

**Regular City Council Meeting
August 7, 2018
Council Chambers
9:02 PM**

COUNCILORS PRESENT

Councilor Abbott
Councilor Bogan
Councilor Gray
Councilor Keans
Councilor Hamann
Councilor Lachapelle
Councilor Lauterborn
Councilor Torr
Councilor Walker
Councilor Varney
Mayor McCarley

OTHERS PRESENT

Blaine Cox, City Manager

COUNCILORS EXCUSED

Councilor Gates
Councilor Hutchinson

Minutes

1. Call to Order

Mayor McCarley called the Regular Meeting to order at 9:02 PM.

2. Opening Prayer

2.1 AMVET Riders

The Opening Prayer took place during the Public Hearing, which was held prior to the Regular City Council meeting.

3. Presentation of the Colors

3.1. AMVET Riders

The Presentation of the Colors/Pledge of Allegiance took place during

the Public Hearing, which was held prior to the Regular City Council meeting.

4. Roll Call

Kelly Walters, City Clerk, took a roll call. All City Council members were present except Councilors Gates and Hutchinson who had been excused.

5. Acceptance of Minutes

5.1 Special City Council Meeting June 19, 2018 (Budget Adoption), Revised Minutes *consideration for approval*

Councilor Lachapelle **MOVED** to **ACCEPT** the minutes of the June 19, 2018 meeting minutes. Councilor Bogan seconded the motion. Councilor Varney questioned the sequence of how the budget adoptions took place in the minutes. He said the minutes should reflect exactly how the sequence of events took place. Mayor McCarley stated that the vote to accept this set of minutes would be postponed.

5.2 Regular City Council Meeting, Revised Minutes: July 10, 2018 *consideration for approval*

Councilor Lachapelle **MOVED** to **ACCEPT** the minutes of the July 10, 2018 meeting. Councilor Walker seconded the motion. Councilor Lachapelle requested that the minutes reflect his attendance. Councilor Walker **MOVED** to **ACCEPT** the minutes as amended. Councilor Lachapelle seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

6. Communications from the City Manager

6.1 Employee of the Month Award

City Manager Cox stated that the Employee of the Month Award for Steve Trepanier, Recreation and Arena Department, has been postponed until the August Workshop.

6.2 City Manager's Report

Contracts and documents executed since last month:

Department of Public Works

- **Esri GIS Enterprise Software Contract**
- **F.A. Gray, Inc. – Painting Exterior of City Hall**
- **Ransom Consulting Services Agreement**
- **State of DHHS Lease Amendment**
- **Yvonne Street Survey**

Economic & Community Development

- **NSP Closeout Documents for CDFA and HUD**
- **FY 2018-2019 Non-CDBG Contract - COAST**
- **FY 2018-2019 Non-CDBG Contract – Cornerstone VNA**
- **JOB Loan Repayment Plan for Distinctive Forest Creations**
- **FY 2018-2019 Non-CDBG Contract – Strafford CAP**
- **FY 2018-2019 CDBG Request for Release of Funds**
- **FY 2018-2019 CDBG Contract – RHA Charles St. Project**
- **FY 2018-2019 CDBG Contract – SOS Recovery Center**
- **SAM.gov Entity Registration Authorization Letter**

Legal Department

- **CDBG Loan to Poulin Realty Acquisition, LLC**
- **Redemption of 131 and 131A Milton Road**

Planning

- **VHB – Transportation Master Plan Professional Services Agreement**

Standard Reports

- **City Council Request & Inquiry Report - none**
- **Monthly Overnight Travel Summary**
- **Permission & Permits Issued**
- **Personnel Action Report Summary**

7. Communications from the Mayor

7.1 Governor Sununu & NH Executive Council visit to Rochester

Mayor McCarley announced that the Ward One Rochester United Neighborhood Meeting at Tara Estates has been postponed until September 12, 2018, at 7 PM.

Mayor McCarley announced that the 8th Annual Gonic vs. Eastside Softball game is scheduled for August 12, 2018, starting at 10 AM at Riverside Park, Old Dover Road.

Mayor McCarley announced that the Governor's Council is scheduled to hold an Executive Board meeting in the Opera House. A full schedule of events had been previously provided to the City Council and local newspaper. Mayor McCarley added that she regretfully cannot attend the event and that Deputy Mayor Varney would welcome the Governor on her behalf.

7.2 Mayors' Letter to New Hampshire Lawmakers regarding Senate Bill 446 and Senate Bill 365

7.2.1 Governor Sununu Letter of Veto for Senate Bill 446 and Senate Bill 365

7.2.2 "Override the Vetoes" Document - *NH Timberland Owners Association, the Granite State Hydropower Association, Owners of the six independent biomass plants, and the [NH Sustainable Energy Association](#)*

Mayor McCarley attended a New Hampshire Municipal Association meeting at which a discussion ensued about two Senate Bills (SB 365 & SB 446) which were vetoed by the Governor. She referenced the backup material for this topic, which can be found in the August 7th packet materials. She briefly explained the impact the vetoes shall have on the six independent biomass power plants in the northern part of the state; however, it would have a negative impact on the local communities as well.

Mayor McCarley referenced a letter addressed to the NH Senate from the thirteen New Hampshire cities requesting an override of both Senate Bills (SB 365 & SB 446). If there are no objections from the City Council members the Mayor shall sign the letter as written. Councilor Gray abstained from the discussion and any vote to be taken. No objections were stated and the letter shall be sent.

8. Presentation of Petitions and Council Correspondence

8.1. Correspondence: Skate Park Letter

Mayor McCarley referenced a letter written by Brayden Grant requesting that the City construct a skate park. Council briefly discussed the matter.

Councilor Lauterborn suggested the matter be sent to the Recreation & Arena Commission. Councilor Keans asked if Red Alert Skate Park offers or would offer a place for this type of bike/skating activity. Councilor Gray recalled that the old skate park had been built with wood and when it fell into disrepair the Community Development Block Grant could not be used to renovate the project. Mayor McCarley said the idea would be sent to the Recreation & Arena Commission for review.

8.2. Petition: Hillsdale Park

Mayor McCarley referenced a petition submitted by the Hillsdale Road residents opposing the proposed development of a kayak/boat launch and parking lot area. Mayor McCarley clarified that the parking lot and kayak/boat launch is a Riverwalk Committee project and it is in the very early stages of planning. Councilor Keans suggested that the residents view a similar launch set up at the end of Rochester Road heading into Berwick, ME. This would give the residents an idea of what the Riverwalk Committee is seeking to construct. Councilor Gray recalled that there is an existing canoe launch on Pickering Road. Councilor Torr recalled that the boat launch could be constructed away from Hillsdale Road, further down the river where there are no residents to be bothered. Mayor McCarley asked that Councilor Walker inform the Riverwalk Committee of Councilor Torr's comments. She stated that the petition is to be kept on record until the Riverwalk Committee formulates a plan.

9. Nominations, Appointments, Resignations, and Elections

9.1. Resignation: Abigail Collins, Selectman, Ward 4

Councilor Walker **MOVED** to **ACCEPT** the resignation with regret. Councilor Lachapelle seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

10. Reports of Committees

10.1. Appointments Committee

Councilor Keans briefed the Council about the Committee's recommendation to re-appoint Janet Davis. Mayor McCarley nominate Janet Davis to be re-appointed to the Rochester Economic Development Commission with a term to expire on January 2, 2021. Councilor Lachapelle seconded the motion. Councilor Walker **MOVED** that nominations cease and that the Clerk

cast one ballot for Janet Davis. Councilor Lachapelle seconded the motion. The **MOTION CARRIED** by a unanimous voice vote. Ms. Davis has been reappointed the Rochester Economic Development Commission.

Councilor Keans said Molly Meulenbroek is the current Chair of the Historic District Commission. Her term is not yet expired, however her new term would expire on January 2, 2022. Mayor McCarley nominated Molly to be reappointed as a Regular Member to the Historic District Commission, with a term to expire on January 2, 2022. Councilor Lachapelle **MOVED** that nominations cease and that the Clerk cast one ballot for Ms. Meulenbroek. Councilor Lachapelle seconded the motion. The **MOTION CARRIED** by a unanimous voice vote. Ms. Meulenbroek has been reappointed to the Historic District Commission.

Councilor Keans briefed the Council about the Committee's recommendation to re-appoint Kevin Sullivan. Mayor McCarley nominated Kevin Sullivan to be appointed to the Conservation Commission Councilor Keans said Mr. Sullivan requested that the Commission have access to the online GIS system (including conservation sites) and one full hard-copy map in order to assist in their duties. The Commission also requested that the "rain gardens" be monitored and that the Department of Public Works checked on rain gardens on an annual basis. This is something the Commission would be happy to assist with as well. Councilor Gray pointed out that the GIS map would have a "layer" of the conservation information. This layer could be viewed or be sent to the background. Mayor McCarley nominated Kevin Sullivan to be reappointed as a member of the Conservation Commission with a term to expire on January 2, 2021. Councilor Lachapelle seconded the motion. Councilor Walker **MOVED** that nominations cease and that the Clerk cast one ballot for Mr. Sullivan. The **MOTION CARRIED** by a unanimous voice vote. Mr. Sullivan has been reappointed to the Conservation Commission.

Councilor Keans said that Troy Dillow has been an asset to the Economic Development Commission and is seeking reappointment. Mayor McCarley nominated Troy Dillow to be reappointed to the Rochester Economic Development Commission for a term to expire on January 2, 2021. Councilor Lachapelle seconded the motion. Councilor Walker **MOVED** that nominations cease and the Clerk cast one ballot for Mr. Dillow. Councilor Lachapelle seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

Mr. Dillow has been reappointed to the Rochester Economic Development Commission.

Councilor Keans said Elizabeth Tokin's is one of the newer members to the Arts and Culture Commission and her term has not yet expired; however, the Committee recommends that Ms. Tonkins-Agea be reappointed to the Arts and Culture Commission with a term to expire on ~~January 2, 2022~~ July 1, 2022. Mayor McCarley nominated Elizabeth Tonkins-Agea to be reappointed to serve on the Arts and Culture Commission with a term to expire on ~~January 2, 2022~~ July 1, 2022. Councilor Lachapelle seconded the motion. Councilor Walker **MOVED** that nominations cease and the Clerk cast one ballot for Ms. Tonkins-Agea. The **MOTION CARRIED** by a unanimous voice vote. Ms. Tonkins-Agea has been reappointed to the Arts and Culture Commission.

Councilor Keans said that Martha Wingate could not attend the Appointments Review Committee meeting; however, she has served on the Historic District Commission for many years. She is a great historian and serves the Committee well. Mayor McCarley nominated Martha Wingate to be reappointed to the Historic District Commission with a term to expire on January 2, 2021. Councilor Walker **MOVED** that nominations cease and the Clerk cast one ballot for Ms. Wingate. The **MOTION CARRIED** by a unanimous voice vote. Ms. Wingate has been reappointed to the Historic District Commission.

10.2. Codes & Ordinances Committee

10.2.1. Amendment to Chapter 22 of the General Ordinances of the City of Rochester Regarding Fire Department Organization *first reading, consideration for second reading and adoption*

Councilor Lachapelle explained that this Amendment had not been dealt with at the last Regular City Council meeting because a "marked-up" version had not been available. He **MOVED** to read the Amendment by title only for a first time. Councilor Bogan seconded the motion. The **MOTION CARRIED** by a unanimous voice vote. Mayor McCarley read the resolution by title only as follows:

See Addendum A for full Amendment.

Councilor Lachapelle **MOVED** to suspend the rules and read the Amendment by title only for a second time. Councilor Walker seconded the motion. The **MOTION CARRIED** by a unanimous voice vote. Mayor McCarley read the Amendment by title only for a second time. Councilor Lachapelle **MOVED** to **ADOPT** the amendment. Councilor Bogan seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

10.3. CTE Joint Building Committee

Councilor Varney informed the Council that the wrong set of minutes were included with the packet. The correct set of minutes shall be sent via email by tomorrow to all Council members. The correct set of minutes shall be added to the August 7, 2018 City Council packet as an Addendum and shall be posted online for the public to view.

Councilor Varney informed the Council that the next meeting would be held on August 8, 2018. He added that Superintendent Hopkins shall post to the School Department's website all of the Clerk of Works reports.

10.3 Public Safety

10.1.1 Committee Recommendation: To Deny the "Speed Limit" sign on Dry Hill Road. *Consideration for approval*

Councilor Walker **MOVED** to **DENY** the request for a speed limit sign to be erected on Dry Hill Road. Councilor Hamann seconded the request. The Council briefly discussed the matter. The **MOTION CARRIED** by a unanimous voice vote.

Councilor Gray said as a result of the fatal accident at the Tebbetts Road/Old Dover Road Intersection the Committee sent a letter to the State seeking an immediate review of that intersection for obvious safety concerns. Council briefly discussed the matter.

Councilor Keans requested that the Committee be provided with the last 3-5 years of accidents reports for that area. It may be time for a change in legislation relative to 'stop lines' and inching forward for safety purposes. Mayor McCarley agreed that maybe the letter could be drafted to include these safety concerns as well.

Peter Nourse, Director of City Services, stated that there shall be a Road Safety Audit conducted in that area, which was triggered by the recent fatality. The Council discussed the stop lines, which have been moved up to gain better site view. It seems that the problem has been linked to the speed of the traffic in that area. The Council discussed the large detour sign that has been placed on the side of the road, which could block the site view and cause a distraction. This matter has been sent to the next Public Safety Committee for further review.

Councilor Walker requested that the City Clerk ensure that a request for a Streetlight be added to the next available public safety committee agenda.

10.2 Tri-City Mayor's Task Force on Homelessness

Mayor McCarley stated that the Committee met a few weeks ago and discussed the idea of the Task Force Committee working with the Strafford Regional Planning Commission on what should be a final plan for the Task Force. The City of Somersworth is currently in opposition of that idea and because of that opposition the City of Dover is no longer in favor of the idea. Mayor McCarley suggested that the City of Rochester not support the decision either. Therefore, the funding request in place that has been pulled from the agenda for this evening.

The tri-city mayors shall meet later this week with the Strafford County Commissioners to address the fact that the homelessness issue is a county-wide issue. A discussion about possible solutions for a warming center is an item for discussion. This would allow the Task Force to keep its focus on homelessness rather than trying to resolve all the issues surrounding cold weather as well. The Mayor shall report back to the Task Force with information discussed with the Strafford County Commissioners.

11. Old Business

12. Consent Calendar

13. New Business

13.1 Resolution Authorizing the Department of Public Works (DPW) to Apply for a New Hampshire Department of Environmental Services (NHDES) Brownfields Cleanup Grant in the Amount of up to

\$200,000 in Connection with 10 and 16 Wallace Street in *first reading and consideration for adoption*

Councilor Lachapelle **MOVED** to read the resolution by title only for a first time. Councilor Walker seconded the motion. The **MOTION CARRIED** by a majority voice vote. Mayor McCarley read the resolution by title only as follows:

Resolution Authorizing the Department of Public Works (DPW) to apply for a New Hampshire Department of Environmental Services (NHDES) Brownfields Cleanup Grant in the Amount of up to \$200,000 in Connection with 10 and 16 Wallace Street

BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF ROCHESTER, AS FOLLOWS:

That DPW is hereby authorized to apply to NHDES for a Brownfields Cleanup Grant in an amount up to Two Hundred Thousand Dollars (\$200,000.00) to be used for remedial actions at the City-owned properties located at 10 Wallace Street and 16 Wallace Street.

Further, to the extent not otherwise provided for in this Resolution, the Finance Director is hereby authorized to identify, designate and/or establish such accounts and/or account numbers as necessary to implement the transactions contemplated by this Resolution.

Councilor Lachapelle **MOVED** to **ADOPT** the resolution. Councilor Walker seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

13.2 Resolution Accepting a Law Enforcement Opioid Abuse Reduction Initiative (OARI) Grant in the Amount of \$20,000.00 and Supplemental Appropriation in Connection Therewith *first reading, consideration for second reading and adoption*

Councilor Lachapelle **MOVED** to read the resolution by title only. Councilor Walker seconded the motion. The **MOTION CARRIED** by a unanimous voice vote. Mayor McCarley read the resolution by title only for a first time as follows:

Resolution Accepting a Law Enforcement Opioid Abuse Reduction Initiatives (OARI) Grant in the Amount of \$20,000.00 and Supplemental Appropriation in Connection Therewith

BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF ROCHESTER, AS FOLLOWS:

That the City Council hereby accepts a portion of a Law Enforcement OARI Grant in the amount of Twenty Thousand Dollars (\$20,000/00) derived from the grant applied for and received by Strafford County as part of ongoing operations related to Operation Granite Shield.

Further, the City Council approves a supplemental appropriation to the Police Department operating budget in the amount of Twenty Thousand Dollars (\$20,000/00) Dollars (\$20,000.00) with the entirety of the appropriate being derived from the above-mentioned grant.

Finally, to the extent not otherwise provided for in this Resolution, the Finance Director is hereby authorized to identify, designate and/or establish such accounts and/or account numbers as necessary to implement the transactions contemplated by this Resolution.

Councilor Lachapelle **MOVED** to suspend the rules and read the resolution by title only for a second time. Councilor Walker seconded the motion.

Councilor Lachapelle **MOVED** to **ADOPT** the resolution. Councilor Walker seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

13.3 Resolution Accepting a Highway Safety Department Sustained Traffic Enforcement Patrol (STEP) Grant in the amount of \$2,900.22 and Supplemental Appropriation in Connection Therewith *first reading, consideration for second reading and adoption*

Councilor Lachapelle **MOVED** to read the resolution by title only for a first time. Councilor Walker seconded the motion. The **MOTION CARRIED** by a unanimous voice vote. Mayor McCarley read the resolution by title only for a first time as follows:

Resolution Accepting a Highway Safety Department Sustained Traffic Enforcement Patrol (STEP) Grant in the Amount of \$2,900.22 and Supplemental Appropriation in Connection Therewith

BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF ROCHESTER, AS FOLLOWS:

That the City Council hereby accepts a Highway Safety Department STEP Grant in the amount of Two Thousand Nine Hundred and 22/100 Dollars (\$2,900.22).

Further, the City Council approves a supplemental appropriation to the Police Department operating budget in the amount of Two Thousand Nine Hundred and 22/100 Dollars (\$2,900.22) with the entirety of the appropriate being derived from the above-mentioned grant.

Finally, to the extent not otherwise provided for in this Resolution, the Finance Director is hereby authorized to identify, designate and/or establish such accounts and/or account numbers as necessary to implement the transactions contemplated by this Resolution.

Councilor Lachapelle **MOVED** to suspend the rules and to read the resolution by title only for a second time. Councilor Walker seconded the motion. The **MOTION CARRIED** by a majority voice vote. Mayor McCarley read the resolution by title only for a second time.

Councilor Lachapelle **MOVED** to **ADOPT** the resolution. Councilor Walker seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

13.4 Resolution Establishing Polling Places and Times for the September 11, 2018 State Primary Election *first reading and consideration for adoption*

Councilor Lachapelle **MOVED** to read the resolution in its entirety for a first time. Councilor Bogan seconded the motion. The **MOTION CARRIED** by a unanimous voice vote. Mayor McCarley read the entire resolution as follows:

Resolution Establishing Polling Places and Times for the September 11, 2018 State Primary Election

BE IT RESOLVED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF ROCHESTER:

That the following polling places are hereby established for the City of Rochester for the upcoming September 11, 2018 State Primary Election.

- WARD 1: East Rochester Elementary School**
773 Portland Street, East Rochester

- WARD 2: St. Mary's Parish Center**
71 Lowell Street, Rochester

- WARD 3: Gonic Elementary School**
10 Railroad Avenue, Rochester

- WARD 4: McClelland Elementary School**
59 Brock Street, Rochester

- WARD 5: Rochester Community Center**
150 Wakefield Street/Community Way, Rochester
Located on the Chestnut Hill Road Side of Building

- WARD 6: Elks Lodge #1393**
295 Columbus Avenue, Rochester

Further, that in accordance with RSA 659:4, and Section 47 of the City Charter – All polling places shall be open from 8:00 A.M. to 7:00 P.M., on said Election Day.

Councilor Lachapelle **MOVED** to **ADOPT** the resolution. Councilor Walker seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

13.5 Amended and Restated Development Agreement Between the City of Rochester, New Hampshire and Farmington Associates Properties, LLC and Farmington Associates Properties Ground Tenant, LLC (Waterstone Phase II Development Agreement)
Motion to Authorize City Manager to Enter into Development Agreement (See Addendum B)

13.5.1 GRDD TIF Phase II Analysis

Councilor Lachapelle **MOVED** to authorize the City Manager to enter into a development agreement. Councilor Walker seconded the motion. Mayor

McCarley informed the Council that this is the agreement with Waterstone, which has been under negotiations with the City for some time.

City Manager Cox provided the following updates:

- This amended development agreement pertains to Waterstone Phase II.
- The existing Agreement allowed for up to \$5,000,000 in TIF bonding for public infrastructure.
- The City Council authorized the City Manager and City Attorney to negotiate an amended development agreement that included up to \$7,430,000 in TIF Bonding.
- This authorization allowed the application of TIF increment from the entire Granite Ridge Development District and excluded the \$1,200,000 needed for a sewer lift station upgrade. (*The sewer lift station is to be funded by the Sewer Fund. The intent is to re-fund the Sewer Fund once the TIF Bonds are paid off.*)
- The \$7,430,000 in public infrastructure costs are estimated as shown on Exhibit C. (These are estimated amounts which equals \$7,430,000; which is listed in the agreement as the “not” to exceed figure.)
- There is language included “...in an event that Waterstone ceases operations, with respect to the project and/or ceases operations prior to the completion of the project before the satisfaction of the TIF Bond, Waterstone shall, prior to the next TIF Bond payment, pay to the City all such amounts necessary to retire the TIF Bonds...”
- “...*Waterstone will guarantee any payments due on the TIF Bond(s)... in the event that the tax increment financing taxes...are insufficient to satisfy payments due...*”
- There is a Financial Analysis included in the agreement provided by the Finance Department.

Councilor Varney said the map to be found on page 189 of the City Council packet shows what the City is responsible for: the district park, the district parking lot, and the access road to these locations. He requested that bids for these items be separated and brought back to the City Council as soon as possible. He would like to view the costs separately.

Councilor Varney clarified for the public that the City is not giving the developer anything; however, the developer is paying for this with the investment of the TIF program.

Councilor Walker requested a roll call vote. Councilor Bogan seconded the motion. Mayor McCarley called for the motion to accept the agreement. The **MOTION CARRIED** by a roll call vote of 10 to 1. Councilors Keans, Lauterborn, Walker, Lachapelle, Gray, Abbott, Hamann, Bogan, Varney, and Mayor McCarley voted in favor the motion. Councilor Torr voted against the motion.

13.6 Resolution Authorizing a Grant to SOS Recovery in the amount of \$25,000.00 *first reading, consideration for second reading and adoption*

Councilor Lachapelle **MOVED** to read the resolution by title only for a first time. Councilor Bogan seconded the motion. The **MOTION CARRIED** by a unanimous voice vote. Mayor McCarley read the resolution by title only for a first time as follows:

Resolution Authorizing a Grant to SOS Recovery in the amount of \$25,000.00

BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF ROCHESTER, AS FOLLOWS:

That the City Council approves a grant to SOS Recovery in the amount of Twenty Five Thousand Dollars (\$25,000.00) to be used in connection with rehabilitation and counseling services provided by SOS Recovery within the City of Rochester.

Further, to the extent not otherwise provided for in this Resolution, the Finance Director is hereby authorized to identify, designate and/or establish such accounts and/or account numbers as necessary to implement the transactions contemplated by this Resolution.

Councilor Lachapelle **MOVED** to suspend the rules and read the resolution for the second time by title only. Councilor Walker seconded the motion. The **MOTION CARRIED** by a majority voice vote. Mayor McCarley read the resolution by title only for a second time.

Councilor Lachapelle **MOVED** to **ADOPT** the resolution. Councilor Bogan seconded the motion. City Manager Cox stated that the funding source is being recommended to be General Overhead Contingency. Councilor Walker said this item was taken out of the proposed FY 19 budget and questioned why it is on this evening's agenda. Mayor McCarley explained that the funding (\$75,000) for the Frisbie Memorial Hospital Recovery Center had been removed from the FY 19 proposed budget because the anticipation of the closing of the Recovery Center, which occurred on June 30, 2018. As a result of the Recovery Center being closed, the SOS Recovery Community Organization has offered its support for those previously seeking assistance from the Frisbie Memorial Hospital Recovery Center. It was noted that the amount of \$75,000 is still being requested; however, the Mayor felt that \$25,000 of support had been more realistic expectation to assist in their efforts.

Councilor Lauterborn questioned how this Resolution had been added to the agenda and how they arrived at the amount of \$25,000. She recalled that Frisbie Memorial Hospital Recover Center had requested an amount of \$75,000; however, SOS had originally requested \$14,000. Mayor McCarley replied that she had placed the resolution on the agenda. She added that since the Frisbie Memorial Hospital Recovery Center has been closed that SOS has been serving more and more residents seeking assistance. She said \$25,000 seems to be a more reasonable amount in order to show support for their efforts. Councilor Walker **MOVED** to send the funding request to the Finance Committee for further review. Councilor Torr seconded the motion. The Council discussed the matter. The **MOTION CARRIED** by an 8 to 3 show-of-hands vote.

13.7 Discussion: Fairgrounds Issue

Mayor McCarley said the City has been working with the New Board Members of the Fair Association in order to bring the facility into compliance with Code standards. There has been an understanding between the New Board and the City as to what is left to be done. There had been an outstanding balance due from the Fair Association to the City which has now been paid in full.

The City Manager recently sent a letter to the Fair Association requesting

that a pre-payment be made for anticipated cost associated with all Police & Fire detail. The City received a letter back from the Fair Association requesting to allow the Police & Fire detail to be paid after the Fair had closed this year in order to have enough funding to pay the bill. The City Council debated the matter. Councilor Walker **MOVED** that the Fair Association pay the bill prior to opening day of the Fair. Councilor Torr seconded the motion. The Council debated the matter further. The **MOTION FAILED** by a 3 to 8 show-of-hands vote. Councilor Varney **MOVED** that the City Manager meet with the Fair Association to discuss the business plan and that the City Manager report back to the Council with a recommendation for payment. Councilor Lachapelle seconded the motion. The **MOTION CARRIED** by a unanimous voice vote. It was determined that this item would be added to a Special City Council meeting directly following the August 21, 2018 Workshop.

14. Non-Meeting/Non-Public Session

15. Other

Councilor Torr stated that the Tennis Court Project had been approved in May 2018 and so far there has been no work done on the project. He noted that it may be time to send this project out to bid one more time.

16. Adjournment

Councilor Lachapelle **MOVED** to **ADJOURN** the Regular City Council Meeting at 10:28 PM. Councilor Bogan seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

Respectfully submitted,

Kelly Walters, CMC
City Clerk

**Amendment to Chapter 22 of the General Ordinances of the City of Rochester
Regarding Fire Department Organization**

THE CITY OF ROCHESTER ORDAINS:

That Chapter 22 of the General Ordinances of the City of Rochester and currently before the Rochester City Council, be amended as follows (deletions struck out and additions in italics):

CHAPTER 22

FIRE DEPARTMENT ORGANIZATION

SECTION ANALYSIS

~~22.1 Board of Firewards Established~~

~~22.2-1~~ Appointment and Requirements of the Fire Chief

~~22.3 Organization of Companies~~

~~22.4 Rules and Regulations of Fire Department~~

~~22.5-2~~ Rank of Assistant Chief Transfer of Authority in the absence of the Fire Chief

~~22.6 Rank of Deputy Chief or Fire Marshal in Charge~~

~~22.7 Captain in Charge~~

~~22.8 Hose and Ladder Company Captains~~

~~22.9-3~~ Equipment and Apparatus

~~22.10 Conflict of Interest~~

~~22.11 Payrolls~~

~~22.12 Penalty Clause~~

22.1 Board of Firewards Established.

~~The Chief of the Department, Assistant Fire Chief, Deputy Chief and the Fire Marshal shall constitute the Board of Firewards, and they shall have such powers and duties as are granted to the Firewards by Chapter 154, as amended, of the New Hampshire Revised Statutes Annotated.~~

22.12 Appointment and Requirements of the Fire Chief.

Upon appointment, the Fire Chief shall within six (6) months establish residence within the City's boundaries. The Fire Chief shall work under the direct supervision of the City Manager in accordance with the provisions of Section 18 of the Rochester City Charter. The Fire Chief shall manage, consult with and advise the City Manager on all matters pertaining to the equipment and control of the Fire Department. *Subject to the approval of the City Manager, the Fire Chief shall make rules and regulations for the internal operation of the Fire Department as he/she shall deem necessary and shall keep the same posted in the Fire Station and other buildings of the Department.*

22.3 Organization of Companies.

~~The call firefighters shall be organized into the following companies: Engine 1, Engine 2, Engine 3, Engine 4, Engine 5 and Ladder 1.~~

22.4 Rules and Regulations of Fire Department.

~~Subject to the approval of the City Manager, the Fire Chief shall make rules and regulations for the internal operation of the Fire Department as he/she shall deem necessary and shall keep the same posted in the engine house and other buildings of the department.~~

22.5-2 Rank of Assistant Chief. Transfer of Authority in the Absence of the Fire Chief.

The Assistant Chief shall be senior in rank to the Deputy Chief and Fire Marshal and in the absence of the Chief shall perform all the duties and have the powers of the Chief. ~~The rank of Assistant Chief shall be appointed by the Fire Chief. In the absence of the Fire Chief and Assistant Fire Chief, the Fire Chief shall designate an Acting Chief who shall perform all the duties and accept all the responsibilities of the Fire Chief per RSA 154:5 and 154:7 until such time as the Fire Chief or Assistant Fire Chief returns and assume his/her duties.~~

6/6/06

22.6 Deputy Chief and Fire Marshal in Charge.

~~In the absence of the Fire Chief and Assistant Fire Chief, the Deputy Chief or Fire Marshal shall perform all the duties and have all the powers of the Chief.~~

22.7 Captain in Charge.

~~In the absence of the Chief, Assistant Chief, Deputy Chief and Fire Marshal, the ranking Captain shall perform all the duties and have all the powers of Chief.~~

22.8 Hose and Ladder Company Captains. [1]

~~Each Call hose or ladder company shall have one (1) member assigned as the Company Captain. All Company Captains shall be appointed by the Fire Chief~~

22.9-3 Equipment and Apparatus.

~~No hose or ladder equipment or any other fire apparatus shall be taken to a fire, emergency or other business outside of the City without the permission of the Fire Chief or his designee. The Fire Chief or his/her designee shall be notified by dispatch whenever an apparatus responds to an incident outside of the City.~~ The Chief shall notify the City Manager whenever practical and convenient when an apparatus is to be outside the City for extended periods or other circumstances determined by the Chief

The effective date of these amendments shall be upon passage.

22.10 Conflict of Interest. [1]

~~No member of the Fire Department shall hold the office of Chief of Police, Deputy Chief of Police, Sergeant or regular Police Officer in the City.~~

22.11 Payrolls. [1]

~~The secretary of the department shall make up the call force payroll semi-annually in June and December and turn into the Fire Chief for approval and after the action of the Fire Chief payments thereon shall be made immediately after.~~

22.12 Penalty. [1]

~~Any person failing to comply with a lawful order of the Fire Chief or his/her designee shall be fined not more than \$100.00 for each offense and each 24 hours of maintenance of prohibited conditions shall constitute a separate offense.~~

AMENDED AND RESTATED DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF ROCHESTER, NEW HAMPSHIRE
AND
FARMINGTON ASSOCIATES PROPERTIES, LLC
AND
FARMINGTON ASSOCIATES PROPERTIES GROUND TENANT, LLC

THIS AMENDED AND RESTATED AGREEMENT, made and entered into this ____ day of _____, 2018, by and between the **CITY OF ROCHESTER**, a New Hampshire municipal corporation (hereinafter referred to as the "City"), with a place of business, and mailing address, at 31 Wakefield Street, Rochester, New Hampshire 03867, **FARMINGTON ASSOCIATES PROPERTIES, LLC** and **FARMINGTON ASSOCIATES PROPERTIES GROUND TENANT, LLC**, with a place of business c/o Waterstone Properties Group, Inc., with a mailing address of 322 Reservoir Street, Needham, Massachusetts 02494 (hereinafter individually "Waterstone"), (the entities referred to in this paragraph are sometimes hereinafter collectively referred to as the "Parties"), as follows:

RECITALS:

WHEREAS, on December 3, 2015, Farmington Associates Properties, LLC and Waterstone Properties Group, Inc. and the City entered into a certain Development Agreement as amended by a First Amendment to Development Agreement dated March, 2016 and by an Addendum dated November 15, 2016 (the "**Development Agreement**") relating to the development of certain property located at the Project Premises, as shown on Exhibit A. Farmington Associates Properties, LLC has since ground leased the Project Premises to Farmington Associates Properties Ground Tenant, LLC. Since the time of execution of the Development Agreement, Waterstone has determined to re-design the development plan for the Project Premises, as provided herein. This re-design of the Project Premises necessitates a revision of the Development Agreement, all as provided herein.

WHEREAS, Waterstone received site plan approval on or around December 15, 2015, from the City of Rochester Planning Board (hereinafter the "Planning Board"), and additional site plan approvals on or around December 31, 2017 and anticipates the construction of a commercial development buildings consisting of approximately one hundred and ten thousand square feet (110,000 sq. ft.) of commercial and retail space, a district public recreational park and a district

public parking lot with appurtenant roadways, parking lots, drainage structures and other on-site and off-site public and private infrastructure improvements, for office, retail entertainment, and other permitted uses (hereinafter the "**Project**"), the same to be located on land currently owned and/or under contract to be owned by Waterstone, situated on NH Route 11 in Rochester, New Hampshire (the "**Project Premises**"); all as more particularly shown and/or described in/on the plans, documents, and representations made by Waterstone, in connection with its Project application and presentations made to the Planning Board in conjunction with the obtaining of Waterstone's aforementioned site plan review approvals; and

WHEREAS, as a result of such approvals for the Project by the Planning Board, the parties require the amendment and restatement of the Development Agreement, to include provisions regarding funding for 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**"), (collectively the Off-Site Public Infrastructure Improvements and the On-Site Public Improvements are hereinafter referred to as the "**Public Infrastructure Improvements**"), as well as provisions relating to the timing of development, the coordination of such matters, and other issues of needed and/or necessary cooperation and coordination between the City and Waterstone, and/or with other governmental agencies and/or private entities, such as the State and/or federal government departments or agencies and/or private utilities and the like, in order for Waterstone to develop the Project as approved by the Planning Board; and

WHEREAS, the City is desirous of having Waterstone develop the Project in Rochester, and to have Waterstone's prospective Project tenants locate in Rochester, as it will result in the creation of approximately 300 construction jobs and approximately 200 permanent full/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 Waterstone 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 New Hampshire, Department of Transportation (hereinafter "**NHDOT**") and/or other governmental agencies having jurisdiction over the Project, or aspects thereof; and

WHEREAS, in conjunction with the Planning Board site plan review approval of the Project, various traffic studies, including the 2015 traffic study prepared by Stephen G. Pernaw on behalf of Waterstone and an updated traffic study also prepared by Stephen G. Pernaw on behalf of Waterstone, were used to evaluate and assess the traffic impacts and access requirements associated with the Project, and the results of such traffic studies have been reviewed by the City's and/or its traffic consultants/representatives, and NH DOT, and have further been made available to and reviewed by the City Planning Department and the Planning Board; and

WHEREAS, it is the intent of the City and Waterstone to execute this Development 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 and the Planning Board's site plan review approval for the Project, as well as establishing, and providing for, a viable financing mechanism for such Public Infrastructure Improvements, 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 and/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 and implementation of the necessary and/or required financing mechanisms so as to permit the simultaneous, or near simultaneous, construction of the Project and of the Public Infrastructure Improvements contemplated/required by the Project's approval in order to permit Waterstone to occupy the Project in a timely manner; and if necessary to allow Waterstone to assist the City with Public Infrastructure Improvements, at the City's or other available funding mechanisms and/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 to the City or such other available mechanism and/or entity; and

WHEREAS, the City, by a resolution of the Mayor and City Council (hereinafter, the "City Council") on June 17, 2014, has established the so-called Granite Ridge Development District, a New Hampshire Chapter 162-K tax increment financing district, and adopted the "**Granite Ridge Development District: Tax Increment Development Program & Financing Plan**";

and

WHEREAS, given the establishment of the Granite Ridge Development District and the adoption of the "Granite Ridge Development District: Tax Increment Development Program & Financing Plan" as amended, Waterstone has agreed to undertake the Project and to guarantee the payment of a so-called tax increment financing bond or bonds (the "TIF Bond"), to be issued by the City with respect to the Public Infrastructure Improvements associated with the Project, in a principal amount of no more than \$7,430,000.00 as more particularly set forth and detailed herein;

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 Development Agreement includes the 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 and/or contemplated on **Exhibit B** hereto, whether such improvements are to be constructed: (a) on City owned/controlled property not part of the Project Premises; or (b) on-site at the Project Premises or (c) on neighboring premises over which Waterstone has easement access rights, but which involve an improvement that is anticipated and intended to be transferred to the City (by deed, easement and/or other legal conveyance instrument) upon the completion and acceptance by the Rochester City Council of such transfer document(s), or over which the City will have non-exclusive access rights with Waterstone (such as shared access or parking areas). The term “**On-Site Public Infrastructure Improvement(s)**” as it is used in this Development Agreement is intended to refer specifically to public infrastructure improvement(s) being constructed on the Project Premises, until such portion of the Project Premises on which the public infrastructure improvement(s) being constructed is completed, and is transferred to, and accepted by, the City as contemplated in the preceding sentence.

1.2 The construction of Public Infrastructure Improvements referred to in this Development Agreement include, but are not limited to, the following, whether such costs are incurred prior to, or after, the issuance of the TIF Bond(s):

(a) Public Infrastructure Improvements Design/Construction Responsibilities:

- i. All design and engineering costs associated with the Public Infrastructure Improvements, including the Rt. 11 improvements to meet NHDOT specifications (cross-sections at certain intervals, etc.);
- ii. Preparation of a NHDES sewer connection permit with associated cross sections as needed, (as well as any state permit required for extension of City services);
- iii. Design of any improvements to the water system required to increase pressure as needed (note that this excludes looping a water line if needed);
- iv. Design of any improvements to the sewage pump station required;
- v. A contribution to the NHDES Alteration of Terrain (“AOT”) permit, proportional to the City’s disturbance;
- vi. A contribution to the NPDES General Construction Plan proportional to the City’s disturbance;

- vi. Engineer's preparation of bid ready, construction drawings and specifications, to the extent required for competitive construction bidding;
- vii. Design engineer's limited, part time construction oversight and so-called "stamp of approval" at project completion of the work within the proposed right of way that will be acquired by the City (the "City ROW"), beyond City staff involvement;
- viii. Engineer's assistance and advice on any unforeseen change orders, and the like;
- ix. Cost of site preparation and physical roadway improvements within the proposed City ROW;
- x. Cost of water and sewer main lines within the proposed City ROW – stubs to property lines will be the responsibility of the developer per City Ordinance;
- xi. Cost of underground electric improvements within the ROW;
- xii. Cost of landscaping within the ROW;
- xiii. Cost of lighting within the ROW;
- xiv. Cost of COAST bus/trolley stop construction;
- xv. Cost of site preparation, accessibility (pedestrian and vehicular) and finishing of the municipal parking lot;
- xvi. Cost of site preparation, accessibility (pedestrian and vehicular) and finishing of the public recreation park;
- xvii. Cost of creating and improving walking and bike trails;
- xviii. A contribution to the overall drainage improvements that is proportional to the City's disturbance;
- ixx. Cost of physical improvements along Route 11;
- xx. Cost of water and/or sewer service improvements required to service the Granite Ridge Marketplace Development area.

1.3 The Parties hereto understand and agree that the total amount of the TIF Bond(s) for Public Infrastructure Improvements (as defined below herein), shall not exceed Seven Million Four Hundred and Thirty Thousand (\$7,430,000.00). To the extent that the cost of Public Infrastructure Improvements (as defined below herein) exceeds Seven Million Four Hundred and Thirty Thousand (\$7,430,000.00) Dollars, Waterstone shall be solely responsible for all said excess costs and/or expenses except as otherwise specifically provided for in this Development Agreement.

The Parties further agree that in interpreting this Development Agreement the Parties, and any other reviewing authority, including a court, or courts, of competent jurisdiction, shall apply the provisions of this paragraph as the overriding principle reflecting the extent of the City's obligation to provide financing for the cost of Public Infrastructure Improvements for the Project provided for in this Development Agreement

2. Waterstone Obligations.

2.1 Waterstone will perform, or cause to be performed, all of the building design, engineering and construction to be located on the Project Premises (with the exception of 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 approval and this Development Agreement for use in connection with the Off-Site Public Infrastructure Improvements. Except as expressly indicated otherwise in this Development Agreement, Waterstone will determine the design and specifications of the buildings and appurtenances. All building design, engineering and construction by Waterstone shall be done in accordance with all applicable laws and regulations, federal, state and local governing including, but not limited to, compliance with all building codes, planning ordinances, regulations and zoning ordinances, regulations and any other applicable legal requirements of the City.

2.2 The buildings to be constructed by Waterstone in connection with the Project should have an estimated value when completed of approximately Ten Million Four Hundred and Fifty Thousand (\$10,450,000), at a minimum, and shall include buildings not to exceed an aggregate size/area of approximately 110,000 sq. ft. Waterstone shall provide the City with all design plans for the buildings and on-site Project Premises utilities and any existing surveys or plans it currently has for the buildings and any other appurtenances related to the remainder of the Project Premises. The City, however, shall have no design control over the design plans for the buildings and on-site Project Premises utilities, except to the extent provided for in Section 2.1 above.

2.3 It is anticipated that construction of the building(s) to be located on the Project Premises shall be substantially completed on or about June, 2021 , subject to the provisions of Section 5.2 hereof. In the event that economic conditions dictate either the phasing of the Project by Waterstone or an extension of the development schedule set forth herein (see **Exhibit C** attached hereto), Waterstone may seek, and the City shall not unreasonably decline to grant, extensions of time for substantial construction completion for a period of up to, but not to exceed 48 months. Provided, however, that, any such delay shall not, in any way, delay and/or abrogate, to any extent, Waterstone's obligations with respect to the payment of the TIF Bond(s), including, but not limited to, the obligations provided for in Section 2.14 hereof.

2.4 Waterstone agrees to use commercially reasonable efforts to accomplish its design, engineering and construction obligations under this Development Agreement in accordance with the Development Schedule attached hereto as **Exhibit C** (and as defined in Section 5.1 hereof), provided, however, time for the performance thereof shall be extended by a period equal to an act of God, war, civil commotion, fire or other casualty, labor difficulties, shortages of energy, labor, materials or equipment, government regulations, or other causes beyond Waterstone's control whether such time be designated by a fixed date, a fixed time (as further defined in Section 5.2 hereof), or a reasonable time, provided, further, in the event that the City has not completed the On-Site Public Infrastructure Improvements (as defined in Section 1 herein) by the conclusion of the time period set forth in **Exhibit C**, Waterstone's time for performance shall be extended for a reasonable period of time taking into account winter conditions and the difficulty of commencing, prosecution and completing construction during winter months (if applicable).

2.5 Waterstone shall undertake, and shall, subject to applicable government approvals and regulations, be solely responsible for, the design, development, permitting and construction of all required Non-Public On-Site Improvements and construction of all service connections to all Public Infrastructure Improvements (as well as the payment of all connection fees related thereto), which the City will bring to the property line of, or other appropriate and/or agreed upon areas within, the Project Premises, at locations and elevations agreed to by the Parties.

2.6 Except for the financing contemplated herein, Waterstone shall be responsible for securing any other financing required for the Project. To the extent that any re-financing shall involve a mortgage, lien and/or another encumbrance(s) on the Project Premises, or any portion or product thereof, which contains terms and/or conditions which are not generally commercially utilized (such as, but not limited to, a contemporaneous pledge of rents as collected), any such financing agreement(s) shall, prior to its/their execution, be on terms and conditions reasonably acceptable by the City and shall be approved/or rejected in writing by the City within five (5) business days of the City's receipt of the same, provided that if no action is taken on the request during such period the non-action shall be deemed to be an approval. Any financing agreement(s) shall specifically provide that such mortgage, lien and/or similar encumbrance(s) shall be subject, but not subordinate, to the provisions of this Development Agreement, and the holder of such security shall execute an acknowledgment of such fact in a recordable writing approved in advance by the City.

2.7 Waterstone and its consultants, contractors, agents, and representatives shall coordinate the design of On-site Infrastructure Improvements for the Project by Waterstone with the Public Infrastructure Improvements as undertaken by the City. 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 (in an AutoCAD format reasonably acceptable to the City) copies.

2.8 Waterstone's obligations hereunder are subject to the following condition:

- a. The City performing its obligations in accordance with the terms of this Development Agreement, including, but not limited to, those set forth in Article 3, below.

2.9 All documents, except financial documents not related to the Project Premises, of Waterstone relating to the design, engineering and construction of the Project shall be made available at the offices of Waterstone, for the review and copying by the City upon reasonable request. In the case where Waterstone has committed an Event of Default as defined in 7.2 of this Development Agreement, the City shall be entitled to access Waterstone's financial documents in the manner provided for in the preceding sentence.

2.10 Waterstone shall use commercially reasonable efforts to create, by itself, and/or in conjunction with its prospective tenants, cause to be created, approximately 200 full/part time jobs at the Project Premises. Waterstone shall annually report to the City and the Department of Business and Economic Development Affairs as to the number of employees utilizing the Project Premises and providing a general description of the job classifications, so long as the TIF Bond(s), related to the Project Premises, remain(s) outstanding. Due to the nature of leasing, the City acknowledges that Waterstone cannot require any tenants to maintain a minimum number of employees at any given time, as Waterstone does not control the hiring practices of such tenants, and that the job creation is dependent upon leases being executed.

2.11 Subject to the provisions of Section 5.2 hereof, in the event Waterstone ceases operations with respect to the Project (which shall be defined as "performing no work on the Project for a period of 180 consecutive days"), and/or ceases operations prior to completion of the Project, and/or ceases operations at the Project Premises (which shall be defined as: not having substantially completed the construction of the Project"), before the satisfaction of the TIF Bond(s) (as defined in Section 2.12 below), Waterstone shall, prior to the next TIF Bond payment (but in no event less than within two hundred seventy (270) days thereof: pay to the City all such amounts as are necessary to pay-off and retire the TIF Bond(s): and (ii) pay to the City such amounts as are necessary to pay-off and retire any un-bonded payment obligations incurred by the City in connection with the Off-Site Public Infrastructure Improvements.

2.12 As used in this Development Agreement the term "**TIF Bond(s)**" shall mean a bond(s) and/or other borrowing and or funding vehicle utilized by the City (whether acting directly on its own, or through the Granite Ridge TIF District), in a total amount not to exceed approximately Seven Million Four Hundred and Thirty Thousand (\$7,430,000.00) Dollars, the proceeds of which shall be used for the purpose of paying City costs and/or expenses associated

with the Public Infrastructure Improvements, and which is/are intended by the Parties to this Development Agreement to be repaid to the City based on a repayment and amortization schedule of ten (10) years. The repayment of interest and principal on the TIF Bonds shall be made from both the tax increment financing taxes on the Project Premises and tax increment financing taxes on the entire Granite Ridge Development District, including the cumulative net surplus of the Granite Ridge Development District, in accordance with the TIF Plan as authorized and governed by the provisions of RSA Chapter 162-K (RSA Chapter 162-K). For the purposes of this Development Agreement the term “TIF Bond(s)” shall include expenses paid at any time by the City (or such expenses which the City becomes obligated to pay), with respect to the Public Improvements, whether bonded or not. The City will notify and keep Waterstone informed as to the timing of the bond financing.

2.13 Waterstone and the City acknowledge and agree that the viability of this Development Agreement and the Project are dependent upon the construction of the Public Infrastructure Improvements provided for in Section 1.2 above, and the financing and maintenance of such improvements through the utilization of a tax increment financing (“TIF”) mechanism for the so-called Granite Ridge Development District. The TIF is authorized and regulated by the provisions of Chapter 162-K of the New Hampshire Revised Statutes Annotated, as the “Granite Ridge Development District: Tax Increment Development Program & Financing Plan” (the “**TIF Plan**”), which was adopted by the City on June 17, 2014. It is the expectation and intent of the Parties that a TIF mechanism, implemented in accordance with the provisions of NH RSA Chapter 162-K, shall be placed, from the issuance of the initial TIF Bond(s) until the retirement of such TIF Bond(s) as a result of such bonds having been paid in full. In consideration of the foregoing, and the fact that this Development Agreement is designed and intended to enable Waterstone to construct, and ultimately operate, a substantial retail development on the Project Premises, Waterstone agrees as follows:

- a. Waterstone shall, in a timely manner, pay all real property taxes assessed on the Project Premises while all or any portion of the thereof is owned by Waterstone or any related and/or associated entity;
- b. Waterstone shall enter into a Guaranty Agreement (the “Guaranty Agreement”) in favor of the City, in the form set forth in **Exhibit D** hereto, pursuant to which Waterstone will guaranty any payments due on the TIF Bond(s), and certain Maintenance Costs (as defined in Section 2.13 (c) below), to the City, in the event that the tax increment financing taxes contemplated in Section 2.12 above are insufficient to satisfy the payments due with respect to the TIF Bond(s) from the City, and shall further agree to amend the existing Escrow Agreement (the “Escrow Agreement”) with the City and Waterstone Rochester, LLC (an affiliate of Farmington Associates Properties, LLC) to allow the City to access those funds. The

amended Escrow Agreement shall provide security for the Guaranty to the City provided for herein, as well as for Waterstone's obligations made in the Development Agreement. The Guaranty Agreement and the Escrow Agreement shall contain commercially reasonable terms and otherwise be in form and substance reasonably acceptable to the City and to Waterstone;

- c. Upon the completion of the Public Infrastructure Improvements, Waterstone agrees to guaranty annual maintenance costs contained in the annual Granite Ridge Development District TIF budget, to the extent, but only to the extent, that such costs exceed the total tax increment revenues received by the TIF District from the RSA Chapter 162-K tax increment for such budget year, plus any designated TIF District budget reserves available to fund such excess costs (the "**Maintenance Costs**");
- d. The parties agree that in order to implement the Guaranty Agreement and the amendment of the existing Escrow Agreement provided for in Sections 2.14(b) and (c), the Guaranty Agreement and the amended Escrow Agreement provided for in Section 2.14 (b) shall come into existence (by the same having been fully executed), prior to the issuance of the initial TIF Bond(s), and in no event later than December 31, 2018 (see Section 3.1 below), and both such agreements shall remain in existence throughout the duration of the Development Agreement, subject to the provisions of Section 2.14 below.

2.14 Waterstone shall, at a time mutually agreed upon by the Parties, after the completion of the Public Infrastructure Improvements on the Project Premises (for purposes of this Section 2.14, the term "completion" shall mean the completion of the Public Infrastructure Improvements themselves plus a reasonable period of operation of any or all such Public Infrastructure components to assure their/its proper construction and/or operation), but in no event later than **July 1 , 2021**, offer/tender to the City a deed(s) or other appropriate legal instrument(s) in order to transfer title to the land and/or interest in land on which the Public Infrastructure Improvements are located, and/or such other necessary components required to support or otherwise operate and/or maintain the use and/or functionality of the Public Infrastructure Improvements to be transferred. Waterstone agrees, at its sole expense, to maintain and to pay the Maintenance Costs of the On-Site Public Infrastructure Improvements on the Project Premises eighteen (18) months after completion. Notwithstanding the foregoing, once tax revenues for the TIF District begin to generate increment in excess of the payment of annual expenses, Waterstone shall be reimbursed for any payments made by Waterstone from the Escrow Agreement, the Guaranty Agreement and Maintenance Agreement.

3. City of Rochester Obligations.

3.1 The City shall issue Tax Increment Financing bonds (the “**TIF Bond(s)**”) as contemplated by RSA Chapter 162-K, based on a ten (10) year amortization period (the “**TIF Bond**” and/or the “**TIF Bonds**”), as described in Section 2.13 hereof, in the amount and for the Public Infrastructure Improvements set forth and agreed to by the Parties in Section 1.2 and/or reflected on **Exhibit B**, for the purposes of paying for costs of Public Infrastructure Improvements contemplated by the Project, provided, however, that the Parties agree that the amount of the TIF Bond(s) shall not exceed Seven Million Four Hundred and Thirty Thousand (\$7,430,000.00) Dollars. Failure to issue the TIF Bonds shall not, however, affect the City’s underlying obligation to pay for the cost of the Public Infrastructure Improvements. To the extent that the cost of Public Improvements exceeds Seven Million Four Hundred and Thirty Thousand (\$7,430,000.00) Dollars, Waterstone shall be solely responsible for said excess costs and expenses. The City agrees that it shall design and construct the Public Infrastructure Improvements in accordance with pertinent City rules, regulations and design standards. Exhibit B_ represents the parties’ best estimate of the costs of Project Infrastructure Improvements as of the date of signing this Agreement. The Parties acknowledge that such cost estimate may change over time. Therefore, the Parties agree that they shall have the ability to reallocate project costs between/among the individual line items and the contingency line item for related costs, unforeseen costs or budget overruns.

3.2 The construction of the Public Infrastructure Improvements by, or on behalf of, the City shall be subject to the following:

- a. All design and engineering costs associated with the Public Infrastructure Improvements;
- b. The City obtaining all permits and approval needed by the City for the obligations accepted by the City in this Development Agreement.
- c. The City shall provide Waterstone, for their review, approval and recommendations, which approval shall not be unreasonably withheld, a copy of the plan, design and schedule for the Public Infrastructure Improvements, which shall be completed on or before January 2019.
- d. Before undertaking any construction of the Public Infrastructure Improvements, the City shall provide Waterstone, for their review copies of all bids and quotes from contractors for the Public Infrastructure Improvements.

- e. The Public Infrastructure Improvements will be substantially completed on or before September 30, 2020 (subject to the provisions of **Exhibit C**).

3.3 The City shall require a municipal bidding process for the completion of the within delineated Public Infrastructure Improvements to be financed by the TIF Bond.

3.4 The City's obligation to proceed with the Public Infrastructure Improvements shall be subject to the following contingencies, the failure to satisfy any one of which shall give the City the right to withdraw from this Development Agreement, after which withdrawal the City shall have no further obligations under this Development Agreement, to wit:

- a. The City (subject to the provisions of the Development Schedule set forth in **Exhibit C**) shall have no obligation to perform improvements unless Waterstone performs all of the obligations applicable to it contained in Sections 2.1 through 2.15 of the within Development Agreement in a timely fashion, as provided herein and subject to the provisions contained herein.

3.5 The City and its consultants, contractors, agents, and representatives shall coordinate the design of Off-Site Public Infrastructure Improvements with the on-site improvements as undertaken by Waterstone, including, but not limited to where the Public Infrastructure Improvements enter the Project Premises and the elevations thereof. Such coordination shall include, but not be limited to, attending meetings as well as providing copies of plans/designs in both hard copy and electronic (in an AutoCAD format acceptable to Waterstone) copy.

3.6 To the extent appropriate and/or required by law, the City has and will comply with the provisions of RSA 162-K, including, but not limited to, the reporting requirements set forth in RSA 162-K:11.

4. **Financing Provisions.**

4.1 The City has approved, and will continue to cooperate in the implementation of, a development plan under RSA Chapter 162-K for the so-called Granite Ridge Development District of which the Project Premises is a part.

4.2. In accordance with the provisions of Chapter 162-K, the annual tax increment created as a result of the TIF Plan will, to the extent available, be utilized to pay the annual costs of the TIF Bond(s), and to the extent available, to pay other permissible expenses relative to the so called Granite Ridge Development District, including the Maintenance Costs, as described in Section 2.14 (c) herein. If the annual tax increment is not available, such unavailability shall not affect the City's underlying obligation to pay for the cost of the Public Infrastructure Improvements.

4.3 Upon payment of the TIF Bond(s) in full this Development Agreement shall terminate, except for any obligations that expressly survive the repayment of the TIF Bond(s).

4.4 Notwithstanding any other provision hereof:

- a. Prior to executing any loan documents, agreements, instruments or contracts evidencing or with respect to the TIF Bonds (the "**TIF Bond Documents**"), the City shall provide to Waterstone, for its review copies of the TIF Bond(s) Documents.
- b. The City shall provide to Waterstone the actual results of the sale of the bonds.

5. Development Schedule.

5.1 Attached to this Development Agreement is a Development Schedule (Exhibit C, 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 C**) may require adjustment based upon economic conditions, site constraints, actions of third parties, and circumstances beyond the control of Waterstone or the City. Any such adjustment(s) shall be reviewed and agreed upon by the Parties hereto. Consent to such Development Schedule adjustment shall not be unreasonably withheld.

5.2 Expressly subject to the provisions of Section 2.4 above, for the purposes of any of the provisions of this Agreement, the Parties shall not be considered in breach or default of its/their respective obligations hereunder in the event of unavoidable delay in the performance of such obligations due to causes beyond its control and without its fault or negligence, including but not 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 either for the TIF Bond(s) (including the appropriation vote or any permit or approval needed for the Project), freight embargoes, undue and unanticipated economic conditions and unusually severe weather or delays of contractors and subcontractors due to such causes; it being the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of such party shall be extended for the period of the enforced delay, provided, that the party seeking the benefit of the provisions of this section shall, within thirty (30) days after the beginning of any such enforced delay, have first notified the other party thereof in writing stating the cause or causes thereof and requested an extension for the period of the enforced delay. In calculating the length of the delay, the City and Waterstone shall consider not only actual work stoppages, but also any consequential delays resulting from such stoppage as well.

6. Representations and Warranties.

6.1 Representations and Warranties of City. The City hereby represents and warrants that:

- 6.1.1 The execution and delivery of this Development Agreement and the performance of the City's obligations hereunder have been duly authorized by such municipal action as necessary, and this Development Agreement constitutes the legal, valid and binding agreement of the City, enforceable against the City in accordance with its terms subject only to the conditions set out in this Development Agreement.
- 6.1.2 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 Development Agreement, or any other agreement or instrument entered into by the City in connection with the transactions contemplated hereby.
- 6.1.3 The City has complied, and will continue to comply, where and to the extent necessary, with the provisions of RSA Chapter 162-K.
- 6.1.4 If required by Waterstone or its lender(s), the City shall provide Waterstone with a legal counsel's opinion, in a form acceptable to Waterstone, with respect to the matters described in this section.

6.2 Representations and Warranties of Waterstone. Waterstone hereby represents and warrants to the best of its knowledge and belief that:

- 6.2.1 Farmington Associates Properties, LLC. is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Delaware, 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 in good standing under the laws of the State of New Hampshire. **FARMINGTON ASSOCIATES PROPERTIES GROUND TENANT, LLC**, is a limited liability company, duly organized, validly existing and in good standing under the laws of the of the state of Delaware, 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 in good standing under the laws of the State of New Hampshire.
- 6.2.2 Waterstone has the power and authority to execute, deliver and carry out the terms and provisions of this Development Agreement and all necessary action has been taken to authorize the execution, delivery and performance by it of this Development Agreement. This Development Agreement will, upon execution and delivery thereof by Waterstone, constitute valid, legal and binding obligations of Waterstone enforceable in accordance with the respective terms thereof.
- 6.2.3 Neither the execution or delivery by Waterstone of this Development Agreement, the performance by Waterstone of its obligations in connection with the transactions contemplated hereby, nor the fulfillment by Waterstone of the terms or conditions hereof conflicts with, violates or results in a breach of any constitution, law or governmental regulation applicable to Waterstone, or conflicts with, violates or result in a breach of any term or condition of any judgment or decree, to which Waterstone is a party or by which Waterstone or any of its properties or assets are bound, or constitutes a default there under.
- 6.2.4 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 Waterstone's knowledge threatened against Waterstone, 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 Waterstone of its obligations hereunder or the performance by Waterstone 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 Development Agreement or any other agreement or instrument entered into by Waterstone in connection with the transactions contemplated hereby.

6.2.5 Waterstone and Farmington shall provide certification from their respective corporate secretary or manager, as the case may be, indicating that the signatory to the within Development Agreement has obtained all necessary corporate authority to execute and perform the terms of the within Development Agreement.

6.2.6 If required by the City, Waterstone 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.

7. Defaults and Remedies.

7.1 Events of Default by City. Any one or more of the following shall constitute an "Event of Default" of the City.

7.1.1 Any representation or warranty made by the City shall prove incorrect or untrue in any material respect when made and have a material adverse effect on Waterstone or its rights under this Development Agreement;

7.1.2 The City shall fail or refuse to fulfill any of its material obligations under this Development Agreement, (unless such failure or refusal is caused by the acts or omissions of Waterstone, or its servants or agents) including, without limitation, the failure by the City to undertake or complete the Public Infrastructure Improvements or to complete any of its obligations within the time frames established by the Development Schedule attached hereto as Exhibit C unless such timeframes have been extended and mutually agreed upon by the City and Waterstone pursuant to this Development Agreement;

Provided, however, that no such failure shall constitute an Event of Default unless and until:

7.1.3 Waterstone has given written notice to the City stating that in its opinion a particular default exists that will, unless corrected, constitute a material breach of this Development Agreement or any related agreement on the part of the City and that such default will, in the opinion of Waterstone, give Waterstone a right to exercise its remedies pursuant to Section 8.1 unless such default is corrected within a reasonable period of time not to exceed ninety (90) days; and

7.2 Events of Default by Waterstone. Any one or more of the following shall constitute an "Event of Default" of Waterstone:

7.2.1 Waterstone shall fail to pay any amount due with respect to the TIF Bond(s) and/or to complete the improvements to be constructed by it

contemplated in this Development Agreement and such failure is not otherwise excused or extended under this Development Agreement;

- 7.2.2 Any representation or warranty made herein by Waterstone shall prove to be incorrect or untrue in any material respect when made and has a material adverse effect on the City or its rights under this Development Agreement; or
- 7.2.3 Waterstone fails or refuses to fulfill any of its material obligations under this Development Agreement (unless such failure or refusal is caused by the acts or omissions of the City, or its servants or agents) including, without limitation, the failure by Waterstone to complete any of its obligations within the time frames established by the Development Schedule attached hereto as Exhibit C as such timeframes may be extended pursuant to this Development Agreement; or
- 7.2.4 Waterstone (through the date of the completion of the Project and compliance with the terms of this Development Agreement, including responsibilities per Article 2) shall suffer the following:
 - 7.2.4.1 commencement by Waterstone (or any of such term's component entities) of a voluntary case under Title 11 of the United States Code as from time to time in effect, or by its authorizing, by appropriate proceedings of its board of directors, partners, members, or other governing body, the commencement of such a voluntary case;
 - 7.2.4.2 by its seeking relief as a debtor under any applicable law, other than said Title 11, of any jurisdiction relating to the liquidation or reorganization of debtors or to the modification or alteration of the rights of creditors, or by its consenting to or acquiescing in such relief;
 - 7.2.4.3 by the entry of an order by a court of competent jurisdiction (a) finding it to be bankrupt or insolvent, (b) ordering or approving its liquidation, reorganization or any modification or alteration of the rights of its creditors, or (c) assuming custody of, or appointing a receiver or other custodian for all or a substantial part of its property;
 - 7.2.4.4 by an assignment for the benefit of its creditors, or admission in writing of its inability to pay its debts generally as they become due, or consent

to the appointment of a receiver or liquidator or trustee or assignee in bankruptcy or insolvency of it or of a major part of its property.

Provided however, that the foregoing shall not be deemed to constitute an Event of Default with respect to Waterstone if the debtor in possession, trustee, receiver, custodian, liquidator, agent or other party exercising control over the assets of the Party, affirms this Development Agreement without modification and within a reasonable period of time and provides evidence satisfactory to the City, in the City's sole discretion, of the capacity to continue the performance of Waterstone's obligations under this Development Agreement and to cure, in a timely manner, all breaches thereunder.

7.2.5 Once site work at the Project Premises has commenced, Waterstone has ceased active and substantial construction of the Project for a period of ninety (90) days, excluding winter shut down periods or except as provided by the Development Schedule attached hereto as Exhibit C, unless such timeframes have been extended and mutually agreed upon by the City and Waterstone pursuant to this Development Agreement (see Section 2.3 hereof).

7.2.6 None of 7.2.1 through 7.2.5 shall constitute an Event of Default unless and until:

7.2.6.1 The City has given written notice to Waterstone stating that, in its opinion, a particular default or defaults exist that will, unless corrected, constitute a material breach of this Development Agreement on the part of Waterstone and that such default or defaults will, in the opinion of the City, give the City a right to exercise its remedies pursuant to Section 8.2 unless such default is corrected within a reasonable period of time not to exceed ninety (90) days from the receipt of such notice..

8. Consequences of Defaults.

8.1 **Consequences of Events of Default by the City.** Upon the occurrence of an Event of Default by the City, Waterstone may proceed by appropriate proceedings, judicial, administrative or otherwise at law or in equity or otherwise to protect and enforce or recover its rights or damages to which it may be entitled to enforce performance by the City. Said proceeding is to be brought in the Strafford County Superior Court, and Waterstone may take any action and incur any expense necessary to cure or avoid any default and Waterstone may recover from the

City, and the City shall pay to reimburse Waterstone, for all expenses so incurred or that must be paid by Waterstone.

8.1.2 In the event the cure by the City delays work by Waterstone, Waterstone's obligations under the Development Schedule may be extended for the period of delay taking into account winter conditions and the difficulty of commencing, prosecution and completing construction during winter months (if applicable).

8.2 **Consequences of Events of Default by Waterstone.** In the event of an event of default by Waterstone, the City may proceed by appropriate proceedings, judicial, administrative or otherwise in law or in equity to protect and enforce their rights to recover any actual damages to which they may be entitled and to enforce performance by Waterstone. Said proceedings to be brought in the Strafford County Superior Court and the City may take any action and incur any expense necessary to cure or avoid any default and the City may recover from Waterstone, and Waterstone shall pay to reimburse the City for all expenses so incurred or that must be paid by the City.

8.2.2 In the event the cure by the Waterstone delays work by the City, the City's obligations under the Development Schedule may be extended for the period of delay taking into account winter conditions and the difficulty of commencing, prosecution and completing construction during winter months (if applicable).

9. Further Assurances/Cooperation.

9.1 City staff shall attend all Zoning Board of Adjustment, Conservation Commission, and Planning Board meetings or public hearings concerning the Project. City staff shall also provide guidance with respect to the preparation of pertinent Zoning and Planning Board applications, as required. However, Waterstone shall be solely responsible for preparing and filing said applications, as well as paying all application fees associated therewith.

9.2 The Parties recognize and acknowledge that there are issues regarding the operation and maintenance of the Public Infrastructure Improvements during and particularly after their completion pursuant to the terms of this Development Agreement. These issues include, but are not limited to, maintenance of the Public Infrastructure Improvements, and the operation of the drainage system contemplated by such improvements. The Parties, therefore, mutually agree, to negotiate, approve and execute agreements, with reasonable provisions, relative to:

1. Maintenance issues with respect to Public Infrastructure Improvements, including, but not limited to, responsibilities with respect thereto; and
2. Drainage issues related to the Public Infrastructure Improvements designed to deal with drainage, including, but not limited to, (1) responsibilities with respect thereto; and (2) rules and/or regulations regarding drainage, etc.

9.3 In accordance with the provisions of Chapter 162-K of the New Hampshire Revised Statutes Annotated and the provisions of Section D.7 of the Granite Ridge Development District: Tax Increment Development Program & Financing Plan, adopted by the City on June 17, 2014 (the "TIF Plan"), the Parties agree that, except as otherwise provided for herein, the annual Maintenance Costs for the Public Infrastructure Improvements shall be paid by the TIF District Administrator from the so-called tax increment, to the extent of the availability of such tax increment funds after the payment of amounts due on the TIF Bond(s).

10. General Provisions.

101 This Development Agreement shall be governed and construed in accordance with the laws of the State of New Hampshire.

10.2 If any term or provision of this Development Agreement is held to be invalid or unenforceable, to any extent, the remainder of this Development Agreement shall continue to be fully valid and enforceable.

10.3 Notices, demands, consents, approvals or other instruments required or permitted by this Development 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 Waterstone:

Farmington Associates Properties Ground Tenant,
LLC
Attn: Josh Levy
322 Reservoir Street
Needham, MA 02494

To City:

City Manager

City of Rochester
31 Wakefield Street
Rochester, NH 03867

With a copy to:

City of Rochester
Attn: Finance Director
31 Wakefield Street
Rochester, NH 03867

10.4 Time is of the essence with regard to this Development Agreement.

10.5 This Development Agreement shall be binding upon and inure to the benefit of the Parties hereto, and their respective successors and assigns. This Development Agreement may be assigned by Waterstone to an entity that is a subsidiary or affiliate of Waterstone. Except as permitted herein, neither this Development Agreement nor any of the rights, interests or obligations of this Development Agreement may be assigned or delegated by any party without the prior written consent of the other parties.

10.6 Waterstone shall not pledge or assign this Development Agreement or any documents relating thereto as security for any financing without the prior written consent of the City except that Waterstone may finance and secure the construction of the building(s) or other improvements on the Project Premises and may pledge or assign this Development Agreement and any documents relating thereto in connection with such financing, but may not otherwise pledge or assign this Development Agreement or any documents relating thereto as security for any financing without the prior written 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 Waterstone shall not be relieved or diminished.

10.7 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 Development 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 Development 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 Development Agreement.

10.8 Waterstone 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 Development Agreement or any related agreement. All legal actions taken by the Parties shall be commenced in Strafford County New Hampshire Superior Court.

10.9 Unless expressly stated otherwise in this Development Agreement, whenever a party's consent or approval is required under this Development 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 Development Agreement, or whenever a party must act or perform before another party may act or perform under this Development 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.

10.10 The execution of this Development Agreement does not preempt or supersede the review process or powers of any City or other governmental Board, Committee, Commission, or Department, or excuse Waterstone 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.

10.11 In the event that any of the terms or provisions of this Development 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 Development Agreement, the remaining terms and provisions that are not effected thereby shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have set their hands this ____day of _____, 2018.

CITY OF ROCHESTER

Witness

By: _____
Daniel W. Fitzpatrick, City Manager
Duly authorized

**FARMINGTON ASSOCIATES PROPERTIES,
LLC**

Witness

By: _____
Joshua Levy, Manager
Duly authorized

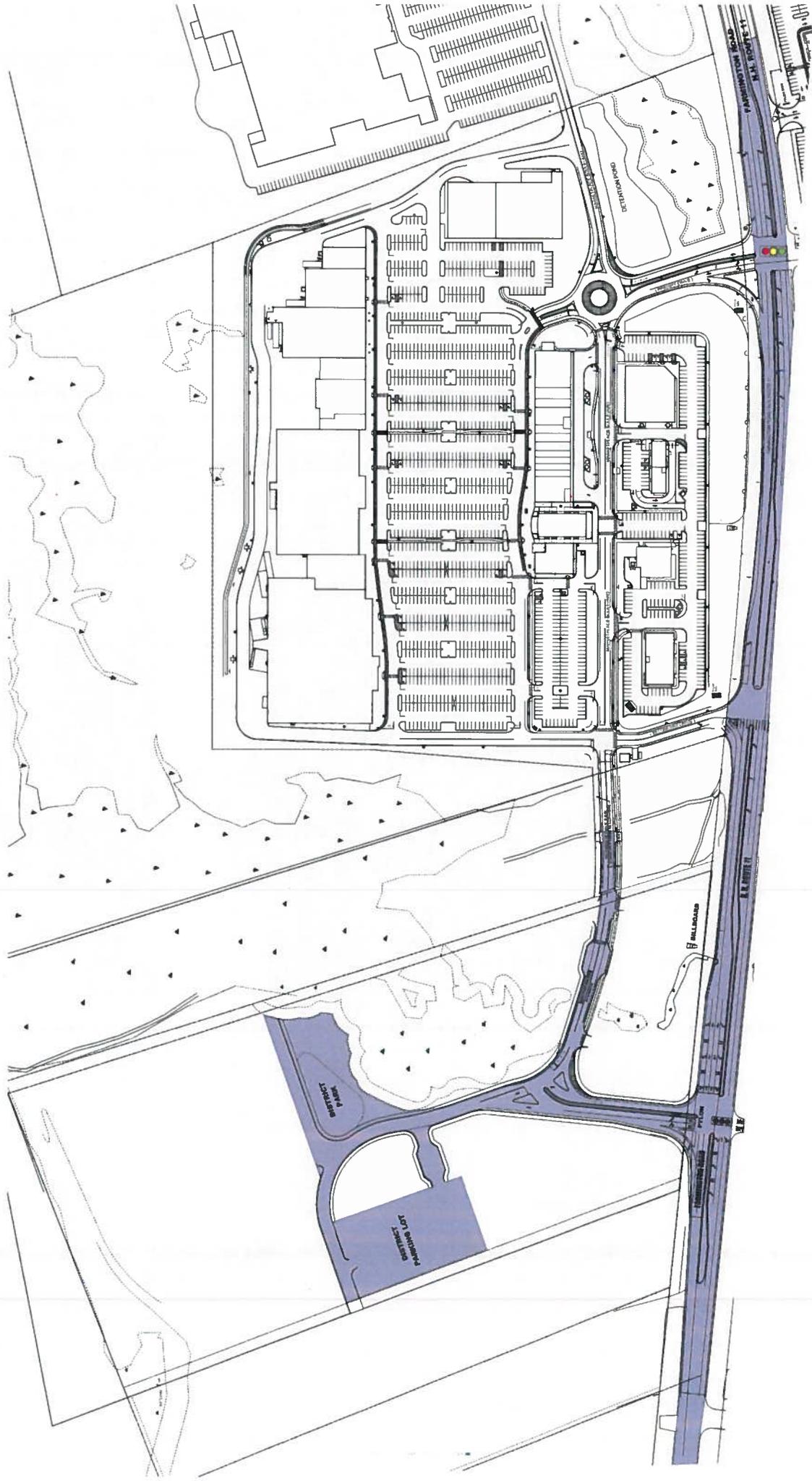
**FARMINGTON ASSOCIATES PROPERTIES
GROUND TENANT, LLC**

Witness

By: _____
Joshua Levy, Manager
Duly authorized

Exhibit A
Plan Showing the Project

1



THE
RIDGE

60 FARMINGTON ROAD, ROCHESTER, NH 03867



MERCHANDISING PLAN ONLY Date: 07.26.18

WATERSTONE PROPERTIES : 322 RESERVOIR STREET, NEEDHAM, MA 02494 : www.waterstonepg.com : (781) 599-3301

Exhibit B
Public Infrastructure Improvements

EXHIBIT B SCHEDULE

PUBLIC INFRASTRUCTURE IMPROVEMENTS						
			Estimated Timeline			
Scope	Footnote	Item	Start	Finish		
A		Marketplace Blvd (Frontage Road) and infrastrucutre/District Parking Lot / District Park	2	Design Work	10/18	1/19
				City Approvals	1/19	2/19
				Bid Process and Award	2/19	3/19
				Submittals & Order	3/19	4/19
				Construction	4/19	6/2020
B		Remaining Work on Rt 11 Overlay and Permanent Markings (The Ridge)		Construction	6/18	9/18
C		Route 11 Improvements	2	Design Work	2/16	9/18
				City Approvals	2/16	2/19
				Bid Process and Award	2/19	3/19
				Submittals & Order	3/19	4/19
				Construction	4/19	10/19
DEVELOPMENT						
			Estimated Timeline			
Scope		Item	Start	Finish		
Local Approvals			12/15	2/19		
State Approvals		Wetlands	Permit Approved 4/17			
		AOT	Permit Approved 4/17			
		WW Connection	11/18	2/19		
		NHDOT	1/16	2/19		
		Preliminary Design	Completed in 2016			
		Final Design	2/16	12/18		
A		Phase II Sitework	3	8/17	12/2020	
B		First Pad Delivery	4		12/2020	
C		First Building Occupancy	4		6/2021	

Footnotes

- 1: This schedule was developed based on assumptions that permitting agencies & local entities can meet, review and approve project documents in a timely manner
- 2: Amendment to City Task Order is required to revise Frontage Road and Offsite Improvement Plans
- 3: Excavation Activities began in August of 2017 and approved for expansion in April of 2018
- 4: This schedule is dependent on tenant interest at the site and may need to be adjusted to meet tenant needs

Exhibit C
Development Schedule

EXHIBIT C

Phase	Description	Amount
II	Marketplace Boulevard and Marketplace Boulevard Entrance Road	\$ 1,965,000
II	Sewer - Marketplace Boulevard	\$ 225,000
II	Water - Marketplace Boulevard	\$ 225,000
II	Rt 11 Widening and Crane Drive Signal (60 Farmington Road) & Remaining Work on Rt 11 Overlay and Permanent Markings (The Ridge)	\$ 2,185,000
II	District Parking Lot and District Park	\$ 2,100,000
II	Engineering Costs estimate	\$ 400,000
II	Contingency	\$ 330,000
	Total Budget	\$ 7,430,000

Exhibit D
First Amendment to Guaranty Agreement

FIRST AMENDMENT TO GUARANTY

This FIRST AMENDMENT TO GUARANTY is dated as of June __, 2018 and is by and between Farmington Associates Properties, LLC, Farmington Associates Properties Ground Tenant, LLC and (collectively, "Waterstone") and The City of Rochester, New Hampshire (the "City").

Reference is made to the following facts:

- A. On December 3, 2015, Farmington Associates Properties LLC and Waterstone Retail Development, Inc. and the City entered into that certain Development Agreement related to the development of the Project Premises, as such term was defined in the Development Agreement; and
- B. Farmington Associates Properties LLC has ground leased the Premises to Farmington Associates Properties Ground Tenant, LLC, and
- C. In connection with such Development Agreement, on December 3, 2015, Farmington Associates Properties, LLC and Waterstone Retail Development, Inc. executed in favor of the City that certain Guaranty of certain obligations (the "Guaranty"), as set forth in the Guaranty.
- D. The parties are now amending and restating the Development Agreement, and wish to have the Guaranty ratified and confirmed with respect to the amended and restated Development Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Reference is made to the Amended and Restated Development Agreement between the parties of even date herewith.
2. All references in the Guaranty to the "Agreement" are hereby amended to be the Amended and Restated Development Agreement.
3. Waterstone hereby accepts, ratifies and confirms all obligations undertaken by Waterstone under the Guaranty, with respect to the Amended and Restated Development Agreement, as if Waterstone were the original guarantor.
4. The City accepts Waterstone as the replacement guarantor for Waterstone Retail Properties, Inc., and releases Waterstone Retail Properties, Inc. (now known as "Waterstone Properties Group, Inc.") from any obligations under such guaranty

Executed as a sealed instrument under seal as of the __ day of June, 2018.

CITY OF ROCHESTER, NEW HAMPSHIRE

Witness

By: _____
Daniel W. Fitzpatrick, City Manager
Duly authorized

**FARMINGTON ASSOCIATES
PROPERTIES, LLC**

Witness

By: _____
Joshua Levy, Manager
Duly authorized

**FARMINGTON ASSOCIATES PROPERTIES
GROUND TENANT, LLC**

Witness

By: _____
Joshua Levy, Manager
Duly authorized