DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF ROCHESTER, NEW HAMPSHIRE
AND
WATERSTONE ROCHESTER, LLC
AND
WATERSTONE RETAIL, INC.

THIS AGREEMENT, made and entered into this 6th day of August, 2014, 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, and **WATERSTONE ROCHESTER, LLC**, a Delaware LLC, with a place of business c/o Waterstone Retail Development, Inc., with a mailing address of 145 Rosemary Street, Building B, Needham, Massachusetts 02094 (hereinafter individually "Waterstone Rochester"), and **WATERSTONE RETAIL DEVELOPMENT, INC.**, a Massachusetts corporation with a place of business, and mailing address, at 145 Rosemary Street, Building B, Needham, Massachusetts 02094 (hereinafter individually as "Waterstone Retail") (Waterstone Rochester and Waterston Retail being hereinafter collectively referred to as "Waterstone") (the entities referred to in this paragraph are sometimes hereinafter collectively referred to as the "Parties"), as follows:

RECITALS:

WHEREAS, on May 5, 2014 Waterstone received site plan review approval from the City of Rochester Planning Board (hereinafter the "Planning Board") for the construction of a mixed use commercial development, including buildings consisting of approximately 300,000 sq. ft. 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 situate 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 May 5, 2014 site plan review approval; and

WHEREAS, the Planning Board as part of its May 5, 2014 approval of Waterstone's site review application, imposed, as a condition of such approval for the Project, the requirement of the execution of a so-called Development Agreement between Waterstone and the City (the

"Development Agreement"), such Development Agreement (hereinafter sometimes referred to as "the Agreement") to include provisions regarding funding for off-site public infrastructure improvements (hereinafter the "Off-Site Public Infrastructure Improvements" and/or the finalthe "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 500 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 off-site public infrastructure improvements, including the Off-Site Public Infrastructure Improvements, and, therefore, the City and Waterstone have agreed to cooperate to bring about the creation of such off-site public infrastructure improvements, including the Off-Site Public Infrastructure 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 May 5, 2014 Planning Board site plan review approval of the Project, various traffic studies, including the 2014 traffic study 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 Rochester 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 Off-Site Public Infrastructure Improvements required by the City, the State and the Rochester Planning Board's May 5, 2014 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 compliment the Project, it is the intent of the parties to establish a schedule for the timely completion of the Public Infrastructure Improvements as well as for the on-site infrastructure improvements and the establishment 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 mechanism's 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.

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 so-called Granite Ridge Development District and the adoption of the "Granite Ridge Development District: Tax Increment Development Program & Financing Plan", 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 Off-Site Public Infrastructure Improvements associated with the Project, in a principal amount of up to $5,000,000.00, 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 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 D** hereto, whether such improvements are to be constructed: (a) on City owned/controlled property not part of the Project Premises; or (b) on on-site at the Project Premises, 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). The term "On-Site Public Infrastructure Improvement(s)" as it is used in this Agreement is intended to refer specifically to public infrastructure improvement(s) being constructed on the Project Premises while, and/or 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 Public Infrastructure Improvements referred to in this Agreement are as follows:

a. City Public Infrastructure Improvements Design/Construction Responsibilities:

i. Engineering design of Rt. 11 improvements to meet NHDOT specifications (cross-sections at certain intervals, etc.);

ii. Preparation of NHDES sewer connection permit with associated cross sections as needed, (as well as 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 proper sizing of on-site water lines, or looping a water line if needed);

iv. A contribution to the NHDES Alteration of Terrain ("AOT") permit, proportional to the City's disturbance;

v. A contribution to the NPDES General Construction Plan proportional to the City's disturbance;

vi. Cost for engineer's modifications to Frontage Road to avoid impact in the existing conservation easement (approx. 20 sf

vii. Design and coordination for access easement across PSNH property;

viii. Engineers preparation of bid ready, construction drawings and specifications, to the extent required for competitive construction bidding;

ix. Design engineer's construction oversight and so-called "stamp of approval" at project completion of the work within the proposed City ROW;

x. Engineer's assistance and advice on any unforeseen change orders, etc.;

xi. Cost of physical roadway improvements within the proposed City ROW;

xii. 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;

xiii. Cost of underground electric improvements within the ROW;

ix. Cost of landscaping within the ROW;

x. Cost of lighting within the ROW;

xi. Cost of COAST bus stop construction;

xii. A contribution to the overall drainage improvements that is proportional to the City's disturbance;

xiii. Cost of physical improvements along Route 11;

xiv. 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 Five Million Dollars ($5,000,000.00). To the extent that the cost of Public Infrastructure Improvements (as defined below herein) exceeds Five Million Dollars ($5,000,000.00), Waterstone shall be solely responsible for all said excess costs and/or expenses except as otherwise specifically provided for in the Agreement. The Parties further agree that in interpreting this 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 Agreement.

2. <u>Waterstone Obligations.</u>

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 May 5, 2014 approval and this Development Agreement (sometimes hereinafter referred to as the "Agreement") for use in connection with the Off-Site Public Infrastructure Improvements. Except as expressly indicated otherwise in this Agreement, Waterstone will determine the design and specifications of the building 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 will have an estimated value when completed of approximately Twenty Million Dollars ($20,000,000.00), at a minimum, and shall include buildings not to exceed an aggregate size/area of approximately 300,000 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 commence on or about April 15, 2015 and shall be substantially completed on or about December 1, 2018., 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 project/construction schedule set forth herein (see **Exhibit A** attached hereto) (the "Development Schedule"), 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 Agreement in accordance with the Development Schedule attached hereto as **Exhibit A** (and as defined in Section 5.1 hereof), provided, however, time for the performance thereof shall be extended by a period equal to: (a) any delay caused by or resulting from a delay by the City in implementing and approving the New Hampshire RSA Chapter 162-K tax increment financing District and Plan contemplated in Section 3.7, below (hereinafter sometimes individually the "TIF District" and the "TIF Plan" respectively, and collectively the "TIF District and TIF Plan"); and (b) 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 A**, 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 agrees to enter into, or to cause its permitted assignee/designee (after written approval of the same by the City as to the conveyance and to the terms and conditions of the transfer (which approval shall be limited to the financial ability of the assignee/designee to perform the obligations of Waterstone hereunder), including provisions making such conveyance and any grantee thereof subject to the terms of this Development Agreement insofar as they relate to Waterstone) to take title to the Project Premises within 210 days of the execution of the within Agreement. In the event Waterstone, or its permitted assignee/designee fails to take title to the Project Premises within such time period, the within Development Agreement, at the discretion of the City will be null and void, unless the City agrees to an extension of the time within which title to the Project Premises shall be transferred, which agreement to extend shall not be unreasonably withheld or delayed.

2.6 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 on-site infrastructure 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.

2.7 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 other 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 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.

2.8 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 AutoCADformat reasonably acceptable to the City) copies.

2.9 Waterstone's obligations hereunder are subject to the following conditions:

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

2.10 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 Agreement, the City shall be entitled to access Waterstone's financial documents in the manner provided for in the preceding sentence.

2.11 Waterstone shall use commercially reasonable efforts to create, by itself, and/or in conjunction with its prospective tenants, and/or cause to be created, approximately 500 full/part time jobs at the Project Premises. Waterstone shall, annually report to the City and the Department of Resources and Economic Development 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.

2.12 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: "having leased no spaces to third parties or substantially completed the construction of the Project"), before the satisfaction of the TIF Bond(s) (as defined in Section 2.13 below), Waterstone shall, prior to the next TIF Bond payment (but in no event less that 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

2.13 As used in this 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 Five Million Dollars ($5,000,000.00), the proceeds of which shall be used for the purpose of paying City costs and/or expenses associated with the Public Infrastructure Improvements (see **Exhibit E** annexed hereto containing the projected costs associated with the Public Infrastructure Improvements), and which costs/expenses is/are intended by the Parties to this Agreement to be repaid to the City through tax increment financing taxes paid on the Project Premises 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 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.

2.14 Waterstone and the City acknowledge and agree that the viability of this 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 authorized and regulated by the provisions of Chapter 162-K of the New Hampshire Revised Statutes Annotated, such 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 in place, at a minimum 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. Having the foregoing in mind, as well as the fact that this Agreement is designed and intended to enable Waterstone to construct, and ultimately operate, a substantial retail development on the Project Premises, as reflected in Waterstone's May 5, 2014 site plan review approval by the Planning Board (see also **Exhibit D** annexed hereto), 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, and in the form set forth in **Exhibit B** hereto, pursuant to which Waterstone will guaranty any payments due on the TIF Bond(s), and certain Maintenance Costs (as defined in Section 2,14 (c) below), to the City, in the event that the annual tax increment receipts contemplated in Section 2.13 above are insufficient to satisfy the payments due with respect to the TIF Bond(s) from the City, and shall further enter into an Escrow Agreement (the "Escrow Agreement") with the City, in the form set forth in **Exhibit C** hereto, which Escrow Agreement shall provide security for the Guaranty to the City provided for herein, as well as for Waterstone's obligations made to the City 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;

c. Beginning on April 1, 2018, Waterstone agrees to guaranty annual maintenance costs contained in the annual Granite Ridge Development District TIF Advisory Board (the "GRDDTAB") 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 costs excess costs (the "Maintenance Costs"). Waterstone agrees to pay the Maintenance Costs guaranty and to secure such payment(s) through the utilization of the Guaranty Agreement and Escrow Agreement provide for in Section 2.14 (b) above;

d. The parties agree that in order to implement the Guaranty Agreement and Escrow Agreement Guaranty aspects Waterstone's guaranties provided for in Section 2.14 (b) and (c) the Guaranty Agreement and Escrow Agreement provide 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 no event later than July 1 , 2015 (see Section 3.1 above), and both such agreements shall remain in existence throughout the duration of the Development Agreement. The funding of the Escrow Agreement, and the provision of payment of a guaranty obligations that exceed the amount(s) then available in the Escrow Agreement shall be accomplished in the following manner, to wit:

(i) At the time of the execution of the Guaranty Agreement and Escrow Agreement, Waterstone shall tender to the Escrow Agent the sum of $150,000.00, by certified check, or other means acceptable to the Parties, and the Escrow Agent shall accept such tendered funds and shall deposit such funds to an account in accordance with the terms of the Escrow Agreement. The Escrow Agent shall thereafter hold such funds, pursuant to the Escrow Agreement, shall use the same to pay Waterstone's guaranty obligations provided for in Sections 2.14 (b) and (c) above, provided, however, that if after of the third annual TIF Bond Payment (expected to be in 2018) there remains a balance of the aforesaid $150,000.00 (in excess of $250.00) in the Escrow Agreement account(s), such remaining balance shall be returned to Waterstone by the Escrow Agent;

(ii) Beginning April 1, 2018, if the City (acting on its own or through the GRDDTAB), at any time projects, in an annual GRDDTAB budget, or otherwise, that there will be an insufficient amount of annual tax increment financing revenues payable to/received by - the City, as anticipated in Section 2.13 above and/or for Maintenance Costs, Waterstone shall, within forty-five (45) days written notice from the City, or the GRDDTAB, as to the projected amount of such insufficiency, pay to the Escrow Agent an amount equal to two (2) times the amount of such actual and/or projected insufficiency (which shall be held by the Escrow Agent for the purpose of paying any annual insufficiency that shall occur for that year, subject to further supplement by Waterstone should the insufficiency amount held in pursuant to the Escrow Agreement to secure payment of Waterstones annual guaranty obligations for such year). Provided further, however that, to the extent that insufficiency projections for subsequent years of the of the Development Agreement's existence shall remain, Waterstone shall be required to deposit with the Escrow Agent, in the manner aforesaid, funds to equal two (2) times the amount of any projected annual insufficiency. Waterstone may seek relief from any deposit requirement herein, or any insufficiency payment provided for herein, through an appeal to the GRDDTAB and/or to the TIF District Administrator, whether with respect to the amount of the deposit or with respect to the making of reasonable adjustments to an annual GRDDTAB budget, so as to reduce the amount of any deposit and/or insufficiency, paid and/or to be paid, by Waterstone pursuant to the terms of the Development Agreement, the Guaranty, and/o the Escrow Agreement, including, but not limited to adjustments with respect to maintenance of the Project Premises, or any portion, or portions, thereof.

2.15 Waterstone shall, at a time mutually agreed upon by the Parties, after the completion of the On-Site Public Infrastructure Improvements on the Project Premises (for purposes of this Section 2.15, 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 January 28, 2018, 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 is sole expense, to maintain and to pay the maintenance costs with respect to the On-Site Public Infrastructure Improvements on the Project Premises until March 31, 2018.

2.16 Waterstone shall timely pay all real estate taxes imposed on all its interests taxable under the provisions of NH RSA Chapter 72, or otherwise legally imposed on it, in a timely manner throughout the continuance of this Agreement and until such time as the TIF

Bond(s) are retired as a result of being paid in full. Any provisions of this Agreement notwithstanding, the City shall retain all New Hampshire statutory authority and rights regarding security for, payment of and collection of unpaid real property taxes.

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 for a term of twenty (20) years (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 D**, 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 Five Million Dollars ($5,000,000.00). To the extent that the cost of Public Improvements exceeds Five Million Dollars ($5,000,000.00) 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. The initial TIF Bond(s) shall be issued no later than July 1, 2015 (the initial "Bond Deadline").

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

a. The City obtaining all permits and approval.

b. The City shall provide Waterstone, for their review and approval, 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 December 1, 2014.

c. Before undertaking any construction of the Public Infrastructure Improvements, the City shall provide Waterstone, for their review and approval, copies of all bids and quotes from contractors for the Public Infrastructure Improvements. Waterstone's approval shall not be unreasonably withheld and shall be granted or denied within ten (10) days of receiving said bid or quote.

d. The Public Infrastructure Improvements will be substantially completed on or before October 1, 2015 (subject to the provisions of **Exhibit A**).

3.3 The City may, at its discretion, require a municipal bidding process for the completion of the within delineated Public Infrastructure Improvements to be financed by the TIF Bond, but such bidding process shall not delay the initial Bond Deadline.

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 Agreement, after which withdrawal the City shall have no further obligations under this Agreement, to wit:

a. The City (subject to the provisions of the Development Schedule set forth in **Exhibit A)** 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 Agreement in a timely fashion, and

b. Waterstone, or a nominee approved in writing by the City, shall have failed to acquire title to the Project Premises on or before April 1, 2015.

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;

3.7 The City shall establish a tax increment financing district and approve and implement a tax increment development program and financing plan for the so-called Granite Ridge Development District (in which the Project Premises is located) in accordance with the provisions of RSA Chapter 162-Kwithin 30 days, or less, of the execution of the within Agreement.

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 The City shall hold its appropriation vote on the issuance of TIF Bond(s) subsequent to the execution of the within Agreement. The City shall not be obligated to sell any of the TIF Bond(s) or the TIF Bond(s) obligations prior to July 1, 2015

4.3. 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.

4.4 Upon payment of the TIF Bond(s) in full this Development Agreement shall terminate.

4.5 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 and approval, which approval shall not be unreasonably withheld, copies of the TIF Bond(s) Documents.

b. After executing the TIF Bond(s) Documents the City shall not amend or change the TIF Bond(s) Documents without the consent of Waterstone, which consent shall not be unreasonably withheld.

5. <u>Development Schedule.</u>

5.1 Attached to this Agreement is a Development Schedule (**Exhibit A**, 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 A**) 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 Agreement and the performance of the City's obligations hereunder have been duly authorized by such municipal action as necessary, and this Agreement constitutes the legal, valid and binding agreement of the City, enforceable against the City in accordance with its terms subject only to the conditions set out in this Agreement.

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 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 Waterstone Retail Development, Inc. is a corporation, duly organized, validly existing and in good standing under the laws of the –Commonwealth of Massachusetts, 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. Waterstone Rochester, LLC, is a limited liability, 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 Agreement and all necessary action has been taken to authorize the execution, delivery and performance by it of this Agreement. This Agreement will, upon execution and delivery thereof by 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 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 Agreement or any other agreement or instrument entered into by Waterstone in connection with the transactions contemplated hereby.

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

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 Agreement;

7.1.2 The City shall fail or refuse to fulfill any of its material obligations under this 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 A unless such timeframes have been extended and mutually agreed upon by the City and Waterstone pursuant to this 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 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 Agreement and such failure is not otherwise excused or extended under this 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 Agreement; or

7.2.3 Waterstone fails or refuses to fulfill any of its material obligations under this 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 A as such timeframes may be extended pursuant to this Agreement; or

7.2.4 Waterstone (through the date of the completion of the Project and compliance with the terms of this Agreement, including responsibilities per Article 2) shall suffer the following:

7.2.41 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 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 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 thirty (60) days excluding winter shut down periods or except as provided by the Development Schedule attached hereto as Exhibit A unless such timeframes have been extended and mutually agreed upon by the City and Waterstone pursuant to this 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 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 may proceed by appropriate proceedings, judicial, administrative or otherwise in law or in equity to protect and enforce their rights to recover any 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 On-Site Public Infrastructure Improvements during and particularly after their completion pursuant to the terms of this 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:

a. Maintenance issues with respect to Public Infrastructure Improvements, including, but not limited to, responsibilities with respect thereto; and

b. 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).

9.4 The Parties hereto recognize that the one of the primary purposes behind the creation of the Granite Ridge Development District (the "TIF District"), pursuant to the provisions of NH RSA Chapter 162-K, was/is the promotion of economic development within the TIF District, as well as throughout the entire City of Rochester. This being the case, it is possible that additional development agreements may be entered into by the City and other developers/entities with respect to property located in the TIF District, other than the Project Premises, prior to the payment in full of the TIF Bond(s). Given such potentiality, the Parties hereto agree that, in the event that the City shall engage in negotiations designed to result in the establishment of a development agreement(s), or similar type arrangement(s), with individual(s)/entity(ies), other than Waterstone, involving tax increment financing pursuant to the provisions of RSA Chapter 162-K, or other legal authority, with regard to property in the TIF District, prior to the payment in full of the TIF Bond(s), the Parties shall, prior to consummating other such development agreement(s), or similar type arrangement(s), enter into negotiations, and shall agree to modify this Development Agreement (and the Guaranty Agreement and/or Escrow Agreement, if necessary), in a manner designed to keep Waterstone's guaranty obligations under this Development Agreement reasonably equitable and proportional in light of such additional tax increment funding agreement(s).

10. <u>General Provisions.</u>

10.1 This 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 Agreement is held to be invalid or unenforceable, to any extent, the remainder of this Agreement shall continue to be fully valid and enforceable.

10.3 Notices, demands, consents, approvals or other instruments required or permitted by this Agreement shall be in writing and shall be executed by the party or an officer, agent, attorney of the party, and shall be deemed to have been effective as to the date of actual delivery, if delivered personally, or as of the third day from and including the date on which it is mailed by registered or certified mail, return receipt requested, with postage prepaid as follows:

To Waterstone:	Waterstone Retail, Inc. 145 Rosemary Street, Building B Needham, MA 02094
With a copy to:	Waterstone Rochester, LLC 145 Rosemary Street, Building B Needham, MA 02094
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 Agreement.

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

10.6 Waterstone shall not pledge or assign this Agreement or any documents relating thereto as security for any financing without the prior written consent of the City 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 Agreement and any documents relating thereto in connection with such financing, but may not otherwise pledge or assign this 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 Agreement. The Parties recognize, however, that the land use regulatory authorities of the City and the State must perform their responsibilities in accordance with the law governing that performance and consequently are not obligated in any way by this Agreement. The Parties agree to further negotiate in good faith and to enter into such other and further agreements as may be necessary to implement any aspect of design, engineering, or construction contemplated under this Agreement.

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 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 Agreement, whenever a party's consent or approval is required under this Agreement, or whenever a party shall have the right to give an instruction or request another party to act or to refrain from acting under this Agreement, or whenever a party must act or perform before another party may act or perform under this Agreement, such consent, approval, or instruction, request, act or performance shall be reasonably made or done, or shall not be unreasonably withheld, delayed, or conditioned, as the case may be.

10.10 The execution of this Agreement does not preempt or supersede the review process or powers of any City or other governmental Board, Committee, Commission, or Department, or excuse 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 Agreement are declared invalid or unenforceable by any Court of competent jurisdiction or any Federal or State Government Agency having jurisdiction over the subject matter of this Agreement, the remaining terms and provisions that are not effected thereby shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have set their hands this 6th day of August, 2014.

CITY OF ROCHESTER

Witness

By: ______________________
Printed Name & Title; Daniel W Fitzpatrick, City Manager
duly authorized

Witness

WATERSTONE ROCHESTER, LLC

By:________________________________

Printed Name & Title; Josh Levy Manager,

duly authorized

Witness

WATERSTONE RETAIL, INC.

By:________________________________

Printed Name & Title; Josh Levy Authorized Signatory

duly authorized

EXHIBIT A

to

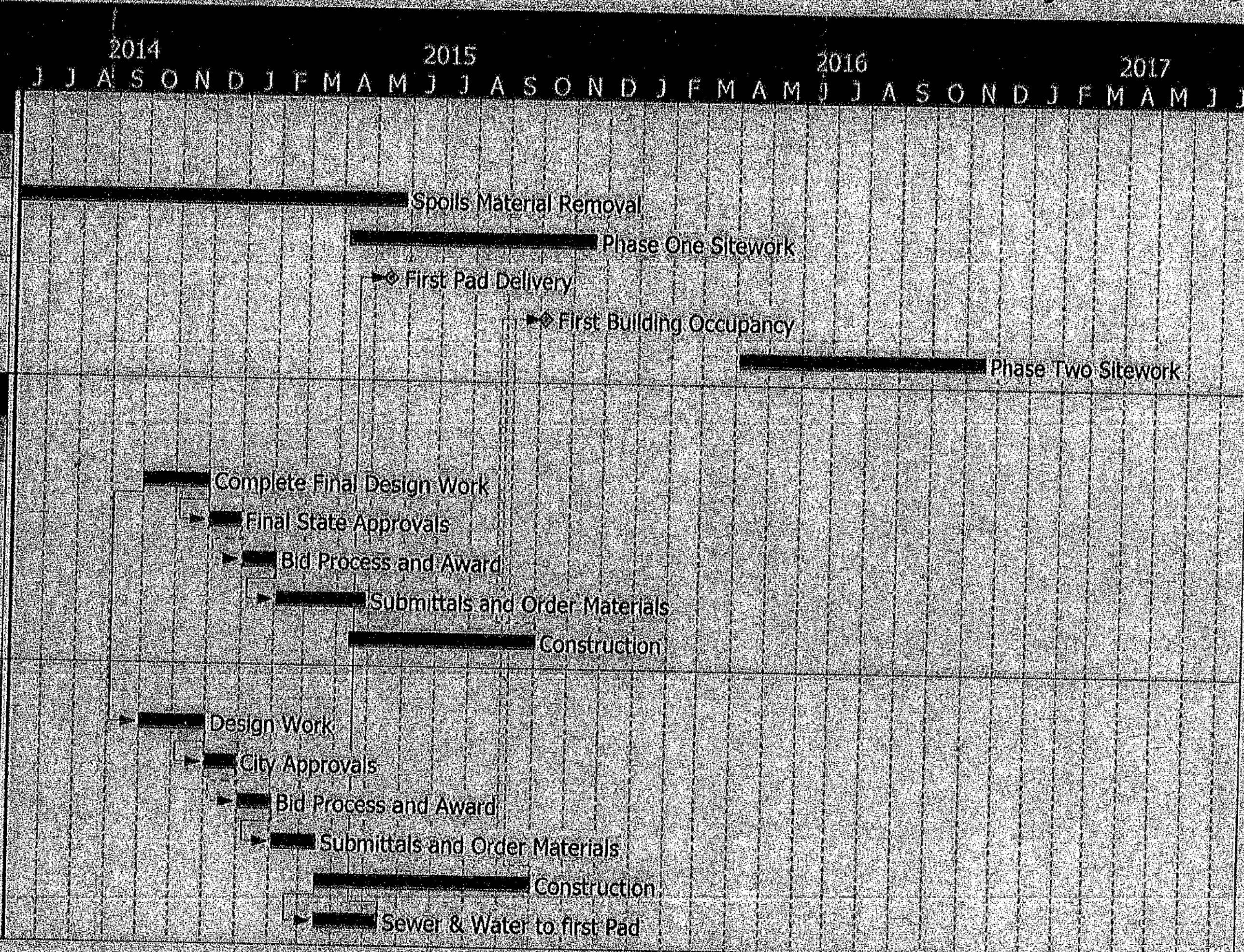
DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF ROCHESTER, NEW HAMPSHIRE
AND
WATERSTONE ROCHESTER, LLC
AND
WATERSTONE RETAIL, INC.

DEVELOPMENT SCHEDULE

Granite Ridge Marketplace

Preliminary Project Schedule

Act ID	Description	Orig Dur	Remaining Duration	Start	Finish
Waterstone Development					
On - Site					
900	Spoils Material Removal	255d	255d	02JUN14	27MAY15
1000	Phase One Sitework	165d	165d	06APR15 *	20NOV15
1010	First Pad Delivery	0	0	15MAY15	
1020	First Building Occupancy	0	0		05OCT15 *
2000	Phase Two Sitework	164d	164d	04APR16 *	18NOV16
City of Rochester					
Route 11 Improvements					
3000	Complete Final Design Work	44d	44d	01OCT14 *	01DEC14
3100	Final State Approvals	20d	20d	02DEC14	30DEC14
3150	Bid Process and Award	22d	22d	02JAN15 *	02FEB15
3180	Submittals and Order	60d	60d	03FEB15	27APR15
3200	Construction	124d	124d	13APR15 *	01OCT15
Loop Road					
4000	Design Work	44d	44d	01OCT14 *	01DEC14
4100	City Approvals	20d	20d	02DEC14	30DEC14
4150	Bid Process and Award	22d	22d	02JAN15 *	02FEB15
4180	Submittals and Order	30d	30d	03FEB15	16MAR15
4200	Construction	144d	144d	16MAR15	01OCT15
4210	Sewer & Water to first Pad	44d	44d	16MAR15	14MAY15



Start date	02JUN14
Finish date	18NOV16
Data date	02JUN14
Run date	29JUL14
Page number	1A

Waterstone Development
Granite Ridge Marketplace

Early bar
Progress bar
Critical bar
Summary bar
Start milestone point
Finish milestone point

EXHIBIT B

to

DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF ROCHESTER, NEW HAMPSHIRE
AND
WATERSTONE ROCHESTER, LLC
AND
WATERSTONE RETAIL, INC

GUARANTY AGREEMENT

GUARANTY AGREEMENT

NOW COME, **WATERSTONE ROCHESTER, LLC**, a Delaware LLC, with a place of business c/o Waterstone Retail Development, Inc., with a mailing address of 145 Rosemary Street, Building B, Needham, Massachusetts 02094 (hereinafter individually "Waterstone Rochester"), and **WATERSTONE RETAIL DEVELOPMENT, INC.**, a Massachusetts corporation with a place of business, and mailing address, at 145 Rosemary Street, Building B, Needham, Massachusetts 02094 (hereinafter individually referred to as "Waterstone Retail") (Waterstone Rochester and Waterston Retail being hereinafter collectively referred to as "Waterstone") and the **City of Rochester, New Hampshire**, a municipal corporation with a principal place of business at 31 Wakefield Street, Rochester, New Hampshire (hereinafter referred to as the "City") (the entities referred to in this paragraph are sometimes hereinafter collectively referred to as the "Parties"), and state as follows:

A. That the City and Waterstone entered into a Development Agreement ("Agreement") dated ____________, 2014.

B. In accordance with the provisions of Section 2.14 of the Agreement, Waterstone agreed to enter into a guaranty agreement (the "Guaranty Agreement") and escrow agreement (the Escrow Agreement") in favor of the City whereby Waterstone agreed to: (1) guaranty any payments due on the TIF Bond(s), as well as certain maintenance costs with respect to the Public Infrastructure Improvements (the "Maintenance Costs"), to the City, in the event that payments set forth in Section 2.13 of the Agreement are insufficient to satisfy the payments due on the TIF Bond(s) and/or the Maintenance Costs to the City; and (2) an Escrow Agreement which shall provide additional security for the guaranty of Waterstone to the City as provided for in the Agreement as well as herein.

NOW THEREFORE, for good and valuable consideration and in exchange for the mutual promises contained by the Parties in the Agreement and in satisfaction of Section 2.14 of the Agreement:

1. Waterstone does hereby guaranty any payments due on the TIF Bond(s) and Maintenance Costs with regard to the On-Site Infrastructure Improvements of the Project Premises included in the TIF District annual budget during the period until the TIF Bond(s) are retired as a result of being paid in full, in the event that payments set forth in Section _____ of the Agreement are insufficient to satisfy the payments due on the TIF Bond(s) and Maintenance Costs to the City. The obligation guaranty hereby established includes, without limitation, all interest or other amounts which may be due to the City on the TIF Bond(s) and Maintenance Costs as provided for in the Agreement, and further the obligation to pay, upon demand, all costs and expenses, including counsel fees, which may be incurred in connection with the liabilities due to the City on the TIF Bond(s) and/or Maintenance Costs and/or of the Waterstone's obligations under this Agreement.

2. Waterstone will pay any insufficiency to satisfy the payments due to the City upon thirty (30) days written notice to Waterstone at the address specified in the Agreement, and elsewhere herein.

3. The obligation of Waterstone in this Guaranty shall be direct and not conditioned or contingent upon the pursuit of any remedy against any other party or entity. This is a guaranty of payment, when due, and not merely of collectibility. It is the intention of the parties to this Guaranty that this Guaranty may be resorted to in full, and that all liabilities will become immediately due and owing, notwithstanding that the City is unable to pursue or exhausts its remedies against any other party or entity, whether as a consequence of any intervening bankruptcy or for any other reason whatsoever.

4. All diligence in collection, and all presentment for payment, demand, protest, notice of protest, and notice of non-payment, dishonor or default, and of the acceptance of this Guaranty are expressly waived.

5. No delay in the enforcement of payment of omission in exercising any right or power held by the City, or any other circumstances, shall affect the liability of Waterstone to this Guaranty.

6. Waterstone expressly waives all suretyship defenses.

7. It is represented and agreed that there are no conditions or limitations upon the undertaking in this Guaranty except those written or printed herein at the time of the

signing hereof; and that after the execution, no alteration, change or modification shall be made except by writing, signed or initialed by all parties hereto.

8. This instrument shall be governed, construed and interpreted in accordance with the laws of the State of New Hampshire. The undersigned submit to the jurisdiction of the Courts of the State of New Hampshire for all matters in connection herewith.

9. This Guaranty is entered into with the full authority of the undersigned and for the purpose of satisfying the guaranty obligations set forth in Section 2.14 and _____ of the Agreement.

10. This Guaranty is secured by an Escrow Agreement as referred to in Section 2.14 of the Agreement.

11. The Parties agree that, unless otherwise specifically defined in this Guaranty agreement, defined terms as used or referred to herein shall have the same meanings as such defined terms have accorded to them in the Agreement.

12. This Guaranty is binding upon Waterstone and upon its successors and assigns and shall inure to the benefit of the City, its successors and assigns.

IN WITNESS WHEREOF, this ________ day of __________________, 2014.

WATERSTONE RETAIL DEVELOPMENT, INC.

____
Witness

By:______________________________

______________________, ____________,
(Print Name) (title)
Duly Authorized

WATERSTONE ROCHESTER, LLC.

____
Witness

By:______________________________

______________________, ____________,
(Print Name) (title)
Duly Authorized

Accepted:

CITY OF ROCHESTER, NEW HAMPSHIRE

By:______________________________
Daniel W. Fitzpatrick, City Manager,
Duly Authorized

____
Witness

EXHIBIT C

to

DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF ROCHESTER, NEW HAMPSHIRE
AND
WATERSTONE ROCHESTER, LLC
AND
WATERSTONE RETAIL, INC

ESCROW AGREEMENT

ESCROW AGREEMENT

NOW COME, **WATERSTONE ROCHESTER, LLC**, a Delaware LLC, with a place of business c/o Waterstone Retail Development, Inc., with a mailing address of 145 Rosemary Street, Building B, Needham, Massachusetts 02094 (hereinafter individually "Waterstone Rochester"), and **WATERSTONE RETAIL DEVELOPMENT, INC.**, a Massachusetts corporation with a place of business, and mailing address, at 145 Rosemary Street, Building B, Needham, Massachusetts 02094 (hereinafter individually referred to as "Waterstone Retail") (Waterstone Rochester and Waterston Retail being hereinafter collectively referred to as "Waterstone") and the **City of Rochester, New Hampshire**, a municipal corporation with a principal place of business at 31 Wakefield Street, Rochester, New Hampshire (hereinafter referred to as the "City") and **Danford J. Wensley,** with offices at 40 Wakefield Street, Rochester, New Hampshire 03866 (herein referred to as the "Escrow Agent") (the entities referred to in this paragraph are sometimes hereinafter collectively referred to as the "Parties"), and state as follows:

Whereas Waterstone and the City have entered into a so-called Development Agreement dated August ___, 2014 (the "Development Agreement"), regarding the development of a certain tract of land located on the westerly side of NH Route 11 in Rochester, such Development Agreement also involving the use of the provisions of NH RSA Chapter 162-K tax increment financing mechanism for the financing of certain Public Infrastructure Improvements related and/or necessary for the Project; and

Whereas the Development Agreement contains an agreement by Waterstone to guaranty, in full or in part, the payment of certain costs identified to in the Development Agreement and referred to respectively as the TIF Bond(s) and the Maintenance Costs by virtue of a so-called Guaranty Agreement (see **Exhibit B** to the Development Agreement), with such Guaranty to be secured by the within Escrow Agreement (the "Escrow Agreement"); and

Whereas the Parties agree, by execution of this Escrow Agreement the Parties agree to appoint Danford J. Wensley, Esq., as Escrow Agent under this Escrow Agreement, and the said Danford J. Wensley, by signing this Escrow Agreement below agrees to serve as Escrow Agent under the provisions of the Development Agreement, the Guaranty Agreement and this Escrow Agreement for the purpose of implementing the provisions of the Development Agreement, the Guaranty Agreement and this Escrow Agreement relative to Waterstone's guaranty obligations thereunder and therein; and

Whereas the Funds shall be separately released to the City upon the concurrence of Danford Wensley that the Waterstone and the City have not agreed to and/or executed the Development Agreement as of August 15, 2011, or, alternatively, the Funds shall be returned to Waterstone upon the concurrence of Danford Wensley that Waterstone and the City have agreed to and/or executed the Development Agreement as of September 15, 2011; and

Whereas the Escrow Agent is agreeable to act as escrow agent without compensation under this Agreement and to disburse the Funds in accordance with the terms and conditions set forth in the Development Agreement, the Guaranty Agreement and this Escrow Agreement relative to Waterstone's guaranty obligations;

Now, Therefore, in consideration of the mutual covenants and promises set forth below, the parties agree as follows:

1. Establishment of the Escrow Account

   An escrow account shall be established under this Agreement by Waterstone with Escrow Agent who shall hold, invest in an interest bearing account, and distribute the Funds in accordance with the terms set forth in the Development Agreement, the Guaranty Agreement and this Escrow Agreement;

   Waterstone and the City agree that the Funds in the Escrow Account are to be used exclusively for the purposes, and in the manner, set forth in the Development Agreement, the Guaranty Agreement and this Escrow Agreement.

2. Disbursements

   The Escrow Agent shall disburse all or a portion of the Funds in accordance with the following with the terms set forth in the Development Agreement, the Guaranty Agreement and this Escrow Agreement:

   Upon proper disbursement of the Funds, this Escrow Agreement shall terminate.

3. Escrow Agent's Responsibility

   The City and Waterstone hereby appoint the Escrow Agent to serve hereunder, and the Escrow Agent hereby accepts such appointment and agrees to perform all duties expressly set forth in this Agreement.

Upon disbursement of the Funds in accordance with the the Development Agreement, the Guaranty Agreement and this Escrow Agreement, the Escrow Agent shall have no further responsibility with respect to the amounts so disbursed. In this regard, it is expressly agreed and understood that in no event shall the aggregate amount of disbursements from the Escrow Account by the Escrow Agent exceed the amount deposited by Waterstone in the Escrow Account plus any and all accrued interest.

The Escrow Agent shall have the authority to invest and reinvest the Fund's principal and income upon written notice from the City and pursuant to this Escrow Agreement in an insured savings account and/or accounts at a financial institution having a branch in Rochester, New Hampshire.

The Escrow Agent shall not be liable for any action taken or omitted hereunder or under this Agreement except in the case of its bad faith, gross negligence or willful misconduct.

The Escrow Agent shall furnish to the City and Waterstone an accounting of the receipts in, and disbursements from, the Escrow Accounts, as requested.

The Escrow Agent may resign at any time upon giving the City and Waterstone thirty (30) days' prior written notice; provided, however, that no such resignation shall be effective until a successor escrow agent shall have been appointed by the City and Waterstone and shall have accepted such appointment in writing. The City and Waterstone shall jointly consent to appointment of such successor escrow agent. Upon such appointment, the Escrow Agent's only duty shall be to pay over to the successor escrow agent the Funds in the escrow pursuant to this Agreement.

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

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

6. Notices, demands, consents, approvals or other instruments required or permitted by this Agreement shall be in writing and shall be executed by the party or an officer, agent, attorney of the party, and shall be deemed to have been effective as to the date of actual delivery, if delivered personally, or as of the third day from

and including the date on which it is mailed by registered or certified mail, return receipt requested, with postage prepaid addressed as follows:

To Waterstone:	Waterstone Retail, Inc 145 Rosemary Street, Building B Needham, MA 02094
With a copy to:	Waterstone Rochester, LLC 145 Rosemary Street, Building B Needham, MA 02094
To City:	City Manager, City Manager City of Rochester 31 Wakefield Street Rochester, NH 03867
With copy to:	City of Rochester Attn: Finance Director 31 Wakefield Street Rochester, NH 03867
To Danford J. Wensley:	40 Wakefield Street PO Box 1500 Rochester, NH 03866

Any party to this Escrow Agreement shall be entitled to change the address to be utilized for notifications by giving the other parties written notice of such new address in the manner provided for in this paragraph.

7. The Parties agree that, unless otherwise specifically defined in this Guaranty agreement, defined terms as used or referred to herein shall have the same meanings as such defined terms have accorded to them in the Development Agreement.

8. This Agreement contains the entire agreement of the parties with respect to the subject matter hereof. This Escrow Agreement may be amended only by a written instrument signed by the City, Waterstone and the Escrow Agent.

9. This Escrow Agreement may be executed in any number of counterparts with the same effect as if the signatures on all counterparts were on the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the last date set forth below.

CITY OF ROCHESTER

____
(Signature)

Name: ______________________

Title: ______________________

Date: ______________________

WATERSTONE RETAIL DEVELOPMENT, INC.

____
(Signature)

Name: ______________________

Title: ______________________

Date: ______________________

WATERSTONE ROCHESTER, LLC

____
(Signature)

Name: ______________________

Title: ______________________

Date: ______________________

CITY OF ROCHESTER

____
(Signature)

Name: ______________________

Title: ______________________

Date: ______________________

DANFORD J. WENSLEY

____
(Signature)

Name: ______________________

Title: ______________________

EXHIBIT D

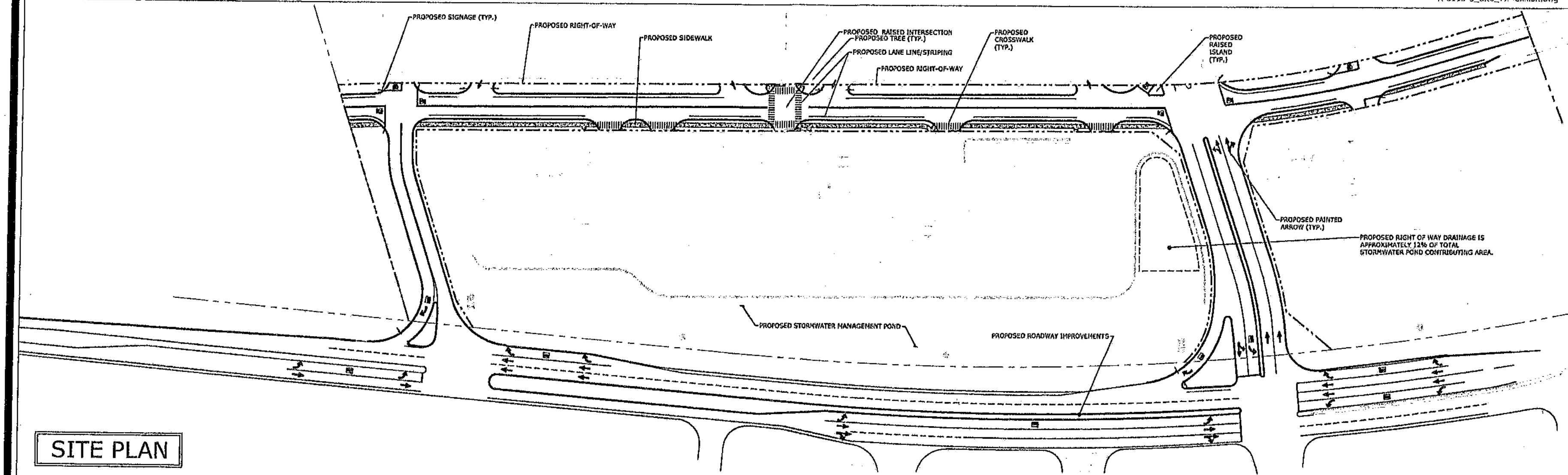
to

DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF ROCHESTER, NEW HAMPSHIRE
AND
WATERSTONE ROCHESTER, LLC
AND
WATERSTONE RETAIL, INC

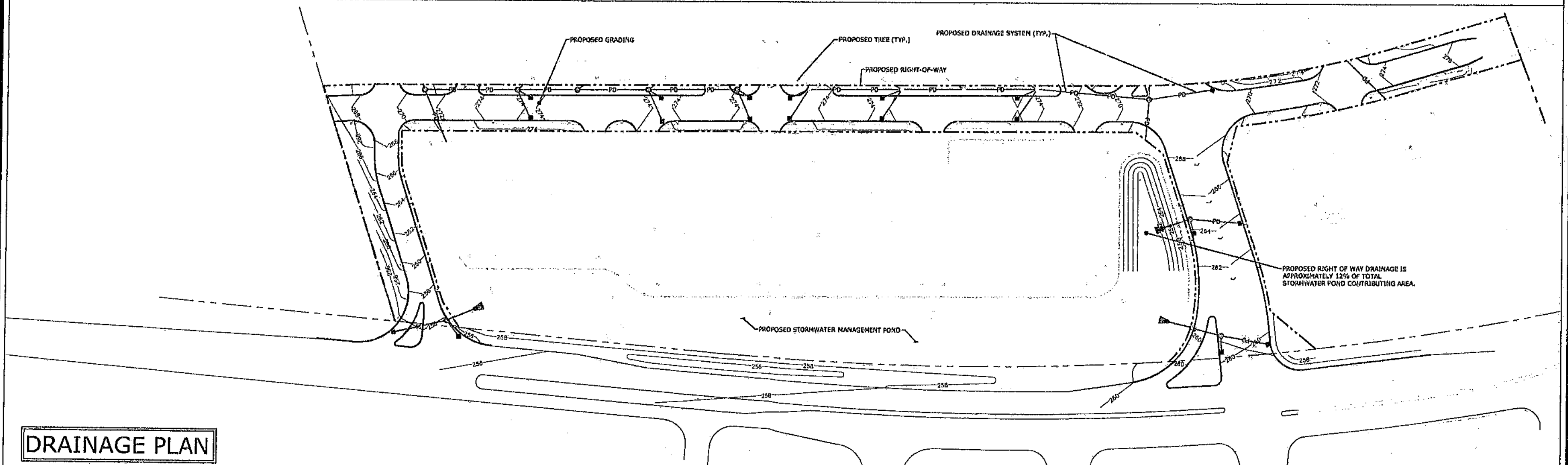
REEPRESENTITIVE PROJECT PREMISES SITE PLANS

PROPOSED COMMERCIAL DEVELOPMENT
FARMINGTON ROAD ~ ROCHESTER, NH
TIF EXHIBIT SHEET 1 of 2

Tighe&Bond
Consulting Engineers
www.tighebond.com
177 Corporate Drive
Portsmouth, New Hampshire 03801
(603) 433-8818
FEBRUARY 3, 2014
R-0195-3_Site_TIF-Exhibit.dwg



SITE PLAN

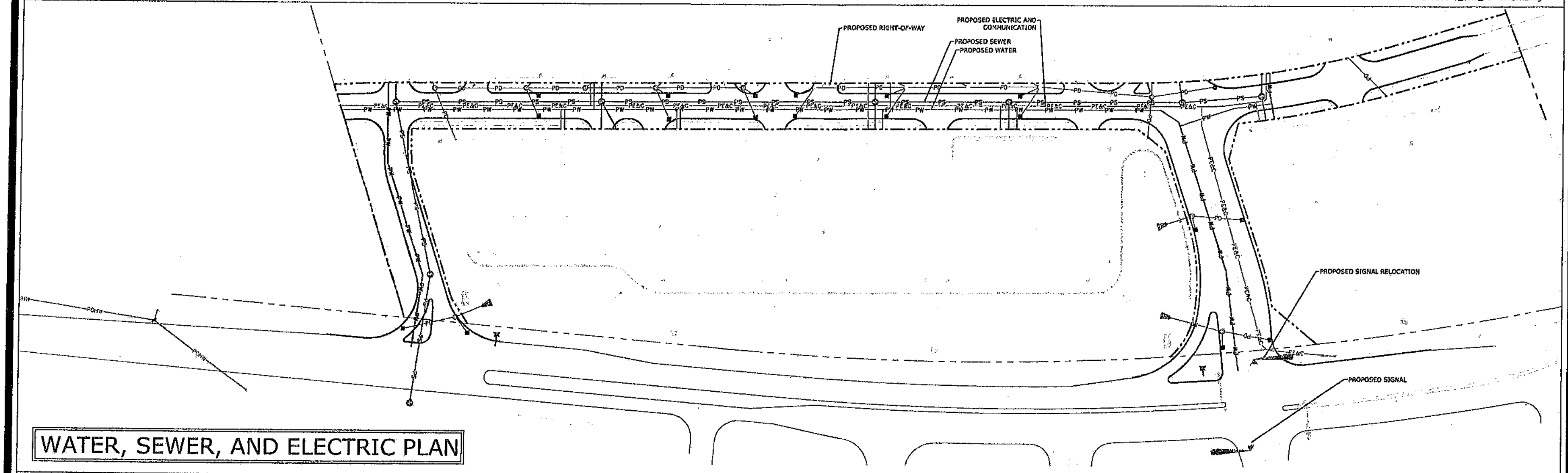


DRAINAGE PLAN

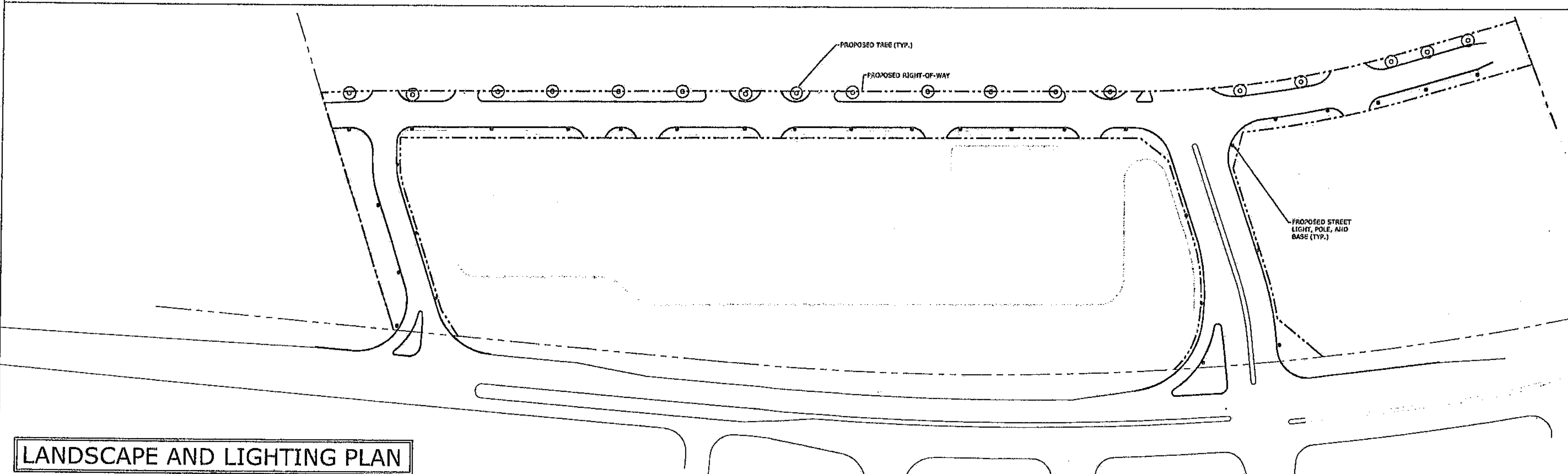
PROPOSED COMMERCIAL DEVELOPMENT
FARMINGTON ROAD ~ ROCHESTER, NH
TIF EXHIBIT SHEET 2 of 2

Tighe&Bond
Consulting Engineers
www.tighebond.com
177 Corporate Drive
Portsmouth, New Hampshire 03801
(603) 433-8818
FEBRUARY 3, 2014
R-0195-3_Site_TIF-Exhibit.dwg

SCALE IN FEET
0 60' 120'
GRAPHIC SCALE



WATER, SEWER, AND ELECTRIC PLAN



LANDSCAPE AND LIGHTING PLAN

EXHIBIT E

to

DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF ROCHESTER, NEW HAMPSHIRE
AND
WATERSTONE ROCHESTER, LLC
AND
WATERSTONE RETAIL, INC

ESTIMATED PUBLIC INFRASTRUCTURE IMPROVEMENTS COSTS

WATERSTONE/CITY OF ROCHESTER
PUBLIC INFRASTRUCHURE IMPROVEMENTS BUDGET

Public Improvements Anticipated 2014-2015		
4. Severino Estimate - Access Roads to Boulevard & Intersection Little Falls Bridge Road	$	814,675.00
5. Severino Estimate - Frontage Road (Granite Ridge Boulevard)	$	1,500,440.25
6. Sewer & Water Improvements	$	1,000,000.00
Subtotal	$	3,315,115.25
Engineering 20%	*$*	*663,023.05*
Contingency 20%	*$*	*795,627.66*
Permitting & Mitigation	$	225,984.04
TOTAL	**$**	**4,999,750.00**