were not provided for in this Lease.

15.7 Remedies Cumulative. Unless otherwise expressly stated in this Lease, each right and remedy provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by the City or Tenant of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the Party in question of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

15.8 Termination Preserving Permitted Leasehold Mortgagee. Upon an Event of Default as provided in **Section 15.2**, the City may, by so stating in a written notice to the Permitted Leasehold Mortgagees, elect to terminate Tenant's rights under this Lease pursuant to this **Section 15.8** without terminating any Permitted Leasehold Mortgagee's lien on the leasehold estate created hereby, in which event all right, title and interest in the leasehold estate of Tenant and, except as otherwise provided in

a Non-Disturbance Agreement executed by the City and a Subtenant in accordance with **Section 13.5** and except for residential Subtenants, of all persons claiming through or under Tenant (including, without limitation, any Subtenant under any such Sublease except for residential Subtenants and Subtenants with whom the City has executed a Non-Disturbance Agreement), except for the Permitted Leasehold Mortgagees, shall terminate as provided in this **Section 15.8** and, as between the City and Tenant and any such Subtenant, the City shall have all the rights provided for in this **Section 15.8**, but as between the City and the Permitted Leasehold Mortgagees, this Lease shall remain in effect with the City holding the leasehold estate created hereby, subject to the Permitted Leasehold Mortgages. An election by the City to preserve the Permitted Leasehold Mortgages shall not prevent the City from thereafter electing, subject to the rights of any Subtenant under a Non-Disturbance Agreement executed by the City and such Subtenant in accordance with **Section 13.5**, to terminate such leasehold estate in a manner which does not preserve the Permitted Leasehold Mortgage, whether the leasehold estate is owned at the time by the City or another party.

15.9 No Termination on Dissolution of the City. The Term of this Lease shall not be affected by the dissolution of the City or transfer of its properties to the State of New Hampshire or any other entity but such Term and the leasehold estate created hereby shall continue in effect, notwithstanding such dissolution or transfer.

15.10 The City's Default. It is the intention of the Parties hereto that, except as otherwise expressly set forth in this Lease: (a) the obligation of Tenant hereunder to pay Base Rent, Participating Rent, Additional Rent and all other sums payable by Tenant shall be a separate and independent covenant and agreement and such obligation shall not be affected by the City's failure to perform any of the City's obligations under this Lease; and (b) Tenant shall have no right to withhold or abate any payment of Rent, or to deduct from Rent any amount, or to offset or interpose any counterclaim for any amount in any action or proceeding commenced by the City with respect to this Lease or the tenancy created hereunder, or to terminate this Lease, because of any default or alleged default on the part of the City under this Lease, but Tenant shall have the right to commence and prosecute an independent action against the City to seek either damages or injunctive relief with respect to such default on the part of the City. Tenant hereby acknowledges that Tenant has been represented by counsel of its choice and has participated fully in the negotiation of this Lease, that Tenant understands that the remedies available to Tenant for a default on the part of the City may be more limited than those that would otherwise be available to Tenant under the common law in the absence of certain provisions of this Lease, and that the so-called "dependent covenants" rule as developed under the common law (including the statement of such rule as set forth in the Restatement (Second) of Property, Section 7.1) shall not apply to this Lease or to the relationship of landlord and tenant created hereunder.

ARTICLE 16

NONDISCRIMINATION AND EQUAL OPPORTUNITY COVENANTS

16.1 Nondiscrimination. With respect to its exercise of all rights and privileges granted herein, Tenant agrees that Tenant, its successors in interest, Subtenants, licensees, managers, operators and assigns shall:

(a) Not discriminate against any person, employee, or applicant for employment because of that person's membership in any legally protected class, including, but not limited to their

race, color, gender, religion, creed, national origin, ancestry, age being greater than forty years, sex, sexual orientation, disability, genetic information, or Vietnam-era veteran status in the use of the Premises, including the hiring and discharging of employees, the provision or use of services, the selection of suppliers and contractors, in the subleasing or refusing to sublease any portion of the Premises or providing or refusing to provide any services or use of any facility on the Premises. In addition, Tenant, its successors in interest, Subtenants, licensees, managers, operators, and assigns shall not discriminate against any person, employee, or applicant for employment who is a member of, or applies to perform service in, or has an obligation to perform service in a uniformed military service of the United States, including the National Guard, on the basis of that membership, application or obligation.

(b) Conspicuously post notices to employees and prospective employees setting forth the Fair Employee Practices Law of the State of New Hampshire.

(c) Comply with all applicable federal, state and local laws, rules, regulations and orders and the City rules and orders (provided that, with respect to the City rules and orders, copies of such rules and orders have been provided to Tenant) pertaining to Civil Rights and Equal Opportunity, including but not limited to Executive Orders 11246 and 11478 as amended, unless otherwise exempt therefrom.

16.2 Noncompliance. Non-compliance by Tenant, any Subtenant, their respective successors in interest and assigns, or any of their respective agents, employees, licensees or operators, with this **Article 16** shall constitute an Event of Default, provided that the City has notified Tenant of such non-compliance in writing and Tenant has failed to cure such non-compliance within thirty (30) days after Tenant's receipt of the City's notice. Tenant shall indemnify and hold harmless the City from any claims and demands of third persons resulting from non-compliance with any of the provisions of this **Article 16**. This **Article 16** shall survive the expiration or earlier termination of this Lease.

16.3 Employment of Portsmouth Residents. [TO BE DISCUSSED]

ARTICLE 17

DETERMINATION OF FAIR MARKET RENT

17.1 Determination of Fair Market Rent. Whenever a determination of fair market rent is required by the terms of this Lease, the fair market rent for the Premises shall be as reasonably determined by the City by written notice to Tenant (the "Fair Market Rent"), which determination of Fair Market Rent shall be transmitted by the City as and when required by this Lease. If Tenant shall dispute the City's determination of Fair Market Rent in writing in within not less than thirty (30) days after the City's transmittal thereof, such determination shall be made in accordance with the following procedures:

(a) The City and Tenant shall each name one (1) impartial real estate appraiser with a third impartial real estate appraiser to be chosen, if necessary, as below provided. Tenant shall appoint its appraiser in its notice to the City commencing the determination procedure set forth in this Section, and the City shall appoint its appraiser by written notice within fifteen (15) days after receipt by it of notice from Tenant. If the City fails to appoint an appraiser, the second appraiser shall be

appointed by the one appraiser appointed by Tenant. Any and all such impartial appraisers (including the third appraiser, if it is necessary for a third appraiser to be chosen) shall be qualified, independent professionals licensed as appraisers in the State of New Hampshire having at least ten (10) years ownership, management or consulting experience in real estate transactions involving leasehold interests and comparable sales in similar multifamily residential and mixed use properties in the Greater Portsmouth metropolitan area, and shall be "Member, Appraisal Institute" or "Society of Real Estate Appraisers" appraisers (or appraisers certified by any successor entity to any such organization).

(b) The two impartial appraisers appointed, as set forth above, shall have thirty (30) days after appointment of the second appraiser to review all relevant documentation and to make their determination of Fair Market Rent, consistent with applicable provisions of this Lease, and to submit their determination in writing to the City and Tenant together with the relevant background documentation therefor.

(c) The unanimous written decision of the two first chosen appraisers, without selection and participation of a third appraiser, or otherwise the written decision of the three appraisers chosen as hereinafter provided, shall be conclusive and binding upon the City and Tenant. If such two appraisers shall not have reached a unanimous decision within thirty (30) days after the appointment of the second such appraiser as set forth above, they shall, within ten (10) days after expiration of such thirty (30) day period, select an impartial third appraiser, with the qualifications set forth in clause (a) hereof, to make such determination. Such third appraiser shall, within thirty (30) days following the date of appointment, select as Fair Market Rent the determination of one of the first two appraisers which is closest to the determination of Fair Market Rent made by such third appraiser, and the determination of Fair Market Rent so selected shall be Fair Market Rent. Promptly after such selection, the third appraiser shall notify the City and Tenant in writing of Fair Market Rent as so determined, and such determination by the third appraiser shall be final and binding upon the Parties. The City and Tenant shall each pay the fees and expenses of the appraiser appointed by or for them, and shall divide equally all fees and expenses of the third appraiser, if appointed.

ARTICLE 18

MISCELLANEOUS

18.1 Quiet Enjoyment. Tenant, upon paying the Rent and other charges herein provided for and observing and keeping all covenants, agreements and conditions of this Lease on its part to be kept, shall quietly have and enjoy the Premises during the Term of this Lease without hindrance by anyone claiming by, through or under the City as such, subject, however, to the exceptions, reservations and conditions of this Lease. The foregoing shall not create any liability on the part of the City for any defects in or encumbrances on the City's title existing as of the date hereof or for any matters set forth in **Exhibit B** hereto.

18.2 Entry on Premises by the City. Tenant shall permit the City and its authorized representatives to enter the Premises at all reasonable times, upon reasonable advance notice to Tenant except in the case of emergency (in which case no notice shall be necessary), for the purpose of inspecting the same for compliance with the covenants and obligations of this Lease, provided that such inspections shall be conducted so as to minimize to the extent practicable any interference with

the conduct of business therein by Tenant or any Subtenant or use and enjoyment of residential units under Allowed Residential Subleases.

18.3 Notices. Any and all notices, demands, requests, submissions, approvals, consents, disapprovals, objections, offers or other communications or documents required to be given, delivered or served, or which may be given, delivered or served, under or by the terms and provisions of this Lease or pursuant to law or otherwise, shall be in writing (regardless of whether or not this Lease expressly so provides in the operative provision hereof, unless express provision is made in this Lease for verbal notice) and shall be delivered (a) by hand, (b) sent by overnight delivery service, such as Federal Express, with provision for receipt, or (c) by registered or certified mail, return receipt requested, addressed if to Tenant to:

Redgate
265 Franklin Street, 6th Floor
Boston, MA 02110
Attention: Steve Perdue

and:

The Kane Company, Inc.
210 Commerce Way, Suite 300
Portsmouth, NH 03801
Attention: Michael Kane

or to such other address as Tenant may from time to time designate by written notice to the City, or if to the City addressed to:

City of Portsmouth
1 Junkins Avenue
Portsmouth, NH 03801
Attention: Nancy Colbert Puff

with a copy to:
City of Portsmouth – Legal Department
1 Junkins Avenue
Portsmouth, NH 03801
Attention: Robert P. Sullivan

with a copy to:

Hinckley Allen
650 Elm Street, Suite 500
Manchester, NH 03101
Attention: John H. Sokul, Esq.

or to such other address as the City may from time to time designate by written notice to Tenant, or to such other agent or agents as may be designated in writing by either Party. The earlier of: (i) the

date of delivery by hand or refusal of delivery, or (ii) the next Business Day after depositing such notice with a nationally-recognized overnight delivery service, or (iii) the date of delivery or upon which delivery was refused as indicated on the registered or certified mail return receipt shall be deemed to be the date such notice or other submission was given.

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

18.5 Estoppel Certificates. The City and Tenant shall, without charge, at any time and from time to time, within ten (10) Business Days after request by the other, certify by written instrument, duly executed, acknowledged and delivered to the party making such request, or any other person, firm or corporation specified by such party:

(a) that this Lease is unmodified and in full force and effect, or, if there have been any modifications, that the same is in full force and effect as modified and stating the modifications;

(b) whether or not, to the best knowledge of the person executing the certificate on behalf of the City or Tenant, there are then existing any claimed set-offs or defenses against the enforcement of any of the agreements, terms, covenants or conditions hereof and any modifications hereof upon the part of the other Party hereto to be performed or complied with, and, if so, specifying the same, paid;

(c) the dates, if any, to which the Rent and other charges hereunder have been

(d) the date of expiration of the current Term;

(e) the Rent then payable under this Lease;

(f) whether there are any defaults on the part of either Party; and

(g) other commercially reasonable statements of a purely factual nature, to the best knowledge of the person executing the certificate on behalf of the City or Tenant, required by a third party unaffiliated lender or purchaser.

Said certificate shall be substantially in the form of that attached hereto as Exhibit I and shall in no event serve or intend to modify, change or interpret the provisions of this Lease or otherwise impair the rights of the City or limit the obligations of Tenant hereunder.

18.6 Waiver. The Parties hereto waive a trial by jury of any and all issues arising in any action or proceeding between them or their successors or assigns under or connected with this Lease or any of its provisions, any negotiations in connection therewith, or Tenant's use or occupation of the Premises. In the case the City shall commence summary proceedings or an action for non-payment of Rent or sums due hereunder against Tenant, Tenant shall not interpose any counterclaim of any nature or description in any such proceeding or action, but such claim shall be relegated to an independent action at law, unless Tenant is required by the rules of civil procedure or applicable law in effect at the

time of commencement of the summary proceedings or action to bring such counterclaim.

18.7 Waiver of Claims. Tenant acknowledges that prior to the expiration of the Term, the City, or its designees, may desire to negotiate with Tenant's Subtenants or other occupants of the Premises with respect to future occupancy or other rights in the Premises. Accordingly, during the period which is twenty-four (24) months prior to the expiration of the Term, the City, or its designees shall have access to Tenant's Subtenants or other occupants of the Premises at reasonable times after reasonable advance notice to Tenant; such access to include, without limitation, the right to contact such Subtenants and/or other occupants for the purposes of negotiations or discussions and the right to execute a written lease or other agreement for a term commencing on or after the expiration date of this Lease for the Premises or any other property owned or leased by the City. In furtherance of the foregoing, Tenant, on behalf of itself, its successors and assigns, hereby waives all claims it may at any time have against the City, its designee, and any Subtenant or other occupant of the Premises, in connection with the exercise of the City's rights under this **Section 18.7**.

18.8 No Brokers. The City and Tenant each represent to the other that they have dealt with no broker in connection with this Lease. Tenant covenants to pay and hold harmless against any and all loss, cost, expense, or liability incurred by the City for any compensation, commissions and charges claimed by any broker or agent with respect to this Lease or any extension thereof arising from Tenant's breach of the foregoing covenant. The City covenants to pay and hold harmless against any and all loss, cost, expense, or liability incurred by Tenant for any compensation, commissions and charges claimed by any broker or agent with respect to this Lease or any extension thereof arising from the City's breach of the foregoing covenant.

18.9 Legal Fees. In the event that the City incurs third party legal fees and costs in connection with a request by Tenant, a Permitted Leasehold Mortgagee, or any potential or then-current purchaser from, investor in, or lender to Tenant, for any modifications or amendments to this Lease or the execution by the City of any additional documentation in connection with any investment in or loan to Tenant (without hereby implying any obligation on the City to agree to execute any such documents), then Tenant shall reimburse the City for such fees and costs, not to exceed Two Thousand Five Hundred Dollars (\$2,500) for each such request (which amount shall be adjusted by the cumulative increase (but not decrease) in the Index every five (5) Lease Years). Tenant shall pay the City all amounts for reimbursement under this **Section 18.9** within thirty (30) days after written demand by the City with reasonable documentation relating to such amounts.

18.10 Consents. Unless otherwise expressly provided in this Lease, wherever this Lease requires the consent, approval or authorization of or from the City, the City shall have the unfettered right to grant or to withhold the same in its sole and absolute discretion. Notwithstanding anything to the contrary contained in this Lease, Tenant shall have no claim, and hereby waives the right to any claim, against the City for money damages by reason of any refusal, withholding, or delaying by the City of any consent, approval or statement of satisfaction, and, in such event, Tenant's only remedies therefor shall be an action for specific performance or injunction to enforce any such requirement.

18.11 Accord and Satisfaction. No acceptance by the City of a lesser sum than the Rent then due shall be deemed to be other than on account of the earliest installment of such Rent due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment of Rent be deemed an accord and satisfaction, and the City may accept such check or payment without

prejudice to the City's right to recover the balance of such installment or pursue any other remedies provided in this Lease.

18.12 Integration. All prior understandings and agreements between the Parties are merged within this Lease, which alone fully and completely sets forth the understanding of the Parties with respect to the subject matter contained herein; and this Lease may not be changed or terminated orally or in any manner other than by an agreement in writing and signed by the Party against whom enforcement of the change or termination is sought.

18.13 Bind and Inure. The covenants and agreements herein contained shall bind and inure to the benefit of the City, its successors and assigns, and Tenant, its successors and assigns.

18.14 Notice of Lease. The City and Tenant mutually agree to execute herewith, in triplicate, a Notice of Lease in recordable and mutually acceptable form with respect to this Lease, which shall be recorded forthwith with the Rockingham County Registry of Deeds, and agree to execute, upon termination of this Lease for whatever cause, a Notice of Termination of Lease in recordable form for recording with said Registry of Deeds.

18.15 Limitation of Liability. Anything contained in this Lease to the contrary notwithstanding, but without limitation of Tenant's equitable rights and remedies, the City's liability under this Lease shall be enforceable only out of the City's interest in the Premises, and the rents, issues and profits therefrom; and there shall be no other recourse against, or right to seek a deficiency judgment against, the City, nor shall there be any personal liability on the part of any member of its board of directors, or any officer, employee, agent or representative of the City, with respect to any obligations to be performed hereunder by the City. Anything contained in this Lease to the contrary notwithstanding, but without limitation of the City's equitable rights and remedies, except as otherwise provided in any guaranty, indemnification or other instrument executed and delivered to the City in connection with this Lease or the Premises, no member, manager, shareholder, director, officer, employee, agent or representative of Tenant shall have any personal liability with respect to any obligations to be performed hereunder by Tenant.

18.16 Authority of Tenant. Tenant warrants and represents that, as of the Effective Date of this Lease (a) it is a limited liability company duly organized under the laws of the State of New Hampshire; (b) it has the authority to enter into and has duly executed this Lease; (c) the execution, performance and delivery by Tenant of this Lease is within the powers of Tenant; (d) all information provided by Tenant to the authority in connection with this Lease is true and accurate in all material respects; (e) as of the execution of this Lease, Tenant has not transferred all or any portion of its interest under this Lease; (f) this Lease is the legal, valid and binding obligation of Tenant, enforceable against Tenant in accordance with its terms, subject to bankruptcy, insolvency and other limitations on creditors' rights generally and to equitable principles; and (g) the person executing this Lease on behalf of Tenant is duly authorized to do so. The City warrants and represents that, as of the Effective Date of this Lease (a) it is a body corporate and public duly organized under the laws of the State of New Hampshire; (b) it has the authority to enter into and has duly executed this Lease; (c) the execution, performance and delivery by the City of this Lease is within the powers of the City; and (d) the person executing this Lease on behalf of the City is duly authorized to do so.

18.17 No Merger. There shall be no merger of this Lease or of the leasehold estate hereby

created with the fee estate in the Premises by reason of the fact that the City may acquire or hold, directly or indirectly, the leasehold estate hereby created or an interest herein or in such leasehold estate, unless the City executes and records an instrument affirmatively electing otherwise.

18.18 Captions. The captions of this Lease are for convenience and reference only and in no way define, limit or describe the scope or intent of this Lease nor in any way affect this Lease.

18.19 Table of Contents. The Table of Contents preceding this Lease but under the same cover is for the purpose of convenience and reference only and is not to be deemed or construed in any way as part of this Lease, nor as supplemental thereto or amendatory thereof.

18.20 New Hampshire Law Governs. This Lease shall be governed exclusively by, and construed in accordance with, the laws of the State of New Hampshire, without regard to conflicts of laws principles. The City and Tenant agree that any court action to be brought by either Party in connection with this Lease shall be brought in a court of competent jurisdiction located within the State of New Hampshire and each Party consents to the jurisdiction of such court and hereby waives any right to remove any such action to any other forum.

18.21 Time of the Essence. **TIME SHALL BE OF THE ESSENCE HEREOF.**

18.22 Holding Over. If Tenant occupies the Premises after the expiration or earlier termination hereof, Tenant shall be a tenant-at-sufferance subject to all of the terms and provisions of this Lease except that the Rent shall be one and one-half (1½) the Rent in effect immediately prior to the expiration or termination hereof. In addition, Tenant shall be liable for all damages incurred by the City as a result of such holding over. Such a holding over, even if with the consent of the City, shall not constitute an extension or renewal of this Lease.

18.23 Confidentiality. The Parties recognize that each will be required to deliver certain proprietary information to the other under the terms of this Lease. Each Party, upon receipt from the other Party of any document designated as "confidential" or "proprietary," or words to that effect, shall use its best efforts in accordance with applicable law, to hold such document and the information contained therein in strict confidence. Notwithstanding the foregoing, the Parties shall be entitled to disclose such information to their representatives, attorneys, employees, consultants, contractors, investors and lenders provided that they require such persons to maintain the confidentiality of such information. In all events, each Party shall be permitted to disclose such information as required by applicable Legal Requirements or court order. Nothing in this provision shall require the City to operate in any way in contravention to RSA 91-A, the so-called Right-to-Know law, as it may be amended from time to time.

18.24 City's Right of Self-Help. As an additional alternative remedy to the other remedies provided for in this Lease, and subject to the rights of any Permitted Leasehold Mortgagee, the City shall have the right (but not the obligation) to cure any Event of Default for and on behalf of Tenant (a) relating to Tenant's obligations regarding insurance, maintenance, repair and use of the Premises; or (b) relating to the obligations of Tenant to comply with Legal Requirements, including, without limitation, Environmental Laws; or (c) relating to the obligations of Tenant to discharge liens (or bond off such liens or otherwise remove them of record), if such default, if not promptly cured, results, or can reasonably be anticipated to result, in a dangerous, unhealthy or unsafe condition at the Premises,

or in a forfeiture, condemnation or loss of the interest of the City in the Premises (or a threat thereof) or in exposure of the City to liability; provided, however, that the City's right of self-help shall not be exercised by the City prior to providing Tenant with an additional notice of the City's intention to exercise its right of self-help and, so long as the City has determined that there is no imminent threat to public health or safety, providing Tenant with an additional cure period, not to exceed seven (7) days. Expenses of the City incurred in exercising its rights under this **Section 18.24**, shall be Additional Rent hereunder to be paid by Tenant. The City shall not incur any liability as a result of any exercise of the rights under this **Section 18.24**, and Tenant shall indemnify and hold the City harmless from all costs, claims, losses and liabilities in any way relating to the same, including all reasonable attorney's fees. Any amount payable by Tenant to the City pursuant to the provisions of this **Section 18.24** shall be paid within thirty (30) days after request by the City with reasonable documentation relating to such amounts.

18.25 No Advertisement. Tenant shall not, without the City's prior written approval, refer to the City in any advertising, letterheads, bills, invoices or in other printed matter.

18.26 When Lease Becomes Binding. Employees or agents of the City have no authority to make or agree to make a lease or any other agreement or undertaking in connection herewith. The submission of this document for examination and negotiation does not constitute an offer to lease, or a reservation of, or option for, the Premises, and this document shall become effective and binding only upon the execution and delivery hereof by both the City and Tenant.

18.27 Limitations on Damages. The City shall never be liable to Tenant, and the Tenant shall never be liable to the City, for any loss of business or any indirect, incidental, special, consequential or exemplary damages or lost profits.

18.28 City Employees. Tenant shall not, during the Term of this Lease, hire or employ, on either a full-time or part-time basis, person or persons so long as Tenant knows or has reason to know that such person is employed by the City.

18.29 No Waiver of the City's Defenses. In the defense of any claim, demand, expense or liability on behalf of the City which is to be defended by Tenant as provided in this Lease (even if such claim, demand, expense or liability is groundless, false or fraudulent), Tenant agrees on its own behalf and on behalf of its successors and assigns, not to, and shall cause its insurers to agree not to, without obtaining express prior written permission from the General Counsel of the City, waive any defense involving in any way the jurisdiction of the tribunal over the person of the City, the immunity of the City, its members, officers, agents or employees, the governmental nature of the City or the provisions of any statutes respecting suits against the City.

18.30 [Reserved].

18.31

18.32 Security Deposit. Tenant shall pay the Security Deposit on the Effective Date to be held by the City in consideration of the City's execution of this Lease and, if the City so elects, as security for the performance and observance by Tenant of all of its covenants and obligations hereunder. Notwithstanding anything to the contrary set forth in this Lease, the Security Deposit shall

be deemed fully earned by the City on the Effective Date and shall not be refundable or otherwise returned to Tenant. If all or any part of the Security Deposit is applied to an obligation of Tenant hereunder, Tenant shall immediately, upon request by the City, restore the Security Deposit to its original amount. Tenant shall not have any right to call upon the City to apply all or any part of the Security Deposit to cure any default or fulfill any obligation of Tenant, but such use shall be solely in the discretion of the City. Upon any conveyance by the City of its interest under this Lease, the Security Deposit may be delivered to the City's grantee or transferee in the City's sole discretion, but it shall have no obligation to do so. Upon any such delivery and upon the receipt by Tenant of a written acknowledgment by said grantee or transferee that it has received the Security Deposit, Tenant hereby releases the City herein named of any and all liability with respect to the Security Deposit, its application and return, and Tenant agrees to look solely to such grantee or transferee. It is further understood and agreed that this provision shall also apply to subsequent grantees and transferees. Tenant agrees that Tenant will not attempt to assign or encumber the Security Deposit and that the City shall not be bound by any such attempted assignment or encumbrance. No holder of any mortgage on the City's Interest in the Premises shall be responsible for the Security Deposit in any manner unless such mortgagee has actually received the same.

18.33 National Historic Monument Program. The Parties acknowledge and agree that the Property is being leased pursuant to and in accordance with the National Historic Monument Program. During the term of this Lease, all obligations and requirements of the City [*Under Review by Tenant*] by virtue of the Deed and the Application or any other applicable document with respect to the rehabilitation, operation, use and improvement of the Property shall be assumed by the Tenant and Tenant shall be primarily responsible therefore until the expiration or earlier termination of the Term of this Lease.

18.34 Transportation Demand Management (TDM) Plan. **TDM Plan Submission:** [*Under Tenant Review*] To improve public health and safety, reduce travel delay by reducing discretionary drive-alone trips, build upon the City's efforts to encourage sustainability, and improve community livability by reducing vehicle trips and providing attractive options to driving alone, Tenant shall comply with a TDM plan to encourage multi-modal access to and from the proposed development as contemplated in the Approvals.

18.35 Historic Tax Credits. Tenant shall have the sole and exclusive right to apply for historic tax credits for the project, and the City hereby agrees to cooperate with Tenant in obtaining historic tax credits and maintaining compliance with requirements applicable to such tax credits. Any such historic tax credits obtained by Tenant shall be shared as follows: [TO COME].

[THIS PAGE ENDS HERE. THE NEXT PAGE IS THE SIGNATURE PAGE.]

EXECUTED as of the Effective Date first set forth above.

CITY:

CITY OF PORTSMOUTH, N.H.,
a New Hampshire _____

By: _____

Name: John P. Bohenko
Title: City Manager

Authorized by vote of the Portsmouth City
Council on _____.

TENANT:

SOBOW SQUARE, LLC,
a _____ limited liability
company

By: _____

Name:
Title:

LIST OF EXHIBITS

Exhibit A – Premises Plan

Exhibit B – Reserved Rights

Exhibit C – Development Plan

Exhibit D – **Reserved**

Exhibit E – Required Approvals

Exhibit F - Construction Schedule

Exhibit G – Completion Guaranty

Exhibit H – Non-Disturbance Agreement

Exhibit I – Estoppel Certificate Form

Exhibit J – Construction Management Plan

Exhibit K – Environmental Indemnification Agreement

Schedule 1 – Calculation of Participating Rent and Reasonable Profit

SCHEDULE 1

Calculation of Participating Rent and Reasonable Profit
TO BE DISCUSSED

LIST OF EXHIBITS

Exhibit A – Premises Plan

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Schedule 1 – Calculation of Participating Rent and Reasonable Profit

SCHEDULE 1

Calculation of Participating Rent and Reasonable Profit
TO BE DISCUSSED

Application: Obtaining Real Property for Historic Monument Purposes

Thomas J. McIntyre Federal Building

80 Daniel Street, Portsmouth, NH

July 15, 2019

Attachment C – Development Budget

	TOTAL BUDGET	New Construction	McIntyre Building
LAND COSTS			
Capitalized Property Taxes	\$ 248,781	\$ 125,252	\$ 123,528
Total Land Costs	\$ 248,781	\$ 125,252	\$ 123,528
Legal			
Legal - Zoning	\$ 200,000	\$ 111,930	\$ 88,070
Legal - Lender	\$ 75,000	\$ 41,974	\$ 33,026
Legal - Owner	\$ 200,000	\$ 111,930	\$ 88,070
Subtotal Legal	\$ 475,000	\$ 265,834	\$ 209,166
Design Costs			
Appraisal	\$ 12,500	\$ 6,996	\$ 5,504
Architect Fees - Design	\$ 1,076,000	\$ 602,184	\$ 473,816
Architect Fees - Construction Administration	\$ 550,000	\$ 307,808	\$ 242,192
Architect Fees - Additional Services	\$ 100,000	\$ 55,965	\$ 44,035
Architectural Reimbursables	\$ 86,300	\$ 48,298	\$ 38,002
Landscape Architecture	\$ 176,740	\$ 98,913	\$ 77,827
Building Envelop Consultant	\$ 80,000	\$ 44,772	\$ 35,228
Interior Design	\$ 75,000	\$ 41,974	\$ 33,026
Acoustic Consultant	\$ 10,000	\$ 5,597	\$ 4,403
Lighting Consultant	\$ 10,000	\$ 5,597	\$ 4,403
Energy Model	\$ 25,000	\$ 13,991	\$ 11,009
Traffic Consultant	\$ 25,000	\$ 13,991	\$ 11,009
City Consultant - Colliers	\$ 32,000	\$ 17,909	\$ 14,091
Abatement Consultant	\$ 9,800	\$ 5,485	\$ 4,315
Consultant Reimbursables	\$ 32,550	\$ 18,216	\$ 14,333
Site / Civil Engineering	\$ 115,000	\$ 64,360	\$ 50,640
Environmental Engineering	\$ 200,000	\$ 111,930	\$ 88,070
Geotech. Engineering	\$ 100,000	\$ 55,965	\$ 44,035
Survey	\$ 26,000	\$ 14,551	\$ 11,449
Materials Testing	\$ 50,000	\$ 27,983	\$ 22,017
Construction Inspections	\$ 25,500	\$ 14,271	\$ 11,229
Subtotal Design Costs	\$ 2,817,390	\$ 1,576,753	\$ 1,240,637
Marketing Costs			
Advertising & Promotion	\$ 150,000	\$ 150,000	\$ -
Furniture, Fixtures & Equipment	\$ 250,000	\$ 139,913	\$ 110,087
Public Relations	\$ 90,000	\$ 50,369	\$ 39,631
Brokerage Fees - Commercial (LC)	\$ 1,130,370	\$ 183,840	\$ 946,530
Brokerage Fees - Residential	\$ 56,525	\$ 56,525	\$ -
Postage, Delivery & Bank Charges	\$ 3,000	\$ 1,679	\$ 1,321
Subtotal Marketing Costs	\$ 1,679,895	\$ 582,325	\$ 1,097,570
Permits & Fees			
Building Permit Fee	\$ 418,376	\$ 234,144	\$ 184,232
Utility Backcharges & Connection Fees	\$ 250,000	\$ 139,913	\$ 110,087
Filing Fees	\$ 25,000	\$ 13,991	\$ 11,009
Subtotal Permits & Fees	\$ 693,376	\$ 388,048	\$ 305,328
Interest Reserve (Construction Financing Costs)	\$ 1,193,945	\$ 1,031,862	\$ 162,083
Loan Commitment Fee	\$ 251,975	\$ 125,988	\$ 125,987
Direct Project Supervision	\$ 730,336	\$ 463,764	\$ 266,572
Accounting (3rd Party CPA)	\$ 30,000	\$ 16,790	\$ 13,210
Direct Project Supervision - Reimbursables	\$ 21,910	\$ 12,262	\$ 9,648
Development Fee	\$ 1,606,739	\$ 1,020,280	\$ 586,459
Operating Deficit (During Construction)	\$ 15,000	\$ 15,000	\$ -
Operating Deficit (During Lease Up)	\$ 336,113	\$ 42,033	\$ 294,080
Approvals and Predevelopment Fee	\$ 300,000	\$ 167,895	\$ 132,105
Soft Cost Contingency	\$ 374,635	\$ 209,664	\$ 164,970
Subtotal Financing, Fees & Operations	\$ 4,860,653	\$ 3,105,537	\$ 1,755,116
Total Soft Costs	\$ 10,526,314	\$ 5,918,497	\$ 4,607,817
HARD COSTS			
Hard Costs - Contractor (Public Realm, Hard Costs Only)	\$ 7,047,053	\$ 3,943,885	\$ 3,103,168
Hard Costs - Contractor (Building)	\$ 33,322,003	\$ 25,057,320	\$ 8,264,683
Hard Costs - Other	\$ 250,000	\$ 139,913	\$ 110,087
Hard Costs - Inflation Factor	\$ 1,218,572	\$ 681,974	\$ 536,598
Hard Costs - TI	\$ 5,613,408	\$ 1,298,000	\$ 4,315,408
Hard Costs Contingency	\$ 2,018,453	\$ 1,129,628	\$ 888,825
Builder's Risk Policy	\$ 270,320	\$ 151,284	\$ 119,035
Owner's GL Policy	\$ 75,000	\$ 41,974	\$ 33,026
Sub Guard / Subcontractor Bonding	\$ 495,967	\$ 277,568	\$ 218,399
Total Hard Costs	\$ 50,310,775	\$ 32,721,546	\$ 17,589,230
Total Project Cost	\$ 61,085,869	\$ 38,765,295	\$ 22,320,575

Application: Obtaining Real Property for Historic Monument Purposes

Thomas J. McIntyre Federal Building

80 Daniel Street, Portsmouth, NH

July 15, 2019

Attachment D – Construction Budget

Cost Estimate Breakdown			
DIVISION	TRADE / DESCRIPTION	PRICE	McIntyre Budget (renovation only)
Division 01	General Requirements	\$ 422,630	\$ 76,719
Division 02	HazMat	\$ 1,908,740	\$ 1,908,740
Division 02	Demolition	\$ 659,158	\$ 527,793
Division 02	Selective Demolition	\$ 36,720	\$ 36,720
Division 02	Earthwork	\$ 2,544,709	\$ -
Division 02	Fencing	\$ 152,500	\$ -
Division 02	Landscape & Site Furnishings	\$ 2,717,799	\$ -
Division 03	CIP Concrete	\$ 876,323	\$ -
Division 03	Cementitious Underlayment	\$ 128,215	\$ -
Division 04	Masonry & Restoration	\$ 1,695,489	\$ 214,140
Division 05	Structural Steel	\$ 1,597,375	\$ -
Division 05	Misc. Metals	\$ 172,600	\$ 46,000
Division 06	Rough Carpentry	\$ 1,904,130	\$ -
Division 06	Finish Carpentry	\$ 446,600	\$ -
Division 07	Waterproofing	\$ 832,889	\$ -
Division 07	Insulation	\$ 125,471	\$ -
Division 07	Roofing	\$ 435,245	\$ 103,500
Division 07	Siding	\$ 163,520	\$ -
Division 07	Fireproofing	\$ 305,265	\$ 188,498
Division 07	Joints & Sealants	\$ 92,060	\$ 30,600
Division 08	Doors, Frames and Hardware	\$ 372,300	\$ -
Division 08	Overhead Doors	\$ 36,000	\$ 6,000
Division 08	Entrances, Storefronts & Glazing	\$ 598,865	\$ 188,105
Division 08	Windows	\$ 622,350	\$ -
Division 09	Gypsum Wall Board	\$ 1,171,002	\$ 220,957
Division 09	Acoustical Ceiling Tiles	\$ 55,200	\$ -
Division 09	Flooring	\$ 505,966	\$ 110,250
Division 09	Painting	\$ 226,800	\$ -
Division 10	Specialties	\$ 405,150	\$ 250,000
Division 11	Parking Equipment	\$ 1,463,750	\$ -
Division 11	Appliances	\$ 264,500	\$ -
Division 11	Trash Chutes & Compactors	\$ 54,000	\$ -
Division 12	Cabinets	\$ 269,200	\$ -
Division 12	Stone and Solid Surface Counters	\$ 137,500	\$ -
Division 12	Window Treatments	\$ 23,100	\$ -
Division 14	Elevators	\$ 1,290,000	\$ 660,000
Division 15	Fire Protection	\$ 648,250	\$ 266,297
Division 15	Plumbing	\$ 2,146,798	\$ 190,798
Division 15	HVAC	\$ 1,684,804	\$ 433,220
Division 16	Electrical	\$ 2,602,342	\$ 609,992
	Trade Subtotal: +	\$ 31,795,315	\$ 6,068,329
	General Conditions	\$ 2,346,618	\$ 1,077,239
	Climate control	\$ 150,000	\$ 50,000
	Construction Contingency	\$ 3,724,574	\$ 716,500
	General Liability Insurance	\$ 500,012	\$ 94,512
	General Conditions/Insurance/Bonds/Permits Subtotal: +	\$ 6,721,204	\$ 1,938,251
	CM Overhead and Fees: +	\$ 1,852,537	\$ 258,103
	TOTAL CONSTRUCTION COST: =	\$ 40,369,056	\$ 8,264,683

Open Streets Concept to
Share the Square
September 29 & October 6, Noon to 5pm

Residents, business owners, and visitors are invited to reimagine Market Square on two Sunday afternoons this fall.

Open Streets are programs that temporarily open streets to people by closing them to cars. On an 'Open Street' people replace cars, and streets become places where people of all ages, abilities and background can come out and improve their health. This is a temporary project that offers our community a chance to experience Market Square in a whole new way.

In partnership with the Portsmouth Recreation Department, we've created a list of activities that already occur around town, and propose that some of these may occur in Market Square during Open Streets:

- Pickle Ball
- Corn Hole
- Salsa Dancing
- A Bike Parade
- Tables with Chess/Checkers
- Street Chalk Paintings
- A Pet Pageant
- Street Buskers

Because this is not a vendor event with outside sponsors, downtown businesses will not be competing with outside vendors. They can bring their shops to the people, out into the streets, and encourage those out in the streets to engage with what they sell or the services they offer.

During Open Streets, residents can also just come to Market Square and enjoy the peace and quiet of a vehicle-free Sunday afternoon.

Be sure to visit <https://openstreetsproject.org> and discover why Portsmouth is joining Open Streets communities across the country and across the world.

Here are some Frequently Asked Questions about Open Streets: (from Open Streets Project)

What are the benefits of having Open Streets in my city?

Open Streets programs provide a multitude of benefits to their host city. They provide communities with accessible, free recreation, leading to improved public health. They are exercises in social integration, connecting neighborhoods and allowing all residents to meet in the street as equals. Local businesses are provided the opportunity to showcase their wares to new potential customers, without the outside vendors that often accompany street festivals and events. Open Streets programs offer communities the opportunity to experience their city streets in whole new ways, encouraging greater civic participation and building support for the provision of broader transportation choices.

What makes Open Streets different from other street closure events like races, parades, or food festivals?

There are a number of ways in which Open Streets are different from other street closure events. Open Streets is a frequently occurring program encouraging physical activity, not a one-off event. They are about exploring your city in a new and fun way, highlighting existing brick and mortar businesses and civic assets, like museums and galleries and parks. Most importantly, Open Streets are entirely free and accessible. There are no user fees or entrance charges. No start lines or finish lines. Participants can enter and exit the route wherever and whenever they wish. You don't need to be a high-performing athlete to participate, and you don't need to be able to afford those \$100 yoga pants either. Open Streets programs are for anyone and everyone.

Will Open Streets cause traffic congestion?

A common concern is that Open Streets programs will cause traffic chaos, leading to the carpalypse or carnageddon. Open Streets organizers are often very interested in just the opposite, looking for solutions to alleviate traffic congestion. We know that cities see fewer traffic problems if residents are able to safely walk, cycle, and take public transit in their daily lives. Open Streets programs are a great way of introducing people to these forms of transportation. Additionally, Open Streets programs most often occur on Sundays, as that's when traffic volumes tend to be at their lowest. Open Streets programs, unlike most other street events, 'soft close' major intersections, allowing vehicular traffic to pass through the route. For more information on how the soft close intersections work, [click here!](#)

What streets are best for an Open Streets route?

We recommend using your main street(s) for your Open Streets program. Think of the Park Avenue of your city. That's a street that is already vibrant, attractive, with established businesses. It's a destination. You'll have a much easier time drawing people to your program if you're providing them with the chance to experience an existing special place in a whole new exciting way. From that spine, you can connect to those easier street close, knitting together various neighborhoods and communities.

What impact does Open Streets have on business?

Another concern Open Streets organizers often hear is that Open Streets will harm small scale business. In reality, Open Streets programs are often a boon to local brick and mortar businesses. One of the defining features of Open Streets programs is that they do not feature outside vending. Unlike many street events, no one will be putting up a tent or parking a food truck in front of an existing business. Open Streets provides the opportunities for local businesses to showcase their neighborhood without outside interference. A number of studies conducted in several American cities have captured the economic benefits available to businesses along Open Streets routes. For more information, take a look at our Open Streets and [Local Economies Fact Sheet](#)

How many times a year should Open Streets happen?

We strongly encourage programs to start with more than one date, even in the first year. Open Streets programs are all about encouraging regular physical activity. Regular is the key word in that sentence. It's difficult to foster a culture of regular physical activity with a one-off event. An Open Streets program that occurs multiple times does a far better job of instilling a routine of physical activity and healthy living.



SAMPLE SCHEDULE

Share the Square

Join us for open streets with some fun demonstrations + activities.
All ages welcome. Free.

SUNDAY, SEPTEMBER 29, 2019
1:00-5:00PM

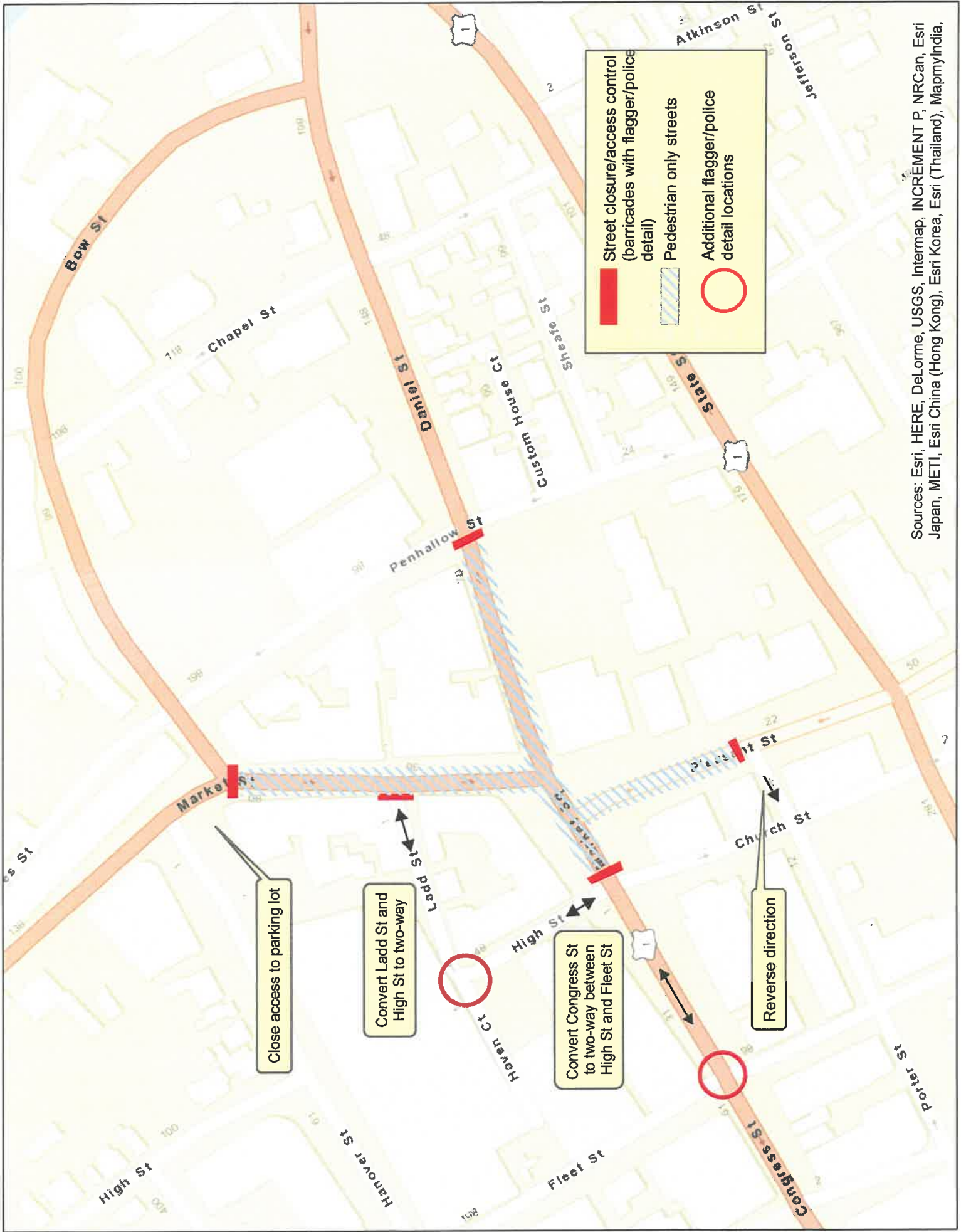
TIME	ACTIVITY	LOCATION
1:00-5:00PM throughout the day	Portsmouth Maritime Folk Festival Begins ~	Ongoing performances
1:00-4:00PM	Game + Activities (see below)	Pleasant Street
1:00-1:45PM	Square Dancing Showcase	Center of the Square
2:00PM Street	Bike Parade	Down + Back on Market
2:00-2:45PM	Zumba Showcase	Center of the Square
3:00-3:34PM	Salsa Showcase	Center of the Square
5:00PM	Shanty Blast – Outdoor Singing - Maritime Folk Festival Closure	

SUNDAY, OCTOBER 6, 2019
1:00-4:00PM

TIME	ACTIVITY	LOCATION
1:00-4:00PM	Game + Activities (see below)	Pleasant Street
2:00-2:45	Jump Roping Showcase	Center on the Square
2:00PM	Crossfit Fitness Challenge	Daniel Street
3:00-3:45PM	Yoga in the Streets	Center on the Square
3:00PM	Pet Costume Contest	In front of North Church

ACTIVITY LIST:

Pickleball Demonstration
Hoola Hooping
Cornhole
Twister (big game)
Human Size Jenga
Street Bowling
Touch a Truck
Ping Pong
Facepainting



Sources: Esri, HERE, DeLorme, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), MapmyIndia,

Open Streets Concept to “Share the Square”

September 29 and October 6, 2019

Noon – 5:00 p.m.

Estimated Expense:

Departments have submitted the following estimated expenses:

Department	# Personnel/Day	Total for 2 Days
Police	5	\$3,746
Fire	N/A	\$0
DPW *	3	\$924 - \$3,942
Recreation/Library	tbd	tbd
Subtotal		\$4,670 - \$7,688
Plus Lost**Parking Revenue	92 spaces	\$3,044
Total***		\$7,714 - \$10,732

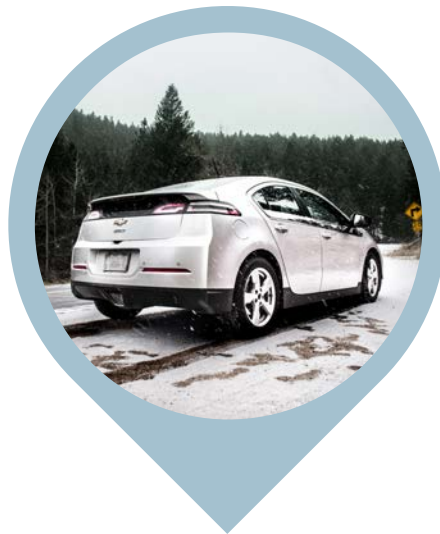
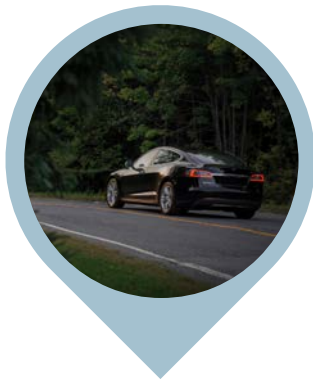
* Range is based upon types of security required (movable barricade vs. manned truck)

** Assumes a worst-case scenario whereby revenue is not recaptured by an alternative paid, City parking location.

*** The cost for appropriate outreach and publicity is not factored into the above estimate.



SITE HOST GUIDE



SEVEN DESTINATIONS

ONE EV READY STATE
OPEN FOR BUSINESS

SEVEN VEHICLES

UNLIMITED
DESTINATIONS

THE GOAL

The **CHARGE FORWARD ELECTRIC VEHICLE (EV) RELAY** will showcase New Hampshire as open for business for tourists, young talent, residents, and all drivers of electric vehicles, featuring the diversity and accessibility of charging stations while showcasing major destinations across the Granite State.

THE RELAY

Beginning in Colebrook and ending in Portsmouth, the **CHARGE FORWARD EV RELAY** will feature the latest technological marvels driven by popular NH personalities along each leg of the relay. The event will demonstrate the power and practicality of the next generation in transportation. Each leg of the route will showcase a different EV model and highlight a unique New Hampshire landmark or destination over the course of the one-day event.

SITE HOSTS

We invite you to be a site host during the **CHARGE FORWARD EV RELAY**. Your location has been selected due to its proximity to an EV charger and unique location as a top NH destination or landmark. Your location will host an approximately 30 minute press stop, featuring brief remarks and photo opportunities before moving on to the next leg of the relay. Site hosts are invited to participate during the remarks of the press stop. Our intent is to host the event rain or shine, with preference to hosting activities outdoors near the site's EV charger. Your location will be promoted as a relay stop on all promotional materials.

THE ROUTE

- Colebrook
- Conway
- Plymouth
- Loudon
- Concord
- Manchester
- Portsmouth

TUNE IN

Follow the relay path and our celebrity drivers for press stops, social media shout-outs, photo ops, and more! Learn more at www.driveelectricnh.org.

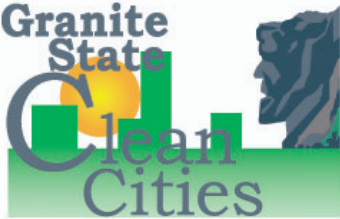


/DriveElectricNH




/DriveElectricNH

EVENT PARTNERS



**CITY OF PORTSMOUTH
PORTSMOUTH, NH 03801**

Office of the City Manager

Date: July 11, 2019
To: Honorable Mayor Jack Blalock and City Council Members
From: John P. Bohenko, City Manager 
Re: City Manager's Comments on July 15, 2019 City Council Agenda

Non-Public Session

1. **Collective Bargaining Agreement Negotiation Status Re: Professional Management Association**
2. **Collective Bargaining Agreement Negotiation Status Re: Teachers' Union**
3. **Collective Bargaining Agreement Negotiation Status Re: School Administrators**

Public Hearings & Votes on Ordinances &/or Resolutions

1. **Public Hearing Re: Various Bonding Resolutions for Projects Identified in the FY 20-25 Capital Improvement Plan** At the June 17th City Council meeting, Council established a public hearing on each of the proposed Resolutions for projects identified in the FY 20-25 Capital Improvement Plan.

GENERAL FUND – Resolution (see attached)

Citywide Streets, Sidewalks, Bridges and Facilities - \$10,550,000

- a. Citywide Facilities Capital Improvements - \$1,000,000
- b. Citywide Sidewalk Reconstruction Program - \$800,000
- c. Citywide Bridge Improvements - \$2,000,000
- d. Maplewood Avenue Bridge Replacement - \$500,000
- e. Cate Street Connector - \$1,500,000
- f. Street Paving Management and Rehabilitation - \$4,000,000
- g. Pease Tradeport Street Rehabilitation - \$750,000

SEWER FUND – Resolution (see attached)

FY 20 Sewer Projects - \$7,145,000

- a. Annual Sewerline Replacement - \$1,000,000
- b. Consent Mitigation - \$4,400,000
- c. Pleasant Street Sewers - \$770,000
- d. Maplewood Avenue Area Reconstruction - \$975,000

WATER FUND – Resolution (see attached)

FY 20 Water Projects - \$4,623,000

- a. Annual Waterline Replacement - \$1,000,000
- b. Reservoir Management - \$600,000
- c. Madbury Wells - \$750,000
- d. Water Transmission Main Replacement - \$250,000
- e. Pleasant Street Water Mains - \$823,000
- f. Maplewood Avenue Area Construction - \$1,200,000

I recommend the City Council move to adopt the various proposed CIP project resolutions to be bonded, as presented.

2. **Second Reading and Public Hearing Re: Annual Omnibus Ordinance Changes Recommended by the Parking and Traffic Safety Committee** Attached are the annual omnibus ordinances recommended by the Parking and Traffic Safety Committee. This year's omnibus addresses changes to parking in loading zones, prohibitions against mopeds and bicycles parking against monuments, no parking spaces, speed limits and one-way streets.

By way of background, on March 29, 2000, the City Council adopted Ordinance #4-2000 under Chapter 7, Article 1, Section 7.103 of the Vehicles, Traffic and Parking Ordinance. This ordinance was adopted in order to be more responsive to the changing parking needs of the downtown. Before its adoption, it often took three readings of the City Council to simply change a parking space from a 2-hour time restriction to a 15-minute restriction. This process would often take 4 – 6 months to complete.

The current ordinance authorizes the Parking and Traffic Safety Committee to recommend temporary parking and traffic regulations to the City Council for its approval in the form of its monthly meeting minutes. Once the Council approves these minutes, the temporary regulations are in effect for a period not to exceed one year. During that year, the Council and the public have the benefit of seeing how a temporary regulation works before adopting it as a permanent change to the parking ordinance. These temporary regulations are presented at one time to the Council for its consideration.

The attached amendments to Chapter 7, Vehicles, Traffic and Parking for the Council's consideration summarize the temporary parking regulations implemented by the Parking and Traffic Safety Committee last year.

I recommend the City Council move to pass second reading of the annual omnibus set of ordinances recommended by the Parking and Traffic Safety Committee, and schedule third and final reading for the August 12, 2019 City Council meeting.

3. **First Reading Re: Ordinance Amendment to Chapter 7, Article III, Section 7.328 Limited Parking – Three Hours – Raynes Avenue and Vaughan Street** The Parking and Traffic Safety Committee voted to place parking meters with a three (3) hour limit on Raynes Avenue and Vaughan Street at their June 6, 2019 meeting. Attached is a map with the proposed meter locations and the amendment to Chapter 7, Article III, Section 7.328, which reflects the vote of the Committee.

I recommend the City Council move to pass first reading and schedule second reading and public hearing for the August 12, 2019 City Council meeting to amend Chapter 7, Article III, Section 7.328 Limited Parking – Three Hours – Raynes Avenue and Vaughan Street.

City Manager's Items Which Require Action

1. **Request Approval of Employment Agreement for Fire Chief Todd Germain** The Fire Commission has reached an Employment Agreement with Fire Chief Todd Germain on a three (3) year employment contract to expire on June 30, 2022. Attached is the Employment Agreement for City Council vote of final approval, as required by Amendment B of the City Charter.

In addition to the term, the major items in this agreement are:

- Initial Salary: Grade 27, Step D of the City of Portsmouth Non-Union Salary Schedule (\$126,027 per annum).
- COLA Adjustments: Consistent with those negotiated in the PMA Collective Bargaining Agreement.
- Automobile: Provision of an automobile suitable for the duties of Fire Chief, which, because the Fire Chief is on-call at all times, may also be used for personal business.
- Tuition Reimbursement: Subject to budgetary restraints and prior approval by the Fire Commission, payment for the cost of tuition and textbooks for courses and/or other classes that would provide for improved job performance.

I recommend the City Council vote to approve the three (3) year Fire Chief Employment Agreement, to expire on June 30, 2022, between the City and Todd Germain.

2. **Request Approval of Agreement between the Portsmouth School Board and the Portsmouth Association of Clericals in Education** The City's negotiation team has reached an Agreement between the Portsmouth School Board and the Portsmouth Association of Clericals in Education on a new three (3) year Collective Bargaining Agreement to expire June 30, 2022. (See attached cost charts and agreement.)

I recommend the City Council vote to approve the three (3) year Collective Bargaining Agreement between the Portsmouth School Board and the Portsmouth Association of Clericals in Education (to expire on June 30, 2022).

3. **Request Approval of Agreement between the Portsmouth School Board and the American Federation of State, County and Municipal (AFSCME) Council 93, AFL-CIO School Custodial Supervisors** The City's negotiating team has reached an Agreement between the Portsmouth School Board and the American Federation of State, County and Municipal (AFSCME) Council 93, AFL-CIO School Custodial Supervisors on a new three (3) year Collective Bargaining Agreement to expire June 30, 2022. (See attached cost charts and agreement.)

I recommend the City Council vote to approve the three (3) year Collective Bargaining Agreement between the Portsmouth School Board and the American Federation of State, County and Municipal (AFSCME) Council 93, AFL-CIO School Custodial Supervisors (to expire on June 30, 2022).

4. **Request Approval of Agreement for Portsmouth Supervisory Management Alliance** The City's negotiating team has reached an Agreement with the Portsmouth City Employees – Portsmouth Supervisory Management Alliance on a new three (3) year Collective Bargaining Agreement to expire June 30, 2022. (See attached cost charts and agreement.)

I recommend the City Council vote to approve the three (3) year Collective Bargaining Agreement with the Portsmouth Supervisory Management Alliance (to expire on June 30, 2022).

5. **Proposed Funding from Contingency FY20 for Indoor Pool** As you will recall, during the budget process, Councilor Raynolds requested that \$15,000 be placed in the indoor pool line item for FY20. Presently, there is \$150,000 budgeted in FY20 for the operation of the indoor pool. In following up on Councilor Raynolds request, I am requesting that \$15,000 come from the contingency account to augment the existing budget of \$150,000, which would bring the total for FY20 to \$165,000.

I request a motion to authorize the City Manager to extend an additional \$15,000 from contingency for the FY20 indoor pool budget.

6. Proposed Cate Street Land Swap and Cate Street Connector Road Development Agreement

Two items (Development Agreement and area maps) are included in the Council’s packet this week related to the future construction of what has been referenced as the “Cate Street Connector Road”. The connector road, as described in the City’s Capital Improvement Plan, would provide direct access between Bartlett Street to the Borthwick Avenue traffic signal on Route 1 Bypass. At the Bartlett Street end, the proposed road would follow the existing Cate Street right-of-way for approximately 250’ and then travel across what is currently private property to connect to the Bypass. The proposed land swap would convey to the City the portion of private property required to complete the new road in return for a portion of what is currently City land to be used by a private developer for the construction of the proposed West End Yards mixed-use development project. In addition, the proposed development agreement to be entered into between the City and the project developer outlines the specifics of the conveyance of land as well as the allocation of responsibility for construction and funding of the new public road.

These two items are being provided for information purposes at this time with an anticipated vote on each item planned for the August 12, 2019 Council meeting.

Proposed Land Swap

On February 14, 2019, Attorney Bosen submitted a letter to the City Manager on behalf of his client, Cate Street Development LLC, requesting a land swap that would convey 136,919 square feet of private land to the City in exchange for 47,470 square feet of City land.

On February 19, 2019, the City Council voted to refer the request to the Planning Board for a recommendation. Per Chapter 11, Article VI of the City Ordinances any municipal actions relating to land acquisition or disposition shall be referred to the Planning Board for a recommendation. Approval of this land swap would provide the right-of-way for the creation of a new City road extending between Bartlett Street and US Route 1 Bypass to be built either now, or in the future. In addition, the developer would be conveyed a portion of the existing Cate Street right-of-way as well as an existing City-owned parcel that would be incorporated into a proposed mixed use development currently known as West End Yards. *At the March 21, 2019 Planning Board meeting, the Board voted to recommend approval of the land swap to the City Council.*

As with any proposed disposition or acquisition of land by the City, City staff have also completed a review of public records and documentation to identify any applicable regulations as well as the location of easements, utilities, or other potential encumbrances on the land. Staff undertakes this review to determine if there are any issues or information that requires further research or clarification prior to final conveyance. As a result of this review, the City has contracted with Ransom Consulting to complete a Phase 1 Environmental Services Assessment of the property to be acquired by the City. The City has also contracted with outside legal counsel – the law firm of Bernstein Shur – to complete any legal due diligence related to the land swap. Costs for both of these services are being carried by the developer.

If the Council approves the land swap, actual design, construction, and acceptance of the road will still require final approval by the City Council and a recommendation from the Planning Board per Chapter 11, Article VI, of the City Ordinances. The Planning Board is currently reviewing roadway plans in conjunction with the site review and subdivision applications for the proposed mixed use project.

Development Agreement

A development agreement is intended to be a contract between a local jurisdiction (the City) and a person or entity who owns or controls property within the jurisdiction, detailing the obligations of both parties and specifying the standards and conditions that will govern development of the property. In this case, the purpose of the proposed development agreement is to lay out the specific responsibilities of the City and the developer regarding the transfer of ownership of land as well as funding and construction for the new public road, off-site public infrastructure improvements, and additional on-site public improvements to benefit the public. A brief summary of the key provisions of the agreement is provided below:

A. Costs proposed to be the sole responsibility of the developer:

- Planning, design, permitting and construction documents prepared related to the public road prior to the approval of the development agreement.
- Relocation of public sewer and water lines currently located on private property with the exception of a portion of a public sewer line that currently extends from the Route 1 Bypass to the rear of the existing U-Haul property for which the City has no documented easement.
- Public realm improvements within land to be transferred to the City including a multi-use path, landscaping and amenities, and stormwater treatment along the northern side of the proposed road paralleling Hodgson Brook.
- Design, permitting, engineering, and construction of all utilities and upgrades required to service the new mixed used development.
- City's legal fees and costs associated with the land swap.

B. Costs proposed to be shared equally by the City and the developer:

- Engineering, permitting, and construction of the proposed public road. Note that the public road includes only the roadway, street lighting, and the proposed sidewalk along the southern side.
- Engineering, permitting, and construction of the improvements to the intersection with Route 1 Bypass.

C. Transfer of land for new road:

- The transfer of land for a public road shall be transferred to the City regardless of whether the City Council approves construction of the new road at this time. This will enable the City to move forward with construction of the road, at its sole cost, at a future date if desired.
- If the Council does not approve funding for construction at this time, the Developer will have the right to construct (at their sole cost) a driveway across the City's property for the purposes of accessing the new development.

I recommend the City Council schedule to vote on the Proposed Cate Street Land Swap and Cate Street Connector Road Development Agreement at the August 12, 2019 City Council meeting.

7. **Request for License for Bluestone Properties of Rye, LLC for Property Located at 135 Congress Street** The City Council has approved two (2) temporary construction licenses for Bluestone Properties of Rye, LLC to encumber a portion of the City's sidewalk at 135 Congress Street. The work requiring both sidewalk licenses has been completed. The applicant has indicated that the construction of the three story building now requires a temporary construction license to use four (4) parking spaces in the Worth Lot. The temporary construction license area includes one (1) ADA parking space and three (3) metered parking spaces. The Department of Public Works will create a temporary ADA parking space in the Worth Lot to replace the ADA space encumbered by this license. The applicant was approved for a 30-day temporary encumbrance permit, but was advised that a new license would be required along with applicable fees. The proposed license would start on July 29, 2019 and end on November 1, 2019.

The license area is shown on the attached plan as Exhibit A, along with a separate Exhibit B that shows the plan to create the temporary ADA parking space in the Worth Lot. Per the City's policy for "License Fee for Encumbrance of City Property", the Owner will be charged the daily fee for each encumbered parking space (\$35 per day x 4 spaces = \$140 per day) for 96 days (the term of the license) for a total license fee of \$13,440. The attached proposed license provides that if the license area is returned to the City prior to the end of the license term, the City will refund to the applicant the portion of the license fee already paid to the City. The proposed license also gives the City Manager the ability to extend the term of the license up to six (6) months.

The Planning and Legal Departments have reviewed and approved the proposed temporary construction license.

I recommend the City Council authorize the City Manager to negotiate and enter into a temporary construction license with Bluestone Properties of Rye, LLC, as submitted to facilitate construction activities at 135 Congress Street.

8. Request for Waiver Re: Islington Creek Neighborhood Parking Pilot Program

Attached is a letter that I sent to Larry Cataldo from the Islington Creek NPP Steering Committee. As you can see from the attached letter, City staff determined that the Steering Committee did not achieve the necessary 75% of signatures from single family households within the Islington Creek NPP neighborhood. It appears that they received a total of 51% in favor of the program. Further, if the City Council provides a waiver and allows the pilot program to go forward, the Steering Committee requests that the pilot program start in April, 2020 and conclude in September, 2020.

I recommend the City Council move to authorize a waiver for the Islington Creek NPP to conduct a pilot program starting April, 2020 through September, 2020.

9. Request for Public Hearing Re: Revisit McIntyre Initiative Petition In response to the Initiative Petition received from Revisit McIntyre on June 27, 2019, relating to the McIntyre property, a request is made for a Public Hearing no earlier than July 29, 2019 and no later than August 7, 2019 (30 days from certification of the City Clerk). In general, the petition seeks to have the City Council rescind every vote taken on the McIntyre property.

In accordance with Article VIII of the City Charter for Portsmouth, New Hampshire Initiative Petitions shall be verified by the City Clerk and signed by not less than 10 percent (10%) of the number of voters who voted at the Municipal Election held on November 7, 2017.

Attached is a copy of the Certificate of Verification which certifies that 601 signatures have been verified and approved with 54 signatures being rejected accounting for 655 signatures that were presented on the Initiative Petition.

The process following the verification is that within seven (7) days, “the City Clerk shall transmit the petition and certificate to the City Council and shall send a copy of the certificate to the first signer of the petition,” which was completed on July 8, 2019.

Article VIII continues, “The petition shall be considered valid following the certification unless written objection regarding the number of signatures certified is made by a voter no more than seven (7) days after the certificate has been issued. The validity of any such objection shall be determined by the City Council. Any decision of the City Council in this regard shall be considered final.

The City Council shall hold a public hearing within thirty (30) days of any measure proposed in any petition signed by the requisite number of registered voters, unless a question of the lawful authority of Council to pass the measure is raised by some member of the Council. If such a question is raised by any Councilor, the measure shall be referred to the City Attorney for review. If the measure proposed is within the lawful

authority of the City Council to pass, the public hearing shall be scheduled within thirty (30) days of the date of the City Attorney's opinion to that effect. If the measure may not be lawfully passed by the Council, it shall be returned to the petitioners with a copy of the City Attorney's opinion affixed to the petition.

The City Clerk shall mail notice of the hearing to ten (10) petitioners whose names appear first on each petition. Such notice is to be mailed at least seven (7) days prior to the hearing. Notice by publication of a summary of the contents shall also be made and shall be at the City's expense."

City Attorney Sullivan has reviewed the measure proposed and has ruled the petition to be within the lawful authority of the City Council to pass. Therefore, it is our recommendation that the Mayor and City Council vote to schedule a public hearing no earlier than July 29, 2019 and no later than August 7, 2019 (30 days from certification of the City Clerk).

Following the public hearing mandated by the Charter, the City Council must either:

1. Pass said measure without alteration or amendment; or
2. Deny said measure by motion stating the reasons for said denial.

I recommend the City Council move to schedule a public hearing and Council vote on the Initiative Petition no earlier than July 29, 2019 and no later than August 7, 2019.

Consent Agenda

1. **Request for License to Install Projecting Sign** Attached is a request for permission to install a projecting sign that extends over the public right of way at 501 Islington Street for Partners Bank as follows:

Sign Dimensions: 48" x 33"

Sign Area: 11 sq. ft.

The proposed sign complies with zoning requirements. If a license is granted by the City Council, no other municipal approvals are needed.

I recommend the City Council move to approve a revocable municipal license, subject to the following conditions:

1. *The license shall be approved by the Legal Department as to content and form;*
2. *Any removal or relocation of the sign, for any reason, shall be done at no cost to the City; and*

3. *Any disturbance of a sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the sign, for any reason, shall be restored at no cost to the City and shall be subject to review and acceptance by the Department of Public Works.*

2. **Request for License to Install Projecting Sign** Attached is a request for permission to install a projecting sign that extends over the public right of way at 65 Congress Street, Unit 107 for Matthew Parker, dba Danforth Pewter as follows:

Sign Dimensions: 36” x 36”

Sign Area: 9 sq. ft.

The proposed sign complies with zoning requirements. If a license is granted by the City Council, no other municipal approvals are needed.

I recommend the City Council move to approve a revocable municipal license, subject to the following conditions:

1. *The license shall be approved by the Legal Department as to content and form;*
2. *Any removal or relocation of the sign, for any reason, shall be done at no cost to the City; and*
3. *Any disturbance of a sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the sign, for any reason, shall be restored at no cost to the City and shall be subject to review and acceptance by the Department of Public Works.*

City Manager Informational Items

1. **Report Back Re: Planters and Flower Boxes on City Property** The following is a report back on Councilor Roberts’ inquiry of planters in the downtown area. As of June 17, 2019, there are approximately 41 planters on City property. This number changes as store owners change their displays. Most of the flower planters are placed tight to the buildings, however, there are some placed closer to the curb. There are approximately 73 planters on private property. *Attached are some photos for review.*
2. **Report Back Re: Distribution of Single-Use Disposables Ordinance** In response to the City Council’s request for Legal Department review of the captioned ordinance which was submitted by Councilor Denton to the Council for consideration in June of this year, please see the *attached memorandum from Attorney Sullivan.*

3. **Letter from NH Department of Transportation Re: Type II Noise Abatement Program** I am pleased to report that the City of Portsmouth is the first community to meet eligibility requirements for a pilot study. (See attached letter.) The anticipated completion of the pilot study is Fall 2019, at which time all Type II measures will have been identified. A report of results will follow.

EMPLOYMENT AGREEMENT

1. Preamble

This Agreement is entered into between the Fire Commission, City of Portsmouth, New Hampshire (hereinafter called "Commission/Board") and Todd Germain (hereinafter called "Employee"). This Agreement is null and void unless approved by the Portsmouth City Council.

2. Employment and Term

The Commission/Board agrees to employ the Employee and the Employee agrees to accept employment in the position of Fire Chief for a 3 year term commencing on July 1, 2019 and ending on June 30, 2022. The Commission/Board and the Employee acknowledge that this is a full-time, year-round position including extensive obligations in the evenings and on week-ends. The Employee agrees to devote all of his professional efforts to the successful fulfillment of his responsibilities to the Commission/Board and the City.

3. Salary

Effective on the date of hire, the Employee shall be placed on Grade 27, Step D of the City of Portsmouth Non-Union Salary Schedule, which is One hundred twenty-six thousand and twenty-seven dollars \$126,027.00 per annum, payable in no fewer than twenty-six installments and subject to such deductions as may be authorized or as may be required by law. Thereafter, the Employee will continue to receive salary step increases consistent with existing City policy. Effective July 1, 2019, July 1, 2020, and July 1, 2021, the Employee will also be entitled to the same COLA increases as those set forth in the collective bargaining agreement between the City of Portsmouth and the Professional Management Association. Except as expressly described herein, the Employee shall not be entitled to any other salary enhancements. In the event that the term of this Agreement ends prior to the ratification of a successor collective bargaining agreement between the City of Portsmouth and the Professional Management Association, the Employee may begin negotiations with the Portsmouth Fire Commission for a new Agreement.

4. Certification

This Section is not applicable to the Fire Chief position.

5. Termination for Cause

This Agreement may be terminated by the Commission/Board at any time for cause, i.e., failure on the part of the Employee to comply with any term or condition of this Agreement, the laws, rules and regulations of the State of New Hampshire, or the rules and regulations of the Commission/Board, or the City of Portsmouth; or malfeasance, misfeasance, nonfeasance, or insubordination in carrying out the responsibilities of the position as specified in the Municipal Charter of the City of Portsmouth or as directed by the Commission/Board.

Termination for Cause shall take place only following written notification specifying the reasons for termination. Unless the Employee submits to the Commission/Board, within twenty (20) days of receipt of such notification, a written request for a hearing before the Commission/Board, the Agreement shall be considered terminated as of the date which falls thirty (30) days after the Employee's receipt of notification. If the Employee requests a hearing, the Commission/Board shall hold this hearing within twenty (20) days after receipt of such request. The Commission/Board shall render a written decision to the Employee within ten (10) days of the hearing. In the event of a Termination for Cause, the Employee shall receive no severance and no further compensation beyond the last day worked.

6. Termination with Severance Payment

If at any time the Commission/Board in its discretion shall so determine, the Commission/Board may, without cause and with or without prior notice, relieve the Employee of duties under this Agreement. In such event, the Employee shall be entitled to severance benefits. Such severance benefits shall be six month's salary or the balance of the contract, whichever is less. As is set forth above in Section 5, if the termination is for cause, the Employee shall not be entitled to severance benefits. Severance benefits shall not be paid upon the voluntary resignation of the Employee.

7. Termination by Mutual Consent/Voluntary Resignation

This Agreement may be terminated at any time by mutual consent of the Commission/Board and the Employee or by voluntary resignation of the Employee. In the event the Employee voluntarily resigns before the expiration of the term of this Agreement or any renewal thereof, the Employee shall give the Commission/Board thirty (30) days written notice in advance of such resignation. In the event of voluntary resignation, the Employee shall not be eligible for severance benefits.

8. Severance Constitutes Release

The acceptance by the Employee of the severance benefits provided under this Agreement shall constitute a full and complete release of any other rights, claims, or causes of action whether in law, equity or otherwise, that the Employee may have against the Commission/Board, the City of Portsmouth, and the employees, elected or appointed officials, officers, agents, representatives and attorneys of such entities.

9. Benefits

Except as otherwise provided herein, the Employee's fringe benefits shall be established by the collective bargaining agreement currently in place between the City of Portsmouth and the Professional Management Association. The exceptions shall be described in detail in Section 10 below.

10. Exception to Benefits in Section 9

In lieu of or in addition to the compensation enumerated in Section 9, the Employee shall also be entitled to the following:

- a. The Fire Chief shall be provided with a suitable automobile for use in the performance of his duties under this Agreement. Recognizing that the Fire Chief is on-call at all times, it is understood that the automobile may also be used for personal business.
- b. Subject to budgetary constraints, the City agrees to cover the cost of tuition and textbooks for courses and/or other classes that would provide for improved job performance as part of a career development program. Prior approval by the Fire Commission of any and all courses is required. If the Employee fails to successfully complete the course and/or class with a final passing grade, he will be required to reimburse the City for the entire cost of tuition and textbooks.
- c. The City recognizes that certain expenses of a non-personal and generally job-related nature will be incurred by Employee, and hereby agrees to reimburse or to pay said general expenses upon receipt of duly executed expense vouchers, receipts, statements or personal affidavits, subject to budgetary authorization to be approved by the Fire Commission as an element of the annual Department budget.
- d. The City hereby agrees to pay, within budgetary constraints and subject to the approval of the Fire Commission, the professional dues and subscriptions of the Employee necessary for his continuation and full participation in national, regional, state and local associations and organizations, necessary and desirable for his continued professional participation, growth and advancement.
- e. Upon execution of this Agreement, the Employee will be credited with his previously accrued sick leave to a maximum of one hundred and fifty (150) days. Going forward, the Employee will accrue sick days in accordance with the PMA contract. The Employee shall accumulate sick leave to a cap of one hundred and fifty (150) days and the City agrees to pay the Employee a sum equal to ninety percent (90%) of all unused sick leave upon his retirement from

the City. At the option of the Employee, the sick leave may be divided and taken over a period of up to three years prior to retirement.

AGREED: The parties below acknowledge that this Agreement is subject to the approval of the Portsmouth City Council without which approval this Agreement is without force and effect.

For the Commission/Board:

Employee:

Date:

Date:

Approved by the Portsmouth City Council:

Date

Certified by the City Clerk

_____ City Clerk

Representing Management Exclusively in Workplace Law and Related Litigation



Jackson Lewis P.C.
100 International Drive
Suite 363
Portsmouth, NH 03801
Tel 603 559-2700
Fax 603 559-2701
www.acksonlewis.com

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THOMAS M. CLOSSON
DIRECT DIAL: 603.559.2729
THOMAS.CLOSSON@JACKSONLEWIS.COM

To: City Manager Bohenko, Mayor Blalock and Members of the Portsmouth City Council
From: Tom Closson
Re: Tentative Agreement with the Portsmouth Association of Clerical Employees
Date: June 11, 2019

This City's negotiating team has reached a tentative agreement with the Portsmouth Association of Clerical Employees on a new three (3) year collective bargaining agreement. Both the Portsmouth School Board and the Association have already voted to ratify the tentative agreement and I am pleased to recommend it to you. The material terms of the tentative agreement are summarized below.

CBA SECTION	PROPOSED CHANGE
3 (Labor Agreement)	Add language requiring School District to provide certain employee information to Union for purposes of negotiations, with Union agreeing to defend and hold the School District harmless for providing such information.
8 (NEA/NH Association Security Clause)	Delete section entirely.
9 (Probation)	Increase probation for new employees to no less than 180 days and up to 270 days.

10 (Classification Of Employees)	Include paid Holiday hours in the prorated calculation of vacation and sick leave.
10 (Classification of Employees)	Change definition of Permanent Employee to reflect increase in probation to no less than 180 days and up to 270 days.
10 (Classification of Employees)	Add “dental insurance” to Category A, B and C.
11 (Holidays)	Increase the day before Thanksgiving to a full day holiday, provided it is not a regular school day.
19 (Leaves)	Allow employees to roll over unused personal leave into sick time.
19 (Leaves)	Create new Section 19.10 to provide that sick and vacation leave will be credited to an employee’s record at the beginning of the employment year.
27 (Overtime)	Remove sick and personal time from calculation of hours worked for purposes of determining overtime.
32 (Health Insurance)	Update language to reflect changed name of health plan offered.
32 (Health Insurance)	No change in premium cost sharing arrangement on 7/1/2019; increase employee premium cost share to 6% on 7/1/2020 and 7% on 7/1/2021.
40 (Phoning For Substitute Personnel) and 41 (Substitute Phoning Cell Phone Usage)	Delete sections entirely.
44A (Educational Incentive Reimbursement)	Add “...technology courses and/or equipment related to an employee’s current responsibilities that is provided as part of, and is included in the cost of, an approved course.”
45 (Longevity)	Include longevity payment in employees’ regular paychecks.
45 (Longevity)	Increase longevity by average rolling CPI-U COLAs on 7/1/2019, 7/1/2020, and 7/1/2021.
46 (Hourly Rate Scale)	Change name of applicable CPI-U to “Boston-Cambridge-Newton.”

46 (Hourly Rate Scale)	Eliminate all “me too” provisions (final 5 paragraphs of Section 46).
46 (Hourly Rate Scale)	Step increases for those eligible; increase of base wages for steps 4-6 only by \$.25/hour on 7/1/2019, \$.30/hour on 7/1/2020, and \$.30/hour on 7/1/2021; and COLAs (based on 10-year rolling average Boston-Cambridge-Newton CPI-U, no less than 2% and no more than 5%) on 7/1/2019, 7/1/2020, and 7/1/2021.
48 (Duration)	Change to June 30, 2022 (to reflect a 3 year CBA).
51 (Job Descriptions)	Change this Section to the following: “The District, with the cooperation of the Association, will continue to work on developing the criteria to be applied to the determination of placement in category, with any actual changes in category to be negotiated by the parties in the next successor collective bargaining agreement.”

A “red-lined” copy of the tentative agreement is attached. I believe that this tentative agreement is fair, reasonable, and consistent with the City’s strategy for collective bargaining. I recommend it to you for ratification. I will also be happy to answer any questions that you have about this tentative agreement.

Clerical 6/27/19

Retirement Rate	11.36%	11.17%	11.17%	11.17%
Medicare	1.45%	1.45%	1.45%	1.45%
Fica	6.20%	6.20%	6.20%	6.20%
COLA		2.00%	2.00%	2.00%
Steps adjusted steps 4-6		\$0.25	\$0.30	\$0.30

CURRENT CONTRACT GROSS BUDGET (Steps only/No COLA)

	FY19 Base Year	FY20	FY21	FY22	Projected 3-Yr Total
Salary	1,592,313	1,658,566	1,662,545	1,664,295	4,985,406
Longevity	25,771	25,338	27,318	30,036	82,692
Retirement	183,814	188,092	188,758	189,257	566,107
Medicare	23,462	24,417	24,503	24,568	73,487
Fica	100,321	104,402	104,772	105,049	314,222
Health Savings	-	-	-	-	-
	1,925,682	2,000,815	2,007,895	2,013,204	6,021,914

Year-to-Year **CURRENT** Gross Budget Change
% Change

	75,133	7,080	5,309
	3.90%	0.35%	0.26%

87,522	Total Yr-to-Yr Increase*
4.55%	Change FY20 to FY22
1.52%	Avg % Change

PROPOSED TENTATIVE AGREEMENT GROSS BUDGET

	FY19 Base Year	FY20	FY21	FY22	Projected 3-Yr Total
Salary	1,592,313	1,705,286	1,756,028	1,793,553	5,254,867
Longevity	25,771	25,879	28,482	30,468	84,829
Retirement	183,814	193,371	199,330	203,743	596,444
Medicare	23,462	25,102	25,875	26,448	77,426
Fica	100,321	107,332	110,640	113,089	331,061
Health Savings	-	-	(5,463)	(5,463)	(10,926)
	1,925,682	2,056,970	2,114,892	2,161,839	6,333,701

Year-to-Year **PROPOSED** Gross Budget Change

	131,288	57,922	46,947
	6.82%	2.82%	2.22%

236,157	Total Yr-to-Yr Increase
12.26%	Change FY20 to FY22
4.09%	Avg % Change

BREAKDOWN OF TENTATIVE AGREEMENT COSTS OVER "CURRENT" GROSS BUDGET

YEAR-TO-YEAR Change Over Prior Year Base

Wages	FY19 Base Year	FY20	FY21	FY22	Projected 3-Yr Total
Salary	-	46,720	46,763	35,775	129,258
Longevity	-	541	623	732	1,896
Retirement	-	5,279	5,293	3,914	14,486
Medicare	-	685	687	508	1,881
Fica	-	2,930	2,938	2,173	8,041
Health Savings	-	-	(5,463)	(5,463)	(10,926)

TOTAL COST OF TENTATIVE AGREEMENT

-	56,156	50,841	37,639
	2.92%	2.54%	1.87%

144,636	Total Yr-to-Yr Increase
7.51%	Change FY20 to FY22
2.50%	Avg % Change

CUMULATIVE TENTATIVE AGREEMENT COST

Difference Between "CURRENT" Gross Budget and "PROPOSED" Gross Budget

	FY19 Base Year	FY20	FY21	FY22	Projected 4-Yr Total
Salary	-	46,720	93,483	129,258	269,461
Longevity	-	541	1,164	1,596	3,301
Retirement	-	5,279	10,572	14,486	30,337
Medicare	-	685	1,372	1,881	3,938
Fica	-	2,930	5,868	8,041	16,839
Health Savings	-	-	(5,463)	(10,926)	(16,389)

TOTAL COST OF TENTATIVE AGREEMENT

-	56,156	106,997	144,336
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307,488	Net Cost FY19-FY22
15.97%	Total Cumulative FY20 - FY22
5.32%	Avg % Change per yr

AGREEMENT

SCHOOL ADMINISTRATIVE UNIT NO. 52

CITY OF PORTSMOUTH, NH

AND

CLERICAL EMPLOYEES

PORTSMOUTH SCHOOL DISTRICT

Three Year Agreement

July 1, 2019 through June 30,
2022

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**NEA/NH - ASSOCIATION
PREFACE**

The School Board agrees that the provisions of this Agreement shall be applied to all employees without discrimination due to race, color, religion, sex, age, marital status, national origin, sexual orientation, disability or Veteran status. There shall be no intimidation or coercion of employees who exercise their rights to bargain collectively through the Association because of their membership therein or their activities in behalf of the Association in accordance with the provisions of RSA 273-A.

All references to employees in this Agreement are intended to designate both sexes, and whenever the female gender is used, it shall be construed to include male and female employees.

WITNESSETH

Whereas, the NEA/NH establishes itself as the exclusive representative of the Clerical employees of the Portsmouth School District who are members of the unit and on regular active duty for the District and enrolled on the School Board's payroll, now, therefore, the parties hereto contract and agree with each other as a result of collective bargaining as follows:

AGREEMENT

This signed agreement is made and entered into by the School Board, City of Portsmouth, New Hampshire, hereinafter called the District, and the National Education Association/New Hampshire, hereinafter called the NEA/NH-Association representing the Clerical employees of the Portsmouth District. Association as defined on page 1, Section I, Recognition.

SECTION #1

RECOGNITION

Whenever used in the Agreement, the word "employee(s)" shall refer to a person or persons actively and regularly engaged in School Board work or enrolled on the regular payroll of the School Board of the City of Portsmouth, New Hampshire.

The School Board hereby recognizes that the Association is the sole and exclusive representative of the certified NEA/NH Association unit of permanent employees of School Board with the purpose of bargaining in respect to wages, hours of work, and working conditions in accordance with the provisions of Chapter 273-A: 1: Public Employment Labor Relations Board (PELRB). School Board shall accord proper courtesy and respect to representative of NEA/NH Association when discussing mutual concerns of this Agreement.

SECTION #2
MANAGEMENT RIGHTS

It is understood that the School Board shall have the exclusive control of its operation. Nothing in this Agreement shall be deemed to limit the District in any way in the exercise of the regular and customary functions of Management.

The School Board agrees for itself and any of its authorized agents that it will not bargain with individual employee(s).

SECTION #3
LABOR AGREEMENT

The NEA/NH Association agrees for itself and its members that no member shall have the right to bargain individually with the District or any of its authorized agents on matters pertaining to wages, hours of work, or other conditions of employment.

It shall be the right of the NEA/NH Association to present and process grievances of its members whose wages, working conditions or status of employment are changed as a result of Management exercising the above-mentioned rights.

The Parties agree that the District shall provide the President of the Association the following information electronically in EXCEL format for each bargaining unit member bi-annually: (on or before September 15th and again on or before January 15th of each year)

Employee name, date of hire, position, work location, classification, salary schedule step, Full or part time status, number of annually paid hours, wage rate, home mailing address (including street, city/town, state and zip code), home phone, stipends and work e-mail address.

Furthermore, the parties agree that during negotiation years that the information provided shall include information pertaining to individual bargaining unit employees elected insurance plans (e.g. Single, 2p, Family), the total cost of each plan and the total amount each employee is responsible for monthly and annually for the plan the elected.

The Association agrees that the School District will be held harmless for providing the information outlined above.

SECTION #4

LABOR/MANAGEMENT MEETING

A meeting between the Portsmouth School Department's Personnel Director, or a designee of the Superintendent of Schools who handles personnel matters, and the President and Vice-President of the Clerical Unit shall take place when requested by either party. The purpose of the meeting will be to facilitate open communication between the parties.

SECTION #5

CONTRACTING OUT

The School Board agrees that work or services presently performed shall not be subcontracted, transferred, leased, assigned, or conveyed, whole or in part, to any other agency, person, private contractor, or non-unit employee where such work or services can be performed by present employees.

SECTION #6

INITIATION OF NEGOTIATIONS

It is the intent of the parties to comply *with* State Law as regards to the initiation of negotiations.

The parties shall set the first session on a mutually agreed date.

SECTION #7

DUES DEDUCTION

Upon presentation of a signed authorization card by the employee to the Office of the Superintendent of Schools, the School Board agrees to deduct the official dues of said NEA/NH Association from the wages of each Clerical employee and pay the total amount of dues collected to the Treasurer of the Local NEA/NH, PACE (Portsmouth Association of Clericals in Education) bi-weekly, along with a statement indicating who has paid dues.

The NEA/NH Association will keep the School Board informed of the correct names and addresses of the Treasurer and Building Representative of NEA/NH PACE.

If an employee has no check coming to him/her, or if the check is not large enough to satisfy the dues, then no deduction will be made. In no case will the School Board attempt to collect fines or assessments for the NEA/NH Association beyond the regular dues deduction.

Maintenance of membership requires that any Clerical employee who wishes to withdraw from membership in the NEA/NH Association shall so stipulate in writing to the steward in those ten (10) days immediately prior to the anniversary date of the employee's original authorization for dues withholding.

SECTION #8

~~NEA/NH ASSOCIATION SECURITY CLAUSE~~

~~It is recognized that the Negotiations for and administration of the Agreement entail expenses which appropriately should be shared by all employees who are beneficiaries of the Agreement. To this end, if an employee in the bargaining unit does not join the NEA/NH Association, such employee will, as a condition of employment by the Board, execute an authorization for the deduction of a "Representation Fee" which shall be a sum equivalent to~~

~~the membership dues and assessments required to be paid by members of the NEA/NEA/NEA Association, which sum shall be retained for a scholarship fund. Award will be made to a graduating senior at Portsmouth High School who has matriculated in the Business Education Program. Preference in receiving the award shall be given to family members of bargaining unit employees. The Committee to award the scholarship shall be made up of two administrators, two members of the NEA/NEA/NEA Association, and one member of the representative group. The scholarship shall be given in the name of the Portsmouth Association of Clericals in Education.~~

SECTION #9

PROBATION

Whenever the Portsmouth School Board hires a new employee, or rehires a person previously employed in this bargaining unit following a break of employment of one (1) year or more (except for the reasons listed in Section 18), these employees shall serve a probationary period. This period will be no less than ninety (90) consecutive days, but this number may be extended up to a maximum of one hundred eighty (180) consecutive days, when the additional time is needed to evaluate the employee.

Whenever the Portsmouth School Board hires a new employee, the probationary period will be no less than one hundred and eighty (180) consecutive days but may be extended up to a maximum of two hundred and seventy (270) consecutive days, when additional time is needed to evaluate the employee.

If anthis extension of the probationary period is to be made, it must be requested by the immediate supervisor/building principal to the Personnel Office. During this period the employee shall be granted full coverage of the following benefits to which he/she is entitled, as soon as possible from his/her date of hire, carrier permitting.

- * Health Insurance
- *Dental Insurance
- Sick Days
- Bereavement Leave
- *Long-Term Disability
- *Life Insurance

*Carrier requires a two (2) week lead time prior to the first of the month.

All other contract provisions and benefits shall be granted to the employee upon completion of the probationary period.

Employees shall have no seniority rights during this period. All employees who have worked the probationary period shall be known as permanent employees, and the probationary period shall be considered part of the seniority time.

Except as provided above with respect to probation only, persons previously employed in this bargaining unit who are rehired by the School Board shall be treated in all other respects under the terms of this contract as new employees.

SECTION #10
CLASSIFICATION OF EMPLOYEES

Permanent Employee Any former employee who has been rehired who has completed the probationary period. This period will be no less than ninety (90) consecutive days, but this number may be extended to a maximum of one hundred and eighty(180) consecutive days.

Any newly hired employee who has completed no less than one hundred of eighty (180) consecutive days of probation. This period may be extended to a maximum of two hundred and seventy (270) consecutive days.

Category A: An individual who is employed fifty-two (52) weeks per year in a position consisting of at least five (5) days per week and at least seven and a half (7.5) hours per day. ~~The yearly minimum would be 1820 hours.~~ These employees shall be entitled to all benefits including full vacation and sick leave benefits, Health Insurance, dental insurance, life insurance, long-term disability, bereavement leave, personal days in accordance with section 19.6.

Category B: An employee who works any combination of numbers of weeks, days per week, and hours per day that total a minimum of 1560 hours yearly.

Vacation and sick leave will be prorated based on:

Number of hours ~~worked~~ paid = 1950 = proration factor
(Persons employed prior to July 1, 2003
~~who remain employed will be grandfathered at 1820.)~~

These employees will be entitled to vacation, sick leave, Health Insurance, life insurance, dental insurance, long-term disability, bereavement leave, personal days in accordance with Section 19.6.

Category C: Any individual hired after June 30, 1993 who works less than 1560 hours and at least 899 hours per year regardless of number of weeks, days, or hours shall receive sick leave, Health Insurance, dental insurance, life insurance, long-term disability, bereavement leave, personal days in accordance with Section 19.6, and five vacation days. At the beginning of the sixth year of employment, Category C employees will be eligible for six (6) days of vacation. At the beginning of their 11th year, Category C employees will be eligible for eight (8) days of vacation. At the beginning of their 13th year, Category C employees will be eligible for ten (10) days of vacation.

Sick leave will be prorated based on:

Number of hours ~~worked~~ paid = 1950
~~1820~~ proration factor

Employees working less than 899 hours will not receive benefits.

Those bargaining unit members employed in the 1992-93 school year who may work fewer than 899 hours per year shall be "grandfathered" for the benefits listed above.

SECTION #II

HOLIDAYS

Because of the school calendar, the following shall be designated as holidays for Category A and B employees, providing they are within their contracted work schedule:

New Year's Day
Martin Luther King Day (provided it is not a regular school day)
Memorial Day
Independence Day
Labor Day
Columbus Day (provided it is not a regular school day)
Veterans' Day
~~1/2~~ Day before Thanksgiving (if there is ~~1/2~~ day of school provided
its not a regular school day)
Thanksgiving Day
Day after Thanksgiving Day
1/2 Day before Christmas
Christmas Day
Day after Christmas Day
Day before New Year's Day

The following shall be designated as holidays for Category C employees (school year personnel):

New Year's Day
Martin Luther King Day (provided it is not a regular school day)
Memorial Day
Labor Day
Columbus Day (provided it is not a regular school day)
Veterans' Day
~~1/2~~ Day before Thanksgiving (if there is ~~1/2~~ day of school provided it
is not a regular school day)
Thanksgiving Day
Day after Thanksgiving Day
1/2 day before Christmas
Christmas Day
Day after Christmas Day

Should a holiday fall on a Sunday, it will be celebrated on Monday and all regular employees shall be paid for this day. Should a holiday fall on a Saturday, the preceding Friday shall be considered to be the holiday.

If an employee works on a holiday included in his/her Notice of Intent to Employ, he/she will be entitled to time and a half for the hours worked in addition to the straight pay received for that day via his/her prorated annual salary.

All hours paid on a holiday shall be counted as hours worked when computing overtime.

All paid holiday hours shall be included in the prorated calculation of vacation and sick leave.

SECTION 12 VACATIONS

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All permanent employees shall be paid for actual time worked, all approved leaves, and all approved holidays; and the School Board shall endeavor to keep the permanent employees continually at work.

All Category A and B employees shall receive a paid vacation. The employee's anniversary date of hire will be used to determine the amount of vacation time due. Vacation pay will be based on an employee's regular rate of pay following the schedule listed below. Vacation time shall be credited to an employee's record at the beginning of each school year. Seniority shall be the determining factor in the selection of vacation time. Vacation may be taken upon approval of the building administrators.

First three months:	None
After three months and up to 1 year:	Prorated @ .8333 days per month or 6.24 hours per month
At beginning of: 2nd year	10 working days or 75 hours
3rd year	10 working days or 75 hours
4th year	10 working days or 75 hours
5th year	10 working days or 75 hours
At beginning of: 6th year	15 working days or 112.5 hours
7th year	15 working days or 112.5 hours
8th year	15 working days or 112.5 hours
9th year	15 working days or 112.5 hours
10th year	15 working days or 112.5 hours
At beginning of: 11th year	20 working days or 150 hours
12th year	20 working days or 150 hours
13th year	20 working days or 150 hours
14th year	20 working days or 150 hours
15th year	20 working days or 150 hours
At beginning of: 16th year	21 working days or 157.5 hours
17th year	22 working days or 165 hours
18th year	23 working days or 172.5

19th year 24 working days or 180 hours

20 th year	23 working days or 187.5 hours
21 st year	24 working days or 195 hours
22 nd year	27 working days or 202.5 hours
23 rd year	28 working days or 210 hours
24 th year	29 working days or 217.5 hours
25 th year	30 working days or 225 hours

No employee shall be permitted to accrue in excess of one and one-half (1 ½) times his/her annual earned vacation (i.e., employees who earned ten (10) days per year shall have no more than fifteen (15) days vacation to their credit at any one time).

Upon termination of employment, the School Board shall pay to the employee an amount equal to one hundred percent (100%) of unused vacation leave earned prior to the date of termination of employment regardless of reason for that termination with the School Board.

Upon the death of an employee while in the employment of School Board, the School Board shall pay to that employee's estate an amount equal to one hundred percent (100%) of unused vacation leave.

Category C personnel will receive vacation days in accordance with Section 10 to be arranged between the employee and his/her supervisor with regard to agreement of his/her request. These will be non-accumulative.

Employees hospitalized during vacations may convert those days to sick leave.

SECTION 13

WORKERS' COMPENSATION

Workers' Compensation benefits will be provided as specified in the New Hampshire statutes. In cases where an employee is on total disability, the School Board will automatically pay to the employee the difference between the Workers' Compensation benefits and the employee's take-home pay.

In no event shall such payments exceed fifty-two (52) weeks.

SECTION 14

PROMOTIONS AND TRANSFERS

The School Board reserves the right and shall have the right to make promotions and transfers primarily on the basis of ability and performance of duty but shall be governed by seniority when equal qualifications are present.

All employees who are successful candidates for a vacancy or new job will be given a probationary period of 90 consecutive days, which may be extended up to a maximum of 180 consecutive days when additional time is necessary to evaluate the employee.

All unit vacancies that are to be filled, and all new jobs, must be posted for ten (10) working days in each school to allow employees the opportunity to apply for those jobs. All employees subject to this paragraph are required to give a minimum of ten (10) days notice prior to termination. These vacancies and new jobs shall be filled within thirty (30) working days after posting expires or within a reasonable time allowing the School Board to make the most appropriate decision for the school system. If vacancies are not filled or cannot be filled, the School Board agrees to notify the President and Building Representatives in writing, stipulating reasons for the decision. The President and Building Representatives shall receive copies of all unit vacancies and new jobs.

Job postings shall include job title, category, location, range of pay, hours of work, date of beginning work, permanent or temporary. All job postings shall include the date of posting. Job specifications will be provided to the candidates upon request and sent to the Association President along with the posting.

SECTION #15

EVALUATION

Prior to June 1, each employee shall receive a written copy of her annual evaluation. Such evaluation shall be ongoing and shall be done by the employee's immediate supervisor or building administrator. Designed to promote professional growth, the evaluation shall be as positive in nature as possible.

A conference between the immediate supervisor and/or building administrator and the employee will be held to discuss the evaluation. A copy of the evaluation shall be given to the employee at least two days prior to this conference. As a result of the conference, modification may be made in the written document prior to its placement in the employee's file.

No evaluation which has not been shown to the employee may be placed in the file. The employee shall sign the evaluation, however, such signature shall indicate only that it has been reviewed and shall not necessarily indicate concurrence with the contents. The employee shall have the right to attach a written response to her evaluation.

SECTION #16

HIRING PROCEDURES

Credit will be given for prior job-related experience as determined by a review of resume by the Superintendent or designee when hiring new employees to the system. Salary consideration will be commensurate with experience and ability. No employee may be hired

beyond the second (2^d) step on the pay schedule. Effective July 1, 2010, new employees may be hired at step 3. Effective July 1, 2012, new employees may be hired at Step 4.

SECTION #17

DISCIPLINARY PROCEDURES

All disciplinary actions shall be applied in a fair manner and shall be consistent with the infraction for which disciplinary action is being taken.

All written warnings, suspensions, and discharges shall be placed in the employee's personnel record and shall describe the reason for the disciplinary action. A copy will be provided to the employee and the union president at the time the discipline is administered.

Disciplinary action shall normally follow this order:

- a. verbal warning
- b. written warning
- c. suspension without pay (one day minimum, five days maximum)
- d. discharge

An employee may be suspended or discharged for the following reasons:

- a. incompetency or inefficiency
- b. insubordination
- c. intoxication while on duty
- d. conviction of a felony
- e. unauthorized absence from duty

No employee shall be penalized, disciplined, suspended, reprimanded, adversely evaluated, reduced in rank or compensation, or deprived of any advancement without just cause.

All employees shall have the right to review their records upon twenty-four (24) hours' notice to the Office of the Business Administrator.

SECTION #18

SENIORITY

An employee's seniority shall commence with the hiring date and continue as long as he/she is employed by the School Board. The current seniority list will be grandfathered and all new employees will be added to the list based on the date they are hired into the PACE bargaining unit.

Seniority shall be defined as having priority over or being given preference to because of continuous years of service.

An employee shall not forfeit seniority during absences caused by the following:

Illness resulting in total/temporary disability due to his/her regular work with the School District, certified to by an affidavit from Workers' Compensation carrier.

Illness not the result of his/her misconduct resulting in total/temporary disability, certified to by a physician's affidavit.

Duty with the Armed Forces.

Reduction in Force.

SECTION #19 LEAVES

19.1 Extended Leaves of Absence

Upon approval of the Superintendent, leaves of absence without pay not to exceed two (2) years may be granted.

Extended leaves of absence will be granted only upon completion of three (3) years of employment in the Portsmouth School System.

All requests, extensions, renewals, early returns or other modifications of leaves shall be made in writing to the Superintendent of Schools. The response shall also be in writing.

Employees on extended leaves approved by the School Department may continue insurance benefits by paying monthly premiums as charged by the carrier at the time the premium is paid for the appropriate level of benefits if the carrier permits such an arrangement.

19.2 Bereavement Days

Funeral leave will be granted as follows:

Not to exceed three (3) days:

1. Brother-in-law
2. Sister-in-law
3. Grandparent
4. Aunt or Uncle
5. Niece or Nephew
6. A blood relative or dependent residing in the same household.
7. Daughter-in-Law
8. Son-in-Law

Not to exceed five (5) days:

1. Parent
2. Sister
3. Brother
4. Parent-in-law

Not to exceed seven (7) days:

1. Husband, wife or civil union partner
2. Child

Extensions may be granted by application to the Superintendent.

Bereavement leave may be granted if approved by the Superintendent for the death of a close friend. The Superintendent shall have the discretion to set the number of days allowed based on the circumstances.

19.3 Civil Leave

Upon approval of the Superintendent, anyone who is subpoenaed as a witness in a city or criminal case or who is called for service on a jury will be granted paid leave for the period of time he/she is unable to report to work.

Application for leave will be made in advance and submitted with a copy of the subpoena. The clerk shall transmit any monies received from such assignment, other than those paid for personal expenses (e.g. travel) to the Portsmouth School Department Business Office.

19.4 Adoption Leave

Any clerical employee adopting an infant may be granted a leave of absence not to exceed one (1) year without pay. Such leave shall commence upon receipt of de facto custody of said infant, or up to two (2) months earlier if necessary to fulfill requirements for adoption.

All benefits to which the clerical employee was entitled at the start of the leave, including accumulated sick leave, shall be restored upon return to work. The clerical may keep health insurance benefits in force under the present carrier while on leave by paying the premium cost to the School Department on a schedule suggested by the Business Administrator.

19.5 Maternity Leave

Upon application of the employee, a maternity leave of absence without pay shall be granted to permanent, full time female employees who have been employed at least one (1) year before said application; said leave to commence at the time recommended by the employee's attending physician and to extend for a period not to exceed one (1) year after the birth of the child. If an employee who has been granted a maternity leave of absence in accordance with

this provision shall fail to return to work upon the expiration of such leave of absence, she shall be deemed to have voluntarily terminated her employment, unless she has been certified by her physician as being physically unable to perform her duties.

Upon application of the employee, a paternity leave of absence without pay shall be granted to permanent, full time male employees who have been employed at least one (1) year before said application; said leave not to exceed one (1) year after the birth of the child. If an employee who has been granted a paternity leave of absence in accordance with this provision shall fail to return to work upon the expiration of such leave of absence, he shall be deemed to have voluntarily terminated his employment.

An employee shall be entitled to use her accumulated sick leave benefits with pay until she has depleted that accumulation. The date of entitlement shall commence from the date of confinement or the birth of the child, during which time the employee is certified as being unable to perform her regular duties, as verified by an affidavit of the attending physician every thirty (30) days. Requests for such sick leave benefits must be submitted in writing to the School Board no later than thirty (30) days after the date of confinement, in order to be eligible for sick leave benefits.

Extensions of the sixty (60) day paid sick leave benefits may be made by the School Board if circumstances so warrant.

All benefits to which the clerical employee was entitled at the start of the leave, including accumulated sick leave, shall be restored upon return to work. The clerical may keep health insurance benefits in force under the present carrier while on leave by paying the premium cost to the School Department on a schedule suggested by the Business Administrator.

19.6 Personal Leave

Clerical employees may receive two (2) days personal leave for business which cannot be transacted any other time. Whenever possible, a twenty-four (24) hour notice shall be given. No employee shall take a personal day preceding or subsequent to any vacation period or school holiday or an election day unless upon approval from the Superintendent of Schools. Effective July 1, 2000, employees with five (5) years of service will receive an additional ~~non-cumulative~~ personal day for a total of three (3) personal days per year.

Clerical employees will be allowed to roll any unused personal days into sick time annually.

19.7 Sick Leave

Fifteen (15) Sick days will be prorated as applicable and will be credited to an employee's record at the beginning of the employment year.

~~Sick leave without loss of pay or other benefits shall be computed at the rate of one and one-quarter (1 1/4) days per month, or fifteen (15) days per year, and may be accumulated to two hundred fifty (250) days. Employees hired after July 1, 1990 may accumulate sick leave only to one hundred fifty (150) days.~~

Sick leave shall be used for self or, when imperative, to care for an immediate member of the employee's family. Employees may utilize no more than fifteen (15) sick days in any school year to care for a family member. In the event of prolonged absence as a result of accident or illness, the SCHOOL BOARD will consider circumstances that might warrant extension of full or partial sick pay.

The Board agrees to pay seventy-five percent (75%) of all accumulated sick days in a cash payment at the per diem rate which the clerical last earned to any clerical who retires under the New Hampshire State Retirement System or to the estate of the employee if the employee dies while employed in the bargaining unit. Prior notice of retirement must be given a year in advance. Employees hired after July 1, 1996 or their estates shall receive no payment for sick leave upon death, retirement or termination.

The School Board agrees to notify each employee in writing of accumulated sick leave days once a year in the month of July. All paid sick leave shall be counted as hours worked when computing overtime.

19.8 Sick Day Conversion

The Board will provide one (1) day of additional pay, at the rate of the pay the clerical is presently earning, to any clerical employee who has used no personal or sick days during the employment year.

SECTION #20

MEETING LEAVE ALLOWANCE

When an employee is elected president of NEA/NH Association and has work to do which takes him/her away from his/her regular employment with the district, he/she shall, at the written request of the NEA/NH Association, be granted a leave of absence up to three (3) work days per year with full pay and no loss of seniority or other benefits.

Employees elected as delegates to either the NEA/NH Association National Convention, or New Hampshire State Convention, shall be allowed a leave of absence with no loss of pay, not to exceed one (1) working day per year. Two (2) NEA/NH Association employees shall be entitled to attend either of the above-mentioned conventions (one (1) to each).

SECTION #21

HOURS OF WORK

The normal work week will consist of five (5) consecutive days, Monday through Friday. Employees normally work a seven and one-half (7 1/2) hour day.

All time worked in excess of the normal work week shall be paid at the rate of time and one-half (1 1/2), or compensatory time will be awarded if requested by the employee and approved in writing by the employee's supervisor.

The Portsmouth School District shall retain the right to schedule working hours which in the opinion of the School Board and Superintendent of Schools best serve the school district and its constituents. Except in the case of extreme emergency conditions, the employee workday shall be scheduled between the hours of 6:00 a.m. and 5:00 p.m.

The work schedule in effect shall be changed only after consultation of both parties.

SECTION #22

TRAVEL

Business Trips

Clerical employees requested by their immediate supervisor to make a local trip on behalf of the School Department on school business will be paid \$2.00 per trip.

SECTION #23

RETIREMENT

The School Department shall enroll clerical employees in the New Hampshire Retirement System in accordance with the provisions of RSA 100-A.

SECTION #24

BULLETIN BOARDS

The School Board shall provide space for bulletin boards for the posting of notices of the School Board addressed to the employees and notices of the Association addressed to the members.

SECTION #25

WORK REDUCTION OR LAYOFFS

The district will lay off based on seniority and job capability and rehire based on seniority and job capability. All employees who have been laid off will be kept on a re-employment list for a maximum of two (2) years. Qualified and available permanent employees shall be reinstated before new employees are hired.

Should it become necessary for the District to reduce the work force (lay off), employees will receive as much advanced notice as possible, and there must be a minimum of one (1) pay period. The employee with the least seniority within job capability will be laid off first. The reverse procedure shall be implemented for recall before new employees are hired. If an employee on the re-employment list refuses recall to a job similar to the one from which he/she was laid off, and which is in the same job category and pay classification and with the same or greater number of hours, said employee's seniority will terminate and he/she shall forfeit any further re-employment rights. Employees will have seven (7) days to decide to accept recall. Notice mailed to the last recorded address will be considered appropriate method of notification. All benefits to which the clerical was entitled at the start of the reduction in force, including accumulated sick leave, shall be restored upon return to work. The employee shall not be entitled to accrue sick leave or vacation during the time period when they are not employed by the School Department.

SECTION #26

STABILITY OF AGREEMENT

Should any article, section or portion thereof, of this Agreement be in violation of a State law or be held unlawful and unenforceable by any court of competent jurisdiction, such decision of the court shall apply only to the specific article, section, or portion thereof directly specified in the decision. Upon issuance of such a decision, the parties agree to immediately negotiate a substitute for the invalidated article, section or portion thereof.

SECTION #27

OVERTIME

Overtime shall be awarded to employees who are qualified to do the work and will be offered to employees of the building where the overtime work occurs. The employee who routinely performs the work will have first preference for the overtime.

All employees shall receive time and one-half (1 ½) for all hours worked over the normal work week as defined in SECTION 21.

Vacation time shall be included in the calculation of hours worked for purposes of determining overtime.

Sick time and Personal time shall not be included in the calculation of hours worked for the purposes of determining overtime.

SECTION #28

CALL-IN TIME

When employees are called in to work outside of their regularly scheduled working hours, they will be paid a minimum of two (2) hours at time and one-half (1 1/2).

SECTION #29

SAFETY

The School Board shall make regulations to ensure the safety and health of its employees during their working hours of employment. Representatives of the School Board and the Association may meet once in ninety (90) days at the request of either party to discuss such regulations. The NEA/NH Association agrees that its members who are employees of the School Board will comply with the School Board's rules and regulations relating to safety, economy, and efficiency of services to the School Board and to the public.

The NEA/NH Association and its members agree to exercise proper care and to be responsible for all School Board property issued or entrusted to them.

SECTION #30

GRIEVANCE PROCEDURE

A grievance for the purpose of this Agreement is a complaint against the employer by an employee(s) or the NEA/NH Association with respect to the meaning and/or application of a provision(s) of this Agreement.

Failure at any step of this procedure to communicate the decision on a grievance within the specified time limits shall permit the aggrieved employee to proceed to the next step, except at the Board level. A decision on the grievance at the Board level shall be rendered within the time limit set forth or the grievance shall be deemed favorable to the grievant. Failure at any step of this procedure to appeal a grievance to the next step within the specified time limits shall be deemed to be acceptance of the decisions rendered at that step.

A grievance must be filed within fifteen (15) working days of its occurrence or within fifteen (15) working days of the time the employee, by reasonable diligence, learned of its occurrence. Grievances shall be processed in the following manner:

STEP I

Any employee who has a grievance shall discuss it first with his/her immediate supervisor, if applicable, in an attempt to resolve the matter informally at that level. A NEA/NH Association representative may be present if requested. A decision shall be rendered to the aggrieved in five (5) working days. This decision shall be in writing.

STEP II

An unfavorable decision by the immediate supervisor may be appealed in writing to the Business Administrator within five (5) working days, and he has five (5) working days to render his decision in writing.

STEP III

An unfavorable decision by the Business Administrator may be appealed in writing to the Superintendent of Schools within five (5) working days. The Superintendent of Schools shall render a written decision within twelve (12) working days.

STEP IV

If the grievance is not resolved to the grievant's satisfaction, he/she and the NEA/NH Association, no later than five (5) school days after receipt of the Superintendent's decision, may request a review by the Board. The request shall be submitted in writing through the Superintendent of Schools, who shall attach all related papers and forward the request to the Board. The Board shall review the grievance and hold a hearing within thirty (30) school days. A decision in writing shall be rendered within fifteen (15) calendar days of the hearing.

STEP V

Should the decision of the School Board be unsatisfactory, any dispute, claim, or grievance arising out of or relating to the interpretation or the application of this Agreement may be submitted to arbitration under the Voluntary Labor Arbitration Rules of the American Arbitration Association. The parties further agree to accept the Arbitrator's award as final and binding upon them. The cost of said arbitration will be borne equally by both parties regardless of the outcome. All decisions involving wages, wage rates, promotions, transfers, hours worked and not worked, shall be retroactive to the date the grievance first occurred. The Arbitrator shall have no authority to alter, amend or change the terms of this Agreement in the course of ruling on a grievance. The Arbitrator's ruling shall be subject to review pursuant to RSA 542.

If the Association wishes to submit a grievance to arbitration, the Association must notify the School Board in writing within fifteen (15) days of its receipt of the decision of the Board.

Any step may be bypassed by mutual agreement or failure to respond.

SECTION #31

BONDING OF EMPLOYEES

The School Board will provide that those employees whose duties include responsibility for the handling of monies will be bonded and that those employees will be rendered safe from

prosecution if those monies are destroyed, stolen, damaged, or lost through no fault or negligence of the employee in charge.

SECTION #32

HEALTH INSURANCE

~~The employee's premium share for any SchoolCare plan (Single, 2 Person, Family) will be fourteen percent (14.0%) of the total premium. The City's share of the total premium of any SchoolCare plan will be eighty-six percent (86.0%).~~

The Association agrees to participate in a City-wide committee to explore health insurance options.

Starting on July 1, ~~2016~~ 2019, the District will offer full-time employees only the ~~Consumer Driven Health Plan (CDHP) Yellow Open Access Plan~~ issued by Cigna Insurance under its SchoolCare Plan of the New Hampshire School Health Care Coalition.

Beginning on 7/1/2019 The employee's premium cost share for the ~~CDHP Yellow Open Access plan~~ (single, 2-person or family option) will be 5% of the total premium. The District's premium cost share will be 95% of the total premium.

Beginning on 7/1/2020, the employee's premium cost share for the Yellow Open Access plan (single, 2-person or family option) will be 6% and the employers cost will be 94% of the total premium.

Beginning on 7/1/2021, the employee's premium cost share for the Yellow Open Access plan (single, 2-person or family option) will be 7% and the employers cost will be 93% of the total premium.

If, at any time after November 1, 2017, the cost of the ~~CDHP Yellow Open Access Plan~~ exceeds the threshold level(s) for assessment of the Cadillac Tax under the ACA, the parties will immediately reopen the contract on the issue of health insurance only, for the purpose of selecting a replacement plan that does not exceed the threshold level(s) for assessment of the Cadillac Tax under the ACA. If the parties are not able to agree on a replacement plan, the District's total contribution to health insurance coverage (including premiums, additional taxes and assessments) will not exceed the current threshold levels for assessment of the Cadillac Tax under the ACA (\$10,200 for a single plan and \$27,500 for a two person/family plan).

Should the parties agree in writing to establish a cafeteria style plan dealing in insurance issues during the course of this three (3) year agreement, such plan would only become effective if ratified by the Association, approved by the School Board, and approved by the City Council.

SECTION #33

DENTAL INSURANCE

The School Board agrees to provide) CIGNA Dental or an equivalent plan and pay one hundred percent (100%) of the premium cost for single, two person, or family plan.

SECTION #34

LIABILITY INSURANCE

The School Board shall save harmless all employees from financial liability arising out of any claim, suit, criminal prosecution or judgment against them because they are an employee of the School Board or because of an act taken by them in the course of their employment.

The above shall not apply in cases where an employee is guilty of gross negligence or gross irresponsibility. An employee who has been found guilty of gross negligence or gross irresponsibility by the employer may appeal such decision through the grievance procedure. Should said appeal find in favor of the employee, the employer shall make the employee whole in terms of all financial liability or loss and all costs related to the alleged negligence or irresponsibility and the subsequent appeal.

SECTION #35

LIFE INSURANCE

The School Board shall provide one hundred percent (100%) of term life insurance for all employees equal to twice the annual salary of each employee for that fiscal year. It is understood that employees age 70 and over will have their benefits reduced in accordance with the certificate schedule attached as Amendment #1 to this Agreement. Additional life insurance may be purchased by the employee with payment for such additional insurance deducted in equal payments from the employee's salary. An employee's life insurance shall start on the first day of the month following his/her date of hire.

SECTION #36

LONG TERM DISABILITY

The School Board will purchase income protection insurance for each employee to begin on the 91st day of disability in an amount equal to 66 2/3% up to \$2,000 of the monthly salary of the employee at the date of disability. Said insurance shall run until age sixty-five (65) and shall be coordinated with Social Security benefits. An employee's long term disability insurance shall start on the first day of the month following his/her date of hire.

SECTION #37

UNEMPLOYMENT COMPENSATION

All unit employees shall be covered by the State of New Hampshire Unemployment Compensation Act, as provided in Chapter 348, and all amendments thereafter.

SECTION #38
COPY EQUIPMENT

The School Board agrees to allow the use of its copying equipment to members of the Clerical Association when the purpose is to provide notice and information to its membership. This work will be performed during a time when the machines are not in use, when the employee is off duty, and the materials will be supplied by the Association.

SECTION #39
LIMITATIONS

Nothing in this Agreement, either by inclusion or exclusion, shall be so interpreted as to limit any benefits now enjoyed by the Clerical employees in this Agreement.

~~SECTION #40
PHONING FOR SUBSTITUTE PERSONNEL~~

~~Effective July 1, 2008, clerical employees who perform the service of phoning for substitutes shall be paid an annual stipend of forty three dollars (\$43.00) times the number of staff members the clerical is responsible for, based on the number of staff as of October 1st of each year. No clerical responsible for phoning substitutes shall receive less than three hundred fifty dollars (\$350.00) for performing those services for a full school year. (These amounts are to be paid by separate check: fifty percent (50%) in the first paycheck of December, and fifty percent (50%) in the first paycheck of June.)~~

~~Adjustments may be made by the Building Principal and the employee, such as compensatory time in lieu of remunerations.~~

~~Posting of the assignment shall be made among clerical employees whenever a vacancy occurs.~~

SECTION #41
SUBSTITUTE PHONING
CELL PHONE USAGE

The District will compensate those clerical employees who phone for substitute personnel for a full school year an additional \$100 per school year for their cell phone minutes/usage.

SECTION #421

HIGHER RATE ASSIGNMENT

Any employee who shall perform duties paying a higher classification shall be paid at the higher rate while performing such duties, but at no time shall an employee be paid at a lower rate than that for which he/she is classified. Effective upon the date of ratification of this Agreement, hourly paid employees in the bargaining unit will be compensated on a plus rate basis of one pay step (no less than five percent (5%) to the nearest whole cent) above her present rate or the entrance rate, whichever is higher, for working in higher level classifications. For each completed week of work in such higher level assignment, the higher level of pay will commence on the sixth (6th) day of the assignment.

SECTION
#423 JOB
BIDDING

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No employee shall be restricted from applying for a posted job vacancy and may exercise this right in applying for any job of his/her choice whether the position is for a higher classification or a lower classification. If, after a sixty (60) day trial period, the employer or the employee desires the employee to return to the original position, the return will occur within thirty (30) days.

SECTION #434

A. EDUCATIONAL INCENTIVE REIMBURSEMENT

The following educational reimbursement policy will apply to members of the bargaining unit covered by this policy.

The District agrees to provide reimbursement to employees who complete approved courses relating to their current responsibilities or as part of an approved career development program. Based upon the following standards, the District agrees to budget four thousand dollars (\$4,000.00) per year. Courses must be approved in advance by the employee's supervisor as meeting the requirements that the course is related to the employee's job or part of a career development program. Approval must be obtained through the Superintendent's Office for payment of the course.

Not more than five hundred dollars (\$500.00) will be paid to any employee in any fiscal year for course reimbursement unless by May 30th there are unused monies remaining in this fund. In that event, clericals who have taken courses in excess of the original five hundred dollars (\$500.00) allotment may submit their receipt for payment of a second reimbursement. This

will be awarded on a first-come first-serve basis. This second reimbursement will not exceed a five hundred dollars (\$500.00) payment.

Approval of courses will be considered on the number of employees and the funds available.

B. EDUCATIONAL CONFERENCES

The SAU agrees to appropriate two thousand dollars (\$2,000) per contract year for members of the clerical staff to attend the New Hampshire Association of Educational Office Professionals (NHAEOP) Conference held in May. Approval of the number attending the conference will be determined by the Superintendent of Schools. Unused monies in the course reimbursement account as of March 1st will be available for the NHAEOP Conference.

SECTION #445

LONGEVITY

Longevity will be based on the number of completed contract years and will be paid in the employee's regular paycheck as follows:

	2015-16
Five (5) years	\$ 657
Six (6) years	\$ 686
Seven (7) years	\$ 716
Eight (8) years	\$ 746
Nine (9) years	\$ 775
Ten (10) years	\$ 804
Eleven (11) years	\$ 848
Twelve (12) years	\$ 878
Thirteen (13) years	\$ 907
Fourteen (14) years	\$ 936
Fifteen (15) years	\$ 966
Sixteen (16) years	\$ 995
Seventeen (17) years	\$1,024
Eighteen (18) years	\$1,053
Nineteen (19) years	\$1,083
Twenty (20) years	\$1,112
Twenty-one (21) years	\$1,142
Twenty-two (22) years	\$1,171
Twenty-three (23) years	\$1,200
Twenty-four (24) years	\$1,230
Twenty-five (25) years	\$1,259
Twenty-six (26) years	\$1,288
Twenty-seven (27) years	\$1,317
Twenty-eight (28) years	\$1,347
Twenty-nine (29) years	\$1,376
Thirty (30) years	\$1,406

~~Longevity is to be paid in a separate check on the first payday in December.~~ Longevity The stipends will be increased by a COLA (annual rolling 10-year average CPI-U between 2% and 5%) on July 1, 20195, July 1, 202016 and July 1, 20217.

SECTION #456

HOURLY RATE SCALE

~~Effective July 1, 201915, all Employees will remain on their current step--all eligible employees shall receive a step increase.~~

Effective on July 1, 201915, the CLERICAL BASE RATE SCALES will be changed to the following: The clerical base wages for steps 4-6 shall increase by twenty-five (.25) cents.

Effective on July 1, 2020, the Clerical base wages for steps 4-6 shall increase by thirty (.30) cents.

Effective on July 1, 2021, the Clerical base wages for steps 4-6 shall increase by thirty (.30) cents.

After the base wage has been increased in each year of the contract for steps 4-6, as outlined above, then the Rolling COLA shall be applied to the entire Scale for each year.

The Base rate scale reflects the 2% COLA for the 2019-~~is base rate scale reflects the 2% rolling COLA for the 2015-2016 school year.~~

CLERICAL BASE RATE SCALES
201915-202016

CATEGORY I

STEP 1	16.14
STEP 2	18.80
STEP 3	19.03
STEP 4	19.53
STEP 5	19.92
STEP 6	20.31

CATEGORY II

STEP 1	<u>18.98</u>
STEP 2	<u>22.17</u>
STEP 3	<u>22.48</u>
STEP 4	<u>23.01</u>
STEP 5	<u>23.46</u>
STEP 6	<u>23.93</u>

CATEGORY III

STEP 1	<u>22.00</u>
STEP 2	<u>25.01</u>
STEP 3	<u>25.30</u>
STEP 4	<u>25.92</u>
STEP 5	<u>26.43</u>
STEP 6	<u>26.95</u>

Effective on July 1, ~~2016-2020~~ and July 1, 2021-17, employees will advance to the next highest step in their Category, except that in order to advance to Step 6, an employee must have first completed at least 5 years of employment with the District.

Effective July 1, 2015-19, and July 1 of each year from July 1, 2015-19 through June 30, 2021-17, a COLA (Cost Of Living Adjustment) percentage increase shall be computed which shall not be less than two percent (2%) nor more than five percent (5%).

The COLA percentage shall be determined by the ten (10)-year rolling average of the CPI-U for the Boston-~~Cambridge-Newton~~~~Brockton-Nashua~~-MA-NH-ME-CT all items index as computed by the Bureau of Labor Statistics (BLS) of the U.S. Department of Labor for the most recent calendar year preceding the July 1 adjustment. The Bureau of Labor Statistics' calendar year for this index is November through November; it is not published on a December to December basis. The reference base is 1982-1984 equals 100 until BLS updates the reference base, at which time the parties agree to adopt the official reference base as used by BLS.

Thus, if the ten (10)-year rolling average of the CPI-U for the Boston-~~Cambridge-Newton~~-MA-NH SMSA prior calendar year (November through November) is 1.5%, the applicable COLA adjustment would be 2%; if it is 3.5%, the applicable COLA adjustment would be 3.5%; if it is 5.5%, the applicable COLA adjustment would be 5.0%.

Applicability After Contract Expires: It is clearly understood that in the event that the three year Working Agreement expires without a successor Working Agreement being settled prior to July 1, 2018, that no further COLA adjustments after July 1, 2017 will be generated under the Working Agreement even if the Working Agreement has an evergreen clause. It is further agreed that the continuation of COLA adjustments are not to be deemed "status quo" as the term has been used by the PELRB in the event that a successor agreement has not been settled by July 1, 2018.

~~The parties agree that in the event that the City approves COLA increases, general wage increases, or general bonuses for fiscal years 2009 through 2014 for any other City or School District bargaining unit, except the Association of Portsmouth Teachers, that are greater than the increases generated under the COLA Adjustment clause in this contract, members of this bargaining unit shall be entitled to the same increases. This provision will not be applicable if:~~

~~a) Another bargaining unit receives COLA increases for fiscal years 2010 through 2014 in accordance with the same COLA formula in this contract, but not for fiscal year 2009.~~

~~b) Another bargaining unit receives COLA increases for fiscal years 2009 through 2014, but the total compounded impact is less than the total compounded impact the COLA adjustments provided by this contract. The total compounded impact is measured by the total new dollars generated on \$1000 in base wages over the term of the contract. For example, under this contract, \$1000 in base wages would generate \$507.24 in total new dollars for fiscal years 2009 through fiscal year 2014 (assuming 3% COLA increases for fiscal years~~

~~2011 through 2014). Partial year COLA adjustments shall result in pro-rated dollar increases for such years. (See Appendix A for calculations on this contract).~~

~~c) Another bargaining unit agrees to a contract through fiscal year 2013, then negotiates a different COLA adjustment for fiscal year 2014 as a part of a successor agreement.~~

~~d) Another bargaining unit receives general wage increases that might be mandated by an outside authority such as the Public Employee Labor Relations Board or under binding interest arbitration if such legislation ever is passed and becomes applicable to the bargaining units listed above.~~

CATEGORIES

Category I	Elementary School Clerical Assistant FUTURES Program Secretary
Category II	Accounting Clerical Assistant Athletic Department Secretary Central Office Receptionist/Clerical Assistant Department of the Arts Secretary, K-12 Elementary Library/Media Program Secretary Elementary Principal's Secretary (3) Food Service Program Secretary High School Assistant Principal's Secretary (2) High School Communications/Receptionist High School Guidance Department Secretary Math and Science Department Secretary/Clerical Assistant Middle School Guidance Department Secretary Middle School Principal's Secretary (2) PASS Secretary PEEP Secretary Reading/Title I Program Secretary Secondary Special Education Secretary Student Services Secretary
Category III	Accounting Assistant/Accounts Payable Administrative Assistant to the High School Principal Executive Assistant to the Assistant Superintendent Executive Assistant to the Business Administrator High School Registrar High School Scheduling/Grading Coordinator/Financial Assistant Payroll/Benefits Assistant Special Education Department Secretary

• To be updated to reflect current position titles.

Tech/Career and Computer Department Secretary
Title 1 Program Parent Coordinator

SECTION #467
COPIES OF AGREEMENT

All employees shall be provided with a copy of this Working Agreement and all appendices at the School Board's expense. The Business Administrator shall comply with this provision no later than thirty (30) working days after the signing of this Agreement.

SECTION #47
DURATION

This Agreement shall be effective as of July 1, 2019 upon the approval of the cost items by the Portsmouth City Council. This Agreement shall expire on June 30, 2022+8.

No cost item in this Agreement will have retroactive effect unless it is specifically noted in the Agreement, and the retroactive cost of such provision is specifically approved by the City Council.

The parties have agreed the cost items in the 2019-2022 contract shall be retroactive to July 1, 2019 once approved by Portsmouth City council.

Persons not employed in the bargaining unit on the date the City Council approves the cost items will not be eligible for any retroactive payments or benefits.

SECTION #48
PAYCHECKS

Salary for clerical employees shall be calculated on an annual basis. Hourly wage times the number of hours worked and divided equally into twenty-one (21) or twenty-six (26) paychecks.

SECTION #4950
INTENT TO EMPLOY

A minimum of eighty percent (80%) of bargaining unit members shall receive their Intent to Employ notices not later than June 1. The School Board may, because of budget considerations, delay the issuance of such notices up to twenty percent (20%) of bargaining unit members, however, no employee shall receive an Intent to Employ notice later than July 1.

Intent to employ notices will be issued by seniority. Those with greater seniority receiving notices on or before the earlier date.

**SECTION 504
JOB DESCRIPTIONS**

The District, with the cooperation of the Association, will ~~update~~ continue to work on developing all job descriptions and job titles by June 30, 2016 to reflect current job responsibilities. ~~On or before December 31, 2017, the District will prepare and circulate to the Association~~ the criteria to be applied to the determination of placement in category, with any actual changes in category to be negotiated by the parties in the next successor collective bargaining agreement.

SIGNATURES

Signed this _____ day of 2015.

PORTSMOUTH SCHOOL BOARD

PORTSMOUTH ASSOCIATION OF
CLERICALS IN EDUCATION


Representing Management Exclusively in Workplace Law and Related Litigation



Jackson Lewis P.C.
100 International Drive
Suite 363
Portsmouth, NH 03801
Tel 603 559-2700
Fax 603 559-2701
www.jacksonlewis.com

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THOMAS M. CLOSSON
DIRECT DIAL: 603.559.2729
THOMAS.CLOSSON@JACKSONLEWIS.COM

To: City Manager Bohenko, Mayor Blalock and Members of the Portsmouth City Council
From: Tom Closson 
Re: Tentative Agreement with the Portsmouth School Custodial Supervisors Union
Date: June 11, 2019

This City’s negotiating team has reached a tentative agreement with the Portsmouth School Custodial Supervisors Union on a new three (3) year collective bargaining agreement. Both the Portsmouth School Board and the Union have already voted to ratify the tentative agreement and I am pleased to recommend it to you. The material terms of the tentative agreement are summarized below.

CBA SECTION	PROPOSED CHANGE
Duration – Cover and Article 76	Three year CBA – from July 1, 2019 through June 30, 2022.
Article 52	Increase shoe allowance to \$150/year.
Article 65	Rename Article to “Health Insurance.”
Article 65	Keep premium cost sharing arrangement the same for year one of the CBA. Change the premium cost sharing arrangement to 94%/6% on July 1, 2020 and keep at 94%/6% on July 1, 2021.

Article 72	Revise salary guide to eliminate differential.
Article 72	<p>For July 1, 2019, set initial steps as follows;</p> <ul style="list-style-type: none"> - Hire through end of first year - \$22.79/hour - Beginning of second year through end of third year - \$23.00/hour - Beginning of fourth year through end of sixth year - \$23.05/hour - Beginning of seventh year through end of fifteenth year - \$23.10/hour - Beginning of sixteenth year - \$23.31/hour <p>No separate wage provision for night shift differential, supervisor pay, or merit pay.</p> <p>Keep language requiring acceptable most recent performance evaluation to move up the step table.</p>
	On July 1, 2019, "red circle" current Senior High Supervisor @ \$25.97 with revised job description.
Article 72	Change CPI-U reference from Boston-Brockton-Nashua to Boston-Cambridge-Newton.
Article 72	Continue COLA increase based on 10 year rolling average CPI-U for Boston-Cambridge-Newton (2% min. and 5% max.) on July 1, 2020, and July 1, 2021.
Article 73	Increase each longevity step by \$100.00 on July 1, 2020 (to coincide with health insurance premium cost share increase).

A "red-lined" copy of the tentative agreement is attached. I believe that this tentative agreement is fair, reasonable, and consistent with the City's strategy for collective bargaining. I recommend it to you for ratification. I will also be happy to answer any questions that you have about this tentative agreement.

Custodial Supervisors - 06/27/19

Retirement Rate	11.36%	11.17%	11.17%	11.17%
Medicare	1.45%	1.45%	1.45%	1.45%
Fica	6.20%	6.20%	6.20%	6.20%
COLA		2.00%	2.00%	2.00%

*scale consolidation/ reinstatement of 1 maintenance position *

CURRENT CONTRACT GROSS BUDGET (Steps only/No COLA)

	FY19 Base Year	FY20	FY21	FY22	Projected 3-Yr Total
Salary	575,975	624,614	630,860	637,168	1,892,642
Longevity	9,300	10,600	10,900	11,100	32,600
Retirement	66,487	70,953	71,685	72,412	215,050
Medicare	8,486	9,211	9,306	9,400	27,916
Fica	36,287	39,383	39,789	40,193	119,365
Health Savings	-	-	-	-	-
Boot Allowance	880	880	880	880	2,640
	697,416	755,641	763,419	771,152	2,290,213

Year-to-Year CURRENT Gross Budget Change	58,225	7,778	7,733
% Change	8.35%	1.03%	1.01%

73,736	Total Yr-to-Yr Increase
10.57%	Change FY20 to FY22
3.52%	Avg % Change

PROPOSED TENTATIVE AGREEMENT GROSS BUDGET

	FY19 Base Year	FY20	FY21	FY22	Projected 3-Yr Total
Salary	575,975	643,352	662,782	682,797	1,988,931
Longevity	9,300	10,812	11,340	11,779	33,932
Retirement	66,487	73,070	75,299	77,584	225,954
Medicare	8,486	9,485	9,775	10,071	29,332
Fica	36,287	40,558	41,796	43,064	125,417
Health Savings	-	-	(2,581)	(2,581)	(5,162)
Boot Allowance	880	1,650	1,650	1,650	4,950
	697,416	777,278	800,061	822,715	2,403,353

Year-to-Year PROPOSED Gross Budget Change	79,862	22,782	22,654
	11.45%	2.93%	2.83%

125,299	Total Yr-to-Yr Increase
17.97%	Change FY20 to FY22
5.99%	Avg % Change

BREAKDOWN OF TENTATIVE AGREEMENT COSTS OVER "CURRENT" GROSS BUDGET

YEAR-TO-YEAR Change Over Prior Year Base

	FY19 Base Year	FY20	FY21	FY22	Projected 3-Yr Total
Salary	-	18,738	13,183	13,707	45,629
Longevity	-	212	228	239	679
Retirement	-	2,117	1,498	1,558	5,173
Medicare	-	275	194	202	671
Fica	-	1,175	832	865	2,871
Health Savings	-	-	(2,581)	(2,581)	(5,162)
Boot Allowance	-	770	770	770	2,310

TOTAL COST OF TENTATIVE AGREEMENT	-	22,517	13,354	13,990
		3.23%	1.77%	1.83%

52,172	Total Yr-to-Yr Increase
7.48%	Change FY20 to FY22
2.49%	Avg % Change

CUMULATIVE TENTATIVE AGREEMENT COST

Difference Between "CURRENT" Gross Budget and "PROPOSED" Gross Budget

	FY19 Base Year	FY20	FY21	FY22	Projected 4-Yr Total
Salary	-	18,738	31,922	45,629	96,289
Longevity	-	212	440	679	1,332
Retirement	-	2,117	3,615	5,173	10,904
Medicare	-	275	469	671	1,415
Fica	-	1,175	2,006	2,871	6,052
Health Savings	-	-	(2,581)	(5,162)	(7,743)
Boot Allowance	-	770	1,540	2,310	4,620
TOTAL COST OF TENTATIVE AGREEMENT	-	22,517	35,871	49,862	112,870

112,870	Net Cost FY20-FY22
16.18%	Total Cumulative FY20-FY22
5.39%	Avg % Change per yr

~~CUSTODIAL SUPERVISORS~~

WORKING AGREEMENT

BETWEEN

THE PORTSMOUTH SCHOOL BOARD

AND

THE CUSTODIAL SUPERVISORS UNION

~~July 1, 2015 - June 30, 2019~~ July 1, 2019 - June 30, 2022

WORKING AGREEMENT

By this Agreement the School District, Administration Unit No. 52, City of Portsmouth, N.H., hereinafter called the SAU and ~~THE~~The Custodial Supervisors Unit of the Portsmouth School District, do hereby reach agreement.

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WITNESSETH

Whereas the Unit established itself as the exclusive representative of the custodial supervisors of the Portsmouth School District who are members of the unit and on regular active duty for the SAU and enrolled on the SAU's payroll, now, therefore, the parties hereto contract and agree with each other as a result of collective bargaining as follows.

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1. Recognition

Whenever used in the Agreement, the word "employee(s)" refers to a person or persons actively and regularly engaged in SAU work or enrolled on the regular payroll of the SAU of the City of Portsmouth, N.H.

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2. Bargaining With Individual Employees

The CSU agrees for itself and its members that no member individually will bargain with the School Board or any of its authorized agents on matters pertaining to wages, hours of work, working conditions, and transfers or promotions.

The District agrees for itself and any of its authorized agents that it will not bargain with an individual employee on matters pertaining to wages, hours of work, working conditions, and transfers or promotions in accordance with the provisions of Chapter 273-A (PELRB).

3. Management's Rights

It is understood that the SAU shall have the exclusive control of its operation. Nothing in this agreement shall be deemed to limit the SAU in anyway in the exercise of the regular and customary functions of management, including the direction of the working forces, the establishment or methods of operation, the establishment of plans for efficiency, the adoption and maintenance of engineering standards, and the right to select or employ supervisory employees and their assistants, except as specifically and

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expressly limited by any of the provisions of this agreement.

4. CSU Rights

It shall be the right of the CSU to present and process grievances for its members whose wages, working conditions or status of employment are changed as a result of management's exercising the above mentioned rights, whenever such grievances exist in accordance with the provisions of Chapter 273-A:XII (PELRB).

5. Holidays

Regular, full-time employees shall be paid the following legal holidays. Should a holiday fall on a Sunday, it will be celebrated on Monday. Should a holiday fall on a Saturday, the preceding Friday will be considered the holiday. All regular, full-time employees shall be paid for this day. The following shall be designated as holidays.

Independence day	*1/2 day before Christmas
Labor Day	Christmas Day
Veterans' Day	Day after Christmas Day
*1/2 day before Thanksgiving	Day before New Year's Day
Thanksgiving Day	New Year's Day
Day after Thanksgiving	Memorial Day
Martin L. King Day	

* The SAU agrees to grant one-half a day before Thanksgiving Day and Christmas Day when the School Department is in session one-half day before Thanksgiving Day and Christmas Day, provided it is not a regular school day. Beginning with the 2003-04 school year, Columbus Day will be designated as a holiday in any year that is not a regular school day.

6. Holiday Pay

Holiday pay shall be granted if an employee reports for work on the last regularly scheduled work day prior to the holiday and the first regularly scheduled work day after the holiday, provided the absence from work for legitimate reasons, excluding sickness, will not be grounds for denying holiday pay.

7. Holiday Pay (Overtime)

All hours paid on a holiday shall be counted as hours worked when computing overtime.

8. Holiday Pay (While on Leave)

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If a holiday occurs while an employee is on paid leave, the employee shall be granted an extra day. This day may be taken at any time during the year with sufficient notice, subject to the approval of the Building Principal.

9. Vacations

All full-time employees shall receive a paid vacation. Length of service on the chart below will be measured as of the July 1 prior to the employee's actual date of hire. For example an employee whose first day of work for the District was September 20, 1998 will be deemed to have completed six years of service for vacation purposes on July 1, 2004. District seniority within the building shall be the determining factor in selection of vacation time. Vacation pay will be based on an employee's regular rate of pay using the following schedule.

After 6 Months	5 days
1 Year - 5 Years	10 days
6 Years - 10 Years	15 days
11 Years - 15 Years	20 days
16 Years - 24 Years	25 days
25 Years and Beyond	30 days

All bargaining unit members employed on July 1, 2003 will move into this schedule without losing days from old schedule and will complete the transition by June 30, 2008. Bargaining unit members whose first day of work was after July 1, 2003 will be on the schedule immediately.

Employees hired into the district as of July 1, 2015 will follow the schedule below:

After 6 Months	5 days
1 Year - 5 Years	10 days
6 Years - 10 Years	15 days
11 Years - 15 Years	20 days
16 Years and beyond	25 days

10. Vacation Accumulation

Vacation accumulation is not to exceed forty (40) days.

11. Vacation Notification

Vacation may be taken at any time during the year with sufficient notice subject to the approval of the SAU.

The SAU agrees to notify each employee, in writing, of accumulated vacation leave days once a year in the month of July.

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12. Pre-Paid Vacation

Employees are entitled to a prepaid vacation with a notice of one (1) week to the pay period.

13. Vacation Termination

Upon his termination of employment, the SAU shall pay to the employee an amount equal to one hundred percent (100%) of vacation leave earned prior to the date of termination of employment.

Upon the death of an employee while in the employment of the SAU, the SAU shall pay to that employee's estate an amount equal to one hundred percent (100%) of earned vacation leave.

14. Promotions, Transfers and Postings

The SAU reserves the right and shall have the right to make promotions and transfers primarily on the basis of ability, performance, attitude, and appearance but shall be governed by seniority when equal qualifications are present.

All employees who are successful candidates for a vacancy or new job will be given a reasonable opportunity to learn that job.

When a question arises as to the proper person having been chosen to fill any job and it cannot be resolved, it will be settled by using the grievance procedure.

All unit vacancies and new jobs that are to be filled shall be posted no later than five (5) days after the School Board has met in regular session after said vacancies or new jobs have occurred.

Custodial Supervisors will keep custodians who are supervised by them informed of any openings or transfers that occur in the Portsmouth School Department.

These vacancies and new jobs shall be posted for five (5) working days in each school to allow employees the opportunity to apply for said position. All vacancies and new jobs must be filled within thirty (30) working days after the expiration of the posting period.

After the position is awarded, the name of the person who has been awarded the position shall be posted for five (5) working days. Any candidate who has applied for the posted position may, in writing, request a meeting with the Building Principal and Personnel Director to discuss the

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reason(s) why he/she was not selected. Said meeting should take place no later than five (5) working days after the written request has been received.

The CSU members shall receive copies of all unit vacancies and new jobs. If vacancies or new jobs are not to be filled or cannot be filled, the SAU shall notify the CSU members no later than thirty-five (35) work days after the position was posted or if the School Board, prior to posting, decides not to fill said vacancy or new position.

Job Elimination - It is understood that an employee may not bump an employee in a higher job category.

15. Job Posting

Job posting shall include job specifications, job location, shift and hours, if the job is permanent with a permanent rating. All postings are to be dated, indicating month, day and year.

The above procedure shall be followed in all transfers and vacancies whether temporary or permanent.

The SAU agrees to assign employees to the school nearest the employee's residence whenever it is feasible and in the best interest of the School Board. Assignment will be based on employee's seniority.

After an award has been made concerning new jobs and vacancies, the name of the person, job location, shift, and/or hours shall be posted for five (5) working days. This also applies when the School Board goes outside to fill the above-mentioned jobs.

16. Non-Selection

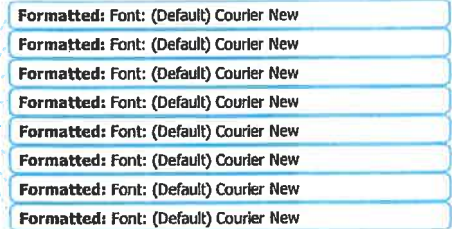
Employees who apply for new jobs, promotions, transfers and vacancies who are not selected, may request a meeting with the Building Principal and Personnel Director in writing to discuss reasons for the non-selection. Said meeting shall be held within five (5) working days.

17. Management Positions

Vacancies in management positions shall be posted in each school to allow employees the opportunity to bid on such positions.

18. Disciplinary Procedures

All disciplinary actions shall be applied in a fair manner and shall be consistent with the infraction for which disciplinary action is being applied.



All suspensions and discharges must be in writing with reasons stated and a copy given to the employee.

Disciplinary action shall follow this order:

- A. Verbal warning
- B. Written warning
- C. Suspension without pay (five (5) days maximum)
- D. Discharge

However, the above sequence need not be followed if an infraction is sufficiently severe to merit immediate suspension or discharge, including but not limited to the following reasons:

- (a) Misconduct during employment
- (b) Incompetency or inefficiency
- (c) Failure to perform assigned duties
- (d) Disobedience to his superior
- (e) Failure to observe rules and regulations
- (f) Incompatibility with other employees
- (g) Unauthorized absence from duty
- (h) Being under the influence of liquor or illegal drugs while on duty
- (i) Drinking intoxicating beverages and using illegal drugs on duty
- (j) Falsifying sickness or any other cause of absence

19. Just Cause

No employee shall be penalized, disciplined, suspended, reprimanded, adversely evaluated, reduced in rank or compensation, or deprived of any advancement without just cause.

20. Written Reprimand

The personnel record of an employee will be cleared of a written reprimand after a period of one (1) year from the date of the reprimand, provided there are no similar infractions committed during the intervening period. However, if the discipline involves misconduct of any type against a minor, the document shall remain in the personnel file.

21. Suspension Notices

The personnel record of an employee will be cleared of suspension notices after a period of two (2) years from the date of suspension provided no similar infractions have been committed during the intervening period. However, if the

discipline involves misconduct of any type against a minor, the document shall remain in the personnel file.

22. Grievance Procedure

22.1 A grievance for the purpose of this Agreement is a complaint against the employer by an employee with respect to the meaning and/or application of a provision of this Agreement.

22.2 A grievance must be filed within fifteen (15) working days of its occurrence or when the employee, by reasonable diligence, should have known of its occurrence. Grievances shall be processed in the following manner:

- A. An employee (or the Union) who has a grievance shall discuss the grievance with his steward. An initial meeting will be held among the employee, a Union representative, and the Building Principal for the purposes of determining if the matter can be resolved informally.
- B. If an employee is not satisfied with the informal resolution of the matter, a grievance may be filed with the business Administrator within five (5) working days after the meeting with the Building Principal. The grievance shall be in writing and on an official grievance form. The Business Administrator shall meet with the Building Principal, employee, and the Union representative and render a decision in writing within five (5) days after the meeting.
- C. An unfavorable decision in Step B may be appealed in writing within five (5) working days to the Superintendent of Schools. The Superintendent of Schools shall have four (4) working days to render a decision in writing. The parties agree to accept the Superintendent of Schools decision as final and binding.
- D. By mutual agreement of the parties, the above time limits may be extended to any step and may be passed for failure to respond.

23. Seniority

An employee's seniority shall commence with his/her date of hire and shall continue for as long as he/she is employed by the SAU.

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An employee shall not forfeit seniority for absences caused by the following:

- (a) Illness resulting in total/temporary disability due to his/her regular work with the School Board, certified by an affidavit from the worker's compensation carrier.
- (b) Illness not the result of misconduct resulting in total/temporary disability certified by a physician.
- (c) Duty with the Armed Forces.

24. Promotions, Transfers, Layoffs, Vacations and Overtime

Seniority, ability, attitude and performance shall be determining factors in promotions and transfers. Seniority alone shall be the determining factor in layoffs, vacations and overtime. A three (3) week notice by certified mail shall be sent to any employee to be laid off.

25. Seniority (Definition)

Seniority shall be defined as having priority over or being given preference because of continuous years of employment as a custodian. In no case will seniority be forfeited or accrued while on layoff or approved leaves of absence.

26. Seniority List

The SAU agrees to establish and keep up to date a seniority list by district. This list shall be posted once a year in July.

27. Seniority/Forfeited

Seniority is forfeited by voluntary resignation, discharge for just cause and retirement.

28. Re-Employment List

The person with the most seniority will be hired back first. All employees who have been laid off will be kept on a re-employment list for a minimum of two years. Qualified and available permanent employees shall be reinstated before new employees are hired.

An employee who is offered a regular full-time job and does not accept recall shall be dropped from the reemployment list. Employees offered reemployment shall have two (2) weeks to decide upon the offer and must be ready to start work within two weeks of notifying the School Department of acceptance unless the parties agree otherwise in a specific instance.

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29. Sick Leave Days (Accumulation)

Sick leave without loss of pay or fringe benefits shall be computed at the rate of 1 1/4 days per month or 15 days per year and may be accumulated without limitation. For employees hired after 1/1/90 accumulation to be limited to 150 days. It will be credited to an employee's record only after earned. For employees hired into the district after July 1, 2015, sick leave without loss of pay or fringe benefits shall be computed at the rate of 1 day per month or 12 days per year.

30. Sick Leave (Pay Back)

The School Board agrees to pay 60% of the accumulated sick days (in a cash payment at their present per diem rate) to any employees who terminates employment with the School District, so long as the employee has been employed in the system for ten (10) or more years, the only exception being if an employee is discharged for just cause. In all cases, prior notice of termination or retirement must be given a year in advance of that termination or retirement.

Employees hired after July 1, 1996 shall not receive any sick leave payout upon termination, retirement, layoff, or death.

Employees seeking payment under this Article shall notify the Superintendent by the first of January prior to their last year of work in order to receive severance pay at retirement. If the employee complies with this notice, severance pay will be payable on or after July 1 of the year in which the notice is given. If the employee does not so notify the Superintendent, he/she will receive severance pay no later than the fiscal year following his/her retirement.

31. Sick Leave (Notification)

The School Board agrees to notify each employee in writing of accumulated sick leave days once a year in the month of July.

32. Sick Leave and Vacation (Overtime)

Paid sick leave taken and vacation shall not be counted as hours worked when computing overtime.

33. Sick Leave (Medical or Dental)

Sick leave shall be used for medical or dental appointments during working hours. Employees shall be charged for actual time absent.

34. Sick Leave (Call In)

All employees shall call in at least two hour prior to shift starting time if they are taking a sick day. This does not apply in cases of emergency.

35. Bereavement Leave

In addition to sick leave, bereavement leave will be granted, as follows:

Up to three (3) days

- brother-in-law
- sister-in-law
- grandparents
- aunt or uncle
- niece or nephew
- blood relative or ward residing in the same household

Up to five (5) days

- parents
- sister
- brother
- parent-in-laws

Up to seven (7) days

- Husband, wife or civil union partner
- children

Extensions may be granted by application and approval of the Superintendent.

36. Personal Days

All employees shall be entitled to five (5) non-accumulative personal days per year. Permission to use these days is subject to the approval of the Building Principal, with a copy sent to Personnel 24 hours prior to taking, except in the case of an emergency.

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37. National Guard/Armed Reserves Leave

An employee called to serve a training tour of duty or for emergency (floods, hurricanes, riots, etc., or upon the call of the Governor of the State of New Hampshire) with the

National Guard or Armed Reserves will suffer no loss of pay or fringe benefits and will be paid the difference between the fee received for such service and the amount of straight time earnings lost by reason of such service. Reimbursement under this section shall not exceed four weeks per employee per year.

38. Civil Leave for Juror or Witness Service

Employees who are subpoenaed as witnesses in a civil or criminal case, or who are called for service on a jury, will be granted paid leave for the period of time they are unable to report to work. The employee shall transmit any monies received from such assignment, other than those paid for personal expenses (e.g., travel) to the School Board.

All time spent while serving on jury duty shall be counted as hours worked.

39. Leave Of Absence

A leave of absence may be granted without pay or benefit, with the written approval of the Superintendent and the School Board after an employee has been employed for at least three years.

40. Normal Work Week

The normal work week shall consist of any five consecutive days, Monday through Saturday. The normal work day shall consist of any eight consecutive hours within a 24 hour period, exclusive of 1/2 an hour for lunch period for the day shift and 1/2 an hour for the night shift employees. By mutual agreement between the principal and the employee, a work week of four 10-hour days may be implemented during the summer school vacation.

41. Work Schedule Change

In the event that it is necessary to change the work schedule in effect, it may be changed provided a two (2) weeks notice is given in advance to those employees affected, stating the duration of the change. This shall not apply in an emergency situation. Any changes not covered by this section, hereof, shall be by agreement of the parties.

42. Avoid Payment Of Overtime

The SAU agrees that the employee's normal work day or normal work week shall not be interrupted to avoid payment of overtime.

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43. Evaluations

All employees covered by this agreement shall have a conference with their supervisors to explain their evaluations. After that conference, both the employee and the supervisor are to initial the evaluation and, if it is desired, either may at that time indicate and attach any substantial agreement or disagreement with that which is written. Such initials shall indicate only that the evaluation has been read and in no way indicates agreement. Upon notice, employees shall have the right to review and reproduce material in their personnel files.

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44. No Strike Clause

There shall be no strikes of any kind, stoppage of work, slowdowns or any kind of interference with or interruptions of the SAU's business by the CSU or its members. There shall be no lockout, partial or total, by the SAU as provided in Chapter 273-A:3 (PELRB).

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45. Stability Of Agreement

Should any article, section, portion thereof of this Agreement be in violation of a State law or be held unlawful and unenforceable by any court of competent jurisdiction, such decision of the court shall apply only to the specific article, section, or portion thereof directly specified in the decision; upon issuance of such a decision, the parties agree immediately to negotiate a substitute for the invalidated article, section or portion thereof.

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46. Work Breaks

Coffee breaks or other similar breaks shall be granted to all employees covered by this agreement for a fifteen (15) minute period during each four consecutive hours of work.

47. Overtime

All employees shall receive time and a half for all hours worked over forty in any one week. Employees who are requested to work on Sundays for non-school related work (non-school related work is when the school department will receive reimbursement from another party for the custodians hours) shall be paid two times their regular hourly rate of pay.

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48. Call-In Time

When employees are called in to work outside their regularly scheduled working hours, they shall be paid a minimum of three (3) hours at time and one-half their regular hourly rate.

48A. Week-End Building Checks

Employees scheduled by the Principal or the Business Administrator to check the building over the week-end shall be paid a minimum of 3 hours of overtime for the week-end (6 hours at the High School).

49. Safety

The SAU shall have the right to make regulations for the safety and health of its employees during their hours of employment.

50. Proper Care

The Union and its members agree to exercise proper care and to be responsible for all School Board property issued or entrusted to them.

51. Personnel File

No written material concerning an employee's conduct, service, character or personality while on the job shall be placed in the employee's personnel file unless the employee has had an opportunity to read and initial the actual copy to be filed with the understanding that such signature merely signifies that the material has been read and in no way indicates agreement.

52. Clothing Allowance/Shoe Allowance

Seven (7) new sets of uniforms will be furnished by the School Board at its expense for all employees covered by this Agreement, including two (2) sets of summer uniforms (shorts and polo shirts). The School Board will replace said uniforms no later than 30 days after request to replace. No later than 30 days after the completion of the probation period or as soon as possible thereafter employees will be issued new uniforms. Upon termination each employee must return all uniforms. The School Department will provide ~~eighty-one hundred and fifty~~ dollars (\$~~80~~150.00) annually for work boots/shoes/sneakers effective July 1, ~~2004~~2019. The School Department shall have the right to establish the specifications for boots/shoes/sneakers purchased under this section.

53. Special Clothing

Special clothing will be issued upon the request of a custodian if approved by the Building Principal.

54. Retirement

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All employees covered by this agreement shall participate in the New Hampshire State Employee's Retirement System in accordance with its terms.

55. Credit Union

As an additional service, all employees are entitled to participate in the Portsmouth Northeast Federal Credit Union.

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56. Bulletin Boards

The School Board shall provide space for bulletin boards for the posting of notices of the SAU addressed to the employees and notices of the Union addressed to its members.

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57. Non-Contracting Service Clause

The School Board agrees that work or services presently performed shall not be subcontracted, transferred, leased, assigned, or conveyed, whole or in part, to any other agency, person, private contractor, or non-unit employee where such work or services can be performed by present employees. The Association understands that the School Board's position is that this clause is not legally enforceable and in the event the School Board successfully attacks the validity or enforceability of such a clause in another school department labor agreement, through litigation, the association agrees to be bound by the final decision.

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58. Related To Another Employee

No employee related to another employee shall work in the same building if one of the employees is in a supervisory capacity.

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59. Copy Equipment

The SAU agrees to allow the use of its copying equipment to members of the CSU unit when the purpose is to provide notices and information to its members. This work will be performed with prior approval by the building administrator and at a time designated by that administrator, and the materials are to be supplied by the CSU.

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60. Copies

The SAU agrees to provide each custodial supervisor unit member with a copy of this agreement within 30 days of signing. The SAU agrees to further provide each custodial supervisor with a copy of the contract between the SAU and the custodian unit.

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61. Benefits (Maintenance of)

Nothing in this agreement, either by inclusion or exclusion, shall be so interpreted as to limit any benefits now enjoyed by the custodial Supervisors.

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62. Emergency Definition

For the purpose of the agreement, an emergency shall be defined as an unexpected event or happening.

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63. School Building

The SAU agrees that the bargaining unit and its representatives may have permission to use a designated room with sufficient prior notice, in a school building to conduct general meetings at reasonable hours.

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64. Bonding Of Employees

The SAU agrees that the bonding of custodial supervisors shall remain at the present level throughout the duration of this AGREEMENT.

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65. Health Insurance

The School Board shall pay provide health insurance for individual, two person, or family coverage for full-time employees.

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~~Employees will have the option of choosing between the POS, HMO or Open Access plan offered through SchoolCare. The employee's will pay fourteen (14%) of the plan and the School Department will pay eighty-six (86%) of the plan.~~

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~~Starting on July 1, 2016, the City will offer full-time employees only the Consumer Driven Health Plan (CDHP) issued by Cigna Insurance under its SchoolCare Plan of the New Hampshire School Health Care Coalition. The employee's premium cost share for the CDHP (single, 2-person or family option) will be 5% of the total premium. The City's premium cost share will be 95% of the total premium. Effective July 1, 2020, the employee's premium cost share for the CDHP (single, 2-person or family option) will be 6% of the total premium and the City's premium cost share will be 94% of the total premium. If, at any time, the cost of the CDHP exceeds the threshold level(s) for assessment of the Cadillac Tax under the ACA, the parties will immediately reopen the contract on the issue of health insurance only, for the purpose of selecting a replacement plan that does not exceed the threshold level(s) for assessment of the Cadillac Tax~~

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under the ACA. If the parties are not able to agree on a replacement plan, the City's total contribution to health insurance coverage (including premiums, additional taxes assessments) will not exceed the current threshold levels for assessment of the Cadillac Tax under the ACA (\$10,200 for single plan and \$27,500 for a two person/family plan).

The Association agrees to participate in a City-wide committee to explore health insurance options.

Should the parties agree in writing to establish a cafeteria style plan dealing in insurance issues during the course of this ~~five~~^{four} ~~year~~ ~~(54)~~ ~~three~~ (3) year agreement such plan would only become effective if ratified by the Association, approved by the School Board and approved by the City Council.

The Board need not provide coverage under Blue Cross/Blue Shield if the employee is already covered under the same plan or a plan with equal benefits. If an employee is found to have dual coverage, the employee must pay back to the Board an amount equal to the premiums paid by the Board during this time.

Effective as soon as possible after final approval of this contract, the School Board will offer employees the option of participating in an IRS 125 Plan (premium conversion plan) so employees may pay their portion of the premium with pre tax dollars (applicable to co-pay attributed to 95 if possible).

66. Long Term Disability

The Board will purchase income protection insurance for each employee to begin on the 91st day of disability in an amount equal to 66 2/3%, up to \$1200.00, of the monthly salary of the employee at the date of disability. Said insurance shall run until age 65 and shall be coordinated with Social Security benefits.

67. Life Insurance

The School Board shall purchase one hundred percent (100%) of term life insurance for all employees, equal to twice the annual income of each employee. It is understood that employees age 70 and over will have their benefits reduced in accordance with the Certificate Schedule attached.

68. Dental Insurance

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SAU agrees to provide Cigna (Plan One - see Appendix A) or an equivalent plan and to pay one hundred percent (100%) of the premium cost for single, two-person, or family plan.

69. Liability Insurance

The School Board shall save harmless all employees from financial liability arising out of any claim suit, criminal prosecution or judgment against them because they are an employee of the School Board or because of an act taken by them in the course of their employment.

The above shall not apply in cases where an employee is guilty of gross negligence or gross irresponsibility. An employee who has been found guilty of gross negligence or gross irresponsibility by the employer may appeal such decision through the grievance procedure. Should said appeal find in favor of the employee, the employer shall make the employee whole in terms of all financial liability or loss and all costs related to the alleged negligence or irresponsibility and the subsequent appeal.

70. Unemployment Compensation

All unit employees shall be covered by the State of New Hampshire Unemployment Compensation Act, as provided in Chapter 348 and all amendments thereafter.

71. Worker's Compensation

Worker's Compensation benefits will be provided as specified in the New Hampshire Statutes. In cases where an employee is on total disability, the School Board shall pay to the employee the difference between the Worker's Compensation benefit and the employee's take-home pay. In accordance with past practice an employees accumulated sick leave time shall be used to pay the supplemental pay to make up the difference in the Worker's Compensation benefit and the employees take home pay.

In no event shall such payments exceed fifty-two (52) weeks.

72. Wages And Salary Guide

Effective July 1, 2019, all Custodial Supervisors will be paid in accordance with the following schedule:

Hire through end of first year	\$22.79/hour
Beginning of second year through end of third year	\$23.00/hour

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Beginning of fourth year through end of sixth year	\$23.05/hour
Beginning of seventh year through end of fifteenth year	\$23.10/hour
Beginning of sixteenth year	\$23.31/hour

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Effective July 1, 2019, the hourly rate of the incumbent Senior High Supervisor will be \$25.97/hour - this is intended to "red circle" only the person currently in the position, not to set a binding wage rate for the position (which would otherwise be included in the regular wage schedule).

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All Custodial Supervisor's base pay will be the highest base pay of a custodian plus \$.40 (forty cents) per hour effective July 1, 2003. Effective July 1, 2010, the differential shall be \$0.45; on July 1, 2011, \$0.50; and on July 1, 2012, \$0.55.

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~~Custodial Supervisor's Merit Pay Schedule:~~

~~1 to 3 years a supervisor in the Portsmouth School Dept. \$0.20 per hour~~

~~3 to 6 years a supervisor in the Portsmouth School Dept. \$0.25 per hour~~

~~6 to 15 years a supervisor in the Portsmouth School Dept. \$0.30 per hour~~

~~Over 15 years as a supervisor in the Portsmouth School Dept. \$0.50 per hour~~

~~An employee will only receive merit pay if his/her most recent performance evaluation is acceptable or better.~~

COLA Adjustment

Effective July 1, 2015~~2020~~ and July 1, 2021, ~~and each July 1 of each year from July 1, 2015 through June 30, 2019,~~ a COLA adjustment percentage increase shall be computed which shall not be less than 2% nor more than 5%.

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The COLA adjustment percentage shall be determined by the ten (10)-year rolling average in the CPI-U for the Boston-Brockton-Nashua ~~MA-NH-ME-CT~~ Cambridge-Newton, all items index as computed by the Bureau of Labor Statistics of the U.S. Department of Labor for the most recent calendar year preceding the July 1 adjustment. BLS's calendar year for

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this index is November through November. It is not published on a December to December basis. The reference base is 1982-1984 equals 100 until BLS updates the reference base at which time the parties agree to adopt the official reference based as used by BLS.

Thus if the ten (10)-year rolling average for the CPI-U for the Boston SMSA calendar year is 1.5% the applicable COLA adjustment would be 2%; if it is 3.5% the applicable COLA adjustment would be 3.5%; if it is 5.5% the applicable COLA adjustment would be 5%.

Applicability After Contract Expires: It is clearly understood that in the event that the ~~threefourthree~~ year Working Agreement expires without a successor Working Agreement being settled prior to July 1, 20~~18~~¹⁹22, that no further COLA adjustments after July 1, 20~~17~~¹⁸21 will be generated under the Working Agreement even though the Working Agreement has an evergreen clause. It is further agreed that continuation of COLA adjustments are not to be deemed "status quo" as the term has been used by the PELRB in the event that a successor agreement has not been settled by July 1, 20~~18~~¹⁹22.

73. Longevity

Longevity will be paid in accordance with the following schedule:

	Effective 7/1/2019	Effective 7/1/2020
After 5 years	\$700	\$800
After 10 years	\$800	\$900
After 15 years	\$900	\$1,000
After 20 years	\$1,000	\$1,100
After 25 years	\$1,100	\$1,200

	July 1, 2015	July 1, 2016
After 5 years	\$ 600	\$700
After 10 years	\$ 700	\$800
After 15 years	\$ 800	\$900
After 20 years	\$ 900	\$1,000
After 25 years	\$ 1,000	\$1,100

Increasing by - \$150 for each additional five years of service.

This will be paid in a separate check on the first payday in August.

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Longevity is based on years of employment with the SAU in any full time capacity.

74. Mileage

Employees required or requested to use their personal vehicles in the course of their duty, shall be reimbursed at the minimum rate of 31.5 cents per mile. The rate for mileage shall increase based on the IRS justifiable mileage rate as set by that agency. Mileage payments shall be paid in agreement with the Business Office.

75. Collective Bargaining Procedure

Any party desiring to bargain shall serve written notice of its intention on the other party at least one hundred twenty (120) days prior to May 16th.

The parties agree to enter into negotiations no later than the third week of January, if possible, to reach agreement on salaries, fringe benefits and other conditions of employment, pertinent to the provisions of N.H. RSA 273-A.

76. Duration Of Agreement

SAU agrees to a ~~three (3)~~ ~~four (4)~~ ~~three (3)~~ year ~~AGREEMENT~~ Agreement. This agreement shall be in full force and effect from July 1, ~~2015-2019~~ through June 30, ~~2019~~ and shall continue from year to year thereafter unless written notice of desire to cancel or terminate the Agreement is served by either party upon the other at least one hundred twenty (120) days prior to the date of expiration as provided in Chapter 273-A:3:11.

A (PELRB). Where no such cancellation or termination notice is served, and the parties desire to continue this Agreement but also desire to negotiate changes or revisions in this Agreement, either party may serve upon the other a notice at least one hundred twenty (120) days prior to budget submission date, as provided in Chapter 273-A:3:11 (PELRB), advising that such a party desires to revise or change terms or conditions of such Agreement and specifies the articles to be renegotiated. The Agreement shall remain in full force and effect until such changes and revisions have been agreed upon.

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SIGNATURES

EXECUTED THIS _____ DAY OF _____, 201~~68~~¹⁹.

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PORTSMOUTH SCHOOL DISTRICT

CSU OF THE PORTSMOUTH
SCHOOL DEPARTMENT

~~Leslie Stevens~~ Pat Ellis, Chair
School Board

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Stephen Zdravec
Superintendent of Schools

Arthur Ashley

Steve Barlett
Business Administrator

Edward O'Connell

Thomas Closson
City Negotiator

**APPENDIX A
YOUR DENTAL CARE BENEFITS:**

Your dental plan is comprehensive. It will pay the following percentage of your bill for all dental procedures covered by the plan.

	Paid by	Paid
by		
	Cigna	
Patient		

COVERAGE A:

Diagnostic - Initial Examination; Examinations to	100%	0%
determine the required dental treatment once in a 6-month period; X-Rays - Full Mouth/Panorex X-Rays once in a 3-year period; Bitewing X-Rays once each 12-month period; Periapical X-Rays as necessary		

Preventive - cleaning once in a 6-month period; Fluoride once in a 12 month period (age limit 19); Space Maintainers	100%	0%
--	------	----

COVERAGE B:

Restorative - Amalgam, Silicate and Acrylic restorations	8%	20%
Oral Surgery - Extractions	80%	20%
Endodontics - Pulpal therapy; root canal filling	80%	20%
Periodontics - Treatment of gum disease	80%	20%
Denture Repair - Repair of removable denture to its original condition	80%	20%
Palliative - Emergency treatment	80%	20%

COVERAGE C:

Prosthetic - Bridges, partial and complete dentures, rebase and recline, crowns, inlays and onlays	50%	50%
--	-----	-----

EXCLUSIONS:

Services which are not covered by your plan include orthodontics, cosmetic dentistry, equilibration, analgesias, plaque control programs, sealants, myofunctional therapy, implantology, prescription drugs, and treatment of temporomandibular joint dysfunctions.

MAXIMUM:

The maximum amount which your plan will pay is \$1500.00 per person per Contract Year.

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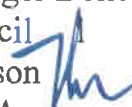
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100 International Drive
Suite 363
Portsmouth, NH 03801
Tel 603 559-2700
Fax 603 559-2701
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THOMAS M. CLOSSON
DIRECT DIAL: 603.559.2729
THOMAS.CLOSSON@JACKSONLEWIS.COM

To: City Manager Bohenko, Mayor Blalock and Members of the Portsmouth City Council
From: Tom Closson 
Re: Tentative Agreement with the Portsmouth Supervisory Management Alliance
Date: June 11, 2019

This City’s negotiating team has reached a tentative agreement with the Portsmouth Supervisory Management Alliance (“SMA”) on a new three (3) year collective bargaining agreement. SMA has already voted to ratify the tentative agreement and I am pleased to recommend it to you. The material terms of the tentative agreement are summarized below.

<u>CBA SECTION</u>	<u>PROPOSED CHANGE</u>
Duration	Three years – July 1, 2019 through June 30, 2022.
Section I - Recognition	Modify Paragraph B to provide <u>only</u> as follows: “Upon completion of the probationary period, each employee included in the bargaining unit will be given the opportunity to join the Association by completing the requisite authorization card and agreeing in writing to pay the full Association dues. No employee included in the bargaining unit will be required to join the Association as a condition of hire or continued employment with the City.”

Section II – Employment And Termination	Increase the probationary period to one year.
Section IV(A) – Pay Increases, Longevity, Medical Insurance	Change COLA CPI-U from Boston-Brockton-Nashua to Boston-Cambridge-Newton.
Section IV(A) - Pay Increases, Longevity, Medical Insurance	Continue current COLA adjustments based on rolling ten year average CPI-U (minimum of 2% and maximum of 5%) on July 1, 2019; July 1, 2020; and July 1, 2021.
Section IV(C) - Pay Increases, Longevity, Medical Insurance	Increase to \$175/week.
Section V(F) - Pay Increases, Longevity, Medical Insurance	No change to employer/employee cost-sharing arrangement in year one. Modify paragraph F to change employer /employee premium cost-sharing arrangement on the AB 20 RX 10/20/45 plan to 87.5%/12.5% on July 1, 2020; and 85%/15% on July 1, 2021.
Section VI – Hours of Work and Overtime	Properly requested and approved paid leave, except for sick leave, will be counted as hours worked for purposes of calculating overtime. Additionally, during a declared snow emergency, once an employee works sixteen (16) hours without a break in service, any additional hours worked in excess of sixteen (16) hours without a break in service will be paid at the employee’s overtime rate.
Section XIV – Standby Monitoring Compensation System	\$3.00/hour July 1, 2019; \$3.25/hour July 1, 2020; and \$3.50/hour July 1, 2021.
City Office Closures	Maintain language consistent with PMA and AFSCME/1386.
Classification Study	The City will conduct a classification study of current positions with any recommended adjustments to be made to the City Council by January 15, 2020. The City Council will have the sole discretion to approve/reject the recommended adjustments.

A “red-lined” copy of the tentative agreement is attached. I believe that this tentative agreement is fair, reasonable, and consistent with the City’s strategy for collective bargaining. I recommend it to you for ratification. I will also be happy to answer any questions that you have about this tentative agreement.

The Portsmouth Supervisory Management Alliance (SMA)

COLA **2.00%** **2.00%** **2.00%**
 Health Insurance Employee Contribution Share **10.0%** **10.0%** **12.5%** **15.0%**
GENERAL FUND ONLY (11.6FTEs):
CURRENT CONTRACT-(Steps only/No COLA)

Wages	FY19 Base Year	FY20*	FY21	FY22	Projected 3-Yr Total
Salary	771,079	780,080	790,345	799,252	2,369,677
Longevity	9,077	9,391	9,799	11,150	30,341
On Call Monitoring	12,090	12,090	12,090	12,090	36,270
Stand By Monitoring	-	-	-	-	-
Retirement	90,158	89,534	90,727	91,872	272,133
Medicare	11,488	11,623	11,777	11,926	35,326
Social Security	49,119	49,697	50,359	50,994	151,050
Health Insurance Savings	-	-	-	-	-
	943,011	952,415	965,098	977,284	2,894,797

Year-to-Year CURRENT Gross Budget Change
 % Change 9,405 12,682 12,187
 1.00% 1.33% 1.26%
 * Reduction in Retirement Rate
 1.21% Avg % Change

34,274	Total Yr-to-Yr Increase*
3.63%	Change FY20 to FY22
1.21%	Avg % Change

PROPOSED TENTATIVE AGREEMENT-SMA GROSS BUDGET

Wages	FY19 Base Year	FY20*	FY21	FY22	Projected 3-Yr Total
Salary	771,079	795,682	822,275	848,172	2,466,129
Longevity	9,077	9,579	10,195	11,832	31,607
On Call Monitoring	12,090	13,650	13,650	13,650	40,950
Stand By Monitoring	-	-	-	-	-
Retirement	90,158	91,472	94,512	97,587	283,571
Medicare	11,488	11,874	12,269	12,668	36,811
Social Security	49,119	50,772	52,459	54,167	157,399
Health Insurance Savings	-	-	(7,480)	(14,960)	(22,440)
	943,011	973,030	997,881	1,023,116	2,994,027

Year-to-Year PROPOSED Gross Budget Change
 30,019 24,851 25,236
 3.18% 2.55% 2.53%
 * Reduction in Retirement Rate
 2.83% Avg % Change per yr

80,106	Total Yr-to-Yr Increase
8.49%	Change FY20 to FY22
2.83%	Avg % Change per yr

BREAKDOWN OF TENTATIVE AGREEMENT COSTS OVER "CURRENT" GROSS BUDGET

YEAR-TO-YEAR Change Over Prior Year Base

Wages	FY19 Base Year	FY20*	FY21	FY22	Projected 3-Yr Total
Salary	-	15,602	16,328	16,991	48,921
Longevity	-	188	208	287	682
On Call Monitoring	-	1,560	-	-	1,560
Stand By Monitoring	-	-	-	-	-
Retirement	-	1,938	1,847	1,930	5,715
Medicare	-	252	240	251	742
Social Security	-	1,076	1,025	1,071	3,172
Health Insurance Savings	-	-	(7,480)	(7,480)	(14,960)

TOTAL COST OF TENTATIVE AGREEMENT
 20,615 12,169 13,049
 2.19% 1.28% 1.35%

45,832	Total Yr-to-Yr Increase
4.86%	Change FY20 to FY22
1.62%	Avg % Change

CUMULATIVE TENTATIVE AGREEMENT COST

Difference Between "CURRENT" Gross Budget and "PROPOSED" Gross Budget

Wages	FY19 Base Year	FY20*	FY21	FY22	Projected 3-Yr Total
Salary	-	15,602	31,930	48,921	96,452
Longevity	-	188	396	682	1,266
On Call Monitoring	-	1,560	1,560	1,560	4,680
Stand By Monitoring	-	-	-	-	-
Retirement	-	1,938	3,785	5,715	11,438
Medicare	-	252	491	742	1,485
Social Security	-	1,076	2,101	3,172	6,349
Health Insurance Savings	-	-	(7,480)	(14,960)	(22,440)

TOTAL COST OF TENTATIVE AGREEMENT
 20,615 32,783 45,832

99,230 Net Cost FY19-FY22

10.52%	Total Cumulative FY20-FY22
3.51%	Avg % Change per yr

PARKING, STORMWATER, PRESCOTT PARK, WATER and SEWER (16.4 FTEs)

CURRENT CONTRACT-(Steps only/No COLA)

Wages	FY19 Base Year	FY20*	FY21	FY22	Projected 3-Yr Total
Salary	1,069,283	1,089,829	1,118,812	1,138,019	3,346,660
Longevity	9,140	9,454	10,302	10,522	30,278
On Call Monitoring	10,695	10,695	10,695	10,695	32,085
Stand By Monitoring	14,166	14,166	14,166	14,166	42,498
Retirement	125,554	125,567	128,899	131,069	385,535
Medicare	15,998	16,300	16,733	17,014	50,047
Social Security	68,404	69,697	71,546	72,751	213,994
Health Insurance Savings	-	-	-	-	-
	1,313,239	1,335,708	1,371,153	1,394,237	4,101,098

Year-to-Year CURRENT Gross Budget Change	22,469	35,445	23,084	80,998	Total Yr-to-Yr Increase*
% Change	1.71%	2.65%	1.68%	6.17%	Change FY20 to FY22
	*Reduction in Retirement Rate			2.06%	Avg % Change

PROPOSED TENTATIVE AGREEMENT-SMA GROSS BUDGET

Wages	FY19 Base Year	FY20*	FY21	FY22	Projected 3-Yr Total
Salary	1,069,283	1,111,625	1,164,012	1,207,675	3,483,313
Longevity	9,140	9,643	10,718	11,166	31,527
On Call Monitoring	10,695	12,075	12,075	12,075	36,225
Stand By Monitoring	14,166	16,666	18,055	19,444	54,165
Retirement	125,554	128,456	134,583	139,665	402,704
Medicare	15,998	16,675	17,470	18,130	52,276
Social Security	68,404	71,301	74,701	77,522	223,524
Health Insurance Savings	-	-	(8,147)	(16,295)	(24,442)
	1,313,239	1,366,441	1,423,467	1,469,383	4,259,292

Year-to-Year PROPOSED Gross Budget Change	53,202	57,026	45,916	156,144	Total Yr-to-Yr Increase
	4.05%	4.17%	3.23%	11.89%	Change FY20 to FY22
	*Reduction in Retirement Rate			3.96%	Avg % Change per yr

DIFFERENCE CURRENT and PROPOSED	-	30,733	52,314	-	83,048	Net Cost FY20-FY22
--	---	--------	--------	---	--------	--------------------

BREAKDOWN OF TENTATIVE AGREEMENT COSTS OVER "CURRENT" GROSS BUDGET

YEAR-TO-YEAR Change Over Prior Year Base

Wages	FY19 Base Year	FY20*	FY21	FY22	Projected 3-Yr Total	
Salary	-	21,797	23,403	24,456	69,656	
Longevity	-	189	227	228	644	
On Call Monitoring	-	1,380	-	-	1,380	
Stand By Monitoring	-	2,500	1,389	1,389	5,278	
Retirement	-	2,889	2,795	2,912	8,596	
Medicare	-	375	363	378	1,116	
Social Security	-	1,604	1,551	1,616	4,771	
Health Insurance Savings	-	-	(8,147)	(8,147)	(16,295)	
TOTAL COST OF TENTATIVE AGREEMENT	-	30,733	29,728	30,979	75,146	
		2.34%	2.23%	2.26%	5.72%	Change FY20 to FY22
					1.91%	Avg % Change

CUMULATIVE TENTATIVE AGREEMENT COST

Difference Between "CURRENT" Gross Budget and "PROPOSED" Gross Budget

Wages	FY19 Base Year	FY20*	FY21	FY22	Projected 3-Yr Total	
Salary	-	21,797	45,200	69,656	136,652	
Longevity	-	189	416	644	1,249	
On Call Monitoring	-	1,380	1,380	1,380	4,140	
Stand By Monitoring	-	2,500	3,889	5,278	11,666	
Retirement	-	2,889	5,684	8,596	17,169	
Medicare	-	375	738	1,116	2,229	
Social Security	-	1,604	3,155	4,771	9,530	
Health Insurance Savings	-	-	(8,147)	(16,295)	(24,442)	
TOTAL COST OF TENTATIVE AGREEMENT	-	30,733	60,461	91,441	158,194	
					12.05%	Total Cumulative FY20-FY22
					4.02%	Avg % Change per yr

ALL FUNDS: GENERAL FUND, PARKING, STORMWATER, PRESCOTT PARK, WATER and SEWER (28 FTEs)

CURRENT CONTRACT-(Steps only/No COLA)

Wages	FY19 Base Year	FY20*	FY21	FY22	Projected 3-Yr Total
Salary	1,840,362	1,869,909	1,909,157	1,937,271	5,716,337
Longevity	18,217	18,845	20,101	21,672	60,618
On Call Monitoring	22,785	22,785	22,785	22,785	68,355
Stand By Monitoring	14,166	14,166	14,166	14,166	42,498
Retirement	215,711	215,101	219,626	222,941	657,668
Medicare	27,485	27,923	28,510	28,940	85,373
Social Security	117,523	119,394	121,905	123,745	365,044
Health Insurance	-	-	-	-	-
	2,256,250	2,288,123	2,336,251	2,371,521	6,995,895

Year-to-Year CURRENT Gross Budget Change	31,873	48,127	35,271
% Change	1.41%	2.10%	1.51%
	*Reduction in Retirement Rate		

115,271	Total Yr-to-Yr Increase*
5.11%	Change FY20 to FY22
1.70%	Avg % Change

PROPOSED TENTATIVE AGREEMENT-SMA GROSS BUDGET

Wages	FY19 Base Year	FY20*	FY21	FY22	Projected 3-Yr Total
Salary	1,840,362	1,907,307	1,986,287	2,055,847	5,949,442
Longevity	18,217	19,222	20,914	22,998	63,134
On Call Monitoring	22,785	25,725	25,725	25,725	77,175
Stand By Monitoring	14,166	16,666	18,055	19,444	54,165
Retirement	215,711	219,928	229,095	237,252	686,275
Medicare	27,485	28,549	29,739	30,798	89,087
Social Security	117,523	122,073	127,161	131,689	380,923
Health Insurance	-	-	(15,627)	(31,255)	(46,882)
	2,256,250	2,339,471	2,421,348	2,492,499	7,253,319

Year-to-Year PROPOSED Gross Budget Change	83,222	81,877	71,151
	3.69%	3.50%	2.94%
	*Reduction in Retirement Rate		

236,250	Total Yr-to-Yr Increase
10.47%	Change FY20 to FY22
3.49%	Avg % Change per yr

DIFFERENCE CURRENT and PROPOSED	-	51,348	85,097
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136,445	Net Cost FY20-FY22
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BREAKDOWN OF TENTATIVE AGREEMENT COSTS OVER "CURRENT" GROSS BUDGET

YEAR-TO-YEAR Change Over Prior Year Base

Wages	FY19 Base Year	FY20*	FY21	FY22	Projected 3-Yr Total
Salary	-	37,398	39,732	41,447	118,576
Longevity	-	377	435	514	1,326
On Call Monitoring	-	2,940	-	-	2,940
Stand By Monitoring	-	2,500	1,389	1,389	5,278
Retirement	-	4,827	4,642	4,842	14,311
Medicare	-	627	603	629	1,858
Social Security	-	2,679	2,576	2,688	7,943
Health Insurance	-	-	(15,627)	(15,627)	(31,255)
TOTAL COST OF TENTATIVE AGREEMENT	-	51,348	33,749	35,881	120,978
		2.28%	1.47%	1.54%	

5.36%	Total Yr-to-Yr Increase
1.79%	Change FY20 to FY22
	Avg % Change

CUMULATIVE TENTATIVE AGREEMENT COST

Difference Between "CURRENT" Gross Budget and "PROPOSED" Gross Budget

Wages	FY19 Base Year	FY20*	FY21	FY22	Projected 3-Yr Total
Salary	-	37,398	77,130	118,576	233,105
Longevity	-	377	812	1,326	2,515
On Call Monitoring	-	2,940	2,940	2,940	8,820
Stand By Monitoring	-	2,500	3,889	5,278	11,666
Retirement	-	4,827	9,469	14,311	28,607
Medicare	-	627	1,229	1,858	3,714
Social Security	-	2,679	5,256	7,943	15,879
Health Insurance	-	-	(15,627)	(31,255)	(46,882)
TOTAL COST OF TENTATIVE AGREEMENT	-	51,348	85,097	120,978	257,424

11.41%	Total Cumulative FY20-FY22
3.80%	Avg % Change per yr

WORKING AGREEMENT

BETWEEN

CITY OF PORTSMOUTH, NEW HAMPSHIRE

AND

~~THE CITY OF PORTSMOUTH AND~~

THE PORTSMOUTH SUPERVISORY MANAGEMENT ALLIANCE

~~July 1, 2016 through June 30, 2019~~ July 1, 2019 through June 30, 2022

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The City of Portsmouth, hereinafter referred to as the City and the Portsmouth Supervisory and Management Alliance, hereinafter referred to as the Alliance, in order to maintain the existing harmonious relationship between the City Manager who is Chief Executive as set forth in the City Charter as amended and their employees, join in this Agreement to promote the morale, equal rights, well-being and security of the Portsmouth Supervisory and Management Alliance, the City Manager, hereby agree as follows:

**SECTION I
RECOGNITION**

A. Alliance personnel covered by this Agreement are those who are employed by the City of Portsmouth in positions identified in paragraph C below.

~~B. Whenever the Departments, the Manager, re-employ personnel, or employs new employees, such individuals, provided they are designated supervisory or management employees, shall become members of the Alliance within eight (8) days after completion of probation period or pay a service fee as set forth below.~~

~~1. Employees in this bargaining unit shall be notified in writing by the Alliance that each member shall have the opportunity to withdraw from membership for a fifteen day period from July 1 to July 15. Each individual notice of withdrawal of membership shall be in writing postmarked during the notice period.~~

~~2. Nothing in this provision, however, shall diminish the withdrawing member's financial obligation to make payment of a service fee to the Alliance in an amount set by the Alliance, not to exceed an amount equal to the cost of the Alliance's Collective Bargaining services and contract administration. The Alliance shall inform the city from time to time of the amount of such service fees.~~

~~3. Any deduction made by the City pursuant to 1, and 2 shall be authorized by each employee in writing. Upon completion of the probationary period, each employee included in the bargaining unit will be given the opportunity to join the Association by completing the requisite authorization card and by agreeing in writing to pay the full Association dues. No employee included in the bargaining unit will be required to join the Association as a condition of hire or continued employment with the City.~~

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C. The following position classifications would come under the provisions of the Alliance membership as set forth in this Agreement:

- General Foreman
- Water Foreman
- Assistant Recreation Director
- Equipment Maintenance Foreman
- Chief Plant Operator
- Highway Foreman
- Building Maintenance Foreman
- Sewer Foreman
- Recreation Supervisor
- Pool Supervisor
- Assistant Chief Plant Operator
- Parking Garage Supervisor

Water Meter Billing Foreman
Construction Technician Supervisor
Senior Services Coordinator
Lead Mechanic
Parking Enforcement Supervisor
Construction Project Coordinator
Tree Supervisor/Arborist

- D. The City hereby recognize that the Alliance is the sole exclusive representative of the permanent, full-time employees of the City and who are members of the Alliance for the purpose of bargaining with respect to wages, hours of work and working conditions, and the Alliance unreservedly accepts and recognizes the necessity of the City to operate within their budgets as set by the City Charter as amended.
- E. The City agrees for itself and any of its authorized agents that it will not bargain with any individual Alliance member on matters pertaining to wages, hours of work, working conditions, transfers or promotions.
- F. The Alliance agrees for itself and its members that no member will bargain with the City or any of its authorized agents on matters pertaining to wages, hours of work, working conditions, transfers or promotions.
- G. The City will pay the additional cost of a commercial driver's license to any employee obtaining such license and subsequent renewal.

SECTION II EMPLOYMENT AND TERMINATION

- A. All Alliance personnel covered by this Agreement shall have a check-off of their Alliance dues upon the signed authorization of Alliance member.
- B. All appointments of members of the Alliance bargaining unit will be made for a working test period of ~~six months~~ one (1) year subject to close review as to his/her competency to carry out his/her assignments. The City Manager may, upon request of the Department Head, extend this working test period to a maximum of an additional three (3) months if, in their opinion, it is necessary. This period supplements the formal examination, etc., and is the final determination of whether the person shall be given regular status. The City Manager may extend the probation for an additional six months, for just cause.
- C. The relative fitness of the applicants for appointments or promotion for a position within the classified service, will be determined by the consideration and rating of any or all of the following qualification factors: experience, general adaptability, special aptitudes, physical fitness, knowledge, skills, personality, character, education and examination. All factors being equal, seniority shall determine appointment.
- D. All new supervisory or management vacancies shall be posted on the bulletin boards in advance for a period of seven (7) working days prior to the filling of the position.
 - 1. Written evaluations, initiated by the City Manager, Department Head, or the individual Alliance member, may be used as the basis for conferences pertaining

to promotions. All parties are to initial the evaluation following the conference to indicate the evaluation has been read, but does not mean all parties agree with the evaluation.

2. Each Alliance member shall be entitled to access to his/her personnel file.
 3. In the event that a Department Head or the City Manager or their representative removes materials from an Alliance member's personnel file, a dated notation shall be placed in the file by the person or persons removing the material.
 4. No information contained in the files of a bargaining unit member will be released to outside persons or agencies without prior approval of the member, except for verifying employment, duration or employment or salary. Each bargaining unit member, during normal working hours, shall have the right of reviewing or duplicating materials in his/her file.
 5. Although management agrees to protect the confidence of personal references and other similar material, it shall not maintain a separate personnel file that is not available for his/her inspection.
- E. When bidding on a new job (via promotion or transfer), the permanent full-time employee shall have a trial period of three (3) months in which he/she may request to be reinstated in his/her previous position.
- F. When it becomes necessary to reduce the number of employees working for the City, because of lack of work or funds, the City Manager will then decide which Alliance member will be laid off. Analysis will be in the following order as referred to in the Merit System:
1. Efficiency;
 2. Demoting Alliance personnel to lower classification for which they are qualified;
 3. All factors being equal, seniority will be the determining factor.
- G. Bargaining unit Members separated from the service through no fault of their own, will be placed on a re-employment list in inverse order of the layoffs. Alliance personnel who are re-hired shall retain their seniority.
- H. The City agrees that it will not discriminate against, intimidate, or coerce Alliance personnel in the exercise of their rights to bargain collectively through the Alliance because of his/her membership therein or his/her activities on behalf of the Alliance.
- I. A bargaining unit member's seniority shall commence with his/her hiring date, provided the member is not discharged and is in the Department's continuous employ beyond the probationary period.
- There shall be one seniority list.
- J. A bargaining unit member shall not forfeit seniority during absence caused by:

1. Illness resulting in total temporary disability due to his/her regular work with the Department, certified by an affidavit from the Worker's Compensation Carrier;
 2. Illness related to his/her employment and not the result of his/her own misconduct resulting in total temporary disability, certified to by a physician's affidavit every three (3) months.
- K. If a bargaining unit member leaves the service of the City in good standing and is subsequently re-employed, he/she shall incur no loss of longevity benefits accrued prior to his/her leaving said service, and all longevity shall be restored to him/her upon re-employment.

**SECTION III
LEAVE OF ABSENCE**

- A. Bargaining Unit Members shall be entitled to the following leaves of absence:
1. Leave may be granted to Alliance members for the purpose of attending conferences, committees or meetings of the like without loss of salary or benefits subject to approval of the City Manager. This leave may be granted to one member for three (3) days or three members for one (1) day each as requested by the Union.
 2. Two (2) days leave may be granted for personal business which cannot be transacted at any other time. Said personal leave shall be non-accumulative and based on the contract year usage (July 1st to June 30th). Wherever possible, twenty-four (24) hour notice shall be given and the leave must be approved by the Department Head prior to use. Personal days will be awarded on July 1 of each year. In order to qualify for the two (2) personal days, an employee must have completed his or her probationary period prior to July 1. In other words, a new employee will not get any personal days until July 1 following the completion of his or her probationary period.
 3.
 - A. All employees shall be entitled to bereavement leave up to three (3) days with pay for a death in the immediate family.
 - B. An additional two (2) days may be granted by the Department Head, at his/her discretion, for a death in the immediate family.
 - C. Immediate family shall be defined as follows: Spouse, child, adopted child, parent, parent by adoption, brother, sister, grandparent, grandchild, mother-in-law, father-in-law, brother-in-law, sister-in-law,
 - D. Employees shall be entitled to one (1) day of bereavement leave to attend the funeral of the following family members: aunt, uncle, grandparent-in-law, niece and nephew.
 - E. Extensions may be granted by application to the Department Head.

4. Paid leave for juror or witness service will be granted for the period of time he/she is unable to return to work. A copy of all or any subpoena along with any monies received from this service (other than personal expenses, such as travel) shall be transmitted to the City Comptroller.

B. Leave Without Pay

Written leaves of absence without pay may be granted by the City Manager as appropriate for a period of six months. Upon expiration of the leave, the employee will be reinstated to the position held before the leave was granted.

C. Accidental Injuries

1. The City shall provide and maintain Worker's Compensation Insurance coverage on each employee covered by this Agreement.
2. In case of accidental personal injury to any employee covered by this Agreement arising out of and in the course of his/her employment, the City shall adjust the employee's pay so that he nets the same amount as if he had actually worked. This shall be accomplished by either paying the difference to the employee, or if the Worker's Compensation benefit is more than the net pay, the City shall deduct the amount of the difference from a withholding account. Any payments by the City shall be made until the employee is able to return to work, but in no event shall such payments by the City exceed fifty-two (52) weeks.
3. If, during the incapacitation of any employee due to injury arising out of the course of his employment, the employee shall be entitled to annual leave in accordance with this Section V. Paragraph A., then said employee shall be indemnified in pay or awarded annual leave at a later date equal to the annual leave lost because of the said injury at the discretion of the Department Head.

D. Military Leave of Absence

Any bargaining unit member who is ordered for active military service as a member of the Armed Forces of the United States of America, or who is engaged in activities in the Reserve Forces of the United States of America, or State National Guard, shall be granted leave of absence to perform such military duties with the City paying the difference in salary between the employee's base pay and his military pay for said duty and without loss of leave time. Such leave shall be considered military leave. However, the payment of the salary differential shall not exceed fourteen (14) days a year and shall not apply to regular monthly meetings.

Family and Medical Leave Act: Independent of any other section of this contract, employees shall be entitled to leave as required by the Family and Medical Leave Act.

The Association and the employer agree that Interim Policy as implemented by the City Manager regarding the Family Medical Leave Act, Policy #30, shall be applicable to the employees covered by this agreement. It is further agreed that should management initiate a change to said policy that it will be negotiated with the Association and subject to all appropriate approvals (unless required by law).

E. Medical Appointments

The City shall allow each full-time permanent employee time off with pay for a doctor, dentist, hospital or other medical related appointments not lasting over two (2) hours per appointment. Employees may take time off in half hour increments but will not exceed a total of 6 hours per contract year.

**SECTION IV
PAY INCREASES, LONGEVITY, MEDICAL INSURANCE**

A. COLA ADJUSTMENT

Effective July 1, 2019, Employees will be compensated according to the Salary Schedule attached hereto at Appendix A. Effective July 1, 2020 and July 1, 2021 of each year from July 1, 2016 through June 30, 2018, a COLA Adjustment percentage increase to the Salary Schedule shall be computed which shall not be less than 2% nor more than 5%.

The COLA Adjustment percentage shall be determined by the ten (10)-year rolling average in the CPI-U for the Boston-Cambridge-Newton all items index as computed by the Bureau of Labor Statistics of the U.S. Department of Labor for the most recent calendar year preceding the July 1 adjustment. BLS's calendar year for this index is November through November, it is not published on a December to December basis. The reference base is 1982-1984 equals 100 until BLS updates the reference base at which time the parties agree to adopt the official reference based as used by BLS.

Thus if the ten (10)-year rolling average in the CPI-U for the Boston SMSA calendar year 2004 (Nov. 2003-Nov. 2004) is 1.5% the applicable COLA adjustment would be 2%; if it is 3.5% the applicable COLA adjustment would be 3.5%; if it is 5.5% the applicable COLA adjustment would be 5.0%

Applicability After Contract Expires: It is clearly understood that in the event that ~~the this wo-three (3)~~ year Working Agreement expires without a successor Working Agreement being settled prior to July 1, ~~2019-2022~~ that no further COLA adjustments after July 1, ~~2018-2021~~ will be generated under the Working Agreement even if the Working Agreement has an evergreen clause. It is further agreed that continuation of COLA adjustments are not to be deemed "status quo" as the term has been used by the PELRB in the event that a successor agreement has not been settled by July 1, ~~2019~~2022.

- B. Any bargaining unit member working more than forty (40) hours in a work week as set forth in Section VI A shall be paid at the rate of one and one-half (1 1/2) times his/her rate of pay.
- C. An employee called in after hours shall be paid a minimum of four (4) hours at one and one-half (1 1/2) times his/her-rate of pay. Any member of the bargaining unit who is required to be on call for a week at a time will be paid a stipend of one hundred and ~~fifty-five dollars (\$155.00)~~ seventy-five dollars (\$175.00) for the week. The Water Chief Plant Operator called out during off-duty hours will earn one-half day comp time, subject to Supervisor's approval, with a maximum of ten (10) days of accrual and limited to one-half day accrual during any day.

- D. An employee promoted to a position which has a higher maximum hourly rate shall receive a pay raise for one step over his/her present rate upon promotion or to the minimum of the new position, whichever is greater, and such increase as is set forth in the Salary Plan, thereafter, based upon the date of promotion.
- E. All general increases shall be additional to the step increases to which the employees are entitled.
- F. Medical Insurance: The City will provide health insurance for all bargaining unit members for individual, two person, or family coverage as appropriate. ~~The health insurance plan shall be SchoolCare Plan of the New Hampshire School Health Care Coalition as administered in accordance with its Articles of Agreement and By-laws or equal and comparable coverage. Newly hired employees into the SMA bargaining unit who are not already covered by health insurance provided by the City shall be entitled to said coverage on the first of the month following date of hire.~~

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~~The parties' current health insurance arrangement will remain in place until July 1, 2016. For health insurance coverage effective July 1, 2016, or as soon as possible thereafter, the Union will move entirely to only Effective July 1, 2019, the City will continue to provide coverage under the AB 20 10/20/45 plan with the City paying 90% of the premium cost and the employee paying 10% of the premium cost. Effective July 1, 2020, the premium cost-sharing arrangement will change, with the City paying 87.5% of the premium cost and the employee paying 12.5% of the premium cost. Effective July 1, 2021, the premium cost-sharing arrangement will change, with the City paying 85% of the premium cost and the employee paying 15% of the premium cost.~~ The City's total contribution to health insurance (including any premium, additional tax or assessment) will not exceed the current threshold levels for assessment of the "Cadillac Tax" under the Affordable Care Act (\$10,200/single \$27,500/2-person and family).

The parties agree that employees currently receiving stipends in lieu of health insurance coverage will continue to receive them at the dollar level in effect at the time this agreement is reached. No additional employees shall receive such stipends when both spouses work for the City. In order to receive health insurance opt-out stipend, employee must present proof of enrollment in alternative employer-sponsored health insurance plan that does not subject the City to any fees, fines or assessments under the Affordable Care Act. Further the City will not provide health and/or dental coverage if an employee is already covered by the same or similar health and/or dental plan by the City or School Department.

The Association agrees to participate in a City-wide committee to explore health insurance options.

- H. Longevity: Employees shall receive the following longevity bonuses payable in December to employees who are on the payroll at the time of payment. Longevity payments will be made annually at the level established below based upon full-time service with the City:

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	<u>AMOUNT OF BONUS</u>
After the completion of 5 years of service	<u>\$320.37</u>
After the completion of 10 years of service	<u>\$640.74</u>
After the completion of 15 years of service	<u>\$961.10</u>
After the completion of 20 years of service	<u>\$1,281.47</u>
After the completion of 25 years of service	<u>\$1,601.84</u>
After the completion of 30 years of service	<u>\$1,922.21</u>
After the completion of 35 years of service	<u>\$2,242.58</u>

H.

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July 1, 2016

After the completion of 5 years of service	\$ 301.89
After the completion of 10 years of service	\$ 603.78
After the completion of 15 years of service	\$ 905.67
After the completion of 20 years of service	\$ 1,207.56
After the completion of 25 years of service	\$ 1,509.45
After the completion of 30 years of service	\$ 1,811.34
After the completion of 35 years of service	\$ 2,113.23

These longevity bonuses will be increased by the 10-year rolling average ~~each July 1 of this contract on July 1, 2020 and July 1, 2021.~~

- I. The City shall undertake to defend and pay any judgment issued against an employee covered by this Agreement arising out of an act or omission of the employee for personal injury, including death or damage to property while the employee was engaged in the performance of his duties.
- J. The City shall enroll all members of the Alliance in the SchoolCare – Plan 2 1500 Max (DPO2C) for individual, two-person or family coverage or equal and comparable coverage.
- K. The City shall provide a group life insurance policy for all eligible members of the Association in the amount of the current annual pay of the individual employee (rounded up to the nearest one thousand dollars), in accordance with the conditions set forth in the insurance policy.
- L. Should the parties agree in writing to establish a cafeteria style plan dealing in insurance issues during the course of this agreement — such plan would only become effective if ratified by the Association, approved by the city Manager and approved by the City Council.
- M. The City will provide long-term disability insurance to members of the bargaining unit with no cost to the employee.
- N. Employees will be entitled to a course reimbursement up to \$2,000 per fiscal year, by the City for courses taken that would provide for improved job performance. Prior approval by the City Manager is required. Reimbursement shall be contingent upon successful completion of the course.

O. Employees shall be paid in accordance with the following schedule:

First 12 months	Step A
After 12 months satisfactory service	Step B
After 24 months satisfactory service	Step C
After 36 months satisfactory service	Step D
After 48 months satisfactory service	Step E
After 120 months satisfactory service	Step F
After 300 months satisfactory service	Step G

**SECTION V
ANNUAL LEAVE**

A. Bargaining Unit Members shall be paid for actual time worked, all approved leaves and all approved holidays.

B. Bargaining Unit Members shall receive paid annual leave as follows after completing one (1) full year's service:

1 through 60 months service ----	6.664 hours/mo.
61 through 72 months service ----	7.336 hours/mo.
73 through 84 months service ----	8 hours/mo.
85 through 96 months service ----	8.664 hours/mo.
97 through 108 months service ----	9.336 hours/mo.
109 through 120 months service ----	10 hours/mo.
121 through 132 months service ----	10.664 hours/mo.
133 through 144 months service ----	11.336/mo.
145 through 156 months service ----	12 hours/mo.
157 through 168 months service ----	12.664 hours/mo.
169 through 180 months service ----	13.336 hours/mo.

C. The accumulated leave allowed will be four hundred (400) hours per calendar year. Any unused annual leave at the end of the year may be applied to four hundred (400) hour cap. In the event an employee has accumulated more than four hundred (400) hours of unused annual leave at the end of each year, said employee shall be paid no more than eighty (80) hours accumulated annual leave in excess of four hundred (400) hours. Payment will be made in February following the calendar year.

**SECTION VI
HOURS OF WORK AND OVERTIME**

A. The work week for a Bargaining Unit Member shall be as follows:

1. Public Works: Forty (40) hours per week, Monday through Friday. The City may modify the Monday through Friday limitation in this provision for vacant and new positions or upon mutual agreement with an employee.
2. Recreation: Any consecutive five days totaling forty hours. Compensatory time or overtime payment at the option of the Department Head based on 1 1/2 times salary after forty (40) hours.

3. ~~Properly requested and approved paid leave, except for sick leave, will be counted as hours worked for purposes of calculating overtime. Additionally, during a declared snow emergency, once an employee works sixteen (16) hours without a break in service, any additional hours worked in excess of sixteen (16) hours without a break in service will be paid at the employee's overtime rate. All holidays shall be considered part of his/her forty (40) hours and shall be compensated as set forth in Section IV, but paid leave including but not limited to sick leave, vacation, personal, doctor's appointments and comp time will not be considered time worked for overtime purposes. Effective July 1, 2014, bereavement shall be considered part of his/her forty (40) hours and shall be compensated as set forth in Section IV.~~

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~~If the City approves a successor agreement with AFSCME Local #1386 that allows paid leave including but not limited to vacation, sick leave, personal, bereavement, doctor's appointments or comp time to be counted as time worked for overtime purposes, then the City shall reimburse any SMA bargaining unit member who lost OT under this agreement attributable to that overtime provision that was not replicated in the AFSCME successor agreement. For example, if the AFSCME successor agreement does not exclude vacation from time worked for OT purposes, then any SMA bargaining unit member who lost overtime under this agreement due to vacation shall be reimbursed for such overtime. Further, this agreement shall be reformed to reflect the AFSCME overtime provisions on the effective date of the AFSCME successor agreement.~~

- B. Non-Bargaining Unit Members may work overtime only on condition that members of the Alliance are not available.
- C. Any Bargaining Unit Member who shall perform duties of a higher rate for more than five (5) consecutive days shall be paid at the higher rate of pay while performing such duty, but at no time shall any alliance member be paid at a lower rate than that at which he/she is classified except for demotion because of physical incapacity or under Section II, F.
- D. COMP-TIME IN LIEU OF OVERTIME: The parties agree that in lieu of overtime, a department head (totally within his/her discretion) may grant comp-time if the employee agrees to accept it, subject to City Manager approval. Comp-time, if granted, must be granted in accordance with FLSA requirements.

SECTION VII SICK LEAVE

Eligibility: Sick leave without loss of pay shall be computed at the rate of one hundred and twelve (112) hours per year (or 9.334 hours per month).

- A. Employees hired prior to May 1, 1990 shall be entitled to Accumulated Sick Leave without limitation as to the number of days.
- B. Employees hired on or after May 1, 1990 shall have Sick Leave Accumulation limited to 1200 hours.

- C. Employees hired after July 1, 1996 shall accumulate sick leave as set forth in Item B above, but shall receive no payment of sick leave upon retirement, termination, or death. Employees in this category who have accrued at least eight hundred (800) sick hours at beginning of a calendar year will be entitled to be paid twenty four (24) sick hours pay if no sick hours are used in the calendar year and sixteen (16) sick hours of pay if eight sick hours are used in the calendar year.

PAYOUT

- D. Upon retirement from employment or termination of the employee, an amount equal to eighty-five percent (85.0%) of the employee's accumulated sick leave shall be paid to the employee. Upon death of an employee, while in the employment of the City, the City shall pay to the employee's estate an amount equal to one-hundred (100%) percent of the employee's accumulated sick leave.

BUY OUT OPTION

- E. The parties agree that in the event the City Council appropriates money to use to buy out a portion of employee's sick leave, that each employee may accept buyout of any portion he or she voluntarily agrees to in writing based upon the terms offered. The parties recognize that if limited buyout funds are available, buyout offers will be made to employees based on seniority.

NOTICE PROVISIONS

- F. To be entitled to payment as set forth above, the employee must give the City notice by February prior to the fiscal year in which payment is to be made. If such notice is not given and the employee retires or voluntarily terminates employment, the employee will not be entitled to be paid for his or her accumulated sick leave until the first pay period of July following his or her retirement or termination or 120 days after his or her retirement or termination which ever is later. If the employee is involuntarily terminated by the City or leaves under one of the following exceptions notice will be waived and then the employee will be paid for his or her accumulated sick leave within seventy five days of termination.
1. Resignation at the request of the City Manager.
 2. Disability retirement.
 3. Retirement caused by serious illness or injury which otherwise does not qualify for disability retirement.
 4. Retirement caused by a serious family illness where the employee is needed to attend the family member in need.
 5. Other circumstances that arise precipitously which make it impossible for an employee to meet the notice requirements of this section, only if the

City Manager approves in advance of the payment without the required notice.

[Employees who give sufficient notice will be able to receive payout in two separate years].

SECTION VIII HOLIDAYS

Alliance members shall be paid at their regular rate for the following legal holidays:

New Year's Day
Martin Luther King, Jr. Day (which is the State's
Civil Rights Day)
Washington's Birthday
Veteran's Day
One-half day on Good Friday
Memorial Day
Independence Day
Labor Day
Columbus Day
Thanksgiving Day
Day after Thanksgiving
Christmas Day
Monday if Christmas comes on Tuesday
Friday if Christmas comes on Thursday

In the event the City eliminates 1/2 day on Good Friday from the AFSCME Local 1386 contract in exchange for 1/2 day on Christmas Eve and 1/2 day on New Year's Eve, the Alliance will adopt the same schedule regarding these holidays.

When a holiday falls on a Saturday, the preceding Friday shall be considered a holiday for Alliance members. If a holiday falls on a Sunday, the following Monday shall be considered a holiday.

SECTION IX EQUIPMENT

- A. The City shall have the right to make regulations for the safety and health of its employees during their hours of employment. Representatives of a Department and the Alliance may meet once in ninety (90) days at the request of either party to discuss such regulations. The Alliance agrees that its members who are employees of a Department will comply with the Department's Rules and Regulations relating to safety, economy, continuity and efficiency of the service to the Department and the public.
- B. Each Department agrees to furnish raincoats and boots for all employees for whom such issue is necessary. The employees agree to exercise due care in the use and storage of such items. All replacements of previous issue shall be made only when an article is turned in or exchanged for one issued.

- C. Each Department shall furnish rubber gloves for all work on existing sewer lines.
- D. The Alliance and its members agree to exercise proper care and to be responsible for all Department property issued or entrusted to them.
- E. All SMA bargaining unit members will be provided uniforms which must be worn when the employee is working if the departmental policy requires it.

Each department will be responsible for developing its own uniform policy.

~~Effective July 1, 2016 - a~~All SMA employees will be entitled to reimbursement two (2) times per year, of up to one hundred and twenty five dollars (\$125.00) per reimbursement, for the purchase of appropriate, work-related footwear. Employees must submit a receipt to the City evidencing an appropriate purchase in order to receive this reimbursement. Each department shall have the right to establish specifications for footwear for jobs to ensure safety.

SECTION X GRIEVANCE PROCEDURE

- A. A grievance shall mean a complaint by an employee or group of members arising out of an interpretation of the provisions of this Agreement or conditions of employment implied but not necessarily stated in this agreement.

A grievance to be considered under this procedure must be initiated by the member within seven (7) working days of its occurrence.
- B. Failure at any step of this procedure to communicate the decision on a grievance within the specified time limits shall permit the aggrieved member to proceed to the next step. (This is specifically meant to apply to situations where a department head might try to sit on a grievance and not respond to it.)
- C. Any member who has a grievance shall put it in writing with his/her Department Head, in an attempt to resolve the matter at that level.
- D. If, as a result of the submission of the grievance, the matter is not resolved to the satisfaction of the member within seven (7) working days, he/she shall set forth the grievance in writing to the City Manager or the Commission, as appropriate, specifying:
 1. The nature of the grievance and date occurred;
 2. The nature and extent of the loss or inconvenience;
 3. His/her dissatisfaction with decisions previously rendered.
 4. The results of previous discussion.

The City Manager shall communicate, their decision to the grievant in writing within seven (7) working days of receipt of the written grievance.

- E. If a grievance is not resolved to the Union's satisfaction, the Union will notify the City Manager within 15 working days after receipt of the decision of its intention to arbitrate

or the decision rendered will be binding on both parties. Arbitrators shall be selected according to the procedures established by PELRB. The parties will share the cost of the arbitrator's fees on a 50/50 basis.

- F. It is further agreed that any arbitration rendered under this contract shall be subject to the review provisions of RSA-542.
- G. An arbitrator deciding a grievance under this contract shall have no authority to alter, amend, change, add to or delete, the terms of the contract of the parties.
- H. For the purposes of this section working days shall be Monday through Friday excluding Saturdays, Sunday and holidays.

SECTION XI AMENDMENT

- A. The signing of this Agreement by the authorized representative of the Alliance, and the City shall constitute the effective date of this Agreement.
- B. This Agreement remains in effect until June 30, ~~2018~~2022. Should neither party to this Agreement initiate negotiations as required by law, this Agreement shall automatically be renewed.
- C. To promote peace and harmony, meetings between the Alliance and the City Manager shall be conducted at approximately 3:30 p.m.

SECTION XII CONFLICT

In the event of a conflict between the provisions of this Agreement and the existing policies and procedures of the City in regard to wages, hours of work and working conditions, it is agreed that this Agreement shall govern the relationship between the parties.

SECTION XIII COPIES

Copies of this Agreement shall be provided to all Alliance members along with any appendices at the City's expense.

SECTION XIV CLASSIFICATION STUDY

~~The City agrees to review the classification of the Spinnaker Point Supervisor position as soon as the contract receives City Council approval, with any adjustment effective upon the date of the consultant's recommendation. The City will conduct a classification study of current positions with any recommended adjustments to be made to the City Council by January 15, 2020. The City Council will have the sole discretion to approve/reject the recommended adjustments.~~

**SECTION XV
STANDBY MONITORING COMPENSATION SYSTEM**

An employee required to be on stand-by to monitor and control the water system and/or the Waste Water System via a lap top computer or similar device during non-working hours will be compensated as follows:

1. ~~\$2.55~~ Effective July 1, 2019, \$3.00 per hour while on stand-by to monitor and control including responses to beeper alarms, computer trouble shooting, etc. and payable whether or not any alarms go off. Effective July 1, 2020, this standby compensation will be increased to \$3.25 per hour; and effective July 1, 2021, this standby compensation will be increased to \$3.50 per hour.
2. When an employee who is on stand-by to monitor the system must come in to correct the Problem, the employee will receive a ~~two-three (3)~~ three (3) hour minimum at overtime rate. [As opposed to a 4 hour emergency call-in set forth in SMA Contract Section IV, Paragraph D]. ~~Effective June 8, 2009, this minimum will be changed to three (3) hours.~~
3. It is understood that an employee who is on standby to monitor the system will not be paid for mileage or travel time if he/or must return to the plant to correct a problem.
4. The compensation system set forth in #1, #2, and #3 above shall be subject to revision if necessary to efficiently deal with operating conditions. Such revisions would have to be negotiated although interim adjustments could be put into effect pending negotiations.

Signed this _____ day of _____ 20162019.

<u>FOR THE CITY</u>	<u>FOR THE ASSOCIATION</u>
<u>John P. Bohenko</u> <u>City Manager</u>	<u>Corin Hallowell</u> <u>Negotiating Team Member</u>
<u>Peter Rice</u> <u>Public Works Director</u>	<u>Mike Baker</u> <u>Negotiating Team Member</u>
<u>Thomas Closson</u> <u>City Negotiator</u>	<u>Charles Baxter</u> <u>Negotiating Team Member</u>
	<u>Peter Conroy</u> <u>Negotiating Team Member</u>

	<u>Tim Bailey</u> Negotiating Team Member
	<u>Brinn Sullivan</u> Negotiating Team Member

For the City of Portsmouth _____ For the Supervisory Management Alliance

John P. Bohenko, _____ Paula Anania
City Manager _____ Negotiating Team Member

Dianna Fogarty, _____ Barry Foley
Human Resources Director _____ Negotiating Team Member

Thomas Closson _____ Todd Croteau
City Negotiator _____ Negotiating Team Member

Peter Rice _____ Dave Desfosses
Public Works Director _____ Negotiation Team Member

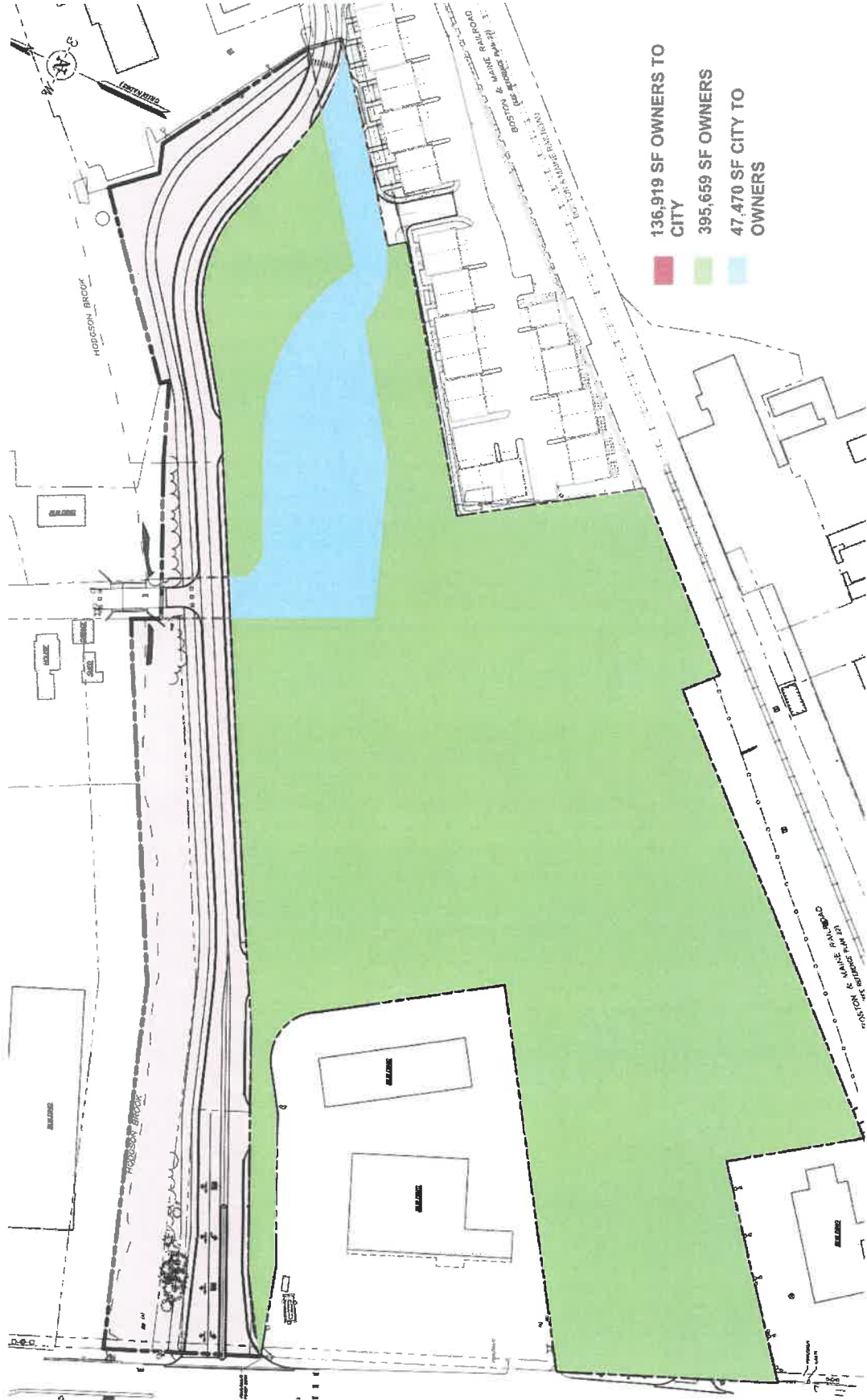
APPENDIX A

**CITY OF PORTSMOUTH
SUPERVISORY MANAGEMENT ALLIANCE
2019- 2020 SALARY SCHEDULE**

A - E are 12 month increments

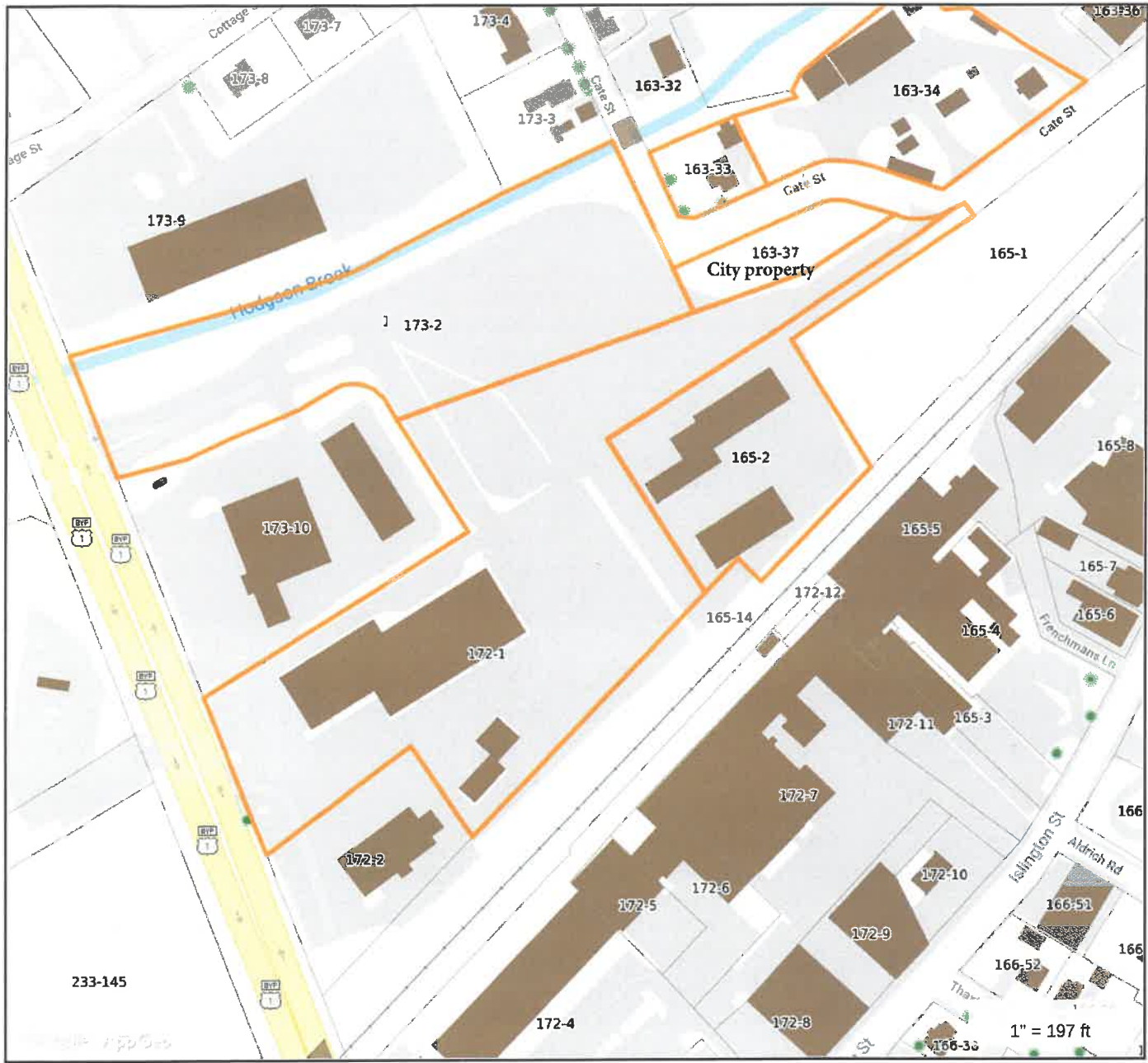
GRADE POSITION		A - E are 12 month increments					10 Years	25 Years
		STEP A	STEP B	STEP C	STEP D	STEP E	STEP F	STEP G
7	Annual	\$42,002.30	\$44,072.26	\$46,238.64	\$48,520.52	\$50,913.41	\$52,313.24	\$53,751.82
	Bi-Weekly	\$1,615.47	\$1,695.09	\$1,778.41	\$1,866.17	\$1,958.21	\$2,012.05	\$2,067.38
	Hourly	\$20.19	\$21.19	\$22.23	\$23.33	\$24.48	\$25.15	\$25.84
8	Annual	\$44,212.96	\$46,391.86	\$48,672.26	\$51,074.24	\$53,593.08	\$55,066.57	\$56,580.90
	Bi-Weekly	\$1,700.50	\$1,784.30	\$1,872.01	\$1,964.39	\$2,061.27	\$2,117.95	\$2,176.19
	Hourly	\$21.26	\$22.30	\$23.40	\$24.55	\$25.77	\$26.47	\$27.20
9	Annual	\$46,539.96	\$48,833.54	\$51,233.96	\$53,762.36	\$56,413.76	\$57,964.81	\$59,558.84
	Bi-Weekly	\$1,790.00	\$1,878.21	\$1,970.54	\$2,067.78	\$2,169.76	\$2,229.42	\$2,290.72
	Hourly	\$22.37	\$23.48	\$24.63	\$25.85	\$27.12	\$27.87	\$28.63
11 Rec Supervisor Comm. Ctr Super.	Annual	\$51,477.43	\$54,022.81	\$56,675.67	\$59,478.80	\$62,428.77	\$64,145.68	\$65,909.68
	Bi-Weekly	\$1,979.90	\$2,077.80	\$2,179.83	\$2,287.65	\$2,401.11	\$2,467.14	\$2,534.99
	Hourly	\$24.75	\$25.97	\$27.25	\$28.60	\$30.01	\$30.84	\$31.69
12 Lead Mechanic Parking Enforcement Supervisor Pool Supervisor Spin Point Super. Sr. Services Coord.	Annual	\$54,022.81	\$56,675.67	\$59,478.80	\$62,428.77	\$65,525.49	\$67,327.35	\$69,178.85
	Bi-Weekly	\$2,077.80	\$2,179.83	\$2,287.65	\$2,401.11	\$2,520.21	\$2,589.51	\$2,660.72
	Hourly	\$25.97	\$27.25	\$28.60	\$30.01	\$31.50	\$32.37	\$33.26
13 Water Foreman I Sewer Foreman I Highway Foreman I Asst. CPO Water Meter Billing Foreman I Const. Proj. Coord Asst. Rec Director Prescott Park Foreman I Parking Garage Foreman I Tree Super/Arborist	Annual	\$56,675.66	\$59,478.79	\$62,428.76	\$65,525.48	\$68,772.62	\$70,663.67	\$72,606.92
	Bi-Weekly	\$2,179.83	\$2,287.65	\$2,401.11	\$2,520.21	\$2,645.10	\$2,717.83	\$2,792.57
	Hourly	\$27.25	\$28.60	\$30.01	\$31.50	\$33.06	\$33.97	\$34.91
14 Equip. Mnt Foreman II Fac/Solid Waste Foreman II Parks & Greenery Foreman II	Annual	\$59,478.80	\$62,428.77	\$65,525.49	\$68,772.64	\$72,198.72	\$74,183.70	\$76,223.75
	Bi-Weekly	\$2,287.65	\$2,401.11	\$2,520.21	\$2,645.10	\$2,776.87	\$2,853.22	\$2,931.68
	Hourly	\$28.60	\$30.01	\$31.50	\$33.06	\$34.71	\$35.67	\$36.65
15 General Foreman Const. Tech. Sup.	Annual	\$62,428.76	\$65,525.48	\$68,772.62	\$72,198.71	\$75,781.53	\$77,865.63	\$80,006.92
	Bi-Weekly	\$2,401.11	\$2,520.21	\$2,645.10	\$2,776.87	\$2,914.67	\$2,994.83	\$3,077.19
	Hourly	\$30.01	\$31.50	\$33.06	\$34.71	\$36.43	\$37.44	\$38.46
16 CPO Non-Exempt	Annual	\$65,525.48	\$68,772.62	\$72,198.70	\$75,781.52	\$79,567.70	\$81,755.40	\$84,003.67
	Bi-Weekly	\$2,520.21	\$2,645.10	\$2,776.87	\$2,914.67	\$3,060.30	\$3,144.44	\$3,230.91
	Hourly	\$31.50	\$33.06	\$34.71	\$36.43	\$38.25	\$39.31	\$40.39
18 CPO Exempt	Annual	71,893.53	75,444.39	79,169.20	83,081.86	87,196.90	\$89,594.81	\$92,058.67
	Bi-Weekly	\$2,765.14	\$2,901.71	\$3,044.97	\$3,195.46	\$3,353.73	\$3,445.95	\$3,540.72

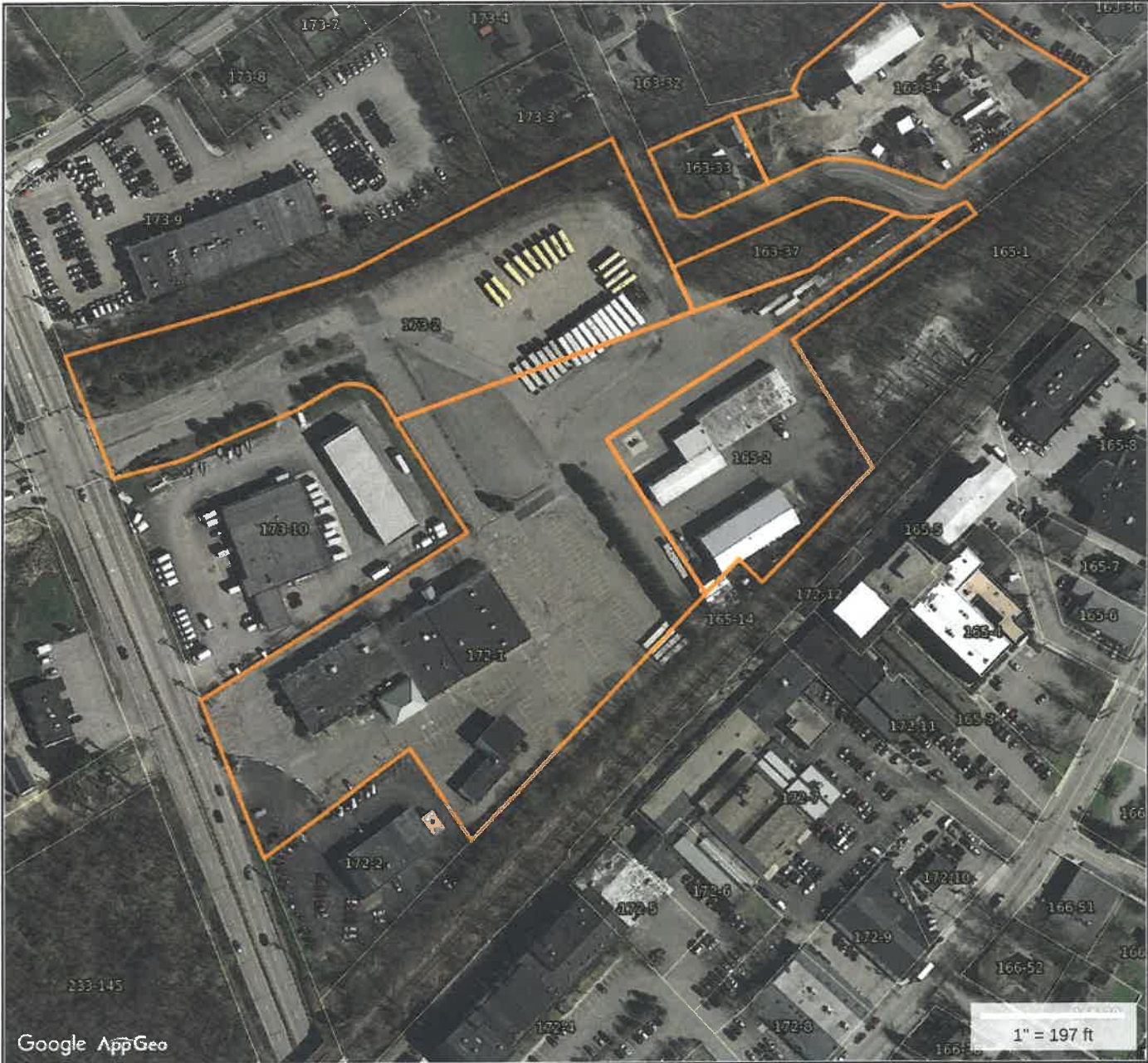
PROPOSED LAND SWAP



Map of Area







Google AppGeo

1" = 197 ft

DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF PORTSMOUTH, NEW HAMPSHIRE
AND
CATE STREET DEVELOPMENT LLC

THIS DEVELOPMENT AGREEMENT (the "Agreement"), made and entered into this ____ day of August, 2019, by and between the **CITY OF PORTSMOUTH**, a New Hampshire municipal corporation (hereinafter referred to as the "City"), with a place of business, and mailing address, at 1 Junkins Avenue, Portsmouth, New Hampshire 03801, and **CATE STREET DEVELOPMENT LLC**, a New Hampshire limited liability company with an address of 11 Elkins Street, Suite 420, Boston, MA 02127 (hereinafter individually "Developer"), (the entities referred to in this paragraph are sometimes hereinafter collectively referred to as the "Parties"), as follows:

RECITALS:

WHEREAS, The Developer is the owner of certain parcels of real estate which are comprised of four separate parcels of real estate, said property consisting of 12.2 acres, more or less, identified as follows:

- A. Map 172, Lot 1 (428 US Route 1 By-Pass)
- B. Map 173, Lot 2 (Cate Street)
- C. Map 165, Lot 2 (55 Cate Street)
- D. Map 163, Lot 33 (161 Cate Street)
- E. Map 163, Lot 34 (1 Cate Street)

WHEREAS, The City is the owner of (1) a certain parcel of real property identified as Map 163, Lot 37, said property consisting of 21,344 square feet, more or less; and (2) certain adjacent property consisting of 26,126 square feet, more or less, same being a portion of the current public road known as Cate Street adjacent to said Map 163, Lot 37.

WHEREAS, the City and the Developer would like to engage in the conveyances depicted on the exhibit attached hereto as **Exhibit A**, whereby fee title to approximately 136,919 square feet of land will be conveyed from the Developer to the City free and clear of all encumbrances to allow for the relocation of a portion of Cate Street, and fee title to approximately 47,470 square feet of land will be conveyed from the City to Developer to allow for the development of the Project, as such term is defined below (collectively, the "Land Swap"). Transfer of title for the Land Swap shall occur within sixty (60) days after Developer obtains full unconditional site plan review approval from the City of Portsmouth Planning Board (hereinafter the "Planning Board").

WHEREAS, the Developer has applied for site plan review approval from the Planning Board to allow for the construction of a mixed use commercial/residential development

consisting of (1) 250 residential apartment units in two buildings (134 apartment units in proposed "Building A" and 116 apartment units in proposed "Building B"), which will include 27 apartments as workforce housing; (2) 23 townhouse style condominium units; (3) 22,000 square feet of retail space; (4) 22,000 square feet of office space; and (5) 495 parking spaces. In addition, certain other improvements will be completed by the Developer such as the cleaning up of Hodgdon's Brook, a public recreational dog park, appurtenant roadways, parking lots, drainage structures and other on-site and off-site public and private infrastructure improvements for the residential, office, retail entertainment, and other permitted uses (hereinafter the "**Project**"), the same to be located on land currently owned by Developer, situated on Cate Street and the US Route 1 By Pass in Portsmouth, New Hampshire (the "**Project Premises**"); all as more particularly shown and/or described in/on the plans, documents, and representations made by Developer, in connection with its Project application and presentations made to the Planning Board in conjunction with the obtaining of Developer's aforementioned site plan review approvals; and

WHEREAS, as a result of such approvals for the Project by the Planning Board, the Parties require an Agreement to include provisions regarding funding for the new public road, various off-site public infrastructure improvements (hereinafter the "**Off-Site Public Infrastructure Improvements**"), and on-site public improvements to benefit the public (hereinafter the "**On-Site Public Improvements**" and together with the **Off-Site Public Infrastructure Improvements**, the "**Public Infrastructure Improvements**", as more particularly described in Section 1.2 hereof), as well as provisions relating to the timing of development, the coordination of such matters, and other issues of need and/or necessary cooperation and coordination between the City and Developer, and/or with other governmental agencies and/or private entities, such as the State of New Hampshire and/or the Federal Government or its departments or agencies and/or private utilities and the like, in order for Developer to develop the Project as approved by the Planning Board; and

WHEREAS, the City desires to have Developer develop the Project in Portsmouth, and to have Developer's prospective Project tenants located in Portsmouth, as it will result in the creation of housing, including but not limited to, workforce housing, office and retail buildings, construction jobs and other permanent full and part time jobs in the City, will significantly expand the City's tax base, and will also result in significant expansion of, and contribution to, substantially enhanced Public Infrastructure Improvements, and, therefore, the City and Developer have agreed to cooperate to bring about the creation of such Public Infrastructure Improvements, including the improvements required by the Planning Board, and/or by the State of New Hampshire Department of Transportation (hereinafter "**NHDOT**") and/or other governmental agencies having jurisdiction over the Project, or aspects thereof; and

WHEREAS, it is the intent of the City and Developer to execute this Agreement for the

purpose of identifying, providing for the creation of, and allocating responsibility for the costs of, and payment for, the Public Infrastructure Improvements required by the City, the State of New Hampshire and the Planning Board's site plan review approval for the Project in accordance with **Exhibit E**, and the maintenance thereof, including the creation and implementation of payment and payment guarantee mechanisms for the same; and

WHEREAS, given the importance of the coordination of the construction of the Project with the availability of a viable financing mechanism to pay the cost of providing the Public Infrastructure Improvements designed and intended or required to complement the Project, it is the intent of the parties to establish a schedule for the timely completion of the Public Infrastructure Improvements of the Public Infrastructure Improvements contemplated or required by the Project's approval in order to permit Developer to occupy the Project in a timely manner; and if necessary to allow Developer to assist the City with Public Infrastructure Improvements, at the City's or other available funding mechanisms' or entities' expense, in order to allow occupancy in a timely manner, provided that the City consents, in advance, to the allocation of such expense.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. Public Infrastructure Improvements

1.1 The term "**Public Infrastructure Improvements**" as used in this Agreement includes the acquisition of land and construction of public improvements, on and off the Project Premises, which are being constructed in conjunction with the Project and which are more particularly described and/or referred to in Section 1.2 below or contemplated on **Exhibit B** hereto. The limits of Public Infrastructure improvements are defined as work within the existing Cate Street and proposed Cate Street right of way, and also includes work within the Bartlett Street and Route 1 By-Pass right of way.

1.2 The planning, design, permitting, and construction of **Public Infrastructure Improvements** referred to in this Agreement include the following:

- a. **Planning, Design, Permitting and Construction Documents.** As part of the design of the new public road, the Developer has incurred cost for the purchase, survey, design, permitting of the public road. These soft costs incurred by Developer prior to this Agreement shall be the sole responsibility of Developer.

- b. The City shall be solely responsible for all costs incurred in connection with the following:
 - i. Relocation of the portion of public sewer line that exists on Developer's property for which the City has no documented easement (extending approximately from the Route 1 Bypass to the rear of the U-Haul property);

- c. The Developer and the City shall share the following costs equally:
 - i. Engineering and construction for site preparation, drainage, and physical roadway improvements (and related sidewalks, landscaping, and lighting) within the proposed **City ROW**, as such term is defined below. Notwithstanding the foregoing, costs associated with any engineering and construction for site preparation, drainage, and physical roadway improvements (and related sidewalks, landscaping, and lighting) that Developer counts toward its "public realm improvements" or "community space" as required by zoning shall be the sole responsibility of Developer, and the City shall have no obligation to reimburse Developer for all or any portion of such costs, including, but not limited to, engineering and construction of walking or biking trails and other improvements associated with the Developer's "public realm improvements" or "community space" as required by zoning;
 - ii. Engineering and construction for physical improvements to the new intersection of US Route 1 Bypass and Cate Street, as well as to the existing Cate Street, related to the creation of the public road;
 - iii. Engineering and construction for physical improvements to the intersection of Bartlett Street and Cate Street related to the creation of the public road, provided that such improvements are required by the City Planning Board. If the City Planning Board grants all necessary final unconditional approvals without requiring any improvements to the intersection of Bartlett Street and Cate Street, Developer shall not be responsible for any costs associated with such improvements.
 - iv. New Hampshire Department of Transportation ("NHDOT") driveway permitting costs for the new road;

- v. Design engineer's construction oversight and so-called "stamp of approval" at project completion of the work within the proposed right of way for which fee title will be conveyed to the City (the "City ROW"), beyond City staff involvement;
 - vi. NHDES Alteration of Terrain ("AOT") permit, proportional, on a square footage proration basis, to the area of disturbance within the **City ROW**;
 - vii. A contribution to the NHDES General Construction Plan proportional to the areas of disturbance with the **City ROW**;
 - viii. Engineer's preparation of bid ready, construction drawings and specifications relating to improvements to the **City ROW**, to the extent required for competitive construction bidding;
 - ix. Engineer's assistance and advice on any unforeseen change orders, and the like regarding the **City ROW**;
 - x. Site preparation and physical roadway improvements within the proposed **City ROW**;
 - xi. Landscaping within the **City ROW**;
 - xii. Lighting within the **City ROW**;
 - xiii. COAST bus/trolley stop construction within the **City ROW**;
 - xiv. Drainage improvements within the **City ROW**;
 - xv. Physical improvements along Route 1 Bypass, excluding NHDOT improvements, which shall be the sole responsibility of the City;
 - xvi. Physical improvements in existing Cate Street and Bartlett Street ROW; and
- d. The Developer shall be solely responsible for all costs incurred in connection with the following:
- i. Design, engineering, permitting, replacement, construction, improvement, or relocation of any and all water or sewer lines, including the extension of any water lines north along US Route 1 Bypass, if necessary;
 - ii. Preparation of a New Hampshire Department of Environmental Services ("NHDES") sewer connection permit with associated

cross sections as needed, as well as any permits otherwise required by NHDES or the State of New Hampshire or its departments or agencies for the extension of City services;

- iii. Design of any improvements to the water system required to increase pressure as needed for the Project;
- iv. Water and sewer main lines within the proposed **City ROW**, including service stubs to property lines, except as set forth in Section 1.2(b) above. The location of service stubs shall be coordinated with City Staff and subject to the City's approval;
- v. Underground electric, underground communications, and gas improvements within the **City ROW**;
- vi. Creating and improving walking and bike trails;
- vii. All other planning, design, permitting, engineering, and construction costs not set forth in Sections 1.2(b) and 1.2(c) above.
- viii. Any costs incurred prior to the date of this Agreement by Developer of any kind and nature whatsoever.

1.3 Developer and City agree that if Developer completes the above-referenced Public Infrastructure Improvements to the satisfaction of the City, the City will reimburse Developer for its equal share of costs for the work set forth in Section 1.2(c) above. Such costs arising from the work set forth in Section 1.2(c) above shall be agreed to in writing by the parties prior to the start of construction. Any changes in the scope of work set forth in Section 1.2(c) above shall be approved by the City before the City shall be required to reimburse Developer for its equal share of such changes, and the City may withhold its consent to any such changes in its sole discretion.

1.4 Developer represents and agrees that all Public Infrastructure Improvements will be constructed per City standards and the City will have the opportunity to observe and inspect the construction to insure the construction is per City standards and otherwise satisfactory to the City.

1.5 The parties agree that in the event that the City Council does not approve the bonding for construction of the new road on or before October 8, 2019, the parties will nonetheless consummate the Land Swap contemplated by this Agreement, provided, however, that Developer shall not be required to contribute towards half the costs of construction of the new road if the City Council approves such construction in the future. If the City Council does not approve the bonding for construction of the new road, the City will grant an access easement to Developer over the land conveyed from the Developer to the City, upon which Developer shall construct, at Developer's sole cost, a driveway for access to the Project Premises. If the City approves bonding for

construction of the new road after October 8, 2019, or if the City otherwise elects to approve such construction after October 8, 2019, Developer's access easement shall terminate and the City shall construct the new road as contemplated herein.

2. Developer Obligations.

2.1 Developer will perform, or cause to be performed, all of the planning, design, engineering, permitting, and construction for the work to be completed and construction to be done on the Project Premises and the Off-Site Public Infrastructure Improvements constructed by, or on behalf of, the City on a portion(s) of the Project Premises to be conveyed, or otherwise transferred, to the City pursuant to the Planning Board's anticipated site plan review approval and this Agreement for use in connection with the Off-Site Public Infrastructure Improvements. The hiring or retention by Developer of any and all planning, design, engineering, permitting, and construction contractors, subcontractors, or other personnel shall be subject to the City's approval, which approval shall not be unreasonably withheld.

2.2 Developer and its consultants, contractors, agents, and representatives shall coordinate the design of On-site Infrastructure Improvements for the Project by Developer with the Public Infrastructure Improvements. Such coordination shall include, but not be limited to, attending meetings as well as providing copies of plans/designs to the City in both hard and electronic format (in an AutoCAD format reasonably acceptable to the City).

2.3 Developer shall, upon receipt of full unconditional site plan review approval from the Planning Board, convey fee title to approximately 136,919 square feet as shown on **Exhibit A**, upon which the Off-Site Public Infrastructure Improvements shall be constructed and located.

2.4 Developer agrees to pay for 100% of the City's legal fees and costs associated with the Land Swap contemplated herein and the parties' performance under this agreement, including but not limited to, legal fees and costs incurred by the City in connection with drafting, revising, and negotiating this Agreement. The City represents that it is represented by the law firm of Bernstein, Shur, Sawyer and Nelson, P.A. ("BSSN") in this matter. BSSN has estimated, but has not guaranteed, that legal fees and costs in this matter will total approximately \$25,000.00. BSSN will provide to Developer original invoice summaries on a monthly basis for all services provided hereunder, with payment due from Developer within thirty (30) days of the delivery of each such invoice summary. To the extent Developer desires further invoice details, it shall inquire with the City, and BSSN shall have no obligation to provide invoice details directly to Developer. Upon the City's request, Developer shall provide a copy of the relevant payment documentation to the Planning Director of the City.

2.5 Should Developer wish to obtain a title insurance policy through Monument Title, a subsidiary of BSSN, or otherwise, in connection with the property conveyed to Developer from the City, such title insurance policy premium and any associated costs shall not be considered legal fees and costs, and such premium shall be paid by Developer directly. The Developer shall also

pay the premium for the title insurance policy obtained by the City for the land conveyed from Developer to the City.

2.6 Developer shall be responsible for any and all closing costs associated with the Land Swap including, but not limited to, recording fees, L-CHIP fees, and transfer tax.

2.7 Prior to commencement of construction of the Public Infrastructure Improvements, the City shall convey a temporary construction easement to Developer and its agents, employees, representatives, guests, invitees, contractors, subcontractors, successors and assigns on, over and across the property to be conveyed from Developer to the City in connection with the Land Swap (consisting of approximately 139,919 square feet) as shown on **Exhibit A**, for the site preparation of the **City ROW**, including without limitation the storage of materials from any and all improvements located thereon, the demolition, razing, and necessary removal of any and all improvements, and any site preparation work for purposes of construction of the new road, which easement shall be automatically terminated upon completion of construction of the improvements thereon and acceptance by the City.

2.8 Prior to commencement of construction of the Public Infrastructure Improvements, Developer shall convey a temporary construction easement to the City and its agents, employees, representatives, guests, invitees, contractors, subcontractors, successors and assigns on, over and across the property to be conveyed from the City to Developer in connection with the Land Swap (consisting of approximately 47,470 square feet), and on, over, and across Developer's surrounding property (consisting of approximately 395,659 square feet), as shown on **Exhibit A**, for the site preparation of the **City ROW**, including without limitation the storage of materials from any and all improvements located thereon, the demolition, razing, and necessary removal of any and all improvements, and any site preparation work for purposes of construction of the new road, which easement shall be automatically terminated upon completion of construction of the improvements thereon.

2.9 The Public Infrastructure Improvements will be substantially completed on or before July 1, 2021.

3. City of Portsmouth Obligations.

3.1 The City shall, upon Developer's receipt of full unconditional site plan review approval from the Planning Board, transfer title to approximately 47,470 square feet of land as shown on **Exhibit A** to the Developer or its assignee, upon which a portion of the On-Site Public Infrastructure Improvements shall be constructed and located.

3.2 The construction of the Public Infrastructure Improvements shall be subject to the following:

- a. The City obtaining proper authorization to enter into this Agreement;

- b. Developer providing the City, for the City's review, recommendations, and approval, which approval shall not be unreasonably withheld, a copy of the plan, design, and schedule for the Public Infrastructure Improvements, when such plan, design, and schedule becomes available.

3.3 The City (subject to the provisions of the Development Schedule set forth in **Exhibit D**) shall have no obligation to perform improvements unless Developer performs all of developer's obligations contained in Sections 2.1 through 2.5 of this Agreement in a timely fashion and to the satisfaction of the City, as provided herein and subject to the provisions contained herein.

3.4 Whenever this Agreement shall require the City to reimburse Developer for any costs incurred by Developer, the City shall only be required to reimburse Developer for such costs upon Developer providing adequate documentation (determination of which shall be within the City's sole discretion) that such costs were actually incurred and paid by Developer.

4. Development Schedule.

4.1 Attached to this Agreement is a Development Schedule (**Exhibit D**, the "**Development Schedule**") showing the anticipated date and sequence of various elements of the Project that are to be completed by the respective Parties as set forth herein. The Parties acknowledge that the Development Schedule is a complex schedule requiring the coordinated efforts of multiple parties and is 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 on the Development Schedule. It is further understood by the Parties that the Development Schedule (**Exhibit D**) may require adjustment based upon economic conditions, site constraints, actions of third parties, and circumstances beyond the control of Developer or the City. Any such adjustment(s) shall be reviewed and agreed to in writing by the Parties hereto. Consent to such Development Schedule adjustment shall not be unreasonably withheld by either party.

4.2 For the purposes of any of the provisions of this Agreement, the Parties shall not be considered in breach or default of their respective obligations hereunder (except for any obligation to pay a sum of money pursuant to their agreement) 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 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, any appeal of any approval needed, including the appropriation vote or any permit or approval needed for the Project), freight embargoes; 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 requested an extension for the period of the enforced delay. In calculating the length of the delay, the City and Developer shall consider not only actual work stoppages, but also any consequential delays resulting from such stoppage as well.

5. Representations and Warranties.

5.1 Representations and Warranties of City. The City hereby represents and warrants that:

5.1.1 This Agreement constitutes a legal, valid and binding agreement of the City, enforceable against the City in accordance with its terms subject only to the conditions set out in this Agreement.

5.1.2 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 to the best of the City's knowledge threatened against the City, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the City of its obligations hereunder or the performance by the City of its obligations under the transactions contemplated hereby, or which, in any way, questions or may adversely affect the validity or enforceability of this Agreement, or any other agreement or instrument entered into by the City in connection with the transactions contemplated hereby.

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

5.2.1 Cate Street Development LLC is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of New Hampshire, the state of its formation, with all requisite authority to own its property and assets and to conduct its business as presently conducted or proposed to be conducted, and is duly qualified or authorized to transact business and is in good standing under the laws of the State of New Hampshire.

5.2.2 Developer has the power and authority to execute, deliver and carry out the terms and provisions of this Agreement and all necessary action has been taken to authorize the execution, delivery and performance by it of this Agreement. This Agreement will, upon execution and delivery thereof by Developer, constitute

valid, legal and binding obligations of Developer enforceable in accordance with the respective terms thereof.

5.2.3 Neither the execution or delivery by Developer of this Agreement, the performance by Developer of its obligations in connection with the transactions contemplated hereby, nor the fulfillment by Developer of the terms or conditions hereof conflicts with, violates or results in a breach of any constitution, law or governmental regulation applicable to Developer, or conflicts with, violates or result in a breach of any term or condition of any judgment or decree, to which Developer is a party or by which Developer or any of its properties or assets are bound, or constitutes a default there under.

5.2.4 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 to the best of Developer's knowledge threatened against Developer, its principal(s), affiliate(s), or entities controlled by its principal(s), wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by Developer of its obligations hereunder or the performance by Developer of its obligations under the transactions contemplated hereby, or which, in any way, questions or may adversely materially affect the validity or enforceability of this Agreement or any other agreement or instrument entered into by Developer in connection with the transactions contemplated hereby.

5.2.5 Developer shall provide certification from their respective corporate secretary or manager, as the case may be, indicating that the signatory to the within Agreement has obtained all necessary corporate authority to execute and perform the terms of the within Agreement.

5.2.6 If required by the City, Developer shall provide the City with a legal counsel's opinion, in a form acceptable to the City, with respect to the matters described in this section.

6. Default.

6.1 If:

- a. Developer shall fail to cure any default in the performance of any of its non-monetary covenants, agreements or obligations hereunder within thirty (30) days of written notice of default from City plus, so long as Developer has diligently commenced cure within said thirty (30) days and has been unable to complete same within said thirty (30) days, such additional time as is reasonably necessary to cure with commercially reasonable efforts; or

- b. Developer shall fail to cure any monetary default within five (5) business days of written notice thereof, or
- c. Developer is unable to obtain any permit(s) necessary for completion of the Project; or
- d. Developer shall make any assignment for the benefit of creditors or shall apply for or consent to the appointment of a receiver for themselves or any of their property, or Developer shall be adjudged an involuntary bankrupt, or a decree or order for reorganization under the federal bankruptcy laws as now or hereafter amended, or under the laws of any state, shall be entered against Developer, and any such decree or judgment or order shall not have been vacated or set aside within sixty (60) days from the date of the entry or granting thereof; or
- e. In addition to the foregoing and not in lieu of any of City's rights and remedies hereunder or at law or in equity, if a petition is filed by Developer for relief under Chapter 11 of Title 11 of the United States Code, or for reorganization or arrangement under any provision of the Bankruptcy Code as then in force and effect, or any involuntary petition under any provision of the Bankruptcy Code is filed against Developer and is not dismissed within sixty (60) days thereafter, then in either of such cases this Agreement shall at the option of City terminate upon notice of termination to Developer,

then (notwithstanding any license of any former breach of this Agreement or waiver of the benefit hereof or consent in any former instance) in any of such cases, the City may lawfully, immediately and at any time thereafter, and without further notice or demand, and without prejudice to any other remedies, terminate this Agreement.

6.2 Further, in case of any termination of this Agreement under Section 6.1, and notwithstanding any such termination, Developer shall (i) shall immediately pay to the City as damages all amounts due to the City prior to and including the date of termination; (ii) shall be liable for and pay to the City the entire unpaid charges and all other balances due under this Agreement for the remainder of the then-effective term; and (iii) shall additionally be liable for and pay to the City, as damages for breach of this Agreement, all reasonable amounts and categories of damages that the City is not expressly prohibited by law to obtain or collect from Developer. In addition to the foregoing and notwithstanding any other damages or payments due from Developer under this Agreement or at law or in equity, Developer agrees that, in the event of

its breach of this Agreement prior to the consummation of the Land Swap, the City shall be entitled to an order of specific performance from a court of competent jurisdiction whereby Developer shall be required to convey fee title of approximately 136,919 square feet of land to the City as contemplated by the terms of the Land Swap. In addition to the foregoing and notwithstanding any other damages or payments due from Developer under this Agreement or at law or in equity, Developer agrees that, in the event of its breach of this Agreement, it shall be liable to the City for the City's reasonable attorneys' fees and court costs related to or arising out of Developer's breach or default of its obligations under this Agreement, in the event of termination or otherwise.

6.3 Nothing herein contained shall limit or prejudice the right of City to prove for and obtain in proceedings for bankruptcy or insolvency by reason of the termination, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, the damages are to be proved, provided that such amount is equal to or less than the amount of the loss or damage referred to herein.

7. General Provisions.

7.1 This Agreement shall be governed and construed in accordance with the laws of the State of New Hampshire.

7.2 If any term or provision of this Agreement is held to be invalid or unenforceable, to any extent, the remainder of this Agreement shall continue to be fully valid and enforceable.

7.3 Notices, demands, consents, approvals or other instruments required or permitted by this Agreement shall be in writing and shall be executed by the party or an officer, agent, attorney of the party, and shall be deemed to have been effective as to the date of actual delivery, if delivered personally, or as of the third day from and including the date on which it is mailed by registered or certified mail, return receipt requested, with postage prepaid as follows:

To Developer:

Cate Street Development, LLC
Attn: Jay Bisognano
11 Elkins Street. Suite 420
Boston, MA 02101

With a copy to:

Bosen & Associates, PLLC
Attn: John K. Bosen, Esq.
266 Middle Street
Portsmouth, NH 03801

To the City:

City Manager

City of Portsmouth
ATTN: Legal Department
1 Junkins Ave.
Portsmouth, NH 03801

With a copy to: Bernstein, Shur, Sawyer & Nelson, P.A.
Attn: Ovide Lamontagne, Esq.
670 N. Commercial Street, Suite 108
PO Box 1120
Manchester, NH 03105

7.4 Time is of the essence with regard to this Agreement.

7.5 This Agreement shall be binding upon and inure to the benefit of the Parties hereto, and their respective successors and assigns. Neither this Agreement nor any of the rights, interests or obligations of this Agreement may be assigned or delegated by any party without the prior written consent of the other parties.

7.6 Developer shall not pledge or assign this Agreement or any documents relating thereto as security for any financing without the prior written consent of the City, which consent may not be unreasonably withheld or delayed; provided, however, in the event of said financing pledge and/or assignment, the obligations of Developer shall not be relieved or diminished.

7.7 The Parties anticipate that the obligations set forth herein will be further described in other agreements and/or deeds or leases as agreed to by the Parties. The Parties agree to cooperate in good faith with regard to each and every aspect required for the completion of construction, operation and financing contemplated by this Agreement. The Parties recognize, however, that the land use regulatory authorities of the City and the State must perform their responsibilities in accordance with the law governing that performance and consequently are not obligated in any way by this Agreement. The Parties agree to further negotiate in good faith and to enter into such other and further agreements as may be necessary to implement any aspect of design, engineering, or construction contemplated under this Agreement.

7.8 Developer submits 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 Rockingham County New Hampshire Superior Court.

7.9 Unless expressly stated otherwise in this Agreement, whenever a party's consent or approval is required under this Agreement, or whenever a party shall have the right to give an instruction or request another party to act or to refrain from acting under this Agreement, or whenever a party must act or perform before another

party may act or perform under this Agreement, such consent, approval, or instruction, request, act or performance shall be reasonably made or done, or shall not be unreasonably withheld, delayed, or conditioned, as the case may be.

7.10 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 Developer from the requirement to apply for and receive all necessary permits and approvals from all applicable City or other governmental Boards, Committees, Commissions, or Departments.

7.11 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.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]
[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have set their hands this ____ day of _____, 2019.

CITY OF PORTSMOUTH

Witness

By: _____
John P. Bohenko, City Manager
Duly authorized

CATE STREET DEVELOPMENT, LLC

Witness

By: _____
Jay Bisognano, Manager
Duly authorized

Exhibit A

Land Swap Plan

Exhibit B

Public Infrastructure Improvements

Exhibit C

[INTENTIONALLY OMITTED]

Exhibit D
Development Schedule

Exhibit E

Sharing of Costs

LICENSE AGREEMENT
FOR BLUESTONE PROPERTIES OF RYE, LLC

The City of Portsmouth (hereinafter "City"), a municipal corporation with a principal place of business of 1 Junkins Avenue, Portsmouth, New Hampshire 03801, for good and valuable consideration as set forth herein, hereby grants this Revocable License to Bluestone Properties of Rye, LLC (hereinafter "Licensee" or "Owner") with a principal place of business at PO Box 4780, Portsmouth, NH 03802 pursuant to the following terms and conditions:

1. **Areas of License and Use:** The Owner owns the land, with buildings and other improvements thereon, in the City of Portsmouth, Rockingham County, State of New Hampshire, located at 135 Congress Street, shown on the City of Portsmouth's Assessor's Map as Tax Map 0126-0005-000 ("Subject Property"). For the Owner's title to the Subject Property, see Rockingham County Registry of Deeds at Book 5761 Page 1289

The City authorizes Licensee to temporarily use four parking spaces located in the Worth Lot, more particularly described in the attached Exhibit A, as follows:

License Area : 576 square feet which includes four parking spaces depicted and described as the License Area in Exhibit A: city owned encumbered space. The License Area includes one ADA parking space and three metered parking spaces. The Department of Public Works will create one temporary ADA parking space in the Worth Lot to replace the ADA parking space encumbered by this License as shown in Exhibit B.

2. **Use:** Licensee shall make use of the License Area for the purpose of facilitating the Licensee's construction of a three story building.
3. **Term:** The license for the License Area shall be for 96 days, commencing on July 29, 2019 and concluding on November 1, 2019. Licensee may make application to the City Manager for an extension of this term, not to exceed an additional 6 months, should Licensee, in spite of due diligence in the construction of the project, require additional time to complete the project. Owner shall be responsible for applicable license fees associated with any extension of the term.

Licensee may terminate this License prior to the end of the term by returning License Area to safe and effective use by the public prior to the expiration of the term of this License. Licensee shall contact the Director of Public Works for a determination that the License Area has been returned to safe and effective use. Failure to remove all vehicles, barriers, materials and equipment and to return the License Area to the City in the manner prescribed under this License by the end of the term may result in enforcement action by the City.

4. **Notice:** Licensee shall provide notice to the City's Director of Public Works when Licensee assumes control and use of the License Area and again when it returns the License Area to the City's control and use.
5. **License Fees:** The Owner shall pay to the City license fees in accordance with City Council Policy No. 2018-02 entitled "License Fee for Encumbrance of City Property". The License Fee Policy provides that the Owner will be charged a daily fee for each metered parking space encumbered by this License as determined by the fee schedule.

License Area: The License Area is 576 square feet which includes four parking spaces in the Worth Lot. The daily fee for each parking space is \$35 a day and the daily fee for the four parking spaces is \$140.

The \$140 daily License Fee for the four parking spaces will be paid for the 96 day License Term for a total License Fee of **\$13,440**.

The total License Fee shall be paid in full to the City in advance of the commencement of the term of this Agreement.

Because it is in the City's interest that the Licensed Areas be returned to the public use as soon as possible, if the License Area is returned to the City prior to the end of the License Term, the City will refund the Owner the portion of the License Fee paid but not used by the Owner.

6. **Indemnification:** Licensee agrees to indemnify and hold harmless the City of Portsmouth for any and all property damage, bodily injury or personal injury which arises as a result of its utilization of the Licensed Areas. This obligation survives termination or revocation of this Agreement.
7. **Insurance:** At all times the Licensee shall maintain insurance for bodily injury and property damage in the amount of at least \$1,000,000 per occurrence. Licensee will provide proof of insurance to the City during the term of this Agreement.

8. **Maintenance of Area:** During the term of this Agreement, Licensee shall maintain the License Area in a safe, neat and orderly fashion and shall take such actions as are necessary to protect the public safety. The Licensee shall secure the perimeter of the License Area and take such other measures as may be necessary for pedestrian and vehicular safety during use of the Licensed Areas.
9. **Damage:** Licensee agrees to remedy any damage to the License Area caused by the Licensee's activities. The work will be performed by Licensee to City specifications and survive the terms of this License Agreement. The City may elect to accept reasonable reimbursement from the Licensee in lieu of remedy.
10. **Compliance with Other Laws:** This Agreement does not relieve Licensee from compliance with any other local, state or federal laws or regulations or conditions imposed by any local board. Failure to abide by any local, state or federal laws or regulations or any condition of site plan and may at the City's discretion, result in revocation.
11. **Revocation:** The City may terminate this Agreement or any provision contained in this agreement on 72 hours written notice provided if Licensee fails to meet the terms and conditions of this License or if the public interest requires such termination. No 72 hour written notification is required by the City if it is an emergency.
12. **Contractor and Subcontractor Parking:** Licensee understands and agrees that its contractors and subcontractors for the project shall not use on-street parking. Language will be inserted in Licensee's vendors and suppliers Purchase Orders and Trade Subcontracts that make the prohibition against parking on City streets mandatory. Contractor shall limit/ manage construction vehicles and deliveries to avoid disruption to businesses, particularly during the holiday season. Contractor may use loading zones for active loading and unloading of materials, equipment and tools.

Dated this _____ day of _____, 2019

City of Portsmouth

By: _____
John P. Bohenko
City Manager

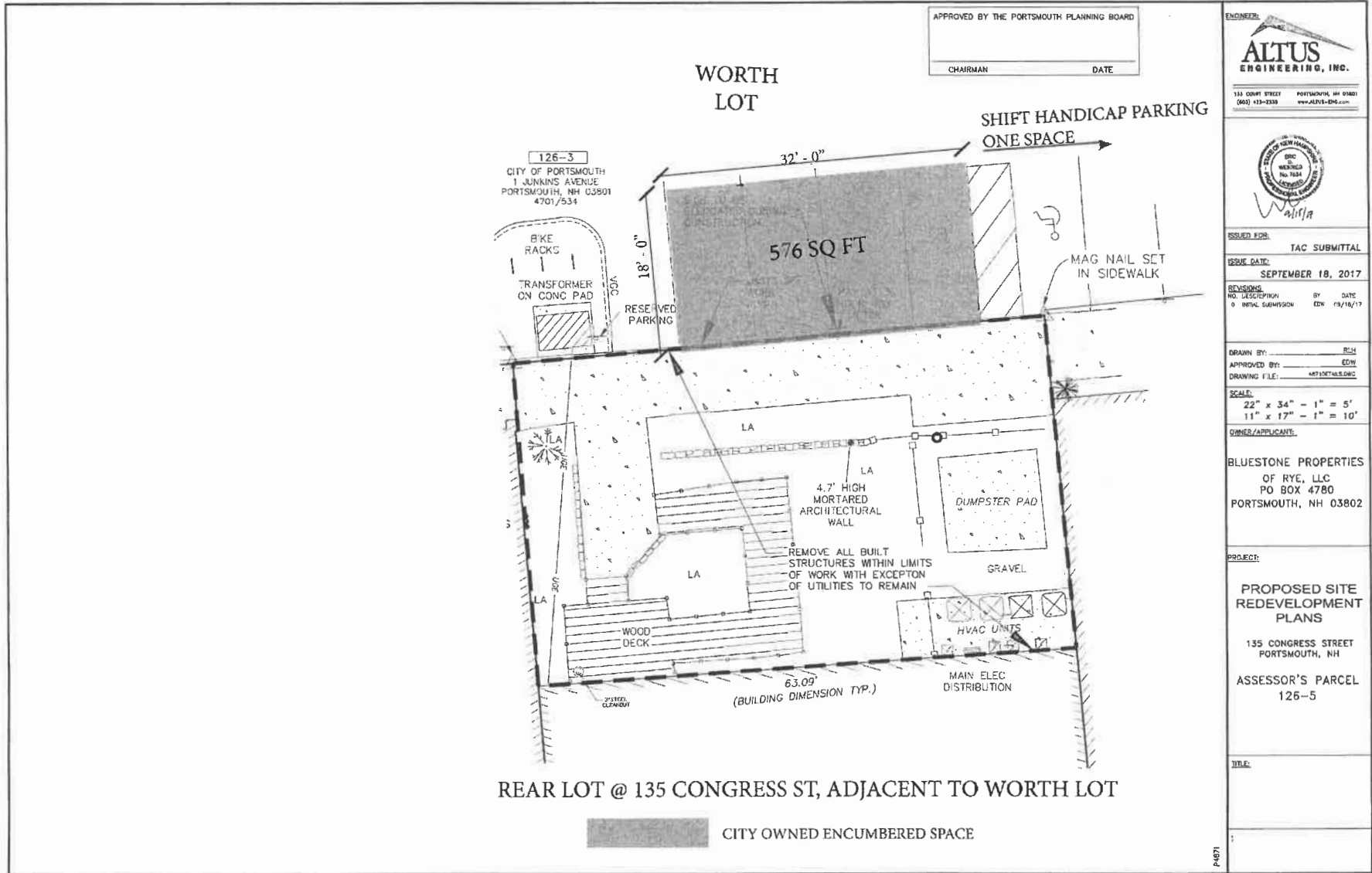
Pursuant to vote of the City Council
of _____

Dated this _____ day of _____, 2019.

Bluestone Properties of Rye, LLC

By: _____

h/ferrini/license/3rdlicense135Congress





SHIFT EXISTING TO PROPOSED LOCATION





CITY OF PORTSMOUTH

City Hall, One Junkins Avenue
Portsmouth, New Hampshire 03801
jpb@cityofportsmouth.com
(603) 610-7201

John P. Bohenko
City Manager

July 8, 2019

Larry Cataldo
133 Islington Street, Apt. 10
Portsmouth, NH 03801-7221

RE: Islington Creek Neighborhood Parking Pilot Program

Dear Larry:

Subsequent to the meeting between City Staff and the Neighborhood Parking Program Steering Committee for the Islington Creek Neighborhood which was held on June 11, 2019, staff has carefully considered all the issues raised and discussed that evening. We conclude as follows:

1. In accordance with the parameters distributed by the City, a Neighborhood Parking Pilot Program would be established for the Islington Creek neighborhood after the Steering Committee "obtain[ed] signatures for a minimum of 75% of single-family households within the NPP neighborhood."
2. Initially, the City had determined that there were 238 applicable households from which signatures would need to be obtained.
3. After meeting with the Steering Committee on June 11th, the City adjusted that number down to 197, utilizing that figure as the number of single-family residences to which the signature requirement would apply.
4. This means that 148 verified 'Yes' signatures would be necessary to trigger the residential parking pilot program.

The Neighborhood had 45 days from City Council approval to collect and submit the signatures to the City's Parking Division in order to trigger the pilot program. That 45-day period expired on May 2, 2019.

The Islington Creek NPP Steering Committee produced documentation with 164 property entries.

Verification efforts conducted by City Staff have returned the following results as of July 1st, 2019:

Verified 'Yes' Signatures:	101
Verified 'No' Signatures:	10
Verified 'Undecided' Signatures:	9

Of the remaining entries:

- The Parking Division has left unreturned voicemail messages for twenty (20) of the numbers provided. Each number in this category was contacted four (4) times. A number was deemed unreachable after the fourth (4th) unreturned voicemail message.
- There are five (5) total entries where the Parking Division has yet to make a fourth and final attempt
- There are fourteen (14) total entries where the phone number has been disconnected, was not provided, or was not connected to the NPP signature effort.
- There are five (5) total entries where the signee no longer lived in the Islington Creek Neighborhood when called to verify.

The sum total of the counts above is equivalent to the total of 164 entries provided by the Steering Committee.

Noteworthy for Council Consideration

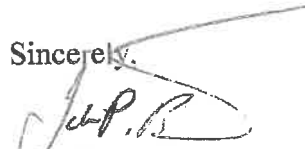
- There are eight (8) signatures that are electronic, in that they are not printed by hand. The Parking Division has called each number to verify, nonetheless, and has included each in its appropriate category above (Yes/No/Could Not Reach).

Summary

With the necessary threshold being 148 verified "Yes" signatures of the total agreed property count of 197, to date the Steering Committee has fallen short of the required number of signatures.

The facts contained in this letter will be presented to the City Council at the Council meeting July 15, 2019. The Council will be requested to make a policy determination at that time as to whether or not to proceed with the Pilot Program.

Sincerely,



John P. Bohenko
City Manager



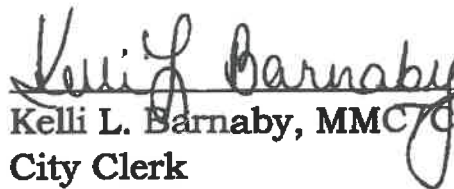
Certificate of Verification

July 8, 2019

In accordance with Article VIII of the City Charter for Portsmouth, New Hampshire Initiative Petitions shall be verified by the City Clerk and signed by not less than 10 percent (10%) of the number of voters who voted at the Municipal Election held on November 7, 2017. In order to reach the 10% requirement there must be 505 signatures that have been verified and approved.

The petition submitted entitled Revisit McIntyre was received on Thursday, June 27, 2019 and contained 655 signatures.

Kelli L. Barnaby, City Clerk hereby certifies that 601 signatures have been verified and approved with 54 signatures being rejected accounting for 655 signatures.


Kelli L. Barnaby, MMC/CNHMC
City Clerk

**OFFICE OF THE CITY CLERK
CITY OF PORTSMOUTH, N.H.**

MEMORANDUM

TO: John Bohenko, City Manager

FROM: Juliet T. H. Walker, Planning Director *JTW*

DATE: June 20, 2019

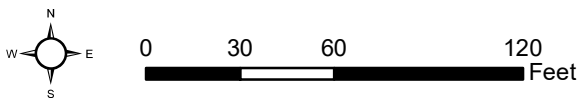
RE: City Council Referral – Projecting Sign:
Address: 65 Congress Street Unit 107
Business Name: Danforth Pewter
Business Owner(s): Matthew Parker

Permission is being sought to install a projecting sign that extends over the public right of way, as follows:

Sign dimensions: 36" x 36"
Sign area: 9 sq. ft.

The proposed sign complies with zoning requirements. If a license is granted by the City Council, no other municipal approvals are needed. Therefore, I recommend approval of a revocable municipal license, subject to the following conditions:

1. The license shall be approved by the Legal Department as to content and form;
2. Any removal or relocation of the sign, for any reason, shall be done at no cost to the City; and
3. Any disturbance of a sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the sign, for any reason, shall be restored at no cost to the City and shall be subject to review and acceptance by the Department of Public Works.



**Request for license
65 Congress Street, Unit 107**

36" x 36" - 2 Sided Projecting Sign
Painted 3/4" MDO with Applied Vinyl
Attached to Existing Bracket



vinyl on painted mdo
mounted with existing hardware

18" x 62.5"

18" x 134"

18" x 51"



MEMORANDUM

TO: John Bohenko, City Manager

FROM: Juliet T. H. Walker, Planning Director *JTW*

DATE: June 17, 2019

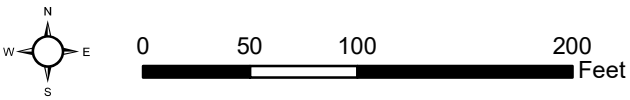
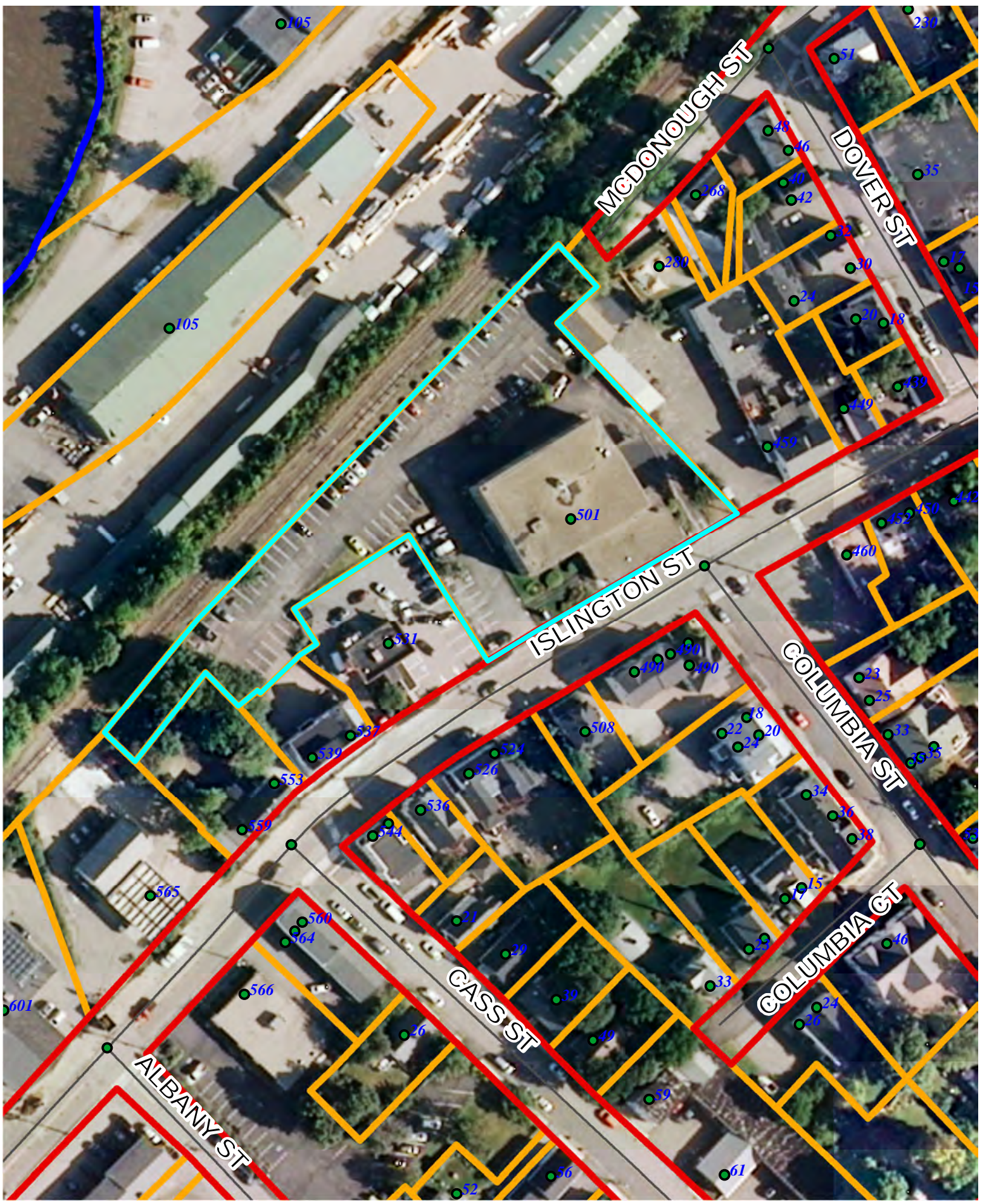
RE: City Council Referral – Projecting Sign
Address: 501 Islington Street
Business Name: Partners Bank
Business Owner: Partners Bank

Permission is being sought to install a projecting sign that extends over the public right of way, as follows:

Sign dimensions: 48" x 33"
Sign area: 11 sq. ft.

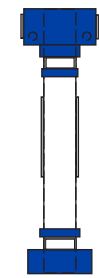
The proposed sign complies with zoning requirements. If a license is granted by the City Council, no other municipal approvals are needed. Therefore, I recommend approval of a revocable municipal license, subject to the following conditions:

1. The license shall be approved by the Legal Department as to content and form;
2. Any removal or relocation of the sign, for any reason, shall be done at no cost to the City; and
3. Any disturbance of a sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the sign, for any reason, shall be restored at no cost to the City and shall be subject to review and acceptance by the Department of Public Works.

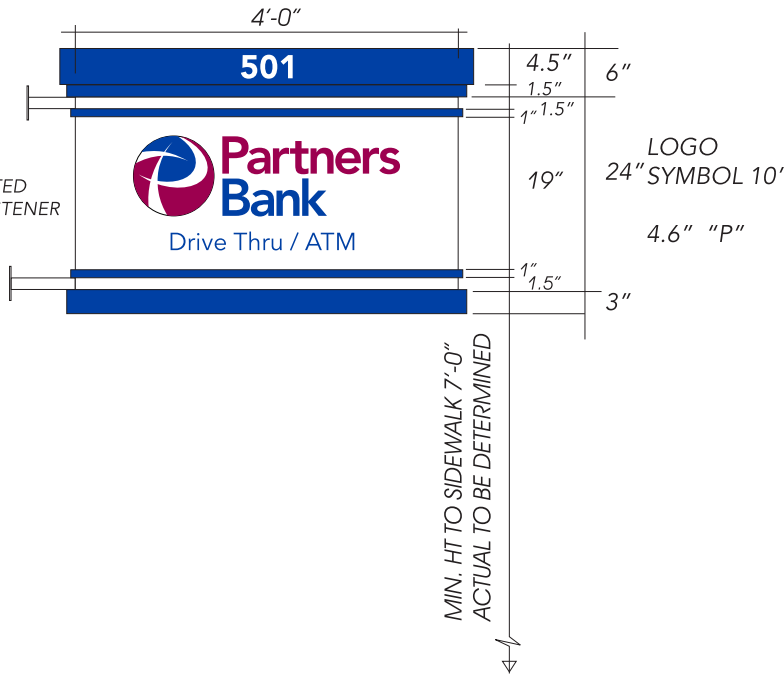


**Request for license
501 Islington Street**

END VIEW
CONCEALED
DOWN LIGHTING



THRU BOLTED
W/ S.S. FASTENER



TRIM WORK: PARTNERS BLUE
3" ADDRESS NUMERALS: 1/4" CUT OUTS PAINTED WHITE

{1} D.F. 2'-0" X 4'-0" X ___ EXTERNALLY ILLUMINATED SIGN

ALUMINUM CABINET & FACES: PAINT WHITE

1/2" COMPOSITE CUT OUT LOGO SYMBOL & LOGOTYPE

TEXT COPY: SURFACE VINYL

VECTOR ART ON FILE

WHITE

PANTONE #293 C

PANTONE # 676 C



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9 Thomas Drive
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Westbrook, ME 04092
207-774-2843 / 1-800-539-SIGN
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ALL ELECTRICAL SIGNS REQUIRE ROUTINE MAINTENANCE.

VOLTAGE

APPROVAL

CLIENT	
APPROVED	DATE
BAILEY SIGN REPRESENTATIVE	
APPROVED	DATE

 	DESIGNATED COPY FOR:
	ESTIMATING/OUTSOURCING
	GRAPHICS
	FABRICATION
	ROUTER
	PAINT
	INSTALLATION

CUSTOMER / SIGN LOCATION
SIS REBRAND PARTNERS BANK
501 ISLINGTON STREET
PORTSMOUTH, NH

SALESPERSON: DE	DRAWN BY: LWM	
WORK ORDER # 2675	CUSTOMER # 5650	CRM #
SCALE 1/2"=1'	DATE 2/11/19	

REVISION # / DATE / NOTES / INITIALS
R1 4/12/19 REDRAW W/ CONCEALED LIGHTING

DRAWING #
08262 B R1

EXISTING SIGNS



MINIMUM CLEARANCE
7'-0"

REF. DR. _____



CITY COUNCIL E-MAILS

June 18, 2019 – July 11, 2019 (9:00 a.m.)

JULY 15, 2019 CITY COUNCIL MEETING

JULY 15, 2019 CITY **UPDATED 07/15/2019 THROUGH 3:30 PM**

New content begins **Page 3**

COUNCIL MEETING

Below is the result of your feedback form. It was submitted by Elizabeth Bratter (gatoday@yahoo.com) on Thursday, June 20, 2019 at 22:43:01

address: 159 McDonough St

comments: Dear Mayor Blalock and City Councilors,

I am a taxpayer in Portsmouth but not a resident. I did some basic math regarding finding a replacement City Manager. I figured the average house in Portsmouth sells between 500K and 600K. I went high and figured a house payment for such a home would be between 5k and 6k. If the starting pay for our new City Manager is 150K at 6K that would mean it would give this person \$78,000 a year (\$6500 a month) for personal living expenses. At 150K at 5K it would give \$90,000 a year (\$7500 a month) for personal living expense. I believe we (the tax payers) also provide other "benefits" to the City Manager, health ins, a little too much vacation time, etc.

I would state there is NO REASON why our incoming City Manager cannot afford to work and live here. To be a good City Manager you have to be invested in our community. The only way to really get to know this city and the feel for it is to live here. To be a good City Manager you have to love the job and therefore we really don't want to hire someone who is working for the money. We want someone who sees the great potential this city has, who listens to the community and wants it to be a great place to live! Please pick someone and start them off low enough so we can see if they "click" with our city but high enough they will want to take the job.

We are NOT Boston, we are not even as big as Manchester we need to remember if we find someone good we need wiggle room to keep our administrative costs down and still have room to provide cost of living increases to the base pay.

Our city is on a high but eventually this bubble will burst. As Councilor Perkins always says density brings down the cost of housing. Our taxes technically would go down too (in theory), therefore be aware of how high the base pay will be for any new city employees. Thank you for your time, Elizabeth Bratter

includeInRecords: on

Engage: Submit

Below is the result of your feedback form. It was submitted by marie lyford (marie03801@comcast.net) on Thursday, June 20, 2019 at 08:19:44

address: 5 opal ave

comments: Hi, I am wondering why we are still providing free parking on weekends at the church, since we have opened Foundry Garage? It makes sense to me to stop the free parking and give the foundry garage a chance to make money for the city. Is this in the plan?

includeInRecords: on

Engage: Submit

Below is the result of your feedback form. It was submitted by Patricia ONeil (Peoneil@me.com) on Monday, July 8, 2019 at 20:04:22

address: 98 Dennett St

comments: Don't believe I ever heard any follow up to what was (isn't) being done to mitigate all the bright lights from the garage? It's all still pretty annoying most particularly the roof top lights and the 2 sections farthest to the back from the entrance-can I please hear what the latest remedy is being considered? Thank you

includeInRecords: on
Engage: Submit

Below is the result of your feedback form. It was submitted by Sharon Borak (Sborak52@gmail.com) on Tuesday, July 9, 2019 at 13:57:31

address: 51 Islington #201 Portsmouth

comments: This would disadvantage us and object to not being included in NPP. Parking is bad enough as it is - this would make it worse for those, like us, excluded from this program. Oof going forward with NPP, INCLUDE us !

includeInRecords: on
Engage: Submit

Below is the result of your feedback form. It was submitted by Arthur Bruinooge (Bruinooge@me.com) on Wednesday, July 10, 2019 at 16:53:37

address: 291 Islington St

comments: Dear Mayor Blalock, City Manager John Bohenko and City Council Members,

The July 8, 2019 letter from City Manager John Bohenko addressed to Larry Cataldo states that the vote for the Islington Creek Pilot Parking Program fell short of the agreed upon requirement of 148 verified "Yes" signatures. Only 51% of the adjusted (lowered) number of households voted in favor of the plan.

This plan has already been amended or adjusted at least twice. I recently learned that the proposed plan initially included all of the Islington Creek Neighborhood. The north side of Islington St as well as Bridge St were included and subsequently dropped. This fact was never made clear to many of the residents and businesses on both of these streets. Input from the parking questionnaire and votes by residents on these streets were not requested and votes that were cast were excluded. If all Islington Creek Neighborhood residents and businesses were given a vote on the proposed plan as currently written, I can assure you that the percentage of "Yes" votes would be significantly lower. I spoke with a number of excluded residents and businesses and confirmed that their vote would have been "No."

I see that the City Council will make a determination at your next meeting on July 15 as to whether or not to proceed with the pilot parking program. I believe the neighborhood has spoken including some of us that are excluded from the plan. I ask that the pilot parking program be dropped and no further amendments made unless the entire Islington Creek Neighborhood is included and given a voice and a vote.

Thank you,
Arthur Bruinooge
includeInRecords: on

New content begins:

Below is the result of your feedback form. It was submitted by Nicole LaPierre (nicoleglapierre@hotmail.com) on Thursday, July 11, 2019 at 16:20:50

address: 44 Rock Street

comments: Nicole LaPierre

44 Rock Street

Portsmouth, NH 03801

H: 603-373-8037

C: 413-427-3707

nicoleglapierre@hotmail.com

July 11, 2019

Dear Council members,

It is my understanding that City Manager, John Bohenko will be asking the Council to make a policy determination on Monday, July 15th whether or not to proceed with the Neighborhood Parking Pilot Program. There are several points I hope you keep in mind while weighing this vital issue:

1. This is a PILOT

Voting to move further is a six month commitment to investigate if this is a viable option for the neighborhood. The neighborhood being situated between downtown and the West End is the ideal location to pilot the necessary exploration of neighborhood parking in the city.

2. There are 14 new development projects occurring near the Islington Creek Neighborhood This will further stress the parking crisis. We continue to witness further development of the city and this requires addressing growing pains such as parking.

3. The Foundry Garage (currently underutilized) abuts the neighborhood (free unlimited parking). It is a shorter walk to Market Square from several of our neighborhood streets than the garage. The garage was built on the premise of being proactive. Why is the same school of thought not applied to a neighborhood parking program?

4. The Heinmann lot is free evening/weekend/holiday parking is in the neighborhood. It was for a long time on the city parking map. As a result, the lot has seen significant rise in usage and brought attention to the neighborhood streets as additional free parking. It also ironically is juxtaposed against the Foundry garage.

5. After the mammoth effort made in earnest by the committee to canvas the neighborhood, the majority of residents support the NPP.

6. The collection of signatures resulted in 144 yes votes, 10 no votes, and 7 undecided. The effort put forth to collect this data was done with the honest spirit of wanting residents'™ opinion. Residents were purposely and specifically presented with a yes/no vote option.

7. I openly question how the calculation made by the city was determined skewing the results. Including unable to contact and vacant buildings as a no vote is simply unfair and not a true representation of results. There are varying opinions on how to calculate the percentages between the city and the neighborhood committee. I fear you will be voting without all information. I am respectfully requesting Doug Roberts, member of the City Council and Chair of the Parking and Traffic Safety Committee share the letter dated May 16, 2019 he received. It is a full report disclosing our process and findings. It was the NPP Cover Letter for Submission-May 16, 2019. I am also requesting the council be provided the vacant property letter sent to John Bohenko and Doug Roberts dated July 20, 2019 from the neighborhood committee as well. To fully understand the complexity of this situation, proper documentation is required.

8. Voting no without an alternative solution to the well documented parking issue in the Islington Creek neighborhood dating back to the 1990s is negligence.

It is difficult for me to even determine the amount of time, energy, and effort that has been put into this process. There is a genuine need and desire to explore neighborhood parking in the Islington Creek Neighborhood. Please remember a pilot is just that. The problem will only worsen and certainly will not solve itself.

Sincerely,
Nicole LaPierre
Rock Street
Islington Creek Neighborhood Association Member

includeInRecords: on
Engage: Submit

Below is the result of your feedback form. It was submitted by Ken Goldman (barbken@comcast.net) on Thursday, July 11, 2019 at 20:27:29

address: 271 Islington St, Portsmouth, NH

comments: We were just looking at the agenda for the City Council Meeting on Monday, July 15, 2019, and our attention was drawn to item 8 under City Manager's "Items Which Require Action":

"8. Request for Waiver Re: Islington Creek Neighborhood Parking Pilot Program Attached is a letter that I sent to Larry Cataldo from the Islington Creek NPP Steering Committee. As you can see from the attached letter, City staff determined that the Steering Committee did not achieve the necessary 75% of signatures from single family households within the Islington Creek NPP neighborhood. It appears that they received a total of 51% in favor of the program. Further, if the City Council provides a waiver and allows the pilot program to go forward, the Steering Committee requests that the pilot program start in April, 2020 and conclude in September, 2020.

I recommend the City Council move to authorize a waiver for the Islington Creek NPP to conduct a pilot program starting April, 2020 through September, 2020."

Frankly, we are appalled by this recommendation. A process was laid out to determine neighborhood support for this program. Even after an attempt was made to change the rules on June 11, 2019 by reducing the number of homes and businesses in the program, the necessary 75% of signatures from single family households within the Islington Creek NPP neighborhood was still not achieved! I believe that the people of the neighborhood have spoken.

It appears that, even though the steering committee only received a total of 51% in favor of the program, the city manager recommends moving ahead. How does that make sense? If the city manager recommends pushing this through anyway, why did the city even bother having a process and setting up criteria for approval?

We hope that the City Council will not support this recommendation and not authorize a waiver.

Thank you,

Ken Goldman & Barbara Sadick

includeInRecords: on
Engage: Submit

Below is the result of your feedback form. It was submitted by Gerald Duffy (gduffy44@gmail.com) on Sunday, July 14, 2019 at 11:50:41

address: 428 Pleasant St., Unit 3

comments: Dear Councilors:

Unfortunately, I am traveling this coming week, otherwise I would attend the meeting on July 15 where a petition from opponents of the current McIntyre Project will be discussed.

Since the public input process began in early 2018 I have advocated for the legitimacy and value of the process the City put in place. The process has been one of collaboration between the City, residents, and highly respected architectural team for the chosen developer.

I know the Council is under enormous pressure to back down in the face of vocal opposition and a lot of misinformation. I urge the Council to give the opponents a fair hearing and, if nothing persuades it to alter course, to move ahead with the submission of a binding application to the National Park Service.

I believe the current deal represents extremely good value for the residents of Portsmouth, both in terms of public benefits on the site itself and also the financial impact on the City, where risk and cost is offloaded to the developer.

It's my hope you will move the project along as planned. I think residents in the future will thank you for it.

Regards,
Gerald Duffy

includeInRecords: on
Engage: Submit

Below is the result of your feedback form. It was submitted by Eleanor Bird (birdwes3@gmail.com) on Sunday, July 14, 2019 at 14:00:50

address: 38 South St.

comments: I urge you to read column in Sunday's Herald submitted by Martha Fuller Clark titled "Portsmouth Citizens begging to be heard." She expresses my views that the current plan to develop the site around the McIntyre Bldg. is unsuitable for the historic center of our city. We have enough of these boring multi-story brick buildings in the North end. The lack of any parking for offices and residential occupants is a screaming omission. And the removal of the Post Office is an inconvenience for all the citizens.

includeInRecords: on
Engage: Submit

Below is the result of your feedback form. It was submitted by Stephen Pamboukes (stepkepamboukes@yahoo.com) on Sunday, July 14, 2019 at 14:43:44

address: 91 Cutts Street

comments: Dear Mayor Blalock and Members of the City Council, I am writing you all in support of your work on the McIntyre Project. It appears to me that this City Council, and Councils before you, have done their due diligence to make the most of the opportunity at hand with the McIntyre property. Project plans and renderings depicting the current Redgate/Kane proposal appear to me as a fine use of space, and a

reasonable amount of density in a historic commercial district. I am confident that the City, in partnership with private business of their choosing, will make decisions that will result in the best possible outcome for all stakeholders, present and future. Respectfully, -Stephen Pamboukes

includeInRecords: on
Engage: Submit

Below is the result of your feedback form. It was submitted by Ken Goldman (barbken@comcast.net) on Sunday, July 14, 2019 at 20:09:16

address: 271 Islington Street, Portsmouth, NH. 03801

comments: I heard that Portsmouth citizens are begging to be heard, so I thought I would add my voice.

Bottom line upfront, I support the City Council and the current plan for redevelopment of the McIntyre Building.

I have been closely following the discussions and the back and forth on the planned McIntyre Project. I also went back and reviewed the archive of McIntyre meetings. As far as I can tell, the public was given multiple opportunities to provide input on this project. I don't think some people understand that there is a huge difference between not agreeing with/acting on people's input and not listening to the input. In the end, someone has to make a decision, and that means some people will not be happy with that decision. In this case, the someone making the decision is the City Council.

I believe that the City Council has come up with a sound plan that will greatly enhance downtown Portsmouth.

I fear that opposition and delay to this project will cause Redgate-Kane to pull out. This, plus the recent history of tying up projects in the courts until the contractor gives up (ie North End Portsmouth), will dissuade any other contractors from spending the time, effort and resources to step into this project. In the end, we may end up with a huge, empty, abandoned building downtown. Is that what anyone really wants?

Again, I fully support the City Council on the McIntyre Project, and thank them for their hard work and diligence.

includeInRecords: on
Engage: Submit

Below is the result of your feedback form. It was submitted by Adam Ruedig (ruedig@gmail.com) on Sunday, July 14, 2019 at 21:03:01

address: 70, Highland St

comments: Dear Councilors,

I submitted the following letter regarding the McIntyre project to the editor of the Portsmouth Herald. Thank you again for all of your time and effort on behalf of the city.

Letter below:

I would like to comment on two issues, much discussed recently in this paper relating to the McIntyre building and surrounding site.

First, local developer Mike Simchek and his Revisit McIntyre group have published a development proposal intended to complete with plans proposed by the City and Kane/Redgate Group, another local developer. Mr. Simchek's plans for a giant park may seem appealing on the surface, but I and many others find them troubling.

His proposal offers a vision for downtown Portsmouth which includes decreased density (a full block of open space), an emphasis on automobile infrastructure (significant parking) and the possible removal of older buildings which some now find to be outdated or unstylish (the McIntyre building).

In the mid-20th century, these exact ideas gained prominence under the name "Urban Renewal." Many cities around the country were convinced by colorful renderings arguing they should tear down 'unsightly', 'out of place' and 'massive' Victorian buildings to allow for much needed parking, roads, and the low-density green space.

Much of the current success of Portsmouth is owed to the fact that our citizens recognized the harm of these ideas before it was too late. Back then these ideas were a bad mistake for towns and for the environment. They still are.

In Portsmouth we have a clear recipe for success: continue to build the dense pedestrian-friendly urban fabric which draws people here from all over the world.

Second, it has been implied that the city council has failed to listen to its citizens. On the contrary, I believe that the city council has done an admirable job seeking input from the citizens of Portsmouth.

As an example, in early 2018, the council formed a Blue Ribbon Steering Committee with the express purpose of soliciting public input from the citizens of Portsmouth. The main event of this process consisted of multiple extensive public input sessions hosted in council chambers and attended by hundreds of Portsmouth citizens.

Over the course of these public input sessions, we heard some argue for the low-density approach proposed by Mr. Simchek. Many others argued for the higher density approach which we see all over historic Portsmouth and which the designers have wisely chosen to pursue.

This is not to say we shouldn't all be very vocal about our preferences for the McIntyre site. I, for one, would like to see these new buildings better represent the best design ideas of our time – contextual but contemporary. And while it is true that some ideas will win out over others, it is not true that citizens of Portsmouth are being ignored.

Adam Ruedig
Portsmouth NH

includeInRecords: on
Engage: Submit

Below is the result of your feedback form. It was submitted by Catherine M Houlihan-Herold (derryarea@gmail.com) on Monday, July 15, 2019 at 06:08:07

address: 313 Islington St.

comments: Dear City Councilors,

I just finished reading the article in today's paper in which John Bohenko confirmed that only 51% of the Pilot Program area voted FOR the program. However he was going to recommend that it proceed..

This is my confusion: The rules were set by this council but this is what has occurred:

1. The committee changed the petition they were given.
2. The committee received a list of 234 properties and chose to eliminate 84.

3. The committee requested an extension of the time frame.

Now the city tries to confirm the 144 "yes" votes and can only confirm 51% of them.

Towards the beginning of June there was a steering committee meeting that I attended where the committee presented why they eliminated the 84 properties to John Bohenko, Peter Rice and Ben Fletcher. At the end of that meeting, Ned Raynolds approached 4 of us and stated " There will be a parking program". I was confused by his comment because I was under the impression that no decisions had been made yet.

Now, my question to you is, if this has all been a ruse to institute a parking program, please admit it and I wish you had just been honest from the beginning. But, please consider that you represent ALL of Portsmouth residents, you laid out what the rules were and they have not been met. I know that this committee of citizens are passionate for getting this program through and they have worked very hard but the numbers speak for themselves. Please consider everyone in the neighborhood.

Thank you for your time, Cathy

includeInRecords: on

Engage: Submit

Below is the result of your feedback form. It was submitted by Mary Lou McElwain (MI259@comcast.net) on Monday, July 15, 2019 at 08:36:03

address: 259 South Street

comments: I just read that John Bohenko is suggesting a waiver on the proposal for Islington corridor NPP. I am strongly opposed to this. I did not vote for the proposal as presented to Parking& Traffic Safety committee because there isn't a backup plan for drivers who presently park in the free spaces. The proposal that residents agreed to was that 75% of residents must sign on. Those who are opposed and didn't sign the petition are expecting the city to uphold that number.

This waiver is unfair to those who do not support the NPP.

includeInRecords: on

Engage: Submit

Below is the result of your feedback form. It was submitted by charlie griffin (charlesgriffinesq@gmail.com) on Monday, July 15, 2019 at 09:44:39

address: 210 Hillside Drive Portsmouth

comments: Tonight you will be asked to approve four employment contracts.I have some concerns about approving those contracts which I would like to share with you.

I realize that you have approved funding for all expired contracts in the current budget.

Notwithstanding that fact, in his memo concerning the proposed contract for the Fire Chief, Mr.Bohenko highlights only the Quid(salary,COLA Adjustments ,Automobile,Tuition Reimbursement) but makes no mention of any Quo. Before you approve this contract I would like you or the Manager to explain what the Fire Chief is giving in exchange for the generous benefits he is receiving from the City..

While I recognize the benefit of not having to negotiate contracts on an annual basis, I feel approving three year contracts is not prudent at this time.

By approving three year contracts you are locking in 70-75% of the budget for the next three years, thereby precluding any meaningful attempt at budgetary reform by future Councils. More importantly you will be tying the hands of the new City Manager who may have new ideas /approaches concerning negotiations and employment agreements and might be discouraged from applying for the position because of this constraint.

Finally, as I mentioned when I spoke on the proposed budget this spring ,you need to abandon the "one size fits all"approach in terms of giving all city employees the same percentage of salary increase.

According to the Herald articles this past winter , the City has 61 employees making in excess of \$100,000. I do not believe they should receive the same percent salary increase as those employees making less than \$100,000.

While this concept may seem unreasonable or even radical to some or all of you, I recall when the concept of having city employees contribute towards the cost of their health insurance was first proposed. It was considered unreasonable by many city employees at the time, but was negotiated and is now a standard provision in all employment agreements, which simply proves that major changes to collective bargaining agreements can be brought about if the Council has the will to do so.

In conclusion, I would support approving the pending agreements with an explanation of the "quo" provisions in the Fire Chief's contract, but only for one year as opposed to three so as not to restrict future Councils and more importantly the new City Manger from pursuing new approaches to negotiating collective bargaining agreements.

Thank you for your consideration .

includeInRecords: on
Engage: Submit

Below is the result of your feedback form. It was submitted by Dan Umbro (umbro.daniel@gmail.com) on Monday, July 15, 2019 at 09:48:53

address: 30 Elm Court

comments: Honorable Mayor and Councilors -

Please do not advance the NPP any further. As you're aware, the Islington Creek neighborhood was only able to obtain 101 verifiable "Yes" signatures in support of the program. Even after the total number of households required to meet the 75% minimum was reduced, it was still not met. Moving forward with this program would set a precedent that pilot program requirements are meaningless.

In a recent Portsmouth Herald article, before the petitions were due to the city, the NPP Steering Committee Chair was asked if he believes the committee can hit the 75% threshold. He responded saying, "We're going to get pretty darn close. If not the people have spoken".

I agree with the chair. If door knocking, waiting outside people's homes, neighborhood meetings, many emails, flyers and direct mail wasn't enough, then it's my opinion those residents didn't want to be bothered or don't want or see a need for the program. The fact is the committee exhausted their outreach efforts and still fell short.

The problem with this program has always been that it pitted residents against each other. South End residents saw it when they tried to lobby for a program in their neighborhood, but later decided it was best to not move forward. The difference with this group is that they have decided to ignore those same opposing voices and attempt to move forward.

I believe there are better solutions for Portsmouth, perhaps a program that allows for all residents to park. As representatives of the entire city I hope you will do the right thing.

Thank you,
Dan Umbro
includeInRecords: on

Below is the result of your feedback form. It was submitted by Eric Mart (emart@comcast.net) on Monday, July 15, 2019 at 09:51:46

address: 3 Truman Place, Portsmouth, NH 03801

comments: I am writing to express my concern about the McIntyre Development Plan. As matters presently stand, there have been occasions when I simply could not find parking in downtown Portsmouth and had to go elsewhere to transact my business. It is my understanding that the project includes 77 residential units and has 77 parking spaces. I assume that some of the people who will live in these units will want to have more than one car, and will sometimes have visitors. Additionally, the stores that are part of the project will also draw traffic. Where are these other people going to park?

I am also concerned that the fact that you approached only one developer runs contrary to generally accepted guidelines for public/private projects. I strongly urge you to take a step back and reconsider your plans for this development. I am not against development per se, but I would like to see additional plans presented which would be less dense and have less impact on the community.

Sincerely,

Eric G. Mart, PhD, ABPP (Forensic)

includeInRecords: on
Engage: Submit

Below is the result of your feedback form. It was submitted by Jason Walls (jason.sedley.walls@gmail.com) on Monday, July 15, 2019 at 10:03:53

address: 1113 Maplewood Ave

comments: I'm writing because I cannot attend tonight. Both my wife and I fully support moving forward with the existing McIntyre plan. It has been properly vetted and there is room for adjustments in the exact design later. We shouldn't delay further.

includeInRecords: on
Engage: Submit

Below is the result of your feedback form. It was submitted by Dixie Tarbell (dixiemcleantarbell@gmail.com) on Monday, July 15, 2019 at 11:38:58

address: 25 Driftwood Lane

comments: Just voicing my support for the well worked out McIntyre project in its current form. I see no need to "revisit" it. I especially like the proposed sheltered public space which will provide opportunities to enjoy downtown Portsmouth even while it's raining, snowing, or freezing out. It's been fleshed out more than long enough. Time to get it ready for use!

includeInRecords: on
Engage: Submit

Below is the result of your feedback form. It was submitted by Elizabeth Bratter (gatoday@yahoo.com) on Monday, July 15, 2019 at 12:01:17

address: 159 McDonough St

comments: Dear Mayor Blalock and City Councilors,

The Neighborhood Parking Program seems to have been reduced to a numbers game. I would like to share with you my thoughts on the program. We have a parking problem in Portsmouth which has been growing rapidly as more and more new developments receive parking reductions which don't seem to be secured in most cases with actual agreed upon places for the overflow to park. I've shared parking with 135 McDonough for over 37 years, however there is more overflow into our neighborhood on our end from Islington St and other walking distance places so the neighborhood is very full most of the time. Other neighborhoods are full as well: Rock St, Sudbury St, most of State St, Lower end of Richard's Ave, all the "free" parking lots, the street the Library and Court house are on and I'm sure there are more I've missed. All the new housing and development going in there will be even more cars to contend with. The NPP is something to "try" for 6 months. It will be inconvenient for th!

e people who live within it. It may push parking into other areas or to the Foundry Garage. It may not even solve the problem. Studies have shown, done in MANY other cities, that NPP's work for both residents, businesses within the NPP area and for employees who were using neighborhoods as parking lots to either use public transportation or public parking garages and lots.

We received a letter from the City of Dover one of our buildings was now in a pilot NPP. None of our tenants got passes or needed them. The local yoga studio now had parking for 2 hours for their clients and it encouraged turnover for other businesses to have parking available for them as well. The program has prevented people from parking there all day long which was a huge issue because it is within 1 block of downtown. Needless to say, there was a lot less fuss and it seems to be working out for all.

Please consider the NPP. It is strictly a pilot program to TRY this idea. I really don't support it but I am willing to try it because NO ONE in the CITY has come up with ANY OTHER OPTIONS to solve the parking problems. This is one idea. It should be tried and at the end of 6 month questions can be passed out by the NPP team to all the residents. The parking enforcement people should be given some input as well as local businesses. It may be one solution, it may not. We won't know until we try it!

Please consider supporting this pilot program! Thank you, Elizabeth

includeInRecords: on

Engage: Submit

Below is the result of your feedback form. It was submitted by Dave Hudlin (dhudlin@hotmail.com) on Monday, July 15, 2019 at 12:20:46

address: 260 Miller ave

comments: Dear Council,

Once again we are having a citywide revaluation. If you recall in 2017, I was very vocal about the Commercial assessments and how they didn't reflect the Portsmouth market. To refresh your memories, in 2017 the overall commercial sector increased 6% vs 2015, or an ave 3% annual increase. This compared to a 18%-20% increase in residential, or an ave 10% annual increase. As a result of that revaluation, the tax rate decreased 8.9% thanks to the residential increase. This resulted in a net tax bill REDUCTION to commercial of 3% and a 10% INCREASE residential.

During that 2017 revaluation I presented to both the Assessor and the Council a list of 139 commercial properties representing \$1.3B in valuations and showed the impact on both % change in assessments and \$ change in taxes paid. I have taken that same list of properties and input the 2019 valuations....guess what, the overall assessments increased 6.2% or an ave of 3% annually since the 2017 revaluation. NO CHANGE in annual appreciation.

My guess is that residential assessments will show a minimum 10-12% increase. The tax rate will once again drop, and Commercial will no doubt see little to no increase in taxes and residential will get hit. This would actually be an improvement over 2017 as residential had to pick up the huge tax bill reduction to Commercial.

I plan on distributing this data and asking questions on specific properties during the upcoming meetings. I expect you to ask the hard questions and represent the best interest of taxpayers that are continuing to suffer the effects of annual operating budget increases and a commercial sector whose taxes never, in aggregate, go up.

includeInRecords: on
Engage: Submit

Below is the result of your feedback form. It was submitted by Brian Kelly (Brian@seacoastrep.org) on Monday, July 15, 2019 at 12:44:43

address: 132 Broad Street Rochester

comments: Hey y'all. Brian Kelly here. Relatively certain you know me but just in case - While I'm no longer a resident due to out-of-control housing costs, I do still help manage Seacoast Rep, which shares a street with the McIntyre building.

Hoo boy. You guys are in a tough spot. By and large eight of you know what the probably correct thing is to do, but if you do it you'll get punished at the polls and it could kick in a whole new council that we know would be relatively disastrous.

I don't envy you, but I do think you need to remember the facts. Revisit is a developer founded and funded organization. They have some heavy hitters in there, sure. They also have an array of some of the more nefarious bad faith actors in Portsmouth. Some of them wear fun ties.

You are familiar with their level of honesty, and so I won't bother to enumerate the exact level of dishonesty by going point by point. You also know some of the people involved and their particular axes that they're grinding, or the campaigns they're getting ready to run.

You haven't seen a clear vision of what they want, because other than Simchik none of them have one. You also know how they tend to participate, when they participate, so you can guess how a restarting of the process would go. They also haven't really thought out what it might be like if they come to a conclusion of what they want and it is merely impossible. Then, if they don't like what they get, they'll do it again. Repeat ad nauseum.

So I guess the question is - do you really think that if you give these folks what they want, that they'll suddenly change their behavior? Do we honestly think this crew, this particular crew, can create a better process and result than probably the most robust and transparent process that Portsmouth has had?

Also I just want to point out that the petition for a statue of Ronnie James Dio in Prescott Park garnered more signatures, and that wasn't developer funded and bolstered by a captured media apparatus - that was just like five of us and we were trying easily half as hard.

While we're on that subject, I think their support is a bit overmagnified. They have the signatures, sure, but boast only 15 donors. They've only raised \$3030, and \$2000 of that is from a single anonymous donor. A good portion of those signatures came from their misleading booth on Market Square Day where they posed as the Post Office. How much of that support stems from an actual understanding? How many of them have been misled? How many are merely bored or dissatisfied? I don't know, but I suspect it's a thing.

Anyway, I think you can make a good case come election time that you did the responsible thing if you do the responsible thing, and if you do the irresponsible thing to try to get votes I think they're likely to try to gun for you anyway. Plus, if you cave here, you can expect them to try to make you do it again, and again, and again. If you give a mouse a cookie they'll want a glass of milk and will probably write breathless op-eds about it too.

So hey, good luck and godspeed. I will ensure the cash drops you all get from developers have a big ole bonus in them this month. I'll see you the next time most of us meet in the dead of night to find new ways to ruin Portsmouth while lining our own pockets.

As always, may The Devil whom we serve and His Workers Here on Earth preserve Michael Kane and Red Redgate. Soon we will realize His dream of knocking down the North Church for a nice co-working space.

Heck yeah I want this in the public record.

includeInRecords: on

Engage: Submit

JUN 3 2019

CITY MANAGER

**PORTSMOUTH POLICE DEPARTMENT
MEMORANDUM**

DATE: MAY 30, 2019
TO: JOHN P. BOHENKO, CITY MANAGER
FROM: CHIEF ROBERT M. MERNER
RE: CHIEF SAM FARINA

Chief Sam Farina was the CALEA team leader for the critical on-site review of the Portsmouth Police Department this past January. His report and recommendations were a key part of our successful Accreditation Process.

Chief Farina believes making an official report to the municipal governing body is the last big piece of this process. He is the Chief of Police in Fairport, NY, and will be traveling to Portsmouth next month specifically to make that report to the City Council.

We respectfully request Chief Farina be placed on the July 15th City Council Meeting Agenda for this purpose.



Robert M. Merner, Chief of Police

RECEIVED

JUN 06 2019

CITY MANAGER
PORTSMOUTH, NH



ONE PLAINS AVENUE, PORTSMOUTH NH 03801 • (603) 436-6660 • INFO@PONTINE.ORG

June 4, 2019

John P. Bohenko, City Manager
City of Portsmouth
1 Junkins Avenue
Portsmouth, NH 03801

Dear John,

I am writing to report on Pontine Theatre's second year at the Plains School — our first with a full slate of programs.

As we have so recently completed extensive renovations, no repair work was undertaken by Pontine; the only capital improvement was the installation of plantings in the front of the building and along the sidewalk. Material costs were \$734.77; receipts are attached to this letter. All labor was donated.

We presented two Pontine productions at the Plains School this past year: a holiday show in December and the premiere of a new work in March and April. We also presented three programs by guest artists: Jay O'Callahan, a storyteller, performed last November, Mark Mandeville and Raianne Richards gave a concert of contemporary folk music in February, and Public Displays of Motion performed a dance program in March. Pontine also hosted a reunion performance by stars of the old Theatre-by-the Sea last August.

Free public programs included: Andrew Periale's "Foreman Brown: New Hampshire's Forgotten Poet/Puppeteer," Lucie Therrien in concert, Mimi White in an Earth-Day poetry program, and Jo Radner in a humanities program about collecting and telling family stories.

We also invited in our neighbors at the Plains: Avi Magidoff used the schoolhouse for a Veteran's Day program in November, several neighbors attended an open dress rehearsal for our holiday production, and others took advantage of our offer of complimentary tickets to the March production.

We have had a tremendous response from everyone who attended events at the Plains School this season. People truly appreciate the way in which this historic building has been repurposed. We were so pleased to share the Preservation Award from Portsmouth Advocates with the City of Portsmouth and remain very grateful for this unique opportunity.

Thanks, again, for our wonderful new home!

Sincerely,

A handwritten signature in black ink that reads "Greg Gathers". The signature is written in a cursive, flowing style.

Greg Gathers
Co-Artistic Director

CC: Nancy Carmer, Dept. of Economic Development

SalmonFalls Gardens 06

Sales Invoice 30058
Date 6/2/2018
Customer ID CASH

()
Fax

Purchase Order ID
Tax Exemption ID

Bill To
CASH

Ship To
CASH

<u>Quantity</u>	<u>Description</u>	<u>Discount</u>	<u>Unit Price</u>	<u>Item Total</u>
1.00	9808 - WFF PERENNIAL 8"	0.00%	15.95	15.95

Shipping Method Counter Pickup
Salesperson No Salesperson
Payment Terms Cash
Payment Method Cash
Memo

Subtotal \$ 15.95
Discoun 0.00% \$ 0.00
Sales Tax \$ 0.88
Freight Amount \$ 0.00
Total \$ 16.83
Amount Paid \$ 16.83
Balance Due \$ 0.00



LOWE'S HOME CENTERS, LLC
1440 GREENLAND ROAD
GREENLAND, NH 03840 (603) 373-2158

SALES#: 51879KL1 1960668 TRNS#: 16246801 05-25-18

92433 40-LB CON MANDRILL 36.16
0 3 3.16

SALE --
SUBTOTAL: 25.44
TOTAL: 0.00
INVOICE 10575 110 3.44
VISA: 25.44

VISA:XXXXXXXXXX0435 AMOUNT:25.44 AUTHID:652498
CHIP REFID:187910167262 05/25/18 07:46:35
APL: VISA CREDIT TVR: 8080808000
AIB: A000000031070 ISI: 6800

[Signature]

STORE: 1879 TERMINAL: 10 05/25/18 07:47:08
OF ITEMS PURCHASED: 8
EXCLUDES FEES, SERVICES AND SPECIAL ORDER ITEMS



THANK YOU FOR SHOPPING LOWE'S.
SEE REVERSE SIDE FOR RETURN POLICY.
STORE MANAGER: JOE ROHAN

LOWE'S PRICE MATCH GUARANTEE
FOR MORE DETAILS, VISIT LOWES.COM/PRICEMATCH

YOUR OPINION: 101

school



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1440 GREENLAND ROAD
GREENLAND, NH 03840 (603) 373-2158

SALES#: 51879KL1 1712544 TRNS#: 20878906 06-01-18

92433 40-LB CON MANDRILL 36.16
12 3 3.16
184240 LEATHER PALM GLOVE W/SAFE 5.98

SUBTOTAL: 42.14
TOTAL TAX: 0.00
INVOICE 20185 TOTAL: 42.14
VISA: 42.14

VISA:XXXXXXXXXX0435 AMOUNT:42.14 AUTHID:040576
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APL: VISA CREDIT TVR: 8080808000
AIB: A000000031070 ISI: 6600

[Signature]

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OF ITEMS PURCHASED: 13
EXCLUDES FEES, SERVICES AND SPECIAL ORDER ITEMS



ROLLING GREEN NURSERY LLC
64 BREAKFAST HILL RD
GREENLAND NH 03840
603-436-2732

Terminal ID: 01497117 7859 LINT
6/2/18 9:48 AM 99

CHASE VISA - INSERT
AID: A0000000031010 39
ACCT #: *****3552

CREDIT SALE
UID: 815322125537 REF #: 0012
BATCH #: 001 AUTH #: 04601C 9

AMOUNT \$169.95

APPROVED

IC - 695E1000036C0E9B

CUSTOMER COPY

Thank you,
rollinggreennursery.com

RECEIVED BY	TAX
	TOTAL

THA

All claims and returned goods MUST be accompanied by this bill.

School

ROLLING GREEN NURSERY LLC
64 BREAKFAST HILL RD
GREENLAND NH 03840
603-436-2732

Terminal ID: 01497117 7859 AMOUNT
/19/18 8:55 AM 16.99

ISA CREDIT - INSERT
ID: A0000000031010 16.99
CCT #: *****0435 0.00
REDIT SALE 16.99
ID: 813937972759 REF #: 7581 16.99
ATCH #: 739 AUTH #: 545970 0.00

AMOUNT \$16.99

APPROVED

TC - FDPEAD1357899611

CUSTOMER COPY

School

STRATHAM CIRCLE NURSERY
4 COLLEGE RD
STRATHAM, NH 03885
603-778-3711

05/19/2018 09:38:26
Merchant ID: *****7906
Device ID: 1018
Terminal ID: PPX1.

Credit Sale:

Transaction #: 10
Card Type: Visa
Account: *****0435
Entry: Chip

Amount: \$26.95

STAN: 009
Auth. Code: 036476
Batch Number: 7
Response: AUTH/TKI
ACT Code: E
TRANS ID: 588139486367046

Mode: Issuer
AID: A0000000031010
TVR: 8000000000
IAD: 06010403600000
TSI: 6800
ARC: 00
APPN:
TC: 6A7231814ADD691A
ATC: 004F
APPLAB: VISA CREDIT

CUSTOMER COPY

School

NORTH HILL NURSERY INC
NORTH HAMPTON NH
603 964 7104
ALL SALES FINAL
NO REFUNDS OR RETURNS
Like Us On Facebook

05/19/2018 9:00AM 01
000003#6993 Kaylee

M
TI
B: PERENNIALS 2 @ \$14.99 56
B: PERENNIALS 11 \$29.98
C: PERENNIALS 2 @ \$12.99
In PERENNIALS 11 \$25.98 14
AJ
VI ITEMS 40
*** CHARGE2 \$55.96 id **

AMOUNT \$55.96

APPROVED

CUSTOMER COPY

ROLLING GREEN NURSERY INC
141 ROLLING RD
NORTH HILL NH 03869
(603) 743 4919

Auth ID: 0011
Merchant ID: 0027
Term ID: 035

Sale

XXXXXXXXXXXX3552
VISA Entry Method: Chip ser: POS
Total: \$ 15.77 tion: 1

06/02/18 11:43:55 Total
Inv #: 000048 Appr Code: 06834C 10.99
Apprvd: Online Batch#: 153001 4.78
Ret Level Ref #: 1010037

CHASE VISA
AID: 0000000001010
TSI: F800
TVR: 000000000
Customer Copy
15.77
0.00

15.77
CREDIT CARD EXT PROCESSOR 15.77

Items purchased: 3

NORTH HILL NURSERY INC
NORTH HAMPTON NH
603 964 7104
ALL SALES FINAL
NO REFUNDS OR RETURNS
Like Us On Facebook

06/02/2018 10:35AM 01
000003#8205 Kaylee
Bank 2 @ \$14.99
Batch PERENNIALS 11 \$29.98
06/0 PERENNIALS 11 \$12.99
Invoi
APPI ITEMS 30
VISA CHARGE2 \$42.97

AMOUNT \$42.97

APPROVED

CUSTOMER COPY

ROLLING GREEN NURSERY LLC
 64 BREAKFAST HILL RD
 GREENLAND NH 03840
 603-436-2732

Terminal ID: 01497120 8476
 5/26/18 8:34 AM

VISA CREDIT - INSERT
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 ACCT #: *****0435

CREDIT SALE

UID: 814625467484 REF #: 3825
 BATCH #: 854 AUTH #: 43755G

AMOUNT \$55.99

APPROVED

TC - 4762101BD75E4C61

CUSTOMER COPY

RECEIVED BY	
TAX	
TOTAL	

TT

All claims and returned goods MUST be accompanied by this bill



LOWE'S HOME CENTERS, LLC
 1440 GREENLAND ROAD
 GREENLAND, NH 03840 (603) 373-2158

SALES#: S1879FN1 2252494 TRANS#: 19656474 05-18-18

--- SALE ---
 SALES#: S1879X1 2414738 TRANS#: 20566446 05-17-18

92433 40-LB COW HANURE AND COMP 31.80
 10 @ 3.18
 184240 LEATHER PALM GLOVE W/SAFE 3.98

SUBTOTAL: 35.78
 TOTAL TAX: 0.00
 INVOICE 19754 TOTAL: 35.78
 VISA: 35.78

SUBTOTAL: 116.96
 TOTAL TAX: 0.00
 INVOICE 20282 TOTAL: 116.96
 VISA: 116.96

VISA:XXXXXXXXXX0435 AMOUNT:116.96 AUTHCD:41954G
 CHIP REF ID:18792006346 05/17/18 10:15:55

VISA:XXXXXXXXXX0435 AMOUNT:35.78 AUTHCD:447206
 CHIP REF ID:187919035498 05/18/18 11:14:26

CUSTOMER CODE: no
 APL: VISA CREDIT TUR: 8080008000
 AID: A0000000031010 TSI: 6800

CUSTOMER CODE: no
 APL: VISA CREDIT TUR: 8080008000
 AID: A0000000031010 TSI: 6600

[Handwritten Signature]

[Handwritten Signature]

STORE: 1879 TERMINAL: 20 05/17/18 10:14
 # OF ITEMS PURCHASED: 11

STORE: 1879 TERMINAL: 19 05/18/18 11:15:00
 # OF ITEMS PURCHASED: 11
 EXCLUDES FEES, SERVICES AND SPECIAL ORDER ITEMS





LOWE'S HOME CENTERS, LLC
1440 GREENLAND ROAD
GREENLAND, NH 03840 (603) 373-2158

SALES# : 51679111 1712344 TRANS# : 70938724 06-02-18

3280/1 0.75-CU FT ARGAL CON HAND 35.76
12 # 2.98

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TOTAL TAX: 0.00
INVOICE TOTAL: 35.76
VISA: 35.76

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AID: 8000000031010 ISI: 6800

STORE: 1879 TERMINAL: 20 06/02/18 07:17:59
OF ITEMS PURCHASED: 12
EXCLUDES FEES, SERVICES AND SPECIAL UNDER ITEMS



School



More saving.
More doing.™

NOW HIRING HOMEDEPOT.COM/CAREERS
NICOLAS.O_LAPOINTE@HOMEDEPOT.COM
3409 00015 79028 05/19/18 12:21 PM
CASHIER DAVID

042206270009 ADJ TIP NOZZ <A> 9.48
ADJUSTABLE REAR TRIGGER NOZZLE
078627141406 100FT HOSE <A> 19.88
5/8"X100' CONTRACTOR HOSE PROMG
845401021991 PEONY #2 <A> 17.98
PAEONIA PEONY #2 HN

SUBTOTAL 47.34
SALES TAX 0.00
TOTAL \$47.34
XXXXXXXXXXXX0435 VISA

AUTH CODE 135596/9152533
Chip Read USD\$ 47.34
AID A0000000031010 TA
TUR 8080008000 VISA CREDIT
IAD 06010A03600000
TSI 6800
ARC 00

P.O.#/JOB NAME: NO



3409 15 79028 05/19/2018 5877



LOWE'S HOME CENTERS, LLC
1440 GREENLAND ROAD
GREENLAND, NH 03840 (603) 373-2158

SALES# : 518794HT 2252494 TRANS# : 19620934 05 29-18

758323 1.5-CU FT TRIPLE SHRO BLK 29.82
6 0 4.97

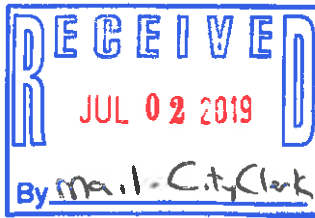
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AID: 8000000031010 ISI: 6800

STORE: 1879 TERMINAL: 19 05/29/18 15:09:45
OF ITEMS PURCHASED: 6
EXCLUDES FEES, SERVICES AND SPECIAL ORDER ITEMS





June 28, 2019

38 South St. Portsmouth

The City Council
Portsmouth City Hall
Portsmouth, NH 03801

The McIntyre Site

The City Council's bungles just keep coming to light.

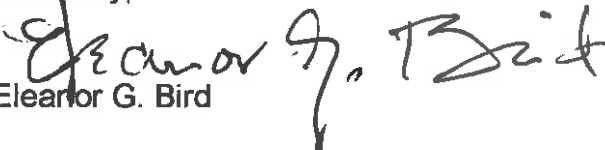
The public was never informed in the beginning of all the development options.

Today's *Herald* reports that in October, 2018, the former Postmaster Patricia Hersey, informed you that the Post Office had been cleaned of asbestos in the late 1990's and is totally separated from the McIntyre office building for its air conditioning/heating needs.

Why wasn't this information transmitted to Redgate/Kane so the Post Office would not be included in their proposal?

I urge you to Revisit this proposed development in order to respond to the hundreds of Portsmouth residents who have expressed their dissatisfaction with the plan.

Sincerely,


Eleanor G. Bird

Subject: McIntyre Project (July 2019)

(from Peter Somssich & Kathleen Pohlman-Somssich , 34 Swett Ave., Portsmouth NH (603) 436-5221)

Dear City Councilors,

I write to you today to encourage you not to go ahead with the currently proposed McIntyre project, but to pause and reset the process allowing more input, including from the Revisit McIntyre group before making a final decision.

In the case of the McIntyre project, I believe that the City Council has misread the sentiment of the residents regarding this project. This misreading was certainly not malicious, but may have been the result of an opinion of the council that city residents were not willing to invest taxpayer dollars into this project. However, my reading of city sentiment is that residents would indeed be willing to invest some taxpayer dollars, if that guaranteed that their wishes for the final project would be incorporated into the plans.

I participated in a number of citizens' listening sessions and presentations regarding the McIntyre proposal, as has my wife, Kathleen, who has also interviewed many of the stakeholders as part of her weekly radio program. The following comments are a composite of both of our opinions regarding this project.

- 1) Both of us agree that during the input sessions and presentations, keeping the post office at its current location was the overwhelming consensus**
- 2) We also heard the consensus view that the city should not focus primarily on maximizing the revenue that this project would generate for the city, but should focus on proposing a plan that was strongly supported by city residents.**
- 3) Finally, we heard many voices calling for some kind of park, a green space or open space, as part of the project, which would ensure that the attractive views of our harbor and the tugboats would not be blocked by new structures.**

We do not have the impression that the current plan adequately addresses these 3 comments.

It would seem intuitive that when the city asks a developer to assume all of the liabilities for a project such as the McIntyre project, with no city money at stake, the city and the resident's lose control of the final project. We believe that in fact this is happening, which is why the outside financial evaluation of the project described it as "highly complicated...and risky."

However, far more important for our city is that this project has become too divisive for city residents and businesses, which was the opposite outcome that most of us had hoped for; when we were more optimistic and hopeful.

We believe that this project needs to be reconsidered from the beginning and that alternative proposals should be evaluated together with the public. Such alternatives could include:

- 1) Walking away from a free building entirely,**
- 2) Determining anew the wishes of the city residents for this property,**
- 3) Gauging the level of support for some financial investment of taxpayer money in exchange for retaining control over the final plan,**
- 4) Exploring some of the ideas proposed by the Revisit McIntyre group such as rezoning options and less dense development of the property.**

For all of the reasons mentioned above, we ask the city council to postpone a final decision at this time, and to reset the process so that a more thorough evaluation of the options can be considered, resulting in a final proposal that brings us all together instead of leaving Portsmouth divided.

Wednesday, July 10, 2019

To: The Portsmouth City Council

It appears clear that most Portsmouth City Councilors, led by our current city management, are on a path to attempt to close the doors on future discussion about the Redgate/Kane McIntyre Project by taking a series of votes at its July meeting.

I support the good work of Attorney Paul McEachern, State Senator Martha Fuller Clark, RevisitMcIntyre leaders Bill Downey and Bill Hamilton, and many other citizens and business leaders in their efforts to encourage the Council to take a breather on this project. There is no need for action in the middle of July after a process that has not been as inclusive as it should be, and has in many ways shortchanged the creativity of the citizens of our community in offering better ideas.

The call of those many people involved with and supportive of the efforts of RevisitMcIntyre to expand the process by airing more concepts and visionary ideas for the 2.2 acres of land in the center of our Downtown makes sense. The vision for that plot of land should not just be more buildings and compressed alleyways. We can be more innovative and inventive than that.

A few weeks ago, Michael Kane asked to meet with me to discuss his plan. After his secretary and I spent a couple of weeks going back-and-forth as to where to meet -- he initially wanted to meet at his office, and I explained that in all of my time in government I have never met with a developer in the privacy of an office -- we agreed to meet at a public location, the River House on Bow Street. I brought along former Historic District Commissioner Richard Katz, who shares some of my concerns about the current McIntyre plans, and Michael brought Attorney Rob Ciandella, whom I respect for his top-notch work when I knew him since the early 1990s for his participation in Pease-related redevelopment issues. Michael is lucky to have his services.

The four of us met over coffee for an hour and a half, and after Michael and Rob made their pitch for his plans, both Richard and I were able to express our thoughts and concerns. One central point I offered was that no matter what this current City Council and city management would agree to do, the plans are not conceived well, and will not see completion as planned. Too much of the discussion has been done by a small subcommittee of the Council and management behind closed doors -- raising questions of N.H. Right-to-Know Law violations (which resulted in a well-researched story in The Portsmouth Herald) -- and financials and parking arrangements that don't make a hell of a

lot of sense for a high-density development on a relatively small piece of land in our Downtown.

This was my first meeting with Mr. Kane, despite our mutual involvement in the city for many years, and I found him to be sincere in his thoughts of bettering the city. My 1 1/2 hours of time was well-spent, and I enjoyed meeting him, and I found much to like about him. Perhaps my only real disagreement with his work is his apparent resistance to outreach to union companies with which to contract his construction and development projects. Growing up in a union family and being supportive of unions, I believe that unions and the professionals who work in their trades guarantee the highest quality -- and whatever is eventually done in redeveloping McIntyre should include union trade workers.

I told Michael I thought that he would be well-advised to stand aside from this project at this point because he has essentially been set up and used by city management to move along its own concepts of redevelopment of McIntyre. I suggested to him that he should join the cause of RevisitMcIntyre and urge a little more time to get more people involved in the process.

It's obvious he hasn't taken that advice, and the city has continued and will continue to use Mr. Kane's financial resources in what is, I believe, a project that will not see completion in its current form. This is costing Mr. Kane a lot of money -- yes, with the hope of making money, but I do hope he's being careful and cautious, because at the moment it seems to me that city management has put him into a corner. With potential legal challenges and several approvals pending beyond City Hall control before construction can begin, plus financial questions that have been recently raised about the viability of the project, I trust that the next City Council, to be elected in just a few short weeks, will reconsider actions to date.

I urge Portsmouth City Councilors to do the right thing, and that is to stand up to the requests of city management to act now and in haste. One of the final votes I was involved with as Assistant Mayor was on December 20, 2017 -- an 8 to 1 vote (I was that "one") to begin a process that I considered to be rigged - - and at that time we were falsely being told that there were deadlines of just a few months for the city to act with a development team. As we have since learned, we were misled and there were, nor are, "deadlines." In other words - - there is time to get this right, and considering that whatever goes into the McIntyre land will be there for many decades to come, we need to get this right for the future of our community and our Downtown.

I know that when I used the word "rigged" to define this process from the beginning, that some people took exception to my characterization. In a public commentary I wrote a few months ago, I explained that the word is not a four-letter one, and that it properly defined what happened from the beginning with that 8-1 vote in December of two years ago as this process got underway. Before using that term, I consulted my online Merriam-Webster dictionary to determine the definition of "rigged." I found: *"to manipulate or control; to fix in advance for a desired result."* Then I found in what is called "The Urban Dictionary," especially relevant to this discussion because the topic is something urban: *"The word 'rigged' is used to describe situations where unfair advantages are given to one side."*

"Rigged" is a descriptive word. And it describes the McIntyre process from Day One. A process determined to get this desired result. And this isn't about Redgate/Kane; it's about the desires of city management to max out on development in the McIntyre plans.

In my judgment, the stand-alone hero on this matter is the good City Councilor Rick Becksted. He has raised alarms and asked many dozens of questions. His colleagues should listen. Because this project, in its current configuration of squashing over 75 high-priced apartments and lots of office/store space into a relatively small spot of land while providing a net loss in parking in the center of our community, while at the same time squeezing out our Post Office, should not be allowed – and I don't think will be.

There will be legal challenges, as well as required permitting of our Boards and Commissions. Plus, the federal government has yet given approvals for what are indeed some questionable use plans and profit-making. I think that the still-pending built-in oversight, unless the Council and city management short-circuits it -- and that will be tough to get away with because many of us will be watching carefully -- and those legal challenges that are surely forthcoming, will bring some sanity to the process.

There is plenty of time to get this right. To review. Reconsider. Reinvent. Re-think. The collective "we" need to revisit the beginnings of the process, and make better decisions with the foresight that hindsight now gives us.

Please, do the right thing -- which right now is not giving final approvals. There is time to Revisit McIntyre. Portsmouth citizens deserve better than what is being proposed. It's about us, and our future.


Jim Splaine
Citizen Activist

201 Oriental Gardens
Portsmouth, N.H. 03801
Telephone: 727-466-3546
E-Mail: jimsplaineportsmouth@gmail.com



Portsmouth City property approximately 41 planters.

There are approximately 73 planters on private property.



CITY OF PORTSMOUTH

LEGAL DEPARTMENT


MEMORANDUM

DATE: July 10, 2019

TO: JOHN P. BOHENKO, CITY MANAGER

FROM: ROBERT P. SULLIVAN, CITY ATTORNEY

RE: CITY COUNCILOR JOSH DENTON'S PROPOSAL ORDINANCE
REGARDING DISTRIBUTION OF SINGLE-USE DISPOSABLES



This memorandum is in response to the City Council request for Legal Department review of the captioned ordinance which was submitted by Councilor Denton to the Council for consideration in June of this year. It will address only the issue of whether or not legal authority exists for the Council to adopt the ordinance.¹

The ordinance presently under consideration (copy attached for ease of review) is actually the third iteration of ordinances submitted by Councilor Denton since January 2017 related to the regulation of single-use plastics. In each succeeding case the ordinances have become more refined to deal with perceived legal issues, most notably the lack of enabling legislation.

A brief description of the current ordinance would be to say that it limits its scope of the regulation of single-use disposable plastic items to activities which take place on City property. The one exception to that limitation is the regulation of Styrofoam products (single-use polystyrene) throughout the City.

In summary, this memorandum concludes that regulation of single-use plastic disposables on City property is within the authority of the City to accomplish. However, regulation of single-use plastic items throughout the community generally fails to come within the scope of the City's authority for the reasons described in detail during prior iterations of the plastic regulatory ordinances.

As described above, the reason that prior versions of the plastic regulatory ordinances have been found to be beyond the scope of the City's authority to enact is that there is insufficient State enabling legislation to provide the City with that power. The most recent draft of the ordinances, which is now at issue, addresses this lack of enabling legislation by limiting its regulatory authority to activities which take place "on City property." The addition of this phrase to the regulation of plastic disposables creates an entirely new source of authority for the City Council to rely upon. Whereas prior drafts of the plastic regulatory ordinances have relied, or

attempted to rely, on statutes providing the City with authority to regulate activities throughout the community, the current version relies upon the City's authority to regulate conduct on land which it owns. The City can regulate activities on its own property. The authority of the City to regulate its own property is described, among other places, in 14 NH 865; Local Government Law, a treatise written by Peter Loughlin, and in the case of *Sherburne v. Portsmouth*, 72 NH 539 (1904). Thus, those elements of the proposed ordinance which regulate plastic disposables on City-owned property seem to be within the authority of the City Council to adopt.

This memorandum concludes differently with respect to the regulation of Styrofoam (polystyrene) cups and containers throughout the municipality, not limited to property of the City of Portsmouth. The lack of enabling legislation for such a measure was thoroughly vetted during consideration of prior versions of the plastic regulatory ordinances with the conclusion being that there is insufficient State-enabling legislation for the City to regulate single-use plastics on a community-wide basis. Please see the memorandum dated June 6, 2013 addressed to office of the City Manager from the City Legal Department which reaches that conclusion. In fairness, it should be pointed out that a contrary view exists which suggests that the authority which the State has granted to the City under RSA 149:M and other statutes to regulate solid waste management might, in some manner, extend to regulating the use and sale of single-use plastic items. This is not a frivolous position. However, there has been no change in State law since City Legal Department concluded that it is not likely to be successful in litigation.² Since there has been no substantive change in State law since those prior writings, it would be inconsistent to now conclude that enabling legislation does exist. Thus, we conclude that those portions of the most recent plastic regulatory ordinance which would seek to prohibit the use of single-use plastics on a City-wide basis are beyond the scope of the City to adopt or enforce.

CONCLUSION

For the foregoing reasons, the City Council is advised that those portions of the ordinance submitted by Councilor Denton which regulate single-use plastics on City property do appear to be within the authority of the City to enact. However, those elements which relate to regulating the use of plastics on a City-wide basis are likely not within the scope of that authority. Moreover, the proposal and its contents contain drafting issues which should be resolved prior to introduction of the ordinance for first reading, whether the ordinance is introduced as submitted or otherwise.

Attachment

¹ This memorandum will address only the legal authority question, not policy matters (which are within the ambit of the Council, spelling, grammar or syntax issues). Neither will the memo address other legal issues such as the fact that the ordinance would send disposable materials to composting facilities in Maine, but not New Hampshire (interstate commerce). All of these types of issues will be dealt with in drafting for first reading in the event that the City Council directs the ordinance to be brought in for first reading.

² The drafting of this memorandum was delayed to allow for recent the session of the legislature to address the issue, but the relevant law was not changed.

1 **CHAPTER 3**

2 **PUBLIC HEALTH**

3 **ARTICLE X: DISTRIBUTION OF SINGLE-USE DISPOSABLES**

4 **3.X01: PURPOSE**

5 The City of Portsmouth recognizes that limiting the distribution of
6 single-use disposables is necessary for the protection of both the
7 environment of the municipality and the public health, safety, and
8 welfare of its citizens.

9 **3.X02: DEFINITIONS**

10 For the purpose of this Section, the following definitions apply:

11 *Composting Facility*: a solid waste compost facility pursuant to the
12 Maine Solid Waste Management Rules: Composting Facilities, 06-096
13 CMR 410 or equivalent; the Maine Hazardous Waste, Septage and Solid
14 Waste Management Act, 38 M.R.S.A. §§ 1301 to 1319-Y or equivalent,
15 and Maine's other Solid Waste Management Rules or equivalents.

16 *Cost Pass-Through*: the cost which must be collected by retailers from
17 their Customers when providing a Single-Use Carryout Bag or a Single-
18 Use Cup.

19 *Customer*: any Person obtaining goods from a Store.

20 *Food Service Establishment*: any restaurant, take-out food establishment,
21 or any other business that is required to obtain a valid food service
22 license from the Public Health Department of the City of Portsmouth.
23 Food Service Establishments do not include Nonprofit Food
24 Establishments.

25 *Medical Facility*: a business or nonprofit that has a primary purpose of
26 providing medical services.

1 *Nonprofit Charitable Reuser:* a charitable organization or a distinct
2 operating unit or division of the charitable organization, that reuses and
3 recycles donated goods or materials and receives more than fifty percent
4 (50%) of its revenues from the handling and sale of those donated goods
5 or materials. To be considered a Nonprofit Charitable Reuser, the entity
6 must meet the terms of section 501(c)(3) of the U.S. Internal Revenue
7 Code (26 U.S.C. 501(c)(3)).

8 *Nonprofit Food Establishment:* a charitable entity that prepares or serves
9 food directly to the Customer or otherwise provides food or meals for
10 consumption by humans. The term includes central food banks, soup
11 kitchens, and nonprofit food delivery services. To be considered a
12 Nonprofit Food Establishment, the entity must meet the terms of section
13 501(c)(3) of the U.S. Internal Revenue Code (26 U.S.C. 501(c)(3)).

14 *Operator:* the person in control of, or having the responsibility for, the
15 operation of a Store, which may include, but not be limited to, the owner
16 of the Store.

17 *Person:* any natural person, firm, corporation, partnership, or other
18 organization or group however organized.

19 *Pharmacy:* any Store where prescriptions, medications, controlled or
20 over the counter drugs, personal care products or health supplement
21 goods, or vitamins are sold.

22 *Prepared Food:* foods or beverages which are prepared on the premises
23 by cooking, chopping, slicing, mixing, freezing, or squeezing, and which
24 require no further preparation to be consumed. Prepared Food does not
25 include any raw, uncooked meat product or fruits or vegetables which
26 are chopped, squeezed, or mixed.

27 *Produce Bag:* any bag without handles used exclusively to carry
28 produce, meats, or other food items to the point of sale inside a store or
29 to prevent such food items from coming into direct contact with other
30 purchased items. A Produce Bag is not a form of Single-Use Plastic Bag.

1 *Retail Establishment*: any commercial establishment that sells perishable
2 and nonperishable goods including but not limited to, clothing, food, and
3 personal items directly to the Customer and is located within or doing
4 business within the City. Retail Establishments do not include Food
5 Service Establishments, Nonprofit Charitable Reusers, or Pharmacies.

6 *Reusable Plastic Bag*: a sewn woven or non-woven nylon,
7 polypropylene, polyethylene-terephthalata, or Tyvek bag capable of
8 being used one hundred (100) times, is machine washable, and has
9 stitched or woven handles that are not fused. A Reusable Plastic Bag is a
10 form of Reusable Bag.

11 *Reusable Bag*: a bag capable of being used one hundred (100) times, is
12 machine washable, and has stitched or woven handles that are not fused.
13 Reusable Bags include Reusable Plastic Bags

14 *Single-Use Carryout Bag*: a bag made of plastic, paper, or other material
15 that is provided by a Store to a Customer at the check stand, cash
16 register, point of sale or other point of departure for the purpose of
17 transporting food or merchandise out of the Store. Single-Use Carryout
18 Bags include Single-Use Plastic Bags and Single-Use Recycled Paper
19 Bags. Single-Use Carryout Bags do not include Produce bags, Reusable
20 Bags, or bags without handles provided to the Customer to hold
21 prescription medication dispensed from a Pharmacy.

22 *Single-Use Compostable Plastic Container*: a container that is composed
23 of one hundred percent (100%) Polylactic Acid and distributed for the
24 purpose of transporting Prepared Food on a single occasion inside or
25 outside of a Store. A Single-Use Compostable Plastic Container is a
26 form of a Single-Use Plastic Container.

27 *Single-Use Compostable Plastic Cup*: a cup composed of one hundred
28 percent (100%) Polylactic Acid and is distributed for the purpose of
29 transporting a beverage on a single occasion inside or outside of a Store.
30 A Single-Use Compostable Plastic Cup is a form of a Single-Use Plastic
31 Cup.

1 *Single-Use Compostable Plastic Straw:* a disposable tube that is
2 composed of one hundred percent (100%) Polylactic Acid and is
3 distributed to transfer a beverage from a cup or container to the mouth of
4 a person drinking the beverage on a single occasion. A Single-Use
5 Compostable Plastic Straw is a form of a Single-Use Plastic Straw.

6 *Single-Use Cup:* a cup that is distributed for the purpose of transporting
7 a beverage on a single occasion inside or outside of a Store.

8 *Single-Use Plastic Bag:* a bag that is made predominantly of plastic
9 derived from either petroleum or a biologically based polymer, such as
10 corn or other plant sources, and is provided at the check stand, cash
11 register, point of sale or other point of departure for the purpose of
12 transporting food or merchandise out of the Store. A Single-Use Plastic
13 Bag is a form of a Single-Use Carryout Bag.

14 *Single-Use Plastic Container:* a container that is made predominantly of
15 plastic derived from either petroleum or a biologically based polymer,
16 such as corn or other plant sources, and is distributed for the purpose of
17 transporting Prepared Food on a single occasion inside or outside of a
18 Store. A Single-Use Plastic Container is a form of a Single-Use
19 Container.

20 *Single-Use Plastic Cup:* a cup that is made predominantly of plastic
21 derived from either petroleum or a biologically based polymer, such as
22 corn or other plant sources, and is distributed for the purpose of
23 transporting a beverage on a single occasion inside or outside of a Store.
24 A Single-Use Plastic Cup is a form of a Single-Use Cup.

25 *Single-Use Polystyrene Container:* a container composed of synthetic
26 aromatic hydrocarbon polymers that is made from the monomer styrene
27 and distributed for the purpose of transporting Prepared Food on a single
28 occasion inside or outside of a Store. A Single-Use Polystyrene
29 Container is a form of a Single-Use Container.

1 *Single-Use Polystyrene Cup*: a cup composed of synthetic aromatic
2 hydrocarbon polymers that is made from the monomer styrene and
3 distributed for the purpose of transporting a beverage on a single
4 occasion inside or outside of a Store. A Single-Use Polystyrene Cup is a
5 form of a Single-Use Cup.

6 *Single-Use Plastic Straw*: a disposable tube made predominantly of
7 plastic derived from either petroleum or a biologically based polymer,
8 such as corn or other plant sources, that is distributed to transfer a
9 beverage from a cup or container to the mouth of a person drinking the
10 beverage. A Single-Use Plastic Straw is a form of a Single-Use Straw.

11 *Single-Use Recycled Paper Bag*: a paper bag provided at the check
12 stand, cash register, point of sale, or other point of departure for the
13 purpose of transporting food or merchandise out of the establishment
14 that contains no old growth fiber and a minimum of forty percent (40%)
15 post-consumer recycled content; is one hundred percent (100%)
16 recyclable; and has printed in a highly visible manner on the outside of
17 the bag the word “Recyclable,” the name and location of the
18 manufacturer, and the percentage of post-consumer recycled content.
19 The Single-Use Recycled Paper Bag is capable of composting,
20 consistent with the timeline and specifications of the American Society
21 of Testing and Material (ASTM) Standard Specification for
22 Compostable Plastics D6400, as published in September 2004. A Single-
23 Use Recycled Paper Bag is a form of a Single-Use Carryout Bag.

24 *Single-Use Straw*: a disposable tube that is distributed to transfer a
25 beverage from a cup or container to the mouth of a person drinking the
26 beverage on a single occasion. Single-Use Straws include a straw made
27 from both plastic materials and non-plastic materials such as paper,
28 pasta, sugar cane, wood, or bamboo.

29 *Store*: any Food Service Establishment, Pharmacy, or Retail
30 Establishment located within the City. Stores do not include Medical
31 Facilities.

1 **3.X03 CARRYOUT BAGS**

2 A. Prohibited Carryout Bags:

- 3 1. No Store on City property shall provide a Single-Use Carryout Bag
4 to a Customer, at the check stand, cash register, point of sale, or
5 other point of departure for the purpose of transporting food or
6 merchandise out of the Store except as provided in this Section.
7 2. No Person shall distribute a Single-Use Carryout Bag at any City
8 facility, City-managed concession, City-sponsored event, or City--
9 permitted event unless a Store on City property is also otherwise
10 allowed to in this Section.

11 B. Permitted Carryout Bags:

- 12 1. Stores on City property are allowed to distribute Single-Use
13 Carryout Bags or Reusable Bags to Customers subject to the terms
14 of this Section.
15 2. All Stores may distribute their remaining 2019 Single-Use Plastic
16 Bag inventory.
17 3. Nothing in this Section prohibits Customers from using bags of
18 any type that they bring to the Store themselves or from carrying
19 away goods that are not placed in a bag, in lieu of using bags
20 provided by the Store.

21 C. Exemptions:

- 22 1. Stores on City property are allowed to distribute only Single-Use
23 Recycled Paper Bags or Reusable Bags to Customers for the
24 purpose of carrying away goods or other materials from the point
25 of sale, subject to the terms of this Section.
26 2. Food Service Establishments on City property are allowed to
27 distribute Single-Use Plastic Bags to Customers only for the
28 purpose of safeguarding health and safety during the transportation
29 of Prepared Foods, including take-out foods and liquids intended

1 for consumption away from the food provider's premises, subject
2 to the terms of this Section.

- 3 3. A Customer shall be charged a minimum of a ten cents (\$.10) Cost
4 Pass-Through for each Single-Use Carryout Bag provided by the
5 Store on City property. The sale of each bag shall be separately
6 itemized on the sale receipt. The Cost Pass-Through will remain
7 with the Operator of the Store.
- 8 4. A Store on City property may provide a Customer participating in
9 *Special Supplement Nutrition Program for Women, Infants, and*
10 *Children (WIC)* or *Supplemental Nutrition Assistance Program*
11 *(SNAP)* with one (1) or more Single-Use Carryout Bag or Reusable
12 Bags at no cost.
- 13 5. A Store on City property may provide a Customer with (1) Single-
14 Use Recycled Paper Bag 6 inches across or less without handles at
15 no cost.

16 **3.X04 DISPOSABLE CUPS**

17 **A. Prohibited Disposable Cups:**

- 18 1. No Store on City property shall provide a Single-Use Plastic Cup
19 to a Customer, at the check stand, cash register, point of sale, or
20 any other location for the purpose of transporting a beverage that
21 will be drank inside or outside of the Store except as provided in
22 this Section.
- 23 2. No Store shall provide a Single-Use Polystyrene Cup to a
24 Customer at the check stand, cash register, point of sale, or any
25 other location for the purpose of transporting a beverage that will
26 be drank inside or outside of the Store.
- 27 3. No Person shall distribute a Single-Use Plastic Cup or Single-Use
28 Polystyrene Cup at any City facility, City-managed concession,
29 City-sponsored event, or City-permitted event unless a Store on
30 City property is also otherwise allowed to in this Section.

31 **B. Permitted Disposable Cups:**

- 1 1. Stores on City property are allowed to distribute Single-Use Cups
2 to Customers for the purpose of transporting a beverage that will
3 be drank inside or outside of the Store, subject to the terms of this
4 Section.
- 5 2. A Customer shall be charged a minimum of a ten cents (\$.10) Cost
6 Pass-Through for each Single-Use Cup provided by the Store on
7 City property. The sale of each Single-Use Cup shall be separately
8 itemized on the sale receipt. The Cost Pass-Through will remain
9 with the Operator of the Store.
- 10 3. All Stores may distribute their remaining 2019 Single-Use Cup
11 inventory.
- 12 4. Nothing in this Section prohibits Customers from using cups of
13 any type that they bring to the Store themselves they would
14 otherwise be allowed to bring under the Ordinances of the City of
15 Portsmouth in lieu of using cups provided by the Store.

16 C. Exemptions:

- 17 1. The only Single-Use Plastic Cups that Stores on City property are
18 allowed to distribute are Single-Use Plastic Compostable Cups if
19 the Store on City property provides customers the option to dispose
20 of the Single-Use Compostable Plastic Cups in a specifically
21 designated composting receptacle that is both on the premise and
22 its contents will be transported to a Composting Facility to be
23 composted.
- 24 2. A Store may provide a Customer participating in the Special
25 Supplement Nutrition Program for Women, Infants, and Children
26 (WIC) or the Supplemental Nutrition Assistance Program (SNAP)
27 with one (1) or more Single-Use Cup at no cost.

28 **3.X05 DISPOSABLE CONTAINERS**

29 A. Prohibited Disposable Containers:

- 30 1. No Store on City property shall provide a Single-Use Plastic
31 Container to a Customer, at the check stand, cash register, point of

1 sale, or any other location for the purpose of transporting Prepared
2 Food that will be consumed inside or outside of the Store except as
3 provided in this Section.

4 2. No Store shall provide a Single-Use Polystyrene Container at the
5 check stand, cash register, point of sale, or any other location for
6 the purpose of transporting Prepared Food that will be eaten inside
7 or outside of the Store.

8 3. No Person shall distribute a Single-Use Plastic Container or a
9 Single-Use Polystyrene Container at any City facility, City-
10 managed concession, City-sponsored event, or City-permitted
11 event unless a Store on City property is also otherwise allowed to
12 in this Section.

13 B. Permitted Disposable Containers:

14 1. Stores on City property are allowed to distribute Single-Use
15 Containers to Customers for the purpose of transporting Prepared
16 Food that will be eaten inside or outside of the Store, subject to the
17 terms of this Section.

18 2. All Stores may distribute their remaining 2019 Single-Use
19 Container inventory.

20 3. Nothing in this Section prohibits Customers from using containers
21 of any type that they would otherwise be allowed to bring under
22 the Ordinances of the City of Portsmouth to the Store themselves
23 in lieu of using containers provided by the Store.

24 C. Exemptions:

25 1. The only Single-Use Plastic Containers that Stores on City
26 property are allowed to distribute are Single-Use Plastic
27 Compostable Containers if the Store provides customers the option
28 to dispose of the Single-Use Compostable Plastic Containers in a
29 specifically designated composting receptacle that is both on the
30 premise and its contents will be transported to a Composting
31 Facility to be composted.

1 **3.X06 DISPOSABLE STRAWS**

2 A. Prohibited Disposable Straws:

- 3 1. No Store on City property shall provide a Single-Use Plastic Straw
4 to a customer for the purpose of transferring a beverage from a cup
5 or container to the mouth of a person drinking the beverage on a
6 single occasion inside or outside of the Store, except as provided in
7 this Section.
- 8 2. No Person shall distribute a Single-Use Plastic Straw at any City
9 facility, City-managed concession, City-sponsored event, or City-
10 permitted event unless a Store on City property is also otherwise
11 allowed to in this Section.

12 B. Permitted Disposable Straws:

- 13 1. Stores on City property are allowed to distribute Single-Use Straws
14 to Customers for the purpose of transferring a beverage from a cup
15 or container to the mouth of a person drinking the beverage on a
16 single occasion inside or outside of the Store, subject to the terms
17 of this Section.
- 18 2. All Stores may distribute their remaining 2019 Single-Use Straw
19 inventory.
- 20 3. Nothing in this Section prohibits Customers from using straws of
21 any type that they bring to the Store themselves in lieu of using
22 containers provided by the Store.

23 C. Exemptions:

- 24 1. Stores on City property are only allowed to distribute Single-Use
25 Straws at the explicit request of the customer for the purpose of
26 transferring a beverage from a cup or container to the mouth of a
27 person drinking the beverage on a single occasion inside or outside
28 of the Store.
- 29 2. The only Single-Use Plastic Straws that Stores on City property are
30 allowed to distribute are Single-Use Plastic Compostable Straws if

1 the Store provides customers the option to dispose of the Single-
2 Use Compostable Plastic Straws in a specifically designated
3 composting receptacle that is both on the premise and its contents
4 will be transported to a Composting Facility to be composted.

5 **3.X07 PENALTIES AND REMEDIES**

6 In addition to any other penalty or remedy permissible by law for
7 violation of this Section, the following shall apply:

- 8 1. If the City determines that a violation of this Section has occurred,
9 he/she will issue a written warning notice to the Operator of a
10 Store on City property and the potential penalties that will apply
11 for future violations
- 12 2. Upon a second or subsequent infraction of this Section, the City is
13 authorized to issue citations to persons, firms, or corporations
14 violating this Section in accordance with the ordinances of the City
15 of Portsmouth. The amount of the fee that will accompany the
16 citation will be determined by the Fee Schedule Study Committee
17 of the City of Portsmouth.
- 18 3. The City Attorney is authorized to file any appropriate legal
19 proceedings, including but not limited to requests for injunctive
20 relief, necessary to prevent violation of this Section.

21 **SEVERABILITY**

22 Any portion of this ordinance that is found to be void shall be
23 unenforceable without invalidating the remainder of the ordinance.

24 **EFFECTIVE DATE**

25 This ordinance shall take effect on December 31, 2019.



THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION



Victoria F. Sheehan
Commissioner

William Cass, P.E.
Assistant Commissioner

July 8, 2019

The Honorable Jack Blalock, Mayor
City of Portsmouth
Municipal Complex
1 Junkins Ave
Portsmouth, NH 03801

Re: Type II Noise Abatement Program

Dear Mayor Blalock:

This letter is in response to your February 4, 2019 request that the City of Portsmouth be accepted into the NH Department of Transportation's Type II Noise Abatement Program. The Department has reviewed this request along with the information provided regarding the newly enacted Highway Noise Overlay District within the City Ordinances. The intent of this review was to determine if the development of this ordinance would prevent or reduce the likelihood of future highway traffic noise impacts adjacent to the various roadways operated by the Department within the limits of the City of Portsmouth.

The Department's review indicated that the City of Portsmouth has adequately demonstrated that the necessary requirements of the Department's Type II Noise Abatement Policy have been met. As such, the Department is pleased to inform you that the City of Portsmouth is now eligible to participate in the Department's Type II Program.

As is indicated in the Department's Noise Policy, the design and construction of Type II noise abatement is subject to available funds within the Department's Ten Year Transportation Improvement Plan (TYP). To date no Type II funding has been identified in the TYP.

Since the inception of the Department's Type II program, the City of Portsmouth is the first community to meet the eligibility requirements for participation in the Type II Noise Abatement Program. Given that the City of Portsmouth is the first community to meet the Type II eligibility requirements, the Department has not yet conducted a Type II community noise assessment.

The Department intends to conduct a pilot Type II community noise assessment to provide guidance on the needs associated with similar potential future efforts. We anticipate completion of this pilot study by the Fall of 2019, at which time all Type II eligible abatement measures will have been identified within the City of Portsmouth. Upon completion of this study the results will be provided to the City of Portsmouth.

Sincerely,

A handwritten signature in blue ink that reads "Victoria F. Sheehan".

Victoria F. Sheehan
Commissioner

VFS:jae

cc: Bill Cass (via e-mail)
Peter Stamnas (via e-mail)
Kevin Nyhan (via e-mail)
Jon Evans (via e-mail)